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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–388–AD; Amendment 39–12824; AD 2002–14–24]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 650 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Cessna Model 650 airplanes, that requires a one-time inspection of the side brace mechanism assemblies of the left and right main landing gears (MLG) to detect any incorrect part number, and corrective actions if necessary. This action is necessary to prevent inadvertent disengagement of the locking mechanism of the side brace mechanism assembly, which could lead to collapse of the respective MLG, and result in a gear-up landing and possible injury to passengers and crew. This action is intended to address the identified unsafe condition.

DATES: Effective August 26, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert P. Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Cessna Model 650 airplanes was published in the **Federal Register** on March 28, 2002 (67 FR 14893). That action proposed to require a one-time inspection of the side brace mechanism assemblies of the left and right main landing gears (MLG) to detect any incorrect part number, and corrective actions if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Support for the Proposal

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 353 Model 650 airplanes of the affected design in the worldwide fleet. The FAA estimates that 282 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $169,200, or $600 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–24 Cessna Aircraft Company: Amendment 39–12824. Docket 2000–NM–388–AD.

Applicability: Model 650 airplanes, serial numbers –0001 through –0241 inclusive, and serial numbers –7001 through –7112 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent disengagement of the locking mechanism of the side brace mechanism assembly of the left or right main landing gear (MLG), which could lead to collapse of the respective MLG, and result in gear-up landing and possible injury to passengers and crew; accomplish the following:

One-Time Inspection

(a) Within 6 months after the effective date of this AD, do a one-time inspection of the side brace mechanism assemblies of the left and right MLGs to detect any incorrect part number (P/N) found installed, as specified in Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000.

(1) If the correct part number is found installed on the left side brace mechanism assembly, P/N 6217076–201, and on the right side brace mechanism assembly, P/N 6217076–202, no further action is required by paragraph (a) of this AD.

Corrective Action

(2) If incorrect P/N 6217076–2, 6217076–4, or 6217076–9 is found installed on either the left or right side brace mechanism assembly: Prior to further flight, replace any incorrect left side brace mechanism assembly with a new, improved assembly, P/N 6217076–201; and replace any incorrect right side brace mechanism assembly with a new, improved assembly, P/N 6217076–202; per Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000. After the replacement action, no further action is required by this AD.

Spares

(b) As of the effective date of this AD, no person shall install a left or right MLG side brace mechanism assembly, P/N 6217076–2, 6217076–4, or 6217076–9, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 26, 2002.

Issued in Renton, Washington, on July 11, 2002.

Lorio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18199 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–11–AD; Amendment 39–12829; AD 2002–15–01]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Models H–36 "Dimona", HK 36 R "Super Dimona", HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Diamond Aircraft Industries GmbH (Diamond) Models H–36 "Dimona", HK 36 R "Super Dimona", HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS sailplanes. This AD requires you to inspect the long aileron push rods in both wings for damage and modify the push rods. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria. The actions specified by this AD are intended to detect and correct damage in the long aileron push control rods, which could result in failure of the aileron push rods and decreased control. Such failure could lead to aeroelastic flutter.

DATES: This AD becomes effective on September 3, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 3, 2002.

ADDRESSES: You may get the service information referenced in this AD from Diamond Aircraft Industries GmbH, N.A. Otto-Strasse 5, A–2700 Wiener Neistadt, Austria; telephone: 43 2622 26 700; facsimile: 43 2622 26 780. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–11–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106;

telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Austro Control GmbH (Austro Control), which is the airworthiness authority for Austria, recently notified FAA that an unsafe condition may exist on all Diamond Models H–36 "Dimona", HK 36 R "Super Dimona", HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS sailplanes. The Austro Control reports that during the preflight of one sailplane, the long aileron push rod was found to be broken. On several sailplanes, the aileron push control rods in both wings were found damaged due to contact or interference with the support for the aileron bellcrank.

What Is the Potential Impact If FAA Took No Action?

If the damaged aileron push control rods are not detected and corrected, the damage could result in failure of the aileron push rods and decreased control. Such failure could lead to aeroelastic flutter.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Diamond Models H–36 "Dimona", HK 36 R "Super Dimona", HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 20, 2002 (67 FR 35459). The NPRM proposed to require you to inspect the long aileron push rods in both wings for damage and modify the push rods.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Sailplanes Does This AD Impact?

We estimate that this AD affects 45 sailplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Sailplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	None	$60	$60 × 45 = $2,700

We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	$80	$200	$200 × 45 = $9,000

Compliance Time of This AD

Why Is a Compliance Time of 10 Hours Time-in-Service (TIS) Used for the Inspection of the Long Aileron Push Rods?

Normally, FAA uses a 10-hour TIS compliance time for urgent safety of flight conditions. However, sailplane operation varies among operators. It might take operators between 3 months to 12 months or more to accumulate 10 hours TIS. For this reason, FAA has determined that the compliance time of this AD should be 10 hours TIS to ensure this condition is corrected in a timely manner but does not unduly penalize operators.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–15–01 Diamond Aircraft Industries GMBH: Amendment 39–12829; Docket No. 2002–CE–11–AD.

(a) *What sailplanes are affected by this AD?* This AD affects Models H–36 "Dimona", HK 36 R "Super Dimona", HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS sailplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage in the long aileron push control rods, which could result in failure of the aileron push rods and decreased control. Such failure could lead to aeroelastic flutter.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the long aileron push rods in both wings.	Within the next 10 hours time-in-service (TIS) after September 3, 2002 (the effective date of this AD).	In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002; Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002; and the applicable sailplane maintenance manual.
(2) If any long aileron push rods are found damaged during the inspection required in paragraph (d)(1) of this AD, modify the push rods.	Before further flight, after the inspection required in paragraph (d)(1) of this AD.	In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002; Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002; and the applicable sailplane maintenance manual.
(3) If no damage is found during the inspection required in paragraph (d)(1), modify the push rods.	Within the next 25 hours TIS after September 3, 2002 (the effective date of this AD).	In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002; Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002; and the applicable sailplane maintenance manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002; and Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Diamond Aircraft Industries GmbH, N.A. Otto-Strasse 5, A–2700 Wiener Neistadt, Austria; telephone: 43 2622 26 700; facsimile: 43 2622 26 780. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Austrian AD No. 111, dated February 26, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on September 3, 2002.

Issued in Kansas City, Missouri, on July 12, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18333 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–35–AD; Amendment 39–12826; AD 2002–14–26]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel Models 1A, 1A1, 1B, 1D, and 1D1 Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Arriel models 1A, 1A1, 1B, 1D, and 1D1 turboshaft engines. This action requires installation of containment shield rings around the free turbine blade area, and installation of a double support around the gearbox free turbine bearing housing. This amendment is prompted by two reports of the cantilevered axis of the free turbine moving from its design position and inducing blade trajectories outside the current design free turbine containment area. This condition can lead to uncontainment of the free turbine during an overspeed

event. The actions specified in this AD are intended to prevent uncontainment of the free turbine during an overspeed event, resulting in damage to the helicopter.

DATES: Effective August 6, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 6, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–35–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *"9-ane-adcomment@faa.gov"*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Turbomeca S.A., 40220 Tarnos, France; telephone: (33) 05 59 64 40 00; Fax: (33) 05 59 64 60 80. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299, telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arriel models 1A, 1A1, 1B, 1D, and 1D1 turboshaft engines. The DGAC advises that two reports were received of the cantilevered axis of the free turbine moving from its design position and inducing blade trajectories outside the current design, free turbine containment area. This condition can lead to uncontainment of the free turbine during an overspeed event.

Manufacturer's Service Information

Turbomeca S.A. has issued service bulletin (SB) No. A292 72 0206, Update 2, dated October 23, 2000, which specifies installation of modification TU 254, containment shield ring made of INCO 625 material, SB No. A292 72 0207, Update 2, dated October 23, 2000, which specifies installation of modification TU 255, additional containment shield ring made of Z10CNT 18–11 material, and SB No. 292 72 0208, Update 2, dated May 13, 1996, which specifies installation of modification TU 259, double support around the reduction gearbox free turbine bearing housing, to maintain bearing centering. The DGAC classified these SB's as mandatory and issued AD 1995–069(A)R3, dated March 7, 2001, to assure the airworthiness of these Turbomeca S.A. engines in France.

Bilateral Airworthiness Agreement

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arriel models 1A, 1A1, 1B, 1D, and 1D1 turboshaft engines of the same type design, this AD is being issued to prevent uncontainment of the free turbine during an overspeed event, resulting in damage to the helicopter. This AD requires installation of containment shield rings around the free turbine blade area, and installation of a double support around the gearbox free turbine bearing housing to maintain bearing centering. The actions must be done in accordance with the SB's described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model affected by the adoption of this rule, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–35–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation

under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–26 Turbomeca S.A.: Amendment 39–12826. Docket No. 2001–NE–35–AD.

Applicability: This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel models 1A, 1A1, 1B, 1D, and 1D1 turboshaft engines. These engines are installed on, but not limited to, Astar AS350D; Eurocopter AS350B, BA, B1, L1, and B2N; and Fennic AS550U2 helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent uncontainment of the free turbine during an overspeed event, resulting in damage to the helicopter, do the following:

(a) For Arriel engine models 1A and 1A1 that have incorporated modification TU 13, but have not incorporated modification TU 99 and modification TU 215, and for Arriel engine models 1B and 1D that have not incorporated modification TU 99 and modification TU 215, do the following within 30 days after the effective date of this AD:

(1) Install containment shield ring in accordance with the Instructions to be Incorporated, paragraphs 2A. through 2C, (modification TU 254) of service bulletin (SB) No. A292 72 0206, Update 2, dated October 23, 2000.

(2) Install double support around the reduction gearbox free turbine bearing housing, in accordance with Instructions for Incorporation, paragraphs 2A. through 2C, (modification TU 259) of SB No. 292 72 0208, Update 2, dated May 13, 1996.

(b) For Arriel engine models 1A and 1A1 that have incorporated modification TU 13 and modification TU 99, but have not incorporated modification TU 215, and Arriel engine models 1B, 1D, and 1D1 that have incorporated modification TU 99, but have not incorporated modification TU 215, do the following within 30 days after the effective date of this AD:

(1) Install additional containment shield ring, in accordance with the Instructions to be Incorporated, paragraphs 2A. through 2C, (modification TU 255) of SB No. A292 72 0207, Update 2, dated October 23, 2000.

(2) Install double support around the reduction gearbox free turbine bearing housing, in accordance with Instructions for Incorporation, paragraphs 2A. through 2C, (modification TU 259) of SB No. 292 72 0208, Update 2, dated May 13, 1996.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(e) The modifications must be done in accordance with the following Turbomeca S.A. mandatory service bulletins (MSB's):

Document No.	Pages	Revision	Date
MSB No. A292 72 0206, Total pages: 8	All	2	Oct. 23, 2000.
MSB No. A292 72 0207, Total pages: 7	All	2	Oct. 23, 2000.
MSB No. 292 72 0208, Total pages: 8	All	2	May 13, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca S.A., 40220 Tarnos, France; telephone: (33) 05 59 64 40 00; fax: (33) 05 59 64 60 80. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive AD 1995–069(A)R3.

Effective Date

(f) This amendment becomes effective on August 6, 2002.

Issued in Burlington, Massachusetts, on July 8, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–18203 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–124–AD; Amendment 39–12828; AD 2002–14–28]

RIN 2120–AA64

Airworthiness Directives; de Havilland Inc. Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain de Havilland Inc. (de Havilland) Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This AD establishes a life limit for the front fuselage struts and requires you to repetitively replace the front fuselage struts every 15 years or repetitively inspect the struts for corrosion or fatigue damage and replace when the damage exceeds a certain level. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. The actions specified by this AD are intended to prevent structural failure of the front fuselage caused by corrosion or fatigue damage to the struts that develops over time, which could result in reduced or loss of control of the airplane.

EFFECTIVE DATE: This AD becomes effective on September 6, 2002.

ADDRESSES: You may get the service information referenced in this AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–124–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Hjelm, Aerospace Engineer, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200; telephone: (516) 256–7523; facsimile: (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

Transport Canada, which is the airworthiness authority for Canada, notified FAA that an unsafe condition may exist on certain de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. Transport Canada reports numerous incidents of corrosion of the front fuselage struts. Further analysis of the front fuselage struts reveals that these parts are not life limited and incur corrosion and fatigue damage over time.

What Is The Potential Impact if FAA Took No Action?

Corrosion damage, if not detected and corrected, could result in failure of the front fuselage and possible reduced or loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 28, 2002 (67 FR 14886). The NPRM proposed to establish a life limit for the front fuselage struts and would require you to repetitively replace the front fuselage struts every 15 years or repetitively inspect the struts for corrosion or fatigue damage and replace when the damage exceeds a certain level.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 354 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. Operators
108 workhours × $60 an hour = $6,480 per airplane.	$2,352 per airplane	$8,832 per airplane per replacement	$3,126,528

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The replacement compliance time of this AD is "initially replace upon accumulating 15 years from the date of installation of the front fuselage struts or within the next 12 calendar months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 15 years." If the repetitive inspection option is used, then the repetitive compliance time interval will be at 1 and 5 years depending on the method used (provided certain corrosion or damage limits are not exceeded).

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The compliance of this AD is presented in calendar time instead of hours TIS. The need for establishing a life limit for the front fuselage struts as specified in this AD is the result of reports of corrosion found in this area on the affected airplanes. Corrosion can occur regardless of whether the aircraft is in operation. In order to ensure that the unsafe condition specified in this AD does not go undetected if the airplane was not in operation for an extended period of time, the compliance is presented in calendar time instead of hours TIS.

Regulatory Flexibility Determination and Analysis

What Are the Requirements of the Regulatory Flexibility Act?

The Regulatory Flexibility Act of 1980 was enacted by Congress to assure that small entities are not unnecessarily or disproportionately burdened by government regulations. This Act establishes "as principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational

requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

What Is FAA's Determination?

The FAA has determined that this AD could have a significant economic impact on a substantial number of small entities. However, we have determined that we should continue with this action in order to address the unsafe condition and ensure aviation safety.

You may obtain a copy of the complete Regulatory Flexibility Analysis (entitled "Final Regulatory Flexibility Analysis") that was prepared for this AD from the Docket file at the location listed under the **ADDRESSES** section of this document.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) could have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–14–28 de Havilland Inc.: Amendment 39–12828; Docket No. 98–CE–124–AD.

(a) *What airplanes are affected by this AD?* This AD affects all serial numbers of Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the front fuselage caused by corrosion or fatigue damage to the struts that develops over time, which could result in reduced or loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace each front fuselage strut with a new strut. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD.	Initially replace upon accumulating 15 years on each front fuselage strut or within the next 12 calendar months after September 6, 2002 (the effective date of this AD), whichever occurs later. Repetitively replace thereafter upon accumulating 15 years on each front fuselage strut.	In accordance with the applicable maintenance manual, as specified in de Havilland Parts Service Manual 1–2–2, Part 5, Temporary Revision 2–22; and de Havilland Parts Service Manual 1–2T–2, Part 5, Temporary Revision 2T–6, both dated August 3, 1998.

Actions	Compliance	Procedures
(2) As an alternative method of compliance to the replacements in paragraph (d)(1) of this AD, you may repetitively inspect each front fuselage strut, as follows:. (i) perform a detailed inspection of each front fuselage strut and all fittings attached to the frame for damage (corrosion, cracks, dents). When fatigue damage is found, you must replace the damaged strut. After each inspection, clean the drain holes around the bottom end fitting and protect the tube with an appropriate corrosion preventive spray. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD. (ii) perform an ultrasonic thickness measurement of all surface on each front fuselage strut. When minimum thickness is below 0.030 inches, you must replace the affected strut. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD.	Initially inspect upon accumulating 15 years on each front fuselage strut or within the next 12 calendar months after September 6, 2002 (the effective date of this AD), whichever occurs later. Accomplish the repetitive detailed inspection thereafter at intervals not to exceed 12 months and the ultrasonic thickness measurement at intervals not to exceed 5 years. Accomplish the corrosion prevention work prior to further flight after each inspection. Accomplish the replacement prior to further flight after damage is found or the thickness is found below 0.030 inches. Then, after replacement either replace with a new strut at 15-year intervals thereafter or repetitively inspect as prescribed above beginning at 15 years after each replacement.	For the detailed inspection, use an inspection light, inspection mirror, and 10X magnifying glass. For the ultrasonic inspection, use FAA-approved procedures that follow a similar calibration and measures strut thickness to that detailed in Bombardier Service Bulletin 2/49, Revision C.
(3) Do not install, on any affected airplane, any front fuselage strut unless it has a part number specified in the Replacement Part Number column of the chart presented in paragraph (e) of this AD.	As of September 6, 2002 (the effective date of this AD.	Not Applicable.

(e) *What part number front fuselage struts should I use for replacements?* The following charts presents the part numbers for existing parts and replacement parts for the front fuselage strut replacements:

Installed part No.	Replacement part No.	Description
C2FS209 or C2FS3281A	C2FS3281A	Strut Assembly Front Fuselage, Left.
C2FS210 or C2FS3282A	C2FS3282A	Strut Assembly Front Fuselage, Right.

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, New York Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone: (516) 256–7523; facsimile: (516) 256–2716.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *How do I get copies of the documents referenced in this AD?* You may direct technical questions to or get copies of the documents referenced in this AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Canadian AD CF–98–37R1, dated August 20, 1999.

(j) *When does this amendment become effective?* This amendment becomes effective on September 6, 2002.

Issued in Kansas City, Missouri, on July 15, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18334 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Melengestrol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of several supplemental applications filed by Pharmacia and Upjohn Co. to their new animal drug applications (NADAs) for the use of single-ingredient Type A medicated

articles containing melengestrol acetate, monensin, and tylosin to make two-way and (with tylosin) three-way, dry and liquid, combination drug Type C medicated feeds for heifers fed in confinement for slaughter. Some of the supplemental NADAs add the single-ingredient monensin claim for prevention and control of coccidiosis in feedlot heifers to the indications for combinations of melengestrol acetate and monensin with and without tylosin. Other supplemental NADAs extend the dose of tylosin to the single-ingredient range of 60 to 90 milligrams (mg) per head per day to reduce the incidence of liver abscesses in feedlot heifers and provide for use of liquid Type C medicated feeds containing melengestrol acetate and tylosin with and without monensin.

DATES: This rule is effective July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Daniel A. Benz, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0223, dbenz@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pharmacia and Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed supplemental applications to NADAs 124–309 and 125–476 that provide for use of MGA (melengestrol acetate) Premixes and RUMENSIN (monensin sodium) Premixes to make two-way, dry and liquid, combination drug Type C medicated feeds and to NADAs 138–792 and 138–870 that provide for use of MGA Premixes, RUMENSIN Premixes, and TYLAN (tylosin phosphate) Premixes to make three-way, dry and liquid, combination drug Type C medicated feeds for heifers fed in confinement for slaughter. These supplemental NADAs add the claim for use of 50 to 360 mg of monensin per head per day for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*. Pharmacia and Upjohn Co. also filed supplemental applications to NADAs 138–995 and 139–192 that provide for combination use of MGA Premixes and TYLAN Premixes, and to NADAs 138–792 and 138–870, described previously. These supplemental NADAs extend the dose of tylosin to a range of 60 to 90 mg per head per day to reduce the incidence of liver abscesses caused by *Fusobacterium necrophorum and Actinomyces (Corynebacterium) pyogenes* and provide for use of liquid Type C medicated feeds in combinations of melengestrol acetate and tylosin with and without monensin in heifers fed in confinement for slaughter. The supplemental applications are approved as of February 26, 2002, and the regulations are amended in § 558.342 (21 CFR 558.342) to reflect the approvals. Where appropriate, the basis of approval is discussed in freedom of information summaries.

Section 558.342 is also being revised to include a table format and to correct drug labeler codes to reflect recent changes of sponsorship for single-ingredient lasalocid (66 FR 46705, September 7, 2001) and oxytetracycline (66 FR 47962, September 17, 2001) Type A medicated articles. Section 558.355 is also being revised to delete a redundant entry and to add a cross-reference.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) and (a)(6) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither environmental assessments nor environmental impact statements are required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.342 is amended by revising the section heading and paragraph (a); by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively; by adding a new paragraph (b) and paragraphs (d)(3) through (d)(8); and by revising newly redesignated paragraph (e) to read as follows:

§ 558.342 Melengestrol.

(a) *Specifications.* (1) Dry Type A medicated articles containing 100 or 200 milligrams (mg) melengestrol acetate per pound.

(2) Liquid Type A medicated article containing 500 mg melengestrol acetate per pound.

(b) *Approvals.* See No. 000009 in § 510.600(c) of this chapter.

* * * * *

(d) * * *

(3) Combination Type B or C medicated feeds containing lasalocid must be labeled in accordance with § 558.311(d)(5) of this chapter.

(4) Liquid combination Type B or C medicated feeds containing melengestrol acetate and lasalocid must be manufactured in accordance with § 558.311(d) of this chapter.

(5) Combination Type B or C medicated feeds containing monensin must be labeled in accordance with § 558.355(d) of this chapter.

(6) Liquid combination Type B or C medicated feeds containing melengestrol acetate and monensin must be manufactured in accordance with § 558.355(f)(3)(i) of this chapter.

(7) Liquid combination Type B or C medicated feeds containing melengestrol acetate and tylosin must be manufactured in accordance with § 558.625(c) of this chapter.

(8) Liquid melengestrol acetate may not be mixed with oxytetracycline in a common liquid feed supplement.

(e) *Conditions of use*—(1) *Cattle.*

Melengestrol acetate in mg/head/day	Combination in mg/head/day	Indications for use	Limitations	Sponsor
(i) 0.25 to 0.5		Heifers fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat).	Administer 0.5 to 2.0 pounds (lb)/head/day of medicated feed containing 0.125 to 1.0 mg melengestrol acetate/lb to provide 0.25 to 0.5 mg melengestrol acetate/head/day.	000009

Melengestrol acetate in mg/head/day	Combination in mg/head/day	Indications for use	Limitations	Sponsor
(ii) 0.5		Heifers intended for breeding: For suppression of estrus (heat).	Administer 0.5 to 2.0 lb/head/day of Type C feed containing 0.25 to 1.0 mg melengestrol acetate/lb to provide 0.5 mg melengestrol acetate/head/day. Do not exceed 24 days of feeding.	000009
(iii) 0.25 to 0.5	Lasalocid 100 to 360	Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section.	Add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 1.0 mg melengestrol acetate/lb to a feed containing 10 to 30 grams (g) of lasalocid per ton; or add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 1.0 mg melengestrol acetate plus 50 to 720 mg lasalocid/lb to a ration of nonmedicated feed to provide 0.25 to 0.5 mg melengestrol acetate and 100 to 360 mg lasalocid/head/day. Lasalocid provided by No. 046573 in § 510.600(c) of this chapter.	000009
(iv) 0.25 to 0.5	Lasalocid 100 to 360 plus tylosin 90	Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section; and for reduced incidence of liver abscesses.	To administer 0.25 to 0.5 mg melengestrol acetate plus 100 to 360 mg lasalocid plus 90 mg tylosin/head/day: 1. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate/lb to a medicated feed containing 10 to 30 g lasalocid and 8 to 10 g tylosin per ton; or 2. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate plus 50 to 720 mg lasalocid/lb to 4.5 to 18 lb of a dry medicated feed containing 10 to 40 g tylosin per ton; or 3. Add 0.5 to 2.0 lb/head/day of a dry pelleted medicated feed containing 0.125 to 1.0 mg melengestrol acetate (from a dry Type A article), 50 to 720 mg lasalocid, and 45 to 180 mg tylosin/lb to a ration of nonmedicated feed. Lasalocid provided by No. 046573 and tylosin as tylosin phosphate by No. 000986 in § 510.600(c) of this chapter.	000009
(v) 0.25 to 0.4	Monensin 50 to 360	Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section.	Add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 0.80 mg melengestrol acetate/lb to a feed containing 5 to 30 g monensin per ton; or add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 0.80 mg melengestrol acetate plus 25 to 720 mg monensin/lb to a nonmedicated feed to provide 0.25 to 0.40 mg melengestrol acetate and 50 to 360 mg monensin/head/day. Monensin provided by No. 000986 in § 510.600(c) of this chapter.	000009

Melengestrol acetate in mg/head/day	Combination in mg/head/day	Indications for use	Limitations	Sponsor
(vi) 0.25 to 0.4	Monensin 50 to 360	Heifers fed in confinement for slaughter: As in item paragraph (e)(1)(i) of this section; and for the prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*.	Add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 0.80 mg melengestrol acetate/lb to a feed containing 10 to 30 g monensin per ton; or add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 0.80 mg melengestrol acetate plus 25 to 720 mg monensin/lb to a nonmedicated feed to provide 0.25 to 0.40 mg melengestrol acetate and 0.14 to 0.42 mg monensin/lb body weight, up to 360 mg monensin/head/day. Monensin provided by No. 000986 in § 510.600(c) of this chapter.	000009
(vii) 0.25 to 0.5	Monensin 50 to 360 plus tylosin 60 to 90	Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section; for the prevention and control of coccidiosis due to *E. bovis* and *E. zuernii*; and for reduced incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces (Corynebacterium) pyogenes*.	To administer 0.25 to 0.50 mg melengestrol acetate to 50 to 360 mg monensin plus 60 to 90 mg tylosin/head/day: 1. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate/lb to a medicated feed containing 5 to 30 g monensin and 8 to 10 g tylosin per ton; or 2. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate plus 25 to 720 mg monensin per pound to 4.5 to 18 lb of a dry medicated feed containing 10 to 40 g tylosin per ton; or 3. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate (from a dry Type A article), 25 to 600 mg monensin, and 45 to 180 mg tylosin/lb to a ration of nonmedicated feed. Monensin and tylosin as tylosin phosphate provided by No. 000986 in § 510.600(c) of this chapter.	000009
(viii) 0.25 to 0.5	Oxytetracycline 75	Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section; and for reduction of liver condemnation due to liver abscesses.	Add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 1.0 mg melengestrol acetate/lb per pound to a feed containing 6 to 10 g oxytetracycline per ton; or add at the rate of 0.5 to 2.0 lb/head/day a dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate plus 37.5 to 150 mg oxytetracycline/lb to provide 0.25 to 0.5 mg melengestrol acetate and 75 mg oxytetracycline/head/day. Oxytetracycline as provided by No. 066104 in § 510.600(c) of this chapter.	000009

Melengestrol acetate in mg/head/day	Combination in mg/head/day	Indications for use	Limitations	Sponsor
(ix) 0.25 to 0.5	Tylosin 60 to 90	Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section; and for reduced incidence of liver abscesses caused by *F. necrophorum* and *Actinomyces* (*Corynebacterium*) *pyogenes*.	To administer 0.25 to 0.5 mg melengestrol acetate with 60 to 90 mg tylosin/head/day: 1. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate/lb to a medicated feed containing 8 to 10 g tylosin per ton; or 2. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate/lb to 4.5 to 18 pounds of a dry medicated feed containing 10 to 40 g tylosin per ton; or 3. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate (from a dry Type A article) plus 45 to 180 mg tylosin/lb to a ration of nonmedicated feed. Tylosin as tylosin phosphate provided by No. 000986 in § 510.600(c) of this chapter.	000009

(2) [Reserved]

3. Section 558.355 is amended by removing and reserving paragraph (f)(3)(iv) and by revising paragraph (f)(7) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(7) Monensin may also be used in combination with:

(i) Decoquinate alone or with tylosin as in § 558.195.

(ii) Melengestrol acetate alone or with tylosin as in § 558.342.

Dated: July 8, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–18367 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Ractopamine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADAs) filed by Elanco Animal Health for their ractopamine hydrochloride Type A medicated article. The supplemental NADAs provide for use of a 45-gram-per-pound (g/lb) strength Type A medicated article to make Type B and Type C medicated feeds for finishing swine, for amending the assay limits for Type B and Type C medicated feeds containing ractopamine, and for the addition of cautionary statements to labeling.

DATES: This rule is effective July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: candres@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed two supplemental applications to NADA 140–863 for PAYLEAN (ractopamine hydrochloride), a Type A medicated article used to make Type B and Type C medicated feeds for finishing swine. The first supplemental NADA provides for use of a 45-g/lb strength of PAYLEAN and for amending the assay limits for Type B and Type C medicated feeds containing ractopamine. The second supplemental NADA provides for addition of cautionary statements to labeling. The supplemental NADAs are approved as of February 27 and June 1, 2001, respectively, and the regulations are amended in §§ 558.4 and 558.500 (21 CFR 558.4 and 558.500) to reflect the approval.

In addition, § 558.500 is being revised to correct the wording of the indications for the use of ractopamine alone or in combination with tylosin.

Approval of the first supplemental NADA did not require review of safety or effectiveness data; therefore, a freedom of information summary is not required.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data submitted to support approval of the second supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Amended]

2. Section 558.4 *Requirement of a medicated feed mill license* is amended in paragraph (d) in the "Category I" table in the entry for "Ractopamine" in the "Assay limits percent[1] type B/C[2]" column by removing "80–110" and adding in its place "80–110/75–125".

3. Section 558.500 is amended in paragraph (a) by removing "9" and adding in its place "9 or 45" and by revising the table in paragraph (d)(1) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(d) * * *

(1) * * *

Ractopamine grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
(i) 4.5		For increased rate of weight gain, improved feed efficiency, and increased carcass leanness in finishing swine fed a complete ration containing at least 16 percent crude protein from 150 pounds (lb) (68 kilograms (kg)) to 240 lb (109 kg) body weight.	Feed continuously as sole ration. Pigs fed PAYLEAN are at an increased risk for exhibiting the downer pig syndrome (also referred to as "slows," "subs," or "suspects"). Pig handling methods to reduce the incidence of downer pigs should be thoroughly evaluated prior to initiating use of PAYLEAN. Not for use in breeding swine.	000986
(ii) 4.5	Tylosin 100	Finishing swine: As in paragraph (d)(1)(i) of this section; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*.	Feed continuously as sole ration for 21 days. Not for use in breeding swine.	000986
(iii) 4.5 to 18		For improved feed efficiency and increased carcass leanness in finishing swine fed a complete ration containing at least 16 percent crude protein from 150 lb (68 kg) to 240 lb (109 kg) body weight.	Feed continuously as sole ration. Pigs fed PAYLEAN are at an increased risk for exhibiting the downer pig syndrome (also referred to as "slows," "subs," or "suspects"). Pig handling methods to reduce the incidence of downer pigs should be thoroughly evaluated prior to initiating use of PAYLEAN. Not for use in breeding swine.	000986
(iv) 4.5 to 18	Tylosin 100	Finishing swine: As in paragraph (d)(1)(iii) of this section; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *L. intracellularis*.	Feed continuously as sole ration for 21 days. Not for use in breeding swine.	000986

(2) [Reserved]

Dated: July 9, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–18365 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9005]

RIN 1545–BA87

Refund of Mistaken Contributions and Withdrawal Liability Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the return of employer contributions or withdrawal liability payments made to multiemployer plans due to a mistake of fact or law. Changes to the applicable laws were made by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). The final regulations provide guidance to the public in complying with MPPAA. The regulations affect multiemployer plans which receive mistaken contributions or withdrawal liability payments.

EFFECTIVE DATE: These regulations are effective July 22, 2002.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 401(a)(2) generally requires a trust instrument forming part of a pension, profit sharing or stock bonus plan to prohibit the diversion of corpus or income for purposes other than the exclusive benefit of employees or their beneficiaries. Section 403(c)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93–406 (88 Stat. 829), contains a parallel rule that prohibits the assets of a plan from inuring to the benefit of any employer and that requires the plan assets be held for the exclusive purposes of providing benefits to plan participants and their beneficiaries and defraying reasonable expenses of administering the plan. Under these rules, employer contributions to qualified plans were generally not refundable. However, a contribution made due to a mistake of

fact was permitted to be returned to the employer within one year after the date of the contribution.

The Multiemployer Pension Plan Amendments Act of 1980 (Public Law 96–364, 410(b) (94 Stat. 1208,1308)) amended section 401(a)(2) of the Internal Revenue Code to reflect Congressional concern that the requirements of prior law for the return of an employer contribution were too narrow in the multiemployer context. Under section 401(a)(2), as amended, a contribution made to a multiemployer plan due to a mistake of fact or law may be returned within six months after the date that the plan administrator determines that it was made in error. Section 401(a)(2) was also amended by MPPAA to permit the return of any withdrawal liability payment determined to be an overpayment made due to a mistake of fact or law within six months after that determination.

The effective date of section 410(b) of MPPAA was January 1, 1975, except that in the case of any determination by a plan administrator made before September 26, 1980 (the date of enactment), that a past contribution was made by of mistake of fact or law was deemed to have been made on the date of enactment. Accordingly, the period of time for refund of these contributions was 6 months from the date of enactment.

The IRS published a notice of proposed rulemaking (EE–133–80) in the **Federal Register** on March 11, 1983, (48 FR 10374) to amend the Income Tax Regulations (26 CFR part 1) under section 401(a)(2) of the Internal Revenue Code of 1954 (Code). At that time, the public was invited to comment in writing, or to make a request for public hearing, upon issues addressed in the proposals. Eight comments were received, but no public hearing was requested.

The proposed amendment to the regulations would have been numbered § 1.401(a)-3. However, in the intervening period of time the IRS has changed its system of numbering regulations to more closely align the regulation number to the number of the underlying Code section. Accordingly, the regulations are being finalized as § 1.401(a)(2)-1.

After consideration of all comments, the proposed provisions are revised and adopted as final regulations under this Treasury decision.

Explanation of Provisions

In general, the final regulations follow the proposed regulations with minor changes described below.

1. *Amount to be refunded.* Several comments concerned the amount to be refunded to the employer when a determination of mistake is made by the plan administrator. Questions were raised relating to the earnings and losses attributable to the excess contribution or overpayment of withdrawal liability, and the Pension Benefit Guaranty Corporation rules regarding the refund of overpayments of withdrawal liability.

These final regulations provide a narrow exception to the general rule that trust assets not be used for, or diverted to, purposes other than the exclusive benefit of employees. That the employer may, under limited circumstances, receive a refund of a mistaken contribution does not detract from the primary purpose of ERISA to protect individual pension rights and maintain the solvency and integrity of pension funds.

In general, any earnings attributable to an excess contribution shall not be returned to the employer, and any losses attributable to an excess contribution must reduce the amount to be returned to the employer. As a further limitation on the return of contributions, the final regulations provide that a refund of an excess contribution must in no event reduce a participant's account balance in a defined contribution plan to an amount less than that amount which would properly have been in that participant's account had no mistake occurred.

In the case of an overpayment of withdrawal liability, established by the plan sponsor under section 4219(c)(2) of ERISA, the plan will not fail to satisfy section 401(a)(2) if, in accordance with Pension Benefit Guaranty Corporation regulations regarding the overpayment of withdrawal liability, the overpayment with interest is returned to the employer. (*See* 29 CFR Ch. XL 4219.31(d)).

2. *Amount to be included in income.* In general, the amount of the excess contribution or overpayment must be included in gross income by the employer if the excess contribution or overpayment resulted in a tax benefit in a prior year. Any interest credited or paid on the refund of mistaken withdrawal liability payments must also be included in gross income by the employer.

Effective Date

These regulations apply for refunds made after July 22, 2002. However, plans and employers may apply the rules of these regulations to refunds made prior to that date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the preceding proposed rule was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

The principal author of these regulations is John T. Ricotta, Office of the Division Counsel/ Associate Chief Counsel (Tax Exempt/Government Entities). However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry to read in part as follows:

Authority: 26 U.S.C. 7805 * * * § 1.401(a)(2)–1 also issued under Multiemployer Pension Plan Amendments Act, Public Law 96–364, 410, (94 Stat. 1208, 1308)(1980). * * *

Par. 2. Section 1.401(a)(2)–1 is added to read as follows:

§ 1.401(a)(2)–1 Refund of mistaken employer contributions and withdrawal liability payments to multiemployer plans.

(a) *Introduction*—(1) *In general.* Section 401(a)(2) provides that a contribution or payment of withdrawal liability made to a multiemployer plan due to a mistake of fact or mistake of law can be returned to the employer under certain conditions. This section specifies the conditions under which an employer's contribution or payment may be returned.

(2) *Effective dates.* This section applies to refunds made after July 22, 2002.

(b) *Conditions for return of contribution*—(1) *In general.* In the case of a contribution or a withdrawal liability payment to a multiemployer plan which was made because of a mistake of fact or a mistake of law, the

plan will not violate section 401(a)(2) merely because the contribution or payment is returned within six months after the date on which the plan administrator determines that the contribution or payment was the result of a mistake of fact or law. The contribution or payment is considered as returned within the required period if the employer establishes a right to a refund of the amount mistakenly contributed or paid by filing a claim with the plan administrator within six months after the date on which the plan administrator determines that a mistake did occur. For purposes of this section, plan administrator is defined in section 414(g) and the regulations thereunder.

(2) *Applicable conditions*—(i) *In general.* The employer making the contribution or withdrawal liability payment to a multiemployer plan must demonstrate that an excessive contribution or overpayment has been made due to a mistake of fact or law. A mistake of fact or law relating to plan qualification under section 401 or to trust exemption under section 501 is not considered to be a mistake of fact or law which entitles an employer to a refund under this section. For purposes of this section, a multiemployer plan is defined in section 414(f) and the regulations thereunder.

(ii) *Amount to be returned*—(A) *General rule.* The amount to be returned to the employer is the excess of the amount contributed or paid over the amount that would have been contributed or paid had no mistake been made. This amount is the excess contribution or overpayment. Except as provided in paragraph (b)(2)(ii)(B) of this section, interest or earnings attributable to an excess contribution shall not be returned to the employer, and any losses attributable to an excess contribution must reduce the amount returned to the employer. For purposes of the previous sentence, the application of plan-wide investment experience to the excess contribution would be an acceptable method of calculating losses. A refund of a mistaken contribution must in no event reduce a participant's account balance in a defined contribution plan to an amount less than that amount which would properly have been in that participant's account had no mistake occurred. Thus, to the extent that the refund of an excess contribution would reduce a participant's account balance in a defined contribution plan to an amount less than the amount which would properly be in the participant's account had no mistake occurred, the return of the excess contribution would be prohibited by this section.

(B) *Overpayment of withdrawal liability.* In the case of an overpayment of withdrawal liability established by the plan sponsor under section 4219(c)(2) of ERISA, the plan will not fail to satisfy section 401(a)(2) if, in accordance with Pension Benefit Guaranty Corporation regulations regarding the overpayments of withdrawal liability (29 CFR 4219.31(d)), the overpayment, with interest, is returned to the employer.

(c) *Amount refunded includible in employer's income.* In general, the amount of the excess contribution or overpayment must be included in gross income by the employer if the excess contribution or overpayment resulted in a tax benefit in a prior year. Any interest credited or paid on the refund of mistaken withdrawal liability payments must also be included in gross income by the employer.

(d) *Application of section 412.* An amount returned under paragraph (b)(2)(ii) of this section is charged to the funding standard account under section 412 in the year in which the amount is returned.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: July 10, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–18019 Filed 7–19–02; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4003

RIN 1212–AA97

Rules for Administrative Review of Agency Decisions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is amending its regulation on Administrative Review of Agency Decisions to expedite the appeals process by authorizing a single member of the PBGC's Appeals Board to decide routine appeals.

EFFECTIVE DATE: July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Thomas H. Gabriel, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW, Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: On March 27, 2002 (at 67 FR 14663), the PBGC published a proposed rule that would authorize a single member of PBGC's Appeals Board to decide routine appeals. The PBGC received no comments in response to the proposed rule and is issuing the final regulation without change.

Under the PBGC's regulation on Administrative Review of Agency Decisions (29 CFR part 4003), persons aggrieved by certain PBGC determinations may appeal to the PBGC Appeals Board, defined as "a board consisting of three PBGC officials."

The PBGC has been studying its administrative appeals process to see how it can accelerate appeals processing while continuing to protect the rights of appellants. Experience has shown that many appeals involve simple factual issues or call for application of well-settled legal principles. The PBGC believes that cases that do not raise a significant issue of law or a precedent-setting issue can be properly decided by a single Appeals Board member, thereby expediting the appeals process. Accordingly, this final rule authorizes any one member of the Appeals Board to act for the Board in routine cases as described in the rule. The PBGC will continue to use 3-member panels for cases that involve a significant issue of law or a precedent-setting issue. This would include, for example, a benefit determination appeal in which the decision is expected to affect the benefits of other persons.

Compliance With Rulemaking Requirements

As a rule of agency organization, procedure, or practice, this rule is exempt from notice and public comment requirements. Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply to this rule. See 5 U.S.C. 601(2), 603, 604.

The PBGC has determined that good cause exists to dispense with the delayed effective date provisions of the Administrative Procedure Act as unnecessary. These amendments affect only the PBGC's processing of appeals and do not require any person other than the PBGC to take any action. Accordingly, the PBGC has decided to make these amendments effective immediately.

This rule is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

List of Subjects in 29 CFR Part 4003

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

For the reasons set forth above, the PBGC is amending 29 CFR part 4003 as follows.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

1. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

2. Add new § 4003.61 to read as follows:

§ 4003.61 Action by a sing'e Appeals Board member.

(a) *Authority to act.* Notwithstanding any other provision of this part, any member of the Appeals Board has the authority to take any action that the Appeals Board could take with respect to a routine appeal as defined in paragraph (b) of this section.

(b) *Routine appeal defined.* For purposes of this section, a routine appeal is any appeal that does not raise a significant issue of law or a precedent-setting issue. This would generally include any appeal that—

(1) Is outside the jurisdiction of the Appeals Board (for example, an appeal challenging the plan's termination date);

(2) Is filed by a person other than an aggrieved person or an aggrieved person's authorized representative;

(3) Is untimely and presents no grounds for waiver or extension of the time limit for filing the appeal, or only grounds that are clearly without merit;

(4) Presents grounds that clearly warrant or clearly do not warrant the relief requested;

(5) Presents only factual issues that are not reasonably expected to affect other appeals (for example, the participant's date of birth or date of hire); or

(6) Presents only issues that are controlled by settled principles of existing law, including Appeals Board precedent (for example, an issue of plan interpretation that has been resolved by the Appeals Board in a decision on an appeal by another participant in the same plan).

Issued in Washington, DC, this 16th day of July, 2002.

Elaine L. Chao,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 02–18373 Filed 7–19–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810–AA93

Indian Education Discretionary Grant Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations with request for comments.

SUMMARY: The Secretary amends the regulations that govern the competition of new Indian Education discretionary grant programs for fiscal year (FY) 2002. The programs governed by this part include grants for the Professional Development program and the Demonstration Grants for Indian Children program. These programs are authorized under Title VII of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001. These regulations identify eligible applicants for the program and the specific application and program requirements that must be met in order for applications to be considered for funding. These regulations also provide the requirements for the payback provisions that apply to the Professional Development program. These regulations will govern the grant application process for new FY 2002 awards under both programs, including the payback provisions for the Professional Development program.

EFFECTIVE DATE: These regulations are effective July 22, 2002.

We must receive your comments on or before August 21, 2002.

ADDRESSES: Address all comments concerning these regulations to Cathie Martin, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W111, Washington, DC 20202–6335. If you prefer to send your comments through the Internet, use the following address: *cathie.martin@ed.gov*.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Cathie Martin. Telephone: (202) 260–1683 or via Internet: *cathie.martin@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

Although the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment, we are interested in whether you think we should make any changes in these regulations. We will consider these comments in determining whether to revise the regulations.

To ensure that your comments have maximum effect, we urge you to identify clearly the specific section or sections of the regulations that each of your comments addresses and to arrange your comments in the same order as the regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these regulations in room 3W115 at 400 Maryland Ave., SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these regulations. If you want to schedule an appointment for this type

of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

On January 8, 2002, the Demonstration Grants for Indian Children program and Professional Development program were revised and recodified as Sections 7121 and 7122 of Subpart 2 of Part A of Title VII of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by Pub. L. 107–110. These regulations incorporate the specific program requirements for both programs. They also include the application requirements for the Professional Development program that must be met in order for applications to be considered for funding and the requirements concerning the payback provisions applicable to that program.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 263.9 When does payback begin?)
- Could the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the regulations easier to understand? If so, how?
- What else could we do to make the regulations easier to understand?

Send any comments that concern how the Department could make these regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Waiver of Proposed Rulemaking

Under the Administrative Procedures Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, in order to make timely grant awards in fiscal year (FY) 2002, the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment. These regulations will apply to the FY 2002 grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

The small entities that are affected by these regulations are small local educational agencies (LEAs) receiving Federal funds under this program. However, the regulations will not have a significant economic impact on the small LEAs affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these regulations require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.299 Indian Education—Special Programs)

List of Subjects in 34 CFR Part 263

Elementary and secondary education, Grant programs-education, Indians-education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: July 16, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising part 263 to read as follows:

PART 263—INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

Subpart A—Professional Development Program

Sec.

263.1 What is the Professional Development program?
263.2 Who is eligible to apply under the Professional Development program?
263.3 What definitions apply to the Professional Development program?

263.4 What training costs may a Professional Development program include?
263.5 What priority is given to certain projects and applicants?
263.6 How does the Secretary evaluate applications for the Professional Development program?
263.7 What are the requirements for a leave of absence?
263.8 What are the payback requirements?
263.9 When does payback begin?
263.10 What are the payback reporting requirements?

Subpart B—Demonstration Grants for Indian Children Program

263.20 What definitions apply to the Demonstration Grants for Indian Children program?
263.21 What priority is given to certain projects and applicants?

Authority: 20 U.S.C. 7441 and 7442, unless otherwise noted.

Subpart A—Professional Development Program

§ 263.1 What is the Professional Development program?

(a) The Professional Development program provides grants to eligible entities to—

(1) Increase the number of qualified Indian individuals in professions that serve Indian people;

(2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) Improve the skills of qualified Indian individuals who serve in the education field.

(b) The Professional Development program requires individuals who receive training to—

(1) Perform work related to the training received under the program and that benefits Indian people, or to repay all or a prorated part of the assistance received under the program; and

(2) Report to the Secretary on the individual's compliance with the work requirement.

(Authority: 20 U.S.C. 7442)

§ 263.2 Who is eligible to apply under the Professional Development program?

(a) In order to be eligible for either pre-service or in-service training programs, an applicant must be an eligible entity which means —

(1) An institution of higher education, including an Indian institution of higher education;

(2) A State educational agency in consortium with an institution of higher education;

(3) A local educational agency in consortium with an institution of higher education;

(4) An Indian tribe or Indian organization in consortium with an institution of higher education; or

(5) A Bureau-funded school.

(b) Bureau-funded schools are eligible applicants for —

(1) An in-service training program; and

(2) A pre-service training program when the Bureau-funded school applies in consortium with an institution of higher education that is accredited to provide the coursework and level of degree required by the project.

(c) Eligibility of an applicant requiring a consortium with any institution of higher education, including Indian institutions of higher education, requires that the institution of higher education be accredited to provide the coursework and level of degree required by the project.

(Authority: 20 U.S.C. 7442)

§ 263.3 What definitions apply to the Professional Development program?

The following definitions apply to the Professional Development program:

Bureau-funded school means a Bureau school, a contract or grant school, or a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

Department means the U.S. Department of Education.

Dependent allowance means costs for the care of minor children under the age of 18 who reside with the training participant and for whom the participant has responsibility. The term does not include financial obligations for payment of child support required of the participant.

Expenses means tuition and required fees; health insurance required by the institution of higher education; room, personal living expenses, and board at or near the institution; dependent allowance; and instructional supplies.

Full course load means the number of credit hours that the institution requires of a full-time student.

Full-time student means a student who —

(1) Is a degree candidate for a baccalaureate or graduate degree;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

Good standing means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

Graduate degree means a post-baccalaureate degree awarded by an institution of higher education beyond the undergraduate level.

Indian means an individual who is —

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements described in paragraph (a) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect October 19, 1994.

Indian institution of higher education means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

Indian organization means an organization that —

(1) Is legally established —

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Has as its primary purpose the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Induction services means services provided after the participant completes his or her training program and includes, at a minimum, these activities:

(1) Mentoring, coaching, and consultation services for the participant to improve performance,

(2) Access to research materials and information on teaching and learning,

(3) Periodic assessment of, and feedback sessions on, the participant's performance, provided in coordination with the participant's supervisor,

(4) Periodic meetings or seminars for participants to enhance collaboration, feedback, and peer networking and support.

In-service training means professional activities and opportunities designed to enhance the skills and abilities of individuals in their current areas of employment.

Institution of higher education means an accredited college or university within the United States that awards a baccalaureate or post-baccalaureate degree.

Participant means an Indian individual who is being trained under the Professional Development program.

Payback means work-related service or cash reimbursement to the Department of Education for the training received under the Professional Development program.

Pre-service training means training to Indian individuals to prepare them to meet the requirements for licensing or certification in a professional field requiring at least a baccalaureate degree.

Professional development activities means in-service training offered to enhance the skills and abilities of individual participants.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means that portion of an award that is used for room and board and personal living expenses. **Note:** Only full-time students are eligible for stipends.

Undergraduate degree means a baccalaureate (bachelor's) degree awarded by an institution of higher education.

(Authority: 20 U.S.C. 7442 and 7491)

§ 263.4 What training costs may a Professional Development program include?

(a) A Professional Development program may include, as training costs, assistance to either—

(1) Fully finance a student's educational expenses; or

(2) Supplement other financial aid—including Federal funding other than loans—for meeting a student's educational expenses.

(b) The Secretary announces the expected maximum amounts for stipends and other costs—including training costs—in the annual application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7442)

§ 263.5 What priority is given to certain projects and applicants?

(a) The Secretary awards a total of 5 points to an application submitted by an Indian tribe, Indian organization, or an Indian institution of higher education that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization or Indian institution of higher education will be considered eligible to receive the 5 priority points.

(b) The Secretary awards a total of 5 points to an application submitted by a consortium of eligible applicants that includes a tribal college or university and that designates that tribal college or university as the fiscal agent for the application. The consortium application of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR to be considered eligible to receive the 5 priority points. These competitive preference points are in addition to the 5 competitive preference points that may be given under the paragraph (a) of this section.

(c) The Secretary may give absolute preference to applications, reserving all or a portion of the funds available for new awards under the Professional Development program, to fund only those applications that meet one of the following priorities selected for a fiscal year. The Secretary announces the absolute priority selected in the annual application notice published in the **Federal Register**.

(1) *Pre-Service Training for Teachers.* This priority provides support and training to Indian individuals to complete a pre-service education program that enables these individuals to meet the requirements for full State certification or licensure as a teacher through—

(i) Training that leads to a bachelor's degree in education before the end of the award period; or

(ii) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area as long as the training meets the requirements for full State teacher certification or licensure; or

(iii) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists; and

(iv) One-year induction services after graduation, certification, or licensure, provided during the award period to graduates of the pre-service program while they are completing their first year of work in schools with significant Indian student populations.

Note to paragraph (c)(1): In working with various institutions of higher education and State certification/licensure requirements, we found that states requiring a degree in a specific subject area (*e.g.*, specialty areas or teaching at the secondary level) generally require a Master's degree or fifth-year requirement before an individual can be certified or licensed as a teacher. These students would be eligible to participate as long as their training meets the requirements for full State certification or licensure as a teacher.

(2) *Pre-service Administrator Training.* This priority provides—

(i) Support and training to Indian individuals to complete a master's degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator; and

(ii) One year of induction services, during the award period, to participants after graduation, certification, or licensure, while they are completing their first year of work as administrators in schools with significant Indian student populations.

(Authority: 20 U.S.C. 7442 and 7473)

§ 263.6 How does the Secretary evaluate applications for the Professional Development program?

The following criteria, with the total number of points available in parenthesis, are used to evaluate an application for a new award:

(a) *Need for project (5) points.* In determining the need for the proposed project, the Secretary considers the following:

(1) The extent to which the proposed project will prepare personnel in specific fields in which shortages have been demonstrated,

(2) The extent to which specific gaps or weaknesses in local capacity to provide, improve, or expand services that address the needs of the community or region have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance (10) points.* In determining the significance of the proposed project, the Secretary considers the following:

(1) The potential contribution of the proposed project to increase effective strategies for teaching and student achievement,

(2) The likelihood that the proposed project will build local capacity to provide, improve, or expand services that address the needs of the target population,

(3) The likelihood that the proposed project will result in system change or improvement.

(c) *Quality of the Project Design (15) points.* The Secretary considers the

following factors in determining the quality of the design of the proposed project:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design of the proposed project reflects up-to-date knowledge from scientifically-based research and effective practices on how to improve teaching and learning to support student proficiency in meeting rigorous academic standards.

(3) The extent to which performance feedback and continuous improvement of participant performance are integral to the design of the proposed project.

(4) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing educational services to the population of students to be served by the participants.

(d) *Quality of Project Services (15) points.* The Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge of scientifically-based research and effective practice;

(2) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in the achievement of students as measured against rigorous academic standards;

(3) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of the training and project services provided.

(e) *Quality of project personnel (15) points.* The Secretary considers the following factors when determining the quality of the personnel who will carry out the proposed project.

(1) The qualifications, including relevant training and experience, of the project director.

(2) The qualifications, including relevant training and experience, of key project personnel.

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Adequacy of resources (10) points.* In determining the adequacy of support for the proposed project, the Secretary considers the following factors:

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(2) The extent to which the costs are reasonable in relation to the design of the program, program objectives, number of persons to be served, and the anticipated results and benefits.

(3) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(g) *Quality of the management plan (15) points.* In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of procedures for ensuring feedback and continuous improvement in the performance of program participants in meeting the needs of the population they are to serve.

(2) The adequacy of the management plan to achieve the objectives of the proposed project during the award period, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(3) The extent to which the time commitments of the project director and other key personnel are appropriate and adequate to meet the objectives of the proposed project.

(h) *Quality of the project evaluation (15) points.* In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the context within which the project operates and the effectiveness of project implementation strategies.

(2) The extent to which the methods of evaluation will provide performance feedback on participants and permit periodic assessment of progress toward achieving the intended outcomes.

(3) The extent to which the methods of evaluation include the use of objective output measures that are directly related to the intended outcomes of the project and will produce both quantitative and qualitative data to the extent possible.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.7 What are the requirements for a leave of absence?

(a) A participant shall submit a written request for a leave of absence to the project director not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the project director chooses to waive the prior notification requirement.

(b) The project director may approve a leave of absence, for a period not longer than one academic year, provided a training participant has successfully completed at least one academic year.

(c)The project director permits a leave of absence only if the institution of higher education certifies that the training participant is eligible to resume his or her course of study at the end of the leave absence.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.8 What are the payback requirements?

(a) Individuals receiving assistance under the Professional Development are required to—

(1) Sign an agreement, at the time of selection for training, to meet the provisions of the payback requirement; and

(2) Perform work related to the training received and that benefits Indian people; or

(3) Repay all or a prorated part of the assistance received.

(b) The period of time required for a work-related payback is equivalent to the total period of time for which training was actually received under the Professional Development program.

(c) The cash payback required shall be equivalent to the total amount of funds received and expended for training received under these programs and may be prorated based on any approved work-related service the participant performs.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.9 When does payback begin?

(a) For all participants who complete their training under the Professional Development program, payback shall begin within six months from the date of completion of the training.

(b) For participants who do not complete their training under the Professional Development Program, payback shall begin within six months from the date the fellow leaves the Professional Development program, unless he or she continues as a full-time student without interruption, in a program leading to a degree in an accredited institution of higher education.

(1) If the participant leaves the Professional Development program, but plans to continue his or her education as a full-time student, the Secretary may defer the payback requirement until the participant has completed his or her educational program. Written requests for deferment shall be submitted to the

Secretary within 30 days of leaving the Professional Development program and shall provide the following information—

(i) The name of the accredited institution the student will be attending;

(ii) A copy of the letter of admission from the institution;

(iii) The degree being sought; and

(iv) The projected date of completion.

(2) After approval by the Secretary for deferment of the payback provision on the basis of continuing as a full-time student, former participants are required to submit to the Secretary a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.10 What are the payback reporting requirements?

(a) *Notice of intent.* Participants shall submit to the Secretary, within 30 days of completion of their training program, a written notice of intent to complete a work-related or cash payback, or to continue in a degree program as a full-time student.

(b) *Work-related payback.* If the participant proposes a work-related payback, the written notice of intent shall include information explaining how the work-related service is related to the training received and how it benefits Indian people.

(1) For work-related service, the Secretary shall review each participant's payback plan to determine if the work-related service is related to the training received and that it benefits Indian people. The Secretary approves the payback plan if a determination is made that the work-related service to be performed is related to the training received and benefits Indian people, meets all applicable statutory and regulatory requirements, and is otherwise appropriate.

(2) The payback plan for work-related service shall identify where, when, the type of service, and for whom the work will be performed.

(3) A participant shall notify the Secretary in writing of any change in the work-related service being performed within 30 days of such change.

(4) For work-related payback, individuals shall submit a status report every six months beginning from the date the work-related service is to begin. The reports shall include a certification from the participant's employer that the service(s) have been performed without interruption.

(5) For participants that initiate, but cannot complete, a work-related payback, the payback reverts to a cash payback that is prorated based upon the amount of time the work-related payback has been completed.

(c) *Cash payback.* If a cash payback is to be made, the Department will contact the participant to establish an appropriate schedule for payments.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

Subpart B—Demonstration Grants for Indian Children Program

§ 263.20 What definitions apply to the Demonstration Grants for Indian Children program?

The following definitions apply to the Demonstration Grants for Indian Children program:

Federally supported elementary or secondary school for Indian students means an elementary or secondary school that is operated or funded, through a contract or grant, by the Bureau of Indian Affairs.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides; or

(2) A descendant of a parent or grandparent who meets the requirements described in paragraph (a) of this definition; or

(3) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect October 19, 1994.

Indian institution of higher education means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

Indian organization means an organization that:

(1) Is legally established:

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Has as its primary purpose the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Professional development activities means in-service training offered to enhance the skills and abilities of individuals that may be part of, but not exclusively, the activities provided in a Demonstration Grants for Indian Children program.

(Authority: 20 U.S.C. 7441)

§ 263.21 What priority is given to certain projects and applicants?

(a) The Secretary awards a total of 5 competitive preference priority points to an application that presents a plan for combining two or more of the activities described in section 7121(c) of the Act over a period of more than one year.

(b) The Secretary awards a total of 5 competitive preference priority points to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education that is eligible to participate in the Demonstration Grants for Indian Children program. A consortium of eligible entities that meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five (5) priority points. The written consortium agreement must be submitted with the application.

(c) The Secretary may give absolute preference to applications, reserving all or a portion of the funds available for new awards under the Demonstration Grants for Indian Children program, to fund only those applications that meet one or more of the following priorities selected for a fiscal year. The Secretary announces the absolute priority selected in the annual application notice published in the **Federal Register**.

(1) School readiness projects that provide age appropriate educational programs and language skills to three- and four-year old Indian students to prepare them for successful entry into school at the kindergarten school level.

(2) Early childhood and kindergarten programs, including family-based preschool programs, emphasizing school readiness and parental skills.

(3) College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including math and science, to enable Indian students to successfully transition to postsecondary education.

(Authority: 20 U.S.C. 7441 and 7473)

[FR Doc. 02–18305 Filed 7–19–02; 8:45 am]

BILLING CODE 4000–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AB02

Records Disposition

AGENCY: National Archives and Records Administration (NARA).

ACTION: Correcting amendment.

SUMMARY: This document corrects NARA's rule on disposition of Federal records by correcting a reference to a section that has been redesignated.

DATES: Effective on July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: NARA redesignated certain sections in Part 1228 in a rulemaking on December 2, 1999 (64 FR 67667). We inadvertently failed to amend § 1228.42 to reflect the redesignation of a referenced section. This amendment makes that correction to the CFR.

List of Subjects in 36 CFR Part 1228

Archives and records.

Accordingly, 36 CFR part 1228 is corrected by making the following correcting amendment:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for Part 1228 continues to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

§ 1228.42 [Amended].

2. In paragraph (d) of § 1228.42 revise the reference to "§ 1228.200" to read "§ 1228.282".

Dated: July 15, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–18327 Filed 7–19–02; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 261–0362a; FRL–7247–8]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic solvents, organic solvent degreasing operations and organic solvent cleaning, storage and disposal. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This direct final rule is effective on September 20, 2002, without further notice, unless EPA receives adverse comments by August 21, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4661	Organic Solvents	12/20/01	02/20/02
SJVUAPCD	4662	Organic Solvent Degreasing Operations	12/20/01	02/20/02
SJVUAPCD	4663	Organic Solvent Cleaning, Storage, and Disposal	12/20/01	02/20/02

On March 15, 2002, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are no previous versions of Rules 4662 and 4663 in the SIP, although the SJVUAPCD adopted earlier versions of rule 4661 on December 9, 1999, and CARB submitted it to us on February 23, 2000. We approved this version of Rule 4661 into the SIP on August 29, 2000. The SJVUAPCD

adopted revisions to the SIP-approved version of rule 4661 and adopted rules 4662 and 4663 on December 20, 2001 and CARB submitted them to us on February 20, 2002. The SJVUAPCD previously adopted rule 4662 on December 17, 1992 and CARB submitted it to us on July 23, 1999. The SJVUAPCD again adopted rule 4662 on April 19, 2001 and CARB submitted it to us on October 30, 2001. The EPA did not act on previous two submittals of rule 4662. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What Is the Purpose of the Submitted Rules?

Rule 4661 regulates emissions of VOCs from a variety of sources and controls emissions of VOCs by limiting the amount of organic solvents that may be released into the atmosphere. This rule applies to any source operation that uses organic solvents and is not exempted by any other district rule(s). Rule 4662 controls emissions by limiting VOCs from organic solvent degreasing operations. This rule applies to all organic solvent degreasing operations except cleaning outside a degreaser. Rule 4663 controls emissions by limiting VOCs from organic solvent cleaning and from storage and disposal of solvents and waste solvent materials. This rule applies to any organic solvent cleaning performed outside a degreaser during the production, repair, maintenance, or servicing of parts, products, tools, machinery, equipment, or in general work areas at stationary sources. It also applies to the storage and disposal of all solvents and waste solvent materials at stationary sources. The technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The SJVUAPCD regulates an ozone nonattainment area (*see* 40 CFR part 81), so Rules 4661, 4662, and 4663 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. *Issues Relating to VOC Regulation, Cut Points, Deficiencies, and Deviations: Clarifications to Appendix D of November 24, 1987* ***Federal Register***. EPA, May 25, 1988 (the "Blue Book").
2. *Control of Volatile Organic Emissions from Solvent Metal Cleaning*. EPA–450/2–77–022, November 1977.
3. *Determination of Reasonably Available Control Technology and Best Available Control Technology for Organic Solvent Cleaning and Degreasing operations. CARB*, July 18, 1991.
4. *Guidance Document for Correcting VOC Rule Deficiencies*. EPA Region IX, August 21, 2001 (the "Little Blue Book").

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 21, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 20, 2002. This will incorporate these rules into the federally enforceable SIP.

Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that these rules will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because these rules approve pre-existing requirements under state law and do not impose any additional enforceable duty beyond that required by state law, they do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

These rules also do not have tribal implications because they will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. These rules also are not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because they are not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. These rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these rules for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 2, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(294)(i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(294) * * *

(i) * * *

(A) * * *

(*4*) Rule 4661, adopted on May 21, 1992 and amended on December 20, 2001, Rule 4662, adopted April 11, 1991 and amended on December 20, 2001, and Rule 4663, adopted on December 20, 2001.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7247–5]

RIN 2060–AG12

Protection of Stratospheric Ozone; Listing of Substitutes in the Foam Sector

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action lists acceptable and unacceptable substitutes for ozone-depleting substances (ODSs) in the foam blowing sector under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. Today's action: Withdraws the proposed decision to list HCFC–22 and HCFC–142b as unacceptable substitutes for existing users; lists HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in rigid polyurethane/polyisocyanurate laminated boardstock, rigid polyurethane appliance foam, and rigid polyurethane spray foam applications; lists HCFC–22 and HCFC–142b as acceptable substitutes for HCFC–141b, with narrowed use limits (users must ascertain and document that other acceptable alternatives are not technically feasible) in commercial refrigeration and sandwich panel applications and in the rigid polyurethane slabstock and other foams end-use; and lists HCFC–124 as an unacceptable substitute in all foam end-uses. At this time, EPA is deferring final action on its proposed decision to list HCFC–141b as an unacceptable foam blowing agent.

EFFECTIVE DATE: August 21, 2002.

ADDRESSES: Information relevant to this rulemaking is available in Docket A–2000–18, U.S. Environmental Protection Agency, OAR Docket and Information Center, 401 M Street, SW., Room M–1500, Mail Code 6102, Washington, DC 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Jeff Cohen at phone: (202) 564–0135, fax

(202) 565–2155 or e-mail: *cohen.jeff@epa.gov*, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW., Washington, DC 20001. The Stratospheric Protection Hotline can be contacted at (800) 296–1996. Additional information can also be obtained through EPA's Ozone Depletion World Wide Web site at "*http://www.epa.gov/ozone/snap/index.html*".

SUPPLEMENTARY INFORMATION: SNAP implements section 612 of the Clean Air Act which requires EPA to evaluate substitutes for ODSs to reduce overall risk to human health and the environment. The intended effect of the SNAP program is to expedite movement away from ozone-depleting compounds while avoiding a shift into substitutes posing other environmental problems. On March 18, 1994, EPA promulgated the initial SNAP rule establishing the program for evaluating and regulating substitutes for ozone depleting chemicals (59 FR 13044), and has since issued decisions on the acceptability and unacceptability of a number of substitutes.

In February 1999, EPA received a submission requesting review of the following foam blowing agents as substitutes for HCFC–141b: HFC–134a, HCFC–22, HCFC–142b, HCFC–124, and an HCFC–22/142b blend. In response, EPA proposed the following two determinations: (1) listing HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in all foam end-uses; and (2) listing HCFC–124 as unacceptable in all foam end-uses (65 FR 42653). EPA did not address the use of HFC–134a in the proposal because HFC–134a was already listed as an acceptable substitute for HCFC–141b (64 FR 30410). In addition, EPA proposed to list HCFC–141b, –22, and –142b as unacceptable in all foam end-uses with existing users grandfathered until 2005.

During the official comment period for the proposal, EPA received approximately 45 comments on the proposal (Docket A–2000–18). After the comment period closed, EPA acquired additional information pertaining to the availability and technical viability of alternatives, and the market size and potential economic impact of the proposal on various sub-sectors of the foam industry. This information was obtained through meetings held at the request of industry representatives, letters sent from members of Congress, letters sent directly to the Agency, and through EPA's own efforts to obtain additional information in order to fully address comments received during the comment period. On May 23, 2001, the Agency published a Notice of Data Availability (NODA) making this new information available for public review and comment (66 FR 28408). The comment period for the NODA ended on June 22, 2001.

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I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published a rule (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam manufacturing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.

C. Listing Decisions

Under section 612, the Agency has considerable discretion in the risk management decisions it can make

under the SNAP program. In the SNAP rule, the Agency identified four possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable. Fully acceptable substitutes, *i.e.*, those with no restrictions, can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risk to human health and the environment. Such substitutes are described as "acceptable subject to use conditions." Use of such substitutes without meeting associated use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the Clean Air Act and the SNAP regulations.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation must include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.*, performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. The use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit is unacceptable and violates section 612 of the CAA and the SNAP regulations.

EPA does not believe that notice and comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings (59 FR 13044). Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

As described in the original March 18, 1994 rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes. In this final rule, EPA is issuing its decision on the acceptability of certain substitutes in the foams blowing sector. Today's rule finalizes and incorporates decisions that were proposed on July 11, 2000 at 65 FR 42653 (referred to hereinafter as "the proposal"). The section below presents a detailed discussion of the determinations that are made final in today's Final Rule.

II. Listing Decisions on Foam Sector Substitutes

A major goal of the SNAP program is to facilitate the transition away from ozone-depleting substances. In 1994, EPA listed hydrochlorofluorocarbons (HCFCs), such as HCFC–141b, –22, and –142b, as acceptable replacements for CFCs because the Agency believed that HCFCs provided a temporary bridge to alternatives that do not deplete stratospheric ozone ("ozone-friendly"). At that time, EPA believed that HCFCs were necessary transitional alternatives to CFC blowing agents in thermal insulating foam (59 FR 13083). Since then, HCFC–141b, –22, and –142b have become the most common foam blowing agents. HCFCs are slated for phaseout under the Clean Air Act and Montreal Protocol on Substances that Deplete the Ozone Layer,[1] and the Agency has identified several alternatives to HCFC blowing agents, including hydrofluorocarbons (HFCs), hydrocarbons, carbon dioxide, and other compounds as acceptable substitutes in the foam blowing sector. In some foam end-uses, these alternatives have been tested and implemented in finished products that are on the market. In others, foam manufacturers are still working to formulate, test, and implement the alternatives to HCFCs in manufacturing processes.

On July 11, 2000, EPA proposed action regarding the acceptability of certain HCFCs in the foam sector. EPA subsequently solicited additional comment in a Notice of Data Availability issued on May 23, 2001. Today, EPA is making final decisions regarding the acceptability of those substitutes. EPA's decisions are based on the technical viability of alternatives, timing and availability of alternatives, the need for products that maintain thermal efficiency, structural integrity, and safety, and the potential economic implications. Table A summarizes today's final actions by foam sector end-use.

TABLE A.—TODAY'S FINAL ACTION BY FOAM END-USE

Foam end-use	HCFC blowing agent in use	Today's final action
Rigid Polyurethane/ Polyisocyanurate Laminated Boardstock.	HCFC–141b	(1) HCFC–141b: No Action. (2) HCFC–22, –142b, –124: Unacceptable Substitutes for HCFC–141b.
Rigid Polyurethane Appliance Foam	HCFC–141b (some HCFC–22 and HCFC–142b).	(1) HCFC–141b: No Action. (2) HCFC–22: Remains an Acceptable Substitute for CFCs. (3) HCFC–22, –142b, –124: Unacceptable Substitutes for HCFC–141b.
Rigid Polyurethane Spray Foam	HCFC–141b	(1) HCFC–141b: No Action. (2) HCFC–22, –142b: Unacceptable Substitutes for HCFC–141b. (3) HCFC–124: Unacceptable Substitute.

[1] The phaseout schedule was established on December 10, 1993 (58 FR 65018) as authorized under section 606 of the Clean Air Act. The phaseout for HCFCs currently used as foam blowing agents range from January 1, 2003 to January 1, 2010.

TABLE A.—TODAY'S FINAL ACTION BY FOAM END-USE—Continued

Foam end-use	HCFC blowing agent in use	Today's final action
Rigid Polyurethane Commercial Refrigeration and Sandwich Panels.	HCFC–141b, –22, and HCFC–142b.	(1) HCFC–141b: No Action. (2) HCFC–22, –142b: Remain Acceptable Substitutes for CFCs. (3) HCFC–22, –142b: Acceptable Substitutes for HCFC–141b Subject to Narrowed Use Limits.* (4) HCFC–124: Unacceptable Substitute.
Rigid Polyurethane Slabstock and Other Foams.	HCFC–141b (some HCFC–22)	(1) HCFC–141b: No Action. (2) HCFC–22, –142b: Acceptable Substitutes for HCFC–141b Subject to Narrowed Use Limits*. (3) HCFC–124: Unacceptable Substitute.
Extruded Polystyrene	HCFC–142b (some HCFC–22)	(1) HCFC–142b, –22: Remain Acceptable Substitutes for CFCs. (2) HCFC–124: Unacceptable Substitute.
Polyolefin	HCFC–142b	(1) HCFC–142b: Remains an Acceptable Substitute for CFCs. (2) HCFC–124: Unacceptable Substitute.

*Users must maintain records outlining technical/economic constraints that prevent switching from HCFC–141b to non-ozone-depleting alternatives.

A. HCFC–141b

Summary of Proposal

On March 18, 1994, EPA listed HCFC–141b as an acceptable substitute for CFCs in various foam end-uses. A number of foam manufacturers switched from CFC–11 and CFC–113 to HCFC–141b. Since that time, EPA has listed several non-ozone-depleting alternatives as acceptable replacements for HCFC–141b. In the July 11, 2000 proposal, EPA proposed to change its previous decision of acceptability such that use of HCFC–141b would be unacceptable for foam manufacture (65 FR 42653). However, for existing users, such use would be grandfathered until January 2005 (*i.e.*, existing users could continue to use HCFC–141b as a foam blowing agent until January 2005). The Agency believed that this time period was sufficient for these end-users to transition to non-ozone-depleting alternative foam blowing agents, taking into consideration the impending production phaseout of HCFC–141b effective January 1, 2003.

Summary of Final Action

EPA is deferring its decision on whether to list HCFC–141b as an unacceptable substitute for CFCs in foam blowing end uses. This decision does not in any way affect the January 1, 2003 phaseout deadline for the production and import of HCFC–141b, previously established on December 10, 1993 (58 FR 65018), to reduce U.S. HCFC consumption in accordance with section 606 of the Clean Air Act and the Montreal Protocol.

After the comment period for the July 11, 2000 proposal closed September 11, 2000, EPA acquired additional information pertaining to the availability and technical viability of alternatives and the market size and economic impact of the proposal on various industries. This information was obtained through meetings held at the request of industry representatives, letters sent through congressional representatives, letters sent directly to the Agency, and through EPA's own efforts to obtain additional information in order to fully address comments received during the comment period. The Agency published a Notice of Data Availability (NODA) on May 23, 2001 making the additional information pertaining to the foam industry available for public comment (66 FR 28408). As part of the proposed HCFC allowance allocation rulemaking, the Agency has also received comments and information pertaining to the use and availability of HCFCs and alternatives in the foam industry (66 FR 38064). The proposed HCFC allowance system is intended to control the U.S. production and consumption of class II controlled substances, the hydrochlorofluorocarbons (HCFCs) in accordance with U.S. obligations under the Montreal Protocol.

Several commenters on the proposed SNAP rule suggested that EPA should not list HCFC–141b as unacceptable for existing users because of a lack of feasible alternatives. In fact, these commenters, as well as commenters on the proposed HCFC allocation rule, requested that the Agency extend the January 1, 2003 phaseout deadline for production of HCFC–141b for use in specific applications such as spray foam. As part of the separate regulatory program governing HCFC production and allocations under sections 605 and 606 of the Clean Air Act (66 FR 38081), the Agency will address the comments pertaining to limited, continued production of HCFC–141b for use in applications where feasible alternatives are not yet fully developed and available. A final HCFC allocation rule is expected to be published by the fall of 2002. More detailed and up-to-date information on this issue can be found on EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/title6/phaseout/hcfc141b.html*.

Because a decision on exempted HCFC–141b production will have implications for continued use of HCFC–141b in the foam industry, we are deferring a final decision on the use of HCFC–141b. By deferring, EPA is allowing continued use of stockpiled HCFC–141b (produced prior to January 1, 2003) and use of limited amounts of HCFC–141b that may be produced after January 1, 2003 to address technical constraints of some existing HCFC–141b users.

B. HCFC–22, HCFC–142b and Blends Thereof

Summary of Proposal

In the July 11, 2000 proposal, EPA proposed to list HCFC–22, HCFC–142b and blends thereof as unacceptable in all foam end-uses; existing use of HCFC–22/HCFC–142b would have been grandfathered until January 1, 2005. On

March 18, 1994, EPA listed these HCFCs as acceptable substitutes for CFC–11, –12, –113, and –114 in various foam end-uses. A number of foam manufacturers switched from those CFCs to HCFC–22 and HCFC–142b as transitional blowing agents. Since that time, EPA has listed several non-ozone-depleting substitutes as acceptable replacements for HCFCs. Under the proposal, companies not currently using HCFC–22 or HCFC–142b would be prohibited from switching to HCFC–22 or HCFC–142b while existing users of HCFC–22 and HCFC–142b could continue to use HCFC–22 and HCFC–142b as foam blowing agents, but only until January 1, 2005. The Agency believed that time period was sufficient time for existing users to transition from HCFC–22 and HCFC–142b to non-ozone depleting alternative foam blowing agents.

Summary of Final Action

Based on comments received on the proposal and NODA, the Agency is taking the following final actions today: (1) Withdrawing its proposed decision to list HCFC–22 and HCFC–142b as unacceptable substitutes for CFCs (*i.e.*, existing users of these chemicals can continue use); (2) listing HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in rigid polyurethane/polyisocyanurate laminated boardstock, rigid polyurethane appliance, and rigid polyurethane spray foam applications; and (3) listing HCFC–22 and HCFC–142b as acceptable substitutes, with narrowed use limits, for HCFC–141b in commercial refrigeration, sandwich panels, and rigid polyurethane slabstock and other foams applications.

EPA is withdrawing the proposal to restrict existing use of HCFC–22 and HCFC–142b as substitutes for CFCs because the Agency believes there are technical and economic constraints in switching to ozone-friendly alternatives for these users within the next several years. Foam manufacturers who are existing users of HCFC–22 and HCFC–142b can continue to use these HCFCs but only under the conditions described here. Existing use is defined as current use of HCFC–22 and/or HCFC–142b to manufacture actual foam products that are sold into commercial markets and meet all relevant code approvals, where required, prior to the date of publication of this final rulemaking. Manufacturers who have conducted trials or limited production runs are not considered existing users. Foam manufacturers who use HCFC–141b in blends with HCFC–22 or HCFC–142b may continue to use the current percentage by weight of HCFC–22 and HCFC–142b based on the overall formulation. However, in those end-uses identified in today's action where substitution of HCFC–141b with HCFC–22 or HCFC–142b is unacceptable (rigid polyurethane/polyisocyanurate laminated boardstock, rigid polyurethane appliance, and rigid polyurethane spray foam applications), foam manufacturers may not replace HCFC–141b in current formulations with HCFC–22 or HCFC–142b. In these end-uses, HCFC–141b can only be replaced by SNAP approved alternatives. For example, if a formulation contains 8% HCFC–141b (by weight) and 2% HCFC–22 (by weight), the user cannot increase the total content of HCFC–22 in the formulation when replacing HCFC–141b with other SNAP approved alternatives. In addition to combined use of HCFC–141b and HCFC–22 in blends, EPA recognizes that a manufacturer may run separate production lines, some with HCFC–141b and some with HCFC–22, or may have multiple production facilities. Although such a manufacturer is an existing user of HCFC–22/HCFC–142b for some production lines, he may not convert the HCFC–141b lines or facilities, in whole or part, to HCFC–22 or HCFC–142b, except for those end-uses in which such substitution is deemed acceptable, subject to narrowed use limits (*e.g.*, commercial refrigeration, sandwich panels, and rigid polyurethane slabstock). In those end-uses where substitution of HCFC–141b with HCFC–22 or HCFC–142b is deemed unacceptable, SNAP approved alternatives for HCFC–141b must be used in those lines or facilities.

In today's action, EPA is also addressing use of HCFC–22 and HCFC–142b as replacements for HCFC–141b. EPA is finalizing its proposed determination that HCFC–22 and HCFC–142b are unacceptable as replacements for HCFC–141b in polyurethane boardstock and spray foam, and appliance end-uses; as of the effective date of this rule, these HCFCs cannot be used as substitute foam blowing agents for HCFC–141b. EPA believes that polyurethane boardstock, spray foam, and appliance manufacturers have identified and, in many cases, implemented viable non-ozone-depleting alternatives to HCFC–141b.

For commercial refrigeration and sandwich panel applications, and the polyurethane slabstock and other foams end-use, EPA is listing HCFC–22 and HCFC–142b, with narrowed use limits, as acceptable replacements for HCFC–141b. These end-uses are comprised of a wide range of diverse applications with unique technical considerations and fragmented HCFC use. EPA is strongly opposed to listing HCFCs as acceptable where non-ozone-depleting alternatives are available. However, EPA believes that ozone-friendly alternatives to HCFC–141b have not yet been fully developed and implemented across the spectrum of applications within these end-uses. In these situations, EPA believes switching to HCFC–22 and/or HCFC–142b as a bridge to non-ozone-depleting alternatives presents a lower risk than continued use of HCFC–141b.

In prior SNAP program regulations, substitutes have been permitted under a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. The narrowed use limit means that users intending to adopt HCFC–22 or HCFC–142b, and blends thereof in the commercial refrigeration and sandwich panels, and the "slabstock and other foams" end-uses, must ascertain that other acceptable alternatives are not technically feasible. These narrowed use requirements are summarized in a table at the end of this document and will be incorporated into Appendix J, Subpart G of the Code of Federal Regulations (CFR) at 40 CFR part 82. Under these provisions, companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation must include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.*, performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. The use of HCFC–22, HCFC–142b, and blends thereof in applications which are not specified as acceptable in the narrowed use limit is considered unacceptable and violates section 612 of the CAA and the SNAP regulations. In addition, foam manufacturers should be aware that EPA is continuing to review the commercial refrigeration, and sandwich panels and slabstock and other foams end-uses to determine the progress of non-ozone-depleting alternatives. As non-ozone-depleting alternatives become more widely available, the Agency will reevaluate the acceptability of HCFCs in these end-uses. Therefore, foam manufacturers within these applications that are using HCFCs should begin using non-ozone-depleting alternatives as soon as they are available in anticipation of future EPA action restricting the use of HCFCs.

C. HCFC–124

Summary of Proposal

In the July 11, 2000 proposal, EPA proposed to list HCFC–124 as unacceptable in all foam end-uses. Because HCFC–124 has never been listed as an acceptable foam blowing substitute for CFCs, EPA believed there were no current users of the chemical and, therefore, did not address existing users separately.

Summary of Final Action

Today's final rule lists HCFC–124 as unacceptable in all foam end-uses. Although HCFC–124 has a lower ODP than HCFC–141b, it was never submitted as a replacement for CFCs and therefore has never been commercialized for use as a blowing agent in the U.S. EPA is not aware of any uses of HCFC–124 as a foam blowing agent anywhere in the world. Comments on the proposal indicate that HCFC–124 has been tested on a limited scale as a foam blowing agent for rigid polyurethane foam only in the appliance industry. EPA believes that introduction of an HCFC into the foams industry to replace an existing HCFC is not necessary or appropriate in light of the ability of the appliance industry to convert directly from HCFC–141b to technically viable zero-ODP foam blowing alternatives.

III. Response to Comments

A. HCFC–141b

Because EPA is not taking final action today on its proposed decision to list HCFC–141b as unacceptable, the Agency is not responding to comments at this time. However, EPA would like to note the following issues raised in comments: (1) Import of pre-blended HCFC–141b polyurethane systems; and (2) use of stockpiled HCFC–141b. Commenters' concerns are summarized below along with EPA's preliminary views on these issues and information on the Agency's regulatory authority to address them.

Some commenters expressed concern that there was a potential for HCFC–141b, produced in the U.S. after the production ban for domestic use but subsequently exported from the U.S., to be re-imported in pre-blended polyurethane systems and used to produce foam in the U.S. Polyurethane foam systems generally consist of two components. One contains polyols, surfactants, blowing agents and other chemicals, the other contains isocyanate. These components are mixed on site to produce foam. Information specifically addressing or referencing these issues can be found in Air Docket A–2000–18 reference numbers IV–E–7, IV–D–80, IV–D–93, and IV–D–96. Currently there are no regulations prohibiting insulating foam products containing HCFC–141b from being sold in the U.S. after January 1, 2003.[2]

These comments are outside the scope of the present rulemaking. However, EPA will continue to monitor the situation closely and collect information in order to decide if any action is necessary and if so, the appropriate timing of such action. Available information does not now indicate the extent to which import of HCFC–141b systems may occur. However, if this activity becomes widespread and compromises or undermines the intent of the U.S. HCFC–141b phaseout, disadvantaging companies that have made good faith investments in developing and implementing alternative technologies, EPA could consider establishing a SNAP use restriction under section 612 of the Clean Air Act or other appropriate actions; expanding the definition of "controlled product" or "bulk substance" under the U.S. phaseout regulations at 40 CFR part 82 to specifically address polyurethane pre-polymers; and/or establishing a labeling requirement under section 611 of the Clean Air Act for foams blown with HCFC–141b and any products containing such foam. These labels would inform the public that these products contain HCFC–141b, an ozone-depleting chemical that destroys stratospheric ozone. Other possible actions that could occur if the import of pre-blended HCFC–141b systems is seen to be compromising the U.S. phaseout of HCFC–141b include: (1) Section 610 of the Clean Air Act could be amended to remove the exemption for foam insulation products which would allow EPA to restrict the sale and distribution of products containing HCFC–141b; and (2) international discussions under the Montreal Protocol might result in a re-classification of polyurethane pre-polymers to include all pre-blended polyurethane systems as controlled bulk substances subject to the import restrictions or other such changes that could prevent import of pre-blended polyurethane systems.

Another issue identified in the NODA was the potential for users to stockpile large enough quantities to delay the transition from HCFC–141b to non-ozone-depleting chemicals. Comments in the docket show that there are conflicting views on the amount of HCFC–141b that could be stockpiled for use after January 1, 2003. Some comments stated that the amount of HCFC–141b that could be stockpiled was limited by production and storage capacity and those limitations would prevent use of HCFC–141b after 2005 regardless of EPA's proposed unacceptability listing. Opposing this position, a commenter estimated that enough HCFC–141b could be collected, stockpiled, and sold to last more than 5 years past the production phaseout date.

The Agency does not have evidence that use of stockpiled HCFC–141b will significantly impede the transition away from HCFC–141b after the production phaseout. As the phaseout nears and access to HCFC–141b becomes more limited, the Agency believes that greater numbers of HCFC–141b users who have not yet transitioned to alternatives will do so. EPA encourages foam manufacturers to follow the lead of the polyisocyanurate boardstock industry, certain appliance manufacturers, and other foam manufacturers that are undertaking commendable efforts to transition to ozone-friendly alternatives. EPA will continue to monitor the situation closely and collect information in order to decide if any action is necessary and if so, the appropriate timing. The Agency may address this issue in more detail at the time we address the question of limited, continued production of HCFC–141b as part of the HCFC allocation rulemaking.

B. Existing Use of HCFC–22 and HCFC–142b

In today's action, EPA is withdrawing its proposal to list HCFC–22 and HCFC–142b as unacceptable substitutes for CFCs. Comments on the July 11, 2000 proposal and May 23, 2001 NODA regarding existing use of HCFC–22 and HCFC–142b fall under the following four summarized statements which are addressed in detail below:

1. Alternatives to HCFC–22 and HCFC–142b have not been fully developed for U.S. foam markets and, therefore, they are not technically viable for existing users of these chemicals.

2. There would be a significant impact on small businesses if EPA finalized its proposed action to list HCFC–22 and HCFC–142b as unacceptable for existing users.

[2] Foam products which contain or are manufactured with HCFCs are currently banned from sale or distribution into interstate commerce under section 610 of the Clean Air Act. However, section 610 exempts foam insulation from this ban. Foam insulation products are defined as product containing or consisting of the following closed cell rigid foam types: polyurethane, polystrene boardstock, phenolic, and polyethylene foam used for pipe insulation.

3. EPA should not de-list chemicals without new evidence suggesting that these chemicals are more harmful than previously known or that eliminating their use would benefit the environment.

4. EPA should not use the SNAP program to accelerate the phaseout of HCFC–22 and HCFC–142b.

1. Technical Viability of Alternatives

EPA's proposal was based on published and other publicly available information indicating that technically viable alternatives to HCFC–22 and HCFC–142b are available in all foam end-uses. Although some commenters agreed with EPA and supported the proposed decision, many commenters argued that EPA had insufficient data and that technically viable alternatives are not available. Commenters who disagreed with EPA recommended that EPA withdraw portions of the proposal that would affect existing users of HCFC–22 and HCFC–142b or extend the grandfathering period, for example, to 2008 instead of 2005. Based on these comments, EPA decided to collect more information in those foam sectors where publicly available information and published literature are limited. This additional information was made available for public review in a May 23, 2001 Notice of Data Availability (NODA) (66 FR 28408). The NODA included a technical analysis of comments received from the extruded polystyrene industry and a review of challenges facing the polyurethane spray foam industry and other systems house based applications. Both of these reports can be found in Docket A–2000–18, reference number IV–D–77 and IV–D–78, respectively.[3]

The polystyrene industry represents the largest foam end-use of HCFC–142b, with some minor HCFC–22 use. Key concerns raised during the comment periods relate to the technical feasibility of alternatives coupled with the cost and timing of the transition to non-ozone depleting chemicals. Polystyrene manufacturers commented that while zero-ODP alternatives have been implemented in Europe, conversion to non-HCFC alternatives in the U.S. would require more than 5 years of research and development due to differences in building codes and product requirements. The major challenges facing the polystyrene industry relate to balancing density and thickness (*i.e.*, insulation value) of the foam and compliance with safety requirements. For example, current building codes limit the use of polystyrene to either thin, high density foam or thicker, low density foam. Any changes that result in higher density or lower R-value (thicker) foam would result in products that cannot meet current building codes. Existing building codes are not expected to be revised in the near future and EPA agrees with comments indicating that it could take longer than 4 years to finalize the development of new codes to account for increased "fire loads" (*i.e.*, denser or thicker foam) that the polystyrene industry indicates would result from switching to non-HCFC alternatives.

The technical analysis of comments received from the extruded polystyrene industry, Air Docket A–2000–18, IV–D–77, shows that the polystyrene industry needs to maximize its efforts between now and 2010 in order to transition to alternatives in time for the HCFC–22/HCFC–142b production phaseout. EPA believes that research and development to modify existing blowing agent options and/or building codes in the U.S., and to also conduct trials and plant modifications, could take up to 8 years. EPA urges polystyrene manufacturers to examine research and development applied in Europe to further develop non-HCFC blowing agent options in order to achieve foam densities and insulation values that will meet building codes and be marketable in the U.S. at the earliest possible date. The Agency will continue to monitor the development of alternatives in the polystyrene sector and work with this industry to establish a time-frame for transitioning away from HCFCs.

As indicated in footnote 3 above, end-uses other than polystyrene account for a small percentage of the total existing HCFC–22 and HCFC–142b use in the foam industry. HCFC–22 and HCFC–142b are used in polyurethane appliance, commercial refrigeration, sandwich panels, and slabstock and other foam end-uses. Many comments on the July 11, 2000 proposal stated that EPA had not identified all entities potentially affected by the proposed HCFC–22/HCFC–142b restrictions or failed to assess the impact of the proposal on these users, many of which are small businesses. In response to comments, EPA expanded its effort to identify users of HCFC–22 and HCFC–142b and analyze the current status of alternatives in these applications. EPA reviewed comments and hired a foam industry expert to collect information from spray polyurethane foam representatives and systems house representatives on the viability of alternatives in each application that could be identified. Due to the fragmentation of the industry, it was difficult to identify specific applications, blowing agents used, and the viability of alternatives for each end-user.

In developing the proposed rule, based on information available to the Agency at the time, we concluded that non-ozone-depleting chemicals which reduce the risk to human health and the environment were available as replacements, and that existing users of HCFC–22 and HCFC–142b could switch to these alternatives. Based on comments and EPA's data collection efforts, the Agency learned that HCFC–22/HCFC–142b alternatives have been identified and developed by some polyurethane foam manufacturers. However, due to unique technical considerations for many HCFC–22/HCFC–142b users in the polyurethane industry, EPA believes that technically viable alternatives cannot be implemented across the spectrum of applications at this time. Consequently, EPA believes that for many polyurethane manufacturers that have been relying on HCFC–22 and HCFC–142b, switching to alternatives by 2005 would be difficult and prohibitively costly.

Thus, because of the infeasibility in the near term of alternatives for existing users in the polystyrene industry and the availability and technical viability of alternatives in other end-uses, EPA is withdrawing the proposed restriction on HCFC–22 and HCFC–142b for existing users. However, EPA believes that there are certain polyurethane applications, particularly non-insulating applications, that may currently have technically viable alternatives that are economically feasible. EPA is conducting a complete review of the spray, commercial refrigeration, and sandwich panels and slabstock and other foams end-uses to determine the current status of specific applications and products within these end-uses and the progress being made to implement non-ozone-depleting alternatives. As non-ozone-depleting alternatives become more widely available and implemented, the Agency

[3] Based on EPA's information collection effort and public comments submitted in response to the NODA, EPA estimates that approximately 160 million pounds of HCFCs are used in the foam sector. HCFC–22 makes up only 5% of the total HCFC use in the foam sector on a weight basis. Approximately half of that is in the polyurethane appliance sector. The remaining HCFC–22 use is in polyurethane commercial refrigeration, sandwich panel and other polyurethane applications with some minor use of HCFC–22 in the polystyrene industry. Nearly 95% of the approximately 30 million pounds of HCFC–142b is used by the polystyrene industry. The remaining HCFC–142b use is scattered amongst polyurethane appliance, commercial refirgeration, one-component, and sandwich panel applications. Some HCFC–142b is also used to produce polyethylene foam.

plans to reevaluate the acceptability of HCFCs in these end-uses. In order to anticipate future EPA action restricting the use of HCFCs, EPA urges foam manufacturers to implement non-ozone-depleting alternatives as soon as they are available and economically feasible.

2. Small Business Impacts

At the time of the proposal, EPA did not believe that a significant number of small entities would be affected by the proposed action. However, EPA acknowledged that this decision would reverse a prior acceptability determination and current users could be disadvantaged if forced to quickly switch to other substitutes. For that reason, the Agency proposed to grandfather existing users of HCFC–22 and HCFC–142b until January 1, 2005. Through comments to the proposal, it came to the Agency's attention that we were not aware of some users of these HCFCs. Commenters argued that the flexibility EPA proposed to allow individual users to demonstrate need for continued use of HCFC–22 and HCFC–142b beyond 2005 was not appropriate because a case-by-case review to provide extensions to the grandfathering period would create a new SNAP process that would place an undue burden on many small businesses. In reaction to these comments, EPA expanded its effort to identify existing users of HCFC–22 and HCFC–142b that would be affected if EPA made final a decision to make HCFC–22 and HCFC–142b unacceptable for existing users. As discussed above, on May 23, 2001, EPA published a NODA that identified many of the existing HCFC–22/HCFC–142b users in the foam industry as small businesses (66 FR 28408). Because EPA is withdrawing the proposed action, there will be no effect on small businesses that are existing users of HCFC–22 and/or HCFC–142b. If the Agency takes future action to restrict the use of HCFCs based on its review of commercial refrigeration, and sandwich panels and slabstock and other foams end-uses, small business impacts will be fully considered prior to an EPA proposal.

3. Environmental Benefit

Commenters argued that the environmental benefit of the proposal had not been quantified and that an analysis would have shown minimal benefit. Specifically, these commenters claimed that a decision to list HCFC–22 and HCFC–142b as unacceptable would not significantly reduce damage to the ozone layer and that EPA had not shown how the proposal would reduce overall risks to human health and the environment. One commenter stated that "any phaseout of HCFCs in the U.S. foam-blowing sector would have a de minimis impact on the recovery of the stratospheric ozone layer."

Under the SNAP program, EPA does not rank various risk factors (*e.g.*, toxicity, flammability, ozone depletion potential) for each alternative being considered. Instead, EPA considers all relevant health and environmental information in a comparative framework. Today's decision is to list HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in certain applications because of the availability of non-ozone depleting alternatives. Because of the risks they pose to the stratospheric ozone layer, HCFC–22 and HCFC–142b are being phased out of production under the provisions of the Montreal Protocol and the Clean Air Act. Under SNAP, EPA's mandate is to determine that it is "unlawful" to replace an ODS with a substitute where other alternatives are available and would reduce the overall risk to human health and the environment. EPA's decision to list HCFC–22 and HCFC–142b as unacceptable in specific end-uses is based on the conclusion that other non-ODS substitutes are available and, considering all risk factors, create less overall risk to human health and the environment.

Because of technical constraints faced by existing users of HCFC–22 and HCFC–142b, EPA is withdrawing the proposal affecting existing users. However, EPA maintains that use of these chemicals continues to destroy the ozone layer (estimates gathered by EPA and provided in the NODA show that 35 million pounds of HCFC–142b and HCFC–22 are used annually) and that there will be an environmental benefit to transitioning from ODSs as soon as technically viable, energy efficient alternatives are fully developed and available. EPA encourages companies to continue efforts to develop and implement these alternatives.

4. Accelerated Phaseout

Many commenters viewed EPA's proposed listing decision for HCFC–22 and HCFC–142b as an attempt to accelerate the phaseout of these HCFCs. Many commenters argued that prohibiting use of HCFCs under SNAP would amount to an acceleration of the established January 1, 2010 production phase-out of HCFC–22 and HCFC–142b established under section 605 of the Clean Air Act (CAA), and that such action is not authorized under the SNAP program (section 612).

EPA recognizes that some foam manufacturers viewed the 2010 production phaseout of HCFC–22 and HCFC–142b as equivalent to an end-of-use date because after that time supplies of these chemicals will significantly diminish. However, the 2010 deadline only relates to consumption of HCFCs as defined under section 601 of the CAA (consumption = production + import – exports). SNAP determinations under section 612 of the CAA do not affect consumption, defined under section 605 of the CAA. If finalized, EPA's determination would have only restricted *use* of HCFC–22 and HCFC–142b in the foam sector. Nevertheless, this issue is moot because under today's action, existing users of HCFC–22 and HCFC–142b can continue using these chemicals beyond January 1, 2005.

EPA also received comments that SNAP should not be used in order to reduce consumption of ozone depleting chemicals. Use restrictions under SNAP may have the effect of reducing the production and import of ozone-depleting substances. However, the SNAP program does not directly regulate or constrain HCFC consumption. Compliance with HCFC consumption requirements for the U.S., specified in the Montreal Protocol and Clean Air Act, are addressed in separate regulatory actions by the Agency. In the proposal, EPA was following its mandate to review ODS alternatives and make determinations on their acceptability in order to ensure that substitutes for ODSs that are determined acceptable present a lower risk to human health and the environment. EPA's basis for the proposal was that the Agency believed technically and economically viable non-ozone depleting alternatives were available. Because the goal of the SNAP program is to facilitate an expeditious movement to these alternatives, EPA believed its proposed action was appropriate at the time. However, as provided above, EPA is withdrawing its proposed decision because EPA now believes that technically feasible alternatives are not widely available for polystyrene manufacturers. Additional information will be collected on the viability and timing of non-ozone-depleting alternatives for polyurethane manufacturers currently using HCFC–22 and/or HCFC–142b.

C. New Use of HCFC–22 and HCFC–142b

A major objective of the SNAP program is to facilitate the transition from ozone-depleting chemicals by promoting the use of substitutes which present a lower risk to human health

and the environment (40 CFR 82.170(a)). Today's rule lists HCFC–22 and HCFC–142b as unacceptable replacements for HCFC–141b in rigid polyurethane and polyisocyanurate boardstock, and polyurethane appliance and spray foam applications. EPA has concluded based on the available information that technically viable, non-ozone depleting (zero-ODP) alternatives are currently or potentially available for HCFC–141b for these end-uses. The Agency believes that the use of HCFC–22 and HCFC–142b in applications where non-ozone depleting chemicals are available is unnecessary and presents greater risk to human health and the environment by contributing to the continued depletion of the ozone layer.

In the boardstock and appliance foam sectors, many companies have already switched to non-ozone-depleting alternatives or plan to do so in the near future. In the spray foam sector, alternatives other than HCFC–22 or HCFC–142b have been identified as eventual replacements for HCFC–141b. At this point, however, the spray foam industry believes that additional time is needed to test and implement any alternatives to HCFC–141b. The Agency is currently reviewing a request that limited quantities of HCFC–141b be made available for spray foam applications beyond the January 1, 2003 phaseout deadline. EPA intends to issue a proposed determination pertaining to this request later this year as part of the HCFC allocation rulemaking.

Today's rule lists HCFC–22 and HCFC–142b as acceptable replacements, under narrowed use limits, for HCFC–141b in commercial refrigeration, sandwich panels, and slabstock and other foams applications. Users intending to adopt HCFC–22 or HCFC–142b, and blends thererof in the commercial refrigeration and sandwich panels, and the "slabstock and other foams" end-uses, must ascertain and document that other acceptable alternatives are not technically feasible. EPA believes that at this time, technically viable, non-ozone depleting (zero-ODP) alternatives to HCFC–141b are not fully developed for all applications within these end-uses. With the production phaseout of HCFC–141b approaching, several comments indicated that many companies are aggressively testing non-ozone-depleting alternatives and plan to implement them in the near future. However, these end-uses are comprised of extremely diverse products and non-ozone-depleting alternatives may not be fully developed in every unique application within these end-uses. Additionally, these end-uses comprise thousands of small businesses and EPA believes that, in this situation, it is appropriate to allow the narrowed use of HCFC–22 and/or HCFC–142b where necessary. Although EPA encourages continued efforts to implement non-ozone-depleting alternatives, the Agency feels that allowing narrowed use of HCFC–22 and/or HCFC–142b will facilitate the impending HCFC–141b transition by providing flexibility to small businesses who have not yet successfully identified suitable alternatives.

Comments on the July 11, 2000 proposal and May 23, 2001 NODA regarding new use of HCFC–22 and HCFC–142b as replacements for HCFC–141b indicate opposing views on the following four major issues which are addressed in detail below:

1. Technical viability of alternatives to HCFC–141b
2. Availability of alternatives to HCFC–141b
3. Economic/small business impacts
4. EPA's review process

1. Technical Viability of Alternatives

EPA's proposal was based on our understanding that technically feasible alternatives are available in all foam sectors. However, some comments suggested that feasible alternatives were not available for all end-uses and that EPA should have proposed acceptability determinations by end-use rather than across the entire foam sector. EPA's SNAP program has defined ten major end-uses in the foam sector. Of these ten end-uses, manufacturers in the following four use HCFC–141b:[4]

- Rigid Polyurethane and Polyisocyanurate Laminated Boardstock
- Rigid Poiyurethane Appliance
- Rigid Polyurethane Spray, Commercial Refrigeration, and Sandwich Panels
- Rigid Polyurethane Slabstock and Other Foams

Based on data collected by the Agency (Air Docket A–2000–18, IV–D–79), rigid polyurethane/polyisocyanurate laminated boardstock makes up 60% of the total foam manufacturing use of HCFC–141b in the U.S., the rigid polyurethane appliance end-use and spray foam application each use approximately 18% of the total HCFC–141b, and the remaining 4–5% of HCFC–141b use is combined in rigid polyurethane commercial refrigeration, sandwich panels, slabstock and other foam applications. Below is a discussion, by end-use, on the technical feasibility of non-ODS alternatives to HCFC–141b (Table B lists the SNAP approved alternatives).

TABLE B.—SNAP APPROVED ALTERNATIVES TO HCFCS

SNAP approved HCFC alternative	Boardstock	Appliance	Spray	Commercial refrigeration, and sandwich panels	Slabstock and other foams
Water/CO_2	X	X	X	X	X
HFC–134a	X	X	X	X	X
HFC–152a	X	X	X	X	X
HFC–245fa	X	X	X	X	X
Exxsol	X	X	X	X	X
Hydrocarbons (C3–C6)	X	X	.....	X	X
Formic Acid	X	X	X	X	X
Vacuum Panels	.....	X			
2-chloropropane	X				
Methyl Formate	X	X	.....	X	X

[4] HCFC–141B is not used to manufacture polystyrene foam.

Rigid Polyurethane and Polyisocyanurate Laminated Boardstock

Although the majority of comments supported EPA's determination that technically viable alternatives to HCFC–141b are available for the polyurethane and polyisocyanurate boardstock industry, two commenters stated that those manufacturers converting from HCFC–141b to hydrocarbons would see a 10–15% loss in insulation value of their product. EPA recognizes that foam manufactured using alternative blowing agents may display slightly different properties than HCFC–141b-blown foam. However, the Agency did not receive, and is not otherwise aware of, data demonstrating that the use of hydrocarbons would reduce the insulating performance of polyurethane and polyisocyanurate boardstock. On the contrary, EPA received information showing that hydrocarbons are a viable option and that manufacturers in the polyurethane and polyisocyanurate laminated boardstock industry are actively transitioning to them, as described below.

Hydrocarbon blowing agents have been considered viable candidates to replace HCFCs for several years. A 1995 article indicates that "hydrocarbon blown foams can be developed that meet the stringent requirements of the North American construction industries" (Docket A–2000–18, IV–D–41, Supporting Document #54). Although processing techniques were not optimized at the time, according to the authors, the data "clearly indicate[s] that n-pentane and cyclopentane are viable candidates for use as * * * blowing agents in polyisocyanurate foams." Subsequent studies show that, due to further research and development of hydrocarbon blown foams over the past 5 years, the technical viability of hydrocarbons has improved (A–2000–18, IV–D–41, Supporting Document #44–51).

Additionally, several comments provided information confirming that rigid polyurethane and polyisocyanurate laminated boardstock manufacturers are rapidly converting to hydrocarbon-based blowing agents. One roofing corporation presented a line of hydrocarbon blown foam in 1997, well ahead of the 2003 HCFC–141b phaseout (A–2000–18, IV–D–72). As of March 2000, two additional polyisocyanurate boardstock manufacturers had announced their intention to use hydrocarbons, and two or three others planned to do so before 2001 (Docket A–2000–18, IV–D–41, Supporting Document #43). EPA has additional information indicating that several other boardstock manufacturers are in the process of converting some or all of their facilities from HCFC–141b to hydrocarbons (A–2000–18, IV–D–64, 73). EPA believes that evidence of an ongoing transition from HCFC–141b to hydrocarbon blowing agents, provides conclusive support for the Agency's position that low- or zero-ODP alternatives are available in the rigid polyurethane and polyisocyanurate boardstock sector.

Although hydrocarbons have taken the lead as the replacement for HCFC–141b in rigid polyurethane and polyisocyanurate laminated boardstock applications, hydrofluorocarbons (HFCs) may also be considered viable alternatives to HCFC blowing agents (Docket A–2000–18, IV–D–41, Supporting Document #48, 52, 54). An article published for a Polyurethanes World Congress meeting in 1997 indicates that HFC–245fa is a technically viable zero-ODP alternative that "produces foams with properties comparable to HCFC–141b with minimal reformulation" (Docket A–2000–18, IV–D–41, Supporting Document #52). Although the author states that the predicted costs of HFC–245fa could limit its use in certain applications, recently published articles show that more cost-effective blends of HFC–245fa and water or HFC–245fa and hydrocarbons are currently being tested and developed for the boardstock sector (Docket A–2000–18, IV–D–74, 75). Based on this information, the Agency believes HFC–245fa and HFC–245fa blends are additional, viable zero-ODP alternatives to HCFC–141b in the polyurethane and polyisocyanurate boardstock industry.

Rigid Polyurethane Appliance Foam

The rigid polyurethane appliance foam industry predominantly uses HCFC–141b with some minor use of HCFC–22 and HCFC–142b. As discussed in the previous section, existing use of HCFC–22 and HCFC–142b is considered acceptable in today's action.[5] For appliance foam manufacturers using HCFC–141b today, however, the Agency believes that there are a sufficient number of viable, non-ozone depleting alternatives to which the industry has already made substantial commitment. As discussed below, in anticipation of the phaseout of HCFC–141b and new Department of Energy efficiency standards, the U.S. appliance industry has been testing and developing zero-ODP alternatives for at least five years (Docket A–2000–18: IV–D–11, Attachments #2, 4; IV–D–41, Supporting Document #5).

Hydrocarbon blowing agents have been considered viable candidates to replace CFCs and HCFCs for several years and are widely used to produce appliance foam in Europe and Japan. One commenter provided 16 articles showing performance developments of hydrocarbon appliance systems since 1995 (Docket A–2000–18, IV–D–41, Supporting Documents #2–5, 8–9, 12–13, 15, 17, 21–23, 25–26, 29). Although U.S. appliance manufacturers have not shown broad movement towards hydrocarbons, comments indicate that hydrocarbons are technically viable alternatives to HCFC–141b (Docket A–2000–18, IV–D–31 and 41 -Supporting Document #5, 43).

HFC–134a also is a technically viable alternative that is currently being used in the U.S. to manufacture appliance foam (Docket A–2000–18, IV–D–41-Supporting Document #5, IV–E–6). An October 2000 industry report (Docket A–2000–18, IV–D–75c) documents developments in HFC–134a technology that have improved processing and foam properties. The author concludes that HFC–134a is a "cost-effective substitute to produce rigid polyurethane foam with excellent properties for the appliance industry."

EPA received some comments opposed to the Agency's determination that technically viable alternatives are available for the polyurethane appliance foam sector. Three commenters stated that appliance manufacturers converting from HCFC–141b to commercially available zero-ODP alternatives would see a 10% loss in energy efficiency (Docket A–2000–18, IV–D–3, 11, 16). These commenters also suggest that alternative blowing agents, such as HFC–134a and cyclopentane, may result in foams that are not as thermally insulating as those produced with HCFC–141b. However, one study reported that performance of cyclopentane-blown appliance foam may approach that of CFC–11 (Docket A–2000–18, IV–D–41, Supporting Document #8). If appliance manufacturers see losses in insulation values when using hydrocarbons or HFC–134a, modifications can be made to reduce energy consumption to

[5] Appliance manufacturers recently modified their products and operations to comply with 2001 DOE energy efficiency standards. In contrast to appliance manufacturers that have been using HCFC–141b, HCFC–22/–142b users have assumed that their blowing agents would be available until 2010. As discussed in this section, alternatives to HCFC–141b in the appliance sector have been developed and are being implemented in ways to ensure compliance with the DOE standard. The Agency believes that it would be difficult at this point for HCFC–22/–142b users to test and implement other blowing agents in their products to meet the new energy standards.

compensate for losses in insulation value (Docket A–2000–18: IV–D–11, Attachment #1; IV–D–41, Supporting Document #27, 32, 33). Additionally, EPA received numerous studies showing that use of HFC–245fa, which is scheduled to be commercially available by mid-2002, could result in energy efficiencies equal or superior to those for HCFC–141b (Docket A–2000–18: IV–D–11, Attachment #1–5, IV–D–41, Supporting Documents #1, 2, 5–7, 10, 11, 14–17, 23, 28) and several appliance manufacturers have finalized their plans to convert to HFC–245fa blowing agents (Docket A–2000–18: IV–E–6, IV–D–23).

Water heaters and vending machines also fall under the SNAP rigid polyurethane appliance sector. Both of these applications are primarily supplied by polyurethane systems houses and some manufacturers in this end-use currently use HCFC–22 and HCFC–142b, while others use HCFC–141b.[6] The technical viability of alternatives for these applications was discussed in the May 23, 2001 Notice of Data Availability (NODA). Available information indicates that non-ozone depleting alternatives to HCFC–141b are available and are already being implemented. Several water heater manufacturers have transitioned from HCFCs to non-ozone-depleting alternatives or are planning for conversions as the HCFC–141b production phaseout nears. No technical barriers to these alternatives were identified in the comments received from the polyurethane systems houses (non-spray foam) provided in the NODA.

Rigid Polyurethane Spray Foam

Based on several comments and a report commissioned by the Agency to supplement information provided in the comments to the proposed rule and NODA, there is little if any interest within the spray polyurethane foam industry in switching from HCFC–141b to HCFC–22 and/or HCFC–142b. Much of this resistance is due to differences in processing and performance, and the capital costs associated with transitioning from a liquid blowing agent (HCFC–141b) to a gaseous blowing agent (HCFC–22/HCFC–142b). Today's action lists HCFC–22 or HCFC–142b as unacceptable substitutes for HCFC–141b within the rigid polyurethane spray foam sector. As discussed previously, the Agency will issue a separate decision on the request to allow for limited production of HCFC–141b beyond January, 2003 for spray foam applications.

Commercial Refrigeration and Sandwich Panels; Slabstock and "Other Foams"

Based on comments from numerous foam manufacturers within the commercial refrigeration, sandwich panels, and slabstock & "other foams" applications, EPA is approving use of HCFC–22 and HCFC–142b in these end-uses with narrowed use conditions. EPA found that these end-uses have the following characteristics: (1) Highly diverse applications with unique technical considerations depending on the application; (2) thousands of small businesses with varying levels of progress made on research and development on alternatives; and (3) use of different HCFCs within the same applications with no single preferred blowing agent of choice;. These end-uses include a broad array of products and applications such as walk-in coolers, garage and entry doors, refrigerated trucks and railcars, architectural panels, picnic coolers, tank and pipe insulation, marine flotation foams, floral foams, and taxidermy foams. Given the limited amount of published information on the technical viability of alternatives in these end-uses, EPA commissioned a review of the diverse foam applications encompassed under this sector. The resulting information was made available for public review in the May 23, 2001 NODA (66 FR 28408) and can be found in EPA's Air Docket (A–2000–18, IV–D–78, and 79).

Through the NODA, EPA provided information on the type and amount of HCFC used in each foam industry end-use (Air Docket A–2000–18, IV–D–79). Based on information collected by EPA and comments to the NODA, EPA believes there is mixed use of HCFC–141b, –22, and HCFC–142b in the commercial refrigeration and sandwich panels and the slabstock and other foams applications, depending on the specific product and the individual manufacturer (Air Docket A–2000–18, IV–D–81). Unlike the polyurethane boardstock, appliance, and spray foam end-uses, a majority of foam manufacturers in these end-uses did not adopt HCFC–141b as their prime blowing agent. Instead, individual foam manufacturers within these applications adopted different HCFC blowing agents based on the original blowing agent used and existing equipment and product requirements (although there were differences in handling and processing due to differences in vapor pressure, the blowing agent and capital costs to transition were similar). Because HCFC–141b, -22, and HCFC–142b were similar in cost, companies could meet their specific product requirements and remain cost competitive while using different blowing agents to manufacture similar products.

Within the commercial refrigeration and sandwich panel applications, non-ozone depleting alternatives have been identified and, in limited cases, implemented successfully. EPA is allowing limited use of HCFC–22 and/or HCFC–142b as alternatives to HCFC–141b for companies within these applications who have not had access to and/or have been able to fully implement ozone-friendly alternatives to meet their thermal performance, dimensional, and flammability control requirements. The narrowed use limits imposed under today's action are in recognition of comments and information collected by the Agency indicating that many companies in the pour foam industry are engaged in developing and testing alternatives to ozone depleting chemicals, but that ozone-friendly alternatives are not yet widely available to ensure that products are made that maintain sufficient thermal efficiency, product integrity and safety. While technical information is scarce for these applications, EPA believes that within the wide range of small foam uses within these applications, there are HCFC–141b users who currently have technical constraints in transitioning from HCFC–141b to non-ozone-depleting alternatives. To help ensure that HCFC–22 and HCFC–142b are used as substitutes for HCFC–141b only in specific applications where no technically viable alternatives are available, however, EPA is including these narrowed use limit provisions.

In commercial refrigeration and sandwich panel applications, EPA's consultant report and comments identified HCFC–22 and HCFC–142b as potential alternatives to HCFC–141b. One example is in refrigerated transport insulation, which may include refrigerated truck bodies and insulated rail cars, where there are cases in which it is critical to maintain thermal performance, flammability control, and an absolute outside dimension of a container while maximizing internal dimensions. Further, due to new low temperature requirements for food storage and transport recently imposed by the Food and Drug Administration, there is an increased demand for thermal performance of blowing agents for these applications. Even though manufacturers switching from a liquid

[6] Polyurethane systems houses sell pre-blended polyurethane systems which are defined in Section III, A.

(HCFC–141b) to a gaseous (HCFC–22/HCFC–142b) blowing agent will need to make process/equipment modifications, some companies consider HCFC–22 and HCFC–142b viable alternatives to HCFC–141b because their manufacturing processes occur in a controlled factory setting, making this transition more manageable. Therefore, where low temperature and/or space requirements cannot be met with non-ozone-depleting blowing agents, HCFC–22 and HCFC–142b can be used as replacements for HCFC–141b.

Comments to the consultant report and information from systems houses indicate that there are also pour foam applications within the slabstock and other foams end-use where manufacturers have identified difficulties in transitioning from HCFC–141b to non-ODS alternatives. EPA received comments that HCFC–22/HCFC–142b may also be used as transitional blowing agents within this end-use. Similar to the commercial refrigeration and sandwich panel end-uses, available data indicate that alternatives to HCFCs are available for some applications within the rigid polyurethane slabstock and other foam end use, particularly those where foam is used in non-insulating applications. However, due to the diverse nature of this end use (*e.g.*, picnic coolers, drink dispensers, marine flotation, tanks and pipes, floral and taxidermy foam) and potential technical constraints of some small businesses in transitioning to ozone-friendly alternatives, EPA is approving the use of HCFC–22 and HCFC–142b as alternatives to HCFC–141b with narrowed use limits. At this time, EPA believes it is appropriate to approve these blowing agents in narrowed uses to facilitate the HCFC–141b phaseout and level the playing field for small businesses.

The Agency recognizes that some of the constraints within the commercial refrigeration and sandwich panel and slabstock and other foam end-use sectors can be resolved through equipment and formulation modifications and that non-ozone-depleting blowing agents are currently under consideration or are being used in some applications. However, the end-uses within these sectors are highly diverse and their use of HCFCs fragmented (some use HCFC–141b while others use HCFC–22 and HCFC–142b), and it is difficult to assess, in the absence of detailed information, the viability of alternatives in each narrow application. While HCFC–22/HCFC–142b may be the most viable alternatives to HCFC–141b for some applications, non-ozone-depleting alternatives may be technically viable in other applications, such as entry or garage doors, where there are no strict insulation requirements. In fact, several door manufacturers have converted or are in the process of converting to non-ODS alternatives already listed as acceptable (Docket A–2000–18, IV–D–64, IV–E–6). In other cases, where HCFC–141b is used in niche applications, EPA believes foam manufacturers may experience difficulties and delays in transitioning from HCFC–141b to non-ozone-depleting alternatives. Given the constraints associated with cost and timing of transitioning to alternatives for small businesses, and the need to facilitate a smooth and equitable transition from HCFC–141b, EPA believes that within the commercial refrigeration and sandwich panel and the slabstock and other foam end-use sectors, it is appropriate to approve use of HCFC–22 and/or HCFC–142b as substitutes for HCFC–141b in these end-uses, provided that the users intending to adopt HCFC–22 or HCFC–142b ascertain and document that other acceptable alternatives are not technically feasible. EPA urges foam manufacturers to replace HCFC–141b with non-ODP alternatives in applications where the non-ODP alternatives are technically and economically feasible. The Agency will continue its review of the transition in these end-uses for possible regulatory action in the future.

2. Availability of Alternatives

Many commenters expressed concern over the timing and continued availability of the alternatives to HCFC–141b. The majority of these comments related to the limited supply of HFC–245fa to date and the uncertainty associated with relying on a single source of supply. EPA recognizes that HFC–245fa is not currently produced in commercial quantities. However, information from the manufacturer indicates that pilot quantities of HFC–245fa have been supplied to the foam industry, with semi-commercial quantities available today, and world-scale quantities becoming available later in 2002. Because the major market for this chemical is as a replacement for HCFC–141b, it is not surprising that the timing of commercialization coincides with the phaseout of 141b by January 1, 2003. Based on the progress on plant construction, EPA is confident that HFC–245fa will be commercially available to a significant part of the foam industry later this year.

It is important to note that other alternatives, including other HFCs, hydrocarbons, and CO_2/water have been commercially available for years. Although two commenters expressed concern that chemical manufacturers may not commit to produce sufficient quantities of HFC–134a, EPA has no reason to believe that HFC–134a will not be available for the foams industry. HFC–134a is extensively used throughout the U.S. in foam applications and as a refrigerant in automobile air conditioners. Hydrocarbons, CO_2/water, and other SNAP approved alternatives are also widely available.

3. Economic/Small Business Impacts

Today's action designates HCFC–22 and HCFC–142b as acceptable substitutes subject to narrowed use limits for new users in some sectors (commercial refrigeration, sandwich panels, slabstock and other foam applications), and unacceptable for new use in other sectors where ozone-friendly alternatives are available. The Agency believes that its original cost analysis adequately accounts for the projected costs associated with the final rule. In evaluating the potential cost impacts of the July 11, 2000 proposal, EPA focused on the appliance sector where a range of alternative blowing agents, including HCFC–22 and HCFC–142b were considered technically viable replacements for HCFC–141b; responses to comments on this evaluation are provided later in this section. For other foam end-uses, EPA believed that either: (a) There would be no cost associated with the proposed decision; or, (b) that the costs would be extremely low. Explanations for each scenario follows:

(a) The Agency did not project additional costs for certain polyurethane foam end-uses because the Agency believed that those end-uses had identified non-ozone depleting chemicals as the most viable options. Because HCFC–22 and HCFC–142b were not seen as technically viable and/or cost effective, restrictions on new use of HCFC–22 and HCFC–142b in those sectors would not impose additional costs to the industry. Based on comments, EPA believes that assessment was accurate for the boardstock and spray foam end-uses. For other polyurethane applications, however, EPA found that HCFC–22 and HCFC–142b are considered technically and economically viable alternatives to HCFC–141b. In those applications, EPA is listing HCFC–22 and HCFC–142b as acceptable subject to narrowed use limits. The Agency does not believe there will be costs to the industry related to this decision that have not already been accounted for as part of the

original CFC and HCFC phaseout regulations.

Since 1993, the foam industry, including the relevant sectors: commercial refrigeration, sandwich panels, and slabstock, have been aware of the impending phaseout of HCFCs. Individual companies in these sectors commented that they have been engaged in evaluating alternatives to HCFC–141b and collecting the kind of information required by the narrowed use provisions in today's rule. Under this rulemaking, these companies will only have to retain the documentation of these evaluations. The Agency has already accounted for costs associated with recordkeeping requirements for substitutes acceptable subject to narrowed use limits under the SNAP program (2001 SNAP ICR, OMB No. 2060–0226). The Agency therefore does not project any added costs for these sectors associated with today's rule.

(b) The bulk of comments on the economic impacts to industry, including small business impacts, came from existing users of HCFC–22 and HCFC–142b who were concerned that EPA had not fully considered the impact of discontinuing use of these chemicals by 2005. Any potential impacts on such users are not an issue given today's action which withdraws EPA's proposed decision to list HCFC–22 and HCFC–142b as unacceptable for existing users of those chemicals. EPA concluded in its original economic analysis that the cost of transitioning away from HCFC–22 and HCFC–142b by January 1, 2005 would be extremely low because alternatives were readily available and comparably priced. As stated above, this issue is no longer relevant given that EPA is withdrawing the proposed restriction on continued use of HCFC–22 and HCFC–142b for those end-uses.

As noted above, for those applications where new use of HCFC–22 and HCFC–142b is not considered acceptable, rigid polyurethane appliance foam is the only sector where HCFC–22 and HCFC–142b has been considered a possible option by at least some companies. As part of the July 11, 2000 proposal, EPA estimated potential costs associated with restricting use of HCFC–22, HCFC–142b, and HCFC–124, in the appliance end-use. The Agency's assessment of costs to the appliance sector was premised on the fact that the costs of transitioning out of HCFC–141b for all users had been previously accounted for in the original CFC and HCFC phaseout regulations. Furthermore, EPA examined the potential costs associated with meeting the proposed SNAP restrictions while complying with the DOE efficiency standards which took effect in July, 2001. Thus, for purposes of this rule, EPA compared the costs of manufacturing new refrigerators with foam blowing agents other than HCFC–141b (*i.e.*, the cost of using HCFC–22/–142b was compared with the costs of using HFC–134a, HFC–245fa or hydrocarbons).

Two commenters claim that the Unfunded Mandates Act obligated EPA to consider a reasonable number of regulatory alternatives and develop a budgetary impact statement because the proposed rule would result in costs to the private sector of more than $100 million or more in any one year. One of these commenters suggests that "full utilization" of HFC–245fa (*i.e.*, use in all new refrigerators) would result in a material cost impact of $86 million per year and that full utilization of HFC–134a would result in an annual cost of $114.5 million. The commenters note that these costs do not take into account the retail pricing structure nor capital expenditures.

Although it is unclear precisely what assumptions went into the commenters' conclusions regarding cost, it appears that the cost figures provided assume the full cost of transferring from HFC–141b to a substitute. EPA disagrees with that method of determining the costs associated with this rule. The core costs of switching from HCFC–141b to another substitute are costs associated with the HCFC phase-out rule, which mandates a phaseout in production of HCFC–141b by January 1, 2003. In the economic analysis performed for the phaseout rule, EPA took into account the general cost that users of HCFCs would incur in switching to substitutes. Thus, in this rulemaking, which restricts some of the potential substitutes, EPA took into consideration the differential costs associated with employing the substitutes. For example, in examining the cost of this rule, EPA compared the costs to a user of switching from HCFC–141b to HCFC–22/142b with the costs of switching from HCFC–141b to HFC–245fa. Thus, if it were more costly to switch to HFC–245fa than to switch to HCFC–22/142b, the cost attributable to this rule which lists HCFC–22/142b as an unacceptable substitute in appliance foam would be the incremental cost of switching to HFC–245fa. In addition, EPA notes that the figures provided by the commenter for HFC–245fa and HFC–134a both assume "full utilization." Thus, those numbers should not be combined; rather, it should be assumed that the costs identified by the commenter would fall somewhere between $86 million and $114.5 million, assuming the validity of those numbers. (As noted above, the commenter does not explain how those numbers were derived.) In concluding that the $100 million threshold would be exceeded because of this rule, the commenter apparently assumes a distribution of refrigerators using both HFCs (134a and 245fa) but does not explain the scenario that they project for the industry.

The Agency also disagrees with the commenter's claim that EPA's economic analysis under-estimates the manufacturing costs for refrigerators that would be converting to zero-ODP blowing agents for their insulation foam. As noted above, the Agency did not attribute costs specific to transitioning out of HCFC–141b to this rulemaking, since those costs have already been accounted for as part of the CFC and HCFC phaseout regulations. The Agency did estimate additional manufacturing costs associated with alternative blowing agents and it is noteworthy that this commenter presents a range of added costs comparable to the range derived by EPA. The commenter estimates that zero-ODP blowing agents would cost between $4.07 and $8.60 per refrigerator, while EPA estimated that the cost to convert to zero-ODP blowing agents would range from approximately $3 to $10 for a mid-size refrigerator. It is difficult for the Agency to respond to the commenter's analysis in any detail, however, because the commenter only states in a footnote to the table entitled "Foam Blowing Agent Performance/Cost Factors" that the costs include "all costs necessary to insure that the foam system will function satisfactorily: blowing agent, polyurethane components, and capital investment," but does not disaggregate costs for separate manufacturing components as EPA did in its analysis (blowing agent price, foam density, foam cost, foam liner cost, capital to convert).

By apparently ignoring the differential costs considered by EPA, the commenter under-estimates costs associated with less energy efficient blowing agents (*e.g.*, HCFC–22/–142b) and over-estimates costs associated with more efficient blowing agents (*e.g.*, HFC–245fa). In reviewing the insulation efficiencies associated with various acceptable foam blowing agents, EPA believed it was necessary to reflect the total costs of refrigerator manufacture under the new DOE requirements associated with alternative blowing agents. EPA's analysis calculated the potential *additional* costs associated with these kinds of design modifications needed to compensate for foams blown with agents that provide less insulation value. These additional costs depend on

the insulation value of the different blowing agents. EPA derived "energy penalties" or "energy gaps" for the various foam blowing agents relative to HCFC–141b based on the R-values and k-factors for foams made with the various alternative blowing agents and other data provided in various industry forums. For example, these data indicate an 8% energy gap for a 60%/40% blend of HCFC–22/142b, whereas the commenter presents a significantly lower energy penalty (2%) for an unspecified blend of HCFC–22 and HCFC–142b. Unlike EPA's analysis, the commenter's analysis does not appear to account for differential costs between alternative blowing agents associated with potential refrigerator re-designs to meet DOE energy efficiency standards that took effect in July 2001.

The commenter incorrectly concludes that "EPA implies that lower power, more efficient evaporator and condenser fan motors, more foam, and more extensive gasket systems cost less rather than more." The Agency does not believe that these types of modifications would not entail costs, and recognizes that complying with the new DOE energy standard, and transitioning from HCFC–141b to alternative blowing agents will have costs. However, as noted above, these costs are attributable to the phaseout and DOE energy efficiency standards. Blowing agents that provide greater insulation value will reduce the burden on the manufacturer to increase energy efficiency in other components of the refrigerator. In comparing the costs associated with the different alternatives, the Agency estimated that the impacts of the proposal, because it would facilitate a transition to an energy efficient blowing agent, would actually be a cost *savings* for the industry and ultimately, consumers. Because HFC–245fa has a high insulation value, EPA calculated that the total costs (cost of foam plus re-design costs to comply with new energy efficiency standard) associated with a transition to this agent would be considerably lower compared to a transition using any other alternative. In other words, a switch from HCFC–141b to HFC–245fa (which have comparable insulation values) would cost between $2.30 and $3.40 per refrigerator less compared to a switch from HCFC–141b to other blowing agents with lower insulation values and boiling points, such as HCFC–142b/HCFC–22 blends, or HFC–134a. When these costs are aggregated for the U.S., the cost reductions would total between approximately $23 million and $34 million per year.

The Agency believes, as discussed above, that the total costs of transitioning out of HCFC–141b in manufacturing new refrigerators is not a relevant consideration for today's rulemaking. The commenter again is apparently not accounting for differences in insulation value across the different blowing agents that are potential alternatives to HCFC–141b. For example, the commenter on one hand states that indirect costs are included to compensate for the reduced insulation value provided by HFC–134a; however, indirect cost savings from using HFC–245fa, which provides significantly greater insulation value, are not included in the commenter's analysis. One commenter raised a concern that EPA does not restrict the import of products containing substitutes that EPA has determined unacceptable under SNAP and that companies that shift production of appliances to Mexico will have an unfair economic advantage. While EPA sympathizes with and shares the concerns raised by the commenter, the issues surrounding imports are complex and there are limits on EPA's ability to control the import of appliances that contain substitutes listed as unacceptable for use in the United States. However, those limits on EPA's ability to control imports do not justify a decision to list as acceptable substitutes that are more harmful to human health and the environment than other available substitutes.

The Agency concludes that comments received since the proposal do not provide any substantive reasons why the original estimates require revision. The Agency maintains its assertion that the costs associated with today's decision will not result in the expenditure by State, local, and tribal governments or the private sector of $100 million or more in any one year.

4. EPA's Review Process

EPA received comments that the Agency's review process took much longer than the period provided by the CAA and EPA's regulations and that the lengthy review created industry hardship. EPA recognizes that while a manufacturer of a substitute may market that substitute 90 days after it files a petition with EPA, that there may be reluctance of users to switch to that substitute until EPA makes a determination of whether that substitute is acceptable. EPA makes its best effort to review and act on a petition as quickly as possible. Under the SNAP procedures established in 1994, EPA may make determinations that a substitute is acceptable without going through notice-and-comment rulemaking. Thus, often, EPA can make determinations that a substitute is acceptable relatively quickly. However, EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes or to establish use limits. In providing adequate technical and scientific review of the substitute and providing sufficient public participation through the notice-and-comment rulemaking process, it is virtually impossible for the Agency to make such determinations quickly.

In this case, the Agency listed one of the chemicals in the petition, HFC–134a, as an acceptable substitute as soon as possible after the petition was received (64 FR 30410, June 8, 1999). HFC–134a is a non-ozone-depleting chemical that is safe to use and widely available. At that time, EPA reached the conclusion that additional review was necessary for the remaining chemicals (HCFCs) in the petition. Because of their ozone-depletion potential, EPA believed that the HCFCs could pose a higher risk than other SNAP approved alternatives. Therefore, EPA took additional time to assess the availability and technical viability of other SNAP approved alternatives in each foam sector end-use. Based on that review, EPA concluded that there were alternatives that posed a lower risk than HCFCs and drafted a proposal to list these chemicals as unacceptable. Following the comment period to the proposal, the Agency was faced with reviewing a significant amount of technical information provided in comments, collecting additional information regarding small businesses that might be affected by the rule, and seeking public comment on this new information through a Notice of Data Availability published in the **Federal Register**.

While EPA strives to act on these petitions in a quick, yet thoughtful, manner, if a person is concerned that EPA is failing to act in accordance with statutory or regulatory time frames the CAA provides a remedy. Under section 304 of the CAA, a person may file an action requesting a federal district court to order EPA to take action as required under the Act.

Several commenters argued that EPA did not consider the factors identified by EPA in the original SNAP program regulations as key decision criteria in evaluating the acceptability of proposed alternatives to ODSs (40 CFR 82.180 (a)(7)). Some commenters believed that EPA based the proposal on ODP alone and argued that the Agency cannot make a listing decision without taking into account the overall risk of the

alternatives. EPA would like to assure commenters that these factors were indeed considered. EPA's SNAP submission form requests extensive information on each substitute.[7] Before proposing action on July 11, 2000, the Agency considered ODP, global warming potential (GWP), insulation values for the resulting foam products, and toxicological risks for HCFC–22, –142b, and –124 compared to HCFC–141b and other acceptable alternatives. (EPA discusses its final decision to list HCFC–124 as unacceptable more fully in the next section.) Although in the preamble of the July 11, 2000 proposal, EPA summarized only the atmospheric effects of the various HCFCs, the information regarding the other decision criteria was considered and is publicly available in EPA's Air Docket A–91–42. After considering health and environment risk criteria, EPA determined that ODP and atmospheric lifetimes of HCFC–22, –142b, and –124 distinguish these chemicals from other HCFC–141b alternatives. As stated in the proposal, HCFC–141b has an ODP of 0.1, HCFC–142b has an ODP of 0.065, HCFC–22 has an ODP of 0.055, and HCFC–124 has an ODP of 0.02 (World Meteorological Organization, 1999). The atmospheric lifetimes for these chemicals range from 6–18 years. Although it was not the determining factor for this decision, EPA noted that HCFC–22 and HCFC–142b also have 100-year global warming potentials that are significantly higher (1900 and 2300 respectively) than the zero-ODP alternatives already listed as acceptable. The Agency believes that the ozone depletion potentials of HCFC–22, –124, and –142b make them unacceptable substitutes for HCFC–141b in appliance, boardstock and spray foam applications because other alternatives are available that overall pose less risk to human health and the environment.

One commenter suggested that EPA should list HCFC–22, –142b, and –124 as acceptable substitutes for HCFC–141b in all foam end-uses because each of the submitted chemicals has a lower ODP than does HCFC–141b. The same commenter suggested EPA's proposed decision not to list as acceptable substitutes with any ODP was inconsistent with prior EPA decisions because 2-chloropropane, with an ODP of 0.003, was recently listed as acceptable under SNAP in the polyurethane boardstock sector. Similarly, another commenter referenced approval of a blend with CF_3I (ODP estimated to be 0.008, atmospheric lifetime approximately 1 day) to replace CFC–12 in some refrigeration applications. EPA acknowledges that the Agency has listed substitutes for ODSs that themselves have ODPs; indeed, EPA approved the use of HCFCs as transitional foam blowing agents, despite their ozone depletion potential, because technically feasible alternatives to CFCs were limited at that time. EPA is taking the same approach in today's final action. In commercial refrigeration, sandwich panels, and slabstock and other foams applications, the Agency is approving narrowed use of HCFC–22 and HCFC–142b as replacements for HCFC–141b because other approved alternatives may not be viable in certain applications at this time. However, in polyurethane boardstock, appliance and spray foam applications, EPA believes that low- or non-ozone-depleting alternatives have been identified; therefore, EPA is listing HCFCs as unacceptable as replacements for HCFC–141b in these end-uses. EPA does not believe that today's decision to list HCFC–22 and HCFC–142b as unacceptable replacements for HCFC–141b in those end uses is inconsistent with EPA's approval of 2-chloropropane as a replacement for HCFC–141b because the ODP of 2-chloropropane is estimated to be 0.003 which is extremely low (significantly lower than the ODPs of HCFC–22 and HCFC–142b).

Even though HCFC–22, and 142b have lower ODPs than HCFC–141b, EPA does not believe that new use of these ODSs as substitutes for HCFC–141b, even for a short period of time, is warranted across the spectrum of foam applications given the availability of zero-ODP foam blowing agents in certain applications. Where alternatives are available, the transition from HCFCs to zero-ODP alternatives can be made, and will be made more quickly without an additional and incremental transition from HCFC–141b to other HCFCs. This decision is consistent with a previous EPA determination, based on the availability of alternatives with zero-ODP, that HCFC–141b is *not* acceptable as a substitute cleaning solvent for CFC–113 or methyl chloroform (59 FR 13044). A determination that it is acceptable for users of HCFC–141b to switch to HCFC–22, HCFC–142b or blends thereof would result in continued damage to the ozone layer and would delay the transition to zero-ODP foam blowing agents which are available.

One commenter suggested that EPA's review should have resulted in approval of HCFCs because, based on data provided by the commenter, some of the currently acceptable alternatives increase GWP, CO_2 loading, and energy use compared to HCFC–141b (Docket A–2000–18, IV–D–3) and that HCFC–22, –142b, and –124 provide lower overall risk than HCFC–141b. Under SNAP, EPA's primary consideration is the comparison of substitutes, not the comparison of the substitute with the substance it is replacing (Clean Air Act Section 612 (c)). The information that EPA had at the time of proposal, as well as the information provided by the commenter, shows that the zero-ODP alternatives already listed as acceptable, compared to HCFC–22 and HCFC–142b, can in fact reduce ODP, GWP, atmospheric lifetime, and improve energy efficiency, thereby reducing emissions of CO_2. The information also shows that the zero-ODP alternatives, compared to HCFC–124 reduce ODP in all cases, and reduce GWP, atmospheric lifetime, and CO_2 loading in some cases. However, the differences in GWP, atmospheric lifetime, and CO_2 loading were not significant enough to warrant determining HCFC–124 acceptable. Although information provided by this commenter and a few others report increases in energy use for some currently acceptable substitutes, EPA believes, as discussed above in section III, C, 1 under *Rigid Polyurethane Appliance Foam*, that use of zero-ODP alternatives will result in insulation values very close to those for HCFC–141b and that other non-foam related modifications could improve energy efficiency where necessary.

Regarding the other health and environmental factors typically included in SNAP review (40 CFC 82.180(a)(7)), EPA found no substantive distinction between the HCFCs under consideration and the alternatives already listed as acceptable foam blowing agents. However, some commenters disagreed with EPA's finding and expressed concern that EPA disregarded evidence that HCFC–22 and HCFC–142b pose lower risks than current alternatives in certain aspects. Two commenters specifically pointed out that hydrocarbons are flammable volatile organic compounds and pose a greater risk than the HCFCs under review. One of these commenters also stated that HCFC–22 and HCFC–142b are relatively less toxic than HFC–245fa.

EPA recognizes that the risks associated with factors such as toxicity and flammability vary amongst the

[7] To minimize the reporting burden EPA does not require submitters to re-submit data that have been previously reviewed by the Agency. HCFC–22 and HCFC–142b and HCFC–124 were previously submitted and fully reviewed as CFC substitutes in the foam and refrigeration sectors. This information is part of the record for the original March 1994 SNAP rulemaking.

SNAP-approved alternatives and the HCFCs under consideration. For example, EPA recognized the flammability risks and VOC issues associated with hydrocarbons when they were originally approved as replacements for CFCs in the foam sector (59 FR 13083). In SNAP listing decisions published in December 1999 and April 2000, the Agency approved hydrocarbons for use as replacements for HCFC–141b, but indicated that hydrocarbon blowing agents are flammable and should be handled with proper precautions (64 FR 68039 and 65 FR 19327). EPA gave examples of high risk scenarios and stated that approval of hydrocarbons in certain applications would be granted only to manufacturers providing safety training to their customers (64 FR 68039 and 65 FR 19327).

Regarding the comment about toxicity of HFC–245fa, EPA does not believe there are increased human health risks associated with use of HFC–245fa versus HCFCs in the foam industry. When EPA listed HFC–245fa as an acceptable substitute, EPA's Office of Pollution Prevention and Toxics reviewed the toxicity profile of HFC–245fa and referred it to the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limit (WEEL) committee for a final exposure limit. Since then, the WEEL committee adopted an occupational exposure limit of 300 ppm (8-hour Time Weighted Average). EPA anticipates that HFC–245fa will be used in a manner consistent with recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs) (64 FR 68039) and that any exposures will fall well below acceptable exposure limits set by the AIHA or other voluntary consensus standards organizations.

As part of prior SNAP determinations, the Agency has specifically reviewed the flammability and toxicological risks associated with the various alternative foam blowing agents, and consistent with its conclusion and recommendations at the time these substitutes where listed as acceptable, the Agency believes that those potential risks associated with the zero-ODP alternatives will be mitigated by the industry with appropriate health and safety procedures.

D. HCFC–124

Based on comments, EPA believes that interest in using HCFC–124 is limited to the rigid polyurethane appliance end-use within the foam sector. Comments on the July 11, 2000 proposal and May 23, 2001 NODA regarding new use of HCFC–124 in appliances indicate opposing views on whether HCFC–124 should be listed as an acceptable substitute for HCFC–141b.

Several comments summarized and responded to above suggested that EPA should list HCFC–124, as well as HCFC–22 and HCFC–142b, as acceptable substitutes in all foam end-uses because each of these chemicals has a lower ODP than HCFC–141b. In addition, two commenters argued that HCFC–124 provided an energy-efficient alternative to HCFC–141b while use of zero-ODP alternatives would result in energy losses. As discussed above in section III, C, 1 under *Rigid Polyurethane Appliance Foam*, EPA believes use of currently acceptable alternatives could result in energy efficient products. One commenter agreed with the Agency's proposed decision on HCFC–124 and estimated that foam blown with HFC–245fa has a 7–10% energy consumption advantage compared to HCFC–124 and, after accounting for the aging rate of the foam, that a refrigerator made with HFC–245fa blown foam would have about 15% less total global warming impact compared to a similar product made with HCFC–124. This commenter expressed confidence that the appliance industry has zero-ODP alternatives to HCFC–141b that will not adversely affect energy efficiency, including HFC–245fa. The commenter expressed concern that approval of HCFC–124 would reverse progress made by the appliance industry to eliminate compounds with an ODP, would fail to account for the availability of other, more viable non-ODP alternatives, and this would be inconsistent with the intent of the Clean Air Act and EPA's mandate to protect the environment. This commenter also expressed concern that approval would "penalize environmentally responsible companies".

The Agency agrees with the latter commenter and their analysis which more fully takes account of energy consumption and the total environmental impact of alternative blowing agents. As discussed, EPA does not believe that new use of HCFCs as substitutes for HCFC–141b, even for a short period of time, is warranted in all foam end-uses given the availability of zero-ODP foam blowing agents in most specific applications. In the case of rigid polyurethane appliance foam, the transition from HCFCs to zero-ODP alternatives can be made without an additional and incremental transition from HCFC–141b to HCFC–124. The Agency has identified several zero ODP foam blowing agent alternatives for the appliance foam end-uses. The Agency believes that the ozone depletion potential of HCFC–124 makes it an unacceptable substitute for HCFC–141b because other alternatives are available for the appliance foam industry that overall pose a less significant risk to human health and the environment. The information that EPA had at the time of proposal as well as the information provided by commenters since shows that the zero-ODP alternatives already listed as acceptable, compared to HCFC–124, have lower ODPs in all cases, and in some cases, lower GWPs and atmospheric lifetimes. A determination that it would be acceptable for users of HCFC–141b to switch to HCFC–124 would result in continued damage to the ozone layer and would delay the transition to zero-ODP foam blowing agents which are available.

IV. Summary

A major objective of the SNAP program is to facilitate the transition from ozone-depleting chemicals by promoting the use of substitutes which present a lower risk to human health and the environment (40 CFR 82.170(a)). In this light, a key policy interest of the SNAP program is promoting the quickest shift from ODSs to alternatives posing lower overall risk and that are currently or potentially available (59 FR 13044). Today's decision to list HCFC–22, HCFC–142b, and HCFC–124 as unacceptable substitutes for HCFC–141b in the end-uses discussed above is based on the Agency's finding that the use of HCFC–22 and HCFC–142b, in applications where non-ozone depleting chemicals are available, would contribute to the continued depletion of the ozone layer, and would delay the transition to alternatives that pose lower overall risk to the health and the environment.

For commercial refrigeration and sandwich panel applications, and the polyurethane slabstock and other foams end-use, EPA is listing HCFC–22 and HCFC–142b, with narrowed use limits, as acceptable replacements for HCFC–141b. EPA is strongly opposed to listing HCFCs as acceptable where non-ozone-depleting alternatives are available. However, EPA believes that ozone-friendly alternatives to HCFC–141b have not yet been fully developed and implemented across the spectrum of applications within these end-uses. In these situations, EPA believes switching to HCFC–22 and/or HCFC–142b as a bridge to non-ozone-depleting alternatives presents a lower risk than continued use of HCFC–141b.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule imposes no enforceable duty on any State, local or tribal government. The core costs of transitioning from HCFC–141b to substitutes are costs associated with the January 1, 2003 phaseout deadline for the production and import of HCFC–141b, previously established on December 10, 1993 (58 FR 65018). In the economic analysis for that rule, EPA accounted for costs to HCFC manufacturers and users to shift from, for example, HCFC–141b to substitutes. For the private sector, this rule identifies which HCFC–141b alternatives are acceptable and adds minor recordkeeping requirements for those who wish to transition from HCFC–141b to HCFC–22 or HCFC–142b in sectors where that transition is acceptable. Thus, it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

C. Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. As discussed above, EPA received comments on potential small business impacts of the proposal. In response to those comments, the Agency collected additional technical information and analyzed the potential for economic impacts to small businesses. EPA found that there are some foam manufacturers who currently have technical constraints in transitioning from HCFCs to non-ozone-depleting alternatives. Based on that information, EPA is withdrawing its proposed decision to list *existing use* of HCFC–22 and HCFC–142b as unacceptable and approving narrowed use of HCFC–22 and HCFC–142b as replacements for HCFC–141b in certain applications. As provided above, EPA believes that the recordkeeping requirement associated with the narrowed use determination will not result in any substantial cost. In the end-uses for which EPA is listing HCFC–22 and HCFC–142b acceptable, small businesses will not be affected. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to

narrowed use limits, and record-keeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks"

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children, as the exposure limits and acceptability listings in this final rule primarily apply to the workplace.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule applies to facilities that manufacture foam and not government entities. Thus, Executive Order 13175 does not apply to this rule.

I. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards. This rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this rule.

J. Executive Order 13211 (Energy Effects)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule lists acceptable and unacceptable substitutes for ozone-depleting chemicals in foam manufacturing. Where other approved alternatives are available and technically viable, EPA is listing HCFC–22, HCFC–142b, and HCFC–124 as unacceptable replacements for HCFC–141b. Although some comments to the proposal stated that use of other EPA approved alternatives would result in diminished insulation value and reduce the energy efficiency of products such as appliances, as discussed in the response to comments above, EPA believes that use of alternatives can result in products that are equal or superior in energy efficiency. EPA's position is supported by several appliance manufacturers who plan to meet DOE energy efficiency requirements using non-ozone-depleting foam blowing agents. Where alternatives to HCFC–141b have not been fully developed, EPA is listing HCFC–22 and HCFC–142b as acceptable in certain applications with narrowed use limits. Based on our evaluation of comments and technical data, we have concluded

that this rule is not likely to have any adverse energy effects.

VI. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at (800) 296–1996.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at *"http://www.epa.gov/ozone/"* and from the Stratospheric Protection Hotline number as listed above.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: July 12, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. Sec. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

2. Subpart G is amended by adding Appendix K to read as follows:

Appendix K to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed in the July 22, 2002, Final Rule, Effective August 21, 2002.

FOAM BLOWING—UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
Replacements for HCFC–141b in the following rigid polyurethane/polyisocyanurate applications: —Boardstock —Appliance —Spray	HCFC–22, HCFC–142b and blends thereof.	Unacceptable	Alternatives exist with lower or zero-ODP.
All foam end-uses	HCFC–124	Unacceptable	Alternatives exist with lower or zero-ODP.

FOAM BLOWING—ACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
Replacements for HCFC–141b in the following rigid polyurethane applications: —Commercial Refrigeration —Sandwich Panels —Slabstock and Other Foams	HCFC–22, HCFC–142b and blends thereof.	Acceptable Subject to Narrowed to Narrowed Use Limits.	Users must evaluate other acceptable non-ozone-depleting substitutes to determine that HCFC–22/HCFC–142b use is necessary to meet performance or safety requirements. Users must determine that there are technical constraints that preclude the use of other available substitutes. Documentation of this evaluation must be available for review upon request.

[FR Doc. 02–18176 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–7247–7]

Underground Injection Control Program Revision; Aquifer Exemption Determination for Portions of the Lance Formation Aquifer in Wyoming

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The State of Wyoming Department of Environmental Quality (WDEQ) has requested Environmental Protection Agency (EPA) approval of a revision to the State Underground Injection Control (UIC) Program, specifically that EPA approve an aquifer exemption from classification as an underground source of drinking water (USDW) for portions of the Lance Formation within the Powder River Basin in Johnson County, Wyoming.

Until August 2000, COGEMA Minerals was mining uranium from the Wasatch Formation under a UIC Class III in-situ leaching permit, issued by WDEQ. A previous Lance Formation aquifer exemption, approved by EPA in the **Federal Register** on March 26, 1999, allowed COGEMA to inject mining and mineral processing waste fluids from the Wasatch into the Lance Formation through two Class I Non-Hazardous deep injection wells permitted in 1997. COGEMA, after closing its mining operations, is extending its large-scale ground water restoration throughout the entire mined portion of the Wasatch Formation.

During the active mining process, the disposal capacity of the two existing Class I wells were adequate for the smaller scale restoration waste stream as COGEMA mined, then closed each Class III well field sequentially. However, now that COGEMA is restoring the entire mine site, large-scale restoration will produce a larger volume of waste fluid. WDEQ issued the final permit to COGEMA for the operation of two additional wells on November 3, 2000. However, COGEMA cannot inject any fluids into these wells until EPA approves this aquifer exemption.

Today's approval of this new aquifer exemption will allow COGEMA to use the newly permitted Class I injection wells to inject ground water restoration waste fluids from the Wasatch Formation into the Lance Formation. As a result of this increased disposal

capacity, COGEMA will be able to restore the Wasatch ground water more quickly and pump and treat less ground water. The rate of pumping out of the Wasatch will prevent any negative impact to the adjacent portions of this USDW.

EPA published a notice of the aquifer exemption request and asked for comments from the public in the **Federal Register** on January 30, 2001. EPA did not receive comments and after careful review of the exemption request, EPA has determined that the designated portions of the Lance Formation meet the requirements for an aquifer exemption. EPA is approving this aquifer exemption as a revision of the Wyoming UIC program. This final rule contains a table listing approved aquifer exemption areas for Class I wells on Wyoming State lands within the Lance Formation approved since January 1, 1999.

DATES: This rule shall become effective on August 21, 2002. In accordance with 40 CFR 23.7, this rule shall be considered promulgated for the purposes of judicial review at August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Valois Shea, US EPA Region 8, Mail Code 8P–W–GW, 999 18th Street, Suite 300, Denver, CO 80202; (303) 312–6276.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

COGEMA Mining, Inc. is the only regulated entity affected by today's action. COGEMA will derive some economic benefit as a result of this approval because the accelerated restoration will reduce the volume of waste being disposed and close the site more quickly. There is no other impact on regulated entities.

II. Introduction

The Safe Drinking Water Act (SDWA) established the Underground Injection Control (UIC) Program, which protects underground sources of drinking water [1] (USDWs) from potential contamination from injection well practices. The UIC program regulations also provide for exempting aquifers from the definition of USDWs stated in 40 CFR 144.3. The UIC regulations, specifically 40 CFR 144.7 and 146.4, define and provide criteria for exempting aquifers.

On September 25, 2000, the EPA Regional Office in Denver, Colorado (Region 8) received a request from the Wyoming Department of Environmental Quality (WDEQ), dated September 9, 2000, submitted on behalf of COGEMA Mining, Inc. (COGEMA), for EPA to grant an aquifer exemption for the Lance Formation. This exemption surrounds two Class I [2] Non-Hazardous deep injection wells in Johnson County, WY. The exemption area includes two cylindrical volumes with centers in the wells COGEMA DW No. 2 and COGEMA DW No. 3 respectively, and a radius of 1320 feet. These volumes were determined to be required to protect adjacent portions of the USDW from contamination from the injection activity. Traditional algorithms were used to determine the minimum distance from the wells that would be affected by the injection of the restoration waste. Both wells are located in the Christensen Ranch, in Johnson County WY. The COGEMA DW No.2 is located at approximately 2,290 feet from the North line and 1130 feet from the East line SW1/4 SE1/4 NE1/4 of Section 7, Township 44 North, Range 76 West. The COGEMA DW No. 3 is located approximately 3300 feet from the North line and 1340 feet from the West line center of SW1/4 of Section 5, Township 44 North, Range 76 West. The upper boundary of the exemption is at 3800 feet below ground surface and the lower boundary is at 6500 feet below ground surface.

EPA has reviewed this aquifer exemption request and approves the request to exempt the designated portions of the Lance Formation from classification as a USDW. The technical review done by EPA included the verification of the volume of the Lance formation that would be affected by the waste. Part of this verification included determination that all contaminants injected in the wells would be precipitated out of solution, neutralized, diluted or adsorbed by the formation matrix within the volume of the exemption. The January 30, 2001 **Federal Register** document (66 FR 8234, January 30, 2001) contains a detailed discussion of the justification of this aquifer exemption approval. Today's approval exempts two cylindrical volumes with centers in the wells COGEMA DW No. 2 and COGEMA DW No. 3 respectively, and a radius of 1320 feet (approximately one square mile of the Lance Formation, at depths between approximately 3,800 to 6,500 feet below the surface). On March 26, 1999, EPA approved a similar exemption of an nearby portion of the Lance Formation for two other COGEMA Class I wells located within 2 miles of the Class I wells involved in today's final rule. EPA published a *Request for Public Comment on a Substantial Modification to the Wyoming 1422 Underground Injection Control Program* in the **Federal Register** on August 27, 1998 (63 FR 45810). EPA received no public comment and subsequently published approval of the aquifer exemption in the **Federal Register** on March 26, 1999 (64 FR 14799).

The procedures to follow for approval or disapproval of State program revisions in the UIC program are codified in 40 CFR 145.32 and described in UIC Guidance #34, *Guidance for Review and Approval of State UIC Programs and Revisions to Approved State Programs*. EPA UIC Guidance #34 also identifies criteria that EPA generally uses to determine whether or not a State program revision is substantial. The Lance Formation ground water contains less than 3,000 milligrams per liter total dissolved solids (TDS), and the aquifer exemption is associated with a Class I injection well permit. For these two reasons this aquifer exemption is a *substantial* revision of the Wyoming UIC program as approved under section 1422 of the Safe Drinking Water Act.

WDEQ determined that the Lance Formation in the exemption area is located at such a depth below the surface so as to make its use economically impractical as a possible source of drinking water. Previously, WDEQ's request for public participation in issuing the well permits focused on the poor quality of the water in the Lance formation to justify the exemption. Subsequent analysis of the water quality and geological data by EPA determined that this criterion was not adequate and was replaced with the ** * * (2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; * * * § 146.4(b)(2))*. The depth of the Lance Formation in the exemption area is between approximately 3,800 to 6,500 feet below ground surface, based on its depth at the nearer of the two other COGEMA Class I Non-Hazardous deep injection wells. WDEQ issued a public notice in local newspapers, the *Casper Star Tribune* and the Johnson County *Buffalo Bulletin* on October 2, 2000 inviting public

[1] An underground source of drinking water (USDW) means an aquifer or its portion: (a)(1) which supplies any public water system; or (2) which contains a sufficient quantity of ground water to supply a public water system; and (i) currently supplies drinking water for human consumption; or (ii) contains fewer than 10,000 milligrams/liter total dissolved solids; and (b) which is not an exempted aquifer.

[2] Injection wells are divided into 5 classes. Class I wells are associated with the disposal of industrial, municipal or radioactive waste into formations below the lowermost underground source of drinking water (USDW). These wells have strict standards for siting, construction and operation.

comment on its intent to issue a permit for the two new wells. The public comment period began October 2, 2000, and ended October 31, 2000, but WDEQ did not receive any public comments or requests for a public hearing.

On January 30, 2001, EPA published a notice in the **Federal Register** (66 FR 8234, January 30, 2001) requesting public comment on the aquifer exemption request by COGEMA, based on both the contamination (§ 146.4(b)(3)) and the location (§ 146.4(b)(2)) criteria.[3] EPA did not receive comments or requests for a public hearing.

III. Background

Until August 2000, COGEMA operated the Christensen Ranch *in-situ* leaching uranium mine within the Wasatch Formation in Johnson and, Campbell Counties WY. The mining operation included five well fields operating under a UIC Class III[4] permit. The mining process contaminated ground water within the mined portions of the Wasatch Formation. To fulfill the mine permit closing requirements, COGEMA is engaging in large-scale ground water restoration throughout the entire mined portion of the Wasatch Formation.

COGEMA must conduct ground water restoration upon completion of mining activities to return the ground water affected by mining to baseline condition or to a condition consistent with its pre-mining or potential use. Once the ground water within the Wasatch is restored, the concentrations of contaminants in the ground water will be below drinking water standards. Complete restoration of the ground water quality within the mined-out areas of the Wasatch Formation will require a wastewater disposal capacity of 300 to 500 gallons per minute (gpm) over the next 4 to 6 years.

While mining was active, COGEMA used two Class I Non-Hazardous deep injection wells permitted in 1997 to inject mining, mineral process and ground water restoration waste fluids into the Lance Formation. Under the previously planned mining closure and aquifer restoration process, the disposal capacity of the two previously permitted Class I wells (and the volume of the previously granted aquifer exemption) would have been adequate for the long-term (18 years) restoration waste stream as COGEMA sequentially mined, then closed each Class III well field. However, now that COGEMA is restoring all areas of the mine site simultaneously, large-scale, accelerated restoration will produce a larger volume of waste fluids more quickly than the existing two Class I wells can inject it into the Lance Formation at the permitted injection rate.

Limiting the rate of the restoration process results in the generation of a *bleed stream* (discussed below) which constitutes an additional volume of waste fluids. Much of the mined portion of the Wasatch is on "standby" until either (a) the two new wells increase the disposal capacity, or (b) COGEMA sequentially restores each well field and completes the restoration process in other mined-out areas. In the standby areas, it is necessary to keep underground water flow directed into the mined portions until COGEMA can begin the restoration process there. Ground water flowing into the unrestored mined areas prevents contaminated water migration from the mined part of the aquifer outward into the surrounding high water quality areas of the Wasatch Formation. In order to allow underground water to flow into the standby areas, COGEMA must continuously pump ground water out of them. The term "bleed stream" refers to the ground water that COGEMA extracts for this purpose.[5]

The injected wastewater consists of the bleed stream described above and fluids from the restoration of the Wasatch Formation. The injectate also includes yellow cake wash water from washing any residual uranium recovered during the restoration process, laboratory wastewater, reverse osmosis brine, and ground water sweep solutions.[6] The bleed streams are non-hazardous, beneficiation[7] wastes exempt from regulation as hazardous waste under the Resource Conservation and Recovery Act as stipulated by the Bevill Amendment (40 CFR 261.4(b)(7).

Bringing the two new Class I wells on line to handle an increased volume of restoration waste water will increase the rate of the restoration process and will allow restoration to begin more immediately in the standby areas. These two new injection wells will decrease the time these mined areas will have to remain in standby mode, producing a continuous bleed stream. Use of the two new Class I injection wells will prevent the production of an additional 31 million gallons of bleed stream requiring disposal.[8] The increased rate of restoration will allow COGEMA to complete the restoration of the Wasatch Formation two years sooner than without the two additional wells.

IV. Basis for Approval of the Aquifer Exemption

EPA approves the exemption of the designated portions of the Lance Formation because the formation meets the following criteria for exempted aquifers:

§ 146.4 Criteria for exempted aquifers

An aquifer or a portion thereof which meets the criteria for an "underground source of drinking water" in 146.3 may be determined under 40 CFR 144.8 [sic—should read 144.7(b)] to be an "exempted aquifer" if it meets the following criteria:

(a) It does not currently serve as a source for drinking water;

There are no drinking water wells, public or private, extracting water from the Lance Formation in the exemption area or within 30 miles of the exemption area.

(b) It cannot now and will not serve as a source of drinking water because:

* * * (2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical.[9]

The depth of the Lance Formation within the aquifer exemption area ranges from 3,800 to 6,500 feet. The Powder River Basin is a deep syncline[10] and the aquifer exemption area occurs

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[3] Final decision to grant the exemption only under the location criterion did not occur until after this notice was published in the **Federal Register**.

[4] Class III wells are associated with the extraction of minerals, such as uranium, salts and sulfur, by in-situ mining.

[5] The mined volume acts like a vessel, which the "bleed stream" is continually emptying. This makes water drain into the vessel, preventing any contaminated water from flowing outside the mined area.

[6] To restore the Wasatch Formation, COGEMA must pump ground water from the mined portion and treat it by reverse osmosis. The reverse osmosis process cleans most of the water, but also generates a large volume of concentrated brine that COGEMA must inject into the Class I wells. Pumping the ground water out draws clean ground water into the mined area from surrounding areas in the Wasatch Formation and from injection wells used for injecting the previously extracted and treated ground water. This process causes the ground water to "sweep" through and clean the mined area. Eventually this process will restore the water in the formation to a pre-determined baseline quality.

[7] For a list of the processes included under beneficiation, please see 40 CFR 261.4(b)(7).

[8] This volume is the amount of additional bleed off fluids that would have to be disposed in the two years that this action would save.

[9] Originally the State had requested the exemption under a different criterion. Analysis of the request indicated that the stated criterion is more relevant.

[10] A syncline is a geologic structure in which earth's compressional forces deformed originally flat-lying rock strata into a large U-shaped fold where the center of the fold is deeper than the edges.

very near the center of the syncline, which is the deepest occurrence of the Lance Formation within this syncline. Retrieval of water from an aquifer at these depths is very expensive.

In addition to the great depth of the Lance Formation within the exemption area, it is also a low-yielding aquifer and does not produce a sufficient volume to supply drinking water to a public system. Verification that the Lance Formation is unable to provide a public drinking water system with a sufficient supply of water is presented by the towns of Midwest and Edgerton, WY, which depended on the Lance Formation for drinking water until 1997. These towns are located 30 miles southwest of the exemption area where the Lance Formation occurs near the surface at the western edge of the Powder River Basin. In 1997 these wells were abandoned because of low water productivity (40 gallons per minute (gpm) sustainable flow). At that time the towns of Midwest and Edgerton determined that piping in pre-treated water 50 miles from Casper, WY is more economically feasible than continuing operation of the drinking water wells completed in the Lance Formation, even at the relatively shallow depth of 1,500 to 2,000 feet. (The Wasatch formation is not present near these two towns.) Another factor in this decision was the expense of treatment that would be required to continue using the Lance wells as a public water supply (COGEMA, 1998).

Alternatively, the *Wasatch Formation* occurs 2,600 feet above the Lance Formation in the mining restoration area and provides a shallower, more prolific, better quality water supply source available for use in the area. Given this abundant, shallower supply of high quality ground water, EPA concludes that the deeper *Lance Formation* will never be required to provide drinking water in the area of the aquifer exemption. (Please note that the Wasatch is the same aquifer that COGEMA will restore to drinking water quality more quickly if these disposal wells are available to increase capacity for disposal of aquifer restoration waste fluids into the Lance Formation.)

As indicated before, neither the State of Wyoming nor EPA received comments or a request for a public hearing in response to several public notices including the January 31, 2001 notice published in the **Federal Register** (66 FR 8234) for this aquifer exemption.

V. Regulatory Impact/Administrative Requirements

A. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action does not establish new monitoring and reporting requirements. Reporting by this facility, involving the injection wells, is already required by the State UIC program and it is not affected by the approval of this exemption. The approval of this aquifer exemption does not impose any additional information collection burdens.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

B. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practice) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when EPA decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provision of Title II of the UMRA), for State, local or Tribal governments, or the private sector. This rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This final rule merely approves the exemption of a portion of the Lance aquifer from the definition of a USDW. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has also determined that this rule contains no regulatory requirements that

might significantly or uniquely affect small governments.

Thus, today's rule is not subject to the requirements of section 203 of UMRA.

D. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, we defined small entities as (1) a small business based on Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on any small entities. Further, EPA received information with the exemption request and confirmed that there are no entities of any size currently using the Lance Formation as a source of drinking water within 30 miles of the aquifer exemption area.

E. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule does not apply to any Tribal government and there are no Tribal jurisdictions on or near the area of this aquifer exemption. Thus, Executive Order 13175 does not apply to this rule.

F. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13054 because it is not "economically significant" as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

H. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule does not have any substantial direct effect on the State of Wyoming or local governments in the State of Wyoming, on the relationship between the national government and the State of Wyoming or local governments in the State of Wyoming, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as

defined by 5 U.S.C. 804(2). This rule will be effective on August 21, 2002.

J. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

VI. References

USEPA 1998. Underground Injection Control Program: Substantial Modification to an Existing State-Administered Underground Injection Control Program, 63 FR 45810, August 27, 1998.

USEPA 1999. Underground Injection Control Program Revision; Aquifer Exemption Determination for Portions of the Lance Formation Aquifer in Wyoming; Final Rule. 64 FR 14799, March 26, 1999.

USEPA 2001. Underground Injection Control Program: Substantial Modification to an Existing State-Administered Underground Injection Control Program. 66 FR 8234, January 30, 2001.

COGEMA Mining, Inc. 1998(b). "Submittal of Supplemental Technical Document in Support of Lance Formation Aquifer Exemption; Application for Modification of Class I UIC permit No. 95–241," Apr 17, 1998, COGEMA Mining, Inc., 935 Pendell Boulevard, P.O. Box 730, Mills, WY 82644.

"Approval of Programs and Revisions to Approved State Programs, GWPB Guidance #34," July 9, 1984, US Environmental Protection Agency, Washington, DC.

WDEQ 2000, "Public Notice of Draft Permit 00–340," Oct 2, 2000, *Casper Star Tribune*, Casper, WY.

WDEQ 2000, "Public Notice of Draft Permit 00–340," Oct 2, 2000, *Buffalo Bulletin*, Johnson County, WY.

List of Subjects in 40 CFR Part 147

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: July 12, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 147 is amended as follows:

PART 147—[AMENDED]

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

Subpart ZZ—Wyoming

2. Section 147.2555 is amended by revising the table heading and adding an entry to the table to read as follows:

§ 147.2555 Aquifer exemptions since January 1, 1999.

* * * * *

AQUIFER EXEMPTIONS SINCE JANUARY 1, 1999

Formation	Approximate depth (feet below ground surface)	Location
Lance Formation at indicated depths and locations.	3,800—6,500	Two cylindrical volumes with centers in the wells COGEMA DW No. 2 and COGEMA DW No. 3 respectively, and radius of 1320 feet. Both wells are located in the Christensen Ranch, in Johnson County WY. The COGEMA DW No. 2 is located at approximately 2,290 feet from the North line and 1130 feet from the East line SW1/4 SE1/4 NE1/4 of Section 7, Township 44 North, Range 76 West. The COGEMA DW No. 3 is located approximately 3300 feet from the North line and 1340 feet from the West line center of SW1/4 of Section 5, Township 44 North, Range 76 West.
*	*	* * * * * *

[FR Doc. 02–18410 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI61

Endangered and Threatened Wildlife and Plants; Listing the Sonoma County Distinct Population Segment of the California Tiger Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: We, the Fish and Wildlife Service (Service), exercise our authority to emergency list the Sonoma County Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*), as endangered under the Endangered Species Act of 1973, as amended (Act). Currently, only seven known breeding sites of the Sonoma County population remain. In the past two years, four breeding sites have been destroyed or have suffered severe degradation. Plans to construct a residential development will result in the loss of one of the seven remaining breeding sites and severely impact and further isolate another two of the remaining breeding sites. Because these losses constitute an emergency posing a significant and imminent risk to the well-being of the Sonoma County Distinct Population Segment of the California tiger salamander, we find that emergency listing is necessary.

This emergency rule provides Federal protection pursuant to the Act for a period of 240 days. A proposed rule to list the Sonoma County Distinct Population Segment of the California tiger salamander as endangered is published concurrently with this emergency rule in this same issue of the **Federal Register** in the Proposed Rule Section.

DATES: This emergency rule becomes immediately effective July 22, 2002, and expires March 19, 2003.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: David E. Wooten, Susan Moore, Amy LaVoie, or Chris Nagano, Sacramento Fish and Wildlife Office, at the address

listed above (telephone 916/414–6600; facsimile 916/414–6713).

SUPPLEMENTARY INFORMATION:

Background

The California tiger salamander was first described as a full species, *Ambystoma californiense*, by Gray in 1853, based on specimens that had been collected in Monterey, California (Grinnell and Camp 1917). Storer (1925) and Bishop (1943) also considered the California tiger salamander to be a species. Dunn (1940), Gehlbach (1967), and Frost (1985) stated the California tiger salamander was a subspecies of the more widespread tiger salamander (*Ambystoma tigrinum*). However, based on recent studies of the genetics, geographic distribution, and ecological differences among the members of the *A. tigrinum* complex, the California tiger salamander is now considered to be a distinct species (Shaffer and Stanley 1991; Shaffer *et al.* 1993; Jones 1993; Shaffer and McKnight 1996; Irschick and Shaffer 1997; Petranka 1998).

The California tiger salamander is a large, stocky, terrestrial salamander with small eyes and a broad, rounded snout. Adults may reach a total length of 208 millimeters (mm) (8.2 inches (in)), with males generally averaging about 203 mm (8 in) in total length, and females averaging about 173 mm (6.8 in) in total length. For both sexes, the average snout-vent length is approximately 91 mm (3.6 in). The small eyes have black irises and protrude from the head. Coloration consists of white or pale yellow spots or bars on a black background on the back and sides. The belly varies from almost uniform white or pale yellow to a variegated pattern of white or pale yellow and black. Males can be distinguished from females, especially during the breeding season, by their swollen cloacae (a common chamber into which the intestinal, urinary, and reproductive canals discharge), more developed tail fins, and larger overall size (Stebbins 1962; Loredo and Van Vuren 1996).

California tiger salamanders are restricted to California and their range does not naturally overlap with any other species of tiger salamander (Stebbins 1985; Petranka 1998). Based on genetic analysis, there are seven populations of California tiger salamanders, which are found on the Santa Rosa Plain in Sonoma County, the Sacramento Valley area (Yolo, Solano, Colusa, Contra Costa, Alameda, and Sacramento Counties), Stanislaus County, the east Central Valley (Madera, Fresno, and north Tulare Counties), the Diablo Range (western Merced and San Benito Counties), the Inner Coast Range (Monterey and San Luis Obispo Counties), and Santa Barbara County (Shaffer *et al.* 1993). The California tiger salamander on the Santa Rosa Plain in Sonoma County inhabits low elevation (below 60 meters (m) (200 feet (ft)) vernal pools and seasonal ponds, associated grassland, and oak savannah plant communities. The historic range of the species also may have included the Petaluma River watershed, as there is one historic record of a specimen from the vicinity of Petaluma from the mid-1800s (Borland 1856, as cited in Storer 1925).

California tiger salamanders on the Santa Rosa Plain in Sonoma County are geographically separated from other California tiger salamander populations. The closest California tiger salamander populations to Sonoma County are located in Contra Costa, Yolo, and Solano Counties, which are separated from the Sonoma County population by the Coast Range, Napa River, and the Carquinez Straits, a distance of about 72 kilometers (km) (45 miles (mi)).

The known breeding sites of the California tiger salamander in Sonoma County are restricted to Huichica-Wright-Zamora and Clear Lake-Reyes soils series/associations as defined by the U.S. Department of Agriculture (USDA 1972, 1990). The poorly drained soils in the Huichica-Wright-Zamora association (yellow outlined in red on Soil Map) are considered prime soils for containing wetlands, and more specifically, prime soils for habitat containing California tiger salamander (P. Northen Sonoma State University pers. comm.). The Huichica-Wright-Zamora association is restricted to the Santa Rosa Plain and the vicinity of the town of Sonoma (USDA 1972, 1990). The poorly drained soils in the Clear Lake-Reyes association are considered suitable to marginal soils for containing wetlands or habitat for California tiger salamander (Northen pers. comm.). The Clear Lake-Reyes association is found from the Cotati region south and east of Petaluma to the tidelands of northern San Francisco Bay where the salt marsh habitat is unsuitable for the California tiger salamander. There are also scattered areas of the Clear Lake-Reyes association found south and southwest of the town of Sonoma (USDA 1972, 1990). There are no known records of the California tiger salamander from the area around the town of Sonoma (D. McGriff California Department of Fish and Game pers. comm.) and there is now extensive urban and agricultural development in this portion of the County. The remainder of areas in Sonoma County outside of the two soil series/associations discussed above contain soils that are well drained, rocky, or otherwise unsuitable for habitat for the California tiger salamander.

Subadult and adult California tiger salamanders spend the dry summer and fall months of the year estivating (a state of dormancy or inactivity in response to hot, dry weather) in the burrows of small mammals, such as California ground squirrels (*Spermophilus beecheyi*) and Botta's pocket gopher (*Thomomys bottae*) (Loredo and Van Vuren 1996; Petranka 1998; Trenham 1998a). During estivation, California tiger salamanders eat very little (Shaffer *et al.* 1993). Once fall or winter rains begin, they emerge from these retreats on nights of high relative humidity and during rains to feed and migrate to the breeding ponds (Stebbins 1985, 1989; Shaffer *et al.* 1993). The salamanders breeding in, and living around, a seasonal pool or pools, and associated uplands where estivation can occur, constitute a breeding site. A breeding site is defined as a location where the animals are able to successfully breed in years of "normal" rainfall and complete their estivation. Normal rainfall in Santa Rosa is 76 centimeters (cm) (30 in) per year (National Weather Service 2002).

Adult California tiger salamanders may migrate up to 2 km (1.2 mi) from their estivation sites to the breeding ponds (Sam Sweet, University of California, Santa Barbara, *in litt.*, 1998). The distance between these areas depends on local topography and vegetation, and the distribution of ground squirrel or other rodent burrows (Stebbins 1989; Lawrence Hunt, consultant, *in litt.*,1998). Males migrate before females (Twitty 1941; Shaffer *et al.* 1993; Loredo and Van Vuren 1996; Trenham 1998b). Males usually remain in the ponds for an average of about 6 to 8 weeks, while females stay for approximately 1 to 2 weeks. In dry years, both sexes may stay for shorter periods (Loredo and Van Vuren 1996; Trenham 1998b). Although most marked salamanders have been recaptured at the pond where they were initially captured, in one study approximately 20 percent were recaptured at different ponds (Trenham 1998b). The rate of natural movement of salamanders among breeding sites depends on the distance between the ponds or complexes of ponds and on the intervening habitat (*e.g.*, salamanders may move more quickly through sparsely covered and more open grassland versus more densely vegetated lands) (Trenham 1998a). As with migration distances, the number of ponds used by an individual over its

lifetime will be dependent on landscape features and environmental factors.

The adults mate in the ponds and the females lay their eggs in the water (Twitty 1941; Shaffer *et al.* 1993). Females attach their eggs singly, or in rare circumstances, in groups of two to four, to twigs, grass stems, vegetation, or debris (Storer 1925; Twitty 1941). In ponds with limited or no vegetation, they may be attached to objects, such as rocks and boards, on the bottom (Jennings and Hayes 1994). After breeding, adults leave the pond and return to the small mammal burrows (Loredo *et al.* 1996; Trenham 1998a), although they may continue to come out nightly for approximately the next 2 weeks to feed (Shaffer *et al.* 1993). In drought years, the seasonal ponds may not form and the adults cannot breed (Barry and Shaffer 1994).

Eggs hatch in 10 to 14 days, with newly hatched larvae ranging from 11.5 to 14.2 mm (0.45 to 0.56 in) in total length. The young salamanders (larvae) are aquatic. They are yellowish gray in color and have broad heads, large, feathery gills, and broad dorsal fins that extend well onto their back. The larvae feed on zooplankton, small crustaceans, and aquatic insects for about 6 weeks after hatching, after which they switch to larger prey (Anderson 1968). Larger larvae have been known to consume smaller tadpoles of Pacific treefrogs (*Pseudacris regilla*) and California red-legged frogs (*Rana aurora*) (J. Anderson 1968; P. Anderson 1968). The larvae are among the top aquatic predators in the seasonal pond ecosystems. The larvae often rest on the pond bottom in shallow water, but also may be found at different layers in the water column in deeper water. The young salamanders are wary and when approached by potential predators will dart into the vegetation on the bottom of the ponds (Storer 1925).

The larval stage of the California tiger salamander usually lasts 3 to 6 months, as most ponds dry up during the summer (Petranka 1998). Amphibian larvae must grow to a critical minimum body size before they can metamorphose (change into a different physical form) to the terrestrial stage (Wilbur and Collins 1973). Individuals collected near Stockton in the Central Valley during April varied from 47 to 58 mm (1.85 to 2.28 in) in length (Storer 1925). Feaver (1971) found that California tiger salamander larvae metamorphosed into terrestrial juveniles and left the breeding ponds 60 to 94 days after the eggs had been laid, with larvae developing faster in smaller, more rapidly drying ponds. The longer the ponding duration, the larger the larvae are able to grow, and the more likely they are to survive as metamorphosed juveniles and reproduce as adults (Semlitsch *et al.* 1988; Morey 1998). The larvae will perish if a site dries before they complete metamorphosis (P.R. Anderson 1968; Feaver 1971). Pechmann *et al.* (1988) found a strong positive correlation between ponding duration and total number of metamorphosed juveniles in five salamander species.

When the metamorphosed juveniles leave their ponds, in the late spring or early summer, before the ponds dry completely, they settle in small mammal burrows at the end of their nightly movements (Zeiner *et al.* 1988; Shaffer *et al.* 1993; Loredo *et al.* 1996). Like the adults, juveniles may emerge from these retreats to feed during nights of high relative humidity (Storer 1925; Shaffer *et al.* 1993) before settling in their selected estivation sites for the dry hot summer months. Juveniles have been observed to migrate up to 1.6 km (1 mi) from breeding ponds to estivation areas (Austin and Shaffer 1992).

Lifetime reproductive success for California and other tiger salamanders is low. Trenham *et al.* (2000) found the average female bred 1.3 times and produced 8.5 young that survived to metamorphosis per reproductive effort; this resulted in roughly 11 metamorphic offspring over the lifetime of a female. Preliminary data suggest that most individuals of the California tiger salamanders require 2 years to become sexually mature, but some individuals may be slower to mature (Shaffer *et al.* 1993). Some animals do not breed until they are 4 to 6 years old. While individuals may survive for more than 10 years, many may breed only once, and, in some populations, less than 5 percent of marked juveniles survive to become breeding adults (Trenham 1998b). With such low recruitment, isolated populations can decline greatly from unusual, randomly occurring natural events as well as from human-caused factors that reduce breeding success and individual survival. Factors that repeatedly lower breeding success in isolated ponds that are too far from other ponds for migrating individuals to replenish the population can function to quickly extirpate a population.

The life history and ecology of the California tiger salamander on the Santa Rosa Plain in Sonoma County make it likely that this population has a metapopulation structure (Hanski and Gilpin 1991). A metapopulation is a set of local populations or breeding sites within an area, where typically migration from one local population or breeding site to other areas containing suitable habitat is possible, but not routine. Movement between areas containing suitable habitat (i.e., dispersal) is restricted due to inhospitable conditions around and between areas of suitable habitat. Because many of the areas of suitable habitat may be small, and support small numbers of salamanders, local extinction of these small units may be common. A metapopulation's persistence depends on the combined dynamics of these local extinctions and the subsequent recolonization of these areas by dispersal (Hanski and Gilpin 1991, 1997; McCullough 1996; Hanski 1999).

We believe habitat loss has reduced the sizes and connectivity between patches of suitable and occupied salamander habitat on the Santa Rosa Plain. The reduction in the extent and amount of suitable water bodies, grasslands, and other suitable upland habitats likely has eliminated connectivity among most of the known breeding sites, making recolonization of some sites more difficult following local extinction. In addition, the reduction of habitat below a certain size threshold has the effect of reducing the quality of the remaining habitat by reducing the size of habitat boundaries, and making effects of other factors such as amount of food, availability of rodent burrows, pesticide use, mortality from vehicles, and predators more pronounced given the smaller area now exposed to such impacts. There is not enough data to determine what the size threshold for habitat might be, whereby any further reduction would lower the quality of the remaining habitat. But it is probable that the acreage is dependent on factors such as the type of building occurring along habitat boundaries (*i.e.*, residential, industrial, community park), number of roads bordering the habitat and the amount of traffic those roads experience, amount of pesticide use within the breeding pool watershed, or whether domestic animals or people have access to the site during periods when salamanders are vulnerable such as migrating to or from estivation sites. It is likely that there is a size beyond which the combination of various impacts will result in the loss of more salamanders than the Sonoma County California tiger salamander population can produce, and thus local extinction will occur.

Previous Federal Action

On September 18, 1985, we published the Vertebrate Notice of Review (NOR) (50 FR 37958), which included the California tiger salamander as a category 2 candidate species for possible future

listing as threatened or endangered. Category 2 candidates were those taxa for which information contained in our files indicated that listing may be appropriate but for which additional data were needed to support a listing proposal. The January 6, 1989, and November 21, 1991, candidate notices of review (54 FR 554 and 56 FR 58804, respectively) also included the California tiger salamander as a category 2 candidate, soliciting information on the status of the species.

On February 21, 1992, we received a petition from Dr. H. Bradley Shaffer of the University of California at Davis (UCD), to list the California tiger salamander as an endangered species. We published a 90-day petition finding on November 19, 1992 (57 FR 54545), concluding that the petition presented substantial information indicating that listing may be warranted. On April 18, 1994, we published a 12-month petition finding (59 FR 18353) that the listing of the California tiger salamander was warranted but precluded by higher priority listing actions. We elevated the species to category 1 status at that time, which was reflected in the November 15, 1994, NOR (59 FR 58982). Category 1 candidates were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals.

We discontinued the use of different categories of candidates in the NOR, published February 28, 1996 (61 FR 7596), and defined "candidate species" as those meeting the definition of former category 1. We maintained the California tiger salamander as a candidate species in that NOR, as well as subsequent NORs published September 19, 1997 (62 FR 49398), October 25, 1999 (64 FR 57533), and October 30, 2001 (66 FR 54808).

On June 12, 2001, we received a petition dated June 11, 2001, from the Center for Biological Diversity (CBD) and Citizens for a Sustainable Cotati to emergency list the Sonoma County population of the California tiger salamander as an endangered species and to designate critical habitat. On February 27, 2002, CBD filed a complaint for our failure to emergency list the Sonoma County population of the California tiger salamander as endangered (*Center for Biological Diversity* v. *U.S. Fish and Wildlife Service* (Case No. C–02–0558 WHA)). On June 6, 2002, based on a settlement agreement between ourselves and CBD, the court signed an order requiring us to submit for publication in the **Federal Register**, a proposal and/or emergency rule to list the species by July 15, 2002. This emergency listing rule, and the concurrently published proposed rule, complies with the settlement agreement.

Distinct Vertebrate Population Segment

Under the Act, we must consider for listing any species, subspecies, or, for vertebrates, any Distinct Population Segment (DPS) of these taxa if there is sufficient information to indicate that such action may be warranted. To implement the measures prescribed by the Act and its Congressional guidance, we, along with the National Marine Fisheries Service, developed policy that addresses the recognition of DPSs for potential listing actions (61 FR 4722). The policy allows for a more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require its protective measures. Under our DPS policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS. The elements are: (1) The population segment's discreteness from the remainder of the species to which it belongs; and (2) the significance of the population segment's to the species to which it belongs. If we determine that a population segment being considered for listing represents a DPS, then the level of threat to the population is evaluated based on the five listing factors established by the Act to determine if listing it as either threatened or endangered is warranted.

Discreteness

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist. The proposed DPS is based on the first condition, the marked separation from other populations.

The Sonoma County population of the California tiger salamander (Sonoma County population) is discrete in relation to the remainder of the species as a whole. The population is geographically isolated and separate from other California tiger salamanders. The Sonoma County population is widely separated geographically from the closest populations which are located in Contra Costa, Yolo, and Solano Counties. These populations are separated from the Sonoma County population by the Coast Range, Napa River, and the Carquinez Straits, a distance of about 72 km (45 mi). There are no known records of the California tiger salamander in the intervening areas (Dee Warenycia, California Department of Fish and Game (CDFG), pers. comm., 2002). There is no evidence of natural interchange of individuals in the Sonoma County population with other California tiger salamander populations. As detailed below, this finding is supported by an evaluation of the genetic variability of the species.

Dr. H. Bradley Shaffer analyzed the population genetics of the California tiger salamander (Shaffer *et al.* 1993). Allozyme variation (distinct types of enzymes (proteins) in the cells, which are formed from an individuals inherited genes) and mitochondrial DNA sequence data indicate that there are seven distinct populations of the California tiger salamander. These seven populations differ markedly from each other in their genetic characteristics, with the Sonoma County population having gene sequences not found in any other populations (Shaffer *et al.* 1993). The sequence divergence between the Sonoma County population was found to diverge on the order of 2 percent from other populations of this species. This high level of genetic divergence indicates that there has been little, if any, gene flow between the Sonoma County population and other California tiger salamanders populations. Shaffer's mitochondrial DNA sequence data (Shaffer and McKnight 1996) suggest that the seven distinct populations differ markedly in their genetic characteristics, with Sonoma County California tiger salamanders having gene sequences not found in other California tiger salamanders. These levels of divergence justify separate species recognition between the Sonoma County population and the other California tiger salamander populations and may warrant separate taxonomic recognition (Shaffer *et al.* 1993; Shaffer and McKnight 1996).

Significance

Under our DPS policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to, evidence of the persistence of the discrete population segment in an ecological setting that is unique for the taxon; evidence that loss of the population segment would result in a

significant gap in the range of the taxon; evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. We have found substantial evidence that two of these significance factors are met by the population of the California tiger salamander that occurs on the Santa Rosa Plain in Sonoma County.

The extinction of the Sonoma County population would result in the loss of a significant genetic entity and the curtailment of the range of the species. As discussed above, the Sonoma County population is genetically distinct from other populations of California tiger salamanders. Loss of the Sonoma County population would eliminate the most northern coastal extent of the range of the species. The Sonoma County population is geographically isolated. Genetic analysis of the species supports the hypothesis that no natural interchange of the Sonoma County population occurs with other California tiger salamander populations.

Conclusion

We evaluated the Sonoma County population as a DPS, addressing the two elements which our policy requires us to consider in deciding whether a vertebrate population may be recognized as a DPS and considered for listing under the Act. We conclude that the Sonoma County population is discrete, as per our policy, based on its geographic separation and genetic divergence from the rest of the California tiger salamander populations. We conclude that the Sonoma County population of the California tiger salamander is significant because the loss of the species from the Santa Rosa Plain in Sonoma County would result in a significant reduction in the species' range and would constitute loss of a genetically divergent portion of the species. Because the population segment meets both the discreteness and significance criteria of our DPS policy, the DPS qualifies for consideration for listing. An evaluation of the level of threat to the DPS based on the five listing factors established by the Act follows.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act describe the procedures for adding species to the Federal list. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Sonoma County DPS of the California tiger salamander (Sonoma County California tiger salamander) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The Sonoma County California tiger salamander population, as well as the population in Santa Barbara County, which we listed as endangered (65 FR 57242), are considered to be the most vulnerable of the seven populations of the California tiger salamander (Shaffer et al. 1993; LSA Associates 2001). Urban development is the primary threat to the Sonoma County California tiger salamander. The species now occurs in scattered and increasingly isolated breeding sites within a small portion of its historic range on the Santa Rosa Plain in Sonoma County. Four known breeding sites have been destroyed in the last two years. All of the seven known extant breeding sites are distributed in the City of Santa Rosa, and the immediate associated unincorporated areas, an area approximately 8 km (5 mi) by 6 km (4 mi) wide. Within this area and south to the Cotati area, there are scattered records of adult salamanders crossing roads during the fall and winter rains, and also instances of breeding in roadside ditches. However, these roadside ditches likely do not represent viable breeding sites because they either do not have sufficient ponding duration and/or associated uplands for estivation.

The seven known breeding sites are imperiled by the construction of high-density housing, office buildings, road construction, and other development. The survival and viability of the Sonoma County California tiger salamander is directly related to availability of breeding pools with hydrological and other factors conducive to their reproduction. There also must be adequate upland acreage, with associated small mammal burrows, in the vicinity of the Sonoma County California tiger salamander breeding pools to accommodate estivation. The Santa Rosa Plain once contained extensive valley oak woods, native grasslands, riparian, and vernal pools. Vernal pools and seasonal wetlands likely were extensive, due to the flat terrain, clay soils, and relative high rainfall (CH2M Hill 1995). Based on the topography and habitat type of the lands that have been converted to urban development and agriculture on the Santa Rosa Plain, the number of breeding ponds, the extent of upland habitats, and the quality of the remaining habitats has been greatly reduced since Europeans first settled the region.

The extent of the historic range of the California tiger salamander within the Santa Rosa Plain in Sonoma County is uncertain due to limited information collected on this population prior to the 1990s (Shaffer *et al.* 1993; Jennings and Hayes 1994). However, based on the habitat requirements of the species for low elevation, seasonally filled breeding ponds and small rodent burrows, the ecology of the taxon, the general trend of urban development into suitable and occupied habitat, and other adverse factors affecting the species, we believe that it once occupied a more extensive, but still limited area within the Santa Rosa Plain.

There are no available estimates of the total number of individual Sonoma County California tiger salamanders. The difficulty of estimating total California tiger salamander population size has been discussed by a number of biologists (Shaffer *et al.* 1993; Jennings and Hayes 1994). However, estimates have been made for only a few populations in Monterey County (Barry and Shaffer 1994; Trenham *et al.* 1996). This is due to the lack of data about the numbers of individuals of the Sonoma County California tiger salamander, the fact that these amphibians spend much of their lives underground, and the fact that only a portion of the total number of animals migrate to the ponds to breed every year.

A 1990 study of the Santa Rosa Plain found that 25 percent of an 11,300 hectare (ha) (28,000 acres (ac)) study area had been converted to subdivisions, "ranchettes," golf courses, and commercial buildings (Waaland *et al.* 1990). An additional 17 percent of the study area had been converted to agricultural uses. Since 1990, many more acres have been urbanized and converted to intensive agriculture, particularly vineyards. Even relatively minor habitat modifications, such as construction of roads, storm drains, and road curbs that traverse the area between breeding and estivation sites, increase habitat fragmentation, impede or prevent migration, and result in direct and indirect mortality (Mader 1984; S. Sweet, *in litt.*, 1993, 1998; Findlay and Houlahan 1996; Launer and Fee 1996; Gibbs 1998). All of the known Sonoma County California tiger salamander breeding pools are within 450 m (1,476 ft) of roads and residential

development, and five of the seven remaining viable breeding locations are within 100 m (328 ft) of major development activities.

Urban Development

Urban development poses a significant threat to all of the known breeding sites of the Sonoma County California tiger salamander. All of these sites are found in and around the former Santa Rosa Air Center that is located in west Santa Rosa. This area contains one of the largest undeveloped blocks of land within the city limits of Santa Rosa. Urban development is proposed on or near locations containing three of the seven known breeding sites in the Santa Rosa area (Santa Rosa Department of Community Development 1994; EIP Associates 2000). The airport was closed and the property sold to the City of Santa Rosa in the mid-1980s. The City of Santa Rosa is proposing the majority of the area be developed as part of their Southwest Area Plan (Santa Rosa Department of Community Development 1994; EIP Associates 2000). Urban development of this area is proceeding rapidly. Demographic data obtained from the City of Santa Rosa Housing and Community Development Commission indicate that since 1980, Santa Rosa has experienced a greater than 53 percent increase in its population. From 1980 until 1997, the number of housing units grew by 66 percent from 35,403 units in 1980 to 53,558 units by January 1, 1997 (Michael Enright, City of Santa Rosa, pers. comm., 2001).

Four known breeding sites were lost within the past two years, two of which were lost due to urban development/housing with another lost to commercial development. As recently as June 2002, the fourth breeding site near Cotati was destroyed when the pond was filled for unknown reasons (David Cook, The Wildlife Society, *in litt.*, 2002; Liam Davis, CDFG, *in litt.*, 2002). The Cotati location was considered highly productive for salamanders (D. Cook, *in litt.*, 2002).

Roads and Highways

California tiger salamanders require a large amount of barrier-free landscape for successful migration (Shaffer *et al.* 1993; Loredo *et al.* 1996). Roads and highways are permanent physical obstacles that can block the animals from moving to new breeding habitat, or prevent them from returning to their breeding ponds or estivation sites. Road construction can reduce or completely eliminate a breeding site, and in some cases, larger portions of a metapopulation.

All the pools at the known extant Sonoma County California tiger salamander breeding sites are within 460 m (1,509 ft) of roads of various sizes. Findlay and Houlahan (1996) found that roads within 2000m (1.2 mi) of wetlands adversely affected the number of amphibian species. The Federal Emergency Management Agency (FEMA)/Broadmore North Preserve, and Hall Road Preserve are the only lands with known breeding sites where salamanders can access breeding pools from estivation areas without crossing roads.

Large numbers of California tiger salamanders at some locations in the Central Valley, up to 15 or 20 per mile of road (Joe Medeiros, Sierra College, pers. comm., 1993), have been killed as they crossed roads on breeding migrations (Hansen and Tremper 1993; S. Sweet, *in litt.*, 1993). Estimates of losses to automobile traffic range from 25 to 72 percent of the breeding population for several different populations of the species (Twitty 1941; S. Sweet, *in litt.*, 1993; Launer and Fee 1996). Curbs and berms as low as 9 to 13 cm (3.5 to 5 in), which allow salamanders to climb onto the road but can restrict or prevent their movements off the roads, can effectively turn the roads into sources of high mortality (Launer and Fee 1996; S. Sweet, *in litt.*, 1998). Automobile traffic along Stony Point Road in western Santa Rosa has probably quadrupled in the past 5 years (D. Cook, pers. comm., 2002). This was once a moderately used rural road and is now a major route for commuter traffic. Between November 21, 2001, and December 5, 2001, 26 California tiger salamanders were found killed by cars on this road between Santa Rosa and Cotati. Fourteen of these dead California tiger salamanders were found along Stoney Point Road near Meachum Road (D. Cook, pers. comm., 2002).

Description of the Breeding Sites

Except for the Hall Road Preserve and the FEMA/Broadmore North Preserve, all of the known breeding sites of the Sonoma County California tiger salamander are found on small locations in areas being rapidly converted from low-intensity farming, cattle grazing, and low-density housing, to high density housing, and office buildings. The Hall Road Preserve and the FEMA/Broadmore North Preserve have hydrologic regimes that are adequate to provide recruitment for SCTS in normal to dry years. All other known breeding locations are either slated for development or will have their hydrology altered by disrupting the natural runoff from surrounding uplands. A description of the known extant breeding sites of the Sonoma County California tiger salamander is presented below.

(1) *Hall Road Preserve:* This 74 ha (183 ac) site is owned by CDFG. It is the largest preserved area where the Sonoma County California tiger salamander is currently known to occur. It contains two pools with ponding levels adequate for successful breeding during drought years. This preserve contains seven additional breeding pools that are relatively shallow and do not pond water long enough for successful breeding in years of moderate to low rainfall. Surveys conducted over the past 2 years indicate this preserve does not function as a highly productive breeding site (Cook and Northern 2001). The land surrounding the preserve is privately owned, and the City of Santa Rosa has issued permits for urban development. Urban development has occurred on adjacent lands to the east and west, and agriculture to the north of the preserve. Exotic predators of the salamander, such as Louisiana crayfish (*Procrambus clarkii*), sticklebacks (*Gasterosteus aculeatus*, a fish), and possibly bullfrogs (*Rana catesbeiana*) are present at the Hall Road Preserve.

(2) *FEMA/Broadmore North Preserve:* This breeding site consists of two properties, the FEMA Preserve and the Broadmore North Preserve. The 24 ha (59 ac) FEMA Preserve is owned by CDFG and it contains one of the most productive Sonoma County California tiger salamander breeding sites. The 6.5 ha (16 ac) Broadmore North Preserve is a conservation area that was set aside as mitigation by the Bellvue School District. It is also managed by CDFG. The two breeding sites are contiguous and encompass 30 ha (75 ac) containing three breeding pools. The FEMA Preserve has two large, deep pools that remain ponded late in the season. Salamanders probably breed there during most years. The one breeding pool on Broadmore North is shallow and does not contribute salamanders to the population in dry years (i.e., there is no recruitment) (D. Cook, pers. comm., 2001). While there is no hydrological connection between this site and the deeper pools contained on the FEMA Preserve, the FEMA Preserve probably allows the salamanders at the Broadmore North Preserve the opportunity to breed during dry years. Urban development has occurred to the north and east sides of the preserves. Although these breeding sites are protected, urbanization imperils upland habitats on private land to the east and west of them. A new road and housing development on lands adjacent to the

preserves' western boundaries have been permitted by City of Santa Rosa. This new road and construction will eliminate the western migration route between Southwest Air Center and the FEMA and Broadmore North preserves for salamander from this breeding site.

(3) *Northwest Air Center:* This breeding site is composed of one breeding pond and is located on private land. Much of the associated upland has recently been developed. This site is bordered on the west and north by roads subject to heavy traffic from housing developments that have been constructed under the City of Santa Rosa's Southwest Area Development Plan. Housing has eliminated migration routes to the east and south, thus leaving this site as an isolated breeding site with less than 22 ha (55 ac) of remaining undeveloped upland area and pool with private lands surrounding it to the south and east (M. Enright, pers. comm., 2001).

(4) *Southwest Air Center:* This breeding site is located on private land and it contains one breeding pool. The City of Santa Rosa has issued permits for a residential development that likely will result in the elimination of the salamanders at this location. Preparation of this site for construction has been initiated. The grading of the upland areas in the summer dry season likely will eliminate estivating salamanders at this site. The salamanders at this location also may utilize the breeding ponds at the FEMA and Broadmore North preserves by an existing migration corridor to the east. The destruction of this breeding site likely will further isolate the animals inhabiting this location. Loss of this breeding site will contribute to the overall isolation of the remaining breeding sites. Based on the completion time of the construction of other approved projects in the area, the West Air Center breeding site likely will be lost by September 2002.

(5) *North Air Center:* There is one breeding pool on this privately owned site. Recent residential and commercial developments which border this breeding site on three sides severely restrict the potential for migration. The City of Santa Rosa has approved residential and road projects for this location that will adversely affect the salamanders. This site is bordered by houses to the west, a road with high levels of automobile traffic to the north, and a corporate park to the east. There is a small tract of undeveloped private land to the south. No protection exists for the uplands or breeding pool which is located directly south of Sebastopol Road. The upland area is about 15 ha (37 ac). Portions of Sebastopol Road have been widened to four traffic lanes, including the construction of storm drains and curbs. The curbs likely funnel migrating salamanders into storm drains where they perish after being washed into the sewer system. Residential and commercial projects currently are under construction in this area, and this breeding site likely will be significantly degraded and completely isolated by September, 2002.

(6) *Wright Avenue:* This breeding site is located on private land. Approved development described in the City of Santa Rosa's Southwest Area Development Plan will isolate this breeding site through increased automobile traffic and residential development along Wright and Ludwig avenues. Additionally, there is no construction specifically proposed for this property, but no protection exists to prevent the breeding site and associated uplands from being developed.

(7) *South Ludwig Avenue:* This breeding site is located on private land and current threats to the salamanders include increased traffic along Ludwig Avenue due to increasing residential development. The breeding site and associated uplands are currently not protected from potential development on the property.

Conclusion for Factor A

Maintenance of tracts of habitat between breeding sites will likely play a pivotal role in maintenance of the Sonoma County California tiger salamander metapopulation dynamics. If breeding sites are eliminated and the metapopulation becomes so fragmented that individuals are unable to disperse between suitable patches of habitat, the probability of natural recolonization will not offset the probability of extinction, with a result of population extinction. Some of the salamander breeding sites, such as the FEMA Preserve/Broadmore North Preserve and the pools at the Hall Road Preserve, are linked to each other by suitable habitat. If movements through these linkages are disrupted or precluded (e.g., by urban development), then the stability of the metapopulation (i.e., the exchange of individuals between breeding sites) will be affected. Isolation, whether by geographic distance or ecological factors, will prevent the influx of new genetic material, and may result in inbreeding and extinction (Levin 2002). We believe that the Sonoma County California tiger salamander is at risk from increasing fragmentation and isolation that is the result of urban development.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The larvae of non-native tiger salamanders are used as bait by some fishermen and are still sold in California for this purpose. The extent of the use of the Sonoma County California tiger salamander for this purpose is unknown.

Tiger salamanders are considered to be excellent pets by amateur herpetologists (Porras 2002). The Sonoma County California tiger salamander does not appear to be particularly popular among amphibian and reptile collectors; however, Federal listing could raise the value of the species within wildlife trade markets and increase the threat of unauthorized collection above current levels (Special Agent Ken McCloud, Service, pers. comm., 2002). Even limited interest in the species could pose a serious threat to the small population of this species.

C. Disease or Predation

Disease

The specific effects of disease on the Sonoma County California tiger salamanders is not known and the risks to the animal have not been determined. Large numbers of dead and dying California tiger salamanders were observed in a pond in the Los Alamos Valley in Santa Barbara County, but the cause was not determined (S. Sweet, pers. comm., 1998). Several pathogenic (disease-causing) agents, including at least one bacterium (Worthylake and Hovingh 1989), a water mold (fungus) (Kiesecker and Blaustein 1997; Lefcort *et al.* 1997), and a virus (McLean 1998), have been associated with die-offs of tiger salamanders, as well as other amphibian species. Since Sonoma County California tiger salamanders are found in only a few sites in a relatively small area, a disease outbreak could devastate one or all of the known extant breeding sites if introduced into Sonoma County.

Worthylake and Hovingh (1989) described repeated die-offs of tiger salamanders (*Ambystoma tigrinum*) at Desolation Lake in the Wasatch Mountains of Utah. Affected salamanders had red, swollen hind legs and vents, and widespread hemorrhage of the skin and internal organs. The researchers determined that the die-offs were due to infection from the bacterium *Acinetobacter*. The number of bacteria in the lake increased with increasing nitrogen levels as the lake dried. The nitrogen was believed to come from both atmospheric deposition and waste from sheep grazing in the

watershed (Worthylake and Hovingh 1989). *Acinetobacter* are common in soil and animal feces.

Lefcort *et al.* (1997) found that tiger salamanders raised in natural and artificial ponds contaminated with silt were susceptible to infection by the water mold *Saprolegnia parasitica* at a location in Georgia. The fungus first appeared on the feet, spread to the entire leg, and then infected animals died. Die-offs of western toads (*Bufo boreas*), Cascades frogs (*Rana cascadae*), and Pacific treefrogs also have been associated with *Saprolegnia* infections (Kiesecker and Blaustein 1997). *Saprolegnia* is widespread in natural waters and commonly grows on dead organic material (Wise 1995).

In addition to the *Acinetobacter*, viruses associated with die-offs of tiger and spotted salamanders in Maine and North Dakota, have been isolated (McLean 1998). In 1995, researchers reported similar die-offs attributed to an iridovirus in southern Arizona and near Regina, Saskatchewan, Canada (McLean 1998). Iridoviruses are found in both fish and frogs and may have been introduced to some sites through fish stocking programs. Little is known about the historical distribution of iridoviruses in salamander populations. The virus may be carried by birds, such as herons and egrets (Family Ardeidae), that feed on the salamanders. Such a virus could be devastating to the Sonoma County California tiger salamanders.

Predation

Predation and competition by introduced or non-native species potentially affects all of the seven known Sonoma County California tiger salamander breeding sites. Bullfrogs prey on California tiger salamander larvae (P.R. Anderson 1968; Lawler *et al.* 1999). Morey and Guinn (1992) documented a shift in amphibian community composition at a vernal pool complex, with California tiger salamanders becoming proportionally less abundant as bullfrogs increased in number. Although bullfrogs are unable to establish permanent breeding populations in unaltered vernal pools and seasonal ponds, dispersing immature frogs take up residence in pools during winter and spring (Morey and Guinn 1992), and may prey on native amphibians, including larval salamanders. One of the pools at the Hall Road breeding site, and two of the pools contained at the FEMA/Broadmore North preserves, are located within 46 m (150 ft) of ditches or creek channels known to contain bullfrogs or crayfish. Bullfrogs likely occur in Roseland Creek , which is near the FEMA/Broadmore North preserve (D. Cook, pers. comm., 2002). Bullfrogs are likely present in ditches that cross the Hall Road Preserve (D. Cook, pers. comm., 2002).

Mosquito fish (*Gambusia affinis*), rather than pesticides, are often placed into ponds by vector control agencies to eliminate mosquitoes. Salamanders may be especially vulnerable to mosquito fish predation due to their fluttering external gills, which may attract these visual predators (Graf 1993). Loredo-Prendeville *et al.* (1994) found no California tiger salamanders inhabiting ponds containing mosquito fish. Mosquito fish prey on other amphibian species, such as the California newt (*Taricha torosa*) (Gamradt and Kats 1996) and Pacific treefrog (Goodsell and Kats 1999) tadpoles in both field and laboratory experiments, even given the optional prey of mosquito larvae (Goodsell and Kats 1999; Lee Kats, Pepperdine University, pers. comm., 1999). Robert Stebbins observed mosquito fish ingesting and then spitting out California newt larvae, causing severe damage to the newts in the process (Graf 1993). Given the effects of mosquito fish on other amphibian species, they are likely to have similar effects on California tiger salamanders. If they have the same effects, the use of mosquito fish in California tiger salamander habitat threatens the persistence of the species, especially in the isolated and decline Sonoma County California tiger salamander population.

Other fish, such as sticklebacks, may prey on the Sonoma County California tiger salamander. One pool at the Hall Road Preserve appears to have all of the biological components for successful California tiger salamander breeding, but has a small connector to a drainage ditch containing stickleback. Sonoma County California tiger salamanders have never been found at this site, and it is suspected that predation of their eggs and larvae by this fish is the limiting factor (D. Cook, pers. comm., 2002).

Crayfish also apparently prey on California tiger salamanders (Shaffer *et al.* 1993) and may have eliminated some populations (Jennings and Hayes 1994). The crayfish prey on California newt eggs and larvae, in spite of toxins produced by these amphibians, and they may be a significant factor in the loss of newts from several streams in southern California (Gamradt and Kats 1996). These crayfish have been found at both the FEMA/Broadmore North and Hall Road Preserves. At the FEMA property, crayfish were found in the pool (D. Cook, pers. comm., 2002). The crayfish likely came from the adjacent Roseland Creek Channel. Louisiana crayfish have been found in the ditches that cross the Hall Road Preserve, but not at any of the pools known to support Sonoma County California tiger salamander populations (D. Cook, pers. comm., 2002). The presence of both stickleback and crayfish, along with the suspected presence of bullfrogs, could affect the Hall Road Preserve. The Hall Road Preserve is one of only two breeding sites that still contain pools with migration corridors that accommodate the transfer of genetic material between pools, while also allowing for the repopulation of individual pools in the event of a randomly occurring catastrophic event.

California tiger salamander larvae also are preyed upon by many native species. In healthy salamander populations, such predation is probably not a significant threat. But when combined with other impacts, such as predation by non-native species, contaminants, migration barriers, or habitat alteration, it may cause a significant decrease in population viability. Native predators include great blue herons (*Ardea herodias*) and egrets, western pond turtles (*Clemmys marmorata*), various garter snakes (*Thamnophis* spp.), larger California tiger salamander larvae, larger spadefoot toad (*Scaphiopus hammondii*) larvae, and California red-legged frogs (Mike Peters, Service, *in litt.*, 1993; Hansen and Tremper 1993).

D. The Inadequacy of Existing Regulatory Mechanisms

The primary cause of the decline of the Sonoma County California tiger salamander is the loss, degradation, and fragmentation of habitat from human activities. Federal, State, and local laws have been insufficient to prevent past and ongoing losses of the limited habitat of the Sonoma County California tiger salamander.

Federal

Under section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344 *et seq.*), the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, including wetlands. Section 404 regulations require applicants to obtain a permit for projects that involve the discharge of fill material into waters of the United States, including wetlands. However, normal farming activities are exempt under the CWA and do not require a permit (53 FR 20764; Robert Wayland III, Environmental Protection Agency (EPA), *in litt.*, 1996). Projects

that are subject to regulation may qualify for authorization to place fill material into headwaters and isolated waters, including wetlands, under several nationwide permits. The use of nationwide permits by an applicant or project proponent is normally authorized with minimal environmental review by the Corps. No activity that is likely to jeopardize the continued existence of a threatened or endangered species, or that is likely to destroy or adversely modify designated critical habitat of such species, is authorized under any nationwide permit. An individual permit may be required by the Corps if a project otherwise qualifying under a nationwide permit would have greater than minimal adverse environmental impacts.

Three federally endangered plants, Sonoma sunshine (*Blennosperma bakeri*), Sebastopol meadowfoam (*Limnanthes vinculans*), and Burke's goldfields (*Lasthenia burkei*) occur on the Santa Rosa Plain of Sonoma County in the vicinity of Sonoma County California tiger salamander. However, little overlap occurs between the viable breeding sites of this species and these federally listed vernal pool species. Any Corps consultation requirement for fill of pools on the Santa Rosa Plain would be triggered by the listed plants. Since the salamander and the federally listed plants do not substantially overlap, salamander breeding pools are unlikely to be protected by presence of the plants or their habitat. Furthermore, even if breeding pools of this animal are avoided due to the presence of a federally listed plant species, this protection may only extend to the pool itself with a small upland buffer. Since Sonoma County California tiger salamanders spend up to 80 percent of their life in small mammal burrows in upland habitats surrounding breeding pools, the protection of the pool itself, with concurrent loss of uplands surrounding the pool, would still result in the loss of local Sonoma County California tiger salamander breeding sites.

Recent court cases may further limit the Corps' ability to utilize the CWA to regulate the fill or discharge of fill or dredged material into the aquatic environment within the current range of the Sonoma County California tiger salamander (*Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC)). The effect of SWANCC on Federal regulation of activities in wetlands in the area of the Sonoma County California tiger salamander has recently become clear by the Corps' failure to assert its jurisdiction over fill of several wetlands within the range of the Sonoma county California tiger salamander. In a letter from the Corps dated March 8, 2002, concerning the fill of 0.18 ha (0.45 ac) of seasonal wetlands southwest of the intersection of Piner and Marlow Roads (Corps File Number 19736N), the Corps referenced the SWANCC decision and reiterated that the subject wetlands were not "waters of the United States" because they were: (1) Not navigable waters; (2) not interstate waters; (3) not part of a tributary system to 1 or 2; (4) not wetlands adjacent to any of the foregoing; and (5) not an impoundment of any of the above. The letter further stated that the interstate commerce nexus to these particular waters is insufficient to establish CWA jurisdiction, and therefore, not subject to regulation by the Corps under section 404 of the CWA. The Corps also cited the SWANCC decision as their reasoning for not taking jurisdiction over fill of Sonoma County California tiger salamander breeding pools at the recently constructed South Sonoma Business Park.

State

The CDFG recognizes the California tiger salamander as a species of special concern. This designation does not provide the species with any protection from actions that injure or kill them, or damage or destroy their habitat. The California tiger salamander is not protected under the California Endangered Species Act.

The California Environmental Quality Act (CEQA) (Public Resources Code Sec. 21000–21177) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over a project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines, as amended, requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed endangered species and/or their habitat. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agency involved.

Local

We are not aware of any specific county or city ordinances that provide protection for the Sonoma County California tiger salamander.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Several other factors, including contaminants, ground squirrel and gopher control, hybridization with non-native salamanders, predation, and competition with introduced species may have negative effects on California tiger salamanders and their aquatic and upland habitats. These factors are discussed below.

Contaminants

Sonoma County California tiger salamanders probably are exposed to a variety of pesticides and other chemicals throughout their range. Sonoma County California tiger salamanders also could die from starvation by the loss of their prey base. Hydrocarbon and other contamination from oil production and road runoff; the application of numerous chemicals for roadside maintenance; urban/suburban landscape maintenance; and rodent and vector control programs may all have negative effects on tiger salamander populations, as detailed below.

Road mortality is not the only risk factor associated with roads, as oil and other contaminants in runoff have been detected in adjacent ponds and linked to die-offs and deformities in California tiger salamanders and spadefoot toads, and die-offs of invertebrates that form most of both species' prey base (S. Sweet, *in litt.*, 1993). Lefcort *et al.* (1997) found that oil had limited direct effects on 5-week-old marbled (*Ambystoma opacum*) and tiger salamanders (*A. t. tigrinum*). However, it was found that salamanders from oil-contaminated natural ponds metamorphosed earlier at smaller sizes, and those from oil-contaminated artificial ponds had slower growth rates, than larvae raised in non-contaminated ponds. Their studies did not address effects on eggs and early larval stages, where the effects may be more pronounced.

Hatch and Burton (1998) and Monson *et al.* (1999) investigated the effects of one component of petroleum products and urban runoff (fluoranthene, a polycyclic aromatic hydrocarbon) on spotted salamanders (*A. maculatum*), northern leopard frogs (*Rana pipiens*), and African clawed frogs (*Xenopus laevis*). In laboratory and outdoor experiments, using levels of the

contaminant comparable to those found in service station and other urban runoff, the researchers found reduced survival and growth abnormalities in all species and that the effects were worse when the larvae were exposed to the contaminant under natural levels of sunlight, rather than in the laboratory under artificial light. In Sonoma County, there are a number of records of California tiger salamanders using roadside ditches. Many are in areas where there are no known breeding ponds, and these animals are utilizing the only marginal habitat remaining. Also, many pools in these areas have likely been destroyed, leaving these marginal sites as the only option for breeding. In light of the increased urbanization occurring in this area, with concurrent increases in traffic, the risk factor associated with contaminants in runoff likely will rise in both roadside ditches and across the general landscape.

Agricultural and Landscaping Contaminants

In Sonoma County, over 1.4 million kilograms (3.1 million pounds) of agricultural chemicals were used in 2000 on grapes, apples, rights of way, structural pest control, and landscape maintenance (California Department of Pesticide Regulation (CDPR), Internet Website). Chemical use occurring on or near tiger salamander breeding sites in Sonoma County is primarily associated with rights of way, structural pest control, and landscape maintenance. These chemicals included metam-sodium, methyl bromide, mancozeb, petroleum oil, phosmet, chlorpyrifos, pendimethalin, parathion, paraquat dichloride, fosetyl-aluminum, acephate, cryolite, and malathion, some of which are extremely toxic to aquatic organisms, such as amphibians and the organisms on which they prey.

Even if toxic or detectable amounts of pesticides are not found in the breeding ponds or groundwater, salamanders may still be affected, particularly when chemicals are applied during the migration and dispersal seasons. All of the remaining seven documented salamander breeding sites in Sonoma County may be directly or indirectly affected by toxic landscaping chemicals due to the presence of housing developments within their drainage basins.

Rodent Control

California tiger salamanders spend much of their lives estivating in underground retreats, typically in the burrows of ground squirrels and gophers (Loredo *et al.* 1996; Trenham 1998a). Widespread ground squirrel control programs were begun in California as early as 1910, and are carried out on more than 4 million ha (9.9 million ac) in California (Marsh 1987). It is unclear how effective such control programs were in reducing ground squirrel populations. According to Marsh (1987), when a ground squirrel population is at or near carrying capacity, it must be reduced by at least 90 percent annually for several years to significantly reduce the population. However, it may not be practical to attain such high reduction rates over large areas of rangelands, but it may be possible to reduce populations to low numbers (Salmon and Schmidt 1984). In some primarily agricultural counties, the ground squirrel population has been reduced and maintained at perhaps 10 to 20 percent of the carrying capacity. Rodent control programs are conducted by individual land owners and managers on grazing, vineyard, and crop production lands (Rosemary Thompson, Science Applications International Corporation, *in litt.*, 1998).

Pocket gopher and ground squirrel burrows are most often used by California tiger salamanders in Sonoma County (D. Cook, pers. comm., 2001). Both of these animals are classified as nongame mammals by CDFG. This means that if they are found to be injuring growing crops or other property, including garden and landscape plants, they may be controlled at any time and in any legal manner by the owner or the tenant of the premises (University of California Integrated Pest Management (UCIPM), internet website 2002).

Legal methods of pocket gopher control include trapping, strychnine-treated grain bait, and anticoagulant baits. Poisoned grains (anticoagulant baits) are the most common method used to control ground squirrels around homes and other areas where children, pets, and poultry are present (UCIPM 2002; Jon Shelgrin, CDPR, pers. comm., 2002). Zinc phosphide is highly toxic to freshwater fish and to non-target mammals (EXOTONET 1996). Zinc phosphide, a rodenticide and restricted material, turns into phosgene gas, a toxic gas once ingested by the rodents. There is little risk of California tiger salamanders ingesting any of these baits; however the use of these grains may impact the California tiger salamanders indirectly if washed into burrows or ponds used by the species.

Two of the most commonly used rodenticides, chlorophacinone and diphacinone, are anticoagulants that cause animals to bleed to death. They can be absorbed through the skin and are considered toxic to fish and wildlife (EPA 1985; Extension Toxicology Network (EXTOXNET) 1999). These two chemicals, along with strychnine, are used in Sonoma County to control rodents (R. Thompson, *in litt.*, 1998). Although the effects of these poisons on California tiger salamanders have not been assessed, use along roadways or surrounding residential areas may result in contamination of salamander breeding ponds, with undetermined effects. Gases, including aluminum phosphide, carbon monoxide, and methyl bromide, can be introduced into burrows either by using cartridges or by pumping. When such fumigants are used, all animals inhabiting the burrow are killed (Salmon and Schmidt 1984).

In addition to possible direct effects of rodent control chemicals, control programs probably have an adverse indirect effect on California tiger salamander populations. Control of ground squirrels could significantly reduce the number of burrows available for use by the Sonoma County California tiger salamander (Loredo-Prendeville *et al.* 1994). All of the remaining Sonoma County California tiger salamander breeding locations exist in areas that are likely to experience a heightened degree of rodent control due to landscaping concerns surrounding residential developments. Because the burrow density required to support California tiger salamanders in an area is not known, the loss of burrows as a result of control programs cannot be quantified at this time. However, Shaffer *et al.* (1993) stated that rodent control programs may be responsible for the lack of California tiger salamanders in some areas. Active ground squirrel colonies probably are needed to sustain tiger salamanders because inactive burrow systems become progressively unsuitable over time. Loredo *et al.* (1996) found that burrow systems collapsed within 18 months following abandonment by or loss of the ground squirrels. Although the researchers found that California tiger salamanders used both occupied and unoccupied burrows, they did not indicate that the salamanders used collapsed burrows. Rodent control programs must be analyzed and implemented carefully in California tiger salamander habitat so the persistence of the animals is not threatened. One of the remaining Sonoma County California tiger salamander sites is currently occupied by cattle. Most owners of livestock seek to eliminate ground squirrel burrows because of the threat of cows (*Bos bos*) breaking their legs if they accidentally step into a burrow.

Mosquito Control

A commonly used method to control mosquitoes, used in Sonoma County (Marin/Sonoma Mosquito and Vector Control District, internet website 2002), is the application of methoprene, which increases the level of juvenile hormone in insect larvae and disrupts the molting process. Lawrenz (1984) found that methoprene (Altosid SR–10) retarded the development of selected crustacea that had the same molting hormones (i.e., juvenile hormone) as insects, and anticipated that the same hormone may control metamorphosis in other arthropods. Because the success of many aquatic vertebrates relies on an abundance of invertebrates in temporary wetlands, any delay in insect growth could reduce the numbers and density of prey available (Lawrenz 1984). The use of methoprene could have an indirect adverse effect on the California tiger salamander by reducing the availability of prey. In more recent studies, methoprene did not cause increased mortality of gray treefrog (*Hyla versicolor*) tadpoles (Sparling and Lowe 1998). However, it caused reduced survival rates and increased malformations in northern leopard frogs (*Rana pipiens*) (Ankley *et al.* 1998), and increased malformations in southern leopard frogs (*R. utricularia*) (Sparling 1998). Blumberg *et al.* (1998) correlated exposure to methoprene with delayed metamorphosis and high mortality rates in northern leopard and mink (*R. septentrionalis*) frogs. Methoprene appears to have both direct and indirect effects on the growth and survival of larval amphibians.

Introduced Species

Introduced species can have negative effects on California tiger salamander populations through competition and hybridization (Shaffer *et al.* 1993; H. Bradley Shaffer, UCD, *in litt.*, 1999). Competition from fish that prey on mosquito larvae and other invertebrates can reduce the survival of salamanders. Both California tiger salamanders (Stebbins 1962; J. D. Anderson 1968; Holomuzki 1986) and mosquito fish feed on micro- and macro-invertebrates; large numbers of mosquito fish may outcompete the salamander larvae for food (Graf 1993). As urban areas continue to expand, the introduction of mosquito fish into previously untreated ponds may result in the elimination of California tiger salamanders from additional breeding sites. The introduction of other fish either inadvertently or for recreational fishing or other purposes may also affect the prey base, reducing growth and survival rates of salamanders. They may also prey on tiger salamander larvae, reducing or eliminating populations (Shaffer *et al.* 1993).

The practice of importing the non-native tiger salamander for fish bait is no longer legal in California (CCR Title 14, Division 1, Subdivision 1, Chapter 2, Article 3, Section 4 2000). Non-native tiger salamanders have been documented in Sonoma County, although not in habitat utilized by California tiger salamanders (Shaffer *et al.* 1993). Non-native tiger salamanders were being sold as pets in a store directly across the street from one of the breeding sites (David Wooten, Service, pers. obs., 2002). If salamander population ranges overlap or come in contact through expansion, then hybridization may occur in closely related species and certain subspecies (Rudd 1955). Over time, a population of a subspecies could become genetically indistinguishable from a larger population of an introgressing subspecies such that the true genotype of the lesser subspecies no longer exists (Levin 2002). The Sonoma County California tiger salamander breeding sites in west Santa Rosa may be threatened by hybridization with non-native tiger salamanders because of the ability of the animals to disperse over upland areas, or through intentional introduction to the pools (Cook and Northern 2001).

Introduced salamanders may out-compete the California tiger salamander, or interbreed with the natives (Bury and Lukenbach 1976; Shaffer *et al.* 1993). Evidence suggests that the hybrids are viable, and that they breed with California tiger salamanders (H. Shaffer *in litt.*, 1999). With so few remaining breeding sites of California tiger salamanders in Sonoma County, the loss of any to hybridization, with or competition from, introduced species is of serious concern.

Grazing

Grazing in many cases has positive, or at least neutral, effects on the California tiger salamander (H. B. Shaffer and Peter Trenham, UCD, pers. comm., 1998; S. Sweet, pers. comm., 1998, 1999). By keeping vegetation shorter, grazing can make areas more suitable for ground squirrels, whose burrows are used by California tiger salamanders. Only one of the seven viable Sonoma County California tiger salamander breeding locations is currently being grazed. However, cattle drink large quantities of water, sometimes causing temporary pools to dry faster than they otherwise would (Sheri Melanson, Service, *in litt.*, 1993), and possibly causing breeding pools to dry too quickly for salamanders to be able to metamorphose (Feaver 1971). Melanson (1993) noted that although vernal pool species continued to reproduce under a November-to-April grazing regime, California tiger salamanders were either absent or found in low numbers in portions of pools that were heavily trampled by cattle. Continued trampling of a pond's edge by cattle can increase the surface area of a pond, and may increase water temperature and speed up the rate of evaporation and thus reduce the amount of time the pond contains enough water (S. Sweet, pers. comm., 1998).

Reduction in water quality caused by cattle excrement may negatively affect the California tiger salamanders by increasing nitrogen levels. High nitrogen levels have been associated with blooms of bacteria (Worthylake and Hovingh 1989), and silt has been associated with fatal fungal infections (Lefcort *et al.* 1997) (see Factor C of this section). However, grazing generally is compatible with the continued use of rangelands by the California tiger salamander as long as intensive burrowing rodent control programs are not implemented on such areas, and grazing is not excessive (Thomas Jones, University of Michigan, *in litt.*, 1993; Shaffer *et al.* 1993; S. Sweet, pers. comm., 1998, 1999).

Population Size

The low numbers of Sonoma County California tiger salamander make it vulnerable to risks associated with small, restricted populations. The elements of risk that are amplified in very small populations include: (1) The impact of high death rates or low birth rates; (2) the effects of genetic drift (random fluctuations in gene frequencies) and inbreeding (mating among close relatives); and (3) deterioration in environmental quality (Gilpin and Soule 1986). Genetic drift and inbreeding may lead to reductions in the ability of individuals to survive and reproduce (i.e., reductions in fitness) in small populations. In addition, reduced genetic variation in small populations may make any species less able to successfully adapt to future environmental changes (Shaffer 1981, 1987; Noss and Cooperrider 1994; Primack 1998).

Reason for Emergency Determination

Under section 4(b)(7) of the Act, and regulations at 50 CFR 424.20, we must consider development of an emergency rule to list a species if the threats to the species constitute an emergency posing a significant risk to its continuing survival. Such an emergency listing

becomes effective upon publication in the **Federal Register** and expires 240 days following publication in the **Federal Register** unless, during this 240-day period, we list the species following the normal listing procedures. We discuss the reasons why emergency listing the Sonoma County California tiger salamander as endangered is necessary below. In accordance with the Act, we will withdraw this emergency rule if, at any time after its publication, we determine that substantial evidence does not exist to warrant such a rule.

In making this determination, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Sonoma County California tiger salamander. As discussed in the Summary of Factors Affecting the Species, the species faces a number of threats. These include habitat destruction, degradation, and fragmentation, collection, invasive exotic species, pesticides, and inadequate regulatory mechanisms. The Sonoma County California tiger salamander also is vulnerable to chance environmental or demographic events, to which small populations are particularly vulnerable. The combination of only seven known breeding sites, small range on the Santa Rosa Plain, and restricted habitat makes the animal highly susceptible to random events, such as drought, disease, and other occurrences.

Drought conditions in the last two years have resulting in many of these ponds drying up earlier in the season than expected. Only three pools were wet long enough to allow for recruitment in 2001. Any extended drought could result in such low numbers of individuals that recovery would be precluded.

Because the Sonoma County California tiger salamander has been reduced to only seven known breeding sites, and all of them are subject to various immediate, ongoing, and future threats as outlined above, we find that the Sonoma County California tiger salamander is in imminent danger of extinction throughout all or a significant portion of its range and warrants immediate protection under the Act. Emergency listing the Sonoma County California tiger salamander as endangered will increase the regulatory protections and resources available to the species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the—(i) Specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary of the Interior (Secretary) designate critical habitat at the time the species is determined to be endangered or threatened. Our implementing regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform the required analysis of impacts of the designation is lacking, or if the biological needs of the species are not sufficiently well known to allow identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if she determines that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species. In the absence of a finding that critical habitat would increase threats to a species, if any benefits would derive from critical habitat designation, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits.

The primary regulatory effect of critical habitat is the section 7 requirement that agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also produce some educational or informational benefits. Therefore, designation of critical habitat for the Sonoma County California tiger salamander is prudent.

However, our budget for listing activities is currently insufficient to allow us to immediately complete all the listing actions required by the Act. Not designating critical habitat at this time allows us to provide the necessary protections needed for the conservation of the species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. The legislative history of the 1982 Act amendments also emphasized this point: "The Committee feels strongly, however, that, where biology relating to the status of the species is clear, it should not be denied the protection of the Act because of the inability of the Secretary to complete the work necessary to designate critical habitat. * * * The committee expects the agencies to make the strongest attempt possible to determine critical habitat within the time period designated for listing, but stresses that the listing of species is not to be delayed in any instance past the time period allocated for such listing if the biological data is clear but the habitat designation process is not complete" (H.R. Rep. No. 97–567 at 20 (1982)). We will prepare a critical habitat designation in the future when our available resources allow.

We will protect the Sonoma County California tiger salamander and its habitat through section 7 consultations to determine whether Federal actions are likely to jeopardize the continued existence of the subspecies, through the recovery process, through enforcement of take prohibitions under section 9 of the Act, and through the section 10 process for activities on non-Federal lands with no Federal nexus.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation actions by Federal, State, and local agencies. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for listed species. We discuss the protection of Federal agencies, considerations for

protection and conservation actions, and the prohibitions against taking and harm for the Sonoma County California tiger salamander, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed to be listed or is listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Federal agencies are required to confer with us informally on any action that is likely to jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Federal agency actions that may affect the Sonoma County California tiger salamanders and may require consultation with us include, but are not limited to, those within the jurisdiction of the Corps, Natural Resources Conservation Service, Federal Farm Bureau, and Federal Highway Administration (FHA).

We believe that protection and recovery of the Sonoma County California tiger salamander will require reduction of the threats from destruction and degradation of wetland and associated upland habitats due to urban development, exotic predators, unnecessary ground squirrel and gopher control, and road construction. Threats from collection and pesticide drift also must be reduced. These threats should be considered when management actions are taken in habitats currently and potentially occupied by the Sonoma County California tiger salamander, and areas deemed important for dispersal and connectivity or corridors between known locations of this species. Monitoring also should be undertaken for any management actions or scientific investigations designed to address these threats or their impacts.

Listing the Sonoma County California tiger salamander provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and regional agency efforts for the conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It also will describe the site-specific actions necessary to achieve conservation and survival of the species.

Listing also will require us to review any actions that may affect the Sonoma County California tiger salamander for lands and activities under Federal jurisdiction, State plans developed pursuant to section 6 of the Act, scientific investigations of efforts to enhance the propagation or survival of the animal, pursuant to section 10(a)(1)(A) of the Act, and habitat conservation plans prepared for non-Federal lands and activities pursuant to section 10(a)(1)(B) of the Act.

Federal agencies with management responsibility for the Sonoma County California tiger salamander include the Service, in relation to the issuance of section 10(a)(1)(A and B) permits for habitat conservation plans and other programs. Occurrences of this species could potentially be affected by projects requiring a permit from the Corps under section 404 of the CWA. The Corps is required to consult with us on applications they receive for projects that may affect listed species. Highway construction and maintenance projects that receive funding from the FHA would be subject to review under section 7 of the Act. In addition, activities that are authorized, funded, or administered by Federal agencies on non-Federal lands will be subject to section 7 review.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, codified at 50 CFR 17.21, in part make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any such conduct), import, export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. We believe that, based on the best available information, the following actions are not likely to result in a violation of section 9, provided these actions are carried out in accordance with any existing regulations and permit requirements:

(1) Possession, delivery, including interstate transport and import or export from the United States, involving no commercial activity, of Sonoma County California tiger salamanders that were collected prior to the date of publication of this emergency listing rule in the **Federal Register**;

(2) Any actions that may affect the Sonoma County California tiger salamander that are authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with the consultation requirements for listed species pursuant to section 7 of the Act;

(3) Any action taken for scientific research carried out under a recovery permit issued by the Service pursuant to section 10(a)(1)(A) of the Act; and

(4) Land actions or management carried out under a habitat conservation plan approved by the Service pursuant to section 10(a)(1)(B) of the Act, or an approved conservation agreement.

Activities that we believe could potentially result in a violation of section 9 of the Act include, but are not limited to:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including intrastate, interstate, and foreign commerce, or harming, or attempting any of these actions, of Sonoma County California tiger salamanders. Research activities where salamanders are trapped or captured will require a permit under section 10(a)(1)(A) of the Act;

(2) Activities authorized, funded, or carried out by Federal agencies that may affect the Sonoma County California tiger salamander, or its habitat, when such activities are not conducted in accordance with the consultation for listed species under section 7 of the Act;

(3) Discharges or dumping of toxic chemicals, silt, or other pollutants into, or other alteration of the quality of waters supporting Sonoma County California tiger salamanders that results in death or injury of the species or that results in degradation of their occupied habitat;

(4) Release of exotic species (including, but not limited to, bullfrogs, tiger salamanders, mosquito fish, bass, sunfish, bullhead, catfish, crayfish) into Sonoma County California tiger salamander breeding habitat;

(5) Destruction or alteration of uplands associated with seasonal pools used by Sonoma County California tiger salamanders during estivation and dispersal, or modification of migration routes such that migration and dispersal are reduced or precluded; and

(6) Activities (e.g., habitat conversion, excessive livestock grazing, road and trail construction, recreation, development, and unauthorized application of herbicides and pesticides in violation of label restrictions) that directly or indirectly result in the death or injury of larvae, sub-adult, or adult Sonoma County California tiger salamanders, or modify Sonoma County California tiger salamander habitat and significantly affect their essential behavioral patterns including breeding, foraging, sheltering, or other life functions. Otherwise lawful activities that incidentally take Sonoma County California tiger salamanders, but have no Federal nexus, will require a permit under section 10(a)(1)(B) of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that an Environmental Assessment and Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned control number 1018–0094, which is valid through July 31, 2004. This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

Authors

The primary author of this rule is David Wooten, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
AMPHIBIANS							
*	*	*	*	*	*	*	
Salamander, California tiger.	*Ambystoma californiense.*	U.S.A. (CA)	U.S.A. (CA–Sonoma County).	E	729	NA	NA
*	*	*	*	*	*	*	

Dated: July 16, 2002.

Marshall P. Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–18456 Filed 7–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 071702A]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 17, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of northern rockfish for the Western Regulatory Area was established as 600 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for northern rockfish in the Western Regulatory Area will be reached before the end of the fishing season or year. Therefore, the Regional Administrator is establishing a directed fishing allowance of 550 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 17, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18440 Filed 7–17–02; 4:05 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 140
Monday, July 22, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. FV02–956–1 PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Establishment of Grade and Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on the establishment of grade and inspection requirements for Walla Walla sweet onions. This proposed rule was recommended by the Walla Walla Sweet Onion Marketing Committee (Committee), the agency responsible for local administration of the marketing order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. This rule would require that all Walla Walla sweet onions handled prior to June 10 of each marketing season be inspected and be at least U.S. Commercial grade. By establishing minimum standards early in the season, this rule is expected to improve producer returns by ensuring that early-season sweet onions are mature and marketable, while satisfying the consumer demand for consistently good quality produce. The cost of the required inspections would be fully funded by the Committee, and there would be no minimum quantity exemption from inspection prior to June 10 because the Committee would be funding the required inspections.

DATES: Comments must be received by September 20, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would establish grade and inspection requirements for Walla Walla sweet onions. Specifically, this rule would require that all Walla Walla sweet onions shipped prior to June 10 be inspected by the Federal-State Inspection Service (Inspection Service) and be at least U.S. Commercial grade. The proposed rule also provides that the Committee would enter into an agreement with the Inspection Service to fund the costs of the inspections required under this rule. And lastly, this rule would modify the minimum quantity inspection provision in § 956.64 by providing that the provision not apply for shipments made prior to June 10 of each marketing season.

Section 956.61 of the order provides authority for the Committee to recommend the establishment, modification, suspension or termination of handling regulations and § 956.62 provides authority for the issuance of grade and maturity regulations. Section 956.64 provides authority for the establishment and modification of minimum quantity exemptions. Section 956.70(f) provides for inspection during any period in which Walla Walla sweet onions are regulated, as well as providing that the Committee may enter into an agreement with the Inspection Service with respect to the cost and funding of inspection.

At a meeting held on February 12, 2002, the Committee passed a motion recommending to USDA that: (1) A regulation be established requiring that all onions shipped prior to June 10 be inspected and certified as being at least U.S. Commercial grade; (2) the cost of the required inspections be fully funded

by the Committee; (3) there be no minimum quantity exemption from inspection since the Committee would be funding the required inspections; and (4) the Committee be given the authority to administratively change the June 10 date to an earlier date. Seven members voted in favor of the motion, two in opposition and one member abstained. The members supporting the motion believe that the shipment of poor quality, immature onions early in the season result in low consumer acceptance, hurt repeat purchases, and have a price depressing effect on good quality onions. The three members not initially supporting grade and inspection requirements wanted additional time to evaluate the recommendation and were concerned about the potential cost of funding the inspections.

The Committee met again on February 20, 2002, to discuss ways of amending the recommendation to meet the concerns of those who did not support the initial recommendation. Individuals not in support of the original motion suggested that parameters be established to limit the number of inspections, or alternatively, that limits be placed on the total amount the Committee would be required to expend on inspections. They also expressed concern that not all handlers shipped poor quality and immature onions early in the season and that it was important that this problem not be viewed as an industry-wide problem.

There were seven Committee members in attendance at the February 20 meeting. All of those in attendance, which included two of the members opposed to the initial action, voted in favor of a motion recommending to USDA that: (1) A regulation be established requiring that all onions shipped prior to June 10 be inspected and certified as being at least U.S. Commercial grade; (2) the cost of the required inspections be fully funded by the Committee; (3) there be no minimum quantity exemption from inspection since the Committee would be funding the required inspections; and (4) the Committee be given the authority to administratively change the June 10 date to an earlier or later date. This recommendation was subsequently submitted to USDA. Following review of this proposal, USDA notified the Committee, that the recommendation to grant the Committee authority to administratively change the date when inspections would be required would not be proposed because such a change should be subject to rulemaking.

As a consequence, the Committee met once again on April 9, 2002, and with a quorum of seven of the ten members present, unanimously recommended that: (1) All Walla Walla sweet onions shipped prior to June 10 be inspected and certified as being at least U.S. Commercial grade; (2) the cost of the required inspections be fully funded by the Committee; and (3) there be no minimum quantity exemption from inspection since the Committee would fund the required inspections. This modified recommendation dropped the proposed provision containing authority for the Committee to administratively change the dates when inspections would be required. Further, Committee members determined that there was not a need to put a cap on the amount of money the Committee would fund for the cost of inspection. Onion shipments prior to June 10 are expected to be minimal with inspection costs being estimated to approximate $3,000. The Committee plans to provide in its budget $4,500 for the cost of inspection in case its shipment estimate is low. The Committee calculated that with an estimated inspection fee of $0.06 per 50-pound container on small lots, $4,500 would pay for the inspection of 75,000 50-pound containers of onions. Committee members believed that it was very unlikely that 75,000 50-pound containers of onions could be shipped prior to June 10.

The Walla Walla sweet onion harvesting and marketing season generally starts in mid-June and ends late in August, with shipments peaking in July. Depending upon cultural practices and weather, a few producers may start harvesting and marketing onions in early June. Also, depending upon whether the onions were planted in the autumn or the spring, harvest may extend past the end of August. There have also been some recent attempts at controlled atmosphere storage with sales reported as late as November.

The primary objective of this proposed rule is to prevent disorderly marketing conditions caused by the shipment of poor quality, immature Walla Walla sweet onions early in the season thereby improving producer returns, and providing the consumer with a quality product. A secondary objective is to help prevent onions from other production areas from being mislabeled and marketed as Walla Walla sweet onions.

According to the Committee, a few producers and handlers of Walla Walla sweet onions harvest and market poor quality, immature onions early in the season. Immature onions tend to break down prematurely, becoming soft and spongy. Buyers who have purchased poor quality, immature onions often delay or fail to make repeat purchases of additional Walla Walla sweet onions. Walla Walla sweet onions are non-storage, summer onions that should be harvested when mature and immediately marketed. If buyers refuse to purchase additional Walla Walla sweet onions, demand for such onions decreases. Buyer dissatisfaction and reduced repeat purchases have a price depressing effect on good quality onions. Shipment of poor quality, immature onions early in the marketing season can set a negative market tone for the entire season that results in depressed producer returns.

The rule would require all Walla Walla sweet onions handled prior to June 10 of each season to be inspected as discussed below. The Committee also recommended that there not be a minimum quantity exemption from inspection prior to June 10 since the Committee would be funding the cost of inspection and because small shipments of poor quality, immature onions can be damaging to the market for good quality onions. The Committee reports that early-season sales of immature onions in the past have been made by both large and small entities.

Under this proposed rule, the Inspection Service would inspect all Walla Walla sweet onions being shipped prior to June 10. The onions would have to, at least, meet the requirements of U.S. Commercial grade as defined in the U.S. Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Type), as amended (7 CFR 51.2830 through 51.2854.) Any lot of Walla Walla sweet onions meeting a minimum of U.S. Commercial grade would be issued an inspection certificate validating the shipment of such onions.

With regard to the early-season onions, the feature the Committee is most interested in under the U.S. Commercial grade designation is maturity. Under § 51.2841 of the U.S. Standards, "mature" is defined to mean "well cured." Included in this definition is an exception for "mid-season onions," a term used to describe onions that

"* * * are not customarily held in storage and are considered mature when harvested in accordance with good commercial practice at a stage which will not result in the onions becoming soft or spongy." Walla Walla sweet onions are considered a "mid-season" onion. The USDA's Shipping Point and Market Inspection Instructions for Onions further explains that "mid-season onions" are onions "* * * harvested during the summer for

immediate shipment and consumption in only a fairly-well cured state." These definitions and instructions are designed to provide the Inspection Service with the ability to more accurately grade the various summer, non-storage onions grown in the northern United States, including Walla Walla sweet onions.

The Committee also believes that this rule would help in the monitoring and prevention of any early season mislabeling and sale of onions grown outside the defined production area as Walla Walla sweet onions. The Committee reports that various roadside produce stands and Farmers' Markets located outside the production area have sold onions mislabeled as Walla Walla sweet onions that are not produced within the order's defined production area. The shipments of poor quality onions produced outside the production area that are misrepresented and mislabeled as Walla Walla sweet onions are price depressing for Walla Walla sweet onions. The Committee believes that requiring a valid inspection certificate on all lots of Walla Walla sweet onions being shipped prior to June 10 would enhance the Committee's compliance efforts in preventing this misrepresentation and mislabeling.

The Committee also expends funds to help educate consumers and retailers regarding Walla Walla sweet onions, including information about the marketing season and the current regulation (§ 956.162) that requires each container of Walla Walla sweet onions to be conspicuously marked with the Committee's trademarked logo.

The Committee believes that the establishment of mandatory early-season inspection and certification would help ensure that poor quality, immature onions are kept out of the market and that poor quality onions from other production areas are not misrepresented as Walla Walla sweet onions. With the establishment of this regulation, the Committee believes the marketing of Walla Walla sweet onions would be improved, producer returns would be increased, and consumer confidence would be maintained for the entire season.

This rule also includes a conforming change to § 956.163 Handling for specified purposes. Section 956.163 currently specifies that assessment and container-marking requirements specified in Part 956 shall not be applicable to shipments of onions for the purposes listed in § 956.163. Such purposes include shipments for relief or to charitable institutions, livestock feed, processing, seed, and other noncompetitive outlets. This conforming change would add handling requirements specified in this part to the requirements that do not apply to shipments of onions for purposes listed in § 956.163.

This proposed change would not impact the onion import regulation under section 8e of the Act. Section 8e provides that whenever two or more marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation into the United States of any such commodity shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary, regulates the commodity produced in the area with which the imported commodity is in most direct competition. It has been previously determined that onions imported during the period March 10 through June 4 of each year are in most direct competition with onions grown in designated counties in South Texas under Marketing Order No. 959 and that the imported onions must meet the grade, size, quality, and maturity requirements imposed under that order. During the period June 5 through March 9 of each marketing year, imported onions are in most direct competition with onions grown in designated counties in Idaho and Malheur County, Oregon, under Marketing Order No. 958, and imported onions must comply with the grade, size, quality, and maturity requirements imposed under that order.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 37 producers of Walla Walla sweet onions and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

According to the Washington Agricultural Statistics Service, approximately 576,000 50-pound containers of Walla Walla sweet onions were produced for market in 2001 with an average F.O.B. value of $9.70 per 50-pound container. Thus, in 2001 the industry realized gross receipts of about $5,587,000 for the sale of fresh Walla Walla sweet onions, providing each of the 21 handlers, on average, gross annual receipts of about $266,000. Furthermore, based on the Committee's estimate of an average packing cost for Walla Walla sweet onions of $2.75 per 50-pound container, returns to producers would have been about $6.95 per 50-pound container, or just less than $110,000 on average. Based on the foregoing, it can be concluded that a majority of handlers and producers of Walla Walla sweet onions may be classified as small entities.

This rule would establish grade and inspection requirements for Walla Walla sweet onions. Specifically, this rule would require that all Walla Walla sweet onions handled prior to June 10 be U.S. Commercial grade, or better. This rule would also provide that the current minimum quantity exemption from inspection (2000 pounds per shipment) not apply to onion shipments prior to June 10 of each marketing season. This rule was unanimously recommended by the Committee at a meeting held in Walla Walla, Washington, on April 9, 2002, following discussions at meetings held on February 12 and 20, 2002. Authority for the proposed rule is contained in §§ 956.61, 956.62, 956.64, and 956.70 of the order.

The Committee discussed the impact this change could have on handlers and producers in terms of cost. This rule would have costs associated with it due to the cost of inspection. All handlers, both small and large, would be required to have all sweet onions that are shipped prior to June 10 inspected and certified. However, the Committee is concerned with the impact any regulation would have on the industry's small handlers and producers, and recommended that the Committee cover the cost of the inspections that would be required by this proposed rule. The Committee anticipates that the total annual cost of such a regulation would approximate $3,000. The funds designated for the early-season inspection costs would originate from assessment income and thus be spread out over the entire industry. Based on

the 576,000 50-pound containers of Walla Walla sweet onions produced in 2001, this could amount to about $0.0052 per 50-pound container of sweet onions handled during any given season. The Committee plans on incurring this additional cost without increasing the current $0.21 per 50-pound container assessment rate. The Committee believes that the costs associated with this proposed regulation would not be significant, and that the benefits would outweigh any costs. As noted earlier, poor quality Walla Walla sweet onions, particularly immature onions, shipped early in the marketing season are price depressing on the shipment of good quality onions and reduce producer returns.

The Committee discussed alternatives to this rule at all three of its meetings, including the establishment of various dates other than June 10, various methods of mitigating the impact of the rule on small handlers, and not establishing any regulation. The Committee explored the idea of establishing a date as early as June 1 and as late as June 15 as the date prior to which inspections would be required. During this discussion, it was thought that a date earlier than June 10 would not adequately prevent immature onions from being marketed. In addition, the Committee determined that a date later than June 10, although decreasing the chance that immature onions would be marketed, could be too expensive for the Committee to fund. The Committee decided that June 10 was the best date based on the historical start of the Walla Walla sweet onion season.

The Committee considered that each handler pay directly for the cost of inspection, but believed that funding through assessments would be preferable. Consideration was given to the impact on small handlers. The Committee was of the view that funding through assessments would be better in terms of any negative impact on small handlers. Other options were considered including limiting each handler to two inspections a day and establishing an inspection cost ceiling for each handler that, once met, would require the handler to pay for any additional inspections prior to June 10. However, funding through assessments was considered the most reasonable and practical method to fund the inspection requirements proposed herein.

The Committee also discussed how it could annually meet and modify the date prior to which inspections would be required. The Committee included in its initial recommendation a provision that would allow it to administratively modify the date, as established in the rule, to a date earlier in the season. At the request of a producer, this provision was modified by the Committee at the February 20 meeting to include provision that the Committee be able to administratively modify the date to either an earlier date or a later date than that established by the rule. Under this alternative, the Committee would meet annually and take action, if appropriate, to modify this date administratively, without utilizing the rulemaking process. USDA reviewed the recommendation and notified the Committee that the recommendation to grant the Committee authority to administratively change the date when inspections would be required would not be proposed because such a change should be subject to rulemaking.

Finally, the Committee discussed and rejected the idea of not establishing any early-season inspection requirement because it strongly believes that some type of action is needed to help create orderly marketing and improve producer returns.

This rule would establish grade and inspection requirements for Walla Walla sweet onions handled prior to June 10. Although inspection certificates would be issued by the Inspection Service, this action would not impose any additional reporting or recordkeeping requirements on either small or large sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, as previously mentioned, Walla Walla sweet onions would have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq*).

In addition, the Committee's meetings were widely publicized throughout the Walla Walla sweet onion industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the Committee meetings on February 12, February 20, and April 9, 2002, were public meetings and all entities, both large and small, were able to express views on this issue. In addition, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons the opportunity to respond to this proposal, including any regulatory and informational impacts of this action on small businesses. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 956 is proposed to be amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 956.163(a) is amended by revising the introductory text of paragraph (a) to read as follows:

§ 956.163 Handling for specified purposes.

(a) Assessment, container marking, and handling regulations specified in this part shall not be applicable to shipments of onions for any of the following purposes:

* * * * *

3. A new subpart—Handling Regulations—consisting of § 956.362 is added to read as follows:

Subpart—Handling Regulations

§ 956.362 Handling Regulation.

No person shall handle any quantity of Walla Walla Sweet Onions prior to June 10 of each marketing season unless such onions are handled in accordance with paragraphs (a) and (b) of this section, or unless such onions are handled in accordance with § 956.163.

(a) *Grade requirement.* U.S. Commercial grade or better.

(b) *Inspection.* No handler shall handle any onions unless such onions are inspected by the Federal-State Inspection Service and are covered by a valid inspection certificate. The minimum quantity exemption provision in § 956.64 of this part shall not apply to any quantity of Walla Walla sweet onions shipped prior to June 10 of each marketing season. The Committee shall enter into an agreement pursuant to

§ 956.70(f) with the Federal-State Inspection Service in which the Committee agrees to fund all required inspections prior to June 10 of each marketing year.

(c) *Definitions.* The term "U.S. Commercial" shall have the same meaning as when used in the United States Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Type), as amended (7 CFR 51.2830 through 51.2854) including the tolerances set forth therein.

Dated: July 15, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18256 Filed 7–19–02; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG93

Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its licensing requirements for dry cask modes of storage of spent nuclear fuel, high-level radioactive waste, and power reactor-related Greater than Class C waste in an independent spent fuel storage installation (ISFSI) or in a U.S. Department of Energy (DOE) monitored retrievable storage installation (MRS). These amendments would update the seismic siting and design criteria, including geologic, seismic, and earthquake engineering considerations. The proposed rule would allow NRC and its licensees to benefit from experience gained in the licensing of existing facilities and to incorporate the rapid advancements in the earth sciences and earthquake engineering. The proposed amendments would make the Part 72 regulations compatible with the 1996 revision to Part 100 that addressed uncertainties in seismic hazard analysis, and commensurate with the risk associated with an ISFSI or MRS.

DATES: The comment period expires October 7, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide electronic comments via the NRC's interactive rulemaking website at (*http://ruleforum.llnl.gov*). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher at (301) 415–5905, or e-mail cag@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room (PDR), Room O–1F21, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Keith K. McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–5252, e-mail: *kkm@nrc.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background

In 1980, the Commission added 10 CFR part 72 to its regulations to establish licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste (HLW) (45 FR 74693; November 12, 1980). In 1988, the Commission amended part 72 to provide for licensing the storage of spent nuclear fuel and HLW in an MRS (53 FR 31651, August 19, 1988). Subpart E of part 72 contains siting evaluation factors that must be investigated and assessed with respect to the siting of an ISFSI or MRS, including a requirement for evaluation of geological and seismological characteristics. ISFSI and MRS facilities are designed and constructed for the interim storage of spent nuclear fuel that has aged for at least one year, and other solidified high-level radioactive materials that are pending shipment to a high-level radioactive waste repository or other disposal.

The original regulations envisioned ISFSI and MRS facilities as spent fuel pools or single, massive dry storage structures. The regulations required seismic evaluations equivalent to those for a nuclear power plant (NPP) when the ISFSI or MRS is located west of the Rocky Mountain Front (west of approximately 104° west longitude), referred to hereafter as western U.S., or in areas of known seismic activity east of the Rocky Mountain Front (east of approximately 104° west longitude), referred to hereafter as eastern U.S. A seismic design requirement, equivalent to the requirements for a NPP (appendix A to part 100) seemed appropriate for these types of facilities, given the potential accident scenarios. For those sites located in eastern U.S., and not in areas of known seismic activity, the regulations allowed for less stringent alternatives.

For other types of ISFSI or MRS designs, the regulation required a site-specific investigation to establish site suitability commensurate with the specific requirements of the proposed ISFSI or MRS. The Commission explained that for ISFSIs that do not involve massive structures, such as dry storage casks and canisters, the required design earthquake ground motion (DE) will be determined on a case-by-case basis until more experience is gained with the licensing of these types of units (45 FR 74697).

For sites located in either the western U.S. or in areas of known seismic activity in the eastern U.S., the regulations in 10 CFR part 72 currently require the use of the procedures in appendix A to part 100 for determining

the design basis vibratory ground motion at a site. Appendix A requires the use of "deterministic" approaches in the development of a single set of earthquake sources. The applicant develops for each source a postulated earthquake to be used to determine the ground motion that can affect the site, locates the postulated earthquake according to prescribed rules, and then calculates ground motions at the site.

Advances in the sciences of seismology and geology, along with the occurrence of some licensing issues not foreseen in the development of appendix A to part 100, have caused a number of difficulties in the application of this regulation to ISFSIs. Specific problematic areas include the following:

1. Because the deterministic approach does not explicitly recognize uncertainties in geoscience parameters, probabilistic seismic hazard analysis (PSHA) methods were developed that allow explicit expressions for the uncertainty in ground motion estimates and provide a means for assessing sensitivity to various parameters. Yet appendix A to part 100 does not allow this application.

2. The limitations in data and geologic and seismic analyses and the rapid accumulation of knowledge in the geosciences have required considerable latitude in judgment. The inclusion of detailed geoscience assessments in appendix A has caused difficulties for applicants and the NRC staff by inhibiting the use of needed judgment and flexibility in applying basic principles to new situations; and

3. Various sections of appendix A are subject to different interpretations. For example, there have been differences of opinion and differing interpretations among experts as to the largest earthquakes to be considered and ground motion models to be used, thus often making the licensing process less predictable.

In 1996, the Commission amended 10 CFR parts 50 and 100 to update the criteria used in decisions regarding NPP siting, including geologic and seismic engineering considerations for future NPPs (61 FR 65157; December 11, 1996). The amendments added a new § 100.23 requiring that the uncertainties associated with the determination of the safe shutdown earthquake ground motion (SSE) be addressed through an appropriate analysis, such as a PSHA or suitable sensitivity analyses in lieu of appendix A to part 100. This approach takes into account the problematic areas identified above in the earlier siting requirements and is based on developments in the field over the past two decades. Further, regulatory guides have been used to address implementation issues. For example, the Commission provided guidance for NPP license applicants in Regulatory Guide 1.165, "Identification and Characterization of Seismic Sources and Determination of Safe Shutdown Earthquake Ground Motion," and Standard Review Plan NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Reactors," Section 2.5.2, "Vibratory Ground Motion," Revision 3. However, the Commission left appendix A to part 100 in place to preserve the licensing basis for existing plants and confined the applicability of § 100.23 to new NPPs.

With over 10 years of experience licensing dry cask storage (10 specific licenses have been issued), the Commission is now proposing a conforming change to 10 CFR part 72 to require applicants, at some locations, to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, for determining the DE. The use of a probabilistic approach or suitable sensitivity analyses to siting parallels the change made to 10 CFR part 100.

In comparison with a NPP, an operating dry cask ISFSI or MRS facility, storing spent nuclear fuel, is a passive facility in which the primary activities are waste receipt, handling, and storage. An ISFSI or MRS facility does not have the variety and complexity of active systems necessary to support safe operations at a NPP. Further, the robust cask design required for non-seismic considerations (e.g., drop event, shielding), assure low probabilities of failure from seismic events. In the unlikely occurrence of a radiological release as a result of a seismic event, the radiological consequences to workers and the public are significantly lower than those that could arise at a NPP. This is because the conditions required for release and dispersal of significant quantities of radioactive material, such as high temperatures or pressures, are not present in an ISFSI or MRS. This is primarily due to the low heat-generation rate of spent fuel that has undergone more than one year of decay before storage in an ISFSI or MRS, and to the low inventory of volatile radioactive materials readily available for release to the environment. The long-lived nuclides present in spent fuel are tightly bound in the fuel materials and are not readily dispersible. Short-lived volatile nuclides, such as I–131, are no longer present in aged spent fuel. Furthermore, even if the short-lived nuclides were present during a fuel assembly rupture, the canister surrounding the fuel assemblies is designed to confine these nuclides. Hence, the Commission believes that the seismically induced risk from the operation of an ISFSI or MRS is less than at an operating NPP. Therefore, the Commission proposes to revise the DE requirements for ISFSI and MRS facilities from the current part 72 requirements, which are equivalent to the SSE for a NPP.

II. Objectives

An ISFSI is designed, constructed, and operated under a part 72 specific or general license. A part 72 specific license for an ISFSI is issued to a named person upon application filed under part 72 regulations. A part 72 general license for an ISFSI is issued under 10 CFR 72.210 to persons authorized to possess a NPP license under part 50, without filing a part 72 license application. A general licensee is required to meet the conditions specified in Subpart K of part 72. An MRS may be designed, constructed, and operated by DOE under a part 72 specific license.

The proposed rule reflects changes that are intended to (1) benefit from the experience gained in applying the existing regulation and from research; and (2) provide needed regulatory flexibility to incorporate into licensing under part 72, state-of-the-art improvements in the geosciences and earthquake engineering.

The objectives of this proposed rule are to:

1. Require a new specific license applicant for a dry cask storage facility located in either the western U.S. or in areas of known seismic activity in the eastern U.S., and not co-located with a NPP, to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, for determining the DE. All other new specific license applicants for dry cask storage facilities would have the option of complying with the proposed requirement to use a PSHA or suitable sensitivity analyses to address uncertainties in seismic hazard analysis, or other options compatible with the existing regulation. (§ 72.103)

2. Allow new ISFSI or MRS applicants to use a DE appropriate for and commensurate with the risk associated with an ISFSI or MRS (§ 72.103); and

3. Require general licensees to evaluate that the designs of cask storage pads and areas adequately account for dynamic loads, in addition to static loads. (§ 72.212)

III. Applicability

This section clarifies the applicability of the proposed new § 72.103 for part 72 specific licensees, and modified § 72.212(b)(2)(i)(B) for part 72 general licensees.

Applicability of Proposed § 72.103

(1) Applicants who apply on or after the effective date of the final rule, for a part 72 specific license for a dry cask storage ISFSI or MRS, located in either the western U.S. or in areas of known seismic activity in the eastern U.S., and not co-located with a NPP, would be required to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, for determining the DE.

(2) Applicants who apply on or after the effective date of the final rule, for a part 72 specific license for a dry cask storage ISFSI or MRS, located in either the western U.S. or in areas of known seismic activity in the eastern U.S., and co-located with a NPP, would have the option of addressing uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, or using the existing design criteria for the NPP, for determining the DE. When the existing design criteria for the NPP are used for an ISFSI at a site with multiple NPPs, the criteria for the most recent NPP must be used.

(3) Applicants who apply on or after the effective date of the final rule, for a part 72 specific license for a dry cask storage ISFSI or MRS, located in the eastern U.S., except in areas of known seismic activity, would have the option of addressing uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, or using the standardized DE described by an appropriate response spectrum anchored at 0.25 g (subject to the conditions in proposed § 72.103(a)(1)), or using the existing design criteria for the most recent NPP (if applicable), for determining the DE.

(4) The proposed § 72.103 is not applicable to a general licensee at an existing NPP operating an ISFSI under a part 72 general license anywhere in the U.S.

The proposed changes apply to the design basis of both a dry cask storage type ISFSI and MRS, because these facilities are similar in design. The Commission does not intend to revise the 10 CFR part 72 geological and seismological criteria as they apply to wet modes of storage because applications for this means of storage are not expected and it is not cost-effective to allocate resources to develop the technical bases for such an expansion of the rulemaking. The Commission also does not intend to revise the 10 CFR part 72 geological and seismological criteria as they apply to dry modes of storage that do not use casks because of the lack of experience in licensing these facilities.

Applicability of Modified § 72.212(b)(2)(i)(B)

The proposed changes in § 72.212(b)(2)(i)(B) regarding the evaluation of dynamic loads for the design of cask storage pads and areas would apply to all general licensees for an ISFSI.

The applicability of the proposed § 72.103 and modified § 72.212(b)(2)(i)(B) is summarized in the table below.

SUMMARY OF APPLICABILITY

[Design Earthquake Ground Motion for ISFSI or MRS Specific License Applicants for Dry Cask Modes of Storage on or after the Effective Date of the Final Rule.]

Site condition	Specific license [1]
Western U.S., or areas of known seismic activity in the eastern U.S., not co-located with NPP.	Must use PSHA or suitable sensitivity analyses to account for uncertainties in seismic hazards evaluations.[2]
Western U.S., or areas of known seismic activity in the eastern U.S., and co-located with NPP.	PSHA or suitable sensitivity analyses to account for uncertainties in seismic hazards evaluations,[2] or existing NPP design criteria (multi-unit sites—use the most recent criteria).
Eastern U.S., and not in areas of known seismic activity	PSHA or suitable sensitivity analyses to account for uncertainties in seismic hazards evaluations,[2] or existing NPP design criteria, if applicable (multi-unit activity sites—use the most recent criteria), or an appropriate response spectrum anchored at 0.25g (subject to the conditions in proposed § 72.103(a)(1)).

[1] Proposed § 72.103 does not apply to general licensees. General licensees must satisfy the conditions given in 10 CFR 72.212.
[2] Regardless of the results of the investigations, anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum.

IV. Discussion

The Commission is proposing to amend certain sections of part 72 dealing with seismic siting and design criteria for a dry cask ISFSI or MRS. The Commission intends to leave the present § 72.102 in place to preserve the ISFSI licensing bases for applications before the effective date of the rule, and continue the present ISFSI or MRS licensing bases for applications for other than dry cask modes of storage. The Commission is proposing to change the heading of § 72.102, add a new § 72.103, and modify § 72.212(b)(2)(i)(B).

A. Proposed Change to 10 CFR 72.102

The heading of § 72.102 would be changed to clarify that the present requirements are applicable to ISFSI or MRS licensees or license applicants before the effective date of the rule. The requirements of § 72.102 that applied to ISFSI or MRS licensees or license applicants for other than dry cask modes of storage would continue to apply.

B. Proposed 10 CFR 72.103

Proposed § 72.103 describes the seismic requirements for new specific license applicants for dry cask storage at an ISFSI or MRS.

1. Remove Detailed Guidance From the Regulation

Part 72 currently requires license applicants for an ISFSI or MRS, in the western U.S. or in other areas of know seismicity, to comply with appendix A to part 100. Appendix A contains both requirements and guidance on how to satisfy those requirements. For example, Section IV, "Required Investigations," of appendix A states that investigations are required for vibratory ground

motion, surface faulting, and seismically induced floods and water waves. Appendix A then provides detailed guidance on what constitutes an acceptable investigation. A similar situation exists in Section V, "Seismic and Geologic Design Bases," of appendix A to part 100.

Geoscience assessments require considerable latitude in judgment because of (a) limitations in data; (b) current state-of-the-art of geologic and seismic analyses; (c) rapid accumulation of knowledge; and (d) evolution in geoscience concepts. The Commission recognized the need for latitude in judgment when it amended part 100 in 1996.

However, specifying geoscience assessments in detail in a regulation has created difficulty for applicants and the NRC staff by inhibiting needed latitude in judgment. It has inhibited the flexibility needed in applying basic principles to new situations and the use of evolving methods of analyses (for instance, probabilistic) in the licensing process.

The Commission proposes to add a new section in part 72 that would provide specific siting requirements for an ISFSI or MRS instead of referencing another part of the regulations (appendix A to part 100). The proposed regulation would also reduce the level of detail by placing only basic requirements in the rule and providing the details on methods acceptable for meeting the requirements in an accompanying guidance document. Thus, the proposed regulation contains requirements to:

(i) Determine the geological, seismological, and engineering characteristics of the proposed site;

(ii) Establish a DE; and

(iii) Identify the uncertainties associated with these requirements. Detailed guidance on the procedures acceptable to the NRC for meeting the requirements would be provided in a draft regulatory guide being issued for public comment as DG–3021, "Site Evaluations and Determination of Design Earthquake Ground Motion for Seismic Design of Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations."

2. Address Uncertainties and Use Probabilistic Methods

The existing approach for determining a DE for an ISFSI or MRS, embodied in appendix A to part 100, relies on a "deterministic" approach. Using this deterministic approach, an applicant develops a single set of earthquake sources, develops for each source a postulated earthquake to be used as the source of ground motion that can affect the site, locates the postulated earthquake according to prescribed rules, and then calculates ground motions at the site.

Although this approach has worked reasonably well for the past several decades in the sense that SSE for NPPs sited with this approach are judged to be suitably conservative, the approach has not explicitly recognized uncertainties in geosciences parameters. Because so little is known about earthquake phenomena (especially in the eastern U.S.), there have often been differences of opinion and differing interpretations among experts as to the largest earthquakes to be considered and ground-motion models to be used, often making the licensing process less predictable.

Probabilistic methods that have been developed in the past 15 to 20 years for evaluation of seismic safety of nuclear facilities allow explicit incorporation of different models for zonation, earthquake size, ground motion, and other parameters. The advantage of using these probabilistic methods is their ability to incorporate different models and data sets, thereby providing an explicit expression for the uncertainty in the ground motion estimates and a means of assessing sensitivity to various input parameters. The western and eastern U.S. have fundamentally different tectonic environments and histories of tectonic deformation. Consequently, application of these probabilistic methodologies has revealed the need to vary the fundamental PSHA methodology depending on the tectonic environment of the site.

In 1996, when the Commission accepted the use of a PSHA methodology or suitable sensitivity analyses in § 100.23, it recognized that the uncertainties in seismological and geological information must be formally evaluated and appropriately accommodated in the determination of the SSE for seismic design of NPPs. The Commission further recognized that the nature of uncertainty and the appropriate approach to account for it depends on the tectonic environment of the site and on properly characterizing parameters input to the PSHA or suitable sensitivity analyses. Consequently, methods other than probabilistic methods, such as sensitivity analyses, may be adequate for some sites to account for uncertainties. The Commission believes that certain new applicants for ISFSI or MRS licenses, as described in Section III, "Applicability," above, must use probabilistic methods or other sensitivity analyses to account for these uncertainties instead of using the appendix A to part 100. The Commission does not intend to require new ISFSI or MRS applicants that are co-located with a NPP to address uncertainties because the criteria used to evaluate existing NPPs are considered to be adequate for ISFSIs, in that the criteria have been determined to be safe for NPP licensing, and the seismically. induced risk of an ISFSI or MRS is significantly lower than that of a NPP, as described in Section IV.

The key elements of the Commission's proposed approach for seismic and geologic siting for ISFSI or MRS license review and approval consists of:

a. Conducting site-specific and regional geoscience investigations;

b. Setting the target exceedance probability commensurate with the level of risk associated with an ISFSI or MRS;

c. Conducting PSHA and determining ground motion level corresponding to the target exceedance probability;

d. Determining if other sources of information change the available probabilistic results or data for the site; and

e. Determining site-specific spectral shape, and scaling this shape to the ground motion level determined above.

In addition, the NRC staff will review the application using all available data including insights and information from previous licensing experience. Thus, the proposed approach requires thorough regional and site-specific geoscience investigations. Results of the regional and site-specific investigations must be considered in applying the probabilistic method. Two current probabilistic methods are the NRC-sponsored study conducted by Lawrence Livermore National Laboratory and the Electric Power Research Institute's seismic hazard study. These are essentially regional studies. The regional and site-specific investigations provide detailed information to update the database of the hazard methodology to make the probabilistic analysis site-specific.

Applicants must also incorporate local site geological factors, such as stratigraphy and topography, and account for site-specific geotechnical properties in establishing the DE. Guidelines to incorporate local site factors and advances in ground motion attenuation models, and to determine ground motion estimates, are outlined in NUREG–0800, Section 2.5.2.

Methods acceptable to the NRC for implementing the proposed regulation related to the PSHA or suitable sensitivity analyses are described in DG–3021.

3. Revise the Design Earthquake Ground Motion

The present DE is based on the requirements contained in 10 CFR part 100 for NPPs. In the Statement of Considerations accompanying the initial part 72 rulemaking, the Commission recognized that the design peak horizontal acceleration for structures, systems, and components (SSCs) need not be as high as for a NPP and should be determined on a "case-by-case" basis until "more experience is gained with licensing of these types of units" (45 FR 74697; November 12, 1980). With over 10 years of experience in licensing dry cask storage and with analyses demonstrating robust behavior of dry cask storage systems (DCSSs) in accident scenarios (10 specific licenses have been issued and 9 locations use the general license provisions), the Commission now has a reasonable basis to consider lower and more appropriate DE parameters for a dry cask ISFSI or MRS. Therefore, the Commission proposes to reduce the DE for new ISFSI or MRS license applicants to be commensurate with the lower risk associated with these facilities.

I. Factors that result in the lower radiological risk at an ISFSI or MRS compared to a NPP include the following:

a. In comparison with a NPP, an operating ISFSI or MRS is a passive facility in which the primary activities are waste receipt, handling, and storage. An ISFSI or MRS does not have the variety and complexity of active systems necessary to support an operating NPP. After the spent fuel is in place, an ISFSI or MRS is essentially a static operation.

b. During normal operations, the conditions required for the release and dispersal of significant quantities of radioactive materials are not present. There are no high temperatures or pressures present during normal operations or under design basis accident conditions to cause the release and dispersal of radioactive materials. This is primarily due to the low heat-generation rate of spent fuel that has undergone more than one year of decay before storage in an ISFSI or MRS, and to the low inventory of volatile radioactive materials readily available for release to the environment.

c. The long-lived nuclides present in spent fuel are tightly bound in the fuel materials and are not readily dispersible. Short-lived volatile nuclides, such as I–131, are no longer present in aged spent fuel. Furthermore, even if the short-lived nuclides were present during a fuel assembly rupture, the canister surrounding the fuel assemblies would confine these nuclides. Therefore, the Commission believes that the seismically induced radiological risk associated with an ISFSI or MRS is significantly less than the risk associated with a NPP. Also, the Commission has stated that the use of risk-informed regulation is appropriate.

d. The critical element for protection against radiation release is the sealed cask containing the spent fuel assemblies. The standards in part 72 subparts E "Siting Evaluation Factors," and F "General Design Criteria," ensure that the dry cask storage designs are very rugged and robust. The casks must maintain structural integrity during a variety of postulated non-seismic events, including cask drops, tip-over, and wind driven missile impacts. These non-seismic events challenge cask integrity significantly more than seismic events. Therefore, the casks are expected to have substantial design margins to withstand forces from a seismic event greater than the design earthquake.

e. During a seismic event at an ISFSI or MRS, a cask may slide if lateral seismic forces are greater than the frictional resistance between the cask and the concrete pad. The sliding and resulting displacements are computed by the applicant to demonstrate that the casks, which are spaced to satisfy the thermal criteria in part 72 subpart F, are precluded from impacting other adjacent casks. Furthermore, the NRC staff guidance in reviewing cask designs is to show that public health and safety is maintained during a postulated DE. This can be demonstrated by showing that either casks are designed to prevent sliding or tip over during a seismic event, or the consequences of the calculated cask movements are acceptable. Even if the casks slide or tip over and then impact other casks or the pad during a seismic event significantly greater than the proposed DE, there are adequate design margins to ensure that the casks maintain their structural integrity.

f. The combined probability of the occurrence of a seismic event and operational failure that leads to a radiological release is much smaller than the individual probabilities of either of these events. This is because the handling building and crane are used for only a fraction of the licensed period of an ISFSI or MRS and for only a few casks at a time. Additionally, dry cask ISFSIs are expected to handle only sealed casks and not individual fuel assemblies. Therefore, the risk of a potential release of radioactivity due to failure of the cask handling building and/or crane during a seismic event is small.

II. Additional rationale for reducing the DE for new ISFSI or MRS license applicants include the following:

a. Because the DE is a smooth broad-band spectrum, which envelops the controlling earthquake responses, the vibratory ground motion specified is conservative.

b. The crane used for lifting the casks in the building is designed using the same industry codes as for a NPP (ACI 349, AISC N690, ANSI N14.6, and NUREG–0612), and has a safety factor of five (5) or greater for lifted loads using the ultimate strength of the materials. Therefore, the crane would perform satisfactorily during an earthquake much larger than the design earthquake.

c. The determination of a DE for an ISFSI or MRS is consistent with the design approach used in DOE Standard DOE-STD–1020, "Natural Phenomena Hazards Design Evaluation Criteria for Department of Energy Facilities," for similar type facilities.

The present DE (equivalent to the SSE for a NPP) has a mean annual probability of exceedance of approximately 1.0E–04 (*i.e.*, in any one year, the probability is one in ten thousand that the DE established for the site will be exceeded). DG–3021 recommends a mean annual probability of exceedance. The Commission is soliciting public comments on the appropriate mean annual probability of exceedance, as discussed in Section VII of the **SUPPLEMENTARY INFORMATION**.

C. Proposed Change to 10 CFR 72.212(b)(2)(i)(B)

The Commission is proposing to modify § 72.212(b)(2)(i)(B) to require that general licensees evaluate dynamic loads, in addition to static loads, in the design of cask storage pads and areas for ISFSIs to ensure that casks are not placed in unanalyzed conditions. During a seismic event, the cask storage pads and areas experience dynamic loads in addition to static loads. The dynamic loads depend on the interaction of the casks, cask storage pads, and areas. Consideration of the dynamic loads of the stored casks, in addition to the static loads, for the design of the cask storage pads and areas, would ensure that the cask storage pads and areas would perform satisfactorily during a seismic event.

The proposed revision would also require consideration of potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion. Depending on the properties of

soil and structures, the free-field earthquake acceleration input loads may be amplified at the top of the storage pad. These amplified acceleration input values must be bound by the design bases seismic acceleration values for the cask, specified in the Certificate of Compliance. Liquefaction of the soil and instability during a vibratory motion due to an earthquake event may affect the cask stability.

The proposed changes to § 72.212 would not actually impose new burden on the general licensees because they currently need to consider dynamic loads to meet the requirements in § 72.212(b)(2)(i)(A). Section 72.212(b)(2)(i)(A) requires that general licensees perform written evaluations to meet conditions set forth in the cask Certificate of Compliance (CoC). These CoCs require that dynamic loads, such as seismic and tornado loads, be evaluated to meet the cask design bases. Specific licensees are currently required, under § 72.122(b)(2), to design ISFSIs to withstand the effects of dynamic loads, such as earthquakes and tornados.

V. Related Regulatory Guide

The NRC is developing a new regulatory guide, a draft of which has been issued as developed DG–3021, "Site Evaluations and Determination of Design Earthquake Ground Motion for Seismic Design of Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations." This guide is being developed to provide license applicants with the necessary guidance for implementing the proposed regulation. DG–3021 is being developed to provide general guidance and recommendations, describes acceptable procedures and provides a list of references that present acceptable methodologies to identify and characterize capable tectonic sources and seismogenic sources. Section IV.B of this **SUPPLEMENTARY INFORMATION** describes the key elements.

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In the future editorial changes to NUREG–1536, "Standard Review Plan for Dry Cask Storage Systems," and NUREG–1567, "Standard Review Plan for Spent Fuel Dry Storage Facilities," would be made. For example, the standard review plans would need to reference the proposed § 72.103 and the effective version of the draft guide, DG–3021.

VI. Discussion of Proposed Amendments by Section

This proposed rule would make the following changes to 10 CFR Part 72:

Section 72.9 Information Collection Requirements: OMB Approval

In Section 72.9, the list of sections where approved information collection requirements appear is amended to add Section 72.103.

Section 72.102 Geological and Seismological Characteristics. (Current Heading)

Section 72.102 Geological and Seismological Characteristics for Applications Before [insert Effective Date of the Rule] and Applications for Other than Dry Cask Modes of Storage. (Proposed New Heading)

The heading of § 72.102 is proposed to be revised because § 72.103 is added for ISFSI or MRS applications after the effective date of the rule. Section 72.103 would only apply to dry cask modes of storage. Therefore, the heading of § 72.102 is being modified to show the revised applicability of this section. The requirements of § 72.102 would continue to apply for an ISFSI or MRS using wet modes of storage or dry modes of storage that do not use casks.

The Commission does not intend for existing part 72 licensees to re-evaluate the geological and seismological characteristics for siting and design using the revised criteria in the proposed changes to the regulations. These existing facilities are considered safe because the criteria used in their evaluation have been determined to be safe for NPP licensing, and the seismically induced risk of an ISFSI or MRS is significantly lower than that of a NPP. The proposed change leaves the current § 72.102 in place to preserve the licensing bases of present ISFSIs.

Section 72.103 Geological and Seismological Characteristics for Applications for Dry Cask Modes of Storage on or After [Insert Effective Date of the Rule].

The trend towards dry cask storage has resulted in the need for applicants for new licenses to request exemptions from § 72.102(f)(1), which requires that for sites evaluated under the criteria of appendix A to part 100, the DE must be equivalent to the SSE for a NPP. By making § 72.102 applicable only to existing ISFSIs and by providing a new § 72.103, the proposed rule is intended to preclude the need for exemption requests from new license applicants.

The proposed requirements in § 72.103 parallel the requirements in § 72.102. However, new applicants for sites located in either the western U.S. or in the eastern U.S. in areas of known seismic activity, and not co-located with a NPP, for dry cask storage applications, on or after the effective date of this rule, would be required to address the uncertainties in seismic hazard analysis by using a PSHA or sensitivity analyses instead of using the deterministic methods of appendix A to part 100 without sensitivity analyses. Applicants located in either the western U.S. or in areas of known seismic activity in eastern U.S., and co-located with a NPP, have the option of using the proposed PSHA methodology or suitable sensitivity analyses for determining the DE, or using the existing design criteria for the NPP. This proposed change to require an understanding of the uncertainties in the determination of the DE would make the regulations compatible with 10 CFR 100.23 for NPPs and would allow the geological and seismological criteria for an ISFSI or MRS dry cask storage facilities to be risk-informed.

Proposed § 72.103(a)(1) would provide that sites located in eastern U.S. and not in areas of known seismic activity, would be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g. Section 72.103(a)(1) would parallel the requirements currently included in § 72.102(a)(1).

Proposed § 72.103(a)(2) would provide that applicants conducting evaluations in accordance with § 72.103(a)(1) may use a standardized DE described by an appropriate response spectrum anchored at 0.25 g.

These requirements parallel the requirements currently included in § 72.102(a)(2). Section 72.102(a)(2) provides an alternative to determine a site-specific DE using the criteria and level of investigations required by appendix A to part 100. Proposed § 72.103(a)(2) would also provide, as an alternative, that a site-specific DE may be determined by using the criteria and level of investigations in proposed § 72.103(f). Section 72.103(f) is a new provision that would require certain new ISFSI or MRS license applicants to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, in determining the DE instead of the current deterministic approach in Appendix A to Part 100.

Proposed § 72.103(a)(2) would also provide that if an ISFSI or MRS is located at a NPP site, the existing geological and seismological design criteria for the NPP may be used instead of PSHA techniques or suitable sensitivity analysis because the risk due to a seismic event at an ISFSI or MRS is less than that of a NPP. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used to ensure that the seismic design criteria used is based on the latest seismic hazard information at the site.

Proposed § 72.103(b) would provide that applicants for licenses for sites located in either the western U.S. or in the eastern U.S. in areas of known seismic activity, must investigate the geological, seismological, and engineering characteristics of the site using the PSHA techniques or suitable sensitivity analysis of proposed § 72.103(f). If an ISFSI or MRS is located at a NPP site, the existing geological and seismological design criteria for the NPP may be used instead of PSHA techniques or suitable sensitivity analysis because the risk due to a seismic event at an ISFSI or MRS is less than that of a NPP. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used to ensure that the seismic design criteria used is based on the latest seismic hazard information at the site.

Proposed § 72.103(c) is identical to § 72.102(c). Proposed § 72.103(c) would require that sites, other than bedrock sites, must be evaluated for the liquefaction potential or other soil instability due to vibratory ground motion. This is to ensure that ISFSI or MRS would be adequately supported on a stable foundation during a seismic event.

Proposed § 72.103(d) is identical to § 72.102(d). Proposed § 72.103(d) would require that site specific investigation and laboratory analysis must show that soil conditions are adequate for the proposed foundation loading. This is to ensure that ISFSI or MRS would be adequately supported on a stable foundation during a seismic event.

Proposed § 72.103(e) is identical to § 72.102(e). Proposed § 72.103(e) would require that in an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred, and that sites with unstable geologic characteristics should be avoided. This is to ensure that sites with minimum deficiencies are selected and that ISFSI or MRS would be adequately supported on a stable foundation during a seismic event.

Proposed § 72.103(f) would describe the steps required for seismic hazard analysis to determine the DE for use in the design of structures, systems, and components of an ISFSI or MRS. The proposed scope of site investigations to determine the geological, seismological, and engineering characteristics of a site and its environs is similar to § 100.23 requirements. Unlike § 72.102(f), which requires that for sites that have been evaluated under the criteria of appendix A to part 100 the DE must be equivalent to the SSE for a NPP, proposed § 72.103(f) requires evaluating uncertainty in seismic hazard analysis by using a PSHA or suitable sensitivity analyses, similar to 10 CFR 100.23 requirements for a NPP.

Proposed § 72.103(f)(1) would require that the geological, seismological, and engineering characteristics of a site and its environs must be investigated in sufficient scope and detail to permit an adequate evaluation of the proposed site and to determine the DE. These requirements track existing requirements in § 100.23(c).

Proposed §§ 72.103(f)(2)(i) through (iv) would specify criteria for determining the DE for the site, the potential for surface tectonic and nontectonic deformations, the design basis for seismically induced floods and water waves, and other design conditions. In particular, § 72.103(f)(2)(i) would provide that a license applicant must address uncertainties in seismic hazard analysis by using appropriate analyses, such as, a PSHA or suitable sensitivity analyses, for determining the DE. Sections 72.103(f)(2)(ii) through (iv) track the corresponding requirements in § 100.23(d).

Finally, the proposed § 72.103(f)(3) would provide that regardless of the results of the investigations anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum. This provision would be identical to the requirement currently included in § 72.102(f)(2).

Section 72.212 Conditions of General License Issued Under § 72.210.

Section 72.212(b)(2)(i)(B) would be revised to require general licensees to address the dynamic loads of the stored casks in addition to the static loads. The requirements would be changed because during a seismic event the cask experiences dynamic inertia loads in addition to the static loads. which are supported by the concrete pad. The dynamic loads depend on the interaction of the casks, the pad, and the foundation. Consideration of the dynamic loads, in addition to the static loads, of the stored casks would ensure that the pad would perform satisfactorily during a seismic event.

The proposed new paragraph would also require consideration of potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion. Depending on the properties of soil and structures, the free-field earthquake acceleration input loads may be amplified at the top of the storage pad. These amplified acceleration input values must be bound by the design bases seismic acceleration values for the cask, specified in the Certificate of Compliance. Liquefaction of the soil and instability during a vibratory motion due to an earthquake event may affect the cask stability, and thus must be addressed.

The proposed changes to § 72.212 are intended to require that general licensees perform appropriate load evaluations of cask storage pads and areas to ensure that casks are not placed in an unanalyzed condition. Similar requirements currently exist in § 72.102(c) for an ISFSI specific license and are proposed in § 72.103(c).

VII. Specific Question for Public Comment

The Commission welcomes comments on all aspects of this proposed rule and is especially interested in receiving comments on the following question:

Discussion: The present mean annual probability of exceedance value for determining the DE for an ISFSI or MRS is approximately 1.0E–04 (*i.e.*, in any one year, the probability is one in ten thousand, which is the reciprocal of 1.0E–04, that the DE established for the

site will be exceeded). This value is based on nuclear plant requirements. The Commission is considering allowing for the use of a mean annual probability of exceedance value in the range of 5.0E–04 (i.e., in any one year, the probability is one in two thousand that the DE established for the site will be exceeded) to 1.0E–04 for ISFSI or MRS applications. Draft Regulatory Guide DG–3021, "Site Evaluations and Determination of Design Earthquake Ground Motion for Seismic Design of Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations," listed in Section V, has been developed to provide guidelines that are acceptable to the NRC staff for determining the DE for an ISFSI or MRS. Currently, DG–3021 recommends a mean annual probability of exceedance value of 5.0E–04 as an appropriate risk-informed value for the design of a dry cask storage ISFSI or MRS. However, the NRC staff is undertaking further analysis to support a specific value. An ISFSI or MRS license applicant would need to demonstrate that the use of a higher probability of exceedance value would not impose any undue radiological risk to public health and safety.

Question: In view of this discussion and the discussion in Section IV.C., what is the appropriate mean annual probability of exceedance value to be used for the seismic design of an ISFSI or MRS and what is the justification for this probability?

VIII. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR Part 72 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

IX. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA of 1954, as amended, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

X. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

XI. Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC is presenting amendments to its regulations in 10 CFR part 72 for the geological and seismological criteria of a dry cask independent spent fuel storage facility, to make them commensurate with the risk of the facility. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

XII. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this proposed rule because the Commission has concluded, based on an Environmental Assessment, that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment.

The Commission concluded that no significant environmental impact would result from this rulemaking. In comparison with a NPP, an operating ISFSI or MRS is a passive facility in which the primary activities are waste receipt, handling, and storage. An ISFSI or MRS does not have the variety and complexity of active systems necessary to support an operating NPP. Once the spent fuel is in place, an ISFSI or MRS is essentially a static operation and, during normal operations, the conditions required for the release and dispersal of significant quantities of radioactive materials are not present. There are no high temperatures or pressures present during normal operations or under design basis accident conditions to cause the release and dispersal of radioactive materials. This is primarily due to the low heat generation rate of spent fuel after it has decayed for more than one year before storage in an ISFSI or MRS and the low inventory of volatile radioactive materials readily available for release to the environs. The long-lived nuclides present in spent fuel are tightly bound in the fuel materials and are not readily dispersible. The short-lived volatile nuclides, such as I–131, are no longer present in aged spent fuel stored at an ISFSI or MRS. Furthermore, even if the short-lived nuclides were present during an event of a fuel assembly rupture, the canister surrounding the fuel assemblies would confine these nuclides. Therefore, the seismically induced radiological risk associated with an ISFSI or MRS is less than the risk associated with a NPP.

The determination of this environmental assessment is that there will be no significant environmental impact due to the proposed changes because the same level of safety would be maintained by the new requirements, taking into account the lesser risk from an ISFSI or MRS. However, the general public should note that the NRC welcomes public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the Environmental Assessment and this proposed rule to every State Liaison Officer and requested their comments on the Environmental Assessment. The Environmental Assessment may be examined at the NRC Public Document Room, O–1F21,11555 Rockville Pike, Rockville, MD. Single copies of the Environmental Assessment are available from Keith K. McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–5252, e-mail: *kkm@nrc.gov*.

XIII. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). This proposed rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

The burden to the public for these information collections is estimated to average 2,563 hours per response, including the time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0132), Office of Management and Budget, Washington, DC 20503.Comments to OMB on the information collections or on the above issues should be submitted by August 21, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XIV. Regulatory Analysis

The Commission has prepared a draft Regulatory Analysis (RA) entitled: "Regulatory Analysis of Geological and Seismological Characteristics for Design of Dry Cask Independent Spent Fuel Storage Installations." The RA examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the RA. Comments may be submitted to the NRC as indicated under the **ADDRESSES** heading. The RA is available on the NRC rulemaking website at *http://ruleforum.llnl.gov,* and is also available for inspection at the NRC Public Document Room located at One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD. Single copies of the RA are available from Keith K. McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–5252, e-mail: *kkm@nrc.gov.*

XV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects applicants for a part 72 specific license, and general licensees on or after the effective date of the rule for an ISFSI or MRS. These companies do not generally fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

XVI. Backfit Analysis

The Commission has determined that the backfit rule, § 72.62, does not apply to the changes in §§ 72.9, 72.102, and 72.103 because they do not involve any provisions that would impose backfits as defined in § 72.62(a).

Section 72.212(b)(2)(i)(B) currently requires evaluations of static loads of the stored casks for design of the cask storage pads and areas (foundation). The proposed revisions to this section would require general licensees also to address the dynamic loads of the stored casks. During a seismic event, the cask storage pads and areas experience dynamic loads in addition to static loads. The dynamic loads depend on the interaction of the casks, cask storage pads, and areas. Consideration of the dynamic loads of the stored casks, in addition to the static loads, for the design of the cask storage pads and areas, would ensure that the cask storage pads and areas would perform satisfactorily during a seismic event.

The proposed revision would also require consideration of potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion. Depending on the properties of soil and structures, the free-field earthquake acceleration input loads may be amplified at the top of the storage pad. These amplified acceleration input values must be bound by the design bases seismic acceleration values for the cask, specified in the Certificate of Compliance (CoC). The soil liquefaction and instability during a vibratory motion due to an earthquake event may affect the cask stability.

The proposed changes to § 72.212(b)(2)(i)(B) will impact procedures required to operate an ISFSI and; therefore, implicate the backfit rule. The proposed changes would require that general licensees perform appropriate analyses to assure that the cask seismic design bases bound the specific site seismic conditions, and that casks are not placed in an unanalyzed condition. Therefore, these proposed changes are necessary to assure adequate protection to occupational or public health and safety. Although the Commission is imposing this backfit because it is necessary to assure adequate protection to occupational or public health and safety, the proposed changes to § 72.212 would not actually impose new burden on the general licensees because they currently need to consider dynamic loads to meet the requirements in § 72.212(b)(2)(i)(A). Section 72.212(b)(2)(i)(A) requires that general licensees perform written evaluations to meet conditions set forth in the cask CoC. These CoCs require that dynamic loads, such as seismic and tornado loads, be evaluated to meet the cask design bases. Since the general licensees currently evaluate dynamic loads for evaluating the casks, pads and areas, the proposed changes to § 72.212(b)(2)(i)(B) would not actually require any general licensees presently operating an ISFSI to re-perform any written evaluations previously undertaken.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.9, paragraph (b) is revised to read as follows:

§ 72.9 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 72.7, 72.11, 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70, through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.103, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176, 72.180 through 72.186, 72.192, 72.206, 72.212, 72.216, 72.218, 72.230, 72.232, 72.234, 72.236, 72.240, 72.242, 72.244, 72.248.

3. The heading of § 72.102 is revised to read as follows:

§ 72.102 Geological and seismological characteristics for applications before [insert Effective Date of the Rule] and applications for other than dry cask modes of storage.

* * * * *

4. A new § 72.103 is added to read as follows:

§ 72.103 Geological and seismological characteristics for applications for dry cask modes of storage on or after [insert Effective Date of the Rule].

(a)(1) East of the Rocky Mountain Front (east of approximately 104o west longitude), except in areas of known seismic activity including but not limited to the regions around New Madrid, MO, Charleston, SC, Attica, NY will be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g.

(2) For those sites that have been evaluated under paragraph (a)(1) of this section that are east of the Rocky Mountain Front, and that are not in areas of known seismic activity, a standardized design earthquake ground motion (DE) described by an appropriate response spectrum anchored at 0.25 g may be used. Alternatively, a site-specific DE may be determined by using the criteria and level of investigations required by paragraph (f) of this section. For a site with a co-located nuclear power plant (NPP), the existing geological and seismological design criteria for the NPP may be used. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used.

(b) West of the Rocky Mountain Front (west of approximately 104o west longitude), and in other areas of known potential seismic activity east of the Rocky Mountain Front, seismicity must be evaluated by the techniques presented in paragraph (f) of this section. Sites that lie within the range of strong near-field ground motion from historical earthquakes on large capable faults should be avoided. If an ISFSI or MRS is located on a NPP site, the existing geological and seismological design criteria for the NPP may be used. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used.

(c) Sites other than bedrock sites must be evaluated for their liquefaction potential or other soil instability due to vibratory ground motion.

(d) Site-specific investigations and laboratory analyses must show that soil conditions are adequate for the proposed foundation loading.

(e) In an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred. Sites with unstable geologic characteristics should be avoided.

(f) The DE for use in the design of structures, systems, and components must be determined as follows:

(1) *Geological, seismological, and engineering characteristics.* The geological, seismological, and engineering characteristics of a site and its environs must be investigated in sufficient scope and detail to permit an adequate evaluation of the proposed site, to provide sufficient information to support evaluations performed to arrive at estimates of the DE, and to permit adequate engineering solutions to actual or potential geologic and seismic effects at the proposed site. The size of the region to be investigated and the type of data pertinent to the investigations must be determined based on the nature of the region surrounding the proposed site. Data on the vibratory ground motion, tectonic surface deformation, nontectonic deformation, earthquake recurrence rates, fault geometry and slip rates, site foundation material, and seismically induced floods and water waves must be obtained by reviewing pertinent literature and carrying out field investigations. However, each applicant shall investigate all geologic and seismic factors (for example, volcanic activity) that may affect the design and operation of the proposed ISFSI or MRS facility irrespective of whether these factors are explicitly included in this section.

(2) *Geologic and seismic siting factors.* The geologic and seismic siting factors considered for design must include a determination of the DE for the site, the potential for surface tectonic and nontectonic deformations, the design bases for seismically induced floods and water waves, and other design conditions as stated in paragraph (f)(2)(iv) of this section.

(i) Determination of the Design Earthquake Ground Motion (DE). The DE for the site is characterized by both horizontal and vertical free-field ground motion response spectra at the free ground surface. In view of the limited data available on vibratory ground motions for strong earthquakes, it usually will be appropriate that the design response spectra be smoothed spectra. The DE for the site is determined considering the results of the investigations required by paragraph (f)(1) of this section. Uncertainties are inherent in these estimates and must be addressed through an appropriate analysis, such as a probabilistic seismic hazard analysis (PSHA) or suitable sensitivity analyses.

(ii) Determination of the potential for surface tectonic and nontectonic deformations. Sufficient geological, seismological, and geophysical data must be provided to clearly establish if there is a potential for surface deformation.

(iii) Determination of design bases for seismically induced floods and water waves. The size of seismically induced floods and water waves that could affect

a site from either locally or distantly generated seismic activity must be determined.

(iv) Determination of siting factors for other design conditions. Siting factors for other design conditions that must be evaluated include soil and rock stability, liquefaction potential, and natural and artificial slope stability. Each applicant shall evaluate all siting factors and potential causes of failure, such as, the physical properties of the materials underlying the site, ground disruption, and the effects of vibratory ground motion that may affect the design and operation of the proposed ISFSI or MRS.

(3) Regardless of the results of the investigations anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum.

5. In § 72.212, paragraph (b)(2)(i)(B) is revised to read as follows:

§ 72.212 Conditions of general license issued under § 72.210.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) cask storage pads and areas have been designed to adequately support the static and dynamic loads of the stored casks, considering potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion; and

* * * * *

Dated at Rockville, Maryland, this 15th day of July, 2002.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary for the Commission.

[FR Doc. 02–18436 Filed 7–19–02; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards

Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Hand and Edge Tool Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Hand and Edge Tool Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal Government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this document is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before August 2, 2002.

ADDRESSES: Address comments to Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW Washington DC, 20416, Tel: (202) 619–0422.

FOR FUTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months.

The SBA defines "class of products" based on six digit coding systems.

The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS)*. The second is the Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Hand and Edge Tool Manufacturing, North American Industry Classification System (NAICS) 332212. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 02–18368 Filed 7–19–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 25

[REG–123345–01]

RIN 1545–AY91

Net Gift Treatment Under Section 2519

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to the amount treated as a transfer under section 2519 of the Internal Revenue Code when there is a right to recover gift tax under section 2207A(b) and the related gift tax consequences if the right to recover the gift tax is not exercised. The proposed regulations will affect donee spouses who make lifetime dispositions of all or part of a qualifying income interest in qualified terminable interest property. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for Tuesday, October 15, 2002, at 10 a.m., must be received by Tuesday, September 24, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–123345–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–123345–01). Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS internet site at www.irs.gov/regs. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, DeAnn K. Malone, (202) 622–7830; concerning submissions of comments, the hearing,

and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A marital deduction for qualified terminable interest property is allowed for estate tax purposes under section 2056(b)(7) and for gift tax purposes under section 2523(f). Qualified terminable interest property is property transferred by the decedent or donor spouse, in which the donee spouse has a qualifying income interest for life, and for which an election has been made. If the donee spouse makes a lifetime disposition of all or a portion of the qualifying income interest, section 2519 provides that the donee spouse is treated for estate and gift tax purposes as transferring all interests in the property other than the qualifying income interest. Under section 2207A(b), the donee spouse is entitled to recover any gift tax paid with respect to a transfer under section 2519 from the person receiving the transferred property.

Proposed regulations under several sections including sections 2519 and 2207A(b) were issued on May 21, 1984 (49 FR 21350 [LR–211–76, 1984–1 C.B. 598]). The proposed regulations provided that the amount of the gift under section 2519 is reduced by the amount of the gift tax that the donee spouse is entitled to recover under section 2207A(b) and that the donee spouse makes an additional gift if the donee spouse fails to exercise the right to recover the gift tax. These two provisions were not included in the regulations when they were finalized (TD 8522, 1994–1 C.B. 236). The preamble to the final regulations stated that these issues would be the subject of future proposed regulations. Sections 25.2519–1(c)(4) and 25.2207A–1(b) were reserved for those provisions.

Explanation of Provisions

Section 2207A(b) statutorily shifts the burden for paying the gift tax imposed on a transfer under section 2519 from the donee spouse to the person receiving the transferred property. The payment of gift tax by the person receiving the property benefits the donee spouse because the donee spouse is liable for the payment of this tax and, absent the right of recovery, would be required to pay the tax from the donee spouse's own assets.

The proposed regulations will amend the regulations under section 2519 to provide that the amount of the transfer under section 2519 is reduced by the amount of the gift tax that the donee spouse is entitled to recover under section 2207A(b). The amount of gift tax recoverable and the amount of the remainder interest treated as transferred under section 2519 are determined by using the interrelated computation applicable to other transfers in which the transferee agrees to pay the gift tax. See Rev. Rul. 81–23 (1981–2 C.B. 189).

In addition, the proposed regulations will amend the regulations under section 2207A(b) to provide that if the donee spouse fails to exercise the right to recover the gift tax, the donee spouse makes a gift in the amount of the unrecovered gift tax to the person from whom the recovery of gift tax could have been obtained.

Proposed Effective Date

The regulations will apply to any transfer under section 2519 where there is a right to recover gift tax under section 2207A(b) that occurs on or after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the regulations will be submitted to the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, October 15, 2002, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must use the main building entrance on Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Tuesday, September 24, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is DeAnn K. Malone, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 25 is proposed to be amended as follows:

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Paragraph 1. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 25.2207A–1 is amended by adding the text of paragraph (b) to read as follows:

§ 25.2207A–1 Right of recovery of gift taxes in the case of certain marital deduction property.

* * * * *

(b) *Failure of a person to exercise the right of recovery.* The failure of a person to exercise a right of recovery provided by section 2207A(b) upon a lifetime transfer subject to section 2519 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts to the person(s) from whom the recovery

could have been obtained. See § 25.2511–1. The transfer is considered to be made when the right to recovery is no longer enforceable and is treated as a gift even if recovery is impossible. Any delay in the exercise of the right of recovery shall be treated as an interest-free loan with the appropriate gift tax consequences.

* * * * *

Par. 3. Section 25.2519–1 is amended as follows:

1. Paragraph (c)(1) is amended by adding a sentence to the end of the paragraph.

2. The paragraph heading for paragraph (c)(4) is revised and the text of paragraph (c)(4) is added.

3. Paragraph (g) introductory text is revised.

The additions and revisions read as follows:

§ 25.2519–1 Disposition of certain life estates.

* * * * *

(c) * * * (1) * * * See paragraph (c)(4) of this section for the effect of gift tax that the donee spouse is entitled to recover under section 2207A.

* * * * *

(4) *Effect of gift tax entitled to be recovered under section 2207A on the amount of the transfer.* The amount treated as a transfer under paragraph (c)(1) of this section is further reduced by the amount the donee spouse is entitled to recover under section 2207A(b) (relating to the right to recover gift tax attributable to the remainder interest). If the spouse is entitled to recover gift tax under section 2207A(b), the amount of gift tax recoverable and the value of the remainder interest treated as transferred under section 2519 are determined by using the same interrelated computation applicable for other transfers in which the transferee assumes the gift tax liability. The gift tax consequences of failing to exercise the right of recovery are determined separately under § 25.2207A–1(b).

* * * * *

(g) *Examples.* The following examples illustrate the application of paragraphs (a) through (f) of this section. Except as provided otherwise in the examples, assume that the decedent, D, was survived by spouse, S, that in each example the section 2503(b) exclusion has already been fully utilized for each year with respect to the donee in question, that section 2503(e) is not applicable to the amount deemed transferred, and that the gift taxes on the amount treated as transferred under paragraph (c) are offset by S's unified credit. The examples are as follows:

* * * * *

Robert E. Wenzel,

Deputy Commissioner of the Internal Revenue Service.

[FR Doc. 02–18184 Filed 7–19–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 261–0362b; FRL–7247–9]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic solvents, organic solvent degreasing operations and organic solvent cleaning, storage and disposal. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 21, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SJVUAPCD 4661, 4662, and 4663. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 2, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–18400 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1481, MB Docket No. 02–153, RM–10454]

Television Broadcast Service; New Iberia, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Iberia Communications, LLC, an applicant for NTSC Channel 53 at New Iberia, Louisiana, proposing the substitution of Channel 50 for Channel 53 at New Iberia. TV Channel 50 can be allotted to at reference coordinates 29–55–12 N. and 91–46–07 W. with a zero offset.

DATES: Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making *(except in broadcast allotment proceedings). See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger

delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard M. Weiss, Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209–3801 (Counsel for Iberia Communications LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–153, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Louisiana, is amended by removing Channel 53 and adding Channel 50 at New Iberia.

Federal Communications Commission

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–18370 Filed 7–19–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI61

Endangered and Threatened Wildlife and Plants; Listing the Sonoma County Distinct Population Segment of the California Tiger Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to make permanent the provisions of the emergency rule listing the Sonoma County distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*), as endangered under the Endangered Species Act of 1973, as amended (Act). The emergency rule listing the population is published concurrently in this issue of the **Federal Register**. The Sonoma County DPS of the California tiger salamander is currently known from only seven viable breeding sites and associated uplands.

This species is imperiled by a variety of factors including habitat destruction, degradation, and fragmentation due to urban development. Other threats include road construction, pesticide drift, collection, and inadequate regulatory mechanisms. Extinction also could occur by naturally occurring events due to the small, isolated nature of the remaining breeding sites. We find these threats constitute a significant and immediate risk to the Sonoma County DPS of the California tiger salamander.

We solicit additional data and information that may assist us in making a final decision on this proposed action. This proposal, if made final, would extend the Federal protection and recovery provisions of the Act to this species.

DATES: We will accept comments until the close of business on September 20, 2002. Public hearing requests must be received by September 5, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor (Attn: SCCTS), Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825.

(2) You may hand-deliver written comments to our Sacramento Fish and Wildlife Office at the address given above.

(3) You may send comments by electronic mail (e-mail) to: *fw1sccaliforniatiger@r1.fws.gov*. See the Public Comments Solicited section below for file format and other information on electronic filing.

FOR FURTHER INFORMATION CONTACT: Chris Nagano or David Wooten, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/414–6600; facsimile 916/414–6713).

SUPPLEMENTARY INFORMATION:

Background

For a discussion of biological background information, previous Federal action, factors affecting the species, critical habitat, and conservation measures available to listed and proposed species, consult the emergency rule on the Sonoma County Distinct Vertebrate Population Segment of the California tiger salamander (Sonoma County California tiger salamander) published concurrently in this issue of the **Federal Register**.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are soliciting comments from the public, other concerned governmental agencies, the scientific community, industry, or any other

interested party concerning this proposed rule. We are particularly seeking comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Sonoma County California tiger salamander;

(2) The location of any additional populations or breeding sites of this species, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities or land use practices in the subject area and their possible impacts on this species.

If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [RIN–AI61]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at 916/414–6600.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowed by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

In making any final decision on this proposal, we will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

Public Hearings

The Act requires that we hold one or more public hearings on this proposal, if requested within 45 days of the date of publication of a proposed rule. Such requests must be made in writing and be addressed to the Field Supervisor, (Attn: SCCTS), Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Should a public hearing be requested, then we will announce the date, time, and place for the hearing in the **Federal Register**, through legal notices in area newspapers, and in news releases to the media.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send the peer reviewers copies of this proposed rule, as well as the emergency rule, immediately following publication in the **Federal Register**. We will invite them to comment, during the public comment period, on specific assumptions and conclusions regarding the proposed rule to list the Sonoma County California tiger salamander.

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Paperwork Reduction Act

This rule does not include any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget control number 1018–0094 which expires on July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, *see* 50 CFR 17.21 and 17.22.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not significant energy action, and no Statement of Energy Effects is required.

Author

The primary author of this proposed rule is Chris Nagano, Deputy Chief, Endangered Species Division, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble to the emergency rule listing the Sonoma County Distinct Vertebrate Population of the California tiger salamander as endangered, published concurrently in this issue of the **Federal Register**, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Salamander, California tiger.	*Ambystoma californiense.*	U.S.A. (CA)	U.S.A. (CA—Sonoma County).	E	729	NA	NA
*	*	*	*	*	*		*

Dated: July 16, 2002.

Marshall P. Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–18451 Filed 7–19–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 140
Monday, July 22, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. LS–02–08]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision of a currently approved information collection used to compile and generate the livestock and meat market reports for the Livestock and Grain Market News Program.

DATES: Comments on this notice must be received by September 20, 2002, to be assured of consideration.

Additional Information or Comments: Comments may be mailed to Jimmy A. Beard; Assistant to the Chief; Livestock and Grain Market News Branch, Livestock and Seed Program, AMS, USDA; STOP 0252; 1400 Independence Avenue, SW.; Washington, DC 20250–0252; Phone (202) 720–8054; Fax (202) 690–3732; or e-mail to *John.VanDyke@usda.gov*. All comments received will be available for public inspection at this address during the hours of 8 a.m. to 4 p.m. Monday through Friday, and on the Internet at *http://www.ams.usda.gov/lsg/mncs.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

SUPPLEMENTARY INFORMATION:

Title: Livestock and Meat Market Reports.

OMB Number: 0581–0154.

Expiration Date of Approval: 09–30–2002.

Type of Request: Extension of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq*) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization.

Under this market news program, USDA issues market news reports covering the livestock and meat trade, which includes a wide range of industry contacts, including packers, processors, producers, brokers, and retailers. These reports are compiled on a voluntary basis, in cooperation with the livestock and meat industry. The information provided by respondents initiates market news reporting, which must be timely, accurate, unbiased, and continuous if it is to be useful to the industry. The livestock and meat industry requested that USDA issue livestock and meat market reports in order to assist them in making immediate production and marketing decisions and as a guide in making sound marketing decisions. The industry uses the livestock and meat reports for assistance in making marketing and production decisions. Also, since the Government is a large purchaser of meat, the reporting and use of this data is helpful.

Estimate of Burden: Public reporting burden for this collection of information is estimated at .03 hours per response.

Respondents: Business or other for-profit, individuals or households and farms.

Estimated Number of Respondents: 450.

Estimated Number of Responses per Respondent: 520.

Estimated Total Annual Burden on Respondents: 7,020 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: July 16, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18338 Filed 7–19–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Winter Motorized Recreation Forest Plan Amendment, Flathead National Forest, Flathead, Lake Missoula, Lincoln and Sanders Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to amend the Flathead National Forest Land and Resource Management Plan (hereafter referred to as Forest Plan) management direction regarding winter snowmobile use. The amendment covers the entire Flathead National Forest.

DATES: Comments concerning the proposed action should be received in writing on or before 30 days after publication of this notice in the **Federal Register**. The draft EIS is expected to be filed with the Environmental Protection Agency and made available for public review in October 2002. No date has yet been determined for filing the final EIS.

ADDRESSES: Send written comments to Terry Chute, Planning Staff Officer, 1935 3rd Avenue East, Kalispell, Montana 59901 or call (406) 758–5243.

FOR FURTHER INFORMATION CONTACT: Terry Chute, Planning Staff Officer, 1935 3rd Avenue East, Kalispell, Montana 59901 or call (406) 758–5243.

SUPPLEMENTARY INFORMATION: The existing Forest Plan does not adequately address winter-motorized access. In response to administrative appeals of the Forest Plan, the Associate Chief of the Forest Service directed the Regional

Forester "to clarify the LRMP management direction to eliminate any confusion about motorized use in MA–2A areas." For various reasons that clarification did not occur.

In response to a 1999 lawsuit, a federal Magistrate recommended that the Flathead National Forest be ordered to close all Management Area (MA) 2A areas to motorized use. These MA 2A areas include many popular snowmobile play areas, as well as groomed snowmobile trails. The parties to the lawsuit agreed to a settlement that included preparation of a Forest Plan amendment in an open public forum to develop Forest-wide winter motorized recreation direction.

The Purpose and Need for this amendment is to:

1. Clarify Forest Plan management direction to eliminate any confusion about motorized use in MA–2A areas.

2. Meet the requirements of a settlement agreement resulting from a lawsuit challenging the Flathead Forest Plan.

3. Determine long-term winter recreation management direction related to motorized use.

The Proposed Action for the Winter Motorized Recreation Amendment includes the following features:

- A new Forest-wide standard would be added to the Forest Plan that would incorporate a set of winter motorized recreation maps into the Forest Plan, which would provide direction on where winter motorized use may and may not occur.
- Forest-wide and management area direction would be reviewed and clarified as needed to provide clear direction regarding winter motorized access.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

The Responsible Official is the Forest Supervisor of the Flathead National Forest, 1935 3rd Avenue East, Kalispell, Montana 59901. The Forest Supervisor will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies, The decision and rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: July 15, 2002.

Cathy Barbouletos,

Forest Supervisor—Flathead National Forest.

[FR Doc. 02–18483 Filed 7–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Fork of Pound Natural Gas Development Project, Clinch Ranger District, Wise County, VA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The federal government proposes to approve exploration and development of a federal oil and gas lease on Pine Mountain above North Fork of Pound Lake in Wise County, Virginia. This proposed action is in response to the Notice of Staking (NOS) the federal government has received from the lessee, Equitable Production Company. The proposed gas wells and associated roads and pipelines are to be located on the Clinch Ranger District of the George Washington and Jefferson National Forests.

DATES: Comments concerning the scope of the analysis must be received by August 19, 2002. The draft environmental impact statement (DEIS) is expected in September 2003 and the final environmental impact statement (FEIS) is expected in March 2004.

ADDRESSES: Send written comments to District Ranger Sten Olsen, Clinch Ranger District, 9416 Darden Drive, Wise Virginia 24293.

FOR FURTHER INFORMATION CONTACT: District Ranger Sten Olsen, Clinch Ranger District, 9416 Darden Drive, Wise, Virginia 24293/(276)–328–2931.

SUPPLEMENTARY INFORMATION: Congress established the federal oil and gas-leasing program under which oil and gas leases are issued to, and developed by, private enterprise. In 1984, the federal government issued federal oil and gas lease VAES–32510 covering 4,836 acres of federal land in the North Fork Pound area of Wise County, Virginia. The federal lease was issued for the purpose of exploration and development of oil and gas on the Clinch Ranger District of the George Washington and Jefferson National Forests. The holder of the lease (lessee) has the right to access the area, and occupy as much of the surface as is reasonable and necessary in order to explore and develop the mineral resource.

The lessee, Equitable Production Company, has filed with the USDA, Forest Service; and the Department of the Interior (DOI), Bureau of Land Management (BLM), a NOS to drill multiple gas wells, thereby fulfilling the purpose of federal lease, VAES–32510. The NOS is a preliminary step, which facilitates the selection of acceptable drilling locations by the lessee, the Forest Service, and the BLM prior to the submission of the Application for Permit to Drill (APD). The federal government must approve an APD before a lessee could build roads, drill wells, or otherwise occupy the surface of the lease. Both the Forest Service and the BLM have specific authority related to the APD approval. The federal government is required to make a timely decision on approving and issuing an APD to construct roads and well pads, drill wells, and install pipelines.

Since 1990, production from a private well located adjacent to the leased lands has been allocated to a small portion of federal lease. VAES–32510. While the federal lease has been held by production from this private well, the lessee now plans to develop natural gas field on the much larger, remaining portion of the leased tract.

The proposed gas well development is an energy project requiring an expedited review by the Departments of the Interior and Agriculture in accordance with Executive Order 13212. In addition, the Energy Security Act of 1980 directs the Secretary of Agriculture to process applications fro leases and permits to explore, drill and develop resources on National Forest System lands, notwithstanding of the current status of the Land and Resource

Management Plan (Forest Plan). This means that the Forest Service must process the applications for these permits regardless of the current status of the Revision of the Jefferson Forest Plan.

The proposed action is the approval of multiple APDs to drill 21 wells, construct 11 miles of road, and install 12 miles of pipeline. Most of the pipeline corridors will be located along the 11 miles of road corridor. About one mile of pipeline corridor would not be along the road corridor, but would be within the boundary of the lands within the lease. Each well pad will initially require a 1.5-acre clearing. Once production is obtained, each well pad will be reduced in size to one-half acre, and the remainder of the original well pad will be reclaimed. When natural gas production ceases, wells will be plugged and the well pads and any unnecessary facilities will be reclaimed.

The following permits or licenses would be required to implement the proposed action: Application for Permit to Drill; DOI Bureau of Land Management, and Permit to Drill; Virginia Department of Mines, Minerals & Energy.

No significant ground-disturbing management activities have occurred in the vicinity since coming under Forest Service management in 1983. Nearly all of the proposed gas development occurs within the North Fork of Pound Roadless Area (NFPRA). The NFPRA was identified as a roadless area in 1997 as part of the roadless inventory for the Jefferson Forest Plan revision process. The Roadless Area Conservation Initiative recognizes existing rights, and provides for development of current leases, along with associated roads necessary for access.

The preliminary alternatives to be considered include the proposed action and the no-action alternative. The cumulative effects section of the EIS for the subject 21 well projects will also consider the cumulative effects from a separate proposal involving the exercise of private oil and gas rights under the federal surface of U.S. tract J–1352d. This tract is located just west of the lands covered by federal oil and gas lease VAES–32510. The exercise of these private oil and gas rights, which were reserved at the time the United States acquired the lands, are subject to 1963 Secretary of Agriculture's Rules and Regulations. Development of the private rights would result in the drilling of 4 wells and the construction of about 13,500 feet of access roads and pipelines. A portion of the proposed road construction would occur in the western part of the NFPRA in an area where the federal government does not own the oil and gas rights.

Public comments received during a previous analysis of the North Fork of Pound Opportunity Area tentatively identified the following preliminary issues:

Issue 1. The roads, pipelines and well pads associated with this project may negatively impact the North Fork of Pound Roadless Area's qualifications for Congressional Wilderness designation.

Issue 2. The roads, pipelines and well pads associated with this project may increase sedimentation in North Fork of Pound Lake, a municipal water supply for the town of Pound.

Issue 3. The roads, pipelines and well pads associated with this project may negatively impact the visual quality of the area, especially in Forest Service developed recreation sites at North Fork of Pound Lake.

This notice is to inform the public of the proposed action and invite the public to participate by providing any comments or information they may have concerning the proposal. This information will be used to identify important issues and determine the extent of the analysis necessary to make an informed decision on the proposal. Such issues will assist in the formulation of additional alternatives and the development of mitigation measures necessary to reduce impacts. To allow us to better consider comments, please make them as specific as possible to the proposed action.

A DEIS will be prepared for comment. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

At this early stage, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Corp.* v. *NRDC, 435 U.S. 519, 533 (1978).* Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Forest Service is the lead agency for managing surface use of the project vicinity during and after development. The Forest Service is the lead agency for the environmental analysis. The BLM will be a cooperating agency.

Federal oil and gas lease VAES–32510 was issued in 1984. The federal decision now ripe is now to implement the lease through approval of APDs for oil and gas lease operations. The federal decision includes decisions about proposed locations of roads, oil and gas wells, and other facilities, as well as about Conditions of Approval to mitigate or reduce environmental impacts. The decision to be made by the Forest Service is whether to approve the surface use plan of operations (SUPO) part of the APD's. The BLM decision is whether to approve the drilling plans. Once the BLM has received the Forest Service approval of the SUPO's, and the Conditions of Approval, they will issue the actual APD's.

The Regional Forester will decide which mitigation measures and monitoring requirements to include with the surface use plan of operations in the APD's.

The Responsible Official for Forest Service is Robert T. Jacobs, Regional Forester—Southern Region; 1720 Peachtree Road NW., Atlanta, GA 30309. The Responsible Official for the BLM is Bruce E. Dawson, Field Manager, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: July 10, 2002.

Eurial Turner,

Deputy Regional Forester for Operations.

[FR Doc. 02–17949 Filed 7–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, Santa Fe National Forest, USDA, and Bureau of Land Management, Taos Field Office, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service (FS) and USDI Bureau of Land Management (BLM) will prepare an environmental impact statement (EIS) on a proposal that if authorized would permit the construction and operation of the Buckman Water Diversion Project on public lands managed by the FS and BLM, Santa Fe County, New Mexico. The City of Santa Fe (City), Santa Fe County (County), and Las Campanas Limited Partnership (Las Campanas) have each submitted Special Use Applications (SUP) requesting the use of these lands for this water diversion project.

The facilities necessary to implement this project include an intake structure on the eastern bank of the Rio Grande; sediment settling ponds (or an equivalent technical means of removing sand before pumping the water away from the river); pumps and pipes to move the water approximately 15 miles to the vicinity of its use, and two water treatment plants (one located on private land and one located on land leased by the City from the BLM), where the raw water will be treated to safe drinking water standards.

Estimated water diversion quantities used for the analysis will be based on annual demand projections that extend to the year 2010 for the City and County, while the demand for Las Campanas is projected for a longer period (*e.g.* to community build out). These projections translate to approximately 8,750 acre feet per year (AFY), currently estimated to be 5,230 AFY for the City; 1,700 AFY for the County; and 1,800 AFY for Las Campanas. The proposed diversion facility is sized for a combined net peak diversion of approximately 28.2 cubic feet per second (cfs).

The agencies invite written comments and suggestions on the scope of the analysis. The agencies also hereby give notice of the environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the proposed project must be received no later than September 5, 2002. Refer to Supplemental Information regarding public disclosure of submitted comment information.

ADDRESSES: Send written comments to Mr. Sandy Hurlocker, NEPA Coordinator, USDA–FS, Española Ranger District, P.O. Box 3307, Española, New Mexico, 87533. Electronic mail (e-mail) may be sent to *shurlocker@fs.fed.us* and FAX may be sent to (505) 753–9411.

FOR FURTHER INFORMATION CONTACT: Sandy Hurlocker, NEPA Coordinator, Española Ranger District, (505) 753–7331.

SUPPLEMENTARY INFORMATION:

Continuing water shortages in the City of Santa Fe and the surrounding area have resulted in a critical and immediate need for developing a sustainable means of accessing water supplies. The Buckman Well Field is being used to access existing water rights. However, the well field cannot provide a reliable source of water due to declining well yields, significant drops in ground water levels near the well field, and potential limitations to pumping due to depletions of nearby streams. Even at current levels undesirable consequences to ground water levels and nearby streams are expected to occur unless an alternate supply is found for the near term.

The project applicants (City of Santa Fe, Santa Fe County, and Las Campanas Limited Partnership) have proposed the Buckman Water Diversion Project to meet the immediate need for a sustainable means of accessing water supplies that make more direct use of the Applicants' water rights by diverting San Juan-Chama Project water and native Rio Grande water while reducing impacts to the aquifer.

Proposed Action: The Applicants propose to construct and operate a surface water diversion facility at the Rio Grande near the western terminus of Buckman Road located within the Santa Fe National Forest, near the existing Buckman water management area (also known as the Buckman Well Field). The water will be pumped to the Santa Fe vicinity, where it will serve municipal and community water supply customers.

The Buckman Water Diversion Project will involve diversion of San Juan-Chama water, which is released from storage in upstream reservoirs, and native Rio Grande water. The Buckman diversion is proposed to be constructed with the capacity necessary to meet the near-term need for water, based on various physical, technical, and environmental limitations. This proposed project has an independent utility from the long-term water management strategy being undertaken by the City and the County.

At this point in the analysis, the only alternative to the proposed action identified is the no action alternative.

The USDA Forest Service (FS) and USDI Bureau of Land Management (BLM) are co-lead agencies. The USDI Bureau of Reclamation (Reclamation), the City of Santa Fe (City), and Santa Fe County (County) have been granted cooperating agency status in accordance with 40 CFR 1501.6. Reclamation is participating as a cooperating agency because it may contribute federal funds to the project.

The responsible Officials are the Forest Supervisor, Santa Fe National Forest 1474 Rodeo Road, P.O. Box 1689, Santa Fe, NM, 87504–1689, and the Taos Area Manager for the Taos Field office of the BLM, 226 Cruz Alta Taos, NM 87571.

The NEPA decision to be made by FS and BLM officials is whether or not to authorize the construction and operations/maintenance of the Buckman water diversion project facilities on FS and BLM managed lands as proposed by the applicants, or an alternative to the proposed facilities.

The scoping process will include public meetings, field reviews and interaction with various Federal and State agencies. Public scoping meetings will be announced in area media, as well as posted on Forest Service and BLM Internet sites. Meetings are expected to occur between June and August of 2002 as part of the initial scoping for the project. Additional public meetings will be held once the Draft EIS is available for review.

Preliminary issues include the following:

- Impacts (both beneficial and adverse) to water resources.
- Impacts of construction to existing infrastructure (roads, powerlines, buried utilities)
- Impacts to fish and aquatic habitats
- Impacts to recreation use, including river guides, as well as the scenic resources associated with the area.

• Impacts of traffic. This includes short-term increases caused by construction traffic as well as longer-term increases in traffic resulting from proposed road improvements.

In addition to evaluating these preliminary issues, the environmental evaluation will assess the potential effects that the proposed project may have on Indian trust assets, as well as assessing the potential effects that the proposed project may have on minority and low-income populations. Economic impacts of the proposed action as well as no action will be considered, as will other social considerations.

In addition to the permits issued by the Forest Service and BLM, the following permits may be necessary for implementation of the project:

• *US Army Corps of Engineers*—Section 404 Permit (including Section 10 Navigable Waters, Section 401 Water Quality Certification, etc.). Includes both in-river construction and construction and construction in designated arroyos (*e.g.*, pipeline crossings). Coordination with FEMA may be required to cover changes to 100-year flood levels or for construction of facilities in 100-year floodplain.

• *US Environmental Protection Agency, Region VI*—National Pollution Discharge Elimination System (NPDES) Permit for settled sand return line from sedimentation pond to Rio Grande.

The following permits may be required by the State of New Mexico:

• *Office of the State Engineer*—Application for approval of a permit to Divert Surface Water and for a Point of Diversion for San Juan-Chama Water (City and County), and a permit to Change of Place and Purpose and Use and Point of Diversion for native Rio Grande water (County and Las Campanas).

• *Environment Department*—Certification of federal NPDES discharge permit.

• *Environment Department*—Construction storm water NPDES permits for construction of diversion and near-river facilities, pipelines, booster stations, water treatment plants, and treated water distribution piping.

• *Environment Department*—Review of plans & specifications for compliance with Safe Drinking Water Act and related rules.

• *Land Use Office*—Right-of-way permit for facilities on State Lands.

• *Office of Cultural Affairs, Historic Preservation Division*—Section 106 Historic Preservation Permit (requirements typically covered via EIS NHPA review).

The following permits may be required by the County and City:

• *Santa Fe County*—Land Development Permit; Building Permit (near-river facilities and booster station facilities); Floodplain Development Permit.

• *City of Sant Fe*—Wastewater Discharge Permit for reject water or any other discharges from the Water Treatment Facility to the City sanitary sewer system; Approved Development Plan; Building Permit, Grading Permit, and Utilities Permit; Noise Permit (only if any construction work in the City is to be performed outside the hours of 6 am to 8 pm); Temporary (construction) and permanent easements or rights-of-way for land ownerships other than those already listed (*e.g.*, railroads).

Actual permits required will depend upon the selected alternative.

Comment Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement. The lead agencies invite written comments and suggestions on the proposed action, including any issues to consider, as well as any concerns relevant to the analysis. In order to be most useful, scoping comments should be received within 45 days of publication of this Notice of Intent.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act (FOIA), you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law, but persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days. All submissions from organizations and business, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215.

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

At this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).*

Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the lead agencies in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The draft environmental impact statement is expected in June of 2003 and the final environmental impact statement is expected in November of 2003.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 24, 2002.

Leonard Atencio,

Santa Fe Forest Supervisor.

Ron Huntsinger,

Taos Field Manager.

[FR Doc. 02–18337 Filed 7–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Central Idaho Resource Advisory Committee Salmon-Challis National Forest Butte, Custer, and Lemhi Counties, Idaho

AGENCY: Forest Service, USDA.

SUMMARY: The Central Idaho Resource Advisory Committee will meet at 1:30 p.m., July 26, 2002 at the Salmon-Challis National Forest Supervisor's Office, Highway 93 South, Salmon Idaho.

The 15 member committee will be evaluating proposed projects and recommending projects to the Salmon-Challis National Forest. The committee will also discuss individual project proposals for 2002. The meeting is open to the public and time will be scheduled for public comments.

The Central Idaho Resource Advisory Committee was established by the Secretary of Agriculture under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000 to work collaboratively with the Salmon-Challis National Forest to provide advice and recommendations consistent with the purposes of the Act.

George P. Matejko,

Forest Supervisor, Salmon-Challis National Forest, Designated Federal Official.

[FR Doc. 02–18430 Filed 7–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Little Otter Creek Watershed Plan, Caldwell County, Missouri.

SUMMARY: Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the U.S. Department of Agriculture-Natural Resources Conservation Service, the Caldwell County Commission (Missouri), and the Caldwell County Soil and Water Conservation District will prepare an Environmental Impact Statement to assess potential environmental impacts associated with the construction of a multiple-purpose reservoir in the Little Otter Creek Watershed. The proposed reservoir (Site LO–1), will provide rural water supply; fish and wildlife habitat enhancement; recreational development; and flood prevention. The reservoir permanent pool will be 362 acres.

The reservoir will yield 1,240,000 gallons of water per day. It will also provide an estimated 60,000 annual public recreational visits, provide recreational facilities and public opportunities for fishing, walking/biking, and family and social events, provide wetland and wildlife habitat development, and reduce flood damages to lower stream reaches by 96 percent.

FOR FURTHER INFORMATION CONTACT: Harold Deckerd, Assistant State Conservationist, USDA-Natural Resources Conservation Service, Parkade Center, Suite 250, 601 Business Loop 70 West, Columbia, MO 65203, (573) 876–0900.

Harold L. Deckerd,

Acting Assistant State Conservationist for Water Resources, for Roger A. Hansen, State Conservationist.

[FR Doc. 02–18360 Filed 7–19–02; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order, and Intent to Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke order in part.

SUMMARY: In accordance with 751(b) of the Tarriff Act of 1930 ("the Act") and section 351.216(b) of the Department of Commerce's ("the Department") regulations, Uchiyama America, Inc. ("Uchiyama") filed a request for a changed circumstances review of the antidumping order on certain corrosion-resistant carbon steel flat products from Japan with respect to the carbon steel flat products as described below. Domestic producers of the like product have affirmatively expressed no interest in continuation of the order with respect to these particular products. In response to Uchiyama's request, the Department is initiating a changed circumstances review and issuing a notice of intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3207.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended, by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 C.F.R. Part 351 (2002).

Background

On May 29, 2002, Uchiyama requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Uchiyama requested that the Department revoke the order with respect to imports meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a

layer consisting of phosphate, and finally a layer consisting of silicate.

Scope of Review

The products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness.Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900 - 990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also, excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (i.e., a changed circumstances review) where the Department determines that "producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in issuance of an order." Section 782(h)(2) of the Act. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Initiation and Preliminary Results of Changed Circumstances Review*, 66 FR 57415, 57416 (November 15, 2001). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g)(i) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 C.F.R. 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist.

In addition, in the event that the Department concludes that expedited action is warranted, 19 C.F.R. 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 C.F.R. 351.216 and 351.222(g), based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation; National Steel Corporation; and United States Steel Corporation ("Domestic Producers"), no further interest exists in continuing the order with respect to certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate. See Domestic Producers' July 3, 2002, letter to the Department. Therefore, we are initiating this changed circumstances administrative review.

Furthermore, because domestic producers have expressed a lack of interest, we determine that expedited action is warranted, and we preliminarily determine that continued application of the order with respect to certain corrosion-resistant carbon steel flat products falling within the description above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order with respect to imports of certain corrosion-resistant carbon steel flat products meeting the above-mentioned specifications from Japan.

If the final revocation in part occurs, we intend to instruct the U.S. Customs Service ("Customs") to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, not subject to final results of administrative review as of the date of publication in the Federal Register of the final results of this changed circumstances review in accordance with 19 C.F.R. 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on certain corrosion-resistant carbon steel flat products meeting the above specifications will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Pursuant to 19 C.F.R. 351.309(d)(1), rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 C.F.R. 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 C.F.R. 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

This notice is published in accordance with section 751(b)(1) of the Act and 19 C.F.R. 351.216 and 351.222.

Dated: July 16, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–18448 Filed 7–19–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final results of changed circumstances review, and revocation in part of antidumping duty order

SUMMARY: On June 7, 2002, the Department of Commerce ("the Department") published a notice of initiation and preliminary results of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order and Intent to Revoke Order in Part*, 67 FR 39345 (June 7, 2002) ("*Initiation and Preliminary Results*"). In our *Initiation and*

Preliminary Results, we gave interested parties an opportunity to comment; however, we did not receive any comments. We are now revoking this order, in part, with respect to the particular carbon steel flat products described below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to these particular carbon steel flat products.

EFFECTIVE DATE: July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3207.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2002).

SUPPLEMENTARY INFORMATION:

Background

On May 6, 2002, Mitsubishi International Steel Inc. ("MISI") requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, MISI requested that the Department revoke the order with respect to imports meeting the following specifications: (1) Diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet ("CRBG") with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004" (0.10mm) to 0.030" (0.762mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than +/ − 0.2; Lankford value = ≥ 1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) Nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel-graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold

rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥1.0 micrometer.

On May 14, 2002, domestic producers of the like product, Bethlehem Steel Corporation; National Steel Corporation; and United States Steel Corporation, informed the Department that they have no interest in the importation or sale of steel from Japan with these specialized characteristics. Subsequently, as noted above, we gave interested parties an opportunity to comment on the *Initiation and Preliminary Results*. We received no comments from interested parties.

New Scope Based on Changed Circumstances Review

The merchandise covered by this changed circumstances review is certain corrosion-resistant carbon steel flat products from Japan. This changed circumstances administrative review covers all manufacturers/exporters of carbon steel flat products meeting the specifications as noted above in the background section. The new scope of this order is as follows: the products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness.

Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also, excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under

8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

Also excluded from this order are products meeting the following specifications: (1) Diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet ("CRBG") with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004" (0.10mm) to 0.030" (0.762mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than +/− 0.2; Lankford value = ≥ 1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) Nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel-graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side : nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to

create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥1.0 micrometer.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning carbon steel flat products, as described herein, constitutes changed circumstances sufficient to warrant partial revocation of this order. Also, no party commented on the *Initiation and Preliminary Results*. Therefore, the Department is partially revoking the order on certain corrosion-resistant carbon steel flat products from Japan with regard to products which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216(d). We will instruct the U.S. Customs Service ("Customs") to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, and not subject to final results of an administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222.

This notice serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216(e) and 351.222(g) of the Department's regulations.

Dated: July 16, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–18449 Filed 7–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071002A]

Marine Mammals; Notice of Intent to Prepare an Environmental Impact Statement for a Take Reduction Plan for the Western North Atlantic Coastal Stock of Bottlenose Dolphins

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS); request for comments.

SUMMARY: NMFS announces its intention to prepare an EIS, in accordance with the National Environmental Policy Act, for the development of a Bottlenose Dolphin Take Reduction Plan (BDTRP) to reduce the incidental mortality and serious injury of the Atlantic coastal stock of bottlenose dolphins in commercial fisheries to below the potential biological removal (PBR) level for the stock. The purpose of this action is to solicit public comments on the scope of the issues to be addressed in the EIS.

DATES: Comments on the scope of the EIS must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time August 21, 2002.

ADDRESSES: Send comments on the scope of the EIS to Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, Attn: Bottlenose Dolphin EIS. Comments may also be sent via facsimile to 301–713–0376. NMFS will not accept comments submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Katie Moore, NMFS Southeast Region, phone: 727–570–5312, e-mail: *Katie.Moore@noaa.gov*; or Emily Menashes, NMFS Office of Protected Resources, phone: 301–713–2322, e-mail: *Emily.Menashes@noaa.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

For additional information on Atlantic coastal bottlenose dolphins, refer to the draft 2002 Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Reports (SARs). The reports can be accessed via the internet at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*.

Background

NMFS intends to develop and implement a BDTRP pursuant to section 118(f) of the Marine Mammal Protection Act (MMPA). The purpose of the proposed action is to reduce the incidental mortality and serious injury of the Atlantic coastal stock of bottlenose dolphins in commercial fisheries to below the PBR level for the stock. The BDTRP will address mortality and serious injury of Atlantic coastal bottlenose dolphins incidentally taken in the following Category II commercial fisheries: Mid-Atlantic coastal gillnet; North Carolina inshore gillnet; Southeast Atlantic gillnet; Southeastern U.S. Atlantic shark gillnet; Atlantic blue crab trap/pot; Mid-Atlantic haul/beach seine; North Carolina long haul seine; North Carolina roe mullet stop net; and Virginia pound net.

Section 118(f) of the MMPA requires NMFS to convene a take reduction team to assist in the recovery and prevent the depletion of each strategic stock that interacts with Category I or II fisheries. The western North Atlantic coastal stock of bottlenose dolphins is a strategic stock. More information about the stock is available in the draft 2002 SAR, which can be obtained via the internet (see ELECTRONIC ACCESS) or by contacting Katie Moore or Emily Menashes (see **FOR FURTHER INFORMATION CONTACT**). Strategic status was initially assigned because the stock is designated as depleted under the MMPA as a result of a large-scale mortality event that occurred in 1987–1988 (58 FR 17789, April 6, 1993). However, the stock also qualifies as strategic because mortality and serious injury of this stock incidental to commercial fishing exceeds the PBR level of the stock.

The immediate goal of a take reduction plan for a strategic stock of marine mammals is to reduce, within 6 months of plan implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to levels

less than the PBR level. The long-term goal of the plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans.

The Secretary of Commerce (Secretary) may establish a take reduction team to address mortality or serious injury of strategic stocks of marine mammals interacting with Category I or II fisheries. Not later than 6 months after the date of establishment of a take reduction team, the team is required to submit a draft take reduction plan for such stock to the Secretary, consistent with the other provisions of section 118 of the MMPA. The Secretary is required to take the draft take reduction plan submitted by the team into consideration and publish in the Federal Register a summary of the draft plan submitted by the team, any changes proposed by the Secretary with an explanation of the reasons therefore, and proposed regulations to implement such plan, for public review and comment.

Public Scoping Process

The Bottlenose Dolphin Take Reduction Team (Team) was established on November 7, 2001. A **Federal Register** notification announcing the convening of the Team and their first meeting was published on October 24, 2001 (66 FR 53782). The Team met a total of five times before delivering consensus recommendations for the BDTRP to NMFS on May 7, 2002. The dates of the five meetings were: November 7–8, 2001, January 23–25, 2002, February 27–March 1, 2002, March 27–28, 2002, and April 23–25, 2002. Team meetings were open to the public and a public comment period was held following each day of meetings. Additionally, NMFS held three public meetings with potential Team members and other interested members of the public on May 15–16, 2001, July 11–12, 2001, and November 6, 2001. No additional scoping meetings are scheduled. This document provides additional opportunity for public involvement in the scope of the issues to be addressed in the EIS.

NMFS hired a commercial fisheries liaison to involve potentially affected sectors of the commercial fishing industry in the Team process by providing information about the purpose of the Team, meeting dates and locations, and discussion topics for upcoming meetings. The liaison used dockside visits, commercial fishing publications, and a commercial fishing expo to disseminate the information. NMFS generated and distributed a fact sheet about the Team and upcoming Team meetings and used mail and electronic mail to distribute information about meeting logistics and summaries to over 200 interested persons.

Analysis of Alternatives

NMFS will be analyzing alternatives that are reasonably expected to reduce mortality and serious injury of Atlantic coastal bottlenose dolphins to less than the PBR level within 6 months of implementation of the BDTRP. NMFS will be analyzing all reasonable alternatives, which include a status quo alternative and the recommendations submitted by the Team. The Team's recommendations can be obtained by contacting Katie Moore or Emily Menashes (see **FOR FURTHER INFORMATION CONTACT**).

Dated: July 15, 2002.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18443 Filed 7–19–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Area the Public is Requested To Temporarily Avoid During Coral Reef Restoration Activities in the Florida Keys National Marine Sanctuary

AGENCY: National Marine Sanctuaries Program (NMSP), Office of Ocean and Coastal Resources Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of area to be temporarily avoided.

SUMMARY: NOAA requests that users of the Florida Keys National Marine Sanctuary (FKNMS) avoid, from June 28, 2002 through August 15, 2002, an area of approximately 0.58 acres marked by construction buoys in the vicinity of 25° 0.67′ N, 80° 22.37′ W, which is at "Molkasses Reef" and is located 6 nautical miles (11.1 km) off the southeastern portion of Key Largo, Florida. Avoidance was previously requested for the same region from May 15, 2002 through June 28, 2002. Due to unusual weather conditions, the work was not able to be completed. During the time of avoidance, NOAA and authorized contractors will be conducting physical restoration activities of a coral reef where the M/V Wellwood grounded in August 1984. The public is requested to avoid the area during this period due to the presence of heavy construction materials and equipment (*e.g.*, barges and cranes), avoid the area during this period due to the presence of heavy construction materials and equipment (*e.g.*, barges and cranes), moorings, surface air supply hoses of divers and increased localized boat traffic. The intent of this notice is to ensure the timely and successful completion of the restoration and the protection of life and property during these complex activities.

DATES: The public is requested to avoid the area from June 28, 2002 through August 15, 2002. If less or more time is needed, NOAA will so inform the public. Public notice of this request also will be provided through local news media, a Notice to Mariners, and posting of placards or bulletin boards in public areas in Key Largo.

FOR FURTHER INFORMATION CONTACT: Harriet Sopher, Program Manager, Resource Protection Team, National Marine Sanctuaries Program, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 11th Floor, Silver Spring, Maryland, 20910. Telephone number: 301–713–3125, ext. 109.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1984, the M/V Wellwood, a 122-meter Cypriot-registered freighter, ran aground on the upper forereef of Molasses Reef within the FKNMS. The grounding site is a bank reef located 6 nautical miles (11.1 km) off the southeast portion of Key Largo, Florida (centered at approximately 25°0.67′ N, 80°22.37′ W). The impact of the grounding and the shifting of the vessel created large scars on the Molasses Reef forereef. Significant injuries were inflicted to the coral reef colonies, substrate, and other resident marine organisms such as sponges and sea fans. The unconsolidated coral rubble and ship debris have been removed. Storm events, including Hurricane Georges in the autumn of 1998, have caused additional damage to the grounding site.

Section 312 of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1443) authorizes NOAA to pursue claims for response costs and damages when sanctuary resources are destroyed, lost

or injured. Funds recovered under 312 are used to restore, replace or acquire equivalent sanctuary resources. As part of the restoration process at the site of the M/V Wellwood grounding, NOAA and its authorized contractor will be placing reef modules and tremie concrete to rebuild the physical structure of the damaged coral reef. This activity will occur from April 15, 2002 through August 15, 2002.

Because divers, moorings, heavy construction materials and equipment (e.g., barges and cranes) and increased localized boat traffic will be present during the restoration activity, NOAA requests the public to avoid an area of approximately 0.58 acres where the restoration activity will occur. Five to seven, recreational mooring buoys will be removed from the work area and the nearby vicinity. The work area will be marked by construction buoys. The buoys will be set about 30 feet beyond the barge tie down locations, and create an area approximately 200 feet by 150 feet, with the longer axis oriented in a NE–SW direction, around the grounding site (25°0.67′ N, 80°22.37′ W). The intent is to provide an area for the conduct of these important restoration activities; protect the life and property of construction crews and Sanctuary users while heavy construction materials and equipment (*e.g.*, barges and cranes) are in the area; protect moorings which will be used at the site of stabilize the barges; protect the surface air supply hoses of the divers and SCUBA crew who will be conducting the restoration activities; and ensure timely and successful completion of the restoration. The area that the public is requested to avoid is the minimum area necessary to moor the barges and includes buffer zones to moor support vessels and provide an extra margin for public safety during the restoration activities. The time period for which the public is requested to avoid the restoration site is the expected time necessary to complete the construction activities. If less or more time is needed, NOAA will so notify the public. During the spring of 2002, one-on-one contact was made with local dive operators, a public meeting was held to explain the restoration project and make the public aware of the area it would be requested to temporarily avoid. Additionally, NOAA issued press releases to the local newspapers and radio stations which have covered the restoration planning process and which have provided notice of NOAA's request for the public to avoid the restoration area.

Locations and Boundaries of the Area the Public Is Requested To Avoid

The area which the public is requested to avoid is located approximately 6 nautical miles offshore the southeast portion of the Key Largo, Florida (centered near 25° 0.67′ N, 80° 22.37′ W). The total area is approximately 0.58 acres. The boundary of this area will be marked by construction buoys.

The area is bounded by the following coordinates:

Latitude	Longitude
A: 25°00′ 37.96364″N	80°22′ 14.60425″W
B: 25°00′ 31.20173″N	80°22′ 22.54159″W
C: 25°00′ 45.20646″N	80°22′ 22.02476″W
D: 25°00′ 38.44445″N	80°22′ 29.96212″W

Dated: July 16, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–18446 Filed 7–19–02; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Scoping Period for the Proposed Designation of the Northwestern Hawaiian Islands National Marine Sanctuary; Reopening of Comment Period

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; request for comment; re-opening of comment period.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is re-opening, until August 6, 2002, the period for submission of public comments on the proposed designation of the Northwestern Hawaiian Islands National Marine Sanctuary.

DATES: Comments on the proposed designation must be received by close of business August 6, 2002.

ADDRESSES: Written comments may be sent to NWHI Coral Reef Ecosystem Reserve, 6700 Kalanianaole Highway, #215, Honolulu, Hawaii 96825; faxed to (808) 3972662; or emailed to *nwhi@noaa.gov*. Comments will be available for public review at the office address above.

FOR FURTHER INFORMATION CONTACT: Aulani Wilhelm, (808) 397–2657, *nwhi@noaa.gov*.

SUPPLEMENTARY INFORMATION: On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the National Marine Sanctuaries Amendments Act of 2000. The Reserve extends approximately 1200 nautical miles long. and 100 nautical miles wide. Pursuant to this Act and the Executive Order, NOAA initiated the process to designate the Reserve as a national marine santuary by issuing a notice of intent on January 19, 2001 (66 FR 5509). The public scoping period was announced on March 18, 2002 (67 FR 11996), with a closing date of May 3, 2002. The close of the public scoping period was extended to May 17, 2002 (67 FR 17673). Because of continuing public interest as indicated by the number of comments received during and after the comment period, NOAA is re-opening the comment period until August 6, 2002. Any comments that may have been received between May 17, 2002 and July 22, 2002, will be considered timely filed.

Authority: 16 U.S.C. 1431 *et seq.*, Pub. L. 106–513, (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: July 16, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator, for Ocean Services and Coastal Zone Management.

[FR Doc. 02–18447 Filed 7–19–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071602A]

Marine Mammals; File No. 1034–1685 and Permit No. 751–1614

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a permit and application to amend a permit.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of marine mammals for purposes of scientific research: NMFS has received a permit application from Dr. Markus Horning, Department of Marine Biology, Texas A&M University, Galveston, TX 77551, to take California sea lions (*Zalophus californianus*); and an application to amend Permit No. 751–1614 issued to the Ocean Alliance/ Whale Conservation Institute, 191

Weston Road, Lincoln, MA 01773 (Dr. Roger S. Payne, Principal Investigator).

DATES: Written or telefaxed comments must be received on or before August 21, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

For both applications, Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

For File No. 1034–1685, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

For Permit No. 751–1614, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

For Permit No. 751–1614, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Tammy Adams, Ruth Johnson, or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit, File No. 1034–1685, is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). The subject amendment to Permit No. 751–1614 is requested under the authority of the MMPA, the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the ESA, and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant for File No. 1034–1685 proposes to implant dual satellite-linked life history transmitters in up to 15 rehabilitated California sea lions at the Marine Mammal Center per year, for two years, to determine long-term post-release survival rates of rehabilitated sea lions. External tags will also be attached for short-term monitoring. To assess stress levels from surgical procedures, and to relate post-rehabilitation health status to survival, blood samples will be collected for standard clinical hematology and chemistry panels. Blubber biopsies, bioelectric impedance analysis, deuterium dilution determinations, and blubber ultrasound will also be performed.

Permit No. 751–1614, issued on March 7, 2002 (67 FR 11677) authorizes takes of various cetacean species by aerial survey, photo-identification, and biopsy sampling, within waters under the jurisdiction of the United States or on the high seas of the Pacific, Atlantic, and Indian Oceans, and the Mediterranean Sea. It also authorizes the import/export of an unlimited number of samples (sloughed skin from live animals, and skin, blubber, blood, bone, baleen and other tissues collected from dead stranded animals) collected within the territorial waters of a number of foreign countries. The holder of Permit No. 751–1614 has requested authorization to import and export samples collected from the cetacean species listed in the permit within the territorial waters of any foreign country sanctioned by the United States and in accordance with the permit conditions.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 16, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18441 Filed 7–19–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071202B]

Marine Mammals; File No. 779–1681

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that NMFS Southeast Fisheries Science Center (SEFSC), (Dr. Aleta Hohn, Principal Investigator), 75 Virginia Beach Drive, Miami, FL 33149, has applied in due form for a permit to take bottlenose dolphins for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 21, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978)281–9200; fax (978)281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*)and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The SEFSC requests a Permit to take bottlenose dolphins (*Tursiops truncatus*) for scientific research. The impetus for the research is the need to define the stock structure of western North Atlantic bottlenose dolphins. The project is a continuation of research begun in 1997 to elucidate stock structure using multiple methods and to test the hypothesis of one coastal migratory stock of bottlenose dolphins along the Atlantic coast of the U.S. A maximum of 500 individual dolphins will be captured, examined, sampled, marked, and released during the 5 year

period of the permit. Captures will take place in inshore and nearshore waters from New York to the Texas/Mexico border. As part of the research, the captured bottlenose dolphins will be sampled for genetic and isotope analyses, photographed for photo-id and will have transmitters attached.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 16, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18442 Filed 7–19–02; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice Concerning Request for Public Input on 2003 Administrative and Program Guidance

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") is requesting input from the public concerning the 2003 program and administrative guidance that will be issued in October, 2002. This guidance will set forth the policies, procedures, and timelines that govern the allocation of resources in fiscal year 2003, and covers all organizations that may apply for support under the National and Community Service Act of 1990, as amended, and the Domestic Volunteer Service Act of 1973, as amended. This guidance will set requirements upon organizations applying for funds, and provide the criteria that will be used in evaluating applicants. The Corporation invites input on any topic covered by these guidelines, including items such as: preferences for funding; sustainability; and accountability measures. Please note that this Notice does not request comments on individual application forms used under the various programs of the Corporation. The Corporation periodically publishes separate requests for comments concerning such application forms. By way of example, please refer to the Corporation's Application Guidelines for 2002 at *http://www.americorps.org/resources/guidelines2002.html.*

DATES: To be considered, input must arrive at the Corporation no later than 5 p.m., Eastern Standard Time, on August 26, 2002.

ADDRESSES: Any input must be submitted to the Corporation at the following address: (a) via e-mail to *gkowalczyk@cns.gov;* or (b) via fax to Gary Kowalczyk at 202–565–2784; or (c) via letter, to: Corporation for National and Community Service, Attn: Gary Kowalczyk, 1201 New York Avenue NW., Washington, DC 20525. Due to continued delays in the Corporation's receipt of mail, individuals are strongly encouraged to respond via e-mail or fax. This notice may be requested in an alternative format for the visually impaired.

FOR FURTHER INFORMATION CONTACT: For further information, contact either Gary Kowalczyk at 202–606–5000 x340 (*gkowalczyk@cns.gov*) or Nancy Talbot at 202–606–5000 x470 (*ntalbot@cns.gov*). The TDD number is 202–565–2799.

Dated: July 17, 2002.

Gary Kowalczyk,

Coordinator, National Service Programs.

[FR Doc. 02–18450 Filed 7–19–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Space Command

AGENCY: Department of the Air Force, DoD.

ACTION: Amendment of the notice of intent to prepare an Environment Impact Statement for actions to sustain operability of Air Force Space Command early warning radar sites at Cape Cod Air Force Station (AFS), Massachusetts (MA); Beale Air Force Base (AFB), California (CA); and Clear AFS, Alaska (AK).

SUMMARY: The Air Force hereby amends its notice of intent to prepare an Environmental Impact Statement (EIS) for Service Life Extension Program (SLEP) action at the Early Warning Radars located at Cape Cod AFS, MA; Beale AFB, CA; and Clear AFS, AK, as published in 65 FR 4406, published 27 January 2000. The Air Force intends to prepare a Supplemental EIS to the 1979 EIS on the Operation of the PAVE PAWS Radar System at Otis AFB, MA. The Supplemental EIS will address concerns over the possible health effects from operation of the early warning radar at Cape Cod AFS. The Supplemental EIS will be prepared pursuant to section 1502.9(c) (2) of the Council on Environmental Quality regulations and will include, among other information, the results from ongoing studies and efforts that are addressing concerns related to radio frequency energy (RFE) from the radar. These studies and efforts include a National Research Council study; an RFE survey at Cape Cod, MA; an exposure assessment using the results of the RFE survey; a waveform characterization study; and a review conducted by the Armed Forces Epidemiology Board. The Air Force made the decision to prepare a Supplemental EIS following a review of the SLEP EIS process. The review was prompted by the decreasing availability of spare parts for the early warning radars and increasing concern that the radars were becoming unsupportable due to a lack of spare parts. Through the review process, which took into account comments received during public scoping meetings, the Air Force determined that public concerns centered around the possible health effects arising from operation of the radars, rather than from the proposed action of replacing outdated computer hardware and rehosting software. Replacing computer hardware and rehosting software will not change the amount or characteristics of the radio frequency energy being transmitted by the radar. Based on present calculations, which may change, the Air Force anticipates releasing a draft Supplemental EIS in 2004, approximately six months after the results from the last of the studies is scheduled to be published. The Air Force will prepare site-specific

environmental assessments (EAs) for the SLEP actions of replacing computer hardware and rehosting software at each of the three early warning radar sites. Notices will be published in local newspapers when the EAs are available for public review.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Novak, HQ AFSPC/CEVP, 150 Vandenberg Street, Suite 1105, Peterson Air Force Base, CO 80914–2370, Fax 719–554–3849.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–18363 Filed 7–19–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2001 S&T Review. The purpose of the meeting is to allow the SAB and study leadership to brief the Chief of Staff and Secretary of the Air Force on the results of their study. Because sensitive and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: August 6, 2002.

ADDRESSES: 4E869.

FOR FURTHER INFORMATION CONTACT: Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–18364 Filed 7–19–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 5,918,680 entitled "Water Spray Cooling System for Extinguishment and Post Fire Suppression of Compartment Fires", Navy Case No. 77,714.

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Ave, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: July 15, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–18336 Filed 7–19–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: Tuesday, August 6, 2003, from 8 a.m. to 4 p.m.

ADDRESSES: The Commission meeting will be held in San Diego, California, at the Westgate Hotel located at 1055 Second Avenue, San Diego, CA 92101.

FOR FURTHER INFORMATION CONTACT: Leslie Sanchez, Executive Director, or Adam Chavarria, Associate Director, White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Ave., SW., Washington, DC 20202, (202) 401–1411.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 13230 dated October 12, 2001. The Commission is established to provide advice to the Secretary of Education (Secretary) and issue reports to the President concerning: (a) The progress of Hispanic Americans in closing the academic achievement gap and attaining the goals established by the President's No Child Left Behind Act of 2002; (b) the development, monitoring, and coordination of Federal efforts to promote high-quality education for Hispanic Americans; (c) ways to increase parental, State and local, private sector, and community involvement in improving education; and (d) ways to maximize the effectiveness of Federal education initiatives within the Hispanic community.

Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Adam Chavarria at (202) 401–1411 by no later than July 31. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

At the meeting on Tuesday, August 6, the Commission will review comments and adopt changes to the Interim Report from 8 a.m. to 4 p.m.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans from the hours of 9 a.m. to 5 p.m.

Dated: July 10, 2002.

Rod Paige,

Secretary, U.S. Department of Education.

[FR Doc. 02–18335 Filed 7–19–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Draft Report Implementing Office of Management and Budget Information Dissemination Quality Guidelines

AGENCY: Office of the Chief Information Officer, Department of Energy (DOE).

ACTION: Notice and request for comment.

SUMMARY: DOE invites public comment on a draft report to the Office of

Management and Budget (OMB) that contains draft DOE guidelines setting forth policy and procedures to ensure and maximize the quality, utility, objectivity, and integrity of the information that DOE disseminates to members of the public. DOE has prepared this draft report pursuant to OMB government-wide guidelines under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Act) (Pub. L. 106–554, 114 Stat. 2763).

DATES: Public comments are due August 21, 2002.

ADDRESSES: Comments should be sent by regular mail or electronic mail. To ensure receipt of comments by the due date, DOE recommends submission by electronic mail to the Office of the Chief Information Officer, Attention: DOE Quality Guidelines Review at *cio.webmaster@hq.doe.gov*. Comments sent by regular mail should be addressed to: Office of the Chief Information Officer, Attention: DOE Quality Guidelines Review, U.S. Department of Energy, Forrestal Building—Room 8H–089, 1000 Independence Avenue NW., Washington, DC 20585, or via Fax to (202) 586–7966.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Information Officer, Attention: Ms. Deborah Henderson, at the electronic and regular mail addresses provided above. The draft DOE report and guidelines in this notice are available on the DOE CIO Web site at *http://cio.doe.gov/informationquality*.

SUPPLEMENTARY INFORMATION: The draft report and guidelines in this notice are in response to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (OMB guidelines), 67 FR 8452 (February 22, 2002) under section 515 of the Act. DOE's draft guidelines would apply to a wide variety of information disseminated to members of the public. The DOE draft guidelines are modeled on the OMB guidelines with modifications specific to DOE. The principal modifications with explanations, are as follows:

1. DOE inserted the definitions before the operative portions of its draft guidelines, and in order to enhance readability, opted to relocate some of the language in the OMB definitions (namely, that which provided policy as distinguished from strictly definitional material) among the operative sections of guidelines.

2. DOE included general pre-dissemination review procedures which would provide for the originating DOE office to review information in light of the quality standards in the OMB and DOE guidelines and, in appropriate cases, for higher level internal review of the originating office's conclusions to ensure that the procedures are followed.

3. DOE opted to propose its own definition of "influential" when that term is applied to financial, scientific, or statistical information. Under the OMB guidelines, "influential" information of that type is supposed to meet the highest standards of transparency (consistent with countervailing considerations such as confidentiality) and data must be capable of reproduction by a qualified individual outside of the agency. DOE proposes to define "influential information" as information that DOE routinely embargoes because of its potential effect on markets, information on which a regulatory action with a $100 million per year impact is based, and other information products on a case-by-case basis. Routine embargo information occurs with regard to certain of the information products of DOE's Energy Information Administration. Currently, only some of the appliance energy conservation standards rulemakings under the Energy Policy and Conservation Act (42 U.S.C. 6295) have $100 million impacts on the economy. While DOE is committed to maintaining high standards of quality for all its information products aimed at the public, DOE is not of the view that the impact of other information products warrants holding them to the most rigorous standards of transparency and reproducibility.

4. DOE proposes mandatory procedures, including content requirements, to be followed by members of the public in submitting requests for correction of information under the Guidelines. With respect to information related to DOE actions subject to public comment, members of the public generally would be required to submit requests for correction in the form of timely comments made through the comment process. With respect to DOE actions that are not subject to public comment, members of the public would be required to submit requests for correction to the DOE CIO who would direct the request to the originating DOE program office. That office should provide at least an initial response within 60 days. A member of the public could request review of an adverse response to the DOE CIO. The CIO would direct the request for review to a higher level official of the DOE program office to whom the originating program office reports for a final decision within 60 days.

In addition to the four foregoing points, DOE is considering whether, consistent with the OMB guidelines (67 FR 8460), to add a variation to the portion of the DOE guidelines calling for use of the criteria in the Safe Drinking Water Act Amendments of 1996 (42 U.S.C 300g–1(b)(3)(A) and (B)) in the preparation of risk assessments. The possible adaptation would be to add a variation of the Safe Drinking Water Act criteria for ecological risk assessments which may not involve health and medical information. More specifically, DOE is considering adding the following provision on ecological risk assessment procedures to its guidelines:

"1. To the degree that a DOE Element's action is based on science, the DOE Element should use:

a. The best available peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices to evaluate adverse effects to local populations or communities of affected biota; and

b. Data collected by accepted methods (if the reliability of the method and the nature of the decision justifies use of the data), including, where feasible, site-specific data.

2. In the dissemination of public information about risks, the DOE Element should ensure that the presentation of information about risk effects is comprehensive, informative, and understandable.

3. In a document made available to the public, the DOE Element should specify, to the extent practicable:

a. Each population addressed by any estimate of applicable risks;

b. The expected risk or central estimate of risk for the specific populations affected;

c. Each appropriate upper-bound or lower-bound estimate of risk developed through probabilistic risk assessment techniques where feasible;

d. Each significant uncertainty identified in the process of the assessment of risk effects and the studies that would assist in resolving the uncertainty; and

e. Peer-reviewed studies known to the DOE Element that support, are directly relevant to, or fail to support any estimate of risk effects and the methodology used to reconcile inconsistencies in the scientific data, including, where feasible, a weight of the evidence analysis and causation criteria analysis."

DOE particularly invites comments on its draft guideline provisions reflecting the four points discussed above; DOE also invites comments on the advisability of adopting the ecological

risk assessment language set forth above.

DOE plans to review all relevant comments submitted in response to its draft guidelines and will respond to the major issues they raise. Publication of a final report to OMB is due on October 1, 2002.

Issued in Washington, DC on July 16, 2002.

Karen S. Evans,

Chief Information Officer.

Draft Report to the Office of Management and Budget on Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Energy

Introduction

This report is submitted to the Office of Management and Budget, (OMB) by the Department of Energy (DOE) pursuant to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (OMB guidelines), 67 FR 8452 (February 22, 2002) under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554, 114 Stat. 2763). The report includes DOE's guidelines to implement the policies and procedural guidance set forth in the OMB guidelines.

Background

DOE is responsible for the administration of a wide variety of national defense, energy supply, energy conservation, and nuclear waste cleanup programs authorized by law. DOE administers a system of national laboratories with active scientific research programs. DOE also disseminates a large volume of statistical reports through its Energy Information Administration. Although DOE is not a major regulatory agency, DOE has some rulemaking mandates and authorities, such as the appliance energy conservation program of test procedures and standards, that require the dissemination of financial, scientific, and statistical information. Like other agencies, DOE publishes draft and final environmental impact statements and environmental assessments under the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.* to 4370d.

Discussion of Guidelines

DOE has always maintained high standards of quality in the production of information disseminated to members of the public. As a source of scientific and statistical information on which members of the public and other government officials rely, DOE has long had procedures to assure adequate information quality. DOE's Energy Information Administration is a leader in this regard and has elaborate procedures to ensure the quality of its information products. DOE's Office of Energy Efficiency and Renewable Energy has elaborate special procedures for some of its rulemakings. That office has codified a general statement of policy in Appendix A to Subpart C of 10 CFR part 430 with regard to its information quality review procedures for information used in its appliance energy conservation standards rulemakings.

The DOE guidelines set forth below are modeled on OMB guidelines and incorporate a basic standard of quality (including objectivity, utility, and integrity) in the development and dissemination of DOE or DOE-sponsored information to the public. They also incorporate the procedures that DOE has traditionally followed to review information products for adequate quality. In addition, the DOE guidelines provide a uniform set for procedures for members of the public who wish to request correction of information on a timely basis. These procedures will ensure that final DOE decisions with respect to requests for correction will be made by high-level management officials.

In DOE's view, section 515 of the Act requires procedures and performance goals for the internal management of the Executive Branch. Although the draft DOE guidelines provide procedures by which a member of the public may request correction of information DOE has disseminated, they are not intended to result in DOE actions that are subject to judicial review. Rather, section 515(b)(2)(C) contemplates that each agency shall "report periodically to the Director" of OMB concerning "(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and (ii) how such complaints were handled by the agency."

The DOE Guidelines were prepared by the DOE Chief Information Officer, who is responsible for coordinating DOE's response to OMB's guidelines, in cooperation with other affected DOE offices.

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated to the Public by the Department of Energy

I. Background

Section 515, Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554), directed the Office of Management and Budget (OMB) to issue government-wide guidelines that "provide policy and procedural guidance to Federal Agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal Agencies." The OMB guidelines, published in the **Federal Register** on February 22, 2002 (67 FR 8452), require agencies to issue by October 1, 2002, their own implementing guidelines that include administrative mechanisms allowing members of the public to seek and obtain correction of information disseminated by the agency that does not comply with the agency guidelines.

The Department of Energy (DOE) Information Quality Guidelines, issued by the Department's Chief Information Officer (CIO) pursuant to OMB's Guidelines, are intended to provide guidance to Departmental Elements (*i.e.*, major DOE offices) on maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated to the public.

The DOE Guidelines also establish mechanisms for members of the public to seek and obtain administrative correction of disseminated information that does not comply with the quality requirements of these Guidelines. Finally, the Guidelines explain how the CIO will comply with OMB's annual reporting requirement concerning complaints from members of the public.The DOE Information Quality Guidelines will become effective on October 1, 2002.

II. Introduction

The CIO has designed these Guidelines to apply to a wide variety of DOE information dissemination activities that may range in importance and scope. They are intended to be sufficiently generic to fit all media, printed, electronic, or other forms. The CIO has sought to avoid the problems that would be inherent in developing detailed, prescriptive, "one-size-fits-all" DOE-wide guidelines that would artificially require different types of dissemination activities to be treated in the same manner.

The Guidelines are designed so that DOE Elements can apply them in a common sense and workable manner. It is important that these guidelines not impose unnecessary administrative burdens that would inhibit DOE Elements from continuing to take advantage of the Internet and other technologies to disseminate information to the public. In this regard, DOE Elements may incorporate the standards and procedures required by these guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative or contradictory processes. DOE Elements may rely on their implementation of the computer security provisions of the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 *et seq.*, to establish appropriate security safeguards for ensuring the integrity of the information that they disseminate.

III. DOE Information Quality Guidelines

A. What Definitions Apply to These Guidelines?

1. *DOE Element* means a major DOE office headed by an official whose position is subject to Senate confirmation or an office which directly reports to the Secretary, Deputy Secretary, or either of the DOE Under Secretaries.

2. *Dissemination* means DOE Element initiated or sponsored distribution of information to the public.

3. *Influential* means, when used in the context of scientific, financial, or statistical information, information (1) that is subject to embargo until the date of its dissemination by the Department or DOE Element disseminating the information because of potential market effects; (2) that is the basis for a DOE action that may result in an annual effect on the economy of $100 million or more; or (3) that is designated by a DOE Element as "influential."

4. *Information* means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms, including information that a DOE Element disseminates from a web page, but excluding the provision of hyperlinks to information that others disseminate.

5. *Information dissemination product* means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, a DOE Element disseminates to the public, including any electronic document, CD–ROM, or Web page.

6. *Integrity* means the information has been secured and protected from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

7. *Objectivity* means the information is presented in an accurate, clear, complete, and unbiased manner and the substance of the information is accurate, reliable, and unbiased.

8. *Quality* means utility, objectivity, and integrity.

9. *Reproducibility* means capability of being substantially reproduced, subject to an acceptable degree of imprecision, and with respect to analytical results, "capable of being substantially reproduced" means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.

10. *Subject to public comment* means that DOE has made the information available for comment by members of the public, preliminary to making a final determination, through a notice in the **Federal Register** including, but not limited to, a notice of inquiry, an advance notice of proposed rulemaking, a notice of proposed rulemaking, a notice reopening or extending a comment period due to receipt of new information, a notice of availability of a draft environmental impact statement, or any other **Federal Register** notice that provides an opportunity for comment by members of the public regarding information on which a final adjudicatory determination may be based.

11. *Transparent* means clear and concise

12. *Utility* means the usefulness of the information to its intended users, including the public.

B. Which Public Disseminations of Information Are and Are Not Subject to These Guidelines?

These Guidelines apply to any public dissemination of information. The definitions of "information" and "dissemination" establish the scope of the applicability of the guidelines. "Information" means "any communication or representation of knowledge such as facts or data." Consequently, "information" does not include opinions.

"Dissemination" is defined to mean agency initiated or sponsored distribution of information to the public," including, for example, a risk assessment prepared by a DOE Element to inform the agency's formulation of possible regulatory or other action. A DOE Element does not "initiate" the dissemination of information when a Federally employed scientist or Federal grantee or contractor publishes his or her research findings, even if the DOE retains ownership or other intellectual property rights because DOE paid for the research. In such cases, to avoid confusion, the DOE Element should ensure that the researcher includes an appropriate disclaimer that the views are the researcher's and do not necessarily reflect the views of DOE. However, if a DOE Element directs a Federally employed scientist or Federal grantee or contractor to disseminate information and retains authority to review and approve the information before release, then the DOE Element has sponsored the dissemination of the information.

"Dissemination" also does not include the following distributions:

(1) Press releases, including but not limited to fact sheets, press conferences or similar communications in any medium that announce, support the announcement or give public notice of information a DOE Element has disseminated elsewhere;

(2) Any inadvertent or unauthorized disclosure of information intended only for inter-agency and intra-agency communications;

(3) Correspondence with individuals or persons;

(4) Testimony and other submissions to Congress containing information a DOE Element has disseminated elsewhere;

(5) Responses to requests for DOE records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or similar laws;

(6) Information in public filings (such as public comments received by DOE in rulemaking proceedings), except where the DOE Element distributes information submitted to it by a third party in a manner that suggests that the DOE Element endorses or adopts the information, or indicates in its distribution that it is using or proposing to use the information to formulate or support a regulation, guidance, or other DOE Element decision or position.

(7) Information contained in subpoenas or documents filed in adjudicative proceedings, including DOE adjudicatory orders, opinions, amicus and other briefs;

(8) Procedural, operational, policy and internal manuals and memoranda prepared for the management and operation of DOE Elements that are not

primarily intended for public dissemination;

(9) Archival records (including information made available to the public on a DOE web site to document historical DOE actions); and

(10) Communications limited to government employees or DOE contractors or grantees.

C. What Are the Responsibilities of DOE Elements for Ensuring Quality of Information Disseminated to the Public and Responding to Requests From Members of the Public for Correction of Information?

1. *Ensuring quality.* As a guiding principle, DOE Elements should have as a performance goal that information disseminated to the public meets a basic level of quality. The quality of information disseminated by DOE Elements is measured by its utility, objectivity, and integrity. "Objectivity" focuses on whether the disseminated information is being presented in an accurate, clear, complete and unbiased manner and as a matter of substance, is accurate, reliable and unbiased. This includes whether the information is presented in the proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.

Also, DOE Elements should (to the extent possible, consistent with security, privacy, intellectual property, trade secrets, and confidentiality protections) identify the sources of the disseminated information and, in a scientific, financial, or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where feasible, data should have full, accurate, transparent documentation, and possible sources of error affecting data quality should be identified and disclosed to users.

In addition, "objectivity" involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, the original and supporting data should be generated, and the analytical results developed, using sound statistical and research methods. If the data and analytical results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing by a member of the public seeking correction of information in a particular instance. If DOE Element-sponsored peer review is employed to help satisfy the objectivity standard, the review process employed should meet the general criteria for competent and credible peer review recommended by OMB's Office of Information and Regulatory Affairs to the President's Management Council (*http://www.whitehouse.gov/omb/inforeg/oira_review-process.html*), namely "that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner."

Influential information. If a DOE Element is responsible for disseminating and disseminates influential scientific, financial information, a high degree of transparency of data and methods should be ensured to facilitate the reproducibility of such information by qualified third parties.

"Influential" when used in the context of scientific, financial or statistical information, means information: (1) That is subject to embargo until its dissemination by DOE or a DOE Element disseminating the information because of potential market effects; (2) that is the basis for a DOE action that may result in an annual effect on the economy of $100 million or more; or (3) that is designated by a DOE Element as "influential."

With regard to original and supporting data related thereto, these Guidelines do not require that all disseminated original and supporting data be subjected to the reproducibility requirement applicable to influential information. DOE Elements may identify, in consultation with the relevant scientific and technical communities, those particular types of data that may practicably be subjected to the reproducibility requirement, given ethical, feasibility, confidentiality, privacy, trade secret, security, and intellectual property constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (*i.e.* a new experiment, test, or sample) should not be required prior to each dissemination. At a minimum, DOE Elements should assure reproducibility for those kinds of original and supporting data according to "commonly accepted scientific, financial, or statistical standards."

With regard to analytic results related thereto, DOE Elements generally should demonstrate sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public. These transparency standards apply to analysis of data from a single study as well as to analyses that combine information from multiple studies.

Making the data and models publicly available will assist in determining whether analytical results are capable of being substantially reproduced. However, the objectivity standard does not override other compelling interests such as privacy, trade secret, security, intellectual property, and other confidentiality protections.

In situations where public access to data and methods will not occur due to other compelling interests, DOE Elements should apply rigorous robustness checks to analytic results and document what checks were undertaken. DOE Elements should, however, disclose the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed. However, each DOE Element should define the type of robustness checks and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for which the DOE Element is responsible.

With regard to the dissemination of information containing analyses of risks to human health, safety and the environment, DOE Elements should either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996. DOE Elements responsible for dissemination of vital health, environmental and medical information should interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information to medical providers, patients, health agencies, and the public. Information quality standards may be waived temporarily by DOE Elements in urgent situations (*e.g.* imminent threats to public health or homeland security).

"Utility" refers to the usefulness of the information to intended users including the public. In assessing the usefulness of information, DOE Elements need to consider the uses of the information they plan to disseminate not only from their perspective but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's

perspective, DOE Elements should take care to ensure that transparency has been addressed in its review of the information.

"Integrity" refers to security—the protection of information from unauthorized access or revision to ensure that information by DOE or DOE Elements is not compromised through corruption or falsification.

Pre-dissemination review procedures. Before disseminating information to members of the public, the originating office of the DOE Element must ensure that the information is consistent with the OMB and DOE guidelines and must determine that the information is of adequate quality for dissemination. If the information is influential financial, scientific, or statistical information, then the DOE Element should provide for higher level review of the program office's conclusions. Each DOE Element should identify for the CIO a high ranking official at the rank of at least a deputy assistant secretary who is responsible for ensuring the accountability of the DOE Element's program offices in reviewing information to be disseminated to members of the public under the OMB and DOE guidelines.

As a matter of good and effective information resources management, DOE Elements may develop and post on their websites supplemental guidelines for the process they will follow for reviewing the quality (including objectivity, utility and integrity) of information before it is disseminated. DOE Elements should treat information quality as integral to every step of development of information, including creation, collection, maintenance, and dissemination. This process will enable every DOE Element to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.

Paperwork Reduction Act. It is important that DOE Elements make use of OMB's Paperwork Reduction Act (PRA) clearance process to help improve the quality of information that the DOE Elements collect and disseminate to the public. DOE Elements already are required to demonstrate in their PRA submissions to OMB the "practical utility" of a proposed collection of information the DOE Element plans to disseminate. Additionally, for all proposed collections of information that will be disseminated to the public, DOE Elements should demonstrate in their PRA clearance submissions to OMB that the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with the OMB and DOE information quality guidelines.

2. *Responding to requests from members of the public.* To facilitate public review of information disseminated to the public, these Guidelines provide procedures allowing members of the public to seek and obtain correction of information disseminated to the public that does not comply with the quality provisions of these Guidelines. The procedures, set out in Part IV below, provide separate mechanisms for information set forth or referenced in a DOE or DOE-sponsored document subject to public comment and all other DOE or DOE-sponsored information.

IV. Requests From Members of the Public for Correction of Publicly Disseminated Data

A. How Does a Member of the Public Request Correction of Publicly Disseminated Information?

1. *Requests from members of the public seeking correction of DOE or DOE-sponsored documents subject to public comment.* (A) With respect to information set forth or referenced in a DOE or DOE-sponsored document subject to public comment, a member of the public must request correction within the comment period in a comment that:

(1) Specifically identifies the information in question and the document(s) containing the information;

(2) Explains with specificity the reasons why the information is inconsistent with the applicable quality standards in the OMB or DOE guidelines; and

(3) Presents substitute information, if any, with an explanation showing that such information is consistent with the applicable quality standards in the OMB and DOE guidelines.

(B) With respect to information set forth or referenced in a DOE notice of final rulemaking or a final Environmental Impact Statement (and any related Record of Decision), a member of the public may only file a request for correction of information in the form of a petition for rulemaking under 5 U.S.C. 553(e) or a petition for a supplemental environmental impact statement under 10 CFR part 1021, whichever is appropriate.

(C) A member of the public must file a request for correction under this paragraph at the address for comments set forth in DOE's notice providing for public comment.

(D) If the request for correction concerns information in or referenced in a document subject to comment at an early stage of the public comment process (e.g., an advance notice of proposed rulemaking), any response prior to publication of the final document is a preliminary response.

(E) A member of the public who files a request for correction under this paragraph has the burden of proof with respect to the necessity for correction as well as with respect to the type of correction requested.

2. *Requests from members of the public seeking correction of DOE or DOE-sponsored documents not subject to public comment.* (A) With respect to information set forth or referenced in a DOE or DOE-sponsored document that is disseminated or redisseminated on or after October 1, 2002, and is not subject to public comment, a member of the public must request correction by letter to the Office of the Chief Information Officer, Attention: DOE Quality Guidelines, U.S. Department of Energy, Forrestal Building—Room 8H–089, 1000 Independence Avenue NW., Washington, DC 20585, or via Fax to (202) 586–7996, or by filling out the form provided at the CIO Web site: *http://cio.doe.gov/informationquality.* This form will request the information set forth in paragraph (B) below.

(B) If a member of the public requests correction of DOE or DOE-sponsored information by letter, addressed to the CIO, then the letter must:

(1) Specifically identify the information in question and the document(s) containing the information;

(2) Explain with specificity the reasons why the information is inconsistent with the applicable quality standards in the OMB Guidelines or DOE guidelines; and

(3) Present substitute information, if any, with an explanation showing that such information is consistent with the OMB guidelines and the DOE implementing guidelines.

(C) If a member of the public complains about information set forth or referenced in a DOE or DOE-sponsored document and does not request correction under the OMB or DOE guidelines, then the complaint is not subject to processing as a request for correction under those guidelines.

(D) A member of the public who files a request for correction under this paragraph has the burden of proof with respect to the necessity for correction as well as with respect to the type of correction requested.

B. How Does DOE Process Requests for Correction?

(A) *Incomplete requests.* If a request for correction is incomplete, DOE may seek clarification from the person

submitting the request or return it without prejudice to resubmission.

(B) *Public notice of a request for correction.* In selected cases, DOE may publish notice of the receipt of a request for correction and may invite public comment.

(C) *Participation by other interested persons.* By letter, DOE may invite or allow other interested persons to comment on a request for correction.

(D) *Initial decisions.* If the request for correction concerns information that does not involve a document subject to public comment, then the originating office of the DOE Element responsible for dissemination of the information should provide at least an initial response within 60 days (with a copy to the CIO). The response should contain a statement of reasons for the disposition.

(E) *Administrative appeals.* In the event DOE initially denies a request for correction of information not subject to public comment and the person who submitted the request would like additional review, then that person must submit a request for review, including a statement of reasons for modifying or reversing the initial decision, no later than 30 days from the date of that decision. A request for review under this paragraph must be submitted by e-mail to *cio.webmaster@hq.doe.gov,* or by regular mail to Office of the Chief Information Officer, Attention: DOE Quality Guidelines, U.S. Department of Energy, Forrestal Building—Room 8H–089, 1000 Independence Avenue NW., Washington, DC 20585, or via Fax to (202) 586–7996. The CIO will direct the request for review to the DOE Element which supervises the originating DOE program office, and the DOE Element, with the concurrence of the Office of General Counsel, should issue a final decision for DOE (with a copy to the CIO) within 60 days from the date that the request for review is received.

(F) Any corrective action will be determined by the nature and timeliness of the information, the magnitude of the error, and the cost of undertaking a correction. DOE Elements are not required to change, or in any way alter, the content or status of information simply based on the receipt of a request for correction. DOE Elements need not respond substantively to frivolous or repetitive requests for correction. Nor do DOE Elements have to respond substantively to requests that concern information not covered by the OMB or DOE Guidelines or from a person whom the information does not affect.

(G) If DOE determines that a request for correction of information not subject to public comment has merit, DOE may respond by correcting the information in question and without issuing a decision explaining the reasons for accepting the request.

(H) If DOE receives multiple requests for correction of information not subject to public comment, DOE may consolidate the requests and respond on a DOE web site, or by notice in the **Federal Register**, or by issuing a correction in similar form and manner as the original information was issued.

V. DOE Reporting Requirements

On an annual fiscal-year basis, the CIO will report to the Director of OMB concerning requests for correction received under these Guidelines. DOE Elements must designate a reporting official, except as agreed otherwise between the DOE Element and the CIO, for example, where the CIO might compile the data for the DOE Element. Where a DOE Element reporting official has been designated, that official must report to the CIO no later than November 1 every year concerning requests received during the previous fiscal year and their resolutions, including requests with regard to information subject to public comment. The first reports are due November 1, 2003. The CIO will compile the DOE consolidated report and submit it annually to OMB beginning January 1, 2004. DOE Element reports should contain the number of complaints received, nature of complaints (*e.g.*, request for deletion or correction) and how they were resolved (*e.g.*, number corrected, denied, or pending review). The report must also include a compilation of the number of staff-hours devoted to handling and resolving such complaints and preparing reports.

[FR Doc. 02–18378 Filed 7–19–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–890–005 and ER02–1465–002]

Boston Edison Company; Notice of Filing

July 16, 2002.

Take notice that on July 3, 2002, Boston Edison Company (Boston Edison) tendered for filing a revised Interconnection Agreement between Sithe Mystic Development LLC and Boston Edison. Boston Edison states that the Interconnection Agreement reflects revisions required by the Commission in its order issued in this proceeding on May 31, 2002, 99 FERC ¶61,241 (2002).

Copies of said filing have been served upon all persons included on the official service list in this proceeding.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 24, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18382 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1902–000]

Buchanan Generation, LLC; Notice of Issuance of Order

July 16, 2002.

Buchanan Generation, LLC (Buchanan) submitted for filing a rate schedule under which Buchanan will engage in the sale of energy, capacity and ancillary services at market-based rates and for the reassignment of transmission capacity. Buchanan also requested waiver of various Commission regulations. In particular, Buchanan requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Buchanan.

On July 8, 2002, pursuant to delegated authority, the Director, Office of

Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Buchanan should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Buchanan is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Buchanan, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Buchanan's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 7, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18383 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–246–001]

Dominion Transmission Inc.; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 10, 2002, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 1155, to be effective July 1, 2002.

DTI states that the filing is being made to comply with the Commission's letter order of June 26, 2002 in the above referenced docket. The revised tariff sheet eliminates timing limitations for pipeline notification to replacement shippers of a recall of capacity.

DTI states that copies of the filing has been served upon all parties on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18391 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–247–001]

Enbridge Offshore Pipelines (UTOS) LLC; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 9, 2002, Enbridge Offshore Pipelines (UTOS) LLC (UTOS) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute First Revised Sheet No. 122, with an effective date of July 1, 2002.

UTOS states that the filing is being made in compliance with the Commission's June 27, 2002, order in these proceedings and Order No. 587–N.

UTOS states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18392 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–239–001]

Enbridge Pipelines (KPC); Notice of Compliance Filing

July 16, 2002.

Take notice that on July 9, 2002, Enbridge Pipelines (KPC) (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 121B, with an effective date of July 1, 2002.

KPC states that the filing is being made in compliance with the Commission's June 26, 2002, order in these proceedings and Order No 587–N.

KPC states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be

filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18388 Filed 7–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–244–001]

Enbridge Pipelines (Midla) Inc.; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 9, 2002, Enbridge Pipelines (Midla) Inc. (Midla) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with an effective date of July 1, 2002:
Substitute First Revised Sheet No. 166
Substitute Original Sheet No. 166A

Midla states that the filing is being made in compliance with the Commission's June 27, 2002, order in these proceedings and Order No. 587-N.

Midla states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18389 Filed 7–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–245–001]

Enbridge Pipelines (AlaTenn) Inc.; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 9, 2002, Enbridge Pipelines (AlaTenn) Inc. (AlaTenn) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 114, and First Revised Sheet No. 146, with an effective date of July 1, 2002.

AlaTenn states that the revised tariff sheets are being filed in compliance with the Commission's June 26, 2002, order in these proceedings and Order No. 587–N.

AlaTenn states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18390 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1903–000]

FPL Energy Marcus Hook, L.P.; Notice of Issuance of Order

July 16, 2002.

FPL Energy Marcus Hook, L.P. (FPL Marcus Hook) submitted for filing a rate schedule under which FPL Marcus Hook will engage in the sale of energy, capacity and ancillary services at market-based rates, franchised affiliate sales at market-based rates, and for the reassignment of transmission capacity. FPL Marcus Hook also requested waiver of various Commission regulations In particular, FPL Marcus Hook requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by FPL Marcus Hook.

On July 8, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by FPL Marcus Hook should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, FPL Marcus Hook is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of FPL Marcus Hook, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued

approval of FPL Marcus Hook's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 7, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18384 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–265–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 10, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Original Sheet No. 256A, to be effective on July 1, 2002.

Maritimes states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 27, 2002, in Docket No. RP02–265 (June 27 Order).

Maritimes states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587-N. The June 27 Order conditionally accepted the tariff sheets contained in Maritimes' May 1 tariff filing, effective July 1, 2002, subject to the condition that Maritimes file, within fifteen days of the June 27 Order, substitute revised tariff sheets to reflect the changes required by the June 27 Order. Maritimes is submitting this filing in compliance with the June 27 Order.

Maritimes states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18394 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–405–000]

SG Resources Mississippi, L.L.C.; Notice of Petition

July 16, 2002.

Take notice that on July 11, 2002, SG Resources Mississippi L.L.C. (SGRM), 7500 San Felipe, Suite #600, Houston, Texas 77063 filed in Docket No. CP02–405–000 a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207 (a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(5)), and Section 7(c)(1)(B) of the Natural Gas Act (15 U.S.C. 717(c)(1)(B)), seeking approval of an exemption from certificate requirements to perform temporary activities related to drilling a water supply test well to gather certain data relating to the underground water supply to be used in connection with the development of a planned high deliverability salt cavern natural gas storage facility to be located in Greene County, Mississippi. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Any questions regarding the petition should be directed to James F. Bowe, Jr., Attorney, Dewey Ballantine LLP, 1775 Pennsylvania Avenue, NW., Washington, DC 20006–4605; telephone (202) 429–1444, facsimile (202) 429–1579, e-mail *jbowe@dbllp.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 26, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the

Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18381 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–263–001]

Texas Eastern Transmission, LP; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 10, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Sub First Revised Sheet No. 534, to be effective on July 1, 2002.

Texas Eastern states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 27, 2002, in Docket No. RP02–263 (June 27 Order).

Texas Eastern states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587-N. The June 27 Order conditionally accepted certain of the tariff sheets contained in Texas Eastern's May 1 tariff filing, effective July 1, 2002, subject to the condition that Texas Eastern file, within fifteen days of the June 27 Order, substitute revised tariff sheets to reflect the changes required by the June 27 Order. Texas Eastern is submitting this filing in compliance with the June 27 Order.

Texas Eastern states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18393 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2042–000]

UGI Utilities, Inc.; Notice of Issuance of Order

July 16, 2002.

UGI Utilities, Inc. (UGI) submitted for filing a rate schedule under which UGI will engage in the sales of energy and capacity at market-based rates and for the reassignment of transmission capacity. UGI also requested waiver of various Commission regulations. In particular, UGI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by UGI.

On July 8, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by UGI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, UGI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of UGI, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of UGI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 7, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18385 Filed 7–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–92–000, et al.]

The Empire District Electric Company, et al.; Electric Rate and Corporate Regulation Filings

July 15, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. The Empire District Electric Company

[Docket No. EC02–92–000]

Take notice that on July 5, 2002, The Empire District Electric Company (Empire) filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilitates whereby Empire will transfer functional control of its jurisdictional transmission facilities to the regional transmission organization that will result from consolidation of Southwest Power Pool, Inc. and the Midwest Independent Transmission System Operator, Inc.

Copies of this filing were served on all affected state utility commissions.

Comment Date: July 26, 2002.

2. Nevada Power Company

[Docket No. ER02–84–003]

Take notice that on July 9, 2002, Nevada Power Company (Nevada Power) tendered for filing a revised and corrected Interconnection and Operation Agreement between Nevada Power and Duke Energy Moapa, LLC.

Comment Date: July 30, 2002.

3. Boston Edison Company

[Docket No. ER02–843–002]

Take notice that on July 9, 2002, Boston Edison Company (Boston Edison) tendered for filing a Related Facilities Agreement between Boston Edison and Mirant Kendall, LLC (Mirant Kendall) in compliance with the directives of the Federal Energy Regulatory Commission contained in a letter order issued on June 14, 2002 in this proceeding. Boston Edison requests an effective date of the Agreement, of March 26, 2002.

Comment Date: July 30, 2002.

4. New York Independent System Operator, Inc.

[Docket No. ER02–1507–001]

Take notice that on July 8, 2002, the New York Independent System Operator, Inc. (NYISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), revisions to its Open Access Transmission and Market Administration and Control Area Services Tariffs in order to reflect revisions pertaining to the treatment of Pre-Scheduled Transaction Requests, pursuant to the Commission's order issued on June 6, 2002, in the above-captioned docket. The NYISO has requested an effective date of April 11, 2002, for the filing.

The NYISO has served a copy of this filing upon parties on the official service list maintained by the Commission for the above-captioned docket.

Comment Date: July 29, 2002.

5. New England Power Pool

[Docket No. ER02–1618–001]

Take notice that on July 8, 2002, the New England Power Pool (NEPOOL) Participants Committee tendered for filing with the Federal Energy Regulatory Commission (Commission), a Report of Compliance as required by the Commission's June 21, 2002 order issued in Docket No. ER02–1618–000.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: July 29, 2002.

6. Duke Energy Corporation

[Docket No. ER02–2008–001]

Take notice that on July 9, 2002, Duke Energy Corporation (Duke) on behalf of Duke Electric Transmission (Duke ET), tendered for filing an amended Interconnection and Operating Agreement (IOA) between Duke ET and GenPower Anderson, LLC.

Duke seeks an effective date for the amended IOA of June 4, 2002.*Comment Date:* July 30, 2002.

7. Duke Energy Corporation

[Docket No. ER02–2079–001]

Take notice that on July 9, 2002, Duke Energy Corporation (Duke) on behalf of Duke Power and Duke Electric Transmission (Duke ET), tendered for filing an executed Service Agreement for Network Integration Transmission Service (NITSA), dated March 14, 1997, and amended May 16, 2002, between Duke Power, on its own behalf and acting as agent for Nantahala Power and Light Company, and the City of Seneca, South Carolina (Seneca). Included with the NITSA were Revised Specifications for network integration transmission service under the NITSA and an executed Network Operating Agreement (NOA) between Duke ET and Seneca.

Duke seeks an effective date of May 16, 2002.

Comment Date: July 30, 2002.

8. California Independent System Operator Corporation

[Docket No. ER02–2163–001]

Take notice that on July 8, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), an Errata to the First Revised Service Agreement No. 368 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Point Arguello Pipeline Company (Point Arguello). The Errata corrects the Resource ID for Schedule 1. The ISO filed First Revised Service Agreement No. 368 on June 26, 2002 to update Schedule 1 of the PGA. The ISO requested that the revised PGA be made effective as of June 6, 2002.

The ISO states that this filing has been served on all entities that are on the official service list for Docket No. ER01–1953–000.

Comment Date: July 29, 2002.

9. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2274–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Benham Kentucky (Rate Schedule FERC No 187). The amendment removes contractual language between the City of Benham and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

10. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2275–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Corbin Kentucky (Rate Schedule FERC No 188). The amendment removes contractual language between the City of Corbin and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

11. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2276–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Falmouth Kentucky (Rate Schedule FERC No 189). The amendment removes contractual language between the City of Falmouth and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

12. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2277–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Nicholasville Kentucky (Rate Schedule FERC No 163). The amendment removes contractual language between the City of Nicholasville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

13. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2278–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Nicholasville Kentucky (Rate Schedule FERC No 198). The amendment removes contractual language between the City of Nicholausville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

14. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2279–000]

Take notice that on July 5, 2002 , Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Nicholausville Kentucky (Rate Schedule FERC No 216). The amendment removes contractual language between the City of Nicholausville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

15. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2280–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Providence Kentucky (Rate Schedule FERC No 195). The amendment removes contractual language between the City of Providence and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

16. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2281–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Providence Kentucky (Rate Schedule FERC No 196). The amendment removes contractual language between the City of Providence and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

17. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2282–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Madisonville Kentucky (Rate Schedule FERC No 161). The amendment removes contractual language between the City of Madisonville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

18. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2283–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Ownensboro Kentucky (Rate Schedule FERC No 74). The amendment removes contractual language between the City of Owensboro and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

19. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2284–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Paris Kentucky (Rate Schedule FERC No 83). The amendment removes contractual language between the City of Paris and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2286–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Madisonville Kentucky (Rate Schedule FERC No 192). The amendment removes contractual language between the City of Madisonville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

21. Illinois Power Company

[Docket No. ER02–2287–000]

Take notice that on July 5, 2002, Illinois Power Company (Illinois Power), filed a First Revised Network Integration Transmission Service Agreement with Illinois Power, as retail merchant.

Illinois Power requests an effective date of July 1, 2002 for the Agreement and seeks a waiver of the Commission's

notice requirement. Illinois Power has mailed a copy of the filing to the Transmission Customer.

Comment Date: July 26, 2002.

22. California Independent System Operator Corporation

[Docket No. ER02–2288–000]

Take notice that on July 8, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), a participating Generator Agreement between the ISO and Recot, Inc., dba Frito-Lay Inc. For acceptance by the Commission.

The ISO states that this filing has been served on Frito-Lay and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective June 25, 2002.

Comment Date: July 29, 2002.

23. California Independent System Operator Corporation

[Docket No. ER02–2289–000]

Take notice that the on July 8, 2002, California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and Recot, Inc., dba Frito-Lay Inc. for acceptance by the Commission.

The ISO states that this filing has been served on Frito-Lay and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective June 25, 2002.

Comment Date: July 29, 2002.

24. WPS Resources Operating Companies[Docket No. ER02–2290–000]

Take notice that on July 8, 2002, the WPS Resources Operating Companies, on behalf of Wisconsin Public Service Corporation and Upper Peninsula Power Company (collectively, WPS Resources) tendered for filing with the Federal Energy Regulatory Commission (Commission), a notice of cancellation and revised service agreement cover sheets (Cancellation Documents) to terminate service agreements between WPS Resources and its customers providing for transmission service. The Cancellation Documents are being filed because WPS Resources is no longer providing service under the service agreements.

WPS Resources respectfully requests that the Commission allow the Cancellation Documents to become effective on July 9, 2002, the day after filing.

Copies of the filing were served upon customers that were taking service under the service agreements, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: July 29, 2002.

25. Northern Indiana Public Service Company

[Docket No. ER02–2291–000]

Take notice that on July 8, 2002, Northern Indiana Public Service Company (Northern Indiana), tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Energy USA-TPC Corp., Transmission Customer (Transmission Customer).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Non-Firm Point-to-Point Transmission Service to Transmission Customer pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of July 9, 2002.

Comment Date: July 29, 2002.

27. Northern Indiana Public Service Company

[Docket No. ER02–2292–000]

Take notice that on July 8, 2002, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Energy USA-TPC Corp. (Transmission Customer).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Firm Point-to-Point Transmission Service to Transmission Customer pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of July 9, 2002.

Copies of this filing have been sent to Energy USA-TPC Corp., the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: July 29, 2002.

28. Mt. Carmel Public Utility Co.

[Docket No. ER02–2293–000]

Take notice that on July 8, 2002, Mt. Carmel Public Utility Co., (Mt. Carmel) tendered for filing executed Service and Operating Agreements between Mt. Carmel and Central Illinois Public Service Co., (dba Ameren/CIPS). Mt. Carmel asserts that the purpose of the Agreement is to permit Mt. Carmel to provide transmission service to Ameren/CIPS pursuant to Mt. Carmel's Open Access Transmission Tariff.

Comment Date: July 29, 2002.

29. New England Power Pool

[Docket No. ER02–2294–000]

Take notice that on July 8, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted a refiling of Sections 5 and 7 of Schedule 18 to the NEPOOL Tariff. Expedited consideration, a waiver of the sixty-day notice requirement and a June 1, 2002 effective date has been requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: July 29, 2002.

30. American Electric Power Service Corporation

[Docket No. ER02–2295–000]

Take notice that on July 9, 2002, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (collectively AEP) filed proposed amendments to its Open Access Transmission Tariff in the above-referenced docket.

AEP requests an effective date of July 1, 2000 for the proposed amendment. Copies of AEP's filing have been served upon AEP's transmission customers and the public service commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: July 30, 2002.

31. El Paso Electric Company

[Docket No. ES02–48–000]

Take notice that on June 28, 2002, El Paso Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to extend the maturity dates of its pollution control bonds.

Comment Date: July 25, 2002.

32. Atlantic City Electric Company

[Docket No. OA02–6–000]

Take notice that on July 2, 2002, Atlantic City Electric Company (Atlantic), tendered for filing revised standards of conduct procedures. Atlantic updated its list of affiliates in the procedures. It also updated the web and physical location of the procedures.

Copies of the filing were served upon the official service list.

Comment Date: August 1, 2002.

33. Delmarva Power & Light Company

[Docket No. OA02–7–000]

Take notice that on July 2, 2002, Delmarva Power & Light Company (Delmarva) filed Revised Standards of Conduct Procedures. DelMarva updated its list of affiliates in the procedures. It also updated the web and physical location of the procedures.

Copies of the filng were served upon the official service list.

Comment Date: August 1, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary

[FR Doc. 02–18344 Filed 7–19–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–374–000]

Hackberry LNG Terminal, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Hackberry LNG Terminal Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting and Site Visit

July 16, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of Hackberry LNG Terminal L.L.C.'s (Hackberry) proposed Hackberry LNG Terminal Project in Louisiana.[1] These proposed facilities would consist of liquefied natural gas (LNG) import terminal and storage facilities in Cameron Parish and 35.4 miles of 36-inch-diameter pipeline in Cameron, Calcasieu, and Beauregard Parishes, Louisiana. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice is being sent to residences within 0.5 mile of Hackberry's proposed LNG facilities and to landowners along the proposed pipeline route. If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Hackberry provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*http://www.ferc.gov*).

[1] Hackberry's application was filed with the Commission under Sections 3(a) and 7(c) of the Natural Gas Act and Parts 157 and 284 of the Commission's regulations.

Summary of the Proposed Project

Hackberry proposes to build a new LNG import, storage, and vaporization terminal approximately 2.3 miles north of Hackberry, Louisiana; and a natural gas pipeline to transport approximately 1.5 billion cubic feet per day of imported natural gas to the United States market. The natural gas would primarily supply new power generation markets. Hackberry seeks authorization to construct and operate the following new facilities at its proposed site:

- LNG ship docking and unloading facilities with two berths, each equipped with mooring and breasting dolphins, three liquid unloading arms, and one vapor return arm;
- three double-walled LNG storage tanks each with a usable volume of 1,006,000 barrels (3.5 billion cubic feet of gas equivalent);
- nine 250 million standard cubic feet per day (MMscf/d) in-tank pumps;
- ten 188 MMscf/d second-stage pumps;
- twelve 150 MMscf/d submerged combustion vaporizers;
- a boil-off gas compressor and condensing system;
- an LNG circulation system to maintain the facilities at the appropriate temperature when LNG ships are not being unloaded;
- a natural gas liquids recovery unit;
- utilities, buildings, and service facilities; and
- 35.4 miles of 36-inch-diameter natural gas pipeline extending from the LNG import terminal in Cameron Parish north through Calcasieu Parish to a connection with the existing Transcontinental Gas Pipe Line compressor station site in Beauregard Parish.

As part of the proposed project, Hackberry plans to remove the existing liquefied petroleum gas facilities and associated dock at the proposed site. The general location of the project facilities is shown in appendix 1.[2]

Hackberry is requesting approval to begin construction of the LNG facilities in October 2003 and the pipeline in April 2006. The approximate duration of construction of the LNG facilities would be 3 years, while pipeline construction would take 6 months. Hackberry proposes to place the project in service by November 2006.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website (*http://www.ferc.gov*) at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

Construction of the LNG terminal would require about 153 acres for the docking and LNG terminal facilities. Construction of the proposed pipeline facilities would disturb about 446 acres of land including the construction right-of-way, temporary extra workspaces, and contractor/pipe yards. Additional temporary work areas would include the use of 36.1 miles of primarily existing access roads along the proposed pipeline route. Approximately 6.1 miles of these access roads would require some improvements, resulting in the disturbance of 36.7 acres. The nominal construction right-of-way for the pipeline would be 100 feet wide. Additional right-of-way width and temporary extra workspace would be required at road and waterbody crossings and areas requiring topsoil segregation or special construction techniques.

Hackberry would maintain a 50-foot-wide permanent right-of-way for operation of the pipeline. Total land requirements would be approximately 199 acres for the new permanent right-of-way and 101 acres for the LNG facilities. Aboveground facilities associated with the pipeline, including mainline block valves, pig launchers and receivers, would be located within the new permanent right-of-way.[3]

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals.[4] This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues and reasonable alternatives. By this Notice of Intent, we are requesting agency and public comments on the scope of the issues to be analyzed and presented in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the Draft EIS. The Draft EIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to all comments received. To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of environmental issues and alternatives that we think deserve attention based on a preliminary review of the proposed facilities, and the environmental information provided by Hackberry. This preliminary list of issues and alternatives may be changed based on your comments and our additional analysis.

- Geology and Soils:
  - —Assessment of potential geological hazards, including subsidence.
  - —Assessment of potentially contaminated dredge material.
  - —Impact on mineral and petroleum resources.
  - —Erosion and sedimentation control.
  - —Right-of-way restoration.
- Water Resources:
  - —Impact on groundwater and surface water supplies.
  - —Assessment of dredge and fill of coastal wetlands associated with construction of the proposed LNG terminal.
  - —Assessment of alternatives to avoid or minimize wetland impacts.
  - —Permanent impact on forested wetlands associated with construction and maintenance of the pipeline.
  - —Impact on wetland hydrology.
  - —Effect of pipeline crossings on perennial and intermittent streams, canals, and ditches, including possible increased turbidity from construction.
  - —Assessment of hydrostatic test water sources and discharge locations.
- Fish, Wildlife, and Vegetation:
  - —Effect on Essential Fish Habitat.
  - —Effect on economically important marine fisheries.
  - —Effect on wildlife resources and their habitat.
  - —Effect on migratory birds.
  - —Assessment of wildlife-related construction time window restrictions.
  - —Control of noxious weeds within the right-of-way.
  - —Assessment of measures to successfully revegetate the right-of-way.
  - —Clearing and permanent loss of forestland.
- Endangered and Threatened Species:
  - —Potential effect on federally listed species.
- Cultural Resources:
  - —Assessment of survey methodologies.
  - —Effect on historic and prehistoric sites.
  - —Native American and tribal concerns.
- Paleontological resources:
  - —Effect on paleontological resources.
- Land Use, Recreation and Special Interest Areas, and Visual Resources:
  - —Permanent land use alteration associated with site development.
  - —Impacts on forest land associated with pipeline construction, including forested wetlands.
  - —Impact on residences near the pipeline construction work area.
  - —Evaluation of the project's consistency with coastal zone management area guidelines.
  - —Visual impacts associated with the new LNG terminal and storage tanks.
- Socioeconomics:
  - —Effects on transportation and traffic within the project area, including the increase of shipping traffic within the Calcasieu Ship Channel by approximately 210 LNG tankers per year.
  - —Effects of construction workforce demands on public services and temporary housing.
- Air Quality and Noise:
  - —Effects on local air quality and noise environment from construction and operation of the proposed facilities.
- Reliability and Safety:
  - —Assessment of hazards associated with shipping and storage of LNG.
  - —Assessment of hazards associated with natural gas pipelines.
- Alternatives:
  - —Assessment of the use of existing natural gas systems to reduce or avoid environmental impacts.
  - —Evaluation of alternative sites for the LNG import and storage facilities.
  - —Evaluation of pipeline route alternatives.
  - —Identification of measures to lessen or avoid impacts on the various resource and special interest areas.

[3] A pig is an internal tool used to clean, dry, or internally inspect a pipeline for potential leaks.

[4] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

- Cumulative Impact:
  —Assessment of the effect of the proposed project when combined with other past, present, or future actions in the same region.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1.
- Reference Docket No. CP02–374–000.
- Mail your comments so that they will be received in Washington, DC on or before August 16, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Public Scoping Meetings and Site Visit

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting we will conduct in the project area. The location and time for this meeting is listed below: August 6, 2002, 7:00 pm. Holiday Inn Express, 102 Mallard Street, Sulphur, Louisiana 70665, Telephone: 337–625–2500.

The public scoping meeting is designed to provide state and local agencies, interested groups, affected landowners, and the general public with more detailed information and another opportunity to offer your comments on the proposed project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

On the day of the meeting, we will also be conducting a limited site visit to the LNG terminal site and pipeline route. Anyone interested in participating in the site visit should meet at the proposed LNG terminal site, located approximately 15 miles south of Sulphur, Louisiana along Louisiana State Route 27, at 8:30 AM on August 6, 2002. The meeting place is a gravel drive on the left side of Louisiana State Route 27, two miles south of the Intracoastal Waterway bridge. Participants must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR385.214) (see appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EIS.

Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs at 1–866–208–FERC or on the FERC website (*http://www.ferc.gov*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18380 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–P

[5] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197]

Notice of Temporary Variance and Soliciting Comments, Motions To Intervene, and Protests

July 16, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for temporary variance to minimum flow releases

b. *Project No:* 2197–052

c. *Date Filed:* July 3, 2002

d. *Applicant:* Alcoa Power Generating Inc.

e. *Name of Project:* Yadkin

f. *Location:* The project is located on the Yadkin/Pee Dee River, in Montgomery, Stanley, Davidson, Rowan, and Davie Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a), 825(r) and sections 799 and 801.

h. *Applicant Contact:* Julian Polk, Alcoa Power Generating Inc., 293 NC 740 Highway, P.O. Box 576, Badin, NC 28009–0576, (704) 422–5617.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. T.J. LoVullo at (202) 219–1168, or e-mail address: *thomas.lovullo@ferc.gov.*

j. *Deadline for filing comments and or motions:* August 1, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2197) on any comments or motions filed.

k. *Description of Request:* As the result of a meeting held on July 3, 2002, Alcoa Power Generating Inc. (APGI or licensee), Duke Energy, Progress Energy, Aquila Energy Marketing Corporation, Commission staff, and representatives from most of the resources agencies with responsibility for water for the States of North Carolina and South Carolina concerning the drought in the project area and reservoir levels in the project reservoirs, there emerged a consensus that it would be prudent on behalf of all users of water on that watershed to reduce minimum releases from the Yadkin Project from 1,400 cubic feet per second (cfs) to 1,200 cfs. Accordingly, APGI requests the Commission grant it a temporary variance in the minimum release requirements from 1,400 cfs to 1,200 cfs until September 15, 2002, or further order of the Commission. On July 5, 2002, the Commission granted the variance request, but reserved authority to require changes to minimum releases associated with the temporary variance based upon comments received from this notice.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18387 Filed 7–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation at Stakeholder Meeting on the California Independent System Operator's Comprehensive Market Redesign Proposal

July 16, 2002.

The Federal Energy Regulatory Commission hereby gives notice that on July 23, 2002, members of its staff will attend the meeting sponsored by several stakeholders about the California Independent System Operator's Comprehensive Market Redesign Proposal. The staff's attendance is part of the Commission's ongoing outreach efforts. The meeting is sponsored by Tony Braun of Braun and Associates, P.C. and will be held at the offices of Sempra Energy, 101 Ash Street, San Diego, CA. This meeting is open to the public. The meeting may discuss matters at issue in Docket Nos. EL00–95–000 and ER02–1656–000. For more information, contact Tony Braun at (916) 441–1733, or Susan Pollonais at (202) 208–0011.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18386 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7248–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; 2003 Report to Congress on Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 2003 Report to Congress on Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows and expires one year from the effective date of the ICR. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 21, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 2063.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby

at EPA by phone at (202) 566–1672, by E-mail at auby.susan@epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2063.01 For technical questions about the ICR contact Kevin DeBell, Office of Water, at (202) 564–0040.

SUPPLEMENTARY INFORMATION:

Title: 2003 Report to Congress on Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows (EPA ICR No. 2063.01) expiring one year from the effective date of the ICR. This is a new collection.

Abstract: EPA is developing the 2003 Report to Congress on Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows to meet a requirement included in the Consolidated Appropriations Act for Fiscal Year 2001, Public Law 106–554. EPA's Office of Wastewater Management (OWM) will use data from federal sources, state environmental agencies, state and local health departments, and municipalities to determine, summarize, and report the extent of human health and environmental impacts caused by municipal combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs). This Report will also include information on resources spent to address these impacts and an evaluation of the technologies used by municipalities to address these impacts. In addition, this Report will support EPA's SSO Notice of Proposed Rulemaking effort and data integration efforts for the National Pollutant Discharge Elimination System (NPDES) program.

OWM's method for collecting and analyzing the data for CSOs and SSOs from state environmental agencies, state and local health departments, and municipalities is as follows: site visits; interviews; file review; and phone calls to a subset of publicly owned treatment works (POTWs) and health departments nationwide. In addition, information that is collected from the various entities is voluntary and available to the public.

The data collected and analyzed for this Report will include the location of permitted and unpermitted wastewater discharges, the volume of pollutants discharged, and the constituents discharged; environmental and public health impacts of discharges; the resources spent to address these impacts; and an evaluation of the technologies used to address these impacts.

The burden for states and municipalities to provide, analyze, and review data submitted is a total of 6,300 hours and a cost of $307,492. This burden will occur once, and the collection of information should be completed one-year from the effective date of the ICR. Of the total portion, the municipal burden is 2,565 hours and $121,986. The states burden is 3,735 hours and $185,506.

All data will be stored in a data management system developed by OWM. The data will be used as a cornerstone of the 2003 Report to Congress, giving federal offices, states, municipalities, and the public full access to the data collected both in print and through OWM's website (www.epa.gov/npdes).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 05/02/02 (67 *FR* 22077–22078); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information will vary in hours, depending on the available information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected: State environmental agencies; State and local health departments; Municipal wastewater treatment authorities

Estimated Number of Respondents: 535.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 6,300

Estimated Total Annualized Capital, O&M Cost Burden: $0.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2063.01 in any correspondence.

Dated: July 11, 2002.

Oscar Morales,

Director, Collection , Strategies Division.

[FR Doc. 02–18409 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7248–7]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at (202) 566–1672, or e-mail at *Auby.susan@epa.gov*. and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 2070.01; Reporting and Recordkeeping Requirements for NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Final Amendments Rule); Final Rule; in 40 CFR part 63, subpart EEE was approved 05/10/2002; OMB No. 2050–0187; expires 10/31/2004.

EPA ICR No. 0801.14; Requirements for Generators, Transporters, and Disposers under the RCRA Hazardous Waste Manifest System; was approved 05/10/2002; in 40 CFR 262.20, 262.21, 262.22, 262.23, 262.40, 262.42, 262.54, 262.55, 263.20, 263.22, 264.71, 264.72, 262.76, 265.71, 265.72 and 265.76; OMB No. 2050–0039; expires 05/31/2005.

EPA ICR No. 1773.05; Amendments to the Reporting and Recordkeeping Requirements for National Emissions Standards for Hazardous Air Pollutants

(NESHAP) for Hazardous Waste Combustors—Direct Final Rule; in 40 CFR part 63, subpart EEE; was approved 05/10/2002; OMB No. 2050–0171; expires 10/31/2004.

EPA ICR No. 1679.04; Federal Standards for Marine Tank Vessel Loading Operations and National Emission Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading Operations; in 40 CFR part 63, subpart Y; was approved 05/09/2002; OMB No. 2060–0289; expires 05/31/2005.

EPA ICR No. 1432.21; Recordkeeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transshipment and Feedstock Use of Ozone-Depleting Substances; in 40 CFR part 82; was approved 05/09/2002; OMB No. 2060–0170; expires 05/31/2005.

EPA ICR No. 2069.01; Reporting and Recordkeeping Requirements for National Emissions Standards for NESHAP: Interim Standards for Hazardous Wastes Combustors(Interim Standards Rule); Final Rule; was approved 05/07/2002; OMB No. 2050–0186; expires 10/31/2004.

EPA ICR No. 2043.01; Institutional Controls Tracking Systems and Costs Survey; was approved 05/27/2002; OMB No. 2050–0185; expires 05/31/2005.

EPA ICR No. 1648.04; Control Technology Determination for Equivalent Emission Limitations by Permit; was approved 05/27/2002; in 40 CFR part 63, subpart B; OMB No. 2060–0266; expires 05/31/2005.

EPA ICR No. 1850.03; NESHAP Primary Copper Smelters; in 40 CFR part 63, subpart QQQ; was approved 05/23/2002; OMB No. 2060–0476; expires 05/31/2005.

EPA ICR No. 1362.04; National Emission Standards for Coke Oven Batteries; in 40 CFR 63, subpart L; was approved 05/31/2002; OMB No. 2060–0253; expires 05/31/2005.

EPA ICR No. 1965.01; Soil Ingestion Research; was approved 05/06/2002; OMB No. 2050–0188; expires 05/31/2005.

Short-Term Extensions

EPA ICR No. 0012.11; Motor Vehicle Exclusion Determination; in 40 CFR 85.1703; OMB No. 2060–0124; on 05/09/2002 OMB extended the expiration date through 08/31/2002.

EPA ICR No. 0167.06; Verification of Test Parameters and Parts Lists for Light-Duty Vehicles and Light-Duty Trucks; OMB No. 2060–0094; on 05/09/2002 OMB extended the expiration date through 08/31/2002.

EPA ICR No. 1154.05; NESHAP Benzene Emissions from Bulk Transfer Operations; in 40 CFR part 61, subpart BB; OMB No. 2060–0182; on 05/09/2002 OMB extended the expiration date through 08/31/2002.

EPA ICR No. 1852.01; Exclusion Determinations for New Non-Road Spark-Ignited Engines At or Below 19 Kilowatts, New Compression-Ignited Engines At or Above 37 Kilowatts, New Marine Engines, and New On-Road Heavy; OMB No. 2060–0395; in 40 CFR part 85, subpart R, part 89, subpart A, part 90, subpart J, part 91, subpart K; on 05/15/2002 OMB extend the expiration date through 06/30/2002.

EPA ICR No. 1601.04; Air Pollution Regulations for Outer Continental Shelf Activities; in 40 CFR part 55; OMB No. 2060–0249; on 05/15/2002 OMB extended the expiration date through 06/30/2002.

Comment Filed

EPA ICR No. 2023.01; Recordkeeping and Reporting Requirements for the Clay Ceramics Manufacturing NESHAP; on 05/09/2002 OMB filed comment.

EPA ICR No. 1952.01; National Emission Standards for Hazardous Air Pollutants; Metal Furniture Surface Coating Operations; on 05/09/2002 OMB filed comment.

EPA ICR No. 2032.01; Recordkeeping and Reporting Requirements for NESHAP for Hydrochloric Acid Production; on 05/09/2002; OMB filed comment.

EPA ICR No. 1897.03; Information Requirements of Marine Diesel Engines (Nonroad Large SI Engines and Marine Engines and Boats) (Amendments); on 05/16/2002 OMB filed comment.

EPA ICR No. 0783.43; Motor Vehicle Emission Standards and Emission Credits Provisions (Highway Motorcycles and Recreational Vehicle Amendments); OMB No. 2060–0104; on 05/16/2002 OMB filed comment.

EPA ICR No. 2027.01; Recordkeeping and Reporting Requirements for NESHAP for Flexible Polyurethane Foam Fabrication; on 5/23/2002 OMB filed comment.

Dated: July 11, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–18408 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7248–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, NESHAP: Natural Gas Transmission and Storage Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: NESHAP: Natural Gas Transmission and Storage Facilities (40 CFR part 63, subpart HHH); OMB Control Number 2060–0418; expiration date July 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 21, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1789.03 and OMB Control No. 2060–0418, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1789.03. For technical questions about the ICR contact Dan Chadwick of the Office of Compliance at (202) 564–7054 or via e-mail at *chadwick.dan@epa.gov*

SUPPLEMENTARY INFORMATION:

Title: NESHAP: Natural Gas Transmission and Storage Facilities (40 CFR part 63, subpart HHH), OMB Control Number 2060–0418, EPA ICR Number 1789.03, expiration date July 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP), for the regulations published at 40 CFR part 63, subpart HHH were

proposed on February 6, 1998 and promulgated on June 17, 1999. These regulations apply to the following facilities in 40 CFR part 63, subpart HHH: facilities that are major sources or area sources of hazardous air pollutants (HAP) that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user, and that commences construction, modification or reconstruction after the date of proposal. Specifically exempted from this regulation are oil and natural gas production wells. This information is being collected to assure compliance with 40 CFR part 63, subpart HHH.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP.Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 5 years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on: 01/30/02 no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 19 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and Operators of Natural Gas Transmission andStorage Facilities.

Estimated Number of Respondents: 7.

Frequency of Response: On Occasion, Semi-Annually, Annually.

Estimated Total Annual Hour Burden: 581 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1789.03 and OMB Control No. 2060–0418 in any correspondence.

Dated: July 10, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–18411 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0154; FRL–7190–7]

Organophosphate Pesticides; Availability of the Revised Organophosphate Cumulative Risk Assessment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA is extending the comment period for the revised organophosphorous (OP) cumulative risk assessment for an additional 30 days. The revised OP cumulative risk assessment was released to the public for comment in the **Federal Register** of June 20, 2002. The revised assessment was developed as part of EPA's process for tolerance reassessments under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). By allowing access and opportunity for comment on the revised risk assessment, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information.

DATES: Comments, identified by the docket ID number OPP–2002–0154, must be received on or before August 21, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0154 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; fax number: (703) 308–8005; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining and submitting comments on the revisions to the OP pesticide cumulative risk assessment, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1 . *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also

go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/cumulative.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0154. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

As described in Unit III. of the notice published in the **Federal Register** of June 20, 2002 (67 FR 41993) (FRL–7183–1), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in that notice. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket ID number OPP–2002–0154 in the subject line on the first page of your response.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

EPA is extending the comment period for the revised OP cumulative risk assessment, which was released to the public for comment in the **Federal Register** of June 20, 2002 (67 FR 41993) (FRL–7183–1). The documents provide information on the revisions that were made to the preliminary OP cumulative risk assessment, which was released to the public in the **Federal Register** of December 28, 2001 (66 FR 67249) (FRL–6816–5).

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 17, 2002.

Lois Ann Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–18582 Filed 7–18–02; 1:33 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7249–2]

Announcement of Public Comment Period for Draft Contaminated Sediments Science Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comments.

SUMMARY: The Environmental Protection Agency has developed and requests public comment on the draft Contaminated Sediments Science Plan. The Contaminated Sediments Science Plan is available electronically at *http://www.epa.gov/superfund/action/guidance/cssp.pdf* and *http://www.epa.gov/superfund/action/guidance/cssp-appendix.pdf*. This science plan is a mechanism for the EPA to develop and coordinate Agency-wide science activities in the contaminated sediments area. Along with the EPA's contaminated sediments science activities database, this plan provides an analysis of the current Agency science activities in this area, identifies and evaluates the science gaps, and provides a strategy for filling those gaps. Implementation of the science recommendations will be contingent upon overall Agency priorities and resources available within the annual budgetary planning cycle. Four questions for which the EPA is particularly seeking public comment are provided below in the section Issues for Public Comment. The information submitted in response to this notice will be considered by the EPA in the completion of the final document.

DATES: Comments must be received on or before September 20, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions provided in section I.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Contact the RCRA/Superfund Call Center at (800) 424–9346; from the Washington, DC, metropolitan area call (703) 412–9810. The Telecommunications Device for the Deaf (TDD) number is (800) 553–7672; from the Washington, DC, metropolitan area the number is (703) 412–3323. For technical inquiries, you may contact Lee Hofmann, Office of Solid Waste and Emergency Response, Mail Code 5103T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at telephone

number 202–566–1928, or by email *hofmann.lee@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket:* The EPA has established an official public docket for this action under Docket ID No. SFUND–2002–0004. The official public docket is the collection of materials that is available for public viewing at EPA, Superfund Docket located at 1235 Jefferson Davis Highway, Arlington, Virginia. This Docket Facility is open from 9:00 a.m. to 4:00 p.m. EST, Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 603–9232.

2. *Electronic Access.* You may access this **Federal Register** notice or document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use the EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in the EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in the EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.

For public commenters, it is important to note that the EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in the EPA's electronic public docket as the EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When the EPA identifies a comment containing copyrighted material, the EPA will provide a reference to that material in the version of the comment that is placed in the EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to the EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in the EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in the EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about the EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by the EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. You may submit comments until 60 days from the date of this document. Comments received after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, the EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows the EPA to contact you in case the EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that the EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in the EPA's electronic public docket. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of the EPA's electronic public docket to submit comments to the EPA electronically is the EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access the EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources, Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. SFUND–2002–0004. The system is an "anonymous access" system, which means the EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *Superfund.docket@epa.gov*, Attention Docket ID No. SFUND–2002–0004. In contrast to the EPA's electronic public docket, the EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through the EPA's electronic public docket, the EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by the EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in the EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of your comments and enclosures (including references) to: EPA, Superfund Docket Contaminated Sediments Science Plan, Mail Code 5202G, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. SFUND–2002–0004. If you want receipt of your comments acknowledged, you must include a self-addressed, stamped envelope.

3. *By Hand Delivery or Courier.* Deliver an original and three copies of your comments and enclosures (including references) to: Superfund Docket, 1235 Jefferson Davis Highway, Arlington, Virginia, Attention Docket ID No. SFUND–2002–0004. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By Facsimile.* Fax your comments to: (703) 603–9240, Attention Docket ID. No. SFUND–2002–0004.

II. Purpose of the Science Plan

This Contaminated Sediments Science Plan is a mechanism for the U.S. Environmental Protection Agency (EPA) to develop and coordinate Agency-wide science activities in the contaminated sediments area. Along with the EPA's contaminated sediments science activities database, this plan provides an analysis of the current Agency science activities in this area, identifies and evaluates the science gaps, and provides a strategy for filling these gaps. The Contaminated Sediments Science Plan has three goals to promote the vision of providing a strong scientific basis for addressing contaminated sediments: (1) To develop and disseminate the tools and science necessary to address the management of contaminated sediments; (2) To enhance the level of coordination and communication of science activities dealing with contaminated sediments across the Agency Program and Regional Offices and the Office of Research and Development; and (3) To develop an effective, cost-efficient strategy to promote these scientific activities and research.

III. Description of Science Plan

The draft document has four chapters. Chapter 1 discusses the goals and objectives and how the Science Plan relates to the Agency's mandate. Chapter 2 provides an overview of the contaminated sediments work across the Agency. These issue summaries provide the overall context for the discussion of the specific research and science needs given in the rest of the Science Plan. Chapter 3, along with the EPA's contaminated sediments science activities database (Appendix A), is the data collection and analysis section of the Science Plan. It documents the current contaminated sediment science activities ongoing within the Agency and places these activities within the context of Agency goals. These activities are sediment site characterization, exposure assessment, human health and ecological risk assessment, risk communication, sediment remediation, baseline and post-remediation monitoring and information management and exchange activities. Significant data gaps and uncertainties in methodology/assessment procedures are identified. Finally, it proposes research and science activities to fill those data gaps and resolve related issues. Chapter 4 provides the key recommendations for future Agency science activities, including research, based upon the discussion in Chapter 3. For each recommendation, critical EPA partners, and the immediate or long-term nature of the science activity are proposed. An internal mechanism for implementing the science recommendations is proposed. Implementation of the science recommendations will be contingent upon overall Agency priorities and resources available within the annual budgetary planning cycle.

Issues for Public Comment: The EPA solicits comments on all aspects of the draft science plan. In particular, the EPA requests comments and information on the following questions: (1) The Contaminated Sediments Science Plan (Science Plan) is the first official Agency science plan of its kind designed to address a significant cross-agency environmental issue in a systematic and integrated fashion. Does the Science Plan adequately convey the need for such a strategic planning document, i.e., are the goals and objectives of the plan understandable and appropriate to the subject? (2) Are the major areas of contaminated sediments science (sediment site characterization, exposure assessment, human health effects and risk assessment, ecological effects and risk assessment, sediment remediation, baseline and post-remediation monitoring, risk communication, and information management and exchange activities) appropriately addressed? Are any major areas missing?

(3) Are the key recommendations clearly defined and appropriate to resolve the science needs discussed in Chapter 3?

(4) Are there other issues or key recommendations which should be considered in this Science Plan?

Dated: July 12, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 02–18406 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7248–8]

Valley Chemical Superfund Site/ Greenville, MS; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Valley Chemical Superfund Site (Site) located in Greenville, Mississippi, with Carl A. Bauer. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: June 26,2002.

James T. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–18407 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 02–1466]

Wireline Competition Bureau Seeks Comment on Smith Bagley, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Navajo Reservation in Utah

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In a Public Notice in this proceeding released on June 21, 2002, the Wireline Competition Bureau sought comment on Smith Bagley's petition seeking designation as an eligible telecommunications carrier to receive Federal universal service support for the provision of service on the Navajo Reservation in Utah.

DATES: Comments are due on or before August 21, 2002. Reply comments are due on or before September 5, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. *See* Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Anita Cheng, Assistant Division Chief,

Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On May 24, 2002, Smith Bagley, Inc. (Smith Bagley) filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive Federal universal service support for the provision of service on the Navajo Reservation in Utah. Smith Bagley contends that its service offering to tribal residents on the Navajo Reservation is not subject to the jurisdiction of the Public Service Commission of Utah (Utah Commission). Smith Bagley also maintains that it satisfies all the statutory and regulatory requirements to be an ETC, and that designating Smith Bagley as an ETC for the Navajo Reservation in Utah will advance the public interest. The Wireline Competition Bureau seeks comment on Smith Bagley's petition.

In the *Twelfth Report and Order*, 65 FR 47941, August 4, 2000, the Commission concluded that a carrier seeking ETC designation of service provided on tribal lands may petition the Commission under section 214(e)(6), without first seeking designation from the appropriate state commission. The petitioner must provide copies of its petition to the appropriate state commission at the time of filing with the Commission. Pursuant to the guidelines established in the *Twelfth Report and Order*, the Commission will publish a copy of this Public Notice, or a summary thereof, in the **Federal Register**. The Commission will also send the Public Notice announcing the comment and reply comment dates to the Utah Commission by overnight express mail to ensure that the state commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1415, 1.419, interested parties may file comments on or before August 21, 2002 and reply comments on or before September 5, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *<http://www.fcc.gov/e-file/ecfs.html>*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 Twelve Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Anita Cheng,

Assistant Division Chief, Telecommunications Access Policy Division.

[FR Doc. 02–18350 Filed 7–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2562]

Petitions for Reconsideration of Action in Rulemaking Proceedings

July 11, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full test of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by August 6, 2002. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Rulemaking to amend Parts 1, 2, 21 and 25 of the Commission's Rules to redesignate the 27.5–29.5 GHz frequency band, to reallocate the 29.5–30.0 GHz frequency band, to establish rules and polices for local multipoint distribution service and for fixed satellite services (CC Docket No. 92–297).

Number of Petitions Filed: 1.

Subject: Amendment of the FM Table of Allotments (MM Docket No. 00–69).

Number of Petitions Filed: 3.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–18369 Filed 7–19–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1422–DR]

Arizona; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of

Arizona (FEMA–1422–DR), dated June 25, 2002, and related determinations.

EFFECTIVE DATE: July 7, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 7, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18355 Filed 7–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1422–DR]

Arizona; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arizona (FEMA–1422–DR), dated June 25, 2002, and related determinations.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rick Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or Rick.Robuck@fema.gov.

Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sandra L. Coachman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Scott Wells as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18356 Filed 7–19–02; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1426–DR]

Guam; Amendment No.1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Territory of Guam, (FEMA–1426–DR), datedJuly 6, 2002, and related determinations.

EFFECTIVE DATE: July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Territory of Guam is hereby amended to include Individual Assistance for the Territory of Guam determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 6, 2002:

The Territory of Guam for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance at 75 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18353 Filed 7–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1416–DR]

Illinois; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois, (FEMA–1416–DR), dated May 21, 2002, and related determinations.

EFFECTIVE DATE: July 10, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 21, 2002:

Hamilton County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18351 Filed 7–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1418–DR]

Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana, (FEMA–1418–DR), datedJune 13, 2002, and related determinations.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 2002:

Sullivan County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18352 Filed 7–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1427–DR]

Federated States of Micronesia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Federated States of Micronesia, (FEMA–1427–DR), dated July 11, 2002, and related determinations.

EFFECTIVE DATE: July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 11, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia, resulting from Tropical Storm Chata'an, including flooding, mudslides and landslides on July 2–4, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the Federated States of Micronesia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under Public Assistance in the designated area, and Hazard Mitigation throughout the Federated State of Micronesia, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Individual Assistance is later warranted, Federal funds provided under the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William L. Carwile, III of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the Federated States of Micronesia to have been affected adversely by this declared major disaster:

Chuuk State for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance at 75 percent Federal funding.

All areas within the Federated States of Micronesia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18354 Filed 7–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 98–14]

Shipping Restrictions, Requirements and Practices of the People's Republic of China

July 17, 2002.

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission updates a Further Notice of Inquiry, to reflect a recent extension of deadline for comments by the Ministry of Communications of the People's Republic of China.

DATE: July 22, 2002.

FOR FURTHER INFORMATION CONTACT: David R. Miles, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: On June 28, 2002, the Federal Maritime Commission ("FMC" or "Commission") issued a Further Notice of Inquiry ("FNOI") soliciting comments with respect to proposed implementing rules of the Ministry of Communications ("MOC") of the People's Republic of China ("PRC"). 67 FR 44843–44 (July 5, 2002). The FNOI referred to MOC's request for comments as having a deadline for comments of July 15, 2002. However, MOC announced on its official website (*http://www.moc.gov.cn*) on July 16, 2002, that it had extended this deadline, and that it would receive comments on the proposed rules until July 31, 2002.

In light of the fact that the Commission's FNOI referred to the MOC's original deadline of July 15, 2002, it now wishes to notify the shipping public that this deadline should be updated to reflect the revised MOC deadline, which is July 31, 2002.

Now therefore, it is ordered, that this Notice be published in the **Federal Register**.

By the Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–18379 Filed 7–19–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Bayerische Hypo-und Vereinsbank AG, Munich, Germany; which is partially owned by Munchener Ruckversicherungs-Gesellschaft AG, Munich, Germany, which is partially owned by Allianz AG, Munich, Germany; to engage *de novo* through its subsidiary, Identrus, LLC, New York, New York, in certain data processing activities, pursuant to § 225.28(b)(14), of Regulation Y. See also The Royal Bank of Canada, 82 Fed. Res. Bull. 363 (1996) (the "First Integrion Order") and the Royal Bank of Canada, 83 Fed. Res. Bull. 135 (1997) (the "Second Integrion Order"; and together with the First Integrion Order, the "Integrion Orders"). See also, Cardinal Bancshares, Inc., 82 Fed. Res. Bull. 674 (1996) (permitting bank holding company to provide data processing and transmission services to unaffiliated institutions to assist those institutions in offering banking and financial services to their customers over the internet); Toronto-Dominion Bank, 83 Fed. Res. Bull. 335 (1997) (permitting bank holding company to provide computer software to broker-dealers and other financial institutions to permit those institutions to execute purchases and sales of securities for their customers).

Board of Governors of the Federal Reserve System, July 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–18466 Filed 7–19–02; 8:45 am]

BILLING CODE 6210–01–S

OFFICE OF GOVERNMENT ETHICS

Submission for OMB Review; Comment Request: Proposed Slightly Revised OGE Form 450 Executive Branch Confidential Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted a slightly revised version of its OGE Form 450 for confidential financial disclosure reporting under its existing executive branch regulations for review and three-year approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

DATES: Comments by the agencies and the public on this proposal are invited and should be received by August 21, 2002.

ADDRESSES: Comments should be sent to Mr. Joseph F. Lackey, Jr.,Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; Telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: Mary T. Donovan at the Office of Government Ethics; Telephone: 202–208–8000, ext. 1185; TDD: 202–208–8025; FAX: 202–208–8037. A copy of the proposed slightly revised OGE Form 450 and the rest of the OGE submission package to OMB may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics has submitted a proposed slightly revised version of the OGE Form 450 Executive Branch Confidential Financial Disclosure Report for three-year approval (reclearance) by OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35. The OGE Form 450 (OMB control # 3209–0006) collects information from covered department and agency officials as required under OGE's executive branchwide regulatory provisions in subpart I of 5 CFR part 2634. The OGE Form 450 serves as the uniform report form for collection, on a confidential basis, of financial information required by the OGE regulation from certain new entrant and incumbent employees of the Federal Government executive branch departments and agencies in order to allow ethics officials to conduct conflict of interest reviews and to resolve any actual or potential conflicts found.

The basis for the OGE regulation and the report form is two-fold. First, section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990) makes OGE responsible for the establishment of a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public financial disclosure under the Ethics in Government Act of 1978 (the "Ethics Act"), as amended, 5 U.S.C. appendix. Second, section 107(a) of the Ethics Act, 5 U.S.C. appendix 107(a), further provides authority for OGE as the supervising ethics office for the executive branch of the Federal Government to require that appropriate executive agency employees file confidential financial disclosure reports, "in such form as the supervising ethics office may prescribe." The current version of the OGE Form 450, adopted in 1999, together with the underlying OGE 5 CFR part 2634 executive branchwide financial disclosure regulation, issued in 1992 and modified at various times since, constitute the basic form OGE has prescribed for such confidential financial disclosure in the executive branch.

The changes to the OGE Form 450 that OGE is proposing at this time (as also referenced on the mark-up copy of

the form) are updating the contact information to reflect recent OGE organizational changes, formally adding a Part I (Assets and Income) continuation page (which the fillable versions on OGE's Web site already incorporate), and the forthcoming adjustment to the thresholds for reporting of gifts and travel reimbursements for regular employee annual filers in Part V of the OGE Form 450. Currently these thresholds require the reporting of gifts and reimbursements totaling more than $260 from any one source during the annual reporting period, subject to a de minimis exclusion for any item valued at $104 or less (which is not counted toward the overall threshold). The thresholds will have to be adjusted sometime this year when the General Services Administration redefines "minimal value" under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342(a)(5), for the three-year period 2002–2004. Currently, foreign gifts minimal value is set at $260 or less pursuant to 41 CFR 102–42.10 of GSA's regulations. Under section 102(a)(2)(A) and (B) of the Ethics Act, 5 U.S.C. appendix 102(a)(2)(A) and (B), the public financial disclosure reporting thresholds are pegged to any adjustment of minimal value over $250 (at the same time and by the same amount percentage). The Office of Government Ethics has extended the statutory thresholds to confidential financial disclosure reporting for the executive branch. *See* 5 CFR 2634.907(a)(3), so incorporating the reporting of gifts and reimbursements specified in 5 CFR 2634.304 for public reports but without amounts or values. Once GSA adjusts minimal value for foreign gifts, OGE will revise the gifts and reimbursements reporting thresholds of the OGE Form 450 and amend the underlying part 2634 regulation (public financial disclosure reporting would also be affected). The Office of Government Ethics will advise the departments and agencies of any such change, make the modified form available on its Web site, and coordinate with OMB on the paperwork and rulemaking aspects of the revision.

In addition, OGE has made proposed revisions to the form since publication of the first round paperwork notice (*see* below). The Office of Government Ethics is separately working on issuing its own proposed Privacy Act regulation and updating the OGE/GOVT–2 executive branchwide system of records notice (covering Confidential Statements of Employment and Financial Interests). As a result, the Privacy Act Statement, which includes paraphrases of the routine uses, on the proposed OGE Form 450 will need to be revised. As soon as possible, a summary of the anticipated changes relevant to that OGE Form 450 statement will be prepared for inclusion with the mark-up copy of the form as proposed for revision, which is available from OGE upon request. Once the new language in OGE's forthcoming Privacy Act regulation and systems notice is finalized (anticipated completion date is January 2003), OGE will request permission from OMB to modify the OGE Form 450 (with notice to OMB at that time) without further paperwork clearance even though the new wording will likely take effect after reclearance of the renewed form. As with the future gifts/reimbursements thresholds changes (see above), OGE will also advise the departments and agencies of the privacy statement changes, make the modified form available on the OGE Web site, and coordinate with OMB at that time.

The Office of Government Ethics will continue to make the OGE Form 450 available to departments and agencies and their reporting employees through the Forms, Publications & Other Ethics Documents section of OGE's Internet Web site (address: *http://www.usoge.gov*). This allows employees two different fillable options for preparing their report on a computer (in addition to a downloadable blank form), although a printout and manual signature of the form are still required unless specifically approved otherwise by OGE. Moreover, OGE also permits departments and agencies to develop or utilize their own electronic versions of the OGE Form 450 provided they precisely duplicate the paper original to the extent technically possible. While OGE sees no legal bar to electronic filing and electronic signatures for the OGE Form 450, agencies must meet the requirements of the Government Paperwork Elimination Act (GPEA) and other applicable laws and issues such as security, verification, non-repudiation, *etc.* Those agencies seeking to develop or utilize an electronic version of the OGE Form 450, and who have not so informed OGE, are asked to advise OGE's Deputy Director for Administration and Information Management of their intentions to do so and to provide assurance of their adherence to the previously mentioned requirements.

Moreover, since 1992 various departments and agencies have developed, with OGE review/approval, alternative reporting formats, such as certificates of no conflict, for certain classes of employees. Other agencies provide for additional disclosures pursuant to independent organic statutes and in certain other circumstances when authorized by OGE. In 1997, OGE itself developed the new OGE Optional Form 450–A (Confidential Certificate of No New Interests (Executive Branch)) for possible agency and employee use in certain years, if applicable. That optional form continues in use at various agencies. However, the OGE Form 450 remains the uniform executive branch report form for most of those executive branch employees who are required by their agencies to report confidentially on their financial interests. The OGE Form 450 is to be filed by each reporting individual with the designated agency ethics official at the executive department or agency where he or she is or will be employed.

Reporting individuals are regular employees whose positions have been designated by their agency under 5 CFR 2634.904 as requiring confidential financial disclosure in order to help avoid conflicts with their assigned responsibilities; under that section, all special Government employees (SGE) are also generally required to file. Agencies may, if appropriate under the OGE regulation, exclude certain regular employees or SGEs as provided in 5 CFR 2634.905. Reports are normally required to be filed within 30 days of entering a covered position (or earlier if required by the agency concerned), and again annually in the fall if the employee serves for more than 60 days in the position. As indicated in § 2634.907 of the OGE regulation, the information required to be collected includes assets and sources of income, liabilities, outside positions, employment agreements and arrangements, and gifts and travel reimbursements, subject to certain thresholds and exclusions.

Most of the persons who file this report form are current executive branch Government employees at the time they complete their report. However, some filers are private citizens who are asked to submit the report by the Senate committee considering their nomination for a PAS position (Presidential Appointment with Senate confirmation), or who are asked by their prospective agency to file a new entrant report prior to entering Government service in order to permit advance checking for any potential conflicts of interest and resolution thereof by agreement to recuse or divest, obtaining of a waiver, *etc.* Based on OGE's annual agency ethics program questionnaire responses for 1999, 2000, and 2001 (the

figures for the latter year now being available), OGE estimates that an average of approximately 264,509 OGE Form 450 report forms will be filed each year for the next three years throughout the executive branch (some 4,000 less than estimated in the first round **Federal Register** notice when the 2001 figures were not yet available). This estimate is based on average number of report forms filed branchwide for 1999 through 2001 as indicated in the Questionnaire responses, some 271,834 in 1999, 265,053 in 2000, and 256,639 in 2001 for a total of 793,526 with that number then divided by three and rounded to give the projected annual average of 264,509 reports. Of these reports, OGE estimates that no more than between 5% and 10%, or some 13,225 to 26,451 per year at most, will be filed by private citizens, those potential (incoming) regular employees whose positions are designated for confidential disclosure filing as well as potential special Government employees whose agencies require that they file their new entrant reports prior to assuming Government responsibilities. No termination reports are required for the OGE Form 450.

Each filing is estimated to take an average of one-and-one-half hours. The number of private citizens whose reports are filed each year with OGE itself is less than 10, but pursuant to 5 CFR 1320.3(c)(4)(i), the lower limit for this general regulatory-based requirement is set at 10 private persons (OGE-processed reports). This yields an annual reporting burden of 15 hours, the same as in OGE's current OMB inventory for this information collection. The remainder of the private citizen reports are filed with other departments and agencies throughout the executive branch.

On March 18, 2002, OGE published its first round notice of the forthcoming request for paperwork clearance for the proposed slightly revised OGE Form 450. *See* 67 FR 12017–12018. The Office of Government Ethics did not receive any comments in response to that notice, though one agency requested a copy of the proposed form.

In this second notice, public comment is again invited on the proposed slightly revised OGE Form 450 as set forth in this notice, including specifically views on: the need for and practical utility of this proposed modified collection of information; the accuracy of OGE's burden estimate; the enhancement of quality, utility and clarity of the information collected; and the minimization of burden (including the use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: July 15, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 02–18343 Filed 7–19–02; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for a Health Services Research Dissertation Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Health Services Research Dissertation Grant on Modeling Health Care Utilization.

Date: July 25, 2002 (Open on July 25 from 12:30 p.m. to 12:40 p.m. and closed for remainder of the teleconference meeting).

Place: Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, 4W5, Division of Scientific Review, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 8, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–18330 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for a Minority Students Predoctoral Fellowship Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Minority Students Predoctoral Fellowship Grant on Physician, Financial Incentives for Health Care Quality.

Date: July 26, 2002 (Open on July 26, from 11:30 a.m. to 11:40 a.m. and closed for remainder of the teleconference meeting).

Place: Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, 4W5, Division of Scientific Review, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and

Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 8, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–18331 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and Date: 12 p.m.–8 p.m., August 27, 2002.

Place: YWCA of Oak Ridge, 1660 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37830. Telephone: (865) 482–9922.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: A Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE, delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters To Be Discussed: The agenda includes a discussion of the public health assessment, updates from the Public Health Assessment, Health Needs Assessment, Agenda, Guidelines and Procedures, and Outreach and Communications Workgroups. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR (28737), fax 404/498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 16, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–18359 Filed 7–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02207]

Core State Injury Surveillance and Program Development; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Core State Injury Surveillance and Program Development, focused in two phases: Phase I Basic Core Injury Program Development; Phase II Enhanced Core Injury Program Development. This Program addresses "Healthy People 2010" focus area of Injury and Violence Prevention.

The purposes of the cooperative agreements are to develop, implement and evaluate injury core and/or surveillance programs in one of the specified injury-related priority areas.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control: Enhance the capacity of states to implement effective injury prevention programs.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a), 317(k)(2), 391, 392, 394, and 394A [42 U.S.C. 241(a), 247b(k)(2), 280b, 280b–1, 280b–2, 280b–3] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

C. Eligible Applicant

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. In consultation with States, assistance may be provided to political subdivisions of States.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, or loan.

D. Availability of Funds

Approximately $300,000 is available in FY 2002 to fund up to four awards for Phase I Basic Core Injury Development or Phase II Enhanced Core Injury Development. The average award amount would be $75,000. It is expected that the award will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of three years. Funding estimates may change.

Matching funds are not required for this program.

Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and on the availability of funds.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient

will be responsible for the activities under 1. Recipient Activities and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

Phase I: Basic Core Injury Program Development

a. Establish an injury focal point and coordinating process within the public health agency.

b. Establish an injury advisory council to address issues relevant to injury prevention and control in the State.

c. Conduct data review and analysis to determine the availability of data about injury problems and the potential for solutions in the State and region in comparison to the nation. Develop an annotated report containing this information.

d. Identify and catalog current and potential injury prevention and control resources within the State.

e. Develop a State injury plan which is based on data and which is prioritized for the prevention and control of injuries and serves as a resource for other State agencies.

Phase II: Enhanced Core Injury Program Development

In addition to the activities indicated for Phase I, above, applicant will also:

a. Analyze existing data to define the magnitude of the injury problem in the State, the populations at risk, and the causes of injury.

b. Use the 11 recommended core data sets to produce and disseminate written reports on injuries within the State and conduct national comparisons. (To obtain a copy of Consensus recommendations, see Section J. "Where to Obtain Additional Information".)

c. Evaluate data to determine whether data sources can be linked and whether linking them provides any benefit to prevention.

d. Develop or update a State injury plan which is based on data and which is prioritized for the prevention and control of injuries and serve as a resource for other State agencies.

e. Develop, update, or expand an injury advisory council to provide input on issues relevant to injury prevention and control in the State.

f. Provide coordination for injury activities of the public health agency.

g. Participate in a process for establishing and reviewing some components (e.g., data collection and analysis; coordination and collaboration; and technical support and training) of the five minimum components used to define a Core Injury Program. Share "lessons learned" about and through this process with other States.

2. CDC Activities

a. Provide consultation on planning, implementation, evaluation, data analysis, and dissemination of results.

b. Provide coordination between and among the States, by assisting in the transfer of information and methods developed to other programs, and providing up-to-date information.

c. Provide technical assistance for the Behavioral Risk Factor Surveillance System (BRFSS) and other available specific injury surveillance modules when requested.

d. Operate a process of evaluation and improvement in which lessons learned are shared among other States implementing the same type of program.

e. Coordinate compilation of "lessons learned" through this process and communicate them.

F. Content

Pre-Application Workshop for Applicants

For interested applicants, a telephone conference call for pre-application technical assistance will be held on July 24, from 2:00 pm to 3:00 pm, Eastern Standard Time. The conference name is NCIPC Core Injury, the bridge number for the conference call is 404–639–4100 or 1–800–713–1971 and the pass code is 112180 If you have a problem during your conference, you may press *0 at anytime to signal the attendant. If you have questions about the technical operations of the teleconference equipment, please call 404–639–7550.

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than one page single spaced, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to estimate the potential review workload and avoid conflict of interest in the review. It should include the following information, the name, organization, address, and telephone number of the Principal Investigator and whether you are applying for Phase I or Phase II funding.

Application

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Subject to the limitations described under Eligible Applicants, Section B above, States may choose to apply for Phases I or II. A separate application should be submitted for each Phase (I, II) applied for. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and unreduced 12 pt Times Roman (or equivalent size) font. Number each page consecutively and provide a complete Table of Contents. The entire application, with appendices, should be no longer than 70 pages total. The application must include a one-page abstract and summary of the proposed effort. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

G. Submission and Deadline

Letter of Intent (LOI)

On or before July 31, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

They may also be obtained by calling the Grants Management Specialist listed in this announcement.

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable) Narrative

Forms may not be submitted electronically.

The application must be received by 5 p.m. Eastern Time, August 21, 2002. Submit the application to: Technical Information Management—PA02207, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants

sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Need for Core Program Development (30 points)

For Phase I Applicants

The extent to which the applicant describes the need for Core Program funding and the minimal nature of their injury program.

The extent to which the applicant describes the level of agency resources directed toward injury activities, if applicable, and how this additional funding will contribute to efforts to initiate or improve existing or planned injury surveillance activities.

The extent to which the applicant defines the agency's commitment to coordinating injury prevention and control activities through a focal point.

For Phase II Applicants

The extent to which the applicant describes an existing injury program which continually maintains capacity to conduct injury activities.

2. Methods and Staffing (30 points)

Phase I and II

The extent to which the applicant provides: (1) a detailed description of how staffing resources (including epidemiological resources) will be allocated and used to accomplish each objective and overall program goals, and which includes designation of a injury program director or equivalent with responsibility for directing and coordinating an injury prevention and control program; (2) a reasonable and complete schedule for implementing and completing all activities; (3) a description of the roles of each unit, organization, or agency, and evidence of coordination, supervision, and degree of commitment (e.g., time, in-kind, financial) of staff, organizations, and agencies involved in injury surveillance activities; (4) evidence of access or assignment of epidemiological expertise for performing routine data review and analysis activities and providing technical advice and consultation for other State agencies.

3. Evaluation (20 points)

Phase I and II

The extent to which the proposed evaluation system is detailed, addresses goals and objectives of the program, and will document program process, effectiveness, and impact. The extent to which the applicant demonstrates potential data sources for evaluation purposes and methods to evaluate the data sources, and documents staff availability, expertise, experience, and capacity to perform the evaluation.

The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions and continuous program improvement is present.

4. Goals and Objectives (10 points)

Phase I and II

The extent to which the applicant includes goals which are relevant to the purpose of the proposal and feasible to accomplish during the project period.

The extent to which the applicant has included objectives which are feasible to accomplish during the budget period, and which address all activities necessary to accomplish the purpose of the proposal.

The extent to which the objectives are specific, time-framed, measurable, and realistic.

5. Collaboration (10 points)

Phase I and II

The extent to which relationships between the program and other organizations, agencies, and health department units that will relate to the program or conduct related activities are clear, complete and provide for complementary or supplementary interactions.

The extent to which advisory group membership and roles are clear and appropriate.

The extent to which relationships with local academic institutions are completely described and appropriate.

The extent to which surveillance, if any, of core injury conditions will be developed and coordinated to enable comparability of Traumatic Brain Injury (TBI) and other injury data with other States and jurisdictions.

6. Budget and Justification (not scored)

Phase I and II

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semi-annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where To Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the announcement.

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

AR–14 Accounting System Requirements

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page on the Internet: *http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Angie Nation, Grants Management Specialist—PA 02207, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2719, E-mail address: *Acn4@cdc.gov.*

For program technical assistance, contact: Cecil Threat, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway N.E., Mailstop F42, Atlanta, GA 30341–3724, Telephone: (770) 488–1236, Fax: 770–488–4338, E-mail: CThreat@cdc.gov.

Dated: July 15, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–18362 Filed 7–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02109]

War-Related Mental Health and Trauma Assessment Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY)2002 funds for cooperative agreements for War-Related Mental Health & Trauma Assessment program was published on July 8, 2002, Volume 67, Number 130, pages 45121–45123. The notice is amended as follows: On page 45121, column 2, paragraph "D. Availability of Funds", the following change is made: It is expected that the awards will begin on or about September 1, 2002.

Dated: July 16, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–18358 Filed 7–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–243]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Agreement Application, Health Care Prepayment Plan and Supporting Regulations in 42 CFR 417.800–.840; *Form No.:* CMS–R–243 (OMB# 0938–0768); *Use:* An organization must meet certain regulatory requirements to be a Health Care Prepayment Plan that is eligible for a Medicare Section 1833 agreement. The application is the collection form to obtain the information from an organization that enables CMS staff to determine compliance with the regulations; *Frequency:* one time submission; *Affected Public:* Business or other for-profit, Not-for-profit institutions, State, local and Tribal Government; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 750.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 12, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18431 Filed 7–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–843]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; Title of Information Collection: Durable Medicare Equipment Regional Carrier, Certificate of Medical Necessity; *Form No.:* CMS–843 (OMB# 0938–NEW—The term "new" means we are asking for a new OMB Number; however, nothing related to this collection has changed); *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. These forms contain medical information necessary to make a appropriate claim determination. Suppliers and physicians will complete these forms; *Frequency:* On Occasion; *Affected Public:* Business or other for-profit, Federal Government, Not-for-profit institutions; *Number of Respondents:* 2,700;*Total Annual Responses:* 129,000; *Total Annual Hours:* 32,250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235,Washington, DC 20503.

Dated: July 11, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18432 Filed 7–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10062]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Collection of Diagnostic Data from Medicare+Choice Organizations for Risk Adjusted Payments and Supporting Regulations Part 422 Subparts F and G; *Form No.:* CMS–10062 (OMB# 0938-New); *Use:* CMS requires hospital inpatient diagnostic data as well as diagnostic data from ambulatory settings (hospital outpatient and physician) from Medicare+Choice organizations to develop and implement risk adjustment methodology as required by the Balanced Budget Act of 1997 and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 156; *Total Annual Responses:* 6,605,691; *Total Annual Hours:* 18,877.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235,Washington, DC 20503.

Dated: July 11, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18433 Filed 7–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0296]

Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational New Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

DATES: Submit written or electronic comments on the collection of information by September 20, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Investigational New Drug (IND) Regulations—Part 312 (21 CFR Part 312)—(OMB Control Number 0910–0014)—Extension

FDA is requesting OMB approval for the reporting and recordkeeping requirements contained in the FDA regulation "Investigational New Drug Application" part 312 (21 CFR part 312). This regulation implements provisions of section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

FDA is charged with implementing statutory requirements that drug products marketed in the United States be shown to be safe and effective, properly manufactured, and properly labeled for their intended uses. Section 505(a) of the act provides that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well-controlled studies, including studies in humans, that are conducted by qualified experts. The investigational new drug application (IND) regulations establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. Submissions are reviewed by medical officers and other agency scientific reviewers assigned responsibility for overseeing the specific study. The IND regulations also contain recordkeeping requirements that pertain to the responsibilities of sponsors and investigators. The detail and complexity of these requirements are dictated by the scientific procedures and human subject safeguards that must be followed in the clinical tests of investigational new drugs.

The IND information collection requirements provide the means by which FDA can: (1) Monitor the safety of ongoing clinical investigations; (2) determine whether the clinical testing of a drug should be authorized; (3) ensure production of reliable data on the metabolism and pharmacological action of the drug in humans; (4) obtain timely information on adverse reactions to the drug; (5) obtain information on side effects associated with increasing doses; (6) obtain information on the drug's effectiveness; (7) ensure the design of well-controlled, scientifically valid studies; and (8) obtain other information pertinent to determining whether clinical testing should be continued and information related to the protection of human subjects. Without the information provided by industry in response to the IND regulations, FDA cannot authorize or monitor the clinical investigations which must be conducted prior to authorizing the sale and general use of new drugs. These reports enable FDA to monitor a study's progress, to assure subject safety, to assure that a study will be conducted ethically, and to increase the likelihood that the sponsor will conduct studies that will be useful in determining whether the drug should be marketed and available for use in medical practice.

There are two forms that are required under part 312: Form FDA–1571—"Investigational New Drug Application."

A person who intends to conduct a clinical investigation submits this form to FDA. It includes: (1) A cover sheet containing background information on the sponsor and investigator; (2) a table of contents; (3) an introductory statement and general investigational plan; (4) an investigator's brochure describing the drug substance; (5) a protocol for each planned study; (6) chemistry, manufacturing, and control information for each investigation; (7) pharmacology and toxicology information for each investigation; and (8) previous human experience with the investigational drug.

Form FDA–1572—"Investigator Statement." Before permitting an investigator to begin participation in an investigation, the sponsor must obtain and record this form. It includes background information on the investigator and the investigation, and a general outline of the planned investigation and the study protocol.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements in part 312.

TABLE 1.—REPORTING REQUIREMENTS

21 CFR Section	Explanations
312.7(d)	Applications for permission to sell an investigational new drug.
312.10(a)	Applications for waiver of requirements under part 312. Estimates for this requirement are included under §§ 312.23 and 312.31.
312.20(c)	Applications for investigations involving an exception from informed consent under § 50.24 (21 CFR 50.24). Estimates for this requirement are included under § 312.23.
312.23	INDs (content and format).
312.23(a)(1)	Cover sheet FDA–1571.
312.23(a)(2)	Table of contents.
312.23(a)(3)	Investigational plan for each planned study.
312.23(a)(5)	Investigator's brochure.
312.23(a)(6)	Protocols—Phase 1, 2, and 3.
312.23(a)(7)	Chemistry, manufacturing, and control information.
312.23(a)(7)(iv)(*a*),(*b*),(*c*)	A description of the drug substance, a list of all components, and any placebo used.
312.23(a)(7)(iv)(*d*)	Labeling: Copies of labels and labeling to be provided each investigator.
312.23(a)(7)(iv)(*e*)	Environmental impact analysis regarding drug manufacturing and use.
312.23(a)(8)	Pharmacological and toxicology information.
312.23(a)(9)	Previous human experience with the investigational drug.
312.23(a)(10)	Additional information.
312.23(a)(11)	Relevant information.
312.23(f)	Identification of exception from informed consent.
312.30	Protocol amendments.
312.30(a)	New protocol.
312.30(b)	Change in protocol.
312.30(c)	New investigator.
312.30(d)	Content and format.
312.30(e)	Frequency.
312.31	Information amendments.
312.31(b)	Content and format.
	Chemistry, toxicology, or technical information.
312.32	Safety reports.
312.32(c)(1)	Written reports to FDA and to investigators.
312.32(c)(2)	Telephone reports to FDA for fatal or life-threatening experience.
312.32(c)(3)	Format or frequency.
312.32(d)	Follow up submissions.
312.33	Annual reports.
312.33(a)	Individual study information.
312.33(b)	Summary information.
312.33(b)(1)	Adverse experiences.
312.33(b)(2)	Safety report summary.
312.33(b)(3)	List of fatalities and causes of death.
312.33(b)(4)	List of discontinuing subjects.
312.33(b)(5)	Drug action.
312.33(b)(6)	Preclinical studies and findings.
312.33(b)(7)	Significant changes.
312.33(c)	Next year general investigational plan.
312.33(d)	Brochure revision.
312.33(e)	Phase I protocol modifications.
312.33(f)	Foreign marketing developments.
312.35	Treatment use of investigational new drugs.
312.35(a)	Treatment protocol submitted by IND sponsor.
312.35(b)	Treatment IND submitted by licensed practitioner.
312.36	Requests for emergency use of an investigational new drug.
312.38(b) and (c)	Notification of withdrawal of an IND.
312.42(e)	Sponsor requests that a clinical hold be removed and submits a complete response to the issues identified in the clinical hold order.
312.44(c) and (d)	Opportunity for sponsor response to FDA when IND is terminated.
312.45(a) and (b)	Sponsor request for or response to inactive status determination of an IND.
312.47(b)	"End-of-Phase 2" meetings and "Pre-NDA" meetings.
312.53(c)	Investigator information.
	Investigator report (Form FDA–1572) and narrative; Investigator's background information; phase 1 outline of planned investigation; and phase 2 outline of study protocol; financial disclosure information.
312.54(a) and (b)	Sponsor submissions concerning investigations involving an exception from informed consent under § 50.24.
312.55(b)	Sponsor reports to investigators on new observations, especially adverse reactions and safe use. Only "new observations" are estimated under this section; investigator brochures are included under § 312.23.

TABLE 1.—REPORTING REQUIREMENTS—Continued

21 CFR Section	Explanations
312.56(b), (c), and (d)	Sponsor monitoring of all clinical investigations, investigators, and drug safety; notification to FDA.
312.58(a)	Sponsor's submission of records to FDA on request.
312.64	Investigator reports to the sponsor.
312.64(a)	Progress reports.
312.64(b)	Safety reports
312.64(c)	Final reports.
312.64(d)	Financial disclosure reports.
312.66	Investigator reports to Institutional Review Board. Estimates for this requirement are included under § 312.53.
312.70(a)	Investigator disqualification; opportunity to respond to FDA.
312.83	Sponsor submission of treatment protocol. Estimates for this requirement are included under §§ 312.34 and 312.35.
312.85	Sponsors conducting phase 4 studies. Estimates for this requirement are included under § 312.23, and under 21 CFR 314.50, 314.70, and 314.81 in 0910–0001.
312.110(b)	Request to export an investigational drug.
312.120(b) and (c)(2)	Sponsor's submission to FDA for use of foreign clinical study to support an IND.
312.120(c)(3)	Sponsor's report to FDA on findings of independent review committee on foreign clinical study.
312.130(d)	Request for disclosable information for investigations involving an exception from informed consent under § 50.24.

TABLE 2.—RECORDKEEPING REQUIREMENTS

21 CFR Section	Explanations
312.52(a)	Transfer of obligations to a contract research organization.
312.57(a) and (b)	Sponsor recordkeeping.
312.59	Sponsor recordkeeping of disposition of unused supply of drugs. Estimates for this requirement are included under § 312.57.
312.62(a)	Investigator recordkeeping of disposition of drugs.
312.62(b)	Investigator recordkeeping of case histories of individuals.
312.160(a)(3)	Records maintenance: Shipment of drugs for investigational use in laboratory research animals or in vitro tests.
312.160(c)	Shipper records of alternative disposition of unused drugs.

In tables 3 through 5 of this document, the estimates for "number of respondents," "number of responses per respondent," and "total annual responses" were obtained from the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) reports and data management systems for submissions received in 2001 and from other sources familiar with the number of submissions received under part 312. The estimates for "hours per response" were made by CDER and CBER individuals familiar with the burden associated with these reports and from estimates received from the pharmaceutical industry.

TABLE 3.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN FOR HUMAN DRUGS[1]

21 CFR Section	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
312.7(d)	5	1.4	7	24	168
312.23(a) through (f)	1,506	1.2	1,872	1,600	2,995,200
312.30(a) through (e)	1,050	15	15,705	284	4,460,220
312.31(b)	1,037	8	8,375	100	837,500
312.32(c) and (d)	546	22.6	12,366	32	395,712
312.33(a) through (f)	1,608	2.6	4,202	360	1,512,720
312.35(a) and (b)	1	1	1	300	300
312.36	281	1	302	16	4,832
312.38(b) and (c)	466	1.3	608	28	17,024
312.42(e)	63	1.2	78	284	22,152
312.44(c) and (d)	40	1	42	16	672
312.45(a) and (b)	244	1.4	355	12	4,260
312.47(b)	130	1.8	233	160	37,280
312.53(c)	20,428	1	20,428	80	1,634,240
312.54(a) and (b)	1	1	1	48	48
312.55(b)	388	435	168,775	48	8,101,200
312.56(b), (c), and (d)	2	1	2	80	160

TABLE 3.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN FOR HUMAN DRUGS[1]—Continued

21 CFR Section	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
312.58(a)	75	4.2	322	8	2,576
312.64(a) through (d)	11,574	3	34,722	24	833,328
312.70(a)	2	1	2	40	80
312.110(b)	32	8.1	261	75	19,575
312.120(b) and (c)(2)	180	2	361	168	60,548
312.120(c)(3)	2	2	4	40	160
312.130(d)	4	1	4	8	32
312.52(a)	1,104	3 .1	3,495	2	6,990
312.57(a) and (b)	1,104	34.5	38,088	100	3,808,800
312.62(a)	9,522	2	19,044	40	761,760
312.62(b)	9,522	10	95,220	40	3,808,800
312.160(a)(3)	301	1.4	425	.5	213
312.160(c)		1.4	425	.5.	213
Total					29,326,763

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS[1]

21 CFR Section	No. of Respondents	No. of Responses per Response	Total Annual Responses	Hours per Responses	Total Hours
312.7(d)	22	1.4	31	24	744
312.10(a)	9	7.9	71	40	2,840
312.23(a) and (f) and 312.120(b), (c)(2), and (c)(3)	376	1.4	535	1,600	856,000
312.30(a) through (e)	724	5.6	4,038	284	1,146,792
312.31(b)	268	9.0	2,399	100	239,900
312.32(c) and (d) and 312.56(c)	334	12.8	4,261	32	136,352
312.33(a) and (f) and 312.56(c)	614	2.6	1,615	350	565,250
312.35(a) and (b)	1	1	1	300	300
312.36	19	4	76	16	1,216
312.38(b)	172	2.1	358	28	10,024
312.38(c)	172	2.1	358	160	57,280
312.44(c) and (d)	0	0	0	0	0
312.45(a) and (b)	70	1.7	120	12	1,440
312.47(b)	60	1.1	68	160	10,880
312.53(c)	322	5.9	1,904	80	152,320
312.54(a) and (b)	0	0	0	0	0
312.55(b)	139	2.4	331	48	15,888
312.56(b) and (d)	12	1.7	20	80	1,600
312.58(a)	19	1	19	8	152
312.64(a) and (d)	5,713	1	5,713	24	137,112
312.110(b)	9	2.4	22	75	1,650
312.130(d)	1	1	1	0.5	0.5
Total					3,337,740.5

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 5.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.52(a) recordkeeping	113	1	113	5	565
312.57(a) and (b) recordkeeping	1,432	2	2,859	100	285,900
312.62(a) recordkeeping	5,713	1	5,713	40	228,520
312.62(b) recordkeeping	5,713	12.5	71,355	40	2,854,200
312.160(a) recordkeeping	1,432	7.5	10,708	0.5	5,354
312.160(c) recordkeeping	1,432	2.5	3,573	0.5	1,786.5
Total biologics recordkeeping hours					3,376,325.5
Total biologics burden hours					3,337,740.5
Subtotal					6,714,066
Human Drugs					29,326,763
Biologics					6,714,066

TABLE 5.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Total					36,040,829

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18318 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0308]

Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and "Lookback" Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the regulations of FDA's current good manufacturing practices (CGMP) and related regulations for blood and blood components, and "lookback" requirements.

DATES: Submit written or electronic comments on the collection of information by September 20, 2002.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and "Lookback" Requirements (OMB Control Number 0910–0116)—Extension

Under the statutory requirements contained in section 351 of the Public Health Service Act (42 U.S.C. 262), no blood, blood component, or derivative may move in interstate commerce unless: (1) It is propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license; (2) the product complies with regulatory standards designed to ensure safety, purity, and potency; and (3) it bears a label plainly marked with the product's proper name, manufacturer, and expiration date. In addition, under the biologics licensing and quarantine provisions in sections 351 to 361 of the Public Health Service Act (42 U.S.C. 262 to 264) and the general administrative provisions under sections 501 to 503, 505 to 510, and 701 to 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 to 353, 355 to 360, and 371 to 374), FDA has the authority to issue regulations designed to protect the public from unsafe or ineffective biological products and to issue regulations necessary to prevent the introduction, transmission, or spread communicable diseases. The CGMP and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The lookback regulations are intended to help ensure the continued safety of the blood supply by providing necessary information to users of blood and blood components and appropriate notification of recipients of transfusion at increased risk for transmitting human immunodeficiency virus (HIV) infection.

The information collection requirements in the CGMP and lookback regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enables FDA to perform meaningful inspections. The recordkeeping requirements serve preventative and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action.

Section 606.100(b) (21 CFR 606.100(b)) requires that written standard operating procedures (SOPs) be maintained for the collection, processing, compatibility testing, storage, and distribution of blood and blood components used for transfusion and manufacturing purposes. Section 606.100(c) requires the review of all pertinent records to a lot or unit of blood prior to release. Any unexplained discrepancy or failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded. Section 606.110(a) requires a physician to certify in writing that the donor's health permits plateletpheresis or leukapheresis if a variance from additional regulatory standards for a specific product is used when obtaining the product from a specific donor for a specific recipient. Section 606.110(b) requires establishments to request prior Center for Biologics Evaluation and Research (CBER) approval for plasmapheresis of donors who do not meet donor requirements. Section 606.151(e) (21 CFR 606.151(e)) requires that records of expedited transfusions in life-threatening emergencies be maintained. So that all steps in the collection, processing, compatibility testing, storage and distribution, quality control, and transfusion reaction reports and complaints for each unit of blood and blood components can be clearly traced, § 606.160 (21 CFR 606.160) requires that legible and indelible contemporaneous records of each significant step be made and maintained for no less than 5 years. Section 606.165 (21 CFR 606.165) requires that distribution and receipt records be maintained to facilitate recalls, if necessary. Section 606.170(a) (21 CFR 606.170(a)) requires records to be maintained of any reports of complaints of adverse reactions as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 606.170(b) requires that fatal complications of blood collection and transfusions be reported to FDA as soon as possible and that a written report shall be submitted within 7 days. Section 610.46(a) (21 CFR 610.46(a)) requires blood establishments to notify consignees, within 72 hours, of repeatedly reactive tests results so that previously collected blood and blood components are appropriately quarantined. Section 610.46(b) requires blood establishments to notify consignees of licensed, more specific test results for HIV within 30 calendar days after the donors's repeatedly reactive test. Section 610.47(b) (21 CFR 610.47(b)) requires transfusion services not subject to Centers for Medicare and Medicaid Services (CMS) regulations to notify physicians of prior donation recipients or to notify recipients themselves of the need for HIV testing and counseling. In addition to the CGMP's in 21 CFR part 606, there are regulations in part 640 (21 CFR part 640) that require additional standards for certain blood and blood components as follows: Sections 640.3(a); 640.4(a); 640.25(b)(4) and (c)(1); 640.27(b); 640.31(b); 640.33(b); 640.51(b); 640.53(c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.66; 640.71(b)(1); 640.72; 640.73; and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the 21 CFR part 606 burden estimates, as described below.

Respondents to this collection of information are licensed and unlicensed blood establishments inspected by FDA, and other transfusion services inspected by CMS.

Based on FDA's registration system, there are approximately 2,841 registered blood establishments inspected by FDA. Of these 2,841 establishments, approximately 1,349 perform pheresis, approximately 1,041 annually collect 27 million units of Whole Blood, blood components including Source Plasma, and Source Leukocytes and are required to follow FDA "lookback" procedures, and approximately 166 are registered transfusion services that are not subject to CMS's "lookback" regulations. Based on CMS records there are an estimated 4,980 transfusion services.

The following reporting and recordkeeping estimates are based on information provided by industry, CMS, and FDA experience. In table 1 of this document, we estimate that there are approximately 3,500 repeat donors that will test reactive on a screening test for HIV. We estimate that each repeat donor has donated two previous times and an average of three components were made from each donation. Under § 610.46(a) and (b), this estimate results in 21,000 (3,500 x 2 x 3) notifications of the HIV screening test results to consignees by collecting establishments for the purpose of quarantining affected blood and blood components, and another 21,000 (3,500 x 2 x 3) notifications to consignees of subsequent test results. Under § 606.110(b), licensed establishments submit supplements to their biologics license applications to request prior CBER approval of plasmapheresis donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are reported under OMB control number 0910–0338.

In table 2 of this document, the recordkeeping chart reflects the estimate that 95 percent of the recordkeepers, which collect 98 percent of the blood supply, had developed SOP's as part of their customary and usual business practice. Establishments may minimize burdens associated with CGMP and related regulations by using model SOP's developed by industries' accreditation organizations. These accreditation organizations represent almost all registered blood establishments.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
606.170(b)[2]	70	1	70	20	1,400
610.46(a)	1,041	20	21,000	0.17	3,570
610.46(b)	1,041	20	21,000	0.17	3,570
610.47(b)	166	0.7	116	1	116
Total					8,656

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
606.100(b)[2]	249[5]	1	249	24	5,976
606.100(c)	249[5]	10	2,490	1	2,490
606.110(a)[3]	67[6]	5	335	0.5	168
606.151(e)	249[5]	12	2,988	0.083	248
606.160[4]	249[5]	2,169	540,000	0.5	270,000
606.165	249[5]	2,169	540,000	0.083	44,820
606.170(a)	249[5]	12	2,988	1	2,988
Total					326,690

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The recordkeeping requirements in §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOPs, are included in the estimate for § 606.100(b).
[3]The recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for the plateletpheresis, are included in the estimate for § 606.110(a).
[4]The recordkeeping requirements in §§ 640.3(a)(2); 640.3(f); 640.4(a)(2); 640.25(b)(4) and (c)(1); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.71(b)(1); 640.72; and 640.76(a) and (b), which address the maintenance of various records, are included in the estimate for § 606.160.
[5]Five percent of CMS and FDA-registered blood establishments (0.05 x 4,890).
[6]Five percent of pheresis establishments (1,349).

Dated: July 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18320 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0309]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reclassification Petitions for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for reclassification petitions for medical devices.

DATES: Submit written and electronic comments on the collection of information by September 20, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reclassification Petitions for Medical Devices—21 CFR 860.123 (OMB Control Number 0910–0138)—Extension

FDA has the responsibility under sections 513(e) and (f), 514(b), 515(b), and 520(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e) and (f), 360d(b), 360e(b), and 360j(l)) and part 860 (21 CFR part 860), subpart C, to collect data and information contained in reclassification petitions. The reclassification provisions of the act allow any person to petition for reclassification of a device from any one of the three classes (I, II, and III) to another class. The reclassification content regulation (§ 860.123) requires the submission of sufficient, valid scientific evidence demonstrating that the proposed classification will provide a reasonable assurance of safety and effectiveness of the device for its intended use. The reclassification provisions of the act serve primarily as a vehicle for manufacturers to seek reclassification from a higher to a lower class, thereby reducing the regulatory requirements applicable to a particular device. The reclassification petitions requesting classification from class III to class II or class I, if approved, provide an alternative route to the market in lieu

of premarket approval for class III devices.

Description of respondents: Device manufacturers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
860.123	6	1	6	500	3,000
Totals					3,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on current trends and actual reclassification petitions received, FDA anticipates that six petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data, averages 500 hours per petition. This average is based upon estimates by FDA administrative and technical staff who are familiar with the requirements for submission of a reclassification petition, have consulted and advised manufacturers on these requirements, and have reviewed the documentation submitted.

Dated: July 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18463 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0284]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling: Health Claims; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection of the record retention requirement of the soy protein/coronary heart disease health claim.

DATES: Submit written or electronic comments on the collection of information by September 20, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520) Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Labeling: Health Claims; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim (21 CFR 101.82(c)(2)(ii)(B)) (OMB Control Number 0910–0428)—Extension

This regulation authorizes a health claim for food labels about soy protein and coronary heart disease (CHD). Section 403(r)(3)(A)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)(3)(A)(i)) provides for the use of food label statements characterizing a relationship of any nutrient of the type required to be in the label or labeling of the food to a disease or a health related condition only where that statement meets the requirements of the regulations issued by the Secretary of Health and Human Services to authorize the use of such a health claim. To bear the soy protein and CHD health claim, foods must contain at least 6.25-gram soy protein per reference amount customarily consumed. Analytical methods for measuring total protein can be used to quantify the amount of soy protein in foods that contain soy as the sole source of protein. At the present time, there is no validated analytical methodology available to quantify the amount of soy protein in foods that contain other sources of protein. For these latter foods, FDA must rely on information known only to the manufacturer to assess compliance with the qualifying amount of soy protein. Thus, FDA requires manufacturers to have and keep records to substantiate the amount of soy protein in a food that bears the health claim and contains sources of protein other than soy, and to make such records available to

appropriate regulatory officials upon written request. The information collected includes nutrient databases or analyses, recipes or formulations, purchase orders for ingredients, or any other information that reasonably substantiates the ratio of soy protein to total protein.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
101.82(c)(2)(ii)(B)	25	1	25	1	25

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based upon its experience with the use of health claims, FDA estimates that only about 25 firms would be likely to market products bearing a soy protein/CHD health claim and that only, perhaps, one of each firm's products might contain non-soy sources of protein along with soy protein. The records required to be retained by 21 CFR 101.82(c)(2)(ii)(B) are the records, e.g., the formulation or recipe, that a manufacturer has and maintains as a normal course of its doing business. Thus, the burden to the food manufacturer is that involved in assembling and providing the records to appropriate regulatory officials for review or copying.

Dated: July 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18464 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0053]

Agency Information Collection Activities; Announcement of OMB Approval; State Petitions for Exemption From Preemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "State Petitions for Exemption From Preemption" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 30, 2002 (67 37838), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0277. The approval expires on July 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: July 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18366 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0123]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 21, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers (OMB Control Number 0910–0037)—Extension

Under section 402 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342), FDA is authorized to prevent the interstate distribution of food products that may be injurious to health or that are otherwise adulterated. Under the authority granted to FDA by section 404 of the act (21 U.S.C. 344), FDA regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit FDA to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *C. botulinum* must be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate

heat processes or other means of preservation.

To protect the public health, FDA's regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with FDA using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(2) (21 CFR 108.25(c)(1) and 108.35(c)(2))). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Form FDA 2541a for all methods except aseptic processing, or Form FDA 2541c for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (21 CFR 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms are also required to document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§§ 113.60(c) (thermally processed foods) and 114.80(b) (acidified foods)).

FDA estimates the burden of complying with the information collection provisions of the agency's regulations for acidified foods and thermally processed low-acid foods in hermetically sealed containers as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
FDA 2541 (registration)	108.25 and 108.35	500	1	500	.17	85
FDA 2541a (process filing)	108.25 and 108.35	1,000	7	7,000	.333	2,331
FDA 2541c (process filing)	108.35	275	2	550	.75	412
Total				8,050		2,828

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Part	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
108, 113, and 114	6,000	1	6,000	250	1,500,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for §§ 108.25(d) and 108.35(d) and (e) is insignificant because notification of spoilage, process deviation or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. To avoid double-counting, estimates for §§ 108.25(g) and 108.35(h) have not been included because they merely cross-reference recordkeeping requirements contained in parts 113 and 114.

Dated: July 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18319 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0012]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Postmarketing Adverse Drug Experience Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by August 21, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Postmarketing Adverse Drug Experience Reporting—21 CFR 310.305 and 314.80 (OMB Control Number 0910–0230)—Extension

Sections 201, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 352, 355, and 371) require that marketed drugs be safe and effective. In order to know whether drugs that are not safe and effective are on the market, FDA must be promptly informed of adverse experiences occasioned by the use of marketed drugs. In order to help ensure this, FDA issued regulations (§§ 310.305 and 314.80 (21 CFR 310.305 and 314.80)) to impose reporting and recordkeeping requirements on the drug industry that would enable FDA to take action necessary for protection of the public health from adverse drug experiences.

All applicants who have received marketing approval of drug products are required to report to FDA serious, unexpected adverse drug experiences, as well as followup reports when needed (§ 314.80(c)(1)). This includes reports of all foreign or domestic adverse experiences as well as those obtained in scientific literature and from postmarketing epidemiological/surveillance studies. Under § 314.80(c)(2) applicants must provide periodic reports of adverse drug experiences. A periodic report includes, for the reporting interval, reports of serious, expected adverse drug experiences and all nonserious adverse drug experiences, a narrative summary and analysis of adverse drug experiences and a history of actions taken because of adverse drug experiences. Under § 314.80(i) applicants must keep for 10 years records of all adverse drug experience reports known to the applicant.

For marketed prescription drug products without approved new drug applications (NDAs) or abbreviated new drug applications, manufacturers, packers, and distributors are required to report to FDA serious, unexpected adverse drug experiences as well as followup reports when needed (§ 310.305(c)). Under § 310.305(f) each manufacturer, packer, and distributor shall maintain for 10 years records of all adverse drug experiences required to be reported.

The primary purpose of FDA's adverse drug experience reporting system is to provide a signal for potentially serious safety problems with marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provides, for the first time, the opportunity to collect information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because the information enables FDA to make important changes to the product's labeling (such as adding a new warning) and when necessary, to initiate removal of a drug from the market.

In the **Federal Register** of February 25, 2002 (67 FR 8545), the agency requested comments on the proposed collection of information. FDA received two comments.

The comments asked what methodology and assumptions were used by FDA to calculate the burden estimates.

The "hours per response" were based on FDA's estimates of the time it would take manufacturers, packers, distributors, and applicants of marketed human drug products to submit the information to the agency.

The comments said that the annual number of responses of periodic reports is significantly underestimated. One comment estimated that companies submit more than 400 periodic reports (annual and quarterly reports) annually. The other comment estimated that it submits over 70 periodic reports annually.

FDA data indicates that it receives, on average, approximately 10,245 periodic reports (annual and quarterly reports) annually. A periodic report includes, as previously indicated, a narrative summary, individual case safety reports, and history of actions taken. Although some companies may submit 400 periodic reports annually, others only submit 1 periodic report annually.

The comments stated that the burden estimate seems to reflect only FDA's effort and not that of the respondents. The comments said that the hours per response for preparing periodic reports is grossly underestimated. One comment said that the preparation, quality control, and duplication of NDA periodic reports takes, on average, from 16 to 40 hours each, while the other comment said that this processing takes from 100 to 300 hours for each periodic report. The comments said that all adverse experience reports, including the non-15-day alert reports, need to be taken into account when calculating the burden, because all need to be reviewed, assessed, and processed for determination of "expedited" status and for inclusion in the periodic safety update reports. For example, the comments said that one company received approximately 49,000 initial adverse drug experience reports in association with their marketed prescription products from worldwide sources in 2001, approximately 4,800 of which qualified as 15-day alert reports; this included both initial and followup reports. Another company received approximately 20,000 initial adverse event reports from worldwide sources in 2001, approximately 2,000 of which qualified as 15-day alert reports; this included both initial and followup reports.

FDA notes that the estimate of 5 hours in the **Federal Register** of February 25, 2002, document was a typographical error. The correct estimate should be 28 hours. As explained in the information collection notice that published in the **Federal Register** of January 29, 1999 (64 FR 4665), this estimate is based on industry suggestions.

The comments questioned whether there are no capital, operating, or maintenance costs associated with maintaining records of adverse experience reports for 10 years. The comments said that companies must maintain facilities to store paper records in addition to backup records on other media. Costs for storage and retrieval vary widely, depending on the volume of records, rental fees, transportation costs, and retrieval fees, but may be substantial (i.e., thousands of dollars annually).

FDA agrees that there are maintenance costs associated with maintaining records of adverse experience reports for 10 years. FDA estimates that these costs are approximately $2,000 per company annually, as suggested by the comments.

The comments also provided several suggestions on how the regulations should be revised to enhance the reporting efficiency and to minimize the burden of the collection of information. For example, the comments said that FDA should revise the requirements to be consistent with the International Conference on Harmonization (ICH) guidelines for periodic safety update reports.

FDA is in the process of revising its safety reporting and recordkeeping regulations and will consider these comments in finalizing its rulemaking. Respondents will have an opportunity to comment further on these rulemaking initiatives. As stated in the **Federal Register** of May 13, 2002 (67 FR 33059), FDA is planning to publish a proposed rule that would amend the expedited and periodic safety reporting regulations

for human drugs and biologics to revise certain definitions and reporting formats as recommended by the ICH and to define new terms; to possibly add to or revise current reporting requirements; to consider revising certain reporting timeframes; and to suggest other revisions to these regulations to enhance the quality of safety reports received by FDA.

Respondents to this collection of information are manufacturers, packers, distributors, and applicants. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
310.305(c)(5)	1	1	1	1	1
314.80(c)(1)(iii)	5	1	5	1	5
314.80(c)(2)	683	15	10,245	28	286,860
Total					286,866

[1]The reporting burden for §§ 310.305(c)(1), (c)(2), and (c)(3), and 314.80(c)(1)(i) and (c)(1)(ii) was reported under OMB control number 0910–0291. There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
310.305(f)	25	1	25	1	25
314.80(i)	683	1	683	1	683
Total					708

[1]There are no capital costs or operating costs associated with this collection of information. There are maintenance costs of $2,000 annually.

These estimates are based on FDA's knowledge of adverse drug experience reporting, including knowledge about the time needed to prepare the reports and the number of reports submitted to the agency.

Dated: July 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18462 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02F–0316]

Intralytix, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Intralytix, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of bacteriophages as an antimicrobial agent on foods, including fresh meat, meat products, fresh poultry, and poultry products.

FOR FURTHER INFORMATION CONTACT: Raphael A. Davy, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3405.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2A4738) has been filed by Intralytix, Inc., c/o Lewis & Harrison, 122 C St. NW., suite 740, Washington, DC 20001. The petition proposes to amend the food additive regulations to provide for the safe use of a mixture of bacteriophages as an antimicrobial agent on foods, including fresh meat, meat products, fresh poultry, and poultry products.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 27, 2002.

Alan M. Rulis,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–18465 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Proposed Project: Maternal and Child Health Services Title V Block Grant Program—Guidance and Forms for the Title V Application/Annual Report (OMB No. 0915–0172)—Revision

The Health Resources and Services Administration (HRSA) proposes to revise the *Maternal and Child Health Services Title V Block Grant Program—Guidance and Forms for the Application/Annual Report*. The guidance is used annually by the 50 States and 9 jurisdictions in making application for Block Grants under Title V of the Social Security Act and in preparing the required annual report. The proposed revisions follow and build on extensive consultation received from a Workgroup convened in 2002 to provide suggestions for improving the guidance and forms. The proposed revisions are editorial and technical revisions in nature and are based on the experience of the States and jurisdictions using previous versions of the guidance. Changes include consolidating the narrative to reduce redundancy, and reducing the number of Health Status Indicators (HSI) required in the application/annual report.

In addition, HRSA proposes changing the format for electronic submission to direct web entry. Web based data and text entry will provide for automatic calculation of ratios, rates, and percentages, carry data over year-to-year and assure that data used in multiple tables are entered only once. It will also facilitate the orderly printing of tables, text, and required appendices.

The guidance used annually by the 50 States and 9 jurisdictions had a previous estimated burden of 358 hours. Based on the new revisions and more efficient electronic submission, the estimated burden has been reduced by 5% to 322 hours. The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Application and Annual Report, with needs assessment*:				
States	50	1	428	21,400
Jurisdictions	9	1	228	2,052
Application and Annual Report, without needs assessment*:				
States	50	1	313	15,658
Jurisdictions	9	1	126	1,134

*The Application and Annual Report, with needs assessment, will be submitted in FY 2005. The Application and Annual Report, without needs assessment, will be submitted in FY 2003 and FY 2004. The average annual total burden hours for the next three years is 19,007. The average annual burden per respondent 322 hours.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of notice.

Dated: July 16, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–18323 Filed 7–19–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Traumatic Brain Injury (TBI) Grantee Survey—(NEW)

The TBI program is designed to emphasize activities by States to ensure access to comprehensive and coordinated services for individuals with TBI and their families, including: Pre-hospital care; emergency department care; acute hospital care, rehabilitation; transitional services; education and employment; and long-term community support, on a statewide basis. The program provides grants to strengthen infrastructure, improve community supports and services, develop and evaluate model approaches to integrating TBI services into the broader service delivery system, and generate support from local and private sources for sustaining their efforts after the grant's completion.

HRSA is planning to conduct to conduct a survey to assess the degree to which States have implemented the core components of a TBI State Plan, which include: A designated State Health Agency and staff position, a Statewide Advisory Board, a Statewide needs assessment, and a Statewide Action Plan. The results of this assessment will be used to determine funding priorities, including development of appropriate guidelines and provision of technical assistance to States, demonstration grants, information collection and sharing among State agencies, and training programs for health professionals.

HRSA has included national performance measures for TBI in this survey in accordance with the requirements of the "Government Performance and Results Act (GPRA) of 1993" (Public Law 103–62). This act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance.

The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Self assessment questionnaire	56	1	10	560

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 16, 2002.

Jane M. Harrison,

Director, , Division of Policy Review and Coordination.

[FR Doc. 02–18324 Filed 7–19–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Emergency Medical Services for Children (EMSC) Grantee Survey—(NEW)

Because of the differences in the way emergency medical services are managed and provided in different States and the challenges faced delivering services in different parts of the country, there are many unanswered questions about the overall capability of these systems to respond to emergencies. In order to improve the quality of EMSC, more information is needed to identify State needs and resources.

HRSA is therefore planning to conduct a needs assessment to obtain information about the characteristics of State EMS systems, and the degree to which they have been adapted to address the needs of children. The results of this assessment will be used to determine funding priorities, including development of appropriate guidelines and provision of technical assistance to States, demonstration grants, information collection and sharing among State agencies, and training programs for health professionals.

HRSA has included national performance measures for EMSC in this survey in accordance with the requirements of the "Government Performance and Results Act (GPRA) of 1993" (Public Law 103–62). This act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance.

The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Self Assessment questionnaire	56	1	10	560

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 16, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–18325 Filed 7–19–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Drug Abuse Warning Network (OMB number 0930–0074, revision)—The Drug Abuse Warning Network (DAWN) is an ongoing data system that currently collects information on drug abuse-related medical emergencies and deaths as reported from about 466 hospitals and 137 medical examiners/coroners (ME/C) nationwide. DAWN provides national and metropolitan estimates of substances involved with drug-related ED visits; disseminates information about substances involved in deaths investigated by participating ME/Cs; provides a means for monitoring drug abuse patterns, trends, and the emergence of new substances; assesses health hazards associated with drug use; and generates information for national and local drug abuse policy and program planning. DAWN data are used by Federal, State, and local agencies, as well as universities, pharmaceutical companies, and the press.

The current emergency department (ED) sample supports estimates for the coterminous U.S. and 21 major metropolitan areas. Beginning in 2003, the DAWN case definition will be changed to obtain more consistent and reliable data on drug abuse cases and also will capture additional cases where drug use/misuse led to ED visits or deaths for conditions such as adverse drug reactions, underage drinking and malicious poisonings. To achieve better geographic and population coverage, the ED sample will be expanded to support estimates for the full U.S. and 48 metropolitan areas. By the end of 2005, the sample will include approximately 841 hospitals. To achieve complete coverage, approximately 66 non-participating ME/C jurisdictions in the 48 metropolitan areas targeted for the ED expansion will be added in lieu of a sample. Facilities (EDs and ME/Cs) will continue to use the current forms in early 2003 to complete reporting on events occurring through December 2002, but will use the revised forms for all events occurring from 1/1/2003 forward.

The annual burden estimates are shown below.

ANNUALIZED REPORTING BURDEN FOR DAWN: CLOSEOUT 2002 [1]

	Number of respondents	Estimated number of responses per respondent	Estimated time per response	Gross burden hours	IR [2] Reporting Hours	Total adjusted burden (hrs)
Hospitals						
Current Forms	100	58	9 min (.15 hr)	870	435	435
Current eHERS (electronic Hospital Emergency Reporting System).	366	58	9 min (.15 hr)	3184	1592	1592
ED Logs	100	7	2 min (.03 hr)	21	11	10
Subtotal						2037
Medical Examiners						
Current Forms	20	16	15 min (.25 hr)	80	40	40
Current eMERS (electronic Medical Examiner Reporting System).	119	16	15 min (.25 hr)	476	238	238
ME Logs	20	9	2 min (.03 hr)	5	3	2
Subtotal						280
Total						2317

[1] Number of respondents and respondent burden annualized over 3 year period from 12/1/02–11/30/05, using the current reporting forms.

[2] There is no burden associated with reporting by Independent Reporters (IRs), so these hours are not included in Total Adjusted Burden. Half (50%) of all respondents are Independent Reporters.

ANNUALIZED REPORTING BURDEN FOR DAWN [1]: 2003–2005

	Number of respondents	Estimated Number of responses per respondent	Estimated time per response	Gross burden hours	IR [2] Reporting hours	Total adjusted burden (hrs)
Hospitals						
Case Forms	100	97	12 min (.20 hr)	1940	970	970
Transmittal Forms	100	11	2 min (.03 hr)	33	17	16

ANNUALIZED REPORTING BURDEN FOR DAWN [1]: 2003–2005—Continued

	Number of respondents	Estimated Number of responses per respondent	Estimated time per response	Gross burden hours	IR [2] Reporting hours	Total adjusted burden (hrs)
Revised eHERS (electronic Hospital Emergency Reporting System).	654	678	12 min (.20 hr)	88,682	44,341	44,341
Subtotal						45,327
Medical Examiners						
Case Forms	20	20	15 min (.25 hr)	100	50	50
Transmittal Forms	20	11	2 min (.03 hr)	7	4	3
Revised eMERS (electronic Medical Examiner Reporting System).	175	117	15 min (.25 hr)	5119	2560	2559
Subtotal						2612
Total						47,939

[1] Number of respondents and respondent burden annualized over 3 year period from 12/1/02–11/30/05 using the revised reporting forms. Assumes all facilities converted to electronic reporting by July 2003.

[2] There is no burden associated with reporting by Independent Reporters (IRs), so these hours are not included in Total Adjusted Burden. Half (50%) of all respondents are Independent Reporters.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 16, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–18357 Filed 7–19–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in August 2002.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. Among other things, it will hear presentations from experts in several issue areas, define issue priorities in greater detail and develop an outline for the interim report.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time: Open: August 7, 2002, 3:30 p.m. to 6:30 p.m.

Open: August 8, 2002, 8:30 a.m. to 3:30 p.m.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26,Rockville, MD 20857.

Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov.*

Dated: July 17, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–18461 Filed 7–19–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on "No Child Left Behind Act"

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: The Department of the Interior gives notice that the Bureau of Indian Affairs (BIA) will conduct regional consultation meetings to obtain oral and written comments prior to establishing a Negotiated Rulemaking Committee under the No Child Left Behind Act of 2001 for negotiation of proposed regulations under the Act. Tribal officials, parents, teachers, administrators, educators at Bureau schools, and school board members of tribes served by Bureau-funded schools are encouraged to attend the meetings and submit written comments.

DATES: The meeting dates are August 9, 2002 through September 9, 2002, for all locations listed. All meetings will begin at 9 a.m. and end at 6 p.m. (local time) or when all meeting participants have the opportunity to make comments. Comments are due on or before September 15, 2002.

ADDRESSES: Send or hand-deliver written comments to William Mehojah, Jr., Director, Office of Indian Education Programs, Bureau of Indian Affairs, MS

3512–MIB, 1849 C St., NW., Washington, DC 20240. Send facsimile submissions to (202) 273–0030.

FOR FURTHER INFORMATION CONTACT: Dalton Henry, Office of Indian Education Programs, Bureau of Indian Affairs, MS 3512–MIB, 1849 C St., NW., Washington, DC 20240. Telephone: (202) 208–5820.

SUPPLEMENTARY INFORMATION: The No Child Left Behind Act of 2001, Public Law 107–110, authorizes the Department to promulgate several regulations using negotiated rulemaking. The purpose of the regional consultation meetings is to allow tribal officials, parents, teachers, administrators, educators at Bureau schools, and school board members of tribes served by Bureau-funded schools to provide guidance to the Secretary on the content of the regulations. As part of providing guidance to the Secretary, the meetings are intended to identify interests and define issues for recommendations for negotiated rulemaking under the Act and under the Negotiated Rulemaking Act and the Federal Advisory Committee Act.

This consultation will cover six sections of the Act that provide for negotiated rulemaking regarding Bureau-funded schools. The Committee will develop recommendations for proposed regulations that will:

(1) *Under Section 1124*—establish separate geographic attendance areas for each Bureau-funded school;

(2) *Under Section 1127*—establish a formula for determining the minimum annual amount of funds necessary to fund each Bureau-funded school;

(3) *Under Section 1130*—establish a system for the direct funding and support of all Bureau-funded schools under the formula established under Section 1127;

(4) *Under Section 1136*—establish guidelines to ensure the constitutional and civil rights of Indian students regarding the right to privacy, freedom of religion and expression, and due process in connection with disciplinary actions (suspension and expulsion);

(5) *Under Section 1043*—establish a method for the administration of grants under the Tribally Controlled Schools Act of 1988, as amended by Section 1043; and

(6) *Under Section 1116(g)*—define "Adequate Yearly Progress" which is the essential measurement for determining that schools are providing quality education.

A third-party neutral facilitator will facilitate each consultation meeting. Interpreters will be available, as needed.

The results of this consultation will provide guidance to the negotiated rulemaking committee. The Committee, in its advisory capacity, will develop recommendations for the Secretary for proposed regulations to be published by June 2003.

MEETING SCHEDULE

Dates	Location	Local contact	Phone No.
August 9, 2002	Tuba City, AZ	Mike Luther	(928) 283–2218
August 12, 2002	Shiprock, NM	Lester Hudson	(505) 368–3400
August 13, 2002	Chinle, AZ	Beverly Crawford	(928) 674–5131
August 14, 2002	Window Rock, AZ	Winnifred Peters	(928) 729–7251
August 15, 2002	Ft. Wingate, NM	Bea Woodward	(505) 786–6150
August 16, 2002	Albuquerque, NM	Ben Atencio	(505) 346–2431
August 19, 2002	Bismarck, ND	Loretta Delong	(701) 477–3463
August 21, 2002	Minneapolis, MN	Terry Portra	(612) 713–4400
August 23, 2002	Pierre, SD	Norma Tibbitts	(605) 867–1306
		Cherie Farlee	(605) 964–8722
August 26, 2002	Philadelphia, MS	LaVonna Weller	(202) 208–7952
August 28, 2002	Phoenix, AZ	Joe Frazier	(520) 361–3510
August 30, 2002	Portland, OR	John Reimer	(503) 872–2743
September 5, 2002	Oklahoma City, OK	Joy Martin	(405) 605–6051
September 9, 2002	Washington, DC	Ed Parisien	(505) 248–6955
		Rod Young	(202) 208–6175

Comments, including names, street addresses, and other contact information from commenters, will be available for public review at the address listed under the **ADDRESSES** section during regular business hours (7:45 a.m. to 4:15 p.m. EDT), Monday through Friday, except Federal holidays. If you do not want your name or address or other information available to the public, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Dated: July 16, 2002.

Neal A. McCaleb,

Assistant Secretary-Indian Affairs.

[FR Doc. 02–18460 Filed 7–19–02; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0059 and 1029–0090

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed authority for two collections of information: OSM grant forms—OSM–47 (Budget Information Report) OSM–49 (Budget Information and Financial Reporting), and OSM–51 (Performance and Program narrative); and 30 CFR part 870, Abandoned mine reclamation fund—fee collection and coal production reporting.

DATES: Comments on the proposed information collection must be received by September 20, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240. Comments

may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in OSM grant forms—OSM–47 (Budget Information Report), OSM–49 (Budget Information and Financial Reporting) and OSM–51 (Performance and Program narrative); and 30 CFR part 870, Abandoned mine reclamation fund—fee collection and coal production reporting. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Title: Budget information, financial reporting, and performance reporting forms.

OMB Control Number: 1029–0059.

Summary: State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

Bureau Form Numbers: OSM–47, OSM–49 and OSM–51.

Frequency of Collection: Semi-annually and annually.

Description of Respondents: State and Tribal regulatory and reclamation authorities.

Total Annual Responses: 131.

Total Annual Burden Hours: 655 hours.

Title: 30 CFR part 870—Abandoned mine reclamation fund—fee collection and coal production reporting.

OMB Control Number: 1029–0090.

Summary: Section 402 of SMCRA requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection request is needed to support verification of the moisture deduction allowance. The information will be used by OSM during audits to verify that the amount of excess moisture taken by the operator is appropriate.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine operators.

Total Annual Responses: 933.

Total Annual Burden Hours: 700.

Dated: June 19, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–18458 Filed 7–19–02; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Request for Comments on Proposed Guidelines.

SUMMARY: A notice published by the Office of Management and Budget (OMB) in the **Federal Register** directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. We, the Office of Surface Mining Reclamation and Enforcement (OSM), are issuing these proposed Information Quality Guidelines in order to comply with the OMB requirement.

DATES: To ensure consideration of any comments you may have on the proposed guidelines, your comments must be received on or before August 21, 2002.

ADDRESSES: You may mail or hand carry comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC 20240. You may also e-mail comments to *osmrules@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Griffith, Deputy Chief Information Officer, Office of Surface Mining Reclamation and Enforcement, on 202–208–2916, or via e-mail at *DGriffit@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A notice published by OMB in the **Federal Register**, dated January 3, 2002 (67 FR 369), and reissued February 22, 2002 (67 FR 8451), directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. On May 24, 2002, the Department of the Interior published a **Federal Register** notice providing the web site where Departmental Information Quality Guidelines may be reviewed, and directing its offices and bureaus to publish by July 1, 2002, a notice of availability of their own Guidelines in the **Federal Register** for public comment. We are issuing these proposed Information Quality Guidelines in order to comply with this direction.

OSM, which includes Headquarters, three Regional Offices, and ten Field Offices, disseminates a wide variety of information to the public regarding the nation's surface coal mining and reclamation activities on Federal, tribal or other lands within states which may include state or privately-owned lands. The disseminated information includes organizational and management information, programs and services products, research and statistical reports, policy and regulatory information, and general reference material. We will evaluate and identify the types of information that we disseminate that will be subject to these guidelines, once finalized.

II. Information Quality Standards

To the greatest extent practicable and appropriate, information we disseminate is internally reviewed for quality—including objectivity, utility, and integrity—before such information is disseminated.

1. Information we disseminate to the public is normally subject to one or more levels of internal staff, or supervisory review for quality before we disseminate the information.

2. The number of levels of infernal quality review applied in a particular case depends on the nature, scope, and purpose of the information to be disseminated. For example, routine reports that may be prepared by staff about the agency's activities or operations may be subject to one or two levels of staff or supervisory review for

basic accuracy and completeness before such reports are released to the general public. Additional levels of internal review, supplementation, clarification, or approval by our management may be appropriate, however, to the extent such a report may be intended as the basis for more complicated budgeting decisions or legislative reporting purposes (e.g., to satisfy a need for greater statistical detail or explanation).

We have adopted the information quality definitions published by OMB. They are set forth in IV. below.

III. Information Quality Procedures

While we may vary in our implementation approaches, the basic guidance published by OMB on January 3, 2002, re-issued February 22, 2002, and adopted by the Department in the **Federal Register**, dated May 24, 2002, is included in our policy and will apply to our dissemination of information.

The OMB guidelines mandate that, after October 2, 2002, affected persons may seek and obtain, where appropriate, correction of disseminated information that does not comply with the OMB or Department guidelines. As a responsible bureau, we will by that date provide procedures to review and correct disseminated information and will establish a system for tracking and responding to complaints in accordance with this direction. As a part of this process, we will provide on our Web site (*http://www.osmre.gov*) a means for affected persons to challenge the quality of disseminated information. We will also provide addresses of appropriate officials to contact through the mail to challenge the quality of disseminated information.

If you want to challenge the quality of our disseminated information, please provide the following information: the name and address of the person filing the complaint; specific reference to the information being challenged; a statement of why the complainant believes the information fails to satisfy the standards in the OSM or OMB guidelines; and how the complainant is affected by the challenged information. The complainant may include suggestions for correcting the challenged information, but that is not mandatory.

Once we receive a complaint, we will have 5 business days to notify the complainant of receipt. We will also notify the program area that disseminated the challenged information of the receipt of the complaint. We will have 45 business days from receipt to evaluate whether the complaint is accurate based on an analysis of all information available to the appropriate program or office. If, within the 45 business-day period, we determine that the complaint is without merit, we will notify the complainant. If, within the 45 business-day period, we determine that the complaint has merit, we will notify the complainant and the appropriate program or office. We will take reasonable steps to withdraw the information from the public domain and from any decision-making process in which it is being used. If we decide to correct the challenged information, we will notify the complainant of our intent and make the correction. We will determine the schedule and procedure for correcting challenged information, but will not disseminate the challenged information in any form until we make the appropriate corrections. We will provide the complainant with a copy of the corrected information once completed.

If a complainant does not receive the notices within the time frame described above, or wishes to appeal a determination of merit, or wishes to appeal the proposed correction of information, the complainant may appeal to our Chief Information Officer (CIO). The CIO may intervene on behalf of the complainant to maintain the complaint-resolution process. If the CIO determines that an appeal of a determination of merit or the proposed correction of information has merit, our appropriate program office will be notified. We will withdraw the challenged information from the public domain, to the extent practicable, and will not use the information in any of our decision-making process until we correct it.

If we receive a second complaint before we issue the 45 business-day notice for an overlapping complaint under review, we will treat it with simultaneous consideration. We will notify the second complainant within 5 business days that an analysis is in progress and will provide its status. We will combine the earlier and later complaints and issue a combined 45 business-day notice.

If we receive the second complaint on the same subject after we have issued a 45 business-day notice, we will conduct a new and separate review.

We conduct a substantial amount of business following the public review and comment on proposed documents prior to their issuance in final form. These activities include rulemakings and analyses conducted under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the National Environmental Policy Act (NEPA) and other authorities. For the purposes of the Information Quality Guidelines covered by this notice, we will treat requests we receive for corrections of information in draft documents as comments on the draft documents. Response to comments will be included in the final document. When we receive requests for corrections of information in a final document, we will first determine whether the request pertains to an issue discussed in the draft document upon which the requester could have commented. If we determine that the requester had the opportunity to comment on the issue at the draft stage and failed to do so, we may consider the request to have no merit. If information that did not appear in the draft document is the subject of a request for correction, we will consider that request. If we determine that the information does not comply with OMB or our guidelines, such that the non-compliance with the guidelines presents significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, OSM will use existing mechanisms to remedy the situation, such as reproposing a rule or supplementing published analysis.

We will submit a report for each fiscal year to the Department of the Interior's Office of the Chief Information Officer (OCIO) not later than November 30 of each year. The report will identify the number, nature, and resolution of complaints received. the OCIO staff will consolidate all bureau reports into a Departmental annual report and submit to the Director of OMB no later than January 1, annually.

IV. Definitions

1. *Quality* is an encompassing term that includes utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four statutory terms collectively as quality.

2. *Utility* refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that we disseminate to the public, we need to reconsider the uses of the information not only from our perspective, but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, we will take care to address that transparency in our review of the information.

3. *Objectivity* involves two distinct elements: presentations and substance.

(a) *Objectivity* includes whether we disseminate information in an accurate, clear, complete, and unbiased manner.

This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, we will identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and include it in a specific financial, or statistical context so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, we will identify transparent documentation and error sources affecting data quality.

(b) In addition, objectivity involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific financial, or statistical context, we will analyze the original and supporting data and develop our results using sound statistical and research methods.

(1) If data and analytic results have been subjected to formal, independent, external peer review, we will generally presume that the information is of acceptable objectivity. However, a complainant may rebut this presumption based on a persuasive showing in a particular instance. If we use peer review to help satisfy the objectivity standard, the review process employed shall meet the general criteria for competent and credible peer review recommended by OMB's Office of Information and Regulatory Affairs (OIRA) to the President's Management Council (9/20/01) (*http://www.whitehouse.gov/omb/inforeg/oira_review-process.html*). OIRA recommends "that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner."

(2) Since we are responsible for disseminating influential scientific, financial, and statistical information, we will include a high degree of transparency about data and methods to facilitate the reproducibility (the ability to reproduce the results) of such information by qualified third parties.

With regard to original and supporting related data, we will not require that all disseminated data be subjected to a reproducibility requirement. We may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practically be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (i.e. a new experiment, test of sample) that will not be required prior to each release of information.

With regard to analytical results, we will generally require sufficient transparency about data and methods that a qualified member of the public could undertake an independent reanalysis. These transparency standards apply to our analysis of data from a single study as well as to analyses that combine information from multiple studies.

Making the data and methods publicly available will assist us in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.

In situations where public access to data and methods will not occur due to other compelling interests, we will apply especially rigorous checks to analytical results and documents what checks were undertaken. We will, however, disclose the specific data sources used, and the specific quantitative methods and assumptions we employed. We will define type of checks, and the level of detail for documentation, given the nature and complexity of the issues.

Since we are responsible for dissemination of some types of health and public safety information, we will interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information from us to appropriate government agencies and the public. We may temporarily waive information from us to appropriate government agencies and the public. We may temporarily waive information quality standards under urgent situations (e.g., imminent threats to public health or homeland security) in accordance with the latitude that may be specified in the Department guidelines.

4. *Integrity* refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

5. *Information* means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where our presentation makes it clear that what is being offered is someone's opinion rather than fact or our views.

6. *Government information* means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

7. *Information dissemination product* means any books, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, an agency disseminates to the public. This definition includes any electronic document, CD–ROM, or web page.

8. *Dissemination* means agency initiated or sponsored distribution of information to the public [*see* 5 CFR 1320.3(d) for definition of "conduct or sponsor"]. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.

9. *Influential,* when used in the phrase "influential scientific, financial, or statistical information," means that we can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions. We are authorized to define "influential" in ways appropriate for us, given the nature and multiplicity of issues for which we are responsible.

10. *Reproducible* means that the information is capable of being substantially reproduced, subject to an acceptable degree of impression. For information judged to have more (less) important impacts, the degree of imprecision that is tolerated is reduced (increased). If we apply the reproducibility test to specific types of original or supporting data, the associated guidelines will provide relevant definitions of reproducibility

(*e.g.*, standards for replication of laboratory data). With respect to analytic results, capable of being substantially reproduced means that independent analysis of the original or supporting data using identical methods would demonstrate whether similar analytic results, subject to an acceptable degree of imprecision or error, could be generated.

V. Legal Effect

These guidelines are intended only to improve the internal management of the Office of Surface Mining Reclamation and Enforcement relating to information quality. Nothing in these guidelines is intended to create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its offices, or any other person.

Dated: June 25, 2002.

Jeffrey D. Jarrett,

Director.

[FR Doc. 02–18459 Filed 7–19–02; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Office of Disability Employment Policy; High School/High Tech State Grants

AGENCY: Office of Disability Employment Policy, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications of High School/High Tech State Grants (SGA 02–14).

SUMMARY: The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP) announces the availability of $500,000 to award two to five competitive grants in the amount of $100,000 to $250,000 each to further expand the integration of the High School/ High Tech (HS/HT) program into the One-Stop Center System established under the Workforce Investment Act of 1998 (WIA) (Public Law 105–220, 29 U.S.C. 2801 *et seq.*). State Workforce Investment Boards; State Departments of Education; State Departments of Labor; State Developmental Disability Councils; State Departments of Vocational Rehabilitation; State Committees affiliated with the National Governors' Committees for People with Disabilities; and Workforce Investment representatives from the District Columbia, Puerto Rico, and other United States Territories and Commonwealths, and other similar state agencies are eligible applicants for these grants. Grants will be awarded for a 24-month period of performance. After two years of support, it is anticipated that the grantees will have identified and developed the funds and resources needed to continue the expansion of High School/High Tech programs within their states.

The purpose of these grants is to assist states in developing statewide High School/High Tech infrastructure and operations and integrating the HS/HT programs into the youth services provided through the One-Stop Center System. HS/HT is a series of nationally established programs designed to provide young people with disabilities with an opportunity to explore careers or further education leading to technology-related careers. These programs, which have generally been locally directed and supported, serve both in-school or out-of-school youth with all disabilities in a year round program of corporate site visits, mentoring, job shadowing, guest speakers, after school activities and summer internships. These grants are intended to assist states in planning and implementing a statewide HS/HT network working in partnership with the State Workforce Investment Board.

DATES: The closing date for receipt of applications under this announcement is August 21, 2002. Submit one ink-signed original, complete grant application plus two copies of the Technical Proposal and two copies of the Cost Proposal to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 02–14, Room N–5416, 200 Constitution Avenue, NW., Washington, DC, 20210, not later than 4:45 p.m. Eastern Daylight Savings Time (EDST), August 21, 2002. Hand-delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Grant applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 02–14, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: This SGA offers complete guidance on how to submit a proposal. Questions concerning this solicitation may be directed to Cassandra Willis, at phone (202) 693–4570 (this is not a toll-free number). Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

Late Proposals: All applicants are advised that U.S. mail delivery in the Washington, DC, area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application(s) by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, at 202/693–4570, prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

Acceptable Methods of Submission: The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services Center after 4:45 p.m., EDST, August 21, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 21, 2002; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days, excluding weekends and Federal holidays, prior to August 21, 2002; and/or

3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however the Department does not accept dates or date stamps on such packages as evidence of timely mailing. Thus, the

applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC, area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Authority

Consolidated Appropriations Act, 2001, Pub. L. 106–554, 114 Stat. 2763; 29 U.S.C. 557b; DOL, HHS, Education and Related Appropriations Act, 2002, Pub. L. 107–116, 115 Stat. 2177.

II. Background

According to the U.S. Department of Education, the national high school graduation rates (*e.g.*, diplomas, GED, alternative certificates) for students with disabilities are below that of youth without disabilities. According to the National Center on Education Statistics (2001), 88% of students without disabilities graduate; according to the Office of Special Education Programs (2000) 62% of youth with disabilities graduate. Students with disabilities experience a school drop out rate of 31%, compared to 11% of non-disabled youth. Youth with emotional disabilities experience an even higher drop out rate of 54%. Further, it is estimated that only one-third of young people with disabilities who need job training receive it. Young people with disabilities also have significantly lower rates of participation in post-secondary education. Finally, the Social Security Administration has found that many young people with disabilities who enter the Supplementary Security Income (SSI)/Social Security Disability Insurance (SSDI) rolls are likely to remain on the program rolls for their entire lives.

The Federal/State vocational rehabilitation system is neither large enough to serve, nor solely responsible for serving all youth with disabilities that depart the school system. According to the U.S. Department of Education, each year approximately 500,000 young people with disabilities leave our nation's schools. Vocational rehabilitation programs are able to serve less than 40,000 of these young people with disabilities. A large portion of the remaining 460,000 youth with disabilities is potentially eligible for youth programs financially assisted under WIA.

The current expectations of public education and workforce development systems, along with employers, parents and young people with disabilities often fail to recognize the potential that young people with disabilities have for jobs and careers, particularly in technology-related occupations. As a result, youths with disabilities are seldom afforded post-secondary preparation and educational opportunities leading to internships and placements in technology-related careers. This is a tragic loss of potential. People with disabilities have demonstrated that they can be successful in technology-based occupations and these positions represent an increasing segment of the workforce.

The U.S. Department of Labor has determined that youth programs need to be strengthened to better serve young people with disabilities. Among ODEP's responsibilities is to provide technical assistance and support designed to assist various youth programs, including WIA-assisted youth programs, and thereby increase the capacity of those programs to serve people with disabilities. These activities will substantially contribute to achieving the goals of the President's New Freedom Initiative particularly as it relates to increasing the ability of Americans with disabilities to integrate into the workforce.

A key to increasing the employment of people with disabilities is to ensure that young people with disabilities are provided resources and assistance to move from school to work, as opposed to becoming dependent on welfare or other benefits programs. One way of accomplishing this is to increase the participation of youth with disabilities in transition programs like the Workforce Investment Act (WIA) youth programs and High School/High Tech (HS/HT). The WIA youth-focused programs and activities hold tremendous potential to support career development activities for young people with disabilities.

WIA youth service providers, however, may not be aware of the need to serve youth with disabilities in their communities and may lack the resources to develop strong partnerships and an equitable referral and assessment system. In addition, Vocational Rehabilitation agencies, Special Education agencies, and other agencies serving youth with disabilities may not be informed about the potential for coordinating resources with WIA-based programs, or for creating mechanisms for such programs to cooperate and support young people with disabilities. HS/HT, an existing program that has proven effective in attracting high school aged youth with disabilities to technology careers, can help bridge this gap.

HS/HT programs currently operate in 75 communities, across the nation. As HS/HT is a community-based partnership, different entities run the local HS/HT operations across the country. Current HS/HT operators include non-profits (Goodwill, Centers for Independent Living, United Cerebral Palsy Affiliates, and others), community colleges, universities and school districts. Funding for the sites is managed locally. Therefore, funding comes from a variety of local, state, and national resources. In order for HS/HT to continue to flourish, state level organization and coordination are needed.

The HS/HT program works within community and state systems to help coordinate the delivery of education and transition services to students with disabilities. Its stakeholders include employers, educators, consumers, family members, workforce system agencies, and rehabilitation professionals. The HS/HT program offers states proven techniques for developing improved employment outcomes for young people with disabilities.

HS/HT graduates demonstrate at least a doubling of post-secondary education achievements. At some HS/HT sites, as many as 70% of HS/HT graduates move on to post-secondary education. HS/HT clearly enhances expectations, educational achievements and eventual employment outcomes for a population who, without this intervention, is far more likely to move onto the Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) rolls than to find competitive employment in technology related occupations.

Last year ODEP funded start-up HS/HT sites that began connecting HS/HT and WIA youth programs at the community level and the funds awarded under the current SGA are intended to expand upon that effort. The goals of HS/HT match the Workforce Investment Act's youth programming themes of employment preparation, educational achievement, support, and leadership. The HS/HT model includes eight of the ten programming elements required for youth programs funded by WIA: (1) Summer employment opportunities; (2)

work experiences; (3) occupational skills training; (4) tutoring; (5) supportive services; (6) adult mentoring; (7) comprehensive guidance; and (8) leadership development. *See* section 129(c)(2) of the WIA, codified at 29 U.S.C. 2854(c)(2). By linking HS/HT and WIA and additional resources at a state level, students with disabilities will have an increased opportunity to participate in meaningful school-to-career initiatives.

III. Purpose

High School/High Tech sites have traditionally worked with community systems to coordinate the delivery of educational and transitional services to youths with disabilities. The purpose of this SGA is to bring HS/HT to the state level. This will allow the resources within a state to be maximized and coordinated for the benefit of all HS/HT sites in a state. HS/HT state directors will work with key stakeholders (workforce investment systems, colleges, developmental disability councils, governors' committees on the employment of people with disabilities, employers, educators, rehabilitation professionals, consumers, and parents) to institutionalize the program within the state.

As a community-based, work-based, and school-based program, HS/HT is designed to provide opportunities for students with disabilities to explore careers in technology-related occupations. HS/HT students across the nation learn first-hand what it is like to work in high tech environments. Preparatory experiences (career information and assessment, computer training, visiting colleges, and guest speakers), work-based experiences (internships, site visits, mentoring, and job shadowing), leadership development (mentoring, self-advocacy training, and community service), and connecting activities (assistive technology, tutoring, and transportation) all provide students with the opportunities to learn more about careers in science, engineering and technology-related fields.

To learn about the structure and operations of the High School/High Tech Program, consult the High School/ High Tech Program Guide at *http://www2.dol.gov/odep/media/reports/hsht00/toc.htm.*

IV. Statement of Work

These grant funds are not intended as direct service payments for youth with disabilities. Rather, these funds are intended to be used in ways which create the adoption (systems change) of a statewide HS/HT initiative and which involve the development or demonstration of promising new strategies with potential replicability that build upon existing HS/HT strategies.

This system will better serve youth with disabilities as they transition from high school to post-secondary education or the work world.

The Project Narrative of the grant application must provide complete information that will address the requirements of this SGA, including the following:

A. Leadership

The application must discuss how the applicant will establish leadership from, or a working relationship with, a State Workforce Investment Board, State Department of Labor, State Department of Education, State Vocational Rehabilitation, WIA youth-related entity, or other community partners (*e.g.*, area disability organizations, state committees on employment of people with disabilities, centers for independent living, interested employers) in the establishment and operation of a state level HS/HT program. At least three categories of the above listed organizations must be represented in and be a part of the state-level leadership team, with the State Workforce Investment Board as a mandatory partner. Describe any actions already taken by the applicant to address the need for a statewide HS/HT leader.

B. Strategic Plan for the State

The application must address the proposed design for a state-based HS/HT infrastructure. The plan should include: the partners' (as listed in paragraph A) roles within the state's HS/HT operations; how the partners will integrate resources to advance the HS/HT model; the plan for long term funding for the initiative; plans for developing or increasing the number of sites; and possible policy implications and changes resulting from an improved delivery system for all high school-aged youth with disabilities transitioning to post-secondary education or the world of work.

C. High School/High Tech Sites

The application must include a strategy to replicate HS/HT programs throughout the state. In the first year of the grant the state director will establish, at a minimum, one new site. In the second year of the grant the state director will establish at least two additional sites. Applications must identify tentative locations for such sites and likely partners at the sites.

D. State Director

This person must have sufficient knowledge and experience to expand HS/HT at a state level. Attach the resume or position description of the state director to the application.

E. Data

Describe plans to report the demographic characteristics of students, types of programming activities and program outcomes (post-secondary education and employment) of youth with disabilities served through HS/HT in the state; and compare their performances with students not enrolled in the program.

F. Resources

Describe the strategy for gaining the support of area employers, people with disabilities and their family members. Identify federal, state, and local public sector resources, as well as local non-profit sector resources which will be leveraged for purposes of sustainability after the grant period ends.

G. Technical Assistance

Document a willingness to cooperate with ODEP and its technical assistance efforts to provide information and advice to other states on how the HS/HT model can be replicated.

H. Outreach

Describe how the needs of individuals with disabilities from diverse cultures and/or ethnic groups will be addressed.

I. Management Plan

Provide a detailed management plan for project goals, objectives, and activities for the state level HS/HT operations.

V. Funding Availability

The period of performance will be 24 months from the date of execution by the Government. Up to five competitive grants will be awarded in the range of $100,000 to $250,000. It is expected that the funds used for this SGA will support the costs associated with the development, implementation, and evaluation of state level HS/HT programs.

The funds may be used to conduct a variety of activities to support state-level HS/HT operations such as staff training, strategic planning, assessment, curriculum/ materials development, career development, student-focused planning, program alignment, partnership building, etc. Funds are not intended to provide direct services to youth.

VI. Eligible Applicants

Eligible applicants are State Workforce Investment Boards; State Departments of Education; State Departments of Labor; State Developmental Disability Councils; State Departments of Vocational Rehabilitation; or State Committees affiliated with the National Governors' Committees for People with Disabilities, or other similar state agencies. "State" in this context includes the 50 states, the District of Columbia, Puerto Rico, the U. S. Virgin Islands, Guam, and American Samoa. Each grantee must, at a minimum, involve members of three of the other above-mentioned groups in strategic planning and implementation activities with the State Workforce Investment Board constituting a mandatory partner.

Indian and Native American Tribal entities, or consortia of Tribes, with the written approval of their tribal council, are also eligible to receive these grants. Grants to Indian and Native American tribal grantees must recognize principles of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act, allowing for the government-to-government relationship between the Federal and Tribal Governments. Tribal entities also must involve, at a minimum, members of three of the other groups mentioned above in strategic planning and implementation activities with the State Workforce Investment Board constituting a mandatory partner.

VII. Application Contents

General Requirements—Two copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only. There are three required sections of the application. Requirements for each section are provided in this application package.

Part I—Executive Summary

The Executive summary should be no more than 2 single-spaced, single-sided pages in length giving a clear summary of the project narrative.

Each application must provide an executive summary, which identifies the following:

- The applicant;
- The type of organization the applicant represents and the additional consortium partners and the type of organization they represent;
- The amount of funds requested;
- The planned period of performance; and
- The extent to which Vocational Rehabilitation and the WIA System will be integrated or coordinated with the HS/HT system.

Part II—Project Narrative (Appendices—Letters of Commitment, Resumes, etc.)

Applicants must include a narrative that addresses the Statement of Work in Part IV and the selection criteria that are used by reviewers in evaluating the application. Part II must be limited to no more than twenty-five (25) pages. This page limit does not apply to Part I, the Executive Summary; Part III the Project Financial Plan (Budget); and the Appendices (the assurances and certifications, resumes, a bibliography or references, and the letters of support.) A page is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch.)

Applicants must include in Part II of the proposal a narrative that addresses all of the Evaluation Criteria (section VIII below) that will be used by reviewers in evaluating individual proposals.

Part III—Project Financial Plan (Budget)

Applications must include a detailed financial plan that identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Plan must contain the SF–424, Application for Federal Assistance (Appendix A) and a Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award.

VIII. Evaluation Criteria/Selection

A. Evaluation Criteria

The application must include appropriate information of the type described below.

1. Significance of the Proposed Project (20 Points)

In determining the significance of the proposed project, the Department will consider the following factors:

a. The potential contribution of the proposed project to increase the quality of transition services available in the state;

b. The current level of HS/HT activity in your state and those sites' commitment to work with this application;

c. The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

d. The extent to which the proposed project involves the development or demonstration of promising new strategies that build upon existing HS/HT strategies;

e. The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for the products to be used effectively in a variety of other states; and

f. The importance or magnitude of the results that are likely to be attained by the proposed project.

2. Quality of the Project Design (30 points)

In evaluating the quality of the proposed project design, the Department considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved are clearly specified and measurable;

b. The extent to which the design of the proposed project features innovative methods for developing new sites and/or strengthening existing sites;

c. The extent to which the proposal incorporates the strategic plan in Part IV, Statement of Work;

d. The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this grant;

e. The extent to which the proposed budget and narrative justification are adequate to support the proposed project.

f. The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community and HS/HT sites, State, and Federal resources;

g. The extent to which the applicant encourages involvement of young people with all disabilities, relevant experts, and organizations in project activities; and,

h. The extent to which performance feedback and continuous improvement

are integral to the design of the proposed project.

3. Quality of Project Personnel (10 points)

The Project Narrative must describe the proposed staffing of the project. In addition, it must identify and summarize the qualifications of the personnel who will carry it out.

The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities. In addition, the Department considers the qualifications, including relevant education, training and experience of key project personnel as well as the qualifications, including relevant training and experience, of project consultants or subcontractors. Resumes must be included in the Appendices.

4. Plan for Sustaining the Statewide HS/HT Program Through Leveraging of Other Resources (25 points)

The Project Narrative must describe a detailed plan for sustaining this project after grant funds cease. Sustainability must be an objective built into the design and ongoing operation of the project. Projects funded under this SGA must leverage a combination of federal, state, and local public sector resources, as well as local non-profit sector resources for purposes of sustainability.

In evaluating the quality of the plan for sustainability, the Department considers the following factors to be of particular importance:

- The extent to which vocational rehabilitation monies are leveraged effectively; and
- The likelihood of the applicant successfully securing state ownership and participation in these projects when these grant funds cease.

Grantees are expected to use this grant as seed money to develop other public and private resources in order to ensure sustainability of grant activities following completion of the funding period. The Department considers detailed commitments for specific new activities as more important than promises of in-kind supports in showing sustained support for the project. Grants recently received from another agency can be discussed in the proposal, but the applicant should be precise about which activities precede this grant and which will occur because of this grant. In addition, the applicant should detail how public sector commitments can contribute to the sustainability of this project following completion of the grant. Examples of the types of public and private sector commitments envisioned include the following:

- The school system commits to offering credit for HS/HT training activities.
- The vocational rehabilitation office commits to funding assistive technology and transportation services for students enrolled in the program.
- A community college commits to providing technology training for HS/HT students.
- State-level elected officials commit to work towards state codification of High School/High Tech.
- An employer commits to providing technology based summer internships.
- State and Local Workforce Investment Boards commit to paying internship costs.
- A university commits to providing scholarships for HS/HT students.
- A developmental disability council commits to funding a new HS/HT site.
- An independent living center commits a staff person to work full time on HS/HT.

Letters of Commitment. Applicants can include letters of support if they provide specific commitments. Such letters can increase an applicant's score by showing that the commitments in the text of the proposal are serious. Form letters will not be considered. We encourage applicants to have letters of support from all existing HS/HT programs in their states.

Letter from the Governor. A letter from the Governor or functionally equivalent entity reflecting support of state level participation in the High School/High Tech program will be viewed favorably. If a letter from the Governor is not feasible, the application must include a letter from the head of an appropriate state agency.

5. Quality of the Management Plan (15 points)

In evaluating the quality of the management plan for the proposed project, the Department will consider the following factors:

a. The extent to which a management plan for project implementation is likely to achieve the objectives of the proposed project on time and within budget, including defined staff responsibilities, and time allocated to project activities, time lines, milestones for accomplishing project tasks and project deliverables;

b. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and,

c. The extent to which the time commitments of the state director and/or principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB Circulars require, and an entities procurement procedures must require that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (*see* Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

1. findings of the grant technical evaluation panel;
2. geographic distribution of the competitive applications;
3. assuring a variety of different program designs; and,
4. the availability of funds.

IX. Reporting

The Department of Labor is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement, the grant agreement and other applicable administrative requirements. Applicants should assume that Department staff or their designees will conduct at least one on-site project review. In addition, all grantees will be expected to provide information on outcomes (post-secondary education and employment) of the youth with disabilities served through the HS/HT program.

Applicants must submit on a quarterly basis, beginning ninety days from the award of the grant, financial and participation reports under this program as prescribed by OMB Circular A–102 and A–110, as codified by 29 CFR parts 97 and 95 respectively. Specifically the following reports will be required:

1. *Quarterly reports;* The quarterly report is estimated to take five hours to complete. The form for the Quarterly Report will be provided by ODEP. The Department will work with the grantee to help refine the requirements of the report, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction.

2. *Standard Form 269;* Financial Status Report Form, on a quarterly basis.

3. *Final Project Report;* including an assessment of project performance and outcomes achieved. The final report is estimated to take twenty hours. This report will be submitted in hard copy and on electronic disk using a format and following instructions, which will be provided by the Department. A draft of the final report is due to the Department thirty days before the termination of the grant. The final report is due to DOL sixty days following the termination of the grant.

DOL will arrange for and conduct an independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Grantees must agree to make available records on all parts of project activity, including participant post secondary and employment data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for project implementation.

X. Administration Provisions

A. Administrative Standards and Provisions

Grantees are strongly encouraged to read these regulations before submitting a proposal. The grant awarded under this SGA shall be subject to the following as applicable:

29 CFR part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;

29 CFR part 96—Audit Requirements for Grants, Contracts, and Other Agreements.

29 CFR part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

B. Allowable Cost

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Government—OMB Circular A–87

Nonprofit Organizations—OMB Circular A–122

Profit-Making Commercial Firms—48 CFR part 31

Profit will *not* be considered an allowable cost in any case.

C. Grant Assurances

As a condition of the award, the applicant must certify that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

29 CFR part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964.

29 CFR part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794).

29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*).

29 CFR part 37—Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA), (Implementing Section 188 of the Workforce Investment Act, 29 U.S.C. 2938).

The applicant must include assurances and certifications that it will comply with these laws in its grant application. The assurances and certifications are attached as Appendix C.

Signed at Washington, DC, this 16th day of July, 2002.

Lawrence J. Kuss,

Grant Officer.

APPENDIX A. Application for Federal Assistance, Form SF 424

APPENDIX B. Budget Information Sheet, Form SF 424A

APPENDIX C. Assurances and Certifications Signature Page

BILLING CODE 4510–CX–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED July 16, 2002	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-07) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

D. Applicant is not a 501 (c) (4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 02–18423 Filed 7–19–02; 8:45 am]
BILLING CODE 4510–CX–C

DEPARTMENT OF LABOR

Office of Disability Employment Policy; Working for Freedom, Opportunity and Real Choice Through Community Employment (WorkFORCE) Grant Initiative: Supporting the Coordination and Delivery of Competitive Employment Opportunities That Facilitate People With Disabilities Living and Working in Their Communities

AGENCY: Office of Disability Employment Policy, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications for WorkFORCE coordinating and action grants) (SGA 02–20 and SGA 02–21).

SUMMARY: This notice announces the availability of $6.0 million in grant funding through the Department of Labor's Working for Freedom, Opportunity and Real Choice through Community Employment (WorkFORCE) Grant Initiative. This new initiative represents the Department of Labor's continued support for increasing and improving employment opportunities that allow individuals with disabilities to: (1) Move from nursing homes or other institutions and residential facilities into the community; (2) continue living in the community; (3) achieve economic self-sufficiency; and (4) attain full access to, and participation in, their communities.

This WorkFORCE Grant Initiative includes two distinct competitive Solicitations for Grant Applications (SGAs), the WorkFORCE Coordinating Grants SGA and the WorkFORCE Action Grants SGA:

- WorkFORCE Coordinating Grants (SGA 02–20): These grants, ranging from $100,000 to $150,000, are to assist in coordinating, strategizing and developing competitive, customized community employment opportunities for individuals with disabilities so that they may live, work, and fully participate in their communities.
- WorkFORCE Action Grants (SGA 02–21): These grants are demonstration grants, ranging from $400,000 to $750,000, to begin or expand the delivery and implementation of competitive, customized community employment opportunities for individuals with disabilities so that they may live, work, and fully participate in their communities.

The application and evaluation/selection criteria for both SGAs are included in this Notice of Funding Availability. State agencies, nonprofit organizations, a consortium of public and private entities, and Indian and Native American Tribal entities, or consortia of Tribes, with the written approval of their tribal council are eligible applicants for the WorkFORCE Coordinating Grants. Nonprofit organizations, either individually or as part of a consortium, are eligible applicants for the WorkFORCE Action Grants.

Deadline for Submission of Grant Applications: To be considered under the Fiscal Year 2002 funding cycle, grant applications must be submitted by the deadlines listed below:

WorkFORCE Coordinating Grants, August 21, 2002
WorkFORCE Action Grants, August 21, 2002

Submission of Applications: Applicants are required to submit one ink-signed original and two copies of the complete application for each grant for which they are applying to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 02–20 or SGA 02–21, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210 by no later than 4:45 p.m. Eastern Daylight Savings Time (EDST) on August 21, 2002. Both the WorkFORCE Coordinating Grants and the WorkFORCE Action Grants have the same closing date, August 21, 2002. Applications for either grant received after these closing dates will not be considered.

Late Proposals: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application(s) by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, at (202) 693–4570, prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services Center after 4:45 p.m., EDST, August 21, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 21, 2002; or
2. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days, excluding weekends and Federal holidays, prior to August 21, 2002; and/or
3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however the Department does not accept dates or date stamps on such packages as evidence of timely mailing. Thus, the applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

FOR FURTHER INFORMATION, CONTACT: Questions concerning this solicitation may be directed to Cassandra Willis, at (202) 693–4570. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339. Application announcements or forms will not be mailed. They are published in the **Federal Register** which may be obtained from your nearest U.S. Government office or public library. In addition, you can obtain up-to-date general information about the WorkFORCE Grants, as well as the complete grant solicitations for both the WorkFORCE Coordinating Grants and the WorkFORCE Action Grants, please check our web site at: *http://www2.dol.gov/odep/*.

SUPPLEMENTARY INFORMATION:

I. Authority

Consolidated Appropriations Act, 2001, Public Law 106–554, 114 Stat. 2763; 29 U.S.C. 557b; DOL, HHS, Education and Related Appropriations Act, 2002, Public Law 107–116, 115 Stat. 2177.

II. Background

In *Olmstead* v. *L.C.*, 119 S.Ct. 2176 (1999) (the "Olmstead decision"), the Supreme Court construed Title II of the Americans with Disabilities Act (ADA) to require states to place qualified individuals with mental disabilities in community settings, rather than in institutions, whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the state can reasonably accommodate the placement, taking into account the resources available to the state and the needs of others with disabilities. The Department of Justice regulations implementing Title II of the ADA require public entities to administer their services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, 28 CFR 35.130(d).

The Supreme Court stated that institutional placements of people with disabilities who can live in, and benefit from, community settings perpetuates the unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life and that "...confinement in an institution severely diminishes everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." *Olmstead,* 119 S.Ct. 2176, 21789, 2187 [emphasis added]. This decision affects not only all persons in institutions and segregated settings, but also people with disabilities who are at-risk of institutionalization, including people with disabilities on waiting lists to receive community based services and supports.

The Court indicated that one way states can show they are meeting their obligations under the ADA and the *Olmstead* decision is to develop a "comprehensive, effectively working plan for placing qualified people with mental disabilities in less restrictive settings." *Olmstead* at 2179. Based on this, almost all the states are in the process of developing, or have already developed such plans.

In support of these state efforts, on June 18, 2001, President Bush issued Executive Order 13217-Community-Based Alternatives for Individuals with Disabilities (the *Olmstead* Executive Order), which extended application of the Supreme Court's Olmstead decision to all Americans with disabilities, and called upon selected federal agencies, including the U.S. Department of Labor, to help support governors in their implementation of the *Olmstead* decision. In support of these state efforts and in response to the direction set forth in Executive Order 13217, the U.S. Department of Labor is issuing this SGA for the WorkFORCE Coordinating Grants and WorkFORCE Action Grants.

In March 2002, the U.S. Secretary of Health and Human Services, Tommy G. Thompson, submitted a report to President Bush, titled Delivering on the Promise, on behalf of the Departments of Labor (DOL), Justice (DOJ), Education (ED), Housing and Urban Development (HUD), Transportation (DOT), Veterans Affairs (VA), and the Social Security Administration (SSA) and Office of Personnel Management (OPM). This report detailed actions being planned by the aforementioned agencies to eliminate barriers and promote community integration. *See http://www.hhs.gov/newfreedom/final.* In this report, DOL and other Federal agencies noted that successful Olmstead planning and implementation efforts must include competitive employment and employment-related supports. Delivering on the Promise identifies several key concerns related to employment that must be addressed, including:

- Fragmentation of existing employment services;
- Isolation and segregation of people with disabilities from "mainstream" or generic employment programs and services;
- Lack of access to health insurance;
- The complexity of existing work incentives that are supposed to encourage and/or support work efforts;
- Lack of control and choice in selecting employment training and service providers;
- Inadequate work opportunities resulting from attitudinal barriers based on historical and erroneous stereotypes; and
- Lack of accurate data on employment of people with disabilities needed to measure progress in eliminating barriers to their employment.

These WorkFORCE grants are meant to offer opportunities that respond to these issues.

Additionally, these grants support the President's New Freedom Initiative. The New Freedom Initiative is designed to increase the number of people with disabilities who enter, re-enter, and remain in the workforce. By emphasizing the need to increase the capacity of Federally-supported employment and training programs to serve people with significant disabilities, including those covered by the *Olmstead* decision and Executive Order, the current SGA will further the New Freedom Initiative's goals of increased integration of Americans with disabilities into the workforce.

These grants will also support other Federal and state initiatives already underway to make working and living in the community a reality for more people with disabilities, including the state planning and implementation efforts under the U.S. Supreme Court's *Olmstead* decision; the *Olmstead* Executive Order; the Department of Health and Human Services Systems Change Grants; the DOL Work Incentive Grants and Customized Employment Grants; and other related grant opportunities and efforts by DOL, the Department of Health and Human Services, and the Social Security Administration under the Workforce Investment Act (WIA) and the Ticket to Work and Work Incentives Improvement Act (TWWIIA).

Many strategies exist for creating and expanding competitive employment opportunities in the community, especially for people with significant disabilities who were for many years considered unemployable, including individuals who have been segregated in institutions, sheltered workshops, nursing homes, and day activity programs. Many related practices and promising strategies have emerged through decades of research and demonstration projects, and through other public and private activities promoting increased choice and self-

determination for people with disabilities. These include multiple "customized" employment approaches such as supported employment and supported entrepreneurship; individualized job development; job carving and restructuring; use of personal agents (including individuals with disabilities and family members); development of micro-boards, micro-enterprises, cooperatives and small businesses; and the use of personal budgets and other forms of individualized funding that provide choice and control to the person and promote self-determination.

WIA established comprehensive reform of existing Federal job training programs with and impacted service delivery under the Wagner-Peyser Act, Adult Education and Literacy Act, and the Rehabilitation Act. A number of other Federal programs are also identified as required partners in the One-Stop delivery system in order to provide comprehensive services for all Americans to access the information and resources available to assist them in the development and implementation of their career goals. The purpose of the One-Stop system is to establish programs and providers in co-located and integrated settings that are accessible for individuals and businesses alike in approximately 600 workforce investment areas established throughout the nation.

The One-Stop Centers, which comprise the heart of this system, are in a position to expand employment opportunities for people with disabilities by helping to ensure that the workforce system is accessible both physically and programmatically. To accomplish this expansion, however, additional state and local organizations must be involved. Partners necessary to the success of this endeavor include, but are not limited to, the following: state programs for individuals with cognitive and developmental disabilities; Medicaid; mental health and substance abuse agencies and organizations; transportation and assistive technology providers; Small Business Development Centers; secondary education programs; community colleges; University Centers for Excellence in Developmental Disabilities; foundations; and community-based and faith-based organizations.

Innovative partnerships hold the promise of dramatically increasing both employment and wages for people with disabilities, in part by increasing their choices for integrated, competitive employment, business ownership, entrepreneurship, and other customized employment options.

In response to these considerations and in view of the potential resources described above, ODEP will pursue a two-pronged approach in its new Working for Freedom, Opportunity and Real Choice through Community Employment (WorkFORCE) Grant Initiative:

- Awarding WorkFORCE Coordinating Grants to provide an opportunity to expand state coordination, planning and development efforts related to Olmstead plans.
- Awarding WorkFORCE Action Grants to demonstration projects that develop and/or expand the capacity of communities to support the employment-related needs of individuals with disabilities.

The combination of these efforts will substantially contribute to the President's New Freedom Initiative and will further the objectives of the President's Executive Order 13217.

III. Workforce Coordinating Grants (SGA 02–20)

A. Overview

ODEP will award up to $4.0 million in grant funding for WorkFORCE Coordinating Grants to fund up to twenty-seven grants, with the average grant size ranging between $100,000—$150,000 for one year. These grants are part of the Department of Labor's continued efforts to increase the employment rate of people with disabilities. The purpose of the WorkFORCE Coordinating Grants is to support the development and coordination of competitive, customized employment strategies and opportunities for people with disabilities who want to: (1) Move from nursing homes or other institutions or residential facilities into the community; (2) continue living in the community; (3) achieve economic self-sufficiency; and (4) attain full access to, and participation in, their communities.

Eligible applicants for the WorkFORCE Coordinating Grants are state agencies; nonprofit, faith-based, and community organizations; a consortium of public and private entities; and Indian and Native American Tribal entities, or consortia of Tribes.

In this SGA, ODEP is also announcing the availability of up to $2.0 million in WorkFORCE Action Grants to fund two to four community employment demonstration projects ranging from $400,000–$750,000 per year for up to five years. Applicants for both of these grants must document through a letter signed by their state's governor or functionally equivalent entity, or his/her designee for *Olmstead* implementation, that the proposed grant activities will be regarded as one of their state's official demonstration program(s) for overall *Olmstead* implementation. If a particular state is supporting applications for both a WorkFORCE Coordinating and WorkFORCE Action grant, the letter signed by the sanctioning entity must additionally reflect that the state will work with the applicants to ensure that the activities of the two grants are coordinated. In addition, applicants must provide a detailed explanation of the specific procedures and approaches that will be put in place to ensure coordination of grants.

B. Purpose of Coordinating Grants

The WorkFORCE Coordinating Grants are designed to provide states with an opportunity to expand and better coordinate their statewide overall *Olmstead* planning and implementation efforts, with an emphasis on coordinating the delivery of employment-related services and supports to people with disabilities, including those provided through the workforce development system and its One-Stop Career Center system. The Coordinating Grants are intended to enhance the ability of states, disability organizations, and other relevant entities to engage in strategic statewide coordination, planning and development leading to improved and/or increased opportunities for customized, competitive community employment for people with disabilities.

These coordination efforts must include the involvement of many key partners, especially those associated with the workforce development system, including the One-Stop Centers; those involved in developing and implementing Medicaid buy-ins and other work incentives related to Social Security disability benefits and programs; and those partners involved in HHS Systems Change, Real Choice, and Nursing Home Transition grants, which also target individuals with disabilities who are covered by the *Olmstead* decision and Executive Order. In addition, coordination must include entities that currently receive relevant DOL grants, including the Work Incentive Grants (WIGs) and the Customized Employment grants, and other appropriate DOL initiatives. *See www2.dol.gov/odep/.*

The target groups to be served are people with disabilities who are either unemployed or under-employed and:

- In non-work, segregated work or transitioning to work settings; or
- Anticipated to be or are determined to be covered under the *Olmstead* decision and/or Executive Order and therefore part of the state's *Olmstead* planning process; or,
- Awaiting employment services and supports following a move from a residential facility, or as part of a plan to move into a community under the *Olmstead* decision and/or Executive Order.

For purposes of this solicitation, customized employment means individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of the strengths, needs, and interests of the person with a disability, and is also designed to meet the specific needs of the employer. It may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being individually customized and negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

C. Statement of Work for Coordinating Grants

All applicants shall describe their proposal for coordinating and developing community employment opportunities, including how they will work to ensure that their state's overall *Olmstead* implementation plan fully addresses providing competitive, customized employment options for people with disabilities who are transitioning to, or living in, the community. Grant applications must include proposed methods for coordinating efforts with a wide variety of state agencies or entities. Some of the agencies and entities that should be included are: (1) State and local Workforce Investment Boards and One-Stop Career Centers; (2) Vocational Rehabilitation; (3) Medicaid, Developmental Disabilities; (4) Mental Health; (5) Substance Abuse; (6) Public Health; (7) Temporary Assistance for Needy Families (TANF); (8) Governors' Developmental Disability Councils, Governors' Committees on Employment of People with Disabilities; (9) University Centers for Excellence in Disabilities; (10) individuals with disabilities; (11) centers for independent living; (12) advocacy and consumer groups; (13) employers; (14) community- and faith-based organizations, family members, and other appropriate organizations and stakeholders.

WorkFORCE coordination activities must include development and implementation of cross-agency strategies that will link employment supports and services into the current overall *Olmstead* planning process. The activities should be designed to help support the movement of people with significant disabilities from segregated settings to integrated settings, particularly customized, competitive employment opportunities in the community.

The grant will result in the development of coordinated, strategic plans and actions that offer leadership and detail as to how various delivery systems and related agencies and organizations are working, and can work, to better meet the community employment needs of people with significant disabilities. These activities must include strategies to provide training and staff development to increase organizational capacity to serve the target population with needed customized employment services. Coordination with the state's other *Olmstead* activities and planning efforts is mandatory, as is the institution of objectives measures of evaluation to document project success.

Grantees for the WorkFORCE Coordinating Grants must engage in collaborative activities across relevant stakeholder groups, including both required and non-required WIA partners, persons with disabilities, their parents and other family members, advocates, employers, community rehabilitation agencies, and others, as appropriate. The commitment of key personnel to this effort will be very important to the success of the grant.

Appropriate actions and activities which may be undertaken under the WorkFORCE Coordinating Grants include the following:

1. Identification of the major barriers to integrated and competitive community employment that affect people with significant disabilities who are transitioning into, or already living in, the community;

2. Research to establish or foster the development or expansion of promising practices (including customized employment strategies such as supported employment; supported entrepreneurship; individualized job placement; job carving and restructuring; use of personal agents; development of micro-boards, micro-enterprises, cooperative, and small businesses; use of personal budgets and other forms of individualized funding that provide choice and control and promote self-determination) that have demonstrated increased employment outcomes for people with significant disabilities;

3. Involvement of agencies, organizations, employers, and individuals currently active in the overall *Olmstead* planning process and those who need to become involved:

4. Development of plans for implementing cross-agency strategies that will assure that employment in integrated, competitive work settings is part of the overall *Olmstead* plan and is available as an option for the targeted population;

5. Development of strategies for capacity building and linking of relevant resources to the overall workforce development activities in the state;

1. Identification of specific roles and responsibilities that the agencies, both public and private, should fulfill in order to provide increased and improved competitive, customized employment opportunities in the community;

7. Identification of the necessary resources, financial and non-financial, to continue to implement these actions and provide increased and improved competitive customized employment opportunities in the community, in ways that provide increased control and choice for individuals with disabilities;

8. Development of strategies for how existing state *Olmstead*-related activities will be coordinated and involved in employment programs for the target population;

9. Identification of specific ways people with disabilities and, when appropriate, their family members will be involved in the development and growth of competitive, customized community employment options in non-stereotypical jobs;

10. Identification of specific ways employers and businesses will be involved in developing and supporting increased and improved competitive, customized community employment options;

11. Identification of long-term strategies to pursue for needed systemic changes;

12. Development of Memoranda of Understanding, letters of support, etc., to carry out the coordination activities, including commitments, resources, time lines, outcomes (*e.g.*, how many people will be served);

13. Development of a data collection system designed to document community employment results for

people with disabilities who are transitioning from institutions to the community and/or currently living in the community;

Grantees must account for the travel costs associated with sending at least one representative for two days to a mandatory annual ODEP Grantees' training conference, to be held in Washington, DC in their grant budget.

Grantees must also agree to work with ODEP and its various technical assistance efforts in order to share with others what is learned about delivering competitive, customized community employment services to individuals with disabilities.

D. Funding Availability for Coordinating Grants

The Department of Labor anticipates awarding at least 30 grants, with a range of $100,000 to $150,000 each. These awards will be for a one-year period of performance.

E. Eligible Applicants for Coordinating Grants

Eligible applicants for the WorkFORCE Coordinating Grants are state agencies, nonprofit organizations, or a consortium of public and private entities, which have been designated, authorized, and/or approved by the governor of the state, the governmental body's functionally equivalent entity, or the governor or equivalent entity's designee for *Olmstead* implementation to:

- Lead the state's overall *Olmstead* implementation effort or
- Develop and/or lead the specific component of the state's overall *Olmstead* implementation effort that relates to employment.

"State" in this context includes the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. Indian and Native American Tribal entities, or consortia of Tribes, with the written approval of their tribal council, are also eligible applicants to receive these grants. Grants awarded to tribal entities are to be used in coordinating, strategizing, and developing competitive, customized community employment opportunities for individuals with disabilities in a specific Indian community or covering multiple Tribal entities so that they may live, work and fully participate in their communities. Grants to Indian and Native American tribal grantees must recognize principles of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act, allowing for the government-to-government relationship between the Federal and Tribal Governments.

F. Application Contents for Coordinating Grants

General Requirements—Two copies and one ink-signed original of the proposal must be submitted. Proposals must be submitted by the applicant only. There are three required sections of the application. Requirements for each section are provided in this application package.

Part I—Executive Summary

The Executive Summary must be no more than 2 single-spaced pages in length giving a clear summary of the project narrative.

Part II—Project Narrative—(Appendices: Letters of Commitment/Support, Resumes, etc.)

Applicants must include a project narrative that addresses the Statement of Work in Part III, Section C of this notice and the evaluation criteria that are used by reviewers in evaluating the application in Part III, Section G. Applicants that are consortium of public and private entities must include a copy of their consortium's partnership agreement in the Appendices.

You must limit the project narrative to the equivalent of no more than thirty pages using the following standards. This page limit does not apply to Part I, the Executive Summary; Part III, the Project Financial Plan (Budget); and, the Appendices (the assurances and certifications, consortium partnership agreement (where applicable), resumes, bibliography or references, and the letters of support). A page is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch.)

Part III—Project Financial Plan (Budget)

Applications must include a detailed financial plan that identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Plan must contain the SF–424, Application for Federal Assistance (Appendix A) and a Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

G. Evaluation and Selection Criteria for Coordinating Grants

A. Evaluation Criteria

The application must include information of the type described below.

1. Significance of the Proposed Project (20 points)

In determining the significance of the proposed project, the Department considers the following factors:

a. The potential contribution of the proposed project to increase knowledge or understanding of problems, issues, or effective strategies for coordinating state-wide *Olmstead* planning and implementation efforts, with an emphasis on coordinating the delivery of employment-related services and supports;

b. The extent to which the applicant demonstrates an understanding of the issues the state is currently facing in their overall *Olmstead* implementation efforts;

c. The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

d. The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

e. The potential replicability (national significance) of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings; and,

f. The importance or magnitude of the results that is likely to be attained by the proposed project

2. Quality of the Project Design (30 points)

In evaluating the quality of the proposed project design, the Department considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

b. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population and other identified needs;

c. The extent to which the design of the proposed project provides procedures and approaches for coordination with key agencies and organizations, identification of critical roles, and a plan for implementation of competitive, customized community employment strategies;

d. The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this grant;

e. The extent to which the proposed project will be coordinated, including demonstrated support from the state governor or designated Olmstead agency and commitment from key organizations and agencies;

f. The extent to which the applicant encourages involvement of people with disabilities and their families, experts and organizations, and other relevant stakeholders in project activities; and,

g. The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

3. Quality of Project Personnel (15 points)

The Project Narrative must describe the proposed staffing of the project and must identify and summarize the qualifications of the personnel who will carry it out. In addition, the Project Narrative must summarize the qualifications, including relevant education, training and experience of key project personnel as well as the qualifications, including relevant training and experience of project consultants or subcontractors. Resumes must be included in the Appendices.

4. Adequacy of the Budget (10 points)

In evaluating the adequacy of the budget for the proposed project, the Department considers the following factors:

a. The extent to which the budget is adequate to support the proposed project; and

b. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

The applicant may include letters of commitment from proposed partners in the Appendix.

5. Quality of the Management Plan (15 points)

In evaluating the quality of the management plan for the proposed project, the Department considers the following factors:

a. The extent to which the management plan for project implementation achieves the objectives of the proposed project on time and within budget, including clearly defined staff responsibilities, and time allocated to project activities, time lines, milestones for accomplishing project tasks and project deliverables;

b. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and

c. The extent to which the time commitments of the project director and/or principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

6. Quality of the Project Evaluation (10 points)

In evaluating the quality of the project's evaluation design, the Department considers the following factors:

a. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, context, and outcomes of the proposed project;

b. The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

c. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data;

d. The extent to which the evaluation will provide information to other programs about effective strategies suitable for replication or testing in other settings; and,

e. The extent to which the methods of evaluation measure in both quantitative and qualitative terms, program results and satisfaction of people with disabilities.

B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require, that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., to avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

1. Findings of the grant technical evaluation panel;

2. Geographic distribution of the competitive applications;

3. Assuring a variety of program designs; and,

4. The availability of funds.

H. Reporting for Workforce Coordinating Grants

The Department of Labor is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement, the grant agreement and other applicable administrative requirements.

Grantees will be required to submit periodic financial and participation reports under the WorkFORCE Coordinating Grant program. Specifically the following reports will be required:

1. Semi-Annual Reports; The Semi-Annual Report is estimated to take ten hours to complete. The form for the Semi-Annual Report will be provided by ODEP. It is designed to measure progress in reaching the objectives of the Grant.

2. Standard Form 269; Financial Status Report Form, on a quarterly basis.

3. Final Project Report; including an assessment of project performance and outcomes achieved. The final report is estimated to take 20 hours. This report will be submitted in hard copy and on electronic disk following the format and instructions provided by DOL/ODEP. A draft of the final report is due to DOL 45 days before the termination of the grant. The final report is due to DOL 60 days following the termination of the grant.

Applicants for the WorkFORCE Coordinating Grant Program should proceed to Section I, Administration Provisions.

IV. Workforce Action Grants (SGA 02–21)

A. Overview

The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP) announces the availability of up to $2.0 million to award between two to four grants, ranging from $400,000 to $750,000 each, to develop demonstration programs to support the development and coordination of competitive, customized employment opportunities in non-stereotypical jobs for people with disabilities who want to (1) move from nursing homes, residential facilities, or other institutions into the community, (2) continue living in the community, (3) achieve economic self-sufficiency, and (4) attain full access to, and participation in, their communities.

These demonstration grants are for a one-year implementation period with four optional additional years, depending upon project performance and funding availability at varying funding levels. These grants are designed to provide competitive, customized, community employment services that lead to non-stereotypical jobs for people with significant disabilities.

In this SGA, ODEP is also announcing the availability of up to $4.0 million in WorkFORCE Coordinating Grants. Applicants for both of these grants must document through a letter signed by their state's governor or functionally equivalent entity, or his/her designee for *Olmstead* implementation, that the proposed grant activities will be regarded as one of their state's official demonstration program(s) for overall *Olmstead* implementation. If a particular state is supporting applications for both a WorkFORCE Coordinating and WorkFORCE Action grant, the letter signed by the state's sanctioning entity must additionally reflect that the state will work with the applicants to ensure that the activities of the two grants are coordinated. In addition, applicants must provide a detailed explanation of the specific procedures and approaches that will be put in place to ensure coordination of grants in their Project Narrative.

These grants are part of the Department of Labor's continued efforts to increase the employment rate of people with disabilities. Eligible applicants for the WorkFORCE Action Grants are nonprofit organizations, either individually or as part of a consortium. Organizations applying to be demonstration sites must have approval and support from the governor, or his/her designee, as one of the state's official *Olmstead* employment demonstration grant programs.

B. Purpose of Workforce Action Grants

The purpose of the WorkFORCE Action Grants is to demonstrate the employment potential of people with disabilities through techniques for accomplishing competitive employment in non-stereotypical integrated settings, utilizing customized employment strategies. These efforts must include the involvement of many key partners, especially those associated with their area's One-Stop Career Centers.

The target groups to be served are people with disabilities who are either unemployed or under-employed and who are:

- In non-work, segregated work, or transitioning to work settings;
- Expected to be or are determined to be covered under the *Olmstead* decision and/or Executive Order and therefore part of the state overall *Olmstead* planning process; or,
- Awaiting employment services and supports following a move from a residential facility, or as part of a plan to move into a community under the Supreme Court's decision in *Olmstead* and/or *Olmstead* Executive Order.

For purposes of this solicitation, customized employment means individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of strengths, needs, and interests of the person with a disability, and is also designed to meet the specific needs of the employer. It may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and the supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

If proposals are submitted for both grants from a particular state, the activities of the WorkFORCE Coordinating Grant and the WorkFORCE Action Grant must be coordinated as discussed previously. Coordination and demonstration efforts can be reinforcing activities.

C. Statement of Work for Action Grants

Each applicant for these grants shall describe its plan for expanding capacity for, and provision of, customized employment opportunities to the target groups. Applicants must document through a letter signed by their state's governor, or his/her designee for *Olmstead* implementation, that the proposed activities will be regarded as one of their state's official demonstration program(s) for overall *Olmstead* implementation. This letter should also indicate how the lessons learned in the implementation of the WorkFORCE Action Grant demonstration project would be utilized in other communities throughout the state. Grant applications must include proposed methods for coordinating efforts with a wide variety of state agencies or entities. Some of the agencies that should be included are: employment and training agencies; state and local Workforce Investment Boards and their One-Stop Career Centers; Substance Abuse; Vocational Rehabilitation; state Education Agencies; Medicaid; Mental Retardation; Mental Health; Public Health; Temporary Assistance for Needy Families (TANF); Developmental Disability Councils; Independent Living programs; community rehabilitation providers; University Centers for Excellence in Disabilities; family members; consumers; employers; and any other key agencies or constituencies needed to offer a comprehensive service delivery model.

The demonstration grant program being described must address the movement of individuals from segregated settings to competitive, integrated, customized employment opportunities in the community. Grantees must work in coordination with their state's *Olmstead* lead agency on their state's overall *Olmstead* plan, and describe how they will contribute to the development of their state's plan and implementation strategy related to employment. Grantees must also integrate their employment strategies with their state's employment programs and services, including existing services available through the One-Stop Centers, the state and local Workforce Investment Boards, and their partners. In addition, they must coordinate their efforts with existing *Olmstead* activities and programs including grant activities and initiatives funded by the Center for Medicaid and State Operations at the U.S. Department of Health and Human Services (*e.g.*, Systems Change for Community Living Grants, State Medicaid Buy-in programs, and Medicaid Infrastructure Grants), and grant activities funded by the Center for Mental Health Services of the U.S. Department of Health and Human Services, (*e.g.*, Community-Based Care

Services for People with Psychiatric Disabilities).

Grantees must develop employment opportunities in a variety of occupations and industries based on the strengths, needs, and desires of the individual with a disability, including self-employment and entrepreneurship where appropriate. Services and supports must be organized in ways that provide informed choice and promote self-determination. In addition, grantees must establish employer involvement; track and respond to customer service and satisfaction for both persons with disabilities and employers; and provide services, including follow-up services, to ensure job retention and career development.

Grantees should establish partnerships and linkages with other relevant state entities and programs (such as Medicaid, mental health, substance abuse, transportation, State Councils on Developmental Disabilities), as well as Small Business Development Centers, community colleges, benefits counseling and assistance programs, and lending and financial institutions, whose expertise, services, and/or funds could contribute to employment services and supports needed by the *Olmstead* population in order to secure competitive, customized community employment outcomes.

Grantees must educate relevant stakeholders and systems personnel about changes needed to increase integrated, customized community employment outcomes for individuals with disabilities.

Grantees must consider the usefulness of increasing the availability of personal agents and job development personnel offering customized services through customer-controlled approaches that result in customized employment. One possible area of focus could include demonstrating the effectiveness of paying family members and/or other individuals with disabilities to serve as personal agents when selected by the individual with a disability to assist in negotiating and implementing employment plans and services. Grantees must incorporate use of funds leveraged across several systems available to people with disabilities through personal accounts or personal budgets.

Grantees may use funds in a flexible manner, as determined appropriate by input from stakeholders and identified needs, so long as requirements for outcome and evaluation data and other requirements of Federal statutes, regulations, administrative requirements, and OMB circulars and the requirements delineated in this SGA are met.

All grantees must agree to cooperate with an independent evaluation to be conducted by the DOL. DOL will arrange for and conduct this independent evaluation of the outcomes, impacts, and accomplishments of each funded grant. Grantees must agree to make available records on all parts of grant activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department.

Grantees must also agree to work with ODEP in its various technical assistance efforts in order to freely share with others what is learned about delivering customized employment services to the *Olmstead* population. Grantees also must agree to collaborate with other research institutes, centers, studies, and evaluations that are supported by DOL and other relevant Federal agencies.

D. Funding Availability for Action Grants

The Department of Labor anticipates awarding two to four grants, with a range of $400,000 to $750,000 each. These awards will be for one-year period of performance and may be renewed annually up to four additional years for a total of five years depending upon the availability of funds and the efficacy of the grant activities, established by independent reviews conducted by the Department of Labor or its designee. Proposals must include budgetary information for a five-year period. It is envisioned that if funding is continued for the full five years, the funding for years four and five will be at successfully lower rates, with funding during year four at 80 percent of the third year funds, and, at 60 percent during year five. Grantees are expected to use this grant as seed money to develop other public and private resources in order to ensure sustainability of grant activities following completion of the funding period. Funds may not be used for modifying buildings or equipment for physical or communication accessibility, although the strategic planning should address how resources will be leveraged for such purposes from other sources, as appropriate.

E. Eligible Applicants for Action Grants

Eligible applicants for these demonstration grants are non-profit organizations. Applicants must document, via a letter signed by their state's governor, or his/her designee for overall *Olmstead* implementation, that the proposed grant activities will be regarded as an official demonstration program playing a vital role in their state's *Olmstead* employment implementation effort(s). Moreover, this letter must describe how the lessons learned under this grant will be utilized to benefit other communities throughout the state, and thereby provide expanded competitive, customized employment options for people who are covered under the *Olmstead* decision and Executive Order.

F. Application Contents

General Requirements—Two copies and one ink-signed original of the proposal must be submitted. Proposals must be submitted by the applicant only. There are three required sections of the application. Requirements for each section are provided in this application package.

Part I—Executive Summary

The Executive Summary must be no more than two single-spaced pages in length giving a clear summary of the project narrative.

Part II—Project Narrative—(Appendices: Letters of Commitment/Support, Resumes, etc.)

Applicants must include a project narrative that addresses the Statement of Work in Part IV, Section C of this notice and the evaluation criteria that are used by reviewers in evaluating the application in Part IV, Section G. Applicants that are consortium entities must include a copy of the consortium's partnership agreement in the Appendices.

You must limit the project narrative to the equivalent of no more than 75 pages using the following standards. This page limit does not apply to Part I, the Executive Summary; Part III, the Project Financial Plan (Budget); and, the Appendices (the assurances and certifications, resumes, bibliography or references, the letters of support, and consortium partnership agreement where applicable). A page is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch.)

Part III—Project Financial Plan (Budget)

Applications must include a detailed financial plan that identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Plan must contain the SF–424, Application for Federal Assistance (Appendix A) and a Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

F. Evaluation Criteria

A. Evaluation Criteria

The application must include information of the type described below.

1. Significance of the Proposed Project (20 points)

In determining the significance of the proposed project, the Department considers the following factors:

a. The potential contribution of the proposed project to increase knowledge or understanding of problems, issues, or effective strategies for addressing the development and/or enhancing the capacity of the One-Stop Career Center system or other potential partners to use customized employment strategies to increase employment, choice and wages, and influence systems change;

b. The extent to which the applicant demonstrates an understanding of the issues the state and proposed geographic area are currently facing in their overall *Olmstead* implementation efforts;

c. The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

d. The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

f. The extent to which the promising practices of the proposed project are to be disseminated in ways that will enable others to use the information or strategies;

g. The potential replicability (national significance) of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings; and,

h. The importance or magnitude of the results, which are likely to be attained by the proposed project.

2. Quality of the Project Design (30 points)

In evaluating the quality of the proposed project design, the Department considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

b. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population and other identified needs and the quality of the applicant's plans for recruiting and retaining the target population;

c. The extent to which the design of the proposed project provides procedures and approaches for collaboration and coordination with key agencies and organizations, identification of critical roles, and a plan for implementation of competitive, customized community employment strategies;

d. The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this grant and the quality of the applicant's plans for implementing the project's activities in years four and five when Federal fending will be reduced;

e. The extent to which the proposed project will be coordinated, including demonstrated support from the state governor or designated Olmstead agency and commitment from key organizations, employers, and agencies;

f. The extent to which the applicant encourages involvement of people with disabilities and their families, experts and organizations, and other relevant stakeholders in project activities; and,

g. The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

3. Quality of Project Personnel (15 points)

The Project Narrative must describe the proposed staffing of the project and must identify and summarize the qualifications of the personnel who will carry it out. In addition, the Project Narrative must summarize the qualifications, including relevant education, training and experience of key project personnel as well as the qualifications, including relevant training and experience of project consultants or subcontractors. Resumes must be included in the Appendices.

4. Adequacy of the Budget (10 points)

In evaluating the adequacy of the budget for the proposed project, the Department considers the following factors:

a. The extent to which the budget is adequate to support and sustain the proposed project activities over the projected five-year period; and,

b. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

The applicant may include letters of commitment from proposed partners in the Appendix.

5. Quality of the Management Plan (15 points)

In evaluating the quality of the management plan for the proposed project, the Department considers the following factors:

a. The extent to which the management plan for project implementation achieves the objectives of the proposed project on time and within budget, including clearly defined staff responsibilities, and time allocated to project activities, time lines, milestones for accomplishing project tasks and project deliverables;

b. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and,

c. The extent to which the time commitments of the project director and/or principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

6. Quality of the Project Evaluation (10 points)

In evaluating the quality of the project's evaluation design, the Department considers the following factors:

a. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, context, and outcomes of the proposed project;

b. The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

c. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data;

d. The extent to which the evaluation will provide information to other programs about effective strategies

suitable for replication or testing in other settings; and,

e. The extent to which the methods of evaluation measure in both quantitative and qualitative terms, program results and satisfaction of people with disabilities.

B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements, and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require, that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., to avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

1. Findings of the grant technical evaluation panel
2. Geographic distribution of the competitive applications;
3. Assuring a variety of program designs; and,
4. The availability of funds.

H. Reporting for Workforce Action Grants

The Department of Labor is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement, the grant agreement, and other applicable administrative requirements. Applicants should assume that DOL staff or their designees will conduct at least one on-site project review. In addition, all grantees will be expected to provide information on individuals with disabilities securing employment through use of customized strategies (including information on types of jobs, wages, and benefits secured by specific individuals with disabilities, and other areas addressed through the linkages and networks facilitated by project activities).

Grantees will be required to submit periodic financial and participation reports. Specifically the following reports will be required:

1. Quarterly reports; The quarterly report is estimated to take ten hours to complete. The form for the Quarterly Report will be provided by ODEP. The Department will work with the grantee to help refine the requirements of the report, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction.
2. Standard Form 269; Financial Status Report Form, on a quarterly basis.
3. Final Project Report; including an assessment of project performance and outcomes achieved. The final report is estimated to take 20 hours. This report will be submitted in hard copy and on electronic disk using a format and following instructions, which will be provided by the Department. A draft of the final report is due to the Department 45 days before the termination of the grant. The final report is due to the Department 60 days following the termination of the grant

DOL will arrange for and conduct an independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Grantees must agree to make available records on all parts of project activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for project implementation.

I. Administration Provisions (Applicable to Both SGAs)

A. Administrative Standards and Provisions

1. The WorkFORCE Coordinating Grants awarded under this SGA are subject to the following:

- 29 CFR Part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;
- 29 CFR Part 96—Audit Requirements for Grants, Contracts and Other Agreements;
- 29 CFR Part 97 " Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments

2. The WorkFORCE Action Grants awarded under this SGA shall be subject to the following:

- 29 CFR Part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;
- 29 CFR Part 96—Audit Requirements for Grants, Contracts, and Other Agreements.

B. Allowable Costs

Determinations of allowable costs for both the WorkFORCE Coordinating and Action Grants shall be made in accordance with the following applicable Federal cost principles:

- Nonprofit Organizations—OMB Circular A–122
- State and Local Government—OMB Circular A–87

Profit will not be considered an allowable cost in any case.

C. Grant Non-Discrimination Assurances

As a condition of the awards, applicants for both the WorkFORCE Coordinating and Action Grants must certify that they will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

29 CFR Part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964.

29 CFR Part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794)

29 CFR Part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq.)

29 CFR Part 37—Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA), (Implementing Section 188 of the Workforce Investment Act, 29 U.S.C. 2938)

The applicant must include assurances and certifications that it will comply with these laws in its grant application. The assurances and certifications are attached as Appendix C.

Signed at Washington, DC this 16th day of July, 2002.

Lawrence J. Kuss,

Grant Officer.

Appendix A. Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications

Signature Page

BILLING CODE 4510–CX–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED: July 16, 2002	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

D. Applicant is not a 501 (c) (4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 02–18424 Filed 7–19–02; 8:45 am]
BILLING CODE 4510–CX–C

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,248; NAS Interplex, Inc., Flushing, NY

TA–W–41,183; Alcoa Lebanon Works, A Div. Of Alcoa, Inc., Lebanon, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,393; Transylvania Vocational Services (TVS), Inc., Brevard, NC

TA–W–41,206; ICF Industries, Inc., Edison, NJ

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,576; Jones Apparel Group USA, Inc., Bristol, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,016 & A, B; Schott Corp., Marshall, MN, Minneota, MN and Canby, MN

TA–W–41,238; Keystone Thermistor Corp., Mt. Jewett, PA

TA–W–41,301; Schlumbergersema, Inc., San Carlos, CA

TA–W–41,294; Northwind Outdoor Co., Overton's, Inc., Fergus Falls, MN

TA–W–41,475; Ruger Equipment, Inc., Urichsville, OH

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,342; American Furniture Co., Chilhowie, VA: March 20, 2001.

TA–W–41,407; Leviton Manufacturing Co., Inc., El Paso Operations, El Paso, TX: April 10, 2001.

TA–W–41,461; Renfro Corp., South Pittsburg, TN: April 8, 2001.

TA–W–41,262; Alexander Garments, Inc., Hialeah, FL: February 15, 2001.

TA–W–41,063; Lakemont Manufacturing Co., Inc., Lakemont, GA: January 24, 2001.

TA–W–41,473; Mount Vernon Mills, Inc., Alto Yarn Division, Alto, GA: April 12, 2001.

TA–W–41,232; Presto Lifts, Inc., Pawtucket, RI: March 25, 2001.

TA–W–41,234 & A; Spring Ford Industries, Spindale, NC and Rutherfordton, NC: March 20, 2001.

TA–W–41,466; Execumold, Inc., (Currently Located at Fairview, Pennsylvania), Erie, PA: February 21, 2001.

TA–W–41,472; Deerter's Tool and Manufacturing, Inc., Erie, PA: March 28, 2001.

TA–W–41,066; Guilford Mills, Inc., Twin Rivers Textile, Schenectady, NY: February 6, 2001.

TA–W–41,214; Gem-Dandy, Inc., Madison, NC: February 22, 2001.

TA–W–41,219; Spring Ford Industries, Gastonia, NC: March 22, 2001.

TA–W–41,220; Spring Ford Industries, Chilhowie, VA: January 20, 2002.

TA–W–41,226; Emerson Tool Co., Menominee, MI: March 21, 2001.

TA–W–41,535; Sights Denim Systems, Inc., Henderson, KY: May 6, 2001.

TA–W–41,476; Warnaco, Inc., Calvin Klein Div., Abbeville, NC: April 10, 2001.

TA–W–41,397; American Fashion, Inc., Chula Vista, CA: March 26, 2001.

TA–W–40,311; Quickie Manufacturing Corp., El Paso, TX: February 15, 2001.

TA–W–41,470; Milco Industries, Inc., Bloomsburg, PA: April 28, 2002.

TA–W–39,136; Western Electronics, Eugene Div., Eugene, OR: April 6, 2000.

TA–W–41,454; K and J Clothing, Inc., Philadelphia, PA: March 29, 2001.

TA–W–41,471; Cummins, Inc., Cummins Power Generation, Fridley, MN: April 8, 2001.

TA–W–41,296; Mullican Lumber Co., LP, Appalachia, VA: March 28, 2001.

TA–W–41,426 & A; Fairbrooke Enterprises, Inc., Carlstadt, NJ and New York, NY: April 8, 2001.

TA–W–41,377; Levi Strauss & Co., San Francisco Manufacturing Plant, San Francisco, CA, A; Blue Ridge Manufacturing Plant, Blue Ridge, GA, B; Powell Manufacturing Plant, Powell, TN, C; Brownsville Manufacturing Plant, Brownsville, TX, D; Kastrin Manufacturing Plant, El Paso, TX, E; San Benito Manufacturing Plant, San Benito, TX, G; Little Rock Customer Service Center, Little Rock, AR, H; Hebron Customer Service Center, Hebron, KY, I; Sky Harbor Customer Service Center, Henderson, NE, J; Canton Customer Service Center, Canton, MS, K; CF Regional Dallas Office, Dallas, TX, L; Westlake Data Center, Westlake, TX, M; San Francisco Headquarters, San Francisco, CA, N; Oak Road Office, Walnut Creek, CA: April 11, 2001.

TA–W–40,995; Bosch Rexroth Corp., Industrial Hydraulics Div., Racine, WI: March 11, 2001.

TA–W–41,098; Marathon Electric, Inc., A Subsidiary of Regal-Beloit Corp., Wausau, WI: February 13, 2001.

TA–W–41,002; Flextronics Enclosures Systems, Inc., Kingston, PA: January 11, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05999; Flextronics Enclosures Systems, Inc., Kingston, PA
NAFTA–TAA–06018; Johnson Controls International, Fullerton, CA
NAFTA–TAA–06138; Milco Industries, Inc., Apparel Div., Bloomsburg, PA
NAFTA–TAA–06169; Schlumbergersema, Inc., San Carlos, CA
NAFTA–TAA–06219; Pillowtex Corp., Phenix City Facility Finishing and Weave and Columbus Towel Greige, Phenix City, AL
NAFTA–TAA–06128; Deeter's Tool and Manufacturing, Inc., Erie, PA
NAFTA–TAA–06059; New Images, Inc., Reidsville, NC
NAFTA–TAA–06050; NAS Interplex, Inc., Flushing, NY
NAFTA–TAA–05987; Alcoa Lebanon Works, A Div. Of Alcoa, Inc., Lebanon, PA
NAFTA–TAA–05959; Gem-Dandy, Inc., Madison, NC
NAFTA–TAA–05758; Bosch Rexroth Corp., Industrial Hydraulics Div., Racine, WI
NAFTA–TAA–05738; Drexel Heritage Furnishings, Inc., Plant Number 1, Drexel, NC
NAFTA–TAA–05227; Union Apparel, Inc., Norvelt, PA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06034; Alcatel USA, Repair/Returns, Ogdensburg, NY
NAFTA–TAA–06174; Transylvania Vocational Services, (TVS), Inc., Brevard, NC

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

NAFTA–TAA–5604; Jones Apparel Group USA, Inc., Bristol, PA
NAFTA–TAA–05659; Liz Claiborne, Inc., Mt. Pocono, PA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06134; Keystone Termistor Corp., Mt. Jewett, PA: April 1, 2001.
NAFTA–TAA–06200; ASCO Power Technologies, LP, Firetrol, Including Leased Workers of Onsite Companies, Cary, NC: May 10, 2001.
NAFTA–TAA–06105; Warnaco, Inc., Calivin Klein Div., Abbeville, SC: April 12, 2001.
NAFTA–TAA–06098; Leviton Manufacturing Co., Inc., El Paso Operations, El Paso, TX: March 28, 2001.
NAFTA–TAA–06095; Levi Strauss & Co., San Francisco Manufacturing Plant, San Francisco, CA, A; Blue Ridge Manufacturing Plant, Blue Ridge, GA, B; Powell Manufacturing Plant, Powell, TN, C; Brownsville Manufacturing Plant, Brownsville, TX, D; Kastrin Manufacturing Plant, El Paso, TX, E; San Antonio Finishing Plant, San Antonio, TX, F; San Benito Manufacturing Plant, San Benito, TX, G; Little Rock Customer Service Center, Little Rock, AR, H; Hebron Customer Service Center, Hebron, KY, I; Sky Harbor Customer Service Center, Henderson, NE, J; Canton Customer Service Center, Canton, MS, K; CF Regional Dallas Office, Dallas, TX, L; Westlake Data Center, Westlake, TX, M; San Francisco Headquarters, San Francisco, CA, N; Oak Road Office, Walnut Creek, CA: April 11, 2001.
NAFTA–TAA–04751; Western Electronics, Eugene Div., Eugene, OR: April 6, 2000.
NAFTA–TAA–05061; Great Lakes Stitchery, Inc., Manistee, MI: July 10, 2000.
NAFTA–TAA–06042; American Fashion, Inc., Chula Vista, CA: March 21, 2001.
NAFTA–TAA–05881; Marathon Electric, Inc., A Subsidiary of Regal-Beloit Corp., Wausau, WI: February 19, 2001.
NAFTA–TAA–6232; West Penn Hat and Cap Corp., Creighton, PA: May 14, 2001.
NAFTA–TAA–06115; Garlock Sealing Technologies, A Div. Of B.F. Goodrich, Sodus Facility, Palmyra, NY: October 2, 2000.
NAFTA–TAA–6101; Mount Vernon Mills, Inc., Alto Yarn Div., Alto, GA: April 12, 2001.
NAFTA–TAA–05995; Emerson Tool Co., Menominee, MI: March 21, 2001.
NAFTA–TAA–05993; Spring Ford Industries, Rutherfordton, NC: March 20, 2001.
NAFTA–TAA–05992; Spring Ford Industries, Gastonia, NC: March 22, 2001.
NAFTA–TAA–05971; Spring Ford Industries, Spindale, NC: March 14, 2001.
NAFTA–TAA–06163; Sights Denim Systems, Inc., Henderson, KY: May 6, 2001.

I hereby certify that the aforementioned determinations were issued during the months of July, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 12, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18420 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,915 & NAFTA–5701]

Trend Technologies, Round Rock, TX; Notice of Determination on Reconsideration

By application dated May 16, 2002, a petitioner requested administrative reconsideration of the Department's negative determinations regarding eligibility to apply for TAA (TA–W–40,915) and NAFTA–TAA (NAFTA–

5701) applicable to workers and former workers of the subject firm. The denial notices were signed on April 22, 2002 and May 3, 2002, respectively and published in the **Federal Register** on May 2, 2002 (67 FR 22113) and May 17, 2002 (67 FR 35142), respectively.

The initial TAA and NAFTA–TAA petition investigations for workers at Trend Technologies, Round Rock, Texas (TA–W–40,915 & NAFTA–5701) were denied based on the finding that sales and production at the subject firm did not decline during the relevant period.

The petitioner alleged that shifts in subject plant production occurred and supplied various shipping invoices depicting shifts in plant machinery to Guadalajara, Mexico during the relevant period.

A review of the data furnished by the petitioner and further clarification from the company shows that a meaningful portion of subject plant production was shifted to Mexico during the relevant period. The products produced in Mexico by Trend Technologies are then sold to their customer located in Mexico. The subject plant products are not imported back to the United States, but incorporated into the customers' computer products.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that there was a shift in production from the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers at Trend Technologies, Round Rock, Texas (NAFTA–05701), who became totally or partially separated from employment on or after December 30, 2000, through two years from the date of certification, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

and

I affirm the original notice of negative determination of eligibility to apply for TAA under Section 223 of the Trade Act of 1974 for workers and former workers of Trend Technologies, Round Rock, Texas (TA–W–40,915).

Signed in Washington, DC this 17th day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18418 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,471]

Besser Company, Alpena, MI; Notice of Revised Determination on Reconsideration

On April 26, 2002, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 4, 2002 (67 FR 38523).

The Department initially denied TAA to workers of Besser Company, Alpena, Michigan engaged in the production of concrete machinery and equipment because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted a sample survey of additional major customers of the subject firm regarding their purchases of concrete machinery and equipment during the relevant period. The survey revealed that some customers increased their reliance on imported concrete machinery and equipment during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with concrete equipment and machinery, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Besser Company, Alpena, Michigan. In accordance with the provisions of the Act, I make the following certification:

All workers of Besser Company, Alpena, Michigan engaged in the production of concrete machinery and equipment who became totally or partially separated from employment on or after May 29, 2000 through two years from date of certification are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 12th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18413 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,492]

Coastal Lumber Company, Suffolk, VA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 4, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 6, 2002, and published in the **Federal Register** on May 17, 2002 (67 FR 35340).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Coastal Lumber Company, located in Suffolk, Virginia was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their imports of pine boards while decreasing their purchases from the subject firm during the relevant period.

The petitioner supplied statistics relating to softwood lumber imports for selected countries. The petitioner believes these countries are importing pine boards back to the United States and that the declines in the price of softwood lumber created a surge in imports of softwood lumber during the relevant period, thus impacting the subject plant workers and the softwood lumber industry.

A review of the data supplied by the petitioner depicts the trend in softwood lumber imports for selected countries during the relevant period. However, the softwood lumber statistics supplied by the petitioner is a broad (basket) category and is not specific enough with

the products produced (pine board) by the subject plant and therefore not relevant. The Department conducted a survey, as already indicated, to examine the direct impact of pine board imports on the subject firm worker's during the relevant period. The survey revealed that customer imports did not contribute importantly to the layoffs at the subject plant during the relevant period.

Further, the price of imported softwood lumber is not a relevant factor in meeting the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 3rd day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18416 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,987]

GSI Lumonics Corp., Maple Grove, MN; Notice of Revised Determination on Reconsideration

By letter of January 9, 2002, an employee requested administrative reconsideration regarding the Department=s Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on December 17, 2001, based on the finding that imports did not contribute importantly to the layoffs at the subject plant. The denial notice was published in the **Federal Register** on January 11, 2002 (67 FR 1509).

The request for reconsideration is based on the allegation that specific products produced at the subject plant were shifted to Canada and England, and a meaningful portion of those products were imported back to the United States.

The Department on further review of the investigation and further contact with the company received new information revealing that shifts in plant production (SVS & Silver Cutting Head) to foreign sources occurred during the relevant period. A meaningful portion of that production shifted to foreign sources was imported back to the United States during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at GSI Lumonics, Inc., Maple Grove, Minnesota contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of GSI Lumonics, Inc., Maple Grove, Minnesota who became totally or partially separated from employment on or after August 21, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 14th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18414 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,732]

LM Services, Cumberland, Maryland; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at LM Services, Cumberland, Maryland. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–40,732; LM Services
Cumberland, Maryland (June 24, 2002)

Signed at Washington, DC this 12th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18417 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,343]

Specialty Minerals (Michigan), Inc., Plainwell, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 13, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 24, 2002, and published in the **Federal Register** on May 2, 2002 (67 FR 22112).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Specialty Minerals (Michigan), Inc., Plainwell, Michigan was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended; was not met. The denial was based on evidence indicating that customers of the subject firm do not import precipitated calcium carbonate. The subject firm did not import precipitated calcium carbonate.

The company feels that the eligibility criteria were met based on the fact that the subject plant existed to supply the key raw material (precipitated calcium carbonate) to the major customer. The company further states that once the customer closed down, due to imported paper, the subject plant no longer had a customer and as a result was directly impacted by imported paper closing it's primary customer.

The imports of any other product by the company or customer is not relevant to this petition that was filed on behalf of worker(s) producing precipitated calcium carbonate. The products imported must be "like or directly competitive" with what the subject plant produces to meet the eligibility requirements of section 222(3) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 14th day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18415 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,142]

SPX Valves and Controls, Lake City, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application received on May 31, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of SPX Valves and Controls, Lake City, Pennsylvania was issued on May 13, 2002, and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings revealed that criterion (2) of the group eligibility requirements of section 222 of the Trade Act of 1974 was not met. Subject firm sales and production of valves increased from 2000 to 2001 and further increased from the January through March 2002 period over the corresponding 2001 period. The workers were engaged in the production of valves.

The request for reconsideration alleges that sales and production although increasing at the subject plant will begin to decline during the third or fourth quarter of 2002. The company further states that the company started importing valve parts (valve bonnets, bodies, actuators and positioners) from foreign sources during January 2002 and has purchase orders to import a meaningful amount of valves during the remainder of the year.

The company request for reconsideration corresponds to the TAA denial which was based on criterion (2) not being met, plant sales and production did not decline during the relevant period.

Imports of valve parts cannot be considered in meeting criterion (3) group eligibility requirements of Section 222 of the Trade Act of 1974. The reported importation of component parts beginning in January 2002 is not a relevant factor for workers producing valves. The imported product must be like or directly competitive with what the subject firm workers produce (valves).

The petitioner further states that sales and production will decline later this year and also appears to be stating that the company has ordered foreign produced valves which will be imported into the United States in the near future and continue to be imported through the remainder of 2002. If conditions change at the subject firm, the workers are encouraged to reapply for TAA eligibility.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC., this 18th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18419 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request; Correction

AGENCY: Employment and Training Administration, USDOL.

ACTION: Correction.

SUMMARY: In notice document 02–17599 beginning on page 46214 in the issue of Friday, July 12, 2002, make the following corrections:

On page 46214 in the third column, insert "*Agency:* Employment and Training Administration" after "*Type of Review:* Extension with change" where "*Type of Review:* Extension without change" first appears.

On page 46214 in the third column, insert "*Title:* Employment Service Complaint Referral" in the seventh line just before the word "Record." Thus, the beginning of line seven should read as "*Title:* Employment Service Complaint Referral Record, ETA 8429 and the Services to * * *"

Dated: July 15, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–18412 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05755]

Delphi Automotive Systems Corporation, Delphi Delco Electronics Division, Body and Security Team, Oak Creek, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 10, 2002, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA—TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 16, 2002, and was published in the **Federal Register** on May 2, 2002 (67 FR 22115).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers performing engineering design work at Delphi Automotive Systems Corporation, Delphi Electronics Division, Body and Security Team, Oak Creek, Wisconsin was based on the finding that the workers do not produce an article as required for certification under Section 250(a) of the Trade Act of 1974, as amended.

The petitioners allege that the workers produce a product (prototypes) and that work performed by the subject firm workers was shifted to Mexico.

Review of the investigation shows that subject workers were engaged in engineering design work. Workers at the subject site were also engaged in minor modifications of prototypes that were built at another affiliated domestic facility and then transferred to the subject plant. The engineering design work was shifted to Mexico, no functions relating to minor modifications to the prototypes were shifted to Mexico. The Mexican site is strictly engineering focused, no prototype production is being performed there. The engineering design activities that were shifted to Mexico are service functions only. No subject plant production was shifted to Mexico. Therefore, the workers at the subject firm do not meet the eligibility requirements under section 250 of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18421 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5866]

Exide Technologies Transportation Business Group Florence, MS; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 13, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 11, 2002, and was published in the **Federal Register** on April 24, 2002 (67 FR 20167).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of SLI batteries at Exide Technologies, Transportation Business Group, Florence was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There were no company imports of SLI batteries from Mexico or Canada, nor did the subject firm shift production from Florence, Mississippi to Mexico or Canada. The survey conducted by the Department of Labor revealed no increase in customer purchases of SLI batteries from Canada or Mexico during the period.

The petitioner alleges that a major competitor is expanding their production facility in Mexico.

The expansion of a major competitor's Mexican facility producing SLI batteries is not relevant to meeting the eligibility requirements for adjustment assistance under section 250(a) of the Trade Act of 1974, as amended.

The petitioner is further concerned that the customers are not buying the batteries directly from the Mexican facility, but purchasing the imported Mexican batteries from domestic sources and thus the Mexican imports may not show up in the Department of Labor's investigation.

The Department of Labor (DOL) survey tests for imported products that are purchased from domestic sources that are like or directly competitive with what the subject plant produces during the relevant period. The DOL survey revealed that none of customers increased their purchases of imported batteries from Canada or Mexico or other domestic sources that may be importing from Canada or Mexico during the relevant period.

On June 5, 2002 the company contacted the Labor Department stating that other Exide Technologies facilities were certified eligible for NAFTA–TAA and that the customer bases of those facilities were similar to subject plant's customer base. Therefore, the company believes that the subject plant should also be certified eligible for NAFTA–TAA based on those certifications.

Examination of previous company wide NAFTA–TAA certifications show that those facilities were certified eligible for NAFTA–TAA based on a major customer increasing their imports of batteries from Mexico during the relevant time period. The subject plant did not sell batteries to that major customer during the relevant time period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 14th day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18425 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5983]

Freightliner LLC, Cleveland Manufacturing Plant, Cleveland, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 8, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 3, 2002, and was published in the **Federal Register** on April 17, 2002 (67 FR 18924).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of Class 8 heavy-duty trucks at Freightliner LLC, Cleveland Truck Manufacturing Plant, Cleveland, North Carolina was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no increased company imports of Class 8 heavy-duty trucks from Mexico or Canada, nor did the subject firm shift production from Cleveland, North Carolina to Mexico or Canada. The survey conducted by the Department of Labor revealed that customer purchases of Class 8 heavy-duty trucks from Canada or Mexico were negligible during the relevant period.

The petitioner appears to be alleging that the layoffs that occurred from July 2000 through October 2000 were the result of shifts in production to Mexico by their parent, Freightliner LLC, Portland, Oregon producing trucks and parts and a sister plant Freightliner LLC Truck Manufacturing, Mt. Holly, North Carolina producing parts used at the Cleveland plant, caused a decrease in production at the subject plant.

The subject plant layoffs that occurred during July 2000 through October 2000 period are beyond the relevant period. In accordance with Section 250 of the Act, no certification may apply to any worker whose last total or partial separation from the subject firm occurred one year prior to the date of the petition. The layoffs were more than one year prior to the date of the petition (March 12, 2002). Therefore, the declines in plant production and employment during the July 2000 through October 2000 period are not relevant.

The petitioner also indicates that a meaningful portion of the subject plants' production declines were caused by an indirect affect of an increasing number of companies either closing throughout the United States or shifting their production to Mexico, thus reducing the demand for Freightliner Class 8 Trucks and causing the layoffs at the subject firm.

Customers shifting their production to Mexico or going out of business are not relevant factors in meeting the eligibility requirement of section 250 of the Trade Act.

The petitioner further states that they should be certified for NAFTA–TAA since the Portland and Mt. Holly facilities were certified eligible for NAFTA–TAA.

A review of the two NAFTA–TAA certifications pertaining to the Portland (NAFTA–4636) and Mt. Holly (NAFTA–4550) plants were based on some products produced by those two plants being shifted to Mexico. In the case of the subject plant, there was no shift in plant production to either Canada or Mexico during the relevant period. To meet the eligibility requirement (criterion 4) of a shift in subject plant production to Canada or Mexico, there must be a shift in production by such workers' firm or subdivision to Mexico or Canada of articles "like or directly competitive" with articles which are produced by the firm or subdivision.

The Department of Labor conducted an investigation for the relevant period. The investigation revealed that criteria (3) and (4) were not met as depicted in the initial decision.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 14th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18422 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—006260]

GretagMacbeth, New Windsor, NY; Notice of Termination of Investigation

Pursuant to Title V of the North American Free TradeAgreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on April 18, 2002, in response to a petition filed on behalf of workers at GretagMacbeth, New Windsor, New York. Workers were engaged in the production of color quality and control instruments.

During the investigation it was discovered that the petition was a duplicate of the petition filed on April 18, 2002 that resulted in a negative determination (NAFTA–006109). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of July, 2002.

Edward A. Tomchick,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18427 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5998]

Ibiden Graphite Of America Corporation, Portland, Oregon; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked May 29, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers

and former workers of the subject firm. The denial notice was signed on May 3, 2002, and was published in the **Federal Register** on May 17, 2002 (67 FR 35142).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of carbon graphite machined products and raw graphite materials at Ibiden Graphite of America Corporation, Portland, Oregon was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no company imports of carbon graphite machined products and raw graphite materials from Mexico or Canada, nor did the subject firm shift production from Portland, Oregon to Mexico or Canada. The survey conducted by the Department of Labor revealed no imports of carbon graphite machined products and raw graphite materials from Canada or Mexico during the relevant period.

The petitioner appears to be alleging that the production performed by the subject firm is now being sent to a facility located in Boston, Massachusetts, who then send most of that work to Japan.

The alleged shifts in production to a foreign source other than Canada or Mexico or the imports from a foreign source other than Canada or Mexico are not relevant factors in meeting the eligibility requirements for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Of note, on June 28, 2002 the workers were certified eligible to apply for Trade Adjustment Assistance under TA–W–41,424.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 12th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18426 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6286]

Joy Mining Machinery, Mt. Vernon, IL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 12, 2002, in response to a petition filed by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 483, on behalf of workers at Joy Mining Machinery, Mt. Vernon, Illinois (NAFTA–6286).

The date of the petition is June 3, 2002, however, the employees in question were terminated from employment November 24, 2000. Thus, all workers were separated from the subject firm more than one year prior to the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year prior to the date of the petition.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18428 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6322]

Whisper Jet, Inc., Sanford, FL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 20, 2002, in response to a petition filed on behalf of workers at Whisper Jet, Inc., Sanford, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18429 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m. Thursday, July 25, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Reprogramming of NCUA's Operating Budget for 2002.
3. Request from a Federal Credit Union to Convert to a Community Charter.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Sheila Albin,

Acting Secretary of the Board.

[FR Doc. 02–18568 Filed 7–18–02; 1:13 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Nuclear Management Company, LLC; Prairie Island Nuclear Generating Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. DPR–42 and DPR–60, issued to Nuclear Management Company, LLC (the licensee) for

operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2, located in Goodhue County, Minnesota. Pursuant to title 10 of the Code of Federal Regulations (10 CFR) sections 51.21 and 51.32, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would be a full conversion from the current technical specifications (CTS) to a set of improved technical specifications (ITS) based on NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1, dated April 1995. The proposed action is in accordance with the licensee's application dated December 11, 2000, as supplemented by letters dated March 6, July 3, August 13, November 12, and December 12, 2001, and January 25, January 31, February 14, February 15, February 16, March 6, April 11, May 10, May 30, June 7, June 25, and June 28, 2002.

The Need for the Proposed Action

The Commission's "Proposed Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors" (52 FR 3788), dated February 6, 1987, contained an Interim Policy Statement that set forth objective criteria for determining which regulatory requirements and operating restrictions should be included in the technical specifications (TS). When it issued the Interim Policy Statement, the Commission also requested comments on it. Subsequently, to implement the Interim Policy Statement, each reactor vendor owners group and the NRC staff began developing standard TS (STS) for reactors supplied by each vendor. The Commission then published its "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors" (58 FR 39132), dated July 22, 1993, in which it addressed comments received on the Interim Policy Statement, and incorporated experience in developing the STS. The Final Policy Statement formed the basis for a revision to 10 CFR 50.36 (60 FR 36953), dated July 19, 1995, that codified the criteria for determining the content of TS. The NRC Committee to Review Generic Requirements reviewed the STS, made note of their safety merits, and indicated its support of conversion by operating plants to the STS. For the Prairie Island Nuclear Generating Plant, Units 1 and 2, the STS are NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1, dated April 1995. This document formed the basis for the Prairie Island Nuclear Generating Plant, Units 1 and 2, conversion.

The proposed changes to the CTS are based on NUREG–1431 and guidance provided in the Final Policy Statement. The objective of this action is to completely rewrite, reformat, and streamline the CTS (i.e., to convert the CTS to ITS). Emphasis was placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the CTS were also used as the basis for the development of the Prairie Island Nuclear Generating Plant, Units 1 and 2 ITS. Plant-specific issues (i.e., unique design features, requirements, and operating practices) were discussed at length with the licensee.

The proposed changes from the CTS can be categorized into five general groupings. These groupings are characterized as administrative changes, more restrictive changes, less restrictive changes, less restrictive relocated details, and relocated specifications. Administrative changes include those changes that are editorial in nature or involve the reorganization or reformatting of CTS requirements without affecting technical content or operational restrictions.

More restrictive changes include those changes that result in added restrictions or reduced flexibility. The licensee, in electing to implement the specifications of the STS, proposed a number of requirements more restrictive than those in the CTS. The ITS requirements in this category include requirements that are either new, more conservative than corresponding requirements in the CTS, or have additional restrictions that are not in the CTS but are in the STS.

Less restrictive changes include deletions and relaxations to portions of the CTS in order to conform to the guidance of NUREG–1431, which would result in reduced restrictions or added flexibility. When requirements have been shown to provide little or no safety benefit, their relaxation or removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (1) generic NRC actions, (2) new staff positions that have evolved from technological advancements and operating experience, or (3) resolution of the Owner's Groups' comments on STS.

Less restrictive relocated details include those changes to the CTS that eliminate details and relocate the details to licensee-controlled documents. Typically, this involves details of system designs, system descriptions including design limits, descriptions of system or plant operation, procedural details for meeting TS requirements and relocated reporting requirements, and redundant requirement references.

Relocated specifications include those changes to the CTS that relocate certain requirements which do not meet the 10 CFR 50.36 selection criteria. These requirements may be relocated to the Bases, updated safety analysis report, core operating limits report (COLR), operational quality assurance plan, plant procedures, or other licensee-controlled documents. Relocating requirements to licensee-controlled documents does not eliminate them, but rather, places them under more appropriate regulatory controls (*i.e.*, 10 CFR 50.54(a)(3), and 10 CFR 50.59) to manage their implementation and future changes.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are (1) different from the requirements in both the CTS and the STS and, (2) in addition to those changes that are needed to meet the overall purpose of the conversion. These changes are referred to as beyond-scope changes and include:

1. Extension of the certain surveillance interval from 18 months to 24 months to support the proposed refueling cycle of 24 months;

2. Extension of the allowed outage time for the emergency core cooling system accumulators from 1 to 24 hours;

3. Missed surveillance consolidated line item improvement to extend the delay period for a missed surveillance requirement from the current limit of 24 hours to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater;"

4. Revision to the ventilation filter testing program to incorporate the guidance provided in NRC Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999;

5. A new methodology (to be incorporated by reference into ITS Section 5.0) that describes the method by which the shutdown margin limit during physics testing is established for inclusion within the COLR;

6. A new methodology (to be incorporated by reference to ITS Section 5.0) that describes the method by which a factor, F_Q^A, (in support of ITS 3.2.1, Heat Flux Channel Factor) is to be determined; and

7. Plant-specific instrument setpoint methodology in support of new

instrument allowable values and trip setpoints in the ITS.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.Specifically, the proposed TS changes will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites because no previously undisturbed area will be affected by the proposed TS changes. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Prairie Island Nuclear Generating Plant, Units 1 and 2, dated May 1973.

Agencies and Persons Consulted

On July 8, 2002, the staff consulted with Ms. Linda Bruemmer of Minnesota State Division of Environmental Health regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 11, 2000, as supplemented by letters dated March 6, July 3, August 13, November 12, and December 12, 2001, and January 25, January 31, February 14, February 15, February 16, March 6, April 11, May 10, May 30, June 7, June 25, and June 28, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams*"adams.html". Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 15th day of July 2002.

For the Nuclear Regulatory Commission.

L. Raghavan,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18434 Filed 7–19–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1099, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1099, "Anchoring Components and Structural Supports in Concrete," is being developed to provide guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the NRC's regulations on the design, evaluation, and quality assurance of anchors (steel embedments) used for component and structural supports on concrete structures.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, ADM, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by October 25, 2002.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC Home Page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *cag@nrc.gov*. For information about Draft Regulatory Guide DG–1099, contact Mr. H.L. Graves at (301)415–5880, e-mail *hlg1@nrc.gov*.

Although a time limit is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *pdr@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-

mail to *distribution@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 7th day of July, 2002.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 02–18435 Filed 7–19–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–28616]

Application and Opportunity for Hearing: Armstrong World Industries, Inc.

July 16, 2002.

The Securities and Exchange Commission gives notice that Armstrong World Industries, Inc. has filed an application under section 310(b)(1)(ii) of the Trust Indenture Act of 1939. Armstrong asks the Commission to find that the trusteeship of Wells Fargo Bank Minnesota, National Association as successor trustee under:

- An indenture dated August 6, 1996, between Armstrong and The Chase Manhattan Bank, a predecessor trustee, with respect to 6.35% Senior Notes due 2003, 6½% Senior Notes due 2005 and 7.45% Senior Quarterly Interest Bonds due 2038, and
- An indenture dated December 23, 1998 between Armstrong and Bank One Trust Company, N.A., a successor trustee, with respect to 7.45% Senior Notes due 2029,

is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Wells Fargo from acting as trustee under both of those indentures.

Section 310(b) of the 1939 Act provides, in part, that if a trustee under an indenture qualified under the Act has or acquires any conflicting interest described in that section, the trustee must, within ninety days after ascertaining that it has a conflicting interest, either eliminate the conflicting interest or resign. Section 310(b)(1) provides, with stated exceptions, that a trustee shall be deemed to have a conflicting interest if the trustee is also a trustee under another indenture under which any other securities of the same obligor are outstanding. However, under Section 310(b)(1)(ii), specified situations are exempt from the deemed conflict of interest under Section 310(b)(1). Section 310(b)(1)(ii) provides, in part, that an indenture to be qualified shall be deemed exempt from section 310(b)(1) if:

> The issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indenture * * * is not so likely to involve a *material conflict of interest* as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures. * * * Section 310(b)(1)(ii) (emphasis added).

Under this provision, Wells Fargo's trusteeship under the indentures may be excluded from the operation of Section 310(b)(1) if Armstrong sustains the burden of proving, on application to the Commission, that a material conflict of interest is not so likely as to make it necessary in the public interest or for the protection of investors to disqualify Wells Fargo from acting as trustee under either of the indentures.

In its application, Armstrong alleges that:

1. Armstrong issued the 1996 notes and the 1998 notes in registered public offerings in the United States (Registration Statement Nos. 333–6333 and 333–74501), and Armstrong qualified the indentures under the 1939 Act. The securities outstanding under the indentures rank *pari passu* with each other and are wholly unsecured. However, neither indenture references the other indenture.

2. As a result of an Instrument of Resignation, Appointment and Acceptance, dated December 1, 2000, Wells Fargo succeeded Chase as trustee under the 1996 indenture. Under an Instrument of Resignation, Appointment and Acceptance, dated November 12, 2001, Wells Fargo will succeed Bank One as trustee under the 1998 indenture if the Commission grants Armstrong's application.

3. As of the date of Armstrong's application, Armstrong is in default under the indentures due to its filing of a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code on December 6, 2000. The commencement of a voluntary case under the U.S. Bankruptcy Code constituted an event of default under section 5.1(6) of the 1996 indenture and Section 501(5) of the 1998 indenture. Thus, Armstrong is in default under both of the indentures.

4. Had the 1998 indenture contained a specific description of the 1996 indenture, no conflict of interest would be deemed to exist under section 310(b)(1)(i) of the 1939 Act, and the application would not be required. Section 310(b)(1)(i) exempts an indenture from the provisions of Section 310(b) "if the indenture to be qualified and any such other indenture or indentures * * * are wholly unsecured and rank equally, and such other indenture or indentures * * * are specifically described in the indenture to be qualified or are thereafter qualified." The Section 310(b)(i) issue arises only because the 1998 indenture does not refer to the 1996 indenture. Armstrong asserts that this technical omission does not create a risk of material conflict between the two indentures where none otherwise exists.

5. Armstrong asserts that because the securities outstanding under the two indentures rank equally with one another in right of payment and are wholly unsecured, it is highly unlikely that Wells Fargo would ever be subject to a conflict of interest with respect to issues relating to the priority of payment. Wells Fargo would neither be in a position, nor required by the terms of either indenture, to assert that securities outstanding under one indenture are entitled to payment prior to payment of claims under the other indenture.

6. Further, the indentures contain almost identical default and remedy provisions. *See* Section 5 of the 1996 indenture and *Article Five* of the 1998 indenture. Armstrong asserts that it is highly unlikely as a practical matter that Wells Fargo will find itself in a position of proceeding against Armstrong for a default under one indenture but not under the other indenture.

7. Armstrong asserts that it is in the best interest of Armstrong and the holders of the securities under the indentures that Wells Fargo serves simultaneously as trustee under both indentures. Bank One will be required to resign as trustee under the 1998 indenture because of Bank One's concurrent status as a creditor of Armstrong. Wells Fargo is not, except as indenture trustee, a creditor of Armstrong and has no business relationship with Armstrong other than under the 1996 indenture. Wells Fargo's trusteeship also will allow Armstrong to avoid the significant duplicative costs associated with having two separate trustees and their respective separate professionals.

Apart from granting relief under section 310(b)(1)(ii) of the 1939 Act, the Commission may invoke its power to exempt Wells Fargo under Section 304(d). On application by any interested person, Section 304(d) empowers the Commission to "exempt conditionally or unconditionally any person,

registration statement, indenture, security or transaction * * * from any one or more of the provisions of [the 1939 Act], if and to the extent that such exemption is necessary or appropriate in the *public interest* and consistent with the *protection of investors* and the purposes fairly intended by [the 1939 Act]." Section 304(d) (emphasis added).

Armstrong has waived notice of a hearing and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter. Any interested persons should look to the application for a more detailed statement of the asserted matters of fact and law. The application is on file in the Commission's Public Reference Section, File No. 22–28616, 450 Fifth Street, NW., Washington, DC, 20549.

The Commission also gives notice that any interested persons may request in writing that a hearing be held on this matter. Interested persons must submit those requests to the Commission no later than August 12, 2002. Interested persons must include the following in their request for a hearing on this matter:

- The nature of that person's interest;
- The reasons for the request; and
- The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. At any time after August 12, 2002, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18404 Filed 7–19–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25662; 812–12530]

Met Investors Series Trust and Met Investors Advisory LLC; Notice of Application

July 16, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of the Application: Applicants request an order that would permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) and the Act.

Applicants: Met Investors Series Trust (the ("Trust"), all existing and future series of the Trust, and any other registered open-end management investment company and its series that are currently on in the future advised by Met Investors Advisory LLC (the ("Adviser") or any entity controlling, controlled by, or under common control with the Adviser (collectively, the "Funds"), and the Adviser.

Filing Dates: The application was filed on May 29, 2001, and amended on July 16, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 9, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 22 Corporate Plaza Drive, Newport Beach, CA 92660.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is organized as a business trust under the laws of the State of Delaware and is an open-end management investment company registered under the Act. The Trust currently offers Class A, Class B, and Class E shares in 22 Funds, one of which is a money market fund subject to rule 2a–7 under the Act (together with any future Funds that are money market funds, the "Money Market Funds;" all other Funds that are not money market funds are collectively referred to as the ("Non-Money Market Funds").[1] Not all Funds offer Class A, Class B, or Class E shares. The Funds selling Class A shares sell such shares to qualified pension and profit sharing plans and to separate accounts of Metropolitan Life Insurance Company and its affiliates (collectively, "MetLife") to fund variable annuity and variable life contracts. The Class B and Class E shares are sold exclusively to MetLife separate accounts.[2] The Adviser serves as the investment adviser to each Fund and is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). The Adviser selects other affiliated and unaffiliated investment advisers registered under the Advisers Act ("Subadvisers") to manage the portfolio for each Fund.

2. Applicants state that each Non-Money Market Fund has, or may be expected to have, uninvested cash ("Uninvested Cash") held by its custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, and new investor capital. The Non-Money Market Funds also may receive cash ("Cash Collateral," and together with Uninvested Cash, "Cash Balances") in connection with a securities lending program ("Securities Lending Agreement") between the Trust and State Street Bank and Trust Company ("State Street") under which a Non-Money Market Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. Pursuant to the Securities Lending

[1] All existing Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently relies on the order will comply with the terms and conditions in the application.

[2] Class C shares are authorized for all Funds; however, none are currently being offered.

Agreement, State Street serves as the securities lending agent for the Funds. State Street is not affiliated with the Adviser, the Subadvisers, or any of their affiliates. The Securities Lending Agreement requires that the loans be continuously secured by collateral equal at all times to at least the market value of the securities loaned.

3. Applicants request an order to permit a Non-Money Market Fund to use its Cash Balances to purchase and redeem shares of a Money Market Fund, and the Money Market Fund to sell shares to and redeem shares as requested by the Non-Money Market Fund. Applicants believe that the ability to invest Cash Balances in Money Market Funds will benefit the Non-Money Market Funds by providing higher rates of return, ready liquidity, and increased diversification.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if the securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other acquired investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any persons or transactions from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Non-Money Market Funds to invest Cash Balances in the Money Market Funds in excess of the limitations in sections 12(d)(1)(A) and (B).

3. Applicants submit that the proposed transactions do not implicate the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that each of the Money Market Funds will be managed specifically to maintain a highly liquid portfolio and will not be susceptible to undue control due to the threat of large scale redemptions. Applicants also submit that there will be no layering of fees because no sales load, redemption fee or asset based distribution fee will be charged in connection with the purchase and sale of shares of the Money Market Funds. To the extent that both a Money Market Fund and Non-Money Market Fund charge a service fee as defined in rule 2830 of the conduct rules of the National Association of Securities Dealers ("NASD Conduct Rules"), the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of the fee incurred by the Non-Money Market Fund. If a Money Market Fund offers more than one class of shares, each Non-Money Market Fund will invest only in the class with the lowest expense ratio at the time of the investment. Before approving any advisory contract with the Adviser or a Subadviser for a Non-Money Market Fund, the board of trustees of the Fund ("Board"), including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees"), will consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser and the Subadviser should be reduced to account for the reduced services provided to the Non-Money Market Fund by the Adviser and the Subadviser as a result of Uninvested Cash being invested in the Money Market Fund. No Money Market Fund will acquire shares of any other investment company in excess of the limits in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of the affiliated person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that because the Funds share a common investment adviser and have identical Boards, each Fund may be deemed to be under common control and affiliated persons of one another. As a result, section 17(a) would prohibit the sale of the shares of a Money Market Fund to a Non-Money Market Fund and the redemption of the shares by the Non-Money Market Funds.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the request for relief satisfies the standards of sections 17(b) and 6(c). Applicants state that the proposed transactions are reasonable and fair and would not involve overreaching because shares of the Money Market Fund will be purchased and redeemed by the Non-Money Market Funds at net asset value. Applicants also note that the Non-Money Market Funds will retain their ability to invest their Cash Balances directly in money market instruments in accordance with their investment objectives and policies. Applicants state that each Money Market Fund may discontinue selling its shares to any of the Non-Money Market Funds if the Board of the Money Market Fund determines that the sale would adversely affect the Money Market Fund's portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Funds, by participating in the proposed transactions, and the Adviser and Subadvisers, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

8. In considering whether to permit a joint transaction under rule 17d–1, the Commission considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds will participate in the proposed transactions on the same basis and will be indistinguishable from any other shareholder and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The shares of the Money Market Funds sold to and redeemed by the Non-Money Market Funds will not be subject to a sales load, redemption fee or distribution fee under a plan adopted in accordance with rule 12b–1 under the Act. To the extent that both a Money Market Fund and a Non-Money Market Fund may charge a service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of the service fee incurred by the Non-Money Market Fund.

2. Before the next meeting of the Board of a Non-Money Market Fund is held for the purpose of voting on an advisory contract with the Adviser or a Subadviser under section 15 of the Act, the Adviser and Subadviser will provide the Board with specific information regarding the approximate costs to the Adviser and Subadviser of, or portion of the advisory fee under the existing advisory contract with the Adviser and the Subadviser attributable to, managing the Uninvested Cash of the Non-Money Market Fund, the Board, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser and the Subadviser as a result of Uninvested Cash being invested in the Money Market Funds. The Non-Money Market Fund's minute books will record fully the Board's considerations in approving the advisory contract with the Adviser or a Subadviser, including the considerations relating to fees referred to above.

3. Each Non-Money Market Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Non-Money Market Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Non-Money Market Fund's total assets. For purposes of this limitation, each Non-Money Market Fund or series thereof will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Non-Money Market Fund's respective investment restrictions, if any, and will be consistent with each Non-Money Market Fund's policies as set forth in its prospectus and statement of additional information.

5. The Non-Money Market Funds and the Money Market Funds will be advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser.

6. No Money Market Fund will require securities of an investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Agreement, a majority of its Board, including a majority of the Independent Trustees, will approve the Fund's participation in the Securities Lending Agreement. The Board also will evaluate the Securities Lending Agreement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18403 Filed 7–19–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46211; File No. SR–Phlx 2002–42]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Modified Capitalization Weighting Methodology for Index Options

July 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1009A(b), Designation of the Index, to delete, and then to repropose, modified capitalization weighting as an approved weighting methodology for index options so that there is no change to the actual present language of Rule 1009A(b). The following is the text of the proposed rule change. Language that is currently in the text of the rule, which is proposed to be deleted and immediately reinserted, is underlined.

Designation of the Index

Rule 1009A.

(a) No change.

(b)–(b)(1) No change.

(b)(2) The index is capitalization-weighted, price-weighted, *modified capitalization-weighted* or equal dollar-weighted, and consists of ten or more component securities;

(b)(3)–b(10) No change.

(b)(11) An equal dollar-weighted index will be rebalanced at least once every calendar quarter*; and a modified capitalization-weighted index will be rebalanced at least twice annually;*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to first delete, and immediately to reinsert pursuant to Commission approval, language in Rule 1009A(b) relating to modified capitalization weighting as a permissible weighting methodology for narrow-based index options listed and traded pursuant to Rule 1009A(b). The language is currently in effect, inasmuch as it became immediately effective on March 1, 2002, pursuant an Exchange filing made pursuant to section

19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4]

In 1998 the Commission adopted new Rule 19b–4(e),[5] eliminating the requirement that a self-regulatory organization ("SRO") file a proposal under Section 19(b)(3)(A) [6] to list and trade options on a narrow-based index, provided that the SRO has generic listing criteria approved by the Commission and meets certain other requirements. The Exchange is now seeking Commission approval, under section 19(b)(2) of the Act,[7] of the addition of modified capitalization weighting as a permissible methodology in order to ensure the applicability of Rule 19b–4(e) [8] to products which the Exchange may list and trade pursuant to Rule 1009A(b).[9] With the affirmative Commission approval of the proposed rule change, Phlx will have greater assurance that it will be permitted under Rule 19b–4(e) to introduce new options that are based on narrow-based stock indexes using modified capitalization weighting, but without the Exchange having to file a proposal under Section 19(b)(3)(A) of the Act.[10]

As discussed in the Exchange's original filing made pursuant to section 19(b)(3)(A) of the Act,[11] the purpose of the language adding modified capitalization weighting as a permitted weighting methodology is to increase and diversify the number and types of securities products the Exchange may offer to the investing public. The reasons for the original proposal are set forth below and serve as the basis of the Exchange's current request for Commission approval under section 19(b)(2) of the Act.[12]

Increasingly, the Exchange receives requests to trade new indexes using the modified capitalization weighting methodology. Accordingly, in order to accommodate those requests in a timely manner and respond to market demand, the Exchange seeks to permit this calculation methodology for narrow-based indexes. The Exchange wishes to accommodate these requests and proposes to add this methodology to the existing narrow based criteria set forth in Phlx Rule 1009A(b), which permits the listing of options on stock index groups pursuant to Rule 19b–4(e) under the Act.[13] Use of the modified capitalization weighted methodology (in addition to the capitalization-weighted, price-weighted, or equal dollar-weighted methodologies) should allow the Exchange greater flexibility in developing indexes and facilitate the listing of options on stock industry index groups that more accurately reflect the industry represented by the index.

When determining the value using capitalization weighting methodology, the following calculation applies: multiply the primary exchange regular-way last sale price of each component security by the number of shares outstanding, add the result for each product and divide the sum by the current index divisor. The index value for a modified capitalization-weighted index is calculated in a similar manner. However, instead of using the actual number of shares outstanding, an adjusted number of shares outstanding are used in the calculation. (Thus, the following calculation applies: multiply the primary exchange regular-way last sale price of each component security by an adjusted number of shares outstanding, add the results for each product, and then divide the sum by the current index divisor). The adjusted number of shares is determined by a proprietary algorithm. When using the modified capitalization weighting, the Exchange will use a calculation methodology that will be clearly defined and will consist of objective standards in accordance with the generic criteria set forth in Phlx Rule 1009A. In addition, the terms of the index will be defined in the marketing materials describing a new index and in the circulars that the Exchange distributes to its members upon the launch of a new index option.

The modified capitalization weighting methodology uses an adjusted number of shares outstanding to prevent component companies with a relatively high market capitalization from representing an inordinately large portion of an index's value. For example, inclusion of a company that is highly capitalized, in relation to the other smaller capitalized companies in the index, may result in the higher capitalized company's representation in the index exceeding 25% of the index's value. Thus, options on these indexes could not be listed on the Phlx. However, because use of the modified capitalization methodology permits a reduction in the higher capitalized company's representation in the index to an amount less than 25% of the index's value, the listing criteria of Phlx Rule 1009A(b)(6) are satisfied. Therefore, modifying the capitalization amounts of the securities underlying an index can prevent an individual stock from inappropriately skewing the performance of an entire index, thus market accuracy and transparency should be correspondently enhanced by use of the modified capitalization methodology. Currently, indexes such as the Nasdaq 100 [14] and Fortune e–50 [15] utilize modified capitalization weighting. Thus, it is an established calculation methodology that the Exchange seeks to capture in its listing standards.

Additionally, the Exchange will review the component weightings of indexes employing the modified capitalization weighting methodology at least semi-annually (or pursuant to then-existing standards), and if necessary, adjust them to ensure that the index continues to meet the weighting guidelines. Also, adjustments will be made on an intra-semi-annual basis, as necessary, to reflect corporate actions such as, share issuances, repurchases and other events of significance.

2. Statutory Basis

For these reasons, the Exchange believes that its proposal is consistent with section 6(b) [16] of the Act in general, and furthers the objectives of section 6(b)(5),[17] in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect the investors and the public interest, by encouraging and adding flexibility to the development of new indexes, thereby, increasing the amount of new products available to the investing public, consistent with the purposes of option listing standards. Specifically, the Exchange seeks to list

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[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). *See* Securities Exchange Act Release No. 45622 (March 21, 2002), 67 FR 15269 (March 29, 2002).

[5] 17 CFR 240.19b–4(e). *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 240.19b–4(e).

[9] Rule 19b–4(e) provides in relevant part that "[t]he listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change * * * if the Commission has *approved*, pursuant to section 19(b) of the Act (15 U.S.C. 78s(b)), the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class (emphasis added)."

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 15 U.S.C. 78s(b)(2). To date, the Exchange has not listed and traded any modified capitalization weighted index options pursuant to Rule 1009A(b).

[13] 17 CFR 240.19b–4(e).

[14] The Nasdaq–100®, Nasdaq–100 Index®, and Nasdaq® are trade or service marks of The Nasdaq Stock Market, Inc.

[15] The Fortune e–50® is a trade or service mark of the American Stock Exchange LLC.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

new index options based on this calculation methodology pursuant to Rule 1009A(b), the Exchange's generic narrow-based index option rule. The Exchange believes that it will have greater assurance that such options are eligible for listing pursuant to Rule 19b–4(e) [18] if the language regarding modified capitalization weighting as a permitted index weighting methodology is added to the text of Rule 1009A(b) pursuant to Commission approval.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PHLX –2002–42 and should be submitted by August 12, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act.[19] The proposed rule change will enable the Exchange to provide investors access to certain narrow-based index options based upon modified capitalization weighted indexes more quickly than would be possible if the Exchange were required to a file proposed rule change for each such option. Acceleration of the Commission's approval order will permit the Exchange to begin eligibility of modified capitalization weighted indexes for narrow based index option trading, with the assurance that such indexes may underlie options to which Commission Rule 19b–4(e) applies. The Commission notes that the proposed rule change is significantly similar to the rules of another self-regulatory organization already approved by the Commission pursuant to section 19(b)(2) of the Act and does not raise novel regulatory issues.[20] Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[21] to approve the proposal on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18402 Filed 7–19–02; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 240.19b–4(e).

[19] 15 U.S.C. 78s(b)(2).

[20] *See* Securities Exchange Act Release No. 41557 (June 24, 1999), 64 FR 36055 (July 2, 1999) (Order approving File No. SR–Amex–99–09 to allow modified equal-dollar and modified capitalization weighting calculation methodologies for narrow based index options on the American Stock Exchange LLC).

[21] 15 U.S.C. 78f(b)(5).

[22] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Employee Verification Service (EVS)

Background

Under Internal Revenue Service regulations, employers are required to provide wage and tax data to SSA using form W–2, Wage and Tax Statement or its electronic equivalent. As part of this process, the employer must furnish the employee's name and Social Security Number (SSN). This information must match SSA's records in order for the employee's wage and tax data to be properly posted to the Earnings Record. Information that is incorrectly provided to the Agency must be corrected by the employer using an amended reporting form, which is a labor-intensive and time-consuming process for both SSA and the employer. Therefore, to help ensure that employers provide accurate name and SSN information on their wage reports, SSA is offering the EVS service whereby employers can verify, via magnetic tape, cartridge, diskette, paper, and telephone, if the reported name and SSN of their employee matches SSA's records.

EVS Collection

SSA will use the information collected through the EVS to verify that the employee name and SSN information, provided by employers, matches SSA records. SSA will respond to the employer informing them only of matches and mismatches of submitted information. Respondents are employers

who provide wage and tax data to SSA who elect to use EVS to verify their employees' names and SSNs.

Type of Request: New Information Collection.

Number of Respondents: 100,000.

Frequency of Response: 5.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 83,333 hours.

2. 20 CFR Part 422.527, Private Printing and Modification of Prescribed Applications and Other Forms—0960–NEW

SSA uses the information required by this regulation to process requests from a person, institution or organization (requesting entities) that want to reproduce, duplicate, or privately print any SSA application or other form prescribed by SSA. The requesting entities must obtain prior approval from SSA and make their requests in writing, providing the required information set forth in the regulation. Respondents are the requesting entities that want to reproduce, duplicate, or privately print any SSA application or other form.

Type of Request: New Information Collection.

Number of Respondents: 4.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 1/2 hour.

3. Medical Source Statement of Ability To Do Work-Related Activities (Physical), Form HA–1151; Medical Source Statement of Ability To Do Work-Related Activities (Mental), Form HA–1152—0960–NEW

SSA's Office of Hearing and Appeals (OHA) uses the HA–1151 (Physical) and its companion form HA–1152 (Mental) to collect information that Administrative Law Judges and the Appeals Council of OHA require to determine the residual functional capacity (RFC) of individuals who are appealing denied claims for benefits based on disability. RFC must be determined to decide cases that cannot be decided based on current work activity or on medical facts alone. Both forms are completed by medical sources that provide medical reports based either on existing medical evidence or on consultative examinations conducted for the purposes of the report. Respondents to these forms are medical sources that provide medical reports.

Type of Request: New Information Collections.

HA–1151

Number of Respondents: 5,000.

Frequency of Response: 20.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 25,000 hours.

HA–1152

Number of Respondents: 5,000.

Frequency of Response: 20.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 25,000 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–0454, or by writing to the address listed above.

The Census Bureau Survey of Income and Program Participation (SIPP) on Behalf of the Social Security Administration (SSA)—0960–NEW. SSA has requested the Census Bureau to include in its SIPP interviews scheduled for January 2003 a sample of social security disabled insurance beneficiaries and supplemental security income recipients. SSA will use these data to conduct statistical research of recipients of SSA-administered programs. The *SIPP for SSA Beneficiaries* is a household-based survey molded around a central "core" of labor force and income questions. The core is supplemented with questions designed to address specific needs, such as obtaining information about assets and liabilities, as well as expenses related to work, health care, child support and real estate/dependent care. These supplemental questions are included with the core and are referred to as "topical modules."

The survey is currently scheduled for one month and will include approximately 1,000 households. We estimate that each household will average 2.1 people, yielding 2,100 interviews. Interviews take 30 minutes on average. The total burden for the *SIPP for SSA Beneficiaries* would be 1,050 hours.

The topical modules for the *SIPP for SSA Beneficiaries* collect information about:

- Medical Expenses and Utilization of Health Care (Adults and Children)
- Work Related Expenses, Child Support Paid and Child Care Poverty
- Assets, Liabilities, and Eligibility
- Real Estate and Dependent Care

The survey interviews will be conducted from January 1, 2003 through January 31, 2003.

Type of Request: New Information Collection.

Number of Respondents: 2,100.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 1,050 hours.

Dated: July 15, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–18189 Filed 7–19–02; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1540).

TIME AND DATE: 9 a.m. (CDT), July 23, 2002.

PLACE: TVA Mayfield Customer Service Center, 10060 State Route 45 North, Hickory, Kentucky.

STATUS: Open.

Agenda

Approval of minutes of meeting held on May 16, 2002.

New Business

A—Budget and Financing

A1. Amendment of previously adopted resolutions to authorize the issuance of an additional $1 billion of electronotes℠.

C—Energy

C1. Contract with the Babcock & Wilcox Company to design, engineer, fabricate, and deliver boiler components, assemblies, genuine repair parts, and related engineering services for any TVA fossil plant.

C2. Contracts with Oxbow Mining, LLC; West Ridge Resources, Inc.; and Co-op Mining Company for coal supply for various fossil plants.

C3. Contract with Electrical Supply Alliance for general electrical supplies and electrical wire and cable for any TVA location.

C4. Contract with Fastenal Company for nonnuclear fasteners (nuts, bolts, screws, washers, etc.) at any TVA location.

C5. Contract with Stone and Webster Construction, Inc., for supplemental maintenance and modifications for TVA Nuclear operating units and for Browns Ferry Nuclear Plant Unit 1 recovery.

C6. Delegation of authority to the Senior Vice President, Procurement, to contract for specified materials and

services for the recovery of Browns Ferry Nuclear Plant Unit 1.

C7. Contract with Westinghouse Electric Company for replacement steam generators with associated equipment and licensing support for Watts Bar Nuclear Plant Unit 1.

E—Real Property Transactions

E1. Deed modification affecting 0.1 acre of former TVA land on Norris Reservoir, a portion of Tract No. XNR–597, in Anderson County, Tennessee, to allow James M. Porter clear title to his property.

E2. Sale of a 30-year term public recreation easement to Anderson County, Tennessee, affecting approximately 1.6 acres of land on Bull Run Fossil Plant Reservation in Anderson County, Tennessee, Tract No. XBRSP–6RE.

E3. Sale of a noncommercial, nonexclusive permanent easement to Roy White, affecting approximately 0.13 acre of Tellico Reservoir shoreline in Monroe County, Tennessee, Tract No. XTELR–229RE.

E4. Grant of a permanent easement for a substation expansion to Lenoir City Utilities Board, affecting approximately 0.73 acre of TVA property on Fort Loudoun Dam Reservation in Loudon County, Tennessee, Tract No. XTFL–127U.

E5. Deed Modification affecting approximately 88 acres of private property on Wheeler Reservoir in Limestone County, Alabama, Tract No. XWR–288, to allow residential use.

E6. Grant of a 30-year term public recreation easement to the Alabama Department of Conservation and Natural Resources, affecting approximately 18,048 acres of land on Guntersville and Wheeler Reservoirs in Jackson, Lawrence, Limestone, and Morgan Counties, Alabama (Tract Nos. XTGR–155 WL, XTWR–45RE, and XTWR–114WL).

E7. Land-use allocation change to the Guntersville Reservoir Land Management Plan from industrial/commercial to residential access, affecting approximately 1.3 acres of land on Guntersville Reservoir in Marshall County, Alabama, Tract No. GR–925.

E8. Abandonment of a 50-foot wide right-of-way affecting approximately 0.51 acre of land on Guntersville Reservoir in Marshall County, Alabama, Tract No. XGR–365.

F—Other

F1. Approval to file condemnation cases to acquire transmission line easements and rights-of-way affecting Tract No. MRFSTB–6A, Great Falls-Murfreesboro-Smith Nashville Tap to Blackman Transmission Line in Rutherford County, Tennessee.

Information Items

1. Approval of in-house equity index fund management by TVA Treasury Staff for TVA Master Decommissioning Trust.

2. Approval of Amendments to the Rules and Regulations of the TVA Retirement System and to the provisions of the TVA Savings and Deferral Retirement Plan (401(k) Plan).

3. Approval of Harbour Vest Partners, LLC, as a new investment manager for the TVA Retirement System and approval of the investment management agreement.

4. Approval of a $1 million loan to the Tennessee Valley Public Power Association to help it purchase a building to house its new permanent headquarters.

5. Approval for TVA to participate in the Southern Appalachian Fund by purchasing 10 limited partnership units totaling $1 million.

6. Confirmation of the authorization of the public auction sale affecting approximately 38.3 acres of a portion of the Beech River Project property in Henderson County, Tennessee, Tract No. XBRPIC–3.

7. Approval of a land allocation change and sale of permanent easements to the Public Park Authority of the Shoals for construction of a hotel and convention center complex and road access, affecting approximately 12.8 acres of land on Wilson Dam Reservation in Lauderdale County, Alabama, Tract No. XWDR–9E.

8. Approval of a public auction sale affecting approximately 7.45 acres of land in Madison County, Alabama, Tract No. XHCSC–1.

9. Grant of a permanent easement to the Alabama Department of Transportation for highway and bridge improvement purposes, affecting approximately 12 acres of land on the Upper bear Creek Reservoir site in Franklin County, Alabama, Tract No. XTBCUR–4H.

10. Approval of the Standards of Conduct for Functional Separation of Wholesale Merchant Function from Transmission System Operations and Reliability Functions and Related Information, 2002 Edition, to replace TVA's Code of Conduct, Open access Transmission.

11. Approval of arrangements covering interconnection of TVA's transmission system to the Choctaw Gas Generation, LLC, generating facility located near Ackerman in Choctaw County, Mississippi.

12. Approval of condemnation cases to acquire transmission line easements and rights-of-way affecting Tract No. LASL–2, Lowndes-Alabama-State Line in Lowndes County, Mississippi, and Tract No. HCVB–1001TE, Hanceville-Bremen in Cullman County, Alabama.

13. Approval of filing of condemnation cases to acquire transmission line easements and rights-of-way affecting Tract No. CHMDMW–25, Cordova-Holly Springs Tap to Miller Substation Tap to DeSoto Road Substation Tap to Mineral Wells Transmission Line in DeSoto County, Mississippi, and Center Point-Swamp creek Transmission Line in Whitfield County, Georgia.

14. Approval of filing of condemnation cases to acquire transmission line easements and rights-of-way affecting Tract No. CPGSSC–7A–AR, Center Point-Swamp Creek Transmission Line and Tract No. RSCP–161, Rock Springs-Center Point Transmission Line in Whitfield County, Georgia.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: July 16, 2002.

Clifford L. Beach, Jr.,

Attorney and Assistant Secretary.

[FR Doc. 02–18492 Filed 7–17–02; 4:43 pm]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Boca Raton Airport, Boca Raton, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Boca Raton Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal

responsibilities in Senate Report No. 9652 (1980). On December 31, 2001, the FAA determined that the noise exposure maps submitted by the Boca Raton Airport Authority under part 150 were in compliance with applicable requirements. On June 28, 2002, the Administrator approved the Boca Raton Airport noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Boca Raton Airport noise compatibility program is June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822, (407) 8126331, Extension 30.
Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Boca Raton Airport, effective June 28, 2002.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The Boca Raton Airport Authority submitted to the FAA on December 11, 2001, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from March 18, 1999, through December 11, 2001. The Boca Raton Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on December 31, 2001. Notice of this determination was published in the **Federal Register** on December 31, 2001. As a result of the FAA actions on the air traffic procedural recommendations, above, the FAA considers the forecast 2006 NEM to be "2006 with Existing Noise Compatibility Program", for purposes of application of the following Land Use Elements. As the FAA announces its actions on the NCP Update in the **Federal Register**, it is issuing a revised determination that this forecast NEM will replace the "2006 Noise Exposure Map with Recommended Noise Compatibility Program" that was determined in compliance with part 150 by FAA on December 31, 2001.

The Boca Raton Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2006. It was requested that FAA evaluate and approve this material as a compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on December 31, 2001, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained nineteen (19) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective June 28, 2002.

Outright approval was granted for seven (7) of the nineteen (19) specific program elements. One (1) element was disapproved for the purposes of part 150, eleven (11) elements were partially approved. The approval action was for the following program measures:

Measure	Description	NCP pages
	Operational Measures	
1. Runway 5 noise abatement turn to 360°, to climb west of Interstate 95, to 1,500′.	This measure replaces Measure 1 from the 1991 Noise Compatibility Program, page 3–11, "Voluntary Runway 5 noise abatement turn to 360 degrees to climb west of I–95. Maintain heading until reaching 1,500 feet." FAA Action: Approved as voluntary, when air traffic and airspace safety and efficiency conditions permit. This procedure places traffic over the noise-compatible interstate corridor, and was approved as a voluntary measure in the Noise Compatibility Program ROA that was signed by FAA on August 19, 1991. However, since approval of this measure, the number of aircraft instrument operations at this airport and in the Palm Beach region has increased steadily. Because of the growing complexities of safely and efficiently controlling air traffic in this area, it has become more difficult to allow extensive use of this voluntary procedure. This departure procedure not only affects the flow of traffic at this airport, but also requires additional coordination with several different facilities that are controlling aircraft traversing in many different directions comprised of inbound and outbound traffic from Palm Beach International Airport, Pompano Airpark, and Boca Raton Airport. This procedure directs VFR aircraft into an IFR final approach course (VOR/DME and GPS–A); when these conflicting procedures are in effect, capacity is reduced as arrivals would have to be sequenced with departures.	75, 93, 131, 210, Table 12.1.
2. Runway 23 noise abatement turn to 255°, to climb over Town Center, to 1,500′.	This measure replaces Measure 2 from the 1991 Noise Compatibility Program, page 3–12, "Establish a voluntary Runway 23 noise abatement turn to 255 degrees to climb over area southwest of airport. Maintain heading until reaching 1,500 feet." FAA Action: Approved as voluntary, when air traffic and airspace safety and efficiency conditions permit. Aircraft would fly over a compatible commercial corridor. This element was approved as a voluntary measure in the Noise Compatibility Program signed on August 19, 1991. However, since approval of this measure, the number of aircraft instrument operations at this airport and in the Palm Beach region has increased steadily. Because of the growing complexities of safely and efficiently controlling air traffic in this area, it has become more difficult to allow use of this voluntary procedure. This procedure not only affects the flow of traffic at this airport, but also requires additional coordination with several different facilities that are controlling aircraft traversing in many different directions comprised of traffic from Palm Beach International Airport, Pompano Airpark, and Boca Raton Airport. This procedure directs aircraft towards the Pompano Airpark localizer and GPS final approach course to Runway 15, and mandatory use of this procedure would limit capacity at all three airports because of sequencing requirements for arrivals with departures.	75, 93, 131, 210, Table 12.1.
3. Recommend jets use NBAA noise abatement procedures, including "close-in" NADP.	This measure replaces Measure 5 from the 1991 Noise Compatibility Program, page 3–24, "Recommend corporate jet pilots use of NBAA noise abatement procedures, including 'close-in' departure procedures." FAA Action: Approved as a voluntary measure. The NPC supplemental analysis shows that use of the noise abatement procedure instead of the standard departure procedure would reduce noise on a single event basis.	75, 131, 157, 210, and Tables 12.1.
4. Right-hand traffic pattern on Runway 23.	This measure replaces Measure 4 from the 1991 Noise Compatibility Program, page 3–12, "Continue right-hand traffic pattern on Runway 23." Current procedures at the airport call for right-handed traffic for Runway 23 operations to avoid overflight of the relatively more densely developed areas east of the airport, including Florida Atlantic University. FAA Action: Approved as voluntary, when air traffic and airspace safety and efficiency conditions permit. This measure was included in the 1991 Noise Compatibility Program for Boca Raton Airport.	192, 210, and Table 12.1.
5. Left-hand traffic pattern on Runway 5, with right-hand arrivals from the east.	This measure replaces Measure 3 from the 1991 Noise Compatibility Program, page 2–11, "Continue left-hand traffic pattern on Runway 5." FAA Action: Approved in part, disapproved in Part. A left-hand traffic pattern is a standard VFR operational procedure and was included in the 1991 Noise Compatibility Program for Boca Raton Airport. The standard left-hand traffic pattern operation on Runway 5 is approved. The simultaneous right-hand traffic pattern for arrivals from the east is disapproved. This activity puts aircraft in direct conflict with other arriving aircraft using the left-hand traffic pattern.	133, 139, Table 9.8, 192, 210, and Table 12.1.

Measure	Description	NCP pages
6. North-flow preferential runway use.	FAA Action: Approved as voluntary, when air traffic and airspace safety and efficiency conditions permit. North-flow operation on Runway 5 is currently being used approximately 80% of the time because of the winds and air traffic control measures. Table 9.8 indicates that mandatory implementation of this measure would increase noise to approximately 86 people in the DNL 65 dB noise contour, and reduce noise to approximately 264 people in the DNL 60 dB noise contour. The FAA considers impacts at noise levels of DNL 65 dB and greater to be significant when compared to lesser noise levels of "moderate" impact (less than DNL 65 dB, and greater than DNL 55 dB), as described in the Federal compatible land use guidelines at Table 1 of part 150. In this case, the airport operator has adopted a deviation from the Federal compatibility guidelines published in part 150 at Table 1 (see NCP, chapter 7). Based on air traffic concerns expressed above at FAA's action on measures 1 and 2, the FAA does not expect continued use of this measure to change from the present values.	132, 139, and 210, and Tables 9.8 and 12.1.
7. Further analysis of restrictive options.	This measure includes: 24-hour restriction on stage 1 jet operations, night restrictions on non-stage 3 operations, and night restriction on all aircraft operations. This recommendation is to continue evaluation of other options to reduce noise impacts outside of the FAR part 150 process. Study of these recommendations will require additional analysis under FAR part 161 and evaluation of the Grant Assurances for which the airport is obligated under past Grant Agreements with the FAA. FAA Action: Approved for study. The Boca Raton Airport's NCP in Table 9.8 indicates that approximately 2,180 people will be exposed to significant levels of aircraft noise within the DNL 65 dB 2006 Forecast NEM contour, absent mandatory implementation of air traffic procedures. The Boca Raton Airport Authority, the airport sponsor, proposes to study several noise restriction options that could further reduce noise impacts. The study should reflect the noise contours and land use compatibility achieved under this approved part 150 program and evaluates additional noise benefits that could be realized with any particular restriction. FAA's part 150 approval for the additional study in no way prejudges the study's outcome or implies agreement with any restriction that may result from the study. In order to be eligible for Federal funding, the study results must be incorporated into a part 150 update. All proposed restrictions under consideration by the Boca Raton Airport Authority must be evaluated for consistency with Federal law, including assurances in airport grant agreements. Federal law requires that restrictions be reasonable, have no adverse effect on safety or efficient use of the airspace, not pose an undue burden to interstate commerce, not be unjustly discriminatory, and not intrude into areas that are Federally preempted. In addition, proposed restrictions that would affect the operations of Stage 2 and Stage 3 aircraft are subject to Part 161, including public notice and analysis requirements. FAA approval, pursuant to specified statutory criteria, is required under Part 161 for a restriction affecting Stage 3 operations. The restriction that would affect only Stage 1 aircraft is not subject to Part 161, but is subject to all other requirements of Federal law.	192, 210, and Tables 12.1
8. Obtain "formal" FAA implementation status for Elements 1, 2, 4, 5, and 6.	This new recommendation is to obtain formal agreement with the FAA to incorporate Elements 1, 2, 4, 5, and 6 into a Tower Order which will require the air traffic controllers to follow these procedures at all times. FAA Action: Disapproved. Under this formal agreement, there would be no allowance for weather conditions or for the growing complexities of controlling traffic in the Palm Beach area resulting from the steady increase in air traffic through the area. As indicated in FAA's determinations on these individual measures, above, mandatory use of these flight patterns could impact aircraft safety and efficiency. To the extent the FAA can implement the measures, it will direct pilots to these headings and traffic patterns.	191, 192, 211, and Table 12.2
	Land Use Measures	
	As a result of the FAA actions on the air traffic procedural recommendations, above, the FAA considers the forecast 2006 NEM to be "2006 with Existing Noise Compatibility Program", for purposes of application of the following Land Use Elements. As the FAA announces its actions on the NCP Update in the **Federal Register**, it is issuing a revised determination that this forecast NEM will replace the "2006 Noise Exposure Map with Recommended Noise Compatibility Program" that was determined in compliance with part 150 by FAA on December 31, 2001. Measures 1 through 4, and 9 through 11, replace measures that were approved by the FAA in 1991 for that NCP at Boca Raton Airport. The other Land Use measures are new recommendations in this part 150 Update	

Measure	Description	NCP pages
1. Zoning	The City and County will continue to update and adopt a revised Airport Zoning and Land Use Ordinance consistent with the updated NEM's. FAA Action: Approved as a continuing measure. The recommendation, included in the 1991 Noise Compatibility Program, has been partially implemented by the affected land use jurisdictions.	195, 196, 211, and Table 12.1.
2. Building code revision	The Boca Raton Airport Authority will continue to work with local jurisdictions to include specifications for the use of noise insulating materials in construction within/adjacent to approved NEM's. FAA Action: Approved as a continuing measure.	196, 211, and Tables 12.1.
3. Local environmental review	The City and County implemented an environmental review through their respective airport zoning and land use regulations that they adopted in accordance with Chapter 333 of the Florida Statutes (Article 18 of the County Land Development Code and City Ordinance 3274). Both the County and City Planning Departments notify The Boca Raton Airport Authority of potential developments and request comment. It is necessary to carry the measure forward to this recommended NCP to ensure its continued implementation. FAA Action: Approved as a continuing measure.	197, 211 and Tables 12.1.
4. Comprehensive Planning	The comprehensive plans for the City of Boca Raton and Palm Beach County would be revised to fully address the issues of aircraft noise on existing and proposed land use. The State Statutes require that the plans be evaluated and updated every five years. FAA Action: Approved as a continuing measure.	196 and 211, and Tables 12.1.
5. Real Estate Disclosure	This measure will require disclosure of aircraft noise levels and their meaning to purchasers or renters prior to the time of the contract or title transfer for residential property. Disclosure will involve a form to be signed by the prospective buyer or renter similar to what is required by truth-in-sales laws. This will ensure that new residents are aware of the noise environment prior to purchase or rental of properties within the noise zones. FAA Action: Approved.	200, and 211, and Tables 12.1.
6. Easement Acquisition	This measure is to purchase avigation easements from noise-sensitive property owners within the 60 DNL noise contour for "2006 with the recommended NCP". This measure would allow the acquisition of easements over developed property as well as undeveloped property. Only existing private homes and public use (schools) within the DNL 60 dB contour are assumed to be included. Property owners refusing participation in the sound insulation program may be eligible for easements. FAA Action: Approved to the extent the properties are located within the official NEM's, specifically "2001 NEM with Existing Noise Compatibility Program". The specific identification of the structures recommended for inclusion in the program will be required prior to approval for federal funding.	201 and 211, Exhibits 8.1, and Tables 12.1.
7. Sound Insulation	This measure is to provide the opportunity for sound insulation of noise-sensitive structures within the 65 DNL contour, for "2006 with the recommended NCP." Avigation easements are typically obtained in return for property owner participation. Only existing private homes and public uses within the 2006 65 dB DNL contour are assumed to be included. Property owners refusing sound insulation may be eligible for easements and vice-versa. FAA Action: Approved to the extent the properties are located within the DNL 65 dB noise contour of the official NEM's, specifically "2001 NEM with Existing Noise Compatibility Program". The specific identification of the structures recommended for inclusion in the program will be required prior to approval for federal funding.	201, and 211, Exhibits 8.1, and Tables 12.1.
8. Noise and Operations Monitoring System.	This measure is to include provisions for the Boca Raton Airport Authority to acquire capabilities to monitor operations, noise, and complaints, in an integrated system. This system will include purchase of equipment to monitor, record, analyze, and report on actual flight track geometry and runway utilization. This measure also includes six to eight permanent noise monitors and one portable noise monitor that will allow improved communication with the community when addressing aircraft operations. This system will also include the capabilities to identify complainants' addresses, correlate complaints with operations and noise data and develop a database. FAA Action: Approved to the extent that the requested equipment is allowed to interface with FAA equipment and operations. Eligibility for Federal funding will be determined at the time of application.	205, and 211, and Tables 12.1.
9. Noise Abatement Advisory Committee.	This measure is to continue the ongoing Noise Abatement Committee to discuss noise abatement issues with the public and interested parties. FAA Action: Approved.	207, and 212, and Tables 12.1.
10. Noise Office Staff	This measure is to continue to employ a full-time noise and community affairs staff person. FAA Action: Approved.	207, and 212, and Tables 12.1.

Measure	Description	NCP pages
11. Program Publicity	This measure is to continue to publicize the approved program. (The measure replaces Measure 7, "Install on-airfield noise abatement signage", page 5–21, of the 1991 Noise Compatibility Program). Once the FAA has approved the revised NCP, and the BRAA should take steps to publicize the program, including: revisions to on-airfield signs, posters for pilot lounges or flight planning areas, pilot handouts, such as flight manual inserts and web site upgrades, that summarize the preferred procedures. FAA Action: Approved in part, disapproved in part. The methods to publicize this revised noise compatibility program are approved. Specific language to be included is disapproved herein. Prior to release, each publicity measure must be approved for wording and content by the appropriate FAA office, and should clearly state that the noise abatement measures are voluntary, and that pilots, while encouraged to request the noise abatement departure heading, are always required to follow the directions provided by air traffic control.	207 and 212, and Tables 12.1; FAA letter dated March 29, 2002.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on June 28, 2002. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Boca Raton Airport Authority.

Issued in Orlando, Florida on July 12, 2002.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 02–18339 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: King County Washington

AGENCY: Federal Highway Administration (FHWA), King County Department of Transportation, WA

ACTION: Notice of Intent to prepare a draft supplemental environmental impact statement (EIS).

SUMMARY: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT) and King County Department of Transportation, is issuing this notice to advise the public that a supplement to the final EIS will be prepared on the proposal to replace the Elliott Bridge on 149th Avenue Southeast where it crosses the Cedar River approximately three miles east of downtown Renton in King County, Washington.

FOR FURTHER INFORMATION CONTACT: Jim Leonard, P.E., Urban Area Engineer, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia, Washington 98501–1284, Telephone: (360) 753–9408 or Tina Morehead, Senior Environmental Engineer, King County, Road Services Division, Department of Transportation, King Street Center M.S. KSC–TR–0231, 201 South Jackson Street, Seattle, WA 98104–3856, Telephone: (206) 296–3733.

SUPPLEMENTARY INFORMATION: The Record of Decision for the orginal EIS for the improvements (FHWA–WA–EIS–92–4–F) was signed on November 21, 1995. In the original EIS, the proposed improvements to the Elliott Bridge provided a three-lane bridge (two travel lanes and one center lane) with pedestrain sidewalk and associated approach road realignment. Improvements to the bridge were, and still are, considered necessary to provide for traffic circulation, roadway safety, and structural stability.

After approval and subsequent appeal of the local shoreline substantial development permit, King County withdrew its shoreline permit application based on issues related to the Federal Endangered Species Act. Since that withdrawal, the county and FHWA have reevaluated the project and determined that a supplemental EIS needs to be prepared to address those issues.

No formal scoping period will be held. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Subsequent to distribution of the draft supplemental EIS, a public hearing will be held during the EIS comment period. The location and time of the public hearing will be announced in the local news media and through a public mailing when it is scheduled. The draft supplemental EIS will be available for public and agency review prior to the public hearing. Release of the draft supplemental EIS for public comment and the public hearing will also be announced in the local news media as these dates are established.

Comments or questions concerning this proposed action and the supplemental EIS should be directed to FHWA or King County at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 9, 2002.

Jim Leonard,

Urban Area Engineer, Federal Highway Administration, Washington Division.

[FR Doc. 02–18328 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Travis County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed new location highway/tollway project in Travis County, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Bauer, P.E., District Engineer, Federal Highway Administration, 826 Federal Office Building, 300 E. 8th Street, Austin, Texas 78701, telephone number (512) 536–5950 or Ms. Stacey Benningfield, Environmental Program Manager, Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701, telephone number (512) 225–1351.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation, will prepare an EIS for proposed State Highway 45, between Interstate Highway 35, south of Austin, Texas, and proposed State Highway 130/existing US Highway 183, southeast of Austin in Travis County, Texas. As currently envisioned, proposed SH 45 would ultimately be a six-lane controlled access roadway with directions of travel being separated by a barrier or median. Interchanges or grade separations would be constructed at major thoroughfares and direct connector ramps would be provided at IH 35 and State Highway 130/US Highway 183. The proposed right-of-way width would be 400′ (usual minimum) and the project length would be approximately 7 miles. Alternatives to be addressed in the EIS include (1) upgrading existing roadways, (2) new location alternatives and (3) the no-build alternative. The proposed project is considered necessary in order to provide for existing and projected traffic demand in the project area.

The proposed project is considered a candidate for development as a toll road. Accordingly, in conjunction with preparation of the EIS, TTA will conduct a study to determine the feasibility of constructing the proposed facility as a toll road and financing it, in whole or in part, through the issuance of revenue bonds. Impacts owing to the possible toll designation will be addressed in the EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies; and to private organizations, citizens and residents who have previously expressed or are known to have an interest in this proposal.

It is anticipated that the project would be constructed in phases, with the initial (interim) phase(s) being of smaller scale (fewer lanes) than the ultimate facility.

To ensure that the full range of issues related to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. On Thursday, August 22, 2002, the TTA will conduct a public scoping meeting on the proposed SH 45 project. The meeting will be held at Popham Elementary School, 7014 Elroy Road, Del Valle, Texas. The purpose of the public meeting will be to receive comments and identify issues to be considered during development of route alternative and preparation of the EIS. Verbal and written comments may be submitted at the meeting or written comments may be submitted via regular postal mail to the FHWA or TTA at the addresses provided above. To be included in the official record of the public meeting, comments must be received by Tuesday, September 3, 2002. The meeting will begin at 6 p.m. with a one-hour "open house". During the open house displays showing the project area and other project information will be available for review and staff from the TTA will be available to answer questions. At 7 p.m. there will be a presentation followed by a public comment period. All interested citizens are encouraged to attend this meeting.

Persons who have special communication or accommodation needs, and who plan to attend the public meeting are asked to contact Stacey Benningfield (512/225–1351) at least two business days prior to the meeting so that accommodations may be made.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 11, 2002.

Antonio Palacios,

Urban Engineer.

[FR Doc. 02–18329 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2001–9972; Formerly FRA Docket No. 87–2; Notice No. 15]

RIN 2130–AB20

Automatic Train Control and Advanced Civil Speed Enforcement System; Northeast Corridor Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendment to Order of Particular Applicability requiring Advanced Civil Speed Enforcement System (ACSES) between New Haven, Connecticut and Boston, Massachusetts—New CSX Transportation (CSXT) temporary operating protocols allowing nighttime operations.

SUMMARY: In 1998, FRA issued an Order of Particular Applicability requiring all trains operating on the Northeast Corridor (NEC) between New Haven, Connecticut and Boston, Massachusetts (NEC—North End) to be equipped to respond to the new Advanced Civil Speed Enforcement System (ACSES). On June 26, 2002, CSXT wrote to request additional relief. After reviewing this request, and discussing it with CSXT personnel, FRA has decided to amend the Order to allow CSXT to run nighttime operations under temporary operating protocols until further notice.

DATES: The amendment to the Order is effective July 22, 2002.

FOR FURTHER INFORMATION CONTACT: W.E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6325); Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6258); or Patricia V. Sun, Office of Chief Counsel, Mail Stop 10, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6038).

For instructions on how to use this system, visit the Docket Management System Web site (*www.dms.dot.gov*) and click on the "Help" menu. This docket is also available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001, during regular business hours.

SUPPLEMENTARY INFORMATION: The Order of Particular Applicability (Order), as published on July 22, 1998, set performance standards for cab signal/automatic train control and ACSES systems, increased certain maximum authorized train speeds, and contained safety requirements supporting improved rail service on the NEC. 63 FR 39343. Among other requirements, the Order required all trains operating on track controlled by the National Railroad Passenger Corporation (Amtrak) on the NEC—North End to be controlled by locomotives equipped to respond to ACSES by October 1, 1999. In seven subsequent notices, FRA amended the Order to reset the implementation schedule, make technical changes, and allow the use of temporary operating protocols. 64 FR 54410, October 6, 1999; 65 FR 62795, October 19, 2000; 66 FR 1718, January 9, 2001; 66 FR 34512, June 28, 2001; 66 FR 57771, November 16, 2001; 67 FR 6753, February 12, 2002, and 67 FR 14769, March 27, 2002.

On June 28, 2001, in Notice No. 11, FRA granted CSXT a relief period from the implementation schedule specified in the Order to allow CSXT additional time to complete its field testing of new

Amtrak operational software. FRA subsequently extended the relief period several times as Amtrak continued to make adjustments. The temporary operating protocols specified in paragraph 12 of this Order are no longer in effect, since the last of these extensions expired on July 1, 2002. For this reason, the temporary operating protocols specified in this amendment will be added to this Order in new paragraph 13.

The modifications contained in this amendment to the Order will run until development and testing of the operational software is complete and FRA has issued a subsequent notice. FRA is making this amendment effective upon publication instead of 30 days after the publication date in order to realize the significant safety and transportation benefits afforded by the ACSES system at the earliest possible time. All affected parties have been notified.

FRA is not reopening the comment period since the amendment to this Order is necessary to avoid disruption of rail service. Under these circumstances, delaying the effective date of the amendment to allow for notice and comment would be impracticable, unnecessary, and contrary to the public interest.

As mentioned above, the relief granted in the last amendment has expired. To prevent such recurrences, and to ensure that FRA has adequate time to consider all requests, any future requests for relief must be submitted no later than 10 working days before the requestor wishes the desired relief to take effect. FRA expects the parties to this Order to resolve any remaining issues quickly, since this is the seventh time that FRA has amended the Order to provide temporary relief from its requirements.

New CSXT Temporary Operating Protocols

The CSXT letter identified numerous "problem areas" in both the wayside and onboard portions of ACSES, with CSXT's recommended solutions. Many of the software and mechanical issues identified by CSXT have either been resolved through agreement with Amtrak or cannot be addressed by revisions to the order. One major issue, however, is CSXT's request to be allowed to continue trains operations with ACSES cut out in the event of a road failure, or a single nuisance penalty brake application. FRA will not allow this request. CSXT is in effect asking for permission to cut out ACSES en route, regardless of whether the system is on board and working as intended. FRA believes that the protection ACSES provides to high speed trains and other trains on the NEC—North End is more important than its occasional impact on freight service. However, FRA is amending the Order to reduce the impact on CSXT operations by excepting nighttime operations as CSXT requested. In this amendment, FRA also addresses CSXT's request to remove the positive stop protections at two interlockings.

(1) Nighttime Operations

In its June 26 letter, CSXT stated that Amtrak had agreed to allow CSXT to operate freight trains on the NEC—North End with ACSES cut out during the low-volume hours of 12:00 a.m–5:00 a.m. There are no high-speed train operations on the NEC—North End during these hours, and other passenger rail operations are very limited. This relief will allow CSXT to operate trains on the NEC—North End with ACSES cut out, without the current requirement that the Amtrak dispatcher be notified at the time of cut out.

FRA approves this request, provided that CSXT and Amtrak submit operating rules for FRA's approval before nighttime operations begin. The operating rules must indicate all the aspects and controls of these operations. This relief will continue until Amtrak has modified its software to eliminate the large number of unexpected penalty applications currently required and FRA has issued a subsequent notice rescinding the relief extended in this notice.

(2) Retention of Positive Stop Requirements

Currently, ACSES enforces positive stop requirements at the interlockings at Attleboro, and Mansfield, Massachusetts. In its June 26 letter, CSXT indicated that Amtrak had agreed to grant CSXT's request to remove the positive stop requirements at both interlockings, to reduce the number of penalty brake applications experienced during switching operations.

Even though Amtrak has agreed to these removals, FRA does not approve CSXT's request to remove the positive stop requirements at the Attleboro and Mansfield interlockings. The Order required Amtrak to put ACSES on high speed main tracks and tracks adjacent to them where speeds exceed 15 mph. This ACSES territory must also have perimeter protection. At the Attleboro interlocking, entry from the New Bedford Secondary is onto Track 4, a 60 mile per hour (mph) track used by cab car forward commuter trains where safety could be adversely affected by the removal of the positive stops at the east and west bound home signals. Track 4 is required both to have ACSES and to be perimeter-protected, which benefits safety on the commuter main and the adjacent high speed line. At the Mansfield interlocking, entry is onto a high-speed (150 mph) track. Here too, FRA believes that safety would be better served by retaining positive stop protection.

Accordingly, for the reasons stated in the preamble, the Final Order of Particular Applicability published at 63 FR 39343, July 22, 1998 (Order) is amended as follows:

1. The authority for the Order continues to read as follows: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49(f), (g), and (m).

2. *Paragraph 13 is added to read as follows:*

13. *CSX Transportation (CSXT) Temporary Operating Protocols.*

Effective upon [July 22, 2002] until further notice:

CSXT may operate trains along the NEC—North End between the hours of 12 a.m. to 5 a.m. with ACSES cut out, without prior notification to the Amtrak dispatcher. This temporary relief is contingent upon FRA approval of Amtrak and CSXT operating rules concerning these operations.

Issued in Washington, DC, on July 15, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–18346 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted Buy America waiver.

SUMMARY: This waiver was granted to Webasto Thermosystems, Inc., Teleflex Thermal Technology, and Espar Products for the manufacture of an auxiliary heater to be used in bus heating systems and will allow vehicle manufacturers to count the auxiliary heater as domestic when calculating domestic content. This notice shall ensure that the public, particularly potential manufacturers, is aware of this waiver. FTA requests that the public notify it of any relevant changes in the domestic market of auxiliary heaters.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, FTA Office of Chief

Counsel, Room 9316, (202) 366–1936 (telephone) or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION: The above referenced waiver is as follows:

May 15, 2002

Mr. Patrick Lock, Transit OEM Account Manager, Webasto Theromsystems Inc., 3333 John Conley Dr., Lapeer, Michigan 48446.

Mr. Scott Winton, Sales & Marketing Manager, Thermal Division, Teleflex Thermal Technology, 3831 No. 6 Road, Richmond, BC, Canada V6V 1P6.

Mr. John Dennehy, Vice President of Marketing and Communications, Espar Products, Inc., 6435 Kestrel Road, Mississauga, Ontario, Canada L5T128.

Dear Messrs. Lock, Winton, and Dennehy: This is in response to Mr. Lock's letters of March 5, 2002, and April 1, 2002, in which he requested a Buy America component waiver. The request is based on the domestic non-availability of auxiliary heaters used in bus heating systems. For the reasons below, I have determined that a waiver is appropriate here.

We received a similar request from Teleflex on July 28, 2001, which was ultimately denied. The reason for that denial was discussed in our September 28, 2001, letter. We considered the fact that the auxiliary heaters comprised a small percentage of the overall material content of the vehicle and FTA's unwillingness to create a competitive advantage where there might be more than [sic] one foreign manufacturer. In that case, no further information was provided concerning the market or other manufacturers, and therefore, we were not presented with enough information on which to base a waiver.

However, the request by Webasto contained the information needed to grant this waiver; specifically, we were given information about all known auxiliary heater manufacturers. We then verified this information with many vehicle manufacturers and were told that the three companies listed here were, in fact, the only known manufacturers of such auxiliary heaters and that all three companies supply foreign products. We are now confident that no domestic manufacturer of this product currently exists.

The Federal Transit Administration's (FTA) requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). Section 5323(j)(2)(C) contains the general requirements for the procurement of rolling stock. This section provides that when rolling stock is procured with FTA funds, the cost of the components and subcomponents produced in the United States must be at least 60 percent of the cost of the components of the rolling stock, and the vehicle must undergo final assembly in the U.S. See also, 49 CFR 661.11. Section 5323(j)(2)(B) states that those requirements shall not apply if the item is not produced in sufficient and reasonably available amounts in the U.S. See also, 49 CFR 661.7(c). The implementing regulation allows a bidder or supplier to request a non-availability waiver for a component or subcomponent of rolling stock. 49 CFR 661.7(f) and 661.9(d).

Based on the above-referenced information, I have determined that the grounds for a "non-availability" waiver do exist for Webasto, Teleflex, and Espar. Therefore, pursuant to the provisions of 49 U.S.C. 5323(j)(2)(B), the waiver is hereby granted for all contracts for auxiliary heaters entered into within two years of the date of this letter, or until such time as a domestic source for this type of product becomes available, whichever occurs first. In order to ensure that the public is aware of this waiver, particularly potential manufacturers, it will be published in the **Federal Register**.

If you have any questions, please contact Meghan G. Ludtke at (202) 366–1936.

Very truly yours,

Gregory B. McBride,
Deputy Chief Counsel.

Dated: Issued July 16, 2002.

Jennifer L. Dorn,
Administrator.

[FR Doc. 02–18347 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on July 16, 2002.

J. Suzanne Hedgepeth,
Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
New Exemption Applications			
11862–N	The BOC, Group Murray Hill, NJ	4	8/30/2002
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	8/30/2002
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	8/30/2002
12412–N	Great Western Chemical Company, Portland, OR	4	8/30/2002
12440–N	Luxfer Inc., Riverside, CA	4	8/30/2002
12571–N	Air Products & Chemicals, Inc., Allentown, PA	4	8/30/2002
12630–N	Chemetall GmbH Gesellschaft Langelsheim, DE	4	8/30/2002
12648–N	Stress Engineering Services, Inc., Houston, TX	4	9/30/2002
12676–N	Hawks Logistics, Edmond, OK	4	9/30/2002
12701–N	Fuel Cell Components & Integrators, Inc., Hauppauge, NY	1	8/30/2002
12706–N	Raufoss Composites AS, Raufoss, NO	4	8/30/2002

Application No.	Applicant	Reason for delay	Estimated date of completion
12715–N	Arkansas Eastman Division, Eastman Chemical Co., Batesville, AR	4	8/30/2002
12718–N	Weldship Corporation, Bethlehem, PA	4	8/30/2002
12751–N	Defense Technology Corporation, Casper, WY	4	7/31/2002
12753–N	Praxair, Inc., Danbury, CT	4	7/31/2002
12820–N	Trinity Manufacturing, Hamlet, NC	4	7/31/2002
12843–N	United States Enrichment Corporation, Bethesda, MD	4	8/30/2002
12845–N	Qantas Airways Limited, Los Angeles, CA	4	8/30/2002
12859–N	Atlantic Research Corporation, Gainesville, VA	4	8/30/2002
12867–N	G.L.I. Citergaz, 964 Civray, FR	4	8/30/2002
12872–N	Southern California Edison, San Clemente, CA	4	7/31/2002
12874–N	Zomeworks Corporation, Albuquerque, NM	4	7/31/2002
12876–N	Asai Glass Fluoropolymers USA, Inc., Bayonne, NJ	4	7/31/2002
12900–N	Syngenta Crop Protection, Inc., Greensboro, NC	4	8/30/2002
12902–N	C&S Railroad Corp., Jim Thorpe, PA	4	9/30/2002
12904–N	Chemex Corp., San Juan, PR	4	9/30/2002
12924–N	Infineum USA LP, Linden, NJ	4	8/30/2002
	Modifications to Exemptions		
4884–M	Matheson Tri-Gas, East Rutherford, NJ	4	7/31/2002
7060–M	Federal Express, Memphis, TN	4	7/31/2002
7277–M	Structural Composites Industries, Pomona, CA	4	7/31/2002
8162–M	Structural Composites Industries, Pomona, CA	4	7/31/2002
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	7/31/2002
8308–M	American Courier Express Corporation, Miramar, FL	4	7/31/2002
8554–M	Orica USA Inc. Englewood, CO	4	7/31/2002
8718–M	Structural Composites Industries, Pomona, CA	4	7/31/2002
10019–M	Structural Composites Industries, Pomona, CA	4	7/31/2002
10440–M	MASS Systems (A Unit of Ameron Global, Inc.), Baldwin Park, CA	4	7/31/2002
11327–M	Phoenix Services, Inc., Pasadena, MD	1	8/30/2002
11379–M	TRW Automotive, Occupant Safety Systems, Washington, MI	4	7/31/2002
11380–M	Baker Atlas (Houston Technology Center), Houston, TX	4	7/31/2002
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	7/31/2002
11769–M	Great Western Chemical Company, Portland, OR	4	8/30/2002
11769–M	Great Western Chemical Company, Portland, OR	4	8/30/2002
11769–M	Hydrite Chemical Company, Brookfield, WI	4	8/30/2002
11791–M	The Coleman Company, Inc., Wichita, KS	4	7/31/2002
11850–M	Air Transport Association, Washington, DC	4	8/30/2002
11911–M	Transfer Flow, Inc., Chico, CA	4	8/30/2002
11911–M	Transfer Flow, Inc., Chico, CA	4	8/30/2002
12065–M	Petrolab Company, Latham, NY	4	7/31/2002
12449–M	Chlorine Service Company, Inc., Kingwood, TX	4	7/31/2002
12599–M	Voltaix, Inc., North Branch, NJ	4	7/31/2002

[FR Doc. 02–18348 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34223]

John C. Nolan—Control Exemption—Penn Eastern Rail Lines, Inc.

John C. Nolan, a noncarrier individual, has filed a verified notice of exemption to acquire control through stock ownership of Penn Eastern Rail Lines, Inc. (PRL), a Class III railroad.[1] Applicant currently controls through stock ownership another Class III railroad, East Penn Railway, Inc. (EPRY).[2]

The transaction was expected to be consummated on or shortly after July 1, 2002, the effective date of the exemption.

Applicant states that: (i) The railroads will not connect with each other; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).[3]

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34223, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John K. Fiorilla, 390 George Street, P.O. Box 1185, New Brunswick, NJ 08903.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: July 15, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18437 Filed 7–19–02; 8:45 am]

BILLING CODE 4915–00–P

[1] PRL is an indirect wholly owned subsidiary of Genesee & Wyoming Inc., a noncarrier holding company. PRL currently operates in eastern Pennsylvania and interchanges with CSX Transportation (CSXT) at Bristol, PA, and with Norfolk Southern Railway Company at specified points in Pennsylvania.

[2] EPRY operates in eastern Pennsylvania and interchanges with CSXT at Telford, PA.

[3] Applicant states that he intends that PRL and EPRY will be operated as separate entities.

DEPARTMENT OF THE TREASURY

Customs Service

Use or Replacement of Continuous Bonds That Were Destroyed in New York

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public that importers will be afforded additional time to follow the procedures previously prescribed to ensure continuous bond coverage on future import transactions in the case of continuous bonds maintained by Customs in New York that were destroyed in the terrorist attack on September 11, 2001.

DATES: A copy of a current bond must be provided to Customs, or a new bond must be filed with Customs, on or before August 12, 2002.

FOR FURTHER INFORMATION CONTACT: For questions regarding operational issues: The Entry and Drawback Management Branch, Office of Field Operations (202–927–0360).

For inquiries about specific bonds: The Customs Bond Unit, Elizabeth, New Jersey (201–443–0234). A party making a telephonic inquiry regarding a specific bond should be prepared to provide its importer name and identification number.

SUPPLEMENTARY INFORMATION:

Background

The Customs laws and regulations require the posting of a surety bond to secure Customs transactions involving specific types of activities (for example, the importation and entry of merchandise, the custody of imported merchandise, the arrival and clearance of conveyances). A Customs bond may be approved by Customs for a particular activity involving one individual Customs transaction (for example, a single entry bond) or may be approved by Customs as a continuous bond for a particular activity involving multiple Customs transactions (for example, a continuous importation and entry bond). A single transaction bond normally is approved by Customs when presented in connection with the individual transaction to which it relates and remains in effect only for purposes of that one transaction. An application for a continuous transaction bond normally is filed with, and approved by, Customs before all of the transactions to which it relates arise, and the approved bond is retained on file by Customs and remains in effect until terminated by the parties to the bond.

The terrorist attack on the World Trade Center in New York on September 11, 2001, resulted in the destruction of Customs bonds and other documents that were being stored at the Customs offices at 6 World Trade Center. The destroyed bonds and other documents included, but were not limited to, continuous bonds which were filed for approval at the New York Seaport (port code 1001) and at the New York Regional Port (port code 7200).

On May 13, 2002, Customs published in the **Federal Register** (67 FR 32082) a general notice setting forth procedures for importers to follow in order to ensure uninterrupted bond coverage and avoid the need to file an application for a new continuous bond. That notice provided that each party having a continuous bond of any type involving activity code 1 to 5 that has an effective date of September 11, 2001, or earlier and that was filed at either of the two ports referred to above and that was in effect on the date of publication of the notice must, within 30 days of the date of publication of the notice (that is, on or before June 12, 2002), provide Customs with a copy of that bond together with the Customs bond number and copies of any riders to the bond. The notice further stated that failure to provide a copy of the bond within the prescribed 30-day period would cause Customs to refuse to accept a reference to the bond to guarantee future transactions and that, if a copy of the bond could not be provided, the party must submit to Customs a new continuous bond application within the same 30-day period. For purposes of that notice, the term "party" referred to any individual or business association that prior to, or on or after, September 11, 2001, had engaged in activities secured by a continuous bond described above as having been destroyed on that date, either by virtue of being listed as a "Principal" on the bond or by virtue of being listed as a user in "Section III" on the bond. Finally, the May 13, 2002, notice stated that the copy of the continuous bond or the new continuous bond application should be sent to either of the following addresses:

U.S. Customs Service, Attention: Bond Desk, 1210 Corbin Street, Elizabeth, New Jersey 07201;
or,
U.S. Customs Service, Attention: Bond Desk, Bldg. 77, JFK Airport,Jamaica, New York 11430.

Extension of Submission Period

Following publication of the May 13, 2002, notice, various trade associations advised Customs that additional time would be required for their members to comply with the procedures set forth in the notice. Moreover, Customs has, to date, received significantly fewer copies of bonds or new bond applications than it expected to receive. Customs therefore has determined that an additional 60 days should be allowed for submission of the prescribed bond information or a new bond application.

Accordingly, subject to the other terms and conditions of the May 13, 2002, notice as described above, Customs will continue to accept a copy of a destroyed bond or a new continuous bond application until August 12, 2002. Failure to provide a copy of a destroyed bond by that date will cause Customs to refuse to accept a reference to the bond to guarantee future transactions.

Dated: July 16, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–18341 Filed 7–19–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending June 30, 2002.

LNAME	FNAME	MNAME
Antoniazzi	Remi	Jacgues
Bamberger	Harold	Eugene
Bartlett	Gabriela	Loretto
Beop Shim	Ezra	Sang
Burnett	Robert	Kenneth
Canellopoulos	Nellos	Panayotis
Chan	Daisy	Tak Wai
Chen	Christine	Tsung
Chen	Uelin.	
Chiu	Yeong	Jen
Cho	Byong	Un
Chung	Peter	Sang-Hoon
Cohen	Steven	Douglas
Cremer Jr.	Robert	Roger
Cuestas	Edelmira.	
Dimenstein	Marcel	Clifford
Down	Patricia	Belle
Farace	Alessia	D'Ecclesia
Farace	Arianna	D'Ecclesia
Firmenich	Sophie	Jocelyne
Fuentes	Margaret	Elizabeth
Gabitass	Christine	Anne
Gautschi	Ellen	Catherine
Greenall	Rita	Faye
Gruenhagen	Richard	Dean
Henry	Rosalba	Norma
Horie	Yuri	E
Hsiao	Bi-Khim	Louise
Janssen	Tokiko.	
Kaegi	Claudia	Alexandra
Kao	Fumei.	
Kim	Dong	Whan
Kim	Sung	Eun
Knight	Nicola	Ann
Koo	Dong	Soo
Lee	Hye-Won.	
Lee	Sammy	Wai Sum
Lesley	Dominique	Lisette
Livanos	Peter	George
Maurice	Ivan	Joannes Geoffroy Aime
McDonald	Kevin	George
McNair	Elizabeth	Louise
Merritt	Martin	Joseph
Miura	Kiyoshi.	
Niedziela	Yvone.	
Oresko	Robert	Craig
Park	Christopher	L
Person	Linda	Jane
Person	John	Michael
Pillet	Patrick	Louis
Popodi	Alfred	Ernst
Rietema	Jan	Clarence
Rule	Christopher	Marx
Schiemann	Helen	Hedwig
Schwab	Wallace	Joseph
Shaw	Lamar	Henry
Sumar	William	Saxonis
Sun	Bill	Kauo-Hwa
Thrasher	Dale	Henry
Todd	James	Jason
Velay	Heloise	Yvonne
Velazquez	Jose.	
Warren	Judith.	
Wibholm	Linda	Zehnder
Wortmann	Furman.	
Wuest	Lawrence	John
Yip	Ka Kay.	
Yip	Ka-Hay.	
Yung	Vivian	Hsu
Zavatti	Samuel	Mario

Dated: June 28, 2002.

Samuel Brown,

Team Manager—Examination Operation, Philadelphia Compliance Services.

[FR Doc. 02–18326 Filed 7–19–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 67, No. 140
Monday, July 22, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

RIN 0584–AC94

Child and Adult Care Food Program; Implementing Legislative Reforms to Strengthen Program Integrity

Correction

In rule document 02–15776 beginning on page 43448 in the issue of Thursday, June 27, 2002, make the following correction:

§ 226.18 [Corrected]

On page 43493, in the third column, in § 226.18, in paragraph (b)(15), in the ninth line, "§226.6(1)(2);" should read "§226.6(l)(2);"

[FR Doc. C2–15776 Filed 7–19–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Final Notice of Allocations to States of FY 2002 Funds for Refugee Social Services

Correction

In notice document 02–17027 beginning on page 45131 in the issue of Monday, July 8, 2002 make the following correction:

On page 45135, in table 1, under the column titled, "Total final allocation", in the 10th line, "8,543,954" should read "18,543,954".

[FR Doc. C2–17027 Filed 7–19–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–127–AD; Amendment 39–12820; AD 2002–14–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –800, and –900 Series Airplanes

Correction

In rule document 02–17548 beginning on page 46580 in the issue of Tuesday, July 16, 2002, make the following correction:

§39.13 [Corrected]

On page 46581, in the second column, in the second line of the Airworthiness Directive "Docket 2002–NM–1AD" should read "Docket 2002–NM–127–AD".

[FR Doc. C2–17548 Filed 7–19–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
July 22, 2002

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7236–5]

RIN 2060–A167 and 2060–A168

National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is adding two source categories, brick and structural clay products (BSCP) manufacturing and clay ceramics manufacturing, to the list of categories of major sources of hazardous air pollutants (HAP) published under section 112(c) of the Clean Air Act (CAA) and to the source category schedule for national emission standards for hazardous air pollutants (NESHAP). The two source categories being added were originally included in the clay products manufacturing source category, which was on the initial list of source categories to be regulated. The EPA is, at the same time, proposing NESHAP for new and existing sources at BSCP manufacturing facilities and NESHAP for new sources at clay ceramics manufacturing facilities. The two proposed subparts would require major sources to meet emission standards reflecting the application of maximum achievable control technology (MACT). The HAP emitted by facilities in the BSCP and clay ceramics manufacturing source categories include hydrogen fluoride (HF), hydrogen chloride (HCl), and metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium). Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and kidney damage. The EPA has classified three of the HAP as human carcinogens, four as probable human carcinogens, and one as a possible human carcinogen. We estimate that the proposed rules would reduce nationwide emissions of HAP from these facilities by approximately 2,600 megagrams per year (Mg/yr)(2,800 tons per year (tpy)), a reduction of approximately 45 percent from the current level of emissions.

DATES: *Comments.* Submit comments on or before September 20, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 12, 2002, a public hearing will be held on August 21, 2002.

ADDRESSES: *Comments on BSCP Manufacturing NESHAP.* By U.S. Postal Service, written comments on the proposed BSCP manufacturing NESHAP should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–30, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–30, Room M–1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Comments on Clay Ceramics Manufacturing NESHAP. By U.S. Postal Service, written comments on the proposed clay ceramics manufacturing NESHAP should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–48, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–48, Room M–1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at 10 a.m. on August 21, 2002 at the EPA's Environmental Research Center Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. A–99–30 contains supporting information used in developing the proposed BSCP standards. Docket No. A–2000–48 contains supporting information used in developing the proposed clay ceramics standards. The dockets are located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For questions about the proposed rules, contact Ms. Mary Johnson, Combustion Group, Emission Standards Division (MC–C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5025, e-mail address: *johnson.mary@epa.gov*. For questions about the public hearing, contact Ms. Tanya Medley, Minerals and Inorganic Chemicals Group, Emission Standards Division (MC–C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5422, e-mail address: *medley.tanya@epa.gov*.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–99–30 for BSCP manufacturing and A–2000–48 for clay ceramics manufacturing. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, MC–C404–02, Attention: Ms. Mary Johnson, U.S. EPA, Research Triangle Park, North Carolina 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Tanya Medley at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Medley to verify the time, date, and location of the hearing. The address, telephone number, and e-mail address for Ms. Medley are listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. If a public hearing is held, it will provide interested parties

the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The dockets are organized and complete files of all the information considered by the EPA in the development of the proposed rules. The dockets are dynamic files because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the dockets will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to the proposed rules are available for review in the dockets, or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the dockets, an electronic copy of each proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of each rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Entities potentially regulated by this action are those industrial facilities that manufacture BSCP and clay ceramics. Brick and structural clay products manufacturing is classified under Standard Industrial Classification (SIC) codes 3251, Brick and Structural Clay Tile; 3253, Ceramic Wall and Floor Tile; and 3259, Other Structural Clay Products. The North American Industry Classification System (NAICS) codes for BSCP manufacturing are 327121, Brick and Structural Clay Tile; 327122, Ceramic Wall and Floor Tile Manufacturing; and 327123, Other Structural Clay Products. Clay ceramics manufacturing is classified under SIC codes 3253, Ceramic Wall and Floor Tile; and 3261, Vitreous Plumbing Fixtures (Sanitaryware). The NAICS codes for clay ceramics manufacturing are 327122, Ceramic Wall and Floor Tile Manufacturing; and 327111, Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing. Regulated categories and entities are shown in Table 1 of this preamble.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	SIC	NAICS	Examples of potentially regulated entities
Industrial	3251	327121	Brick and structural clay tile manufacturing facilities (BSCP NESHAP)
Industrial	3253	327122	Ceramic wall and floor tile manufacturing facilities (Clay Ceramics NESHAP) and extruded tile manufacturing facilities (BSCP NESHAP)
Industrial	3259	327123	Other structural clay products manufacturing facilities (BSCP NESHAP)
Industrial	3261	327111	Vitreous plumbing fixtures (sanitaryware) manufactunng facilities (Clay Ceramics NESHAP)

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.8385 of the proposed BSCP rule and § 63.8535 of the proposed clay ceramics rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Introduction
  A. What is the source of authority for development of NESHAP?
  B. What criteria are used in the development of NESHAP?
  C. What is the history of the source categories?
  D. What are the health effects of pollutants emitted from the brick and structural clay products manufacturing and clay ceramics manufacturing source categories?
II. Summary of the Proposed Rule for Brick and Structural Clay Products Manufacturing
  A. What source category is regulated by the proposed rule?
  B. What are the affected sources?
  C. When must I comply with the proposed rule?
  D. What are the emission limits?
  E. What are the operating limits?
  F. What are the performance test and initial compliance requirements?
  G. What are the continuous compliance requirements?
  H. What are the notification, recordkeeping, and reporting requirements?
III. Summary of Environmental, Energy, and Economic Impacts for the Proposed Brick and Structural Clay Products Manufacturing NESHAP
  A. What are the air quality impacts?
  B. What are the water and solid waste impacts?
  C. What are the energy impacts?
  D. Are there any additional environmental and health impacts?
  E. What are the cost impacts?
  F. How can we reduce the cost of the proposed rule?
  G. What are the economic impacts?
IV. Rationale for Selecting the Proposed Standards for Brick and Structural Clay Products Manufacturing
  A. How did we select the emission sources and pollutants that will be regulated?
  B. How did we determine subcategories?
  C. How did we determine the MACT floors for existing sources?
  D. How did we determine the MACT floors for new sources?
  E. How did we select the format of the proposed rule?
  F. How did we determine the emission limits?
  G. How did we select the operating limits and monitoring requirements?
V. Summary of the Proposed Rule for Clay Ceramics Manufacturing
  A. What source category is regulated by the proposed rule?
  B. What are the affected sources?
  C. When must I comply with the proposed rule?
  D. What are the emission limits?
  E. What are the operating limits?
  F. What are the performance test and initial compliance requirements?
  G. What are the continuous compliance requirements?
  H. What are the notification, recordkeeping, and reporting requirements?
VI. Summary of Environmental, Energy, and Economic Impacts for the Proposed Clay Ceramics Manufacturing NESHAP
  A. What are the air quality impacts?
  B. What are the water and solid waste impacts?
  C. What are the energy impacts?
  D. Are there any additional environmental and health impacts?
  E. What are the cost impacts?
  F. What are the economic impacts?

VII. Rationale for Selecting the Proposed Standards for Clay Ceramics Manufacturing
A. How did we select the emission sources and pollutants that will be regulated?
B. How did we determine subcategories?
C. How did we determine the MACT floors for existing sources?
D. How did we determine the MACT floors for new sources?
E. How did we select the format of the proposed rule?
F. How did we determine the emission limits?
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VIII. Solicitation of Comments and Public Participation
IX. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
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H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995

I. Introduction

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those stationary sources or groups of stationary sources that are located within a contiguous area under common control that emit or have the potential to emit, considering controls, 9.07 Mg/yr (10 tpy) or more of any one HAP or 22.68 Mg/yr (25 tpy) or more of any combination of HAP. Area sources are those stationary sources or groups of stationary sources that are not major sources.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

C. What Is the History of the Source Categories?

We published an initial list of source categories on July 16, 1992 (57 FR 31576). Included on the initial source category list were major sources of HAP emissions from the clay products manufacturing industry.

Early in the regulatory development process, four distinct industries were identified within the clay products manufacturing source category. In a notice published in the **Federal Register** on November 18, 1999 (64 FR 63025), we stated that we anticipated replacing the clay products manufacturing source category with four separate source categories representing those four industries: BSCP manufacturing, ceramics manufacturing, clay minerals processing, and lightweight aggregate manufacturing. We further stated that we expected to propose and promulgate separate MACT standards for each of the anticipated four source categories, and that the proposal for each of the standards would add the new source category to the source category list (64 FR 63028).

After further consideration, we have decided to propose and promulgate MACT standards for only two of the four anticipated source categories: BSCP manufacturing and clay ceramics manufacturing. These two categories are included in this action. The similarity of affected sources and types of HAP emissions within these two categories provides the opportunity to propose rules for both industries under one action. Consequently, today's action replaces the clay products manufacturing source category on the source category list with BSCP manufacturing and clay ceramics manufacturing. At this time, we do not anticipate proposing and promulgating MACT standards for the clay minerals processing and lightweight aggregate manufacturing industries. Because we have not added those industries to the source category list, we need not take formal action to remove them from the list. However, we are providing notice of our current plans here so that interested persons have an opportunity to comment.

D. What Are the Health Effects of Pollutants Emitted From the Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing Source Categories?

Today's proposed rules protect air quality and promote the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. Emissions data collected during development of the proposed rules show that HF, HCl, and metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium) are emitted from BSCP and clay ceramics manufacturing facilities. Exposure to these HAP is associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and damage to the kidneys), and acute health disorders (*e.g.*, lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the kidney and central nervous system). We have classified three of the HAP as human carcinogens, four as probable human carcinogens, and one as a possible human carcinogen. We do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, today's proposed rules would reduce emissions and subsequent exposures.

1. Hydrogen Fluoride

Acute (short-term) inhalation exposure to gaseous HF can cause severe respiratory damage in humans,

including severe irritation and pulmonary edema. Chronic (long-term) exposure to fluoride at low levels has a beneficial effect of dental cavity prevention and may also be useful for the treatment of osteoporosis. Exposure to higher levels of fluoride may cause dental fluorosis or mottling, while very high exposures through drinking water or air can result in crippling skeletal fluorosis. One study reported menstrual irregularities in women occupationally exposed to fluoride. We have not classified HF for carcinogenicity.

2. Hydrogen Chloride

Hydrogen chloride, also called hydrochloric acid, is corrosive to the eyes, skin, and mucous membranes. Acute (short-term) inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic (long-term) occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. We have not classified HCl for carcinogenicity.

3. Antimony

Acute (short-term) exposure to antimony by inhalation in humans results in effects on the skin and eyes. Respiratory effects, such as inflammation of the lungs, chronic bronchitis, and chronic emphysema, are the primary effects noted from chronic (long-term) exposure to antimony in humans via inhalation. Human studies are inconclusive regarding antimony exposure and cancer, while animal studies have reported lung tumors in rats exposed to antimony trioxide via inhalation. We have not classified antimony for carcinogenicity.

4. Arsenic

Acute (short-term) high-level inhalation exposure to arsenic dust or fumes has resulted in gastrointestinal effects (nausea, diarrhea, abdominal pain), and central and peripheral nervous system disorders. Chronic (long-term) inhalation exposure to inorganic arsenic in humans is associated with irritation of the skin and mucous membranes. Human data suggest a relationship between inhalation exposure of women working at or living near metal smelters and an increased risk of reproductive effects, such as spontaneous abortions. Inorganic arsenic exposure in humans by the inhalation route has been shown to be strongly associated with lung cancer, while ingestion of inorganic arsenic in humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. We have classified inorganic arsenic as a Group A, human carcinogen.

5. Beryllium

Acute (short-term) inhalation exposure to high levels of beryllium has been observed to cause inflammation of the lungs or acute pneumonitis (reddening and swelling of the lungs) in humans; after exposure ends, these symptoms may be reversible. Chronic (long-term) inhalation exposure of humans to beryllium has been reported to cause chronic beryllium disease (berylliosis), in which granulomatous (noncancerous) lesions develop in the lung. Inhalation exposure to beryllium has been demonstrated to cause lung cancer in rats and monkeys. Human studies are limited, but suggest a causal relationship between beryllium exposure and an increased risk of lung cancer. We have classified beryllium as a Group B1, probable human carcinogen.

6. Cadmium

The acute (short-term) effects of cadmium inhalation in humans consist mainly of effects on the lung, such as pulmonary irritation. Chronic (long-term) inhalation or oral exposure to cadmium leads to a build-up of cadmium in the kidneys that can cause kidney disease. Cadmium has been shown to be a developmental toxicant in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans. An association between cadmium exposure and an increased risk of lung cancer has been reported from human studies, but these studies are inconclusive due to confounding factors. Animal studies have demonstrated an increase in lung cancer from long-term inhalation exposure to cadmium. We have classified cadmium as a Group B1, probable human carcinogen.

7. Chromium

Chromium may be emitted in two forms, trivalent chromium (chromium III) or hexavalent chromium (chromium VI). The respiratory tract is the major target organ for chromium VI toxicity, for acute (short-term) and chronic (long-term) inhalation exposures. Shortness of breath, coughing, and wheezing have been reported from acute exposure to chromium VI, while perforations and ulcerations of the septum, bronchitis, decreased pulmonary function, pneumonia, and other respiratory effects have been noted from chronic exposure. Limited human studies suggest that chromium VI inhalation exposure may be associated with complications during pregnancy and childbirth, while animal studies have not reported reproductive effects from inhalation exposure to chromium VI. Human and animal studies have clearly established that inhaled chromium VI is a carcinogen, resulting in an increased risk of lung cancer. We have classified chromium VI as a Group A, human carcinogen.

Chromium III is much less toxic than chromium VI. The respiratory tract is also the major target organ for chromium III toxicity, similar to chromium VI. Chromium III is an essential element in humans, with a daily intake of 50 to 200 micrograms per day (µg/d) recommended for an adult. The body can detoxify some amount of chromium VI to chromium III. We have not classified chromium III for carcinogenicity.

8. Cobalt

Acute (short-term) exposure to high levels of cobalt by inhalation in humans and animals results in respiratory effects such as a significant decrease in ventilatory function, congestion, edema, and hemorrhage of the lung. Respiratory effects are also the major effects noted from chronic (long-term) exposure to cobalt by inhalation, with respiratory irritation, wheezing, asthma, pneumonia, and fibrosis noted. Cardiac effects, congestion of the liver, kidneys, and conjunctiva, and immunological effects have also been noted in humans. Cobalt is an essential element in humans, as a constituent of vitamin B12. Human and animal studies are inconclusive with respect to potential carcinogenicity of cobalt. We have not classified cobalt for carcinogenicity.

9. Mercury

Mercury exists in three forms: Elemental mercury, inorganic mercury compounds (primarily mercuric chloride), and organic mercury compounds (primarily methyl mercury). Each form exhibits different health effects. Brick, structural clay products, and clay ceramics manufacturing may release elemental or inorganic mercury, but not methyl mercury so those health effects are not addressed in this preamble. Acute (short-term) exposure to high levels of elemental mercury in humans results in central nervous system (CNS) effects such as tremors,

mood changes, and slowed sensory and motor nerve function. High inhalation exposures can also cause kidney damage and effects on the gastrointestinal tract and respiratory system. Chronic (long-term) exposure to elemental mercury in humans also affects the CNS, with effects such as increased excitability, irritability, excessive shyness, and tremors. We have not classified elemental mercury for carcinogenicity.

Acute exposure to inorganic mercury by the oral route may result in effects such as nausea, vomiting, and severe abdominal pain. The major effect from chronic exposure to inorganic mercury is kidney damage. Reproductive and developmental animal studies have reported effects such as alterations in testicular tissue, increased embryo resorption rates, and abnormalities of development. Mercuric chloride (an inorganic mercury compound) exposure has been shown to result in forestomach, thyroid, and renal tumors in experimental animals. We have classified mercuric chloride as a Group C, possible human carcinogen.

10. Manganese

Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic (long-term) exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a recommended daily allowance of 2 to 5 milligrams per day (mg/d). Chronic exposure to high levels of manganese by inhalation in humans results primarily in CNS effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. We have classified manganese as Group D, not classifiable as to human carcinogenicity.

11. Nickel

Nickel is an essential element in some animal species, and it has been suggested it may be essential for human nutrition. Nickel dermatitis, consisting of itching of the fingers, hands, and forearms, is the most common effect in humans from chronic (long-term) skin contact with nickel. Respiratory effects have also been reported in humans from inhalation exposure to nickel. No information is available regarding the reproductive or developmental effects of nickel in humans, but animal studies have reported such effects. Human and animal studies have reported an increased risk of lung and nasal cancers from exposure to nickel refinery dusts and nickel subsulfide. Animal studies of soluble nickel compounds (i.e., nickel carbonyl) have reported lung tumors. We have classified nickel refinery dust and nickel subsulfide as Group A, human carcinogens, and nickel carbonyl as a Group B2, probable human carcinogen.

12. Lead

Lead is a very toxic element, causing a variety of effects at low dose levels. Brain damage, kidney damage, and gastrointestinal distress may occur from acute (short-term) exposure to high levels of lead in humans. Chronic (long-term) exposure to lead in humans results in effects on the blood, CNS, blood pressure, and kidneys. Children are particularly sensitive to the chronic effects of lead, with slowed cognitive development, reduced growth, and other effects reported. Reproductive effects, such as decreased sperm count in men and spontaneous abortions in women, have been associated with lead exposure. The developing fetus is at particular risk from maternal lead exposure, with low birth weight and slowed postnatal neurobehavioral development noted. Human studies are inconclusive regarding lead exposure and cancer, while animal studies have reported an increase in kidney cancer from lead exposure by the oral route. We have classified lead as a Group B2, probable human carcinogen.

13. Selenium

Selenium is a naturally occurring substance that is toxic at high concentrations but is also a nutritionally essential element. Acute (short-term) exposure to elemental selenium, hydrogen selenide, and selenium dioxide by inhalation results primarily in respiratory effects, such as irritation of the mucous membranes, pulmonary edema, severe bronchitis, and bronchial pneumonia. Studies of humans chronically (long-term) exposed to high levels of selenium in food and water have reported discoloration of the skin, pathological deformation and loss of nails, loss of hair, excessive tooth decay and discoloration, lack of mental alertness, and listlessness. The consumption of high levels of selenium by pigs, sheep, and cattle has been shown to interfere with normal fetal development and to produce birth defects. Results of human and animal studies suggest that supplementation with some forms of selenium may result in a reduced incidence of several tumor types. One selenium compound, selenium sulfide, is carcinogenic in animals exposed orally. We have classified elemental selenium as a Group D, not classifiable as to human carcinogenicity, and selenium sulfide as a Group B2, probable human carcinogen.

II. Summary of the Proposed Rule for Brick and Structural Clay Products Manufacturing

A. What Source Category Is Regulated by the Proposed Rule?

Today's proposed rule for BSCP manufacturing applies to BSCP manufacturing facilities that are, are located at, or are part of, a major source of HAP emissions. The BSCP manufacturing source category includes those facilities that manufacture brick (face brick, structural brick, brick pavers, other brick); clay pipe; roof tile; extruded floor and wall tile; and/or other extruded, dimensional clay products. Brick and structural clay products primarily are produced from common clay and shale. Production of BSCP typically consists of processing and handling the raw materials, forming and cutting bricks and shapes, and drying and firing the bricks and shapes. One by-product of brick manufacturing is crushed brick, which is produced at some facilities by crushing reject bricks.

There are a total of 189 domestic BSCP manufacturing facilities; 170 of these facilities primarily produce brick, and 19 of these facilities primarily produce structural clay products. The 189 BSCP manufacturing facilities are located in 39 States and are owned by 90 companies. Seventy-seven of the companies are small businesses, and these 77 companies own 93 of the BSCP manufacturing facilities. Thirteen of the companies are large businesses, and these 13 companies own 96 BSCP manufacturing facilities.

All BSCP are fired either in continuous (tunnel or roller) or batch (periodic) kilns. Because the vast majority of continuous kilns are tunnel kilns, continuous kilns, including roller kilns, will be referred to as tunnel kilns for the remainder of this preamble. A total of 308 permitted and operable tunnel kilns were reported by industry; 296 of these kilns are located at facilities that are estimated, based on uncontrolled emissions, to be major sources. Of the 296 tunnel kilns located at major sources, 269 are located at brick manufacturing facilities and 27 are located at structural clay products manufacturing facilities. A total of 227 permitted and operable periodic kilns

were reported by industry; 164 of these kilns are located at facilities that are estimated to be major sources. Of the 164 periodic kilns located at major sources, 81 are located at brick manufacturing facilities and 83 are located at structural clay products manufacturing facilities.

Most tunnel kilns are fired with natural gas, although coal, sawdust, landfill gas, and fuel oil also are used. Many kilns have propane available as a back-up fuel. Most of the sawdust-fired tunnel kilns duct some or all of the kiln exhaust to rotary sawdust dryers prior to release to the atmosphere. Tunnel kilns range in size from about 104 meters (m) (340 feet (ft)) to 152 m (500 ft) in length and include a dryer, a firing zone, and a cooling zone. The dryer can be a totally separate structure from the tunnel kiln or can be in-line (part of the tunnel kiln). In tunnel kilns with in-line dryers, the dryer and kiln exhaust fans are balanced so that kiln combustion gases do not enter the dryer. A neutral point, created by the draft from the dryer and the kiln, separates the dryer and kiln atmospheres. A similar neutral point also exists between the firing and cooling zones of all tunnel kilns. Some dryers that precede coal-fired kilns use kiln gases to aid in the drying process. This process is called back-drafting and is accomplished by changing the balance between the dryer and kiln exhaust fans so that the dryer/kiln neutral point moves into the kiln and allows some combustion gases to enter the dryer. Tunnel kiln firing zones typically maintain a maximum temperature of about 1090°C (2000°F). Production rates for tunnel kilns averaged about 5.7 megagrams per hour (Mg/hr) (6.3 tons per hour (tph)) in 1996. During firing, small amounts of excess fuel, typically natural gas, are sometimes introduced to the kiln atmosphere, creating a reducing atmosphere that adds color to the surface of the bricks. This process is called flashing. After firing, the bricks enter the cooling zone, where they are cooled to near ambient temperatures before leaving the tunnel kiln. The bricks then are removed from the kiln cars, stored, and shipped.

Periodic kilns are the most common type of kiln for firing clay pipe and are also used to produce brick and other structural clay products. Types of periodic kilns that are used in the BSCP industry include beehive kilns and shuttle kilns. Beehive kilns are round, brick structures in which bricks or structural clay products are manually loaded or stacked. Shuttle kilns typically are steel-framed, refractory-lined structures that are loaded with brick or structural clay product-laden kiln cars. Following loading, periodic kilns are fired for a set amount of time, depending on the product. Firing cycles for brick range from 40 hours to about 200 hours. Firing cycles for structural clay products vary over a much wider range (16 hours to about 700 hours) because the sizes of the products vary over a wide range. The average production rate for periodic kilns in the industry is less than 0.5 tph (on a continuous basis). Structural clay tile that are fired in periodic kilns typically require relatively short firing cycles, while large clay pipe typically require hundreds of hours. Facilities that use periodic kilns typically operate several kilns, and groups or banks of periodic kilns often are ducted to a single stack. Most periodic kilns are fired with natural gas, while a few periodic kilns are fired with coal or sawdust.

The primary HAP emissions sources at BSCP manufacturing plants are tunnel kilns and periodic kilns, which emit HF, HCl, and HAP metals. Kilns also emit particulate matter (PM) and sulfur dioxide (SO_2). Other sources of HAP emissions at BSCP manufacturing plants are the raw material processing and handling equipment. The air pollution control devices (APCD) that are used by the industry to control emissions from kilns include dry lime injection fabric filters (DIFF), dry lime scrubber/fabric filters (DLS/FF), dry limestone adsorbers (DLA), wet scrubbers (WS), and fabric filters. The following paragraphs describe the control systems.

Dry lime injection fabric filters are used to control HF, HCl, SO_2, and PM emissions from tunnel kilns. These systems inject hydrated lime (a dry lime powder) into the kiln exhaust. The lime and kiln exhaust mix in a reaction chamber or an exhaust duct and are ducted to a fabric filter. Acid gas removal takes place in the exhaust duct or reaction chamber and subsequent ductwork, and across the lime-caked fabric filter bags. The fabric filter then removes the lime and other PM from the exhaust stream prior to release to the atmosphere. The spent lime and PM collected by the fabric filter are then disposed of as solid waste. One facility ships the lime to a landfill where it is used to solidify liquid hazardous waste. The facility does not have to pay for spent lime disposal (other than shipping costs) because the lime is useful to the landfill.

Dry lime scrubber/fabric filters are also used to control HF, HCl, SO_2, and PM emissions from tunnel kilns. These systems mix fresh hydrated lime, re-circulated hydrated lime, and a small amount of water in a conditioning drum. The lime/water mixture then is injected into a reaction chamber where it mixes with the kiln exhaust. Acid gas removal takes place in the reaction chamber, subsequent ductwork, and across the lime caked fabric filter bags. Additionally, the hot exhaust gases from the kiln evaporate the water in the lime/water mixture, thereby cooling the exhaust gases before entering the fabric filter. From the reaction chamber, the exhaust stream is ducted to a fabric filter for PM removal, and a percentage of the fabric filter catch is reintroduced into the conditioning drum along with fresh lime and water.

Dry limestone adsorbers are also used to control tunnel kiln emissions. These systems feed limestone into the top of a reaction chamber countercurrent to the kiln exhaust gases. The limestone cascades through multiple baffles within the chamber and reacts with and removes HF, and, to a lesser degree, HCl and SO_2 from the kiln exhaust. The system does not provide a mechanism for controlling PM and may actually create PM emissions in some instances. Depending on the system, the limestone is then pneumatically conveyed directly back to the top of the chamber or is mechanically processed (scraped) to remove reacted material from the surface and then pneumatically conveyed back to the top of the reaction chamber. New limestone is periodically added to the system as needed. We have several concerns, which are discussed in section IV.B of this preamble, with the DLA control technology.

Attempts are currently under way to control a periodic kiln with a DLA, but based on available test data and discussions with the facility manager, the system has not been successful in controlling HF emissions from the kiln. The facility is continuing efforts to solve the problems with the APCD, but at this point, the DLA has not been proven effective for controlling emissions from periodic kilns.

Wet scrubbers are also used to control HF, HCl, SO_2, and PM emissions from tunnel kilns. One type of WS system currently in use is a vertical, packed-tower scrubber. This system first quenches the exhaust gases with a soda-ash and water solution. The exhaust gases then pass through 5 feet of random dump packing followed by a demister. The soda-ash and water solution is also added to the top of the packing material, countercurrent to the gas flow. The other WS currently in use, which recently began operation, is a fluidized bed scrubber that uses water and sodium hydroxide as the scrubbing solution. Test data documenting the

performance of the fluidized bed scrubber are not yet available. The facility that is currently operating wet scrubbers discharges the scrubber wastewater directly to the sewer. This water disposal option is not available to all facilities, but some facilities have indicated that they would have similar disposal options.

In addition, another type of wet scrubber system has been developed specifically for the brick industry. The system is a cross-flow scrubber that includes the addition of magnesium hydroxide ($Mg(OH)_2$) to the scrubber water. The $Mg(OH)_2$ reacts with HF, HCl, and SO_2 to form several salts, including magnesium fluoride (MgF_2), magnesium chloride ($MgCl_2$), and magnesium sulfate ($MgSO_4$). A pilot-scale test of the system reportedly showed HF control efficiencies greater than 99 percent, SO_2 control efficiencies greater than 95 percent, and PM concentrations lower than 0.023 grams per dry standard cubic meter (g/dscm) (0.1 grains per dry standard cubic foot (gr/dscf)). The testing did not include measurements of HCl emissions. The system can be designed to discharge directly to a sewer if available or can include a spray dryer (*i.e.*, evaporator) to eliminate the liquid waste.

B. What Are the Affected Sources?

The existing affected source, which is the portion of each source in the category for which we are setting emission standards, is any existing tunnel kiln with a design capacity equal to or greater than 9.07 Mg/hr (10 tph) of fired product. Such tunnel kilns may be fired by natural gas or other fuels, including sawdust. Sawdust firing typically involves the use of a sawdust dryer because sawdust typically is purchased wet and needs to be dried before it can be used as fuel. Consequently, some sawdust-fired tunnel kilns have two process streams, including: a process stream that exhausts directly to the atmosphere or to an APCD, and a process stream in which the kiln exhaust is ducted to a sawdust dryer where it is used to dry sawdust before being emitted to the atmosphere.

Today's proposed rule focuses on those process streams from existing tunnel kilns that exhaust directly to the atmosphere or to an APCD. For existing tunnel kilns at or above the threshold design capacity that do not have sawdust dryers, the kiln exhaust process stream (i.e., the only process stream) is subject to the requirements of today's proposed rule. In accordance with CAA section 112(d)(1), we have divided tunnel kilns that duct exhaust to sawdust dryers into two classes for purposes of regulation. For existing tunnel kilns at or above the threshold design capacity that duct exhaust to sawdust dryers prior to July 22, 2002, only the process stream that is emitted directly to the atmosphere or to an APCD is subject to the requirements of today's proposed rule; any process stream from such kilns that is ducted to a sawdust dryer is not subject to those requirements.

By contrast, for existing tunnel kilns at or above the threshold design capacity that first duct exhaust to sawdust dryers on or after July 22, 2002, all of the exhaust (i.e., both the process stream that is emitted directly to the atmosphere or to an APCD and the process stream that is ducted to a sawdust dryer) is subject to the same level of control requirement as a new tunnel kiln. It is important to regulate all of the exhaust from this subset of existing tunnel kilns in order to prevent existing tunnel kilns that do not duct exhaust to sawdust dryers prior to July 22, 2002 from circumventing the control requirements of today's proposed rule by ducting to sawdust dryers. It also makes sense to subject all of the exhaust from kilns that first duct exhaust to sawdust dryers on or after July 22, 2002 to the requirements of today's proposed rule because these sources, like new sources, have options for controlling their emissions that are not as readily available to existing sources. Thus, the cost of requiring MACT for sources that choose to first duct kiln exhaust to a sawdust dryer on or after July 22, 2002 is considered reasonable.

In addition, each new or reconstructed tunnel kiln is an affected source, regardless of design capacity, and all process streams from new or reconstructed tunnel kilns are subject to the requirements of today's proposed rule. A source is a new affected source if construction began after July 22, 2002. An affected source is reconstructed if the criteria defined in § 63.2 are met. An affected source is existing if it is not new or reconstructed.

An existing tunnel kiln with a federally enforceable permit condition that restricts kiln operation to less than 9.07 Mg/hr (10 tph) of fired product on a 30-day rolling average basis is not subject to the requirements of today's proposed rule. Kilns that are used exclusively for research and development (R&D) and not used to manufacture products for commercial sale are not subject to the requirements of today's proposed rule. Finally, kilns that are used exclusively for setting glazes on previously fired products are not subject to the requirements of today's proposed rule.

C. When Must I Comply With the Proposed Rule?

Existing affected sources must comply within 3 years of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. New or reconstructed affected sources with an initial startup before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] must comply no later than [Date of Publication of the Final Rule in the **Federal Register**]. New or reconstructed affected sources with an initial startup after [Date of Publication of the Final Rule in the **Federal Register**] must comply upon initial startup. Existing area sources that subsequently become major sources have 3 years from the date they become major sources to come into compliance. Any portion of existing facilities that become new or reconstructed major sources and any new or reconstructed area sources that become major sources must be in compliance upon initial startup.

D. What Are the Emission Limits?

Today's proposed rule includes emission limits in the form of production-based mass emission limits and percent reduction requirements. In establishing the HAP emission limits, we selected PM as a surrogate for HAP metals (including mercury in particulate form). Today's proposed rule proposes HF, HCl, and PM emission limits for existing, new, and reconstructed affected sources at BSCP manufacturing facilities.

If you own or operate an existing tunnel kiln with a design capacity equal to or greater than 9.07 Mg/hr (10 tph) or a new or reconstructed tunnel kiln, regardless of capacity, you would be required to meet an HF emission limit of 0.014 kilogram per megagram (kg/Mg) (0.027 pound per ton (lb/ton)) of product or reduce uncontrolled HF emissions by at least 95 percent for affected process streams. You would be required to meet an HCl emission limit of 0.019 kg/Mg (0.037 lb/ton) of product or reduce uncontrolled HCl emissions by at least 90 percent. You would be required to meet a PM emission limit of 0.06 kg/Mg (0.12 lb/ton) of product.

E. What Are the Operating Limits?

In addition to the emission limits, today's proposed rule includes operating limits that would apply to APCD used to comply with the proposed rule. The operating limits require you to maintain certain process or APCD parameters within levels

established during performance tests. Each facility affected by the proposed rule would be required to prepare, implement, and revise, as necessary, an operation, maintenance, and monitoring (OM&M) plan. The OM&M plan generally specifies the operating parameters that will be monitored; the frequency that parameter values will be determined; the limits for each parameter; procedures for proper operation and maintenance of process units, APCD, and monitoring equipment; procedures for responding to parameter deviations; and procedures for documenting compliance.

We have established operating limits for DIFF (dry lime injection fabric filters), DLS/FF (dry lime scrubbers/fabric filters), and WS (wet scrubbers). If you operate a DIFF or DLS/FF, you would be required to initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions according to your OM&M plan, operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month reporting period, and maintain the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature, plus 14°C (25°F), established during your performance test. You would be required to maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems and maintain the feeder setting at or above the level established during your performance test. If you operate a DLS/FF, you would be required to maintain the average water injection rate for each 3-hour block period at or above the level established during your performance test.

If you operate a WS (wet scrubber), you would be required to maintain the average scrubber pressure drop, the average scrubber liquid pH, the average scrubber liquid flow rate, and the average chemical addition rate, if applicable, for each 3-hour block period at or above the average values established during your performance test.

If you own or operate an affected source equipped with an alternative APCD or technique not listed in the proposed rule, you would establish operating limits for the appropriate operating parameters subject to prior written approval by the Administrator as described in 40 CFR 63.8(f). You would be required to submit a request for approval of alternative monitoring procedures that includes a description of the alternative APCD or technique, the type of monitoring device or procedure that would be used, the appropriate operating parameters that would be monitored, and the frequency that the operating parameter values would be determined and recorded. You would establish site-specific operating limits during your performance test based on the information included in the approved alternative monitoring procedures request. You would be required to install, operate, and maintain the parameter monitoring system for the alternative APCD or technique according to your OM&M plan. If the Administrator determines that parameter monitoring cannot assure continuous compliance, a continuous emission monitoring system (CEMS) to measure HF and/or HCl emissions may be required.

If a facility applies for the approval of alternative monitoring procedures, including operating parameters, long-term APCD performance is an important consideration. Some of the new APCD that are being developed for controlling HF, HCl, and PM from brick kilns are similar to DIFF and DLS/FF, but they use different dry media, such as crushed limestone, sodium bicarbonate, and possibly other materials. One system uses powdered limestone as a primary sorbent, followed by lesser amounts of hydrated lime and sodium bicarbonate, each in a different reaction chamber. This type of system is designed to minimize sorbent costs by using the least expensive sorbent for primary control and using more expensive (and effective) sorbents to provide additional acid gas removal. The proposed operating limits for DIFF are appropriate for these DIFF-type systems, but the limits will require some modification to address specific design differences, such as the use of multiple sorbents.

We are soliciting comment on requiring the application of PM CEMS as a method to assure continuous compliance with the proposed PM emission limits for BSCP tunnel kilns. Specifically, we are soliciting comment on the relation of a PM CEMS requirement to the PM emission limits that are proposed today. This includes the level and averaging time of a CEMS-based PM emission limit and the methodology for deriving the limit from the available data for BSCP tunnel kilns.

We have continued to learn about the capabilities and performance of PM CEMS through performing and witnessing field evaluations and through discussions with our European counterparts. We believe there is sound evidence that PM CEMS should work on BSCP tunnel kilns.

We intend to propose revisions to the performance specification for PM CEMS (Performance Specification 11 (PS–11), 40 CFR part 60, appendix B, and Procedure 2, 40 CFR part 60, appendix F) in the near future with subsequent promulgation.

F. What Are the Performance Test and Initial Compliance Requirements?

We are requiring owners and operators of all affected sources to conduct an initial performance test using specified EPA test methods to demonstrate initial compliance with the emission limits. A performance test must be conducted before renewing your 40 CFR part 70 operating permit or at least every 5 years following the initial performance test, as well as when an operating limit parameter value is being revised. You would test at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources. If meeting the percent reduction emission limits for HF or HCl, you would test at the APCD inlet. Under the proposed rule, you must conduct each test while operating at the maximum production level.

Under the proposed rule, you would be required to measure emissions of HF, HCl, and PM. You would measure HF and HCl emissions using EPA Reference Method 26A, "Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources-Isokinetic Method," 40 CFR part 60, appendix A, or any other alternative method that has been approved by the Administrator under 40 CFR 63.7(f) of the general provisions. The EPA Reference Method 26, "Determination of Hydrogen Chloride Emissions from Stationary Sources," 40 CFR part 60, appendix A, may be used when no acid particulate matter (*e.g.*, HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present. Particulate matter emissions would be measured using EPA Reference Method 5, "Determination of Particulate Emissions from Stationary Sources," 40 CFR part 60, appendix A, or any other approved alternative method.

To determine initial compliance with the production-based mass emission limits for HF, HCl, and PM, you would calculate the mass emissions per unit of production for each test run using the mass emission rates of HF, HCl, and PM and the production rate (on a fired-product basis) measured during your performance test. To determine initial compliance with any of the percent reduction emission limits, you would calculate the percent reduction for each test run using the mass emission rates, measured during your performance test,

of the specific HAP (HF or HCl) entering and exiting the APCD.

Prior to your initial performance test, you would be required to install the continuous monitoring system (CMS) (*e.g.*, continuous parameter monitoring system) equipment to be used to demonstrate continuous compliance with the operating limits. During your initial test, you would use the CMS to establish site-specific operating parameter values that represent your operating limits. If you operate a DIFF or DLS/FF, you would be required to continuously measure the temperature at the inlet to the fabric filter, determine and record the average temperatures during each 1-hour test run, and determine the 3-hour block average temperature. You would be required to ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test, and you would be required to record the feeder setting for the three test runs. If the lime feed rate varies, you would be required to determine the average feed rate from the three test runs. You would be required to submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems. Additionally, if you operate a DLS/FF, you would be required to continuously measure the water injection rate, determine and record the average water injection rate values for the three test runs, and determine the 3-hour block average water injection rate. If you operate a WS, you would be required to continuously measure the scrubber pressure drop, the scrubber liquid pH, the scrubber liquid flow rate, and the chemical addition rate (if applicable). For each WS parameter, you would be required to determine and record the average values for the three test runs and the 3-hour block average value.

G. What Are the Continuous Compliance Requirements?

The proposed standards require that you demonstrate continuous compliance with each emission limitation that applies to you. You would be required to follow the requirements in your OM&M plan and document conformance with your OM&M plan. You would be required to operate a CMS to monitor the operating parameters established during your initial performance test as described in the following paragraphs. The CMS would have to collect data at least every 15 minutes, and you would need to have at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) per hour (not including startup, shutdown, malfunction, or out-of-control periods) to have a valid hour of data. You would have to operate the CMS at all times when the process is operating. You would also have to conduct proper maintenance of the CMS, including inspections, calibrations, and validation checks, and maintain an inventory of necessary parts for routine repairs of the CMS. Using the recorded readings, you would calculate and record the 3-hour block average values of each operating parameter. To calculate the average for each 3-hour averaging period, you must have at least 75 percent of the recorded readings for that period (not including startup, shutdown, malfunction, or out-of-control periods).

For DIFF and DLS/FF systems, you would have to continuously maintain the 3-hour block average temperature at the fabric filter inlet at or below the average temperature, plus 14°C (25°F), established during your performance test. You would have to maintain free-flowing lime in the feed hopper or silo and to the APCD at all times. If lime is found not to be free flowing via the output of a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system, you would have to promptly initiate and complete corrective actions according to your OM&M plan. You would also have to maintain the feeder setting at or above the level established during your performance test and record the feeder setting once each shift. You would have to initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions according to your OM&M plan. You would also have to operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time would be counted. If corrective action is required, each alarm would be counted as a minimum of 1 hour, and if you take longer than 1 hour to initiate corrective action, the alarm time would be counted as the actual amount of time taken to initiate corrective action.

Additionally, for DLS/FF, you would have to continuously maintain the 3-hour block average water injection rate at or above the minimum value established during your performance test. For WS, you would have to continuously maintain the 3-hour block averages for scrubber pressure drop, scrubber liquid pH, scrubber liquid flow rate, and chemical addition rate (if applicable) at or above the minimum values established during your performance test.

H. What Are the Notification, Recordkeeping, and Reporting Requirements?

We are requiring owners and operators of all affected sources to submit initial notifications, notifications of performance tests, and notifications of compliance status by the specified dates in the proposed rule, which may vary depending on whether the affected source is new or existing. In addition to the information specified in 40 CFR 63.9(h)(2)(i), you would be required to include the following in your notification of compliance status: (1) The operating limit parameter values established for each affected source (with supporting documentation) and a description of the procedure used to establish the values, and (2) analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems.

We are requiring owners and operators of all affected sources to submit semiannual compliance reports containing statements and information concerning emission limitation deviations, out-of-control CMS, and periods of startup, shutdown, or malfunction when actions consistent with your approved startup, shutdown, and malfunction plan (SSMP) were taken. In addition, if you undertake an action that is inconsistent with your approved SSMP, then you would be required to submit a startup, shutdown, and malfunction report within 2 working days of starting such action and within 7 working days of ending such action.

We are requiring owners and operators of all affected sources to maintain records for at least 5 years from the date of each record. You must retain the records onsite for at least the first 2 years but may retain the records offsite for the remaining 3 years. You would be required to keep a copy of each notification and report, along with supporting documentation. You would be required to keep records related to the following: (1) Records of startup, shutdown, or malfunction; (2) records of performance tests; (3) records to show continuous compliance with each emission limitation; (4) records of each bag leak detection system alarm, including the time of the alarm, the time corrective action was initiated and completed, and a description of the cause of the alarm and the corrective action taken; (5) records of each

operating limit parameter value deviation, including the date, time, and duration of the deviation, a description of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction; (6) records of production rate; (7) records for any approved alternative monitoring or test procedures; and (8) current copies of your SSMP and OM&M plan, including any revisions, with records documenting conformance.

III. Summary of Environmental, Energy, and Economic Impacts for the Proposed Brick and Structural Clay Products Manufacturing NESHAP

A. What Are the Air Quality Impacts?

At the current level of control and 1996 production levels, nationwide emissions of HAP from the 169 BSCP facilities estimated to be major sources are about 5,700 Mg/yr (6,300 tpy). Under the proposed rule, it is assumed that DIFF will be installed on 81 tunnel kilns with production capacities equal to or greater than 9.07 Mg (10 tph) (that currently are not controlled with a DIFF, DLS/FF, or WS). This would result in an estimated reduction in nationwide HAP emissions of 2,500 Mg/yr (2,800 tpy). We estimated the impacts based on DIFF as the control technology because DIFF costs provided a conservative cost basis for the economic analyses. Based on available information on wet scrubbers, wet scrubbers achieve similar emissions reductions to DIFF, while compliance costs may be significantly less than those associated with DIFF, depending on the wastewater disposal options available to each facility.

Hydrogen fluoride emissions account for approximately 60 percent of the baseline HAP emissions. Hydrogen chloride emissions account for approximately 40 percent, with HAP metals comprising less than 1 percent of the baseline HAP emissions. Estimated nationwide emissions of HF, HCl, and HAP metals from existing major source BSCP facilities at the current level of control are 3,400 Mg/yr (3,700 tpy), 2,300 Mg/yr (2,500 tpy), and 62 Mg/yr (68 tpy), respectively. Implementing the rule as proposed would reduce nationwide HF emissions from existing tunnel kilns by about 1,500 Mg/yr (1,700 tpy), and HCl would be reduced by 1,000 Mg/yr (1,100 tpy). Emissions of HAP metals would be reduced by 24 Mg/yr (27 tpy). Implementing the rule as proposed also would reduce PM and SO_2 emissions by 1,300 Mg/yr (1,400 tpy) and 3,400 Mg/yr (3,800 tpy), respectively.

To project air quality impacts for new sources, we assumed that three large model tunnel kilns (each with a 15 tph capacity), equipped with DIFF, would begin operation at the beginning of the first year following promulgation of the rule as proposed. We estimate that by implementing the rule as proposed, HF emissions from new sources would be reduced by 96 Mg/yr (106 tpy), HCl emissions would be reduced by 65 Mg/yr (72 tpy), and HAP metals emissions would be reduced by 1.6 Mg/yr (1.8 tpy). We also estimate that PM and SO_2 emissions from the new kilns would be reduced by 88 Mg/yr (97 tpy) and 230 Mg/yr (250 tpy), respectively.

Secondary air impacts associated with the proposed BSCP rule are direct impacts that result from the operation of any new or additional APCD. The generation of electricity required to operate the APCD on new and existing kilns will result in 32 tpy of nitrogen oxides (NO_X) emissions in the first year following promulgation of the rule as proposed. The electricity was assumed to be generated by natural gas-fired turbines.

B. What Are the Water and Solid Waste Impacts?

Because compliance with the proposed rule is based on the use of DIFF, no water pollution impacts are estimated. However, facilities will have the option of using wet scrubbers. Facilities that use wet scrubbers would have several options for disposing of wastewater, including: (1) Using an evaporator and disposing of solid waste, (2) using scrubber blowdown water as process water (this option is currently being studied within the industry and may or may not be possible at all brick plants), and (3) disposing of scrubber blowdown directly to a sewer system (this option is available to some facilities). Because of the various scenarios and considerable uncertainty, we did not attempt to estimate overall wastewater impacts. Based on available information, each scrubber-controlled kiln could generate as little as zero or as much as about 5 million gallons per year of waste water (based on a 10 gallon per minute scrubber blowdown, which is the maximum permitted amount in the industry). The solid waste impacts discussed below may be overstated since it is likely that some facilities will use wet scrubbers. However, wet scrubbers may be equipped with spray dryers to eliminate wastewater (and create solid waste).

The solid waste disposal impacts that result from the use of DIFF include the disposal of the spent lime (or other sorbent) that is injected into the kiln exhaust stream and subsequently captured by a fabric filter. We calculated the solid waste by taking the difference between the amount of lime injected into the system and the amount of reacted lime, and adding the amount of reaction products. Stoichiometric ratios of 1.0 to 2.0 have been reported for the DIFF and DLS/FF in use in the brick manufacturing industry. The average stoichiometric ratio of 1.35 was used in this analysis. Implementing the rule as proposed would result in an increase in solid waste by 28,600 Mg/yr (31,500 tpy).

To project solid waste impacts for new sources, we assumed that three large model tunnel kilns, equipped with DIFF, would begin operation at the beginning of the first year following promulgation of the rule as proposed. We estimate that implementing the rule as proposed would result in the generation of 1,230 Mg/yr (1,360 tpy) of solid waste from new sources.

C. What Are the Energy Impacts?

Energy impacts consist of the electricity needed to operate the DIFF. Electricity requirements are driven primarily by the size of the fan needed in the APCD. We estimated the increase in electricity consumption that would result from implementation of the rule as proposed to be 254 terajoules per year (242 billion British thermal units (Btu) per year).

To project energy impacts for new sources, we assumed that three large model tunnel kilns, equipped with DIFF, would begin operation at the beginning of the first year following promulgation of the rule as proposed. We estimate the increase in energy consumption that would result from implementation of the rule as proposed to be 10.2 terajoules per year (9.7 billion Btu per year) for new sources.

D. Are There Any Additional Environmental and Health Impacts?

Reducing HAP emissions under the proposed rule would lower occupational HAP exposure levels. The operation of APCD may increase occupational noise levels in the facilities that do not control HAP emissions.

The HAP controls that are likely to be installed under the proposed rule would provide control of SO_2 and PM emissions from BSCP kilns. We estimate that SO_2 emissions from existing kilns would be reduced by 3,400 Mg/yr (3,800 tpy) and PM emissions from existing kilns would be reduced by 1,300 Mg/yr (1,400 tpy). We also estimate that SO_2 and PM emissions from projected new kilns would be reduced by 230 Mg/yr

(250 tpy) and 88 Mg/yr (97 tpy), respectively.

E. What Are the Cost Impacts?

For existing sources, nationwide total capital costs to implement the rule as proposed are estimated at $85 million, with total annualized costs of $36 million. The capital costs include the purchase and installation of DIFF and monitoring equipment on 81 existing tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph). The annualized costs include annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, emission testing costs, and recordkeeping and reporting costs associated with installing and operating these 81 DIFF.

To project costs for new sources, we assumed that three large model tunnel kilns, equipped with DIFF, would begin operation at the beginning of the first year following promulgation of the rule as proposed. We estimate the capital costs associated with implementation of the rule as proposed to be $3.4 million for these three new sources. The capital cost of a DIFF corresponds to about 6 percent of the cost of a typical new plant, including a new mill room and kiln (a typical plant expansion would likely include a new mill room and kiln, but may not include other equipment such as raw material processing equipment). We estimate the annualized costs associated with implementation of the rule as proposed to be $1.41 million per year for new sources in the first year following promulgation of the rule as proposed.

We calculated the cost estimates using cost algorithms that are based on procedures from EPA's OAQPS Control Cost Manual (EPA 450/3–90–006, January 1990) and cost information provided by the BSCP industry. We estimated costs by developing model process units that correspond to the various sizes of kilns found at BSCP manufacturing facilities and assigning the model process units to each facility based on the kiln sizes at each facility. The facility costs were summed to determine total industry costs. Additional information on the model process units and cost estimates is included in docket A–99–30.

F. How Can We Reduce the Cost of the Proposed Rule?

As described elsewhere in this preamble, we have made every effort in developing the proposal to minimize the cost to the regulated community and allow maximum flexibility in compliance options consistent with our statutory obligations. However, we recognize that the proposal may still require some facilities to take costly steps to further control emissions even though their emissions may not result in exposures which could pose an excess individual lifetime cancer risk greater than one in one million or which exceed thresholds determined to provide an ample margin of safety for protecting public health and the environment from the effects of hazardous air pollutants. We are, therefore, specifically soliciting comment on whether there are further ways to structure the proposed rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment.

In connection with another rulemaking, representatives of the plywood and composite wood products industry provided EPA with descriptions of three mechanisms that they believed could be used to implement more cost-effective reductions in risk. The docket for the plywood and composite wood products rule contains "white papers" prepared by that industry that outline their proposed approaches (See Docket Number A–98–44.) We welcome public comment on these approaches. We believe that two of the three suggested approaches warrant further consideration. We believe they could be used to focus regulatory controls on facilities with significant risks and avoid the imposition of high costs on facilities that pose little risk to public health or the environment. One of the approaches, an applicability cutoff for threshold pollutants, would be implemented under the authority of CAA section 112(d)(4); the other approach, subcategorization and delisting, would be implemented under the authority of CAA sections 112(c)(1) and 112(c)(9). The EPA requests comment on the technical and legal viability of these approaches, as well as any modifications to these approaches that commenters may wish to suggest. The maximum achievable control technology, or MACT, program outlined in CAA section 112(d) is intended to reduce emissions of HAP through the application of MACT to major sources of toxic air pollutants. Section 112(c)(9) is intended to allow EPA to avoid setting MACT standards for categories or subcategories of sources that pose little risk to public health and the environment. The EPA requests comment on whether the proposals described here appropriately rely on these provisions of CAA section 112. While both approaches focus on assessing the inhalation exposures of HAP emitted by a source, EPA specifically requests comment on the appropriateness and necessity of extending these approaches to account for non-inhalation exposures of certain HAP which may deposit from the atmosphere after being emitted into the air or to account for adverse environmental impacts. In addition to the specific requests for comment noted in this section, we are also interested in any information or comment concerning technical limitations, environmental and cost impacts, compliance assurance, legal authority, and implementation relevant to the approaches. We also request comment on appropriate practicable and verifiable methods to ensure that sources' emissions remain below levels that protect public health and the environment. We will evaluate all comments before determining whether either of the two approaches will be included in the final rule.

Applicability Cutoffs for Threshold Pollutants Under Section 112(d)(4) of the CAA

The first approach is an "applicability cutoff" for threshold pollutants that is based on EPA's authority under CAA section 112(d)(4). A "threshold pollutant" is one for which there is a concentration or dose below which adverse effects are not expected to occur over a lifetime of exposure. For such pollutants, section 112(d)(4) allows EPA to consider the threshold level, with an ample margin of safety, when establishing emissions standards. Specifically, section 112(d)(4) allows EPA to establish emission standards that are not based upon the maximum achievable control technology (MACT) specified under section 112(d)(2) for pollutants for which a health threshold has been established. Such standards may be less stringent than MACT. Furthermore, EPA has interpreted 112(d)(4) to allow us to avoid further regulation of categories of sources that emit only threshold pollutants, if those emissions result in ambient levels that do not exceed the threshold, with an ample margin of safety.[1] Industry's suggested approach interprets this provision to allow us to exempt individual facilities that can demonstrate that their emissions will not result in air concentrations above the threshold levels, with an ample margin of safety, even if the category is otherwise subject to MACT.

[1] See 63 FR 18754, 18765–66 (April 15, 1998) (Pulp and Paper Combustion Sources Proposed NESHAP).

For facilities to avoid being subject to the MACT standard, EPA would have to determine that a health effects threshold exists for each pollutant emitted by the brick and structural clay products sources at the facility and that the ambient impacts of those emissions do not exceed the threshold levels, with an ample margin of safety. The common approach for evaluating the potential hazard of a threshold air pollutant is to calculate a "hazard quotient" by dividing the pollutant's inhalation exposure concentration (often assumed to be equivalent to its estimated concentration in air at a location where people could be exposed) by the pollutant's inhalation Reference Concentration (RfC). An RfC is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure that, over a lifetime, likely would not result in the occurrence of adverse health effects in humans, including sensitive individuals. The EPA typically establishes an RfC by applying uncertainty factors to the critical toxic effect derived from the lowest- or no-observed-adverse-effect level of a pollutant.[2] A hazard quotient less than one means that the exposure concentration of the pollutant is less than the RfC. A hazard quotient greater than one means the exposure concentration of the pollutant is greater than the RfC. For the determinations discussed herein, EPA would generally plan to use RfC values contained in EPA's toxicology database, the Integrated Risk Information System (IRIS). When a pollutant does not have an approved RfC in IRIS, or when a pollutant is a carcinogen, EPA would have to determine whether a threshold exists based upon the availability of specific data on the pollutant's mode or mechanism of action, potentially using a health threshold value from an alternative source such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the California Environmental Protection Agency (CalEPA).

In the past, EPA routinely treated carcinogens as non-threshold pollutants. The EPA recognizes that advances in risk assessment science and policy may affect the way EPA differentiates between threshold and non-threshold HAP. The EPA's draft Guidelines for Carcinogen Risk Assessment[3] suggest that carcinogens be assigned non-linear dose-response relationships where data warrant. Moreover, it is possible that dose-response curves for some pollutants may reach zero risk at a dose greater than zero, creating a threshold for carcinogenic effects. It is possible that future evaluations of the carcinogens emitted by this source category would determine that one or more of the carcinogens in the category is a threshold carcinogen or is a carcinogen that exhibits a non-linear dose-response relationship but does not have a threshold. The EPA requests comment on how we should consider the state of the science as it relates to legislative intent when making determinations under section 112(d)(4). In addition, EPA requests comment on whether there is a level of emissions of a carcinogenic HAP that could be considered insignificant enough to allow a facility to use the approaches discussed in this section.

As suggested above, in order for EPA to establish an applicability cutoff under section 112(d)(4), EPA would need to define ambient air exposure concentration limits for the threshold pollutants involved. There are several factors to consider when establishing such concentrations. First, we would need to ensure that the concentrations that would be established would protect public health with an ample margin of safety. As discussed above, the approach EPA commonly uses when evaluating the potential hazard of a threshold air pollutant is to calculate the pollutant's hazard quotient. Further, current EPA guidance suggests that when exposures to mixtures of pollutants are being evaluated, the risk assessor should calculate a hazard index by summing the individual hazard quotients for those pollutants in the mixture that affect the same target organ or system by the same mechanism[4].

As suggested by CAA legislative history, we would need to ensure that the analysis considers the total ambient air concentrations of all the emitted HAP to which the public is exposed[5]. Our goal would thus be to establish a hazard index limit for the mixture of pollutants from a source which would recognize the potential for other sources to contribute to exposure. Consistent with this goal, there are at least several options for establishing a hazard index limit for the section 112(d)(4) analysis. One option is to allow the hazard index posed by all threshold HAP emitted by brick and structural clay products sources at the facility to be no greater than one. This approach assumes that no additional threshold HAP exposures would be anticipated from other sources in the vicinity or through other routes of exposure (*i.e.*, through ingestion).

A second option is to adopt an approach similar to that used by EPA's Office of Water (OW) in establishing drinking water standards. Using this approach, we would allow that up to a certain percentage of an individual's total exposure to all threshold HAP could be contributed by emissions from brick and structural clay products sources at the facility, assuming that the rest of the individual's exposure results from other sources and through other media. In the absence of adequate exposure data, the drinking water program usually assumes that drinking water can account for up to 20 percent of an individual's exposure to an individual pollutant, assuming that the remaining 80 percent of an individual's exposure comes from other sources, such as diet[6]. The adaptation of this approach for the purposes of conducting an analysis to support a section 112(d)(4) determination is to assume that an individual's exposure to the mixture of threshold HAP emitted from the brick and structural clay products sources at a facility accounts for 20 percent of an individual's total exposure to those HAP and that other sources account for the remaining 80 percent of the exposure. This means that exposures to the mixture of HAP from brick and structural clay products sources would not be allowed to exceed a hazard index limit of 0.2.

A third option is to use available data (from scientific literature or EPA studies, for example) to determine background concentrations of HAP, possibly on a national or regional basis. These data would be used to estimate the exposures to HAP from non-brick and structural clay products sources in the vicinity of an individual facility. For example, the EPA's National-scale Air Toxics Assessment (NATA)[7] and

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[2] "Methods for Derivation of Inhalation Reference Concentrations and Applications of Inhalation Dosimetry." EPA–600/8–90–066F. Office of Research and Development, USEPA, October 1994.

[3] "Draft Revised Guidelines for Carcinogen Risk Assessment." NCEA–F–0644. USEPA, Risk Assessment Forum, July 1999. pp 3–9ff. *http://www.epa.gov/ncea/raf/pdfs/cancer_gls.pdf*

[4] "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum Technical Panel". EPA/630/R–00/002. USEPA. August 2000. *http://www.epa.gov/nceawww1/pdfs/chem_mix/chem_mix_08_2001.pdf*

[5] Senate Debate on Conference Report (October 27, 1990), reprinted in "A Legislative History of the Clean Air Act Amendments of 1990," Comm. Print S. Prt. 103–38 (1993) ("Legis. Hist.") at 868.

[6] "Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)", Technical Support Document Volume 1: Risk Assessment". EPA–822–B–00–005. Office of Science and Technology, Office of Water, USEPA. October 2000. *http://www.epa.gov/waterscience/humanhealth/method/complete.pdf*

[7] See *http://www.epa.gov/ttn/atw/nata*

ATSDR's Toxicological Profiles[8] contain information about background concentrations of some HAP in the atmosphere and other media. The combined exposures from brick and structural clay products sources and from other sources (as determined from the literature or studies) would then not be allowed to exceed a hazard index limit of one. The EPA requests comment on the appropriateness of setting the hazard index limit at one for such an analysis.

As an alternative to the third option, a fourth option is to allow facilities to estimate or measure their own facility-specific background HAP concentrations for use in their analysis. With regard to the third and fourth options, the EPA requests comment on how these analyses could be structured. Specifically, EPA requests comment on how the analyses should take into account background exposure levels from air, water, food and soil encountered by the individuals exposed to brick and structural clay products emissions. In addition, we request comment on how such analyses should account for potential increases in exposures due to a new or increased use of a HAP, or the effect of other nearby sources that release HAP. EPA requests comment on the feasibility and scientific validity of each of these or other approaches.

Finally, EPA requests comment on how we should implement the section 112(d)(4) applicability cutoffs, including appropriate mechanisms for applying cutoffs to individual facilities. For example, would the Title V permit process provide an appropriate mechanism? Establishing that a facility meets the cutoffs established under section 112(d)(4) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would promote a tiered analytical approach for these determinations. A tiered analysis involves making successive refinements in modeling methodologies and input data to derive successively less conservative, more realistic estimates of pollutant concentrations in air and estimates of risk. As a first tier of analysis, EPA could develop a series of simple look-up tables based on the results of air dispersion modeling conducted using conservative input assumptions. By specifying a limited number of input parameters, such as stack height, distance to property line, and emission rate, a facility could use these look-up tables to determine easily whether the emissions from their sources might cause a hazard index limit to be exceeded. A facility that does not pass this initial conservative screening analysis could implement increasingly more site-specific but more resource-intensive tiers of analysis using EPA-approved modeling procedures, in an attempt to demonstrate that their facility does not exceed the hazard index limit. The EPA's guidance could provide the basis for conducting such a tiered analysis.[9] The EPA requests comment on methods for constructing and implementing a tiered analytical approach for determining applicability of the section 112(d)(4) criterion to specific brick and structural clay products sources. It is also possible that ambient monitoring data could be used to supplement or supplant the tiered modeling approach described above, although it is envisioned that the appropriate monitoring to support such a determination could be extensive. The EPA requests comment on the appropriate use of monitoring in the determinations described above.

Subcategory Delisting Under Section 112(c)(9)(B) of the CAA

EPA is authorized to establish categories and subcategories of sources, as appropriate, pursuant to CAA section 112(c)(1), in order to facilitate the development of MACT standards consistent with section 112 of the CAA. Further, section 112(c)(9)(B) allows EPA to delete a category (or subcategory) from the list of major sources for which MACT standards are to be developed when the following can be demonstrated: (1) In the case of carcinogenic pollutants, that "no source in the category * * * emits [carcinogenic] air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source"; (2) in the case of pollutants that cause adverse noncancer health effects, that "emissions from no source in the category or subcategory * * * exceed a level which is adequate to protect public health with an ample margin of safety"; and (3) in the case of pollutants that cause adverse environmental effects, that "no adverse environmental effect will result from emissions from any source."

Given these authorities and the suggestions from the white paper prepared by representatives of the plywood and composite wood products industry (*see* Docket Number A–98–44), EPA is considering whether it would be possible to establish a subcategory of facilities within the larger brick and structural clay products industry category that would meet the risk-based criteria for delisting. Since each facility in such a subcategory would be a low-risk facility (*i.e.*, if each met these criteria), the subcategory could be delisted in accordance with section 112(c)(9), thereby limiting the costs and impacts of the proposed MACT rule to only those facilities that do not qualify for subcategorization and delisting. Facilities seeking to be included in the delisted subcategory would be responsible for providing all data required to determine whether they are eligible for inclusion. Facilities that could not demonstrate that they are eligible to be included in the low-risk subcategory would be subject to MACT and possible future residual risk standards. Although EPA currently is not convinced that subcategorization based on risk is possible within the statutory constraints of the CAA, EPA solicits comment on implementing a risk-based approach for establishing subcategories of brick and structural clay products facilities.

Another approach would be to define a subcategory of facilities within the brick and structural clay products source category based upon technological differences, such as differences in production rate, emission vent flow rates, overall facility size, emissions characteristics, processes, or air pollution control device viability. The EPA requests comment on how we might establish brick and structural clay products subcategories based on these, or other, source characteristics. If it could then be determined that each source in this technologically-defined subcategory presents a low risk to the surrounding community, the subcategory could then be delisted in accordance with 112(c)(9). The EPA requests comment on the concept of identifying technologically-based subcategories that may include only low-risk facilities within the brick and structural caly products source category.

G. What Are the Economic Impacts?

We conducted a detailed economic impact analysis to determine the market- and industry-level impacts associated with the proposed rule. The compliance costs of today's proposed rule are expected to increase the price of brick and reduce their domestic production and consumption. We project the price of brick to increase by

[8] See *http://www.atsdr.cdc.gov/toxpro2.html*

[9] "A Tiered Modeling Approach for Assessing the Risks due to Sources of Hazardous Air Pollutants." EPA–450/4–92–001. David E. Guinnup, Office of Air Quality Planning and Standards, USEPA, March 1992.

just less than 2 percent and project no change in price for structural clay products. Domestic production of brick is expected to decline by close to 2 percent. In addition, foreign brick imports are estimated to increase while exports decrease, both by just under 2 percent. Since there is no expected change in the price of structural clay products, we predict no change in domestic production or foreign imports of structural clay products.

In terms of industry impacts, the brick producers are projected to experience a decrease in operating profits of about 18 percent, which reflects the compliance costs associated with brick production and the resulting reductions in revenues due to the increase in the price of brick and the reduced quantity purchased. Through the market impacts described above, the proposed rule would create both positive and negative financial impacts on facilities within the BSCP manufacturing industry. The majority of facilities, almost 68 percent, are expected to experience profit increases with the proposed rule; however, there are some facilities projected to lose profits (about 28 percent). Furthermore, the economic impact analysis indicates that of the 189 BSCP manufacturing facilities, two brick facilities are at risk of closure because of the proposed rule, while none of the structural clay products facilities are at risk to close.

Based on the market analysis, the annual social costs of the proposed rule are projected to be $34.5 million. This differs from the annual engineering costs of the proposed rule because the social costs account for producer and consumer behavior. These social costs are distributed across the many consumers and producers of brick. Since there are no price changes occurring in the structural clay products market, the social costs of the proposed rule are confined to the brick industry. The consumers of brick are expected to incur the $18.9 million in costs associated with the proposed rule, with domestic consumers bearing $18.8 million and foreign consumers bearing $0.1 million. Brick producers, in aggregate, are expected to bear the remaining $15.6 million annually in costs. Domestic producers incur $15.65 million while foreign producers gain $0.05 million annually.

We estimate that 15 new kilns will be built during the 5 years after promulgation of the rule as proposed. The total compliance costs associated with these kilns are projected to be less than 0.5 percent of the industry's value of shipments. The economic impact analysis estimated the impact of the proposed rule on these new sources through a sensitivity analysis. According to that analysis, it is projected that anywhere from three to six of these new kilns will be delayed in coming on-line in the BSCP manufacturing industry due to the proposed rule. Additional information is included in the economic impact analysis report located in docket A–99–30.

IV. Rationale for Selecting the Proposed Standards for Brick and Structural Clay Products Manufacturing

A. How Did We Select the Emission Sources and Pollutants That Will Be Regulated?

In the BSCP manufacturing industry, the most significant sources of HAP emissions are kilns, including continuous (tunnel and roller) kilns and periodic kilns. For this reason, the proposed rule covers both existing and new kilns at major source BSCP manufacturing facilities which meet the applicability criteria. Other sources of HAP emissions at BSCP manufacturing facilities are the raw material processing and handling equipment.

At the temperatures encountered in BSCP kilns, naturally occurring fluorides and chlorides found in the raw clays and shales that are used as raw materials are released to the atmosphere as HF and HCl. We estimate that most BSCP manufacturing facilities emit more than 9.07 Mg/yr (10 tpy) of HF and, therefore, are major sources as defined by the CAA. In addition, we estimate that many facilities are also major sources of HCl emissions. In addition to HF and HCl, all of the HAP metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury (in particulate form), nickel, and selenium) listed in section 112(b) of the CAA have been detected in brick kiln exhaust. The HAP metals may emanate from trace quantities of metals found in raw materials, metallic body additives and surface coatings commonly used in the industry, or from the fuels fired in the kilns. Therefore, we propose to regulate HF, HCl, and HAP metals (using PM as a surrogate for HAP metals, including mercury in particulate form) emissions from BSCP kilns.

Particulate matter was selected as a surrogate for HAP metals that are emitted in particulate form because HAP metals are always expected to be present in PM from BSCP kilns, and the same control mechanisms that remove PM from the exhaust stream will also remove nonvolatile and semi-volatile HAP metals. Available data show that HAP metals constitute between 0.16 percent and 4.5 percent of PM emissions from BSCP kilns. The use of PM as a surrogate pollutant for HAP metals reduces the costs associated with compliance testing and monitoring because such testing and monitoring are necessary only for one PM emission limit, rather than for numerous emission limits for individual HAP metals.

B. How Did We Determine Subcategories?

Section 112(d)(1) of the CAA allows EPA to promulgate emission standards for either categories or subcategories of sources. Through subcategorization, we are able to define subsets of similar emission sources within a source category if differences in emissions characteristics, processes, APCD viability, or opportunities for pollution prevention exist within the source category. Upon initial consideration of the available information on the BSCP manufacturing industry, we determined that separate subcategories for periodic kilns and tunnel kilns were warranted for several reasons. First, periodic kilns are smaller than tunnel kilns (with lower production on an hourly basis, as well as accounting for only about 4 percent of total BSCP industry production). Second, periodic kilns are operated in batch cycles, whereas tunnel kilns operate continuously. Finally, to our knowledge, periodic kilns have not successfully been controlled using any of the currently available APCD, as have tunnel kilns, or through the use of low-HAP fuels or changes in raw materials or processes.

Following this initial subcategorization, we examined the potential for additional subcategories for tunnel kilns, including subcategorization based on kiln fuel and kiln size. We determined that because the HAP emissions from tunnel kilns primarily result from the raw materials rather than the kiln fuel, subcategorization by kiln fuel is not appropriate for BSCP tunnel kilns. We then considered subcategorization of tunnel kilns based on kiln size and, for the reasons discussed below, decided to propose two subcategories based on size.

A review of the available information regarding tunnel kilns showed that DIFF, DLS/FF, and WS, which we believe represent the best controls, generally are installed on kilns with design capacities greater than approximately 10 tph of fired product. However, in the absence of subcategorization of tunnel kilns based on size, the MACT floor for all existing tunnel kilns would be the level of control provided by DLA for all

pollutants. Specifically, the tunnel kiln subcategory (all tunnel kilns) includes 296 tunnel kilns that are located at major sources of HAP. The best-controlled 12 percent of these sources include 4 DIFF-controlled, 4 DLS/FF-controlled, 2 WS-controlled, 11 DLA-controlled and 15 uncontrolled kilns. The level of control that corresponds to the mean of the best-controlled 12 percent of these kilns is the 94th percentile level of control, which corresponds to the level of control provided by a DLA. As previously mentioned, we have several concerns about the long-term effectiveness of the DLA control technology and the degree to which we can assure continuous compliance for DLA-controlled kilns. First, long-term test data that demonstrate performance over the life of the sorbent are not available. This is important for these systems because the sorbent (limestone) is not continuously replaced with new sorbent, and we expect the performance of the systems to decrease as the sorbent is re-used and the ability of the sorbent to adsorb HF and HCl decreases. Second, representatives of DLA manufacturers and facilities that operate DLA have stated that not all limestone can effectively be used as a sorbent in a DLA. Because of these two issues, we have been unable to identify any type of parameter monitoring that could be used to assure continuous compliance. If parameter monitoring cannot be used, some type of CEMS would be required to assure continuous compliance with HF and HCl emission limits if DLA were considered as MACT control. The only potential option that we have identified for assuring continuous compliance is the installation and continuous operation of Fourier transform infrared spectroscopy (FTIR) monitoring systems. The costs associated with FTIR systems are considerable. Finally, DLA do not provide a mechanism for PM (and, therefore, metal HAP) removal and may actually create PM in some instances. For all of these reasons, we believe that DLA or equivalent controls would not represent an appropriate level of MACT control for BSCP kilns.

We also note that a rule that did not subcategorize tunnel kilns based on size would have considerable impacts on small businesses. In the absence of size-based subcategories, every existing tunnel kiln that is located at a major source of HAP would be required to install a DLA or equivalent control. We estimate that 151 of the 189 BSCP facilities, including 70 of 93 small business-owned facilities, would have to install at least one DLA or other equivalent APCD. In addition, two small business-owned BSCP facilities are estimated to incur monitoring, testing, and recordkeeping and reporting costs only. A total of 261 tunnel kilns, including 109 small business-owned kilns, would require the addition of controls to meet the requirements of a rule based on this approach. The 21 tunnel kilns that are currently equipped with DIFF, DLS/FF, WS, and DLA controls are estimated to incur only monitoring, testing, and recordkeeping and reporting costs. Fourteen tunnel kilns that duct all of the kiln exhaust to a sawdust dryer would not require controls. We estimate the total annualized cost to industry, under a regulatory approach that did not include size-based subcategories, to be $74 million, and the annualized cost to small business-owned facilities to be about $29 million.

We, therefore, concluded that subcategorizing tunnel kilns based on size would enable us to ease the burden on small businesses while fulfilling our obligations under the CAA and achieving substantial emissions reductions. Our analysis focused on subcategorization scenarios under which the MACT floor (for all pollutants) would be control with a DIFF, DLS/FF, WS, or equivalent control for a subset of tunnel kilns with design capacities equal to or greater than a specific size. The MACT floor for all pollutants for the remaining subset of kilns (those with capacities less than the specific size) would be "no emissions reductions." To help select a design capacity upon which to base the subcategories, we examined the design capacities of the kilns controlled with a DIFF, DLS/FF, or WS. Our initial review of the available information showed that the smallest kiln controlled with a DIFF, DLS/FF, or WS had a design capacity of about 11 tph of fired product. We then examined the capacities of kilns owned by small and large businesses, which revealed a general trend of small businesses operating smaller kilns than large businesses. This trend was most pronounced at and below a capacity of about 10 tph. Using this information, we selected a design capacity of 10 tph as the basis for subcategorization. Under this scenario, 66 of the 77 small businesses (82 of 93 small business-owned facilities) would incur no costs for existing operations, and the total estimated cost to small businesses would be $7.2 million, compared to $29 million under the scenario that does not include size-based subcategories. Since the initial review, we have identified a new DIFF-controlled kiln with a design capacity just under 10 tph. Although this new controlled kiln is not included in the MACT floor calculations for existing sources (under lowest achievable emission rate (LAER) provisions in the CAA), the fact that it is controlled with a DIFF shows that control with a DIFF is feasible for similar-size kilns.

During the development of the proposed rule, representatives of the brick industry pointed out that impacts on small businesses (and the industry as a whole) could be further reduced by increasing the kiln design capacity upon which subcategories would be based to 13.3 tph. Upon examination of this suggestion, we determined that 13.3 tph is the highest capacity that would maintain DIFF, DLS/FF, WS, or equivalent control as the MACT floor. Subcategories based on a capacity of 13.3 tph minimize economic impacts on small and large businesses, but also minimize the HAP emissions reductions that would be achieved because the MACT controls would apply to fewer sources than a lower size cutoff. This suggestion from the brick industry representatives prompted us to examine the situation from the opposite perspective. Specifically, we determined a kiln design capacity that would maximize HAP emissions reductions by maximizing the number of sources that would be subject to the MACT controls. Based on the available information, the capacity that maximizes HAP emissions reductions is 7 tph. However, the small business impacts of subcategorization based on a 7 tph design capacity would be considerable. Table 2 of this preamble shows a summary of the estimated HAP emissions reductions and cost impacts for the various size-based subcategories that we examined.

TABLE 2.—IMPACTS OF POTENTIAL TUNNEL KILN SUBCATEGORIES

Design capacity [a]	Number of impacted facil.	Number of impacted small business facil.	Total annual cost, $ × 10^6	Total annual small business cost $ × 10^6	HAP reduction (tpy)
None [b]	160	72	74.1	29.4	4,200
7 tph	97	27	59.4	15.7	4,358
10 tph	59	11	35.7	7.17	2,827
13.3 tph	29	3	16.0	1.42	1,378

[a] Design capacity at or above which existing tunnel kilns would be subject to the requirements of the proposed rule.
[b] With no design capacity-based subcategories, the MACT floor would be a DLA, which is a less effective HAP control device. All existing tunnel kilns would be required to install DLA or equivalent controls under this scenario.

As shown in Table 2 of this preamble, while subcategorization based on a 7 tph design capacity provides the highest level of emissions reductions and subcategorization based on a 13.3 tph design capacity results in the lowest cost impacts, subcategorization based on a 10 tph design capacity provides significant environmental benefits while reducing the cost impacts on small businesses.

As a result of the analysis of possible subcategorization levels presented above, we are proposing subcategorization of existing tunnel kilns based on a 10 tph design capacity, which we believe is reasonable. We remain interested in information that will further inform our analysis and solicit comment on the appropriate design capacity-based subcategorization level. We are specifically interested in the following:

(1) Information regarding the applicability of DIFF, DLS/FF, WS, or equivalent control to kilns below 13 tph design capacity;

(2) Information about the health risks posed by emissions from kilns below 13 tph design capacity; and

(3) Any other information regarding the feasibility, costs, and benefits of implementing a particular subcategorization level.

C. How Did We Determine the MACT Floors for Existing Sources?

The CAA specifies that MACT standards be at least as stringent as the floor for the sources in the relevant source category or subcategory. It further specifies that we set standards for existing sources that are no less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources (for which the Administrator has emissions information) where there are 30 or more sources in the category or subcategory. Our interpretation of the "average emission limitation" is that it is a measure of central tendency, such as the arithmetic average or the mean. If the mean is used when there are at least 30 sources, then the emission level achievable by the source and its APCD that is at the bottom of the top 6 percent of the best-performing sources (i.e., the 94th percentile) represents the MACT floor control level. The MACT floors for each subcategory are based on this interpretation.

After identifying the MACT floors for existing sources, we also consider control options more stringent than the MACT floor levels. The selected option may be more stringent than the MACT floor, but the control level must be achievable and reasonable in the Administrator's judgement considering cost, non-air quality health and environmental impacts, and energy requirements. The objective is to achieve the maximum degree of emissions reductions without imposing unreasonable impacts (*see* section 112(d)(2) of the CAA).

1. Existing Periodic Kilns

No existing periodic kiln is equipped with an APCD that has been demonstrated to control HAP emissions. In addition to APCD, we considered other possible MACT floors such as the use of low-HAP fuels or raw materials. However, because available data do not show increased HAP emissions based on fuel use, a MACT floor based on fuel type is not appropriate for these sources. In addition, low-HAP raw material use is not a viable MACT option because all facilities use local clays and shales to produce BSCP, and particular clays and shales are integral to those products. Changes in raw materials could change the end products. The procurement of low-HAP raw materials as a control measure is not done in the BSCP industry. After considering all of the MACT options, we determined that the MACT floor for existing periodic kilns is "no emissions reductions," because we did not identify any means by which existing periodic kilns are currently reducing emissions. Because no APCD have been demonstrated to control HAP emissions, and we believe that low-HAP fuels or raw materials are not viable options, we found no beyond-the-floor options for existing periodic kilns. Therefore, we have determined that the control level for existing periodic kilns should be "no emissions reductions."

2. Existing Tunnel Kilns With Design Capacities Less Than 10 TPH

As discussed earlier, tunnel kilns may have more than one process stream, including the kiln exhaust process stream and the kiln/sawdust dryer exhaust process stream.

a. *Kiln Exhaust Process Stream.* For tunnel kilns with design capacities less than 10 tph of fired product, the available data show that three of the 199 kilns (1.5 percent) that are included in this subcategory are equipped with DLA. The best-controlled 12 percent of these kilns includes the three DLA-controlled kilns and 21 uncontrolled kilns. The 94th percentile level of control, or the mean of the best-controlled 12 percent, is "no emissions reductions." In addition to APCD, we considered other possible MACT floors such as the use of low-HAP fuels or raw materials. However, because available data do not show increased HAP emissions based on fuel use, a MACT floor based on fuel type is not appropriate for these sources. In addition, low-HAP raw material use is not a viable MACT option because all facilities use local clays and shales to produce BSCP, and such local materials are integral to the end products that are manufactured. The procurement of low-HAP raw materials as a control measure is not done in the BSCP industry. Therefore, the MACT floor levels of HF, HCl, and PM control are "no emissions reductions," because we did not identify any means by which tunnel kilns with design capacities less than 10 tph are currently reducing emissions from their kiln exhaust process streams that is sufficient to constitute a MACT floor.

We considered beyond-the-floor controls for kiln exhaust process streams from existing tunnel kilns with design capacities less than 10 tph. For these analyses, the costs of installing and operating DIFF on existing tunnel kilns with design capacities less than 10 tph, along with the associated emissions reductions and other impacts, were assessed. After analyzing all of the impacts of retrofitting the kiln exhaust process stream from each of 189 existing BSCP tunnel kilns (10 of the 199 kilns in the subcategory duct all kiln exhaust to a sawdust dryer and do not include a kiln exhaust process stream) with a design capacity less than 10 tph with a DIFF to control HAP emissions, we concluded that setting a standard reflecting this beyond-the-floor approach would be unreasonable at this time. Our analysis included an estimate of emissions reductions that would be achieved by this approach, secondary air impacts, non-air quality impacts, and cost impacts on the entire BSCP industry and on small businesses. Primary HAP air pollution impacts of the beyond-the-floor approach consist of the reduction of HF, HCl, and HAP metals emissions, which would be substantial. Specifically, the beyond-the-floor approach would reduce total HAP emissions from existing BSCP tunnel kilns with capacities less than 10 tph by 2,949 tpy, or 98.0 percent, from a baseline HAP emission level of 3,011 tpy. Particulate matter emissions reductions (PM is used as a surrogate for HAP metals), and co-control of SO_2 emissions (from the baseline level) also would result from the beyond-the-floor approach. The estimated baseline emissions and emissions reductions for the beyond-the-floor approach for tunnel kilns with capacities less than 10 tph are summarized in Table 3 of this preamble. Table 4 of this preamble shows a summary of the results of our evaluations of secondary air, solid waste, energy, and cost impacts for this approach. Using the emissions reductions estimates shown in Table 3 of this preamble and the beyond-the-floor cost presented in Table 4 of this preamble, the nationwide cost effectiveness of requiring tunnel kilns with capacities less than 10 tph to install DIFF controls is about $22,000 per ton of HAP removed. In addition, the costs of the beyond-the-floor approach are significantly higher than those of the floor level of control. Specifically, the cost of the beyond-the-floor approach is estimated to be $101 million for the BSCP industry, compared to $36 million under the floor approach. The cost of the beyond-the-floor approach for small businesses is estimated to be $39 million, compared to an estimated $7 million under the floor approach.

TABLE 3.—BASELINE EMISSIONS AND EMISSIONS REDUCTIONS FOR BEYOND-THE-FLOOR CONTROL OF BSCP TUNNEL KILNS WITH DESIGN CAPABILITIES LESS THAN 10 TPH

Pollutant	Baseline emissions, tpy	Emissions reductions, tpy	Percent reduction
HF	1,787	1,766	99
HCl	1,192	1,152	97
HAP metals	32	31.4	98
Total HAP	3,011	2,949	98
PM	1,688	1,651	98
SO_2	8,277	4,080	49

TABLE 4.—SUMMARY OF SECONDARY AIR, SOLID WASTE, ENERGY, AND COST IMPACTS FOR BEYOND-THE-FLOOR CONTROL OF BSCP TUNNEL KILNS WITH DESIGN CAPABILITIES LESS THAN 10 TPH

Type of impact	Beyond-the-floor impact	Comments
Secondary air: NO_x	55 tpy NO_x increase	Based on electricity provided by gas turbines.
Solid waste	34,900 tpy	Assumes facilities must dispose of all waste lime as solid waste.
Energy	423,000 MMBtu/yr	
Cost	$65 million	Total cost of the proposed rule would be $101 million.
Small business cost	$33 million (95 kilns at 62 plants)	Total cost to small businesses would be $39 million.

Based on the aforementioned analyses, we determined that the benefits of requiring controls for the kiln exhaust process streams from existing tunnel kilns with design capacities less than 10 tph do not justify the cost at this time. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time. Based on these considerations, we have decided that the control level for the kiln exhaust process stream from existing tunnel kilns with design capacities less than 10 tph should be "no emissions reductions."

b. *Kiln/Sawdust Dryer Exhaust Process Stream.* None of the kiln/sawdust dryer exhaust process streams from existing tunnel kilns with design capacities less than 10 tph are equipped with APCD. Nor are such kilns reducing emissions from their kiln/sawdust dryer exhaust process streams through the use of low-HAP fuels or raw materials. For the same reasons outlined in the floor discussion for the kiln exhaust process streams, we believe that the use of low-HAP fuels or raw materials is not a viable option. Therefore, because we did not identify any means by which existing tunnel kilns with design capacities less than 10 tph are currently reducing emissions from their kiln/sawdust dryer exhaust process streams, the MACT floor for all pollutants from the kiln/sawdust dryer process streams is "no emissions reductions."

We also considered beyond-the-floor options for the kiln/sawdust dryer exhaust process stream that is part of some sawdust-fired tunnel kilns. The options we considered were: (1) Heating the sawdust dryer exhaust above the dew points of the acid gases and then applying DIFF or DLS/FF controls to the exhaust; (2) installing a DIFF or DLS/FF prior to the sawdust dryer, and then exhausting the APCD to the sawdust dryer; and (3) requiring that facilities purchase dry sawdust or use other methods to dry the sawdust, thus eliminating the kiln/sawdust dryer process stream. Because all of these

options involve additional costs beyond the costs of the options for controlling the kiln exhaust process stream, we determined that the benefits of requiring control of the kiln/sawdust dryer process stream for existing tunnel kilns with design capacities less than 10 tph do not justify the cost at this time. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time for the kiln/sawdust dryer exhaust process stream. The control level for the kiln/sawdust dryer exhaust process stream from existing tunnel kilns with design capacities less than 10 tph is "no emissions reductions."

3. Existing Tunnel Kilns With Design Capacities Equal to or Greater Than 10 TPH

As discussed earlier, tunnel kilns may have more than one process stream, including the kiln exhaust process stream and the kiln/sawdust dryer exhaust process stream.

a. *Kiln Exhaust Process Stream.* The subcategory of tunnel kilns with design capacities equal to or greater than 10 tph of fired product includes 97 tunnel kilns that are located at major sources of HAP. The best-controlled 12 percent of these sources include four DIFF-controlled, four DLS/FF-controlled, two WS-controlled, and two DLA-controlled kilns. The level of control that corresponds to the mean of the best-controlled 12 percent of these kilns is the 94th percentile level of control. We consider the DIFF, DLS/FF, and WS installed on 10 of the best-controlled 12 sources to provide equivalent overall control of HAP, and each of these controls, therefore, is representative of the 94th percentile level of control. The proposed emission limits are based on the performance of all three control technologies. In addition to APCD, we considered other possible MACT floors such as the use of low-HAP fuels or raw materials. However, because available data do not show increased HAP emissions based on fuel use, a MACT floor based on fuel type is not appropriate for these sources. In addition, low-HAP raw material use is not a viable MACT option because all facilities use local clays and shales to produce BSCP, and such local materials are integral to those products. The procurement of low-HAP raw materials as a control measure is not done in the BSCP industry. Beyond-the-floor options for the kiln exhaust process stream were not evaluated because emissions reductions achieved by DIFF, DLS/FF, and WS represent the best control achieved by sources that would be subject to the proposed rule.

b. *Kiln/Sawdust Dryer Exhaust Process Stream.* None of the kiln/sawdust dryer exhaust process streams are equipped with APCD, and to our knowledge, no existing tunnel kilns with design capacities equal to or greater than 10 tph are using low-HAP fuels or raw materials to reduce HAP emissions from their kiln/sawdust dryer exhaust process streams. Therefore, the MACT floor for these kiln/sawdust dryer process streams is "no emissions reductions."

We considered beyond-the-floor options for the kiln/sawdust dryer exhaust process stream that is part of some sawdust-fired tunnel kilns. The options we considered were: (1) Heating the sawdust dryer exhaust above the dew points of the acid gases and then applying DIFF, DLS/FF, WS, or equivalent control to the exhaust; (2) installing a DIFF, DLS/FF, or equivalent control prior to the sawdust dryer, and then exhausting the APCD to the sawdust dryer; and (3) requiring that facilities purchase dry sawdust or use other methods to dry the sawdust, thus eliminating the kiln/sawdust dryer process stream and controlling the entire kiln exhaust process stream with a DIFF, DLS/FF, WS, or equivalent control. Because the beyond-the-floor options involve additional costs beyond the costs of the options for controlling the kiln exhaust process stream and because limited data show that sawdust dryers provide some degree (up to about 60 percent) of acid gas control, we determined that the benefits of requiring control of the kiln/sawdust dryer process stream for existing tunnel kilns with design capacities equal to or greater than 10 tph do not justify the cost at this time. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time for kiln/sawdust dryer exhaust process streams from existing tunnel kilns with a design capacity equal to or greater than 10 tph. The level of control for such process streams is "no emissions reductions."

By contrast, for the class of existing tunnel kilns with design capacities equal to or greater than 10 tph that first duct exhaust to sawdust dryers on or after July 22, 2002, all of the exhaust (i.e., all process streams, including the kiln/sawdust dryer exhaust process stream) is subject to the same level of control requirement as a new tunnel kiln. We believe it is important to regulate all of the exhaust from this subset of existing tunnel kilns in order to prevent existing tunnel kilns that do not duct exhaust to sawdust dryers prior to July 22, 2002 from circumventing the requirements of the proposed rule by ducting to sawdust dryers.

4. Consideration of "Synthetic Area Sources" in the MACT Floor Determinations for Existing Sources

In determining the MACT floors as discussed above, we included "synthetic area sources" (sometimes called "synthetic minor sources"). Synthetic area sources include those that emit fewer than 10 tons per year of any HAP or fewer than 25 tons per year of any combination of HAP because they use some emission control device (or devices) adopted under existing Federal or State regulations. In the absence of such controls, these sources would be major. In this proposal, however, we are requesting comment on whether or not synthetic area sources should be included in or excluded from the MACT floor determinations for existing tunnel kilns. Industry representatives have stated that the MACT floor determination should not include these synthetic area sources. Whether or not synthetic area sources are included would affect the level of control represented by the floor determinations for existing tunnel kilns. (By contrast, the floor determination for existing periodic kilns would not be affected by the inclusion or exclusion of synthetic area sources, because the MACT floor for such kilns is "no emissions reductions.")

The way that including or excluding synthetic area sources would affect the floor determinations for tunnel kilns would vary depending on the design capacity-based subcategorization level. For example, for existing tunnel kilns, with no subcategories based on design capacity, the MACT floor would be a DLA if synthetic area sources are included in the floor determination; the MACT floor would be "no emissions reductions" if synthetic area sources are excluded from the floor determination. Thus, excluding synthetic area sources from the MACT floor determination in this example would reduce the number of impacted facilities, the total annual cost, and the HAP emissions reductions achieved at the floor level of control. Control options more stringent than the MACT floor of "no emissions reductions" must then be evaluated, considering the associated costs, non-air quality health and environmental impacts, and energy requirements, to arrive at the requirements of the proposed rule. Furthermore, with 10 tph design capacity-based subcategories (as proposed), the MACT floor would be DIFF, DLS/FF or WS if synthetic area sources are included in the floor determination and the MACT floor

would be a DLA if synthetic area sources are excluded from the floor determination. Accordingly, excluding synthetic area sources from the MACT floor determination in this example would reduce both the total annual cost and the HAP emissions reductions achieved. EPA specifically solicits comment on whether or not synthetic area sources should be included in the MACT floor determinations for existing tunnel kilns.

D. How Did We Determine the MACT Floors for New Sources?

For new sources, the CAA requires the MACT floors to be based on the degree of emissions reductions achieved in practice by the best-controlled similar source. In some instances, the existing source MACT floor control levels may also represent the level of control appropriate for new sources. In these instances, the existing source MACT floor technology represents the greatest degree of emissions reductions that is achievable. In other instances, the MACT floor levels of control for new sources are more stringent than for existing sources.

1. New Periodic Kilns

We determined, based on design differences and the fact that periodic kilns are batch processes, that periodic kilns and tunnel kilns are not similar sources. Two major design differences between periodic and tunnel kilns are the varying temperature and flow profiles associated with periodic kilns. In a single batch cycle, periodic kiln exhaust temperatures begin at ambient temperature and minimal air flow and gradually increase to temperatures that may exceed 315°C (600°F) and flow rates in excess of 340 actual cubic meters per minute (m^3/min) (12,000 actual cubic feet per minute (acfm)). In contrast, tunnel kiln exhaust temperatures and flow rates remain relatively constant. In addition, periodic kilns involve a batch process whereas tunnel kilns involve a continuous process. Another difference in periodic kilns and tunnel kilns is that periodic kilns generally are used to produce specialty products such as brick shapes and structural pipe, whereas tunnel kilns typically are used to produce face brick and other standard products. Finally, APCD have not been proven on periodic kilns. Dry injection fabric filters, DLS/FF, and WS that are used to control HAP emissions from tunnel kilns have not been applied to periodic kilns, and it is not clear how these APCD would perform on periodic kilns with highly variable temperature and flow profiles. For these reasons, we do not consider periodic kilns and tunnel kilns to be similar sources. Therefore, MACT for new periodic kilns is based on the best-controlled periodic kiln. Currently, one periodic kiln is equipped with a DLA, but the DLA has not been proven effective in controlling emissions from the kiln. As previously explained, MACT options such as low-HAP fuels or raw materials are not appropriate for BSCP kilns. Therefore, the best-controlled similar source is an uncontrolled periodic kiln, and the MACT floor level of control for new periodic kilns is "no emissions reductions." Because no APCD have been demonstrated to control HAP emissions, and we believe that low-HAP fuels or raw materials are not viable options, we found no beyond-the-floor options for new periodic kilns. Therefore, we have determined that the control level for new periodic kilns should be "no emissions reductions."

2. New Tunnel Kilns With Design Capacities Less Than 10 TPH

The new source MACT floor for tunnel kilns with design capacities less than 10 tph is based on the emission control that is achieved in practice by the best-controlled similar source. We identified a tunnel kiln with a design capacity equal to or greater than 10 tph of fired product as the best-controlled similar source. Although the MACT floor levels of control for existing tunnel kilns with design capacities less than 10 tph are "no emissions reductions," we determined that the MACT control levels for new tunnel kilns with design capacities less than 10 tph are represented by DIFF-, DLS/FF-, or WS-based controls. The basis of this determination is that there are no design differences based on kiln size that would preclude the ability of a smaller (less than 10 tph capacity) kiln to be controlled with technologies that primarily have been applied to larger kilns. In fact, one new (on-line in November 2000) kiln with a capacity between 9 and 10 tph is currently controlled with a DIFF. Moreover, new sources have the ability to plan for achieving emissions reductions efficiently during the design phase that precedes their construction. Therefore, control with a DIFF, DLS/FF, WS, or equivalent control represents MACT for new tunnel kilns with design capacities less than 10 tph of fired product.

All process streams from new tunnel kilns would be subject to the emission limitations because the best-controlled sources control 100 percent of their kiln exhaust. As previously explained, options such as low-HAP fuels or raw materials are not appropriate for BSCP kilns. Beyond-the-floor options were not evaluated because emissions reductions achieved by DIFF, DLS/FF, and WS represent the best overall control of HAP.

3. New Tunnel Kilns With Design Capacities Equal to or Greater Than 10 TPH

The controls that we consider to represent the MACT floor for existing tunnel kilns with design capacities equal to or greater than 10 tph of fired product also are considered to be the best controls available for controlling HF, HCl, and PM emissions from such brick kilns. Therefore, control with a DIFF, DLS/FF, WS, or equivalent control represents the MACT floor for new tunnel kilns with design capacities equal to or greater than 10 tph.

All process streams from new tunnel kilns would be subject to the emission limitations because the best-controlled sources control 100 percent of the kiln exhaust. As previously explained, MACT options such as low-HAP fuels or raw materials are not appropriate for BSCP kilns. Beyond-the-floor options were not evaluated because emissions reductions achieved by DIFF, DLS/FF, and WS represent the best overall control of HAP.

E. How Did We Select the Format of the Proposed Rule?

The formats for complying with today's proposed rule include production-based emission limits and percent reduction emission limits. Affected tunnel kilns would have the option of meeting production-based or percent reduction emission limits for HF and HCl. The percent reduction emission limits alternative for HF and HCl is offered to account for the variability in the amount of these HAP in the uncontrolled kiln emissions because kilns with higher inlet HF or HCl concentrations may not be capable of meeting the production-based emission limits. Affected tunnel kilns would also have to meet a production-based emission limit for PM.

F. How Did We Determine the Emission Limits?

We have performance data for five of the nine DLS/FF and DIFF and one of the two WS currently operating on BSCP kilns. The evaluation of the data included analyses of APCD operating parameters to determine whether the devices were operating properly during the emission tests. The emissions data were used to develop production-based and percent removal emission limits for HF and HCl emissions from tunnel kilns. In addition, a production-based

PM emission limit for affected tunnel kilns was developed using the test data. Additional details on the test data and analyses are available in docket A–99–30.

1. Hydrogen Fluoride

The proposed HF emission limits for tunnel kilns include a production-based emission limit of 0.0135 kg/Mg (0.027 lb/ton) of fired product and a percent reduction emission limit of at least 95 percent. To develop this percent reduction emission limit, we analyzed the available HF test data from DIFF-, DLS/FF-, and WS-controlled kilns. The individual emission tests show HF or total fluoride (TF) control efficiencies ranging from 95.9 percent to 99.9 percent. The available data show that TF and HF emissions from tunnel kilns are similar, and we, therefore, consider TF control efficiencies to be good estimates of HF control efficiencies for DIFF, DLS/FF, and WS systems. For DIFF systems, one available test shows a TF control efficiency of 99.8 percent. Five HF emission tests conducted on four DLS/FF-controlled kilns show control efficiencies of 95.9 percent, 96.9 percent, 98.5 percent, 99.7 percent, and 99.9 percent. Two TF emission tests conducted on a WS-controlled kiln show control efficiencies of 98.8 percent and 99.9 percent. These data indicate that DIFF, DLS/FF, and WS, all of which are considered representative of MACT, currently operating on the best-controlled BSCP kilns are capable of achieving HF control efficiencies of 95 percent. In addition, 95 percent is the highest control level that DIFF and DLS/FF manufacturers have guaranteed for BSCP kilns. The 95 percent control efficiency was used in conjunction with the average uncontrolled HF emission factor for the BSCP industry, 0.27 kg/Mg (0.54 lb/ton), to calculate the proposed HF emission limit of 0.014 kg/Mg (0.027 lb/ton).

2. Hydrogen Chloride

The proposed HCl emission limits include a production-based emission limit of 0.019 kg/Mg (0.037 lb/ton) of fired product and a percent reduction emission limit of at least 90 percent. To develop this percent reduction emission limit, we analyzed the available HCl test data from DLS/FF-controlled kilns. Emission tests conducted on two DLS/FF-controlled kilns showed HCl control efficiencies of 98.2 percent and 99.8 percent. Because no data are available to quantify HCl control efficiencies for DIFF or WS in the BSCP industry, we examined HCl data for DIFF and WS operating in other industries. Data from DIFF that are used to control emissions from sources within the secondary aluminum industry indicate that the systems provide 90 percent control of HCl, which is the HCl emission limit in the secondary aluminum NESHAP (65 FR 15690, March 23, 2000). Measured HCl concentrations from sources within the secondary aluminum industry are within the range of concentrations measured from brick kilns. Wet scrubbers are expected to perform at least as well as DLS/FF and DIFF. Additionally, data from WS used on medical waste incinerators show HCl reductions of 99 percent, although these control efficiencies were achieved on much higher inlet HCl loadings (61 FR 31736, June 20, 1996). Because we believe that it is important to consider the variability in performance of the control technologies representative of MACT, we selected 90 percent as the percent reduction emission limit for HCl. Control device vendors have indicated that WS can meet this emission limit. This 90 percent control efficiency was used in conjunction with the average uncontrolled HCl emission factor for the BSCP industry, 0.19 kg/Mg (0.37 lb/ton), to calculate the proposed HCl emission limit of 0.019 kg/Mg (0.037 lb/ton).

3. Particulate Matter

Particulate matter was selected as a surrogate pollutant for HAP metals, including mercury in particulate form, that are emitted from BSCP kilns. The percentages of PM emissions composed of HAP metals at four facilities for which HAP metals and PM data are available are 0.16 percent, 0.99 percent, 2.8 percent, and 4.5 percent. The large degree of variability in these percentages may be a result of differences in metallic surface coatings, body additives, brick raw material composition, kiln fuel, or a combination of these factors. The available test data for DIFF-, DLS/FF-, and WS-controlled kilns indicate that production-based outlet PM emissions range from 0.0017 kg/Mg (0.0034 lb/ton) to 0.060 kg/Mg (0.12 lb/ton). We selected the high end of the range from the best-controlled kilns, 0.060 kg/Mg (0.12 lb/ton) of fired product, as the PM emission limit for tunnel kilns in order to include WS, which would be less costly for some facilities than DIFF and DLS/FF and which would more readily achieve high HF and HCl removal, as a viable control option for complying with the proposed rule.

G. How Did We Select the Operating Limits and Monitoring Requirements?

We selected operating limits and monitoring requirements that would ensure proper operation of APCD used to comply with the proposed rule. These operating limits and monitoring requirements would require you to monitor and maintain certain parameters within levels established during performance tests that documented compliance with the proposed emission limits. We believe that these operating limits and monitoring requirements would provide sufficient information needed to assure continuing compliance or identify operating problems at the source. At the same time, the provisions are not labor intensive, do not require expensive or complex equipment, and do not require burdensome recordkeeping. Temperature monitoring and recording equipment and lime injection rate monitoring and recording equipment are standard features on DIFF and DLS/FF. Water injection rate monitoring and recording equipment is a standard feature on DLS/FF. For WS, pressure drop monitors and liquid flow monitors often are part of standard scrubber instrumentation.

V. Summary of the Proposed Rule for Clay Ceramics Manufacturing

A. What Source Category Is Regulated by the Proposed Rule?

Today's proposed rule for clay ceramics manufacturing applies to clay ceramics manufacturing facilities that are, are located at, or are part of, a major source of HAP emissions. The clay ceramics manufacturing source category includes those facilities that manufacture pressed floor tile, pressed wall tile, and other pressed tile; or sanitaryware (toilets and sinks). Clay ceramics are primarily composed of clay and shale, and may include many different additives, including silica, talc, and various high purity powders produced by chemical synthesis. Clay ceramics manufacturing generally includes raw material processing and handling and forming of the tile or sanitaryware shapes, followed by drying, glazing, and firing. Most clay ceramics are coated with a glaze prior to firing. The clay ceramics industry also includes dinnerware and pottery manufacturing, but these industry segments are not covered by the proposed rule because we determined that there are no dinnerware or pottery manufacturing facilities that are major sources of HAP.

Available information shows a total of 58 facilities that produce clay ceramics. Thirty-one of these facilities, located in 16 States, primarily produce pressed tile, while 26 of these facilities, located in 15 States, primarily produce

sanitaryware. Eight of the 58 clay ceramics manufacturing facilities are estimated to be major sources. Thirteen clay ceramics facilities are owned by small businesses, and none of the small business-owned facilities are estimated to be major sources.

All clay ceramics are fired in kilns. Firing may be performed in one or more stages. Tile can be fired in either continuous (tunnel or roller) or batch (periodic) kilns, but most facilities use either tunnel or roller kilns for tile production. Most newer tile kilns are roller kilns, which are considerably more fuel efficient than tunnel kilns. Production rates for both tunnel and roller kilns average between 2 and 3 tph. Nearly all kilns are fueled by natural gas. Periodic kilns are usually used at smaller facilities or are used primarily for second-firing a product after a glaze has been applied. Most of the periodic kiln times range from 20 to 40 hours per batch.

The sanitaryware industry uses either tunnel kilns or periodic kilns for firing. Tunnel kilns account for most sanitaryware firing; periodic kilns are used primarily for refiring rejected pieces that have been repaired and re-glazed. Some smaller facilities use periodic kilns for all firing operations. Production rates for tunnel kilns average between 2 and 3 tph. Most sanitaryware kilns are fired with natural gas. Most tunnel and periodic kilns operate with maximum temperatures in the range of 950° to 1260°C (1750° to 2300°F).

The primary HAP emission sources at clay ceramics manufacturing plants are roller, tunnel, and periodic kilns which emit HF, HCl, and HAP metals. Kilns also emit PM and SO_2. Currently, no APCD are used by the clay ceramics industry to control emissions from kilns. Other sources of HAP emissions at clay ceramics manufacturing plants are the raw material processing and handling equipment.

B. What Are the Affected Sources?

The affected sources, which are the portions of each source in the category for which we are setting emission standards, are each new or reconstructed tunnel and roller kiln. Kilns that are used exclusively for R&D and not used to manufacture products for commercial sale are not subject to the requirements of today's proposed rule. Kilns that are used exclusively for refiring or for setting glazes on previously fired products are not subject to the requirements of today's proposed rule.

A source is a new affected source if construction began after July 22, 2002. An affected source is reconstructed if the criteria defined in 40 CFR 63.2 are met.

C. When Must I Comply With the Proposed Rule?

New or reconstructed affected sources with an initial startup before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] must comply no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. New or reconstructed affected sources with an initial startup after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] must comply upon initial startup. Any portion of existing facilities that become new or reconstructed major sources and any new or reconstructed area sources that become major sources must be in compliance upon initial startup.

D. What Are the Emission Limits?

Today's proposed rule includes emission limits in the form of production-based mass emission limits and percent reduction requirements. In establishing the HAP emission limits, we selected PM as a surrogate for HAP metals, including mercury in particulate form. Today's proposed rule includes HF, HCl, and PM emission limits for new and reconstructed affected sources at clay ceramics manufacturing facilities.

If you own or operate a new or reconstructed tunnel or roller kiln, you would be required to meet an HF emission limit of 0.014 kg/Mg (0.027 lb/ton) of product or reduce uncontrolled HF emissions by at least 95 percent. You also would be required to meet an HCl emission limit of 0.019 kg/Mg (0.037 lb/ton) of product or reduce uncontrolled HCl emissions by at least 90 percent. If you own or operate a new or reconstructed tunnel or roller kiln, you also would be required to meet a PM emission limit of 0.06 kg/Mg (0.12 lb/ton).

E. What Are the Operating Limits?

The operating limits being proposed for new and reconstructed clay ceramics tunnel and roller kilns are the same as those that are being proposed for new and reconstructed BSCP tunnel kilns. These operating limits are presented in section II.E of this preamble. We also are soliciting comment on requiring the application of PM CEMS as a method to assure continuous compliance with the proposed PM emission limits for clay ceramics tunnel and roller kilns. Specifically, we are soliciting comment on the relation of a PM CEMS requirement to the PM emission limits that are proposed today. This includes the level and averaging time of a CEMS-based PM emission limit and the methodology for deriving the limit from the available data for clay ceramics tunnel and roller kilns.

We have continued to learn about the capabilities and performance of PM CEMS through performing and witnessing field evaluations and through discussions with our European counterparts. We believe there is sound evidence that PM CEMS should work on clay ceramics tunnel and roller kilns.

We intend to propose revisions to the performance specification for PM CEMS (PS–11, 40 CFR part 60, appendix B, and Procedure 2, 40 CFR part 60, appendix F) in the near future with subsequent promulgation.

F. What Are the Performance Test and Initial Compliance Requirements?

The performance test and initial compliance requirements being proposed for new and reconstructed clay ceramics tunnel and roller kilns are the same as those that are being proposed for BSCP manufacturing kilns. These requirements are presented in section II.F of this preamble.

G. What Are the Continuous Compliance Requirements?

The continuous compliance requirements being proposed for new and reconstructed clay ceramics tunnel and roller kilns are the same as those that are being proposed for BSCP manufacturing kilns. These requirements are presented in section II.G of this preamble.

H. What Are the Notification, Recordkeeping, and Reporting Requirements?

The notification, recordkeeping, and reporting requirements being proposed for new and reconstructed clay ceramics tunnel and roller kilns are the same as those that are being proposed for BSCP manufacturing kilns. These requirements are presented in section II.H of this preamble.

VI. Summary of Environmental, Energy, and Economic Impacts for the Proposed Clay Ceramics Manufacturing NESHAP

A. What Are the Air Quality Impacts?

Because we are not regulating existing sources under the proposed rule, no air quality impacts are projected for existing sources. To project air quality impacts for new sources, we assumed that one tile roller kiln (3.5 tph capacity) and one sanitaryware tunnel kiln (4 tph capacity), each equipped with a DIFF, will begin operation at the beginning of the first year following promulgation of the rule as proposed. We estimate that by implementing the rule as proposed,

HF emissions from these new sources would be reduced by 8.1 Mg/yr (8.9 tpy), HCl emissions would be reduced by 4.8 Mg/yr (5.3 tpy), and HAP metals emissions would be reduced by 0.19 Mg/yr (0.21 tpy). We also estimate that PM and SO_2 emissions from the new kilns would be reduced by 9.0 Mg/yr (9.9 tpy) and 22 Mg/yr (24 tpy), respectively.

Secondary air impacts associated with the proposed clay ceramics rule are direct impacts that result from the operation of any new APCD. The generation of electricity required to operate the control devices on the two projected new kilns will result in 0.4 tpy of NO_X emissions in the first year following promulgation of the rule as proposed. The electricity was assumed to be generated by natural gas-fired turbines.

B. What Are the Water and Solid Waste Impacts?

Because we are not regulating existing sources under the proposed rule, no water and solid waste impacts are projected for existing sources. Our analyses are based on the use of DIFF for controlling new kilns and, therefore, no water impacts are projected for new sources. To project solid waste impacts for new sources, we assumed that one tile roller kiln and one sanitaryware tunnel kiln, each equipped with a DIFF, will begin operation at the beginning of the first year following promulgation of the rule as proposed. The solid waste disposal impacts that result from the use of DIFF will include the disposal of the spent lime that is injected into the kiln exhaust stream and subsequently captured by a fabric filter. We calculated the solid waste by taking the difference between the amount of lime injected into the system and the amount of reacted lime and adding the amount of reaction products. Stoichiometric ratios of 1.0 to 1.5 have been reported for the DIFF in use in the brick manufacturing industry. An average stoichiometric ratio of 1.35 was used in this analysis. We estimate that implementing the rule as proposed would result in the generation of 114 Mg/yr (126 tpy) of solid waste from new sources.

C. What Are the Energy Impacts?

Because we are not regulating existing sources under the proposed rule, no energy impacts are projected for existing sources. To project energy impacts for new sources, we assumed that one tile roller kiln and one sanitaryware tunnel kiln, each equipped with a DIFF, will begin operation at the beginning of the first year following promulgation of the rule as proposed. Energy impacts consist of the electricity needed to operate the DIFF. Electricity requirements are driven primarily by the size of the fan needed in the control device. We estimate the increase in energy consumption that would result from implementation of the rule as proposed to be 3.2 terajoules per year (3.0 billion Btu per year).

D. Are There Any Additional Environmental and Health Impacts?

Because we are not regulating existing sources under the proposed rule, no additional environmental and health impacts are projected for existing sources. The HAP controls that are likely to be installed on new kilns also provide control of SO_2 and PM emissions. We estimate that SO_2 and PM emissions from the projected new kilns would be reduced by 22 Mg/yr (24 tpy) and 9.0 Mg/yr (9.9 tpy), respectively.

E. What Are the Cost Impacts?

Because we are not regulating existing sources under the proposed rule, no cost impacts are projected for existing sources. To project costs for new sources, we assumed that one tile roller kiln and one sanitaryware tunnel kiln, each equipped with a DIFF, will be built during the first year following promulgation of the rule as proposed. We estimate the capital costs associated with implementation of the rule as proposed to be $1.1 million for new sources. The capital costs include the purchase and installation of DIFF and monitoring equipment. We estimate the annualized costs associated with implementation of the rule as proposed to be $560,000 per year for new sources. The annualized costs include annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, emission testing costs, and recordkeeping and reporting costs associated with installing and operating the DIFF.

We calculated the cost estimates using cost algorithms that are based on procedures from EPA's OAQPS Control Cost Manual (EPA 450/3–90–006, January 1990) and cost information provided by the BSCP industry and control device vendors. We estimated costs by developing model process units that correspond to the various sizes of kilns found at clay ceramics manufacturing facilities. Additional information on the model process units and cost estimates are included in docket A–2000–48.

F. What Are the Economic Impacts?

The goal of the economic impact analysis is to estimate the market response of clay ceramics manufacturing producers to the proposed rule and to determine the economic effects that may result due to the proposed rule. Because the MACT floor for existing clay ceramics kilns is "no emissions reductions," there are no compliance costs associated with today's proposed rule. The aggregate price of ceramic products is, therefore, expected to remain the same. Because the prices of ceramic products are not expected to change due to the proposed rule, there are no projected changes in domestic production, domestic consumption, or foreign trade. Therefore, no economic impacts on existing major sources are expected from the proposed rule.

Unlike existing sources, new sources used to produce clay ceramics will face positive compliance costs. We estimate that two new kilns will be constructed in the first 5 years after the rule is promulgated as proposed. One new 3.5 tph capacity roller kiln is projected to come on-line in the ceramic floor and wall tile industry, and one new 4 tph capacity tunnel kiln is projected for the sanitaryware industry. Industry compliance costs associated with these kilns are expected to be less than 0.1 percent of industry value of shipments for each of these industries. At the new kiln level, the share of costs to sales generated from the output produced by the ceramic floor and wall tile kiln is expected to be less than 1.5 percent. No level of cost-to-sales for sanitaryware kilns could be developed due to the diversity of product types that they produce.

VII. Rationale for Selecting the Proposed Standards for Clay Ceramics Manufacturing

A. How Did We Select the Emission Sources and Pollutants That Will Be Regulated?

In the clay ceramics manufacturing industry, the most significant sources of HAP emissions are kilns, including continuous (tunnel and roller) kilns and periodic kilns. Other sources of HAP emissions at clay ceramics manufacturing facilities are the raw material processing and handling equipment. The proposed rule covers new tunnel and roller kilns at major source clay ceramics manufacturing facilities.

At the temperatures encountered in clay ceramics kilns, naturally occurring fluorides and chlorides found in raw clays and shales are released to the atmosphere as HF and HCl. We estimate that eight clay ceramics manufacturing facilities emit more than 9.07 Mg/yr (10 tpy) of HF and, therefore, are major

sources as defined by the CAA. In addition, we estimate that some of these facilities may emit more than 9.07 Mg/yr (10 tpy) of HCl. In addition to HF and HCl, it is likely that all of the HAP metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury (in particulate form), nickel, and selenium) listed in section 112(b) of the CAA may be emitted from clay ceramics kilns because these pollutants have been detected in brick kiln exhaust. The HAP metals may emanate from trace quantities of metals found in raw materials, metallic body additives, glazes, and other surface coatings commonly used in the industry, or from the fuels fired in the kilns. Therefore, we propose to regulate HF, HCl, and HAP metals (using PM as a surrogate for HAP metals, including mercury in particulate form) emissions from clay ceramics kilns. Clay ceramics kilns that are used exclusively for refiring or for setting glazes on previously fired products are not expected to emit HF or HCl and, therefore, would not be subject to the proposed rule.

Particulate matter was selected as a surrogate for HAP metals that are emitted in particulate form because HAP metals are expected to be present in the clay ceramics kiln exhaust stream, and the same control mechanisms that remove PM from the exhaust stream also will remove nonvolatile and semi-volatile HAP metals. Available data from the brick industry show that HAP metals constitute between 0.16 percent and 4.5 percent of kiln PM emissions. The use of PM as a surrogate pollutant for HAP metals also reduces the costs associated with compliance testing and monitoring because such testing and monitoring is necessary only for a single PM emission limit, rather than for numerous emission limits for individual HAP metals.

B. How Did We Determine Subcategories?

Section 112(d)(1) of the CAA allows EPA to promulgate emission standards for either categories or subcategories of sources. Through subcategorization, we are able to define subsets of similar emission sources within a source category if differences in emissions characteristics, processes, APCD viability, or opportunities for pollution prevention exist within the source category. Upon initial consideration of the available information on the clay ceramics manufacturing industry, we determined that separate subcategories for periodic kilns and continuous (tunnel and roller) kilns were warranted because periodic kilns are smaller than tunnel and roller kilns (with lower production on an hourly basis, and accounting for only a small percentage of total clay ceramics industry production) and are operated in batch cycles, whereas tunnel and roller kilns operate continuously. We also examined subcategorization by kiln fuel, but determined that fuel-based subcategories are not appropriate for these sources because available data from similar sources in the BSCP industry do not show increased HAP emissions based on fuel use.

C. How Did We Determine the MACT Floors for Existing Sources?

The CAA specifies that we set standards for existing sources that are no less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources where there are 30 or more sources (for which the Administrator has emissions information) in the category or subcategory, or the best performing five sources (for which the Administrator has or could reasonably obtain emissions information) where there are fewer than 30 sources.

After identifying the MACT floors for existing sources, we also consider control options more stringent than the MACT floor levels. The selected option may be more stringent than the MACT floor, but the control level must be achievable and reasonable in the Administrator's judgement considering cost, non-air quality health and environmental impacts, and energy requirements. The objective is to achieve the maximum degree of emissions reductions without imposing unreasonable impacts (see section 112(d)(2)of the CAA).

1. Existing Periodic Kilns

No existing periodic kilns are equipped with APCD. In addition to APCD, we considered other possible MACT floors such as the use of low-HAP fuels or raw materials. However, because available data from the clay ceramics and BSCP industries do not show increased HAP emissions based on fuel use, a MACT floor based on fuel type is not appropriate for these sources. In addition, procurement of low-HAP raw materials has not been identified as a control measure that is used in the clay ceramics industry. Therefore, the MACT floor levels of HF, HCl, and PM control for existing periodic kilns are "no emissions reductions."

We consider clay ceramics periodic kilns to be similar sources to BSCP periodic kilns. Currently, one BSCP periodic kiln is equipped with a DLA, but the DLA has not been proven effective in controlling emissions from the kiln. We believe that requiring the use of low-HAP fuels would not be appropriate for these sources because, as noted above, available data do not show increased HAP emissions based on fuel use. We also believe that requiring procurement of low-HAP raw materials would not be appropriate because the raw materials used in clay ceramics manufacturing are integral to the end products manufactured. Because no APCD have been demonstrated to control HAP emissions from clay ceramics periodic kilns or BSCP periodic kilns, and low-HAP fuels or raw materials are not viable options, we found no beyond-the-floor options for existing periodic kilns. Therefore, we have determined that the control level for existing periodic kilns should be "no emissions reductions."

2. Existing Tunnel Kilns and Roller Kilns

No existing clay ceramics tunnel kilns or roller kilns are equipped with APCD. In addition to APCD, we considered other possible MACT floors such as the use of low-HAP fuels or raw materials. However, because available data from the clay ceramics and BSCP industries do not show increased HAP emissions based on fuel use, a MACT floor based on fuel type is not appropriate for these sources. In addition, procurement of low-HAP raw materials has not been identified as a control measure that is used in the clay ceramics industry. Therefore, the MACT floor levels of HF, HCl, and PM control for existing clay ceramics tunnel and roller kilns are "no emissions reductions."

We considered beyond-the-floor controls for existing clay ceramics tunnel and roller kilns. For these analyses, we assessed the costs, emissions reductions, and other impacts of installing and operating a DIFF, which is one APCD representative of the MACT floor for new clay ceramics tunnel and roller kilns, on each existing tunnel and roller kiln located at a major source of HAP. After analyzing all of the impacts of retrofitting each of the 14 existing tile tunnel kilns, 16 existing tile roller kilns, and 23 existing sanitaryware tunnel kilns with a DIFF to control HAP emissions, we concluded that setting standards reflecting this beyond-the-floor approach would be unreasonable at this time. Our analysis included an estimate of emissions reductions that would be achieved by this approach, secondary air impacts, non-air quality impacts, and cost impacts on the clay ceramics manufacturing industry. Primary HAP air pollution impacts from the beyond-

the-floor approach consist of the reduction of HF, HCl, and HAP metals emissions. Specifically, the beyond-the-floor approach would reduce total HAP emissions from existing clay ceramics tunnel and roller kilns by 435 tpy, or 99 percent; from a baseline HAP emission level of 441 tpy. Particulate matter emissions reductions (PM is used as a surrogate for HAP metals) and co-control of SO_2 emissions (from the baseline level) also would result from the beyond-the-floor approach. The estimated baseline emissions and emissions reductions for the beyond-the-floor approach for clay ceramics tunnel kilns and roller kilns are summarized in Table 5 of this preamble. Table 6 of this preamble shows a summary of the results of our evaluations of secondary air, solid waste, energy, and cost impacts for this approach. Using the emissions reductions estimates shown in Table 5 of this preamble and the beyond-the-floor cost presented in Table 6 of this preamble, the nationwide cost effectiveness of requiring clay ceramics tunnel and roller kilns to install DIFF controls is about $36,000 per ton of HAP removed. In addition, the costs of the beyond-the-floor approach are significantly higher than those of the floor level of control. Specifically, the cost of the beyond-the-floor approach is estimated to be $15.8 million for the clay ceramics manufacturing industry, compared to no cost for existing sources under the floor approach.

TABLE 5.—BASELINE EMISSIONS AND EMISSIONS REDUCTIONS FOR BEYOND-THE-FLOOR CONTROL OF CLAY CERAMICS TUNNEL KILNS AND ROLLER KILNS

Pollutant	Baseline emissions, tpy	Emissions reductions, tpy	Percent reduction
HF	267	265	99
HCl	167	164	98
HAP metals	5.9	5.9	99.9
Total HAP	441	435	99
PM	294	294	99.9
SO_2	1,460	730	50

TABLE 6.—SUMMARY OF SECONDARY AIR, SOLID WASTE, ENERGY, AND COST IMPACTS FOR BEYOND-THE-FLOOR CONTROL OF CLAY CERAMICS TUNNEL KILNS AND ROLLER KILNS

Type of impact	Beyond-the-floor impact	Comments
Secondary air: NO_x	12 tpy NO_x increase	Based on electricity provided by gas turbines.
Solid waste	3,800 tpy	Assumes facilities must dispose of all waste lime as solid waste.
Energy	92,000 MMBtu/yr	
Cost	$15.8 million.	

Based on the aforementioned analyses, we determined that the benefits of requiring controls for existing tunnel kilns and roller kilns do not justify the cost at this time. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time. Based on these considerations, we have decided that the control level for existing clay ceramics tunnel kilns and roller kilns should be "no emissions reductions."

D. How Did We Determine the MACT Floors for New Sources?

For new sources, the CAA requires the MACT floors to be based on the degree of emissions reductions achieved in practice by the best-controlled similar source.

1. New Periodic Kilns

Because we consider clay ceramics periodic kilns to be similar sources to BSCP periodic kilns, MACT for new clay ceramics periodic kilns is based on the best-controlled clay ceramics or BSCP periodic kiln. Currently, one BSCP periodic kiln is equipped with a DLA, but the DLA has not been proven effective in controlling emissions from the kiln. As previously explained, MACT options such as low-HAP fuels or raw materials are not appropriate for clay ceramics kilns. Therefore, the best-controlled similar source is an uncontrolled periodic kiln, and the MACT floor level of control for new clay ceramics periodic kilns is "no emissions reductions." Because no APCD have been demonstrated to control HAP emissions, and we believe that low-HAP fuels or raw materials are not viable options, we found no beyond-the-floor options for new periodic kilns. Therefore, we have determined that the control level for new periodic kilns should be "no emissions reductions."

2. New Tunnel and Roller Kilns

For new clay ceramics tunnel and roller kilns, we identified tunnel kilns that produce BSCP as the best-controlled similar source. Although the MACT floor levels of HF, HCl, and PM control for clay ceramics kilns are "no emissions reductions," we determined that MACT for new tunnel and roller kilns is represented by DIFF-, DLS/FF-, or WS-based controls. These controls are considered equivalent in overall control of HAP and are installed on the ten best performing existing BSCP tunnel kilns. The basis of this determination is that BSCP kilns and clay ceramics kilns process many of the same types of raw materials, and the types of emissions (HF, HCl, HAP metals) are the same. Therefore, control with a DIFF, DLS/FF, WS, or equivalent control represents the MACT floor level of control for new clay ceramics tunnel and roller kilns. As previously explained, MACT options such as low-HAP fuels or raw materials are not appropriate for clay ceramics kilns. Beyond-the-floor options for new tunnel and roller kilns were not evaluated because the emissions reductions achieved by DIFF, DLS/FF, and WS represent the best overall control of HAP.

E. How Did We Select the Format of the Proposed Rule?

The formats for complying with today's proposed rule include production-based emission limits and percent reduction emission limits. Affected tunnel and roller kilns would

have the option of meeting production-based or percent reduction emission limits for HF and HCl. The percent reduction emission limits alternative for HF and HCl is offered to account for the variability in the amount of these HAP in the uncontrolled kiln emissions, because kilns with higher inlet HF or HCl concentrations may not be capable of meeting the production-based emission limits. Affected tunnel and roller kilns also would have to meet a production-based emission limit for PM.

F. How Did We Determine the Emission Limits?

Because we determined clay ceramics tunnel and roller kilns to be similar sources to BSCP tunnel kilns, and we based MACT on the best-controlled BSCP tunnel kilns, the emission limits being proposed for clay ceramics manufacturing kilns are the same emission limits that are being proposed for BSCP manufacturing kilns. The rationale for the development of the emission limits for BSCP manufacturing kilns is discussed in section IV.F of this preamble.

G. How Did We Select the Operating Limits and Monitoring Requirements?

Because we determined clay ceramics tunnel and roller kilns to be similar sources to BSCP tunnel kilns, and we based MACT on the best-controlled BSCP tunnel kilns, the operating limits and monitoring requirements being proposed for clay ceramics manufacturing kilns are the same as those that are being proposed for BSCP manufacturing kilns. The rationale for the development of the operating limits and monitoring requirements is discussed in section IV.G of this preamble.

VIII. Solicitation of Comments and Public Participation

We are seeking full public participation in arriving at our final decisions, and we encourage comments on all aspects of this proposal from all interested parties. Full supporting data and detailed analyses should be submitted with comments to allow us to make maximum use of the comments. Information on where and when to submit comments is listed under the **ADDRESSES** and **DATES** sections. Information on procedures for submitting proprietary information in the comments is listed under the **SUPPLEMENTARY INFORMATION** section.

IX. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed rules are not "significant regulatory actions" because none of the listed criteria apply to these actions. Consequently, these actions were not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns the environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rules are not subject to Executive Order 13045 because they are not economically significant regulatory actions as defined by Executive Order 12866, and they are based on technology performance and not on health or safety risks.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, the EPA must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132. The proposed rules would not impose directly enforceable requirements on States, nor would they preempt them from adopting their own more stringent programs to control emissions from BSCP and clay ceramics manufacturing facilities. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rules. Although section 6 of Executive Order 13132 does not apply to the proposed rules, the EPA is providing State and local officials an opportunity to comment on the proposed rules. A summary of the concerns raised during the notice and comment process and EPA's response to those concerns will be provided in the final rulemaking action.

D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The proposed rules do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments are known to own or operate BSCP or clay ceramics manufacturing facilities. Thus, Executive Order 13175 does not apply to the proposed rules.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, the EPA specifically solicits additional comment on the proposed rules from tribal officials.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These rules are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not significant regulatory actions under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total annual cost for the proposed BSCP standards for any 1 year is estimated at $36 million. Because the proposed clay ceramics manufacturing standards would not regulate existing sources, the total annual cost is zero. Thus, today's proposed rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rules contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rules are not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions. The following two sections provide descriptions of the small business assessments for the two categories of sources addressed by today's proposal.

1. Brick and Structural Clay Products (BSCP) Manufacturing

For purposes of assessing the impacts of today's proposed rule on BSCP manufacturing sources that are small entities, a small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Small Business Administration size standards for BSCP manufacturing, by NAICS code, are shown in Table 7 of this preamble.

TABLE 7.—SMALL BUSINESS SIZE STANDARDS FOR BSCP MANUFACTURING

NAICS code	Size standard, number of employees
327121	500
327122	500
327123	500
327125	750
327993	750

In accordance with the RFA, we conducted an assessment of the proposed standards on small businesses within the BSCP manufacturing industry. Based on SBA NAICS-based size definitions and reported sales and employment data, the EPA identified 77 of the 90 companies owning BSCP manufacturing facilities as small businesses. Although small businesses represent 86 percent of the companies within the source category, they are expected to incur 20 percent of the total industry engineering compliance costs of $35.8 million. Additionally, 66 of the 77 small businesses will incur no costs. Under the proposed rule, the mean annual compliance cost for this source category, as a share of sales, for small businesses is 0.5 percent, and the median is 0.0 percent, with a range of 0.0 percent to 5.3 percent. We estimate that one small firm in this source category may experience an impact between 1 percent and 3 percent of sales, and 9 percent of small businesses (or eight firms) may experience an impact greater than 3 percent of sales.

We also conducted an economic impact analysis that accounted for firm behavior to provide an estimate of the facility and market impacts of the proposed rule. The analysis projected that of the 189 facilities in this source category, two facilities are at risk of closure. Neither of these facilities is owned by a small business. The median compliance cost is below 1 percent of sales for both small and large firms affected by the proposed rule (0.0 and 0.1 percent for small and large firms, respectively).

Fifteen new BSCP manufacturing sources are projected to be constructed during the five years after promulgation of the rule. Industry compliance costs associated with these sources are anticipated to be less than 0.5 percent of the BSCP manufacturing industry's value of shipments. According to the new source economic impact analysis, three to six of these new sources may be delayed in coming on-line due to the compliance costs they would face. We cannot determine with certainty whether these new sources will be built by large or small companies. Regardless, impacts at the company level are not expected to be significant for a substantial number of small entities.

2. Clay Ceramics Manufacturing

For purposes of assessing the impacts of today's proposed rule on clay ceramics manufacturing sources that are small entities, a small entity is defined as: (1) A small business according to SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Small Business Administration size standards for clay ceramics manufacturing, by NAICS code, are shown in Table 8 of this preamble.

TABLE 8.—SMALL BUSINESS SIZE STANDARDS FOR CLAY CERAMICS MANUFACTURING

NAICS code	Size standard, number of employees
326191	500
327111	750
327112	500
327122	500
327123	500
327125	750
335121	500
421220	100
421320	100

Based on SBA NAICS-based size definitions and reported sales and employment data, the EPA identified 13 of the 29 companies owning clay ceramics manufacturing facilities as small businesses. Because the proposed rule does not include emissions limits or other requirements for existing kilns in the clay ceramics manufacturing source category, large or small, a firm's existing kilns will not be impacted by the proposed rule. One new ceramic tile manufacturing source and one new sanitaryware manufacturing source are projected to be constructed in the first five years following promulgation of the rule. Industry compliance costs associated with these sources are expected to be less than 0.1 percent of industry value of shipments for each of these industry segments. The share of costs to sales generated from the output produced by the new ceramic tile manufacturing source is expected to be less than 1.5 percent. No level of cost-to-sales for the new sanitaryware manufacturing source could be developed due to the diversity of product types produced. Thus, new clay ceramics manufacturing sources are expected to face positive compliance costs; however, we cannot determine with certainty whether these sources will be built by large or small companies. Regardless, impacts at the company level are not expected to be significant for a substantial number of small entities.

3. RFA Certification

In summary, this action will regulate two source categories that include 90 small business companies out of 119 total companies that own BSCP and clay ceramics manufacturing facilities. The mean annual compliance cost for the BSCP manufacturing and clay ceramics manufacturing source categories, as a share of sales, for small businesses is 0.0 percent, and the median is 0.0 percent, with a range of 0.0 percent to 5.3 percent. Seventy-nine of the 90 small businesses will incur no costs. One small firm is projected to have compliance costs between 1 and 3 percent of their sales, and eight small firms are projected to have cost-to-sales ratios greater than 3 percent. No facilities owned by affected small firms are expected to close after implementation of this action. Industry compliance costs associated with the 17 new BSCP and clay ceramics manufacturing sources projected to be constructed during the five years after promulgation of this action are anticipated to be less than 0.5 percent of each industry's value of shipments.

After considering the economic impacts of today's proposed rule on small entities in these two source categories, I certify that this action will not have a significant impact on a substantial number of small entities. Although the proposed rule will not have a significant economic impact on a substantial number of small entities, we have nonetheless worked aggressively to minimize the impact of the proposed rule on small entities, consistent with our obligations under the CAA. For the BSCP manufacturing source category, we exercised flexibility in minimizing impacts on small entities through subcategorization of existing tunnel kilns by size, which still benefits the environment by reducing emissions from the larger kilns. Input from small entities within the BSCP manufacturing source category was solicited during the data-gathering phase of the rulemaking process.

In addition, for the BSCP manufacturing source category, we contacted the small entities estimated to

incur impacts in excess of 1 percent of sales to explain the proposal's regulatory approach, as well as a potential alternative to installing an APCD. Facilities with tunnel kilns operating at or near 10 tph could accept a permit condition that restricts kiln production to less than 10 tph and, therefore, places the kiln in the subcategory unaffected by the standards for existing kilns.

For both the BSCP manufacturing and clay ceramics manufacturing source categories, we provided flexibility by offering a choice of compliance options. Compliance options include mass emission limits or percent reduction limits for HF and HCl. Compliance with the proposed emission limits can be achieved through use of a DIFF, DLS/FF, WS, or equivalent control device. The various control device options provide an opportunity to determine the most suitable and cost-effective control option for a kiln given the specifics of the facility site. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

The information collection requirements in the proposed rules will be submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document for each of the proposed rules (ICR No. 2022.01 for BSCP manufacturing and ICR No. 2023.01 for clay ceramics manufacturing), and a copy of either document may be obtained from Sandy Farmer, by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; by e-mail at farmer.sandy@epa.gov; or by calling (202) 260–2740. You may also download a copy off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

The proposed rules would not require any notifications or reports beyond those required by the NESHAP General Provisions. The recordkeeping requirements require only the specific information needed to assure compliance.

The annual monitoring, reporting, and recordkeeping burden for the collection of information required by the proposed BSCP manufacturing rule (averaged over the first 3 years after the effective date of the final rule) is estimated to be 7,273 labor hours per year at a total annual labor cost of $334,000. This burden estimate includes a one-time submission of an OM&M plan; one-time submission of a SSMP, with immediate reports for any event when the procedures in the plan were not followed; semiannual compliance reports; maintenance inspections; notifications; and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $217,500, with operation and maintenance costs of $16,900/yr.

The annual monitoring, reporting, and recordkeeping burden for the collection of information required by the proposed clay ceramics manufacturing rule (averaged over the first 3 years after the effective date of the final rule) is estimated to be 238 labor hours per year at a total annual labor cost of $10,900. This burden estimate includes a one-time submission of an OM&M plan; one-time submission of a SSMP, with immediate reports for any event when the procedures in the plan were not followed; semiannual compliance reports; maintenance inspections; notifications; and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $4,300, with operation and maintenance costs of $400/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on either ICR to the Director, Office of Environmental Information, Collection Strategies Division (2822); U.S. EPA; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; 725 17th Street NW.; Washington, DC 20503; marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 22, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by August 21, 2002. The final rulemaking action will respond to any OMB or public comments on the information collection requirements contained in these proposals.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rules involve technical standards. The EPA proposes in these rules to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 4, 5, 26, and 26A of 40 CFR part 60, appendix A. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA

methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, and 2G. The search and review results have been documented and are in the dockets for the proposed rules.

The search for emission measurement procedures identified 14 voluntary consensus standards potentially applicable to the proposed rules. The EPA determined that 11 of these 14 standards were impractical alternatives to EPA test methods for the purposes of the proposed rules. Therefore, the EPA does not propose to adopt these standards today. The reasons for this determination for the 11 standards are discussed in the dockets for the proposed rules.

The following three of the 14 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the proposed rules because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 1 (and possibly 2); ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; and an ASTM impinger method for measuring HCl. While we are not proposing to include these three voluntary consensus standards in today's proposed rules, the EPA will consider the standards when final.

The EPA takes comment on the compliance demonstration requirements in the proposed rules and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commentors should also explain why the proposed rules should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A was used).

Table 3 of the proposed BSCP rule and Table 3 of the proposed clay ceramics rule list the EPA testing methods included in the proposed rules. Under § 63.7(f), a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 63.

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 17, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart JJJJJ to read as follows:

Subpart JJJJJ—National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing

Sec.

What This Subpart Covers

63.8380 What is the purpose of this subpart?
63.8385 Am I subject to this subpart?
63.8390 What parts of my plant does this subpart cover?
63.8395 When do I have to comply with this subpart?

Emission Limitations

63.8405 What emission limitations must I meet?
63.8410 What are my options for meeting the emission limitations?

General Compliance Requirements

63.8420 What are my general requirements for complying with this subpart?
63.8425 What do I need to know about operation, maintenance, and monitoring plans?

Testing and Initial Compliance Requirements

63.8435 By what date must I conduct performance tests?
63.8440 When must I conduct subsequent performance tests?
63.8445 How do I conduct performance tests and establish operating limits?
63.8450 What are my monitoring installation, operation, and maintenance requirements?
63.8455 How do I demonstrate initial compliance with the emission limitations?

Continuous Compliance Requirements

63.8465 How do I monitor and collect data to demonstrate continuous compliance?
63.8470 How do I demonstrate continuous compliance with the emission limitations?

Notifications, Reports, and Records

63.8480 What notifications must I submit and when?
63.8485 What reports must I submit and when?
63.8490 What records must I keep?
63.8495 In what form and how long must I keep my records?

Other Requirements and Information

63.8505 What parts of the General Provisions apply to me?
63.8510 Who implements and enforces this subpart?
63.8515 What definitions apply to this subpart?

Tables to Subpart JJJJJ of Part 63

Table 1 to Subpart JJJJJ of Part 63—Emission Limits
Table 2 to Subpart JJJJJ of Part 63—Operating Limits
Table 3 to Subpart JJJJJ of Part 63—Requirements for

Performance Tests

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Subpart JJJJJ—National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing

What This Subpart Covers

§ 63.8380 What is the purpose of this subpart?

This subpart establishes national emission limitations for hazardous air pollutants (HAP) emitted from brick and structural clay products (BSCP) manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.8385 Am I subject to this subpart?

You are subject to this subpart if you own or operate a BSCP manufacturing facility that is, is located at, or is part of, a major source of HAP emissions according to the criteria in paragraphs (a) and (b) of this section.

(a) A BSCP manufacturing facility is a plant site that manufactures brick (face brick, structural brick, brick pavers, other brick) and/or structural clay products (clay pipe; roof tile; extruded floor and wall tile; or other extruded, dimensional clay products). Brick and structural clay products manufacturing facilities typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes.

(b) A major source of HAP emissions is any stationary source or group of

stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.8390 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at a BSCP manufacturing facility.

(b) The existing affected source is an existing tunnel kiln with a design capacity equal to or greater than 9.07 megagrams per hour (Mg/hr) (10 tons per hour (tph)) of fired product according to paragraphs (b)(1) through (3) of this section.

(1) For existing tunnel kilns that do not have sawdust dryers, the kiln exhaust process stream (*i.e.*, the only process stream) is subject to the requirements of this subpart.

(2) For existing tunnel kilns that duct exhaust to sawdust dryers prior to July 22, 2002, only the kiln exhaust process stream (i.e., the process stream that exhausts directly to the atmosphere or to an air pollution control device (APCD)) is subject to the requirements of this subpart. As such, any process stream that is ducted to a sawdust dryer is not subject to these requirements.

(3) For existing tunnel kilns that first duct exhaust to sawdust dryers on or after July 22, 2002, all of the exhaust (i.e., all process streams) is subject to the requirements of this subpart.

(c) An existing tunnel kiln whose design capacity is increased such that it is equal to or greater than 9.07 Mg/hr (10 tph) of fired product is subject to the requirements of this subpart.

(d) An existing tunnel kiln with a federally enforceable permit condition that restricts kiln operation to less than 9.07 Mg/hr (10 tph) of fired product on a 30-day rolling average basis is not subject to the requirements of this subpart.

(e) Each new or reconstructed tunnel kiln is an affected source regardless of design capacity. All process streams from each new or reconstructed tunnel kiln are subject to the requirements of this subpart.

(f) Kilns that are used exclusively for research and development (R&D) and are not used to manufacture products for commercial sale are not subject to the requirements of this subpart.

(g) Kilns that are used exclusively for setting glazes on previously fired products are not subject to the requirements of this subpart.

(h) A source is a new affected source if construction of the affected source began after July 22, 2002, and you met the applicability criteria at the time you began construction.

(i) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(j) An affected source is existing if it is not new or reconstructed.

§ 63.8395 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If the initial startup of your affected source is before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the emission limitations for new and reconstructed sources in this subpart no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(2) If the initial startup of your affected source is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the emission limitations for new and reconstructed sources in this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations for existing sources no later than [3 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If you have an existing area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart according to paragraphs (c)(1) and (2) of this section.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the existing facility must be in compliance with this subpart by 3 years after the date the area source becomes a major source.

(d) If you have a new area source (i.e., an area source for which construction or reconstruction was commenced after July 22, 2002) that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(e) You must meet the notification requirements in § 63.8480 according to the schedule in § 63.8480 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations

§ 63.8405 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

§ 63.8410 What are my options for meeting the emission limitations?

To meet the emission limitations in Tables 1 and 2 to this subpart, you must use one or more of the options listed in paragraphs (a) and (b) of this section.

(a) *Emissions control system.* Use an emissions capture and collection system and an APCD and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart, and that the capture and collection system and APCD meet the applicable operating limits in Table 2 to this subpart.

(b) *Process changes.* Use low-HAP raw materials or implement manufacturing process changes and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart.

General Compliance Requirements

§ 63.8420 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source in § 63.8395 and the date upon which continuous monitoring systems (CMS) (e.g., continuous parameter monitoring systems) have been installed and verified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) You must prepare and implement a written operation, maintenance, and monitoring (OM&M) plan according to the requirements in § 63.8425.

(e) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 7 to this subpart.

§ 63.8425 What do I need to know about operation, maintenance, and monitoring plans?

(a) You must prepare, implement, and revise as necessary an OM&M plan that includes the information in paragraph (b) of this section. Your OM&M plan must be available for inspection by the permitting authority upon request.

(b) Your OM&M plan must include, as a minimum, the information in paragraphs (b)(1) through (12) of this section.

(1) Each process and APCD to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(3) The limits for each parameter that represent continuous compliance with the emission limitations in § 63.8405. The limits must be based on values of the monitored parameters recorded during performance tests.

(4) Procedures for the proper operation and routine and long-term maintenance of each process unit and APCD, including a maintenance and inspection schedule that is consistent with the manufacturer's recommendations.

(5) Procedures for installing the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last APCD).

(6) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(7) Continuous monitoring system performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(8) Procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8450 and 63.8(c)(1), (3), (4)(ii), (7), and (8).

(9) Continuous monitoring system data quality assurance procedures consistent with the requirements in § 63.8(d).

(10) Continuous monitoring system recordkeeping and reporting procedures consistent with the requirements in § 63.10(c), (e)(1), and (e)(2)(i).

(11) Procedures for responding to operating parameter deviations, including the procedures in paragraphs (b)(11)(i) through (iii) of this section.

(i) Procedures for determining the cause of the operating parameter deviation.

(ii) Actions for correcting the deviation and returning the operating parameters to the allowable limits.

(iii) Procedures for recording the times that the deviation began and ended, and corrective actions were initiated and completed.

(12) Procedures for keeping records to document compliance.

(c) Changes to the operating limits in your OM&M plan require a new performance test. If you are revising an operating limit parameter value, you must meet the requirements in paragraphs (c)(1) and (2) of this section.

(1) Submit a notification of performance test to the Administrator as specified in § 63.7(b).

(2) After completing the performance tests to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h).

(d) If you are revising the inspection and maintenance procedures in your OM&M plan, you do not need to conduct a new performance test.

Testing and Initial Compliance Requirements

§ 63.8435 By what date must I conduct performance tests?

You must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8395 and according to the provisions in § 63.7(a)(2).

§ 63.8440 When must I conduct subsequent performance tests?

(a) You must conduct a performance test before renewing your 40 CFR part 70 operating permit or at least every 5 years following the initial performance test.

(b) You must conduct a performance test when you want to change the parameter value for any operating limit specified in your OM&M plan.

§ 63.8445 How do I conduct performance tests and establish operating limits?

(a) You must conduct each performance test in Table 3 to this subpart that applies to you.

(b) Before conducting the performance test, you must install and calibrate all monitoring equipment.

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 3 to this subpart.

(d) You must test while operating at the maximum production level.

(e) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(f) You must conduct at least three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(g) You must use the data gathered during the performance test and the equations in paragraphs (g)(1) and (2) of this section to determine compliance with the emission limitations.

(1) To determine compliance with the production-based hydrogen fluoride (HF), hydrogen chloride (HCl), and particulate matter (PM) emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of production for each test run using Equation 1 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 1)}$$

Where:

MP = mass per unit of production, kilograms (pounds) of pollutant per megagram (ton) of fired product

ER = mass emission rate of pollutant (HF, HCl, or PM) during each performance test run, kilograms (pounds) per hour

P = production rate during each performance test run, megagrams (tons) of fired product per hour.

(2) To determine compliance with any of the emission limits based on percent reduction across an emissions control system in Table 1 to this subpart, you must calculate the percent reduction for each test run using Equation 2 of this section:

$$PR = \frac{ER_i - ER_o}{ER_i}(100) \qquad \text{(Eq. 2)}$$

Where:

PR = percent reduction, percent

ER_i = mass emission rate of specific HAP (HF or HCl) entering the APCD, kilograms (pounds) per hour

ER_o = mass emission rate of specific HAP (HF or HCl) exiting the APCD, kilograms (pounds) per hour.

(h) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you as specified in Table 3 to this subpart.

(i) For each affected kiln that is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means

of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (i)(1) and (2) of this section.

(1) Submit a request for approval of alternative monitoring procedures to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (i)(1)(i) through (iv) of this section.

(i) A description of the alternative APCD or process changes.

(ii) The type of monitoring device or procedure that will be used.

(iii) The operating parameters that will be monitored.

(iv) The frequency that the operating parameter values will be determined and recorded to establish continuous compliance with the operating limits.

(2) Establish site-specific operating limits during the performance test based on the information included in the approved alternative monitoring procedures request and, as applicable, as specified in Table 3 to this subpart.

§ 63.8450 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CMS according to your OM&M plan and the requirements in paragraphs (a)(1) through (5) of this section.

(1) Conduct a performance evaluation of each CMS according to your OM&M plan.

(2) The CMS must complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, or out-of-control periods).

(3) Determine and record the 3-hour block averages of all recorded readings, calculated after every 3 hours of operation as the average of the previous 3 operating hours. To calculate the average for each 3-hour average period, you must have at least 75 percent of the recorded readings for that period (not including startup, shutdown, malfunction, or out-of-control periods).

(4) Record the results of each inspection, calibration, and validation check.

(5) At all times, maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(b) For each temperature monitoring device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (b)(1) through (7) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) Use a temperature sensor with a minimum measurement sensitivity of 2.2°C (4.0°F) or 0.75 percent of the temperature value, whichever is larger.

(3) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(4) If a chart recorder is used, it must have a sensitivity in the minor division of at least 11.1°C (20°F).

(5) At least semiannually, perform an electronic calibration according to the procedures in the manufacturer's owners manual. Following the electronic calibration, conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7oC (30.1oF) of the process temperature sensor's reading.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating temperature range, conduct calibration and validation checks or install a new temperature sensor.

(7) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) For each liquid flow measurement device (e.g., to determine dry lime scrubber/fabric filter water injection rate or wet scrubber liquid flowrate), you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (c)(1) through (3) of this section.

(1) Locate the flow sensor in ■ position that provides a representative flowrate.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the liquid flowrate.

(3) At least semiannually, conduct a flow sensor calibration check.

(d) For each pressure measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (d)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum measurement sensitivity of 1 percent of the pressure range.

(4) Check the pressure tap daily to ensure that it is not plugged.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating pressure range, conduct calibration checks or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(e) For each pH measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (e)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(f) For each bag leak detection system, you must meet the requirements in paragraphs (f)(1) through (11) of this section.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the "Fabric Filter Bag Leak Detection Guidance," (EPA–454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (MD–19), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Continuous Emission Monitoring. Other types of bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide an output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the "Fabric Filter Bag Leak Detection Guidance."

(10) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted except as detailed in your OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition. Record each adjustment.

(11) Record the results of each inspection, calibration, and validation check.

(g) For each lime or chemical feed rate measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (g)(1) and (2) of this section.

(1) Locate the measurement device in a position that provides a representative feed rate measurement.

(2) At least semiannually, conduct a calibration check.

(h) Requests for approval of alternate monitoring procedures must meet the requirements in §§ 63.8445(i) and 63.8(f).

§ 63.8455 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 4 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8445 and Table 3 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8480(e).

Continuous Compliance Requirements

§ 63.8465 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for periods of monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities for purposes of calculating data averages. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. You must use all the valid data collected during all other periods in assessing compliance of the APCD and associated control system. Any averaging period for which you do not have valid monitoring data and such data are required constitutes a deviation of the monitoring requirements.

§ 63.8470 How do I demonstrate continuous compliance with the emission limitations?

(a) You must demonstrate continuous compliance with each emission limit and operating limit in Tables 1 and 2 to this subpart that applies to you according to the methods specified in Table 5 to this subpart.

(b) For each affected kiln that is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must demonstrate continuous compliance with each emission limit in Table 1 to this subpart, and each operating limit established as required in § 63.8445(i)(2) according to the methods specified in your approved alternative monitoring procedures request, as described in §§ 63.8445(i)(1) and 63.8(f).

(c) You must report each instance in which you did not meet each emission limit and each operating limit in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8485.

(d) During periods of startup, shutdown, and malfunction, you must operate according to your SSMP.

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to your SSMP and your OM&M plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.8480 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9 (b) through (e), (g)(1), and (h) that apply to you, by the dates specified.

(b) As specified in § 63.9(b)(2) and (3), if you start up your affected source before the [DATE OF PUBLICATION OF THE FINAL RULE IN THE Federal Register], you must submit an Initial Notification not later than 120 calendar days after [DATE OF PUBLICATION OF THE FINAL RULE IN THE Federal Register].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE Federal Register], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test as specified in Table 3 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) and (2) of this section.

(1) For each compliance demonstration that includes a

performance test conducted according to the requirements in Table 3 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 63.10(d)(2).

(2) In addition to the requirements in § 63.9(h)(2)(i), you must include the information in paragraphs (e)(2)(i) and (ii) of this section in your Notification of Compliance Status.

(i) The operating limit parameter values established for each affected source with supporting documentation and a description of the procedure used to establish the values.

(ii) For each APCD that includes a fabric filter, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.8450(f).

§ 63.8485 What reports must I submit and when?

(a) You must submit each report in Table 6 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 6 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8395 and ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP and OM&M plan, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limits or operating limits) that apply to you, the compliance report must contain a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, the compliance report must contain a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from an emission limitation (emission limit or operating limit) occurring at an affected source where you are using a CMS to comply with the emission limitations in this subpart, you must include the information in paragraphs (c)(1) through (4) and paragraphs (e)(1) through (13) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) The date and time that each malfunction started and stopped.

(3) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(4) The date, time and duration that each CMS was out-of-control, including the information in your OM&M plan.

(5) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(6) A description of corrective action taken in response to a deviation.

(7) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(9) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CMS.

(12) The date of the latest CMS certification or audit.

(13) A description of any changes in CMS, processes, or control equipment since the last reporting period.

(f) If you have obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 6 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report

deviations from permit requirements to the permit authority.

§ 63.8490 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in Table 5 to this subpart to show continuous compliance with each emission limitation that applies to you.

(c) You must also maintain the records listed in paragraphs (c)(1) through (6) of this section.

(1) For each bag leak detection system, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

(2) For each deviation of an operating limit parameter value, the date, time, and duration of the deviation, a brief explanation of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction.

(3) For each affected source, records of production rates on a fired-product basis.

(4) Records for any approved alternative monitoring or test procedures.

(5) Records of maintenance and inspections performed on the APCD.

(6) Current copies of your SSMP and OM&M plan, including any revisions, with records documenting conformance.

§ 63.8495 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8505 What parts of the General Provisions apply to me?

Table 7 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.8510 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.8385 and 63.8390, the compliance date requirements in § 63.8395, and the non-opacity emission limitations in § 63.8405.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8515 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air.

Bag leak detection system means an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

Brick and structural clay products (BSCP) manufacturing facility means a plant site that manufactures brick (face brick, structural brick, brick pavers, other brick) and/or structural clay products (clay pipe; roof tile; extruded floor and wall tile; or other extruded, dimensional clay products). Brick and structural clay products manufacturing facilities typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Dry lime injection fabric filter (DIFF) means an air pollution control device that includes continuous injection of hydrated lime or other sorbent into a duct or reaction chamber followed by a fabric filter.

Dry lime scrubber/fabric filter (DLS/FF) means an air pollution control device that includes continuous injection of humidified hydrated lime or other sorbent into a reaction chamber followed by a fabric filter. These systems typically include recirculation of some of the sorbent.

Emission limitation means any emission limit or operating limit.

Fabric filter means an air pollution control device used to capture PM by filtering a gas stream through filter media; also known as a baghouse.

Kiln exhaust process stream means the portion of the exhaust from a tunnel kiln that exhausts directly to the atmosphere (or to an air pollution control device), rather than to a sawdust dryer.

Particulate matter (PM) means, for purposes of this subpart, emissions of PM that serve as a measure of total particulate emissions, as measured by Method 5 (40 CFR part 60, appendix A),

and as a surrogate for metal HAP contained in the particulates including, but not limited to, antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Research and development kiln means any kiln whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale.

Responsible official means responsible official as defined in 40 CFR 70.2.

Tunnel kiln means any continuous kiln that is used to fire BSCP. Some tunnel kilns have two process streams, including: a process stream that exhausts directly to the atmosphere or to an air pollution control device, and a process stream in which the kiln exhaust is ducted to a sawdust dryer where it is used to dry sawdust before being emitted to the atmosphere.

Tunnel kiln design capacity means the maximum amount of brick that a kiln is designed to produce in 1 hour. If a kiln is modified to increase the capacity, the design capacity is considered to be the capacity following modifications.

Wet scrubber (WS) means an *air pollution control device* that uses water, which may include caustic additives or other chemicals, as the sorbent. Wet scrubbers may use any of various design mechanisms to increase the contact between exhaust gases and the sorbent.

As stated in § 63.8405, you must meet each emission limit in the following table that applies to you:

TABLE 1 TO SUBPART JJJJJ OF PART 63.—EMISSION LIMITS

For each . . .	You must meet the following emission limits . . .	Or you must comply with the following . . .
1. Existing tunnel kiln with a design capacity of ≥9.07 Mg/hr (10 tph) of fired product, excluding any process stream that is ducted to a sawdust dryer prior to July 22, 2002; or including any process stream that exhausts directly to the atmosphere or to an APCD and any process stream that is first ducted to a sawdust dryer on or after July 22, 2002.	a. HF emissions must not exceed 0.014 kilograms per megagram (kg/Mg) (0.027 pounds per ton (lb/ton)) of fired product.	Reduce uncontrolled HF emissions by at least 95 percent.
	b. HCl emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product.	Reduce uncontrolled HCl emissions by at least 90 percent.
	c. PM emissions must not exceed 0.06 kg/Mg (0.12 lb/ton) of fired product.	Not applicable.
2. New or reconstructed tunnel kiln, regardless of design capacity and including all process streams.	a. HF emissions must not exceed 0.014 kg/Mg (0.027 lb/ton) of fired product.	Reduce uncontrolled HF emissions by at least 95 percent.
	b. HCl emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product.	Reduce uncontrolled HCl emissions by at least 90 percent.
	c. PM emissions must not exceed 0.060 kg/Mg (0.12 lb/ton) of fired product.	Not applicable.

As stated in § 63.8405, you must meet each operating limit in the following table that applies to you:

TABLE 2 TO SUBPART JJJJJ OF PART 63.—OPERATING LIMITS

For each . . .	You must . . .
1. Kiln equipped with a dry lime injection fabric filter (DIFF) or dry lime scrubber/fabric filter (DLS/FF).	a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; and b. Maintain the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature, plus 14°C (25°F), established during the performance test; and c. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting at or above the level established during the performance test for continuous injection systems.
2. Kiln equipped with a DLS/FF.	Maintain the average water injection rate for each 3-hour block period at or above the level established during the performance test.
3. Kiln equipped with a wet scrubber (WS).	a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and

TABLE 2 TO SUBPART JJJJJ OF PART 63.—OPERATING LIMITS—Continued

For each . . .	You must . . .
	c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and d. If chemicals are added to the scrubber water, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the performance test.

As stated in § 63.8445, you must conduct each performance test in the following table that applies to you:

TABLE 3 TO SUBPART JJJJJ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Kiln	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources. If you choose to meet the percent emission reduction requirements for HF or HCl, a sampling site must also be located at the APCD inlet.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A.	You may use Method 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A.
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A.	You may use 3A or 3B of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A.	
	e. Measure HF and HCl emissions.	Method 26A of 40 CFR part 60, appendix A.	Conduct the test while operating at the maximum production level. You may use Method 26 of 40 CFR part 60, appendix A, as an alternative to using Method 26A of 40 CFR part 60, appendix A, when no acid PM (*e.g.*, HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present.
	f. Measure PM emissions ..	Method 5 of 40 CFR part 60, appendix A.	Conduct the test while operating at the maximum production level.
2. Kiln that is complying with production-based emission limits.	Determine the production rate during each test run in order to determine compliance with production-based emission limits.	Production data collected during the performance tests (e.g., # of pushes per hour, # of bricks per kiln car, weight of a typical fired brick).	You must measure and record the production rate, on a fired-product basis, of the affected source for each of the three test runs.
3. Kiln equipped with a DIFF or DLS/FF.	a. Establish the operating limit for the average fabric filter inlet temperature.	Data from the temperature measurement device during the performance test.	You must continuously measure the temperature at the inlet to the fabric filter, determine and record the block average temperatures for the three test runs, and determine and record the 3-hour block average of the recorded temperature measurements for the three test runs.
	b. Establish the operating limit for the lime feeder setting.	Data from the lime feeder during the performance test.	For continuous lime injection systems, you must ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test and record the feeder setting for the three test runs. If the feed rate setting varies during the three test runs, determine and record the average feed rate from the three test runs.
4. Kiln equipped with a DLS/FF.	Establish the operating limit for the average water injection rate.	Data from the water injection rate measurement device during the performance test.	You must continuously measure the water injection rate, determine and record the block average water injection rate values for the three test runs, and determine and record the 3-hour block average of the recorded water injection rate measurements for the three test runs.

TABLE 3 TO SUBPART JJJJJ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
5. Kiln equipped with a WS	a. Establish the operating limit for the average scrubber pressure drop.	Data from the pressure drop measurement device during the performance test.	You must continuously measure the scrubber pressure drop, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs.
	b. Establish the operating limit for the average scrubber liquid pH.	Data from the pH measurement device during the performance test.	You must continuously measure the scrubber liquid pH, determine and record the block average pH values for the three test runs, and determine and record the 3-hour block average of the recorded pH measurements for the three test runs.
	c. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the performance test.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs.
6. Kiln equipped with a WS that includes chemical addition to the water.	Establish the operating limit for the average scrubber chemical feed rate.	Data from the chemical feed rate measurement device during the performance test.	You must continuously measure the scrubber chemical feed rate, determine and record the block average chemical feed rate values for the three test runs, and determine and record the 3-hour block average of the recorded chemical feed rate measurements for the three test runs.

As stated in §63.8455, you must demonstrate initial compliance with each emission limitation that applies to you according to the following table:

TABLE 4 TO SUBPART JJJJJ OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

For each . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. Tunnel kiln	a. HF emissions must not exceed 0.014 kg/Mg (0.027 lb/ton) of fired product; or uncontrolled HF emissions must be reduced by at least 95 percent; and	i. The HF emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in §63.8445(g)(1), do not exceed 0.014 kg/Mg (0.027 lb/ton); or Uncontrolled HF measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test are reduced by at least be reduced by at 95 percent, according to the calculations least in §63.8445(g)(2); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HF emissions did not exceed 0.014 kg/Mg (0.027 lb/ton) or uncontrolled HF emissions were reduced by at least 95 percent.
	b. HCl emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product; or uncontrolled HC1 emissions must be reduced by at least 90 percent; and	The HC1 emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in 63.8445(g)(1), do not exceed 0.019 kg/Mg (0.037 lb/ton); or uncontrolled HC1 emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test are reduced by at least 90 percent, according to the calculations in §63.8445(g)(2); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HC1 emissions did not exceed 0.019 kg/Mg (0.037 lb/ton) or uncontrolled HC1 emissions were reduced by at least 90 percent.
	c. PM emissions must not exceed 0.06 kg/Mg (0.12 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in §63.8445(g)(1), do not exceed 0.06 kg/Mg (0.12 lb/ton); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.06 kg/Mg (0.12 lb/ton).

As stated in §63.8470, you must demonstrate continuous compliance with each emission limit and operating limit that applies to you according to the following table:

TABLE 5 TO SUBPART JJJJJ OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND OPERATING LIMITS

For each . . .	For the following emission limits and operating limits . . .	You must demonstrate continuous compliance by . . .
1. Kiln equipped with a DIFF or DLS/FF.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 1 of Table 2 to this subpart for kilns equipped with DIFF or DLS/FF.	i. Initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action; and ii. Collecting the fabric filter inlet temperature data according to §63.8450(a); reducing the fabric filter inlet temperature data to 3-hour block averages according to §63.8450(a); maintaining the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature, plus 14°C (25°F), established during the performance test; and iii. Verifying that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions in accordance with your OM&M plan; recording the feeder setting once each shift of operation to verify that the feeder setting is being maintained at or above the level established during the performance test.
2. Kiln equipped with a DLS/FF	Each emission limit in Table 1 to this subpart and each operating limit in Item 2 of Table 2 to this subpart for kilns equipped with DLS/FF.	Collecting the water injection rate data according to §63.8450(a); reducing the water injection rate data to 3-hour block averages according to §63.8450(a); maintaining the average water injection rate for each 3-hour block period at or above the average water injection rate established during the performance test.
3. Kiln equipped with a WS	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 3 of Table 2 to this subpart for kilns equipped with WS.	i. Collecting the scrubber pressure drop data according to §63.8450(a); reducing the scrubber pressure drop data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and ii. Collecting the scrubber liquid pH data according to §63.8450(a); reducing the scrubber liquid pH data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and iii. Collecting the scrubber liquid flow rate data according to §63.8450(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and iv. If chemicals are added to the scrubber water, collecting the scrubber chemical feed rate data according to §63.8450(a); reducing the scrubber chemical feed rate data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber

As stated in §63.8485, you must submit each report that applies to you according to the following table:

TABLE 6 TO SUBPART JJJJJ OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit . . .	The report must contain . . .	You must submit the report . . .
1. A compliance report	a. If there are no deviations from any emission limitations (emission limit, operating limit) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period. If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, a statement that there were no periods during which the CMS was out- of-control during the reporting period.	Semiannually according to the requirements in § 63.8485(b)
	b. If you have a deviation from any emission limitation (emission limit, operating limit) during the reporting period, the report must contain the information in § 63.8485(d) or (e). If there were periods during which the CMS was out-of-control, as specified in your OM&M plan, the report must contain the information in § 63.8485(e).	Semiannually according to the requirements in § 63.8485(b)
	c. If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i).	Semiannually according to the requirements in § 63.8485(b)
2. An immediate startup, shutdown, and malfunction report if you took actions during a startup, shutdown, or malfunction during the reporting period that are not consistent with your SSMP.	a. Actions taken for the event according to the requirements in § 63.10(d)(5)(ii).	By fax or telephone within 2 working days after starting actions inconsistent with the plan
	b. The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority

As stated in § 63.8505, you must comply with the General Provisions in §§ 63.1–63.15 that apply to you according to the following table:

TABLE 7 TO SUBPART JJJJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ

Citation	Subject	Brief Description	Applies to Subpart JJJJJ
§ 63.1	Applicability		Yes.
§ 63.2	Definitions		Yes.
§ 63.3	Units and Abbreviation		Yes.
§ 63.4	Prohibited Activities	Compliance date; circumvention, severability.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; Upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification		Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources.	Yes.

TABLE 7 TO SUBPART JJJJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ—Continued

Citation	Subject	Brief Description	Applies to Subpart JJJJJ
§63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§63.6(c)(3)–(4)	[Reserved].		
§63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§63.6(d)	[Reserved].		
§63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; requirements independently enforceable; information Administrator will use to determine if operations and maintenance requirements were met.	Yes.
§63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).		Yes.
§63.6(f)(1)	Compliance Except During SSM	You must comply with emissions standards at all times except during SSM.	Yes.
§63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§63.6(g)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§63.6(h)	Opacity/Visible Emission (VE) Standards		No, not applicable.
§63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§63.6(j)	Presidential Compliance Exemption	President may exempt source category	Yes.
§63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes.
§63.7(a)(3)	§114 Authority	Adminstrator may require a performance test under CAA §114 at any time.	Yes.
§63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	Yes.
§63.7(b)(2)	Notification of Rescheduling	Must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§63.7(c)	Quality Assurance (QA) Test Plan	Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§63.7(d)	Testing Facilities		Yes.
§63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions. Cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	No, §63.8445 specifies requirements. Yes.

TABLE 7 TO SUBPART JJJJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ—Continued

Citation	Subject	Brief Description	Applies to Subpart JJJJJ
63.7(e)(2)–(3)	Conditions for Conducting Performance Tests.	Must conduct according to subpart and EPA test methods unless Administrator approved alternative; must have at least three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes.
§63.7(f)	Alternative Test Method		Yes.
§63.7(g)	Performance Test Data Analysis		Yes.
§63.7(h)	Waiver of Test		Yes.
§63.8(a)(1)	Applicability of Monitoring Requirements		Yes.
§63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§63.8(a)(3)	[Reserved].		
§63.8(a)(4)	Monitoring with Flares		No, not applicable.
§63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring System.	Specific requirements for installing and reporting on monitoring systems.	Yes.
§63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintenance consistent with good air pollution control practices.	Yes.
§63.8(c)(1)(i)	Routine and Predictable SSM	Reporting requirements for SSM when action is described in SSMP.	Yes.
§63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSMP.	Yes.
§63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements.	Yes.
§63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements.	Yes.
§63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.		No, §63.8465 specifies requirements.
§63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.		No, not applicable.
§63.8(c)(6)	CMS Requirements		No, §63.8425 specifies requirements.
§63.8(c)(7)–(8)	CMS Requirements		No, §63.8425 specifies requirements.
§63.8(d)	CMS Quality Control		No, §63.8425 specifies requirements.
§63.8(e)	CMS Performance Evaluation		No, §63.8425 specifies requirements.
§63.8(f)(1)–5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§63.8(f)	Alternative to Relative Accuracy		No, not applicable.
§63.8(g)	Data Reduction		No, not applicable.

TABLE 7 TO SUBPART JJJJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ—Continued

Citation	Subject	Brief Description	Applies to Subpart JJJJJ
§ 63.9(a)	Notification Requirements		Yes.
§ 63.9(b)	Initial Notification		Yes.
§ 63.9(c)	Request for Compliance Extension		Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.		Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test		No, not applicable.
§ 63.9(g)(1)	Additional Notification When Using CMS		Yes.
§ 63.9(g)(2)–(3)	Additional Notification When Using CMS		No, not applicable.
§ 63.9(h)	Notification of Compliance Status		Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines		Yes.
§ 63.9(j)	Change in Previous Information		Yes.
§ 63.10(a)	Recordkeeping/Reporting		Yes.
§ 63.10(b)(1)	General Recordkeeping Requirements		Yes.
§ 63.10(b)(2)(1)–(v)	Records Related to Startup, Shutdown, and Malfunction.		Yes.
§ 63.10(b)(2)(vi)–(xii) and (xiv).	CMS Records		Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	No, not applicable.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1)–(15)	Records		No, §§ 63.8425 and 63.8490 specify requirements.
§ 63.10(d)(1) and (2)	General Reporting Requirements	Requirements for reporting	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations		No, not applicable.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension..	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.
§ 63.10(e)(1)–(3)	Additional CMS Reports		No, §§ 63.8425 and 63.8485 specify requirements.
§ 63.10(e)(4)	Reporting COMS data		No, not applicable.
§ 63.10(f)	Waiver for Recordkeeping/Reporting		Yes.
§ 63.11	Flares		No, not applicable.
§ 63.12	Delegation		Yes.
§ 63.13	Addresses		Yes.
§ 63.14	Incorporation by Reference		Yes.
§ 63.15	Availability of Information		Yes.

3. Part 63 is amended by adding subpart KKKKK to read as follows:

Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

Sec.

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Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

What This Subpart Covers

§ 63.8530 What is the purpose of this subpart?

This subpart establishes national emission limitations for hazardous air pollutants (HAP) emitted from clay ceramics manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.8535 Am I subject to this subpart?

You are subject to this subpart if you own or operate a clay ceramics manufacturing facility that is, is located at, or is part of a major source of HAP emissions according to the criteria in paragraphs (a) and (b) of this section.

(a) A clay ceramics manufacturing facility is a plant site that manufactures pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware (*e.g.*, sinks and toilets). Clay ceramics manufacturing facilities typically process clay, shale, and various additives; form the processed materials into tile or sanitaryware shapes; and dry and fire the ceramic products. Glazes are applied to many tile and sanitaryware products.

(b) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.8540 What parts of my plant does this subpart cover?

(a) This subpart applies to each new or reconstructed affected source at a clay ceramics manufacturing facility.

(b) Each new or reconstructed tunnel kiln and roller kiln is an affected source.

(c) Kilns that are used exclusively for research and development (R&D) and are not used to manufacture products for commercial sale are not subject to the requirements of this subpart.

(d) Kilns that are used exclusively for setting glazes on previously fired products or for refiring are not subject to the requirements of this subpart.

(e) A source is a new affected source if construction of the affected source began after July 22, 2002, and you met the applicability criteria at the time you began construction.

(f) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

§ 63.8545 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If the initial startup of your affected source is before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the emission limitations for new and reconstructed sources in this subpart no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(2) If the initial startup of your affected source is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the emission limitations for new and reconstructed sources in this subpart upon initial startup of your affected source.

(b) If you have an existing area source that increases its emissions or its potential to emit such that it becomes a major source of HAP by adding a new affected source or by reconstructing, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(c) If you have a new area source (i.e., an area source for which construction or reconstruction was commenced after July 22, 2002) that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(d) You must meet the notification requirements in § 63.8630 according to the schedule in § 63.8630 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations

§ 63.8555 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

§ 63.8560 What are my options for meeting the emission limitations?

To meet the emission limitations in Tables 1 and 2 to this subpart, you must use one or more of the options listed in paragraphs (a) and (b) of this section.

(a) *Emissions control system.* Use an emissions capture and collection system and an air pollution control device (APCD) and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart, and that the capture and collection system and APCD meet the applicable operating limits in Table 2 to this subpart.

(b) *Process changes.* Use low-HAP raw materials or implement manufacturing process changes and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart.

General Compliance Requirements

§ 63.8570 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source in § 63.8545 and the date upon which continuous monitoring systems (CMS) (*e.g.*, continuous parameter monitoring systems) have been installed and verified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) You must prepare and implement a written operation, maintenance, and monitoring (OM&M) plan according to the requirements in § 63.8575.

(e) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 7 to this subpart.

§ 63.8575 What do I need to know about operation, maintenance, and monitoring plans?

(a) You must prepare, implement, and revise as necessary an OM&M plan that includes the information in paragraph (b) of this section. Your OM&M plan must be available for inspection by the permitting authority upon request.

(b) Your OM&M plan must include, as a minimum, the information in paragraphs (b)(1) through (12) of this section.

(1) Each process and APCD to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(3) The limits for each parameter that represent continuous compliance with the emission limitations in § 63.8555. The limits must be based on values of the monitored parameters recorded during performance tests.

(4) Procedures for the proper operation and routine and long-term maintenance of each process unit and APCD, including a maintenance and inspection schedule that is consistent with the manufacturer's recommendations.

(5) Procedures for installing the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last APCD).

(6) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(7) Continuous monitoring system performance evaluation procedures and acceptance criteria (e.g., calibrations).

(8) Procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8600 and 63.8(c)(1), (3), (4)(ii), (7), and (8).

(9) Continuous monitoring system data quality assurance procedures consistent with the requirements in § 63.8(d).

(10) Continuous monitoring system recordkeeping and reporting procedures consistent with the requirements in § 63.10(c), (e)(1), and (e)(2)(i).

(11) Procedures for responding to operating parameter deviations, including the procedures in paragraphs (b)(11)(i) through (iii) of this section.

(i) Procedures for determining the cause of the operating parameter deviation.

(ii) Actions for correcting the deviation and returning the operating parameters to the allowable limits.

(iii) Procedures for recording the times that the deviation began and ended, and corrective actions were initiated and completed.

(12) Procedures for keeping records to document compliance.

(c) Changes to the operating limits in your OM&M plan require a new performance test. If you are revising an operating limit parameter value, you must meet the requirements in paragraphs (c)(1) and (2) of this section.

(1) Submit a notification of performance test to the Administrator as specified in § 63.7(b).

(2) After completing the performance test to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h).

(d) If you are revising the inspection and maintenance procedures in your OM&M plan, you do not need to conduct a new performance test.

Testing and Initial Compliance Requirements

§ 63.8585 By what date must I conduct performance tests?

You must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8545 and according to the provisions in § 63.7(a)(2).

§ 63.8590 When must I conduct subsequent performance tests?

(a) You must conduct a performance test before renewing your 40 CFR part 70 operating permit or at least every 5 years following the initial performance test.

(b) You must conduct a performance test when you want to change the parameter value for any operating limit specified in your OM&M plan.

§ 63.8595 How do I conduct performance tests and establish operating limits?

(a) You must conduct each performance test in Table 3 to this subpart that applies to you.

(b) Before conducting the performance test, you must install and calibrate all monitoring equipment.

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 3 to this subpart.

(d) You must test while operating at the maximum production level.

(e) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(f) You must conduct at least three separate test runs for each performance

test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(g) You must use the data gathered during the performance test and the equations in paragraphs (g)(1) and (2) of this section to determine compliance with the emission limitations:

(1) To determine compliance with the production-based hydrogen fluoride (HF), hydrogen chloride (HCl), and particulate matter (PM) emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of production for each test run using Equation 1 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 1)}$$

Where:

MP = mass per unit production, kilograms (pounds) of pollutant per megagram (ton) of fired product

ER = mass emission rate of pollutant (HF, HCl, or PM) during each performance test run, kilograms (pounds) per hour

P = production rate during each performance test run, megagrams (tons) of fired product per hour.

(2) To determine compliance with any of the emission limits based on percent reduction across an emissions control system in Table 1 to this subpart, you must calculate the percent reduction for each test run using Equation 2 of this section:

$$PR = \frac{ER_i - ER_o}{ER_i}(100) \qquad \text{(Eq. 2)}$$

Where:

PR = percent reduction, percent

ER_i = mass emission rate of specific HAP (HF or HCl) entering the APCD, kilograms (pounds) per hour

ER_o = mass emission rate of specific HAP (HF or HCl) exiting the APCD, kilograms (pounds) per hour.

(h) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you as specified in Table 3 to this subpart.

(i) For each affected kiln that is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (i)(1) and (2) of this section.

(1) Submit a request for approval of alternative monitoring procedures to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (i)(1)(i) through (iv) of this section.

(i) A description of the alternative APCD or process changes.

(ii) The type of monitoring device or procedure that will be used.

(iii) The operating parameters that will be monitored.

(iv) The frequency that the operating parameter values will be determined and recorded to establish continuous compliance with the operating limits.

(2) Establish site-specific operating limits during the performance test based on the information included in the approved alternative monitoring procedures request and, as applicable, as specified in Table 3 to this subpart.

§ 63.8600 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CMS according to your OM&M plan and the requirements in paragraphs (a)(1) through (5) of this section.

(1) Conduct a performance evaluation of each CMS according to your OM&M plan.

(2) The CMS must complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, or out-of-control periods).

(3) Determine and record the 3-hour block averages of all recorded readings, calculated after every 3 hours of operation as the average of the previous 3 operating hours. To calculate the average for each 3-hour average period, you must have at least 75 percent of the recorded readings for that period (not including startup, shutdown, malfunction, or out-of-control periods).

(4) Record the results of each inspection, calibration, and validation check.

(5) At all times, maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(b) For each temperature monitoring device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (b)(1) through (7) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) Use a temperature sensor with a minimum measurement sensitivity of 2.2°C (4.0°F) or 0.75 percent of the temperature value, whichever is larger.

(3) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(4) If a chart recorder is used, it must have a sensitivity in the minor division of at least 11.1°C (20°F).

(5) At least semiannually, perform an electronic calibration according to the procedures in the manufacturer's owners manual. Following the electronic calibration, conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7°C (30.1°F) of the process temperature sensor's reading.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating temperature range, conduct calibration and validation checks or install a new temperature sensor.

(7) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) For each liquid flow measurement device (e.g., to determine dry lime scrubber/fabric filter water injection rate or wet scrubber liquid flow rate), you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (c)(1) through (3) of this section.

(1) Locate the flow sensor in a position that provides a representative flowrate.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the liquid flowrate.

(3) At least semiannually, conduct a flow sensor calibration check.

(d) For each pressure measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (d)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(4) Check the pressure tap daily to ensure that it is not plugged.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating pressure range, conduct

calibration checks or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(e) For each pH measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (e)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(f) For each bag leak detection system, you must meet the requirements in paragraphs (f)(1) through (11) of this section.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the "Fabric Filter Bag Leak Detection Guidance," (EPA–454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (MD–19), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center, Continuous Emission Monitoring. Other types of bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the "Fabric Filter Bag Leak Detection Guidance."

(10) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted except as detailed in your OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition. Record each adjustment.

(11) Record the results of each inspection, calibration, and validation check.

(g) For each lime or chemical feed rate measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (g)(1) and (2) of this section.

(1) Locate the measurement device in a position that provides a representative feed rate measurement.

(2) At least semiannually, conduct a calibration check.

(h) Requests for approval of alternate monitoring procedures must meet the requirements in §§ 63.8595(i) and 63.8(f).

§ 63.8605 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 4 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8595 and Table 3 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8630(e).

Continuous Compliance Requirements

§ 63.8615 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for periods of monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities for purposes of calculating data averages. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. You must use all the valid data collected during all other periods in assessing compliance of the APCD and associated control system. Any averaging period for which you do not have valid monitoring data and such data are required constitutes a deviation of the monitoring requirements.

§ 63.8620 How do I demonstrate continuous compliance with the emission limitations?

(a) You must demonstrate continuous compliance with each emission limit and operating limit in Tables 1 and 2 to this subpart that applies to you according to the methods specified in Table 5 to this subpart.

(b) For each affected kiln that is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must demonstrate continuous compliance with each emission limit in Table 1 to this subpart, and each operating limit established as required in § 63.8595(i)(2) according to the methods specified in your approved alternative monitoring procedures request, as described in §§ 63.8595(i)(1) and 63.8(f).

(c) You must report each instance in which you did not meet each emission limit and each operating limit in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are

deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8635.

(d) During periods of startup, shutdown, and malfunction, you must operate according to your SSMP.

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to your SSMP and your OM&M plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.8630 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e), (g)(1), and (h) that apply to you, by the dates specified.

(b) As specified in § 63.9(b)(2) and (3), if you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test as specified in Table 3 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) and (2) of this section.

(1) For each compliance demonstration that includes a performance test conducted according to the requirements in Table 3 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 63.10(d)(2).

(2) In addition to the requirements in § 63.9(h)(2)(i), you must include the information in paragraphs (e)(2)(i) and (ii) of this section in your Notification of Compliance Status:

(i) The operating limit parameter values established for each affected source with supporting documentation and a description of the procedure used to establish the values.

(ii) For each APCD that includes a fabric filter, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.8600(f).

§ 63.8635 What reports must I submit and when?

(a) You must submit each report in Table 6 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 6 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8545 and ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP and OM&M plan, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limits or operating limits) that apply to you, the compliance report must contain a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, the compliance report must contain a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from an emission limitation (emission limit or operating limit) occurring at an affected source where you are using a CMS to comply with the emission limitations in this subpart, you must include the information in paragraphs (c)(1) through (4) and paragraphs (e)(1) through (13) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) The date and time that each malfunction started and stopped.

(3) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(4) The date, time and duration that each CMS was out-of-control, including the information in your OM&M plan.

(5) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(6) A description of corrective action taken in response to a deviation.

(7) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(9) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CMS.

(12) The date of the latest CMS certification or audit.

(13) A description of any changes in CMS, processes, or control equipment since the last reporting period.

(f) If you have obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 6 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report deviations from permit requirements to the permit authority.

§ 63.8640 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in Table 5 to this subpart to show continuous compliance with each emission limitation that applies to you.

(c) You must also maintain the records listed in paragraphs (c)(1) through (6) of this section.

(1) For each bag leak detection system, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

(2) For each deviation of an operating limit parameter value, the date, time, and duration of the deviation, a brief explanation of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction.

(3) For each affected source, records of production rates on a fired-product weight basis.

(4) Records for any approved alternative monitoring or test procedures.

(5) Records of maintenance and inspections performed on the APCD.

(6) Current copies of your SSMP and OM&M plan, including any revisions, with records documenting conformance.

§ 63.8645 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8655 What parts of the General Provisions apply to me?

Table 7 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.8660 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.8535 and 63.8540, the compliance date requirements in § 63.8545, and the non-opacity emission limitations in § 63.8555.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8665 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air.

Bag leak detection system means an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

Clay ceramics manufacturing facility means a plant site that manufactures pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware (e.g., sinks and toilets). Clay ceramics manufacturing facilities typically process clay, shale, and various

additives, form the processed materials into tile or sanitaryware shapes, and dry and fire the ceramic products. Glazes are applied to many tile and sanitaryware products.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Dry lime injection fabric filter (DIFF) means an air pollution control device that includes continuous injection of hydrated lime or other sorbent into a duct or reaction chamber followed by a fabric filter.

Dry lime scrubber/fabric filter (DLS/FF) means an air pollution control device that includes continuous injection of humidified hydrated lime or other sorbent into a reaction chamber followed by a fabric filter. These systems typically include recirculation of some of the sorbent.

Emission limitation means any emission limit or operating limit.

Fabric filter means an air pollution control device used to capture PM by filtering a gas stream through filter media; also known as a baghouse.

Particulate matter (PM) means, for purposes of this subpart, emissions of PM that serve as a measure of total particulate emissions, as measured by Method 5 (40 CFR part 60, appendix A), and as a surrogate for metal HAP contained in the particulates including, but not limited to, antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Research and development kiln means any kiln whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale.

Responsible official means responsible official as defined in 40 CFR 70.2.

Roller kiln means any continuous kiln that uses rollers to convey individual ceramic pieces through the kiln, rather than using kiln cars such as those used in tunnel kilns.

Tunnel kiln means any continuous kiln (that is not a roller kiln) that is used to fire clay ceramics.

Wet scrubber (WS) means an air pollution control device that uses water, which may include caustic additives or other chemicals, as the sorbent. Wet scrubbers may use any of various design mechanisms to increase the contact between exhaust gases and the sorbent.

As stated in § 63.8555, you must meet each emission limit in the following table that applies to you:

Tables to Subpart KKKKK of Part 63

TABLE 1 TO SUBPART KKKKK OF PART 63.—EMISSION LIMITS

For each . . .	You must meet the following emission limits . . .	Or you must comply with the following . . .
1. New or reconstructed tunnel or roller kiln.	a. HF emissions must not exceed 0.014 kilograms per megagram (kg/Mg) (0.027 pounds per ton (lb/ton)) of fired product.	Reduce uncontrolled HF emissions by at least 95 percent.
	b. HCl emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product.	Reduce uncontrolled HCl emissions by at least 90 percent.
	c. PM emissions must not exceed 0.06 kg/Mg (0.12 lb/ton) of fired product.	Not applicable.

As stated in § 63.8555, you must meet each operating limit in the following table that applies to you:

TABLE 2 TO SUBPART KKKKK OF PART 63.—OPERATING LIMITS

For each . . .	You must . . .
1. Kiln equipped with a dry lime injection fabric filter (DIFF) or dry lime scrubber/fabric filter (DLS/FF).	a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; and b. Maintain the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature, plus 14°C (25°F), established during the performance test; and c. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting at or above the level established during the performance test for continuous injection systems.
2. Kiln equipped with a DLS/FF	Maintain the average water injection rate for each 3-hour block period at or above the level established during the performance test.
3. Kiln equipped with a wet scrubber (WS)	a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and

TABLE 2 TO SUBPART KKKKK OF PART 63.—OPERATING LIMITS—Continued

For each . . .	You must . . .
	d. If chemicals are added to the scrubber water, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the performance test.

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

TABLE 3.—TO SUBPART KKKKK OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Kiln	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources. If you choose to meet the percent emission reduction requirements for HF or HCl, a sampling site must also be located at the APCD inlet.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A.	You may use Method 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A.
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A.	You may use Method 3A or 3B of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A.	
	e. Measure HF and HCl emissions.	Method 26A of 40 CFR part 60, appendix A.	Conduct the test while operating at the maximum production level. You may use Method 26 of 40 CFR part 60, appendix A, as an alternative to using Method 26A of 40 CFR part 60, appendix A, when no acid PM (e.g., HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present.
	f. Measure PM emissions	Method 5 of 40 CFR part 60, appendix A.	Conduct the test while operating at the maximum production level.
2. Kiln that is complying with production-based emission limits.	Determine the production rate during each test run in order to determine compliance with production-based emission limits.	Production data collected during the performance tests (e.g., the number of ceramic pieces and weight per piece in the kiln during a test run divided by the amount of time to fire a piece).	You must measure and record the production rate, on a fired-product weight basis, of the affected kiln for each of the three test runs.
3. Kiln equipped with a DIFF or DLS/FF.	a. Establish the operating limit for the average fabric filter inlet temperature.	Data from the temperature measurement device during the performance test.	You must continuously measure the temperature at the inlet to the fabric filter, determine and record the block average temperatures for the three test runs, and determine and record the 3-hour block average of the recorded temperature measurements for the three test runs.
	b. Establish the operating limit for the lime feeder setting.	Data from the lime feeder during the performance test.	For continuous lime injection systems, you must ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test and record the feeder setting for the three test runs. If the feed rate setting varies during the three test runs, determine and record the average feed rate from the three test runs.
4. Kiln equipped with a DLS/FF.	Establish the operating limit for the average water injection rate.	Data from the water injection rate measurement device during the performance test.	You must continuously measure the water injection rate. determine and the record the block average water injection rate values for the three test runs, and determine and record the 3-hour block average of the recorded water injection rate measurements for the three test runs.

TABLE 3.—TO SUBPART KKKKK OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
5. Kiln equipped with a WS.	a. Establish the operating limit for the average scrubber pressure drop.	Data from the pressure drop measurement device during the performance test.	You must continuously measure the scrubber pressure drop determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs.
	b. Establish the operating limit for the average scrubber liquid pH.	Data from the pH measurement device during the performance test.	You must continuously measure the scrubber liquid pH, determine and record the block average pH values for the three test runs, and determine and record the 3-hour block average of the recorded pH measurements for the three test runs.
	c. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the performance test.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs.
6. Kiln equipped with a WS that includes chemical addition to the water.	Establish the operating limit for the average scrubber chemical feed rate.	Data from the chemical feed rate measurement device during the performance test.	You must continuously measure the scrubber chemical feed rate, determine and record the block average chemical feed rate values for the three test runs, and determine and record the 3-hour block average of the recorded chemical feed rate measurements for the three test runs.

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation that applies to you according to the following table:

TABLE 4 TO SUBPART KKKKK OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

For each . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. New or reconstructed tunnel or roller kiln.	a. HF emissions must not exceed 0.014 kg/Mg (0.027 lb/ton) of fired product; or uncontrolled HF emissions must be reduced by at least 95 percent; and	i. The HF emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in § 63.8595(g)(1), do not exceed 0.014 kg/Mg (0.027 lb/ton); or uncontrolled HF emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test are reduced by at least 95 percent, according to the calculations in § 63.8595(g)(2); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HF emissions did not exceed 0.014 kg/Mg (0.027 lb/ton) or uncontrolled HF emissions were reduced by at least 95 percent.
	b. HCl emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product; or uncontrolled HCl emissions must be reduced by at least 90 percent; and	i. The HCl emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in § 63.8595(g)(1), do not exceed 0.019 kg/Mg (0.037 lb/ton); or uncontrolled HCl emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test are reduced by at least 90 percent, according to the calculations in § 63.8595(g)(2); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HCl emissions did not exceed 0.019 kg/Mg (0.037 lb/ton) or uncontrolled HCl emissions were reduced by at least 90 percent.
	c. PM emissions must not exceed 0.06 kg/Mg (0.12 lb/ton) of fired product..	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in § 63.8595(g)(1), do not exceed 0.06 kg/Mg (0.12 lb/ton); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.06 kg/Mg (0.12 lb/ton).

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limit and operating limit that applies to you according to the following table:

TABLE 5 TO SUBPART KKKKK OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND OPERATING LIMITS

For each . . .	For the following emission limits and operating limits . . .	You must demonstrate continuous compliance by . . .
1. Kiln equipped with a DIFF or DLS/FF.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 1 of Table 2 to this subpart for kilns equipped with DIFF or DLS/FF.	i. Initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time take by you to initiate corrective action; and ii. Collecting the fabric filter inlet temperature data according to § 63.8600(a); reducing the fabric filter inlet temperature data to 3-hour block averages according to § 63.8600(a); maintaining the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature, plus 14°C (25°F), established during the performance test; and iii. Verifying that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions in accordance with your OM&M plan; recording the feeder setting once each shift of operation to verify that the feeder setting is being maintained at or above the level established during the performance test.
2. Kiln equipped with a DLS/FF	Each emission limit in Table 1 to this subpart and each operating limit in Item 2 of Table 2 to this subpart for kilns equipped with DLS/FF.	Collecting the water injection rate data according to § 63.8600(a); reducing the water injection rate data to 3-hour block averages according to § 63.8600(a); maintaining the average water injection rate for each 3-hour block period at or above the average water injection rate established during the performance test.
3. Kiln equipped with a WS	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 3 of Table 2 to this subpart for kilns equipped with WS.	i. Collecting the scrubber pressure drop data according to § 63.8600(a); reducing the scrubber pressure drop data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and ii. Collecting the scrubber liquid pH data according to § 63.8600(a); reducing the scrubber liquid pH data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and iii. Collecting the scrubber liquid flow rate data according to § 63.8600(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and iv. If chemicals are added to the scrubber water, collecting the scrubber chemical feed rate data according to § 63.8600(a); reducing the scrubber chemical feed rate data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber chemical feed rate.

As stated in § 63.8635, you must submit each report that applies to you according to the following table:

TABLE 6 TO SUBPART KKKKK OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit . . .	The report must contain . . .	You must submit the report . . .
1. A compliance report	a. If there are no deviations from any emission limitations (emission limit, operating limit) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period. If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, a statement that there were no periods during which the CMS was out-of-control during the reporting period.	Semiannually according to the requirements in § 63.8635(b).

TABLE 6 TO SUBPART KKKKK OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

You must submit . . .	The report must contain . . .	You must submit the report . . .
	b. If you have a deviation from any emission limitation (emission limit, operating limit) during the reporting period, the report must contain the information in § 63.8635(d) or (e) If there were periods during which the CMS was out-of-control, as specified in your OM&M plan, the report must contain the information in § 63.8635(e).	Semiannually according to the requirements in § 63.8635(b).
	c. If you had a startup, shutdown or malfunction during the reporting period and you took actions the consistent with your SSMP, compliance report must include the information in § 63.10(d)(5)(i).	Semiannually according to the requirements in § 63.8635(b).
2. An immediate startup, shutdown, and malfunction report if you took actions during a startup, shutdown, or malfunction during the reporting period that are not consistent with your SSMP.	a. Actions taken for the event according to the requirements in § 63.10(d)(5)(ii).	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

As stated in § 63.8655, you must comply with the General Provisions in §§ 63.1–63.15 that apply to you according to the following table:

TABLE 7 TO SUBPART KKKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK

Citation	Subject	Brief description	Applies to subpart KKKKK
§ 63.1	Applicability		Yes.
§ 63.2	Definitions		Yes.
§ 63.3	Units and Abbreviations		Yes.
§ 63.4	Prohibited Activities	Compliance date; circumvention, severability.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; Upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification		Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).		Yes.
§ 63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.

TABLE 7 TO SUBPART KKKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK—Continued

Citation	Subject	Brief description	Applies to subpart KKKKK
§63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§63.6(g)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§63.6(h)	Opacity/Visible Emission (VE) Standards		No, not applicable.
§63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§63.6(j)	Presidential Compliance Exemption	President may exempt source category	Yes.
§63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes.
§63.7(a)(3)	§114 Authority	Administrator may require a performance test under CAA §114 at any time.	Yes.
§63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	Yes.
§63.7(b)(2)	Notification of Rescheduling	Must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§63.7(c)	Quality Assurance (QA)/ Test Plan	Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§63.7(d)	Testing Facilities		Yes.
§63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions.	No, §63.8595 specifies requirements.
		Cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes.
§63.7(e)(2)–(3)	Conditions for Conducting Performance Tests.	Must conduct according to subpart and EPA test methods unless Administrator approves alternative; must have at least three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes.
§63.7(f)	Alternative Test Method		Yes.
§63.7(g)	Performance Test Data Analysis		Yes.
§63.7(h)	Waiver of Test		Yes.
§63.8(a)(1)	Applicability of Monitoring Requirements		Yes.
§63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§63.8(a)(3)	[Reserved].		
§63.8(a)(4)	Monitoring with Flares		No, not applicable.
§63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing and reporting on monitoring systems.	Yes.
§63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintenance consistent with good air pollution control practices.	Yes.
§63.8(c)(1)(i)	Routine and Predictable SSM	Reporting requirements for SSM when action is described in SSMP.	Yes.
§63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSMP.	Yes.
§63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements.	Yes.
§63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements.	Yes.
§63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.		No, §63.8615 specifies requirements.
§63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.		No, not applicable.
§63.8(c)(6)	CMS Requirements		No, §63.8575 specifies requirements.
§63.8(c)(7)–(8)	CMS Requirements		No, §63.8575 specifies requirements.
§63.8(d)	CMS Quality Control		No, §63.8575 specifies requirements.

TABLE 7 TO SUBPART KKKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK—Continued

Citation	Subject	Brief description	Applies to subpart KKKKK
§ 63.8(e)	CMS Performance Evaluation		No, § 63.8575 specifies requirements.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test		No, not applicable.
§ 63.8(g)	Data Reduction		No, not applicable.
§ 63.9(a)	Notification Requirements		Yes.
§ 63.9(b)	Initial Notifications		Yes.
§ 63.9(c)	Request for Compliance Extension		Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.		Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test		No, not applicable.
§ 63.9(g)(1)	Additional Notifications When Using CMS		Yes.
§ 63.9(g)(2)–(3)	Additional Notifications When Using CMS		No, not applicable.
§ 63.9(h)	Notification of Compliance Status		Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines		Yes.
§ 63.9(j)	Change in Previous Information		Yes.
§ 63.10(a)	Recordkeeping/Reporting		Yes.
§ 63.10(b)(1)	General Recordkeeping Requirements		Yes.
§ 63.10(b)(2)(i)–(v)	Records Related to Startup, Shutdown, and Malfunction.		Yes.
§ 63.10(b)(2)(vi)–(xii) and (xiv).	CMS Records		Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	No, not applicable.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c) (1)–(15)	Records		No. §§ 63.8575 and 63.8640 specify requirements.
§ 63.10(d)(1) and (2)	General Reporting Requirements	Requirements for reporting	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations		No, not applicable.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports	Contents and submission	Yes.
§ 63.10(e)(1)–(3)	Additional CMS Reports		No, §§ 63.8575 and 63.8635 specify requirements.
§ 63.10(e)(4)	Reporting COMS data		No, not applicable.
§ 63.10(f)	Waiver for Recordkeeping/Reporting		Yes.
§ 63.11	Flares		No, not applicable.
§ 63.12	Delegation		Yes.
§ 63.13	Addresses		Yes.
§ 63.14	Incorporation by Reference		Yes.
§ 63.15	Availability of Information		Yes.

[FR Doc. 02–15869 Filed 7–19–02; 8:45 am]

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Federal Register

Monday,
July 22, 2002

Part III

Department of State

Office of Protocol

Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2001; Notice

DEPARTMENT OF STATE

Office of Protocol

[Public Notice 4058]

Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2001

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 2001 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the Federal Register is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorizations Act, Fiscal Year 1978 (Public Law 95–105, August 17, 1977, 91 Stat. 865).

Dated: April 25, 2002.

Grant S. Green, Jr.,

Under Secretary for Management, Department of State.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Inuit sculpture of walrus in green soapstone with ivory tusks, created by J.B. Kolola (12″ x 7″ x 5″). Recd—February 5, 2001. Est. Value—$700. Archives Foreign.	The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Red Oriental wool rug (approximately 39″ x 63″) with an additional 4″ of fringe on each side. Recd—February 14, 2001. Est. Value—$400. Archives Foreign. Book: "Nazarabayev—My Life, My Times, and the Future," an autobiography. Recd—February 14, 2001. est. Value—$30. Archives Foreign.	His Excellency Kanat B. Saudabayev, Ambassador of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Two book set (English and Spanish): "Guanajuato: Places and Pathways" and "Guanajuato: Sitios y Recorridos," by Consuelo Tovar. (2) Handmade black leather cowboy boots with eagles on each side; made by the Liberty Boot Company. Recd—February 15, 2001. Est. Value—$1900. Archives Foreign.	The Honorable Juan Carlos Romero Hicks, Governor of the State of Guanajuato.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Handmade black and maroon ostrich skin cowboy boots made by the Montana Boot Company. Recd—February 15, 2001. Est. Value—$1500. Archives Foreign. Black leather belt with a sterling silver belt buckle shaped to form "BUSH". Recd—February 15, 2001. Est. Value—$400. Archives Foreign. Pitiado belt decorated with cactus thread. Recd—February 15, 2001. Est. Value—$400. Archives Foreign.	His Excellency Vicente Fox Quesada, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Black felt cowboy hat by the Arlop Hat Company. Recd—February 15, 2001. Est. Value—$250. Archives Foreign.	The Honorable Eduardo Ezequiel Arroyo Roldan, Mayor of San Francisco Del Rincon, Guanajuato.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Black felt sombrero with 10k gold thread trim stitched "San Francisco del Rincon, Gto 2001 Fox Bush San Cristobal" around the rim; made by the Salazar Yepez Hat company. Recd—February 15, 2001. Est. Value—$1800. Archives Foreign.		
	"Concord" gym bag with five baseball hats with "Concord" symbol; three pairs of men's running shoes; two short-sleeved "Concord" shirts, white with black trim; two short-sleeved "Concord" shirts, black and white trim. Recd—February 15, 2001. Est. Value—$552. Archives Foreign.		
President	(1) Key to the city of Leon in a black case with a plaque "Llave de la Ciudad de Leon de los Aldama Entregada por su Govierno al Presidente de los Estados Unidos de Norte America George W. Bush Leon de los Aldama, Guanajuato, Mexico a 16 de Febrero del ano 2001." Small Mexican flag lapel pin included. (2) 8″ metal replica of "Arco Triunfal" on a wooden base. (3) Hardcover book: "Leon: Trayectoria y Destino", by Mariano Gonzalez Leal. (4) Handmade black leather boots with blue and white stitching from the San Diego Boot Company. Recd—February 15, 2001. Est. Value—$1620. Archives Foreign.	The Honorable Luis Ernesto Ayala Torres, Mayor of the City of Leon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Painting: De la Serie "Paisajes de Cafetal" by Edmundo Otoniel, 11″ x 14″ landscape scene triple matted and framed in a gold-painted wooden frame (26″ x 29″. Recd—March 2, 2001. Est. Value—$1200. Archives Foreign.	His Excellency Francisco Guillermo Flores Perez, President of the Republic of El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Model of a turtle ship (keo bug seon). 5.5″ x 5.5″ x 5.5″, executed in white painted aluminum; contained in a glass case on a rosewood base with brass plaque engraved "Presented to his Excellency George Walker Bush, the President of the United States of America by Kim Dae-jung, the President of the Republic of Korea March 7, 2001". Recd—March 7, 2001. Est. Value—$400. Archives Foreign.	His Excellency Kim Dae-jung, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Book: "Three Stage' Approach to Korean Reunification," by President Kim Dae-jung. Recd—March 7, 2001. Est. Value—$40. Archives Foreign.		
President	Mirror: 36″ x 50″ in an elaborate 5″ wooden inlay frame; handmade in Syria. Recd—March 13, 2001. Est. Value—$600. Archives Foreign.	His Excellency Rostom Al-Zoubi, Ambassador of the Syrian Arab Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Large (12″ diameter) Dublin Crystal bowl, engraved on side "Presented to George W. Bush, President of The United States of America on the occasion of St. Patrick's Day 2001 by the Taoiseach, Bertie Ahern, T.D., on behalf of the people of Ireland." Gift also included 5 pint-size bags of shamrocks. Recd—March 16, 2001. Est. Value—$295. Archives Foreign.	His Excellency Bertie Ahern, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Portrait: Laser picture of President Bush on stretch nylon fabric 16″ x 12″), double matted in wooden frame (23¼″ x 18¼″). Recd—March 19, 2001. Est. Value—$375. Archives Foreign.	His Excellency Yoshiro Mori, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Vase: Kutani ware, round 6½″ x 20″ in dark blue shading to green color. Recd—March 19, 2001. Est. Value—$350. Archives.		
President	Etching (20″ x 15″): "Draught of the City of Jerusalem" with a plaque engraved: "Presented to The Honorable George W. Bush, President The. United States of America, In Friendship, March 2001 Ariel Sharon State of Israel Prime Minister." Recd—March 20, 2001. Est. Value—$275. Archives Foreign.	His Excellency Ariel Sharon, Prime Minister of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Boots: navy blue ostrich skin stitched with "GWB", "2001", the American and Mexican flags, and a symbolic Mexican design. Recd—March 22, 2001. Est. Value—$1800. Archives Foreign.	His Excellency Vicente Fox Quesada, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coin: "Pontificate of John Paul II" gold coin, issued 12 Sept 2000. Recd—March 26, 2001. Est. Value—$405. Archives Foreign.	His Eminence Edmund Cardinal Szoka, President, Pontifical Commission for Vatican City State.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Coin: "Pontificate of Paul Paul II" coin, issued 12 Sept 2000. Recd—March 26, 2001. Est. Value—$209. Archives Foreign.		
President	Eschenbach binoculars and canvas carrying case. Recd—March 29, 2001. Est. Value—$267. Archives Foreign.	His Excellency Gerhard Schroeder, Chancellor of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Hardcover book: "Berlin 360," by Jaron Verlag. Book has panoramic photographs of various scenes in Berlin with captions in German. Recd—March 29, 2001. Est. Value—$75. Archives Foreign.		
President	Rug: Mamluk design, all silk (approximately 4′ x 6′ machine spun Egyptian rug. Recd—April 2, 2001. Est. Value—$1500. Archives Foreign.	His Excellency Mohamed Hosny Mubarak, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Vase; metal in the shape of the Aries symbol (a ram's head). Recd—April 9, 2001. Est. Value—$400. Archives Foreign.	His Excellency Robert Kocharian, President of the Republic of Armenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Crystal vase (10″ x 4½″): handmade Swedish frosted glass with crown engraved on top and a landscape design underneath; wood base with brass plaque and a wood display case (14″ x 8¾″ x 8½″) also included. Recd—April 10, 2001. Est. Value—$600. Archives Foreign.	His Majesty King Abdullah II bin Al Hussein of the Hashemite, Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	"Coordillerana" saddle, stirrup, stirrup's belt, blue poncho, poncho, and silver bridle. Recd—April 19, 2001. Est. Value—$438. Archives Foreign.	His Excellency The President of the Argentine Nation and Mrs. de De la Rua.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Silver "GB" belt buckle and leather belt. Recd—April 19, 2001. Est. Value—$200. Archives Foreign.		
President	Artwork (18″ x 21″): four pictures of different Quebec scenes by Antoine, Dumas; all numbered, 30 of 80, and signed by artist. Recd—April 20, 2001. Est. Value—$575. Archives Foreign.	The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Wooden box with carving of Chateau Frontenac on front containing 4 bottles of Inniskillin wine ('97 Oak aged and '98 Vidal). Recd—April 20, 2001. Est. Value—$336. Handled pursuant to Secret Service policy.	The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Hardback book: "Sepultado en el olvido: Atlas Historiografico," by Alejandro, Bolanos Geyer. Recd—April 21, 2001. Est. Value—$300. Archives Foreign.	His Excellency, The President of the Republic of Nicaragua and Exelentisima Maria Dolores Aleman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Framed paintings (21″ x 21½″): (1) town scene, (2) village by the beach. Recd—April 25, 2001. Est. Value—$700. Archives Foriegn.	His Excellency, Rafiq al-Hariri, Prime Minister of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Color photograph (approximately 9″ x 7″) inscribed to President in a silver and leather frame. Recd—May 7, 2001. Est. Value—$500. Archives Foreign.	His Highness Sheikh Sulman bin Hamad bin Isa Al-Khalifa, Crown Prince of the State of Bahrain, and Head of the Bahrain Defense Force.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Curved gold saber and sheath, approximately 39″ long. Recd—May 7, 2001. Est. Value—$10000. Archives Foreign.		
President	Bottle (750ml) of Sljiva liquor. Recd—May 9, 2001. Est. Value—$16. Handled pursuant to Secretary Service policy.	His Excellency Vojislav Kostunica, President of the Federal Republic of Yugoslavia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Icon: 14″ × 10″ painted wood icon depicting St. George on a horse slaying a monster. Recd—May 9, 2001. Est. Value—$250. Archives Foreign.		
President	14″ black sculpture of a panther with display stand; held in a large green leather box. Recd—May 11, 2001. Est. Value—$850. Archives Foreign.	His Excellency, Olusegun Obasanjo, President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Two signed, limited edition engravings, approximately 6½″ x 8″ Recd—May 23, 2001. Est. Value—$400. Archives Foreign.	His Excellency, Vicente Fox Quesada, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Hardcover book: "Scrolls from the Dead Sea." Hardcover book: "The Golden Book of Psalms," bound in buffalo leather, printed in Hebrew and English, and held in a leather and wood box. Recd—May 31, 2001. Est. Value—$535. Archives Foreign.	His Excellency Moshe Katzav, President of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	38″ x 9″ framed reproduction of a Dead Sea Scroll; held in a blue velvet box. Recd—May 31, 2001. Est. Value—$300. Archives Foreign.		
President	Waterman blue fountain pen with NATO logo on tip. Recd—June 13, 2001. Est. Value—$275. Archives Foreign.	The Right Honorable Lord Robertson of Port Ellen, P.C.; Screatary General of the North Atlantic Treaty Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Four crystal wine glasses. Recd—June 13, 2001. Est. Value—$800. Archives Foreign.	His Excellency Guy Verhofstadt, Prime Minister of Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Crystal globe (10″ diameter) with Slovenia marked in gold. Globe rotates and rests on marble base (9″d) with plaque engraved "Republika Slovenija 16.6.2001." Recd—June 16, 2001. Est. Value—$250. Archives Foreign.	His Excellency Milan Kucan, President of the Republic of Slovenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Hardcover book: "Slovenia: The First Ten Years," Recd—June 16, 2001. Est. Value—$80. Archives Foreign.		
President	Silver relief of the Kremlin (2″ x 5″) and 5 silver coins; held in blue presentation box. Recd—June 16, 2001. Est. Value—$350. Archives Foreign.	His Excellency, Vladimir Putin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Cloth (11″ x 6′8″): green, gold, black, purple and red hand woven "Kente" cloth. Recd—June 29, 2001. Est. Value—$650. Archives Foreign.	His Excellency John Kufuor, President of the Republic of Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Fishing rod: 6″ Daiwa "Grand Wave-X Off-shore" rod; specialized jigging model 63 HRJ–S. Recd—June 30, 2001. Est. Value—$399. Archives Foreign. Sony P50 digital camera. Recd—June 30, 2001. Est. Value—$400. Archives Foreign.	His Excellency Junichiro Koizumi, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Saddle: black with gold and silver embroidery, red leather trim, black fringe with silver sequins, and intricately engraved metal strirrups; held in a glass case. Recd—July 6, 2001. Est. Value—$500. Archives Foreign.	His Majesty Mohamed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Sword: 29″ silver handle and sheath with motif of flowers and rope, and coral stones. Recd—July 12, 2001. Est. Value—$1000. Archives Foreign. Saddle (39″ x 41″) with 15″ seat and wool blanket lining: green leather with gold and silver rope applique with matching neck piece (50″ x 3″) and head piece (33″ x 15″). Wood stand for resting the saddle (31″ x 22″ x 15″). Recd—July 12, 2001. Est. Value—$1400. Archives Foreign. Dates (10 boxes): "Dattes Deglet Nour d'Algerie, Branchettes." Recd—July 12, 2001. Est. Value—$220. Handled pursuant to Secret Service policy. Wine (36 bottles): Domaine de Sebra (12); Medea (12); Cuvee du President (12). Recd—July 12, 2001. Est. Value—$480. Handled pursuant to Secret Service policy.	His Excellency Abdelkaziz Bouteflika, President of the People's Democratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Silver frame (8½″ x 12″): with the Royal crest engraved on top, and matted and signed photograph of Prince Philip. Recd—July 19, 2001. Est. Value—$350. Archives Foreign.	His Royal Highness The Prince Philip, Duke of Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Art prints (4): copper plates (30″ x 22½″) hand printed on Fabriano Tiepolo paper depicting four Greco-Roman theaters; all signed and numbered. Recd—July 20, 2001. Est. Value—$800. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Porcelain bowl: 15½″ white and gold crater-shaped bowl by Richard Ginori; crafted in the style of Carlo Leopoldo Ginori Lisci; with scalloped edges and four mermaid figures atop a base featuring two horses. Recd—July 20, 2001. Est. Value—$1200. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Toiletries: Aqua di Parma cologne (6 oz.); soap (100 g); facial cream (3.3 oz.); and cologne deodorant (5 oz.). Recd—July 20, 2001. Est. Value—$263. Handled pursuant to Secret Service policy. Yellow leather Aqua di Parma toiletries case. Recd—July 20, 2001. Est. Value—$100. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Watch: Stradivari 1715 wristwatch with black leather band and silver casing engraved "George W. Bush" on side. Recd—July 20, 2001. Est. Value—$500. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Leatherbound hardcover book (first edition): "Storia Della Scienza, Volume I" in a brown leather sleeve; accompanied by an engraved book plaque. Recd—July 20, 2001. Est. Value—$350. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Watch: Franck Muller Chrometro wristwatch with gold casing and brown leather band, Recd—July 27, 2001. Est. Value—$10900. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Lap desk: portable black leather Pineider writing desk (17½″ x 17¼″ x 15½″) with personalized stationery, fountain pens and nibs, and inkwell. Recd—July 27, 2001. Est. Value—$1650. Archives Foreign.	His Excellency Sivlio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Ties (3): "Battistoni" silk twill (navy blue). Recd—July 30, 2001. Est. Value—$390. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photo album: leather imprinted with "Presidenza della Republica Italiana, George W. Bush, Presidente degli Stati Uniti D'America, Genova—Roma, 20–23 Luglio 2001," containing photos from the Presidential visit. Recd—July 30, 2001. Est. Value—$200. Archives Foreign.	His Excellency Carlo Azeglio Ciampi, President of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Wooden carving: 40″ female figure carrying child on her back and a water urn on her head; carved from light-colored ebony with a plaque attached to the base: "To The Honorable George W. Bush President of the United States From, Ambassador Serge Mombouli Republic of Congo, Credentials Presented 7–31–01." Recd—July 30, 2001. Est. Value—$1600.	His Excellency Serge Mombouli, Ambassador of the Republic of Congo.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Briefcase: made of black real carbon fiber by "Tradition and Technology" (4″ x 14″ x 17″). Recd—July 31, 2001. Est Value—$800. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Jacket: Barbour Thornproof, Classic Beaufort with zip-in vest and snap-on hood. Recd—July 31, 2001. Est. Value—$354. Archives Foreign.	The Right Honorable Tony Blair, M.P., Prime Minister.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Framed document: 27″ x 32″ framed and matted reproduction of the "Declaration of Quebec City" from the Summit of the Americas, April 22, 2001; signed by attendees. Recd—August 20, 2001. Est. Value—$180. Archives Foreign. CD and videocassette: "Amerythmes: Sommet des Ameriques, Quebec, Canada 2001." Recd—August 20, 2001. Est. Value—$30. Archives Foreign. Album: 9″ x 10″ burgundy leather photo album embossed with gold crest, containing photographs of the Presidential visit to Quebec in April 2001. Recd—August 20, 2001. Est. Value—$201. Archives Foreign.	The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Shirt: long-sleeve wool shirt with blue and green stripes. Recd—September 10, 2001. Est. Value—$150. Archives Foreign. Boots: custom-made boots of Australian crocodile, kangaroo, and emu hide. Recd—September 10, 2001. Est. Value—$496. Archives Foreign. Bowl: wooden bowl (16″ x 10″) made of Australian red cedar, with hinged lid and flower design on lid; held in satin-lined polished wood case. Recd—September 10, 2002. Est. Value—$404. Archives Foreign.	The Honorable John Howard, Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Wreath of flowers. Recd—September 17, 2001. Est. Value—$300. Handled pursuant to Secret Service policy.	His Excellency, Teodoro Biyogo Nsue, Ambassador of the Republic of Equatorial Guinea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Watch: Bernard-Richards quartz watch with Roman and Arabic dials and a leather band; engraved on back "Presidence de la Republique francaise." Recd—September 19, 2001. Est Value—$350. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Wine: 6 bottles of 1990 Chateau La Lagune Haut-Medoc win. Recd—Septmeber 19, 2001. Est. Value—$372. Handled pursuant to Secret Service policy.		
President	Wood carving: 31″ elaborately carved ebony in the figure of a male and female head. Recd—September 26, 2001. Est. Value—$225. Archives Foreign.	Her Excellency Soekarnopoutri Megawati, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Framed original cartoon by Washington Times cartoonist Bill Garner; two-panel drawing of President Bush at joint session of Congress in September 2001. Recd—October 1, 2001. Est. Value—$600. Archives Foreign.	His Royal Highness Prince Bandar bin Sultan bin Abdul Aziz, Ambassador of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Vase (14″): turquoise frosted glass bowl (15″ diameter) on a gold and silver stand surrounded by five gnus. Recd—October 4, 2001. Est. Value—$10000. Archives Foreign.	His Highness Sheikh Hamad bin Khalifa Al Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	CD: "Qatar: The Modern State." Recd—October 4, 2001. Est. Value—$15. Archives Foreign.		
President	Painting: 23″ round enamel painting on copper of St. George on a horse slaying the dragon, with "Good Defeats Evil" above it; held on a 35″ × 35″ wood frame. Recd—October 5, 2001. Est. Value—$800. Archives Foreign.	His Excellency Eduard Shevardnadze, President of Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Parchment commendation of George W. Bush from "Republica de Colombia Congreso de Colombia Sesion Plenaria"; received in a leather folder embossed with crest and "Senado de la Republica". Recd—October 12, 2001. Est. Value—$400. Archives Foreign.	The Honorable Carlos Garcia Orjuela, President of the Senate of the Republic of Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Watch: silver Piaget watch with rectangular face. Recd—October 16, 2001. Est. Value—$5900. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Bow: 6′ lacquered bamboo bow bound by rattan; made in the same manner as those of the shoguns. Recd—October 20, 2001. Est. Value—$650. Archives Foreign.	His Excellency Junichiro Koizumi, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Wooden stand and four arrows; stand designed to hold large bamboo bow. Recd—October 20, 2001. Est. Value—$60. Archives Foreign.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Arrow: antique fork-shaped arrow in a wooden box with calligraphy by the Prime Minister: "The arrow to defeat the evil and bring peace on earth." Recd—October 20, 2001. Est. Value—$2400. Archives Foreign. Photograph: 4" x 6" color photo of a man in traditional shogun costume on horseback with large bow and arrow; held in a tinted lucite frame. Recd—October 20, 2001. Est. Value—$30. Archives Foreign.		
President	Hardcover book series (10 volumes): "Kasaysayan: The Story of the Filipino People," published by Reader's Digest. Recd—October 21, 2001. Est. Value—$350. Archives Foreign.	Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President	Box: 5¼" x 3¾" x 2" wood-lined silver box with glass insert in lid displaying piece of Peruvian fabric. Recd—October 24, 2001. Est. Value—$200. Archives Foreign. Hardcover coffee table book: "Calendar of Peru: Fiesta Times." Recd—October 24, 2001. Est. Value—$75. Archives Foreign.	His Excellency Alejandro Toledo Manrique, President of the Republic of Peru.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Rice bowl: ornate silver bowl with lid and gold details, made in traditional Malay silver crafting method. Recd—October 24, 2001. Est. Value—$750. Archives Foreign.	His Excellency YAB Dato Seri Dr. Mahathir bin Mohamad, Prime Minister of Malaysia.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President	Box: 8¼" x 6½" wood box carved with the APEC CEO Summit logo; lined in yellow silk and containing a glass snuff bottle painted with an image of the President, with a wood display stand. Recd—October 24, 2001. Est. Value—$1000. Archives Foreign.	Mr. Yu Ziaozong, Chairman, China Council for the Promotion of International Trade.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Vase: ceramic vase painted with Chinese landscape; held in a silk box with rosewood stand. Recd—October 24, 2001. Est. Value—$150. Archives Foreign. Tunic: blue and gold, traditional Chinese silk tunic lined in ivory silk and held in a personalized red silk garment bag. Recd—October 24, 2001. Est. Value—$350. Archives Foreign.	His Excellency Jiang Zemin, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Vessel: 12" silver and gold lidded pitcher with elaborate detailing. Recd—October 25, 2001. Est. Value—$850. Archives Foreign.	His Highness Sheikh Sulman bin Hamad bin Isa Al-Khalifa, Crown Prince of the State of Bahrain and Head of the Bahrain Defense Force.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Dates: two boxes of Algerian dates. Recd—November 6, 2001. Est. Value—$130. Handled pursuant to Secret Service policy. Wine (12 bottles): 1998 Domanine Sebra, 1998 Domaine Mamounia, and 1998 Domaine Khadra (4 bottles of each). Recd—November 6, 2001. Est. Value—$180. Handled pursuant to Secret Service policy. Rug: 6′ x 9′ multi-colored area rug made of native Algerian wool. Recd—November 6, 2001. Est. Value—$2800. Archives Foreign.. Mosaic: 51″ x 47″ ceramic tile mosaic in blue and green floral pattern, in a wooden frame. Recd—November 6, 2001. Est. Value—$1800. Archives Foreign.	His Excellency Abdelaziz Bouteflika, President of the People's Democratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Wine: 6 bottles of 1990 Chateau Talbot Saint-Julien. Recd—November 7, 2001. Est. Value—$450. Handled pursuant to Secret Service policy.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Sterling silver tray (11″ x 11″) and bowl (8″) with bulls around the edges. Recd—November 9, 2001. Est. Value—$1000. Archives Foreign.	His Excellency Atal Bihari Vajpayee, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Facsimile of letter recognizing the United States as a nation; held in a leather presentation box embossed with Croation crest. Recd—November 10, 2001. Est. Value—$300. Archives Foreign.	His Excellency Stjephan Mesic, President of the Republic of Croatia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Samovar: 40″ electric stainless steel tea urn with platter. Recd—November 13, 2001. Est. Value—$750. Archives Foreign.	His Excellency Vladimir Putin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Commemorative coin: gold coin with "Commemoraction Cenenario Natalicio de Rubon Dario" printed inside lid of blue box with blue velvet interior. Est. Value—$300. Archives Foreign.	His Excellency Enrique Bolanos, President-elect of the Republic of Nicaragua.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	CDs (2): commemorating September 11 attacks: "Long Live America" and "My Heart's Song: For NYC and the World;" lyrics of "Long Live America!" in silver painted frame (8″ x 10″). Recd—November 21, 2001. Est. Value—$45. Archives Foreign. Hardcover art book: "Kiukok: Deconstructing Despair," by Alfredo Roces. Recd—November 21, 2001. Est. Value—$75. Archives Foreign.	Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Mr. Jose Miguel Arroyo.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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	Cuff links: yellow mother of pearl cuff links set in 18K gold. Recd—November 21, 2001. Est. Value—$300. Archives Foreign.		
	Painting: 19″ x 25″ painting "Rooster" by Filippino artist Ang Kiukok in a goldtone frame. Recd—November 21, 2001. Est. Value—$450. Archives Foreign.		
President	Tea: 72 packets of La Virginia Argentine tea. Recd—November 27, 2001. Est. Value—$72. Handled pursuant to Secret Service policy.	His Excellency The president of the Argentine Nation and Mrs. de De la Rua.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Box: 11½″ x 7″ x 3½″ sterling silver box with wood interior and crest of Argentina on lid. Recd—November 27, 2001. Est. Value—$450. Archives Foreign.		
President	Saddle: Western-style brown leather saddle with silver accents. Recd—November 27, 2001. Est. Value—$500. Archives Foreign.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Hat: brown leather hat with drawstring. Redc—November 27, 2001. Est. Value—$75. Archives Foreign.		
President	Artwork (45.5″ x 35″): oil painting of five African tribal dancers in gold-toned frame. Recd—November 27, 2001. Est. Value—$500. Archives Foreign.	His Excellency Didier Ratsiraka, President of the Republic of Madagascar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Artwork (31″ x 27″): oil painting of village scene with purple flowering tree; held in wooden frame painted white with red accents. Recd—November 27, 2001. Est. Value—$325. Archives Foreign.		
President	Artwork (9″ x 12″): blue cross with black overlay, and yellow and red background, by Rafael Canogar, numbered 17/25. Recd—November 28, 2001. Est. Value—$500. Archives Foreign.	His Excellency Jose Maria Aznar, President of the Government of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Sword: 29″ silver saber with curved blade and scabard with elaborate detailing and amber stones. Recd—November 28, 2001. Est. Value—$1500. Archives Foreign.	His Excellency Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Fabric (4 pieces): 98″ x 49″ blue and orange striped material; 116″ x 46″): black and orange striped material (2); and 100″ x 44″ blue and yellow striped material. Recd—November 28, 2001. Est. Value—$300. Archives Foreign.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Framed photograph: 27″ x 24″ doubled matted color photo of then-Governor Bush at the Western Wall in Jerusalem, Israel. Recd—December 2, 2001. Est. Value—$300. Archives Foreign.	His Excellency Ariel Sharon, Prime Minister of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Framed message: 19″ x 24″ message proclaiming the planting of 5000 trees in a park in Jerusalem to honor the victims of the September 11 attacks; in a painted wood frame with cream matting. Small plaque on frame engraved: "With appreciation for your leadership, courage, and determination in the face of evil." Recd—December 3, 2001. Est. Value—$69. Archives Foreign.	His Excellency Ariel Sharon, Prime Minister of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Circular engraved sterling and gold representation of Jerusalem; small plaque on stand reads: "Presented to The Honorable George W. Bush, President of the United States of America, In Friendship December 2001, Ariel Sharon, Prime Minister of the State of Israel." Recd—December 3, 2001. Est. Value—$500. Archives Foreign.		
President	Staff: 48″ wooden rod bound in silver, inset with multi-colored glass stones; 6 hanging charms near the top. Recd—December 6, 2001. Est. Value—$300. Archives Foreign.	His Excellency Jorge Fernando Quiroga Ramirez, President of the Republic of Bolivia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Hardcover coffee table book: "Casas de los Cabos." Recd—December 7, 2001. Est. Value—$50. Archives Foreign.	His Excellency Vicente Fox Quesada, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Decorative silver bowl (4″ x 4″d) with a small bird on the lip. Recd—December 7, 2001. Est. Value—$250. Archives Foreign.		
President	Lamp: 27″ lamp with a jade base carved in the shape of an elephant, with a 14″ green silk shade. Recd—December 14, 2001. Est. Value—$800. Archives Foreign.	His Excellency Sakthip Krairiksh, Ambassador of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Books: boxed set of nine volumes on the "Kings of the Royal House of Chakri." Recd—December 14, 2001. Est. Value—$350. Archives Foreign.	His Excellency Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Stationery: 2 sets of paper and envelopes, with a gold tone letter opener; held in a polished burlwood box with the seal of the Royal Thai Government on the lid. Recd—December 14, 2001. Est. Value—$60. Archives Foreign.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Travel desk: 13½″ x 17½″ black leather-topped lap desk with polished burlwood trim. Recd—December 14, 2001. Est. Value—$250. Archives Foreign.		
President	Colored photographs (19): pictures of the Presidential visit to China; off-white matting with gold edges (9.5″ x 13″). Recd—December 19, 2001. Est. Value—$333. Archives Foreign.	His Excellency Tang Jiaxuan, Minister of Foreign Affairs of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Decorative silver stand (6½″) with a marble base; indigenous Kazakhstan animals adorn the stand; held in a green leather presentation case. Recd—December 21, 2001. Est. Value—$5697. Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Silver medallion (2″ diameter): engraved with "President of Republic of Kazakhstan" with outline and signature of President Nazarbayev. Recd—December 21, 2001. Est. Value—$40. Archives Foreign.		
President	Saddle: black with ornate trimming. Recd—December 21, 2001. Est. Value—$7500. Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Hardcover leather books (2 copies): "A Diary Between Friends," by Alliance Atlantis Communications, Inc. (English and French versions), in sleeves. Recd—December 27, 2001. Est. Value—$500. Archives Foreign.	The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Governemnt.
President	Branched dates (approximately 30 pounds). Recd—December 31, 2001. Est. Value—$180. Handled pursuant to Secret Service policy.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Purple leather chest (16″ x 18″ x 24″): Bombay vault style with mirror-lined lid; one false drawer, two half drawers, and one full drawer, all leather covered and lined. Recd—December 31, 2001. Est. Value—$700. Archives Foreign.		
	Olive oil (8 liters). Recd—December 31, 2001. Est. Value—$28. Handled pursuant to Secret Service policy.		
	Bottles of wine (6): "Les Vignes de Tanit (2 Rose, 2 Blanc, 2 Rouge)," made in Tunisia. Recd—December 31, 2001. Est. Value—$48. Handled pursuant to Secret Service policy.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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President	Chinese classical novels (4 chests, 38 volumes total): "Dream of Red Mansions," "The Romance of Three Kingdoms," "Outlaws of the Marsh," and "Journey to the West," printed on fine kozo (rice) style paper with silk covering; made into calligraphic version by Shen Hongsheng for APEC China 2001 meeting. Recd—December 31, 2001. Est. Value—$3000. Archives Foreign.	The Honorable Chen Liangyu, Acting Mayor, Municipal People's Government of Shanghai.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Oil painting (22″ x 26″): green palm tree with donkey, chair, and multi-colored beach balls; presented in gold frame. Recd—December 31, 2001. Est. Value—$500. Archives Foreign.	His Excellency Hipolito Mejia, President of the Dominican Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Dish: 7″ silver-plated copper with pedestal base and engraved with a killer whale in the center; created by artist Harold Alfred, a member of the Kwakiutl tribe. Recd—February 5, 2001. Est. Value—$500. Archives Foreign.	Mrs. Aline Chretien, Office of the Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	"Concord" gym bag with eight baseball hats with "Concord" symbol, and four pairs of women's running shoes. Recd—February 15, 2001. Est. Value—$375. Archives Foreign.	The Honorable Eduardo Ezequiel Arroyo Roldan, Mayor of San Francisco Del Rincon, Guanajuato.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	White straw cowboy hat by the Arlop Hat Company. Recd—February 15, 2001. Est. Value—$150. Archives Foreign.		
First Lady	Books: "My Love, My Country," and "Praying for Tomorrow: Letters to My Husband in Prison," both by Lee Hee-ho, and "Prison Writings," by Kim Daejung. Recd—March 7, 2001. Est. Value—$99. Archives Foreign.	Mrs. Lee Hee-ho, First Lady of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Hwagak jewelry box, tiger patterned, 7″ x 4″ x 3″, specially made by J.M. Lee. Recd—March 7, 2001. Est. Value—$396. Archives Foreign.		
First Lady	Silver necklace with bird and heart design in a small green jewelry box with gold trim. Recd—March 22, 2001. Est. Value—$110. Archives Foreign.	His Excellency Vicente Fox Quesada, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Boots; brown lizard skin with a star stitched in brown on both front and back. Recd—March 22, 2001. Est. Value—$450. Archives Foreign.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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First Lady	Brooch: 22 karat gold and amber brooch from "Onnig of Cairo Egyptian Museum." Recd—April 2, 2001. Est. Value—$850. Archives Foreign.	Mrs. Suzanne Mubarak.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Large pine wood chest with crown latch and inlaid with design of crown; containing a wooden bath brush. Recd—April 12, 2001. Est. Value—$200. Archives Foreign. Collection of beauty products contained in chest: two packages of three bars each of soap (mineral, scrub, and black mud); three small burlap bags filled with Dead Sea salts; two bottles of Dead Sea bath salts; one natural sponge; one bees wax candle; one pottery jar filled with Dead Sea bath salts; and one pottery jar filled with Dead Sea mud. Recd—April 12, 2001. Est. Value—$200. Handled pursuant to Secret Service policy.	His Majesty King Abdullah II bin al Hussein of the Hashemite, Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Large red shawl with black suede design representing "The Sky Woman and the Great Tree of Life," designed by Tammy Beauvais. Recd—April 20, 2001. Est. Value—$300. Archives Foreign.	Mrs. Aline Chretien, Office of the Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Embroidered table runner: 15″ x 42″ with a Macedonian design. Recd—May 3, 2001. Est. Value—$75. Archives Foreign. Embroidered tea cloth: 45″ x 42″ with a Macedonian design. Recd—May 3, 2001. Est. Value—$150. Archives Foreign. Embroidered table runner: 16″ x 44″ with a Macedonian design. Recd—May 3, 2001. Est. Value—$75. Archives Foreign.	Mrs. Vilma Trajkovska, Office of the President of Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book: 3¼″ x 2¼″ leatherbound pictorial catechism and hardcover "Catecismo de Fray Pedro de Gante." Recd—June 12, 2001. Est. Value—$800. Archives Foreign.	His Excellency Jose Maria Aznar, President of the Government of Spain and Mrs. Aznar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Hardback book: "Libro de Horas del Viaje de Carlos V Para Ser Coronado Emperador," a Coleccion Carlos V. leather bound edition with gold-leaf pages; covers of the book are imprinted with coat of arms. Paperback translation also included. Recd—June 12, 2001. Est. Value—$1800. Archives Foreign.	Her Majesty Sofia, Queen of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Black linen apron stitched with "Laura Bush." Recd—June 14, 2001. Est. Value—$30. Archives Foreign.	His Excellency Goran Persson, Prime Minister of Sweden.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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	Four double old fashioned size drinking glasses. Recd—June 14, 2001. Est. Value—$200. Archives Foreign. Two ceramic coffee mugs with the European Union logo. Recd—June 14, 2001. Est. Value—$26. Archives Foreign. Small umbrella with Swedish colors. Recd—June 14, 2001. Est. Value—$22. Archives Foreign. CD produced by a local Swedish group. Recd—June 14, 2001. Est. Value—$15. Archives Foreign. CD: "Best of Western Gotaland." Recd—June 14, 2001. Est. Value—$15. Archives Foreign. Pin with the European Union logo. Recd—June 14, 2001. Est. Value—$20. Archives Foreign.		
First Lady	Purse caramel color, "Kelly" style Ferragamo leather handbag. Recd—July 30, 2001. Est. Value—$625. Archives Foreign. Hardback book: "Il Palazzo Del Quirinale," by Electa (Italian). Recd—July 30, 2001. Est. Value—$114. Archives Foreign.	His Excellency Carlo Azegio Ciampi, President of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Shirt: long-sleeve wool shirt with blue and green stripes. Recd—September 10, 2001. Est. Value—$150. Archives Foreign.	The Honorable John Howard, Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Evening bag made of silver, decorated with a leaf pattern. Recd—September 26, 2001. Est. Value—$750. Archives Foreign.	Her Excellency Soekarnopoutri Megawati, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Painting: 19″ × 29″ oil painting of a woman holding a bowl, in a gift-painted wooden frame. Recd—October 9, 2001. Est. Value—$1400. Archives Foreign.	His Excellency Eduard Shevardnadze, President of Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Place card holders (18): silver, six each in shape of a native house, water buffalo, and outrigger boat. Recd—October 24, 2001. Est. Value—$450. Archives Foreign.	Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Mr. Jose Miguel Arroyo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Vase: handpainted clear glass vase with stopper and rosewood display stand; vase is painted with scene of several Chinese women in traditional dress. Recd—October 24, 2001. Est. Value—$1500. Archives Foreign.	His Excellency Jiang Zemin, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Necklace: gold chain with opal pendant and two diamond studs. Recd—October 30, 2001. Est. Value—$1000. Archives Foreign.	The Honorable John Howard, Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Robe: white linen and lace caftan embroidered with stars; held in a brown leather case. Recd—November 8, 2001. Est. Value—$425. Archives Foreign.	His Excellency Abedelaziz Bouteflika, President of the People's Democratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: matching silver brooch, necklace and cuff bracelet with yellow, blue, and green enamel, studded with pieces of coral; held in a blue silk-lined silver box with coral. Recd—November 8, 2001. Est. Value—$500. Archives Foreign.	His Excellency Abdelaziz Bouteflika, President of the People's Deocratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Brooch: yellow mother of pearl in the shape of two flowers, set in 18K gold with tsavorite and pink tourmaline stones. Recd—November 21, 2001. Est. Value—$450. Archives Foreign.	Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Mr. Jose Miguel Arroyo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Table linens: one cream tablecloth with grey embroidery and 12 grey napkins with white border, all by Valentino. Recd—November 21, 2001. Est. Value—$434. Archives Foreign.	His Excellency Vladimir Putin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Tea and coffee service: handpainted white and blue floral Gzhel coffee and tea pots, serving tray, six cups and saucers, and a creamer and sugar bowl. Recd—November 21, 2001. Est. Value—$589. Archives Foreign.		
First Lady	Tablecloth (60″ x 120″) and napkins (12): white cotton embroidered with multi-colored butterflies. Recd—November 27, 2001. Est. Value—$557. Archives Foreign.	His Excellency Didier Ratsiraka, President of the Republic of Madagascar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Table shawl (24″ x 82″): cream and cream design with fringe. Recd—November 27, 2001. Est. Value—$80. Archives Foreign.		
	Petrified wood pieces (2, 4″ x 4″ x 5″): presented in straw-colored, heart-shaped containers; 2 wooden stands included. Recd—November 27, 2001. Est. Value—$100. Archives Foreign.		
First Lady	Porcelain figure (13″): handcrafted Spanish doll, "Menina", in blue and white ballgown. Recd—November 28, 2001. Est. Value—$125. Archives Foreign.	His Excellency Jose Maria Aznar, President of the Government of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Necklace: ornate silver with silver charms, oval-shaped coral pieces and silver bow as centerpiece. Earrings (2.5″): silver with small charms attached. Bracklet: silver with small red stone in center. Large silver ring. Pins: miniature sabershaped pins (one gold, one silver, each 2″ x 5″). Recd—December 3, 2001. Est. Value—$1500. Archives Foreign.	His Excellency Ali Abdullah Saleh, President of the Public of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Purple fabric (39″ x 174″ "floating weft brocade" in raw silk. Recd—Decenber 14, 2001. Est. Value—$1200. Archives Foreign.	His Excellency Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Necklace: gold with bi-color amethyst. Recd—December 18, 2001. Est. Value—$200. Archives Foreign. Hand-woven cloth (35″ x 43″): brown with geometric designs in white, yellow and pink. Recd—December 18, 2001. Est. Value—$375. Archives Foreign. Hand-woven Charazani belt (3″ x 41″): brown with animal designs and topo clasp (9″) of ornate metal. Recd—December 18, 2001. Est. Value—$135. Archives Foreign.	Mrs. Virginia Gillum de Quiroga, First Lady of the Republic of Bolivia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Bracelet: gold bracelet decorated with two horse heads, diamonds and turquoise; held in a green leather presentation box. Recd—December 21, 2001. Est. Value—$2664. Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embrassment to donor and U.S. Government.
First Family	Chalices (2): coral marble with attached gold handles (7″ x 4¾″ x 4″). Recd—March 29, 2001. Est. Value—$400. Archives Foreign. Frame (15″ x 12″): silver with signed photograph of the King and Queen of Spain; enclosed in a leather box. Recd—March 29, 2001. Est. Value—$225. Archives Foreign.	His Majesty Juan Carlos I, King of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Bag: canvas tote printed with a crest and "Lansstyrelsen Vastra Gotaland www.o.1st.se." Recd—June 14, 2001. Est. Value—$15. Archives Foreign. Fabric: 64″ x 100″ beige and tan fabric. Recd—June 14, 2001. Est. Value—$300. Archives Foreign.	The Honorable and Mrs. Gote Bernhardsson, Governor of Goteborg.	Non-acceptance would case embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Hardcover book: "Design from Western Sweden," by Fike Edwwards, Gunilla Grahn-Hinnfors, Torsten Hild, Ingrid Sommer, Anders Westgardh. Recd—June 14, 2001. Est. Value—$30. Archives Foreign.		
	Hardcover book: "Goteborg och dess historia," by Gunnar Bohlin. Recd—June 14, 2001. Est. Value—$25. Archives Foreign.		
	Hardcover book: "Cuisine from Sweden's West at its Best," published by Nordbok International AB. Recd—June 14, 2001. Est. Value—$30. Archives Foreign.		
First Family	Porcelain: "Noble Lady at Leisure" ceramic sculpture (13″) of a woman dressed in a traditional Chinese robe glazed with bright blue and orange colors. Black wood stand included (11″x 9″ x 1½″). Recd—July 16, 2001. Est. Value—$1450. Archives Foreign.	The Honorable Tung Chee Hwa, Chief Executive of the Hong Kong Special Administrative Region Office of the Chief Executive.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Frame (8½″ x 12″): silver, engraved with the Royal crest; displaying a matted and signed photograph of the Queen. Recd—July 19, 2001. Est. Value—$350. Archives Foreign.	Her Majesty Queen Elizabeth II.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Bags (2): Gilli mustard-colored ostrich leather travel bag, and black and white leather envelope-style handbag. Recd—July 20, 2001. Est. Value—$3300. Archives Foreign.	His Excellency, Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Pitcher 11″ cut glass Gorham pitcher with cylindrical body and sterling silver rim decorated with leaves and engraved with "RCW" monogram. Recd—July 27, 2001. Est. Value—$550. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Fragment of Imperial Porphyry (purple stone) in burgundy leather box. Recd—July 30, 2001. Est. Value—$125. Archives Foreign.	His Excellency Carlo Azeglio Ciampi, President of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Scarf: 33″ silk scarf based on tapestry that hangs in President Ciampi's office. Recd—July 30, 2001. Est. Value—$80. Archives Foreign.		
First Family	Medals (3): the Pontiff on one side, Jesus on reverse (gold, silver and bronze); held in white leather case with crest of the Vatican. Recd—July 30, 2001. Est. Value—$1875. Archives Foreign.	His Holiness John Paul II.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Family	Pitchers: pair of antique crystal pitchers with silver detail. Recd—October 16, 2001. Est. Value—$1500. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Silver tray with engraved flowers around edges (9.5″ x 12.5″). Recd—December 31, 2001. Est. Value—$350. Archives Foreign.	His Excellency Lalit Mansingh, Ambassador of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Daughter Barbara Bush	Necklace: seven strands of coral beads clasped at two points with silver balls and large silver piece in center with five charms attached (13″ x 13″ x 13″); and miniature saber-shaped pin (3.5″ x 3.5″). Recd—December 3, 2001. Est. Value—$750. Archives Foreign.	His Excellency Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Daughter Jenna Bush	Necklace: seven strands of coral beads clasped at two points with silver balls and large silver piece in center with five charms attached (13″ x 13″ x 3″); and miniature saber-shaped pin (3.5″ x 3.5″). Recd—December 3, 2001. Est. Value—$750. Archives Foreign.	His Excellency Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Bradtke, Robert A. Executive Secretary, NSC.	Vase: pale green glazed vase with one large white peony and one pink peony (approximately 10″ x 30″). Recd—July 19, 2001. Est. Value—$400. Archives, Staff Gift.	His Excellency Junichiro Koizumi, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Card, Andrew H., Jr., Assistant to the President and Chief of Staff.	Vase: large pottery vase (11″ x 34″) with a flock of white cranes flying on a background of gold colored paint with mountains in the background in gray over a clay colored surface. Recd—April 16, 2001. Est. Value—$650. Archives, Staff Gift.	His Excellency Shunji Yanai, Ambassador of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Card, Andrew H., Jr., Assistant to the President and Chief of Staff.	Decorative Plate: "Fukagawa Porcelain" (approximately 10″ diameter) with two cranes and blue and gold trim. Black lacquer display stand included. Recd—July 27, 2001. Est. Value—$350. Archives, Staff Gift.	His Excellency Junichiro Koizumi, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Card, Andrew H., Jr., Assistant to the President and Chief of Staff.	Candle holder: "Frazer and Haws of London" sterling silver candle holder on a wooden base (approximately 11″ x 3½″), presented in a red velvet box embossed with the seal of the Prime Minister of India. Recd—November 27, 2001. Est. Value—$500. Archives, Staff Gift.	His Excellency Atal Bihari Vajpayee, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Edson, Gary R. Deputy Assistant to the President for International Economic Affairs & Deputy National Security Advisor.	Vase: 15″ x 4″ dark blue with large white peonies and touch of gold. Recd—July 20, 2001. Est. Value—$750. Archives, Staff Gift.	His Excellency Junichiro Koizumi, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Fenton, Cathy, Special Assistant to the President & White House Social Secretary.	Picture frame: 5″ x 6″ Mikimoto frame for a 4″ x 3½″ photo, decorated on each corner with a small pearl and gold colored decorative painting. Recd—May 31, 2001. Est. Value—$350. Return to sender.	Mrs. Toshiko Yanai, Embassy of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Frazer, Jendayi, Special Assistant to the President & Senior Director, NSC African Affairs.	Seat cushion covers: three dark green leather seat cushion covers approximately 29″ in diameter with gold designs, Recd—June 27, 2001. Est. Value—$600. Archives, Staff Gift.	The Honorable Ahmed Mohammed Makarfi, Governor of Kaduna, Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gonzales, Alberto R., Counsel to the President.	Vase: 15″ x 4″ dark blue with peonies and touch of gold. Recd—July 20, 2001. Est. Value—$750. Archives, Staff Gift.	His Excellency Shunji Yanai, Ambassador of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Hadley, Stephen, Assistant to the President & Deputy National Security Advisor.	Vase: pale green glazed vase with one white and one pink peony (approximately 10″ x 30″). Recd—May 4, 2001. Est. Value—$400. Archives, Staff Gift.	His Excellency Yoshiro Mori, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Hadley, Stephen, Assistant to the President & Deputy National Security Advisor.	Silver box: 7½″ x 5″ silver box with green velvet bottom and interior. Recd—September 6, 2001. Est. Value—$500. Archives, Staff Gift.	Lieutenant General Mahmud Ahmed, Director General, Inter-Services Intelligence Directorate.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lindsey, Larry, Assistant to the President for Economic Policy & Director, National Economic Council.	Vase, large potter vase (11″ x 34″) with a flock of white cranes flying over a gold colored painted background with mountains in the background painted in gray over a clay colored surface. Recd—April 26, 2001. Est. Value—$650. Archives, Staff Gift.	His Excellency Shunji Yanai, Ambassador of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lindsey, Larry, Assistant to the President for Economic Policy & Director, National Economic Council.	Decorative plate: "Fukagawa Porcelain" decorative plate (approximately 10″ diameter) with two cranes and blue and gold trim. Black lacquer display stand included Recd—July 16, 2001. Est. Value—$350. Archives, Staff Gift.	His Execellency Junichiro Koizumi, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Patterson, Torkel, Special Assistant to the President & Senior Director, NSC Asian Affairs.	Scarf: black "Chateau Robert" pashmina with silk. Recd—February 13, 2001. Est. Value—$280. Government Property.	Mr. Ray Yang, Director, Western Region NSB, Taipei Economic & Culture Representative Office (TECRO).	Non-acceptance would cause embarrassment to donor and U.S. Government.
Patterson, Torkel, Special Assistant to the President & Senior Director, NSC Asian Affairs.	Vase: pale green glazed vase with one white and one pink peony in a ginger jar shape, approximately 10″ x 30″. Recd—March 19, 2001. Est. Value—$400. Archives, Staff Gift.	His Excellency Yoshiro Mori, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Patterson, Torkel, Special Assistant to the President & Senior Director, NSC Asian Affairs.	Decorative plate (10″ diameter): "Fukagawa Porcelain" decorative plate in blue with white cranes and gold edging. Black lacquer display stand included. Recd—August 20, 2001. Est. Value—$350. Archives, Staff Gift.	His Excellency Junichiro Koizumi, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Patterson, Torkel, Special Assistant to the President & Senior Director, NSC Asian Affairs.	Artwork: Suzzani silk needlework on silk textile base; picture 24½″ x 32″) depicts a classical wooden bridge over a pond; held in a gold colored wooden frame. Recd—November 30, 2001. Est. Value—$600. Archives, Staff Gift.	His Excellency Tam Chien Nguyen, Ambassador of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Briefcase: burgundy leather. Recd—February 6, 2001 Est. Value—$300. Government Property.	His Excellency Adalberto Rodriguez Giavarini, Minister of Foreign Relations, International Trade and Wordship of the Argentine Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Silver box: small, ornately designed silver trinket box with lid. Recd—May 1, 2001. Est. Value—$350. Archives, Staff Gift.	His Excellency Ilir Meta, Prime Minister of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Framed 24″ x 28″ acrylic painting of mountains with green pine trees, signed by "Leon." Recd—May 4, 2001. Est. Value—$375. Archives, Staff Gift.	His Excellency Yerlan Idrisov, Minister of Foreign Affairs of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Vase: large pottery vase (11″ x 34″) with a flock of white cranes flying over a gold colored background with grey mountains in the background over a clay colored surface. Recd—May 4, 2001. Est. Value—$650. Archives, Staff Gift.	His Excellency Yoshiro Mori, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Compote: small ornate silver compote ("ilias LaLaoUNIS" brand name). Recd—May 21, 2001. Est. Value—$300. Archives, Staff Gift.	His Excellency George Papandreou, Minister of Foreign Affairs of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Silver incense burner with long, curved handle; presented in a large red leather case with satin lining. Recd—June 21, 2001. Est. Value—$450. Archives, Staff Gift.	His Excellency Yusuf bin Alawi bin Abdullah, Minister Responsible for Foreign Affairs of the Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Silver container (4½ x 18″): decorative silver beads and bands covering surface with an occasional coral bead. Recd—July 12, 2001. Est. Value—$750. Archives, Staff Gift.	His Excellency Abdelaziz Bouteflika, President of the People's Democratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Porcelain vase (13″): navy blue and gold, with blue raised applied flowers. Recd—July 25, 2001. Est. Value—$350. Archives, Staff Gift.	Mr. Vladimir B. Rushaylo, Secretary of Russian Security Council.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Decorative plate: "Fukagawa Porcelain" decorative plate (approximately 10″ diameter) with two cranes and blue and gold trim. Black lacquer display stand included. Recd—July 27, 2001. Est. Value—$350. Archives, Staff Gift.	His Excellency Junichiro Koizumi. Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Vessel: sterling silver vessel "PYXIS" Design inspired by a Minoan compass (1400 B.C.). Made by ilias LALAoUNIS. Recd—October 5, 2001. Est. Value—$350. Archives, Staff Gift.	His Excellency George Papandreou, Minister of Foreign Affairs of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Gold coins: four 22k gold coins in a black leather case. Recd—November 7, 2001. Est. Value—$800. Archives, Staff Gift.	His Excellency Shaykh Sabah al-Ahmad al-Jabir Al Sabah, First Deputy Prime Minister and Minister of Foreign Affairs of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rove, Karl, Senior Advisor to the President.	Vase: pale green glazed vase with one white and one pink peony in a ginger jar shape (approximately 10″ x 30″). Recd—April 30, 2001, Est. Value—$400. Archives, Staff Gift.	His Excellency Yoshiro Mori, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Spellings, Margaret, Assistant to the President for Domestic Policy.	Vase: 15″ x 4″ dark blue vase with peonies and a touch of gold. Recd—July 20, 2001. Est. Value—$750. Archives, Staff Gift.	His Excellency Shunji Yanai, Ambassador of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Tighe, Mary, Director, NSC Asian Affairs.	Vase: white glazed vase with blue mountains, approximately 10″ x 24″, Recd—March 19, 2001. Est. Value—$400. Archives, Staff Gift.	His Excellency Yoshiro Mori, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Walters, Logan M., Presidential Aide.	Ties (2): one "Battistoni" dark blue silk with small ships, and one E. Marinella silk tie from Naples with dark blue and gold dots and small logo. Recd—August 6, 2001. Est. Value—$260. Government Property. Hardcover books: "The Museums of Genoa Welcome the G8"; "Liguria The World in One Region"; "A Window Over the Mediterranean Sea". Recd—August 6, 2001. Est. Value—Not Applicable. Government Property.. Paperback books (4): "Omaggio al G8 La Maniera Italiana"; The G7/G8 from Rambouillet to Genoa"; "Liguria terra di poesia"; "The Delegate's Handbook". Recd—August 6, 2001. Est. Value—Not Applicable. Government Property. CD and DVD: promotional CD and DVD of "Genova". Recd—August 6, 2001. Est. Value—Not applicable. Government Property. Travel case: nylon navy blue travel case with zippered compartments and stitched "G8 2001" with Genoa logo, Recd—August 6, 2001. Ext. Value—$50. Government Property.	Genoa G8 Summit 2001	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Miscellaneous items given in gift pack: seven postcards; magazine; ¾" dark blue enamel pin with white flag and red cross; one pack of "G8 2001" stationery and blue ballpoint pen; and one pack of travel brochures. Recd—August 6, 2001. Ext. Value—Not Applicable. Government Property.		

ENTITY: OFFICE OF THE VICE PRESIDENT

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
148/QC, Vice President	Octagonal porcelain dish by Villa Allegre, reproduction of Chinese porcelain, depicting two birds in a landscape with trees. Recd—February 28, 2001. Est. Value—$275. Archives Foreign.	His Excellency Jamie Gama, Minister of State and Foreign Affairs of Portugal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
155/QC, Vice President	Four Floral "Get-Well" Bouquets that included roses, French tulips, lilacs, and orchids in crystal vases. Recd—March 10, 2001. Est. Value—$1950. Handled pursuant to Secret Service policy.	His Majesty King Fahd Bin Abdulaziz; His Highness Prince Abdullah Bin Abdulaziz; Prince Sultan Bin Abdulaziz; Prince Bandar Bin Sultan Bin Abdulaziz, Royal Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
281/QC, Vice President	Small ancient glass vessel from Hebrew archaeological site (50 B.C.) mounted on ornamental silver tripod. Encased in lucite, with inscription to the Vice President. 4"x5". Recd—March 19, 2001. Est. Value—$290. Archives Foreign.	His Excellency Ariel Sharon, Prime Minister of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
113037/BOYER_C, Vice President	Large round Kutani earthenware vase, painted with flying cranes and gold foil decoration. Recd—April 4, 2001. Est. Value—$600. Archives Foreign.	His Excellency Yoshiro Mori, Former Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
111297/BOYER_C, Vice President	Odalisque Dead Sea Products: assorted toiletries for men and women, including shampoo, soap, and bath salts. Recd—April 16, 2001. Est. Value—$302. Handled pursuant to Secret Service policy.	His Majesty Abdullah II bin al Hussein, of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
113382/BOYER_C, Vice President	Desk set featuring a lump of gold ore from the Mahd Ad-Dahb gold mine and a Baccarat crystal decanter containing Arabian extra-light crude oil; measures 8"x5"x10" on a black acrylic base. Recd—May 1, 2001. Est. Value—$1000. Archives Foreign.	His Excellency Ali I. Al-Naimi, Minister of Petroleum and Mineral Resources of the Royal Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

ENTITY: OFFICE OF THE VICE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
113381/BOYER_C, Vice President	Burled wood Boisseliers du Rif humidor, with inlaid wood framing a painting of the Mediterranean, measures 12″x9″. Recd—May 1, 2001. Est. Value—$350. Archives Foreign.	His Excellency Rafiq al-Hariri, Prime Minister of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
107541/BOYER_C, Vice President	750 gram copper modelia with silk screen of "King David" and "Entry in Jerusalem" by Marc Chagall. Recd—May 2, 2001. Est. Value—$291. Archives Foreign.	His Excellency Moshe Katsav, President of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
107539/BOYER_C, Vice President	Sterling silver filigree box, measures 4¼″x6½″ with small jaspar stone on lid. Recd—May 2, 2001. Est. Value—$400. Archives Foreign.	His Excellency Ilir Meta, Prime Minister of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
111331/BOYER_C, Vice President	Engraved silver octagonal box, lined in blue velvet. Measures 7″ in width. Recd—May 2, 2001. Est. Value—$1400. Archives Foreign.	His Excellency Mohamed Hosny Mubarak, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
107467/BOYER_C, Vice President	Sterling silver vessel, design inspired from the Minoan Period (1480 BC). Recd—May 22, 2001. Est. Value—$300. Archives Foreign.	His Excellency George A. Papandreou, Minister of Foreign Affairs of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
113034/BOYER_C, Vice President	Charles Silver Clock mounted with two large Baccarat crystal horse heads on brass base with simulated lapis decorations. Recd—June 1, 2001. Est. Value—$2500. Archives Foreign.	His Excellency Ali I. Al-Naimi, Minister of Petroleum and Mineral Resources, Royal Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
108033/BOYER_C, Vice President	Sterling Silver 9″ round tray and 10″ tall incense container with cut work and reposé hinged ball on top. Recd—June 18, 2001. Est. Value—$750. Archives Foreign.	His Excellency Yusef Bin Alawi, Foreign Minister of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
108034/BOYER_C, Vice President	Large black lacquer box, with mother of pearl inlays in seascape design. Recd—June 22, 2001. Est. Value—$350. Archives Foreign.	His Excellency Kim Dong Shin, ROK Defense Minister.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Black baseball bat signed by Juan Gonzalez of the Texas Rangers. Recd—June 22, 2001. Est. Value—$55. Archives Foreign.		
107515/BOYER_C, Vice President	Flowers. Recd—July 10, 2001. Est. Value—$500. Handled pursuant to Secret Service policy.	His Majesty, King Fahd Bin Abdulaziz, Royal Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
107520/BOYER_C, Vice President	Flowers. Recd—July 10, 2001. Est. Value—$400. Handled pursuant to Secret Service policy.	His Highness Crown Prince Abdullah Bin Abdulaziz, Royal Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
112902/BOYER_C, Vice President	Poljot chronograph watch, 23 jewels, stopwatch and calendar features with crest of President Putin. In leather case with crest. Recd—July 20, 2001. Est. Value—$290. Archives Foreign.	His Excellency Vladimir Putin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.

ENTITY: OFFICE OF THE VICE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
109314/BOYER_C, Vice President	Fresh dates, 8.8 lbs ($44); Algerian wine, 12 bottles ($160); Camel saddle with bridle, red and gold saddle blanket, whip, lead, and wooden saddle stand ($1400). Consumables were handled pursuant to Secret Service policy. Recd—August 2, 2001. Est. Value—$1604. Archives Foreign.	His Excellency Abdelaziz Bouteflika, President of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
110239/BOYER_C, Vice President	Silver repousé bowl with Indonesian crest, measures 10.5″ in diameter. Recd—September 17, 2001. Est. Value—$200. Archives Foreign.	Her Excellency Megawati Soukarnopoutri, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
113035/BOYER_C, Vice President	Desktop decoration: large Sterling Silver sailboat, with gold vermeil sails. Measures 18″ x 18″ x 7″. Recd—October 1, 2001. Est. Value—$2500. Archives Foreign.	His Highness Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
112125/BOYER_C, Vice President	Ornate silver carafe, measures 12.5″ high by 11″ wide, plate on brass. Recd—October 15, 2001. Est. Value—$300. Archives Foreign.	Sheikh Salman Bin Hamad Al-Khalifa, Crown Prince and Commander in Chief of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
112122/BOYER_C, Vice President	Gold vermeil sailboat on black base, measures 13.5″ tall by 13.5″ wide. Recd—November 5, 2001. Est. Value—$1500. Archives Foreign.	Sabah Al-Ahmad Al-Jabir, First Deputy Prime Minister of Foreign Affairs of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
113300/MURRAY_M, Vice President.	Silver sword with silver filigree handle inset with stones, and a silver filigree sheath, 24″ in length. Recd—November 27, 2001. Est. Value—$1000. Archives Foreign.	His Excellency Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Four cotton shawls or milfeh. Various colors with metallic thread and synthetic fibers. Size approximately 3″ x 6″. Recd—November 27, 2001. Est. Value—$400. Archives Foreign.		
112945/BOYER_C, Vice President	Frazer and Haws 6″ tall artwork: silver god, Ganesh, atop a faceted crystal ball, balanced on a silver rat. Marble base. Recd—December 3, 2001. Est. Value—$500. Archives Foreign.	His Excellency Atal Bihari Vajpayee, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
113638/BOYER_C, Vice President	A 600 Baht and a 30 Baht coin celebrating the Golden Jubilee of King Rama IX's Reign and the 60th Birthday of Queen Sirikit. Recd—December 14, 2001. Est. Value—$20. Archives Foreign.	His Excellency and Mrs. Thaksin Shinawatra, Prime Minister of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
113639/BOYER_C, Vice President	Sterling silver salver, 8″ in diameter, from Spink & Son, London. Recd—December 21, 2001. Est. Value—$2166. Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
113037/BOYER_C, Mrs. Cheney ..	Black and gold lacquer five-drawer jewelry box. Recd—April 4, 2001. Est. Value—$150. Archives Foreign.	His Excellency Yoshiro Mori, Former Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

ENTITY: OFFICE OF THE VICE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
111314/BOYER_C, Mrs. Cheney ..	Gold pin (18 carat) showing ancient Egyptian in boat; gift to Mrs. Cheney from Suzanne Mubarak. Recd—May 2, 2001, Est. Value—$450. Archives Foreign.	His Excellency Mohamed Hosny Mubarak, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
110239/BOYER_C, Mrs. Cheney ..	Small pierced Sterling Silver evening purse, measures 5″ x 2.5,4″ with hinged lid and 44″ silver chain. Recd—September 17 2001. Est. Value—$350. Archives Foreign.	His Excellency Megawati Soukarnopoutri, President, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
113300/MURRAY _M, Mrs. Cheney.	Silver quill work necklace with semi-precious stones, 23″ long, bow motif 6″ joined to six hanging silver quill motifs and stones on each side; earrings 3″ long; ring 1½″ in diameter; bracelet, bow in center with red stone and quilled scrolls on each side, 1¼″ and 6½″ in diameter. Recd—November 27, 2001. Est. Value—$750. Archives Foreign.	His Excellency Ali Abdulla Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
113638/BOYER_C, Mrs. Cheney ..	Six yards purple Thai silk, with metallic thread, measures 198″ by 40″. Recd—December 14, 2001. Est. Value—$500.	His Excellency and Mrs. Thaksin Shinawatra, Prime Minister of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
112944/BOYER_C, Mrs. Cheney ..	Hand-embroiderred orange Pashmina shawl, measures 36″ by 80″. Recd—December 3, 2001. Est. Value—$410. Archives Foreign.	His Excellency Atal Bihari Vajpayee, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
113036/BOYER_C, Vice President and Mrs. Cheney.	Large antique reproduction blue and white plum jar, modeled after 15th century jar from the Ho-Am Art Museum in Seoul, Korea. Recd—June 1, 2001. Est. Value—$350. Archives Foreign.	His Excellency Kim Dae-jung, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
109314/BOYER_C, Vice President Staff.	Red and black native wool rug approximately 6′6″ by 3′8″ presented to Lewis Libby. Recd—August 2, 2001. Est. Value—$600. Archives Foreign.	His Excellency Abdelaziz Bouteflika, President of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Hand-painted tile work scene of Algerian seaport presented to Chris Bolan. Framed, Highly decorative. Measures 18″ x 24″. Framed in simulated wood, one inch frame. Recd—August 2, 2001. Est. Value—$500. Archives Foreign..		

AGENCY: DEPARTMENT OF STATE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin Powell, Secretary of State	Diorama, 22″x14″, mother of pearl and abalone shell depicting "The Last Supper" and "The Nativity" in Bethlehem, also with numerals for the year 2000, Palestine, late 20th century, fitted red velvet case. Rec'd—January 25, 2001. Est. Value—$1,000.00. Pending transfer to GSA.	His Excellency Yasser Arafat, Chairman, Palestine Liberation Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Icon, 14″x12⅛″, polychrome wood with gold ground, Christ and Saints, Serbia, 18th/19th century. Rec'd—February 2, 2001. Est. Value—$1,000.00. Pending transfer to GSA.	His Excellency Zoran Djindjic, Prime Minister, Republic of Serbia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Vase, 7″ H, porcelain of globular form with tiny mouth and, incised celadon glaze, "diatreta" filigree outside the solid body composed of florets, Korea, late 20th century, wood box. Rec'd—February 7, 2001. Est. Value—$500.00. Pending transfer to GSA.	His Excellency Lee Joung-binn, Minister of Foreign Affairs and Trade, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Coffee pot, 12½″ H, sterling silver with gilt interior, mounted with the Kuwaiti coat of arms, leather and woven metal strip handle, late 20th century—45 ozsT, together with six Limoges porcelain cups, red leather fitted case. Rec'd—February 23, 2001. Est. Value—$1,000.00. Pending transfer to GSA.	His Highness Shaykh Jabir al-Ahmad Al Sabah Amir, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Medal, commemorative, 38.61 mm, proof 22 karat yellow gold, 40th Anniversary of the National Day of the State of Kuwait, 2001, plastic case, 47.54 g and Medal, commemorative, 55 mm, proof sterling silver, 72.5 g. Rec'd—February 23, 2001. Est. Value—$475.00. Pending transfer to GSA.	His Excellency Shaykh al-Ahmad al-Jabir Al Sabah, First Deputy Prime Minister and Minister of Forei, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Robes (bishts) brown cotton and black cotton gauze fabric, each with gold embroidery, Kuwait, late 20th century. Rec'd—February 23, 2001. Est. Value—$350.00. Pending transfer to GSA.	His Excellency Shaykh Sabah al-Ahmad al-Jabir Al Sabah, First Deputy Prime Minister and Minister of Forei, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Robes (bishts) brown cotton and black cotton gauze fabric, each with gold embroidery, Kuwait, late 20th century. Rec'd—February 23, 2001. Est. Value—$350.00. Pending transfer to GSA.	His Excellency Shaykh Sabah al-Ahmad al-Jabir Al Sabah, First Deputy Prime Minister and Minister of Forei, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin Powell, Secretary of State	Arrows, 23¼″x34″, bamboo shafts with four black stone and one wood head, feather ends, mounted against a sumi on paper drawing of a deer hunt, Korea, 20th century, matted and framed. Rec'd—March 7, 2001. Est. Value—$350.00. Pending transfer to GSA.	His Excellency Kim Dae-jung, President, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Alma Powell, Spouse, Secretary of State.	Fabric, 30″x240″, silk brocade with oriental motif, China, late 20th century. Rec'd—March 21, 2001. Est. Value—$300.00. Pending transfer to GSA.	Madame Zhou Hangiong, Spouse, People's Republic of China..	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Scribe's pen box and inkwell, 10¾″L, 900 silver with chased decoration, Turkish 20th century copy of the 17th century Ottoman original, fitted box, 160zsT. Rec'd—March 30, 2001. Est. Value—$500.00. Pending transfer to GSA.	His Excellency Ismail Cem, Minister of Foreign Affairs Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Cigarette box, 7½″L, sterling silver, lid engraved with the Royal Jordanian coat of arms and the facsimile signature of King Abdullah, by Kuhn, Germany, #27 late 20th century, fitted case, gross weight 20ozsT. Rec'd—April 4, 2001. Est. Value—$500.00. Pending transfer to GSA.	Their Majesties King Abdullah II bin al Hussein and Queen Rania King and Queen Hashemite Kingdom of Jordon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Vase, 10½″ H, Kutani ceramic with parcel gold ground and white cranes, Japan, late 20th century, wood box. Rec'd—April 4, 2001. Est. Value—$750.00. Pending transfer to GSA.	His Excellency Yoshiro Mori, Prime Minister, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Bowls, 7¾″ diameter, pierced, chased and repoussed sterling silver, India, late 20th century, 8ozsT, fitted box. Rec'd—April 6, 2001. Est. Value—$300.00. Pending transfer to GSA.	His Excellency Jaswant Singh, Minister of External Affairs, Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Drum, 44½″ Hx13½″ diameter, stretched skin on carved wood depicting many figures engaged in a celebration, other celebrating figures to column, portrait heads, Africa, 3rd quarter to late 20th century. Rec'd—April 17, 2001. Est. Value—$450.00. Pendings transfer to GSA.	Chief Mila Assoure, Member of the Central Committee on the RDCP Republic of Cameroun.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Painting, oil on canvas board, 15½″x15½″, village scene, by H. Jouni, late 20th century, matted and framed. Rec'd—April 25, 2001. Est. Value—$400.00. Pending transfer to GSA.	His Excellency Rafiq al-Hariri, Prime Minister, Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Icon, 12″ x 8½″, polychrome and gold ground on wood panel depicting St. George and the Dragon, Bulgaria, dated 2001. Rec'd—April 25, 2001. Est. Value—$300.00. Pending transfer to GSA.	His Excellency Ivan Kostov, Prime Minister, Republic of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin Powell, Secretary of State	Plaque, 12¾″x10¼″, 800 silver easel frame inset with turquoise color panel mounted with silver map of Bahrain and islands studded with seed pearls and set with 96 round diamonds TW 3.75 carats, late 20th century. Rec'd—May 7, 2001. Est. Value—$4,000.00. Pending transfer to GSA.	His Highness Shaykh Hamad bin Essa Al Khalifa Amir, State of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Sculpture—Tribal, carved wood, seated male and female figures. Rec'd—May 23, 2001. Est. Value—$750.00. Pending transfer to GSA.	His Excellency Mobido Sidibe, Minister of Foreign Affairs and Malians Abroad, Republic of Mali.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Painting, oil on canvas, 30″x37½″, Thompson's Gazelle, by (Francis?) Taga, Africa, 2000, wood frame. Rec'd—May 27, 2001. Est. Value—$750.00. Pending transfer to GSA.	His Excellency Yoweri Kaguta Museveni, President Republic of Uganda.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Plaque, 7½″ diameter, copper with relief "King David", centered with a polychrome enamel picture of King David, #881/2450, after Marc Chagall, 20th/21st century, framed and boxed. Rec'd—May 31, 2001. Est. Value—$400.00. Pending transfer to GSA.	His Excellency Moshe Katsav, President, Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Diorama, 22″x14″, abalone shell and mother of pearl depicting "The Nativity" in Bethlehem, Palestine, late 20th century, fitted red velvet case. Rec'd—June 28, 2001. Est. Value—$750.00. Pending transfer to GSA.	His Excellency Yasser Arafat, Chairman, Palestine Liberation Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Sword, 29″L with scabbard, sliver filigree set with 16 coral cabochons, Algerian, 20th/21st century, 44ozsT including blade. Rec'd—July 12, 2001. Est. Value—$2,000.00. Pending transfer to GSA.	His Excellency Abdelaziz Boutefilka, President, Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Bowl, footed, 10½″x8½″ oval, Chinese Export porcelain with polychrome enamel figures, flowers and colophons to exterior, China, mid to 3rd quarter 19th century, boxed. Rec'd—July 25, 2001. Est. Value—$350.00. Pending transfer to GSA.	Mr. Tung Chee-Hwa, Executive, Government of Hong Kong.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Five volumes: "The Complete Sagas of Icelanders", published by Leifur Eirksson, late 20th century, boxed. Rec'd—August 8, 2001. Est. Value—$390.00. Pending transfer to GSA.	His Excellency Halldor Asgrimsson, Minister of Foreign Affairs, Republic of Iceland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin Powell, Secretary of State	Beaker, 4″H, sterling silver, repousse with geometric, "Aztec" decoration, by Marmolejo-Izta, Mexico, 20th/21st century. 10ozsT. Rec'd—September 6, 2001. Est. Value—$350.00. Pending transfer to GSA.	His Excellency Vicente Fox, United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Model of a temple, 7¼″ H, silver, Indonesia, 20th/21st century, 32ozsT, boxed. Rec'd—September 19, 2001. Est. Value—$550.00. Pending transfer to GSA.	His Excellency Soekamopoutri Megawati, President, Republic of Indonesia.	Non-acceptance would cause embarrassment of donor and U.S. Government.
Colin Powell, Secretary of State	Cup, handled, 3″ H, sterling silver, repoussed with ancient Greek scene, reproduction by Ilias Lalaounis, Greece, 20th/21st century, boxed. Rec'd—October 3, 2001. Est. Value—$400.00. Pending transfer to GSA.	His Excellency George Papandreou, Minister of Foreign Affairs, Hellenic Republic (Greece).	Non-acceptance would cause embarrassment of donor and U.S. Government.
Colin Powell, Secretary of State	Painting, oil on canvas, 27″ x 27″ Georgian Mythological scene, by Gia Bugadze, 20th/21st century, framed. Rec'd—October 5, 2001. Est. Value—$500.00. Pending transfer to GSA.	His Excellency Eduard Shevardnadze, President, State of Georgia.	Non-acceptance would cause embarrassment of donor and U.S. Government.
Colin Powell, Secretary of State	Sculpture, 12¼″x12¼″, sterling silver, made London 1995–6 by "GGM", depicting a fort and centered with the coat of arms of Qatar, walnut base, fitted leather case, 150ozsT. Rec'd—October 5, 2001. Est. Value—$5,000.00. Pending transfer to GSA.	His Highness Sheikh Hamad bin Khalifa Al Thani Amir, State of Qatar.	Non-acceptance would cause embarrassment of donor and U.S. Government.
Colin Powell, Secretary of State	Plaque, 38″x24″, sheet copper with polychrome decoration centered with a repousse figure of a tribal dancer, by Mumba, 2001, framed. Rec'd—November 1, 2001. Est. Value—$850.00. Pending transfer to GSA.	His Excellency Joseph Kabila, President, Democratic Republic of the Congo.	Non-acceptance would cause embarrassment of donor and U.S. Government.
Colin Powell, Secretary of State	Diorama, 22″x14″, abalone shell and mother of pearl depicting "The Nativity" in Bethlehem, Palestine, late 20th century, fitted red velvet case. Rec'd—November 9, 2001. Est. Value—$750.00. Pending transfer to GSA.	His Excellency Yasser Arafat, Chairman, Palestine Liberation Organization.	Non-acceptance would cause embarrassment of donor and U.S. Government.
Mrs. Alma Powell, Spouse, Secretary of State.	Necklace, bracelet, pair of earrings and ring, silver filigree with coral beads, Yemen, 20th/21st century, boxed. Rec'd—November 27, 2001. Est. Value—$450.00. Pending transfer to GSA.	His Excellency Ali Abdullah Saleh, President, Republic of Yemen.	Non-acceptance would cause embarrassment of donor and U.S. Government.
Colin Powell, Secretary of State	Dagger, bent, silver hilt and scabbard set with 6 carnelian cabochons, Yemen, 20th/21st century, boxed. Rec'd—November 27, 2001. Est. Value—$1,250.00. Pending transfer to GSA.	His Excellency Ali Abdullah Saleh, President, Republic of Yemen.	Non-acceptance would cause embarrassment of donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin Powell, Secretary of State	Gravy boat, 9 38″ L, hand wrought sterling silver, two side handles, by Ilias Lalaounis, Greece, late 20th century. Rec'd—December 1, 2001. Est. Value—$300.00. Pending transfer to GSA.	His Excellency George Papandreou, Minister of Foreign Affairs, Hellenic Republic (Greece).	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Scribe's box, 10¾″ L, 900 silver decorated with bright cut engraving, Turkey, late 20th century. Rec'd—December 2, 2001. Est. Value—$400.00. Pending transfer to GSA.	His Excellency Ismail Cem, Minister of Foreign Affairs, Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Bowl, 6¼″ diameter across two mountain goat head handles, silver, gilt lined, set with 8 cabochon carnelians and 6 cabochon chrysoprases, Kazakhstan reproduction of a "Saks" bowl, stitched leather presentation box. Rec'd—December 9, 2001. Est. Value—$300.00. Pending transfer to GSA.	His Excellency Nursultan Nazarbayev, President, Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Coverlet, 86″x105″, patchwork pieces of cloth, mid 20th century. Rec'd—December 15, 2001. Est. Value—$375.00. Pending transfer to GSA.	His Excellency Maleeha Lodhi, Ambassador to the United States, Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Donal Burnham Ensenat, Chief of Protocol.	Dagger, 17″ H, silver filigree hilt and scabbard set with 15 orange coral cabochons, Algerian, late 20th century, wood box. Rec'd—July 12, 2001. Est. Value—$400.00. Retained for Official Use.	His Excellency Abdelaziz Boutefilka, President, Democratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Department of State	Desktop implements, leather box, Asprey, London, late 20th century: 18K yellow gold clock with 55 round diamonds TW2 carats, 2 Mont Blanc silver gilt (vermeil) pens, a green lizard change purse, & pair 18K gold, diamond, emerald & mabe pearl earrings. Rec'd—Est. Value—$15,000.00. Pending transfer to GSA.	Unknown..	
Colin Powell, Secretary of State	Orthodox egg, 6¾″ H, pierced sterling silver gilt (vermeil) with reddish orange enamel and set with imitation diamonds, Russian, late 20th century. Rec'd—December 9, 2001. Est. Value—$2,000.00. Pending transfer to GSA.	His Excellency Igor Ivanov, Minsiter of Foreign Affairs, Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Carpet, 45″ x 63″, wool and silk on cotton, tan field with geometric caucasian design, multiple borders, Uzbekistan, 20th/21st century. Rec'd—November 5, 2001. Est. Value—$1,850.00. Retained for Official Use.	His Excellency DPM Tashkent, Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin Powell, Secretary of State	Carpet, 9′7″ x 6′5″, wool on cotton, red, green and yellow geometric design, Algeria, 20th/21st Century. Rec'd—July 12, 2001. Est. Value—$1,000.00. Pending transfer to GSA.	His Excellency Abdelaziz Bouteflika, President, Democratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin Powell, Secretary of State	Wine Rec'd—November 5, 2001. Est. Value—$54.00. Handled pursuant to Department of State procedures.	His Excellency Abdelazia Bouteflika, President, Democratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin L. Powell, Secretary of State	Candleholder, 11″ H plus base, pierced sterling silver body, pricket base with wood bottom, by Frazer & Haws, India, 20th/21st century, 10ozsT plus base, boxed. Rec'd—November 9, 2001. Est. Value—$700.00, Pending transfer to GSA.	His Excellency Jaswant Singh, Minister of External Affairs, Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin L. Powell, Secretary of State	Coffee pot, 13″ H, silver, typical form, engraved ground, by Al Mannai, Bahrain, 20th/21st century, 44ozsT. Rec'd—November 30, 2001. Est. Value—$1,000.00. Pending transfer to GSA.	His Excellency Shaykh Mohammed bin Mubarak Al Khalifa, Minister of Foreign Affairs, State of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Johnny Young and Mrs. Johnny Young, U.S. Ambassador.	Bracelet, gold with miniature pearls. Rec'd—Est. Value—$500.00. Pending Transfer to GSA.	State of Bahrain	Non-acceptance would cause embarrassment to donor and U.S. Government.
Johnny Young, U.S. Ambassador	Carpet, silk 4½′x6½′ oriental design. Rec'd—December 1, 2001. Est. Value—$5,000.00. Retained for Official Use—Embassy Manama.	State of Bahrain	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ronald E. Neumann, U.S. Ambassador.	Watches, matching men's and women's stainless steel and alloy wrist watches, Pierre Perron of Paris, boxed Rec'd—September 30, 2001. Est. Value—$400.00. Pending transfer to GSA.	State of Bahrain	Non-acceptance would cause embarrassment to donor and U.S. Government.
George Tietjen, RSO	Laptop Computer. Rec'd—. Est. Value—$2,000.00. Pending transfer to GSA.	Brig. General Issa, Syria	Attempted on several occasions to refuse gift—all of which were unsuccessful.

AGENCY: DEPARTMENT OF THE TREASURY

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Edwin M. Truman, Assistant Secretary for International Affairs.	Bills and monies of Ecuador in circulation. Rec'd—Nov. 2, 2000. Est. Value—$1,400. To be excessed to GSA.	Luis Yturralde, Finance Minister, Govt. of Eduador.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary of Treasury.	Small silver dish. Rec'd—Mar. 15, 2001. Est. Value—$400. To be excessed to GSA.	Andres Pastrana, President, Govt. of Columbia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary of Treasury.	Australian blackwood box with gavel and hammer. Rec'd—Jul 6, 2001, Est. Value—$1,500. To be excessed to GSA.	Mr. Chino, President of Asian Development Bank.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary of Treasury.	Handmade cold cast bronze sculpture. Rec'd—Jul 6, 2001. Est. Value—$380. To be excessed to GSA.	John Kufuor, President, Govt. of Ghana.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary of Treasury.	Icon of St. George slaying the dragon. Rec'd—Jul 27, 2001. Est. Value—$880. To be excessed to GSA.	Mr. Kudrin, Finance Minister of Russia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE TREASURY—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James H. Fall, III, Deputy Assistant Secretary, Technical Assistance Policy.	Gold coin commemorating 2000 years of Christmas. Rec'd—Sep 28, 2001. Est. Value—$300. To be excessed to GSA.	Petro O. Poroshenko, People's Deputy of Ukraine.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimate value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donald H. Rumsfeld, Sec. of Defense.	Cotton rug. Rec'd—Oct. 4, 2001. Est. Value—$350.00. Reported to GSA—Pending Sec. Def. Decision.	Field Marshall Hussein Tantawy, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald H. Rumsfeld, Sec. of Defense.	Silver Flatware (24 piece set). Rec'd—Oct. 4, 2001. Est. Value—$560.00. Reported to GSA—March 13, 2001. Decision.	President Islam Karimov, Uzbekistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald H. Rumsfeld, Sec. of Defense.	Coin set honoring 2002 FIFA World Cup Korea Japan. Rec'd—Nov. 15, 2001. Est. Value—$275.00. Reported to GSA—Pending.	Korean MOD, Kim Dong-Shin	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald H. Rumsfeld, Sec. of Defense.	Silver spoons w/ ducks on handles. Rec'd—Nov. 15, 2001. Est. Value—$275.00. Reported to GSA—Pending.	Korean MOD, Kim Dong-Shin	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald H. Rumsfeld, Sec. of Defense.	Tiffany crystal bowl. Rec'd—Dec. 15, 2001. Est. Value—$420.00. Reported to GSA—Pending.	Salim Al-Abdallah Jabir Al Sabah, Ambassador Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald H. Rumsfeld, Sec. of Defense.	Silk carpet. Rec'd—Dec. 16, 2001. Est. Value—$390.00. Reported to GSA—Pending.	Fahid Kahn, MOD Afghanistan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald H. Rumsfeld, Sec. of Defense.	Painting of (Adoration of the Magi). Rec'd—Dec. 15, 2001. Est. Value—$340.00. Reported to GSA—Pending Sec. Def. Decision.	President Schevardnadze, Georgia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald H. Rumsfeld, Sec. of Defense.	Silver, gold multicolored sword. Rec'd—Dec. 15, 2001. Est. Value—$360.00. Reported to GSA—Mar. 13, 2001.	MOD Safar Abiyev, Azerbaijan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald H. Rumsfeld, Sec. of Defense.	Large wood chest w/brass and copper. Rec'd—Nov. 4, 2001. Est. Value—$340.00. Reported to GSA—Mar. 13, 2001.	President General Pervez Musharraf of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald H. Rumsfeld, Sec. of Defense.	Painting of a village in front of a mountain. Rec'd—Nov. 29, 2001. Est. Value—$340.00. Reported to GSA—Jan. 30, 2002.	MOD Kodir Gulomov, Uzbekistan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Rumsfeld, Spouse of Sec. of Defense.	Gold necklace. Rec'd—Oct. 4, 2001. Est. Value—$925.00. Reported to GSA—Pending Sec. Def. Decision.	Field Marshall Hussien Tantawy, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gen. Henry H. Shelton, CJCS	CSX Diamond Chronograph watch. Rec'd—Jul 17, 2001. Est. Value—$350.00. Reported to GSA—Oct 30, 2001.	Maj. Gen. Hamad Ali al-Attiyah, Chief of Staff, Qatar Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gen. Henry H. Shelton, CJCS	Wooden ship model. Rec'd—May 1, 2001. Est. Value—$550.00. Reported to GSA—Jul 30, 2001.	General Manoussos Paragioudakis, Chief Of the Hellenic National Defense General Staff.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimate value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Gen. Heny H. Shelton, CJCS	Silver Bowl and Plate set. Rec'd—Jun 5, 2001. Est. Value—$270.00. Reported to GSA—Jul 6, 01.	Lt. General Madgy Hatata, Egyptian Chief Defense.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gen. Henry H. Shelton, CJCS and Spouse Mrs. Carolyn J. Shelton.	Concord watch. Rec'd—Jul 17, 2001. Est. Value—$780.00. Reported to GSA—Oct 30, 2001.	Maj Gen. Hamad Ali al-Attiyah, Chief of Staff, Qatar Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gen. Henry H. Shelton, CJCS and Spouse Mrs. Carolyn J. Shelton.	Gold Bracelet. Rec'd—Jun 5, 2001. Est. Value—$1,200.00. Reported to GSA—Jul 30, 2001.	Lt. Gen Magdy Hatata, Egyptian Chief of Defense.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gen. Henry H. Shelton, CJCS and Spouse Mrs. Carolyn J. Shelton.	Gold Scarab Necklace. Rec'd—Jun 5, 2001. Est. Value—$650.00. Reported to CSA—Jul 30, 2001.	Field Marshal Hussein Tantawy CINC Of the Armed Forces, MOD, Military Production.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Guy R. Abbate, Jr. Naval Justice School, Newport.	Man's watch. Recd—November 16, 2001. Est. Vaule—$1080. Being retained at CNO (N09B13).	United Arab Emirates	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William C. Aseltine, Naval Justice School, Newport.	Man's watch. Recd—November 16, 2001. Est. Value—$1080. Being retained in CNO (N09B13).	United Arab Emirates	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Capt. Dennis G. Bengtson, Naval Justice School, Newport.	Man's watch. Recd—November 16, 2000. Est. Value—$1080. Being retained in CNO (N09B13).	United Arab Emirates	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kathleen Bengston, spouse of Capt. Bengtson, Naval Justice School, Newport.	Woman's watch. Recd—November 16, 2000. Est. Value—$1500. Being retained at CNO (N09B13).	United Arab Emirates	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cassie A. Cioci, Naval Justice School, Newport.	Woman's watch. Recd—November 16, 2000. Est. Value—$850. Being retained at CNO (N09B13).	United Arab Emirates	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Adm. V.E. Clark, Chief of Naval Operations.	Gold brass plaque. Recd—23 Mar 2001. Est. Value—$300. Being retained at CNO (N09B13).	Singapore Navy	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Adm. Thomas B. Fargo, Commander in Chief, U.S. Pacific Fleet.	Necklace. Recd—April 19, 2001. Est. Value—$475. Being retained at CN09B13).	Republic China Navy	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Karl Farris, Naval Justice School, Newport.	Man's watch. Recd—November 16, 2000. Est. Value—$1080. Being retained at CNO (N09B13).	United Arab Emirates	Non-acceptance would have caused embarrassment to donor and U.S. Government.
RAdm. Richard B. Porterfield, Director, Naval Intelligence.	Necklace cuff links silver set. Recd—January 30, 2001. Est. Value—$300. Being retained at CNO (N09B13).	Egyptian Military Directorate	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Adm. Thomas B. Fargo, Commander in Chief, U.S. Pacific Fleet.	Man and woman's watch. Recd—July 30, 2001. Est. Value—$1200. Official use.	Japan National Defense League ..	Non-acceptance would have caused embarrassment to donor and U.S. Government.
BGen. Leif H. Hendrickson, Marine Corps University.	Framed print. Recd—December 6, 2001. Est. Value—$300. Command display.	Australian Army	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Col. Craig Huddleston, Command and Staff College.	Model aircraft in case. Recd—November 28, 2001. Est. Value—$350. Command display.	Saudi Air Force	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Col. David Reist, Command and Staff College.	Model aircraft in case. Recd—November 28, 2001. Est. Value—$300. Command display.	Saudi Air Force	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LtGen. Frank Libutti U.S. Marine Forces, Pacific.	Fountain pen. Recd—August 10, 2001. Est. Value—$350. Command for official use.	Republic of Korea	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VAdm. Charles W. Moore, Jr., Commander, U.S. Naval Forces Central Command.	Recd—March 6, 2001. Value—$2450. Expended for hotel and meals.	UAE Armed Forces	Official trip.

AGENCY: DEPARTMENT OF THE AIR FORCE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colonel Robert E. Chapman II, Chief, Saudi Arabia Division, International Affairs (SAF/IARS), Washington, DC.	Men's Rolex "Air King," silver-faced Oyster Perpetual watch, model #14010, serial #P–709764. Recd—June 2001. Est. Value—$2,100. On official display at SAF/IARS, pending turn-in to GSA.	Major General Mohammed A. Al-Ayeesh, Director, Logistics and Supply, Royal Saudi Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Colonel Jeffery S. Cohen, Deputy Commander, 32d Air Operations Group, RAF Mildenhall, United Kingdom.	Two uncarved elephant tusks, each 15 inches tall. Recd—October 23, 2000. Est. Value—$1,000. Destroyed, November 3, 2001.	Air Marshall Alfa, Chief of Staff, Nigerian Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
General Ralph E. Eberhart, Commander in Chief/U.S. Space Command, NORAD, Colorado Springs, Colorado.	Persian Tabriz-stylized Heriz design Oriental rug, 5′1″ by 6′8″, light green and lavender central medallion on a peach-colored field. Recd—January 15, 2001. Est. Value—$2,300. On official display at HQ NORAD, Colorado.	Mr. Abdulazim Karaman, Senior Arab Affairs Advisor, Saudi Arabia.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Colonel Steven R. Eddy, Director of Operations, 3 AF, RAF Mildenhall, United Kingdom.	Two carved elephant tusks, each 17 inches tall. Recd—October 23, 2000 Est. Value—$1,000. Destroyed, November 3, 2001.	Air Marshall Alfa, Chief of Staff, Nigerian Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Major General Kenneth W. Hess, Commander, 3 AF, RAF Mildenhall, United Kingdom.	One carved elephant tusk, 15-inches tall. Recd—October 23, 200. Est. Value—$500. Destroyed, November 3, 2001.	Air Marshall Alfa, Chief of Staff, Nigerian Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Colonel Karl A. Kaszuba, Staff Judge Advocate, 3 AF, RAF Mildenhall, United.	Two carved elephant tusks, 18-inches tall. Recd—October 23, 2000. Est. Value—$1,000. Destroyed, November 3, 2001.	Air Marshall Alfa, Chief of Staff, Nigerian Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Major General David F. MacGhee, Jr., Commandant, Air War College (AWC), Maxwell Air Force Base, Alabama.	18-carat gold and jade prayer beads Recd—April 17, 2001. Est. Value—$2,500. On official display at AWC, Maxwell Air Force Base, Alabama.	His Royal Highness Prince Bandar Bin Sultan Bin Abdulaziz, Ambassador of Saudi Arabia to the United States.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Colonel Phillip C. Miller, Jr., Director of Logistics, 3 AF, RAF Mildenhall United Kingdom.	Two carved elephant tusks, 17-inches tall, Recd—October 23, 200. Est. Value—$1,000. Destroyed, November 3, 2001.	Air Marshall Alfa, Chief of Staff, Nigerian Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Mr. Willard Mitchell, Deputy Under Secretary, International Affairs (SAF/IA), Washington, D.C.	Men's Rolex "Air King" pink Arabic oyster perpetual watch, model #14000, serial #U653804. Recd—June 27, 2001. Est. Value—$2,100. Pending turn-in to GSA.	Major General Mohammed A. Al-Ayeesh, Director, Logistics and Supply, Royal Saudi Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Willard Mitchell, Deputy Under Secretary, International Affairs (SAF/IA), Washington, D.C.	Women's Rolex "Air King" pink Arabic oyster perpetual watch, model #76080, serial #P150416. Recd—June 27, 2001. Est. Value—$2,100. Pending turn-in to GSA.	Major General Mohammed A. Al-Ayeesh, Director, Logistics and Supply, Royal Saudi Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Colonel James R. Nelson, Commander, Air Force Office of Special Investigations—United Kingdom, RAF Mildenhall, United Kingdom.	Two carved elephant tusks, 17-inches tall. Recd—October 23, 2000 Est. Value—$1,000. Destroyed, November 3, 2001.	Air Marshall Alfa, Chief of Staff, Nigerian Air Force Forces.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Mr. Ronald L. Orr, Assistant Deputy Chief of Staff, Air Force Installations and Logistics, Washington, D.C.	Stainless steel Rolex oyster perpetual watch with Saudi Air Force emblem, model 14000, serial #P708733. Recd—June 29, 2001. Est. Value—$1,000. Pending turn-in to GSA.	Major General Mohammed A. Al-Ayeesh, Director, Logistics and Supply, Royal Saudi Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
General Michael E. Ryan, Chief of Staff, USAF, Washington, D.C.	Painting and ceramic fruit string. Recd—June 15, 2001. Est. Value—$375 aggragately. Turned in to GSA, October 11, 2001.	Colonel Mario Rene Siliezar Giron, Commander, Guatemalan Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
General Michael E. Ryan, Chief of Staff, USAF, Washngton, D.C.	Painting. Recd—June 15, 2001. Est. Value—$550. Turned in to GSA, October 11, 2001.	Lt. General Jose Malaquin Correa, Commander, Uruguay Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
General Michael E. Ryan, Chief of Staff, USAF, Washington, D.C.	Painting. Recd—June 5, 2001. Est. Value—$600. Turned in to GSA, October 11, 2001.	ACM Squire, Commander-in-Chief, Royal Air Force, United Kingdom.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
General Michael E. Ryan, Chief of Staff, USAF, Washington, D.C.	Eight (8) silver coins. Recd—January 4, 1999. Est. Value—$500. Turned in to GSA, October 11, 2001.	State President Guntis Ulmanis, President, Republic of Latvia.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
General John T. Sheridan, Commandant, Air Command and Staff College (ACSC), Maxwell Air Force Base, Alabama.	18-carat gold and jade prayer beads Recd—April 27, 2001. Est. Value—$2,500. On official display at ACSC Maxwell Air Force Base, Alabama.	His Royal Highness Prince Bandar bin Sultan Bin Abdulaziz, Ambassador of Saudi Arabia to the United States.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Brigadier General Francis X. Taylor, Commander, Air Force Office of Special Investigations, (AFOSI) Bolling Air Force Base, D.C.	Silver dagger and sheath. Recd—April 27, 2001. Est. Value—$1,000. On official display at HQ AFOSI.	Embassy of Oman	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Brigadier General Francis X. Taylor, Commander, AFOSI, Bolling Air Force Base, D.C.	Flat weave wool Kilim carpet. Recd—November 17, 2002. Est. Value—$850. On official display at HQ AFOSI Protocol lounge.	Mr. Turen Genc, Chief of Turkish National Police.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Mrs. Marilyn Wald, wife of Lt. General Charles F. Wald, Commander, USCENTAF, Shaw Air Force Base, South Carolina.	Stainless steel Concord Delirium ladies watch with silver dial and four Roman numeral markers Model #0304374. Est. Value—1,200. Pending turn-in to GSA.	Brigadier General Hamad bin Alibin Hamad Al-Ahiyan, Chief, Armed Forces of Qatar.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Mrs. Marilyn Wald, wife of Lt. General Charles F. Wald, Commander, USCENTAF, Shaw Air Force Base, South Carolina.	Gold bracelet. Recd—October 16, 2000. Est. Value—$950. Pending turn-in to GSA.	Brig Staff Pilot Khalid bin Abdullah Mubarak Al Buainneen, Commander, United Arab Emirates Air Force and Air Defense.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.
Captain Joseph P. Wedding, Aide, d-Camp, 3 AF, RAF Mildenhall, United Kingdom.	Two uncarved elephant tusks, 15-inches tall. Recd—October 23, 2000. Est. Value—$1,000. Destroyed November 3, 2001.	Air Marshall Alfa, Chief of Staff, Nigerian Air Force.	Non-acceptance would have caused embarrassment to the donor & U.S. Government.

AGENCY: FBI

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstance justifying acceptance
Wilford Rattigan, Legal Attache, Riyadh.	Winter Bisht (Formal Saudi Topcoat). Recd—10/01. Est. Value—$250.00. On Display.	United Arab Emirates	Courtesy gift, received when conducting a Needs Assessment Review.
Wilford Rattigan, Legal Attache, Riyadh.	Summer Bisht (Formal Saudi Topcoat). Recd—10/01. Est. Value—$250.00. On Display.	United Arab Emirates	Courtesy gift received when conducting a Needs Assessment Review.
Wilford Rattigan, Legal Attache, Riyadh.	Fortix Stainless Steel Watch. Recd—10/01. Est. Value—$500.00. On Display.	United Arab Emirates	Courtesy gift received when conducting a Needs Assessment Review.

AGENCY: UNITED STATES DEPARTMENT OF AGRICULTURE

[Report of Tangible Gifts—CY–2001]

Name of title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identify of foreign donor and government	Circumstances justifying acceptance
Ann M. Veneman, Secretary of Agriculture.	A Mexican sterling silver pitcher. Rectangular tapering body, with pressed Greek key base and top border, with monogram "A.V." Angular handle. Marked: "TERAL .925 Sterling Mexico." Weight 835.5 grams. Packing box marked: Schiavon, dal 1957 1957 firma l'argente" and a label "Specially Manufactured for Tera.1." Height 7¾" and Width 5¾"; Depth 2¼". *Date received:* September 6, 2001. *Appraised retail value:* $975. *Disposition*: In storeroom of the USDA Foreign Agricultural Service's Chief of Representation, Foreign Visitors and Protocol. An SF–120 will be prepared and the item will be turned-in to General Services Administration. Appraisal performed by John V. Lanterman, FASA (Fellow, American Society of Appraisers) and Barbara Shanley, Accredited Senior Appraiser on October 11, 2001.	Hon. Javier USABIAGA Arroyo, Mexican Secretary of Agriculture.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.

AGENCY: DEPARTMENT OF ENERGY

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Spencer Abraham, Secretary of Energy.	A sample of Arabian light crude oil from the Arab (D) reservoir in a crystal decanter and a sample of oil-rich rock from the Manifa reservoir[3] in a wood presentation box with gold tone liner. Received—April 27, 2001. Estimated Value—$590. Reported to GSA February 21, 2001; pending transfer to GSA.	Ali I.—Naimi, Minister of Petroleum & Mineral Reservoirs, Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF ENERGY—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Spencer Abraham, Secretary of Energy.	Crystal bowl. Received—December 11, 2001. Estimated Value—$370. Reported to GSA February 21, 2001; pending transfer to GSA.	Sheikh Saudi Nasser Al-Sabah, Ambassador of Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: SECURITIES AND EXCHANGE COMMISSION

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Wayne M. Carlin, Regional Director, Northeast Regional Office.	Plastic dish. Recd.—February 20, 2001. Unknown value. Sent to GSA for disposition.	People's Republic of China, China Securities Regulatory Commission.	Informational Meeting at NERO Gift to host.
Wayne M. Carlin, Regional Director, Northeast Regional Office.	Bound volume of People's Republic of China postage stamps. Recd.—February 20, 2001. Unknown value. Sent to GSA for disposition.	People's Republic of China, China Securities Regulatory Commission.	Informational Meeting at NERO Gift to host.
Wayne M. Carlin, Regional Director, Northeast Regional Office.	Framed glass plate. Recd.—February 26, 2001. Unknown value. Sent to GSA for disposition.	People's Republic of China, China Securities Regulatory Commission.	Informational Meeting at NERO Gift to host.

AGENCY: UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identify of foreign donor and government	Circumstances justifying acceptance
Carrie Dailey, Executive Office, USAID/Benin.	Gift: Gold jewelry. Date of acceptance: July 23, 2001. Estimated value: $494. Location: USAID/M/AS/CPD.	USAID/Benin's landlady, Ms. El Hadja Rachidatou Nourou Soule's daughter.	Attempts to decline acceptance were unsuccessful; further effort would have caused embarrassment to donor.

AGENCY: CENTRAL INTELLIGENCE AGENCY

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George J. Tenet, Director, Central Intelligence.	Parquetry mother-of-pearl diorama, modern with a scene of the Last Supper above a nativity scene within the year 2000 H: 23½ inches; W: 15¾ inches; D: 3½ inches. Rec'd—12 June 2001. Est. value—$500. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George J. Tenet, Director, Central Intelligence.	Parcel gilt and niello silver presentation sabre and sheath, modern. Elaborately decorate with foliage and arabesque reserves with chased decoration, in a walnut red velvet lined case. L: overall: 37½ inches. Rec'd—05 July 2001. Est. value—$750. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Cased pair of reproduction brass and polished steel inlaid walnut flint-lock presentation pistols, modern; together with four implements. L of pistols: 15 inches. Rec'd—04 October 2001. Est. value—$300. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Pair of unmarked yellow gold and diamond cufflinks, one market G. Sacco for Gerardo Sacco, modern, each set with four melee round faceted diamonds. Rec'd—05 November 2001. Est. value—$300. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Agate mounted silver kindjal, modern, in a blue velvet fitted case. L: 23½ inches Rec'd—27 November 2001. Est. value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Brass mounted wood presentation sabre, modern, in a fitted velvet lined case. L: 37 inches. Rec'd—21 December 2001. Est. value—$300. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Engraved silver coffee pot, modern, typical form chased with bands of scrolling vines and flowers on a punch-work ground. H: 12½ inches; Weight: 55 oz. Rec'd—01 November 2001. Est. value—$500. To be retained for official display.	5 U.S.C. 7342(F)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: UNITED STATES SENATE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mike DeWine, U.S. Senator	Oil painting, 28 x 23, rural Central American village scene. Recd.—February 20, 2000. Est. Value—$900. Display in SR 148.	President Carlos Roberto Flores of Honduras.	Non-acceptance would have caused embarrassment to the donor and the U.S.
James M. Inhofe, U.S. Senator	Algerian-made carpet 10′ x 6′. Recd.—July 23, 2001. Est. Value—Exceeds $100. Display in SR 449.	President of Algeria, H.E. Abdelaziz Bouteflika.	Non-acceptance would have caused embarrassment to the donor and the U.S.

AGENCY: UNITED STATES SENATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Edward M. Kennedy, U.S. Senator	Statue of Cuchulainn (an Irish Folk Hero), Bronze, 12″ tall. Recd.—May 1, 2001. Est. Value—$108. Display in SR 315.	Prime Minister Bertie Ahern of Ireland.	Non-acceptance would have caused embarrassment to the donor and the U.S.
Edward M. Kennedy, U.S. Senator	Glass Plate, Arabic design, gold trim with blue painting and red and green outer border. Recd.—February 26, 2000. Est. Value—$150. Deposited with Secretary of Senate.	King Fahd of Saudi Arabia	Non-acceptance would have caused embarrassment to the donor and the U.S.
Edward M. Kennedy, U.S. Senator	Square Plate, Arabic design, teal, red and blue. Recd.—February 26, 2001. Est. Value—$150. Deposited with Secretary of Senate.	King Abdullah of Jordan	Non-acceptance would have caused embarrassment to the donor and the U.S.
Edward M. Kennedy, U.S. Senator	Vase, Recd.—June 16, 2000. Est. Value—$220. Display SR 324.	Former President of Taiwan, Lee Ten-Hoi.	Non-acceptance would have caused embarrassment to the donor and the U.S.
John F. Kerry, U.S. Senator	Two Rosenthal China Plates. Recd.—January 26, 2001. Est. Value—Exceeds $100. Deposited with Secretary of Senate.	King Abdullah of Jordan	Non-acceptance would have caused embarrassment to the donor and the U.S.
Bill Nelson, U.S. Senator	Carpet, 120″ x 72″. Recd.—July 12, 2001. Est. Value—Exceeds $100. Display SH 716.	President of Algeria, H.E. Abdelaziz Bouteflika.	Non-acceptance would have caused embarrassment to the donor and the U.S.
Bill Nelson, U.S. Senator	Carpet, 80″ x 48″. Recd.—April 14, 2001. Est. Value—Exceeds $100. Display SH 716.	President of Azerbaijan, Heyder Aliyer.	Non-acceptance would have caused embarrassment to the donor and the U.S.
John D. Rockefeller IV, U.S. Senator.	Framed print entitled "Wealth and Good Fortune". Recd.—August 10, 2001. Est. Value—Exceeds $100. Display in SH 531.	Premier Chun-Hsiung Chang, Republic of China.	Non-acceptance would have caused embarrassment to the donor and the U.S.

AGENCY: UNITED STATES SENATE

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Ian Brzezinski, Professional Staff Member, Committee on Foreign Relations.	Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001.	Government of Poland	No commercial transportation available within scheduled time frame.
Tom Daschle, U.S. Senator	Transportation within Mexico via small military aircraft, November 17–18, 2001.	Government of Mexico	No commercial transport available to accommodate meetings scheduled with Mexican officials.
Linda Daschle, Spouse of Senator	Transportation within Mexico via small military aircraft, November 17–18, 2001.	Government of Mexico	No commercial transport available to accommodate meetings scheduled with Mexican officials.
Dr. John Eisold, Attending Physicain.	Transportation within Mexico via small military aircraft, November 17–18, 2001.	Government of Mexico	No commercial transport available to accommodate meetings scheduled with Mexican offcials.
Nancy Ives, Communications Director, Office of Senator McCain.	Transportation and lodging within Thailand, April 19–22, 2001.	Thailand Ministry of Foreign Affairs.	Non-acceptance would cause host government embarrassment.
Sue Keenom, Director of Administration, Office of Senator Gordon Smith.	Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001.	Government of Poland	No commercial transportation available within scheduled time frame.
Joab M. Lesesne, III, Chief of Staff, Senator Hollings.	Transportation including lodging and meals within Thailand, April 19–22, 2001.	Thailand Ministry of Foreign Affairs.	Non-acceptance would cause host government embarrassment.

AGENCY: UNITED STATES SENATE—Continued

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Andrea LaRue, Counsel, Office of Senate Majority Leader.	Transportation within Mexico via small military aircraft, November 17–18, 2001.	Government of Mexico	No commercial transport available within scheduled time frame.
Denis McDonough, Foreign Policy Advisor, Office of Senate Majority Leader.	Transportation within Mexico via small military aircraft, November 17–18, 2001.	Government of Mexico	No commercial transport available within scheduled time frame.
Tiffany Smith, Congressional Fellow, Office of Senator Bob Graham.	Transportation within Chile, including lodging and meals, July 1–5, 2001.	Government of Chile	Official travel to meetings relating to U.S./Chile Free Trade issues.
Gordon Smith, U.S. Senator	Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001.	Government of Poland	No commercial transport available within scheduled time frame.
Sharon Smith, Spouse of Senator	Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001.	Government of Poland	No commercial transport avaialble within scheduled time frame.
George Voinovich, U.S. Senator	Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001.	Government of Poland	No commercial transport available within scheduled time frame.
Jane Voinovich, Spouse of Senator.	Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001.	Government of Poland	No commercial transport available within scheduled time frame.
Sally Walsh, Director, Interparliamentary Services.	Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001.	Government of Poland	No commercial transport available within scheduled time frame.
Sally Walsh, Director, Interparliamentary Services.	Transportation within Mexico via small military aircraft, November 17–18, 2001.	Government of Mexico	No commercial transport available to accommodate meetings scheduled with Mexican officials.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Barney Frank, Member of Congress.	Oil painting by Maria Tomás. Received April 19, 2001. Value in excess of $1,000. On display in Rep. Frank's Washington Office.	President Carlos César, President of the Autonomous Regional Government of the Azores (Portugal).	Non-acceptance would have caused embarrassment to donor.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Bob Barr, Member of Congress	Lodging and meals in Qatar for Member and spouse, April 8–11, 2001.	University of Qatar	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
David E. Bonoir, Member of Congress.	Helicopter transport within Pakistan (Islamabad to Muzaffarabad to Islamabad) April 21, 2000.	Pakistan	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Meredith Broadbent, Committee on Ways and Means.	Meals, lodging and travel in Costa Rica, May 27–30, 2001.	Costa Rica	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Edward A. Bruley, Rep. Bonoir	Helicopter transport within Pakistan (Islamabad to Muzaffarabad to Islamabad) April 21, 2000.	Pakistan	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Vergil Cabasco, Rep. Dunn	Lodging, meals and transportation in Thailand, April 19–April 22, 2001.	Thailand Ministry of Foreign Affairs.	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Robert J. Castro, Rep. Shaw	Lodging, meals and land transportation in Thailand, April 19–April 22, 2001.	Thailand Ministry of Foreign Affairs.	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Philip Crane, Member of Congress	Meals, lodging and travel in Costa Rica, for Member and spouse, May 27–30, 2001.	Costa Rica	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Steve Elmendorf, Office of the Democratic Leader.	Transportation within Mexico (Mexico City to Leon to Mexico City), plus meal, November 17, 2001.	Mexico	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Richard A. Gephardt, Minority Leader.	Transportation within Mexico (Mexico City to Leon to Mexico City), plus meal, for Minority Leader and spouse, November 17, 2001.	Mexico	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Lee R. Godown, Rep. Sanchez	Lodging, meals, in-country travel in China, April 9–13, 2001.	Peoples' Republic of China (Chinese Peoples' Institute of Foreign Affairs).	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Michael M. Honda, Member of Congress.	Transportation, meals and admission in China, for Member and spouse, August 4–12, 2001.	Peoples' Republic of China (Chinese Peoples' Institute of Foreign Affairs).	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Mannik Khatchatrian, Rep. Schiff	Helicopter ride and tour from Yerevan to Naorno-Karabakh, August 22, 2001.	Armenia	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Ray LaHood, Member of Congress	Lodging in Lebanon, for Member and spouse, May 26–June 3, 2000.	Lebanon	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Audrey Lesesne, Rep. McIntyre	Lodging, transportation and meals in Thailand, April 19–22, 2001.	Thailand Ministry of Foreign Affairs.	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Meri Maben, Rep. Honda	Transportation, meals and admission in China, August 4–12, 2001.	Peoples' Republic of China (Chinese Peoples' Institute of Foreign Affairs).	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Moses Mercado, Office of the Democratic Leader.	Transportation within Mexico (Mexico City to Puebla), November 17, 2001.	Mexico	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Donna Pignatelli, Rep. Brown	Travel and meals in Thailand, April 19–22, 2001.	Thailand Ministry of Foreign Affairs.	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Nick J. Rahall, Member of Congress.	Lodging and meals in the United Arab Emirates, April 5–8, 2001.	United Arab Emirates	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Nick J. Rahall, Member of Congress.	Lodging and meals in Qatar, April 8–11, 2001.	University of Qatar	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Andrea Salinas, Rep. Stark	Lodging and meals for staff member and spouse, August 11–August 17, 2001.	Chilean Government	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Loretta Sanchez, Member of Congress.	Lodging, food, in-county travel in China, April 9–April 13, 2001.	Peoples' Republic of China (Chinese People's Institute of Foreign Affairs).	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Adam B. Schiff, Member of Congress.	Helicopter and ground tour from Yerevan to Nagorno-Karabakh, August 22, 2001.	Armenia	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Brad Smith, Rep. Dreier	Lodging, food and travel within Bangkok, April 19–22, 2001.	Thailand Ministry of Foreign Affairs.	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Gene Smith, Rep. Berman	Lodging, food and travel within Bangkok, April 19–22, 2001.	Thailand Ministry of Foreign Affairs.	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
John E. Sununu, Member of Congress.	Lodging and meals, April 8–11, 2001.	University of Qatar	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Michele Taulton, Rep. Crane	Lodging, meals and travel in Costa Rica, May 27–30, 2001.	Costa Rica	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Lisa Vogt, Rep. Armey	Lodging, ground transportation, food and interpreter in Chile, August 11–14, 2001.	Government of Chile	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Eric Cantor Member of Congress ..	Certified antique glass bowl in a personally engraved display case. Received December 12, 2001. Value in excess of $260. On display in Rep. Cantor's Washington Office.	Minister of Tourism of Israel	Non-acceptance would have caused embarrassment to donor.

AGENCY: DEPARTMENT OF COMMERCE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donald L. Evans, Secretary of Commerce.	Department of Commerce, Secretary's Office. Rec'd—November 5, 2001. Est. Value—$1750. 7′4″ x 9′6″ Oriental Rug.	Abdelaziz Bouteflika, President, Algeria.	Non-acceptance would have caused embarrassment to donor.
Donald L. Evans, Secretary of Commerce.	Department of Commerce, Secretary's Office. Rec'd—July 12, 2001. Est. Value—$1200. 114′½″″ x 88″″ Oriental Rug.	Abdelaziz Bouteflika, President, Algeria.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald L. Evans, Secretary of Commerce.	Café Pushkin, Moscow, Russia. Rec'd—July 27, 2001. Est. value—$1200. Painting—"Winter Scene" by A. Yegorov, Circa 1910.	German Gref, Minister, Economic Development and Trade, Russia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald L. Evans, Secretary of Commerce.	Department of Commerce, Secretary's Office. Rec'd—August 14, 2001. Est. Value—Pending. Ceremonial dagger—Khanjar.	Yusuf bin Alawi bin Abdullah, Minister, Foreign Affairs Sultanate of Oman.	Non-acceptance would have caused embarrassment to donor.
Donald L. Evans, Secretary of Commerce.	Department of Commerce, Secretary's Office. Rec'd—September 5, 2001. Est. Value—Pending. Obsidian Statue, 6″.	Vicente Fox Quesada, President, Mexico.	Non-acceptance would have caused embarrassment to donor.

[FR Doc. 02–16498 Filed 7–19–02; 8:45 am]

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Federal Register

Monday,
July 22, 2002

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 39
Airworthiness Directives; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2000–8460; Amdt. No. 39–9474]

RIN 2120–AA64

Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule incorporates several standard provisions previously included in most airworthiness directives into the Code of Federal Regulations. FAA will no longer include these provisions in individual airworthiness directives. FAA is taking this action to standardize the way we write airworthiness directives. This action will enhance aviation safety by making it easier for users to focus on specific safety concerns addressed in airworthiness directives.

DATES: Effective August 21, 2002.

FOR FURTHER INFORMATION CONTACT: Donald Byrne, Assistant Chief Counsel, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this document through the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html* or from the Department of Transportation's electronic Docket Management System (DMS) web page on the Internet at *http://dms.dot.gov*. Use the search function to search for Docket Number 8460. This document will be the last item in the list of items under that number. You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591. Ask for the final rule for Docket Number 8460.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA at our Web site, *http://www.faa.gov/avr/arm/sbrefa.htm*, or e-mail us at *9-AWA-SBREFA@faa.gov*.

Background

1. New Provisions

FAA is revising part 39 of Title 14 of the Code of Federal Regulations (14 CFR) by adding several provisions currently found in airworthiness directives (ADs). This action will allow us to omit those provisions from individual ADs. Omitting this language from ADs will place the focus of ADs on the unsafe condition that created the need for the directive. Many operators have indicated that this boilerplate language imposed a burden on the reader without contributing to aviation safety. The standard provisions currently found in ADs make it hard for the reader to focus on the safety aspects of the AD. Therefore, FAA is moving several of these standard provisions to part 39.

Specifically, FAA is adding to part 39 the language explaining that ADs apply even if products have been modified, altered, or repaired in the area addressed by the directive. FAA also is adding the language about the use of special flight permits if operators are not able to move their aircraft to a repair facility within the time limits imposed by the AD. Further, the new part 39 will contain procedures for asking FAA to approve alternative methods of compliance with the AD. Finally, FAA is adding the language that requires operators to comply with the requirements of an AD when the AD and a service document referenced in an AD conflict.

2. Clearer Regulatory Format

In addition to moving certain provisions currently found in individual ADs to part 39, FAA wrote this regulation in plain language. We reorganized and reworded the regulation using plain language techniques. Plain language elements in the proposal include—

a. Section headings in the form of questions to help direct the readers to specific material they need;

b. Personal pronouns to reduce passive voice and draw readers into the writing; and

c. Active verbs to make clear who is responsible for what actions.

3. Related Activity

As part of FAA's effort to improve the way we issue ADs, we will start to issue them in a new, streamlined format. Simpler ADs will appear as charts, with all regulatory information contained within the chart. More complex ADs will make greater use of tables to present complex materials in a clearer manner.

4. Discussion of Comments

FAA issued a notice of proposed rulemaking (NPRM), proposing changes to part 39, as described previously (66 FR 3382; January 12, 2001). FAA received fifteen comments on the proposal from individuals, representatives of industry associations, and businesses who participate in the aviation industry.

General comments: Several commenters generally supported the proposal. They stated that they support the concept of writing ADs in a clear style. They agree that eliminating the standard language from most ADs will help readers focus on the safety information specific to each AD.

One commenter generally objected to the proposal and several commenters, while supporting the proposal in general, objected to the question and answer format. They stated that it was more difficult to find material with question headings. One commenter stated that "question headings fail to communicate a clear standard."

We find that question headings help guide readers through the document, especially in non-technical regulations such as this one; therefore, FAA will continue to consider the use of question headings. However, we do agree that use of question headings is not always appropriate. This is particularly true of standard sections at the beginning of many regulations, such as the purpose of the regulation and definitions used in the regulation. On the other hand, switching back and forth between two heading types throughout a regulation may be distracting and confusing to some readers. Accordingly, we have retained the question headings in most of this regulation, but have used the more traditional statement style for the first two sections of the final rule, "Purpose of the Regulation" and "Definition of Airworthiness Directives."

We do not agree with the comment that question headings fail to provide a clear standard. Standards of a regulation are within the text of each section, not in the heading. Traditional headings in statement form such as "applications" and "general" were never intended to provide a "clear standard" to the reader, and neither are question headings.

Several commenters stated they found pronouns confusing. FAA finds that

pronouns help readers relate to a document. However, we agree that it is critical that the referent for each pronoun be clear, and we have tried to achieve that in this final rule.

Several commenters cautioned that if we eliminate the boilerplate notes from specific ADs, we should mention this new part 39 in the preamble to each AD. While we note that any operator of aircraft regulated by FAA has an obligation to be familiar with FAA regulations, we will refer to part 39 in the preamble of each AD to alert operators to these provisions.

Two commenters stated the rule does nothing to enhance aviation safety. FAA disagrees. As we stated above, we find that this action will allow readers of ADs to focus on the safety related material. We find that clear communication is a safety issue, and this final rule will clarify the provisions of ADs, thereby enhancing aviation safety. Several commenters agreed that removing the boilerplate will allow readers to focus on the safety issues.

Several commenters indicated that FAA should not introduce new regulatory requirements in part 39 in this rulemaking action. The only example that commenters gave was the change to § 39.17, which tells people where to send requests for FAA approval of alternative methods of complying with ADs. We discuss this issue in the section-by-section analysis below. FAA notes that this rulemaking action does not introduce any new regulatory requirements. We are simply moving provisions currently found in ADs to part 39.

Several commenters stated that some headings did not adequately cover the material in the following section, or that FAA needed additional material clarifying the proposed provisions. We agree with several of the comments; therefore, we added new sections to the final rule, and renumbered succeeding sections accordingly.

Section-by-Section Discussion of Comments

Section 39.1 Purpose of This Regulation

This section explains that part 39 establishes the regulatory basis for FAA's airworthiness directives. This would replace similar material found currently in part 39.

One commenter objected to the term "set up" in the proposal, and suggested alternative language. While we have not used the commenter's suggested language, which was much longer, we agree the term "set up" may not be appropriate for a regulation. We have reworded this section to provide a more precise description of the role of part 39.

Section 39.3 Definition of Airworthiness Directives

This section explains that ADs are legally enforceable rules that apply toaircraft, aircraft engines, propellers, and appliances. We refer to these items as "products." This definition is similar to that in the prior version of §§ 39.1 and 39.3.

Two commenters suggested that we either define products, which they note is defined only in 14 CFR part 21, or eliminate the term from this section. The prior version of part 39 included the same definition of "product," that is, "aircraft, aircraft engine, propellers, or appliances." We have decided not to change this definition. The definition of "product" in part 21 is similar, but does not include the term "appliance." We will continue to issue ADs applicable to "appliances." To clarify that we will use this term in this part, we have revised the wording in this section to state that ADs cover the following products: aircraft, aircraft engines, propellers, and appliances.

Proposed § 39.3 stated the conditions under which FAA will issue an AD. We have moved this provision into a new section in the final rule, § 39.5. See the discussion of that section below. One commenter suggested the heading of this section did not capture the entire contents of the section. According to the commenter, the section also refers to the conditions that must be present when FAA issues an AD. We agree with the commenter; therefore, we have separated this material into two sections.

Section 39.5 (New Section in Final Rule) When Does FAA Issue Airworthiness Directives?

This is a new section in the final rule. This material, which is similar to that found in current § 39.1, was in proposed § 39.3. The section describes the conditions under which FAA would issue an AD. FAA issues ADs when we find that an unsafe condition exists in a product and the condition is likely to exist or develop in other products of the same type design. We have renumbered subsequent sections accordingly to accommodate this new section.

One commenter stated that the language in this section could be interpreted to exclude issuing an AD against parts. FAA does not intend this provision to change AD applicability to parts. Except for "appliances," which are included in the definition of "products," FAA has not issued ADs that apply to "parts," independently of the products on which they are installed. Rather, if we find an unsafe condition is caused by a particular part, we issue an AD against the product or products on which the part is installed. For ease of identifying those products, we may specify the part in the applicability provision, "as installed on" particular products. If we are not certain of all the products on which the part is installed, we may identify the products we do know about, but indicate that others may also be affected. In all of these cases, however, the AD applies to the products on which these parts are installed, rather than to the parts themselves, simply because parts that are not installed on products do not create an unsafe condition. This new version of part 39 will not change this practice.

Section 39.7 (Proposed § 39.5) Who Must Comply With Airworthiness Directives?

This section clarifies that anyone operating a product listed in an AD must comply with the AD. Proposed § 39.5 also specified that each flight taken without complying with the AD is a separate violation. This material is similar to the prior version of § 39.3.

One commenter noted that the heading of this section does not capture the entire content of the section because the section also addresses the consequences of non-compliance. FAA agrees. Many readers will also want to find information about compliance. Therefore, we have separated this information into a new section, § 39.9, for easy reference.

In considering this comment, we recognized that prior version of § 39.3, which proposed § 39.5 was intended to replace, does not state who must comply with ADs. Rather, it states that no person may operate a product that is subject to an AD except in accordance with the requirements of that AD. This is a statement of the legal effect of failing to comply with ADs. The question of who must accomplish the actions specified in an AD is actually answered by other rules. For example, many ADs require maintenance actions. Other regulations, including those in 14 CFR parts 65, 121, and 145, identify who is authorized to do maintenance. Further, in the past when FAA took enforcement action relating to failures to comply with an AD, we cited § 39.3 as the regulation that was violated, not the AD itself.

To prevent confusion and to be consistent with past practice, we are revising the question heading for § 39.7 to state, "What is the legal effect of failing to comply with an AD?" We have

changed the section to read, "It is a violation of this section for anyone to operate a product when it is not in compliance with an AD that applies to it."

We are re-writing § 39.9 to refer to § 39.7, which is the rule that operators will violate if they fail to operate or use a product without complying with an AD that applies to that product.

Section 39.9 (New Section in Final Rule) What If I operate or Use a Product That Does Not Meet the Requirements of an Airworthiness Directive?

This section specifies that if the requirements of an airworthiness directive have not been met, then each time you operate the aircraft or use the product, you violate § 39.7. In the proposal, this material was in §§ 39.3 and 39.7. We made this change in response to a comment that the title of proposed § 39.5 did not adequately cover this issue.

Section 39.11 (Proposed 39.7) What Actions Do Airworthiness Directives Require?

This section identifies what actions ADs can require. This rule is similar to the prior version of § 39.11. As under the former provisions in part 39, FAA intends to retain broad authority to require whatever types of corrective actions we determine to be most effective in addressing identified unsafe conditions. This includes inspections, repairs, modifications, operating limitations, airworthiness limitations, and maintenance program requirements. We received no comments on this section, and adopt it as proposed.

Section 39.13 Are Airworthiness Directives Part of the Code of Federal Regulations?

This section specifies that ADs are amendments to § 39.13. However, ADs are not codified in the annual edition of the Code of Federal Regulations. As with other regulations, ADs are published in full in the **Federal Register**.

One commenter stated this language is not needed in the rule, and recommended we move it to the preamble. While this language may appear to be just informative and not regulatory, the Office of the Federal Register requires us to include it in part 39. This language has the legal effect of including ADs in the Code of Federal Regulations by publishing them in the **Federal Register**, without codifying them in the annual edition of the Code. Therefore, we adopt this section as proposed.

Section 39.15 Does an Airworthiness Directive Apply If the Product Has Been Changed?

This section specifies that ADs apply to products even if they have been modified, altered, or repaired in the area addressed by the AD. Proposed § 39.15 also specified what to do if the change prevents complying with the AD.

One commenter suggested that the heading as proposed did not cover all the material in the section. The section not only specified that ADs apply to products even if they have been modified, altered, or repaired, but also included material on what to do if products had been changed in a way that affected an operator's ability to comply with an AD. We agree with the commenter. Therefore, we have moved that second provision into a new section, § 39.17. We discuss this issue and comments received on proposed § 39.15 in the discussion of new § 39.17.

Several commenters expressed confusion about the meaning of the first two sentences of this section as proposed. We agree that the proposed wording was confusing, and have accepted language suggested by one of the commenters. This change in the final rule language is consistent with both past practice and with our intent in the NPRM.

Another commenter suggested that we define product, series, model, and individual aircraft. As discussed previously, we define "product" in § 39.3. We do not agree that the terms "series, "model," and "individual aircraft" need a regulatory definition. An aircraft "model" typically refers to all aircraft covered by a particular type certificate, such as "Boeing Model 747 airplanes." A "series" typically refers to a specific subset of the model that is identified on the type certificate data sheet for the model, such as "Boeing Model 747–400 series airplanes." In addition, the applicability provisions of ADs frequently refer to individual aircraft, as identified by unique line numbers or serial numbers.

Section 39.17 (New Section in Final Rule) What Must I Do If a Change in a Product Affects My Ability To Accomplish the Actions Required in an Airworthiness Directive?

This new section contains material we proposed in § 39.15. We have moved it into a separate section in response to comments. It specifies that if a change in a product affects your ability to comply with the AD, you must ask FAA's permission to use an alternative method of compliance, and your request must *either show that the change eliminated the unsafe condition or* include the specific actions you propose. Although this material is new to part 39, it currently appears as a note in individual ADs.

Several commenters suggested that we retain current language for "alternative method of compliance" and that we use this language consistently. We agree with this suggestion.

One commenter suggested that we change the first sentence to say "that" change rather than "a" change. We have accepted this suggestion. The same commenter further suggested that we clarify this provision by stating that it applies to cases where the change alters existing approved actions. We do not agree. As stated in the NPRM regarding this provision, "This material is new to part 39 but currently appears in most individual ADs." This section simply explains the legal effect of the applicability provision of each AD, and this effect is unchanged by the adoption of this final rule. In the past, as in the future, all products identified in the applicability provision of an AD are subject to the AD, and operators must either comply with the provisions of the AD or request approval for an alternative method of compliance. No change to the final rule is necessary.

One commenter suggested repeating the language about products that are "modified, altered or repaired * * *" We find that the term "change" adequately covers these three concepts and therefore this more detailed language is not necessary.

Another commenter noted that if a prior change has made the aircraft safe, FAA should not ground the aircraft pending completion of actions required by an AD. The comment stated this is an "additional requirement" on safely modified aircraft and FAA should not impose such requirements.

FAA does not agree. ADs apply to a specific product, even if the product has been changed. We cannot tell whether a change satisfies the safety concern until the operator demonstrates that to us. If the operator demonstrated to FAA that the change satisfied the safety concern, we may approve the change as an alternative method of compliance.

One of the reasons why ADs have become so complex is that FAA has tried to address all configuration variations. However, we cannot cover all possible changes under an AD. We issue ADs to address the main configurations approved under type certificates or, in some cases, under supplemental type certificates. If operators have made additional changes, they are responsible for making

their aircraft airworthy and getting the necessary approvals to do so.

Similarly, two commenters questioned whether FAA should make a blanket statement that ADs apply to changed products, since the situation may be very complex. One commenter noted,

> It may not be advisable to automatically make the statement the airworthiness directive applies to changed products. This may take away some needed considerations of affected configurations during the formulation of the AD. By this statement, I am saying that there may be a propensity to think the responsibility of consideration of changed configurations can just be thrown to the owner/operator. There are some very complex changes to products on airplanes that cannot be reliably delegated to field operations FAA and maintenance personnel. Those complex changes are the very reasons for the omission of the applicability statement to changed products referenced in the Proposed Rule as having historically occurred on airworthiness directive's [sic]. It is frequently necessary to develop airworthiness directive's [sic] that adequately cover known changes to airplanes. Having this automatic responsibility statement may well promote a lack of effort in properly creating the airworthiness directive's [sic] needed to cover various configurations.

Presumably, the purpose of an operator's alternative method of compliance would be to avoid having to undertake the actions required by an AD. If the operator of a product that has been modified, altered, or repaired can show that the change makes the aircraft safe, FAA will approve the new configuration as an alternative method of compliance and the operator would not have to take the actions specified in the AD. This is not a new requirement. All products identified in the applicability provision of an AD have always been subject to the directive. Originally, we began including this note in ADs because some operators had taken the legally incorrect position that, because they had changed their aircraft, they did not have to comply.

In the final rule, we have moved this provision into its own section. We have used the term "alternative method of compliance" rather than a similar term used in the proposal.

Section 39.19 (Proposed § 39.17) May I Address the Unsafe Condition in a Way Other Than That Set Out in the Airworthiness Directive?

This section allows anyone to propose to FAA an alternative method of compliance, including proposals to change the amount of time given to comply with an AD, as long as the proposal provides an acceptable level of safety. This section explains how to ask FAA to approve a proposed alternative. This material is new to part 39 but currently appears in most individual ADs.

One commenter noted that sending copies to "assigned FAA principal or aviation safety inspector" differs from the current process of sending requests for alternative methods of compliance to FAA. Another commenter suggested the method specified in the proposal adds a new burden to operators. We have changed the language in the final rule to clarify that operators who do not have principal inspectors should send their requests directly to the FAA manager responsible for the AD for which they seek approval of an alternative method of compliance. We have also changed the language to allow operators to send a copy of their request simultaneously to the principal inspector and the manager, rather than requiring it. Since the final rule language does not require sending copies to two offices at once, there should be no additional burden imposed by the rule. However, if operators want to send copies to both the inspector and the manager at the same time to expedite the process or for some other reason, the final rule language allows them to do so. Operators can work with their principal inspector and manager to determine which works best for each case.

We have also added language authorizing FAA to designate an alternative process for submitting requests should the need arise. This flexibility accommodates particular unusual cases or improved processing of these requests, such as increased use of electronic transmissions. We have deleted the reference to Safety Inspectors and instead use the more specific term Principal Inspector.

Several commenters stated that FAA does not always designate managers as contact points for approval of an alternative method of compliance, and suggested that we use a more general term. We are not aware of any cases in which we designate someone other than a manager as a contact for approval of an alternative method of compliance. While some managers may have delegated that function to staff, the manager remains responsible for responding to the requests. Therefore we disagree with this comment.

Two commenters suggested that FAA indicate what standards we will use in reviewing requests for alternative methods of compliance. Further, they suggested that we indicate we will grant the request if the applicant shows the proposal would provide a level of safety at least equal to that provided by the AD. Given the range of unsafe conditions and possible alternative methods, FAA does not find it appropriate that we provide specific standards. We already state that we will approve these requests if they provide an acceptable level of safety. We are not arbitrary in our review of proposals for alternative methods of compliance, and have always approved them if they provide an acceptable level of safety. If FAA determines a proposed alternative is "acceptable" we will approve it, even if it may not be technically "equivalent" or "at least equal to" the method specified in the AD. Thus, the AD itself specifies the standard for approving an alternative method of compliance.

Several commenters stated FAA has previously approved alternative methods of compliance through other regulatory provisions, specifically 14 CFR 21.305(d) and 43.13(c), as well as 14 CFR part 11. The commenters recommend that FAA should continue this practice. This new version of part 39 will not change or eliminate any current bases for FAA's approval of alternative methods of compliance. However, we do not find that we have used these other authorities as the basis for approval. Approvals we have granted under § 21.305(d) or § 43.13(c) do not affect in any way an operator's obligation to either follow the requirements of an AD or get approval for an alternative method of compliance under part 39.

Section 39.21 (Proposed § 39.19) Where Can I Get Information About FAA-Approved Alternative Methods of Compliance?

This section informs you where to get information about alternative methods of compliance with ADs that FAA has already approved for other certificate holders. This material is new to part 39 but currently appears in most individual ADs.

Several commenters stated that if FAA's language means we will make alternative methods of compliance public when they are approved, FAA would be making proprietary information publicly available in violation of 18 U.S.C. 1905.

We derived this new paragraph in part 39 from a provision used in ADs for many years. By providing information about FAA-approved alternative methods of compliance, FAA does not reveal proprietary information; we simply identify whether we have approved alternative methods of compliance with a particular directive. We handle requests for further information regarding the content or substance of the alternative method of compliance under the Freedom of

Information Act, which provides an exception from disclosure for proprietary information.

Section 39.23 (Proposed § 39.21) May I Fly My Aircraft to a Repair Facility To Do the Work Required by an Airworthiness Directive?

This section explains that if you do not already have authority in your approved maintenance program to fly your aircraft to a repair facility, FAA may issue you a special flight permit, sometimes called a "ferry permit," allowing you to fly your aircraft to a place where you can comply with the AD. This material is new to part 39 but currently appears in most individual ADs. Moving this provision to part 39 does not mean that you have authority under previously issued ADs to fly your aircraft to a repair facility.

Since we will allow you to move an aircraft only if it is safe to do so, this section also provides that FAA may add special requirements for flying a specific product to a repair facility to ensure aviation safety. Furthermore, FAA may specify in particular ADs that we will not issue special flight permits for products covered by that particular directive. FAA may take this position when the safety issue addressed by the AD is so serious that moving an aircraft to a repair facility would create an unacceptable safety risk. We may also decline to issue special flight permits in individual cases because of the condition of a specific aircraft.

Several commenters raised the issue of "continuing" authority to fly aircraft to a repair facility. We agree this was not specified in the proposed rule language, and have added language clarifying this in the final version of this section.

One commenter stated that FAA should explain that the local Flight Standards District Office, not the Office where the aircraft is based, issues special flight permits. We have incorporated the commenter's suggestions by adding reference to the local office to the final rule.

Several commenters suggested that we reference requirements in other parts of FAA's regulations concerning how to get a special flight permit. FAA agrees with this comment; therefore, we have added a new section, § 39.25, to the final rule.

Section 39.25 (New Section in Final Rule) How Do I Get a Special Flight Permit?

This section specifies that you can obtain a special flight permit under the provisions of 14 CFR 21.197 and 21.199. We added this section to the final rule in response to comments on proposed § 39.21 (final rule § 39.23) requesting that we address the requirements for obtaining special flight permits.

Section 39.27 (Proposed § 39.25) What Do I Do If the Airworthiness Directive Conflicts With the Service Document on Which It Is Based?

This section clarifies that in the case of conflicts between an AD and a service document, the AD prevails. This material is new to part 39 but currently appears in some ADs.

One commenter suggested that we change the reference to service bulletins to some broader term because sometimes ADs refer to other technical data besides service bulletins. FAA agrees with this comment and has changed the final rule language to reference "service documents."

Finally, one commenter suggested that FAA make available to the public any service bulletin incorporated by reference in an AD. We include a statement in every AD that service documents are available for viewing at FAA. To get your own copy, you must obtain it from the publisher.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

For regulations with an expected minimal impact, however, the analyses specified above are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If we determine that the expected impact is so minimal that the proposal does not warrant a full Evaluation, we include a statement to that effect and the basis for it in proposed regulation.

This final rule simply moves existing provisions from individual Airworthiness Directives (ADs) into part 39. This action streamlines individual Ads, which is expected to improve the focus of the safety issued addressed in the AD. This final rule imposes no new requirements. No comments were received disputing the facts that the action streamlines individual ADs and imposes no new requirements.

In analyzing this final rule, FAA has determined the rule has benefits which justify the costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in the Department of Transportation Regulatory Policies and Procedures. As the expected impact of this rule will have minimal cost, if any, a full regulatory evaluation is not warranted, and FAA did not prepare one.

Additionally, FAA certifies the rule will not have a significant impact on a substantial number of small entities, has no effect on barriers to international trade, and does not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational

requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action simply moves existing provisions from individual airworthiness directives into part 39. As a result, the cost is expected to be minimal. FAA did not receive any comments disagreeing with the assessment of minimal cost. Consequently, FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

FAA has accordingly assessed the potential effect of this final rule to be minimal and therefore determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 3132, Federalism

FAA analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We determined that this final rule, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

FAA has assessed the energy impact of the final rule under the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 39

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the above, the Federal Aviation Administration revises part 39 of Title 14, Code of Federal Regulations, to read as follows:

PART 39—AIRWORTHINESS DIRECTIVES

Sec.

39.1 Purpose of this regulation.
39.3 Definition of airworthiness directives.
39.5 When does FAA issue airworthiness directives?
39.7 What is the legal effect of failing to comply with an airworthiness directive?
39.9 What if I operate an aircraft or use a product that does not meet the requirements of an airworthiness directive?
39.11 What actions do airworthiness directives require?
39.13 Are airworthiness directives part of the Code of Federal Regulations?
39.15 Does an airworthiness directive apply if the product has been changed?
39.17 What must I do if a change in a product affects my ability to accomplish the actions required in an airworthiness directive?
39.19 May I address the unsafe condition in a way other than that set out in the airworthiness directive?
39.21 Where can I get information about FAA-approved alternative methods of compliance?
39.23 May I fly my aircraft to a repair facility to do the work required by an airworthiness directive?
39.25 How do I get a special flight permit?
39.27 What do I do if the airworthiness directive conflicts with the service document on which it is based?

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.1 Purpose of this regulation.

The regulations in this part provide a legal framework for FAA's system of Airworthiness Directives.

§ 39.3 Definition of airworthiness directives.

FAA's airworthiness directives are legally enforceable rules that apply to the following products: aircraft, aircraft engines, propellers, and appliances.

§ 39.5 When does FAA issue airworthiness directives?

FAA issues an airworthiness directive addressing a product when we find that:

(a) An unsafe condition exists in the product; and

(b) The condition is likely to exist or develop in other products of the same type design.

§ 39.7 What is the legal effect of failing to comply with an airworthiness directive?

Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.

§ 39.9 What if I operate an aircraft or use a product that does not meet the requirements of an airworthiness directive?

If the requirements of an airworthiness directive have not been met, you violate § 39.7 each time you operate the aircraft or use the product.

§ 39.11 What actions do airworthiness directives require?

Airworthiness directives specify inspections you must carry out, conditions and limitations you must comply with, and any actions you must take to resolve an unsafe condition.

§ 39.13 Are airworthiness directives part of the Code of Federal Regulations?

Yes, airworthiness directives are part of the Code of Federal Regulations, but they are not codified in the annual edition. FAA publishes airworthiness directives in full in the **Federal Register** as amendments to § 39.13.

§ 39.15 Does an airworthiness directive apply if the product has been changed?

Yes, an airworthiness directive applies to each product identified in the airworthiness directive, even if an individual product has been changed by modifying, altering, or repairing it in the area addressed by the airworthiness directive.

§ 39.17 What must I do if a change in a product affects my ability to accomplish the actions required in an airworthiness directive?

If a change in a product affects your ability to accomplish the actions required by the airworthiness directive in any way, you must request FAA approval of an alternative method of compliance. Unless you can show the change eliminated the unsafe condition, your request should include the specific actions that you propose to address the unsafe condition. Submit your request in the manner described in § 39.19.

§ 39.19 May I address the unsafe condition in a way other than that set out in the airworthiness directive?

Yes, anyone may propose to FAA an alternative method of compliance or a change in the compliance time, if the proposal provides an acceptable level of safety. Unless FAA authorizes otherwise, send your proposal to your principal inspector. Include the specific actions you are proposing to address the unsafe condition. The principal inspector may add comments and will send your request to the manager of the office identified in the airworthiness directive (manager). You may send a copy to the manager at the same time you send it to the principal inspector. If you do not have a principal inspector send your proposal directly to the manager. You may use the alternative you propose only if the manager approves it.

§ 39.21 Where can I get information about FAA-approved alternative methods of compliance?

Each airworthiness directive identifies the office responsible for approving alternative methods of compliance. That office can provide information about alternatives it has already approved.

§ 39.23 May I fly my aircraft to a repair facility to do the work required by an airworthiness directive?

Yes, the operations specifications giving some operators authority to operate include a provision that allow them to fly their aircraft to a repair facility to do the work required by an airworthiness directive. If you do not have this authority, the local Flight Standards District Office of FAA may issue you a special flight permit unless the airworthiness directive states otherwise. To ensure aviation safety, FAA may add special requirements for operating your aircraft to a place where the repairs or modifications can be accomplished. FAA may also decline to issue a special flight permit in particular cases if we determine you cannot move the aircraft safely.

§ 39.25 How do I get a special flight permit?

Apply to FAA for a special flight permit following the procedures in 14 CFR 21.199.

§ 39.27 What do I do if the airworthiness directive conflicts with the service document on which it is based?

In some cases an airworthiness directive incorporates by reference a manufacturer's service document. In these cases, the service document becomes part of the airworthiness directive. In some cases the directions in the service document may be modified by the airworthiness directive. If there is a conflict between the service document and the airworthiness directive, you must follow the requirements of the airworthiness directive.

Issued in Washington, DC, on July 10, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–17743 Filed 7–19–02; 8:45 am]

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Federal Register

Monday,
July 22, 2002

Part V

Department of Housing and Urban Development

24 CFR Parts 21 and 24
Adoption of Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants); Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 21 and 24

[Docket No. FR–4692–P–01]

RIN 2502–AC81

Adoption of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: On January 23, 2002, a proposed common rule was published that announced substantive changes and amendments to the governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug-Free Workplace Act of 1988. This rule would adopt those amendments.

DATES: *Comment Due Date:* September 20, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Dane Narode, Deputy Chief Counsel for Administrative Proceedings, Departmental Enforcement Center, Department of Housing and Urban Development, 1250 Maryland Avenue, Suite 200, Washington, DC 20024; telephone (202) 708–2350 (this is not a toll-free number); e-mail: *Dane_M._Narode@HUD.gov*. Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal information relay service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On January 23, 2002 (67 FR 3266), a governmentwide common rule was published that proposed substantive changes and amendments to the governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug-Free Workplace Act of 1988. The publication is available at *http://www.access.gpo.gov/su_docs*.

Through this proposed rule, HUD would adopt the changes and amendments made in the common rule. In addition, HUD is proposing in this rule to adopt specific requirements that, along with the provisions in the common rule, would best serve HUD's programs.

HUD's proposed rule inserts an additional paragraph regarding employment contracts to the definition of "covered transaction" found at § 24.200. HUD's addition makes clear that each payment under an employment contract constitutes a new "covered transaction." HUD has also enhanced the exclusion review that takes place in § 24.300. Under HUD's proposed rule, a participant must ensure it is not entering into a covered transaction with an excluded or disqualified person. In reviewing for an exclusion, however, HUD, at section § 24.300(d), exempts participants from checking on the exemption status of their principals while making salary payments pursuant to an employment contract.

Additionally, § 24.440 proposes to use terms or conditions to the award transaction as a means to enforce exclusions under HUD transactions rather than written certifications.

HUD proposes to provide examples for the debarment and suspension common rule definition of "principal" found at § 24.995. The expansion contains minor modifications consistent with HUD's present practice regarding the definition of "principal" for the purpose of debarments and suspensions. HUD is retaining its definitions of "Hearing Officer" at § 24.947 and "Ultimate Beneficiary" at § 24.1017 as found in the current common rule. The proposed rule makes clear in § 24.750 and § 24.845 that all fact finding referrals for HUD suspensions and debarments will be made to hearing officers.

Subpart J of part 24, which addresses limited denial of participation, has been revised stylistically so that the rule conforms to the question and answer format of the proposed rule. HUD has removed the term "contractor" from § 24.1105 because the proposed rule has deleted the definition of the term. The revised definition of "participant" in the proposed rule covers individuals previously defined as "contractors" in the current rule. Section 24.1145, which addresses imputing the conduct of one person to another in a limited denial of participation, has been revised to be consistent with the provisions of § 24.630.

Finally, the requirements for maintaining a drug-free workplace are being enacted as a new part 21, codifying HUD's drug-free workplace requirements.

List of Subjects

24 CFR Part 21

Administrative practice and procedure, Grant programs, Drug-free workplace, Reporting and recordkeeping rquirements.

24 CFR Part 24

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Technical assistance, Reporting and recordkeeping requirements.

For the reasons stated in the common preamble, the Department of Housing and Urban Development amends 24 CFR Chapter I, as follows:

1. A new part 21 is added to read as follows:

PART 21—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A—Purpose and Coverage

Sec.

21.100 What does this part do?
21.105 Does this part apply to me?
21.110 Are any of my Federal assistance awards exempt from this part?
21.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

21.200 What must I do to comply with this part?
21.205 What must I include in my drug-free workplace statement?
21.210 To whom must I distribute my drug-free workplace statement?
21.215 What must I include in my drug-free awareness program?
21.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
21.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
21.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

21.300 What must I do to comply with this part if I am an individual recipient?
21.301 [Reserved]

Subpart D—Responsibilities of HUD Awarding Officials

21.400 What are my responsibilities as an HUD awarding official?

Subpart E—Violations of this Part and Consequences

21.500 How are violations of this part determined for recipients other than individuals?

21.505 How are violations of this part determined for recipients who are individuals?
21.510 What actions will the Federal Government take against a recipient determined to have violated this part?
21.515 Are there any exceptions to those actions?

Subpart F—Definitions

21.605 Award.
21.610 Controlled substance.
21.615 Conviction.
21.620 Cooperative agreement.
21.625 Criminal drug statute.
21.630 Debarment.
21.635 Drug-free workplace.
21.640 Employee.
21.645 Federal agency or agency.
21.650 Grant.
21.655 Individual.
21.660 Recipient.
21.665 State.
21.670 Suspension.

Authority: 41 U.S.C. 701; 42 U.S.C. 3535.

Subpart A—Purpose and Coverage

§ 21.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 21.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either:

(1) A recipient of an assistance award from the Department of Housing and Urban Development; or

(2) An HUD awarding official. (See definitions of award and recipient in §§ 21.605 and 21.660, respectively.)

(b) The following table shows the subparts that apply to you:

If you are . . .	see sections . . .
(1) a recipient who is *not* an individual	24.2110–24.2230 24.2500–24.2515
(2) a recipient who is an individual	24.2110–24.2115 24.2300–24.2301 24.2500–24.2515
(3) a HUD awarding official	24.2100–24.2115 24.2400–24.2500 24.2515

§ 21.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the Secretary determines the application of which would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 21.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 21.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ 21.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in the subsequent sections of this subpart. Briefly, those measures are to:

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 21.205 through 21.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 21.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 21.230).

§ 21.205 What must I include in my drug-free workplace statement?

You must publish a statement that:

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 21.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 21.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 21.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 21.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 24.2205 and an ongoing awareness program as described in § 24.2215, you must publish the statement and establish the program by the time given in the following table:

If . . .	then you . . .
(a) the performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) the performance period of the award is 30 days or more	must have the policy statement and program in place within 30 days after award.

If . . .	then you . . .
(c) you believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the HUD awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 21.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 21.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must:

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either:

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ 21.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each HUD award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces:

(1) To the HUD official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by HUD officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the HUD awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the HUD awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ 21.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving an HUD award, if you are an individual recipient, you must agree that:

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing;

(2) Within 10 calendar days of the conviction;

(3) To the HUD awarding official or other designee for each award that you currently have, unless § 21.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

§ 21.301 [Reserved]

Subpart D—Responsibilities of HUD Awarding Officials

§ 21.400 What are my responsibilities as an HUD awarding official?

As an HUD awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in:

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

§ 21.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Secretary determines, in writing, that:

(a) The recipient has violated the requirements of Subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 21.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Secretary determines, in writing, that:

(a) The recipient has violated the requirements of Subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 21.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 21.500 or 21.505, the Department of Housing and Urban Development may take one or more of the following actions:

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under 24 CFR part 24, for a period not to exceed five years.

§ 21.515 Are there any provisions for exceptions to those actions?

The Secretary may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Secretary determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ 21.605 Award.

Award means an award of financial assistance by the Department of Housing and Urban Development or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule (codified in HUD's regulations at 24 CFR part 85) that implements OMB Circular A–102 and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veteran's benefits to individuals (i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

§ 21.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ 21.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 21.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 21.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 21.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 21.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Governmentwide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

§ 21.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 21.640 Employee.

(a) Employee means the employee of a recipient directly engaged in the performance of work under the award, including:

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (e.g., volunteers), even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces.

§ 21.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 21.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 21.655 Individual.

Individual means a natural person.

§ 21.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency), or legal entity, however organized, that receives an award directly from a Federal agency.

§ 21.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 21.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Governmentwide Debarment and Suspension (Nonprocurement) that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

2. Part 24 is revised to read as set forth at 67 FR 3273, January 23, 2002:

PART 24—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

24.25 How is this part organized?
24.50 How is this part written?
24.75 Do terms in this part have special meanings?

Subpart A—General

24.100 What does this part do?
24.105 Does this part apply to me?

24.110 What is the purpose of the nonprocurement debarment and suspension system?
24.115 How does an exclusion restrict a person's involvement in covered transactions?
24.120 May we grant an exception to let an excluded person participate in a covered transaction?
24.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
24.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
24.135 May the Department of Housing and Urban Development exclude a person who is not currently participating in a nonprocurement transaction?
24.140 How do I know if a person is excluded?
24.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

24.200 What is a covered transaction?
24.205 Why is it important to know if a particular transaction is a covered transaction?
24.210 Which nonprocurement transactions are covered transactions?
24.215 Which nonprocurement transactions are not covered transactions?
24.220 Are any procurement contracts included as covered transactions?
24.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

24.300 May I enter into a covered transaction with an excluded or disqualified person?
24.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
24.310 May I use the services of an excluded person under a covered transaction?
24.315 Must I verify that principals of my covered transactions are eligible to participate?
24.320 What happens if I do business with an excluded person in a covered transaction?
24.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

24.330 What information must I provide before entering into a covered transaction with the Department of Housing and Urban Development?
24.335 If I disclose unfavorable information required under § 24.330 will I be prevented from entering into the transaction?
24.340 What happens if I fail to disclose the information required under § 24.330?
24.345 What must I do if I learn of the information required under § 24.330 after entering into a covered transaction with the Department of Housing and Urban Development?

Disclosing information—Lower Tier Participants

24.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
24.355 What happens if I fail to disclose the information required under § 24.350?
24.360 What must I do if I learn of information required under § 24.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of HUD Officials Regarding Transactions

24.400 May I enter into a transaction with an excluded or disqualified person?
24.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
24.410 May I approve a participant's use of the services of an excluded person?
24.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
24.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
24.425 When do I check to see if a person is excluded or disqualified?
24.430 How do I check to see if a person is excluded or disqualified?
24.435 What must I require of a primary tier participant?
24.440 What method do I use to communicate those requirements to participants?
24.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
24.450 What action may I take if a primary tier participant fails to disclose the information required under § 24.330?
24.455 What may I do if a lower tier participant fails to disclose the information required under § 24.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

24.500 What is the purpose of the List?
24.505 Who uses the List?
24.510 Who maintains the List?
24.515 What specific information is on the List?
24.520 Who gives the GSA the information that it puts on the List?
24.525 Whom do I ask if I have questions about a person on the List?
24.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

24.600 How do suspension and debarment actions start?
24.605 How does suspension differ from debarment?
24.610 What procedures does the Department of Housing and Urban Development use in suspension and debarment actions?
24.615 How does the Department of Housing and Urban Development notify a person of suspension and debarment actions?
24.620 Do Federal agencies coordinate suspension and debarment actions?
24.625 What is the scope of a suspension or debarment action?
24.630 May the Department of Housing and Urban Development impute the conduct of one person to another?
24.635 May the Department of Housing and Urban Development settle a debarment or suspension action?
24.640 May a settlement include a voluntary exclusion?
24.645 Do other Federal agencies know if the Department of Housing and Urban Development agrees to a voluntary exclusion?

Subpart G—Suspension

24.700 When may the suspending official issue a suspension?
24.705 What does the suspending official consider in issuing a suspension?
24.710 When does a suspension take effect?
24.715 What notice does the suspending official give me if I am suspended?
24.720 How may I contest a suspension?
24.725 How much time do I have to contest a suspension?
24.730 What information must I provide to the suspending official if I contest a suspension?
24.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
24.740 Are suspension proceedings formal?
24.745 Is a record made of fact-finding proceedings?
24.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
24.755 When will I know whether the suspension is continued or terminated?
24.760 How long may my suspension last?

Subpart H—Debarment

24.800 What are the causes for debarment?
24.805 What notice does the debarring official give me if I am proposed for debarment?
24.810 When does a debarment take effect?
24.815 How may I contest a proposed debarment?
24.820 How much time do I have to contest a proposed debarment?
24.825 What information must I provide to the debarring official if I contest a proposed debarment?
24.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
24.835 Are debarment proceedings formal?
24.840 Is a record made of fact-finding proceedings?
24.845 What does the debarring official consider in deciding whether to debar me?
24.850 What is the standard of proof in a debarment action?

24.855 Who has the burden of proof in a debarment action?
24.860 What factors may influence the debarring official's decision?
24.865 How long may my debarment last?
24.870 When do I know if the debarring official debars me?
24.875 May I ask the debarring official to reconsider a decision to debar me?
24.880 What factors may influence the debarring official during reconsideration?
24.885 May the debarring official extend a debarment?

Subpart I—Definitions

24.900 Adequate evidence.
24.905 Affiliate.
24.910 Agency.
24.915 Agent or representative.
24.920 Civil judgment.
24.925 Conviction.
24.930 Debarment.
24.935 Debarring official.
24.940 Disqualified.
24.945 Excluded or exclusion.
24.947 Hearing officer.
24.950 Indictment.
24.955 Ineligible or ineligibility.
24.960 Legal proceedings.
24.965 List of parties excluded or disqualified from federal procurement and nonprocurement programs.
24.970 Nonprocurement transaction.
24.975 Notice.
24.980 Participant.
24.985 Person.
24.990 Preponderance of the evidence.
24.995 Principal.
24.1000 Respondent.
24.1005 State.
24.1010 Suspending official.
24.1015 Suspension.
24.1017 Ultimate beneficiaries.
24.1020 Voluntary exclusion or voluntarily excluded.
Appendix to part 24—Covered Transactions.

Subpart J—Limited Denial of Participation

24.1100 What is a limited denial of participation?
24.1105 Who may issue a limited denial of participation?
24.1110 When may a HUD official issue a limited denial of participation?
24.1115 When does a limited denial of participation take effect?
24.1120 How long may a limited denial of participation last?
24.1125 How does a limited denial of participation start?
24.1130 How may I contest my limited denial of participation?
24.1135 Do Federal Agencies coordinate limited denial of participation actions?
24.1140 What is the scope of a limited denial of participation?
24.1145 May HUD impute the conduct of one person to another in a limited denial of participation?
24.1150 What is the effect of a suspension or debarment on a limited denial of participation?
24.1155 What is the effect of a limited denial of participation on a suspension or a debarment?
12.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?
24.1165 How is a limited denial of participation reported?

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 3535(d); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

3. Part 24 is further amended as set forth below.

a. "[Agency noun]" is removed and "the Department of Housing and Urban Development" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "HUD" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "HUD Debarring Official or designee" is added in its place wherever it occurs.

4. Section 24.200 is further amended by adding a paragraph (c) to read as follows:

§ 24.200 What is a covered transaction?

* * * * *

(c) In the case of employment contracts that are covered transactions, each salary payment under the contract is a separate covered transaction.

5. Section 24.300 is further amended by adding paragraphs (c) and (d) to read as follows:

§ 24.300 May I enter into a covered transaction with an excluded or disqualified person?

* * * * *

(c) You as a participant are responsible for determining whether you are entering into a covered transaction with an excluded or disqualified person. You may decide the method by which you do so. You may, but are not required to, check the *List*.

(d) In the case of an employment contract, HUD does not require employers to check the *List* prior to making salary payments pursuant to that contract.

6. Section 24.440 is added to read as follows:

§ 24.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

7. Section 24.750 is further amended by adding a paragraph (c) to read as follows:

§ 24.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

* * * * *

(c) The official receiving the referral for findings of fact regarding disputed material facts must be a hearing officer in all HUD suspensions.

8. Section 24.845 is further amended by adding a paragraph (d) to read as follows:

§ 24.845 What does the debarring official consider in deciding whether to debar me?

* * * * *

(d) The official receiving the referral for findings of fact regarding disputed material facts must be a hearing officer in all HUD debarments.

9. Section 24.947 is added to read as follows:

§ 24.947 Hearing officer.

Hearing officer means an Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD's Secretary or by the Secretary's designee, to conduct proceedings under this part.

10. Section 24.995 is further amended by adding a paragraph (c) to read as follows:

§ 24.995 Principal.

* * * * *

(c) A person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. Persons who have a critical influence on, or substantive control over, a covered transaction may include, but are not limited to:

(1) Loan officers;
(2) Staff appraisers and inspectors;
(3) Underwriters;
(4) Bonding companies;
(5) Borrowers under programs financed by HUD or with loans guaranteed, insured, or subsidized through HUD programs;
(6) Purchasers of properties with HUD-insured or Secretary-held mortgages;
(7) Recipients under HUD assistance agreements;
(8) Ultimate beneficiaries of HUD programs;
(9) Fee appraisers and inspectors;
(10) Real estate agents and brokers;
(11) Management and marketing agents;
(12) Accountants, consultants, investment bankers, architects, engineers, and attorneys who are in a business relationship with participants in connection with a covered transaction under a HUD program;
(13) Contractors involved in the construction or rehabilitation of

properties financed by HUD, with HUD insured loans, or acquired properties, including properties held by HUD as mortgagee-in-possession;

(14) Closing agents;

(15) Turnkey developers of projects financed by or with financing insured by HUD;

(16) Title companies;

(17) Escrow agents;

(18) Project owners;

(19) Administrators of nursing homes and projects for the elderly financed or insured by HUD; and,

(20) Developers, sellers or owners of property financed with loans insured under title I or title II of the National Housing Act.

11. Subpart J is added to Part 24 to read as follows:

Subpart J—Limited Denial of Participation

§ 24.1100 What is a limited denial of participation?

A limited denial of participation excludes a specific person from participating in a specific program, or programs, within a HUD Field Office's geographic jurisdiction, for a specific period of time. A limited denial of participation is normally issued by a HUD Field Office but may be issued by a Headquarters office. The decision to impose a limited denial of participation is discretionary and in the best interests of the Government.

§ 24.1105 Who may issue a limited denial of participation?

The Secretary designates HUD Officials who are authorized to impose a limited denial of participation, affecting any participant and/or their affiliates, except FHA approved mortgagees.

§ 24.1110 When may a HUD official issue a limited denial of participation?

(a) An authorized HUD official may issue a limited denial of participation against a person based upon adequate evidence of any of the following causes:

(1) Approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) Irregularities in a person's past performance in a HUD program;

(3) Failure of a person to maintain the prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) Failure to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) Deficiencies in ongoing construction projects;

(7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.800;

(9) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(10) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department;

(11) Imposition of a limited denial of participation by any other HUD office; or

(12) Debarment or suspension by another federal agency for any cause substantially the same as provided in § 24.800.

(b) Filing of a criminal Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions. The Indictment or Information need not be based on offenses against HUD.

(c) Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for additional conference or further hearing.

(d) An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 24.1115 When does a limited denial of participation take effect?

A limited denial of participation is effective immediately upon issuance of the notice.

§ 24.1120 How long may a limited denial of participation last?

A limited denial of participation may remain effective up to 12 months.

§ 24.1125 How does a limited denial of participation start?

A limited denial of participation is made effective by providing the person, and any specifically named affiliate, with notice:

(a) That the limited denial of participation is being imposed;

(b) Of the cause(s) under § 24.1110 for the sanction;

(c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;

(d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 24.1130; and

(e) Of the right to contest the limited denial of participation under § 24.1130.

§ 24.1130 How may I contest my limited denial of participation?

(a) Within 30 days after receiving a notice of limited denial of participation, you may request a conference with the official who issued such notice. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless you waive this time limit. The official who imposed the sanction, or designee, shall preside. At the conference, you may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed upon extension of time for submission of additional materials, the official or designee shall, in writing, advise you of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise you of the opportunity to contest the notice and request a hearing before a Departmental Hearing Officer. You have 30 days after receipt of the notice of affirmation to request this hearing. If the official or designee does not issue a decision within the 20-day period, you may contest the sanction before a Departmental Hearing Officer. Again, you have 30 days from the expiration of the 20-day period to request this hearing. If you request a hearing before the Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., B 133 Portals 200, Washington, DC 20410.

(b) You may skip the conference with the official and you may request a hearing before a Departmental Hearing Officer. This must also be done within 30 days after receiving a notice of limited denial of participation. If you opt to have a hearing before a Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing

and Urban Development, 451 Seventh Street, SW., B 133 Portals 200, Washington, DC 20410. The hearing before the Departmental Hearing Officer is more formal than the conference before the sanctioning official described above. The hearing before the Departmental Hearing Officer will be conducted in accordance with 24 CFR part 26, subpart A. The Departmental Hearing Officer will issue findings of fact and make a recommended decision. The sanctioning official will then make a final decision as promptly as possible after the Departmental Hearing Officer recommended decision is issued. The sanctioning official may reject the recommended decision or any findings of fact, only after specifically determining the decision or any of the facts to be arbitrary or capricious or clearly erroneous.

§ 24.1135 Do Federal Agencies coordinate limited denial of participation actions?

Federal agencies do not coordinate limited denial of participation actions. As stated in § 24.1100, a limited denial of participation is a HUD specific action and applies only to HUD activities.

§ 24.1140 What is the scope of a limited denial of participation?

The scope of a limited denial of participation is as follows:

(a) A limited denial of participation generally extends only to participation in the program under which the cause arose. Program may, in the discretion of the authorized official, include any or all of the functions within the jurisdiction of an Assistant Secretary. The authorized official, however, may determine that the sanction shall apply to all programs throughout HUD where the sanction is based on an indictment or conviction.

(b) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts.

(c) The sanction may be imposed for a period not to exceed 12 months, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by an Assistant Secretary or Deputy Assistant Secretary in which case the sanction may be imposed on either a nationwide or a more restricted basis.

§ 24.1145 May HUD impute the conduct of one person to another in a limited denial of participation?

For purposes of determining a limited denial of participation, HUD may impute conduct as follows:

(a) *Conduct imputed to participant.* HUD may impute the fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval or acquiescence. The participant's acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

(b) *Conduct imputed to individuals associated with participant.* HUD may impute the fraudulent, criminal, or other seriously improper conduct of a participant to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(c) *Conduct of one participant imputed to other participants in a joint venture.* HUD may impute the fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application or similar arrangement, or with the knowledge, approval, or acquiescence of those participants. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

§ 24.1150 What is the effect of a suspension or debarment on a limited denial of participation?

If you have submitted a request for a hearing pursuant to § 24.1130 of this section, and you also receive, pursuant to subpart G or H of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or conduct as the limited denial of participation, as determined by the debarring or suspending official, the following rules shall apply:

(a) During the 30-day period after you receive a proposed debarment or suspension, during which you may elect to contest the debarment under § 24.815, or the suspension pursuant to § 24.720, all proceedings in the limited denial of participation, including discovery, are automatically stayed.

(b) If you do not contest the proposed debarment pursuant to § 24.815, or the suspension pursuant to § 24.720, the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(c) If you contest the proposed debarment pursuant to § 24.815, or the suspension pursuant to § 24.720, then:

(1) Those parts of the limited denial of participation and the debarment or suspension based on the same transaction(s) or conduct, as the determined by the debarring or suspending official, shall be immediately consolidated before the debarring or suspending official;

(2) Jurisdiction of the hearing officer under 24 CFR part 24, subpart J, to hear those parts of the limited denial of participation based on the same transaction(s) or conduct as the debarment or suspension, as determined by the debarring or suspending official, shall be divested, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarring or suspending official; and

(3) The debarring or suspending official shall hear the entire consolidated case under the procedures governing debarments and suspensions, and shall issue a final decision as to both the limited denial of participation and the debarment or suspension.

§ 24.1155 What is the effect of a limited denial of participation on a suspension or a debarment?

The imposition of a limited denial of participation does not affect the right of the Department to suspend or debar any person under this part.

§ 24.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?

If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it.

§ 24.1165 How is a limited denial of participation reported?

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to § 24.1130 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Compliance Division in the Departmental Enforcement Center of the scope of the limited denial of participation.

Dated: June 5, 2002.

Mel Martinez,

Secretary.

[FR Doc. 02–18309 Filed 7–19–02; 8:45 am]

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H.R. 327/P.L. 107–198
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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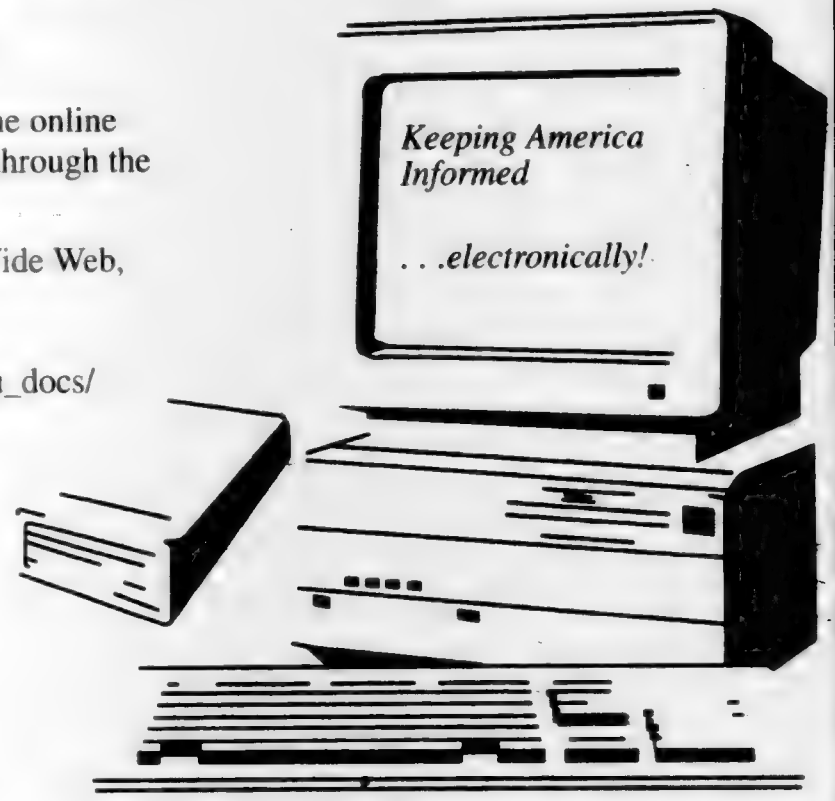

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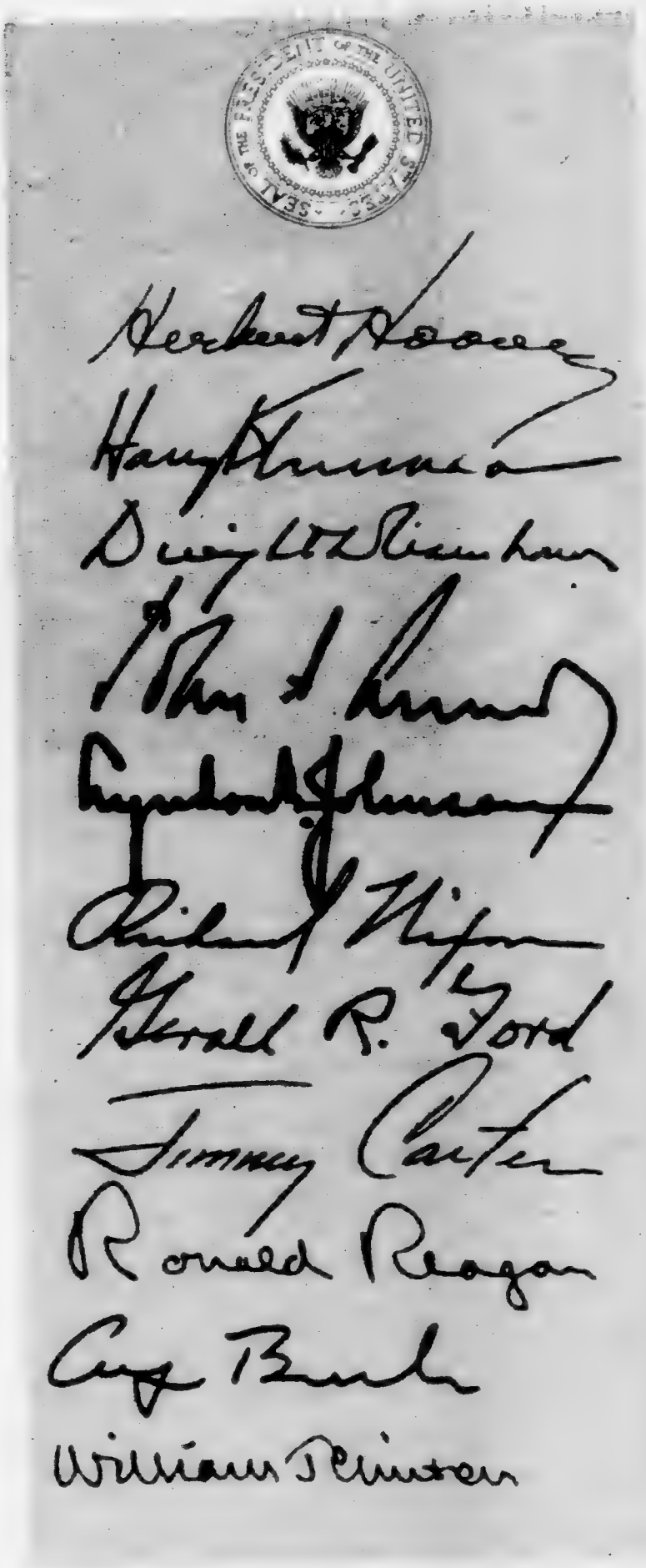

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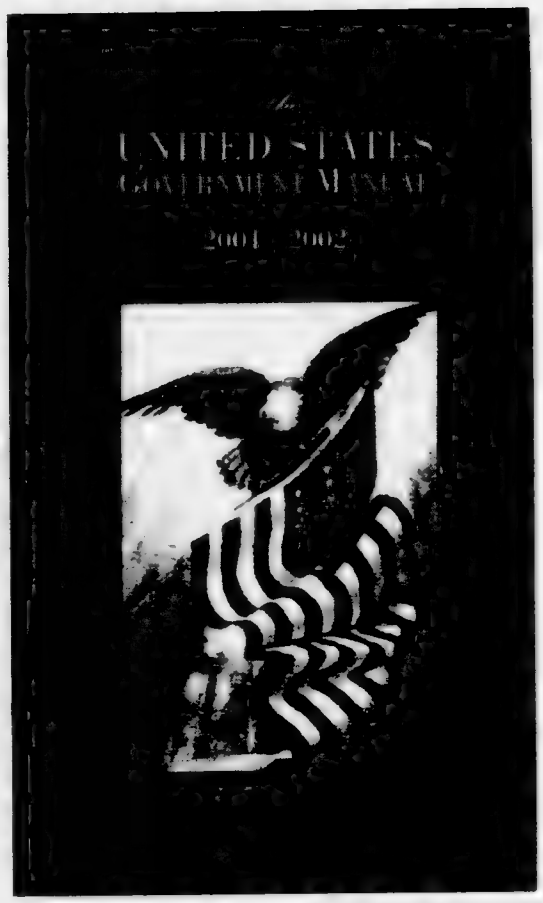

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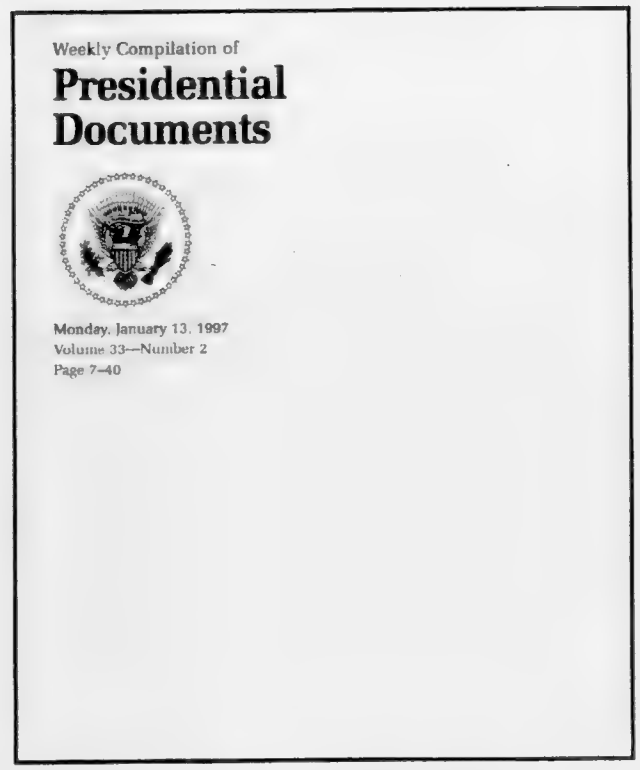

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–3 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Removing Dancy and Robinson Tangerine Varieties From the Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule removes two varieties of tangerines from the regulated varieties of Florida citrus currently prescribed under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The marketing order is administered locally by the Citrus Administrative Committee (committee). This rule removes Dancy tangerines and Robinson tangerines from the regulated varieties of Florida citrus. This rule also removes a section of the rules and regulations dealing with handling procedures when Dancy and Robinson tangerines are restricted. Production of these varieties has declined and it is expected production will continue to decline. Removing these varieties from the minimum grade and size requirements will have no significant impact on the tangerine market.

DATES: Effective July 24, 2002; comments received by September 23, 2002 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of USDA. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers.

This rule removes Dancy tangerines and Robinson tangerines from the regulated varieties of Florida citrus fruit currently prescribed under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. Production of these varieties has declined and it is expected that production will continue to decline. Removing these varieties from the minimum grade and size requirements will have no significant impact on the overall quality of tangerines. This action was unanimously recommended by the committee at its meeting on May 22, 2002.

Section 905.52 of the order, in part, authorizes the committee to recommend minimum grade and size regulations to USDA. Section 905.306 of the order's rules and regulations specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. Such requirements for domestic shipments are specified in § 905.306 in Table I of

paragraph (a), and for export shipments in Table II of paragraph (b). Currently, a minimum grade of U.S. No. 1 as specified in the U.S. Standards for Grades of Florida Tangerines (7 CFR 51.1810 through 51.1837), and a minimum size of 2$^{6}/_{16}$ inches diameter are established for both Dancy and Robinson tangerines.

This rule modifies § 905.306 by deleting Dancy tangerines and Robinson tangerines from the list of entries in Table I of paragraph (a), and in Table II of paragraph (b). In its deliberations, the committee realized that Dancy tangerines and Robinson tangerines no longer significantly impact the citrus market. During the 2001–02 season, early indications are that total shipments of Dancy tangerines will only be around 13,000 cartons. Florida Department of Agriculture statistics show that in 2000–01, 23,000 cartons were shipped. This is down from 94,000 cartons shipped in the 1997–98 season. During 2001–02, early indications are that only 124,000 cartons of Robinson tangerines will be shipped. Florida Department of Agriculture statistics show that in 2000–01, 165,000 cartons were shipped. This is down from 262,000 cartons in 1997–98. Production of these varieties has declined as newer varieties have been developed and planted. The decline is expected to continue. Currently, shipments of these varieties represent approximately 4 percent of fresh shipments of tangerines. Consequently, the committee believes that the current market share and shipment levels justify removal of minimum grade and size requirements for these varieties.

Section 905.152 sets forth procedures for determining handlers' permitted quantities of Dancy and Robinson tangerine varieties when a portion of the 210 size of these varieties is restricted. Because Dancy and Robinson tangerines will no longer have to meet size requirements, § 905.152 is unnecessary and is being removed with this rule.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of Florida citrus in the production area and approximately 75 tangerine handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and committee data, the average annual F.O.B. price for fresh early Florida tangerines during the 2000–01 season was around $9.50 per 4/5-bushel carton, and total fresh shipments of early tangerines for the 2000–01 season were 4.5 million cartons.

Approximately 20 percent of all handlers handled 77 percent of Florida tangerine shipments. Using tangerine shipments and the average F.O.B. prices, it can be determined that the majority of Florida tangerine handlers could be considered small businesses under SBA's definition. In addition, the majority of Florida citrus growers may be classified as small entities.

This rule removes Dancy tangerines and Robinson tangerines from the varieties of citrus regulated under the order. These varieties will no longer be required to meet the minimum grade and size requirements. Production of these varieties has declined and it is expected production will continue to decline. Removing these varieties from the minimum grade and size requirements will have no significant impact on the tangerine market.

Section 905.52 of the order, in part, authorizes the committee to recommend minimum grade and size regulations to the USDA. Section 905.306 of the order's rules and regulations specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. This rule modifies § 905.306 of the rules and regulations concerning covered varieties and minimum grade and size requirements, respectively. This rule also removes § 905.152.

This rule relaxes the handling requirements by removing two varieties from the list of varieties regulated. Handlers will be able to market these varieties free from the order's requirements. There will be no additional costs imposed on growers and handlers with this rule.

Early indications are that only a total of 137,000 cartons of these tangerines will be shipped in the 2001–02 season. Florida Department of Agriculture statistics show that in 2000–01, a total of 188,000 cartons of these varieties were shipped. This is down from a total of 356,000 cartons of Dancy and Robinson tangerines shipped in the 1997–98 season. Currently, shipments of these varieties account for approximately 4 percent of the overall 4.5 million cartons of early Florida tangerines shipped during the 2000–01 season. Production of these varieties has declined as newer varieties have been developed and planted. The decline in production of these varieties is expected to continue. Most producers have already discontinued growing these varieties and handlers find it easier to sell the newer varieties that have been developed. This change is expected to benefit both large and small entities equally.

One alternative discussed was to make no change to the order's handling regulations. The committee saw this alternative as being of no benefit to the industry because of the declining production and minimal market share of these varieties. The committee believes these varieties have no significant impact on the tangerine market and agreed that action should be taken to remove these varieties from the handling regulations, so this alternative was rejected.

Another alternative was to also remove the Ambersweet variety of tangerines from the regulations. However, the committee determined that annual shipments of this variety impact the tangerine market and, therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Florida tangerine handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in the committee's deliberations. Like all committee meetings, the May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Finally, interested persons are invited to submit information on the regulatory

and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on removal of Dancy tangerines and Robinson tangerines from the rules and regulations concerning covered varieties of Florida citrus. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule relaxes handling requirements for two varieties of tangerines and, therefore, should be in place when the handlers begin shipments of these early tangerine varieties, beginning October 1, 2002. This issue has been widely discussed at various industry and association meetings, and the committee has kept the industry well informed. Interested persons have had time to determine and express their positions. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period is provided in this rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 905.152 [Removed]

2. Section 905.152 is removed.

§ 905.306 [Amended]

3. In § 905.306, Table I and Table II are amended by removing the entries for "Dancy tangerines" and "Robinson tangerines."

Dated: July 17, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18571 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9009]

RIN 1545–AY66

Taxable Years of Partner and Partnership; Foreign Partners

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations on the taxable year of a partnership with foreign partners and tax-exempt partners. The final regulations provide that in certain circumstances the taxable year of a partnership will be determined without regard to the taxable year of certain foreign partners and certain tax-exempt partners.

DATES: *Effective Date:* These regulations are effective on July 23, 2002.

Applicability Date: For dates of applicability of these regulations, see §§ 1.706–1(b)(5)(iii), (b)(6)(v), and (b)(11)(ii).

FOR FURTHER INFORMATION CONTACT: Dan Carmody, (202) 622–3080 (not a toll-free number). For specific information regarding international issues, contact Ronald M. Gootzeit, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document finalizes portions of § 1.706–1(b) of the Income Tax Regulations (26 CFR part 1) relating to the determination of the taxable year of a partnership with tax-exempt partners and foreign partners. This document also withdraws § 1.706–3T (26 CFR part 1).

Background

On May 24, 1988, Treasury and the Internal Revenue Service (IRS) issued temporary regulations (§ 1.706–3T, promulgated as part of TD 8205 (53 FR 19688)) with a contemporaneous notice of proposed rulemaking (LR–53–88 (53 FR 19715)) relating to the determination of the taxable year of a partnership with tax-exempt partners (the 1988 Proposed Regulations). On January 17, 2001, Treasury and the IRS published in the **Federal Register** a notice of proposed rulemaking [REG–104876–00 (66 FR 3920)] to provide guidance relating to the determination of the taxable year of a partnership with foreign partners (the 2001 Proposed Regulations). In that notice of proposed rulemaking, Treasury and the IRS also indicated that the 1988 Proposed Regulations would be finalized. A public hearing was held on June 6, 2001. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

I. In General

Section 706 provides rules relating to the taxable years of a partnership and its partners. Under section 706(a), in computing the taxable income of a partner for a taxable year, the partner must include the partner's share of any income, gain, loss, deduction, or credit of the partnership for the partnership's taxable year that ends within or with the partner's taxable year.

Section 706(b)(1)(B) provides that, unless the partnership establishes a business purpose for a different taxable year, a partnership cannot have a taxable year other than: (i) The majority interest taxable year; (ii) if there is no majority interest taxable year, the taxable year of all the principal partners of the partnership; or (iii) if there is no taxable year described in (i) or (ii), the calendar year unless the Secretary by regulation prescribes another period. Section 1.706–1(b)(2) of the Income Tax Regulations provides that, if neither section 706(b)(1)(B)(i) nor (ii) apply, the partnership's taxable year will be the taxable year that results in the least aggregate deferral of partnership income.

As part of a larger guidance project on accounting periods, the regulations under section 706 were restructured on May 17, 2002 [TD 8996 (67 FR 35009)]. To conform with the restructuring, the regulations finalized by this document will be finalized as amendments to § 1.706–1 even though they were proposed under §§ 1.706–3 and 1.706–4. A small portion of the proposed regulation under § 1.706–3 dealing with the effect of partner elections under

section 444 has been finalized as § 1.706–1(b)(11).

II. Treatment of Tax-Exempt Partners

The 1988 Proposed Regulations provide that, in determining the taxable year (the current year) of a partnership under section 706(b) and the regulations thereunder, a partner that is tax-exempt under section 501(a) is disregarded if such partner was not subject to tax, under chapter 1 of the Internal Revenue Code (Code), on any income attributable to its investment in the partnership during the partnership's taxable year immediately preceding the current year. This Treasury decision finalizes the 1988 Proposed Regulations without substantive change and withdraws the temporary regulations.

III. Treatment of Foreign Partners

A. General Rule

The 2001 Proposed Regulations generally provide that a foreign partner that is not subject to U.S. taxation on a net basis on income earned through the partnership is disregarded for purposes of section 706(b). For these purposes, a foreign partner will be considered subject to U.S. taxation on a net basis only if the partner is allocated gross income of the partnership that is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States (effectively connected income or ECI). In the case of a foreign partner claiming benefits under a U.S. income tax treaty, such partner is disregarded unless it is allocated any gross income that is attributable to a permanent establishment in the United States.

The final regulations follow the same approach as the proposed regulations, but the general rule has been clarified to provide that a foreign partner is disregarded unless such partner is allocated any gross income that is ECI, and the taxation of the income is not otherwise precluded under any U.S. income tax treaty. Gross income for these purposes does not include income that is excluded under another Code provision (e.g., the exclusion from gross income under section 883 for certain transportation income). Further, as the preamble to the proposed regulations [REG–104876–00 (66 FR 3920, 3922)] states, the Commissioner may challenge an arrangement that, while conforming to these rules, is undertaken with a principal purpose of achieving a tax result that is inconsistent with the intent of section 706. § 1.701–2.

A commentator questioned the statutory authority for regulations that disregard the interest in a partnership held by certain foreign partners in determining a partnership's taxable year under section 706(b). Treasury and the IRS believe that they have the authority to adopt these final regulations in order to resolve ambiguity in the statutory provisions in a manner that is consistent with the objectives of section 706(b) to eliminate or reduce the amount of deferral available on income earned through a partnership.

B. Application of the Minority Interest Rule

Treasury and the IRS recognize that requiring a partnership taxable year to be determined without regard to certain foreign partners may present difficulties for minority partners in some cases. For this reason, the proposed regulations include a "minority interest rule" which provides that the taxable years of foreign partners are not disregarded for purposes of section 706(b) if no single partner (other than a disregarded foreign partner) holds a 10-percent or greater interest in the capital or profits of the partnership, and if, in the aggregate, the partners that are not disregarded foreign partners do not hold a 20-percent or greater interest in the capital or profits of the partnership.

The 2001 Proposed Regulations provide that, for purposes of determining a partner's ownership in the partnership, the constructive ownership rules of section 318 apply (substituting "10 percent" for "50 percent" in section 318(a)(2)(C) and (3)(C)) and the attribution rules of section 267(c) also apply to the extent that those rules attribute ownership to persons to whom section 318 does not attribute ownership. These regulations replace this attribution rule with an attribution rule based on the principles of sections 267(b) and 707(b). Attribution under sections 267(b) and 707(b) is more commonly applied in the partnership context than is attribution under section 318, which is generally used to determine constructive ownership of stock.

Commentators expressed concern that the 10- and 20-percent thresholds were too low. They explained that U.S. minority partners would have difficulty reporting partnership income timely under these rules, because a U.S. minority partner typically lacks the practical or legal ability to cause a foreign partnership to close its books and conduct a mid-year accounting. Treasury and the IRS believe that partners can generally negotiate with the partnership to obtain the information needed to comply with their reporting obligations under these regulations. Recognizing, though, that partners in existing partnerships may not be in a position to renegotiate for partnership information, Treasury and the IRS have made these regulations applicable on a mandatory basis only to partnerships formed on or after September 23, 2002. Partnerships formed before September 23, 2002, however, may elect to change their taxable years to conform with these regulations. Such a change will be treated as a change to a required taxable year under § 4 of Rev. Proc. 2002–38 (2002–22 I.R.B. 1), or any successor, and the partnership will then be subject to the requirements of § 1.706–1(b)(6). Moreover, if an existing partnership terminates under the rules of section 708(b)(1)(B), the resulting partnership will be subject to the requirements of these regulations. Treasury and the IRS request comments on additional ways in which the administrative burdens associated with these regulations may be reduced.

The preamble to the 2001 Proposed Regulations requests comments on whether tax-exempt partners should be excluded for purposes of the minority interest rule. As no comments were received, the final regulations consider tax-exempt partners in determining whether the minority interest rule applies.

IV. Effective Date

The regulations under § 1.706–1(b)(5) relating to the taxable year of a partnership with tax-exempt partners apply to taxable years beginning on or after July 23, 2002. For taxable years beginning before July 23, 2002, see § 1.706–3T as contained in 26 CFR part 1 revised April 1, 2002.

The regulations under § 1.706–1(b)(6) relating to the taxable year of a partnership with foreign partners are applicable for taxable years of partnerships (other than existing partnerships as defined in § 1.706–1(b)(6)(v)) beginning on or after July 23, 2002.

The regulations under § 1.706–1(b)(11) relating to the effect of partner elections under section 444 are applicable for taxable years of partnerships beginning on or after July 23, 2002. For taxable years beginning before July 23, 2002, see § 1.706–3T as contained in 26 CFR part 1 revised April 1, 2002.

V. Transitional Relief for Existing Partnerships With Foreign Partners

The 2001 Proposed Regulations recognize that a potential hardship exists for partners of an existing partnership that changes its taxable year to comply with § 1.706–1(b)(6). If the

change results in two partnership taxable years ending within a partner's single taxable year, that partner could experience a bunching of more than 12 months of partnership income in a single taxable year. In order to avoid potential hardships, the 2001 Proposed Regulations incorporate the transitional rules of § 1.702–3T to allow the gain recognition to be spread over a four-year period. A partnership that uses this transitional rule is required to take into account all items of income, gain, loss, deduction and credit ratably over the four-year period.

Unlike the 2001 Proposed Regulations, these regulations do not require that existing partnerships change their taxable years to conform to the regulations. Because the regulations do not require existing partnerships to change their taxable years, the need for transitional relief is less imperative. Nevertheless, to encourage existing partnerships to change their taxable years to conform to these regulations, Treasury and the IRS have retained the transitional rule for any partnership that elects to apply the regulations in its first taxable year beginning on or after July 23, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Dan Carmody, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. In § 1.706–1, paragraphs (b)(5) and (b)(6) are revised and paragraph (b)(11) is added to read as follows:

§ 1.706–1 Taxable years of partner and partnership.

* * * * *

(b) * * *

(5) *Taxable year of a partnership with tax-exempt partners*—(i) *Certain tax-exempt partners disregarded.* In determining the taxable year (the current year) of a partnership under section 706(b) and the regulations thereunder, a partner that is tax-exempt under section 501(a) shall be disregarded if such partner was not subject to tax, under chapter 1 of the Internal Revenue Code, on any income attributable to its investment in the partnership during the partnership's taxable year immediately preceding the current year. However, if a partner that is tax-exempt under section 501(a) was not a partner during the partnership's immediately preceding taxable year, such partner will be disregarded for the current year if the partnership reasonably believes that the partner will not be subject to tax, under chapter 1 of the Internal Revenue Code, on any income attributable to such partner's investment in the partnership during the current year.

(ii) *Example.* The provisions of paragraph (b)(5)(i) of this section may be illustrated by the following example:

Example. Assume that partnership A has historically used the calendar year as its taxable year. In addition, assume that A is owned by 5 partners, 4 calendar year individuals (each owning 10 percent of A's profits and capital) and a tax-exempt organization (owning 60 percent of A's profits and capital). The tax-exempt organization has never had unrelated business taxable income with respect to A and has historically used a June 30 fiscal year. Finally, assume that A desires to retain the calendar year for its taxable year beginning January 1, 2003. Under these facts and but for the special rule in paragraph (b)(5)(i) of this section, A would be required under section 706(b)(1)(B)(i) to change to a year ending June 30, for its taxable year beginning January 1, 2003. However, under the special rule provided in paragraph (b)(5)(i) of this section the partner that is tax-exempt is disregarded, and A must retain the calendar year, under section 706(b)(1)(B)(i), for its taxable year beginning January 1.

(iii) *Effective date.* The provisions of this paragraph (b)(5) are applicable for taxable years beginning on or after July 23, 2002. For taxable years beginning before July 23, 2002, see § 1.706–3T as contained in 26 CFR part 1 revised April 1, 2002.

(6) *Certain foreign partners disregarded*—(i) *Interests of disregarded foreign partners not taken into account.* In determining the taxable year (the current taxable year) of a partnership under section 706(b) and the regulations thereunder, any interest held by a disregarded foreign partner is not taken into account. A foreign partner is a disregarded foreign partner unless such partner is allocated any gross income of the partnership that was effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States during the partnership's taxable year immediately preceding the current taxable year (or, if such partner was not a partner during the partnership's immediately preceding taxable year, the partnership reasonably believes that the partner will be allocated any such income during the current taxable year) and taxation of that income is not otherwise precluded under any U.S. income tax treaty.

(ii) *Definition of foreign partner.* For purposes of this paragraph (b)(6), a foreign partner is any partner that is not a U.S. person (as defined in section 7701(a)(30)), except that a partner that is a controlled foreign corporation (as defined in section 957(a)) or a foreign personal holding company (as defined in section 552) shall not be treated as a foreign partner.

(iii) *Minority interest rule.* If each partner that is not a disregarded foreign partner under paragraph (b)(6)(i) of this section (regarded partner) holds less than a 10-percent interest, and the regarded partners, in the aggregate, hold less than a 20-percent interest in the capital or profits of the partnership, then paragraph (b)(6)(i) of this section does not apply. In determining ownership in a partnership for purposes of this paragraph (b)(6)(iii), each regarded partner is treated as owning any interest in the partnership owned by a related partner. For this purpose, partners are treated as related if they are related within the meaning of sections 267(b) or 707(b) (using the language "10 percent" instead of "50 percent" each place it appears). However, for purposes of determining if partners hold less than a 20-percent interest in the aggregate, the same interests will not be considered as being owned by more than one regarded partner.

(iv) *Example.* The provisions of paragraph (b)(6) of this section may be illustrated by the following example:

Example. Partnership B is owned by two partners, F, a foreign corporation that owns a 95-percent interest in the capital and profits of partnership B, and D, a domestic corporation that owns the remaining 5-percent interest in the capital and profits of partnership B. Partnership B is not engaged in the conduct of a trade or business within the United States, and, accordingly, partnership B does not earn any income that is effectively connected with a U.S. trade or business. F uses a March 31 fiscal year, and causes partnership B to maintain its books and records on a March 31 fiscal year as well. D is a calendar year taxpayer. Under paragraph (b)(6)(i) of this section, F would be disregarded and partnership B's taxable year would be determined by reference to D. However, because D owns less than a 10-percent interest in the capital and profits of partnership B, the minority interest rule of paragraph (b)(6)(iii) of this section applies, and partnership B must adopt the March 31 fiscal year for Federal tax purposes.

(v) *Effective date*—(A) *Generally.* The provisions of this paragraph (b)(6) are applicable for the first taxable year of a partnership other than an existing partnership that begins on or after July 23, 2002. For this purpose, an existing partnership is a partnership that was formed prior to September 23, 2002.

(B) *Voluntary change in taxable year.* An existing partnership may change its taxable year to a year determined in accordance with this section. An existing partnership that makes such a change will cease to be exempted from the requirements of paragraph (b)(6) of this section.

(C) *Subsequent sale or exchange of interests.* If an existing partnership terminates under section 708(b)(1)(B), the resulting partnership is not an existing partnership for purposes of paragraph (b)(6)(v)(A) of this section.

(D) *Transition rule.* If, in the first taxable year beginning on or after July 23, 2002, an existing partnership voluntarily changes its taxable year to a year determined in accordance with this paragraph (b)(6), then the partners of that partnership may apply the provisions of § 1.702–3T to take into account all items of income, gain, loss, deduction, and credit attributable to the partnership year of change ratably over a four-year period.

* * * * *

(11) *Effect of partner elections under section 444—(i) Election taken into account.* For purposes of section 706(b)(1)(B), any section 444 election by a partner in a partnership shall be taken into account in determining the taxable year of the partnership. See § 1.7519–1T(d), *Example (4).*

(ii) *Effective date.* The provisions of this paragraph (b)(11) are applicable for taxable years beginning on or after July 23, 2002. For taxable years beginning before July 23, 2002, see § 1.706–3T as contained in 26 CFR part 1 revised April 1, 2002.

* * * * *

§ 1.706–3T [Removed]

3. Section 1.706–3T is removed.

David A. Mader,

Deputy Commissioner of Internal Revenue.

Approved: July 16, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–18455 Filed 7–22–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9008]

RIN 1545–AY45

Guidance Under Subpart F Relating to Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance under subpart F relating to partnerships. The final regulations are necessary in order to clarify the treatment of a controlled foreign corporation's (CFC) distributive share of partnership income under subpart F. The final regulations will affect United States shareholders of CFCs that have an interest in a partnership.

DATES: *Effective Dates:* July 23, 2002.

Applicability Dates: For dates of applicability, see § 1.702–1(a)(8)(ii), 1.952–1(g)(3), 1.954–1(g)(4), 1.954–2(a)(5)(v), 1.954–3(a)(6)(iii), 1.954–4(b)(2)(iii), 1.956–2(a)(3).

FOR FURTHER INFORMATION CONTACT: Jonathan A. Sambur, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2000, the IRS and Treasury published in the **Federal Register** (65 FR 56836) proposed amendments to the regulations (REG–112502–00) under section 702 and subpart F of the Internal Revenue Code (Code). Those proposed regulations substantially restated rules in former proposed regulations, REG–104537–97 (63 FR 14613), that were withdrawn in REG–113909–98 (64 FR 37727). Written comments were solicited and a public hearing was scheduled for December 5, 2000. Several comments were received and are discussed below. No public hearing was requested, therefore the hearing was cancelled. After consideration of all the comments, the proposed regulations under section 702 and subpart F are adopted as revised by this Treasury decision.

Summary of Public Comments and Explanation of Revisions

A. § 1.702–1(a)(8)(ii) Characterization and Determination of Subpart F Income

Under the proposed regulations, gross income is characterized at the partnership level. If any part of the partnership's gross income is a type of income that would be subpart F income if received directly by partners that are CFCs, that part of the partnership's gross income must be separately taken into account by each partner under section 702. To the extent that the separately stated income results in subpart F income to the CFC partner, it will be taken into account in determining the CFC's total subpart F income for the taxable year.

The proposed regulations under section 702 clarify that an item must be separately taken into account when, if separately taken into account by any partner, the item would result in an income tax liability for that partner, or any other person, different from that which would result if the partner did not take the item into account separately.

One commentator noted that the proposed regulations are inconsistent with section 702(b), which requires that the character and source of an item of gross income be determined at the partnership level, because the proposed regulations require the determination of subpart F income as if the income had been earned by the CFC. That commentator asserted further that the addition of the phrase "or for any other person" in the first sentence of § 1.702–1(a)(8)(ii) goes beyond the regulatory authority provided in section 702(a)(7).

The IRS and Treasury believe there is ample statutory authority for these regulations. The regulations are based upon the authority of subchapter K and subpart F and the policies underlying those provisions. The legislative history of subchapter K provides that, for purposes of interpreting Internal Revenue Code provisions outside of subchapter K, a partnership may be treated as either an entity separate from its partners or an aggregate of its partners, depending on which characterization is more appropriate to carry out the purpose of the particular

Internal Revenue Code or regulation section under consideration. *H.R. Conf. Rep. No. 2543, 83rd Cong. 2d. Sess. 59 (1954).*

To allow a CFC to avoid subpart F treatment for items of income through the simple expedient of receiving them as distributive shares of partnership income, rather than directly, is contrary to the intent of subpart F. Subpart F was intended to limit deferral of U.S. income tax on certain types of income received by CFCs. The IRS and Treasury believe that the approach set out in these regulations (which treats the partnership as an entity for certain purposes and as an aggregate for certain purposes) best achieves the purposes of subpart F and is consistent with the policies underlying subchapter K.

Another commentator stated that the requirement of a separate statement of subpart F income by the partnership would be difficult to administer because a foreign partnership generally is not required to prepare a Schedule K for its foreign partners.

The IRS and Treasury do not believe that applying the rules in the regulations will cause significant problems. Because the rules of subpart F target certain specific types of income (e.g., passive income, certain income earned from transactions with related persons), the IRS and Treasury believe that, in most cases, either the partnership, the CFC partner, or both, will be able to determine without significant difficulty the income earned by the partnership that must be separately stated by the CFC partner.

B. § 1.952–1(g) Treatment of Distributive Share of Partnership Income by a CFC Partner

The proposed regulations clarify that the definition of subpart F income includes a CFC's distributive share of any item of gross income of a partnership to the extent the income would have been subpart F income if received directly by the CFC partner. The proposed regulations apply to all partnership interests owned by CFC partners. In the preamble to the proposed regulations, comments were requested about whether these rules should apply for ownership interests that fall below a minimum threshold. This comment was requested because the IRS and Treasury were considering whether to provide that CFCs with a *de minimis* interest in a partnership should not be subject to the regulations (e.g., by analogy to the 10 percent ownership threshold that is used to determine a U.S. shareholder of a CFC).

One comment was received in response to this request. The commentator suggested that the proposed regulations should apply only to controlling partners, i.e. partners that hold more than a 50 percent interest. The commentator stated further that this result would be consistent with the subpart F ownership rules and would limit the rule to circumstances where the CFC partner could easily obtain the necessary information to determine whether its distributive share was subpart F income.

The commentator's suggestion of limiting the application of these rules to controlled partnerships was not adopted. The IRS and Treasury do not believe that the objective of the regulations (which, as noted above, is to prevent CFCs from avoiding subpart F by receiving items of income as distributive shares of partnership income, rather than directly) can be achieved by limiting the application of these rules only to controlled partnerships. Further, upon additional consideration, the IRS and Treasury believe that requiring all partnership interests held by a CFC to be subject to the rules of these regulations best effectuates the legislative intent of subpart F and generally should not give rise to significant difficulties for the CFC partner.

C. § 1.954–1(g) Test for Activity and Related Persons

Section 1.954–1(g) of the proposed regulations provides that, generally, in determining whether a distributive share of partnership income is subpart F income, whether an entity is a related person and whether an activity takes place in or outside the country under the laws of which the CFC is organized (e.g., for purposes of determining whether the income qualifies for a "same country" exception to subpart F), shall be determined with respect to the CFC partner and not the partnership.

One commentator objected to the rules in § 1.954–1(g)(1). This commentator stated that the rule represented a "reverse" application of the aggregate theory of partnerships, and was inconsistent with the principles of subchapter K. The IRS and Treasury disagree with this comment. As noted above, subchapter K contemplates applying either an aggregate theory or an entity theory of partnerships, based on the approach that best serves the underlying purposes of the Code or regulations at issue. For purposes of applying the policies of subpart F, which focus in part on whether income is being shifted between a CFC and a related entity in a different country, the IRS and Treasury believe it is appropriate to make the determination of whether an entity is a related person with respect to the CFC, and whether an activity takes place in or outside a CFC's country of incorporation, at the CFC partner level.

The IRS and Treasury also have become aware that some uncertainty exists under the proposed regulations with respect to the application of the related person test to certain purchase and sales transactions occurring between a partnership and its CFC partner. Specifically, where a purchase or sales transaction occurs between the partnership and its CFC partner, including sales or purchases on behalf of the CFC by the partnership, the general rule fails to provide guidance on whether the CFC partner's distributive share of the partnership income is derived from a transaction with a related person. As a result, the final regulations add a new rule for purposes of making that determination. In general, the final regulations provide that where the partnership enters into a purchase or sales transaction with the CFC partner, the transaction will be treated as a purchase or sales transaction with a related person where the CFC purchased the property that it sells to the partnership from a person related to the CFC or sells the property that it purchased from the partnership to such a related person. This rule also applies to purchases or sales by the CFC on behalf of a related person.

For example, if a partnership sells goods to its CFC partner that it bought from a person unrelated to the CFC, and the CFC partner then sells the goods to a person related to the CFC partner, the sale of goods by the partnership to the CFC will be treated as the sale of personal property to a related person for purposes of determining whether the CFC's distributive share of the partnership income relating to the sale of goods by the partnership is foreign base company sales income. An example has been included in the final regulations to illustrate this rule. In addition, the final regulations provide that when the CFC partner manufactures property that it sells to the partnership and the CFC conducts sales or manufacturing activities through a branch, if the CFC's income from the sale of property to the partnership is foreign base company sales income under the branch rule of section 954(d)(2), the partnership's purchase of this property from the CFC will be treated as the purchase of personal property from a related person. The effect of these two rules is to treat the CFC partner's distributive share of the income earned by the partnership as income earned from a related person

transaction if it would have been so treated if the CFC had purchased or sold the property directly, rather than through a partnership.

D. § 1.954–2(a)(5)(ii) Exceptions Applicable to Foreign Personal Holding Company Income

Section 1.954–2(a)(5)(ii) of the proposed regulations provide that only the activities of, and property owned by, the partnership will be taken into account in determining whether the exceptions from foreign personal holding company income contained in section 954(c)(2), (h) and (i) apply.

One commentator argued that applying § 1.954–2(a)(5)(ii) to a CFC with a qualified business unit (QBU) partnership that is seeking to qualify for the active financing exception under section 954(h) produces a result that is inconsistent with the intent of section 954(h). Specifically, section 954(h)(2)(B)(i) provides that a CFC that is engaged in a lending or finance business will be considered an "eligible controlled foreign corporation" for purposes of the active financing exception if the CFC derives more than 70 percent of its gross income directly from the active and regular conduct of a lending or finance business from transactions with unrelated customers. In addition, section 954(h)(3)(B) provides that, in the case of a CFC that conducts a lending or finance business (other than a banking or securities business), no income of the CFC (or QBU of the CFC) will qualify for the active financing exception unless more than 30 percent of the CFC's or QBU's gross income is derived directly from the active conduct of a financing business from transactions with unrelated customers in the CFC or QBU's home country. The commentator stated that section 954(h) appears to provide that the 70 percent test must be applied at the CFC level based on the CFC's income (including branches and partnerships) and the 30 percent test must be applied at the partnership or QBU level.

The proposed regulations, however, require that the determination of whether the 70 percent test and the 30 percent test are met is based solely by reference to the activities of the partnership. The commentator concluded that the proposed regulations are inconsistent with the two-part test in section 954(h) and that applying the rule of the proposed regulations potentially could place a CFC that conducts a financial services business through a partnership in a significantly worse situation than a CFC that conducts a similar business through a branch or disregarded entity.

In response to this comment, the IRS and Treasury have included a new rule in the final regulations that applies the "eligible controlled foreign corporation" requirement under section 954(h)(2), including the 70 percent test of section 954(h)(2)(B)(i), at the CFC partner level (by including in the gross income of the CFC partner any gross income earned by partnerships or other QBUs of the CFC partner), and applies the qualified banking and financing income test (the 30 percent test) under section 954(h)(3) at the partnership level (by including only the gross income of the partnership). In addition, a new rule has been added under § 1.954–2(a)(5)(ii) to clarify that for purposes of applying the special rule for income derived in the active conduct of an insurance business under section 954(i), the exception will apply only if the CFC partner is a qualifying insurance company, as defined in section 953(e)(3) (determined by examining premiums written by the CFC partner and any partnerships or other QBUs of the CFC partner), and the partnership generates qualified insurance income, as defined in section 954(i)(2) (determined by examining only the income earned by the partnership). Two examples have been included in the final regulations that illustrate the operation of these rules.

Another comment was received suggesting that the proposed regulations inappropriately require the partnership, not the CFC partner, to satisfy the active trade or business tests to qualify for the exceptions to the foreign personal holding company rules. The commentator stated that such a rule allows a purely passive investor in a partnership to qualify for the exceptions, contrary to the purposes of subpart F. The commentator argued that, instead, the regulations should apply the active trade or business tests at the CFC partner level, but should provide a rule that limits the attribution of partnership activities to the CFC partners.

This suggestion was not adopted. In general, the IRS and Treasury believe that the policies underlying subpart F are best served by applying the relevant active trade or business tests at the level of the entity that actually earns the income (i.e., the partnership). As noted above, however, the IRS and Treasury believe that, for purposes of determining whether a CFC qualifies for the active financing exception, applying the 70 percent test of section 954(h)(2) (and determining a CFC's qualification as a qualifying insurance company under section 954(i)(2)) at the CFC partner level is consistent with the statutory language of these provisions and best effectuates the legislative intent behind these provisions.

E. § 1.954–4(b)(2)(iii) Application of the Substantial Assistance Rule

The proposed regulations describe how the substantial assistance rules of § 1.954–4(b)(1)(iv) apply when the CFC partner earns services income through the partnership. When the partnership is performing services for a person unrelated to the CFC partner, but the CFC partner, or a related person, provides substantial assistance to the partnership, the CFC partner and the partnership are regarded as separate entities and the substantial assistance provided to the partnership by the CFC partner, or a related person, cause the CFC partner's distributive share of the services income to be treated as foreign base company services income.

Commentators argued that the proposed regulations should not treat the distributive share of the partnership's income as subpart F income if only the CFC partner provides substantial assistance to the partnership because, in that case, under an aggregate theory the CFC does not receive substantial assistance from a related person. This suggestion has not been adopted because the IRS and Treasury believe that excluding the CFC partner from the substantial assistance rule could potentially allow the CFC partner to circumvent the foreign base company service rules with respect to the services it is performing.

Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) and (d) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury

Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 1.702–1 is amended as follows:

1. Paragraph (a)(8)(ii) is revised.

2. Paragraph (c)(1)(iii) is amended by removing the word "and'.

3. Paragraph (c)(1)(iv) is amended by removing the period at the end and adding "; and" in its place.

4. Paragraph (c)(1)(v) is added.

The addition and revision read as follows:

§ 1.702–1 Income and credits of partner.

(a) * * *

(8) * * *

(ii) Each partner must also take into account separately the partner's distributive share of any partnership item which, if separately taken into account by any partner, would result in an income tax liability for that partner, or for any other person, different from that which would result if that partner did not take the item into account separately. Thus, if any partner is a controlled foreign corporation, as defined in section 957, items of income that would be gross subpart F income if separately taken into account by the controlled foreign corporation must be separately stated for all partners. Under section 911(a), if any partner is a bona fide resident of a foreign country who may exclude from gross income the part of the partner's distributive share which qualifies as earned income, as defined in section 911(b), the earned income of the partnership for all partners must be separately stated. Similarly, all relevant items of income or deduction of the partnership must be separately stated for all partners in determining the applicability of section 183 (relating to activities not engaged in for profit) and the recomputation of tax thereunder for any partner. This paragraph (a)(8)(ii) applies to taxable years beginning on or after July 23, 2002.

* * * * *

(c) * * *

(1) * * *

(v) In determining whether the de minimis or full inclusion rules of section 954(b)(3) apply.

* * * * *

3. In § 1.952–1, paragraph (g) is added to read as follows:

§ 1.952–1 Subpart F income defined.

* * * * *

(g) *Treatment of distributive share of partnership income*—(1) *In general.* A controlled foreign corporation's distributive share of any item of income of a partnership is income that falls within a category of subpart F income described in section 952(a) to the extent the item of income would have been income in such category if received by the controlled foreign corporation directly. For specific rules regarding the treatment of a distributive share of partnership income under certain provisions of subpart F, see §§ 1.954–1(g), 1.954–2(a)(5), 1.954–3(a)(6), and 1.954–4(b)(2)(iii).

(2) *Example.* The application of this paragraph (g) may be illustrated by the following example:

Example. CFC, a controlled foreign corporation, is an 80-percent partner in PRS, a foreign partnership. PRS earns $100 of interest income that is not export financing interest as defined in section 954(c)(2)(B), or qualified banking or financing income as defined in section 954(h)(3)(A), from a person unrelated to CFC. This interest income would have been foreign personal holding company income to CFC, under section 954(c), if it had received this income directly. Accordingly, CFC's distributive share of this interest income, $80, is foreign personal holding company income.

(3) *Effective date.* This paragraph (g) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

4. In § 1.954–1, paragraph (g) is added to read as follows:

§ 1.954–1 Foreign base company income.

* * * * *

(g) *Distributive share of partnership income*—(1) *Application of related person and country of organization tests.* Unless otherwise provided, to determine the extent to which a controlled foreign corporation's distributive share of any item of gross income of a partnership would have been subpart F income if received by it directly, under § 1.952–1(g), if a provision of subpart F requires a determination of whether an entity is a related person, within the meaning of section 954(d)(3), or whether an activity occurred within or outside the country under the laws of which the controlled foreign corporation is created or organized, this determination shall be made by reference to such controlled foreign corporation and not by reference to the partnership.

(2) *Application of related person test for sales and purchase transactions between a partnership and its controlled foreign corporation partner.* For purposes of determining whether a controlled foreign corporation's distributive share of any item of gross income of a partnership is foreign base company sales income under section 954(d)(1) when the item of income is derived from the sale by the partnership of personal property purchased by the partnership from (or sold by the partnership on behalf of) the controlled foreign corporation; or the sale by the partnership of personal property to (or the purchase of personal property by the partnership on behalf of) the controlled foreign corporation (CFC-partnership transaction), the CFC-partnership transaction will be treated as a transaction with an entity that is a related person, within the meaning of section 954(d)(3), under paragraph (g)(1) of this section, if—

(i) The controlled foreign corporation purchased such personal property from (or sold it to the partnership on behalf of), or sells such personal property to (or purchases it from the partnership on behalf of), a related person with respect to the controlled foreign corporation (other than the partnership), within the meaning of section 954(d)(3); or

(ii) The branch rule of section 954(d)(2) applies to treat as foreign base company sales income the income of the controlled foreign corporation from selling to the partnership (or a third party) personal property that the controlled foreign corporation has manufactured, in the case where the partnership purchases personal property from (or sells personal property on behalf of) the controlled foreign corporation.

(3) *Examples.* The application of this paragraph (g) is illustrated by the following examples:

Example 1. CFC, a controlled foreign corporation organized in Country A, is an 80-percent partner in Partnership, a partnership organized in Country A. All of the stock of CFC is owned by USP, a U.S. corporation. Partnership earns commission income from purchasing Product O on behalf of USP, from unrelated manufacturers in Country B, for sale in the United States. To determine whether CFC's distributive share of Partnership's commission income is foreign base company sales income under section 954(d), CFC is treated as if it purchased Product O on behalf of USP. Under section 954(d)(3), USP is a related person with respect to CFC. Thus, with respect to CFC, the sales income is deemed to be derived from the purchase of personal property on

behalf of a related person. Because the property purchased is both manufactured and sold for use outside of Country A, CFC's country of organization, CFC's distributive share of the sales income is foreign base company sales income.

Example 2. (i) CFC1, a controlled foreign corporation organized in Country A, is an 80-percent partner in Partnership, a partnership organized in Country B. CFC2, a controlled foreign corporation organized in Country B, owns the remaining 20 percent interest in Partnership. CFC1 and CFC2 are owned by a common U.S. parent, USP. CFC2 manufactures Product A in Country B. Partnership earns sales income from purchasing Product A from CFC2 and selling it to third parties located in Country B that are not related persons with respect to CFC1 or CFC2. To determine whether CFC1's distributive share of Partnership's sales income is foreign base company sales income under section 954(d), CFC1 is treated as if it purchased Product A from CFC2 and sold it to third parties in Country B. Under section 954(d)(3), CFC2 is a related person with respect to CFC1. Thus, with respect to CFC1, the sales income is deemed to be derived from the purchase of personal property from a related person. Because the property purchased is both manufactured and sold for use outside of Country A, CFC1's country of organization, CFC1's distributive share of the sales income is foreign base company sales income.

(ii) Because Product A is both manufactured and sold for use within CFC2's country of organization, CFC2's distributive share of Partnership's sales income is not foreign base company sales income.

Example 3. CFC, a controlled foreign corporation organized in Country A, is an 80 percent partner in MJK Partnership, a Country B partnership. CFC purchased goods from J Corp, a Country C corporation that is a related person with respect to CFC. CFC sold the goods to MJK Partnership. In turn, MJK Partnership sold the goods to P Corp, a Country D corporation that is unrelated to CFC. P Corp sold the goods to unrelated customers in Country D. The goods were manufactured in Country C by persons unrelated to J Corp . CFC's distributive share of the income of MJK Partnership from the sale of goods to P Corp will be treated as income from the sale of goods purchased from a related person for purposes of section 954(d)(1) because CFC purchased the goods from J Corp, a related person. Because the goods were both manufactured and sold for use outside of Country A, CFC's distributive share of the income attributable to the sale of the goods is foreign base company sales income. Further, CFC's income from the sale of the goods to MJK Partnership will also be foreign base company sales income.

Example 4. The facts are the same as *Example 3*, except that MJK Partnership purchased the goods from P Corp and sold those goods to CFC. CFC sold the goods to J Corp. J Corp sold the goods to unrelated customers in Country C. CFC's distributive share of the income of MJK Partnership from the sale of the goods by the partnership to itself will be treated as income from the sale of goods to a related person, for purposes of section 954(d)(1). Because the goods were both manufactured and sold for use outside of Country A, CFC's distributive share of income attributable to the sale of the goods is foreign base company sales income. Further, CFC's income from the sale of the goods to J Corp is also foreign base company sales income.

(4) *Effective date.* This paragraph (g) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

5. In § 1.954–2, paragraph (a)(5) is added to read as follows:

§ 1.954–2 Foreign personal holding company income.

(a) * * *

(5) *Special rules applicable to distributive share of partnership income*—(i) [Reserved].

(ii) *Certain other exceptions applicable to foreign personal holding company income.* To determine the extent to which a controlled foreign corporation's distributive share of an item of income of a partnership is foreign personal holding company income —

(A) The exceptions contained in section 954(c) that are based on whether the controlled foreign corporation is engaged in the active conduct of a trade or business, including section 954(c)(2) and paragraphs (b)(2) and (6), (e)(1)(ii) and (3)(ii), (iii) and (iv), (f)(1)(ii), (g)(2)(ii), and (h)(3)(ii) of this section, shall apply only if any such exception would have applied to exclude the income from foreign personal holding company income if the controlled foreign corporation had earned the income directly, determined by taking into account only the activities of, and property owned by, the partnership and not the separate activities or property of the controlled foreign corporation or any other person;

(B) A controlled foreign corporation's distributive share of partnership income will not be excluded from foreign personal holding company income under the exception contained in section 954(h) unless the controlled foreign corporation is an eligible controlled foreign corporation within the meaning of section 954(h)(2) (taking into account the income of the controlled foreign corporation and any partnerships or other qualified business units, within the meaning of section 989(a), of the controlled foreign corporation, including the controlled foreign corporation's distributive share of partnership income) and the partnership, of which the controlled foreign corporation is a partner, generates qualified banking or financing income within the meaning of section 954(h)(3) (taking into account only the income of the partnership);

(C) A controlled foreign corporation's distributive share of partnership income will not be excluded from foreign personal holding company income under the exception contained in section 954(i) unless the controlled foreign corporation partner is a qualifying insurance company, as defined in section 953(e)(3) (determined by examining premiums written by the controlled foreign corporation and any partnerships or other qualified business units, within the meaning of section 989(a), of the CFC partner), and the partnership, of which the controlled foreign corporation is a partner, generates qualified insurance income within the meaning of section 954(i)(2) (taking into account only the income of the partnership).

(iii) *Examples.* The application of paragraph (a)(5)(ii) is demonstrated by the following examples:

Example 1. B Corp, a Country C corporation, is a controlled foreign corporation within the meaning of section 957(a). B Corp is an 80 percent partner of RKS Partnership, a Country D partnership whose principal office is located in Country D. RKS Partnership is a qualified business unit of B Corp, within the meaning of section 989(a). B Corp, including income earned through RKS Partnership, derives more than 70 percent of its gross income directly from the active and regular conduct of a lending or finance business, within the meaning of section 954(h)(4), from transactions in various countries with customers which are not related persons. Thus, B Corp is predominantly engaged in the active conduct of a banking, financing, or similar business within the meaning of section 954(h)(2)(A)(i). B Corp conducts substantial activity with respect to such business within the meaning of section 954(h)(2)(A)(ii). RKS Partnership derives more than 30 percent of its income from the active and regular conduct of a lending or finance business, within the meaning of section 954(h)(4), from transactions with customers which are not related persons and which are located solely within the home country of RKS Partnership, Country D. B Corp's distributive share of RKS Partnership's income from its lending or finance business will satisfy the special rule for income derived in the active conduct of banking, financing, or similar business of section 954(h). B Corp is an eligible controlled foreign corporation within the meaning of section 954(h)(2) and RKS Partnership generates qualified banking or financing income within the meaning of section 954(h)(3). B Corp does not have any foreign personal holding company income with respect to its distributive share of RKS Partnership income attributable to its lending or finance business income earned in Country D.

Example 2. D Corp, a Country F corporation, is a controlled foreign corporation within the meaning of section

957(a). D Corp satisfies the requirements of section 953(e)(3) and is a qualifying insurance company. D Corp is a 40 percent partner of DJ Partnership, a Country G partnership. DJ Partnership is a qualified business unit of D Corp, within the meaning of section 989(a), and is licensed by the applicable insurance regulatory body for Country G to sell insurance to persons other than related persons in its home country within the meaning of section 953(e)(4)(A). DJ Partnership receives income from persons who are not related persons, within the meaning of section 954(d)(3), from investments that satisfy the requirements of section 954(i)(2). D Corp's distributive share of DJ Partnership's income from investments that satisfy the requirements of section 954(i)(2) will not be treated as foreign personal holding company income because D Corp will satisfy the special rule of section 954(i) for income derived in the active conduct of insurance business. DJ Partnership is a qualifying insurance company branch within the meaning of section 953(e)(4) and its income is qualified insurance income within the meaning of section 954(i)(2). D Corp does not have any foreign personal holding company income as a result of its distributive share of DJ Partnership income that is attributable to the partnership's qualifying insurance income.

(iv) [Reserved].

(v) *Effective date.* This paragraph (a)(5) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

* * * * *

6. In § 1.954–3, paragraph (a)(6) is added to read as follows:

§ 1.954–3 Foreign base company sales income.

(a) * * *

(6) *Special rule applicable to distributive share of partnership income*—(i) *In general.* To determine the extent to which a controlled foreign corporation's distributive share of any item of gross income of a partnership would have been foreign base company sales income if received by it directly, under § 1.952–1(g), the property sold will be considered to be manufactured, produced or constructed by the controlled foreign corporation, within the meaning of paragraph (a)(4) of this section, only if the manufacturing exception of paragraph (a)(4) of this section would have applied to exclude the income from foreign base company sales income if the controlled foreign corporation had earned the income directly, determined by taking into account only the activities of, and property owned by, the partnership and not the separate activities or property of the controlled foreign corporation or any other person.

(ii) *Example.* The application of paragraph (a)(6)(i) of this section is illustrated by the following example:

Example. CFC, a controlled foreign corporation organized under the laws of Country A, is an 80 percent partner in Partnership X, a partnership organized under the laws of Country B. Partnership X performs activities in Country B that would constitute the manufacture of Product O, within the meaning of paragraph (a)(4) of this section, if performed directly by CFC. Partnership X, through its sales offices in Country B, then sells Product O to Corp D, a corporation that is a related person with respect to CFC, within the meaning of section 954(d)(3), for use within Country B. CFC's distributive share of Partnership X's sales income is not foreign base company sales income because the manufacturing exception of paragraph (a)(4) of this section would have applied to exclude the income from foreign base company sales income if CFC had earned the income directly.

(iii) *Effective date.* This paragraph (a)(6) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

* * * * *

7. In § 1.954–4, paragraph (b)(2)(iii) is added to read as follows:

§ 1.954–4 Foreign base company services income.

* * * * *

(b) * * *

(2) * * *

(iii) *Special rule applicable to distributive share of partnership income.* A controlled foreign corporation's distributive share of a partnership's services income will be deemed to be derived from services performed for or on behalf of a related person, within the meaning of section 954(e)(1)(A), if the partnership is a related person with respect to the controlled foreign corporation, under section 954(d)(3), and, in connection with the services performed by the partnership, the controlled foreign corporation, or a person that is a related person with respect to the controlled foreign corporation, provided assistance that would have constituted substantial assistance contributing to the performance of such services, under paragraph (b)(2)(ii) of this section, if furnished to the controlled foreign corporation by a related person. This paragraph (b)(2)(iii) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

* * * * *

8. In § 1.956–2, paragraph (a)(3) is added to read as follows:

§ 1.956–2 Definition of United States property.

(a) * * *

(3) *Property owned through partnership.* For purposes of section 956, if a controlled foreign corporation is a partner in a partnership that owns property that would be United States property, within the meaning of paragraph (a)(1) of this section, if owned directly by the controlled foreign corporation, the controlled foreign corporation will be treated as holding an interest in the property equal to its interest in the partnership and such interest will be treated as an interest in United States property. This paragraph (a)(3) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

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David A. Mader,

Deputy Commissioner of Internal Revenue.

Approved: July 16, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–18453 Filed 7–22–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9007]

RIN 1545–AW87

Compromise of Tax Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the compromise of internal revenue taxes. The regulations adopt the rules of the temporary regulations and reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998 and the Taxpayer Bill of Rights II.

EFFECTIVE DATE: These regulations are effective July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Frederick W. Schindler, (202) 622–3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7122 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 7122 by section 3462 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685, 764) and by section 503 of the Taxpayer Bill

of Rights II, Public Law 104–168 (110 Stat. 1452, 1461).

As amended by RRA 1998, section 7122 provides that the Secretary will develop guidelines to determine when an offer to compromise is adequate and should be accepted to resolve a dispute. The legislative history accompanying RRA 1998 explains that Congress intended that, in certain circumstances, factors such as equity, hardship, and public policy be taken into account by the IRS in evaluating whether the compromise of individual tax liabilities would promote effective tax administration. H. Conf. Rep. 599, 105th Cong., 2d Sess. 289 (1998). On July 21, 1999, temporary regulations (TD 8829; 64 FR 39020) and a notice of proposed rulemaking (REG–116991–98; 64 FR 39106) reflecting these changes were published in the **Federal Register**. Four written comments on the temporary and proposed regulations were received. A public hearing on the regulations was requested but that request was later withdrawn. No public hearing was scheduled or held. The final regulations adopt the rules of the temporary regulations with minor changes.

Explanation of Provisions

A compromise is an agreement between a taxpayer and the Government that settles a tax liability for payment of less than the total amount determined and assessed. Consistent with its mission of applying the tax laws with integrity and fairness to all, the IRS generally expects that all taxpayers will pay the total amount due, regardless of amount. See Policy Statement P–5–2, Collecting Principles (Approved February 17, 2000), reprinted at IRM 1.2.1.5.2. When attempting to resolve a tax delinquency, the IRS will work with taxpayers to achieve full payment of all tax, penalties, and interest imposed by Congress. Where payment in full cannot immediately be achieved, the IRS may, at its discretion, allow taxpayers to pay over time through installment agreements.

The IRS recognizes that it is both sound business practice and good tax policy to settle some cases for less than the total amount due. Prior to issuance of the temporary regulations, the IRS had a longstanding practice of compromising where there was doubt as to the existence or amount of the tax liability or doubt that the total amount due could be collected. The final regulations continue these traditional grounds for compromise. In addition, to reflect the changes made by RRA 1998, the final regulations allow compromise where there is no doubt as to liability or as to collectibility, but where compromise would promote effective tax administration because either (1) collection of the liability would create economic hardship, or (2) compelling public policy or equity considerations provide a sufficient basis for compromising the liability. Compromise based on these hardship and public policy/equity bases, however, may not be authorized if compromise would undermine compliance with the tax laws.

Effective Tax Administration—Economic Hardship

The final regulations retain the reference in the temporary regulations to the economic hardship standard of § 301.6343–1, which defines economic hardship as the inability to pay reasonable basic living expenses. In determining reasonable basic living expenses, § 301.6343–1 directs the IRS to consider relevant information such as the taxpayer's age, employment status and history, number of dependents, and other "unique circumstances." The final regulations supplement this standard by providing a non-exclusive list of factors which support a finding of economic hardship, and by providing examples to illustrate application of the standard.

The fourth example of economic hardship in the temporary regulations, involving a business taxpayer, has been removed in order to eliminate an inconsistency. The economic hardship standard of § 301.6343–1 specifically applies only to individuals. The fourth example was included in the temporary regulations in the event that a standard for evaluating economic hardship with respect to non-individuals could be developed. After evaluating this issue further, the IRS and Treasury Department have concluded that an economic hardship standard for non-individuals does not necessarily promote effective tax administration. Permitting compromise in non-individual cases where there is no doubt as to collectibility, for instance, would raise the issue of whether the Government should be foregoing the collection of taxes to support a nonviable business.

Although economic hardship therefore is not a basis for compromise for non-individuals under the final regulations, IRS experience has shown that the doubt as to collectibility standard often may permit the resolution of cases involving businesses and other non-individual taxpayers. In addition, even if a business or other non-individual is unable to compromise on liability or collectibility grounds, compelling public policy or equity considerations (discussed below) may provide sufficient grounds to compromise the case.

A commenting party suggested that the economic hardship standard and examples were not inclusive enough, specifically stating that the first two examples of economic hardship in the temporary regulations were drawn too narrowly. The first example illustrating economic hardship described a taxpayer whose assets and income are likely to be exhausted caring for a dependent child. The commenting party believed that the regulations would better promote effective tax administration if the example were expanded to include care of a dependent parent or other family member. The second example described a retired taxpayer whose only income is from a pension and whose only asset is a retirement account. The taxpayer could pay the tax liability in full by liquidating his retirement account, but doing so would leave the taxpayer without adequate means of support. The commenting party suggested that the example should specifically state that the age of the taxpayer should be taken into account. Otherwise, a taxpayer close to retirement age may feel compelled to retire so as to eliminate other sources of income and qualify under this example since retirement funds would then be the only source of income. A second commenting party also suggested that the moral or legal obligation to support others be listed as a factor supporting a finding of economic hardship.

The final regulations adopt these suggestions, in part, by stating that one factor supporting a finding of economic hardship might be that all available funds are used for the care of a dependent. Although the final regulations include examples to illustrate the application of the economic hardship standard, the central inquiry is whether full collection of the liability would render the taxpayer unable to provide for reasonable basic living expenses. Facts such as the number of dependents and the age and health of taxpayers and their dependents are factors which § 301.6343–1 provides should be considered when making that economic hardship determination. Furthermore, the examples in the final regulations are not intended to be exclusive and should not be read to suggest that all of the facts discussed in a given example must be present in a case in order for compromise to be authorized.

Effective Tax Administration—Public Policy and Equity

The temporary regulations provided that the IRS may compromise a liability

to promote effective tax administration even if no other basis for compromise is available. (As discussed above, compromise on the basis of economic hardship is not available to non-individuals under the final regulations.) The temporary regulations provided that the IRS may compromise under the non-hardship effective tax administration standard to promote effective tax administration when, "[r]egardless of the taxpayer's financial circumstances, exceptional circumstances exist such that collection of the full liability will be detrimental to voluntary compliance by taxpayers."

The "detrimental to voluntary compliance" standard in the temporary regulations was intended to indicate that the IRS may compromise in those rare cases where collection of the full liability would adversely affect the overall tax system. Based on public comments and on IRS experience in implementing the temporary regulations, this standard has been restated in the final regulations to clarify the types of cases that may qualify for compromise on these grounds. Compromise under the non-hardship effective tax administration standard in the final regulations, however, still is expected to be appropriate only in those rare cases where collection would adversely affect the overall tax system.

Under the final regulations, a taxpayer seeking to compromise a liability on this basis must identify compelling public policy or equity considerations providing a sufficient basis for compromising the liability. The circumstances must be such that compromise is justified even though a similarly situated taxpayer may have paid his liability in full. Before accepting an offer based on equity and public policy considerations, the IRS must conclude that collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner.

The clarification to the non-hardship effective tax administration standard in the final regulations recognizes that compromise on these grounds raises the issue of disparate treatment of taxpayers who are able to pay the full amount of their liabilities without economic hardship. Some taxpayers will pay less than the full amount owed, while others must pay in full. (Some taxpayers who pay in full also may be in situations similar to that of the taxpayer requesting compromise.) Accordingly, the final regulations specify that a taxpayer must demonstrate that the circumstances of the taxpayer's liability implicate public policy or equity concerns compelling enough to justify compromise notwithstanding this inherent inequity. As noted earlier, the cases satisfying the equity and public policy standard are expected to be rare. In applying this standard, the IRS will presume that the correct application of the tax laws produces a fair and equitable result, absent exceptional circumstances.

The notice of proposed rulemaking specifically encouraged the public to make comments or provide examples regarding the particular types of cases or situations in which the Secretary's authority to compromise should be used because: (1) Collection of the full amount of tax liability would be detrimental to voluntary compliance (i.e., may be appropriate for compromise under the non-hardship effective tax administration standard) or (2) IRS delay in determining the tax liability has resulted in the accumulation of significant interest and penalties. Parties providing comments regarding delay in interest and penalty cases were asked to consider the possible interplay between cases compromised under this provision and the relief accorded taxpayers under section 6404(e).

Two parties submitted comments in response to this request. Both suggested that the regulations be expanded to authorize compromise in situations where delay in determining the taxpayer's liability caused substantial interest and penalties to accrue. The first suggested that compromise on the basis that collection in full would be detrimental to voluntary compliance was warranted when any undue delay by the IRS resulted in the accumulation of penalties and interest. The commenting party suggested that the regulations include delay by the IRS in determining the taxpayer's liability, issuing a revenue agent's report or notice of deficiency, or litigating the issues as factors and examples supporting compromise on these grounds. The commenting party did not suggest a standard for determining "undue delay" and did not discuss whether this kind of expansion of the compromise regulations would undermine the interest abatement provisions of section 6404(e).

The second party to comment on this provision in the regulations suggested compromise should be authorized where a liability results from factors beyond the taxpayer's control and the accumulation of interest and penalties is disproportionately large compared to the initial liability. The specific example suggested by the commenting party was one in which the Tax Matters Partner (TMP) in a partnership subject to the unified audit procedures of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) fraudulently sells shares in a sham business to other partners and those partners incur substantial interest and penalties attributable to partnership items. According to the commenting party, the failure of the IRS to remove a TMP being investigated for fraud relating to the partnership, and to allow the TMP to continue to represent the partnership during the audit, creates "exceptional circumstances" warranting compromise with other partners. The commenting party acknowledged that section 6404(e) would not usually authorize the abatement of interest under such circumstances because the interest does not result from an unreasonable error or delay by an IRS official in performing a ministerial or managerial act. The commenting party also acknowledged that it would be unwise to craft a rule that would make the Government an insurer of individual taxpayer liabilities attributable to the misdeeds of a tax shelter promoter. However, the commenting party believed that where the IRS's failure to remove the TMP contributed to the problem, compromise is warranted.

The IRS and Treasury Department do not believe that it would promote effective tax administration to authorize compromise solely on the basis of an asserted delay by the IRS, particularly delay that does not support relief under section 6404(e) with respect to accrued interest, or on the basis that a third party, such as the taxpayer's partner, is claimed to have defrauded or otherwise caused financial harm to the taxpayer. Nevertheless, cases in which a taxpayer believes the liability was caused, in whole or in part, by delay on the part of the IRS or by the actions of third parties may be appropriate for compromise under the public policy and equity standard. Such cases, however, are expected to be rare, as the taxpayer must identify compelling public policy or equity concerns that satisfy the standard set forth above.

The IRS and Treasury Department are mindful that the Congressional Conference Committee, in adding section 7122(c) as part of RRA 1998, anticipated that the IRS may use the authority provided in section 7122(c) to resolve longstanding cases by foregoing penalties and interest resulting from delays in determining a taxpayer's liability. See H. Conf. Rep. 599, 105th Cong., 2d Sess. 289 (1998). The IRS' experience in applying the temporary regulations is that these regulations have given effect to the intent of Congress, as expressed in the

Conference Report, since cases involving substantial interest and penalties often can be compromised under the standards of doubt as to collectibility and economic hardship. Similarly, although a taxpayer is in the best position to anticipate, and protect himself or herself from, the risks of business associations and transactions, the misdeeds of third parties that may have contributed to a tax liability may be taken into account when determining whether to accept a compromise based on doubt as to collectibility or on a finding that collection would cause economic hardship.

Amount of Compromise if Basis for Compromise Exists

The final regulations set forth the permissible bases for compromise, one of which must be established in order to accept an offer to compromise liabilities arising under the internal revenue laws. They do not, however, prescribe the amount which must be offered in order for an offer to be acceptable. The amount to be paid, future compliance, or other conditions precedent to satisfaction of a liability for less than the full amount due are matters left to the discretion of the Secretary. For the sake of clarity, the final regulations now expressly state this principle, which was stated only in the preamble to the temporary regulations.

As required by section 7122(c)(2)(A) and (B), added by RRA 1998, the final regulations provide for the development and publication of national and local living allowances that permit taxpayers entering into offers to compromise to have an adequate means to provide for their basic living expenses. The determination of whether the published standards should be applied in any particular case must be based upon an evaluation of the individual facts and circumstances presented. The Secretary will continue to determine the appropriate means to publish these national and local living allowances.

A commenting party suggested that the national and local living allowance standards be eliminated in favor of a rule requiring all offer specialists to look only to an individual taxpayer's actual facts and circumstances to determine the amount necessary to provide for reasonable basic living expenses. According to the commenting party, IRS employees rarely depart from the national and local standards, which, in practice, serve as a "cap" on expenses, rather than as a general guide to be applied based on the specific facts of a case.

Because publication of the national and local standards is required by section 7122(c)(2)(A), the suggestion that the standards be eliminated has not been adopted. In accordance with section 7122(c)(2)(B), the final regulations require that the IRS consider the facts and circumstances of the case when determining basic living expenses. Consistent with this requirement in the statute and regulations, the IRS has issued internal guidance requiring that the particular facts and circumstance of a taxpayer's case be considered whenever the expense standards are applied, and that expense allowances beyond the standards be used whenever use of the standards would result in a taxpayer not having adequate means to provide for basic living expenses.

Other Provisions

Section 7122(c)(3)(A) prohibits the rejection of an offer to compromise by a low income taxpayer based solely on the amount of the offer. The final regulations expand this rule to apply to all taxpayers regardless of income level. The final regulations state that no offer may be rejected based solely on the amount of the offer. Offers will only be rejected when the IRS determines that no basis for compromise under this section is present or that the offer is unacceptable under the Secretary's policies and procedures.

In accordance with section 7122(d)(1), the final regulations provide that all proposed rejections of offers to compromise will receive independent administrative review prior to final rejection. Section 7122(d)(2) requires and the regulations also provide that the taxpayer may appeal any rejection of an offer to compromise to the IRS Office of Appeals. The final regulations provide, however, that when the IRS returns an offer to compromise because the offer was submitted solely to delay collection, or because the taxpayer failed to provide requested information required by the IRS to evaluate or process the offer under IRS procedures, the return of the offer does not constitute a rejection and, thus, is not subject to appeal. In the event that the IRS institutes collection action following the return of an offer to compromise, the taxpayer may have the right to consideration of the whole of his collection case under other provisions of the Code.

Although not required by any provision of the Code, the temporary regulations provided that an offer could not be returned to a taxpayer for failure to submit requested financial information until an independent administrative review of the proposed return was completed. The requirement of an independent administrative review of proposed returns was the source of significant delays and was redundant because an IRS manager must review and approve all returns of offers for failure to submit requested financial information. The final regulations therefore require review only by an IRS manager in these cases.

Pursuant to section 6331(k), the final regulations also provide that the IRS may not levy to collect a liability while an offer to compromise is pending, or for the 30 days following any rejection of an offer to compromise, or during any period that an appeal of any rejection is being considered, when such appeal is instituted within the 30 days following rejection. Levy will not, however, be precluded in any case where collection is in jeopardy or the offer to compromise was submitted solely to delay collection. The regulations also correct for an omission in the temporary regulations by providing that the IRS may not refer a case to the Department of Justice to collect an unpaid tax through a judicial proceeding while an offer to compromise that tax is pending or while a rejection of such an offer is being considered by the IRS Office of Appeals. The IRS may, however, authorize the Department of Justice to file a counterclaim in any refund proceeding commenced by a taxpayer, participate in bankruptcy or insolvency cases commenced by or against the taxpayer, or join a taxpayer in any other proceeding in which liability for the tax at issue may be established or disputed.

The final regulations also implement section 503(a) of the Taxpayer Bill of Rights II by specifying that Chief Counsel review of an accepted offer to compromise is required only for offers in compromise involving $50,000 or more in unpaid liabilities.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the preceding temporary regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Frederick W. Schindler of the Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Sections 301.7122–0 and 301.7122–1 are added to read as follows:

§ 301.7122–0 Table of contents.

This section lists the major captions that appear in the regulations under § 301.7122–1.

§ 301.7122–1 Compromises.

(a) In general.
(b) Grounds for compromise.
(c) Special rules for the evaluation of offers to compromise.
(d) Procedures for submission and consideration of offers.
(e) Acceptance of an offer to compromise a tax liability.
(f) Rejection of an offer to compromise.
(g) Effect of offer to compromise on collection activity.
(h) Deposits.
(i) Statute of limitations.
(j) Inspection with respect to accepted offers to compromise.
(k) Effective date.

§ 301.7122–1 Compromises.

(a) *In general*—(1) If the Secretary determines that there are grounds for compromise under this section, the Secretary may, at the Secretary's discretion, compromise any civil or criminal liability arising under the internal revenue laws prior to reference of a case involving such a liability to the Department of Justice for prosecution or defense.

(2) An agreement to compromise may relate to a civil or criminal liability for taxes, interest, or penalties. Unless the terms of the offer and acceptance expressly provide otherwise, acceptance of an offer to compromise a civil liability does not remit a criminal liability, nor does acceptance of an offer to compromise a criminal liability remit a civil liability.

(b) *Grounds for compromise*—(1) *Doubt as to liability.* Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law. Doubt as to liability does not exist where the liability has been established by a final court decision or judgment concerning the existence or amount of the liability. See paragraph (f)(4) of this section for special rules applicable to rejection of offers in cases where the Internal Revenue Service (IRS) is unable to locate the taxpayer's return or return information to verify the liability.

(2) *Doubt as to collectibility.* Doubt as to collectibility exists in any case where the taxpayer's assets and income are less than the full amount of the liability.

(3) *Promote effective tax administration.* (i) A compromise may be entered into to promote effective tax administration when the Secretary determines that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship within the meaning of § 301.6343–1.

(ii) If there are no grounds for compromise under paragraphs (b)(1), (2), or (3)(i) of this section, the IRS may compromise to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability. Compromise will be justified only where, due to exceptional circumstances, collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner. A taxpayer proposing compromise under this paragraph (b)(3)(ii) will be expected to demonstrate circumstances that justify compromise even though a similarly situated taxpayer may have paid his liability in full.

(iii) No compromise to promote effective tax administration may be entered into if compromise of the liability would undermine compliance by taxpayers with the tax laws.

(c) *Special rules for evaluating offers to compromise*—(1) *In general.* Once a basis for compromise under paragraph (b) of this section has been identified, the decision to accept or reject an offer to compromise, as well as the terms and conditions agreed to, is left to the discretion of the Secretary. The determination whether to accept or reject an offer to compromise will be based upon consideration of all the facts and circumstances, including whether the circumstances of a particular case warrant acceptance of an amount that might not otherwise be acceptable under the Secretary's policies and procedures.

(2) *Doubt as to collectibility*—(i) *Allowable expenses.* A determination of doubt as to collectibility will include a determination of ability to pay. In determining ability to pay, the Secretary will permit taxpayers to retain sufficient funds to pay basic living expenses. The determination of the amount of such basic living expenses will be founded upon an evaluation of the individual facts and circumstances presented by the taxpayer's case. To guide this determination, guidelines published by the Secretary on national and local living expense standards will be taken into account.

(ii) *Nonliable spouses*—(A) *In general.* Where a taxpayer is offering to compromise a liability for which the taxpayer's spouse has no liability, the assets and income of the nonliable spouse will not be considered in determining the amount of an adequate offer. The assets and income of a nonliable spouse may be considered, however, to the extent property has been transferred by the taxpayer to the nonliable spouse under circumstances that would permit the IRS to effect collection of the taxpayer's liability from such property (e.g., property that was conveyed in fraud of creditors), property has been transferred by the taxpayer to the nonliable spouse for the purpose of removing the property from consideration by the IRS in evaluating the compromise, or as provided in paragraph (c)(2)(ii)(B) of this section. The IRS also may request information regarding the assets and income of the nonliable spouse for the purpose of verifying the amount of and responsibility for expenses claimed by the taxpayer.

(B) *Exception.* Where collection of the taxpayer's liability from the assets and income of the nonliable spouse is permitted by applicable state law (e.g., under state community property laws), the assets and income of the nonliable spouse will be considered in determining the amount of an adequate offer except to the extent that the taxpayer and the nonliable spouse demonstrate that collection of such assets and income would have a material and adverse impact on the standard of living of the taxpayer, the nonliable spouse, and their dependents.

(3) *Compromises to promote effective tax administration*—(i) Factors supporting (but not conclusive of) a determination that collection would cause economic hardship within the meaning of paragraph (b)(3)(i) of this section include, but are not limited to—

(A) Taxpayer is incapable of earning a living because of a long term illness, medical condition, or disability, and it is reasonably foreseeable that taxpayer's financial resources will be exhausted providing for care and support during the course of the condition;

(B) Although taxpayer has certain monthly income, that income is exhausted each month in providing for the care of dependents with no other means of support; and

(C) Although taxpayer has certain assets, the taxpayer is unable to borrow against the equity in those assets and liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses.

(ii) Factors supporting (but not conclusive of) a determination that compromise would undermine compliance within the meaning of paragraph (b)(3)(iii) of this section include, but are not limited to—

(A) Taxpayer has a history of noncompliance with the filing and payment requirements of the Internal Revenue Code;

(B) Taxpayer has taken deliberate actions to avoid the payment of taxes; and

(C) Taxpayer has encouraged others to refuse to comply with the tax laws.

(iii) The following examples illustrate the types of cases that may be compromised by the Secretary, at the Secretary's discretion, under the economic hardship provisions of paragraph (b)(3)(i) of this section:

Example 1. The taxpayer has assets sufficient to satisfy the tax liability. The taxpayer provides full time care and assistance to her dependent child, who has a serious long-term illness. It is expected that the taxpayer will need to use the equity in his assets to provide for adequate basic living expenses and medical care for his child. The taxpayer's overall compliance history does not weigh against compromise.

Example 2. The taxpayer is retired and his only income is from a pension. The taxpayer's only asset is a retirement account, and the funds in the account are sufficient to satisfy the liability. Liquidation of the retirement account would leave the taxpayer without an adequate means to provide for basic living expenses. The taxpayer's overall compliance history does not weigh against compromise.

Example 3. The taxpayer is disabled and lives on a fixed income that will not, after allowance of basic living expenses, permit full payment of his liability under an installment agreement. The taxpayer also owns a modest house that has been specially equipped to accommodate his disability. The taxpayer's equity in the house is sufficient to permit payment of the liability he owes. However, because of his disability and limited earning potential, the taxpayer is unable to obtain a mortgage or otherwise borrow against this equity. In addition, because the taxpayer's home has been specially equipped to accommodate his disability, forced sale of the taxpayer's residence would create severe adverse consequences for the taxpayer. The taxpayer's overall compliance history does not weigh against compromise.

(iv) The following examples illustrate the types of cases that may be compromised by the Secretary, at the Secretary's discretion, under the public policy and equity provisions of paragraph (b)(3)(ii) of this section:

Example 1. In October of 1986, the taxpayer developed a serious illness that resulted in almost continuous hospitalizations for a number of years. The taxpayer's medical condition was such that during this period the taxpayer was unable to manage any of his financial affairs. The taxpayer has not filed tax returns since that time. The taxpayer's health has now improved and he has promptly begun to attend to his tax affairs. He discovers that the IRS prepared a substitute for return for the 1986 tax year on the basis of information returns it had received and had assessed a tax deficiency. When the taxpayer discovered the liability, with penalties and interest, the tax bill is more than three times the original tax liability. The taxpayer's overall compliance history does not weigh against compromise.

Example 2. The taxpayer is a salaried sales manager at a department store who has been able to place $2,000 in a tax-deductible IRA account for each of the last two years. The taxpayer learns that he can earn a higher rate of interest on his IRA savings by moving those savings from a money management account to a certificate of deposit at a different financial institution. Prior to transferring his savings, the taxpayer submits an e-mail inquiry to the IRS at its Web Page, requesting information about the steps he must take to preserve the tax benefits he has enjoyed and to avoid penalties. The IRS responds in an answering e-mail that the taxpayer may withdraw his IRA savings from his neighborhood bank, but he must redeposit those savings in a new IRA account within 90 days. The taxpayer withdraws the funds and redeposits them in a new IRA account 63 days later. Upon audit, the taxpayer learns that he has been misinformed about the required rollover period and that he is liable for additional taxes, penalties and additions to tax for not having redeposited the amount within 60 days. Had it not been for the erroneous advice that is reflected in the taxpayer's retained copy of the IRS e-mail response to his inquiry, the taxpayer would have redeposited the amount within the required 60-day period. The taxpayer's overall compliance history does not weigh against compromise.

(d) *Procedures for submission and consideration of offers*—(1) *In general.* An offer to compromise a tax liability pursuant to section 7122 must be submitted according to the procedures, and in the form and manner, prescribed by the Secretary. An offer to compromise a tax liability must be made in writing, must be signed by the taxpayer under penalty of perjury, and must contain all of the information prescribed or requested by the Secretary. However, taxpayers submitting offers to compromise liabilities solely on the basis of doubt as to liability will not be required to provide financial statements.

(2) *When offers become pending and return of offers.* An offer to compromise becomes pending when it is accepted for processing. The IRS may not accept for processing any offer to compromise a liability following reference of a case involving such liability to the Attorney General for prosecution or defense. If an offer accepted for processing does not contain sufficient information to permit the IRS to evaluate whether the offer should be accepted, the IRS will request that the taxpayer provide the needed additional information. If the taxpayer does not submit the additional information that the IRS has requested within a reasonable time period after such a request, the IRS may return the offer to the taxpayer. The IRS may also return an offer to compromise a tax liability if it determines that the offer was submitted solely to delay collection or was otherwise nonprocessable. An offer returned following acceptance for processing is deemed pending only for the period between the date the offer is accepted for processing and the date the IRS returns the offer to the taxpayer. See paragraphs (f)(5)(ii) and (g)(4) of this section for rules regarding the effect of such returns of offers.

(3) *Withdrawal.* An offer to compromise a tax liability may be withdrawn by the taxpayer or the taxpayer's representative at any time prior to the IRS' acceptance of the offer to compromise. An offer will be considered withdrawn upon the IRS' receipt of written notification of the withdrawal of the offer either by personal delivery or certified mail, or upon issuance of a letter by the IRS confirming the taxpayer's intent to withdraw the offer.

(e) *Acceptance of an offer to compromise a tax liability.*—(1) An offer to compromise has not been accepted until the IRS issues a written notification of acceptance to the taxpayer or the taxpayer's representative.

(2) As additional consideration for the acceptance of an offer to compromise, the IRS may request that taxpayer enter into any collateral agreement or post any security which is deemed necessary for the protection of the interests of the United States.

(3) Offers may be accepted when they provide for payment of compromised amounts in one or more equal or unequal installments.

(4) If the final payment on an accepted offer to compromise is contingent upon the immediate and simultaneous release of a tax lien in whole or in part, such payment must be made in accordance with the forms, instructions, or procedures prescribed by the Secretary.

(5) Acceptance of an offer to compromise will conclusively settle the liability of the taxpayer specified in the offer. Compromise with one taxpayer does not extinguish the liability of, nor prevent the IRS from taking action to collect from, any person not named in the offer who is also liable for the tax to which the compromise relates. Neither the taxpayer nor the Government will, following acceptance of an offer to compromise, be permitted to reopen the case except in instances where—

(i) False information or documents are supplied in conjunction with the offer;

(ii) The ability to pay or the assets of the taxpayer are concealed; or

(iii) A mutual mistake of material fact sufficient to cause the offer agreement to be reformed or set aside is discovered.

(6) *Opinion of Chief Counsel.* Except as otherwise provided in this paragraph (e)(6), if an offer to compromise is accepted, there will be placed on file the opinion of the Chief Counsel for the IRS with respect to such compromise, along with the reasons therefor. However, no such opinion will be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $50,000. Also placed on file will be a statement of—

(i) The amount of tax assessed;

(ii) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed; and

(iii) The amount actually paid in accordance with the terms of the compromise.

(f) *Rejection of an offer to compromise.*—(1) An offer to compromise has not been rejected until the IRS issues a written notice to the taxpayer or his representative, advising of the rejection, the reason(s) for rejection, and the right to an appeal.

(2) The IRS may not notify a taxpayer or taxpayer's representative of the rejection of an offer to compromise until an independent administrative review of the proposed rejection is completed.

(3) No offer to compromise may be rejected solely on the basis of the amount of the offer without evaluating that offer under the provisions of this section and the Secretary's policies and procedures regarding the compromise of cases.

(4) *Offers based upon doubt as to liability.* Offers submitted on the basis of doubt as to liability cannot be rejected solely because the IRS is unable to locate the taxpayer's return or return information for verification of the liability.

(5) *Appeal of rejection of an offer to compromise*—(i) *In general.* The taxpayer may administratively appeal a rejection of an offer to compromise to the IRS Office of Appeals (Appeals) if, within the 30-day period commencing the day after the date on the letter of rejection, the taxpayer requests such an administrative review in the manner provided by the Secretary.

(ii) *Offer to compromise returned following a determination that the offer was nonprocessable, a failure by the taxpayer to provide requested information, or a determination that the offer was submitted for purposes of delay.* Where a determination is made to return offer documents because the offer to compromise was nonprocessable, because the taxpayer failed to provide requested information, or because the IRS determined that the offer to compromise was submitted solely for purposes of delay under paragraph (d)(2) of this section, the return of the offer does not constitute a rejection of the offer for purposes of this provision and does not entitle the taxpayer to appeal the matter to Appeals under the provisions of this paragraph (f)(5). However, if the offer is returned because the taxpayer failed to provide requested financial information, the offer will not be returned until a managerial review of the proposed return is completed.

(g) *Effect of offer to compromise on collection activity*—(1) *In general.* The IRS will not levy against the property or rights to property of a taxpayer who submits an offer to compromise, to collect the liability that is the subject of the offer, during the period the offer is pending, for 30 days immediately following the rejection of the offer, and for any period when a timely filed appeal from the rejection is being considered by Appeals.

(2) *Revised offers submitted following rejection.* If, following the rejection of an offer to compromise, the taxpayer makes a good faith revision of that offer and submits the revised offer within 30 days after the date of rejection, the IRS will not levy to collect from the taxpayer the liability that is the subject of the revised offer to compromise while that revised offer is pending.

(3) *Jeopardy.* The IRS may levy to collect the liability that is the subject of an offer to compromise during the period the IRS is evaluating whether that offer will be accepted if it determines that collection of the liability is in jeopardy.

(4) *Offers to compromise determined by IRS to be nonprocessable or submitted solely for purposes of delay.* If the IRS determines, under paragraph (d)(2) of this section, that a pending offer did not contain sufficient information to permit evaluation of whether the offer should be accepted, that the offer was submitted solely to delay collection, or that the offer was otherwise nonprocessable, then the IRS may levy to collect the liability that is the subject of that offer at any time after it returns the offer to the taxpayer.

(5) *Offsets under section 6402.* Notwithstanding the evaluation and processing of an offer to compromise, the IRS may, in accordance with section 6402, credit any overpayments made by the taxpayer against a liability that is the subject of an offer to compromise and may offset such overpayments against other liabilities owed by the taxpayer to the extent authorized by section 6402.

(6) *Proceedings in court.* Except as otherwise provided in this paragraph (g)(6), the IRS will not refer a case to the Department of Justice for the commencement of a proceeding in court, against a person named in a pending offer to compromise, if levy to collect the liability is prohibited by paragraph (g)(1) of this section. Without regard to whether a person is named in a pending offer to compromise, however, the IRS may authorize the Department of Justice to file a counterclaim or third-party complaint in a refund action or to join that person in any other proceeding in which liability for the tax that is the subject of the pending offer to compromise may be established or disputed, including a suit against the United States under 28 U.S.C. 2410. In addition, the United States may file a claim in any bankruptcy proceeding or insolvency action brought by or against such person.

(h) *Deposits.* Sums submitted with an offer to compromise a liability or during the pendency of an offer to compromise are considered deposits and will not be applied to the liability until the offer is accepted unless the taxpayer provides written authorization for application of the payments. If an offer to compromise is withdrawn, is determined to be nonprocessable, or is submitted solely for purposes of delay and returned to

the taxpayer, any amount tendered with the offer, including all installments paid on the offer, will be refunded without interest. If an offer is rejected, any amount tendered with the offer, including all installments paid on the offer, will be refunded, without interest, after the conclusion of any review sought by the taxpayer with Appeals. Refund will not be required if the taxpayer has agreed in writing that amounts tendered pursuant to the offer may be applied to the liability for which the offer was submitted.

(i) *Statute of limitations*—(1) *Suspension of the statute of limitations on collection.* The statute of limitations on collection will be suspended while levy is prohibited under paragraph (g)(1) of this section.

(2) *Extension of the statute of limitations on assessment.* For any offer to compromise, the IRS may require, where appropriate, the extension of the statute of limitations on assessment. However, in any case where waiver of the running of the statutory period of limitations on assessment is sought, the taxpayer must be notified of the right to refuse to extend the period of limitations or to limit the extension to particular issues or particular periods of time.

(j) *Inspection with respect to accepted offers to compromise.* For provisions relating to the inspection of returns and accepted offers to compromise, see section 6103(k)(1).

(k) *Effective date.* This section applies to offers to compromise pending on or submitted on or after July 18, 2002.

§§ 301.7122–0T and 301.7122–1T [Removed]

3. Sections 301.7122–0T and 301.7122–1T, are removed.

Approved: July 15, 2002.

Charles O. Rossotti,

Commissioner of Internal Revenue.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–18454 Filed 7–18–02; 12:32 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–7249–5]

Notice of Halting the Sanctions Clocks for the Commonwealth of Virginia's Failure To Submit Required State Implementation Plan for the NO_X SIP Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Determination regarding state implementation plan; notice of halting the sanctions clocks.

SUMMARY: The EPA is announcing that the State Implementation Plan (SIP) revision in response to the Nitrogen Oxides (NO_X) SIP Call submitted by the Commonwealth of Virginia (Virginia) is complete, thereby halting the sanctions clocks. Under the Clean Air Act (CAA) and EPA's NO_X SIP Call regulations, Virginia was required to submit SIP measures providing for NO_X emissions reductions, by October 30, 2000. On December 26, 2000, EPA made a finding that Virginia had failed to submit a SIP in response to the NO_X SIP Call, thus starting the 18-month and 24-month clocks, respectively, for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP). On June 30, 2002, Virginia submitted, as a SIP revision, its NO_X Budget Trading Program, in response to the NO_X SIP Call. On July 16, 2002, EPA found Virginia's SIP submission to be complete. The approval of the Virginia SIP revision in response to the NO_X SIP Call will be addressed in a separate rulemaking action.

EFFECTIVE DATE: July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: On October 27, 1998 (63 FR 57356), EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." On March 2, 2000 (65 FR 11222), the NO_X SIP Call rule was modified establishing emissions budgets for NO_X that each of the identified States must meet through enforceable SIP measures. Various industries and States challenged the final NO_X SIP Call rule by filing petitions for review in the U.S. Court of Appeals for the District of Columbia (D.C. Circuit). State Petitioners challenging the NO_X SIP Call filed a motion requesting the Court to stay the submission schedule until April 27, 2000. In response, in May 1999, the DC Circuit issued a stay of the SIP submission deadline pending further order of the Court. *Michigan* v. *EPA*, No. 98–1497 (D.C. Cir., May 25, 1999) (order granting stay in part). On March 3, 2000, the Court of Appeals issued an opinion, largely upholding the NO_X SIP Call regulations. On April 11, 2000, EPA filed a motion with the Court to lift the stay of the SIP submission date. The EPA requested that the Court lift the stay as of April 27, 2000. On June 22, 2000, the Court ordered that EPA allow the States 128 days from the June 22, 2000 date of the order to submit their SIPs. Therefore, SIPs were due October 30, 2000.

On December 26, 2000 (65 FR 81366), EPA issued findings of failure to officially submit complete submissions to their SIPs, including adopted rules, in response to the SIP Call. The States that received these findings are Virginia, West Virginia, Alabama, Kentucky, North Carolina, South Carolina, Tennessee, Illinois, Indiana, Michigan, Ohio, and the District of Columbia. These findings started an 18-month sanctions clock; if the State failed to make the required submittal which EPA determined to be complete within that period, the emissions offset sanction would apply in accordance with 40 CFR 51.121(n) and 52.31. If the State still had not made a complete submittal which EPA determined to be complete within six months after the sanction is imposed, limitations on the approval of Federal highway funds would apply in accordance with 40 CFR 51.212(a) and 52.31. Conversely, when EPA finds that the State has made a complete SIP submittal under the SIP Call, then the 18-month clock, or additional 6-month clock, stops and the sanctions would be lifted. In addition, CAA section 110(c) provides that EPA can promulgate a FIP immediately after making the findings, as late as two years after making the findings, or any time in between. On July 16, 2002, EPA determined that the Virginia SIP submission is complete; therefore, the sanctions clocks will not take effect.

Administrative Requirements

A. Notice and Comment Under the Administrative Procedure Act

This document is final agency action but is not subject to notice-and-comment requirements of the Administrative Procedures Act (APA), 5 U.S.C. 553(b). The EPA invokes,

consistent with past practice (for example, 61 FR 36294), the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). The EPA believes that because of the limited time provided to make findings of failure to submit and findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice-and-comment rulemaking. Notice and comment are unnecessary because no significant EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs or elements of SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

B. Executive Order 12866 (Regulatory Planning and Review)

This action is exempt from OMB review under Executive Order 12866.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements, as described under (A) above, it is not subject to the RFA.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's document contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The various CAA provisions discussed in this document require the States to submit SIPs. This document merely provides a finding that the States have not met those requirements. This document does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the APA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the effective date of this rule, a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office. This rule is not a "major rule" as defined by APA section 804(2), as amended. The EPA is issuing this action as a rulemaking. There is a question as to whether this action is a rule of "particular applicability" under [[Page 81369]] section 804(3)(A) of the APA as amended by SBREFA, and thus exempt from the congressional submission requirements, because this rule applies only to named States. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of "particular applicability."

F. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of July 23, 2002.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 16, 2002.

Abraham Ferdas,

Acting Regional Administrator, Region III

[FR Doc. 02–18581 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–047–7173a; A–1–FRL–7243–2]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; VOC RACT Order and Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions establish requirements for sources of volatile organic compounds (VOC). The intended effect of this action is to approve a VOC regulation for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area and to approve a VOC order for Anheuser-Busch into the New Hampshire SIP. EPA is taking this action in accordance with the Clean Air Act.

DATES: This direct final rule will be effective September 23, 2002, unless EPA receives relevant adverse comments by August 22, 2002. If EPA receives relevant adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), S.W., Washington, D.C.; and Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What Action Is EPA Taking?
What Are the Relevant Clean Air Act Requirements?
What Are the Items New Hampshire Submitted?
Why Is EPA Approving New Hampshire's Submittals?
What Is the Process for EPA to Approve These SIP Revisions?

What Action Is EPA Taking?

EPA is approving New Hampshire's VOC reasonably available control technology (RACT) order for Anheuser-Busch. EPA is also approving New Hampshire's Env-A 1204.27 VOC RACT rule for the New Hampshire portion of the Boston-Worcester-Lawrence (Eastern Massachusetts) serious ozone nonattainment area.

What Are the Relevant Clean Air Act Requirements?

Sections 182(b)(2) and 184(b) of the Clean Air Act (CAA) contain the requirements relevant to today's action. 42 U.S.C. 7511a(b)(2) and 7511c. Section 182(b)(2) requires states to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing Control Techniques Guideline (CTG)—i.e., a CTG issued prior to the enactment of the 1990 amendments to the CAA; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources.

Pursuant to the CAA Amendments of 1990, portions of New Hampshire were classified as marginal and serious nonattainment areas for ozone. See 56 FR 56694 (November 6, 1991). These serious areas were, thus, subject to the section 182(b)(2) RACT requirement.

In addition, New Hampshire is located in the Northeast Ozone Transport Region (OTR). The entire state is, therefore, subject to section 184(b) of the CAA. Section 184(b) requires that RACT be implemented in the entire state for all VOC sources covered by a CTG issued before or after the enactment of the CAA Amendments of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR).

Today's action specifically deals with the CAA requirement in sections 182(b)(2)(C) and 184(b)(2) to implement RACT at all major VOC sources not already subject to a CTG.

What Are the Items New Hampshire Submitted?

New Hampshire submitted a RACT regulation for major VOC sources, a letter regarding New Filcas of America, and an order for Anheuser-Busch.

New Hampshire's VOC RACT regulation, Env-A 1204.27, "Applicability Criteria and Compliance Options for Miscellaneous and Multicategory Stationary VOC Sources," requires RACT for non-CTG sources that emit 50 tons of VOC or more per year. Env-A 1204.27(d) establishes five options for measuring and enforcing RACT. Options 1 through 4 identify specific levels of emissions or emissions reductions that constitute RACT. Control option 5 describes a process by which RACT can be defined, but does not specifically define RACT as required by the CAA. EPA cannot approve this portion of the rule as meeting sections 182(b)(2) and 184(b)(2) until New Hampshire defines, and EPA approves, RACT for all of those sources which comply with the regulation through control option 5. Therefore, EPA previously granted a limited approval of Env-A 1204.27. See 63 FR 11600 (March 10, 1998). EPA's rulemaking noted that to receive full approval, New Hampshire needed to define RACT for the following sources: Harvard Industries, New Filcas of America, Sturm Ruger, and Anheuser-Busch.

New Hampshire's letter regarding New Filcas of America states that the company's Nashua facility has been shut down since January of 1998 and the company has moved its operations to North Carolina. The letter also states that an inspection by the New Hampshire Department of Environmental Services (DES) staff was conducted on August 30, 2001 to verify that the facility has been shut down. Therefore, DES does not need to establish VOC RACT for this facility.

The order issued to Anheuser-Busch requires the implementation of various process loss reduction activities including the development of information management systems, enhanced training for equipment operators, and integration of state-of-the-art packaging equipment improvements to reduce malt beverage production emissions.

As noted above, New Hampshire has adequately addressed Anheuser-Busch and New Filcas of America. Thus, DES has addressed RACT for all of the applicable sources in the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area. The state has not yet, however, submitted VOC RACT determinations for Harvard Industries and Sturm Ruger. New Hampshire will need to address these facilities in order for Env-A 1204.27 to be fully approvable statewide.

Why Is EPA Approving New Hampshire's Submittals?

EPA has evaluated the Anheuser-Busch order and has found that it is generally consistent with EPA guidance. EPA agrees with DES's assessment that add-on pollution controls are not economically reasonable to control the ethanol emissions from the beer production and bottling processes at the Anheuser-Busch facility. Therefore, DES's order requires Anheuser-Busch to use enumerated state-of-the-art packaging equipment, or replacement equipment that improves on the performance of the existing equipment, which will minimize product losses and VOC emissions. Therefore, EPA is approving this order as RACT. EPA has also evaluated New Hampshire's Env-A 1204.27 and has found that this regulation is generally consistent with EPA guidance, with the exception of the control option 5 issue discussed above. Since New Hampshire has, however, adequately addressed all of the non-CTG major VOC sources in the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area to which this option applies, EPA is approving Env-A

1204.27 as meeting the CAA requirements for this area.

The specific requirements of the Anheuser-Busch order and New Hampshire's Env-A 1204.27 regulation and EPA's evaluation of these requirements are detailed in a memorandum dated May 20, 2002, entitled "Technical Support Document—New Hampshire—VOC RACT Order and Regulation" (TSD). Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

What Is the Process for EPA To Approve These SIP Revisions?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should EPA receive relevant adverse comments. This action will be effective September 23, 2002 without further notice unless the EPA receives relevant adverse comments by August 22, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. EPA will then address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If EPA receives no such comments, the public is advised that this rule will be effective on September 23, 2002 and EPA will take no further action on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Final Action

EPA is approving New Hampshire's VOC RACT order for Anheuser-Busch. EPA is also approving New Hampshire's Env-A 1204.27 VOC RACT rule for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: June 21, 2002.

Ira Leighton,

Acting Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(68) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(68) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on June 28, 1996 and April 15, 2002.

(i) Incorporation by reference.

(A) Order ARD–00–001 issued by the New Hampshire DES to Anheuser-Busch Incorporated, effective April 15, 2002.

(B) Env-A 1204.27, "Applicability Criteria and Compliance Options for Miscellaneous and Multi-category Stationary VOC Sources," effective August 21, 1995, is granted full approval for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area.

(ii) Additional materials.

(A) Letter from the DES, dated April 15, 2002, submitting revised Anheuser-Busch order to EPA as a SIP revision and withdrawing previous submittal for this facility dated June 20, 2000.

(B) Letter from the DES, dated March 22, 2002, containing information on New Filcas of America.

3. In § 52.1525, Table 52.1525 is amended by adding an entry for "Env-A 1204.27" in the State citation chapter column immediately following the entry for "CH air 1204, Part Env-A 1204 (except 1204.9)" and by adding an entry for "Order ARD–00–001" in the same column immediately following the entry for "Order ARD 98–001" to read as follows:

§ 52.1525 EPA—approved New Hampshire state regulations

* * * * *

TABLE 52.1525.—EPA—APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Explanation
*	*	*	*	*	*	*
Applicability Criteria and Compliance Options for Miscellaneous and Multi-category Stationary VOC Sources.	Env-A 1204.27	8/21/95 ..	July 23, 2002 ..	[Insert *FR* citation from published date].	(c)(68)	Rule fully approved for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area.
*	*	*	*	*	*	*
Source Specific Order	Order ARD–00–001	4/15/02 ..	July 23, 2002 ..	[Insert *FR* citation from published date].	(c)(68)	VOC RACT for Anheuser-Busch.
*	*	*	*	*	*	*

[1] These regulations are applicable statewide unless otherwise noted in the Explanation section.
[2] When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Env-A.

[FR Doc. 02–18396 Filed 7–22–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[MN 67–01–7292(a); FRL–7248–9]

Approval of Section 112(l) Program of Delegation; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving, through a "direct final" procedure, a request from Minnesota for delegation of the Federal air toxics program pursuant to section 112(l) of the Clean Air Act (Act). The State's mechanism of delegation involves the straight delegation of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards, except standards addressed specifically in this action, will occur through a procedure set forth in a Memorandum of Agreement (MOA) between the Minnesota Pollution Control Agency (MPCA) and EPA. This request for approval of a mechanism of delegation applies only to those part 70 sources subject to a section 112 standard in Minnesota. It does not include those sources in Indian country.

DATES: The "direct final" is effective on September 23, 2002, unless EPA receives adverse or critical written comments by August 22, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: Robert Miller, Chief, Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Robert Miller at (312) 353–0396 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Bryan Holtrop, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6204, *holtrop.bryan@epa.gov* or, Rachel Rineheart, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886–7017, *rineheart.rachel@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. Why Are We Delegating This Program to MPCA?

Section 112(l) of the Act enables the EPA to delegate Federal air toxics programs or rules to be implemented by States in State air toxics programs. The Federal air toxics program implements the requirements found in section 112 of the Act pertaining to the regulation of hazardous air pollutants. Delegation of an air toxics program is granted by the EPA if the Agency finds that the State program: (1) Is "no less stringent" than the corresponding Federal program or rule, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance. Once approval is granted, the air toxics program can be implemented and enforced by State agencies, as well as EPA.

II. What Is the History of This Request for Delegation?

On December 12, 1995, Minnesota submitted to EPA a request for delegation of authority to implement and enforce the air toxics program under section 112 of the Act. On February 6, 1996, EPA found the State's submittal complete. This request for delegation included both sources subject to the operating permit requirements of 40 CFR part 70 and sources not subject to the permitting requirements of part 70. On July 26, 2001, Minnesota revised the original request for delegation, and is now seeking delegation only for sources subject to part 70. In this notice EPA is taking final action to approve the program of delegation for Minnesota of parts 61 and 63 standards for all part 70 sources, except for those in Indian country.

III. How Will MPCA Implement This Delegation?

Requirements for approval, specified in section 112(l)(5), require that a State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule. These requirements are also requirements for an adequate operating permits program under part 70 (§ 70.4). In a December 4, 2001 rulemaking, EPA promulgated a final approval of the State of Minnesota's Operating Permit Program under part 70. Sources subject to the part 70 program are those sources that are operating pursuant to a part 70 permit issued by the State or a part 71 permit issued by EPA. Sources not subject to the part 70 program are those sources that are not required to obtain a part 70 permit under Title V of the Act from either the State, Tribes, or EPA (*see* 40 CFR 70.3). This action will provide a mechanism to delegate the authority to implement and enforce the section 112 air toxics program for sources subject to part 70 in the State of Minnesota.

The Minnesota program of delegation will not include delegation of section 112(r) authority. The program will, however, include the delegation of the 40 CFR part 63 general provisions to the extent that they are not reserved to the EPA and are delegable to the State.

As stated above, this notice constitutes EPA's approval of Minnesota's program of straight delegation of all existing and future air toxics standards, except for section 112(r) standards, as they pertain to part 70 sources. Straight delegation means that the State will not promulgate its own State rules for each section 112 standard promulgated by EPA, but will implement, adopt by reference, and enforce without change the section 112 standards promulgated by EPA. The Minnesota program of straight delegation will operate as follows: For a future section 112 standard for which MPCA intends to accept delegation, EPA will automatically delegate the authority to implement a section 112 standard to the State by letter. If MPCA does not intend to accept delegation of a standard, MPCA will notify EPA within 45 days of EPA final promulgation of the standard. Upon incorporation by reference of the Federal standard into the State Rules, EPA will delegate the authority to enforce the standard as well.

Minnesota will assume responsibility for the timely implementation and enforcement required by each standard, as well as any further activities agreed to by MPCA and EPA. Some activities necessary for effective implementation of a standard include receipt of initial notifications, recordkeeping, reporting, and generally assuring that sources subject to a standard are aware of its existence. When deemed appropriate, MPCA will utilize the resources of its Small Business Assistance Program to assist in general program implementation. The details of this delegation mechanism will be set forth in a memorandum of agreement between EPA and MPCA, copies of which will be placed in the official file associated with this rulemaking.

IV. What Requirements Did MPCA Meet To Receive Today's Approval?

On November 26, 1993, EPA promulgated regulations to provide guidance relating to the approval of State programs under section 112(l) of the Act. 40 FR 62262. That rulemaking outlined the requirements of approval with respect to various delegation options. The requirements for approval pursuant to section 112(l)(5) of the Act, for a program to implement and enforce Federal section 112 rules as promulgated without changes, are found at 40 CFR 63.91. Any request for approval must meet all section 112(l) approval criteria, as well as all approval criteria of § 63.91. A more detailed analysis of the State's submittal pursuant to § 63.91 is contained in the Technical Support Documents, dated August 15, 2001, included in the official file for this rulemaking.

Under section 112(l) of the Act, approval of a State program is granted by the EPA if the Agency finds that: (1) The State program is "no less stringent" than the corresponding Federal program, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance.

V. How Did MPCA Meet the Approval Criteria?

EPA is approving Minnesota's mechanism of delegation because the State's submittal meets all requirements necessary for approval under section 112(l). The first requirement is that the program be no less stringent than the Federal program. The Minnesota program is no less stringent than the corresponding Federal program or rule because the State has requested straight delegation of all standards unchanged from the Federal standards.

Second, the State has shown that it has adequate authority and resources to implement the program. The authorities are contained in Attachment B of Minnesota's November 15, 1993, Title V submittal. Section 116.07, subdivision 4a of the Minnesota Statutes authorizes MPCA to issue construction and operating permits to part 70 sources of regulated pollutants to assure compliance with all applicable requirements of the Act. Sources subject to the part 70 program are those sources

that are operating pursuant to a part 70 permit issued by the State, local agency or EPA (part 71), whereas sources not subject to the part 70 program are those sources that are not required to obtain a Title V permit under Federal law from either the State, Tribes, or EPA. Minnesota has the authority under section 116 to include any conditions in an operating permit that are necessary to assure compliance with the Act (including section 112 requirements). Furthermore, Minnesota has the authority to perform inspections, request compliance information, and to bring civil and criminal enforcement actions to recover penalties and fines. (Specifically, the statutory language for the above authorities are found in Minnesota Statutes sections 115.071, 116.091, 116.11, 609.671, and 645.24). Adequate resources will be obtained through State funds, Section 105 grant monies awarded to States by EPA, and through Title V fees that can be used to fund acceptable activities with respect to part 70 sources.

Third, upon promulgation of a standard, Minnesota will immediately begin activities necessary for timely implementation of the standard. These activities will involve identifying sources subject to the applicable requirements and notifying these sources of the applicable requirements. Such schedule is sufficiently expeditious for approval.

Fourth, the Minnesota mechanism for straight delegation is not contrary to Federal guidance.

VI. How Will Applicability Determinations Under Section 112 Be Made?

In approving this delegation, the State will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the Clean Air Act or 40 CFR part 61 and 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

VII. What Is Today's Final Action?

The EPA is promulgating final approval of the December 12, 1995, request and subsequent revision by the State of Minnesota of a mechanism for straight delegation of section 112 standards unchanged from Federal standards because the request meets all requirements of 40 CFR 63.91 and section 112(l) of the Act. After the effective date of this document and upon signing of the MOA, the implementation and enforcement of all existing section 112 standards, excluding section 112(r), which have been incorporated into the Minnesota Rules, are delegated to the State of Minnesota (specifically 40 CFR part 63, subpart H "National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks," 40 CFR part 63, subpart I "National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks," 40 CFR part 63, subpart L "National Emission Standards for Coke Oven Batteries," 40 CFR part 63, subpart M "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities," 40 CFR part 63, subpart N "National Emission Standards for Chromium Emissions from Hard and Decorative Chromium electroplating and Chromium Anodizing Tanks," 40 CFR part 63, subpart O "Ethylene Oxide Emissions Standards for Sterilization Facilities," 40 CFR part 63, subpart Q "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers," 40 CFR part 63, subpart R "National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)," 40 CFR part 63, subpart T "National Emission Standards for Halogenated Solvent Cleaning," 40 CFR part 63, subpart U "National Emission Standards for Hazardous Air Pollutant Emissions Group I Polymers and Resins," 40 CFR part 63, subpart W "National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production, " 40 CFR part 63, subpart X, "National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting," 40 CFR part 63, subpart Y "National Emission Standards for Marine Tank Vessel Loading Operations," 40 CFR part 63, subpart CC "National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries," 40 CFR part 63, subpart DD "National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations," 40 CFR part 63, subpart EE "National Emission Standards for Magnetic Tape Manufacturing Operations," 40 CFR part 63, subpart GG "National Emission Standards for Aerospace Manufacturing and Re-Work Facilities," 40 CFR part 63, subpart II "National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)," 40 CFR part 63, subpart JJ "National Emission Standards for Wood Furniture Manufacturing Operations," 40 CFR part 63, subpart KK "National Emission Standards for the Printing and Publishing Industry," 40 CFR part 63, subpart OO "National Emission Standards for Tanks—Level 1," 40 CFR part 63, subpart PP "National Emission Standards for Containers," 40 CFR part 63, subpart QQ "National Emission Standards for Surface Impoundments," 40 CFR part 63, subpart RR "National Emission Standards for Individual Drain Systems," 40 CFR part 63, subpart VV "National Emission Standards for Oil-Water Separators and Organic-Water Separators," and 40 CFR part 63, subpart JJJ "National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins"). As for the existing section 112 standards which have not yet been incorporated into the Minnesota Rules, the implementation authority for these standards is delegated to the State of Minnesota after the effective date of this action and upon signing of the MOA. The enforcement authority and the future delegation of the section 112 standards to the State will occur according to the procedures outlined in the MOA.

This delegation does not include authority over sources in Indian country subject to section 112. Under the Act such Indian country sources are regulated directly by the EPA, until such time as a Tribe requests and has approved its own section 112 program or has the Federal program delegated to it as a part of its tribal implementation plan. See the Tribal Authority Rule, 63 FR 7253 (February 12, 1998). At this time no Tribe in Minnesota has requested or received any authorities under section 112, and EPA is directly implementing and enforcing the section 112 program in Indian country in Minnesota.

Effective immediately, all notifications, reports and other correspondence required under section 112 standards for part 70 sources should be sent to the State of Minnesota rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to: *Compliance Tracking Coordinator, Majors and Remediation Division, MPCA, 520 Lafayette Road, St. Paul, Minnesota 55155–4194.* Sources not subject to part 70 or that are on a tribal reservation should send all notifications, reports and other correspondence required under section 112 standards to: *Chief, Air Enforcement and Compliance Assurance Branch (AE–17J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604.*

EPA is publishing this action without prior proposal because EPA views this action as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this

Federal Register publication, EPA is proposing to approve the State Plan should adverse or critical written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by August 22, 2002. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on Sepetmber 23, 2002.

VIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state actions as meeting Federal requirements and imposes no additional requirements beyond those Federal requirements currently being imposed by EPA. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this delegation approves pre-existing Federal requirements already required under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state plan for implementing Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing a state's request for section 112 authority, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a section 112 authority request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 112 authority request, to use VCS in place of a section 112 authority request that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this delegation and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: June 27, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–18397 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA081–FTA; FRL–7250–5]

Finding of Failure To Attain; California-San Joaquin Valley Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION:

SUMMARY: EPA is today finding that the San Joaquin Valley did not attain the 24-hour and annual particulate matter (PM–10) National Ambient Air Quality Standards (NAAQS) by the deadline mandated in the Clean Air Act (CAA), December 31, 2001.

In response to this finding, the State of California must submit by December 31, 2002 revisions to the California State Implementation Plan (SIP) that provide for attainment of the national PM–10 standards in the San Joaquin Valley and achieve five percent annual reductions in PM–10 or PM–10 precursor emissions as required by CAA section 189(d).

EFFECTIVE DATE: This finding is effective on August 22, 2002.

ADDRESSES: A copy of this final rule is available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air*. The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 972–3980 for assistance.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (415) 947–4148 or Steven Barhite (415) 972–3980, Planning Office Chief (AIR–2), Air Division, EPA Region 9, 75 Hawthorne

Street, San Francisco, CA 94105; *barhite.steven@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 2002, EPA proposed to find that the San Joaquin Valley did not attain the 24-hour and annual PM–10 National Ambient Air Quality Standards (NAAQS) by its December 31, 2001 attainment deadline. The San Joaquin Valley's December 31, 2001 attainment deadline was established on January 8, 1993 when EPA determined that the area could not "practicably" attain the PM–10 NAAQS by the moderate area attainment deadline, December 31, 1994, and reclassified the San Joaquin Valley nonattainment area as serious (58 FR 3334, 3337). See CAA section 188(b)(1). Pursuant to CAA section 188(c)(2), serious PM–10 nonattainment areas were required to attain by December 31, 2001.

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date (i.e., June 30, 2002), whether the San Joaquin Valley PM–10 nonattainment area has attained the annual and 24-hour NAAQS. Section 179(c)(1) of the Act provides that attainment determinations are to be based upon an area's "air quality as of the attainment date," and section 188(b)(2), which is specific to PM–10, is consistent with that requirement. EPA determines whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into EPA's Aerometric Information Retrieval System (AIRS). These data are reviewed to determine the area's air quality status in accordance with EPA regulations at 40 CFR part 50, Appendix K.[1]

For details about EPA's proposed failure to attain finding, please see the proposed rulemaking at 67 FR 11633, March 15, 2002.

[1] Pursuant to Appendix K, attainment of the annual PM–10 NAAQS is achieved when the expected annual arithmetic mean PM–10 concentration is less than or equal to the level of the standard (50μg/m³). Attainment of the 24-hour PM–10 NAAQS is achieved when the expected number of exceedances of the 24-hour NAAQS (150 μg/m³) per year at each monitoring site is less than or equal to one. A total of three consecutive years of clean air quality data is generally necessary to show attainment of the annual and 24-hour standards for PM–10. A complete year of air quality data, as referred to in 40 CFR part 50, Appendix K, is comprised of all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

II. EPA's Responses to Comments on the Proposal

The only comments received on the proposed finding of nonattainment were submitted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). Summaries of the comments and EPA's responses are set forth below.

Comment No. 1: The data set used by EPA to identify sites in nonattainment of the PM–10 NAAQS during the years 1999–2001 appears to have not been complete.

Response: The commenter is correct. The data set used by EPA was based on PM–10 data collected from January 1, 1999 through September 30, 2001. At the time of the proposed rulemaking the San Joaquin Valley PM–10 data for October 1, 2001 to December 31, 2001 was not available. The data for the last quarter of 2001 is now available and is factored into EPA's responses below. In short, the additional data does not change the conclusion in the proposed rule that the San Joaquin Valley did not attain the annual and 24-hour PM–10 standards by its CAA attainment deadline, December 31, 2001. However, as foreseen in the proposal (67 FR 11633, 11634), the additional data collected during October to December 2001 has altered the attainment status of some of the monitoring sites.

For the annual PM–10 NAAQS, the Corcoran site, which was listed as not attaining the annual NAAQS in the proposal, has now been removed from the list of sites not attaining the annual NAAQS since its three-year average annual concentration is 49 μg/m³ (See response to comment 2 below). The Hanford site is now listed as nonattainment with a three-year average annual concentration of 51 μg/m³ (See response to comment 3 below). The Fresno-Drummond site may or may not be violating the annual NAAQS; due to an incomplete data set, it is not possible to calculate an accurate three-year annual average at this time (See response to comment 3 below).

For the 24-hour NAAQS, the most significant change from our proposal is that the Modesto-14th Street site is no longer considered nonattainment for the 24-hour NAAQS (See response to comment 5 below).

Comment No. 2: The proposal incorrectly lists the Corcoran monitoring site as nonattainment for the annual PM–10 NAAQS.

Response: The commenter is correct. EPA miscalculated the three-year annual average at the Corcoran site, which resulted in our listing it as nonattainment for the annual PM–10 NAAQS. The correct three-year annual average based on the full complement of 1999–2001 data is 49 μg/m³. Thus, the Corcoran site did not violate the PM–10 annual NAAQS.

Comment No. 3: Two additional sites, Fresno-Drummond Street and Hanford, may or may not be nonattainment for the annual PM–10 NAAQS depending on whether data substitution is used for filling in missing data points in the 1999–2001 period.

Response: Due to an incomplete data set, EPA was not able to calculate an accurate three-year annual average for these two sites at the time of our proposed action. Using the final 1999–2001 data set and some data substitution in the 4th quarter of 1999,[2] we have determined that the Hanford site definitively violated the annual NAAQS. For missing data in the 4th quarter of 1999, we substituted one half of the minimum detectable concentration of PM–10 (2.5 μg/m³) and still arrived at a three-year annual average of 51 μg/m³.

Determining the annual attainment status of the Fresno-Drummond Street site is more difficult. This site has two incomplete quarters of data, the 4th quarter of 1999 and the 4th quarter of 2000. If we substitute one half the minimum detectable concentration for the missing values we calculate a three-year annual average of 47 μg/m³, which means the site attained the NAAQS. However, if we substitute representative data from other calendar quarters we have a three-year annual average of 53 μg/m³, which exceeds the NAAQS. The true three-year average probably falls somewhere between this range but we cannot make an absolute determination of attainment at this time.

Comment No. 4: Regarding the 24-hour NAAQS, the commenter states that the Turlock site has recorded only one exceedance of the 24-hour standard during its nine years of operation and could be considered attainment if more than three years are used. 40 CFR part 50, appendix K allows this method.

Response: EPA regulations at 40 CFR part 50, appendix K, section 2.1(a) state that "[u]nder 40 CFR 50.6(a) the 24-hour primary and secondary standards are attained when the expected number of exceedances per year at each monitoring site is less than or equal to one. In the simplest case, the number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging

[2] Missing data was substituted using procedures in "Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards," EPA–450/4–87–005, April 1987.

them over the past three calendar years."

EPA acknowledges that according to appendix K, there may be circumstances when more than three years of data can be used to determine attainment. EPA interprets appendix K to allow additional years of data only in order to reduce the effect of unusual or exceptional events. See appendix K, section 2.4(a).

Appendix K, section 3.1 dictates how to estimate the number of exceedances for a year when a monitoring site operates on a less than everyday schedule. The Turlock PM–10 monitoring site operates on a one in six day schedule. Using the equations in this section, the single observed exceedance at the Turlock site would be adjusted to 11.5 exceedances. Even if we were to average these exceedances over the lifetime of the Turlock PM–10 monitor (it began operation in January 1994, therefore we have eight years of operation, not nine) it still averages 1.4 exceedances per year, and violated the 24-hour PM–10 NAAQS.

Comment No. 5: The Modesto-14th Street station had only one exceedance in the most recent three-year period while sampling at a frequency of once every three days. This site could also be considered attainment if more than three years of data are considered as allowed by 40 CFR part 50, appendix K.

Response: Manual sampling methods for PM–10 are labor and resource intensive and because of this many agencies choose to sample PM–10 on a less than an every day schedule. Since there is not a PM–10 concentration value for each day of the year, EPA regulations at 40 part CFR 50, appendix K require an adjustment to be made to the observed number of exceedances to account for the possible effect of incomplete data. In this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level.

In order to properly adjust the data to estimate the expected number of exceedances, the sampling frequency of the PM–10 monitoring site must be known. The PM–10 monitoring site at Modesto—14th Street utilized two high volume PM–10 samplers in order to collect data on a one in three day schedule. Under this arrangement each sampler operates once every six days but the schedules are staggered so that a 24-hour PM–10 value is recorded every three days. In February 2001 one of the PM–10 samplers ceased operation. There are two ways we can view the sampling frequency of this site during the first quarter of 2001, either as a one in three day site that is missing nine scheduled samples or as a one in six day site that has six unscheduled, extra samples. Calculating the estimated number of exceedances requires a different approach depending on how we view this site. Since the site continued to operate on a one in six day schedule for the remainder of the calendar year, we believe it is appropriate to view the entire year as operating on a one in six day schedule and to use Equation 3 from 40 CFR part 50, appendix K to calculate the estimated number of excedances. The total number of estimated exceedances for the period 1999—2001 is three, averaging one exceedance per year. Therefore, this site attained the 24-hour PM–10 NAAQS.

See the previous response to comment 4 for a discussion of using more than three years of data for determining attainment.

III. Summary of Changes From the Proposal

Based on data from the last quarter of 2001 and data recalculations discussed in our responses to comments above, EPA has revised Tables 1 and 2 from the proposed rulemaking (67 FR 11633, 11634–11635) to read as follows:

TABLE 1.—SAN JOAQUIN VALLEY MONITORING SITES THAT VIOLATE THE ANNUAL PM–10 NAAQS (1999–2001)

Site Name	3 year Annual mean ($\mu g/m^3$)
Bakersfield-Golden State	55
Visalia	54
Fresno-Drummond	47–53
Hanford	51

TABLE 2. —SAN JOAQUIN VALLEY MONITORING SITES THAT VIOLATE THE 24-HOUR PM–10 NAAQS (1999–2001)

Monitoring station	Estimated exceedance days 1999	Estimated exceedance days 2000	Estimated exceedance days 2001	Average # of exceedances per year 1999–2001
Fresno East Drummond	8.4	0	6	4.8
Fresno First St	0	0	6	2
Clovis	0	0	6	2
Bakersfield Golden State	6	0	12	6
Bakersfield California Ave	0	0	9	3
Oildale	3.75	0	5.63	3.1
Corcoran	6.1	0	7.6	4.6
Hanford	0	0	12.6	4.2
Turlock	11.5	0	0	3.8

EPA also received a request for information about the specific dates when the exceedances occurred. In response to that request, EPA has included Table 3, which lists the observed exceedances in the San Joaquin Valley PM–10 nonattainment area during the three-year period 1999–2001. These are the actual observed exceedances as opposed to the estimated number of exceedances [3] reported in Table 2.

TABLE 3.—DAYS EXCEEDING THE 24-HOUR PM–10 NAAQS IN THE SAN JOAQUIN VALLEY

Date	Monitoring site	Concentration (μg/m^3)
January 12, 1999	Oildale	156
October 21, 1999	Fresno—East Drumond	162
	Corcoran	174
	Turlock	157
November 14, 1999	Bakersfield—Golden State Hwy	183
January 1, 2001	Fresno—East Drummond	186
	Fresno—First Street	193
	Fresno—Clovis	155
	Bakersfield—Golden State Hwy	205
	Bakersfield—California Ave	186
	Oildale	158
January 3, 2001	Bakersfield—California Ave	190
January 7, 2001	Bakersfield—Golden State Hwy	174
	Bakersfield—California Ave	159
	Corcoran	165
	Hanford	185
November 9, 2001	Hanford	155

IV. Final Action

EPA is finding that the San Joaquin Valley failed to attain the annual and 24-hour PM–10 NAAQS by the December 31, 2001 attainment deadline as reflected in revised Tables 1 and 2 above.

Under section 189(d) of the Act, serious PM–10 nonattainment areas that fail to attain are required to submit within 12 months of the applicable attainment date, "plan revisions which provide for attainment of the PM–10 air quality standards and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area." Since the applicable attainment date was December 31, 2001, the deadline for this plan revision is December 31, 2002.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action in and of itself establishes no new requirements, it merely notes that the air quality in the San Joaquin Valley did not meet the federal health standards for PM–10 by the CAA deadline. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not in and of itself establish new requirements, EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a), 179(d), and 189(d) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)). Therefore, today's final action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not in and of itself create any new requirements and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. Because this finding of failure to attain is a factual determination based on air quality considerations, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

[3] As discussed above, EPA estimates total exceedances pursuant to Part 50, Appendix K when there is incomplete monitored data.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 16, 2002.

Keith Takata,

Acting Regional Administrator, EPA Region 9.

[FR Doc. 02–18589 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–P–7612]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Sebastian (01–06–1837P).	City of Fort Smith.	June 12, 2002; June 19, 2002; *Southwest Times Record.*	The Honorable C. Raymond Baker, Mayor, City of Fort Smith, P.O. Box 1908, Fort Smith, AR 72902.	May 31, 2002	055013
Illinois:					
Will (02–05–2034P).	City of Joliet	June 20, 2002; June 27, 2002; *Farmers Weekly Review.*	The Honorable Arthur Schultz, Mayor, City of Joliet, Municipal Building, 150 West Jefferson Street, Joliet, IL 60432.	September 26, 2002 ..	170702
Cook (01–05–3763P).	Village of Palos Park.	May 1, 2002; May 8, 2002; *Daily Southtown.*	The Honorable Jean Moran, Mayor, Village of Palos Park, 8999 West 123rd Street, Palos Park, IL 60464.	August 7, 2002	170144
Will (02–05–2034P).	Village of Plainfield.	June 19, 2002; June 26, 2002; *The Enterprise.*	Mr. Richard Rock, Village President, Village of Plainfield, 530 West Lockport Street, Suite 206, Plainfield, IL 60544.	September 25, 2002 ..	170771
Will (02–05–2034P).	Unincorporated Areas.	June 19, 2002; June 25, 2002; *The Herald News.*	Mr. Joseph Mikan, County Executive, Will County, 302 North Chicago Street, Joliet, IL 60432.	September 24, 2002 ..	170695
Michigan: Wayne (01–05–2843P).	Township of Canton.	July 11, 2002; July 18, 2002; *Michigan Community Newspapers.*	Mr. Thomas Yack, Township Supervisor, Township of Canton, 1150 South Canton Center, Canton, MI 48188.	June 14, 2002	260219
Minnesota:					
Dakota (01–05–2461P).	City of Lakeville	May 1, 2002; May 8, 2002; *The Lakeville Sun-Current.*	Mr. Robert Erickson, Lakeville City Administrator, 20195 Holyoke Avenue, Lakeville, MN 55044.	August 7, 2002	270107
Dakota (02–05–0298P).	City of Lakeville	May 22, 2002; May 29, 2002; *The Lakeville Sun-Current.*	Mr. Robert Erickson, Lakeville City Administrator, 20195 Holyoke Avenue, Lakeville, MN 55044.	August 28, 2002	270107
Lyon (02–05–1586P).	City of Marshall	May 24, 2002; May 31, 2002; *Marshall Independent.*	The Honorable Robert Byrnes, Mayor, City of Marshall, 344 West Main Street, Marshall, MN 56258.	August 30, 2002	270258
Missouri: Howell (00–07–791P).	City of West Plains.	June 21, 2002; June 28, 2002; *West Plains Daily Quill.*	The Honorable Joe Paul Evans, Mayor, City of West Plains, P.O. Box 710, West Plains, MO 65775.	December 6, 2002	290166
Ohio:					
Lorain (02–05–1841P).	City of Avon Lake.	May 23, 2002; May 30, 2002; *The Sun.*	The Honorable Robert Berner, Mayor, City of Avon Lake, 150 Avon-Belden Road Avon Lake, OH 44012.	August 28, 2002	390602
Cuyahoga (01–05–542P).	City of Parma Heights.	May 2, 2002; May 9, 2002; *Parma Sun Post.*	The Honorable Paul Cassidy, Mayor, City of Parma Heights, 6281 Pearl Road, Parma Heights, OH 44130.	August 8, 2002	390124
Franklin and Delaware (02–05–1465P).	City of Westerville.	May 22, 2002; May 29, 2002; *Westerville News and Public Opinion.*	The Honorable Stewart Flaherty, Mayor, City of Westerville, 21 South State Street, Westerville, OH 43081.	August 28, 2002	390179
Oklahoma:					
Tulsa (01–06–701P).	City of Bixby	April 25, 2002; May 2, 2002; *Bixby Bulletin.*	The Honorable Joe Williams, Mayor, City of Bixby, 116 West Needles Street, Bixby, OK 74008.	August 1, 2002	400207
Oklahoma, Candian, Cleveland, McClain, and Pottawatomie (01–06–2001P).	City of Oklahoma	June 18, 2002; June 25, 2002; *The Daily Oklahoman.*	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, OK 73102.	September 24, 2002	405378
Texas:					
Collin (02–06–1539).	City of Allen	May 29, 2002; June 5, 2002; *The Allen American.*	The Honorable Steve Terrell, Mayor, City of Allen, One Allen Civic Plaza, Allen, TX 75013.	September 4, 2002 ...	480131
Collin (01–06–820P).	City of Allen	June 12, 2002; June 19, 2002; *The Allen American.*	The Honorable Stephen Terrell, Mayor, City of Allen, One Allen Civic Plaza, Allen, TX 75013.	September 18, 2002	480131

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Travis (02–06–826P).	City of Austin	April 30, 2002; May 7, 2002; *Austin American Statesman.*	The Honorable Kirk P. Watson, Mayor, City of Austin, 124 West 8th Street, Austin, TX 78701.	August 6, 2002	480624
Travis (01–06–338P).	City of Austin	May 31, 2002; June 7, 2002; *Austin American Statesman.*	The Honorable Gus Garcia, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	September 6, 2002 ...	480624
Bexar (02–06–761P).	Unincorporated Areas.	May 9, 2002; May 16, 2002; *San Antonio Express-News.*	The Honorable Nelson W. Wolff, Judge, Bexar County, 100 Dolorosa, Suite 120, San Antonio, TX 78205.	August 15, 2002	480035
Bexar (01–06–1795P).	Unincorporated Areas.	May 24, 2002; May 31, 2002; *San Antonio Express News.*	The Honorable Nelson W. Wolff, County Judge, Bexar County, 100 Dolorosa, Suite 120, San Antonia, TX 78205.	August 30, 2002	480035
Brazos (02–06–031P).	City of College Station.	May 24, 2002; May 31, 2002; *The Bryan/College Station Eagle.*	The Honorable Lynn McIlhaney, Mayor, City of College Station, P.O. Box 9960, College Station, TX 77842–9960.	August 30, 2002	480083
Denton (02–06–276P).	City of Denton ...	May 22, 2002; May 29, 2002; *Denton Record Chronicle.*	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	May 2, 2002	480194
Tarrant (01–06–982P).	City of Fort Worth.	June 7, 2002; June 14, 2002; *Fort Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall 1000 Throckmorton Street, Fort Worth, TX 76102.	September 13, 2002 ..	480596
Gillespie (00–06–1860P).	City of Fredericksburg.	May 22, 2002; May 29, 2002; *Fredericksburg Standard Radio Post.*	The Honorable Tim Crenweldge, Mayor, City of Fredericksburg, 126 West Main Street, Fredericksburg, TX 78624–3708.	August 28, 2002	480252
Dallas (02–05–151P).	City of Garland ..	May 2, 2002; May 9, 2002; *Garland Morning News.*	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, TX 75046–9002.	August 8, 2002	485471
Hood (02–06–198P).	City of Granbury	May 30, 2002; June 6, 2002; *Hood County News.*	The Honorable David Southern, Mayor, City of Granbury, P.O. Box 969, Granbury, TX 76048.	September 5, 2002 ...	480357
Dallas (01–06–1213P).	City of Glenn Heights.	May 22, 2002; May 29, 2002; *Focus Daily News.*	The Honorable Mary Coffman, Mayor, City of Glenn Heights, 1938 South Hampton, Glenn Heights, TX 75154.	August 28, 2002	481265
Hidalgo (02–06–715P).	Unincorporated Areas.	June 20, 2002; June 27, 2002; *The Monitor.*	The Honorable Jose E. Pulido, County Judge, Hidalgo County, 100 E. Cano Street, Edinburg, TX 78539.	May 30, 2002	480334
Hood (02–06–198P).	Unincorporated Areas.	May 30, 2002; June 6, 2002; *Hood County News.*	The Honorable Linda Steen, Judge, Hood County, 100 East Pearl Street, Granbury, TX 76048.	September 5, 2002 ...	480356
Tarrant, (01–06–1481P).	City of Hurst	May 24, 2002; May 31, 2002; *Dallas Morning News.*	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	April 30, 2002	480601
Gregg and Harrison (02–06–512P).	City of Longview	May 10, 2002; May 17, 2002; *Longview News Journal.*	The Honorable Earl Roberts, Mayor, City of Longview, P.O. Box 1952, 300 West Cotton Street, Longview, TX 75606.	August 16, 2002	480264
Collin (01–06–1229P).	City of McKinney	May 7, 2002; May 14, 2002; *McKinney Courier-Gazette.*	The Honorable Don Dozier, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	August 13, 2002	480135
Montgomery (02–06–763P).	Unincorporated Areas.	May 1, 2002; May 8, 2002; *The Courier.*	The Honorable Alan B. Sadler Judge, Montgomery County, 301 North Thompson Street, Suite 210, Conroe, TX 77301.	August 7, 2002	480483

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 15, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–18528 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator of the Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
Iowa	Marshall County (Unincorporated Areas) (FEMA Docket No. 7605).	Iowa River		*861 to *881
Maps are available for inspection at the Marshall County Courthouse, 1 East Main Street, Marshalltown, Iowa.				
Kansas	Winfield (City), Cowley County (FEMA Docket No. 7603).	Walnut River	At 0.9 mile downstream of 14th Avenue	*1126
			At approximately 0.4 mile upstream of Highway 160.	*1130
			At approximately 1.5 miles upstream of Highway 160.	*1133
		Black Crook Creek	Just upstream of Joel Mack Road	*1120
			At approximately 0.7 mile upstream of Joel Mack Road.	*1120
Maps are available for inspection at the Public Works/Engineering Department, City Hall, 200 East Ninth Avenue, Winfield, Kansas.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
Minnesota	Vadnais Heights (City), Ramsey County (FEMA Docket No. 7605).		Pond west of McMenemy Road, north of Meadowood Lane, and southeast Foothill Trail.	*889
			Ponding area northeast of the intersection of McMenemy Road and Commerce Court.	*892
			Ponding area north of Commerce Court and south of Oak Grove Parkway and west of SOO Line Railroad.	*904
			Ponding area north of Oak Grove Parkway approximately 1,500 feet east of its intersection with McMenemy Road.	*918
	Vadnais Heights (City), Ramsey County (FEMA Docket No. 7605).		Ponding area east of the SOO Line Railroad, north of Spring Hill Road and west of Morningside Avenue.	*912
			Pond north of Willow Grove Lane and west of Greenhaven Drive.	*915
			Pond north of Clearbrook Lane, east of Bramblewood Avenue, west of Evergreen Drive and South of Birch Ridge Road.	*920
			Pond north of Heritage Court East and South of Valley Oaks Road.	*941
			Ponding area south of Westfield Lane, east and north of Oakcrest Drive and north of South Oak Drive.	*902
			Ponding area south of North Oak Drive, west of Thornhill Lane, and North of County Road "F".	*898
			Ponding area south of Bridgewood Terrace, east of Thornhill Lane and west of Centerville Road.	*907
			Ponding area north of County Road "F", east of Thornhill Lane and west of Centerville Road.	*901
	Vadnais Heights (City), Ramsey County (FEMA Docket No. 7605).		Ponding area along Edgerton Street south of Bear Avenue North and north of Stockdale Road.	*897
			Ponding area along Arcade Street and Stockdale Road south of County Road "F", north of Kohler Road, east of Stockdale Drive and west of Centerville Road.	*896
			Ponding area east of Interstate 35E, south of the Burlington Northern Railroad, west of Labore Road and north of County Road "E".	*908
			Ponding area north of Hiawatha Avenue, west of Greenbrier Street, and south of the Burlington Northern Railroad.	*904
			Ponding area east of Centerville Road, and north of Vadnais Road.	*900
			Pond south of Manor Street and north of Interstate 694.	*909
			Ponds south of Vadnais Center Drive, east of Interstate 35 and west of the interstate 35 and west of the intersection of Labore Road and Willow Lake Boulevard.	*915
	Vadnais Heights (City), Ramsey County (FEMA Docket No. 7605).		Willow Lake	*884
			Ponding area south of County Road "E", east of Montmorency Street and north of Willow Lake Boulevard.	*949

Maps are available for inspection at City Hall, 800 East County Road E, Vadnais Heights, Minnesota.

Missouri	Madison County, (Unincorporated Areas) (FEMA Docket No. 7605).	Little St. Francis River.	Approximately 8,550 feet downstream of West Main Street.	*703

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
			Approximately 3,960 feet downstream of the Missouri Pacific Railroad.	*716
		Saline Creek	Approximately 530 feet upstream of the abandoned Railroad Spur.	*718
			Approximately 2,510 feet upstream of the abandoned Railroad Spur.	*726
		Village Creek	Just downstream of Catherine Mine Road.	*707
			Just downstream of the Missouri Pacific Railroad.	*709
Maps are available for isnpection at the Madison County Courthouse, #1 Courthouse Square, Fredericktown, Missouri.				
Texas	Leona (Town), Leon County (FEMA Docket No. 7605).	Adkisson Branch	.....	*298 to 325
		Leona Branch	.....	*300 to 356
		Leona Branch Tributary 1.	.....	*315 to 349
		Leona Branch Tributary 2.	.....	*299 to 315
Maps are available for inspection at City Hall, Highway 75, Leona, Texas..				

*National Geodetic Vertical Datum.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 15, 2002.

Robert F. Shea, Jr.

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–18527 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–263; DA 02–1474]

Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal of petitions for reconsideration.

SUMMARY: This document dismisses two petitions for reconsideration involving customer service standards adopted pursuant to the Cable Television Consumer Protection and Competition Act of 1992.

FOR FURTHER INFORMATION CONTACT: John Norton, Policy Division, Media Bureau, (202) 418–7037, TTY (202) 418–2989 or *jnorton@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Order of Dismissal ("*Order*") in MM 92–263; DA 02–1474, adopted June 20, 2002 and released June 24, 2002. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.*

Synopsis of Order

Pursuant to Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), Public Law 102–385, the Commission established customer service standards which are subject to enforcement by local franchising authorities. **Federal Register** document published on April 19, 1993, 58 FR 21107, 47 CFR 76.309. Petitions seeking reconsideration of the adoption of particular aspects of the customer service standards were filed by the National Cable & Telecommunications Association (NCTA) and the Coalition of Small System Operators (Coalition). Due to the passage of time, and with no objections put forth by petitioners, we are dismissing the NCTA and Coalition petitions without prejudice.

Federal Communications Commission.

W. Kenneth Ferree,

Chief, Media Bureau.

[FR Doc. 02–18349 Filed 7–22–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1502

[Docket No. TSA–2002–12742]

RIN 2110–AA02

Responsibilities of the Under Secretary of Transportation for Security

AGENCY: Transportation Security Administration, DOT.

ACTION: Final rule.

SUMMARY: In this final rule, the Transportation Security Administration (TSA) states the responsibilities of the Under Secretary of Transportation for Security and designates the Deputy Under Secretary of Transportation for Security/Chief Operating Officer as the "first assistant" to the Under Secretary of Transportation for Security for purposes of the Federal Vacancies Reform Act of 1998. As "first assistant," the Deputy Under Secretary of Transportation for Security/Chief Operating Officer serves as the Acting Under Secretary of Transportation for

Security when the Under Secretary of Transportation for Security dies, resigns, or is otherwise unable to perform the functions and duties of the office.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: David K. Tochen, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law, Department of Transportation, 400 Seventh Street, SW., Room 10102, Washington, DC 20590; Telephone: (202) 366–9153.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Boards Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov*. You can also view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov*). On that webpage, click on "search." On the next page, type in the four-digit docket number shown on the first page of this document. Then click on "search."

Background

The Aviation and Transportation Security Act, Public Law 107–71, enacted into law on November 19, 2001, established the Transportation Security Administration (TSA) as a new operating administration within the Department of Transportation. The TSA is headed by the Under Secretary of Transportation for Security. As specified in the Aviation and Transportation Security Act, the Under Secretary of Transportation for Security is responsible for security in all modes of transportation, including carrying out chapter 449 of title 49 of the United States Code, relating to civil aviation security and related research and development activities. This rule states the responsibilities of the Under Secretary of Transportation for Security.

This rule also provides that the Deputy Under Secretary of Transportation for Security/Chief Operating Officer shall serve as the "first assistant" to the Under Secretary of Transportation for Security within the meaning of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d. The Federal Vacancies Reform Act provides that in the event of a vacancy in an office headed by an officer whose appointment is required to be made by the President, with the advice and consent of the Senate, the "first assistant" shall perform the functions and duties of the vacant position in an acting capacity and on a temporary basis, subject to certain narrow exceptions. Since the Aviation and Transportation Security Act did not establish a "first assistant" to the Under Secretary of Transportation for Security within TSA, the Secretary of Transportation is authorized to designate a "first assistant" and hereby does so by this action.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553 and, as such, it may be made effective in less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d). The Regulatory Flexibility Act does not apply to this rulemaking since, under 5 U.S.C. 553, the Department is not required to publish a notice of proposed rulemaking. However, we note that this rule does not have a significant economic impact on a substantial number of small entities since it relates to DOT management, procedures, and practice. This rule is not considered to be a rule within the meaning of section 3(d) of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget pursuant to that Order. Finally, the rule does not have federalism implications under Executive Order 13132.

List of Subjects in 49 CFR Part 1502

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies).

Issued this 17th day of July, 2002, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

In consideration of the foregoing, a new part 1502 consisting of "1502.1 is added to Title 49 in chapter XII, subchapter A, of the Code of Federal Regulations, to read as follows:

PART 1502—ORGANIZATION, FUNCTIONS, AND PROCEDURES

Authority: 5 U.S.C. 3345, 49 U.S.C. 114, 40119, 44901–44907, 44913–44914, 44916–44920, 44935–44936, 44942, 46101–46105, 45107, 46110.

1502.1 Responsibilities of the Under Secretary of Transportation for Security.

(a) The Under Secretary of Transportation for Security is responsible for the planning, direction, and control of the Transportation Security Administration (TSA) and for security in all modes of transportation. The Under Secretary of Transportation for Security's responsibility includes carrying out chapter 449 of title 49, United States Code, relating to civil aviation security, and related research and development activities, and security responsibilities over other modes of transportation that are exercised by the Department of Transportation.

(b) The Deputy Under Secretary of Transportation for Security/Chief Operating Officer is the "first assistant" to the Under Secretary of Transportation for Security for purposes of the Federal Vacancies Reform Act of 1998, and shall, in the event the Under Secretary of Transportation for Security dies, resigns, or is otherwise unable to perform the functions and duties of the office, serve as the Acting Under Secretary of Transportation for Security, subject to the limitations in the Federal Vacancies Reform Act of 1998. In the event of the absence or disability of both the Under Secretary of Transportation for Security and the Deputy Under Secretary of Transportation for Security/Chief Operating Officer, officials designated by TSA's internal order on succession shall serve as Acting Deputy Under Secretary of Transportation for Security/Chief Operating Officer and shall perform the duties of the Under Secretary of Transportation for Security, except for any non-delegable statutory and/or regulatory duties.

[FR Doc. 02–18524 Filed 7–18–02; 11:46 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 67, No. 141
Tuesday, July 23, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

[Doc. # CN–01–004]

RIN 0581–ACOO

Revision of Regulations for Determining Price Quotations for Spot Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service is proposing to amend the regulation concerning designation of the spot markets used to calculate differences for tenderable qualities delivered against cotton futures contracts. The re-designated spot markets will better reflect the trading value of tenderable qualities. Presently, regulations provide for the Secretary of Agriculture to determine and designate spot markets from which spot cotton price information can be collected. Currently, there are seven designated markets that qualify under the Cotton Futures Act requirements and five of those are designated to determine differences for the settlement of futures contracts. The Commodity Futures Trading Commission, in an effort to better reflect market transparency, approved a request from the New York Board of Trade that the spot markets used to calculate commercial differences in Cotton Futures Exchange deliveries be re-designated. The requested changes were as follows: Replace the South Delta quote with the West Texas quote; and replace the North Delta quote with the average of the combined North and South Delta quotes. Including West Texas quotes and combining and averaging North and South Delta quotes provides a more accurate reflection of cotton that is traded for cotton futures contracts.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to: *cottoncomments@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments will be available for public inspection at Cotton Program, AMS, USDA, Room 2641–S, 1400 Independence Avenue, SW., Washington, DC 20250 during regular business. A copy of this notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm*.

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *norma.mcdill@usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities.

The New York Cotton Future Market traders include the entire cotton industry: farmers, merchants, and textile mill owners. There are an estimated 3,000 traders. This proposed rule would affect all such traders. The majority of the traders are small businesses under the criteria established by the Small Business Administration. Amending the regulations to change the designated spot markets for determining tenderable differences will not significantly affect small businesses as defined under the RFA because:

(1) The information gathered will be more reflective of the cotton traded for cotton futures contracts and add more transparency to the market;

(2) The competitive position or market access of small entities in the cotton industry would not be affected;

(3) No new costs would be imposed on the affected industry.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0029 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Background

The Secretary of Agriculture is authorized under the U.S. Cotton Futures Act (7 U.S.C. 15b) to make such regulations as determined necessary to carry out the provisions of the Act. The Act provides for the designation of at least five bona fide spot markets from which spot cotton price information can be collected. Presently, there are seven such designated markets that qualify under the Cotton Futures Act requirements. The seven designated markets are as follows: Southeastern, North Delta, South Delta, East Texas and Oklahoma, West Texas, Desert Southwest and San Joaquin Valley. For the purposes of determining settlement of futures contracts five of the seven spot markets are used. They are Southeastern, North Delta, South Delta, East Texas and Oklahoma, and Desert Southwest. The Cotton Program of the Agricultural Marketing Service provides market information from these spot markets under the Cotton Statistics and Estimates Act (7 U.S.C. 473b) and the

Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)).

The Commodity Futures Trading Commission, in an effort to better reflect market transparency, approved a request from the New York Board of Trade to change the spot markets used to calculate commercial differences in Cotton Futures Exchange deliveries. This proposed rule would change the designation of the spot markets which are used daily to calculate price differences for cotton futures contracts. The current designations were published in the **Federal Register** on August 4, 1988 (53 FR 29327). As previously stated, differences are quoted for those qualities of cotton which are tenderable on active futures contracts in five designated markets. These differences are averaged to obtain the differences quoted for futures settlement.

This proposed rule would provide that differences would continue to be quoted for those qualities of cotton which are tenderable on active futures contracts in all of the five markets currently designated for this purpose. However, the West Texas spot market would be added as a bone fide spot market for the settlement of futures contracts, and the North Delta and South Delta spot markets would be combined and averaged together when used for this purpose of calculating differences of tenderable qualities for the settlement of futures contracts. This proposed rule would change the calculation of differences of tenderable qualities for the settlement of futures contracts to be the average of the differences of (1) the Southeastern spot market; (2) the East Texas/Oklahoma spot market; (3) the West Texas spot market; (4) the Desert Southwest spot market; and (5) the combination and averaging of the North Delta and South Delta spot markets. The remaining designated spot markets would not change. These proposed modifications are expected to more accurately reflect the trading value of tenderable cotton on futures contracts and add more transparency in the market.

List of Subjects in 7 CFR Part 27

Commodity futures, Cotton.

For the reasons set forth in the preamble, 7 CFR Part 27 is proposed to be amended as follows:

PART 27—[AMENDED]

1. The authority citation for 7 CFR part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. Section 27.94 is amended by revising paragraph (a) to read as follows:

§ 27.94 Spot markets for contract settlement purposes.

(a) For cotton delivered in settlement of any No. 2 contract on the New York Cotton Exchange:

Southeastern, North and South Delta, Eastern Texas and Oklahoma, West Texas, and Desert Southwest.

* * * * *

Dated: July 15, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18255 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 945 and 980

[Docket No. FV00–945–2 PR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, OR, and Irish Potatoes Imported into the United States; Proposed Modification of Handling and Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the reference to Norgold variety potatoes from the handling regulation issued under the marketing order for Idaho-Eastern Oregon potatoes. The Norgold variety is specifically referenced to establish less restrictive maturity requirements for early season shipments. Norgold variety potatoes are no longer produced in the production area covered under the marketing order and the less restrictive requirements are not needed. As required under section 608e of the Agricultural Marketing Agreement Act of 1937, the maturity requirements for potato imports would be changed accordingly.

DATES: Comments must be received by September 23, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–5698, or e-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert Curry, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule also is issued under § 608e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before

parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under § 608e of the Act.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of potatoes. Section 945.341 establishes minimum maturity and pack requirements for potatoes handled subject to the order. Current requirements provide, in part, that all potatoes packed in cartons shall be inspected and certified as meeting U.S. No. 1 grade or better. All varieties shall meet the maturity requirement of slightly skinned (except the Norgold variety from August 1–15, and the White Rose and red skinned varieties from August 1–December 31 can be moderately skinned). During other periods of the year, the White Rose and red skinned varieties are not subject to maturity requirements. Size shall be conspicuously marked on all cartons (except when used as a master container). The grade requirements are based on the U.S. Standards for Grades of Potatoes (7 CFR 51.1540–51.1566), and the size must be marked consistent with § 51.1545 of the standards.

This rule would remove the reference to Norgold variety potatoes from the maturity requirements in the handling regulation. The Norgold variety is specifically referenced to establish less restrictive maturity requirements for early season shipments. Norgold variety potatoes are no longer produced in the production area covered under the marketing order. As required under § 608e of the Act, the maturity requirements for potato imports would change accordingly. This rule would also remove outdated language and make other conforming changes to the handling and import regulations.

The Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the order, met on November 9, 1999, and unanimously recommended the removal of reference to Norgold variety potatoes from the handling regulations.

Currently, the Norgold variety of potatoes is specifically referenced in the handling regulations so a less restrictive maturity requirement (moderately skinned) can be applied during a 15-day period (August 1–August 15) at the beginning of each shipping season. This proposed rule would remove the reference to Norgold potatoes as a separate variety from the minimum maturity requirements of the handling regulations. The Committee recommended this change in the regulations because Norgold variety potatoes are no longer produced in the production area.

Production of this long type variety was discontinued due in part to the Norgold variety's inherent propensity to have lighter, thinner skin early in the season compared to the varieties produced today. Newer replacement varieties are less prone to early season maturity problems, which enables the industry to maintain a consistent maturity level throughout the entire shipping season.

In addition, buyers are accustomed to long type potatoes having a higher maturity level than this minimum requirement allowed. To meet buyer expectations, all varieties of long type potatoes currently produced are required to be of a higher maturity level (slightly skinned) throughout the marketing year. The degree of skinning or maturity is differentiated by the amount of loss of the outer surface or skin layer. "Slightly skinned" means that up to 10 percent of the potatoes in any inspected lot can have one-fourth of the outer skin missing, while "moderately skinned" potatoes can have one-half of the skin missing.

This proposed change would not have any economic impact upon producers or handlers, but would simply update the current handling regulations to recognize that the Norgold variety is no longer being produced within the production area.

As mentioned earlier, § 608e of the Act requires that, when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 608e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must then meet the minimum requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under the order since it was established. The current import regulation in § 980.1 specifies that import requirements for long type potatoes be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, during each month of the marketing year. This proposal would remove reference to Norgold variety potatoes from the maturity requirements of the handling regulation.

While no changes are required in the language of § 980.1, imports of Norgold variety potatoes from August 1–15 would be required to meet the modified maturity requirement of "slightly skinned." This proposal is not expected to have any economic impact upon importers. Nearly all potato imports come from Canada, and representatives of USDA's Market News Service have indicated that their contacts in Canada have reported that Norgold variety potatoes are no longer commercially produced in Canada.

This proposed rule also removes § 945.130 of the rules and regulations which is obsolete, and revises and updates language in § 980.1, Import regulations; Irish potatoes. Sections 945.22 and 945.23 of the order, regarding committee membership districts within the production area and redistricting and committee reapportionment, were amended on June 5, 1995 (60 FR 29724), and § 945.130 is no longer needed. In addition, this rule would remove references in the potato import regulation to the terminated marketing orders for Red River Valley and Maine potatoes, remove outdated language regarding import regulations in effect during 1970 and 1971, update the list and addresses of inspection offices for imports, and update the references in the import regulation to government agencies.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 63 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the order and about 1,600 potato producers in the regulated area. There are approximately 161 importers of potatoes. Small agricultural service firms, which include potato handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. A majority of these handlers, importers, and producers may be classified as small entities.

This rule would remove the reference to Norgold variety potatoes from the maturity requirements in the handling regulation. The Norgold variety is specifically referenced to establish less restrictive maturity requirements for early season shipments. Norgold variety potatoes are no longer produced in the production area covered under the marketing order. As required under § 608e of the Act, the maturity requirements for potato imports would be changed accordingly.

The Committee met on November 9, 1999, and unanimously recommended the removal of the reference to Norgold variety potatoes from the handling regulations.

Currently, the Norgold variety of potatoes is specifically referenced in the handling regulations so a less restrictive maturity requirement (moderately skinned) can be applied during a 15-day period (August 1–15) at the beginning of each shipping season. This proposed rule would remove the reference to Norgold potatoes as a separate variety from the minimum maturity requirements of the handling regulations. The Committee recommended this change in the regulations because Norgold variety potatoes are no longer produced in the production area. In addition, buyers have become accustomed to long type potatoes (such as Norgold variety potatoes) having a higher maturity level than this minimum requirement allowed. To meet buyer expectations, all varieties of long type potatoes currently produced are required to be of a higher maturity level (slightly skinned) throughout the marketing year. "Slightly skinned" means that up to 10 percent of the potatoes in any inspected lot can have one-fourth of the outer skin missing, while "moderately skinned" potatoes can have one-half of the skin missing. This proposed change would not have any economic impact upon producers or handlers, but would simply update the current handling regulations to recognize that the Norgold variety is no longer being produced within the production area.

As mentioned earlier, section 608e of the Act requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. The current import regulation specifies that import requirements for long type potatoes be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, during each month of the marketing year. This proposal would remove reference to Norgold variety potatoes from the maturity requirements of the handling regulation. While no changes are required in the language of § 980.1, imports of Norgold variety potatoes from August 1–15 would be required to meet the modified maturity requirement of "slightly skinned."

This proposal is not expected to have an economic impact upon importers. There are no potato imports during the period of August 1–15. In addition, representatives of the USDA Market News Service have indicated that their contacts in Canada have reported that Norgold variety potatoes are no longer commercially produced in Canada. Nearly all potato imports come from Canada, but there are no shipments until the latter part of September.

The removal of the references to Norgold variety potatoes is not expected to impose any additional costs on handlers, importers, or producers.

As alternatives to the proposal, the Committee discussed leaving the handling regulation as currently issued. The Committee rejected this idea because it would have left outdated language in the rules and regulations.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large potato handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Further, the Committee's meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 9, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 608e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth above, 7 CFR parts 945 and 980 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 945 and 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

§ 945.130 [Removed]

2. Section 945.130 is removed.

§ 945.341 [Amended]

3. In § 945.341, paragraph (b)(2) is removed, and paragraphs (b)(3) and

(b)(4) are redesignated as paragraphs (b)(2) and (b)(3), respectively.

PART 980—VEGETABLES; IMPORT REGULATIONS

4. Section 980.1 is amended as follows:

a. Revise paragraphs (a)(1)(i), (a)(2)(ii), (b)(2), (e), (f), and (g)(1)(ii).

b. Redesignate paragraph (i) as paragraph (j).

c. Redesignate paragraphs (h)(1) and (h)(2) as paragraphs (i)(1) and (i)(2) and revise newly designated paragraphs (i)(1) and (i)(2). The revisions read as follows:

§ 980.1 Import regulations; Irish potatoes.

* * * * *

(a) * * *

(1) * * *

(i) Grade, size, quality, and maturity regulations have been issued from time to time pursuant to the following marketing orders: No. 945 (part 945 of this chapter), No. 948 (part 948 of this chapter), No. 947 (part 947 of this chapter), No. 946 (part 946 of this chapter), and No. 953 (part 953 of this chapter).

* * * * *

(2) * * *

(ii) Imports of all other round type potatoes during the period June 5 through July 31 are in most direct competition with the marketing of the same type of potatoes produced in the Southeastern States covered by Order No. 953 (part 953 of this chapter); and during the period of August 1 through June 4 of the following year they are in most direct competition with all other round type potatoes produced in Area No. 3, Colorado (Northern Colorado) covered by Marketing Order No. 948, as amended (part 948 of this chapter).

* * * * *

(b) * * *

(2) During the period June 5 through July 31 of each marketing year, the grade, size, quality, and maturity requirements of Marketing Order No. 953 (part 953 of this chapter) applicable to potatoes of the round type shall be the respective grade, size, quality, and maturity requirements for imports of other round type potatoes; and during the period August 1 through the following June 4 of each year the grade, size, quality, and maturity requirements of Area No. 3, Colorado (Northern Colorado) covered by Marketing Order No. 948, as amended (part 948 of this chapter) shall be the respective grade, size, quality, and maturity requirements for imports of all other round type potatoes.

* * * * *

(e) *Certified seed.* Certified seed potatoes shall include only those potatoes which are officially certified and tagged as seed potatoes by the Plant Health and Production Division, Plant Products Directorate, Canadian Food Inspection Agency, and which are subsequently used as seed.

(f) *Designation of governmental inspection services.* The Federal or Federal-State Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of Irish potatoes that are imported, or to be imported, into the United States under the provisions of § 608e of the Act.

(g) * * *

(1) * * *

(ii) Since inspectors may not be stationed in the immediate vicinity of a port, or point of entry, an importer of uninspected and uncertified Irish potatoes should make advance arrangements for inspection. Each importer should give at least the specified advance notice to one of the following applicable inspection offices prior to the time the Irish potatoes would be imported.

Ports and points	Inspection offices	Advance notice (days)
All Maine ports and points of entry	In-Charge, Post Office Box 1058, Presque Isle, ME 04767 (PH 207–764–2100)	1
Port of Boston, MA	In-Charge, Boston Market Terminal Building, Room 1, 34 Market Street, Everett, MA 02149 (PH 617–389–2480).	1
Port of New York, NY	In-Charge, 465B New York City Terminal Market, Bronx, NY 10474 (PH 718–991–7665).	1
Port of Philadelphia, PA	In-Charge, 210 Produce Building, 3301 South Galloway Street, Philadelphia, PA 19148 (PH 215–336–0845.	1
All other ports and points of entry.	Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, AMS, USDA, Washington, DC 20250 (PH 1–800–811–2373).	3

* * * * *

(i) *Definitions.* (1) For the purpose of this part potatoes meeting the requirements of Canada No. 1 grade and Canada No. 2 grade shall be deemed to comply with the requirements of the U.S. No. 1 grade and U.S. No. 2 grade, respectively, and the tolerances for size, as set forth in the U.S. Standards for Grades of Potatoes (§§ 51.1540 to 51.1556, inclusive of this title) may be used.

(2) *Importation* means release from the custody of the U.S. Customs Service.

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Dated: July 17, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18572 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

Insurance of State Banks Chartered as Limited Liability Companies

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: One of the statutory requirements for a State-chartered bank to be eligible for Federal deposit insurance is that it be "incorporated under the laws of any State." In the recent past the FDIC has received two inquiries regarding whether a State bank that is chartered as a limited liability company (LLC) could be considered to be "incorporated" for purposes of that requirement. The FDIC proposes to issue a regulation that would clarify that a bank that is chartered as an LLC under State law would be considered to be "incorporated" under State law if it meets certain criteria.

DATES: Written comments must be received on or before October 21, 2002.

ADDRESSES: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. Send facsimile transmissions to (202) 898–3838. Comments may be submitted electronically to *comments@FDIC.gov*. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–6759, or Robert C. Fick, Counsel, Legal Division, (202) 898–8962, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, the FDIC may grant deposit insurance only to depository institutions that are engaged in the business of receiving deposits other than trust funds.[1] The term "depository institution" is defined in the Federal Deposit Insurance Act (FDI Act) to mean any bank or savings association.[2] The term "bank" is also defined in the FDI Act to include any State bank.[3] Finally, "State bank" means

> any bank, banking association, trust company, savings bank, industrial bank * * * or other banking institution which—
>
> (A) is engaged in the business of receiving deposits other than trust funds * * * and
>
> (B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia (except a national bank), including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before August 9, 1989.[4]

Traditionally, the term "incorporated" has been applied such that only those legal entities that have been identified as corporations under State law have been considered eligible to become insured. However, recently, two banks have expressed interest in obtaining Federal deposit insurance for a State bank that would be chartered as an LLC. Proponents have argued specifically that the term "incorporated" should not be interpreted to preclude an LLC from becoming an insured depository institution. A common understanding of the term "incorporated" is "formed or constituted as a legal corporation."[5] In addition, Black's Law Dictionary defines "incorporate" as "to form a legal corporation."[6] The FDI Act provides no definition of the term "incorporated," and there is no judicial guidance on the meaning of "incorporated" as used in the FDI Act. Consequently, in view of the arguments offered regarding LLCs and the lack of direct legislative or judicial guidance, there is some ambiguity as to the meaning of the word "incorporated."

II. Corporations and Other Business Entities

At common law there were three types of business entities: proprietorships, partnerships and corporations. Proprietorships and partnerships had no existence separate and apart from their owners. Corporations, on the other hand, were created and existed by virtue of a grant of authority from the sovereign. Although there appears to be no universally accepted definition of "corporation," most definitions of the term are pervaded by the notion of "an 'artificial legal creation,' the continuance of which does not depend on that of the component persons, and the being or existence of which is owed to an act of state."[7] One of the earliest judicial definitions reflecting that notion is that enunciated in the 1819 case of *Trustees of Dartmouth College* v. *Woodward*.[8] In *Dartmouth College*, Chief Justice Marshall stated that

> [a] corporation is an artificial being, * * * existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it * * *. Among the most important are immortality and * * * individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual.[9]

Description of Four Corporate Attributes

There is also no universal agreement as to the characteristics generally attributed to a modern corporation. This may have resulted from the fact that the characteristics of a modern corporation have evolved over time[10] and also possibly from the fact that the nature of a corporation was subject to the varying notions of the individual State legislatures. However, it is generally accepted that there are four attributes of a corporation that distinguish it from other forms of business entities; they are: perpetual succession, centralized management, limited liability, and free transferability of interests.

Perpetual succession (also sometimes known as continuity of life) is not generally construed to mean immortality; rather perpetual succession means that the entity continues to exist independent of its owners. In the case of a corporation, the death or withdrawal of a shareholder does not terminate the existence of the corporation. Perpetual succession is an attribute that distinguishes corporations from partnerships because partnerships are created and exist by agreement of the partners. The death or withdrawal of a partner generally terminates the partnership.

Centralized management generally means that management of the entity is vested in a group of individuals appointed or elected by the owners; each owner, therefore, does not have the authority to directly participate in the management of the entity. In a partnership the general partner(s) manage the affairs of the partnership.

Limited liability means that an owner of the entity is generally not personally liable for the debts of the entity; rather, the maximum potential liability of an owner is generally limited to the owner's investment in the entity. In a corporation the shareholders of a corporation are generally not liable for the corporation's debts. This attribute also distinguishes a corporation from a partnership because in a partnership a general partner is fully liable for the debts of the partnership.

Free transferability of interests generally means that an owner of the entity may transfer an ownership interest in the entity without the consent or approval of the other owners. In a corporation a shareholder can generally transfer all or a part of his/her shares to another person without the consent or approval of the other shareholders. However, in closely-held

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[1] *See* 12 U.S.C. 1815.

[2] *See* 12 U.S.C. 1813(c)(1).

[3] *See* 12 U.S.C. 1813(a)(1).

[4] 12 U.S.C. 1813(a)(2).

[5] The Random House Dictionary of the English Language 968 (2d ed. 1987).

[6] Black's Law Dictionary 769 (7th ed. 1999).

[7] 1 William Meade Fletcher et al., Fletcher's Cyclopedia of the Law of Private Corporations § 4 (perm. ed., rev. vol. 2001).

[8] *Trustees of Dartmouth College* v. *Woodward*, 17 U.S. (4 Wheat.) 518 (1819).

[9] *Dartmouth College*, 17 U.S. at 636.

[10] *See* Douglas Arner, *Development of the American Law of Corporations to 1832*, 55 SMU Law Review 23, 43–54, 2002.

corporations, it is a common practice for shareholders to enter into agreements requiring a selling shareholder to obtain the prior approval of the remaining shareholders. In partnerships, a partner generally cannot transfer his/her interest without the consent of the other partners. However, even when the other partners consent, the original partnership technically is terminated, and a new partnership is created.[11]

Partnership Distinguished

In addition to the differences noted above, there are other characteristics that distinguish a corporation from a partnership. A generally accepted definition of a partnership is an association of two or more persons to carry on as co-owners a business for profit.[12] A principal distinction between a corporation and a partnership is that generally a partnership can be created by agreement among the co-owners, whereas a corporation requires a grant of authority from the State. In addition, a partnership, unlike a corporation, is not a legal entity separate from its owners. Because of this fact, for federal income tax purposes, the partnership's income is not taxed at the partnership level, but is attributed to the partners and taxed only at the individual partners' level. This feature of a partnership is sometimes called "pass-through tax treatment," and is generally considered to be a significant advantage over the tax treatment of a corporation's income. A corporation's income is said to be taxed twice, once at the corporation level, and again at the shareholders' level when the shareholders receive the corporation's income as dividends.

Internal Revenue Service Rules

Since the characterization of a business entity as a "corporation" has significant tax implications, the Internal Revenue Service (IRS) established rules to determine whether an entity would be taxed as a corporation or a partnership. Prior to its amendment in 1997, Treas. Reg. § 301.7701–2 classified an association of two or more persons who had the purpose of carrying on a business and dividing the profits as either a partnership or a corporation depending upon whether the association possessed more corporate characteristics than noncorporate characteristics. The four corporate characteristics that the IRS utilized were: continuity of life (perpetual succession), centralized management, limited liability, and free transferability of interests. Under the old IRS regulations, if an association possessed at least three of the four corporate characteristics, then it would be treated as a corporation for federal income tax purposes. As noted above, after 1996 the IRS no longer utilized the corporate characteristics test and now permits business entities that are not specifically classified as corporations in the regulation to elect partnership tax treatment.[13] In that regard, we note that one of the entities specifically classified as a corporation in the regulation is a "[s]tate-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act."[14] As a result, an FDIC-insured, State bank that is chartered as an LLC would not qualify for partnership tax treatment for Federal income tax purposes.

Subchapter S Corporations

In August 1996 Congress amended the Internal Revenue Code to allow eligible financial institutions to elect Subchapter S status for federal income tax purposes.[15] A principal advantage of such status is that a Subchapter S corporation is taxed the same as a partnership, *i.e.*, a Subchapter S corporation is entitled to pass-through tax treatment. There are, however, limits on both the number and type of shareholders permissible for a Subchapter S corporation. The maximum number of shareholders of a Subchapter S corporation is 75, and only individuals, estates, certain trusts, and certain tax-exempt organizations may be shareholders. Also, there can only be one class of stock in a Subchapter S corporation, and no nonresident aliens may be shareholders.[16]

Limited Liability Companies

Generally, an LLC is a business entity that combines the limited liability of a corporation with the pass-through tax treatment of a partnership.[17] Wyoming was the first State to authorize LLCs in 1977; since that time the remaining forty-nine States and the District of Columbia have all enacted LLC statutes.[18] Generally, LLC statutes were crafted to authorize a business entity that is neither a partnership nor a corporation, but an entity that has some of the more desirable features of each form of business organization.[19] As a result, an LLC has characteristics of both a partnership and a corporation. However, because an LLC is neither a partnership nor a corporation, State partnership laws and State corporation laws generally do not apply. For example, State corporation laws that require a board of directors, that specify how ownership interests (shares) may be issued, and that impose capital requirements generally do not apply to an LLC. LLC statutes generally allow the owners broad discretion in setting up an LLC. According to some legal scholars, "[w]hole bodies of corporate law doctrine * * * are rendered irrelevant" when an LLC is utilized.[20]

An LLC is established by filing articles of organization with the State. These articles are roughly equivalent to a corporation's articles of incorporation. Every LLC has an operating agreement which is a contract executed by the members that sets forth the manner in which the business of the LLC will be conducted. The operating agreement establishes the rights and liabilities of the members with respect to each other and with respect to the LLC. It contains provisions detailing such matters as the LLC's management structure, capital contributions, accounting, distributions, transfers of a member's interest, and dissolution. As used in many LLC statutes, a "member" of an LLC is a person who owns an interest in the LLC and is roughly equivalent to a shareholder of a corporation. Furthermore, a "member's interest" in an LLC is generally the member's ownership interest in the LLC, and a member's interest in an LLC is sometimes evidenced by a certificate which is roughly equivalent to a stock certificate of a corporation.

Consistency of the LLC Structure with Corporate Attributes

Many LLC statutes authorize entities that do not exhibit all of the four corporate attributes. First, some State LLC statutes require, or permit LLC members to provide in the operating agreement, that the LLC will automatically terminate, or dissolve, or that its operations will be suspended pending the consent of the remaining members, upon the death, disability, bankruptcy, withdrawal, or expulsion of a member, or upon the happening of some other specified event. These

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[11] *See* Fletcher, *supra* note 7, § 20.

[12] *See* Unif. Partnership Act, sec. 101(6) (1997), 6 U.L.A. 61 (Supp. 2002).

[13] *See* Treas. Reg. §§ 301.7701–2, 7701–3 (1997).

[14] Treas. Reg. § 301.7701–2(b)(5) (1997).

[15] *See* Small Business Job Protection Act, Pub. L. 104–188 § 1315, 26 U.S.C. 1361(b)(1996).

[16] *See Id.*

[17] *See* Mark A. Sargent & Walter D. Schwidetzky, Limited Liability Company Handbook § 1:3 (rev. 2002).

[18] *See Id.*

[19] *See* "Unif. Limited Liability Company Act," Prefatory Note, (amended 1996) 6A U.L.A. 426 (Supp. 2002).

[20] *See* Sargent & Schwidetzky, *supra* note 17, § 1:3.

automatic termination/dissolution/suspension provisions are inconsistent with the notion of perpetual succession because the continued existence and operation of the entity directly depends upon the existence of its owners. Second, some State LLC statutes require, or permit LLC members to provide in the operating agreement, that the LLC will be managed solely and directly by the members. Such member-management also tends to be inconsistent with the corporate attribute of centralized management (usually a board of directors) because there is no central management group (i) that has full authority to act for the entity, and (ii) that is not so large or so small as to present operational problems for the entity. Third, members of an LLC are generally not liable for the debts of the LLC in excess of the amount of their investment in the LLC and, therefore, generally have limited liability. Finally, some State LLC statutes require, or permit LLC members to provide in the operating agreement, either that LLC members may not transfer their interests in the LLC without the consent of the remaining members, or that a member may not transfer the managerial or voting rights that accompany membership without the consent of the remaining members. Such a provision tends to be inconsistent with the concept of free transferability of interests because the requirement for prior consent restrains or prevents the transfer of an ownership interest.

III. Interpretation of "Incorporated"

In resolving any ambiguity in a statute it is always helpful to try to determine what Congress intended by its choice of the particular words of the statute. In this case there is no legislative history that sheds any light on their intent. The phrase "incorporated under the laws of any State" first appeared in the definition of "State bank" with the Banking Act of 1935.[21] As noted above, there is also no judicial guidance on the meaning of "incorporated" as used in the FDI Act. In the absence of such guidance, the FDIC believes that it is reasonable to interpret the term "incorporated" in such a way as to aid the FDIC in carrying out the purposes of the FDI Act. Specifically, the FDIC believes that reviewing the corporate attributes, in light of the purposes of the FDI Act, may indicate a rational basis for applying the "incorporated" requirement and may further indicate which of the corporate attributes are necessary or desirable for purposes of determining which institutions qualify as "State banks."

Congress created the Federal Deposit Insurance Corporation in 1933 to restore and maintain public confidence in the nation's banking system. One of the principal purposes of the FDI Act is to promote the safety and soundness of the institutions whose deposits the FDIC insures.[22] Consequently, the FDIC is charged with maintaining public confidence in the nation's banking system and promoting the safety and soundness of the institutions that it insures.

As noted above, the attributes that are commonly identified as distinguishing a corporation from other forms of business organizations are: perpetual succession, centralized management, free transferability of interests, and limited liability.

Perpetual Succession

The first attribute, perpetual succession, is very important to the FDIC's efforts to promote public confidence in the nation's banking industry. An institution that automatically terminated, dissolved, or suspended operations upon the happening of some event would most likely have a substantial adverse effect on public confidence. A depositor in such an institution would have no way of knowing from one day to the next whether the institution will continue in existence, and whether he/she will be able to retrieve his/her money when desired. Furthermore, such an automatic termination, dissolution, or suspension feature would have a significantly adverse effect on the FDIC's efforts to resolve failed institutions. The FDIC is not only charged with promoting the safety and soundness of banking institutions, but is also charged with the duty of resolving failed institutions in an orderly, least costly manner. The FDIC would have no practical opportunity to plan and execute an orderly resolution of an institution that, without any warning or advance notice, was terminated or dissolved or whose operations were suspended. Most likely it would not be possible to arrange for a healthy institution to purchase the assets and assume the deposit liabilities of the failed institution in order to continue to serve the affected community with the least disruption. The cost of resolving such an institution would likely be significantly higher than necessary as a result. Depositors of the failed institution would be paid to the extent of their insured deposits, and then would have to open new accounts with another institution. Checks that were in transit at the time of the bank's failure, but that had not yet been paid, would be rejected. The disruption to the community would be substantial. Consequently, the FDIC believes that perpetual succession is an essential prerequisite for an insured depository institution, and that automatic termination/dissolution/suspension features are inconsistent with the FDIC's duties and the purposes of the FDI Act.

Centralized Management

Centralized management is also an important attribute. Centralized management in the form of a board of directors provides the FDIC with a discrete group of individuals who are capable of acting for, and representing, the institution in virtually all matters. The typical rights, liabilities, powers, and responsibilities of this group are well established. Management of an institution directly and solely by all of its owners presents a variety of problems both from an operational standpoint and from an enforcement standpoint. If there is a large group of owners, it may be excessively difficult to conduct business in a timely fashion. With a large group, activities such as coordinating meetings, providing every owner with information and notices, determining who represents the institution and the extent of his/her authority become substantial undertakings. If there are too few owners, the group may not provide sufficient management depth and expertise. Ensuring that the institution is run by experienced, competent management may be especially difficult if the owners do not happen to possess adequate banking experience and competence. Finally, removing an individual from a management position may be complicated when the manager is also an owner of the institution. Consequently, centralized management is also an important attribute for purposes of the FDI Act.

Limited Liability

Limited liability, of course, encourages investment in the enterprise. Potential owners are more likely to invest in an enterprise when their liability is limited to the amount of their investment. Attracting and maintaining sufficient capital helps to ensure an adequate cushion to protect an institution during periods of economic stress. Since banks and savings associations are subject to periods of economic stress just as other businesses are, the FDIC believes that the owners of banks and savings associations

[21] *See* Banking Act of 1935, Pub. L. 74–305, sec. 101, 49 Stat. 684.

[22] *See FDIC* v. *Philadelphia Gear Corp.*, 106 S. Ct. 1931, 1935 (1986).

should also have limited liability to encourage the maintenance of adequate capital.

Free Transferability of Ownership Interests

Finally, the free transferability of ownership interests also tends to aid in attracting and maintaining capital. Requiring the prior consent of the remaining owners in order to transfer an ownership interest impairs an institution's ability to attract additional investors. At worst, prior consent to a transfer limits the pool of available investors; at best, it delays the additional investment. While the FDIC currently insures approximately 700 mutual institutions (that issue no stock) and more than 1700 closely-held institutions (some of which may have stock-transfer restrictions in the form of shareholder agreements), the FDIC has substantial experience with their structure, operations, and capital maintenance capabilities. The FDIC has no similar experience with institutions organized as LLCs, and that lack of similar experience argues for facilitating, rather than impairing, the maintenance of a capital cushion.

In summary, the FDIC believes that all of the above four attributes that are peculiar to corporations are attributes that a State bank should have in order to be "incorporated" as used in the definition of "State bank" in the FDI Act. Therefore, a banking institution that is chartered as an LLC under the law of any State and that has all of the above four corporate attributes would be considered to be "incorporated" under the law of the State for purposes of the definition of "State bank." Furthermore, such a banking institution would be eligible to apply for Federal deposit insurance as a State bank under section 5 of the FDI Act, 12 U.S.C. 1815.

The proposed regulation reflects these conclusions. It provides generally that a banking institution that is chartered by a State as an LLC will be deemed to be "incorporated" if it has each of the four corporate attributes. The proposed regulation also specifies that for purposes of the FDI Act and the FDIC's regulations, an owner of an interest in an LLC is a "shareholder;" a manager of an LLC is a "director;" an officer of an LLC is an "officer;" and a certificate or other evidence of an ownership interest in an LLC is both "voting stock" and a "voting security." These provisions are intended to remove any ambiguity as to how the rest of the FDI Act and the FDIC's regulations apply to banking institutions chartered as LLCs.

IV. Request for Comments

The FDIC's Board of Directors (Board) is seeking comment on whether the agency should permit a State bank that is organized as an LLC to obtain Federal deposit insurance; whether use of some or all of the four corporate attributes is the most appropriate method of determining whether an institution is "incorporated;" and if not, how the term "incorporated" should be interpreted. The Board invites comments on all of the following questions:

1. Should the FDIC permit a State bank that is organized as an LLC to obtain Federal deposit insurance?

2. If so, should the FDIC interpret the term "incorporated" utilizing some, all, or none of the traditional four corporate attributes?

3. If the FDIC should not utilize any of the four corporate attributes, how should it interpret the term "incorporated?"

V. Paperwork Reduction Act

The proposed rule would not involve any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

VI. Regulatory Flexibilty Act

Pursuant to 5 U.S.C. 605(b) the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule describes the circumstances under which a banking institution that is chartered under State law as a limited liability company would be considered to be "incorporated" for purposes of the definition of "State bank" in 12 U.S.C. 1813(a)(2). It does not require any banking institution to organize as a limited liability company, and it imposes no new reporting, recordkeeping or other compliance requirements. Accordingly, the requirements relating to an initial and final regulatory flexibility analysis are not applicable.

VII. Impact on Families

The proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Foreign banking, Golden parachute payments, Reporting and recordkeeping requirements, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to amend part 303 of Title 12 of the Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

2. New § 303.15 is added to subpart A to read as follows:

§ 303.15 Certain limited liability companies deemed incorporated under State law.

(a) For purposes of the definition of "State bank" in 12 U.S.C. 1813(a)(2), a banking institution that is chartered as a limited liability company (LLC) under the law of any State is deemed to be "incorporated" under the law of the State, if:

(1) The LLC's existence is independent of the life or lives of its owner(s) and specifically is not subject to automatic termination, dissolution, or suspension upon the happening of some event including the death, disability, bankruptcy, expulsion, or withdrawal of an owner of the LLC;

(2) The LLC is managed by a board of managers or directors that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, responsibilities, and composition as, a board of directors of a State bank chartered as a stock corporation;

(3) Each ownership interest in the LLC, including all management rights and voting rights, is transferable without the consent of any other owner of the LLC; and

(4) Each owner of the LLC is not liable for the debts, liabilities, and obligations of the LLC in excess of the amount of the owner's investment.

(b) For purposes of the Federal Deposit Insurance Act and chapter III, title 12 of the Code of Federal Regulations:

(1) The term "shareholder" includes an owner of any interest in an LLC,

including a member or participant of an LLC;

(2) The term "director" includes a manager, director, or other person with substantially similar authority, of an LLC;

(3) The terms "voting stock" and "voting securities" each includes certificates or other evidence of ownership interests in an LLC; and

(4) The term "officer" includes an officer, or other person with substantially similar authority, of an LLC.

By order of the Board of Directors.

Dated at Washington, DC, this 12th day of July, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary/Supervisory Counsel.

[FR Doc. 02–18467 Filed 7–22–02; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt and Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to Pratt and Whitney (PW) model PW4000 series turbofan engines. That AD currently requires the number of PW4000 engines with potentially reduced stability margin to be limited to no more than one engine on each airplane, and removing engines that exceed high pressure compressor (HPC) cycles-since-overhaul (CSO) or cycles-since-new (CSN) from service based on the engine's configuration and category. That AD also requires establishing a minimum build standard for engines that are returned to service, and performing cool-engine fuel spike testing (Testing-21) on engines to be returned to service after having exceeded HPC cyclic limits or after shop maintenance.

This proposal would establish requirements similar to those in the existing AD, and would introduce a rules-based criterion to determine the engine category classification for engines installed on Airbus A300 airplanes. This proposal would also add new requirements to manage the engine configurations installed on Boeing 747 airplanes, and would require repetitive Testing-21 to be performed on certain configuration engines. This proposal would also establish criteria which would require Testing-21 on certain engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations. In addition, this proposal would re-establish high pressure compressor (HPC)-to-high pressure turbine (HPT) cycles-since-overhaul (CSO) cyclic mismatch criteria, and add criteria to address engine installation changes, engine transfers, and thrust rating changes. Also, this proposal would establish criteria to allow engine stagger without performing Testing-21 for engines over their respective limits. This proposal is prompted by investigation and evaluation of PW4000 series turbofan engines surge data, and continuing reports of surges in the PW4000 fleet. The actions specified by this AD are intended to prevent engine takeoff power losses due to HPC surge.

DATES: Comments must be received by August 22, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *"9-ane-adcomment@faa.gov"*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–6600; fax (860) 565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On December 12, 2001, the Federal Aviation Administration (FAA) issued AD 2001–25–11, Amendment 39–12564 (67 FR 1, January 2, 2002) which applies to PW model PW4000 series turbofan engines. That AD was issued as an interim action to address the engine takeoff power loss events while investigation continued. AD 2001–25–11 requires:

- Limiting the number of engines with the HPC cut-back stator (CBS) configuration to one on each airplane before further flight after the effective date of that AD.
- Limiting the number of PW4000 engines with potentially reduced stability margin, to no more than one engine on each airplane.

• Removing engines that exceed HPC cycles-since-overhaul or cycles-since-new (CSN) from service based on the engine's configuration.

• Performing a cool-engine fuel spike test (Testing-21) on engines that experience a certain type of surge.

• Establishing a minimum build standard for engines that are returned to service.

• Performing Testing-21 on engines to be returned to service after having exceeded HPC cyclic limits or after shop maintenance.

• AD 2001–25–11 also establishes reporting requirements for Testing-21 data. That AD was prompted by reports of surges during takeoff on airplanes equipped with PW4000 series turbofan engines.

Based on continued investigation and evaluation of the PW4000 HPC surge data, the field management plan has been refined to better address engine takeoff surges and minimize the risk of dual engine surges. The FAA has also reviewed the comments received in response to AD 2001–25–11. This proposal would require similar requirements as compared to AD 2001–25–11, and would also:

• Use a rules-based criterion to determine the engine category classification for engines installed on Airbus A300 airplanes instead of the list of engine serial numbers used in AD 2001–25–11.

• Add new requirements to manage the engine configurations installed on Boeing 747 airplanes. This engine and airplane combination would allow, for certain engine configurations, one of the four installed engines to remain on-wing until the HPC has accumulated up to 2,600 CSN or CSO before Testing-21 or an HPC overhaul is required.

• Require configuration F engines to repeat Testing-21 every 800 HPC cycles since passing Testing-21 (CST).

• Establish criteria, based on the requirements of AD 2001–01–10, AD 2001–09–05, and AD 2001–09–10, which would require Testing-21 on engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations.

• Re-establish the HPC-to-HPT CSO cyclic mismatch criteria and would add new criteria to address engine installation changes, engine transfers, and thrust rating changes.

• Establish criteria to allow an engine to be removed from service and reinstalled on an airplane, without requiring Testing-21, if this engine is the unmanaged engine for that airplane.

The actions specified by the proposed AD are intended to prevent engine takeoff power losses due to HPC surge.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of the following Pratt & Whitney service information:

• Service Bulletin PW4ENG72–714, Revision 1, dated November 8, 2001.

• Internal Engineering Notice IEN 96KC973D, dated October 12, 2001.

• Temporary Revision (TR) TR 71–0018, dated November 14, 2001.

• TR 71–0026, dated November 14, 2001.

• TR 71 71–0035, dated November 14, 2001.

• Cleaning, Inspection, and Repair (CIR) procedure CIR 51A357, Section 72–35–68, Inspection/Check-04, Indexes 8–11, dated September 15, 2001.

• CIR 51A357, Section 72–35–68, Repair 16, dated June 15, 1996.

• PW4000 PW engine manual (EM) 50A443, 71–00–00, TESTING–21, dated November 14, 2001.

• PW4000 PW EM 50A822, 71–00–00, TESTING–21, dated November 14, 2001.

• PW 4000 PW EM 50A605, 71–00–00, TESTING–21, dated November 14, 2001.

This service information describes procedures for inspections required by the proposed AD.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney PW4000 series turbofan engines of this same type design, the proposed AD would be issued to prevent engine takeoff power losses due to HPC surges, and would supersede AD 2001–25–11 to require:

• Establishing requirements similar to those in the existing AD, and use of a rules-based criterion to determine the engine category classification for engines installed on Airbus A300 airplanes.

• Adding new requirements to manage the engine configurations installed on Boeing 747 airplanes. This engine and airplane combination would allow, for certain engine configurations, one of the four installed engines to remain on-wing until the HPC has accumulated up to 2,600 CSN or CSO before Testing-21 or until an HPC overhaul is required.

• Configuration F engines to repeat Testing-21 every 800 CST.

• Establishing criteria which would require Testing-21 on engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations complying with the requirements of AD 2001–09–05, (66 FR 22908, May 7, 2001); AD 2001–09–10, (66 FR 21853, May 2, 2001), or AD 2001–01–10, (66 FR 6449, January 22, 2001).

• Re-establishing HPC-to-HPT CSO cyclic mismatch criteria.

• Establishing criteria to address engine installation changes, engine transfers, and thrust rating changes.

• Establishing criteria to allow an engine to be removed from service and reinstalled on an airplane, without requiring Testing-21, if this engine is the unmanaged engine for that airplane.

The actions are required to be done in accordance with the service information described previously. This proposal has been coordinated with the Transport Airplane Directorate.

Economic Analysis

There are approximately 2,100 engines of the affected design in the worldwide fleet. The FAA estimates that 625 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that, on average, approximately 100 test cell stability tests and 36 HPC overhauls will be required annually. It is estimated that the cost to industry of a test cell stability test will average $15,000 and an HPC overhaul will cost approximately $400,000. Based on these figures, the total average annual cost of the proposed AD to U.S. operators is estimated to be $15,900,000.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12564, (67 FR 1, January 2, 2002), and by adding a new airworthiness directive:

Pratt & Whitney: Docket No. 2000-NE–47-AD. Supersedes AD 2001–25–11, Amendment 39–12564.

Applicability

This airworthiness directive (AD) is applicable to Pratt and Whitney (PW) model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. These engines are installed on, but not limited to, certain models of Airbus Industrie A300, Airbus Industrie A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (t) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent engine takeoff power losses due to HPC surges, do the following:

(a) When complying with this AD, determine the configuration of each engine on each airplane using the following Table 1:

TABLE 1.—ENGINE CONFIGURATION LISTING

Configuration	Configuration Designator	Description
(1) Phase 1 without high pressure turbine (HPT) 1st turbine vane cut back (1TVCB)	A	Engines that did not incorporate the Phase 3 configuration at the time they were originally manufactured, or have not been converted to Phase 3 configuration; and have not incorporated HPT 1TVCB using any revision of service bulletin (SB) PW4ENG 72–514.
(2) Phase 1 with 1TVCB	B	Same as configuration designator (A) except that HPT 1TVCB has been incorporated using any revision of SB PW4ENG 72–514.
(3) Phase 3, 2nd Run	C	Engines that incorporated the Phase 3 configuration at the time they were onginally manufactured, or have been converted to the Phase 3 configuration during service; and that have had at least one high pressure compressor (HPC) overhaul since new.
(4) Phase 3, 1st Run	D	Same as configuration designator (C) except that the engine has not had an HPC overhaul since new.
(5) HPC Cutback Stator Configuration Engines	E	Engines that currently incorporate any revision of SB's PW4ENG72–706, PW4ENG72–704, or PW4ENG72–711.
(6) Engines that have passed Testing–21	F	Engines which have successfully passed that have passed Testing–21 performed in accordance with paragraph (h) of this AD. Once an engine has passed a Testing–21, it will remain a Configuration F engine until the HPC is overhauled, or is replaced with a new or overhauled HPC.

Engines Installed on Boeing 767 and MD–11 Airplanes

(b) For engines installed on Boeing 767 and MD–11 airplanes, except as provided in paragraph (c) of this AD, within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed the HPC cycles-since-new (CSN), HPC cycles-since-overhaul (CSO), or HPC cycles since passing Testing–21 (CST) limits listed in the following Table 2, to not more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limit listed in Table 2 of this AD. See paragraph (h) of this AD for return to service requirements.

Table 2 follows:

TABLE 2.—ENGINE STAGGER LIMITS FOR BOEING AIRPLANES

Configuration designator	B747—PW4056	B767—PW4052	B767—PW4056	B767—PW4060, PW4060A, PW4060C, PW4062	MD–11, PW4460, PW4462
A	1,400 CSN or CSO	3,000 CSN or CSO	1,600 CSN or CSO	900 CSN or CSO	800 CSN or CSO.
B	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,200 CSN or CSO.
C	2,100 CSO	4,400 CSO	2,800 CSO	2,000 CSO	1,300 CSO.
D	2,600 CSN	4,400 CSN	3,000 CSN	2,200 CSN	2,000 CSN.
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO.
F	800 CST	800 CST	800 CST	800 CST	800 CST.

Configuration E Engines Installed on Boeing 747, 767, and MD–11 Airplanes

(c) For configuration E engines, do the following:

(1) Before further flight, limit the number of engines with configuration E as described in Table 1 of this AD, to one on each airplane.

(2) Remove all engines with configuration E from service before accumulating 1,300 CSN or cycles-since-conversion to configuration E, whichever is later.

Engines Installed on Boeing 747 Airplanes

(d) Except as provided in paragraph (c) of this AD, within 50 airplane cycles after the effective date of this AD, and thereafter, manage the engine configurations installed on Boeing 747 airplanes as follows:

(1) Limit the number of configuration A, B, C, or E engines that exceed the HPC CSN or HPC CSO limits listed in Table 2 of this AD, to not more than one engine per airplane.

(2) The one configuration A, B, C, or E engine per airplane that exceeds the HPC CSN or CSO limits listed in Table 2 of this AD, must be limited to 2,600 HPC CSN or CSO for configuration A, B or C engines, or 1,300 HPC CSN or cycles-since-conversion to configuration E, whichever is later, for configuration E engines.

(3) Remove from service configuration D engines before accumulating 2,600 CSN.

(4) Remove from service configuration F engines before accumulating 800 CST.

(5) Configuration A, B, C, D, and F engines may be returned to service after completing paragraph (h) of this AD.

Engines Installed on Airbus A300 and A310 Airplanes

(e) Use the following paragraphs (e)(1) through (e)(9) to determine which Airbus A300 PW4158 engine category 1, 2, or 3 limits of the following Table 3 of this AD apply to your engine fleet:

TABLE 3.—ENGINE STAGGER LIMITS FOR AIRBUS AIRPLANES

Configuration designator	A300 PW4158 category 1, and A310 PW4156 and PW4156A	A300 PW4158 A300 PW4158 category 2, and A310 PW4152	A300 PW4158 category 3
A	900 CSN or CSO	1,850 CSN or CSO	500 CSN or CSO.
B	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO.
C	2,200 CSO	4,400 CSO	1,600 CSO.
D	4,400 CSN	4,400 CSN	4,400 CSN.
E	Not Applicable	Not Applicable	Not Applicable.
F	800 CST	800 CST	800 CST.

(1) Determine the number of Group 3 takeoff surges experienced by engines in your fleet before April 13, 2001. Count surge events for engines that had an HPC overhaul and incorporated either SB PW 4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count surge events for engines that did not have the HPC overhauled (i.e. 1st run engine) or had the HPC overhauled but did not incorporate either SB PW4ENG 72–484 or SB PW4ENG 72–575. See paragraph (s)(5) of this AD for a definition of a Group 3 takeoff surge.

(2) Determine the number of cumulative HPC CSO accrued by engines in your fleet before April 13, 2001. Count HPC CSO for engines that had an HPC overhaul and incorporated either SB PW4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count HPC CSO accrued on your engines while operating outside your fleet.

(3) Calculate the surge rate by dividing the number of Group 3 takeoff surges determined in paragraph (e)(1) of this AD, by the number of cumulative HPC CSO determined in paragraph (e)(2) of this AD, and then multiply by 1,000.

(4) If the surge rate calculated in paragraph (e)(3) of this AD is less than 0.005, go to paragraph (e)(5) of this AD. If the surge rate calculated in paragraph (e)(3) of this AD is greater than or equal to 0.005, go to paragraph (e)(6) of this AD.

(5) If the cumulative HPC CSO determined in paragraph (e)(2) of this AD is greater than or equal to 200,000 cycles, use A300 PW4158 Category 2 limits of Table 3 of this AD. If less than 200,000 cycles, go to paragraph (e)(7) of this AD.

(6) If the surge rate calculated in paragraph (e)(3) of this AD is greater than 0.035, use A300 PW 4158 Category 3 limits of Table 3 of this AD. If less than or equal to 0.035, go to paragraph (e)(7) of this AD.

(7) Determine the percent of takeoffs with greater than a 1.45 Takeoff engine pressure ratio (EPR) data for engines operating in your

fleet. Count takeoffs from a random sample of at least 700 airplane takeoffs that has occurred over at least a 3-month time period, for a period beginning no earlier than 23 months prior to the effective date of this AD. See paragraph (s)(6) of this AD for definition of Takeoff EPR data.

(8) If there is insufficient data to satisfy the criteria of paragraph (e)(7) of this AD, use A300 PW4158 Category 3 limits of Table 3 of this AD.

(9) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (e)(7) of this AD is greater than 27%, use A300 PW 4158 Category 3 limits listed in Table 3 of this AD. If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (e)(7) of this AD is less than or equal to 27%, use A300 PW 4158 Category 1 limits listed in Table 3 of this AD.

(f) For engines installed on Airbus A300 or A310 airplanes, within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed the CSN, CSO, or CST limits listed in Table 3 of this AD, to no more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limits listed in Table 3 of this AD. See paragraph (h) of this AD for return to service requirements.

(g) For Airbus A300 PW4158 engine operators, except those operators whose engine fleets are determined to be Category 3 classification based on surge rate in accordance with paragraph (e)(6) of this AD, re-evaluate your fleet category within 6 months from the effective date of this AD, and thereafter, at intervals not to exceed 6 months, using the following criteria:

(1) For operators whose engine fleets are initially classified as Category 1 or 3 in accordance with paragraph (e) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (s)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (g)(1) of this AD, use A300 PW4158 Category 3 limits listed in Table 3 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (g)(1) of this AD is greater than 27%, use A300 PW4158 Category 3 limits listed in Table 3 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (g)(1) of this AD is less than or equal to 27%, use A300 PW4158 Category 1 limits listed in Table 3 of this AD.

(2) For operators whose engine fleets are initially classified as Category 2 in accordance with paragraph (e) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (s)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (g)(1) of this AD, use A300 PW4158 Category 3 limits listed in Table 3 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (g)(1) of this AD is greater than 37%, use A300 PW4158 Category 3 limits listed in Table 3 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (g)(1) of this AD is greater than or equal to 13% and less than or equal to 37%, use A300 PW4158 Category 1 limits listed in Table 3 of this AD.

(iv) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (g)(1) of this AD is less than 13%, use A300 PW4158 Category 2 limits listed in Table 3 of this AD.

Return To Service Requirements for All Engines

(h) Engines removed from service in accordance with paragraph (b), (d), or (f) of this AD may be returned to service under the following conditions:

(1) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with one of the following PW4000 Engine Manuals (EM) as applicable, except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge:

(i) PW4000 PW EM 50A443, 71–00–00, TESTING–21, dated November 14, 2001.

(ii) PW4000 PW EM 50A822, 71–00–00, TESTING–21, dated November 14, 2001.

(iii) PW 4000 PW EM 50A605, 71–00–00, TESTING–21, dated November 14, 2001; or

(2) Engines tested before the effective date of this AD, in accordance with any of the following PW4000 EM Temporary Revisions, meet the requirements of Testing–21:

(i) PW4000 EM 50A443, Temporary Revision No. 71–0026, dated November 14, 2001.

(ii) PW4000 EM50A822, Temporary Revision No. 71–0018, dated November 14, 2001.

(iii) PW4000 EM50A605, Temporary Revision No. 71–0035, dated November 14, 2001; or

(3) Engines tested before the effective date of this AD, in accordance with PW IEN 96KC973D, dated October 12, 2001, meet the requirements of Testing–21; or

(4) The engine HPC was replaced with an HPC that is new from production with no time in service; or

(5) The engine HPC has been overhauled, or the engine HPC replaced with an overhauled HPC with zero cycles since overhaul; or

(6) An engine that is either below or exceeding the limits of Table 2 or Table 3 of this AD may be removed and installed on another airplane without Testing–21 as long as the requirements of paragraph (b), (d) or (f) AD are met at the time of engine installation.

Phase 0 or Phase 1, FB2T or FB2B Fan Blade Configurations

(i) For engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations complying with the requirements of AD 2001–09–05, (66 FR 22908, May 5, 2001), AD 2001–09–10, (66 FR 21853, May 2, 2001), or AD 2001–01–10, (66 FR 6449, January 22, 2001), do the following:

(1) Operators complying with the AD's listed in paragraph (i) of this AD using the weight restriction compliance method, must perform Testing–21 in accordance with paragraph (h)(1) of this AD whenever any quantity of fan blades are replaced with new fan blades, overhauled fan blades, or with fan blades having the leading edges recontoured after the effective date of this AD, if during the shop visit the HPC is not overhauled and separation of a major engine flange, located between "A" flange and "T" flange, does not occur.

(2) Testing–21 in accordance with paragraph (h)(1) of this AD is required if an operator changes from the weight restriction compliance method to the fan blade leading edge recontouring method, each time fan blade leading edge recontouring is done after the effective date of this AD, if the fan blades accumulate more than 450 cycles since new or since fan blade overhaul, or since the last time the fan blade leading edges were recontoured.

Minimum Build Standard

(j) After the effective date of this AD, do not install an engine with HPC and HPT modules where the CSO of the HPC is 1,500 cycles or greater than the CSN or CSO of the HPT.

(k) For any engine that undergoes an HPC overhaul after the effective date of this AD, do the following:

(1) Inspect the HPC mid hook and rear hook of the HPC inner case for wear in accordance with PW4000 Clean, Inspect and Repair (CIR) Manual PN 51A357, Section 72–35–68 Inspection/Check–04, Indexes 8–11, dated September 15, 2001. If the HPC rear hook is worn beyond serviceable limits, replace the HPC inner case rear hook with an improved durability hook in accordance with PW SB PW4ENG72–714, Revision 1, dated November 8, 2001, or Chromalloy Florida Repair Procedure 00–CFL–039–0. If the HPC inner case mid hook is worn beyond serviceable limits, repair the HPC inner case mid hook in accordance with PW4000 CIR PN 51A357 Section 72–35–68, Repair–16.

(2) After the effective date of this AD, any engine that undergoes an HPC overhaul may not be returned to service unless it meets the build standard of PW SB PW4ENG 72–484, PW4ENG 72–486, PW4ENG 72–514, and PW4ENG 72–575. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

(l) After the effective date of this AD, any engine that undergoes separation of the HPC and HPT modules must not be installed on an airplane unless it meets the build standard of PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

Stability Testing Requirements

(m) After the effective date of this AD, Testing–21 must be performed in accordance with paragraph (h)(1) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) The engine HPC was overhauled, or replaced with an overhauled HPC with zero cycles since overhaul; or

(2) The engine HPC was replaced with an HPC that is new from production with no time in service; or

(3) The shop visit did not result in the separation of a major engine flange located between "A" flange and "T" flange.

Thrust Rating Changes, Installation Changes, and Engine Transfers

(n) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug, or an installation change has been made during an HPC overhaul period, use the lowest cyclic limit of Table 2 or Table 3 of this AD, associated with any engine thrust rating change or with any installation change made during the affected HPC overhaul period. See paragraph (s)(2) for definition of HPC overhaul period.

(o) When a PW4158 engine is transferred to another PW4158 engine operator whose engine fleet has a different category, use the lowest cyclic limit in Table 3 of this AD that was used or will be used during the affected HPC overhaul period.

(p) When a PW 4158 engine operator whose engine fleet changes category in accordance with paragraph (g) of this AD, use the lowest cyclic limits in Table 3 of this AD that were used during the affected HPC overhaul period.

(q) Engines with an HPC having zero CSN or CSO at the time of thrust rating change, or installation change, or engine transfer between PW4158 engine operators, or subsequent change in operator engine fleet category in accordance with paragraph (g) of this AD in the direction of lower to higher Table 3 limits, are exempt from the lowest cyclic limit requirement in paragraphs (n), (o), and (p) of this AD.

Engines That Surge

(r) For engines that experience a surge, and after troubleshooting procedures are completed for airplane-level surge during forward or reverse thrust, do the following:

(1) For engines that experience a Group 3 takeoff surge, remove the engine from service before further flight and perform an HPC overhaul.

(2) For any engine that experiences a forward or reverse thrust surge at EPR's greater than 1.25 that is not a Group 3 takeoff surge, do the following:

(i) For configuration A, B, C, D, and F engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal, and perform Testing-21 in accordance with paragraph (h)(1) of this AD.

(ii) For configuration E engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal.

Definitions

(s) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) An HPC overhaul period is defined as the time period between HPC overhauls.

(3) An HPT overhaul is defined as restoration of the HPT stage 1 and 2 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(4) A Phase 3 engine is identified by a (-3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a "CN" suffix after the engine serial number if the engine was converted using PW SB's PW4ENG 72–490, PW4ENG 72–504, or PW4ENG 72–572 after original manufacture.

(5) A Group 3 takeoff surge is defined as the occurrence of any of the following engine symptoms during an attempted airplane takeoff operation (either at reduced, derated or full rated takeoff power setting) after takeoff power set, which can be attributed to no specific and correctable fault condition after following airplane-level surge during forward thrust troubleshooting procedures:

(i) Engine noises, including rumblings and loud "bang(s)."

(ii) Unstable engine parameters (EPR, N1, N2, and fuel flow) at a fixed thrust setting.

(iii) Exhaust gas temperature (EGT) increase.

(iv) Flames from the inlet, the exhaust, or both.

(6) Takeoff EPR data is defined as Maximum Takeoff EPR if takeoff with Takeoff-Go-Around (TOGA) is selected or Flex Takeoff EPR if takeoff with Flex Takeoff (FLXTO) is selected. Maximum Takeoff EPR or Flex Takeoff EPR may be recorded using any of the following methods:

(i) Manually recorded by the flight crew read from the Takeoff EPR power management table during flight preparation (see Aircraft Flight Manual (AFM) chapter 5.02.00 and 6.02.01, or Flight Crew Operation Manual (FCOM) chapter 2.09.20) and then adjusted by adding 0.010 to the EPR value recorded; or

(ii) Automatically recorded during Takeoff at 0.18 Mach Number (Mn) (between 0.15 and 0.20 Mn is acceptable) using an aircraft automatic data recording system and then adjusted by subtracting 0.010 from the EPR value recorded; or

(iii) Automatically recorded during takeoff at maximum EGT, which typically occurs at 0.25 " 0.30 Mn, using an aircraft automatic data recording system.

Alternative Methods of Compliance

(t) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(u) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Testing-21 Reports

(v) Within 60 days of test date, report the results of the cool-engine fuel spike stability assessment tests (Testing-21) to the ANE–142 Branch Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to 9-ane-surge-ad-reporting@faa.gov. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056. Be sure to include the following information:

(1) Engine serial number.

(2) Engine configuration designation per Table 1 of this AD.

(3) Date of the cool-engine fuel spike stability test.

(4) HPC Serial Number, and HPC time and cycles-since-new and since-compressor-overhaul at the time of the test.

(5) Results of the test (Pass or Fail).

Issued in Burlington Massachusetts, on July 15, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–18332 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AWP–4]

Proposed Establishment of Class D Airspace; Henderson Airport; Las Vegas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class D surface area at Henderson Airport in Las Vegas, NV. A Federal Contract Tower provides air traffic control services at this location on a part-time basis. Henderson Airport routinely serves a large volume of air tour operator traffic to and from the Grand Canyon area, as well as considerable general aviation activity operating under visual flight rules. Henderson Tower controllers are certified by the National Weather Service (NWS) to provide surface

weather observations at Henderson Airport. Adequate communication capabilities exist to support the establishment of Class D airspace. A review of current and projected operations and procedures at Henderson Airport has indicated the need for Class D airspace to enhance aviation safety. This action would establish Class D airspace extending upward from the surface to, but not including, 4,000 feet MSL within a 4.1-mile radius of Henderson Airport, excluding Las Vegas Class B airspace.

DATES: Comments must be received on or before September 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, Docket No. 02–AWP–4; Air Traffic Division (AWP–500); P.O. Box 92007; Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261. An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide that factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AWP–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 that would establish a Class D surface area at Henderson Airport in Las Vegas, NV. A Federal Contract Tower provides air traffic control services at this location on a part-time basis. The Henderson Airport routinely serves a large volume of air tour operator traffic to and from the Grand Canyon area in addition to considerable general aviation activity. Henderson Tower controllers are certified as weather observers for this airport, and adequate communication facilities have been established to support Class D airspace. A review of current and projected operations and procedures at Henderson Airport indicates the need for Class D airspace to enhance aviation safety, and in the interest of the commerce and welfare of the community. This action would establish Class D airspace extending upward from the surface to, but not including, 4,000 feet MSL within a 4.1-mile radius of Henderson Airport, excluding Las Vegas Class B airspace. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in the document would be published subsequently in that Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Henderson Airport, NV [New]

Henderson Airport, NV

(Lat. 35°58′35″N, long. 115°07′58″W)

That airspace extending upward from the surface to, but not including, 4,000 feet MSL within a 4.1-mile radius of Henderson Airport, excluding Las Vegas Class B airspace. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on June 28, 2002.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–18471 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–8]

Proposed Establishment of Class E Airspace; Poplarville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Poplarville, MS. A Visual Omni Range/Distance Measuring Equipment (VOR/DME)—A, Standard Instrument Approach Procedure (SIAP), has been developed for Oreck Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Oreck Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–8, Manager, Airspace Branch, ASO–520, PO Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Poplarville, MS. A VOR/DME–A SIAP has been developed for Oreck Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Oreck Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO MS E5 Poplarville, MS [NEW]

Oreck Airport, MS
(Lat. 30°46′38″ N, long. 89°43′30″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Oreck Airport; excluding that airspace within the Bogalusa, LA, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on July 9, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–18472 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124256–02]

RIN 1545–BA82

Earnings Calculation for Returned or Recharacterized IRA Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations provide a new method to be used for calculating the net income attributable to IRA contributions that are distributed as a returned contribution pursuant to section 408(d)(4) of the Internal Revenue Code or recharacterized pursuant to section 408A(d)(6). The regulations will affect IRA owners and IRA trustees, custodians and issuers.

DATES: Written or electronic comments must be received by October 21, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–124256–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–124256–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Cathy Vohs at 622–6090.

SUPPLEMENTARY INFORMATION:

Background

Section 408(d)(4) provides that an IRA contribution will not be included in the IRA owner's gross income when distributed as a returned contribution if: (1) It is received by the IRA owner on or before the day prescribed by law (including extensions) for filing the owner's Federal income tax return for the year of the contribution; (2) no deduction is allowed with respect to the contribution; and (3) the distribution is accompanied by the amount of net income attributable to the contribution.

Section 408A governs Roth IRAs and was added by section 302 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788). Section 408A(d)(6) provides that a contribution made to one type of IRA may be recharacterized as having been made to another type of IRA if: (1) The recharacterization transfer occurs on or before the date prescribed by law (including extensions) for filing the IRA owner's Federal income tax return for the year for which the contribution was made; (2) no deduction is allowed with respect to the contribution to the transferor IRA; and (3) the transfer is accompanied by any net income allocable to the contribution.

Section 1.408–4(c)(2)(ii) of the Income Tax Regulations prescribes the method (the old method) for calculating the amount of net income attributable to a contribution distributed pursuant to section 408(d)(4). The old method bases the calculation of the amount of net income attributable to a contribution on the income earned by the IRA during the period beginning on the first day of the taxable year in which the contribution is made and ending on the date of the distribution from the account. Under the old method, net income cannot be negative.

Section 1.408A–5, A–2(c), provides that if a contribution being recharacterized is in an IRA that at any time contained other contributions, the net income attributable to the contribution being recharacterized is calculated in the manner prescribed by § 1.408–4(c)(2)(ii) (the old method), except that net income can be negative. Section 1.408A–5, A–2(b), provides that if an IRA is established with a contribution and no other contributions or distributions are made, then the subsequent recharacterization transfer of the entire account balance of the IRA will satisfy the requirement that the transfer be accompanied by any net income allocable to the contribution.

In connection with issuing the regulations under section 408A governing Roth IRAs, it became apparent that the old method produced anomalous results for contributions made late in the year. This is because, under the old method, account activity in the part of the year that precedes the date the contribution is made is taken into account in the calculation of the net income attributable to the contribution.

In response to this concern, the IRS issued Notice 2000–39 (2000–30 I.R.B. 132), which provided a new method for calculating net income that generally bases the calculation of the amount of net income attributable to a contribution on the actual earnings and losses of the IRA during the time it held the contribution. Under this new method, net income can be negative. Notice 2000–39 provided that until further guidance is issued, either the old method or the new method may be used to calculate net income. Notice 2000–39 also requested comments regarding the new method.

The Service received comments on the new method which were generally favorable. However, commentators provided a number of suggestions for improving the method, including: (1) Allowing a single computation period to be used in the case of multiple IRA contributions; (2) clarifying how transfers in or out of IRAs are treated under the new method; and (3) allowing net income to be determined on the basis of tracing specific assets, rather than dollar amounts. This last suggestion was focused primarily on the calculation of net income in the case of a recharacterization back to a traditional IRA following a conversion of an amount in a traditional IRA to a Roth IRA.

Explanation of Provisions

New Method for Net Income Calculation Under Section 408(d)(4)

These proposed regulations would incorporate, with certain modifications, the new method provided in Notice 2000–39. Under the proposed regulations, for purposes of returned contributions under section 408(d)(4), the net income attributable to a contribution is determined by allocating to the contribution a pro-rata portion of the net income on the assets in the IRA (whether positive or negative) during the period the IRA held the contribution. This new method is represented by the following formula:

$$\text{Net Income} = \text{Contribution} \times \frac{(\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance}}$$

Under this formula, the opening balance is the fair market value of the IRA immediately before the contribution being returned is made to the account and the closing balance is the fair market value of the account immediately before the contribution is removed. The opening balance then is adjusted to include the amount of any contributions or transfers made to the IRA during the computation period. In addition, the closing balance is adjusted to include the amount of any distributions or transfers made from the IRA during the computation period. In the case of an IRA that has received more than one regular contribution for a particular taxable year, the last regular contribution made to the IRA for the year is deemed to be the contribution that is distributed as a returned contribution under section 408(d)(4), up to the amount of the contribution identified by the IRA owner as the amount distributed as a returned contribution.

In response to comments received, the proposed regulations would clarify that a transfer made in or out of an IRA during the computation period is treated in the same manner as a contribution or distribution made to or from the IRA. The proposed regulations also provide that a single computation period is used if more than one contribution was made to the IRA as a regular contribution.

New Method for Net Income Calculation Under Section 408A(d)(6)

The proposed regulations would provide rules for calculating net income allocable to a contribution being recharacterized under section 408A(d)(6) that are substantially similar to the rules applicable to contributions being returned under section 408(d)(4). However, if more than one contribution is being recharacterized, different rules apply. In the case of multiple contributions for a particular year that are eligible for recharacterization, the IRA owner chooses (by date and dollar amount, not by specific assets acquired with those dollars) which contribution is to be recharacterized. In addition, if a series of regular contributions was made, and consecutive contributions in that series are being recharacterized, the computation period is determined using a single computation period, based on the first contribution in the series.

The proposed regulations would retain the rule that net income calculations must be based on the overall value of an IRA and the dollar amounts contributed, distributed or recharacterized to or from the IRA. Even in a recharacterization of an amount converted to a Roth IRA, the proposed regulations would not permit net income to be calculated on the basis of the return on specific assets. The dollars contributed to an IRA are invested in assets that generate gains and losses. Once contributions are commingled in an account, those dollars are no longer associated with particular assets. In the absence of maintaining separate accounts, tying particular assets to a particular contribution would create administrative problems for taxpayers, IRA providers and the IRS.

Proposed Effective Date

The regulations are proposed to be applicable for calculating income allocable to IRA contributions made on or after January 1, 2004. For purposes of determining net income applicable to IRA contributions made during 2002 and 2003, taxpayers may continue to apply the rules set forth in Notice 2000–39 or may rely on these proposed regulations. If, and to the extent, future guidance is more restrictive than these proposed regulations, the future guidance will be issued without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because proposed § 1.408–11 and revised A–2(c) of § 1.408A–5 impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.408–4 also issued under 26 U.S.C. 408.

§ 1.408–11 also issued under 26 U.S.C. 408. * * *

2. Section 1.408–4 is amended by adding the following text before the first sentence of (c)(1):

§ 1.408–4 Treatment of distributions from individual retirement arrangements.

* * * * *

(c) * * * (1) * * *

The rules in this paragraph (c) apply for purposes of determining net income attributable to IRA contributions made before January 1, 2004, and returned pursuant to section 408(d)(4). The rules in § 1.408–11 apply for purposes of determining net income attributable to IRA contributions made on or after January 1, 2004, and returned pursuant to section 408(d)(4).

* * * * *

3. Section 1.408–11 is added to read as follows:

§ 1.408–11 Net income calculation for returned or recharacterized IRA contributions.

(a) *Net income calculation for returned IRA contributions*—(1) *General rule.* For purposes of returned contributions under section 408(d)(4), the net income attributable to a contribution made to an IRA is determined by allocating to the contribution a pro-rata portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula:

$$\text{Net Income} = \text{Contribution} \times \frac{(\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance}}$$

(2) *Special rule.* If an IRA is established with a contribution and no other contributions, distributions or transfers are made to or from that IRA, then the subsequent distribution of the entire account balance of the IRA pursuant to section 408(d)(4) will satisfy the requirement of that Code section that the return of a contribution be accompanied by the amount of net income attributable to the contribution.

(b) *Definitions.* For purposes of this section the following definitions apply—

(1) *Adjusted opening balance.* The term adjusted opening balance means the fair market value of the IRA at the beginning of the computation period plus the amount of any contributions or transfers (including the contribution that is distributed as a returned contribution pursuant to section 408(d)(4) and recharacterizations of contributions pursuant to section 408A(d)(6)) made to the IRA during the computation period.

(2) *Adjusted closing balance.* The term adjusted closing balance means the fair market value of the IRA at the end of the computation period plus the amount of any distributions or transfers (including recharacterizations of contributions pursuant to section 408A(d)(6)) made from the IRA during the computation period.

(3) *Computation period.* The term computation period means the period beginning immediately prior to the time that the contribution being returned was made to the IRA and ending immediately prior to the removal of the contribution. If more than one contribution was made as a regular contribution and is being returned from the IRA, the computation period begins immediately prior to the time the first contribution being returned was contributed.

(4) *Regular contribution.* The term regular contribution means an IRA contribution made by the IRA owner that is neither a trustee-to-trustee transfer from another IRA nor a rollover from another IRA or retirement plan.

(c) *Additional rules*—(1) When an IRA asset is not normally valued on a daily basis, the fair market value of the asset at the beginning of the computation period is deemed to be the most recent, regularly determined, fair market value of the asset, determined as of a date that coincides with or precedes the first day of the computation period. In addition, solely for purposes of this section, notwithstanding A–3 of § 1.408A–5, recharacterized contributions are taken into account for the period they are actually held in a particular IRA.

(2) In the case of an IRA that has received more than one regular contribution for a particular taxable year, the last regular contribution made to the IRA for the year is deemed to be the contribution that is distributed as a returned contribution under section 408(d)(4), up to the amount of the contribution identified by the IRA owner as the amount distributed as a returned contribution.

(3) In the case of an individual who owns multiple IRAs, the net income calculation is performed only on the IRA containing the contribution being returned, and that IRA is the IRA that must distribute the contribution.

(d) *Examples.* The following examples illustrate the net income calculation under section 408(d)(4) and this section:

Example 1. (i) On May 1, 2004, when her IRA is worth $4,800, Taxpayer A makes a $1,600 regular contribution to her IRA. Taxpayer A requests that $400 of the May 1, 2004, contribution be returned to her pursuant to section 408(d)(4). Pursuant to this request, on February 1, 2005, when the IRA is worth $7,600, the IRA trustee distributes to Taxpayer A the $400 plus attributable net income. During this time, no other contributions have been made to the IRA and no distributions have been made.

(ii) The adjusted opening balance is $6,400 [$4,800 + $1,600] and the adjusted closing balance is $7,600. Thus, the net income attributable to the $400 May 1, 2004, contribution is $75 [$400 × ($7,600—$6,400) ÷ $6,400]. Therefore, the total to be distributed on February 1, 2005, pursuant to § 408(d)(4) is $475.

Example 2. (i) Beginning in January 2004, Taxpayer B contributes $300 on the 15th of each month to an IRA for 2004, resulting in an excess regular contribution of $600 for that year. Taxpayer B requests that the $600 excess regular contribution be returned to her pursuant to section 408(d)(4). Pursuant to this request, on March 1, 2005, when the IRA is worth $16,000, the IRA trustee distributes to Taxpayer B the $600 plus attributable net income. The excess regular contributions to be returned are deemed to be the last two made in 2004: the $300 December 15 contribution and the $300 November 15 contribution. On November 15 the IRA was worth $11,000 immediately prior to the contribution. No distributions or transfers have been made from the IRA and no contributions or transfers, other than the monthly contributions (including $300 in January and February 2005), have been made.

(ii) As of the beginning of the computation period (November 15), the adjusted opening balance is $12,200 [$11,000 + $300 + $300 + $300 + $300] and the adjusted closing balance is $16,000. Thus, the net income attributable to the excess regular contributions is $187 [$600 x ($16,000—$12,200) ÷ $12,200]. Therefore, the total to be distributed as returned contributions on March 1, 2005, to correct the excess regular contribution is $787 [$600 + $187].

Par. 4. In § 1.408A–5, A–2(c) is revised to read as follows:

§ 1.408 A–5 Recharacterized contributions.

* * * * *

A–2 * * *

(c) (1) If paragraph (b) of this A–2 does not apply, then, for purposes of determining net income attributable to IRA contributions, the net income attributable to the amount of a contribution is determined by allocating to the contribution a pro-rata portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula:

$$\text{Net Income} = \frac{\text{Contribution} \times (\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance}}$$

(2) For purposes of this paragraph (c), the following definitions apply—

(i) The term adjusted opening balance means the fair market value of the IRA at the beginning of the computation period plus the amount of any contributions or transfers (including the contribution that is being recharacterized pursuant to section 408A(d)(6) and any other recharacterizations) made to the IRA during the computation period.

(ii) The term adjusted closing balance means the fair market value of the IRA at the end of the computation period plus the amount of any distributions or transfers (including contributions returned pursuant to section 408(d)(4) and recharacterizations of contributions pursuant to section 408A(d)(6)) made from the IRA during the computation period.

(iii) The term computation period means the period beginning immediately prior to the time the particular contribution being recharacterized is made to the IRA and ending immediately prior to the recharacterizing transfer of the contribution. If a series of regular contributions was made to the IRA, and consecutive contributions in that series are being recharacterized, the computation period begins immediately prior to the time the first of the regular contributions being recharacterized was made.

(3) When an IRA asset is not normally valued on a daily basis, the fair market value of the asset at the beginning of the computation period is deemed to be the most recent, regularly determined, fair market value of the asset, determined as of a date that coincides with or precedes the first day of the computation period. In addition, solely for purposes of this paragraph (c), notwithstanding A–3 of this section, recharacterized contributions are taken into account for the period they are actually held in a particular IRA.

(4) In the case of an individual with multiple IRAs, the net income calculation is performed only on the IRA containing the particular contribution to be recharacterized, and that IRA is the IRA from which the recharacterizing transfer must be made.

(5) In the case of multiple contributions made to an IRA for a particular year that are eligible for recharacterization, the IRA owner can choose (by date and by dollar amount, not by specific assets acquired with those dollars) which contribution, or portion thereof, is to be recharacterized.

(6) The following examples illustrate the net income calculation under section 408A(d)(6) and this paragraph:

Example 1. (i) On March 1, 2004, when her Roth IRA is worth $80,000, Taxpayer A makes a $160,000 conversion contribution to the Roth IRA. Subsequently, Taxpayer A discovers that she was ineligible to make a Roth conversion contribution in 2004 and so she requests that the $160,000 be recharacterized to a traditional IRA pursuant to section 408A(d)(6). Pursuant to this request, on March 1, 2005, when the IRA is worth $225,000, the Roth IRA trustee transfers to a traditional IRA the $160,000 plus allocable net income. No other contributions have been made to the Roth IRA and no distributions have been made.

(ii) The adjusted opening balance is $240,000 [$80,000 + $160,000] and the adjusted closing balance is $225,000. Thus the net income allocable to the $160,000 is −$10,000 [$160,000 × ($225,000 ÷ $240,000) − $240,000]. Therefore, in order to recharacterize the March 1, 2004, $160,000 conversion contribution on March 1, 2005, the Roth IRA trustee must transfer from Taxpayer A's Roth IRA to her traditional IRA $150,000 [$160,000—$10,000].

Example 2. (i) On April 1, 2004, when her traditional IRA is worth $100,000, Taxpayer B converts the entire amount, consisting of 100 shares of stock in ABC Corp., and 100 shares of stock in XYZ Corp., by transferring the shares to a Roth IRA. At the time of the conversion, the 100 shares of stock in ABC Corp., are worth $50,000 and the 100 shares of stock in XYZ Corp., are also worth $50,000. Taxpayer B decides that she would like to recharacterize the ABC Corp., shares back to a traditional IRA. However, B may choose only by dollar amount the contribution or portion thereof that is to be recharacterized. On the date of transfer, November 1, 2004, the 100 shares of stock in ABC Corp., are worth $40,000 and the 100 shares of stock in XYZ Corp., are worth $70,000. No other contributions have been made to the Roth IRA and no distributions have been made.

(ii) If B requests that $50,000 (which was the value of the ABC Corp., shares at the time of conversion) be recharacterized, the net income allocable to the $50,000 is $5,000 [$50,000 × ($110,000 − $100,000) ÷ $100,000]. Therefore, in order to recharacterize $50,000 of the April 1, 2004, conversion contribution on November 1, 2004, the Roth IRA trustee must transfer from Taxpayer B's Roth IRA to a traditional IRA assets with a value of $55,000 [$50,000 + $5,000].

(iii) If, on the other hand, B requests that $40,000 (which was the value of the ABC Corp., shares on November 1) be recharacterized, the net income allocable to the $40,000 is $4,000 [$40,000 × ($110,000 − $100,000) ÷ $100,000]. Therefore, in order to recharacterize $40,000 of the April 1, 2004, conversion contribution on November 1, 2004, the Roth IRA trustee must transfer from Taxpayer B's Roth IRA to a traditional IRA assets with a value of $44,000 [$40,000 + $4,000].

(iv) Regardless of the amount of the contribution recharacterized, the determination of that amount (or of the net income allocable thereto) is not affected by whether the recharacterization is accomplished by the transfer of shares of ABC Corp., or of shares of XYZ Corp.

(7) This paragraph (c) applies for purposes of determining net income attributable to IRA contributions, made on or after January 1, 2004. For purposes of determining net income attributable to IRA contributions made before January 1, 2004, see paragraph (c) of this A–2 of § 1.408A–5 (as it appeared in the April 1, 2003, edition of 26 CFR part 1).

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 02–18452 Filed 7–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[REG–115781–01]

RIN 1545–A031

Definition of Guaranteed Annuity and Lead Unitrust Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations conforming the income, gift, and estate tax regulations to the Tax Court's decision in *Estate of Boeshore* v. *Commissioner*, 78 T.C. 523 (1982), *acq. in result*, 1987–2 C.B. 1, holding portions of § 20.2055–2(e)(2)(vi)(*e*) of the Estate Tax Regulations invalid.

DATES: Written or electronic comments and requests to speak at the public hearing scheduled for October 16, must be received by September 25, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–115781–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submission of comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–115781–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in Room 4718, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Susan Hurwitz (202) 622–3090; concerning submissions of comments, Sonya Cruse (202) 622–7180.

SUPPLEMENTARY INFORMATION

Background

In general, if interests in the same property are transferred for both charitable and noncharitable purposes, the charitable interest will qualify for the charitable deduction for federal income, gift, and estate tax purposes only if the interest is in one of certain prescribed forms. If the charitable interest is not a remainder interest, sections 170(f), 2522(c)(2), and 2055(e)(2) of the Internal Revenue Code (Code) require that the charitable interest be in the form of either a guaranteed annuity or a fixed percentage of the annual net fair market value of the property (unitrust interest).

A guaranteed annuity is defined in the regulations under sections 170, 2522, and 2055 as an arrangement pursuant to which a specified sum is paid not less often than annually, for a specified term of years or for the life or lives of certain named individuals. A unitrust interest is defined as a right to receive not less often than annually a fixed percentage of the net fair market value, determined annually, of the property funding the unitrust interest, payable for a specified term of years or for the life of certain named individuals. The income, estate, and gift tax regulations also provide that if guaranteed annuity or unitrust interests are payable for private and charitable purposes from a trust and the private interest is payable before the expiration of the charitable interest, then in order for the charitable guaranteed annuity interest or unitrust interest to be deductible, among other requirements, the charitable interest must begin either before, or at the same time as, the private interest. See, for example, § 20.2055–2(e)(2)(vii)(*e*) regarding the estate tax provision applicable to unitrust interests. See also, Rev. Rul. 76–225 (1976–1 C.B. 281).

In *Estate of Boeshore* v. *Commissioner*, the decedent devised the residue of her estate to a charitable remainder unitrust described in section 664 of the Code. Under the terms of the trust, a 6 percent unitrust amount was to be paid annually from the trust. During the life of the decedent's surviving spouse, 70 percent of the distribution was to be paid to the surviving spouse and the remaining 30 percent to the decedent's daughter and two grandchildren. Upon the surviving spouse's death, 58 percent of the unitrust amount was to be paid to the decedent's daughter and two grandchildren for their lives, and the remaining 42 percent was to be paid to a qualifying charity. Upon the death of the last to die of the four individual beneficiaries, the remainder interest was to be paid to charity. The decedent's estate claimed an estate tax charitable deduction for the present values of the charitable remainder interest and the charitable unitrust interest that was to begin upon the spouse's death.

Under the authority of § 20.2055–2(e)(2)(vi)(*e*) (currently § 20.2055–2(e)(2)(vii)(*e*)), the IRS disallowed the deduction for the present value of the charitable unitrust interest, because it was preceded by a noncharitable unitrust interest.

The court noted that the rules contained in section 2055(e)(2) ensure that the value of the charitable interest is not subject to manipulation through trustee investment practices and that the actual benefit charity receives bears a reasonable relationship to the deduction allowed for the value of the charitable interest. Since all the nonremainder interests in the *Boeshore* trust, both charitable and noncharitable, were in the form of unitrust interests, any incentives to manipulate the income interest were removed. *Estate of Boeshore* v. *Commissioner*, 78 T.C. at 529. Under these circumstances, the court was unable to find any congressional intent to preclude a charitable deduction for an otherwise qualified charitable unitrust interest. Accordingly, the court held § 20.2055–2(e)(2)(vi)(*e*) invalid insofar as the regulation disallowed a deduction for the charitable unitrust interest under the facts presented.

Explanation of Provisions

The proposed regulations amend the existing regulations under sections 170, 2055, and 2522 governing charitable guaranteed annuity interests and unitrust interests to eliminate the requirement that the charitable interest can not be preceded in point of time by a noncharitable interest that is in the form of a guaranteed annuity or unitrust interest. The regulations will continue to require that any amounts payable for a private purpose before the expiration of the charitable annuity or unitrust interest either must be in the form of a guaranteed annuity or unitrust interest or must be payable from a separate group of assets devoted exclusively to private purposes.

Effective Date

The regulations are applicable as of the date these regulations are published in the **Federal Register** as final regulations.

Effect on Other Documents

The following publication is revoked as of the date these regulations are published in the **Federal Register** as final regulations.

Rev. Rul. 76–225 (1976–1 C.B. 281)

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 5) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies, if written) or electronic comments that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 16, 2002, at 10 a.m., Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the

time to be devoted to each topic (preferably a signed original and eight (8) copies) by September 25, 2002.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Susan Hurwitz of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 1.170A–6 is amended as follows:

1. Paragraph (c)(2)(i)(E) is revised and the example following paragraph (c)(2)(i)(E) is removed.

2. Paragraph (c)(2)(ii)(D) is revised.

The revision reads as follows:

§ 1.170A–6 Charitable contributions in trust.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(E) Where a charitable interest in the form of a guaranteed annuity interest is transferred after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(i)(E), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust. * * *

(ii) * * *

(D) Where a charitable interest is in the form of a unitrust interest, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(ii)(D), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

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PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

3. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * * *

4. Section 20.2055–2 is amended as follows:

1. Paragraph (e)(2)(vi)(*f*) is revised.

2. Paragraph (e)(2)(vii)(*e*) is revised.

3. In paragraph (f)(2)(iv) *Example (4)* is removed.

The revisions read as follows:

§ 20.2055–2 Transfers not exclusively for charitable purposes.

* * * * *

(e) * * *

(2) * * *

(vi) * * *

(*f*) Where a charitable interest in the form of a guaranteed annuity interest is in trust, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (e)(2)(vi)(*f*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

(vii) * * *

(*e*) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust

interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (e)(2)(vii)(*e*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

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PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

5. The authority for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

6. Section 25.2522(c)–3 is amended as follows:

1. Paragraph (c)(2)(vi)(*f*) is revised.
2. Paragraph (c)(2)(vii)(*e*) is revised.
3. In paragraph (d)(2)(iv), *Example 4*, is removed.

The revisions read as follows:

§ 25.2522(c)–3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(*f*) Where a charitable interest in the form of a guaranteed annuity interest is in trust, and the gift of such interest is made after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vi)(*f*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

(vii) * * *

(*e*) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests.

There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vii)(*e*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–18185 Filed 7–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2001–10689]

RIN 2115–AG47

Temporary Requirements for Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; change of effective period of temporary rule.

SUMMARY: The Coast Guard proposes to extend to March 31, 2003, the effective period for the temporary rule on notification of arrival requirements. Extension of the effective period would ensure sufficient time to complete the rulemaking. Continuing the temporary rule in effect while the permanent rulemaking is in progress will help to ensure the security of our ports and the uninterrupted flow of maritime commerce during that period.

DATES: Comments and related material must reach the Docket Management Facility on or before August 22, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before August 22, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–10689), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov/*.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as

documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LTJG Marcus A. Lines, U.S. Coast Guard (G–MMP), at 202–267–6854. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking. This proposed rule would extend the effective period of the temporary final rule entitled "Temporary Requirements for Notification of Arrival in U.S. Ports" that was published in the **Federal Register** on October 4, 2001 (66 FR 50565) and amended on November, 19, 2001 (66 FR 57877), on January 18, 2002 (67 FR 2571), and on May 30, 2002 (67 FR 3782). Comments and related materials addressing the extension of the effective period of the temporary rule should include your name and address, identify the docket number for this rulemaking (USCG–2001–10689), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On October 4, 2001, we published a temporary final rule entitled "Temporary Requirements for Notification of Arrival in U.S. Ports" in the **Federal Register** (66 FR 50565). Subsequently, we published two corrections in the **Federal Register** [November 19, 2001 (66 FR 57877)] and [January 18, 2002 (67 FR 2571)]. On May 30, 2002, we extended the effective period of the temporary rule through September 30, 2002 (67 FR 37682).

Background and Purpose

We published a related notice of proposed rulemaking (NPRM) to make permanent changes to the notice of arrival requirements ["Notification of Arrival in U.S. Ports" June 19, 2002 (67 FR 41659)]. We expected the extension of the temporary rule through September 30, 2002, would have provided us enough time to complete the permanent changes to the notice of arrival requirements. Now, however, we propose to further extend the effective period of the temporary rule until March 31, 2003, to ensure sufficient time to complete the changes. Continuing the temporary rule in effect while the permanent rulemaking is in progress will help to ensure the security of our ports and the uninterrupted flow of maritime commerce during that period.

Regulatory Evaluation

This proposal is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)[February 26, 1979 (44 FR 11040)].

As discussed in the preamble, the Coast Guard has temporarily changed the notice of arrival (NOA) regulations and proposes to extend the effective period of those requirements until March 31, 2003. When assessing the impact of the temporary requirements, we estimated that providing the Coast Guard with the additional information about passengers, crew, and cargo will impose minimal burden on vessels already complying with the notification requirements of 33 CFR part 160, subpart C. As explained below, the total cost to extend the effective period of the temporary rule should not exceed $377,324:

Cost and Burden. Coast Guard data on Notification of Arrival information for 1998 and 1999 were used to estimate the maximum populations that would be affected by this proposal. Table 1 categorizes the affected vessel population into four sub-populations. They are:

- "Non-AMVER/Non-Great Lakes Vessels"—vessels already required to comply with NOA regulations;
- "AMVER"—vessels complying with the Automated Mutual Assistance Vessel Rescue system and that were exempt from NOA requirements prior to the temporary rule;
- "Great Lakes Vessels"—vessels greater than 300 gross tons, on Great Lakes routes, that were exempt from NOA requirements prior to the temporary rule; and
- "Vessels on Scheduled Routes"—vessels operating upon a route that is described in a schedule that is submitted to the Captain of the Port for each port or place of destination listed in the schedule. The table also sets out the number of vessels and their total number of U.S. port calls (arrivals) for each vessel sub-population.

TABLE 1.—NUMBER OF VESSELS AND U.S. PORT CALLS FOR 1998 AND 1999*

	1998	1999	Annual average	Monthly average
Non-AMVER/Non-Great Lakes Vessels	9,795	9,538	9,667	NA
U.S. Port Calls	63,090	63,482	63,286	5,274
AMVER Vessels	625	609	617	NA
U.S. Port Calls	4,027	4,052	4,040	337
Great Lakes Vessels	83	82	83	NA
U.S. Port Calls	840	786	813	68

TABLE 1.—NUMBER OF VESSELS AND U.S. PORT CALLS FOR 1998 AND 1999*—Continued

	1998	1999	Annual average	Monthly average
Totals Vessels	10,503	10,229	10,367	NA
U.S. Port Calls	67,957	68,320	68,139	5,679

*These estimates include vessels on scheduled routes that will experience about the same costs as the other vessels in this population.

Vessels less than 300 gross tons making ports of call in the Seventh Coast Guard District have to file NOA reports with the COTP. This proposal would maintain the requirement, and the estimate of the vessels and port calls presented in Table 1 accounted for this special group.

Before the temporary final rule, vessels had to file multiple NOA reports if they were visiting multiple U.S. ports on the same voyage. Under the temporary rule, vessels making calls to multiple U.S. ports do not have to file multiple NOA reports; rather, the temporary rule allows a single report listing all destinations in the United States along with estimated arrival dates for each port. The Coast Guard did not collect or maintain information on the number of vessels that made multiple U.S. port calls under separate NOA reports to estimate the number of consolidated reports under the temporary rule. The totals above, therefore, represent a conservative estimate, a "worst-case scenario," of the numbers of vessels and NOA reports that would be affected by this proposal.

Finally, vessels that make scheduled trips outside of their COTP zones would no longer be exempt from reporting requirements. We do not know how many of these vessels and port calls exist, though we know they are included in the population of non-AMVER/non-Great Lakes vessels. For the purposes of analysis, these vessels and port calls are included in the non-AMVER/non-Great Lakes population.

Cost of the Temporary Rule

Minimal burden would be imposed on vessels whose applicability to the NOA reporting requirements was upheld by the temporary rule. The cargo, crew, and passenger information these vessels provide to the Coast Guard is already collected on a form submitted to the Immigration and Naturalization Services (INS) (INS form I–418). We assumed 10 minutes (0.167 hours) would be spent retrieving and transmitting the cargo, crew, and passenger information. We assumed that there would be a $2 transmittal fee (fax, email, telephone, etc.) to provide this information to the Coast Guard. We assumed that clerical labor would complete these tasks at a cost of $31.00 per hour (loaded labor rate, 2001). Based on 1998 and 1999 data, we estimated 31,644 port calls would be made over this extension period (6 months-until March 31, 2003). The summary of unit costs and total rulemaking costs for non-AMVER/non-Great Lakes vessels is presented in Table 2.

TABLE 2.—TOTAL RULEMAKING COSTS FOR NON-AMVER/NON-GREAT LAKES VESSELS

[October 2002–March 2003]*

Port calls during temporary rule	Labor hours per port call	Labor hours during temporary rule	Cost per labor hour	Cost per information transmittal	Total rulemaking cost for these vessels
31,644	0.167	5,274	$31.00	$2.00	$226,782

Detail may not calculate to total due to independent rounding.
*These estimates include vessels on scheduled routes that will experience about the same costs as the other vessels in this population.

Vessels that were exempt from NOA requirements before the original effective period of the temporary rule would, as a result of this proposal, continue to provide the Coast Guard with NOA reports in addition to providing the cargo, crew, and passenger information until March 31, 2003. These vessels (AMVER and vessels that transit only the Great Lakes) would incur cost by extending the effective period of the temporary rule that requires them to submit an NOA report. Based on the OMB-approved Collection of Information for NOA (OMB–2115–0557), we estimated that it would take 10 minutes (0.167 hours) to complete the report, plus an additional 5 minutes (0.083 hours) for the general description of the cargo. We assumed that clerical labor would complete the report at a cost of $31.00 per hour. Additionally, these vessels would need to develop and submit the cargo, crew, and passenger information. Based on information from the INS (OMB–1115–0083), it will require 60 minutes (1.000 hour) to complete both lists, for a total of 75 minutes (1.250 hours) for the entire submission (NOA report, cargo description, crew and passenger information). There would be a $2 transmittal fee to provide the information to the Coast Guard. Based on 1998 and 1999 data, we estimated that 2,427 port calls would be made over the time period of this rulemaking. The summary of unit costs and total rulemaking costs for AMVER/Great Lakes vessels is presented in Table 3.

TABLE 3.—TOTAL RULEMAKING COSTS FOR AMVER/GREAT LAKES VESSELS

[October 2002–March 2003]

Port calls during temporary rule	Labor hours per port call	Labor hours during temporary rule	Cost per labor hour	Cost per information transmittal	Total rulemaking cost for these vessels
2,427	1.250	3,033	$31.00	$2.00	$98,870

Detail may not calculate to total due to independent rounding.

Finally, all vessels affected would continue to communicate with the National Vessel Movement Center (NVMC) upon departure from a U.S. port when their next port of call is also a U.S. port. Vessels are to phone or fax the date of departure to the NVMC along with the name of the port just departed. The NVMC will transmit this information to the COTP in the next port of call. We assumed that reporting this would require 1 minute (0.017 hours) per departure and that clerical labor ($31.00 per hour) would make the call or send the fax. We assumed the transmittal fee would be $1.00 per call/fax. There will be an estimated 34,071 departures over the 6-month extension period of the temporary rule (until March 31, 2003). The cost and burden for notifying NVMC of the date of departure and last port of call is presented in Table 4.

TABLE 4.—TOTAL RULEMAKING COSTS FOR PROVIDING NVMC WITH DATE OF DEPARTURE AND LAST PORT OF CALL INFORMATION

[October 2002–March 2003]

Port departures during temporary rule	Labor hours per port call	Labor hours during temporary rule	Cost per labor hour	Cost per information transmittal	Total rulemaking cost for these vessels
34,071	0.017	568	$31.00	$1.00	$51,672

Detail may not calculate to total due to independent rounding.

The total cost and burden of the rule is presented in Table 5.

TABLE 5.—TOTAL RULEMAKING COST FOR ALL AFFECTED VESSELS

[October 2002–March 2003]*

	Arrivals/departures	Cost per arrival/departure	Burden per arrival/departure (hours)	Total rulemaking cost	Total rulemaking burden
Arr. Non-AMVER/Non-Great Lakes	31,644	$7.17	0.167	$226,782	5,274
Arr. AMVER/Great Lakes	2,427	40.75	1.250	98,870	3,033
Dep. all vessels	34,071	1.52	0.017	51,672	568
Totals	68,142			$377,324	8,875

Detail may not calculate to total due to independent rounding.
* These estimates include vessels on scheduled routes that will experience about the same costs as the other vessels in this population.

Need for the Temporary Rule

This proposal would ensure the timely receipt of advance information about vessels, cargo, and people entering U.S. ports and would help minimize disruption to commerce. The additional information required by this proposal would increase security and provide protection for the nation's ports and waterways. There would be some savings from the consolidated NOA submission for two or more consecutive arrivals at U.S. ports.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposal would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposal will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this proposal would economically affect it.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposal would extend the effective period of an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who would be required to collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Advance Notice of Vessel Arrival and Departure.

OMB Control Number: 2115–0557.

Summary of the Collection of Information: The Coast Guard requires pre-arrival messages from any vessel entering a port or place in the United States. This proposal would extend the effective period of the temporary notice of arrival requirements to March 31, 2003.

Need for Information: To ensure port safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard proposes to extend the effective period of the temporary notice of arrival requirements.

Proposed Use of Information: Extending the NOA information reported would enable the control of vessel traffic, the development of contingency plans, and the enforcement of regulations.

Description of the Respondents: The respondents are owners, agents, masters, operators, or persons in charge of vessels bound for or departing from U.S. ports.

Number of Respondents: The existing OMB-approved collection number of respondents is 10,367. Extending the temporary rule would not increase the total number of respondents.

Frequency of Response: The existing OMB-approved collection annual number of responses is 136,278. Extending the temporary rule would not increase the total number of responses.

Burden of Response: The existing OMB-approved collection burden of response is 15 minutes (0.250 hours). Extending the temporary rule would not increase the burden.

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 39,037 hours. Extending the temporary rule would not increase the total annual burden.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted a copy of this proposal to the Office of Management and Budget (OMB) for its review of the collection of information. Due to the circumstances surrounding this temporary rule, we asked for "emergency processing" of our request. We received OMB approval for the collection of information on September 26, 2001. It is valid until September 30, 2002, and we are requesting it be extended until March 31, 2003.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, the effects of this rule are discussed elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the

Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This proposed rule would extend the effective period of the changes to the requirements established in the notification of arrival regulations. They are procedural in nature and therefore are categorically excluded. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure; Harbors; Hazardous materials transportation; Marine safety; Navigation (water); Reporting and recordkeeping requirements; Vessels; Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 160 as follows:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

Subpart C—Notifications of Arrival, Departures, Hazardous Conditions, and Certain Dangerous Cargoes

1. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1226, 1231; 49 CFR 1.46.

§ 160.201 [Amended]

2. In § 160.201, paragraphs (c) and (d), which were suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, and further suspended at 67 FR 37682, May 30, 2002, until September 30, 2002, will continue to be suspended through March 31, 2003; and paragraphs (e) and (f), added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, and paragraph (g), added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, amended by 66 FR 57877, November 19, 2001, extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, are extended in effect through March 31, 2003.

§ 160.203 [Amended]

3. In § 160.203, the definition of "certain dangerous cargo," which was suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, and further suspended at 67 FR 37682, May 30, 2002, until September 30, 2002, will continue to be suspended through March 31, 2003; and the definitions for "certain dangerous cargo", "crewmember", "nationality", and "persons in addition to crewmembers" which were added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, are extended in effect through March 31, 2003.

§ 160.T204 [Amended]

4. Section 160.T204, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, is extended in effect though March 31, 2003.

§ 160.207 [Amended]

5. Section 160.207, which was suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, and further suspended at 67 FR 37682, May 30, 2002, until September 30, 2002, will continue to be suspended through March 31, 2003.

§ 160.T208 [Amended]

6. Section 160.T208, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, and amended by 66 FR 57877, November 19, 2001, and by 67 FR 2571, January 18, 2002, and extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, is extended in effect though March 31, 2003.

§ 160.211 [Amended]

7. Section 160.211, which was suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, and further suspended at 67 FR 37682, May 30, 2002, until September 30, 2002, will continue to be suspended through March 31, 2003.

§ 160.T212 [Amended]

8. Section 160.T212, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, amended by 66 FR 57877, November 19, 2001, and extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, is extended in effect though March 31, 2003.

§ 160.213 [Amended]

9. Section 160.213, which was suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, and further suspended at 67 FR 37682, May 30, 2002, until September 30, 2002, will continue to be suspended through March 31, 2003.

§ 160.T214 [Amended]

10. Section 160.T214, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, amended by 66 FR 57877, November 19, 2001, and extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, is extended in effect though March 31, 2003.

Dated: July 18, 2002.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety, Security, and Environmental Protection.

[FR Doc. 02–18596 Filed 7–18–02; 3:59 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK38

Enrollment—Provision of Hospital and Outpatient Care to Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: VA's medical regulations captioned "Enrollment—Provision of Hospital and Outpatient Care to Veterans" implement a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care. Veterans currently are eligible to be enrolled based on seven priority categories. We would add veterans awarded the Purple Heart to priority category 3 to implement new statutory requirements. We would delete the copayment provisions from priority category 4 to clarify statutory requirements. We propose to divide priority category 7 into two new priority categories (7 and 8) to implement new statutory requirements. We would use the current subpriorities for category 7 for these new categories. We propose to state principles for placing veterans in enrollment categories to help ensure clarity and fairness in making priority category determinations. Finally, we would change the VA officials who can make enrollment decisions and provide an additional address for sending a request for voluntary disenrollment.

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK38." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Amy Hertz, Office of Policy and Planning (105D), at (202) 273–8934 or Roscoe Butler, Chief Policy & Operations, Health Administration Service (10C3), at (202) 273–8302. These individuals are in the Veterans Health Administration of the Department of Veterans Affairs, and are located at 810 Vermont Avenue, NW, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: Pursuant to the mandate of the Veterans' Health Care Eligibility Reform Act of 1996, VA established a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care (38 CFR 17.36). Starting October 1, 1998, most veterans were required to be enrolled in the VA health care system as a condition for receiving VA hospital and outpatient care, and the Secretary was required to make annual determinations as to which categories of veterans are eligible to enroll in the VA health care system.

Currently, VA's enrollment regulations at 38 CFR 17.36 provide that veterans are eligible to be enrolled based on the following categories of priority:

(1) Veterans with a singular or combined rating of 50 percent or greater based on one or more service-connected disabilities or unemployability.

(2) Veterans with a singular or combined rating of 30 percent or 40 percent based on one or more service-connected disabilities.

(3) Veterans who are former prisoners of war; veterans with a singular or combined rating of 10 percent or 20 percent based on one or more service-connected disabilities; veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty; veterans who receive disability compensation under 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for hospital and outpatient care is provided for in the judgment or settlement described in 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended because of the receipt of military retired pay; and veterans receiving compensation at the 10 percent rating level based on multiple noncompensable service-connected disabilities that clearly interfere with normal employability.

(4) Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined; except that a veteran who is catastrophically disabled and who must agree under 38 U.S.C. 1710 to pay to the United States a copayment as condition of receiving VA care, must agree to pay to the United States the applicable copayment to be enrolled in priority category 4.

(5) Veterans not covered by paragraphs (1) through (4) of this section who are determined to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).

(6) Veterans of the Mexican border period or of World War I; veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation, for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, or for any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided and limited in 38 U.S.C. 1710(e); and veterans with 0 percent service-connected disabilities who are nevertheless compensated, including veterans receiving compensation for inactive tuberculosis.

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 7 veterans.

Priority Category 3—Purple Heart

The Veteran's Millennium Health Care and Benefits Act amended the priority categories to include veterans awarded the Purple Heart in priority category 3. Accordingly, we will change the regulations to implement this statutory change.

Priority Category 4—Catastrophically Disabled Veterans

As noted above, the regulations exclude from priority category 4 those catastrophically disabled veterans who were required under 38 U.S.C. 1710 to agree to pay to the United States a copayment as a condition of receiving care and who had not made such an agreement. The statutory provision establishing the enrollment priority (38 U.S.C. 1705) included catastrophically disabled veterans without regard to copayment requirements. Accordingly, we would delete the copayment provisions from priority category 4. However, as a condition of receiving care, the provisions of 38 U.S.C. 1710 require certain catastrophically disabled veterans to agree to make copayments. Accordingly, § 17.36(a)(2) would be clarified to reflect that to be eligible for the medical benefits package a veteran must agree to make copayments if required by law to do so.

Priority Categories 7 and 8

This document would replace priority category 7 with two new priority categories (7 and 8) and use the current subpriorities for category 7 for these new categories as follows:

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g) if their income for the previous calendar year constitutes "low income" under the geographical income limits published by the U.S. Department of Housing and Urban Development for the fiscal year that ended on September 30 of the previous calendar year. For purposes of this paragraph, VA will determine the income of veterans (to include the income of their spouses and dependents) using the rules in §§ 3.271, 3.272, 3.273, and 3.276; and 38 U.S.C. 1521. After determining the veterans' income and the number of persons in the veterans' family (including only the spouse and dependent children), VA will compare their income with the current applicable "low-income" income limit for the public housing and section 8 programs in their area that the U.S. Department of Housing and Urban Development publishes pursuant to 42 U.S.C. 1437a(b)(2). If the veteran's income is below the applicable "low-income" income limit for the area in which the veteran resides, the veteran will be considered to have "low income" for purposes of this paragraph. To avoid a hardship to a veteran, VA may use the projected income for the current year of the veteran, spouse, and

dependent children if the projected income is below the "low income" income limit referenced above.

This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 7 veterans.

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 8 veterans.

The new priority category 7 is required to implement section 202(a) of Public Law 107–135 that establishes a new priority category 7 which reads: "Veterans described in section 1710(a)(3) of this title who are eligible for treatment as a low-income family under section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)) for the area in which such veterans reside, regardless of whether such veterans are treated as single person families under paragraph (3)(A) of such section 3(b) or as families under paragraph (3)(B) of such section 3(b)." We have interpreted this provision to require that VA just use the income limits established by the Department of Housing and Urban Development to determine whether veterans are in priority category 7. To interpret this provision to require VA or HUD to determine veterans' income under the HUD methodology would result in many veterans having two different incomes for purposes of enrollment in the VA healthcare system: One based on the HUD methodology and the other based on VA's methodology. This interpretation is not supported by the legislative history of this provision and would be unreasonable, unsound, and unworkable. Instead, we propose using the same methodology used to determine income as used in determining whether veterans are unable to defray the cost of necessary care under 38 U.S.C. 1722. This requires using prior year income unless VA determines that using projected current year income would avoid a hardship to the veteran.

The description of the new priority category 8 restates a provision in section 202(a) of Public Law 107–135. To be eligible for enrollment in priority category 8, veterans must agree to pay the applicable copayment, but they need not provide VA with income and asset information.

We propose to sub-prioritize new categories 7 and 8 in the same manner as the current category 7, *i.e.*, on the basis of whether the veterans have service-connected (noncompensable) disabilities. We continue to believe that veterans with a service-connected disability should have a higher priority than those without a service-connected disability.

Consistent with this expansion of priority categories, we propose to amend the enrollment application provisions of § 17.36(d)(1). Thus, applicants for placement in new priority category 8 would not be required to complete section II of VA Form 10–10EZ; however, applicants for new priority category 7 would be required to complete the entire form except for section IIE (*i.e.*, information concerning a veteran's net worth). In our opinion, this is necessary to be consistent with our methodology for determining income in the same manner as currently used for applicants for placement in priority category 5, except that information concerning a veteran's net worth is not needed for applicants for new priority category 7.

Principles for Placement in Enrollment Categories

We propose to establish the following principles for placement of veterans in priority categories:

- Veterans will be placed in priority categories whether or not the veterans in that category are eligible to be enrolled.
- A veteran will be placed in the highest priority category or categories for which the veteran qualifies.
- A veteran may be placed in only one priority category, except that a veteran placed in priority category 6 based on a specified disorder or illness will also be placed in priority category 7 or 8 (if the veteran has previously agreed to pay the applicable copayment) for all matters not covered by priority category 6.
- A veteran who had been enrolled based on inclusion in priority category 5 and became no longer eligible for inclusion in that priority category due to failure to submit to VA a current VA Form 10–10EZ will be changed automatically to enrollment based on inclusion in priority category 6 or 8, as applicable, (or more than one of these categories if the previous principle applies), and be considered continuously enrolled. To meet the criteria for priority category 5, a veteran must submit to VA required financial information in a current VA Form 10–10EZ. To be current, after VA has sent a form 10–10EZ to the veteran at the veteran's last known address, the veteran must return the completed form (including signature) to the address on the return envelope within 60 days from the date VA sent the form to the veteran.
- Veterans will be disenrolled, and reenrolled, in the order of the priority categories listed with veterans in priority category 1 being the last to be disenrolled and the first to be reenrolled. Similarly, within priority categories 7 and 8, veterans will be disenrolled, and reenrolled, in the order of the priority subcategories listed with veterans in subcategory (i) being the last to be disenrolled and first to be reenrolled.

The first principle clarifies that VA will place veterans in the priority category in which they belong even if the Secretary has announced that VA will not enroll veterans in that category under § 17.36(c). This will permit veterans to dispute that placement and may facilitate veterans in this category obtaining VA care if the Secretary later decides to enroll veterans in that category. The second and fifth principles are consistent with 38 U.S.C. 1705(a) which requires VA to give priority to the categories in the order listed. The third principle is required by 38 U.S.C. 1710(a)(2)(F) and (e) which limits the eligibility for care given to certain veterans placed in priority category 6. We are proposing the fourth principle to facilitate the transfer of veterans from category 5 to category 6 or 8 without disenrollment. The current regulations state that to remain in priority category 5, veterans are required yearly to submit information to VA establishing financial eligibility for such priority category. The regulations contained provisions for disenrolling veterans who had been in priority category 5 but who had failed to submit information establishing that they should remain in priority category 5. Disenrollment of such veterans could, during periods when VA must limit enrollments and re-enrollments, result in the loss of eligibility for VA care altogether. This was never intended for veterans who had previously signed a form 10–10EZ and thus agreed to pay applicable copayments. Accordingly, this document proposes to change the rule to provide that a veteran no longer eligible for priority category 5 would be automatically changed to enrollment based on inclusion in priority category 6, or 8, and be deemed as continuously enrolled if the enrollment decision allows for such priority categories to remain enrolled.

Decisionmaking Officials

To reflect a title change, we would change "Chief Network Officer" to "Deputy Under Secretary for Health for Operations and Management." Further, we would add "Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center" to the list of VA officials who can make decisions regarding the enrollment of individual veterans. In our opinion, this is necessary to give VA greater flexibility in administering the enrollment process. We would not change the regulation that provides that the Secretary will make the determination regarding which priority categories of veterans are eligible to be enrolled.

Miscellaneous

An address is proposed to be added for veterans to send a request for voluntary disenrollment. Finally, we would remove a nonsubstantive, unnecessary bracketed phrase from paragraph 17.36(f).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866. Executive Order 12866 provides that a proposed rule "in most cases should include a comment period of not less than 60 days." This proposal provides for a 30-day comment period. This is necessary to allow for a final rule to be established in time to allow the VA Secretary to have as many options as possible concerning the provision of health care services to veterans in fiscal year 2003.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: May 15, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.36 is amended by:

A. Removing "Chief Network Officer" wherever it appears and adding, in its place, "Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center".

B. Revising paragraphs (a)(2), (b)(4), and (b)(7).

C. In paragraph (b)(3), removing "prisoners of war;" and adding, in its place, "prisoners of war; veterans awarded the Purple Heart;"

D. Adding a new paragraph (b)(8).

E. Revising paragraph (d)(1); and redesignating paragraphs (d)(3) through (d)(5) as paragraphs (d)(4) through (d)(6), respectively.

F. Adding a new paragraph (d)(3).

G. Revising newly redesignated paragraphs (d)(5) introductory text; and (d)(5)(i).

H. Removing "Note to Paragraph (d)(1)".

I. In newly redesignated paragraph (d)(5)(iii), removing "priority category 5;" and adding, in its place, "priority category 5 or priority category 7;".

J. In paragraph (f), removing "[insert actual photocopy of VA Form 10–10EZ]".

K. Revising the authority at the end of the section. The revisions and additions read as follows:

§ 17.36 Enrollment—provision of hospital and outpatient care to veterans.

(a) * * *

(2) Except as provided in paragraph (a)(3) of this section, a veteran enrolled under this section and who, if required by law to do so, has agreed to make any applicable copayment is eligible for VA hospital and outpatient care as provided in the "medical benefits package" set forth in § 17.38.

* * * * *

(b) * * *

(4) Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined.

* * * * *

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g) if their income for the previous year constitutes "low income" under the geographical income limits established by the U.S. Department of Housing and Urban Development for the fiscal year that ended on September 30 of the previous calendar year. For purposes of this paragraph, VA will determine the income of veterans (to include the income of their spouses and dependents) using the rules in §§ 3.271, 3.272, 3.273, and 3.276 of this chapter. After determining the veterans' income and the number of persons in the veterans' family (including only the spouse and dependent children), VA will compare their income with the current applicable "low-income" income limit for the public housing and section 8 programs in their area that the U.S. Department of Housing and Urban Development publishes pursuant to 42 U.S.C. 1437a(b)(2). If the veteran's income is below the applicable "low-income" income limits for the area in which the veteran resides, the veteran will be considered to have "low

income" for purposes of this paragraph. To avoid a hardship to a veteran, VA may use the projected income for the current year of the veteran, spouse, and dependent children if the projected income is below the "low income" income limit referenced above. This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 7 veterans.

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 8 veterans.

* * * * *

(d) *Enrollment and disenrollment process*—(1) *Application for enrollment.* A veteran may apply to be enrolled in the VA healthcare system at any time. A veteran who wishes to be enrolled must apply by submitting a VA Form 10–10EZ to a VA medical facility. Veterans applying based on inclusion in priority categories 1, 2, 3, 6, and 8 do not need to complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because of their need for regular aid and attendance or by being permanently housebound need not complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because they are catastrophically disabled need not complete section II, but must complete the rest of the form, if: They agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g); they are a veteran of the Mexican border period or of World War I or a veteran with a 0 percent service-connected disability who is nevertheless compensated; their catastrophic disability is a disorder associated with exposure to a toxic substance or radiation, or with service in the Southwest Asia theater of operations during the Gulf War as provided in 38 U.S.C. 1710(e); or their catastrophic disability is an illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided in 38 U.S.C. 1710(e). All other veterans applying based on inclusion in priority category 4 because they are catastrophically disabled must complete the entire form. Veterans applying based on inclusion in priority category 5 must complete the entire form. Veterans applying based on inclusion in priority category 7 must complete the entire form except for section IIE. VA form 10–10EZ is set forth in paragraph (f) of this section and is available from VA medical facilities.

* * * * *

(3) *Placement in enrollment categories.* (i) Veterans will be placed in priority categories whether or not veterans in that category are eligible to be enrolled.

(ii) A veteran will be placed in the highest priority category or categories for which the veteran qualifies.

(iii) A veteran may be placed in only one priority category, except that a veteran placed in priority category 6 based on a specified disorder or illness will also be placed in priority category 7 or priority category 8, as applicable, if the veteran has previously agreed to pay the applicable copayment, for all matters not covered by priority category 6.

(iv) A veteran who had been enrolled based on inclusion in priority category 5 and became no longer eligible for inclusion in priority category 5 due to failure to submit to VA a current VA Form 10–10EZ will be changed automatically to enrollment based on inclusion in priority category 6 or 8 (or more than one of these categories if the previous principle applies), as applicable, and be considered continuously enrolled. To meet the criteria for priority category 5, a veteran must be eligible for priority category 5 based on the information submitted to VA in a current VA Form 10–10EZ. To be current, after VA has sent a form 10–10EZ to the veteran at the veteran's last known address, the veteran must return the completed form (including signature) to the address on the return envelope within 60 days from the date VA sent the form to the veteran.

(v) Veterans will be disenrolled, and reenrolled, in the order of the priority categories listed with veterans in priority category 1 being the last to be disenrolled and the first to be reenrolled. Similarly, within priority categories 7 and 8, veterans will be disenrolled, and reenrolled, in the order of the priority subcategories listed with veterans in subcategory (i) being the last to be disenrolled and first to be reenrolled.

* * * * *

(5) *Disenrollment.* A veteran enrolled in the VA health care system under paragraph (d)(2) or (d)(4) of this section will be disenrolled only if:

(i) The veteran submits to a VA medical center or the VA Health Eligibility Center, 1644 Tullie Circle, Atlanta, Georgia 30329, a signed document stating that the veteran no longer wishes to be enrolled; or

* * * * *

(**Authority:** 38 U.S.C 101, 501, 1521, 1701, 1705, 1710, 1721, 1722)

[FR Doc. 02–18573 Filed 7–22–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–047–7173b; A–1–FRL–7243–1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; VOC RACT Order and Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions establish requirements for sources of volatile organic compounds (VOC). The intended effect of this action is to approve a VOC regulation for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area and to approve a VOC order for Anheuser-Busch into the New Hampshire SIP. EPA is taking this action in accordance with the Clean Air Act.

DATES: Written comments must be received on or before August 22, 2002.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA and Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no relevant adverse comments in response to this rule, we contemplate no further activity. If EPA receives relevant adverse comments, we will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: June 21, 2002.

Ira Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 02–18395 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7249–9]

Approval and Promulgation of Implementation Plans; Louisiana; Emission Reduction Credits Banking in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Louisiana State Implementation Plan (SIP). The revisions concern the establishment of a means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review (NSR) offsets. The revisions remove the requirement that emission reduction credits (ERCs) in the bank be set aside as a contingency measure for the attainment demonstration.

The revisions also remove the requirement that NSR netting be conducted with surplus ERCs from the bank. The revisions clarify the requirement that ERCs be surplus to all requirements of the Clean Air Act (the Act) when used. The EPA proposes to approve these revisions to satisfy the provisions of the Act which relate to the permitting of new and modified sources which are located in nonattainment areas. The EPA does not propose to approve the revisions as an Economic Incentive Program (EIP), nor through this rule alone to allow the use of ERCs for inter-precursor trading purposes or for alternate Reasonably Available Control Technology (RACT) compliance purposes.

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Written comments should be addressed to David Neleigh, Chief, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884.

FOR FURTHER INFORMATION CONTACT: Merrit Nicewander of EPA Region 6 Air Permits Section at (214) 665–7519 at the address above.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" is used, we mean EPA.

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I. Background Information

Why Is This Action Necessary?

The Baton Rouge area consists of the following parishes: East Baton Rouge, West Baton Rouge, Ascension, Livingston, and Iberville. The Baton Rouge area (40 CFR 81.319) was classified as a serious ozone nonattainment area.

We received the Louisiana rule that we are considering in this proposed action on December 31, 2001, as a component of the Attainment Plan and Transport Demonstration (hereinafter, the Attainment Plan/Transport SIP) for the Baton Rouge area submitted by the LDEQ. This revision to the Attainment Plan/Transport SIP specifies emission reduction strategies designed to bring the Baton Rouge area into compliance with the ozone NAAQS. One component of the Attainment Plan/Transport SIP is the revised emission reduction credit banking regulation that has been enacted at Louisiana Administrative Code (LAC) 33:III Chapter 6. This action is necessary to determine whether that revised rule is an approvable component of the Attainment Plan/Transport SIP.

Does the currently EPA approved SIP contain an emission reduction credit banking regulation?

Yes, we proposed approval (63 FR 44192) on August 18, 1998 of revisions to the Louisiana State Implementation Plan (SIP) for the Baton Rouge ozone nonattainment area for revisions to the 1990 base year emission inventory, the Post-1996 Rate-of-Progress (ROP) Plan, its associated 1999 Motor Vehicle Emissions Budgets (MVEBs) for the area, Attainment Demonstration, the Contingency Measures Plan, and the State's point source emissions banking regulations. We promulgated final approval (64 FR 35930) of the SIP revisions, including the emission reduction credit (ERC) banking regulation on July 2, 1999. The Louisiana Department of Environmental Quality (LDEQ) ERC banking regulation is codified as Louisiana Administrative Code (LAC) 33:III Chapter 6.

EPA's July 2, 1999 approval of the LDEQ Chapter 6 rule is summarized below:

LDEQ CHAPTER 6.—REGULATIONS ON CONTROL OF EMISSIONS REDUCTION CREDITS BANKING

	Original LDEQ date of action	EPA date of action
Section 601 Background and Purpose	Aug. 1994, LR20:874	[July 2, 1999, 64 FR 35930]

LDEQ CHAPTER 6.—REGULATIONS ON CONTROL OF EMISSIONS REDUCTION CREDITS BANKING—Continued

	Original LDEQ date of action	EPA date of action
Section 603 Applicability	Aug. 1994, LR20:874	[July 2, 1999, 64 FR 35930]
Section 605 Definitions	Aug. 1994, LR20:874	[July 2, 1999, 64 FR 3590]
Section 607 Stationary Point Source Reductions.	Aug. 1994, LR20:877	[July 2, 1999, 64 FR 35930]
Section 613 ERC Bank Balance Sheet	Aug. 1994, LR20:877	[July 2, 1999, 64 FR 35930]
Section 615 Schedule for Submitting Applications.	Aug. 1994, LR 20:878	[July 2, 1999, 64 FR 35930] Approves original LDEQ rule (adopted 8/94) and subsequent revision (adopted 07/95)
Section 617 Review and Approval of ERC Bank Balance Sheets.	Aug. 1994, LR20:878	[July 2, 1999, 64 FR 35930]
Section 619 Registration of Emission Reduction Credit Certificates.	Aug. 1994, LR20:879	[July 2, 1999, 64 FR 35930]
Section 621 Protection of Banked ERCs	Aug. 1994, LR20:679	[July 2, 1999, 64 FR 35930]
Section 623 Withdrawal, Use, and Transfer of Emission Reduction Credits.	Aug. 1994, LR20:880	[July 2, 1999, 64 FR 35930]
Section 625 Application and Processing Fees	Aug. 1994, LR20:880	[July 2, 1999, 64 FR 35930]

We proposed approval of the LDEQ Chapter 6 emissions banking rule as meeting the requirements for SIP approval under Title I Part D and section 110 of the Act. We did not approve the banking regulations as an economic incentive program (EIP) pursuant to the EPA's Economic Incentives Program Rules (59 FR 16690) and section 182(g) of the Act. 64 FR 35936.

What Did Louisiana Submit as Contingency Measures in the Post-1996 ROP Plan/Attainment Demonstration SIP?

Louisiana identified, in both its 15% and Post-1996 ROP Plans submittals, the State's point source VOC/NO_x banking regulations (LAC 33:III sections 601, 603, 605, 607, 613, 615, 617, 619, 621, 623, and 625) 2 as a three percent contingency measure intended to meet the requirements of sections 172(c)(9) and 182(c)(9) of the Act. The banking regulations were initially submitted to the EPA for approval in the December 15, 1995, 15% ROP Plan submittal. The EPA deferred taking action on the regulations in the context of the 15% ROP Plan approval until its rulemaking action on the Post-1996 ROP Plan/ Attainment Demonstration SIP. (The rationale for "carving out" the contingency measures was explained in detail in the TSD to the August 18, 1998, proposed rulemaking as well as the TSD to the 15% ROP Plan rulemaking.)

In the December 22, 1995, Post-1996 ROP Plan submittal, the State provided a table of the emissions reductions that had been banked by industry pursuant to the regulations. The State's contingency measure requirement was 5.7 tons/day of VOCs (three percent times the adjusted base year inventory of 191.2 tons/day). The VOC reductions "on deposit," 13.0 tons/day, were well in excess of the three percent requirement.

We determined in the July 2, 1999 rulemaking that the State met the contingency measures requirements by having adopted and submitted the point source banking regulations, and demonstrated that the bank had sufficient VOC credits "on deposit" and available for confiscation in the event of a missed milestone/failure to attain. Furthermore, we determined that the banking rules provided for expeditious implementation of the contingency measures consistent with the time frames identified in the General Preamble.

What are contingency measures?

Under section 172(c)(9) of the Act, ozone nonattainment areas classified as moderate or above must submit contingency measures to be implemented if RFP is not achieved or if the standard is not attained by the applicable attainment date. The "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992) states that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved in a timely manner and additional planning by the State is needed.

In the General Preamble, the EPA interpreted the Act to require States with moderate and above ozone nonattainment areas to include sufficient contingency measures in their November 1993 submittals so that, upon implementation of such measures, additional emissions reductions of up to three percent of the emissions in the adjusted base year inventory (or a lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

Additional contingency provisions are included in section 182(c)(9) for serious ozone nonattainment areas. These latter provisions are similar to the section 172(c)(9) requirements except that the focus in section 182 (Ozone Areas) is on meeting emissions reductions milestones (section 182(g)).

On What Basis Did We Approve the LDEQ Chapter 6 Emission Reduction Credit Banking Regulation on July 2, 1999 (64 FR 35930)?

We took final action to approve the already-banked VOC emissions reductions credits (totaling 5.7 tons/day) toward meeting the three percent contingency measure requirement pursuant to sections 172(c)(9) and 182(c)(9) of the Act.

We determined that the point source VOC/NOX banking regulations were generally consistent with the Act, EPA policy/guidance and Federal regulations. Therefore, we took final action to approve the State's banking regulations as meeting the requirements for SIP approval under part D and section 110 of the Act.

What Is an Economic Incentive Program (EIP)?

An economic incentive program is a regulatory program that achieves an air quality objective by providing market-based incentives or information to emission sources. A uniform emission reduction requirement, based for instance on installation of a required

emission control technology, does not take account of variations in processes, operations, and control costs across sources even of the same type, such as electric utilities, or petroleum refiners. By providing flexibility in how sources meet an emission reduction target, an EIP empowers sources to find the means that are most suitable and most cost-effective for their particular circumstances.

EIPs can be either mandatory (required by the CAA) or discretionary (a program chosen by a state or tribe).

What Is the Section 182 Requirement for an EIP?

Under section 182(g)(3), if a State fails to submit a milestone compliance demonstration for any serious or severe area as required by section 182(g)(2), the State must choose from three options: to bump up to the next higher classification, to implement additional measures (beyond those in the contingency plan which will already be triggered and implemented) to achieve the next milestone, or to adopt an economic incentive program (as described in section 182(g)(4)). Under section 182(g)(5), if a State fails to submit a compliance demonstration for any extreme area as required by section 182(g)(2), or if the area has not met an applicable milestone as required by section 182(g)(1), the State must submit a plan revision to implement an economic incentive program (as described in section 182(g)(4)) within 9 months of such failure.

A mandatory EIP was not, and still is not, required for the Baton Rouge serious ozone nonattainment area. We encourage the adoption of discretionary EIPs by States where appropriate, as allowed for in the Act (section 110(a)(2)(A)), as a means of stimulating the adoption of incentive-based, innovative programs that will assist States in meeting air quality management goals. As explained below (under "What is the purpose of the revised State emissions banking rule?"), the revised LDEQ Chapter 6 emissions banking rule does not establish a discretionary EIP, although it contains some of the features of one.

What Are the EPA's Economic Incentive Program Rules, Promulgated at 59 FR 16690?

The regulations, promulgated at 59 FR 16690, appear at 40 CFR part 51, subpart U—Economic Incentive Programs §§ 51.490—51.494). The rules in Subpart U apply to any mandatory economic incentive program submitted to the EPA to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act. The LDEQ Post-1996 ROP Plan and Attainment Demonstration SIP revision submittal revisions did not include the ERC bank rules for EPA approval as a section 182 mandatory EIP.

Subpart U was also promulgated to serve as our policy guidance on discretionary EIPs submitted as implementation plan revisions. EPA has since developed additional guidance on discretionary EIPs ("Improving Air Quality With Economic Incentive Programs," EPA/452/R–01–001, January 2001) (the "EIP Guidance").

As further discussed below, the revised Louisiana ERC banking regulation does not establish either a mandatory or discretionary EIP, and therefore the above guidance does not directly apply.

What Are the Submitted Revisions to the Emission Reduction Credit Banking Rule?

EPA action is necessary because the banking rule has been revised in several ways, and the State of Louisiana is now requesting that EPA approve the revised rule as a component of the Baton Rouge SIP. A summary of the revisions to the banking rule follows.

First, the LDEQ removed Section 621 of the LDEQ ERC banking regulation that we approved into the SIP for contingency purposes on July 2, 1999. That section of the rule provided a process for the confiscation by the LDEQ of banked ERCs in the case of failure to meet rate of progress/attainment requirements. The submitted regulation has removed this. The State submitted a substitute contingency measures plan that we have proposed to approve, as published on May 20, 2002 at 67 FR 35468.

Second, the revisions to the banking rule contain provisions that require "Surplus When Used" ERCs in accordance with Section 173(c)(2) of the Act and in response to our Administrator's Order of December 22, 2000 (the "Borden Order"). The order was in response to a petition from the Louisiana Environmental Action Network (LEAN) filed on August 24, 1999 requesting the Administrator to object to the issuance of a state operating permit issued to Borden Chemicals, Inc. (Borden) for a new formaldehyde facility in Geismar, Ascension parish, Louisiana.

The order emphasizes the Act's requirements that ERCs used from the emissions bank as offsets must be surplus of State and Federal requirements at the time they are used as well as when they are generated or banked. LDEQ has revised the rule to clarify that ERCs in the emissions bank must be "Surplus When Used" for NNSR offset purposes in accordance with section 173(c)(2) of the Act and as discussed in the Borden Order.

Third, the previous emissions banking rule required that ERCs from the bank be surplus when used for NNSR netting purposes. There is no federal requirement that netting reductions be surplus when used from an emissions bank. The rule was revised to delete this state-only requirement that netting reductions be surplus.

We approved the LDEQ Chapter 6 banking rule on July 2, 1999, as summarized on the table in Part I BACKGROUND INFORMATION. That SIP approval did not include section 611, Mobile Sources Emission Reductions, which the State had promulgated in August 1994, but did include sections 621, 623 and 625. Section 623 covered the withdrawal, use and transfer of emission reduction credits. Section 625 covered the application and processing fees. The revised Chapter 6 banking rule that is the subject of this action removed sections 611, 621, 623 and 625. It is therefore necessary for us to propose approval of the Chapter 6 banking rule as part of the SIP with sections 611, 621, 623 and 625 removed.

Finally, the program established by the revised Chapter 6 Rule may be used in conjunction with the revised Chapter 5 rule, concerning nonattainment new source review (NNSR), to facilitate stationary source communications and offset purchases before certification and use of an ERC in an NNSR permit application.

For these reasons, it is necessary for us to propose an action on the submitted emissions banking regulation at LAC 33:III Chapter 6.

II. Summary of State Submittal

What Revised State Regulations Did We Evaluate?

We evaluated the LAC 33:III Chapter 6 Emission Reduction Credit Banking regulation, as published in the Louisiana Register on February 20, 2002 and submitted by the Governor on March 4, 2002. The rule was revised to reflect the rescission of the contingency measures' enforceable process contained in section 621 of the rule, to incorporate the "Surplus When Used" provision in accordance with the Act and Borden Order and to remove the requirement that netting reductions for NNSR purposes meet the surplus requirement of the emissions bank.

The rule was also revised to remove section 611 which covered mobile

sources emission reductions, which we had not previously approved as part of the SIP. In addition, the revised rule removed section 623 which covered the withdrawal, use and transfer of emission reduction credits, and section 625, which covered the application and processing fees. Our proposed approval of the revised rule including the removal of these sections, does not constitute a relaxation of the SIP since any and all relevant portions of these sections have been incorporated into the revised rule.

The following sections of Chapter 6 were submitted by the State and are being acted upon by us in this proposed action.

State citation	Title/Subject	State approval date
Section 601	Purpose	Feb. 2002, LR 28:301
Section 603	Applicability	Feb. 2002, LR 28:301
Section 605	Definitions	Feb. 2002, LR 28:301
Section 607	Determination of Creditable Emission Reductions.	Feb. 2002, LR 28:302
Section 613	Bank Recordkeeping and Reporting Requirements.	Feb. 2002, LR 28:303
Section 615	Schedule for Submitting Applications	Feb. 2002, LR 28:304
Section 617	Procedures for Review and Approval of ERCs	Feb. 2002, LR 28:304
Section 619	Emission Reduction Credit Bank	Feb. 2002, LR 28:305

What Is the Purpose of the Revised State Emissions Banking Rule?

The purpose of the revised rule, as stated in section 601, is to establish the means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review offsets. This purpose provides flexibility to stationary sources when they undergo nonattainment new source review, allowing sources in need of emissions offsets to identify another stationary source that may have surplus emission reductions available for purchase as NNSR offsets.

Although section 601 states that the purpose of the rule is to "identify and preserve" emission reductions for NNSR offsets, the revised rule does not itself provide a mechanism for "preserving" emission reductions until the permitting stage. That is, under LAC 33:III.617(C)(2), emission reductions can only be preserved after they are identified in the ERC certificate, and the State determines that they are "Surplus When Used."

Thus, in spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, it does not establish an ERC bank. Rather, the revised rule functions as merely a bulletin board to facilitate stationary source communications and offset purchases before certification and use of the ERC in an NNSR permit application. The program established by the revised Chapter 6 rule is not itself a market-based program for achieving air quality improvements (and is therefore not an EIP as defined by EPA). Instead, the program may be used to reduce the administrative burden experienced by stationary sources obtaining emission reductions as a part of New Source Review permitting.

An emissions banking rule that functions merely to facilitate communication between stationary sources is not required to meet the Economic Incentive Program guidance. The guidance was developed to assist states and tribes in establishing programs to achieve emission reductions as required to meet SIP attainment demonstrations or to be traded for inter-precursor offsets purposes, or to facilitate the compliance requirements for alternative RACT requirements. For these reasons, EPA is not reviewing the revised rule for compliance with EPA's EIP Guidance.

Will Offsets Identified and Preserved Under the Revised State Emissions Banking Rule Satisfy the "Surplus When Used" Requirement?

As required by section 173(c)(2) of the Act, the revised rule provides at section 607(B)(1) that emission reductions must be surplus, permanent, quantifiable, and enforceable. "Surplus Emission Reductions" are defined in LAC 33:III.605 as emission reductions voluntarily created for an emissions unit; not required by any local, state or federal law, regulation, order, or requirement, and in excess of reductions used to demonstrate attainment of federal and state ambient air quality standards. LDEQ has revised the rule to clarify that ERCs in the emissions bank must be "Surplus When Used" for NNSR offset purposes in accordance with the Act and as discussed in the Borden Order. Section 617(C)(2) of the revised rule provides for the recalculation of ERCs at the time of permit issuance; therefore, given the surplus requirement of Section 607(b)(1), the revised rule is clear in requiring that ERCs be "Surplus When Used." In addition to the "surplus" definitions discussed above, e.g., not required by any local law, etc., section 605 limits emission reductions as "surplus" to only emission reductions that have occurred "at the time a permit application that relies upon the reductions as offsets is deemed administratively complete."

Under the Revised State Banking Regulation, How Will "Surplus When Used" ERCs Be Calculated?

Section 607(C) of the revised rule provides procedures for calculating the surplus emission reductions. To calculate surplus emissions reductions, it is necessary to establish a baseline from which reduced emission levels can be determined. Emissions reductions below these "baseline emissions" are considered surplus, and under the rule are calculated by subtracting future allowable emissions after the reductions from the baseline emissions the voluntary reduction.

Under the Revised State Banking Regulation, How Will "Baseline Emissions" Be Calculated?

The revised Chapter 6 procedure utilizes a "universal growth" concept in determining baseline emissions. This procedure is laid out in section 607(C)(4) of the revised rule. Under this procedure, the State must compare the current total point-source emissions inventory for the modeled parishes to the "base case inventory" (until November 15, 2005. After November 15, 2005, this comparison is to be made to the "base line inventory"). (These inventories refer to the aggregate point-source emissions inventory for NO_X and VOC. The State prepares an annual inventory of actual point-source emissions. The base case and base line emission inventories are found in the most recent Attainment Demonstration. In essence the difference is that the base line inventory accounts for new attainment-related emission limitations, and hence will reflect lower emissions

due to the RACT limits established to support the attainment demonstration.)

If the current total point source emissions inventory is less than the base case (or, starting in November 15, 2005, the base line) inventory, then the universal growth of emissions in the nonattainment area is below that relied upon in the attainment demonstration modeling. Therefore, it is unnecessary for the determination of the actual emissions modeled in the attainment demonstration to be performed and used in determining baseline emissions, and baseline emissions will simply be the lower of (1) actual emissions or (2) adjusted allowable emissions. If, on the other hand, the current total point source emissions inventory exceeds the base case (or, starting in November 15, 2005, the base line) inventory, baseline emissions will be the lower of (1) actual emissions, (2) adjusted allowable emissions, or (3) the emissions attributed to the source in question in the base case or base line inventory. LAC 33:III.607(C)(4)(a).

Does the Revised State Banking Regulation Incorporate Interpollutant Trading?

No. There is no mention of interpollutant or inter-precursor trading in the revised banking rule. The revised banking rule only serves as a bulletin board for stationary sources to locate other stationary sources that may have offsets for sale. The rule is not an emissions banking or trading rule and is not an Economic Incentive Program. Using the revised rule itself for inter-precursor trading to meet nonattainment new source review offset requirements would be inappropriate. The inclusion of an inter-precursor emissions trading program in the revised bulletin board rule would subject the rule to review as an EIP.

Inter-precursor trading may, however, be conducted under the revised Chapter 5 rule concerning nonattainment New Source Review, using the Chapter 6 bulletin board to identify potentially available offsets. The revisions to Chapter 5 allow what EPA terms "inter-precursor trading" to offset an increase in emissions of VOCs with a decrease in emissions of NO_X. That rule states that all emission reductions claimed as offset credit for significant net NO_X increases shall be from decreases of NO_X. NO_X credits will be allowed to offset VOC increases, but not vice versa. All emission reductions claimed as offset credit for significant net VOC increases shall be from decreases of either NO_X or VOCs, or any combination. If NO_X decreases are used to offset VOC increases, the permit for which the offsets are required must have been issued on or before November 15, 2005.

III. Criteria for Evaluation

What Criteria Did We Use to Approve the Previous Emissions Banking Rule?

As stated above, the previous approval of Chapter 6 by us on July 2, 1999 was not as an Economic Incentive Program. The Chapter 6 regulation no longer provides an enforceable mechanism to confiscate the escrowed 5.7 tons/day of VOCs serving as the contingency measures in support of the attainment demonstration; nor does it provide any emission reductions in support of any attainment demonstration.

What Are the Applicable Criteria for Review of the Revised Emissions Banking Rule?

The revised State emissions banking rule is intended to facilitate communications among stationary sources seeking to identify possible nonattainment new source review emission offsets. Thus, it serves as a bulletin board among the regulated community. The revised State emissions banking rule must only be consistent with the Federal statutes and regulations governing the permitting of stationary sources in ozone nonattainment areas. The statutory requirements, as was the case in the July 2, 1999, EPA approval of the point source banking regulations as an acceptable SIP revision, appear at subchapter I, part A (section 110) and part D (sections 171–185B) of the Act.

What Are the Specific Statutory Requirements With Which the Revised Banking Rule Must Be Consistent?

Subchapter I, part D of the Act contains SIP requirements for nonattainment areas. Subpart I of part D contains the statutory requirements for nonattainment areas in general. Section 173 covers the permit requirements for the nonattainment areas. The Act allows new and modified stationary sources to be constructed in a nonattainment area if the State's SIP contains approved permitting program requirements by the time the source is to commence operation.

The Act requires that offsetting emissions reductions must be obtained, such that total allowable emissions from existing sources in the region (from new or modified minor sources and from the proposed source) will be sufficiently less than total emissions from existing sources before the permit application so that the reasonable further progress requirements are met.

In order to construct and operate in the nonattainment area, the proposed source is required to comply with the lowest achievable emission rate, and all other major stationary sources of the owner or operator in the State must be in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Act.

Section 172 of the Act covers nonattainment SIP provisions in general. Section 172(c)(6) contains SIP measures (including plan items) required to be submitted to comply with the Act. These SIP provisions must include enforceable emission limitations and other control measures as necessary to attain the NAAQS. These measures may include other means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance. Given that the Act in section 172 provides that a technique such as a marketable permits program may be appropriate for inclusion in a SIP, a bulletin board such as the revised State rule is consistent with the Act.

Section 173(c)(1) of the Act states that the owner or operator of a new or modified major stationary source may comply with any offset requirement of the Act for increased emissions only by obtaining emission reductions from the same source or other sources in the same nonattainment area. The emission reduction offsets must, by the time a new or modified source commences operation, be in effect and enforceable. The reductions must assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

Section 173(c)(2) states that emission reductions otherwise required by the Act are not creditable as emissions reductions for any offset requirement. Incidental emission reductions not otherwise required by the Act are creditable as emission reductions for offset purposes if they meet the requirements of section 173(c)(1).

What Are the Specific Regulatory Requirements With Which the Revised Banking Rule Must Be Consistent?

Federal regulations at 40 CFR 51.160 (Subpart I—Review of New Sources and Modifications) state that the SIP must contain the legally enforceable procedures to be followed in air permitting in an nonattainment area.

These legally enforceable procedures enable the State to determine whether the construction or modification of a stationary source will result in a violation of applicable portions of the SIP approved control strategy or will interfere with attainment of the NAAQS.

Federal regulations at 40 CFR 51.161 contain the requirements for public availability of the permit information. This section requires that the legally enforceable procedures identified in 40 CFR 51.160 must include an opportunity for the public to comment on the information submitted in the permit application. The information available for public comment must contain the State's analysis of the effect of the permit on ambient air quality including the State's proposed approval or disapproval of the permit application.

Federal regulations at 40 CFR 51.163 require the SIP to contain administrative procedures to be followed in making the determination required in 40 CFR 51.160.

Federal regulations at 40 CFR 51.165 contain the minimum federal permit requirements for nonattainment areas. Each SIP must adopt a preconstruction permit review program to satisfy the requirements of sections 172(b)(6) and 173 of the Act for any area that has been designated nonattainment for any NAAQS. (Nonattainment areas for Louisiana are listed at 40 CFR 81.319.)

The permit program must apply to any new major stationary source or major modification that is major for the pollutant (or pollutant precursor) for which the area is designated nonattainment. For each SIP containing a preconstruction review program, the baseline for determining credit for emissions reductions must be the emissions limit under the applicable SIP in effect at the time the application to construct is filed.

Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).

IV. Technical Review

What Was the Basis for the Technical Review of the State Emissions Banking Rule as Revised in Chapter 6?

The purpose of the revised rule as stated in section 601 was to establish the means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review (NSR) offsets. The pollutants to which the rule applies are nitrogen oxides (NO_X) and volatile organic compounds (VOC). Since the rule does not by itself directly reduce emissions or improve air quality, and is instead intended solely to enable stationary sources to identify and acquire NO_X and VOC offsets for NNSR purposes, the rule was reviewed as a component of the SIP related to the NNSR offsets rule, not as an Economic Incentive Program.

Was the State's Revised Emissions Banking Rule Reviewed as an Inter-Precursor Trading Program?

No, the revised rule does not contain any reference to an inter-precursor trading program. The purpose of the rule does not include inter-precursor, or for that matter any, emissions trading.

In keeping with the Act, a determination of whether the ERCs are surplus "at use" must be conducted by the State when they are to be used. The Chapter 6 regulation merely provides for stationary sources to identify and acquire ERCs. The new source permitting regulation in Chapter 5, on the other hand, refers to what EPA considers inter-precursor trading. Under the revised Chapter 5 procedure, the State's verification that the ERCs are surplus must be conducted when they are to be used, not when they are acquired (or submitted for certification or purchased). Accordingly, the State's determination that an inter-precursor trade consists of surplus emission reductions must be made at the time of the State's evaluation of the permit application relying upon a trade. Thus, inter-precursor trades are appropriately reviewed, evaluated and verified as surplus under the NSR program at the time of use, which is at the time of the State's review of the permit application. Appropriately, the inter-precursor trading program is not contained in Chapter 6 and was not reviewed under this action. We are reviewing the inter-precursor trading program separately as a part of our review of Louisiana's revisions to its Chapter 5 nonattainment new source review regulations.

Was the State's Revised Emissions Banking Rule Reviewed With Respect to Alternate RACT Compliance Trading Plans?

No, the revised rule does not contain any reference to an alternate RACT compliance trading program. The purpose of the rule does not include alternate RACT trading plans, or for that matter, any emissions trading.

SIP emission reduction credits must be surplus at the time of use. A determination of whether the ERCs are surplus must be conducted by the State when they are to be used. The Chapter 6 regulation merely provides for stationary sources to identify and acquire ERCs. The NO_X control regulation in Chapter 22, on the other hand, refers to trading associated with RACT compliance. Under the provisions of the revised Chapter 22, the verification that the ERCs are surplus must be conducted when they are to be used, not when they are acquired (or submitted for certification or purchased). The determination that an alternate RACT compliance trade consists of surplus emission reductions must be made at the time of the State and EPA's approval of the alternate RACT trading plan. Thus, through the State and EPA approval of a source-specific alternate RACT trading plan, the trade is appropriately reviewed, evaluated and verified as surplus at the time of use. Appropriately, the alternative RACT trading program is not contained in Chapter 6 and was not reviewed under this action. We are reviewing the alternate RACT trading plan program separately as a part of our review of Louisiana's revisions to its Chapter 22 NO_X regulations.

How Does the State's Revised Banking Regulation in Chapter 6 Interact With the NO_X Control Regulation in Chapter 22 and the NSR Regulation in Chapter 5?

The State has recently revised the NO_X control regulation in Chapter 22. This NO_X RACT rule requires stationary sources to comply with a more strict emission limitation during the five month ozone season. Typically a stationary source reduces emissions below the baseline to generate surplus emission reduction credits. Due to the revised NO_X rule, the allowable emission limitation for a stationary source could potentially have two values, one for the five month ozone season and another for the seven month non-ozone season.

Thus, the baseline emissions for the stationary source, which are used to determine surplus emission reduction

credits for offset permitting purposes, could have two different values. In order to accurately determine the surplus ERCs to be used in the NNSR permitting, the baseline emissions and surplus ERCs must be determined for the two time periods. Section 173 of the Act does not address the use of offsets for nonattainment permitting over periods of less than one year. Accordingly, the verification of NO_X ERCs to be used in all NNSR permitting under Chapter 5 must be determined by adding the ERCs from the five-month ozone season and the seven-month non-ozone season.

With respect to all offsets under Chapter 5 and all ERCs under Chapter 6, the total NO_X emission increases during the ozone season must be offset by NO_X ERCs from the ozone season. Non-ozone season NO_X increases may be met by either ozone or non-ozone NO_X ERCs. The annual NO_X increase must be offset by the total combination of ozone and non-ozone season surplus NO_X emission reduction credits.

The stated purpose of the revised emissions banking rule in Chapter 6 is to enable stationary sources to identify and acquire emission reductions for NSR purposes. The Chapter 6 rule does not address the requirement to keep separate documentation for the certification, determination, and recordkeeping of NO_X ERCs during the ozone and non-ozone seasons. The identification, certification, acquisition, recordkeeping and determination of "Surplus When Used" emission reduction credits must be for both the ozone season and the non-ozone season time periods. The State has indicated by letter from Mr. Dale Givens to EPA dated May 3, 2002, that the State would operate the emissions reduction bank in such a manner. EPA requests that in response to comments on EPA's proposed approval of the Chapter 5 and Chapter 6 rules, the State affirm and detail the procedures for the determination of NO_X surplus emission reduction credits resulting from the split emission limitations for the NO_X RACT rule in Chapter 22.

The inter-precursor trading provisions contained in the Chapter 5 NNSR rules indicate that offsets of VOC emissions may be met by surplus NO_X emission reductions. The VOC emission offsets met by surplus NO_X ERCs must be for both the ozone season and non-ozone seasons. In other words, for inter-precursor trading the VOC emission increases during the ozone season must be offset by NO_X ERCs from the ozone season. Non-ozone season VOC increases may be offset by either ozone or non-ozone NO_X ERCs. The annual VOC increase must be offset by the total combination of ozone and non-ozone season surplus NO_X emission reduction credits.

Does the Revised State Emissions Banking Rule Meet the Requirements of the Clean Air Act and 40 CFR Part 51 Regulations Pertaining to NSR Requirements?

We did not approve the previous LDEQ Chapter 6 emission reduction credit banking regulation as an EIP. The stated purpose of the revised rule in section 601 is to establish the means of enabling stationary sources to identify and preserve or acquire emission reductions for NSR offsets. The potential offsets are required by the revised rule to demonstrate that they are "Surplus When Used" as offsets in the NNSR permit application. In spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, the revised rule does not function as an ERC bank. Rather, the revised rule functions as merely a bulletin board to facilitate stationary source communications and offset purchases before certification and use in an NNSR permit application. The "bank" established by the revised rule will not itself provide emission reduction credits that may be used for NNSR inter-precursor trading or alternate RACT compliance trading. Therefore, we are proposing action on the revised Chapter 6 rule after review for compliance with the Act with respect to NNSR purposes only, and not as an EIP.

We have concluded that having a bulletin board such as that established by the revised Chapter 6 rule is consistent with section 172 of the Act, which specifically indicates that economic incentive measures such as fees, marketable permits and auctions of emission rights may be used as SIP provisions. It is also consistent with the 40 CFR part 51 regulations pertaining to NSR permitting.

The operation of the bulletin board as revised in Chapter 6 is also consistent with section 173 of the Act, which provides that the owner or operator of a new or modified major stationary source may comply with any offset requirement of the Act for increased emissions only by obtaining emission reductions from the same source or other sources in the same nonattainment area. By determining the surplus ERCs according to the requirements of section 607 of the revised rule, the requirements of section 173 of the Act—namely, that emission reduction offsets must be, by the time a new or modified source commences operation, in effect and enforceable—will be satisfied.

The determination of surplus ERCs under section 607 is consistent with the Act. It is consistent with 40 CFR part 51 regulations pertaining to NSR requirements. All ERCs sought to be used for inter-precursor trading, including those identified and acquired through the Chapter 6 bank, must be accompanied by a section 607 surplus determination at the time of the permit application submission for the inter-precursor trade. The State will re-evaluate during the NSR process whether these ERCs are surplus at use.

We concluded that the section 607 "universal growth" approach to determining baseline emissions for the purpose of calculating surplus emission reductions is consistent with the Act and 40 CFR part 51 regulations pertaining to NSR requirements. This procedure is discussed above in part II, under the heading "Under the revised State banking regulation, how will "baseline emissions" be calculated?"

In general, baseline emissions are set at the lower of allowable emissions or actual emissions at the source. See EIP Guidance at 39–42. (As noted previously, the EIP Guidance is not directly applicable to the revised Louisiana rule, but it represents EPA's final action on the Open-Market Trading Rule (OMTR) (proposed in August 3, 1995 at 60 FR 39668, and on August 25, 1995 at 60 FR 44290), and therefore its discussion of the baseline for determining surplus emission reductions is relevant here.) Under the revised Chapter 6 rule, "baseline emissions" are defined in section 605, and are calculated as described in section 607(C). As described previously, the revised Louisiana rule requires the comparison of two different inventories—the "base line" and "base case" inventories—in calculating the baseline emissions. The LDEQ has agreed in implementing this rule that it will interpret section 607(C)(1) to require use of the base line inventory beginning November 15, 2005. See letter from Dale Givens, Secretary of LDEQ, to Gregg Cooke, Regional Administrator, EPA Region 6 (May 3, 2002). Using the base case inventory until that date is appropriate as a transition measure during the implementation of the controls necessary for attainment. Accordingly, we have concluded that the use of a universal growth factor to evaluate the actual emissions relied upon in the most recent attainment demonstration is consistent with the Act and 40 CFR part 51 regulations pertaining to NSR permitting.

V. Proposed Action

For the reasons stated herein, we have determined that the SIP submittal for a revision to LAC 33:III Chapter 6 is consistent with Title I of the Act and federal regulations pertaining to NNSR permitting as found at 40 CFR part 51. Sections III and IV of this preamble and the Technical Support Document for this proposed action contain reviews of the State submittal and the basis for our proposal to approve of these Sections.

VI. Request for Public Comments

We are requesting comments on all aspects of the requested SIP revision and our proposed rulemaking action. Comments received by the date indicated above will be considered in the development of the EPA's final rule.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 15, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–18575 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–61–3–7565; FRL–7250–4]

Approval of Revisions to the Louisiana Department of Environmental Quality Title 33 Environmental Quality Part III. Air Chapter 5. Permit Procedures, 504. Nonattainment New Source Review Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the EPA is proposing to approve revisions to the State of Louisiana's State Implementation Plan (SIP). The revisions concern the nonattainment New Source Review (NSR) procedures for the five-parish Baton Rouge ozone nonattainment area (hereinafter referred to as the Baton Rouge area). The revisions include increases to the minimum offset ratios for new major stationary sources and major modifications at major stationary sources in nonattainment areas. The minimum offset ratios were increased for classifications of serious and severe ozone nonattainment. The revisions will also allow an increase in volatile organic compound (VOC) emissions to be offset by a decrease in emissions of nitrogen oxides (NO_X) if the net result is a decrease in ozone levels. The revisions require that if NO_X emissions decreases are used for VOC emissions increases, the permit for which the offsets are required must have been issued on or before November 15, 2005 and meet additional requirements to ensure a net air quality benefit.

Major stationary sources that plan to build or modify in a nonattainment area must obtain these emissions offsets as a condition of permit approval. Emissions offsets are reductions in actual emissions from existing sources in the vicinity of the proposed new source. The EPA proposes to approve the use of these revisions as a component of the Louisiana plan to bring the Baton Rouge nonattainment area into compliance with the Clean Air Act (CAA or the Act).

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Written comments should be sent to:

David Neleigh, Chief, Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Copies of documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733; and the Louisiana Department of Environmental Quality, 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884. Please contact the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Stankosky, Air Permits Section (6PD–R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7525.

SUPPLEMENTARY INFORMATION:
Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

I. What action is the EPA taking?
II. Why is this action necessary?
III. What does this action do?
IV. What is the Baton Rouge ozone nonattainment area?
V. Whom does this action affect?
VI. What is the history of the LDEQ nonattainment NSR program?
VII. Are the nonattainment NSR revisions approvable?
VIII. How does the State's NSR regulation In Chapter 5 interact with The NO_X control regulation in Chapter 22 and the revised banking regulation in Chapter 6?
IX. Administrative Requirements.

Background

I. What action Is the EPA Taking?

The EPA is proposing to approve changes to the State of Louisiana's nonattainment NSR procedures for the five-parish Baton Rouge ozone nonattainment area. These revisions to the nonattainment NSR procedures are part of the changes the state is making to the SIP to address the CAA pollution control requirements for ozone nonattainment areas. These changes revise Section 504, previously approved by the EPA on May 31, 2001 (66 FR 29491). NSR is a permitting program that regulates the construction of new major stationary sources of air pollution and major modifications to existing major sources. These sources are required by the CAA to obtain an air pollution permit before beginning construction.

The revisions include increases to the minimum offset ratios for new major stationary sources and major modifications at major stationary sources in nonattainment areas. The minimum offset ratios were increased for classifications of serious and severe ozone nonattainment. The revisions will also allow an increase in VOC emissions to be offset by a decrease in emissions of NO_X. The revisions require that if NO_X emissions decreases are used for VOC emissions increases, the permit for which the offsets are required must have been issued on or before November 15, 2005.

Major stationary sources that plan to build or modify in a nonattainment area must obtain these emissions offsets as a condition of permit approval. Emissions offsets are reductions in actual emissions from existing sources in the vicinity of the proposed new source.

II. Why Is This Action Necessary?

The Baton Rouge area was classified as a serious ozone nonattainment area (40 CFR 81.319). We received the Louisiana rule that we are considering in this proposed action on December 31, 2001, as a component of the an Attainment Plan and Transport Demonstration (hereinafter, the Attainment Plan/Transport SIP) for the Baton Rouge area submitted by the LDEQ. This revision to the Attainment Plan/Transport SIP specifies emission reduction strategies designed to bring the Baton Rouge area into compliance with the ozone NAAQS. One component of the Attainment Plan/ Transport SIP is the revised nonattainment NSR rule that has been enacted at Louisiana Administrative Code (LAC) 33:III.504. This action is necessary to determine whether that revised rule is an approvable component of the Attainment Plan/ Transport SIP.

III. What Does This Action Do?

In this action, we are proposing to approve revisions to the Louisiana SIP that have been enacted at Louisiana Administrative Code (LAC) 33:III.504, which contains the rules for nonattainment NSR procedures that will apply to the Baton Rouge area. The LAC revisions include increases to the minimum offset ratios for new major stationary sources and major modifications to major stationary sources in the Baton Rouge area. The revisions also add minimum offset ratios for NO_X. For a nonattainment area with a classification of serious for ozone, the new minimum offset ratio for VOCs and for NO_X is 1.20 to 1 with Lowest Achievable Emission Rate (LAER) technology or 1.40 to 1 without LAER using internal offsets. For a nonattainment area classified severe for ozone, the new minimum offset ratio for VOCs and for NO_X is 1.30 to 1 with LAER technology or 1.50 to 1 without LAER using internal offsets. As defined by section 171 of the CAA, the term LAER refers to either the most stringent emission limit contained in the state plan of any state for the applicable category of sources, or the most stringent emission limitation achieved in practice within an industrial category.

The revisions also allow an increase in VOC emissions to be offset by a decrease in emissions of NO_X. The EPA defines this type of "offset," the trading of emission reductions of one pollutant's precursors for emission reductions of a different precursor for that pollutant, as inter-precursor trading. See "Improving Air Quality with Economic Incentive Programs," EPA–452/R–01–011(EPA Office of Air and Radiation, January 2001) (hereinafter, the EIP Guidance). Under the revised rule, all emission reductions claimed as offset credit for significant net NO_X increases shall be from decreases of NO_X. NO_X credits will be allowed to offset VOC increases, but not vice versa. All emission reductions claimed as offset credit for significant net VOC increases shall be from decreases of either NO_X or VOCs, or any combination of NO_X and VOC decreases. If NO_X decreases are used for VOC increases, the permit for which the offsets are required shall have been issued on or before November 15, 2005. The LDEQ has identified November 15, 2005, as a "sunset date" after which no permits will be issued or modified allowing NO_X credits to offset VOC increases. Revisions to the required offset credit ratio are listed in Table 1.

TABLE 1.—MINIMUM OFFSET RATIOS FOR NEW AND MODIFIED MAJOR STATIONARY SOURCES

Pollutant	Major stationary source threshold values (tons/year)	Major modification significant net increase (tons/year)	Offset ratio minimum
Major Stationary Source/ Major Modification Emission Threshold			
Ozone VOC/NO_X Marginal	100	40 (40)	1.10 to 1
Moderate	100	40 (40)	1.10 to 1
Serious	50	25 (5)	1.20 to 1 w/LAER or 1.4 to 1 internal w/out LAER

TABLE 1.—MINIMUM OFFSET RATIOS FOR NEW AND MODIFIED MAJOR STATIONARY SOURCES—Continued

Pollutant	Major stationary source threshold values (tons/year)	Major modification significant net increase (tons/year)	Offset ratio minimum
Severe	25	25 (5)	1.30 to 1 w/LAER or 1.5 to 1 internal w/out LAER

The Attainment Plan/Transport SIP includes an enforceable commitment to perform and submit a mid-course review by May 1, 2004. This mid-course review would include, among other things, a re-evaluation of the ratio of NO_X to VOC emissions reductions needed for attainment.

IV. What Is the Baton Rouge Ozone Nonattainment Area?

The Baton Rouge ozone nonattainment area, located in southern Louisiana, consists of East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Livingston Parishes (40 CFR 81.319).

V. Whom Does This Action Affect?

This action applies to the construction of any new major stationary source or to any major modification at a major stationary source within the Baton Rouge area. Section 182 of the CAA defines "major source" with respect to each category of ozone nonattainment classification area, as shown in Table 2. Any source that emits or has the potential to emit 50 tons or more of VOC or NO_X and is located in an area classified as serious is considered a major source. Any source that emits or has the potential to emit 25 tons or more of VOC or NO_X and is in an area classified as severe is considered a major source.

TABLE 2.—DEFINITIONS OF MAJOR STATIONARY SOURCES

Attainment status of area where source is located	Potential to emit (tons/year)	
	Nitrogen oxides (NO_X)	Volatile organic compounds (VOC)
Attainment areas	100	100
Nonattainment areas:		
Marginal	100	100
Moderate	100	100
Serious	50	50
Severe	25	25
Extreme	10	10

The requirements of the revised rule do not apply to NO_X increases for any applications deemed administratively complete before December 20, 2001. Additionally, under the revised rule the 1.40 to 1 VOC internal offset ratio (without LAER) for serious ozone nonattainment areas shall not apply to such applications. Instead, a 1.30 to 1 internal offset ratio shall apply to VOC if LAER is not utilized. (With LAER, the applicable ratio is 1.20 to 1, regardless of application date.) Further, sources exempt from nonattainment NSR requirements for NO_X increases will still be subject to the construction schedule and other provisions of the EPA's Transitional Guidance. See memoranda from John Seitz, dated March 11, 1991, "New Source Review (NSR) Program Transitional Guidance," and September 3, 1992, "New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements."

VI. What Is the History of the LDEQ Nonattainment NSR Program?

The current provisions for nonattainment NSR for permitting new major stationary sources and major modifications at major stationary sources in the Baton Rouge area are found at LAC 33:III.504. The EPA approved the original regulations on May 31, 1972, (37 FR 10869) with the Louisiana SIP. A number of revisions to the regulations were approved between 1972 and the present. These revisions are outlined in 40 CFR part 52, subpart T, for Louisiana. Under sections 107(d)(1)(C) and 181(a) of the Act, the Baton Rouge area was designated nonattainment for the 1-hour ozone NAAQS and classified as "serious" based on its design value of 0.164 ppm in 1989. These nonattainment designations and classifications were codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991).

On January 26, 1996 (61 FR 2438), we granted an exemption under section 182(f) of the CAA from the reasonably available control technology (RACT) and nonattainment NSR requirements for major stationary sources of NO_X. In granting these exemptions we reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO_X emissions controls. We approved the Louisiana nonattainment NSR (LAC 33:III.504) procedures October 10, 1997 (62 FR 52951) and revisions to Section 504 on January 5, 1999 (64 FR 415) and May 31, 2001 (66 FR 29491).

On May 9, 2001, we proposed our finding that the Baton Rouge ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date (66 FR 23646). The LDEQ requested rescission of the NO_X waivers for the Baton Rouge area on September 24, 2001, based on revised

modeling that demonstrated that NO_X controls will contribute to attaining the ozone NAAQS, and on December 31, 2001, we received from the LDEQ, the Attainment Plan/Transport SIP for the Baton Rouge area which included these revisions to the minimum offset ratios for new major stationary sources and major modifications at major stationary sources in the Baton Rouge area. We proposed approval of the rescission of the NO_X exemptions on May 7, 2002 (67 FR 30638).

On December 20, 2001, Louisiana enacted the revisions to its rule for nonattainment NSR, LAC 33:III.504, that are the subject of this proposed rule.

VII. Are the Nonattainment NSR Revisions Approvable?

Yes, the nonattainment NSR revisions are approvable. The revisions to the LAC 33:III.504, rules for nonattainment NSR procedures for the Baton Rouge area, fulfill the requirements at Section 172(c)(5) of the CAA and at 40 CFR 51.165. The LAC revisions for changes to the minimum offset ratios fulfill offset requirements for both serious and severe ozone nonattainment areas as described in Sections 182(c)(6), (8), & (10) and 182(d)(2) of the CAA and are, in fact, more stringent than required by the Act.

The Attainment Plan/Transport SIP revisions also allow an increase in VOC emissions to be offset by a decrease in emissions of NO_X using the ratios set forth in Table 1. As previously noted, the EPA defines this type of "offset," the trading of emission reductions of one pollutant's precursors for emission reductions of a different precursor for that pollutant, as inter-precursor trading (IPT). While the EPA does not have specific requirements for IPT that apply to all circumstances, we recognize that IPT can be allowed under limited circumstances. Our position on IPT can be found at Appendix 16.9 in the EIP Guidance. An EIP is a regulatory program that achieves an air quality objective by providing market-based incentives or information to emission sources. For example, a uniform emission reduction requirement, based for instance on installation of a required emission control technology, does not take account of variations in processes, operations, and control costs across sources even of the same type, such as electric utilities, or petroleum refiners. An EIP empowers sources to find the means that are most suitable and most cost-effective for their particular circumstances, by providing flexibility in how sources meet an emission reduction target. Because this revision to the nonattainment NSR rule is not itself a market-based program for achieving air quality improvements (and is therefore not an EIP as defined by the EPA), we did not evaluate LAC 33:III.504 with respect to Appendix 16.9 of the EIP Guidance. However, because the IPT guidance provided in the EIP document applies generally to NSR offsets, the EPA determined that the LDEQ rule is consistent with the IPT provisions in the EIP Guidance.

In the December 2001 SIP submission, the LDEQ conducted attainment demonstration modeling, which indicated that a reduction in NO_X emissions and a further reduction in VOC emissions are required in the Baton Rouge area to lower ozone levels. As is recognized in the CAA, VOCs and NO_X emissions combine in the atmosphere to create ozone, and accordingly a reduction in the levels of these pollutants can lower ozone levels. Furthermore, Section 182(c)(2)(C) of the CAA provides for states with ozone problems to substitute NO_X reductions for VOC reduction in their Attainment and Reasonable Further Progress (RFP) Plans.

In allowing substitution of NO_X emission reductions for VOC emission reductions, Section 182(c)(2)(C) of the CAA states that the resulting reductions "in ozone concentrations" must be "at least equivalent" to that which would result from 3% VOC reductions required as a demonstration of RFP under Section 182(c)(2)(B). Our NO_X Substitution Guidance (EPA, December 1993) provides that the RFP reductions should be consistent with those needed for attainment and that the Attainment and RFP Plans show that reduction of NO_X consistent with those needed for attainment can be accepted as equivalent to what would be required for a VOC-only attainment. The LDEQ's current nonattainment NSR procedures also require that emission reduction claimed as offset credit shall be sufficient to ensure RFP toward attainment.

The pollutants being offset must impact the environment in a similar manner and increases in emission of VOCs cannot be replaced with another VOC of lesser reactivity (40 CFR 51.165(a)(3)(ii)(D)). Additionally, 40 CFR 51.100(s) defines VOCs; this regulation and LAC 33:III.2117 also define "non-VOCs" or carbon-containing compounds which do not participate in atmospheric photochemical reactions which may produce ozone. These "non-VOCs" would not be eligible for the proposed emission offsets.

An increase in VOC emissions offset by a decrease in emissions of NO_X should be analyzed for the extent of impact from each pollutant involved. The LDEQ has agreed in implementing this provision to evaluate such trades on a case-by-case basis. See letter from Dale Givens, Secretary of LDEQ, to Gregg Cooke, Regional Administrator, U.S. EPA, Region 6 (May 3, 2002). Additionally, in response to a comment sent by us on the proposed SIP revisions, LDEQ confirmed that further Urban Airshed Modeling would be required on a case-by-case basis if new data or evidence comes to light that indicates a NO_X for VOC trade will not be beneficial to the environment.

IPT has received limited proposed approval from the EPA in the State of New Hampshire (66 FR 9278). It has also received limited approval in several air quality districts in California (Bay Area, 65 FR 56284; El Dorado, 65 FR 4887; Sacramento Metropolitan area; San Diego County, 64 FR 42892; San Joaquin Valley, 65 FR 58252), and is being considered for two more (the South Coast area and the Mojave Desert area).

The Attainment Plan/Transport SIP revisions change only specific portions of the LDEQ regulations. The current regulations found at LAC 33:III.504 continue to require that emission offsets provide a net air quality benefit, and are federally enforceable before commencement of construction of the proposed new source or major modification. The emission offsets must meet all applicable state requirements, any applicable new source performance standard in 40 CFR part 60, and any national emission standard for hazardous air pollutants in 40 CFR part 61 or part 63. Also the current state regulations state that issuance of a permit by LDEQ does not relieve any owner or operator of the responsibility to comply with the provisions of local, state, or federal law.

The Technical Support Document for this action provides a more detailed discussion of our proposed approval.

VIII. How Does the State's NSR Regulation in Chapter 5 Interact With the NO_X Control Regulation in Chapter 22 and the Revised Banking Regulation in Chapter 6?

The State has recently revised the NO_X control regulation in Chapter 22. This NO_X Reasonably Available Control Technology (RACT) rule requires stationary sources to comply with a more strict emission limitation during the State's five month ozone season. Typically a stationary source reduces emissions below the baseline to generate surplus emission reduction credits. Due to the revised NO_X rule, the allowable

emission limitation for a stationary source could potentially have two values, one for the five month ozone season and another for the seven month non-ozone season. For a fuller explanation of the area's ozone seasons, see LAC III:33 Chapter 22, and the separate EPA rule-making to be issued regarding that chapter.

Thus, the baseline emissions for the stationary source, which are used to determine surplus emission reduction credits for offset permitting purposes, could have two different values. In order to accurately determine the surplus emission reduction credits (ERCs) to be used in the nonattainment NSR permitting, the baseline emissions and surplus ERCs must be determined for the two time periods. The NO_X ERCs for any annual time period will consist of the ERCs for the five month ozone season and the ERCs from the seven month non-ozone season. Offset requirements for new sources derive from Section 173(a)(1)(A) of the Act, which concerns "total" emissions and does not address the use of emission offsets for nonattainment permitting over periods of less than one year. Therefore, the NO_X ERCs to be used in all nonattainment NSR permitting under Chapter 5 must be determined by adding the ERCs from the ozone season and the non-ozone season.

With respect to all offsets under Chapter 5 and all ERCs under Chapter 6, the total NO_X emission increases during the ozone season must be offset by NO_X ERCs from the ozone season. Non-ozone season NO_X increases may be met by either ozone or non-ozone NO_X ERCs. The annual NO_X increase must be offset by the total combination of ozone and non-ozone season surplus NO_X emission reduction credits.

The stated purpose of the revised emissions banking rule in Chapter 6 is to enable stationary sources to identify and acquire emission reductions for NSR purposes. The Chapter 6 rule does not address the requirement to keep separate certifying, determining and recording procedures for NO_X ERCs during the ozone and non-ozone seasons. The identification, certification, acquisition, recordkeeping and determination of "Surplus When Used" emission reduction credits must be for the ozone season and the non-ozone season time periods. The State has indicated by letter from Mr. Dale Givens to EPA dated May 3, 2002 that the State would implement the rule by operating the emissions reduction bank in such a manner. EPA requests that in response to comments on EPA's proposed approval of the Chapter 5 and Chapter 6 rules, the State affirm and detail the procedures for the determination of NO_X surplus emission reduction credits resulting from the split emission limitations for the NO_X RACT rule in Chapter 22.

The emission offset provisions contained in the Chapter 5 nonattainment NSR rules indicate that offsets of VOC emissions may be met by surplus NO_X emission reductions. The VOC emission offsets met by surplus NO_X ERCs must be for both the ozone season and non-ozone seasons. In other words, VOC emission increases during the ozone season must be offset by NO_X ERCs from the ozone season. Non-ozone season VOC increases may be met by either ozone or non-ozone NO_X ERCs. The annual VOC increase must be offset by the total combination of ozone and non-ozone season surplus NO_X emission reduction credits.

IX. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Volatile organic compounds, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 15, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–18580 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–62–1–7561; FRL–7249–6]

Approval and Promulgation of Implementation Plans; Louisiana; Control of Emissions of Nitrogen Oxides in the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of rules into the Louisiana State Implementation Plan (SIP). In this rulemaking we are proposing to appreve revisions to the Louisiana Nitrogen Oxides (NO_X) rules in the Baton Rouge (BR) 1-hour ozone nonattainment area (BR area) and its Region of Influence as submitted to us by the State on February 27, 2002 (the February 27, 2002, SIP revision). The revisions concern Reasonably Available Control Technology (RACT) for point sources of NO_X in the BR area and its Region of Influence. *See* section 1 of this document for additional information. These new emissions limits for point sources of NO_X will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the BR area.

The EPA is proposing approval of SIP revisions to regulate emissions of NO_X as meeting the requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the Technical Support Document (TSD) and other documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana, 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–6691, and *Shar.Alan@epa.gov*.

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Throughout this document "we," "us," and "our" means EPA.

1. What actions are we taking in this document?

On February 27, 2002, the Governor of Louisiana, submitted rule revisions to LAC 33:III, Chapter 22, "Control of Emissions of Nitrogen Oxides," (AQ215), as a revision to the Louisiana SIP for point sources of NO_X in the BR area and its Region of Influence.

The BR area constitutes the 5 ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. The Region of Influence constitutes the 4 ozone attainment parishes of East Feliciana, Pointe Coupe, St. Helena, and West Feliciana. *See* section 2201(A)(1) of Louisiana's rule revisions. This SIP revision concerns RACT for point sources of NO_X in all these 9 parishes. The State of Louisiana submitted this revision to us as a part of the NO_X reductions needed for the BR area to attain the 1-hour ozone standard. These NO_X reductions will assist the BR area to attain the 1-hour ozone standard.

We received the Louisiana rule that we are considering in this proposed action on February 27, 2002, as a component of the an Attainment Plan and Transport Demonstration (hereinafter, the Attainment Plan/Transport SIP) for the BR area submitted by the LDEQ. This revision to the Attainment Plan Transport SIP specifies emission reduction strategies designed to bring the BR area into compliance with the ozone NAAQS. One component of the Attainment Plan/Transport SIP is the revised NO_X RACT rule that has been enacted at Louisiana Administrative Code (LAC) 33:III, Chapter 22. This action is necessary to determine whether that revised rule is an approvable component of the Attainment Plan/Transport SIP.

In this document we are proposing to approve the February 27, 2002, rule revision to LAC 33:III, Chapter 22, of the Louisiana SIP. Sections 8 through 11 and section 15 of this document contain more information about LAC 33:III, Chapter 22. By this approval, we are also agreeing that the State of Louisiana will be implementing RACT for point sources of NO_X in the BR area and its Region of Influence. *See* the NO_X point source categories listed in Table III, section 10 of this document for more information.

Table I contains a summary list of the sections of LAC 33:III, Chapter 22, as submitted to us on February 27, 2002, for sources of NO_X in these 9 parishes.

TALBLE I.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF LAC 33:III, CHAPTER 22 SUBMITTED ON FEBRUARY 27, 2002, SIP REVISION

Section	Description
A	Applicability
B	Definitions
C	Exemptions
D	Emission Factors
E	Alternative Plans
F	Permits
G	Initial Demonstration of Compliance
H	Continuous Demonstration of Compliance
I	Notification, Recordkeeping, and Reporting Requirements
J	Effective Dates

2. What Action Are We Not Taking in This Document?

We are not acting on the BR area attainment plan in this particular action or on any other area attainment plan.

3. What Are NO_X?

Nitrogen oxides belong to the group of criteria air pollutants. The NO_X are produced from burning fuels, including natural gas, gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

4. What Is RACT?

RACT is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. Sections 182(b)(2) and 182(f) of the Act establish this requirement. These sections, taken together, establish the requirements for Louisiana to submit a NO_X RACT regulation for all major stationary sources of NO_X in ozone nonattainment areas classified as moderate and above. A State may choose to develop its own RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source.

5. What Are the Clean Air Act's RACT Requirements for NO_X Emissions?

The BR area was classified as a serious ozone nonattainment area (40 CFR 81.319). You can find the requirements for serious ozone nonattainment areas such as BR in section 182(c) of the Act. Section 182(c)(2)(C) addresses the NO_X Control requirements for serious areas. Section 182(b)(2) requires States, with areas classified as moderate and above ozone nonattainment, to implement RACT with respect to all major sources of VOCs. Section 182(f) states that, "The plan provisions required under this subpart for major stationary sources of VOCs shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen." This NO_X RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications.

On November 25, 1992 (57 FR 55620), we published a document of proposed rulemaking entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement). The NO_X Supplement describes and provides preliminary guidance on the requirements of section 182(f) of the Act. You should refer to the NO_X supplement for further information on the NO_X requirements. Other EPA guidance memoranda, such as those included in the "NO_X Policy Document for the Clean Air Act of 1990," (EPA–452/R96–005, March 1996), could provide you with more information about NO_X requirements. In addition, states can use information in EPA's guidance documents known as the Alternative Control Techniques (ACTs) to develop their RACT regulations. The following table contains list of ACT documents for various source categories of NO_X with their corresponding EPA publication numbers.

TABLE II.—ACT DOCUMENTS FOR SOURCE CATEGORIES OF NO_X AND THEIR EPA PUBLICATION NUMBERS

Source category	EPA publication No.
Gas turbines	EPA–453/R–93–007
Process heaters	EPA–453/R–93–034
Internal combustion engines.	EPA–453/R–93–032
Non-utility boilers	EPA–453/R–94–022
Utility boilers	EPA–453/R–94–023

6. What Is Definition of a Major Source for NO_X?

As stated in section 5 of this document, the BR area is currently a serious ozone nonattainment area. According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that emits, when uncontrolled, 50 tpy or more of NO_X. Therefore, the major source size for NO_X within these 9 parishes is 50 tpy or more, when uncontrolled.

7. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time.

See section 1 of this document for a listing of the Louisiana parishes that are nonattainment for ozone.

8. What Is History of NO_X RACT Rule for Point Sources in the BR Area?

Prior to this proposed rulemaking the Louisiana's approved SIP did not a contain NO_X RACT rule for point sources operating in these 9 parishes. On January 26, 1996 (61 FR 2438), we granted an exemption under section 182(f) of the Act from the RACT requirements for major stationary sources of NO_X operating in the BR ozone nonattainment area. We based our approval of the exemption on modeling which showed that NO_X controls would not contribute to attainment of the NAAQS for ozone. In granting the exemption, EPA reserved the right to reverse the approval of the exemption, if subsequent modeling data demonstrated an ozone attainment benefit from NO_X emission controls. Photochemical grid modeling recently conducted for the BR area SIP indicates that control of NO_X sources will help the area attain the NAAQS for ozone. The State of Louisiana has requested that EPA rescind the NO_X exemption based on this new modeling. Accordingly, on May 7, 2002 (67 FR 30638), we published our proposal to rescind, among other things, the 182(f) NO_X exemption. When finalized, the State will need to implement RACT requirements for major stationary sources of NO_X operating in these 9 parishes.

We believe that rescission of the 182(f) NO_X exemption, and implementation of RACT rules for major stationary sources of NO_X operating in these 9 parishes will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP.

9. What Does the February 27, 2002, SIP Revision for point sources of NO_X in the BR Area Say?

The State's rulemaking will reduce/ control NO_X emissions from point sources in these 9 parishes. *See* section 1 of this document for a listing of these 9 parishes. The rulemaking affects point sources that emit, when uncontrolled, 50 tpy or more of NO_X. The revised State rule offers facility-wide averaging incentive and operational flexibility to a source to operate at RACT or more stringent levels beyond the designated ozone season (May 1 through September 30). The May 1 through September 30 time frame is consistent with the time frame adopted for the ozone transport assessment group rules. *See* 62 FR 60344 published on November 7, 1997. The NO_X emission control methods may vary from one source to another. Due to the fact that NO_X emission control methods differ from one source to another, some sources will need to operate their NO_X control device beyond the above-mentioned ozone season. The State provided us with more information about the seasonality of the NO_X control in Chapter 22, in a letter dated May 3, 2002. The seasonality of Louisiana's NO_X controls will also impact Louisiana's ERC accounting procedures. The ERC generated from implementation of this rule will have to be permanent, actual, surplus, quantifiable, and federally enforceable at the time of use. Section D(3) of the rule contains the equation used for calculating the appropriate NO_X cap for a source or multiple sources under common control. *See* page 4 of our TSD for additional information. Furthermore, the State will

need to base and conduct its ERC accounting on a two-balance (during ozone season and outside ozone season) system for NO_X ERC. The NO_X ERC generated outside the ozone season can only be made available for use outside the ozone season. The NO_X ERC generated during the ozone season can be made available for use in both the ozone season and outside the ozone season. We will be proposing action on Louisiana's ERC accounting in a separate **Federal Register** document. For additional information you can refer to our TSD that contains a copy of the State's May 3, 2002, letter.

We believe that the proposed rulemaking will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP.

10. What Are the NO_X Emissions Factors in the February 27, 2002, SIP Revision for Point Sources of NO_X in the BR Area?

Table III of this document contains a summary of the affected NO_X point source categories, maximum rated capacities, and their relevant emission factors based on the February 27, 2002, SIP submittal. *See* LAC 33:III:2201, section D(1).

TABLE III.—AFFECTED CATEGORIES OF NO_X, MAXIMUM RATED CAPACITIES, AND EMISSION FACTORS IN THE BR AREA

Category	Maximum rated capacity	NO_X emission factor
Electric Power Generating System Boilers:		
Coal-fired	≥80 MMBtu/hour	0.21 lb/MMBtu
Number 6 Fuel Oil-fired	≥80 MMBtu/hour	0.18 lb/MMBtu
All others (gaseous or liquid)	≥80 MMBtu/hour	0.10 lb/MMBtu
Industrial Boilers	≥80 MMBtu/hour	0.10 lb/MMBtu
Process heater/furnaces:		
Ammonia Reformers	≥80 MMBtu/hour	0.23 lb/MMBtu
All others	≥80 MMBtu/hour	0.08 lb/MMBtu
Stationary gas turbines	≥10 MW	0.16 lb/MMBtu or 42 ppm @ 15 percent O2, dry basis)
Stationary internal combustion engines:		
Lean burn	≥1500 Hp	4 g/Hp-hour
Rich burn	≥300 Hp	2 g/Hp-hour

We believe that the proposed NO_X emission factors for point sources of NO_X in the BR area will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP. By this approval we are agreeing that the State of Louisiana will be implementing RACT for point source categories listed in Table III, section 10 of this document.

Additionally, we will be proposing approval of a revision to Louisiana's lean burn engine requirements for NO_X, through our "parallel processing" procedures explained at 40 CFR part 51, appendix V, in a separate **Federal Register** document.

11. What Is the Compliance Schedule in the February 27, 2002, SIP revision for Point Sources of NO_X in the BR Area?

The proposed compliance date for point sources of NO_X in the BR area is as expeditiously as possible, but no later than May 1, 2005. *See* LAC 33:III:2201, sections J(1) and (2). We believe that the proposed compliance schedule for point sources of NO_X in the BR area will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP.

12. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

13. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the CFR at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations that we approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

14. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

15. What Areas in Louisiana Will the Proposed February 27, 2002, SIP Revision for Point Sources of NO_X Affect?

The following table contains a list of Parishes affected by the proposed SIP

revision that we are proposing to approve, today.

TABLE IV.—RULE NUMBER AND AFFECTED PARISHES OF LOUISIANA

Rule No.	Affected parishes
LAC 33:III:2201 (AQ215) provisions	Ascension, East Baton Rouge, East Felicia, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Felicia.

If you are in one of these Louisiana parishes, you should refer to the Louisiana NO_X rules to determine if and how today's action will affect you.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 15, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–18576 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[MN 67–01–7292(b); FRL–7249–1]

Approval of Section 112(l) Program of Delegation; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this document the EPA is proposing to approve a request from Minnesota for a partial delegation of the Federal air toxics program pursuant to section 112(l) of the Clean Air Act (Act). The State's mechanism of delegation involves the straight delegation of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards, except standards addressed specifically in this action, will occur through a Memorandum of Agreement (MOA) between the Minnesota Pollution Control Agency (MPCA) and EPA. This request for approval of a mechanism of delegation encompasses only those sources subject to a section 112 standard and a requirement to obtain a part 70 operating permit.

In the final rules section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment. Should the Agency receive such comment, it will publish a document informing the public that the direct final rule will not take effect and such public comment(s) received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second

comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 22, 2002.

ADDRESSES: Written comments should be sent to: Robert Miller, Chief, Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Bryan Holtrop at (312) 886–6204, *holtrop.bryan@epa.gov* or Rachel Rineheart at (312) 886–7017, *rineheart.rachel@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. (Please telephone Robert Miller at (312) 353–0396 before visiting the Region 5 Office.)

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: June 27, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–18399 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 412

[FRL–7250–2]

Notice of Data Availability; National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On January 12, 2001 (66 FR 2959), EPA published a proposal to revise two regulations that address manure, wastewater, and other process waters generated by concentrated animal feeding operations (CAFOs). These two regulations are: The National Pollutant Discharge Elimination System (NPDES) provisions that define which operations are CAFOs and establish permit requirements; and the Effluent Limitations Guidelines, or effluent guidelines, for feedlots (beef, dairy, swine and poultry subcategories), which establish the technology-based effluent discharge standards for CAFOs.

In the proposal, and in a subsequent notice of data availability published on November 21, 2001 (66 FR 58556), EPA solicited comment on various aspects of the proposed revisions and data used to analyze the proposed revisions. Due to additional data and comments received, EPA is considering changes to certain aspects of the proposed rulemaking. Specifically, today's notice presents information on the following: Establishing alternative regulatory thresholds for chicken operations using dry litter management practices; the potential creation of alternative performance standards to encourage CAFOs to implement new technologies; and financial data and changes EPA is considering to refine its economic analysis models. Today, EPA is making these data and potential changes available for public review and comment.

DATES: You must submit comments by August 22, 2002.

ADDRESSES: You are encouraged to submit your comments electronically to *CAFOS.comments@epa.gov*. Electronic comments should specify docket number W–00–27 and must be submitted as an ASCII, Microsoft Word, or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments on this action may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

You also may submit comments by mail to: Concentrated Animal Feeding Operation Proposed Rule, Office of Water, Engineering and Analysis Division (4303T), USEPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Hand deliveries (including overnight mail) should be submitted to the Concentrated Animal Feeding Operation Proposed Rule, USEPA, EPA West Building, Room 6231, 1301 Constitution Avenue, NW, Washington, DC 20004. Please submit an original and three copies of your written comments and enclosures, as well as any references cited in your comments.

The public record for this action and the proposed rulemaking has been established under docket number W–00–27 and is located at 1200 Pennsylvania Avenue NW, Washington, DC. The record is available for inspection from 8 a.m. to noon, Monday through Thursday, excluding legal holidays. For access to the docket materials, call (202) 566–1000 for the room number and to schedule an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Renee Selinsky Johnson at (202) 566–1077 or at the following e-mail address: *johnson.renee@epa.gov*.

SUPPLEMENTARY INFORMATION:

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  C. Preliminary Analysis Results

I. Purpose of This Notice

There are three main components to today's notice: (1) Discussion of potential new regulatory thresholds for chicken operations with dry litter management practices; (2) the potential creation of alternative performance standards to encourage CAFOs to implement new wastewater treatment technologies and/or practices; and (3) discussion of new financial data and changes EPA is considering to refine the economic analysis models used to evaluate economic effects that potential regulatory options may have on CAFOs.

For chicken operations with dry litter management, EPA is considering alternative approaches for determining the number of broilers or laying hens that would be considered equivalent to 1,000 animal units (AU). In the proposed rule, EPA presented a scenario where 100,000 chickens would be considered equivalent to 1,000 AU. In today's notice, EPA presents two possible alternative approaches for setting this metric for chicken operations.

EPA's long-term environmental vision for CAFOs includes continuing research and progress toward environmental improvement. The Agency believes that individual CAFOs can be encouraged to voluntarily develop and install new technologies and management practices equal to or better than those required by baseline best available technology economically achievable (BAT) and new source performance standards (NSPS) effluent guidelines regulations. Further, EPA recognizes that some CAFOs, as well as land grant universities, state

agencies, equipment vendors, and agricultural organizations, are working to develop new technologies that achieve reductions in nutrient and pathogen losses to surface water, ammonia and other air emissions, and groundwater contamination. The development of new technologies offers the potential to match or surpass the pollutant reduction that would be achieved by compliance with limits and standards promulgated in the final CAFO rule.

Today's notice includes EPA's preliminary approach for developing a voluntary program intended to facilitate the development of new technologies and management practices that perform as well as or better than BAT (and NSPS) and may also help address the multimedia environmental issues confronting CAFOs. A key tenet of these programs is that CAFOs would voluntarily choose an alternative BAT/NSPS performance standard as the basis for their technology-based NPDES permit limits (e.g., inclusion of effluent limitations in their NPDES permits that are different from those based on the baseline effluent guideline).

Data that EPA is considering to use in the economic analysis models include both farm level and enterprise level financial data, as well as data and information pertaining to various modeling assumptions used by EPA. The financial data include data from the U.S. Department of Agriculture (USDA), the Food and Agricultural Policy Research Institute (FAPRI) at the University of Missouri, and the National Cattlemen's Beef Association (NCBA). Other enterprise level data for some sectors were collected by EPA from various land grant universities. In today's notice, EPA describes the set of financial data that EPA is considering using to depict baseline financial conditions at regulated CAFOs. This notice also discusses methodological changes EPA is considering, based on comments received on the proposed rule and the previous notice of data availability (the "2001 Notice"), to the analytical framework used to evaluate economic effects that potential regulatory options may have on CAFOs. Among the changes being considered are the inclusion of enterprise level financial data, inclusion of additional measures of profitability to evaluate post-regulatory effects at the enterprise level, and a few ancillary assumptions. These data and analytical changes are in addition to those already presented by EPA in the 2001 Notice.

EPA is seeking further public comment on the specific data and issues identified in this notice. However, EPA is seeking public comment only on these specific data and issues. Nothing in today's notice is intended to reopen any other issues discussed in the CAFO proposal or the 2001 Notice, or to reopen the proposal in general for additional public comments. EPA is continuing to review the comments already submitted on the proposed rule and the 2001 Notice and will address those comments, along with comments submitted on the data and issues identified in today's notice, in the final rulemaking.

II. Background

A. Proposed Rule

On January 12, 2001 (66 FR 2959), EPA published proposed revisions to the existing effluent guidelines for CAFOs (40 CFR Part 412) and to certain provisions of the NPDES regulations applicable to CAFOs. Effluent guidelines and standards for CAFOs establish the technology-based effluent discharge and performance standards for both existing and new sources for each of the beef, dairy, swine and poultry subcategories. The NPDES permit program for CAFOs defines which animal feeding operations (AFOs) are CAFOs and need to obtain a NPDES permit, and establishes the specific requirements that must be complied with under a permit. These two existing interrelated regulations affecting CAFOs were originally promulgated in the 1970s.

1. Effluent Limitations Guidelines and Standards

Under the current effluent guidelines regulations, CAFOs are prohibited from discharging process wastewater, except when rainfall events cause an overflow from a facility designed, constructed, and operated to contain all process-generated wastewater plus the runoff from a 25-year, 24-hour rainfall event.

EPA proposed requiring all existing and new CAFOs spreading manure on cropland to limit the application rate to the nitrogen needs of the crops and, for those fields where additional constraints are considered necessary, to also ensure that the manure application rate would not exceed the phosphorus needs of the crops.

EPA also proposed to require all existing beef and dairy operations to implement controls (*e.g.*, retrofitting lagoons and ponds with impervious liners) to minimize leaching to ground water if the ground water beneath the production area has a direct hydrologic connection to surface water. EPA proposed requiring all existing swine, veal, and poultry CAFOs to eliminate all discharges from the animal production area (i.e., for these sectors, eliminating the effluent guidelines provision that allows for certain overflows due to chronic or catastrophic rainfall).

EPA proposed that newly constructed CAFOs should meet the same requirements as were proposed for existing CAFOs, except that new swine, veal and poultry operations also would need to implement ground water controls where there is a direct hydrologic connection to surface water.

For more information on the proposed technology options, see section VIII of the proposed rule (66 FR 3050–3070). Section VIII of the proposed rule also describes certain other technology options that were considered by EPA at proposal, such as prohibiting manure application on frozen, snow-covered, or saturated ground; mandatory use of anaerobic digester systems; composting; and surface water monitoring requirements.

2. NPDES Regulations

Under the current NPDES regulations for CAFOs, a "three-tier" structure is used to determine which animal feeding operations (AFOs) also meet the criteria under which they are considered concentrated animal feeding operations (CAFOs). Under this current NPDES structure, (1) all AFOs with more than 1,000 AU are automatically defined as CAFOs; (2) AFOs with 301 to 1,000 AU are defined as a CAFO only if they meet certain conditions; and (3) AFOs with 301 to 1,000 AU that do not meet these conditions, and all AFOs with 300 or less AU, become CAFOs only if they are designated as such by the permitting authority. (*See* 40 CFR 122.23 and Part 122, Appendix B).

EPA proposed several alternatives for revising the existing CAFO definition. Under one scenario, the current "three-tier" structure would be retained, but there would be certain changes to the conditions that define an operation as a CAFO in the middle tier (i.e., 300–1,000 AU). EPA also proposed an alternative regulatory approach that would replace the existing "three-tier" structure with a "two-tier" scenario for defining operations as CAFOs. Under the "two-tier" scenario, all animal feeding operations with more than a specified number of animals would be defined as a CAFO. EPA considered several potential thresholds that could be set under the two-tier scenario.

EPA also proposed to revise the definition of a CAFO to expressly include chicken operations using dry litter management techniques, swine nurseries, and heifer operations. EPA proposed to explicitly address manure

application on land under the control of the CAFO, and considered alternatives for collecting information regarding manure transferred to off-site locations. The proposed rule also considered certain changes that affect which entities would be required to obtain NPDES permits, and proposed to add provisions requiring CAFOs that cease operation to retain their NPDES permits until all wastes that were generated by the operation no longer have the potential to reach waters of the United States.

For more information on the proposed changes to the NPDES regulations, see section VII of the proposed rule (66 FR 2993–3050).

B. Notice of Data Availability

On November 21, 2001 (66 FR 58556), EPA published a notice of data availability presenting a summary of new data and information submitted to EPA during the public comment period on the proposed CAFO regulations, including data received from USDA. The 2001 Notice also discussed new data and changes being considered to refine the cost and economic analysis models, and to improve estimates of pollutant reductions and monetized benefits that would result from changes to the CAFO regulations. EPA presented information on potential changes that would enhance flexibility for using State NPDES and non-NPDES CAFO programs, discussed options intended to encourage broader implementation of environmental management systems, and described certain refinements to the CAFO definition that were under consideration.

III. Thresholds for Chicken Operations Using Dry Litter Management

EPA's existing effluent guidelines for CAFOs apply to chicken operations with 30,000 laying hens or broilers when the facility has a liquid manure handling system, and to chicken operations with 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems. (*See* 40 CFR Part 412.10). Under the proposed rule, the CAFO regulations would be revised to remove language referring to the type of manure handling or watering system employed at laying hen and broiler operations and would, as a result, expand the scope of the rule to also address chicken operations with "dry" litter management systems. (The term "dry" does not mean that there are no wastewaters associated with these types of operations. For example, poultry waste includes manure, poultry mortalities, litter, spilled water, waste feed, water associated with cleaning houses, runoff from litter stockpiles, and runoff from land where manure has been applied.) As proposed, the revised CAFO regulations would establish 100,000 chickens as equal to 1,000 AU. (*See* 66 FR 3010–3012).

At proposal, EPA presented two alternative ways to structure the NPDES regulations and define which animal feeding operations are CAFOs. Under EPA's proposed "two-tier" structure, all AFOs with more than a certain AU threshold level would be defined as CAFOs, and those with fewer than the threshold would become CAFOs only if they were designated as such by the permittting authority. Under this alternative, with a threshold of 500 AU, for example, all chicken operations with more than 50,000 chickens would be defined as a CAFO. Under this two-tier structure with the threshold set at 500 AU, EPA estimates 9,300 broiler operations and 1,000 laying hen operations would be automatically defined as CAFOs.

In the second alternative discussed at proposal, EPA proposed to retain the current "three-tier" structure. Under this three-tier scenario, operations with more than 100,000 chickens would be automatically defined as a CAFO, and operations with 30,000 to 100,000 chickens would be defined as a CAFO only if they met certain conditions. Under the three-tier structure, EPA estimates 2,950 broiler operations and 550 laying hen operations would have more than 1,000 AU and would automatically be defined as CAFOs. EPA also estimates an additional 600 broiler operations and 50 laying hen operations would be defined as middle-tier CAFOs (i.e., those with 301–1,000 AU) using EPA's current middle-tier criteria. *See* 66 FR 2996–3004 for additional discussion of the two-tier and three-tier regulatory structures.

In developing the proposed rule, EPA evaluated several methods for equating poultry operations with dry litter management to the existing definition of an animal unit (*See* 66 FR 3010–3012). One factor considered is that the existing CAFO regulations already apply to chicken operations with 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems. Another factor considered relates to the manure generated by chickens in comparison to the manure generated by beef cattle. The average daily manure generation from 100,000 broilers and laying hens (EPA's proposed metric for the number of chickens being equal to 1,000 AU) is comparable to the average daily manure generation from 1,000 beef cattle (1,000 AU). Using manure waste characterization data from USDA's Agricultural Waste Management Field Handbook, EPA's analysis indicated a range of 82,000 laying hens to 111,000 broilers—or approximately 100,000 chickens—as being equivalent to 1,000 AU. EPA's methodology for calculating these values is presented in the record. This analysis suggested a similar threshold for chickens whether basing the comparison of manure on the amount of nitrogen, phosphorus, or biochemical oxygen demand (BOD_5) in the manure.

EPA is considering other thresholds both higher and lower than the 100,000-chicken threshold presented in the proposed rule.

Several comments were received on EPA's proposed thresholds for chicken operations, asserting EPA should maintain a distinction between laying hens and broilers. Other comments asserted that EPA should determine the value (i.e., number of birds) equating to 1,000 AU by evaluating phosphorus content in the manure on an annual basis as opposed to a daily basis. For example, these comments further assert that estimates of the annual phosphorus production should reflect that five to six flocks of broilers are produced per year, and should not assume phosphorus production continues during the periods of the year (i.e., cleanout time between flocks when no broilers are present) when no manure is generated. Using an approach for setting the threshold that compares the phosphorus produced by chickens annually to the phosphorus produced by beef cattle, based on manure waste characterization data from USDA's Agricultural Waste Management Field Handbook, EPA would estimate the 1,000 AU equivalent as 125,000 broilers (in contrast to the 111,000 value estimated using the daily manure generation rates). EPA's methodology for calculating these values (e.g., average bird live weight; typical number of flocks produced per year; average time between bird placements) is presented in the record. Using an alternative threshold of 125,000 broilers, EPA estimates 1,800 broiler operations would have greater than 1,000 animal units. Because laying hens typically are kept at CAFOs for approximately 94 weeks of production, they continue to produce manure throughout the year and EPA's previous estimate of 82,000 laying hens as being equivalent to 1,000 AU remains unchanged.

Additional information regarding the nutrient and BOD_5 content of beef and chicken manure can be found in section 17 of the public record for the CAFO rulemaking. The USDA data used by

EPA to estimate the number of broiler and laying hen operations that would have more than 1,000 AU under the alternative thresholds discussed in this notice are included in section 19.1 of the record. Detailed information on EPA's analyses and assumptions appears in section 19.5 of the record. Section 21 of the record contains public comments received on the proposed rule and 2001 Notice regarding the threshold for chicken operations. See the **ADDRESSES** section of this notice for information on how to obtain access to the public record for the CAFO rulemaking.

EPA is considering whether the 1,000 AU equivalent for broilers should remain as proposed at 100,000 broilers, or whether it should be changed to either 125,000 broilers. EPA is also considering whether the 1,000 AU equivalent for laying hens should remain as proposed at 100,000 laying hens, or whether it should be changed to 82,000 laying hens. EPA notes that the thresholds codified in the current regulations for operations with liquid manure handling systems or unlimited continuous flow watering systems may remain unchanged in the final rule. EPA solicits comment on these alternative thresholds for broiler and laying hen operations with dry litter management systems, the assumptions and data used to derive the thresholds (e.g., average bird liveweight; typical number of flocks produced per year; average time between bird placements), and if other alternative thresholds (and their technical basis) exist that may be appropriate for these operations.

IV. Voluntary Alternative Performance Standards for Innovative Technologies

EPA's long-term environmental vision for CAFOs includes continuing research and progress toward environmental improvement. The Agency believes that individual CAFOs should be encouraged to voluntarily develop and install technologies and management practices that achieve pollutant reductions equivalent to or better than those required by the baseline effluent guidelines regulations.

Further, EPA recognizes that some CAFOs, as well as USDA, land grant universities, equipment vendors and agricultural organizations, are working to develop new technologies that achieve reductions in nutrient and pathogen losses to surface water, ammonia and other air emissions, and ground water contamination. The development of new technologies offers the potential to match or surpass the pollutant reductions that would be achieved by compliance with limits and standards in the final CAFO rule.

EPA received suggestions from a number of stakeholders on the merits of creating a framework for alternative performance standards. Several stakeholders believe that the current and proposed effluent guidelines discourage the use of innovative treatment and pollution prevention technologies and that EPA should include incentives to encourage CAFOs to use improved technologies that would protect all environmental media (particularly surface water, but also air and ground water). A number of commenters expressed support for the inclusion of voluntary alternative technologies which are equivalent to or better than BAT effluent guidelines (or NSPS requirements for new CAFOs), and specifically requested a provision that would allow CAFOs to discharge treated process wastewater generated from the production area of the CAFO.

A number of stakeholders commented that EPA should include controls for pathogens or antibiotics, as well as atmospheric emissions of ammonia, methane, or hydrogen sulfide. Other commenters suggested that adding flexibility in the rule to allow for the discharge of treated process wastewater could lead to better approaches for addressing environmental concerns in all environmental media, including air, ground water, and surface water.

In view of these suggestions, today's notice presents two approaches, described below, to encourage the development of new technologies and management practices that achieve pollutant reductions equivalent to or better than those that would be achieved by the baseline BAT (and NSPS) that will be promulgated in the final rule, and possibly also help address multimedia issues related to air emissions and ground water. Under a Production Area Approach, alternative performance standards would focus on the manure and wastewater discharges from the CAFO production area and CAFOs would be allowed to discharge process wastes that have been treated by technologies that result in equivalent or better pollutant removals than would be achieved under the baseline BAT standard. Under the Whole Farm Approach, CAFOs would conduct a site-specific "whole farm" multimedia review to target optimal pollutant load reduction and pollution prevention opportunities for the production and land application areas. The Whole Farm Approach could include an allowance for wastewater discharge from the production area as described for the Production Area Approach, but most importantly, would require the CAFO to evaluate and implement whole farm improvements through the use of an audit process as a condition for obtaining alternate effluent limits.

A key tenet of these approaches is that CAFOs would voluntarily choose to comply with an alternative BAT/NSPS performance standard as the basis for their technology-based NPDES permit limits (*e.g.*, inclusion of effluent limitations in their NPDES permits that are different from those based on the baseline effluent guideline, to be established by the NPDES permitting authority on the basis of best professional judgement). CAFOs would not be required to enter the alternative standards program. A CAFO choosing not to participate in the alternative standards program would instead be subject to the baseline BAT limitations (discussed below in section IV.A). EPA previously used a similar approach in the effluent guidelines for the pulp and paper industry. See 63 FR 18504, 18593–18611 (April 15, 1998).

EPA solicits comment on the concepts presented in this notice for creating alternative performance standards to encourage CAFOs to implement new technologies. In sections IV.B, IV.C, and IV.D below, EPA also solicits comment specifically on certain aspects related to the Production Area and Whole Farm Approaches for creating alternative performance standards, and on the potential incentives that may be made available to CAFOs participating in an alternative performance standards program.

A. Baseline BAT

Under the current effluent guidelines regulations, CAFOs are prohibited from discharging process wastewater, except when rainfall events cause an overflow from a facility designed, constructed, and operated to contain all process-generated wastewater plus the runoff from a 25-year, 24-hour rainfall event. The limits included in the effluent guidelines are based on the use of storage ponds and lagoons to contain the process wastes and runoff, but they do not prevent CAFOs from using alternative technologies, as long as those technologies also meet zero discharge or the containment requirement. These limitations were established on the basis of factors specified in Clean Water Act sections 304(b) and 306(b), including the cost of achieving the effluent reductions and any non-water quality environmental impacts. EPA continues to assess the large number of comments and data received on the proposed rule regarding the appropriate technology basis for the BAT/NSPS requirements

that will be promulgated in December 2002 (referred to in this notice as the "baseline BAT").

B. Production Area Approach

The Production Area Approach focuses on manure and wastewater discharges from the CAFO production area. Under this approach, CAFOs would be allowed to discharge process wastewater that has been treated by technologies that the CAFO demonstrates will result in equivalent or better pollutant removals than would be achieved by the baseline BAT standard. The requirements applying to wastewater discharges could also be coupled with either a regulatory provision or non-regulatory guidance for participating CAFOs to develop a plan for achieving improvement in multiple environmental media.

As discussed above, the baseline BAT standard, though nominally zero discharge, allows for untreated overflow discharges if the system is designed, constructed and operated to contain process wastewater plus the runoff from a 25-year, 24-hour rainfall. Thus, to demonstrate that the alternative technology would achieve equivalent or better pollutant reductions than baseline BAT requirements, the CAFO would be required to submit a technical analysis, which would include calculating the mass-based pollutant reductions based on the *site-specific modeled performance* of the baseline BAT system (currently, defined as a 25-year/24-hour storage lagoon). Under this approach, a computer simulation model could be used to evaluate site-specific or region-specific climate data, along with wastewater characterization data, to determine the mass-based pollutant discharge that would be projected for a system designed, constructed and operated to achieve compliance with the baseline BAT standard. The model would evaluate the daily inputs to the storage system, including all process wastes, direct precipitation, and runoff. It would also evaluate the daily outputs from the storage system, including losses due to evaporation, sludge removal, and the removal of wastewater for use on cropland at the CAFO or transport off site. The model would be used to predict the overflow from the BAT system that would occur over a 25-year period, and these overflow predictions would be used to determine the median annual predicted overflow over the 25 years evaluated by the model. Site-specific or other appropriate pollutant characterization data for the wastewater from the waste storage system (i.e., the overflow) would then be coupled with the overflow volume output from the model described above to predict the mass pollutant discharge that would occur from a baseline BAT system. CAFOs would be required to meet NPDES permit conditions that result in equivalent or improved pollutant reductions, as compared to the predicted mass discharge from overflow of the baseline BAT system, for example, on an annual basis or over the lifetime of the permit. If a CAFO elected to use this approach it would be meeting the same limitations as a CAFO under the baseline BAT, but expressed in a different fashion (*e.g.*, numeric limits on a continuous discharge versus a limit of zero discharge with an allowance for discontinuous overflows). To illustrate this type of analysis, EPA has prepared an example evaluation using model farm characteristics. This example is available in section 19.6.2 of the rulemaking record. Land application activities would be required to correspond to an approved nutrient management plan.

A variation of this approach could be based on a more holistic approach that considers other environmental media besides discharges to surface water. Under this approach, CAFOs would be authorized to comply with alternative BAT/NSPS performance standards if they implement technologies and management practices that result in equivalent or improved pollutant reductions, including all media. CAFOs that achieve significant reductions in air emissions or ground water discharges for a pollutant would qualify for less stringent limits on discharges to surface water to be established on the basis of best professional judgement. In essence, EPA would be using the authority of Clean Water Act section 304(b) to establish alternative BAT requirements that address the non-water quality environmental impacts from controls of discharges to other media, as well as the costs of those controls. One challenge with this approach is how to determine "equivalence" across environmental media.

This approach would essentially divide up CAFOs within a subcategory into different segments. Those CAFOs which have undertaken or will voluntarily undertake actions to control air emissions or ground water discharges can be distinguished from facilities which have not under Clean Water Act sections 304(b) and 306(b), because they face different economic achievability concerns related to the costs of compliance with the effluent guidelines, or because their activities will have fewer non-water quality environmental impacts. EPA adopted a similar set of alternate requirements for the pesticide chemicals formulating, packaging and repackaging industry when EPA found that facilities using an alternative pollution prevention approach would reduce air emissions. *See* 61 FR 57518, 57525–26 (November 6, 1996).

EPA solicits comment on the following: (1) The criteria and process that would be used under the Production Area Approach to demonstrate performance equivalent to or better than the baseline BAT technology; (2) the appropriate methodology for translating annual mass discharge estimates into an NPDES permit limitation; (3) approaches for comparing the intermittent overflow discharge that would occur under the baseline BAT requirement to the continuous treated discharge that may be allowed under an alternative performance standard; and (4) whether a holistic approach that considers pollutant reductions across all environmental media would be appropriate, how equivalence across media could be determined operationally and embodied in NPDES permit limits, on what statutory basis could EPA distinguish CAFOs that employ the holistic approach, and whether the NPDES permit could and should mandate compliance with the pollutant reductions achieved across media.

C. Whole Farm Approach

The Whole Farm Approach is based on conducting a site-specific multimedia review to target optimal pollutant load reduction and pollution prevention opportunities for both the production and land application areas. This approach could include an allowance for wastewater discharge from the production area as described for the Production Area Approach, but most importantly, would require the CAFO to evaluate and implement whole-farm environmental improvements through the use of a site-specific audit process as a condition for qualifying for alternative BAT limits. At a minimum, as part of the audit, the CAFO would be required to use a mass-balance approach to address site-specific concerns (e.g., karst geology, flood plains) and to quantify their existing releases; identify the potential to reduce losses from the production area, land application area, and transfer of manure off site; and identify specific opportunities to reduce the largest releases (to surface water, ground water, air, or land). In general, EPA would expect the CAFO to evaluate releases that occur at the point of generation first to minimize or eliminate waste

production and air emissions, followed by an evaluation of the waste handling and management systems, and ending with an evaluation of land application and off-site transfer operations.

CAFOs would need to develop and implement a plan for the operation that generates improvement across multiple environmental media. The plan would identify the specific technologies or practices that will be installed or implemented to achieve the estimated pollutant reductions, and provide criteria that demonstrate effective performance of these technologies or practices that could be used to determine compliance. The specific approaches used would be expected to vary somewhat among operations and would be selected by the CAFO as being effective for the particular operation. Potential approaches could include:

- Implementation of feeding strategies (to reduce or eliminate nutrients, hormones, and/or antibiotics);
- Installation of new and innovative waste management technologies;
- Changes to animal housing;.
- Changes to the type and frequency of cleaning operations;
- Controls for the existing waste management system (e.g., storage liners, covers);
- Energy recovery systems;
- Centralized waste treatment or processing;
- Stabilization and production of value-added products;
- Changes to land application methods (e.g., erosion control measures, incorporation/injection);
- Controls for air emissions (e.g., ammonia, particulate matter, methane, hydrogen sulfide);
- Implementation of methods to ensure off-site land application follows nutrient management plan approach; and
- Implementation of a mortality disposal plan.

The implementation plan would need to present data to demonstrate that the plan results in whole-farm reductions in pollutant releases to surface waters equivalent to or better than would be achieved by the baseline BAT requirements. As discussed under the Production Area Approach, this would result in equivalent BAT effluent limitations, but expressed in a different fashion.

Alternatively, the Whole Farm Approach could also be based on a more holistic measure of pollutant reduction and allow trade-offs among reductions in discharges to different media, as long as the plan resulted in equivalent or improved pollutant reduction overall. As discussed above in section IV.B, such an approach would need to determine how to compare reductions across environmental media. As discussed under the Production Are Approach, EPA would utilize its statutory authority to distinguish between facilities that voluntarily achieve reductions to other media and those that do not, on the basis of cost, non-water quality environmental impacts, or other factors.

To illustrate the Whole Farm Approach, EPA has prepared a hypothetical example process evaluation using model farm characteristics. This example is available in section 19.6.2 of the record.

The whole farm approach offers many benefits to the CAFO and to the environment. By targeting reductions of pollutant releases to all media, the CAFO may find ways tailored to the individual site to more cost-effectively minimize environmental impacts. The approach offers flexibility in choosing an environmental system that is most effective and affordable for the specific site, and encourages CAFOs to go beyond the minimum regulatory requirements. This type of program also offers opportunities for state and local partnerships to evaluate location-specific issues and develop targeted approaches.

A potential obstacle to implementing new technologies is the tension between a requirement that CAFOs comply immediately with BAT at the time of permit issuance, and the time that may be required to develop and implement a new technology. While immediate compliance may promote, in the short term, prompt implementation of BAT technologies, EPA is concerned that such a requirement can also discourage CAFOs from fully investigating and implementing alternative technologies that may be better than the baseline BAT technology. EPA is considering, as part of the Whole Farm Approach only, providing CAFOs who choose to implement whole-farm multimedia approaches under the alternative standards program additional time to implement and meet the alternative performance standards. In this way, EPA hopes to provide an incentive for CAFOs to implement whole-farm reductions in pollutant releases. EPA used a similar approach in the effluent guidelines for the pulp, paper, and paperboard industry. Facilities were required to meet BAT reflecting existing practice in the short-term in order to implement a more aggressive BAT (not economically achievable in the short-term) at a later date.

While EPA public recognition programs already exist, the Agency believes that it may also be appropriate to develop and implement a program unique to this industry as an incentive to invest in new technologies and whole-farm approaches to reducing pollutant releases. As part of a public recognition program, EPA could establish criteria under which CAFOs would qualify to receive public recognition on an annual basis. In addition to commitments leading to and achievement of the limits specified or additional reductions associated with a whole farm approach, such criteria would likely include some form of periodic compliance audit and could be structured to give CAFOs flexibility to implement an environmental management system approach. EPA would then recognize the qualifying CAFOs each year through a public event.

EPA solicits comment on the following: (1) The criteria and process that would be used under the Whole Farm Approach to demonstrate pollutant reductions equivalent to or better than the baseline BAT technology; (2) the appropriate methodology for translating the actions identified in the plan for the Whole Farm Approach into an NPDES permit limitation; (3) approaches for comparing the intermittent overflow discharge that would occur under the baseline BAT requirement to the whole-farm actions CAFOs propose to undertake; (4) the length of time CAFOs should be afforded to implement whole-farm pollutant reduction actions; and (5) the possible incentives described in this section for CAFOs implementing the Whole Farm Approach, the applicable criteria used to qualify for the incentives, the type of public recognition that would be afforded, and the frequency for recurring public recognition.

D. Process and Incentives for Participating in Alternative Standards

CAFOs interested in pursuing either alternative standards approach should have a good compliance history. The facility would also be expected to conduct an analysis of their operation (as described above in sections V.B. and V.C.) and prepare a proposed alternative program plan including the results of the analysis, the proposed method for implementing new technologies and practices, and the results demonstrating that these technologies and practices perform equivalent to or better than baseline BAT. This plan would be included with their permit application or renewal, and would be incorporated into the permit. EPA solicits comment on: (1) The process and criteria that

should be used by CAFOs to apply and qualify for participation in the alternative performance standards program; (2) whether CAFOs that have a deadline for "future BAT" under an alternative performance standards program should have interim milestones incorporated in their permits towards meeting the ultimate BAT standard; (3) how the program should address CAFOs that volunteer to participate in the alternative standards program, yet later back out of the alternative standards program without implementing the changes outlined in their plan; (4) on the length of time that CAFOs should be afforded for development and implementation of the plan; and (5) what should the BAT basis be for requirements during the period of development of the alternative standards program (e.g., "existing effluent quality," as EPA used for the pulp and paper effluent guidelines, or some other basis).

CAFOs potentially may derive substantial benefits from participation in the alternative standards approach, through greater flexibility in operation, increased good will of neighbors, reduced odor emissions, and potentially lower costs. EPA is also exploring opportunities for other possible incentives to encourage participation in this program. EPA solicits comment on the possible incentives discussed in this notice, and invites suggestions for other incentives that should be made available.

V. Changes to the Economic Analysis

This section presents changes that EPA is considering to the methodology and underlying financial data that it uses to assess the economic effects of the final regulations to CAFOs. Many of these changes reflect comments and new data that EPA has obtained since proposal, which were broadly described in the 2001 Notice. Today, EPA presents additional information on the approach and data that would be used for an economic analysis of the final rule. Section V.A of this notice describes the modeling framework and changes being considered to assess financial effects to regulated CAFOs. Section V.B of this notice describes the financial data that EPA is considering using to depict baseline conditions at model CAFO facilities. Section V.C discusses preliminary results of analyses using these alternative data and approaches.

A. Changes to Model Framework and Assumptions

EPA expects the economic analysis for the final rule will retain the general modeling framework that the Agency used to assess economic effects for the proposed rule (see 66 FR 3079–3103), with the modifications discussed in the 2001 Notice (see 66 FR 58577–58591). The 2001 Notice describes a range of methodological changes and financial data EPA was considering using to improve its analysis. Today's notice provides further information on the specific changes being considered for the modeling framework and financial data EPA will use to analyze the regulatory options for the final rule.

1. Farm Level Analysis

The farm level analysis that supports the final rulemaking is expected to retain the same general framework used for the proposed rule. Specifically, financial impacts are assessed using a sales test, discounted cash flow analysis, and a debt-asset test. This evaluation is conducted using farm level financial data that are described in Section V.B of this notice and are available in EPA's record. These farm level data reflect income and cost information spanning an operation's primary livestock production, as well as secondary livestock and crop production, government payments, and other farm-related income. As conducted for the proposed rule, EPA would divide the resultant regulatory impacts into defined categories. Operations with estimated financial effects that are "affordable" or "moderate" would not be considered to be vulnerable to closure post-compliance and would, therefore, be considered to indicate economic achievability. Operations with estimated financial "stress" would be considered to be vulnerable to closure and may not be considered to indicate economic achievability, subject to other considerations.

To address public comments submitted to EPA on the overall analysis, EPA is considering making three general changes to its analytical framework at the farm level.

First, for the final analysis, EPA proposes to use a sales test that would use pre-tax incremental cost, as opposed to costs that take into account potential tax savings (post-tax), which was assumed at proposal. These pre-tax costs would be compared to total farm level revenues and that ratio would be used as an initial screener to determine the need for additional analysis using EPA's discounted cash and debt-asset tests.

Second, EPA is considering using alternate baseline debt and asset information for several livestock sectors (beef, heifer, veal, dairy, and hog) that EPA has obtained since proposal and is considering a change to the debt-asset threshold values that would indicate financial stress for these sectors. Consideration of alternative debt and asset data for these sectors is consistent with recommendations by National Cattlemen's Beef Association (NCBA), the National Milk Producers Federation (NMPF), and the National Pork Producers Council (NPPC) and other industry commenters. Data submitted to EPA by NCBA and the Food and Agricultural Policy Research Institute (FAPRI) during the comment period indicate that larger, more intensive, or expanding cattle feeding operations tend to carry more debt than that assumed by EPA for the proposal. (Average USDA-reported data cover a broader range of farm types and sizes, including small farms and non-confinement operations that are not covered by the regulations.) Financial data submitted by NCBA and FAPRI indicate that confinement operations with more than 1,000 AU have baseline debt-asset levels greater than the USDA-recommended 40 percent, ranging from 60 percent to more than 70 percent in the beef, dairy and hog sectors. Since USDA's recommended 40 percent benchmark value may not be suitable for assessing the larger confined cattle, dairy, and hog operations affected by EPA's regulations, EPA is considering using an alternate threshold value for its debt-asset test for these sectors. Based on recommendations by NCBA submitted to EPA since the proposal, EPA is considering an 80 percent threshold value to indicate financial stress (see information submitted by NCBA at DCN 375047 in the record). EPA requests comment on the use of an alternative benchmark, such as 80 percent, for these sectors, if alternative data are used. EPA also requests comment on the use of alternative debt and asset data for the cattle, dairy, and hog sectors. These data are available in the rulemaking record (see: DCN 175044 and DCN 175038). (Due to limited data, EPA will continue to use USDA-reported average debt and asset information for the poultry sectors (broiler, egg, and turkey) and will continue to assess changes in the debt-asset test for these sectors assuming a 40 percent benchmark, as was done in the analysis for the proposed rule.)

A third change being considered for the final analysis involves the use of time series data to project available financial data onto a 10-year time horizon for EPA's discounted cash flow analysis. For the proposed rule, EPA used data projections by USDA. As discussed in the 2001 Notice, many

commenters disagree with the use of this data series as the basis for EPA's projections. To address these comments for the final analysis, EPA is considering using alternative timeline data from FAPRI (hog and poultry sectors), USDA (dairy sector), and NCBA (cattle sector) to project future earnings from the 1997 baseline data. A summary of these data and EPA's projected values based on these data is available for review at DCN 375084. The method that EPA uses to project the baseline data follows the approach used for the proposal analysis, as discussed in the Economic Analysis for the proposed rule.

2. Enterprise Level Analysis

For the final rule, EPA is considering expanding upon the analysis developed for the proposed rule by including an assessment of the financial effects on the enterprise level (e.g., an operation's livestock or poultry enterprise). This modeling change would address comments expressed by many commenters, including FAPRI, other land grant university researchers, and industry, as well as USDA, as discussed in the 2001 Notice (66 FR 58580–58582). These comments are supported by alternate enterprise level data that were submitted to EPA since proposal and presented in the 2001 Notice. An enterprise level analysis would recognize that a farm may be unwilling to cross-subsidize a continually failing livestock operation. Also, this approach would recognize that a failing enterprise with continuous cash flow problems would have limited access to financing for capital replacement and/or expansion, despite the health of the overall business. EPA is considering addressing this concern by including, as part of its final analysis, an assessment of changes in enterprise level profitability, in addition to the results of the farm level analysis. This analysis would be conducted using the enterprise level financial data described in Section V.B of this notice. A summary of these data are available at DCN 375084 in the rulemaking record.

Since the publication of the 2001 Notice, EPA has evaluated ways to incorporate an enterprise level analysis as part of its assessment. To evaluate enterprise level effects, EPA is considering using enterprise level net cash income to develop a discounted cash flow (DCF) estimate for each model enterprise over the 10-year time frame of the analysis. The net present value of cash flow is compared to the net present value of the total cost of the regulatory options. If the farm level analysis shows that the regulations impose "affordable" or "moderate" effects on the operation, the enterprise level analysis would be conducted to determine whether the enterprise's cash flow is able to cover the cost of regulations. Over the analysis period, if an operation's livestock or poultry enterprise maintains a cash flow stream that both exceeds the cash costs of the BAT option (operating and maintenance costs plus interest) and also covers the net present value of the principal payments on the capital, EPA would assume that the enterprise will likely not close due to the CAFO regulations. EPA is also considering whether to add some measure of capital replacement costs to both its farm and enterprise level cash flow analysis. This analysis would be conducted on a pass/fail basis. If the net present value of cash flow minus the net present value of the BAT costs is greater than zero, the enterprise passes the test and the enterprise is assumed to continue to operate. If the net present value of cash flow is not sufficient to cover the net present value of the cost of the regulations, EPA would assume that the CAFO operator would consider shutting down its livestock or poultry enterprise.

The enterprise level analysis would build on the farm level analysis, evaluating effects at a farm's livestock or poultry enterprise. If the operation shows farm level impacts that are "affordable" or "moderate," then an enterprise level analysis is conducted to determine whether the operation's livestock or poultry enterprise remains viable. If enterprise level profitability remains positive over the period of the analysis, then the requirements would be determined to be economically achievable to the entire operation, as well as the livestock or poultry enterprise at the business. Enterprise level results would be presented in addition to estimated farm level effects (i.e., estimated farm impacts would comprise a subset of reported enterprise impacts) and both the farm and enterprise level results could be considered in determining economic achievability. Results indicating "affordable" or "moderate" farm level effects, but where enterprise level profitability is negative (i.e., the farm remains in business but the livestock or poultry enterprise at that business is discontinued) would be subject to further analysis before a final assessment is made. Operations that are determined to experience financial "stress" at the farm level would not be further evaluated because it is assumed that these facilities would go out of business. Additional information about this analysis is provided in the rulemaking record (DCN 375084).

3. Other Model Framework Changes

A summary of other changes being considered for the economic models is as follows. First, EPA is considering expanding the range of cost estimates per representative farm to account for variability across operations based on expected capital and management improvements needed, using data from USDA. These data were discussed in the 2001 Notice (see 66 FR 58572–58573). This change, along with other changes to expand EPA's costing approach, would effectively increase the number of cost models in EPA's analysis from about 200 to approximately 1,600 representative models. Second, for reasons outlined in the 2001 Notice, EPA may not include a debt feasibility test as part of its analysis of the final rule because a down payment assumption is not necessary given EPA's joint analysis of debt-to-asset ratios and cash flow (see 66 FR 58583–58584).

EPA continues to review options to consider additional potential cost offsets as part of its final analysis, including available cost-sharing and technical assistance to farmers under various Federal, State and local conservation programs. In particular, at the Federal level, new farm bill legislation passed this spring by Congress may significantly raise government expenditures for USDA conservation programs. For example, total Environmental Quality Incentives Program (EQIP) authorization for FY 2002–2007 is $5.8 billion, ranging from $400 million to $1.3 billion per year over the period. This compares to current authorized levels of about $200 million per year. The new legislation targets 60 percent of available EQIP funds to livestock and poultry producers, including confinement and grass-based systems (the latter accounting for about 70 percent of total livestock and poultry operations). The new legislation also removed the previous eligibility requirements under EQIP that restricted funding for certain structural practices to operations with fewer than 1,000 animal units (as measured by USDA), replacing this with an overall payment limitation of $450,000 per producer over the authorized life of the 2002 Farm Bill. Under EQIP, cost sharing may cover up to 75 percent of the costs of certain conservation practices. The debate surrounding these increased funding levels included a focus on assisting producers to comply with environmental regulations.

EPA believes that this increased funding in EQIP and other USDA conservation programs may benefit

farmers and offset compliance costs incurred by some facilities under the CAFO regulations by increasing farm access to government cost-share dollars and increased technical assistance. EPA is considering two approaches that would incorporate cost share assumptions as part of EPA's CAFO level analysis. One approach would assume that cost sharing would cover up to 75 percent of the estimated capital compliance costs, spread out over the 10 year period of the analysis. A second approach would be similar to that adopted for a previous USDA and EPA impact analysis of confined animal operations and would assume average per-farm cost share information, as reported by USDA, as an offset to estimated capital costs. EPA solicits comment on these possible approaches and requests additional information to incorporate cost share assumptions as part of EPA's CAFO level analysis. Specifically, EPA requests information on how to account for uncertainty about actual program funding levels and uncertainty about which producers would obtain these funds and in what amount.

EPA will also continue to evaluate expected broader market level changes and adjustments. EPA is considering adjustments to the approach used for the proposal analysis by instead utilizing predicted price and quantity changes from EPA's market model analysis. The market model output information would be used to adjust the baseline financial data that are assumed for EPA's CAFO level analysis. Such an approach is more consistent with previous regulatory analyses conducted by EPA's effluent guideline program (*e.g.*: 65 FR 49686). EPA solicits comment on this modification to the approach used for proposal.

B. Changes to the Baseline Financial Data

This section provides information specific to each animal sectors and describes the data that EPA is considering using, given the availability of financial data from a variety of sources. More detailed citations and the actual farm and enterprise level input data that EPA is proposing to use for its analyses are included in the rulemaking record, with a summary of these data available at DCN 375084.

1. Overview

EPA received many comments on the financial data used to estimate CAFO level effects for the proposed rule. For proposal, EPA incorporated only farm level financial data into its analysis. For the final regulations, EPA is considering using these farm level data for some animal sectors, substituting the 1997 USDA with other data received by EPA in conjunction with financial data specified at the enterprise level. This change in the approach and underlying data for the analysis is discussed in the 2001 Notice (see 66 FR 58585–58590). This section discusses the data that EPA is considering using for its final analysis.

For most sectors, EPA will continue to use available 1997 data from USDA reflecting financial conditions at the farm level, which EPA used for proposal. For two sectors—the cattle feeding and hog sectors—EPA is replacing the 1997 USDA data used for proposal with other data presented in the 2001 Notice. For cattle, EPA uses financial data provided by NCBA and FAPRI; for hogs, EPA uses farm level data from USDA. For the dairy and poultry sectors, EPA will continue to employ the 1997 USDA financial data used for proposal.

To address comments that criticize EPA's use of a single year of financial data to reflect baseline conditions, EPA is considering adjusting the financial data for the cattle, hog, and dairy sectors based on other available published data from USDA, FAPRI, and the land grant universities to average out conditions over multiple years. This approach involves incorporating other available data into the analysis to obtain average conditions over a multiple year time frame, as discussed in the 2001 Notice (see 66 FR 58590–58591). Due to lack of multiple years of financial data for the poultry sectors, EPA is not able to use this approach for those types of operations and is instead continuing to use a single year of data.

2. Cattle Sector

As discussed in the 2001 Notice, EPA is considering not using the farm level data used for the cattle feeding sector used in the proposed rule analysis because of USDA concerns that these data are reflective of cow-calf operations and are not suitable for evaluating impacts to cattle feeding operations (see 66 FR 58585–58587). Instead, for its final analysis of impacts to the cattle feeding sector, EPA is considering using financial data submitted by NCBA and FAPRI (see: DCN 175044 and DCN 175038).

For operations with more than 1,000 AU, EPA would use data provided by NCBA for operations with an average of 52,000 head. For operations with between 300 and 1,000 AU, EPA would use data submitted by FAPRI for a 500-head feedlot enterprise. For the purposes of EPA's analysis, and because of lack of additional available data, EPA assumes these data reflect baseline financial conditions for operations with fed cattle, veal, and heifers. Both the NCBA and FAPRI data represent enterprise level conditions. Farm level data are not available; therefore, EPA's analysis will assume that farm and enterprise conditions are the same. Information on EPA's rationale for selecting these data for its analysis is provided in the rulemaking record (DCN 375084).

To address recommendations that EPA average out baseline conditions to better account for year-to-year variability and pricing cycles (see 66 FR 58590), EPA uses the three years of survey data (1997–1999) provided by NCBA to calculate an average gross revenue value for its analysis using the sales test. Using the FAPRI data, which provides a 2000 base year along with several years of projected data (2000–2011), EPA uses the first 3-years of reported revenue (2000 to 2002) to obtain an average total revenue value. EPA uses average values to address recommendations expressed during the public comment period that EPA consider ways to depict financial conditions over multiple years, despite the availability of a single year of available data only in some cases (see 66 FR 58590).

Accounting for variability and changing conditions over multiple years is already incorporated into EPA's DCF analysis, which spans a 10-year time frame (1997–2006) and utilizes time series projections. This approach is consistent with that used for the 2001 proposal. For this analysis, EPA obtains net cash income estimates at both the farm and enterprise level for the base year (1997) from the available data. EPA uses NCBA data for 1997 for cattle operations with more than 1,000 AU; EPA derives a base year estimate from available FAPRI data for 2000, back-calculated to 1997 using the NCBA time series data.

EPA projects out the 1997 baseline data using NCBA-reported data on costs and returns to feedlot enterprises, expressed as dollars per marketed head to obtain a cash flow stream over the analysis period (1997 to 2006). NCBA's projection covers the 10-year analysis period, relying on historical data and pricing trends in the cattle cycle that correspond to the three years of data in their survey. EPA uses projected returns made by NCBA that were submitted to EPA, along with comments and alternate financial data on the proposed rule because both FAPRI and USDA baseline projections report net returns to cow-calf operations only, which do not

correspond to cattle feeding operations that are affected by the regulations; other cattle sector projections provided by FAPRI do not cover the 1997–2006 time period for EPA's analysis. The method that EPA uses to project the baseline data follows the approach used for the proposal analysis, as discussed in the Economic Analysis supporting the 2001 proposal. From this projected cash stream, EPA estimates the net present value estimates for use in its DCF analysis. Additional information is available in the rulemaking record (DCN 375084).

For the debt-asset test, EPA is considering using FAPRI data on total assets and total liabilities for similar size operations in this sector, replacing USDA asset and liability data (used for proposal) with alternative FAPRI data. Use of these alternative data address concerns expressed during the public comment period about EPA's assumptions of baseline debt and equity conditions at CAFOs and the data on debt and assets assumed for the proposed rulemaking, as discussed in the 2001 Notice (66 FR 58582–58583).

A summary of the baseline financial data that EPA is considering using for its final analysis of this sector is available for review at DCN 375084.

3. Dairy Sector

For dairy operations, EPA is continuing to use the 1997 USDA farm level data that were used for the proposal analysis. However, USDA recently submitted alternative farm level data for dairy operations from a 2000 USDA survey of this sector that EPA is considering using. These data include farm and enterprise level data and are available for review at DCN 375085. For the enterprise level analysis, EPA is considering using financial data obtained during the comment period from FAPRI (DCN 175038), as presented in the 2001 Notice (66 FR 58588–58589). Information on EPA's rationale for selecting these data for its analysis is provided in the rulemaking record (DCN 375084).

To address recommendations that EPA average out baseline conditions to better account for year-to-year variability and pricing cycles (see 66 FR 58590), EPA would adjust the available 1997 gross income data prior to evaluating these data as part of EPA's sales test using published USDA cost and returns data for U.S. dairy operations, spanning 1993 to 2000. These national level data are used to create an index of 8 years of farm level financial data from which to project out 1997 gross sales data, producing an average 8-year revenue value.

Accounting for variability and changing conditions over multiple years is already incorporated into EPA's DCF analysis, which spans a 10-year time frame (1997–2006). This approach is consistent with that used for the 2001 proposal. For this analysis, EPA obtains net cash income estimates at both at the farm and enterprise level for the base year (1997) from the available data. At the farm level, EPA projects out the 1997 baseline data using USDA-reported net returns for the dairy sector to obtain a cash flow stream over the analysis period (1997 to 2006). At the enterprise level, EPA is considering using the 2000 net cash income for representative dairy operations submitted by FAPRI. The 2000 data are back calculated to 1997 and projected from 2000 to 2006 using the same USDA-reported net returns for the dairy sector used for farms. EPA continues to use USDA's projections because other available projections do not regularly report net returns per milk cow or cover the 1997–2006 time period for EPA's analysis. The method that EPA uses to project the baseline data follows the approach used for the proposal analysis. From this projected cash stream, EPA estimates the net present value estimates for use in its DCF analysis. Additional information is available in the rulemaking record (DCN 375084).

For the debt-asset test, EPA is considering using FAPRI data on total assets and total liabilities for similar size operations in this sector, replacing USDA asset and liability data (used for proposal) with alternative FAPRI data. Use of these alternative data address concerns expressed during the public comment period about EPA's assumptions of baseline debt and equity conditions at CAFOs and the data on debt and assets assumed for the proposed rulemaking, as discussed in the 2001 Notice (66 FR 58582–58583).

A summary of the baseline financial data that EPA is considering using for its final analysis of this sector is available for review at DCN 375084.

4. Hog Sector

As discussed in the 2001 Notice, EPA is substituting the 1997 USDA data for hog operations used for proposal with other data obtained by EPA since proposal (see 66 FR 58587–58588). For the hog sector, EPA is not using the financial data that it used for the proposal analysis because of concerns expressed by USDA that 1997 data are not representative, because they reflect conditions where hog prices were unusually high. For the final analysis, EPA proposes to use alternate farm level and enterprise level data from USDA. These cover a broader range of hog production types, including both farm and enterprise level conditions across three types of operations: Independent owner-operator farrow-finish and farrowing operations, contract grow-finish operations, and independent grow-finish operations. Information on EPA's rationale for selecting these data for its analysis is provided in the rulemaking record (DCN 375084).

As anticipated by EPA in its 2001 Notice, initial data obtained by EPA from USDA were not readily analyzable by EPA and since the publication of the Notice, EPA has been working with USDA to resolve these issues and obtain additional data. Since the publication of the 2001 Notice, EPA has obtained data from USDA that report farm income excluding non-cash items that were included by USDA in the original submittal of these data. USDA's new submittal also includes corresponding farm level data. These data are available in the rulemaking record (DCN 375064).

To average the available baseline financial data over multiple years, EPA adjusts the 1998 data using published USDA cost and returns data for both farrow-finish and grow-finish operations. These data cover 1995 to 1999. For this analysis, EPA uses national level data to create an index to develop 5-years of farm level financial data from which to extrapolate the 1998 farm data. The 1998 data are extrapolated over the time frame by apportioning costs and revenues on the basis of changes in costs, revenues, and returns reported for 1995 through 1999. This type of adjustment is discussed in the 2001 Notice (66 FR 58590–58591) and addresses comments received on the proposal analysis by averaging out baseline conditions to better account for year-to-year variability and pricing cycles. Using this approach and USDA data, EPA obtains the average farm level revenue values that EPA uses for its sales test.

EPA's DCF analysis already incorporates changes over multiple years, spanning a 10-year time frame (1997–2006). This approach is consistent with that used for the 2001 proposal. However, net cash income reported by USDA for hog enterprises in 1998 continues to be negative in some cases. When these 1998 values were extrapolated to the 1995–1999 time period, as is done for the farm level data, cash flow on average over this 5-year period continues to be negative for some representative facilities. The primary reason for these negative income values is that 1998 was a year where hog prices dropped dramatically. At the farm level, USDA-reported net

cash income is positive, although likely low when compared to other years.

Because of persistently negative net cash income due to 1998 market conditions in the hog sector, EPA is unable to readily analyze these data for its analysis and is considering additional modifications to the data obtained by USDA. The principal modification to these data by EPA would be the adjustment of these data to reflect expected price rather than actual price for 1998 and 1999. The approach that EPA proposes to use is based on an approach recommended by USDA Economic Research Service (ERS) personnel. This recommended approach uses price projections from USDA's World Agricultural Supply and Demand Estimates (WASDE) published in 1997 as an indicator of expected 1998 price level in the hog sector. Applying this approach provides an expected price of about $47 per hundredweight (cwt.) across all hog operations for that year, compared to the actual price of under $35 per cwt. reported in 1998. Adjustment of the original USDA data is necessary to avoid the need for EPA to regard these operations as baseline closures and remove them from the analysis.

EPA is considering using the resultant expected price for 1998 to adjust the enterprise level data provided to EPA by USDA. (EPA would not adjust USDA-reported farm level data since these data may be analyzed by EPA without adjustment.) Once the 1998 enterprise level data are adjusted, EPA would derive a base year estimate by back-calculating to 1997 using a 5-year index that EPA created based on the same USDA national level cost and returns data for farrow-finish and grow-finish operations from 1995 to 1999, as is used to extrapolate farm level revenues. EPA is proposing to replace the USDA reported data for 1998 and 1999 with EPA adjusted values based on the expected market prices during this period. EPA solicits comment on this approach. EPA has presented the results of these adjustments of the original data to USDA ERS personnel, who are reviewing the approach and resultant adjustments to these data. EPA would project out the 1997 baseline data using FAPRI timeline data of net returns for the hog sector to obtain a cash flow stream over the analysis period (1997 to 2006). From these data, EPA would estimate the net present value of expected cash flow for use in its DCF analysis. Additional information on EPA's adjustment of these data is available in the rulemaking record (DCN 375083).

For the debt-asset test, EPA is considering using FAPRI data on total assets and total liabilities for similar size operations in this sector, replacing USDA asset and liability data (used for proposal) with alternative FAPRI data. Use of these alternative data address concerns expressed during the public comment period about EPA's assumptions of baseline debt and equity conditions at CAFOs and the data on debt and assets assumed for the proposed rulemaking, as discussed in the 2001 Notice (66 FR 58582–58583).

A summary of the baseline financial data that EPA is considering using for its final analysis of this sector is available for review at DCN 375084.

5. Poultry Sector

For EPA's farm level analysis, EPA is continuing to use the 1997 USDA farm level data for broiler, egg layer, and turkey operations used by EPA for its proposal analysis. Since proposal, additional farm level data for these sectors have not been made available. EPA also continues to use USDA data on total assets and total liabilities for the debt-asset test, which EPA used for proposal. Despite concerns expressed during the public comment period about EPA's assumptions of baseline debt and equity conditions at CAFOs, EPA was not able to obtain alternate debt-asset information.

For the enterprise level analysis, EPA is considering using enterprise budget data collected by EPA from Oklahoma State University (contract broiler operations), North Carolina State University (contract turkey hen and turkey tom operation), and Iowa State University (independent-owner egg operation). These data are available in the rulemaking record (see: DCN 175024, DCN 375036, DCN 375048, and DCN 375049). Despite an extensive search of available data, EPA is unable to locate financial data that capture each of the possible types of poultry operations, including whether an operation is independently owned and operated or whether the operation raises animals under contract. Additional information on EPA's rationale for selecting these data for its analysis is provided in the rulemaking record (DCN 375084).

Because limited data are available that characterize conditions at farms that raise chickens and turkeys, EPA is not able to locate multiple years of financial data in order to average available data over a multiple year time frame. Therefore, EPA's analysis of the financial effects on broiler, egg, and turkey operations would be based on a single year of input data. Using available data, EPA obtains net cash income estimates at both the farm and enterprise level. EPA would project out the 1997 baseline data using FAPRI timeline data of net returns for the broiler, egg, and turkey sectors to obtain a cash flow stream over the analysis period (1997 to 2006). From these data, EPA would estimate the net present value of expected cash flow for use in its DCF analysis. Additional information is available in the rulemaking record (DCN 375084).

A summary of the baseline financial data that EPA is considering using for its final analysis of this sector is available for review at DCN 375084.

C. Preliminary Analysis Results

EPA's rulemaking record presents a summary of estimated total compliance costs by sector and technology option (pre-tax, 2001 dollars), which are relatively consistent compared to EPA's estimates for the proposed rule across the various technology options. EPA's rulemaking record also provides a comparison of the results at proposal with preliminary results using the data and methodological changes presented in today's notice. As anticipated by EPA in its 2001 Notice, the cumulative effect of each of the methodological changes and uses of alternative financial data for some sectors results in changes to EPA's estimate of the number of operations that may be vulnerable to closure post-regulation (66 FR 58580–58583).

EPA's preliminary results show that the inclusion of an enterprise level financial analysis does not significantly alter the results of EPA's overall analysis (*i.e.*, the enterprise level results do not always differ substantially from the farm level results across all sectors). The use of alternative financial data in the beef and hog sectors, however, does result in changes in EPA's analysis compared to that conducted for the proposed rule, with more beef operations but fewer hog operations expected to experience financial stress from estimated compliance costs. These preliminary results, however, are not driven solely by changes to EPA's financial models but are also driven by underlying changes to EPA's engineering cost models. As discussed in the 2001 Notice, EPA is considering expanding the range of cost estimates per representative farm to account for variability across operations based on expected capital and management improvements needed (see 66 FR 58572–58573).

Overall, EPA's preliminary analysis results show that combined changes to EPA's cost and financial models and input data to address public comments

do not result in significant changes to EPA's regulatory analysis compared to that conducted for proposal. More detailed information on the results of this analysis is provided in the rulemaking record (DCN 375084). These results are preliminary and subject to change, depending on ongoing refinements and corrections made to both EPA's cost and financial models and input data. In addition, these results do not yet consider potential longer-term market adjustment and structural adjustment by regulated facilities. These results also do not take into account potential cost offsets due to available cost share assistance, given increases in government expenditures and changes to program eligibility requirements under the new farm bill legislation.

Dated: July 16, 2002.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 02–18579 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–P–7611]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of Flooding and Location of Referenced Elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
Bayou Petit Anse-Deblanc Coulee-Segura Branch Canal			Unincorporated Areas of Iberia Parish.
Approximately 6,100 feet downstream of U.S. Route 90	None	*9	
Approximately 75 feet upstream of U.S. Route 90	None	*10	
Bayou Teche			Unincorporated Areas of Iberia Parish, City of Jeanerette, City of New Iberia, Village of Loreauville.
Approximately 2,200 feet downstream of Lewis Street	None	*8	
Approximately 5,000 feet upstream of State Highway 86 (Daspit Road).	None	*15	
Commercial Canal			Unincorporated Areas of Iberia Parish, City of New Iberia.
Approximately 400 feet downstream of Briarwood Drive	None	*9	
Approximately 450 feet upstream of East Admiral Doyle Drive	None	*10	

Source of Flooding and Location of Referenced Elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
Duboin Canal			Unincorporated Areas of Iberia Parish, City of New Iberia.
Approximately 2,900 feet downstream of East Admiral Doyle Drive.	None	*11	
Approximately 3,250 feet upstream of East Admiral Doyle Drive	None	*16	
Jacks Coulee			Unincorporated Areas of Iberia Parish.
Approximately 2,350 feet downstream of U.S. Route 90	None	*9	
Approximately 150 feet upstream of U.S. Route 90	None	*10	
Little Valley Bayou			Unincorporated Areas of Iberia Parish.
Approximately 750 feet downstream Hardin Street	None	*9	
Approximately 575 feet upstream of Smith Road	None	*11	
Peebles Coulee			Unincorporated Areas of Iberia Parish, City of New Iberia.
Approximately 3,225 feet Downstream of Sidney LeBlanc Road	None	*9	
Approximately 3,100 feet upsteam of James Romero Drive	*13	*12	
Rodere Canal			Unincorporated Areas of Iberia Parish, City of New Iberia
Just upstream of Curtis Lane	*10	*9	
Approximately 1,450 feet upstream of Center Street	*11	*13	
Tete Bayou			Unincorporated Areas Iberia Parish
Approximately 375 feet downstream of Emile Verret Road	None	*13	
Approximately 4,450 feet upstream of Émile Verret Road	None	*15	
Gulf of Mexico			City of Jeanerette.
On Landry Street approximately 1,250 feet southwest of the intersection of Landry Street and Patricia Ann Lane.	None	*9	

*National Geodetic Vertical Datum

Maps are available for inspection at the Iberia Parish Courthouse, 300 Iberia Street, New Iberia, Louisiana.

Send comments to The Honorable Will Langlinais, Iberia Parish President, Parish Courthouse, 300 Iberia Street, Suite 400, New Iberia, Louisiana 70560.

Maps are available for inspection at City Hall, 1010 East Main Street, Jeanerette, Louisiana.

Send comments to The Honorable Arthur L. Verret, Mayor, City of Jeanerette, City Hall, 1010 East Main Street, Jeanerette, Louisiana 70544.

Maps are available for inspection at the Town Hall, 103 South Main Street, Loreauville, Louisiana.

Send comments to the Honorable Forbus Mestayer, Mayor, Village of Loreauville, Town Hall, 103 South Main Street, Loreauville, Louisiana 70552.

Maps are available for inspection at City Hall, 457 East Main Street, New Iberia, Louisiana.

Send comments to The Honorable Ruth Fontenot, Mayor, City of New Iberia, City Hall, 457 East Main Street, Suite 300, New Iberia, Louisiana 70560.

East Marley Creek			Village of Mokena, Will County.
Approximately 800 feet downstream of Wolf Road	*680	*679	
Just downstream of 104th Street	*687	*686	

Maps are available for inspection at the Village Hall, 11004 Carpenter Street, Mokena, Illinois.

Send comments to Mr. Paul Pearson, Mokena Village Engineer, 11004 Carpenter Street, Mokena, Illinois 60448.

Maps are available for inspection at the Land Use Department, Subdivision Engineering Division, 58 E. Clinton Street, Joliet, Illinois.

Send comments to The Honorable Joseph L. Mikan, Will County Executive, 302 N. Chicago Street, Joliet, Illinois 60432.

Elkhorn River			Madison County, City of Tilden, Village of Meadow.
Approximately 4,800 feet	None	*1498	

*National Geodetic Vertical Datum

Elkhorn River			Grove, City of Norfolk, Village of Battle Creek.
Downstream of 558th Avenue			
Approximately 300 feet upstream of Center Street/534th Avenue.	None	*1657	
Union Creek			Madison County
Approximately 1.9 miles upstream of 3rd Street	None	*1589	
Approximately 1.7 miles upstream of 3rd Street	None	*1588	

Source of Flooding and Location of Referenced Elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
*National Geodetic Vertical Datum Maps are available for inspection at Zoning Administration, 1112 Bonita Drive, Norfolk, Nebraska. Send comments to Mr. Jerry McCallum, Chairman, Madison County Commissioner, Madison County Courthouse, PO Box 110, Madison, Nebraska 68748. Maps are available for inspection at the City Clerk's Office, 202 South Center, Tilden, Nebraska. Send comments to The Honorable Steve Rutjens, Mayor, City of Tilden, PO Box 37, Tilden, Nebraska 68781. Maps are available for inspection at 102 South Second Street, Battle Creek, Nebraska. Send comments to The Honorable Bob Buckendahl, Mayor, City of Battle Creek, PO Box 280, Battle Creek, Nebraska 68715. Maps are available for inspection at 208 Main Street, Meadow Grove, Nebraska. Send comments to Rita Sparr, Chairperson, Village of Meadow Grove, PO Box 166, Meadow Grove, Nebraska 68752. Maps are available for inspection at 701 Koeningstein Avenue, Norfolk, Nebraska. Send comments to The Honorable Gordon Adams, Mayor, City of Norfolk, PO Box 110, Norfolk, Nebraska 68701.			
Scioto River			Unincorporated Areas of Ross County, City of Chillicothe.
Approximately 0.1 mile upstream of Main Street	*618	*619	
Approximately 3.2 miles upstream of U.S. Highway 35	*632	*631	
*National Geodetic Vertical Datum Maps are available for inspection at the Ross County Engineering Building, 755 Fairgrounds Road, Chillicothe, Ohio. Send comments to Mr. James M. Caldwell, Ross County President of Commissioners, Ross County Courthouse, 2 North Paint Street, Suite H, Chillicothe, Ohio 45601. Maps are available for inspection at City Office, 118 East Main Street, Bainbridge, Ohio. Send comments to The Honorable Bryan Bobb, Mayor, Village of Bainbridge, 118 East Main Street, Bainbridge, Ohio 45612. Maps are available for inspection at the Administration Building, 35 South Paint Street, Chillicothe, Ohio. Send comments to The Honorable Margaret Planton, Mayor, City of Chillicothe, 35 South Paint Street, Chillicothe, Ohio 45601.			
Elm Creek			City of Grove, Delaware County.
Approximately 700 feet downstream of South Main Street	None	*756	
Approximately 2,700 feet upstream of N4640 Road	None	*837	
Flint Creek			Delaware County.
Approximately 6,850 feet downstream of U.S. 59	None	*858	
Approximately 1,100 feet upstream of D 579 Road (Beckwith Bridge).	None	*889	
Grand Lake of the Cherokees			City of Grove, Town of Bernice, Delaware County.
Entire shoreline	None	*756	
Illinois River			Delaware County.
Approximately 7,150 feet downstream of the confluence of Flint Creek.	None	*851	
Approximately 5,850 feet upstream of the confluence of Flint Creek.	None	*863	
North Tributary to Spring Branch			Delaware County.
Approximately 350 feet upstream of North Cherokee Street	None	*753	
.....		.....	Delaware County.
Approximately 1,100 feet downstream of North Cherokee Street.	None	*756	
*National Geodetic Vertial Datum Maps are available for inspection at the Floodplain Administrator's Office, Delaware County Courthouse, Jay, Oklahoma. Send comments to Ms. Pat Lynam, Floodplain Administrator, Delaware County Court House, PO Box 550, Jay, Oklahoma 74346. Maps are available for inspection at the City Manager's Office, City of Grove, 104 West 3rd Street, Grove, Oklahoma. Send comments to Mr. Richard Ball, City Manager, City of Grove, Court House, PO Box 1268, Grove, Oklahoma 74345. Maps are available for inspection at the Mayor's Office, Town of Bernice, 400 East Main, Bernice, Oklahoma. Send comments to The Honorable Bill Raven, Mayor, Town of Bernice, 400 East Main, Bernice, Oklahoma 74331.			
Alsuma Creek			City of Tulsa.
Approximately 200 feet upstream of Missouri Kansas Texas Railroad.	*666	*668	
Approximately 150 feet upstream of East 55th Street	None	*680	
Audubon Creek			City of Tulsa.
At the mouth	*638	*637	
Approximately 1,600 feet upstream of East 31st Street South	*674	*673	
Bell Creek			City of Tulsa.
At the mouth	*645	*644	
Approximately 1,200 feet upstream of East 41st Street South	None	*671	
Bell Creek Tributary			City of Tulsa.
At the mouth	*656	*652	

Source of Flooding and Location of Referenced Elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
Just downstream of 50th Street South	*680	*682	
Brookhollow Creek			City of Tulsa.
Approximately 150 feet downstream of Mingo Road	*641	*640	
Approximately 150 feet downstream of South 129th East Avenue.	*693	*692	
Catfish Creek			City of Tulsa.
Approximately 50 feet upstream of Railroad Bridge	*669	*668	
Just downstream of East 61st Street	*681	*678	
Cooley Creek			City of Tulsa.
At the mouth	*618	*615	
At the county boundary	*695	*699	
Douglas Creek			City of Tulsa, Tulsa County.
At the mouth	*611	*609	
Just downstream of State Highway 11	None	*630	
Eagle Creek			City of Tulsa.
At the mouth	*607	*608	
Approximately 2,600 feet upstream of East Pine Street	*654	*655	
Ford Creek			City of Tulsa.
At the mouth	*663	*661	
Just down of East 51st Street South	*720	*719	
Fulton Creek			City of Tulsa.
At the mouth	*648	*647	
Approximately 200 feet downstream of 39th Street	*667	*666	
Jones Creek			City of Tulsa.
At the mouth	*631	*629	
Approximately 200 feet upstream of 69th East Avenue	*687	*686	
Little Creek			City of Tulsa.
Approximately 1,200 feet downstream of Mingo Valley Expressway (highway 169).	*601	*602	
Just downstream of 129th East Avenue	*650	*649	
Mill Creek			City of Tulsa.
At the mouth	*623	*622	
Just downstream of East 15th Street	*729	*727	
Mingo Creek			City of Tulsa, Tulsa County.
Approximately 600 feet upstream of East 56th Street North	*590	*589	
Approximately 500 feet downstream of South Memorial Drive	*723	*724	
Quarry Creek			City of Tulsa.
Approximately 350 feet upstream of the mouth	*605	*604	
Just downstream of North 145th East Avenue	*681	*680	
Southpark Creek			City of Tulsa.
At the mouth	*653	*652	
Approximately 6,150 feet upstream of Garnett Road	None	*688	
Sugar Creek			City of Tulsa.
At the mouth	*648	*647	
Just downstream of South 129th	*694	*692	
Tupelo Creek			City of Tulsa.
Approximately 200 feet upstream of Mingo Road	*622	*621	
Approximately 700 feet upstream of East 16th Street	*662	*661	
Tupelo Creek Tributary A			City of Tulsa.
At the mouth	*648	*647	
Just downstream of South 129th East Avenue	None	*696	
Tupelo Creek Tributary C			City of Tulsa.
Approximately 200 feet downstream of South Garnett Road	*642	*643	
Just downstream of South 129th East Avenue	None	*697	

*National Geodetic Vertical Datum

Maps are available for inspection at 200 Civic Center, Tulsa, Oklahoma.

Send comments to The Honorable Jack Page, Floodplain Administrator, City of Tulsa, 111 South Greenwood, Suite 300, Tulsa, Oklahoma 74120.

Maps are available for inspection at the Tulsa County Annex Building, 633 West 3rd, Room 140, Tulsa, Oklahoma.

Send comments to The Honorable Robert Dick, Chairperson, Tulsa County Board of Commissioners, Tulsa County, 500 South Denver, Tulsa, Oklahoma 74103.

For further information please, contact the Map Assistance Center toll free at 1–877-FEMA-Map (1–877–336–2627).

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 15, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–18529 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR part 67

[Docket No. FEMA–P–7609]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) ◆(NAVD)	
				Existing	Modified
Arkansas	Saline County (Unincorporated Areas).	Clear Creek	Approximately 4,800 feet downstream of U.S. Route 167.	None	252
			Approximately 350 feet upstream of U.S. Route 167.	None	270
		Duck Creek	Approximately 6,000 feet downstream of S. Springlake Road.	None	253
			Approximately 300 feet downstream U.S. Route 167.	None	275
		Hopt Branch	Approximately 1,500 feet downstream of Honeysuckle Drive.	None	268
			Approximately 4,250 feet upstream of Honeysuckle Drive.	None	285

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) ◆(NAVD)	
				Existing	Modified
		Maple Creek	Approximately 6,200 feet downstream of U.S. Route 65.	None	237
			Just upstream of Springlake Road	None	287
		Maple Creek Tributary	Approximately 4,500 feet downstream of U.S. Route 167.	None	247
			Approximately 100 feet upstream of U.S. Route 167.	None	255
		McCright Branch	Approximately 2,000 feet downstream of Pear Orchard Drive.	None	285
			Approximately 150 feet upstream of Dena Drive.	None	310
		Owen Creek	Approximately 5,000 feet downstream of Midland Road.	None	323
			Approximately 2,000 feet upstream of Hilldale Road.	None	413

Maps are available for inspection at the Saline County Assessor's Office, Real Estate Department 215, Maine Suite 5, Benton, Arkansas.
Send comments to The Honorable Lanny Fite, Judge, Saline County, 200 North Main Street, Benton, Arkansas 72015.

Kansas	Wamego, City of (Pottawatomie County).	East Unnamed Creek	Approximately 1000 feet upstream of Pizza Hut Road.	None	1019
			Approximately 900 feet upstream of Missile Base Road.	None	1041
		East Unnamed Creek Tributary.	Approximately 700 feet upstream of the mouth.	None	1003
			Approximately 850 feet upstream of Graves Road.	None	1012
		North Unnamed Tributary	Just upstream of U.S. Highway 24	None	987
			Approximately 100 feet upstream of Spencer Road.	None	991

Maps are available for inspection at the City of Wamego, 430 Lincoln Avenue, Wamego, Kansas.
Send comments to The Honorable David Vanderbilt, Mayor, City of Wamego, P.O. Box 86, Wamego, Kansas 66547.

Louisiana	Delcambre, Town of (Iberia and Vermilion Parish).	Gulf of Mexico	Intersection of South Railroad Street and East Charity Street.	*11	*10
			Intersection of North Railroad Street and Kirk Street.	*11	*9

Maps are available for inspection at the Office of the Mayor, Town of Delcambre, 107 N. Railroad Road, Delcambre Louisiana.
Send comments to The Honorable Carol Broussard, Mayor, Town of Delcambre, 107 N. Railroad Road, Delcambre, Louisiana 70528.

Minnesota	Northfield, City of (Dakota and Rice Counties).	Cannon River	At downstream corporate limits	899	890
			Approximately 1,200 feet upstream of the corporate limits (Limit of flooding affecting acommunity).	918	913

Maps are available for inspection at 801 Washington Street, Northfield, Minnesota.
Send comments to The Honorable Keith Covey, Mayor, City of Northfield, 801 Washington Street, Northfield, Minnesota 55057.

Minnesota	St. Paul, City of (Ramsey County).	Mississippi River	Approximately 120 feet upstream of the corporate limits.	704	705
			Just downstream of Lock and Dam No. 1	717	716

Maps are available for inspection at the St. Paul Planning & Economic Development, 1300 City Hall Annex, 25 West 4th Street, St. Paul, Minnesota.
Send comments to The Honorable Randy Kelly, Mayor, City of St. Paul, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102.

Missouri	Albany, City of (Gentry County).	East Fork Grand River		None	*849
		Town Branch		None	*846–868
		Town Branch Tributary		None	*850–870

Maps are available for inspection at City Hall, 106 East Clay Street, Albany, Missouri.
Send comments to The Honorable John Ricks, Mayor, City of Albany, 106 East Clay Street, Albany, Missouri 64402.

Missouri	Dalton, Village of (Chariton County).	Missouri River		None	*642–643

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) ◆(NAVD)	
				Existing	Modified
Maps are available for inspection at the Chairman's Home, 109 N. Sycamore Street, Dalton, Missouri. Send comments to The Honorable Donald Hughes, Chairman, Village of Dalton, 109 N. Sycamore Street, Dalton, Missouri 65246.					
Missouri	Dunklin County (Unincorporated Areas).	Shallow flooding	Area north of State Route 84 and south of railroad.	*258	*259
Maps are available for inspection at the Courthouse, Court Square, Kennett, Missouri. Send comments to Mr. Don Collins, Presiding Commissioner, Dunklin County, P.O. Box 188, Kennett, Missouri 63857.					
Missouri	Pemiscot County (Unincorporated Areas).	Shallow flooding	Area along Route A about 2,000 feet north of State Route 84.	*258	*259
			Area south of City of Bragg City, west of Main Street.	*257	*259
			Area south of City of Bragg City, east of Main Street.	*258	*259
Maps are available for inspection at the Courthouse, 610 Ward Avenue, Caruthersville, Missouri. Send comments to Mr. Charles Moss, Presiding Commissioner, Pemiscot County, 610 Ward Avenue, Caruthersville, MO 63830.					
Nebraska	Pilger, Village of (Stanton County).	Elkhorn River	.....	None	*1406–1411
Maps are available for inspection at 220 North Main Street, Pilger, Nebraska. Send comments to The Honorable Andy Anderson, Chairman, Village of Pilger, 220 North Main Street, Pilger, Nebraska 68768.					
Nebraska	Stanton, City of (Stanton County).	Elkhorn River	.....	None	*1444–1462
Maps are available for inspection at 800 Eleventh Street, Stanton Nebraska. Send comments to The Honorable Tim Kabes, Mayor, City of Stanton, 800 Eleventh Street, Stanton, Nebraska 68779.					
Texas	Galveston County (Unincorporated Areas).	Gulf of Mexico	North of FM 3005, from approximately 1,000 feet west of its intersection with Pirates Beach Circle to approximately 300 feet east of 12 Mile Road.	*13	◆17
			At shoreline, near the Southern terminus of San Domingo Drive, about 100 feet west of the City of Galveston corporate limit, to the corporate limit.	*19	◆20
Maps are available for inspection at 123 Rosenberg Street, Suite 4157, Galveston, Texas. Send comments to The Honorable Jim Yarborough, Galveston County Judge, 722 Moody Street, Suite 200, Galveston, Texas 77550.					
Texas	Galveston, City of (Galveston County).	Gulf of Mexico	At the northern terminus of 9 Mile Road ..	*13	◆18
			Along the shoreline extending from approximately 1,500 feet east of the southern terminus of 11 Mile Road to Pabst Road.	*19	◆20
Maps are available for inspection at City Hall, 823 Rosenberg Street, Galveston, Texas. Send comments to The Honorable Roger Quiroga, Mayor, City of Galveston, 823 Rosenberg Street, Galveston, Texas 77550.					
Texas	Jamaica Beach, Village of (Galveston County).	Gulf of Mexico	From the canal northwest of Bahama Way to West Bay.	*12	◆14
			Along the shoreline extending from the western corporate limit to the southern terminus of Buccaneer Drive.	*18	◆20
Maps are available for inspection at 16628 San Luis Pass Road, Jamaica Beach, Texas. Send comments to the Honorable Victor Pierson, Mayor, Village of Jamaica Beach, 16628 San Luis Pass Road, Jamaica Beach, Texas 77554.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 15, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–18530 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–02–12845]

RIN: 2127–AH71

Federal Motor Vehicle Safety Standards; Accelerator Control Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise the Federal motor vehicle safety standard for accelerator control systems. The standard seeks to reduce deaths and injuries resulting from engine overspeed caused by malfunctions in these systems. When the standard was originally drafted and issued, most systems were mechanical. Now, increasing numbers of systems are electronic, electric or hybrid. The revised standard would explicitly apply to these systems, and contain provisions addressing the distinctive failure modes of each type of system.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 23, 2002.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366–4171. His FAX number is (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

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Proposed Regulatory Text

I. Background—History of Standard No. 124

The purpose of Standard No. 124, Accelerator Control Systems, 49 CFR 571.124, is to reduce deaths and injuries resulting from failures of a vehicle's accelerator control system. Since 1972, Standard No. 124 has specified requirements for ensuring the return of a vehicle's throttle to the idle position under each of the following circumstances: (1) When the driver removes the actuating force (usually the driver's foot) from the accelerator control (usually the accelerator pedal), and (2) when there is a severance or disconnection in the accelerator control system ("fail-safe" operation). Standard No. 124 applies to passenger cars, multipurpose passenger vehicles, trucks, and buses.

Standard No. 124 at S5.1 requires that each vehicle have "at least two sources of energy," each independently capable of returning the throttle to the idle position, within the time specified in paragraph S5.3, from any accelerator position or speed whenever the driver removes the actuating force. The Standard defines the throttle as "the component of the fuel metering device that connects to the driver-operated accelerator control system and that by input from the driver-operated accelerator control system controls engine speed."

Paragraph S5.2 requires that the throttle return to idle "whenever any one component of the accelerator control system is disconnected or severed at a single point." This requirement must be met within the time specified in paragraph S5.3.

Paragraph S5.3 requires the throttle to return to idle within one second for vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less and within two seconds for vehicles with GVWRs greater than 10,000 pounds. The return-to-idle time is increased to three seconds for any vehicle that is exposed to ambient air at 0 degrees to −40 degrees Fahrenheit during the test or for any portion of a 12-hour conditioning period.

II. Standard No. 124 and Electronic Accelerator Control Systems

When originally promulgated, the definitions and requirements of Standard No. 124 were easy to apply because they were based on the then-universal mechanical control systems. The "throttle" of a gasoline engine was the carburetor shaft that opened and closed the air intake passages. The "throttle" of a diesel engine was the control rod or rack that controlled fuel flow to the high pressure injectors. The two energy sources were simply two return springs acting on the linkage between the accelerator pedal and the throttle. If at least one of those springs

were connected directly to the carburetor or to the diesel fuel injection rack, it would cause the throttle to return to idle in the event of a disconnection of the pedal linkage. If the disconnection occurred at one of the springs, the other would permit continued driver control.

Since Standard No. 124 was issued, electronic engine controls using computer systems have become commonplace. Electronic accelerator linkages have become so common on large trucks that a mechanical accelerator linkage controlling a fuel injection rack is now rare on those vehicles. Already the norm for large trucks, fully electronic accelerator controls, or "throttle-by-wire" systems, have recently been introduced on light trucks and passenger cars. In these systems, the driver's pressure on the accelerator pedal is sensed electronically and is transmitted to the device on the engine which controls engine power.

The introduction of electronic systems led to questions about whether and how they were regulated by Standard No. 124. Isuzu Motors America, Inc. (Isuzu) wrote first, asking a variety of questions concerning electronic systems. Isuzu suggested that some of the language in the standard seemed more appropriate for mechanical accelerator systems than for electronic ones. Its central question was whether the standard applies to electronic systems. Among other questions, Isuzu asked whether a severance in electric wires in its electronic accelerator control system is a severance within the meaning of S5.2 of the standard. Isuzu expressed its belief that, because the electric wires were not a "moving part," the answer should be no.

In an August 8, 1988 interpretation letter to Isuzu, NHTSA disagreed with Isuzu's position. NHTSA stated that the standard, which refers generally to accelerator control systems, instead of specifically to "mechanical" systems, applies to electronic accelerator control systems. The agency interpreted Standard No. 124's requirement that the throttle must return to idle "whenever any one component of the accelerator control system is disconnected or severed at a single point," to include all severances or disconnections of any component of the accelerator control system as it is defined in the standard, not just disconnections of moving parts. NHTSA subsequently reiterated its position that Standard No. 124 applies to electronic accelerator controls in letters of November 9, 1988 to Caterpillar, Inc.; September 23, 1992 to Bendix Heavy Vehicle Systems; and August 7, 1996 to Philips Research Lab Aachen.

Although the agency has applied Standard No. 124 to electronic accelerator control systems on several occasions, manufacturers continue to question whether the Standard applies to these systems. One correspondent assumed, incorrectly, that since electronic accelerator control systems do not include springs and linkages beyond the pedal assembly as described in Standard No. 124, the electronic components of such systems were not regulated. Similarly, other correspondents have believed Standard No. 124 to mean simply that two return springs should be placed on the accelerator pedal assembly.

In response, the agency has recited in its interpretation letters the requirement that the sources of energy must be capable of returning the throttle to idle in the event of any single severance or disconnection. NHTSA noted that although the use of two springs on the pedal assembly may represent good pedal design, it does not intrinsically overcome a disconnection anywhere within an electronic accelerator control system. Good pedal design by itself does not provide an electronic accelerator control system with the same degree of fail-safe operation provided in a mechanical system by having a return spring directly on the throttle or fuel injection rack. The springs on the throttle or fuel injection rack in a traditional mechanical system could overcome an accelerator control disconnection and return the throttle to idle regardless of where in the system the disconnection occurred. In an electronic accelerator control system, disconnection or severance of the wiring between the pedal position sensor and the engine control processor, between the engine control processor and the throttle on the engine, and in the power and ground connections to the engine control processor are failures analogous to the disconnections of mechanical linkages. Those failures cannot be addressed by focusing solely on the pedal.

Some parties have recognized the analogy between wire severance or disconnection and mechanical linkage severance or disconnection but, because of the standard's lack of specificity, still found it necessary to ask whether the standard applies to short circuits of connecting wires as well as open disconnections.

III. Why We Propose to Amend Standard No. 124

The need for interpretation letters drawing analogies between traditional mechanical components and new electronic systems results from the present regulatory language that reflects the design of mechanical systems. Now that electronic accelerator controls are becoming increasingly commonplace, there is a growing need to revise Standard 124 to address electronic control systems explicitly. As an example, although the term "throttle" is not ambiguous for mechanical systems, it loses its clarity when applied to a diesel engine with electronically controlled fuel injectors because the functional throttle position is the product of the combined duty cycle of the engine's injectors and thus cannot be measured by observing the position of any single component. Regulatory language that specifically addresses "throttle" in the context of electronic controls systems would help make it explicit not only that Standard No. 124 applies to electronic control systems, but also how it applies to them.

We are also concerned that regulating electronic systems by drawing analogies to mechanical systems has the undesirable effect of limiting the permissible responses to failures in electronic systems to only the fail-safe modes that are possible with mechanical systems. The only response that the present standard recognizes for fail-safe performance is the return of the throttle exactly to the idle position. However, the real issue is the return of engine power to a benign idle state as a fail-safe response to a disconnection in the accelerator control system. Electronic engine controls can reduce the engine power through control of fuel pressure, spark timing, and other factors independent of throttle position. It is neither necessary nor desirable to limit the ways in which fail-safe performance can be achieved by electronic accelerator controls systems.

IV. 1995 Request for Comments

In a Request for Comments published in the **Federal Register** on December 4, 1995 (60 FR 62061), NHTSA introduced the subject of revising Standard No. 124 to add specific provisions for electronic accelerator controls. The notice asked for explanations of the principles of operation and fail-safe provisions of systems in use. It also presented for discussion the idea of identifying each potential failure mode of an electronic accelerator control system and a corresponding fail-safe requirement practicable for each failure mode, as

well as the alternative idea of a redundant engine controller active only at the idle position of the accelerator pedal.

In general, the comments of vehicle and engine manufacturers did not address the specific questions in the notice. Instead, they voiced a preference for rescinding the standard altogether, suggesting that market forces and litigation pressure are sufficient to assure fail-safe performance without a Federal motor vehicle safety standard. However, they also commented that, should the agency disagree about rescission, a standard specifying fail-safe performance in the least design-specific terms would be preferable to the requirements suggested in the Request for Comments.

V. 1997 Public Technical Workshop

On May 20, 1997, NHTSA held a public technical workshop on electronic accelerator controls, with the participation of the Truck Manufacturers Association (TMA) and the organization then known as the American Automobile Manufacturers Association (AAMA). Both organizations made brief presentations about the general operating principles of electronic accelerator controls and emphasized that there had been no safety-related developments concerning electronic accelerator controls to justify applying Standard No. 124 to such systems, which they would consider an increase in the scope of the standard.

AAMA identified the following problems in defining the safety performance of electronic accelerator controls: How to define "idle"; how to define "severance" and "disconnection"; how to handle "limp home" strategies; how to specify a test procedure; and how to specify where in the engine management system disconnections and severances should be considered failures of the accelerator control system. TMA stressed that the idle speed is dependent on environmental and operating conditions and is somewhat variable by necessity; therefore, "return to idle" must refer to a range of operation identified by the manufacturer as appropriate for conditions and not simply as a throttle position.

During the meeting, we responded to these comments by stating that we were seeking neither to increase nor decrease the scope of Standard No. 124, but to have a standard that was clear and adequate in its application to electronic accelerator controls and that was as performance-oriented as possible. We agreed that existing electronic accelerator control systems appeared to be safe and that present regulation by analogy was inadequate only in its lack of clarity regarding its applicability and its exclusion of new fail-safe strategies. We invited the attendees, and especially the industry associations, to provide specific recommendations for regulatory text that would address the difficulties in updating Standard No. 124.

TMA and AAMA each submitted suggested regulatory text amending the Standard to accommodate electronic accelerator controls. Their comments, including their suggestions about text, may be viewed in the docket for the present notice. As discussed in the next section, our proposed revision of Standard No. 124 draws on their suggestions, but differs in several important ways.

VI. Notice of Proposed Rulemaking

A. Scope of the Proposed Revision of Standard No. 124

In response to the industry's concerns, we seek to ensure that the scope of the proposed standard remains the same as that of the present standard. Nothing in this proposed rule intentionally changes the scope of Standard No. 124. For example, where the present standard applies only to single-point severances or disconnections such as the disconnection of one end of a throttle cable, the proposed standard also is limited to single-point severances and disconnections such as unhooking one electrical connector or cutting a conductor at one location. The proposal does not attempt to make the requirements more stringent by requiring fail-safe performance when multiple severances or disconnections occur simultaneously.

Electronic accelerator controls are more complex than mechanical accelerator controls. The revised standard in this proposal appears correspondingly more complex than the present standard, but the added regulatory text is for the purpose of greater specificity. Lack of specificity in the present standard has led some parties to believe that electronic accelerator controls are regulated less comprehensively than mechanical accelerator controls. This amendment also enhances design freedom and avoids greater burden on manufacturers by addressing types of accelerator controls other than mechanical air throttles and by allowing fail-safe strategies other than return of the air throttle to a mechanical stop.

The agency's view of the scope of the Standard differs from the suggestions made in 1997 by TMA and AAMA with regard to whether an electronic accelerator control system is comprised only of the pedal position sensor and its wiring to the input of the engine control module (ECM), or whether it extends beyond the ECM to include connections to the actual throttling device on the engine.

AAMA argued that the ECM itself should be considered the throttle. We do not agree with this position. We believe that the throttle is the air intake valve, or throttle plate (which is housed in the "throttle body"), for a conventional gasoline engine. In versions of this engine with mechanical accelerator controls, a cable or linkage that is clearly part of the accelerator control system operates the air intake valve. If the cable or linkage is disconnected at the air intake valve, the present standard requires the air intake valve to close by means of a spring or other source of energy. Versions of this engine with electronic accelerator controls have a similar throttle to which is added an electric actuator to open and close the air intake valve. If the electrical connection between the ECM and the electric actuator of the air intake valve were disconnected, no corresponding fail-safe action would be required in AAMA's view of the scope of the standard. This view is contrary to the analogies between mechanical and electronic systems that form the basis of the legal interpretations of the present standard.

B. Components of an Accelerator Control System

The present standard refers to the accelerator control system in general terms, defining it in S4.1 as "all vehicle components, except the fuel metering device, that regulate engine speed in direct response to the movement of the driver-operated control and that return the throttle to the idle position upon release of the actuating force."

In this proposed rule, we treat an accelerator control system (ACS), whether electronic or mechanical, as a series of linked components extending from the driver-operated control to the fuel metering device on the engine or motor. A severance at any one point in the system should not result in losing control of engine power. Electronic systems with wires, relays, control modules, and electric actuators joining the accelerator pedal to the throttle or injectors on the engine are analogous to mechanical systems in which levers, linkages, pivots, cables, and springs serve the same purpose. This definition also applies to an ACS that mixes mechanical and electronic components.

In a mechanical control system, it is reasonably clear which vehicle components comprise the ACS, and it is therefore not difficult to apply the definition used in the present standard. Electronic ACSs are less easily defined than mechanical ones because a variety of components can influence engine speed without being in the direct line of action between the accelerator pedal and the throttling device on the engine.

One possible approach to defining an electronic ACS would be to list in the standard exactly which components, connections, modules, etc., make up an ACS and are subject to the fail-safe requirements. This explicit approach would provide for a high degree of clarity, but would tend to produce a standard lacking flexibility. There is the possibility that any connective component omitted from specific mention in the standard would be excluded from regulation, whether intentionally or not.

The alternative regulatory approach, and the one that we have chosen to employ in the proposed standard, is to specify in general terms the connective components that are regulated. This general approach lends a high degree of flexibility to the standard by leaving open the possibility that the regulatory language can be adapted to new technology.

We agree with TMA and AAMA that there is no evidence of a new safety problem requiring an increase in the scope of Standard No. 124. Since the scope of the fail-safe requirements is still limited to the "connective components" of accelerator control systems, we believe the proposed standard adheres to the scope of the existing standard.

Nevertheless, this notice lists some common components of an ACS to illustrate the intent of the proposed standard and to make it clear that these components are considered part of the ACS. The following paragraphs list some of the connective components of electronic accelerator control systems subject to the fail-safe requirements of Standard No. 124, as well as elements of mechanical accelerator control systems always understood to be covered by Standard No. 124.

1. Connective Components of an Air or Fuel-Throttled Engine's ACS—For an air-or fuel-throttled engine, the critical connective components of the accelerator control system are: (1) The springs or other sources of energy that return the driver-operated control and the throttle to the idle position; (2) the linkages, rods, cables or equivalent components which are actuated by the driver-operated control; (3) the linkages, rods, cables or equivalent components which actuate the throttle; (4) the hoses which connect hydraulic or pneumatic systems within an accelerator control system; (5) the connectors and individual conductors in the electrical wiring which connect the driver-operated control to the engine control processor; (6) the connectors and individual conductors in the electrical wiring which connect the engine control module (ECM) to the throttle or other fuel-metering device; and (7) the connectors and individual conductors in the electrical wiring which connect the ECM to the electrical power source and electrical ground.

With regard to the ECM itself, the agency believes that an electronic accelerator control system necessarily includes the ECM as one component. However, we view the fail-safe requirements of the Standard as pertaining to the connective elements rather than the internal elements of the ECM. We agree with TMA and AAMA that internal elements of the ECM are analogous in function to the internal elements of a carburetor or fuel injection distributor, which have never been included in the fail-safe requirements of the Standard. The wiring and connectors between the pedal position sensor and the ECM, the wiring and connectors between the ECM and the physical fuel-metering device on the engine, and the power and ground connections to the ECM are all connective rather than internal elements.

2. Connective Components of an Electric Propulsion Motor—For an electric motor, the critical connective components of an accelerator control system are: (1) The springs or other sources of energy that return the driver-operated control and the motor speed controller to the idle position; (2) the linkages, rods, cables or equivalent components which are actuated by the driver-operated control; (3) the linkages, rods, cables or equivalent components which actuate the motor speed controller; (4) the hoses which connect hydraulic or pneumatic systems within an accelerator control system; (5) the connectors and individual conductors in the electrical wiring which connect the driver-operated control to the motor speed controller or motor control processor; (6) the connectors and individual conductors in the electrical wiring which connect the motor control processor to the motor speed controller; (7) the connectors and individual conductors in the electrical wiring which connect the motor control processor to the electrical power and electrical ground; and (8) the connectors and individual conductors in the electrical wiring from the motor speed controller to the electric traction motor.

C. Inadequacy of Present Performance Criteria

At present, Standard No. 124's performance criteria are based on measuring the position of the "throttle," which is defined as the component of the fuel metering device that connects to the driver-operated accelerator control to regulate engine power and speed. The advantage of this indicator of accelerator control operation is that it is simple to measure. The lag time of the actual change in engine power and speed, which can be considerable because it depends on engine characteristics such as compression and rotational inertia and test conditions such as load and temperature, does not complicate the determination of whether the throttle returns to idle within the required time. The typical throttle of a gasoline engine is the "butterfly" plate in the air intake.

However, the convenient measurement of throttle plate position, has no literal meaning for many engines other than conventional gasoline engines. For a modern diesel engine, the hydraulically actuated, electrically controlled unit injection (HEUI) fuel injectors function as multiple throttles, and for a vehicle powered by an electric motor, the motor speed controller is considered the throttle. For HEUI fuel injectors and for electric motor speed controllers, there is no observable component equivalent to a throttle that changes position when the accelerator control is operated.

Furthermore, electronic accelerator control systems now being installed on some gasoline engines have a spring-centered throttle plate. In the absence of an electrical signal at the throttle plate actuator, the spring-centered throttle opens much more than the usual idle position. In the event the electronic accelerator control is disconnected from the throttle plate actuator, these engines cannot satisfy the present fail-safe criterion that the "throttle return to the idle position." On the other hand, engines of this design can accomplish the essential fail-safe performance of returning engine power to a satisfactory idle condition through spark timing control or other means. However, strategies other than throttle plate return would not be recognized as being in compliance under the present Standard. For these reasons, we propose alternative performance criteria to recognize the various ways in which a return to idle state power can be achieved.

D. Criteria for Return to Idle in Normal Operation

Like the present Standard, the proposed Standard has return-to-idle time requirements for two operating conditions: (1) Normal operation of intact accelerator control systems, and (2) fail-safe operation in the event of a severance or disconnection in the accelerator control system. Regarding normal operation, the proposed Standard has retained return of the air throttle to the idle position as the criterion for air-throttled (gasoline) engines. The criterion is still valid for normal operation of engines with mechanical accelerator controls and also for air-throttled engines with electronic accelerator controls.

1. Diesel Engines—For diesels (and other fuel-throttled engines), this proposal accepts TMA's suggestion that the return of the fuel delivery rate (gallons/minute of fuel entering the combustion chambers of the engine) to the idle state be used as the return to idle criterion. For these engines, power is controlled directly by controlling the fuel flow. The result of rapidly returning the accelerator control to idle is a rapid return of the fuel rate to the steady idle rate without the lag required to see the effect on engine speed. In this respect, the fuel rate of fuel-throttled engines is much like the throttle position of air-throttled engines.

2. HEUI Injectors With Multiple "Throttles"—An engine with a HEUI injection system, now commonplace in commercial trucks, is potentially problematic with respect to return to idle criteria because it has multiple "throttles," its individual HEUI injectors, which can operate independently of each other. This difficulty is overcome by using a measured fuel rate that combines the action of the individual injectors and represents the steady effect of all the injectors' dynamic duty cycles (percent open time or pulse width and frequency). It also solves the problem of the lack of a throttle reference position and thus provides a satisfactory return-to-idle indicant. For many trucks, a fuel rate signal that computes the combined effect of fuel pressure and fuel injector duty cycles is available as a diagnostic signal at the ECM. For engines without a reliable diagnostic signal, direct measurement of fuel flow in the supply and return lines would be necessary.

3. Electric Motors—For vehicles powered by electric motors, the electric power input at the drive motor (computed from voltage and current) can be used as the indicant of return-to-idle. This measurement represents the operation of the motor speed controller that, like an electronic fuel injector, is a throttle without a measurable reference position. Since propulsive power is directly proportional to the drive motor input current and voltage, this indicant is equivalent to throttle position.

4. Response Time Requirements Will Be Retained—AAMA suggested eliminating the response time requirements for return to idle in normal operation, but the agency has chosen to retain these requirements. The elimination of the requirements for normal operation was the subject of a prior NPRM (see 61 FR 19020; April 30, 1996) (No DOT Docket No.) which was withdrawn (see 62 FR 10514; March 7, 1997) (No DOT Docket No.). These requirements continue to protect against accelerator controls with poor operation due to mechanical friction.

E. Fail-Safe Performance Criteria

In the case of fail-safe operation, electronic accelerator control systems can have a variety of ways of curtailing vehicle power in response to an accelerator control system failure. Our intent in the proposed Standard is to take advantage of those possibilities by establishing fail-safe criteria that are performance-oriented rather than design-oriented.

AAMA suggested a criterion for fail-safe behavior in the event of a disconnection or severance of the accelerator control system that is strictly performance based and applies to all forms of vehicle propulsion. That criterion was that the maximum time to return to the idle state in the presence of a single severance, disconnection, or short circuit not exceed the time to return to the idle state in the absence of any such fault by more than three seconds. AAMA further suggested that the engine RPM would be used as the idle state indicant for this test.

This suggested criterion appears to be simple and easily attainable because of the extra three seconds of reaction time, but it is actually a rigorous requirement and a difficult test to perform. We propose not to restrict the test to operation in neutral, as initially suggested by AAMA, because that restriction would neglect real driving safety. We propose that in order to adequately determine whether propulsive power is returned to the idle state, the appropriate time to be measured is the time for a whole vehicle to slow from any speed and power condition back to the speed at which the engine is at the idle RPM. It could easily take 60 seconds for a vehicle to slow from 70 mph to an idle speed of perhaps 20 mph as a result of simply lifting the driver's foot from the accelerator pedal. Random differences in the effect of wind and road surface alone make it unlikely that successive runs, even with a vehicle free of faults, would be repeatable within 3 seconds unless performed on an indoor dynamometer. Also, much of the deceleration is the result of engine braking (negative driving torque), and it is arguable that the safety purpose of the standard is satisfied by the cessation of driving torque alone as a fail-safe response.

In the proposed rule, we have included AAMA's suggested RPM test as performed on a dynamometer, in S6.4, as a compliance test of fail-safe performance, and have made it valid for any type of engine or motor. With the RPM test, the proposed standard includes a compliance test that is purely performance-based and independent of design. However, the RPM test is not the sole fail-safe test in the proposed standard because of the disadvantages just described. This is because there are several optional tests in addition to the RPM option for demonstrating fail-safe performance that, though their applicability depends on design, will be simpler and less burdensome to perform than the RPM test for most vehicles.

1. Alternative Fail-Safe Performance Tests for Air-Throttled Engines—For air-throttled engines, we propose three alternative tests. The first test is the return of the throttle plate to the idle position. This alternative is identical to the present standard and is the least burdensome test for many vehicles in current production. The second test alternative for air-throttled engines is return of the fuel rate to the idle state. For engines of this type, engine power cannot vary substantially from the idle state if the fuel rate is constrained to the value observed at the idle state. Thus, fuel rate is a reliable indicant that engine power is under control. The third test, the RPM test, can be used if neither of the other two tests is compatible with the vehicle's fail-safe design.

2. Alternative Fail-Safe Performance Tests for Fuel-Throttled Engines—Since fuel-throttled engines such as diesel engines may operate with excess air in the combustion chambers, neither the position of an air throttle, if one is present, nor the air intake rate would be an accurate indicant of engine power. Fuel rate, on the other hand, is an accurate and sufficient indicant of engine power for these engines. Consequently, we have included the same fuel rate criterion specified for normal operation of fuel-throttled engines as an optional test for fail-safe

performance of those engines. This test was suggested by TMA for both normal and fail-safe operation. As stated above, the RPM test is the other option for these types of engines.

3. Alternative Fail-Safe Performance Tests for Electric Vehicles—For vehicles driven by electric motors, we are proposing that the normal operation criterion for measuring throttle return time of vehicles driven by electric motors, i.e., return of the drive motor electric power input to the idle state, be used as an optional test of fail-safe performance for these vehicles. Again, as stated above, the RPM test is the other option for these vehicles.

4. Alternative Fail-Safe Performance Tests for Hybrid Vehicles—For a hybrid vehicle with more than one type of propulsion system, the RPM test could be applied to the various propulsion systems working together. Alternatively, the fail-safe performance of the accelerator controls of each separate propulsion system could be demonstrated independently using either optional tests appropriate for each propulsion system or the RPM test.

F. Irrevocable Selection of Test to Which Vehicle is Certified

While we propose alternative compliance options in order to minimize the burden on manufacturers, we are also proposing to require manufacturers to declare the option to which their compliance is certified before the agency performs any compliance test of its own. We have noted previously that when a safety standard provides manufacturers with more than one compliance option, the agency needs to know which option has been selected in order to conduct a compliance test.

We have had previous experience with enforcing standards having compliance options without an irrevocable election provision. A manufacturer may certify a vehicle based on one compliance option but subsequently, when confronted with an apparent noncompliance (based on a compliance test) consistent with that choice, argue that the compliance test is irrelevant because the vehicle complies with a different compliance option. Such a shift in the manufacturer's compliance stance would create obvious difficulties for the agency in managing its available resources for carrying out its enforcement responsibilities. By granting manufacturers the flexibility of compliance alternatives, the agency does not intend to impose upon itself an obligation to test each vehicle with each compliance option to determine whether the vehicle in fact complies with this standard.

To avoid this circumstance, we intend to compel manufacturers to inform the agency, when asked to do so, of the compliance option on which its certification is based. The agency will test the vehicle in accordance with that information and further will consider that choice irrevocable. We will consider that test to be prima facie proof of compliance or noncompliance, without regard to whether the vehicle may comply with another option the manufacturer was not intending to rely on. Further, we believe that a post hoc argument that a different option can apply raises serious questions about the manufacturer's compliance with its obligations under 49 U.S.C. 30115 to ensure, using reasonable care, that its certificate is neither false nor misleading.

G. Definition of "Idle State"

TMA and AAMA advised the agency in their comments that the idle state is not fixed but varies according to a number of factors such as engine temperature, accessory load, and emission controls. It may not be possible for a manufacturer to specify absolute values for operating characteristics of the idle state like throttle opening, engine speed, and fuel rate because those characteristics can change according to conditions, e.g., if the engine is warming up or the vehicle's air conditioning is turned on. As a result, the idle state can vary over a limited range without any input from the accelerator pedal. The idle state also can be modified by speed setting devices such as cruise control. Further, some engines may now employ a "limp home" mode which can adjust engine operation to prevent stalling in the event of a malfunction and to provide enough power for a vehicle to be moved from an unsafe location.

For mechanical accelerator control systems, the current standard accommodates the existence of a range of idle states by allowing any idle position "appropriate for existing conditions." Thus, in a traditional air-throttled engine in which the idle position is determined by a mechanical throttle stop, the throttle stop itself can change position as dictated by operating conditions. For example, it may move to a position of increased throttle opening when the engine is cold. For compliance testing, the throttle stop provides a convenient reference position that makes determination of compliance a simple matter.

In vehicles with electronic engine controls, there may be no reference position like a throttle stop. Therefore, it is necessary to establish a reference or baseline value for the idle state, whether it is measured by throttle position, fuel rate, RPM, or electrical power input. The standard could require that the manufacturer specify a value for the baseline, but it would be burdensome to have to obtain idle state data for each of the numerous possible combinations of operating conditions for each vehicle used in compliance testing.

Instead, it is easier and more practical to establish a baseline simply by measuring the initial value of the applicable idle state indicant (throttle position, fuel rate, RPM, electrical power input, etc.) at the beginning of a compliance test (i.e., immediately before the fault is induced). The initial value is an appropriate baseline because it accounts for whatever operating conditions exist. Further, it is a convenient baseline because it is measured directly at the time of the test, and does not depend on information provided by the vehicle manufacturer.

Once the baseline is established, the value of the idle state indicant at the end of the test should be expected to be the same as the baseline value established at the start of the test. Compliance is indicated by whether or not the idle state returns to the baseline value within the elapsed time specified in S5.3.

However, this approach only works if operating conditions such as engine temperature, ambient temperature, accessory load, etc., are constant during a test because on many vehicles there is no idle reference position that adjusts along with those conditions. On an electronic engine, idle state adjustments due to changes in operating conditions would likely take place in the internal circuitry of the ECM. Consequently, a noncomplying increase in idle state might be indistinguishable from a permissible one.

Because of this, the proposed standard specifies that operating conditions must be held constant during the test procedures. In a compliance test, the engine must be stabilized before the test and all accessory controls held constant so that any conditions that affect idle state do not change during the course of the test. In order to eliminate variations in engine idle that are not controlled by the driver, the engine will be operated long enough to release the cold start mechanism as well as to stabilize the emissions controls. The reference or baseline value is established by observing the value of the idle state indicant for an engine with a normally functioning accelerator control system. For normal operation, the idle

state following any input to the accelerator pedal is compared to baseline value, and in fail-safe operation, the idle state following a disconnection in the accelerator control system is compared to the baseline value. Return to the baseline must occur within the specified time span. With the engine operating in a steady state with all accessory controls held constant, any difference in the "before and after" idle states could not be attributed to a change in operating conditions.

H. Handling Limp Home Strategies

Limp home strategies allow for a temporary increase in idle speed to keep an engine from stalling as a result of certain malfunctions, and enhance safety and convenience by preserving limited mobility to get a partially disabled vehicle off the roadway. The test procedures for fail-safe performance identify the baseline idle state as the idle state for a vehicle without a fault in the accelerator control system (although the test could be run with faults in other engine systems). The test requirements do not allow the vehicle to comply if it is in a higher idle state at the end of the test because there would be no real fail-safe requirement. Whatever idle state resulted from a fault in the accelerator control system could be claimed as a limp-home mode induced by the fault. The question of compliance would be essentially rendered moot (although an unsafe idle condition might be considered a vehicle safety defect.)

Neither TMA nor AAMA discussed the possibility of manufacturers creating a limp home strategy specifically for accelerator control system faults such as disconnections and severances. However, the agency considered a hybrid vehicle, the Toyota Prius, which was designed with a "limp-off-the-road" mode for such faults. In this case, a disconnection of the pedal position sensor causes the electric traction motor to receive enough power to move the vehicle off the road. To assure safety, the power is removed upon any activation of the service brake.

We do not view this design as presenting a safety or compliance testing problem. Under the proposed test procedures, fail-safe performance tests would be conducted with the brake pedal (or brake lamp switch) depressed by the minimum amount necessary to cancel the limp-off-the-road idle state during introduction of accelerator control disconnections. We are proposing to include paragraph S5.4 in the Standard to permit limp-off-the-road idle states for accelerator control system faults, but only if they are canceled by any use of the service brake. We have chosen to refer to these as "limp-off-the-road" modes because we believe that term is a more accurate description of what their purpose should be, and also to distinguish them from "limp-home" modes that are designed to function in response to faults not involving the accelerator control system.

I. Severance and Disconnection

Under the proposed revised standard, electrical connections could be tested for disconnection of a whole connector and for the severance of each individual conductor in the wiring at the connector. Each conductor could be either left open or shorted to ground. This treatment is consistent with the prior agency legal interpretations of the standard relating to single point disconnections and severances in electronic accelerator control systems. (See NHTSA interpretation letter of August 8, 1988 to Isuzu Motors America, Inc.)

In the test procedures of the proposed regulatory text, "induce fault" refers to the act of disconnecting one component of the accelerator control system, or severing a single conducting wire to a component, or disconnecting or severing one mechanical linkage or spring within the accelerator control system.

J. Two Sources of Energy for Returning Throttle to Idle

At present, Standard No. 124 at S5.1 states that there shall be at least two sources of energy capable of returning the throttle to the idle position within the specified time limits from any accelerator position or speed, whenever the driver removes the opposing actuating force. S5.1 also specifies that, whenever one source of energy fails, the other shall fulfill the return-to-idle function.

In the past, springs have been the predominant sources of energy for return to idle. That appears to still be the case for accelerator pedal (treadle) assemblies of vehicles with electronic accelerator controls. These assemblies usually incorporate redundant springs. Such springs would be considered part of the accelerator control system under the proposed standard. Fail-safe operation would be tested by disconnecting a spring, just as it is tested in the existing standard. Although having two or more springs on the treadle is an effective countermeasure for instances where a spring disconnection occurs, it is not a sufficient condition to ensure return of the throttle to the idle state. Many vehicles now have electric motors, solenoids, or other devices to control the actual throttle on the engine. Redundant springs on the treadle could be rendered irrelevant if, e.g., the electrical connector to the treadle were disconnected. Under this proposal, fail-safe performance could be tested by disconnecting any single spring in the accelerator pedal or any single spring anywhere else in the ACS.

We believe that all sources of energy connected to the accelerator control system for throttle return, whether springs, solenoids, electric actuators, or other devices, should be treated uniformly as single components whose disconnection must not result in losing control of engine power.

Because the standard requires return to idle regardless of whether there are two sources of energy present, the current requirement may be considered somewhat redundant. Also, it is evident that many manufacturers will provide two or more springs on treadle assemblies whether there is an explicit requirement for it. Nevertheless, since we tentatively conclude that this requirement would continue to ensure that disconnection of one spring would not cause a runaway engine, we propose to retain it in Standard No. 124.

K. Stabilization of Engine Power and Idle State Tolerance

A significant concern in the regulation of ACS failures is that after a fault occurs, the engine should return to a benign power state very quickly, and should also stabilize at a benign condition. It would be unsafe for engine power to return only temporarily to a safe idle state and subsequently jump to a relatively high idle, even after a significant delay.

It is evident from agency tests that an engine with a fault in the ACS may return to or below the baseline idle state initially and within the specified time, but may not stabilize at or below the baseline. Rather, engine power can increase after the initial return to idle. Also, it is reasonable to expect that the idle level attained after fault introduction might be subject to fluctuation because current engines or motors operating in a fault condition might not always be able to achieve a smooth, uniform idle state. Engine operation might be rough, with speed oscillations and/or an elevated idle speed. These are not unexpected side effects when severances or disconnections occur, particularly in modern engines with electronic controls that might be capable of evoking a variety of control strategies to avoid stalling. Such variations in idle conditions may occur independently of

any limp-off-the-road provisions built into the engine control system.

The current standard is silent regarding the need to remain at idle after returning to the idle state when a fault occurs. With traditional mechanical linkages, there was little or no reason to believe that an engine's fail-safe response would change after the first few seconds. The throttle's initial return to or below the idle position after fault introduction was thought to be a sufficient measure of performance, and there was no need to consider engine power behavior at any later instant.

The current standard does not allow for return to any condition that is above the idle state, even by a small amount. Further, it does not give any consideration to whether an elevated idle condition is benign or not. In the past, the prevalence of mechanical throttle systems made such considerations unnecessary because a broken accelerator control system generally was not capable of making adjustments in order to compensate for disconnections or severances.

With electronic engine controls, the situation has changed. Engine computers continuously monitor engine operation. When the computer recognizes a problem, it can adjust engine operation. Such adjustments may occur on a delayed basis. Thus, power output behavior of electronic engines can change over a period of seconds after a fault occurs. Even if an engine returns to a safe power level initially, there might be fluctuations in engine idle parameters. These fluctuations could periodically exceed the baseline idle state by a significant amount.

For example, in one agency test of a fuel-throttled diesel engine in a school bus (GTL Test No. 3473), in which a fault was introduced in the ACS by severing one of the wires between the accelerator pedal position sensor and the engine control module, the fuel rate signal returned very quickly (within 0.2 seconds) to an indicated rate approximately the same as the fuel rate at idle before the wire was severed. By itself, this result appeared to indicate that the vehicle's ACS met a safe level of performance. However, within one second after fault introduction, the fuel rate increased momentarily to a level (approximately 1.2 gallons/hour) that was 2.4 times the baseline value (approximately 0.5 gallons/hour). The indicated fuel rate stabilized at exactly the baseline rate or less only after about 3.4 seconds had elapsed after fault introduction.

In this example, the initial return of indicated fuel rate to zero was evidence that engine power had dropped to a safe level in response to the ACS fault. Since the fuel rate subsequently increased before two seconds had elapsed to a level greater than the baseline, it was necessary to look at the fuel rate behavior for a greater time interval after the fault was introduced to determine if the engine continued to operate at a safe power level. In this case, it did so after a few seconds.

We believe there is no safety reason why the engine power should not be allowed to vary as long as a relatively benign idle condition is achieved within the time specified in S5.3 of the existing standard and maintained. In this example, the engine did return to a benign power level, approximately equal to the baseline power level at idle, within the prescribed time and it also did stabilize, after several seconds, at exactly the baseline level.

In order to address issues relating to stabilization of the idle state, we believe it is appropriate to require return to an idle state that is reasonably close to the baseline idle state, even if not identical to it, by specifying a tolerance which, when applied to the baseline, defines a maximum safe idle condition while also providing for some reasonable amount of variation.

We are proposing to permit a 50 percent increase from the idle state in fail-safe operation. That is, the idle state achieved after fault introduction must not be any more than 50 percent greater than the baseline idle state as determined prior to fault introduction. This level of tolerance would accommodate the kind of engine behavior such as speed fluctuations that the agency observed in tests that were conducted for the purpose of updating Standard No. 124. It would also eliminate the need to either lengthen the allowable time to return to idle in S5.3 or to specify an allowable delay before a complete return to the baseline idle state is achieved in a compliance test.

We are also proposing to require that an engine must remain at the idle state, within the 50 percent tolerance, after initially returning to or below that level following a disconnection or severance. That is, an engine or motor cannot be considered to comply if it returns to an acceptable idle state only temporarily and then increases to a relatively high power level. Under this proposal, the engine would be required to remain at the idle state indefinitely. This requirement would also prevent random or periodic fluctuations in idle state that are large enough to significantly exceed the baseline idle state, even though the idle state might be within compliance during portions of the oscillations. We do not believe this requirement expands Standard No. 124's scope because we believe that a requirement to remain at idle fulfills exactly the same safety need as the requirement to initially return to idle, and it is, in fact, implied in the existing standard.

To measure fuel rate, engine RPM, or electric power, the 50 percent tolerance would be calculated by multiplying the baseline value of the measured quantity by 1.5. To measure the air throttle position, the percent opening is the ratio of throttle plate angular displacement to its full travel. It is calculated by dividing the angular displacement to its full travel. The percent opening would be calculated by dividing the angular displacement of the throttle plate relative to its fully closed position by the angular displacement of the wide open throttle relative to fully closed.

The above described definition of "percent throttle opening" is included in the "Definitions" section of the proposed Standard. As an example, a throttle plate that is designed to rotate 80 degrees from its fully closed position to its fully open position would be considered 20 percent open when rotated 16 degrees from its fully closed position. If a baseline idle position for this throttle at given idle state conditions were measured to be 8 degrees from the fully closed position, then the 50 percent tolerance would be 4 degrees. Thus, the maximum opening following fault inducement in S6.3.4 and the release of the throttle in S6.3.5 would be 12 degrees from the fully closed position.

VII. Leadtime

We propose that the new standard apply to passenger cars, multipurpose passenger vehicles, trucks and buses manufactured on or after the first September 1st that occurs two or more years after the publication of the final rule. Public comment is sought on this proposed lead time. We believe that two years is sufficient lead time for industry since we do not believe that compliance with this proposed rule would involve any new technology, or performance specifications that manufacturers cannot meet with existing design, tooling, or manufacturing capabilities. We further believe that conducting the proposed test procedures would not involve any new technologies or procedures that manufacturers would find difficult to conduct. Since this rulemaking would not make any substantive changes in the scope of Standard No. 124, manufacturers or passenger cars, multipurpose passenger vehicles, trucks or buses would not need to make any changes in vehicle manufacturing

processes or procedures to ensure that their vehicles meet Standard No. 124.

VIII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

The purpose of the proposed revision of Standard No. 124, *Accelerator control systems*, is to specifically clarify the requirements as they apply to "non-mechanical" accelerator control systems, and not an expansion of the present requirements. These proposed requirements were developed with the agency working in concert with the motor vehicle industry, to prevent interpretation problems that have been associated with the present standard. Therefore, there are no new costs involved with the proposed revisions, and a regulatory evaluation has not been prepared.

B. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this proposed rule, if made final, would apply to motor vehicle manufacturers, and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13045 (Economically Significant Rules Disproportionately Affecting Children)

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health or safety risks that disproportionately affect children.

D. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such an effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The Head of the Agency has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this proposal would not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for the certification is that since this rulemaking would not make any substantive changes in the scope of Standard No. 124, small manufacturers of passenger cars, multipurpose

passenger vehicles, trucks or buses would not need to make any changes in vehicle manufacturing processes or procedures to ensure that their vehicles meet Standard No. 124. Accordingly, the agency believes that this proposal would not affect the costs of motor vehicle manufacturers considered to be small business entities.

F. National Environmental Policy Act

We have analyzed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

NHTSA has determined that, if made final, this proposed rule would not impose any "collection of information" burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). This rulemaking action would not impose any filing or recordkeeping requirements on any manufacturer or any other party. For this reason, we discuss neither electronic filing and recordkeeping nor do we discuss a fully electronic reporting option by October 2003.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources (including data from International Organization of Standards or other standards bodies), we have determined that there are not any available and applicable voluntary consensus standards that we can use in this notice of proposed rulemaking. We have searched the SAE's Recommended Practices applicable to accelerator control systems. We found SAE J1843 *Accelerator Pedal Position Sensor for Use with Electronic Controls in Medium and Heavy-Duty Vehicle Applications* APR93, the purpose of which is to "provide a common electrical and mechanical interface specification that can be used to design electronic accelerator pedal position sensors and electronic control systems for use in medium and heavy-duty vehicle applications." However, the specifications in this SAE Standard are limited to the pedal position sensor and a connector-pin diagnostic. It does not provide guidance on the entire accelerator control system. Since the SAE Standard does not provide guidance on an issue material to this rulemaking, we have developed our own proposal.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This proposal would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Data Quality Guidelines

After reviewing the provisions of this NPRM pursuant to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies ("Guidelines") issued by the Office of Management and Budget (OMB) (67 FR 8452, Feb. 22, 2002) and prepared, in draft form, by the Department of Transportation (DOT) (67 FR 21319, Apr. 30, 2002), NHTSA has determined that if made final, nothing in this rule would result in "information dissemination" to the public, as that term is defined in the Guidelines.

If a determination were made that public distribution of data resulting from this rule, constituted information dissemination and was, therefore, subject to the OMB/DOT Guidelines, then the agency would review the information prior to dissemination to ascertain its utility, objectivity, and integrity (collectively, "quality"). Under the Guidelines, any "affected person" who believed that the information ultimately disseminated by NHTSA was of insufficient quality could file a complaint with the agency. The agency would review the disputed information, make an initial determination of whether it agreed with the complainant, and notify the complainant of its initial determination. Once notified of the initial determination, the affected person could file an appeal with the agency.

K. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Comments

How do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System website at Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on "search."

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that the Federal Motor Vehicle Safety Standards (49 CFR Part 571), be amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.124 would be revised to read as follows:

§ 571.124 Standard No. 124; Accelerator control systems.

S1. *Scope.* This standard establishes requirements for the return of engines and electric motors that are connected to a vehicle's drive wheels to the idle state, whenever the actuating force on the driver-operated accelerator control is removed, or there is a severance or disconnection in the accelerator control system.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries resulting from engine over-speed caused by malfunctions in the accelerator control system.

S3. *Application.* This standard applies to passenger cars, multi-purpose passenger vehicles, trucks, and buses.

S4. *Definitions.*

Accelerator control system means all vehicle components, including all engine control modules, that either operate the throttle in response to movement of the driver-operated accelerator control or return the driver-operated accelerator control and the throttle to the idle position upon release of an actuating force.

Air throttle position means the ratio of the angular displacement of the throttle plate in that position relative to its fully closed position to its wide open angular displacement relative to its fully closed position.

Air-throttled engine means an internal combustion engine in which the power is regulated primarily through control of the air intake to the combustion chambers.

Ambient temperature means the surrounding air temperature, at a distance such that it is not significantly affected by heat from the vehicle under test.

Driver-operated accelerator control means any device, such as the accelerator pedal, that allows the driver to change the speed of a vehicle's engine or motor by changing input to the device, but does not include the cruise control or engine controls for other driver-operated ancillary components or systems.

Fuel delivery rate means the rate at which fuel enters the combustion chambers of an engine.

Fuel-throttled engine means an internal combustion engine in which the power is regulated primarily through control of fuel delivery to the combustion chambers.

Idle state means the engine power output to the drive wheels under idle

state conditions when there is no input to the driver-operated accelerator control.

Idle state conditions include, but are not limited to, engine temperature, air conditioning load, emission control, limp home mode, and the use of the cruise control.

Input electric power delivery means a power (wattage) computation using the input current and voltage to an electric motor and an appropriate power factor, if applicable.

Limp home mode means a device or design that restricts the engine or motor to a limited speed range when certain faults other than accelerator control system faults are detected by the engine management system.

Limp-off-the-road mode means a device or design that increases engine or motor speed above the idle state in response to a fault in the accelerator control system.

RPM means the engine or motor speed in revolutions per minute.

Throttle means the component of an engine that is connected to the accelerator control system and that controls the air intake to the combustion chambers of an air-throttled engine, the fuel delivery to the combustion chambers of a fuel-throttled engine or the electric power to an electric traction motor in response to the driver-operated accelerator control.

S5. *Requirements.* Each vehicle shall meet the following requirements when its engine or motor is running under any load condition, when tested under the applicable provisions of S6.

S5.1 *Performance in Normal Operation.* The throttle shall return to or below the idle state within the time limit specified in S5.3 from any position of the driver-operated accelerator control or any speed of which the engine or motor is capable, whenever the actuating force is removed from the driver-operated accelerator control. The idle state of the throttle in normal operation is measured by one of the following indicators when the engine or motor is at a stable idle and its idle state conditions remain constant:

(a) the air throttle position of an air-throttled engine;

(b) the fuel rate to the combustion chambers of a fuel-throttled engine; or

(c) the input electrical power (calculated from the measurements of current and voltage) for an electric traction motor.

S5.2 *Fail-safe Performance.*

S5.2.1 In the event of disconnection or severance of any one component of an accelerator control system at a single point, the engine or motor power shall return to or below the idle state, within the tolerance allowed by S6, within the time limit specified in S5.3, from any position of the driver-operated accelerator control or any speed of which the engine is capable. Each electronic control module in an accelerator control system is considered to be a single component. Severances and disconnections include those which can occur in the external connections of an electronic control module to other components of the accelerator control system and exclude those which can occur internally in an electronic control module.

S5.2.2 The time to return to the idle state is measured either from the first removal of the actuating force by the driver or from the time of severance or disconnection.

S5.2.3 The accelerator control system shall meet the requirements of this section when either open circuits or short circuits to ground result from disconnections and severances of electrical wires and connectors.

S5.2.4 *Selection of compliance options.* Where options for testing fail-safe performance are specified in S6, the manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle. Each manufacturer shall, upon request from the National Highway Traffic Safety Administration, provide information regarding which of the compliance options it has selected for a particular vehicle or make/model.

S5.3 *Accelerator response time.*

S5.3.1 Except as provided in S5.3.2, the maximum time to return to idle state shall be 1 second for vehicles of 4,536 kilograms (10,000 pounds) or less gross vehicle weight rating (GVWR), and 2 seconds for vehicles of more than 4,536 kilograms (10,000 pounds) GVWR.

S5.3.2 The maximum time to return to idle state shall be 3 seconds for any vehicle that is exposed to ambient air at "18 degrees Celsius to "40 degrees Celsius during a test or for any portion of the conditioning period described in S6.

S5.4 *Limp-Off-the-Road Mode for Accelerator Control System Faults.*

S5.4.1 Any increase in the idle state as a limp-off-the-road mode response to a fault in the accelerator control system that is greater than the tolerances provided in S6. shall be removed upon application of the service brake within the time limit specified in S5.3 and shall not recur as long as the service brake is applied.

S5.4.2 For purposes of S5.4, application of the service brake means any application that is sufficient to illuminate the vehicle's stop lamps.

S5.5 *Driver-Operated Accelerator Control.* There shall be at least two sources of energy, each of which is separately capable of returning the driver-operated accelerator control to the idle position within the applicable time limit specified in S5.3, from any position whenever the driver removes the actuating force.

S6. *Test Procedures and Conditions.*

S6.1.1 The air-conditioning setting selected for testing shall be any point within the vehicle's air conditioning control.

S6.1.2 If a vehicle is equipped with limp home mode, the idle state condition is determined with the limp home mode either on or off.

S6.1.3 For idle state conditions such as emissions control that do not provide a means of adjustment, the engine or motor will be operated long enough to stabilize its idle state prior to testing.

S6.1.4 *Air-throttled engines.* An air-throttled engine is tested for fail-safe performance under S6.2, S6.3, or S6.4, at the manufacturer's option.

S6.1.5 *Fuel-throttled engines.* A fuel-throttled engine is tested for fail-safe performance under S6.3, or S6.4 at the manufacturer's option.

S6.1.6 *Electric motors.* An electric motor is tested for fail-safe performance under S6.4 or S6.5 at the manufacturer's option.

S6.1.7 *Baseline value.* The baseline value is the value of the engine or motor power indicant specific to each test procedure below measured for an engine or motor without faults in its accelerator control system for the idle state conditions that will exist at the beginning and end of the test.

S6.1.8 Conditions applicable to all test procedures. The test procedures are conducted with the vehicle's service brake applied by the minimum amount necessary to disengage any limp-off-the-road mode effects.

S6.1.9 *Temperature.* The conditioning and test procedures are conducted at any ambient temperature between "40 degrees Celsius and +50 degrees Celsius.

S6.2 *Return of Air Throttle Position.*

S6.2.1 Condition the vehicle to the selected ambient temperature for 12 hours.

S6.2.2 Operate the engine at idle long enough to determine the baseline air throttle position for the idle state condition.

S6.2.3 Impose test load and engine speed conditions.

S6.2.4 Induce fault while measuring air throttle position.

S6.2.5 After at least 3 seconds, remove actuating force on driver-operated accelerator control while measuring air throttle position.

S6.2.6 The air throttle shall return to and remain indefinitely in a position that is no greater than 50 percent more open than the baseline idle position of S6.1.2 in the response time specified in S5.3 following either S6.2.4 or S6.2.5.

S6.3 *Return of Fuel Delivery Rate.*

S6.3.1 Condition the vehicle to the selected ambient temperature for 12 hours.

S6.3.2 Operate engine at idle long enough to determine fuel delivery rate in the idle state.

S6.3.3 Impose test load and engine speed conditions.

S6.3.4 Induce fault while measuring fuel delivery rate.

S6.3.5 After at least 3 seconds, remove actuating force on driver-operated accelerator control while measuring fuel delivery rate.

S6.3.6 The fuel delivery rate shall return to and shall remain indefinitely at a value that is no greater than 50% more than the idle state value of S6.3.2 in the response time specified in S5.3 following either S6.3.4 or S6.3.5.

S6.4 *Return of Engine or Motor RPM.*

S6.4.1 This test is performed on a chassis dynamometer providing the same resistance as a function of road speed for test runs as for baseline runs.

S6.4.2 Vehicle load, tire pressures and all other factors affecting rolling resistance are kept constant between baseline and test runs.

S6.4.3 Condition the vehicle to the selected ambient temperature.

S6.4.4 Operate the engine or motor at idle long enough to determine the baseline idle RPM on the chassis dynamometer in the same gear which will be selected for the baseline return-to-idle time measurement of S6.4.5 and the fail-safe test of S6.4.8.

S6.4.5 Begin baseline return-to-idle time measurement by imposing test load and engine or motor speed conditions.

S6.4.5.1 Return the external test load to that of S6.4.4 and simultaneously remove the actuating force on the driver-operated accelerator control.

S6.4.5.2 Record the time for the RPM to return to the idle RPM determined in S6.4.4. plus 50 percent.

S6.4.6 Begin fail-safe test by imposing test load and engine or motor speed conditions as in S6.4.5.

S6.4.7 Return the external test load to that of S6.4.4 and remove the actuating force on the driver-operated accelerator control in the manner of S6.4.6 and simultaneously induce fault while measuring RPM.

S6.4.8 The time following S6.4.9 for the RPM to return to a level that is no greater than 50 percent more than the baseline idle RPM of S6.4.4 shall not exceed the normal idle RPM return time of S6.4.7 by more than three seconds.

S6.4.9 The RPM shall remain indefinitely at a level that is no greater than 50 percent more than the baseline idle RPM of S6.4.4.

S6.5 *Return of Input Power Delivery to an Electric Motor.*

S6.5.1 Condition test vehicle to selected ambient temperature.

S6.5.2 Operate the motor at idle long enough to determine the baseline idle input power (which may be zero for some vehicles.)

S6.5.3 Impose test load and engine speed conditions.

S6.5.4 Induce fault while measuring input voltage and total current delivery.

S6.5.5 After at least 3 seconds, remove actuating force on driver-operated accelerator control while measuring input voltage and total current delivery.

S6.5.6 The input power to the motor shall return to and shall remain indefinitely at a value that is no more than 50 percent greater than the baseline idle value of S6.5.2 in the response time specified in S5.3 following either S6.5.4 or S6.5.5.

Issued on: July 16, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–18477 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–59–Pb

Notices

Federal Register
Vol. 67, No. 141
Tuesday, July 23, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Trout Slope West Timber Project, Ashley National Forest, Uintah County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Ashley National Forest has proposed to harvest live and dead timber within the Trout Slope West area of the Vernal Ranger District. The objectives of the proposal are to: reduce potential fuel loadings within treatment areas, prevent a likely future forest condition of blown down and jack-strawed timber, reduce stand density and thereby increase the growth of individual residual trees, begin the development of greater tree species diversity within treatment areas, and to recover the economic value of wood products associated with these objectives.

DATES: To be most useful, comments concerning the scope of the analysis should be received in writing by August 14, 2002.

ADDRESSES: Send written comments to: Brad Exton, District Ranger, Vernal Ranger District, Ashley National Forest, 255 N. Vernal Avenue, Vernal, Utah 84078, or e-mail at *bexton/r4_Ashley@fs.fed.us*

FOR FURTHER INFORMATION CONTACT: Specific questions about the proposed project and analysis should be directed to Ralph Rau, ID Team Leader, Vernal Ranger District, 355 N. Vernal Ave., Vernal, Utah, (435) 789–1181

SUPPLEMENTARY INFORMATION: This proposal arises out of the Vernal Ranger District's Trout Slope Landscape Assessment (TSLA), (1996) that describes the existing condition of an 80,000-acre area between East Park and Leidy Peak. The assessment suggests a desired future condition for the area and recommends resource management strategies to move the area towards the desired condition as a more specific complement to the broad direction of the Ashley National Forest Land and Resource Management Plan (FLRMP), (1986).

The Trout Slope West analysis area is approximately 18,500 acres and lies between Oak Park Reservoir to the east and Leidy Peak to the west. The project area is approximately 24 miles to the northwest of Vernal, Utah and can be accessed via Taylor Mountain Road and Forest Service Road 018. There are approximately 33 miles of open system roads that provide public access to the area. The proposed action was selected from the TSLA by using existing stand level data, areas with existing roads, and areas that included either high proportions of dead and dying trees or were in need of thinning.
Environmental conditions that were considered in developing the proposal were sensitive soils, riparian areas, a timber stand patch size and arrangement in relation to wildlife use, slopes suitable for tractor harvesting, forest type, landtype associations, level and types of recreation use, archaeological resources, and vegetative structual stages.

Proposed Action: The proposed action includes the following activities:

1. Individual tree selection and salvage on approximately 1700 acres.
2. Intermediate harvest (thinning) on approximately 470 acres.
3. Placement of a temporary bridge on the North Fork of Ashley Creek, located about one-quarter mile to the east of Long Park Reservoir. The bridge would be removed when harvest activities are completed.
4. Reconstruction of approximately one-half mile of existing road to allow for correct placement of the bridge noted above.
5. Approximately 12 miles of existing roads would be opened to access proposed harvest areas. A minimal amount of work including cleaning of ditches, and turnouts, spot blading as required, and removal of down timber would be necessary to make the roads suitable for hauling. All of these roads would be closed at the end of harvest operations and seeded with grasses as needed.

Responsible Official: The responsible official for the environmental impact statement is Bert Kulesza, Forest Supervisor, Ashley National Forest. The Forest Supervisor's address is 355 North Vernal Ave., Vernal, Utah 84078.

Nature of Decision To Be Made: The decision to be made is: Should the proposed action for the Trout Slope West Area be implemented or a different alternative that arises out of issues identified through public scoping and internal agency concerns.

Scoping Process: Formal scoping begins upon publication of this notice and will include mailing of information to known and interested parties.

Comment Requested

This notice of intent initiates the scoping proces which guides the development of the environmental impact statement. To be most helpful please submit your comments by August 30, 2002. All comments become part of the public record and can be made available upon request.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made

available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 17, 2002.

Bert Kulesza,

Forest Supervisor.

[FR Doc. 02–18513 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Couverden Timber Sale Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) on a proposal to harvest timber for the Couverden Timber Sale(s) project on the south end of the Chilkat Peninsula north of Icy Strait and west of Lynn Canal on the Juneau Ranger District, Tongass National Forest. The proposed action provides for: (1) Timber harvest on approximately 1500 acres of forested land resulting in the production of an estimated 25 million board feet of sawlog and utility timber volume, (2) construction of approximately 5 miles of new specified road and 3 miles of temporary road, and (3) reconstruction of 19 miles of existing specified road. The Record of Decision will disclose how the Forest Service allocates timber harvest in the project area using the existing transportation infrastructure including existing roads and the permitted log transfer facility known as Homeshore LTF.

DATES: A public mailing that outlines the project timeline and public involvement opportunities is planned for distribution in Summer 2002. Individuals who want to receive this mailing should contact us within 30 days of the publication of this NOI. To be most useful, comments concerning the scope of this project should be received by September 15, 2002. The Draft Environmental Impact Statement is expected in Winter 2003 and will begin a 45-day public comment period. The Final Environmental Impact Statement and Record of Decision are expected Fall 2004.

ADDRESSES: Please send written comments to: District Ranger, Juneau Ranger District, ATTN: Couverden EIS, 8465 Old Dairy Road, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Stan McCoy, Project Team Leader, telephone (907) 790–7431 or Dave Carr, Timber Management Assistant, telephone (907) 790–7402. Juneau Ranger District, 8465 Old Dairy Road, Juneau, AK 99801.

SUPPLEMENTARY INFORMATION:

Background

The proposed timber sale is located about 30 air miles west of Juneau, Alaska, 20 air miles southeast of Gustavus, Alaska and 10 air miles northeast of Hoonah, Alaska on the south end of the Chilkat Peninsula north of Icy Strait and west of Lynn Canal. The project is within townships 41 and 42 south, Ranges 61, 62 and 63 west, Copper River Meridian. The Juneau Ranger District of the Tongass National Forest, Juneau, Alaska, administers the project area. The project area contains Value Comparison Units 1170, 1180, 1190, and 1200 as designated by Tongass Land and Resource Management Plan. The project area includes approximately 66,486 acres. It includes portions of Homeshore, Humpy, and Swanson river drainages within the developed timber management land use designation. The project area includes one medium old growth reserve as designated in Tongass Land and Resource Management Plan. Another medium old growth reserve is located north of the project area near the community of Excursion Inlet. A Forest Plan amendment may be required to modify the old growth reserve boundaries associated with this project. Inventoried roadless area #304, Chilkat-West Lynn Canal, lies north and east of the project area and encompasses 198,525 acres. This Inventoried roadless area is currently managed for semi-remote recreation and old growth habitat. The proposed action does not include timber harvest or road construction in the adjacent inventoried roadless area.

The purpose and need for the Couverden Project is: (1) To implement the direction contained in the 1997 Tongass Land Management Plan and the 1997 ROD, including goals, objectives, management prescriptions, and standards and guidelines; (2) to maintain wood production from suitable timber lands, providing a continuous supply of wood to meet societies needs; (3) to help provide a stable supply of timber from the Tongass National Forest which meets existing and potential market demand and is consistent with sound multiple use and sustained yield objectives; and (4) to help meet the desired future condition of the landscape as described by the 1997 Tongass Land and Resource Management Plan.

Public Participation

Opportunities for the public to participate in the development of the Couverden Timber Sale Environmental Impact Statement will be provided throughout the process. The Forest Service will use a combination of methods to engage and involve the public, including public mailings, postings on the Tongass National Forest internet web page, public meetings and the news media. The comment period on the Draft Environmental Impact statement will be a minimum of 45 days from the date the Environmental Protection Agency (EPA) publishes the notice of availability in the **Federal Register**. The Draft EIS is projected to be filed with the EPA in Fall 2004.

The Forest Service believes it is important to give reviewers notice of several court rulings to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are received by the Forest Service at a

time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns with regard to the proposed action, comments during scoping and on the Draft Supplemental EIS should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the document. Comments may also address the adequacy of the Draft Supplemental EIS or the merits of the alternatives formulated and discussed. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within seven days.

Permits: required for implementation include the following.

1. U.S. Army Corps of Engineers
- Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
- Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;

2. Environmental Protection Agency
- National Pollutant Discharge Elimination System (402) Permit;

3. State of Alaska, Department of Natural Resources
- Tideland Permit and Lease or Easement;

4. State of Alaska, Department of Environmental Conservation
- Solid Waste Disposal Permit;
- Certification of Compliance with Alaska Water Quality Standards.

Responsible Official

The Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision, and state the rationale for the chosen alternative in the Record of Decision.

Dated: July 16, 2002.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 02–18514 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on August 19, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on August 19, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Office of Education Conference Room, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Anderson, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. Email: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on prioritizing and selecting Title II projects for fuels treatment and sediment reduction. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: July 16, 2002.

S.E. "Lou" Woltering,

Forest Supervisor.

[FR Doc. 02–18623 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of revision.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to revise a currently approved information collection, the Agricultural Surveys Program.

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Surveys Program.

OMB Control Number: 0535–0213.

Expiration Date of Approval: January 31, 2004.

Type of Request: Intent to revise a currently approved information collection.

Abstract: The National Agricultural Statistics Service is responsible for collecting and issuing State and national estimates of crop and livestock production, grain stocks, farm numbers, land values, on-farm pesticide usage, and pest crop management practices. The Agricultural Surveys Program contains a series of surveys that obtains basic agricultural data from farmers and ranchers throughout the Nation for preparing agricultural estimates and forecasts. The Program is being revised to discontinue the September small grain forecast. NASS will no longer forecast acreage, yield, and production in the September Crop Production report for durum wheat, other spring wheat, all wheat, and barley. Final acreage, yield, and production estimates will continue to be published for these crops—along with winter wheat, oats, and rye—in the annual Small Grains report, released on the last working day of September.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 547,000.

Estimated Total Annual Burden on Respondents: 139,000 hours.

These data will be collected under the authority of 7 U.S.C. 2204(a).

Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778. Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Dated: July 10, 2002.

Rich Allen,

Associate Administrator.

[FR Doc. 02–18484 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request an extension of a currently approved information collection, the Stocks Report.

DATES: Comments on this notice must be received by September 26, 2002 to be assured of consideration.

ADDRESSES: Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024 or gmcbride@nass.usda.gov.

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Stocks Report.

OMB Control Number: 0535–0007.

Expiration Date of Approval: August 31, 2002.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, stocks, disposition, and prices. The Stocks Report Surveys provide estimates of stocks of grains, hops, oilseeds, peanuts, potatoes, and rice that are stored off-farm. These off-farm stocks are combined with on-farm stocks to estimate stocks in all positions. Stocks statistics are used by the U.S. Department of Agriculture to help administer programs; by State agencies to develop, research, and promote the marketing of products; and by producers to find their best market opportunity. NASS intends to request that the survey be approved for another 3 years.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 18 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 13,000.

Estimated Total Annual Burden on Respondents: 15,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Dated: July 9, 2002.

Rich Allen,

Associate Administrator.

[FR Doc. 02–18489 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Manufacturing Extension Partnership (MEP) Client Impact Survey.

Form Number(s): None.

OMB Approval Number: 0693–0021.

Type of Request: Regular submission.

Burden Hours: 1,083.

Number of Respondents: 6,500.

Average Hours Per Response: 10 minutes.

Needs and Uses: The Manufacturing Extension Partnership (MEP), sponsored by NIST, is a national network of locally based manufacturing extension centers working with small manufacturers to help them improve their productivity, improve profitability and enhance their economic competitiveness. The collection of information from clients about the impact of MEP services is essential for NIST officials to evaluate program strengths and weaknesses and plan improvements in program effectiveness and efficiency. This information is not available from existing programs or other sources.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *Mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days after publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 17, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–18497 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 7 of the 2001 Panel

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 23, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–0001, (301) 763–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information about providing health care in the home, children's well-being, retirement plans, and taxes. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2001 Panel is currently scheduled for three years and will include nine waves of interviewing beginning February 2001. Approximately 50,000 households will be selected for the 2001 Panel, of which 37,500 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 78,750 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2001 SIPP Panel during FY 2003. The total annual burden for the 2001 Panel SIPP interviews would be 118,125 hours in FY 2003.

The topical modules for the 2001 Panel Wave 7 collect information about:

- Home Health Care
- Children's Well-Being
- Retirement and Pension Plan Coverage
- Annual Income and Retirement Accounts
- Taxes

Wave 7 interviews will be conducted from February 2003 through May 2003.

A 10-minute reinterview of 2,500 people is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 1,253 burden hours in FY 2003.

An additional 1,050 burden hours is requested in order to continue the SIPP Methods Panel testing. The test targets SIPP items and sections that require thorough and rigorous testing in order to improve the quality of core data.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of one to four years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2001 Panel, respondents are interviewed a total of nine times (nine waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0875.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 78,750 per wave.

Estimated Time Per Response: 30 minutes, on average.

Estimated Total Annual Burden Hours: 120,428.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: July 17, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–18498 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071702B]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Protected Resources Committee, and its Demersal Species Committee meeting as a Council Committee of the Whole with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Board, and Bluefish Board(s), and its Executive Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, August 6, to Thursday, August 8, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Sheraton Society Hill, One Dock Street, Philadelphia, PA; telephone: 215–238–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, August 6, the Protected Resources Committee will meet from 9:30–10:30 a.m. There will be a report of the 35th Stock Assessment Review Committee (SARC) from 10:30 a.m. until 12:30 p.m. The Council will meet jointly with the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board from 1:30–5:00 p.m. regarding scup specifications for 2003. On Wednesday, August 7, the Council will meet jointly with the ASMFC's Summer Flounder, Scup and Black Sea Bass Board from 8 a.m. until 3 p.m. regarding summer flounder and black sea bass specifications for 2003. The Council will meet with the ASMFC's Bluefish Board from 3 p.m. to 5 p.m. regarding 2003 specifications. On Thursday, August 8, Council will meet from 8:30 a.m. until 2 p.m.

Agenda items for the committees and Council meetings are:

The Protected Resources Committee will review the status of NMFS action regarding white marlin; review SARC reports on summer flounder, scup, and silver hake;

The Council and ASMFC's Summer Flounder, Scup, Black Sea Bass, and Bluefish Board(s) will review Monitoring Committee recommendations regarding the 2003 harvest level and commercial management measures, and recommend the 2003 harvest level and commercial management measures for scup, summer flounder, black sea bass, and bluefish; receive and discuss organizational and committee reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; and, under continuing business the Council will discuss Russian research proposal for mackerel and its total allowable level of foreign fishing (TALFF) implications.

Although non-emergency issues not contained in this agenda may come before the Council and ASMFC for discussion, these issues can not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 17, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18590 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071202H]

Endangered Species; File No. 1388

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. David A. Nelson, U.S. Army Research And Development Center, Waterway Experimental Station, 4104 Freetown Road, Vickburg, MS 39183, has applied in due form for a permit to take green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), loggerhead (Caretta caretta), Kemp's ridley (*Lepidochelys kempi*) and leatherback (*Dermochelys coriacea*) turtles for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 22, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and

exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes three projects along the northwestern Atlantic Ocean and the Gulf of Mexico. The first is to perform turtle relocation trawling for U.S. Army Corps of Engineer dredging projects. The purpose of this action is risk assessment or relocation of the turtles in the channels being dredged. All turtles captured will be handled, flipper and PIT tagged, and released away from the dredging hopper. The applicant requests to take 180 loggerhead, 25 Kemp's ridley, 2 Hawksbill, 20 green, and 2 leatherback turtles per year.

The second project is to perform relative abundance and habitat use surveys of near shore areas for green turtles. The turtles will be captured in tangle nets, measured, flipper and PIT tagged, and released. These turtles will also be tagged with both radio and sonic transmitters or time-depth recorders and radio transmitters. The applicant requests to take 75 green turtles per year.

The third project is to investigate large-scale movements and diving behavior. Turtles will be captured by trawling measured, flipper and PIT tagged, and released. A satellite transmitter will be attached. The applicant requests to take 20 loggerhead, 5 Kemp's ridley, and 5 green turtles per year.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: July 16, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18591 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2002–C–002]

Notice of Change in Publication Format for the Official Gazette of the United States Patent and Trademark Office—Patents

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Patent and Trademark Office (USPTO) will discontinue the publication of the paper version of the *Official Gazette of the United States Patent and Trademark Office—Patents*. Electronic publication via CD–ROM and Internet versions (the *eOG:P*) will replace the printed copy.

DATES: The last publication of the paper version will be September 24, 2002. The electronic publication of the CD–ROM will commence October 1, 2002.

SUPPLEMENTARY INFORMATION:

Background

The USPTO has published the *Official Gazette of the United States Patent and Trademark Office—Patents* since 1872 and it has historically served as the official notification of patent issuance. The *Official Gazette—Patents* is published weekly in conjunction with the issuance of patents. Entries in the *Official Gazette—Patents* contain patent bibliographic information such as inventor name(s), assignee name (if applicable), patent number, patent title, and classification. The entry also contains a representative claim and drawing (if applicable). Each weekly issue also includes an alphabetical index of patentees.

Explanation and Advantages of Change

In view of the widespread access to computers and the Internet and in accordance with the Paperwork Reduction Act of 1995, the USPTO will discontinue the printed copy distribution of the *Official Gazette—Patents*, effective October 1, 2002. Weekly electronic publication via CD–ROM and Internet versions (the *eOG:P*) will replace the paper. Beginning with the July 2, 2002, issue, the *eOG:P* and printed copy will be published on a concurrent basis until the paper version is discontinued.

The information provided by the electronic products will be unchanged from the traditional printed copy. Users will continue to browse patents by classification or patent type. However, the advantages offered by an electronic format will enable easier access to the information. Some of these advantages include: A cumulative patentee and assignee index regardless of patent type, in addition to the standard separate patentee indexes by patent type; direct links from the patentee index entry to the image of the patent; the addition of patentees by country to the geographical index by state; direct links to the patents by state or country; direct links to the patent from classification; and the addition of plant patent images. The electronic information can be easily printed or saved for future use.

The *eOG:P* on CD–ROM will be published and distributed close to issue date. The CD–ROM product will be available from the Information Products Division, Chief Information Officer, United States Patent and Trademark Office, as an annual subscription for $300 per year and as single copies for $15 per issue.

The *eOG:P* will also be available on the USPTO Web site at *www.uspto.gov/web/patents/patog/* each Tuesday, beginning July 2, 2002.

The USPTO will continue paper publication of the *Official Gazette—Trademarks, the Official Gazette Notices* and the *Consolidated Listing of Official Gazette Notices.*

FOR FURTHER INFORMATION CONTACT: Information Products Division at 703–306–2600.

Dated: July 16, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–18478 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Technology Administration

Proposed Information Collection; Comment Request; National Medal of Technology Nomination Applications

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on

the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 23, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 or via the Internet (*mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Mildred Porter, Director, National Medal of Technology Program, Technology Administration, 1401 Constitution Avenue, NW., Room 4226, Washington, DC 20230. In addition, written comments may be sent via fax, (202) 501–8153, and e-mail to *mporter@ta.doc.gov*.

SUPPLEMENTARY INFORMATION

I. Abstract

This information collection is critical for the Nomination Evaluation Committee to determine nomination eligibility and merit for selection of the Nation's leading technological innovators honored by the President of the United States. The National Medal of Technology Nomination Application solicits nominations that recognize an individual's or company's extraordinary leadership and innovation in technological achievement. The information is needed in order to comply with Public Law 96–480 and Public Law 105–309. Comparable information is not available on a standardized basis.

II. Method of Collection

Nomination applications and instructions are electronically posted on the National Medal of Technology web site. The forms are being revised for electronic submission beginning with the 2003 applications.

III. Data

OMB Number: 0692–0001.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; Federal Government.
Estimated Number of Respondents: 102.
Estimated Time Per Response: 25 hours.
Estimated Total Annual Respondent Burden Hours: 2,550.
Estimated Total Annual Respondent Cost Burden: None.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarize and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 17, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–18496 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–18–P

COMMISSION ON THE FUTURE OF THE UNITED STATES AEROSPACE INDUSTRY

Public Meeting

AGENCY: Commission on the Future of the United States Aerospace Industry.

ACTION: Notice.

SUMMARY: This meeting is the fourth in a series of planned public meetings being held by the Commission to carry out its statutory charge with respect to the U.S. civil and military, air and space industry. The focus of this meeting is to receive testimony from and conduct discussions with representatives of the following areas: Aviation (airline and business aircraft operations, air traffic control and pilots), aerospace suppliers, the investment community, space and planetary organizations, and RDT&E infrastructure. In addition, General Ronald R. Fogelman will present the results of the National Academy of Science's Aeronautics and Space Engineering Board's Vision 2050 Report. The meeting will close with a discussion about the next meeting.

Section 1092 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398) established the Commission on the Future of the United States Aerospace Industry to study the issues associated with the future of the United States national security; and assess the future importance of the domestic aerospace industry for the economic and national security of the United States. The Commission in governed by the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation of advisory committees and implementing regulations (41 CFR Subpart 101–6.10). All interested parties are welcome to submit written comments at any time.

Time and Date: Thursday, August 22, 2002; 8:30 a.m. to 5:30 p.m.

ADDRESSES: Herbert C. Hoover Building Auditorium, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Cindy Waters, 1235 Jefferson Davis Highway, Suite 940; Arlington, Virginia, 22202; phone 703–602–1515; e-mail *waters@osd.pentagon.mil*. Reasonable accommodations will be provided for any individual with a disability. Pursuant to the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, any individual with a disability who requires reasonable accommodation to attend the public meeting of the Aerospace Commission may request assistance by contacting Ms. Cindy Waters at least five (5) working days in advance.

Dated: July 17, 2002.

Charles H. Huettner,

Executive Director, Commission on the Future of the United States Aerospace Industry.

[FR Doc. 02–18574 Filed 7–22–02; 8:45 am]

BILLING CODE 6820–WP–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notification of Pending Legal Proceedings Pursuant 10 17 CFR 1.60

AGENCY: Commidity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish

notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the rule requiring notification of pending legal proceedings pursuant to 17 CFR 1.60.

DATES: Comments must be submitted on or before September 23, 2002.

ADDRESSES: Comments may be mailed to Barbara W. Black, Office of Executive Director, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Barbara W. Black, (202) 418–5130; FAX: (202) 418–5541; email: *bblack@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Notification of Pending Legal Proceedings Pursuant to 17 CFR 1.60, OMB control number 3038–0033—Extension

The rule is designed to assist the Commission in monitoring legal proceedings involving the responsibilities imposed on contract markets and their officials and futures commission merchants and their principals by the Commodity Exchange Act, or otherwise.

The rules require futures commission merchants and introducing brokers: (1) To provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

The Commission estimates the burden of this collection of information as follows:

	17 CFR section	Annual number of respondents	Total annual responses	Hours per response	Total hours
Estimated annual reporting burden	1.60	100	100	.10	10

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: July 17, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–18485 Filed 7–22–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Final Programmatic Environmental Assessment and Finding of No Significant Impact for the Millennium Challenge 2002 Joint Integrating Experiment

AGENCY: U.S. Joint Forces Command, DoD.

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to section 101(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing the procedural provisions of NEPA, U.S. Joint Forces Command (JFCOM) gives notice that a Programmatic Environmental Assessment (EA) has been prepared and an Environmental Impact Statement (EIS) is not required for the Millennium Challenge 2002 Joint Integrating Experiment scheduled to be conducted during July and August 2002 in the southwest region of the U.S. and offshore waters of southern California. JFCOM is issuing a Finding of No Significant Impact (FONSI).

FOR FURTHER INFORMATION CONTACT: Mr. Steven Chambliss, Joint Experimentation, U.S. Joint Forces Command, 1562 Mitscher Ave., Suite 200, Norfolk, VA 23551–2488; phone (757) 836–0966.

SUPPLEMENTARY INFORMATION: Millennium Challenge 2002 (MC02) is a Department of Defense (DoD) "major joint integrating experiment" scheduled to be conducted from July 24 to August 15, 2002 in the southwest region of the U.S. and offshore waters of Southern California. Congressional language in the FY01 Defense Authorization Act mandated conduct of the joint integrating experiment and specifically directed the demonstration of a rapid, decisive military operational concept. MC02 responds to Congressional direction and is sponsored by U.S. Joint Forces Command (USJFCOM) based in Norfolk, Virginia. Each of the services proposes to conduct their own experimentation under the umbrella of MC02. The Services have separately assessed the environmental impacts of their actions and determined that the impacts will not be significant. JFCOM conducted an overall, or programmatic assessment of the MC02 Proposed Actions. This assessment considered the potential cumulative effects of the Proposed Actions of the four individual Services during MC02.

Proposed Action

A military Joint Task Force (JTF) will be established by the Secretary of Defense to conduct exercise military operations against hypothetical Country RED. The Commander of the Joint Task Force (CJTF) will be the Commander of the Army III Corps who will command the operation from a land-based headquarters in Suffolk, Virginia and from the San Diego-based Navy Command Ship, USS CORONADO. Each of the Services will provide combat forces to the Joint Task Force. The Air Force proposes to participate with an Air Expeditionary Wing (AEW) at Nellis AFB, Nevada and Nevada Test and Training Range (NTTR) and would conduct 5 days of live flying during MC02. For the Army, the Proposed Action involves approximately 4,500 soldiers conducting operations at the National Training Center (NTC), Fort Irwin, CA. Southern California Logistics Airport (SCLA) near Victorville, CA would be used as a transshipment base (TSB) for movement of Army units by air and ground to and from NTC.

The Marine Corps participation in MC02, called Millennium Dragon, would include a small amphibious landing at MCB Camp Pendleton and urban warfare training exercises at SCLA. Operations would be battalion-sized with a maximum of approximately 1,200 Marines participating. The Navy proposes to conduct a series of experimental activities within MC02 called Fleet Battle Experiment Juliet (FBE J). Activities planned include special operations, mine warfare, anti-submarine warfare (ASW), anti-surface warfare (ASUW), joint fires, and intelligence, surveillance, and reconnaissance (ISR). Forces participating would include 12 ships, 19 aircraft, and about 2,500 personnel at various locations including ocean operating areas off southern California, Point Mugu sea range, San Clemente Island, San Nicolas Island, and China Lake land range.

Alternatives Considered

Geographic Alternatives Evaluated: Ten selection criteria were identified for the location of the MC02 live events: The only other region in the U.S. that could satisfy some of the criteria is the mid-Atlantic region including military ranges in Virginia, North Carolina, and Georgia, and offshore operating areas. The mid-Atlantic region did not meet several key criteria that are essential to fully achieving MC02 objectives.

No-Action Alternative

The no-action alternative would: Fail to comply with Congressional direction to conduct the exercise in fiscal year 2002; fail to assess the U.S. capability to conduct Rapid Decisive Operations (RDO); slow the Department of Defense transformation effort by limiting experimentation to virtual and simulated events; curtail ongoing Service experimentation efforts which are embedded in MC02; increase the quantity of live events required in future joint integrating experiments; and hamper the Services' requirements determination process in which experimental insights gained in MC02 will drive development of future acquisition requirements. Implementation of the No Action alternative would only postpone the integrating experimentation that DoD must inevitably conduct.

Environmental Impacts

The analysis evaluated the potential environmental consequences of military operations in the southwest U.S. and offshore southern California as part of Millennium Challenge 2002. The resource areas analyzed included air quality, water quality, airborne and underwater noise, biological resources, land use, cultural resources, socioeconomics, environmental justice, transportation and circulation, and hazardous materials and waste. The individual Services separately assessed that their individual experimentation activities would have a less than significant impact on the environment. The programmatic assessment in this EA also concluded that overall there would be no significant impacts from MC02 actions in any resource area.

Cumulative Impacts

The individual Services' Proposed Actions would take place within the boundaries of their own existing bases and facilities, test and training ranges, ocean operating areas, or leased facilities. Considerations in assessing the potential cumulative impacts of the MC02 Proposed Actions include: size of the area in which Proposed Actions would occur; multiple service Proposed Actions occurring at the same location; and Proposed Actions compared to normal activity levels. The very large size of the proposed operations area resource. The single MC02 locale with significant overlap of service actions is at SCLA near Victorville, California. Both Marines and the Army plan to use SCLA during MC02, but for different functions. The cumulative impact of Army and Marine activities at SCLA on air quality, airborne noise, land use, and public health and safety were assessed as less than significant. Though MC02 is a large exercise, the level of field activity proposed at any individual base, range, or facility is within the capacity of the base, range, or facility to handle and typical of normal activity levels.

The Proposed Actions of MC02 will occur over a 23-day period in July and August 2002. To the extent there are potential environmental impacts, the short duration will cause the impacts to dissipate over time and cease to contribute to cumulative impacts in the region. Based on the considerations and factors discussed above, the proposed activities of MC02 would not have a significant cumulative effect on the environment in the southern California and Nevada region.

Determination

An analysis of the proposed action determined that there are no significant short-term or long-term effects to the human environment or surrounding populations from Millennium Challenge 2002. The analysis also determined that the proposed activities of MC02 would not have a significant cumulative impact on the environment in the southern California and Nevada region. After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 101(2)(C) of NEPA. Therefore, an Environmental Impact Statement for Millennium Challenge 2002 is not required.

Dated: July 16, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–18479 Filed 7–22–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information System Agency.

ACTION: Notice of membership of the Defense Information Systems, Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board of the Defense Information Systems Agency. The publication of membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DISA.

EFFECTIVE DATES: June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Anita Brooks, SES Program Manager, Civilian Personnel Division, Manpower, Personnel and Security Directorate, Defense Information Systems Agency (703) 607–4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the DISA SES Performance Review Board. They will serve a one-year renewable term, effective 28 June 2002.

Ms. Diann L. McCoy, Principal Director for Applications Engineering, DISA.

James David Bryan, Major General, USA, Vice Director, DISA.

Mr. John Penkoske, Director for Manpower, Personnel, and Security, DISA.

Mr. Robert Hutten, Director for Strategic Plans, Programming and Policy, DISA.

Sue A. Engelhardt,

Chief, Civilian Personnel Division.

[FR Doc. 02–18558 Filed 7–22–02; 8:45 am]

BILLING CODE 3610–05–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to alter systems of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

S322.10.DMDC is being altered to add a new use for the information being released to the Social Security Administration as follows "c. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS)."

DATES: This action will be effective without further notice on August 22, 2002, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 2, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 16, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base (April 26, 2002, 67 FR 20748).

CHANGES:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add a new use for the information being released to the Social Security Administration as follows "c. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS)."

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

PRIMARY LOCATION:

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

BACK-UP LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; active and retired members of the commissioned corps of the Public Health Service; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

Current and former DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the

U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration and the Public Health Service who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active and retired members of the Uniformed Services, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal (non-postal) civilian employees and all Federal civilian retirees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

Individuals who are authorized web access to DMDC computer systems and databases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; date of award of certification of military experience and training; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching. Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

Names of individuals, as well as DMDC assigned identification numbers, and other user-identifying data, such as organization, Social Security Number, email address, phone number, of those having web access to DMDC computer systems and databases, to include dates and times of access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; Pub. L. 106–265, Federal Long-Term Care Insurance; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical

studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

DMDC Web usage data will be used to validate continued need for user access to DMDC computer systems and databases, to address problems associated with Web access, and to ensure that access is only for official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical

analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of (1) conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings, and (2) obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

Note 3: Earnings data obtained from the SSA and used by DoD does not contain any information that identifies the individual about whom the earnings data pertains.

b. To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SVB). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

c. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS).

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated

military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub. L. 97–365) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Public Law 101–510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 4: Data obtained from such organizations and used by DoD does not contain any information that identifies the individual about whom the data pertains.

22. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

The DoD 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

Note 5: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords that are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

The records are used to provide a centralized system within the Department of Defense to assess manpower trends, support personnel functions, perform longitudinal statistical analyses, conduct scientific studies or medical follow-up programs

and other related studies/analyses. Records are retained as follows:

(1) Input/source records are deleted or destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Exception: Apply NARA-approved disposition instructions to the data files residing in other DMDC data bases.

(2) The Master File is retained permanently. At the end of the fiscal year, a snapshot is taken and transferred to the National Archives in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

(3) Outputs records (electronic or paper summary reports) are deleted or destroyed when no longer needed for operational purposes.

Note: This disposition instruction applies only to record keeping copies of the reports retained by DMDC. The DOD office requiring creation of the report should maintain its record keeping copy in accordance with NARA-approved disposition instructions for such reports.

(4) System documentation (codebooks, record layouts, and other system documentation) are retained permanently and transferred to the National Archives along with the master file in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

AGENCY: Department of the Navy, Department of Defense.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy, after carefully weighing the operational, scientific, technical, and environmental implications of the alternatives considered, announces its decision to employ two SURTASS LFA sonar systems with certain geographical restrictions and monitoring mitigation designed to reduce potential adverse effects on the marine environment. This decision, which pertains only to the employment of two SURTASS LFA sonar systems (rather than the up to four analyzed in the Final Overseas Environmental Impact Statement and Environmental Impact Statement [OEIS/EIS] for SURTASS LFA Sonar), implements the preferred alternative, Alternative 1, identified in the Final OEIS/EIS for SURTASS LFA Sonar.

Pursuant to 10 U.S.C. 5062, the Navy is required to be trained and equipped for prompt and sustained combat incident to operations at sea. To fulfill this mandate, the Navy provides credible, combat-ready naval forces capable of sailing anywhere, anytime, as powerful representatives of American sovereignty. Fleet readiness is the foundation of the Navy's war fighting capability, and there is a direct link between fleet readiness and training. For the Navy, fleet readiness means essential, realistic training opportunities, in both open-ocean and littoral environments.

The Navy is facing existing and emerging threats from foreign naval forces. For example, several non-allied nations are fielding new, quiet submarines. New anti-ship, submarine-launched cruise missiles are also being introduced. When quiet submarines and anti-ship cruise missiles are combined, they pose a formidable threat to our sailors and Marines, who are called upon to project power from the sea and maintain open sea lanes.

In order to successfully locate and defend against these threats, our sailors must train realistically with both active and passive sonar. In executing anti-submarine (ASW) missions, sonar is the key to survival for our ships and sailors. The employment of SURTASS LFA will enable the Navy to meet the clearly defined, real-world national security need for improved ASW capability by allowing Navy Fleet units to reliably detect quieter and harder-to-find foreign submarines underwater at long range, thus providing adequate time to react to and defend against the threat, while remaining a safe distance beyond a submarine's effective weapons range.

SUPPLEMENTARY INFORMATION: The text of the Record of Decision is provided as follows:

The Department of the Navy (Navy), pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. Section 4332(2)(c); the regulations of the Council on Environmental Quality (CEQ) that implement NEPA procedures, 40 CFR parts 1500–1508; 32 CFR part 775; and Presidential Executive Order (EO) 12114 (Environmental Effects Abroad of Major Federal Actions), announces its decision to employ two SURTASS LFA sonar systems with certain geographical restrictions and monitoring mitigation designed to reduce potential adverse effects on the marine environment. This decision, which pertains only to the employment of two SURTASS LFA sonar systems (rather than the up to four analyzed in the Final Overseas Environmental Impact Statement and Environmental Impact Statement [OEIS/EIS] for SURTASS LFA Sonar), implements the preferred alternative, Alternative 1, identified in the Final (OEIS/EIS) for SURTASS LFA Sonar.

Background

The U.S. and its military forces must have the ability to project power decisively throughout the world. A key to the ability of the U.S. and its military forces to project power is the protection of U.S. and allied forward deployed Naval units against the threat of opposing force submarines. Of the approximately 500 non-U.S. submarines in the world, 224 are operated by non-allied nations. Many of these are the more advanced, quieter diesel-electric submarines that present a real threat to U.S. and allied forces. When these units are in a defensive mode, that is, not required to travel great distances or at high speed, they have a capability nearly equal to that of a modern U.S. nuclear submarine. At minimal cost, this threat potential can be readily obtained.

Where once the U.S. Navy could detect hostile submarines before they could get close enough to launch their weapons, by the 1990's this response time, against the quietest threat, had shrunk to mere minutes. To regain the needed response time and thereby protect our forces, the Navy embarked on an extensive research program to develop new technologies to detect submarines at long ranges. Among the technologies investigated were radar, laser, magnetic, infrared, electronic, electric, hydrodynamic, biologic and sonar (high-, mid- and low frequency). Although no single technology investigated was effective during all tactical and environmental conditions, the most effective and best available technology for reliable long-range detection was Low Frequency Active (LFA) sonar.

LFA sonar is an augmentation to the passive (SURTASS) detection system. Under certain, specific oceanic conditions, passive sonar can provide the detection required. However, under environmental conditions found in many ocean areas, passive sonar cannot detect quiet targets. Therefore, passive systems alone cannot detect quiet, harder-to-find submarines during all conditions, particularly at long ranges.

SURTASS LFA Sonar System Description

SURTASS LFA sonar is a long-range, all-weather sonar system that operates in the low frequency (LF) band between 100 and 500 Hertz (Hz). It has both active and passive components. The active component of the system, LFA, is a set of 18 low frequency acoustic transmitting source elements (called projectors) suspended by cable from underneath a ship. The source level of an individual projector is 215 dB. These projectors produce the active sonar signal or "ping." A "ping," or transmission, can last between 6 and 100 seconds. The time between transmissions is typically 6 to 15 minutes. The average duty cycle (ratio of sound "on" time to total time) is between 10 and 20 percent. The SURTASS LFA sonar signal is not a continuous tone, but rather a transmission of waveforms that vary in frequency and duration. The duration of each continuous frequency sound transmission is nominally 10 seconds or less. The signals are loud at the source, but levels diminish rapidly over the first kilometer. The passive, or listening, component of the system is SURTASS, which detects returning echoes from submerged objects, such as threat submarines, through the use of hydrophones on a receiving array that is towed behind the ship. The SURTASS LFA ship maintains a minimum speed of 5.6 kilometers (km) per hour (kph) (3 knots [kt]) through the water to tow the horizontal line hydrophone array.

Alternatives Considered

In preparing the OEIS/EIS the Navy considered three alternatives, including Alternative 1 (SURTASS LFA sonar employment [up to four systems] with geographic restrictions and monitoring mitigation); Alternative 2 (unrestricted SURTASS LFA sonar employment [up to four systems]); and the No Action alternative. Each alternative was evaluated and compared against the others in terms of fulfillment of the Navy's validated need for reliable detection of quieter and harder-to-find underwater submarines at long range, and the potential for environmental impacts. The word "employment" as used in this context means the use of SURTASS LFA sonar during routine training and testing, as well as the use of the system during military operations. "Employment" does not apply to the use of the system in armed conflict or direct combat support operations, nor during periods of heightened threat conditions, as determined by the National Command Authorities (President and Secretary of Defense or their duly designated alternates or successors).

Alternative 1, which is the Navy's preferred alternative in the Final OEIS/EIS, involves the employment of up to four SURTASS LFA systems with certain geographical restrictions and monitoring mitigation to reduce potential adverse effects on the marine environment. The geographic restrictions include limiting SURTASS LFA sonar received levels to not exceed 145 dB at known recreational or commercial diving sites; limiting SURTASS LFA sonar received levels to below 180 dB within 22 km (12 nm) of all coastlines (including islands) and in areas declared as Offshore Biologically Important Areas (OBIAs); and the use of sound pressure level (SPL) modeling to accurately gauge the 145 dB and 180 dB sound fields prior to commencing operations. The monitoring mitigation includes visual monitoring, the use of passive acoustic monitoring, and use of the high frequency marine mammal monitoring (HF/M3) sonar to detect marine mammals entering or within the 180-dB sound field. (*See* "*Mitigation*" below for further details).

Additionally, under this alternative, the Navy's Long Term Monitoring Program (budgeted at a level of $1M per year for five years, starting with the issuance of the first Letter of Authorization [LOA] by NMFS under the Marine Mammal Protection Act [MMPA]) will provide information to further the understanding of the potential effects of anthropogenic (human-generated) sounds on the marine environment.

Alternative 2 involves the unrestricted operation of up to four SURTASS LFA sonar systems in the active mode. Under this alternative, the Navy would employ these systems with no mitigation measures (*i.e.*, no geographic restrictions or monitoring mitigation to prevent potential effects on marine animals and divers). This alternative would maximize the Navy's operational flexibility and capability to employ SURTASS LFA sonar. However, this alternative has a higher potential to affect the marine environment than the other alternatives.

Under the No Action Alternative, operational employment of SURTASS LFA sonar would not occur. This would foreclose employment of SURTASS LFA sonar technology, and severely impair the Navy's ability to train to locate and defend against enemy submarines. Because the fleet must "train as it fights," this would in turn directly impact Fleet readiness and national security. The lack of a reliable, long-range underwater submarine detection capability would make it possible for potentially hostile submarines to clandestinely place themselves into position to threaten U.S. and allied Fleet units and land-based targets. Without this long-range surveillance capability, the reaction times to submarines would be greatly reduced and the effectiveness of close-in, tactical systems to neutralize threats would be seriously, if not fatally, compromised. Although it is the most environmentally preferable alternative,

the No Action Alternative would not fulfill the need to improve U.S. detection of quieter and harder-to-find underwater submarines at long range.

Environmental Impacts

The Navy analyzed the potential impacts of the employment of up to four SURTASS LFA sonar systems, with certain geographical restrictions and monitoring mitigation designed to reduce potential adverse effects on the marine environment, in several resource areas. Among the resource areas covered were impacts upon marine mammals, fish and sea turtles, human divers and swimmers, commercial and recreational fishing, whale watching and marine mammal research and exploration activities. This ROD summarizes the potentially significant, but mitigable impacts associated with the decision and the implementation of the selected alternative. The Navy also considered the selected action's potential for indirect effects and cumulative impacts, and ensured consistency with federal policies addressing environmental justice (EO 12898) and protection of children from environmental health and safety risks (EO 13045).

The main areas of impact analysis concerned the potential impact of low frequency sounds upon marine life and human divers. The analytical process utilized in preparation of the OEIS/EIS first conducted a scientific literature review to determine data gaps. Next, scientific screening of marine animal species for potential sensitivity to low frequency underwater sound was undertaken. Following these steps, scientific research and the estimation of the potential for effects from low frequency sound on marine mammals and humans in water was conducted. The research on marine mammals led to the development of a method for quantifying risk to marine mammals. Next, underwater acoustic modeling was conducted. These elements combined to produce an estimation of marine mammal stocks potentially affected. Similar methodologies were used to provide estimations of potential injuries to fish and sea turtles. Finally, geographic restrictions and monitoring mitigation were established to minimize the potential for effects to a negligible level.

Specifically with regard to marine mammals, the analysis of potential impacts contained in the OEIS/EIS was developed based on a literature review, the results of the Navy's Low Frequency Sound Scientific Research Program (LFS SRP) and underwater acoustical modeling. The potential impacts considered were for injury and/or significant change to biologically important behaviors. Biologically important behaviors are those related to activities essential to the continued existence of a species, such as feeding, migrating, breeding and calving.

Initially, it was determined there was potential for injurious effects within short ranges from the SURTASS LFA sonar. This area was designated as the LFA Mitigation Zone and covers a volume of water ensonified to a level at or above 180 dB (sound pressure level) by the SURTASS LFA sonar transmit array. Under normal operating conditions, this zone will vary between the nominal ranges of 0.75 to 1.0 km (0.40 to 0.54 nm) from the source array ranging over a depth of approximately 87 to 157 m (285 to 515 ft). (The center of the array is at a nominal depth of 122 m [400 ft]).

For the purposes of the SURTASS LFA sonar analyses presented in the Final OEIS/EIS and this ROD, all marine mammals exposed to received levels at or above 180 dB are evaluated as if they are injured. This determination was based on estimations of the range of frequencies at which an animal's hearing is most sensitive and the associated hearing thresholds (including an examination of anatomical models of inner ear function); extrapolation from human exposure results; comparison to fish hearing studies; and recent measurements of levels of temporary threshold shift (TTS) in marine mammals.

For the purposes of the SURTASS LFA sonar analysis presented in the Final OEIS/EIS and this ROD, an animal will have to be within the 180-dB sound field during transmission for injury to occur. The probability of this occurring is negligible because of the visual and acoustic monitoring that will be used whenever the SURTASS LFA sonar is transmitting. (*See "Mitigation"* below for further details.)

Knowing that cetacean behavioral responses to low frequency sound signals needed to be better defined using controlled experiments, the Navy supported the three-year LFS SRP conducted by independent scientists beginning in 1997. The LFS SRP was designed to supplement the limited scope of data from previous studies. This field research program was based on a systematic process for selecting the marine mammal indicator species (baleen whales were used as indicator species for other marine animals in the studies because they are the animals that are the most likely to have the greatest sensitivity to low frequency sound, have protected status, and have shown avoidance responses to low frequency sounds) and field study sites, using inputs from several workshops involving a broad group of interested parties (academic scientists, federal regulators, and representatives of environmental and animal welfare groups). Controlled experimental tests were designed and conducted by independent scientists who are recognized experts in the fields of marine mammalogy, marine bioacoustics and underwater acoustics. The LFS SRP involved the following species and settings: Phase I—blue and fin whales feeding in the Southern California Bight (September–October 1997); Phase II—gray whales migrating past the central California coast (January 1998); and Phase III—male humpback whales singing off Hawaii (February–March 1998). The LFS SRP produced new information about responses to low frequency sounds at received levels from 120 to 155 dB. The scientific team explicitly focused on situations that promoted high received levels, but were seldom able to achieve received levels above 155 dB due to the motion of the whales and maneuvering constraints of the low frequency source vessel. Prior to the LFS SRP, the expectation was that whales would begin to show avoidance responses at received levels of 120 dB. Immediately obvious avoidance responses were expected for received levels greater than 140 dB. Although the LFS SRP experiments detected some short-term behavioral responses at estimated received levels between 120 and 155 dB and several behavioral responses were revealed through later statistical analysis, the independent scientists conducting the research concluded that there was no significant change in a biologically important behavior detected in any of the three phases. Most animals that did respond returned to normal baseline behavior within a few tens of minutes. The modeled underwater acoustic received levels, which were calculated in the Final OEIS/EIS subsequent to the LFS SRP, have demonstrated that the range of exposure levels for subject animals during the LFS SRP covered a significant portion of the received level range that will be expected during actual SURTASS LFA sonar operations.

To estimate the percentage of marine mammal stocks potentially affected on a yearly basis under the selected alternative, the typical annual SURTASS LFA sonar operating schedule was correlated to 31 acoustically modeled sites. Conservative predictions from the modeling of the annual estimates of percentages of marine mammal stocks potentially

affected by SURTASS LFA sonar operations in the Pacific/Indian Oceans and Atlantic Ocean/Mediterranean Sea are given in the Final OEIS/EIS. Since marine mammal stocks are reproductively isolated, decreases in one stock cannot be replaced by animals from other stocks. Therefore, to accurately assess the potential effect of SURTASS LFA sonar, each stock was examined independently.

Under the selected alternative, the potential impact on any stock of marine mammals from injury is considered negligible, and the potential effect on the stock of any marine mammal from significant change in a biologically important behavior is considered minimal. However, because there is some potential for incidental takes, the Navy is requesting a Letter of Authorization (LOA) under the MMPA for each SURTASS LFA sonar system from NMFS for the taking of marine mammals incidental to the employment of SURTASS LFA sonar during training, testing and routine military operations. The Final Rule for issuance of the LOA for SURTASS LFA operations was published on 16 July 2002. In the Final Rule the National Marine Fisheries Service (NMFS) determined that employment of SURTASS LFA as described in Alternative 1 of the OEIS/EIS and implemented in this ROD will have negligible impacts on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of such marine mammals for subsistence uses. Additionally, NMFS considers the unintentional takes to be "small numbers of marine mammal species or population stocks."

The Navy has also consulted with NMFS under Section 7 of the ESA concerning the possible incidental taking of listed species, including marine mammals, sea turtles, and fish. In a Biological Opinion dated 30 May 2002, NMFS indicated that employment of the SURTASS LFA sonar as described by Alternative 1 of the Final OEIS/EIS and implemented by this ROD may adversely affect, but is not likely to jeopardize the continued existence of affected endangered and threatened species.

Regarding impacts to fish, the risk of physical harm or injury from exposure to SURTASS LFA sonar transmissions will be no greater than that for marine mammals. Several factors support this finding. First, coastal waters, OBIAs and recreational dive sites commonly contain significant concentrations, abundances and diversity of fish stocks, and geographic restrictions imposed on the SURTASS LFA sonar system employment limits received levels to no greater than 145 dB at known recreational and commercial dive sites and below 180 dB within 22 km (12 nm) of any coastline and in offshore biologically important areas. Based on prior studies, it is reasonable to consider hearing loss or injury to fish from SURTASS LFA sonar transmissions to be limited to received levels of 180 dB and higher. Thus, areas of high fish abundance and diversity will not be exposed to levels of LFA sounds that could potentially cause injury. Second, the SURTASS LFA sonar signal has a narrow bandwidth (approximately 30 Hz) whereas most fish species have much wider hearing bandwidths, which minimizes the potential for masking important regions of fish hearing bandwidth. Third, given that the SURTASS LFA sonar ship is always moving and that the system has a low system duty cycle (20 percent or less), fish will spend little time in the LFA mitigation zone. Finally, the LFA mitigation zone is small relative to fisheries resource regions and open ocean fish habitats. In any event, because only two SURTASS LFA sonar systems will be employed under this ROD, any potential for impacts to fish is less than for the four systems analyzed in the Final OEIS/EIS.

Pelagic fish are food for many marine mammals. If these prey species were within the 180-dB sound field of the SURTASS LFA sonar during source transmission (no more than 20 percent of the time), they could potentially be indirectly affected. However, it is unlikely that prey availability for marine mammals would be altered for more than a few hours. Based on the analyses of potential effects on fish, the potential for injury to fish on a stock level is negligible.

Sea turtle encounters with SURTASS LFA sonar will be limited and not significant due to the same factors described above for fish. Thus, it is unlikely that a significant portion of any sea turtle stock will experience adverse effects on movements, migration patterns, breathing, nesting, breeding, feeding, or other normal behaviors. In any event, because only two SURTASS LFA sonar systems will be employed under this ROD, any potential for impacts to sea turtles is less than for the four systems analyzed in the Final OEIS/EIS. Moreover, given that sea turtles are comparable in size to a small marine mammal, the visual monitoring and active acoustic monitoring employed under the implemented alternative will further reduce the risk of sea turtles encountering the SURTASS LFA sonar system.

Because data regarding the effects of underwater low frequency sound on humans were limited, the Navy conducted two scientific research studies to analyze the potential effects of low frequency sound on human divers. This research, in conjunction with guidelines developed from psychological aversion testing, led to the conclusion that low frequency sounds at or below 145 dB received level would not have an adverse effect on recreational or commercial divers. The Naval Submarine Medical Research Laboratory then established a 145-dB received level criterion for recreational and commercial divers, which has been endorsed by both the Navy's Bureau of Medicine and Surgery and the Naval Sea Systems Command.

Impacts on human divers, swimmers, surfers, snorkelers, and others that may submerse themselves below the ocean's surface will not be significant. Several factors support this conclusion. First, geographic restrictions imposed on SURTASS LFA sonar system employment limits received levels to no greater than 145 dB at known recreational and commercial dive sites. Second, exposure to low frequency sound energy will be eliminated or greatly reduced at beaches that are separated from the open ocean by a land mass (barrier island) or beaches along a broad, shallow portion of the continental shelf. Third, other than for very short periods of time, swimmers, surfers, and snorkelers are located at depths not greater than 2 m (6.5 ft), where substantial sound transmission losses occur in the top layer of water (up to 20 dB less than sound fields in adjacent deeper water). Also, as noted earlier, only two SURTASS LFA sonar systems will be employed under this ROD, so any potential impacts to divers are less than for the four systems analyzed in the Final OEIS/EIS.

Under the selected alternative, there will be negligible impacts on fish (as discussed previously) and, hence, negligible impact on commercial and recreational fishing in marine waters, fisheries trade, or related employment.

There will be no significant impacts on whale watching activities as a result of the employment of SURTASS LFA sonar, primarily because of the geographic restrictions imposed on SURTASS LFA sonar operations, which are designed to avoid areas of high concentrations of marine mammals. Thus, operations will not occur in prime whale watching areas.

Employment of the system and implementation of the selected alternative will not result in potential adverse impacts to existing

governmental, commercial, or academic research and exploration activities. SURTASS LFA sonar sound fields will not exceed 145 dB within known recreational and commercial dive sites, which includes blue water (open ocean) dive sites related to oceanic research. Many research and exploration activities are conducted from vessels under the University National Oceanographic Laboratory System (UNOLS), which cooperates with the Navy on a continuous basis. In addition, data from the Navy's proposed Long Term Monitoring Program can be used to supplement ongoing and future oceanographic and marine environmental research endeavors.

The potential cumulative impact issue associated with SURTASS LFA sonar operations is the addition of underwater sound to oceanic ambient noise levels, which, in turn, could have impacts on marine animals. Analysis of the potential cumulative impacts requires a discussion of recent changes to ambient sound levels in the world's oceans; the operational parameters of the SURTASS LFA sonar system, including the required mitigation; and the contribution of SURTASS LFA sonar to oceanic noise levels relative to other human-generated sources of oceanic noise. As noted in the Final OEIS/EIS, since 1950 oceanic ambient noise levels have risen by as much as 10 dB, mostly due to commercial shipping. Two SURTASS LFA sonars can transmit sound into the ocean for a total maximum of 36 days per year versus a total of 21.9 million days per year for the 60,000 vessels of the world's merchant fleet (assuming 80 percent of the merchant ships are at sea at any one time). Therefore, within the existing environment, the potential for accumulation of noise in the ocean by the intermittent operation of SURTASS LFA sonars is considered negligible.

Any cumulative impacts on fish (including sharks), sea turtle or marine mammal stocks from implementation of the selected alternative are a long-term issue, and are estimated to be extremely small because the system will transmit for a relatively brief period of time on an annual basis (estimated maximum of 432 hours per vessel per year); the system will operate at a low duty cycle (on no more than 20 percent of the time); and the system will not be stationary. In any event, because only two SURTASS LFA sonar systems will be employed under this ROD, any potential for impacts is less than for the four systems analyzed in the Final OEIS/EIS. Moreover, all observations made during the LFS SRP suggest that behavioral effects terminate when transmissions stop. Thus, the maximum scale on which any impacts are likely to occur is a nominal 30-day operational at-sea mission.

Mitigation

All practicable means to avoid or minimize environmental harm have been adopted through the incorporation of mitigation measures into operation of the SURTASS LFA sonar. The objective of these mitigation measures is to avoid injury to marine mammals and sea turtles near the SURTASS LFA sonar source and to recreational and commercial divers in the marine environment. Mitigation measures involve both geographic restrictions and operational measures. Geographic restrictions include limiting the SURTASS LFA sonar-generated sound field to a maximum of 145 dB (received level) in the vicinity of known recreational or commercial dive sites; limiting the SURTASS LFA sonar-generated sound field to below 180 dB (received level) within 22 km (12 nm) of any coastlines (including islands) and in offshore areas outside this zone that have been determined to be Offshore Biologically Important Areas (OBIAs); and estimating SURTASS LFA sound pressure levels prior to and during operations to provide the information necessary to modify operations, including the delay or suspension of transmissions, in order not to exceed the 145-dB and 180-dB sound field criteria.

Additionally, monitoring will take place during operations to prevent injury to marine animals. This monitoring will take three forms. First, visual monitoring for marine mammals and sea turtles will be conducted from the vessel during daylight hours by personnel trained to detect and identify marine mammals and sea turtles. Monitoring will begin 30 minutes before sunrise for ongoing missions or 30 minutes before SURTASS LFA sonar is deployed and continue until 30 minutes after sunset or until the SURTASS LFA sonar have been recovered. Second, passive acoustic monitoring using the SURTASS array will listen for sounds generated by marine mammals as an indicator of their presence when SURTASS is deployed. Finally, active acoustic monitoring will take place using the High Frequency Marine Mammal Monitoring (HF/M3) sonar, which is a Navy-developed, enhanced high frequency commercial sonar to detect, locate, and track marine mammals that may pass close enough to the SURTASS LFA sonar's transmit array to enter the 180-dB sound field (LFA mitigation zone). HF/M3 sonar monitoring will begin 30 minutes before the first SURTASS LFA sonar transmission of a given mission is scheduled to commence and continue until transmissions are terminated. Whenever a marine mammal or sea turtle is detected within the LFA mitigation zone (180–dB sound field) or within the 1-km buffer zone beyond the LFA mitigation zone (interim operational restriction per NMFS Final Rule), the Officer in Charge will order the immediate delay or suspension of SURTASS LFA sonar transmissions, until the animal is determined to have moved beyond the buffer zone.

The startup of the HF/M3 sonar will involve a ramp-up from a source level of approximately 180 dB to ensure there is no inadvertent exposure of local animals to received levels 180 dB and above. If the operating area is found to be clear, the source level will be increased in 10-dB steps until full power (if required) is attained, at which time the operator will adjust the HF/M3 sonar controls as necessary to optimize system performance. The HF/M3 sonar and its operating protocols were designed to minimize potential effects on marine animals.

The HF/M3 sonar operates with a similar power level (220 dB), signal type and frequency (30 to 40 kHz) as high frequency "fish finder" type sonars used worldwide by both commercial and recreational fishermen. The HF/M3 sonar is located near the top of the SURTASS LFA sonar vertical line array. Its computer terminal for data acquisition, processing and display is located in the SURTASS Operations Center. The general characteristics of the HF/M3 sonar are provided in the Final OEIS/EIS.

Analysis and testing of the HF/M3 sonar operating capabilities indicate that this system substantially increases the probability of detecting marine mammals that may pass close enough to the SURTASS LFA sonar's transmit array to enter the 180–dB sound field (LFA mitigation zone) and provides excellent monitoring capability (particularly for medium to large marine mammals) beyond the LFA mitigation zone, in the 1-km buffer zone. The system's ability to detect marine mammals of various sizes has been verified in several sea trials. Recent testing of the HF/M3 sonar, as documented in the Final OEIS/EIS, has demonstrated a probability of detection above 95 percent within the LFA mitigation zone for most marine mammals.

Long Term Monitoring (LTM) Program

The LTM program consists of two parts. First are NMFS-directed reports

under the Final Rule. These reports will provide the necessary information for assessments of whether any taking of marine mammals occurred within the SURTASS LFA mitigation zone during operations based upon data from the monitoring mitigation (visual, passive acoustic, active acoustic). Data analysis from the LTM and post-operation acoustic modeling will provide post-mission estimates of any incidental harassment takes. The second part of the LTM program involves long-term independent scientific research efforts on topics designed to fill data gaps and further the overall understanding of the effects of anthropogenic sound and noise on the marine environment. While the Navy believes that the research and analyses contained in the Final OEIS/EIS are sufficient to permit informed decision-making regarding the employment of SURTASS LFA sonar, it believes that it would be prudent to continue research. The LTM program has been budgeted by the Navy at a level of $1M per year for 5 years, starting with the issuance of the first LOA.

During routine operations of SURTASS LFA sonar, technical and environmental data will be collected and recorded. These will include data from visual and acoustic monitoring, ocean environmental measurements, and technical operational inputs. As part of the LTM Program and as stipulated in the MMPA Final Rule/LOA, the following reports are required. First, a mission report will be provided to NMFS on a quarterly basis with the report including all active-mode missions that have been completed 30 days or more prior to the date of the deadline for the report. Second, the Navy will submit an annual report to NMFS no later than 90 days prior to expiration of an LOA. Finally, the Navy is required to provide a final comprehensive report analyzing any impacts of SURTASS LFA sonar on marine mammal stocks during the 5-year period of the regulations.

Summary of Public Involvement

The public participation program for the OEIS/EIS began with publication of a Notice of Intent (NOI) to prepare an EIS in the Federal Register (FR) on July 18, 1996. Three public scoping meetings were held in August 1996 to determine the scope of issues to be addressed by the OEIS/EIS. In addition to conducting the public participation program, the Navy invited representatives of concerned environmental groups, or non-governmental organizations, to an outreach meeting held on January 8, 1997 in Washington, DC. Three additional meetings were held between February 1997 and June 1998. The purpose of these meetings was to provide interested parties with detailed briefings on SURTASS LFA sonar and to exchange views on the EIS process and content. The outreach meetings provided significant input to the OEIS/EIS development.

The Navy also organized a Scientific Working Group (SWG) on "The Potential Effects of Low Frequency Sound on the Marine Environment." The SWG provided a forum for scientific discourse among Navy and non-governmental organizations to address the underlying scientific issues needing resolution for development of the OEIS/EIS. Group members included representatives from the Navy, the National Marine Fisheries Service, the Marine Mammal Commission, several leading universities, several leading marine research institutions, and an observer from the League for Coastal Protection, who represented the public environmental community. The SWG met three times and was responsible for designing the LFS SRP, which provided critical research on the impacts of low frequency sounds upon marine mammals. The results from the LFS SRP were key factors driving the development and conclusions of the OEIS/EIS.

On July 31, 1999, copies of the Draft OEIS/EIS were distributed to agencies and officials of federal, state, and local governments, citizen groups and associations, and other interested parties (FR Vol. 64 No. 146). Documents produced for the SURTASS LFA Sonar Draft OEIS/EIS were also made available for review at 17 public libraries located in many coastal states, including Hawaii.

A 90-day public review and comment period on the Draft OEIS/EIS ended on October 28, 1999. During this period, three public hearings were held on the Draft OEIS/EIS with notifications published in the **Federal Register** on September 14, 1999 (FR Vol. 64 No. 177) and in local newspapers. Over 1,000 comments were received on the Draft OEIS/EIS, covering federal, state, regional, and local agencies, groups and associations, and private individuals. All oral and written comments received were considered in the preparation of the Final OEIS/EIS.

On January 19, 2001, copies of the Final OEIS/EIS were distributed to agencies and officials of federal, state, and local governments, citizen groups and associations, and other interested parties (FR Vol. 66 No. 23). The Final OEIS/EIS was also made available for review at 17 public libraries located in many coastal states, including Hawaii.

The SURTASS LFA Sonar OEIS/EIS Internet Web site (*http://www.surtass-lfa-eis.com*) will be available for information purposes until 60 days after publication of the ROD in the **Federal Register.**

Comments on the Final OEIS/EIS

The Navy received eleven comment letters on the Final OEIS/EIS, including one comment from the U.S Environmental Protection Agency (USEPA), six comments from individuals, and four from non-governmental organizations. Comments received were considered when preparing this ROD.

The USEPA in its comments on the Draft OEIS/EIS recommended that information from the NMFS biological opinion be included in the Final OEIS/EIS. As the biological opinion was not completed when the Final OEIS/EIS was published, in comments on the Final OEIS/EIS the USEPA similarly requested that the Navy clearly define the mitigation measures in the ROD based on the biological opinion. This information has been provided in this document.

Six comment letters were received from individuals. Responses to issues raised in four of the letters were adequately addressed in the Final OEIS/EIS and/or the NMFS Final Rule. The comments of another individual, which primarily concerned diver issues, were addressed in sufficient detail in the Final OEIS/EIS and Technical Report Number 3 (Summary Report on the Bioeffects of Low Frequency Waterborne Sound). The comments of Mr. K. C. Balcomb, which primarily concerned the Bahamas stranding and the potential for injury to marine mammals from resonance, have been addressed in this document under the discussion concerning the requests for the Navy to do a supplemental EIS and were addressed in the NMFS Final Rule.

The Cape Cod Commercial Hook Fisherman's Association, Inc., raised concerns about impacts that active sonar will have on the New England groundfishery. The potential for impacts from SURTASS LFA sonar to fish and commercial/recreational fishing was addressed in the Final OEIS/EIS. Under the selected alternative, there will be negligible impacts on commercial and recreational fishing in marine waters, fisheries trade, or related employment.

The Navy received two letters from the Natural Resources Defense Council (NRDC) (letters of 31 May 2001 and 4 February 2002) and one from Earth Island Institute (EII) (letter of 27 September 2001) stating that since the Final SURTASS LFA Sonar OEIS/EIS

was published in January 2001 significant new information relevant to environmental concerns and bearing on the Final OEIS/EIS analysis and conclusions has been developed. These letters further requested that the Navy prepare a supplemental EIS (SEIS) based on the matters presented. Under CEQ regulations governing NEPA, Federal agencies are required to prepare an SEIS when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)).

First, the letters have suggested that there is a potential for non-auditory physiological impacts on marine mammals, induced by acoustic resonance of the LFA signal in the bodies of animals. They also suggest that resonance can cause serious physical injury or death at far lower acoustic intensities and over a much wider range of impact than the Navy has heretofore calculated.

In response to the resonance issue raised by these letters and comments to NMFS Proposed Rule, Cudahy and Ellison (2002) analyzed the potential for injury related to resonance from SURTASS LFA signals. Their analysis does not support the claim that resonance from LFA sonar will cause injury. Physical injury due to resonance will not occur unless it will increase stress on tissue to the point of damage. Therefore, the issue is not whether resonance occurs in air/gas cavities, but whether tissue damage occurs. Cudahy and Ellison (2002) indicate that the potential for in vivo tissue damage to marine mammals from exposure to underwater low frequency sound will occur at a damage threshold on the order of 180 to 190 dB or higher. These include: (1) Transluminal (hydraulic) damage to tissues at intensities on the order of 190 dB or greater; (2) vascular damage thresholds from cavitation at intensities in the 240–dB regime; (3) tissue shear damage at intensities on the order of 190 dB or greater; and (4) tissue damage in air-filled spaces at intensities above 180 dB.

In a workshop held April 24 and 25, 2002, an international group of 32 scientists with backgrounds in acoustics met at NMFS Headquarters in Silver Spring, Maryland, to consider the question of acoustic resonance and its possible role in tissue damage in marine mammals. The group concluded that it is not likely that acoustic resonance in air spaces plays a primary role in tissue damage in marine mammals exposed to intense acoustic sources. Tissue displacements are too small to cause damage, and the resonant frequencies of marine mammal air spaces are too low to be excited by most sounds produced by humans. Resonance of non-air containing tissues was not ruled out. While tissue trauma from resonance in air spaces seems highly unlikely, the group agreed that resonance in non-air containing tissues cannot be considered negated until certain experiments are performed. (PersComm with Dr. Roger L. Gentry, Workshop Organizer, NMFS Office of Protected Resources, 14 May 2002)

In summary, the best available scientific information shows that, while resonance can occur in marine animals, this resonance does not necessarily cause injury, and any such injury is not expected to occur below a sound pressure level of 180 dB. Because the Draft and Final OEIS/EISs used 180 dB as the criterion for the determination for the potential for injury to marine life and for the implementation of geographic and monitoring mitigation measures, any non-auditory physiological impacts associated with resonance were accounted for. The 145–dB restriction for known recreational and commercial dive sites will provide an additional level of protection to marine animals in these areas. Based on this analysis, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

Additionally, it has been claimed that air space resonance impacts will cause damage to the lungs and large sinus cavities of cetaceans, that LFA sound could induce panic and subsequent problems with equalization, and that LFA sonar could cause bubble growth in blood vessels. With regard to the specific impacts to lungs and sinus cavities, there is abundant anatomical evidence that marine mammals have adapted to dramatic fluctuations in pressure. For example, marine mammal lungs are reinforced with more extensive connective tissues than their terrestrial relatives. These extensive connective tissues, combined with the probable collapse of the alveoli at the depths at which significant SURTASS LFA signals can be heard, make it very unlikely that significant lung resonance effects could be realized. Based on this analysis, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

Regarding the issue of equalization (or more correctly—decompression), it is likely that marine mammals, which have evolved in an ambient hydrostatic pressure environment spanning several orders of magnitude [1:10^3], would be pre-disposed to have an innately rugged physiology for handling pressure changes and are unlikely to have problems with decompression. Therefore, it is unlikely that they would experience these problems. Based on this analysis, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

One of the letters (NRDC, 4 February 2002) cited a 2001 paper, which building on a theoretical model advanced in a paper published in 1996, hypothesizes that intense, low-frequency sound could spur the growth of nitrogen bubbles in diving animals and result in embolism, hemorrhaging, and decompression sickness. According to the paper, marine mammals whose bodies are already saturated or supersaturated with nitrogen—a condition induced in at least some species by diving—could be especially vulnerable to such injuries. The NRDC letter alleges that the potential for debilitating injury resulting from this process was not addressed by the Navy in its final EIS for the LFA system.

The papers referred to above are "Acoustically Enhanced Bubble Growth at Low Frequencies and Implication for Human Diver and Marine Mammal Safety" by L.A. Crum and Y. Mao in the Journal of the Acoustical Society of America (1996), and "Can Diving-induced Tissue Nitrogen Supersaturation Increase the Chance of Acoustically Driven Bubble Growth in Marine Mammals?" by D. S. Houser, R. Howard, and S. Ridgway in the Journal of Theoretical Biology in 2001. The "bubble growth" issue as presented in Crum and Mao (1996) was discussed in the Final OEIS/EIS based on comments concerning possible effects on divers, even though that paper is also relevant to marine mammals. Both papers raised concerns regarding the potential for low frequency sound (note: in both papers, the authors considered "low frequency" to be below 5,000 Hz; the SURTASS LFA Sonar Final OEIS/EIS, by contrast, defined "low frequency" as below 1,000 Hz) to cause bubble growth from saturated and supersaturated gases in the blood (similar to the human diver condition known as the bends). Crum and Mao (1996), whose analysis was peer reviewed, concluded that sound pressure induced bubble growth would not be of concern until the sound pressure level exceeded 190 dB. Houser et al. (2001) hypothesized that due to their dive profiles, beaked and sperm whales could have high supersaturation of gases in their blood and tissues at or

near the end of their dive cycles (at or near the surface). At these high levels of supersaturation, the primary factor in producing bubble growth is static diffusion, which is not induced by sound pressure. Because the SURTASS LFA sonar monitoring mitigation measures will prevent marine mammals from being exposed to sound levels of 180 dB and above within the LFA mitigation zone, marine mammals will not be exposed to sound levels that could cause bubble growth due to supersaturation. Additionally, since high levels of supersaturation of gases in the tissue and blood are a normal part of marine mammal diving behavior, it must also be assumed that marine mammals have evolved mechanisms to deal with bubble growth by this method. Further, this evolutionary process has included marine mammal exposure to loud sound pressure levels from their own vocalizations and from others in the diving pod. Based on this analysis, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

Further, it is claimed there is a general correlation between naval maneuvers (which may include active sonar) and other mass strandings and multi-species strandings associated with beaked whales. The stranding information provided in the letters has been analyzed by both the Navy and NMFS. Based on this analysis, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

It has also been asserted that the interim report on the Bahamas stranding event (DoC and SECNAV, 2001) provides significant new information. For the following reasons, I have concluded that it does not.

First, as the report notes, SURTASS LFA sonar was not involved in the Bahamas stranding, and it has been confirmed that SURTASS LFA sonar has never been associated with any strandings. Second, the LFS SRP made systematic evaluations of the animals most likely to be potentially affected by low frequency sound. While beaked whales, the primary species that stranded in the Bahamas, may be sensitive to frequencies above that employed by SURTASS LFA sonar, the available evidence does not show that they are more sensitive to low frequency sounds than the species selected as subjects for the LFS SRP (baleen whales).

Finally, the interim report on the Bahamas stranding concluded that the cause of this stranding was the confluence of the Navy mid-range frequency sonar and contributory factors including the presence of a strong surface duct, unusual underwater bathymetry, constricted channel with limited egress, intensive active use of multiple sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these sonars.

In addition to the geographic restrictions and monitoring mitigation protocols required for the proposed action (Alternative 1), the Navy will apply interim operational restrictions required by NMFS in the Final Rule that include a maximum frequency of 330 Hz and a 1-km buffer zone outside of the LFA mitigation zone. Taken as a whole, these protocols and SURTASS vessel maneuvering restrictions (due to the length of the acoustic arrays) will preclude employment in narrow channels surrounded by land such as those in the Bahamas.

The letters have also asserted, in light of the interim Bahamas stranding report that resonance may have had an impact that caused the strandings, that the 180-dB threshold for injury is suspect for marine mammals, that baleen whales may also have stranded in the incident, and that the treatment of the incident in the Final EIS was dismissive.

Possible impacts associated with resonance were discussed earlier. The Navy does not agree that the interim Bahamas stranding report raises doubts about using 180 dB as the basis for determining injury with respect to the SURTASS LFA Sonar Final OEIS/EIS. The Final OEIS/EIS provides detailed discussions supporting the selection of 180 dB as the scientifically reasonable criterion for the potential onset of injury to marine mammals, and are not repeated here. In addition, research published after the Final OEIS/EIS was issued has strengthened this selection. Au and Andrews (2001) measured humpback whale calls off Hawaii at 189 dB; the average call source level for blue whales was calculated by McDonald et al. (2001) to be 186 dB; Charif et al. (2002) found source levels for fin whales up to 186 dB; and Møhl et al. (2000) recorded source levels for sperm whale clicks up to 223 dB. If marine mammals vocalize at these levels, it is reasonable to conclude that these species have also evolved mechanisms to protect themselves and conspecifics from high vocalization source levels.

Two minke whales, which are baleen whales, stranded in the Bahamas, but in a different geographical area than the beaked whales. The minke whales returned to deep water and were not reported to re-strand, so no information about the cause or causes of their strandings is available.

Based on the analysis discussed above, I have concluded that claims associated with the interim Bahamas stranding report do not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

One of the letters claimed that the Final OEIS/EIS failed to discuss the cumulative or synergistic effects of operation of the SURTASS LFA sonar system in the same area with other low-frequency active sonar systems employed by other countries. All low frequency range active sonar systems used by other nations that the Navy is aware of are above 1 kHz, except for the SACLANTCEN (NATO) TVDS system. The NATO TVDS system has both mid- and low-frequency components with frequency ranges of 2.8 to 3.3 kHz and 450 to 700 Hz, respectively (SACLANTCEN, 1998). The U.S. Navy does not intend to operate SURTASS LFA sonar with this NATO system. I have concluded that the potential for SURTASS LFA sonar to operate with other low frequency systems is unlikely and, therefore, this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

One letter also alleged that the Final OEIS/EIS failed to adequately discuss the use of new and advanced passive sonar technologies—such as Advanced Deployable Systems, towed arrays equipped with Acoustic Rapid Commercial-off-the-shelf Insertion (ARCI) processing, Robust Passive Sonar (RPS), and other systems—which have the potential to achieve the strategic goal of locating "quiet" submarines. As stated in the Final OEIS/EIS, LFA "is an augmentation to the passive (SURTASS) detection system, and is planned for use when passive performance is inadequate." Under certain conditions, such as areas of high ambient (background) noise (e.g., high shipping density), passive sonar cannot detect quiet targets. Therefore, passive systems alone cannot meet the Navy's requirement to detect quiet, harder-to-find submarines during all conditions, particularly at long ranges. Passive sonar technologies, such as the Advanced Deployable System (ADS), were discussed in the Final OEIS/EIS and also in the Final Rule. Additionally, SURTASS LFA sonar will have ARCI as its processor. Therefore, I have

concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

Finally, one letter suggested that the Navy prepare an SEIS because the Final OEIS/EIS analysis relied heavily on behavioral audiograms obtained on bottlenose dolphins for its analysis of auditory impacts rather than the newly reported alternative, electro-physiological method (auditory brainstem response) for measuring hearing loss in marine mammals. The letter stated that results indicate that hearing loss in bottlenose dolphins may occur to a greater degree and possibly at lower levels of exposure than had been presumed using behavioral techniques.

The auditory brainstem response (ABR) method referenced in the letter was used to measure temporary threshold shift (TTS), not to measure hearing loss. Additionally, an abstract received from the principal investigator on the referenced research states, "Following the collection of the evoked auditory potential thresholds, the dolphin's thresholds were also reexamined using a conventional standard behavioral psychophysical procedure. The data show very similar thresholds using the two different procedures" (PersComm with Dr. P.E. Nachtigall, 11 February 2002). Thus, the Navy's analysis in the Final OEIS/EIS remains valid. Furthermore, the Navy did not rely primarily on behavioral audiograms obtained on bottlenose dolphins in the Final OEIS/EIS for the analysis of auditory impacts. The subject study by Schlundt *et al.*, (2000) was only one set of data used to estimate the potential effects on marine mammal hearing, which included marine mammal hearing thresholds, extrapolation from human hearing loss studies, temporary threshold shift studies, and comparison to fish hearing studies. Therefore, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

NMFS received several comments under their Proposed Rulemaking regarding the Navy's Final OEIS/EIS. The Navy has worked closely with NMFS in responding to these comments, which have been incorporated into NMFS Final Rule for the Taking of Marine Mammals Incidental to Navy Operations of SURTASS LFA Sonar (**Federal Register** July 16, 2002). In making the decision regarding employment of the SURTASS LFA sonar system, the Navy has fully considered the responses to comments within the NMFS Final Rule for the Taking of Marine Mammals Incidental to Navy Operations of SURTASS LFA Sonar.

Other Considerations

On June 10, 2002, the General Accounting Office (GAO) completed an investigation into the Defense Acquisition of the SURTASS LFA Sonar and issued a report (GAO–02–692) entitled, "Testing Needed to Prove SURTASS/LFA Effectiveness in Littoral Waters." This exhaustive examination concluded that the primary benefit of SURTASS LFA sonar is that it will provide a significant increase in long-range undersea detection capabilities in the open ocean, with fewer assets and operators than other technologies, thus, validating the purpose as defined in the SURTASS LFA Sonar Final EIS. In its singular recommendation, GAO stated that the Navy should establish a test plan and conduct testing of the system to demonstrate its capabilities in littoral areas, which they defined as coastal, near-shore regions. Future testing pursuant to this decision will include testing in the littorals. Therefore, I have concluded that this report does not provide any significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

In a recent article (Croll, D.A, C.W. Clark, A. Acevedo, B. Tershy, S. Flores, J. Gedamke, and J. Urban. 2002. "Bioacoustics: Only male fin whales sing loud songs." Brief Communications, Nature 417: 809), the authors concluded, ". . . .the recovery of fin- and blue-whale populations from past exploitation could be impeded by low-frequency sounds generated by human activity." These low-frequency vocalizations are considered to be breeding displays by males. They also stated, "An increase in ambient noise could thus reduce the distance over which receptive females might hear the vocalizations of males." One of the coauthors, Dr. Chris Clark of Cornell University, was a principal investigator on the LFS SRP and a preparer/reviewer of the Final OEIS/EIS. He has stated that the low frequency contribution to ambient noise of greatest concern is from commercial shipping. He also stated that SURTASS LFA sonar does not contribute to ambient noise in the frequency band of fin whale and blue whale songs (below 100 Hz). Further, the information presented in Croll et al. (2002) was known during the preparation of and is consistent with the conclusions of the SURTASS LFA Final OEIS/EIS. Therefore, I have concluded that this article does not provide any significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

Conclusions

I have considered the following issues relative to the potential environmental impacts from the employment of the SURTASS LFA sonar system including, but not limited to, adequacy of scientific information on human divers and the Navy sponsored research to study the potential effects of low frequency sound on divers to fill these gaps; adequacy of scientific information on marine animals and the Low Frequency Sound Scientific Research Program conducted by independent bioacousticians and marine biologists; development of impact criteria including risk continuum and thresholds; analytical methodology, analyses, and results of the determination of potential impacts; the NOAA/Navy Joint Interim Report Bahamas Marine Mammal Stranding Event of 15–16 March 2000 as it relates to the potential for SURTASS LFA sonar to cause tissue damage/injury to marine mammals; resonance and bubble growth issues as they relate to the potential for SURTASS LFA sonar to cause tissue damage/injury to marine animals; NMFS Final Rule for the Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar and their response to comments received on the Proposed Rule; NMFS Biological Opinion on the Navy's Proposed Employment of Surveillance Towed Array Sensor System Low Frequency Active Sonar; comments received on the SURTASS LFA Sonar Final OEIS/EIS; and requests from environmental groups for the Navy to prepare a supplemental EIS based on significant new information.

Based upon my review of the comparative analysis of the potential for environmental and socioeconomic effects from the three alternatives presented in the Final OEIS/EIS and public comments received during the NEPA process, I have decided to implement Alternative 1 of the Final OEIS/EIS, which was identified as the Navy's preferred alternative, with certain geographical restrictions and monitoring mitigation designed to reduce potential adverse effects on the marine environment, but only to employ two SURTASS LFA sonar systems rather than the four systems analyzed under Alternative 1. Only two SURTASS LFA sonar systems will be available during the next five years. There is no budget identified for any further SURTASS LFA sonar systems through fiscal year 2007. This decision permits the Navy to

reasonably fulfill its purpose of providing U.S. forces with reliable, effective, and efficient long-range detection of new-generation, quiet submarines, while the geographic restrictions and monitoring mitigation requirements constitute all practical means to avoid or minimize environmental harm from the alternative selected. In addition, this decision and implementation of this alternative provide for continued long-term monitoring and research, which will further enhance the understanding of the potential effects of anthropogenic sounds on the marine environment.

Actions requiring issuance of NMFS Letter(s) of Authorization (LOA[s]) are being addressed through NMFS rulemaking under 50 CFR part 216 and the Final Rule (**Federal Register**, 16 July 2002). Actions requiring issuance of incidental take statements (ITS[s]) are being addressed as part of the NMFS Biological Opinion on the U.S. Navy's proposed use of SURTASS LFA Sonar that has been prepared by NMFS in accordance with section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Consultation No. F/FPR/2000/00483, dated 30 May 2002).

Operational employment of the SURTASS LFA sonar system onboard the R/V Cory Chouest is contingent upon issuance of a LOA for that system, which the Navy anticipates being issued with an effective date of 15 August 2002 (30 days after the Final Rule is published in the **Federal Register**), in specific bio-geographic provinces approved for operations. Operational employment is also contingent upon issuance of an ITS concurrent with the above LOA and for the same specified bio-geographic provinces.

Operational employment of the second SURTASS LFA sonar system is contingent upon issuance of a LOA and ITS for that system, in specified bio-geographic provinces approved for operation. The LOA and ITS for this system will be requested by the Navy in accordance with the above regulations when appropriate.

Dated: July 16, 2002.

Donald R. Schregardus,

Deputy Assistant Secretary of the Navy, (Environment).

[FR Doc. 02–18592 Filed 7–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 23, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 17, 2002.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision of a currently approved collection.

Title: Early Childhood Longitudinal Study: Birth Cohort/24 month followup.

Frequency: Other: one-time.

Affected Public: Individuals or household (primary), Businesses or other for-profit, Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 29644.

Burden Hours: 23114.

Abstract: The Early Childhood Longitudinal Study, Birth Cohort (ECLS–B) is a nationally representative longitudinal study of children born in the year 2001. The 24 month followup represents the second round of data collection for members of this cohort. Children are assessed using state of the art assessment tools, parents are interviewed as well as child care providers. Together with the Kindergarten component of this early childhood studies program, the survey informs the research and general community about children's health, early learning, development and education experiences. The focus of this survey is on characteristics of children and their families that influence children's first experiences with the demands of formal schools as well as early health care and in- and out-of-home experiences.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2092. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742. Individuals who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of English Language Acquisitions

Type of Review: Revision of a currently approved collection.

Title: Application for Grants under School Improvement: Elementary School Foreign Language Incentive Program (SC).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 7650.

Abstract: This application is used by public elementary schools and local education agencies to apply for formula grants authorized under the Elementary School Foreign Language Incentive Program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2108. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–18486 Filed 7–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 22, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 17, 2002.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/Ford Loan Master Promissory Note (JS).

Frequency: On occasion.

Affected Public: Individuals or household (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 706000.

Burden Hours: 706000.

Abstract: This form is the means by which a student borrower agrees to repay a Federal Direct Stafford/Ford Loan and/or a Federal Direct Unsubsidized Stafford/Ford Loan.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2037. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–18487 Filed 7–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.299A]

Office of Elementary and Secondary Education, Office of Indian Education; Demonstration Grants for Indian Children; Notice Inviting Applications for New Discretionary Program Awards for Fiscal Year (FY) 2002

Purpose of Program: The purpose of the Demonstration Grants program is to provide financial assistance to projects to develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary students, through activities such as:

(a) Innovative programs related to the educational needs of educationally deprived children;

(b) Educational services that are not available to such children in sufficient quantity or quality, including remedial instruction, to raise the achievement of Indian children in one or more of the core academic subjects of English, mathematics, science, foreign languages, art, history, and geography;

(c) Bilingual and bicultural programs and projects;

(d) Special health and nutrition services, and other related activities, that address the special health, social, and psychological problems of Indian children;

(e) Special compensatory and other programs and projects to assist and encourage Indian children to enter, remain in, or reenter school, and to increase the rate of secondary school graduation;

(f) Comprehensive guidance, counseling, and testing services;

(g) Early childhood and kindergarten programs, including family-based preschool programs that emphasize school readiness and parental skills, and the provision of services to Indian children with disabilities;

(h) Partnership projects between local educational agencies (LEAs) and institutions of higher education that allow secondary school students to enroll in courses at the postsecondary level to aid these students in the transition from secondary school to postsecondary education;

(i) Partnership projects between schools and local businesses for school-to-work transition programs designed to provide Indian youth with the knowledge and skills they need to make an effective transition from school to a first job in a high-skill, high-wage career;

(j) Programs designed to encourage and assist Indian students to work toward, and gain entrance into, an institution of higher education; or

(k) Other services that meet the purpose of this program.

Eligible Applicants: Eligible applicants for this program include a State educational agency (SEA); LEA; Indian tribe; Indian organization; federally supported elementary and secondary school for Indian students; Indian institution, including an Indian institution of higher education; or a consortium of such institutions that meet the requirements of 34 CFR 75.127 through 75.129.

Note: An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The written agreement must be submitted with the application. The agreement must be signed or the applicant must submit other evidence that all the members of the consortium agree to the contents of the agreement. Letters of support do not meet the consortium requirements. The Secretary rejects and does not consider an application that does not meet these requirements.

Applications Available: July 23, 2002.

Deadline for Transmittal of Applications: August 22, 2002.

Deadline for Intergovernmental Review: September 22, 2002.

Available Funds: $4,200,000.

Estimated Range of Awards: $150,000 to $400,000.

Estimated Average Size of Awards: $280,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Requirement: Projects funded under this competition must budget for a one and one-half day Project Directors' meeting during each year of the budget.

Maximum Annual Award Amount: In no case does the Secretary make an award greater than $400,000 during any single budget period in the award. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts.

Page Limit: The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit the narrative to the equivalent of no more than 75 double-spaced pages, using the following standards:

(1) A "page" is 8½" × 11" (one side only) with one-inch margins (top, bottom and sides).

(2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than three lines per vertical inch).

(3) For all text (including charts, tables, and graphs), use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section (including the narrative budget justification); the assurances and certifications; or the one-page abstract, appendices, resumes, bibliography, and letters of support. However, all of the application narrative addressing the selection criteria must be included in the narrative section.

Reviewers will not read any pages of applications that—

- Exceed the page limit if one applies these standards; or
- Exceed the equivalent of the page limit if one applies other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99; and (b) 34 CFR Part 263.

Priorities

Absolute Priority

Under Section 34 CFR 75.102 of EDGAR, the Secretary gives an absolute preference to applications that meet the priority selected. The program regulations at 34 CFR 263.21(c) identify the absolute priorities for the Demonstration Grants for Indian Children program that may be selected by the Secretary. For the FY 2002 grant competition, the Secretary reserves all of the funds available for new awards under the Demonstration Grants for Indian Children program to fund only those applications that meet one or more of the following absolute priorities found at 34 CFR 263.21(c):

(1) School readiness projects that provide age-appropriate educational programs and language skills to three- and four-year old Indian students to prepare them for successful entry into school at the kindergarten school level.

(2) Early childhood and kindergarten programs, including family-based preschool programs, emphasizing school readiness and parental skills.

(3) College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including mathematics and science, to enable Indian students to successfully transition to postsecondary education.

Competitive Preference

(1) In making multiyear grants under this program, the Secretary will award five (5) additional points to an application that presents a plan for combining two or more of the activities described in Section 7121(c) of the Act over a period of more than one year.

(2) In making grants under this program, the Secretary will award five (5) additional points to an application submitted by an Indian tribe, Indian organization, and Indian institution of higher education, including a consortium of any of these entities with other eligible entities. An application from a consortium of eligible entities that meet the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five (5) additional priority points. The written consortium agreement must be submitted with the application. The agreement must be signed or the applicant must submit other evidence that all the members of the consortium agree to the contents of the agreement. Letters of support do not meet the consortium requirements. The Secretary rejects and does not consider an

application that does not meet these requirements.

Authority: Section 7143; 20 U.S.C. 7473.

Selection Criteria

The selection criteria are included in full in the application package for this competition. These selection criteria were established based on the regulations for evaluating discretionary grants found in 34 CFR 75.200 through 75.209.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Demonstration Grants for Indian Children program, CFDA 84.299A, is one of the programs included in the pilot project. If you are an applicant under the Demonstration Grants for Indian Children program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print the ED 424 form from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Demonstration Grants for Indian Children program at: *http://e-grants.ed.gov*.

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications and Transmittal Instructions) in the application package.

Note: Your e-APPLICATION must be submitted through the Internet using the software provided on the e-Grants Web Site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date. All e-APPLICATION submissions that are attempted after that time on the closing date will not be accepted. Applicants that miss the e-APPLICATION submission time must print out their entire application (an original and two copies) and transmit hard copies of the application, following the transmittal procedures for mail or hand delivery, not later than midnight of the closing date.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX (301) 470–1244. If you use a telecommunication device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site *(http://www.ed.gov/edpubs.html)* or its E-mail address *(edpubs@inet.ed.gov)*. If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.299A.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–1683. Internet address: *Cathie.Martin@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document at the following site: *http://www.ed.gov/offices/OESE/oie/index.html*.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 7831.

Dated: July 18, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–18602 Filed 7–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.299B]

Indian Professional Development; Office of Elementary and Secondary Education, Office of Indian Education; Notice Inviting Applications for New Discretionary Grant Program Awards for Fiscal Year (FY) 2002

Purpose of Program: The purposes of this program are to (1) increase the number of qualified Indian individuals in professions that serve Indian people;

(2) provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and (3) improve the skills of qualified Indian individuals who serve in the capacities described in (2). Activities may include, but are not limited to, continuing programs, symposia, workshops, conferences, and direct financial support.

For FY 2002 the competition for new awards focuses on projects designed to meet the priority described in the PRIORITY section of this application notice.

Eligible Applicants: Eligible applicants for this program are institutions of higher education, including Indian institutions of higher education; State or local educational agencies, in consortium with institutions of higher education; Indian tribes or organizations, in consortium with institutions of higher education; and Bureau-funded schools. An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The consortium agreement, signed by all parties, must be submitted with the application. Letters of support do *not* meet the consortium requirements.

Deadline for Transmittal of Applications: August 22, 2002.

Deadline for Intergovernmental Review: September 22, 2002.

Applications Available: July 23, 2002.

Available Funds: $5,000,000.

Estimated Range of Awards: $300,000 to $500,000.

Estimated Average Size of Awards: $333,333.

Estimated Number of Awards: 15.

Project Period: Up to 36 months.

Note: The Department is not bound by any estimates in this notice.

Budget Requirement: Projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

Maximum Annual Award Amount: In no case does the Secretary make an award greater than $500,000 for a single budget period of 12 months for the first 24 months of the award period. The last 12-month budget period of a 36-month award will be limited to induction services only at a cost not to exceed $75,000. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts.

Page Limit: The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit the narrative to the equivalent of no more than 75 double-spaced pages, using the following standards:

(1) A "page" is 8½" x 11" (one side only) with one-inch margins (top, bottom and sides).

(2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than three lines per vertical inch).

(3) For all text (including charts, tables, and graphs), use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section (including the narrative budget justification); the assurances and certifications; or the one-page abstract, appendices, resumes, bibliography, and letters of support. However, all of the application narrative addressing the selection criteria must be included in the narrative section.

Reviewers will not read any pages of applications that—

- Exceed the page limit if one applies these standards; or
- Exceed the equivalent of the page limit if one applies other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR part 263, Professional Development Program.

Absolute Priority

Under Section 34 CFR 75.102 of EDGAR, the Secretary gives an absolute preference to applications that meet the priority selected. The program regulations at 34 CFR 263.5(c) identifies the absolute priorities for the Professional Development that may be selected by the Secretary. For the FY 2002 grant competition, the Secretary reserves all of the funds available for new awards under the Professional Development program to fund only those applications that meet the following absolute priority found at 34 CFR 263.5(c)(1):

Pre-Service Training for Teachers

Provides support and training to Indian individuals to complete a pre-service education program that enables individuals to meet the requirements for full State certification or licensure as a teacher through:

(i) Training that leads to a bachelor's degree in education before the end of the award period; or

(ii) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area as long as the training meets the requirements for full State teacher certification or licensure; or

(iii) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists; and

(iv) One year induction services after graduation, certification, or licensure, provided during the award period to graduates of the pre-service program in which they are completing their first year of work in schools with significant Indian student populations.

Note: In working with various institutions of higher education and State certification/licensure requirements, we found that States requiring a degree in a specific subject area (e.g., specialty areas or teaching at the secondary level), generally require a Master's degree or fifth-year requirement before an individual can be certified or licensed as a teacher. These students would be eligible to participate as long as their training meets the requirements for full State certification or licensure as a teacher.

Selection Criteria

The selection criteria are included in full in the application package for this competition. These selection criteria are established in 34 CFR 263.6.

Fiscal Information: Stipends may be paid only to full-time students. For the payment of stipends to project participants being trained, the Secretary expects to set the stipend maximum at $1,750 per month for full-time students and $175 allowance per month per dependent during the academic year. The terms "stipend," "full-time student," and "dependent allowance" are defined in 34 CFR 263.3.

Competitive Preference

(1) The Secretary will award five (5) additional points to an application submitted by an Indian tribe, organization, or institution of higher education. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, organization or institution of higher education will be considered eligible to receive the five (5) additional priority points.

Authority: 20 U.S.C. 7473.

(2) The Secretary will award a total of five additional points to an application submitted by a consortium of eligible applicants that includes a tribal college or university and that designates that tribal college or university as the fiscal agency for the application. The

consortium application of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR to be considered eligible to receive the five priority points. The consortium agreement must be signed by all partners and submitted with the application. Letters of support do not meet the consortium requirements. These competitive preference points are in addition to the five competitive preference points that may be given under Competitive Preference 1—Preference for Indian Applicants.

Tribal colleges and universities are those institutions cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, Title II (25 U.S.C. 640a note).

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Professional Development program, CFDA 84.299B, is one of the programs included in the pilot project. If you are an applicant under the Professional Development program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print the ED 424 form from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Professional Development program at: *http://e-grants.ed.gov*.

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications and Transmittal Instructions) in the application package.

Note: Your e-APPLICATION must be submitted through the Internet using the software provided on the e-Grants Web Site *(http://e-grants.ed.gov)* by 4:30 p.m. (Washington, DC time) on the deadline date. All e-APPLICATION submissions that are attempted after that time on the closing date will not be accepted. Applicants that miss the e-APPLICATION submission time must print out their entire application (an original and two copies) and transmit hard copies of the application, following the transmittal procedures for mail or hand delivery, not later than midnight of the closing date.

FOR APPLICATIONS CONTACT: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.299B.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–3774. Internet address: *Cathie.Martin@ed.gov*.

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Program Authority: 20 U.S.C. 7442.

Dated: July 18, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–18603 Filed 7–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: Department of Energy, National Nuclear Security Administration.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act ((NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the DOE Regulations Implementing NEPA (10 CFR part 1021), the National Nuclear Security Administration (NNSA), an agency within the U.S. Department of Energy (DOE), announces its intent to prepare an environmental impact statement (EIS) to assess the consolidation and relocation of mission critical chemistry and metallurgy research (CMR) capabilities at Los Alamos National Laboratory (LANL) from degraded facilities such that these capabilities would be available on a long-term basis to successfully accomplish LANL mission support activities or programs. DOE invites individuals, organizations, and agencies to present oral or written comments concerning the scope of the EIS, including the environmental issues and alternatives that the EIS should address.

DATES: The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until August 31, 2002. DOE will consider all comments received or postmarked by that date in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable. Public scoping meetings will provide the public with an opportunity to present comments, ask questions, and discuss concerns regarding the EIS with NNSA officials. The locations, dates and times for the public scoping meetings are as follows:

August 13, 2002, from 4–8 p.m., Cities of Gold Hotel, Pojoaque, New Mexico

August 15, 2002, from 4–8 p.m., Fuller Lodge, Los Alamos, New Mexico

The DOE will publish additional notices on the dates, times, and locations of the scoping meetings in local newspapers in advance of the scheduled meetings. Any necessary changes will be announced in the local media. Any agency, state, pueblo, tribe, or units of local government that desire to be designated a cooperating agency should contact Ms. Elizabeth Withers at the address listed below by August 16, 2002.

ADDRESSES: Written comments or suggestions concerning the scope of the CMRR EIS or requests for more information on the EIS and public scoping process should be directed to: Ms. Elizabeth Withers, EIS Document Manager, U.S. Department of Energy, National Nuclear Security Administration, Office of Los Alamos Site Operations, 528 35th Street, Los Alamos, New Mexico, 87544; facsimile at (505) 667–9998; or E-mail at *ewithers@doeal.gov*. Ms. Withers may also be reached by telephone at (505) 667–8690.

In addition to providing comments at the public scoping meetings, all interested parties are invited to record their comments, ask questions concerning the EIS, or request to be placed on the EIS mailing or document distribution list by leaving a message on the EIS Hotline at (toll free) 1–877–491–4957. The Hotline will have instructions on how to record comments and requests.

FOR FURTHER INFORMATION CONTACT: For general information on NNSA NEPA process, please contact: Mr. James Mangeno (NA–3.6), NNSA NEPA Compliance Officer, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585, or telephone 202–586–8395. For general information about the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Los Alamos National Laboratory (LANL) is located in north-central New Mexico, 60 miles north-northeast of Albuquerque, 25 miles northwest of Santa Fe, and 20 miles southwest of Española in Los Alamos and Santa Fe Counties. It is located between the Jemez Mountains to the west and the Sangre de Cristo Mountains and Rio Grande to the east. LANL occupies an area of about 27,800 acres or approximately 43 square miles and is operated for DOE NNSA by a contractor, the University of California. It is a multidisciplinary, multipurpose institution engaged in theoretical and experimental research and development. LANL has been assigned science, research and development, and production NNSA mission support activities that are critical to the accomplishment of the NNSA national security objectives (as reflected in the Stockpile Stewardship and Management Programmatic EIS (DOE/EIS–0236). Specific LANL assignments for the foreseeable future include production of War-Reserve (WR) products, assessment and certification of the stockpile, surveillance of the WR components and weapon systems, ensuring safe and secure storage of strategic materials, and management of excess plutonium inventories. In addition, LANL also supports actinide (actinides are any of a series of elements with atomic numbers ranging from actinium-89 through lawrencium-103) science missions ranging from Plutonium-238 heat-source program for the National Aeronautics and Space Administration (NASA) to arms control and technology development. LANL's main role in NNSA mission objectives includes a wide range of scientific and technological capabilities that support nuclear materials handling, processing and fabrication; stockpile management; materials and manufacturing technologies; nonproliferation programs; and waste management activities.

The capabilities needed to execute the NNSA mission activities require facilities at LANL that can be used to handle actinide and other radioactive materials in a safe and secure manner. Of primary importance are the facilities located within the CMR Building and the Plutonium Facility (located at Technical Areas (TAs) 3 and 55, respectively), which are used for processing, characterizing and storage of special nuclear material. Most of the LANL mission support functions previously listed require analytical chemistry, material characterization, and actinide research and development support capabilities and capacities that currently exist at facilities within the CMR Building and are not available elsewhere. Other unique capabilities are located at the Plutonium Facility. Work is sometimes moved between the CMR Building and the Plutonium Facility to make use of the full suite of capabilities that these two facilities provide.

Mission critical CMR capabilities at LANL support NNSA's stockpile stewardship and management strategic objectives; these capabilities are necessary to support the current and future directed stockpile work and campaign activities conducted at LANL. The CMR Building is over 50 years old and many of its systems and structural components are in need of being upgraded, refurbished, or replaced. Recent studies conducted in the late 1990s have identified a seismic fault trace located beneath the CMR Building, which greatly enhances the level of structural upgrades needed at the CMR

Building to meet current structural seismic code requirements for a Hazard Category 2 nuclear facility. Performing the needed repairs, upgrades and systems retrofitting for long-term use of the aging CMR Building to allow it to adequately house the mission critical CMR capabilities would be extremely difficult and cost prohibitive. Over the long-term, NNSA cannot continue to operate the assigned LANL mission critical CMR support capabilities in the existing CMR Building at an acceptable level of risk to public and worker health and safety without operational restrictions. These operational restrictions would preclude the full implementation of the level of operation DOE decided upon through its Record of Decision for the 1999 LANL Site-wide Environmental Impact Statement for the Continued Operation of Los Alamos National Laboratory (DOE/EIS–0238). CMR capabilities are necessary to support the current and directed stockpile work and campaign activities at LANL. The currently estimated end-of-life for the existing CMR Building is about 2010. The CMR Building is near the end of its useful life and action is required by NNSA to assess alternatives for continuing these activities for the next 50 years.

Currently, NNSA expects that the CMR Building Replacement Project EIS (CMRR EIS) will evaluate the environmental impacts associated with relocating the CMR capabilities at LANL to the new buildings sited at the following alternative locations: (1) Next to the Plutonium Facility at Technical Area 55 (TA–55) at LANL (the Proposed Action), or (2) a "greenfield" site(s) at or near TA–55. NNSA will evaluate performing minimal necessary structural and systems upgrades and repairs to portions of the existing CMR Building and continuing the use of these upgraded portions of the structure for office and light laboratory purposes, as well as evaluating the potential decontamination and demolition of the entire existing CMR Building as disposition options coupled with the alternatives for construction and operation of new nuclear laboratory facilities at the two previously identified locations. The EIS would also consider the performance of minimal necessary structural and systems upgrades and repairs to the existing CMR Building as a no-action alternative with continued maintenance of limited mission critical CMR capabilities at the CMR Building. It is possible that this list of reasonable alternatives may change during the scoping process.

The CMR Building contains about 550,000 square feet (about 51,100 square meters) of floor space on two floors divided between a main corridor and seven wings. It was constructed to 1949 Uniform Building Codes in the late 1940s and early 1950s. DOE has maintained and upgraded the building over time to provide for continued safe operations. In 1992, DOE initiated planning and implementation of CMR Building upgrades intended to address specific safety, reliability, consolidation and safeguards issues (these were the subject of DOE/EA–1101). These upgrades were intended to extend the useful life of the CMR Building an additional 20 to 30 years. However, in 1997 and 1998, a series of operational, safety and seismic issues surfaced regarding the long-term viability of the CMR Building. In the course of considering these issues, the DOE determined that the originally planned extensive upgrades to the building would be much more expensive and time-consumptive than had been identified. Furthermore, the planned upgrades would be marginally effective in providing the required operational risk reduction and program capabilities to support NNSA mission assignments at LANL. As a result, in January 1998, the DOE directed the down-scope of the CMR Building upgrade projects to only those upgrades needed to ensure safe and reliable operations through about the year 2010. CMR Building operations and capabilities are currently being restricted in scope due to safety and security constraints; it is not being operated to the full extent needed to meet the DOE NNSA operational requirements established in 1999 for the foreseeable future over the next 10 years. In addition, continued support of LANL's existing and evolving missions roles are anticipated to require additional capabilities such as the ability to handle large containment vessels in support of Dynamic Experiments.

In January 1999, the NNSA approved a strategy for managing operational risks at the CMR Building. The strategy included implementing operational restrictions to ensure safe operations. These restrictions are impacting the assigned mission support CMR activities conducted at the CMR Building. This management strategy also committed NNSA to developing long-term facility and site plans to relocate the CMR capabilities elsewhere at LANL by 2010, as necessary to maintain continuing LANL support of national security and other NNSA missions.

Purpose and Need: NNSA needs to provide the physical means for accommodating the continuation of the CMR Building's functional, mission-critical CMR capabilities beyond 2010 in a safe, secure, and environmentally sound manner at LANL. At the same time, NNSA should also take advantage of the opportunity to consolidate like activities for the purpose of operational efficiency, and it is prudent to provide extra space for future anticipated capabilities or activities requirements.

Proposed Action and Alternatives: The Proposed Action (Preferred Alternative) is to construct a new facility at TA–55 composed of two or three buildings to house the existing CMR Building capabilities. One of the new buildings would provide space for administrative offices and support activities; the other building(s) would provide secure laboratory spaces for research and analytical support activities. Construction of the laboratory building(s) at above ground level would be considered. Tunnels may be constructed to connect the buildings. At a minimum, the buildings would operate for the next 50 years. A parking lot or structure would also be constructed as part of the Proposed Action.

Reasonable alternatives to the proposed action have not been definitively identified, but could include construction of a new CMR facility at a nearby location to TA–55 within an undeveloped "greenfield" area. Another alternative could consider continuing use of portions of the existing CMR Building with the implementation of minimal necessary structural and systems upgrades and repairs for office and light laboratory purposes, together with the construction of new nuclear laboratory facilities at the two previously identified locations. If either of the two alternatives were chosen that would completely remove CMR activities from the existing CMR Building, options for the disposition of the existing CMR Building could include an option for continuing use of the existing CMR Building with the implementation of minimal necessary structural and systems upgrades and repairs for offices or other purposes appropriate to the condition of the structure, and an option for complete decontamination and demolition of the entire CMR Building with subsequent waste disposal. As required by the Council on Environmental Quality NEPA regulations, a No Action alternative will also be evaluated. The No Action alternative would be to continue the current use of the CMR Building for CMR operations with minimal structural and equipment component replacements and repairs so that it could continue to function.

although the CMR capabilities would likely be restricted to minimal levels.

Potential Issues for Analysis: NNSA has tentatively identified the following issues for analysis in this EIS. Additional issues may be identified as a result of the scoping process.

1. Potential human health impacts (both to members of the public and to workers) related to the proposed new facility and anticipated LANL nearby activities during normal operations and reasonably foreseeable accident conditions.

2. Potential impacts to air, water, soil, visual resources and viewsheds associated with constructing new buildings, relocating and continuing CMR operations.

3. Potential impacts to plants and animals, and to their habitats, including Federally-listed threatened or endangered species and their critical habitats, wetlands and floodplains, associated with constructing new buildings, relocating and continuing CMR operations.

4. Potential impacts from geologic site conditions and land uses associated with constructing new buildings, relocating and continuing CMR operations.

5. Potential impacts from irretrievable and irreversible consumption of natural resources and energy associated with constructing new buildings, relocating and continuing CMR operations.

6. Potential impacts to cultural resources, including historical and prehistorical resources and traditional cultural properties, from constructing new buildings, relocating and continuing CMR operations.

7. Potential impacts to infrastructure, transportation issues, waste management, and utilities associated with constructing new buildings, relocating and continuing CMR operations.

8. Potential impacts to socioeconomic conditions from constructing new buildings, relocating and continuing CMR operations.

9. Potential environmental justice impacts to minority and low-income populations as a result of constructing new buildings, relocating and continuing CMR operations.

10. Potential cumulative impacts from the Proposed Action and other past, present, and reasonably foreseeable actions at LANL.

NNSA anticipates that certain classified information will be consulted in the preparation of this CMRR EIS and used by decision-makers to decide where and how to relocate the CMR capabilities from the existing CMR Building. This EIS may contain a classified appendix. To the extent allowable, the EIS will summarize and present this information in an unclassified manner.

Related NEPA Reviews: Following is a summary of recent NEPA documents that may be considered in the preparation of this EIS and from which this EIS may be tiered, and of future EISs that may be in preparation simultaneously with the CMRR EIS. The CMRR EIS will include relevant information from each of these documents.

- The Final Stockpile Stewardship and Management Programmatic Environmental Impact Statement (SSM PEIS) (DOE/EIS–0236). The SSM PEIS addressed the facilities and missions to support the stewardship and management of the U.S. nuclear stockpile. The Record of Decision (ROD) was issued in 1996 and identified stewardship and management mission support activities assigned to LANL, in particular, the reestablishment of DOE's plutonium pit production capability.
- The Final Los Alamos National Laboratory Site-Wide Environmental Impact Statement (SWEIS) (DOE/EIS–0238). The SWEIS analyzed four levels of operations alternatives for LANL to meet its existing and potential future program assignments: The No Action Alternative, the Expanded Operations Alternative, the Reduced Operations Alternative, and the Greener Alternative. The SWEIS also provided project specific analysis for two proposed projects: The Expansion of TA–54/Area G Low Level Waste Disposal Area; and Enhancement of Plutonium Pit Manufacturing. The SWEIS Record of Decision identified the Expanded Alternative with reduced pit manufacturing capabilities as the level of operations DOE would undertake at LANL over the next ten years.
- The Draft Environmental Impact Statement for the Proposed Relocation of Technical Area 18 Capabilities and Materials at Los Alamos National Laboratory (TA–18 EIS) (DOE/EIS–0319). The TA–18 EIS considers relocating the TA–18 criticality mission activities to another location at LANL; to the Nevada Test Site near Las Vegas, Nevada; to Sandia National Laboratory at Albuquerque, New Mexico; or to the Argonne National Laboratory—West near Idaho Falls, Idaho. If retained at LANL, the TA–18 activities could be housed in new buildings constructed next to the Plutonium Facility at TA–55; could remain in the current facilities without any upgrades; or could remain in upgraded facilities at TA–18.
- The NNSA is considering initiation of the preparation of an EIS on the proposed Modern Pit Facility. As the analysis for this new facility progresses it will be incorporated, if applicable, into the CMRR EIS to the extent practicable.

Public Scoping Process: The scoping process is an opportunity for the public to assist the NNSA in determining the alternatives and issues for analysis. The purpose of the scoping meetings is to receive oral and written comments from the public. The meetings will use a format to facilitate dialogue between NNSA and the public and will be an opportunity for individuals to provide written or oral statements. NNSA welcomes specific comments or suggestions on the content of these alternatives, or on other alternatives that could be considered. The above list of issues to be considered in the EIS analysis is tentative and is intended to facilitate public comment on the scope of this EIS. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The CMRR EIS will describe the potential environmental impacts of the alternatives, using available data where possible and obtaining additional data where necessary. Copies of written comments and transcripts of oral comments will be available at the following locations: Los Alamos Outreach Center, 1350 Central Avenue, Suite 101, Los Alamos, New Mexico, 87544; and the Zimmerman Library, University of New Mexico, Albuquerque, New Mexico 87131.

Issued in Washington, DC, this 15th day of July, 2002.

Linton Brooks,

Acting Administrator, National Nuclear Security Administration.

[FR Doc. 02–18552 Filed 7–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–259–001]

Algonquin Gas Transmission Company; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 10, 2002, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub Second Revised Sheet No. 641, to be effective on July 1, 2002.

Algonquin states that the purpose of this filing is to comply with the directives of the Commission's Letter

Order dated June 26, 2002, in Docket No. RP02–259 (June 26 Order).

Algonquin states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587–N. The June 26 Order conditionally accepted certain of the tariff sheets contained in Algonquin's May 1 tariff filing, effective July 1, 2002, subject to the condition that Algonquin file, within fifteen days of the June 26 Order, substitute revised tariff sheets to reflect the changes required by the June 26 Order. Algonquin is submitting this filing in compliance with the June 26 Order.

Algonquin states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18544 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–260–001]

Algonquin LNG, Inc.; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 10, 2002, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Fifth Revised Sheet No. 64A, to be effective on July 1, 2002.

ALNG states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 26, 2002, in Docket No. RP02–260 (June 26 Order).

ALNG states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587–N. The June 26 Order conditionally accepted the tariff sheets contained in ALNG's May 1 tariff filing, effective July 1, 2002, subject to the condition that ALNG file, within fifteen days of the June 26 Order, substitute revised tariff sheets to reflect the changes required by the June 26 Order. ALNG is submitting this filing in compliance with the June 26 Order.

ALNG states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18545 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–252–001]

Columbia Gulf Transmission Company; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 11, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 1, 2002:

Substitute Third Revised Sheet No. 389
Substitute Fourth Revised Sheet No. 393
Substitute First Revised Sheet No. 395A

Columbia Gulf states that on May 1, 2002, it made a filing with the Commission to comply with Order No. 587–N (98 FERC 61,257 (2002)). The order amended the Commission's regulations to require pipelines to permit releasing shippers to recall released capacity and renominate such recalled capacity at each nomination opportunity. On June 26, 2002, the Commission approved the tariff sheets filed on May 1, 2002, but directed Columbia Gulf to make minor modifications. The tariff sheets in the instant filing reflect the changes mandated by the Commission.

Columbia Gulf states that copies of its filing have been served to Colombia Gulf's firm customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18543 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–388–000]

Dominion Transmission Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 17, 2002.

Take notice that on July 11, 2002, Dominion Transmission Inc. (DTI)

tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective August 10, 2002:

Twelfth Revised Sheet No. 31
Fifteenth Revised Sheet No. 32
Ninth Revised Sheet No. 33
Tenth Revised Sheet No. 35
Third Revised Sheet No. 1113
Second Revised Sheet No. 1114
Second Revised Sheet No. 1125

DTI states that the proposed revised sheets will enable customers to more easily determine the rates applicable to DTI's pipeline services. The filing makes cosmetic changes to DTI's gas pipeline tariff and corresponding changes to verbiage in DTI's General Terms and Conditions of Service—no substantive change to DTI's rates or services is made.

DTI states that a copy of DTI's filing has been served upon all of DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18550 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–262–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 10, 2002, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sub Eighth Revised Sheet No. 145, and Sub Original Sheet No. 154A, to be effective on July 1, 2002.

East Tennessee states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 28, 2002, in Docket No. RP02–262.

East Tennessee states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587–N. The June 28 Order conditionally accepted the tariff sheets contained in East Tennessee's May 1 tariff filing, effective July 1, 2002, subject to the condition that East Tennessee file, within fifteen days of the June 28 Order, substitute revised tariff sheets to reflect the changes required by the June 28 Order.

East Tennessee states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18546 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–264–001]

Egan Hub Partners, L.P.; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 10, 2002, Egan Hub Partners, L.P. (Egan Hub) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sub 1st Rev First Revised Sheet No. 69A, to be effective on July 1, 2002.

Egan Hub states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 27, 2002, in Docket No. RP02–264 (June 27 Order).

Egan Hub states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587–N. The June 27 Order conditionally accepted the tariff sheets contained in Egan Hub's May 1 tariff filing, effective July 1, 2002, subject to the condition that Egan Hub file, within fifteen days of the June 27 Order, substitute revised tariff sheets to reflect the changes required by the June 27 Order. Egan Hub is submitting this filing in compliance with the June 27 Order.

Egan Hub states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18547 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–237–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 11, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Substitute First Revised Sheet No. 127
Substitute First Revised Sheet No. 162
Substitute First Revised Sheet No. 163
First Revised Sheet No. 164
Substitute First Revised Sheet No. 841
First Revised Sheet No. 842

Kern River states that the purpose of this filing is to comply with the Commission's Letter Order dated June 27, 2002, by submitting revised tariff sheets to manually implement partial day recalls of released capacity, beginning on July 1, 2002.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18542 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–583–002]

Kinder Morgan Texas Pipeline, L.P.; Notice of Application

July 17, 2002.

Take notice that on July 3, 2002, Kinder Morgan Texas Pipeline, L.P. (KMTP), 500 Dallas Street, Suite 1000, Houston, Texas 77002, filed an application in Docket No. CP96–583–002, as supplemented on July 15, 2002, pursuant to section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations, seeking to amend the Section 3 authorization and Presidential Permit previously issued on November 26, 1996, and December 17, 1997,[1] all as more fully set forth in the application. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

KMTP requests that the Commission grant the requested authorization in time to allow construction of the border crossing facility to commence by the end of the third quarter of 2002.

Any questions concerning this application may be directed to Philip R. Telleen, 747 East 22nd Street, Lombard, Illinois 60148, phone (630) 691–3749 or fax (630) 691–3628.

KMTP states that is has been authorized to construct border crossing facilities, near Salineno in Starr County, Texas, that will link a Texas intrastate pipeline with a new pipeline system in Mexico to serve increasing market demand in Mexico. KMTP seeks amended authorization to: (1) Increase the size of KMTP's planned border crossing pipeline from 24-inch to 30-inch diameter pipe, thereby increasing its design capacity from 270 MMcfd to 375 MMcfd; (2) eliminate the previously authorized dual 12-inch meter as part of the border crossing facilities; and (3) redefine the border crossing facilities as extending 878 feet to the middle of the Rio Grande River.

KMTP states that the currently authorized pipeline and metering facilities have not been constructed. In this amendment, KMTP is proposing to increase the pipeline diameter size of the border crossing facility so that it will be the same size as both the upstream and downstream interconnecting facilities. In addition, because the meter will be constructed on the Mexico pipeline facilities rather than as part of the proposed border crossing facilities. the border crossing facilities will extend 878 feet from the location where the directional drill will begin to the International Border at the middle of the river. KMTP estimates the cost of the border crossing facilities (without the meter) to be approximately $500,000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 7, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's

[1] *MidCon Texas Pipeline Corp.*, 77 FERC ¶ 61,205 (1996); *MidCon Texas Pipeline Operator, Inc.*, 81 FERC ¶ 61,326 (1997). KMTP's former name is MidCon Texas Pipeline Operator, Inc.

environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18533 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–319–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 10, 2002 National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub. Third Revised Sheet No. 357, to be effective July 1, 2002.

National Fuel states that this filing is being made in compliance with the Commission's Letter Order issued on June 27, 2002, in the above-referenced docket. National Fuel further states that the revised tariff language clarifies the Intra-Day nomination periods in Section 10.2 of its General Terms and Conditions.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18549 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–57–001]

SCG Pipeline, Inc.; Notice of Amendment

July 17, 2002.

Take notice that on July 11, 2002, SCG Pipeline, Inc (SCG), P.O. Box 102407, Columbia, South Carolina, 29224–2407, filed in Docket No. CP02–57–001 an amendment to its application pursuant to section 7(c) of the Natural Gas Act (NGA) and the Commission's Rules and Regulations, all as more thoroughly described in the application on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (please call (202) 208–2222 for assistance).

In its original application in this proceeding, SCG requested authorization for the following:

(i) A certificate of public convenience and necessity authorizing SCG to construct, install, and operate natural gas pipeline facilities, and to acquire from Southern Natural Gas Company (Southern) an interest in the capacity of pipeline facilities (the Twin 30s) in Georgia, and South Carolina;

(ii) A blanket certificate of public convenience and necessity pursuant to Part 284, Subpart G of the Commission regulations authorizing the transportation of gas for others;

(iii) A blanket certificate of public convenience and necessity under Part 157, Subpart F of the Commission's regulations authorizing the construction, acquisition, abandonment and operation of certain facilities,

SCG states the purpose of this amendment is to comply with Ordering Paragraph (A) contained in the Commission's order granting a Preliminary Determination on Non-Environmental Issues to SCG on June 26, 2002 [1] ("June 26 Order"). The June 26 Order required SCG to amend its proposal to provide that SCG will acquire from Southern an undivided interest in the Twin 30s assets. Accordingly, SCG has filed an Amendment to the Purchase and Sale Agreement between SCG and Southern to provide that SCG will acquire such an ownership interest.

Any questions regarding SCG's amendment should be directed to Troy Blalock, Project Manager, SCG Pipeline, Inc., 105 New Way Road, Columbia, South, Carolina, 28223 at (803) 217–1811 or by fax at (803) 217–2104.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 7, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's

[1] 99 FERC ¶ 61345 (2002)

rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18536 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–290–001]

Southern LNG Inc.; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 11, 2002, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 113 to become effective July 1, 2002.

SLNG states that the filing implements certain directives in the Commission's order issued on June 26, 2002, in the captioned proceeding.

SLNG states that copies of the filing will be served upon its customers and interested state commissions, and upon each party designated on the official service listed compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18548 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–56–001]

Southern Natural Gas Company; Notice of Amendment

July 17, 2002.

Take notice that on July 11, 2002, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama, 35202–2563, filed in Docket No. CP02–56–001 an amendment to its application pursuant to section 7(b) of the Natural Gas Act (NGA) and Sections 157.7 and 157.14 of the Commission's Rules and Regulations for approval of Southern's abandonment by sale to SCG Pipeline, Inc.(SCG), all as more thoroughly described in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (please call (202) 208–2222 for assistance).

Southern purposes to abandon by sale to SCG an undivided interest in the assets of Southern's Twin 30s facilities, which extend from the tailgate of the liquified natural gas facility of Southern LNG, Inc., on Elba Island in Chatham County, Georgia (LNG Facility) to an interconnection to be constructed with the pipeline facilities of SCG at Southern's meter station at Port Wentworth in Chatham County, Georgia. Southern states that this amendment is to comply the Commission's order on June 26, 2002, in this proceeding, in which the Commission found that the proposed abandonment is in the current or future public convenience and necessity, but conditioned its approval on Southern amending its proposal to abandon an interest in the assets of the Twin 30s rather than just capacity.

Any questions regarding Southern's amendment should be directed to Patrick B. Pope, General Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama, 35202–2563 at (205) 325–7126.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 7, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR

385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18535 Filed 7–22–02; 8:45 am]

BILLING CODE 5717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–30–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

July 17, 2002.

Take notice that on July 12, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1: Twentieth Revised Sheet No. 26A, Thirtieth Revised Sheet No. 26B, Second Revised Sheet No. 31, Second Revised Sheet No. 33, Sixth Revised Sheet No. 39, Sixth Revised Sheet No. 42, Sixth Revised Sheet No. 180, and Second Revised Sheet No. 220A, with an effective date of August 1, 2002.

Tennessee states that this filing is (1) to update Rate Schedule NET–284 to reflect the conversion of two shippers to service under Rate Schedule FT–A, and (2) to reflect name changes for two of Tennessee's shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18537 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–024]

Transwestern Pipeline Company; Notice of Negotiated Rates

July 17, 2002.

Take notice that on July 10, 2002, Transwestern Pipeline Company (TW) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective July 12, 2002:

2nd Revised Sheet No. 5B.11

TW states that the above sheets are being filed to reflect an amendment to the specific negotiated rate agreement with United States Gypsum Company that deletes one of the primary receipt points in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18539 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–93–000, et al.]

Tomen Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 16, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Tomen Power Corporation and Fort Point Power LLC

[Docket No. EC02–93–000]

Take notice that on July 12, 2002, Tomen Power Corporation and Fort Point Power LLC (Applicants) filed with the Federal Energy Regulatory Commission (Commission), a joint application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Applicants request approval of the indirect transfer of a 20% limited partnership interest in Lakewood Cogeneration Limited Partnership from Tomen Power Corporation to Fort Point Power LLC.

Lakewood Cogeneration Limited Partnership states that it is engaged exclusively in the business of owning a 238 MW natural gas-fired topping cycle cogeneration facility located in Lakewood Township, New Jersey, and selling its capacity at wholesale to Jersey Central Power & Light Company. The Applicants request privileged treatment by the Commission of the Membership Interests Purchase Agreement that governs the proposed transfer.

Comment Date: August 1, 2002.

2. Whitewater Hill Wind Partners, LLC

[Docket No. EG02–164–000]

Take notice that on July 11, 2002, Whitewater Hill Wind Partners, LLC (the Applicant), with its principal office at c/o Cannon Power Corporation, P. O. Box 675143, Rancho Santa Fe, California 92067, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an approximately 65 MW generating facility located in Riverside County, California. Electric energy produced by the facility will be sold exclusively at wholesale by Applicant.

Comment Date: August 6, 2002.

3. Crescent Ridge LLC

[Docket No. EG02–165–000]

Take notice that on July 11, 2002, Crescent Ridge LLC (the Applicant), with its principal office at c/o Illinois Wind Energy LLC, 205 W. Monroe Street, 4th Floor, Chicago, IL 60606, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of developing, owning and operating an approximately 51 MW generating facility located in Bureau County, Illinois. Electric energy produced by the facility will be sold exclusively at wholesale by Applicant.

Comment Date: August 6, 2002.

4. State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Owner Trustee on behalf of PH Generating Statutory Trust B under the Trust Agreement, dated as of February 15, 2002 (as amended, restated, supplemented or otherwise modified from time to time), by and between State Street Bank and Trust Company of Connecticut, National Association and First Chicago Leasing Corporation

[Docket No. EG02–166–000]

Take notice that on July 10, 2002, State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Owner Trustee on behalf of PH Generating Statutory Trust B under the Trust Agreement, dated as of February 15, 2002 (as amended, restated, supplemented or otherwise modified from time to time), by and between State Street Bank and Trust Company of Connecticut, National Association and First Chicago Leasing Corporation (Applicant) filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Applicant will purchase and hold legal title, as owner trustee for the benefit of owner participants, to a 40 percent leasehold interest in the Aries Power Plant, an approximately 600 MW natural gas-fired combined-cycle generating facility being constructed near Pleasant Hill in Cass County, Missouri.

Comment Date: August 6, 2002.

5. State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Owner Trustee on behalf of PH Generating Statutory Trust A under the Trust Agreement, dated as of February 15, 2002 (as amended, restated, supplemented or otherwise modified from time to time), by and between State Street Bank and Trust Company of Connecticut, National Association and Bankers Commercial Corporation

[Docket No. EG02–167–000]

Take notice that on July 10, 2002, State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Owner Trustee on behalf of PH Generating Statutory Trust A under the Trust Agreement, dated as of February 15, 2002 (as amended, restated, supplemented or otherwise modified from time to time), by and between State Street Bank and Trust Company of Connecticut, National Association and Bankers Commercial Corporation (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Applicant will purchase and hold legal title, as owner trustee for the benefit of owner participants, to a 60 percent leasehold interest in the Aries Power Plant, an approximately 600 MW natural gas-fired combined-cycle generating facility being constructed near Pleasant Hill in Cass County, Missouri.

Comment Date: August 6, 2002.

6. American Electric Power Service Corporation

[Docket Nos. ER00–2413–009]

Take notice that on July 10, 2002, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (collectively AEP) filed proposed amendments to its Open Access Transmission Tariff in compliance with the Commission's May 16, 2002 Order in the above-referenced dockets.

AEP requests an effective date of July 1, 2000 for the proposed amendments. Copies of AEP's filing have been served upon AEP's transmission customers and the public service commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: July 31, 2002.

7. Midwest Independent Transmission System Operator Inc.

[Docket No. ER01–3142–009]

Take notice that on July 10, 2002, the Midwest Independent Transmission System Operator, Inc. submitted its compliance filing pursuant to the Federal Energy Regulatory Commission's (Commission) June 12, 2002 Order On Compliance Filing, Midwest Independent Transmission System Operator, Inc., in which the Commission directed the Midwest ISO to further revise certain language in its Open Access Transmission Tariff.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: July 31, 2002.

8. TransAlta Energy Marketing (US) Inc.

[Docket No. ER01–3148–002]

Take notice that on July 10, 2002, in compliance with the Federal Energy Regulatory Commission's (Commission) June 11, 2002 letter Order in Docket No. EL01–3148–001, TransAlta Energy Marketing (US) Inc. (TEMUS) tendered for filing a notice of succession reflecting its succession to Merchant Energy Group of the Americas, Inc."s Rate Schedule FERC No. 2, effective August 29, 2001.

Comment Date: July 31, 2002.

9. Boston Edison Company

[Docket No. ER02–170–003]

Take notice that on July 10, 2002, Boston Edison Company (Boston Edison) tendered for filing Second Revised Rate Schedule FERC No. 167 to replace the filing made on June 13, 2002 in Docket No. ER02–170–002, which was not in conformance with the requirements of Order No. 614. Boston Edison requests that the new First Revised Rate Schedule FERC No. 167 become effective on June 1, 2002.

Comment Date: July 31, 2002.

10. New England Power Company

[Docket No. ER02–1482–002]

Take notice that on July 10, 2002, New England Power Company (NEP) submitted for filing an erratum to NEP's July 1, 2002 compliance filing made in the above-captioned docket. The purpose of the compliance filing was to amend a service agreement, First Revised Service Agreement No. 178, for service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Middleborough Gas & Electric Department (Middleborough). NEP states that the Network Operating Agreement, which is part of Service Agreement No. 178, was inadvertently omitted from the July 1 filing.

A copy of this filing has been served upon the appropriate state agencies, Middleborough and each person designated on the official service list for this proceeding.

Comment Date: July 31, 2002.

11. Southwest Power Pool, Inc.

[Docket No. ER02–1705–001]

Take notice that on July 10, 2002, Southwest Power Pool, Inc (SPP) tendered certain supplemental information in response to a letter from the Federal Energy Regulatory Commission (Commission) issued on June 26, 2002, in the above-referenced docket. The June 26, 2002 letter requested additional information concerning a proposed upgrade to be in constructed in order to support an interconnection request under an interconnection agreement with Duke Energy Leavenworth that was filed in this proceeding on an unexecuted basis on May 3, 2002.

Comment Date: July 31, 2002.

12. California Power Exchange Corporation

[Docket No. ER02–2234–001]

Take notice that California Power Exchange Corporation (CalPX), on July 10, 2002, tendered for filing an amendment to its July 3, 2002 rate filing in Docket No. ER02–2234–000, to request that the effective date of its proposed Rate Schedule FERC No. 1 be advanced from August 30, 2002 to July 10, 2002, and to provide additional information concerning that rate filing.

The proposed change in effective date responds to actions taken by Enron Power Marketing, Inc. and Enron Corporation and other CalPX Participants in the California electricity market on June 28, 2002 to dismiss certain litigation against CalPX initiated in the United States District Court for the Central District of California.

Comment Date: July 31, 2002.

13. Western Systems Power Pool, Inc.

[Docket No. ER02–2254–001]

Take notice that on July 8, 2002, the Western Systems Power Pool, Inc. (WSPP) submitted an errata to its July 2, 2002 filing to correct a non-substantive error. WSPP seeks an effective date of September 1, 2002, for these changes.

This filing has been posted on the WSPP homepage (*www.wspp.org*) and e-mailed to the active WSPP members thereby providing notice to WSPP members.

Comment Date: July 29, 2002.

14. Southwest Public Service Company

[Docket No ER02–2296–000]

Take notice that on July 9, 2002, Xcel Energy Services Inc., on behalf of Southwestern Public Service Company (SPS), submitted an umbrella agreement and certain executed service agreements between SPS Transmission and SPS Energy Markets under SPS's rate Schedule for the Sale, Assignment or Transfer of Transmission Rights. The agreements are proposed to be effective January 1, 2002, and June 1, 2002, respectively. SPS indicates a copy of the filing has been served upon the State Commissions of Kansas Mexico, Oklahoma and Texas, and on SPS Energy Markets.

Comment Date: July 30, 2002.

15. California Independent System Operator Corporation

[Docket No. ER02–2297–000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 9, 2002, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Cabazon Wind

Partners, LLC for acceptance by the Federal Energy Regulatory Commission.

The ISO states that this filing has been served on Cabazon Wind Partners, LLCand the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective July 3, 2002.

Comment Date: July 30, 2002.

16. California Independent System Operator Corporation

[Docket No. ER02–2298–000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 9, 2002, tendered for filing a Participating Generator Agreement between the ISO and Cabazon Wind Partners, LLC for acceptance by the Commission.

The ISO states that this filing has been served on Cabazon Wind Partners and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 3, 2002.

Comment Date: July 30, 2002.

17. California Independent System Operator Corporation

[Docket No. ER02–2299–000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 9, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and Whitewater Hill Wind Partners, LLC, for acceptance by the Commission.

The ISO states that this filing has been served on Whitewater Hill Wind Partners and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 3, 2002.

Comment Date: July 31, 2002.

18. California Independent System Operator Corporation

[Docket No. ER02–2300–000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 9, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and Whitewater Hill Wind Partners, LLC, for acceptance by the Commission.

The ISO states that this filing has been served on Whitewater Hill Wind Partners and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective July 3, 2002.

Comment Date: July 31, 2002.

19. Entergy Services, Inc.

[Docket No. ER02–2301–000]

Take notice that on July 9, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Dominion Energy Marketing, Inc.

Comment Date: July 30, 2002.

20. American Electric Power Service Corporation

[Docket No.ER02–2302–000]

Take notice that on July 8, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing one (1) non-redacted, confidential copy and one (1) redacted, non-confidential copy of a Service Agreement for the sale of power by AEPSC, which is greater than one year in length. The Power Sales Tariffs were accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies). AEPSC respectfully requests waiver of notice to permit the attached Service Agreement to be made effective on or prior to June 1, 2002.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: July 29, 2002.

21. KeySpan-Port Jefferson Energy Center, LLC

[Docket No. ER02–2303–000]

Take notice that on July 10, 2002, KeySpan-Port Jefferson Energy Center, LLC (Port Jefferson) submitted for filing for informational purposes pursuant to Section 205 of the Federal Power Act an executed umbrella service agreement establishing the Long Island Lighting Company d/b/a LIPA, through its agent KeySpan Energy Trading Services, LLC as a customer under Port Jefferson's market-based rate tariff. Port Jefferson requests an effective date of July 10, 2002 for the service agreement.

Comment Date: July 30, 2002.

22. CalPeak Power—Mission LLC

[Docket No. ER02–2304–000]

Take notice that on July 9, 2002, CalPeak Power—Mission LLC (CalPeak Mission) tendered for filing a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1.

Comment Date: July 30, 2002.

23. California Independent System Operator Corporation

[Docket No. ER02–2305–000]

Take notice that on July 10, 2002, the California Independent System Operator Corporation (ISO) filed Second Revised Service Agreement No. 412, which is a Participating Generator Agreement (PGA) between the ISO and GWF Energy LLC. The PGA has been revised to update Schedule 1 of the PGA. The ISO requests that the PGA be made effective as of June 10, 2002.

The ISO has served copies of this filing upon GWF Energy LLC and all entities that are on the official service list for Docket No. ER01–2958–000.

Comment Date: July 31, 2002.

24. Louisville Gas and Electric Company

[Docket No. ER02–2306–000]

Take notice that on July 10, 2002, Kentucky Utilities Company (KU) filed a termination notice for power sales service between KU and Florida Power and Light Company (FPL). The terminated services are Service Agreement 113 under KU's FERC Electric Tariff 1R2. FPL requested the contract termination on June 25, 2002.

Comment Date: July 31, 2002.

25. California Independent System Operator Corporation

[Docket No. ER02–2307–000]

Take notice that on July 10, 2002, the California Independent System Operator Corporation (ISO) filed First Revised Service Agreement No. 356, which is a Participating Generator Agreement (PGA) between the ISO and Alliance Colton, LLC, which is now known as Colton Power, L.P. The PGA has been revised to update Schedule 1 of the PGA. The ISO requests that the PGA be made effective as of June 6, 2002.

The ISO has served copies of this filing upon Colton Power, L.P. and all entities that are on the official service list for Docket No. ER01–1610–000.

Comment Date: July 31, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18490 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–176–000 and CP01–179–000]

Georgia Strait Crossing Pipeline LP; Notice of Availability of the Final Environmental Impact Statement for the Proposed Georgia Strait Crossing Project

July 17, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) on natural gas pipeline facilities proposed by Georgia Strait Crossing Pipeline LP (GSX–US) in the above-referenced dockets.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The final EIS also evaluates alternatives to the proposal, including system alternatives, route alternatives, and route variations.

The final EIS addresses the potential environmental effects of the construction and operation of the following facilities in Whatcom and San Juan Counties, Washington:

- about 32.0 miles of 20-inch-diameter pipeline (onshore mainline pipeline) extending from the interconnect facilities at the international border between the United States and Canada near Sumas, Washington, across Whatcom County, to a new compressor station (Cherry Point Compressor Station) near Cherry Point, Washington;
- about 1.1 miles of 16-inch-diameter pipeline (onshore mainline pipeline) extending from the Cherry Point Compressor Station to the beginning of the marine portion of the pipeline at the edge of the Strait of Georgia;
- about 13.9 miles of 16-inch-diameter marine pipeline (offshore mainline pipeline) extending from the edge of the Strait of Georgia near Cherry Point, Washington to the international border between the United States and Canada at a point about midway between the west end of Patos Island (Washington) and the east end of Saturna Island (British Columbia) in Boundary Pass;
- interconnect facilities including a receipt point meter station, pig launcher, interconnect piping, and associated valves (Sumas Interconnect Facility) adjacent to an existing compressor station in Whatcom County, Washington;
- a new compressor station (Cherry Point Compressor Station) consisting of one 10,302-hp two-stage compressor unit, pig launcher/receiver facilities, and associated valves near Cherry Point in Whatcom County, Washington;
- six mainline valves (MLV), one each at the Sumas Interconnect Facility and Cherry Point Compressor Station and four valves along the proposed pipeline route; and
- an onshore and an offshore tap valve.

The purpose of the GSX–US project is to provide the United States portion of a natural gas transportation system to supply the growing demand for natural gas on Vancouver Island.

The final EIS will be used in the regulatory decision-making process at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the Commission's Rules and Practices and Procedures, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The final EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Regulatory Energy Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

A limited number of copies of the final EIS are available from the Public Reference and Files Maintenance Branch identified above. In addition, the final EIS was filed with the U.S. Environmental Protection Agency, and has been mailed to Federal, state, and local agencies, elected officials, public interest groups, individuals, and affected landowners who requested a copy of the final EIS; public libraries; newspapers; and parties to this proceeding.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of an FEIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the FEIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the proposed project is available from the Commission's Office of External Affairs at 1–866–208–FERC (1–866–208–3372) or on the FERC Web site (*www.ferc.gov*) using the "RIMS" link to information in the docket numbers. Click on the "RIMS" link, select "Docket #" from the RIMS menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet Web site, click on the "CIPS" link, select "DOCKET #" from the CIPS menu, and follow the instructions. For assistance with access

to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18534 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

July 17, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12160–000.

c. *Date filed:* May 3, 2002.

d. *Applicant:* Lake Dorothy Hydro, Inc.

e. *Name of Project:* Lake Dorothy Hydroelectric Project.

f. *Location:* In the Tongass National Forest, at Lake Dorothy on Dorothy Creek, near Juneau, Alaska. Township 42S, Range 69E and 70E, Copper River Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Corry V. Hildenbrand, Lake Dorothy Hydro, Inc., 5601 Tonsgard Court, Juneau, AK 99801, (907) 463–6315.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12160–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) Lake Dorothy, which has a 998-acre surface area at elevation 2,421 feet; (2) Bart Lake, which has a 250-acre surface area at elevation 986 feet; (3) a lake tap at Bart Lake; (4) a 54-inch-diameter to 96-inch-diameter, 7,500-foot-long tunnel and penstock (combined length); (5) a powerhouse containing a generator unit with an installed capacity of 15 MW; (6) a 138-kV, 3.0-mile-long transmission line connecting the project to the existing submarine transmission line; and (7) appurtenant facilities.

The project would have an annual generation of 74.5 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18538 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: July 16, 2002; 67 FR 46656.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 17, 2002; 10 a.m.

CHANGE IN THE MEETING: The following Docket No. and Company has been added to Item G–21 on the Commission Meeting of July 17, 2002.

Item No.	Docket No. and Company
G–21	Docket No. RP01–01–507–000, Transwestern Pipeline Company.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19783 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–369–017 and RP98–54–034]

Colorado Interstate Gas Company; Notice of Refund Report

July 17, 2002.

Take notice that on July 11, 2002, Colorado Interstate Gas Company (CIG) tendered for filing its fourth and fifth refund reports in Docket Nos. RP97–369 and RP98–54 et al.

CIG states that this filing and refunds were made to comply with the Commission's Order of September 10, 1997. CIG states that refunds were paid by CIG on December 20, 2000, January 22, 2001 and January 24, 2001.

The May 18, 2001, refund report summarizes the refunds made as of that date by CIG for Kansas ad valorem tax overpayments, pursuant to the Commission's Order dated September 10, 1997 and Settlement Order dated November 21, 2000. Lump sum cash refunds were made by CIG to its former jurisdictional sales customers. The May 18, 2002, refund report summarizes the refunds made as of that date by CIG for Kansas ad valorem tax overpayments, pursuant to the Commission's Order dated September 10, 1997 and Settlement Order dated November 21, 2000. No lump sum cash refunds were made by CIG to its former jurisdictional sales customers in this report. In instances where payment has not been made within thirty (30) days of receipt from the producers, appropriate interest will be computed as provided in the Order.

CIG states that copies of CIG's filing were served on all parties of record in Docket No. RP98–54–000, et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18540 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–009]

Dominion Transmission, Inc.; Notice of Report of Refunds

July 17, 2002.

Take notice that on July 11, 2002, Dominion Transmission, Inc. (DTI) filed its report of refunds attributable to the resolution of the above-captioned proceeding. DTI states that the reported refunds and billing adjustments reflect DTI's implementation of the TCRA settlement in the above-captioned proceeding.

DTI states that the purpose of this filing is provide a revised workpaper to show the effect of DTI's May 8 filing on the balances of the Amortization Adder reported in DTI's original February 26 report. This filing does not make any change to the refunds reported in DTI's February 26 and May 8 filings. (DTI's February 26 filing was the original refund report and the May 8 filing reported a programming anomaly in the DTI allocation process, which when corrected resulted in additional refunds for five customers.)

DTI states that copies of its filing are being mailed to affected customers, interested state commissions and all parties to the above-captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18541 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7249–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Lead Smelters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Lead Smelters; 40 CFR part 63, subpart TTT; OMB Control Number 2060–0414, expiration date July 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2002.

ADDRESSES: Send comments, referencing EPA ICR Number 1856.03 and OMB Control Number 2060–0414, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *auby.susan@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR Number 1856.03. For technical questions about the ICR contact Maria Malave in the Office of Compliance at (202) 564–7027 or via E-mail to *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Lead Smelters; 40 CFR part 63, subpart TTT, OMB Control No. 2060–0414, expiration date July 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Lead Smelters, published at 40 CFR part 63, subpart TTT, were proposed on April 17, 1998 (63 FR 19200), and promulgated on June 4, 1999 (64 FR 30204). On February 12, 1999, the Agency publicized a supplemental rulemaking for ferroalloys, mineral wool, primary copper, primary lead and wool fiberglass. The supplemental for this rule enhances the requirements of the bag leak detection systems in 40 CFR 63.1625 and 40 CFR 63.1655 of the proposed rule to include an enforceable operating limit. This rule applies to emissions sources (i.e., sinter machine, blast furnace, dross furnace, process fugitive, and fugitive dust sources) from primary lead smelters.

The monitoring, recordkeeping, and reporting requirements outlined in the rule are similar to those required for other NESHAP regulations. Plants must demonstrate compliance with the emission standards by monitoring their control devices and performing annual emissions testing. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), all sources subject to this standard are required to submit one-time notifications of applicability; a one-time report on performance test results for the primary emission control device; an initial report specifying the intended methods of compliance; standard operating procedure manuals for baghouses and fugitive dust control; and a semiannual report that includes a summary of the monitoring results, any baghouse leak detection system alarms and corrective actions. Sources must also maintain records of production for unrefined lead, copper matte, and copper speiss; the date and times of bag leak detection system alarms and the corrective action taken; baghouse inspection and maintenance; any records required as part of the source standard operating procedures manuals; and the compliance methods chosen. Records shall be maintained for a period of 5 years. Records of the most recent 2 years of operation must be maintained onsite.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001; no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 3,061 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Primary lead smelters.

Estimated Number of Respondents: 2.

Frequency of Response: Semiannual.

Estimated Total Annual Hour Burden: 12,246 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $6,451,878.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 1856.03; OMB Control Number 2060–0414 in any correspondence.

Dated: July 12, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–18578 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7249–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Standards of Performance for Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been

forwarded to the Office of Management and Budget (OMB) for review and approval: Standards of Performance for Petroleum Refineries; OMB Number 2060–0022, expiration date August 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1054.08 and OMB Control No. 2060–0022, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *Auby.susan@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1054.08. For technical questions about the ICR contact Dan Chadwick of the Office of Compliance at (202) 564–7054 or via e-mail at *chadwick.dan@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Petroleum Refineries, (OMB Control No. 2060–0022; EPA ICR No. 1054.08, expiring August 31, 2002. This is a request for extension of a currently approved collection.

Abstract: New Source Performance Standards (NSPS) published at 40 CFR part 60, subpart J were proposed on June 11, 1973, and promulgated on March 8, 1974. These standards apply to the following affected facilities in petroleum refineries: fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and Claus sulfur recovery plants of more than 20 long tons per day commencing construction, modification, or reconstruction after the date of proposal. The pollutants regulated under this Subpart are particulate matter, carbon monoxide, and sulfur oxides. This information is being collected to assure compliance with 40 CFR part 60, subpart J. In general, all NSPS standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these records, and retain the file for at least two years following the date of such occurrences, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on January 30, 2002 (67 FR 4421). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 100 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and Operators of Petroleum Refineries.

Estimated Number of Respondents: 130.

Frequency of Response: Quarterly, Semi-Annually.

Estimated Total Annual Hour Burden: 17,359 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $91,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the addresses listed above. Please refer to EPA ICR No. 1054.08 and OMB Control No. 2060–0022 in any correspondence.

Dated: July 12, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–18577 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7250–9]

Meeting of the Clean Diesel Independent Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Public Law 92–463, notice is hereby given that the Clean Diesel Independent Review Panel of the Clean Air Act Advisory Committee will hold its third meeting on July 30 and 31, 2002. All panel meetings are open to the public. The preliminary agenda for this meeting will be available on the panel's website in mid-July: *http://www.epa.gov/air/caaac/clean_diesel.html*.

DATES: Tuesday, July 30, 2002, from 10 a.m. to 5:30 p.m. Registration begins at 9:30 a.m. Wednesday, July 31, 2002, from 8:30 a.m. to 4 p.m.

ADDRESSES: The Ritz Carlton, Pentagon City, 1250 South Hayes Street, Arlington, VA 22202, (703) 415–5000, (703) 415–5060 (fax), *http://www.ritzcarlton.com/hotels/pentagon_city/*.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Ms. Mary Manners, Designated Federal Official, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone: (734) 214–4873, fax: (734) 214–4051, e-mail: *manners.mary@epa.gov*.

Logistical and Administrative Information: Ms. Julia MacAllister, FACA Management Officer, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone: (734) 214–4131, fax: (734) 214–4816, e-mail: *macallister.julia@epa.gov*.

Current Information: http://www.epa.gov/air/caaac/clean_diesel.html.

Individuals or organizations wishing to provide comments to the panel should submit them to Ms. Manners at the address above by September 30, 2002. The Clean Diesel Independent Review Panel expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Dated: July 18, 2002.

Donald E. Zinger,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. 02–18712 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0042; FRL–6819–1]

Final National Action Plan for Alkyl-lead; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 25, 2000, EPA issued a proposed National Action Plan on alkyl-lead for public review and comment. This Plan is intended to promote further voluntary reductions of use and exposure to alkyl-lead compounds. Alkyl-lead is used as a fuel additive to reduce "knock" in certain combustion engines. These compounds also help lubricate internal engine components and protect intake and exhaust valves against recession. Currently, the largest uses of alkyl-lead compounds are in aviation gasoline for general aviation (piston-engine) aircraft, and racing gasoline. Six comments were submitted to the Agency concerning this plan. The Agency has reviewed these comments and has revised the Plan accordingly. This Notice announces the finalization and availability of the Alkyl-lead National Action Plan. This plan was developed pursuant to the Agency's Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul Matthai, Pollution Prevention Division, Mail Code 7409M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8839; e-mail address: matthai.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who make, distribute, or use racing and aviation gasoline. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/pbt. To access this document, on the PBT Home Page select "Strategy and Action Plans."

2. *In person.* The Agency has established an official record for this action under docket control number OPPT–2002–0042. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. What Action is the Agency Taking?

On November 16, 1998, EPA released its Agency-wide Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants (PBT Strategy). The goal of the PBT Strategy is to identify and reduce risks to human health and the environment from current and future exposure to priority PBT pollutants. This document serves as the Final National Action Plan for alkyl-lead, one of the 12 Level 1 priority PBT pollutants identified for the initial focus of action in the PBT Strategy.

Alkyl-lead compounds are man-made compounds in which a carbon atom of one or more organic molecules is bound to a lead atom. Tetraethyllead (TEL) and tetramethyllead (TML) compounds are the most common alkyl-lead compounds that have been used in the past and are still in use today in the United States. These two alkyl-lead compounds are the focus of this National Action Plan. Alkyl-lead is used as a fuel additive to reduce "knock" in combustion engines, help lubricate internal engine components and protect intake and exhaust valves against recession. Currently, the largest uses of alkyl-lead are in aviation gasoline for general aviation (piston-engine) aircraft, and racing gasoline. Neither of these uses are subject to any of the regulations that restrict leaded motor gasoline use.

In the human body, alkyl-lead compounds are distributed through the blood to "soft tissues" particularly the liver, kidneys, muscles, and brain. Initial symptoms of alkyl-lead poisoning include, among others: anorexia, insomnia, tremor, weakness, fatigue, nausea and vomiting, mood shifts such as aggression or depression, and impairment of memory. In the case of acute alkyl-lead poisoning, possible health effects include mania, convulsions, delirium, fever, coma, and in some cases even death.

The ultimate goal of this alkyl-lead Plan is to identify and reduce risks to human health and the environment from current and future exposure to alkyl-lead. EPA believes that, with the regulatory actions it has taken to date, this goal is within reach. However, the Agency is concerned about any sub-populations that may remain at risk, for example, individuals exposed at racetracks or general aviation airports. The Agency also recognizes that these remaining risks should not be taken lightly. EPA does not have the authority under the Clean Air Act to regulate the use of leaded gasoline for the racing industry, and the authority to regulate aircraft fuel lies with the Federal Aviation Administration. Therefore, the

Agency has chosen to address the risks that remain for alkyl-lead through voluntary efforts under its PBT pollutants program. It is likely that further reductions in exposures to these chemicals will come only through product substitution and voluntary measures.

List of Subjects

Environmental protection, Alkyl-lead, PBT.

Dated: June 10, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–18588 Filed 7–22–02 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Statement of Policy on Bank Merger Transactions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final agency policy statement (amended).

SUMMARY: The FDIC is amending its Statement of Policy on Bank Merger Transactions to incorporate a recent statutory change to the Bank Merger Act, as amended by the USA PATRIOT Act, which makes an insured depository institution's effectiveness in combating money laundering a factor in evaluating a proposed merger transaction.

EFFECTIVE DATE: July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Kevin W. Hodson, Review Examiner (202/898–6919), Division of Supervision and Consumer Protection; Robert C. Fick, Counsel (202/898–8962), or Carl Gold, Counsel (202/898–8702), Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Section 327 of the USA PATRIOT Act (Pub. L. 107–56, enacted October 26, 2001) amends section 18(c) of the Federal Deposit Insurance Act 12 U.S.C. 1828(c) (commonly known as the Bank Merger Act), adding a new factor for consideration in deciding merger transactions covered by the Bank Merger Act. The factor reads, "In every case, the responsible agency shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities, including in overseas branches." The amended statement of policy essentially restates the USA PATRIOT Act requirement. No new informational requirements relating to Bank Merger Act applications are imposed at this time. Consideration of the new factor is required on applications submitted after December 31, 2001. The FDIC is not soliciting comment on the revised Statement of Policy. The amendment to the Policy Statement, which was published at 63 FR 44761 on August 20, 1998, is effective immediately upon publication in the **Federal Register**.

The Statement of Policy is hereby amended by adding a new paragraph at the end of section III., to read as follows:

FDIC Statement of Policy on Bank Merger Transactions

* * * * *

III. Evaluation of Merger Applications

* * * * *

Anti-Money Laundering Record

In every case, the FDIC will take into consideration the effectiveness of each insured depository institution involved in the proposed merger transaction in combating money-laundering activities, including in overseas branches. In this regard, the FDIC will consider the adequacy of each institution's programs, policies, and procedures relating to anti-money laundering activities; the relevant supervisory history of each participating institution, including their compliance with anti-money laundering laws and regulations; and the effectiveness of any corrective program outstanding. The FDIC's assessment may also incorporate information made available to the FDIC by the Department of the Treasury, other Federal or State authorities, and/or foreign governments. Adverse findings may warrant correction of identified problems before consent is granted, or the imposition of conditions. Significantly adverse findings in this area may form the basis for denial of the application.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 12th day of July, 2002.

By order of the Board of Directors.

Valerie J. Best,

Assistant Executive Secretary/Supervisory Counsel.

[FR Doc. 02–18493 Filed 7–22–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1418–DR]

Indiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana, (FEMA–1418–DR), dated June 13, 2002, and related determinations.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 2002:

Dearborn and Orange Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18531 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1419–DR]

Minnesota; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota, (FEMA–1419–DR), dated June 14, 2002, and related determinations.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2002:

Goodhue and Hubbard Counties for Public Assistance.

Itasca, McLeod, and Wright Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18526 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1425-DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Scott Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Sandra L. Coachman as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18525 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS)(formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, "Medicare Health Maintenance Organizations/Competitive Medical Plans Beneficiary Reconsideration System (MBRS)," System No. 09–70–4003. We propose to change the name of the system to read "Medicare Managed Care Beneficiary Reconsideration (RECON) System," to reflect the change in the programs related to this activity. The language in published routine use number 3 will be modified to more accurately reflect activities currently performed by contractors and consultants. We propose to delete published routine use number 5, pertaining to " a state insurance commissioner * * *" and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA). Access to the data for these activities will be accomplished by adding a new routine use which authorizes release of information in this system to "another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent." Disclosure of information to Quality Improvement Organizations (QIO) (formerly Peer Review Organizations) as stated in published routine use number 5 will be treated as a new routine use and prioritized as routine use number 4. We propose to modify the language of published routine use number 4 pertaining to "a third party" to limit disclosures authorized under this routine use and to provide clarity to the circumstances for disclosures. Third parties will be treated as a new routine use and prioritized as routine use number 3.

The security classification previously reported as "None" will be modified to reflect that the data in this system are considered to be "Level Three Privacy Act Sensitive." We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by recent reorganizations and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the system is to collect and maintain information necessary to process requests for reconsideration of service requests or claims by or on behalf of Medicare managed care enrollees, promote the effectiveness and integrity of the Medicare managed care program, and reply to future correspondence related to the case. Information in this system will also be disclosed to: (1) Support regulatory and policy functions performed within the Agency or by a contractor or consultant, (2) another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent, (3) third party contacts, (4) QIOs, (5) support constituent requests made to a congressional representative, (6) support litigation involving the Agency related to this SOR, and (7) combat fraud and abuse in certain health care programs. We have provided background information about the modified system in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See "Effective Dates" section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 17, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.-3 p.m., eastern standard time.

FOR FURTHER INFORMATION CONTACT: Beverly Sgroi, Health Insurance Specialist, Division of Hearings, Appeals & Dispute Resolution, Center for Beneficiary Choices, CMS, Mail-stop S1–05–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–7638. The e-mail address is *bsgroi@hhs.cms.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System of Records.

A. Statutory and Regulatory Basis for SOR

In 1988, CMS established an SOR under the authority of § 1872 of the Social Security Act (the Act) (Title 42 United States Code (U.C.S. section 1395mm). Notice of this system, MBRS, was published in the **Federal Register** (FR) 53 FR 35914 (Sept. 15, 1988), a routine use was added for the Social Security Administration (SSA) at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information concerning Medicare beneficiaries who have been enrolled in a managed care program and who have requested an appeal by CMS, or any person who acts on behalf of these beneficiaries. The system contains the name and address of beneficiaries and the individual representing the beneficiary in this appeal process. It will also contain the beneficiary's social security number (SSN), health insurance claims number (HIC), health insurance plan name and address, health insurance plan number, medical records and statement of fact, service requests/claims data, date of service request/claim received by the health plan, dates of service, beneficiary enrollment form and disenrollment form, verification of enrollment status, date reconsideration request submitted to CMS, and dates of determination by plan and CMS.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release RECON information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of RECON. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., collecting and maintaining information used in processing the claimant's appeal and information necessary to reply to future correspondence.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the RECON without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine uses for disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system of records. CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such Agency to administer a Federal health benefits program, or as necessary to enable such Agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require RECON information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

In addition, other state agencies in their administration of a Federal health program may require RECON information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and /or the quality of health care services provided in the state.

SSA requires RECON data to enable them to assist in the implementation and maintenance of the Medicare program.

State Insurance Commissioners or other state regulators with similar authority acting in a manner consistent with maintaining the integrity of the Medicare program may require RECON data to assist in accomplishing their activities.

3. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, or any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third party contacts require RECON information in order to provide support for the individual's entitlement to benefits under the Medicare program, to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

4. To Quality Improvement Organizations (QIO) connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

7. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require RECON information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The RECON system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential individual identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the RECON system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of RECON data. RECON information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of RECON data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will

collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: June 17, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

System No. 09–70–4003

SYSTEM NAME:

Medicare Managed Care Beneficiary Reconsideration (RECON) System No. 09–70–4003.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information concerning Medicare beneficiaries who have been enrolled in a managed care program and who have requested an appeal by CMS, or any person who acts on behalf of these beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name and address of beneficiaries and the individual representing the beneficiary in this appeal process. It will also contain the beneficiary's social security number (SSN), health insurance claims number (HIC), health insurance plan name and address, health insurance plan number, medical records and statement of fact, service requests/claims data, date of service request/claim received by the health plan, dates of service, beneficiary enrollment form and disenrollment form, verification of enrollment status, date reconsideration request submitted to CMS, and dates of determination by plan and CMS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this system of records is given under §§ 1852, and 1876 of the Social Security Act (the Act) United States Code (U.S.C.) §§ 1395w–22, and 1395mm).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the SOR is to collect and maintain information necessary to process requests for reconsideration of service requests or claims by or on behalf of Medicare managed care enrollees, promote the effectiveness and integrity of the Medicare managed care program, and reply to future correspondence related to the case. Information in this system will also be disclosed to: (1) Support regulatory and policy functions performed within the Agency or by a contractor or consultant, (2) another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent, (3) third party contacts, (4) Quality Improvement Organizations (QIO) (formerly Peer Review Organizations), (5) support constituent requests made to a congressional representative, (6) support litigation involving the Agency related to this SOR, and (7) combat fraud and abuse in certain health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the RECON without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish or modify the following routine uses for disclosures of information maintained in the system:

1. Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such Agency to administer a Federal health benefits program, or as necessary to enable such Agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, or any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

4. To Quality Improvement Organizations in connection with review of claims, or in connection with

studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

7. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the name, SSN, and/or HICN of claimant.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the RECON system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Information Systems Security Policy, Standards, and Guidelines Handbook, and OMB Circular No. A–130, Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Case records are transferred to and maintained in an archival file for a period of 15 years.

SYSTEM MANAGER AND ADDRESS:

Director, Division of hearings, Appeals & Dispute Resolution, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, Mailstop S1–05–06, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HIC, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system is obtained from the reconsideration requests made by or on behalf of Medicare beneficiaries and from inquiries from congressional offices, health plans, providers, state insurance commissioners, state regulators, disenrollment surveys, Medicare carriers or intermediaries, and QIO records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–18167 Filed 7–22–02; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, "Medicare Supplier Identification File (MSIF), System No. 09–70–0530." We are deleting routine uses number 2 pertaining to a Medicaid state agency or its fiscal agent to assist in enforcing Medicare and Medicaid sanctions, and number 4 pertaining to contractors. Disclosures previously allowed by routine use number 2 pertaining to a Medicaid state agency will now be covered by proposed routine use number 5. Disclosures previously allowed by routine use number 4 pertaining to contractors will now be covered by proposed routine use

number 1. We propose to add routine use number 4 and 5 to combat fraud and abuse in certain health benefits programs.

The security classification previously reported as "None" will be modified to reflect that the data in this system is considered to be "Level Three Privacy Act Sensitive." We are modifying the language in the remaining routine uses to provide clarity to CMS' intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of this system is to identify supplier businesses that eligible to receive Medicare payments for items and services furnished to Medicare beneficiaries as well as owners, managing employees, and subcontractors in those suppliers. The system will facilitate the identification of business owners who have been sanctioned by the Office of Inspector General and/or have questionable business practices within the Medicare program. The carriers will be able to review questionable claims before payment that has been found to be more effective than post-payment reviews. Information retrieved from this SOR will also be disclosed to: support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant, support constituent requests made to a congressional representative, support litigation involving the Agency, and combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the modified routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 24, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Charles Waldhauser, Project Officer, Program Integrity Group, Office of Financial Management, CMS, Mail stop N3–02–16, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850. The telephone number is 410–786–6140.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Statutory and Regulatory Basis for SOR

In 1992, CMS established a SOR under the authority of sections 1124, 1124A, 1126, and 1833(e) of Title XVIII of the Social Security Act (the Act) (Title 42 United States Code (USC) §§ 405, 426, 1395c, and 1395k). Notice of this system, "Medicare Supplier Identification File (MSIF), System No. 09–70–0530," was most recently published in the **Federal Register** (FR) 57 FR 23420 (June 3, 1992), one routine use was added at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and at FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

This system contains information on owners and managing employees of suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS), ambulance companies, imaging technology companies, and independent diagnostic testing facilities which provide service or supplies to Medicare beneficiaries. A "supplier" of DMEPOS is an entity or individual, including a physician or Part A provider, that sells or rents Part B covered items to Medicare beneficiaries and that meets the standards which CMS has established and found in 42 CFR § 424.57.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release MSIF information as provided for under ASection III. Proposed Routine Use Disclosures of Data in the System.≃

We will only collect the minimum personal data necessary to achieve the purpose of MSIF. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., identifying supplier businesses, owner, and managing employees of those suppliers who provide services to Medicare beneficiaries.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MSIF without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR. CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries and other individuals often request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

4. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

5. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require MSIF information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, 65 FR 82462 (Dec. 28, 00), as amended by 66 FR 12434 (Feb. 26, 01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

Administrative Safeguards

The MSIF system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the

system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;

- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the MSIF system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card-key and/or combination that grant access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified SOR on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of MSIF. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: June 24, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

No. 09–70–0530

SYSTEM NAME:

"Medicare Supplier Identification File (MSIF), HHS/CMS/OFM"

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data

SYSTEM LOCATION:

National Supplier Clearing House, Palmetto Government Benefits Administrators, Interstate-20 at Alpine Road, Columbia, South Carolina 29219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records (SOR) will contain information on owners and managing employees of suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS), ambulance companies, imaging technology companies, and independent diagnostic testing facilities which provide service or supplies to Medicare beneficiaries. A "supplier" of DMEPOS is an entity or individual, including a physician or Part A provider, that sells or rents Part B covered items to Medicare beneficiaries and that meets the standards that CMS has established and found in 42 CFR 424.57.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the business names and addresses, owner's name, owner's social security number, Unique Physician/Practitioner Identification Number (UPIN), managing employee's name, employer identification number or other tax reporting number, and the carrier assigned billing numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this SOR is given under the provisions of §§ 1124, 1124A, 1126, and 1833(e) of Title XVIII of the Social Security Act (Title 42 United States Code (USC) §§ 405, 426, 1395c, and 1395k).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this system is to identify supplier businesses that are eligible to receive Medicare payments for items and services furnished to Medicare beneficiaries as well as owners, managing employees, and subcontractors in those suppliers. The system will facilitate the identification of business owners who have been sanctioned by the Office of Inspector General and/or have questionable business practices within the Medicare program. The carriers will be able to review questionable claims before payment that has been found to be more effective than post-payment reviews. Information retrieved from this SOR will also be disclosed to: support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant, support constituent requests made to a congressional representative, support litigation involving the Agency, and combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine use in this system meets the compatibility requirement of the Privacy Act. This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, 65 FR 82462 (Dec. 28, 00), as amended by 66 FR 12434 (Feb. 26, 01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information." In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information that will be maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the Agency collected the records.

4. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

5. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the business names and addresses, owner's name, owner's social security number, UPIN, managing employee's name, employer identification number or other tax reporting number, and the carrier assigned billing numbers.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the MSIF system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area. Records are maintained by CMS and the repository of the National Archives and Records Administration for a period not to exceed 15 years.

SYSTEM MANAGER AND ADDRESS:

Director, Program Integrity Group, Office of Financial Management, CMS, C3–02–16, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system

manager who will require the system name, identification number, address, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from the application which the supplier completes to obtain Medicare billing numbers. (CMS Form 192-prior to August 1996, CMS Form 885, April 1996–May 1997, and CMS Form 855S-after May, 1997).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–18168 Filed 7–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services;

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, "Intern and Resident Information System (IRIS), No. 09–70–0524." We will broaden the scope of this system to include information on interns and residents (IRs) required in Title 42 Code of Federal Regulations (CFR) § 412.105 (Special treatment: Hospitals that incur indirect costs for graduate medical education programs) and 42 CFR 413.86 (Direct graduate medical education payments). We are also deleting published routine use number 3 authorizing disclosures to contractors, number 6 authorizing disclosures to researchers, and an unnumbered routine use which authorizes the release of information to the Social Security Administration (SSA).

Proposed routine use number 1 will now cover disclosures previously allowed by routine use number 3 pertaining to contractors. Access to the data from this system to SSA will be accomplished by adding a new routine use number 4, which authorizes release of information in this system to "another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent." Routine use number 6 authorizing release to researchers is being deleted because the very specific nature of the data collected is not sought for research purposes.

The security classification previously reported as "None" will be modified to reflect that the data in this system are considered to be "Level Three Privacy Act Sensitive." We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to ensure that no IRs are counted by the Medicare program as more than one full-time equivalent (FTE) employee in the calculation of payments for the costs of direct graduate medical education (GME) and indirect medical education (IME). Information retrieved from this SOR will also be disclosed to: support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant, providers and suppliers of services, third-party contacts where necessary to establish or verify information, another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent, support constituent requests made to a congressional representative, support litigation involving the Agency, and combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 24, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Milton Jacobson, Division of Financial Integrity, Office of Financial Management, CMS, Room C3–14–00, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–7553.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Statutory and Regulatory Basis for the SOR

In 1990, CMS established a SOR under the authority of sections 1886(d)(5)(B) and 1886(h) of the Social Security Act (the Act) (42 U.S.C. 1395ww(d)(5)(B) and 1395ww(h)). Notice of this system, "Intern and Resident Information System," System No. 09–70–0524, was published in the **Federal Register** (FR) at 55 FR 51163–51165 (Dec. 12, 1990). An unnumbered routine use was added for SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63

FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses was revised and a third deleted. This system was established to ensure that no IRs are counted by the Medicare program as more than one FTE employee in the calculation of payments for the costs of direct GME and IME. The system contains information on IRs in accordance with 42 CFR 413.86(l) for GME and 42 CFR 412.105(f)(2) for IME. This information includes names and social security numbers of IRs who worked at the hospital in approved GME programs during the hospital's cost reporting period. It also discloses information on each IRs medical specialty (e.g., type of residency program), and the number of years each IRs has completed in all types of residency programs. Hospitals are required to submit the information on IRIS diskettes along with their cost reports to their fiscal intermediaries (FI) in accordance with 42 CFR 413.24(f)(5)(I).

The FIs are the primary user of information from IRIS diskettes. They use the information to detect duplicates of IRs being over reported by two or more of their serviced hospitals. FIs with confirmed duplicates of over reported IR at their serviced hospitals can make adjustments to FTE counts of these IRs on cost report settlements.

The FI also use IRIS diskettes for transmitting data on consolidated diskettes to CMS. CMS uploads the data into its mainframe computer for data storage and retrieval purposes. The computer is used to create duplicate reports of over reported IRs for the FI and CMS.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system includes the following information for each IR: name, social security number; name of medical, osteopathic, or podiatric school graduated from and date of graduation, type of dental degree and date of graduation, type of residency program for the medical specialty, number of years completed in all types of residency programs, foreign medical school graduation date and certification date, name of employer (e.g., hospital, university, corporation) paying the salary, the percentage of time spent working in either the inpatient areas of the hospital subject to the Prospective Payment System or in the outpatient areas of the hospital or in a non-hospital setting under agreement with the hospital for IME, the percentage of time spent working in any area of the hospital complex or in a non-provider setting under agreement with the hospital for GME, the start and end dates assigned to the hospital and any hospital-based providers (assignment periods) during the hospital's cost reporting period, the start and end dates assigned to any non-hospital or non-provider setting in connection with approved residency programs (assignment periods) during the hospital's cost reporting period, and the full-time or part-time percentage during each assignment period.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release IRIS information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of IRIS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason data is being collected; e.g., that no IRs are counted by the Medicare program as more than one full-time equivalent (FTE) employee in the calculation of payments for the costs of direct graduate medical education (GME) and indirect medical education (IME).

2. Determines that the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

a. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

b. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the IRIS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for

administration of provisions of Title XVIII of the Social Security Act.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual agreement with providers and suppliers of services to assist in accomplishing CMS functions relating to purposes for this SOR.

3. To third-party contacts where necessary to establish or verify information provided on or by IRs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system of records.

4. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds.

Other Federal or state agencies in their administration of a Federal health program may require IRIS information in order to support evaluations and monitoring of reimbursement for services provided.

SSA may require IRIS data to enable it to assist in the implementation and maintenance of the Medicare program.

State licensing boards may require IRIS data to enable them to assist in the review of activities related to IRs in their state.

The Medicare Payment Advisory Commission and Congressional Budget Office may require IRIS data to assist in certain budgetary and planning activities related to IR status.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Individuals may request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

7. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require IRIS information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information".

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The IRIS system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A-C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural,

and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- *Database Administrator* class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- *Quality Control Administrator* class has read and write access to key fields in the database;
- *Quality Indicator Report Generator* class has read-only access to all fields and tables;
- *Policy Research* class has query access to tables, but are not allowed to access confidential patient identification information; and
- *Submitter* class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the IRIS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card; key and/or combination which grant access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the IRIS system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Netscape Enterprise Server is the security mechanism for all transmission connections to the system. As a result, Netscape controls all information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server are maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

C. Procedural Safeguards

All automated systems must comply with federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified SOR on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of IRIS data. IRIS information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of IRIS data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: June 24, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

System No. 09–70–0524

SYSTEM NAME:

"Intern and Resident Information System (IRIS)," HHS/CMS/OFM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Interns and residents (IRs) in programs approved under 42 CFR

413.85, working in all areas of the hospital complex, or other freestanding providers, as well as non-hospital or non-provider settings on or after July 1, 1985.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the following information for each IR: name, social security number, name of medical, osteopathic, or podiatric school graduated from and date of graduation, type of dental degree and date of graduation, type of residency program for the medical specialty, number of years completed in all types of residency programs, foreign medical school graduation date and certification date, name of employer (e.g., hospital, university, corporation) paying the salary, the percentage of time spent working in either the inpatient areas of the hospital subject to PPS or in the outpatient areas of the hospital or in a non-hospital setting under agreement with the hospital for IME, the percentage of time spent working in any area of the hospital complex or in a non-provider setting under agreement with the hospital for GME, the start and end dates assigned to the hospital and any hospital-based providers (assignment periods) during the hospital's cost reporting period, the start and end dates assigned to any non-hospital or non-provider setting in connection with approved residency programs (assignment periods) during the hospital's cost reporting period, and the full-time or part-time percentage during each assignment period.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under the provisions of §§ 1886(d)(5)(B) and 1886 (h) of (the Act) (42 U.S.C. 195ww(d)(5)(B) and 1395ww (h).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system of records is to ensure that no IRs is counted by the Medicare program as more than one FTE employee in the calculation of payments for the costs of direct GME and IME. Information retrieved from this system of records will also be disclosed to: providers and suppliers of services, third-party contacts where necessary to establish or verify information, support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, support constituent requests made to a congressional representative, support litigation involving the Agency, and combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the IRIS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We have provided a brief explanation of the routine uses we are proposing to establish or modify for disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

2. To providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of Title XVIII.

3. To third-party contacts where necessary to establish or verify information provided on or by IRs.

4. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits, and/or

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

7. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY

Information can be retrieved by name and social security number of the IR.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the IRIS. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. Systems securities are established in accordance with the Department of Health and Human Services (HHS), Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Disposal occurs three years from the last action on the hospital's cost report, and should be coordinated with disposal of the reports.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Financial Integrity, Office of Financial Management, CMS, 7500 Security Boulevard, C3–14–00, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the systems manager who will require the system name, SSN, address, date of birth, sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Data for this system is collected from IRIS diskettes as transmitted by the hospitals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–18169 Filed 7–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0055]

Agency Information Collection Activities; Announcement of OMB Approval; Infant Formula Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Infant Formula Recall Regulations" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 6, 2002 (67 FR 39011), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0188. The approval expires on July 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18557 Filed 7–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Treating Cancer in Humans Using IL–21

Patrick Hwu, M.D. and Gang Wang, Ph.D. (NCI)
U.S. Patent Application No. 60/368,438 filed on March 27, 2002
Licensing Contact: Jonathan Dixon; 301/496–7056 ext. 270; e-mail: *dixonj@od.nih.gov*

The present invention discloses the use of IL–21 for cancer therapy and/or cancer prevention. When compared to similar cytokines, IL–21 has shown substantial anticancer activity and reduced toxicity in murine models.

IL–21 belongs to the class I family of cytokines and is closely related to IL–2 and IL–15. Some cancer patients have shown significant response to administration of IL–2. However, IL–2 has also been associated with severe toxicity leading to a variety of undesirable side effects. This invention attempts to resolve the toxicity concerns and presents a new therapy for cancer prevention and treatment.

Amine Modified Random Primers for Microarray Detection

Charles Xiang and Michael J. Brownstein (NIMH)
DHHS Reference No. E–098–01/1 filed 11 Apr 2002

Licensing Contact: Cristina Thalhammer-Reyero; 301/496–7056 ext. 263; e-mail: *thalhamc@od.nih.gov*

The present invention relates to a new method for preparing fluorescence-labeled cDNA probes for DNA microarray studies, which only uses about 1/20th as much input RNA as the conventional methods require. The method allows making high quality probes from as little as 1 ug of total RNA without RNA or signal amplification. It is based on priming cDNA synthesis with random hexamers to the 5′ ends of which amino allyl modified bases have been added. Coupling of the fluorescent dye to the amine residues is performed after the cDNA is reverse transcribed. The method can be used in tandem with RNA amplification (and/or signal amplification) to label probes from 10 or fewer cells.

Furthermore, the invention also relates to a novel method to amplify RNA derived from single cells using T3-random 9mers and a new lysing method, which allow probe-labeling capabilities that are approaching the single cell level.

DNA Microarray technology has become one of the most important tools for high throughput studies in medical research with applications in the areas of gene discovery, gene expression and mapping. The suitability of DNA Microarray for profiling diseases and for identifying disease-related genes has also been also well documented. Companies like Affimatrix, Incyte and others have commercialized DNA microarrays, printed for a variety of applications. Most studies using DNA arrays involve preparation of fluorescent-labeled cDNA from the mRNA of the studied organism. The cDNA probes are then allowed to hybridize to the DNA fragments printed on the array, and the array is scanned and the data analyzed. Good results depend on a number of factors including high quality arrays and well-labeled probes. In order to achieve adequate sensitivity and reproducibility, probes have had to be prepared from rather large amounts of RNA using other methods.

Use of Lipoxygenase Inhibitors and PPAR Ligands as Anti-Cancer Therapeutic and Intervention Agents

James L. Mulshine (NCI) and Marti Jett
DHHS Reference No. E–069–01/0 filed 29 Jun 2001
Licensing Contact: Catherine Joyce; 301/496–7056 ext. 258; e-mail: *joycec@od.nih.gov*

This technology pertains to the use of inhibitors of the 5-lipoxygenase (5–LO) pathway for treating cancer. The use of 5–LO inhibitors for cancer growth inhibition has been previously described. The advancements in the technology that lead to the instant invention are the further characterization of the role of the 5–LO pathway in breast cancer growth as follows:

1. Growth stimulation of breast cancer cells with 5–HETE, a metabolite from the 5–LO pathway;

2. The upregulation of peroxisome proliferator-activated receptors, alpha and gamma (PPARα and PPARγ), in response to 5–LO inhibitors, and growth reduction of breast cancer cells with each of four PPAR ligands.

Therefore, the instant invention relates to a method of treating an epithelial derived cancer by administering an inhibitor to an enzyme that metabolizes arachidonic acid and a PPAR ligand, or derivative thereof.

The above-mentioned invention is available for licensing on an exclusive or non-exclusive basis.

Dated: July 11, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–18511 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

RF Ablation Needle Tracked With Magnetic Position Sensing

Bradford J. Wood (CC), Filip Banovac, Kevin Cleary
DHHS Reference No. E–348–01/0 filed 01 Mar 2002
Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov*

The invention is a method for using a newly developed position sensing device to determine the three-dimensional position of a needle for precision placement in interventional procedures. The method can be applied to accurate placement of a radiofrequency ablation probe for percutaneous treatment of neoplasms in the liver, kidney, or other solid organs, nodules or lymph nodes. The method incorporates a magnetic field based position sensing device that can track coils of only 0.9 mm diameter by 8 mm in length. These coils can be embedded in needles and other instruments to directly track the tip of these instruments. Based on a pre-operative CT scan, the position of these instruments relative to the anatomy can be displayed on a graphical user interface along with targeting assistance for the physician.

Direct Cell Target Analysis

Michael R. Emmert-Buck (NCI)
DHHS Reference No. E–100–01/0 filed 26 Apr 2002
Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov*

The invention is a novel, non-mechanical method for studying the molecular content of specific normal and/or diseased cell populations in a heterogeneous biological tissue section. Since the procedure is based on biomolecular targeting, it requires minimal effort on the part of the investigator, and can be easily and rapidly applied to a large number of cells. The invention can be applied in one of two ways. In the first scenario, a biological probe (i.e., antibody or oligonucleotide) is allowed to bind to a unique protein or mRNA expressed in the targeted cells. The probe is linked to an enzyme (such as reverse transcriptase or lactoperoxidase) that will specifically label the biomolecules in the targeted cell population. For example, if lactoperoxidase is utilized, the proteins in the targeted cells will subsequently be labeled with I-125, whereas, the proteins in the non-targeted cells will not be labeled and will be "invisible" in

the subsequent analysis step. The entire tissue section(s) is then quickly scraped into a tube containing lysis buffer and the sample is ready for analysis. As an example, the protein lysate could be applied to a two-dimensional polyacrylamide gel (2D-PAGE) to examine the proteomic profile of the targeted cells. In the second scenario, the biological probe is attached to a "moiety" that will activate an LCM (Laser Capture Microdissection) film, either by generating heat in the presence of an enzyme or absorbing laser light at the correct wavelength by virtue of an appropriate dye. In this approach, the probe is hybridized to the targeted cells in the tissue section, which is then covered by the LCM film. The entire tissue section is then exposed to the laser, thereby activating the moiety such that the LCM film is focally melted only above the targeted cell types. The LCM film is then removed and all of the targeted cells are procured on the film for subsequent molecular analysis. Overall, the invention is an alternative to the classical mechanical methods of microdissection, and offers several advantages with respect to specificity, selectivity, speed, and ease of use.

Cloning and Mutational Analysis of the Hyperparathyroidism-Jaw Tumor Syndrome (HPT-JT) Gene

Carpten et al. (NHGRI)
DHHS Reference No. E–004–02/0 filed 13 May 2002
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov*

Hyperparathyroidism is a key feature of some hereditary endocrine neoplasias and the autosomal dominant disorder HPT-JT, all of which are characterized by the presence of tumors in endocrine tissues. The current invention identifies a series of mutations in chromosome 1 open reading frame 28 (C10RF28)—the HPT-JT gene. Linkage analysis and physical mapping studies of clinical samples from multiple families with HPT-JT syndrome were used to identify these mutations. These genomic changes are predicted to result in truncated gene products.

This new technology might be useful for: (1) Diagnosis of HPT-JT and/or a predisposition to HPT-JT; (2) development of a treatment for HPT-JT; and (3) determination of the effectiveness of various potential HPT-JT therapies.

Methods of Diagnosing Potential for Developing Hepatocellular Carcinoma or Metastasis and of Identifying Therapeutic Agents

Xin Wei Wang et al. (NCI)
DHHS Reference No. E–125–02/0 filed 05 Apr 2002
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov*

Expression of nearly 10,000 genes was analyzed in hepatocellular carcinoma (HCC) tumors, and a molecular signature was identified that targets genes that are most likely relevant to the prediction outcome of metastases, including patient survival. A specific therapeutic target protein was also identified, and antibodies against this protein prevent invasion of metastatic HCC cells in vitro. These data identify this target protein both as a diagnostic marker and a therapeutic target for metastatic HCC.

This invention may be useful in diagnosing HCC and HCC metastatic tumors, evaluating risk for development of HCC and HCC metastatic tumors, and identifying HCC therapeutic targets. This invention also identifies a specific therapeutic target protein, and identifies methods of identifying antagonists to this protein, which might be useful in developing a variety of HCC therapeutics.

Dated: July 11, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–18512 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Ocular Albinism RFA.

Date: August 1, 2002.

Time: 10 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892. 301–451–2020.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18502 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: September 5, 2002.

Open: 8 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: 2 p.m. to Adjournment.

Agenda: To review and evaluate to review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892. 301/435–0260.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18499 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Hypoxia Program Project Grants.

Date: October 8, 2002.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne P. Clark, PhD, Chief, DEA, NHLBI, NIH, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924. (301) 435–0270. *clarka@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18500 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Atherogenic Program Project Grants.

Date: October 8, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne P. Clark, PhD, Chief, DEA, NHLBI, NIH, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924. (301) 435–0270. *clarka@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18501 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Clinical trial planning grant.

Date: August 6, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892. 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18503 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the pubic in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Community Based Mental Health.

Date: August 8, 2002.

Time: 11 am to 4 pm.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. 301–443–1513. *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18504 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, July 23, 2002, 8 a.m. to July 24, 2002, 5 p.m., Double Tree Hotel, 1750 Rockville Pike, Rockville, MD, 20852 which was published in the **Federal Register** on June 26, 2002, V. 67, 123, 43134.

The meeting will be held 07/23–24/2002 at the Double Tree Hotel, for RFA AA02–004, New Approaches to Developing Pharmacotherapy for Alcoholism not RFA AA02–006. The meeting is closed to the public.

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18505 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, July 18, 2002, 8 a.m. to July 18, 2002, 5 p.m, Double Tree Hotel, 1750 Rockville Pike, Rockville, MD, 20852 which was published in the **Federal Register** on July 5, 2002, V. 67; 129, Pg 44860.

RFA–02–006 to be reviewed on 07/18/2002, at the Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD, not the Double Tree Hotel as previously announced (FR 07/05/2002, Vol. 67, No. 129, Pg. 44860). The meeting is closed to the public.

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18506 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, July 18, 2002, 8 AM to July 18, 2002, 4 PM, Marriott Marina-San Diego, 333 West Harbor Drive, San Diego, CA 92101–7700, which was published in the **Federal Register** on July 1, 2002, 67 FR 02–16433.

The meeting will be held at the Wyndham San Diego at Emerald Plaza; 400 West Broadway, San Diego, California 92101. The meeting is closed to the public.

Dated: July 15, 2002.

LaVerne Y. Stringfield,

Director Office of Federal Advisory Committee Policy.

[FR Doc. 02–18507 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby give of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Review of Contracts Dealing with Synthesis of Toxicological Compounds Involved in the Treatment of Common Diseases.

Dates: August 6, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Contract Evaluations on Synthesizing New Therapeutic Drugs.

Date: August 7, 2002.

Time: 8 AM to 5 PM.

Agenda: To reive and evaluate contract proposals.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, aging Research, National Institute of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18508 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, International Malaria Research Training Program Award.

Date: August 14, 2002.

Time: 10 AM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Anthony Macaluso, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, Bethesda, MD 20892–7616, 301–496–2550. *amacaluso@niaid.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18509 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 2002.

Time: 3 PM to 5: 30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892. 301–435–1220. *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN 4(05) Neurosciences.

Date: July 29, 2002.

Time: 12 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Daniel E. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN 4(06) Neurosciences.

Date: July 31, 2002.

Time: 12 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Daniel E. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Integrative, Functional and Cognitive Neuroscience.

Date: August 1, 2002.

Time: 12 PM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Daniel E. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 2002.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892. 301–435–8367. *atreyap@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ICP (02): Global Health Research Initiative Program.

Date: August 5–6, 2002.

Time: 8:30 AM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator,

Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892. 301–435–1019.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5, 2002.
Time: 1 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Stephen M. Nigida, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892. (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–1FCNS–02: Member Conflict Panel: Learning and Memory.
Date: August 5, 2002.
Time: 1 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: John Bishop, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP To Review R21 Applications Responsive to PA–02–046 & PA–02–073.
Date: August 5–7, 2002.
Time: 2 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.
Contact Person: Ranga V. Srinivas, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167. *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral, Dental and Craniofacial SBIR/STTR Panel.
Date: August 6, 2002.
Time: 10 AM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: J. Terrell Hoffeld, DDS, Phd, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892. 301/435–1781. *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 6, 2002.
Time: 2 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Cathleen L. Cooper, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. 301–435–3566. *cooper@scr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Disabilities.
Date: August 6, 2002.
Time: 2 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Cheri Wiggs, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892. (301) 435–1261.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue/Fibromyalgia Special Emphasis Panel.
Date: August 7, 2002.
Time: 10 AM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: J. Terrell Hoffeld, DDS, Phd, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892. 301/435–1781. *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 7, 2002.
Time: 2 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892. (301) 435–1038. *remondid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue/Fibromyalgia SBIR/STTR Special Emphasis Panel.
Date: August 7, 2002.
Time: 2:30 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892. 301/435–1781. *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 8, 2002.
Time: 8 AM to 11:30 AM.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel & Suites, 2033 M Street, NW, Washington, DC 20036.
Contact Person: Randolph Addison, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892. (301) 435–1025. *addisonr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 8, 2002.
Time: 11:30 AM to 5:30 PM.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel & Suites, 2033 M Street, NW, Washington, DC 20036.
Contact Person: Randolph Addison, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892. (301) 435–1025. *addisonr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 8, 2002.
Time: 1 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892. (301) 435–3565.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Children with Disabilities.
Date: August 8, 2002.
Time: 2 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770. Bethesda, MD 20892. (301) 451–8011.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 9, 2002.
Time: 1 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178

MSC 7844, Bethesda, MD 20892. (301) 435–1249.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Language Acquisition.

Date: August 9, 2002.

Time: 1:30 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7848, Bethesda, MD 20892. (301) 594–6836. *tathamt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 2002.

Time: 2 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892. (301) 435–1038. *remondid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 15, 2002.

Time: 2 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. (301) 435–3566. *cooperc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18510 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for American Indian/Alaskan Native and Rural Community Planning Program.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, *American Indian/Alaskan Native and Rural Community Planning Program (TI 03–004)*, and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements*, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. number of awards	Project period
American Indian/Alaskan Native and Rural Community Planning Program.	Sept. 10, 2002	$1.5 million	6	Up to 18 Months.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is authorized under Section 509 of the Public Heather Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment announces the availability of FY 2003 funds for grants to support community-based planning, resulting in the development of a local substance abuse treatment system plan, for American Indian and Alaskan Native and rural communities.

Eligibility: Eligible applicants are public and domestic private non-profit entities such as community based organizations, Tribes, Tribal governments, or other tribal authorities, colleges and universities (including Tribal colleges and universities), faith-based organizations, provider and consumer groups and health care organizations.

Applicants must propose to serve:

- Rural communities, or
- American Indian or Alaska Native communities (including urban tribal communities).

The funds available under this program are to develop and strengthen local infrastructure and capabilities in communities that have not previously received CSAT grants. Therefore, approximately 75% of funds available will be set aside for applicants that have not previously had a CSAT grant.

For the purpose of this announcement, a rural community is defined as any location outside of an urbanized area (e.g., a central city or cities of more than 50,000 population and a population density exceeding 1000 people per square mile).

In addition, in compliance with the legislative authority for this program (Sec. 509 of the Public Health Service

Act), for-profit organizations are not eligible.

Availability of Funds: It is expected that approximately $1,500,000 will be available in FY 2003 to support approximately 6 grants. Applicants may request up to but not more than $250,000 in total project costs (direct and indirect) for the entire project period. Actual funding levels will depend on the availability of funds to SAMHSA. Grants will be awarded for a project period of up to 18 months.

Period of Support: An award may be requested for a project period of up to 18 months.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Maria E. Burns, Division of Practice and Systems Development, CSAT/SAMHSA, Rockwall II Building, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–7611, E-Mail: *mburns@samhsa.gov*.

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov*.

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

(a) A copy of the face page of the application (Standard form 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: July 17, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–18595 Filed 7–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Recovery Community Services Program (RCSP II).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, *Cooperative Agreement for Recovery Community Services Program (RCSP II) (TI 03–005)*, and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements*, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. number of awards	Project period
Cooperative Agreement for Recovery Community Services Program (RCSP II).	Sept. 10, 2002	$3.0 million	8–9	4 years.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under Section 509 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: http://www.samhsa.gov (Click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) is accepting applications for FY 2003 grants to implement the Recovery Community Services Program (RCSP II). The goal of the Recovery Community Services Program (RCSP II) is to develop, design, deliver, and document peer-driven recovery support services that help prevent relapse and promote long-term recovery from alcohol and drug use disorders.

Eligibility: Applicants may be domestic public and private nonprofit organizations, such as community-based organizations, faith-based organizations, universities, or units of State or local governments or Indian Tribes and tribal organizations. Consortia comprised of various types of eligible organizations are permitted; however, a single organization representing the consortium must be the applicant, the recipient of any award, and the entity responsible for satisfying the grant requirements. If proposing a consortia, a recovery community organization or members of the recovery community, including people in recovery and families/significant others, must have a lead role in the consortium and in the project.

Organizations that were funded under the 2001 Recovery Community Support Program Guidance Applications (TI–01–003) are not eligible to apply for funds in Fiscal Year (FY) 2003.

Availability of Funds: Approximately $3 million will be available for FY 2003. Approximately 8–9 awards will be made in total costs (direct and indirect) of up to $325,000 per year. The total funds available and actual funding levels will depend on the receipt of an appropriation. Annual continuation of the award depends on the availability of funds and progress achieved. Organizations that were funded under the 2001 Recovery Community Support Program Guidance for Applicants (TI–01–003) are not eligible to apply for funds in Fiscal Year (FY) 2003.

Period of Support: An award may be requested for a project period of up to 4 years.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Catherine Nugent, Recovery Community Services Program, Division of State and Community Assistance, CSAT/SAMHSA, Rockwall II Building, Suite 800, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2662, E-Mail: *cnugent@samhsa.gov*.

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov*.

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

(a) A copy of the face page of the application (Standard form 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine

education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under "Assistance with Grant Applications". The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: July 17, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–18593 Filed 7–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Years (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Cooperative Agreements for Strengthening Communities in the Development of Comprehensive Drug and Alcohol Treatment Systems for Youth.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2003 funds for cooperative agreements for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, *Cooperative Agreements for Strengthening Communities in the Development of Comprehensive Drug and Alcohol Treatment Systems for Youth (TI 03–002)*, and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements*, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. number of awards	Project period
Cooperative Agreements for Strengthening Communities in the Development of Comprehensive Drug and Alcohol Treatment Systems for youth.	September 10, 2002	$2.0 million	3–4	5 years.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under the authority of section 514 of the Public Health Service Act, as amended, and subject to the availability of funds. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) is accepting applications for fiscal year (FY) 2003 funds to assist communities to strengthen their drug and alcohol identification, referral and treatment systems for youth.

Eligibility: Public and domestic private non-profit entities such as units of State and local governments; Native Alaskan entities, Indian tribes and tribal organizations; and community-based organizations, including faith-based organizations are eligible to apply.

While the applicant agency does not have to be a direct provider of substance abuse treatment services, substance abuse treatment providers must be involved in the proposed project. SAMHSA believes that only existing experienced and appropriately credentialed providers with demonstrated infrastructure and expertise will be able to provide services and to address emerging and unmet needs of youth and their families in a timely fashion, with state-of-the-art treatment interventions.

The applicant agency and all direct providers of substance abuse treatment services involved in the proposed system of care must be in compliance with all local, city, county and State licensing and accreditation/certification requirements. Licensure/Accreditation/Certification documentation (or documentation supporting why the local/State government does not require Licensure/Accreditation/Certification) must be provided in Appendix 1 of the application.

The applicant agency, if providing substance abuse treatment services directly, and any direct providers of substance abuse treatment services involved in the proposed system of care, must have been providing substance abuse treatment services for a minimum of two years prior to the date of this application. A list of the substance abuse treatment providers and two-year experience documentation must be provided in Appendix 1 of the application.

Applications will be screened by SAMHSA prior to review. Applications that do not meet the following requirements and provide supporting documentation in Appendix 1 will not be reviewed:

- Non-profit status documentation (e.g., articles of incorporation). [This requirement does not apply to public entities.]
- Licensure/Accreditation/Certification documentation.
- Two years of experience in providing substance abuse treatment services documentation.

Availability of Funds: Approximately $2.0 million will be available to fund 3 to 4 cooperative agreements for FY 2003. The average award is expected to range from $500,000 to $750,000 per year in total costs (direct and indirect). Annual awards will be made subject to continued availability of funds to SAMHSA/CSAT and progress achieved by the grantee.

Period of Support: Cooperative Agreements will be awarded for a period of up to 5 years.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Randolph Muck, M.Ed., Team Leader/Public Health Advisor, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6574, E-Mail: *rmuck@samhsa.gov*.

For questions regarding grants management issues, contact: Steve Hudak, Divisions of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov*.

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under "Assistance with Grant Applications". The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: July 17, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–18594 Filed 7–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–32]

Notice of Proposed Information Collection: Comment Requested; Mortagee's Request for Extension of Time

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department or Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 800a, Washington, DC 20410. E-mail *Wayne_Eddins@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Charlene Weaver, Mortgage Servicing Specialist, HUFA, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Charlene r. weaver@hud.gov,* telephone (202) 708–1672 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Request for Extension.

OMB Control Number, if applicable: 2502–0436.

Description of the need for the information and proposed use: In the event of default and foreclosure of an insured mortgage, the mortgagee is entitled to receive insurance benefits plus interest on such benefits from the date of default to the date of payment of the insurance benefits. HUD regulations require that the mortgagee take certain actions within specific time limitations. Failure to meet such limitations may result in curtailment of interest payments. Information collected here allows the Department to evaluate requests for extension of the regulatory time limits within which specific foreclosure processing steps must be taken, as respond to these requests.

Agency form numbers, if applicable: HUD–50012.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is, 3,000, number of respondents is 2000, frequency of response is on occasion, and the hours per response is .15.

Status of the proposed information collection: Reinstatement with change, of previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 16, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–18599 Filed 7–22–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4737–N–05]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability and Application Kit for the Hispanic Serving Institutions Assisting Communities Program (HSIAC)

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below with be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability and Application Kit for the Hispanic Serving Institution Assisting Communities (HSIAC) Program.

OMB Control Number: 2528–0198 (exp. 09/30/02).

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Number: HUD–424, HUD–424–B, HUD–424–D, HUD–2880, HUD–2990, HUD–2991, HUD–2992, HUD–2993, HUD–2994, HUD–3004, HUD–50070, and HUD–50071.

Members of the Affected Public: Hispanic Serving Institutions (HSI) of higher education that meet the statutory definition of an HSI in Title V of the 1998 Amendments to the Higher Education Act of 1965 (Pub. L. 105–244).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following charts details the respondent burden on an annual and semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	40	40	40	1600
Semi-Annual Reports	15	30	6	180
Final Reports	15	15	8	120
Recordkeeping	15	15	5	75
Total			59	1975

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 16, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–18600 Filed 7–22–02; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Science Advisory Board; Renewal

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Science Advisory Board—notice of renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has renewed the Science Advisory Board (Board).

The purpose of the Board is to advise and assist the Director of the Bureau of Land Management on issues pertaining to science and the application of scientific information in the management of public lands and their resources. The Board is comprised of up to nine members from among the following categories: Natural Resource Management, Energy and Minerals, Forestry and Rangeland Management, Biology, Ecology, and Social and Political Science.

FOR FURTHER INFORMATION, CONTACT: Lee Barkow, Bureau of Land Management, Denver Federal Center, Building 50, P.O. Box 25047, Denver, Colorado 80225–0047, telephone 303–236–1142.

Certification

I hereby certify that the renewal of the Science Advisory Board is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the public lands and resources administered by the Bureau of Land Management.

Date Signed: July 11, 2002.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 02–18495 Filed 7–22–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 223R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 2002

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 2002 aggregate production quotas.

SUMMARY: This notice proposes revised 2002 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before August 22, 2002.

ADDRESSES: Send comments or objections to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On December 13, 2001, DEA published a notice of established initial 2002 aggregate production quotas for certain controlled substances in Schedules I and II (66 FR 64456). This notice stipulated that the Deputy Administrator of the DEA would adjust the quotas in early 2002 as provided for in Section 1303 of Title 21 of the Code of Federal Regulations.

The proposed revised 2002 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2002 to provide adequate supplies of each substance for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export

requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 2001 year-end inventories, 2001 disposition data submitted by quota applicants, estimates of the medical needs of the United States, and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes the following revised 2002 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

Basic Class	Previously established initial 2002 quotas	Proposed revised 2002 quotas
Schedule I		
2,5-Dimethoxyamphetamine	12,501,000	12,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2	2
3-Methylfentanyl	4	4
3-Methylthiofentanyl	2	2
3,4-Methylenedioxyamphetamine (MDA)	15	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	15	15
3,4-Methylenedioxymethamphetamine (MDMA)	15	15
3,4,5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2	2
4-Methoxyamphetamine	7	7
4-Methylaminorex	2	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2	2
Acetyl-alpha-methylfentanyl	2	2
Acetyldihydrocodeine	2	2
Acetylmethadol	2	2
Allylprodine	2	2
Alphacetylmethadol	7	7
Alpha-ethyltryptamine	2	2
Alphameprodine	2	2
Alphamethadol	2	2
Alpha-methylfentanyl	2	2
Alpha-methylthiofentanyl	2	2
Aminorex	7	7
Benzylmorphine	2	2
Betacetylmethadol	2	2
Beta-hydroxy-3-methylfentanyl	2	2
Beta-hydroxyfentanyl	2	2
Betameprodine	2	2
Betamethadol	2	2
Betaprodine	2	2
Bufotenine	2	2
Cathinone	9	9
Codeine-N-oxide	52	95
Diethyltryptamine	2	2
Difenoxin	9,000	9,000
Dihydromorphine	1,101,000	1,101,000
Dimethyltryptamine	3	3
Gamma-hydroxybutyric acid	7	7
Heroin	9	9
Hydromorphinol	0	2
Hydroxypethidine	2	2
Lysergic acid diethylamide (LSD)	46	46
Marihuana	840,000	840,000
Mescaline	7	7
Methaqualone	9	9
Methcathinone	9	9
Methyldihydromorphine	0	2
Morphine-N-oxide	52	201
N,N-Dimethylamphetamine	7	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5	5
N-Ethylamphetamine	7	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2	2
Noracymethadol	2	2
Norlevorphanol	52	52
Normethadone	7	7
Normorphine	57	57
Para-fluorofentanyl	2	2
Phenomorphan	0	2

Basic Class	Previously established initial 2002 quotas	Proposed revised 2002 quotas
Pholcodine	2	2
Propiram	415,000	415,000
Psilocybin	2	2
Psilocyn	2	2
Tetrahydrocannabinols	131,000	131,000
Thiofentanyl	2	2
Trimeperidine	2	2
Schedule II		
1-Phenylcyclohexylamine	12	12
1-Piperidinocyclohexanecarbonitrile (PCC)	10	10
Alfentanil	902	902
Alphaprodine	2	2
Amobarbital	451,000	451,000
Amphetamine	13,964,000	13,964,000
Carfentanil	120	120
Cocaine	251,000	251,000
Codeine (for sale)	43,494,000	43,494,000
Codeine (for conversion)	59,051,000	59,051,000
Dextropropoxyphene	136,696,000	136,696,000
Dihydrocodeine	534,000	534,000
Diphenoxylate	708,000	708,000
Ecgonine	51,000	51,000
Ethylmorphine	12	12
Fentanyl	440,000	657,000
Glutethimide	2	2
Hydrocodone (for sale)	23,825,000	25,702,000
Hydrocodone (for conversion)	13,500,000	10,000,000
Hydromorphone	1,409,000	1,409,000
Isomethadone	12	12
Levo-alphacetylmethadol (LAAM)	12	12
Levomethorphan	2	2
Levorphanol	37,000	37,000
Meperidine	10,037,000	9,583,000
Metazocine	1	1
Methadone (for sale)	12,705,000	12,705,000
Methadone Intermediate	19,081,000	19,081,000
Methamphetamine	2,315,000	2,244,000
[275,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,950,000 grams for methamphetamine for conversion to a Schedule III product; and 19,000 grams for methamphetamine (for sale)]		
Methylphenidate	17,618,000	20,967,000
Morphine (for sale)	17,533,000	17,533,000
Morphine (for conversion)	110,774,000	110,774,000
Nabilone	2	2
Noroxymorphone (for sale)	25,000	25,000
Noroxymorphone (for conversion)	6,000,000	6,000,000
Opium	700,000	700,000
Oxycodone (for sale)	40,109,000	30,156,000
Oxycodone (for conversion)	700,000	1,100,000
Oxymorphone	454,000	454,000
Pentobarbital	27,728,000	27,728,000
Phencyclidine	21	21
Phenmetrazine	2	2
Phenylacetone	10,218,000	10,218,000
Secobarbital	1,002	1,002
Sufentanil	2,100	2,100
Thebaine	59,090,000	47,419,000

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a

public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1303.13(c) and 1303.32.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

Dated: July 16, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–18468 Filed 7–22–02; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; Employment Eligibility Verification; Form I–9.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 23, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–9. Immigration Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form was developed to facilitate compliance with Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000,000 responses at 9 minutes (.15 hours) per response and 20,000,000 record keepers at 4 minutes (0.66 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,020,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Room 1600, Washington, DC 20530.

Dated: July 15, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–18488 Filed 7–22–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately 11:30 a.m. on Tuesday, July 16, 2002, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide four appeals from the National Commissioners' decisions pursuant to 28 CFR 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward R. Reilly, Jr., Michael J. Gaines, and John R. Simpson.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: July 17, 2002.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 02–18670 Filed 7–19–02; 9:47 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of a voluntary, electronic survey for the Information Security Oversight Office to determine general patterns of compliance, program strengths, and systematic weaknesses in the National Industrial Security Program (NISP). The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before August 12, 2002, to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: 2002 National Industrial Security Program (NIPS) Survey.

OMB number: 3095–NEW.

Agency form number: N/A.

Type of review: Emergency.

Affected public: Business or other for-profit.

Estimated number of respondents: 5,000.

Estimated time per response: 45 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 3,750 hours.

Abstract: Executive Order 12829, "National Industrial Security Program," requires the Information Security Oversight Office (ISOO) to exercise policy oversight on behalf of the National Security Council (NSC). ISOO's responsibilities include implementing and monitoring the National Industrial Security Program (NISP) and overseeing agency, contractor, licensee, and grantee actions in order to ensure that they comply with Executive Order 12829. This survey will enable ISOO to fulfill its responsibilities to report to the President regarding the status of the NISP.

Dated: July 16, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–18532 Filed 7–22–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel—Notice of Change

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the time of the open session of the Combined Arts Advisory Panel, Multidisciplinary Section (Organizational Capacity category) has been changed. This session will be held from 3:45 p.m. to 4:45 p.m., rather than 4:30 p.m. to 5:30 p.m., on August 6, 2002, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Dated: July 17, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–18605 Filed 7–22–02; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Dominion Nuclear Connecticut, Inc., Millstone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering

issuance of an amendment to Title 10 of the Code of Federal Regulations (10 CFR) Part 50 for Facility Operating License No. NPF–49 issued to Dominion Nuclear Connecticut, Inc. (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 (MP3), located in Waterford, Connecticut. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Final Safety Analysis Report (FSAR) description of the Supplementary Leakage Collection and Release System (SLCRS) operation after a postulated accident. As a result, this revision modifies the licensing basis for the post-accident operation of the SLCRS.

The proposed action is in accordance with the licensee's application dated June 6, 1998, as supplemented by letters dated April 5, 1999; April 7, April 19, July 31, and September 28, 2000; March 19, June 11, September 21, and December 20, 2001.

The Need for the Proposed Action

The proposed action is necessary because the SLCRS is used to maintain a negative pressure relative to atmospheric in the secondary containment by collecting air from the enclosure building and connecting areas, filtering it to remove iodine, and discharging the filtered air to the atmosphere. The licensee has identified potential release pathways from secondary containment to the environment that could bypass the SLCRS filter following a design-basis accident due to non-nuclear safety-grade (NNS) exhaust fan operation after the accident. These additional pathways are not included in the current design-basis accident dose analyses as documented in the MP3 FSAR, therefore making them non-conservative. The proposed action would include the additional pathway in the current design-basis accident dose analyses.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that issuance of the proposed amendment would not have a significant environmental impact. The proposed changes to the FSAR provide documentation of a combination of events not previously included in the FSAR. Based on the licensee's use of acceptable methodologies and assumptions, and staff confirmation of the licensee's dose results, the staff has determined that the licensee's revised design-basis accident radiological consequences analyses for the Loss of Coolant Accident (LOCA) and rod ejection accident, which take into account additional SLCRS bypass release pathways, are acceptable. The analyses show that the radiological consequences of a postulated design-basis LOCA are within 10 CFR part 100 dose limits for offsite doses and 10 CFR part 50, appendix A, General Design Criterion 19, dose limits with regard to control room habitability.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for MP3, dated December 1984.

Agencies and Persons Consulted

On June 12, 2002, the staff consulted with the Connecticut State official, Mr. Michael Firsick of the Connecticut Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 6, 1998, as supplemented by letters dated April 5, 1999; April 7, April 19, July 31, and September 28, 2000; March 19, June 11, September 21, and December 20, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of July 2002.

For the Nuclear Regulatory Commission

Victor Nerses,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18521 Filed 7–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 22, 29, August 5, 12, 19, 26, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of July 22, 2002

There are no meetings scheduled for the Week of July 22, 2002.

Week of July 29, 2002—Tentative

There are no meetings scheduled for the Week of July 29, 2002.

Week of August 5, 2002—Tentative

There are no meetings scheduled for the Week of August 5, 2002.

Week of August 12, 2002—Tentative

Tuesday, August 13, 2002

9:30 a.m. Briefing on Special Review Group Response to the Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–415–1703).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of August 19, 2002—Tentative

Wednesday, August 21, 2002

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Janice Dunn Lee, 301–415–1780).

This meeting will be webcast live at the Web address—http://*www.nrc.gov.*

2 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308).

This meeting will be webcast live at the Web address—http://*www.nrc.gov.*

Week of August 26, 2002—Tentative

There are no meetings scheduled for the Week of August 26, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: David Louis Gamberoni (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By a vote of 4–0 on July 12, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental Issues (Closed—Ex. 9)" be held on July 12, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://*www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 18, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–18727 Filed 7–14–02; 1:16 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 28, 2002, through July 11, 2002. The last biweekly notice was published on July 9, 2002 (67 FR 45560).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 22, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1]

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002.

Continued

which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

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inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

Dominion Nuclear Connecticut, Inc., Docket No. 50–245, Millstone Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: May 13, 2002.

Description of amendment request: The proposed amendment modifies the Millstone Nuclear Power Station, Unit No. 1 (MP1) Permanently Defueled Technical Specifications (TSs) to change selected MP1 radiological related TSs. These changes are due to the revision to part 20 of Title 10 of the Code of Federal Regulations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

It is proposed to revise the Occupational Radiation Exposure Report, Radioactive Effluent Controls Program, and High Radiation Area Specifications in accordance with TSTF [Technical Specification Task Force] travelers 152, 258 and 308, to reflect changes due to the revision to 10 CFR part 20.

These changes do not have an impact on the acceptance criteria for any design basis accident described in the Unit No. 1 Defueled Safety Analysis Report (DSAR).

The changes have no impact on plant equipment operation. Since the changes are administrative or editorial in nature they cannot affect the likelihood or consequences of accidents. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revisions to the Occupational Radiation Exposure Report, Radioactive Effluent Controls Program, and High Radiation Area Specifications in accordance with TSTF travelers 152, 258 and 308 will have no effect on plant operation. Since the proposed changes are solely administrative or editorial in nature, they do not affect plant operation in any way.

The proposed changes do not involve a physical alteration of the plant or change the plant configuration (no new or different type of equipment will be installed). The proposed changes do not require any new or unusual operator actions. The changes do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Since the proposed changes are solely administrative or editorial changes to the TS, they do not affect plant operation in any way. The proposed changes to each unit's technical specifications will revise them to reflect the requirements of the current 10 CFR Part 20, standardize terminology, provide clearer guidance, clarify inconsistencies, remove extraneous information, and result in minor format changes that will not result in any technical changes to current requirements.

The proposed changes have no effect on any safety analyses assumptions and therefore [do] not impact any margins of safety. The proposed changes do not impact any acceptance criteria for the design basis accidents described in the Unit No. 1 DSAR and [do] not impact the consequences of accidents previously evaluated. Therefore, the proposed changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, CT 06385.

NRC Section Chief: Stephen Dembek.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: May 9, 2002.

Description of amendment request: The amendments would revise the licensing basis Steam Generator Tube Rupture sequences for Catawba Nuclear Station, Units 1 and 2. Specifically, it is requested that a certain single failure scenario potentially leading to steam generator overfill be excluded from the design basis steam generator tube rupture analysis using the guidance of Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant Specific Changes to the Licensing Basis."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This proposed amendment requests that steam generator tube rupture sequences involving a failure of 125 VDC Distribution Center EDE [or EDF] be excluded from consideration in the analysis of the design basis steam generator tube rupture event. These sequences involve a single failure that potentially degrades the ability to terminate auxiliary feedwater flow into a ruptured steam generator following a steam generator tube rupture. The inability to terminate auxiliary feedwater flow in a timely manner following a steam generator tube rupture could result in steam generator overfill.

The sequences to be excluded do not involve equipment that can be considered an accident initiator. Implementation of this amendment does not involve any physical changes to the facility. It does not affect basic operation of the facility. The probability of occurrence of a steam generator tube rupture or any other accident previously evaluated will not change following implementation of this amendment.

Elimination of certain sequences from the design basis steam generator tube rupture analysis does not adversely affect the ability to cool the reactor core and prevent core damage following a steam generator tube rupture. The Departure from Nucleate Boiling ratio is not adversely impacted.

The ability to maintain a secondary heat sink and provide water to the Reactor Coolant System for makeup, cooling of the core, and shutdown margin following a design basis steam generator tube rupture is not affected by the changes proposed in this license amendment. Neither fuel damage nor clad damage is expected to occur for the steam generator tube rupture sequences to be eliminated.

Should the ruptured steam generator overfill following a design basis steam generator tube rupture in one of the sequences to be excluded, radioactivity could be released to the environment in increased amounts and over a longer time span than predicted in the safety analysis. The frequency of occurrence of these steam generator tube rupture sequences is low. Should such an event occur, the radiological consequences are expected to be below the guidelines of 10 CFR 100 and General Design Criteria 19. Under nominal conditions, (e.g., nominal atmospheric dispersion factors, nominal levels of radioactivity in the Reactor Coolant System, etc.), radiological consequences of a steam generator tube rupture would be small compared to even the guideline values of the Standard Review Plan, Section 15.6.3. There is no significant adverse effect on the mitigation of consequences following a steam generator tube rupture.

In summary, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment involves elimination of certain sequences from the

design basis steam generator tube rupture analysis. No physical changes to the facility are associated with the proposed amendment.

The sequences to be eliminated involve single failures that could adversely affect the ability to terminate auxiliary feedwater flow to a ruptured steam generator. The failures associated with these sequences are not accident sequence precursors and do not have an adverse impact on any accident initiator.

No new failure modes are created due to implementation of the change proposed in this License Amendment Request. Therefore, operation of the facility in accordance with the changes proposed in this License Amendment Request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

No. One of the standards by which the consequences of the design basis steam generator tube rupture are evaluated is that the Departure from Nucleate Boiling Ratio (DNBR) is greater than the limit value. Should one of the steam generator tube rupture sequences to be excluded occur, the effects relative to steam generator overfill would not be manifested until the Control Room operators attempt to stop the flow of auxiliary feedwater to the ruptured steam generator which is well into the event. The minimum DNBR would occur within seconds after reactor trip. Therefore, the criterion concerning DNBR is met.

The risk evaluation demonstrates that the frequency of steam generator overfill associated with the steam generator tube rupture sequences to be excluded is low (approximately 3.7 E–11 per reactor year per Class 1E Train). Additionally, the frequency of a large early release is shown to be very low (approximately 3.7 E–15 per reactor year per Class 1E Train).

It is concluded that removal of certain steam generator tube rupture sequences from the plant licensing basis as proposed does not constitute a significant reduction in a margin of safety.

Based on this evaluation, it is concluded that operation of the facility in accordance with the proposed amendment constitutes no significant hazard to the public.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: June 7, 2002.

Description of amendment request: The proposed amendments would revise the Updated Final Safety Analysis Report to eliminate credit for the flow path from the spent fuel pool to high pressure injection pump as one source of primary system makeup following a tornado. The proposed amendments would also credit the Standby Shutdown Facility as the assured means of achieving safe shutdown for all three Oconee units following a tornado.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being requested in this amendment request involve (1) the elimination of the Spent Fuel Pool (SFP) as a suction source to a High Pressure Injection [HPI] pump for primary system make-up, and (2) to fully credit the Standby Shutdown Facility (SSF) as the primary assured means of achieving safe shutdown of all three units following a tornado. Following the modification to fully tornado protect the SSF, this facility becomes the station's assured flow path for both primary make-up and secondary decay heat removal for all three units.

Although the probability of a severe tornado strike at the station does not change, new tornado insights gained from a review of the current external event risk analysis have resulted in an enhanced risk model that more accurately characterizes station tornado damage risk. The proposed changes are part of the revised tornado mitigation strategy that provides for an assured, deterministic success path rather than the current strategy that is based on risk insights and diversity for achieving safe shutdown. This effort has resulted in an overall reduction in tornado risk at the station and consequently, would not result in a significant increase in the consequences of an accident previously evaluated.

Other than the fortification of walls of existing structures to harden them against tornado damage, there are no physical changes to the plant structures, systems, or components (SSCs) or operating procedures, nor are there any changes to safety limits or set points. Also, no new radiological release pathways are created.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed in this amendment request do not create the possibility of a new or different kind of accident from any accident previously evaluated. The initial placement of the SFP-HPI flow path into the LB (Licensing Bases) was based on 1989 risk analyses that showed a potential need for primary make-up due to inventory losses from a reactor coolant pump (RCP) seal loss-of-cooling accident (LOCA). The upgrade of the RCP seals has significantly reduced the probability of a seal LOCA and subsequently, alleviated the initial reliance on the SFP–HPI flow path for primary make-up. If multi-unit primary make-up and decay heat removal are required following an event, the tornado protected SSF RB[C]MU (Reactor Coolant Makeup) or SSF ASW (Auxiliary Service Water) pumps have the capabilities to perform these functions for all three units.

Other than the fortification of walls of existing structures to harden them against tornado damage, there are no physical changes to the plant SSCs or operating procedures. There are no new hazardous materials or potential missiles. It does not introduce the possibility of any new or different malfunctions. No safety limits or set points are changed.

3. Involve a significant reduction in a margin or safety.

As mentioned previously, new tornado insights gained from a review of the current external event risk analysis have resulted in an enhanced risk model that more accurately characterizes station tornado damage risk. The proposed changes are part of the revised tornado mitigation strategy that provides for an assured, deterministic success path rather than a strategy that is based on risk insights and diversity for achieving safe shutdown.

There are no safety limit, set point, design parameters, or operating procedure changes required. The integrity of the fuel cladding, reactor coolant system, and containment are preserved. Thus, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 14, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from

the current limit of "* * * up to 24 hours to permit the completion of the surveillance when the allowable outage time limits of the ACTION requirements are less than 24 hours" to "* * * up to 24 hours or up to the limit of the specified interval, whichever is greater." In addition, the following requirement would be added to SR 4.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated May 14, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO (Limiting Condition for Operation) is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 12, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated June 12, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a

standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: May 31, 2001.

Description of amendment request: The proposed amendments would change Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the proposed change modifies TS Surveillance Requirement (SR) 3.6.1.3.8 to reduce to number of excess flow check valves (EFCVs) required to be tested every 24 months. The proposed SR will require that a representative sample of reactor instrumentation line EFCVs actuate to the isolation position on an actual or simulated instrumentation line break signal every 24 months. All reactor instrumentation line EFCVs will be tested at least once every 10 years (nominal). The proposed change implements Technical Specification Task Force Traveler 334 (TSTF–334), "Relaxed Surveillance Frequency for Excess Flow Check Valve Testing," Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to LaSalle County Station, Unit 1 and Unit 2 Technical Specifications (TS) modifies TS Surveillance Requirement (SR) 3.6.1.3.8 to reduce the number of excess flow check valves (EFCVs) required to be tested every 24 months. The proposed SR will require that a representative sample of reactor instrumentation line EFCVs actuate to the isolation position on an actual or simulated instrumentation line break signal every 24 months. All reactor instrumentation line EFCVs will be tested at least once every 10 years (nominal).

The performance of EFCV surveillance testing is not a precursor to any accident previously evaluated and is not related to the frequency of instrument line failures. Thus, the proposed change to modify the test frequency associated with EFCV surveillance does not have any effect on the probability of an accident previously evaluated.

The performance of the EFCV surveillance testing does provide assurance that the EFCV will perform as designed. The LaSalle County Station radiological dose assessment for an instrument line break is documented in the LaSalle County Station UFSAR Table 15.6–4, "Instrument Line Break Radiological Effects." The assessment does not credit performance of the EFCV to limit instrument line flows during an assumed break. These estimated doses are significantly below the regulatory dose limits listed in 10 CFR 100, "Reactor Site Criteria." The proposed change does not change the assumptions or the estimated doses associated with a LaSalle County Station instrument line break. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change modifies TS SR 3.6.1.3.8 to reduce the number of excess flow check valves (EFCVs) required to be tested every 24 months while requiring all EFCVs to be tested at least once every 10 years (nominal). The proposed change does not affect the performance of any LaSalle County Station structure, system, or component credited with mitigating any accident previously evaluated. The proposed change to modify the surveillance will not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed change for LaSalle County Station, Units 1 and 2, implements Technical Specification Task Force Traveler 334 (TSTF–334), "Relaxed Surveillance Frequency for Excess Flow Check Valve Testing," Revision 2. TSTF–334 notes that its implementation is only allowed for plants for which General Electric Nuclear Energy Topical Report NEDO–32977–A, "Excess Flow Check Valve Testing Relaxation," is applicable. In addition, an EFCV performance criteria and basis must be developed to ensure that the corrective action program can provide meaningful feedback for appropriate corrective actions.

LaSalle County Station, in accordance with Topical Report NEDO–32977–A, has performed a plant-specific radiological dose assessment for an instrument line break, EFCV failure rate analysis, release frequency initiated by an instrument line break analysis and has proposed a corrective action program

to ensure continued EFCV performance. The result of the assessment and analyses meets the overall requirements to allow implementation TSTF–334, Revision 2.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: June 28, 2002.

Description of amendment request: The proposed amendment would revise the Unit 1 Operating License and Technical Specifications to increase the licensed power level to 3304 megawatts thermal (MWt), or 1.66 percent greater than the current licensed power level of 3250 MWt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated—In support of this measurement uncertainty recapture power uprate, a comprehensive evaluation was performed for nuclear steam supply system (NSSS) and balance of plant (BOP) components and analyses that could be affected by this change. A power calorimetric uncertainty calculation was performed, and the effect of increasing plant power by 1.66 percent on the plant's design and licensing basis was evaluated. The result of these evaluations is that all plant components will continue to be capable of performing their design function at an uprated core power of 3304 megawatts thermal (MWt). In addition, an evaluation of the accident analyses demonstrates that applicable analysis acceptance criteria continue to be met. No accident initiators are affected by this uprate and no challenges to any plant safety barriers are created by this change.

Consequences of an Accident Previously Evaluated—This change does not affect the release paths, the frequency of release, or the source term for release for any accidents previously evaluated in the Updated Final Safety Analysis Report. Structures, systems, and components (SSC) required to mitigate transients remain capable of performing their design functions, and thus were found acceptable. The reduced uncertainty in the feedwater flow input to the power calorimetric measurement ensures that applicable accident analyses acceptance criteria continue to be met, to support operation at a core power of 3304 MWt. Analyses performed to assess the effects of mass and energy remain valid. The source terms used to assess radiological consequences have been reviewed and determined to bound operation at the uprated condition.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed changes. The installation of the Caldon Leading Edge Flow Meter (LEFM) CheckPlus™ system has been analyzed, and failures of this system will have no adverse effect on any safety-related system or any SSCs required for transient mitigation. SSCs previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system.

This change does not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. Operating at a core power level of 3304 MWt does not create any new accident initiators or precursors. The reduced uncertainty in the feedwater flow input to the power calorimetric measurement ensures that applicable accident analyses acceptance criteria continue to be met, to support operation at a core power of 3304 MWt. Credible malfunctions continue to be bounded by the current accident analysis of record or re-analysis demonstrates that applicable acceptance criteria continue to be met.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margins of safety associated with this Measurement Uncertainty Recapture Uprate Program are those pertaining to core power. This includes those associated with the fuel cladding, Reactor Coolant System (RCS) pressure boundary, and containment barriers. A comprehensive engineering review was performed to evaluate the 1.66 percent increase in the licensed core power from 3250 MWt to 3304 MWt. The 1.66 percent increase required that revised NSSS design thermal and hydraulic parameters be established, which then served as the basis for all of the NSSS analyses and evaluations. This engineering review concluded that no design transient modifications are required to accommodate the revised NSSS design conditions. NSSS systems and components were evaluated and it was concluded that the NSSS equipment has sufficient margin to accommodate the 1.66 percent power uprate. NSSS accident analyses were either evaluated or revised for the 1.66 percent power uprate. In all cases the evaluations and re-analyses demonstrate that the applicable analyses acceptance criteria continue to be met. As such, the margins of safety continue to be bounded by the current analyses of record for this change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: June 28, 2002.

Description of amendment request: The proposed amendment would delete requirements from the Technical Specifications (TSs) and, as applicable, other elements of the licensing bases to maintain a Post-Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to, or included in, the TSs for nuclear power reactors currently licensed to operate. However, lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained

through other means, or is of little use in the assessment and mitigation of accident conditions.

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the NSHC determination in its application dated June 28, 2002. The NSHC determination is restated below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in [a] margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 7, 2002.

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant Technical Specification (TS) Sections for administrative changes: (1) Section 1—"Definitions," (2) Section 2—"Safety Limits and Limiting Safety System Settings," (3) Section 5—"Design Features," and (4) Section 6—"Administrative Controls." The administrative changes include capitalizing defined words, formatting section titles, renumbering pages and correcting miscellaneous grammar and punctuation errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not alter the intent of the TS. Reformatting the TS sections and correcting typographical, grammatical and format inconsistencies are administrative in nature. There is no impact on accident initiators or plant equipment, and therefore does not affect the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a change to the physical plant or operations. Since these are administrative changes they do not contribute to accident initiation. Therefore, the proposed changes do not produce a new accident scenario or produce a new type of equipment malfunction.

3. Involve a significant reduction in the margin of safety.

Since these are administrative changes, they do not involve a significant reduction in the margin of safety. The proposed changes do not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: L. Raghavan.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: June 27, 2002.

Description of amendment request: SCE&G is proposing a revision to the Technical Specifications (TS) for the Virgil C. Summer Nuclear Station (VCSNS) to add an Allowed Outage Time (AOT) to Table 3.3–3, Engineered Safety Features Actuation System (ESFAS) instrumentation, Action Statement 16.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

South Carolina Electric & Gas Company (SCE&G) has evaluated the proposed changes to the VCSNS TS described above against the Significant Hazards Criteria of 10 CFR 50.92 and has determined that the changes do not involve any significant hazard. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The addition of an ACTION STATEMENT and the addition of an AOT (and its associated actions if not met) for a TS action statement are neither an accident initiator or precursor. The ESFAS actuates in response to an accident and has a mitigating function. Increasing the TS requirements for specific TS instrument loops provides additional assurance that the channels will be capable of performing their design function in the event of a DBA [design-basis accident]. The ability of the operations staff to respond to an evaluated accident or plant transient will not be hampered. This change provides conservative requirements to assure that the design basis of the plant is maintained.

Addition of conservative changes to the Engineered Safety Feature Actuation System Instrumentation [does] not contribute to the initiation of any accident evaluated in the FSAR [Final Safety Analysis Report]. Supporting factors are as follows:

—The changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. These changes are conservative and consistent with the Standard Technical Specifications, NUREG–1431, Rev. 2.

There are no deletions from the Technical Specifications made by these changes, nor relaxation in any applicability, action, or surveillance requirements.

—Overall plant performance and operation [are] not altered by the proposed changes.

There are to be no plant hardware changes as a result of this proposed change and only minimal procedural changes.

Therefore, since the Engineered Safety Feature Actuation System Instrumentation [is] treated more conservatively, the probability of occurrence or consequences of an accident evaluated in the VCSNS FSAR will be no greater than the original design basis of the plant.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. Additionally, the addition of an ACTION STATEMENT and an AOT with conservative requirements are intended to assure that the plant is in a safe configuration and can meet accident analyses assumptions. These changes are conservative and consistent with the Improved Technical Specifications, NUREG–1431, Rev. 2. No new accident initiator mechanisms are introduced since:

—No physical changes to the Engineered Safety Feature Actuation System Instrumentation are made.

—No deletions from the Technical Specifications are made.

—No relaxation in any applicability, action, or surveillance requirements [is] made.

Since the safety and design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new accident scenarios have been created. Therefore, the types of accidents defined in the FSAR continue to represent the credible spectrum of events to be analyzed [that] determine safe plant operation.

3. Does this change involve a significant reduction in margin of safety?

The proposed change requires that an instrument channel for an Engineered Safety Feature [remains] operable or be restored to operability within a reasonable time period, otherwise a controlled shutdown is required. This conforms to the safety analysis where the plant and its systems, structures and components must be capable of performing the safety function while a DBA is occurring, in the presence of a worst case single failure.

This is not a reduction in a margin of safety, since it restores the margin that was designed into the plant.

The proposed changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. These changes are conservative and consistent with the Standard Technical Specifications, NUREG–0452, Rev. 5.

The proposed changes impose more restrictive operating limitations, and their use provides increased assurance that the Engineered Safety Feature Actuation System Instrumentation remains operable. Since the changes are conservative additions, it is concluded that the changes do not involve a significant reduction in the margin of safety. This is not a reduction in a margin of safety, since it restores the margin that was designed into the plant.

Pursuant to 10 CFR 50.91, the preceding analyses [provide] a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of amendment request: May 8, 2002.

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Figure 2.1.1–1, "Reactor Core Safety Limits;" Table 3.3.1–1, "Reactor Trip System Instrumentation;" and the associated Bases B 2.1.1 and B 3.3.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change can be implemented without adverse impact to the safety analyses and plant systems. Implementation of the revised VEGP OTΔT [Overtemperature Delta Temperature] and OPΔT [Overpower Delta temperature] reactor trip setpoints will continue to ensure that fuel melt and departure from nucleate boiling (DNB) criteria are met. In addition, the setpoint changes will improve operating margin to the OTΔT and OPΔT reactor trip setpoints. The setpoints provide reactor protection and are not event initiators and therefore do not affect the probability of occurrence of an accident previously evaluated.

There is no change in the radiological consequences of any accident since the fuel clad, the reactor coolant system pressure boundary, and the containment are not changed, nor will the integrity of these physical barriers be challenged. In addition, the proposed change will not change, degrade, or prevent any reactor trip system actuations.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change can be implemented without adverse impact to the safety analyses and plant systems. Implementation of the revised VEGP OTΔT and OPΔT reactor trip setpoints will continue to ensure that fuel melt and departure from nucleate boiling (DNB) criteria are met. In addition, the setpoint changes will improve operating margin to the OTΔT and OPΔT reactor trip setpoints. The revised OTΔT and OPΔT reactor trip setpoints would not create any new transients nor would they invalidate the OTΔT and OPΔT design bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

The proposed change can be implemented without adverse impact to the safety analyses and plant systems. Implementation of the revised VEGP OTΔT and OPΔT reactor trip setpoints will continue to ensure that fuel melt and departure from nucleate boiling (DNB) criteria are met. In addition, the setpoint changes will improve operating margin to the OTΔT and OPΔT reactor trip setpoints. The margin of safety provided by the Technical Specifications is not significantly affected because the proposed changes are based on the same accident acceptance limits, i.e., the OTΔT and OPΔT design bases continue to be met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: John A. Nakoski.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: June 17, 2002. This application supercedes the December 6, 2001, application that was noticed in the Federal Register on February 5, 2002 (67 FR 5340).

Description of amendment request: The proposed amendment would revise the following Technical Specifications (TSs): (1) TS 3.3.6, "Containment Purge Isolation Instrumentation;" (2) TS 3.3.7, "Control Room Emergency Ventilation System (CREVS) Instrumentation;" (3) TS 3.3.8, "Emergency Exhaust System (EES) Actuation Instrumentation;" and (4) TS 3.9.4, "Containment Penetrations." The revisions to the TSs affect limiting conditions for operation (LCOs), the required actions for LCOs, surveillance requirements, and tables specifying requirements on instrumentation. The revisions to the TSs are to allow the equipment hatch and the emergency air lock to be open in refueling outages during core alterations and/or movement of irradiated fuel within containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will allow the containment equipment hatch [and the emergency air lock] to be open during CORE ALTERATIONS and movement of irradiated fuel assemblies inside containment. The status of the containment equipment hatch or the emergency air lock during refueling operations has no [e]ffect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a fuel handling accident inside containment with an open containment hatch [or emergency air lock] are bounded by the current analysis described in the FSAR [Final Safety Analysis Report] and the probability of an accident is not affected by the status of the containment equipment hatch [or emergency air lock], the proposed change[s] [do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create any new failure modes for any system or component, nor do they adversely affect plant operation. No new equipment will be added and no new limiting single failures will be created. The plant will continue to be operated within the envelope of the existing safety analysis.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The previously determined radiological dose consequences for a fuel handling accident inside containment with the [equipment hatch or the] air lock doors open remain bounding for the proposed changes. These previously determined dose consequences were determined to be well within the limits of 10 CFR 100 and they meet the acceptance criteria of SRP [NRC Standard Review Plan] section 15.7.4 and GDC [NRC General Design Criterion] 19.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: June 17, 2002.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.3.1, "Reactor Trip System (RTS) Instrumentation," by adding Surveillance Requirement (SR) 3.3.1.16 to Function 3 of TS Table 3.3.1–1. The amendment would add a requirement to verify the reactor trip system response times are within limits every 18 months on a staggered test basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes.

The design of the RTS instrumentation, specifically the positive flux rate trip (PFRT) function, will be unaffected. The reactor protection system will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The proposed change imposes additional surveillance requirements to assure safety-related structures, systems, and components are verified to be consistent with the safety analysis and licensing basis. In this specific case, a response time verification requirement will be added to the PFRT function.

The proposed change will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges

imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed change will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR [final safety analysis report].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This change will not affect the normal method of plant operation or change any operating parameters. No performance requirements will be affected; however, the proposed change does impose additional surveillance requirements. These additional requirements are consistent with assumptions made in the safety analysis and licensing basis.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

The safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis is changed. The imposition of additional surveillance requirements increases the margin of safety by assuring that the affected safety analysis assumptions on equipment response time are verified on a periodic frequency.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 27, 2002. This application revises the application of September 27, 2001, that was originally noticed in the **Federal Register** on October 17, 2001 (66 FR 52805).

Description of amendment request: The proposed amendment would revise Section 5.3.1.1 of the Technical Specifications to state new education and experience eligibility requirements for operator license applicants.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program. [The change conforms] to the current requirements of 10 CFR 55.

Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training. WCNOC's [Wolf Creek Nuclear Operating Corporation's] licensed operator training program is accredited by INPO [Institute for Nuclear Power Operations] and is based on a systems approach to training. The proposed TS change takes credit for the INPO accreditation of the licensed operator training program. The TS requirements for all other unit staff qualifications remain unchanged.

Therefore, the proposed change does not involve a signification increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program and to conform to the revised 10 CFR 55.

As noted above, although licensed operator qualifications and training may have an indirect impact on the possibility of a new or different kind of accident from any accident previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised [10 CFR 55] rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and based on a systems approach to training. As previously noted, WCNOC's licensed operator training program is accredited by INPO and is based on a systems approach to training. The proposed TS change takes credit for the INPO accreditation of the licensed operator training program. The TS requirements for all other unit staff qualifications remain unchanged.

Additionally, the proposed TS change does not affect plant design, hardware, system operation, or procedures. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS change is an administrative change to clarify the current requirements applicable to licensed operator qualifications and licensed operator training program. This change is consistent with the requirements of 10 CFR 55. The TS qualification requirements for all other unit staff remain unchanged.

Licensed operator qualifications and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR 55 [rule], determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training. As noted previously, WCNOC's licensed operator training program is accredited by INPO and is based on a systems approach to training.

The NRC has concluded, as stated in NUREG–1262, "Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses," that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining an INPO accredited, systems approach based licensed operator training program is equivalent to maintaining an NRC approved licensed operator training program which conform with applicable NRC Regulatory Guides or NRC endorsed industry standards. The margin of safety is maintained by virtue of maintaining an INPO accredited licensed operator training program.

In addition, the NRC has recently published NRC Regulatory Issue Summary 2001–01, "Eligibility of Operator License Applicants," dated January 18, 2001, "to familiarize addresses with the NRC's current guidelines for the qualification and training

of reactor operator (RO) and senior operator (SO) license applicants." This document again acknowledges that the INPO National Academy for Nuclear Training (NANT) guidelines for education and experience, outline acceptable methods for implementing the NRC's regulations in this area.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: August 24, 2001, as supplemented June 11, 2002.

Brief description of amendment: The amendment revises the control room emergency filtration system requirements in Technical Specification 3.7.3, "Control Room Emergency Filtration (CREF) System," based on NRC-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Traveler TSTF–287, Revision 5, "Ventilation System Envelope Allowed Outage Times."

Date of issuance: June 28, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 149.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36929). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 20, 2001.

Brief description of amendments: The amendments revised the Technical Specifications 5.6.5.b to eliminate the revision number and dates from the list of topical reports that contain the analytical methods used to determine the core operating limits.

Date of issuance: July 2, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 199 and 192.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10010). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 2, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 20, 2001.

Brief description of amendments: The amendments revised the Technical Specification 5.6.5.b to eliminate the revision number and dates from the list of topical reports that contain the analytical methods used to determine the core operating limits.

Date of issuance: July 10, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 203 and 184.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2921). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 10, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: December 20, 2001.

Brief description of amendments: The amendments revised the Technical Specifications 5.6.5.b to eliminate the revision number and dates from the list of topical reports that contain the analytical methods used to determine the core operating limits.

Date of Issuance: July 9, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 326, 326 and 327.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10011).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 9, 2002.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: February 6, 2002, as supplemented by letter dated June 7, 2002.

Brief description of amendment: The amendment relocates the requirements for Main Steam Isolation Valve isolations on certain area temperatures from Technical Specification Section 3.3.6.1, "Primary Containment and Drywell Isolation Instrumentation," to the Technical Requirements Manual.

Date of issuance: July 11, 2002.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 124.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12601). The June 7, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: March 31, 1999, as supplemented by letters dated June 1, July 14, and October 14, 1999, February 11, April 4 and 13, June 30, July 31, September 12 and 13, and October 23, 2000, May 31, October 18, 2001, and February 6, March 27, April 26, and June 11 and 12, 2002 (two letters).

Brief description of amendment: The amendment provides for the full conversion of the Current Technical Specifications to the Improved Technical Specifications.

Date of issuance: July 3, 2002.

Effective date: As of the date of issuance to be implemented within 120 days.

Amendment No.: 274.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 8, 1999, (64 FR 60584), December 13, 1999, (64 FR 69574) and November 28, 2001 (66 FR 59595). The letters subsequent to the November 28, 2001, **Federal Register** notice did not change the technical content of the **Federal Register** notices, and did not change the scope of the proposed action. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 3, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant (KNPP), Kewaunee County, Wisconsin

Date of application for amendment: April 17, 2002.

Brief description of amendment: The amendment revises the KNPP Technical Specification (TS) 6.3, "Plant Staff Qualifications," to change the title of the Superintendent Plant Radiation Protection to the Radiation Protection Manager. In addition, the licensee informed the Nuclear Regulatory Commission staff of its intention to reformat TS 6.3 using MicroSoft Word format.

Date of issuance: June 28, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 161.

Facility Operating License No. DPR–43: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36932). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: August 7, 2001, as supplemented December 14, 2001 and April 1, 2002.

Brief description of amendment: Revised the Technical Specifications (TSs) to add a new condition and associated actions to Limiting Condition for Operation 3.8.1, "AC Sources Operating," to allow one diesel generator to be out of service for 14 days.

Date of issuance: July 1, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 39.

Facility Operating License No. NPF–90: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** September 19, 2001 (66 FR 48292). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 12th of July, 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18242 Filed 7–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Correction

The July 9, 2002, **Federal Register** contained a "Biweekly Notice; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing." This notice corrects the notice published on July 9, 2002, (67 FR 45560). The last paragraph on page 45560 reads as follows: "By July 25, 2002, the licensee may file a request for a hearing with * * *". It should read, "By August 8, 2002, the licensee may file a request for a hearing with * * *" to correct the hearing date to 30 days.

Dated at Rockville, Maryland, this 17th day of July 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18522 Filed 7–22–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension:

Rule 17f–5, SEC File No. 270–259,

OMB Control No. 3235–0269
Rule 17f–7, SEC File No. 270–470, OMB Control No. 3235–0529
Form N–17D–1, SEC File No. 270–231, OMB Control No. 3235–0229
Rule 18f–1 and Form N–18F–1, SEC File No. 270–187, OMB Control No. 3235–0211
Rule 19b–1, SEC File No. 270–312, OMB Control No. 3235–0354

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") requests for extension of the previously approved collections of information discussed below.

Rule 17f–5 under the Investment Company Act of 1940s [15 U.S.C. 80a] ("Investment Company Act" or "Act") governs the custody of the assets of registered management investment companies ("funds") with custodians outside the United States. The Commission amended the rule in 1997 to modernize its conditions. In 1998, representatives of funds and bank custodians informed the Commission that some conditions of the rule presented serious problems for the use of foreign securities depositories. They asserted that many funds had been unable to establish foreign custody arrangements under the amendments because of significant unforeseen problems with the evaluation and use of depositories.

In 1999, the Commission proposed a new rule 17f–7 and amendments to rule 17f–5, which together would permit funds to maintain their assets in foreign securities depositories based on conditions that reflect the operations and role of these depositories.[1] Rule 17f–7, adopted in 2000, established new provisions for the use of foreign depositories.[2] The amendments to rule 17f–5, adopted in 1999, removed custody arrangements with foreign securities depositories from rule 17f–5.[3] The amendments did not substantively change the requirements of the rule, including requirements that call for the "collection of information" within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501—3502]. These requirements continue to apply when a registered management investment company maintains its assets with a foreign bank custodian. In general, the amendments to rule 17f–5 reduced its information collection burdens by removing depository arrangements from its scope, while new rule 17f–7 added new burdens.

The requirements of amended rule 17f–5 that may call for the collection of information are substantially the same as under the rule prior to the amendments. The fund's board of directors must find that it is reasonable to rely on each delegate it selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f–5 are intended to provide protection for fund assets maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,[4] and is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate action if developing custody risks may threaten fund assets.

The Commission's staff estimates that each year, approximately 160 registrants[5] could be required to make an average of one response per registrant under rule 17f–5, requiring approximately 2 hours of director time per response, to make the necessary findings concerning foreign custody managers. The total annual burden associated with these requirements of the rule would be up to approximately 320 hours (160 registrants × 2 hours per registrant). The staff further estimates that during each year, approximately 15 global custodians[6] would be required to make an average of 5 responses per custodian concerning the use of foreign custodians other than depositories, requiring approximately 1000 total hours annually per custodian.[7] The total annual burden associated with these requirements of the rule would be approximately 15,000 hours (15 global custodians × 1000 hours per global custodian). Therefore, the total annual burden of all collection of information requirements of rule 17f–5 is estimated to be up to 15,320 hours (320 + 15,000). The total annual cost of burden hours is estimated to be $910,000 (320 hours × $500/hour for director time, plus 15,000 hours × $50/hour of professional time).

In 1999, the Commission proposed a new rule 17f–7 and amendments to rule 17f–5, which together would permit funds to maintain their assets in foreign

[1] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–23815 (April 29, 1999) [64 FR 24489 (May 6, 1999)] ("Proposing Release").

[2] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–24424 (April 27, 2000) [65 FR 25630 (May 3, 2000)] ("Adopting Release").

[3] *Id.*

[4] See section 17(f) of the Investment Company Act [15 U.S.C. 80a–17(f)].

[5] This figure is an estimate of the number of new funds each year, based on data reported by funds in 2001 on Form N–1A and Form N–2 [17 CFR 274.101]. In practice, not all funds will use foreign custody managers, and the actual figure may be smaller.

[6] This estimate is the same used in connection with the adoption of the amendments to rule 17f–5 and of rule 17f–7 in 1999, based on staff review of custody contracts and other research. The number of global custodians has not changed significantly since 1999.

[7] These estimates are based on a survey of global custodians.

securities depositories based on conditions that reflect the operations and role of these depositories.[8] Rule 17f–7, adopted in 2000, established new provisions for the use of foreign depositories.[9] The amendments to rule 17f–5, adopted in 1999, removed custody arrangements with foreign securities depositories from rule 17f–5.[10] The amendments did not substantively change the requirements of the rule, including requirements that call for the "collection of information" within the meaning of the Paperwork Reduction Act of 1995. These requirements continue to apply when a registered management investment company maintains its assets with a foreign bank custodian. In general, the amendments to rule 17f–5 reduced its information collection burdens by removing depository arrangements from its scope, while new rule 17f–7 added new burdens.

Rule 17f–7 contains some "collection of information" requirements. An eligible securities depository has to meet minimum standards for a depository. The fund or its investment adviser generally determines whether the depository complies with those requirements based on information provided by the fund's primary custodian (a bank that acts as global custodian). The depository custody arrangement also must meet certain conditions. The fund or its adviser must receive from the primary custodian (or its agent) an initial risk analysis of the depository arrangements, and the fund's contract with its primary custodian must state that the custodian will monitor risks and promptly notify the fund or its adviser of material changes in risks. The primary custodian and other custodians also are required to agree to exercise reasonable care.

The collection of information requirements in rule 17f–7 are intended to provide workable standards that protect funds from the risks of using securities depositories while assigning appropriate responsibilities to the fund's primary custodian and investment adviser based on their capabilities. The requirement that the depository meet specified minimum standards is intended to ensure that the depository is subject to basic safeguards deemed appropriate for all depositories. The requirement that the fund or its adviser must receive from the primary custodian (or its agent) an initial risk analysis of the depository arrangements, and the fund's contract with its primary custodian must state that the custodian will monitor risks and promptly notify the fund or its adviser of material changes in risks, is intended to provide essential information about custody risks to the fund's investment adviser as necessary for it to approve the continued use of the depository. The requirement that the primary custodian agree to exercise reasonable care is intended to provide assurances that its services and the information it provides will meet an appropriate standard of care.

The staff estimates that approximately 900 investment advisers[11] would make an average of 5 responses annually per adviser under the rule, requiring a total of approximately 20 hours for each adviser. Each of these "responses" by an adviser may address depository compliance with the minimum requirements of the rule, and require the adviser to review risk analyses or notifications of material changes in the risks related to a depository. The total annual burden associated with these requirements of the rule would be approximately 18,000 hours (900 advisers × 20 hours per adviser). The staff further estimates that during each year, approximately 15 global custodians would make an average of 5 responses per custodian under the rule, requiring approximately 1000 hours annually per custodian.[12] The total annual burden associated with these requirements of the rule would be approximately 15,000 hours (15 custodians × 1000 hours). Therefore, the staff estimates that the total annual burden associated with all collection of information requirements of the rule would be 33,000 hours (18,000 + 15,000). The total annual cost of burden hours is estimated to be $1,650,000 (33,000 hours ×num; $50/hour of professional time).

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

Section 17(d) [15 U.S.C. 80a–17(d)] of the Investment Company Act authorizes the Commission to adopt rules that protect investment companies and their security holders from overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan. Rule 17d–1 under the Act [17 CFR 270.17d–1] prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Subparagraph (d)(3) of the rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing ("investments") made by a small business investment company ("SBIC") and an affiliated bank, provided that reports about the investments are made on forms the Commission may prescribe. Rule 17d–2 [17 CFR 270.17d–2] designates Form N–17D–1 as the form for reports required by rule 17d–1(3).

SBIC's and their affiliated banks use form N–17D–1 to report any contemporaneous investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have the potential for self dealing and other forms of overreaching by affiliated persons at the expense of shareholders.

Form N–17D–1 requires SBIC's and their affiliated banks to report identifying information about the small business concern and the affiliated bank. The report must include, among other things, the SBIC's and affiliated bank's outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the affiliated bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of the affiliated person of the SBIC or the affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration the affiliated person has received or will receive.

Up to seven SBIC's may file the form in any year.[13] The Commission estimates the burden of filling out the form is approximately one hour per response and would likely be completed by an accountant or other professional. Based on past filings, the Commission estimates that no more than one SBIC is likely to use the form each year. The

[8] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–23815 (April 29, 1999) [64 FR 24489 (May 6, 1999)] ("Proposing Release").

[9] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–24424 (April 27, 2000) [65 FR 25630 (May 3, 2000)] ("Adopting Release").

[10] Id.

[11] This figure is based on an estimate by the staff that there are approximately 3,650 registered funds within approximately 900 fund complexes. A fund complex is a group of funds with the same adviser.

[12] These estimates are based on a survey of global custodians.

[13] As of December 31, 2001, seven SBICs were registered with the Commission.

total annual burden of filling out the form is one hour and the total annual cost is approximately $38.[14] The Commission will not keep responses on Form N–17D–1 confidential.

Rule 18f–1 [17 CFR 270.18f–1] enables a registered open-end management investment company that may redeem its securities in-kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act [15 U.S.C. 80a–18(f)]. A fund relying on the rule must file Form N–18F–1 [17 CFR 274.51] to notify the Commission of this election. The Commission staff estimates that approximately 70 funds file Form N–18F–1 annually, and that each response takes approximately one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 70 hours.

The collection of information required by rule 18f–1 is necessary to obtain the benefits of the rule. Responses to the collection of information will not be kept confidential.

Rule 19b–1 is entitled "Frequency of Distribution of Capital Gains." The rule prohibits registered investment companies from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b–1(c) permits unit investment trusts ("UITs") engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, if (i) the capital gains distribution falls within one of several categories specified in the rule [rule 19b–1(c)(1)] and (ii) the distribution is accompanied by a report to the unit holder that clearly describes the distribution as a capital gains distribution [rule 19b–1(c)(2)] (the "notice requirement"). The purpose of this notice requirement is to ensure that unit holders understand that the source of the distribution is long-term capital gains.

Rule 19b–1(e) permits a fund to apply for permission to distribute long-term capital gains more than once a year if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution. An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application. The Commission uses the information required by rule 19b–1(e) to facilitate the processing of requests from funds for authorization to make a distribution that would not otherwise be permitted by the rule.

The Commission staff estimates that the time required to prepare an application under rule 19b–1(e) is approximately four hours. The staff estimates that on average one fund files one application per year under this rule. Based on these estimates, the total paperwork burden is 4 hours for paragraph (e) of rule 19b–1. The Commission staff estimates that there is no hour burden associated with rule 19b–1(c).

There is, however, a cost burden associated with rule 19b–1(c). The staff estimates that there are approximately 8,800 fixed-income UITs, which may rely on rule 19b–1(c) to make capital gains distributions. We estimate that on average each of these UITs relies on rule 19b–1(c) once a year to make a capital gains distribution.[15] We estimate that a UIT incurs a cost of $50, which is encompassed within the fee the UIT pays its trustee, to prepare a notice for a capital gains distribution under rule 19b–1(c)(2). Because the notices are mailed with the capital gains distribution, there is no separate mailing cost. Thus, the staff estimates that the notice requirement imposes an annual cost on UITs of approximately $440,000.

Based on these calculations, the total number of respondents for rule 19b–1 is estimated to be 8,801 (8,800 UIT portfolios + 1 fund filing an application under rule 19b–1(e)), the total hour burden is estimated to be 4 hours, and the total cost burden is estimated to be $440,000.

The collections of information required by 19b–1(c) and 19b–1(e) are necessary to obtain the benefits described above. Responses will not be kept confidential.

These estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 16, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18565 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

[14] Commission staff estimate that the annual burden would be incurred by accounting professionals with an average hourly wage rate of $37.50 per hour. *See* Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry—2000* (2000) (reporting median salary paid to senior accountants outside New York).

[15] The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25665 ; 812–12748]

MassMutual Institutional Funds, et al.; Notice of Application

July 17, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") to amend a prior order that granted an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to amend a prior order ("Prior Order") that permits them to enter into and materially amend sub-advisory agreements without shareholder approval.[1] The amended order would exempt applicants from certain disclosure requirements.

APPLICANTS: MassMutual Institutional Funds ("MMIF"), MML Series Investment Fund ("MML Series," and together with MMIF, the "Trusts") and Massachusetts Mutual Life Insurance Company (the "Manager").

FILING DATES: The application was filed on December 17, 2001, and amended on July 11, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on

[1] MassMutual Institutional Funds, *et al.*, Investment Company Act Release Nos. 25211 (Oct. 16, 2001) (notice) and 25260 (Nov. 9, 2001) (order).

August 12, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, 1295 State Street, B379, Springfield, MA 01111–0001.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634 or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trusts are registered under the Act as open-end management investment companies and are comprised of multiple series (each a "Fund" and together the "Funds").[2] The Manager serves as the investment manager to each Fund pursuant to separate investment management agreements between each Trust and the Manager ("Management Agreements") that were approved by the board of trustees of the relevant Trust (each, the "Board," and collectively, the "Boards"), including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees") and each Fund's shareholders. Under the terms of the Management Agreements, the Manager provides investment management services to each Fund while delegating the day-to-day portfolio management for each Fund to one or more sub-advisers ("Sub-Advisers") pursuant to separate investment sub-advisory agreements ("Sub-Advisory Agreements").[3] The Prior Order permits the Manager, subject to approval by the respective Board, to enter into and materially amend Sub-Advisory Agreements without seeking shareholder approval. The Prior Order does not extend to a Sub-Advisory Agreement with any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Manager (other than by reason of serving as a Sub-Adviser to a Fund) ("Affiliated Sub-Adviser").

2. Applicants request an order that would amend the Prior Order to exempt the Funds from the various disclosure provisions described below. These provisions may require the Funds to disclose the fees paid by the Manager to each Sub-Adviser. An exemption is requested to permit the Funds to disclose (as both a dollar amount and as a percentage of a Fund's net assets): (a) Aggregate fees paid to the Manager and Affiliated Sub-Advisers; and (b) aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers ("Aggregate Fee Disclosure"). If a Fund employs an Affiliated Sub-Adviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

2. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of "the terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

3. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that many Sub-Advisers charge their customers for advisory services according to a "posted" rate schedule. Applicants state that while Sub-Advisers are willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Sub-Advisers to negotiate lower fees with the Manager, the benefits of which are likely to be passed on to a Fund's shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the conditions contained in the Prior Order and the following additional conditions:

1. With respect to the Funds relying on the requested relief, the Manager will provide the Board, no less frequently than quarterly, with information about the Manager's profitability on a per Fund basis. This information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

2. Whenever a Sub-Adviser is hired or terminated, the Manager will provide the relevant Board with information showing the expected impact on the Manager's profitability.

3. Each Trust will disclose in its registration statement the Aggregate Fee Disclosure.

4. Independent counsel knowledgeable about the Act and the

[2] Applicants also request relief with respect to future series of the Trusts and all future registered open-end management investment companies or series thereof that (a) are advised by the Manager or any entity controlling, controlled by, or under common control with the Manager; (b) use the multi-manager structure described in the application; and (c) comply with the terms and conditions in the application and the Prior Order ("Future Funds," and together with the Funds, the "Funds"). The Trusts are the only existing investment companies that currently intend to rely on the requested order.

[3] If the name of any Fund contains the name of a Sub-Adviser, the name of the Fund also will contain the name of the Manager (or an acronym of the name of the Manager), or the name of the entity controlling, controlled by, or under common control with the Manager to the Funds, which will appear before the name of the Sub-Adviser.

duties of Independent Trustees will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18564 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 22, 2002:

Closed Meetings will be held on Monday, July 22, 2002, at 2:30 p.m. and Tuesday, July 23, 2002, at 2:30 p.m., and an Open Meeting will be held on Wednesday, July 24, 2002, at 2:30 p.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Monday, July 22, 2002, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions; and
Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Closed Meeting scheduled for Tuesday, July 23, 2002, will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Amici participation; and
Opinion.

The subject matter of the Open Meeting scheduled for Wednesday, July 24, 2002, will be:

1. The Commission will consider whether to adopt rules governing customer margin for security futures. The rules would be adopted jointly with the Commodity Futures Trading Commission pursuant to section 7(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act"), which, among other things, requires that the customer margin requirements for security futures be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 6(a) of the Exchange Act and provide for initial and maintenance margin levels that are not lower than the lowest level of margin, exclusive of premium, required for comparable exchange-traded options.

2. The Commission will consider whether to propose a new rule that would require analysts to provide certifications regarding research reports and to provide disclosures regarding their compensation related to those reports.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 19, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18696 Filed 7–19–02; 11:48 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46210; File No. SR–Amex–2001–08]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC To Relax Certain Restrictions on Specialist Affiliates

July 16, 2002.

I. Introduction

On February 14, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to provide an exemption to the general rule against a specialist affiliate serving as an officer or director of a company for which that specialist is registered. On March 14, 2001, the Commission published the proposed rule change in the **Federal Register**.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Amex and the New York Stock Exchange ("NYSE") each have a general rule that prohibits a director of an issuer from being an approved person of a member organization that specializes in that issuer's securities.[4] The exchanges differ, however, in that the NYSE's rules allow for exemptions to this general prohibition,[5] but Amex's rules do not. Amex has stated that, since investment banks frequently have personnel serving as directors of private and public companies, the absence of an exemption from Amex Rules 186(a) and 950(i) may create a disincentive for investment banks to establish or maintain a specialist affiliate on the Exchange. Amex, accordingly, has proposed to provide an exemption from Amex Rules 186(a) and 950(i) for specialist affiliates that establish Exchange-approved information barriers.

The Exchange also has proposed a technical correction to Amex Rule 193 to clarify that one of the exemptions provided for by that rule applies to options specialists as well as equity specialists. Currently, Amex Rule 193(c) explicitly provides an exemption to the restrictions in Amex Rule 170 only for approved persons of equity specialists, although the rule implicitly extends this exemption to options specialists.[6] The proposed rule change would explicitly do so.

III. Discussion

The Commission finds that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44048 (March 7, 2001), 66 FR 14945.

[4] *See* NYSE Rule 460(b) ("No member or his member organization or any other member, allied member, or approved person in such member organization or officer or employee of the member organization shall be a director of a company if such member specializes in the stock of that company"); Amex Rule 186(a) ("No specialist or any member in his member organization, officer, employee or approved person therein shall be an officer or director of a corporation which has a security admitted to trading on the Exchange in which security the specialist is registered"). *See also* Amex Rule 950(i) (extending the provisions of Amex Rule 186 to the trading of option contracts).

[5] *See* NYSE Rule 98, Guidelines for Approved Persons Associated with a Specialist's Member Organization.

[6] Amex Rule 170(e) provides that no approved person who is affiliated with a specialist may purchase or sell any security in which such specialist is registered for any account in which that the approved person has a direct or indirect interest. Amex Rule 950(n) states that Amex Rule 170 (and Commentaries .03 and .04 thereto) apply to option transactions on the Exchange.

the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act[8] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.

In 1986, the Commission approved Amex Rule 193 and NYSE Rule 98, which allow an approved person of a specialist organization to be exempt from a number of exchange restrictions, provided there are exchange-approved informational firewalls between that person and the affiliated specialist.[9] In 1993, the Commission approved an additional exemption under NYSE Rule 98 which allows an approved person of a specialist organization to serve as an officer or director of an issuer in whose securities the specialist is registered, provided the firewall requirement is met.[10] Amex now proposes to adopt the same exemption for which the NYSE received approval in 1993.

In its 1993 approval order, the Commission stated that the exemption which allows an approved person to serve as a director or officer is "appropriate * * * so as not to place insurmountable restrictions on full-service member organizations."[11] The Commission continues to believe that such an exemption is appropriate and consistent with the requirements of the Act. The informational firewalls, which must be approved by the Exchange, are a reasonable means of ensuring that approved persons do not misuse their informational advantage and, thus, help protect investors and the public interest.[12]

[7] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 23768 (November 3, 1986), 51 FR 41183 (November 13, 1986).

[10] *See* Securities Exchange Act Release No. 33080 (October 20, 1993), 58 FR 57654 (October 26, 1993).

[11] :58 FR at 57655.

[12] Amex has provided the Commission with a letter describing the means by which it would surveil these informational firewalls. *See* Letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Alton Harvey, Office Head, Office of Market Watch, Commission, dated January 14, 2002. The Commission's Office of Compliance Inspections and Examinations intends to review these surveillance procedures during its next inspection of Amex.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–2001–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18491 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46218; File No. SR–Amex–2002–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Amex Listing Agreement

July 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the Amex Listing Agreement for issuers listing under Sections 106 (*Currency and Index Warrants*) and section 107 (*Other Securities*) of the Amex Company Guide; and Rules 1000 (*Portfolio Depositary Receipts*), 1000A (*Index Fund Shares*) and 1200 (*Rules of General Application;* Trust Issued Receipts) to provide that the issuer cannot implead, cross-claim against, or sue the Exchange and its affiliates as a result of third party claims against the issuer. The text of the proposed rule change follows. Proposed new language is in italics; proposed deletions are in brackets.

Listing Agreement

_____ (the "Company"), in consideration of the listing of its securities, hereby agrees, with the American Stock Exchange LLC (the "Exchange") that:

* * * * *

(4) In order to publicize the Company's listing on the Exchange, the Company authorizes the Exchange to use the Company's corporate logos, Web site address (URS):_____, trade names, and trade/service marks in order to convey quotation information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the Exchange with the Company's current corporate logos, Web site address, trade names, and trade/service marks and with any subsequent changes. Questions regarding logo usage should be directed to _____at ( ) _____–_____.

The Company indemnifies the Exchange and holds it harmless from any third party rights and/or claims arising out of use of the Exchange or any affiliate ("Corporations") of the Company's corporate logos, Web site address, trade names, trade/service marks, and/or trading symbol used by the Company.

In the event that any claim of any kind is brought by a third party against the Company arising out of the listing and/or trading on the Exchange of the listed securities, the Company agrees that it will not implead, cross-claim against or commence a separate action against any of the Corporations or otherwise attempt to obtain contribution, indemnification or any other form of recovery from any of the Corporations relating to such third party claim.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[13] :15 U.S.C. 78s(b)(2).

[14] :17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Issuers of structured products, exchange-traded funds, trust issued receipts and other novel securities products have found that the Exchange is extremely receptive to accommodating product innovation in our marketplace. New products, however, can pose some measure of added litigation risk as a result of third party claims of infringement of property rights, or for other reasons.

As part of its effort to reduce the Exchange's potential legal exposure in this area, the Exchange proposes to amend the Amex Listing Agreement to provide that issuers of such products agree, in connection with their execution of the Listing Agreement, that, in the event they are sued by a third party for any reason regarding an Amex-listed security, they will not implead, cross-claim against or sue the Amex or its affiliates. This would include, for example, claims of patent infringement or any other intellectual property rights.

The proposed amendments to the Exchange Listing Agreement will be applicable to issuers of securities listed under section 106 (*Currency and Index Warrants*) and 107 (*Other Securities*) of the Company Guide; and Rules 1000 (*Portfolio Depositary Receipts*), 1000A (*Index Fund Shares*) and 1200 (*Rules of General Application;* Trust Issued Receipts). The Listing Agreement for these issuers, therefore, would differ from that for common stock issuers. The proposed amended Listing Agreement would apply to (1) new issuers, and (2) new series of securities listed under Rules 1000, 1000A or 1200 or sections 106 and 107 of the Company Guide by issuers that currently list securities under those provisions.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [3] in general and furthers the objectives of Section 6(b)(5)[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the proposed rule change and amendments will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–46 and should be submitted by August 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18561 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46213; File No. SR–Amex–2002–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments Nos. 1, 2, 3 and 4 Thereto by the American Stock Exchange LLC to Permit Limited Side-by-Side Trading and Integrated Market Making

July 16, 2002.

I. Introduction

On March 18, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rules 174, 175, 193, 900, and 958 to (1) permit affiliates of Amex specialists in securities admitted to dealings on an unlisted basis to act as a specialist, Registered Options Trader ("ROT") or other registered market maker in the related options provided there are Exchange-approved information barriers between the stock specialist and the options specialist, ROT or other registered options market maker established pursuant to Exchange Rule 193, and (2) provide that specified Exchange-Traded Fund Shares ("ETFs") or Trust Issued Receipts ("TIRs") and their related options may be traded by the same specialist, specialist firm, and the approved persons of such specialist or specialist firm without information or physical barriers or other restrictions. The Exchange filed Amendment No. 1 to the proposed rule change on March 22, 2002.[3] The Exchange filed Amendment No. 2 to the proposed rule change on March 27, 2002.[4] The Exchange filed Amendment No. 3 to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 22, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety ("Amendment No. 1").

[4] On March 27, 2002, the Exchange filed a second amended Form 19b–4 ("Amendment No. 2").

proposed rule change on April 5, 2002.[5] The Exchange filed Amendment No. 4 to the proposed rule change on June 4, 2002.[6] The proposed rule change, as amended by Amendments Nos. 1, 2, 3, and 4, was published for comment in the **Federal Register** on June 12, 2002.[7] The Commission received one comment letter on the proposed rule change.[8] This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to permit limited side-by-side trading[9] and integrated market making[10] for certain securities. Specifically, Amex proposes to permit limited integrated market making of securities admitted to dealings on an unlisted trading privileges ("UTP") basis and their related options so long as information barriers are established, approved and maintained. In addition, Amex proposes to permit side-by-side trading and integrated market making of certain ETFs, TIRs, and options overlying such ETFs and TIRs. These proposals are discussed more fully below.

A. Securities Admitted to Dealings on an Unlisted Basis

Currently, Amex Rule 175(b) prohibits approved persons[11] and other affiliates ("specialist affiliates") of an Amex equity specialist from acting as an options specialist or functioning in any capacity involving market making responsibilities in any option as to which the underlying security is a stock in which the specialist is registered as such. The Amex proposes to amend Exchange Rule 175 to permit Amex specialists in stocks admitted to dealings on an unlisted basis to act as options specialists, ROTs and registered market makers with respect to the related options provided there are Exchange-approved procedures restricting the flow of material, non-public corporate or market information established pursuant to Amex Rule 193. In addition, stocks admitted to dealings on an unlisted basis and their related options would be traded in areas of the Exchange Floor that are separated from each other so that no side-by-side trading would be permitted.[12]

B. ETFs and TIRs

The Exchange proposes to amend Amex Rules 174, 175, 900, and 958 to allow side-by-side trading and integrated market making of certain ETFs and TIRs and their related options so long as the ETF or TIR meets the criteria set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A.[13] Specifically, the Exchange proposes to amend Amex Rule 175(c) to permit specialists registered in ETFs or TIRs that meet the criteria in Commentary .03(a) of Amex Rule 1000 or Commentary .02(a) of Amex Rule 1000A to also act as specialists, ROTs or other registered market makers in the related options without information barriers or physical barriers. In addition, the Exchange proposes to amend Amex Rule 175(c) to provide that specialists of these ETFs and TIRs, their member organizations, and their approved persons may trade the related options without the limitations of Amex Rule 175(b) and the Guidelines to Amex Rule 175.[14] The Exchange also proposes to amend Amex Rule 958 to permit ETF and TIR specialists to act as ROTs.

The Exchange also proposes to amend Amex Rule 174 to require an ETF or TIR specialist that is also the specialist in the related option in a side-by-side environment to disclose on request to participants in the ETF, TIR, and option trading crowds information about aggregate buying and selling interest at different price points represented by limit orders on the ETF, TIR or option limit order books.

Finally, the Exchange proposes to amend the definition of "Paired Security" in Amex Rule 900 to provide that ETFs and TIRs that meet the criteria of Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A may trade side-by-side with their related options.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change.[15] In general, CBOE supported Amex's proposal to permit integrated market making of securities admitted to dealings on an unlisted basis and the related options as long as information barriers are established. CBOE did, however, raise concerns about the sufficiency of Amex's Rule 193 information barriers and whether they are as comprehensive as those required by the New York Stock Exchange, Inc. ("NYSE") under NYSE Rule 98. As discussed further below, the Commission believes that the information barriers required under Amex Rule 193 are sufficient to prevent the flow of material non-public information between affiliates engaged in integrated market making.

In addition, CBOE expressed concerns about Amex's proposal to permit side-by-side trading and integrated market making in certain ETFs and TIRs and their related options without any information or physical barriers or other restrictions. As discussed further below, the Commission believes that Amex has limited its proposal to address regulatory concerns.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the

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[5] On April 5, 2002, the Exchange filed a third amended Form 19b–4 ("Amendment No. 3").

[6] On June 4, 2002, the Exchange filed a fourth amended Form 19b–4 ("Amendment No. 4").

[7] *See* Securities Exchange Act Release No. 46036 (June 5, 2002), 67 FR 40357.

[8] *See* letter to Jonathan Katz, Secretary, Commission, from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange, Inc. ("CBOE"), dated July 11, 2002 ("CBOE Letter").

[9] "Side-by-side trading" refers to the trading of securities and related derivative products at the same location, though not necessarily by the same specialist.

[10] "Integrated market making" refers to the trading of securities and related derivative products by the same specialist and/or specialist firm.

[11] The Exchange defines an "approved person" as an individual or corporation, partnership or other entity which controls a member or member organization, or which is engaged in the securities business and is under common control with, or controlled by, a member or member organization or which is the owner of a membership held subject to a special transfer agreement. *See* Article I, Section 3(g) of the Exchange Constitution. The term "control" is defined in Exchange Definitional Rule 13.

[12] *See* Amex Rules 900(b)(38), (40) and (41). *See also* Amex Rule 958(f), which prohibits an ROT from executing a trade in an option if he or she has been in the "Designated Stock Area" for the related option within the previous 60 minutes.

[13] The criteria set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A is as follows:

- Component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least $75 million.
- The component securities representing 90% of the weight of the portfolio each have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.
- The most heavily weighted component security cannot exceed 25% of the weight of the portfolio and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio.
- The underlying portfolio must include a minimum of 13 securities.
- All securities in the portfolio must be listed on a national securities exchange or the Nasdaq Stock Market.

[14] Generally, Amex Rule 175(b) only permits a specialist to trade options on its specialty stock for the purpose of offsetting the risk of making a market in the underlying specialty security. The Guidelines to Amex Rule 175 provide the conditions for opening options transactions to hedge existing specialty stock positions.

[15] *See* CBOE Letter, *supra* note 8.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's

Continued

Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

When considering a side-by-side trading or integrated market making proposal, the Commission must balance the potential improvements in the quality of the markets for the stocks and their related options against the competitive, regulatory, and surveillance concerns.[18] In this regard, the Commission must consider whether a side-by-side trading or integrated market making proposal would permit market participants to possess undetectable, material non-public market information, which could give certain market participants a trading advantage over other market participants. Thus, the Commission must evaluate the extent of the proposed side-by-side trading or integrated market making, as well as the characteristics of the market center putting forth the proposal.

Historically, the Commission has had concerns regarding side-by-side trading and integrated market making.[19] The Commission staff also discussed the regulatory issues raised by side-by-side trading and integrated market making in the Options Study. More specifically, the Commission staff noted that side-by-side trading and integrated market making raise the concern that participants engaging in such trading practices could unfairly use non-public market information to their advantage because such participants have access to non-public market information about both a stock and its related option. In addition, side-by-side trading and integrated market making could result in certain market participants gaining an unfair competitive advantage over other market participants because of their access to and ability to use non-public market information. For example, in a side-by-side trading environment or integrated market making environment on a single exchange floor, floor members, by virtue of their positions on the floor of an exchange, are able to react instantaneously to market information by executing orders before the information is publicly disseminated. Similarly, because an integrated entity that operates on two different floors may also have access to non-public market information regarding a stock and its related option, it too could execute orders before information is publicly disseminated. Accordingly, in evaluating whether Amex's proposal is consistent with the Act, the Commission considered the extent to which additional non-public market information and competitive advantages would accrue to stock and options market makers on the Exchange, and their affiliates off the exchange.

In addition, in the Options Study, the staff expressed concerns about the potential for manipulation and other improper trading practices that could result from side-by-side trading and integrated market making, and that such improper conduct would be hard, if not impossible, to surveil.[20] For example, much of the market information that may be used in a side-by-side trading or integrated market making environment may never be publicly disseminated, and thus may never be available for surveillance purposes. In addition, a side-by-side trading environment may increase a specialist's or market maker's ability to observe and utilize information regarding orders, transactions, and patterns of trading and quoting and may permit such specialist or market maker to continuously and accurately assess risks that could be associated with improper trading conduct. For example, in the Options Study, the staff noted that manipulations of stock prices to benefit options positions may be undertaken with greater precision if a market participant on an exchange floor is able to evaluate accurately the supply of, and demand for, a security by observing the buying and selling interest in the crowd, the depth of orders in the book and the trading patterns of market participants at the trading post. This concern may be present in an integrated market making situation when a firm acts as a specialist in a stock on one exchange and as a specialist in the option on another exchange because of its ability to observe transactions, order flow, and trading and quoting patterns on both floors.

Finally, the Commission staff noted concerns about the potential conflicts of interest that may arise when an integrated entity, whether on the same or different exchange floors, has an obligation to make markets in both an option and its underlying equity.

A. Securities Admitted to Dealings on an Unlisted Basis and Related Options

Amex proposes to permit limited integrated market making by allowing affiliates of Amex specialists registered as such in securities admitted to dealings on an unlisted basis to act as a specialist, ROT or other registered market maker in the related options provided there are Exchange-approved information barriers between the stock specialist and the options specialist, ROT or other registered options market maker established pursuant to Amex Rule 193. These information barriers must be approved by the Amex and are subject to annual review by the Amex. By requiring strict information barriers designed to prevent the flow of non-public information, the Amex seeks to limit the concerns raised by integrated market making.

Specifically, the related entities must establish procedures that are sufficient to restrict the flow of non-public information. The Guidelines to Amex Rule 193 set forth the conditions to be met by the related entities in order to satisfy this requirement. For example, Guideline (b)(i) requires organizational separation of the specialist and approved person such that each entity is a separate and distinct organization. Guideline (b)(i) further requires that while the affiliates may be under common management, the management of the approved person may not exercise influence over or control the stock specialist's conduct or vice versa. In addition, any general management oversight must not conflict or compromise in any way the specialist's market making responsibilities. Guideline (b)(ii) requires the establishment of procedures to preserve confidentiality of trading information of both the specialist and the affiliate. Specifically, Guideline (b)(ii) requires the establishment of procedures to prevent the use of material, non-public corporate or market information in the possession of the affiliate to influence the specialist's conduct and avoid the misuse of the specialist's market information to influence the affiliate's

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impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] *See* Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985). *See also* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, H.R. Rep. No. IFC 3, 96th Cong. 1st sess. (Comm. Print 1978) ("Options Study").

[19] *See, e.g.*, Securities Exchange Act Release Nos. 22026, *supra* note 18; 21759 (February 14, 1985), 50 FR 7250 (February 21, 1985)(approving SR–NYSE–84–3 and SR–NYSE–84–10); 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988)(approving SR–Amex–88–16); and 28556 (October 19, 1990), 55 FR 43233 (October 26, 1990)(approving SR–CBOE–90–08).

[20] The Commission staff noted that substantial profits could be made from options positions as a result of small movements in the price of the underlying stock. Further, the staff noted the relative ease by which the price of the underlying security could be moved and the difficulty in detecting improprieties associated with small price movements. *See* Options Study, *supra* note 18.

conduct. These procedures must also include means to prevent the disclosure of trading positions and each specialist's book. Finally, the Guidelines require that the specialist and approved person maintain, among other things, separate books and records, financial accounting and capital requirements.

The Commission believes that these procedures set forth in the Guidelines address the regulatory issues raised by the proposed rule change regarding integrated market making of securities admitted to dealings on an unlisted basis and their related options.[21] The requirement of clearly separate and distinct organizations, along with the other informational barriers and restrictions, should prevent Exchange specialists and their related options specialists or market makers from sharing restricted, non-public market information. Further, Amex Rule 193 requires the Exchange to review and approve the organizational structure and information barriers of the integrated entities. The Commission notes that the Exchange has had extensive experience reviewing its Rule 193's organizational requirements and information barriers and thus should be able to ensure that the integrated entities do not improperly use their affiliations. In addition, organizational separation and information barriers must be established and maintained between an Exchange specialist, any approved person of the specialist that acts as a specialist, ROT, or registered market maker in an option based on the specialist's specialty stock, and any other persons affiliated with them.

The Commission expects the Exchange to assess, as it gains experience with integrated market making, whether any other informational barriers are necessary to prevent the flow of market information between the related entities. Of course, any new information barriers proposed would have to be submitted to the Commission for approval. The Commission also expects that the Exchange will surveil the integrated entities to ensure that the information barriers and organizational structure prevent the flow of non-public market information.

In conclusion, the Commission believes that the Exchange has sufficiently minimized the potential for manipulative and improper trading conduct by requiring strict organizational separation and information barriers.[22] Therefore, the Commission believes that the potential improvements to liquidity and quality of the markets by the Amex's proposal outweigh the regulatory concerns.

B. ETFs, TIRs and Related Options

In addition, the Exchange proposes to permit specified ETFs and TIRs and their related options to be traded by the same specialist, specialist firm, and the approved persons of such specialist or specialist firm without information or physical barriers or other restrictions, *i.e.*, side-by-side trading and integrated market making. The Commission believes that Amex's side-by-side trading and integrated market making proposal regarding certain ETFs, TIRs and their related options is consistent with the Act and is sufficiently limited to address regulatory concerns.[23] Specifically, the Commission notes that ETFs and TIRs are securities that are based on groups of stocks. ETF and TIR prices are based on the prices of their component securities. Accordingly, the Commission believes that a market participant's ability to manipulate the price of the ETF, TIR or related option is limited.

In addition, Amex has limited its proposal to permit side-by-side trading and integrated market making only in broad-based ETFs and TIRs. Specifically, each ETF and TIR must have a minimum of 13 securities in its underlying portfolio, the most heavily weighted component securities cannot exceed 25% of the weight of the portfolio, and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio. By limiting the proposal to broad-based ETFs and TIRs, concerns regarding informational advantages about individual securities are lessened.

In addition, Amex has sought to ensure that the ETFs and TIRs that may be traded side-by-side or by integrated market makers are composed of highly capitalized and liquid component securities and that the component securities are listed on an exchange or the Nasdaq Stock Market. For example, the component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least $75 million. In addition, the component securities representing 90% of the weight of the portfolio each must have a minimum trading volume during each of the last six month of at least 250,000 shares. The Commission believes that these capitalization and liquidity requirements should reduce the likelihood that any market participant has an unfair information advantage about the ETF, TIR, its related options, or its component securities, or that a market participant would not be able to manipulate the prices of the ETFs, TIRs, or their related options.

Moreover, to mitigate the potential information advantages, Amex has proposed to require integrated specialists in a side-by-side trading environment to disclose trading interest in both the ETF or TIR and related options limit order books upon request. By providing all market participants with market information in the limit order books, no market participant should have an unfair competitive advantage over others in the crowd.

Finally, Amex has proposed to permit specialists in ETFs and TIRs and approved persons of such specialists to trade options on such ETFs and TIRs without the limitations set forth in Amex Rule 175(b). Generally, Amex Rule 175(b) only permits a specialist to trade options on its specialty stock for the purpose of offsetting the risk of making a market in the underlying security. The Commission believes that it is consistent with the Act to permit ETF and TIR specialists to trade options based on their specialty ETF or TIR because integrated specialists in ETFs and TIRs would not be able to perform their market making responsibilities in the related options if they were limited to only executing hedging transactions.

The Commission expects the Exchange to assess its surveillance procedures to determine whether they are adequate for the new trading arrangements to ensure that market participants do not engage in manipulative or improper trading practices. Further, the Commission expects Amex to consider whether any additional surveillance procedures or trading restrictions are necessary to prevent manipulative or other improper trading practices. Of course, any new trading restrictions proposed would have to be submitted to the Commission for approval.

The Commission believes that trading efficiencies may be realized as a result of these new trading arrangements for

[21] The Commission notes that it approved a similar NYSE proposal to permit NYSE specialists to be affiliated with specialists and primary market makers in options related to the NYSE specialist's specialty stock so long as information barriers are established, approved, and maintained. *See* Securities Exchange Act Release No. 45454 (February 15, 2002), 67 FR 8567 (February 25, 2002).

[22] The Commission notes that side-by-side trading of UTP stocks and their related options will not be permitted. Accordingly, the UTP stocks and their related options must trade at physically separate trading locations on the Exchange's floor. *See* Amex Rule 900(b)(38), (40), and (41).

[23] The Commission notes that it has previously approved side-by-side trading and integrated market making of related derivative products. *See* Securities Exchange Act Release No. 27383 (October 26, 1989), 54 FR 45846 (October 31, 1989).

ETFs and TIRs and their related options. For example, operational efficiencies may be realized because orders in ETFs and TIRs and their related options may receive faster executions. In addition, combination orders may be executed in a more efficient and timely fashion. Therefore, the Commission believes that the potential improvements to liquidity and quality of the markets in ETFs and TIRs and their related options by the Amex's proposal outweigh the regulatory concerns.

For these reasons, the Commission finds that the proposed rule change permitting side-by-side trading and integrated market making of certain ETFs and TIRs and their related options is consistent with section 6(b)(5) of the Act.[24]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–Amex–2002–21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18562 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46220; File No. SR–BSE–2002–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Boston Stock Exchange, Inc. To Extend its Specialist Performance Evaluation Program on a Pilot Basis

July 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2002, the Boston Stock Exchange ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[24] 15 U.S.C. 78f(b)(5).
[25] 15 U.S.C. 78s(b)(2).
[26] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its Specialist Performance Evaluation Program until September 30, 2002. Below is the text of the proposed rule change. Proposed new language is italicized. Proposed deleted language is in brackets.

* * * * *

Chapter XV

Specialists

Specialist Performance Evaluation Program

Sec. 17 (a)–(e) no change.

(f) This program will expire on [June 30, 2002] September 30, 2002, unless further action is taken by the Exchange.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend its Specialist Performance Evaluation Program ("SPEP") pilot, until September 30, 2002. Under the SPEP pilot program, the Exchange regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvement, depth, and added depth. Generally, any specialist who receives a deficient score in one or more measures may be required to attend a meeting with the Performance Improvement Action Committee, or the Market Performance Committee.

While the Exchange believes that the SPEP program has been a very successful and effective tool for measuring specialist performance, it realizes that modifications are necessitated as a result of recent changes in the industry, particularly decimalization. Accordingly, the Exchange is seeking to extend the pilot period of this program so that evaluation and modification can be undertaken before permanent approval is requested.

2. Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Exchange Act,[3] in that the proposed rule change is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder[5] because the proposal (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from June 25, 2002, the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and BSE has provided the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time the Commission may designate. At any time within 60 days of the filing of such proposed rule

[3] 15 U.S.C. 78f(b)(5).
[4] 15 U.S.C. 78s(b)(3)(A).
[5] 17 CFR 240.19b–4(f)(6).

change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission has decided to waive the five day notice and designates that the proposal become operative on June 30, 2002, because it is consistent with the protection of investors and the public interest to continue the pilot program uninterrupted and permit the Exchange to continue to evaluate the pilot program in light of changes to the marketplace.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to the File No. SR–BSE–2002–08 and should be submitted by August 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18563 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46097A; File No. SR–NASD–2002–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Posting of Margin Disclosure and Day-Trading Risk Disclosure Statements on Web Sites; Correction

July 15, 2002.

In FR document No. 02–16257 beginning on page 43364 in the issue of Thursday, June 27, 2002, the title described the filing incorrectly. The title is corrected to read as set forth above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18559 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46221; File No. SR–NASD–2002–15]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Situations in Which a Suspended, Terminated, or Otherwise Defunct Member or Associated Person Fails To Answer or Participate in an Arbitration Proceeding

July 17, 2002.

I. Introduction

On February 1, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 10314 of the NASD Code of Arbitration Procedure ("Code") to provide default procedures for situations in which a suspended, terminated, or otherwise defunct member or associated person (collectively referred to in this order as "defunct") fails to answer or participate in an arbitration proceeding, and the claimant nevertheless elects to pursue arbitration. The proposed rule change was published for comment in the **Federal Register** on May 1, 2002.[3] The Commission received one comment letter regarding the proposal.[4] NASD Dispute Resolution filed a response to the comment letter with the Commission on July 3, 2002.[5] This order approves the proposed rule change.[6]

II. Description of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend Rule 10314 of the Code to provide an expedited default procedure for certain cases in which a respondent is an associated person whose registration is terminated, revoked, or suspended; a member whose membership has been terminated, suspended, canceled, or revoked; a member that has been expelled from the NASD; or a member that is otherwise defunct. NASD Dispute Resolution represents that the procedures are designed to make it easier for claimants to obtain an award against a defunct party. This award can then be enforced in court. NASD Dispute Resolution states that the proposed rule change would address some concerns discussed in a United States General Accounting Office ("GAO") report that was issued in June 2000.[7]

Under the proposed rule change, if a defunct respondent fails to answer the claim in a timely manner, the claimant may elect to proceed under optional default procedures as to that respondent. If there are several claimants, all must agree to use default procedures. The default procedures may be used against one or more defunct respondents while the rest of the initial

[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 45818 (April 24, 2002), 67 FR 21789.

[4] *See* letter from Barbara Black, Professor, and Jill I. Gross, Visiting Professor, Pace Law School, to Secretary, Commission, dated May 21, 2002 ("Pace Letter").

[5] *See* letter from Jean I. Feeney, Chief Counsel and Associate Vice President, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated July 3, 2002 ("NASD Letter").

[6] The NASD Dispute Resolution represents that the proposal will be effective by October 15, 2002. Telephone conversation between Jean I. Feeney, Chief Counsel and Associate Vice President, NASD Dispute Resolution, and Cyndi Nguyen, Attorney, Division, Commission, on July 8, 2002.

[7] The report is entitled "Securities Arbitration: Actions Needed to Address Problems of Unpaid Awards," Report No. GAO/GGD–00–115 (June 15, 2000) ("GAO Report"). The report is available online at *http://www.gao.gov*.

arbitration proceeds against any remaining respondents.[8]

If the claimant opts to use default procedures, the case would proceed with a single arbitrator without a hearing. Under the default procedures, the arbitrator would make an award based upon the Statement of Claim and any other material submitted by the claimant. The arbitrator may request additional information from the claimant before rendering an award. In keeping with the streamlined nature of the procedures, neither the claimant nor the single arbitrator would have the option to ask that two additional arbitrators be appointed to decide the case (as is sometimes done in other single-arbitrator cases).

NASD Dispute Resolution states that the procedures have several provisions to safeguard the integrity of the process, such as:

- The claimant may not amend the claim to increase the relief requested after the staff has notified the parties that the claim will proceed under default procedures.
- An arbitrator may not make an award based solely on the non-appearance of a party. The party who appears must present a sufficient basis to support the making of an award in that party's favor.
- The arbitrator may not award damages in an amount greater than the damages requested in the Statement of Claim and may not award any other relief that was not requested in the Statement of Claim.

The proposed rule provides, however, that the default award would have no effect on the non-defaulting parties. The proposed rule would apply to all types of claimants, such as customers, associated persons, or member firms, that are bringing a claim against a suspended or terminated member or associated person.

Finally, if a respondent thought to be defunct belatedly files an answer or otherwise begins to participate after the staff has notified the parties that the claim will proceed under default procedures but before an award has been rendered, the default procedures would be suspended, and the case would proceed under the regular procedures.[9]

[8] If a case is to be a bifurcated and handled under two different procedures, regular and default, each proceeding will be assigned a separate case number to avoid confusion. Proposed NASD Rule 10314(e) provides that the default award will have no effect on any non-defaulting part.

[9] *See* NASD Letter, *supra* note 5.

III. Summary of Comments and NASD Dispute Resolution's Response

As noted above, the Commission received one comment letter regarding the original proposal.[10] NASD Dispute Resolution filed a response to address concerns raised by the comment letter.[11]

The commenters supported the proposed rule change as beneficial to customers and stated that the default procedures set forth in proposed NASD Rule 10314(e) would provide an alternative so that claimants can expeditiously obtain an award without the necessity of a hearing. However, the commenters proposed two substantive changes to the rule.[12]

First, the commenters questioned the fairness of paragraph (e)(7) of the proposed rule, which provides that the default procedures are terminated if the respondent files an answer anytime before an award has been rendered. The commenters believe that respondents who do not file an answer until late in the process should not have an absolute right to terminate the default procedure. They suggested that the decision to terminate the default procedure and resume the case under regular procedures should be granted at the discretion of the arbitrator, after giving the claimant an opportunity to respond to the request.[13]

NASD Dispute Resolution responds that it is appropriate to allow the defaulting respondent to appear and automatically terminate default procedures. NASD Dispute Resolution states that to deny the respondent the right to rejoin the regular proceedings due to a late answer could result in court challenges that might delay the proceeding to the claimant's detriment.[14] The NASD Dispute Resolution also states that a respondent is unlikely to abuse this provision to fail deliberately to appear and then make a sudden untimely appearance because the respondent would have to rejoin the case where the respondent finds it.[15]

[10] *See* Pace Letter, *supra* note 4.

[11] *See* NASD Letter, *supra* note 5.

[12] *See* Pace Letter, *supra* note 4.

[13] The commenters suggest that, in making the decision, the arbitrator should take into account the reasons given by the respondent for not filing sooner and the hardship to the claimant of being required to go forward with a hearing. *See* Pace Letter, *supra* note 4.

[14] NASD Dispute Resolution made reference to Rule 55(c) of the Federal Rules of Civil Procedure that provides that, for good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). *See* NASD Letter, *supra* note 5.

[15] For example, if a single arbitrator or the panel has already been selected, the respondent would have to accept that choice without input into the selection, subject only to a challenge for cause. Additionally, in multi-party cases, if a prehearing conference or hearing session has been held, the late-appearing respondent is subject to previous determinations unless the respondent successfully moves for relief. *See* NASD Letter, *supra* note 5.

Furthermore, NASD Dispute Resolution states that NASD Rule 10314(b)(2)(C) would provide sufficient deterrent from such abuse because it provides that a respondent who fails to file an answer within 45 calendar days from receipt of service of a claim, unless the time to answer has been extended, "may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing."

Second, the commenters criticized the proposed rule for not addressing the situation where after filing an answer, the respondent ceases to participate in the hearing because of one of the events described in proposed NASD Rule 10314(e)(1). The commenters suggested that, in this event, the claimant should have the option to convert the proceedings to a default procedure.[16]

In response, NASD Dispute Resolution states its intention to draft a rule that would cover the majority of situations involving defunct respondents without making it unduly complicated. If it should happen that, after filing an answer, a respondent becomes defunct as defined in proposed NASD Rule 10314(e)(1), the claimant would put on its case, and the panel issue an award. If there are no other respondents, NASD Dispute Resolution states that the matter could be concluded expeditiously and that it may not even be necessary to hold an in-person hearing, which would further reduce hearing session costs to the claimant.[17]

Although NASD Dispute Resolution does not feel that an amendment to the proposed rule is currently necessary, it states that it would monitor the operation of the rule and consider any further enhancements that may be warranted.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[18] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[19] in that it is designed to

[16] *See* Pace Letter, *supra* note 4.

[17] *See* NASD Letter, *supra* note 5.

[18] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78*o*–3(b)(6).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

Specifically, the Commission finds that NASD Dispute Resolution's proposal is designed to protect investors and the public interest by making it faster and less costly for investors and other claimants to proceed and obtain awards against defunct members and associated persons while also providing safeguards to all parties. The Commission also believes that the proposed rule change implements the recommendations in the GAO report concerning unpaid arbitration awards issued in arbitration proceedings in securities industry arbitration forums.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NASD–2002–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18566 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46212; File No. SR–Phlx–2002–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Fees Applicable to Competing Specialists

July 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to increase from $0.30 to $0.35 its equity option transaction charge on members for off-floor broker-dealer transactions.[3] The Exchange intends to implement this fee on transactions settling on or after July 1, 2002.[4]

Currently, the Exchange imposes a fee on its members for off-floor broker-dealer transactions.[5] This category includes registered options traders ("ROTs") who trade from off-floor and broker-dealers who route orders through firm, customer or market maker accounts carried by a member clearing firm that are executed on the Exchange trading floor, but not firm/proprietary orders.[6] All other equity option transaction charges will remain unchanged.[7]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to generate additional revenue for the Exchange by increasing the fee imposed on members for off-floor broker-dealer transactions. Thus, the broker-dealer equity option transaction charge will be increased from $0.30 to $0.35.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(4) of the Act,[9] in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among its members. The Exchange believes the proposal is equitable and reasonable because the proposed broker-dealer equity option transaction charge represents a modest increase intended to generate additional revenue.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to

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[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange is also amending the accompanying footnote in the Summary of Equity Options Charges on the Exchange's schedule of dues, fees and charges to make it more precise.

[4] This fee will continue to be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[5] *See* Securities Exchange Act Release No. 45942 (May 16, 2002), 67 FR 36060 (May 22, 2002) (SR–Phlx–2002–32).

[6] A-firm/proprietary transaction or comparison charge applies to members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35 percent of its annual, gross revenues from commissions and principal transactions with customers. *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR–Phlx–00–85).

[7] For purposes of the equity option transaction charge, the broker-dealer option equity transaction charge is currently defined in a footnote in the Summary of Equity Options Charges on the Exchange's schedule of dues, fees and charges, as a charge that is applied to members for orders *entered* from other than the floor of the Exchange for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-floor. The Exchange proposes to replace the word "entered" with the word "received" to make the definition more precise.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

section 19(b)(3)(A) of the Act[10] and subparagraph (f)(2) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–36 and should be submitted by August 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18560 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3433]

Territory of Guam

As a result of the President's major disaster declaration for Public Assistance on July 5, 2002, and Amendment 1 adding Individual Assistance on July 12, 2002, I find that the Territory Of Guam constitutes a disaster area due to damages caused by Typhoon Chata'an occurring on July 5–6, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September10, 2002 and for economic injury until the close of business on April 10, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without, credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 343308 and for economic injury the number is 9Q5600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 16, 2002.

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 02–18518 Filed 7–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3422]

State Of Indiana, Amendment # 2

In accordance with a notice received from the Federal Emergency Management Agency, dated July 9, 2002, the above numbered declaration is hereby amended to include Sullivan County in the State of Indiana as a disaster area due to damages caused by severe storms, tornadoes and flooding occurring April 28, 2002 through June 7, 2002.

All contiguous counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 12, 2002, and for economic injury the deadline is March 13, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 16, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–18519 Filed 7–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3431]

Commonwealth of Pennsylvania; and Contiguous Counties In the State of West Virginia

Washington County and the contiguous counties of Allegheny, Beaver, Fayette, Greene and Westmoreland in the Commonwealth of Pennsylvania; and Brooke, Hancock, Marshall and Ohio counties in the State of West Virginia constitute a disaster area due to damages caused by flooding and mudslides that occurred on June 13, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 16, 2002 and for economic injury until the close of business on April 16, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 343106 for Pennsylvania and 343206 for West Virginia. For economic injury, the numbers are 9Q5400 for Pennsylvania and 9Q5500 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

[10] 15 U.S C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

Dated: July 16, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–18516 Filed 7–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3434]

State of Vermont

As a result of the President's major disaster declaration on July 12, 2002, I find that Caledonia, Franklin, Lamoille and Orleans Counties in the State of Vermont constitute a disaster area due to damages caused by severe storms and flooding occurring on June 5, 2002 through June 13, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 10, 2002 and for economic injury until the close of business on April 10, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Chittenden, Essex, Grand Isle, Orange and Washington Counties in the State of Vermont; and Grafton County in the State of New Hampshire.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 343411. For economic injury the number is 9Q5700 for Vermont; and 9Q5800 for New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 16, 2002.

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. 02–18517 Filed 7–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, August 4, 2002, from 11 a.m. to 5 p.m. EST in the Berkshire Room at the Clarion Hotel and Conference Center in Northampton, Massachusetts to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

Anyone wishing to make an oral presentation to the Board must contact Chancy Lyford, in writing by letter or fax no later than August 2, 2002 in order to be included on the agenda. For further information, please write or call Mr. Chancy Lyford, Designated Federal Officer, U.S. Small Business Administration, 409 Third Street., SW., Sixth Floor, Washington, DC 20416. Telephone number (202) 205–7159, FAX (202) 205–7727.

Kim Mace,

Committee Management Specialist.

[FR Doc. 02–18520 Filed 7–22–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4038]

United States International Telecommunication Advisory Committee; Preparations for International Telecommunications Union Telecommunication Development Sector and Telecommunication Standardization; Notice of Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the International Telecommunication Union (ITU).

The ITAC will meet electronically from July 29 to August 2 to consider two Normal Contributions to ITU–T Study Group 13. The documents are available at the following sites: *ftp://ftp.t1.org/T1A1/T1A1.0/2a100530.doc* and *ftp://ftp.t1.org/T1A1/T1A1.0/2a100540.doc*. Comments on the documents must be posted to *SGB–13@almsntsa.lmlist.state.gov* by July 29, responses will be posted by August 1, and final action will be posted by the Department of State on August 2. People not already members of the "SGB–13" reflector may join by contacting *marciegeissinger@msn.com* by email.

The ITAC will meet from 10 to noon on July 30 in room 5533 and 10 to noon on August 13 and August 27 in room 1105, at the Department of State. The agenda for these meetings is preparations for the meetings of the ITU Telecommunication Development (ITU–D) Sector Study Groups will be in September, 2002.

Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Entrance to the Department of State is controlled. People intending to attend the meeting should send their clearance data by fax to (202) 647–7407 or email to *worsleydm@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location and on which entrance to use may be determined by calling the ITAC Secretariat at 202 647–2592 or email to *worsleydm@state.gov*.

Dated: July 15, 2002.

Doreen McGirr,

Director, Telecommunication Development, Department of State.

[FR Doc. 02–18607 Filed 7–22–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Public Notice 4041]

Secretary of State's Advisory Committee on Private International Law: Study Group on International Transport Law: Meeting Notice

There will be a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Wednesday, July

31, 2002, to consider the draft instrument on the International Transport Law, under negotiation at the United Nations Commission on International Trade Law (UNCITRAL). The meeting will be held from 1 p.m. to 5 p.m. in the offices of Holland & Knight, Suite 100, 2099 Pennsylvania Avenue, NW., Washington, DC.

The purpose of the Study Group meeting is to assist the Departments of State and Transportation in determining the U.S. views for the second session of the UNCITRAL Working Group on this draft instrument, to be held in Vienna, Austria from September 16 to 20, 2002.

The draft text prepared by the Comiteé Maritime International (CMI) at the request of UNCITRAL and the report of the first meeting of the UNCITRAL Working Group on this subject will constitute the basic working document of the UNCITRAL Working Group. These documents are available on UNCITRAL's Website, www.uncitral.org. (The documents are numbered A/CN.9/WGIII/WP.21 and A/CN.9/510, respectively.)

The Study Group meeting is open to the public up to the capacity of the meeting room. Persons who wish to have their views considered are encouraged to submit written comments in advance of the meeting. Comments should refer to Docket number MARAD–2001–11135. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20490–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., est, Monday through Friday, except Federal holidays. An electronic version of this document, along with all documents entered into this docket, is available on the World Wide Web at *http://dms.dot.gov*.

For further information, you may contact Mary Helen Carlson at 202–776–8420, or by e-mail at *carlsonmh@ms.state.gov*.

Mary Helen Carlson,

Attorney-Adviser, Office of the Legal Adviser for Private International Law, Department of State.

Edmund T. Sommer, Jr.,

Chief, Division of General and International Law, Office of the Chief Counsel, Maritime Administration, Department of Transportation.

[FR Doc. 02–18604 Filed 7–22–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice No. 4042]

Secretary of State's Advisory Committee on Private International Law: Study Group on Reciprocal Enforcement of Child Support Obligations: Notice of Meetings

There will be two public meetings of a Study Group of the Secretary of State's Advisory Committee on Private International Law, one on Wednesday, August 7 in New Orleans, Louisiana and the other on Saturday, August 10 in Washington, DC. Additional information about the times and locations are provided below.

The purpose of these meetings is to assist the Department of State in preparing for the upcoming negotiation, under the auspices of the Hague Conference on Private International Law, of a new international convention on the international recovery of child support and other forms of family maintenance. The first session of this negotiation is scheduled for the spring of 2003 in The Hague. The Permanent Bureau of the Hague Conference is preparing for this negotiation, including by distributing to all Hague Conference member countries and other interested countries an information note and questionnaire. This and other documents relevant to this project can be found on the web site of the Hague Conference (*http://www.hcch.net*). Officials of the Permanent Bureau are expected to attend the Study Group meetings, as are officials of the Office of Child Support Enforcement of the U.S. Department of Health and Human Services.

The two Study Group meetings are being planned to coincide with the annual meetings of the National Child Support Enforcement Association (NCSEA) and the American Bar Association (ABA).

The Wednesday, August 7 meeting will take place, in conjunction with NCSEA's conference, from 1:30 p.m. to 5 p.m. in the Eglinton Winton Room, 2nd floor, Hilton New Orleans Riverside Hotel, 2 Poydras Street, New Orleans, Louisiana.

The Saturday, August 10 meeting will take place, in conjunction with the ABA conference, from 3 p.m. to 5 p.m. at Hale & Dorr, LLP, 1455 Pennsylvania Avenue, NW., Washington, DC, Suite 1000. (This is adjacent to the Willard Inter-Continental Hotel, where meetings of the ABA Section of International Law and Practice will take place earlier that day.)

The Study Group meetings are open to the public up to the capacity of the meeting rooms. Interested persons are invited to attend and to express their views. Persons who wish to have their views considered are encouraged, but not required, to submit written comments in advance of the meeting. Written comments should be submitted by e-mail to Mary Helen Carlson at *carlsonmh@ms.state.gov*. All comments will be made available to the public by request to Ms. Carlson via e-mail or by phone (202–776–8420).

Mary Helen Carlson,

Attorney-Adviser, Office of the Legal Adviser for Private International Law, Department of State.

[FR Doc. 02–18608 Filed 7–22–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4068]

Bureau of Political-Military Affairs; Use of Exemption at Section 123.17 of the ITAR for Zimbabwe

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the license exemptions at section 123.17 of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130) are authorized for use in connection with certain exports of firearms and ammunition to Zimbabwe.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Sweeney, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, Telephone (202) 663–2700 or FAX (202) 261–8199.

SUPPLEMENTARY INFORMATION: Due to the Government of Zimbabwe subverting the democratic process through a badly flawed presidential election, orchestrating a campaign of violence and intimidation against its political opposition, and having a blatant disregard for the rule of law and serious human rights abuses, effective April 17, 2002, the Department suspended all licenses and approvals to export or otherwise transfer defense articles and defense services to Zimbabwe. The Department also instituted a policy of denial for new applications for licenses and other approvals to export or otherwise transfer defense articles and defense services to Zimbabwe (67 FR 18978). Also, the denial policy precluded the use of any exemption from licensing or other approval requirements in the ITAR. This notice modifies the denial policy by authorizing the use of the license exemptions at section 123.17 of the

ITAR for exports of firearms and ammunition to Zimbabwe when for personal use by individuals (not for resale or retransfer, including to the Government of Zimbabwe) and the firearms will be returned to the United States.

This action has been taken pursuant to section 38 of the AECA (22 U.S.C. 2778) and relevant provisions of the ITAR in furtherance of the foreign policy of the United States.

Dated: July 17, 2002.

Gregory M. Suchan,

Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 02–18606 Filed 7–22–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 12, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–12778.

Date Filed: July 11, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–ME 0140 dated 9 July 2002, TC2 Europe-Middle East Expedited Resolution 002ii, Special Passenger Amending Resolution r1–r6, Intended effective date: 15 August 2002.

Docket Number: OST–2002–12779.

Date Filed: July 11, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0575 dated 12 July 2002, Mail Vote 224—Resolution 010w, TC3 between Japan/Korea and South East Asia, Special Passenger Amending Resolution between China, (excluding Hong Kong SAR and Macau SAR) and Japan, Intended effective date: 28 August 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–18476 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–11843]

National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions

AGENCY: Coast Guard, DOT.

ACTION: Notice of final agency policy.

SUMMARY: The Coast Guard revised its list of agency actions that we have determined do not individually or cumulatively have a significant effect on the human environment and, thus, are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA). Consistent with the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA, the Coast Guard periodically reviews its NEPA implementing procedures and determines whether it is necessary to clarify some existing categorical exclusions (CEs) to prevent misinterpretation and to create new CEs to reduce excessive and needless paperwork for actions that have proven to have no potential for significant impacts. The purpose of this notice is to provide the public our final list of new and revised categorical exclusions.

DATES: The new and revised categorical exclusions are effective as of July 23, 2002.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Any comments and material received from the public, as well as this notice, and our April 8, 2002 notice requesting comments, are part of this docket (USCG–2002–11843) and available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Kebby Kelley, Office of Civil Engineering, Environmental Management Division, U.S. Coast Guard, Headquarters, 202–267–6034 or via email at kkelley@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Background

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) established the Council on Environmental Quality (CEQ). NEPA and CEQ regulations (40 CFR parts 1500–1508) establish a broad national policy which encourages and promotes productive harmony between man and his environment and provides policies and goals to ensure that environmental considerations and associated public concerns are given careful weight in all decisions of the Federal government.

Section 102 of NEPA (42 USCS 4332) and 40 CFR 1507.3 require Federal agencies to develop and, as needed, revise implementing procedures consistent with NEPA and the CEQ regulations. Additionally, 40 CFR 1500.4 and 1500.5 require Federal agencies to use categorical exclusions (CEs) to reduce excessive paperwork and reduce delay.

To determine whether improvements are needed in its list of agency actions that we have determined are categorically excluded from further NEPA environmental impact analysis, the Coast Guard periodically reviews its list. This list of CEs is contained in section 2.B.2, figure 2–1, of the "Coast Guard National Environmental Policy Act (NEPA) Implementing Procedures and Policy for Considering Environmental Impacts," (Commandant Instruction M16475.1D).

During the most recent review, NEPA-related information in our project administrative records was examined to determine whether the current CEs were being applied consistently and appropriately. Areas of confusion or misinterpretation were identified for further evaluation. Also, the Coast Guard evaluated whether new CEs would be appropriate to further reduce needless paperwork and delay.

Where areas of confusion or misinterpretation with the existing CEs were identified, the Coast Guard evaluated whether the situation could be resolved through improvements in internal guidance, modifications to the existing CEs, or the development of new CEs. Evaluations in these cases included both an examination of the administrative record, as well as, experiences of expert staff in working with the existing CEs. Modifications of existing CEs and new CEs were done where appropriate to resolve areas of confusion or misinterpretation of the existing CE list.

The need for other new CEs was identified by examination of Environmental Assessments (EAs), and associated Findings of No Significant Impact (FONSIs) for similar or like actions. Where it was found that EAs with FONSIs existed for many similar or like actions, a new CE was created. The working group also received input from other Coast Guard staff as to actions that

were not currently categorically excluded but should be based on their experience that such projects normally had no significant environmental impacts.

The working group determined that new CEs were needed for several categories of Coast Guard personal and real property actions. The working group then benchmarked the CEs against those of the General Services Administration (GSA) as the expert agency in terms of personal and real property management for the Federal government. Since other new CEs involved Coast Guard operations, the working group used the Department of the Navy as a benchmark because many of the Navy's actions are similar operationally, albeit at a much larger scale. Coast Guard CEs were then developed to address Coast Guard actions.

Finally, one new and one revised CE for regulatory actions were created. The new regulatory CE was created for regulatory actions mandated by Congress for the improvement or protection of the environment. The working group found that the Coast Guard had multiple EAs with FONSIs for regulations of this type, and, after reviewing the regulations and their environmental aspects, they determined that these types of actions do not normally have significant effects either individually or cumulatively on the human environment.

The recommended list of new and modified CEs developed by the working group was then extensively reviewed within the Coast Guard. This draft list of proposed changes was then also reviewed by, and discussed with, CEQ. Further revisions were made based on CEQ comments.

Discussion of Response to Request for Comments

The resulting list of proposed changes was published in the **Federal Register** on April 8, 2002 (67 FR 16787) with a request for comments to be submitted by May 8, 2002. The Coast Guard received no comments on the draft list; therefore, the draft list has now become our final list of new and revised CEs. The final list was sent to DOT and CEQ for final review and approval. No additional substantive revisions were made by either DOT or CEQ. The final list of new and revised CEs is now available in the appendix to this notice and will also be available in the docket (as indicated under **ADDRESSES**).

Proposed Changes Adopted as Final

In our April 2002 notice we described changes we proposed to make. These changes have now been adopted as final.

Our revisions to Section 2.B.2, Figure 2–1, of M16475.1D, entitled, "Coast Guard Categorical Exclusions" consist of three related parts. The first part is a non-substantive administrative reorganization of the Coast Guard's CEs to group CEs for like actions together under an appropriate general heading. The second part is a revision requiring that a written Categorical Exclusion Determination (CED) be prepared for the administrative record whenever a CE calls for the preparation of a written environmental checklist (checklist). The third part is a substantive addition of new and modified CEs.

A CED is a 1- or 2-page Coast Guard document that states the Coast Guard project being proposed and the CE that is applicable. Our administrative procedures (contained in the Commandant Instruction M16475.1 series) require that the applicability of each CE be examined for extraordinary circumstances for each specific action. The checklist is a tool that is designed to assist us in determining whether there are any extraordinary circumstances that might require preparation of an Environmental Impact Statement (EIS) or an EA.

The CEQ regulations implementing NEPA require agencies to consider extraordinary circumstances and to define categories of agency actions that do not have the potential for significant impacts (that is, categorically excluded actions); however, they do not require that such consideration of extraordinary circumstances or agency use of CEs be documented. Thus, both, the CED and the checklist are internal Coast Guard administrative requirements to ensure that the potential for impacts on the human environment are given adequate consideration in proposed Coast Guard actions and are not required by NEPA law or regulation.

We are requiring that a CED be prepared whenever a checklist is required for a Coast Guard CE. Currently, checklists are required for those CEs covering actions which experience has shown could be likely to occasionally involve unusual circumstances that might make the CE inappropriate in certain instances.

Our CE revision also consists of new and modified CEs, the majority of which address real and personal property actions. A few additional modifications and new CEs were created for certain Coast Guard operations, specific Coast Guard environmental studies, and two types of Coast Guard regulatory actions.

These new and modified CEs represent actions that, based on our past experience with similar actions, do not normally require an EA or EIS because they do not individually or cumulatively have a significant effect on the human environment. We now have CEs for certain situations in which the Coast Guard acquires, or arranges for permitted use of, property. At the time of acquisition or arrangement for permitted use of the property, we will use our Environmental Analysis Checklist to determine whether a CE is appropriate or if an EIS or EA is required. If a CE is appropriate, the Coast Guard will prepare a written CED.

If, in the future, the Coast Guard determines the need to change the use of the property, we will conduct the appropriate NEPA analysis and prepare the documentation—either another CE, an environmental assessment, or an environmental impact statement on the proposed new use. The earlier acquisition or permit use arrangement for the property will not influence the subsequent environmental analysis and documentation, including the need to use the property for the proposed new use, the consideration of alternatives, or selection of the preferred alternative.

Synopsis of Changes

The general changes we have made to the Coast Guard CEs are that the CEs will now be reorganized by action type as: Administrative Actions, Real and Personal Property Actions, Training Actions, Operational Actions, Special Studies, Bridge Administration Actions, and Regulatory Actions. Additionally, all CEs requiring a checklist will also now require a CED.

The final new or amended CEs are listed in the appendix to this notice. Previously existing Coast Guard CEs that remain unchanged are not included in the appendix.

Dated: July 15, 2002.

J.A. Kinghorn,

Rear Admiral, Coast Guard, Assistant Commandant for Systems.

Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy.*

1. Administrative Actions

a. Personnel and other administrative actions associated with consolidations, reorganizations, or reductions in force resulting from identified inefficiencies, reduced personnel or funding levels, skill imbalances, or other similar causes. (Checklist and CED required.)

b. Approval of recreational activities or events (such as a Coast Guard unit picnic) at a location developed or created for that type of activity.

2. *Real and Personal Property Related Actions* (where the term "real property" is

used throughout this section, it means real and any related personal property—and the term "related personal property" means personal property that is an integral part of the subject real property and removal of the personal property would significantly diminish the economic value of the subject real property).

a. The initial lease of, or grant of an easement interest in, Coast Guard-controlled real property to a non-Federal party or the amendment, renewal, or termination of such lease or easement interest where the reasonably foreseeable real property use will not change significantly and is similar to existing uses. (Checklist and CED required.)

b. The grant of a license to a non-Federal party to perform specified acts upon Coast Guard-controlled real property or the amendment, renewal, or termination of such license where the proposed real property use is similar to existing uses. (Checklist and CED required.)

c. Allowing another Federal agency to use Coast Guard-controlled real property under a permit, use agreement, or similar arrangement or the amendment, renewal, or termination of such permit or agreement where real property use is similar to existing uses. (Checklist and CED required.)

d. The lease of a Coast Guard-controlled historic lighthouse property to a non-Federal party as outlined in the Programmatic Memorandum of Agreement between the Coast Guard, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers. (Checklist and CED required.)

e. Acquisition of real property (including fee simple estates, leaseholds, and easements) improved or unimproved, and related personal property from a non-Federal party by purchase, lease, donation, or exchange where the proposed real property use is similar to existing uses for the foreseeable future (acquisition through condemnation not covered). (Checklist and CED required.)

f. Acquisition of real property and related personal property through transfer of administrative control from another Department of Transportation (DOT) component or another Federal agency to the Coast Guard where title to the property remains with the United States including transfers made pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended, (10 U.S.C. 2687 note) and where the proposed Coast Guard real property use is similar to existing uses. (Checklist and CED required.)

g. Coast Guard use of real property under the administrative control of another DOT component or another Federal agency through a permit, use agreement, or similar arrangement where the proposed real property use is similar to existing uses. (Checklist and CED required.)

h. Coast Guard new construction upon, or improvement of, land where all of the following conditions are met (Checklist and CED required.):

- The structure and proposed use are substantially in compliance with prevailing local planning and zoning standards.
- The site is on heavily developed property and/or located on a previously disturbed site in a developed area.
- The proposed use will not substantially increase the number of motor vehicles at the facility.
- The site and scale of construction are consistent with those of existing, adjacent, or nearby buildings.

i. Real property inspections for compliance with deed or easement restrictions.

j. Transfer of administrative control over real property from the Coast Guard to another Department of Transportation (DOT) component or another Federal agency (title to the property remains with the United States) that results in no immediate change in use of the property. (Checklist and CED required.)

k. Determination by the Coast Guard that real property is excess to its needs, pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), and the subsequent reporting of such determination to the Administrator of the General Services Administration or the subsequent filing of a notice of intent to relinquish lands withdrawn or reserved from the public domain with the Bureau of Land Management, Department of Interior, in accordance with 43 CFR part 2370. (Checklist and CED required.)

l. Congressionally mandated conveyance of Coast Guard controlled real property to another Federal agency or non-Federal entity. (Checklist and CED required.)

m. Relocation of Coast Guard personnel into existing Federally owned or leased space where use does not change substantially and any attendant modifications to the facility would be minor.

n. Decisions to temporarily or permanently decommission, disestablish, or close Coast Guard shore facilities including any follow-on connected protection and maintenance needed to maintain the property until it is no longer under Coast Guard control. (Checklist and CED required.)

o. Demolition of buildings, structures, or fixtures and disposal of subsequent building, structure, or fixture waste materials. (Checklist and CED required.)

p. Determination by the Coast Guard that Coast Guard controlled personal property, including vessels and aircraft, is "excess property," as that term is defined in the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472(e)), and any subsequent transfer of such property to another Federal agency's administrative control or conveyance of the United States' title in such property to a non-Federal entity. (Checklist and CED required.)

q. Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in functional use of the real property, (*e.g.*, realigning interior spaces of an existing building, extending an existing roadway in a developed area a short distance, installing a small antenna on an already existing antenna tower, adding a small storage shed to an existing building, etc.) (Checklist and CED required.)

r. Installation of devices to protect human or animal life such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, and fencing and grating to prevent accidental entry to hazardous areas. (Checklist and CED required.)

3. Training

a. Defense preparedness training and exercises conducted on Coast Guard-controlled property that do not involve undeveloped property or increased noise levels over adjacent property and involve a limited number of personnel, such as exercises involving primarily electronic simulation or command post personnel. (Checklist and CED required.)

4. Operational Actions

a. Realignment or initial homeporting of mobile assets, including vessels and aircraft, to existing operational facilities that have the capacity to accommodate such assets or where supporting infrastructure changes will be minor in nature to perform as new homeports or for repair and overhaul.

Note: If the realignment or homeporting would result in more than a one for one replacement of assets at an existing facility, then the checklist required for this CE must specifically address whether such an increase in assets could trigger the potential for significant impacts to protected species or habitats before use of the CE can be approved. (Checklist and CED required.)

5. Special Studies

a. Environmental site characterization studies and environmental monitoring including: Siting, constructing, operating, and dismantling or closing of characterization and monitoring devices. Such activities include but are not limited to the following:

- Conducting geological, geophysical, geochemical, and engineering surveys and mapping, including the establishment of survey marks.
- Installing and operating field instruments, such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools.
- Drilling wells for sampling or monitoring of groundwater, well logging, and installation of water-level recording devices in wells.
- Conducting aquifer response testing.
- Installing and operating ambient air monitoring equipment.
- Sampling and characterizing water, soil, rock, or contaminants.
- Sampling and characterizing water effluents, air emissions, or solid waste streams.
- Sampling flora or fauna.
- Conducting archeological, historic, and cultural resource identification and evaluation studies in compliance with 36 CFR part 800 and 43 CFR part 7.
- Gathering data and information and conducting studies that involve no physical change to the environment. Examples include topographic surveys, bird counts, wetland mapping, and other inventories.

6. Regulatory Actions

a. Regulations concerning vessel operation safety standards (*e.g.*, regulations requiring:

certain boaters to use approved equipment which is required to be installed such as an ignition cut-off switch, or carried on board, such as personal flotation devices (PFDs), and/or stricter blood alcohol concentration (BAC) standards for recreational boaters, etc.), equipment approval, and/or equipment carriage requirements (*e.g.*, personal flotation devices (PFDs) and visual distress signals (VDS's)).

b. Congressionally mandated regulations designed to improve or protect the environment (*e.g.*, regulations implementing the requirements of the Oil Pollution Act of 1990, such as those requiring vessels to have the capability to transmit and receive on radio channels that would allow them to receive critical safety and navigation warnings in U.S. waters, regulations to increase civil penalties against persons responsible for the discharge of oil or hazardous substances into U.S. waters, etc.). (Checklist and CED required.)

*** Note to Appendix:** The final new or amended CEs are listed in the appendix to this notice. Previously existing Coast Guard CEs that remain unchanged are not included in the appendix.

[FR Doc. 02–18475 Filed 7–22–02; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Turbine Engine Continued Rotation and Rotor Locking

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability and request for comments of draft Advisory Circular (AC), No. 33.74/92–1A, Turbine Engine Continued Rotation and Rotor Locking.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–100, at the above address, telephone (781) 238–7120, fax (781) 238–7199. If you have access to the Internet, you may also obtain further information by writing to the following address: *"marc.bouthillier@faa.gov."*

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT**, or Internet users may obtain a copy at the following address: *"http://www.airweb.faa.gov/rgl."* Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they desire. Commenters must identify the subject of the AC, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This draft advisory circular (AC) would provide guidance and acceptable methods, but not the only methods that may be used to demonstrate compliance with the continued rotation and rotor locking requirements. This AC would combine §§ 33.74 and 33.92.

This advisory circular would be published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701–44702, 44704, and would provide guidance for the requirements in 14 CFR part 33.

Issued in Burlington Massachusetts on June 28, 2002.

Francis Favara,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–18473 Filed 7–22–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Approval of the Record of Decision for the Final Environmental Impact Statement for FAA Site Approval and Land Acquisition by the State of Illinois for a Proposed South Suburban Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of approval of the Record of Decision.

SUMMARY: The FAA is announcing the approval of the Record of Decision (ROD) for the Final Environmental Impact Statement for FAA Site Approval and Land Acquisition by the State of Illinois for a Proposed South Suburban Airport. The ROD provides final agency determinations and approvals for site approval.

FOR FURTHER INFORMATION CONTACT: Denis R. Rewerts, Capacity Officer, Federal Aviation Administration, Chicago Airports District Office, Room 312, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. Rewerts can be contacted at (847) 294–7195 (voice), (847) 294–7046 (facsimile) or by e-mail at *9–AGL–SSA–EIS–PROJECT@faa.gov.*

SUPPLEMENTARY INFORMATION: At the request of the State of Illinois, the FAA has prepared the first tier of a tiered Environmental Impact Statement (EIS) to assess impacts relative to FAA site approval and the associated land acquisition by the State for a potential future supplemental air carrier airport to serve the greater Chicago region. The Tier 1 EIS does not consider the site-specific planning, construction, funding, or operation of a potential new supplemental air carrier airport. Subsequent tiered EISs or other environmental documentation as needed, may be prepared and considered in the future to assess the potential impacts that may result from the planning, construction, funding and operation of a potential, supplemental air carrier airport in the south suburban area of Chicago and/or development of existing airports to satisfy future aviation needs in the region.

This Record of Decision provides final agency determinations and approvals for Federal actions by the Federal Aviation Administration (FAA) related to the selection of Will County for a potential South Suburban Airport. These actions are necessary to preserve the option of developing a potential, future air carrier airport to serve the greater Chicago region as determined necessary and appropriate to meet future aviation capacity needs in the region. At a later date, it will be determined how regional aviation capacity needs will be met. The FAA's site approval is based upon the continuing need to protect the airspace and preserve a technically and environmentally feasible site from encroachment from suburban development and provide for continued protection of the airspace. The proposed site, known as the Will County site, commonly known as the Peotone site, is located in Will County, Illinois and is approximately 35 miles south of the Chicago Central Business District. The ultimate site encompasses approximately 24,000 acres.

This ROD approves the Will County, Illinois site to preserve the option for a potential future air carrier airport for the greater Chicago region. The Federal action is described in detail in the Final Environmental Impact Statement (FEIS),

South Suburban Airport dated April 2002. The agency's decision is based on the information contained in the FEIS and all other applicable documents available to the agency and considered by it, which constitutes the administrative record.

The FAA's determinations are discussed in the ROD, which was approved on July 12, 2002.

ADDRESSES: The ROD is available for review at the following locations:

1. Chicago Airports District Office, Room 312, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Individuals who would like to review the ROD at this office must contact Mr. Denis Rewerts at (847) 294–7195 to make prior arrangements.

2. Governors State University Library, Governors State University, University Park, Illinois 60466.

3. Joliet Public Library, 150 North Ottawa Street, Joliet, Illinois 60432.

4. Northwestern University Library, 1935 Sheridan Road, Evanston, Illinois 60202.

5. Harold Washington Public Library, 400 South State Street, Chicago, Illinois 60605.

6. Kankakee Public Library, 304 South Indiana, Kankakee, Illinois 60901.

7. Matteson Public Library, 801 South School Avenue, Matteson, Illinois 60443.

8. Orland Park Public Library, 14760 Park Lane, Orland Park, Illinois 60462.

9. Crete Public Library, 1177 North Main Street, Crete, Illinois 60417.

10. Indiana University Northwest Library, 3400 Broadway, Gary, Indiana 46408.

11. Purdue University, Calumet Campus Library, 2200 169th Street, Hammond, Indiana 46323.

12. College of DuPage, Learning Resources Center (Library), 425 Second Street, Glen Ellyn, Illinois 60137.

13. Illinois Department of Transportation, 310 South Michigan Avenue, Chicago, Illinois 60604.

14. Illinois Department of Transportation, Illinois Division of Aeronautics, One Langhorne Bond Drive/Capital Airport, Springfield, Illinois 62707.

15. Illinois Department of Transportation, South Suburban Airport Program Office, 4749 Lincoln Mall Drive, Suite 501, Matteson, Illinois 60443.

16. Web site: *http://www.faa.gov/arp/app600/5054a/rodidx.htm* or *http://www.southsuburbanairport.com*

Issued in Des Plaines, Illinois.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 02–18616 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–45]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 12, 2002.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12352 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Boylon (425–227–1152), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 17, 2002.

Richard D. McCurdy,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12352.
Petitioner: Instone Air Services.
Section of 14 CFR Affected: 14 CFR 25.857(e), 25.855(a), 25.807(d)(1), and 25.1147(c)(1).
Description of Relief Sought: To permit carriage of supernumeraries (animal handlers) on the main deck of a Boeing Model 747 freighter and the use of portable oxygen bottles in place of standard emergency oxygen systems.

[FR Doc. 02–18474 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–15–C–00–BDL to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposed to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to Kenneth Robert, A.A.E., Aviation Administrator of the Connecticut Department of Transportation, Bureau of Aviation and Ports at the following address: P.O. Box 317546, Newington, CT 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Connecticut Department of Transportation, Bureau of Aviation and Ports under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 27, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Connecticut Department of Transportation, Bureau of Aviation and Ports was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 20, 2002.

The following is a brief overview of the application.

Proposed charge effective date: May 1, 2015.

Proposed charge expiration date: September 1, 2015.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $3,050,000.

Brief description of proposed project(s): Security Improvements and Training System.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-Demand Air Taxi Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut.

Issued in Burlington, Massachusetts on July 10, 2002.

Vincent A. Scarano,

Manager, Airports Division.

[FR Doc. 02–18469 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–14–C–00–BDL To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Kenneth Robert, A.A.E., Aviation Administrator of the Connecticut Department of Transportation, Bureau of Aviation and Ports at the following address: P.O. Box 317546, Newington, CT 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Connecticut Department of Transportation, Bureau of Aviation and Ports under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 27, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Connecticut Department of Transportation, Bureau of Aviation and Ports was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 20, 2002.

The following is a brief overview of the application.

Proposed charge effective date: March 1, 2015.

Proposed charge expiration date: May 1, 2015.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $1,102,000.

Brief description of proposed project(s): Acquire Aircraft Rescue and Fire Fighting Truck.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-Demand Air Taxi Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut.

Issued in Burlington, Massachusetts on July 10, 2002.

Vincent A. Scarano,

Manager, Airports Division.

[FR Doc. 02–18470 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City & County of Denver, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the City and County of Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Shaun Cutting, Senior Operations Engineer, FHWA Colorado, 555 Zang Street, Suite 250, Lakewood, CO 80228,

telephone: (303) 969–6730 or Mr. Tony Gross, Project Engineer, Colorado Department of Transportation-Region 6, 2000 South Holly Street, Denver, Colorado 80222, Telephone: (303) 972–9112.

SUPPLEMENTARY INFORMATION: the FHWA, in cooperation with the Colorado Department of Transportation (CDOT), hereby give notice of intent to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on a proposal to improve I–25 and US 6 in Denver, Colorado. The proposed improvements involve the reconstruction of the existing I–25 between Logan Street and US 6 of a distance of about 2.5 miles and US 6 interchange improvements for Bryant Street and Federal Boulevard.

Improvements to this existing National Highway System (NHS) corridor are considered necessary to provide for the existing and projected traffic demand. Included in this proposal are the reconstruction, reconfiguration, and rehabilitation of an aging substandard highway corridor with operational, safety and geometric deficiencies. Past studies along this portion of I–25 and US 6 have indicated several roadway deficiencies such as structural integrity problems with viaducts, ramp configurations, current vehicle capacity, system linkage and public safety.

Alternatives under consideration include but are not limited to (1) taking no action; (2) reconstruction or realignment of the I–25 and US 6 interchanges/local interchanges to current practices; (3) add lanes to reconfigure I–25 and/or 6th Avenue to achieve lane balance consistent with adjacent projects, and (4) enhance intermodal accessibility to the Denver Regional Transportation District (RTD) transit facilities and consideration of local transportation plans. Incorporated into and to be studied with the various build alternatives will be design variations of grade, alignment and interchange configurations at Broadway/Lincoln, Santa Fe, Alameda, US 6, Bryant Street and Federal Boulevard.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings, including a public scoping meeting will be held in the project area in the fall of 2002. In addition, public hearings will be held after the publication and issuance of the Draft Environmental Impact Statement and the Final Environmental Impact Statement. Public notice will be given of the time and place of the meetings and hearings. The Draft Environmental Impact Statement and Final Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Colorado Department of Transportation at the addresses provided above.

Issued on: July 17, 2002.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Doug Bennett,

Assistant Division Administrator, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

[FR Doc. 02–18515 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34229]

The Ohio & Pennsylvania Railroad Company—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc., in Lowellville, OH

The Ohio & Pennsylvania Railroad Company (O&P), a Class III carrier, has filed a notice of exemption under 49 CFR 1150.41 to permit O&P to acquire by purchase from CSX Transportation, Inc. (CSXT), an approximately 0.89-mile rail line located between Valuation Station 3261 + 00 and Valuation Station 3308 + 00, in Lowellville, Mahoning County, OH.

The transaction was expected to be consummated after July 5, 2002, the effective date of the exemption (7 days after the exemption was filed).

The purpose of this transaction is to permit O&P to extend its line [1] and facilitate the re-establishment of an interchange with CSXT at Lowellville. O&P certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class I or a Class II rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34229 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: July 15, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18374 Filed 7–22–02; 8:45 am]

BILLING CODE 4915–00–P

[1] O&P owns approximately 2 miles of rail line between Struthers and Youngstown, OH, but does not currently operate over the line. The Mahoning Valley Railroad and the Central Columbiana and Pennsylvania Railroad (CCPR) operate over portions of O&P's line under trackage rights. O&P expects to resume freight operations in the near future as new traffic opportunities materialize. This transaction is expected to improve the efficiency of CCPR's current operation over O&P's line, and enhance O&P's own operations if it recommences service.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 15, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 22, 2002, to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: New.
Form Number: None.
Type of Review: New collection.

Title: Brand Tracking Survey.

Description: The survey will focus on Treasury Direct marketing issues.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,600.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (once).

Estimated Total Reporting Burden Hours: 650 hours.

Clearance Officer: Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328, (304) 480–6553.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–18569 Filed 7–22–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 16, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 22, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1398.

Form Number: IRS Form 9620.

Type of Review: Extension.

Title: Race and National Origin Identification.

Description: Form 9620 is an optically scannable form that is used to collect race and national origin data on all IRS employees and new hires. The form is a valuable tool in allowing the IRS to meet its diversity/EEO goals and as a component of its referral and tracking system and recruitment program.

Respondents: Individuals or households, Federal Government.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: Semi-annually, Annually.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1545–1488.

Regulation Project Number: REG–209837–96 Final.

Type of Review: Extension.

Title: Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections.

Description: The regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make certain elections.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 10 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,000 hours.

OMB Number: 1545–1591.

Regulation Project Number: REG–251701–96 Final.

Type of Review: Extension.

Title: Electing Small Business Trusts.

Description: The regulations provide the rules for an electing small business trust (ESBT), which is a permitted shareholder of an S corporation. With respect to the collections of information, the regulations provide the rules for making an ESBT election, and the rules for converting from a qualified subchapter S trust (QSST) to an ESBT and the conversion of an ESBT to a QSST. The regulations allow certain S corporations to reinstate their previous taxable year that was terminated under § 1.444–2T by filing Form 8716.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 7,500.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion, Other (once).

Estimated Total Reporting Burden: 7,500 hours.

OMB Number: 1545–1658.

Regulation Project Number: REG–107069–97 Final.

Type of Review: Extension.

Title: Purchase Price Allocations in Deemed Actual Asset Acquisitions.

Description: Section 338 of the Internal Revenue Code provides rules under which a qualifying stock acquisition is treated as an asset acquisition (as "deemed asset acquisition") when an appropriate election is made.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents: 45.

Estimated Burden Hours Per Respondent: 34 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1545–1784.

Revenue Procedure Number: Revenue Procedure 2002–32.

Type of Review: Extension.

Title: Waiver of 60-month Bar on Reconsolidation After Disaffiliation.

Description: Pursuant to § 1504(a)(3)(B) of the Internal Revenue Code, this procedure grants certain taxpayers a waiver of the general rule of § 1504(a)(3)(A) barring a corporation from filing a consolidated return with a group of which it had ceased to be a member for 60 months following the year of disaffiliation.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 5 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 100 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–18570 Filed 7–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5498–MSA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5498–MSA, MSA or Medicare+Choice MSA Information.

DATES: Written comments should be received on or before September 23, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: MSA or Medicare+Choice MSA Information.

OMB Number: 1545–1518.

Form Number: 5498–MSA.

Abstract: This form is used to report contributions to a medical savings account as required by Internal Revenue Code section 220(h).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 41,105.

Estimated Time Per Response: 10 min.

Estimated Total Annual Burden Hours: 6,988.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–18597 Filed 7–22–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 141

Tuesday, July 23, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1520

RIN 0551–AA61

Administrative Regulations for the Freedom of Information Act

AGENCY: Foreign Agricultural Service, USDA.

Correction

In rule document 02–17452 beginning on page 45895 in the issue of Thursday, July 11, 2002, make the following correction:

On page 45895, in the first column, the subagency name and the CFR title and part should read as set forth above.

[FR Doc. C2–17452 Filed 7–22–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 23, 2002

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7244–1]

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for existing and new facilities that apply surface coatings to large appliances. These final standards implement section 112(d) of the Clean Air Act (CAA) which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b) of the CAA. The intent of the standards is to protect the public by requiring new and existing major sources to control emissions to the level attainable by implementing the maximum achievable control technology (MACT).

Sources typically emit the following HAP: glycol ethers, methylene diphenyl diisocyanate, methyl ethyl ketone, toluene, and xylene. These compounds account for over 80 percent of the nationwide HAP emissions from this source category. These pollutants can cause reversible or irreversible toxic effects to people following exposure.

EFFECTIVE DATE: This rule is effective July 23, 2002. The incorporation by reference of certain publications listed in today's final rule is approved by the Director of the Federal Register as of July 23, 2002.

ADDRESSES: *Docket.* Docket No. A–97–41 contains supporting information used in developing the standards for the Large Appliances Coating source category. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), telephone (202) 260–7548. The docket may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

Background Information Document. A background information document (BID) for the promulgated NESHAP may be obtained from the docket; the U.S. EPA Library (C267–01), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777; or from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Refer to "Large Appliances Surface Coating Operations—Background Information for Promulgated Standards" (EPA–453/R–02–004). The promulgation BID contains a summary of changes made to the standards since proposal, public comments made on the proposed standards, and the EPA responses to the comments.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local air pollution control agency representative or the appropriate EPA Regional Office representative. For information concerning the analyses performed in developing these standards, contact Mr. H. Lynn Dail, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–2363; e-mail address: *dail.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. The contents of the docket, including the BID for the proposed and promulgated standards and the EPA responses to significant comments will serve as the record in case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to today's final rule are available for review in the docket, or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials. *Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. If your facility applies surface coatings to large appliance parts or products, you may be a regulated entity. Categories and entities potentially regulated by the final standards are shown in the following table. This table is slightly different from the table contained in the proposal preamble at 65 FR 81135. The changes made to the table between proposal and promulgation are the result of public comments. These changes clarify the types of facilities that will be affected by the promulgated standards.

CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE FINAL STANDARDS

Category	NAICS Code [a]	Regulated Entities [b]
Industry	335221	Household cooking equipment.
	335222	Household refrigerators and freezers.
	335224	Household laundry equipment.
	335228	Other major household appliances.
	333312	Commercial laundry, drycleaning, and pressing equipment.
	333415	Air-conditioners (except motor vehicle), comfort furnaces, and industrial refrigeration units and freezers (except heat transfer coils and large commercial and industrial chillers).
	[c]333319	Other commercial/service industry machinery, e.g., commercial dishwashers, ovens, and ranges, etc.
Federal Government	.....	Not affected.
State/Local/Tribal Government	.....	Not affected.

[a] North American Industry Classification System
[b] Regulated entities means major source facilities that apply surface coatings to these parts or products.
[c] Excluding special industry machinery, industrial and commercial machinery and equipment, and electrical machinery equipment and supplies not elsewhere classified.

As in the proposal, major sources classified under other NAICS codes will be subject to the standards if they perform large appliance surface coating operations and meet the other applicability criteria. Conversely, some facilities listed under these codes may not be affected because some of the codes in the table cover products that are not defined as large appliances for the purposes of the rule.

This table is not intended to be exhaustive, but rather provides a guide for entities likely to be regulated by this action. To determine whether your facility is subject to the rule, you should carefully examine the applicability criteria in § 63.4081 of the rule. If you have questions regarding how this action applies to a particular entity, consult the appropriate EPA Regional Office representative.

Judicial Review. The NESHAP for large appliance surface coating operations was proposed on December 22, 2000 (65 FR 81134). Under section 307(b)(1) of the CAA, judicial review of NESHAP is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 23, 2002. Only those objections to the rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce the requirements.

Outline. The information presented in this preamble is organized as follows:

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B. What criteria do we use in the development of NESHAP?
II. What changes and clarifications have we made to the proposed standards?
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III. What are the final standards?
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C. Executive Order 13132, Federalism
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E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by the final NESHAP was listed on July 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. Major sources of HAP are those that have the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

B. What Criteria Do We Use in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both existing and new major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than the standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emission reductions, any health and environmental impacts, and energy requirements.

II. What Changes and Clarifications Have We Made to the Proposed Standards?

In response to public comments received on the proposed standards, we made several changes in developing the final rule. While some of the changes were designed to make our intentions clearer, other changes had a direct effect on the degree of coverage of the standards. The substantive comments and our responses and rule changes are summarized in the following sections. A more detailed summary can be found in the BID for the final rule which is available from several sources (see **ADDRESSES**).

A. Scope of Source Category

In the proposal, we defined the regulated community for the standards to be facilities that apply surface coatings to large appliances or components of large appliances. In the proposal BID and the table of regulated entities in the proposal preamble (65 FR 81135, December 22, 2000), we stated that the facilities are generally included under the following NAICS codes (and their SIC code equivalents): 335221 (3631) household cooking appliances, 335222 (3632) household refrigerator and home freezer, 335224 (3633) householdlaundry equipment manufacturing, 335228 (3639) other major household appliances, 333415 (3585) air-conditioning and warm air heating equipment and commercial and industrial refrigeration equipment, and 333319 (3589) service appliance. We cautioned that some facilities and products with these codes do not fit under the large appliance category, and similarly, there may be facilities under other codes that do in fact coat large appliances. Thus, these industrial codes were given as a guide but were not intended to be used as the only basis for determining applicability of the rule.

The codes listed above are associated with household cooking equipment, refrigerators/freezers, laundry equipment, and floor vacuums and polishers, and various types of

commercial and industrial heating, ventilation, and refrigeration equipment. Table 2–1 in the proposal BID listed examples of large appliances that are produced by facilities in these categories.

Several commenters stated that the scope of the category as proposed was overly broad and confusing. They felt that we had included several products not normally considered to be large appliances, and that these products should be regulated under the miscellaneous metal parts and products NESHAP currently under development. As an alternative, if EPA decided not to change the mix of products defined to be large appliances, one commenter suggested that we change the name of the source category to better match the product mix being represented.

In addition, commenters asked for clarification on the applicability of the rule to certain coatings such as porcelain enamel, powder coatings, and asphalt interior soundproofing. The final rule clarifies that the aforementioned coatings are considered coatings for the purposes of the rule and will be subject to subpart NNNN. We also clarified that phosphating (a form of pretreatment) and metal plating are excluded as coatings in subpart NNNN.

Our proposed definition of the large appliances source category was formed using the six SIC/NAICS codes as a foundation, and then including the products under those codes that we believed should be included as large appliances. Some commenters expressed confusion when comparing the preamble table to BID Table 2–1. We have clarified the scope of the source category by including definitions for *large appliance product* and *large appliance part* in the final rule. The definitions list the parts and products intended to be regulated under the final rule, and they supercede the listing in Table 2–1 of the proposal BID. We also modified the proposal preamble table and are including it in the BID for the final rule. We have added Commercial Laundry Equipment and have deleted Floor Waxing/Polishing and Motor Vehicle Air-Conditioning, in keeping with our intent at proposal. In addition, we have also deleted heat transfer coils and large commercial and industrial chillers from the table and from coverage by the large appliances NESHAP.

A few commenters stated that the heat transfer coils used to cool fluids in refrigeration and air-conditioning systems typically have unique coating formulation requirements, and suitable coatings are not available in a low-HAP formulation. The need for special coatings arises from the complex geometry of heat transfer coils, as well as exposure requirements in food processing and other special environments. The coating information we collected and used to determine the MACT floor did not contain coatings used specifically for heat transfer coils. The commenters asked that this large appliance component be removed from the large appliances category and regulated under the miscellaneous metal parts and products NESHAP.

We have examined the submitted data and arguments and have concluded that the data analyzed since proposal offer sufficient justification to revise the scope of the source category. Therefore, we have excluded heat transfer coils from coverage under the large appliances NESHAP.

A trade organization and one manufacturer of large commercial and industrial chillers (equipment that produces chilled water for use in a number of industrial processes including heating, ventilating, and air conditioning (HVAC) applications) commented that large chillers are very different from other products included as large appliances. They said that large HVAC products are produced in much lower volumes than white goods and are often custom designed. Furthermore, they are often subjected to outdoor environments requiring that they meet strict performance criteria, and they have a longer expected life. Commercial and industrial chillers are much larger than most other large appliances and are painted after assembly. Therefore, they cannot be put through a baking oven to cure the coatings, which restricts the coatings available for use.

We requested additional supporting data on large chiller equipment coating operations and the available coatings. We also visited one of the few facilities that manufactures that equipment. Our evaluation of the chiller coating operations led us to determine that large commercial and industrial chillers should be excluded from the Large Appliances category for the reasons described by the commenter.

B. Definitions

We have added definitions for *large appliance product* and *large appliance part* to the final rule. These definitions include "white goods" appliances, as well as certain HVAC equipment used in commercial and industrial applications. However, specifically excluded from the definition of *large appliance product* are heat transfer coils, large commercial and industrial chillers, and motor vehicle air-conditioning units.

We added several other new definitions in response to comments and to increase the clarity of the rule. Newly defined terms include *adhesive, facility maintenance, heat transfer coil, large commercial and industrial chillers*, and *month*. Clarifying changes were also made to the proposed definitions for *coating operation, manufacturer's formulation data*, and *surface preparation*.

C. Overlap With Other NESHAP Categories

Several commenters requested that the final rule provide compliance flexibility for facilities that coat a variety of items in addition to large appliances or large appliance components. Such facilities may be affected by several coating NESHAP, such as the standards for large appliances, miscellaneous metal parts and products, and plastic parts and products. They sought a regulatory approach that would allow facilities to opt specific coating operations or product lines, that are collateral to large appliance coating operations, out of the rule and into either the miscellaneous metal parts and products rule under development or the plastic parts and products rule that is also under development. Commenters also believed that plants coating types of items with a wider use beyond large appliances (such as motors, handles, hinges, etc.) should have the choice of those operations being covered by either the miscellaneous metal or plastic parts rule, even if the specific items are designed to be used on large appliances.

We understand that many facilities may find it beneficial to consolidate their regulatory coverage for a number of different types of coating operations (such as large appliances, miscellaneous metal parts, and plastic parts) into a single NESHAP. Consolidation may reduce the amount of records, reports, or compliance calculations that the facility would have to maintain. To address the issue of multiple regulatory coverage, we are including a new provision in the final rule that allows the consolidation sought by the commenters. Under this approach, as an alternative to complying separately with multiple coating NESHAP, a facility may choose to be subject to the requirements of only one applicable NESHAP, provided it is the most stringent of the applicable subparts. The test for stringency is a demonstration that the facilitywide HAP emissions from all surface coating operations will be less than or equal to the emissions achieved by complying separately with

all applicable subparts of 40 CFR part 63.

There are many facilities that apply surface coatings to a variety of items that may be used on large appliances, but which also have application to other types of products. We agree that such multi-purpose items are not exclusively large appliance parts and may be considered more appropriately miscellaneous metal parts or plastic parts. Therefore, we are excluding these items from coverage under the final rule. However, if a large appliance source prefers to have all its coating operations subject to only one coating NESHAP to consolidate recordkeeping and reporting requirements, the source would have the option described above of complying with only the most stringent applicable NESHAP.

D. Other Changes and Clarifications

A number of commenters found the proposed compliance options confusing and some suggested variations on the way these options should be applied.

One of the commenters believed that the calculations, monthly compliance determinations, and recordkeeping required under the compliant material option should not apply to coating operations that use only powder coatings that contain no HAP. The commenter suggested relevant portions of the proposed requirements that he believed should not be applicable to these powder coating operations.

We have reviewed the proposed calculations, compliance determinations, and recordkeeping requirements for the compliant material option and believe the commenter identified a need to clarify the rule language. The proposed language would have required an affected source choosing the compliant material option and using only powder coatings and non-HAP cleaning materials to determine the mass fraction of organic HAP, the volume fraction of solids, and the density for each coating, and then to determine the ratio of organic HAP to coating solids. Records and certain reports would have had to include such calculations. We did not intend to require this unnecessary calculation for non-HAP coatings at proposal. Clearly, if a coating contains no organic HAP, it is not useful to record and report such calculations since the result is obviously zero kilogram (kg) organic HAP per liter of coating solids. Therefore, we have added a provision in § 63.4141(a) and (d) of the final rule specifying that if the mass fraction of organic HAP in a coating is zero, as determined according to § 63.4141(a) (through test results or manufacturer's formulation data), then the source is not required to determine the volume fraction of coating solids and density or to calculate the organic HAP content. This new provision applies to all types of coatings that contain no organic HAP, not just powder coatings. For such a coating, § 63.4141(d) of the final rule specifies that the organic HAP content equals zero and no calculation is required. The following notification, reporting, and recordkeeping sections of the rule were also revised to fully incorporate this provision: §§ 63.4110(b)(8) and (b)(8)(i), 63.4120(d)(2), and 63.4130(c), (c)(1), (f), and (g). We believe that these changes are responsive to the commenter's concerns, and that they retain only the requirements that are essential for compliance and enforcement purposes.

Some commenters asked whether different compliance options could be combined for the same coating operation in order for sources to gain more flexibility in the way coatings and other materials are used in an operation. We proposed three compliance options: Option 1 when using compliant materials, Option 2 when determining emission rate without add-on controls, and Option 3 when using emission controls. The three proposed compliance options address different situations and were intended to be applied on a one-at-a-time basis (see § 63.4091 introductory language). Both Options 1 and 2 cannot logically be used on one coating operation at the same time. If all coatings meet the limit and all thinners and cleaners are HAP-free, then Option 1 could be used and, thus, there would be no need to combine data elements for multiple coatings, thinners, and cleaning materials to derive an emission rate (required for Option 2). If the coatings, thinners, and cleaning materials do not meet the Option 1 criteria, or if the source owner or operator chooses not to use Option 1, then Option 2 must be used (or Option 3 if an add-on control device is in use). In no case may coatings, thinners, and cleaning materials accounted for under one option be included in the accounting under another option. Because the compliance options are designed to accommodate different situations and, due to the lack of compelling information or justification for the commenter's suggested rule change, the final compliance option provisions are the same as proposed.

Additionally, one commenter believed that a clarification was needed for proposed § 63.4081(a)(3), which excluded certain categories of surface coating from coverage by the rule, such as facility maintenance operations. The commenter wanted the rule to make specific mention of the paint booths that are used for maintaining manufacturing equipment. We agree with the commenter that the rule should not apply to paint booths or to other surface coating equipment used exclusively to coat something other than large appliances. If, however, the paint booth or equipment is sometimes used for large appliance surface coating, it would be subject to the standards during those times and would need to be considered part of the affected source. It also is subject to the standards if it is used for cleaning of equipment used in coating operations, e.g., application equipment, hangers, and racks (see § 63.4081(c)(6) and the definition of coating operation in § 63.4181). To clarify our intent, we have included the following definition of facility maintenance in the final rule: *Facility maintenance* means the routine repair or refurbishing (including surface coating) of the tools, equipment, machinery, and structures that comprise the infrastructure of a facility or that are necessary for the facility to function in its intended capacity. It does not mean cleaning of equipment that is part of a large appliances coating operation.

One commenter suggested that EPA establish a low-use exemption threshold for military installations where military members could apply coatings at on-base hobby shops and housing areas to repair personally owned appliances. Generally, in hobby shops, the prevailing coating application would involve hand-held, non-refillable aerosol containers. However, individuals using hobby shop facilities may also apply the coatings by methods other than hand-held aerosol cans. In the proposal, we excluded hand-held aerosol container coatings from the rule but did not exclude other coating application methods, specifically those related to hobby shops. However, in considering this comment, we concluded that coating application by individuals who repair, refurbish, or recoat large appliances or other types of products at military hobby shops or base housing areas does not compare to the coating operations conducted at facilities that apply coatings as a step in the production of large appliances. Therefore, these coating activities are not subject to the standards. We believe that expanding the exclusion in § 63.4081(d)(4) to include hobby shops is a more appropriate way to address this issue than creating a low-use exemption that would necessitate coating usage recordkeeping at the hobby shop. Therefore, § 63.4081(d)(4) of the final rule excludes research or

laboratory facilities; janitorial, building, and facility maintenance operations; hobby shops operated for non-commercial purposes; and the use of hand-held, non-refillable aerosol containers.

In addition to the changes described above, we noted several areas of the proposed rule that warrant revision even though commenters did not object to them. The changes are necessary so that the provisions properly reflect our intent and are consistent with other surface coating NESHAP under development. As proposed, § 63.4100(a)(2) indicated that affected sources using the emission rate with add-on controls options would not have to comply with the standards during periods of startup, shutdown, and malfunction. This provision is often found in NESHAP in which compliance with the standards is based solely on the results of a short-term initial performance test and short-term averaging of continuous monitoring results thereafter. After proposal of the large applicances NESHAP, we realized that this provision is not appropriate for the surface coating NESHAP when these short-term test and monitoring results are only one component of a compliance determination that determines emissions over a long period of time, which in this case is a month. For the large appliances NESHAP, the source owner or operator will use the performance test and continuous monitoring results in combination with data on coatings and other materials used over a month's period of time. These components will be combined to calculate a monthly organic HAP emission rate. Since there may be many startups and shutdowns of a coating operation over the course of a month as part of normal operation, it is not appropriate to exempt such periods from compliance with the standards. The rule does require in § 63.4100(d) that you develop and operate according to a startup, shutdown, and malfunction plan, and § 63.6163(h) provides the following: "Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e)." We believe that this provision along with a month-long compliance period that will accommodate potential short-term higher emission rates that might occur due to startup, shutdown, or malfunction are adequate and that the proposed exemption is not necessary or appropriate. Therefore, it is not included in the final standards.

Another change we made to the rule is intended to simplify the compliance provisions for the emission rate with add-on controls option. We removed § 63.4162, which was proposed to provide explicit instructions for determining compliance with the emission rate with add-on controls option when the coating operation is operated under several different operating conditions. We found after proposal, however, that this section as proposed added unnecessary complexity to the standards, and that the compliance provisions are adequate without it. Therefore, we removed it from the final standards.

To provide consistency with other surface coating NESHAP, we added provisions in § 63.4167(b)(3) and (4) to allow sources an alternative to the proposed operating limits for catalytic oxidizers that require monitoring of inlet and outlet temperature before and after the catalyst bed and the temperature difference across the bed. This alternative allows you to monitor only the temperature before the catalyst bed if you develop and follow an onsite inspection and maintenance plan for the catalytic oxidizer. For some sources, this would be a preferable alternative. Another addition we made to provide consistency is a description of continuous monitoring requirements for concentrators in § 63.4167(e) and (f) and in Table 1 to the subpart. As proposed, a source using a concentrator would have had to seek and obtain approval from the permitting authority for the continuous monitoring it wanted to use to comply with the operating limits since we did not include such monitoring provisions in the proposed standards. Because we have included these provisions in the final standards, a source can comply with them and, therefore, avoid having to apply for and obtain specific approval unless it wishes to monitor something different than what is specified in the new provisions. The concentrator monitoring requirements are the same as those in other surface coating NESHAP under development.

In addition to the revisions described above, we have made clarifying editorial changes throughout the rule to ensure it accurately expresses our intent and to promote consistency with other surface coating NESHAP currently under development. These changes do not affect the stringency of the requirements since they are only clarifications of the proposed provisions.

III. What Are the Final Standards?

A. What Is the Source Category?

The large appliances source category includes facilities that apply coatings to large appliance parts or products. The rule applies to facilities that are a major source, are located at a major source, or are part of a major source of HAP emissions. Large appliances include "white goods" such as ovens, refrigerators, freezers, dishwashers, laundry equipment, trash compactors, water heaters, comfort furnaces, and electric heat pumps. Large appliances also include most HVAC equipment intended for any application. However, not included in the source category are motor vehicle air-conditioning units, heat transfer coils, and large commercial and industrial chillers. Other coating operations not included in the source category are: the coating of large appliance parts that have a wider use beyond large appliances (such as handles or fasteners), repair or maintenance painting of large appliance parts or products used by a facility, the surface coating of heat transfer coils or large commercial and industrial chillers, research or laboratory facilities and facility maintenance operations, and hobby shops operated for non-commercial purposes.

B. What Is the Affected Source?

The affected source includes all of the activities that involve coatings, thinners, and cleaning materials used in large appliance coating operations. These activities include: (1) Surface preparation of the large appliance parts or products; (2) preparation of coatings for application; (3) applying the coatings; (4) flash-off, drying, or curing of the coatings; (5) cleaning of coating equipment; (6) storage of coatings, thinners, and cleaning materials; (7) conveying of these materials; and (8) handling and conveying of waste materials generated by the coating operations.

C. What Are the Emission Limits?

The emission limits are different for existing and new sources and have not changed since proposal. For an existing source, you must limit organic HAP emissions to no more than 0.13 kg/liter (1.1 pound (lb)/gallon (gal)) of coating solids used during each compliance

(monthly) period. For a new or reconstructed source, you must limit emissions to no more than 0.022 kg/liter (0.18 lb/gal) of coating solids. These limits apply to the total of all coatings, thinners, and cleaning materials used in coating operations at the affected source.

There are three compliance options available for meeting the emission limits. The compliant material option requires that each coating used in the operation meet the limit, and each thinner and cleaning material must contain no organic HAP. Under the emission rate without add-on controls option, you may average all of the coatings, thinners, and cleaning materials together and demonstrate that the overall emission rate is in compliance with the applicable limit. The emission rate with add-on controls option applies to coating operations for which add-on controls are used to meet the limit. Under this option, you must meet certain operating limits for the capture systems and control devices and follow a work practice plan for your material storage, mixing, conveying, and spills.

D. What Are the Testing and Initial and Continuous Compliance Requirements?

Existing sources will have to be in compliance no later than July 25, 2005. New and reconstructed sources will have to be in compliance by this same date or upon startup, whichever is later. The initial compliance period begins on the compliance date and ends on the last day of the first full month following this date, except that for new or reconstructed sources required to conduct performance tests the initial compliance period ends on the last day of the first full month following the test. Note that "month" means a calendar month or a similar pre-specified period in order to accommodate facility accounting periods. The performance test may be conducted up to 180 days after the compliance date.

As discussed earlier, the owner or operator must select one of three compliance options for each coating operation, but may change the approach used for any operation at any time. For the compliant material and emission rate without add-on controls option, you will determine the mass of organic HAP in coatings, thinners, and cleaning materials and the volume fraction of coating solids either from manufacturer's formulation data or from test results using the methods in the final rule. Alternative test methods may be used with EPA's approval, and the test method results will prevail over manufacturer's formulation data for compliance purposes. If you use the emission rate with add-on controls option, you need to determine the mass of organic HAP and volume fraction of coating solids as in the other two options and also the capture and control efficiencies of the add-on controls by means of a performance test. As part of this test, you must establish operating limits that can be used on a continuous basis to demonstrate compliance with the emission limit. The final rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. If the monitoring results indicate no deviations from the operating limits, you would assume the control system is continuing to provide the same control efficiency as demonstrated in the test. If the combination of this efficiency and the total mass of organic HAP in materials used in controlled coating operations continues to be within the applicable emission limit, then continuous compliance is shown for those operations.

E. What Are the Notification, Recordkeeping, and Reporting Requirements?

If you are subject to the standards, you must comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63. The General Provisions notification requirements include: initial notifications, notification of performance test if you are complying using a capture system and control device, Notification of Compliance Status, and additional notifications for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports. Records must be kept for at least 5 years with 2 years of that time being at the facility, and they may be kept in electronic form as long as they are readily available for review.

IV. What Are the Environmental, Energy, Cost, and Economic Impacts?

A. What Are the Air Impacts?

We estimate that nationwide organic HAP emissions will be reduced by approximately 1,080 megagrams/year (Mg/yr) (1,191 tpy) from existing sources. This represents a 45 percent reduction from the emissions baseline of 2,394 Mg/yr (2,639 tpy).

For new sources, we are assuming that most will use state-of-the-art coatings (predominantly powder coatings) even in the absence of the standards. These coatings will produce emission levels at or below the requirements of the final standards. Therefore, we are not attributing any emissions reductions from new sources to the final standards.

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

As at proposal, we have found that there are no significant expected non-air health, environmental, or energy impacts associated with the final standards. We reached this conclusion by considering the likely control approaches that will be used by existing and new sources. The use of low-HAP coating technologies will not produce any significant impacts on health, energy requirements, or the environment.

C. What Are the Cost and Economic Impacts?

The costs for facilities to comply with the final standards result from the switch to reformulated (lower-HAP) coatings, thinners, and cleaning materials. There will also be annual costs for meeting the monitoring, recordkeeping, and reporting (MRR) requirements of the rule.

For existing sources, the total nationwide annual cost in the 5th year of the standards is estimated to be $1.63 million. This includes approximately $0.48 million of direct costs associated with materials usage and $1.15 million for recordkeeping and reporting.

For new sources, only the costs of MRR apply. We estimate the annual cost in the 5th year for all new sources to be $341,000.

Our economic impact analysis showed the economic impacts of the promulgated standards to generally be minimal, with projected price increases and production decreases of less than 0.01 percent. Social costs are estimated at approximately $1.62 million in the 5th year for existing sources, with the burden being shared fairly equally between consumers and producers. No firms or facilities are expected to become at risk of closure due to the final standards. For more information, consult the "Economic Impact Analysis of the Proposed NESHAP: Surface Coating of Large Appliances" (Docket No. A–97–41).

V. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of

the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. These final standards are not subject to Executive Order 13045 because they do not establish an environmental standard based on an assessment of health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, this rule has been determined not to be "economically significant" as defined under Executive Order 12866.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Pursuant to the terms of Executive Order 13132, it has been determined that this rule does not have "federalism implications" because it does not meet the necessary criteria. Thus, Executive Order 13132 does not apply to this rule.

D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate large appliance surface coating facilities. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of this rule for any year has been estimated to be slightly less than $2 million. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that these standards contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such

governments or impose obligations upon them. Therefore, today's final rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business ranging from 100–1,000 employees or less than $3.5 million in annual sales; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In accordance with the RFA and SBREFA, EPA conducted an assessment of these standards on small businesses within the large appliance coating industry. Based on Small Business Administration size definitions and reported sales and employment data, EPA's survey identified 221 facilities that apply surface coatings to large appliances. These facilities, which include major and area sources, are owned by 84 companies. Of these companies, 34 are small businesses. Although small businesses represent about 40 percent of the companies within the source category, they are expected to incur only 10 percent of the total industry compliance costs. Under the final standards, the average annual compliance cost share of sales for small businesses is only 0.20 percent, with 26 of the 34 small businesses not expected to incur any additional costs because they are area sources or are permitted as synthetic minor HAP emission sources. After reviewing the range of costs to be borne by small businesses, EPA has determined the costs are typically small and that this action will not have a significant impact on a substantial number of small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has nonetheless worked aggressively to minimize the impact of these standards on small entities, consistent with our obligations under the CAA. We solicited input from small entities during the data-gathering phase of the proposed rulemaking. We are including compliance options that give small entities flexibility in choosing the most cost-effective and least burdensome alternative for their operation. For example, a facility could purchase and use low-HAP coatings (i.e., pollution prevention) that meet the final standards instead of using add-on capture and control systems. This method of compliance can be demonstrated with minimum burden by using purchase and usage records. No testing of materials will typically be required as the facility owner will be allowed to show that their coatings meet the emission limits by providing formulation data supplied by the manufacturer.

H. Paperwork Reduction Act

The information collection requirements for these final standards will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1954.01) and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The final standards require maintaining records of all coatings, thinners, and cleaning materials data and calculations used to determine compliance. This information includes the volume used during each monthly compliance period, mass fraction organic HAP, density, and, for coatings only, volume fraction of coating solids.

If an add-on control device is used, records must be kept of the capture efficiency of the capture system, destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected sourcewide emissions for each monthly compliance period and all data, calculations, test results, and other supporting information used to determine this value.

The MRR burden in the 5th year after the effective date of the promulgated rule is estimated to be 32,000 labor hours at a cost of $1.50 million for new and existing sources.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's rules are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number(s) for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 or 48 CFR chapter 15 in a subsequent **Federal Register**.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or

more VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This rulemaking involves technical standards. The EPA cites the following standards in this rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A–F, and 311. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A-F, and 311. The search and review results have been documented and are placed in the docket (Docket No. A–97–41) for this rule.

The four VCS described below were identified as acceptable alternatives to EPA test methods for the purposes of this rule.

The VCS, ASME PTC 19–10–1981–Part 10, "Flue and Exhaust Gas Analyses," is cited in this rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981–Part 10 is an acceptable alternative to Method 3B.

The VCS, ASTM 1475–98, "Standard Test Method for Density of Liquid Coatings, Inks, and Related Products," is cited in this rule for determining the density of coatings and the volatile matter in coatings.

The two VCS, ASTM D2697–86 (Reapproved 1998), "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings," and ASTM D6093–97, "Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer," are cited in this rule as acceptable alternatives to EPA Method 24 to determine the volume solids content of coatings. Currently, EPA Method 24 does not have a procedure for determining the volume of solids in coatings. These standards augment the procedures in Method 24, which currently states that volume solids content be calculated from the coating manufacturer's formulation.

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already incorporated by reference (IBR) in EPA Method 24. Five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are IBR in EPA Method 311.

In addition to the VCS EPA uses in this rule, the search for emissions measurement procedures identified eleven other VCS. The EPA determined that nine of these eleven standards identified for measuring emissions of the HAP or surrogates subject to emission standards in this rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, EPA does not intend to adopt these standards for this purpose. For further information on the determination of the eleven methods, see the docket for this rulemaking (Docket A–97–41).

Sections 63.4130, 63.4141, 63.4161, 63.4165, and 63.4166, and Table 1 of subpart NNNN list the EPA testing methods included in the final standards. Under § 63.7(f) of Subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any of the EPA testing methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 3, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 63.14 is amended by revising paragraphs (b)(24), (25), and (i) and adding a new paragraph (b)(26) to read as follows:

§ 63.14 Incorporations by reference

* * * * *

(b) * * *

(24) ASTM D2697–86 (Reapproved 1998), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for §§ 63.4141(b)(1) and 63.5160(c).

(25) ASTM D6093–97, Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for §§ 63.4141(b)(1) and 63.5160(c).

(26) ASTM D1475–98, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, IBR approved for §§ 63.4141(b)(3) and 63.4141(c).

* * * * *

(i) The following material is available for purchase from at least one of the following addresses: ASME International, Orders/Inquiries, P.O. Box 2300, Fairfield, NJ 07007–2300; or Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112: ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses, IBR approved for §§ 63.3360(d)(1)(iii), 63.4166(a)(3), and 63.5160(d)(1)(iii).

* * * * *

3. Part 63 is amended by adding subpart NNNN to read as follows:

Subpart NNNN—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

Sec.

What This Subpart Covers

63.4080 What is the purpose of this subpart?
63.4081 Am I subject to this subpart?
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63.4083 When do I have to comply with this subpart?

Emission Limitations

63.4090 What emission limits must I meet?
63.4091 What are my options for meeting the emission limits?
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63.4110 What notifications must I submit?
63.4120 What reports must I submit?

63.4130 What records must I keep?
63.4131 In what form and for how long must I keep my records?

Compliance Requirements for the Compliant Material Option

63.4140 By what date must I conduct the initial compliance demonstration?
63.4141 How do I demonstrate initial compliance with the emission limitations?
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Compliance Requirements for the Emission Rate Without Add-On Controls Option

63.4150 By what date must I conduct the initial compliance demonstration?
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63.4152 How do I demonstrate continuous compliance with the emission limitations?

Compliance Requirements for the Emission Rate With Add-On Controls Option

63.4160 By what date must I conduct performance tests and other initial compliance demonstrations?
63.4161 How do I demonstrate initial compliance?
63.4162 [Reserved]
63.4163 How do I demonstrate continuous compliance with the emission limitations?
63.4164 What are the general requirements for performance tests?
63.4165 How do I determine the emission capture system efficiency?
63.4166 How do I determine the add-on control device emission destruction or removal efficiency?
63.4167 How do I establish the emission capture system and add-on control device operating limits during the performance test?
63.4168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

Other Requirements and Information

63.4180 Who implements and enforces this subpart?
63.4181 What definitions apply to this subpart?

Tables to Subpart NNNN of Part 63

Table 1 to Subpart NNNN of Part 63—Operating Limits if Using the Emission Rate with Add-on Controls Option
Table 2 to Subpart NNNN of Part 63—Applicability of General Provisions to Subpart NNNN
Table 3 to Subpart NNNN of Part 63—Default Organic HAP Mass Fraction for Solvents and Solvent Blends
Table 4 to Subpart NNNN of Part 63—Default Organic Mass Fraction for Petroleum Solvent Groups

Subpart NNNN—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

What This Subpart Covers

§ 63.4080 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants for large appliance surface coating facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.4081 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a facility that applies coatings to large appliance parts or products, and is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP), except as provided in paragraph (d) of this section. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year. You are not subject to this subpart if your large appliance surface coating facility is located at, or is part of, an area source of HAP emissions. An area source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that is not a major source.

(b) The large appliance surface coating source category includes any facility engaged in the surface coating of a large appliance part or product. Large appliance parts and products include but are not limited to cooking equipment; refrigerators, freezers, and refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and heating, ventilation, and air-conditioning (HVAC) units, air-conditioning (except motor vehicle) units, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps. Specifically excluded are heat transfer coils and large commercial and industrial chillers.

(c) The large appliance surface coating activities and equipment to which this subpart applies are listed in paragraphs (c)(1) through (9) of this section:

(1) Surface preparation of large appliance parts and products;

(2) Preparation of a coating for application (e.g., mixing in thinners and other components);

(3) Application of a coating to large appliance parts and products using, for example, spray guns or dip tanks;

(4) Application of porcelain enamel, powder coating, and asphalt interior soundproofing coating;

(5) Flash-off, drying, or curing following the coating application operation;

(6) Cleaning of equipment used in coating operations (e.g., application equipment, hangers, racks);

(7) Storage of coatings, thinners, and cleaning materials;

(8) Conveying of coatings, thinners, and cleaning materials from storage areas to mixing areas or coating application areas, either manually (e.g., in buckets) or by automated means (e.g., transfer through pipes using pumps); and

(9) Handling and conveying of waste materials generated by coating operations.

(d) This subpart does not apply to surface coating that meets any of the criteria of paragraphs (d)(1) through (5) of this section.

(1) The surface coating of large appliance parts such as metal or plastic handles, hinges, or fasteners that have a wider use beyond large appliances is not subject to this subpart.

(2) The surface coating of large appliances conducted for the purpose of repairing or maintaining large appliances used by a facility and not for commerce is not subject to this subpart unless organic HAP emissions from the surface coating itself are as high as the rates specified in paragraph (a) of this section.

(3) The surface coating of heat transfer coils or large commercial and industrial chillers.

(4) The provisions of this subpart do not apply to research or laboratory facilities; janitorial, building, and facility maintenance operations; hobby shops operated for noncommercial purposes or coating applications using hand-held non-refillable aerosol containers.

(5) The provisions of this subpart do not apply to processes involving metal plating or phosphating of a substrate.

(e) If you own or operate an affected source that is subject to this subpart and at the same affected source you also perform surface coating subject to any other subparts in this part, you may choose for the affected source to comply with only one subpart. In order to choose this alternative, the total mass of organic HAP emissions from all surface coating operations in the affected source

must be less than or equal to the total mass of organic HAP emissions that would result if it complied separately with all applicable subparts. You must make this comparison for the initial compliance period and report it in the Notification of Compliance Status as required in § 63.4110(b)(10) and in the Notification of Compliance Status required by the other subparts. If you choose this alternative, your demonstration of compliance with the other subpart constitutes compliance with this subpart.

§ 63.4082 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source.

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are part of the large appliance surface coating facility:

(1) All coating operations as defined in § 63.4181;

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new affected source if you commenced its construction after July 23, 2002, and the construction is of a completely new large appliance surface coating facility where previously no large appliance surface coating facility had existed.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.4083 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.4140, 63.4150, and 63.4160.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section.

(1) If the initial startup of your new or reconstructed affected source is before July 23, 2002, the compliance date is July 23, 2002.

(2) If the initial startup of your new or reconstructed affected source occurs after July 23, 2002, the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is July 25, 2005.

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source, or the date the area source becomes a major source, or July 23, 2002, whichever is latest.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or July 25, 2005, whichever is later.

(d) You must meet the notification requirements in § 63.4110 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.4090 What emission limits must I meet?

(a) For an existing affected source, you must limit organic HAP emissions to the atmosphere to no more than 0.13 kilogram per liter (kg/liter) (1.1 pound per gallon (lb/gal)) of coating solids used during each compliance period.

(b) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere to no more than 0.022 kg/liter (0.18 lb/gal) of coating solids used during each compliance period.

§ 63.4091 What are my options for meeting the emission limits?

You must include all coatings, thinners, and cleaning materials used in the affected source when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.4090. To make this determination, you must use at least one of the three compliance options listed in paragraphs (a) through (c) of this section. You may apply any of the compliance options to an individual coating operation or to multiple coating operations as a group or to the entire affected source. You may use different compliance options for different coating operations or at different times on the same coating operation. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document this switch as required by § 63.4130(c), and you must report it in the next semiannual compliance report required in § 63.4120.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit in § 63.4090, and that each thinner and each cleaning material used contains no organic HAP. You must meet all the requirements of §§ 63.4140, 63.4141, and 63.4142 to demonstrate compliance with the emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on data on the coatings, thinners, and cleaning materials used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.4090. You must meet all the requirements of §§ 63.4150, 63.4151, and 63.4152 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on data on the coatings, thinners, and cleaning materials used in the coating operation(s) and the emission reductions achieved by emission capture and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.4090. If you use this compliance option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.4092, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h), and that you meet the work practice standards required in § 63.4093. You must meet all the requirements of §§ 63.4160 through 63.4168 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

§ 63.4092 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material

option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.4161(h), you must meet the operating limits specified in Table 1 to this subpart. These operating limits apply to the emission capture and control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the requirements in § 63.4167. You must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in Table 1 to this subpart or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the U.S. Environmental Protection Agency (EPA) Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.4093 What work practice standards must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s) for which you use this option; or you must meet an alternative standard as provided in paragraph (c) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) As provided in § 63.6(g), we, the EPA, may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.4100 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.4091(a) and (b), must be in compliance with the applicable emission limit in § 63.4090 at all times.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.4091(c), must be in compliance with the applicable emission limit in § 63.4090 and work practice standards in § 63.4093 at all times. Each controlled coating operation must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.4092 at all times, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h).

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date specified for your affected source in § 63.4083 and the date when the initial emission capture system and add-on control device performance tests have been completed as specified in § 63.4160. This requirement does not apply to a solvent recovery system for which you conduct a liquid-liquid material balance according to § 63.4161(h) in lieu of conducting performance tests.

(d) If your affected source uses an emission capture system and add-on control device, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address the startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.4101 What parts of the General Provisions apply to me?

Table 2 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.4110 What notifications must I submit?

(a) You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (a)(1) and (2) of this section.

(1) You must submit the Initial Notification required by § 63.9(b) for an existing affected source no later than July 23, 2003. For a new or reconstructed affected source, you must submit the Initial Notification no later than 120 days after initial startup or November 20, 2002, whichever is later.

(2) You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in § 63.4140, § 63.4150, or § 63.4160 that applies to your affected source.

(b) The Notification of Compliance Status must contain the information specified in paragraphs (b)(1) through (10) of this section and the applicable information specified in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.4140, § 63.4150, or § 63.4160 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.4091 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (b)(6)(i) and (ii) of this section.

(i) A description of and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.4090, include all the calculations you used to determine the kg organic HAP emitted per liter of coating solids used. You do not need to submit information provided by the materials suppliers or manufacturers or test reports.

(7) For each of the data items listed in paragraphs (b)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example coating or material or a summary of the results of testing conducted according to § 63.4141(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating, for one thinner, and for one cleaning material.

(ii) Volume fraction of coating solids for one coating.

(iii) Density for one coating, one thinner, and one cleaning material, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.4151.

(8) The determination of kg organic HAP emitted per liter of coating solids used for the compliance option(s) you use, as specified in paragraphs (b)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example determination of the organic HAP content for one coating, according to § 63.4141(d).

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions; the calculation of the total volume of coating solids used; and the calculation of the organic HAP emission rate, using Equations 1, 1A through 1C, 2, and 3, respectively, of § 63.4151.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used, using Equations 1 and 1A through 1C of § 63.4151; the calculation of the total volume of coating solids used, using Equation 2 of § 63.4151; the calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1, 1A through 1C, 2, 3, and 3A through 3C of § 63.4161, as applicable; and the calculation of the organic HAP emission rate, using Equation 4 of § 63.4161.

(9) For the emission rate with add-on controls option, you must include the information specified in paragraphs (b)(9)(i) through (v) of this section, except that the requirements in paragraphs (b)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4093.

(v) A statement of whether or not you developed and implemented the startup, shutdown, and malfunction plan required by § 63.4100(d).

(10) If you have chosen for your affected source to comply with the requirements of another subpart in lieu of the requirements of this subpart, as allowed in § 63.4081(d), your Notification of Compliance Status must include a statement certifying your intent, as well as documentation and supporting materials showing that, during the initial compliance period, your affected source's total organic HAP emissions were equal to or less than the organic HAP emissions that would have resulted from complying separately with each applicable subpart.

§ 63.4120 What reports must I submit?

You must submit semiannual compliance reports for each affected source according to the requirements of this section. The semiannual compliance reporting requirements of this section may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(5) of this section.

(a) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1) through (4) of this section.

(1) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.4140, § 63.4150, or § 63.4160 that applies to your affected source and ends on June 30 or December 31, whichever date is the first date following the end of the initial compliance period.

(2) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(3) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(4) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent semiannual compliance reports according to the dates the permitting authority has established instead of the date specified in paragraph (a)(3) of this section.

(5) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from

any emission limitation in this subpart, its submission shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(b) The semiannual compliance report must contain the information specified in paragraphs (b)(1) through (4) of this section and the information specified in paragraphs (c) through (j) of this section that is applicable to your affected source.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31.

(4) Identification of the compliance option or options specified in § 63.4091 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(c) If there were no deviations from the emission limitations in §§ 63.4090, 63.4092, and 63.4093 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period.

(d) If you use the compliant material option and there was a deviation from the applicable emission limit in § 63.4090, the semiannual compliance report must contain the information in paragraphs (d)(1) through (4) of this section.

(1) Identification of each coating used that deviated from the emission limit, each thinner and cleaning material used that contained organic HAP, and the dates and time periods each was used.

(2) The determination of the organic HAP content, according to § 63.4141(d), for each coating identified in paragraph (d)(1) of this section. You do not need to submit background data supporting this calculation, for example, information provided by coating suppliers or manufacturers or test reports.

(3) The determination of mass fraction of organic HAP for each thinner and cleaning material identified in paragraph (d)(1) of this section. You do not need to submit background data supporting this calculation, for example, information provided by material suppliers or manufacturers or test reports.

(4) A statement of the cause of each deviation.

(e) If you use the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.4090, the semiannual compliance report must contain the information in paragraphs (e)(1) through (3) of this section.

(1) The beginning and ending dates of each compliance period during which the organic HAP emission rate exceeded the emission limit.

(2) The calculations used to determine the organic HAP emission rate for the compliance period in which the deviation occurred. You must provide the calculations for Equations 1, 1A through 1C, 2, and 3 in § 63.4151; and, if applicable, the calculation used to determine the organic HAP in waste materials according to § 63.4151(e)(4). You do not need to submit background data supporting these calculations, for example, information provided by materials suppliers or manufacturers or test reports.

(3) A statement of the cause of each deviation.

(f) If you use the emission rate with add-on controls option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out-of-control during the reporting period.

(g) If you use the emission rate with add-on controls option and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (g)(1) through (14) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(1) The beginning and ending dates of each compliance period during which the organic HAP emission rate exceeded the applicable emission limit in § 63.4090.

(2) The calculations used to determine the organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used during the compliance period, using Equations 1, 1A through 1C, and 2 of § 63.4151 and, if applicable, the calculation used to determine the mass of organic HAP in waste materials according to § 63.4151(e)(4); the calculation of the total volume of coating solids used during the compliance period, using Equation 2 of § 63.4151; the calculation of the mass of organic HAP emission reduction during the compliance period by emission capture systems and add-on control devices, using Equations 1, 1A through 1C, 2, 3, and 3A through 3C of § 63.4161; and the calculation of the organic HAP emission rate, using Equation 4 of § 63.4161. You do not need to submit the background data supporting these calculations, for example, information provided by materials suppliers or manufacturers or test reports.

(3) The date and time that each malfunction started and stopped.

(4) A brief description of the CPMS.

(5) The date of the latest CPMS certification or audit.

(6) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(7) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(8) The date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(9) A summary of the total duration of each deviation from an operating limit in Table 1 to this subpart and bypass of the add-on control device during the semiannual reporting period and the total duration as a percent of the total source operating time during that semiannual reporting period.

(10) A breakdown of the total duration of the deviations from the operating limits in Table 1 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(11) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(12) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control

device since the last semiannual reporting period.

(13) For each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation.

(14) A statement of the cause of each deviation.

(h) If you use the emission rate with add-on controls option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(i) [Reserved]

(j) If you use the emission rate with add-on controls option and you have a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (j)(1) and (2) of this section.

(1) If your actions were consistent with your startup, shutdown, and malfunction plan (SSMP), you must include the information specified in § 63.10(d)(5) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your SSMP, you must submit an immediate startup, shutdown, and malfunction report as described in paragraphs (j)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile (fax), telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.4130 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers such as manufacturer's formulation data or test data used to determine the mass fraction of organic HAP and density for each coating, thinner, and cleaning material and the volume fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, a record of the time periods (beginning and ending dates and times) and the coating operations at which each compliance option was used and a record of all determinations of kg organic HAP per liter of coating solids for the compliance option(s) you used, as specified in paragraphs (c)(1) through (3) of this section.

(1) For the compliant material option, a record of the determination of the organic HAP content for each coating, according to § 63.4141(d).

(2) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4151 and, if applicable, the calculations used to determine the mass of organic HAP in waste materials according to § 63.4151(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4151; and the calculation of the organic HAP emission rate, using Equation 3 of § 63.4151.

(3) For the emission rate with add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4151 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4151(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4151; the calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1, 1A through 1C, 2, 3, and 3A through 3C of § 63.4161, as applicable; and the calculation of the organic HAP emission rate, using Equation 4 of § 63.4161.

(d) A record of the name and volume of each coating, thinner, and cleaning material used during each compliance period.

(e) A record of the mass fraction of organic HAP for each coating, thinner, and cleaning material used during each compliance period.

(f) A record of the volume fraction of coating solids for each coating used during each compliance period except for zero-HAP coatings for which volume solids determination is not required as allowed in § 63.4141(a).

(g) A record of the density for each coating used during each compliance period except for zero-HAP coatings for which volume solids determination is not required as allowed in § 63.4141(a) and, if you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, a record of the density for each thinner and cleaning material used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.4151 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.4151(e)(4), you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 1 of § 63.4151, a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility, and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.4151.

(3) The methodology used in accordance with § 63.4151(e)(4) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month; and the methodology to determine the mass of organic HAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) [Reserved]

(j) You must keep records of the date, time, and duration of each deviation.

(k) If you use the emission rate with add-on controls option, you must keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a

period of startup, shutdown, or malfunction.

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 1 to this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.4165(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.4164 and 63.4165(b) through (e) including the records specified in paragraphs (k)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.4165(e), if applicable.

(6) The records specified in paragraphs (k)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.4166.

(i) Records of each add-on control device performance test conducted according to §§ 63.4164 and 63.4166.

(ii) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(8) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.4167 and to document compliance with the operating limits as specified in Table 1 of this subpart.

(9) A record of the work practice plan required by § 63.4093, and documentation that you are implementing the plan on a continuous basis.

§ 63.4131 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a data base.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.4140 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.4141. The initial compliance period begins on the applicable compliance date specified in § 63.4083 and ends on the last day of the first full month after the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. The initial compliance demonstration includes the determination according to § 63.4141 and supporting documentation showing that, during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limit in § 63.4090, and that you used no thinners or cleaning materials that contained organic HAP.

§ 63.4141 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the emission rate without add-on controls option or the emission rate with add-on controls option for any coating operation(s) in the affected source for which you do not use this option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limit in § 63.4090 and must use no thinner or cleaning material that contains organic HAP, as determined according to this section during the initial compliance period. Any coating operation(s) for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.4092 and 63.4093, respectively. To demonstrate initial compliance with the emission limitations using the compliant material option, you must meet all the requirements of this section for the coating operation(s) using this option. Use the procedures in this section on each coating, thinner, and cleaning material in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration. You do not need to redetermine the HAP content of coatings, thinners, or cleaning materials that have been reclaimed onsite and reused in the coating operation(s) for which you use the compliant material option, provided these materials in their condition as received were demonstrated to comply with the compliant material option. If the mass fraction of organic HAP of a coating equals zero, determined according to paragraph (a) of this section, and you use the compliant material option, you are not required to comply with

paragraphs (b) and (c) of this section for that coating.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (for example, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (for example, 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data if they represent each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for mass fraction of organic HAP in these solvent blends listed in Table 3 or 4 of this subpart. If you use the tables, you must use the values in Table 3 for all solvent blends that match Table 3 entries, and you may only use Table 4 if the solvent blends in the materials you use do not match any of the solvent blends in Table 3, and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 3 or 4 of this subpart, the Method 311 results will take precedence.

(b) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liters of coating solids per liter of coating) for each coating used during the compliance period by a test, by information provided by the supplier or the manufacturer of the material, or by calculation as specified in paragraphs (b)(1) through (3) of this section.

(1) *ASTM Method D2697–86 (Reapproved 1998) or D6093–97.* You may use ASTM Method D2697–86 (Reapproved 1998), "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings," or D6093–97, "Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer" (incorporated by reference, see § 63.14) to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

(2) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(3) *Calculation of volume fraction of coating solids.* If the volume fraction of coating solids cannot be determined using the options in paragraphs (b)(1) and (2) of this section, you must determine it using Equation 1 of this section:

$$V_s = 1 - \frac{m_{volatiles}}{D_{avg}} \qquad \text{(Eq. 1)}$$

Where:

V_s = volume fraction of coating solids, liters coating solids per liter coating.

$m_{volatiles}$ = total volatile matter content of the coating, including HAP, volatile organic compounds (VOC), water, and exempt compounds, determined according to Method 24 in appendix A of 40 CFR part 60, grams volatile matter per liter coating.

D_{avg} = average density of volatile matter in the coating, grams volatile matter per liter volatile matter, determined from test results using ASTM Method D1475–98, "Standard Test Method for Density of Liquid Coatings, Inks, and Related Products" (incorporated by reference, see § 63.14) information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and other information sources, the test results will take precedence.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–98, "Standard Test Method for Density of Liquid Coatings, Inks, and Related Products" (incorporated by reference, see § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and other information sources, the test results will take precedence.

(d) Determine the organic HAP content of each coating. Determine the organic HAP content, kg organic HAP per liter coating solids, of each coating used during the compliance period, using Equation 2 of this section, except that if the mass fraction of organic HAP equals zero, then the organic HAP content also equals zero and you are not required to use Equation 2 to calculate the organic HAP content:

$$H_c = (D_c)(W_c) / V_s \qquad \text{(Eq. 2)}$$

Where:

H_c = organic HAP content of the coating, kg organic HAP per liter coating solids.

D_c = density of coating, kg coating per liter coating, determined according to paragraph (c) of this section.

W_c = mass fraction of organic HAP in the coating, kg organic HAP per kg coating, determined according to paragraph (a) of this section.

V_s = volume fraction of coating solids, liters coating solids per liter coating, determined according to paragraph (b) of this section.

(e) The organic HAP content for each coating used during the initial compliance period must be less than or equal to the applicable emission limit in § 63.4090; and each thinner and cleaning material used during the initial compliance period must contain no organic HAP, determined according to paragraph (a) of this section. You must keep all records required by §§ 63.4130 and 63.4131. As part of the Notification of Compliance Status required in § 63.4110, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeds the applicable emission limit in § 63.4090, and you used no thinners or cleaning materials that contain organic HAP, determined according to paragraph (a) of this section.

§ 63.4142 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period, to demonstrate continuous compliance, you must use no coating for which the organic HAP content, determined according to § 63.4141(d), exceeds the applicable emission limit in § 63.4090, and use no thinner or cleaning material that contains organic HAP, determined according to § 63.4141(a). Each month following the initial compliance period described in § 63.4140 is a compliance period.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating, thinner, or cleaning material that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.4110(b)(6) and 63.4120(d).

(c) As part of each semiannual compliance report required by § 63.4120, you must submit a statement that you were in compliance with the emission limitations during the reporting period because you used no thinners or cleaning materials that contained organic HAP, and you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.4090.

(d) You must maintain records as specified in §§ 63.4130 and 63.4131.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.4150 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4151. The initial compliance period begins on the applicable compliance date specified in § 63.4083 and ends on the last day of the first full month after the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. The initial compliance demonstration includes the calculations according to § 63.4151 and supporting documentation showing that the organic HAP emission rate for the initial compliance period was equal to or less than the applicable emission limit in § 63.4090.

§ 63.4151 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any individual coating operation, for any group of coating operations in the affected source, or for all of the coating operations in the affected source. You must use either the compliant material option or the emission rate with add-on controls option for any coating operation(s) in the affected source for which you do not use this option. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation(s) must meet the applicable emission limit in § 63.4090 but not the operating limits or work practice standards in §§ 63.4092 and 63.4093, respectively, during the initial compliance period. You must meet all of the requirements of this section to demonstrate initial compliance with the applicable emission limit in § 63.4090 for the coating operation(s). When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate with add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed onsite and reused in the coating operation(s) for which you use the emission rate without add-on controls option.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during the compliance period according to the requirements in § 63.4141(a).

(b) *Determine the volume fraction of coating solids for each coating.* Determine the volume fraction of coating solids for each coating used during the compliance period according to the requirements in § 63.4141(b).

(c) *Determine the density of each material.* Determine the density of each coating, thinner, and cleaning material used during the compliance period according to the requirements in § 63.4141(c).

(d) *Determine the volume of each material used during the compliance period.* Determine the volume (liters) of each coating, thinner, and cleaning material used during the compliance period by measurement or usage records.

(e) *Calculate the mass of organic HAP emissions during the compliance period.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings, thinners, and cleaning materials used during the compliance period minus the organic HAP in certain waste materials. Calculate it using Equation 1 of this section.

$$H_e = A + B + C - R_w \quad \text{(Eq. 1)}$$

Where:

H_e = total mass of organic HAP emissions during the compliance period, kg.

A = total mass of organic HAP in the coatings used during the compliance period, kg, as calculated in Equation 1A of this section.

B = total mass of organic HAP in the thinners used during the compliance period, kg, as calculated in Equation 1B of this section.

C = total mass of organic HAP in the cleaning materials used during the compliance period, kg, as calculated in Equation 1C of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the compliance period, kg, determined according to paragraph (e)(4) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the kg organic HAP in the coatings used during the compliance period, using Equation 1A of this section:

$$A = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \qquad \text{(Eq. 1A)}$$

Where:

A = total mass of organic HAP in the coatings used during the compliance period, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the compliance period, liters.

$D_{c,i}$ = density of coating, i, kg coating per liter coating.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

m = number of different coatings used during the compliance period.

(2) Calculate the kg of organic HAP in the thinners used during the compliance period, using Equation 1B of this section:

$$B = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \qquad \text{(Eq. 1B)}$$

Where:

B = total mass or organic HAP in the thinners used during the compliance period, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the compliance period, liters.

$D_{t,j}$ = density of thinner, j, kg thinner per liter thinner.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.

n = number of different thinners used during the compliance period.

(3) Calculate the kg organic HAP in the cleaning materials used during the compliance period, using Equation 1C of this section:

$$C = \sum_{k=1}^{p} (Vol_{s,k})(D_{s,k})(W_{s,k}) \qquad \text{(Eq. 1C)}$$

Where:

C = total mass of organic HAP in the cleaning materials used during the compliance period, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the compliance period, liters.

$D_{s,k}$ = density of cleaning material, k, kg cleaning material per liter cleaning material.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg organic HAP per kg material.

p = number of different cleaning materials used during the compliance period.

(4) Determine the mass of organic HAP contained in waste materials sent to a TSDF. If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in the calculation of the mass of organic HAP emissions (Equation 1 of this section), then you must determine it according to paragraphs (e)(4)(i) through (v) of this section.

(i) You may include in the determination of organic HAP in waste materials only the waste materials that are generated by coating operations for which you use Equation 1 of this section and that will be treated or disposed of by a facility that is regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include in the determination the organic HAP contained in wastewater.

(ii) You must determine either the amount of waste materials sent to a TSDF during the compliance period or the amount collected and stored during the compliance period and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a compliance period if you have already included them in the amount collected and stored during that compliance period or a previous compliance period.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(4)(ii) of this section.

(iv) You must document your methodology to determine the amount of waste materials and the total mass of organic HAP they contain, as required in § 63.4130(h).

(v) To the extent that waste manifests include this information, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total volume of coating solids used during the compliance period.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all of the coatings used during the compliance period, using Equation 2 of this section.

$$V_{st} = \sum_{i=1}^{m} (Vol_{c,i})(V_{s,i}) \qquad \text{(Eq. 2)}$$

Where:

V_{st} = total volume of coating solids used during the compliance period, liters.

$Vol_{c,i}$ = total volume of coating, i, used during the compliance period, liters.

$V_{s,i}$ = volume fraction of coating solids for coating, i, liters solids per liter coating, determined according to § 63.4141(b).

m = number of coatings used during the compliance period.

(g) Calculate the organic HAP emission rate, kg organic HAP per liter coating solids used, using Equation 3 of this section:

$$H_{avg} = \frac{H_e}{V_{st}} \qquad \text{(Eq. 3)}$$

Where:

H_{avg} = organic HAP emission rate for the compliance period, kg organic HAP per liter coating solids.

H_e = total mass organic HAP emissions from all materials used during the compliance period, kg, as calculated by Equation 1 of this section.

V_{st} = total volume coating solids used during the compliance period, liters, as calculated by Equation 2 of this section.

(h) The organic HAP emission rate for the initial compliance period must be less than or equal to the applicable emission limit in § 63.4090. You must keep all records as required by §§ 63.4130 and 63.4131. As part of the Notification of Compliance Status required by § 63.4110, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4090.

§ 63.4152 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, determined according to § 63.4151(a) through (g), must be less than or equal to the applicable emission limit in § 63.4090. Each month following the initial compliance period described in § 63.4150 is a compliance period.

(b) If the organic HAP emission rate for any compliance period exceeded the applicable emission limit in § 63.4090, this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.4110(b)(6) and 63.4120(e).

(c) As part of each semiannual compliance report required by § 63.4120, you must submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4090.

(d) You must maintain records as specified in §§ 63.4130 and 63.4131.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.4160 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (a)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS you use to demonstrate compliance must be installed and operating no later than the applicable compliance date specified in § 63.4183. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4164, 63.4165, and 63.4166, and establish the operating limits required by § 63.4092 no later than the compliance date specified in § 63.4083. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4161(h), you must initiate the first material balance no later than the compliance date specified in § 63.4083.

(2) You must develop and begin implementing the work practice plan required by § 63.4093 no later than the compliance date specified in § 63.4083.

(3) You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4161. The initial compliance period begins on the applicable compliance date specified in § 63.4083 and ends on the last day of the first full month after the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4164, 63.4165, and 63.4166; results of liquid-liquid material balances conducted according to § 63.4161(h); calculations according to § 63.4161 and supporting documentation showing that, during the initial compliance period, the organic HAP emission rate was equal to or less than the emission limit in § 63.4090(a); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4168; and documentation of whether you developed and implemented the work practice plan required by § 63.4093.

(b) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (b)(1) through (4) this section.

(1) All emission capture systems, add-on control devices, and CPMS you use to demonstrate compliance must be installed and operating no later than the applicable compliance date specified in § 63.4183. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4164, 63.4165, and 63.4166, and establish the operating limits required by § 63.4092 no later than 180 days after the applicable compliance date specified in § 63.4183. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4161(h), you must initiate the first material balance no later than 180 days after the applicable compliance date specified in § 63.4183.

(2) You must develop and begin implementing the work practice plan required by § 63.4093 no later than the compliance date specified in § 63.4083.

(3) You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4161. The initial compliance period begins on the applicable compliance date specified in § 63.4083 and ends on the last day of the first full month after the compliance date, or the date you conduct the performance tests of the emission capture systems and add-on control devices, or initiate the first liquid-liquid material balance for a solvent recovery system; whichever is later. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4164, 63.4165, and 63.4166; results of liquid-liquid material balances conducted according to § 63.4161(h); calculations according to § 63.4161 and supporting documentation showing that, during the initial compliance period, the organic HAP emission rate was equal to or less than the emission limit in § 63.4090(b); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4168; and documentation of whether you developed and implemented the work practice plan required by § 63.4093.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.4092 until after you have completed the performance tests specified in paragraph (b)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (b)(1) of this section. This requirement does not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h).

§ 63.4161 How do I demonstrate initial compliance?

You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations in the affected source, or for all of the coating operations in the affected source. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option or the emission rate without add-on controls option for any coating operation(s) in the affected source for which you do not use this option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limit in § 63.4090 and the work practice standards required in § 63.4093; and each controlled coating operation must meet the operating limits required in § 63.4092. You must meet all the requirements of this section to demonstrate initial compliance with the emission limitations. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate without add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed onsite and reused in the coating operation(s) for which you use the emission rate with add-on controls option.

(a) Except as provided in § 63.4160(b)(4) and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of § 63.4161(h), you must establish and demonstrate continuous compliance

during the initial compliance period with the operating limits required by § 63.4092, using the procedures specified in §§ 63.4167 and 63.4168.

(b) You must develop, implement, and document your implementation of the work practice plan required by § 63.4093 during the initial compliance period as specified in § 63.4130.

(c) You must follow the procedures in paragraphs (d) through (l) of this section to demonstrate compliance with the applicable emission limit in § 63.4090.

(d) *Determine the mass fraction of organic HAP, density, volume used, and volume fraction of coating solids.* Follow the procedures specified in § 63.4151(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating, thinner, and cleaning material used during the compliance period, and the volume fraction of coating solids for each coating used during the compliance period.

(e) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.4151, calculate the total mass of organic HAP emissions before add-on controls from all coatings, thinners, and cleaning materials used during the compliance period in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(f) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during the compliance period. The emissions reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (g) of this section to calculate the mass of organic HAP emissions reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (h) of this section to calculate the organic HAP emissions reduction.

(g) *Calculate the organic HAP emissions reduction for controlled coating operations not using liquid-liquid material balance.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate organic HAP emissions reduction, using Equation 1 of this section, by applying the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during the compliance period. For any period of time a deviation specified in § 63.4163(c) or (d) occurs in the controlled coating operation, including a deviation during a period of startup, shutdown, or malfunction, you must assume zero efficiency for the emission capture system and add-on control device. For the purposes of completing the compliance calculations, you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation. You must not include those materials in the calculations of organic HAP emissions reduction in Equation 1 of this section.

$$H_C = (A_I + B_I + C_I)\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \qquad \text{(Eq. 1)}$$

Where:

H_C = mass of organic HAP emissions reduction for the controlled coating operation during the compliance period, kg.

A_I = total mass of organic HAP in the coatings used in the controlled coating operation, kg, as calculated in Equation 1A of this section.

B_I = total mass of organic HAP in the thinners used in the controlled coating operation, kg, as calculated in Equation 1B of this section.

C_I = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the compliance period, kg, as calculated in Equation 1C of this section.

CE = capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.4164 and 63.4165 to measure and record capture efficiency.

DRE = organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.4164 and 63.4166 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the kg of organic HAP in the coatings used in the controlled coating operation, using Equation 1A of this section:

$$A_I = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \qquad \text{(Eq. 1A)}$$

Where:

A_I = mass of organic HAP in the coatings used in the controlled coating operation, kg.

$Vol_{c,i}$ = total volume of coating, i, used, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(2) Calculate the kg of organic HAP in the thinners used in the controlled coating operation, using Equation 1B of this section:

$$B_I = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \qquad \text{(Eq. 1B)}$$

Where:

B_I = mass of organic HAP in the thinners used in the controlled coating operation, kg.

$Vol_{t,j}$ = total volume of thinner, j, used, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.

n = number of different thinners used.

(3) Calculate the kg of organic HAP in the cleaning materials used in the controlled coating operation during the compliance period, using Equation 1C of this section:

$$C_I = \sum_{k=1}^{p} (Vol_{s,k})(D_{s,k})(W_{s,k}) \qquad \text{(Eq. 1C)}$$

Where:

C_I = mass of organic HAP in the cleaning materials used in the controlled coating operation, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used, liters.

$D_{s,k}$ = density of cleaning material, k, kg per liter.
$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg per kg.
p = number of different cleaning materials used.

(h) *Calculate the organic HAP emissions reduction for controlled coating operations using liquid-liquid material balance.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emissions reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation controlled by the solvent recovery system during the compliance period. Perform a liquid-liquid material balance for each compliance period as specified in paragraphs (h)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (h)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each compliance period. The device must be initially certified by the manufacturer to be accurate to within ±2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the compliance period, kg, based on measurement with the device required in paragraph (h)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating used in the coating operation controlled by the solvent recovery system during the compliance period, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(4) Determine the density of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the compliance period, kg per liter, according to § 63.4151(c).

(5) Measure the volume of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the compliance period, liters.

(6) Calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 2 of this section:

$$R_v = 100\frac{M_{VR}}{\sum_{i=1}^{m} Vol_i D_i C_{Vi} + \sum_{j=1}^{n} Vol_j D_j + \sum_{k=1}^{p} Vol_k D_k} \quad \text{(Eq. 2)}$$

Where:
R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system during the compliance period, percent.
M_{VR} = mass of volatile organic matter recovered by the solvent recovery system during the compliance period, kg.
Vol_i = volume of coating, i, used in the coating operation controlled by the solvent recovery system during the compliance period, liters.
D_i = density of coating, i, kg coating per liter coating.
C_{Vi} = mass fraction of volatile organic matter for coating, i, kg volatile organic matter per kg coating.
Vol_j = volume of thinner, j, used in the coating operation controlled by the solvent recovery system during the compliance period, liters.
D_j = density of thinner, j, kg thinner per liter thinner.
Vol_k = volume of cleaning material, k, used in the coating operation controlled by the solvent recovery system during the compliance period, liters.
D_k = density of cleaning material, k, kg cleaning material per liter cleaning material
m = number of different coatings used in the coating operation controlled by the solvent recovery system during the compliance period.
n = number of different thinners used in the coating operation controlled by the solvent recovery system during the compliance period.
p = number of different cleaning materials used in the coating operation controlled by the solvent recovery system during the compliance period.

(7) Calculate the mass of organic HAP emissions reduction for the coating operation controlled by the solvent recovery system during the compliance period, using Equation 3 of this section:

$$H_{CSR} = (A_I + B_I + C_I)\left(\frac{R_V}{100}\right) \quad \text{(Eq. 3)}$$

Where:
H_{CSR} = mass of organic HAP emissions reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the compliance period, kg.
A_I = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 1A of this section.
B_I = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 1B of this section.
C_I = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 1C of this section.
R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) [Reserved]

(j) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all the coatings used during the compliance period, using Equation 2 of § 63.4151.

(k) *Calculate the organic HAP emission rate.* Determine the organic HAP emission rate to the atmosphere, kg organic HAP per liter coating solids used during the compliance period, using Equation 4 of this section.

$$H_{HAP} = \frac{H_e - \sum_{i=1}^{q}(H_{C,i}) - \sum_{j=1}^{r}(H_{CSR,j})}{V_{st}} \quad \text{(Eq. 4)}$$

Where:

H_{HAP} = organic HAP emission rate to the atmosphere during the compliance period, kg organic HAP per liter coating solids used.

H_e = total mass of organic HAP emissions before add-on controls from all the coatings, thinners, and cleaning materials used during the compliance period, kg, determined according to paragraph (e) of this section.

$H_{C,i}$ = total mass of organic HAP emissions reduction for controlled coating operation, i, during the compliance period, kg, from Equation 1 of this section.

$H_{CSR,j}$ = total mass of organic HAP emissions reduction for controlled coating operation, j, during the compliance period, kg, from Equation 3 of this section.

V_{st} = total volume of coating solids used during the compliance period, liters, from Equation 2 of § 63.4151.

q = number of controlled coating operations except those controlled with a solvent recovery system.

r = number of coating operations controlled with a solvent recovery system.

(l) To demonstrate initial compliance with the emission limit, calculated using Equation 4 of this section, must be less than or equal to the applicable emission limit in § 63.4090. You must keep all records as required by §§ 63.4130 and 63.4131. As part of the Notification of Compliance Status required by § 63.4110, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4090, and you achieved the operating limits required by § 63.4092 and the work practice standards required by § 63.4093.

§ 63.4162 [Reserved]

§ 63.4163 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.4090, the organic HAP emission rate for each compliance period determined according to the procedures in § 63.4161 must be equal to or less than the applicable emission limit in § 63.4090. Each month following the initial compliance period described in § 63.4160 is a compliance period.

(b) If the organic HAP emission rate for any compliance period exceeded the applicable emission limit in § 63.4090, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.4110(b)(6) and 63.4120(g).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.4092 that applies to you as specified in Table 1 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 1 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.4110(b)(6) and 63.4120(g).

(2) If an operating parameter deviates from the operating limit specified in Table 1 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in § 63.4161, you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation. You must not include those materials in the calculation of organic HAP emissions reductions in Equation 1 of § 63.4161.

(d) You must meet the requirements for bypass lines in § 63.4168(b). If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.4110(b)(6) and 63.4120(g). For the purposes of completing the compliance calculations specified in § 63.4161, you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation. You must not include those materials in the calculation of organic HAP emissions reductions in Equation 1 of § 63.4161.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.4093. If you did not develop a work practice plan, or you did not implement the plan, or you did not keep the records required by § 63.4130(k)(9), this is a deviation from the work practice standards that must be reported as specified in §§ 63.4110(b)(6) and 63.4120(g).

(f) As part of each semiannual compliance report required in § 63.4120, you must submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4090, and you achieved the operating limits required by § 63.4092 and the work practice standards required by § 63.4093 during each compliance period.

(g) During periods of startup, shutdown, and malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the SSMP required by § 63.4100(d).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.4130 and 63.4131.

§§ 63.4130 and 63.4131.

§ 63.4164 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.4160 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under

representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction and periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.4165 and of an add-on control device according to the requirements in § 63.4166.

(c) The performance test to determine add-on control device organic HAP destruction or removal efficiency must consist of three runs as specified in § 63.7(e)(3) and each run must last at least 1 hour.

§ 63.4165 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.4160.

(a) You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings, thinners, and cleaning materials used in the coating operation are applied within the capture system; coating solvent flash-off and coating, curing, and drying occurs within the capture system and the removal or evaporation of cleaning materials from the surfaces they are applied to occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation, to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or 204F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating, thinner, and cleaning material used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term VOC in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings, thinners, and cleaning materials used in the coating operation during each capture efficiency test run.

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_{used} = total mass of TVH liquid input from all coatings, thinners, and cleaning materials used in the coating operation during the capture efficiency test run, kg.

TVH_i = mass fraction of TVH in coating, thinner, or cleaning material, i, that is used in the coating operation during the capture efficiency test run, kg TVH per kg material.

Vol_i = total volume of coating, thinner, or cleaning material, i, used in the coating operation during the capture efficiency test run, liters.

D_i = density of coating, thinner, or cleaning material, i, kg material per liter material.

n = number of different coatings, thinners, and cleaning materials used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system, using Equation 2 of this section:

$$CE = \frac{\left(TVH_{used} - TVH_{uncaptured}\right)}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = total mass of TVH liquid input used in the coating operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied and all areas where emissions from these applied coatings and materials subsequently occur such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or 204C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or 204C measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct, and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure other than the coating operation for which capture efficiency is being determined must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system, using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.4166 How do I determine the add-on control device emission destruction or removal efficiency?

(a) For all types of add-on control devices, use the test methods as specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME, PTC 19.10–1981, "Flue

and Exhaust Gas Analyses" (incorporated by reference, see § 63.14).

(4) Use Method 4 of appendix A to 40 CFR part 60 to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A if the add-on control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high-volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c [12][0.0416]\left[10^{-6}\right] \quad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg/per hour (h).

C_c = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A; parts per million by volume (ppmv), dry basis.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mm Hg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section.

$$DRE = \frac{M_{fi} - M_{fo}}{M_{fi}} \times 100 \quad \text{(Eq. 2)}$$

Where:

DRE = add-on control device organic emissions destruction or removal efficiency, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.4167 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.4160 and described in §§ 63.4164, 63.4165, and 63.4166, you must establish the operating limits required by § 63.4092 according to this section unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.4092.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature just before the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e.*, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system including the burner assembly and fuel supply lines for problems and, as necessary, adjusting the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine

destruction efficiency according to § 63.4166.

(c) *Carbon adsorbers.* If your add-on control device is a carbon absorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon absorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture system.* For each capture device that is not part of a PTE that meets the criteria of § 63.4165(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 1 to this subpart.

(1) During the capture efficiency determination required by § 63.4160 and described in §§ 63.4164 and 63.4165, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.4168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation except as specified in paragraph (a)(6) of this section.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Except for periods of required quality assurance or control activities, any period during which the CPMS fails to operate and record data continuously as required by paragraph (a)(1) of this section, or generates data that cannot be included in calculating averages as specified in paragraph (a)(6) of this section, is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must comply with the requirements of paragraphs (a)(3) through (5) and (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You

must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (non-diverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shutdown the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.4120.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (a) and (c)(1) through (3) of this section:

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install a gas temperature monitor in the gas stream immediately before the catalyst bed, and if you establish operating limits according to § 63.6167(b)(1) and (2), also install a gas temperature monitor in the gas stream immediately after the catalyst bed.

(3) For each gas temperature monitoring device, you must comply with the requirements in paragraphs (c)(3)(i) through (vii) of this section.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor's reading.

(vi) Any time the sensor exceeds the manufacturer's specified maximum operating temperature range, either conduct calibration and validation checks or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent, capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator, such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (a) and (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks anytime the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the requirements in paragraph (a) of this section and the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the

pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Other Requirements and Information

§ 63.4180 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the work practice standards in § 63.4093 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.4181 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Add-on control device means an air pollution control device, such as a thermal oxidizer or carbon absorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive means any chemical substance that is applied for the purpose of bonding two surfaces together.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on control device.

Capture efficiency or *capture system efficiency* means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings and cleaning materials, both at the point of application and at subsequent points where emissions from the coatings and cleaning materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials such as dirt, grease, oil, and dried or wet coating (e.g., depainting) from a substrate before or after coating application or from equipment associated with a coating operation such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes cleaning materials used for substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. For the purposes of this subpart, coatings include paints, porcelain enamels, sealants, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply cleaning materials to a substrate to prepare it for coating application or to remove dried coating (surface preparation), to apply coating to a substrate (coating application) and to dry or cure the coating after application, or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment but always includes at least the point at which a coating or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that coating or cleaning material occur. There may be multiple coating operations in an affected source. Applications of coatings using hand-held, nonrefillable aerosol containers, touchup markers, or marking pens are not coating operations for the purposes of this subpart.

Coating solids means the nonvolatile portion of the coating that makes up the dry film.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart used to sample, condition (if applicable), analyze, and provide a record of coating operation, capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Deviation means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, or operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction regardless of whether or not such failure is permitted by this subpart.

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Facility maintenance means the routine repair or refurbishing (including surface coating) of the tools, equipment, machinery, and structures that comprise the infrastructure of the facility or that are necessary for the facility to function in its intended capacity. It does not mean cleaning of equipment that is part of a large appliances coating operation.

Heat transfer coil means a tube-and-fin assembly used in large appliance

products to remove heat from a circulating fluid.

Large appliance part means a component of a large appliance product except for the wider use parts excluded under § 63.4081(d)(1).

Large appliance product means, but is not limited to, any of the following products (except as provided under § 63.4081(d)(3)) manufactured for household, recreational, institutional, commercial, or industrial use:

(1) Cooking equipment (ovens, ranges, and microwave ovens but not including toasters, counter-top grills, and similar small products);

(2) Refrigerators, freezers, and refrigerated cabinets and cases;

(3) Laundry equipment (washers, dryers, drycleaning machines, and pressing machines);

(4) Dishwashers, trash compactors, and water heaters; and

(5) HVAC units, air-conditioning (except motor vehicle) units, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps.

Specifically excluded are heat transfer coils and large commercial and industrial chillers.

Large commercial and industrial chillers means, for the purposes of this subpart, equipment designed to produce chilled water for use in commercial or industrial HVAC systems.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.4141. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg organic HAP per kg of material.

Month means a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Organic HAP content means the mass of organic HAP per volume of coating solids for a coating, calculated using Equation 2 of § 63.4141. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Protective oil means an organic material that is applied to a substrate for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oils includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products conducted under the close supervision of technically trained personnel and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means use of a cleaning material on a portion of or all of a substrate including use of cleaning material to remove dried coating which is sometimes called "depainting."

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Uncontrolled coating operation means a coating operation from which no organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating, expressed as liters of coating solids per liter of coating.

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

Tables to Subpart NNNN of Part 63

TABLE 1 TO SUBPART NNNN OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION

[If you are required to comply with operating limits by § 63.4092, you must comply with the applicable operating limits in the following table]

For following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
1. thermal oxidizer	a. the average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.4167(a).	i. collecting the combustion temperature data according to § 63.4168(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average combustion temperature at or above the combustion temperature limit.
2. catalytic oxidizer	a. the average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.4167(b); and either.	i. collecting the temperature data according to § 63.4168(c); ii. reducing the data to 3-hour block before the averages; and iii. maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.

TABLE 1 TO SUBPART NNNN OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION—Continued

[If you are required to comply with operating limits by § 63.4092, you must comply with the applicable operating limits in the following table]

For following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
	b. ensure that average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.4167(b)(2); or.	i. collecting the temperature data according to § 63.4168(c); ii. reducing the data to 3-hour block difference across averages; and iii. maintaining the 3-hour average temperature difference at or above the temperature difference limit.
	c. develop and implement an inspection and maintenance plan according to § 63.4167(b)(4).	i. maintaining an up-to-date inspection and maintenance plan, records of annual catalyst activity checks, records monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by § 63.4167(b)(4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. carbon adsorber	a. the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to § 63.4167(c).	i. measuring the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle according to § 63.4168(d); and ii. maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. the temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to § 63.4167(c).	i. measuring the temperature of the carbon bed after completing each regeneration and any cooling cycle according to § 63.4168(d); and ii. operating the carbon beds such that each carbon bed is not returned to service until the recorded temperature of the carbon bed is at or below the temperature limit.
4. condenser	a. the average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to § 63.4167(d).	i. collecting the condenser outlet (product side) gas temperature according to § 63.4168(e); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas exceed the temperature at the outlet at or below the temperature limit.
5. concentrators, including zeolite wheels and rotary carbon adsorbers.	a. the average gas temperature of the desorption concentrate stream in any 3-hour period must not fall below the limit established according to § 63.4167(e).	i. collecting the temperature data according to 63.4168(f); ii. reducing the data to 3-hour block averaged; and iii. maintaining the 3-hour average temperature at or above the temperature limit.
	b. the average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to § 63.4167(e).	i. collecting the pressure drop data according to 63.4168(f); and ii. reducing the pressure drop data to across the 3-hour block averages; and iii. maintaining the 3-hour average pressure drop at or above the pressure drop limit.
6. emission capture system that is a PTE according to § 63.4165(a).	a. the direction of the air flow at all times must be into the enclosure; and either.	i. collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to § 63.4168(g)(1) or the pressure drop across the enclosure according to § 63.4168(g)(2); and ii. maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
	b. the average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or.	See item 6.a. of this table.
	c. the pressure drop across the enclosure must be at least 0.007 inch H_2O, as established in Method 204 of appendix M to 40 CFR part 51.	See item 6.a. of this table.

TABLE 1 TO SUBPART NNNN OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION—Continued

[If you are required to comply with operating limits by § 63.4092, you must comply with the applicable operating limits in the following table]

For following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
7. emission capture system that is not a PTE according to § 63.4165(a).	a. the average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.4167(f).	i. collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.4168(g); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

TABLE 2 TO SUBPART NNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNN

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart NNNN	Explanation
§ 63.1(a)(1)–(14)	General Applicability	Yes	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart NNNN is also specified in § 63.4081.
§ 63.1(c)(1)	Applicability After Standard Established	Yes	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart NNNN.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes	
§ 63.2	Definitions	Yes	Additional definitions are Specified in § 63.4181.
§ 63.3(a)–(c)	Units and Abbreviations	Yes	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes	
§ 63.4(b)–(c)	Circumvention/Severability	Yes	
§ 63.5(a)	Construction/Reconstruction	Yes	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.4083 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	Section 63.4083 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes	
§ 63.6(e)(3)	SSMP	Yes	Only sources using an add—on control device to comply with the standard must complete SSMP.
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes	Applies only to sources using an and add—on control device to comply with the standards.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes	
§ 63.6(h)	Compliance With Opacity/Visible Emission standards.	No	Subpart NNNN does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes	
§ 63.6(j)	Presidential Compliance Exemption	Yes	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.4164, 63.4165, and 63.4166.

TABLE 2 TO SUBPART NNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNN—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart NNNN	Explanation
§ 63.7(a)(2)	Performance Test Requirements—Dates	Yes	Applies only to performance tests for caputre system and control device efficiency at sources using these to comply with the standards. Section 63.4160 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required By the Administrator.	Yes	
§ 63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in § 63.4168.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart NNNN does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes	
§ 63.8(c)(1)–(3)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in § 63.4168.
§ 63.8(c)(4)	CMS	No	Section 63.4168 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart NNNN does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.4168 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes	
§ 63.8(c)(8)	CMS Out-of-Control Periods and Reporting.	No	Section 63.4120 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart NNNN does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method	Yes	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart NNNN does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.4167 and 63.4168 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standard.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart NNNN does not have opacity or visible emission standards.

TABLE 2 TO SUBPART NNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNN—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart NNNN	Explanation
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS	No	Subpart NNNN does not require the use of continuous emissions monitoring systems.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.4110 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes	
§ 63.9(j)	Change in Previous Information	Yes	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §§ 63.4130 and 63.4131.
§ 63.10(b)(2)(i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for startup, shutdown, and malfunction records only apply to add-on control devices used to comply with the standard.
§ 63.10(b)(2)(vi)–(xi)		Yes	
§ 63.10(b)(2)(xii)	Records	Yes	
§ 63.10(b)(2)(xiii)		No	Subpart NNNN does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2)(xiv)		Yes	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes	
§ 63.10(c)(7)–(8)		No	The same records are required in § 63.4120(a)(7).
§ 63.10(c)(9)–(15)		Yes	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.4120.
§ 63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in § 63.4120(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart NNNN does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to add-on control devices at sources using these to comply with the standard.
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart NNNN does not require the use of continuous emissions monitoring systems.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.4120(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart NNNN does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes	
§ 63.11	Control Device Requirements/Flares	No	Subpart NNNN does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes	
§ 63.13	Addresses	Yes	
§ 63.14	Incorporation by Reference	Yes	
§ 63.15	Availability of Information/Confidentiality	Yes	

TABLE 3 TO SUBPART NNNN OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.]

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene.
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene.
3. Hexane	110–54–3	0.5	n-hexane.
4. n-Hexane	110–54–3	1.0	n-hexane.

TABLE 3 TO SUBPART NNNN OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS—Continued

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.]

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene.
6. Aliphatic 140	.....	0	None.
7. Aromatic 100	.....	0.02	1% xylene, 1% cumene.
8. Aromatic 150	.....	0.09	Naphthalene.
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	0.1	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.
13. Lactol spirits	64742–89–6	0.15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	0.01	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene.
18. Stoddard solvent	8052–41–3	0.01	Xylenes.
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes.
20. Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene.
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene.
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl.

TABLE 4 TO SUBPART NNNN OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.]

Solvent type	Average organic HAP mass fraction	Typical organic HAP, percent by mass
Aliphatic [b]	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene.
Aromatic [c]	0.06	4% Xylene, 1% Toluene, and 1% Ethylbenzene.

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 3 to this subpart and you only know whether the blend is aliphatic or aromatic.

[b] e.g., Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] e.g., Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

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Federal Register

Tuesday,
July 23, 2002

Part III

Department of the Treasury

31 CFR Part 103
Office of the Comptroller of the Currency

12 CFR Part 21
Office of Thrift Supervision

12 CFR Part 563

Federal Reserve System

12 CFR Parts 208 and 211

Federal Deposit Insurance Corporation

12 CFR Part 326

National Credit Union Administration

12 CFR Part 748

Commodity Futures Trading Commission

17 CFR Part 1

Securities and Exchange Commission

17 CFR Part 240

Transactions and Customer Identification Programs; Proposed Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 21

[Docket No. 02–11]

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

[Docket No. R–1127]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 2002–27]

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA31

Customer Identification Programs for Banks, Savings Associations, and Credit Unions

AGENCIES: The Financial Crimes Enforcement Network, Treasury; Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), together with the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies) are jointly issuing a proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury (Secretary) to jointly prescribe with each of the Agencies, the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC), a regulation that, at a minimum, requires financial institutions to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. The proposed regulation applies to banks, savings associations, and credit unions.

DATES: Written comments on the proposed rule may be submitted on or before September 6, 2002.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail or fax comments. Comments should be sent by one method only. Financial institution commenters are encouraged to submit comments only to their Federal functional regulator. Non-financial institution commenters are encouraged to submit comments only to FinCEN. All comments will be considered by Treasury and the Agencies in formulating the final rule.

OCC: Please direct your comments to: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Washington, DC 20219, Attention; Docket No. 02–11; FAX number (202) 874–4448; or Internet address: *regs.comments@occ.treas.gov*. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

Board: Comments should refer to Docket No. R–1127 and may be mailed to Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; sent by FAX to (202) 452–3819 or (202) 452–3102; or sent by e-mail to *regs.comments@federalreserve.gov*. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12 (except as provided in section 261.14) of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Comments should be directed to: Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. In addition, comments may be sent by fax to (202) 898–3838, or by electronic mail to *comments@FDIC.gov*. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m., on business days.

OTS: Comments may be mailed to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2002–27; FAX number (202) 906–6518, Attention: No. 2002–27; or Internet address *regs.comments@ots.treas.gov*, Attention: No. 2002–27 and include your name and telephone number. Comments may also be hand delivered to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, No. 2002–27. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, you may inspect comments at the Public Reading Room, 1700 G St. NW., by appointment. To make an appointment for access, you may call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

NCUA: Direct comments to the Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319, or e-mail comments to *regcomments@NCUA.gov*. To inspect comments, please contact the Office of General Counsel, (703) 518–6540; or the Office of Examination and Insurance, (703) 518–6360.

FinCEN: Comments may be mailed to FinCEN, Section 326 Bank Rule Comments, P.O. Box 39, Vienna, VA 22183, or sent to Internet address *regcomments@fincen.treas.gov* with the caption "Attention: Section 326 Bank Rule Comments" in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington,

DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

OCC: Office of the Chief Counsel (202) 874–3295.

Board: Enforcement and Special Investigations Sections: (202) 452–5235; (202) 728–5829; or (202) 452–2961.

FDIC: Special Activities Section, Division of Supervision, and Legal Division at (202) 898–3671.

OTS: Office of the Chief Counsel, (202) 906–6012.

NCUA: Office of General Counsel, (703) 518–6540; or Office of Examination and Insurance, (703) 518–6360.

Treasury: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act, Public Law 107–56. Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 that requires the Secretary to prescribe regulations setting forth minimum standards for financial institutions that relate to the identification and verification of any person who applies to open an account.

Section 326 applies to all "financial institutions." This term is defined very broadly in the BSA to encompass a variety of entities including banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, brokers and dealers in securities or commodities, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. See 31 U.S.C. 5312(a)(2).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the Agencies, the SEC, and the CFTC (the Federal functional regulators). Final regulations implementing section 326 must be effective by October 25, 2002.

Section 326 of the Act provides that the regulations must contain certain requirements. At a minimum, the regulations must require financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available. The following proposal is being issued jointly by Treasury and the Agencies. It applies only to a financial institution that is a "bank" as defined in 31 CFR 103.11(c) that is subject to regulation by one of the Agencies,[1] and any foreign branch of an insured bank. Regulations governing the applicability of section 326 to other financial institutions, including section 4(k) institutions regulated by the SEC and the CFTC, will be issued separately.

Treasury, the Agencies, the SEC, and the CFTC consulted extensively in the development of all rules implementing section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

In addition, Treasury under its own authority is proposing conforming amendments to 31 CFR 103.34, which currently imposes requirements concerning the identification of bank customers.

B. Codification of the Joint Proposed Rule

The substantive requirements of the joint proposed rule will be codified with other Bank Secrecy Act regulations as part of Treasury's regulations in 31 CFR part 103. To minimize potential confusion by affected entities regarding the scope of the joint proposed rule, each of the Agencies is also proposing to add a nonsubstantive provision in its own regulations in either 12 CFR part 21, 12 CFR parts 208 and 211, 12 CFR part 326, 12 CFR part 563, or 12 CFR part 748, that will cross-reference the regulations in 31 CFR part 103. Although no specific text is being proposed at this time, the cross-references will be included in individual final rules published concurrently with the joint final rule issued by Treasury and the Agencies implementing section 326 of the Act.

II. Section-by-Section Analysis

A. Regulations Implementing Section 326

Definitions

Section 103.121(a)(1) Account. The proposed rule's definition of "account" is based on the statutory definition of "account" that is used in section 311 of the Act. "Account" means each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions. For example, a deposit account, transaction or asset account, and a credit account or other extension of credit would each constitute an account.

Section 311 of the Act does not require that this definition be used for regulations implementing section 326 of the Act. However, to the extent possible, Treasury and the Agencies propose to apply consistent definitions for each of the regulations implementing the Act to reduce confusion. "Deposit accounts" and "transaction accounts," which as previously noted, are considered "accounts" for purposes of this rulemaking, are themselves defined terms. In addition, the term "account" is limited to banking and business relationships established to provide "ongoing" services, dealings, or other financial transactions to make clear that this term is not intended to cover infrequent transactions such as the occasional purchase of a money order or a wire transfer.

Section 103.121(a)(2) Bank. As discussed above, the proposal adopts the definition of "bank" already used in 31 CFR 103.11(c), which encompasses

[1] Published elsewhere in this separate part of this issue of the **Federal Register** is a separate Treasury proposal implementing section 326 for banks that are not subject to regulation by a Federal functional regulator, including certain state-chartered uninsured trust companies and non-federally insured credit unions.

virtually all of the financial institutions regulated by the Agencies, including banks, savings associations, and credit unions. Any branch, agency, or representative office of a foreign bank in the United States, as well as any Edge corporation, would be subject to this joint regulation under the existing definition of "bank."[2] However, the definition is modified to include "any foreign branch of an insured bank" to make clear that the procedures required by this regulation must be implemented throughout the bank, no matter where its offices are located. These procedures also apply to bank subsidiaries to the same extent as existing BSA compliance program requirements. We note that securities broker-dealers, futures commission merchants, insurance companies, and investment companies will be subject to forthcoming rules implementing section 326, whether or not they are affiliated with a bank.

Section 103.121(a)(3) Customer. The proposed rule defines "customer" to mean any person seeking to open a new account. Accordingly, the term "customer" includes a person applying to open an account, but would not cover a person seeking information about an account, such as rates charged or interest paid on an account, if the person does not actually open an account. "Customer" includes both individuals and other persons such as corporations, partnerships, and trusts. In addition, any person seeking to open an account at a bank, on or after the effective date of the final rule, will be a "customer," regardless of whether that person already has an account at the bank.

The proposed rule also defines a "customer" to include any signatory on an account. Thus, for example, an individual with signing authority over a corporate account is a "customer" within the meaning of the proposed rule. A signatory can become a "customer" when the account is opened or when the signatory is added to an existing account.

The requirements of section 326 of the Act apply to any person "seeking to open a new account." Accordingly, transfers of accounts from one bank to another, that are not initiated by the customer, for example, as a result of a merger, acquisition, or purchase of assets or assumption of liabilities, fall outside of the scope of section 326, and are not covered by the proposed regulation.[3]

Section 103.121(a)(4) Federal functional regulator. The proposed rule defines "Federal functional regulator" by reference to § 103.120(a)(2). Accordingly, this term means each of the Agencies (as well as the SEC and the CFTC)

Section 103.121(a)(5) Person. The proposed rule defines "person" by reference to § 103.11(z). This definition includes individuals, corporations, partnerships, trusts, estates, joint stock companies, associations, syndicates, joint ventures, other unincorporated organizations or groups, certain Indian Tribes, and all entities cognizable as legal personalities.

Section 103.121(a)(6) U.S. Person. Under the proposed rule, for an individual, "U.S. person" means a U.S. citizen. For persons other than an individual, "U.S. person" means an entity established or organized under the laws of a State or the United States. A non-U.S. person is defined in § 103.121(a)(7) as a person who does not satisfy these criteria.

Section 103.121(a)(8) Taxpayer identification number. The proposed rule continues the provision in current § 103.34(a)(4), which provides that the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder determine what constitutes a taxpayer identification number.

Customer Identification Program: Minimum Requirements

Section 103.121(b)(1) General Rule. Section 326 of the Act requires Treasury and the Agencies to jointly issue a regulation that establishes minimum standards regarding the identity of any customer who applies to open an account. Section 326 then prescribes three procedures that Treasury and the Agencies must require institutions to implement as part of this process: (1) Identification and verification of persons seeking to open an account; (2) recordkeeping; and (3) comparison with government lists.

Rather than imposing the same list of specific requirements on every bank, regardless of its circumstances, the proposed regulation requires all banks to implement a Customer Identification Program (CIP) that is appropriate given the bank's size, location, and type of business. The proposed regulation requires a bank's CIP to contain the statutorily prescribed procedures, describes these procedures, and details certain minimum elements that each of the procedures must contain.

In addition, the proposed rule requires that the CIP be written and that it be approved by the bank's board of directors or a committee of the board. This latter requirement highlights the responsibility of a bank's board of directors to approve and exercise general oversight over the bank's CIP.

Under the proposed regulation, the CIP must be incorporated into the bank's anti-money laundering (BSA) program.[4] A bank's BSA program must include (1) internal policies, procedures, and controls to ensure ongoing compliance; (2) designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. Each of these requirements also applies to a bank's CIP.

Unlike other sections of 31 CFR 103, the proposed regulation explicitly states that the CIP must be a part of a bank's BSA program. This language is included to make clear that the CIP is not a separate program. However, this statement should not be read to create any negative inference about a bank's need to establish and maintain a BSA program that is designed to ensure compliance with all other sections of 31 CFR 103.

Section 103.121(b)(2) Identity Verification Procedures. Under section 326 of the Act, the regulations issued by Treasury and the Agencies must require banks to implement and comply with reasonable procedures for verifying the identity of any person seeking to open an account, to the extent reasonable and practicable. The proposed regulation implements this requirement by providing that each bank must have risk-based procedures for verifying the identity of a customer that take into consideration the types of accounts that banks maintain, the different methods of opening accounts, and the types of identifying information available. These procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer.

Under the proposed regulation, a bank must first have procedures that specify

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[2] Section 103.11(c) defines bank to include "each agent, agency, branch, or office within the United States of any person doing business in one or more of the capacities listed below: * * *. (8) a bank organized under foreign law; (9) any national banking association or corporation acting under the provisions of section [25a] of the [Federal Reserve Act] (12 U.S.C. 611–32)."

[3] However, there may be situations involving the transfer of accounts where it would be appropriate for a bank to verify the identity of customers associated with the accounts that it is acquiring. Therefore, Treasury and the Agencies expect procedures for transfers of accounts to be part of a bank's existing BSA program.

[4] All insured depository institutions currently must have a BSA program. See 12 CFR 21.21 (OCC), 12 CFR 208.63 (Board), 12 CFR 326.8 (FDIC), 12 CFR 563.177 (OTS), and 12 CFR 748.2 (NCUA). In addition, all financial institutions are required by 31 U.S.C. 5318(h) to develop and implement an anti-money laundering program.

the identifying information that the bank must obtain from any customer. The proposed regulation also sets forth certain, minimal identifying information that a bank must obtain prior to opening an account or adding a signatory to an account. Second, the bank must have procedures describing how the bank will verify the identifying information provided. The bank must have procedures that describe when it will use documents for this purpose and when it will use other methods, either in addition or as an alternative to using documents for the purpose of verifying the identity of a customer.

While a bank's CIP must contain the identity verification procedures set forth above, these procedures are to be risk-based. For example, a bank need not verify the identifying information of an existing customer seeking to open a new account, or who becomes a signatory on an account, if the bank (1) previously verified the customer's identity in accordance with procedures consistent with this regulation, and (2) continues to have a reasonable belief that it knows the true identity of the customer. The proposal requires a bank to exercise reasonable efforts to ascertain the identity of each customer.

Although the main purpose of the Act is to prevent and detect money laundering and the financing of terrorism, Treasury and the Agencies anticipate that the proposed regulation will ultimately benefit consumers. In addition to deterring money laundering and terrorist financing, requiring every bank to establish comprehensive procedures for verifying the identity of customers should reduce the growing incidence of fraud and identity theft involving new accounts.[5]

Section 103.121(b)(2)(i) Information Required. The proposed regulation provides that a bank's CIP must contain procedures that specify the identifying information the bank must obtain from a customer. At a minimum, a bank must obtain from each customer the following information prior to opening an account or adding a signatory to an account: name; address; for individuals, date of birth; and an identification number, described in greater detail below. To satisfy the requirement that a bank obtain the address of a customer, Treasury and the Agencies expect a bank to obtain both the address of an individual's residence and, if different, the individual's mailing address. For customers who are not individuals, the bank should obtain an address showing the customer's principal place of business and, if different, the customer's mailing address.

For U.S. persons a bank must obtain a U.S. taxpayer identification number (*e.g.*, social security number, individual taxpayer identification number, or employer identification number). For non-U.S. persons a bank must obtain one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. The basic information that banks would be required to obtain under this proposed regulation reflects the type of information that financial institutions currently obtain in the account-opening process and is similar to the identifying information currently required for each deposit or share account opened (*see* 31 CFR 103.34(a)(1)). The proposed regulation uses the term "similar safeguard" to permit the use of any biometric identifiers that may be used in addition to, or instead of, photographs.

Treasury and the Agencies recognize that a new business may need access to banking services, particularly a bank account or an extension of credit, before it has received an employer identification number from the Internal Revenue Service. For this reason, the proposed regulation contains a limited exception to the requirement that a taxpayer identification number must be provided prior to establishing or adding a signatory to an account. Accordingly, a CIP may permit a bank to open or add a signatory to an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number. However, in such a case, the CIP must require that the bank obtain a copy of the application before it opens or adds a signatory to the account and obtain the employee identification number within a reasonable period of time after an account is established or a signatory is added to an account. Currently, the IRS indicates that the issuance of an employer identification number can take up to five weeks. This length of time, coupled with when the person applied for the employer identification number, should be considered by the bank in determining the reasonable period of time within which the person should provide its employer identification number to the bank.

Section 103.121(b)(2)(ii) Verification. The proposed regulation provides that the CIP must contain risk-based procedures for verifying the information that the bank obtains in accordance with § 103.121(b)(2)(i), within a reasonable period of time after the account is opened. Treasury and the Agencies considered proposing that a customer's identity be verified before an account is opened or within a specific time period after the account is opened. However, we recognize that such a position would be unduly burdensome for both banks and customers and therefore contrary to the plain language of the statute, which states that the procedures must be both reasonable and practicable. The amount of time it will take an institution to verify identity may depend upon the type of account opened, whether the customer is physically present when the account is opened, and the type of identifying information available. In addition, although an account may be opened, it is common practice among banks to place limits on the account, such as by restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed regulation provides a bank with the flexibility to use a risk-based approach to determine how soon identity must be verified.[6]

Section103.121(b)(2)(ii)(A) Verification Through Documents. The CIP must contain procedures describing when the bank will verify identity through documents and setting forth the documents that the bank will use for this purpose. For individuals, these documents may include: unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard. For corporations, partnerships, trusts, and other persons that are not individuals, these may be documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, partnership agreement, or trust instrument.

Section 103.121(b)(2)(ii)(B) Non-Documentary Verification. The proposed regulation provides that a

[5] Last year, over 86,000 complaints were logged into the Identity Theft Complaint database established by the Federal Trade Commission (FTC). Forms of identity theft commonly reported included (1) credit card fraud, where one or more new credit cards were opened in the victim's name; (2) bank fraud, where a new bank account was opened in the victim's name; and (3) fraudulent loans, where a loan had been obtained in the victim's name. *See* Statement of J. Howard Beales, Director, Bureau of Consumer Protection, FTC, to the Senate Committee on the Judiciary, Subcommittee on Technology, March 20, 2002.

[6] It is possible that a bank would, however, violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.*, 31 CFR 500, prohibiting transactions involving designated foreign countries or their nationals.

bank's CIP also must contain procedures describing non-documentary methods the bank will use to verify identity and when these methods will be used in addition to, or instead of, relying on documents. For example, the procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the account is not opened in a face-to-face transaction; and the type of account increases the risk that the bank will not be able to verify the true identity of the customer through documents.

Treasury and the Agencies believe that banks typically require documents to be presented when an account is opened face-to-face. Although customers usually satisfy these requirements by presenting government-issued identification documents bearing a photograph, such as a driver's license or passport, Treasury and the Agencies recognize that some customers legitimately may be unable to present those customary forms of identification when opening an account. For example, an elderly person may not have a valid driver's license or passport. Under these circumstances, Treasury and the Agencies expect that banks will provide products and services to those customers and verify their identities through other methods. Similarly, a bank may be unable to obtain original documents to verify a customer's identity when an account is opened by telephone, by mail, and over the Internet. Thus, when an account is opened for a customer who is not physically present, a bank will be permitted to use other methods of verification, to the extent set forth in the CIP.

While other verification methods must be used when a bank cannot examine original documents, Treasury and the Agencies also recognize that original identification documents, including those issued by a government entity, may be obtained illegally and may be fraudulent. In light of the recent increase in identity fraud, banks are encouraged to use other verification methods, even when a customer has provided original documents.

Obtaining sufficient information to verify a customer's identity can reduce the risk that a bank will be used as a conduit for money laundering and terrorist financing. The risk that the bank will not know the customer's true identity will be heightened for certain types of accounts, such as accounts opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in jurisdictions that have been designated by the United States as a primary money laundering concern or have been designated as non-cooperative by an international body. As a bank's identity verification procedures should be risk-based, they should identify types of accounts that pose a heightened risk, and prescribe additional measures to verify the identity of any person seeking to open an account and the signatory for such accounts.

The proposed regulation gives examples of other non-documentary verification methods that a bank may use in the situations described above. These methods could include contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with information available from a trusted third party source, such as a credit report from a consumer reporting agency (positive verification); and checking references with other financial institutions. The bank also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number, date of birth, and social security number (logical verification).[7]

Section 103.121(b)(2)(iii) Lack of Verification. The proposed regulation also states that a bank's CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer.

Generally, a bank should only maintain an account for a customer when it can form a reasonable belief that it knows the customer's true identity.[8] Thus, a bank should have procedures that specify the actions that it will take when it cannot form a reasonable belief that it knows the true identity of a customer, including when an account should not be opened. In addition, a bank's CIP should have procedures that address the terms under which a customer may conduct transactions while a customer's identity is being verified. The procedures also should specify at what point, after attempts to verify a customer's identity have failed, a customer's account that has been opened should be closed. Finally, if a bank cannot form a reasonable belief that it knows the identity of a customer, the procedures should also include determining whether a Suspicious Activity Report should be filed in accordance with applicable law and regulation.

Section 103.121(b)(3) Recordkeeping. Section 326 of the Act requires reasonable procedures for maintaining records of the information used to verify a person's name, address, and other identifying information. The proposed regulation sets forth recordkeeping procedures that must be included in a bank's CIP. Under the proposal, a bank is required to maintain a record of the identifying information provided by the customer. Where a bank relies upon a document to verify identity, the bank must maintain a copy of the document that the bank relied on that clearly evidences the type of document and any identifying information it may contain.[9] The bank also must record the methods and result of any additional measures undertaken to verify the identity of the customer. Last, the bank must record the resolution of any discrepancy in the identifying information obtained. The bank must retain all of these records for five years after the date the account is closed.

Treasury and the Agencies emphasize that the collection and retention of information about a customer, such as an individual's race or sex, as an ancillary part of collecting identifying information do not relieve a bank from its obligations to comply with anti-discrimination laws or regulations, such as the prohibition in the Equal Credit Opportunity Act against discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex or marital status, age, or other prohibited classifications.

Nothing in this proposed regulation modifies, limits or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act, Public Law 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, a bank may use electronic records to satisfy the requirements of this regulation, as long as the records are accurate and remain

[7] Treasury and the Agencies understand that most banks currently make use of technology that permits instantaneous negative, positive, and logical verification of identity.

[8] There are some exceptions to this basic rule. For example, a bank may maintain an account, at the direction of a law enforcement or intelligence agency, although the bank does not know the true identity of a customer.

[9] The bank need not keep a separate record of the identifying information provided by the customer if this information clearly appears on the copy of the document maintained by the bank.

accessible in accordance with 31 CFR 103.38(d).

Section 103.121(b)(4) Comparison with Government Lists. Section 326 of the Act also requires reasonable procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any government agency. The proposed rule implements this requirement and clarifies that the requirement applies only with respect to lists circulated by the Federal government.

In addition, the proposed rule states that the procedures must ensure that the bank follows all Federal directives issued in connection with such lists. This provision makes clear that a bank must have procedures for responding to circumstances when the bank determines that a customer is named on a list.

Section 103.121(b)(5) Customer Notice. Section 326 of the Act states that customers of financial institutions shall be required to comply with the identity verification procedures described above "after being given adequate notice." Therefore, a bank's CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity. A bank may satisfy the notice requirement by generally notifying its customers about the procedures the bank must comply with to verify their identities. For example, the bank may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is opened electronically, such as through an Internet website, the bank may also provide notice electronically.

Section 103.121(c) Exemptions. Section 326 states that the Secretary (and, in the case of section 4(k) institutions, the appropriate Federal functional regulator, as defined in section 103.120(a)(2)), may by regulation or order, exempt any financial institution or type of account from the requirements of this regulation in accordance with such standards and procedures as the Secretary may prescribe.

Under the proposed rule, the appropriate Federal functional regulator, with the concurrence of Treasury, may by order or regulation exempt any bank or type of account from the requirements of this section. In issuing such exemptions, the Federal functional regulator and the Treasury shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, consistent with safe and sound banking, and in the public interest. The Federal functional regulator and Treasury also may consider other necessary and appropriate factors.

Section 103.121(d) Other Information Requirements Unaffected. This section provides that nothing in section 103.121 shall be construed to relieve a bank of its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103. For example, if an account is opened with a deposit of more than $10,000 in cash, the bank opening the account must comply with the customer identification requirements in section 103.121, as well as with the provisions of section 103.22, which require that certain information concerning the transaction be reported by filing a Cash Transaction Report (CTR).

B. Conforming Amendments to 31 CFR 103.34

Current section 103.34(a) sets forth customer identification requirements when certain types of deposit accounts are opened. Generally, sections 103.34(a)(1) and (2) require a bank, within 30 days after certain deposit accounts are opened, to secure and maintain a record of the taxpayer identification number of the customer involved. If the bank is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under section 103.34 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to the Secretary upon request. In the case of a non-resident alien, the bank is required to record the person's passport number or a description of some other government document used to determine identification. Treasury and the Agencies believe that the requirements of section 103.34(a)(1) and (2) are inconsistent with the intent and purpose of section 326 of the Act and incompatible with proposed section 103.121.

Section 103.34(a)(3) currently provides that a bank need not obtain a taxpayer identification number with respect to specified categories of persons [10] opening certain deposit accounts. This proposed rule does not contain any exemptions from the CIP requirements.

Treasury and the Agencies are requesting comments on whether any of these exemptions should apply in the context of the proposed CIP requirements in light of the intent and purpose of section 326 of the Act.

Section 103.34(a)(4) provides that section 6109 of the Internal Revenue Code and the rules and regulations of the Internal Revenue Service (IRS) promulgated thereunder shall determine what constitutes a taxpayer identification number. This provision is continued in proposed section 103.121(a)(8). Section 103.34(a)(4) also provides that IRS rules shall determine whose number shall be obtained in the case of multiple account holders. Treasury and the Agencies believe that this provision is inconsistent with section 326 of the Act, which requires that banks verify the identity of "any" person seeking to open an account.

For these reasons, Treasury, under its own authority, is proposing to repeal section 103.34(a).

Section 103.34(b) sets forth certain recordkeeping requirements for banks. Among other things, section 103.34(b)(1) requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of [a person with signature authority over an account] (such as a driver's license number or credit card number)." Treasury and the Agencies believe that the quoted language in section 103.34(b)(1) is inconsistent with the requirements of proposed section 103.121. For this reason, Treasury, under its own authority, is proposing to delete the quoted language.

C. Technical Amendment to 31 CFR 103.11(j)

Section 103.11(j), which defines the term "deposit account," contains an

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[10] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iv) aliens who are accredited representatives of certain international organizations, and their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter; (viii) a person under 18 years of age, with respect to an account opened as part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club, or similar installment savings program, provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States.

obsolete reference to the definition of "transaction account," which is defined in section 103.11(hh). Under its own authority, Treasury is proposing to correct this reference.

III. Request for Comments

Treasury and the Agencies invite comment on all aspects of this rulemaking, and specifically seek comment on the following issues:

1. Whether the proposed definition of "account" is appropriate and whether other examples of accounts should be added to the regulatory text.

2. How the proposed regulation should apply to various types of accounts that are designed to allow a customer to transact business immediately.

3. Whether the definition of "bank" in the proposed regulation should be amended with respect to the foreign branches of banks by (i) excluding foreign branches or (ii) clarifying that a foreign branch must comply only to the extent that the bank's program does not contravene applicable local law. Treasury and the Agencies request that commenters cite and describe any potentially conflicting foreign laws that may apply to the foreign branches of banks.

Comment is requested on this issue because Treasury and the Agencies recognize that interpreting the BSA to apply to the foreign branch of a U.S. depository institution could cause practical and legal problems for that institution if the branch has a conflicting obligation under applicable local law. The regulation, if adopted as proposed, may place a foreign branch in a position of potentially violating local law by implementing aspects of its bank's CIP, which is described more fully in the Supplemental Information, above.

4. Ways that banks can comply with the requirement that a bank obtain both the address of an individual's residence, and, if different, the individual's mailing address in situations involving individuals who lack a permanent address.

5. Whether non-U.S. persons that are not individuals will be able to provide a bank with the identifying information required in section 103.121(b)(2)(i)(D)(2), or whether other categories of identifying information should be added to this section to permit non-U.S. persons that are not individuals to open accounts. Commenters on this issue should suggest other means of identification that banks currently use or should use.

6. Whether the proposed regulation will subject banks to conflicting State laws. Treasury and the Agencies request that commenters cite and describe any potentially conflicting State laws.

7. The extent to which the verification procedures required by the proposed regulation make use of information that banks currently obtain in the account opening process. Treasury and the Agencies note that the legislative history of section 326 indicates that Congress intended "the verification procedures prescribed by Treasury [to] make use of information currently obtained by most financial institutions in the account opening process." *See* H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

8. Whether any of the exemptions from the customer identification requirements contained in current section 103.34(a)(3) should be continued in section 103.121(c). In this regard, Treasury and the Agencies request that commenters address the standards set forth in proposed section 103.121(c) (as well as any other appropriate factors).

IV. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the OCC, Board, FDIC, and OTS to use plain language in all proposed and final rules published after January 1, 2000. Therefore, these agencies specifically invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

V. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" unless the agency certifies that the rule will not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 603, 605(b).[11]

The Agencies have reviewed the impact of this proposed rule on small banks. Treasury and the Agencies certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The requirements of the proposed rule closely parallel the requirements for customer identification programs mandated by section 326 of the Act.

Moreover, Treasury and the Agencies believe that banks already have implemented prudential business practices and anti-money laundering programs that involve the key controls that would be required in a customer identification program in accordance with the proposed regulation. First, all banks already undertake extensive measures to verify the identity of their customers as a matter of good business practice. In addition, banks already must have anti-money laundering programs that include procedures for identification, verification, and documentation of customer information.[12]

Second, banks already should have compliance programs in place to check lists provided by the Federal government of known and suspected terrorists and terrorist organizations. Currently, banks are prohibited from engaging in transactions involving certain foreign countries or their nationals under rules issued by the Office of Foreign Assets Control (OFAC). *See* 31 CFR 500. Banks should already have compliance programs in place to ensure that they do not violate OFAC rules. Treasury and the Agencies understand that many banks, including small banks, have instituted programs to check other lists provided to them by the Federal government following the events of September 11, 2001. Treasury and the Agencies believe that all banks have access to a variety of resources, such as computer software packages, that enable them to check lists provided by the Federal government.

Third, Treasury and the Agencies believe the provision in the proposed rule that requires a bank to provide adequate notice to its customers that it is requesting information to verify their

[11] The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to the definitions published by the Small Business Administration (SBA). The SBA has defined a "small entity" for banking purposes as a bank or savings institution with less than $150 million in assets. *See* 13 CFR 121.201. The NCUA defines "small credit union" as those under $1 million in assets. Interpretive Ruling and Policy Statement No. 87 2, Developing and Reviewing Government Regulations (52 FR 35231, September 18, 1987).

[12] *See* footnote 3.

identity will impose minimal costs on banks. Banks may elect to satisfy that requirement through a variety of low-cost measures, such as by posting a sign in the bank's lobby or providing any other form of written or oral notice.

The recordkeeping requirements similarly may impose some costs on banks, if, for example, some of the information that must be maintained as a consequence of implementing customer identification programs is not already retained. Treasury and the Agencies believe that the compliance burden, if any, is minimized for banks, including small banks, because the proposed regulation vests a bank with the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

Finally, Treasury and the Agencies believe that the flexibility incorporated into the proposed rule will permit each bank to tailor its CIP to fit its own size and needs. In this regard, Treasury and the Agencies believe that expenditures associated with establishing and implementing a CIP will be commensurate with the size of a bank. If a bank is small, the burden to comply with the proposed rule should be *de minimis*.

VI. Paperwork Reduction Act

The proposed rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). In summary, the proposed rule requires banks to implement reasonable procedures to (1) maintain records of the information used to verify the person's identity and (2) provide notice of these procedures to customers. These recordkeeping and disclosure requirements are required under section 326 of the Act.

The proposed rule applies only to a financial institution that is a "bank" as defined in 31 CFR 103.11(c),[13] and any foreign branch of an insured bank. The proposed rule requires each bank to establish a written CIP that must include recordkeeping procedures (proposed section 103.121(b)(3)) and procedures for providing customers with notice that the bank is requesting information to verify their identity (proposed section 103.121(b)(5)).

The proposed rule requires a bank to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, the identification number of the document(s), and a copy of the identification document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained. These records must be maintained at the bank for five years after the date the account is closed (proposed section 103.121(b)(3)). Treasury and the Agencies believe that little burden is associated with the recordkeeping requirements outlined in proposed section 103.121(b)(2), because such recordkeeping is a usual and customary business practice. In addition, banks already must keep similar records to comply with existing regulations in 31 CFR part 103 (*see, e.g.*, 31 CFR 103.34, requiring certain records for each deposit or share account opened).

The proposed rule also requires banks to give customers "adequate notice" of the identity verification procedures (proposed section 103.121(b)(5)). A bank may satisfy the notice requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice. If the account is opened electronically, the bank may provide the notice electronically. Treasury and the Agencies believe that nominal burden is associated with the disclosure requirement outlined in proposed section 103.121(b)(5). This section requires a bank to notify its customers about the procedures the bank has implemented to verify their identities. However, a bank may choose among a variety of methods of providing adequate notice and may select the least burdensome method, given the circumstances under which customers seek to open new accounts.

A person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information requirements contained in the proposed rule have been submitted to the OMB by Treasury in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

The institutions subject to these requirements include national banks and Federal branches and agencies (OCC financial institutions); state member banks and branches and agencies of foreign banks (Board financial institutions); insured state nonmember banks (FDIC financial institutions); savings associations (OTS financial institutions); and federally insured credit unions (NCUA financial institutions).

Estimated number of OCC financial institutions: 2,289.

Estimated number of Board financial institutions: 1,188.

Estimated number of FDIC financial institutions: 5,500.

Estimated number OTS financial institutions: 1,020.

Estimated number of NCUA financial institution: 9,944.

Estimated average annual burden for the recordkeeping requirements of the proposed rule per each financial institution respondent: 10 hours.

Estimated average annual burden for the disclosure requirements of the proposed rule per each financial institution respondent: 1 hour.

Estimated total annual recordkeeping and disclosure burden: 219,351 hours.

Treasury and the Agencies request public comment on all aspects of the recordkeeping and disclosure requirements contained in this proposed rule, including how burdensome it would be for banks to comply with these requirements. Also, Treasury and the Agencies request comment on whether the banks are currently maintaining the records requested in proposed section 103.121(b)(2). Treasury and the Agencies also invite comment on:

(1) Whether the collections of information contained in the notice of proposed rulemaking are necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of each agency's estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Comments concerning the recordkeeping and disclosure requirements in the proposed rule should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

[13] This definition includes banks, thrifts, and credit unions.

VII. Executive Order 12866

Treasury, the OCC, and OTS have determined that this proposal is not a "significant regulatory action" under Executive Order 12866. The rule follows closely the requirements of section 326 of the Act.

Treasury, the OCC, and OTS believe that national banks and savings associations already have procedures in place that fulfill most of the requirements of the proposed regulation. First, the procedures are a matter of good business practice. Second, national banks and savings associations already are required to have BSA compliance programs that address many of the requirements detailed in this notice of proposed rulemaking. Third, banks and savings associations should already have compliance programs in place to ensure they comply with OFAC rules prohibiting transactions with certain foreign countries or their nationals.

Treasury, the OCC, and OTS invite national banks, the thrift industry, and the public to provide any cost estimates and related data that they think would be useful in evaluating the overall costs of the rule.

For these reasons, and for the reasons discussed elsewhere in this preamble, Treasury, the OCC, and OTS believe that the burden stemming from this rulemaking will not cause the proposed rule to be a "significant regulatory action."

Lists of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107–56, 115 Stat. 307.

2. Section 103.11(j) is amended by removing "paragraph (q)" and adding "paragraph (hh)".

3. Section 103.34 is amended as follows:

a. By removing paragraph (a);

b. By redesignating paragraph (b) introductory text and paragraphs (b)(1) through (b)(13) as introductory text and paragraphs (a) through (m), respectively.

c. In newly redesignated introductory text, by removing ", in addition," in the first sentence; and

d. In newly redesignated paragraph (a), by removing ", including any notations, if such are normally made, of specific identifying information verifying the identity of the signer (such as a driver's license number or credit card number)".

4. Subpart I of part 103 is amended by adding new § 103.121 to read as follows:

§ 103.121 Customer Identification Programs for banks, savings associations, and credit unions.

(a) *Definitions.* For purposes of this section:

(1) *Account* means each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions. For example, a deposit account, a transaction or asset account, and a credit account or other extension of credit would each constitute an account.

(2) *Bank* means a bank, as that term is defined in § 103.11(c), that is subject to regulation by a Federal functional regulator, and any foreign branch of an insured bank.

(3) *Customer* means:

(i) Any person seeking to open a new account; and

(ii) Any signatory on the account at the time the account is opened, and any new signatory added thereafter.

(4) *Federal functional regulator* has the same meaning as provided in § 103.120(a)(2).

(5) *Person* has the same meaning as provided in § 103.11(z).

(6) *U.S. person* means:

(i) A U.S. citizen; or

(ii) A corporation, partnership, trust, or person (other than an individual) that is established or organized under the laws of a State or the United States.

(7) *Non-U.S. person* means a person that is not a *U.S. person.*

(8) *Taxpayer identification number.* The provisions of section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the regulations of the Internal Revenue Service promulgated thereunder shall determine what constitutes a taxpayer identification number.

(b) *Customer Identification Program: minimum requirements.* (1) *In general.* A bank must implement a written Customer Identification Program (Program) that, at a minimum, includes each of the components of this section. The Program should be tailored to the bank's size, location and type of business. The bank's board of directors or a committee of the board must approve the Program. The Program must be a part of the bank's anti-money laundering program required under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), and 12 U.S.C. 1786(q)(1).

(2) *Identity verification procedures.* The Program must include procedures for verifying the identity of each customer, to the extent reasonable and practicable. The procedures must be based on the bank's assessment of the risks presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, and the type of identifying information available, and must enable the bank to form a reasonable belief that it knows the true identity of the customer.

(i) *Information required.* (A) *In general.* The Program must contain procedures that specify the identifying information that the bank must obtain from each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, at a minimum, a bank must obtain the following information prior to opening or adding a signatory to an account:

(*1*) Name;

(*2*) For individuals, date of birth;

(*3*) (*i*) For individuals, residence and, if different, mailing address; or

(*ii*) For persons other than individuals, such as corporations, partnerships, and trusts: principal place of business and, if different, mailing address;

(*4*) (*i*) For U.S. persons, a U.S. taxpayer identification number (e.g., social security number, individual taxpayer identification number, or employer identification number); or

(*ii*) For non-U.S. persons, one or more of the following: a U.S. taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

(B) *Limited exception.* The Program may permit the bank to open or add a signatory to an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number. However, in such a case, the bank must obtain a copy of the application before

it opens or adds a signatory to the account and obtain the employer identification number within a reasonable period of time after it opens or adds a signatory to the account.

(ii) *Verification.* The Program must contain risk-based procedures for verifying the information obtained pursuant to paragraph (b)(2)(i)(A) of this section within a reasonable time after the account is established or a signatory is added to the account. A bank need not verify the information about an existing customer seeking to open a new account or who becomes a signatory on an account, if the bank previously verified the customer's identity in accordance with procedures consistent with this section, and continues to have a reasonable belief that it knows the true identity of the customer.

(A) *Verification through documents.* The Customer Identification Program must contain procedures describing when the bank will verify identity through documents and setting forth the documents that the bank will use for this purpose. These documents may include:

(*1*) For individuals: unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and

(*2*) For corporations, partnerships, trusts and persons other than individuals: documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, partnership agreement, or trust instrument.

(B) *Non-documentary verification methods.* The Program must contain procedures that describe non-documentary methods the bank will use to verify identity and when these methods will be used in addition to, or instead of, relying on documents. These procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the account is not opened in a face-to-face transaction; and the type of account increases the risk that the bank will not be able to verify the true identity of the customer through documents. Other verification methods may include contacting a customer; independently verifying documentary information through credit bureaus, public databases, or other sources; checking references with other financial institutions; and obtaining a financial statement.

(iii) *Lack of verification.* The Program must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer.

(3) *Recordkeeping.* (i) The Program must include procedures for maintaining a record of all information obtained under the procedures implementing paragraph (b)(1) of this section. The record must include:

(A) All identifying information provided by a customer pursuant to paragraphs (b)(2)(i)(A) and (B) of this section;

(B) A copy of any document that was relied on pursuant to paragraph (b)(2)(ii)(A) of this section that clearly evidences the type of document and any identification number it may contain;

(C) The methods and result of any measures undertaken to verify the identity of the customer pursuant to paragraph (b)(2)(ii)(B) of this section; and

(D) The resolution of any discrepancy in the identifying information obtained.

(ii) The bank must retain all records for five years after the date the account is closed.

(4) *Comparison with government lists.* The Program must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any federal government agency. The procedures must also ensure that the bank follows all federal directives issued in connection with such lists.

(5) *Customer notice.* The Program must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity.

(c) *Exemptions.* The appropriate Federal functional regulator with the concurrence of the Secretary, may by order or regulation, exempt any bank or type of account from the requirements of this section. In issuing such exemptions, the Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and is in the public interest. The Federal functional regulator and the Secretary also may consider other appropriate factors.

(d) *Other information requirements unaffected.* Nothing in this section shall be construed to relieve a bank of its obligation to comply with any other provision in this part concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: July 2, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 10, 2002.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors of the Federal Deposit Insurance Corporation this 3rd day of July, 2002.

Valerie J. Best,

Assistant Executive Secretary.

Dated: July 5, 2002. In concurrence, by the Office of Thrift Supervision.

James E. Gilleran,

Director.

Dated: July 3, 2002.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 02–18191 Filed 7–22–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA31

Financial Crimes Enforcement Network; Customer Identification Programs for Certain Banks (Credit Unions, Private Banks and Trust Companies) That Do Not Have a Federal Functional Regulator

AGENCIES: The Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing a proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001(the Act) for credit unions and trust companies that do not have a federal functional regulator. The proposed rule provides the same rules for these financial institutions as are provided in a companion notice of proposed rulemaking being issued jointly by FinCEN and the Federal bank regulators published elsewhere in this separate part of this issue of the **Federal Register**.

DATES: Written comments on the proposed rule may be submitted on or before September 6, 2002.

ADDRESSES: Because paper mail in the Washington area may be subject to

delay, commenters are encouraged to e-mail comments. Comments should be sent by one method only. Comments may be mailed to FinCEN, Section 326 Certain Credit Union and Trust Company Rule Comments, P.O. Box 39, Vienna, VA 22183 or sent by e-mail to *regcomments@fincen.treas.gov* with the caption "Attention: Section 326 Certain Credit Union and Trust Company Rule Comments" in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, D.C. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act, Public Law 107–56. Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 that requires the Secretary to prescribe regulations setting forth minimum standards for financial institutions that relate to the identification and verification of any person who applies to open an account. Final regulations implementing section 326 must be effective by October 25, 2002.

Section 326 applies to all "financial institutions." This term is defined very broadly in the BSA to encompass a variety of entities including banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, brokers and dealers in securities or commodities, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. *See* 31 U.S.C. 5312(a)(2).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the Federal bank regulators (the Agencies), the SEC, and the CFTC (the Federal functional regulators). FinCEN and the Federal bank regulators are today jointly issuing a proposed rule that applies to banks within the meaning of 31 CFR 103.11(c) that are subject to a Federal banking regulator. Under its own authority, FinCEN is issuing this proposed rule to extend rules identical [1] to those in the joint proposal to all banks lacking a Federal functional regulator, namely private banks and State chartered credit unions that are not federally insured, and trust companies. The text of the joint rule is published elsewhere in this separate part of this issue of the **Federal Register**.

Section 326 of the Act provides that the regulations must contain certain requirements. At a minimum, the regulations must require financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

B. Codification of the Proposed Rule

The substantive requirements of the proposed rule will be codified with other Bank Secrecy Act regulations as part of Treasury's regulations in 31 CFR part 103. FinCEN anticipates that, at that time, it will publish a final rule that implements section 326 in a single section that will apply to all banks.

[1] The references in the joint rule to a bank's anti-money laundering program requirement (proposed § 103.121 (b)(1)) and to the procedures for exemptions granted by the Federal functional regulator (with Treasury concurrence) (proposed § 103.121(c)) will be modified appropriately at the final rule stage.

II. Detailed Analysis

A. Regulations Implementing Section 326

Definitions. Account. The proposed rule's definition of "account" is based on the statutory definition of "account" that is used in section 311 of the Act. "Account" means each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions. For example, a deposit account, transaction or asset account, and a credit account or other extension of credit would each constitute an account.

Section 311 of the Act does not require that this definition be used for regulations implementing section 326 of the Act. However, to the extent possible, Treasury proposes to apply consistent definitions for each of the regulations implementing the Act to reduce confusion. "Deposit accounts" and "transaction accounts," which as previously noted, are considered "accounts" for purposes of this rulemaking, are themselves defined terms. In addition, the term "account" is limited to banking and business relationships established to provide "ongoing" services, dealings, or other financial transactions to make clear that this term is not intended to cover infrequent transactions such as the occasional purchase of a money order or a wire transfer.

Bank. For purposes of this proposed rule, the "bank" includes only those banks within the meaning of 31 CFR 103.11(c) that lack a Federal functional regulator. These are private banks and certain State chartered credit unions that are not federally insured, and trust companies.

Customer. The proposed rule defines "customer" to mean any person seeking to open a new account. Accordingly, the term "customer" includes a person applying to open an account, but would not cover a person seeking information about an account, such as rates charged or interest paid on an account, if the person does not actually open an account. "Customer" includes both individuals and other persons such as corporations, partnerships, and trusts. In addition, any person seeking to open an account at a bank, on or after the effective date of the final rule, will be a "customer," regardless of whether that person already has an account at the bank.

The proposed rule also defines a "customer" to include any signatory on an account. Thus, for example, an individual with signing authority over a corporate account is a "customer" within the meaning of the proposed

rule. A signatory can become a "customer" when the account is opened or when the signatory is added to an existing account.

The requirements of section 326 of the Act apply to any person "seeking to open a new account." Accordingly, transfers of accounts from one bank to another, that are not initiated by the customer, for example, as a result of a merger, acquisition, or purchase of assets or assumption of liabilities, fall outside of the scope of section 326, and are not covered by the proposed regulation.

Person. The proposed rule defines "person" by reference to § 103.11(z). This definition includes individuals, corporations, partnerships, trusts, estates, joint stock companies, associations, syndicates, joint ventures, other unincorporated organizations or groups, certain Indian Tribes, and all entities cognizable as legal personalities.

U.S. Person. Under the proposed rule, for an individual, "U.S. person" means a U.S. citizen. For persons other than an individual, "U.S. person" means an entity established or organized under the laws of a State or the United States. A non-U.S. person is defined as a person who does not satisfy these criteria.

Taxpayer identification number. The proposed rule continues the provision in current § 103.34(a)(4), which provides that the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder determine what constitutes a taxpayer identification number.

Customer Identification Program: Minimum Requirements.

General Rule. Section 326 of the Act requires Treasury to issue a regulation that establishes minimum standards regarding the identity of any customer who applies to open an account. Section 326 then prescribes three procedures that Treasury must require institutions to implement as part of this process: (1) Identification and verification of persons seeking to open an account; (2) recordkeeping; and (3) comparison with government lists.

Rather than imposing the same list of specific requirements on every bank, regardless of its circumstances, the proposed regulation requires all banks to implement a Customer Identification Program (CIP) that is appropriate given the bank's size, location, and type of business. The proposed regulation requires a bank's CIP to contain the statutorily prescribed procedures, describes these procedures, and details certain minimum elements that each of the procedures must contain.

In addition, the proposed rule requires that the CIP be written and that it be approved by the bank's board of directors or a committee of the board. This latter requirement highlights the responsibility of a bank's board of directors to approve and exercise general oversight over the bank's CIP.

Under the proposed joint regulation for federally regulated banks, the CIP must be incorporated into the bank's anti-money laundering (BSA) program. FinCEN has not yet issued an anti-money laundering program regulation for the banks subject to this proposed rule, but anticipates doing so in the near future, at which time they would be required to incorporate the CIP into that program. A bank's BSA program must include (1) internal policies, procedures, and controls to ensure ongoing compliance; (2) designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. Each of these requirements also applies to a bank's CIP.

Identity Verification Procedures. Under section 326 of the Act, the regulations issued by Treasury must require banks to implement and comply with reasonable procedures for verifying the identity of any person seeking to open an account, to the extent reasonable and practicable. The proposed regulation implements this requirement by providing that each bank must have risk-based procedures for verifying the identity of a customer that take into consideration the types of accounts that banks maintain, the different methods of opening accounts, and the types of identifying information available. These procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer.

Under the proposed regulation, a bank must first have procedures that specify the identifying information that the bank must obtain from any customer. The proposed regulation also sets forth certain, minimal identifying information that a bank must obtain prior to opening an account or adding a signatory to an account. Second, the bank must have procedures describing how the bank will verify the identifying information provided. The bank must have procedures that describe when it will use documents for this purpose and when it will use other methods, either in addition or as an alternative to using documents for the purpose of verifying the identity of a customer.

While a bank's CIP must contain the identity verification procedures set forth above, these procedures are to be risk-based. For example, a bank need not verify the identifying information of an existing customer seeking to open a new account, or who becomes a signatory on an account, if the bank (1) previously verified the customer's identity in accordance with procedures consistent with this regulation, and (2) continues to have a reasonable belief that it knows the true identity of the customer. The proposal requires a bank to exercise reasonable efforts to ascertain the identity of each customer.

Although the main purpose of the Act is to prevent and detect money laundering and the financing of terrorism, Treasury anticipates that the proposed regulation will ultimately benefit consumers. In addition to deterring money laundering and terrorist financing, requiring every bank to establish comprehensive procedures for verifying the identity of customers should reduce the growing incidence of fraud and identity theft involving new accounts.[2]

Information Required. The proposed regulation provides that a bank's CIP must contain procedures that specify the identifying information the bank must obtain from a customer. At a minimum, a bank must obtain from each customer the following information prior to opening an account or adding a signatory to an account: name; address; for individuals, date of birth; and an identification number, described in greater detail below. To satisfy the requirement that a bank obtain the address of a customer, Treasury expects a bank to obtain both the address of an individual's residence and, if different, the individual's mailing address. For customers who are not individuals, the bank should obtain an address showing the customer's principal place of business and, if different, the customer's mailing address.

For U.S. persons a bank must obtain a U.S. taxpayer identification number (*e.g.*, social security number, individual taxpayer identification number, or employer identification number). For non-U.S. persons a bank must obtain one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number

[2] Last year, over 86,000 complaints were logged into the Identity Theft Complaint database established by the Federal Trade Commission (FTC). Forms of identity theft commonly reported included (1) credit card fraud, where one or more new credit cards were opened in the victim's name; (2) bank fraud, where a new bank account was opened in the victim's name; and (3) fraudulent loans, where a loan had been obtained in the victim's name. *See* Statement of J. Howard Beales, Director, Bureau of Consumer Protection, FTC, to the Senate Committee on the Judiciary, Subcommittee on Technology, March 20, 2002.

and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. The basic information that banks would be required to obtain under this proposed regulation reflects the type of information that financial institutions currently obtain in the account-opening process and is similar to the identifying information currently required for each deposit or share account opened (*see* 31 CFR 103.34(a)(1)). The proposed regulation uses the term "similar safeguard" to permit the use of any biometric identifiers that may be used in addition to, or instead of, photographs.

Treasury recognizes that a new business may need access to banking services, particularly a bank account or an extension of credit, before it has received an employer identification number from the Internal Revenue Service. For this reason, the proposed regulation contains a limited exception to the requirement that a taxpayer identification number must be provided prior to establishing or adding a signatory to an account. Accordingly, a CIP may permit a bank to open or add a signatory to an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number. However, in such a case, the CIP must require that the bank obtain a copy of the application before it opens or adds a signatory to the account and obtain the employee identification number within a reasonable period of time after an account is established or a signatory is added to an account. Currently, the IRS indicates that the issuance of an employer identification number can take up to five weeks. This length of time, coupled with when the person applied for the employer identification number, should be considered by the bank in determining the reasonable period of time within which the person should provide its employer identification number to the bank.

Verification. The proposed regulation provides that the CIP must contain risk-based procedures for verifying the information that the bank obtains in accordance with the proposed rule, within a reasonable period of time after the account is opened. Treasury considered proposing that a customer's identity be verified before an account is opened or within a specific time period after the account is opened. However, Treasury recognizes that such a position would be unduly burdensome for both banks and customers and therefore contrary to the plain language of the statute, which states that the procedures must be both reasonable and practicable. The amount of time it will take an institution to verify identity may depend upon the type of account opened, whether the customer is physically present when the account is opened, and the type of identifying information available. In addition, although an account may be opened, it is common practice among banks to place limits on the account, such as by restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed regulation provides a bank with the flexibility to use a risk-based approach to determine how soon identity must be verified.[3]

Verification Through Documents. The CIP must contain procedures describing when the bank will verify identity through documents and setting forth the documents that the bank will use for this purpose. For individuals, these documents may include: unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard. For corporations, partnerships, trusts, and other persons that are not individuals, these may be documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, partnership agreement, or trust instrument.

Non-Documentary Verification. The proposed regulation provides that a bank's CIP also must contain procedures describing non-documentary methods the bank will use to verify identity and when these methods will be used in addition to, or instead of, relying on documents. For example, the procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the account is not opened in a face-to-face transaction; and the type of account increases the risk that the bank will not be able to verify the true identity of the customer through documents.

Treasury believes that banks typically require documents to be presented when an account is opened face-to-face. Although customers usually satisfy these requirements by presenting government-issued identification documents bearing a photograph, such as a driver's license or passport, Treasury recognizes that some customers legitimately may be unable to present those customary forms of identification when opening an account. For example, an elderly person may not have a valid driver's license or passport. Under these circumstances, Treasury expects that banks will provide products and services to those customers and verify their identities through other methods. Similarly, a bank may be unable to obtain original documents to verify a customer's identity when an account is opened by telephone, by mail, and over the Internet. Thus, when an account is opened for a customer who is not physically present, a bank will be permitted to use other methods of verification, to the extent set forth in the CIP.

While other verification methods must be used when a bank cannot examine original documents, Treasury also recognizes that original identification documents, including those issued by a government entity, may be obtained illegally and may be fraudulent. In light of the recent increase in identity fraud, banks are encouraged to use other verification methods, even when a customer has provided original documents.

Obtaining sufficient information to verify a customer's identity can reduce the risk that a bank will be used as a conduit for money laundering and terrorist financing. The risk that the bank will not know the customer's true identity will be heightened for certain types of accounts, such as accounts opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in jurisdictions that have been designated by the United States as a primary money laundering concern or have been designated as non-cooperative by an international body. As a bank's identity verification procedures should be risk-based, they should identify types of accounts that pose a heightened risk, and prescribe additional measures to verify the identity of any person seeking to open an account and the signatory for such accounts.

The proposed regulation gives examples of other non-documentary verification methods that a bank may use in the situations described above. These methods could include contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine

[3] It is possible that a bank would, however, violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.*, 31 CFR 500, prohibiting transactions involving designated foreign countries or their nationals.

whether any of the information is associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with information available from a trusted third party source, such as a credit report from a consumer reporting agency (positive verification); and checking references with other financial institutions. The bank also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number, date of birth, and social security number (logical verification).[4]

Lack of Verification. The proposed regulation also states that a bank's CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer.

Generally, a bank should only maintain an account for a customer when it can form a reasonable belief that it knows the customer's true identity.[5] Thus, a bank should have procedures that specify the actions that it will take when it cannot form a reasonable belief that it knows the true identity of a customer, including when an account should not be opened. In addition, a bank's CIP should have procedures that address the terms under which a customer may conduct transactions while a customer's identity is being verified. The procedures also should specify at what point, after attempts to verify a customer's identity have failed, a customer's account that has been opened should be closed. Finally, if a bank cannot form a reasonable belief that it knows the identity of a customer, the procedures should also include determining whether a Suspicious Activity Report should be filed in accordance with applicable law and regulation.

Recordkeeping. Section 326 of the Act requires reasonable procedures for maintaining records of the information used to verify a person's name, address, and other identifying information. The proposed regulation sets forth recordkeeping procedures that must be included in a bank's CIP. Under the proposal, a bank is required to maintain a record of the identifying information provided by the customer. Where a bank relies upon a document to verify identity, the bank must maintain a copy of the document that the bank relied on that clearly evidences the type of document and any identifying information it may contain.[6] The bank also must record the methods and result of any additional measures undertaken to verify the identity of the customer. Last, the bank must record the resolution of any discrepancy in the identifying information obtained. The bank must retain all of these records for five years after the date the account is closed.

Treasury emphasizes that the collection and retention of information about a customer, such as an individual's race or sex, as an ancillary part of collecting identifying information do not relieve a bank from its obligations to comply with anti-discrimination laws or regulations, such as the prohibition in the Equal Credit Opportunity Act against discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex or marital status, age, or other prohibited classifications.

Nothing in this proposed regulation modifies, limits or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, a bank may use electronic records to satisfy the requirements of this regulation, as long as the records are accurate and remain accessible in accordance with 31 CFR 103.38(d).

Comparison with Government Lists. Section 326 of the Act also requires reasonable procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any government agency. The proposed rule implements this requirement and clarifies that the requirement applies only with respect to lists circulated by the Federal government.

In addition, the proposed rule requires that the procedures must ensure that the bank follows all Federal directives issued in connection with such lists. This provision makes clear that a bank must have procedures for responding to circumstances when the bank determines that a customer is named on a list.

Customer Notice. Section 326 of the Act contemplates that financial institutions will provide their customers with "adequate notice" of the customer identification procedures. Therefore, a bank's CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity. A bank may satisfy the notice requirement by generally notifying its customers about the procedures the bank must comply with to verify their identities. For example, the bank may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is opened electronically, such as through an Internet website, the bank may also provide notice electronically.

Exemptions. Section 326 states that the Secretary (and, in the case of section 4(k) institutions, the appropriate Federal functional regulator) may by regulation or order, exempt any financial institution or type of account from the requirements of this regulation in accordance with such standards and procedures as the Secretary may prescribe.

Under the proposed rule, Treasury, may by order or regulation exempt any bank lacking a federal functional regulator or type of account at such a bank from the requirements of this section. In issuing such exemptions, Treasury shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, consistent with safe and sound banking, and in the public interest. Treasury also may consider other necessary and appropriate factors.

Other Information Requirements Unaffected. Nothing in the proposal shall be construed to relieve a bank of its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103. For example, if an account is opened with a deposit of more than $10,000 in cash, the bank opening the account must comply with the customer identification requirements in the proposal, as well as with the provisions of section 103.22, which require that certain information concerning the transaction be reported by filing a Cash Transaction Report (CTR).

B. Conforming Amendments to 31 CFR 103.34

Current section 103.34(a) sets forth customer identification requirements when certain types of deposit accounts are opened. Generally, sections 103.34(a)(1) and (2) require a bank, within 30 days after certain deposit accounts are opened, to secure and maintain a record of the taxpayer identification number of the customer

[4] Treasury understands that most banks currently make use of technology that permits instantaneous negative, positive, and logical verification of identity.

[5] There are some exceptions to this basic rule. For example, a bank may maintain an account, at the direction of a law enforcement or intelligence agency, although the bank does not know the true identity of a customer.

[6] The bank need not keep a separate record of the identifying information provided by the customer if this information clearly appears on the copy of the document maintained by the bank.

involved. If the bank is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under section 103.34 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to the Secretary upon request. In the case of a non-resident alien, the bank is required to record the person's passport number or a description of some other government document used to determine identification. Treasury believes that the requirements of section 103.34(a)(1) and (2) are inconsistent with the intent and purpose of section 326 of the Act and incompatible with the proposal.

Section 103.34(a)(3) currently provides that a bank need not obtain a taxpayer identification number with respect to specified categories of persons [7] opening certain deposit accounts. This proposed rule does not contain any exemptions from the CIP requirements.

Treasury is requesting comments on whether any of these exemptions should apply in the context of the proposed CIP requirements in light of the intent and purpose of section 326 of the Act.

Section 103.34(a)(4) provides that section 6109 of the Internal Revenue Code and the rules and regulations of the Internal Revenue Service (IRS) promulgated thereunder shall determine what constitutes a taxpayer identification number. This provision is continued in the proposal. Section 103.34(a)(4) also provides that IRS rules shall determine whose number shall be obtained in the case of multiple account holders. Treasury believes that this provision is inconsistent with section 326 of the Act, which requires that banks verify the identity of "any" person seeking to open an account. For these reasons, Treasury is proposing to repeal section 103.34(a).

Section 103.34(b) sets forth certain recordkeeping requirements for banks. Among other things, section 103.34(b)(1) requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of [a person with signature authority over an account] (such as a driver's license number or credit card number)." Treasury believes that the quoted language in section 103.34(b)(1) is inconsistent with the requirements of the proposal. For this reason, Treasury is proposing to delete the quoted language.

III. Request for Comments

Treasury invites comment on all aspects of this rulemaking, and specifically seek comment on the following issues:

1. Whether the proposed definition of "account" is appropriate and whether other examples of accounts should be added to the regulatory text.

2. How the proposed regulation should apply to various types of accounts that are designed to allow a customer to transact business immediately.

3. Ways that banks can comply with the requirement that a bank obtain both the address of an individual's residence, and, if different, the individual's mailing address in situations involving individuals who lack a permanent address.

4. Whether non-U.S. persons that are not individuals will be able to provide a bank with the identifying information required in the proposal, or whether other categories of identifying information should be added to this proposal to permit non-U.S. persons that are not individuals to open accounts. Commenters on this issue should suggest other means of identification that banks currently use or should use.

5. Whether the proposed regulation will subject banks to conflicting State laws. Treasury requests that commenters cite and describe any potentially conflicting State laws.

6. The extent to which the verification procedures required by the proposed regulation make use of information that banks currently obtain in the account opening process. Treasury notes that the legislative history of section 326 indicates that Congress intended "the verification procedures prescribed by Treasury [to] make use of information currently obtained by most financial institutions in the account opening process." *See* H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

7. Whether any of the exemptions from the customer identification requirements contained in current section 103.34(a)(3) should be continued in the proposal. In this regard, Treasury requests that commenters address the standards set forth in the proposal (as well as any other appropriate factors).

IV. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis' unless the agency certifies that the rule will not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 603, 605(b).[8]

Treasury certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The requirements of the proposed rule closely parallel the requirements for customer identification programs mandated by section 326 of the Act.

Moreover, Treasury believes that banks already have implemented prudential business practices and anti-money laundering programs that involve the key controls that would be required in a customer identification program in accordance with the proposed regulation. First, all banks already undertake extensive measures to verify the identity of their customers as a matter of good business practice.

Second, banks already should have compliance programs in place to check lists provided by the Federal government of known and suspected terrorists and terrorist organizations. Currently, banks are prohibited from engaging in transactions involving certain foreign countries or their nationals under rules issued by Treasury's Office of Foreign Assets Control (OFAC). *See* 31 CFR part 500. Banks should already have compliance programs in place to ensure that they do

[7] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iv) aliens who are accredited representatives of certain international organizations, and their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter; (viii) a person under 18 years of age, with respect to an account opened as part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club, or similar installment savings program, provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States.

[8] The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to the definitions published by the Small Business Administration (SBA). The SBA has defined a "small entity" for banking purposes as a bank or savings institution with less than $150 million in assets. *See* 13 CFR 121.201. The NCUA defines "small credit union" as those under $1 million in assets. Interpretive Ruling and Policy Statement No. 87–2, Developing and Reviewing Government Regulations (52 FR 35231, September 18, 1987).

not violate OFAC rules. Treasury understands that many banks, including small banks, have instituted programs to check other lists provided to them by the Federal government following the events of September 11, 2001. Treasury believes that all banks have access to a variety of resources, such as computer software packages, that enable them to check lists provided by the Federal government.

Third, Treasury believes the provision in the proposed rule that requires a bank to provide adequate notice to its customers that it is requesting information to verify their identity will impose minimal costs on banks. Banks may elect to satisfy that requirement through a variety of low-cost measures, such as by posting a sign in the bank's lobby or providing any other form of written or oral notice.

The recordkeeping requirements similarly may impose some costs on banks, if, for example, some of the information that must be maintained as a consequence of implementing customer identification programs is not already retained. Treasury believes that the compliance burden, if any, is minimized for banks, including small banks, because the proposed regulation vests a bank with the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

Finally, Treasury believes that the flexibility incorporated into the proposed rule will permit each bank to tailor its CIP to fit its own size and needs. In this regard, Treasury believes that expenditures associated with establishing and implementing a CIP will be commensurate with the size of a bank. If a bank is small, the burden to comply with the proposed rule should be *de minimis*.

V. Paperwork Reduction Act

The proposed rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). In summary, the proposed rule requires banks to implement reasonable procedures to (1) maintain records of the information used to verify the person's identity and (2) provide notice of these procedures to customers. These recordkeeping and disclosure requirements are required under section 326 of the Act.

The proposed rule applies only to a financial institution that is a "bank" as defined in 31 CFR 103.11(c) lacking a Federal functional regulator. The proposed rule requires each bank to establish a written CIP that must include recordkeeping procedures and procedures for providing customers with notice that the bank is requesting information to verify their identity.

The proposed rule requires a bank to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, the identification number of the document(s), and a copy of the identification document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained. These records must be maintained at the bank for five years after the date the account is closed. Treasury believes that little burden is associated with the recordkeeping requirements of the proposal, because such recordkeeping is a usual and customary business practice. In addition, banks already must keep similar records to comply with existing regulations in 31 CFR Part 103 (*see, e.g.*, 31 CFR 103.34, requiring certain records for each deposit or share account opened).

The proposed rule also requires banks to give customers "adequate notice" of the identity verification procedures. A bank may satisfy the notice requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice. If the account is opened electronically, the bank may provide the notice electronically. Treasury believes that nominal burden is associated with the disclosure requirement of the proposal. This section requires a bank to notify its customers about the procedures the bank has implemented to verify their identities. However, a bank may choose among a variety of methods of providing adequate notice and may select the least burdensome method, given the circumstances under which customers seek to open new accounts.

A person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information requirements contained in the proposed rule have been submitted to the OMB by Treasury in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

The institutions subject to these requirements include private banks, credit unions, and trust companies that do not have a Federal functional regulator.

Estimated number of financial institutions: 2,460.

Estimated average annual burden for the recordkeeping requirements of the proposed rule per each financial institution respondent: 10 hours.

Estimated average annual burden for the disclosure requirements of the proposed rule per each financial institution respondent: 1 hour.

Estimated total annual recordkeeping and disclosure burden: 27,060 hours.

Treasury requests public comment on all aspects of the recordkeeping and disclosure requirements contained in this proposed rule, including how burdensome it would be for banks to comply with these requirements. Also, Treasury requests comment on whether the banks are currently maintaining the records requested by the proposal. Treasury also invites comment on:

(1) Whether the collections of information contained in the notice of proposed rulemaking are necessary for the proper performance of FinCEN's functions, including whether the information has practical utility;

(2) The accuracy of the estimated burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Comments concerning the recordkeeping and disclosure requirements in the proposed rule should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

VI. Executive Order 12866

Treasury has determined that this proposal is not a "significant regulatory action" under Executive Order 12866. The rule follows closely the requirements of section 326 of the Act.

Treasury believes banks already have procedures in place that fulfill most of the requirements of the proposed regulation. First, the procedures are a matter of good business practice. Second, banks should already have compliance programs in place to ensure

they comply with OFAC rules prohibiting transactions with certain foreign countries or their nationals.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–18193 Filed 7–22–02; 8:45 am]

BILLING CODE 4810–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–46192, File No. S7–25–02]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA32

Customer Identification Programs For Broker-Dealers

AGENCIES: Financial Crimes Enforcement Network, Treasury; Securities and Exchange Commission.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the Securities and Exchange Commission are jointly issuing a proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury to jointly prescribe with the Securities and Exchange Commission a regulation that, at a minimum, requires broker-dealers to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the broker-dealer by any government agency.

DATES: Written comments on the proposed rule may be submitted to the Treasury Department and the Securities and Exchange Commission on or before September 6, 2002.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments should be sent by one method only.

Treasury: Comments may be mailed to FinCEN, Section 326 Broker-Dealer Rule Comments, P.O. Box 39, Vienna, VA 22183, or sent to Internet address *regcomments@fincen.treas.gov* with the caption "Attention: Section 326 Broker-Dealer Rule Comments" in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

Securities and Exchange Commission: Comments also should be submitted in triplicate to Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rulecomments@sec.gov*. Comment letters should refer to File No. S7–25–02; this file number should be included on the subject line if e-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet web site *(http//www.sec.gov)*. Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: *Treasury:* Office of the Chief Counsel (FinCEN), 703/905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), 202/622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), 202/622–0480.

Securities and Exchange Commission: Division of Market Regulation, 202/942–0177 or *marketreg@sec.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act.[1] Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA). *See* 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 that requires the Secretary of the Treasury (Secretary) to prescribe regulations setting forth minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at the financial institution.

Section 326 applies to all "financial institutions." This term is defined very broadly in the BSA to encompass a variety of entities including banks, agencies and branches of foreign banks in the United States, investment companies, thrifts, credit unions, brokers and dealers in securities or commodities, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. *See* 31 U.S.C. 5312(a)(2).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each Federal functional regulator appropriate for such financial institution. The Federal functional regulators include the Securities and Exchange Commission (Commission), the Commodity Futures Trading Commission (CFTC), and the banking agencies (banking agencies), namely, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration. Final regulations implementing section 326 must be effective before October 25, 2002.

Section 326 provides that the regulations, at a minimum, must require financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

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[1] Pub. L. 107–56.

The following proposal is being issued jointly by Treasury and the Commission. It applies only to persons registered, or required to be registered, with the Commission as brokers or dealers under the Securities Exchange Act of 1934 (Exchange Act), except persons who register pursuant to paragraph (b)(11) of section 15 of the Exchange Act (15 U.S.C. 78o(b)(11)) solely because they effect transactions in security futures products. This class of brokers and dealers will be subject to regulations issued by Treasury and the CFTC separately. Regulations governing the applicability of section 326 to other financial institutions, such as those regulated by the banking agencies, will be issued separately as well.

Treasury, the Commission, the CFTC and the banking agencies consulted extensively in the development of all rules implementing section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

In addition, Treasury under its own authority is proposing conforming amendments to 31 CFR 103.35, which currently imposes requirements concerning the identification of bank customers.

B. Codification of the Joint Proposed Rule

The substantive requirements of the joint proposed rule will be codified with other BSA regulations as part of Treasury's regulations in 31 CFR part 103. To minimize potential confusion by affected entities regarding the scope of the joint proposed rule, the Commission is also proposing to add a provision in its own regulations in 17 CFR part 240 that will cross-reference the regulations in 31 CFR part 103. Although no specific text is being proposed at this time, the cross-reference will be included in a final rule published by the Commission concurrently with the joint final rule issued by Treasury and the Commission implementing section 326 of the Act.

II. Section-by-Section Analysis

A. Section 103.122(a) Definitions

Section 103.122(a)(1) Account. The proposed rule's definition of "account" is intended to include all types of securities accounts maintained by brokers or dealers. These include accounts to purchase, sell, lend or otherwise hold securities or other assets, cash accounts, margin accounts, prime brokerage accounts that consolidate trading done at a number of firms, and accounts for repurchase and stock loan transactions.

Section 103.122(a)(2) Broker-dealer. The proposed rule defines "broker-dealer" to include any person registered, or required to be registered, with the Commission as a broker or dealer under the Exchange Act, except persons who register, or are required to be registered, solely because they effect transactions in security futures products. These latter brokers or dealers, which register with the Commission pursuant to section 15(b)(11) of the Exchange Act, will be subject to a separate regulation issued jointly by Treasury and the CFTC implementing section 326.

Section 103.122(a)(3) Commission. The proposed rule defines "Commission" to mean the United States Securities and Exchange Commission.

Section 103.122(a)(4) Customer. The proposed rule defines "customer" as any person who opens a new account at a broker-dealer or is granted trading authority with respect to an account at a broker-dealer. Under this definition, a person who has an account at a broker-dealer prior to the effective date of the regulation would not be a "customer." However, such a person becomes a "customer" if the person opens a different account. Moreover, a person becomes a "customer" each time the person opens a different type of account at a broker-dealer. Thus, if a person opens a cash account and subsequently opens a margin account, the person would be a "customer" for verification purposes on both occasions.

Similarly, a person with trading authority prior to the effective date of the regulation is not a "customer." However, any person being granted trading authority after the effective date is a customer. This is true even if the person is granted trading authority with respect to an account that existed prior to the effective date or the person had been granted trading authority for another account prior to the effective date.

The requirements of section 326 apply to "customers" (*i.e.*, persons opening new accounts or being granted trading authority), but do not apply to persons seeking information about an account such as a schedule of transaction fees, if an account is not opened. In addition, transfers of accounts from one broker-dealer to another that are not initiated by the customer, for example as a result of a merger, acquisition, or purchase of assets or assumption of liabilities, fall outside of the scope of section 326, and are not covered by the proposed regulation.[2]

Section 103.122(a)(5) Person. The proposed rule defines "person" as having the same meaning as that term is defined in section 103.11(z). Thus, the term includes natural persons, corporations, partnerships, trusts or estates, joint stock companies, associations, syndicates, joint ventures, any unincorporated organizations or groups, Indian Tribes, and all entities cognizable as legal entities.

Section 103.122(a)(6) U.S. person. The proposed rule defines "U.S. person" because U.S. citizens and persons incorporated under U.S. laws will be required to provide U.S. tax identification numbers whereas other persons, who may not have a U.S. tax identification number, will be required to provide other similar numbers. Thus, the rule defines "U.S. person" to mean a U.S. citizen or, for persons other than natural persons, an entity established or organized under the laws of a State or the United States.[3]

Section 103.122(a)(7) Non-U.S. person. The proposed rule defines a "Non-U.S. person" as a person that is not a "U.S. person" as that term is defined in the rule.

Section 103.122(a)(8) Taxpayer identification number. The proposed rule defines "taxpayer identification number" to have the same meaning as determined under the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder.

B. Section 103.122(b) Customer Identification Program

Section 326 of the Act requires the Secretary and the Commission to prescribe regulations requiring broker-dealers to implement and comply with "reasonable procedures" for: verifying the identity of customers "to the extent reasonable and practicable;" maintaining records associated with such verification; and consulting lists of known terrorists.

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[2] However, there may be situations involving the transfer of accounts where it would be appropriate for a broker-dealer to verify the identity of customers associated with the accounts it is acquiring. Therefore, Treasury and the Commission expect procedures for transfers of accounts to be part of a broker-dealer's overall anti-money laundering program required under section 352 of the Patriot Act. *See* Footnote 5 *infra* for a discussion of the requirements of section 352.

[3] The terms "State" and "United States" are defined in section 103.11.

Paragraph (b) of the proposed rule sets forth the requirement that a broker-dealer must develop and operate a customer identification program ("CIP") and sets forth relevant factors for the design of CIP procedures. The degree to which a CIP is effective will be a function of a broker-dealer's assessment of these factors and the nature of its response to them (as manifested in the CIP's procedures and guidelines). In addition, as section 326 and the proposed rule provide, the reasonableness of the CIP also will be a function of what is practicable for the broker-dealer.

In developing and updating CIPs, broker-dealers should consider the type of identifying information available for customers and the methods available to verify that information. While certain minimum identifying information is required in paragraph (c) of this proposed rule and certain suitable verification methods are described in paragraph (d), broker-dealers should consider on an ongoing basis whether other information or methods are appropriate, particularly as they become available in the future.

Broker-dealers must also base their CIPs on the risks associated with their business operations. Some relevant risk factors to be considered are set forth in paragraph (b) and discussed below in general terms.[4]

The first risk factor to consider is the broker-dealer's size. For example, a large firm that opens a substantial number of accounts on any given day will have different risks than one that opens a new account no more than once or twice a month. The same is true with respect to a firm that has many branches as compared to a firm with one office.

The second risk factor is the location of the broker-dealer. Firms should assess whether they are located in areas where money laundering activities have been known to exist or that otherwise raise the risk that attempts will be made to open accounts for money laundering purposes.

The third risk factor is the method by which customers open accounts at the broker-dealer. Accounts opened exclusively on-line present different, and perhaps greater, risks than those opened in person on the firm's premises.

The fourth and fifth risk factors are the types of accounts and transactions offered by the broker-dealer. Broker-dealers should assess whether there are different risks (and degrees of risk) associated with the various types of accounts they provide to customers (*e.g.*, cash, margin, prime-brokerage) and transactions they execute in those accounts (*e.g.*, short sales, over-the-counter derivatives, repurchase and reverse repurchase agreements, block trades).

The sixth risk factor is the customer base. Broker-dealers should assess the risks associated with different types of customers. For example, a firm should examine whether it is opening accounts for customers located in countries the Secretary determines to be of "primary money laundering concern" pursuant to section 311 of the Act. Verification procedures should account for the concerns raised by such customers. In addition, certain legal entities may pose greater risks (*e.g.*, a closely held corporation as opposed to one that is publicly traded).

The seventh risk factor requires an assessment of whether the broker-dealer can rely on another broker-dealer, with which it shares an account relationship, to undertake any of the steps required by this proposed rule with respect to the shared account. A shared account means an account subject to a carrying or clearing agreement governed by New York Stock Exchange (NYSE) Rule 382 or National Association of Securities Dealers, Inc. (NASD) Rule 3230 (*i.e.*, a customer account introduced by a correspondent broker-dealer to a clearing and carrying broker-dealer). Rules 382 and 3230 allow correspondents and clearing firms to set forth in written agreements a division of responsibilities with respect to the accounts they share.

We anticipate broker-dealers sharing accounts may realize efficiencies by dividing up the requirements in this proposed rule pursuant to their clearing agreements. For example, the correspondent may undertake to obtain the identifying information from customers as required in paragraph (c), and the clearing firm may undertake the verification procedures as required in paragraph (d). Nonetheless, both firms would still be responsible for ensuring that each requirement in the rule is met with respect to each customer. Accordingly, a broker-dealer must continually assess whether the other firm can be relied on to perform its responsibilities. This would include communicating and coordinating with the other firm on an on-going basis. Moreover, a broker-dealer is expected to cease such reliance if it is no longer reasonable.

Paragraph (b) also requires that the identity verification procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of the customer. This provision makes clear that, while there is flexibility in establishing these procedures, the broker-dealer is responsible for exercising reasonable efforts to ascertain the identity of each customer.

Finally, paragraph (b) requires that broker-dealers make their CIPs part of their overall anti-money laundering programs required under section 352 of the Act (31 U.S.C. 5318(h)).[5] This requirement is intended to make it clear that the CIP is not a separate program, but rather should be integrated into a broker-dealer's overall anti-money laundering procedures and policies. However, this should not be read to create any negative inference about a broker-dealer's need to establish and maintain an overall money laundering program that is designed to ensure compliance with all other applicable regulations promulgated under the Act.

C. Section 103.122(c) Required Information

The first step in verifying identity is obtaining identifying information from customers. Paragraph (c) of the proposed rule provides that a broker-dealer's CIP must require customers to provide, at a minimum, certain identifying information before an account is opened for the customer or the customer is granted trading authority over an account. Specifically, the broker-dealer must obtain each customer's: (1) Name; (2) date of birth, if applicable; (3) addresses; [6] and (4) documentary number.[7]

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[4] This discussion of the risk factors is included in the release because it may be helpful in providing some meaning and context with respect to the factors. However, it is not meant to provide comprehensive definitions of these risk factors or an exhaustive description of the considerations involved in assessing them. Instead, it should serve as a starting point for defining and assessing them.

[5] Section 352 requires brokers and dealers to establish anti-money laundering programs that, at a minimum, include (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. On April 22, 2002, the Commission approved rule changes submitted by the NASD and the NYSE. Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002). These rules (NASD Rule 3011 and NYSE Rule 445) set forth minimum requirements for these programs.

[6] With respect to the address requirement, each customer must provide a mailing address, and, if different, the address of the customer's residence (if a natural person) or principal place of business (if not a natural person).

[7] Each customer that is a U.S. person must provide a U.S. taxpayer identification number (*e.g.*, social security number or employer identification number). Customers that are Non-U.S. persons must provide either a U.S. taxpayer identification number, an alien identification card number, or the number and country of issuance of any other

The rule requires only that the minimum identifying information be obtained from each customer. Broker-dealers, in assessing the risk factors in paragraph (b), should determine whether other identifying information is necessary to form a reasonable belief as to the true identity of each customer. There may be certain types of customers from whom it is reasonable to obtain other identifying information in addition to the minimum required information. There also may be circumstances that make it appropriate to obtain additional information. If a broker-dealer, in examining the nature of its business and operations, determines that additional information should be obtained in certain cases, it should set forth guidelines in its CIP indicating the types of additional information and the circumstances when it shall be obtained.

Treasury and the Commission recognize that a new business may need to open a brokerage account before it has received an employer identification number (EIN) from the Internal Revenue Service. For this reason, the proposed rule contains a limited exception to the requirement that a taxpayer identification number must be provided prior to the opening of an account or the granting of trading authority. Accordingly, a CIP may permit an account to be opened or trading authority to be granted for a person, other than an individual (such as a corporation, partnership or trust), that has applied for, but has not received, an EIN. However, in such a case, the CIP must require that the broker-dealer obtain a copy of the application for the EIN prior to the time the account is opened or trading authority granted. Currently, the IRS indicates that the issuance of an EIN can take up to five weeks. This length of time, coupled with when the person applied for the EIN, should be considered by the broker-dealer in determining the reasonable period of time within which the person should provide its EIN to the broker-dealer.

D. Section 103.122(d) Required Verification Procedures

After obtaining identifying information from a customer, the broker-dealer must take steps to verify the accuracy of that information in order to reach a point where it can form a reasonable belief that it knows the true identity of the customer. Accordingly, paragraph (d) of the proposed rule requires a broker-dealer's CIP to have procedures for verifying the accuracy of the identifying information provided by the customer. The extent of the verification for each customer will depend on the steps necessary for a broker-dealer to reach a reasonable belief that it knows the true identity of the customer.

Paragraph (d) requires that the verification procedures must be undertaken within a reasonable time before or after a customer's account is opened or a customer is granted authority to effect transactions with respect to an account. This flexibility must be exercised in a reasonable manner, given that verifications too far in advance may become stale and verifications too long after the fact may provide opportunities to launder money while verification is pending. The amount of time it will take a broker-dealer to verify the identity of a customer may depend on the type of account opened, whether the customer opens the account in person, and on the type of identifying information available. In addition, although an account is opened, a broker-dealer may choose to place limits on the account, such as restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed rule provides broker-dealers with the flexibility to use a risk-based approach to determine when the identity of a customer must be verified relative to the opening of an account or the granting of trading authority.[8]

A person becomes a customer each time the person opens a new account at a broker-dealer or is granted trading authority with respect to an account. Therefore, upon the opening of each account or the granting of new authority, the verification requirements of this rule would apply. However, if a customer whose identification has been verified previously opens a new account or is granted new authority, the broker-dealer would not need to verify the customer's identity a second time, provided the broker-dealer (1) previously verified the customer's identity in accordance with procedures consistent with the proposed rule, and (2) continues to have a reasonable belief that it knows the true identity of the customer.

The rule provides for two methods of verifying identifying information: verification through documents and verification through non-documentary means. For example, using documents would include obtaining a driver's license or passport from a natural person or articles of incorporation from a company. Non-documentary methods would include cross-checking the information provided by a customer against that supplied by a credit bureau.

The proposed rule requires that a broker-dealer's CIP address both methods of verification. Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documentary or non-documentary methods. In some cases, it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the broker-dealer's assessment of the factors described in paragraph (b) of the proposed rule.

The risk a broker-dealer will not know a customer's true identity will be heightened for certain types of accounts, such as accounts opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction the Secretary determines is a primary money laundering concern or an international body, such as the Financial Action Task Force on Money Laundering, designates as non-cooperative. Obtaining sufficient information to verify a given customer's true identity can reduce the risk a broker-dealer will be used as a conduit for money laundering and terrorist financing. A broker-dealer's identity verification procedures must be based on its assessments of the factors in paragraph (b). Accordingly, when those assessments suggest a heightened risk, the broker-dealer should prescribe additional verification measures.

1. Verification Through Documents

Paragraph (d)(1) provides that the CIP must describe when a broker-dealer will verify identity through documents and set forth the documents that will be used for this purpose. The rule also lists certain documents that are suitable for verification. For natural persons, these documents may include: unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard. For other persons, suitable documents would be ones showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, a

government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. The term "similar safeguard" is included to permit the use of any biometric identifiers that may be used in addition to, or instead of, photographs.

[8] We note that it is possible a broker-dealer could violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.*, 31 CFR part 500, prohibiting transactions involving designated foreign countries or their nationals.

partnership agreement, or a trust instrument.

2. Verification Through Non-Documentary Methods

Paragraph (d)(2) provides that the CIP must describe non-documentary verification methods and when such methods will be employed in addition to, or instead of, using documents. The rule allows for the exclusive use of non-documentary methods because frequently accounts are opened by telephone, mail, or over the Internet. However, even if the customer presents documents, it may be appropriate to use non-documentary methods as well. Ultimately, the broker-dealer is responsible for employing sufficient verification methods to be able to form a reasonable belief that it knows the true identity of the customer.

The proposed rule sets forth certain non-documentary methods that would be suitable for verifying identity. These methods include contacting a customer after the account is opened; [9] obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with information available from a trusted third party source, such as a credit report from a consumer reporting agency (positive verification); and checking references with other financial institutions. The broker-dealer also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number (logical verification).

Paragraph (d)(2) also provides that the CIP must require the use of non-documentary methods in certain cases; specifically, when a natural person is unable to present an unexpired government issued identification document that bears a photograph or similar safeguard and when the broker-dealer is presented with unfamiliar documents to verify the identity of a customer, does not obtain documents to verify the identity of a customer, does not meet face-to-face a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the broker-dealer will be unable to verify the true identity of a customer through documents.

Thus, non-documentary methods should be used when a broker-dealer cannot examine original documents. In addition, Treasury and the Commission recognize that identification documents, including those issued by a government entity, may be obtained illegally and may be fraudulent. In light of the recent increase in identity fraud, broker-dealers are encouraged to use non-documentary methods, even when a customer has provided identification documents.

E. Section 103.122(e) Government Lists

Section 326 of the Act also requires reasonable procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations provided by any government agency. The proposed rule implements this requirement and clarifies that the requirement applies only with respect to lists circulated by the Federal government. In addition, the proposed rule states that broker-dealers must follow all Federal directives issued in connection with such lists. This provision makes clear that a broker-dealer must have procedures for responding to circumstances when a customer is named on a list.

F. Section 103.122(f) Customer Notice

Section 326 provides that financial institutions must give their customers notice of their identity verification procedures. Therefore, a broker-dealer's CIP must include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identity. A broker-dealer may satisfy the notice requirement by generally notifying its customers about the procedures the broker-dealer must comply with to verify their identities. For example, the broker-dealer may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is to be opened electronically, such as through an Internet website, the broker-dealer may provide notice electronically. Notice must be given before an account is opened or trading authority is granted.

G. Section 103.122(g) Lack of Verification

Paragraph (g) of the proposed rule states that a broker-dealer's CIP must include procedures for responding to circumstances in which it cannot form a reasonable belief that it knows the true identity of a customer. Generally, a broker-dealer should maintain an account for a customer only when it can form a reasonable belief that it knows the customer's true identity. [10] Thus, a broker-dealer's CIP should specify the actions to be taken when it cannot form a reasonable belief. There also should be guidelines for when an account will not be opened. In addition, the CIP should address the terms under which a customer may conduct transactions while a customer's identity is being verified. The CIP should specify at what point, after attempts to verify a customer's identity have failed, an account that has been opened will be closed. Finally, the procedures should include a process for determining whether a Suspicious Activity Report should be filed in accordance with applicable laws and regulations.

H. Section 103.122(h) Recordkeeping

Section 326 of the Act requires procedures for maintaining records of the information used to verify a person's identity, including name, address, and other identifying information. Paragraph (h) of the proposed rule sets forth recordkeeping procedures that must be included in a broker-dealer's CIP. These procedures must provide for the maintenance of all information obtained pursuant to the CIP. Information that must be maintained includes all identifying information provided by a customer pursuant to paragraph (c). Thus, the broker-dealer must make a record of each customer's name, date of birth (if applicable), addresses, and tax identification number or other number. Broker-dealers also must maintain copies of any documents that were relied on pursuant to paragraph (d)(1) evidencing the type of document and any identification number it may contain. For example, if a customer produces a driver's license, the broker-dealer must make a copy of the driver's license that clearly indicates it is a driver's license and legibly depicts any identification number on the license.

Broker-dealers also must make and maintain records of the methods and results of measures undertaken to verify the identity of a customer pursuant to paragraph (d)(2). For example, if a broker-dealer obtains a report from a credit bureau concerning a customer, the report must be maintained. Broker-dealers also must make and maintain records of the resolution of any discrepancy in the identifying information obtained. To continue with

[9] The purpose of engaging in verification is to check identifying information about a customer against an independent source. Contacting a customer may be a useful part of the verification process when an account is opened on-line or by mail. However, a broker-dealer should not rely solely on this method as a means of verification.

[10] There are some exceptions to this basic rule. For example, a broker-dealer may maintain an account, at the direction of law enforcement, notwithstanding that the broker-dealer does not know the true identity of a customer.

the previous example, if the customer provides a residence address that is different than the address shown on the credit report, the broker-dealer must document how it resolves this discrepancy or, if the discrepancy is not resolved, how it forms a reasonable belief notwithstanding the discrepancy.

The broker-dealer must retain all of these records for five years after the date the account is closed or the grant of authority to effect transactions with respect to an account is revoked. In all other respects, the records should be maintained in accordance with the requirements of Rule 17a-4.[11]

Nothing in this proposed regulation modifies, limits or supersedes section 101 of the Electronic Records in Global and National Commerce Act, Public Law 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, a broker-dealer may use electronic records to satisfy the requirements of this regulation, as long as the records are maintained in accordance with Rule 17a-4(f), which the Commission has interpreted as being consistent with the requirements in the E-Sign Act.[12]

Treasury and the Commission emphasize that the collection and retention of information about a customer, as an ancillary part of collecting identifying information, do not relieve a broker-dealer from its obligations to comply with anti-discrimination laws and regulations.

I. Section 103.122(i) Approval of Program

Paragraph (i) of the proposed rule requires that the broker-dealer's CIP be approved by the most senior level of the firm (*e.g.*, the board of directors, managing partners, board of managers, or other governing body performing similar functions) or by persons specifically authorized by that body to approve such a program.

J. Section 103.122(j) Exemptions

Section 326 states that the Secretary and the Federal functional regulator jointly issuing a rule under that section may by order or regulation exempt any financial institution or type of account from the regulation in accordance with such standards and procedures as the Secretary may prescribe. The proposed rule provides that the Commission, with the concurrence of the Secretary, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o and 78o-4. However, it excludes from this exemptive authority broker-dealers that register pursuant to 15 U.S.C. 78o(b)(11). These are firms that register as broker-dealers solely because they deal in securities futures products. The exemptive authority with respect to these firms will be in the rule issued jointly by Treasury and the CFTC. The proposed rule provides that the Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers pursuant to 15 U.S.C 78o-5 (*i.e.*, government securities dealers).

In issuing exemptions under the proposed rule, the Secretary and the Commission shall consider whether the exemption is consistent with the purposes of the BSA, and in the public interest, and may consider other necessary and appropriate factors.

III. Conforming Amendments to 31 CFR 103.35

Current section 103.35(a) sets forth customer identification requirements when certain brokerage accounts are opened. Generally, sections 103.35(a)(1) and (2) require a broker-dealer, within 30 days after an account is opened, to secure and maintain a record of the taxpayer identification number of the customer involved. If the broker-dealer is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under section 103.35 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to the Secretary upon request. In the case of a non-resident alien, the broker-dealer is required to record the person's passport number or a description of some other government document used to determine identification.

Section 103.35(a)(3) currently provides that a broker-dealer need not obtain a taxpayer identification number with respect to specified categories of persons[13] opening accounts. The proposed rule does not contain any exemptions from the CIP requirements. Treasury believes that the requirements of section 103.35(a)(1) and (2) are inconsistent with the intent and purpose of section 326 of the Act and incompatible with the proposed rule. For these reasons, Treasury, under its own authority, is proposing to repeal section 103.35(a).

In addition, Treasury and the Commission are requesting comments on whether any of the exemptions in Section 103.35(a)(3) should apply in the context of the proposed CIP requirements in light of the intent and purpose of section 326 of the Act.

IV. Request for Comments

Treasury and the Commission invite comment on all aspects of the proposed regulation, and specifically seek comment on the following issues:

1. Whether the proposed definition of "account" is appropriate and whether other examples of accounts should be added to the rule text.

2. How broker-dealers can comply with the requirement to obtain both the address of a person's residence, and, if different, the person's mailing address in situations involving natural persons who lack a permanent address.

3. Whether non-U.S. persons that are not natural persons will be able to provide a broker-dealer with the identifying information required in § 103.122(c)(4), or whether other categories of identifying information should be added to this section. Commenters on this issue should suggest other means of identification that broker-dealers currently use or should use in this circumstance that would allow a broker-dealer to form a reasonable belief that it knows the true identity of the entity.

4. The extent to which the verification procedures required by the proposed rule make use of information that broker-dealers currently obtain in the account opening process. We note that the legislative history of section 326 indicates that Congress intended "the verification procedures prescribed by Treasury [to] make use of information currently obtained by most financial institutions in the account opening process." *See* H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

5. Whether any of the exemptions from the customer identification requirements contained in current section 103.35(a)(3) should be continued in the proposed rule. In this regard, Treasury and the Commission

[11] 17 CFR 240.17a-4.

[12] *See* Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001).

[13] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iii) aliens who are accredited representatives of certain international organizations, and their immediate families; (iv) aliens temporarily residing in the United States for a period not to exceed 180 days; (v) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; and (vi) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter.

request that commenters address the standards set forth in paragraph (j) of the proposed rule (as well as any other appropriate factors).

V. Paperwork Reduction Act

Certain provisions of the proposed rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[14] Treasury has submitted the proposed rule to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C 3507(d). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Collection of Information Under the Proposed Rule

The proposed rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995. In summary, the proposed rule requires broker-dealers to implement reasonable procedures to (1) maintain records of the information used to verify the person's identity and (2) provide notice of the CIPs procedures to customers. These recordkeeping and notice requirements are required under section 326 of the Act.

B. Proposed Use of the Information

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for broker-dealers and their customers regarding the identity of the customer that shall apply in connection with opening of an account at the broker-dealer. Furthermore, section 326 provides that the regulations, at a minimum, must require broker-dealers to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the proposed rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The proposed rule requires each broker-dealer to establish a written CIP that must include recordkeeping procedures and procedures for providing customers with notice that the broker-dealer is requesting information to verify their identity. The proposed rule requires a broker-dealer to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, the identification number of the document(s), and a copy of the identification document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained.

The proposed rule also requires each broker-dealer to give customers "adequate notice" of the identity verification procedures. A broker-dealer may satisfy this disclosure requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice. If the account is opened electronically, the broker-dealer may provide the notice electronically. Accordingly, a broker-dealer may choose among a variety of methods of providing adequate notice and may select the least burdensome method, given the circumstances under which customers seek to open new accounts.

C. Respondents

The proposed rule would apply to approximately 5,568 broker-dealers, which is the approximate number of firms that conduct business with the general public.

D. Total Annual Reporting and Recordkeeping Burden

1. Providing Notice to Customers

The requirement to provide notice to customers generally will be a one-time burden in terms of drafting and posting or implementing the notices. The Commission estimates that broker-dealers will take two hours each to draft and post the required notices. There are approximately 5,568 broker-dealers that will have to undertake this task. Therefore, in complying with this requirement, the Commission estimates that the industry as a whole will spend approximately 11,136 hours.

2. Recordkeeping

The requirement to make and maintain records related to the CIP will be an annual time burden. The total burden to the industry will depend on the number of new accounts added each year. The Commission estimates that broker-dealers, on average, will spend two minutes per account making and maintaining the required records.[15] Therefore, in complying with this requirement, the Commission estimates that the industry as a whole will spend approximately 513,333 hours in 2002, 563,333 hours in 2003, and 620,000 hours in 2004.[16]

E. Collection of Information Is Mandatory

These recordkeeping and disclosure (notice) requirements are mandatory.

F. Confidentiality

The collection of information pursuant to the proposed rule would be provided by customers and other sources to broker-dealers and maintained by broker-dealers. In addition, the information may be used by federal regulators, self-regulatory organizations, and authorities in the course of examinations, investigations, and judicial proceedings. No governmental agency regularly would receive any of the information described above.

G. Record Retention Period

The proposed rule will require that the records with respect to a given customer be retained until five years after the date the account of a customer is closed or the grant of authority to effect transactions with respect to an account is revoked.

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[14] 44 U.S.C. 3502 *et seq.*

[15] The Commission estimates that the number of new accounts in the upcoming years will be: 15,400,000 in 2002, 16,900,000 in 2003, and 18,600,000 in 2004. The Commission arrived at this estimate by considering: (1) the total number of accounts at the 2001 year-end (102,700,000) as reported by broker-dealers on Form X–17a-5—Financial and Operational Combined Uniform Single (FOCUS) Reports they file pursuant to section 17 of the Exchange Act and rule 17a-5 (17 CFR 240.17a-5) thereunder; and (2) the annualized growth rate in total accounts for the years 1990 through 2001 (ten percent). The Commission also estimates that the number of accounts that are closed each year equals five percent of the total number of accounts. Accordingly, the Commission estimates that the total annualized growth rate for new accounts each year is fifteen percent. Therefore, starting with the 2001 total of 102,700,000 and using an annualized growth rate of fifteen percent, the Commission estimates that 15,400,000 new accounts will be added in 2002, 16,900,000 in 2003 and 18,600,000 in 2004.

[16] The Commission derived these estimates by taking the number of new accounts projected for each upcoming year and multiplying the number by two minutes and then dividing that number by 60 to convert minute totals into hour totals.

H. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), Treasury and the Commission solicit comments to:

(1) Evaluate whether the proposed collections of information are necessary, and whether they would have practical utility,

(2) Evaluate the accuracy of the estimates of the burden of the proposed collection of information,

(3) Enhance the quality, utility, and clarity of the information to be collected, and

(4) Minimize the burden of the collection of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

Comments concerning the recordkeeping and disclosure requirements in the proposed rule should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

VI. Commission's Analysis of the Costs and Benefits Associated With the Proposed Rule

The Commission is considering the costs and benefits associated with the proposal and requesting comment on all aspects of this cost-benefit analysis, including identification and assessment of any other costs and benefits not discussed in the analysis. Commenters are encouraged to identify, discuss, analyze, and supply relevant data concerning the costs and benefits associated with the proposed rule.

Section 326 of the Act requires Treasury and the Commission to prescribe regulations setting forth minimum standards for broker-dealers regarding the identities of customers that shall apply in connection with the opening of an account. The statute also provides that the regulations issued by Treasury and the Commission must, at a minimum, require financial institutions to implement reasonable procedures for: (1) Verification of customers' identities; (2) determination of whether a customer appears on a government list; and (3) maintenance of records related to customer verification. The proposed rule implements this statutory mandate by requiring broker-dealers to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify identifying information of customers; (4) check customers against lists provided by federal agencies, (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records. The Commission believes that these requirements are reasonable and practicable, as required by the section 326 and, therefore, that the costs associated with them are attributable to the statute. Moreover, while the proposed rule specifies certain minimum requirements, broker-dealers will be able to design their CIPs in a manner most appropriate to their business models and customer bases. This flexibility should be beneficial to broker-dealers in helping them to tailor their CIPs appropriately, while still meeting the statutory requirements of section 326.

Even though the Commission believes the costs associated with the proposed rule are attributable to the statute, it nonetheless has undertaken an analysis of the costs and benefits of the requirements. The Commission seeks comment on all aspects of the proposed rule, including whether the proposed rule, by setting forth minimum requirements, creates a benefit or, conversely, imposes costs because broker-dealers will not be able to choose for themselves the minimum procedures they wish to use to meet the requirements of the statute. The Commission also seeks comment on whether the costs are attributable to the statute.

A. Benefits Associated With the Proposed Rule

The anti-money laundering provisions in the Act are intended to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. The proposed rule is an important part of this effort. It fulfills the statutory mandate of section 326 by specifying how a broker-dealer is to establish a program that will assist it in determining the identities of customers. Verifying identities, in turn, will reduce the risk of broker-dealers unwittingly aiding criminals, including terrorists, in accessing U.S. financial markets to launder money or move funds for illicit purposes. Additionally, the implementation of such programs should make it more difficult for persons to successfully engage in fraudulent activities involving identity theft or the placing of fictitious orders to buy or sell securities.

B. Costs Associated with the Proposed Rule

1. Writing Procedures

Most broker-dealers, as a matter of prudent business practices, should already have procedures in place for verifying identities of customers. In addition, Exchange Act Rule 17a–3(a)(9) requires broker-dealers to obtain the name and address of each beneficial owner of a cash or margin account.[17] Similarly, the self-regulatory organizations have rules requiring broker-dealers to obtain identifying information from customers.[18] Accordingly, firms should already have written procedures for complying with these existing regulations.

Nonetheless, the Commission believes that some broker-dealers will have to update or establish a CIP. The proposed rule seeks to keep the costs low by allowing for great flexibility in establishing a CIP. For example, it is to be based on factors specific to each broker-dealer, such as size, customer base and location. Thus, the analysis and detail necessary for a CIP will depend on the complexity of the broker-dealer and its operations. Given the considerable differences among broker-dealers, it is difficult to quantify a cost per broker-dealer. Highly complex firms will have more risk factors to consider, given, for example, their size, multiple offices, variety of services and products offered, and range of customers. However, most large firms already have some procedures in place for verifying customer identities. Smaller and less complex firms will not have as many risk factors.

The Commission estimates that establishing a written CIP could result in additional costs for some broker-dealers to the extent they do not have verification procedures that meet the minimum requirements in the rule. This includes broker-dealers that would need to augment their procedures to make them compliant. On average, the Commission estimates the additional cost per broker-dealer to establish a compliant CIP to be approximately $2,244, resulting in a one time overall cost to the industry of approximately $12,494,592.[19]

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[17] 17 CFR 240.17a–3(a)(9).

[18] *See, e.g.*, NYSE Rule 405, NASD Rule 3110.

[19] The Commission estimates that it will take broker-dealers on average approximately 20 hours to establish a written CIP. This estimate seeks to account for the fact that many firms already have customer identification and verification procedures and that discrepancies in size and complexity will result in differing time burdens. The Commission believes that broker-dealers will have senior compliance personnel draft their CIPs and that this

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2. Obtaining Identifying Information

The Commission believes that broker-dealers already obtain from customers most, if not all, of the information required under the proposed rule.[20] Rule 17a–3(a)(9) requires broker-dealers to obtain, with respect to each margin and cash account, the name and address of each beneficial owner, provided that the broker-dealer need only obtain such information from the persons authorized to transact business for the account if it is a joint or corporation account.[21]

Further, broker-dealers are already required, pursuant to NASD Rule 3110, to obtain certain identifying information with respect to each account.[22] For example, if the customer is a natural person, the rule requires the broker-dealer to obtain the customer's name and address.[23] In addition, the broker-dealer must determine whether the customer is of legal age, and, if the customer purchases more than just open-end investment company shares or is solicited to purchase such shares, the broker-dealer must obtain the customer's tax identification or social security number.[24] If the customer is a corporation, partnership, or other legal entity, the broker-dealer must obtain its name, residence, and the names of any persons authorized to transact business on behalf of the entity.[25] If the account is a discretionary account, the broker-dealer must obtain the signature of each person authorized to exercise discretion over the account.[26] Finally, the broker-dealer must maintain all of this information as a record of the firm.

In addition, NYSE Rule 405 requires broker-dealers to "[u]se due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization and every person holding power of attorney over any account accepted or carried by such organization."[27]

While broker-dealers are required currently to obtain most of this information, the Commission estimates that there will be some new costs for broker-dealers because some may not be obtaining all the required information. The Commission estimates that the total cost to the industry to obtain the minimum identifying information will be $5,826,333 in 2002, $6,393,833 in 2003, and $7,037,000 in 2004.[28] The Commission also estimates that some broker-dealers will have to update their account opening applications or account opening websites in order to insert line items requesting customers to provide the required information. The Commission estimates that this will result in a one-time cost to the industry of $563,760.[29]

3. Verifying Identifying Information

The proposed rule provides broker-dealers with substantial flexibility in establishing how they will independently verify the information provided by customers. For example, customers that open accounts on a broker-dealer's premises can simply provide a driver's license or passport, or if the customer is not a natural person, it can provide a copy of any documents showing its existence as a legal entity (*e.g.*, articles of incorporation, business licenses, partnership agreements or trust instruments). There are also a number of options for customers that open accounts via the telephone or Internet. In these cases, broker-dealers may obtain a financial statement from the customer, check the customer's name against a credit bureau or database, or check the customer's references with other financial institutions.

The documentary and non-documentary verification methods set forth in the rule are not meant to be an exclusive list of the appropriate means of verification. Other reasonable methods may be available now or in the future. The purpose of making the rule flexible is to allow broker-dealers to select verification methods that are, as section 326 requires, reasonable and practicable. Methods that are appropriate for a smaller broker-dealer with a fairly localized customer base may not be sufficient for a larger firm with customers from many different countries. The proposed rule recognizes this fact and, therefore, allows broker-dealers to employ such verification methods as would be suitable to a given firm to form a reasonable belief that it knows the true identities of its customers.

The Commission estimates that verifying the identifying information could result in costs for broker-dealers because some firms currently may not use verification methods. The Commission estimates that the total cost to the industry to verify the identifying information will be $48,628,333 in

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will take an average of 16 hours. The Commission anticipates that in-house counsel will spend on average 4 hours reviewing the CIP. According to the Securities Industry Association ("SIA") *Management and Professional Earnings 2000* report ("SIA Earnings Report"), Table 051, the hourly cost of a compliance manager plus 35% overhead is $101.25. The hourly cost for an in-house counsel plus 35% overhead is $156.00 (SIA Earnings Report, Table 107 [Attorney]). Therefore, the Commission estimates that the total cost per broker-dealer to establish a CIP would be $2,244 per broker-dealer [(16 × $101.25) + (4 × $156.00)]. As of the 2000 year-end, there were approximately 5,568 broker-dealers that engaged in some form of a public business. Therefore, the Commission estimates that the total cost to the industry would be $2,244 multiplied by 5,568 or $12,494,592.

[20] For example, the Anti-Money Laundering Committee of the SIA recommended in its *Preliminary Guidance for Deterring Money Laundering Activity* (February 2002) that broker-dealers obtain certain identifying information from customers at the commencement of the business relationship, including, for natural persons: name, address, date of birth, investment experience and objectives, social security number or taxpayer identification number, net worth, annual income, occupation, employer's address, and the names of any persons authorized to effect transactions in the account. For non-resident aliens, the SIA Committee recommended that the broker-dealer obtain, in addition to the information above, a passport number or other valid government identification number. The SIA Committee also made a number of recommendations with respect to customers that are not natural persons.

[21] 17 CFR 240.17a–3(a)(9).

[22] Section 15(b)(8) of the Exchange Act (15 U.S.C. 78o(b)(8)) requires each broker-dealer to become a member of a securities association registered pursuant to section 15A of the Exchange Act (15 U.S.C. 78o–3) unless the broker-dealer effects transactions solely on a national securities exchange of which it is a member. The NASD is the only securities association registered pursuant to section 15A. Exchange Act Rule 15b9–1 (17 CFR 240.15b9–1) exempts broker-dealers from this requirement to register with the NASD if they (1) are an exchange member, (2) carry no customer accounts, and (3) derive gross annual income from purchases and sales of securities other than on a national securities exchange of not greater than $1,000. Generally then, most broker-dealers that carry customer accounts are members of the NASD and subject to Rule 3110.

[23] NASD Rule 3110(c)(1).

[24] NASD Rule 3110(c)(2).

[25] NASD Rule 3110(c)(1).

[26] NASD Rule 3110(c)(3).

[27] NYSE Rule 405(1).

[28] The Commission estimates that obtaining the required minimum identifying information will take broker-dealers approximately one minute per account. This takes into consideration the fact that approximately 97% of customer accounts are held at the 70 largest broker-dealers. These firms likely already obtain the required identifying information from their customers. Therefore, requiring that each piece of identifying information be obtained should not impose a significant additional burden. The average hourly cost of the person who would be obtaining this information is $22.70 per hour (per the SIA Earnings Report, Table 082 (Retail Sales Assistant, Registered) and including 35% in overhead charges). Therefore, the costs to the industry would be: (number of new accounts per year) × (1/60 of an hour) × ($22.70). As indicated previously, the Commission estimates that the number of new accounts in the upcoming years will be: 15,400,000 in 2002, 16,900,000 in 2003, and 18,600,000 in 2004.

[29] The Commission estimates that it will take each broker-dealer, on average, one hour to update account opening applications or electronic account opening systems. The Commission believes that broker-dealers will have a compliance manager implement the necessary changes. The hourly cost for a compliance manager is $101.25 (SIA Earnings Report, Table 051 (Compliance manager)). Accordingly, the total cost to the industry would be: ($101.25) × (the number of broker-dealers doing a public business or 5,568) or $563,760.

2002, $53,375,833 in 2003, and $58,745,000 in 2004.[30]

4. Determining Whether Customers Appear on a Federal Government List

The Commission believes that broker-dealers who receive federal government lists, chiefly clearing firms, already have procedures for checking customers against them. First, there are substantive legal requirements associated with the lists circulated by Treasury's Office of Foreign Asset Control of the U.S. Treasury (OFAC). The failure of a firm to comply with these requirements could result in criminal and civil penalties. The Commission believes that, given the events of September 11, 2001, most broker-dealers that receive lists from the federal government have implemented procedures for checking their customers against them.

The Commission estimates that this requirement could result in some additional costs for broker-dealers because some may not already check such lists. The Commission estimates that the total cost to the industry to check such lists will be $3,323,833 in 2002, $3,647,583 in 2003, and $4,014,500 in 2004.[31]

5. Providing Notice to Customers

A broker-dealer may satisfy the notice requirement by generally notifying its customers about the procedures the broker-dealer must comply with to verify their identities. For example, the broker-dealer may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is opened electronically, such as through an Internet website, the broker-dealer may provide notice electronically. The Commission estimates the total one-time cost to the industry to provide notice to customers to be $1,432,368.[32]

6. Recordkeeping

The Commission estimates that many of the records required by the rule are already made and maintained by broker-dealers. As discussed above, Commission and self-regulatory organization rules already require broker-dealers to obtain much of the minimum identifying information specified in the proposed rule. These regulations also require that records be made and kept of this information. The Commission estimates that the recordkeeping requirement could result in additional costs for some broker-dealers that currently do not maintain certain of the records for the prescribed time period. The Commission estimates that the total cost to the industry to make and maintain the required records in the upcoming years will be $13,295,333 in 2002, $14,590,333 in 2003, and $16,058,000 in 2004.[33]

[30] The Commission estimates that the processing costs associated with verification methods will be approximately $1.00 per account. The Commission further estimates that the average time spent verifying an account will be five minutes. The hourly cost of the person who would undertake the verification is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × ($1.00) + (number of new accounts per year) × (1/12 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 15,400,000 in 2002, 16,900,000 in 2003, and 18,600,000 in 2004.

[31] The Commission believes that most of the firms that receive these lists already check their customers against them. Moreover, as indicated previously, 97% of customer accounts are held at the 70 largest firms. The Commission understands that most of these firms have automated processes for complying with many regulatory requirements. Accordingly, the Commission estimates that it will take broker-dealers on average thirty seconds to check whether a person appears on a government list. The hourly cost of the person who would check the list is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × (1/120 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 15,400,000 in 2002, 16,900,000 in 2003, and 18,600,000 in 2004.

[32] The Commission estimates that it will take each broker-dealer, on average, two hours to create and implement the appropriate notice. This estimate takes into consideration the fact that many small firms will be able to provide adequate notice by hanging signs in their premises. Larger firms will be able to provide notice by updating account opening documentation or electronic account opening systems. The Commission believes that broker-dealers will have an attorney draft the appropriate notice, and that this will take approximately one hour. The hourly cost for an in-house counsel plus 35% overhead is $156.00 (SIA Earnings Report, Table 107, (Attorney)). The Commission believes that broker-dealers will have a compliance manager implement the notice, and that implementation will take approximately one hour. The hourly cost for a compliance manager is $101.25 (SIA Earnings Report, Table 051 (Compliance manager)). Accordingly, the total cost to the industry would be: ($156.00 + 101.25) × (the number of broker-dealers doing a public business or 5,568) or $1,432,368.

[33] The Commission estimates that it will take approximately two minutes per new account to make and maintain the required records. This estimate takes into account the fact that many broker-dealers already make and maintain many of the required records. In addition, for many new accounts, the recordkeeping will be fairly simple (*e.g.*, making a photocopy of a driver's license or financial statement, or keeping a record of the results of a public database search or credit bureau query. The hourly cost of the person who would undertake the verification is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × (1/30 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 15,400,000 in 2002, 16,900,000 in 2003, and 18,600,000 in 2004.

VII. Regulatory Flexibility Act

Treasury and the Commission are sensitive to the impact our rules may impose on small entities. Congress enacted the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, to address concerns related to the effects of agency rules on small entities. In this case, Treasury and the Commission believe that the proposed rule likely would not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). First, the economic impact on small entities should not be significant because most small entities are likely to have a relatively small number of accounts, and thus compliance should not impose a significant economic impact. Second, as discussed in Section VI (the Commission's cost benefit analysis), the economic impact on broker-dealers, including small entities, is imposed by the statute itself, and not by the proposed rule. Treasury and the Commission seek comment on whether the proposed rule would have a significant economic impact on a substantial number of small entities and whether the costs are imposed by the statute itself, and not the proposed rule.

While Treasury and the Commission believe that the proposed rule likely would not have a significant economic impact on a substantial number of small entities, Treasury and the Commission do not have complete data at this time to make this determination. Therefore, an Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603.

A. Reason for the Proposed Action

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for broker-dealers and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at the broker-dealer. Furthermore, section 326 requires, at a minimum, that broker-dealers implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of section 326, and the regulations promulgated thereunder, is

to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the proposed rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

B. Objective

The objective of the proposed regulation is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. The proposed rule seeks to achieve this goal by specifying the information broker-dealers must obtain from or about customers that can be used to verify the identity of the customers. This will make it more difficult for persons to use false identities to establish customer relationships with broker-dealers for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism.

C. Legal Basis

The proposed rule is being promulgated pursuant to section 326 of the Act, which mandates that Treasury and the Commission issue a regulation setting forth minimum standards for financial institutions and their customers regarding the identity of customers that shall apply in connection with the opening of accounts at financial institutions.

D. Small Entities Subject to the Rule

The proposed rule would affect broker-dealers that are small entities. Rule 0–10 under the Exchange Act [34] defines a broker-dealer to be small if it (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in the rule.

As of December 31, 2000, the Commission estimates there were approximately 873 broker-dealers that were "small" for purposes of Rule 0–10 that would be subject to this rule because they conduct business with the general public. The Commission bases its estimate on the information provided in broker-dealer FOCUS Reports.

E. Reporting, Recordkeeping and other Compliance Requirements

The proposed rule would require broker-dealers to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify identifying information of customers; (4) check customers against lists provided by federal agencies; (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records related to the CIP.

F. Duplicative, Overlapping or Conflicting Federal Rules

As discussed throughout this preamble, there are other federal rules that contain requirements for collecting certain information from customers. However, these other requirements do not provide sufficient information for broker-dealers to verify the identity of their customers. Congress has mandated that Treasury and the Commission issue a regulation that requires broker-dealers to undertake such verifications.

G. Significant Alternatives

If an agency does not certify that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act directs Treasury and the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any adverse impact on small entities.

In connection with the proposed amendments, we considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The proposed rule provides for substantial flexibility in how each broker-dealer may meet its requirements. This flexibility is designed to account for differences between broker-dealers, including size. Nonetheless, Treasury and the Commission did consider alternatives such as exempting certain small entities from some or all of the requirements of the proposed rule. Treasury and the Commission do not believe that such an exemption is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of broker-dealers, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small firms as well as large firms.

H. Solicitation of Comments

Treasury and the Commission encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis, including comments regarding the number of small entities that may be affected by the proposed rule. Such comments will be considered by Treasury and the Commission in determining whether a Final Regulatory Flexibility Analysis is required, and will be placed in the same public file as comments on the proposed amendment itself. Comments should be submitted to Treasury or the Commission at the addresses previously indicated.

VIII. Executive Order 12866

The Department of the Treasury has determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. As noted above, the proposed rule closely parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

Lists of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. Section 103.35 is amended as follows:

a. By removing paragraph (a);

b. By redesignating paragraph (b) introductory text and paragraphs (b)(1) through (b)(4) as introductory text and paragraphs (a) through (d), respectively; and

[34] 17 CFR 240.0–10(c).

c. In newly redesignated introductory text, by removing ", in addition," in the first sentence.

3. Subpart I of part 103 is amended by adding § 103.122 to read as follows:

§ 103.122 Customer identification programs for broker-dealers.

(a) *Definitions.* For the purposes of this section:

(1) *Account* means any formal business relationship with a broker-dealer established to effect financial transactions in securities, including, but not limited to, the purchase or sale of securities, securities loan and borrowed activity, or the holding of securities or other assets for safekeeping or as collateral. For example, a cash account, margin account, prime brokerage account that consolidates trading done at a number of firms, or an account for repurchase transactions would each constitute an account.

(2) *Broker-dealer* means any person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C 77a *et seq.*), except persons who register pursuant to 15 U.S.C 78o(b)(11).

(3) *Commission* means the United States Securities and Exchange Commission.

(4) *Customer* means:

(i) Any person who opens a new account with a broker-dealer; and

(ii) Any person who is granted authority to effect transactions with respect to an account with a broker-dealer.

(5) *Person* has the same meaning as that term is defined in § 103.11(z).

(6) *U.S. person* means:

(i) Any U.S. citizen; and

(ii) Any corporation, partnership, trust, or person (other than a natural person) that is established or organized under the laws of a State or the United States.

(7) *Non-U.S. person* means a person that is not a *U.S. person*.

(8) *Taxpayer identification number.* The provisions of section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the regulations of the Internal Revenue Service promulgated thereunder shall determine what constitutes a taxpayer identification number.

(b) *Customer identification program.* A broker-dealer shall establish, document, and maintain a written Customer Identification Program ("CIP"). A broker-dealer's CIP procedures must enable it to form a reasonable belief that it knows the true identity of the customer. A broker-dealer's CIP must be a part of its anti-money laundering program required under 31 U.S.C. 5318(h). A broker-dealer's CIP procedures shall be based on the type of identifying information available and on an assessment of relevant risk factors including:

(1) The broker-dealer's size;

(2) The broker-dealer's location;

(3) The broker-dealer's methods for opening accounts;

(4) The types of accounts the broker-dealer maintains for customers;

(5) The types of transactions the broker-dealer executes for customers;

(6) The broker-dealer's customer base; and

(7) The broker-dealer's reliance on another broker-dealer with which it shares an account relationship.

(c) *Required information*—(1) *General.* Except as permitted by paragraph (c)(2) of this section, the CIP shall require the broker-dealer to obtain specified identifying information about each customer before an account is opened or a customer is granted authority to effect transactions with respect to an account. The specified information must include, at a minimum:

(i) Name;

(ii) Date of birth, for a natural person;

(iii) Addresses:

(A) Residence and mailing (if different) for a natural person; or

(B) Principal place of business and mailing (if different) for a person other than a natural person; and

(iv) Documentary record:

(A) *U.S. person.* A taxpayer identification number from each customer that is a U.S. person; or

(B) *Non-U.S. person.* A taxpayer identification number, passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

(2) *Limited exception.* In the case of a person other than a natural person that has applied for, but has not received, an employer identification number, the CIP may allow the employer identification number to be provided within a reasonable period of time after the account is established, if the broker-dealer obtains a copy of the application for the employer identification number prior to the opening of an account or the granting of trading authority.

(d) *Required verification procedures.* The CIP shall include procedures for verifying the identity of customers, to the extent reasonable and practicable, using identifying information obtained. Such verification must occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account.

(1) *Verification through documents.* The CIP must describe when the broker-dealer will verify customers' identities through documents and describe the documents that the broker-dealer will use for this purpose. Suitable documents for verification may include:

(i) For natural persons, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and

(ii) For persons other than natural persons, documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(2) *Verification through non-documentary methods.* The CIP must describe non-documentary methods the broker-dealer will use to verify customers' identities and when these methods will be used in addition to, or instead of, relying on documents. Non-documentary verification methods may include contacting a customer, obtaining a financial statement, independently verifying information through credit bureaus, public databases, or other sources, and checking references with other financial institutions. Non-documentary methods shall be used when a customer who is a natural person is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard, or the broker-dealer is presented with unfamiliar documents to verify the identity of a customer, the broker-dealer does not obtain documents to verify the identity of a customer, does not meet face-to-face a customer who is a natural person, or the broker-dealer is otherwise presented with circumstances that increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.

(e) *Government lists.* The CIP shall include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations provided to the broker-dealer by any federal government agency. Broker-dealers shall follow all federal directives issued in connection with such lists.

(f) *Customer notice.* The CIP shall include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identities.

(g) *Lack of verification.* The CIP shall include procedures for responding to circumstances in which the broker-dealer cannot form a reasonable belief that it knows the true identity of a customer.

(h) *Recordkeeping.* The CIP shall include procedures for making and retaining a record of all information obtained pursuant to the CIP.

(1) *Required records.* At a minimum, the CIP shall require the broker-dealer to make the following records:

(i) All identifying information provided by a customer pursuant to paragraph (c) of this section, and copies of any documents that were relied on pursuant to paragraph (d)(1) of this section that accurately depict the types of documents and any identification numbers they may contain;

(ii) The methods and results of any measures undertaken to verify the identity of a customer pursuant to paragraph (d)(2) of this section; and

(iii) The resolution of any discrepancy in the identifying information obtained.

(2) *Retention of records.* The broker-dealer must retain all records made or obtained when verifying the identity of a customer pursuant to its CIP until five years after the date the account of the customer is closed or the grant of authority to effect transactions with respect to an account is revoked. In all other respects, the records shall be maintained pursuant to the provisions of 17 CFR 240.17a-4.

(i) *Approval of CIP.* The CIP shall be approved by the broker-dealer's board of directors, managing partners, board of managers or other governing body performing similar functions or by a person or persons specifically authorized by such bodies to approve the CIP.

(j) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o (except broker-dealers that register under subsection (b)(11) of that section) or 15 U.S.C. 78o-4 or type of account from the requirements of this section. The Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o-5. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: July 12, 2002.

By the Securities and Exchange Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18192 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P; 4830–01–P516

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25657; File No. S7–26–02]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA33

Customer Identification Programs for Mutual Funds

AGENCIES: Financial Crimes Enforcement Network, Treasury; Securities and Exchange Commission.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the Securities and Exchange Commission are jointly issuing a proposed regulation to implement Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury to jointly prescribe with the Securities and Exchange Commission a regulation that, at a minimum, requires investment companies to adopt and implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to investment companies by any government agency. The proposed rule would apply to investment companies that are mutual funds.

DATES: Written comments on the proposed rule should be submitted to the Treasury Department and the Securities and Exchange Commission on or before September 6, 2002.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments should be sent by one method only.

Treasury: Comments may be mailed to FinCEN, Section 326 Mutual Fund Rule Comments, P.O. Box 39, Vienna, VA 22183, or sent to Internet address *regcomments@fincen.treas.gov* with the caption "Attention: Section 326 Mutual Fund Rule Comments" in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

Securities and Exchange Commission: Comments also should be submitted in triplicate to Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–26–02; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet web site *(http://www.sec.gov)*. Personal, identifying information, such as names or E-mail addresses, is not deleted from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

Securities and Exchange Commission: Division of Investment Management, Securities and Exchange Commission, (202) 942–0720.

Treasury: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act.[1] Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act ("BSA"), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the

[1] Pub. L. 107–56.

prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 that requires the Secretary of the Treasury ("Secretary") to prescribe regulations setting forth minimum standards for financial institutions and their customers that relate to the identification and verification of any person who applies to open an account. Section 326 provides that the regulations must require, at a minimum, financial institutions to implement reasonable procedures for: (1) Verifying the identity of customers, to the extent reasonable and practicable, when accounts are opened; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available. Final regulations implementing Section 326 must be effective by October 25, 2002.

Section 326 applies to all "financial institutions." This term is defined very broadly in the BSA to encompass a variety of entities including investment companies, banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, brokers and dealers in securities or commodities, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. *See* 31 U.S.C. 5312(a)(2).[2]

Although the BSA includes "an * * * investment company" among the entities defined as financial institutions, Treasury has not previously defined the term for purposes of the BSA.[3] The Investment Company Act of 1940 (codified at 15 U.S.C. 80a–1, *et seq.*) ("1940 Act") defines investment company broadly and subjects those entities to comprehensive regulation by the Commission.[4] However, privately offered entities commonly known as hedge funds, private equity funds and venture capital funds typically rely on exclusions from the 1940 Act definition of investment company.[5] For purposes of the Section 326 requirement, the scope of this proposed rule is limited to those entities that are required to register with the Commission as investment companies and that fall within the category of "open-end company" contained in section 5(a)(1) of the 1940 Act.[6] These entities are commonly referred to as "mutual funds."[7]

Regulations governing the applicability of Section 326 to other financial institutions, such as broker-dealers and those institutions regulated by the banking agencies, are being issued separately. Treasury, the Commission, the CFTC and the banking agencies consulted extensively in the development of all rules implementing Section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry.[8]

The Secretary has determined that the records required to be kept by Section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

B. Codification of the Joint Proposed Rule

The substantive requirements of the joint proposed will be codified with other Bank Secrecy Act regulations as part of Treasury's regulations in 31 CFR part 103. To minimize potential confusion by affected entities regarding the scope of the joint proposed rule, the Commission is also proposing to add a provision in its own regulations in 17 CFR part 270 that will cross-reference the regulations in 31 CFR part 103. Although no specific text is being proposed at this time, the cross-reference will be included in a final rule published by the Commission concurrently with the joint final rule issued by Treasury and the Commission implementing section 326 of the Act.

II. Section-by-Section Analysis

A. Section 103.131(a) Definitions

(1) *Account*. The proposed rule's definition of "account" is intended to include all types of securities accounts maintained by mutual funds. This includes each account at a mutual fund.

(2) *Commission* means the United States Securities and Exchange Commission.

(3) *Customer*. The proposed rule defines "customer" as any shareholder

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[2] For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with the Securities and Exchange Commission ("Commission"), the Commodity Futures Trading Commission ("CFTC"), and the banking agencies ("banking agencies"), namely, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration.

[3] 31 U.S.C 5312(a)(2)(I).

[4] Section 3(a)(1) defines "investment company" as any issuer which—

(A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

[5] *E.g.*, Sections 3(c)(1) and 3(c)(7) of the Investment Company Act. Section 356 of the Act requires that the Secretary, the Board of Governors of the Federal Reserve System and the Commission jointly submit a report to Congress, not later than October 26, 2002, on recommendations for effective regulations to apply the requirements of the BSA to investment companies as defined in section 3 of the 1940 Act, including persons that, but for the provisions that exclude entities commonly known as hedge funds, private equity funds, and venture capital funds, would be investment companies.

[6] Other types of investment companies regulated by the Commission include closed-end companies and unit investment trusts. Closed-end companies typically sell a fixed number of shares in traditional underwritten offerings. Holders of closed-end company shares then trade their shares in secondary market transactions, usually on a securities exchange or in the over-the-counter market. Unit investment trusts are pooled investment entities without a board of directors or investment adviser that offer investors redeemable units in an unmanaged, fixed portfolio of securities. The Secretary and the Commission will continue to consider whether a CIP requirement would be appropriate for the issuers of these products, or whether they are effectively covered by the CIP requirements of other financial institutions involved in their distribution (e.g., broker-dealers).

[7] By interim rule published on April 29, 2002, Treasury required that mutual funds adopt anti-money laundering programs pursuant to Section 352 of the Act. 67 FR 21117 (April 29, 2002). Treasury temporarily exempted investment companies other than mutual funds from the requirement that they establish anti-money laundering programs and temporarily deferred determining the definition of "investment company" for purposes of the BSA. *Id.* However, it is likely that some of the entities excluded from the definition of "investment company" in the 1940 Act will be required to establish anti-money laundering programs and customer identification programs pursuant to sections 352 and 326 of the Act.

[8] Section 314(c) of the Act provides that: "Compliance with the provisions of this title requiring or allowing financial institutions and any association of financial institutions to disclose or share information regarding individuals, entities, and organizations engaged in or suspected of engaging in terrorist acts or money laundering activities shall not constitute a violation of the provisions of title V of the Gramm-Leach-Bliley Act (Public Law 106–102)."

of record who opens a new account with a mutual fund and any person granted authority to effect transactions in the shareholder of record's account with a mutual fund. Under this definition, a shareholder of record prior to the effective date of the regulation would not be a "customer." However, such a person becomes a "customer" if the person becomes a shareholder of record or is granted trading authorization in a different account after the effective date. Moreover, a person becomes a "customer" each time they open a different type of account. For example, after the effective date, if a person opens a taxable account and subsequently opens an IRA account, the person is a "customer" subject to the requirements of this rule on both occasions.[9] However, a shareholder who exchanges shares of one fund for shares of another fund within the same account (or initiates any other transaction that does not involve the opening of a separate account) does not become a "customer" for the purpose of this rule.

A person with trading authority prior to the effective date of the regulation is not a "customer." However, any person granted trading authority after the effective date is a customer. This is true even if the person is granted authority with respect to an account that existed prior to the effective date or the person had been granted authority for another account prior to the effective date.

The requirements of Section 326 apply to any person who opens a new account or is granted trading authority for an account, but do not apply to persons seeking information about a mutual fund such as a request for a prospectus or profile. In addition, transfers of accounts from one mutual fund to another that are not initiated by the customer (*e.g.*, as a result of a merger, acquisition, or purchase of assets) fall outside of the scope of Section 326, and are not covered by the proposed regulation.[10]

(4) *Mutual Fund* means an entity that is required to register with the Commission as an "investment company" (as the term is defined in Section 3 of the 1940 Act) and that is an "open-end company" (as that term is defined in Section 5 of the 1940 Act).

(5) *Person.* The proposed regulation defines "person" as having the same meaning as that term is defined in section 103.11(z). Thus, the term includes natural persons, corporations, partnerships, trusts or estates, joint stock companies, associations, syndicates, joint ventures, any unincorporated organizations or groups, Indian Tribes, and all entities cognizable as legal entities.

(6) *Taxpayer identification number.* The proposed rule defines "taxpayer identification number" to have the same meaning as determined under the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder.

(7) *U.S. person.* The proposed rule defines "U.S. person" as a U.S. citizen or, for persons other than natural persons, an entity established or organized under the laws of a State or the United States.[11] A non-U.S. person is a person who does not satisfy these criteria.

B. Section 103.131(b) Customer Identification Program

Section 326 requires the Secretary and the Commission to prescribe regulations requiring mutual funds to adopt and implement "reasonable procedures" for: verifying the identity of customers "to the extent reasonable and practicable;" maintaining records associated with such verification; and consulting lists of known terrorists.

Paragraph (b) of the proposed rule sets forth the requirement that mutual funds must develop and operate a customer identification program ("CIP") and sets forth relevant factors for the design of CIP procedures.[12] The degree to which a CIP is effective will be a function of a mutual fund's assessment of these factors and the nature of its response to them (as manifested in the CIP's procedures and guidelines). In addition, as Section 326 and the proposed rule provide, the reasonableness of the CIP also will be a function of what is practicable for the mutual fund.

In developing and updating CIPs, mutual funds should consider the type of identifying information available for customers and the methods available to verify that information. While certain minimum identifying information is required in paragraph (c) of this proposed rule and certain suitable verification methods are described in paragraph (d), mutual funds should consider on an on-going basis whether other information or methods are appropriate, particularly as they become available in the future.

Mutual funds must also base their CIPs on the risks associated with their business operations. Some relevant risk factors to be considered are set forth in paragraph (b) and discussed below in general terms.[13]

The first risk factor to consider is the mutual fund's size. For example, a large mutual fund that opens a substantial number of accounts on any given day will have different risks than one that opens a much smaller number of new accounts.

The second risk factor is the method by which customers open accounts at the mutual fund. Accounts opened exclusively on-line present different, and perhaps greater, risks than those opened in-person on the firm's premises.

The third risk factor is the type of accounts offered by the mutual fund. Mutual funds should assess whether there are different risks (and degrees of risk) associated with the various types of accounts they provide to customers (*e.g.*, taxable, IRA, 401(k) and 403(b) accounts).

The fourth risk factor is the customer base. Mutual funds should assess the risks associated with different types of customers. For example, a mutual fund should examine whether it is opening accounts for customers located in countries the Secretary determines to be of "primary money laundering concern" pursuant to Section 311 of the Act. Verification procedures should account for the concerns raised by such customers. In addition, certain types of customers may pose greater risks (*e.g.*, individuals and certain types of business entities, such as closely held corporations, may pose a greater risk than institutional shareholders).

Because mutual funds typically conduct their operations through separate entities, which may or may not be affiliated, some elements of the CIP

[9] As discussed *infra*, this does not necessarily mean that a customer whose identity has been verified by a mutual fund must always have their identity verified every time they subsequently becomes a customer with respect to a different account.

[10] However, there may be situations involving the transfer of accounts where it would be appropriate for a mutual fund to verify the identity of customers associated with the accounts acquired by the mutual fund. Therefore, Treasury and the Commission expect procedures for transfers of accounts to be part of a mutual fund's overall anti-money laundering program required under section 352 of the Act.

[11] The terms "State" and "United States" are defined at 31 CFR 103.11.

[12] An interim rule issued by Treasury pursuant to Section 352 of the Act requires all mutual funds to establish anti-money laundering programs that, at a minimum, include (1) The development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. 67 FR 21117 (April 29, 2002). The proposed rule requires that the CIP be incorporated into a mutual fund's program established under Section 352. At the same time that it issued the interim rule under Section 352 of the Act, Treasury delegated to the Commission authority to examine mutual funds for compliance with Bank Secrecy Act regulations.

[13] This discussion of risk factors is not intended to be comprehensive or exhaustive.

will best be performed by personnel of these separate entities. It is permissible for a mutual fund to contractually delegate the implementation and operation of its CIP to another affiliated or unaffiliated service provider, such as a transfer agent. However, the mutual fund remains responsible for assuring compliance with this rule. Accordingly, the mutual fund must actively monitor the operation of its CIP program and assess its effectiveness.

A mutual fund's CIP does not have to include verification of individuals' identities whose transactions are conducted through an omnibus account. Typically, a fund has little or no identifying information for the individual customers represented in an omnibus account. For example, when fund shares are sold through a broker-dealer, the shareholders' accounts are opened at the broker-dealer. The broker-dealer obtains the identifying information about the customers. This rule does not require that a mutual fund obtain any additional information regarding the identities of individual shareholders who open their accounts through an omnibus accountholder. Of course, the omnibus account holder is itself a customer for purposes of this rule.[14]

Finally, paragraph (b) requires that the identity verification procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of the customer. This provision makes clear that, while there is flexibility in establishing these procedures, the mutual fund is responsible for exercising reasonable efforts to ascertain the identity of each customer.

C. Section 103.131(c) Required Information

Paragraph (c) of the proposed regulation provides that a mutual fund's CIP must require customers to provide, at a minimum, certain identifying information before an account is opened for the customer or the customer is granted trading authority over an account. Specifically, the mutual fund must obtain each customer's: (1) Name, (2) date of birth, if applicable, (3) addresses,[15] and (4) identification number.[16]

The rule only specifies the minimum identifying information that must be obtained from each customer. Mutual funds, in assessing the risk factors in paragraph (b), should determine whether obtaining other identifying information is necessary to form a reasonable belief as to the true identity of each customer. There may be circumstances when a mutual fund should obtain additional identifying information. The CIP should set forth guidelines regarding what those circumstances are and what additional information should be obtained in such circumstances.

Treasury and the Commission recognize that a new business may need to open a mutual fund account before it has received an employer identification number ("EIN") from the Internal Revenue Service. For this reason, the proposed regulation contains a limited exception to the requirement that an EIN be provided prior to establishing an account. Accordingly, in the case of person other than an individual (such as a corporation, partnership or trust) that has applied for, but has not received, an EIN, the EIN may be provided within a reasonable period of time after an account is established, provided that a copy of the EIN application is submitted to the mutual fund prior to the time the account is established. Currently, the IRS indicates that the issuance of an EIN can take up to five weeks. This length of time, coupled with when the entity applied for the EIN, should be considered by the mutual fund in determining the reasonable period of time within which the entity should provide its EIN to the mutual fund.

D. Section 103.131(d) Required Verification Procedures

After obtaining identifying information from a customer, the mutual fund must take steps to verify some, or all, of that information in order to form a reasonable belief that it knows the true identity of the customer. Accordingly, paragraph (d) of the proposed rule requires a mutual fund's CIP to have procedures for verifying identifying information provided by the customer. The mutual fund need not verify each piece of identifying information obtained pursuant to paragraph (c), if it is able to form a reasonable belief that it knows the customer's identity after verifying only certain of the information.

Paragraph (d) further requires that the verification procedures must be undertaken within a reasonable time before or after a customer's account is opened or a customer is granted authority to effect transactions with respect to an account. This flexibility must be exercised in a reasonable manner, given that verifications too far in advance may become stale and verifications too long after the fact may provide opportunities to launder money while verification is pending. The amount of time it will take a mutual fund to verify the identity of a customer may depend on the type of account opened, whether the customer opens the account in-person, and on the type of identifying information available. In addition, provided that the appropriate disclosure is made, a mutual fund may choose to place limits on the account, such as temporarily limiting additional purchases in an account until the customer's identity is verified. Therefore, the proposed rule provides mutual funds with the flexibility to use a risk-based approach to determine when the identity of a customer must be verified relative to the opening of an account or granting of trading authority.

A person becomes a customer each time they open a new account with a mutual fund. Therefore, upon the opening of each account, the verification requirements of this rule would apply. However, if a customer whose identification has been verified previously opens a new account, the mutual fund would not need to verify the customer's identity a second time, provided that the mutual fund continued to have a reasonable belief that it knew the true identity of the customer based on the previous verification.

The rule provides for two methods of verifying identifying information: verification through documents and/or verification through non-documentary means. For natural persons, suitable documents for verification include unexpired government-issued identification documents evidencing nationality or residence and bearing ■

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[14] This treatment of omnibus accounts is consistent with the legislative history of the Act which includes the following: [W]here a mutual fund sells its shares to the public through a broker-dealer and maintains a "street name" or omnibus account in the broker-dealer's name, the individual purchasers of the fund shares are customers of the broker-dealer, rather than the mutual fund. The mutual fund would not be required to "look through" the broker-dealer to identify and verify the identities of those customers. Similarly, where a mutual fund sells its shares to a qualified retirement plan, the plan, and not its participants, would be the fund's customers. Thus, the fund would not be required to "look through" the plan to identify its participants. H.R. Rep. 107–250, pt. 1, at 62(2001).

[15] With respect to addresses, each customer must provide a mailing address and, if different, the address of the customer's residence (if a natural person) or principal place of business (if not a natural person).

[16] If the customer is a U.S. person, he must provide a U.S. taxpayer identification number (*e.g.*, social security number or employer identification number). If the customer is a non-U.S. person, he must provide a U.S. taxpayer identification number, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. The term "similar safeguard" is included to permit the use of any biometric identifiers (*e.g.*, fingerprints) that may be used in addition to, or instead of, photographs.

photograph or similar safeguard. For non-natural persons, suitable documents must evidence the existence of the entity, such as registered articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

The proposed rule requires a mutual fund's CIP to address both methods of verification. Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documents or non-documentary methods. In some cases, it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the mutual fund's assessment of the factors described in paragraph (b) of the proposed rule.

The risk a mutual fund will not know a customer's true identity will be heightened for certain types of accounts, such as accounts opened in the name of a corporation, partnership, or trust that is created, or conducts substantial business, in jurisdictions designated as primary money laundering concerns or designated as non-cooperative by an international body. Obtaining sufficient information to verify a given customer's identity can reduce the risk a mutual fund will be used as a conduit for money laundering and terrorist financing. A mutual fund's identity verification procedures must be based on its assessments of the factors in paragraph (b). Accordingly, when those assessments suggest a heightened risk, the mutual fund should utilize additional verification measures.

1. Verification Through Documents

Paragraph (d)(1) provides that the CIP must describe when a mutual fund will verify identity through documents and set forth the documents that will be used for this purpose. The rule also lists certain documents that are suitable for verification. For example, documentary verification could include obtaining a driver's license or passport from a natural person or articles of incorporation from a company.

2. Verification Through Non-documentary Methods

Paragraph (d)(2) provides that the CIP must describe non-documentary verification methods and when such methods will be employed in addition to, or instead of, verification through documents. The rule allows for the exclusive use of non-documentary methods because some accounts are opened by telephone, mail, or over the Internet. However, even if the customer presents identification documents, it may be appropriate to use non-documentary methods as well. Ultimately, the mutual fund is responsible for employing sufficient verification methods to be able to form a reasonable belief that it knows the true identity of the customer.

The proposed rule sets forth certain non-documentary methods that would be suitable for verifying identity. These methods include contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is associated with known incidents of fraudulent behavior; comparing the identifying information with information available from a trusted third-party source, such as a credit report from a consumer reporting agency; and checking references with other financial institutions. The mutual fund also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.

Paragraph (d)(2) also provides that the CIP must require the use of non-documentary methods in certain cases; specifically, when a natural person is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard and when the mutual fund is presented with unfamiliar documents to verify the identity of a customer, does not obtain documents to verify the identity of a customer, does not meet face-to-face a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the mutual fund will be unable to verify the true identity of a customer through documents.

Treasury and the Commission recognize that identification documents, including those issued by a government entity, may be obtained illegally and may be fraudulent. In light of the recent increase in identity fraud, mutual funds are encouraged to use non-documentary methods, even when a customer has provided identification documents.

E. Section 103.131(e) Government Lists

The proposed rule requires that a mutual fund's CIP must include reasonable procedures for determining whether a customer's name appears on any list of known or suspected terrorists or terrorist organizations prepared by any federal government agency and made available to the mutual fund. This requirement applies only with respect to lists circulated, directly provided, or otherwise made available by the Federal government. In addition, the proposed rule states that mutual funds must follow all Federal directives issued in connection with such lists. A mutual fund must have procedures for responding to circumstances when a customer is named on such a list.

F. Section 103.131(f) Customer Notice

Section 326 provides that financial institutions must give their customers notice of their identity verification procedures. Therefore, a mutual fund's CIP must include procedures for providing customers with adequate notice that the mutual fund is requesting information to verify their identities. A mutual fund may satisfy the notice requirement by generally notifying its customers about the procedures the fund must comply with to verify their identities. If an account is opened electronically, such as through an Internet website, the mutual fund may provide notice electronically. However, notice must be provided to the customer before the account is opened or trading authority is granted.

G. Section 103.131(g) Lack of Verification

Paragraph (g) of the proposed rule states that a mutual fund's CIP must include procedures for responding to circumstances in which it cannot form a reasonable belief that it knows the true identity of a customer. A mutual fund's CIP should specify the actions to be taken when it cannot form a reasonable belief that it knows the customer's true identity, which could include closing the account or placing limitations on additional purchases. There also should be guidelines for when an account will not be opened (*e.g.*, when the required information is not provided). In addition, the CIP should address the terms under which a customer may conduct transactions while the customer's identity is being verified. Mutual funds are also encouraged, but not required at this time, to adopt procedures for voluntarily filing Suspicious Activity Reports with FinCEN and for reporting suspected terrorist activities to FinCEN using its Financial Institutions Hotline (866–566–3974).

H. Section 103.131(h) Recordkeeping

Section 326 of the Act requires procedures for maintaining records of the information used to verify a person's identity, including name, address, and other identifying information. Paragraph

(h) of the proposed rule sets forth recordkeeping procedures that must be included in a mutual fund's CIP. These procedures must provide for the maintenance of all information obtained pursuant to the CIP. Information that must be maintained includes all identifying information provided by a customer pursuant to paragraph (c). Thus, the mutual fund must make a record of each customer's name, date of birth (if applicable), addresses, and identification numbers provided. Mutual funds also must maintain copies of any documents that were relied on pursuant to paragraph (d)(1) evidencing the type of document and any identification number it may contain. For example, if a customer produces a driver's license, the mutual fund must make a copy of the driver's license that clearly indicates it is a driver's license and legibly depicts any identification number on the license.

Mutual funds also must make and maintain records of the methods and results of measures undertaken to verify the identity of a customer pursuant to paragraph (d)(2). For example, if a mutual fund obtains a report from a credit bureau concerning a customer, the report must be maintained. Mutual funds also must make and maintain records of the resolution of any discrepancy in the identifying information obtained. To continue with the previous example, if the customer provides a residence address that is different than the address shown on the credit report, the mutual fund must document how it resolves this discrepancy or, if the discrepancy is not resolved, how it forms a reasonable belief that the mutual fund knows the true identity of the customer, notwithstanding the discrepancy.

The mutual fund must retain all of these records for five years after the date the account is closed. Nothing in this proposed regulation modifies, limits or supersedes Section 101 of the Electronic Records in Global and National Commerce Act, Public Law 106–229, 114 Stat. 464 (15 U.S.C. 7001) ("E-Sign Act"). Thus, a mutual fund may use electronic records to satisfy the requirements of this regulation in accordance with previously issued Commission guidance.[17]

Treasury and the Commission emphasize that the collection and retention of information about a customer, as an ancillary part of collecting identifying information, do not relieve a mutual fund from its obligations to comply with anti-discrimination laws or regulations.

I. Section 103.131(i) Approval of Program

Paragraph (i) of the proposed rule requires that the mutual fund's CIP be approved by its board of directors or trustees. The board should periodically assess the effectiveness of its CIP and should receive periodic reports regarding the CIP from the person or persons responsible for monitoring the fund's anti-money laundering program pursuant to 31 CFR 103.130(c)(3).

J. Section 103.131(j) Exemptions

Section 326 states that the Secretary and the Federal functional regulator jointly issuing the rule may by order or regulation exempt any financial institution or type of account from this regulation in accordance with such standards and procedures as the Secretary may prescribe. The proposed rule provides that the Commission, with the concurrence of the Secretary, may exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

III. Request for Comments

Treasury and the Commission invite comment on all aspects of the proposed regulation, and specifically seek comment on the following issues:

1. Whether the proposed definition of "account" is appropriate and whether other examples of accounts should be added to the regulatory text.

2. How mutual funds can comply with the requirement to obtain both the address of a person's residence, and, if different, the person's mailing address in situations involving natural persons who lack a permanent address.

3. Whether non-U.S. persons that are not natural persons will be able to provide a mutual fund with the identifying information required in § 103.131(c)(4), or whether other categories of identifying information should be added to this section. Commenters on this issue should suggest other means of identification that mutual funds currently use or could use in this circumstance that would allow a mutual fund to form a reasonable belief that it knew the true identity of the entity.

4. The extent to which the verification procedures required by the proposed regulation will use information that mutual funds currently obtain in the account opening process. We note that the legislative history of Section 326 indicates that Congress intended "the verification procedures prescribed by Treasury [to] make use of information currently obtained by most financial institutions in the account opening process." *See* H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

IV. The Commission's Analysis of the Costs and Benefits Associated With the Proposed Rule

The Commission is considering the costs and benefits associated with the proposal and requesting comment on all aspects of this cost-benefit analysis, including identification and assessment of any other costs and benefits not discussed in the analysis. Commenters are encouraged to identify, discuss, analyze, and supply relevant data concerning the costs and benefits of the proposed rule's implementation of Section 326 requirements.

Section 326 of the Act requires Treasury and the Commission to prescribe regulations setting forth minimum standards for mutual funds regarding the identities of customers that shall apply in connection with the opening of an account. The statute also provides that the regulations issued by Treasury and the Commission must, at a minimum, require financial institutions to implement reasonable procedures for: (1) Verification of customers' identities; (2) determination of whether a customer appears on a government list; and (3) maintenance of records related to customer verification. The Commission believes that the requirements in the proposed rule are reasonable and practicable. Accordingly, the costs to mutual funds to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify identifying information of customers; (4) check customers against lists provided by federal agencies, (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records related to the CIP are attributable to the statute.

While the Commission believes the costs are attributable to the statute, it nonetheless has undertaken an analysis of the costs and benefits of the requirements. The Commission seeks comment on whether the costs are attributable to the statute. The Commission also seeks comment on whether the proposed rule, by setting forth minimum requirements, creates a benefit or, conversely, imposes costs because mutual funds will not have to establish their own minimum requirements as required by the statute.

[17] *See* Investment Company Act Release No. 24991 (May 24, 2001) [66 FR 29224 (May 30, 2001)].

A. Benefits Associated With the Proposed Rule

The anti-money laundering provisions in the Act are intended to prevent, detect and prosecute money laundering and the financing of terrorism. The proposed rule is an important part of this effort. It requires mutual funds to establish a program for verifying the true identities of their customers, thereby reducing the risk that mutual funds will be unwittingly aiding criminals, including terrorists, in accessing U.S. financial markets to launder money or move funds for illicit purposes. Additionally, the implementation of such programs should make it more difficult for persons to successfully engage in fraudulent activities involving identity theft or the placing of fictitious orders to buy or sell securities. It is virtually impossible to quantify in monetary terms those benefits.

B. Costs Associated With the Proposed Rule

Section 326 of the Act and the proposed rule allows for great flexibility in developing CIPs. Given the considerable differences among mutual funds regarding their distribution channels, customers, and exposure to other relevant risk factors, it is difficult to quantify a cost per mutual fund. Most mutual funds already have some procedures in place for detecting fraud in the account opening process by looking for inconsistencies in the information provided by customers and/or checking customer names against certain databases. In those instances, the Section 326 requirements supplement those procedures.

Section 326 requirements will impose initial, one-time costs and ongoing costs on mutual funds. The costs associated with establishment of CIPs and modification of account applications (both paper and web-based applications) to require that customers provide the information required by the CIP and to provide the required notice regarding use of that information will primarily be initial, one-time costs.

Ongoing costs for mutual funds will be associated with the need to: (1) Collect the information required by the CIPs, (2) verify customers' identities, (3) determine whether customers appear on lists provided by federal agencies, and (4) make and maintain records related to CIPs. These ongoing costs will primarily be a function of the number of new accounts opened at a mutual fund. From January 1, 1990 through December 31, 2001, approximately 16 million mutual fund accounts were added annually.[18]

1. Establishment of a CIP

There are approximately 3,060 mutual fund companies that are registered with the Commission ("mutual fund registrants").[19] For estimating the total costs associated with Section 326 requirements, the Commission assumes that each mutual fund registrant will be responsible for establishing a CIP.[20]

The Commission staff believes that it will take mutual funds on average approximately 50 hours to establish a CIP. The Commission staff believes that the hourly personnel cost and overhead associated with development of CIPs will be approximately $125. Therefore, the estimated total cost per mutual fund to establish a CIP will be approximately $6,250. Consequently, the estimated initial cost for the 3,060 mutual fund registrants will be approximately $19,125,000.

The actual development costs associated with a single CIP may be higher than the $6,250 estimate. For mutual fund registrants that delegate implementation of their CIP to unaffiliated service providers, the burden per mutual fund registrant may be less because those service providers will likely use the same or similar software and systems for several different registrants. Similarly, the cost per registrant on registrants that utilize a CIP developed by their fund complex may be less. Consequently, the Commission believes this is a reasonable estimate of the cost per mutual fund registrant of developing and implementing the requisite CIPs.

2. Obtaining Identifying Information

Generally, mutual funds currently only require a name and mailing address from a customer in order to open an account. While most mutual funds request a social security number, they generally will open an account if the customer does not provide one. Most funds currently do not require that customers provide a residential address (if different from the mailing address) or a date of birth.

Collecting identifying information for the majority of new accounts should create no additional burden on mutual funds. Most of the burden associated with this requirement will be associated with those account applications where the customer did not provide some of the required information, thus requiring follow-up by the mutual fund. Mutual funds can minimize this burden with clear disclosure on account applications that an account cannot be opened without the requisite information.

The Commission staff believes that the average time spent collecting the requisite information will be one minute per account and that the hourly personnel and overhead cost associated with these requirements will be $25 per hour. Therefore, the estimated cost to the industry from this requirement is: (16 million new accounts per year * 1/60 of an hour * $25). Thus, the estimated annual, industry-wide cost will be approximately $6,666,667.

3. Providing Notice to Customers

A mutual fund may satisfy the notice requirement by generally notifying its customers about the procedures the mutual fund must comply with to verify their identities. If an account is opened electronically, such as through an Internet website, the mutual fund may provide notice electronically. The Commission expects that mutual funds will provide the required notice to customers by modifying their paper and electronic account applications.

The Commission staff believes that it will take mutual funds on average approximately two hours to modify account applications to provide the adequate notice. The Commission staff estimates that the hourly personnel cost and overhead associated with this modification will be approximately $125. Therefore, the estimated total cost per mutual fund to modify its account applications will be approximately $250. Consequently, the estimated initial cost associated with modifying account applications to provide the requisite notice to customers for the 3,060 mutual fund registrants will be approximately $765,000.

4. Verifying Customers' Identities

The proposed rule provides mutual funds with substantial flexibility in establishing how they will independently verify the information provided by customers. For example, customers that open accounts on a

[18] This estimate is derived from information reported in the Investment Company Institute's 2002 Mutual Fund Fact Book. It represents the net annual increase in the number of mutual fund accounts. The actual number of new accounts that were opened during this period is probably higher as this estimate is reduced by the number of accounts that were closed during the same period. No data are available regarding the number of accounts that were closed.

[19] This estimate is based on figures compiled by the Commission staff from Commission filings.

[20] Using the number of mutual fund registrants to estimate the total costs associated with development of CIPs may result in a high estimate of those costs. A mutual fund complex (or mutual fund family) often comprises several mutual fund registrants. The Commission assumes that, in many instances, a single CIP will be developed by a mutual fund complex and utilized by all of the mutual fund registrants in that complex.

mutual fund's premises can simply provide a driver's license or passport, or if the customer is not a natural person, it can provide a copy of any documents showing its existence as a legal entity (*e.g.*, articles of incorporation, business licenses, partnership agreements or trust instruments). There are also a number of options for customers that open accounts via the telephone or Internet. In these cases, mutual funds may obtain a financial statement from the customer, check the customer's name against a credit bureau or database, or check the customer's references with other financial institutions.

The documentary and non-documentary verification methods set forth in the rule are not meant to be an exclusive list of the appropriate means of verification. Other reasonable methods may be available now or in the future. The purpose of making the rule flexible is to allow mutual funds to select verification methods that are, as section 326 requires, reasonable and practicable. The proposed rule allows mutual funds to employ such verification methods as would be suitable to a given firm to form a reasonable belief that it knows the true identities of its customers.

The Commission believes that verifying the identifying information could result in costs for mutual funds because some firms currently may not use verification methods. The estimated total annual cost to the industry to verify the identifying information will be $49,333,333.[21]

5. Determining Whether Customers Appear on Government Lists

Mutual funds should already have procedures for checking customers against government lists. There are substantive legal requirements associated with the lists circulated by Treasury's Office of Foreign Asset Control of the U.S. Treasury (OFAC). The failure of a firm to comply with these requirements could result in criminal and civil penalties. The Commission believes that, given the events of September 11, 2001, most mutual funds that receive lists from the federal government have implemented procedures for checking their customers against them. The Commission believes that this requirement could result in some additional costs for mutual funds because some may not already check such lists. The estimated annual cost to the industry to check such lists is $3,333,333.[22]

6. Recordkeeping

The Commission believes that the recordkeeping requirement could result in additional costs for some mutual funds that currently do not maintain certain of the records for the prescribed time period. The estimated total annual cost to the industry to make and maintain the required records is $13,333,333.[23]

V. Paperwork Reduction Act

Certain provisions of the proposed rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[24] Treasury has submitted the proposed rule to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C 3507(d). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Collection of Information Under the Proposed Rule

The proposed rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995. In summary, the proposed rule requires mutual funds to (1) maintain records of the information used to verify customers' identities and (2) provide notice to customers that information they supply may be used to verify their identities. These recordkeeping and disclosure requirements are required under Section 326 of the Act.

B. Proposed Use of the Information

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for mutual funds to verify the identities of their customers. Furthermore, Section 326 provides that the regulations must require, at a minimum, mutual funds to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of Section 326, and the proposed rule, is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the proposed rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under Section 326 and to achieve its important purpose.

C. Respondents

If adopted, the proposed rule would apply to approximately 3,060 mutual fund companies that are registered with the Commission.[25]

D. Total Annual Reporting and Recordkeeping Burden

1. Recordkeeping

The requirement to make and maintain records related to the CIP will be an ongoing burden. The total burden will depend on the number of new accounts added each year. From January 1, 1990 through December 31, 2001, approximately 16 million mutual fund accounts were added annually.[26] The Commission estimates that mutual funds, on average, will spend two minutes per account making and maintaining the required records. Therefore, in complying with this requirement, the Commission estimates an annual, industry-wide burden of

[21] The Commission staff believes that the processing costs associated with verification methods will be approximately $1.00 per account. The Commission staff further estimates that the average time spent verifying an account will be five minutes. The hourly cost of the person who would undertake the verification is estimated to be $25 per hour including overhead. Therefore, the estimated costs to the industry reported above are: (16 million new accounts per year) * ($1.00) + (number of new accounts per year) * (1/12 of an hour) * ($25).

[22] The Commission staff believes that it will take mutual funds on average thirty seconds to check whether a customer appears on a government list and that the cost (including overhead) of this process will be $25 per hour. Therefore, the costs to the industry reported above are: (16 million new accounts per year) * (1/120 of an hour) * ($25).

[23] The Commission staff believes that it will take approximately two minutes per new account to make and maintain the required records. This estimate takes into account the fact that, for many new accounts, the recordkeeping will be fairly simple (*e.g.*, making a photocopy of a driver's license or financial statement, or keeping a record of the results of a public database search or credit bureau query. The estimated cost associated with the recordkeeping is $25 per hour (including overhead). The estimated cost to the industry is: (16 million new accounts per year) * (1/30 of an hour) * ($25).

[24] 44 U.S.C. 3501 *et seq.*

[25] This estimate is based on figures compiled by the Commission staff from Commission filings.

[26] This estimate is derived from information reported in the Investment Company Institue's 2002 Mutual Fund Fact Book. It represents the net annual increase in the number of mutual fund accounts. The actual number of new accounts that were opened during this period is probably higher as this estimate is reduced by the number of accounts that were closed during the same period. No data available regarding the number of accounts that were closed.

533,333 hours will be associated with the record-keeping requirements of the proposed rule.

2. Notice to Customers

The requirement for mutual funds to provide the required notice to customers regarding use of customers' information will necessitate the amendment of mutual funds' account applications, both paper and web-based applications. The Commission estimates that the approximately 3,060 mutual fund registrants will each spend approximately two hours modifying their account applications to satisfy the notice requirement. Thus, the Commission estimates an initial, industry-wide burden of 6,120 hours to modify fund applications.

E. Collection of Information Is Mandatory

This collection of information is mandatory.

F. Confidentiality

The collection of information pursuant to the proposed rule would be provided by customers and other sources to mutual funds and maintained by mutual funds. In addition, the information may be used by federal regulators, self-regulatory organizations, and authorities in the course of examinations, investigations, and judicial proceedings. No governmental agency regularly would receive any of the information described above.

G. Record Retention Period

The proposed rule will require that the records with respect to a given customer be retained until five years after the date the account of a customer is closed or the grant of authority to effect transactions with respect to an account is revoked.

H. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), Treasury and the Commission solicit comments to:

(1) Evaluate whether the proposed collection of information is necessary, and whether it would have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those required to respond, including through the use of automated collection techniques or other forms on information technology.

Comments concerning the recordkeeping and disclosure requirements in the proposed rule should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

VI. Regulatory Flexibility Act

Treasury and the Commission are sensitive to the impact our rules may impose on small entities. Congress enacted the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), to address concerns related to the effects of agency rules on small entities. In this case, we believe that the proposed rule likely would not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). As discussed in Section IV (The Commission's Analysis of the Costs and Benefits of the Section 326 Requirements), we believe that the impact on mutual funds, including small entities, is imposed by the statute itself, and not by the proposed rule. Moreover, the economic impact on small entities should not be significant because we believe that most small entities are likely to have a relatively small number of accounts, and thus compliance should not impose a significant economic impact. Treasury and the Commission seek comment on whether the proposed rule would have a significant economic impact on a substantial number of small entities and whether the costs are imposed by the statute itself, and not the proposed rule.

While we believe that the proposed rule likely would not have a significant economic impact on a substantial number of small entities, we do not have complete data at this time to make this determination. We have therefore prepared this Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603.

A. Reason for the Proposed Action

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for mutual funds and their customers regarding the identity of the customer that shall apply in connection with opening of an account at the mutual fund. Furthermore, Section 326 provides that the regulations must require, at a minimum, mutual funds to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of Section 326, and this proposed rule, is to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the proposed rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under Section 326 and to achieve its important purpose.

B. Objective

The objective of the proposed regulation is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. The rule seeks to achieve this goal by requiring mutual funds to obtain identifying information from customers that can be used to verify the identity of the customers. This will make it more difficult for persons to use false identities to establish customer relationships with mutual funds for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism.

C. Legal Basis

The proposed rule is being promulgated pursuant to Section 326 of the Act, which mandates that Treasury and the Commission issue a regulation setting forth minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with opening of an account at the financial institution.

D. Small Entities Subject to the Rule

The proposed rule would affect mutual funds that are small entities. For purposes of the Regulatory Flexibility Act, the Commission has determined that an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[27] Approximately 156 mutual funds meet this definition.[28]

[27] 17 CFR 270.0–10.

[28] This estimate is based on figures compiled by the Commission staff from outside databases.

E. Reporting, Recordkeeping and Other Compliance Requirements

Section 326 requires mutual funds to adopt reasonable procedures to: (1) Verify the identities of their customers; (2) check customers against lists provided by federal agencies, (3) provide notice to customers that information the customers provide may be used to verify customers' identities; and (4) make and maintain records related to the CIP.

F. Duplicative, Overlapping or Conflicting Federal Rules

We have not identified any federal rules that duplicate, overlap or conflict with the proposed rule. Congress has mandated that Treasury and the Commission issue a regulation that requires mutual funds to verify their customers' identities. This congressional directive cannot be followed absent the issuance of a new rule.

G. Significant Alternatives

If an agency does not certify that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act directs Treasury and the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any adverse impact on small entities.

In connection with the proposed amendments, we considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The proposed rule provides for substantial flexibility in how each mutual fund may meet its requirements. This flexibility is designed to account for differences between mutual funds, including size. Nonetheless, Treasury and the Commission did consider alternatives such as exempting certain small entities from some or all of the requirements of the proposed rule. Treasury and the Commission do not believe that such an exemption is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of mutual funds, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small firms as well as large firms.

H. Solicitation of Comments

Treasury and the Commission encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis, including comments regarding the number of small entities that may be affected by the proposed rule. Such comments will be considered by Treasury and the Commission in determining whether a Final Regulatory Flexibility Analysis is required, and will be placed in the same public file as comments on the proposed amendment itself. Comments should be submitted to Treasury or the Commission at the addresses previously indicated.

VII. Executive Order 12866

The Department of the Treasury has determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. As noted above, the proposed rule closely parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

Lists of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is amended by adding § 103.131 to read as follows:

§ 103.131 Customer identification programs for mutual funds.

(a) *Definitions.* For the purposes of this section:

(1) *Account* means any contractual or other business relationship between a customer and a mutual fund established to effect financial transactions in securities, including the purchase or sale of securities.

(2) *Commission* means the United States Securities and Exchange Commission.

(3) *Customer* means:

(i) Any mutual fund shareholder of record who opens a new account with a mutual fund; and

(ii) Any person authorized to effect transactions in the shareholder of record's account with a mutual fund.

(4) *Mutual Fund* means an entity that is required to register with the Commission as an "investment company" (as the term is defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) ("Investment Company Act")) and is an "open-end company" (as that term is defined in Section 5 of the Investment Company Act, 15 U.S.C. 80a–5).

(5) *Person* has the same meaning as that term is defined in § 103.11(z).

(6) *Taxpayer identification number.* The provisions of Section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the regulations of the Internal Revenue Service promulgated thereunder shall determine what constitutes a taxpayer identification number.

(7) *U.S. person* means:

(i) Any U.S. citizen; and

(ii) Any corporation, partnership, trust, or person (other than a natural person) that is established or organized under the laws of a State or the United States.

(8) *Non-U.S. person* means a person that is not a U.S. person.

(b) *Customer identification program.* A mutual fund shall establish, document, and maintain a written Customer Identification Program ("CIP"). A mutual fund's CIP procedures must enable it to form a reasonable belief that it knows the true identity of the customer. A mutual fund's CIP must be a part of its anti-money laundering program required under 31 U.S.C. 5318(h). A mutual fund's CIP procedures shall be based on the type of identifying information available and on an assessment of relevant risk factors including:

(1) The mutual fund's size;

(2) The manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected;

(3) The mutual fund's types of accounts; and

(4) The mutual fund's customer base.

(c) *Required information.* (1) *General.* Except as permitted by paragraph (c)(2) of this section, the CIP shall require the mutual fund to obtain specified identifying information about each

customer before an account is opened or a customer is granted authority to effect transactions with respect to an account. The specified information must include, at a minimum:

(i) Name;

(ii) Date of birth, for a natural person;

(iii) Addresses:

(A) Residence and mailing (if different) for a natural person; or

(B) Principal place of business and mailing (if different) for a person other than a natural person; and

(iv) Identification numbers:

(A) A taxpayer identification number from each customer that is a U.S. person; or

(B) A taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard from each customer that is not a U.S. person.

(2) *Limited exception.* In the case of a person other than a natural person that has applied for, but has not received, an employer identification number, the CIP may allow such information to be provided within a reasonable period of time after the account is established, if the mutual fund obtains a copy of the application for the employer identification number prior to such time.

(d) *Required verification procedures.* The CIP shall include procedures for verifying the identity of customers, to the extent reasonable and practicable, using information obtained pursuant to paragraph (c) of this section. Such verification must occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account:

(1) *Verification through documents.* The CIP must describe when the mutual fund will verify customers' identities through documents and describe the documents that the mutual fund will use for this purpose. Suitable documents for verification may include:

(i) For natural persons, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and

(ii) For persons other than natural persons, documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, partnership agreement, or trust instrument.

(2) *Verification through non-documentary methods.* The CIP must describe non-documentary methods a mutual fund will use to verify customers' identities and when these methods will be used in addition to, or instead of, relying on documents. Non-documentary verification methods may include contacting a customer; independently verifying information through credit bureaus, public databases, or other sources; and checking references with other financial institutions. Non-documentary methods shall be used when a customer who is a natural person is unable to present an unexpired, government-issued identification document that bears a photograph or similar safeguard; the mutual fund is presented with unfamiliar documents to verify the identity of a customer; or the mutual fund does not obtain documents to verify the identity of a customer, does not meet face-to-face a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the mutual fund will be unable to verify the true identity of a customer through documents.

(e) *Government lists.* The CIP shall include procedures for determining whether a customer's name appears on any list of known or suspected terrorists or terrorist organizations prepared by any federal government agency and made available to the mutual fund. Mutual funds shall follow all federal directives issued in connection with such lists.

(f) *Customer notice.* The CIP shall include procedures for providing customers with adequate notice that the mutual fund is requesting information to verify the customer's identity.

(g) *Lack of verification.* The CIP shall include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of a customer.

(h) *Recordkeeping.* The CIP shall include procedures for maintaining a record of all information obtained pursuant to the CIP. A mutual fund must retain all records made or obtained when verifying the identity of a customer pursuant to its CIP until five years after the date the account of the customer is closed. Records subject to the requirements in this paragraph (h) include:

(1) All identifying information provided by a customer pursuant to paragraph (c) of this section, and copies of any documents that were relied on pursuant to paragraph (d)(1) of this section evidencing the type of document and any identification number it may contain;

(2) The methods and results of any measures undertaken to verify the identity of a customer pursuant to paragraph (d)(2) of this section; and

(3) The resolution of any discrepancy in the identifying information obtained.

(i) *Approval by the board.* The CIP shall be approved by the mutual fund's board of directors or trustees.

(j) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) and in the public interest, and may consider other necessary and appropriate factors.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: July 12, 2002.

By the Securities and Exchange Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18194 Filed 7–22–02; 8:45 am]

BILLING CODE 4810–02–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB90

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA34

Customer Identification Programs for Futures Commission Merchants and Introducing Brokers

AGENCIES: Financial Crimes Enforcement Network, Treasury; United States Commodity Futures Trading Commission.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the United States Commodity Futures Trading Commission (CFTC or Commission) are jointly issuing a proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 of the Act requires Treasury to jointly prescribe with the CFTC a regulation that, at a minimum, requires

futures commission merchants and introducing brokers to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the futures commission merchant or introducing broker by any government agency.

DATES: Written comments on the proposed rule may be submitted on or before September 6, 2002.

ADDRESSES: Because paper mail in the Washington, DC area may be subject to delay, commenters are encouraged to e-mail or fax comments. Comments should be sent by one method only. Futures commission merchants and introducing brokers (and their respective trade associations) are encouraged to submit comments only to the CFTC. Other commenters are encouraged to submit comments only to FinCEN. All comments will be considered by Treasury and the CFTC in formulating the final rule.

CFTC: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, Attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to *secretary@cftc.gov*. Reference should be made to "Proposed Section 326 Rule " Customer Identification."

FinCEN: Comments may be mailed to FinCEN, Section 326 Futures Industry Comments, PO Box 39, Vienna, VA 22183, or sent to Internet address *regcomments@fincen.treas.gov* with the caption "Attention: Section 326 Futures Industry Rule Comments" in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

CFTC: Office of the General Counsel, (202) 418–5120, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

Treasury: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act.[1] Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 that requires the Secretary of the Treasury (Secretary) to prescribe regulations setting forth minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at the financial institution.

Section 326 applies to all "financial institutions." This term is defined very broadly in the BSA to encompass a variety of entities including banks, agencies and branches of foreign banks located in the United States, thrifts, credit unions, brokers and dealers in securities or commodities,[2] futures commission merchants, insurance companies, travel agents, pawnbrokers, check-cashers, casinos, and telegraph companies, among many others. *See* 31 U.S.C. 5312(a)(2), 5312(c)(1)(A).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the CFTC, the Securities and Exchange Commission (SEC), and the banking agencies, namely, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (collectively referred to as the banking agencies). Final regulations implementing section 326 must be effective by October 25, 2002.

Section 326 provides that the regulations must require, at a minimum, financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person's name appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

The following proposal is being issued jointly by Treasury, through FinCEN, and the Commission. It applies only to persons registered, or required to be registered, with the Commission as either futures commission merchants or introducing brokers under the Commodity Exchange Act (CEA) (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4f(a)(2) of the CEA. Accordingly, this rule does not apply to persons who register, or are required to register, as futures commission merchants or introducing brokers solely because they effect transactions in security futures products. These section 4f(a)(2) futures commission merchants and introducing brokers must be registered with the SEC as brokers or dealers, and they are therefore the subject of rules issued jointly by Treasury and the SEC implementing section 326. Regulations governing the applicability of section 326 to other financial institutions, such as those regulated by the banking agencies, are also the subject of separate regulations.

Treasury, the Commission, the SEC and the banking agencies consulted extensively in the development of all rules implementing section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

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[1] Pub. L. 107–56.

[2] Treasury has previously expressed the opinion that introducing brokers are "brokers or dealers in commodities" and therefore come within this definition of "financial institution." *See* Financial Crimes Enforcement Network; Anti-Money Laundering Programs For Financial Institutions, 67 FR 21110, 21111 n.5 (April 29, 2002) (citing 31 U.S.C. 5312 (a)(2)(h)). Nonetheless, Treasury takes this opportunity to clarify formally that section 5312 (a)(2)(H) includes "introducing brokers" within the definition of "financial institution."

B. Codification of the Joint Proposed Rule

The substantive requirements of the joint proposed rule will be codified with other Bank Secrecy Act regulations as part of Treasury's regulations in 31 CFR part 103. To minimize potential confusion by affected entities regarding the scope of the joint proposed rule, the CFTC is also proposing to add a provision in its own regulations in 17 CFR part 1 that will cross-reference the regulations in 31 CFR part 103. Although no specific text is being proposed at this time, the cross-reference will be included in a final rule published by the CFTC concurrently with the joint final rule issued by Treasury and the CFTC implementing section 326 of the Act.

II. Section-by-Section Analysis

A. Section 103.123(a) Definitions

Section 103.123 (a)(1) Account. The proposed rule's definition of "account" is intended to include all types of futures and commodity option accounts maintained or introduced by futures commission merchants and introducing brokers. These include, but are not limited to: accounts to purchase or sell contracts of sale for future delivery, options on contracts of sale for future delivery, or options on physicals in any commodity; cash accounts; margin accounts; prime brokerage accounts that consolidate trading done at a number of firms; and accounts for repurchase and commodity loan transactions.

Section 103.123(a)(2) Commission. The proposed rule defines "Commission" as the United States Commodity Futures Trading Commission.

Section 103.123(a)(3) Commodity. The proposed rule defines "commodity" as any good, article, service, right, or interest described in Section 1a(4) of the Commodity Exchange Act, 7 U.S.C. 1a(4).

Section 103.123(a)(4) Customer. The proposed rule defines "customer" as any person who opens a new account at a futures commission merchant or is granted authority to effect transactions with respect to an account at a futures commission merchant. Where an account is introduced to a futures commission merchant by an introducing broker, a person opening the account or granted authority to effect transactions with respect to the account is a customer of both the futures commission merchant and the introducing broker.

Under this definition, a person who has an account at the futures commission merchant prior to the effective date of the proposed rule would not be a "customer." However, such a person becomes a "customer" if the person opens a different account thereafter. Moreover, a person becomes a "customer" each time they open a different type of account at a futures commission merchant.

Similarly, an outside advisor with trading authority prior to the effective date of the regulation is not a "customer." However, such a person being granted trading authority after the effective date is a customer. This is true even if the person is granted authority with respect to an account that existed prior to the effective date or the person had been granted authority for another account prior to the effective date.

The requirements of section 326 apply to "customers" (*i.e.*, persons opening new accounts or certain persons being granted trading authority), but do not apply to persons seeking information about an account such as a schedule of transaction fees, if an account is not opened. In addition, transfers of accounts from one futures commission merchant to another that are not initiated by the customer, for example as a result of a bankruptcy, merger, acquisition, or purchase of assets or assumption of liabilities, fall outside of the scope of section 326, and are not covered by the proposed rule.[3]

Section 103.123(a)(5) Futures Commission Merchant. The proposed rule defines "futures commission merchant" as (and therefore applies to) any persons registered, or required to be registered, with the Commission as futures commission merchants under the CEA, except persons who register, or are required to be registered, solely because they effect transactions in security futures products. These latter futures commission merchants, who register with the Commission pursuant to section 4f(a)(2) of the CEA, will be subject to regulations issued jointly by Treasury and the SEC implementing section 326.

Section 103.123(a)(6) Introducing Broker. The proposed rule defines "introducing broker" as (and therefore applies to) any persons registered, or required to be registered, with the Commission as introducing brokers under the CEA, except persons who register, or are required to be registered, solely because they effect transactions in security futures products. These latter introducing brokers, who register with the Commission pursuant to section 4f(a)(2) of the CEA, will be subject to regulations issued jointly by Treasury and the SEC implementing section 326.

Section 103.123(a)(7) Option. The proposed rule defines "option" as an agreement, contract or transaction described in Section 1a(26) of the Commodity Exchange Act, 7 U.S.C. 1a(26).

Section 103.123(a)(8) Person. The proposed rule defines "person" as having the same meaning as provided in section 103.11(z). Thus, the term includes natural persons, corporations, partnerships, trusts or estates, joint stock companies, associations, syndicates, joint ventures, any unincorporated organizations or groups, Indian Tribes, and all other entities cognizable as legal entities. This means that any such entity will be considered a "customer" for the purposes of this rule if, after the effective date, the person opens an account or is granted trading authority with respect to an account.

Section 103.123(a)(9) U.S. person. The proposed rule defines "U.S. person" because U.S. citizens and persons incorporated under U.S. laws will be required to provide U.S. tax identification numbers whereas other persons, who may not have a U.S. tax identification number, will be required to provide other similar numbers. Thus, the rule defines "U.S. person" to mean a U.S. citizen or, for persons other than natural persons, an entity established or organized under the laws of a State or the United States. The terms "State" and "United States" are defined in sections 103.11(ss) and 103.11(nn), respectively. A non-U.S. person is defined in § 103.123(a)(10) as a person who does not satisfy these criteria.

Section 103.123(a)(11) Taxpayer identification number. The proposed rule provides that the provisions of Section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder determine what constitutes a taxpayer identification number.

B. Section 103.123(b) Customer Identification Program

As indicated above, section 326 requires the Secretary and the Commission to prescribe regulations requiring futures commission merchants and introducing brokers to implement "reasonable procedures" for: verifying the identity of customers "to the extent reasonable and practicable;" maintaining records associated with

[3] However, there may be situations involving the transfer of accounts where it would be appropriate for a futures commission merchant to verify the identity of customers associated with the accounts it is acquiring. Therefore, Treasury and the Commission expect procedures for transfers of accounts to be part of a futrures commission merchant's overall anti-money laundering program required under section 352 of the USA PATRIOT Act.

such verification; and consulting lists of known or suspected terrorists or terrorist organizations. Paragraph (b) of the proposed rule sets forth the requirement that futures commission merchants and introducing brokers must develop and operate a customer identification program (CIP).

Paragraph (b) also sets forth certain requirements that each CIP must possess. These factors include the type of identifying information available and six assessments based upon the business operations of the futures commission merchant or introducing broker.

The first factor identified in paragraph (b) is the type of identifying information available. Thus, in implementing and updating their CIPs, futures commission merchants and introducing brokers should consider the type of identifying information that customers can provide. They should also consider the methods available to verify that information, and should consider on an on-going basis whether any additional information or methods are appropriate, particularly as they become available in the future.

The six business-operations-based risk factors include assessments of the futures commission merchant's or introducing broker's (1) size; (2) location; (3) methods of opening accounts; (4) types of accounts and transactions; (5) customer base; and (6) reliance, if any, on another futures commission merchant or introducing broker with which it shares an account relationship. These specific factors are discussed below in general terms.[4]

The first risk factor to consider is the futures commission merchant's or introducing broker's size. For example, a large futures commission merchant or introducing broker that opens a substantial number of accounts on any given day will have different risks than one that opens a new account no more than once or twice a month. The same is true when comparing a futures commission merchant or introducing broker that has many branches with one that has a single office.

The second risk factor is the location of the futures commission merchant or introducing broker. Futures commission merchants and introducing brokers should assess whether they are located or have offices in areas where money laundering activities have been known to exist or that otherwise increase the risk that attempts will be made to open accounts for money laundering purposes.

The third risk factor is the method by which customers open accounts. Accounts opened exclusively on-line present different, and perhaps greater, risks than those opened in-person on the premises of the futures commission merchant or introducing broker.

The fourth risk factor is the type of accounts and transactions that are offered by the futures commission merchant or introducing broker. Futures commission merchants and introducing brokers should assess whether there are different risks (and degrees of risk) associated with the various types of accounts they provide to customers (*e.g.*, futures, options on futures, prime-brokerage) and transactions they execute in those accounts (*e.g.*, longs, shorts, spreads).

The fifth risk factor to be considered is customer base. Futures commission merchants and introducing brokers should assess the risks associated with different types of customers. For example, futures commission merchants and introducing brokers should examine whether they are opening accounts for customers located in countries the Secretary determines to be of "primary money laundering concern" pursuant to section 311 of the Act. In addition, certain legal entities may pose greater risks (*e.g.*, a closely-held corporation as opposed to one that is publicly traded).

Each CIP also should address the risks that may be posed by different types of intermediated accounts. With respect to intermediated accounts, such as omnibus accounts and accounts for commodity pools and other collective investment vehicles,[5] a futures commission merchant or introducing broker may have little or no information about the identities and transaction activities of the underlying participants or beneficiaries of such accounts.[6] In most instances, given Treasury's risk-based approach to anti-money laundering programs for financial institutions generally, it is expected that the focus of each futures commission merchant's and introducing broker's CIP will be the intermediary itself, and not the underlying participants or beneficiaries. Thus, futures commission merchants and introducing brokers should assess the risks associated with different types of intermediaries based upon an evaluation of relevant factors, including the type of intermediary; its location; the statutory and regulatory regime that applies to a foreign intermediary (*e.g.*, whether the jurisdiction complies with the European Union anti-money laundering directives or has been identified as non-cooperative by the Financial Action Task Force); the futures commission merchant's or introducing broker's historical experience with the intermediary; references from other financial institutions regarding the intermediary; and whether the intermediary is itself a BSA financial institution required to have an anti-money laundering program.[7]

The sixth risk factor requires an assessment of whether the futures commission merchant or introducing broker can rely on another futures commission merchant or introducing broker, with which it shares an account relationship, to undertake any of the steps required by this proposed rule with respect to the shared account.[8] A shared account relationship may occur in at least two different circumstances: (1) An introducing broker introduces a customer to a futures commission merchant and (2) an executing futures commission merchant executes a customer's order and then "gives up" this filled order to a clearing futures

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[4] This discussion of the risk factors is included because we believe it is helpful in providing some meaning and context with respect to the factors. However, we are not attempting to provide comprehensive definitions of these risk factors or an exhaustive description of the considerations involved in assessing them. Instead, we intend our discussion to serve as a starting point for defining and assessing them.

[5] The term "collective investment vehicle" is not defined in regulations under the CEA but is commonly used to describe an entity through which persons combine funds (*i.e.*, cash) or other assets, which are invested and managed by the entity. *See generally* 65 FR 24127 (April 25, 2000) (CFTC rule regarding exclusion for certain persons from the definition of the term "commodity pool operator").

[6] Similarly, when a customer has given a commodity trading advisor discretionary trading authority over its account, the commodity trading advisor and not the futures commission merchant (or introducing broker) may be the financial institution with the most information regarding the customer. Treasury, however, has temporarily exempted commodity trading advisors from the requirement to establish anti-money laundering programs as required by section 352 of the Act. 67 FR 21110, 21112 (April 29, 2002). At such time as Treasury proposes or promulgates regulations requiring commodity trading advisors to establish anti-money laundering programs, it will provide guidance regarding the permissible interrelation between commodity trading advisors and futures commission merchants (or introducing brokers) in order to satisfy their respective BSA obligations.

[7] Treasury's interim final rule requiring mutual funds to establish anti-money laundering programs provided for similar treatment of omnibus accounts. 67 FR 21117 (April 29, 2002); *see also* proposed 31 CFR 103.131.

[8] Treasury and the Commission recognize that a related issue arises in the context of a firm that is registered both with the SEC as a broker-dealer and with the Commission as a futures commission merchant or introducing broker. Neither Treasury nor the Commission intend the effect of this proposed rule to require that both the securities and futures firm identify, and verify the identity of, their customers. For example, if a futures firm has a bifurcated compliance department handling, respectively, the securities and futures sides of its business, the futures firm could perform the required customer identification and verification procedures and the securities firm could rely on it.

commission merchant who carries the customer's account.[9] We anticipate that futures commission merchants and introducing brokers sharing accounts may realize efficiencies by dividing up the requirements in this proposed rule pursuant to either their introducing agreements (in the context of introduced business) or give-up agreements (in the context of give-up business).[10] For example, the introducing broker may undertake to obtain the identifying information from customers as required in paragraph (c) and the futures commission merchant may undertake the verification procedures as required in paragraph (d). Or, in another example, the clearing futures commission merchant may undertake the procedures required for paragraphs (c) and (d) both for its own behalf and on behalf of the executing futures commission merchant. Nonetheless, in both examples, each financial institution would still be responsible for ensuring that each requirement in the proposed rule is met with respect to a customer. Accordingly, a futures commission merchant or introducing broker must assess whether the other firm can be relied on to fulfill its allocated responsibilities. Moreover, a futures commission merchant or introducing broker is expected to cease such reliance if it is no longer reasonable.

Paragraph (b) also requires that the identity verification procedures must enable each futures commission merchant and introducing broker to form a reasonable belief that it knows the true identity of its customers. This provision makes clear that, while there is flexibility in establishing these procedures, each futures commission merchant and introducing broker is responsible for exercising reasonable efforts to ascertain the identity of each customer.

Finally, paragraph (b) requires that futures commission merchants and introducing brokers incorporate their CIPs into their overall anti-money laundering programs required under section 352 of the Act (31 U.S.C. 5318(h)) and National Futures Association (NFA) Compliance Rule 2–9(c).[11] This requirement is intended to make clear that the CIP is not a separate program, but is merely one component of each futures commission merchant's and introducing broker's overall anti-money laundering program that is designed to ensure compliance with all other applicable rules and regulations promulgated under the Act and the BSA.

C. Section 103.123(c) Required Information

The first step in verifying identity is obtaining identifying information from customers. Paragraph (c) of the proposed rule provides that each futures commission merchant's and introducing broker's CIP must specify identifying information that customers are required to provide. It also sets forth certain information that must be obtained at a minimum and provides that the CIP must require the futures commission merchant and introducing broker to obtain this minimum information before an account is opened or trading authority is granted.

The minimum information that must be obtained from each customer is (1) name, (2) date of birth, if applicable, (3) address, and (4) U.S. taxpayer identification number (*e.g.*, social security number or employer identification number) or if the person is not a U.S. person, a U.S. taxpayer identification number, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.[12] The term "similar safeguard" is included to permit the use of any biometric identifiers that may be used in addition to, or instead of, photographs. With respect to the address requirement, each customer must provide both a mailing and residence address (if a natural person) or principal place of business (if not a natural person).

The rule only specifies the minimum identifying information that must be obtained from each customer. Futures commission merchants and introducing brokers, in assessing the risk factors in paragraph (b), should determine whether additional identifying information is necessary to form a reasonable belief as to the true identity of each customer. There may be certain types of customers or circumstances where it is reasonable to obtain other identifying information in addition to the minimum. If a futures commission merchant or introducing broker, in examining the nature of its business and operations, determines that additional information should be obtained in certain cases, it should set forth guidelines in its CIP indicating when this shall occur.

Treasury and the Commission recognize that a new business may need access to an account at a futures commission merchant or introducing broker before it has received an employer identification number from the Internal Revenue Service. For this reason, the proposed regulation contains a limited exception to the requirement that a taxpayer identification number must be provided prior to establishing or adding a signatory to an account. Accordingly, a CIP may permit a futures commission merchant or introducing broker to open or add a signatory to an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number. However, in such a case, the CIP must require that the futures commission merchant or introducing broker obtain a copy of the application before it opens or adds a signatory to the account and obtain the employee identification number within a reasonable period of time after an account is established or a signatory is added to an account. Currently, the IRS indicates that the issuance of an employer identification number can

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[9] Although no formal survey has been conducted, the Commission has been advised that a significant percentage of all customer trades on U.S. exchanges are effected using an executing futures commission merchant. A customer may elect to use one or more executing futures commission merchants for a number of reasons. In certain circumstances, the customer's carrying futures commission merchant may not be a member of a particular exchange on which the contract in question is listed for trading. In others, particularly in the case of larger institutional customers, the customer may elect to use one or more executing futures commission merchants in order not to disclose its intentions to other market participants. Finally, certain futures commission merchants simply develop a reputation for being able to execute transactions in particular contracts well.

[10] An executing futures commission merchant subject to this proposed rule could obtain from a clearing futures commission merchant, either as part of a give-up agreement or on a transaction-by-transaction basis, a certification that the latter has performed the required customer identification or verification functions. For example, the U.K."s Joint Money Laundering Steering Group (JMLSG), an association of U.K. Financial Services Industry Trade Associations, recommends that its members employ a variation of the certification approach. For give-up business, the JMLSG's Money Laundering Guidance Notes state: "Where an executing broker and a clearing broker are undertaking an exchange transaction on behalf of the same customer, the clearing broker should provide the appropriate written assurance that it will have obtained and recorded evidence of the identity of the underlying client." *See www.jmlsg.org.uk.*

[11] Section 352 requires financial institutions to establish anti-money laundering programs that, at a minimum, include (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. On April 23, 2002, the Commission approved rule changes submitted by the NFA setting forth for member futures commission merchants and introducing brokers the minimum requirements for these programs.

[12] Treasury and the Commission understand these categories of identification numbers for foreign citizens generally are applicable to natural persons. Accordingly, we seek comment on the types of numbers that could be provided by other persons.

take up to five weeks. This length of time, coupled with when the person applied for the employer identification number, should be considered by the futures commission merchant or introducing broker in determining the reasonable period of time within which the person should provide its employer identification number to the futures commission merchant or introducing broker.

D. Section 103.123(d) Required Verification Procedures

After obtaining identifying information from a customer, futures commission merchants and introducing brokers must take steps to verify the accuracy of that information in order to reach a point where they can form a reasonable belief as to the true identity of the customer. Accordingly, paragraph (d) of the proposed rule requires each futures commission merchant's and introducing broker's CIP to have procedures for verifying the accuracy of the identifying information provided by the customer. Because the proposed rule requires futures commission merchants and introducing brokers to form a reasonable belief that they know the true identity of each customer, the extent of the verification for each customer will depend on the steps necessary for futures commission merchants and introducing brokers to form such a belief.

Paragraph (d) requires that the verification procedures must be undertaken within a reasonable time before or after a customer's account is opened or a customer is granted authority to effect transactions with respect to an account. This flexibility must be exercised in a reasonable manner, given that verifications too far in advance may become stale and verifications too long after an account is opened may provide money laundering opportunities to persons who would not have had such opportunities if verification occurred sooner. The amount of time it will take a futures commission merchant or introducing broker to verify the identity of a customer may depend on the type of account opened, whether the customer opens the account in person, and on the type of identifying information available. In addition, although an account is opened, a futures commission merchant or introducing broker may choose to place limits on the account, such as restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed rule provides futures commission merchants and introducing brokers with the flexibility to use a risk-based approach to determine when the identity of a customer must be verified relative to the opening of an account or granting of trading authority.[13]

As mentioned above, a person becomes a customer each time they open a new account or are granted trading authority. Therefore, upon the opening of each account, the verification requirements of this rule would apply. However, if a customer whose identification has been verified previously opens a new account, a futures commission merchant or introducing broker would not need to verify the customer's identity a second time, provided it (1) previously verified the customer's identity in accordance with procedures consistent with this rule, and (2) continues to have a reasonable belief that it knows the true identity of the customer.

The rule provides for two methods of verifying identifying information: use of documents and use of non-documentary means. For example, using documents would include obtaining a driver's license or passport from a natural person or articles of incorporation from a company. Non-documentary methods would include cross-checking the information provided by a customer against that supplied by a credit bureau or consumer reporting agency.

The proposed rule requires each futures commission merchant's and introducing broker's CIP to address both methods of verification. Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documents or non-documentary methods. However, in some cases, it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used.

The risk that a futures commission merchant or introducing broker will not know a customer's identity will be heightened for certain types of accounts, such as accounts opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in jurisdictions designated as primary money laundering concerns or that have been designated as non-cooperative by an international body, such as the Financial Action Task Force.

Obtaining sufficient information to verify a given customer's identity can reduce the risk that a futures commission merchant or introducing broker will be used as a conduit for money laundering and terrorist financing. Each futures commission merchant's and introducing broker's identity verification procedures must be based on its assessment of the factors described in paragraph (b) of the proposed rule. Accordingly, when those assessments suggest a heightened risk, the futures commission merchant and introducing broker should prescribe additional verification measures.

1. Verification Through Documents

Paragraph (d)(1) provides that the CIP must describe when a futures commission merchant or introducing broker will verify identity through documents and set forth the documents that will be used for this purpose. The rule also lists certain documents that are suitable for verification. For natural persons, these documents may include: unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard. For other persons, suitable documents would be ones showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

2. Verification Through Non-Documentary Methods

Paragraph (d)(2) provides that the CIP must describe non-documentary verification methods and when such methods will be employed in addition to, or instead of, using documents. The rule allows for the exclusive use of non-documentary methods because some accounts are opened by telephone, mail, or over the Internet. However, even if the customer presents documents, it may be appropriate to use non-documentary methods as well. In the end, each futures commission merchant and introducing broker is responsible for employing sufficient verification methods to be able to form a reasonable belief that it knows the true identity of the customer.

The proposed rule sets forth certain non-documentary methods that would be suitable for verifying identity. These methods include contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with

[13] Treasury and the Commission note that it is possible that futures commission merchants and introducing brokers could violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.*, 31 CFR part 500, prohibiting transactions involving designated foreign countries or their nationals.

information available from a trusted third party source, such as a credit report from a credit bureau or consumer reporting agency (positive verification); and checking references with other financial institutions. Futures commission merchants and introducing brokers also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number (logical verification).

Paragraph (d)(2) also provides that the CIP must require the use of non-documentary methods in certain cases; specifically, when a natural person is unable to present an unexpired government issued identification document that bears a photograph or similar safeguard or when a futures commission merchant or introducing broker is presented with unfamiliar documents to verify the identity of a customer, does not obtain documents to verify the identity of a customer, does not meet a customer face-to-face, or is otherwise presented with circumstances that increase the risk the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

Thus, non-documentary methods should be used when the futures commission merchant or introducing broker cannot examine original documents. In addition, Treasury and the Commission recognize that identification documents, including those issued by a government entity, may be obtained illegally and may be fraudulent. In light of the recent increase in identity fraud, futures commission merchants and introducing brokers are encouraged to use non-documentary methods, even when a customer has provided identification documents.

E. Section 103.123(e) Government Lists

Section 326 of the Act also requires reasonable procedures for determining whether a customer's name appears on any list of known or suspected terrorists or terrorist organizations provided by any government agency. The proposed rule implements this requirement and clarifies that the requirement applies only with respect to lists circulated by the Federal government.

In addition, the proposed rule states that futures commission merchants and introducing brokers must follow all Federal directives issued in connection with such lists. This provision makes clear that futures commission merchants and introducing brokers must have procedures for responding to circumstances when a customer is named on a list.

F. Section 103.123(f) Customer Notice

Section 326 of the Act contemplates that financial institutions will provide their customers with "adequate notice" of the customer identification procedures. Therefore, each futures commission merchant's and introducing broker's CIP must include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identity. A futures commission merchant or introducing broker may satisfy the notice requirement by generally notifying its customers about the procedures it must comply with to verify their identities. For example, a futures commission merchant or introducing broker may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is opened electronically, such as through an Internet website, the futures commission merchant or introducing broker may provide notice electronically.

G. Section 103.123(g) Lack of Verification

Paragraph (g) of the proposed rule states that each futures commission merchant's and introducing broker's CIP must include procedures for responding to circumstances in which it cannot form a reasonable belief that it knows the true identity of a customer.

Generally, each futures commission merchant and introducing broker should only maintain an account for a customer when it has a reasonable belief that it knows the customer's true identity.[14] Thus, each futures commission merchant's and introducing broker's CIP should specify the actions to be taken when it cannot form a reasonable belief. There also should be guidelines for when an account will not be opened. In addition, the CIP should address the terms under which a customer may conduct transactions while a customer's identity is being verified. The CIP should specify at what point, after attempts to verify a customer's identity have failed, an account that has been opened should be closed. Finally, the procedures should include a process for determining whether, in connection with conducting customer identification or verification, a Suspicious Activity Report should be filed.

H. Section 103.123(h) Recordkeeping

Section 326 of the Act requires procedures for maintaining records of the information used to verify a person's identity, including name, address, and other identifying information. Paragraph (h) of the proposed rule sets forth recordkeeping procedures that must be included in each futures commission merchant's and introducing broker's CIP. These procedures must provide for the maintenance of all information and documents obtained pursuant to the CIP. Information that must be maintained includes all identifying information provided by a customer pursuant to paragraph (c). Thus, the futures commission merchant and introducing broker must make a record of each customer's name, date of birth (if applicable), addresses, and tax identification number or other number. Futures commission merchants and introducing brokers also must maintain copies of any documents that were relied upon to verify identity pursuant to paragraph (d)(1), evidencing the type of document and any identification number it may contain. For example, if a customer produces a driver's license, the futures commission merchant or introducing broker must make a copy of the driver's license that clearly indicates it is a driver's license and legibly depicts any identification number on the license.

Futures commission merchants and introducing brokers also must make and maintain records evidencing the methods and results of measures undertaken to verify the identity of a customer pursuant to paragraph (d)(2). For example, if a futures commission merchant or introducing broker obtains a report from a credit bureau concerning a customer, the report must be maintained. Futures commission merchants and introducing brokers also must make and maintain records of the resolution of any discrepancy in the identifying information obtained. To continue with the previous example, if the customer provides a residence address that is different from the address shown on the credit report, the futures commission merchant or introducing broker must document how it resolved this discrepancy or, if the discrepancy was not resolved, how it formed a reasonable belief notwithstanding the discrepancy.

Futures commission merchants and introducing brokers must retain all of these records for five years after the date an account is closed or the grant of

[14] There are some exceptions to this basic rule. For example, a futures commission merchant or introducing broker may introduce or maintain an account, at the direction of law enforcement, notwithstanding that it does not know the true identity of a customer.

authority to effect transactions with respect to an account is revoked. In all other respects, the records must be maintained in accordance with the requirements of Commission Rule 1.31.[15]

Nothing in this proposed rule modifies, limits or supersedes section 101 of the Electronic Records in Global and National Commerce Act, Public Law 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, futures commission merchants and introducing brokers may use electronic records to satisfy the requirements of this rule, as long as the records are maintained in accordance with Commission Rules 1.4 and 1.31.[16]

Treasury and the Commission emphasize that the collection and retention of information about a customer as an ancillary part of collecting identifying information, do not relieve futures commission merchants and introducing brokers from their obligations to comply with anti-discrimination laws or regulations.

I. Section 103.123(i) Approval of Program

Paragraph (i) of the proposed rule requires that each futures commission merchant's and introducing broker's CIP be approved by its most senior level (*e.g.*, board of directors, managing partners, board of managers or other governing body performing similar functions) or by persons specifically authorized by that body to approve such a program.

J. Section 103.123(j) Exemptions

Section 326 states that the Secretary and the Federal functional regulator jointly issuing the rule may by order or regulation exempt any financial institution or type of account from this rule in accordance with such standards and procedures as the Secretary may prescribe. The proposed rule provides that the Commission, with the concurrence of the Secretary, may exempt any futures commission merchant or introducing broker that registers with the Commission. However, it excludes from this exemptive authority futures commission merchants and introducing brokers that register pursuant to section 4f(a)(2) of the CEA. These are firms that register as futures commission merchants or introducing brokers solely because they deal in security futures products. The exemptive authority with respect to these firms is addressed in the rule issued jointly by Treasury and the SEC.

In issuing exemptions under the proposed rule, the Secretary and the Commission shall consider whether the exemption is consistent with the purposes of the BSA, and in the public interest, and may consider other necessary and appropriate factors.

III. Request for Comments

Treasury and the Commission invite comment on all aspects of the proposed rule, and specifically seek comment on the following issues:

1. Whether the proposed definition of "account" is appropriate.

2. How the proposed rule should apply to various types of accounts that are designed to allow a customer to transact business immediately.

3. Ways that futures commission merchants and introducing brokers can comply with the requirement to obtain both the address of a person's residence, and, if different, the person's mailing address in situations involving natural persons who lack a permanent address.

4. Whether non-U.S. persons that are not natural persons will be able to provide futures commission merchants and introducing brokers with the identifying information required in § 103.123(c)(4), or whether other categories of identifying information should be added to this section. Commenters on this issue should suggest other means of identification that futures commission merchants and introducing brokers currently use or should use in this circumstance.

5. Whether the proposed rule will subject futures commission merchants and introducing brokers to conflicting State laws. Treasury and the Commission request that commenters cite and describe any potentially conflicting State laws.

6. The extent to which the verification procedures required by the proposed rule make use of information that futures commission merchants and introducing brokers currently obtain in the account opening process. We note that the legislative history of section 326 indicates that Congress intended "the verification procedures prescribed by Treasury [to] make use of information currently obtained by most financial institutions in the account opening process." *See* H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Because this proposed rulemaking contains information collection requirements within the meaning of the PRA, FinCEN has submitted the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for its review in accordance with 44 U.S.C. 3507(d).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The proposed rule requires futures commission merchants and introducing brokers to implement reasonable procedures to (1) maintain records of the information used to verify the person's identity and (2) provide notice of these procedures to customers. These recordkeeping and disclosure requirements are required under section 326 of the Act.

The Commission estimates that approximately 188 futures commission merchants and 1593 introducing brokers will need to implement a CIP. Further, the Commission estimates that each futures commission merchant and introducing broker will need to spend approximately 10 hours per year to meet the recordkeeping requirements of the proposed rule.[17] Further, Treasury and the Commission estimate that each futures commission merchant and introducing broker will need to spend approximately one hour per year to meet the disclosure requirements of the new rule. Therefore, the estimated paperwork burden of this proposed rule is calculated as follows:

Estimated number of respondents: 1781.

Estimated average annual burden for the recordkeeping requirements of the proposed rule for each respondent: 10 hours.

Estimated average annual burden for the disclosure requirements of the proposed rule per each respondent: 1 hour.

Estimated total annual burden: 19,591 hours.

[15] 17 CFR 1.31.

[16] 17 CFR 1.4, 1.31.

[17] The Commission believes that futures commission merchants and introducing brokers already obtain from their customers most, if not all, of the information required under the proposed rule. *See* Commission Rule 1.37, 17 CFR 1.37 (requiring futures commission merchants and introducing brokers to obtain the customer's true name, address, principal occupation or business, name of guarantor, and name of person controlling the account), and NFA Compliance Rule 2–30 (futures commission merchants and introducing brokers are required to obtain, with respect to customers that are individuals, the customer's true name, address, principal occupation or business, estimated annual income and net worth, and approximate age). Futures commission merchants and introducing brokers are required to maintain these records pursuant to Commission Rule 1.31, 17 CFR 1.31, and NFA Compliance Rule 2–10.

Treasury and the Commission invite comment on:

(1) Whether the collections of information contained in the notice of proposed rulemaking are necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of the Commission's estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rule proposed today would affect futures commission merchants and introducing brokers. The CFTC previously established certain definitions of "small entities" to be used in evaluating the impact of its rules in accordance with the RFA.[18] The Commission has previously determined that futures commission merchants are not small entities for the purpose of the RFA.[19] With respect to introducing brokers, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected introducing brokers would be considered to be small entities and, if so, the economic impact on them of any rule.[20] The Commission believes that all introducing brokers will be affected by this rule, including small introducing brokers. However; the Commission does not believe that the economic impact of the rule will be significant. First, the information being collected by introducing brokers is, for the most part, already required to be collected by CFTC rules and by self-regulatory organization rules.[21] Second, each introducing broker will be able to tailor its CIP to fit its own size and needs; the rule provides for flexibility in how they will meet their requirements. Lastly, the CFTC believes that any expenditure associated with establishing and implementing a CIP will be commensurate with the size of an introducing broker. If an introducing broker is small, its economic burden should be *de minimis*. For these reasons, the Commission does not expect the rule, as proposed herein, to have a significant economic impact on a substantial number of small entities. Accordingly, it is hereby certified pursuant to 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities. Treasury and the Commission invite the public to comment on this finding.

VI. Commission's Analysis of the Costs and Benefits Associated With the Proposed Rule

Section 15(a) of the CEA requires the CFTC to consider the costs and benefits of its action before issuing a new regulation. The CFTC understands that, by its terms, section 15(a) does not require the CFTC to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15(a) simply requires the CFTC to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the CFTC could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

Section 326 of the Act requires Treasury and the Commission to prescribe regulations setting forth minimum standards for futures commission merchants and introducing brokers regarding the identities of customers that shall apply in connection with the opening of an account. The statute also provides that the regulations issued by Treasury and the Commission must, at a minimum, require financial institutions to implement reasonable procedures for: (1) Verification of customers' identities; (2) determination of whether a customer appears on a government list; and (3) maintenance of records related to customer verification. The proposed rule implements this statutory mandate by requiring futures commission merchants and introducing brokers to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify identifying information of customers; (4) check customers against lists provided by federal agencies; (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records. The Commission believes that these requirements are reasonable and practicable, as required by section 326 and, therefore, that the costs associated with them are attributable to the statute. Moreover, while the proposed rule specifies certain minimum requirements, futures commission merchants and introducing brokers will be able to design their CIPs in a manner most appropriate to their business models and customer bases. This flexibility should help them to tailor their CIPs appropriately, while still meeting the statutory requirements of section 326.

The proposed rule is not related to the marketplace and thus should not affect the protection of market participants; the efficiency, competitiveness, and financial integrity of futures markets; price discovery; or sound risk management practices. This proposed rule does, however, address other public interest considerations, namely, the prevention and detection of money laundering and financing of terrorism. As noted elsewhere in this preamble, the CFTC believes the costs associated with implementing CIPs, which are mandated by section 326 of the Act, will be small. On the other hand, the benefits include a reduced risk of futures commission merchants and introducing brokers unwittingly aiding criminals, including terrorists, in laundering money or moving funds for illicit purposes. Additionally, the

[18] *See* 47 FR 18618 (April 30, 1982).

[19] *See* 47 FR at 18619.

[20] *See id.*

[21] *See, supra*, page 34 n.17.

implementation of such programs should make it more difficult for persons to successfully engage in fraudulent activities involving identity theft.

VII. Executive Order 12866

Treasury has determined that this proposed rule is not a "significant regulatory action" for purposes of Executive Order 12866. The rule follows closely the requirements of section 326 of the Act. Moreover, as indicated above, Treasury and the Commission believe that futures commission merchants and introducing brokers already have procedures in place that fulfill most of the requirements of the proposed rule. First, the procedures are a matter of good business practice. Second, futures commission merchants and introducing brokers already are required to have BSA compliance programs that address many of the requirements detailed in this notice of proposed rulemaking. Third, futures commission merchants and introducing brokers should already have compliance programs in place to ensure they comply with Treasury's Office of Foreign Assets Control rules prohibiting transactions with certain foreign countries or their nationals. Accordingly, a regulatory impact analysis is not required.

Lists of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, Banking, Brokers, Commodity futures, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is amended by adding new section 103.123 to read as follows:

§ 103.123 Customer Identification Programs for futures commission merchants and introducing brokers.

(a) *Definitions.* For the purposes of this section:

(1) *Account* means any formal business relationship with a futures commission merchant, including, but not limited to, those established to effect transactions in contracts of sale for future delivery, options on contracts of sale for future delivery, or options on physicals in any commodity.

(2) *Commission* means the United States Commodity Futures Trading Commission.

(3) *Commodity* means any good, article, service, right, or interest described in Section 1a(4) of the Commodity Exchange Act, 7 U.S.C. 1a(4).

(4) *Customer.* (i) The term customer means:

(A) Any person who opens a new account with a futures commission merchant; and

(B) Any person who is granted authority to effect transactions with respect to an account with a futures commission merchant.

(ii) Where an account is introduced to a futures commission merchant by an introducing broker, a person opening the account or granted authority to effect transactions with respect to the account is a customer of both the futures commission merchant and the introducing broker.

(5) *Futures commission merchant* means any person registered or required to be registered as a futures commission merchant with the Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), except persons who register pursuant to section 4f(a)(2) of the Commodity Exchange Act, 7 U.S.C. 6f(a)(2).

(6) *Introducing broker* means any person registered or required to be registered as an introducing broker with the Commission under the Commodity Exchange Act, except persons who register pursuant to section 4f(a)(2) of the Commodity Exchange Act.

(7) *Option* means an agreement, contract or transaction described in Section 1a(26) of the Commodity Exchange Act, 7 U.S.C. 1a(26).

(8) *Person* has the same meaning as that term is defined in § 103.11(z).

(9) *U.S. person* means:

(i) A U.S. citizen; or

(ii) A corporation, partnership, trust or person (other than an individual) that is established or organized under the laws of a State or the United States.

(10) *Non-U.S. person* means a person that is not a *U.S. person.*

(11) *Taxpayer identification number.* The provisions of section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the regulations of the Internal Revenue Service promulgated thereunder shall determine what constitutes a taxpayer identification number.

(b) *Customer Identification Program.* Each futures commission merchant and introducing broker shall implement a written Customer Identification Program (Program) that shall be based on the type of identifying information available and on an assessment of the varying risks associated with the futures commission merchant's or the introducing broker's size, location, methods of opening accounts, types of accounts and transactions, customer base, and reliance, if any, on another futures commission merchant or introducing broker with which it shares an account relationship. Each futures commission merchant's and introducing broker's procedures must enable it to form a reasonable belief that it knows the true identity of its customers. The Program should be a part of each futures commission merchant's and introducing broker's anti-money laundering program required under 31 U.S.C. 5318(h).

(c) *Required information*—(1) *General.* Except as permitted by paragraph (c)(2) of this section, each Program shall require the futures commission merchant or the introducing broker to obtain specified identifying information about each of their customers. The Program shall require that this minimum information be obtained prior to opening a customer's account or granting a customer authority to effect transactions with respect to an account. At a minimum, the specified identifying information shall include:

(i) Name;

(ii) Date of birth, for natural persons;

(iii) Addresses:

(A) Residence and mailing (if different) for natural persons; or

(B) Principal place of business and mailing (if different) for persons other than natural persons; and

(iv) Identification number:

(A) For U.S. persons, a U.S. taxpayer identification number (*e.g.*, social security number, or employer identification number); or

(B) For non-U.S. persons, a U.S. taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

(2) *Limited exception.* The Program may permit the futures commission

merchant or introducing broker to open or add a signatory to an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number. However, in such a case, the futures commission merchant or introducing broker must obtain a copy of the application before it opens or adds a signatory to the account and obtain the employer identification number within a reasonable period of time after it opens or adds a signatory to the account.

(d) *Required verification procedures.* Each Program shall contain risk-based procedures for verifying the identity of customers, to the extent reasonable and practicable. Such verification must occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account. A futures commission merchant or introducing broker need not verify the information about an existing customer who opens a new account or who is granted authority to effect transactions with respect to a new account, if it previously verified the customer's identity in accordance with procedures consistent with this paragraph (d), and continues to have a reasonable belief that it knows the true identity of the customer.

(1) *Verification through documents.* Each Program must describe when the futures commission merchant or introducing broker will verify identity through documents and set forth the documents that it will use for this purpose. Suitable documents for verification may include:

(i) For natural persons, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and

(ii) For persons other than natural persons, documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(2) *Verification through non-documentary methods.* Each Program must describe non-documentary methods the futures commission merchant or introducing broker will use to verify their customer's identity and when these methods will be used in addition to, or instead of, relying on documents. These non-documentary methods may include, but are not limited to, contacting a customer; obtaining a financial statement; independently verifying information through credit bureaus, public databases, or other sources; and checking references with other financial institutions. Non-documentary methods shall be used when: a natural person is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the futures commission merchant or introducing broker is presented with unfamiliar documents to verify the identity of a customer; the futures commission merchant or introducing broker does not obtain documents to verify the identity of a customer; does not meet a customer face-to-face; or is otherwise presented with circumstances that increase the risk the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

(e) *Government lists.* Each Program shall include procedures for determining whether a customer's name appears on any list of known or suspected terrorists or terrorist organizations provided to the futures commission merchant or introducing broker by any federal government agency. Futures commission merchants and introducing brokers shall follow all federal directives issued in connection with such lists.

(f) *Customer notice.* Each Program shall include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identity.

(g) *Lack of verification.* Each Program shall include procedures for responding to circumstances in which the futures commission merchant or introducing broker cannot form a reasonable belief that it knows the true identity of a customer.

(h) *Recordkeeping.* (1) The Program shall include procedures for maintaining a record of all information obtained pursuant to the Program, including:

(i) All identifying information provided by a customer pursuant to paragraph (c) of this section, and copies of any documents that were relied on pursuant to paragraph (d)(1) of this section evidencing the type of document and any identification number it may contain;

(ii) The methods and results of any measures undertaken to verify the identity of a customer through non-documentary methods pursuant to paragraph (d)(2) of this section; and

(iii) The resolution of any discrepancy in the identifying information obtained.

(2) Futures commission merchants and introducing brokers must retain all records made or obtained when verifying the identity of a customer pursuant to a Program until five years after the date the account of the customer is closed or the grant of authority to effect transactions with respect to an account is revoked. In all other respects, the records shall be maintained pursuant to the provisions of 17 CFR 1.31.

(i) *Approval of program.* Each Program shall be approved by the futures commission merchant's or introducing broker's board of directors, managing partners, board of managers or other governing body performing similar functions or by a person or persons specifically authorized by such bodies to approve the Program.

(j) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any futures commission merchant or introducing broker that registers with the Commission (except futures commission merchants or introducing brokers that register pursuant to section 4f(a)(2) of the Commodity Exchange Act) or any type of account from the requirements of this section. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: July 10, 2002.

Jean A. Webb,

Secretary of the Commodity Futures Trading Commission.

[FR Doc. 02–18195 Filed 7–22–02; 8:45 am]

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Federal Register

Tuesday,
July 23, 2002

Part IV

National Skill Standards Board

Solicitation of Comments; Notice

NATIONAL SKILL STANDARDS BOARD

Solicitation of Comments

AGENCY: National Skill Standards Board.

ACTION: Solicitation of comments.

SUMMARY: The National Skill Standards Board (NSSB) is building a voluntary national system of skill standards, assessments, and certification that will enhance the ability of the U.S. to compete effectively in a global economy. Industry-led, voluntary coalitions, called Voluntary Partnerships, are developing the skill standards, assessment, and certification systems within fifteen NSSB-defined industry sectors. The NSSB has developed a set of criteria for certification, against which the Board will evaluate for approval certifications developed by the Voluntary Partnerships. The NSSB seeks public comment on these criteria to ensure clarity and comprehensiveness. Comments must be submitted in writing as described in the "Request for and Resolution of Comments" in the **SUPPLEMENTARY INFORMATION** section below in order to be considered, and details on submitting comments via e-mail, fax, or regular mail are provided in the **ADDRESSES** section of this announcement.

DATES: The National Skill Standards Board will accept written comments on the criteria for certification on or before August 22, 2002.

ADDRESSES: Please send comments via regular mail to: NSSB, Attention: Bridget Brown, Director of Program Development, 1441 L Street, NW., Suite 9000, Washington, DC 20005–3512. To submit comments via fax, transmit to Bridget Brown, Certification Criteria, at 202–254–8646. To submit comments via the Internet, go to http://*www.nssb.org*. Click on the icon entitled "View and Comment on Certification Criteria Here"

FOR FURTHER INFORMATION CONTACT: For further information on the Voluntary National System of Industry Skill Standards, Assessment, and Certification, contact Bridget Brown, National Skill Standards Board (NSSB): 1441 L Street, NW., Suite 9000, Washington DC 20005, 202–254–8628, *http://www.nssb.org*.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Authorizing Legislation
III. NSSB Criteria for Assessment
IV. Request for and Resolution of Comments

I. Background

The National Skill Standards Act of 1994 created "a National Skill Standards Board to serve as a catalyst in stimulating the development and adoption of a voluntary national system of skill standards and of assessment and certification of attainment of skill standards' (*see* Section II below). The Act defines a skill standard as one that specifies the level of knowledge and skills required to successfully perform work-related functions within an industry cluster. Industry clusters are broad groups of industries defined by the NSSB to delineate the scope of employment covered by skill standards. They are based on the federal government's official 1997 North American Industry Classification System. Industry coalitions called Voluntary Partnerships (VPs) are developing the skill standards, assessment and certification systems within fifteen industry clusters. The skill standards, and therefore assessments and certifications, are being developed to reflect the needs of high-performance organizations.

II. Authorizing Legislation

Public Law 103–227, Title V, National Skill Standards Act of 1994.

III. NSSB Criteria for Certification

The National Skill Standards Board (NSSB) will use the following specific criteria to evaluate the degree to which skill standards systems include an appropriate certification program, and the degree to which this program adheres to statutory requirements and NSSB policy on certification: Voluntary Partnerships must demonstrate adherence to the criteria in order to receive NSSB approval and ultimate endorsement of the entire system.

Criteria Related to Legal and Technical Defensibility

E1. The certification organization and program do not discriminate against any class of individuals based upon race, color, ethnicity, age, gender, religion, national origin, disability, or any other criteria covered in federal civil rights law.

E2. The certification program includes a policy specifying record retention requirements for assessment results, applications, and other key documentation required to administer the certification program.

E3. The certification program includes a process to ensure compliance with applicable laws and regulations pertaining to assessment and certification.

E4. The scoring methodology (*i.e.*, pass/fail scoring, categorical scoring, percentile scoring) for the assessment(s) is clearly documented and defensible. Where more than one assessment module, test, or subtest are used for certification, the rationale for weighting and otherwise combining these into an overall certification decision is clearly documented and supportable.

E5. The certification must be clearly based upon skill standards research approved by the NSSB.

Criteria Related to System Quality and Integrity

E6. The certification organization demonstrates sufficient staff resources, with appropriate technical training and education, to maintain the quality and integrity of the program.

E7. A written policies and procedures manual addressing the operation of the certification program is implemented.

E8. The certification program includes a process to ensure continual compliance of the certification program with all NSSB criteria to maintain approval. The certification organization must provide the NSSB with annual summaries of relevant data including, but not limited to, number of certifications pending, number of total certificants, certifications awarded during the period covered, data disaggregated by demographic categories, and pass/fail rates.

E9. Certifications are effective for a limited time period, at which time an individual must re-certify. Re-certification policies should be clearly communicated to stakeholders at the time of the initial application.

Criteria Related to Security and Protection

E10. The certification program incorporates an appeals process that provides fair and legal methods for challenging decisions on certification status and assessment results. The appeals policies and procedures are readily accessible to all stakeholders.

E11. The certification program maintains a registry of certified individuals and utilizes a formal process to provide confirmation of an individual's current certification status. Specific policies are required describing the confidentiality of assessment results and rules/conditions for access to this information. Unless required by law or regulation, information regarding candidates or certificants (other than certification status) shall not be disclosed to third parties without the written consent of the individual.

E12. Certification is awarded only to individuals who have successfully completed the required assessment(s).

E13. A security policy is established, documented, and monitored by the certifying organization. Security policies should include, but not be limited to: (1) Criteria for the selection, training, utilization, monitoring, and performance of proctors, assessors, raters and other individuals involved in administering and scoring; (2) access to item banks and various computer-based and non-computer based forms of the assessment; and (3) requirements for formal investigations of suspected misconduct in assessment centers.

V. Request for and Resolution of Comments

The National Skill Standards Board (NSSB) requests that comments submitted address one or more of the following areas:

- The adequacy and completeness of this list of criteria;
- The clarity of the criteria;
- Examples or descriptions of how the VPs can meet the criteria; and,
- Examples of how to document compliance with the criteria.

The NSSB shall review and take into consideration all comments; will respond in writing to comments as appropriate; and, will make revisions as deemed appropriate. At the end of the comment period the NSSB will post a summary of comments on the NSSB Website *http://www.nssb.org*. A summary of the response to comments and a notice of revision will be posted at a later date.

Signed at Washington DC on the 18th day of July, 2002.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 02–18567 Filed 7–22–02; 8:45 am]

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Federal Register

Tuesday,
July 23, 2002

Part V

Department of Housing and Urban Development

24 CFR Part 200

FHA Appraiser Watch Initiative; Advance Notice of Proposed Rulemaking; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4744–A–01]

RIN 2502–AH81

FHA Appraiser Watch Initiative; Advance Notice of Proposed Rulemaking

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Administration, HUD.

ACTION: Advance Notice of proposed rulemaking.

SUMMARY: This document requests comments on issues related to the implementation of the Federal Housing Administration (FHA) Appraiser Watch Initiative. Through the Appraiser Watch Initiative, HUD plans to establish and monitor a performance standard that appraisers must meet to maintain their status on the FHA Appraiser Roster (Roster). HUD is considering an approach modeled on FHA's Credit Watch Termination Initiative that would provide for an electronic, fully computerized Appraiser Watch monitoring system, and would permit an appraiser to be removed from the Roster if the rate of defaults and claims on closed mortgages linked to the appraiser exceeds a rate established by HUD.

DATES: Comment Due Date: September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Critical Role of Appraisers in FHA-Insured Home Loans

An appraisal is required for every property purchased with an FHA-insured mortgage. The purpose of an FHA appraisal is to determine the property's eligibility for mortgage insurance on the basis of its condition and location, and to estimate the value of the property for mortgage insurance purposes. As stated in a recent Congressional report, "With the high loan-to-value ratio of most FHA loans, an accurate appraisal is critical to minimizing HUD's insurance risk." (Minority Staff of the Permanent Subcommittee on Investigations of the Senate Comm. on Governmental Affairs, 107th Cong., 1st Sess., Property "Flipping": HUD's Failure to Curb Mortgage Fraud 56 (Committee Print 2001)). In recognition of the importance of an accurate appraisal, section 202(e)(1) of the National Housing Act requires FHA appraisals to be performed by "individuals who have demonstrated competence and whose professional conduct is subject to effective supervision." The purpose of this notice is to request comments on establishing a system that will enable FHA to remove poorly performing appraisers from the Roster on the basis of high default and claim rates on loans secured by the properties appraised by such appraisers. As discussed in greater detail in section E, of this notice, HUD is specifically requesting comments on a broad range of issues being considered before a proposed rule is issued. This oversight of appraisal performance will help address the concerns that have been raised about this critical segment of the FHA single family mortgage insurance programs.

B. The FHA Credit Watch Termination Initiative As a Model Approach for Appraisers

The Appraiser Watch Initiative would implement one of several new initiatives to protect FHA. Specifically, HUD proposes to establish an "Appraiser Watch" system, similar to the successful Credit Watch system for FHA lenders. The benefit of following an established system is that it provides for the application of a clear, familiar and consistent approach to these closely related segments of the FHA insurance process. Such an approach would prompt these segments to work more closely and cooperatively to fulfill responsibilities held in common, attain common goals, and avoid common pitfalls.

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (the Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. Some mortgagees, however, have demonstrated high default and claim rates on their FHA-insured portfolios that, although not signifying violations of FHA requirements, are nonetheless unacceptable. As a result, HUD developed the Credit Watch Termination Initiative to identify mortgagees with unsatisfactory performance levels and take ameliorative action at an early stage.

Under the FHA Credit Watch Termination Initiative, FHA systematically reviews mortgagees' early default and claim rates, that is, defaults and claims on mortgagees' loans during the initial 24 months following endorsement. In cases of severe performance deficiencies, HUD may terminate mortgagees' loan origination approval authority. The Termination of a mortgagee's Agreement is separate and apart from any action under 24 CFR part 25 taken by HUD's Mortgagee Review Board against mortgagees for violations of FHA requirements.

C. HUD's FHA Appraiser Roster

HUD has taken various steps to ensure the integrity of FHA appraisals. On June 1, 1998, HUD launched reforms of the FHA appraisal process through its Homebuyer Protection Plan. The purpose of these reforms is to ensure that a lender and FHA receive accurate and complete appraisals of homes. In keeping with these reforms, HUD has established regulatory placement and removal procedures for the Roster. These procedures are codified in subpart G of HUD's regulations at 24 CFR part 200.

HUD's Appraiser Roster lists those appraisers who are eligible to perform FHA single family appraisals. HUD established the Roster to provide a means by which HUD can monitor the quality of appraisers who perform appraisals on single family homes with FHA single family mortgage insurance and to ensure that appraisers performing appraisals meet high competency standards. The Roster is an important part of the FHA Single Family Mortgage Insurance program because accurate, competent and professional appraisals are vital to the success of the program and HUD's ability to protect the FHA Insurance Fund.

D. Appraiser Watch Initiative

HUD is soliciting comments on using a performance-based Appraiser Watch Initiative similar to the successful Credit Watch system described above for FHA lenders. The Appraiser Watch system would rate appraisers on the performance of loans secured by properties they appraised. Appraisers who are associated with excessive default and claim rates are subject to notification of proposed removal from the Roster within 60 days. Just as a consistently higher level of poor underwriting is reasonably expected to be linked to a consistently higher level of defaults, a consistently higher level of poor appraisals may be associated with a consistently higher level of defaults, regardless of the quality of the underwriting. This is because the appraisal is a key component of the underwriting process, and when this key component is inadequate, the rest of the process is adversely affected from the onset, increasing the probability of default and claims. While poor underwriting practices also increase the probability of defaults and claims, it is reasonable to conclude that at some point, a high enough rate of defaults and claims on loans secured by properties appraised by an appraiser is indicative of inadequate performance.

Under a rule similar to Credit Watch, an appraiser may be subject to removal from the Roster if the rate of defaults and claims on closed mortgages secured by properties with appraisals performed by the appraiser exceeds the normal rate in the area of a HUD field office by a specified amount, and exceeds the national default and claim rate for closed mortgages. In the case of Credit Watch, lenders are subject to removal if the rate exceeds 200 percent of the normal rate in the field office area. Such an objective, performance-based standard allows for the most efficient use of HUD's limited resources to conduct across-the-board monitoring of appraisers.

Upon receiving notification of proposed removal under Appraiser Watch, an appraiser may request an informal conference to present HUD with relevant reasons and factors, including factors beyond the appraiser's control, that may have contributed to the excessive default and claim rates. HUD may withdraw the removal notice based upon the informal conference.

Consistent with the goals of the Administration regarding the increased use of technology in government, the Appraiser Watch system being considered would allow for electronic monitoring. HUD's electronic Neighborhood Watch system, available via the FHA Connection, would be used for this purpose. Specifically, HUD would, on an ongoing basis, review the FHA mortgage default and claim rate on loans secured by properties appraised by an appraiser in the geographic region served by a HUD field office and according to the type of appraisal conducted (i.e., single family, or 2- to 4-unit, or rehabilitation). An appraiser's performance would be determined relative to the performance of other appraisers in the same geographic area conducting the same type of appraisal over the same period of time. HUD would make this information available to appraisers and the public on an ongoing basis through the Neighborhood Watch system.

To keep the public informed of the status of appraisers, HUD believes it is appropriate for any system that is adopted to provide for publication of the names of appraisers removed from the Roster pursuant to Appraisal Watch. Further, to prevent delays and disruptions in any transactions already in progress, HUD believes the appraiser should be permitted to complete any appraisal already contracted for, but not be permitted to take on any additional appraisals as of the date of removal from the Roster. Appraisers should also be permitted to apply for reinstatement. Appraiser watch is proposed to be a procedure separate and apart from the Appraiser Roster Placement and Removal procedures contained in 24 CFR part 200 subpart G. Any rule promulgated as a result of this ANPR would clearly provide that Appraiser Watch removal is in addition to and independent from any other remedies and actions available to HUD under applicable law.

E. Additional Considerations and Request for Comments

HUD seeks to establish a clear, consistent and familiar standard and procedure for an appraiser to maintain status on, or be removed from, the Roster. Because it is HUD's goal to promulgate a rule that will promote, in a fair, reasonable, and efficient manner, the highest standard of conduct and professionalism among FHA Appraisers, thereby minimizing the risk of loss to the FHA, HUD is requesting public comment on all aspects of promoting and maintaining the excellence and integrity of appraisers listed on the Roster. In particular, HUD requests comments on the following issues:

1. Whether HUD should establish a minimum number of appraisals as a threshold for any action, and if so, what number would be appropriate.

2. Whether HUD should specify the age of loans secured by appraised properties that would be considered under a standard, and what loan age would be appropriate (e.g., appraisals for loans not more than one, two or three years old, measured from the time of origination).

3. Whether a higher or lower rate than the 200 percent used in Credit Watch would provide an adequate measure of appraiser performance and level of protection for FHA.

4. What period of time over which appraisals are conducted should be used for evaluation purposes (e.g., performance over 12 months, or 18 months, or 24 months)?

5. What factors in addition to the rate of loan defaults and FHA insurance claims should HUD consider in evaluating appraiser performance?

6. Should the severity of loss be considered as a factor in evaluating an appraiser's performance?

7. If included as a factor, how should severity of loss be considered in evaluating performance?

8. What kinds of factors should be considered as mitigating for an appraiser with higher than normal default and claim rates (e.g., factors beyond the appraiser's control)?

9. How much time should be provided for an appraiser to request an informal conference after receiving notification of proposed removal (e.g., 15, 30, or 45 days)?

10. What is an appropriate period of removal from the roster before a reinstatement is permitted?

11. What are appropriate procedures and factors to consider for reinstatement?

Dated: July 17, 2002.

Sean Cassidy,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–18672 Filed 7–22–02; 11:25 am]

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Federal Register

Tuesday,
July 23, 2002

Part VI

Department of the Treasury

31 CFR Part 103
Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts; Final Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA29

Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim final rule.

SUMMARY: Treasury and FinCEN are issuing an interim final rule temporarily deferring for certain financial institutions (as defined in the Bank Secrecy Act) the application of the requirements contained in section 5318(i) of title 31, United States Code, added by section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001 (the Act). Section 5318(i) requires U.S. financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts that U.S. financial institutions establish or maintain for non-U.S. persons. Section 312 takes effect on July 23, 2002, whether or not Treasury has issued a final rule implementing that provision. Additionally, this interim final rule provides guidance, pending issuance of a final rule, to those financial institutions for which compliance with section 5318(i) has not been deferred.

DATES: This interim final rule is effective July 23, 2002. Written comments may be submitted on or before August 22, 2002.

ADDRESSES: Submit comments (preferably an original and four copies) to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 312 Interim Regulations. Comments may also be submitted by electronic mail to *regcomments@fincen.treas.gov* with the caption in the body of the text, "Attention: Section 312 Interim Regulations." Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480; the Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Chief Counsel (FinCEN), (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Treasury and FinCEN are exercising the authority under 31 U.S.C. 5318(a)(6) to temporarily defer the application of 31 U.S.C. 5318(i) to certain financial institutions pending issuance by Treasury and FinCEN of a final rule outlining the scope of coverage, duties, and obligations under that provision. Additionally, for those financial institutions for which compliance with section 5318(i) has not been deferred entirely, interim guidance is provided for compliance with the statute pending issuance of a final rule. Although this interim final rule and the guidance contained herein may be relied upon by financial institutions until superseded by a final regulation or subsequent guidance, no inference may be drawn from this rule concerning the scope and substance of the final regulation that Treasury will issue concerning section 5318(i).

I. Background

Section 312 of the Act adds new subsection (i) to 31 U.S.C. 5318, the Bank Secrecy Act (BSA). This provision requires each U.S. financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-U.S. person to take certain anti-money laundering measures with respect to such accounts. In particular, financial institutions must establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures and controls that are reasonably designed to enable the financial institution to detect and report instances of money laundering through those accounts.

In addition to this general requirement, which applies to all correspondent and private banking accounts for non-U.S. persons, section 312 of the Act specifies additional standards for correspondent accounts maintained for certain foreign banks. For a correspondent account maintained for a foreign bank operating under an offshore license or a license granted by a jurisdiction designated as being of concern for money laundering, a financial institution must take reasonable steps to identify the owners of the foreign bank, to conduct enhanced scrutiny of the correspondent account to guard against money laundering, and to ascertain whether the foreign bank provides correspondent accounts to other foreign banks and, if so, to conduct appropriate related due diligence.

Section 312 also sets forth minimum standards for the due diligence requirements for a private banking account for a non-U.S. person. Specifically, a financial institution must take reasonable steps to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, the private banking account, as necessary to guard against money laundering. The institution must also conduct enhanced scrutiny of private banking accounts requested or maintained by or on behalf of senior foreign political figures (or their family members or close associates). Enhanced scrutiny must be reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

Section 312(b)(2) provides that subsection 5318(i) takes effect on July 23, 2002, regardless of whether Treasury has issued a final rule by that date. Furthermore, it indicates that subsection 5318(i) applies to all accounts, regardless of when they were opened.

1. The Proposed Rule

On May 30, 2002, Treasury and FinCEN published in the **Federal Register** a proposed rule implementing section 312. See 67 FR 37,736 (May 30, 2002). In that proposed rule, Treasury sought to take the broad statutory mandate of section 312 and translate it into specific regulatory directives for financial institutions to apply. Like the statute itself, the rule proposed by Treasury is far reaching, seeking to require a wide range of U.S. financial institutions [1] to apply due diligence and enhanced due diligence procedures to a diverse array of foreign financial institutions [2] that maintain "correspondent accounts" or "private

[1] Treasury proposed that the following financial institutions would be covered by the regulation: An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); a commercial bank; an agency or branch of a foreign bank in the United States; a federally insured credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered, or required to register, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant registered, or required to register, under, and an introducing broker as defined in § 1a23 of, the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); a casino (as defined in § 103.11(n)(5)); a mutual fund (as defined in § 103.130); a money services business (as defined in § 103.11(uu)); and an operator of a credit card system (as defined in § 103.135).

[2] Foreign financial institutions include foreign banks and any other foreign person that, if organized in the United States, would be required to establish an anti-money laundering program pursuant to §§ 103.120 through 103.169 of this part.

banking accounts" in the U.S. The proposed rule sets forth a series of due diligence procedures that financial institutions covered by the rule may, and in many cases must, apply to correspondent accounts and private banking accounts. Because section 5318(i) takes effect on July 23, 2002, regardless of whether Treasury has issued a final implementing regulation, Treasury imposed a 30-day period in which public comments on the proposed rule would be accepted.

2. The Final Rule

A final rule implementing section 312 cannot reasonably be completed by the statutory effective date of July 23, 2002. Without question, the proposed rule implementing section 312 is the furthest reaching proposed regulation issued under Title III of the Act thus far. The requirements placed on financial institutions under this provision are significant, and commenters have raised substantial and important concerns about the scope of the regulation as well as the major definitions applicable to this section. For example, commenters consistently noted that the definitions of "correspondent account," "covered financial institution," and "foreign financial institution," were overly broad and difficult to implement. Likewise, commenters expressed concerns regarding the definition of "senior foreign political figure." Moreover, the statute does not define many important terms with respect to financial institutions other than banks, leaving the task for Treasury and FinCEN. Additional time is necessary to consider carefully these definitions and the text of the proposed rule in light of comments received to determine whether these terms should be further defined with respect to each financial institution.

Treasury anticipates issuing a final rule no later than October 25, 2002.

3. Deferral of Application to Certain Financial Institutions

Although section 312 is self-executing, in the absence of a final rule, many classes of financial institutions, in particular, non-bank financial institutions, would not have clear notice of, or guidance regarding, their compliance obligations. More pointedly, without regulations defining key terms for financial institutions other than banks, these financial institutions would not have sufficient guidance to comply with all facets of section 312. This situation necessarily stems from the fact that the statute seeks to cover a diverse universe of financial institutions and seeks to address a multitude of issues arising from the panoply of financial relationships that can exist with various foreign financial institutions. Treasury's role in this process is to draft a regulation, after obtaining public comment, that provides clear and unequivocal direction to financial institutions covered by the provision. Without clarifying appropriate terms for the various industries, enforcement of section 5318(i) against the full range of financial institutions proposed to be covered by section 312 will be difficult. Therefore, deferral is necessary and appropriate.

Nor would it be appropriate for Treasury to insist on compliance with the terms of the proposed rule pending the completion of a final rule. We are still reviewing and analyzing the comments received and formulating the terms and scope of the final rule. Were Treasury to require strict compliance with the proposed rule, not only would it undermine the administrative process, but also it might require financial institutions to incur substantial costs to comply with provisions of the proposed rule that may be altered or eliminated.[3] Without suggesting that such changes will be made, such a result is untenable.

Accordingly, invoking the authority under section 5318(a)(6) of the BSA, this interim final rule defers the application of all provisions of section 5318(i) to financial institutions other than banks, securities brokers and dealers, futures commission merchants, and introducing brokers.[4] Banks must comply with all provisions of section 5318(i). Securities brokers and dealers, futures commission merchants, and introducing brokers must comply with the provisions of section 5318(i) relating to due diligence and enhanced due diligence for "private banking accounts," but they are exempted from provisions related to correspondent accounts. The reason for this distinction is a practical one-the Act does not define a "correspondent account" for financial institutions other than banks, and Treasury needs time to consider whether the definition in the proposed rule is appropriate. In contrast, the definition of a private banking account in section 5318(i) is not limited to banks and is both applicable and commonly understood with the securities and futures industries. Moreover, to the extent these financial institutions offer this type of account, the risks of money laundering are similar to the risks posed by banks offering such accounts. As a result, they will be required to comply with the provisions of section 5318(i) regarding private banking accounts pending Treasury's issuance of a final rule, consistent with the guidance set forth below.

In summary:

- Banks must comply with section 5318(i) pending Treasury's issuance of a final rule. For the purposes of this interim final rule, these include: An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));[5] a commercial bank; an agency or branch of a foreign bank in the United States; a federally insured credit union; a thrift institution; and a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).[6]
- Securities brokers and dealers registered, or required to register, with the Securities and Exchange Commission (SEC), and futures commission merchants and introducing brokers registered, or required to register, with the Commodity Futures Trading Commission (CFTC) must comply with provisions relating to private banking accounts, but their compliance with the remaining provisions of section 5318(i) is deferred.
- Financial institutions subject to deferment of all obligations under section 5318(i) include: Casinos; money services businesses; mutual funds; operators of credit card systems; and all remaining financial institutions defined in the BSA that are not banks, securities brokers and dealers, futures commission merchants, or introducing brokers.[7]

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[3] *Cf. CFTC* v. *Schor*, 478 U.S. 833, 845 (1986) (noting the important distinction between ■ proposed rule and a final rule drafted based on ■ review of public comment).

[4] "Introducing brokers" refers to those registered, or required to register, with the Commodity Futures Trading Commission.

[5] This group of covered entities was drawn from the list of "covered financial institutions" in the proposed rule. Treasury is evaluating whether to add uninsured national trust banks to this list at the final rule stage as these entities are currently required to have anti-money laundering programs. See 12 CFR 21.21. Treasury also will consider whether non-federally regulated, state chartered, uninsured trust companies and trust banks, and non-federally insured credit unions should be added to the list to the extent that they maintain correspondent or private banking accounts for non-U.S. persons.

[6] For purposes of complying with section 5318(i) pending Treasury's issuance of a final rule, foreign branches of insured banks are deemed to be foreign banks rather than covered financial institutions.

[7] The remaining financial institutions include: dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers; trust companies; state chartered credit unions that are not federally regulated; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; investment companies; commodity pool operators; and commodity trading advisors.

II. Compliance Obligations Pending Publication of the Final Rule

Under the Act, Treasury is authorized to interpret and administer section 312. This interim final rule provides guidance to those financial institutions for which the application of section 5318(i) has not been deferred. Pending issuance of a final rule, Treasury expects compliance with section 5318(i) as set forth below. Treasury does not expect compliance with the terms and conditions of the proposed rule except to the extent they coincide with the express requirements of the statute. However, the interim compliance measures set forth in this guidance should not be construed as an indication of the obligations that will be imposed by the final rule.

1. Due Diligence for Correspondent Accounts—Banks Only

With respect to correspondent accounts, section 5318(i)(1) requires U.S. financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts established, maintained, administered, or managed in the United States for a foreign financial institution. In the interim period before the issuance of a final rule, a due diligence program under section 5318(i)(1) will be reasonable in Treasury's view if it focuses compliance efforts on the correspondent accounts that pose a high risk of money laundering based on an overall assessment of the money laundering risks posed by the foreign correspondent institution. It is the expectation of Treasury that a bank will accord priority to conducting due diligence on high-risk foreign banks for which it maintains correspondent deposit accounts or their equivalents, and will focus foremost on correspondent accounts used to provide services to third parties. Treasury also expects banks to give priority to conducting due diligence on high-risk correspondent accounts maintained for foreign financial institutions other than foreign banks, such as money transmitters. In all cases, Treasury expects that a bank will accord priority in applying due diligence to accounts opened on or after July 23, 2002.

Treasury acknowledges that, as a practical matter, banks will be unable to craft and implement final comprehensive due diligence policies and procedures pursuant to the dictates of section 5318(i)(1) until Treasury issues a final rule. However, in the interim, a reasonable due diligence policy, in Treasury's view, is one that comports with existing best practices standards for banks that maintain correspondent accounts for foreign banks,[8] and evidences good faith efforts to incorporate due diligence procedures for correspondent accounts maintained for foreign financial institutions posing an increased risk of money laundering.

2. Enhanced Due Diligence for High Risk Foreign Banks—Banks Only

Section 5318(i)(2) requires U.S. financial institutions to establish enhanced due diligence policies and procedures applicable when opening or maintaining a correspondent account in the United States for certain foreign banks designated as high risk. Sections 5318(i)(2)(B)(i) through (iii) further specify requirements that must be incorporated into a financial institution's enhanced due diligence policies and procedures.

An enhanced due diligence program will be reasonable under section 5318(i)(2)(B), in Treasury's view, if first, it comports with existing best practice standards for banks that maintain correspondent accounts for foreign banks.[9] Second, the program must also focus enhanced due diligence measures on those correspondent accounts that are maintained by a foreign correspondent bank deemed high risk by section 5318(i)(2)(A) posing a particularly high risk of money laundering based on the bank's overall assessment of the risk posed by the foreign correspondent bank. As with the previous provision, it is the expectation of Treasury that a bank will accord priority in applying enhanced due diligence to accounts opened on or after July 23, 2002.

Within these priorities, as required by the statute, banks must take reasonable steps to comply with directives described in sections 5318(i)(2)(B)(i) through (iii). For purposes of section 5318(i)(2)(B)(i), an owner is deemed to be any person who directly or indirectly owns, controls, or has voting power over 5 percent or more of any class of securities of a foreign bank, the shares of which are not publicly traded.

3. Due Diligence for Private Banking Accounts—Banks, Securities Brokers and Dealers, Futures Commission Merchants, and Introducing Brokers

Sections 5318(i)(1) and (3) set forth due diligence requirements for U.S. financial institutions that maintain private banking accounts in the United States for non-U.S. persons.[10] Under the Act, a private banking account is an account (or any combination of accounts) that requires minimum aggregate deposits of at least $1 million, that is established for one or more individuals, and that is assigned to or administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as liaison between the financial institution and the direct or beneficial owner of the account. Section 5318(i)(3)(A) requires financial institutions, as needed to guard against money laundering, to take reasonable steps to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, the account. Additionally, the statute requires enhanced scrutiny of private banking accounts maintained by or on behalf of senior foreign political figures, an immediate family member, or close associate, to guard against laundering the proceeds of foreign corruption.

As with the requirements for correspondent accounts, a private banking due diligence program under sections 5318(i)(1) and (3) must be reasonably designed to detect and report money laundering and the existence of the proceeds of foreign corruption. Treasury believes that a due diligence private banking program would be reasonable, pending adoption of final regulations to implement section 5318(i), if the program is focused on those private banking accounts that present a high risk of money laundering. A program that is consistent with applicable government guidance on private banking accounts, such as the guidance on sound practices for private banking issued by the Federal Reserve (SR 97–19 (SUP) "Private Banking Activities" (June 30, 1997) at *www.federalreserve.gov*) and the guidance on enhanced scrutiny for transactions that may involve the proceeds of foreign corruption issued jointly by Treasury, the bank regulators, and the State Department in January 2001 (at *http://www.treas.gov/press/releases/docs/guidance.htm*) would be reasonable, so long as it incorporates the

[8] *See, e.g.*, New York Clearing House Association, L.L.C., "Guidelines for Counter Money Laundering Policies and Procedures in Correspondent Banking," (March 2002) at *www.nych.org;* Basel Committee on Banking Supervision, "Customer Due Diligence for Banks" (October 2001) at *www.bis.org.* A due diligence program that does not adopt all of the best practices and standards described in industry and other available guidance also could be considered reasonable if there is a justifiable basis for not adopting a particular best practice or standard, based on the particular type of accounts held by the institution.

[9] *See supra* note 7.

[10] For purposes of this interim final rule, a non-U.S. person means an individual who is neither a United States citizen nor a lawful permanent resident as defined in 26 U.S.C. 7701(b)(6).

requirements of section 5318(i)(3).[11] Treasury expects that an institution will accord priority in applying enhanced due diligence to accounts opened on or after July 23, 2002.

III. Analysis of the Interim Final Rule

A. Banks, Savings Associations, and Credit Unions—Section 103.181

The following financial institutions are not subject to the deferral contained in this interim final rule and must take steps, in light of the guidance provided above, to comply with the requirements of section 5318(i) pending issuance of a final implementing regulation: An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); a commercial bank; an agency or branch of a foreign bank in the United States; a federally insured credit union; a thrift institution; and a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

B. Securities Brokers and Dealers, Futures Commission Merchants, and Introducing Brokers—Section 103.182

Securities brokers and dealers registered, or required to register, with the SEC, and futures commission merchants and introducing brokers registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) are subject to the requirements of section 5318(i) relating to due diligence and enhanced due diligence relating to private banking accounts. They must take steps, in light of the guidance provided above, to comply with the requirements of section 5318(i) relating to private banking accounts pending issuance of a final implementing regulation. Treasury and FinCEN are exercising the authority under BSA section 5318(a)(6) to temporarily defer the application of all other requirements contained in section 5318(i) for securities brokers and dealers, futures commission merchants, and introducing brokers.

C. All Other BSA Financial Institutions—Section 103.183

Treasury and FinCEN are exercising the authority under BSA section 5318(a)(6) to temporarily defer the application of all requirements contained in section 5318(i) for all other financial institutions. This temporary deferment applies to casinos; money services businesses; mutual funds; operators of credit card systems; dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers;[12] trust companies; state chartered credit unions that are not federally insured; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; investment companies; commodity pool operators; and commodity trading advisors.

This temporary deferral does not in any way relieve any financial institution from compliance with the existing anti-money laundering and anti-terrorism requirements imposed by law, regulation, or rule of a self-regulatory organization. Quite to the contrary, the obligations contemplated by section 312 will serve to augment and improve the existing anti-money laundering activities of financial institutions. To that end, Treasury and FinCEN expect financial institutions proposed to be subject to the regulation implementing section 312 to begin immediately the process of evaluating their due diligence procedures when correspondent accounts or private banking accounts are opened or maintained on behalf of non-U.S. persons.

IV. Administrative Procedure Act

The provisions of 31 U.S.C. 5318(i), requiring due diligence programs for certain foreign accounts, become effective July 23, 2002. This interim rule exempts certain financial institutions from these requirements and provides interim compliance guidance for those financial institutions not exempted. Accordingly, good cause is found to dispense with notice and public procedure as unnecessary and contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B), and to make the provisions of the interim rule effective in less than 30 days pursuant to 5 U.S.C. 553(d)(1) and (3).

V. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

VI. Executive Order 12866

This interim final rule is not a "significant regulatory action" as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Banks, Banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. Add new undesignated centerheading "Anti-Money Laundering Programs" to subpart I immediately before § 103.120.

3. Add new undesignated centerheading and §§ 103.181 through 103.183 to subpart I to read as follows:

Special Due Diligence for Correspondent Accounts and Private Banking Accounts

Sec.

103.181 Special due diligence programs for banks, savings associations, and credit unions.
103.182 Special due diligence programs for securities brokers and dealers, futures commission merchants, and introducing brokers.
103.183 Deferred due diligence programs for other financial institutions.

Special Due Diligence for Correspondent Accounts and Private Banking Accounts

§ 103.181 Special due diligence programs for banks, savings associations, and credit unions.

The requirements of 31 U.S.C. 5318(i) shall apply, effective July 23, 2002, to a financial institution that is:

(a) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(b) A commercial bank;

(c) An agency or branch of a foreign bank in the United States;

(d) A federally insured credit union;

(e) A thrift institution; or

(f) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

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[11] *See also*, Wolfsberg Group, "Global Anti-Money-Laundering Guidelines for Private Banking: Wolfsberg AML Principles" (1st Revision May 2002) at *www.wolfsberg-principles.com*. A program that does not follow all of the best practices outlined in this government guidance would be reasonable if there is a justifiable basis, based on the particular circumstances of the institution involved, for not following these practices.

[12] A private banker under the BSA refers to state chartered banking entities that are not organized as a corporation. Generally, such entities are organized as partnerships. A private banker does not refer to those who offer private banking accounts.

§ 103.182 Special due diligence programs for securities brokers and dealers, futures commission merchants, and introducing brokers.

(a) *Private banking accounts.* The requirements of 31 U.S.C. 5318(i) relating to due diligence and enhanced due diligence for private banking accounts shall apply, effective July 23, 2002, to a financial institution that is:

(1) A broker or dealer registered, or required to register, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(2) A futures commission merchant or introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

(b) *Correspondent accounts.* A financial institution described in paragraph (a) of this section is exempt from the requirements of 31 U.S.C. 5318(i) relating to due diligence and enhanced due diligence for certain correspondent accounts.

(c) *Other compliance obligations of financial institutions unaffected.* Nothing in this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the United States Code and this part.

§ 103.183 Deferred due diligence programs for other financial institutions.

(a) *Exempt financial institutions.* Except as provided in § 103.181 and § 103.182, a financial institution defined in 31 U.S.C. 5312(a)(2) and (c)(1) or § 103.11(n) is exempt from the requirements of 31 U.S.C. 5318(i).

(b) *Other compliance obligations of financial institutions unaffected.* Nothing in this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the United States Code and this part.

Dated: July 19, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

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To amend title 31 of the United States Code to increase the public debt limit. (June 28, 2002; 116 Stat. 734)

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Federal Register
Vol. 67, No. 142
Wednesday, July 24, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 636

RIN 0578–AA21

Wildlife Habitat Incentives Program

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The Farm Security and Rural Investment Act of 2002 amended the authority of the Secretary of Agriculture for the Wildlife Habitat Incentives Program (WHIP) to provide additional cost-share assistance to landowners who enter into an agreement to protect and restore plant and animal habitat for a term of at least 15 years. The current regulations for WHIP require cost-share agreements to be for a term of 5 to 10 years. This change will amend the program regulation to conform to the statutory language.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Roger L. Bensey at (202) 720–3534.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has determined that this final rule does not meet the criteria for a significant regulatory action as specified in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Natural Resources Conservation Service is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rule making with respect to the subject matter of this rule.

Paperwork Reduction Act

No recordkeeping or reporting burden is associated with this rule.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, NRCS assessed the affects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector, and therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion

The Wildlife Habitat Incentives Program (WHIP) was originally authorized under section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), 16 U.S.C. 3836a. WHIP provides cost-share assistance to landowners to develop wildlife habitat on upland, wetland, riparian, aquatic, and other areas. Section 387 did not specify the cost-share rate or the agreement length.

NRCS published its final rule to implement WHIP, 7 CFR part 636, on September 19, 1997 (62 FR 49358). Section 636.6 of the WHIP final rule specified that NRCS would offer to pay no more than 75 percent of the cost of establishing wildlife habitat development practices. Section 636.8 of the WHIP final rule specified that a WHIP cost-share agreement would be for a period of 5 to 10 years, unless a shorter period was recommended to address situations where wildlife habitat was threatened as a result of a disaster.

Section 2502 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act), Public Law 107–171, repealed the original WHIP statute and amended Title XII of the Food Security Act of 1985 to add a new section 1240N as the authority for WHIP. As amended, the Food Security Act authorizes NRCS to provide additional cost-share payments to protect and restore plant and animal habitat under an agreement or contract that has a term of at least 15 years.

This final rule reflects the new authority to provide additional cost-share assistance under agreements or contracts that have a term of at least 15 years. This change will conform the WHIP regulation with statutory authorization. No public comments are being solicited.

List of Subjects in 7 CFR Part 636

Administrative practice and procedure, Agriculture, Soil conservation, Wildlife.

Accordingly, 7 CFR part 636 is amended as follows:

PART 636—WILDLIFE HABITAT INCENTIVES PROGRAM

1. The authority citation for part 636 is revised to read as follows:

Authority: 16 U.S.C. 3839bb–1.

2. Section 636.8 is amended by adding a new paragraph (d) to read as follows:

§ 636.8 Cost-share agreements.

* * * * *

(d) Notwithstanding any limitation of this part, NRCS may enter into a cost-share agreement or contract that:

(1) Is for a term of at least 15 years;

(2) Protects and restores plant and animal habitat; and

(3) Provides cost-share payments in addition to amounts provided under § 636.6 of this part.

Signed in Washington, DC, on July 12, 2002.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 02–18657 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF JUSTICE

8 CFR Part 2

28 CFR Part 65

[INS No. 1924–98; AG Order No.2601–2002]

RIN 1115–AF20

Powers of the Attorney General to Authorize State or Local Law Enforcement Officers To Exercise Federal Immigration Enforcement Authority During a Mass Influx of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements section 103(a)(8) of the Immigration and Nationality Act (Act), which permits the Attorney General to authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise certain powers, privileges, or duties of officers or employees of the Immigration or Naturalization Service (INS or Service) during the period of a declared "mass influx of aliens."

This rule provides a cooperative process by which State or local governments can agree to place authorized State or local law enforcement officers under the direction of the INS in exercising Federal immigration enforcement authority whenever the Attorney General determines that such assistance is necessary during a declared mass influx of aliens. This rule allows the Commissioner of the INS to enter into advance written "contingency agreements" with State or local law enforcement officials to explain the terms and conditions (including the reimbursement of expenses) under which State or local law enforcement officers can exercise Federal immigration enforcement authority during a declared mass influx of aliens. The rule also ensures that appropriate notifications are made to Congress and the Administration.

Finally, this rule is necessary to ensure that the Service, in conjunction and coordination with State or local governments, can respond in an expeditious manner to urgent and quickly developing events during a declared mass influx of aliens to protect public safety, public health, and national security, while ensuring that performance of duties under this special authorization is cognizant of, and consistent with, constitutional and civil rights protections.

DATES: This final rule is effective August 23, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald W. Dodson, Supervisory Special Agent, Director, Evaluation and Support Branch, Headquarters Office of Investigations, Immigration and Naturalization Service, 425 I Street, NW, Room 1000, Washington, DC 20536, telephone (202) 514–2998.

SUPPLEMENTARY INFORMATION:

What Authority Does the Department of Justice Have to Publish this Regulation?

Section 372 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C., 110 Stat. 3009–646, amended section 103(a) of the Act, 8 U.S.C. 1103(a), to permit the Attorney General to authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by the Act or implementing regulations upon officers or employees of the Service during a period of a mass influx of aliens.

Under section 103(a)(8) of the Act, the Attorney General may authorize State or local law enforcement officers to perform such powers, privileges, or duties only if the Attorney General determines that "an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response." Under these regulations, the Attorney General will be authorized to consider factors described in the definitions of "immigration emergency" and "other circumstances" contained in 28 CFR 65.81 when determining whether a mass influx of aliens is imminent or occurring. As described in 28 CFR 65.81, the phrase "immigration emergency" means

> an actual or imminent influx of aliens which either is of such magnitude or exhibits such other characteristics that effective administration of the immigration laws of the United States is beyond the existing capabilities of the [INS] in the affected area or areas. Characteristics of an influx of aliens, other than magnitude, which may be considered in determining whether an immigration emergency exists include: the likelihood of continued growth in the magnitude of the influx; an apparent connection between the influx and increases in criminal activity; the actual or imminent imposition of unusual and overwhelming demands on law enforcement agencies; and other similar characteristics.

Finally, the phrase "other circumstances" means "a situation that, as determined by the Attorney General, requires the resources of a State or local government to ensure the proper administration of the immigration laws of the United States or to meet urgent demands arising from the presence of aliens in a State or local government's jurisdiction."

In declaring that a mass influx of aliens is imminent or occurring, the Attorney General will define the boundaries of the geographic area where the declared mass influx of aliens is imminent or occurring. The Commissioner of the INS is authorized to amend and redefine these boundaries to expand or decrease them, as necessary, based on evolving developments. This authority shall not be further delegated. The Attorney General will also define the time periods that denote the beginning and the end of the declared mass influx of aliens. The authority of State or local law enforcement officers to enforce immigration laws under section 103(a)(8) of the Act can be exercised only during a mass influx of aliens, as determined and declared by the Attorney General. State or local law enforcement officers authorized to exercise immigration law enforcement authorities for transporting or guarding aliens in custody may exercise such authorities as necessary beyond the defined geographic boundaries where the declared mass influx of aliens is imminent or occurring. Apart from this exception, State or local law enforcement officers authorized to enforce immigration laws pursuant to section 103(a)(8) of the Act can exercise that authority only within the defined geographic boundaries where the mass influx of aliens has been declared. In all circumstances, State or local officers may exercise authority pursuant to section 103(a)(8) of the Act only during the time period prescribed by the Attorney General.

The implementation of this final rule will facilitate an expeditious and coordinated response during a mass influx of aliens by enabling the Attorney General to draw upon the voluntary assistance of State or local law enforcement resources to meet urgent and quickly developing demands.

A proposed rule with request for comments was published by the Department of Justice in the **Federal Register** on April 8, 1999. 64 FR 17128. The Service received a total of eighteen comments, all of which were considered in the formulation of this final rule. Comments were received from the Office of the Governor of the State of

Florida, the Florida Department of Law Enforcement, law enforcement organizations in the State of Florida representing Florida sheriffs and chiefs of police, and from non-governmental organizations. Of the total, four commenters expressed support for the regulation and fourteen commenters opposed the rule.

What Were the Comments and What Changes Are Being Made in This Final Rule?

Of the fourteen commenters opposing the regulation, nine commenters opposed State or local law enforcement officers exercising Federal immigration enforcement authority under any circumstances. All the opposing comments expressed concern that authorizing State or local law enforcement officers to exercise Federal immigration enforcement authority would result in civil rights violations and racial profiling by State or local police. The majority of opposing comments also expressed concern that the authorization of State or local law enforcement officers to exercise Federal immigration enforcement authority would undermine public safety by interfering with the normal duties of police in serving and protecting the community at large.

Authorization: Scope and Geographic Area

The commenters opposing the regulation generally based their concerns on the premise that the Attorney General would authorize state or local law enforcement officers to exercise Federal immigration enforcement authority during a declared mass influx of aliens in a large geographic area, thereby creating a greater likelihood for racial profiling. Moreover, commenters were concerned that a conflict in police functions would be created that would be counter to the purpose and intent of neighborhood and community policing. Commenters also were concerned that State and local law enforcement officers would use their authority under section 103(a)(8) of the Act to further particular State and local interests, such as gathering information or evidence relating to a State offense.

The Service recognizes and appreciates these concerns, but notes that pursuant to the provisions of section 103(a)(8) of the Act, the Attorney General will authorize State or local law enforcement officers to exercise Federal immigration enforcement authority only during a declared mass influx of aliens, the determination of which will be based on the factors set forth in the definitions of the terms "assistance," "immigration emergency," and "other circumstances" as defined in 28 CFR 65.81. The Attorney General will authorize the exercise of only those immigration law enforcement authorities that are essential to meeting the demands imposed by the situation.

In an "immigration emergency," local Service resources are inadequate to meet the immediate threat to public safety, public health, and national security. Immediate response and immigration law enforcement under such circumstances would be essential. It must be presumed that many of the first officials responding to events in such an urgent and quickly developing situation would be State or local law enforcement officers. They must be provided with the necessary authority to provide effective assistance to Federal authorities to contain and control the situation. In these circumstances, the assistance of State or local law enforcement officers would be essential to protect public safety, public health, and national security.

The regulation does not abridge or abrogate constitutional or civil rights protections. The Service believes that sufficient additional safeguards to protect civil rights have been incorporated in the regulation, and that these safeguards will be further strengthened through supplemental policy and procedures. These safeguards include defining the boundaries and duration of the event, thus limiting the geographic area and time period when State and local law enforcement officers would exercise Federal immigration law enforcement authority. The regulation requires Service training and certification for State or local officers who would exercise immigration law enforcement authorities. The Attorney General will authorize the exercise of only those authorities that are essential to meet the demands imposed by the emergent event. The regulation also requires that State or local law enforcement officers exercising Federal immigration law enforcement authorities adhere to applicable Service policies and standards. The regulation also requires that a contingency agreement between the Service and State or local law enforcement agencies include a statement that the exercise of Federal immigration law enforcement authority will not abrogate or abridge constitutional or civil rights protections. Further, the rule requires a complaint reporting and resolution procedure to be in place and a mechanism to record and monitor complaints of misconduct or wrongdoing by State or local officers in the exercise of Federal immigration law enforcement authority.

Contingency agreements with State or local police agencies that voluntarily agree to assist during a declared mass influx of aliens will detail any authority to enforce immigration laws that State or local law enforcement officers will exercise pursuant to section 103(a)(8) of the Act. State or local law enforcement officers will not be authorized to enforce immigration laws pursuant to section 103(a)(8) of the Act during a declared mass influx of aliens without completing a required training program as required by the regulation.

Preliminary contingency agreements between the Service and several State or local law enforcement agencies in the State of Florida have been developed in order to be in place prior to the authorization of immigration law enforcement in the event a mass influx of aliens is declared. Plans call for the Service to develop and provide training to State or local law enforcement officers who would exercise Federal immigration law enforcement authority during such an event. The Service will oversee and coordinate all immigration law enforcement activities during a declared mass influx of aliens.

The regulation has been modified to provide the Attorney General with the sole authority and responsibility, when declaring a mass influx of aliens, to define the initial geographic boundaries where the mass influx of aliens is imminent or occurring. The regulation will authorize the INS Commissioner subsequently to amend and redefine the boundaries to expand or decrease them as necessary based on evolving developments in the event. The authority to determine and define the boundaries of a mass influx of aliens may not be further delegated. This regulatory scheme will limit the geographic area in which designated State or local law enforcement officers would be authorized to perform the functions of immigration officers.

The regulation has been modified to require the Attorney General to determine when a mass influx of aliens event has concluded, at which point the authorization of State and local law enforcement officers to enforce immigration law under the provisions of section 103(a)(8) of the Act would cease.

Potential for Racial Profiling

The majority of the commenters opposing the implementation of the regulation expressed serious concern that the proposed rule would exacerbate racial profiling. To support these reservations, the commenters cited and quoted several reports and news media

articles. A number of the commenters pointed out that the proposed rule indicated bias by indicating that the authority to exercise Federal immigration law enforcement authority would be limited to State or local law enforcement agencies whose jurisdiction is along the southern land border or the coastline of South Florida, thus implying that a mass influx of aliens would be made up of Latino or Caribbean migrants.

Several aspects of the final rule address these concerns. The final rule has been modified to remove reference to the southern land border and the coastline of South Florida and to insert in place of those references the phrase, "aliens arriving off the coast or near a land border of the United States." During a declared mass influx of aliens, the Service would exercise oversight and control to focus the assisting State or local law enforcement resources on the essential immigration law enforcement activities necessary to contain and control the situation in the defined areas of such an event. Moreover, the potential for unwarranted stops based solely on ethnic appearance would be significantly reduced by the presence of other distinguishing factors consistent with the characteristics of the event.

Several comments dealt with training. Several commenters expressed concern that Service training of State or local law enforcement officers would be insufficient to erase biases or to address the likelihood that police would end up stopping those people who look like members of the group entering or about to enter the United States during a declared mass influx of aliens. Also, given the complex and changing nature of immigration law, concern was expressed that adequate training could not be provided to State or local law enforcement officers to enable them properly to exercise Federal immigration enforcement authority. Concern also was expressed that a significant amount of time could pass between the initial training the Service would provide to State or local law enforcement officers and the time the authorization to exercise Federal immigration authority would occur. Therefore, at the time when they would be expected to apply their knowledge of immigration law, State or local law enforcement officers might not be able to recall crucial elements required for effective enforcement. One commenter recommended that the State or local law enforcement officers who may be called upon to exercise Federal immigration enforcement authority during a mass influx of aliens be required to undergo thorough retraining on a regular basis. One of the comments noted:

> In addition, local law enforcement officers should also be trained to distinguish between situations when they are acting to enforce the INA (Immigration and Nationality Act) and when they are not. Special attention should be paid to this difference so that officers do not abuse their powers and claim to be engaging in immigration enforcement activity that is really a pretext for criminal enforcement activities.

The training concerns and recommendations presented in these comments are noted. The Service agrees that training for State or local law enforcement officers who may be called upon to exercise Federal immigration enforcement authority during a mass influx of aliens is a critically important matter. State or local law enforcement officers cannot perform any functions of a Service officer or employee pursuant to section 103(a)(8) of the Act and under the provisions of this rule until they successfully complete training prescribed by the Service and become certified in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues. Recognizing that a significant amount of time could pass between initial training and certification and the time when authorization to enforce immigration laws occurs, the Service also will develop a means to provide appropriate refresher training. The Service believes that it is important to mandate the general requirement for training in the regulation, but that the details of how the training will be developed and provided should be addressed through internal policy. The Service will do its utmost to ensure that the training developed and provided meets the essential and critical requirements for sufficiency and timeliness.

One commenter suggested that in addition to training to prevent constitutional and civil rights violations, the regulation should also require that an entity be established to monitor the exercise of Federal immigration enforcement authority by State or local law enforcement officials. The commenter expressed concern that the proposed regulation did not seem to contemplate the possibility that State or local law enforcement officers authorized pursuant to section 103(a)(8) of the Act to enforce immigration laws would engage in improper activity that might warrant discipline.

The Service agrees that a mechanism is needed to monitor the immigration law enforcement activities of State or local law enforcement officers conducted pursuant to section 103(a)(8) of the Act, but does not agree that an independent entity needs to be established to do so. The regulation has been modified to direct that a mechanism to monitor complaints and allegations regarding the immigration enforcement activities of State or local law enforcement officers pursuant to section 103(a)(8) of the Act be included in the contingency agreements implemented between participating State or local law enforcement agencies and the Service. There are existing publicized means for reporting complaints of wrongdoing or misconduct against State or local law enforcement officers. The Service believes that creating a separate entity to handle complaints and violations with respect to the exercise of authorized immigration law enforcement powers would be less effective and efficient than the procedures already established. However, because of the importance of this issue, this rule has been modified to require that a complaint reporting and resolution procedure for such allegations be included in the contingency agreement between the cooperating State or local department and the Service.

Definition of "Mass Influx of Aliens"

Several commenters opposing the rule expressed concern that the proposed rule was inherently vague in that it allowed the Attorney General to make the determination that a mass influx of aliens is imminent or occurring without precisely defining what constitutes a mass influx of aliens. Some of these commenters expressed the view that the vague nature of these provisions was problematic in that the discretionary power to determine whether the power should be exercised is in the hands of the same person who would exercise the power. They expressed concern that such discretionary power can become arbitrary when there are no limiting factors or guidelines that must be met before the authority can be legitimately triggered. The commenters noted that the notice of proposed rulemaking did not offer historical precedent as to whether a mass influx of aliens has occurred at any time in the past. The commenters also noted that there is no guidance to quantify how many incoming noncitizens need to be at the border or off the coast of the United States before the Attorney General of the United States can determine that a mass influx of aliens is imminent or occurring.

The Service notes that there have been a number of events during the past two decades that required the Federal

Government to adopt extraordinary measures beyond the capacity of the Service to meet the challenges posed by large groups of undocumented migrants either arriving or en route to the United States, Some of these past events originated in the Caribbean. More recently, significant numbers of undocumented migrants have been discovered bound for this country from China in the holds of cargo vessels. The intent of those directing some of these seagoing cargo vessels has been to run the vessel aground and force their human cargo to abandon ship. In at least one instance, such an event resulted in loss of life. There have been periods when a significant number of such cargo vessels carrying substantial numbers of undocumented migrants in their holds were identified. Again, extraordinary actions by the Federal Government beyond the capacity of the Service were required to deal with these events.

In all of these situations, the undocumented migrants were exposed to extreme hazards and life-threatening conditions. The belief that the Federal Government will not be able to respond and prevent such actions may bolster and encourage such brazen attempts by migrants to enter the United States illegally, with reckless and criminal disregard for human life and safety. The Federal Government must have the capability and the regulatory basis upon which to mobilize and coordinate with State or local law enforcement resources to respond to such events. In so doing, the coordinated efforts of Federal, State, and local governments can be combined to confront, manage, and possibly deter such reckless and illegal behavior by undocumented migrants and those criminal enterprises that seek to prosper unlawfully from them. Such illegal entries into the United States not only greatly endanger the lives of the undocumented migrants, but also endanger the safety, security, and well-being of the United States, affected communities, and the public at large. They cannot go unchecked.

The Service does not believe that it is necessary or appropriate to quantify the basis for the declaring of a mass influx of aliens by the Attorney General. There are several factors articulated in 28 CFR 65.81, specifically those noted in the definitions of "immigration emergency" and "other circumstances," that the Attorney General will consider in determining whether to declare a mass influx of aliens.

Some of the commenters opposed any rule that would authorize State and local law enforcement officers to exercise Federal immigration enforcement authority. The Service strongly disagrees with this viewpoint. The exercise of Federal law enforcement authority by State and local law enforcement officers is not unique to this rule. For example, the Department has deputized State and local law enforcement officers to assist them in enforcing federal law. Moreover, this final rule sets forth the guidelines under which the Attorney General can authorize State and local officers to exercise Federal immigration law enforcement authority during a mass influx of aliens and establishes appropriate limits on the exercise of such authority.

Coordinated Law Enforcement Response

Four sets of comments strongly supported the regulation. These comments came from the Office of the Governor of the State of Florida, the Florida Department of Law Enforcement, and from two law enforcement organizations in the State of Florida representing Florida sheriffs and chiefs of police, respectively. All of these commenters pointed out that the State of Florida has experienced a number of immigration-related crises over the years. They unanimously expressed the belief that the implementation of this rule would facilitate coordination between agencies to more effectively meet the challenges and demands that arise during such a mass influx event. These comments strongly advocated the position that safety and security of all parties are the paramount government interests during such an event. The commenters also recognized and supported the establishment of contingency agreements between the Service and State or local law enforcement agencies as an effective means to formalize the working relationships and expectations between the Service and State or local law enforcement agencies during a mass influx event.

The Service believes that these commenters reflected the essence of the statutory intent of section 103(a)(8) of the Act and the purpose of this regulatory action. The declaration of a "mass influx" of aliens by the Attorney General would signal an urgent and quickly developing event that requires a coordinated and effective response by the combined resources of the Federal Government and the State or local governments representing the communities that would be directly affected. During such an event, Service resources by themselves would be inadequate to meet the demands imposed by such a crisis. During such an occurrence, the Service would require the use of State or local law enforcement resources to augment available Service resources. Prior planning, appropriate authorizations, adequate training, organized mobilization, and sufficient coordination between the Service and State or local law enforcement agencies would be essential to ensure that public safety, public health, and national security are protected. This regulation provides the foundation and framework to accomplish these essential requirements in the event that an Attorney General declares that a mass influx of aliens is imminent or occurring becomes necessary.

Explanation of Changes

This rule implements the intent of section 103(a)(8) of the Act by providing a mechanism by which a trained cadre of State or local law enforcement officers will be available to enhance the Federal Government's ability to provide an immediate and effective response to a declared mass influx of aliens.

To enable implementation of the Attorney General's authority, the rule provides that the Commissioner of the INS may execute written contingency agreements with State or local law enforcement agencies regarding assistance under section 103(a)(8) of the Act, which may be activated in the event that the Attorney General determines that such assistance is required during a period of a declared mass influx of aliens. Such contingency agreements shall not authorize State or local law enforcement officers to perform any functions of Service officers or employees pursuant to the provisions of section 103(a)(8) of the Act until the Attorney General declares that a mass influx of aliens is imminent or occurring, and specifically authorizes such performance.

Written agreements regarding assistance under 28 CFR 65.83(d), including contingency agreements, shall include the following:

(1) A statement of the powers, privileges, or duties that State or local law enforcement officers will be authorized to perform or exercise and the conditions under which they may be performed or exercised;

(2) a statement of the types of assistance by State or local law enforcement officers for which the Attorney General shall be responsible for reimbursing the relevant parties in accordance with the procedures set forth;

(3) a statement that the relevant State or local law enforcement officers are not authorized to perform any functions of Service officers or employees pursuant

to section 103(a)(8) of the Act until the Attorney General has made a determination pursuant to that section and authorizes such performance;

(4) a requirement that State or local law enforcement officers cannot perform any authorized functions of Service officers or employees pursuant to section 103(a)(8) of the Act until they have successfully completed and been certified in a Service prescribed course of instruction in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues;

(5) a description of the duration of both the written agreement and the authority the Attorney General will confer upon State or local law enforcement officers pursuant to section 103(a)(8) of the Act, along with a mechanism for amending, terminating, or extending the duration of authority and/or the written agreement;

(6) a requirement that the performance of any Service officer functions by State or local law enforcement officers pursuant to section 103(a)(8) of the Act be at the direction of the Service;

(7) a requirement that any State or local law enforcement officer performing Service officer or employee functions pursuant to section 103(a)(8) of the Act must adhere to the policies and standards set forth during the training, including applicable immigration law, immigration law enforcement standards and procedures, civil rights law, and sensitivity and cultural awareness issues;

(8) a statement that the authority to perform Service officer or employee functions pursuant to section 103(a)(8) does not abrogate or abridge constitutional or civil rights protections;

(9) a requirement that a complaint reporting and resolution procedure for allegations of misconduct or wrongdoing by State or local officers designated, or activities undertaken, pursuant to section 103(a)(8) of the Act be in place;

(10) a requirement that a mechanism to record and monitor complaints regarding the immigration enforcement activities of State or local law enforcement officers exercising the authority to enforce immigration laws be in place;

(11) a listing by position (title and name, when available) of the Service officers authorized to provide operational direction to State or local law enforcement officers assisting in a Federal response pursuant to section 103(a)(8) of the Act;

(12) a requirement that a State or local law enforcement agency maintain records of operational expenditures incurred as a result of supporting the Federal response to a mass influx of aliens;

(13) provisions concerning State or local law enforcement officer use of Federal property or facilities, if any;

(14) a requirement that any department, agency, or establishment whose State or local law enforcement officer is performing Service officer or employee functions shall cooperate fully in any Federal investigation related to allegations of misconduct or wrongdoing in conjunction with such functions, or to the written agreement; and

(15) a procedure by which the appropriate law enforcement department, agency, or establishment will be notified that the Attorney General has made a determination under section 103(a)(8) of the Act to authorize State or local law enforcement officers to exercise Federal immigration enforcement authority under the provisions of the respective agreements.

The boundaries of the geographic area where the declared mass influx of aliens is imminent or occurring would be defined by the Attorney General, who would also determine the time period of the mass influx of aliens. The Commissioner is authorized to amend and redefine the geographic boundaries of the area of the mass influx of aliens, including expanding or decreasing the boundaries, as necessary, based on evolving developments in the scope of the event. This authority shall not be further delegated.

State or local law enforcement officers cannot perform any functions of a Service officer or employee pursuant to section 103(a)(8) of the Act and under the provisions of this rule until they successfully complete training prescribed by the Service and become certified in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues.

The Service will provide all necessary training materials and will conduct training sessions to designated officers at sites within their jurisdictional or commuting areas when possible. Any employing State or local law enforcement agency, department, or establishment will be required to fund its officers' transportation, lodging, and subsistence costs as may be required.

This rule amends the existing regulations of the Department of Justice relating to the Immigration Emergency Fund. Under the amended rule, the Department of Justice has the authority to reimburse State or local law enforcement agencies that assist in the Federal response to a mass influx of aliens from any authorizing statutory source or other available funding source, provided such funding exists and has been made available to the Department for this purpose. Therefore, the final rule allows for the reimbursement of these entities up to the amount available to the Department of Justice for such purposes. This rule provides no guarantee of reimbursement for actual expenses incurred but seeks to assure State or local law enforcement agencies that they will not bear undue increased operational expenditures incurred in direct support of a Federal response to declaration of a mass influx of aliens.

Execution of advance contingency agreements will expedite subsequent action by the Attorney General to authorize State or local law enforcement officers to exercise Federal immigration enforcement authority. The execution of advance contingency agreements will also facilitate reimbursement of actual expenditures in support of a Federal response to a mass influx of aliens, pursuant to existing financial requirements.

Within the regulation, the phrase "State or local law enforcement officers" means State law enforcement officers, local law enforcement officers, or both. The phrase "State or local law enforcement agencies" refers to State law enforcement agencies, local law enforcement agencies, or both.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities because of the following factors:

(1) The Service anticipates that participation in written agreements executed with State or local law enforcement agencies under section 103(a)(8) of the Act and this rule will be limited to those State or local law enforcement agencies whose jurisdiction is along the coast of the United States, or near a land border;

(2) Participation by State or local law enforcement agencies is voluntary, and no State or local law enforcement agency outside the contiguous area of a mass influx of aliens would be affected by implementation of this rule;

(3) This rule provides a means to relieve undue financial burdens on participating law enforcement agencies by allowing for reimbursement of actual

expenses incurred in direct support of a Federal response to declaration of a mass influx of aliens; and

(4) It is anticipated that the authorization of State or local law enforcement officers to enforce immigration law under the provisions of this rule will be infrequent, as such authorization can occur only during times of an actual or imminent mass influx of aliens into the United States pursuant to such declaration by the Attorney General.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in the Small Business Regulatory Enforcement Fairness Act of 1996; 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This rule allows for reimbursement by the Department of Justice (contingent upon availability of such funds) as determined by the Attorney General, of actual expenditures incurred by State or local law enforcement agencies whose law enforcement officers are supporting a Federal response to an actual or imminent mass influx of aliens. Moreover, participation by State or local law enforcement agencies is voluntary. Therefore, in accordance with section six of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

As contained in this rule under 28 CFR 65.85(e), the Attorney General will consider all applications from State or local governments for reimbursement of actual expenses incurred in direct support of a Federal response to a mass influx of aliens, until the Attorney General has obligated funding available for such purposes as determined by the Attorney General. The information that must be included in the application for reimbursement is described in 28 CFR 65.85(c). The information required in 28 CFR 65.85(c) is considered an information collection covered under the Paperwork Reduction Act (PRA). This information collection has previously been approved by the Office of Management and Budget (OMB) under the PRA. The OMB control number for this approved information collection is 1115–0184.

List of Subjects

8 CFR Part 2

Authority delegations (government agencies).

28 CFR Part 65

Grant programs—law, Law enforcement, Reporting and recordkeeping requirements.

Accordingly, part 2 of chapter I of title 8 of the Code of Federal Regulations, and part 65 of chapter I of title 28 of the Code of Federal Regulations are amended as follows:

TITLE 8—ALIENS AND NATIONALITY

PART 2—AUTHORITY OF THE COMMISSIONER

1. The authority citation for part 2 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103.

2. Section 2.1 is amended by:

(a) Designating the existing text as paragraph (a); and by

(b) Adding a new paragraph (b), to read as follows:

§ 2.1 Authority of the Commissioner.

* * * * *

(b) The Commissioner, pursuant to 28 CFR 65.84(a), may execute written contingency agreements with State or local law enforcement agencies regarding assistance under section 103(a)(8) of the Act, 8 U.S.C. 1103(a)(8), which may be activated in the event that the Attorney General determines that such assistance is required during a period of a declared mass influx of aliens, as provided in 28 CFR 65.83(d). Such contingency agreements shall not authorize State or local law enforcement officers to perform any functions of Service officers or employees pursuant to the provisions of section 103(a)(8) of the Act until the Attorney General declares that a mass influx of aliens is imminent or occurring and specifically authorizes such performance. The boundaries of the geographic area of the mass influx of aliens shall be defined by the Attorney General. In addition, the Attorney General will define the inclusive time period of a mass influx of aliens by declaring the beginning and the end of such an event pursuant to 28 CFR 65.83(d). Based on evolving developments in the scope of the event, the Commissioner is authorized to amend and redefine by new definition, as necessary, the geographic area defined by the Attorney General to expand or decrease the boundaries. This authority shall not be further delegated.

TITLE 28—JUDICIAL ADMINISTRATION

PART 65—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

3. The authority citation for part 65 continues to read as follows:

Authority: The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98–473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 *et seq.*); 8 U.S.C. 1101 note; Sec. 610, Pub. L. 102–140, 105 Stat. 832.

4. In § 65.80, the first sentence is revised to read as follows:

§ 65.80 General.

The regulations of this subpart set forth procedures for implementing section 404(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101 note, by providing for Presidential determinations of the existence of an immigration emergency, and for payments from the Immigration Emergency Fund or other funding available for such purposes, to State and

local governments for assistance provided in meeting an immigration emergency. * * *

5. Section 65.83 is amended by:

a. Revising the introductory text; and by

b. Adding a new paragraph (d), to read as follows:

§ 65.83 Assistance required by the Attorney General.

The Attorney General may request assistance from a State or local government in the administration of the immigration laws of the United States or in meeting urgent demands where the need for assistance arises because of the presence of aliens in that State or local jurisdiction, and may provide funding to a State or local government relating to such assistance from the Immigration Emergency Fund or other funding available for such purposes, without a Presidential determination of an immigration emergency, in any of the following circumstances:

* * * * *

(d)(1) If, in making a determination pursuant to paragraph (b) or (c) of this section, the Attorney General also determines that the situation involves an actual or imminent mass influx of aliens arriving off the coast or near a land border of the United States and presents urgent circumstances requiring an immediate Federal response, the Attorney General will formally declare that a mass influx of aliens is imminent or occurring. The determination that a mass influx of aliens is imminent or occurring will be based on the factors set forth in the definitions contained in § 65.81 of this subpart. The Attorney General will determine and define the time period that encompasses a mass influx of aliens by declaring when such an event begins and when it ends. The Attorney General will initially define the geographic boundaries where the mass influx of aliens is imminent or occurring.

(2) Based on evolving developments in the scope of the event, the Commissioner of the INS may, as necessary, amend and redefine the geographic area defined by the Attorney General to expand or decrease the boundaries. This authority shall not be further delegated.

(3) The Attorney General, pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), may authorize any State or local law enforcement officer to perform or exercise any of the powers, privileges, or duties conferred or imposed by the Act, or regulations issued thereunder, upon officers or employees of the Service. Such authorization must be with the consent of the head of the department, agency, or establishment under whose jurisdiction the officer is serving.

(4) Authorization for State or local law enforcement officers to exercise Federal immigration law enforcement authority for transporting or guarding aliens in custody may be exercised as necessary beyond the defined geographic boundaries where the mass influx of aliens is imminent or occurring. Otherwise, Federal immigration law enforcement authority to be exercised by State or local law enforcement officers will be authorized only within the defined geographic boundaries where the mass influx of aliens is imminent or occurring.

(5) State or local law enforcement officers will be authorized to exercise Federal immigration law enforcement authority only during the time period prescribed by the Attorney General in conjunction with the initiation and termination of a declared mass influx of aliens.

6. Section 65.84 is amended by:

a. Revising the section heading; and

b. Revising paragraph (a) of this section, to read as follows:

§ 65.84 Procedures for the Attorney General when seeking State or local assistance.

(a)(1) When the Attorney General determines to seek assistance from a State or local government under § 65.83 of this subpart, or when the President has determined that an immigration emergency exists, the Attorney General shall negotiate the terms and conditions of that assistance with the State or local government. The Attorney General shall then execute a written agreement with appropriate State or local officials, which sets forth the terms and conditions of the assistance, including funding. Such written agreements can be reimbursement agreements, grants, or cooperative agreements.

(2) The Commissioner may execute written contingency agreements regarding assistance under § 65.83(d) of this subpart in advance of the Attorney General's determination pursuant to that section. However, such advance agreements shall not authorize State or local law enforcement officers to perform any functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until the Attorney General has made the necessary determinations and authorizes such performance. Any such advance agreements shall contain precise activation procedures.

(3) Written agreements regarding assistance under § 65.83(d) of this subpart, including contingency agreements, shall include the following minimum requirements:

(i) A statement of the powers, privileges, or duties that State or local law enforcement officers will be authorized to exercise and the conditions under which they may be exercised;

(ii) A statement of the types of assistance by State or local law enforcement officers for which the Attorney General shall be responsible for reimbursing the relevant parties in accordance with the procedures set forth in paragraph (b) of this section;

(iii) A statement that the relevant State or local law enforcement officers are not authorized to exercise any functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until the Attorney General has made a determination pursuant to that section and authorizes such performance;

(iv) A requirement that State or local law enforcement officers cannot exercise any authorized functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until they have successfully completed and been certified in a Service-prescribed course of instruction in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues;

(v) A description of the duration of the written agreement, and of the authority the Attorney General will confer upon State or local law enforcement officers pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), along with a provision for amending, terminating, or extending the duration of the written agreement, or for terminating or amending the authority to be conferred pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8);

(vi) A requirement that the exercise of any Service officer functions by State or local law enforcement officers pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), be at the direction of the Service;

(vii) A requirement that any State or local law enforcement officer performing Service officer or employee functions pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), must adhere to the policies and standards set forth during the training, including applicable immigration law enforcement standards and procedures, civil rights law, and sensitivity and cultural awareness issues;

(viii) A statement that the authority to perform Service officer or employee functions pursuant to section 103(a)(8)

of the INA, 8 U.S.C. 1103(a)(8), does not abrogate or abridge constitutional or civil rights protections;

(ix) A requirement that a complaint reporting and resolution procedure for allegations of misconduct or wrongdoing by State or local officers designated, or activities undertaken, pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), be in place;

(x) A requirement that a mechanism to record and monitor complaints regarding the immigration enforcement activities of State or local law enforcement officers authorized to enforce immigration laws be in place;

(xi) A listing by position (title and name when available) of the Service officers authorized to provide operational direction to State or local law enforcement officers assisting in a Federal response pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8);

(xii) A requirement that a State or local law enforcement agency maintain records of operational expenditures incurred as a result of supporting the Federal response to a mass influx of aliens;

(xiii) Provisions concerning State or local law enforcement officer use of Federal property or facilities, if any;

(xiv) A requirement that any department, agency, or establishment whose State or local law enforcement officer is performing Service officer or employee functions shall cooperate fully in any Federal investigation related to allegations of misconduct or wrongdoing in conjunction with such functions, or to the written agreement; and

(xv) A procedure by which the appropriate law enforcement agency, department, or establishment will be notified that the Attorney General has made a determination under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), to authorize State or local law enforcement officers to exercise Federal immigration enforcement authority under the provisions of the respective agreements.

* * * * *

7. In § 65.85, paragraph (e) is revised to read as follows:

§ 65.85 Procedures for State or local governments applying for funding.

* * * * *

(e) The Attorney General will consider all applications from State or local governments until the Attorney General has obligated funding available for such purposes as determined by the Attorney General. The Attorney General will make a decision with respect to any application submitted under this section that contains the information described in paragraph (c) of this section within 15 calendar days of such application.

* * * * *

Dated: July 17, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–18655 Filed 7–23–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM225; Special Conditions No. 25–207–SC]

Special Conditions: Embraer Model EMB–135BJ; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer Model EMB–135BJ airplane. The Embraer Model EMB–135BJ airplane will have a novel or unusual design feature involving a fuel transfer system whose failure can affect the structural performance of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this system and its effect on structural performance. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the applicable airworthiness standards.

DATES: The effective date of these special conditions is July 12, 2002. Comments must be received on or before August 23, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, Attention: Rules Docket (ANM–113), Docket No. NM225, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM225. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1178; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected airplanes. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On May 22, 2002, Embraer applied for an amendment to Type Certificate No. T00011AT to include a corporate jet version of the Model EMB–135 airplane. The Model EMB–135BJ, which is a derivative of the EMB–135LR aircraft currently approved under Type Certificate No. T00011AT, is a pressurized, low-wing, "T" tail, transport category airplane with tricycle landing gear. It is powered by two Rolls-Royce model AE3007A1P engines, and will carry a maximum of 19 passengers. The primary differences between the existing EMB–135LR and the new EMB–

135BJ are the addition of winglets, increased maximum takeoff weight (to 21,990 kg), increased maximum operational ceiling (to 39,000 feet), additional exposed underbelly fuel tank installed ahead of the air conditioning area, extra internal fuel tanks installed in the back of the baggage compartment, and a modified fuel system due to the extra tanks. The new fuel system can serve to alleviate loads in the airframe and, when in a failure state, can create loads in the airframe. The current regulations do not adequately account for the effects of these systems and their failures on structural performance. These special conditions will require Embraer to substantiate the strength capability and freedom from aeroelastic instabilities after failures in the fuel transfer system.

Type Certification Basis

Under the provisions of § 21.101, Embraer must show that the Model EMB–135BJ meets the applicable provisions of the regulations incorporated by reference in Type Certificate T00011AT, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No.T00011AT are 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–84; Amendment 25–85; § 25.1517, as amended by Amendment 25–86; Amendment 25–88; Amendment 25–90; §§ 25.331, 25.335(b)(2), 25.345, 25.351, 25.363, 25.371, 25.415, 25.491, 25.499 and 25.561, as amended by Amendment 25–91; Amendment 25–93; § 25.807, as amended by Amendment 25–94; and Amendment 25–97. In addition, the certification basis includes certain special conditions, exemptions, and equivalent safety findings that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Model EMB–135BJ because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB–135BJ must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Feature

The Model EMB–135BJ will have systems that affect the structural performance of the airplane, either directly or as a result of a failure or malfunction. These novel or unusual design features are systems that can serve to alleviate loads in the airframe and, when in a failure state, can create loads in the airframe. The current regulations do not adequately account for the effects of these systems and their failures on structural performance. These special conditions provide the criteria to be used in assessing the effects of these systems on structures.

Conclusion

This action affects only certain novel or unusual design features on one model airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Immediate Adoption

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect certification of the Embraer Model EMB–135BJ, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Interaction of Systems and Structure

1. General

For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of subparts C and D of part 25. The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

(a) The criteria defined herein only address the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative modes are not provided in these special conditions.

(b) Depending upon the specific characteristics of the airplane, additional studies that go beyond the criteria provided in these special conditions may be required in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions, for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to these special conditions.

Structural performance: Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the

flight manual (*e.g.*, speed limitations, avoidance of severe weather conditions, *etc.*).

Operational limitations: Limitations, including flight limitations that can be applied to the airplane operating conditions before dispatch (*e.g.*, fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in these special conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309; however, these special conditions apply only to system failure conditions that affect the structural performance of the airplane (*e.g.*, system failure conditions that induce loads, lower flutter margins, or change the response of the airplane to inputs such as gusts or pilot actions).

2. Effects of Systems on Structures

The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(a) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C, taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

(b) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) *At the time of occurrence.* Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence

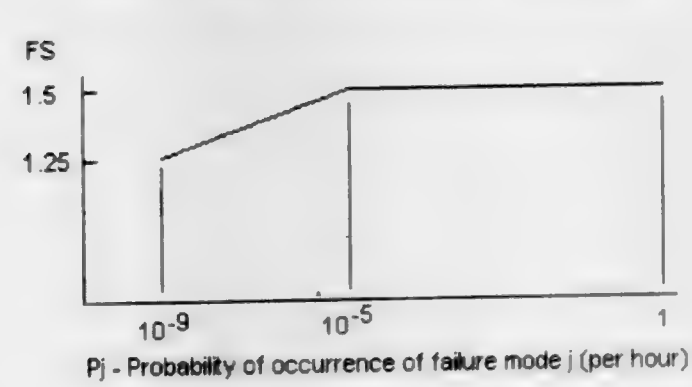

(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (b)(1)(i) above.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond Vc/Mc, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) *For the continuation of the flight.* For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions at speeds up to Vc, or the speed limitation prescribed for the remainder of the flight, must be determined:

(A) The limit symmetrical maneuvering conditions specified in §§ 25.331 and 25.345.

(B) The limit gust and turbulence conditions specified in §§ 25.341 and 25.345.

(C) The limit rolling conditions specified in § 25.349, and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in §§ 25.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads defined in paragraph (2)(i) above, multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2
Factor of safety for continuation of flight

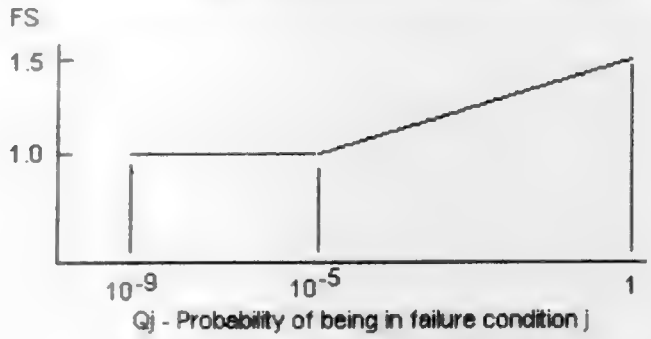

$Q_j = (T_j)(P_j)$ where:
T_j = Average time spent in failure condition j (in hours).
P_j = Probability of occurrence of failure mode j (per hour).

Note: If Pj is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C.

(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (2)(ii) above.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V^I and V^{II} may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3
Clearance speed

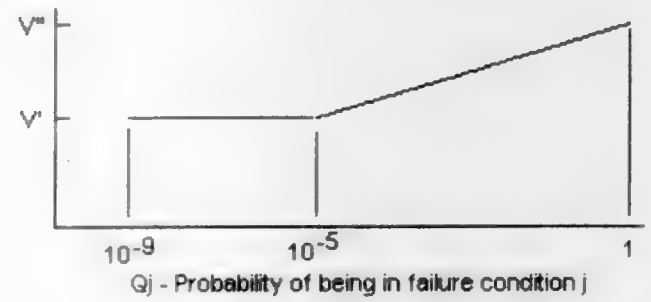

V^I = Clearance speed as defined by § 25.629(b)(2).
V^{II} = Clearance speed as defined by § 25.629(b)(1).
$Q_j = (T_j)(P_j)$ where:
T_j = Average time spent in failure condition j (in hours).
P_j = Probability of occurrence of failure mode j (per hour).

Note: If Pj is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V^{II}.

(vi) Freedom from aeroelastic instability must also be shown up to V^I in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of part 25, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(c) *Warning considerations.* For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25, or significantly reduce the reliability of the remaining system. The flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of warning systems, to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of subpart C below 1.25, or flutter margins below V^{II}, must be signaled to the crew during flight.

(d) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain

structural performance, then the provisions of these special conditions must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Q_j as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

Issued in Renton, Washington, on July 12, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18617 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–01–AD; Amendment 39–12830; AD 2002–15–02]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Power Systems (Formerly Sundstrand Power Systems, Turbomach, and Solar) T–62T Series Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) T–62T series auxiliary power units (APU's) with compressor wheel part number (P/N) 100636–1 installed. This amendment requires the replacement of compressor wheels P/N 100636–1. This amendment is prompted by a manufacturer's stress analysis that indicates stress levels high enough to initiate and drive crack growth in these compressor wheels. The actions specified by this AD are intended to mandate the replacement of the affected compressor wheels, which if not replaced, could result in uncontained compressor wheel failure and damage to the airplane.

DATES: Effective August 28, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Hamilton Sundstrand Power Systems, Technical Publications Department, P.O. Box 7002, Rockford, IL 61125–7002; telephone (815) 623–5983; fax (815) 966–8525. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5251, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) T–62T series APU's with compressor wheel P/N 100636–1 was published in the **Federal Register** on March 28, 2002 (67 FR 14889). That action proposed to mandate the replacement of the affected compressor wheels, which if not replaced, could result in uncontained compressor wheel failure and damage to the airplane.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 492 Hamilton Sundstrand Power Systems (formerly Sundstrand Power systems, Turbomach, and Solar) models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 APU's of the affected design in the worldwide fleet. The FAA estimates that 337 APU's installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per APU to perform the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $16,799 per engine. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $ 6,470,063.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–15–02 Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar): Amendment 39–12830. Docket No. 2002–NE–01–AD.

Applicability

This airworthiness directive (AD) is applicable to Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 auxiliary power units (APU's) that have compressor wheel part number (P/N) 100636–1 installed. These APU's are installed on, but not limited to, Fairchild

FH–227, Dassault Falcon 20, Lockheed 1329 series (Jetstar), British Aerospace Jetstream 3101, Raytheon Aircraft HS125–600, –700, –800, and Sabreliner Corporation 60 and 80 airplanes, and Boeing Defense & Space Group 234 Series helicopters.

Note 1: This AD applies to each APU identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For APU's that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To replace affected compressor wheels P/N 100636–1, which if not replaced, could result in uncontained compressor wheel failure and damage to the airplane, do the following:

Cast Steel Compressor Wheel Replacement

(a) For compressor wheels, P/N 100636–1, made of cast steel, identifiable by a four-digit casting lot vendor identification number used as a prefix to the serial number, replace compressor wheels with compressor wheel P/N 4503164, 4504174, or M4504174 as follows:

(1) Replace cast steel compressor wheels with 2,350 or greater cycles-since-new (CSN) on the effective date of this AD within 250 cycles-in-service (CIS) after the effective date of this AD.

(2) Replace cast steel compressor wheels with less than 2,350 CSN on the effective date of this AD before accumulating 2,600 CSN.

Wrought Steel Compressor Wheel Replacement

(b) For compressor wheels, P/N 100636–1 made of wrought steel, identifiable by a serial number beginning with the letter W, replace compressor wheels with compressor wheel P/N 4503164, 4504174, or M4504174 as follows:

(1) Replace wrought steel compressor wheels with 3,600 or greater CSN on the effective date of this AD within 500 CIS after the effective date of this AD.

(2) Replace wrought steel compressor wheels with less than 3,600 CSN on the effective date of this AD before accumulating 4,100 CSN.

(c) Information on procedures for replacing compressor wheel P/N 100636–1 may be found in Hamilton Sundstrand Power Systems service bulletin No. SB–T–62T–49–148, Revision 1, dated December 20, 2001.

Reduced Life Limits

(d) This AD establishes new cyclic life limits for compressor wheels P/N 100636–1, of 2,600 CSN for cast steel compressor wheels and 4,100 CSN for wrought steel compressor wheels. Except as provided in paragraph (e) of this AD, no alternate life limits for these parts may be approved.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Effective Date

(g) This amendment becomes effective on August 28, 2002.

Issued in Burlington, Massachusetts, on July 15, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–18482 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–131–AD; Amendment 39–12825; AD 2002–14–25]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directives (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, that currently requires repetitive inspections (tests) of the actuator clutches of the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications, and replacement of the actuator, if necessary. This amendment expands the applicability in the existing AD. This amendment is prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. The actions specified in this AD are intended to prevent loss of pitch trim command during the takeoff and climb phase of flight due to improper set point of the actuator clutches, which would result in high pitch control forces and consequent reduced controllability of the airplane. This action is needed to address the identified unsafe condition.

DATES: Effective August 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 8, 2002.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 16, 2002 (67 FR 21567), May 1, 2002).

Comments for inclusion in the Rules Docket must be received on or before September 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may abe inspected at this location between 9 a.m and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9/anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 202–NM–131–AD" in the subject line and need not be submitted in triplicate. Comments sent via the internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Braileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–

116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On April 19, 2002, the FAA issued AD 2002–08–18, amendment 39–12730 (65 FR 21567, May 1, 2002), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, to require repetitive inspections (tests) of the actuator clutches of the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications, and replacement of the actuator, if necessary. The actions required by that AD are intended to prevent loss of pitch trim command during the takeoff and climb phase of flight due to improper set point of the actuator clutches, which could result in high pitch control forces and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, has revised the Brazilian airworthiness directive referenced in the existing AD to expand the applicability to include all airplanes equipped with certain actuators of the horizontal stabilizer. The DAC issued Brazilian airworthiness directive 2001–10–02R2, dated May 6, 2002, in order to assure the continued airworthiness of these airplanes in Brazil.

In addition, the manufacturer has issued EMBRAER Service Bulletin 145–27–0082, Change No. 01, dated December 13, 2001. Change No. 01 clarifies certain accomplishment instruments and adds certain airplanes to the effectivity of the original version of the service bulletin. AD 2002–08–18 cites the original version of EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001, as the appropriate source of service information for accomplishment of the requirements.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 2002–08–18 to continue to require repetitive inspections (tests) of the actuator clutches of the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications, and replacement of the actuator, if necessary. This AD expands the applicability in the existing AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organized comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–131–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 100(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12730 (67 FR 21567, May 1, 2002), and by adding a new airworthiness directive (AD), amendment 39–12825, to read as follows:

2002–14–25 Empresa Brasileira De Aeronautica S.A. (Embraer): amendment 39–128.25 Docket 2002–NM–131–AD. Supersedes AD 2002–08–18. Amendment 39–12730.

Applicability: Model EMB–135 and –145 series airplanes; certificated in any category: equipped with horizontal stabilizer actuators as listed in Embraer Service Bulletin 145–27–0082, Change No. 01, dated December 13, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of pitch trim command during the takeoff and climb phase of flight due to improper set point of the actuator clutches of the horizontal stabilizer, which could result in high pitch control forces and consequent reduced controllability of the airplane, accomplish the following:

Requirements of AD 2002–08–18, Amendment 39–12739

Repetitive Inspectors (Tests)/Replacement

(a) For airplanes subject to the requirements of AD 2002–08–18, within 800 flight hours after May 16, 2002 (the effective date of AD 2002–08–18): Do an inspection (test) of the actuator clutches of both the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications per EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001, or Change No. 01, dated December 13, 2001. Repeat the test after that every 2,000 flight hours.

(1) If either test indicates that the clutch is slipping (no PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears, and the measured voltage during trim attempts is greater than 1 volt), before further flight, replace the applicable actuator with an improved actuator and before further flight, repeat the test.

(2) If both tests indicate that the clutch is acceptable (PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears), repeat the test at the time specified in paragraph (a) of this AD.

New Requirements of This AD

(b) For airplanes other than those identified in paragraph (a) of this AD, within 800 flight hours after the effective date of this AD: Do an inspection (test) of the actuator clutches of both the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications per EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001, or Change No. 01, dated December 13, 2001. Repeat the test their that every 2,000 flight hours.

(1) If either test indicates that the clutch is slipping (no PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears, and the measured voltage during trim attempts is greater than 1 volt), before further flight, replace the applicable actuator with an improved actuator per the service bulletin, and before further flight, repeat the test.

(2) If both tests indicate that the clutch is acceptable (PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears), repeat the test at the time specified in paragraph (a) of this AD.

Spares

(c) As of the effective date of this AD, no person shall install an actuator having part number 362200–1007, –1009, –1011, or –1013 on any airplane, unless the actuator clutch is inspected as required by paragraph (a) of this AD.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously per AD 2002–08–18, amendment 39–12730, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existing of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (a)(1) of this AD, the actions shall be done in accordance with EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001; or EMBRAER Service Bulletin 145–27–0082, Change No. 01, dated December 13, 2001.

(1) The incorporation by reference of EMBRAER Service Bulletin 145–27–0082, Change No. 01, dated December 13, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001, was approved previously by the Director of the Federal Register as of May 16, 2002 (67 FR 21567, May 1, 2002.)

(3) Copies may be obtained from Empresa Brasileira de Aeronautics S.A. (EMBRAER), P.O. Box 343–CEP 12.225, San Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–10–02R2, dated May 6, 2002.

Effective Date

(g) This amendment becomes effective on August 8, 2002.

Issued in Renton, Washington, on July 11, 2002.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18028 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 191

[T.D. 02–38]

RIN 1515–AD02

Manufacturing Substitution Drawback: Duty Apportionment

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to provide the method for calculating manufacturing substitution drawback where imported merchandise, which is dutiable on its value, contains a chemical element and amounts of that chemical element are used in the manufacture or production of articles which are either exported or destroyed under Customs supervision. Recent court decisions have held that a chemical element that is contained in an imported material that is subject to an *ad valorem* rate of duty may be designated as same kind and quality merchandise for drawback purposes. This amendment provides the method by which the duty attributable to the chemical element can be apportioned. This amendment requires a drawback claimant, where applicable, to make this apportionment calculation.

DATES: This interim rule is effective July 24, 2002. Comments must be received on or before September 23, 2002.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at the U.S. Customs Service, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Chief, Duty and Refund Determinations Branch, Office of Regulations and Rulings, U.S. Customs Service, Tel. (202) 572–8807.

SUPPLEMENTARY INFORMATION:

Background

Drawback—19 U.S.C. 1313

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant upon the exportation, or destruction under Customs supervision, of eligible articles. The purpose of drawback is to place U.S. exporters on equal footing with foreign competitors by refunding most of the duties paid on imports used in domestic manufactures intended for export.

Substitution for drawback purposes—19 U.S.C. 1313(b)

There are several types of drawback. Under section 1313(b), a manufacturer can recoup duties paid for imported merchandise if it uses merchandise of the same kind and quality to produce exported articles pursuant to the terms of the statute. Section 1313(b) reads, in pertinent part, as follows:

> (b) *Substitution for drawback purposes* If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported. * * *"

Manufacturing substitution drawback is intended to alleviate some of the difficulties in accounting for whether imported merchandise has, in fact, been used in a domestic manufacture. Section 1313(b) permits domestic or other imported merchandise to be used as the basis for drawback, instead of the actual imported merchandise, so long as the domestic merchandise is of the "same kind and quality" as the actual imported merchandise.

Several recent court cases have examined the scope of the term "same kind and quality" as used in 19 U.S.C. 1313(b). *See E.I. DuPont De Nemours and Co.* v. *United States*, 116 F. Supp. 2d 1343 (Ct. Int'l Trade 2000). *See also International Light Metals* v. *United States*, 194 F.3d 1355 (Fed. Cir. 1999). In these cases, the courts held that a chemical element that is contained in an imported material that is dutiable on its value may be designated as same kind and quality merchandise for purposes of manufacturing substitution drawback pursuant to 19 U.S.C. 1313(b).

In *DuPont*, the court held that apportionment is a feasible method of claiming a drawback entitlement. *DuPont*, 116 F. Supp. 2d at 1348–49. Under these regulations, therefore, a substitution drawback claimant must apportion the duty attributable to a chemical element contained in an *ad valorem* duty-paid imported material if it is claimed that a chemical element was used in the domestic production of articles that were exported or destroyed under Customs supervision within the prescribed time period. The drawback claim on the chemical element that is the designated merchandise must be limited to the duty apportioned to that chemical element on a unit-for-unit attribution using the unit of measure set forth in the Harmonized Tariff Schedule of the United States that is applicable to the imported material. The apportionment is necessary to avoid overpayment of drawback.

Amendment to § 191.26(b) of the Customs Regulations

Section 191.26 of the Customs Regulations (19 CFR 191.26) sets forth the recordkeeping requirements for manufacturing drawback. Paragraph (b) of this section describes the recordkeeping requirements for substitution drawback.

To implement the courts' interpretation of 19 U.S.C. 1313(b), this document amends § 191.26(b) by adding language that explains how to apportion the duty attributable to same kind and quality chemical elements contained in *ad valorem* duty-paid imported materials for purposes of manufacturing substitution drawback. This document also amends § 191.26(b) to provide an example of apportionment calculations.

Duty Apportionment Calculation

In order for a drawback claimant to be able to ascertain what portion of the *ad valorem* duty paid on imported merchandise is attributable to a chemical element contained in the merchandise, an apportionment calculation is necessary. First, if the imported duty-paid material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements, converting to the decimal equivalent of their respective percentages, and multiplying that decimal equivalent against the above-determined amount of pure compound. Second, the amount claimed as drawback based on a contained element must be taken into account and deducted from the duty paid on the imported material that may be claimed on any other drawback claim.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC.

Inapplicability of Prior Public Notice and Comment Procedures

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on this regulation are unnecessary and contrary to public interest. The regulatory changes to the Customs Regulations add language necessitated by recent decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit. The regulatory changes benefit the public by providing specific information as to how a drawback claimant is to correctly make the requisite duty apportionment calculations when claiming manufacturing substitution drawback for a chemical element contained in *ad valorem* duty-paid imported merchandise. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 191

Claims, Commerce, Customs duties and inspection, Drawback.

Amendment to the Regulations

For the reason stated above, part 191 of the Customs Regulations (19 CFR part 191), is amended as set forth below.

PART 191—DRAWBACK

1. The general authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

1. Section 191.26 is amended:

a. In paragraph (b)(2) by removing the word "and" after the semi-colon;

b. At the end of paragraph (b)(3) by removing the period and adding "; and"; and

c. By adding a new paragraph (b)(4) to read as follows:

§ 191.26 Recordkeeping for manufacturing drawback.

* * * * *

(b) *Substitution manufacturing.* * * *

(4) If the designated merchandise is a chemical element that was contained in imported material that was subject to an *ad valorem* rate of duty, and a substitution drawback claim is made based on that chemical element:

(i) The duty paid on the imported material must be apportioned among its constituent components. The claim on the chemical element that is the designated merchandise must be limited to the duty apportioned to that element on a unit-for-unit attribution using the unit of measure set forth in the Harmonized Tariff Schedule of the United States (HTSUS) that is applicable to the imported material. If the material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements and converting to the decimal equivalent of their respective percentages and multiplying that decimal equivalent against the above-determined amount of pure compound.

(ii) The amount claimed as drawback based on the chemical element must be deducted from the duty paid on the imported material that may be claimed on any other drawback claim.

Example to paragraph (b)(4)

Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% *ad valorem* duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of $12,000. The total duty paid is $600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the percentage (91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent (.917 × 30,000 = 27,510 pounds of titanium dioxide). The titanium, based on atomic weight, represents 59.93% of the constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile (.5993 × 27,510 pounds = 16,486.7 pounds). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. The ratio between the amount of titanium and the total amount of imported synthetic rutile is determined by dividing the weight of the titanium by the weight of the synthetic rutile (16,486.7 ÷ 30,000 = .550) or 55%. Accordingly, 55% of the duty is apportioned to the titanium content which is the designated merchandise of the imported synthetic rutile. As the per-unit duty paid on the synthetic rutile is calculated by dividing the duty ($600) by the amount of the imported synthetic rutile (30,000), the per-unit duty is two cents of duty per pound ($600 ÷ 30,000 = $0.02). The per pound duty on the titanium is calculated by multiplying the factor of 55% (.55 × $0.02 = $0.011 per pound). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound factor ($0.011 per pound) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($0.011 × 16,000 = $176). Because only 99% of the duty can be claimed, drawback is determined by multiplying the available duty amount by 99% (.99 × $176 = $174.24). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, that factor would be used to determine the duty available for drawback based on the substitution of oxygen.

Robert C. Bonner,

Commissioner of Customs.

Approved: July 18, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–18609 Filed 7–23–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 97N–0023]

RIN 0910–AA99

Use of Ozone-Depleting Substances; Essential-Use Determinations

AGENCY: Food and Drug Administration, HHS.

ACTION:

SUMMARY: The Food and Drug Administration (FDA) is amending its regulation on the use of chlorofluorocarbon (CFC) propellants in self-pressurized containers to make it consistent with other laws. FDA is setting the standard it will use to determine which FDA-regulated products that utilize an ozone-depleting substance (ODS) are essential under the Clean Air Act. Under the Clean Air Act, FDA, in consultation with the Environmental Protection Agency (EPA), is required to determine whether an FDA-regulated product that utilizes an ODS is essential. FDA is also removing current essential-use designations for products no longer marketed and for metered-dose steroid human drugs for nasal inhalation. FDA will add or remove specific essential-use designations for other products by

engaging in separate notice-and-comment rulemaking.

DATES: *Effective Date*: This rule is effective January 20, 2003.

Applicability Date: The removal of the essential-use exemption for metered-dose steroid human drugs for nasal inhalation applies as of August 25, 2003.

ADDRESSES: This document and related information are available on the Internet at http://www.fda.gov/cder/mdi.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

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I. Background

FDA, in consultation with EPA, determines whether a medical product is essential for purposes of Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*) (Title VI). If a medical product is determined to be essential, and meets the other elements of the definition found in section 601 of the Clean Air Act, it will be considered a "medical device." "Medical devices" are exempt from the general prohibition on nonessential uses of CFCs found in section 610 of the Clean Air Act. If certain conditions are met, EPA may authorize production of ODS for use in "medical devices" under an exemption from the general prohibitions on production and consumption of ODS found in sections 604 and 605 of the Clean Air Act. FDA lists essential medical products in § 2.125 (21 CFR 2.125). Most of the medical products listed as essential are metered-dose inhalers (MDIs). FDA will maintain the designation of ODS medical products such as MDIs as essential until non-ODS medical products adequately meet the needs of patients.

In the **Federal Register** of September 1, 1999 (64 FR 47719), FDA published a proposed rule that sought public comment on the process FDA would use to make essential-use determinations.[1] FDA received 22 comments on the proposed rule and addresses those comments in section IV of this document.

The United States, as a party to the international agreement called the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) (September 16, 1987, S. Treaty Doc. No. 10, 100th Cong., 1st sess., 26 I. L. M. 1541 (1987)), has agreed to phase out production and importation of ODSs, including CFCs. The United States has generally banned the use of CFCs in consumer aerosols for decades and eliminated almost all manufacture and importation of CFCs as of January 1, 1996. However, the Montreal Protocol permits parties to the Protocol to continue to produce or import CFCs for use in essential medical products if such production or importation is approved by the parties, and the United States continues to do so at this time.

The twelfth meeting of the parties to the Montreal Protocol took place in Ouagadougou, Burkina Faso. The parties issued Decision XII/2—"Measures to facilitate the transition to chlorofluorocarbon-free metered-dose inhalers." Decision XII/2 is contained in the Report of the Twelfth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The report can be found on the United Nations Environment Programme Web site at http://www.unep.org/ozone/mop/12mop/12mop-9.e.shtml. Decision XII/2 states the following:

> [A]ny chlorofluorocarbon metered-dose inhaler product approved after 31 December 2000 for treatment of asthma and/or chronic obstructive pulmonary disease in a non-Article 5(1) Party is not an essential use [under the Montreal Protocol] unless the product meets the criteria set out in paragraph 1(a) of decision IV/25.

The United States is a non-Article 5(1) Party under the Montreal Protocol. Paragraph 1(a) of Decision IV/25 provides that:

> a use of a controlled substance should qualify as 'essential' [under the Montreal Protocol] only if:
>
> (i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and
>
> (ii) There are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health.

Decision IV/25 is contained in the Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The report can be found on the United Nations Environment Programme Web site at http://www.unep.org/ozone/mop/04mop/4mop-15.e.shtml.

FDA believes that this rule is consistent with Decision XII/2. This rule is also a key step in fulfilling the United States' obligation under paragraph 5 of Decision XII/2 to develop a national transition strategy that "includes effective criteria and measures for determining when chlorofluorocarbon metered-dose inhaler product(s) is/are no longer essential."

Title VI and the Montreal Protocol work in independent but complementary ways. The Montreal Protocol deals primarily with restrictions on the production and importation of new ODSs. Title VI deals with the use of ODSs, as well as their production and importation. The following hypothetical example may be helpful in illustrating the interaction of Title VI and the Montreal Protocol. A United States company makes CFC-propelled plastic party streamers using recycled and stockpiled CFCs. This use of ODSs would not be impacted by the Montreal Protocol because no newly manufactured or imported ODSs were used. However, this use of ODSs would be prohibited by Title VI, because CFC-propelled plastic party streamers are specifically banned by section 610(b)(1) of the Clean Air Act.

[1] FDA included in the proposed rule a summary of the comments the agency received on the advanced notice of proposed rulemaking (ANPRM) published in the **Federal Register** of March 6, 1997 (62 FR 10242).

The purpose of this rule is to implement Title VI. A determination that a product that contains ODSs is essential under Title VI does not guarantee that the manufacturer of that product will be allocated ODSs for use in the product. As the example above illustrates, the ability to manufacture and market an ODS-containing product requires compliance with both the Clean Air Act and the Montreal Protocol.

II. Highlights of the Final Rule

FDA is making the following changes to § 2.125:

- Using the phrase "ozone-depleting substance" instead of the word "chlorofluorocarbon" in the title and text of the regulation;
- Revising § 2.125(b) to remove explanatory material that has no regulatory effect;
- In revised § 2.125(b), defining a product that is subject to § 2.125 as any food, drug, device, or cosmetic that is, consists in part of, or is contained in an aerosol product or other pressurized dispenser that releases an ODS, rather than limiting the definition to those products that use CFCs as a propellant;
- Changing the designation of ODS products not listed in § 2.125(e) from adulterated and misbranded to nonessential;
- Listing as a separate essential use each active moiety marketed under the current essential uses for metered-dose steroid human drugs for oral inhalation and metered-dose adrenergic bronchodilator human drugs for oral inhalation;
- Eliminating the essential-use designation in § 2.125(e) for metered-dose steroid human drugs for nasal inhalation;
- Eliminating the essential-use designations in § 2.125(e) for products that are no longer marketed;
- Setting the standard to determine when a new essential-use designation should be added to § 2.125;
- Eliminating outdated transitional provisions in current § 2.125(g), (h), (i), (j), (k), and (l); and
- Setting standards to determine whether the use of an ODS in a medical product remains essential.

We are highlighting the most important portions of the final rule here.

A. Removal of the Term "Propellant"

The agency is defining the products that are subject to § 2.125 as any food, drug, device, or cosmetic that is, consists in part of, or is contained in an aerosol product or other pressurized dispenser that releases an ODS, rather than limiting the application of § 2.125 to products that use a CFC as a propellant in a self-pressurized container. This brings within the scope of the regulation medical products that use ODSs for purposes other than as a propellant. This provision is intended to encompass all products that are regulated by FDA.

B. Change to Essentiality Determinations

Former § 2.125(c) stated that any CFC product not found in § 2.125(e) was adulterated and/or misbranded in violation of the Federal Food, Drug, and Cosmetic Act (the act). FDA is changing this paragraph to reflect the agency's authority under the Clean Air Act to determine whether an ODS product is essential. FDA notes that EPA is responsible for enforcing the provisions of the Clean Air Act. However, FDA is not stating by its removal of the adulterated and/or misbranded provision from § 2.125 that a nonessential ODS product is not adulterated or misbranded. Such products may still be considered adulterated and misbranded under the act.

C. Metered-Dose Steroid Human Drugs for Nasal Inhalation

FDA is removing the essential-use designation for metered-dose steroid human drugs for nasal inhalation for the following reasons:

- Adequate alternative non-ODS products for steroid human drugs for nasal inhalation are currently available, including metering atomizing pumps for administering nasal corticosteroids, other nonsteroid nasal topical therapies, and systemic therapies;
- Patients use the alternative products on a widespread basis; and
- These alternative products have been and continue to be produced and supplied at sufficient levels to meet patient needs.

While it was not a factor in the agency's decision, FDA notes that, unlike other ODS medical products currently being marketed, the diseases for which these products are indicated are not life threatening. FDA also notes that only the three active moieties beclomethasone, budesonide, and triamcinolone are marketed as CFC-nasal steroids and that these three moieties are also marketed in non-ODS formulations.

D. Products No Longer Marketed

FDA is removing the essential-use designations for the following ODS products that are no longer marketed:

- Contraceptive vaginal foams for human use;
- Intrarectal hydrocortisone acetate for human use;
- Polymyxin B sulfate-bacitracin zinc-neomycin sulfate soluble antibiotic powder without excipients, for use on humans; and
- Metered-dose nitroglycerin human drugs administered to the oral cavity.

These drug products are either no longer being marketed or are no longer being marketed in a formulation containing CFCs. Additionally, in instituting a list in § 2.125 of each marketed active moiety for metered-dose adrenergic bronchodilator human drugs for oral inhalation, the following moieties will not be listed as essential uses of ODS, as they are no longer being marketed in a formulation containing CFCs: Isoetharine, isoproterenol, terbutaline.

E. Petitions To Add New Essential Uses

By this final rule, FDA is amending § 2.125 to provide a process for adding investigational uses to § 2.125(e) and amending the existing process for adding noninvestigational uses to § 2.125(e). FDA believes that it would be inappropriate to add new essential uses to § 2.125 in all but the most extraordinary circumstances because of the relatively near-term phaseout of the production and importation of ODSs and because of the United States' commitment to reducing its consumption of ODSs. Therefore, FDA is requiring compelling evidence in support of a petition for a new essential use. For purposes of this rule, compelling evidence is evidence sufficient to establish with reasonable scientific certainty the truth of the matter asserted. The evidence should be detailed and capable of scientific analysis and discussion. Unsupported, conclusory statements are not compelling evidence. Because the Clean Air Act mandates an opportunity for public comment before FDA makes a determination of essential use, a petitioner must disclose all relevant information in a petition to add a new essential use to § 2.125(e). Such information will become publicly available. FDA will use this information in issuing a proposed rule to add the essential use if it finds that the petitioner has submitted compelling evidence.

This new standard applies to all requests for essential-use exemptions submitted after the effective date of this rule.

1. Noninvestigational Uses

Noninvestigational products are products that are not intended to be used in preclinical or clinical

investigations of a medical product. Noninvestigational uses include the use of ODSs in medical products that are commercially distributed under an approved marketing application. FDA does not intend to consider proposing a new essential use for a noninvestigational product unless a petitioner submits:

- Compelling evidence that substantial technical barriers exist to formulating the product without ODSs;
- Compelling evidence that the product will provide an unavailable important public health benefit;
- Information describing the cumulative release of ODS into the atmosphere and a discussion of the significance of the release; and
- The basis for why the release is warranted in view of the unavailable important public health benefit.

2. Investigational Uses

FDA does not intend to consider proposing a new essential use for an investigational use of an ODS medical product unless a petitioner submits:

- Compelling evidence that substantial technical barriers exist to formulating the investigational product without ODSs;
- Compelling evidence that a high probability exists that the investigational product will provide an unavailable important public health benefit;
- Information describing the cumulative release of ODS into the atmosphere and a discussion of the significance of the release; and
- The basis for why the release is warranted in view of the unavailable important public health benefit.

FDA notes that inclusion of an investigational use in § 2.125(e)(4) will not allow commercial manufacture and marketing of an ODS product. A sponsor will need to file a separate petition under § 2.125(f)(1) for a new essential-use determination for commercial marketing of the ODS product.

3. Requesting Addition of a New Essential Use

A party seeking a new essential use will need to file a citizen petition under § 10.30 (21 CFR 10.30) requesting that FDA initiate rulemaking to add a new essential use. The petitioner will need to include compelling evidence justifying addition of the new essential use, as provided for in § 2.125(e). FDA will deny the petition if the petitioner has not submitted compelling evidence. If the petitioner has submitted compelling evidence, FDA will grant the petition and initiate notice-and-comment rulemaking to add the new essential use.

First, the petitioner must demonstrate through compelling evidence that substantial technical barriers exist to formulating the product without ODSs. Generally, FDA intends the term "technical barriers" to refer to difficulties encountered in chemistry and manufacturing. To demonstrate that substantial technical barriers exist, the petitioner will have to establish that it evaluated all available alternative technologies and explain in detail why each alternative was deemed to be unusable to demonstrate that substantial technical barriers exist. FDA notes that alternative technologies not suitable for use by general patient populations may be suitable for use in a clinical investigation due to the increased medical supervision provided and the limited use of the investigational new drug (see FDA Response to Biovail Citizen Petition, Docket No. 95P–0045). The agency might consider cost as a technical barrier if the petitioner shows that the cost of using a non-ODS in a product is prohibitively high in comparison to the cost of using an ODS.

Second, the petitioner for a new essential use for a noninvestigational product must include compelling evidence of an unavailable important public health benefit. For investigational products, FDA is requiring the petitioner to provide compelling evidence that there is a high probability that the investigational product will provide an unavailable important public health benefit. "High probability" means that it is substantially more likely than not that the investigational product will provide an unavailable important public health benefit.

The agency will give the phrase "unavailable important public health benefit" a markedly different construction from the previous phrase "substantial health benefit." For example, the petitioner should show that the use of an ODS would save lives, significantly reduce or prevent an important morbidity, or significantly increase patient quality of life to support a claim of important public health benefit. The petitioner should also show that patients cannot access non-ODS products and that no technology is readily available to produce and distribute non-ODS products. In unusual cases, FDA might accept a showing of nonclinical health benefit, such as the safety of the health care practitioner using the product.

Third, the petitioner must submit compelling evidence showing that the use of the product does not release significant amounts of ODS into the atmosphere. Alternatively, the petitioner may show that the release is warranted in view of the important public health benefit or, for an investigational product, in view of a high probability of an important public health benefit. The petitioner must submit a well-documented statement of the number of products to be manufactured and the amount of ODS to be released by each product.

F. Determinations of Continued Essentiality

In § 2.125(g), FDA sets forth criteria to determine whether an essential-use designation should be removed from § 2.125(e).

1. Products No Longer Marketed

Under § 2.125(g)(1), FDA will propose removal of an active moiety from the essential-use list (§ 2.125(e)) if it is no longer marketed in an ODS formulation. FDA believes failure to market indicates nonessentiality because the absence of a demand sufficient for even one company to market the product is highly indicative that the use is not essential.

2. Products Marketed After January 1, 2005

Section 2.125(g)(2) provides that, after January 1, 2005, FDA may propose that ODS products containing a particular active moiety are nonessential if the moiety no longer meets the essential-use criteria in § 2.125(f). Even if a current essential-use active moiety is not reformulated, sufficient alternative products may exist in the future to fully meet the needs of patients. FDA would designate any remaining active moieties marketed in ODS formulations as nonessential. FDA will consult with an advisory committee and provide the opportunity for public comment before making such a determination.

3. Products for Which Non-ODS Alternatives Containing the Same Active Moiety Are Developed

Under § 2.125(g)(3) and (g)(4), a moiety can remain on the essential-use list until:

- A non-ODS product(s) with the same active moiety is (are) marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use;
- Supplies and production capacity for the alternative(s) exist or will exist at levels sufficient to meet patient need;
- Adequate U.S. postmarketing data exist; and

• Patients who medically require the ODS product are adequately served by available alternatives.

In addition, a CFC–MDI with an active moiety that is marketed under more than one new drug application (NDA) will not be removed from the essential-use list under § 2.125(g)(4) unless at least two non-ODS products with the same active moiety are marketed under more than one NDA.

a. *Same indication.* In evaluating indications, FDA will require a non-ODS alternative to have a broader indication or an indication or indications identical to that of the ODS product containing the active moiety to be removed from the list of essential uses, except for minor wording changes that do not materially change the meaning of the indication. For example, the non-ODS product could be indicated for treatment of asthma and chronic obstructive pulmonary disease (COPD), whereas the ODS product might only be indicated for asthma.

b. *Same level of convenience of use.* In evaluating whether an alternative has approximately the same level of convenience of use compared to the ODS product containing the same active moiety, FDA will consider whether:

• The product has approximately the same or better portability;

• The product requires approximately the same amount of or less preparation before use; and

• The product requires approximately the same or less physical effort and dexterity.

c. *Supplies and production capacity.* In evaluating whether supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need, FDA will consider whether a manufacturer of a non-ODS alternative is able to manufacture the non-ODS alternative in sufficient quantities to satisfy patient demand once the ODS product containing the same active moiety is no longer marketed. FDA generally will expect the non-ODS product to be manufactured at multiple manufacturing sites if the ODS product was manufactured at multiple manufacturing sites.

d. *Postmarketing data.* In evaluating postmarketing data, FDA will look at a composite of all available information. FDA expects to see data showing the acceptance of a non-ODS product in widespread use outside of controlled trials and in subgroups not represented adequately in the clinical trials that served as the basis for marketing approval. FDA will also look for information on device performance in uncontrolled settings, tolerability of products in widespread use, unusual adverse reactions not previously identified in premarketing studies, and effectiveness in broader patient populations.

FDA encourages sponsors to obtain postmarketing use data and to assess the safety, effectiveness, tolerability, and patient acceptance of possible alternatives in postmarketing clinical studies. In particular, FDA encourages sponsors to seek data regarding patient subpopulations not fully represented in premarketing clinical trials. FDA will also evaluate data on acceptance, device performance, tolerability, adverse events, and effectiveness by using postmarketing studies and postmarketing use and surveillance data, including FDA's MedWatch data.

In addition, FDA will consider foreign data supportive of U.S. postmarketing use data if U.S. and foreign formulations, patient populations, and clinical practices were the same or substantially similar. FDA will monitor events related to the transition to non-ODS alternatives in other developed nations for any information relevant to the U.S. transition, including information regarding the safety, effectiveness, tolerability, performance, and patient acceptance of non-ODS alternative products.

e. *Patients adequately served.* FDA will evaluate whether patients who medically require the ODS product are adequately served by available alternatives by determining whether adequate safety, tolerability, effectiveness, and compliance data for the available alternatives exist for the indicated populations and other populations known to medically rely on the ODS product. FDA anticipates that ODS products of the same active moiety marketed in different strengths will need to be replaced by non-ODS products of the same active moiety with more than one strength to adequately serve patients. FDA will also consider whether a high-priced non-ODS product is effectively unavailable to a portion of the patient population because they cannot afford to buy the product.

4. Opportunity for Public Comment

The public will have the opportunity to comment on the acceptability of alternatives before FDA removes the essential-use designation for any particular active moiety. FDA encourages health care professionals and patients to submit medically significant data based on actual use regarding the acceptability of alternatives and whether alternatives adequately serve patients.

III. Changes From the Proposed Rule

Based on the comments it received on the proposed rule, FDA has made some changes in this final rule.

FDA is finalizing § 2.125(g)(2) to permit FDA to evaluate all remaining ODS products after January 1, 2005, instead of just those products that are not available without an ODS. FDA is making this change in response to comments. FDA believes this change is important to cover active moieties marketed as ODS products and represented by two or more NDAs but for which only one non-ODS replacement is marketed, as well as active moieties for which a non-ODS replacement is developed that does not alone meet all of the criteria in § 2.125(g)(3). Under § 2.125(g)(2), FDA will examine the entire marketplace of products available to treat asthma and COPD in determining whether an ODS product remains essential. By entire marketplace, FDA means to include replacements containing the same active moiety, other non-ODS products, as well as remaining CFC products.

FDA is finalizing § 2.125(g)(3)(iii) to require adequate U.S. postmarketing data instead of at least 1 year of postmarketing data. FDA is making this change in response to comments pointing out that more or less data may be necessary depending on factors such as the amount of foreign data available on the same product and the amount of U.S. data that would be available by the time FDA finalized removal of an essential use.

FDA is eliminating the proposal that § 2.125(g)(4) require active moieties marketed as ODS products and represented by multiple strengths be replaced by at least two non-ODS products. FDA is making this change in response to comments. FDA made this proposal to account for different subpopulations that may require different strengths. FDA believes it can adequately account for this need by requiring that replacements adequately serve patients who medically require the ODS product (see § 2.125(g)(3)(iv)).

For consistency, FDA is also finalizing § 2.125(g)(3) to eliminate the phrase "and one strength:".

FDA is maintaining the requirement in § 2.125(g)(4) to require active moieties marketed as ODS products and represented by two or more NDAs to be replaced by at least two non-ODS products.

FDA has determined, on its own initiative, that this rule will go into effect 180 days after publication, rather than 1 year after publication as was originally proposed. This change is

being made because of the length of this rulemaking process, the anticipated length of future rulemakings to remove essential-use exemptions, and the importance of eliminating ODSs in a timely manner. The agency has also determined that the elimination of the essential-use exemption for metered-dose steroid human drugs for nasal inhalation will apply 1 year after the date of publication of this rule. Several CFC-containing nasal steroid MDIs are still being marketed. The agency believes that a 1-year period to dispose of existing stocks and to complete the transition to non-ODS-containing alternatives remains appropriate.

IV. Comments on the Proposed Rule

FDA sought comments on the proposed rule. In particular, FDA requested comment on the following issues:

- The criteria FDA should use to determine whether a subpopulation is significant;
- The type of postmarketing information FDA should consider in evaluating the adequacy of alternatives; and
- The timing of the removal of the essential-use designation for nasal steroids.

FDA received 22 written comments on the proposed rule and held one public meeting at the November 22, 1999, session of the Pulmonary and Allergy Drugs Advisory Committee (PADAC). Comments were submitted by individuals, health care providers, patient groups, prescription drug manufacturers, professional associations, Congress, and a union. A summary of the comments received and the agency's responses follow.

A. General Comments About the Proposed Rule

(Comment 1) Two comments supported the proposed rule as reasonable and protective of patient choice. One comment noted that it is difficult for patients to switch therapies and supported the proposed rule as minimally disruptive of patient care. One comment supported the proposed rule as protective of patients and the environment. One comment supported the proposed rule as a reasonable and measured approach. One comment encouraged FDA to finalize the proposed rule as quickly as possible. One comment supported the proposed rule as an improvement over the ANPRM (62 FR 10242, March 6, 1997) FDA published on the same topic. PADAC members were generally supportive of the proposed rule (Ref. 1, page 122 of the transcript).

FDA is generally adopting the rule as proposed, with the changes noted in section III of this document.

B. Number of Alternatives Proposed

(Comment 2) Eight comments supported the moiety-by-moiety approach. Two comments supported the moiety-by-moiety approach, including listing each individual active moiety deemed essential. PADAC was generally supportive of the moiety-by-moiety approach (Ref. 1, pp. 203 and 204 of the transcript).

FDA is using the moiety-by-moiety approach overall, including listing each individual active moiety deemed essential.

(Comment 3) Two comments said that FDA should make essentiality determinations on a product-by-product rather than a moiety-by-moiety approach. One of these comments argued that FDA applies such a product-by-product approach to discontinued products and products outside the classes listed in the proposal. One comment said that FDA should not remove an essential use for an active moiety unless there is a non-ODS alternative available. One comment requested that FDA not remove a product from the essential-use list until it was no longer marketed.

FDA notes that some companies are unlikely to reformulate their CFC products into non-ODS products because of economic considerations. Therefore, FDA did not propose using a product-by-product approach or waiting until a product was no longer marketed because such approaches would not accomplish the eventual phaseout of CFC–MDIs as agreed to by the United States.

FDA disagrees that drugs outside the classes listed in the proposal and discontinued products are treated differently from drugs within the classes. FDA is not listing particular products, but rather active moieties. Although some of these active moieties are represented by one product, as are most of the moieties within the classes listed in the proposal, FDA is using the active moiety within the product as a basis for classification, not the product itself.

(Comment 4) One comment stated that FDA should list as essential uses all currently approved and available asthma-related MDIs, including cromolyn. The comment also stated that some of the active moieties included in table 1 of the proposed rule (64 FR 47719 at 47740, September 1, 1999) were not proposed as essential uses.

FDA proposed, and is including in this final rule, an essential use for cromolyn at § 2.125(e)(4)(iv). In evaluating this comment, FDA compared table 1 in the preamble of the proposed rule with the proposed codified language and found that the active moieties isoetharine and isoproterenol were referenced in the table but not in the proposed codified language. FDA did not include these active moieties in the proposed codified language because the moieties are no longer marketed in CFC formulations. FDA also researched whether any active moieties listed in table 1 of the proposed rule are no longer marketed. FDA has determined that terbutaline is no longer marketed in an ODS formulation and, therefore, is finalizing this rule without including terbutaline in the codified portion of this final rule.

(Comment 5) One comment requested that FDA provide additional details regarding how it would treat over-the-counter (OTC) bronchodilator products.

The only active moiety available as an OTC bronchodilator is epinephrine. Epinephrine CFC–MDIs are manufactured under multiple NDAs. FDA will evaluate the essentiality of epinephrine the same way it will evaluate the essentiality of all active moieties manufactured under multiple NDAs. FDA will not initiate rulemaking to eliminate the essential-use designation for any individual active moiety marketed under multiple NDAs until at least two non-ODS alternatives exist that contain the same active moiety or, after January 1, 2005, until adequate alternatives exist, as described in § 2.125(g). FDA further notes that any reexamination of the appropriateness of continuing the OTC status for bronchodilators is quite separate from determinations on the essential-use status of epinephrine CFC–MDIs.

(Comment 6) Five comments supported the proposal that more than one non-ODS product be available for an active moiety for which more than one CFC product is available currently. One comment stated that FDA should clarify that under § 2.125(g)(4) more than one product is required only for active moieties represented by two or more NDAs. PADAC supported this proposal generally but noted that the replacement products should be adequate to serve the populations that were served by the ODS product (Ref. 1, pp. 196 through 199 of the transcript).

FDA is including in this final rule a requirement that more than one non-ODS product be available for active moieties currently available under two or more NDAs. FDA acknowledges that it may be difficult to argue that a higher strength replacement is an adequate replacement for a product available in

multiple strengths if a population exists that specifically requires a lower strength product (Ref. 1, pp. 197 and 198 of the transcript). Therefore, FDA is removing the requirement that multiple-strength ODS products be replaced by replacement products represented by multiple NDAs. Instead, FDA will consider whether a multiple-strength ODS product is adequately replaced by a non-ODS product by determining whether patients are adequately served by the replacement.

(Comment 7) One comment asked FDA to require that before a multiple-strength ODS product is found to be nonessential it must be replaced by either one non-ODS product with the same active moiety in at least two strengths, or two different non-ODS products with the same active moiety in different strengths.

At the time FDA drafted the proposed rule, FDA considered carefully whether to propose requiring replacing multiple strength ODS products with multiple strength non-ODS products. Instead the agency decided to require replacement by multiple non-ODS products for active moieties for which more than one different product is currently available. FDA chose not to propose to specifically require multiple strength alternatives for multiple strength ODS products because of the difficulty of equating therapeutic need with strengths. For example, if an active moiety were available in two low potency strength alternatives, it would meet the letter of the regulation, but might not meet the therapeutic need for a high-potency formulation. On the other hand, if a replacement product were twice as effective at half the strength, requiring the replacement to be marketed in the same strength would not necessarily serve the same population. FDA believes this reasoning is still valid and declines to adopt the suggestion, but will rather examine all aspects of an alternative's acceptability as a replacement.

(Comment 8) One comment stated that proposed § 2.125(g)(4) could preclude replacement of a multiple-strength CFC–MDI by one non-ODS product with two strengths.

FDA agrees that proposed § 2.125(g)(4) could have prevented a multiple-strength CFC–MDI from being replaced by one non-ODS product with two strengths filed under the same NDA. Therefore, FDA is finalizing § 2.125(g)(4) to require only that ODS products represented by two or more NDAs be replaced by at least two non-ODS products. This criterion could be met by two products that differ in strength and that are approved under one NDA. FDA is eliminating the proposal that active moieties marketed in multiple distinct strengths be replaced by at least two non-ODS products. FDA's intent in proposing that multiple strengths be replaced by multiple products was to ensure that patients who require different strengths are adequately served by replacements. Section 2.125(g)(3)(iv) already requires that patients who medically required the ODS product to be adequately served by the non-ODS product(s) containing that active moiety and other available products. Therefore, FDA does not believe that its original proposal adds any additional protection. For consistency, FDA is also eliminating the phrase "and one strength" from § 2.125 (g)(3).

C. Specific Comments on the Proposed Criteria for Phaseout

(Comment 9) One comment stated that FDA should establish a procedure to reinstate an essential use if a replacement is found inadequate after removal of that essential use.

Section 2.125 does provide a mechanism to reinstate an essential use if replacements are found inadequate after removal of that essential use. A petitioner will need to apply under § 2.125(f) to add the essential use to § 2.125(e).

(Comment 10) One comment stated that FDA should permit FDA-regulated products using any ODS to remain on the market.

As explained below in detail in response to comment 52 of this document, FDA-regulated products containing an ODS cannot remain on the market once they are no longer essential.

(Comment 11) One comment stated that FDA should not propose removal of an essential-use listing for an active moiety that does not have a non-ODS replacement after January 1, 2005, unless FDA states the criteria it will use to conclude that alternatives are adequate.

FDA will use notice-and-comment rulemaking if it proposes removal of an essential-use listing for an active moiety that does not have a non-ODS replacement. As part of this rulemaking, FDA will state the criteria it will use to conclude that alternatives are adequate.

(Comment 12) One comment recommended that FDA establish an expert panel to monitor all aspects of the transition. One comment stated that FDA should state the qualifications of the people on the advisory committee and should include members of the expert panel assembled by the National Institutes of Health (NIH) and professionals selected by the House Committee on Commerce's Subcommittee on Health and the Environment.

PADAC comprises individuals possessing recognized expertise and judgment in the fields of pulmonary and allergy medicine. Members have the training and experience necessary to evaluate information objectively and to interpret its significance under various, often controversial, circumstances. Voting members of PADAC have expertise, as demonstrated by training, education, and experience in pulmonary and allergy medicine. To the extent feasible, voting members possess skill and experience in the development, manufacture, or use of the types of drugs to be referred to the committee. FDA strives to ensure that the group of voting members reflects a balanced composition of scientific expertise through members with diverse professional education, training, and experience (21 CFR 14.80(b)(1)). Ad hoc committee members who are representatives of consumer or patient interests, or who have expertise in the particular disease or condition for which the drug under consideration is proposed to be indicated, will be voting members if: (1) They have the requisite scientific or technical expertise, and (2) their participation is not prevented by conflict of interest laws and regulations. Because of inherent conflict of interest concerns, representatives of the drug manufacturing industry will not be voting members of the committee. No person who is a regular full-time employee of the U.S. Government and engaged in the administration of the act may be a voting member of an advisory committee (section 505(n)(3) of the act (21 U.S.C. 355(n)(3))).

The names and qualifications of the current members of PADAC are available at each meeting and by written request mailed or faxed to the following address: Food and Drug Administration, Freedom of Information Staff (HFI–35), 5600 Fishers Lane, Rockville, MD 20857, FAX 301–443–1726.

FDA may invite other individuals, such as members of the expert panel assembled by NIH or professionals selected by the House Committee on Commerce's Subcommittee on Health and the Environment, to serve as ad hoc PADAC members if appropriate.

(Comment 13) Four comments supported proposed § 2.125(g)(2). Three comments recommended FDA undertake an evaluation of all ODS–MDI products after January 1, 2005. One comment stated that FDA should not limit proposed § 2.125(g)(2) to products without a non-ODS replacement.

FDA agrees with these comments and has therefore revised § 2.125(g)(2) to permit the agency to undertake an evaluation of all ODS products after January 1, 2005, not just those products without a non-ODS replacement.

(Comment 14) Three comments stated that FDA should permit manufacturers to demonstrate an ability to meet patient need through a single manufacturing site before requiring multiple manufacturing sites. One comment supported FDA's proposal to require adequate supplies and production capacity, but asked FDA to clarify that a single facility could be adequate to meet patient demand.

FDA did not propose and is not finalizing in this rule a requirement that replacement products be manufactured at multiple sites. This final rule requires only that supplies and production capacity for the non-ODS product exist at levels sufficient to meet patient need. FDA notes, however, that multiple manufacturing sites increase the likelihood that a manufacturer will be able to supply the replacement drug in the event of an unforseen circumstance that shuts down one site.

(Comment 15) Three comments supported the proposal that an alternative be acceptable only if patients are adequately served and the alternative is marketed for the same route of administration, for the same indication, and with approximately the same level of convenience of use as the product it is replacing.

In this final rule, FDA will not eliminate an essential use under § 2.125(g)(3) or (g)(4) unless patients are adequately served by alternatives and an alternative is marketed for the same route of administration, for the same indication, and with approximately the same level of convenience of use as the product it is replacing.

(Comment 16) One comment asked FDA to confirm that only significant variations in convenience that materially impede patient compliance are a basis for consideration of whether a product has approximately the same level of convenience of use.

FDA confirms that only significant variations in convenience that materially impede patient compliance are a basis for consideration of whether a product has approximately the same level of convenience of use. For example, it is possible that a non-ODS MDI may use a mouthpiece that is different from its CFC–MDI counterpart. Such a difference would not normally constitute a significant inconvenience. On the other hand, FDA is aware that physicians and patients value the compact size and ease of use of MDIs. Therefore, a non-ODS product that needed to be plugged in to be used would not have the same level of convenience of use as a portable MDI.

(Comment 17) One comment supported FDA's statement that approximately the same level of convenience of use should mean approximately the same or better portability and the same amount of or less preparation time.

In evaluating whether an alternative has approximately the same level of convenience of use compared to the ODS product containing the same active moiety, FDA will consider whether:

1. The product has approximately the same or better portability;

2. The product requires approximately the same amount of or less preparation before use; and

3. The product does not require significantly greater physical effort or dexterity.

(Comment 18) One comment asked FDA to revise the rule to state that a non-ODS product need only provide a level of convenience that would not significantly impair safe and effective use.

FDA is not revising this rule to state that convenience of use means only that a non-ODS product does not significantly impair safe and effective use. Although products exist already that are safe and effective without providing the same level of convenience of use as CFC–MDIs, such products do not represent sufficient treatment options. For example, solutions for nebulization safely and effectively treat asthma and COPD. However, nebulizers are generally not readily portable and usually require an external power source to work. If such solution products were the only means to treat asthma and COPD, patients with these diseases would be highly restricted in where and how they could receive their treatment. FDA does not believe such restrictions are reasonable or medically appropriate.

(Comment 19) One comment asked that FDA eliminate essential uses based on indications. One comment argued that FDA should eliminate essential uses on an indication-by-indication basis and require revised labeling accordingly.

FDA is not eliminating essential uses based on indications. It is extraordinarily difficult to control to whom marketed drugs are prescribed. FDA believes such an effort would be ineffective. Therefore, FDA is not adopting this suggestion.

(Comment 20) Three comments supported removing essential use designations for products no longer marketed.

FDA is removing the essential-use designations for products no longer marketed and will continue to propose removal of such designations under § 2.125(g)(1) as products are removed from the market.

(Comment 21) One comment stated that FDA should not eliminate an essential use unless alternatives are found to be as safe, effective, well tolerated, and inexpensive as CFC–MDIs.

In general, the criteria cited in this comment match the criteria in this final rule. Although rigid cost comparison is not planned, FDA will consider cost under the criterion of whether patients are adequately served by the non-ODS alternatives.

(Comment 22) One comment suggested that FDA modify § 2.125(f) to specify that a petition to remove an essential use must submit compelling evidence that the criteria in § 2.125(g)(3) or (g)(4) are met.

FDA is finalizing § 2.125(g) to clarify that a petitioner must submit compelling evidence that an essential use should be removed from § 2.125(e). If FDA grants the petition, FDA will propose removal of that essential use through notice-and-comment rulemaking. During the rulemaking period, the public will have the opportunity to comment on the adequacy of the evidence in support of the proposal to remove the essential use.

(Comment 23) One comment supported requiring that all patient groups be adequately served.

FDA agrees with this comment and therefore is including in this final rule a requirement that patients who medically required the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products (§ 2.125(g)).

(Comment 24) One comment asked that FDA revise § 2.125(g)(4) to add the word "each" to clarify that each replacement product is subject to independent evaluation using the substitution criteria.

FDA is not adding the word "each" to § 2.125(g)(4). It is not FDA's intent that each replacement product be subject to independent evaluation using the substitution criteria. Rather, it is FDA's intent to ensure that patients are adequately served by available options.

D. Patient Subpopulations

(Comment 25) One comment stated that every subpopulation is significant. One comment asked that FDA consider the severity of impact on patients rather

than the numbers in a subpopulation. PADAC noted that some subgroups that might require particular attention are the elderly, pregnant women, urban patients, low-income patients, minority populations, and people who cannot cooperate at all in using a device because of neurological or other health problems (Ref. 1, pages 171 to 196 of the transcript). However, PADAC also acknowledged that these same groups have problems with existing products and stated that FDA should not set a standard for new products that cannot be met by existing products (Ref. 1, pp. 187 and 196 of the transcript).

FDA recognizes that each patient is important. FDA also recognizes that patients' asthma management programs are individualized and that changes in these programs require patience, education, and consultation with health care providers. FDA encourages patients to try appropriate new therapies as they become available and will ask patients to provide first-hand feedback to FDA as part of notice-and-comment rulemaking proposing to remove an essential use. FDA will carefully consider all such comments in determining whether a use remains essential. However, FDA notes that, just as all patients are not served by one CFC–MDI, all patients will not be served by a single alternative product. Therefore, FDA does not believe it is appropriate to make essential-use determinations on a patient-by-patient basis, just as the agency would not make determinations about whether a drug should remain on the market based on the experience of one patient or a small handful of patients.

(Comment 26) One comment stated that FDA proposed to determine essentiality based on the needs of patients who use the product for unapproved uses and asked that FDA limit its evaluations to approved uses. The comment cited the statement "for the indicated populations and other populations known to medically rely on the ODS product" (64 FR 47719 at 47723).

Although FDA will generally concentrate on those populations for whom a product is indicated in approved labeling, FDA also recognizes that there are populations that medically rely on CFC–MDIs even though the CFC–MDIs are not labeled for their use. FDA will consider information from these populations in making its essential-use determinations.

(Comment 27) One comment requested that FDA confirm that alternatives would have to cover all significant indications before being considered acceptable.

FDA confirms that the available alternatives should cover all significant indications before the agency removes an essential use. In general, non-ODS products with the same active moiety should be approved for the same indications as their CFC counterparts prior to being considered as alternatives. For example, if a CFC–MDI is approved for use in the pediatric population as young as age 6 but the non-ODS alternatives are only labeled for children age 12 and above, a significant patient subpopulation would exist that might not be adequately served by non-ODS products. Absent other data, the agency would not eliminate the essential-use designation for the CFC–MDI based on this factor alone. FDA notes, however, that FDA will examine all available treatment options, not just the non-ODS product(s) containing the moiety for which FDA proposes eliminating an essential use, in determining whether patients are adequately served. FDA will examine all replacement products, as well as remaining ODS products.

(Comment 28) One comment recommended that FDA revise § 2.125(g)(3)(i) to replace the word "indication" with "indication(s)".

After consideration, FDA has decided not to replace the words "indication" with "indication(s)" in § 2.125(g)(3)(i). Multiple non-ODS products may replace the ODS product, and FDA does not intend to require each of those products to carry each of the indications approved for the ODS product. Instead, FDA will examine whether all of the products together cover the same indications as the ODS product.

E. Postmarketing Data and Suggested Duration

(Comment 29) One comment stated that FDA must use methods in addition to MedWatch to collect postmarketing data.

FDA plans to use methods in addition to MedWatch to collect postmarketing data. FDA will encourage sponsors to obtain postmarketing use data and to assess the safety, effectiveness, tolerability, and patient acceptance of possible alternatives in postmarketing clinical studies. In particular, FDA will encourage sponsors to seek data regarding patient subpopulations not fully represented in premarketing clinical trials. FDA will also evaluate data on acceptance, device performance, tolerability, adverse events, and effectiveness by using postmarketing studies and postmarketing use and surveillance data, including but not limited to FDA's MedWatch data.

(Comment 30) One comment supported use of foreign postmarketing data in support of U.S. data.

FDA will consider foreign data supportive of U.S. postmarketing use data if U.S. and foreign formulations, patient populations, and clinical practices are the same or substantially similar.

(Comment 31) Two comments asked that FDA reduce the requirement for 1 year of U.S. postmarketing data if foreign postmarketing use data is sufficient to support a finding that a CFC–MDI is no longer essential. One comment asked that FDA permit the use of foreign data in combination with U.S. data to make a total of 1 year of postmarketing data.

In response to these comments, FDA has finalized § 2.125(g)(3)(iii) to require that adequate U.S. postmarketing data exist for the non-ODS product. FDA may find that less than 1 year is adequate if foreign data is relevant to the U.S. market. FDA notes that it is interested in the acceptability of a product in the U.S. population, its actual use in the United States, and its relation to other products marketed in the United States. Foreign data may be used to augment U.S. data when appropriate.

(Comment 32) One comment stated that FDA should use a longer than 1-year period to collect postmarketing data.

FDA is requiring adequate postmarketing data. This may mean more or less than 1 year, depending on the particulars of the product under consideration and the status of other alternatives.

(Comment 33) One comment stated that it does not support phase 4 studies in the postmarketing period. One comment supported FDA's postmarketing requirements, but asked that FDA clarify that postmarketing information need not necessarily be obtained through phase 4 studies. One comment supported the proposal that a postmarketing study not be required if other data are adequate to establish the acceptability of an alternative. PADAC members had differing points of view on the value of conducting formal postmarketing studies (Ref. 1, pp. 136 through 171 of the transcript).

In general, FDA does not anticipate that sponsors will need to conduct formal phase 4 studies in the postmarketing period to provide adequate postmarketing data. FDA does anticipate, however, that sponsors will need to collect some postmarketing data beyond standard postmarketing surveillance to determine the acceptability of an alternative.

(Comment 34) One comment asked that FDA retract its suggestion that new data, and possibly new clinical studies, may be required to ensure an additional level of proof of safety and effectiveness.

FDA will not require an additional level of proof of safety and effectiveness in evaluating alternatives. FDA makes a determination that a non-ODS product is safe and effective when FDA approves the product for marketing. The question of whether the non-ODS product is an acceptable alternative to an ODS-product is a separate question, which FDA will answer by using the criteria set forth in § 2.125(g).

F. Timing of Phaseout

(Comment 35) One comment requested that FDA accord priority review to NDAs for non-ODS products. One comment stated that non-ODS products should undergo expedited review.

The agency is committed to the timely review of all drug applications. FDA does not believe that NDAs for non-ODS replacement products meet the criteria for priority review at the current time.

(Comment 36) One comment stated that education is a very important part of the transition process and asked FDA to take a leadership role in continuing education.

FDA recognizes the need to educate patients, health care providers, and interested parties about the planned phaseout of CFC–MDIs for the transition to non-ODS products to occur as smoothly as possible. FDA has been involved in public education on this issue for the past several years. Members of the Center for Drug Evaluation and Research's Division of Pulmonary and Allergy Drug Products have made presentations and participated in panel discussions on the phaseout of CFCs at national scientific and professional society meetings and will continue to do so.

The division has also worked in close cooperation with the National Asthma Education and Prevention Program (NAEPP), an ongoing comprehensive program directed by the staff of the National Heart, Lung, and Blood Institute of NIH. NAEPP educates physicians, other health care providers, and patients about issues related to the prevention and treatment of asthma, including the phaseout of CFCs. The NAEPP Coordinating Committee formed a CFC Workgroup to educate patients and physicians about the CFC phaseout. The NAEPP CFC Workgroup, in cooperation with the International Pharmaceutical Aerosol Consortium, developed a "fact sheet" for patients entitled "Your Metered-Dose Inhaler Will Be Changing * * * Here Are the Facts." The fact sheet is available on the Internet at http://www.fda.gov/cder/mdi/. The NAEPP CFC Workgroup is continuing to broaden its educational effort. FDA provides appropriate advice and assistance to the NAEPP CFC Workgroup.

FDA has also published articles on the phaseout of CFCs in FDA Consumer, Journal of the American Medical Association, and the FDA Medical Bulletin to educate health care providers and patients about FDA actions, or proposed actions, related to the transition to non-ODS inhalation products.

The agency views these educational efforts as a critical component of the transition process and intends to continue these efforts as the transition to non-ODS products moves forward.

(Comment 37) One comment asked that FDA work with others to outline clear deadlines and strategies for a complete transition to facilitate necessary patient and health care provider education. One comment stated that FDA should provide a detailed timeframe for the transition.

FDA understands that patients and health care providers are very interested in knowing exactly when the transition will be complete. However, FDA cannot provide an exact date at this time because the U.S. transition is largely dependent on the availability of alternative products. However, as described above, FDA will develop and participate in patient and health care provider education that is appropriate for each stage of the transition and as more information becomes available regarding the timing of the transition.

(Comment 38) One comment requested that FDA carefully prepare its regulatory materials; provide patient, medical professional, and public education; and allow ample opportunity for interaction with FDA advisory bodies and personnel before proposing removal of an essential-use designation for an active moiety without a non-ODS replacement containing that active moiety.

FDA plans to take all of these steps before proposing removal of an essential-use designation under § 2.125(g)(2) for an active moiety without a non-ODS replacement containing that moiety. FDA notes, however, that if an active moiety is no longer marketed in a CFC formulation, FDA will propose removal of the essential-use designation under § 2.125(g)(1) without necessarily taking the additional steps suggested in the comment.

(Comment 39) One comment asked that FDA reiterate that it will determine the effective date of the removal of an essential use from § 2.125 on a case-by-case basis.

FDA will determine the effective date of the removal of an essential use from § 2.125(e) on a case-by-case basis determined as a part of notice-and-comment rulemaking.

G. Nasal Steroids

(Comment 40) Three comments supported removal of the essential-use designations for nasal steroids. PADAC supported the removal of the essential-use designations for nasal steroids (Ref. 1, pp. 235 though 240 of the transcript).

In this final rule, FDA is eliminating the essential-use designations for nasal steroids. This means that after the applicability date of this rule, no ODS formulation of a nasal steroid may be sold or distributed, or offered for sale or distribution, in the United States (see 40 CFR 82.64(c) and 82.66(d)).

(Comment 41) One comment supported removal of nasal steroids generally, but noted that only one nasal steroid containing CFCs is approved to age 4 and asked that FDA not remove the essential use for this product.

In response to this comment, FDA has reviewed the labeling for nasal steroids. Fluticasone and mometasone, both available as non-ODS products, are labeled for children as young as ages 4 and 3, respectively. No CFC nasal products are approved for children as young as age 4. Therefore, FDA does not believe it is medically necessary to retain the essential use for any nasal steroid.

H. Incentives for Development of Alternatives

(Comment 42) One comment requested that FDA cooperate with other government entities to implement suggestions outside of its authority. The same comment asked FDA to seek changes to the Montreal Protocol if necessary to protect patient health.

FDA is working closely with EPA and with the Department of State to ensure that the transition is smooth. If FDA finds that patient health is at risk as the transition progresses, FDA will take steps within its own authority and will seek the assistance of other authorities to continue to protect patient health.

I. Cost of New Products

(Comment 43) One comment stated that cost should be a priority in determining whether non-ODS alternatives are adequate. One comment stated that economic impacts must be taken into account before removal of an

essential-use designation. One comment argued that FDA has not adequately assessed the impact on public health from removal of generic CFC–MDIs. Three comments stated that FDA should not consider cost in determining essentiality. PADAC members agreed generally that cost alone should not be a reason for retaining an essential use and that the United States should work to find a way to deliver appropriate drugs to people who cannot afford the medicine (Ref. 1, pp. 226 through 235 of the transcript).

FDA recognizes that cost is a concern for many patients and health care providers. In part due to considerations such as those raised in these comments, FDA is requiring that multiple-source CFC–MDI products be replaced by at least two non-ODS alternative products. FDA will also consider cost in determining whether alternatives meet patient needs. In addition, FDA expects that the price for most non-ODS products will approximate the price for branded CFC products. FDA bases this expectation on statements by manufacturers.

J. Environmental Impact of CFC–MDI Use

(Comment 44) One comment argued that the elimination of CFC–MDIs is not justified by the *de minimis* environmental benefit that will result.

The United States evaluated the environmental effect of eliminating the use of all CFCs in an environmental impact statement (EIS) in the 1970s (see 43 FR 11301, March 17, 1978). As part of that evaluation, FDA concluded that the continued use of CFCs in medical products posed an unreasonable risk of long-term biological and climatic impacts (see Docket No. 96N–0057). Congress later enacted provisions of the Clean Air Act that codified the decision to fully phase out the use of CFCs over time (see Title VI (enacted November 15, 1990)). FDA notes that the environmental impact of individual uses of nonessential CFCs must not be evaluated independently, but rather must be evaluated in the context of the overall use of CFCs. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7). Significance cannot be avoided by breaking an action down into small components (40 CFR 1508.27(b)(7)). Although it may appear to some that CFC–MDI use is only a small part of total ODS use and therefore should be exempted, the elimination of CFC use in MDIs is only one of many steps that are part of the overall phaseout of ODS use. If each small step were provided an exemption, the cumulative effect would be to prevent environmental improvements. FDA is merely fulfilling its obligation to make essential-use determinations for FDA-regulated products, in accordance with the Clean Air Act.

K. Generics

(Comment 45) Two comments stated that FDA should not eliminate an essential use unless a non-ODS generic is available for that essential use.

Only one CFC-MDI, albuterol, is available in a generic formulation. FDA is not requiring that more generics be available in non-ODS formulations than are available in CFC formulations. It would seem inappropriate to require the availability of a non-ODS generic drug product when there is no generic version currently on the market and we have no guaranty that a generic drug will ever be developed for any given active moiety. When generic products become available is dictated by manufacturers' decisions whether to produce a generic product, by U.S. patent laws, by the exclusivity provisions of the act, by the approvability of any particular generic drug application, and by the manufacturers' eligibility to receive ODSs under the Montreal Protocol and the Clean Air Act.

(Comment 46) Three comments said that FDA should not approve a new CFC-containing MDI drug product if the active moiety in the drug product is already marketed and appears on the essential-use list. Three comments stated that FDA should not approve generic versions of existing essential-use products. One comment stated that FDA should approve generic versions of existing essential-use products. One comment stated that patients will not be adversely affected in terms of out-of-pocket cost of medications or quality of life if approval of generic medications should cease. One comment said that FDA should not approve any new CFC-containing drug product unless it provides an unavailable important public health benefit. One comment requested that FDA require all new drug products to demonstrate clinically significant value before approval.

Section 505 of the act directs FDA to approve new drug and generic products if all of the requirements in the act are met. There is no exception in the act permitting FDA to refuse to approve new drug or generic products simply because they contain an ODS. Therefore, FDA will continue to approve new drug and generic applications that meet the current requirements of the act.

(Comment 47) One comment stated that FDA should require companies using essential-use designations to demonstrate that they are actively pursuing reformulation.

FDA is not requiring companies to demonstrate that they are actively pursuing reformulation to maintain the essential-use designation of their products. However, after January 1, 2005, FDA may propose to remove the essential-use designation for an active moiety even if it has not been reformulated.

L. New Essential Uses

(Comment 48) One comment supported the criteria in the proposed rule for the addition of new essential uses.

FDA is adopting the criteria for addition of new essential uses that it had proposed.

(Comment 49) One comment supported the compelling evidence standard generally but asked that FDA approve new essential uses if the product offers a compelling therapeutic benefit to a significant, albeit small, subpopulation.

FDA will consider adding a new essential use if the use is for a product that will provide an unavailable important public health benefit. FDA believes it is possible, under this criterion, for a product that offers a compelling therapeutic benefit for a significant, albeit small, subpopulation to qualify for an essential use. FDA would carefully evaluate any evidence in support of such an essential use.

M. Additional Comments

(Comment 50) Three comments supported changing the designation of ODS products not listed from adulterated and misbranded to nonessential. One comment asked that FDA revoke the statements made in the preamble to the proposed rule regarding the continued applicability of the adulterated and misbranded provisions of the act. One comment stated that FDA should retain the express authority to find a nonessential product adulterated or misbranded if it contains CFCs.

The agency is amending § 2.125 to state that a product in a self-pressurized container that contains an ODS is not essential. This change should not be interpreted to mean that FDA no longer believes that such products are adulterated and/or misbranded. Such nonessential products are adulterated and/or misbranded under certain act provisions, including sections 402, 403, 409, 501, 502, 601, and 602 of the act (21 U.S.C. 342, 343, 348, 351, 352, 361, and 362). The basis for FDA's authority

to declare such products adulterated and/or misbranded is discussed in the preambles for § 2.125 and related rules and proposed rules (see 43 FR 11301, March 17, 1978; 42 FR 24536, May 13, 1977; 42 FR 22018, April 29, 1977; and 41 FR 52071, November 26, 1976). However, FDA is changing the regulation to conform to the authority delegated to it under the Clean Air Act. FDA notes that EPA is responsible for enforcement of the Clean Air Act.

(Comment 51) One comment argued that the transition will force patients to abandon safe and effective products.

FDA is finalizing this rule to fulfill its responsibilities under the Clean Air Act. Although it is true that CFC–MDIs are safe and effective as approved, CFCs also deplete the ozone layer which has a detrimental effect on the public health and the environment. The United States has determined that, as a result, CFC–MDIs should be phased out.

(Comment 52) One comment asked for clarification on whether elimination of an essential use from § 2.125 would prohibit use of stockpiled CFCs.

This comment raises questions under the Clean Air Act. Under 40 CFR 82.64(c), no person may sell or distribute, or offer to sell or distribute, in interstate commerce any nonessential product. Under 40 CFR 82.66(d), any aerosol product or other pressurized dispenser that contains a CFC is a nonessential product. Medical devices listed in § 2.125(e) are exempted from this prohibition (40 CFR 82.66(d)(2)(i)). However, once a medical device is removed from the listing in § 2.125(e), it can no longer be marketed (40 CFR 82.64(c)). FDA notes that it plans to include an implementation period once the agency determines that a use is no longer essential. The length of this implementation period will be determined through the notice-and-comment rulemaking in which the essential use is eliminated.

(Comment 53) One comment stated that FDA must comply with Executive Order 12898 on environmental justice.

Executive Order 12898 requires agencies to identify and address disproportionately high adverse human health or environmental effects on minority populations and low-income populations. As discussed in the economic analysis prepared for this rule, the agency does not anticipate that this final rule will have any adverse effects on human health or the environment (see section VII of this document).

(Comment 54) One comment stated that FDA must comply with Executive Order 12866 on economic and social cost-benefit assessments.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. The agency has complied with this requirement to the extent necessary (see section VII of this document).

(Comment 55) One comment stated that FDA must comply with Executive Order 12630 on effects on private property. One comment argued that the government cannot preclude the use of stockpiled CFCs because to do so would result in a taking.

Executive Order 12630 requires government agencies to evaluate whether a regulation has any takings implications. FDA does not believe that this regulation has any takings implications. This regulation simply sets the standard FDA will use to determine whether an ODS use remains essential. The Clean Air Act then prevents marketing of those ODS-containing products. The use of stockpiled CFCs is governed by the Clean Air Act.

(Comment 56) One comment stated that FDA needs to complete an EIS under the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347).

FDA has complied with NEPA. The agency has evaluated the environmental effects of eliminating ODS-containing products and provided opportunities for public comment on these issues. An EIS was prepared on this issue (see 43 FR 11301, March 17, 1978). In addition, environmental assessments (EAs) were prepared in conjunction with the NDA approval process for products that are viewed as alternatives to metered-dose steroid drugs for nasal inhalation containing ODSs. Finally, FDA issued both an ANPRM (62 FR 10242) and a proposed rule (64 FR 47719) as part to this rulemaking. Both of these documents discuss the environmental effects of eliminating ODS-containing products. The agency received large numbers of comments and responded to them in the proposed rule or this document. This document further discusses the environmental effect of eliminating ODS- containing products.

Furthermore, those portions of the rule that set out the processes for adding new essential uses and for determining that existing uses are no longer essential are covered by a categorical exclusion from NEPA's requirements. Section 25.30(h) of FDA's NEPA regulations (21 CFR 25.30(h)) provides that the "[i]ssuance, amendment, or revocation of procedural or administrative regulations * * *" does not require the preparation of an EIS or an EA. Finally, in the future, when FDA undertakes rulemaking to add or remove an essential use, the agency will prepare an EA and/or an EIS if required by NEPA.

However, to ensure that the public is given the fullest opportunity to comment on this rulemaking, interested parties may submit comments on the environmental effects of removing the essential-use designations for products that are no longer being marketed and for metered-dose steroid drugs for nasal inhalation for a period of 30 days after publication of this rule. Unless the agency receives a comment that leads it to believe that a change in the rule is appropriate, the effective date of this rule will be January 20, 2003.

(Comment 57) One comment asked that FDA revise the proposal to clarify that the nonessentiality determination applies only to products marketed in the United States and not to exports.

FDA is not revising § 2.125 to reflect that the nonessentiality determination applies only to products in the United States and not to exports because the act has specific provisions that address when a product that would otherwise be adulterated and misbranded may still be exported. Under section 801(e)(1) of the act (21 U.S.C. 381(e)(1)):

> A food, drug, device, or cosmetic intended for export shall not be deemed to be adulterated or misbranded under this Act if it—
>
> (A) accords to the specifications of the foreign purchaser,
>
> (B) is not in conflict with the laws of the country to which it is intended for export,
>
> (C) is labeled on the outside of the shipping package that it is intended for export, and
>
> (D) is not sold or offered for sale in domestic commerce.

A manufacturer seeking to export nonessential products could do so under the act so long as the products for export met the requirements of section 801 of the act.

FDA has consulted with EPA to determine whether EPA rules currently allow export of nonessential products. FDA understands that current EPA rules do not allow such export. However, depending on the pace of transition in other countries and their possible continued short-term need to have a small amount of additional time to effectuate their timely and thoughtful phaseout, EPA may consider changing its rule at some future date.

(Comment 58) One comment argued that the Clean Air Act requires notice-and-comment rulemaking for addition of each drug product rather than each moiety.

Section 601(8) of the Clean Air Act states that each "medical device" must

have been determined to be essential. The section defines "medical device" as "any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system * * *." Section 201(g)(1) of the act defines "drug" as:

(A) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and

(B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and

(C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(D) articles intended for use as a component of any article specified in clause (A), (B), or (C).

* * *

This definition permits the word "drug" to be read to mean either "drug product," "drug substance" or "active moiety." FDA has read the word drug to have a specific meaning depending on the context in which it is used. In this case, FDA believes it is appropriate to read the word "drug" to mean "active moiety."

(Comment 59) Two comments stated that neither the Clean Air Act nor the Montreal Protocol requires an eventual end to any and all essential uses of CFCs within the United States.

In light of these comments, FDA has revisited the text of the Clean Air Act, its legislative history, the text of the Montreal Protocol, and decisions by the Parties to the Protocol. FDA also further discussed its understanding of the Clean Air Act and the Protocol with the EPA.

The text of the Clean Air Act states that EPA will, after notice and opportunity for public comment and "to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of class I substances solely for use in medical devices * * *." (section 604(d)(2) of the Clean Air Act). The Clean Air Act does not state specifically whether such essential-use exemptions may continue indefinitely or must terminate at some future time. However, the legislative history for this section of the Clean Air Act makes it clear that the exemption is only permitted for a limited time. The Senate Conference Report for this section of the Clean Air Act states:

The Administrator [of EPA] is authorized on a conditional basis to grant limited extensions of the termination date for production of limited quantities of class I substances, to the extent such action is consistent with the Montreal Protocol for: * * * medical devices; * * *.

* * * * *

The centerpiece of the stratospheric ozone protection program established by this title is the phaseout of production and consumption of all ozone depleting substances.

(136 Cong. Rec. S16895 at 16946 and 16947 (daily ed. Oct. 27, 1990).)

These statements are consistent with the Montreal Protocol. The Preamble to the Protocol states that the Parties are:

Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, *with the ultimate objective of their elimination* on the basis of developments in scientific knowledge, taking into account technical and economic considerations and bearing in mind the developmental needs of developing countries.

(Preamble to the Montreal Protocol (emphasis added).)

Decision IV/25 of the Protocol also indicates that essential-use exemptions are temporary. This decision asks the Technology and Economic Assessment Panel to determine an estimated duration for each essential use, the steps necessary to ensure alternatives are available as soon as possible, and whether previously qualified essential uses should no longer qualify as essential.

Finally, FDA confirmed with EPA that it is also their understanding that the Clean Air Act and the Montreal Protocol do not permit essential-use exemptions to continue forever.

Thus, although it is true that there is no set date for termination of essential-use exemptions, it is also clear that the exemptions will not exist forever.

V. Legal Authority

This final rule to determine when FDA-regulated products using ODSs are essential is authorized by the Clean Air Act. EPA regulations implementing the provisions of section 610 of the Clean Air Act contain a general ban on the use of CFCs in pressurized dispensers (40 CFR 82.64(c) and 82.66(d)). The Clean Air Act and EPA regulations exempt from the general ban "medical devices" that FDA considers essential and that are listed in § 2.125(e) (section 610(e) of the Clean Air Act; 40 CFR 82.66(d)(2)). Section 601(8) of the Clean Air Act defines "medical device" as any device (as defined in the act), diagnostic product, drug (as defined in the act), and drug delivery system, if such device, product, drug, or drug delivery system uses a class I or class II ODS for which no safe and effective alternative has been developed (and, where necessary, approved by the Commissioner of Food and Drugs (the Commissioner)); and if such device, product, drug, or drug delivery system has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA (the Administrator). Class I substances include CFCs, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (see 40 CFR part 82, appendix B to subpart A).

Essential-use products are listed in § 2.125(e). Although § 2.125 includes a mechanism for adding essential-use products to the regulations, the regulations do not include a mechanism for removing products from the essential-use list. This rule provides a mechanism for FDA to remove products from the essential-use list in an orderly and rational fashion.

EPA has reviewed this rule and agrees with its issuance.

VI. Implementation Plan

This final rule is effective January 20, 2003. After January 20, 2003, FDA will evaluate products on the essential-use list according to the criteria set forth in the rule. As the criteria for eliminating essential uses are met, FDA will publish proposals to eliminate essential uses for the appropriate individual active moieties. FDA intends that such proposals will be published and finalized in an expeditious manner.

VII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs regulatory agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Unless the agency certifies that the rule is not expected to have a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact on small entities. Section 202 of the Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any

rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million in any one year (adjusted annually for inflation). The agency has determined that the final rule is consistent with the principles set forth in the Executive order and in these statutes. The final rule will not result in costs in excess of $100 million and therefore no further analysis is required under the Unfunded Mandates Reform Act. In addition, FDA certifies that this regulation would not result in a significant economic impact on a substantial number of small entities. Thus, the agency need not prepare a final regulatory flexibility analysis.

FDA published a detailed analysis of impacts when this regulation was proposed in September 1, 1999 (64 FR 47719). No further information has been submitted that would alter the findings of the analysis submitted with the proposed regulation.

FDA is removing the essential-use designation for metered-dose steroid human drugs for nasal inhalation. Four manufacturers market CFC-nasal inhalation products, which constitute a small proportion of the nasal inhalation product market. The affected CFC containing drug products contain either beclomethasone, budesonide, or triamcinolone. All three active moieties are also marketed in non-CFC formulations by the same manufacturers of the CFC nasal inhalation products. Several other steroid human drugs for nasal inhalation are marketed in non-CFC formulations. These drug products provide therapeutic alternatives to the CFC containing products.

FDA is also removing the essential-use designations for drug products that are either no longer being marketed or are no longer being marketed in a formulation containing ozone depleting substances.

In addition to removing these essential uses, this regulation articulates the standards used by FDA to determine whether the use of ozone-depleting substances in metered dose inhalers remains essential under the Clean Air Act. The regulation has limited direct economic impact because it primarily establishes the criteria FDA would use to make essential use determinations. However, future application of the procedure described in this regulation will generate both regulatory benefits and costs. FDA has discussed the potential nature of these impacts with the proposed rule and briefly describes them below.

A. Regulatory Benefits

The benefits of the procedure described in this regulation are the environmental gains associated with the diminished use of ozone-depleting substances in medical products. The Environmental Protection Agency has estimated (in prior regulatory analyses) that the aggregate public health benefit of phasing out the use of ozone-depleting substances due to reduced cases of skin cancer, cataracts and other health effects ranges between $8 and $32 trillion. FDA has crafted the procedure described in this regulation to achieve a small fraction of these benefits while maintaining adequate supplies of reformulated products for patients treated for asthma and COPD. Most important, the regulation ensures that adequate supplies of reformulated products with comparable therapeutic roles are available prior to rescission of an essential use designation. Although FDA cannot speak with certainty about future events, the agency does not anticipate that significant decreases in purchases of non-ODS alternatives, as compared to purchases of CFC–MDIs, will occur after an essential-use exemption is removed under the procedures set forth in this rule.

Similarly, removal of essential-use designations for steroid nasal inhalation products would not affect the public health. Adequate supplies of reformulated products with comparable therapeutic roles exist with prices that are approximately the same as the CFC products on a dose basis.

B. Regulatory Costs

FDA considers the costs of reformulation to be direct consequences of the statutory requirements of the Clean Air Act rather than forthcoming FDA regulatory activity. Sponsors who elect to reformulate their products may incur costs to collect detailed clinical data, but FDA has no empirical information to confirm the extent of these costs. Manufacturers are well aware of the mandate to eliminate ozone-depleting substances and are already engaged in the development of reformulated products.

The same manufacturers that currently market steroid nasal inhalation products containing CFCs also market non-CFC alternatives. Thus, FDA does not anticipate a regulatory cost due to this regulation.

FDA realizes that the future elimination of essential-use exemptions could have significant distributional and regulatory impacts on various economic sectors. The agency will prepare detailed analyses of impacts as part of each of these future rulemakings. The role that the Montreal Protocol and the Clean Air Act will play in the eventual prohibition of the production or importation of ODSs must also be kept in mind.

C. Distributive Impacts

Potential distributive impacts will not be triggered until the completion of future rulemaking on each specific product currently using ozone-depleting substances. FDA plans on conducting specific market analyses to determine the approximate magnitude of these effects prior to removing essential use designations for specific products.

The agency recognizes that generic albuterol CFC-MDIs are currently marketed and that these products cost less than currently marketed albuterol sulfate MDI's which use hydrofluoroalkane (HFA) as a propellant. At the appropriate time, FDA will evaluate the essential-use status of albuterol under criteria established by this rule. In determining whether patients are adequately served by non-ODS products containing albuterol as the active moiety, FDA will consider the cost of potential alternatives, such as the albuterol sulfate HFA-MDIs.

The agency does not believe that cost will be a significant factor in determining whether patients are adequately served by non-ODS products containing active moieties other than albuterol. There are currently no generic versions for these other products and FDA expects that the price for most non-ODS products will approximate the price for branded CFC products. FDA bases this expectation on statements by manufacturers.

FDA does not anticipate distributive impacts due to the removal of essential-use designations for steroid nasal inhalation products. The same manufacturers also currently market substitute, non-CFC products at approximately the same price.

D. Small Business Impact

FDA conducted an interim Regulatory Flexibility Analysis that resulted in a determination that this regulation would not have a significant economic impact on a substantial number of small entities. This analysis was included with the proposed regulation (64 FR 47719). There are relatively few small manufacturers of products that could potentially be affected. In addition, pharmaceutical wholesalers and retailers are unlikely to be significantly affected because this regulation will affect only a few of the thousands of products sold by these firms. FDA

received no comments on the interim analysis. FDA also notes that this regulation simply articulates a procedure that will be used in the future to assess whether or not ozone-depleting substances in metered dose inhalers are essential.

FDA further certifies that the removal of essential-use designations for steroid nasal inhalation products that contain CFCs will not have a significant impact on a substantial number of small entities. The four affected manufacturers currently market alternative products at comparable prices. Therefore no net impact is expected from this regulation.

VIII. The Paperwork Reduction Act of 1995

This final rule does not require information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Section 2.125(f) provides that a person may seek to add or remove an essential use listed under § 2.125(e) by filing a petition under part 10 (21 CFR part 10). Section 10.30(b) requires that a petitioner submit to the agency a statement of grounds, including the factual and legal grounds on which the petitioner relies. Section 2.125(f) describes the factual grounds necessary to document a petition to add or remove an essential use, as required by § 10.30(b). The burden hours required to provide the factual grounds for a petition have been calculated under § 10.30 and have been approved under OMB control number 0910–0183, which expires on February 28, 2003 (see 65 FR 12014, March 7, 2000).

IX. Reference

The following reference has been placed on display in the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The reference may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Food and Drug Administration, Center for Drug Evaluation and Research, Pulmonary and Allergy Drugs Advisory Committee Transcript, Friedman & Associates, November 22, 1999.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Devices, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Clean Air Act and under authority delegated to the Commissioner of Food and Drugs, after consultation with the Administrator of the Environmental Protection Agency, 21 CFR part 2 is amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 is revised to read as follows:

Authority: 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

2. Section 2.125 is revised to read as follows:

§ 2.125 Use of ozone-depleting substances in foods, drugs, devices, or cosmetics.

(a) As used in this section, *ozone-depleting substance* (ODS) means any class I substance as defined in 40 CFR part 82, appendix A to subpart A, or class II substance as defined in 40 CFR part 82, appendix B to subpart A.

(b) Except as provided in paragraph (c) of this section, any food, drug, device, or cosmetic that is, consists in part of, or is contained in an aerosol product or other pressurized dispenser that releases an ODS is not an essential use of the ODS under the Clean Air Act.

(c) A food, drug, device, or cosmetic that is, consists in part of, or is contained in an aerosol product or other pressurized dispenser that releases an ODS is an essential use of the ODS under the Clean Air Act if paragraph (e) of this section specifies the use of that product as essential. For drugs, including biologics and animal drugs, and for devices, an investigational application or an approved marketing application must be in effect, as applicable.

(d) [Reserved]

(e) The use of ODSs in the following products is essential:

(1) *Metered-dose corticosteroid human drugs for oral inhalation.* Oral pressurized metered-dose inhalers containing the following active moieties:

(i) Beclomethasone.

(ii) Dexamethasone.

(iii) Flunisolide.

(iv) Fluticasone.

(v) Triamcinolone.

(2) *Metered-dose short-acting adrenergic bronchodilator human drugs for oral inhalation.* Oral pressurized metered-dose inhalers containing the following active moieties:

(i) Albuterol.

(ii) Bitolterol.

(iii) Metaproterenol.

(iv) Pirbuterol.

(v) Epinephrine.

(3) [Reserved]

(4) *Other essential uses.* (i) Metered-dose salmeterol drug products administered by oral inhalation for use in humans.

(ii) Metered-dose ergotamine tartrate drug products administered by oral inhalation for use in humans.

(iii) Anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application.

(iv) Metered-dose cromolyn sodium human drugs administered by oral inhalation.

(v) Metered-dose ipratropium bromide for oral inhalation.

(vi) Metered-dose atropine sulfate aerosol human drugs administered by oral inhalation.

(vii) Metered-dose nedocromil sodium human drugs administered by oral inhalation.

(viii) Metered-dose ipratropium bromide and albuterol sulfate, in combination, administered by oral inhalation for human use.

(ix) Sterile aerosol talc administered intrapleurally by thoracoscopy for human use.

(f) Any person may file a petition under part 10 of this chapter to request that FDA initiate rulemaking to amend paragraph (e) of this section to add an essential use. FDA may initiate notice-and-comment rulemaking to add an essential use on its own initiative or in response to a petition, if granted.

(1) If the petition is to add use of a noninvestigational product, the petitioner must submit compelling evidence that:

(i) Substantial technical barriers exist to formulating the product without ODSs;

(ii) The product will provide an unavailable important public health benefit; and

(iii) Use of the product does not release cumulatively significant amounts of ODSs into the atmosphere or the release is warranted in view of the unavailable important public health benefit.

(2) If the petition is to add use of an investigational product, the petitioner must submit compelling evidence that:

(i) Substantial technical barriers exist to formulating the investigational product without ODSs;

(ii) A high probability exists that the investigational product will provide an unavailable important public health benefit; and

(iii) Use of the investigational product does not release cumulatively significant amounts of ODSs into the atmosphere or the release is warranted in view of the high probability of an unavailable important public health benefit.

(g) Any person may file a petition under part 10 of this chapter to request

that FDA initiate rulemaking to amend paragraph (e) of this section to remove an essential use. FDA may initiate notice-and-comment rulemaking to remove an essential use on its own initiative or in response to a petition, if granted. If the petition is to remove an essential use from paragraph (e) of this section, the petitioner must submit compelling evidence of any one of the following criteria:

(1) The product using an ODS is no longer being marketed; or

(2) After January 1, 2005, FDA determines that the product using an ODS no longer meets the criteria in paragraph (f) of this section after consultation with a relevant advisory committee(s) and after an open public meeting; or

(3) For individual active moieties marketed as ODS products and represented by one new drug application (NDA):

(i) At least one non-ODS product with the same active moiety is marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use as the ODS product containing that active moiety;

(ii) Supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need;

(iii) Adequate U.S. postmarketing use data is available for the non-ODS product(s); and

(iv) Patients who medically required the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products; or

(4) For individual active moieties marketed as ODS products and represented by two or more NDAs:

(i) At least two non-ODS products that contain the same active moiety are being marketed with the same route of delivery, for the same indication, and with approximately the same level of convenience of use as the ODS products; and

(ii) The requirements of paragraphs (g)(3)(ii), (g)(3)(iii), and (g)(3)(iv) of this section are met.

Dated: April 15, 2002.

Lester M. Crawford,

Deputy Commissioner.

[FR Doc. 02–18610 Filed 7–18–02; 3:38 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 523

[BOP–1106–F]

RIN 1120–AB05

District of Columbia Educational Good Time Credit

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) describes procedures for awarding educational good time credit consistent with D.C. Code § 24–221.01 (DCEGT). This rule will apply to D.C. Code offenders in Bureau institutions or Bureau contract facilities under the National Capital Revitalization and Self-Government Improvement Act of 1997 (D.C. Revitalization Act), D.C. Code § 24–101(b), who committed their offenses before August 5, 2000. Through this rule, we will allow inmates sentenced under the D.C. Code to retain benefits permitted by the D.C. Code while fulfilling our statutory mandate to provide for their custody consistent with the sentence imposed.

DATES: This rule is effective on July 24, 2002. Comments are due by September 23, 2002.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

What Will This Rule Do?

Through this rule, the Bureau of Prisons (Bureau) will add a subpart D to its regulations in 28 CFR part 523, on Computation of Sentence. The new subpart D will establish procedures for awarding educational good time credit consistent with D.C. Code § 24–221.01. (We refer to educational good time credit consistent with the D.C. Code as "DCEGT.")

This rule will apply to D.C. Code offenders who committed their offense before August 5, 2000 and are in Bureau institutions or Bureau contract facilities under the D.C. Revitalization Act.

Why Are We Making This Rule?

We are making this rule to comply with the D.C. Revitalization Act, enacted August 5, 1997. This Act makes the Bureau responsible for the "custody, care, subsistence, education, treatment and training" of "the felony population sentenced pursuant to the District of Columbia Code" (D.C. Code offenders). (D.C. Code § 24–101(b)) D.C. Code offenders in Bureau custody are subject to Federal laws and Bureau regulations as long as they are "consistent with the sentence imposed."

In August of 1997, when the D.C. Revitalization Act was enacted, the Bureau began absorbing approximately 8000 D.C. Code offenders. It was unclear at that time to what extent, if any, the Bureau would be bound by D.C. Code legislation which purported to direct Bureau functions.

As numerous D.C. Code provisions were analyzed for applicability to Bureau functions, it was generally concluded that the Bureau would have to follow D.C. Code sentence calculation provisions (e.g., good time, jail credit, etc.) to the extent non-compliance would result in an ex post facto violation of the offender's sentence. The Bureau based this approach on the provision in D.C. Revitalization Act requiring the Bureau to apply Federal laws to D.C. Code offenders "consistent with the sentence imposed."

The Bureau concluded that D.C. Code offenders who committed their offenses before August 5, 2000 are entitled to educational good time sentence credit. As a result, we developed these rules to give effect to the D.C. Code educational good time sentence credit (DCEGT) provisions in the Bureau's education and sentence calculation systems.

Section 24–221.01 of the D.C. Code provides for "educational good time credits of no less than 3 days a month and not more than 5 days a month" when a D.C. Code offender completes an educational program and obeys institution rules. This provision applies when a D.C. Code offender completes an educational program on or after April 11, 1987, when section 24–221.01 was enacted.

Section 24–403.01(d) of the D.C. Code, enacted April 23, 1998, however, requires that D.C. Code offenders who committed their offense on or after August 5, 2000, receive good time credit "only as provided in 18 U.S.C. 3624(b)." This statute in the Federal Criminal Code directs the Bureau how to award good time credit to U.S. Code offenders. Bureau regulations implementing this provision are in 28 CFR 523.20.

D.C. Code offenders who successfully complete an educational program on or after April 11, 1987, and who committed their offense before August 5, 2000, may receive educational good time credit consistent with D.C. Code

§ 24–221.01 (DCEGT). By contrast, D.C. Code offenders who commit their offense on or after August 5, 2000, are eligible for good time credit only under the Federal law, 18 U.S.C. 3624(b).

To be "consistent with the sentence imposed," as required by the D.C. Revitalization Act (D.C. Code § 24–101(b)), the Bureau developed these rules on DCEGT to conform with D.C. law on DCEGT in D.C. Code § 24–221.01.

How Do These Rules Work?

The rules describe eligibility for DCEGT, how we award it, how we limit it, and how to appeal our decisions on DCEGT. We will allow 5 days of DCEGT for each calendar month that a D.C. offender is enrolled in a Bureau-designated education program. Eligible D.C. offenders can earn DCEGT up to a Bureau-determined maximum amount, which varies for different types of educational programs.

Why Is This an Interim Final Rule?

We are making this an interim final rule for the following reasons:

As a result of National Capital Revitalization and Self-Government Improvement Act of 1997 (D.C. Revitalization Act), D.C. Code § 24–101(b), passed August 5, 1997, we are responsible for administering the sentences of D.C. Code offenders in our custody, including DCEGT awards.

Since the D.C. Revitalization Act's enactment on August 5, 1997, D.C. Code offenders in Bureau custody may have completed educational programs designated by these rules as eligible for DCEGT.

If we do not implement this rule as soon as possible, inmates eligible for DCEGT risk being considered parole eligible at a later date than if the credit were awarded. Also, for D.C. Code offenders projected for mandatory release, an award of DCEGT may affect their release date.

Therefore, to insure that D.C. Code offenders in our custody receive the benefit of DCEGT, these rules must take effect as soon as possible. Having a DCEGT system in place also provides eligible offenders incentive to pursue educational programming, which may ultimately help them re-adjust to the community.

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534.

We will consider comments we receive during the comment period before we take final action. We will try to consider comments we receive after the end of the comment period. In light of comments we receive, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments we receive remain on file for public inspection at the above address.

Executive Order 12866

The Office of Management and Budget (OMB) determined that certain rules are part of a category of actions which are not "significant regulatory actions" under section 3(f) of Executive Order 12866. Because this rule falls within that category, OMB did not review it.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write to Sarah Qureshi at the address or telephone number listed above.

List of Subjects in 28 CFR Part 523

Prisoners.

Kathleen Hawk Sawyer,
Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend part 523 in subchapter B of 28 CFR, chapter V as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 523—COMPUTATION OF SENTENCE

1. The authority citation for 28 CFR part 523 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (Repealed November 1, 1987 as to offenses committed on or after that date), 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166, (repealed October 12, 1984, as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Add Subpart D, consisting of §§ 523.30 through 523.34, to read as follows:

Subpart D—District of Columbia Educational Good Time Credit

Sec.

523.30 What is educational good time sentence credit?
523.31 Who is eligible for DCEGT?
523.32 How much DCEGT can I earn?
523.33 How is eligibility for DCEGT limited?
523.34 How can I challenge DCEGT award decisions?

Subpart D—District of Columbia Educational Good Time Credit

§ 523.30 What is educational good time sentence credit?

Educational good time sentence credit is authorized by District of Columbia (D.C.) Code § 24–221.01, and reduces the amount of time to serve under a term of imprisonment. In these rules, we refer to D.C. educational good time as "DCEGT."

§ 523.31 Who is eligible for DCEGT?

You are eligible for DCEGT if:

(a) You are incarcerated in a Bureau of Prisons' (Bureau) institution or a Bureau contract facility;

(b) You are serving a term of imprisonment for a D.C. criminal code violation committed before August 5, 2000;

(c) Your Unit Team approved or designed a plan for you to complete a program designated by the Bureau as eligible for DCEGT;

(d) The Supervisor of Education (SOE) finds that you successfully completed a Bureau-designated education program on or after August 5, 1997; and

(e) You did not violate prison discipline rules while enrolled in the program (see § 523.33).

§ 523.32 How much DCEGT can I earn?

(a) You can earn 5 days DCEGT for each month you were enrolled in a designated program, up to the maximum amount designated by the Bureau for the type of program successfully completed.

(b) You are limited to 5 days per month DCEGT, even if enrolled in more than one designated program.

(c) Enrollment in a designated program for any portion of a calender month earns one full month's worth of DCEGT.

(d) You are not eligible for DCEGT which, if awarded, would make you past due for release.

(e) Once appropriately awarded, DCEGT vests, and cannot be forfeited.

§ 523.33 How is eligibility for DCEGT limited?

Eligibility for DCEGT is limited in two ways:

(a) If you violate prison rules, you are not eligible for one month's worth of DCEGT for each disciplinary incident committed during the program enrollment period. A Discipline Hearing Officer, or other staff using procedures similar to those in 28 CFR 541.17, must determine that you committed a prohibited act.

(b) The nature of your offense may limit your eligibility for DCEGT under D.C. Code 24–221.01b or 24–221.06.

§ 523.34 How can I challenge DCEGT award decisions?

You can use the Administrative Remedy Program, 28 CFR 542.10 through 542.19, to challenge Bureau of Prisons decisions regarding DCEGT.

[FR Doc. 02–18625 Filed 7–23–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Internal Revenue Service; Privacy Act, Implementation

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of a final rule to exempt an Internal Revenue Service system of records entitled "Employee System Protection Records-Treasury/IRS 60.000" from certain provisions of the Privacy Act.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Chief, Office of Employee Protection, Internal Revenue Service, 477 Michigan Avenue, Detroit, Michigan 48226, telephone (313) 628–3742. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a notice of a proposed rule exempting a system of records from certain provisions of the Privacy Act of 1974, as amended. The Internal Revenue Service (IRS) published the system notice in its entirety at 66 FR 59839–59841 (November 30, 2001), and the proposed rule in the same **Federal Register** on pages 59754–59755.

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, as amended, if the system is investigatory material compiled for law enforcement purposes. The Employee Protection System Records-Treasury/IRS 60.000, contains investigatory material compiled for law enforcement purposes.

The proposed rule requested that public comments be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224, CL:GLD:D, no later than December 31, 2001.

The IRS did not receive comments on the proposed rule. Accordingly, the Department of the Treasury is hereby giving notice that the system of records entitled "Employee Protection System Records-Treasury/IRS 60.000," is exempt from certain provisions of the Privacy Act. The provisions of the Privacy Act from which exemption is claimed pursuant to 5 U.S.C. 552a(k)(2) are as follows: 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f).

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, Subpart C of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(g) * * *

(1) * * *

(viii) * * *

System No.	Name of system
. .	. . . .
IRS 60.000	Employee Protection System Records
. .	. . . .

Dated: July 2, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–18706 Filed 7–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA30

Financial Crimes Enforcement Network; Rescission of Exemption From Bank Secrecy Act Regulations for Sale of Variable Annuities

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of rescission of exemption.

SUMMARY: FinCEN is announcing today that it is rescinding an exemption from the provisions of the Bank Secrecy Act regulations granted in 1972 to persons required to register as brokers or dealers in securities ("broker-dealers") solely to permit the sale of variable annuities contracts issued by life insurance companies. This action is being taken in order to ensure consistency with USA PATRIOT ACT provisions mandating extension of Bank Secrecy Act requirements to a broad range of financial institutions.

DATES: Effective Date: August 23, 2002.

FOR FURTHER INFORMATION CONTACT: Peter G. Djinis, Executive Assistant Director for Regulatory Policy, FinCEN, at (703) 905–3930; Judith R. Starr, Chief Counsel, Cynthia L. Clark, Deputy Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332 (the "BSA"), authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

II. FinCEN Issuance 2002–1

This document, FinCEN Issuance 2002–1, rescinds an exemption from the provisions of 31 CFR part 103 granted to persons registered with the Securities and Exchange Commission as broker-dealers solely in order to offer and sell variable annuity contracts issued by life insurance companies. The background and purpose of the rescission are explained below.

The definition of "financial institution" for BSA purposes, found at 31 CFR 103.11(n), includes "a broker or dealer in securities."[2] BSA regulations further define the term "broker or dealer in securities" to include a "broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934."[3] Because variable annuity contracts fall within the definition of "security" under the federal securities laws, life insurance companies wishing to sell variable annuity contracts must register as broker-dealers under the Securities Exchange Act of 1934, and thus fall under the definition of "broker or dealer in securities" found in 31 CFR part 103.

In response to a request from the American Life Convention—Life Insurance Association of America, Treasury in 1972 granted an exemption from the provisions of 31 CFR part 103 to persons registered with the Securities and Exchange Commission as broker-dealers solely in order to offer and sell variable annuity contracts issued by life insurance companies.[4] However, given the Congressional mandate found in the USA PATRIOT ACT to extend to all entities defined as financial institutions under the BSA the requirement to establish an anti-money laundering program (*See* Section 352(a) of the USA PATRIOT ACT), and to extend suspicious activity reporting to broker-dealers (*See* Section 356 of the USA PATRIOT ACT), FinCEN believes that it is now appropriate to rescind this exemption pursuant to 31 CFR 103.86.

On December 31, 2001, FinCEN published a notice of proposed rulemaking (the "Notice"), 66 FR 67670, that would extend to broker-dealers the requirement to report suspicious transactions to the Department of the Treasury. In the Notice, FinCEN indicated that it anticipated that the exemption relating to variable annuity contracts issued by life insurance companies would be rescinded on the effective date of the final rule based on the Notice.[5] A final rule based on the Notice was published in the **Federal Register** on July 1, 2002.[6] FinCEN did not receive any adverse comments on the issue of rescinding the exemption. However, in response to a comment, FinCEN wishes to clarify that rescission of the exemption extends BSA coverage only to the activity of a life insurance company requiring the company to register with the SEC as a broker-dealer, and not to all activity of the life insurance company.

Thus, a person registered with the SEC as a broker-dealer solely to offer and sell variable annuity contracts issued by life insurance companies is subject to all applicable BSA requirements, including the requirement to file reports of suspicious activity, to the extent they offer and sell such contracts.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–18612 Filed 7–23–02; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #: OR–01–006a; FRL–7240–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: OR; Medford Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to Oregon's State Implementation Plan (SIP) which were submitted on May 31, 2001. These revisions consist of the 1993 carbon monoxide (CO) base/attainment year emissions inventory for Medford, Oregon, and the revised Medford CO maintenance plan. Oregon concurrently requested redesignation of

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[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), Public Law 107–56.

[2] *See* 31 CFR 103.11(n)(2).

[3] *See* 31 CFR 103.11(f).

[4] *See* 37 FR 248986, 248988, November 23, 1972.

[5] *See* 66 FR 67670, 67672 (December 31, 2001).

[6] *See* 67 FR 44048 (July 1, 2002).

Medford from nonattainment to attainment for CO and EPA is approving the redesignation request.

DATES: This direct final rule will be effective on September 23, 2002, without further notice, unless EPA receives adverse comment by August 23, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Connie Robinson, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's requests and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air Quality (OAQ–107), EPA, Region 10, Seattle, Washington, (206) 553–1086.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

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- *I. What Contingency Measures Does the State Provide?*
- *J. How Will the State Provide for Subsequent Maintenance Plan Revisions?*
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I. Background Information

A. What Is a State Implementation Plan?

Section 110 of the Clean Air Act as amended in 1990 (the Act) requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. These ambient standards are established under section 109 of the Act and they address six criteria pollutants: CO, nitrogen dioxide, ozone, lead, particulate matter and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP. Each State has a SIP designed to protect its air quality. These SIPs can be extensive, containing regulations, enforceable emission limits, emission inventories, monitoring networks, and modeling demonstrations.

Oregon submitted their original section 110 SIP on January 25, 1972, and it was approved by EPA soon thereafter. Other SIP revisions have been submitted over the intervening years and likewise have been approved. The Medford CO SIP revisions and redesignation request submitted on May 31, 2001, are the subject of today's action.

B. Why Was This SIP Revision and Redesignation Request Submitted?

Oregon believes that the Medford, Oregon CO nonattainment area is eligible for redesignation to attainment because air quality data shows that it has not recorded a violation of the primary or secondary CO air quality standards since 1991. The Medford nonattainment area has shown attainment of the CO NAAQS since 1993 and the maintenance plan demonstrates that Medford will be able to remain in attainment for the next 10 years.

C. What Action Is EPA Taking?

Today's rulemaking announces three actions being taken by EPA related to air quality in the State of Oregon. These actions are taken at the request of the Governor of Oregon in response to requirements of the Act and EPA regulations.

First, EPA approves the 1993 base/attainment year CO emissions inventory for Medford. The 1993 inventory establishes a baseline of emissions that EPA considers comprehensive and accurate and provides the foundation for air quality planning in the Medford, Oregon CO nonattainment area.

Second, EPA approves the CO maintenance plan for the Medford nonattainment area into the Oregon SIP.

Third, EPA redesignates Medford from nonattainment to attainment for CO. This redesignation is based on validated monitoring data and projections made in the maintenance plan's demonstration. EPA believes the area will continue to meet the NAAQS for CO for at least ten years beyond this redesignation, as required by the Act.

II. Basis for EPA's Action

A. What Criteria Did EPA Use To Review the Maintenance Plan and Redesignation Request?

Section 107(d)(3)(E) of the Act states that EPA can redesignate an area to attainment if the following conditions are met:

1. The State must attain the applicable NAAQS.
2. The area must have a fully approved SIP under section 110(k) of the Act and the area must meet all the relevant requirements under section 110 and part D of the Act.
3. The air quality improvement must be permanent and enforceable.
4. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

EPA has found that the Oregon redesignation request for the Medford, Oregon CO nonattainment area meets the above requirements. A Technical Support Document on file at the EPA Region 10 office contains a detailed analysis and rationale in support of the redesignation of Medford's CO nonattainment area to attainment.

B. How Does the State Show That the Area Has Attained the CO NAAQS?

To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year at any monitoring site in the nonattainment area for at least two consecutive years. The redesignation of Medford is based on air quality data that shows that the CO standard was not violated from 1992 through 1995, or since. These data were collected by the Oregon Department of Environmental Quality (ODEQ) in accordance with 40 CFR 50.8, following EPA guidance on quality assurance and quality control, and are entered in the EPA Aerometric Information and Retrieval System, or AIRS. Since the Medford, Oregon area has complete quality-assured monitoring data showing attainment

with no violations, the area has met the statutory criterion for attainment of the CO NAAQS. ODEQ has committed to continue monitoring in this area in accordance with 40 CFR part 58.

C. Does the Area Have a Fully Approved SIP Under section 110(k) of the Act and Has the Area Met All the Relevant Requirements Under Section 110 and Part D of the Act?

Yes. Medford was classified as a nonattainment area with a design value less than 12.7 parts per million (ppm). Therefore, the 1990 requirements applicable to the Medford nonattainment area for inclusion in the Oregon SIP include a 1990 emission inventory with periodic updates, an oxygenated fuels program, basic motor vehicle inspection/maintenance (I/M) program, contingency measures, conformity procedures, and a permit program for new or modified major stationary sources.

For the purposes of evaluating the request for redesignation to attainment, EPA has previously approved all but one element of the Oregon SIP. Section 187(a) of the Act requires moderate CO areas to submit a comprehensive, accurate, and current inventory of actual emissions from all sources as described in section 172(c)(3). Specifically, the 1990 emissions inventory was reviewed but not acted upon to allow for additional correction and revision. We later determined that a 1993 inventory that incorporated these changes would satisfy the requirement for a base/attainment year inventory and would also serve as the attainment year emissions inventory submitted with the maintenance plan. Today's action concurrently approves this required element of the 110 SIP as part of the Oregon SIP with the redesignation to attainment.

D. Are the Improvements in Air Quality Permanent and Enforceable?

Yes. Emissions reductions achieved through the implementation of control measures are enforceable. These measures are: (1) The Federal Motor Vehicle Control Program, establishing emission standards for new motor vehicles; (2) a basic I/M program, and (3) an oxygenated fuels program.

ODEQ has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to a local economic downturn or unusual or extreme weather patterns. We believe the combination of certain existing EPA-approved SIP and Federal measures contribute to permanent and enforceable reductions in ambient CO levels that have allowed the area to attain the NAAQS.

E. Has the State Submitted a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

Today's action by EPA approves the Medford CO maintenance plan. Section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. The Medford CO maintenance plan meets all of these requirements.

F. Did the State Provide Adequate Attainment Year and Maintenance Year Emissions Inventories?

Yes. ODEQ submitted comprehensive inventories of CO emissions from point, area and mobile sources using 1993 as the attainment year. Since air monitoring recorded attainment of CO in 1993, this is an acceptable year for the attainment year inventory. This data was then used in calculations to demonstrate that the CO standard will be maintained in future years. ODEQ calculated inventories for the required maintenance year (2012) and three years beyond (2015). Future emission estimates are based on forecast assumptions about growth of the regional economy and vehicle miles traveled.

Mobile sources are the greatest source of CO. Although vehicle use is expected to increase in the future, more stringent Federal automobile standards and removal of older, less efficient cars over time will still result in an overall decline in CO emissions. The projections in the maintenance plan demonstrate that future emissions are not expected to exceed attainment year levels.

Total CO emissions were projected from the 1993 attainment year out to 2015. These projected inventories were prepared according to EPA guidance. Because compliance with the 8-hour CO standard is linked to average daily emissions, emission estimates reflecting a typical winter season day (pounds of CO per day) were used for the maintenance demonstration. Oregon calculated these emissions without the implementation of the oxygenated fuels program. Oregon is requesting that the SIP requirement for an oxygenated fuels program be discontinued upon EPA's approval of the maintenance plan and redesignation. The projections show that CO emissions calculated without the implementation of the oxygenated fuels program are not expected to exceed 1993 attainment year levels. The following table summarizes the 1993 attainment year emissions, the 2015 maintenance year emissions, and 2015 emissions. The on-road mobile emissions are modeled for 1993 and 2015. Emissions for 2012 were calculated on the basis of a straight line interpolation between these two analysis years.

TABLE 1.—1993 CO ATTAINMENT YEAR ACTUAL EMISSIONS, 2012 CO MAINTENANCE YEAR PROJECTED EMISSIONS AND 2015 CO PROJECTED EMISSIONS

[Pounds CO/Winter Day]

Year	Mobile	Area	Non-road	Point	Total
1993 Attainment Year Actuals	57,342	19,656	6,536	28,517	112,051
2012 Maintenance Year Projected	28,439	16,083	8,800	19,420	72,742
2015 Year Projected	22,244	16,165	9,186	20,153	67,748

Detailed inventory data for this action is contained in the docket maintained by EPA.

G. How Will This Action Affect the Oxygenated Fuels Program in Medford?

ODEQ's maintenance demonstration shows that the Medford Urban Growth Boundary (UGB) is expected to continue to meet the CO NAAQS through 2015 without the oxygenated fuels program, while maintaining a safety margin. Therefore, EPA approves the State's request to discontinue the oxygenated fuels program except as a contingency measure in the maintenance plan. The oxygenated fuels program will not need to be implemented following redesignation unless a future violation of the standard triggers its use as a contingency measure.

H. How Will the State Continue To Verify Attainment?

In accordance with 40 CFR part 50 and EPA's Redesignation Guidance, ODEQ has committed to analyze air quality data on an annual basis to verify continued attainment of the CO NAAQS. ODEQ will also conduct a comprehensive review of plan implementation and air quality status eight years after redesignation. The State will then submit a SIP revision that includes a full emissions inventory update and provides for the continued maintenance of the standard ten years beyond the initial ten-year period.

I. What Contingency Measures Does the State Provide?

If the monitored CO level at any site registers a second high 8-hour average of 8.1 ppm during a calendar year, the ODEQ will convene a planning group to review and recommend contingency strategies for implementation in order to prevent a violation. These strategies include but are not limited to improvements to parking and traffic circulation; aggressive signal retiming program; increased funding for transit; enhanced I/M program; and accelerated implementation of bicycle and pedestrian networks.

Section 175(d) of the Act requires retention of all control measures contained in the SIP prior to redesignation as contingency measures in the CO maintenance plan. The oxygenated fuels program was a control measure contained in the SIP prior to redesignation and is a primary contingency measure in the maintenance plan. This contingency measure will be reinstated in the event of a quality-assured violation of the NAAQS for CO at any permanent monitoring site in the nonattainment area. A violation will occur when any monitoring site records two eight-hour average CO concentrations that equal or exceed 9.5 ppm in a single calendar year. If triggered, this contingency measure would require all gasoline blended for sale in Medford to meet requirements identical to those of the current oxygenated gasoline program. Implementation will continue throughout the balance of the CO maintenance period, or until such time as a reassessment of the ambient CO monitoring data establishes that the contingency measure is no longer needed and EPA agrees to a revision.

J. How Will the State Provide for Subsequent Maintenance Plan Revisions?

In accordance with section 175A (b) of the Act, the state has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. That revised SIP must provide for maintenance of the standard for an additional ten years. It will include a full emissions inventory update and projected emissions demonstrating continued attainment for ten additional years.

K. How Does This Action Affect Transportation Conformity in Medford?

Under section 176(c) of the Act, transportation plans, programs, and projects in nonattainment or maintenance areas that are funded or approved under 23 U.S.C. or the Federal Transit Act, must conform to the applicable SIPs. In short, a transportation plan is deemed to conform to the applicable SIP if the emissions resulting from implementation of that transportation plan are less than or equal to the motor vehicle emission level established in the SIP for the maintenance year and other analysis years.

In this maintenance plan, procedures for estimating motor vehicle emissions are well documented. For transportation conformity and regional emissions analysis purposes, an emissions budget has been established for on-road motor vehicle emissions in the Medford UGB. The transportation emissions budget numbers for the plan are shown in Table 2.

TABLE 2.—MEDFORD UGB TRANSPORTATION EMISSIONS BUDGET

[Pounds CO/Winter Day]

Year	2000	2015	2020 and after
Budget (1st 4 yrs I/M exempt)	63,860	26,963	32,640

EPA found this motor vehicle emissions budget adequate for conformity purposes. See 67 FR 17686, April 11, 2002.

L. How Does This Action Affect Specific Rules?

Upon the effective date of this action, Medford, Oregon will no longer be a nonattainment area and will become a maintenance area. Additionally, OAR 340–204–0090, Oxygenated Gasoline Control Areas, has been revised to discontinue the program in Medford upon the effective date of this action. EPA is approving this rule as a revision to the SIP and replacing the rule dated 10–25–00. Below are the specific rule revisions affected by this action which EPA is incorporating by reference into the SIP, with the state effective date in parentheses. OAR 340–204–0090, Oxygenated Gasoline Control Areas (3–27–01)

III. Final Action

EPA is approving the following revisions to the Oregon SIP: the 1993 CO base/attainment year emissions inventory for Medford, Oregon, and the Medford CO maintenance plan. EPA is also approving redesignation of Medford, Oregon from nonattainment to attainment for CO. EPA is approving the Medford CO maintenance plan, and Oregon's request for redesignation to attainment because Oregon has demonstrated compliance with the requirements of section 107(d)(3)(E). We believe that the redesignation requirements are effectively satisfied based on information provided by ODEQ and contained in the Oregon SIP and Medford Oregon CO maintenance plan.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the

Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Oregon Notice Provision

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because the five-day advance notice provision required by ORS 468.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval, as specified in section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a section 110 SIP revision.

To correct the problem the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph ORS 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from federal approval or delegation. ODEQ responded to EPA's understanding of the application of ORS 468.126(2)(e) and agreed that, because federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

Oregon Audit Privilege

Another enforcement issue concerns Oregon's audit privilege and immunity law. Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act Program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 25, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(137) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(137) On May 31, 2001, the Oregon Department of Environmental Quality requested the redesignation of Medford to attainment for carbon monoxide. The State's maintenance plan, base/attainment year emissions inventory, and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Oregon Administrative Rules 340–204–0090, as effective March 27, 2001.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.338, the table entitled "Oregon—Carbon Monoxide," the entry for Medford Area, Jackson County is revised to read as follows:

* * * * *

§ 81.338 Oregon.

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OREGON—CARBON MONOXIDE

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Medford Area: Jackson County (part).	September 23, 2002	Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 02–18584 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 266, 268 and 271

[FRL–7248–3]

RIN 2050–AE69

Zinc Fertilizers Made From Recycled Hazardous Secondary Materials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today finalizing regulations under the Resource Conservation and Recovery Act (RCRA) that apply to recycling of hazardous secondary materials to make zinc fertilizer products. This final rule establishes a more consistent regulatory framework for this practice, and establishes conditions for excluding hazardous secondary materials that are used to make zinc fertilizers from the regulatory definition of solid waste. The rule also establishes new product specifications for contaminants in zinc fertilizers made from those secondary materials.

DATES: This final rule is effective July 24, 2002, except for the amendment to 40 CFR 266.20(b), which eliminates the exemption from treatment standards for fertilizers made from recycled electric arc furnace dust. The effective date for that provision in today's final rule is January 24, 2003.

ADDRESSES: Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The index and some supporting materials are available electronically. *See* the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rulemaking, contact Dave Fagan, U.S. EPA (5301W), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–0603, or e-mail: *fagan.david@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Entities potentially regulated by this action are expected to include manufacturers of zinc fertilizers, and the generators of hazardous secondary materials who will supply zinc-bearing feedstocks to those manufacturers. Some intermediate handlers, such as brokers, who manage hazardous secondary materials may also be affected by this rule.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. RCRA–2000–0054. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket, 1235 Jefferson Davis Hwy, 1st Floor, Arlington, VA 22201. You may copy up to 100 pages from any docket at no charge. Additional copies cost $0.15 each.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the

public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

The index of comments received and supporting materials for this rulemaking are available from the RCRA Information Center. The official record for this action is in paper form. EPA has transferred all comments received electronically into paper form and has placed them in the official record, which also includes all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA's responses to the major comments received on this rulemaking are presented in the preamble to this final rule; other comments are addressed in a separate "Response to Comments" document which is also part of the official record for this rulemaking.

The contents of today's action are listed in the following outline:

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  E. Federalism—Applicability of Executive Order 13132
  F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Risks and Safety Risks
  H. National Technology Transfer and Advancement Act of 1995
  I. Executive Order 12898
  J. Executive Order 13211 (Energy Effects)
  K. Congressional Review Act

I. Statutory Authority

These regulations are promulgated under the authority of sections 3001, 3002, 3003, and 3004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C 6921, 6922, 6923 and 6924.

II. Background

A. What Is the Purpose of Today's Final Rule?

Today's final rule puts in place a new, more coherent system for regulating the practice of manufacturing zinc fertilizers from hazardous secondary materials, and establishes conditions under which such materials can be recycled to produce fertilizers without the materials or the fertilizers being regulated as hazardous wastes. The rule, which was proposed on November 28, 2000 (65 FR 70954), is the Agency's response to concerns expressed by public interest groups, citizens, industry and state environmental agencies with regard to the RCRA regulations that have previously applied to this practice. We believe that these new regulations will create a more consistent and comprehensive regulatory framework for such recycling activities, will make industry more accountable for those activities, will establish more appropriate limits on contaminants in zinc fertilizers made from hazardous secondary materials, and in general will promote safe, beneficial recycling in the zinc fertilizer industry.

EPA wishes to emphasize that today's regulatory action addresses only one aspect of the larger issue of contaminants in fertilizers. Fertilizers made from recycled hazardous wastes (which are the only types of fertilizers subject to regulation under EPA's RCRA authorities) represent a very small segment-less than one half of one percent—of the total fertilizer market. To our knowledge, virtually all of these are zinc micronutrient fertilizers. Currently, less than half of all zinc fertilizers on the market are made from such recycled materials. In any case, EPA's studies of contaminants in fertilizers have indicated that the great majority of fertilizers are safe when used properly. This general finding is consistent with similar studies done by states such as Washington and California.

Because fertilizers are generally safe, EPA sees no compelling reason to launch a broad new federal regulatory program to address fertilizer contaminants generally (such regulatory authority is potentially available under the Toxic Substances Control Act). This is not to say, however, that there is no need at all to regulate fertilizer contaminants. A wide range of fertilizers and soil amendments, including many products that are not made from recycled wastes, contain appreciable levels of heavy metal contaminants. In addition, EPA's fertilizer studies concluded that a few of these products may contain contaminants at levels approaching those which could pose unacceptable risks to human health and the environment. There is also the potential for tainted feedstocks to be introduced into the market unknowingly, particularly when such materials are imported into the country from unknown sources. A recent incident in the Pacific Northwest involving imported shipments of zinc sulfate material with extremely high cadmium levels is evidence that such problems can occur (*see* Washington Department of Ecology fact sheet at *http://www.ecy.wa..gov/pubs/004025.pdf*).

Traditionally, state agriculture agencies have had responsibility for regulating the content of fertilizers, and in recent years several states (so far, Washington, Texas and California) have developed comprehensive programs to control contaminants in fertilizers and soil amendments. We believe that these state programs have been largely successful, and the Agency supports further state efforts in this area. Additional discussion of state fertilizer regulations and how they relate to this

RCRA rulemaking is presented in section V. of this preamble.

B. Who Will Be Affected by Today's Final Rule?

We expect that the primary impact of this rule will be on manufacturers of zinc fertilizer products who have an interest in using hazardous secondary materials as feedstocks, and the generators who supply them. We expect that a number of manufacturers who have heretofore been avoiding the use of hazardous wastes will use the exclusion in today's rule to begin using materials such as zinc-rich dusts from brass foundries and fabricators as substitutes for other feedstocks. The generators of those materials are thus expected to benefit from this rule. The Agency is aware that the last manufacturer of K061 derived fertilizer (Frit Industries of Ozark, Alabama) has already begun the transition to use of alternative feedstock materials. Nucor Steel, the K061 generator that has been Frit Industries' supplier, is likewise switching to other recycling or disposal options. More detailed discussion of the impacts of this rule is presented in section VII.A of this preamble, and in the economic impact analysis document that has been prepared for this rulemaking.

C. How Were Public Comments on the Proposal Considered by EPA?

EPA received more than 600 comments on the proposal during the formal comment period, which closed on February 26, 2001. The Agency also received a number of letters, cards and emails commenting on the proposal after the comment period, and these comments have been entered into the docket for this rulemaking. In addition, more than seventy individuals made oral statements at the public hearing on the proposal, which was held in Seattle, WA on November 29, 2001. Those statements have been recorded in the transcript of that hearing, which is also in the docket. At the hearing a substantial number of written comments were also submitted to the Agency, and have been included in the docket as well. In total, nearly 1000 comments were received on the proposed rule.

EPA has reviewed each comment on the proposal that was submitted. The major substantive comments that were received, and the Agency's response to them, are discussed in following sections of today's preamble. Other comments (with EPA's responses) are set out in a separate Response to Comments document. Where many commenters expressed similar or identical views on certain issues, these have been consolidated in the document, and the Agency has prepared a collective response to them. The Response to Comments document has been placed in the docket for this rulemaking.

D. How Does This Final Rule Compare to the Proposal?

In today's final rule EPA is promulgating the same basic regulatory approach that was outlined in the November 28, 2000 proposal. To summarize, today's rule:

- Removes the exemption from land disposal restrictions (LDR) treatment standards for zinc fertilizers made from electric arc furnace dust, or K061; and
- Establishes a conditional exclusion from the RCRA regulatory definition of solid waste for hazardous secondary materials that are legitimately recycled to make zinc micronutrient fertilizers; and
- Establishes conditions (chiefly concentration limits for certain heavy metals and dioxins) under which zinc fertilizers produced from hazardous secondary materials are not classified as solid wastes, and hence are not subject to RCRA subtitle C regulation.

Although EPA has finalized the same basic regulatory approach that was outlined in the November 28, 2000 proposed rule, several substantive revisions have been made in response to comments received. The following is a summary of these changes, which are discussed in more detail in following sections of this preamble:

Applicability. The final rule clarifies how the new product specification contaminant limits will apply to zinc fertilizers made from regulated (*i.e.*, non-excluded) hazardous wastes. In short, such fertilizers will need to comply with the existing, applicable land disposal restrictions (LDR) treatment standards for the hazardous wastes the fertilizers contain. Manufacturers of such fertilizers may, however, choose to meet the new, more stringent contaminant limits, if they wish.

Intermediate handlers. Under today's final rule, intermediate handlers (*e.g.*, brokers) of excluded materials will be eligible for the same exclusion as generators, provided they choose to meet the same conditions for reporting, record keeping and storage of excluded materials that apply to generators of such materials. The proposed rule did not contain any provisions specifically addressing intermediate handlers.

Additional testing. Today's final rule provides for additional sampling and analysis of fertilizer products in cases where processes or feedstock materials are changed in ways that could significantly affect contaminant levels in the fertilizers.

One-time notice. Two changes have been made to the condition for one-time notices that generators will need to submit to EPA or to authorized state agencies. One change eliminates the need to provide certain potentially proprietary information in the notices (*e.g.*, estimated quantities of material to be shipped to specific manufacturers). The other change will require that facilities identify in the one-time notice when they intend to begin managing materials under the terms of the conditional exclusion.

Certifications. The final rule eliminates the proposed condition that each shipment of excluded material to another state be accompanied by a certification that the receiving state is authorized to administer the conditional exclusion in this regulation.

Unit Closure. The final rule includes a provision clarifying that storage units which have previously stored hazardous wastes, and that subsequently will only store excluded materials according to these regulations, will not be subject to RCRA closure requirements.

Limits for nickel and arsenic. The proposed level for arsenic has been lowered in this final rule, and the proposed level for nickel has been eliminated.

Storage in supersacks. The proposed condition that would have prohibited outside storage of excluded secondary materials in non-rigid "supersack" containers has been revised to allow the use of these types of containers outdoors, provided they are managed within units (*e.g.*, on concrete pads) that have containment systems to prevent releases from leaks, spills or precipitation events.

E. Why Does EPA Believe This Is the Best Approach for Regulating This Recycling Practice?

EPA's main objectives for this rulemaking are to:

- Establish a more consistent, more comprehensive, and more protective regulatory framework for this recycling practice; and
- Establish more appropriate limits on contaminants in recycled zinc fertilizers that effectively distinguish fertilizer products from wastes by adopting limits that are already found in commercial fertilizers, which can be achieved with well-demonstrated manufacturing techniques, and that are protective; and
- Encourage legitimate recycling by streamlining regulatory restrictions on the management of hazardous secondary materials used to make zinc fertilizers.

while making industry more accountable for its recycling activities.

EPA believes that the regulatory approach in today's final rule is the best means of achieving these objectives, for several reasons. We expect it to be environmentally beneficial by removing regulatory anomalies and making zinc fertilizers cleaner—for example, by halting production of K061-derived zinc fertilizers with relatively high contaminant levels (*see* section III.B. of this preamble). A further environmental benefit will be recovery of large volumes of valuable zinc, rather than landfilling this resource. The rule will also enhance the ability of regulatory agencies to effectively monitor this recycling practice, while removing unnecessary regulatory disincentives on legitimate recycling. We also believe that the new contaminant limits in this rule are reasonable and are consistent with the environmental objectives stated above, and can be (and are being) easily achieved by industry using relatively simple, economically viable, existing manufacturing practices. These levels thus reasonably demarcate products from wastes.

While EPA believes that this final rule provides an appropriate balance of conditions and incentives, a large proportion of the more than 1000 total comments we received expressed a clear preference for a more stringent regulatory approach. Most of these comments were received in the form of emails, post cards, form letters and oral statements made at the public hearing. In general, these commenters expressed support for a regulatory approach similar to the option in the preamble identified as "Maintain current UCD requirements, with additional reporting, record keeping and testing requirements for all hazardous waste derived fertilizers" (*see* 65 FR 70964–5, November 28, 2000). Under this type of approach, the current hazardous waste regulatory structure would be maintained and made more stringent by requiring lower limits on a wider range of potential fertilizer contaminants, greatly expanded testing requirements, labeling of hazardous waste derived fertilizer products, and much more in-depth reporting of environmental and manufacturing data. Many commenters suggested in addition that there should be a complete prohibition on the use of any dioxin-containing hazardous wastes to make fertilizers.

Such a regulatory approach would likely result in a complete elimination of hazardous secondary materials as a source of zinc to make fertilizers, since it would perpetuate existing regulatory disincentives (*e.g.*, RCRA permit requirements, as explained further in this preamble) and substantially increase compliance costs. To avoid these regulatory disincentives, manufacturers would almost certainly use alternative feedstock materials (which would likely contain the same or similar contaminants as are found in hazardous wastes) to make fertilizers. The resulting fertilizers would be largely unregulated, since they would not be subject to EPA's RCRA regulatory system, and only a few states presently regulate fertilizer contaminants under other legal authorities. Therefore, by eliminating the use of hazardous wastes in fertilizer manufacture, contaminant levels in some fertilizers could actually increase, which we do not believe is a desirable environmental result (not to mention the energy and other resources conserved by avoiding treatment and disposal of zinc-bearing secondary materials).

As explained in the preamble to the proposed rule, EPA has found that a wide variety of zinc-bearing materials—including hazardous wastes—can be safely and legitimately processed and recycled into high-quality zinc fertilizer products by using relatively simple, existing manufacturing techniques. In other words, the quality of the end fertilizer product depends almost entirely on the manufacturing process, rather than on the type of feedstock material that is used. EPA did not receive any comments on the proposal that presented technical or scientific information to challenge these findings, and we therefore have no reason to believe that high-purity zinc fertilizers made from recycled hazardous wastes are any different in composition or risk potential from those made from other types of materials. (*See* proposed rule at 65 FR at 70959 n. 2 discussing the similarity of hazardous constituent levels in zinc fertilizers made from hazardous wastes and from other materials). Given that high purity zinc fertilizers made from hazardous secondary materials are essentially identical to those made from other types of feedstock materials, we see no environmental reason for increasing regulatory restrictions over such products. We believe that today's rule provides the proper balance of protections and incentives for this recycling practice without the need for additional, more prescriptive regulatory controls. The Agency therefore chose not to adopt the more stringent regulatory approach (described above) that was advocated by many commenters.

We also received a number of comments that simply decried the practice of using hazardous waste to make fertilizers, claiming that it creates serious threats to human health, the food supply, and the environment. None of these commenters, however, offered any specific evidence of such threats, or any concrete information indicating that hazardous wastes are being indiscriminately added to fertilizers as a way of disposing of them. It is important to note that any such acts would be considered "sham" recycling of hazardous waste, which is illegal.[1] Further, EPA's studies of contaminants in fertilizers have not found evidence to support such serious concerns. We do not wish to minimize the potential for adverse health effects from exposure generally to toxic chemicals such as heavy metals. We believe, however, that with regard to fertilizers, much of this concern is apparently misplaced, and may have resulted from unsubstantiated speculations and exaggerated claims of risk that have appeared in the media and elsewhere. We hope that this final rule, and the record of evidence that supports it, will help to allay unnecessary public fears with regard to fertilizers made from recycled hazardous wastes.

III. Detailed Description of Today's Final Rule

A. Applicability

Today's rule establishes a new regulatory framework for legitimate recycling of "hazardous secondary materials" in the manufacture of zinc micronutrient fertilizers. A secondary material is a sludge, by-product, or spent material. *See* 50 FR at 616 n. 4 (Jan. 4, 1985). A hazardous secondary material is a secondary material that would be a hazardous waste (*i.e.*, is listed or exhibits a characteristic of hazardous waste) if it is first a solid waste. Hazardous secondary materials are presently classified as hazardous wastes when recycled to produce

[1] Sham recycling is waste treatment or disposal occurring under the guise of recycling. *United States* v. *Marine Shale Processors*, 81 F. 3d 1361, 1365 (5th Cir. 1996). Sham recycling occurs, for example, "if extra materials are added to [the material to be recycled] that provide no benefit to the industrial process * * *." *American Petroleum Inst.* v. *EPA*, 216 F. 3d 50, 58 (D.C. Cir. 2000). EPA has frequently noted factors that are likely to be relevant in determining whether sham recycling is occurring. *See United States* v. *Marine Shale Processors*, 81 F. 3d at 1365 nn. 3 and 4 (compiling **Federal Register** citations). These include: (a) Whether the secondary material is ineffective or only marginally effective for the claimed use (*i.e.*, does not contribute a significant element to the recycled product or to the recycling process); (b) whether the secondary material is used in excess of the amount needed; and (c) whether the secondary material is handled in a manner consistent with its use as a substitute for an industrial feedstock (*i.e.*, to guard against loss).

fertilizers. *See* 65 FR at 70958–59, explaining the "use constituting disposal" provisions in EPA's hazardous waste recycling rules. However, EPA is referring to these materials in this preamble as "secondary materials" or "hazardous secondary materials," rather than as "hazardous wastes," since today's rule excludes them from being defined as wastes provided that certain conditions are followed.

The rule will potentially apply to manufacturers of zinc fertilizers who use (or wish to use) hazardous secondary materials as ingredients in their production processes, and to the generators and any intermediate handlers who supply those materials to the manufacturers. The rule will not directly affect any zinc fertilizers that are made from non-hazardous materials ("secondary" or otherwise), nor will it change the current regulatory requirements for non-zinc fertilizers made from hazardous wastes. A full explanation of the regulatory requirements for hazardous waste fertilizer recycling that have been in effect prior to today's action is presented in the preamble to the proposed rule (*see* November 28, 2000, 65 FR at 70956).

It should be noted that today's final rule creates two separate conditional exclusions-an exclusion from regulation for the hazardous secondary materials used in zinc fertilizer manufacture, and an exclusion for the fertilizer products that are made from these materials. The exclusion for hazardous secondary materials will potentially be available to those parties who handle such materials prior to recycling (*i.e.*, the secondary material generators, any intermediate handlers, and the fertilizer manufacturers). The exclusion provided for the finished zinc fertilizer products will only apply to fertilizer manufacturers, since they are solely responsible for ensuring that their products meet the specifications in today's rule.

To reiterate, today's final rule will not apply to any fertilizers other than zinc fertilizers that are made from recycled hazardous secondary materials. Thus, if a manufacturer were to use hazardous waste as an ingredient in a non-zinc fertilizer, the manufacturer would not be eligible for the conditional exclusion in today's rule, and will need to comply with applicable hazardous waste management requirements [*see* existing § 266.20(b)].

Effective Dates. Except for one provision, today's rule will become effective immediately upon publication in the **Federal Register**. The exception is the provision in the rule that amends § 266.20(b), removing the exemption from treatment standards for fertilizers made from recycled K061. The effective date for that provision will be January 23, 2002.

The RCRA statute establishes six months as the usual effective date for Subtitle C rules (*see* RCRA section 3010 (b)), though the Agency may provide for a shorter or immediate effective date in the case of regulations with which the regulated community does not need six months to come into compliance, as determined by the Admininstrator. Since today's final rule is essentially deregulatory in nature (with the exception noted above), we see no reason to delay its effective date. Thus, except for the provision that removes the exemption for K061 derived fertilizers, today's rule will be effective immediately upon publication in the **Federal Register**.

One commenter (Frit Industries) requested an extended (nine month) effective date for removing the exemption from treatment standards for K061 fertilizers. We note that there is no provision in the RCRA statute for such extended effective dates. In addition, the commenter has had ample notice of the Agency's intent to finalize this provision, and has been aware of the Agency's schedule for completing this regulatory action. Thus, we believe the commenter has had sufficient notice of this action.

Once this provision of the rule becomes effective, sales of K061 derived fertilizers by manufacturers to other parties will not be permitted, unless those fertilizers can meet the specifications for exclusion in today's rule. Assuming they cannot meet the exclusion specifications, remaining manufacturer inventories of K061 fertilizers after the effective date will need to be managed in accordance with applicable hazardous waste regulations. As a practical matter, however, inventories of K061 (or other) fertilizers that have already entered commerce (*i.e.*, have been sold and shipped to other parties) before the effective date will not be affected. Thus, fertilizer dealers and others who may have unsold stocks of K061 fertilizers after this rule's effective date will not be affected, provided the fertilizers were sold and shipped by the manufacturer prior to the effective date. It is our intent to hold manufacturers of K061 fertilizers (and any other affected fertilizers) responsible for ensuring that non-compliant products do not enter commerce after the effective date of this rule.

B. Removal of Exemption for Fertilizers Made from Electric Arc Furnace Dust (K061)

Today's rule eliminates the provision in § 266.20 that has exempted zinc fertilizers made specifically from electric arc furnace dust (K061) from having to meet applicable land disposal restrictions (LDR) treatment standards (*i.e.*, the treatment standards for K061). This exemption was originally promulgated in the "First Third" LDR rulemaking (August 17, 1988, 52 FR 31138), based on a determination by EPA that fertilizers made from K061 had metal contaminant levels comparable to those of substitute zinc fertilizers (including those made from non-hazardous waste feedstocks), and that the use of K061 fertilizers did not appear to pose significant risks (*see* 53 FR 31164, August 17, 1998). However, in recent years zinc fertilizers of much higher purity (*e.g.*, zinc sulfate monohydrate, or ZSM fertilizers) have become widely available, and K061 derived zinc fertilizers now have among the highest contaminant (*i.e.*, hazardous constituent) levels of any zinc fertilizers. Thus, EPA believes that the original basis for the K061 exemption is no longer valid, and sees no reason why these fertilizer products should not have to meet the same contaminant limits as other fertilizers made from recycled hazardous wastes (or be excluded from regulation in the same way as other such fertilizers).

Response to Comments. Numerous commenters expressed support for a complete ban on the use of K061 in fertilizer manufacture, often citing the relatively high levels of dioxins in K061 fertilizers compared to other fertilizer products. Others urged a ban on the use of all "dioxin laden wastes" to make fertilizer. A few commenters opposed removing the current LDR exemption for K061 derived fertilizers.

EPA chose not to ban the use of K061 to make zinc fertilizers, for several reasons. Most importantly, we believe that with the promulgation of today's rule the issue of dioxins in K061 derived fertilizers will effectively become moot, largely because the new rules will in all likelihood eliminate the use of K061 to make zinc oxysulfate fertilizers. Oxysulfate is a type of zinc fertilizer that is typically made by simply mixing zinc-bearing material (*e.g.*, K061) with sulfuric acid. There is typically no processing step to remove contaminants—whatever impurities are in the feedstock material will usually remain in the finished product. Such products will be unable to meet the new exclusion levels in today's rule, or the

applicable LDR standards. Thus, we do not expect this type of fertilizer to be produced after the effective date of today's regulations.

At the same time, it is possible to remove the contaminants in K061 to make a different type of fertilizer, such as high-purity ZSM fertilizer, which can satisfy the conditional exclusion levels. Most of the zinc in K061 is bound with iron in a zinc ferrite compound that is relatively insoluble and, at normal temperatures, cannot be effectively digested with acids to precipitate and filter out contaminants such as lead and other metals. However, it has been demonstrated that raw K061 can be first processed in high-temperature furnaces to form a zinc oxide material that can then easily be made into ZSM. Such thermal treatment, combined with subsequent manufacturing processes, is likely to destroy most or nearly all dioxins present in K061. The agency thus sees no dioxin-related reason to prohibit this use of K061. Further discussion of dioxins in hazardous waste derived fertilizers is presented in section III.D.3 of this preamble.

A few comments were received that opposed removing the current exemption from LDR treatment standards for K061 derived zinc fertilizers. These commenters did not, however, challenge the Agency's logic for eliminating the exemption, but rather argued that EPA has no legal jurisdiction to regulate these fertilizers at all, based on recent court decisions. EPA rejects these arguments, for the reasons discussed later in this preamble.

C. Conditional Exclusion for Hazardous Secondary Materials Used To Make Zinc Fertilizers

In this final rule, EPA has created a "conditional exclusion" from the RCRA definition of solid waste for hazardous secondary materials (which would otherwise be classified as hazardous wastes, as explained above) that are used as ingredients to make zinc micronutrient fertilizers. As mentioned previously, this feature of the final rule is consistent with the proposal, though a few specific changes have been made, as explained below.

The conditional exclusion provided in today's rule is an exclusion only from the RCRA subtitle C regulations, and not from the emergency, remediation and information-gathering sections of the RCRA statute [sections 3004(u), 3007, 3013, and 7003]. This is consistent with the principle already codified for other excluded secondary materials—that the exclusion is only from RCRA regulatory provisions, and not from these statutory authorities. See § 261.1(b). EPA is restating this principle here in the interests of clarity, not to reopen the issue. The legal basis for the distinction of the Agency's authority under these provisions is that they use the broader statutory definition of solid waste (and hazardous waste as well) and so need not (and should not) be read as being limited by the regulatory definition. *See*, for example, 50 FR at 627. See also *Connecticut Coastal Fishermen's Assn.* v. *Remington Arms*, 989 F. 2d 1305, 1313–15 (2d Cir. 1993) (EPA may permissibly ascribe different definitions to the term "solid waste" for regulatory and statutory purposes).

Today's conditional exclusion is intended to remove many of the regulatory disincentives that to date have discouraged legitimate recycling in the zinc fertilizer industry. Previously, hazardous wastes that were recycled to make fertilizers were subject to the full suite of hazardous waste regulatory requirements, including the requirement to obtain a RCRA permit for storage of wastes prior to fertilizer production. This permitting requirement in particular has dissuaded a number of fertilizer manufacturers from using valuable secondary materials as feedstocks, since RCRA permits can be time and resource-intensive to obtain and maintain, and a number of alternative materials are readily available that are not subject to subtitle C regulation, either because they are not hazardous (*i.e.*, are not listed and do not exhibit a characteristic), or are raw materials. By allowing companies to manage these hazardous secondary materials in accord with the conditions which are established in today's final rule, EPA expects that the rate of legitimate recovery of zinc values in these materials will increase considerably, which should be environmentally beneficial and result in lower costs to farmers for zinc fertilizers.

Once this rule becomes effective, those who wish to begin managing hazardous secondary materials according to the conditional exclusion will first need to notify EPA or the authorized state of their intent to do so. This will provide overseeing agencies information as to who will be operating under this alternative regulatory system, when they will start, and the type of materials involved. In EPA's view, for this particular recycling practice, this is the minimum information needed to ascertain that legitimate recycling of the zinc-bearing materials will occur, and by whom. The other conditions that must be met to use and maintain the conditional exclusion address the proper storage of materials prior to recycling, and documentation of all off-site shipments of excluded materials. In addition, fertilizer manufacturers will need to submit an annual report to the overseeing agency that identifies the type, quantity and origin of all excluded materials that were used in the previous year. Again, EPA believes that for this recycling practice, these conditions are needed to assure that the materials will be recycled legitimately.

1. Applicability

Several changes have been made to the final rule with regard to its applicability. For one, the final rule has been modified with regard to how it applies to intermediate handlers who act as brokers or middlemen between generators and fertilizer manufacturers. The proposed regulatory language did not specify any requirements or conditions specifically for intermediate handlers, though EPA discussed the issue and solicited comments on it in the preamble (65 FR at 70962–3). Several commenters observed that the use of intermediate handlers in this industry is not uncommon, with one commenter suggesting that in the final rule an intermediate handler should have the same responsibilities as a manufacturer who uses the conditional exclusion.

The conditions in the final rule for excluding hazardous secondary materials are intended to reflect normal, responsible practices for management of valuable material commodities, rather than waste management. Since intermediate handlers may be an integral part of the management chain for these materials prior to recycling, we believe it is reasonable to also establish conditions for them. If intermediate handlers had no responsibilities for maintaining the excluded status of materials they receive, the materials could potentially be mixed or consolidated with other materials, or could in some other way lose their regulatory identity and escape the chain of custody that provides accountability to the government and the public to ensure that these materials are being handled in way that is consistent with the handling of a valuable commodity. They also could simply be stored haphazardly and create the types of damage associated with improper management of discarded materials, as has occurred in past damage incidents within the zinc fertilizer recycling industry (records of these damage cases are in the docket for this rulemaking).

EPA sees no reason to prohibit excluded materials from being shipped through intermediate handlers, since they may provide a useful service to

both generators and manufacturers in this industry. Moreover, use of such middle-men is relatively common in the industry, and so is consistent with the idea of an exclusion conditioned to conform to industry commercial practice. However, their use must not compromise the protections that have been built into this conditional exclusion.

We believe that intermediate handlers have incentives for managing conditionally excluded materials that are very similar to the generators', and thus should have similar responsibilities (*i.e.*, any exclusion for intermediate handlers should be conditioned in the same manner as for generators). The final rule therefore specifies that intermediate handlers who wish to use the conditional exclusion must meet the same set of conditions that apply to the generators of the materials [*see* § 261.4(a)(20)(ii)]. In effect, any intermediate handler who elects to receive conditionally excluded materials and wishes to maintain their excluded status under the terms of today's rule would need to provide prior notice to the appropriate regulatory agency, store the materials in accordance with the conditions in the rule, and meet all other conditions that would otherwise apply to the generator of the material. Alternatively, it is possible that an intermediate handler might choose not to use the conditional exclusion, in which case any excluded materials received by the handler would lose their excluded regulatory status.

2. Conditions to the Exclusion

In general, the conditions established in today's final rule for storage and documentation of excluded material are designed to reflect normal fertilizer industry handling practices for zinc-bearing feedstock materials. They are the same basic conditions that were proposed for establishing and maintaining a regulatory exclusion for hazardous secondary materials used to make zinc fertilizers, with several relatively minor changes.

Under this rule, in order to begin managing hazardous secondary materials that will be used to make zinc fertilizers without being subject to the current hazardous waste regulatory system, the responsible party (*i.e.*, the secondary material generator, the fertilizer manufacturer or an intermediate handler) must initially notify the appropriate regulatory agency that he or she intends to begin doing so, and must then meet the conditions set out in this regulation. These conditions address proper storage of the excluded secondary material, notification of regulatory agencies, and documenting and maintaining records of any off-site shipments of such material. Fertilizer manufacturers who wish to use the conditional exclusion will also need to submit an annual report to EPA or the authorized state agency on the types, origins and quantities of excluded materials used in the previous year.

The storage conditions in today's rule are based on normal industry practices for storing zinc-bearing feedstock materials used to make fertilizers, and thus are analogues to the hazardous constituent specification levels for the fertilizers, which likewise are drawn from existing industry practice. The conditions generally serve to prevent these materials from being discarded via wholesale release into the environment. The conditions also reflect the fact that zinc fertilizer feedstock materials are typically valued commodities, and are thus stored so as to prevent releases or other losses of the material. EPA's review of feedstock storage practices by zinc fertilizer manufacturers indicated, for example, that bulk feedstock materials are usually stored outdoors in hoppers or other types of tanks, while indoor storage is typically in supersack containers or in piles. We are not aware of any zinc fertilizer manufacturer currently storing feedstock materials in ways that readily allow dispersal via wind or precipitation runoff (e.g., open, outdoor piles). See the memorandum "Industry Storage Practices," in the docket for this rulemaking. Thus, we believe that the conditions in today's rule reflect this industry's feedstock storage practices, and thus reasonably serve to demarcate valuable feedstocks from wastes.

EPA has made several changes from the proposed rule to the specific conditions that must be met in order to be eligible for the exclusion. These changes address outside storage of material in supersack containers, initial notifications to regulatory agencies, certifications for off-site shipments of excluded material, and enforcement of the conditions, as discussed in more detail below.

Outdoor storage in supersack containers. Supersacks are flexible, woven resin containers designed to hold approximately one ton of dry material, and are commonly used by generators, manufacturers and others to store various types of solid zinc fertilizer feedstock materials. Several commenters objected to the proposed condition that would have allowed only indoor storage of excluded materials in this type of container, asserting that such a restriction could be a hardship for smaller facilities that may not have sufficient indoor storage capacity, and that with a few simple safeguards supersacks can be safely and reliably used to store this type of material out of doors.

EPA agrees with the commenters' assertions that outdoor storage of excluded material in supersack containers can be safe and does not automatically indicate the material is being discarded, and therefore should be allowed under certain conditions. We are unaware of any environmental damage cases associated with storage of zinc fertilizer feedstock materials in supersack containers. The final rule therefore specifies that storage of excluded material in non-rigid containers (*e.g.*, supersacks) will be allowed outdoors, as long as they are kept closed and are in sound condition, and are managed within storage units (*e.g.*, on concrete pads) that can contain, drain and allow removal of leaks, spills, and accumulated precipitation, and can prevent run-on into the unit. These conditions are intended to assure management commensurate with the secondary material's classification as a valuable feedstock, rather than as a waste. Put another way, the conditions assure both that the material is being managed comparably to other material inputs used in fertilizer manufacture, and that the secondary materials will not be discarded via haphazard management that allows wholesale environmental release of the material, so becoming "part of the waste disposal problem". *American Mining Congress* v. *EPA*, 824 F. 2d 1177, 1193 (D.C. Cir. 1987); *Association of Battery Recyclers* v. *EPA*, 298 F. 3d 1047, 1056 n. 6 (D.C. Cir. 2000).

One-time notice. Under the proposed rule, generators would have had to identify in their one-time notices to regulatory agencies the estimated annual quantities of excluded materials that they expected to ship to each fertilizer manufacturer. Some commenters objected to this condition on the grounds that such information would be speculative, commercially sensitive, and of questionable use to regulatory agencies. EPA agrees, largely for the reasons offered by the commenters, and has removed this element of the one-time notice condition from the final rule.

Certification. The proposed rule specified that generators using the conditional exclusion in today's rule would need to ensure that each shipment of excluded material off-site to another state was accompanied by a certification stating that the receiving state is authorized to administer the provisions of this rule. The implication

of this proposed provision was that out-of-state shipments of excluded material would only have been allowed if the receiving state had adopted and obtained authorization from EPA to implement these rules. Several commenters objected to this provision, arguing that shipments to states not authorized for this rule should be allowed, provided the materials are managed as hazardous wastes once they enter the receiving state. EPA agrees with these commenters, and has removed this certification provision from the final rule language.

3. Other Provisions

Burden of Proof. The proposed rule contained a provision stating that in an enforcement action, the burden of proof in establishing conformance with the conditions in § 261.4(a)(20) shall be on the generator, intermediate handler or manufacturer claiming the exclusion. One commenter correctly noted that this provision is redundant with the provision in § 261.2(f), which also addresses assigning burdens of proof (both the burden of going forward and the ultimate burden of persuasion, *see* 50 FR at 642) when conditional exclusions are involved. The proposed provision has therefore been deleted from the final rule.

Unit Closure. Today's final rule specifies that storage units (*e.g.*, tanks and containers) used only to store zinc-bearing hazardous wastes before a conditional exclusion takes effect (*i.e.*, before the facility owner/operator submits the one-time notice provided under § 261.4(a)(20)(ii)(B)), and that will be used thereafter only to store secondary material excluded under today's rule, will not be subject to the closure requirements of 40 CFR part 264 (for units at permitted facilities) or Part 265 (for units at interim status facilities). This provision is intended to address situations where units such as tanks that have been used to store hazardous wastes would be required under the existing regulations to go through RCRA closure before storage of the excluded material could commence. As explained in the preamble to the proposed rule, the existing regulations require closure of units within 90 days of receiving the final volume of hazardous waste (*see* § 264.113(a) and § 265.113(a)). In the case of facilities affected by today's rule, this would mean that for units such as tanks that have been storing zinc-bearing hazardous wastes, the owner/operator would need to remove all waste residues and other contamination from the unit, in order for the unit to then commence storing the identical material under the terms of the conditional exclusion. We believe that requiring closure under these circumstances would serve little, if any environmental purpose, and today's rule explicitly provides that in these situations storage units will not be subject to RCRA closure requirements.

Although these storage units will not be required to undergo closure according to the RCRA hazardous waste regulations, when the use of such a unit for this purpose is ultimately discontinued for some reason, the Agency expects that owner/operators will take common-sense steps to decontaminate and decommission the unit. We encourage owner/operators in these situations to consult with regulatory agencies as to the best way to ensure that such units and their surroundings are cleaned up properly.

EPA wishes to emphasize that relieving storage units from closure requirements in these situations will not relieve facility owner/operators of their responsibility to respond to any releases from such units during their operational life. As explained elsewhere in this preamble, not responding to such releases could be considered an act of illegal disposal under RCRA, and could thus be subject to enforcement action under RCRA section 3008(a), which could impose penalties, as well as require any necessary cleanup actions. The conditional exclusion also will not affect a facility owner/operator's corrective action obligations under RCRA section 3004(u) or section 3008(h). If necessary, other federal or state remedial authorities may also be used to address such releases. We also note that the facilities operating under the terms of today's conditional exclusion will remain subject to regulatory oversight by authorized states and EPA, and as such we expect that environmental conditions at these facilities will continue to be scrutinized by regulatory personnel. Another consideration for not requiring RCRA closure in today's rule is that storage in land-based units (e.g., outdoor piles) will not be allowed under the conditional exclusion. Generally, land-based units are more likely to have releases and are often more difficult to remediate. We thus believe, for the reasons cited above, that eliminating the closure requirement for storage units at facilities affected by today's rule will not compromise environmental protections at these facilities.

4. Implementation and Enforcement

Implementation. The preamble to the proposed rule discussed and requested comments on several issues relating to implementation of this rule once it takes effect (65 FR at 70966–70967). These issues addressed the potential regulatory consequences of the rule on permitted and interim status RCRA facilities, and how the rule would be enforced. EPA has not made any specific regulatory changes in the final rule to address these issues, since we believe they can be satisfactorily resolved by the following explanation.

One key issue has to do with the effects of the rule on facilities that currently have RCRA permits or interim status, and are managing hazardous wastes that will become conditionally excluded under this rule. Under one scenario, a facility that manages a variety of hazardous waste materials, including some that become excluded under this rule, would be affected only to the extent that certain units or procedures at the facility would no longer be subject to hazardous waste regulations. A somewhat different scenario could involve a facility whose hazardous wastes all become conditionally excluded from regulation when this rule takes effect (*i.e.*, the facility no longer operates any hazardous waste management units).

One idea discussed in the proposal was to amend the current regulations to automatically terminate permit conditions, permits and/or interim status at facilities where hazardous waste management units or activities become de-regulated under today's rule. This could eliminate the need for regulatory agencies to process permit modifications or administratively terminate permits or interim status for those facilities. One state agency commenting on the proposal argued, however, for maintaining a government role in managing these facility transitions, asserting that automatically terminating permit conditions would not provide adequate oversight over facilities in these situations. Although cases like this are expected to be relatively few in number (perhaps only one facility in the nation will potentially be able to have its RCRA permit terminated because of this rule), we agree with the state agency commenter that making the transition to non-permitted status may not be entirely straightforward, especially when such facilities are undergoing cleanup actions under RCRA authorities. Thus, we concur that there should be some regulatory agency oversight in changing a facility's permit or interim status obligations under these regulations, and today's rule does not contain any regulatory provision for automatically terminating permits, permit conditions or interim status at

facilities affected by this final rule. We believe that making these changes at affected facilities can be done efficiently under current authorized state administrative procedures for modifying or terminating a facility's RCRA permit or interim status.

Another potential implementation issue that could arise has to do with ensuring cleanup of historic contamination problems at facilities that may no longer need permits or interim status once the conditional exclusion takes effect. An example might be a facility with a RCRA operating permit that is working to remediate ground water contamination under the conditions of the permit. While the facility's operating permit may no longer be needed (since it is no longer actively managing hazardous waste), the owner/operator's obligations to remediate the contamination problems at the facility would not be affected by a change in the facility's operating status. In these situations, the authorized states would have the flexibility to address the facility's cleanup obligations by either maintaining in effect the corrective action-related provisions of the permit, or by using alternative federal or state enforcement mechanisms that may be available.

Enforcement. The exclusion in today's rule for hazardous secondary materials (§ 261.4(a)(20)) will take effect once a generator, intermediate handler or manufacturer provides notice to the appropriate regulatory agency of his/her intent to begin using the exclusion. There is no requirement for the regulatory agency to formally approve or otherwise act on such notices, though some state agencies may wish to do so.

The party claiming the conditional exclusion will be responsible for maintaining the exclusion by ensuring that all of the conditions are met. In the event that a condition is not met, the facility owner/operator will need to remedy the situation as soon as possible in order not to jeopardize the exclusion. Should there be any questions as to whether the facility has properly maintained its exclusion, it will be the responsibility of the owner/operator to demonstrate that the conditions have been and are being met. *See* section 261.2(f), discussed earlier. If necessary, the overseeing regulatory agency may use RCRA inspection and information collection authorities to assist in establishing whether or not a facility is meeting the exclusion conditions.

Facilities that claim the exclusion but fail to meet one or more of its conditions may be subject to enforcement action. For example, if a facility claiming the conditional exclusion failed to store secondary material in accordance with one or more of the conditions, the facility would in effect automatically lose its exclusion, and EPA or an authorized state agency could take enforcement action (under RCRA section 3008(a)), since the facility would likely then be violating hazardous waste regulatory requirements. In these situations a range of specific enforcement actions might be taken. In less serious cases the facility might simply be required to promptly remedy the situation, though fines or other penalties could also be assessed if appropriate. In especially serious cases the facility could be ordered to obtain a RCRA permit and comply with all applicable hazardous waste regulations.

As a general matter, if a facility fails to meet a condition of the exclusion it will not necessarily affect the regulatory status of the secondary material at other facilities. For example, if a fertilizer manufacturer's facility were to lose its exclusion, the facility generating the secondary material would typically be allowed to retain its exclusion, provided that he or she continues to meet the applicable conditions. In such a case, the manufacturer would need to be in compliance with applicable hazardous waste regulations in order to accept any further shipments of excluded (or non-excluded) material from a generator.

With regard to enforcement, it should also be noted that the conditional exclusion in today's rule will not affect a facility owner/operator's obligation to promptly respond to and remediate any releases of excluded secondary material that may occur at the facility. An accident, for example, could rupture or otherwise damage a tank or container, causing spillage of material onto soils. If such released material were not cleaned up promptly, the owner/operator would be subject to enforcement action for illegal disposal of waste. *See* § 264.1(g)(8)(iii).

Today's conditional exclusion will not affect the rights of concerned citizens to bring to regulators' attention any circumstance that might aid authorities in their monitoring and enforcement efforts. A concerned citizen also may file a suit under RCRA section 7002 against a party for violations that may result from failure to meet any of the conditions in this rule. Moreover, imminent and substantial endangerment provisions under Section 7003 of RCRA will continue to apply to conditionally excluded secondary materials as a safeguard, since those materials remain a statutory solid waste. Thus, EPA or an authorized State can act in the unlikely event of circumstances which may endanger human health or environment.

5. Response to Comments

EPA received a number of comments addressing the general issue of whether or not a conditional exclusion from hazardous waste regulations is appropriate in the context of this rulemaking. One set of commenters presented arguments contending that EPA has no legal jurisdiction at all under RCRA to establish conditions or otherwise regulate hazardous secondary materials that are recycled to make zinc fertilizers. On the other hand, a substantial number of commenters expressed support for EPA continuing to regulate these materials as hazardous wastes, and called for adding a number of new, more stringent regulatory controls and restrictions over these waste materials.

With respect to comments challenging EPA's authority to classify hazardous secondary materials used as ingredients in fertilizer as solid wastes at all, EPA notes first that this issue has been long-settled, and was not reopened in this rule. EPA's rules classifying hazardous secondary materials used in a manner constituting disposal—which includes use as fertilizers, or as ingredients in fertilizers—were promulgated in 1985. 50 FR at 664, 666–67. These use constituting disposal rules were never challenged.[2] EPA did not reopen the issue of jurisdiction for comment in this proceeding. 65 FR at 70959 n. 2. Thus, EPA believes that these comments are untimely.

In the event that response is considered necessary, however, EPA believes that it has ample jurisdiction to classify hazardous secondary materials used to produce zinc fertilizers as solid wastes. We also note that the following discussion applies to authority over uses constituting disposal as defined in section 261.2(c)(1), and does not deal with, or apply to, any other type of recycling. First, the generator of the hazardous secondary material is an unrelated entity getting rid of its secondary materials to a different industry sector. Thus, when one entity takes a secondary material for which it has no continuing use and transfers it to an unrelated entity, the materials can be viewed as discarded by that first entity.

[2] EPA promulgated the rules requiring products placed on the land which are produced from hazardous wastes to meet LDR requirements in 1988, which rules also contained the provision exempting K 061-derived zinc fertilizers from this requirement. 53 FR at 31212 (August 17, 1988). There were likewise no challenges to these rules raising the question of EPA's jurisdiction to adopt the provisions.

See *Owen Electric Steel Co.*, v. *EPA*, 37 F. 3d 146, 150 (4th Cir. 1994) EPA properly classified secondary material as a solid waste "because the slag is sold to others for use in roadbed construction, it is not 'destined for beneficial reuse or recycling in a continuous process *by the generating industry itself*', quoting *AMC I*, 824 F. 2d at 1186 (emphasis in original). See generally *American Petroleum Institute* v. *EPA ("API II")*, 216 F. 3d 50__, 58 (D.C. Cir. 2000); *Association of Battery Recyclers* v. *EPA*, 208 F. 3d 1047, 1059–60 (D.C. Cir. 2000); *American Petroleum Institute* v. *EPA*, 906 F. 2d 729, 741 (D.C. Cir. 1990)[3]; *Specialty Steel Mfrs. Assn* v. *EPA*, 27 F. 3d 642, 646 (D.C. Cir. 1994).

Recycling via land application is a further indication of discarding. As EPA has stated years ago, "Use constituting disposal involves as a practical matter the disposal of wastes. The wastes are being gotten rid of by placing them directly on the land." 53 FR at 31198; *see* also 48 FR at 14484 (April 4, 1983) ("these practices are virtually the equivalent of unsupervised land disposal"). When placed on the land, hazardous secondary materials and the hazardous constituents they contain (few, if any, of which contribute to the recycling activity) could escape via all conceivable exposure pathways—air, runoff, leaching, even (as here) foodchain uptake. Such activities can certainly be viewed as discarding that is "part of the waste disposal problem."

The statute supports this position. *See* RCRA section 3004 (l) (use of "waste or used oil or other material, which is contaminated with dioxin or any hazardous waste * * * for dust suppression or road treatment is prohibited")[4]; H.R. Rep. No. 198, 98th Cong., 1st Sess. at 46, 67–68 (hazardous waste-derived products that are placed on the land are to be the special object of EPA scrutiny in implementing subtitle C); see also *Association of Battery Recyclers* v. *EPA*, 208 F. 3d 1047, 1059–60 (recycling via uses constituting disposal pose even greater potential risks than conventional land disposal, and thus justify stricter regulation). As the Agency concluded in 1988 (in another determination that was never challenged), "To say that Congress did not intend to control these use constituting disposal situations under RCRA is to say that Congress had no intention of controlling such damage incidents as the Times Beach dioxin spreading incident where a group of communities were rendered uninhabitable as a result of use of a distillation botto[m] mixed with used oil as a dust suppressant. No credible reading of the statute would authorize this type of conduct." 53 FR at 31198. Indeed, some of the fertilizers addressed by today's rule contain dioxin, which comes from the hazardous secondary materials used as a source of zinc. EPA does not consider it plausible that Congress prohibited the use of dioxin-containing secondary materials as dust suppressants, but denied EPA the authority to even consider the question of dioxin-containing hazardous secondary materials used as fertilizers—the more potentially harmful practice given the possibility of food chain contamination.

EPA notes, in addition, that many of the conditions in today's rule serve to demarcate legitimate recycling. The hazardous constitutent levels for fertilizers, for example, are drawn from typical levels in commercial zinc micronutrient fertilizers. To the extent that fertilizers contain non-nutritive hazardous constituents which come from hazardous secondary materials in concentrations significantly in excess of these levels, the recycling practice can be viewed as simply discarding those materials and constituents. *American Petroleum Inst. II*, 216 F. 3d at 58.

This is not to say that EPA lacks discretion to classify some hazardous secondary materials, and products derived therefrom, which are used in a manner constituting disposal as not being solid wastes. The facts justifying such discretion here (stated broadly) are (a) the usefulness of the materials as a source of zinc for fertilizer; (b) the similarity of hazardous constituent levels in hazardous and non-hazardous feedstock materials, and the fact that zinc fertilizers made from hazardous secondary materials are indistinguishable from those made from non-hazardous materials, and are processed identically (*see, e.g.* 46 FR at 44971 (Aug. 8, 1981) (EPA's first announcement of the principle that identity of waste-derived and non-waste derived products justifies cessation of RCRA regulation); and (c) management practices commensurate with the idea that the secondary materials are being managed as a valuable commodity rather than as a waste. The conditions adopted in today's rule are designed to assure that this fact pattern actually occurs, and (as noted above) are further designed to assure that legitimate rather than sham recycling occurs.

As mentioned previously, a number of commenters did not support a regulatory exclusion of any kind for hazardous secondary materials used to make fertilizers, and instead favored maintaining and expanding the current hazardous waste regulatory controls over these materials. Among the suggestions for increased regulatory controls were greatly enhanced reporting by waste generators, middlemen and fertilizer manufacturers with regard to all shipments of hazardous wastes, including reporting on the composition of both the wastes that are used and of the fertilizers that are produced from those wastes. These additional reports would be required as part of the RCRA biennial reporting system (*see* § 262.41). More thorough testing for a wider range of hazardous constituents was also suggested, as was labeling of fertilizer packaging to indicate that the fertilizer was made from hazardous waste.

As discussed earlier, we believe that maintaining RCRA regulatory controls over all hazardous secondary materials

[3] Commenters argued that *API I* was not on point because EPA there had compelled recovery of K 061 by establishing a treatment standard mandating metals recovery, and so had simply forced the recycling of material that would otherwise be disposed of, so that the material could be regarded as "discarded". Although it is correct that the opinion states that K061 was subject to a treatment standard of mandatory metal reclamation, 906 F. 2d at 741, it is incorrect that steel mills were otherwise disposing of their electric arc furnace dust, or that EPA had through its treatment standard converted a disposed-of waste into a recycled secondary material. Metals reclamation of K 061 was widespread at the time EPA adopted the treatment standard, and EPA based the standard on this well-established, existing practice. *See* 53 FR 11742, 11752 (April 8, 1988) (high temperature metal recovery currently in use by at least four domestic facilities to recover zinc from K061, and the proposed treatment standard is taken from measurements from one of those existing operations). It also should be noted that the recycling practice at issue in *API I* is arguably more continuous than the types of practices involved in this rulemaking. When electric arc furnace dust is smelted for zinc recovery, it is captured as a dust by steel mill baghouses, conveyed to a storage bin at the mill (usually by conveyor belt, but sometimes pneumatically), and then shipped directly by truck or rail to the purchasing smelter. Typical storage time at the generating steel mill is two days or less, due to limited storage bin capacity. In contrast, storage times at generators of secondary materials used eventually as a zinc source for fertilizer often is up to 90 days. These generators also often deal through intermediary brokers who find an end use for the secondary material.

[4] Since dioxin is a chemical contaminant, and is not itself a waste, section 3004 (l) thus states that use of contaminated used oil which is recycled via use as a dust suppressant—an example of a use constituting disposal—is prohibited. Congress, by placing this prohibition within section 3004 (which applies only to solid and hazardous wastes) could take this action only if it considered this form of recycling to involve a solid waste. It also bears mention that use of used oil contaminated with dioxin as a dust suppressant is not per se a type of sham recycling. Dioxins bind tenaciously with soils, and so contribute to the dust suppression use. The Congressional prohibition in section 3004 (l) thus applies to a form of recycling, not to illicit disposal. Note also that today's rule deals (in part) with the issue of dioxin contamination in the secondary materials used to produce zinc fertilizers.

used to make zinc fertilizer is counter-productive, in that it discourages legitimate, safe recycling of these valuable materials, and can actually encourage production of fertilizers with higher contaminant levels . Adding further regulatory requirements would almost certainly ensure that this recyling practice would be eliminated completely, which we do not believe would be beneficial environmentally. With regard specifically to requiring additional testing of wastes and materials, the commenters did not supply any data to demonstrate why such additional testing is necessary, or any evidence indicating that fertilizers which meet today's exclusion levels are likely to contain meaningful levels of contaminants other than those for which we have established limits. EPA thus sees no reason to impose such additional requirements without a clear rationale for doing so.

With regard to commenters who supported labeling of hazardous waste derived fertilizer products, we note that there is no legal authority under RCRA to impose such a labeling requirement on products that are made from legitimately recycled hazardous wastes or conditionally excluded secondary materials. We also question the appropriateness of requiring such labels, since they would likely unnecessarily stigmatize products that are identical in composition to fertilizers made from other types of materials.

D. Conditional Exclusion for Zinc Fertilizers Made From Excluded Hazardous Secondary Materials

As mentioned previously, today's rule finalizes the same basic approach as was proposed with regard to setting conditional limits on contaminants in zinc fertilizers made from recycled hazardous secondary materials. This rule therefore establishes specific limits on heavy metals and dioxins that may be contained in these zinc fertilizers (the limits serving as the means for distinguishing wastes from fertilizer products under the conditional exclusion), and sets conditions for sampling, analysis and recordkeeping to verify compliance with these limits (i.e., to verify that excluded recycling is occurring). In effect, these conditions must all be met in order for zinc fertilizers made from hazardous secondary materials to be considered products, rather than wastes.

1. Hazardous Constituent Levels for Excluded Zinc Fertilizers

Today's rule establishes a new set of product specification limits for contaminants in zinc fertilizers made from hazardous secondary materials. Zinc fertilizers that meet these specification limits will in effect be considered products, rather than wastes.

The new exclusion limits in today's final rule address five metal contaminants—i.e., metals coming from zinc-containing hazardous secondary materials that are both non-nutritive and toxic (lead, cadmium, arsenic, mercury and chromium)—and dioxins (likewise non-contributing). In absolute terms, the exclusion limits for the five metals are numerically higher than the LDR treatment standards for those metals (*i.e.*, the "universal treatment standards" specified at § 268.48). However, direct comparisons between the two sets of limits are difficult to make. This is because the LDRs are measured according to a leachate extraction procedure (the toxicity characteristic leaching procedure, or TCLP—*see* § 261.24), while the new exclusion levels are expressed as total concentrations. Since the leachability of metal constituents varies according to a number of factors, it is difficult to predict the relationship between TCLP-measured levels vs. total concentration levels with any degree of certainty. To illustrate, the new exclusion level for lead in a 20% zinc fertilizer formulation would be 56 ppm, while the universal treatment standard for lead is 0.75 ppm (milligrams per liter). If in this case the tested sample contained 56 ppm total lead, the TCLP result could be either higher than 0.75 ppm, or lower if the lead was in (for example) a relatively insoluble compound form.

The exclusion limit for dioxins in today's rule is more stringent than the LDR standards, since dioxins are typically not "underlying constituents" subject to treatment in the secondary materials that are likely to be excluded under today's rule (*i.e.*, secondary materials that exhibit a hazardous characteristic—*see* § 268.40(e)). Because of this, and in light of the uncertainties inherent in comparing LDR standards for metals with the new exclusion levels, EPA considers today's exclusion levels to be generally more stringent than the LDR standards.

The product specifications in today's rule must be met for any zinc fertilizer that is made from excluded secondary materials. In this sense the two exclusions are linked—a manufacturer who uses the exclusion for hazardous secondary materials must meet the new, more stringent exclusion levels for the zinc fertilizers he or she produces. The LDR standards will continue to apply to any non-zinc fertilizer that is made from recycled hazardous waste.

It is possible under some circumstances that a zinc fertilizer manufacturer might choose not to use the conditional exclusion for hazardous secondary materials, and instead use fully regulated hazardous wastes as feedstock materials. This might happen, for instance, if the manufacturer has already obtained a RCRA permit and made the necessary investments to comply with hazardous waste regulations. In such a case the LDR standards would apply to the hazardous waste derived fertilizers. Such a manufacturer would have the option, however, of meeting the generally more stringent product specifications in today's rule if there were some incentive (*e.g.*, a marketing advantage) to do so.

To reiterate, today's conditional exclusions apply only to *zinc* fertilizers and the secondary materials used to produce them. Thus, if hazardous wastes are used to make non-zinc fertilizers, both the wastes and the fertilizers will be subject to applicable hazardous waste regulations (*see* § 262.20(a)).

2. Limits on Metal Contaminants

Table 1 presents the final limits on five metal contaminants in zinc fertilizers that are made from hazardous secondary materials:

TABLE 1.—LIMITS ON METAL CONTAMINANTS

Metal Constituent	Maximum allowable total concentration in fertilizer, per unit (1%) of zinc content
Arsenic	0.3 ppm
Cadmium	1.4 ppm
Chromium	0.6 ppm
Lead	2.8 ppm
Mercury	0.3 ppm

As noted in the table, these limits are expressed as total concentrations of the metal in the fertilizer product. The alternative of establishing limits based on a different type of test procedure, such as the TCLP used in the RCRA program to identify hazardous wastes, was not supported by any of the commenters on the proposal (one obvious reason being that satisfying a leach test would normally mean that the material is unusable as a fertilizer, since the nutritive metal would be bound up along with the hazardous constitutents). It should also be noted that the limits are tied to the percentage of zinc in the fertilizer. This is primarily because the zinc content of fertilizers varies widely. If the limits were not tied to the percentage of zinc in the product, it is possible that manufacturers could

comply with the limits simply by lowering the zinc content of the product, in effect diluting the contaminants with other ingredients. 55 FR at 70969.

These limits on metals are based on the levels of contaminants in commercial zinc fertilizers that have been well demonstrated as technically and economically practical, by using sound, relatively simple manufacturing techniques. They thus are reasonable levels for demarcating products from wastes. As explained in the preamble to the proposed rule, a widely-marketed zinc fertilizer formulation known as zinc sulfate monohydrate, or ZSM, was used as the basis for developing these limits. 55 FR at 70969.

EPA has made three substantive changes in finalizing the conditional limits for metal contaminants. One change was made in response to a commenter who suggested that additional sampling and testing for metal contaminants should be required whenever a change in manufacturing processes or ingredients is made that could significantly affect the amounts of contaminants in the fertilizer product. The Agency has added this condition to the final rule, since we believe it to be a reasonable precaution that prudent manufacturers would likely take in the normal course of production, even without such a regulatory provision. As such, we believe it a reasonable condition to demarcate products from wastes and to assure that legitimate recycling occurs.

Another substantive change that has been made to the proposed limits on metal contaminants is that the final rule does not include a limit for nickel. Several commenters expressed the view that the proposed limit on nickel (1.4 ppm per percent of zinc in the fertilizer) was unnecessary from an environmental perspective, in that nickel is generally less toxic than the five other metal contaminants, and EPA's background data did not reveal especially high levels of nickel in any of the fertilizer products that were studied [*see* "Background Document on Fertilizer Use, Contaminants and Regulation" (EPA 747–R–98–003, January, 1999)]. Some of these commenters also opined that setting a limit on nickel in the context of this EPA rulemaking could create an unnecessary and unwarranted perception that exposure to nickel generally poses serious human health and/or environmental risks.

EPA agrees that nickel is generally less toxic to humans than metals such as lead, cadmium, arsenic and others, and we acknowledge that our review of fertilizer contaminant data did not identify any fertilizer product with nickel at levels that could pose significant health or ecological risks. Further, the processing and filtering steps that are required to manufacture high-purity zinc fertilizers (such as ZSM fertilizers) remove nickel along with other metal contaminants. It is therefore highly unlikely that fertilizers which meet the RCRA contaminant limits for other metals (lead, cadmium, arsenic, mercury and chromium) would contain elevated levels of nickel.

Given that excessive levels of nickel are unlikely in zinc fertilizers that meet the limits for the other five metals in today's rule, and given the relatively lower toxicity of nickel as compared with those metals, the Agency is persuaded that specifying a limit for nickel in today's final rule would serve no real environmental or regulatory purpose. We have therefore removed the limit for nickel in today's final rule.

The third change that has been made to the proposed limits for metals is that the final conditional limit for arsenic has been lowered, from 0.6 ppm per unit of zinc, to 0.3 ppm. This change was made in response to a commenter who questioned the validity of certain data that were used to derive the numerical limit for arsenic. Specifically, the commenter noted that the proposed limit appeared to be based on test results that represented analytical detection limits, rather than actual measured levels of arsenic in tested fertilizers. Our further review of the data confirmed this to be the case, and we have therefore established an arsenic limit that more accurately reflects what we believe to be the actual levels of arsenic in ZSM fertilizers.

Response to comments. EPA received comments reflecting a wide range of viewpoints (in addition to those described above) regarding the proposed limits on metals in recycled zinc fertilizers. One group of commenters questioned the Agency's legal authority to establish any limits at all on contaminants in these fertilizers, arguing that recent court decisions have narrowed the scope of EPA's regulatory jurisdiction over this type of hazardous waste recycling (an issue addressed earlier in this preamble). Some of these commenters also argued that, legal issues aside, it is unnecessary to set any limits on fertilizer contaminants, since EPA's own studies have concluded that fertilizers are generally safe when used properly. Other commenters expressed the view that the technology-based limits (*i.e.* conditional levels reflecting demonstrated fertilizer production process capabilities) as proposed were unnecessarily stringent from a risk perspective, and that any such contaminant limits should be risk-based (*i.e.*, set at levels that are "safe," based on an assessment of potential risks to humans and ecosystems). Some of these commenters further suggested that the risk-based guidelines for metal contaminants in fertilizers that were recently adopted by the Association of American Plant Food Control Officials (AAPFCO) (*see http://aapfco.org/SUIP25Aug08.htm*) could be used for this purpose. Other commenters expressed the view that the proposed limits for metals were not stringent enough, and should be set at the lowest levels that can be technically achieved. Some of these commenters further suggested that limits should be set for additional metals (*e.g.*, selenium, vanadium, beryllium, antimony). One commenter further argued that the limit on chromium should apply only to the more toxic, hexavalent form of chromium, rather than to total chromium as proposed.

EPA chose not to use risk-based limits in this final rule, primarily because we continue to believe that technology-based limits are more appropriate in the context of this rulemaking. Our rationale for using technology-based limits for metals in fertilizers—viz. as explained above, establishing a specification based on contaminant levels found in normal commercial fertilizers in order to reasonably distinguish products from wastes—was explained in detail in the preamble to the proposal, and many commenters supported the approach. Given that today's rule is an exclusion of these materials from being solid wastes, rather than an exclusion from being a hazardous waste (which would more naturally call for a risk-based justification), EPA continues to believe that this approach is reasonable. We did not receive any comments persuading us that the use of technology-based limits in the context of this rulemaking is inappropriate, technically difficult or unduly burdensome for industry.

Moreover, developing risk-based limits for zinc fertilizers would be a highly complex and resource intensive undertaking, and risk-based limits might actually allow contaminant levels in fertilizers to increase substantially, which we do not believe is an environmentally desirable result. To illustrate, Table 2 compares today's exclusion levels with AAPFCO's recommended standards (which were developed from risk assessment studies) for five metals in micronutrient fertilizers, assuming a 35.5% zinc content that is typical for zinc sulfate monohydrate fertilizers:

TABLE 2.—COMPARISON OF RCRA EXCLUSION LEVELS WITH AAPFCO RECOMMENDED GUIDELINES

Metal	RCRA Exclusion Levels (ppm)	AAPFCO Guideline (ppm)
Arsenic	10.7	3,976
Cadmium	49.7	2,947
Chromium	21.3	No limit
Lead	99.4	16,437
Mercury	10.7	213

It should be noted that the AAPFCO recommended standards listed in Table 2 were based primarily on a risk assessment study commissioned by The Fertilizer Institute (an industry trade organization). As with other similar risk assessments, including EPA's ("Estimating Risk from Contaminants Contained in Agricultural Fertilizers," September 1, 1999; Web site address *www.epa.gov/epaoswer/hazwaste/recycle/fertiliz/risk/report.pdf*), a number of simplifying assumptions and models were used to address data gaps and other uncertainties inherent in that analysis. EPA does not necessarily accept or dispute the validity of the AAPFCO recommended levels as accurate indicators of potential risks; any such technical judgment would of necessity have to be based on additional data and more rigorous analysis. We note, however, that the general findings of EPA's risk assessment did not differ dramatically from those of the TFI-sponsored study. In any case, we simply wish to underscore the point that any risk-based standards for fertilizer contaminants, including those adopted by AAPFCO, have a considerable uncertainty factor associated with them.

The comparison in Table 2 indicates that risk-based limits for zinc fertilizers are likely to be far higher than the levels of contaminants that are now found in many commonly marketed products. At best, therefore, risk-based standards would have very little effect in terms of actually limiting the amounts of toxic metals in fertilizer products. In fact, as noted already, such standards could allow contaminant levels in zinc fertilizers to increase substantially over current levels. From an environmental perspective, and in light of the public policy debate that has recently taken place over fertilizer contamination, we believe such a result to be inappropriate from an environmental and public policy perspective. In EPA's view, regulatory efforts to control contaminants in fertilizers should be focused mainly on ensuring that fertilizers remain relatively clean, rather than allowing fertilizers to become increasingly contaminated to the point where they may begin to pose unacceptable human health or ecological risks. More importantly for the purposes of this rulemaking, risk-based levels are inappropriate as a measure of distinguishing zinc fertilizer products from wastes, since they bear no relation to the levels that are found in currently marketed zinc fertilizers, and therefore bear no relation to the question of whether the waste-derived fertilizers should be viewed as being or containing waste.

As for the comment suggesting that it is unnecessary to place any limits on contaminants in fertilizers because EPA's studies indicate fertilizers are generally safe, we disagree. In our view, it would be difficult, if not unconscionable, to assure the public and other stakeholders as to the safety and legitimacy of using hazardous secondary materials—*i.e.*, what otherwise are hazardous wastes—to make fertilizers without having any means of limiting contaminants in the resulting fertilizer products. Moreover, opportunities for sham recycling obviously would become rife under such an approach.

Some commenters expressed support for EPA's proposal to use technology-based limits for metals in recycled zinc fertilizers, but suggested that lower limits can and should be achieved. One industry commenter agreed, noting that his company consistently produces pharmaceutical grade zinc sulfate monohydrate with lower contaminant levels than those proposed, and that other companies could meet similar levels.

EPA does not question the assertion that lower contaminant levels than those proposed are technically achievable through the use of more refined (and more expensive) manufacturing processes. However, it is not the Agency's intent to set these limits at the very lowest levels that can be technically achieved. Cf. 63 FR at 33784–33785 (June 19, 1998) (explaining a similar benchmark approach for establishing levels to distinguish products from waste fuels based on comtaminant levels found in normal fossil fuels, rather than the very "cleanest" or "dirtiest" fossil fuels). The Agency's fertilizer risk assessment indicates that the proposed limits are considerably below levels that we estimate (albeit roughly) to be safe for humans and ecosystems. Thus, the actual environmental benefit to be gained from more stringent limits would likely be negligible. Further, we find highly questionable the notion that there would be any real public benefit in requiring zinc fertilizers to be suitable for pharmaceutical use, or that such exceptional purity (necessary for such a specialized use) is a reasonable means of demarcating fertilizer products from wastes. Finally, setting stricter limits in this rule would almost certainly force most manufacturers to either raise prices for finished zinc fertilizer products, or avoid regulatory requirements altogether by simply switching to alternative feedstock materials that are unregulated by RCRA. We see little if any benefit in either outcome. We have therefore not adjusted the final limits for metals in response to these comments.

Some commenters expressed the view that this rule should set limits for additional metals such as selenium, vanadium, beryllium, antimony and others, citing the possibility that potentially harmful levels of such metals could occur in zinc fertilizers. These commenters did not, however, provide any data to establish that elevated levels of such metals occur in ZSM products (or any other types of fertilizers), or that the purification techniques used in manufacturing ZSM would fail to remove these metals. We note, too, that the data we have reviewed to date on fertilizer contaminants did not indicate the presence of elevated levels of such additional contaminants in zinc fertilizers or any other fertilizer products. We are therefore not persuaded that there is any real need to set limits on additional metals in this rule, and the final rule addresses only the five metal constituents listed above.

A few commenters questioned the proposed limit on chromium (0.6 ppm per unit of zinc), contending that it would be unnecessarily stringent since it does not differentiate between the hexavalent and trivalent forms of chromium, and only the hexavalent form is a potential threat to human health. One commenter also stated that there is no basis or precedent in RCRA to establish controls on the less toxic forms of chromium. That commenter argued further that new fertilizer manufacturing techniques under development may be unable to meet the proposed limit if it applied to total chromium, but could presumably meet that level if it applied only to the hexavalent form.

EPA does not dispute that the potential adverse health effects from exposure to hexavalent chromium are considerably greater than for trivalent chromium, although we do not agree with the commenter's assertion that RCRA controls only apply to hexavalent chromium. As one example, the listing

of chromium as a "hazardous constituent" in Appendix VIII of 40 CFR part 261 does not distinguish between the hexavalent and trivalent forms. Similarly, the "land disposal restrictions" treatment standard for chromium (see § 268.48) applies to total chromium. There are a number of other examples, as well. We acknowledge, however, that some regulatory provisions of RCRA do make risk distinctions between hexavalent and trivalent chromium. One example is the exemption from the definition of hazardous waste for certain wastes that, upon specific demonstration, are shown to contain only trivalent chromium (see § 261.4(b)(6)).

The proposed limit for total chromium (0.6 ppm per unit of zinc) represents the level that has been demonstrated as readily achievable in ZSM fertilizers, including a small margin to account for variabilities in the manufacturing process. The commenter who proposed applying the limit only to hexavalent chromium did not question EPA's assertion that this level can be easily achieved in ZSM products, but instead referred to an unspecified "advanced technology" for making zinc fertilizer that is not designed to remove these contaminants. We note that the commenter did not supply any description of this advanced process, or submit any data to substantiate the claim that this technology would be unable to meet the proposed limit for total chromium. In fact, it is unclear from the commenter's discussion that this unspecified technology has been actually used in full-scale manufacture of zinc fertilizers. We also note that there is little, if any, available ZSM analytical data that differentiates between the different forms of chromium, although the basic chemical properties of chromium suggest that the presence of hexavalent chromium in ZSM fertilizers is likely to be relatively rare. In any case, it is certainly not EPA's intent in this rule to stifle development of new technologies for legitimate recycling in the fertilizer industry. However, without additional data and/or considerably more substantiation of the commenter's claims it is difficult for the Agency to conclude that the proposed limit on chromium is inappropriate or will otherwise be a hardship for zinc fertilizer manufacturers. The final limit on (total) chromium is therefore unchanged from the proposal.

3. Limit on Dioxins

Today's rule finalizes the proposed limit of eight (8) parts per trillion of dioxins in zinc fertilizers, as measured according to the "toxicity equivalence" or TEQ method (see "Estimating Exposures to Dioxin-like Compounds" (EPA publication #600/6–88/005 Ca)). The eight part per trillion limit is based on EPA's estimate of average national background levels of dioxins in soils (*see* EPA report "Estimating Exposure to Dioxin-Like Compounds, Review Draft" (EPA/600/6–88/000Ca; June 1994)). EPA has included dioxins in its list of priority "persistent, bioaccumulative and toxic" (PBT) chemicals that are of particular concern environmentally and are the focus of new control strategies being developed by EPA. Further information on the Agency's overall strategy for addressing PBTs can be found on our Web site (*see www.epa.gov/pbt.htm*).

Significant levels of dioxins (in the hundreds of parts per trillion range) have been found in zinc oxysulfate fertilizers made from K061 hazardous wastes. EPA's fertilizer risk assessment concluded that exposure to dioxins in fertilizers at these levels is unlikely to pose unacceptable risks, based on currently available dioxin health effects information. However, available data on dioxin levels in fertilizers are admittedly very limited, so it is possible that dioxin levels in some fertilizer products could be higher than the current data suggest. It is also possible that, when finished, the Agency's ongoing reassessment of dioxin health effects could conclude that even more aggressive measures to control this class of PBT compounds are warranted. Because of these uncertainties, and because EPA is committed generally to a multifaceted national strategy aimed at reducing PBTs in the environment, we believe it is appropriate and prudent to limit dioxins in fertilizers in today's final rule. Moreover, given the presence of dioxins in at least some of the hazardous secondary materials used to produce zinc fertilizers, the extreme health risks associated with dioxins, and the fact that they contribute nothing to the efficacy of fertilizer products, some limit on dioxins is necessary for distinguishing product fertilizers from wastes, and to guard against sham recycling.

As explained in the preamble to the proposed rule, EPA chose to use a "background" approach to setting a limit for dioxins in zinc fertilizers primarily because we do not have sufficient data on dioxin levels in zinc fertilizers to establish a technology-based limit, which would be consistent with the approach used in this rulemaking to set limits for metals. The limited data that are available on dioxin concentrations in zinc sulfate monohydrate (the zinc fertilizer formulation used to develop the technology-based limits for metals) indicate dioxin levels of approximately one part per trillion (TEQ) or less. We did not receive any additional data from commenters with regard to dioxin levels in ZSM products, nor did any commenters offer persuasive evidence that the 8 ppt limit would be technically or economically difficult for ZSM producers to achieve in their products. Thus, we believe that the 8 ppt limit can be (and is being) easily achieved by industry, should not impose any significant economic burden on zinc fertilizer manufacturers, and serves as a reasonable level for distinguishing fertilizer products from wastes.

Response to comments. Many of the commenters on the proposal cited the need to limit dioxins in fertilizers as one of their primary concerns with regard to this rulemaking. Most of these commenters argued for either a more stringent limit than was proposed (e.g., a technology-based limit), or a complete ban on the recycling of any dioxin-containing waste material to make fertilizers. Some commenters suggested that a limit based on average national soil background levels would be appropriate only if it were based on "pre-industrial" background levels (which would presumably be lower than eight parts per trillion). In contrast, a number of other commenters opposed setting any limit on dioxins in this rule, arguing that it would increase costs to industry and would have little or no net environmental benefit. Other commenters suggested that if a limit on dioxins in fertilizer is established it should be risk-based, rather than based on national background soil levels. One commenter suggested that a dioxin limit of 100 parts per trillion would be more reasonable and appropriate than the proposed limit, though the basis for that specific limit was not provided.

None of the commenters who argued for more stringent limits on dioxins in this rule offered any scientific evidence establishing an environmental need for such additional controls, or questioning EPA's basic risk findings with regard to dioxins in zinc fertilizers. In addition, it is likely that more stringent limits would raise costs for this rule considerably. We see no reason to impose such additional costs without a convincing environmental rationale for doing so; thus, we chose not to adopt more stringent controls for dioxins in this final rule.

We disagree with the commenters who questioned the need for any limit on dioxins in this rule. As explained above, we believe that a limit on dioxins

is appropriate as part of the Agency's broader strategy to control PBT chemicals in the environment, and should moreover have minimal cost impacts on industry. We also believe that a limit on dioxins in this rule is useful in distinguishing products from wastes, and in guarding against sham recycling of dioxin-containing secondary materials (dioxin being a non-contributing hazardous constituent in fertilizers). We do not agree with the commenters who suggested using a risk-based approach to setting limits on dioxins in this rule, for reasons similar to those in the preceding discussion of risk-based levels for metal contaminants. A risk-based limit on dioxins would likely be much higher than the actual levels of dioxins in high-quality zinc fertilizer, or the national soil background level of eight parts per trillion. Thus, a risk-based limit on dioxins would likely allow dioxin levels in these fertilizer products to increase greatly, to the point where they could pose unacceptable risks. EPA does not believe this to be a desirable environmental result, particularly in light of the current scientific uncertainty over the health effects of dioxins.

We also chose not to adopt a limit of 100 parts per trillion, as was suggested by one commenter. That commenter did not offer any scientific, technical or economic basis for this particular limit, nor did the commenter offer any evidence to refute our assumption that the eight ppt limit would be easily achievable by manufacturers of high-quality zinc fertilizers. We thus see no reason to adopt this higher, alternative limit for dioxins in this rule.

IV. Mining Wastes Used To Make Fertilizers

In the preamble to the proposed rule, EPA discussed and requested comment as to the regulatory status of certain fertilizers that are made from mining wastes which exhibit a hazardous characteristic (*e.g.*, are toxic when tested according to the TCLP, cited earlier). One particular iron fertilizer product, which is widely marketed to consumers through retail outlets under the name "Ironite," has been identified as being made from such material. This product is notable for containing approximately 4400 parts per million of arsenic—to our knowledge, the highest arsenic levels of any fertilizer, by several orders of magnitude. At issue is the fact that the hazardous mining wastes used to make Ironite are presently exempt from regulation as hazardous wastes, under the so-called Bevill exemption in the RCRA statute (section 3001(b)(3)(A)(ii)).

In the proposed rule we invited comment as to whether EPA should undertake a regulatory initiative to remove the current exemption for this type of fertilizer. Most of the commenters on the proposed rule supported the idea of regulating Ironite (and other similar fertilizers, though we are not aware of any) under the same set of regulations that apply to hazardous waste derived fertilizers. Several commenters, in fact, expressed strong concerns as to the potential adverse health effects of Ironite, particularly acute effects that could result from direct ingestion (*e.g.*, by children) of Ironite products. Some of these commenters also questioned the validity of the studies that have been cited by the Ironite Products Company as demonstrating the safety of their products. One commenter, however (the American Mining Association), disputed the idea that Ironite is unsafe, suggesting that EPA's actual motive in this regard is to "backdoor" its way into narrowing the scope of the Bevill exemption. These commenters also cited the argument made by others that EPA has no legal authority at all to regulate hazardous wastes that are recycled to make fertilizers, let alone mining wastes that are specifically exempt from hazardous waste regulations.

EPA continues to believe that concerns regarding exposure to arsenic in Ironite products are worthy of serious consideration, particularly since it is a widely marketed consumer product intended for use by home gardeners and others. As such, the potential for misuse and/or accidental exposure (especially to children) cannot be discounted. At the same time, however, we recognize that there are technical issues associated with estimating risks from exposure to contaminants in Ironite that merit further study before the Agency can reach any definitive conclusions as to the potential risks of the product. For example, there has been some controversy regarding the bio-availability of the arsenic and lead compounds in Ironite and Ironite-amended soils.

EPA's Office of Solid Waste is partnering with EPA's Office of Research and Development and EPA's Region 8 Office to further evaluate the potential human health and environmental risks that may occur from the use of Ironite fertilizer. We expect that these efforts will provide the Agency with a much clearer sense of the environmental implications of Ironite use, and whether or not there is a need to pursue regulatory action to impose RCRA controls. The Agency will be coordinating this effort with state environmental and public health agencies and others who may have conducted similar studies or may have supporting analyses underway. Preliminary results of EPA's evaluation should be available in calendar year 2003. We hope to announce the Agency's follow-up regulatory strategy with regard to specific mining waste-derived fertilizers, such as Ironite, subsequently.

V. State Fertilizer Regulatory Programs

Virtually all States have regulatory programs for fertilizers, which are usually administered by state agricultural agencies. Traditionally, the primary focus of these regulatory programs has been to ensure that fertilizers are accurately classified and labeled, and meet manufacturers' plant nutrient claims. Until quite recently, state regulatory programs did not explicitly address the issue of controlling contaminants such as heavy metals in fertilizer products. In 1998 the State of Washington enacted legislation to create this country's first comprehensive system for regulating fertilizer contaminants. A key feature of Washington's program is a publicly accessible internet website containing data on all fertilizers registered in the State of Washington, including data on levels of non-nutrient metals in each registered product. This database can be accessed at *http//www.wa.gov/agr/pmd/fertilizers.*

The States of Texas and California have also recently established regulatory programs for fertilizer contaminants, and a number of other states are likewise considering regulatory initiatives in this area.

EPA supports state efforts to regulate contaminants in fertilizers. EPA regulates only a small fraction of the fertilizers currently on the market (one half of one percent or less) under its RCRA authorities. The potential certainly exists, however, for contaminant problems in other types of fertilizers. For example, cadmium levels in certain phosphate fertilizers (which typically are not waste derived) have been the subject of some concern recently by researchers, state regulators and others. We believe that the State of Washington's fertilizer regulatory program has been highly successful in controlling, and in a number of cases reducing, contaminants in fertilizer products sold in that state, and we thus encourage other states to develop similar programs.

VI. State authority

A. Applicability of Federal RCRA Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent federal requirements and become federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

A state may receive authorization by following the approval process described in 40 CFR part 271. Part 271 of 40 CFR also describes the overall standards and requirements for authorization. After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements (this does not, however, preclude a state from adopting and implementing such new regulations under state law only, prior to being authorized for them). The state must adopt such requirements to maintain authorization. In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized States. Although authorized states are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so. Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements.

RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. *See* also 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, either HSWA or non-HSWA, that are considered less stringent.

B. Authorization of States for Today's Proposal

Today's rule is promulgated pursuant in part to HSWA authority and in part to non-HSWA authority. The conditional exclusion from the definition of solid waste for hazardous secondary materials used in zinc fertilizers is promulgated pursuant to non-HSWA authority, and is also less stringent than the current Federal requirements. Therefore, States will not be required to adopt and seek authorization for the conditional exclusion. EPA will implement the exclusion only in those States which are not authorized for the RCRA program. EPA believes, however, that this final rulemaking has considerable merit, and we thus strongly encourage States to amend their programs and become federally authorized to implement these rules.

The elimination of the exemption from LDR treatment standards for K061 derived fertilizers is promulgated pursuant to RCRA section 3004(g), a HSWA provision.[5] Therefore, the Agency is adding this rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. Table 2 in 40 CFR 271.1(j) is modified to indicate that these requirements are self-implementing. Until the States receive authorization for these more stringent HSWA provisions, EPA will implement them. Once authorized States adopt an equivalent rule and receive authorization for such rule from EPA, the authorized state rule will apply in that State as the RCRA Subtitle C requirement in lieu of the equivalent federal requirement.

VII. Administrative Assessments

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, the Agency has determined that today's proposed rule is a significant regulatory action because this proposed rule contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's proposal.

EPA's economic analysis suggests that this rule is not economically significant under Executive Order 12866.

Detailed discussions of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's rule for regulatory modifications to the definition of solid waste for zinc-containing hazardous waste-derived fertilizers, followed by a presentation of the cost, economic impact and benefit results, may be found in the background document: "Economic Analysis for Regulatory Modifications to the Definition of Solid Waste For Zinc-Containing Hazardous Waste-Derived Fertilizers, Notice of Final Rulemaking," which is in the docket for today's final rule.

Methodology. To estimate the cost, economic impacts to potentially affected firms and benefits to society from this rulemaking, we analyzed data from zinc micronutrient producers, firm financial reports, trade associations and chemical production data. The Agency has used both model facilities and actual facilities in analyzing the effects of this proposed regulation.

To estimate the incremental cost or cost savings of this rule making, we reviewed baseline management practices and costs of potentially affected firms. The Agency has modeled the most likely post-regulatory scenario resulting from this action (*e.g.*, shifts to non-hazardous fertilizer feedstocks, shifting from zinc oxysulfate to zinc sulfate monohydrate production) and the estimated cost of complying with it.

[5] In Aug. 17, 1988, through a rule promulgated pursuant to HSWA, EPA imposed treatment standards prior to land application on all other commercial fertilizers containing recyclable waste, except for those derived from K061 (53 FR 31198, 31202). Today's rule simply extends the application of treatment standards to K061 derived fertilizers.

The difference between the baseline management cost and the post-regulatory cost is either the incremental cost or cost savings resulting from the rulemaking.

To estimate the economic impact of today's rule, we compared the incremental cost or cost savings of the rule with model firm sales. The Agency has also considered the ability of potentially affected firms to pass compliance costs on in the form of higher prices.

To characterize the benefits of today's rule, we evaluated available data and presented a qualitative assessment of benefits including ecological benefits and protection of natural resources such as groundwater.

Results. Volume. Data reviewed by the Agency indicates that there are 3 to 4 zinc micronutrient producers, one zinc producer, one steel mill, and 23 brass fume dust generators (ingot makers, mills, and foundries) potentially affected by today's rule. Although the exact amount of hazardous waste used in zinc micronutrient fertilizer production on annual basis varies from year to year, in 1997, data indicate that approximately 46,000 tons of hazardous waste were used in the production of zinc micronutrient fertilizer. The principal hazardous waste feedstocks were tire ash, electric arc furnace dust (K061) and brass fume dust from ingot makers, mills and foundries.

Costs. For the part of today's rule pertaining to zinc micronutrient fertilizers, we estimate the total annual cost savings from today's proposal to be $2.14 million for all facilities. Costs savings for different groups are summarized in Table 1.

TABLE 1.—ESTIMATED INCREMENTAL COSTS AND COST SAVINGS BY FACILITY CATEGORY

Potentially affected facility	Incremental annual costs (cost savings) (1999$)
Zinc Oxysulfate Producers.	($0.49 million).
Zinc Sulfate Monohydrate Producers.	($0.75 million).
Primary Zinc Producers.	($1.0 million).
Steel Mill	$1.5 million.
Brass Fume Dust Generators.	($1.4 million).
Total	($2.14 million).

Costs and cost savings to zinc oxysulfate producers are estimated from either shifting production to zinc sulfate monohydrate or shifting to nonhazardous sources of oxysulfate feedstocks. Zinc sulfate monohydrate producers and primary zinc producers are estimated to realize cost savings from shifting brass fume dust currently used in animal feed production to fertilizer production. Under current zinc sulfate markets, fertilizers are sold at a higher price than animal feed. One steel mill that has generated baghouse dust used in fertilizer manufacturing is expected to incur additional costs from having to shift their dust from fertilizer production to land disposal. And brass fume dust generators (mills, ingot makers, foundries) are estimated to incur cost savings from shifting their dust from zinc reclamation and animal feed to fertilizer production.

Economic Impact Results. To estimate potential economic impacts resulting from today's rule, we use a first order economic impacts measure: the estimated incremental costs or cost savings of today's rule as a percentage of affected firms sales. Because of data limitations, EPA was unable to obtain profit information for potentially affected firms. For two zinc oxysulfate producers the estimated impact of the rule is 1.42 percent in incremental costs for one firm and 0.64 percent in cost savings for the other. Two zinc sulfate monohydrate producers are estimated to realize cost savings of 0.1 and 15 percent of revenue. For the primary zinc producer, the rule is estimated to result in cost savings equal to 1 percent of firm sales. More detailed information on this estimate can be found in the economic analysis placed into today's docket.

Benefits Assessment. Because EPA did not use any risk assessments of current or projected metals and dioxin concentrations in zinc fertilizers in the development of this rulemaking, the Agency cannot make any quantitative conclusions about the risk reduction from today's final rule. To estimate the benefits resulting from today's rule, EPA looked at available literature and records regarding hazardous waste feedstocks used to make zinc micronutrient fertilizers. The data suggest that today's rule will reduce loading of toxic non-nutritive constituents to the soil. Two zinc oxysulfate samples produced from hazardous waste and analyzed by the State of Washington had dioxin concentrations between 17 and 42 times background level ("Final Report Screening Survey for Metals and Dioxins in Fertilizer Products and Soils in Washington State," Washington State Department of Ecology, April 1999, Figures 1–1 and 1–2). In addition, the zinc oxysulfate manufacturing process does not remove any of the lead or cadmium from the feedstock material. If promulgated, today's proposal would reduce annual loadings of these metals to the soil.

In addition, today's proposal may reduce natural resource damage and contamination to groundwater. EPA is aware of at least two damage incidents caused by land placement of hazardous waste prior to fertilizer production that resulted in contamination of either groundwater or surrounding surface water bodies adjacent to the site. ("Report of RCRA Compliance Inspection at American Microtrace Corporation," US EPA Region VII, December 4, 1996, Editorial, The Atlanta Journal/Constitution, April 11, 1993). Today's proposal may increase non-use values for these environmental amenities as well.

The Agency also believes that this rule has the potential for reducing what may be considered low probability but high consequence adverse human health or environmental impact if contamination from hazardous secondary material used in fertilizer production should, because of geological conditions such as karst terrain, reach a major population drinking water source or sensitive environmental location. This rule should lessen the chances of this type of event even though the probabilities of such occurrences and the magnitude of any impacts are not known.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we have determined that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

There is one small entity incurring incremental costs and offsetting increased revenues resulting from this rulemaking. This firm is Frit Inc, a zinc oxysulfate fertilizer producer. Frit has one facility co-located onsite with Nucor Steel's Norfolk, Nebraska facility. Frit has been producing zinc oxysulfate fertilizer from Nucor's baghouse dust (K061, a listed hazardous waste). As result of this rulemaking, Frit will no longer be able to make zinc oxysulfate from Nucor's dust. This is due to both the removal of the exemption of K061 derived fertilizer's from LDR requirements and metal limits on zinc fertilizers made from hazardous secondary materials. EPA understands that Frit is ceasing operations at the Norfolk, Nebraska facility. In the economic analysis of the proposed rulemaking, EPA had modeled Frit switching from zinc oxysulfate to zinc sulfate monohydrate at Nucor's facility as the most cost-effective post-regulatory alternative. In public comment on the proposed rulemaking, The Fertilizer Institute, a trade association of which Frit is a member, commented that EPA's economic analysis had not accounted for costs of switching and operating from zinc oxysulfate to zinc sulfate monohydrate. Although EPA agrees with some of The Fertilizer Institute's comments and disagrees with others (for more information see the Response to Comments document to today's rulemaking), when EPA reevaluated two possible alternative regulatory responses for Frit to this rulemaking (1. switching from zinc oxysulfate to zinc sulfate monohydrate, and 2. switching from hazardous secondary sources to nonhazardous secondary sources), we determined that switching to nonhazardous sources of zinc-bearing secondary materials would be more cost-effective for Frit than switching its production to ZSM. This is because although it costs more to purchase nonhazardous zinc-bearing secondaries, the fertilizers produced from the nonhazardous sources are sold at a higher price due to lower nonnutritive mineral content (i.e. lead and cadmium). Because Frit is ceasing operations at the Nucor site, EPA has modeled the firm consolidating its operations at another company facility to produce zinc oxysulfate from nonhazardous sources. EPA has estimated that Frit's costs for nonhazardous feedstocks will increase by $2.9 million. Also, Frit should realize increased revenues of $3.4 million that offset these costs and increase profit by $0.49 million. Thus, Frit should not be significantly impacted by this rule even though it will be required to incur additional costs when substituting to nonhazardous sources.

Moreover, EPA does not believe that one regulated entity constitutes a substantial number of small entities in the zinc micronutrient industry. There are several other firms producing zinc micronutrient fertilizers, some of them small businesses. As discussed below, this rule will benefit many of these firms.

It is also likely that even in the absence of this rulemaking that opportunities to market K061 derived fertilizers would become more limited in response to decreased consumer demand for fertilizers with high non-nutritive mineral content. EPA notes that there is currently a market trend away from zinc fertilizers with high heavy metal content (*see www.chemexpo.com/news/newsframe.cfm?framebody=/news/profile.cfm* as obtained April 12, 2002 for zinc sulfate). Therefore, it is likely that even in the absence of this rulemaking, the market for zinc fertilizers with relatively high heavy metal content, such as K061-derived zinc oxysulfate, is declining in favor of cleaner zinc fertilizers. And in the past 3 years, there has been a trend away from using K061 in fertilizer production. Two of the three firms that had used K061 in 1997 in zinc oxysulfate production had ceased using this hazardous feedstock prior to EPA's proposed fertilizer rulemaking.

EPA also notes that this rulemaking will assist many small businesses that either generate hazardous zinc-bearing secondary feedstocks or use those feedstocks in fertilizer production by opening up markets for these materials including brass dust, tire ash, and zinc oxides from steel waste. Brass foundries, brass mills, and brass ingot makers are examples of the types of small business generators likely to benefit from today's final rule. The Agency has received favorable public comments from trade associations representing small business generators of hazardous zinc-bearing secondaries. Other small business producers of zinc sulfate monohydrate such as Big River Zinc, and Madison Industries will benefit from increased supplies of zinc-bearing secondaries. For more information, please refer to the background document entitled "Economic Analysis for Regulatory Modifications to the Definition of Solid Waste For Zinc-Containing Hazardous Waste-Derived Fertilizers, Notice of Final Rulemaking," which was placed in the docket for today's final rule.

For the reasons discussed above, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1189.XX). A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environmental Protection Agency (2137), 1200 Pennsylvania Avenue, NW., Washington DC 20460, or by calling (202) 260–2740 and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by e-mail at *farmer.sandy@epamail.epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

EPA has finalized the following conditions for reporting and recordkeeping by generators and manufacturers: The rule requires generators to submit a one-time notice to the EPA Regional Administrator (or the state Director in an authorized state) and to maintain all records of all shipments of excluded hazardous secondary materials for a minimum of three years As a condition of the exclusion, manufacturers will be required to submit a one-time notice, retain for a minimum of three years

records of all shipments of excluded hazardous secondary materials that were received by the zinc fertilizer manufacturer during that period, and submit an annual report identifying the types, quantities and origins of all such excluded materials that were received by the manufacturer in the preceding year. The manufacturer will also be required to perform sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Additional testing will be required when changes to processes or feedstock materials are made that could significantly alter the composition of the fertilizer products. These conditions replace the current hazardous waste regulatory requirements for reporting and recordkeeping, and are designed to improve the accountability system, and government oversight capabilities, over the handling of secondary materials used to make zinc fertilizers.

EPA estimates that the total annual respondent burden for the new paperwork requirements in the rule is approximately 61 hours per year and the annual respondent cost for the new paperwork requirements in the rule is approximately $12,653. However, in addition to the new paperwork requirements in the rule, EPA also estimated the burden and cost savings that generators and manufacturers could expect as a result of no longer needing to comply with the existing RCRA hazardous waste information collection requirements for the excluded materials. This cost savings of $21,149 minus the $12,653 cost for the new paperwork requirements will result in an overall cost savings $8,496. The net cost to EPA of administering the rule was estimated at approximately $244 per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of § 205 do not apply when they are inconsistent with applicable law. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under § 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials to have meaningful and timely input in the development of regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule does not include a Federal mandate that may result in expenditures of $100 million or more to State, local, or tribal governments in the aggregate, because this rule imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Therefore, today's proposed rule is not subject to the requirements of Sections 202, 203, and 205 of UMRA.

E. Federalism—Applicability of Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132. This rule directly affects primarily zinc micronutrient producers and generators of hazardous wastes used in zinc fertilizer production. There are no State and local government bodies that incur direct compliance costs by this rulemaking. And State and local government implementation expenditures are expected to be less than $500,000 in any one year (for more information, please refer to the background document entitled "Federalism Analysis (Executive Order 13132) for Zinc-Containing Hazardous Waste-Derived Fertilizers, Notice of Proposed Rulemaking: Substantial Direct Effects", August 2000). Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

This rule preempts State and local law that is less stringent for these zinc-bearing hazardous wastes. Under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 to 6992k, the relationship between the States and the national government with respect to hazardous waste management is established for authorized State hazardous waste programs, 42 U.S.C. 6926 (section 3006), and retention of State authority, 42 U.S.C. 6929 (section 3009). Under section 3009 of RCRA, States and their political subdivisions may not impose requirements less stringent for hazardous waste management than the national government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children. EPA's fertilizer risk assessment modeled a number of pathways by which farmers and their children could be exposed to metals and dioxins in fertilizer products applied at recommended rates and frequencies. Exposure was modeled through both direct and indirect pathways. The direct pathways considered were the inhalation pathway, including inhalation of windblown emissions, and from emissions during product application and tilling. Direct ingestion of soils amended with fertilizers was also modeled. The indirect exposure pathways considered were ingestion of plants (vegetables, fruits, and root vegetables) grown on soils amended with fertilizer products containing metals and dioxins, ingestion of beef and dairy products produced on land amended with these products, and ingestion of home-caught fish from a stream adjacent to the farmer's agricultural field.

EPA's fertilizer risk assessment used a probabilistic methodology to estimate incremental lifetime cancer and non-cancer risks to farmers and farm children. The general conclusion of the risk assessment was that fertilizers generally do not pose harm to human health or the environment. Since today's final rule is expected to reduce the overall levels of contaminants in zinc fertilizers made from hazardous secondary materials, the Agency expects that the impacts of this rule on childrens' health will be positive, albeit relatively small.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule establishes a conditional exclusion for zinc fertilizers based on contaminant levels for metals and dioxins. After considering alternatives, EPA has determined that it would be impractical and inappropriate to use voluntary consensus standards in this rulemaking, for the reasons discussed in more detail in in Section III.D of this preamble.

I. Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in safe and healthful environments. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's rule pertains to hazardous wastes used in zinc micronutrient production, and is intended to reduce risks of excluded hazardous secondary materials, and benefit all populations. As such, this rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

Excluded hazardous secondary materials will be subject to protective conditions regardless of where they are generated and regardless of where they may be managed. Although the Agency understands that the exclusion may affect where these wastes are managed in the future, the Agency's decision to conditionally exclude these materials is

independent of any decisions regarding the location of waste generators and the siting of waste management facilities. Today's rule will reduce loadings of toxic non-nutritive constituents to the soil, and will ensure proper management of secondary materials at affected facilities. EPA believes that these provisions of the rule will benefit all populations in the United States, including low-income and minority communities.

J. Executive Order 13211 (Energy Effects)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule applies to a discrete sector of the economy and potentially adversely affects fewer than 20 firms. This rule reduces regulatory burden and creates markets for hazardous zinc-bearing secondary materials. It thus does not adversely affect energy supply, distribution or use.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on July 24, 2002, except for the amendment to 40 CFR 266.20(b), which eliminates the exemption from treatment standards for fertilizers made from recycled electric arc furnace dust. The effective date for that provision in today's final rule is January 24, 2003.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental proteciton, Hazardous waste, Reporting and recordkeeping requirements.

Dated: July 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

2. Section 261.4 is amended by adding paragraphs (a)(20) and (a)(21) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in § 261.1 (c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Regional Administrator or State Director in whose jurisdiction the exclusion is being claimed, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(*1*) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(*2*) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(*3*) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of this paragraph (a)(20).

(D) Maintain at the generator's or intermediate handlers's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

(*1*) Name of the transporter and date of the shipment;

(*2*) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(*3*) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in paragraph (a)(20)(ii)(B) of this section.

(B) Submit a one-time notification to the Regional Administrator or State Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Regional Administrator or State Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described inparagraph (a)(20)(ii)(A) of this section, and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of 40 CFR Parts 264 and 265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under paragraph (a)(20) of this section, provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of paragraph (a)(21)(ii) of this section. Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this paragraph (a)(21).

PART 266—[AMENDED]

3. The authority citation for Part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

4. Section 266.20 is amended by removing the last two sentences of paragraph (b), and adding paragraph (d) to read as follows:

§ 266.20 Applicability.

* * * * *

(d) Fertilizers that contain recyclable materials are not subject to regulation provided that:

(1) They are zinc fertilizers excluded from the definition of solid waste according to § 261.4(a)(21) of this chapter; or

(2) They meet the applicable treatment standards in subpart D of Part 268 of this chapter for each hazardous waste that they contain.

PART 268— [AMENDED]

5. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart D—Treatment Standards

§ 268.40 [Amended]

6. Section 268.40 is amended by removing and reserving paragraph (i).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

8. In § 271.1(j), tables 1 and 2 are amended by adding the following entries in chronological order by date of publication to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
July 15, 2002	Elimination of LDR Treatment Standards Exemption for K061-Derived Fertlizers.	July 24, 2002, FR cite	January 24, 2003.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984—Continued

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * * * * * *			

TABLE 2.—SELF IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* * * * * * *			
January 24, 2003	Elimination of LDR Treatment Standards Exemption for K061 Derived Fertilizers.	3004(g)(6)	July 24, 2002, FR cite.
* * * * * * *			

[FR Doc. 02–18405 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 18

[ET Docket No. 98–80; FCC 02–157]

Conducted Emission Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On July 10, 2002 (67 FR 45666), the Commission published final rules in the **Federal Register**, which amended the rules for Conducted Emission Limits. This document contains a correction to the effective date of that rule which was inadvertently published incorrectly.

DATE: Effective August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Anh Wride, Office of Engineering and Technology, (202) 418–0577, TTY (202) 418–2989, e-mail: *awride@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending parts 15 and 18 in the **Federal Register** of July 10, 2002, (67 FR 45666). This document corrects the **Federal Register** as it appeared. In FR Doc. 02–17264 published on July 10, 2002, (67 FR 45666), the Commission is correcting the "**DATES**: Effective August 9, 2002 of the Commission's rules to reflect the correct **DATES**: Effective September 9, 2002."

In rule FR Doc. 02–17264 published on July 10, 2002 (67 FR 45666) make the following correction:

On page 45666, in the third column correct Dates: Effective August 9, 2002 to read as **DATES**: Effective September 9, 2002.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–18626 Filed 7–23–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; DA 02–1490]

Request for Comment on Petition for Clarification on the Provision of and Cost Recovery for Captioned Telephone as an Improved Voice Carry-Over Service for Telecommunications Relay Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; request for comments on petition for clarification.

SUMMARY: This document seeks public comment on a petition requesting clarification of the Commission's rules on telecommunications relay services ("TRS") with respect to the provision and reimbursement of captioned telephone, an enhanced voice carry-over service (published at 65 FR 38432, June 21, 2000.) *See* Petition for Clarification Provision of and Cost Recovery for CapTel, An Enhanced VCO Service, CC Docket No. 98–67 filed April 12, 2002 on the behalf of Ultratec, Inc. This document also seeks public comment on Ultratec, Inc.'s request for clarification that certain TRS mandatory minimum standards do not apply to this service.

DATES: Interested parties may file comments in this proceeding no later than July 26, 2002. Reply comments may be filed no later than August 12, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC, 20554.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–2247 (voice), (202) 418–7898 (TTY), or e-mail at *dljackso@fcc.gov*.

SUPPLEMENTARY INFORMATION: When filing comments, please reference CC Docket No. 98–67. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *<http://www.fcc.gov/e-file/ecfs.html>*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of the proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail

(although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325 Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, SW, Room 6–C410, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b). Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov*. This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 02–18371 Filed 7–23–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 071902C]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 21, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of northern rockfish for the Central Regulatory Area was established as 4,170 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for northern rockfish in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,120 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 2002.

Virginia M. Fox,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18737 Filed 7–19–02; 3:35 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 071902A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 20, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of Pacific ocean perch for the Western Aleutian District was established as 5,236 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for Pacific ocean perch in the Western Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,436 mt, and is setting aside the remaining 800 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2002 TAC of Pacific ocean perch for the Western Aleutian District of the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(b)(3)(iii)(A). These procedures are unnecessary and contrary to the public interest because the need to implement these measures in a timely fashion to avoid exceeding the 2002 TAC of Pacific ocean perch for the Western Aleutian District of the BSAI constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority:

Dated: July 19, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18735 Filed 7–19–02; 3:35 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 071902B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of pelagic shelf rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 21, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of pelagic shelf rockfish for the Central Regulatory Area was established as 3,480 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for pelagic shelf rockfish in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,450 mt, and is setting aside the remaining 30 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is

contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18736 Filed 7–19–02; 3:35 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 142
Wednesday, July 24, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE80

Small Business Size Standards; Information Technology Value Added Resellers

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to establish a new industry category and size standard of 500 employees for Information Technology Value Added Resellers under Other Computer Related Services, North American Industry Classification System (NAICS) 541519. This industry category and size standard is being established to better apply small business eligibility requirements under Federal contracts that combine substantial services with the acquisition of computer hardware and software. SBA is requesting public comments on establishing this industry category and size standard.

DATES: Comments must be received on or before August 23, 2002.

ADDRESSES: Send comments to Linda G. Williams, Associate Administrator for Policy, Planning, and Liaison, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third St., SW, Mail Code 6510, Washington, DC 20416; or, via e-mail to *SIZESTANDARDS@sba.gov*. Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Gary Jackson, Assistant Administrator for Size Standards, at (202) 205–6464.

SUPPLEMENTARY INFORMATION:

Information technology (IT) is one of the largest areas of Federal contracting today. The Federal government spent approximately $19 billion in contracting for computer hardware, software, programming, and other related services during fiscal year 2000. Within this area of contracting, many Federal agencies, as well as private sector organizations, look for contractors that provide solutions to their IT needs. In this regard, they seek a contractor, such as a Value Added Reseller or Solution Provider, who can provide a range of services that assist and support the acquisition of computer hardware and software. These contractors provide services such as advising an organization on what types of computer equipment, systems, and technologies will fit its needs; designing and integrating systems; purchasing and installing IT equipment; customizing hardware and software configurations; and providing technical services, maintenance, warranty service, and user support. The customer benefits from these types of contracts by having a single contractor coordinate their IT acquisition needs. These value added services are vitally important in a rapidly changing environment where new products and technologies are continually being introduced.

SBA's size standards and program eligibility requirements do not specifically address the classification of Federal contracts that combine services with the acquisition of supplies. As a result, Federal agencies have had difficulty using small business preference programs for these types of contracts, especially for IT. Under SBA's current policies, such contracts are almost always viewed as a manufacturing or supply contract since the dollar value of the largest component of the contract will be associated with the acquisition of supplies. For supply contracts that are set aside for small business or for SBA's 8(a) and HUBZone programs, an eligible small business must be a small manufacturer of the end item being procured or, if not the actual manufacturer of the end item, must supply the product of a small business manufacturer (referred to as the "nonmanufacturer rule") unless SBA grants a waiver of the nonmanufacturer rule for that specific item (13 CFR 121.406). For most supply contracts, this distinction is workable: either a company has made the product or is supplying it along with distribution related value added services. SBA, however, has found that the manufacturer/nonmanufacturer distinction does not adequately address Federal IT contracting that combine supplies and services into a single contract.

The acquisition of IT equipment has several aspects that lead SBA to believe that it should establish special small business eligibility requirements for IT Value Added Resellers that are similar to those for a service contractor. First, as discussed above, many Federal agencies prefer to go to a single source to obtain IT equipment and supporting services. In doing so, a contractor often provides advisory and other support services. Second, most acquisitions are for numerous IT products that make it unrealistic to expect one manufacturer to produce all of the required items. In many cases, the agency and contractor agree in advance to equipment prices and delivery timeframes. Third, IT contracts often require the contractor to customize computer hardware or install specialized software to meet an individual user's needs. Although these activities usually do not constitute manufacturing, they are beyond the traditional wholesale-distribution function.

To address these types of IT contracts, SBA proposes establishing a category of IT Value Added Resellers under NAICS code 541519, Other Computer Related Services. An IT Value Added Resellers industry category will allow Federal IT contracts that combine supply and services activities to be classified in an industry that reflects the purpose and scope of the contract and for SBA to apply a reasonable size standard and other eligibility requirements to IT Value Added Resellers that generally perform these combined functions. This new industry category will enable Federal agencies to better utilize small business preference programs for their IT acquisitions.

SBA recognizes that establishing a category of IT Value Added Resellers as a service activity is a departure from the North American Industry Classification System (NAICS). Under NAICS, Value Added Resellers are classified in the Wholesale Trade sector along with merchant wholesalers, distributors, drop shippers, brokers, and agents. These latter types of establishments arrange the delivery of manufactured products to their customers and provide value added services associated with distribution, such as billing or inventory management. While providing

manufactured products, IT Value Added Resellers also offer services beyond those associated with the distribution function. SBA believes that for Federal small business procurement preference programs in particular, IT Value Added Resellers need to be treated in a different manner than wholesale trade firms (or nonmanufacturers) on supply contracts. Specifically, the service activities performed by IT Value Added Resellers warrants greater consideration than NAICS affords other Value Added Resellers.

Definition of Information Technology Value Added Resellers

An IT Value Added Reseller provides a total solution to IT acquisitions by providing multi-vendor hardware and software along with significant pre-sale and post-sale services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support.

This proposed rule requires that a Federal IT procurement be classified under this industry category if it consists of at least 15 percent but not more than 50 percent of value added services as measured by the total price less the cost of IT hardware, computer software, and profit. This requirement ensures that the contractor provides a meaningful amount of substantive computer-related services. For example, if a procurement consists of $750,000 for personal computers, printers, and application software; $250,000 for installation of hardware, maintenance, and technical support; and $50,000 profit, then it satisfies the criteria to be classified as an IT Value Added Resellers procurement. In this example, 23.8 percent of the value of the procurement is for value added computer services. (Percent of value added services = value of computer services / total price. 23.8% = $250,000 / $1,050,000.)

However, an IT procurement consisting of value added services less than 15 percent or greater than 50 percent must be classified under a different NAICS industry. If a Federal procurement is comprised of less than 15 percent of value added services, then it must be classified under a manufacturing industry and incorporate the applicable manufacturer size standard and nonmanufacturer size standard. For example, on a procurement to provide 100 personal computers without any additional services or with only incidental services is classified under NAICS 334111, Electronic Computer Manufacturing. For this type of procurement reserved for small businesses or under the 8(a) and HUBZone Programs, the nonmanufacturer rule requires that a small business nonmanufacturer supply personal computers manufactured by a small manufacturer. In limited cases, SBA may waive this nonmanufacturer rule for a specific procurement or class of products allowing the nonmanufacturer to supply the product of any domestic manufacturer. (*See* 13 CFR 121.406.)

Conversely, if the IT procurement consists of more than 50 percent of value added computer-related services, it must be classified under the computer services industry that best describes the predominate service of the procurement. For example, a procurement to write a custom computer program that includes providing several personal computers and printers accounting for 25 percent of the value of the procurement is classified under NAICS 541511, Custom Computer Programming Services, since 75 percent of the work is for computer programming services. The size standard applicable to this procurement is $21 million in average annual receipts.

Size Standard and Eligibility Requirement for IT Value Added Resellers

SBA proposes to adopt the nonmanufacturer size standard of 500-employees, but is also seeking comments on alternatives to this size standard. A large proportion of the value of a contract will be for hardware and software with 20 percent to 30 percent generally for value added services. In addition, IT Value Added Resellers have obtained Federal supply contracts as nonmanufacturers under a 500-employee size standard. Applying that size standard to IT Value Added Resellers would maintain the same size standard under which many of these businesses currently qualify as small. In recognition that a substantial amount of the dollar value of the contract will be for hardware and software sales, an employee size standard is considered an appropriate size standard to measure the magnitude of operations of IT Value Added Resellers. To ensure consistent size eligibility requirements for other SBA programs outside of Federal procurement, the 500-employee size standard would be applicable to businesses whose primary activities match the IT Value Added Resellers description.

SBA considered three other size standards for IT Valued Added Resellers. These alternative size standards relate to existing size standards for computer services and wholesale trade.

First, SBA considered proposing the same $21 million size standard that applies to the computer services industries (NAICS codes 541510 -541519). If IT Value Added Resellers are viewed as part of computer services, then the same size standard may be appropriate. As mentioned above, SBA believes an employee size standard is a better measure of the operations of an IT Value Added Reseller and decided not to propose this or another receipts size standard.

Second, SBA considered a 150-employee size standard that represents the employee-equivalent of the $21 million computer services size standard. On average, computer services businesses generate $142,500 sales per employee. Sales in the amount of $21 million translate to approximately 150-employees ($21,000,000 ÷ $142,500 = 147.4). This 150-employee size standard results in a size standard consistent with that of the computer services receipts size standard without being skewed by the value of hardware and software products provided by an IT Value Added Reseller. SBA did not propose this size standard since it is lower than the size standard that now applies to nonmanufacturers. Without specific industry data by which to assess the impact of a 150-employee size standard on small businesses, SBA is reluctant to adopt that size standard without first seeking comments.

Third, SBA also considered applying the 100-employee size standard for wholesale trade industries to IT Value Added Resellers. SBA adopted a 500-employee size standard for nonmanufacturers in part because of the competition among both distributors and manufacturers on Federal supply contracts. Federal customers seeking IT value added services will almost always find computer services firms and distributors with services capabilities competing for those contracts. With a limited presence of manufacturer competitors, the need for a 500-employee size standard for IT Value Added Services may not exist. For the same reasons as not proposing a 150 employee size standard, SBA has decided to seek comment on this alternative before considering it for adoption.

SBA invites comments on these three alternative size standards, or other alternatives that may more appropriately define a small IT Value Added Reseller. The comments should explain why the alternative is a more

appropriate size standard than 500 employees. These comments should also discuss the impact of the 500 employee size standard and alternative size standard on small businesses and how they effectively assists small businesses. In addition, commenters are requested to identify data sources on IT Value Added Resellers that SBA may be able to use to more definitely evaluate the size standard.

The classification of Federal contracts under the proposed IT Value Added Resellers industry would alter how two other SBA regulations are applied when such contracts are set aside for small businesses or under the 8(a) and HUBZone Programs. First, an IT Value Added Reseller would be required to meet performance requirements (or limitations on subcontracting) as required on other service contracts. Under 13 CFR 125.6, a service contractor is required to perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. Second, IT Value Added Resellers would not be subject to the nonmanufacturer rule (13 CFR 121.406). As discussed above, SBA views an IT Value Added Resellers contract as a service rather than a supply contract since its purpose is to assist and provide supporting services to an agency in the acquisition of information technology equipment.

SBA seeks the public's comment on this proposed rule. In addition to comments on alternative size standards, SBA specifically desires comments on the following issues:

(1) To what extent do Federal agencies expect contractors providing information technology equipment to also provide value added services?

(2) Are the activities included in the definition of IT Value Added Reseller appropriate?

(3) Should SBA require a different minimum and maximum percentage of total contract value for services? If so, state what percentages and describe the basis for those percentages?

(4) Should SBA calculate the percent of services on IT Value Added Reseller contracts based on total price or some other baseline?

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the proposed rule is a "significant" regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the reasons for establishing an industry category and size standard for IT Value Added Resellers.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment.

Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses. The benefits of a new industry category and size standard would accrue to three groups. First, businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs. Second, growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards. Third, Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's financial programs, in particular its 7(a) Guaranteed Loan Program. IT Value Added Resellers qualify for these loans if they have 100 or fewer employees. Since over the last two years only one loan was guaranteed to a firm with more than 50 employees, it is unlikely that this rule would expand the use of the 7(a) Program.

Newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

In the absence of specific data on IT Value Added Resellers, there is no definitive estimate of the number of additional businesses that would become qualified as small businesses for Federal small business procurement preference programs. The benefits of the rule in Federal contracting will be more in terms of clarifying requirements on Federal contracts combining IT supplies and services than increasing the actual number of new small businesses. This rule is likely to increase opportunities for small businesses, but it is uncertain how many Federal contracts may be affected.

Federal agencies may benefit from the new industry category and size standard if more small businesses compete for set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A large base of active small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

This rule is not expected to increase administrative costs to the Federal government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. If the number of businesses seeking SBA assistance increases, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal government may be higher on some Federal contracts as a result of this rule. With a more appropriate contract requirement for IT value added service, Federal

agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), and HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and loses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or small disadvantaged businesses instead of large businesses since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The potential distributional impacts of these transfers cannot be estimated with any degree of precision since the data on the size of businesses receiving a Federal contract are limited to identifying small or other-than-small businesses.

The creation of an IT Value Added Resellers industry category and size standard is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the reasons and objectives of the rule; SBA's description and estimate of the number of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate overlap or conflict with the proposed rule; and alternatives considered by SBA.

(1) What Is Reason for This Action?

As discussed in the supplemental information, the purpose of this proposal is to establish more reasonable size standard and eligibility requirements for Federal information technology contracts that combine the acquisition of computer equipment and services. The proposed changes will better assist small IT Value Added Resellers in obtaining Federal contracts.

(2) What Is the Objective and Legal Basis for the Rule?

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards. Size standards are developed on an industry basis and vary by industry to reflect differing characteristics of firms in an industry or other appropriate factors regarding an industry. This rule proposes to establish an industry category of IT Value Added Resellers that SBA believes is necessary to appropriately apply its small business assistance program to small businesses in this category.

(3) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

SBA estimates that approximately 1,100 small businesses could receive assistance as a result of this proposed rule. In SBA's PRO-Net data base, 1,100 small businesses indicated that they are wholesalers of IT equipment and are capable of providing some other services. It cannot be determined how many could actually meet the requirements of the proposed IT Value Added Resellers definition. Thus, the actual number of affected businesses is likely to be smaller. A few small computer manufacturers could be adversely affected by this rule since small business set-aside, 8(a), or HUBZone contracts classified under the IT Value Added Resellers industry would not apply the nonmanufacturer rule. However, SBA believes the impact would be minimal since the IT Value Added Reseller contracts are most likely not currently being awarded to small manufacturers under these programs.

Description of Potential Benefits of the Rule: The most significant benefit to businesses obtaining small business status as a result of this rule is their eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZones).

SBA estimates that approximately $118 million of additional Federal contracts could be awarded to small firms under the proposed IT Value Added Resellers size standard. In FY 2000, $2 billion were awarded for ADPE systems configuration supply contracts. Only 3.3 percent of computer supply contracts were awarded as small business set aside and 8(a) contracts. SBA assumes that Federal agencies will be able to increase their small business set-aside and 8(a) awards for ADPE systems configuration to the same level as for computer services contracts. In FY 2000, 9.2 percent of the computer services contracts were awarded as a small business set-aside or 8(a) contract. If SBA's assumption is correct, an additional 5.9 percent, or $118 million, in small business contract awards for ADPE systems configuration could result. Most of these contracts would consist of a potential transfer from large businesses to small IT Value Added Resellers. This does not represent the creation of new contracting activity by the Federal government, merely a possible reallocation or transfer to different sized firms.

SBA does not believe any additional loans would be made under its 7(a) Guaranteed Loan Program and Certified Development Company (504) Program as a result of changes the SBA is proposing in this rulemaking. IT Value Added Resellers are currently eligible for these programs if they have 100 or fewer employees. In the last two years, only one 7(a) loan was made to a small business with more than 50 employees.

In the 504 Program, the alternative size standards of $2 million net income and $6 million net worth most likely already qualify IT Value Added Resellers with 100 to 500 employees.

Description of Potential Costs of the Rule: The changes in size standards as they affect Federal procurement are not expected to add any significant costs to the Federal Government. As a matter of policy, procurements may be set aside for small businesses or under the 8(a) and HUBZone Programs only if awards are expected to be made at reasonable prices. Similarly, the rule should not result in any added costs associated with the 7(a) and 504 loan programs. The amount of lending authority SBA can make or guarantee is established by appropriation.

The competitive effects of size standard revisions differ from those normally associated with other regulations which typically burden smaller firms to a greater degree than larger firms in areas such as prices, costs, profits, growth, innovation and mergers. A change to a size standard is not anticipated to have any appreciable effect on any of these factors, although small businesses, 8(a) firms, or small disadvantaged businesses much smaller than the size standard for their industry may be less successful in competing for some Federal procurement opportunities due to the presence of larger, newly defined small businesses. On the other hand, with more larger small businesses competing for small business set-aside and 8(a) procurements, Federal agencies are likely to increase the overall number of contracting opportunities available under these programs, and this could result in greater opportunities for businesses much smaller than the size standard.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping Requirements on Small Businesses?

This proposed rule does not impose any new information collection requirements which require OMB approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(5) What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule?

This proposed rule overlaps rules of other Federal agencies that use

SBA's size standards to define a small business. Under § 3(a)(2)(c) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

(6) What Alternatives Did SBA Consider?

SBA considered revising its definition of a manufacturer. On April 1, 1999, SBA published in the **Federal Register** a "Request for Comments" asking for comments on a modern definition of the term manufacturer and a new definition for "Remanufacturer" (64 FR 15708, dated April 1, 1999). SBA received only six comments on this issue, none of which provided sufficient information to support a revision to SBA's current manufacturer definition. After further review, SBA now believes that establishing an IT Value Added Resellers industry category is a more effective approach to addressing the size eligibility requirements of nonmanufacturers providing substantial services along with IT products on Federal contracts.

For purposes of Executive Order 12988, SBA has determined that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this proposed rule does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

This proposed rule does not impose any new information collection requirements from SBA which require the approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

Accordingly, for the reasons stated in the preamble, part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

Subpart A—Size Eligibility Provisions and Standards

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

§ 121.201 [Amended]

2. In § 121.201, in the table "Small Business Size Standards by NAICS Industry," under the heading Subsector 541–Professional, Scientific, and Technical Services, revise the entry for 541519 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS industry descriptions	Size standards in number of employees or millions of dollars
	* * * * * * *	
	Subsector 54—Professional, Scientific and Technical Services	
	* * * * * * *	
541519	Other Computer Related Services	$18.0
EXCEPT	Information Technology Value Added Resellers	[16] 500
	* * * * * * *	

3. In § 121.201, add footnote 16 at the end of the footnote section, under the table to read as follows:

Footnotes

* * * * *

16. NAICS code 541519—An Information Technology Value Added Reseller provides a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. For purposes of Government procurement, an information technology procurement classified under this industry category must consist of at least 15 percent and not more than 50 percent of value added services as measured by the total price less the cost of information technology hardware, computer software, and profit. If less than 15 percent of value added services, then it must be classified under a NAICS manufacturing industry. If the contract consists of more than 50 percent of value added services, it must be classified under the NAICS industry that best describes the predominate service of the procurement. For SBA assistance as a small business concern as an Information Technology Value Added Reseller, other than for Government procurement, a concern must be primarily engaged in providing information technology equipment and computer software and provides value added services which account for at least 15 percent of its receipts but not more than 50 percent of its receipts.

Dated: May 7, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–18766 Filed 7–23–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Planned Modification of the Houston Class B Airspace Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This document announces three fact-finding informal airspace meetings to solicit information from airspace users, and others, concerning a plan to modify the Class B airspace area at the George Bush Intercontinental Airport/Houston, TX. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the plan to modify the Houston, TX, Class B airspace area. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

DATES: *Meetings.* These informal airspace meetings will be held on Tuesday, August 27, 2002, at 6:00 pm—9:00 pm; Thursday, August 29, 2002, at 6:00 pm—9:00 pm; and Wednesday, September 4, 2002, at 6:00 pm—9:00 p.m.

Comments. Comments must be received on or before October 4, 2002.

ADDRESSES: *Meetings.* On August 27, 2002, the meeting will be held at Fletcher Aviation, at the William P. Hobby Airport, 9000 Randolph, Houston, TX. The August 29, 2002, meeting will be held at the Terminal Building at the West Houston Airport, 18000 Groschke, Houston, TX. The September 4, 2002, meeting will be held in the Academic room 126 at the North Harris College, 2700 W. Thorne Drive, Houston, TX.

Comments. Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Federal Aviation Administration, Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298.

FOR FURTHER INFORMATION CONTACT: Caroline Carey, Houston ATCT, George Bush Intercontinental Airport/Houston, 2700 West Terminal Rd., Houston, TX 77032; telephone (281) 209–8603.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by one or more representatives of the FAA Southwest Region. A representative from the FAA will present a formal briefing on the planned Class B airspace area modification. Each participant will be given an opportunity to deliver comments or make a presentation at the meetings. Only comments concerning the proposal to modify the Class B airspace area will be accepted.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) These meetings will not be formally recorded.

Agenda for the Meetings

—Opening Remarks and Presentation of Meeting Procedures.
—Briefing on Background for the Planned Modification of the Class B Airspace Area at the George Bush Intercontinental Airport/Houston, TX.
—Public Presentations and Discussions.
—Closing Comments.

Issued in Washington, DC, on July 15, 2002.

Ellen Crum,

Acting Manager, Airspace and Rules Division.

[FR Doc. 02–18619 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Metal Strapping Materials on Pallets

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes revisions to the *Domestic Mail Manual* that would exclude the use of metal strapping or metal banding material to secure pallets of mail, whether an individual pallet of mail, a pallet composed of several individual pallets stacked to form a single unit, or a pallet with a pallet box containing mail. These proposed revisions would also exclude metal buckles, seals, or other devices used to secure the ends of nonmetal strapping material used on pallets of mail. These proposed revisions would not change current approved methods or other materials for securing the mail to pallets.

Many mailers and the Postal Service are concerned about safety with the continued use of metal materials, as well as environmental issues, such as recycling. During the past 10 years, most pallet mailers and mailing operations have eliminated metal materials in favor of less expensive materials. For example, polyester, the most rigid of all strapping materials, has very good breaking strength, has only a 1–2 percent elongation, retains tension well, and has excellent recyclability properties. Although steel is the strongest of strapping materials, it is expensive, can be dangerous to work with, and difficult to recycle.

DATES: Submit comments on or before August 23, 2002.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, U.S. Postal Service Headquarters, 1735 N Lynn Street, Suite 3025, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC. Comments may also be submitted via fax to 703–292–4058, ATTN: O.B. Akinwole.

FOR FURTHER INFORMATION CONTACT: O.B. Akinwole at (703) 292–3643.

SUPPLEMENTARY INFORMATION: Current Postal Service standards for mail palletization in *Domestic Mail Manual* (DMM) M041, whether for individual pallets, stacked pallets, or pallet boxes, affords mailers flexibility in choices to secure mail to a pallet. For an individual pallet, mailers may choose to use only straps or bands, only plastic stretchwrap or shrinkwrap, or a combination of straps or bands and plastic wrapping material. These various materials and methods may be used for individual pallets as long as the materials and methods are strong enough to secure the mail and maintain the integrity of the pallet load during transport and handling. For several pallets stacked to form a single unit, mailers must secure the pallets with at least two straps or bands. Stretchwrap and similar plastic covering materials are not permitted for securing these pallets into a single unit. For a pallet box, mailers are required to secure the pallet only if the pallet and the pallet box containing the mail are to be transported by the Postal Service, or the weight of the mail in the box is not sufficient to hold the box in place on the pallet during transport and processing.

Metal straps, bands, buckles, or seals used to secure the ends of other nonmetal strapping material, can create serious safety hazards to personnel and equipment preparing, processing, and distributing the mail. In addition, the accumulation and disposal of metal strapping materials can create additional hazardous situations and environmental concerns. It should be noted that current Postal Service standards for packaging mail prohibit the use of metal or wire for securing mail into packages, and the standards for traying mail specify the use of plastic straps for securing tray sleeves and lids.

The Postal Service is committed to integrating safety into all postal operations, not only for its employees but also for its customers. Serious injuries, such as deep cuts, can occur when metal bands are applied, often when removed. In addition, the Postal Service is committed to conservation initiatives and supports environmentally sound practices. In keeping with these two commitments, the Postal Service believes that eliminating the use of metal straps or bands on palletized mail would improve employee and customer safety and promote better resource conservation.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S. C. of 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment of the following proposed revisions to the *Domestic Mail Manual*, incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S. C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M040 Pallets

M041 General Standards

* * * * *

1.0 PHYSICAL CHARACTERISTICS

* * * * *

1.3 Securing Pallets

[*Revise 1.3 to read as follows:*]

Except for stacked pallets under 3.1 and pallet boxes under 4.3, each loaded pallet of mail must be prepared to maintain the integrity of the mail and the entire pallet load during transport and handling using one of the following methods:

a. Securing with at least two straps or bands of appropriate material. Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used.

b. Wrapping with stretchable or shrinkable plastic.

c. Securing with at least two straps or bands of appropriate material and wrapping with stretchable or shrinkable plastic. Wire or metal bands, straps,

buckles, seals, and similar metal fastening devices may not be used.

* * * * *

3.0 STACKING PALLETS

[*Revise the heading of 3.1 to read as follows:*]

3.1 Physical Characteristics

Pallets may be stacked two, three, or four tiers high if:

[*Revise item d to read as follows:*]

* * * * *

d. The stack of pallets is secured with at least two straps or bands of appropriate material to maintain the integrity of the stacked pallets during transport and handling. Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used. The stack of pallets may not be secured together with stretchable or shrinkable plastic.

* * * * *

4.0 PALLET BOXES

* * * * *

4.3 Securing

[*Revise the introductory text in 4.3 to read as follows:*]

Pallet boxes must be secured to the pallet with strapping, banding, stretchable, plastic, shrinkwrap, or other material (Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used.) that ensures that the pallet can be safely unloaded from vehicles, transported, and processed as a single unit to the point where the contents are distributed with the load intact if:

* * * * *

An appropriate amendment to 39 CFR 111 to reflect the changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–18732 Filed 7–23–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket OR–01–006b; FRL–7241–1]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Oregon; Medford Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve revisions to Oregon's State Implementation Plan (SIP) which were submitted on May 31, 2001. These revisions consist of: the 1993 carbon monoxide (CO) base/attainment year emissions inventory for Medford, Oregon and the revised Medford CO maintenance plan. EPA also proposes to approve Oregon's request for redesignation of Medford from nonattainment to attainment for CO.

DATES: Written comments must be received by August 23, 2002.

ADDRESSES: Written comments should be addressed to Connie Robinson, EPA, Region 10, Office of Air Quality (OAQ–107), at the address listed below.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, EPA, Region 10, Office of Air Quality (OAQ–107), Seattle, Washington, (206) 553–1086.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: June 25, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 02–18585 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[CA080–OPPS; FRL–7250–6]

Proposed Partial Withdrawal of Approval of 34 Clean Air Act Title V Operating Permits Programs and Implementation of a Partial Part 71 Federal Operating Permits Program in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority at 40 CFR 70.10(b)(2)(i), EPA is proposing to withdraw, in part, approval of the following 34 Clean Air Act title V Operating Permits Programs in the State of California: Amador County Air Pollution Control District (APCD), Bay Area Air Quality Management District (AQMD), Butte County AQMD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, Mojave Desert AQMD, Monterey Bay Unified APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, Shasta County APCD, Siskiyou County APCD, South Coast AQMD, Tehama County APCD, Tuolumne County APCD, Ventura County APCD, and Yolo-Solano AQMD. Our proposed partial title V program

withdrawal is based upon EPA's finding that the State's agricultural permitting exemption at Health and Safety Code 42310(e) unduly restricts the 34 local districts' ability to adequately administer and enforce their title V programs, which have previously been granted full approval status. Therefore, EPA is proposing to withdraw approval of those portions of the 34 district title V programs that relate to sources that would be subject to title V but for the state agricultural exemption ("state-exempt major stationary agricultural sources"). EPA is also today proposing to implement a partial federal operating permits program under 40 CFR part 71 ("Part 71 program") for state-exempt major stationary agricultural sources.

DATES: Comments on this proposed action must be received in writing by September 3, 2002.

ADDRESSES: Written comments on this proposed action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, at (415) 972–3974 or *rios.gerardo@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," or "our" means EPA.

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I. Background
II. Description of Proposed Action
III. Effect of EPA's Rulemaking
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I. Background

Title V of the CAA Amendments of 1990 required all state permitting authorities to develop operating permits programs that met certain federal criteria codified at 40 Code of Federal Regulations (CFR) part 70. Where a state operating permits program substantially, but not fully, meets the 40 CFR part 70 criteria, section 502(g) of the Act authorizes EPA to grant interim approval to the state program, and requires EPA to identify the changes that must be made before the program can receive full approval.

In California, we granted interim approval to all 34 local operating permits programs initially submitted by the State. Our interim approvals, granted in 1994 and 1995, identified, among other things, the removal of the agricultural permitting exemption in California's Health and Safety Code (HSC) section 42310(e), as a change that had to occur before we could grant full approval. This section of California's HSC exempts from the requirement to obtain a permit "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals." We stated in each of our interim approval rulemakings that the State's permitting exemption was a program deficiency and that the exemption needed to be eliminated in order for us to grant full approval to the 34 operating permits programs.

On November 30, 2001, we promulgated final full approval of the 34 districts' title V operating permits programs, despite the State of California's failure to eliminate the agricultural permitting exemption. *See* 66 FR 63503 (December 7, 2001).[1] In granting full approval, we decided to defer title V permitting of state-exempted agricultural operations for a brief period, not to exceed three years.[2]

Subsequent to EPA's final rulemaking approving the 34 title V programs, EPA made a formal determination that all 34 local permitting authorities in California that have fully approved title V operating permit programs are not adequately administering or enforcing their programs because state law at Health and Safety Code 42310(e) exempts from permitting, "equipment used in agricultural operations in the growing of crops or the raising of fowl or animals." In other words, this exemption hinders the ability of the local districts to issue, administer or enforce title V permits for any major sources covered by the exemption.[3] Title V of the Act does not allow any exemptions for major sources, and requires that all permitting authorities have the authority to "issue permits and assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter." CAA 502(b)(5)(A). These requirements are echoed in the operating permit program approval regulations promulgated at 40 CFR part 70. *See* 40 CFR 70.4(b)(3)(i).

40 CFR 70.10(b) and 70.10(c) provide that EPA may withdraw a 40 CFR part 70 program approval, in whole or in part, whenever the permitting authority's legal authority does not meet the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**.

40 CFR 70.10(b) also provides that EPA may promulgate and administer a federal program under title V of the Act in the event that a permitting authority is not adequately administering or enforcing a part 70 program, or portion thereof. This action must also be preceded by notification to the permitting authority of EPA's finding of inadequate program administration, and is contingent upon a failure of the permitting authority to take significant action within 90 days of such notification.

Our determination regarding the inadequacy of the 34 districts' title V programs was published in a Notice of Deficiency (NOD). *See* 67 FR 35990 (May 22, 2002). Publication of the NOD fulfilled our obligation under 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a title V permitting authority is not adequately administering or enforcing its title V operating permits program. Pursuant to 40 CFR 70.10(b)(2), publication of the NOD commenced a 90-day period during which the State of California must take significant action to assure adequate administration and enforcement of the local districts' programs.[4]

II. Description of Proposed Action

We are proposing to withdraw, in part, approval of the 34 fully approved Clean Air Act title V Operating Permits Programs in the State of California. We are proposing to withdraw only the portions of the programs that relate to state-exempt major stationary agricultural sources; because they have the ability to adequately administer and enforce their part 70 programs for non-

[1] Although there are 35 separate permitting authorities in California, one permitting authority, Antelope Valley APCD, was not included in our final action because it only recently obtained its authority to issue part 70 permits and is still under tis initial interim approval status granted on December 19, 2000 (65 FR 79314).

[2] Our final rulemaking was challenged by several environmental and communiy groups alleging that the full approval was illegal based, in part, on the exemption of major agricultural sources from title V permitting. EPA entered into a settlement of this litigation which requires, in part, that the Agency propose the actions contained in today's notice.

[3] We are not identifying every source covered by the California HSC exemption as a "major source" under title V. Rather, we are acknowledging that any stationary agricultural sources that are "major sources" are covered by title V, even if they are exempt from permitting under the California HSC.

[4] EPA has determined that "significant action" in this instance means the revision or removal of Health and Safety Code 42310(e) so that local air pollution control districts have the required authority to issue title V permits to stationary agricultural sources that are major sources of air pollution.

exempt major stationary sources, each of the 34 local air districts will continue to administer their existing title V program for all other title V sources. In addition, we are proposing to implement a partial federal operating permits program under 40 CFR part 71 for state-exempt major stationary agricultural sources. EPA's action is necessary because the local districts cannot issue, administer or enforce operating permits for these sources, which are required to obtain permits under title V of the Act.

Although the 90-day period for the State to take significant action in response to EPA's Notice of Deficiency does not expire until August 19, 2002, we are today proposing to partially withdraw title V program approval and to implement a partial part 71 program for state-exempt major stationary sources in each of the 34 California districts where we are proposing partial program withdrawal. We are proposing these actions now in anticipation that the State of California will not effect the necessary change in state law prior to the end of the 90-day period on August 19. However, consistent with 40 CFR 70.10(b)(2), final action on this proposal will occur only after the 90 days for the State to take significant action has fully elapsed.

III. Effect of EPA's Rulemaking

Our proposal, if finalized, would result in EPA administering and enforcing a part 71 federal operating permit program for state-exempt major stationary agricultural sources within the jurisdiction of the 34 California air districts listed at the beginning of this proposal. Pursuant to 40 CFR 71.5(a)(1)(i), major stationary sources which do not have an existing operating permit issued by a State (or local permitting authority) under an approved part 70 program, and which are applying for a part 71 permit for the first time, must submit an application within 12 months after becoming subject to the permit program or on or before such earlier date as the permitting authority may establish. Section 71.5(a)(1)(i) further provides that sources required to submit permit applications earlier than 12 months after becoming subject to part 71 shall be notified of the earlier submittal date at least 6 months in advance of the date.

In the event we finalize this rule as proposed and implement a part 71 program for state-exempt major stationary agricultural sources, we are proposing to establish the following permit application deadlines: (1) state-exempt agricultural stationary sources that are major sources, as defined in 40 CFR 71.2, due to emissions from diesel-powered engines[5] must submit part 71 permit applications to the EPA Region IX Permits Office no later than 6 months after the effective date of the partial part 71 program or May 1, 2003, whichever is later; and (2) any remaining state-exempt major stationary agricultural sources must submit part 71 permit applications to the EPA Region IX Permits Office no later than August 1, 2003, or 6 months after the effective date of the partial part 71 program, whichever is later.

IV. Request for Public Comment

We are soliciting public comment on all aspects of this proposal. Written comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail (in triplicate if possible) as described in the **ADDRESSES** section listed in the front of this document. We will consider any written comments received by September 3, 2002. We are establishing a longer comment period than the 30 days required under the Administrative Procedure Act (APA) so that the public comment period on today's proposal extends beyond the end of the 90-day period for the State to take significant action. This time frame will provide the public with an opportunity, in commenting on today's proposal, to also fully consider and address any action taken by the State during the 90-day period.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not alter the relationship or the

[5] Emissions from stationary diesel-powered engines are considered when determining a source's applicability to title V permitting requirements. Emissions from motorized vehicles and from diesel-powered engines (or other types of engines) that meet the 40 CFR 89.2 definition of "nonroad engine" are not counted in title V applicability determinations.

distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities. In developing the original part 70 regulations and the proposed revisions to part 70, the Agency determined that they would not have a significant economic impact on a substantial number of small entities. *See* 57 FR 32250, 32294 (July 21, 1992), and 60 FR 45530, 45563 (August 31, 1995). Similarly, the same conclusion was reached in an initial regulatory flexibility analysis performed in support of the 1996 part 71 rulemaking. *See* 61 FR 34202, 34227 (July 1, 1996); see also 64 FR 8262 (February 19, 1999). Only a small subset of sources subject to the part 71 rule would be affected by today's action. The prior screening analyses for the part 70 and part 71 rules were done on a nationwide basis without regard to whether sources were located within California and are, therefore, applicable to sources in California. Accordingly, EPA believes that the screening analyses are valid for purposes of today's action. And since the screening analyses for the prior rules found that the part 70 and 71 rules as a whole would not have a significant impact on a substantial number of small entities, today's action, which would affect a much smaller number of entities than affected by the earlier rules, also will not have a significant impact on a substantial number of small entities.

EPA believes that few if any small businesses involved in the production of crops or animals in California would be subject to part 71 as a result of this rule. First, EPA notes that the Small Business Administration, pursuant to its authority under 15 U.S.C. 632(a) and 634(b)(6), has established thresholds for various business sectors to be used in the determination of whether a business is "small." *See*, 13 CFR part 121. For most businesses involved in the production of crops or animals (those that would most likely be subject to part 71 because of this rule), the SBA has set the "small business" threshold as $750,000 in annual receipts. (The threshold for cattle feedlots is $1.5 million; the threshold for chicken egg production is $9 million.) *See* 13 CFR 121.201; see also, 13 CFR 121.104. Businesses that have annual receipts in excess of that threshold are not "small businesses." Second, EPA's rule would require only major sources of air pollution to obtain a part 71 operating permit. For instance, in the San Joaquin Valley, the threshold for major sources of oxides of nitrogen or volatile organic compounds is 25 tons per year; the threshold for major sources of particulate matter is 70 tons per year. Most other air districts in California have higher thresholds and consequently fewer sources in those districts would be subject to part 71. Furthermore, EPA does not include a source's fugitive emissions of criteria pollutants in determining whether part 71 applies to it. In addition, for sources that might have the potential to emit above the major source threshold, but have actual emissions below the threshold, the Agency has issued several policy memoranda explaining mechanisms for these sources to become "synthetic minors." These sources are recognized as not emitting pollutants in major quantities and may avoid the requirement to obtain a part 71 permit. Moreover, to the extent there is any impact, it will not be significant because part 71 imposes few if any additional substantive requirements. EPA intends to provide assistance to all sources that would become subject to part 71 as a result of this rulemaking.

Consequently, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

I. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this action under the

provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* and has assigned OMB control number 2060–0336. The information is planned to be collected to enable EPA to carry out its obligations under the Act to determine which sources are subject to the Federal Operating Permits Program and what requirements should be included in permits for sources subject to the program. Responses to the collection of information will be mandatory under § 71.5(a) which requires owners or operators of sources subject to the program to submit a timely and complete permit application and under §§ 71.6 (a) and (c) which require that permits include requirements related to recordkeeping and reporting. As provided in 42 U.S.C. 7661b(e), sources may assert a business confidentiality claim for the information collected under section 114(c) of the Act.

In the Information Collection Request (ICR) document for the July 1996 final part 71 rule (ICR Number 1713.02), EPA estimated that 1,980 sources in 8 states would potentially be subject to part 71. EPA also estimated that the annual burden per source would be 329 hours, and the annual burden to the Federal government is 243 hours per source. EPA believes that these burden estimates are significantly higher than the burdens associated with the rule proposed today. First, EPA estimates that the number of agricultural sources in California will be significantly less than the number on which the July 1996 estimates were based. In addition, State and local laws have traditionally exempted agricultural sources from many air pollution regulations. Therefore, agricultural sources will have fewer applicable requirements than the average part 71 source; accordingly, the burdens associated with permit applications and recordkeeping and reporting requirements should be minimal and far less than those for the typical part 71 source. Today's action would impose no burden on State or local governments and no burden on Tribal agencies. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

List of Subjects 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: July 17, 2002.

Keith Takata,

Acting Regional Administrator, Region 9.

[FR Doc. 02–18715 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 67, No. 142
Wednesday, July 24, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Environmental Quality Incentives Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of availability of program funds for the Environmental Quality Incentives Program (EQIP).

SUMMARY: The Farm Security and Rural Investment Act of 2002, increased the funding authorized to implement the Environmental Quality Incentives Program (EQIP). The Commodity Credit Corporation (CCC) administers EQIP under the general supervision of the Chief of the Natural Resources Conservation Service (NRCS), who is one of the vice presidents of CCC. CCC hereby announces the availability of up to an additional $200 million in FY 02 funds to provide technical, financial, and educational assistance under EQIP for farmers and ranchers to promote agricultural production and environmental quality as compatible National goals for working agricultural lands. CCC also announces the availability of up to an additional $25 million of EQIP funds in FY 02 to provide technical and financial assistance for ground and surface water conservation. Finally, CCC announces the availability of up to an additional $50 million of EQIP funds to carry out water conservation activities in the Klamath Basin in California and Oregon.

This notice applies only to funds made available and obligated in FY 02. CCC will, at a later date, issue a proposed rule for FY 03 through FY 07 program implementation. The proposed rule will address and seek comment on a number of issues including: the process for establishing National priorities and criteria for optimizing environmental benefits, the administration of incentive payments and their potential for promoting innovation and technological improvements and rewarding performance, the process of allocating and focusing funding at state and local levels, and the systematic evaluation of program performance. It will also consider other issues including creation of an innovative grant program, integration of air quality as a program goal, and the ground and surface water conservation program.

DATES: July 24, 2002 to September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013; (202) 720–1845; fax: (202) 720–4265. Submit electronic requests for additional information to: *mark.berkland@usda.gov*.

SUPPLEMENTARY INFORMATION: CCC hereby announces the availability of up to an additional $200 million in FY 02 funds to provide technical, financial, and educational assistance under EQIP, 16 U.S.C. 3839aa, for farmers and ranchers to promote agricultural production and environmental quality as compatible goals for working agricultural lands. CCC announces the availability of up to an additional $25 million of EQIP funds in FY 02 to provide technical and financial assistance for ground and surface water conservation. Finally, CCC announces the availability of up to an additional $50 million of EQIP funds to carry out water conservation activities in the Klamath Basin in California and Oregon.

EQIP assistance promotes agricultural production and environmental quality as compatible goals, and strives to optimize environmental benefits. Through EQIP, CCC provides flexible technical, financial, and educational assistance to producers to install and maintain conservation systems that enhance soil, water, air quality, related natural resources, and wildlife while sustaining production of food and fiber. The statutory purposes for EQIP are to promote agricultural production and environmental quality as compatible goals and to optimize environmental benefits.

Background

EQIP was initially authorized by amendments made by the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127 (the 1996 Act), to the Food Security Act of 1985, Public Law 99–198 (the 1985 Act). Since FY 96, CCC has implemented EQIP through regulations promulgated at 7 CFR part 1466. These regulations continue to govern contracts entered into with funds made available prior to the passage of the Farm Security and Rural Investment Act of 2002, Public Law 107–171 (the 2002 Act). Producers who entered into EQIP contracts in FY 02 prior to May 13, 2002, may modify their FY 02 contracts to avail themselves of the changes made by the 2002 Act.

CCC administers EQIP funds under the general supervision of the Chief of the Natural Resources Conservation Service (NRCS), who is a vice president of CCC. The Farm Service Agency (FSA) provides support for program administrative processes.

Implementation of the 2002 Act in Fiscal Year 2002

Section 2301 of the 2002 Act made several changes to the implementation of EQIP that must be applied in order to implement the program in FY 02. CCC shall implement these statutory provisions in contracts entered into with the funds made available by the 2002 Act for FY 02 and described in this notice of availability. CCC will implement these new EQIP contracts in accordance with the program regulations found at 7 CFR part 1466 as conditioned by the changes required by the 2002 Act. Where there are inconsistencies or conflicts between the statute and regulations, the statutory provisions will prevail. The 2002 Act made the following changes to the implementation of EQIP necessary for FY 02:

1. The process of designating conservation priority areas has been eliminated and will no longer be used.

2. The requirement to maximize environmental benefits per dollar spent has been eliminated. In accordance with the 2002 Act, CCC will seek to optimize environmental benefits as determined by the NRCS State Conservationist with advice from the State Technical Committee.

3. If the environmental values of two or more applications are comparable, CCC will not assign a higher priority to an application simply because it would present the least cost to the program.

4. In evaluating applications, CCC will accord a higher priority to applications that encourage the use of cost-effective conservation practices and address national conservation priorities.

5. The limitation on the size of livestock operations eligible to receive financial assistance has been removed. All livestock operations are now eligible to receive financial and technical assistance as long as all other eligibility criteria are met. The 2002 Act also increased from 50 percent to 60 percent the total amount of funding to be obligated nationally for livestock practices. Thus the regulatory provisions found at 7 CFR 1466.4(e), 1466.7(b), and related limitations will not apply to new contracts entered into or modified under the 2002 Act.

6. CCC is now authorized to make incentive payments to producers to develop comprehensive nutrient management plans for confined livestock feed operations. In the case of a confined livestock feeding operation, to be eligible to receive cost-share payments or incentives payments for animal waste management under EQIP, a producer must submit a plan of operations that provides for developing and implementing a comprehensive nutrient management plan.

7. An EQIP contract must extend at least one year after the implementation of the last practice, but not exceed a total of 10 years in duration. Additionally, a producer may now receive payment during the first year of the contract period.

8. Participants are now subject to different payment limitation requirements. An individual or entity may not receive, directly or indirectly, on the aggregate, $450,000 for all EQIP contracts entered into by the individual or entity during the period of FY 02 through FY 07. Therefore, the current contract and payment limitations found at 7 CFR 1466.23(b) through (e) will not apply to new contracts entered into or modified under the 2002 Act. For a producer who inherits land under an EQIP contract during the contract period, the $450,000 individual or entity payment limitation will not apply to the extent that the payments from any contract on the inherited land causes any heir who was party to an EQIP contract on other lands prior to the inheritance to exceed the annual limit.

With regard to EQIP contracts on Tribal land, Indian trust land, or Bureau of Indian Affairs (BIA) allotted land, payments exceeding the $450,000 individual or entity payment limitation may be made to the Tribal venture if an official of the BIA or Tribal official certifies in writing that no one person directly or indirectly will receive more than the $450,000 payment during the period of FY 02 through FY 07. BIA or Tribal officials will be required to submit a listing of individuals that are receiving any of the EQIP funding and identify how much each individual has received.

A broad purpose for EQIP continues to be assisting producers comply voluntarily with local, State, and national environmental quality regulatory requirements concerning soil, water, and air quality; wildlife habitat; and surface and ground water conservation.

Application Process

CCC will consider for funding under this notice applications received throughout FY 02. The State Conservationist, working with the State Technical Committee, will widely distribute information on the availability of assistance, State and local goals, and the information needed to submit applications.

The applicants must meet the definition of "person" as set out in Section 1001(5) of the 1985 Act, as amended, 7 U.S.C. 1308(5), as determined by the Farm Service Agency (FSA). Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment.

Applicants must submit an application (CCC–1200 form) to CCC to be considered for participation in EQIP. Any producer who has eligible land may obtain and submit by mail, fax, or electronically an application for participation in EQIP to a USDA Service Center. Producers who are members of a joint operation must file a single application for the joint operation. An NRCS conservationist will be available to work with the applicant to collect the information necessary to evaluate the application using the current State or locally developed ranking criteria.

Additional requirements and information pertaining to the EQIP program relating to contracts, administrative requirements, and other matters can be found on CCC form CCC–1200, the Conservation Program Contract, and the appendix to form CCC–1200, both of which are available at local USDA service centers. Information is also available on the World Wide Web (WWW) at *http://www.nrcs.usda.gov/programs/farmbill/2002*.

Civil Rights

NRCS and CCC have collected civil rights data on farmers/ranchers participating in conservation programs. Based on past participation, it is estimated that the funding being made available with this notice will not negatively or disproportionately affect minorities, women, or persons with disabilities who are program beneficiaries or applicants for program benefits in NRCS- or CCC-assisted programs.

Environmental Evaluation

The Secretary of Agriculture will determine the actual level of funding for FY 02 from funds made available under the 1985 Act, as amended by the 2002 Act. While the actual level of funding is unknown at this time, based on the participation in existing soil and water conservation programs, it is estimated that this assistance could result in approximately 25,000 contracts. The environmental effects of any proposed actions under the EQIP contracts will be evaluated on an individual basis. Such individual evaluation is used to determine whether further environmental analysis is required. An Environmental Assessment was prepared for EQIP in 1996 and it is anticipated that the effects from EQIP activities authorized in FY 02 will not be significantly different than those identified in that assessment. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared for this notice.

Signed in Washington, DC, on July 10, 2002.

Bruce I. Knight,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 02–18660 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Revise a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44977, August 29, 1995), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES)

intention to revise a currently approved information collection entitled, "Cooperative State Research, Education and Extension Service Application Kit for Research and Extension Programs."

DATES: Comments on this notice must be received by September 27, 2002, to be assured of consideration.

ADDRESSES: Written comments concerning this notice may be mailed to Louise Ebaugh, Deputy Administrator; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299 or sent electronically to: *rfp-oep@reeusda.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection, contact Louise Ebaugh, (202) 720–9181.

SUPPLEMENTARY INFORMATION:

Title: Cooperative State Research, Education, and Extension Service Application Kit for Research and Extension Programs.

OMB Number: 0524–0039.

Expiration Date of Current Approval: March 31, 2004.

Type of Request: Revise a currently approved information collection.

Abstract: The Cooperative State Research, Education, and Extension Service (CSREES) sponsors ongoing agricultural research, extension, and education programs under which competitive, special, and other awards of a high-priority nature are made. Before awards can be made, certain information is required from applicants as part of an overall proposal package. In addition to project summaries, descriptions of the research, extension, or education efforts, literature reviews, curricula vitae of project directors, and other, relevant technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided.

Because of the nature of the competitive, peer-reviewed process, it is important that information from applicants be available in a standardized format to ensure equitable treatment. Each year, solicitations are issued requesting proposals for various research, education, and extension areas targeted for support. Applicants submit proposals for these targeted areas following formats outlined in the proposal application guidelines accompanying each program's solicitation. These proposals are evaluated by peer review panels and awarded on a competitive basis. Forms CSREES–2002, "Proposal Cover Page;" CSREES–2003, "Project Summary;" CSREES–2004, "Proposal Budget;" CSREES–2005, "Current and Pending Support;" CSREES–2006, "National Environmental Policy Act Exclusions;" CSREES–2007, "Identification of Conflicts of Interest;" CSREES–2008, "Assurance Statement(s);" and the Proposal Summary/Proposal Narrative (no assigned form number) are mainly used for proposal evaluation and administration purposes. While some of the information is used to respond to inquiries from Congress and other government agencies, the forms are not designed to be statistical surveys or data collection instruments. Their completion by potential recipients is a normal part of the application to agencies which support basic and applied science. The following information is collected:

Form CSREES–2002—Proposal Cover Page: Provides names, mailing and electronic addresses, and telephone numbers of project directors and authorized agents of applicant institutions and general information regarding the proposals.

Form CSREES–2003—Project Summary: Lists the Project Director(s) and their institution(s), project title and key words, and a project summary which allows for quick screening and assignment of proposals to peer reviewers.

Form CSREES–2004—Proposal Budget: Provides a breakdown of the purposes for which funds will be spent in the event of an award.

Form CSREES–2005—Current and Pending Support: Provides information for active and pending projects.

Form CSREES–2006—National Environmental Policy Act Exclusions: Allows identification of whether or not the proposal fits one of the exclusions listed for compliance with the National Environmental Policy Act (7 CFR Part 3407). This information is used in determining whether or not further action is needed to meet the requirements of this Act.

Form CSREES–2007—Identification of Conflicts of Interest: Lists the person(s) who are in conflict of interest with the applicant(s). This is used when selecting peer review panels to assure objective reviews.

Form CSREES–2008—Assurance Statement(s): Provides required assurances of compliance with regulations involving the protection of human subjects, animal welfare, and recombinant DNA research. This form is be used for competitive, special, and formula-funded projects.

Proposal Summary/Proposal Narrative: Provides a description of the proposed activity for which support is requested including objectives, plan of operation, and the project's significance to higher education in the food and agricultural sciences.

New Form CSREES–2010—Fellowships/Scholarships Entry/Exit Form: This form will only apply to recipients of a CSREES fellowship or scholarship. The form will be used to document fellowship appointments and scholarships, pertinent demographic data on the fellows/scholars, and documentation of the progress of the fellows/scholars under the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 24.75.

Respondents: Non-profit institutions, and State, local, or Tribal governments.

Estimated Number of Respondents: For applicants: 7,150 each for the Proposal Summary/Proposal Narrative and Forms CSREES–2002, –2003, –2004, –2005, –2006, and –2007 and 9,450 for Form CSREES–2008. For grantees: 50 for Form CSREES–2010.

Estimated Total Annual Burden on Respondents: 156,813 hours broken down by: 21,450 hours for Form CSREES–2002, "Proposal Cover Page," (three hours per response); 3,575 hours for Form CSREES–2003, "Project Summary," (one-half hour per response); 7,150 hours for Form CSREES–2004, "Proposal Budget," (one hour per response); 7,150 hours for Form CSREES–2005, "Current and Pending Support," (one hour per response); 1,788 hours for Form CSREES–2006, "National Environmental Policy Act Exclusions," (one-quarter hour per response); 3,575 hours for Form CSREES–2007, "Identification of Conflicts of Interest," (one-half hour per response); 4,725 hours for Form CSREES–2008, "Assurance Statement," (one-half hour per response); 107,250 for the "Proposal Summary/Proposal Narrative," (an average of 15 hours per response); and 150 hours for Form CSREES–2010, "Fellowships/Scholarships Entry/Exit Form," (three hours per response).

Frequency of Respondents: Annually.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including

through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the address stated in the preamble.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, DC, this 16th day of July, 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–18647 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service; Notice of Intent To Establish an Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44977, August 29, 1995), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request approval to establish an information collection for reviewers of proposals for Federal financial assistance.

DATES: Written comments on this notice must be received by September 27, 2002, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDITIONAL INFORMATION OR COMMENTS: Contact Robert C. MacDonald, Grants Policy Program Leader, Information Systems and Technology Management, CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216. Telephone (202) 205–5967. E-mail: *rmacdonald@reeusda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Questionnaire for Potential Reviewers.

OMB Number: 0524–NEW.

Expiration Date of Current Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for three years.

Abstract: CSREES administers competitive, peer-reviewed agricultural research, education, and extension programs, under which awards of a high-priority nature are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), the Smith-Lever Act, as amended (7 U.S.C. 341 *et seq.*), and other legislative authorities.

CSREES receives approximately 6,000 agricultural research, education, and extension proposals per year, of which approximately 2,000 are awarded. The majority of these proposals are subjected to a rigorous peer-review process involving technical experts (e.g., scientists, educators, farmers, engineers, extension specialists) located worldwide. Given the highly technical nature of many of these proposals, the quality of the peer-review greatly depends on the appropriate matching of the proposal subject matter with the technical expertise of the reviewer. As a result, a single database of technical experts is an invaluable tool for CSREES in accomplishing a suitable marriage of proposal content with reviewer expertise.

A single database of technical experts will serve as the central location for CSREES to determine which individuals would be most suitable to review proposals and to seek the individuals participation in the peer-review process. It will also enable CSREES to consider the characteristics of a possible peer-review panel. CSREES strives to have balanced panels of discipline, geography, institutional affiliation, rank, and women and minorities.

To populate and update the database with accurate information, CSREES is seeking clearance to conduct an annual survey. The survey will be in the form of a questionnaire sent to individuals who have the technical expertise as determined through their professional affiliation or some other means. The survey will be sent via e-mail, hard copy, or other appropriate mechanism. The survey will request the individual provide/update data including geographical and expertise information and their willingness to serve as a CSREES peer reviewer.

The database will be the source of information for CSREES to arrange the review of proposals by qualified personnel. The results of the review process extend into the CSREES award process. Therefore, the information collection will serve as an integral part of the CSREES peer-review and award process. The following information will be collected:

Form CSREES–New—Questionnaire for Potential Reviewers: Will be used to update/provide data such as geographical and expertise information, and willingness to review proposals submitted to CSREES.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average ten (10) minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 75,000.

Estimated Total Annual Burden on Respondents: 12,500 hours.

Frequency of Responses: Annually.

Copies of this information collection can be obtained from Robert C. MacDonald, Grants Policy Program Leader, Information Systems and Technology Management, CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216. Telephone (202) 205–5967. E-mail: rmacdonald@reeusda.gov.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Done at Washington, DC, this 16th day of July, 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–18648 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of resource advisory committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday,

August 19, 2002. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is to review committee effort, discuss meeting schedule and discuss chairperson/committee duties.

DATE: The Madera Resource Advisory Committee meeting will be held Monday, August 19, 2002. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neals, CA 93645

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext. 3100 e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review committee efforrt, (2) discuss meeting schedule, and (3) discuss chairperson/committee duties. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 17, 2002.

David W. Martin,

District Ranger.

[FR Doc. 02–18668 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Aging Flood Control Dams, OK

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the rehabilitation of Site Number 6, Cavalry Creek Watershed, Oklahoma.

FOR FURTHER INFORMATION CONTACT: M. Darrel Dominick, State Conservationist, Natural Resources Conservation Service, 100 USDA Suite 206, Stillwater, Oklahoma 74074, (405) 742–1204.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, M. Darrel Dominick, State Conservationist has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns watershed protection and flood prevention. Alternatives under consideration to reach these objectives include rehabilitation, no action, nonstructural measures, and decommissioning.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meetings will be held at 8:30 a.m. on July 16, 2002, at the NRCS Field Service Center, 1505 N. Glenn English, Cordell, Oklahoma, to determine the scope of the evaluation of the proposed action. Further information on the proposed action or the scoping meeting may be obtained from M. Darrel Dominick, State Conservationist, at the above address or telephone number.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: March 26, 2001.

M. Darrel Dominick,

State Conservationist, Oklahoma.

[FR Doc. 02–18659 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Margaret Creek Watershed, Athens County, OH; Finding of No Significant Impact

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Rules (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation project for Floodwater Retarding Structure 2 in the Margaret Creek Watershed.

FOR FURTHER INFORMATION CONTACT: Kevin Brown; State Conservationist; Natural Resources Conservation Service; 200 North High Street, Room 522, Columbus, Ohio 43215; telephone 614–255–2500.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Kevin Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The project purpose is flood prevention. The action includes a combination of widening the emergency spillway by 150 feet and utilizing this fill to raise the dam approximately 2.5 feet. The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency; various Federal, state and local agencies; and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Kevin Brown.

No administrative action on implementation of the preferred alternative will be taken until 30 days after the date of this publication in the **Federal Register**.

Kevin Brown,

State Conservationist.

[FR Doc. 02–18658 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty

Administrative Reviews and Requests for Revocation in Part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

EFFECTIVE DATE: June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202)482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2000), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan and Polyethylene Terephthalate Film, Sheet and Strip (Pet Film) from the Republic of Korea.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2003.

	Period to be reviewed
Antidumping Duty Proceedings	
Japan:	
Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, A–588–846	06/01/01–05/31/02
Kawasaki Steel Corporation	
Sumitomo Metal Industries, Ltd.	
Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–588–850	06/01/01–05/31/02
Kawasaki Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–588–851	06/01/01–05/31/02
Kawasaki Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
Republic of Korea:	
Polyethylene Terephthalate Film, Sheet and Strip (Pet Film), A–580–807	06/01/01–05/31/02
Hyosung Corporation	
Taiwan:	
Certain Stainless Steel Butt-Weld Pipe Fittings, A–583–816	06/01/01–05/31/02
Liang Feng Stainless Steel Fitting Co., Ltd.	
Ta Chen Stainless Steel Pipe, Ltd.	
Tru-Flow Industrial Co., Ltd.	
The People's Republic of China:	
Certain Non-Frozen Apple Juice Concentrate [1], A–570–855	06/01/01–05/31/02
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	
Sanmenxia Lakeside Fruit Juice Co., Ltd.	
SDIC ZhongLu Fruit Juice Co.	
Yantai Oriental Juice Co., Ltd.	
Qingdao Nannan Foods Co., Ltd.	
Xian Asia Qin Fruit Co., Ltd.	
Xianyang Fuan Juice Co., Ltd.	
Changsha Industrial Products & Minerals Import & Export Co.	
Shandong Foodstuffs Import & Export Corporation	
Shaanxi Hengxing Fruit Juice Co., Ltd.	
Shaanxi Machinery and Equipment Import and Export Corporation	
Shaanxi Gold Peter Natural Drink Co., Ltd.	
Synthetic Indigo [2], A–570–856	06/01/01–05/31/02
Liyang Skyblue Chemical Co., Ltd.	
Silicon Metal [3], A–570–806	06/01/01–05/31/02
Groupstars Chemical Co., Ltd.	
China Shanxi Province Lin Fen Prefecture Foreigh Trade Import and Export Corp.	
Tapered Roller Bearings, [4] A–570–601	06/01/01–05/31/02
China National Machinery Import & Export Corp.	
Liaoning MEC Group Co., Ltd.	
Luoyang Bearing Corporation	
Peer Bearing Company-Changshan	
Tianshui Hailin Import & Export Corp.	
Wanxiang Group Corporation	
Yantai Timken Co., Ltd.	
Countervailing Duty Proceedings: None	
Suspension Agreements: None	

[1] If one of the above named companies does not quality for a separate rate, all other exporters of non-frozen apple juice concentrate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of synthetic indigo from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of silicon metal from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[4] If one of the above named companies does not qualify for a separate rate, all other exporters of tapered roller bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 18, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–18730 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Initiation of Antidumping Duty Investigation: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Lisa Shishido, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208, (202) 482–0413, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR Part 351 (2002).

The Petition

On June 28, 2002, the Department of Commerce ("Department") received a petition on imports of certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") filed in proper form by Catfish Farmers of America ("CFA") and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as "the Petitioners." On July 3, 2002, the Department requested clarification of certain areas of the petition and received a response on July 10, 2002. A second request for clarification was sent on July 9, 2002, and the Department received a response on July 11, 2002.

In accordance with section 732(b) of the Act, the Petitioners allege that imports of certain frozen fish fillets from Vietnam are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

The Petitioners are domestic farmers and processors of catfish and account for over fifty percent of domestic production of catfish fillets, as defined in the petition. Therefore, the Department finds that the Petitioners have standing to file the petition because they are interested parties as defined under section 771(9)(C) of the Act, with respect to the merchandise subject to this investigation. The Petitioners have demonstrated sufficient industry support with respect to the antidumping duty investigation they are requesting the Department to initiate (*see* "Determination of Industry Support for the Petition" below).

Scope of Investigation

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets, whether or not breaded or marinated, of the species Pangasius Bocourti, Pangasius Hypophthalmus (also known as Pangasius Pangasius), and Pangasius Micronemus. The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 [1] (Frozen Sole Fillets) of the Harmonized Tariff Schedule of the United States ("HTSUS"). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

During our review of the petition, we discussed the scope with the Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice.

Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street

[1] The Petitioners have included this tariff classification code because they believe that the merchandise under investigation is entering the United States under this classification based on previous uses of the term 'sole' to describe Vietnamese basa and tra.

and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. In investigations involving a processed agricultural product that is produced from a raw agricultural product, section 771(4)(E) of the Act provides that the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if (1) the processed agricultural product is produced from the raw agricultural product through a continuous line of production and (2) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may include price, added market value, or other economic interrelationships.

Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to growers, processors, and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. At this time, the Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Moreover, the Department has determined that the petition contains adequate evidence of industry support; therefore, polling was unnecessary (*see Initiation Checklist* Re: Industry Support, July 18, 2002) ("*Initiation Checklist*"). To the best of the Department's knowledge, producers supporting the petition represent over 50 percent of total production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9)(A), (C), (D), (E), or (F) of the Act has expressed opposition to the petition.

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price

The following is a description of the allegation of sales at less than fair value ("LTFV") upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and factors of production are also discussed in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

The Petitioners identified approximately fifty-three Vietnamese companies as major producers and exporters of frozen fish fillets in Vietnam. *See Initiation Checklist* at Attachment I.

The Petitioners submitted LTFV analyses for Vietnam as a non-market economy and a market economy. Consequently, the Petitioners calculated an export price using a non-market economy and a market economy analysis.

In both the non-market economy and the market economy analysis, the Petitioners based export price ("EP") on quantities and free on board ("FOB") values from Bureau of Census" import statistics, using the weighted average unit values of the merchandise subject to this investigation classifiable under HTSUS category 0304.20.60.30. To obtain ex-factory prices, in both instances, the Petitioners adjusted the average unit value for brokerage and handling and inland freight costs. *See Initiation Checklist* for further information.

Normal Value: Nonmarket Economy

The Petitioners provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C). For the normal value ("NV") calculation, petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor and energy), for certain frozen fish fillets on information from a U.S. catfish producer. The Petitioners asserted that they did not have specific, reliable information on frozen basa and tra fillet production factors in Vietnam. However, according to the Petitioners, all catfish processors, whether they are located in the United States or Vietnam, perform the same basic steps in producing frozen fish fillets. Therefore, the Petitioners relied upon U.S. production factors for the NV calculation, after adjusting for known differences in Vietnam. *See Initiation Checklist*.

The Petitioners selected India as their surrogate country. The Petitioners argued that pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the NME and is a significant producer of comparable merchandise. Based on the information provided by the Petitioners, we believe that the Petitioners' use of India as a surrogate country is appropriate for purposes of initiation of

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[2] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

this investigation. *See Initiation Checklist.*

In accordance with section 773(c)(4) of the Act, the Petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain raw materials, the Petitioners used import statistics from India, as reported in Indian *Monthly Statistics of Foreign Trade of India*, Vol. II–Imports, Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce, Government of India, Calcutta, excluding those values from countries previously determined by the Department to be NME countries. For inputs valued in Indian Rupiah and not contemporaneous with the period of investigation ("POI") (*i.e.*, October 2001—March 2002), the Petitioners used information from the wholesale price indices ("WPI") in India as published by the Office of the Economic Adviser in the Indian Ministry of Commerce and Industry, March 2002, to determine the inflation adjustment.

To value live fish, the major input, the Petitioners stated that since Indian *Monthly Statistics of Foreign Trade of India* were not specific to the merchandise subject to this investigation, the surrogate value was based on the average price of catfish in India from the United Nations Food and Aquaculture Organization ("FAO") FishStat Plus Database. The Petitioners explained their efforts in obtaining alternative surrogate values and the reliability of the FAO data in Exhibit 22 of the Petition. The Petitioners noted that because the FAO price is reported in dollars, they deflated the price to the October 2001 to March 2002 period by using the United States purchase price index ("PPI"), as published by the United States Bureau of Labor Statistics. *See Initiation Checklist.*

The Petitioners explained that the production of frozen catfish fillets generates waste, as the head, tail, skin and viscera are all discarded. According to the Petitioners, in the United States, processors recover the waste and sell it to rendering plants where it may be used for further processing into products such as fish meal or fish oil. Furthermore, according to the Petitioners, the Vietnamese processors require 3.51 pounds of live fish to produce one pound of fillets, and therefore, the waste quantity would be 2.51 pounds for every pound of fish fillet. Because the Petitioners could not obtain any information on the recovery of offal by Vietnamese processors, they deducted from the total material cost an amount for waste recovery based on their own experience. The Petitioners were also unable to obtain a value for fish offal in India. Therefore, pursuant to 19 CFR 351.202(b)(7)(i)(B), the value of offal is based on the experience of a U.S producer's average for year 2000 and 2001. *See Initiation Checklist.*

For water, the Petitioners calculated a surrogate value based on price data in India as reported by the Second Water Utilities Data Book, Asian and Pacific Region, published the Asian Development Bank. The Petitioners applied the WPI to inflate the water price to the POI. *See Initiation Checklist.* Data from the Asian Development Bank has previously been used by the Department. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Duty Administrative Review, and Rescission of a New Shipper Review, Fresh Water Crawfish Tail Meat from the People's Republic of China ("Crawfish")* 65 FR 60399, 60404 (October 11, 2000).

To value electricity in India, the Petitioners relied upon the Organization for Economic Cooperation and Development's ("OECD") *Energy Prices and Taxes* data. The Petitioners applied the Indian WPI to inflate the electricity price to the POI. *See Initiation Checklist.*

Pursuant to 19 CFR 351.408(c)(3), the Department calculates and publishes the surrogate values for labor to be used in non-market economy cases. The Petitioners explained that because the Department has not yet published a labor rate for Vietnam, they have applied the regression formula published on the Department's website to derive the Vietnamese labor rate that would be calculated using the Department's methodology. *See Initiation Checklist.*

The Petitioners calculated a simple average for factory overhead, selling, general and administrative expenses (SG&A), interest, and profit, which were derived from the 2000–2001 financial statements of NCC Blue Water Products, Ltd., Integrated Rubian Exports, Ltd. and Uniroyal Marine Exports, Ltd., Indian producers of frozen fish fillets.

We made adjustments to NV for sodium tripolyphosphate, propane and the packing materials. For further information, see the *Initiation Checklist.*

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margin for certain frozen fish fillets from Vietnam applying the non-market economy methodology is 190.20 percent.

Normal Value: Market Economy

The price and cost data provided by the Petitioners was examined for reasonableness and accuracy. The Petitioners stated that they were unable to obtain information on home market or third country prices of Vietnamese frozen fish fillets, despite extensive research using the Internet and data sources published by organizations such as the World Bank, International Monetary Fund, Asian Development Bank, and Bureau of Labor Statistics.

Pursuant to 19 CFR 351.202(b)(7)(i)(B), the Petitioners calculated the NV based on constructed value ("CV"), using U.S. production costs and factors that have been adjusted for known differences in production in Vietnam. *See* Initiation Checklist. The Petitioners calculated the production costs and factors provided by a domestic U.S. producer of frozen fish fillets where the Petitioners were unable to obtain Vietnamese pricing information. Specifically, the Petitioners were only able to obtain published Vietnamese input prices for live fish, labor, electricity, and water. To value the fish waste offset, sodium tripolyphosphate, propane, and packing materials, the Petitioners used U.S. producer input costs. To value factory overhead, SG&A and Profit, the Petitioners used a U.S. producer's financial statement information[3]. *See Initiation Checklist.* The values submitted by the Petitioners to calculate the CV consist of information reasonably available, and are therefore acceptable for purposes of initiation.

Based on comparisons of EP to NV, calculated in accordance with section 773(a)(c) of the Act, the estimated recalculated dumping margin for certain frozen fish fillets from Vietnam applying the market economy methodology is 143.7 percent.

Fair Value Comparisons

Based on the data provided by the Petitioners, there is reason to believe that imports of frozen fish fillets from Vietnam are being, or are likely to be, sold in the United States at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like

[3] For purposes of initiation we are accepting the Petitioners' use of a U.S. catfish processor's financial statement information to derive the financial and profit ratios, but note that in the event that we rely on Petition information as facts available, we may re-examine the appropriateness of the U.S. producers' information as the basis for calculating the financial and profit ratios.

product is being materially injured and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The Petitioners contend that the industry's injured condition is evident in (1) reduced shipments; (2) reduced prices; (3) declining employment; (4) declining production and capacity utilization; (5) growing inventories; and (6) significant financial losses.

The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation.

Initiation of Antidumping Investigation

Based upon our examination of the Petition on frozen fish fillets from Vietnam, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of frozen fish fillets from Vietnam are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to the government representatives of Vietnam. We will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than August 12, 2002, whether there is a reasonable indication that imports of frozen fish fillets from Vietnam are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: July 18, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–18731 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Non-Frozen Apple Juice Concentrate from the People's Republic of China: Initiation of Antidumping New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping New Shipper Review.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on non-frozen apple juice concentrate from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214, we are initiating this new shipper review.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Audrey Twyman or Stephen Cho, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1778, (202) 482–3534, and (202) 482–3798 respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 ("the Act"). The Department of Commerce ("the Department") is conducting this new shipper review in accordance with section 751(a)(2)(B) of the Act. In addition, all references to the Department's regulations are to 19 CFR Part 351 (2002).

Background

On June 25, 2002, the Department received a request from Gansu Tongda Fruit Juice and Beverage Co., Ltd. ("Gansu Tongda"), pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 351.214(b), to conduct a new shipper review of the antidumping duty order on non-frozen apple juice concentrate ("NFAJC") from the People's Republic of China ("PRC"). This order has a June anniversary month.

Initiation of Review

Pursuant to 19 CFR 351.214(b), Gansu Tongda certified in its request that it did not export the subject merchandise to the United States during the period of investigation ("POI") (October 1, 1998 through March 31, 1999), that it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI, and that its export activities are not controlled by the central government of the PRC. Gansu Tongda submitted documentation establishing: (i) the date on which its NFAJC was first shipped to the USA; (ii) the volume of that shipment; and (iii) the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, we are initiating a new shipper review of the antidumping duty order on NFAJC from the PRC. In accordance with 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days from the date of publication of this notice. All provisions of 19 CFR 351.214 will apply to Gansu Tongda throughout the duration of this new shipper review. Pursuant to 19 CFR 351.214(g)(1)(i)(A), the standard period of review in a new shipper review initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month.

Antidumping Duty Proceeding	Period to be Reviewed
People's Republic of China: Non-Frozen Apple Juice Concentrate, A–570–855: Gansu Tongda Fruit Juice and Beverage Co., Ltd.	06/01/01 through 05/31/02

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for

each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: July 11, 2002.

Richard W. Moreland,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. 02–18729 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber from Taiwan: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: In response to a May 31, 2002, request made by Far Eastern Textile, Ltd., and Nan Ya Plastics Corporation, Ltd., producers/exporters of certain polyester staple fiber in Taiwan, the Department of Commerce published the initiation of an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan for Far Eastern Textile, Ltd. and Nan Ya Plastics Corporation, Ltd. covering the period May 1, 2001, through April 30, 2002. This review has now been rescinded as a result of the withdrawal of the requests for review by Far Eastern Textile, Ltd. and Nan Ya Plastics Corporation, Ltd.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0176.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the "Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations refer to 19 CFR part 351 (2002).

Background

On May 25, 2000, the Department published an antidumping duty order on certain polyester staple fiber from Taiwan. *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807. On May 31, 2002, Far Eastern Textile, Ltd. ("FETL") and Nan Ya ("Nan Ya") Plastics Corporation, Ltd., producers/exporters of certain polyester staple fiber in Taiwan, requested an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan covering the period May 1, 2001, through April 30, 2002. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on June 25, 2002. *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocations in Part*, 67 FR 42753. On July 9, 2002, FETL and Nan Ya withdrew their requests for review.

Rescission of Review

The Department's regulations provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within ninety days of the date of publication of the notice of initiation of the requested review. 19 CFR 351.213(d)(1). FETL's and Nan Ya's requests for review were withdrawn within the ninety-day deadline. Therefore, we have accepted FETL's and Nan Ya's withdrawal of their requests for review.

As a result of the withdrawals of the requests for review and because the Department received no other request for review, the Department is rescinding this administrative review.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 17, 2002

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–18728 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071702E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for yelloweye rockfish will hold a work session which is open to the public.

DATES: The yelloweye rockfish Stock Assessment Review Panel will meet beginning at 11:30 a.m.on Sunday, August 11, 2002. The meeting will continue on August 12, 2002 beginning at 8 a.m. through August 14, 2002. The meetings will end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The yelloweye rockfish Stock Assessment Review Panel meeting will be held at the NMFS Northwest Fisheries Science Center, 2725 Montlake Blvd. E, Seattle, WA 98112; telephone: 206–860–3200 August 11 through August 13, 2002 in the Auditorium, and on August 14, 2002 in Room 370 W.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer; 503–820–2280; toll-free: 866–806–7204.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Team to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons.

Entry to the Northwest Fisheries Science Center requires identification with photograph (such as a student ID, state drivers license, etc.) A security guard will review the identification and

issue a Visitor's Badge valid only for the date of the meeting.

Although nonemergency issues not contained in STAR Panel agendas may come before the STAR Panel for discussion, those issues may not be the subjectof formal Panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 (toll-free 866–806–7204) at least 5 days prior to the meeting date.

Dated: July 17, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18739 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070202E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Marine Reserves Policy Committee will hold a working meeting which is open to the public.

DATES: The meeting will be held on Wednesday, August 14, 2002, from 12 noon to 5 p.m., and on Thursday, August 15, 2002, from 8 a.m. to 12 noon.

ADDRESSES: The meetings will be held at a location to be announced on the Pacific Fishery Management Council's website (*www.pcouncil.org*) by July 15, 2002.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Jennifer Gilden, Associate Staff Officer; telephone: (866) 806–7204.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to consider policy recommendations for marine reserve proposals for the state waters of the Channel Islands National Marine Sanctuary.

Although nonemergency issues not contained in the Ad Hoc Marine Reserves Policy Committee meeting agenda may come before the Ad Hoc Marine Reserves Policy Committee for discussion, those issues may not be the subject of formal Ad Hoc Marine Reserves Policy Committee action during this meeting. Ad Hoc Marine Reserves Policy Committee action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Ad Hoc Marine Reserves Policy Committee intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 18, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18740 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071202F]

Endangered Species; File No. 1299

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for modification.

SUMMARY: Notice is hereby given that Raymond R. Carthy, Ph.D., Florida Cooperative Fish and Wildlife Research Unit, USGS-BRD, Department of Wildlife Ecology and Conservation, University of Florida, P.O. Box 110485, Gainesville, FL 23611–0450, has requested a modification to scientific research Permit No. 1299.

DATES: Written or telefaxed comments must be received on or before August 23, 2002.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1299, issued on May 24, 2001, (66 FR 29934) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 1299 authorizes the permit holder to capture, handle, photograph, measure, flipper and PIT tag, collect tissue samples from and release loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and Kemp's ridley (*Lepidochelys kempi*) sea turtles. The purpose of the research, as stated in the application, is to examine the inter-nesting movements and habitat usage of adult loggerhead turtles along the northwestern coast of Florida, while also examining species composition, population densities and habitat utilization in coastal bays in the same area. The permit holder requests authorization to increase the annual allowed take of sea turtles from 100 to 300 for the remainder of the permit which expires on December 31, 2003.

In compliance with the National Environmental Policy Act of 1969 (42

U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: July 18, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18741 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062802C]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for a renewal of its Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to seismic retrofit construction of the Richmond-San Rafael Bridge (the Bridge), San Francisco Bay (SFB), CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to renew a small take authorization to CALTRANS to incidentally take, by harassment, small numbers of Pacific harbor seals and possibly California sea lions for 1 year.

DATES: Comments and information must be received no later than August 23, 2002.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments cannot be accepted if submitted via e-mail or the Internet. A copy of the application, Environmental Assessment (EA) and/or monitoring reports may be obtained by writing to this address or by telephoning the contact listed here. Publications referenced in this document are available for viewing, by appointment during regular business hours, at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On May 28, 2002, NMFS received a letter from CALTRANS, requesting reauthorization of an IHA that was first issued to it on December 16, 1997 (62 FR 6704, December 23, 1997), and was renewed on January 8, 2000 (65 FR 2375, January 14, 2000) and September 19, 2001 (66 FR 49165, September 26, 2001). The current IHA expires on September 18, 2002. The renewed authorization request is for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to seismic retrofit construction of the Bridge.

The Bridge is being seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to extend until the year 2005. A detailed description of the work planned is contained in the Final Natural Environmental Study/Biological Assessment for the Richmond-San Rafael Bridge Seismic Retrofit Project (CALTRANS, 1996). Among other things, seismic retrofit work will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a time. In addition to pier retrofit, superstructure construction and tower retrofit work will also be carried out. Because seismic retrofit construction between piers 52 and 57 has the potential to disturb harbor seals hauled out on Castro Rocks, an IHA is warranted. The duration for the seismic retrofit of foundation and towers on piers 52 through 57, which began this year, will take approximately 7 to 8 months to complete.

Description of Habitat and Marine Mammals Affected by the Activity

A description of SFB ecosystem and its associated marine mammals can be found in the original CALTRANS application (CALTRANS 1997) and in CALTRANS (1996). Castro Rocks are a small chain of rocky islands located next to the Bridge and approximately 1500 ft (460 m) north of the Chevron Long Wharf. They extend in a southwesterly direction for approximately 800 ft (240 m) from pier 55. The rocks start at about 55 ft (17 m) from pier 55 (A rock) and end at approximately 250 ft (76 m) from pier 53 (F rock). The chain of rocks is

exposed during low tides and inundated during high tide.

Marine Mammals

General information on harbor seals and other marine mammal species found in Central California waters can be found in Forney et al. (2000, 2001), which are available at the following URL: http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html Refer to those documents for information on these species. The marine mammals likely to be affected by work in the Bridge area are limited to harbor seals and California sea lions.

The harbor seal is the only marine mammal species expected to be found regularly in the Bridge area. A detailed description of harbor seals was provided in the 1997 notification of proposed authorization (62 FR 46480, September 3, 1997) with corrections and clarifications provided in the notice of IHA issuance (62 FR 67045, December 23, 1997). This information is not repeated here, but may be referenced at the following URLs:

http://frwebgate4.access.gpo.gov/cgi-bin/ waisgate.cgi? WAISdoc ID=9398588449 +1 +0 +0 & WAI Saction =retrieve

http://frwebgate3.access.gpo.gov/cgi-bin/ waisgate.cgi?WAISdoc ID=94045429635 + 0 + 0 + 0& WAI Saction = retrieve

It should be noted that pups are born in mid- to late-March, peak numbers of pups are observed in early May, and, by the first week in June, all pups are weaned (Kopec and Harvey, 1995). Estimated pup counts at Castro Rocks were 35 in 1999, 40 in 2000 and 40 in 2001 (A. Bohorquez pers. comm in Green *et al.*, 2001). This represents approximately 22–24 percent of the pups born in SFB.

The California sea lion primarily uses the Central SFB area to feed. California sea lions are periodically observed at Castro Rocks. No pupping or regular haulouts occur in the project area.

Potential Effects on Marine Mammals

The impact to the harbor seals and California sea lions is expected to be disturbance by the presence of workers, construction noise, and construction vessel traffic. Disturbance from these activities is expected to have only a short-term negligible impact to a small number of harbor seals and sea lions. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

Marine mammal monitoring under the current and previous IHAs has been conducted at Castro Rocks and at two "control" haul-out locations in SFB, Mowry Slough and Yerba Buena Island (Green et al., 2001, 2002) since 1998. To date, over 10,000 hours of observations have been conducted at these sites with two-thirds of those hours at Castro Rocks. While disturbances can consist of head alerts, approaches to the water, and flushes into the water, only the latter behavior is considered by NMFS to rise to Level B harassment. At Castro Rocks, of all flush disturbances monitored during the day, the major harassment sources were watercraft (e.g. motorboats, sailboats, tankers, kayaks and jet skis) with 0.128 disturbances/hr field time (d/hr); wildlife (seals and birds) with 0.075 d/hr; anthropogenic (debris, workmen on bridge with 0.040 d/hr; and "research" with 0.021 d/hr. Construction activities resulted in 0.0165 d/hr. There were fewer flushes observed at night. For more detailed information on the extent of take by harassment at Castro Rocks by activities other than the requested authorization, refer to Green et al. (2002).

During the work period (August 1 through February 14), the incidental harassment of harbor seals and, on rare occasions, California sea lions is expected to occur on a daily basis upon initiation of the retrofit work. In addition, the number of seals disturbed will vary daily depending upon tidal elevations. Monitoring by Green et al. (2002) indicates that although overall seal numbers each month of the year are not significantly different across years, there are differences in subsite use by seals at Castro Rocks during both the daytime and nighttime. For example, the average number of seals hauled out on Castro Rocks (rocks A and C) during the fall of 2001 (when construction activity was taking place within the area of the haul-out site) was significantly different than the average number of seals hauled out on Castro Rocks during 1998–2000, prior to the construction period. It was noted that fewer seals were using rock A, located closest to the Bridge, and more seals were hauling out on rock C, which was located farther from the Bridge than rock A. The number of seals hauled out on rocks B and E was not significantly different between years while the number hauled out on rocks D and F was greater during the fall of 2000 and 2001 than 1998 and 1999. For a more detailed discussion on the distribution of harbor seals during the work and non-work periods and levels of impact by various natural and anthropogenic disturbance sources, see Green et al. (2002) which is available upon request (see **ADDRESSES**).

Whether California sea lions will react to construction noise and move away from the rocks during construction activities is unknown. Sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, less likely to be affected.

Potential Effects on Habitat

Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the Castro Rocks haulout site while work is in progress or until seals acclimate to the disturbance. This will not likely result in any permanent reduction in the number of seals at Castro Rocks. The abandonment of Castro Rocks as a harbor seal haulout and rookery is not anticipated since existing traffic noise from the Bridge, commercial activities at the Chevron Long Wharf used for off-loading crude oil, and considerable recreational boating and commercial shipping that currently occur within the area have not caused long-term abandonment. In addition, mitigation measures and work restrictions are designed to preclude abandonment.

Therefore, as described in detail in CALTRANS (1996), other than the potential short-term abandonment by harbor seals of part or all of Castro Rocks during retrofit construction, no impact on the habitat or food sources of marine mammals are likely from this construction project.

Mitigation

Several mitigation measures to reduce the potential for general noise have been implemented by CALTRANS as part of their activity. General restrictions include: with the exception of the Concrete Trestle Section, no piles will be driven (i.e., no repetitive pounding of piles) on the Bridge between 9 p.m. and 7 a.m.; an imposition of a construction noise limit of 86 dBA at 50 ft (15 m) between 9 p.m. and 7 a.m.; and, a limitation on construction noise levels for 24 hrs/day in the vicinity of Castro Rocks during the pupping/molting restriction period.

To minimize potential harassment of marine mammals, in the current and previous authorizations NMFS required CALTRANS to comply with the following mitigation measures: (1) A February 15 through July 31 restriction on work in the water south of the Bridge center line and retrofit work on the Bridge substructure, towers, superstructure, piers, and pilings from piers 52 through 57; (2) no watercraft will be deployed by CALTRANS employees or contractors, during the

year within the Work/Boat Exclusion Zone (W/BEZ) located between piers 52 and 57, except for when construction equipment is required for seismic retrofitting of piers 52 through 57; and (3) minimize vessel traffic to the greatest extent practicable in the exclusion zone when conducting construction activities between piers 52 and 57. The boundary of the current W/BEZ is rectangular in shape (1700 ft (518 m) by 800 ft (244 m)) and completely encloses Castro Rocks and piers 52 through 57, inclusive. The northern boundary of the W/BEZ is located 300 ft (91 m) from the most northern tip of Castro Rocks, and the southern boundary is located 300 ft (91 m) from the most southern tip of Castro Rocks. The eastern boundary is currently located 300 ft (91 m) from the most eastern tip of Castro Rocks, and the western boundary is currently located 300 ft (91 m) from the most western tip of Castro Rocks. This W/BEZ is restricted as a controlled access area and is marked off with buoys and warning signs for the entire year.

For this proposed IHA, CALTRANS has requested, among other things, that the W/BEZ be modified from its current location so that the eastern boundary is shifted from 100 ft (30.5 m) east of Pier 57 to 100 ft (30.5 m) west of Pier 57. This will maintain a 400–ft (122–m) "buffer," as opposed to the existing 600–ft (183–m) buffer, between the work at Pier 57 and "A" rock. CALTRANS believes that this modification is reasonable based on observed seal behavior during the construction within the W/BEZ that harbor seals adjusted their location preference on Castro Rocks by moving westerly to rocks further from the construction (see discussion previously in this document). However, CALTRANS notes that there has not been a statistically significant change in the total numbers of animals that utilize the Castro Rocks haulout.

In addition to shifting the W/BEZ, CALTRANS is requesting that the period in which work is allowed in the vicinity of Castro Rocks be modified from February 15th to March 1st. CALTRANS is requesting this modification due to unforseen circumstances affecting the ability of the contractor to the seismic retrofit work on Pier 57. This will allow the contractor to complete the work this coming season and to stay under budget.

The current Closure Period (February 15–July 31) was designed to encompass the entire harbor seals pupping and breeding seasons and nearly the entire molting season at Castro Rocks. Thus, the Closure Period includes the entire pupping season at Castro Rocks and a substantial pre-pupping period when females are moving into pupping areas (62 FR 67045, December 23, 1997). Because moving the Closure Period from February 15th to March 1st would still provide a two-week window prior to the onset of successful pupping (March 15th), and because NMFS does not find scientific evidence indicating that female harbor seals need a "quiet period" from general noise in order to pup successfully, NMFS has preliminarily determined that shifting the Closure Period from February 15th to March 1st would not have a significant impact on harbor seal pupping.

Finally, CALTRANS has requested that the period in which work is allowed in the vicinity of Castro Rocks be modified from August 1st to a new date of July 16th. As mentioned in previous documents, newborn harbor seal pups are able to swim immediately after birth (Zeiner et al., 1990) and pups are weaned by the first week of June. Therefore terminating the Closure Period on July 16th should not affect pup survival. Under the current and previous authorizations, the July 31st ending date for the Closure Period was established to protect harbor seals during the molting season. However, those documents also noted that it is likely that harbor seals evolved adaptive mechanisms to deal with exposure to the water during the molt. For example, on some harbor seal haul-outs (such as Castro Rocks) during the molting season seals must enter the water once or even twice a day due to tidal fluctuations limiting access to the haul-out. Also, since harbor seals lose hair in patches during the molt, they are never completely hairless and would not be as vulnerable to heat loss in the water during this period compared to other seals (e.g., elephant seals) that lose all their hair at one time. Finally, if the levels of harbor seal disturbance during the molt are relatively high, seals are likely to utilize other local haul-out sites during the molt (DeLong, R., pers. commun. 1997; Hanan, D., pers. commun. 1997; Harvey, J., pers. commun. 1997). Hanan (1996) found that although harbor seals tagged at an isolated southern California haul-out tended to exhibit site fidelity during the molt, some seals were observed molting at other nearby haul-outs. Based on these reasons, NMFS has preliminarily determined that changing the last day of the Closure Period to July 15th should not significantly affect harbor seals in general or molting seals at Castro Rocks in particular.

Monitoring

NMFS will require CALTRANS to continue to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. CALTRANS is to monitor at least one additional harbor seal haulout within San Francisco Bay to evaluate whether harbor seals use alternative haulout areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (app. July 16 through February 28) and the Closure Period Phase (app. March 1 through July 15). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will be recorded: (1) Number of seals and sea lions on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. At least 2 nights/week, the monitor will conduct a harbor seal census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between piers 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal behavior at Castro Rocks and at the alternative site(s) once a day for a period of 5 consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal behavior and collect appropriate data at the alternative Bay harbor seal haulout at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS will require that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior, at Castro Rocks, at least 5 days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least 2 nights/week during this same period, the monitor will conduct an additional harbor seal census after midnight.

Reporting

Under the current and previous IHAs, CALTRANS has provided monitoring reports (Green et al. (2001, 2002). The findings from these reports have been summarized previously in this document.

CALTRANS will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults, sub-adults and pups, number of females/males, number of harbor seals with a red pelage, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure levels measurements made at the haulout will also be provided. A draft interim report must be submitted to NMFS by April 30, 2003.

A draft final report must be submitted to the Regional Administrator within 90 days after the expiration of this IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

CALTRANS will provide NMFS with a follow-up report on the post-construction monitoring activities within 18 months of project completion in order to evaluate whether haulout patterns are similar to the pre-retrofit haul-out patterns at Castro Rocks.

National Environmental Policy Act

In conjunction with the promulgation of regulations implementing section 101(a)(5)(D) of the MMPA, NMFS completed an EA on May 9, 1995, that addressed the impacts on the human environment from issuance of IHAs and the alternatives to that action. NMFS' analysis resulted in a Finding of No Significant Impact. In addition, NMFS prepared an EA in 1997 that concluded that the impacts of CALTRANS' seismic retrofit construction of the Bridge will not have a significant impact on the human environment. Accordingly, this proposed action has not changed significantly from the 1997 action, it is categorical excluded from further NEPA analysis and, therefore, a new EA will not be prepared. A copy of these two relevant EAs are available (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of the seismic retrofit construction of the Bridge, as described in this document, should result, at worst, in the temporary modification in behavior by harbor seals and, possibly, by some California sea lions. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to renew an IHA to CALTRANS for the potential harassment of small numbers of harbor seals and California sea lions incidental to seismic retrofit construction of the Bridge, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals and possibly California sea lions and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: July 18, 2002.

David Cottingham

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18742 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in India

July 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59577, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 24, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	103,112,557 square meters.
317	35,321,538 square meters.
335/635	1,101,190 dozen.
340/640	3,010,998 dozen.

Category	Adjusted twelve-month limit [1]
341	6,445,869 dozen of which not more than 3,742,222 dozen shall be in Category 341–Y [2].
342/642	2,229,915 dozen.
345	329,563 dozen.
641	2,221,817 dozen.
647/648	1,252,018 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–18708 Filed 7–23–02 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

July 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing, special shift, special swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63030, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 24, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels within the fabric group	
219	48,388,504 square meters.
620	11,193,064 square meters.
Other specific limits	
338/339	2,025,312 dozen.
340/640	1,972,271 dozen.
341/641	2,506,992 dozen of which not more than 924,369 dozen shall be in Category 341.
347/348	967,441 dozen.
351/651	446,713 dozen.
634/635	1,187,343 dozen.
645/646	483,399 dozen.
647/648	2,455,021 dozen of which not more than 1,794,889 dozen shall be in Category 647–K [2] and not more than 1,794,889 dozen shall be in Category 648–K [3]

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[3] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–18709 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

July 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Issuing a directive to the Commissioner of Customs increasing the limit for Cetegories 352/652 for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63035, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 24, 2002, you are directed to increase the current limit for Categories 352/652 to 2,231,911 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–18707 Filed 7–23–02; 8:45 a.m.

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Petition under the North American Free Trade Agreement (NAFTA)

July 17, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for certain acrylic yarn made from synthetic acid-dyeable acrylic tow.

SUMMARY: On July 2, 2002, the Chairman of CITA received a request from National Spinning Company, Incorporated (New York, NY) alleging that certain synthetic acid-dyeable acrylic tow, classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 5501.30, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for acrylic yarn classified under HTSUS 5509.31 should be modified to allow the use of non-North American tow of the type described above.

The President may proclaim a modification to the NAFTA rules of origin only after reaching agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether the acrylic tow described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by August 23, 2002 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA countries on such a modification.

On July 2,2002 the Chairman of CITA received a request from National Spinning Company, Incorporated (New York, NY) alleging that certain synthetic acid-dyeable acrylic tow, classified under HTSUS subheading 5501.30, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for acrylic yarn classified under HTSUS 5509.31 should be modified to allow the use of non-North American tow of the type described above.

CITA is soliciting public comments regarding this request, particularly with respect to whether the acid-dyeable acrylic tow, classified in HTSUS heading 5501.30, can be supplied by the domestic industry in commercial quantities in a timely manner. The request states that National Spinning Company, Incorporated has contacted known North American suppliers of acrylic tow and was unable to locate a supplier who produced acid-dyeable acrylic tow in commercial quantities in a timely manner. Comments must be received no later than August 23, 2002. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that the acid-dyeable acrylic tow can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the tow stating that it produces the tow that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–18555 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, July 31, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Contract Market Designation.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 02–18795 Filed 7–22–02; 3:58 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the general availability of exclusive or partially exclusive licenses under the following pending patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status. The subject patent application of this notice is U.S. Patent Application Serial No. 06/795,843 entitled "Pulse Sampled Optical Fiber Hydrophone", filed September 5, 1985.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Office of Technology Transfer, Naval Undersea Warfare Center, 1176 Howell St., Newport, RI 02841, telephone (401) 832–8728 or e-mail at *bausta@npt.nuwc.navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: July 12, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–18654 Filed 7–23–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than July 26, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. This notice is being submitted to the **Federal Register** less than 15 days before the date of the meeting due to administrative delays.

DATES: August 1–August 3, 2002.

TIMES: *August 1:* Assessment Development Committee: Closed Session 10 a.m. to 3 p.m.; Executive Committee Meeting: Open Session 4:30 p.m.–6 p.m.; Closed Session 6 p.m. to 7:30 p.m.

August 2: Full Board Meeting: Open Session 9 a.m.–12:30 p.m.; Committee Meetings: Assessment Development Committee 10:30 a.m.–12:30 p.m.; Committee on Standards, Design and Methodology, 10:30 a.m.–12:30 p.m.; Reporting and Dissemination Committee, 10:30 a.m.–12:30 p.m.; Full Board—Closed Meeting 12:30 p.m.–1:30 p.m.; Open Meeting 1:30 p.m.–2:45 p.m.; Closed Meeting, 3 p.m.–4:30 p.m.

August 3: Full Board Meeting: Closed Session 8:45 a.m.–9:30 a.m.; Full Board Open Meeting, 9:30 a.m.–12 p.m.

LOCATION: The Four Seasons Hotel, 2800 Pennsylvania Avenue NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

On August 2, 2002 the full Board will convene in open session from 9 a.m.–10:30 a.m. The Board will approve the agenda; receive the Executive Director's report and a NAEP Update from the Deputy Commissioner of NCES, Gary Phillips. The Board will then preview proposed policies on the NAEP program. From 10:30 a.m. to 12:30 p.m., the Board's standing committees—the Assessment Development Committee, the Committee on Standards, Design, and Methodology, and the Reporting and Dissemination Committee will meet in open session.

The full Board will reconvene in closed session on August 2, 2002 from 12:30 p.m.–1:30 p.m. to receive a briefing on market basket reporting. This briefing will include confidential information on NAEP test items. Disclosure of the specific test items would significantly frustrate implementation of the NAEP program.

and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board will reconvene in open session on August 2, from 1:30 p.m. to 2:45 p.m. to receive final recommendations on the NAEP Economics Framework project and to receive a report on NAEP/NAGB reauthorization. From 3 p.m. to 4:30 p.m. the full Board will meet in closed session to review and discuss test items from the Main NAEP Mathematics Assessment. Disclosure of the specific test items for the NAEP Mathematics Assessment would significantly frustrate implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board will meet in partially closed session on August 3, 2002 from 8:45 a.m. to 9:30 a.m. to receive an update on nominations for Board membership. This discussion pertains solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on August 3, 2002 from 9:30 a.m. to 12 p.m. The Board will receive a presentation on NAEP data on the Internet from 9:30 a.m. to 10 a.m. The Board will then hear and take action on Committee reports from 10 a.m. to 11:45 a.m. Subsequently, from 11:45 a.m. to 12 noon, the Board will elect the Board Vice Chair. The August 3, 2002 session of the Board meeting will adjourn at 12 noon.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: July 19, 2002.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 02–18673 Filed 7–23–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

The purpose of this notice is to invite written comments on accrediting agencies and State approval agencies whose applications to the Secretary for initial or renewed recognition or whose interim reports will be reviewed at the Advisory Committee meeting to be held on December 2–4, 2002.

Where Should I Submit My Comments?

Please submit your written comments by September 9, 2002 to Carol Griffiths, Chief, Accrediting Agency Evaluation, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone: (202) 219–7011. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity To Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, a subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer a second opportunity to submit written comment.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of the agencies' compliance with the Secretary's Criteria for Recognition of Accrediting Agencies and State Approval Agencies. The Criteria are regulations found in 34 CFR part 602 (for accrediting agencies) and in 34 CFR part 603 (for State approval agencies).

We will also include your comments with the staff analyses we present to the Advisory Committee at its December 2002 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by September 9, 2002. In all instances, your comments about agencies seeking initial or continued recognition must relate to the Criteria for Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the interim report.

What Happens to Comments Received After the Deadline?

We will review any comments received after the deadline. If such comments, upon investigation, reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate.

What Agencies Will the Advisory Committee Review at the Meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education if the Secretary determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs that are encompassed within the scope of recognition he grants to the agency. The following agencies will be reviewed during the December 2002 meeting of the Advisory Committee:

Nationally Recognized Accredity Agencies

Petition for Initial Recognition

1. Commission on English Language Program Accreditation (Requested scope of recognition: the accreditation of postsecondary English language programs and institutions in the United States)

2. Teacher Education Accreditation Council (Requested scope of recognition: the accreditation throughout the United States of professional education programs in institutions offering baccalaureate and

graduate degrees for the preparation of teachers K–12)

Petitions for Renewal of Recognition

1. Accrediting Council for Continuing Education and Training (Current scope of recognition: the accreditation of institutions of higher education throughout the United States that offer non-collegiate continuing education programs.) (Requested scope of recognition: the accreditation of institutions of higher education throughout the United States that offer non-collegiate continuing education programs, including programs offered via distance education.)

2. American Optometric Association, Accreditation Council on Optometric Education (Current scope of recognition: the accreditation in the United States of professional optometric degree programs, optometric technician (associate degree) programs, and optometric residency programs and for the preaccreditation categories of Preliminary Approval and Reasonable Assurance for professional optometric degree programs and Candidacy Pending for optometric residency programs in Veterans' Administration facilities.)

3. American Speech-Language-Hearing Association, Council on Academic Accreditation (Current scope of recognition: the accreditation and preaccreditation (Candidacy status) throughout the United States of Master's and doctoral-level degree programs in speech-language pathology and/or audiology.) (Requested scope of recognition: the accreditation and preaccreditation ("Accreditation Candidate") throughout the United States of entry-level graduate education programs at the master's or doctoral level leading to the first professional or academic degree in audiology and/or speech-language pathology and the accreditation of these programs offered via distance education.)

4. Midwifery Education Accreditation Council (Current scope of recognition: the accreditation throughout the United States of direct-entry midwifery educational institutions and programs conferring degrees and certificates.) (Requested scope of recognition: the preaccreditation and accreditation throughout the United States of direct-entry midwifery educational institutions and programs conferring degrees and certificates, including the accreditation of programs offered via distance education.)

5. National Association of Schools of Art and Design, Commission on Accreditation (Current scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in art and design and art and design-related disciplines.) (Requested scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in art and design and art and design-related disciplines, including programs offered via distance education.)

6. National Association of Schools of Dance, Commission on Accreditation (Current scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in dance and dance-related disciplines.) (Requested scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in dance and dance-related disciplines, including programs offered via distance education.)

7. National Association of Schools of Music, Commission on Accreditation, Commission on Non-Degree-Granting Accreditation, Commission on Community/Junior College Accreditation (Current scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in music and music-related disciplines, including community/junior colleges and independent degree-granting and non-degree-granting institutions.) (Requested scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in music and music-related disciplines, including community/junior colleges and independent degree-granting and non-degree-granting institutions and programs offered via distance education.)

8. National Association of Schools of Theatre, Commission on Accreditation (Current scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in theatre and theatre-related disciplines.) (Requested scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in theatre and theatre-related disciplines, including programs offered via distance education.)

9. New England Association of Schools and Colleges, Commission on Institutions of Higher Education (Current scope of recognition: the accreditation and preaccreditation ("Candidacy status") of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.) (Requested scope of recognition: the accreditation and preaccreditation ("Candidacy status") of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings, and the accreditation of programs offered via distance education within these institutions. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.)

10. New England Association of Schools and Colleges, Commission on Technical and Career Institutions (Current scope of recognition: the accreditation and preaccreditation ("Candidate status") of secondary institutions with vocational-technical programs at the 13th and 14th grade level, postsecondary institutions, and institutions of higher education that provide primarily vocational/technical education at the certificate, associate, and baccalaureate degree levels in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.) (Requested scope of recognition: the accreditation and preaccreditation ("Candidate status") of secondary institutions with vocational-technical programs at the 13th and 14th grade level, postsecondary institutions, and institutions of higher education that provide primarily vocational/technical education at the certificate, associate,

and baccalaureate degree levels in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, and the accreditation of programs offered via distance education within these institutions. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.)

11. North Central Association of Colleges and Schools, The Higher Learning Commission (Current scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming, including schools of the Navajo Nation.) (Requested scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming, including schools of the Navajo Nation, and the accreditation of programs offered via distance education within these institutions.)

12. Northwest Association of Schools and of Colleges and Universities, Commission on Colleges and Universities (Current scope of recognition: the accreditation and preaccreditation ("Candidacy status") of postsecondary educational institutions in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington.) (Requested scope of recognition: the accreditation and preaccreditation ("Candidacy status") of postsecondary educational institutions in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington, and the accreditation of programs offered via distance education within these institutions.)

13. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (Current scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of community and junior colleges located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.) (Requested scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of community and junior colleges located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, and the accreditation of programs offered via distance education at these colleges.)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Accrediting Council for Independent Colleges and Schools.
2. American College of Nurse-Midwives, Division of Accreditation.
3. American Council on Pharmaceutical Education.
4. Commission on Opticianry Accreditation.
5. Joint Review Committee on Education in Radiologic Technology.
6. Joint Review Committee on Educational Programs in Nuclear Medicine Technology.
7. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities:

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. Oklahoma Board of Career and Technology Education (Current scope of recognition: the approval of public postsecondary vocational education offered at institutions in the State of Oklahoma that are not under the jurisdiction of the Oklahoma State Regents for Higher Education.)
2. Utah State Board for Applied Technology Education:

State Agencies Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Iowa Board of Nursing
2. Maryland Board of Nursing

Federal Agency Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree-Granting Authority

1. U.S. Marine Corps University, Quantico, VA (request to award a master's degree of Operational Studies)

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone (202) 219–7011 between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, until November 8, 2002. They will be available again after the December 2–4 Advisory Committee meeting. An appointment must be made in advance of such inspection or copying.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Authority: 5 U.S.C. Appendix 2.

Dated: July 18, 2002.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 02–18663 Filed 7–23–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–340–001]

ANR Pipeline Company; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 12, 2002, ANR Pipeline Company (ANR) filed revised tariff sheets in compliance with the Commission's June 13, 2002 Order in the above-referenced docket. *ANR Pipeline Company,* 99 FERC] 61,310.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18682 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–254–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 15, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 1, 2002:

Substitute Fifth Revised Sheet No. 575
Substitute Fifth Revised Sheet No. 585
Substitute Fourth Revised Sheet No. 581

Columbia Gas states that on May 1, 2002, it made a filing with the Commission to comply with Order No. 587–N (98 FERC ¶ 61,257 (2002)). The order amended the Commission's regulations to require pipelines to permit releasing shippers to recall released capacity and renominate such recalled capacity at each nomination opportunity. On June 28, 2002, the Commission approved the tariff sheets filed on May 1, 2002, but directed Columbia to make minor modifications. The tariff sheets in the instant filing reflect the changes mandated by the Commission.

Columbia states that copies of its filing have been served on Columbia's firm customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18681 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–406–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

July 18, 2002.

Take notice that on July 12, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP02–406–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations (18 CFR 157.205 and 157.216) under the Natural Gas Act (NGA) for authorization to abandon delivery point facilities for service to two end-users in Ohio, under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.fed.us/online/htm* (call 202–208–2222 for assistance).

Columbia requests authorization to abandon by removal facilities installed to provide natural gas service to two residential end-use customers of Columbia Gas of Ohio (COH) located in Licking and Knox Counties, Ohio. It is stated that Columbia was authorized to own and operate the facilities pursuant to Commission authorization in Docket No. CP71–132. Columbia states that the taps are no longer needed because the service to the two customers is now being provided through distribution lines belonging to COH.

Any questions regarding the application may be directed to Fredric J. George, Senior Attorney, at (304) 357–2359.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the

time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA. Comments and protests may be filed electronically in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18684 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–057]

Columbia Gulf Transmission Company; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 15, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 316, to become effective July 5, 2002.

Columbia Gulf states on June 7, 2002, it made a filing with the Commission seeking approval of a Rate Schedule FTS–1 negotiated rate agreement with Reliant Energy Services, Inc. in Docket No. RP96–389–054. On July 5, 2002, the Commission issued an order on the filing, approving the service agreement effective November 1, 2002, and directing Columbia Gulf to file a tariff sheet identifying the agreement as a non-conforming agreement in compliance with Section 154.112(b) of the Commission's regulations. The instant filing is being made to comply with Section 154.112(b) and reference the non-conforming service agreement in its Volume No. 1 tariff.

Columbia Gulf states that copies of its filing has been mailed to each of the parties listed on the service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18683 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2317–000]

Delano Energy Company, Inc.; Notice of Filing

July 18, 2002.

Take notice that on July 1, 2002, Delano Energy Company, Inc., (Delano) filed pursuant to section 205 of the Federal Power Act is Interim Energy Purchase Agreement with the California Department of Water Resources, dated at of March 29, 2002, and it Interim Energy Purchase Agreement the California Department of Water Resources, dated as of December 2001.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 29, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18685 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–319–001 and RP00–598–001]

Discovery Gas Transmission LLC; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 15, 2002, Discovery Gas Transmission LLC (Discovery) tendered for filing in its FERC Gas Tariff, Original Volume No. 1, the following *pro forma* tariffs sheets in compliance with the Commission's Order on Compliance with Order Nos. 637, 587–G and 587–L, issued May 1, 2002:

First Revised Sheet No. 101
Original Sheet No. 136A
Third Revised Sheet No. 146
Third Revised Sheet No. 151
Original Sheet No. 197
Second Revised Sheet No. 130
Second Revised Sheet No. 145
Second Revised Sheet No. 150
Sixth Revised Sheet No. 196
Reserved Sheets Nos. 198–199

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for

assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18687 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–48–001]

El Paso Electric Company; Notice of Application

July 18, 2002.

Take notice that on July 16, 2002, El Paso Electric Company (El Paso) amended its application requesting authorization to replace two outstanding series of Pollution Control Bonds with the following: (1) $37.1 million of Adjustable Tender Pollution Control Refunding Revenue Bonds, 1984 Series E, and (2) $33.3 million Adjustable Tender Pollution Control Refunding Revenue Bonds, 1994 Series A.

El Paso also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 26, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18677 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–190–004]

Kern River Gas Transmission Company; Notice of Correciton

July 18, 2002.

Take notice that on July 9, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing Second Revised Sheet No. 645 as part of its FERC Gas Tariff, Second Revised Volume No. 1.

Kern River states that the purpose of this filing is to correct a pagination error by submitting Second Revised Sheet No. 645 to replace the sheet that was incorrectly identified as First Revised Sheet No. 645 in this proceeding.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18680 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1398–001]

KeySpan-Ravenswood, Inc.; Notice of Filing

July 18, 2002.

Take notice that on July 2, 2002, KeySpan-Ravenswood, Inc., (Ravenswood) filed with the Federal Energy Regulatory Commission (Commission) changes to its market-based rate schedule to reflect the proposed internal reorganization involving a change in Ravenswood Inc.'s corporate form from a New York corporation to a New York limited liability corporation named KeySpan-Ravenswood LLC (the Transaction). The Commission issued an Order in the above-captioned proceeding on April 26, 2002 accepting the revised Rate Schedule.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 29, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18676 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–391–001 and RP00–575–001]

Mississippi Canyon Gas Pipeline, LLC; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 16, 2002 Mississippi Canyon Gas Pipeline, LLC (MCGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Attachment A to the filing.

MCGP states that the purpose of this filing is to comply with the Commission's June 17, 2002 order on MCGP's Order No. 637 pro forma compliance filing. Pursuant to Ordering Paragraph (B) of that order, MCGP is not proposing an effective date for the revised tariff sheets at this time.

MCGP states that a copy of this filing has been served upon its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18679 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–235–001]

Northern Natural Gas Company; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 15, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet in compliance with the Commission's Order issued on June 28, 2002, in Docket No. RP02–235–000:

Substitute Fourth Revised Sheet No. 289

In the Order the Commission accepted Northern's filing, subject to Northern removing its proposal that it would notify replacement shippers of recalls received after 5 p.m. CCT by 9 a.m. CCT the next morning. Therefore, Northern is filing the above-referenced tariff sheet to remove this provision.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18689 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–5–041]

Northwest Pipeline Corporation; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 12, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing a compliance filing in response to the Commission's June 12, 2002 order in this docket.

Northwest states that the purpose of this filing is to comply with the Commission's June 12, 2002 Order on Remand in Docket No. RP93–5–040. Northwest states that on April 3, 2000 it submitted revised rates and surcharges based on the 6.08 percent long-term growth projection as established by settlement of the parties and the median return on equity, which was accepted in a July 14, 2000 order. Northwest further states that on August 31, 2001 it filed a refund and surcharge offset report confirming its compliance with the Commission's July 14, 2000 order. The refund report was accepted by the Commission on December 5, 2001. Northwest believes that the April 3, 2000 compliance filing and the August 31, 2001 refund report satisfy the requirements of the June 12, 2002 order and requests the Commission to take whatever action it deems necessary to close this docket.

Northwest states that a copy of this filing has been served upon each person designated on the official service lists compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.

Deputy Secretary

[FR Doc. 02–18691 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–339–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 12, 2002, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Original Sheet No. 374F.02, with an effective date of July 1, 2002.

Transco states that the filing is made in compliance with the Commission's Order issued June 28, 2002 (June 28 Order) in the referenced docket, which addressed Transco's Motion for Extension of Time to comply with Order No. 587–N.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18690 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–585–002 and RP00–586–001]

Vector Pipeline L.P.; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 12, 2002, Vector Pipeline L.P. (Vector), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of August 1, 2002.

Vector states that the filing is being made in compliance with the requirements in the Commission's June 17, 2002 order.

Vector states that copies of the filing has been served on each affected customers, interested state commissions, and all persons on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18688 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–62–048, *et al.*]

ISO New England Inc., *et al.*; Electric Rate and Corporate Regulation Filings

July 17, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New England Power Pool

[Docket No. ER98–3853–015]

Take notice that on July 12, 2002, ISO New England Inc. submitted a corrected compliance filing revising an earlier compliance filing made by the ISO on July 9, 2002 in the above-referenced dockets.

Comment Date: August 2, 2002.

2. Great Bay Power Corporation; Little Bay Power Corporation

[Docket Nos. ER98–3470–001 and ER99–3050–001]

Take notice that on July 12, 2002, Great Bay Power Corporation and Little Bay Power Corporation tendered for filing their triennial market power updates in support of authorization to engage in wholesale sales of electric energy and market-based rates.

Comment Date: August 2, 2002.

3. Tenaska Gateway Partners, Ltd.

[Docket No. ER99–2992–001]

Take notice that on July 15, 2002, Tenaska Gateway Partners, Ltd., (Tenaska Gateway) submitted for filing with the Federal Energy Regulatory Commission (Commission) its triennial updated market analysis in accordance with Appendix B of the Commission's Order in Front Range Associates, LLC.

Questions concerning this filing may be directed to counsel for Tenaska Gateway, Neil L. Levy, Kirkland & Ellis, 655 Fifteenth Street, NW, Suite 1200, Washington, DC 20005, Phone (202) 879–5116, Fax (202) 879–5200, e-mail *Neil_Levy@dc.kirkland.com*.

Comment Date: August 5, 2002.

4. Alcoa Power Generating Inc.

[Docket No. ER00–1372–001]

Take notice that on July 15, 2002, Alcoa Power Generating Inc. (APGI) tendered for filing its triennial market power update in support of authorization to engage in wholesale sales of electric energy at market based prices.

Comment Date: August 5, 2002.

5. Geysers Power Company, LLC

[Docket No. ER01–812–002]

Take notice that on July 11, 2002, Geysers Power Company, LLC filed a refund report in compliance with the Commission's order in this proceeding dated June 12, 2002.

Comment Date: August 1, 2002.

6. Nevada Power Company

[Docket Nos. ER01–2754–004, ER01–2755–004, ER01–2758–004, and ER01–2759–004 (Not Consolidated)]

Take notice that on July 12, 2002, Nevada Power Company (Nevada Power) filed, pursuant to section 205 of the Federal Power Act and the Federal Energy Regulatory Commission's (Commission) Order dated June 12, 2002, in the above-referenced proceedings, transmission service agreements that have been revised in accordance with the settlement approved by the Commission in its June 12, 2002 Order. Also included in the same filing is a Notice of Termination, filed by Nevada Power pursuant to section 35.15 of the Commission's Regulations, of Service Agreement No. 95 between Nevada Power and Calpine Corporation. Nevada Power requests that this agreement be terminated as of June 12, 2002, which is the date that the Commission accepted the settlement providing for the termination of the agreement.

Comment Date: August 2, 2002.

7. Garnet Energy LLC

[Docket No. ER02–1119–002]

Take notice that on July 11, 2002, Garnet Energy LLC (Garnet) filed a Compliance Filing of Supply Margin Assessment with the Federal Regulatory Commission (the Commission), regarding the Application for Market-Based Rate Authority filed February 26, 2002, seeking acceptance of Garnet's FERC Rate Schedule No. 1 and the granting of certain blanket approvals, including the authority to sell energy and capacity at market-based rates and the waiver of certain Commission regulations. The filing was submitted in accordance with the letter order dated April 22, 2002.

Comment Date: August 1, 2002.

8. American Electric Power Service Corporation

[Docket No. ER02–1575–001]

Take notice that on July 12, 2002, American Electric Power Service Corporation submitted for filing an Amended Interconnection and Operation Agreement between Appalachian Power Company (APCo) and Allegheny Energy Supply Company, LLC, in compliance with the Commission's June 13, 2002 Order Conditionally Accepting Interconnection Agreement for Filing and Ordering Compliance Filing in the above-referenced docket. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6, effective June 15, 2000.

APCo requests an effective date of June 16, 2002. Copies of APCo's filing have been served upon Allegheny Energy Supply Company, LLC and upon Virginia State Corporation Commission.

Comment Date: August 2, 2002.

9. Southeast Chicago Energy Project, LLC

[Docket No. ER02–2017–001]

Take notice that on July 12, 2002, Southeast Chicago Energy Project, LLC (Southeast Chicago) filed supplemental information requested by Federal Energy Regulatory Commission.

Comment Date: August 2, 2002.

10. Entergy Services, Inc.

[Docket No. ER02–2123–001]

Take notice that on July 11, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), tendered for filing fully executed copies of the Network Integration Transmission Service Agreement between the Entergy Operating Companies and the City of North Little Rock, Arkansas (the City), and the Network Operating Agreement between Entergy and the City, which had been previously submitted for filing in this docket.

Comment Date: August 1, 2002.

11. Consolidated Edison Company Of New York, Inc. (Complainant)

[Docket No. ER02–2126–002]

Take notice that on July 12, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing in the captioned proceeding a revised unexecuted Interconnection Agreement (Agreement) between Con Edison and PSEG Power In-City I, LLC (PSEG Power).

Con Edison requested that the revised Agreement be allowed to become effective September 1, 2002. Con Edison states that copies of the filing were served upon PSEG Power, the New York Independent System Operator, and the New York Public Service Commission.

Comment Date: August 2, 2002.

12. Lake Road Generating Company, L.P.

[Docket No. ER02–2130–001]

Take notice that on July 15, 2002, Lake Road Generating Company, L.P., (Lake Road) filed with the Federal Energy Regulatory Commission (Commission) its Electric Purchase/Sale Agreement with its affiliate PG&E Energy Trading—Power, L.P. (PGET) for wholesale sales.

Comment Date: August 5, 2002.

13. Zion Energy, LLC

[Docket No. ER02–2178–001]

Take notice that on July 11, 2002, Zion Energy, LLC (Zion) filed an amendment to its filing of June 27, 2002 of an executed power sales agreement under which it makes wholesale sales of electric energy to Calpine Energy Services, L.P. at market-based rates.

Comment Date: August 1, 2002.

14. Entergy Services, Inc.

[Docket No. ER02–2308–000]

Take notice that on July 11, 2002, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an unexecuted Interconnection and Operating Agreement with Bayou Verret Energy, L.L.C. (Bayou Verret), and a Generator Imbalance Agreement with Bayou Verret.

Comment Date: August 1, 2002.

15. Whitewater Hill Wind Partners, LLC

[Docket No. ER02–2309–000]

Take notice that on July 11, 2002, Whitewater Hill Wind Partners, LLC (Whitewater) applied to the Federal Energy Regulatory Commission (Commission) for acceptance of Whitewater's Electric Tariff FERC No. 1; the granting of certain blanket approvals, including the authority to sell electric energy and capacity at market-based rates; and the waiver of certain Commission Regulations. Whitewater also submitted a long-term power purchase agreement between Whitewater and the California Department of Water Resources for acceptance as a service agreement under the market-based rate tariff.

Comment Date: August 1, 2002.

16. Crescent Ridge LLC

[Docket No. ER02–2310–000]

Take notice that on July 11, 2002, Crescent Ridge LLC (Crescent Ridge) applied to the Federal Energy Regulatory Commission (Commission) for acceptance of Crescent Ridge's Electric Tariff FERC No. 1; the granting of certain blanket approvals, including the authority to sell electric energy and capacity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: August 1, 2002.

17. Avista Corporation

[Docket No. ER02–2311–000]

Take notice that on July 12, 2002, Avista Corporation (Avista Corp)

tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Service Agreement under Avista Corp's FERC Electric Tariff First Revised Volume No. 10, with Seattle City Light with an assigned Service Agreement No. 293. The unexecuted Service Agreement will be replaced by an executed Service Agreement upon approval and receipt from the Seattle City Light.

Avista Corporation requests waiver of the prior notice requirements and requests an effective date of April 1, 2002. Notice has been sent to Seattle City Light.

Comment Date: August 2, 2002.

18. Aquila, Inc.

[Docket No. ER02–2312–000]

Take notice that on July 12, 2002, Aquila, Inc. (Aquila) tendered for filing Service Agreement No. 109 under Aquila's FERC Electric Tariff, Third Revised Volume No. 24, a short-term firm point-to-point transmission service agreement between Aquila's Missouri Public Service division and Keeney Creek Energy Associates, LLC.

UtiliCorp requests an effective date for the service agreement of July 15, 2002.

Comment Date: August 2, 2002.

19. Southwestern Electric Power Company

[Docket No. ER02–2313–000]

Take notice that on July 12, 2002, Southwestern Electric Power Company (SWEPCO) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed tariff changes in its Rate Schedule FERC No. 72, applicable to transmission service rendered to Arkansas Electric Cooperative Corporation (AECC) under the Flint Creek Power Plant Power Coordination, Interchange and Transmission Service Agreement (Flint Creek Agreement). SWEPCO has proposed decreased rates (calculated in accordance with the formula contained in the Flint Creek Agreement).

SWEPCO requests an effective date of July 1, 2001, and, accordingly, seeks waiver of the Commission's notice requirements. A copy of the filing was served on AECC and the Arkansas Public Service Commission.

Comment Date: August 2, 2002.

20. RockGen Energy LLC

[Docket No. ER02–2314–000]

Take notice that on July 12, 2002, RockGen Energy LLC (the Applicant) tendered for filing, under section 205 of the Federal Power Act, a rate schedule for system support services, whereby it would make available to American Transmission Company, an emergency redispatch service and a reactive power service.

Comment Date: August 2, 2002.

21. Public Service Company of New Mexico

[Docket No. ER02–2316–000]

Take notice that on July 15, 2002, Public Service Company of New Mexico (PNM) submitted for filing an executed Network Integration Transmission Service Agreement (NITSA) and an associated Network Operating Agreement (NOA) with PNM's Wholesale Bulk Power Marketing and Development Department (PNMM), dated June 30, 2002, under the terms of PNM's Open Access Transmission Tariff (OATT). The purpose of the NITSA and NOA is to facilitate delivery of electric service by PNMM to the City of Gallup, New Mexico (Gallup) under the Amended and Restated Agreement for Electric Service between PNMM and Gallup (the PNMM-Gallup Agreement). Service under the PNMM-Gallup Agreement commenced on July 1, 2002, and PNM is requesting that same date as the effective date for the NITSA and NOA. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

A copy of this filing has been served upon PNMM and informational copies have been sent to Gallup, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: August 5, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18649 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–1–000 and CP02–1–001]

Southern Natural Gas Company; Notice of Availability of the Enivronmental Assessment for the Proposed South System Expansion II Project

July 18, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Southern Natural Gas Company (Southern) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of about 114 miles of pipeline loop and about 53,380 horsepower (hp) of mainline compression at various points along Southern's existing system in Louisiana, Mississippi, Alabama, and Georgia. Southern's South System Expansion II Project would provide a total of 329,891 thousand cubic feet per day (Mcfd) to serve the following customers: Southern Company Services, Inc. (97,950 Mcfd), Calpine Energy Services, L.P. (65,000 Mcfd), SCG Pipeline, Inc. (93,046 Mcfd), Effingham County Power, L.L.C. (58,766 Mcfd), City of Austell, Georgia (6,366 Mcfd), Morgan Stanley (5,400 Mcfd), Procter & Gamble (1,763 Mcfd), and Kimberly Clark (1,600 Mcfd). Southern proposes to construct the project in two phases, with in-service dates proposed for June 2003 (Phase I) and May 2004 (Phase II).

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission,

Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ11.1.
- Reference Docket Nos. CP02–1–000 and CP02–1–001; and
- Mail your comments so that they will be received in Washington, DC on or before August 19, 2002.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). [1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet Web site provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet Web site, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18675 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Extension of Time To Commence Project Construction and Soliciting Comments

July 18, 2002.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Extension of Time to Commence Project Construction.

b. *Project No.*: 7115–032.

c. *Date Filed*: June 17, 2002.

d. *Applicant*: Homestead Energy Resources, LLC.

e. *Name of Project*: George W. Andrews.

f. *Location*: At the Corps of Engineers' George W. Andrews Lock and Dam on the Chattahoochee River in Houston County, Alabama and Early County, Georgia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Charles B. Mierek, Homestead Energy Resources, LLC., 5250 Clifton-Glendale Rd., Spartanburg, SC 29307–4618, (864) 579–4405.

i. *FERC Contact*: Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments and or motions*: August 23, 2002.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Please include the Project Number (7115–032) on any comments or motions filed.

k. *Description of Application*: Pursuant to Sections 4.200") and 4.202(a) of the Commission's regulations and Public Law No. 106–213, the applicant requests that its license be amended to extend the deadline for commencement of construction until September 21, 2004. The applicant also requests that completion of construction be extended by an additional four years from any extended commencement of construction date that the Commission grants.

l. *Location of the Application*: Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http://www/ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file

comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18678 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 18, 2002.

a. *Application Type*: Application to Amend License for the Riley-Jay-Livermore Project.

b. *Project No*: 2375–035.

c. *Date Filed*: May 31, 2002.

d. *Applicant*: International Paper Company.

e. *Name of Project*: Riley-Jay-Livermore Project.

f. *Location*: The project is located on the Androscoggin River at the junction of Franklin, Androscoggin, and Oxford Counties, Maine.

g. *Filed Pursuant to*: Federal Power Act, 16 USC 791(a)-825) and 799 and 801.

h. *Applicant Contact*: Mr. Michael Craft, International Paper Company, Androscoggin Mill, Riley Road, Jay, Maine 04239. Tel: (207) 897–3431.

I. *FERC Contact*: Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 219–3273 or by e-mail at *vedula.sarma@ferc.gov*.

j. *Deadline for filing comments and/or motions*: August 23, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2375–035) on any comments or motions filed.

k. *Description of Filing*: International Paper Company, proposes to revise the authorized capacity of the Livermore development of the project from 12.26 MW to 8.8 MW. The proposal would reduce the total hydraulic capacity of the Livermore development from 5,346 cfs to 3,966 cfs.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18686 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0157; FRL–7190—2]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (FIFRA SAP) to consider and review corn rootworm plant-incorporated protectant insect resistance management and non-target insect issues.

DATES: The meeting will be held on August 27–29, 2002, from 8:30 a.m. to 5 p.m, eastern standard time.

For dates on requests to present oral comments, submission of written comments, or requests for special seating arrangements, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

For requests for nominations to serve as Ad-Hoc members of the FIFRA SAP for this meeting, see Unit II.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at Sheraton Crystal City Hotel, 1800 Jefferson Davis Hwy., Arlington, VA. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Requests to present oral comments, submission of written comments, or requests for special seating arrangements may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2002–0157 in the subject line on the first page of your response.

Send nominations to serve Ad-Hoc members of the FIFRA SAP for this meeting to the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2002–0157 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, DFO, Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at: http://www.epa.gov/fedrgstr/.

A meeting agenda relevant to this meeting is now available. EPA's position paper, questions to FIFRA SAP, and FIFRA SAP composition (i.e., members and consultants) will be available as soon as possible, but no later than early August. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at: http://www.epa.gov/scipoly/sap.

2. *In person.* The Agency has established an official record for this meeting under docket ID number OPP–2002–0157. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents.

The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How May I Participate in this Meeting?

You may submit requests to present oral comments, written comments, or requests for special seating arrangements through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0157 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments.

Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, August 22, 2002, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of the oral comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments.* Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted no later than noon, eastern standard time, August 22, 2002, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Submission of requests and written comments*—a. *By mail.* Submit your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Pennsylvania Ave., NW., Washington, DC 20460.

b. *In person or by courier.* Deliver your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

c. *Electronically.* You may submit your request or written comments electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 9.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket ID number OPP–2002–0157. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the FIFRA Scientific Advisory Panel

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel (SAP) prior to being made public or issued to a registrant. In accordance with FIFRA section 25(d), the SAP is to have an opportunity to comment on the health and environmental impact of such actions. The Panel also shall make comments, evaluations, and recommendations for operating

guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the Panel for staggered terms of 4 years, based on recommendations from the National Institute of Health and the National Science Foundation.

Section 104 of the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170 established the FQPA Science Review Board (SRB). These scientists shall be available to the SAP on an ad hoc basis to assist in reviews conducted by the Panel.

B. Purpose of the Meeting

The FIFRA SAP will meet to consider and review corn rootworm plant-incorporated protectant insect resistance management and non-target insect issues. Monsanto Company has requested a registration for the plant-incorporated protectant *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material (ZMIR13L) necessary for its production in corn. The Cry3Bb1 protein is intended to control corn rootworms (CRW, *Diabrotica* spp.), a coleopteran pest of corn. This registration application is limited to event MON 863 corn and descendant lines and varieties. Studies were submitted to support registration of the transformation event MON 863. CRW, a primary pest of corn in the United States, feeds on corn roots as larvae leading to a reduction in the plant's ability to absorb water and nutrients from soil and lodging. In areas where CRW is a pest (e.g., Corn Belt), significant financial losses are realized from a decrease in production and the cost of chemical insecticides used to control this insect pest. Significant acres of corn are treated annually to control CRW with organophosphate, carbamate and pyrethroid insecticides.

Monsanto has conducted experiments using Cry3Bb1 corn for the last 3 years (2000–2002) under Experimental Use Permits. This has allowed for data to be developed to support the company's application for a commercial registration under FIFRA. EPA has conducted a risk assessment based on the data submitted. The Agency is seeking the FIFRA SAP's review on their assessment of the non-target arthropod studies and the Bt degradation in soil studies.

In addition, Monsanto has submitted an insect resistance management plan (IRM) intended to be used for a 3-year interim period while further scientific studies are conducted to refine the plan based on actual commercial field experience. EPA has cooperated with researchers working with corn rootworm in its evaluation of the Monsanto proposed IRM plan. The Agency will also be seeking the advice of the FIFRA SAP regarding their assessment of the IRM plan. The guidance provided by the FIFRA SAP along with comments provided by the public will be considered by the Agency in making its decision on the application for registration for products containing Cry3Bb1.

C. Request for Nominations to Serve as Ad-Hoc Members of the FIFRA Scientific Advisory Panel for This Meeting

The FIFRA SAP staff routinely solicit the stakeholder community for nominations to serve as ad-hoc members of the FIFRA SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Individuals nominated should have expertise in one or more of the following areas: Insect biology, insect resistance management, and non-target effects. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** by August 5, 2002.

The criteria for selecting scientists to serve on the Panel are that these persons be recognized scientists--experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they be available to participate fully in the review, which will be conducted over a relatively short time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a Panel nominee is considered to assist in a review by the SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the Panel nominee is required to submit a Confidential Financial Disclosure Report which shall fully disclose, among other financial interests, the nominee's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the nominee's financial disclosure form to assess that there are no formal conflicts of interest before the nominee is considered to serve on the Panel. Selected Panel members will be hired as a Special Government Employee. The Agency will review all nominations; a decision on Panel members for the meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of the **SUPPLEMENTARY INFORMATION**.

D. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days. The minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of the **SUPPLEMENTARY INFORMATION**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 17, 2002.

Sherell A. Sterling,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 02–18725 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0132; FRL–7189–3]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active

ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0132, must be received on or before August 23, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0132 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354 and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0132. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0132 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), OPP, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0132. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 66330–UG. *Applicant*: Arvesta Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105. *Product name*: TM-42501. *Active ingredient*: Iodomethane at 98%. *Proposed classification/Use*: Restricted use. For pre-plant fumigation onto fields intended for commercial production of strawberries, tomatoes, peppers, and ornamental flowers, plants, and bushes for the control of soil-borne pests, including nematodes, insects, weed and grass seeds, and diseases.

2. *File Symbol*: 66330–UU. *Applicant*: Arvesta Corporation, *Product name*: Iodomethane Technical. *Active ingredient*: Iodomethane at 100%. *Proposed classification/Use*: None. For formulation or repackaging into end-use products intended for terrestrial non-food uses for the control of soil-borne pests.

3. *File Symbol*: 66330–UE. *Applicant*: Arvesta Corporation. *Product name*: TM-42503. *Active ingredients*: Iodomethane at 25% and chloropicrin at 75%. *Proposed classification/Use*: Restricted use. For pre-plant fumigation onto fields intended for commercial production of strawberries, tomatoes, peppers, and ornamental flowers, plants, and bushes for the control of soil-borne pests,including nematodes, insects, weed and grass seeds, and diseases.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 12, 2002.

Richard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–18587 Filed 7–23–02; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0123; FRL–7184–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0123, must be received on or before August 23, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0123 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224 e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0123. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0123 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0123. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance ith procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 11, 2002.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

OF6210

Summary of Petition

EPA has received a pesticide petition from Aventis CropScience USA, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.473(c) by establishing a tolerance for residues of the herbicide glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl-, monoammonium salt) and its metabolites, 3-methylphosphinicopropionic acid, and 2-acetamido-4-methylphosphinico-butanoic acid expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on the raw agricultural commodity (RAC) derived from transgenic rice tolerant to glufosinate-ammonium: Grain at 1.0 parts per million (ppm), straw at 1.6 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* A metabolism study was conducted on transgenic rice using ^{14}C-glufosinate-ammonium. Two treatment regimes were examined to simulate commercial application practices. The results from both treatments were similar. The principal residue in the grain at harvest was 3-methylphosphinicopropionic acid (Hoe 061517; approximately 70% of the total radioactive residues (TRR). Other relevant residues in the grain included N-acetyl-L-glufosinate (2-acetamido-4-methylphosphinicobutanoic acid; Hoe 099730) at about 11% of the TRR and parent at 5–6% of the TRR. In the straw, 3-methylphosphinicopropionic acid was the predominate component comprising approximately 60% of the TRR. Lesser amounts of the parent (about 17% of the TRR) and N-acetylglufosinate (10–13% of TRR) were found in the straw fraction. These results are consistent

with previous metabolism studies conducted using glufosinate-ammonium on other transgenic crops. As a result of all the metabolism studies conducted, the nature of residues found in transgenic plants as a result of a treatment of glufosinate-ammonium is well understood.

2. *Analytical method.* The enforcement analytical method utilizes gas chromatography for detecting and measuring levels of glufosinate-ammonium and metabolites with a general limit of quantification of 0.05 ppm. This method allows detection of residues at or above the proposed tolerances.

3. *Magnitude of residues.* Field residue trials were conducted across the major regions of rice production in the U.S. The treatment regime was selected to represent the use pattern that is the most likely to result in the highest residues. Glufosinate-ammonium derived residues did not exceed 0.74 ppm in rice grain, and 1.48 ppm in rice straw when sampled at 70 days or more after the last treatment. No concentration of the residues occurred when rice whole grain was processed into polished grain and bran, whereas a concentration factor of approximately 2.3 was found for rice hulls.

B. Toxicological Profile

1. *Acute toxicity.* Glufosinate-ammonium has been classified as toxicity category III for acute oral, dermal, and inhalation toxicity; and for eye irritation. Glufosinate-ammonium is not a dermal irritant (toxicity category IV) nor is it a dermal sensitizer. The oral LD_{50} is 2 g/kg in male rats, and 1.62 g/kg in female rats.

2. *Genotoxicty.* Based on results of a complete genotoxicity database, there is no evidence of mutagenic activity in a battery of studies, including: *Salmonella* spp., *E. coli*, *in vitro* mammalian cell gene mutation assays, mammalian cell chromosome aberration assays, *in vivo* mouse bone marrow micronucleus assays, and unscheduled DNA synthesis assays.

3. *Reproductive and developmental toxicity.* In a developmental toxicity study, groups of 20 pregnant female Wistar rats were administered glufosinate-ammonium by gavage at doses of 0, 0.5, 2.24 10, 50 and 250 mg/kg/day from days 7 to 16 of pregnancy. The no observed adversed effect level (NOAEL) for maternal toxicity is 10 mg/kg/day; the lowest observed adverse effect level (LOAEL) is 50 mg/kg/day based on vaginal bleeding and hyperactivity in dams. In the fetus, the NOAEL is 50 milligrams/kilogram/day (mg/kg/day), based on dilated renal pelvis observations at the LOAEL of 250 mg/kg/day. In a developmental toxicity study, groups of 15 pregnant female Himalayan rabbits were administered glufosinate-ammonium by gavage at doses of 0, 2.0, 6.3, or 20.0 mg/kg/day from days 7 to 19 of pregnancy. In maternal animals, decreases in food consumption and body weight gain were observed at the 20 mg/kg/day dose level. The NOAEL for maternal toxicity was 6.3 mg/kg/day and that for developmental toxicity was 20 mg/kg/day.

In a multi-generation reproduction study, glufosinate-ammonium was administered to groups of 30 male and 30 female Wistar/Han rats in the diet at concentrations of 0, 40, 120, or 360 ppm. The LOAEL for systemic toxicity is 120 ppm based on increased kidney weights in both sexes and generations. The systemic toxicity NOAEL is 40 ppm. The LOAEL for reproductive/developmental toxicity is 360 ppm based on decreased numbers of viable pups in all generations. The NOAEL is 120 ppm.

4. *Subchronic toxicity.* In a subchronic oral toxicity study, glufosinate-ammonium was administered to 10 NMRI mice/sex/dose in the diet at levels of 0, 80, 320 or 1,280 ppm equivalent to 0, 12, 48 or 192 mg/kg/day for 13 weeks. Significant (< 0.05) increases were observed in serum aspartate aminotransferase and in alkaline phosphatase in high-dose (192 mg/kg/day) males. Also observed were increases in absolute and relative liver weights in mid-(48 mg/kg/day) and high-dose males. The NOAEL is 12 mg/kg/day, the LOAEL is 48 mg/kg/day based on the changes in clinical biochemistry and liver weights.

5. *Chronic toxicity.* In a combined chronic toxicity/oncogenicity study, glufosinate-ammonium was administered to 50 Wistar rats/sex/dose in the diet for 130 weeks at dose levels of 0, 40, 140, or 500 ppm (mean compound intake in males was 0, 1.9, 6.8, and 24.4 mg/kg/day and for females was 0, 2.4, 8.2 and 28.7 mg/kg/day, respectively). A dose-related increase in mortality was noted in females at 140 and 500 ppm, whereas in males increased absolute and relative kidney weights were noted at 140 ppm, and 500 ppm. The NOAEL was considered to be 40 ppm. No treatment-related oncogenic response was noted.

In an oncogenicity study, glufosinate-ammonium was administered to 50 NMRI mice/sex/dose in the diet at dose levels of 0, 80, 160 (males only), or 320 (females only) ppm for 104 weeks. The NOAEL for systemic toxicity is 80 ppm (10.82/16.19 mg/kg/day in males/females (M/F)), and the LOAEL is 160/320 ppm (22.60/ 63.96 mg/kg/day in M/F), based on increased mortality in males, increased glucose levels in M/F, and changes in glutathione levels in males. No increase in tumor incidence was found in any treatment group. In a chronic feeding study, technical glufosinate-ammonium was fed to M/F beagle dogs for 12 months in the diet at levels of 2.0, 5.0, or 8.5 mg/kg/day. The NOAEL is 5.0 mg/kg/day based on clinical signs of toxicity, reduced weight gain and mortality 8.5 mg/kg/day. In a rat oncogenicity study, glufosinate-ammonium was administered to Wistar rats (60/sex/group) for up to 24 months at 0, 1,000, 5,000, or 10,000 ppm (equivalent to 0, 45.4, 228.9, or 466.3 mg/kg/day in males, and 0, 57.1, 281.5, or 579.3 mg/kg/day in females). The LOAEL for chronic toxicity is 5,000 ppm (equivalent to 228.9 mg/kg/day for male rats, and 281.5 mg/kg/day for females), based on increased incidences of retinal atrophy. The chronic NOAEL is 1,000 ppm. Under the conditions of this study, there was no evidence of arcinogenic potential. Dosing was considered adequate based on the increased incidence of retinal atrophy.

6. *Animal metabolism.* Studies conducted in rats using 14^{C}- glufosinate-ammonium have shown that th compound is poorly absorbed (5–10%) after oral administration and is rapidly eliminated primarily as the parent compound. The highest residue levels were found in liver and kidney tissues.

The metabolic profile and the quantitative distribution of metabolites were very similar in both goat and hen. The vast majority of the dose was excreted, primarily as parent compound. The very limited residues found in edible tissues, milk, and eggs were comprised principally of glufosinate and 3-methylphosphinico-propionic acid (Hoe 061517), with lesser amounts of N-acetyl-L-glufosinate (Hoe 099730) and 2-methylohosphinico-acetic acid (Hoe 064619).

7. *Metabolite toxicology.* Additional testing has been conducted with the major metabolites, 3-methylphosphinico-propionic acid, and N-acetyl-L-glufosinate. Based on subchronic and developmental toxicity study results, a profile of similar or less toxicity was observed for the metabolites as compared to the parent compound, glufosinate-ammonium.

8. *Endocrine disruption.* No special studies have been conducted to investigate the potential of glufosinate-ammonium to induce estrogenic or other endocrine effects. However, no evidence of estrogenic or other endocrine effects have been noted in

any of the toxicology studies that have been conducted with this product and there is no reason to suspect that any such effects would be likely.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances have been established (40 CFR 180.473) for the combined residues of glufosinate-ammonium and metabolites in or on a variety of RACs. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicity studies. EPA has, therefore, not established an acute RfD for the general population including infants and children. An acute RfD of 0.063 mg/kg/day was established, however, for the females 13+ subgroup. Therefore, an acute dietary analysis was conducted for this sub-population; whereas, chronic dietary analysis was conducted for the usual populations.

i. *Food.* An acute dietary analysis was conducted using the DEEM™ software and the 1994–1996 CSFII consumption database. The analysis assumed tolerance level residues for all commodities and 100% of crop treated for all registered or pending uses. This Tier One analysis resulted in an exposure of 0.007124 mg/kg bw/day (95th percentile) for the female 13+ sub-population (the only population of concern) representing 34% utilization of the acute RfD.

Chronic dietary analysis was conducted to estimate exposure to potential glufosinate-ammonium residues in or on registered and proposed commodities. The DEEM™ software and the 1994–1996 USDA food consumption data were used. Tolerance level residues were assumed for all commodities. Percent crop treated values generated by EPA/BEAD were incorporated as follows: Tree nuts, 1%; apples, 1%; field corn, 2.6%; grapes, 1%;, and soybeans, 1%. Aventis CropScience estimates that an upper bound value for cotton at market maturity is 20% and that for potatoes is 10%. All other crops are included at 100% of crop treated. Chronic dietary exposure estimates from residues of glufosinate-ammonium for the U.S. population represented approximately 25% of the chronic RfD; whereas that for children 1-6, the sub-population with the highest exposure, represented approximately 61% of the chronic RfD. The approach used is very conservative, yet still indicates that dietary exposures for all segments of the population are well within the chronic RfDs. This analysis was based on highly conservative assumptions. The Agency has no concerns with RfD utilization up to 100%.

ii. *Drinking water.* EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water assessment. The models Screening concentrating in ground water (SCI-GROW) and Pesticide Root Zone Model-Exposure Modeling System (PRZM-EXAMS) were used to estimate the concentration of glufosinate-ammonium that might occur in water. The acute drinking water level of comparison (DWLOC) for females 13+ is 417 ppb. In comparison, the acute drinking water estimated concentrations (DWEC) calculated by Generic expected environmental concentration (GENEEC) is 127 ppb.

The chronic DWLOC calculated for adults is 185 ppb and that for children/toddlers is 41 parts per billion (ppb). The chronic DWEC calculated using a worst case scenario is 31 ppb (GENEEC). The drinking water levels of comparison are based on highly conservative dietary (food) exposures and are expected to be much higher in real world situations reducing further the percent utilization of the DWLOC.

2. *Non-dietary exposure.* Glufosinate-ammonium is currently registered for use on the following non-food sites: areas around ornamentals, shade trees, Christmas trees, shrubs, walks, driveways, flower beds, farmstead buildings, in shelter belts, and along fences. It is also registered for use as a post-emergent herbicide on farmsteads, areas associated with airports, commercial plants, storage and lumber yards, highways, educational facilities, fence lines, ditch banks, dry ditches, schools, parking lots, tank farms, pumping stations, parks, utility rights-of-way, roadsides, railroads, and other public areas and similar industrial and non-food crop areas. It is also registered for lawn renovation uses.

The EPA has determined that there are no acute or chronic non-dietary exposure scenarios. Further, the Agency has determined that it is not appropriate to aggregate short-term and intermediate-term non-dietary exposure with dietary exposures in risk assessments because the end-points are different.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA has indicated that, at this time, the Agency does not have available data to determine whether glufosinate-ammonium has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glufosinate-ammonium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, therefore, it has not been assumed that glufosinate-ammonium has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the conservative assumptions described above and based on the completeness and reliability of the toxicity data, it is concluded that chronic dietary exposure to the registered and proposed uses of glufosinate-ammonium will utilize at most 25% of the chronic RfD for the U.S. population. The actual exposure is likely to be significantly less than predicted by this analysis as data and models that are more realistic are developed. Exposures below 100% of the reference dose (RfD) are generally assumed to be of no concern because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health.

The acute population of concern, female 13+ utilizes 34% of the acute RfD. This is a Tier One highly conservative assessment and actual exposure is likely to be far less. Drinking water levels of comparison based on dietary exposures are greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all.

EPA has concluded that it is not appropriate to aggregate non-dietary exposures with dietary exposures in a risk assessment because the toxicity end-points are different.

Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food, drinking water and nonresidential) to residues of glufosinate-ammonium and metabolites.

2. *Infants and children.* The toxicological database is sufficient for evaluating prenatal and postnatal toxicity for glufosinate-ammonium. There are no prenatal or postnatal susceptibility concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproduction study. Based on clinical signs of neurological toxicity in short

and intermediate dermal toxicity studies with rats, EPA has determined that an added FQPA safety factor of 3x is appropriate of assessing the risk of glufosinate-ammonium derived residues in crop commodities.

Using the conservative assumptions described in the exposure section above, the percent of the chronic RfD that will be used for exposure to residues of glufosinate-ammonium in food for children 1–6 (the most highly exposed sub-group) is 61%. Infants utilize 37% of the chronic RfD. As in the adult situation, drinking water levels of comparison are higher than the worst case DWECs and are expected to use well below 100% of the RfD, if they occur at all.

Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of glufosinate-ammonium.

F. International Tolerances

Maximum residue limits (Codex MRLs) for glufosinate-ammonium and metabolites in or on rice commodities have not been established by the Codex Alimentarius Commission.

[FR Doc. 02–18586 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0084; FRL–7188–8]

Pesticides; Draft Guidance for Pesticide Registrants on False or Misleading Pesticide Product Brand Names; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Extension of comment period.

SUMMARY: In the **Federal Register** of March 28, 2002, EPA published a document announcing the availability of and sought public comment on a draft Pesticide Registration (PR) Notice titled, "False or Misleading Pesticide Product Brand Names." PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. The draft PR Notice provides guidance to registrants, applicants, and the public as to what product brand names may be false or misleading, either by themselves or in association with company names or trademarks. In response to a request from stakeholders, EPA extended the comment period for 60 days, until August 1, 2002, and is now extending the comment period for an additional 90 days, until October 30, 2002.

DATES: Comments, identified by docket ID number OPP–2002–0084, must be received on or before October 30, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0084 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5448; fax number: (703) 308–6467; e-mail address: kempter.carlton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general although this action may be of particular interest to those persons who are required to register pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may obtain an electronic copy of all PR Notices, both final and draft, at http://www.epa.gov/opppmsd1/PR_Notices.

2. *Fax-on-demand.* You may request a faxed copy of the draft PR Notice titled, "False or Misleading Pesticide Product Brand Names," by using a faxphone to call (202) 564–3119 and selecting item 6146. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0084. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0084 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information

electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0084. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is EPA Taking?

In the **Federal Register** of March 28, 2002 (67 FR 14941) (FRL–6809–9), EPA announced the availability of a draft PR Notice titled, "Pesticides; Draft Guidance for Pesticide Registrants on False or Misleading Pesticide Product Brand Names." The Agency provided a 60–day comment period, which was scheduled to end May 28, 2002. EPA extended the comment period for the draft PR Notice for 60 days in the **Federal Register** of May 24, 2002 (67 FR 36595) (FRL–7180–9), until August 1, 2002, and is now extending the comment period for an additional 90 days, until October 30, 2002.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 16, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 02–18716 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7250–7]

LCP-Holtrachem Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent order.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a consent order for a removal action pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, regarding the LCP-Holtrachem Superfund Site located in Riegelwood, Columbus County, North Carolina. EPA will consider public comments on the cost recovery component of the proposed settlement, section VIII, for thirty (30) days. EPA may withhold consent to all or part of section VIII of the proposed settlement should such comments disclose facts or considerations which indicate section VIII is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: July 11, 2002.

James T. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–18714 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7250–3]

Notice of Availability of List of Impaired Waters Prepared by the Commonwealth of Virginia Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On July 15, 2002, the Commonwealth of Virginia published a notice announcing that it was making available for public comment its proposed "2002 303(d) Report on Impaired Waters." The Department of Environmental Quality (DEQ) of the Commonwealth of Virginia prepared this proposed report pursuant to section 303(d)(1)(A) of the Clean Water Act (CWA), 33 U.S.C. 1313(d)(1)(A), and implementing regulations at 40 CFR 130.7(b). The purpose of today's notice is to provide additional notice to the public of the availability of that proposed report. On July 15, 2002, the Virginia Department of Environmental Quality also announced the availability of its 2002 "305(b) Water Quality Assessment."

DATES: Comments on both reports should be sent by midnight August 16, 2002 to the Virginia Department of Environmental Quality. In addition, the Virginia Department of Environmental Quality will hold public information meetings regarding the 303(d) and 305(b) reports on July 29, July 31, and August 1, 2002.

ADDRESSES: Submit written comments to Mr. Darryl M. Glover, DEQ Water Quality Monitoring and Assessment Manager, at P.O. Box 10009, Richmond, Virginia 23240–0009, or via e-mail to *dmglover@deq.state.va.us*. Please include your name, (US mail) address, and telephone number.

The public information meetings will be held as follows:

- July 29th, 2 p.m.–3:30 p.m.—DEQ West Central Regional Office, 3019 Peters Creek Road in Roanoke. For directions please call (540) 562–6700.
- July 31st, 1:30 p.m.–3 p.m.—DEQ Northern Va. Regional Office, 13901

Crown Court in Woodbridge. For directions please call (703) 583–3800.

• August 1st, 1:30 p.m.–3 p.m.—DEQ Piedmont Regional Office, 4949–A Cox Road in Glen Allen. For directions please call (804) 527–5020.

FOR FURTHER INFORMATION CONTACT: The Virginia 2002 303(d) Report on Impaired Waters is available for download at *http://www.deq.state.va.us/water/303d.html* throughout the public comment period, which ends on August 16, 2002. A hard copy will be made available upon request by phoning Diana Baumann at (804) 698–4310. In the United States Environmental Protection Agency, contact Mr. Thomas Henry at (215) 814–5752.

SUPPLEMENTARY INFORMATION: The purpose of Virginia's proposed 303(d) list is to identify waters in the Commonwealth of Virginia for which Total Maximum Daily Loads (TMDLs) under CWA Section 303(d) need to be developed. The proposed report identifies waters as impaired if they do not support, or only partially support, one or more of five designated uses (i.e., aquatic life, fish consumption, shellfish consumption, swimming, and drinking water). Support of the designated uses is based on attainment of Virginia's water quality standards, which include numeric and narrative criteria. Attainment is determined by the assessment of all available monitoring data and water quality information.

EPA is providing this notice in compliance with Paragraph 4(b) of the consent degree entered in the case of *American Canoe Assoc., et al.* v. *EPA, Civil Action No. 98–979A*, on June 11, 1999.

Jon M. Capacasa,

Acting Division Director, Water Protection Division, EPA, Region III.

[FR Doc. 02–18583 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC is seeking public comments on its proposal to extend through December 31, 2005 the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in its Fuel Rating Rule ("Rule"). That clearance expires on December 31, 2002.

DATES: Comments must be filed by September 23, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Fuel Rating Rule: Paperwork Comment." Comments in electronic form should be sent to: *Fuel Rating PRA@ftc.gov* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *Fuel Rating PRA@ ftc. gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

The Fuel Rating Rule establishes standard procedures for determining, certifying, and disclosing the octane rating of automotive gasoline and the automotive fuel rating of alternative liquid automotive fuels, as required by the Petroleum Marketing Practices Act. 15 U.S.C. 2822(a)–(c). The Rule also requires refiners, producers, importers, distributors, and retailers to retain records showing how the ratings were determined, including delivery tickets or letters of certification.

Estimated annual hours burden: 42,000 total burden hours (17,000 recordkeeping hours + 25,000 disclosure hours).

Recordkeeping: Based on industry sources, staff estimates that 200,000 fuel industry members each incur an average annual burden of approximately five minutes to ensure retention of relevant business records for the period required by the Rule, resulting in a total of 17,000 hours, rounded.

Disclosure: Staff estimates that affected industry members incur an average burden of approximately one hour to produce, distribute, and post octane rating labels. Because the labels are durable, only about one of every eight industry members (*i.e.*, approximately 25,000 of 200,000 industry members) incur this burden each year, resulting in a total annual burden of 25,000 hours.

Estimated annual cost burden: $739,000, rounded ($672,000 in labor costs and $67,000 in non-labor costs).

Labor costs: Staff estimates that the work associated with the Rule's recordkeeping and disclosure requirements is performed by skilled clerical employees at an average rate of $16.00 per hour. Thus, the annual labor cost to respondents of complying with the recordkeeping and disclosure requirements of the Rule is estimated to be $672,000 ((17,000 hours + 25,000 hours) × $16.00 per hour).

Capital or other non-labor costs: $67,000, rounded up to the nearest thousand.

Staff believes that there are no current start-up costs associated with the Rule. Because the Rule has been effective since 1979 for gasoline, and since 1993 for liquid alternative automotive fuels, industry members already have in place the capital equipment and other means necessary to comply with the Rule. Retailers (approximately 175,000

industry members), however, do incur the cost of procuring (and replacing) fuel dispenser labels to comply with the Rule. According to industry input, the price per label is about thirty-eight cents. Based on ranging industry estimates of a 6–10 year useful life per dispenser label, staff will conservatively factor into its calculation of labeling cost the shortest assumed useful life, *i.e.*, 6 years. Staff believes that the average retailer has six dispensers, with all of them being obtained either simultaneously or otherwise within the same year. Assuming that, in any given year, ⅙th of all retailers (29,167 retailers) will replace their dispenser labels, staff estimates total labeling cost to be $66,500 (29,167 × 6 × .38).

William E. Kovacic,

General Counsel.

[FR Doc. 02–18705 Filed 7–23–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Public Workshop: Possible Anticompetitive Efforts To Restrict Competition on the Internet

AGENCY: Federal Trade Commission.

ACTION: Notice of Public Workshop and Opportunity for Comment

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") announces a public workshop on "Possible Anticompetitive Efforts to Restrict Competition on the Internet." The workshop will focus on how certain state regulation may have anticompetitive effects, and how certain business practices may raise antitrust concerns, in the context of business-to-consumer e-commerce. The workshop will be held at and administered by the FTC.

DATES: The workshop will take place on October 8–10, 2002. The workshop will be transcribed and placed on the public record. Any interested person may submit written comments responsive to any of the topics to be addressed; such comments should be submitted no later than the last session of the workshop. Any written comments received also will be placed on the public record.

ADDRESSES: When in session, the workshop will be held at the FTC headquarters, 600 Pennsylvania Avenue, NW., Washington, DC. All interested parties are welcome to attend. Pre-registration is not required.

Written comments should be submitted in both hard copy and electronic form. Six hard copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be captioned "Comments regarding ecompetition." Electronic submissions may be sent by electronic mail to "*ecompetition@ftc.gov*". Alternatively, electronic submissions may be filed on a 3½-inch computer disk with a label on the disk stating the name of the submitter and the name and version of the word processing program used to create the document.

FOR FURTHER INFORMATION CONTACT: Jerry Ellig, Deputy Director, Office of Policy Planning, 600 Pennsylvania Avenue, NW., Washington, DC 20580; telephone (202) 326–3528; e-mail: *jellig@ftc.gov*. Detailed agendas for the workshop will be available on the FTC home page (*http://www.ftc.gov*) and through Mildred Taylor, Staff Secretary, at (202) 326–2553.

SUPPLEMENTARY INFORMATION:

Overview

In the past decade, there has been growing concern about possible anticompetitive efforts to restrict competition on the Internet. In particular, many states have enacted regulations that have the direct effect of protecting local merchants from competition over the Internet. For example, some states require that online vendors maintain an in-state office, while other states prohibit online sales of certain products entirely. Some scholars have argued that these regulations are often simply attempts by existing industries to forestall the entry of new and innovative Internet competitors, much as in prior eras, other entrenched producers have benefited from regulatory effort to impede new forms of competition.

Similarly, some private companies have engaged in conduct that may raise antitrust issues. For instance, some manufacturers and dealers do not list prices for certain items online, and others do not sell certain items over the Internet altogether and urge horizontal competitors to do the same. Depending on the circumstances, some of these restrictions could be viewed as potentially anticompetitive. While much of this regulation and conduct undoubtedly has pro-competitive and pro-consumer rationales, the regulations impose costs on consumer that, according to some estimates, may exceed $15 billion annually.

For these reasons, a workshop on possible anticompetitive efforts to restrict competition on the Internet is timely, and will build on previous FTC-sponsored events that addressed other aspects of e-commerce.[1] In order to enhance the Commission's understanding of particular practices and regulations, the workshop will have panels to address certain specific industries, including some or all of the following: retailing, automobiles, cyber-charter schools, real estate/mortgages, health care/pharmaceuticals/telemedicine, wine sales, auctions, contact lenses, and funerals (caskets).

Each of these industries has experienced some growth in commerce via the Internet, but according to various commentators, each also may have been hampered by anticompetitive state regulation or business practices. *See, e.g.*, Atkinson, The Revenge of the Disintermediated (Jan. 2001) (report of the Progressive Policy Institute); Atkinson and Wilhilm. The Best States for E-Commerce (Mar. 2002) (second report of the Progressive Policy Institute). In addition, these industries involve goods and services that comprise a very large portion of a consumer's budget, such as homes, cars, schools, and health care.

It is intended that each industry panel have at least one independent analyst or academic, and also have representatives from the affected industries (on both sides of the issue). Where appropriate, the panel also will include a representative from a government agency, including (where appropriate) representatives from different states. We hope that each panel will provide all sides of the issue, including the perspectives of industry, intermediaries, consumers, and regulators.

The Commission also invites comments concerning other industries, not listed above, that may raise similar issues and merit similar examination.

Issues

Below is a non-exhaustive list of issues to be addressed by the workshop. Written comments need not address all of these issues.

1. General Issues

What role does competitive law and policy play in fostering or hindering e-commerce? From a practical business perspective, how does each foster or impede e-commerce? What do empirical studies show?

Does state regulation have protectionist effects, and if so how? What are the benefits of such regulation, and do the benefits outweigh the costs? What is the prevalence of such state

[1] For more information on previous FTC-sponsored events regarding e-commerce, see *http://www.ftc.gov/opp/ecommerce/index.htm; http://www.ftc.gov/opa/2000/05/b2bworkshop.htm.*

regulation? Are some types of regulations more friendly to e-commerce?

Do businesses try to limit competition over the Internet through anticompetitive efforts, and if so how? What are the business justifications for these efforts?

2. Issues for Particular Industries

Retailing

How and why do manufacturers limit their distributors' sales of certain products over the Internet? What are the costs to consumers? Do distributors pressure manufacturers into limiting sales over the Internet, and if so how? Are such efforts facilitated by horizontal agreements? Does such conduct raise antitrust concerns, and are there legitimate business justifications, such as concerns about free-riding, for limiting e-commerce sales?

Automobiles

Have manufacturers been forced to limit Internet sales of automobiles, and if so how? What are the costs to consumers? Are there legitimate concerns about free-riding or differentials in bargaining power? Are there different issues concerning the sale of new and used cares? What regulations have been applied to the sale of new or used cars through online auction sites? Does state regulation have the effect of protecting dealers from competition, to the possible detriment of consumers, or does existing state regulation provide important protection to consumers?

Cyber-Charter Schools

How have states fostered or hindered cyber-charter schools? What are the competitive benefits of cyber-schools? Are there legitimate consumer protection concerns? Do the efforts of some school districts to limit cyber-charter schools raise any antitrust issues? What is the current status and focus of litigation, and what types of legislative solutions are possible?

Real Estate/Mortgages

What types of state regulations limit online real estate an mortgage services? What are the costs to consumers? What is the impact of regulations requiring real estate closings or refinancing to be conducted solely by attorneys? What are the pro-consumer rationales for such regulations, and are there less restrictive means of achieving the same goals? What is the impact of Internet competition upon real estate commissions,and how are realtors responding to that competition?

Health Care/Pharmaceuticals/ Telemedicine

What types of state regulations limit online provision of health care goods and services, such as pharmaceuticals and telemedicine? What are the costs to consumers? Are these regulations directed mainly at out-of-state competitors? Are online prescriptions particularly susceptible to abuse? What are the pro-consumer rationales for regulations, and are there less restrictive means of achieving the same goals? Are reciprocity statues an effective way to dealing with these issues?

Wine Sales

How does the "three tier" system for distributing wine limit online sales, and are there legitimate justifications, such as temperance or taxation, for the system? What are the costs to consumers? Are there separate and measurable price and variety effects? Are there less restrictive means for achieving the same goals, and are reciprocity statues a viable alternative? What is the status of the ongoing litigation addressing this system?

Auctions

How have states applied their existing auctioneering regulations to online auction sites? What are the costs to consumers? Have states enacted new regulations targeted at online auctions? Do such regulations limit competition from online auctions, and if so how? Do those regulations impact large and small online auctioneers differently? To what extent are online auctions replacing traditional retail outlets, for consumers goods, automobiles (new or used), and other products? What types of state regulation can best protect consumers while still allowing competition from online auctions?

Contact Lenses

What types of state regulations limit online sales of contact lenses? What are the costs to consumers? What are the health justifications for such regulations, and how valid are they? Are there separate issues for replacement lenses or disposable lenses? How should prescription requirements be administered? Have manufacturers limited the supply of contact lenses to online vendors, and if so why?

Funerals (Caskets)

What types of state regulations limit online casket sales? What are the costs to consumers? What are the pro-consumer rationales for such regulaitons, particularly in light of the recent controversies? Are there less restrictive means of achieving the same goals? What is the status and focus of current litigation?

The Commission welcomes suggestions for other questions that also shuld be addressed. Proposed questions, identified as such, may be sent by electronic mail to *competition@ftc.gov*.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–18704 Filed 7–23–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—06/24/2002			
20020795	Kaman Corporation	Dae Y. Shin	DSE Inc.
20020868	Holding Eurocard, S.A.	MasterCard Incorporated	MasterCard Incorporated.

Trans #	Acquiring	Acquired	Entities
20020872	CSFB Global Opportunities Partners, L.P.	Oxford Automotive, Inc	Oxford Automotive, Inc.
20020876	Daniel K. Thome	GS Industries (Debtor-In-Possesion).	Georgetown Steel Corporation.
20020880	WorldCom, Inc	Star Telecommunications, Inc	PT–1 Communications, Inc. PT–1 Long Distance, Inc. PT–1 Technologies, Inc.
20020882	The PMI Group, Inc	Fairbanks Capital Holding Corp	Fairbanks Capital Holding Corp.
20020883	AT&T Broadband Corp	GSA Commerce, Inc	GSA Commerce, Inc.
20020884	GTCR Fund VII, L.P	Alex E. Gores	VeriFone, Inc.
Transactions Granted Early Termination—06/25/2002			
20020873	MedPoint Inc	MedPoint Inc	Wallace Pharmaceuticals/ASTA Medica L.L.C.
20020879	Cooperatieve Centrale Raiffeisen—Boerenleenbank B.A.	General Mills, Inc	General Mills, Inc. GM Cereals Operations, Inc.
Transactions Granted Early Termination—06/26/2002			
20020888	Alcatel	Telera, Inc	Telera, Inc.
Transactions Granted Early Termination—06/28/2002			
20020838	DRS Technologies, Inc	Eaton Corporation	Eaton Corporation.
20020853	Striker Corporation	Tyco International Ltd	Surgical Dynamics Canada, Inc. Surgical Dynamics Germany GmbH. Surgical Dynamics Inc.
20020858	South African Breweries plc	Philip Morris Companies, Inc	Miller Brewing Company.
20020869	GS Capital Partners 2000, L.P	Atlantic Equity Partners International II, L.P.	BPC Holding Corporation.
20020893	Group 1 Automotive, Inc.	Miller Trust of 1980 (restated)	Miller Automotive Group Inc.
20020898	Electronic Data System Corporation.	Loudcloud, Inc	Loudcloud, Inc.
20020902	CompuCredit Corporation	Federated Department Stores Inc	Fingerhut Receivables, Inc.
20020905	Novell, Inc	SilverStream Software, Inc	SilverStream Software, Inc.
Transactions Granted Early Termination—07/01/2002			
20020863	Aquila, Inc	George T. Lewis, Jr. and Betty G. Lewis.	Cogentrix Energy, Inc.
20020871	ABM Industries Incorporated	Michael Sweig	Lakeside Building Maintenance, Inc.
20020877	Carl C. Icahn	Tyco International Ltd	Tyco International Ltd.
20020895	Gray Communication Systems, Inc.	Stations Holding Company, Inc	Stations Holding Company, Inc.
Transactions Granted Early Termination—07/02/2002			
20020900	Thomas J. Petters	Federated Department Stores, Inc.	Fingerhut Companies, Inc.
20020901	Theordore Deikel	Federated Department Stores, Inc.	Fingerhut Companies, Inc.
Transactions Granted Early Termination—07/03/2002			
20020906	Cemex, S.A. de C.V	Puerto Rican Cement Company, Inc.	Puerto Rican Cement Company, Inc.
Transactions Granted Early Termination—07/04/2002			
20020892	Warburg Pincus Private Equity VIII, L.P.	Agere Systems, Inc	Agere Systems, Inc.
Transactions Granted Early Termination—07/05/2002			
20020899	Proxim Corporation	Agere Systems, Inc.	Agere Systems, Inc.
20020907	EDO Corporation	Behrman Capital II, L.P	CEI Systems, Inc. Condor Systems, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative. Federal Trade Commission, Premeger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–18703 Filed 7–23–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0059]

Amgen Inc. and Immunex Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 12, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Jex, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3273.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 12, 2002), on the World Wide Web, at "*http://www.ftc.gov/os/2002/07/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from Amgen Inc. ("Amgen") and Immunex Corporation ("Immunex") that is designed to remedy the anticompetitive effects of the merger of Amgen and Immunex. Under the terms of the agreement, the companies would be required to: (1) Divest of all Immunex's assets relating to Leukine (a neutrophil regeneration factor) to Schering AG ("Schering"); (2) license certain Amgen patents relating to its tumor necrosis factor ("TNF") receptor to Serono S.A. ("Serono"); and (3) license certain Amgen and Immunex patents relating to the development of Interleukin-1 ("IL–1") receptors to Regeneron Pharmaceuticals Inc. ("Regeneron").

The proposed Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

In their merger agreement of December 16, 2001, Amgen and Immunex propose to combine their two companies in a transaction valued at approximately $16 billion. Thereafter, the merged entity will be called Amgen Inc. The proposed Complaint alleges that the proposed merger, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the markets for: (1) Neutrophil regeneration factors; (2) TNF inhibitors; and (3) IL–1 inhibitors. The proposed Consent Order would remedy the alleged violations by replacing the lost competition in each of these markets that would result from the merger.

Neutrophil Regeneration Factors

Neutrophil regeneration factors are used to treat neutropenia, the suppression of production of certain white blood cells (known as "neutrophils") which often results from chemotherapy. Immunex's product, Leukine, stimulates the production of both granulocytes and macrophages, two types of neutrophils, while Amgen's products, Neupogen and Neulasta, stimulate the production of granulocytes. The use of these products to stimulate neutrophil regeneration allows patients to maintain a robust immune system while continuing with their chemotherapy regimens. Annual U.S. sales of neutrophil regeneration factors total approximately $1.2 billion.

The market for neutrophil regeneration factors is highly concentrated. Amgen and Immunex are the only companies with neutrophil regeneration factors approved for sale in the United States. Amgen's Neupogen is the leading product in this market, with 2001 sales of approximately $1.05 billion in the United States. In January 2002, Amgen launched Neulasta, an extended-release version of Neupogen. Immunex's 2001 sales for Leukine were $109 million.

Entry into the neutrophil regeneration factor market requires lengthy preclinical and clinical trials, data collection and analysis, and expenditures of significant resources over many years to qualify manufacturing facilities with the Food and Drug Administration ("FDA"). Clinical development and FDA approval can extend from 6 to 10 years and cost over $200 million. The FDA must approve all phases of development, including extensive preclinical and clinical work. The most significant barriers to entry include technical, regulatory, patent, clinical and production barriers. No company can reach advanced stages of development

in the relevant market without: (1) Clinical trial expertise; (2) patent rights sufficient to provide the company with reasonable assurances of freedom to operate; (3) commercial scale product manufacturing expertise and capacity; and (4) regulatory approvals.

The proposed merger of Amgen and Immunex would cause significant anticompetitive effects in the U.S. neutrophil regeneration market by eliminating actual, direct, and substantial competition between the only two firms in the market. As a result, cancer patients that need these drugs would likely pay higher prices for neutrophil regeneration factors.

The proposed Consent Order maintains competition in the market for neutrophil regeneration factors by requiring that Immunex sell its Leukine business to Schering so that Schering can maintain the present competition against Amgen as well as the continued research and development of Leukine for future competition.

TNF Inhibitors

TNF is a cytokine that promotes the inflammation of human tissues. TNF inhibitors may be used to prevent the binding of TNF proteins with TNF receptors, thereby blocking the triggering of the inflammation cascade. TNF inhibitors are used primarily to treat rheumatoid arthritis, Crohn's disease, and psoriatic arthritis, but they also are being examined for a host of other autoimmune diseases. Annual U.S. sales of TNF inhibitors total approximately $1.4 billion.

The market for TNF inhibitors is highly concentrated. Immunex, which makes Enbrel, and Johnson & Johnson ("J&J"), which makes Remicade, are the only companies with TNF inhibitors on the market. In 2001, Immunex sold over $760 million of Enbrel in the United States and Canada, while Remicade accounted for the rest of the market in the United States. There are only three other companies with TNF inhibitors in clinical development in the United States. Amgen has a TNF inhibitor similar to Enbrel in clinical development that it expects to launch in 2005. Abbott recently submitted a Biologic License Application to the FDA for its D2E7 product. Pharmacia and Celltech are jointly in Phase II trials for their TNF inhibitor, CDP870. Additionally, Serono is developing a TNF inhibitor for use in Europe, but it does not possess the patent rights necessary to market the product in the United States.

New entry into the research, development, manufacture, and sale of TNF inhibitors is difficult, expensive, and time-consuming. As with other pharmaceutical markets, entry requires identifying a preclinical compound, performing animal safety tests, clinically developing the product in humans, securing FDA approval of commercial scale production facilities, and obtaining FDA approval to market the drug in the United States. In order to enter the market, a firm must incur substantial sunk costs to research, develop, manufacture, and sell a TNF inhibitor. De novo entry has been estimated to take from 8 to 10 years and cost over $400 million. New entry sufficient to deter or counteract the anticompetitive effects of the proposed merger would not occur in a timely manner.

The proposed merger of Amgen and Immunex would cause significant anticompetitive effects in the U.S. TNF inhibitor market by eliminating potential competition from Amgen's TNF inhibitor in development. Immunex and Amgen are the only two firms that market or are developing soluble TNF receptor products in the United States and two of only five firms that are developing any type of TNF inhibitor for the U.S. market. As a result of the merger, consumers of these drugs would likely pay higher prices and have fewer alternatives for TNF inhibitors for the treatment of rheumatoid arthritis and other diseases.

The proposed Consent Order maintains competition in the TNF inhibitor market by requiring that Amgen license certain patents to Serono, a Swiss biotechnology company with a soluble TNF inhibitor in clinical development that otherwise likely would not be sold in the United States due to blocking patents held by Amgen. This license would assure Serono that it has the freedom of operation necessary to market its TNF inhibitor in the U.S. Amgen retains the rights to pursue development of its TNF inhibitor either as a menotherapy or in combination with an IL–1 inhibitor.

IL–1 Inhibitors

IL–1 is another cytokine that promotes the inflammation of human tissues. IL–1 inhibitors prevent the binding of IL–1protein with IL–1 receptors, thereby blocking the triggering of the inflammation cascade. IL–1 inhibitors are used to treat rheumatoid arthritis.

The market for IL–1 inhibitors is highly concentrated. Amgen's Kineret, approved by the FDA in November of 2001, is the only IL–1 inhibitor on the U.S. market. Sales to date have exceeded $2.4 million. Immunex and Regeneron are the only other companies with IL–1 inhibitors in clinical trials in the United States. Regeneron's development and commercialization of its IL–1 Trap, however, may be delayed or foreclosed by patents owned by Immunex. It appears that Immunex is likely to succeed in its efforts to preclude Regeneron's successful commercializaiton of its IL–1 Trap product through patent infringement litigation for the following reasons: (1) Immunex has indicated that it will seek to block Regeneron by using patent litigation; (2) Regeneron has indicated that such litigation, even were it to yield an outcome favorable to Regeneron, could foreclose its ability to commercialize its IL–1 Trap; and (3) the likelihood of threatened patent litigation by Immunex will jeopardize and could effectively preclude commercialization of Regeneron's IL–1 Trap.

New entry into the research, development, manufacture, and sale of IL–1 inhibitors is difficult, expensive, and time-consuming. As with other pharmaceutical markets, entry requires identifying a preclinical compound, performing animal safety tests, clinically developing the product in humans, securing FDA approval of commercial scale production facilities, and obtaining FDA approval to market the drug in the United States. In order to enter the market, a firm must incur substantial sunk costs to research, develop, manufacture, and sell an IL–1 inhibitor. *De novo* entry has been estimated to take between 6 to 10 years and cost over $200 million. New entry sufficient to deter or counteract the anticompetitive effects of the merger would not occur in a timely manner.

The proposed merger of Amgen and Immunex would cause significant anticompetitive effects in the U.S. IL–1 inhibitor market by eliminating Amgen's most significant (and likely only) potential competitor, Immunex. By consolidating the IL–1 patents of both companies, Amgen would be more likely to use its combined patents to block Regeneron from marketing an IL–1 inhibitor. Furthermore, Amgen and Immunex are the only companies actively engaged in the development of TNF/IL–1 combination therapies, which may prove more efficacious for the treatment of rheumatoid arthritis in many patients than using either drug alone. The proposed merger, therefore, is likely to lead to unilateral anticompetitive effects in the IL–1 inhibitor market by eliminating potential competition between Amgen and Immunex as well as the ongoing research and development competition between the companies.

The proposed Consent Order remedies the merger's anticompetitive effects by requiring that Immunex license certain patents to Regeneron, given Regeneron the freedom of operation necessary to bring its IL–1 Trap product to the market and compete against Amgen in this market.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the proposed Consent Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–18702 Filed 7–23–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

1. *HHS Acquisition Regulation (HHSAR) Part 342—Contract Administration—0990–0131—Extension with no change*—HHSAR 342.7103 requires reporting information when a cost overrun is anticipated. The information is used to determine if a proposed overrun is reasonable. *Respondents:* State or local governments, business, or other for-profit, non-profit institutions, small business; *Number of respondents:* 215; *Average burden per response:* 20 hours; *Total burden:* 4,300 hours.

2. *HHS Acquisition Regulations (HHSAR Part 333 Disputes and Appeals—0990–0133—Extension with no change*—The Litigation and Claims clause is needed to inform the government of actions filed against government contracts. *Respondents:* State or local governments, business or other for-profit institutions, small business; *Number of respondents:* 86; *Average burden per response:* 30 minutes; *Total burden:* 43 hours.

3. *HHS Acquisition Regulation (HHSAR) Part 332—Contract Financing—0990–0134—Extension with no change*—The requirements of HHSAR Part 332 are needed to ascertain costs associated with certain contracts so as to timely pay contractors. *Respondents:* State or local governments, small businesses; *Number of respondents:* 226; *Average burden per response:* one hours; *Total burden:* 226 hours.

4. *HHS Acquisition Regulation (HHSAR) Part 324—Protection of Privacy and Freedom of Information—0990–0136—Extension with no change*—The confidentiality of information requirements are needed to prevent improper disclosure of confidential data. *Respondents:* State of local governments, business or other for-profit, non-profit institutions, small businesses; *Number of respondents:* 638; *Average burden per response:* 8 hours; *Total burden:* 5,104 hours.

5. *HHS Acquisition Regulation (HHSAR) Part 316—Types of Contracts—0990–0138—Extension with no change— The negotiated Overhead Rate*—Fixed clause is needed since fixed rates are authorized by OMB Circular and a clause is not provided in the Federal Acquisition Regulation (FAR). *Respondents:* non-profit institutions; *Number of respondents:* 520: *Average burden per response:* 10 hours; total burden: 5,200 hours.

6. *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—0990–0169—Extension with no change*—Pre-award, post-award, and subsequent reporting and recordkeeping requirements are necessary to award, monitor, close out and manage grant programs, ensure minimum fiscal control and accountability for Federal funds and deter fraud, waste and abuse. *Respondents:* State and local governments; *Number of respondents:* 4,000; *Average burden per response:* 70 hours; *Total burden:* 280,000 hours.

7. *HHS Acquisition Regulation (HHSAR) Part 370—Special Programs Affecting Acquisition—0990–0129—Extension with no change*—Establishes requirements for the accessibility of meetings, conferences, and seminars to persons with disabilities; establishes requirements for Indian Preference in employment, training and subcontracting opportunities. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions, small businesses; *Burden Information about Accessibility of Meetings—Annual number of respondents:* 335; *Average burden per response:* 10 hours; *Total annual number of respondents:* 932; *Average burden per response;* 8 hours; *Total annual burden:* 7,456 hours—*Total Burden:* 10,806 hours.

8. *HHS Acquisition Regulation (HHSAR) Part 352—Solicitation Provisions and Contract Clauses—0990–0130—Extension with no change*—The Key Personnel clause in HHSAR 352.27–5 requires contractors to obtain approval before substituting key personnel which are specified in the contract. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions, small businesses; Total number of *respondents:* 1,921; *Average burden per response:* 2 hours; *Total burden:* 3,842 hours.

Send comments to Cynthia Agents Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: July 16, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–18622 Filed 7–23–02; 8:45 am]

BILLING CODE 4151–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Measures of Patients' Hospital Care Experiences

AGENCY: Agency for Healthcare Reserach and Quality (AHRQ), HHS.

ACTION: Notice of Request for measures.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is soliciting the submission of instruments measuring patients' experience with the

quality of hospital care from researchers, stakeholders and other interested parties. This initiative is in response to the priority established by the Acting Director of AHRQ and the Administrator of the Centers for Medicare & Medicaid Services (CMS), which is to support the development of a standard that would be used nation wide. While CAHPS®, funded by AHRQ, has been accepted as the industry standard for measuring consumers' experiences within the health care system, it does not address patients' experiences within the acute care setting. In response to this need, AHRQ will initiate the process of developing a public domain instrument by reviewing existing instruments that capture the patients' hospital experiences.

DATES: Please subject instruments and supporting information by September 23, 2002. AHRQ will not respond individually to submittrs, but will consider all submitted instruments and publicly report the results of the review of the submissions in aggregate.

ADDRESSES: Submissions should include a brief cover letter, a copy of the instrument for consideration and supporting information as specified under Submission Criteria, below. Submissions may be in the form of a letter or e-mail, preferably with an electronic file in a standard word processing format on a 3½-inch floppy disk or as an e-mail attachment. Responses to this request should be submitted to: Charles Darby, Agency for Healthcare Research and Quality, 6011 Executive Blvd., Suite 200, Rockville, MD 20852, Phone: (301) 594–2050, Fax: (301) 594–2155, E-mail: *cdarby@ahrq.gov*.

To facilitate handling of submissions, please include full information about the instrument developer or contact: (a) name, (b) title, (c) organization, (d) mailing address, (e) telephone number, (f) fax number and (g) e-mail address. Also, please submit a copy of the instrument, evidence that it meets the criteria below, *i.e.*, citation of a peer-reviewed journal article pertaining to the instrument to include the title of the article, author(s), publication year, journal name, volume, issue, and page numbers where article appears and or other applicable evidence. Submitters must also provide a statement of willingness to grant to AHRQ the right to use and authorize others to use submitted measures and their documentation as part of a CAHPSâ-trademarked instrument. This CAHPSâ instrument for patient assessment of hospital care will be made publicly available, free of charge. Please do not use acronyms. Electronic submissions are encouraged.

FOR FURTHER INFORMATION CONTACT: Charles Darby, Center for quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, 6011 Executive Blvd., Suite 200, Rockville, MD 20852; Phone: (301) 594–2050; Fax: (301) 594–2155, e-mail: *cdarby@ahrq.gov*.

Submission Criteria

Instruments submitted should focus on acute, inpatient stays for medical, surgical care, OB/GYN and/or pediatric care. Measures submitted must meet these criteria to be considered: capture the patients' experience of care in acute care and/or hospital settings; demonstrate a high degree of reliability and validity; and have been used widely, not just in one or two research studies or local hospital settings. Submitters willingness to grant to AHRQ the right to use and authorize others to use the instrument means that the CAHPS® trademark will be applied to a new instrument combining the best features of all the submissions as well as any ideas that may develop from reviewing them, to ensure free access to the instrument, and free access to the instrument's supportive/administrative information. AHRQ, in collaboration with CAHPS grantees, will evaluate all submitted instruments and select one or more either in whole or in part for testing and, if required, additional modification. AHRQ will assume responsibility for the final measure set as well as any future modifications to the instrument.

The finalized instrument will bear the CAHPS® trademark and it will be made freely available for use by all interested parties. However, as a matter of quality control, there will be warnings that the CAHPS® identification may not be used if any changes are made to the instrument or final measure set without review and permission of the agency. Each submission should include the following information: the name of the instrument, whether the instrument is disease or condition specific, domain, language(s) the instrument is available in; evidence of cultural/cross group comparability, if any, instrument reliability (internal consistency, test-retest, etc.) validity (content, construct, criterion-related), response rates, methods and results of cognitive testing and field-testing and description of sampling strategies and data collection protocols, including such elements as mode of administration, use of advance letters, timing and frequencies of contacts. In addition, a list of hospitals in which the instrument has been fielded or counts of the number of hospitals by state or region, in which the survey has been and/or is being used should also be included in the submission materials. Submission of copies of existing report formats developed to disclose findings to consumers and providers is desirable, but not required. Additionally, information about existing database(s) for the instrument(s) submitted is helpful, but not required for submission. Evidence of the criteria should be demonstrated through submission of peer-reviewed journal article(s) or through the best evidence available at the time of submission.

SUPPLEMENTARY INFORMATION:

Background

AHRQ is a leader in developing and testing instruments for measuring consumer experience within the healthcare system of the United States as evidenced by the development of CAHPS®, formerly the Consumer Assessment of Health Plans, which provides information on health plan quality to consumers and purchasers alike. While CAPHS® is highly regarded within the industry and provides valuable information; it does not address patients' experience within an acute care setting. Standardization of measures is the basis for the development of the CAHPS® system, and is essential for meaningful comparison of performance of hospitals and acute care health systems. Use of a standardized measure of patient experience in hospital settings provides several benefits including: comparable information across hospitals for the public about the quality of care from the patient's perspective; data-based recommendations for quality improvement efforts and a data base to stimulate research in this area.

Leaders in the health care sector have called for a response to these pressing needs. In "Crossing the Quality Chasm," the National Institute of Medicine (IOM) established patient-centered care as one of the industry's six aims for quality improvement. The dimensions of patient-centered care include: respect for patients' values, preferences, and expressed needs; coordination and integration of care; information, communication, and education; physical comfort; emotional support, *i.e.*, relieving fear and anxiety; involvement of family and friends; continuity and transition; and access to care (2001).

The measurement of these dimensions will require a standardized instrument that produces reliable and valid results.

Furthermore, the National Quality Forum (NQF) has cited the need for further research and development of suitable performance measures to evaluate and improve the quality of care in the hospital setting. Among the many priorities cited by the NQF in this area, the need to measure patient experiences with inpatient care is crucial.

In an effect to address the concerns of the industry, the Acting Director of AHRQ and the Administrator of the Centers for Medicare & Medicaid Services (CMS) have established a priority to develop a standard for measuring and the public reporting of patient experiences in the acute care setting.

AHRQ, through a collaborative process with CMS and other Federal agencies, as well as other stakeholders, has initiated the process for this project. The steps to advance this initiative include:

- *Stakeholder Meetings:* A series of public meetings will be held to identify the issues, concerns and interests of the healthcare community. Summaries of all meetings will be posted on the AHRQ Website: *http//www.ahrq.gov/qual/cahpsix.htm.*
- *Sponsorship:* Identify potential sponsors who will fund, assist in development and periodic revisions, and ultimately help support the process for implementing and maintaining this standardized instrument.
- *Research Plan:* The process by which measures will be defined and applicable instruments identified. Instruments submitted will be evaluated to determine if they meet the measurement needs and to identify whether additional measure development is required. Once consensus among AHRQ and the CAHPS Grantees on the instrument is achieved, and the instrument testing is concluded, the resulting work will be readily available free of charge to all prospective users.
- *Implementation Plan:* A description of the recommended or required process to implement the standardized instrument will also be readily available including information related to data collection, analysis, and public reporting.

Dated: July 18, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–18710 Filed 7–23–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites of the Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period extending through July 7, 2004.

For further information, contact Burma Burch, CDC/ATSDR Committee Management Officer, Centers for Disease Control and Prevention of the Department of Health and Human Services, 1600 Clifton Road, NE., MS E72, Atlanta, Georgia 30333. Telephone (404) 498–0090, or fax (404) 498–0011.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 18, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–18669 Filed 7–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10064]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Minimum Data Set (MDS) for Swing Bed Hospitals and Supporting Regulations in 42 CFR, Sections 413.337 and 483.20; *Form No.:* CMS–10064 (OMB# 0938–0872); *Use:* We are requesting re-approval of resident assessment information that swing bed hospitals are required to submit as described at 42 CFR 483.20 in the manner necessary to administer the payment rate methodology described in 42 CFR 413.337; *Frequency:* Other: Days 5, 14, 30, 60 & 90 of stay; *Affected Public:* Not-for-Profit Institutions, and State, Local or Tribal Government; *Number of Respondents:* 1,250; *Total Annual Responses:* 156,480; *Total Annual Hours:* 132,360.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–10064, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 16, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18653 Filed 7–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–460]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Participating Physician or Supplier Agreement, CMS–460; *Form No.:* CMS–460 (OMB# 0938–0373); *Use:* The CMS–460 is completed by nonparticipating physicians and supplier if they choose to participate in Medicare Part B. By signing the agreement, the physician or supplier agrees to take assignment on all Medicare claims. To take assignment means to accept the Medicare allowed amount as payment in full for the services they furnish and to charge the beneficiary no more than the deductible and coinsurance for the covered service. In exchange for signing the agreement, the physician or supplier receives a significant number of program benefits not available to nonparticipating physicians and suppliers. The information is needed to know to whom to provide these benefits; *Frequency:* Once, unless re-enrolled; *Affected Public:* Business or other for-profit, and Individuals or Households; *Number of Respondents:* 6,250; *Total Annual Responses:* 6,250; *Total Annual Hours:* 1,563.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 16, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18651 Filed 7–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–106]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare Coverage of Heart Transplants; *Form No.:* CMS–R–106 (OMB# 0938–0490); *Use:* Medicare Participating Hospitals must file an application to be approved for coverage and payment of heart transplants performed on Medicare beneficiaries. This information collection specifies the criteria for approval.; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 4; *Total Annual Responses:* 4; *Total Annual Hours:* 400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 16, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18652 Filed 7–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–1513]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare/Medicaid Disclosure of Ownership and Control Interest Statement and Supporting Regulations in 42 CFR 420.200–.206, 455.100–.106 and 45 CFR 228.72–.73; *Form No.:* HCFA–1513 (OMB# 0938–0086); *Use:* The Medicare/Medicaid Disclosure of Ownership and Control Interest Statement must be used by State agencies and HCFA regional offices to determine whether providers meet the eligibility requirements for Titles 18 and 19 (Medicare and Medicaid) and for grants under Titles V and XX. Review of ownership and control is particularly necessary to prohibit ownership and control for individuals excluded under Federal fraud statutes; *Frequency:* Other (every 1 to 3 years); *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 92,000; *Total Annual Responses:* 92,000; *Total Annual Hours:* 46,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 17, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18720 Filed 7–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–381]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Identification of Extension Units of Outpatient Physical Therapy (OPT) and Outpatient Speech Pathology (OSP) Providers and Supporting Regulations in 42 CFR 485.701–485.729; *Form No.:* CMS–381 (OMB# 0938–0273); *Use:* When an OPT/OSP provider furnishes services to locations other than their already certified premises (extension locations), those premises are considered to be part of the OPT/OSP provider and are subject to the same Medicare regulations as the primary location. This form is used by the State survey agencies and by the CMS regional offices to identify and monitor extension locations to ensure their compliance with Federal requirements; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 2,833; *Total Annual Responses:* 2,833; *Total Annual Hours:* 708.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 16, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18721 Filed 7–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 23, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management

Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Texas Parks and Wildlife Department, Austin, Texas, PRT–057900.

The applicant requests a permit to import biological samples taken from wild specimens of black-capped vireo (*Vireo atricapillus*) for the purpose of scientific research.

PRT–059591

Applicant: Adrian M. Meyer, Beloit, KS.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–059045

Applicant: Elmer E. Mowbray, La Belle, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: July 12, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–18694 Filed 7–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 23, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–059006

Applicant: Disney's Animal Kingdom, Lake Buena Vista, FL.

The applicant requests a permit to import two male captive-born cheetah (*Acinonyx jubatus*) from the Wassenaar Wildlife Breeding Centre, Wassenaar, The Netherlands, for the purpose of enhancement of the survival of the species through captive propagation.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: July 5, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–18695 Filed 7–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On March 20, 2002, a notice was published in the **Federal Register** (67 FR 13003), that an application had been filed with the Fish and Wildlife Service by John F. Wilhelm for a permit (PRT–053629) to import one polar bear taken from the Southern Beaufort Sea population, Canada, for personal use.

Notice is hereby given that on June 24, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: July 12, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–18693 Filed 7–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for approval.

SUMMARY: The public is invited to comment on the following application for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

DATES: Written data, comments, or requests for a copy of this complete application must be received by August 23, 2002.

ADDRESSES: Written data, comments, or requests for a copy of this complete application should be sent to the Chief, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Andrea Gaski, Chief, Branch of CITES Operations, Division of Management Authority, at 703–358–2095.

SUPPLEMENTARY INFORMATION:

Applicant: Ms. Cathy S. MacKay of Redding, California.

The applicant wishes to establish a cooperative breeding program for silver-eared mesia (*Leiothrix argentauris*) and red-billed leiothrix (*Leiothrix lutea*). The applicant wishes to be an active participant in this program along with eight other individuals. The National Finch and Softbill Society has agreed to assume oversight responsibility of this program if it is approved. Documents and other information submitted with this application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice.

Dated: July 11, 2002.

Mark Albert,

Acting Chief, Branch of CITES Operations, Division of Management Authority.

[FR Doc. 02–18692 Filed 7–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–6334–AA; GP2–0195A]

Roseburg District Bureau of Land Management (BLM) Resource Advisory Committee (RAC): Correction, Cancellation of Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings; cancellation.

SUMMARY: On May 20, 2002, the **Federal Register** published the dates of the Roseburg District BLM Resource Advisory Committee Meetings. The following meeting dates have been cancelled: July 22, 2002, July 29, 2002, August 13, 2002, August 19, 2002, and August 26, 2002.

SUPPLEMENTARY INFORMATION: The RAC meets in accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Roseburg District BLM Resource Advisory Committee may be obtained from E. Lynn Burkett, Public Affairs Officer, Roseburg District Office, 777 Garden Valley Blvd, Roseburg, Oregon 97470, or *elynn_burkett@blm.gov*, or on the web at *http://www.or.blm.gov*.

Dated: July 19, 2002.

Michael H. Schwartz,

Regulatory Affairs Group Manager.

[FR Doc. 02–18802 Filed 7–22–02; 10:53 am]

BILLING CODE 4310–33–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,710]

Alpha Carb Enterprises, Leechburg, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 3, 2002, the company, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on April 29, 2002 and published in the **Federal Register** on May 17, 2002 (67 FR 35143).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Alpha Carb Enterprises, Leechburg, Pennsylvania engaged in the production of steel and tungsten carbide progressive dies, was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of steel and tungsten carbide progressive dies. The survey revealed that none of the customers increased their import purchases of steel and tungsten carbide progressive dies, while reducing their purchases from the subject firm during the relevant period. The subject firm did not import steel and tungsten carbide progressive dies during the relevant period.

The petitioner alleges that they believe the TAA decision was based on the company being an importer of steel and tungsten carbide progressive dies, rather than a manufacturer of steel and tungsten carbide progressive dies.

A review of the initial investigation conducted for the subject plant workers treated the worker group as production workers engaged in activities related to the production of steel and tungsten carbide progressive dies and not importers of steel and tungsten carbide progressive dies.

The petitioner further believes that their customers are importing steel and tungsten carbide progressive dies from overseas, resulting in lost business at the subject plant.

A review of the initial investigation shows that none of the respondents increased their purchases of steel and tungsten carbide progressive dies, while decreasing their purchases from the subject firm during the relevant period.

The petitioner also alleges that a local competitor was granted TAA eligibility and strongly believes they should be granted TAA eligibility based on that event.

As already indicated, the "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The TAA eligibility of a competitor does not show the direct impact of imports contributing to the subject plant layoffs and therefore is not relevant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify

reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 12th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18642 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,255]

American Greetings Corporation, Corbin, KY; Notice of Negative Determination Regarding Application for Reconsideration; A Corrected Republication in Full

A corrected republication in full is necessary for the Notice of Negative Determination Regarding Application for Reconsideration applicable to workers of American Greetings Corporation, Corbin, Kentucky, TA–W–41,455. The notice was published in the **Federal Register** on July 9, 2002 (FR 67 45546), FR Document 02–17147. The word "not" was inadvertently omitted from the decision, and this correction is issued to insert the word "not" in the third paragraph, 4th line between the words "did" and "contribute". The notice is republished as follows:

By application received on June 6, 2002 and June 7, 2002, a worker and the Teamsters, Local 89, respectively, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 13, 2002, and published in the **Federal Register** on June 4, 2002 (67 FR 38521).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of American Greetings Corporation, Corbin, Kentucky was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. Increased imports did not contribute importantly to worker separations. The denial was based on Corbin, Kentucky production of printed greeting card sheets being consolidated with another American Greetings Corporation domestic production facility. The company did not import printed greeting card sheets during the relevant period.

The petitioners allege that American Greetings Corporation has been forced to restructure the company in order to cut costs, which resulted in lost jobs at the Corbin plant over a three year period, leading to the final closing of the subject plant. The petitioners further allege that the jobs lost at the Corbin plant is the result of American Greetings moving manufacturing production (candles, party goods, print greeting cards) from the Corbin plant to China, Mexico, Taiwan and Hong Kong. A copy of a label attached to the petitioner(s) request depicts that a product produced in China was imported directly to American Greetings Corp., Corbin, Kentucky.

A review of the initial decision and recent clarification by the company indicate there was no decline in the firm's customer base. Any declines in plant sales or production (party goods, gift wrap and bows, candles, printed greeting card sheets) are due to shifts in plant production to other domestic locations. That is, virtually all plant production was shifted to other domestic sources, except for a small portion of printed greeting card sheets that were ordered from a foreign source and scheduled to enter the United States beyond the relevant period of the investigation. In any event, the amount of printed greeting card sheets to be imported is relatively low and would not be considered a major contributing factor to the layoffs at the subject firm.

Further review and contact with the company shows that the preponderance in the declines in employment at the subject plant is related to other factors unrelated to imported products "like or directly competitive" with what the subject plant produced. That is, internet card competition and cost cutting measures such as the elimination of some high cost product lines and the consolidation of subject plant production to other affiliated domestic locations to cut costs are the dominant factors leading to the layoffs at the subject plant.

The Department contacted the company regarding a label attached and labels referenced in the petitioner's request for reconsideration. The company indicated that some of the products produced by the subject plant have been intermittently imported, but the amount of each type of product imported was negligible during the relevant period.

In a further allegation by the petitioner, it is indicated that the subject plant candle production was shifted to China and imported back to the United States. The company indicated candles imported back to the United States were negligible during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 21st day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18634 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,516, TA–W–40,516C, and TA–W–40,516D]

Bayer Clothing Group, Inc., Target Square Facility, Clearfield, PA; Macclenny Products, Lake Butler Facility, Lake Butler, Florida; Macclenny, FL Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 7, 2002, applicable to workers of Bayer Clothing Group, Inc., Target Square Facility, Clearfield, Pennsylvania. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 35141).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of men's sports coats, suit coats, blazers and slacks.

New information shows that worker separations occurred at the Macclenny Products, Lake Butler Facility, Lake Butler, Florida and Macclenny Products,

Macclenny, Florida locations of Bayer Clothing Group, Inc. The Lake Butler, Florida location which closed in April, 2002 and the Macclenny, Florida location provided warehousing and distribution services for Bayer Clothing Group, Inc. production facilities including Clearfield, Pennsylvania.

Accordingly, the Department is amending the certification to cover the workers of Bayer Clothing Group, Inc., Macclenny Products, Lake Butler, Florida and Macclenny, Florida.

The intent of the Department's certification is to include all workers of Bayer Clothing Group, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,516 is hereby issued as follows:

All workers of Bayer Clothing Group, Inc., Target Square Facility, Clearfield, Pennsylvania (TA–W–40,516) who became totally or partially separated from employment on or after January 22, 2002, through May 7, 2004, and Bayer Clothing Group, Inc., Macclenny Products, Lake Butler Facility, Lake Butler, Florida (TA–W–40,516C) and Bayer Clothing Group, Inc., Macclenny Products, Macclenny, Florida (TA–W–40,516D) who became totally or partially separated from employment on or after December 4, 2000, through May 7, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18631 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,539]

CECO Door Products, Assa Abloy Door Group LLC, Harlingen, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the U.S. Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 29, 2002, applicable to workers of CECO Door Products, Harlingen, Texas. The notice was published in the **Federal Register** on June 11, 2002 (67 FR 40006).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of metal doors and frames.

Company information shows that Assa Abloy Door Group LLC is the parent firm of CECO Door Products located in Harlingen, Texas. New information provided by the State shows that some workers separated from employment at CECO Door Products had their wages reported under a separate unemployment insurance (UI) tax account for Assa Abloy Door Group LLC also located in Harlingen, Texas.

Based on these findings, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of CECO Door Products who were adversely affected by increased imports of metal doors and frames.

The amended notice applicable to TA–W–41,539 is hereby issued as follows:

All workers of CECO Door Products and Assa Abloy Door Group LLC, Harlingen, Texas, who became totally or partially separated from employment on or after April 22, 2001, through May 29, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 16th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18638 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,459]

Dave Goldberg, Inc., Long Island City, NY; Notice of Termination of Certification

Pursuant to Section 223 of the Trade Act of 1974, on May 22, 2002, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance applicable to workers of the subject firm. The notice was published in the **Federal Register** on June 11, 2002 (67 FR 40004).

The State agency requested that the Department review the certification for workers of the subject firm engaged in the production of swimwear. New information shows that Dave Goldberg, Inc. is the parent company of Tama Sportswear located in Long Island City, New York. The Tama Sportswear certification, TA–W–40,569, was amended to include workers whose wages are reported to the Unemployment Insurance tax account for Dave Goldberg, Inc.

Consequently, continuance of this certification would serve no purpose and the certification is terminated.

Signed in Washington, DC this 15th day of July 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18635 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,899, TA–W–40,899A, and TA–W–40,899B]

E.J. Footwear LLC, Blairsville, GA; E.J. Footwear LLC, Franklin, TN; E.J. Footwear LLC, Vestal, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 3, 2002, applicable to workers of E.J. Footwear LLC, Blairsville, Georgia. The notice was published in the **Federal Register** on April 17, 2002 (67 FR 18923).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of work and occupational footwear.

The company reports that worker separations occurred at the Franklin, Tennessee and Vestal, New York facilities of the subject firm. These locations provide advertising, engineering and administrative support function services directly for the Blairsville, Georgia production facility.

Based on these findings, the Department is amending the certification to include workers of E.J. Footwear LLC, Franklin, Tennessee and Vestal, New York.

The intent of the Department's certification is to include all workers of E.J. Footwear LLC who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,899 is hereby issued as follows:

All workers of E.J. Footwear LLC, Blairsville, Georgia (TA–W–40,899), E.J. Footwear LLC, Franklin, Tennessee (TA–W–40,899A) and E.J. Footwear LLC, Vestal, New York (TA–W–40,899B) who became totally or partially separated from employment on or

after October 24, 2000, through April 3, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division, of Trade Adjustment Assistance.

[FR Doc. 02–18640 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,081A]

Goss Graphic Systems, Inc., Westmont, IL., and Operating at Various Field Offices in the Following States: TA–W–40,081B, Arizona; TA–W–40,081H, New Jersey; TA–W–40,081C, California; TA–W–40,081I, North Carolina; TA–W–40,081D, Colorado; TA–W–40,081J, Pennsylvania; TA–W–40,081E, Florida; TA–W–40,081K, Texas; TA–W–40,081F, Indiana; TA–W–41,081L, Wisconsin; TA–W–40,081G, Missouri; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 31, 2001, applicable to workers of Goss Graphic Systems, Inc., located in Westmont, Illinois. The notice was published in the **Federal Register** on November 9, 2001 (66 FR 56712).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information provided by the company show that workers in various States provide support services related to the production of printing presses at Goss Graphic Systems, Inc. The workers' wages for Goss Graphic Systems employees in Arizona, California, Colorado, Florida, Indiana, Missouri, New Jersey, North Carolina, Pennsylvania, Texas, and Wisconsin are paid by Goss Graphic Systems, Inc., Westmont, Illinois.

The intent of the certification is to provide coverage to all workers of the subject firm impacted by increased imports of printing presses. Therefore, the Department is amending the certification to include workers of the firm providing support services at various locations outside Illinois.

The amended notice applicable to TA–W–40,081A is hereby issued as follows:

All workers of Goss Graphic Systems, Inc., Westmont, Illinois, including workers at various field offices located in Arizona, California, Colorado, Florida, Indiana, Missouri, New Jersey, North Carolina, Pennsylvania, Texas, Wisconsin, who became totally or partially separated from employment on or after September 1, 2000, through October 31, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18630 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,834]

Levolor Kirsch Window Fashions, Levolor Home Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 8, 2002, applicable to workers of Levolor Kirsch Window Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, California. The notice was published in the **Federal Register** on April 24, 2002 (67 FR 20166).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wood and faux wood window coverings.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Levolor Home Fashions.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Levolor Kirsch Window Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, California who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,834 is hereby issued as follows:

All workers of Levolor Kirsch Window Fashions, Levolor Home Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, California, engaged in the production of wood and faux wood window coverings, who became totally or partially separated from employment on or after January 28, 2001, through April 8, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18641 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,327]

MeadWestvaco, Including Leased Workers of Bancroft Contracting, Denali Fire Protection, WF Porter, Mechanical Services, Cinbro Contracting, ES Boulos, CP Technologies and Arbon Equipment, Rumford, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 21, 2002, applicable to all workers of MeadWestvaco, located in Rumford, Maine. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The State reports that it was the company's intent to include leased workers producing coated groundwood paper and freesheet paper and market pulp at the Rumford mill. New information provided to the Department by the State and a company official show that MeadWestvaco leased employees to produce articles at the Rumford, Maine mill. Worker separations were experienced at Bancroft Contracting, Denali Fire Protection, WF Porter, Mechanical Services, Cinbro Contracting, ES Boulos, CP Technologies, and Arbon Equipment as a result of worker separations at MeadWestvaco.

Based on this new information, the Department is amending the certification to include leased workers producing coated paper and pulp at the Rumford mill. The intent of the Department's certification is to include all workers of MeadWestvaco adversely affected by imports.

The amended notice applicable to TA–W–41,327 is hereby issued as follows:

All workers of MeadWestvaco, Rumford, Maine, and leased workers of Bancroft Contracting, Denali Fire Protection, WF Porter, Mechanical Services, Cinbro Contracting, ES Boulos, CP Technologies, and Arbon Equipment engaged in employment related to the production of coated groundwood and freesheet paper and market pulp at MeadWestvaco, Rumford, Maine, who became totally or partially separated from employment on or after March 22, 2001, through June 21, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18639 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,850]

Newbold Corporation, Rocky Mount, VA; Notice of Termination of Certification

This notice terminates the Determination Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the Department on May 21, 2002, applicable to workers of NewBold Corporation, Rocky Mount, Virginia, engaged in employment related to the production of retail imprinter machines. The notice was published in the **Federal Register** on June 11, 2002 (67 FR 40003–40005).

At the request of the State agency, the Department reviewed the worker certification. Findings show that on January 9, 2002, all workers of NewBold Corporation, Rocky Mount, Virginia, were certified eligible to apply for Worker Adjustment Assistance, TA–W–39,448. All workers separated from employment with the subject firm on or after May 28, 2000, through January 9, 2004, are eligible to apply for worker adjustment assistance program benefits.

On January 9, 2002, the Department issued a certification of eligibility applicable to all workers at NewBold Corporation, Rocky Mount, Virginia, TA–W–39,448. Workers separated from employment with the subject firm on or after May 28, 2000, through January 9, 2004, are eligible to apply for worker adjustment assistance program benefits.

Based on this new information, the Department is terminating the certification for petition number TA–W–40,850. Further coverage for workers under this certification would serve no purpose, and the certification has been terminated.

Signed at Washington, DC, this 14th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18633 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,590]

Oxford Industries, Oxford Womenswear, New York, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 28, 2002 in response to a worker petition which was filed on behalf of workers at Oxford Industries, Oxford Womenswear, New York, New York.

An active certification covering the petitioning group of workers is already in effect (TA–W–39,764A, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18636 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,764 and TA–W–39,764A]

Oxford Industries, Inc., Oxford of Columbia, Columbia, SC, and Oxford Industries, Inc., Oxford Womenswear, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 30, 2001, applicable to workers of Oxford Industries, Inc., Oxford of Columbia, Columbia, South Carolina. The notice was published in the **Federal Register** on September 11, 2001 (66 FR 47241).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the New York, New York location of the subject firm. The New York, New York location provides administrative services supporting the production of ladies' apparel such as pants, skirts jackets and blouses at the Columbia, South Carolina facility of the subject firm.

Based on these findings, the Department is amending the certification to include workers of Oxford Industries, Oxford Womenswear, New York, New York.

The intent of the Department's certification is to include all workers of Oxford Industries, Oxford of Columbia who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,764 is hereby issued as follows:

All workers of Oxford Industries, Inc., Oxford of Columbia, Columbia, South Carolina (TA–W–39,764) and Oxford Industries, Oxford Womenswear, New York, New York (TA–W–39,764A) who became totally or partially separated from employment on or after August 27, 2001, through August 30, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division, of Trade Adjustment Assistance.

[FR Doc. 02–18629 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,255]

Potlatch Corporation, Honeywell Corporation, Minnesota Pulp and Paper Division, Brainerd, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a

Certification of Eligibility To Apply for Worker Adjustment Assistance on February 20, 2002, applicable to workers of Potlatch Corporation, Minnesota Pulp and Paper Division, Brainerd, Minnesota. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9325).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of high line coated printed paper.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Honeywell Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Potlatch Corporation, Minnesota Pulp and Paper Division, Brainerd, Minnesota who were adversely affected by increased imports.

The amended notice applicable to TA-W–39,255 is hereby issued as follows:

All workers of Potlatch Corporation, Honeywell Corporation, Minnesota Pulp and Paper Division, Brainerd, Minnesota, who became totally or partially separated from employment on or after May 1, 2000, through February 20, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18644 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,498]

Precision Twist Drill Co., Rhinelander, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 10, 2002, the United Steelworkers of America, District-2, Local 9408 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 7, 2002, and published in the **Federal Register** on May 17, 2002 (67 FR 35140).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Precision Twist Drill Co., Rhinelander, Wisconsin was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported twist drill bits, while decreasing their purchases from the subject firm during the relevant period. The investigation also revealed that Precision Twist Drill Co., Rhinelander, Wisconsin did not import articles "like or directly competitive" with the products produced at the subject plant. The separations at the subject plant were due to a transfer of plant production to another domestic facility.

The petitioner supplied additional information based on a company announcement dated April 25, 2002 indicating that the Rhinelander facility would close down and approximately two-thirds of the blank drill bit production would be manufactured overseas.

Based on data supplied during the initial investigation and further contact with the company, the shifts in plant production did not occur during the relevant period of the investigation. The shift in the production of blank drill bits to foreign sources began during July 2002. Any potential future company imports of blank drill bits are beyond the relevant period of the initial investigation.

The petitioner further alleges the subject plant once manufactured drills for Boeing and that production was shifted to Crystal Lake, Illinois. Since then, the company indicated they would shift that production to Brazil.

Recent information provided by the company indicates that the product (special drill bits) produced for Boeing was never produced at the subject plant. Therefore, the shift in production to Brazil by the Crystal Lake plant is not a relevant factor that is considered in meeting the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 11th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18643 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,569]

Tama Sportswear, a/k/a Dave Goldberg, Inc., Long Island City, NY Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 25, 2002, applicable to all workers of Tama Sportswear, located in Long Island City, New York. The notice was published in the **Federal Register** on May 2, 2002 (67 FR 22113).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of women's swimwear. New information provided by the State and a company official show that Dave Goldberg is the parent company of Tama Sportswear. Some workers wages are reported to the Unemployment Insurance tax account for Dave Goldberg, Inc.

The intent of the certification is to provide coverage to all workers of the subject firm impacted by increased imports of swimwear. Therefore, the Department is amending the certification to include all workers of the firm whose wages are reported to Dave Goldberg, Inc.

The amended notice applicable to TA–W–40,569 is hereby issued as follows:

All workers of Tama Sportswear, also known as Dave Goldberg, Inc., Long Island City, New York, who became totally or partially separated from employment on or after November 6, 2000, through April 25, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 15th day of July 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18632 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,495 and TA–W–38,495C]

VF Imagewear (East), Inc., Martinsville, VA, Including Employees of VF Imagewear (East), Martinsville, VA, Located in Golden Valley, MN, Dallas, TX, Portland, OR, and Salisbury, MD, and VF Imagewear (East), Inc., Brownsville, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 17, 2001, applicable to workers of VF Imagewear (East), Inc., Martinsville, Virginia. The notice was published in the **Federal Register** on May 3, 2001 (66 FR 22262). The certification was amended on December 14, 2001 to include employees of the Martinsville, Virginia facility of the subject firm located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations have occurred at The Brownsville, Texas location of VF Imagewear (East), Inc. The Brownsville, Texas workers provide warehousing and distribution services for the subject firm's production facilities, including Martinsville, Virginia.

Accordingly, the Department is amending the certification to cover the workers of VF Imagewear (East), Inc., Brownsville, Texas.

The intent of the Department's certification is to include all workers of VF Imagewear (East), Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,495 is hereby issued as follows:

All workers of VF Imagewear (East), Inc., Martinsville, Virginia, including workers of the Martinsville, Virginia facility located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland (TA–W–38,495) and VF Imagewear (East), Inc., Brownsville, Texas (TA–W–38,495C) who became totally or partially separated from employment on or after December 13, 1999, through April 17, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 3rd day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18628 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—05849]

Levolor Kirsch Window Fashions, Levolor Home Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, CA; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 8, 2002, applicable to workers of Levolor Kirsch Window Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, California. The notice published in the **Federal Register** on April 24, 2002 (67 FR 20166).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wood and faux wood coverings.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Levolor Home Fashions.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Levolor Kirsch Window Fashions, Wood and Faux Wood Customer Window Coverings Department, Westminster, California who were adversely affected by a shift of production to Mexico.

The amended notice applicable to NAFTA—05849 is hereby issued as follows:

All workers of Levolor Kirsch Window Fashions, Levolor Home Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, California, engaged in the production of wood and Faux wood window coverings, who became totally or partially separated from employment on or after February 4, 2001, through April 8, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18637 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs; Notice of Reinstatement of Chicago Messenger Service

AGENCY: Office of Federal Contract Compliance Programs, Department of Labor.

ACTION: Notice of reinstatement, Chicago Messenger Service.

SUMMARY: This notice advises that Chicago Messenger Service has been reinstated as an eligible bidder on Federal contracts and subcontracts. For further information, contact Charles E. James, Sr., Deputy Assistant Secretary for Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–3325, Washington, D.C. 20210, (202–693–0101).

SUPPLEMENTARY INFORMATION: Chicago Messenger Service, Chicago, Illinois, is, as of this date, reinstated as an eligible bidder on Federal contracts and subcontracts.

Signed: July 15, 2002, Washington, D.C.

Charles E. James, Sr.

Deputy Assistant Secretary.

[FR Doc. 02–18627 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–CM–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–090]

National Environmental Policy Act; Mars Exploration Rover-2003 Project

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft environmental impact statement (DEIS) for implementation of the Mars Exploration Rover (MER)–2003 Project.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216, subpart 1216.3), NASA has prepared and issued a DEIS for the MER–2003 project. The DEIS addresses the potential environmental impacts associated with continuing the preparations for and implementing the MER–2003 project. The purpose of this proposal is to perform exploration of the surface of Mars.

The project is planned to consist of two missions, each involving identical rover spacecraft. NASA proposes to launch the first mission from Cape Canaveral Air Force Station (CCAFS), Florida, in May or June 2003, on a Delta II 7925, and the second mission from CCAFS in June or July 2003, on a Delta II 7925 Heavy. Each rover would include two small radioactive sources for instrument calibration and would use up to eleven radioisotope heater units (RHU) for thermal control.

DATES: Interested parties are invited to submit comments on environmental concerns on or before September 9, 2002, or 45 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the MER–2003 project DEIS, whichever is later.

ADDRESSES: Comments submitted via first class, registered, or certified mail should be addressed to David Lavery, Office of Space Science, Mail Code SM, NASA Headquarters, Washington, DC 20546–0001. Comments submitted via express mail, a commercial deliverer, or courier service should be addressed to David Lavery, Office of Space Science, Mail Code SM, Attn: Receiving & Inspection (Rear of Building), NASA Headquarters, 300 E Street SW., Washington, DC 20024–3210. While hard copy comments are preferred, comments by electronic mail may be sent to *marsnepa@hq.nasa.gov*. The DEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546.

(b) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler at 321–867–2201 so that arrangements can be made.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800

Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

In addition, the DEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–1181).

(e) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–276–2704).

(f) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(g) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–0730).

(h) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(i) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(j) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–2030).

(k) NASA, Stennis Space Center, MS 39529 (228–688–2164).

Limited hard copies of the DEIS are available, on a first request basis, by contacting David Lavery at the address or telephone number indicated herein. The DEIS also is available in Acrobat® format at *http://spacescience.nasa.gov/admin/pubs/mereis/index.htm*.

FOR FURTHER INFORMATION CONTACT: David Lavery, 202–358–4800; electronic mail (marsnepa@hq.nasa.gov).

SUPPLEMENTARY INFORMATION: The MER–2003 project is part of a series of missions to characterize Mars' atmosphere, geologic history, climate, and the relationship to Earth's climate change process. The two missions of the MER–2003 project aim to determine what resources Mars provides for future exploration, and to search for evidence of past and present life. These two missions would continue the intense study of local areas of the surface via identical rover spacecraft. The two rovers would separately explore two different locations on Mars. Operation of the rovers and their science instruments would also benefit the planning and design of future missions by demonstrating the capabilities for long-range travel by mobile science platforms to validate long-lived, long-distance rover technologies; demonstrate complex science operations through the simultaneous use of multiple mobile laboratories; and validate the standards, protocols, and capabilities of the international Mars communications infrastructure.

The proposed action consists of continuing preparations for and implementing the MER–2003 project. The first mission (MER–A) would be launched on a Delta II 7925 from CCAFS in May or June 2003. The second mission (MER–B) would be launched on a Delta II 7925 Heavy from CCAFS in June or July 2003. The 2003 launch opportunity represents the best opportunity for a surface mission to Mars in the next twenty years. Programmatic issues (*e.g.*, changes in NASA priorities or unforeseen circumstances) could necessitate modification to the mission objectives and timing. Such modifications could result in the need to launch one mission in 2003, and a second mission at a later launch opportunity or not at all. Accordingly, the only alternative that was evaluated is the No Action alternative.

For the MER–2003 missions, the potentially affected environment for normal launches includes the area at and in the vicinity of the launch site, CCAFS in Florida. The environmental impacts of normal launches of the two missions for the proposed action would be associated principally with the exhaust emissions from each of the Delta II launch vehicles. These effects would include short-term impacts on air quality within the exhaust cloud and near the launch pads, and the potential for acidic deposition on the vegetation and surface water bodies at and near the launch complex, particularly if rain occurs shortly after launch.

A concern associated with launch of the two MER–2003 spacecraft involves potential launch accidents that could result in the release of some of the radioactive material on board the rover. Each rover would employ two instruments which use small quantities of cobalt-57 (that would not exceed 350 millicuries) and curium-244 (that would not exceed 50 millicuries) as instrument sources. Each rover would have up to eleven RHUs that use plutonium dioxide to provide heat to the electronics and batteries on board the rover. The radioisotope inventory of up to eleven RHUs would total approximately 365 curies of plutonium.

The U.S. Department of Energy (DOE), in cooperation with NASA, has

performed a risk assessment of potential accidents for the MER–2003 project. This assessment used a methodology refined through applications to the Galileo, Mars Pathfinder, and Cassini, missions and incorporates results of safety tests on the RHUs and an evaluation of the January 17, 1997, Delta II accident at CCAFS. DOE's risk assessment for this project indicates that in the event of a launch accident the expected impacts of released radioactive material at and in the vicinity of the launch area, and on a global basis, would be small.

Dated: July 18, 2002.

Olga M. Dominguez,

Director, Environmental Management Division.

[FR Doc. 02–18734 Filed 7–23–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–091)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that AirFlow Catalyst Systems, Inc., of Rochester, New York, has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent No. 6,132,694 (NASA Case Number LAR 15652–1), entitled "Catalyst for Oxidation of Volatile Organic Compounds;" NASA Case Number LAR 16307–1–SB, entitled "Methodology for the Effective Stabilization of Tin-Oxide Based Oxidation/Reduction Catalysts," and NASA Case.Number LAR 16390–1–SB, entitled "Ruthenium Stabilization Mechanism for Next Generation Oxidation and Reduction Catalyst Systems," for which two United States Patent Applications were filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; and NASA Invention Disclosure Case Numbers LAR 16001–1, LAR 16308–1–CU, and LAR 16117–1–SB, entitled "Catalyst for Treatment and Control of Post-Combustion Emissions," "Catalyst for Decomposition of Nitrogen Oxides," and "Sol-Gel Based Methodology for the Preparation of Oxidation/Reduction Catalysts," respectively. Written objections to the prospective grant of a license should be sent to Langley Research Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Helen M. Galus, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199; telephone 757–864–3227; fax 757–864–9190.

Dated: July 19, 2002.

Paul G. Pastorek,

General Counsel.

[FR Doc. 02–18733 Filed 7–23–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 9, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Larry Baume, Acting Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1505. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an

agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. *Department of Commerce, Bureau of Industry and Security (N1–476–02–1, 9 items, 5 temporary items).* Working papers, compliance case files, appeals files, and tracking records accumulated by the Under Secretary. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of speeches, appointment books, travel files, and subject files.

2. *Department of Commerce, Bureau of Industry and Security (N1–476–02–2, 11 items, 8 temporary items).* Records of the Office of Congressional and Public Affairs, including such record series as hearing and subject files, chronological files, biographies and photographs, working papers, duplicate copies of publications, and records relating to the preparation of publications. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as press releases, audiovisual records, and speeches and statements.

3. *Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–01–4, 2 items, 1 temporary item).* Electronic copies of documents created using electronic mail and word processing that relate to measures taken to minimize the harmful effects of actions taken by agencies on designated Essential Fish Habitats. Proposed for permanent retention are recordkeeping copies of these files.

4. *Department of Defense, Defense Contract Audit Agency (N1–372–02–4, 3 items, 3 temporary items).* Records pertaining to hand receipts issued for the use of agency property. Included are original receipts issued to employees and electronic copies of documents created using electronic mail and word processing.

5. *Department of Defense, Defense Contract Audit Agency (N1–372–02–5, 2 items, 2 temporary items).* Records pertaining to reports of surveys maintained by the office being reviewed. Included are requests for corrective action and subsequent responses to surveys. Also included are documents relating to planning and completing visits to Field Audit Offices to render assistance or to conduct evaluations. This schedule modifies the disposition instructions for these files, which were previously approved for disposal.

6. *Department of Defense, Defense Contract Audit Agency (N1–372–02–9, 3 items, 3 temporary items).* Records pertaining to obtaining and using carriers for the transmission of official mail. Included are documents relating to estimating and requesting funding, cost information, and agreements as well as electronic copies of documents created using electronic mail and word processing.

7. *Department of Defense, Defense Threat Reduction Agency (N1–374–02–4, 5 items, 5 temporary items).* Records relating to the operation of the Defense Threat Reduction Agency Information Analysis Center. Included are records of contracted studies, analyses, and other projects, operations and maintenance reports, and performance and cost reports. Also included are electronic copies of documents created using electronic mail and word processing.

8. *Department of Defense, Defense Threat Reduction Agency (N1–374–02–5, 12 items, 8 temporary items).* Records relating to occupational safety and health. Included are such records as safety and health plans, safety surveys and inspections, safety awareness and protection training materials, and safety and accident reports. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of safety surveys and assessments, training materials pertaining to chemical, biological, and nuclear materiel, and accident and incident reports related to exposure to ionizing radiation or to chemical or biological agents.

9. *Department of Defense, Defense Threat Reduction Agency (N1–374–02–7, 12 items, 12 temporary items).* Records relating to the operation of the Defense Nuclear Weapons School. Included are such records as course curriculum approvals, accreditations, class lists, enrollment and completion statistics, and schedules of classes as well as a database containing information concerning courses and course participants. Also included are electronic copies of documents created using electronic mail and word processing.

10. *Department of Housing and Urban Development, Office of Public and Indian Housing (N1–207–02–5, 23 items, 23 temporary items).* Special Applications Center (SAC) application case files pertaining to requests for approval of such actions as the demolition of properties that have received agency funding, the conversion of residents from low-rent project-based assistance to tenant-based assistance, the sale of housing units to residents, and the taking of a project by eminent domain under state law. Electronic copies of records created using electronic mail and word processing are included.

11. *Department of Transportation, Research and Special Programs Administration (N1–467–01–1, 4 items, 4 temporary items).* Office of Hazardous Materials Planning and Analysis grant application files that relate to training public employees for emergency response. Records include general grant guidance, progress reporting information, applications for assistance, and administrative certification documents. The schedule applies to records created and maintained in paper and to optical disk copies of grant files. Also included are electronic copies of records created using electronic mail and word processing. Files that deal with historically significant matters will be brought to NARA's attention for appraisal on a case-by-case basis.

12. *Central Intelligence Agency, Agency-wide (N1–263–02–2, 5 items, 5 temporary items).* Copies of documents sent to or received from other government agencies for declassification review, a database used to track documents and referrals, and forms certifying declassification decisions.

13. *Environmental Protection Agency, Office of Air and Radiation (N1–412–02–9, 2 items, 2 temporary items).* Documents related to manufacturers' applications for emission certification under the Clean Air Act for motor vehicles, locomotives, and non-road mobile sources. Records contain technical product descriptions, test results, copies of certificates of conformity, notices of violations, and other related documents. Also included are electronic copies of records created using electronic mail and word processing.

14. *Federal Reserve System, Board of Governors (N1–82–02–3, 48 items, 36 temporary items).* Records created in support of the Board of Governors in such functional areas as public affairs, congressional liaison, corporate secretary activities, and legal advisory matters. Included are such records as administrative manuals, policy change

notices, telephone logs, routine correspondence, congressional subject files, and legal opinion memorandums. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are such records as minutes of Board meetings, Board policy statements, press releases, speeches and testimony, and official correspondence signed by the Board of Governors. This schedule authorizes the agency to apply the proposed disposition instructions to records in all media.

15. *Office of Navajo and Hopi Indian Relocation, Administrative Services Division (N1–220–02–11, 81 items, 50 temporary items).* Electronic data of the Client Information System, including counseling, pre-move, and post-move relocation operations data, and program analysis data. Also included are queries and program reports and daily, weekly, and six-week full and incremental backups. Proposed for permanent retention are databases documenting such matters as client and joint use areas, client eligibility, Hopi partitioned land residency and certifications, and new lands operations. The related system documentation is also proposed for permanent retention.

Dated: July 17, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–18674 Filed 7–23–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Learning Opportunities Grants Guidelines and Application Forms; Submission for OMB Review, Comment Request

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of requests for new information collection approval.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning extending collection entitled, Technology Survey for Libraries and Museums. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606–8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by August 23, 2002. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

ADDRESSES: For a copy of the form contact: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 510, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 104–208 enacted on September 30, 1996 contains the former Museum Services Act and the Library Services and Technology Act, a reauthorization Public Law 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to improve museum and library service throughout the United States.

Agency: Institute of Museum and Library Services.

Title: Evaluation of IMLS General Operating Support program.

OMB Number: None.

Agency Number: 3137.

Frequency: One-time.

Affected Public: museums.

Number of Respondents: 900.

Estimated Time Per Respondent: 40 hours.

Total Burden Hours: 3600.

Total Annualized capital/startup costs: n/a.

Total Annual Costs: n/a.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to Office of Information and Regulatory Affairs: Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 02–18671 Filed 7–23–02; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 74, "Material Control and Accounting of Special Nuclear Material (SNM);" NUREG–1065, Rev. 2, "Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low Enriched Uranium Facilities;" NUREG/CR–5734, "Recommendations to the NRC on Acceptable Standard Format and Content for the Fundamental Nuclear Material Control Plan Required for Low-Enriched Uranium Enrichment Facilities;" and NUREG–1280, Rev. 1, "Standard Format and Content Acceptance Criteria for the Material Control and Accounting (MC&A) Reform Amendment."

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Submission of the FNMC is a one-time requirement which has been completed by all current licensees. However, licensees may submit amendments or revisions to the plans as necessary. In addition, specified inventory and material status reports are

required annually or semiannually. Other reports are submitted as events occur.

5. *Who will be required or asked to report:* Persons licensed under 10 CFR parts 70 who possess and use certain forms and quantities of SNM.

6. *An estimate of the number of responses:* 36 (25 responses + 11 recordkeepers).

7. *The estimated number of annual respondents:* 23.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* The number of hours needed annually to complete the requirement or request: 6,314 (1,369 hours for reporting and 4,945 hours for recordkeeping [an average of 55 hours per response and 450 hours annually for each of 11 recordkeepers]).

9. *An indication of whether section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 74 establishes requirements for material control and accounting of SNM, and specific performance-based regulations for licensees authorized to possess and use strategic special nuclear material, or to possess and use, or produce, special nuclear material of low strategic significance. The information is used by the NRC to make licensing and regulatory determinations concerning material control and accounting of special nuclear material and to satisfy obligations of the United States to the International Atomic Energy Agency (IAEA). Submission or retention of the information is mandatory for persons subject to the requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 23, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0123), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of July 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–18745 Filed 7–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Proposed rule, "Geological and Seismological Characteristics for the Siting and Design of Dry Cask Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations" which would amend 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste."

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Specific license applications are only required to be submitted for the initial license, for the Certificate of Compliance, for amendments, and for renewal every 20 years (40 years for a monitored retrievable storage installation). General licenses for a dry cask independent spent fuel storage installation are issued under § 72.210 to persons authorized to possess a NPP license under part 50, without filing a part 72 license application. General licensees are required under § 72.212(b)(2) to retain as a record on site, a copy of the written evaluation until spent fuel is no longer stored under the general license issued under § 72.210.

5. *Who will be required or asked to report:* New specific licensees and applicants under 72.7 and 72.16 (reporting). General licensees under 72.212(b)(2) (recordkeeping).

6. *An estimate of the number of responses:* (8.5).

7. *The estimated number of annual respondents:* (8.5) (—1.5 reporting under sections 72.7 and 72.16 and —7 recordkeepers under 72.212(b)(2)).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* (466) (-7,406 hours for reporting and 6,940 hours for recordkeeping).

9. *An indication of whether section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 72 establishes requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in a dry cask independent spent fuel storage installation, and requirements for the issuance of licenses to the Department of Energy to receive, transfer, package, and possess power reactor spent fuel and high-level radioactive waste, and other associated radioactive materials, in a monitored retrievable storage installation. The proposed amendments would make the part 72 regulations compatible with the 1996 revision to 10 CFR part 100 that addressed uncertainties in seismic hazard analysis, and commensurate with the risk associated with a dry cask independent spent fuel storage installation or a monitored retrievable storage installation. The proposed amendments would also specify that general licensees evaluate dynamic loads, as well as static loads, in the design of cask storage pads and areas. These proposed amendments would make the part 72 requirements more effective and efficient and reduce the burden on licensees and on the NRC, without an adverse effect on public health and safety, or on the environment.

Submit, by August 23, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. The proposed rule indicated in "The title of the information collection" is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. The OMB clearance package and rule are available at the NRC WorldWide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov*.

Comments and questions should be directed to the OMB reviewer by August 23, 2002, Bryon Allen, Office of Information and Regulatory Affairs (3150–0132), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of July 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–18746 Filed 7–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8084]

Rio Algom Mining LLC

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of receipt of Rio Algom Mining LLC's application for establishing alternate concentration limits in source material license SUA–1119 for the Lisbon, UT, facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission (NRC) has received, by letter dated May 22, 2002, an application from Rio Algom Mining LLC (Rio Algom) to establish Alternate Concentration Limits and amend the Source Material License No. SUA–1119 for the Lisbon uranium mill facility.

FOR FURTHER INFORMATION CONTACT: Jill S. Caverly, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6699.

SUPPLEMENTARY INFORMATION: The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, ATTN: Rulemaking and Adjudications Staff, Washington, DC 20555:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Rio Algom Mining LLC, 6305 Waterford Blvd., Suite 400, Oklahoma City, Oklahoma 73118, Attention: William Paul Goranson; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 10th day of July 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–18747 Filed 7–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Rochester Gas and Electric Corporation (the licensee) to withdraw its March 18, 2002, application for proposed amendment to Facility Operating License No. DRP–18 for the R.E. Ginna Nuclear Power Plant, located in Wayne County, New York.

The proposed amendment would have revised the Technical Specifications to remove the administrative requirement that a candidate for the plant operations manager position hold a Senior Reactor Operator License at the time of appointment.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 30, 2002 (67 FR 21292). However, by letter dated June 12, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 18, 2002, and the licensee's letter dated June 12, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*.

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 17th day of July 2002.

For the Nuclear Regulatory Commission.

Robert Clark,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18748 Filed 7–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guides; Extension of comment period

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of Comment Period.

SUMMARY: On December 14, 2001 (66 FR 64893), the U.S. Nuclear Regulatory Commission (NRC) published for public comment draft regulatory guide DG–1111, "Atmospheric Relative Concentrations for Control Room Radiological Habitability Assessments at Nuclear Power Plants." The public comment period was to have expired on March 15, 2002. On January 25, 2002 (67 FR 3743), NRC published for public comment draft regulatory guide DG–1113, "Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light-Water Nuclear Power Reactors." The public comment period was to have expired on April 30, 2002. On March 28, 2002 (67 FR 14992), NRC published for public comment draft regulatory guides DG–1114, "Control Room Habitability at Light-Water Nuclear Power Reactors," and DG–115, "Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors." The public comment period was to have expired on June 28, 2002. Although issued for public comment individually, these draft guides are all related to control room habitability. The NRC received a request to extend the comment period for all four draft guides to allow reviewers an opportunity to review and comment on interrelationships between the guides. After considering of the request, NRC has decided to extend the public comment period for these guides until September 6, 2002.

DATES: The public comment periods for DG–1111, DG–1113, DG–1114, and DG–1115 have been extended and now expire on September 6, 2002. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T–6D59, Washington, DC 20555–0001. Deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., on Federal workdays. Copies of any comments received and documents related to this action may be examined at the NRC Public Document Room, One White Flint North, Public File Area O1–F21, 11545 Rockville Pike, Rockville, Maryland. Documents are also available electronically at NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. From this site, the public can gain entry into NRC's Agencywide Documents Access and Management System(ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the proposed draft regulatory guides are ML013130132 for DG–1111, ML020160023 for DG–1113, ML020790125 for DG–1114, and ML020790191 for DG–1115. For more information, contact the NRC's Public Document Room reference staff by telephone at (800) 397–4209 or (301) 415–4737 by or e-mail to *pdr@nrc.gov*. The draft regulatory guides are also available on NRC's Web site at *http://www.nrc.gov/reading-rm/adams.html*. You may also send comments electronically from this Web site by clicking on the comment form. A copies of the proposed regulatory guides are also available for inspection, and copying for a fee, in the NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: W. Mark Blumberg, (telephone (301) 415–1083, e-mail *wmb1@nrc.gov* or Stephen LaVie on (telephone (301) 415–1081, e-mail: *sfl@nrc.gov*.

Dated at Rockville, Maryland, this 11th day of July 2002.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Chief, Probabilistic Safety Analysis Branch, Division of Systems and Safety Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18744 Filed 7–23–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ad–17, SEC File No. 270–412, OMB Control No. 3235–0469

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17Ad–17 Transfer Agents' Obligation to Search for Lost Securityholders

Rule 17Ad–17 [17 CFR 240.17Ad–17] requires approximately 952 registered transfer agents to conduct searches using third party database vendors to attempt to locate lost securityholders. The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–17 is five hours annually. The total burden is approximately 4,760 annually for all transfer agents. The cost of compliance for each individual transfer agent depends on the number of lost accounts for which it is responsible. Based on information received from transfer agents, we estimate that the annual cost industry wide is $3.3 million.

The retention period for the recordkeeping requirement under Rule 17Ad–17 is three years. The recordkeeping requirement under Rule 17Ad–17 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget,

Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 17, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18645 Filed 7–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–32; File No. S7–27–02]

Privacy Act of 1974; Amended System of Records for Enforcement Files

AGENCY: Securities and Exchange Commission.

ACTION: Notice of amended system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission gives notice of the amendment of its system of records for Enforcement Files (SEC–42) to clarify its routine uses with respect to disclosures related to the collection of amounts ordered to be paid in civil and administrative proceedings, to incorporate a statement regarding disclosure to consumer credit reporting agencies, to update statutory and regulatory references in certain routine uses, to update addresses of system administrators, and to identify exemptions from disclosure that have been claimed for this system of records under the Privacy Act.

DATES: Comments must be received by August 23, 2002. The amendments will take effect September 2, 2002 unless the Commission receives comments that would require a different determination.

ADDRESSES: Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You may also send your comments electronically to the following electronic address: *rule-comments@sec.gov*. All comments should refer to File No. S–27–02 and, if sent electronically, should include this file number on the subject line. Comment letters will be available for public inspection and copying at our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. If sent electronically, comment letters will also be available on our Web site *http://www.sec.gov*.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, Assistant Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0809, (202) 942–4635.

SUPPLEMENTARY INFORMATION: The Commission has amended its system of records for the files maintained by the Division of Enforcement. The information in the system is obtained and used for purposes of the Commission's investigations and actions to enforce the federal securities laws. The information in the system is used in conjunction with the collection of amounts ordered to be paid in enforcement actions, a function that is a necessary component of litigation. However, the Debt Collection Act, as amended by the Debt Collection Improvement Act of 1996, requires agencies to publish a notice identifying each system of records from which information may be disclosed to consumer credit reporting agencies (*i.e.*, consumer credit bureaus). The Office of Management and Budget has indicated that this notice should take the form of an insert to existing systems of records. *See* OMB, *Privacy Act of 1974; Guidelines on the Relationship of the Debt Collection Act of 1982 to the Privacy Act of 1974*, 48 FR 15556, 15558 (April 11, 1983). The Commission has thus incorporated a statement regarding consumer credit reporting into the system of records for Enforcement Files.

The Commission has also revised the routine uses for Enforcement Files to clarify that disclosure may be made in connection with certain debt collection procedures that are mandatory for federal agencies. A routine use has thus been adopted which specifically states that disclosure may be made when the Commission seeks to collect by offset, *i.e.*, the withholding of amounts otherwise payable by the government to a debtor. *Administrative offset*, authorized by the Debt Collection Act, 31 U.S.C. 3716, is the most general form of such withholding, and applies to most amounts that may be payable to a debtor. *Tax refund offset*, authorized by 31 U.S.C. 3720A, authorizes the withholding of federal income tax refunds to satisfy a debt owed to the government. *Salary offset*, authorized by 5 U.S.C. 5514, authorizes the withholding of a portion of the wages due to a federal employee. The routine use also indicates that disclosure may be made in connection with *administrative wage garnishment*, a procedure by which the Commission may direct a non-federal employer to withhold a portion of an employee's wages to satisfy a debt owed to the government. In addition, notice is given that disclosure may be made to other persons, including other federal agencies and private collection agents, who assist in the collection of amounts owed as a result of enforcement actions.

The Commission has adopted technical amendments to other routine uses. Four of the existing routine uses (those numbered 11, 12, 15 and 17) refer to the definition of "federal securities laws" which has been moved from Section 21(g) of the Exchange Act to Section 3(a)(47); this reference has been updated. Two of the routine uses (those numbered 7 and 12) contain incorrect references to the re-codified Rules of Practice, and those references have been updated.

The Commission has updated the addresses of the following system administrators: the Commission's Records Officer; the Regional Directors for the Northeast Regional Office, the Southeast Regional Office, the Central Regional Office, the Pacific Regional Office and the Midwest Regional Office; and the District Administrators for the Philadelphia District Office, the Fort Worth District Office, and the Salt Lake District Office.

The Commission has also added a statement identifying the exemptions that have been claimed for this system of records. The Privacy Act includes provisions that generally require an agency to: notify an individual, upon request, of the existence of information contained in a record pertaining to the individual; permit access to such record and permit amendment or correction of such record; make available to an individual an accounting of disclosures to third-parties: publish the sources of information in the system; and screen records to ensure that only such information is maintained about the individual as is necessary and relevant to a required purpose of the Commission. *See* 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f). The Privacy Act permits an agency, by rule, to claim exemption from these provisions for any system containing "investigatory material compiled for law enforcement purposes" if disclosure would interfere with the conduct of investigations. 5 U.S.C. 552a(k)(2). The Commission has claimed exemptions from these provisions for its Enforcement Files system of records. 17 CFR 200.312(a)(1).

Accordingly, SEC–42 is amended to read as follows:

SEC–42

SYSTEM NAME:

Enforcement Files.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

7. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

* * * * *

11. In connection with their regulatory and enforcement responsibilities mandated by the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), or state or foreign laws regulating securities or other related matters, records may be disclosed to national securities associations that are registered with the Commission, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, the federal banking authorities, including but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, state securities regulatory or law enforcement agencies or organizations, or regulatory law enforcement agencies of a foreign government, or foreign securities authority.

12. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or the Commission's Rules of Practice, 17 CFR 201.100–900, or otherwise, where such trustee, receiver, master, special counsel or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice.

* * * * *

15. Inclusion in reports published by the Commission pursuant to authority granted in the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)).

* * * * *

17. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 735–18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

* * * * *

23. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

DISCLOSURE TO CONSUMER REPORTING AGENCIES

When the Commission seeks to collect a debt arising from a civil action or administrative proceeding, it may disclose the following information to a consumer reporting agency: (i) Information necessary to establish the identity of the debtor, including name, address and taxpayer identification number or social security number; (ii) the amount, status, and history of the debt; and (iii) the fact that the debt arose from a Commission action or proceeding to enforce the federal securities laws.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SYSTEMS MANAGERS AND ADDRESSES:

Director, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0801; Records Officer, Securities and Exchange Commission, 6441-D General Green Way, Alexandria, VA 22312; Regional Director, Northeast Regional Office, 233 Broadway, New York, NY 10279; District Administrator, Boston District Office, 73 Tremont Street, Suite 600, Boston, MA 02108–3912; District Administrator, Philadelphia District Office, The Curtis Center, 601 Walnut Street, Suite 1120 E., Philadelphia, PA 19106–3322; Regional Director, Southeast Regional Office, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131; District Administrator, Atlanta District Office, 3475 Lenox Road, N.E., Suite 1000, Atlanta, GA, 30326–1232; Regional Director, Midwest Regional Office, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604; Regional Director, Central Regional Office, 1801 California Street, Suite 1500, Denver, CO 80202–2648; District Administrator, Fort Worth District Office, 801 Cherry Street, Unit #18, Fort Worth, TX 76102–6882; District Administrator, Salt Lake District Office, 50 South Main Street, Suite 500, Salt Lake City, UT 84144–0402; Regional Director, Pacific Regional Office, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036–3648; and District Administrator, San Francisco District Office, 44 Montgomery Street, Suite 1100, San Francisco, CA 94104.

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(k)(2), this system of records is exempted from the following provisions of the Privacy Act, 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). These exemptions are contained in 17 CFR 200.312(a)(1).

By the Commission.

Dated: July 18, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18646 Filed 7–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46219; File No. SR–CHX–2002–14]

Self Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Delete Rule Provisions Relating to the Trading of Options

July 17, 2002.

On April 26, 2002, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to delete provisions governing or relating to the trading of options on the CHX. Under the proposed rule change, CHX would delete certain provisions of its rules that govern or make reference

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

to the trading of options on the CHX. In 1980, the Commission approved changes to the Exchange's bylaws and rules that deleted most references to the Exchange's operation of an options market.[3] Since that time, CHX has not operated an options market, but has served as an self-regulatory organization participant on the Options Self-Regulatory Council ("OSRC") for essentially informational purposes.

In its proposal, CHX explained that given changes in the options market and obligations of OSRC participants, it believes that it is no longer advisable, from either a regulatory or economic perspective, to continue serving on the OSRC.[4] Accordingly, the proposed rule change deletes from the CHX rules all remaining references to the trading of options and handling of options orders, which in turn, excuses the Exchange from any obligation to serve on the OSRC.

The proposed rule change was published for comment in the **Federal Register** on June 13, 2002.[5] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the rule change appropriately conforms the CHX rules to the current scope of the CHX's operations, which does not currently include operating an options market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–CHX–2002–14) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18700 Filed 7–23–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 17075 (August 19, 1980), 45 FR 56486 (August 25, 1980).

[4] If the CHX were to continue to serve, it would be responsible for a *pro rata* share of OSRC member examination costs, which CHX states are significant. CHX believes that there is no rationale that supports CHX payment of examination costs attributable to exchanges that are actively trading options, given that CHX does not presently trade options and would have to propose significant rule changes should it elect to commence options trading in the future.

[5] *See* Securities Exchange Act Release No. 46044 (June 6, 2002), 67 FR 40761 (June 13, 2002).

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2)

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46227; File No. SR–NYSE–2001–18]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Relating to NYSE Rule 72 Regarding Clean Crosses of Orders of 100,000 Shares or More, and Providing That a Specialist May Not Effect a Proprietary Transaction to Provide Price Improvement to One Side of a Clean Cross or the Other

July 18, 2002.

I. Introduction

On July 3, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 72(b) to (i) permit clean crosses of 100,000 shares or more when a member organization is facilitating a customer order; and (ii) provide that a specialist may not effect a proprietary transaction to break up a cross being effected under the Rule. The proposal was published for notice and comment in the **Federal Register** on November 6, 2001.[3] The Commission received three comments on the proposal.[4] On January 29, 2002, the NYSE responded to the comments.[5]

On June 18, 2002, the NYSE amended the proposal by removing the proposed amendment to Rule 72(b) relating to clean crosses of 100,000 shares or more.[6] This order approves the proposed rule change. Also, Amendment No. 1 is approved on an accelerated basis.

II. Description of the Proposed Rule Change

As a result of Amendment No. 1, the proposed rule change consists only of the NYSE's amendment of NYSE Rule 72(b) to provide that a specialist may not effect a proprietary transaction to provide price improvement to one side of a clean cross or the other. The Exchange understands that there may be a perception that specialists can break up a proposed cross transaction by trading for their own account at a minimally improved price, and, thereby, step ahead of a public customer on the other side of the cross. The NYSE believes the proposed rule change, as amended, will preserve the auction market principle of price improvement, since non-proprietary interest of specialists and particular Floor brokers in the market may offer price improvement at any minimum variation.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45004 (October 31, 2001), 66 FR 56143.

[4] *See* November 27, 2001 letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC ("ICI Letter"); December 18, 2001 letter from Thomas N. McManus, Executive Director and Counsel, Morgan Stanley ("Morgan Stanley Letter"); February 11, 2002 letter from Alton B. Harris, Ungaretti & Harris ("Ungaretti Letter"). All of the comment letters focused on the provision allowing clean crosses of 100,000 shares or more when a member organization is facilitating a customer order. This provision was subsequently deleted from the proposed rule change. See footnote 6, *infra*. The Commission reviewed the comment letters. Because the letters pertained to those portions of the original proposed rule change that were subsequently removed by Amendment No. 1, the Commission has not included a summary of comments in this order.

[5] *See* January 29, 2002 letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC ("NYSE Response Letter").

[6] *See* June 14, 2002 letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC and attachments ("Amendment No. 1").

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

requirements of Section 6 of the Act[8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that the Rule is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change, while eliminating the opportunity for specialists to effect a proprietary transaction to provide price improvement to one side of a clean cross or the other, preserves the auction market principle of price improvement by continuing to allow non-proprietary interest of specialists and particular Floor brokers in the market to offer price improvement at any minimum variation.

The Commission finds good cause for approving Amendment No. 1 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 simply removes the provision from the original filing that would have allowed clean crosses of 100,000 shares or more when a member organization is facilitating a customer order. This provision was the focus of the comment letters. Because Amendment No. 1 removes this provision, the Commission believes it is appropriate to approve Amendment No. 1 on an accelerated basis. For these reasons, the Commission finds good cause for accelerating approval of Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2001–18 and should be submitted by August 14, 2002.

V. Conclusion and Order

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2001–18), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18697 Filed 7–23–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4069]

Office of Global Educational Programs (ECA/A/S); 30-Day Notice of Proposed Information Collection: Fulbright Teacher and Administrator Exchange Program Application Package; Forms DS–4500, 4501, 4502, 4503, 4504, 4505, 4506; OMB Number 1405–0114

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement with change of a previously approved collection for which approval has expired.

Originating Office: Office of Global Educational Programs (ECA/A/S).

Title of Information Collection: Fulbright Teacher and Administrator Exchange Program Application Package.

Frequency: Annual.

Form Number: DS–4500, 4501, 4502, 4503, 4504, 4505, and 4506.

Respondents: Educators desiring to participate in the Fulbright Teacher and Administrator Exchange Program.

Estimated Number of Respondents: 862.

Average Hours Per Response: 2.

Total Estimated Burden: 1724.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from U.S. Department of State, SA–44, Room 349; 301 Fourth St., SW; Washington, DC 20547. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: July 9, 2002.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–18723 Filed 7–23–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4070]

M/DGHR/MED/EX; 30-Day Notice of Proposed Information Collection: Form DS–1843, Medical History and Examination for Foreign Service—Persons 12 Years and Over; Form DS–1622, Medical History and Examination for Foreign Service—For Children 11 Years and Under; OMB Number 1405–0068

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a current collection.

Originating Office: Office of Medical Services, M/DGHR/MED.

Title of Information Collection: Medical History and Examination for Foreign Service Persons 12 Years and Over; Medical History and Examination for Foreign Service—For Children 11 Years and Under.

Frequency: Biennially.

Form Numbers: DS–1843 and DS–1622.

Respondents: Candidates for Foreign Service Positions and their Eligible Family Members.

Estimated Number of Respondents: 12,000.

Average Hours Per Response: One Hour.

Total Estimated Burden: 12,000.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from John A. Triplett, M.D., Office of Medical Services, 2401 E Street, NW., U.S. Department of State, Washington, DC 20522, telephone 202–663–1680. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: July 7, 2002.

Maria C. Melchiorre,

Acting Executive Director, Office of Medical Services, Department of State.

[FR Doc. 02–18724 Filed 7–23–02; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Four Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on four currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. *2120–0007, Flight Engineers and Flight Navigators—FAR 63.* The information collected will be used to determine compliance of applicants with the provisions of FAR Part 63, which prescribes the requirements of eligibility for flight navigator and flight engineer certification and training course requirements for those airmen. The current estimated annual reporting burden is 1,009 hours.

2. *2120–0576, Kansas City Center Customer Satisfaction Questionnaire.* The information collected on this form represents customer feedback concerning the quality of service provided to the users of Kansas City ARTCC airspace. This information may be used to solve problems, improve safety, and increase system efficiency. Respondents are general aviation pilots, air taxi operators, airlines, military pilots, and adjacent families. The current estimated annual reporting burden is 25 hours.

3. *2120–0605, ACSEP Evaluation Customer Feedback Report.* The information is collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP). The agency uses the information as a customer service standard and to continually improve ACSEP. The current estimated annual reporting burden is 225 hours.

4. *2120–0651, Additional Flight Data Recorder Requirements for Certain Boeing 737 Airplanes.* This collection of information requires the recording of additional operating parameters for certain Boeing 737 airplanes. These additional parameters allow the NTSB and FAA to establish a cause and enable the industry to make appropriate modifications to prevent future incidents. The current estimated annual reporting burden is 1 hour.

Issued in Washington, DC, on July 10, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 02–18618 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Peoria, Marshall, Putnam, and Bureau Counties, IL

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for expanding Illinois 29 to a four-lane highway. The proposed project will extend from Illinois 6 in Peoria County north to I–180 in Bureau County.

FOR FURTHER INFORMATION CONTACT:

Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600

Joseph E. Crowe, P.E., District Engineer, Illinois Department of Transportation, District 4, 401 Main Street, Peoria, Illinois 61602–1111, Telephone: (309) 671–3333

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve existing Illinois 29 to a four-lane highway from Illinois 6 in Peoria County north to I–180 in Bureau County. The approximately 35-mile long project corridor is located west of and parallel to the Illinois River. The proposal is being considered to improve north-south highway access west of the Illinois River, enhance travel efficiency, and support economic development in the region. Alternatives under consideration include: (1) The No-Build Alternative, (2) improvements to the existing highway, and (3) possible bypasses at Chillicothe, Sparland, Henry and Putnam.

Alignment studies will determine one preferred alignment location and address the type of facility and preliminary interchange geometrics. Engineering and environmental conditions will be addressed in order to determine an alignment that meets the transportation needs of the region while minimizing the impacts to the environment. Potentially affected resources include agricultural land, archaeological sites, wetlands, woodlands, natural areas, State Conservation Areas, a nature preserve, historic structures, and residential and commercial property. Preliminary measures to minimize harm, probable construction cost estimates and estimated right of way requirements will be developed as part of the study.

The scoping process undertaken for this project will include distribution of a scoping informational packet, coordination with appropriate Federal, State, and local agencies, and review sessions as needed. An informational scoping packet may be obtained from one of the contact people listed above.

To ensure that the full range of issues related to this proposed action are addressed, and all substantive issues are identified, public involvement activities will be conducted as part of the study. Public information meetings, local government meetings, and newsletters will provide opportunities for public involvement. A public hearing will be held at the time that the Draft EIS is made available for comment. The project's Draft EIS will be available for public and agency review prior to the public hearing. The time and location of the public information meeting and public hearing will be announced in local newspapers. Comments or questions concerning this proposed action and the Draft EIS should be directed to FHWA or the Illinois Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 18, 2002.

J.D. Stevenson,

Environmental Programs Engineer, Springfield, Illinois.

[FR Doc. 02–18666 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Peoria, Tazewell, Woodford, Livingston, Marshall, Mclean, Putnam, Bureau and, La Salle

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will not be prepared for the study of a proposed four-lane Heart of Illinois Highway in north central Illinois. Three feasible corridors identified by Illinois DOT as part of an earlier study were to be the focus of the EIS.

FOR FURTHER INFORMATION CONTACT:

Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600

Joseph E. Crowe, P.E., District Engineer, Illinois Department of Transportation, District 4, 401 Main Street, Peoria, Illinois 61602–1111, Telephone: (309) 671–3333

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, issued a notice of intent to prepare an Environmental Impact Statement (EIS) on a proposal to develop a four-lane divided highway, known as the Heart of Illinois Highway, between Peoria and the interstate freeway system either north or east of Peoria. Three feasible corridors previously identified by Illinois DOT were to be examined as part of the EIS. The notice of intent to prepare an EIS for this project was published in the **Federal Register** on April 26, 2000 (Volume 65, Number 81).

Due to public opposition and lack of regional support, this project has been put on hold indefinitely. At this time there are no plans to prepare an EIS for this project.

Comments or questions concerning this notice should be directed to FHWA or the Illinois Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on July 18, 0002.

J.D. Stevenson,

Environmental Programs Engineer, Springfield, Illinois.

[FR Doc. 02–18667 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12891]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FREE SPIRIT.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 23, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12891.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: FREE SPIRIT. Owner: Crown Enterprises, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Gross: 33, Net: 26, Length: 47.9 ft., Breadth: 15.6 ft, Depth: 6.7 ft."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended commercial use of this vessel is for harbor and offshore cruising from Santa Barbara to San Diego, California, including the offshore islands of Catalina, San Clemente, Santa Barbara, Anacapa, Santa Cruz, Santa Rosa and San Miguel. All such usage would involve 12 passengers or less."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1991. Place of construction: Taiwan, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The primary yacht chartering businesses in the Southern California area deal with much larger boats, specializing either in bay and dinner cruising with large groups, the transport of passengers to the City of Avalon, on Catalina Island, or involve similar sized or smaller boats which specialize in fishing trips. There are very few smaller boats (under 60 feet) available for charter for cruising. Accordingly, the offering of this vessel for harbor cruises, and for offshore cruising, with 12 or fewer people, will have a minimal, if any, impact on existing operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver will have no material negative effect on U.S. shipyards. If anything, increased usage of the boat will result in a positive contribution to local shipyards, as additional maintenance will be required by such commercial usage."

Dated: July 19, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18718 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12877]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MAGIC DAULPHIN.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 23, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12877. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: MAGIC DAULPHIN. Owner: Captain Stephen L. Flowers.

(2) Size, capacity and tonnage of vessel. According to the applicant: "24 GRT, 21 NRT, Length: 51.0 ft., Breadth: 14.7 ft., Depth: 6.5 ft."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "This vessel will be used for charters on the Florida coast along the Gulf of Mexico and Atlantic Ocean based in Fort Myers Beach."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: UNKNOWN. Place of construction: UNKNOWN.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "There are currently six to eight sailboat charters operating in this region based in Fort Myers Beach. Because of the ever increasing number of tourist flocking to this area each year, minimal or no impact is expected for these existing sailboat charters."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The vessel for which the waiver is requested will be docked at a local marina and all repairs and maintenance will be performed locally as well as supplies purchased locally creating a positive effect on local shipyards and vendors. In addition, crew will be hired as needed from the local area."

Dated: July 18, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18661 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12875]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SHEARWATER.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 23, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12875. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: SHEARWATER. Owner: Caribe Yankee LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: "11 tons; 8 passengers; 48′ × 26′ × 5½-draft."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Personal/charter in Eastern Seaboard of USA—Marine to FLorida."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1992. Place of construction: Jeantot Marine, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Should not be much. We are a small charterer in off-market areas; less than 20 charters per year."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "We use U.S. yards for annual and regular service and maintenance needs."

Dated: July 18, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18662 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12890]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TORTUGA.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S.

vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 23, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12890. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: TORTUGA. *Owner:* James A. Williams and Stephanie L. Rice.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Length—48.6', Breadth—15.5', Depth—6.5', Capacity—To carry 12 or fewer passengers, Tonnage—Gross 32 tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended use of the vessel is to carry 12 or fewer passengers for week-end boat and breakfast charter trips:" "The vessel will be used in the Chesapeake Bay from Annapolis, Maryland down the East Coast, around the Florida Keys and the West Coast of Florida in the Gulf of Mexico."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1971. *Place of construction:* Hong Kong, China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "To the best of my knowledge there will be no adverse effect on other commercial passenger vessel operators in the area. I am not aware of any commercial passengers operators doing the types of trips I plan to make."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "To the best of my knowledge the possible impact that my operation will have on U.S. Shipyards is the repair business for my vessel as a result of the approval of this waiver."

Dated: July 19, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18719 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Ninth Quarterly Meeting of the Crash Injury Research and Engineering Network (CIREN)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting Announcement.

SUMMARY: This notice announces the Ninth Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at ten Level 1 Trauma Centers linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATE AND TIME: The meeting is scheduled from 9:00 a.m. to 5:00 p.m. on Thursday, August 22, 2002.

ADDRESSES: The meeting will be held at the Harborview Medical Center's Research and Training Building Auditorium at 9th and Alder St., Seattle, WA. (Hosted by the Seattle CIREN center)

To Register for This Event: Please visit the Seattle CIREN team's Web site at *www.hiprc.org* and locate the CIREN conference announcement.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. CIREN cases may be viewed from the NHTSA/CIREN Web site at: *http://www-nrd.nhtsa.dot.gov/departments/nrd-50/ciren/CIREN.html*. NHTSA has held three Annual Conferences where CIREN research results were presented. Further information about the three previous CIREN conferences is also available through the NHTSA Web site. NHTSA held the first quarterly meeting on May 5, 2000, with a topic of lower extremity injuries in motor vehicle crashes; the second quarterly meeting on July 21, 2000, with a topic of side impact crashes; the third quarterly meeting on November 30, 2000, with a topic of thoracic injuries in crashes; the fourth quarterly meeting on March 16, 2001, with a topic of offset frontal collisions; the fifth quarterly meeting on June 21, 2001, on CIREN outreach efforts; the sixth quarterly meeting (held in Ann Arbor, Michigan) with a topic of injuries involving sport utility vehicles, the seventh quarterly meeting on December 6, 2001, with a topic of Age Related Injuries (Elderly and Children), and the eighth quarterly meeting on April 25, 2002, with a topic of Head and Traumatic Brain Injuries. Presentations from these meetings are available through the NHTSA Web site.

NHTSA plans to continue holding quarterly meetings on a regular basis to disseminate CIREN information to interested parties. This is the ninth such meeting. The ten CIREN Centers will be presenting papers on the research specialty for their particular center regarding crash injury mechanisms. Subsequent meetings have tentatively been scheduled for December 2002 and April 2003. These meetings are in lieu of an annual CIREN conference.

Should it be necessary to cancel the meeting due to inclement weather or to

any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/*. If you do not have access to the Web site, you may call the contact listed below and leave your telephone or fax number. You will be called only if the meeting is postponed or canceled.

For Further Information Contact NHTSA or SEATTLE CIREN CENTER at:

NHTSA—Catherine McCullough, Office of Human-Centered Research, 400 Seventh Street, SW., Room 6220, Washington, DC 20590, telephone: (202) 366–4734.

CIREN SEATTLE—Rob Kaufman, Harborview Injury Prevention and Research Center, 325 Ninth Ave., Box 359960, Seattle, WA 98104. Telephone: (206) 521–1533.

Issued on: July 17, 2002.

Raymond P. Owings,

Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 02–18615 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

[STB Finance Docket No. 34204]

South Kansas and Oklahoma Railroad Company—Lease Exemption—The Burlington Northern and Santa Fe Railway Company

South Kansas and Oklahoma Railroad Company (SKO), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from The Burlington Northern and Santa Fe Railway Company (BNSF) 6.22 miles of rail line located between milepost 139.10 near Pittsburg, KS, and milepost 145.32, near Cherokee, KS. SKO will be the operator of the property.

Because SKO's projected annual revenues will exceed $5 million, SKO certified to the Board on May 3, 2002, that it sent the required notice of the transaction to the national offices of all labor unions representing employees on the line and posted a copy of the notice at the workplace of the employees on the affected lines on April 25, 2002. *See* 49 CFR 1150.42(e).

The transaction was scheduled to be consummated on or shortly after July 2, 2002 (60 days after SKO's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e)).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34204, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of the each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our website at "*www.stb.dot.gov*."

Decided: July 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18438 Filed 7–23–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34218 (Sub–No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption-Union Pacific Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34218[1] to permit the trackage rights agreement to expire on August 16, 2002.

DATES: This exemption is effective on August 15, 2002. Petitions to reopen must be filed by August 5, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34218 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Michael E. Roper, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal Copy Service, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339].

Board decisions and notices are available on our website at "*http://WWW.STB.DOT.GOV*."

Decided: July 17, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18551 Filed 7–23–02; 8:45 am]

BILLING CODE 4915–00–P

[1] On June 10, 2002, The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement by Union Pacific Railroad Company (UP) to grant temporary overhead trackage rights to BNSF between UP milepost 428.7 at Klamath Falls, OR, and UP milepost 141.9 at Binney Junction (Marysville), CA, a total distance of approximately 286.8 miles. *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 34218 (STB served June 28, 2002). The trackage rights operations under the exemption became effective and were scheduled to be consummated on June 17, 2002.

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Criteria for Certification of Explosives Trace Detection Systems

AGENCY: Transportation Security Administration (TSA) DOT.

ACTION: Notice.

SUMMARY: This notice discusses the criteria that an Explosive Trace Detection system (ETD) must satisfy in order to be certified by TSA (hereinafter referred to as the criteria). The criteria establish minimum acceptable performance in detecting and identifying trace amounts of explosives at levels indicative of contamination from the presence of explosive material or from proximity or contact with suspect individuals who handled explosive material. The criteria also establish certain minimum acceptable operational requirements.

FOR FURTHER INFORMATION CONTACT: Richard Burdette, Office of Information and Security Technology, Transportation Security Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–7398.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can get an electronic copy of this notice using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last digits of the docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the docket summary information for the docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140html*.

In addition, copies are available by writing or calling the Transportation Security Administration's Air Carrier Division, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3413.

Release of National Security and Sensitive Information

The complete criteria are contained in the Certification Plan for Explosives Trace Detection Equipment (Certification Plan). Certain portions of the criteria are of national security concern and require safeguarding from unauthorized disclosure pursuant to Executive Order 12356 (National Security Information, often referred to as classified information). Further, pursuant to TSA regulations governing protection of sensitive security information, *See* 67 FR 8340, 8352 (Feb. 20, 2002) (to be codified at 49 CFR part 1520), certain unclassified information incorporated in the criteria has been determined to be sensitive security information. Upon request, the Certification Plan will be provided to prospective vendors of ETDs and other interested persons with a bona fide need to know, provided such persons have appropriate authorization for access to U.S. Government national security information and sensitive security information. The Certification Plan, without the national security information, will be provided to other interested persons with a bona fide need to know, provided such persons have appropriate authorization for access to sensitive security information.

Availability of Certification Plan

Persons requesting access to, or a copy of, the Certification Plan (including all classified and sensitive security information) may write to: Information Security Program Manager, Office of Inspection (TSA–13), Transportation Security Administration, 400 7th Street, SW., Washington, DC 20590.

Individuals requesting the classified portion of the Certification Plan must include information regarding authorizations and security clearances for access to U.S. Government national security information, and sufficient explanatory information supporting the request to demonstrate a bona fide need to know the information contained in the Certification Plan.

Background

In light of the September 11, 2001, terrorist attacks in the United States and the potential for future attacks in this country, Congress enacted the Aviation and Transportation Security Act (ATSA), Public Law 107–71, 115 Stat. 597 (November 19, 2001), which established the Transportation Security Administration (TSA) as an operating administration within the Department of Transportation (DOT), headed by the Under Secretary of Transportation for Security (Under Secretary).

Pursuant to ATSA, TSA is responsible for security in all modes of transportation, including civil aviation under Chapter 449 of title 49, United States Code, related research and development activities, and other transportation security functions exercised by DOT. TSA is specifically responsible for the day-to-day security screening operations for passenger air transportation and intrastate air transportation under 49 U.S.C. 44901 and 44935. This includes, among other things, the screening of checked baggage carried aboard passenger aircraft.

Under 49 U.S.C. 44901(d)(1), TSA is required to ensure that explosive detection systems are deployed so that United States airports have sufficient explosive detection systems to screen all checked baggage at those airports by December 31, 2002. TSA will meet this requirement through the deployment of bulk explosive detection systems (EDS) and ETDs.

In 1993, the Federal Aviation Administration issued criteria for the certification of bulk EDS that established minimum performance requirements for screening of checked baggage. *See* 58 FR 47804 (Sept. 10, 1993). TSA, as the agency now responsible for civil aviation security, is issuing criteria for the certification of ETDs used to screen baggage, including both checked baggage or accessible property, and the contents of baggage.

The ETD Criteria

The following sets forth a summary of the criteria. It does not include those portions that contain either National Security Information that requires safeguarding pursuant to Executive Order 12356, or sensitive security information that requires safeguarding pursuant to TSA regulations, *see* 67 FR 8340, 8352 (Feb. 20, 2002) (to be codified at 49 CFR part 1520.7) (together referred to as "sensitive criteria"). The Certification Plan contains all the criteria, as well as the steps the vendor must take to have TSA certify its ETD.

Testing of ETDs presented to TSA for ETD certification will be performed in accordance with the TSA's Certification Plan for Explosive Trace Detection Equipment (the Certification Plan). The Certification Plan is consistent with the recommendations for certification of trace equipment in the 1999 National Research Council's report on the "Assessment of Technologies Deployed to Improve Aviation Security."

All costs, direct and indirect, associated with testing and certification (*e.g.*, insurance, shipping, installation, set-up, technical operation, maintenance, calibration, disassembly, and TSA laboratory testing costs) must be borne by the vendor.

Summary of the Criteria for Certification of Explosive Trace Detection Systems

Terms Used

For purposes of the criteria:

An "explosive trace" is a minute residue of explosive materials that may be the remnant of threat activities, including bomb making or coming into close proximity with a suspect individual (*e.g.*, bomb makers or bomb distributors).

An ETD is a device, or combination of devices, that has the ability to detect and identify potential threats by looking for explosive traces in or on baggage and its contents, to include electronic items, electric items, courier pouches, and other concealments, as specified by TSA.

The term "baggage" includes accessible property and checked baggage.

The term "accessible property" includes to all items presented at the screening checkpoint prior to entering the sterile area including electronic and electric items intended to be carried into the sterile area or in the passenger cabin of the aircraft.

The term "checked baggage" includes all passenger bags destined for the aircraft cargo hold, including originating and transfer baggage.

The term "nuisance alarm" means an alarm by the ETD that may be caused by the presence of explosive traces when no bomb is present or by other materials that produce a signature indistinguishable from the explosives of interest.

General Requirements

The ETD must operate effectively, efficiently, and reliably in an airport environment, with a reasonable nuisance alarm rate. To achieve certification, the system must demonstrate the ability to achieve operational requirements when used in the assigned mission role by representative operators provided with procedures. Additionally, the ETD must demonstrate a capability to sustain mission readiness when maintained by trained personnel using the defined maintenance schedule and procedures.

TSA will certify ETD equipment based upon the criteria. TSA will also develop a list of certified equipment that is eligible for use in screening baggage (the Qualified Vendor Listing or QVL) in airport operations.

The ETD must be approved by Underwriters Laboratory or equivalent, and if it employs a radioactive source, be licensed by the Nuclear Regulatory Commission (NRC). Radiation safety procedures must exist for each ETD containing radioactive materials to ensure compliance with pertinent regulations.

The vendor must provide data certifying that the ETD and associated test equipment and tools meet the personnel and facility safety requirements specified by the Occupational Safety and Health Administration (OSHA) regulations and the National Electrical Code.

The vendor must provide a general license to allow TSA, air carriers, and airport operators the legal right to operate the ETD without limitation for each location of installation and operation.

TSA will certify only complete turnkey systems. TSA will not certify, or allow for use, individual components. Prior to final certification, TSA will require vendors to provide a complete baseline system with documentation. This documentation must include, but is not limited to: recommended system installation procedures with power and telecommunications requirements; calibration and sample collection procedures; minimum essential test equipment and devices; routine field testing and calibration procedures and test objects to be used; routine and emergency operating procedures; field preventative maintenance and repair procedures; and training programs.

Detection Requirements

The ETD must demonstrate a very high probability of detection for each category of explosive. The ETD must detect and identify the explosives at the trace levels specified in the sensitive criteria when employed in the operational environment by representative personnel. The sensitive criteria identify the types and quantities of explosive materials (explosive trace) that must be detected, the minimum detection rate for each category of explosive, and the overall detection and maximum nuisance alarm rates. The criteria also specifies the requirement to detect the minimum quantity and larger quantities of each listed explosive.

The ETD must detect and differentiate explosive materials from among all other materials that might be found deposited on a surface of interest, whether on the inside or outside of the baggage or its contents.

The ETD, either as sold or with modification, must also be capable of field retrofit to identify new threats, including the marking agents for plastic explosives required by Public Law 104–132.

The ETD must have a clear-down time specified in the sensitive criteria.

Operational Requirements

The ETD must have a sampling method. The sampling method must provide for effective sampling from the variety of surfaces shapes, contours, and textures encountered in baggage and their contents. The sampling method must have sufficient flexibility to sample all potential areas of interest on and in the bag. The sampling method may be automated, and must be usable by the average baggage screener.

The ETD sampling method must not cause damage visible to the naked eye or significant residual alteration of the screened subject(s) or its contents. Assume there will not be sample acquisition from scratch-sensitive surfaces such as laptop computer screens and camera lenses.

The ETD must display data using a built-in monitor and be viewable in normal lighting conditions using a glare-free screen. The monitor must be at least two inches on each side.

The ETD must display a message on the monitor that identifies the explosive detected.

The ETD must provide notification of NON-Detection by displaying a message on the monitor.

The ETD must provide notification of detection of explosives by aural alarms.

The ETD must provide a printed record indicating all available information associated with the alarm. The information must be sufficient for analysis of the sample, assistance in troubleshooting, and diagnosis of problems.

The ETD's human-system interface, including displays, printed records of detection activity, visual and auditory alarms, and others, should conform to applicable provisions of DOT/FAA/CT–96/1 (Human Factors Engineering Design Guide for Non-Developmental and Developmental Items) for use by 5th percentile female through 95th percentile male users. Additionally, displays should conform to industry conventions for Graphical User Interface (GUI) or Object-Oriented User Interface (OOUI) designs where GUI or OOUI displays are present. Displayed information must be heuristically appropriate and based on operator and maintainer task requirements.

The ETD must be capable of processing a minimum of 180 samples per hour when no alarms are present (not including acquiring the sample). This time includes machine processing and analysis.

The ETD must operate on 110 volt typical airport power.

The ETD must be capable of being safely, effectively, and efficiently operated and maintained in its fielded configuration under all possible operating conditions (*e.g.*, environment: lighting, and noise) by trained personnel using the procedures provided by the vendor.

The ETD must be capable of being shut down, transported by one individual to a new site, reinstalled, and placed in an operational ready mode within a one hour period.

The vendor must provide routine updates, upgrades, design modifications, and corrective performance improvements. A decision will be made by TSA if incorporating the upgrades require the vendor to re-certify the ETD. The vendor must notify and obtain written approval from TSA, in accordance with the Configuration Management Plan (CMP), before incorporating any adaptation, update or upgrade of TSA deployed hardware, software, or firmware.

Reliability Requirements

The ETD must demonstrate a mission reliability of 95% where mission reliability is defined as the ability of the

system to complete any given shift once operations are commenced.

The ETD must be available for sample testing 95% of the time (defined as the availability of the unit to support the mission at any given time during any 24 hour period).

The vendor must provide a maintenance schedule and maintenance procedures for the fielded configuration item that can be accomplished by site operator and maintenance personnel. The ETD must require less than an average of 30 minutes of general/preventive maintenance per day.

The ETD must have a MTTR of less than 4 and a maximum time to repair of 24 hours including cool-down, disassembly, reassembly, warm-up, verification of operation, and further diagnosis as required. The MTTR should be based on repair by a factory-trained technician.

Data Processing Requirements

The ETD must provide data processing capability with an internal processor. This processor must be at a minimum equivalent to the 80486 processor. The ETD must provide data directly to the TSA. The data elements are "system" and "transaction" data defined in the Certification Plan.

Training Requirements

The ETD must demonstrate the capability to be operated and maintained by trained personnel; the training program must be matched and attuned to the skill level, qualifications, and capacity of current ETD operators and supervisors performing similar baggage inspection functions. The system must be delivered with technical documentation which at a minimum will consist of two System Technical Manuals to support the ETD: (1) an Operations Manual to support operations; and (2) a Maintenance Manual to support maintenance performed by technicians at the System sites.

Certification Requirements

As required by the Certification Plan, vendors seeking TSA certification for an ETD must submit complete descriptive data, manuals, and airport test results to TSA prior to receiving permission to ship the ETD to the TSA Technical Center. TSA reserves the right to visit a vendor's facilities for technical quality assurance and configuration management purposes, require and/or monitor in-house tests, and review associated data prior to granting permission to ship equipment for certification testing.

The vendor must provide documentation describing the ETD configuration management and quality assurance plans and practices applied during system development, production, and test and evaluation.

Before the system is accepted for laboratory detection testing it must have been used in an airport and have processed over 4,000 bags. TSA will provide, on request, up to 100 sample test articles for use in the airport environment to allow realistic detection testing. Data from these tests may be used to help establish the appropriate alarm threshold and to evaluate various sampling tools and procedures. Nuisance alarm rates must be reported at the alarm threshold setting to be used in the laboratory testing. Additionally, the data on detection (based upon a set of 50 test articles), reliability and operational availability must be recorded and submitted as part of the pre-certification documentation.

The TSA Research and Development Technical Center in Atlantic City, New Jersey will perform certification tests for producers of candidate ETDs. The ETD Certification Test Director in the Office of Transportation Security Research and Development is the point of contact.

After the ETD has demonstrated an acceptable level of detection in the laboratory, TSA will take the system to an airport to exercise and test the sample acquisition system and acquire nuisance alarm and reliability data by sampling at least 1,000 passenger bags.

Operational field test and evaluation of the ETD is a critical component of the trace detector certification process. Using the same configuration demonstrated in the laboratory test, the ETD must demonstrate compliance with appropriate operational requirements, including usability, appropriately low nuisance alarm rates, automated data collection and retrieval capability, security protocols, reliability, maintainability, supportability, ease of use and transportability.

Considerations for the Qualified Vendors Listing (QVL)

In addition to the mandatory Criteria discussed above, there are a number of other operational considerations that will influence any future TSA decision to place the equipment on the QVL. The QVL is the list of equipment that is eligible for TSA to purchase, deploy, and use ETD for screening baggage. While these considerations are not mandatory for certification of ETD, TSA highly recommends that vendors factor these considerations into development and design decisions. While such trade-offs may not affect certification under these Criteria, they will be considered during decision making regarding purchase and deployment of certified ETD. A detailed discussion of these economic and operational concerns are addressed in the Certification Plan.

Authority: Pub. L. 107–71, 115 Stat. 597 (3001).

Dated: July 15, 2002.

John W. Magaw,

Under Secretary of Transportation for Security.

[FR Doc. 02–18611 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–62–P

Corrections

Federal Register

Vol. 67, No. 142

Wednesday, July 24, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–44–AD; Amendment 39–12822; AD 2002–14–22]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

Correction

In rule document 02–17602 beginning on page 46582 in the issue of Tuesday, July 16, 2002 make the following corrections:

§ 39.13 [Corrected]

1. On page 46583, in §39.13, in the table, under "Actions", in paragraph (1), in the second line, "bold" should read "bolt".

2. On the same page, in §39.13, in the same table, under "Actions", in paragraph (3), in the third line, "bolt" should read "both".

[FR Doc. C2–17602 Filed 7–23–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 24, 2002

Part II

Securities and Exchange Commission

17 CFR Part 270
Investment Company Mergers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25666; File No. S7–21–01]

RIN 3235–AH81

Investment Company Mergers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to the rule under the Investment Company Act of 1940 that permits mergers and other business combinations between certain affiliated investment companies. The amendments expand the types of business combinations permitted by the rule and make the rule available for mergers between registered investment companies and certain unregistered entities. The amendments are designed to reduce burdens on investment companies by eliminating the need to obtain Commission approval for mergers that present little risk of overreaching.

DATES: *Effective Date:* July 26, 2002.

Compliance Date: October 25, 2002. Section II of this document contains more information on transition prior to the compliance date.

FOR FURTHER INFORMATION CONTACT: Robert S. Kim, Attorney, at (202) 942–7961, or Martha B. Peterson, Special Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is adopting amendments to rule 17a–8 [17 CFR 270.17a–8] under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act" or "Act").

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Executive Summary

The Commission is adopting amendments to rule 17a–8 under the Investment Company Act, the rule that permits mergers of registered investment companies ("funds") with certain of their affiliated persons.[1] The amendments expand the availability of the rule in two ways: first, the rule permits funds to merge with other affiliated funds without regard to the reason for their affiliation; and second, the rule permits funds to merge with unregistered bank common trust funds, bank collective trust funds, and unregistered insurance company separate accounts. The amendments subject the exemption to certain additional conditions designed to protect investors.

I. Discussion

Section 17 of the Investment Company Act prohibits certain transactions between funds[2] and their affiliated persons[3] unless the Commission issues an order after finding that (i) the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, (ii) the proposed transaction is consistent with the policy of each fund, and (iii) the proposed transaction is consistent with the general purposes of the Act.[4] This section operates to prohibit mergers[5] of investment companies that are affiliated persons of each other, which typically include funds that are in the same fund complex.[6] Since 1980, our rule 17a–8 has permitted mergers of funds that are affiliated solely because they have common investment advisers, officers and/or directors.[7] We have considered other fund mergers on a case-by-case basis, and since 1980 we have issued more than 150 orders granting exemptions for fund mergers that did not qualify for relief under rule 17a-8.[8]

In November 2001, we proposed to codify the terms of our exemptive orders and expand the availability of rule 17a–8 to permit affiliated mergers regardless of the reasons for the funds' affiliation, and to permit funds to merge with unregistered bank common and collective trust funds.[9] We received eight comments on the proposed amendments to rule 17a–8.[10] Commenters supported the proposed broadening of the rule, but suggested changes. Today we are adopting the amendments to rule 17a–8, with several changes that respond to issues raised by commenters. The amended rule, which we describe below, will permit most mergers of registered investment

[1] Unless otherwise noted, when we refer to rule 17a–8 or any paragraph of that rule, we are referring to 17 CFR 270.17a–8, the section of the Code of Federal Regulations in which the rule is published, as amended by this release.

[2] We use the term "fund" throughout this release to refer to registered investment companies and series of registered investment companies that are series companies.

[3] The Act describes an "affiliated person" of another person as (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting securities of such other person; (B) any person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof. 15 U.S.C. 80a–2(a)(3). Unless otherwise noted, in this release, we will use the term "affiliate" to include affiliated persons of the fund and affiliated persons of those affiliated persons. Section 17(a) also reaches transactions with a promoter of or a principal underwriter for a fund and affiliated persons of such promoter or principal underwriter. For purposes of this release, the term "affiliates" includes these persons as well.

[4] 15 U.S.C. 80a–17(a)–(b).

[5] We use the term "merger" in rule 17a–8 and this release to refer to a merger, consolidation, or purchase or sale of substantially all of an entity's assets. Rule 17a–8(b)(1). A fund merger typically occurs in one of three ways, each of which involves the purchase or sale of fund assets: (i) One fund purchases the portfolio assets of the other; (ii) one fund purchases all securities issued by the other; or (iii) securities issued by one fund are exchanged for all or substantially all of the portfolio assets of the other fund.

[6] Funds in a fund complex are under the common control of an investment adviser or other person when the adviser or other person exercises a controlling influence over the management or policies of the funds. 15 U.S.C. 80a–2(a)(9). Not all advisers control the funds they advise. The determination of whether a fund is under the control of its adviser, officers, or directors depends on the relevant facts and circumstances. Throughout this release we presume that the funds in a fund complex are under common control, because funds that are *not* affiliated would not need relief under rule 17a–8.

[7] *See* Mergers and Consolidations Involving Registered Investment Companies, Investment Company Act Release No. 11053 (Feb. 19, 1980) [45 FR 12408 (Feb. 26, 1980)].

[8] Typically a single order provides an exemption for multiple funds. The 16 orders we issued in 2001 provided exemptions for 120 mergers involving approximately 220 funds.

[9] Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)] ("Proposing Release").

[10] The comment letters and a summary of comments prepared by our staff are available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC (File No. S7–21–01). The comment summary is also available on the Commission's Internet Web site *(http://www.sec.gov/rules/extra/s72101commsumm.htm)*.

companies to proceed without the need for exemptive relief.

A. Mergers Between Registered Investment Companies

The Commission is adopting, as proposed, an amendment to rule 17a-8 to permit affiliated fund mergers regardless of the reasons for the funds' affiliation.[11] The rule will continue to require that each fund's board (including a majority of disinterested directors) determine that the merger is in the best interests of the fund and will not dilute the interests of shareholders.[12] These are critical determinations boards must carefully consider, particularly when the merger involves significant conflicts of interest.[13] Directors must request and evaluate any information reasonably necessary to their determinations, and consider and give appropriate weight to all pertinent factors in making their findings under the rule, and in fulfilling the overall duty of care they owe to the fund's shareholders.[14] In making their determinations, boards should consider, if relevant, the following factors, among others[15]—

- Any fees or expenses that will be borne directly or indirectly by the fund in connection with the merger;[16]
- Any effect of the merger on annual fund operating expenses and shareholder fees and services;
- Any change in the fund's investment objectives, restrictions, and policies that will result from the merger; and
- Any direct or indirect federal income tax consequences of the merger to fund shareholders.

We do not intend the list of factors to be exhaustive, and none of the factors would necessarily be determinative. Consideration of these specific factors does not relieve a board of the obligation to consider other relevant factors.[17]

We are also adopting an amendment that requires the acquired fund, in a merger relying on rule 17a-8, to have the merger approved by its shareholders in certain circumstances.[18] In the Proposing Release we expressed concern that funds were increasingly organized (or reorganized) under state laws that did not require shareholder approval of mergers, which could deny shareholders a voice in an important change in their investment.[19] Most commenters supported requiring acquired companies to obtain shareholder approval, but in light of the costs of proxy solicitations, urged us to limit the requirement. One commenter recommended that we require shareholder approval only when the merger would result in a change that, in a context other than a merger, would require a shareholder vote under the Investment Company Act. We believe such an approach has merit because it would preserve important values embodied in the Investment Company Act while reducing the need for a fund to incur the expense of soliciting proxies when the merger may not raise significant issues for shareholders.

Under rule 17a-8, as we are today amending it, reliance on the rule requires the acquired fund to obtain the approval of a majority of its shareholders[20] in circumstances that we have derived from various provisions of the Act and our rules that specify when a fund must obtain the approval of its shareholders.[21] Under the rule as amended a majority of the shareholders of the acquired fund must approve the merger if—

- Any policy of the acquired fund that under section 13 of the Act could not be changed without a vote of a majority of its outstanding voting securities is materially different from a policy of the acquiring fund;[22]
- The acquiring fund's advisory contract is materially different from that of the acquired fund, except for the identity of the funds as parties to the contract;[23]

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[11] Rule 17a-8(a).

[12] Rule 17a-8(a)(2)(i). We are not adopting a proposal to prohibit funds from relying on rule 17a-8 to effect mergers that are part of a plan or scheme to evade the prohibitions of section 17(a) of the Act; section 48(a) of the Act already makes such activity unlawful. 15 U.S.C. 80a-47(a).

[13] In January 2001, we amended rule 17a-8 to include conditions related to independent directors of a merging fund. Under those amendments, relief is conditioned on (i) a majority of the board of directors of each fund relying on the rule being independent directors, (ii) the independent directors of any fund relying on the rule selecting and nominating any other independent directors, and (iii) any legal counsel for the independent directors of the fund relying on the rule being an independent legal counsel. *See* rule 17a-8(a)(4). *See also* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)].

[14] Rule 17a-8(a)(2)(ii).

[15] In the proposal, we identified these factors in the text of the rule itself. *See* proposed rule 17a-8(a)(2)(ii). Consistent with our judgment to continue to rely on the exercise of judgment by the directors (including the disinterested directors), and because these factors only represent examples of factors that may be relevant, we have decided not to include the factors in the rule text. Instead, we have included a note in the rule to refer readers to this release. As such, the factors do not represent legal requirements. While it is true that the directors may not have to consider all of these factors, it is equally true that consideration of these factors may not suffice if the directors have not considered other relevant factors. In all cases, the directors must make their own determination as to what factors are relevant to making their findings under the rule.

[16] Directors should consider in particular whether the fund's payment of fees and expenses that would otherwise be paid by the fund's investment adviser raises questions under section 15(a)(1) [15 U.S.C. 80a-15(a)(1)] (advisory contract must precisely describe all compensation to be paid under the contract) and section 36(b) [15 U.S.C. 80a-35(b)] (investment adviser has fiduciary duty with respect to the receipt of compensation for services, or of payments of a material nature, paid by the fund or its shareholders). In addition, if the fund merger follows a merger of the fund's investment adviser, then the fund's payment of fees and expenses might constitute compensation to the investment adviser and raise questions regarding the availability of section 15(f) [15 U.S.C. 80a-15(f)] (creating a safe harbor under which investment advisers may receive a benefit in connection with a sale of securities of, or a sale of any other interest in, an investment adviser that results in an assignment of an investment advisory contract, if certain conditions are met).

[17] *See supra* note 15.

[18] In some cases rule 17a-8 may permit a merger to occur without shareholder approval, but state law or the fund's organizational documents may require shareholder approval. Nothing in rule 17a-8 relieves a fund of its obligations in this regard under state law or its organizational documents. We also proposed, but are not adopting, an amendment that would have required certain shareholders to "echo vote" their securities. Commenters pointed out that echo voting would be costly and complex, and that seeking instructions from beneficial owners could be contrary to the terms of underlying legal arrangements. Advisers (and their affiliated persons) that are also fund shareholders should carefully consider their fiduciary responsibilities to the fund when deciding how to cast their votes. We understand that it is a common practice for advisers with conflicting obligations to vote their shares in a manner similar to that which we proposed.

[19] Proposing Release, *supra* note 9, at text accompanying nn.37–41.

[20] The amended rule requires a "vote of a majority of the outstanding voting securities," as described in section 2(a)(42) of the Act. Rule 17a-8(a)(3). We have added this provision in response to a comment that shareholder votes required under rule 17a-8 be subject to the Act's requirements for majority approval. *Cf.* Proposing Release, *supra* note 9, at n.41.

[21] We have not included the identical requirements because the application of such requirements in the context of a merger would not work, or might require a shareholder vote in all circumstances.

[22] Rule 17a–8(a)(3)(i). Under section 13 of the Act no fund may, unless authorized by the vote of a majority of its outstanding voting securities: (1) change between being an open- and closed-end investment company or from being a diversified to a nondiversified company; (2) borrow money, issue senior securities, underwrite securities issued by other persons, purchase or sell real estate or commodities, or make loans to other persons, except in accordance with the recitals of policies contained in the fund's registration statement; (3) deviate from any investment policy that is changeable only by shareholder vote or any policy that is "fundamental" under section 8(b)(3) of the Act; or (4) change the nature of its business so as to cease to be an investment company. 15 U.S.C. 80a–13(a)(3).

[23] Rule 17a–8(a)(3)(ii). *See* 15 U.S.C. 80a–15 (requiring shareholder approval of advisory contracts). We interpret section 15(a) to require shareholder approval of only material changes to an advisory contract, and thus have drafted the rule in a manner that reflects that interpretation. If, after the merger, the advisory fees payable by the acquiring fund will be greater than the advisory fees of the acquired fund, we would consider the

Continued

• After the merger, directors of the acquired fund who are not interested persons of the acquired fund and who were elected by its shareholders will not comprise a majority of the directors of the acquiring fund who are not interested persons of the acquiring fund;[24] or

• After the merger, the acquiring fund will be authorized to pay charges under a plan that provides for use of fund assets for distribution ("rule 12b–1 plan") that are greater than charges authorized to be paid by the acquired fund under such a plan.[25]

We are also adopting, as proposed, a requirement that each investment company that survives the merger preserve written records that document the merger and its terms.[26] The records must include, among other things, the minute books setting forth the determinations of the funds' boards and the bases for those determinations, any supporting documents provided to the directors in connection with the merger, and documentation of the prices at which securities were transferred in the merger.[27] The recordkeeping requirement ensures that we have adequate information to assess the merging funds' compliance with the rule's conditions.

B. Mergers of Registered Investment Companies and Certain Unregistered Entities

We are expanding the exemption provided by rule 17a–8 to permit funds to merge with affiliated persons that are bank common trust funds,[28] bank collective trust funds,[29] and unregistered insurance company separate accounts,[30] provided that the survivor is a registered investment company.[31] We did not propose to permit mergers with unregistered insurance company separate accounts. One commenter pointed out, and we agree, that the issues raised by mergers with that type of account are similar to the issues raised by mergers with bank common and collective trust funds.

We are also adopting a requirement that the board of directors of a fund that merges with an unregistered trust fund or account, in making its determination that the interests of the fund's shareholders will not be diluted as a result of the merger, approve procedures for the valuation of the securities (or other assets) that the unregistered entity will convey to the fund.[32] These procedures must provide for the preparation of a report by an independent evaluator[33] that sets forth the fair market value of any such assets for which market quotations are not readily available.[34] The independent evaluator's report must be included in the records of the merger.[35]

II. Effective Date

The amendments to rule 17a-8 will be effective on July 26, 2002. The Administrative Procedure Act generally provides that a substantive rule may become effective no less than 30 days after publication in the **Federal Register**.[36] Nevertheless, we may establish an effective date that is less than 30 days after publication for rule amendments that grant or recognize an exemption or relieve a restriction.[37] Today's amendments meet these criteria, because the amendments exempt certain fund mergers from the prohibition in section 17(a).

Persons entering into mergers that occur on or after October 25, 2002 ("compliance date") must comply with the conditions in rule 17a-8 as amended in order to rely on the exemption in the rule. Persons entering into mergers that occur between July 26, 2002 and the compliance date may rely on either rule 17a-8 as amended, or rule 17a-8 as it existed prior to today's amendments.

III. Cost-Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules. The amendments to rule 17a-8 are designed to reduce costs incurred by funds and advisers by eliminating the need for Commission approval of certain fund mergers. The amendments also supplement existing conditions of the rule, in order to ensure continued protection of fund shareholders in connection with mergers of funds and their affiliates. The Commission has identified certain costs, which are discussed below, that may result from the rule amendments. The rule amendments are exemptive, rather than prescriptive, and funds are not required to rely on them. Therefore, we assume that funds will rely on the rule amendments only if the anticipated benefit from doing so exceeds the anticipated cost. We did not receive any data regarding the costs and benefits of the rule amendments from commenters.

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increase in the advisory fee to be a material change requiring shareholder approval.

[24] Rule 17a–8(a)(3)(iii). In other words, a shareholder vote is *not* required if, after the merger, a majority of the disinterested directors of the acquiring company will be comprised of persons who were elected disinterested directors of the acquired company.

[25] Rule 17a-8(a)(3)(iv). *See* rule 12b–1 under the Investment Company Act [17 CFR 270.12b–1] (describing circumstances in which an open-end management investment company may bear expenses associated with the distribution of its shares).

[26] Rule 17a–8(a)(5) (requiring the company to keep these records for six years after the merger and, for the first two years, in an easily accessible place).

[27] Rule 17a–8(a)(2)(iv). The merger records also must include any report of an independent evaluator necessary for compliance with rule 17a–8(a)(2)(iii). *See infra* Section I.B.

[28] Generally, common trust funds and similar funds are exempt from registration under section 3(c)(3) of the Act [15 U.S.C. 80a–3(c)(3)]. *See* Proposing Release, *supra* note 9, at n.48.

[29] Collective trust funds are exempt from registration under section 3(c)(11) of the Act [15 U.S.C. 80a–3(c)(11)]. *See* Proposing Release, *supra* note 9, at n.49.

[30] Separate accounts are described in section 2(a)(37) of the Act [15 U.S.C. 80a–2(a)(37)].

[31] Rule 17a–8(a)(1). As we discussed in the Proposing Release, the staff has written no-action letters in the past under section 17(a) and rule 17a–7 to funds seeking to merge with unregistered entities. Proposing Release, *supra* note 9, at n.54. Parties to mergers that occur on or after the compliance date of the amendments to rule 17a–8 should not rely on the guidance in those letters. Parties to such mergers must either (i) comply with rule 17a–8 or another applicable rule or (ii) obtain an exemptive order from the Commission under section 17(b). A merger that is conducted in reliance on rule 17a–7 must comply with all of the conditions of that rule, including the requirement that the transaction be for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available. *See* 17 CFR 270.17a–7(a).

[32] Rule 17a-8(a)(2)(iii).

[33] An "independent evaluator" is a person having expertise in the valuation of securities and other financial assets who is not an interested person of the unregistered entity or any of its affiliated persons, other than the fund. Rule 17a-8(b)(3).

[34] Rule 17a-8(a)(2)(iii). This provision requires the directors to obtain a report from an independent evaluator valuing those securities for which the directors will have to determine fair value for purposes of computing the net asset value of the fund's shares subsequent to the merger. *See* 17 CFR 270.2a–4(a). A number of commenters incorrectly assumed that our proposal would require the fund to accept the opinion of the independent evaluator and expressed a concern that the rule might require the fund to accept valuations for the purpose of the merger that it would not subsequently use, which would require a readjustment of values. The rule amendment essentially requires the board to receive a "second opinion" from an independent evaluator, which the board can use when considering the asset valuations that may have been prepared by a person that has an interest in the transaction. Although a board is free under the rule to reject the opinion, it should use caution in accepting a valuation by a person that has an interest in the merger when that person's valuation is materially different from that of the independent evaluator. The proposed amendments would have required that the independent evaluator's report include valuations for all securities to be conveyed to the acquiring fund. The rule amendments that we are adopting limit this requirement to securities for which market quotations are not readily available. Commenters expressed concern about the cost to funds of obtaining reports from independent evaluators, and we do not believe that it is necessary to require reports that value securities for which market quotations are readily available.

[35] Rule 17a-8(a)(5).

[36] 5 U.S.C. 553(d).

[37] 5 U.S.C. 553(d)(1).

A. Benefits

We anticipate that funds, their shareholders, and their advisers and other affiliates will benefit from the expansion of the rule to include mergers of affiliated funds, regardless of the nature of the affiliation, and mergers with common or collective trust funds and unregistered insurance company separate accounts. More merging funds will be able to rely on the rule and therefore will not have to obtain exemptive relief, which can be costly to merging funds, their shareholders, and their affiliates.[38] Thus, the amendments will remove an obstacle to mergers of affiliated funds and can thereby reduce the costs of affiliated mergers. Investment advisers also can benefit from the greater ease with which mergers can be effected under the amended rule because they often bear all or a portion of the costs of obtaining exemptive relief.[39]

The Commission staff anticipates that eliminating the need for merging funds to obtain individualized exemptive relief would not cause a significant increase in the number of mergers. However, to the extent that the number of mergers increases, mergers give shareholders of small or poorly performing funds an opportunity to shift their assets to a better performing fund without negative tax consequences.[40] In addition, investment advisers can realize economies of scale through fund mergers, which spread the costs of management, some of which are fixed, across a larger pool of assets. Shareholders may benefit from these economies of scale in the form of lower fees and expenses.[41]

We believe that the amendments, in addition to reducing costs faced by funds in connection with mergers, also may enhance the protections afforded by the rule to fund shareholders. We believe that the provision conditioning relief on the directors requesting and evaluating such information as may reasonably be necessary to determine whether the merger is in the best interests of the fund and will not dilute the interests of the fund's existing shareholders will encourage director scrutiny of fund mergers. Conditioning the rule's relief in certain circumstances on approval of the merger by a majority of the outstanding voting securities of an acquired fund can benefit fund shareholders by giving them an opportunity to assess the merger in light of their own financial circumstances. Submitting the merger to a vote, we believe, may improve its terms since the fund managers must persuade investors to approve them. Finally, we believe that the amended rule's recordkeeping requirements will ensure that our examinations staff will be able to assess merging funds' compliance with the rule.

B. Costs

Merging funds that choose to rely on rule 17a-8, and their advisers, will incur certain costs in complying with the rule's conditions. The supplemental conditions included in the amendments, together with the increased numbers of merging funds likely to rely on the rule, may result in an increase in the aggregate annual cost of compliance with rule 17a-8.

The amendments would eliminate the expenses of filing an exemptive application for certain merging funds.[42] Unlike the expense of complying with rule 17a-8, however, the cost of an exemptive application may be shared by a number of merging funds. Therefore, there may be certain increased compliance costs under the amended rule for these merging funds.[43] In addition, some merging funds that would have been able to comply with rule 17a-8 prior to the amendments may face higher costs under the amendments.[44] Finally, funds merging with eligible unregistered funds will be able to avoid the expense of filing an exemptive application, but some funds may incur greater costs under the rule than they would have incurred otherwise, such as higher valuation costs because of the required independent evaluator's report.

The rule is intended to ensure that boards thoroughly review merger transactions and their terms. Even in the absence of the amended rule, fund boards would meet to consider the merger; as a result, the incremental costs attributable to the board determination requirements of rule 17a-8 are likely to be minimal.

In conjunction with the expansion of the rule to unregistered entities, the amendments require that fund boards establish procedures for valuing the assets held by any eligible unregistered funds participating in the merger. If the unregistered entity will convey assets to the fund for which market quotations are not readily available, then the valuation procedures must include the preparation of a report by an independent evaluator. The staff estimates that this requirement will impose an aggregate annual cost of approximately $195,000.[45]

We believe that there will be few additional shareholder votes annually as a result of the requirement in rule 17a-8 that shareholders of the acquired fund approve certain fund mergers.[46] Currently, in most (if not all) cases acquired funds obtain approval of their shareholders before engaging in mergers that materially alter the investment held by fund shareholders. The staff estimates that the cost of obtaining

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[38] In calendar year 2000, exemptive orders were issued for over 30% of affiliated fund mergers. We believe that these mergers would have been able to proceed under amended rule 17a-8. As set forth in Section V below, we anticipate that there will be approximately 400 affiliated fund mergers annually. Thus, assuming that 30% of these would have had to proceed under an exemptive order, annually approximately 120 mergers for which individualized exemptive relief would have been necessary will now be able to proceed under the rule. The Commission staff estimates, based on conversations with persons who have prepared exemptive applications for merger-related relief under section 17(b), that it costs an average of $36,000 to obtain an exemptive order permitting mergers of multiple portfolios of one or more affiliated registered investment companies. As discussed below, some funds may incur costs in complying with the rule's conditions that they otherwise would not have incurred. *See infra* Section III.B.

[39] The costs of a fund merger may be borne totally or in part by the investment adviser to one or both of the merging funds or may be borne by one or both of the merging funds. The allocation of costs of the merger is a product of negotiation between the boards of the merging funds and their investment adviser(s).

[40] Liquidations are generally taxable events for fund shareholders, whereas fund mergers can be structured to be non-taxable.

[41] *See* Narayanan Jayaraman, *et al.*, *An Analysis of the Determinants and Shareholder Wealth Effects of Mutual Fund Mergers*, 57 J.Fin. 1521 (2002) (finding that target shareholders benefit from improved performance and lower expense ratios).

[42] *See supra* note and accompanying text.

[43] Except in rare circumstances, it is unlikely that funds will experience significantly higher costs in conducting a merger under the amended rule. *See infra* notes 46–47 and accompanying text (discussing costs associated with conducting a shareholder vote).

[44] These increased costs may be attributable to the amended rule's requirements regarding board determinations, shareholder voting provisions, and/or recordkeeping requirements.

[45] The staff estimates, based on a review of fund filings, that there will be approximately 13 mergers each year involving common or collective trust funds or unregistered separate accounts. The staff also estimates, based on discussions with professionals who have prepared similar valuation reports, that the preparation of an independent evaluator's report in these instances would cost approximately $15,000. This cost could, however, be considerably higher depending on the number and characteristics of the securities that are being valued.

[46] For purposes of our Paperwork Reduction Act analysis, we assumed that twenty funds each year will be affected. *See infra* Section V. Our staff rarely sees fund mergers in which there is no shareholder vote. Many funds are required by state law or the fund's organizational documents to conduct a shareholder vote in the event of a merger. Even funds that are not required to obtain shareholder approval may do so in order to maintain good relations with their shareholders.

shareholder approval for a fund merger is approximately $75,000.[47]

We believe that the incremental costs associated with the recordkeeping requirements in amended rule 17a-8 will not be significant. We believe that most funds already retain the types of records that are required by the amended rule as a matter of good business practice. Prior to the amendments, the rule required that the directors' findings and their bases be recorded in the minute books of the fund. The amended rule retains this requirement at what we anticipate will continue to be a minimal cost.[48] The amended rule also requires the acquiring fund to retain written records describing the merger and its terms. The six-year retention period is consistent with the retention period applicable to similar fund records.[49] We believe, therefore, that the recordkeeping requirement is unlikely to impose significant additional costs on funds.

IV. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[50] None of the commenters addressed these issues.

Today's amendments to rule 17a–8 are intended to make the rule available for more affiliated fund mergers, thereby eliminating the need for specific exemptive relief in most cases.[51]

The rule amendments will expedite many mergers that, prior to the amendments, could proceed only if we issued an exemptive order. These mergers will now be less costly to the merging funds, their shareholders, and their affiliates. It is possible that reducing the cost of mergers will induce more funds to combine, thereby increasing industry concentration. We do not, however, believe that the cost of obtaining a Commission exemptive order is a significant factor in funds' decisions to enter into mergers, and we do not anticipate that the rule amendments will significantly increase or decrease the number of mergers that occur annually; therefore, the amendments will not have a significant direct effect on efficiency, competition, or capital formation.[52]

The amendments may have certain secondary effects on efficiency and competition. By eliminating disparities in the costs incurred by affiliated funds that would have been able to merge under the rule prior to the amendments, versus those that would have merged through an exemptive order, the amendments may have a positive effect on competition. On the other hand, because (as discussed above) a small number of funds that would have been able to merge under the rule prior to the amendments may incur higher costs under the amended rule, the amendments may have a negative effect on efficiency. However, we do not anticipate that either effect will be significant.

V. Paperwork Reduction Act

As explained in the Proposing Release, the amendments to rule 17a-8 expand the rule's scope and add new conditions to the rule, some of which constitute new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We submitted these proposals to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Rule 17a–8 under the Investment Company Act of 1940 [17 CFR 270.17a–8], "Mergers of Certain Affiliated Investment Companies." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The OMB control number for amended rule 17a–8 is 3235–0235.

As discussed above, today we are adopting amendments to rule 17a–8 that are substantially similar to amendments that we proposed in November 2001. None of the commenters addressed the Paperwork Reduction Act burden associated with these amendments.

The staff believes that the amendments will increase the annual hour burden associated with the rule, which is currently estimated to be 120 hours, and introduce an annual cost burden associated with the rule for purposes of the Paperwork Reduction Act. Because rule 17a–8 is an exemptive rule, funds may choose whether to rely on it. Therefore, any information provided under rule 17a–8 would be provided voluntarily. The amendments do not require that information be provided to the Commission, and thus this release does not address the confidentiality of responses under the amendments to rule 17a–8.

We anticipate that most if not all funds that engage in mergers with affiliated funds will rely on rule 17a-8. Assuming that there will be approximately 400 mergers between affiliated funds or fund portfolios annually, we estimate that approximately 800 registered investment companies, or, in many cases, portfolios or series thereof, would be subject to the rule's information collection requirements annually.[53] The Commission staff estimates that merging funds would spend annually an aggregate of 600 hours—200 hours of professional time and 400 hours of clerical time—recording the relevant determinations of the boards of directors and preserving written records of the mergers and their terms.[54] The

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[47] This estimate, which is based on conversations with representatives of funds and service providers, includes the legal, mailing, printing, solicitation, and tabulation costs associated with a shareholder vote. For the estimated twenty affected funds, the annual aggregate cost of holding a shareholder vote (at a cost of $75,000 per fund) would be approximately $1,500,000. However, the cost of holding a shareholder vote would be offset by an affected fund avoiding the cost of sending shareholders an information statement. *See* 15 U.S.C. 78n(c) (providing that prior to any meeting of its shareholders with respect to which proxies are not solicited, an investment company must, in accordance with Commission rules, file with the Commission and transmit to all shareholders of record information substantially equivalent to the information which would be required to be transmitted if a solicitation were made). Our staff estimates, based on discussions with industry participants, that the cost of preparing and delivering an information statement is $30,000. Thus, we estimate that there will be an aggregate cost savings of $600,000 resulting in a net annual aggregate cost of holding a shareholder vote of approximately $900,000.

[48] For purposes of the Paperwork Reduction Act analysis, the staff estimates that personnel of each fund will spend approximately .75 hours (.25 hours of professional time and .5 hours of clerical time) to satisfy the amended rule's recordkeeping requirements in connection with a merger. *See infra* Section V.

[49] *See* rule 31a–2 [17 CFR 270.31a–2].

[50] 15 U.S.C. 80a–2(c). We are adopting the amendments to rule 17a–8 pursuant to the authority in section 6(c) and 38(a) of the Act. As rules that we adopt under section 6(c) must be "necessary or appropriate in the public interest," the requirements of section 2(c) apply to the rule amendments.

[51] *See supra* Section III.

[52] *See supra* Section III.A. for a discussion of the cost savings.

[53] The staff estimate of approximately 400 mergers annually is higher than the approximately 279 mergers predicted for calendar year 2002 by a simple linear projection of merger data from 1993 through 2000. The staff believes, based on an evaluation of the number of mergers in recent years and current industry conditions, that 279 is an underestimate of the number of mergers that are likely to occur annually.

[54] The staff estimates, based on estimates made by the staff in 1999 in connection with the application for an extension of OMB's approval for the rule 17a–8 paperwork collection burden, that the proposed amendments would cause each of the approximately 800 participating portfolios or series of registered investment companies to incur an annual burden of .75 hours (.25 hours of professional time and .5 hours of clerical time) to

amendments would require that written records describing the merger transaction and terms be maintained for six years after the merger, the first two in an easily accessible place.

We also anticipate that most if not all funds that engage in mergers with eligible unregistered funds will rely on rule 17a–8. Our staff estimates that approximately 13 merging funds would be covered by this provision in the first year following the adoption of this rule.[55] Our staff further estimates, based on discussions with professionals who have prepared similar valuation reports, that an independent evaluator's report would cost approximately $15,000 and that, in the aggregate, the annual burden associated with this aspect of the rule will be approximately $195,000.[56]

There is a cost associated with obtaining the approval of the acquired fund's outstanding voting securities. The staff estimates that shareholder approval will be sought by approximately twenty funds each year that would not otherwise have conducted a shareholder vote.[57] Funds or their advisers incur legal, mailing, printing, solicitation, and tabulation costs in connection with a shareholder vote. We estimate, based on discussions with representatives of funds and service providers, that the total cost to an acquired fund of obtaining shareholder approval for a fund merger is approximately $75,000. Thus, we anticipate that the total annual cost associated with this provision will be approximately $1,500,000. However, since a fund conducting a shareholder vote will not be required to send an information statement, the cost of the shareholder vote provision will be offset by the avoided cost of sending information statements. We estimate, based on discussions with fund representatives, that each information statement would cost $30,000 to prepare and deliver. Thus, we anticipate that a total of approximately $600,000 of costs will be avoided annually, and the net cost of the shareholder vote provision will be approximately $900,000.[58]

The Commission staff estimates that the paperwork burden arising from the proposed amendments reflects an increase in the paperwork burden associated with rule 17a–8 of 480 hours and an increase in the annual cost burden of approximately $1,095,000.[59]

VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604 regarding the amendments to rule 17a–8 under the Investment Company Act. A summary of the Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. The following is a summary of the FRFA.

A. Need for and Objectives of the Rule Amendments

The FRFA summarizes the background of the amendments. The FRFA also discusses the reasons for the amendments and the objectives of, and legal basis for, the amendments. Those items are discussed above in this release.

B. Significant Issues Raised by Public Comment

The Commission received no comments on the IRFA.

C. Small Entities Subject to the Rule

The FRFA discusses the effect of the amendments on small entities. A small business or small organization (collectively, "small entity") for purposes of the Regulatory Flexibility Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[60] Of approximately 3,650 active funds, approximately 190 are small entities. A fund that is a small entity, like other funds, will be affected by the amendments only if it seeks to merge with an affiliated fund, bank common trust fund, bank collective trust fund, or unregistered insurance company separate account.

The FRFA states that the rule amendments should not have a substantial impact on small entities. Like other funds, a small entity will be affected by rule 17a–8 only if it enters into a merger with an affiliated person in reliance on the rule.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

As amended, the rule conditions relief on the board making the best interests and non-dilution determinations and on those determinations and the bases therefor being recorded in the minute books of each registered company. The rule requires that fund directors request and evaluate such information as may reasonably be necessary to their determinations, considering and giving appropriate weight to all pertinent factors. As a basis for the non-dilution finding, the board of directors of a fund that merges with an unregistered entity must approve procedures for the valuation of the securities (or other assets) that the unregistered entity will convey to the fund. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair market value of any such assets for which market quotations are not readily available. The FRFA describes the provision in the rule related to shareholder voting. Finally, the FRFA describes the requirement that any surviving fund maintain records relating to the merger transaction for six years, the first two in an easily accessible place, following the merger.

The FRFA explains that the amendments could benefit funds, including small entities, by expanding the availability of the rule to include mergers that are currently outside the scope of the rule. Funds that currently would have to incur the expense associated with filing applications for exemptive relief could rely on the rule.

E. Agency Action To Minimize Effect on Small Entities

The FRFA explains that the Commission has considered significant alternatives to the amendments that would accomplish the stated objective, while minimizing any significant

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record board resolutions documenting the board's findings and to preserve records of the merger transaction.

[55] This estimate is based on a review of fund filings. It is greater than the estimate in the Proposing Release because the amendments to rule 17a–8 in the Proposing Release did not include unregistered insurance company separate accounts as eligible unregistered funds. *See supra* Section I.B.

[56] *See supra* note 45, which sets forth the basis for this estimate. This estimate is greater than the estimate in the Proposing Release because of the increase in the estimate of the number of merging funds that will rely on rule 17a–8. *See supra* note 55.

[57] Many funds are required by state law or their organizational documents to conduct a shareholder vote in the event of a merger. Moreover, even funds that are not required to obtain shareholder approval may do so in order to maintain good relations with their shareholders.

[58] This figure is less than the estimate in the Proposing Release because the figure in the Proposing Release did not take into account the avoided cost of sending information statements. *See* Proposing Release, *supra* note , at text accompanying n.95.

[59] This figure is the total of the estimated $195,000 annual cost associated with valuing the securities of eligible unregistered funds and the $900,000 annual net cost associated with obtaining shareholder approval. It differs from the figure of $3,650,000 in the Proposing Release because of (i) an increase of $45,000 in the estimated annual cost associated with valuing the securities of eligible unregistered funds, (ii) a decrease of $600,000 in the estimated annual cost associated with obtaining shareholder approval, and (iii) the elimination of the proposed echo voting provision and its accompanying cost, estimated at $2,000,000. *See supra* note 18 for a discussion of the proposed echo voting requirement.

[60] Rule 0–10 [17 CFR 270.0–10].

adverse impact on small entities. The Commission believes that no alternative could carry out these objectives as effectively as the amendments.

VII. Statutory Authority

The Commission is adopting amendments to rule 17a–8 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.17a–8 is revised to read as follows:

§ 270.17a–8 Mergers of affiliated companies.

(a) *Exemption of affiliated mergers.* A Merger of a registered investment company (or a series thereof) and one or more other registered investment companies (or series thereof) or Eligible Unregistered Funds is exempt from sections 17(a)(1) and (2) of the Act (15 U.S.C. 80a–17(a)(1)–(2)) if:

(1) *Surviving company.* The Surviving Company is a registered investment company (or a series thereof).

(2) *Board determinations.* As to any registered investment company (or series thereof) participating in the Merger ("Merging Company"):

(i) The board of directors, including a majority of the directors who are not interested persons of the Merging Company or of any other company or series participating in the Merger, determines that:

(A) Participation in the Merger is in the best interests of the Merging Company; and

(B) The interests of the Merging Company's existing shareholders will not be diluted as a result of the Merger.

Note to paragraph (a)(2)(i): For a discussion of factors that may be relevant to the determinations in paragraph (a)(2)(i) of this section, see Investment Company Act Release No. 25666, July 18, 2002.

(ii) The directors have requested and evaluated such information as may reasonably be necessary to their determinations in paragraph (a)(2)(i) of this section, and have considered and given appropriate weight to all pertinent factors.

(iii) The directors, in making the determination in paragraph (a)(2)(i)(B) of this section, have approved procedures for the valuation of assets to be conveyed by each Eligible Unregistered Fund participating in the Merger. The approved procedures provide for the preparation of a report by an Independent Evaluator, to be considered in assessing the value of any securities (or other assets) for which market quotations are not readily available, that sets forth the fair value of each such asset as of the date of the Merger.

(iv) The determinations required in paragraph (a)(2)(i) of this section and the bases thereof, including the factors considered by the directors pursuant to paragraph (a)(2)(ii) of this section, are recorded fully in the minute books of the Merging Company.

(3) *Shareholder approval.* Participation in the Merger is approved by the vote of a majority of the outstanding voting securities (as provided in section 2(a)(42) of the Act (15 U.S.C. 80a-2(a)(42))) of any Merging Company that is not a Surviving Company, unless—

(i) No policy of the Merging Company that under section 13 of the Act (15 U.S.C. 80a-13) could not be changed without a vote of a majority of its outstanding voting securities, is materially different from a policy of the Surviving Company;

(ii) No advisory contract between the Merging Company and any investment adviser thereof is materially different from an advisory contract between the Surviving Company and any investment adviser thereof, except for the identity of the investment companies as a party to the contract;

(iii)Directors of the Merging Company who are not interested persons of the Merging Company and who were elected by its shareholders, will comprise a majority of the directors of the Surviving Company who are not interested persons of the Surviving Company; and

(iv) Any distribution fees (as a percentage of the fund's average net assets) authorized to be paid by the Surviving Company pursuant to a plan adopted in accordance with § 270.12b-1 are no greater than the distribution fees (as a percentage of the fund's average net assets) authorized to be paid by the Merging Company pursuant to such a plan.

(4) *Board composition; independent directors.* (i) A majority of the directors are not interested persons of the Merging Company and those directors select and nominate any other disinterested directors.

(ii) Any person who acts as legal counsel for the disinterested directors is an independent legal counsel.

(5) *Merger records.* Any Surviving Company preserves written records that describe the Merger and its terms for six years after the Merger (and for the first two years in an easily accessible place).

(b) *Definitions.* For purposes of this section:

(1) *Merger* means the merger, consolidation, or purchase or sale of substantially all of the assets between a registered investment company (or a series thereof) and another company;

(2) *Eligible Unregistered Fund* means:

(i) A collective trust fund, as described in section 3(c)(11) of the Act (15 U.S.C. 80a–3(c)(11));

(ii) A common trust fund or similar fund, as described in section 3(c)(3) of the Act (15 U.S.C. 80a–3(c)(3)); or

(iii) A separate account, as described in section 2(a)(37) of the Act (15 U.S.C. 80a–2(a)(37)), that is neither registered under section 8 of the Act, nor required to be so registered;

(3) *Independent Evaluator* means a person who has expertise in the valuation of securities and other financial assets and who is not an interested person, as defined in section 2(a)(19) of the Act (15 U.S.C. 80a–2(a)(19)), of the Eligible Unregistered Fund or any affiliate thereof except the Merging Company; and

(4) *Surviving Company* means a company in which shareholders of a Merging Company will obtain an interest as a result of a Merger.

Dated: July 18, 2002.
By the Commission.

Margaret H. McFarland,
Deputy Secretary.

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H.R. 327/P.L. 107–198

Small Business Paperwork Relief Act of 2002 (June 28, 2002; 116 Stat. 729)

S. 2578/P.L. 107–199

To amend title 31 of the United States Code to increase the public debt limit. (June 28, 2002; 116 Stat. 734)

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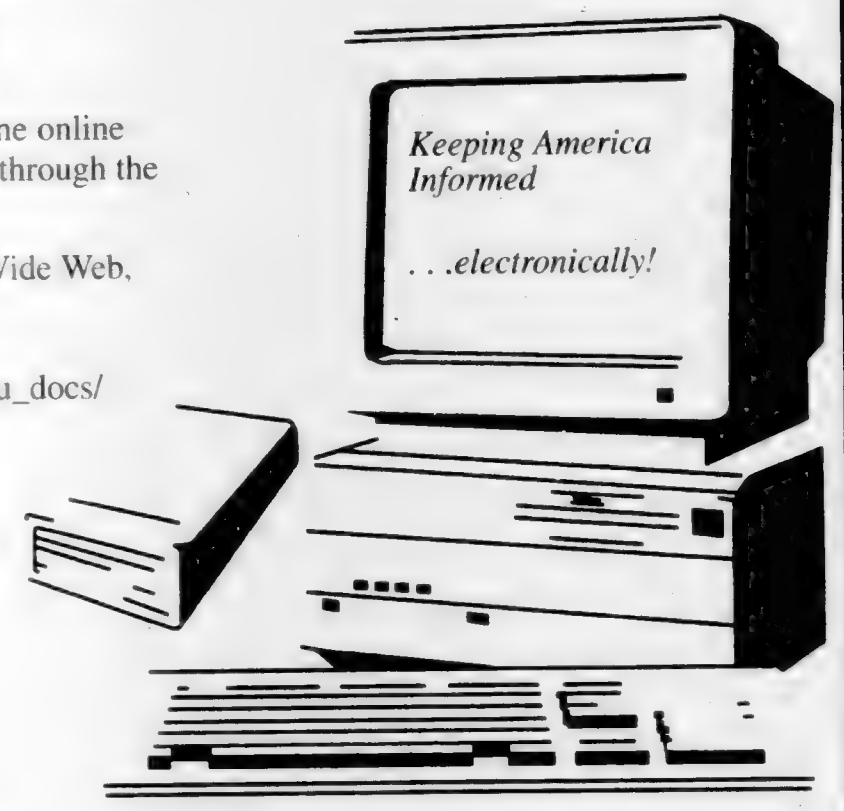

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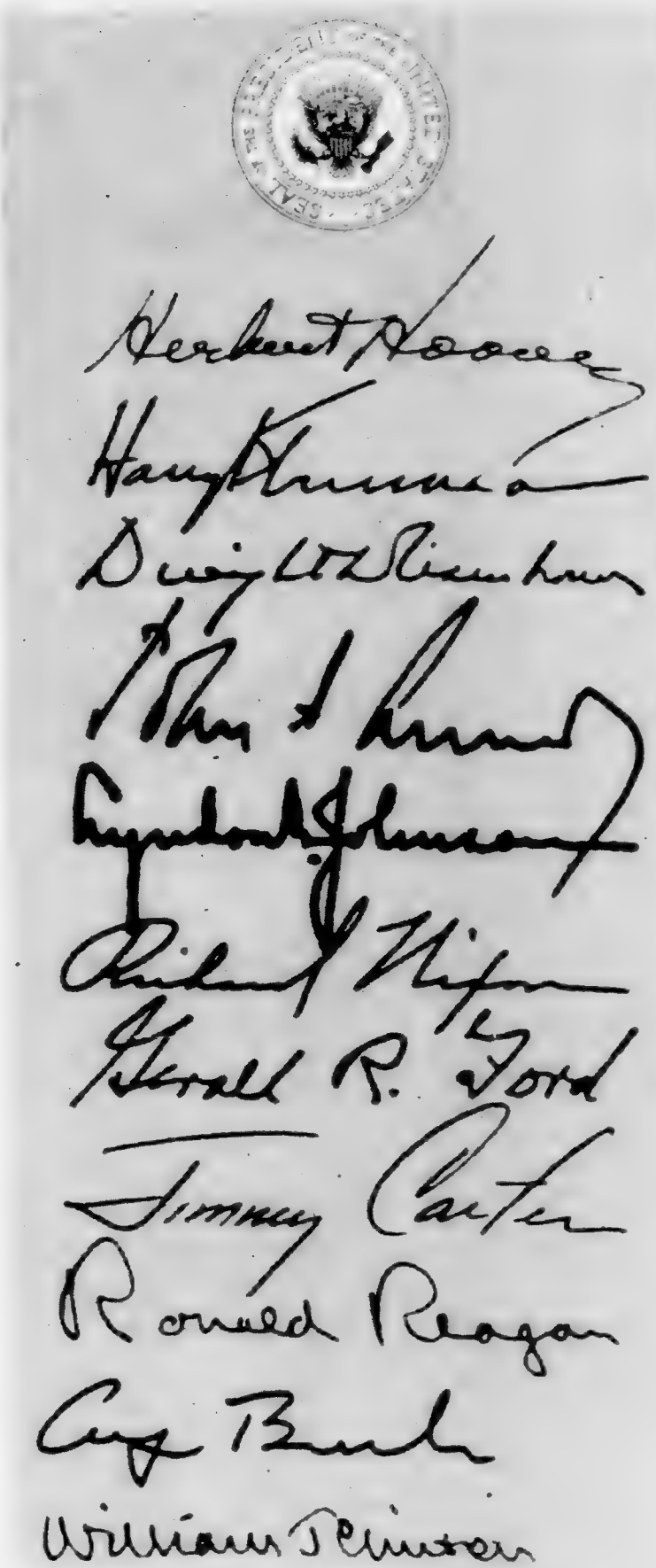

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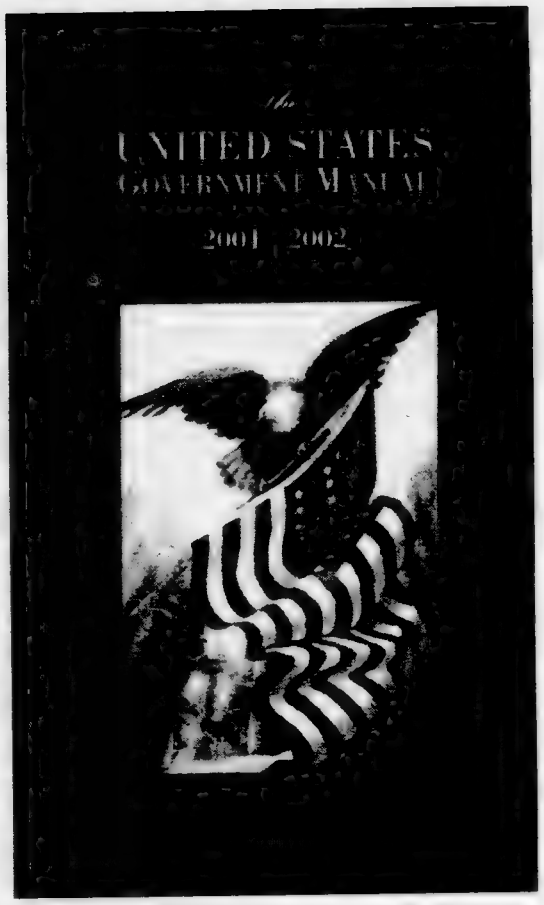

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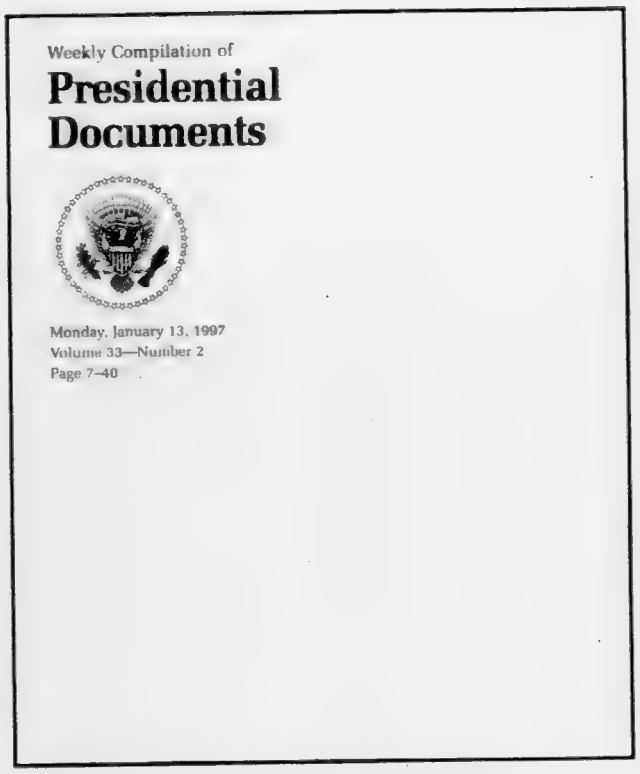

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Parts 97 and 130

[Docket No. 00–087–2]

Fee Increases for Overtime Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are changing our hourly rates for Sunday, holiday, or other overtime work performed by employees of the Animal and Plant Health Inspection Service (APHIS) for any person, firm, or corporation having ownership, custody, or control of animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles subject to inspection, laboratory testing, certification, or quarantine under the regulations. We are increasing these overtime rates for each of the fiscal years 2002 through 2006 to reflect the anticipated costs associated with providing these services during each year. Establishing the overtime rate changes in advance will allow users of APHIS' services to incorporate the rates into their budget planning. We are also making several nonsubstantive changes to the regulations that correct errors or inconsistencies.

EFFECTIVE DATE: August 11, 2002.

FOR FURTHER INFORMATION CONTACT: For information concerning Agricultural Quarantine and Inspection program operations, contact Mr. Colonel Locklear, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8372.

For information concerning Veterinary Services program operations, contact Dr. Karen James-Preston, Assistant Director, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1236; (301) 734–3261.

For information concerning user fee development, contact Ms. Kris Caraher, Accountant, User Fees Section, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1231; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR chapter III and 9 CFR chapter I, subchapters D and G, require inspection, laboratory testing, certification, or quarantine of certain animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles intended for importation into, or exportation from, the United States. With some exceptions, when these services must be provided by an Animal and Plant Health Inspection Service (APHIS) employee on a Sunday or on a holiday, or at any other time outside the APHIS employee's regular duty hours, the Government charges an hourly overtime fee for the services in accordance with 7 CFR part 354 and 9 CFR part 97.

Based on changes to the costs associated with providing inspection, laboratory testing, certification, and quarantine services outside of an employee's normal tour of duty, we determined that adjustments to the overtime rates in 7 CFR part 354 and 9 CFR part 97 were necessary in order for APHIS to recover the full cost of providing these services. Therefore, we proposed to set hourly overtime rates for inspection, laboratory testing, certification, and quarantine services provided outside of an employee's normal tour of duty for fiscal years 2002 through 2006. Our proposal was published in the **Federal Register** on April 22, 2002 (67 FR 19524–19534, Docket No. 00–087–1). The proposed overtime rates were based on our costs of providing the services, including direct labor costs, area delivery costs, billing and collection costs, program direction and support costs, agency/management support costs, central/departmental charges, and a reserve component, plus adjustments for inflation and anticipated annual increases in the salaries of employees who provide the services.

We also proposed to make the several nonsubstantive changes to the regulations to correct errors or inconsistencies.

We solicited comments concerning our proposal for 60 days ending June 21, 2002. We did not receive any comments by that date. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This is a full cost recovery program. In order to allow for orderly implementation and maximum recovery of costs, the rule will be effective on August 11, 2002, which is the beginning of a pay period. This effective date will provide users of overtime services with more than 2 weeks time to take the new rates into account in their operational and budget planning.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

APHIS charges hourly overtime rates to individuals, firms, and corporations requesting inspection, testing, certification, or quarantine services at laboratories, border ports, ocean ports, rail ports, quarantine facilities, and airports outside of the regularly established hours of service. These overtime rates vary depending on what type of service is performed and whether the service is performed on Sundays or on Saturdays, holidays, or weekdays. There is one overtime rate schedule for inspection, laboratory testing, certification, or quarantine of animals and animal or agricultural products or articles and another schedule for commercial airline inspection services.

Prior to the effective date of this final rule, APHIS charged $39.36 per hour per employee for services provided to

owners and operators of aircraft outside of the regularly established hours of service on a Sunday, and $30.64 per hour per employee for services provided to owners and operators of aircraft outside the employee's regular tour of duty on a holiday or any other period. APHIS charged $47.96 per hour per employee for those services performed at the request of all users except owners and operators of aircraft on Sundays, and $37.84 per hour per employee for services performed at the request of all users except owners or operators of aircraft on a holiday or any other time outside the employee's regular tour of duty. Those rates were established in 1993.

This final rule establishes overtime rates for inspection, laboratory testing, certification, or quarantine services performed by an employee outside of his or her regularly scheduled tour of duty for fiscal years 2002 through 2006. Table 1 shows the hourly overtime rates for fiscal years 2002 through 2006.

TABLE 1.—OVERTIME RATES

[Per Hour]

	Outside employee's normal tour of duty	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday–Saturday and holidays.	$45.00	$46.00	$48.00	$49.00	$51.00
	Sundays	59.00	61.00	63.00	65.00	67.00
Commercial airline inspection services.	Monday–Saturday and holidays.	36.00	37.00	39.00	40.00	41.00
	Sundays	48.00	49.00	51.00	53.00	55.00

The percentage increase in hourly overtime rates for fiscal year (FY) 2002 over the overtime rates established in 1993 is shown in table 2. Because the overtime rates for FY 2002 reflect cost increases incurred since 1993, the increase in overtime rates is highest for this year. Table 2 also lists the average annual percentage increase in the overtime rates from fiscal years 2002 through 2006.

TABLE 2.—PERCENTAGE INCREASE IN HOURLY OVERTIME RATES

Rate category	Outside of employee's normal tour of duty	Current hourly overtime rate *	FY 02 hourly overtime rate	Increase in FY 02 rate over current rate (%)	Average annual increase for FY 02–06 (%)
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday–Saturday and holidays.	$37.84	$45.00	18.9	3.2
	Sundays	47.96	59.00	23.0	3.3
Commercial airline inspections services	Monday–Saturday and holidays.	30.64	36.00	17.5	3.3
	Sundays	39.36	48.00	22.0	3.5

* "Current hourly overtime rate" refers to those rates established in 1993.

Overtime services performed for all users, except owners and operators of aircraft, outside of regularly scheduled hours of operation on Monday through Saturday or on holidays account for three-fourths of all overtime hours. During fiscal years 1998 through 2000, overtime services performed for all users, except owners and operators of aircraft, outside of regularly scheduled hours of operation on Monday through Saturday or on holidays averaged 286,749 hours per year, or 76 percent of all overtime hours. The average hours of overtime services performed annually during fiscal years 1998 through 2000 for each overtime rate category are shown in table 3, along with each rate category's percentage of that total.

TABLE 3.—AVERAGE ANNUAL OVERTIME HOURS

[Fiscal Years 1998 Through 2000]

Rate category	Outside of employee's normal tour of duty	Average annual overtime hours (FY 98–00)	Percentage of total
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday–Saturday and holidays	286,749	76
	Sundays	28,165	7
Commercial airline inspection services	Monday–Saturday and holidays	45,857	12
	Sundays	18,398	5
Total		379,169	100

Because the number of overtime hours in each rate category is unknown for FY 2002 and beyond, the impact of this rule on APHIS' revenues in those years is also unknown. Total overtime hours for all rate categories combined have shown a steady increase from 341,336 hours in FY 1998 to 390,600 hours in FY 1999 and 405,570 hours in FY 2000. This increase would suggest that the use of overtime services will continue to increase in the future, especially given that world trade is also likely to increase. In this regard, it is unlikely that demand for overtime services will lessen as a result of the rate increases.

Furthermore, we do not anticipate users of APHIS' services to alter their planned imports and exports in order to avoid the new overtime rates, given the low value in absolute dollar terms of the rate increases. In none of the four categories, for example, does the increase in rates exceed $11.04 in any one year. The average annual increase in overtime rates between the rate established in 1993 and the rate for FY 2006 is only $2.63 for all users of overtime services, except for commercial airline inspection services, that are performed outside of regularly scheduled hours of operation on Monday through Saturday or on holidays.[1] As shown in table 3, this overtime rate category accounts for 76 percent of all overtime hours. In many cases, the overtime rate increases for inspection, laboratory testing, certification, or quarantine services performed outside of an employee's normal tour of duty represent only a small portion of the dollar value of the plants, animals, or other commodities for which they are performed. For example, the cost of purchasing and importing a breeding-grade animal into the United States can range between $1,500 and $5,000 per head, an amount that would suggest that the overtime rate increases would be a relatively insignificant factor in an importer's decision regarding if and when an animal should be imported. Indeed, the average annual increase in overtime rates through FY 2006 of $2.63 for users of overtime services, except for commercial airline inspection services, that are performed on weekdays and Saturdays or on holidays is equivalent to less than 1 percent of the value of an animal worth $2,000.

Assuming that annual overtime hours in fiscal years 2002 through 2006 match those for fiscal year 2000, this rule will generate approximately $19 million more in revenues over that 5-year period than would be generated under the rates established in 1993 (see table 4).[2] The additional revenue generated by the changes in the hourly overtime rates corresponds to cost increases associated with providing inspection, laboratory testing, certification and quarantine services on Sundays, holidays, or at any other time outside an employee's normal tour of duty, and will allow APHIS to recover the full cost of providing these services.

TABLE 4.—ADDITIONAL REVENUES FROM NEW OVERTIME RATES—BASED ON FY 2000 OVERTIME HOURS

[In Millions]

Rate category	Outside of employee's normal tour of duty	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Total
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday–Saturday and holidays.	$1.13	$2.57	$3.20	$3.51	$4.14	$14.55
	Sundays	0.16	0.37	0.43	0.49	0.54	1.99
Commercial airline inspection services.	Monday–Saturday and holidays.	0.12	0.28	0.37	0.41	0.46	1.64
	Sundays	0.08	0.18	0.22	0.25	0.29	1.02
Total		1.49	3.40	4.22	4.66	5.43	19.20

This rule has the potential to affect any private individual or business entity dealing with plants, animals, poultry, germ plasm, animal products, organisms, vectors, aquaculture, or the testing of these items, including importers, exporters, brokers, dealers, animal exhibitors, laboratories, universities, and individuals who travel with their pets. Affected individuals and entities will incur higher costs. The number of individuals and businesses that could be adversely affected by this action depends on the ability of any one individual or business entity to absorb the increased costs or pass them on. This information is not available.[3] However, in many cases, some entities that pay overtime fees to APHIS, such as brokers, will be unaffected because they are able to pass those fees on to their clients. Furthermore, the amount of the overtime rate increases, both in absolute dollar terms and in percentage terms of the dollar value of the affected plants or animals, suggest that the economic impact on most individuals and entities will be minimal.

Small Entity Impact

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities, such as small businesses, organizations, and governmental jurisdictions. All entities affected by the overtime rate increases, both large and small, will incur higher costs.

It is reasonable to assume that most businesses affected by this rule are small in size. This is because most U.S. businesses in general are small, based on the standards of the U.S. Small

[1] Users of APHIS' services during overtime periods are typically charged for between 3 and 6 hours of overtime per service request. As a practical matter, therefore, the actual impact for users of each service request would typically be 3 to 6 times the rate increase for 1 hour of overtime service. However, the year-to-year hourly overtime rate increases are so low in absolute dollar terms that these rate increases should not cause most users to alter their planned imports and exports.

[2] Because this rule is being published after the start of FY 2002, the FY 2002 column of the table projects additional revenues for only one-half of that fiscal year, assuming that the number of overtime hours would be spread evenly throughout the year. For FY 2002, therefore, we used one-half the number of annual overtime hours worked during FY 2000 to calculate the additional revenue generated by the FY 2002 overtime rates over the current rates. Given that this rule becomes effective with less than 6 months remaining in FY 2002, the actual revenues generated in FY 2002 are expected to be less than those indicated in the table for FY 2002.

[3] Even if a list of the current users of APHIS' services during overtime hours were available, those users may be unwilling, for proprietary reasons, to provide the financial data needed to assess their ability to absorb the increased costs.

Business Administration (SBA). In 1997, for example, there were 5,769 U.S. firms in NAICS 541710, a classification comprised of firms primarily engaged in conducting research and experimental development in the physical, engineering, or life sciences, including agriculture and veterinary subjects. Of those 5,769 firms, 4,607 were in operation for all of 1997 and, of those, all but 28 had fewer than 500 employees, the SBA's small entity criterion for firms in that NAICS category.[4] Accordingly, most of the businesses potentially affected by this rule are likely to be small in size. However, for the reasons discussed above, the overtime rate increases will not have a significant economic impact on those businesses.

Alternatives

One alternative to this rule would be to make no changes to the current overtime rates for inspection, laboratory testing, certification, or quarantine services performed by an employee on a Sunday or holiday or any time outside of his or her regular tour of duty. We do not consider leaving the current overtime rates unchanged to be a reasonable alternative because we would not recover the full cost for providing these services during overtime periods. This alternative would place the burden of increased costs for overtime services on the general taxpayer instead of the users of those services.

Another alternative to this rule would be to either exempt small businesses from the overtime rate increases or establish a different overtime rate schedule for small businesses. Every business, including small businesses, using a Government service needs to pay the cost of that service, rather than having other businesses pay a disproportionate share or having those costs passed on to the general public. Therefore, we do not consider exempting small businesses from these overtime rates or establishing a different user fee schedule for small businesses a viable option because it would not allow for the full recovery of our costs from all users of the overtime services.

Cost-Benefit Analysis

The benefit of user fees is the shift in the payment for services from taxpayers as a whole to those persons who are receiving the Government service. While taxes may not change by the same amount as the change in user fee collections, there is a related shift in the appropriation of taxes to Government programs that allows those tax dollars to be applied to other programs that benefit the public. Therefore, there will be a relative savings to taxpayers as a result of the changes in the hourly overtime rates.

The administrative cost involved in obtaining these savings will be minimal. APHIS already has a user fee program and a mechanism for collecting user fees in place; this rule will simply update the existing fees in that system. Accordingly, increases in administrative costs will be small. Because the savings to taxpayers are sufficiently large and the administrative costs will be small, it is likely that the net gain in reducing the burden on taxpayers as a whole will outweigh the cost of administering the user fee program with the updated user fees contained in this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we are amending 7 CFR part 354 and 9 CFR parts 97 and 130 as follows:

TITLE 7—[AMENDED]

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 is revised to read as follows:

Authority: 7 U.S.C. 8311; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

2. In § 354.1, paragraph (a) is amended as follows:

a. By revising the introductory text of paragraph (a)(1) to read as set forth below.

b. By revising paragraph (a)(1)(iii) to read as set forth below.

c. In paragraph (a)(2), by revising the first sentence to read as set forth below.

§ 354.1 Overtime work at border ports, sea ports, and airports.

(a)(1) Any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and subchapter D of chapter I, title 9 CFR, who requires the services of an employee of the Animal and Plant Health Inspection Service on a Sunday or holiday, or at any other time outside the regular tour of duty of that employee, shall sufficiently in advance of the period of Sunday, holiday, or overtime service request the Animal and Plant Health Inspection Service inspector in charge to furnish the service during the overtime or Sunday or holiday period, and shall pay the Government at the rate listed in the following table, except as provided in paragraphs (a)(1)(i), (ii), and (iii) of this section:

[4] Source: SBA and U.S. Census Bureau.

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF PLANTS, PLANT PRODUCTS, ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30. 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$45.00	$46.00	$48.00	$49.00	$51.00
Sundays	59.00	61.00	63.00	65.00	67.00

* * * * * * *

(iii) The overtime rate to be charged owners or operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service is listed in the following table:

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$36.00	$37.00	$39.00	$40.00	$41.00
Sundays	48.00	49.00	51.00	53.00	55.00

[1] These charges exclude administrative overhead costs.

(2) A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or her, or which is performed by an employee on his or her regular workday beginning either at least 1 hour before his or her scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty.

* * *

* * * * *

TITLE 9—[AMENDED]

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

3. The authority citation for part 97 is revised to read as follows:

Authority: 7 U.S.C. 8311; 49 U.S.C. 80503; 7 CFR 2.22, 280, and 371.4.

4. Section 97.1 is amended as follows:

a. By revising paragraph (a), introductory text, and paragraph (a)(3) to read as set forth below.

b. In paragraph (b), by revising the first sentence to read as set forth below.

§ 97.1 Overtime services relating to imports and exports.

(a) Any person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of the Animal and Plant Health Inspection Service on a Sunday or holiday, or at any other time outside the regular tour of duty of the employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Animal and Plant Health Inspection Service inspector in charge to furnish the service and shall pay the Government at the rate listed in the following table, except as provided in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$45.00	$46.00	$48.00	$49.00	$51.00
Sundays	59.00	61.00	63.00	65.00	67.00

* * * * * * *

(3) The overtime rate to be charged owners or operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service is listed in the following table:

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$36.00	$37.00	$39.00	$40.00	$41.00
Sundays	48.00	49.00	51.00	53.00	55.00

[1] These charges exclude administrative overhead costs.

(b) A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or her, or which is performed by an employee on his or her regular workday beginning either at least 1 hour before his or her scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty.

* * *

* * * * *

PART 130—USER FEES

5. The authority citation for part 130 is revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622, 8303, 8304, 8306–8308, 8310, 8311, 8313, 8315, and 8316; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

6. In § 130.7, paragraph (a), the table is revised to read as follows:

§ 130.7 User fees for import or entry services for live animals at land border ports along the United States-Canada border.

(a) * * *

Type of live animal	Unit	User fee		
		Oct. 1, 2001–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Animals being imported into the United States				
Breeding animals (Grade animals, except horses):				
Sheep and goats	per head	$0.50	$0.50	$0.50
Swine	per head	0.75	0.75	0.75
All others	per head	3.25	3.25	3.25
Feeder animals:				
Cattle (not including calves)	per head	1.50	1.50	1.50
Sheep and calves	per head	0.50	0.50	0.50
Swine	per head	0.25	0.25	0.25
Horses (including registered horses), other than slaughter and in-transit.	per head	27.00	28.00	29.00
Poultry (including eggs), imported for any purpose	per load	47.00	48.00	50.00
Registered animals (except horses)	per head	5.50	5.75	6.00
Slaughter animals (except poultry)	per load	24.00	24.00	25.00
Animals transiting [1] the United States				
Cattle	per head	1.50	1.50	1.50
Sheep and goats	per head	0.25	0.25	0.25
Swine	per head	0.25	0.25	0.25
Horses and all other animals	per head	6.50	6.75	6.75

[1] The user fee in this section will be charged for in-transit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the hourly user fee rate in § 130.30 will apply.

* * * * *

§ 130.20 [Amended]

7. In § 130.20, paragraph (b)(1) is amended by removing the citation "§ 130.21(a)" and adding the citation "§ 130.30(a)" in its place.

8. In § 130.50, paragraph (b)(3)(i), the table is revised to read as follows:

§ 130.50 Payment of user fees.

* * * * *

(b) * * *

(3) * * *

(i) * * *

OVERTIME FOR FLAT RATE USER FEES [1] [2]

	Outside of the employee's normal tour of duty	Overtime rates (per hour)				
		Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities. [3]	Monday–Saturday and holidays.	$45.00	$46.00	$48.00	$49.00	$51.00
	Sundays	59.00	61.00	63.00	65.00	67.00
Rate for commercial airline inspection services. [4]	Monday–Saturday and holidays.	36.00	37.00	39.00	40.00	41.00

OVERTIME FOR FLAT RATE USER FEES [1] [2]—Continued

	Outside of the employee's normal tour of duty	Overtime rates (per hour)				
		Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
	Sundays	48.00	49.00	51.00	53.00	55.00

[1] Minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.
[2] When the 2-hour minimum applies, you may need to pay commuted travel time. (See § 97.1(b) of this chapter for specific information about commuted travel time.)
[3] See § 97.1(a) of this chapter or 7 CFR 354.3 for details.
[4] See § 97.1(a)(3) of this chapter for details.

* * * * *

Done in Washington, DC, this 19th day of July, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–18844 Filed 7–24–02; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 313

RIN 3064–AC40

Procedures for Corporate Debt Collection

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is issuing a new regulation governing procedures for corporate debt collection. The Debt Collection Improvement Act of 1996 requires agencies to promulgate regulations on this subject. The regulation sets forth the procedures the FDIC will follow in collecting debts owed to the United States. These procedures include collection of debts through administrative offset, salary offset, administrative wage garnishment and tax refund offset.

EFFECTIVE DATE: August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Manuel A. Palau (202) 898–8829 of the Legal Division; Connie Brindle (202) 416–7224 of the Division of Finance; or David Harrington (202) 942–3396 of the Division of Administration. The FDIC's main office is located at 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements changes to the law made by the Debt Collection Improvement Act of 1996 (DCIA). The DCIA requires federal agencies to collect debts owed to the United States under regulations prescribed by the head of the agency, and standards prescribed by the Department of Justice and the Department of the Treasury. 31 U.S.C. 3711. These standards, known as the Federal Claims Collection Standards (FCCS), became effective on December 22, 2000. 31 CFR chapter IX and parts 900 through 904.

The DCIA also requires agencies, prior to collecting debts owed to the United States by administrative offset, to: (1) adopt without change regulations on collecting debts by administrative offset promulgated by the Department of Justice or Department of the Treasury (FCCS); or (2) prescribe agency regulations for collecting such debts by administrative offset, which are consistent with the FCCS. 31 U.S.C. 3716. The agency regulations protect the minimum due process rights that must be afforded to the debtor when an agency seeks to collect a debt by administrative offset including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

The FDIC has decided to issue its own agency regulations for debt collection and administrative offset, in part to account for the FDIC's status as an independent regulatory agency. The regulations are, however, consistent with the FCCS, as required by the DCIA. The salary offset portion of the regulations has been submitted to and approved by the Office of Personnel Management (OPM), as required by 5 U.S.C. 5514. In addition, the tax refund offset provisions of the regulations satisfy the requirement in 31 CFR 285.2(c) that the FDIC adopt agency regulations authorizing its collection of debts by administrative offset in general and tax refund offset in particular. The administrative wage garnishment provisions of the regulations satisfy the requirement in 31 CFR 285.11(f) that the FDIC adopt regulations for the conduct of administrative wage garnishment hearings consistent with 31 CFR 285.11.

In addition to these legal authorities, the FDIC is issuing these regulations pursuant to 12 U.S.C. 1819(a), which authorizes the FDIC to adopt such reasonable regulations as it deems necessary to carry out its corporate functions and duties.

II. Discussion of the Rule

A. Subpart A—Scope, Purpose, Definitions and Delegations of Authority

The regulations apply only to debts owed to the United States which arise out of FDIC transactions and functions in its corporate capacity, including, but not limited to: employee or former employee matters such as travel-related claims, claims arising out of the travel card program, and erroneous overpayments; agency contracting activities involving corporate operations; and debts related to requests for documents under the Freedom of Information Act (FOIA). These regulations do not apply to debts owed to or payments made by the FDIC in connection with the FDIC's receivership, liquidation, supervision, enforcement, or insurance responsibilities, nor do they limit or affect the FDIC's authority pursuant to 12 U.S.C. 1819(a) and 1820(a).

When the FDIC Director of the Division of Administration (DOA) or Director of the Division of Finance (DOF) determines that it is appropriate to initiate debt collection or seek administrative offset to collect that debt, the Director shall conform to the procedural standards for collecting debts set forth in the FCCS. 31 CFR parts 900 through 904. The FCCS establish standards governing the following areas of the debt collection process: prompt demand of payment of the claim from the debtor; review of the existence or amount of a debt claimed, upon the debtor's demand for a final agency determination; standards for collecting debts in installment payments; the required assessment of

interest, penalties and administrative costs on debts claimed; standards for compromise of claims due; standards to be followed in determining whether to suspend or terminate collection action; the required referral of delinquent debts to the Secretary of the Treasury, for collection by means of centralized administrative offset under the Treasury Offset Program; the reporting of debts to consumer reporting agencies and the use of credit reports; and the sale of delinquent debts. In addition, when the Director elects to pursue a specific debt collection remedy such as salary offset, administrative wage garnishment, offset against Civil Service Retirement and Disability Fund payments or offset against tax refunds, the Director shall follow the applicable procedures for that debt collection remedy set forth in the regulations.

B. Subpart B—Administrative Offset

Pursuant to 31 U.S.C. 3716, the FDIC may collect debts owed to the United States through administrative offset. Under the administrative offset regulations, the FDIC is authorized to collect debts owed to the United States by: (1) withholding money payable by the FDIC to the debtor, or held by the FDIC for the debtor; or (2) by requesting that another federal agency withhold money payable to the debtor, or held by the agency for the debtor. Subpart B of the regulations meets the requirement under 31 U.S.C. 3716(b) that the FDIC promulgate regulations for administrative offset procedures and provide minimum due process rights to the debtor, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the FDIC. Subpart B of the regulations also meets the requirement under 4 CFR 901.3 that the FDIC prescribe administrative offset regulations consistent with the FCCS prior to referring delinquent debts to the Secretary of the Treasury for collection by centralized administrative offset.

C. Subpart C—Salary Offset

Subpart C of the regulations provides that when the FDIC determines it is appropriate to collect a debt by means of deductions from the current pay account of an FDIC employee, or any individual employed by the federal government (including a former FDIC employee), the FDIC shall initiate salary offset under 5 U.S.C. 5514(a)(1). Salary offset is a form of administrative offset governed by statute (5 U.S.C. 5514) and by regulations issued by the OPM (5 CFR part 550, subpart K). Salary offset may only be used to collect debts owed by persons currently employed by the federal government. As noted above, the statute requires agencies to promulgate regulations to carry out salary offset subject to OPM approval. 5 U.S.C. 5514(b)(1). Subpart C implements those statutory requirements.

D. Subpart D—Administrative Wage Garnishment

Subpart D of the regulations sets forth procedures that may be used by the FDIC to collect debts by garnishing the wages of individuals employed outside the federal government. This includes persons employed by the private sector, as well as state and local governments. The administrative wage garnishment regulations are issued in compliance with 31 U.S.C. 3720D and 31 CFR 285.11(f). Administrative wage garnishment regulations do not apply to the collection of delinquent debts from the wages of federal employees. Federal pay is subject to the federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

E. Subpart E—Tax Refund Offset

Where collection by salary offset or administrative offset is not feasible, the FDIC may also seek to recover a legally enforceable, past-due debt owed the United States by requesting that the Financial Management Service of the Department of the Treasury offset all or part of a tax refund to a debtor by the amount of the debt and pay such money to the FDIC. 31 U.S.C. 3720A; 26 CFR 301.6402 through 6406. In order to collect a debt by means of tax refund offset, the FDIC is required to promulgate its own regulations on salary offset, administrative offset, and tax refund offset. 31 U.S.C. 3720A(b)(4); 31 CFR 285.2. Subpart E of the regulations implements this requirement.

F. Subpart F—Civil Service Retirement and Disability Fund Offset

Under certain circumstances, the FDIC may also request that money payable from the Civil Service Retirement and Disability Fund be offset by the OPM to recover a valid debt due to the United States. 5 CFR 831.1801 through 831.1808. The regulations governing such offsets provide that creditor agencies may make such requests to OPM upon compliance with the administrative offset procedures required under 31 U.S.C. 3716, or the salary offset procedures required under 5 U.S.C. 5514, and the corresponding regulations. Subpart F of the regulations provides a process for such offset.

G. Subpart G—Mandatory Centralized Administrative Offset

When the FDIC is the creditor agency, it is required to refer all legally enforceable, non-tax debts that are delinquent (over 180 days past due), as defined in the FCCS, to the Secretary of the Treasury, to enable the Secretary to seek collection by centralized administrative offset. 31 U.S.C. 3716. Subpart G of the regulations implements this requirement.

III. Administrative Procedure Act

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because these rules relate solely to agency procedure and practice. 5 U.S.C. 553(b)(3)(A). Furthermore, notice and an opportunity for public comment are not necessary prior to issuance of this final rule because it implements a definitive statutory scheme mandated by the DCIA.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the FDIC hereby certifies that the rules set forth in this notice do not have a significant economic impact on a substantial number of small business entities. The rule applies primarily to federal agencies and employees and a limited number of business entities. 5 U.S.C. 605(b).

V. Paperwork Reduction Act

These rules are not subject to the Paperwork Reduction Act (44 U.S.C. 3501), since they do not contain any new information collection requirements.

VI. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that the rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681).

VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the APA at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of

Management and Budget has determined that this final rule does not constitute a "major rule" as defined by SBREFA.

List of Subjects in 12 CFR Part 313

Administrative practice and procedure, Claims, Debt collection, Government employees, Hearing procedures, Wages.

For the reasons set forth in the preamble, 12 CFR part 313 is added as follows:

PART 313—PROCEDURES FOR CORPORATE DEBT COLLECTION

Subpart A—Scope, Purpose, Definitions and Delegations of Authority

Sec.
313.1 Scope.
313.2 Purpose.
313.3 Definitions.
313.4 Delegations of authority.
313.5—313.19

Subpart B—Administrative Offset

313.20 Applicability and scope.
313.21 Definitions.
313.22 Collection.
313.23 Offset prior to completion of procedures.
313.24 Omission of procedures.
313.25 Debtor's rights.
313.26 Interest.
313.27 Refunds.
313.28 No requirement for duplicate notice.
313.29 Requests for offset to other federal agencies.
313.30 Requests for offset from other federal agencies.
313.31—313.39 [Reserved]

Subpart C—Salary Offset

313.40 Scope.
313.41 Notice requirement where FDIC is creditor agency.
313.42 Procedures to request a hearing.
313.43 Failure to timely submit request for hearing.
313.44 Procedure for hearing.
313.45 Certification of debt by FDIC as creditor agency.
313.46 Notice of salary offset where FDIC is the paying agency.
313.47 Voluntary repayment agreements as alternative to salary offset where the FDIC is the creditor agency.
313.48 Special review of repayment agreement or salary offset due to changed circumstances.
313.49 Coordinating salary offset with other agencies.
313.50 Interest, penalties, and administrative costs.
313.51 Refunds.
313.52 Request from a creditor agency for services of a hearing official.
313.53 Non-waiver of rights by payments.
313.54 Exception to due process procedures.
313.55 Salary adjustments.
313.56–313.79 [Reserved]

Subpart D—Administrative Wage Garnishment

313.80 Scope and purpose.
313.81 Notice.
313.82 Debtor's rights.
313.83 Form of hearing.
313.84 Effect of timely request.
313.85 Failure to timely request a hearing.
313.86 Hearing official.
313.87 Procedure.
313.88 Format of hearing.
313.89 Date of decision.
313.90 Content of decision.
313.91 Finality of agency action.
313.92 Failure to appear.
313.93 Wage garnishment order.
313.94 Certification by employer.
313.95 Amounts withheld.
313.96 Exclusions from garnishment.
313.97 Financial hardship.
313.98 Ending garnishment.
313.99 Prohibited actions by employer.
313.100 Refunds.
313.101 Right of action.
313.102–313.119 [Reserved]

Subpart E—Tax Refund Offset

313.120 Scope.
313.121 Definitions.
313.122 Notification of debt to FMS.
313.123 Certification and referral of debt.
313.124 Pre-offset notice and consideration of evidence.
313.125 Referral of past-due, legally enforceable debt.
313.126 Correcting and updating referral.
313.127 Disposition of amounts collected.
313.128–313.139 [Reserved]

Subpart F—Civil Service Retirement and Disability Fund Offset

313.140 Future benefits.
313.141 Notification to OPM.
313.142 Request for administrative offset.
313.143 Cancellation of deduction.
313.144–313.159 [Reserved]

Subpart G—Mandatory Centralized Administrative Offset

313.160 Treasury notification.
313.161 Certification of debt.
313.162 Compliance with 31 CFR part 285.
313.163 Notification of debts of 180 days or less.
313.164–313.180 [Reserved]

Authority: 12 U.S.C. 1819(a); 5 U.S.C. 5514; Pub. L. 104–143, 110 Stat. 1321 (31 U.S.C. 3711, 3716).

Subpart A—Scope, Purpose, Definitions and Delegations of Authority

§ 313.1 Scope.

This part establishes FDIC procedures for the collection of certain debts owed to the United States.

(a) This part applies to collections by the FDIC from:

(1) Federal employees who are indebted to the FDIC;

(2) Employees of the FDIC who are indebted to other agencies; and

(3) Other persons, organizations, or entities that are indebted to the FDIC, except those excluded in paragraph (b)(3) of this section.

(b) This part does not apply:

(1) To debts or claims arising under the Internal Revenue Code of 1986 (Title 26, U.S. Code), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States;

(2) To a situation to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies; or

(3) In any case where collection of a debt is explicitly provided for or prohibited by another statute.

(c) This part applies only to debts owed to and payments made by the FDIC acting in its corporate capacity; that is, in connection with employee matters such as travel-related claims and erroneous overpayments, contracting activities involving corporate operations, debts related to requests to the FDIC for documents under the Freedom of Information Act (FOIA) or where a request for an offset is received by the FDIC from another federal agency. It does not apply to debts owed to or payments made by the FDIC in connection with the FDIC's liquidation, supervision, enforcement, or insurance responsibilities, nor does it limit or affect the FDIC's authority with respect to debts and/or claims pursuant to 12 U.S.C. 1819(a) and 1820(a).

(d) Nothing in this part 313 precludes the compromise, suspension, or termination of collection actions, where appropriate, under: standards implementing the Debt Collection Improvement Act (DCIA) (31 U.S.C. 3711 *et seq.*), the Federal Claims Collection Standards (FCCS) (31 CFR chapter IX and parts 900 through 904); or any other applicable law.

§ 313.2 Purpose.

(a) The purpose of this part is to implement federal statutes and regulatory standards authorizing the FDIC to collect debts owed to the United States. This part is consistent with the following federal statutes and regulations:

(1) DCIA at 31 U.S.C. 3711 (collection and compromise of claims); section 3716 (administrative offset), section 3717 (interest and penalty on claims), and section 3718 (contracts for collection services);

(2) 5 U.S.C. 5514 (salary offset);

(3) 5 U.S.C. 5584 (waiver of claims for overpayment);

(4) 31 CFR chapter IX and parts 900 through 904 (Federal Claims Collection Standards);

(5) 5 CFR part 550, subpart K (salary offset);

(6) 31 U.S.C. 3720D, 31 CFR 285.11 (administrative wage garnishment);

(7) 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2 (tax refund offset); and

(8) 5 CFR 831.1801 through 1808 (U. S. Office of Personnel Management (OPM) offset).

(b) Collectively, these statutes and regulations prescribe the manner in which federal agencies should proceed to establish the existence and validity of debts owed to the federal government and describe the remedies available to agencies to offset valid debts.

§ 313.3 Definitions.

Except where the context clearly indicates otherwise or where the term is defined elsewhere in this subpart, the following definitions shall apply to this subpart.

(a) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including government corporations.

(b) *Board* means the Board of Directors of the FDIC.

(c) *Centralized administrative offset* means the mandatory referral to the Secretary of the Treasury by a creditor agency of a past due debt which is more than 180 days delinquent, for the purpose of collection under the Treasury's centralized offset program.

(d) *Certification* means a written statement transmitted from a creditor agency to a paying agency for purposes of administrative or salary offset, or to the Secretary of the Treasury for centralized administrative offset. The certification confirms the existence and amount of the debt and verifies that required procedural protections have been afforded the employee. Where the debtor requests a hearing on a claimed debt, the decision by a hearing official or administrative law judge constitutes a certification.

(e) *Chairman* means the Chairman of the FDIC.

(f) *Compromise* means the settlement or forgiveness of a debt under 31 U.S.C. 3711, in accordance with standards set forth in the FCCS and applicable federal law.

(g) *Creditor agency* means an agency of the federal government to which the debt is owed, or a debt collection center when acting on behalf of a creditor agency to collect a debt.

(h) *Debt* means an amount owed to the United States from loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures, and all other similar sources. For purposes of this part, a debt owed to the FDIC constitutes a debt owed to the United States.

(i) *Debt collection center* means the Department of the Treasury or other government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(j) *Director* means the Director of the Division of Finance (DOF) or the Director of the Division of Administration (DOA), as applicable, or the applicable Director's delegate.

(k) *Disposable pay* means that part of current adjusted basic pay, special pay, incentive pay, retired pay, retainer pay, and, in the case of an employee not entitled to adjusted basic pay, other authorized pay, remaining for each pay period after the deduction of any amount required by law to be withheld. The FDIC shall allow the following deductions in determining the amount of disposable pay that is subject to salary offset:

(1) Federal employment taxes;

(2) Federal, state, or local income taxes to the extent authorized or required by law, but no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(3) Medicare deductions;

(4) Health insurance premiums;

(5) Normal retirement contributions, including employee contributions to the Thrift Savings Plan or the FDIC 401(k) Plan;

(6) Normal life insurance premiums (*e.g.*, Serviceman's Group Life Insurance and "Basic Life" Federal Employee's Group Life Insurance premiums), not including amounts deducted for supplementary coverage;

(7) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;

(8) Fines and forfeiture ordered by a court-martial or by a commanding officer.

(l) *Division of Administration* (DOA) means the Division of Administration of the FDIC.

(m) *Division of Finance* (DOF) means the Division of Finance of the FDIC.

(n) *Federal Claims Collection Standards* (FCCS) means standards published at 31 CFR chapter IX and parts 900 through 904.

(o) *Garnishment* means the process of withholding amounts from the disposable pay of a person employed outside the federal government, and the paying of those amounts to a creditor in satisfaction of a withholding order.

(p) *Hearing official* means an administrative law judge or other individual authorized to conduct a hearing and issue a final decision in response to a debtor's request for hearing. A hearing official may not be under the supervision or control of the Chairman or FDIC Board when the FDIC is the creditor agency.

(q) *Notice of Intent to Offset or Notice of Intent* means a written notice from a creditor agency to an employee, organization, or entity that claims a debt and informs the debtor that the creditor agency intends to collect the debt by administrative offset. The notice also informs the debtor of certain procedural rights with respect to the claimed debt and offset.

(r) *Notice of Salary Offset* means a written notice from a paying agency to its employee informing the employee that salary offset to collect a debt due to the creditor agency will begin at the next officially established pay interval. The paying agency transmits this notice to its employee after receiving a certification from the creditor agency.

(s) *Paying agency* means the agency of the federal government that employs the individual who owes a debt to an agency of the federal government. The same agency may be both the creditor agency and the paying agency.

(t) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(u) *Waiver* means the cancellation, remission, forgiveness or non-recovery of a debt allegedly owed by an employee to an agency, as authorized or required by 5 U.S.C. 5584 or any other law.

(v) *Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of administrative wage garnishment, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

§ 313.4 Delegations of authority.

Authority to conduct the following activities is delegated to the Director of DOA or Director of DOF, as applicable, or the applicable Director's delegate, to:

(a) Initiate and carry out the debt collection process on behalf of the FDIC, in accordance with the FCCS;

(b) Accept or reject compromise offers and suspend or terminate collection actions to the full extent of the FDIC's legal authority under 12 U.S.C. 1819(a)

and 1820(a), 31 U.S.C. 3711(a)(2), and any other applicable statute or regulation, provided, however, that no such claim shall be compromised or collection action terminated, except upon the concurrence of the FDIC General Counsel or his or her designee;

(c) Report to consumer reporting agencies certain data pertaining to delinquent debts, where appropriate;

(d) Use administrative offset procedures, including salary offset, to collect debts; and

(e) Take any other action necessary to promptly and effectively collect debts owed to the United States in accordance with the policies contained herein and as otherwise provided by law.

§§ 313.5–313.19 [Reserved]

Subpart B—Administrative Offset

§ 313.20 Applicability and scope.

The provisions of this subpart apply to the collection of debts owed to the United States arising from transactions with the FDIC. Administrative offset is authorized under the DCIA. This subpart is consistent with the FCCS on administrative offset issued by the Department of Justice.

§ 313.21 Definitions.

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt.

(b) *Person* includes a natural person or persons, profit or nonprofit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or any state or local government shall be excluded.

§ 313.22 Collection.

(a) The Director may collect a claim from a person by administrative offset of monies payable by the Government only after:

(1) Providing the debtor with due process required under this part; and

(2) Providing the paying agency with written certification that the debtor owes the debt in the amount stated and that the FDIC, as creditor agency, has complied with this part.

(b) Prior to initiating collection by administrative offset, the Director should determine that the proposed offset is within the scope of this remedy, as set forth in 31 CFR 901.3(a). Administrative offset under 31 U.S.C. 3716 may not be used to collect debts more than 10 years after the federal government's right to collect the debt first accrued, except as otherwise provided by law. In addition, administrative offset may not be used when a statute explicitly prohibits its use to collect the claim or type of claim involved.

(c) Unless otherwise provided, debts or payments not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under common law, or any other applicable statutory authority.

§ 313.23 Offset prior to completion of procedures.

The FDIC may collect a debt by administrative offset prior to the completion of the procedures described in § 313.25, if:

(a) Failure to offset a payment would substantially prejudice the FDIC's ability to collect the debt; and

(b) The time before the payment is to be made does not reasonably permit completion of the procedures described in § 313.25. Such prior offsetting shall be followed promptly by the completion of the procedures described in § 313.25.

§ 313.24 Omission of procedures.

The FDIC shall not be required to follow the procedures described in § 313.25 where:

(a) The offset is in the nature of a recoupment (*i.e.*, the FDIC may offset a payment due to the debtor when both the payment due to the debtor and the debt owed to the FDIC arose from the same transaction); or

(b) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney*, 995 F.2d 1052 (Fed. Cir. 1993), which provides that procedural protections under administrative offset do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act; or

(c) In the case of non-centralized administrative offsets, the FDIC first learns of the existence of a debt due when there would be insufficient time to afford the debtor due process under these procedures before the paying agency makes payment to the debtor; in such cases, the Director shall give the debtor notice and an opportunity for review as soon as practical and shall refund any money ultimately found not to be due to the U.S. Government.

§ 313.25 Debtor's rights.

Unless the procedures described in § 313.23 are used, prior to collecting any claim by administrative offset or referring such claim to another agency for collection through administrative offset, the Director shall provide the debtor with the following:

(a) Written notification of the nature and amount of the claim, the intention of the Director to collect the claim through administrative offset, and a statement of the rights of the debtor under this paragraph;

(b) An opportunity to inspect and copy the records of the FDIC with respect to the claim, unless such records are exempt from disclosure;

(c) An opportunity to have the FDIC's determination of indebtedness reviewed by the Director:

(1) Any request by the debtor for such review shall be in writing and shall be submitted to the FDIC within 30 calendar days of the date of the notice of the offset. The Director may waive the time limit for requesting review for good cause shown by the debtor;

(2) Upon acceptance of a request for review by the debtor, the FDIC shall provide the debtor with a reasonable opportunity for an oral hearing when the determination turns on an issue of credibility or veracity, or the Director determines that the question of the indebtedness cannot be resolved by review of the documentary evidence alone. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Director shall document all significant matters discussed at the hearing. In cases where an oral hearing is not required by this section, the Director shall make his determination based on a documentary hearing consisting of a review of the written record; and

(d) An opportunity to enter into a written agreement for the voluntary repayment of the amount of the claim at the discretion of the Director.

§ 313.26 Interest.

Pursuant to 31 U.S.C. 3717, the FDIC shall assess interest, penalties and administrative costs on debts owed to the United States. The FDIC is authorized to assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 313.27 Refunds.

Amounts recovered by administrative offset but later found not to be owed to the Government shall be promptly refunded. Unless required by law or contract, such refunds shall not bear interest.

§ 313.28 No requirement for duplicate notice.

Where the Director has previously given a debtor any of the required notice and review opportunities with respect to a particular debt, the Director is not required to duplicate such notice and

review opportunities prior to initiating administrative offset.

§ 313.29 Requests for offset to other federal agencies.

The Director may request that a debt owed to the FDIC be administratively offset against funds due and payable to a debtor by another federal agency. In requesting administrative offset, the FDIC, as the creditor agency, will certify in writing to the federal agency holding funds payable to the debtor:

(a) That the debtor owes the debt;

(b) The amount and basis of the debt; and

(c) That the FDIC has complied with the requirements of its own administrative offset regulations and the applicable provisions of 31 U.S.C. 3716 with respect to providing the debtor with due process, unless otherwise provided.

§ 313.30 Requests for offset from other federal agencies.

Any federal agency may request that funds due and payable to its debtor by the FDIC be administratively offset by the FDIC in order to collect a debt owed to such agency by the debtor. The FDIC shall initiate the requested offset only upon:

(a) Receipt of written certification from the creditor agency stating:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 31 CFR 901.3, including providing any required hearing or review.

(b) A determination by the creditor agency that collection by offset against funds payable by the FDIC would be in the best interest of the United States and that such offset would not otherwise be contrary to law.

§§ 313.31—313.39 [Reserved]

Subpart C—Salary Offset

§ 313.40 Scope.

These salary offset regulations are issued in compliance with 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and apply to the collection of debts owed by employees of the FDIC or other federal agencies. These salary offset procedures do not apply where an employee consents to the recovery of a debt from his current pay account. These procedures do not apply to debts arising under the Internal Revenue Code, the tariff laws of the United States or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108). These procedures do not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, or in any way questioning the amount or validity of a debt, in the manner specified by law or these agency regulations. This section also does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority. When possible, salary offset through centralized administrative offset procedures should be attempted before seeking salary offset from a paying agency different than the creditor agency.

§ 313.41 Notice requirement where FDIC is creditor agency.

Where the FDIC seeks salary offset under 5 U.S.C. 5514 as the creditor agency, the FDIC shall first provide the employee with a written Notice of Intent to Offset at least 30 calendar days before salary offset is to commence. The Notice of Intent to Offset shall include the following information and statements:

(a) That the Director has determined that a debt is owed to the FDIC and intends to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full or otherwise resolved;

(b) The amount of the debt and the factual basis for the debt;

(c) A salary offset schedule stating the frequency and amount of each deduction, stated as a fixed dollar amount or percentage of disposable pay (not to exceed 15%);

(d) That in lieu of salary offset, the employee may propose a voluntary repayment plan to satisfy the debt on terms acceptable to the FDIC, which must be documented in writing, signed by the employee and the Director or the Director's designee, and documented in the FDIC's files;

(e) The FDIC's policy concerning interest, penalties, and administrative costs, and a statement that such assessments must be made, unless excused in accordance with the FCCS;

(f) That the employee has the right to inspect and copy FDIC records not exempt from disclosure relating to the debt claimed, or to receive copies of such records if the employee or the employee's representative is unable personally to inspect the records, due to geographical or other constraints:

(1) That such requests be made in writing, and identify by name and address the Director or other designated individual to whom the request should be sent; and

(2) That upon receipt of such a request, the Director or the Director's designee shall notify the employee of the time and location where the records may be inspected and copied;

(g) That the employee has a right to request a hearing regarding the existence and amount of the debt claimed or the salary offset schedule proposed by the FDIC, provided that the employee files a request for such a hearing with the FDIC in accordance with § 313.42 that such a hearing will be conducted by an impartial official who is an administrative law judge or other hearing official not under the supervision or control of the Board;

(h) The procedure and deadline for requesting a hearing, including the name, address, and telephone number of the Director or other designated individual to whom a request for hearing must be sent;

(i) That a request for hearing must be received by the FDIC on or before the 30th calendar day following receipt of the Notice of Intent, and that filing of a request for hearing will stay the collection proceedings;

(j) That the FDIC will initiate salary offset procedures not less than 30 days from the date of the employee's receipt of the Notice of Intent to Offset, unless the employee files a timely request for a hearing;

(k) That if a hearing is held, the administrative law judge or other hearing official will issue a decision at the earliest practical date, but not later than 60 days after the filing of the request for the hearing, unless the employee requests a delay in the proceedings which is granted by the hearing official;

(l) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729 through 3731, or under any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or under any other applicable statutory authority;

(m) That the employee also has the right to request waiver of overpayment pursuant to 5 U.S.C. 5584, and may exercise any other rights and remedies available under statutes or regulations governing the program for which the collection is being made; and

(n) That amounts paid on or deducted from debts that are later waived or found not to be owed to the United States will be promptly refunded to the

employee, unless there are applicable contractual or statutory provisions to the contrary.

§ 313.42 Procedures to request a hearing.

(a) To request a hearing, an employee must send a written request to the Director. The request must be received by the Director within 30 calendar days after the employee's receipt of the Notice of Intent.

(b) The request must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position. The request for hearing must state whether the employee is requesting an oral or documentary hearing. If an oral hearing is requested, the request shall explain why the matter cannot be resolved by a review of documentary evidence alone.

§ 313.43 Failure to timely submit request for hearing.

If the Director does not receive an employee's request for hearing within the 30-day period set forth in § 313.42(a), the employee shall not be entitled to a hearing. However, the Director may accept an untimely request for hearing if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

§ 313.44 Procedure for hearing.

(a) *Obtaining the services of a hearing official.* When the FDIC is the creditor agency and the debtor is an FDIC employee, the FDIC shall designate an administrative law judge or contact any agent of another agency designated in appendix A to 5 CFR part 581 to arrange for a hearing official. When the FDIC is the creditor agency and the debtor is not an FDIC employee (*i.e.*, the debtor is employed by another federal agency, also known as the paying agency), and the FDIC cannot provide a prompt and appropriate hearing before an administrative law judge or a hearing official furnished pursuant to a lawful arrangement, the FDIC may contact an agent of the paying agency designated in appendix A to 5 CFR part 581 to arrange for a hearing official. The paying agency must cooperate with the FDIC to provide a hearing official, as required by the FCCS.

(b) *Notice and format of hearing.* (1) *Notice.* The hearing official shall determine whether the hearing shall be oral or documentary and shall notify the employee of the form of the hearing. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must be held within 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be documentary, the employee shall be notified to submit evidence and written arguments in support of his or her case to the hearing official within 30 calendar days.

(2) *Oral hearing.* The hearing official may grant a request for an oral hearing if he or she determines that the issues raised by the employee cannot be resolved by review of documentary evidence alone (*e.g.*, where credibility or veracity are at issue). An oral hearing is not required to be an adversarial adjudication, and the hearing official is not required to apply rules of evidence. Witnesses who testify in oral hearings shall do so under oath or affirmation. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings in which the hearing examiner interviews the employee; or

(iii) Formal written submissions followed by an opportunity for oral presentation.

(3) *Documentary hearing.* If the hearing official determines that an oral hearing is not necessary, he or she shall decide the issues raised by the employee based upon a review of the written record.

(4) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(c) *Rescheduling of the hearing date.* The hearing official shall reschedule a hearing if requested to do so by both parties, who shall be given reasonable notice of the time and place of this new hearing.

(d) *Failure to appear.* In the absence of good cause, an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the Notice of Intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled, and issue a decision based upon the oral testimony presented and the documentation submitted by both parties.

(e) *Date of decision.* The hearing official shall issue a written decision based upon the evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the request for hearing was received by the FDIC, unless the hearing was delayed at the request of the employee. In the event of such a delay, the 60-day decision period shall be extended by the number of days by which the hearing was postponed. The decision of the hearing official shall be final.

(f) *Content of decision.* The written decision shall include:

(1) A summary of the facts concerning the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of the repayment schedule, if applicable.

(g) *Official certification of debt.* The hearing official's decision shall constitute an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. Where the FDIC is the creditor agency but not the current paying agency, the FDIC may make a certification regarding the existence and amount of the debt owed to the FDIC, based on the hearing official's certification. The FDIC may make this certification to: the Secretary of the Treasury so that Treasury may offset the employee's current pay account by means of centralized administrative offset (5 CFR 550.1108); or to the current paying agency (5 CFR 550.1109). If the hearing official determines that a debt may not be collected through salary offset but the FDIC as the creditor agency determines that the debt is still valid, the FDIC may seek collection of the debt through other means, including administrative offset of other federal payments or litigation.

§ 313.45 Certification of debt by FDIC as creditor agency.

The Director may also issue a certification of the debt where there has not been a hearing, if the employee has admitted the debt, or failed to contest the existence and amount of the debt in a timely manner (*e.g.*, by failing to request a hearing). The certification shall be in writing and shall state:

(a) The amount and basis of the debt owed by the employee;

(b) The date the FDIC's right to collect the debt first accrued;

(c) That the FDIC's debt collection regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(d) If the collection is to be made by lump-sum payment, the amount and date such payment will be collected;

(e) If the collection is to be made in installments through salary offset, the number of installments to be collected, the amount of each installment, and the date of the first installment, if a date

other than the next officially established pay period; and

(f) The date the employee was notified of the debt, the action(s) taken pursuant to the FDIC's regulations, and the dates such actions were taken.

§ 313.46 Notice of salary offset where FDIC is the paying agency.

(a) Upon issuance of a proper certification by the Director for debts owed to the FDIC, or upon receipt of a proper certification from a creditor agency, the Director shall send the employee a written notice of salary offset. Such notice shall advise the employee:

(1) That certification has been issued by the Director or received from another creditor agency;

(2) Of the amount of the debt and of the deductions to be made; and

(3) Of the initiation of salary offset at the next officially established pay interval or as otherwise provided for in the certification.

(b) Where appropriate, the Director shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 313.47 Voluntary repayment agreements as alternative to salary offset where the FDIC is the creditor agency.

(a) In response to a Notice of Intent, an employee may propose to voluntarily repay the debt through scheduled voluntary payments, in lieu of salary offset. An employee who wishes to repay a debt in this manner shall submit to the Director a written agreement proposing a repayment schedule. This proposal must be received by the Director within 30 calendar days after receipt of the Notice of Intent.

(b) The Director shall notify the employee whether the employee's proposed voluntary repayment agreement is acceptable. It is within the discretion of the Director whether to accept or reject the debtor's proposal, or whether to propose to the debtor a modification of the proposed repayment agreement:

(1) If the Director decides that the proposed repayment agreement is unacceptable, he or she shall notify the employee and the employee shall have 30 calendar days from the date he or she received notice of the decision in which to file a request for a hearing on the proposed repayment agreement, as provided in § 313.42; or

(2) If the Director decides that the proposed repayment agreement is acceptable or the debtor agrees to a modification proposed by the Director, the agreement shall be put in writing and signed by both the employee and the Director.

§ 313.48 Special review of repayment agreement or salary offset due to changed circumstances.

(a) An employee subject to a voluntary repayment agreement or salary offset payable to the FDIC as creditor agency may request a special review by the Director of the amount of the salary offset or voluntary repayment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability. A request for special review may be made at any time.

(b) In support of a request for special review, the employee shall submit to the Director a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Monthly expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) The employee shall also file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in extreme financial hardship to the employee.

(d) The Director shall evaluate the statement and supporting documents and determine whether the original salary offset or repayment schedule imposes extreme financial hardship on the employee, for example, by preventing the employee from meeting essential subsistence expenses such as food, housing, clothing, transportation, and medical care. The Director shall notify the employee in writing within 30 calendar days of his or her determination.

(e) If the special review results in a revised salary offset or repayment schedule, the Director shall provide a new certification to the paying agency.

§ 313.49 Coordinating salary offset with other agencies.

(a) *Responsibility of the FDIC as the creditor agency.* Upon completion of the procedures established in § 313.40 through § 313.45, the Director shall take the following actions:

(1) Submit a debt claim to the paying agency, containing the information described in paragraphs (a)(2) and (a)(3) of this section, together with the certification of debt or an installment agreement (or other instruction regarding the payment schedule, if applicable).

(2) If the collection must be made in installments, inform the paying agency of the amount or percentage of disposable pay to be collected in each installment. The Director may also inform the paying agency of the commencement date and number of installments to be paid, if a date other than the next officially established pay period is required.

(3) Unless the employee has consented to the salary offset in writing or has signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency, the Director must also advise the paying agency of the actions the FDIC has taken under 5 U.S.C. 5514 and state the dates such action was taken.

(4) If the employee is in the process of separating from employment, the Director shall submit the debt claim to the employee's paying agency for collection by lump-sum deduction from the employee's final check. The paying agency shall certify the total amount of its collection and furnish a copy of the certification to the FDIC and to the employee.

(5) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Director may, unless otherwise prohibited, request that money due and payable to the employee from the federal government, including payments from the Civil Service Retirement and Disability Fund (5 CFR 831.1801), be administratively offset to collect the debt.

(6) In the event an employee transfers to another paying agency, the Director shall not repeat the procedures described in § 313.40 through § 313.45 in order to resume collecting the debt. Instead, the FDIC shall review the debt upon receiving the former paying agency's notice of the employee's transfer and shall ensure that collection is resumed by the new paying agency. The FDIC must submit a properly certified claim to the new paying agency before collection can be resumed.

(b) *Responsibility of the FDIC as the paying agency.* (1) *Complete claim.* When the FDIC receives a properly certified claim from a creditor agency, the employee shall be given written notice of the certification, the date salary offset will begin, and the amount of the periodic deductions. The FDIC shall schedule deductions to begin at the next officially established pay interval or as otherwise provided for in the certification.

(2) *Incomplete claim.* When the FDIC receives an incomplete certification of debt from a creditor agency, the FDIC shall return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed and that a properly certified debt claim must be received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The FDIC is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another agency.* If, after the creditor agency has submitted the debt claim to the FDIC, the employee transfers to a different paying agency before the debt is collected in full, the FDIC must certify the total amount collected on the debt. One copy of the certification shall be furnished to the employee, and one copy shall be sent to the creditor agency along with notice of the employee's transfer. If the FDIC is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the requirements set forth herein and in the OPM's regulation (5 CFR part 550, subpart K) have been fully met.

§ 313.50 Interest, penalties, and administrative costs.

Where the FDIC is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and 31 CFR parts 900 through 904.

§ 313.51 Refunds.

(a) Where the FDIC is the creditor agency, it shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when the debt is compromised or otherwise found not to be owing to the United States, or when an administrative or judicial order directs the FDIC to make a refund.

(b) Unless required by law or contract, such refunds shall not bear interest.

§ 313.52 Request from a creditor agency for services of a hearing official.

(a) The FDIC may provide a hearing official upon request of the creditor agency when the debtor is employed by the FDIC and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(b) The FDIC may provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(c) The Director shall arrange for qualified personnel to serve as hearing officials.

(d) Services rendered under paragraph (a) of this section shall be provided on a fully reimbursable basis pursuant to 31 U.S.C. 1535.

§ 313.53 Non-waiver of rights by payments.

A debtor's payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this section shall not be construed as a waiver of any rights that the debtor may have under any statute, regulation, or contract except as otherwise provided by law or contract.

§ 313.54 Exception to due process procedures.

(a) The procedures set forth in this subpart shall not apply to routine intra-agency salary adjustments of pay, including the following:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine adjustment of pay that is made to correct an overpayment attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment or as soon thereafter as is practical, the individual is provided written notice of the nature and amount of the adjustment and the point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amount to $50 or less, if, at the time of such adjustment, or as soon thereafter as is practical, the individual is provided written notice of the nature and amount of the adjustment and the point of contact for contesting such adjustment.

(b) The procedure for notice to the employee and collection of such adjustments is set forth in § 313.55.

§ 313.55 Salary adjustments.

Any negative adjustment to pay arising out of an employee's election of coverage, or a change in coverage, under a federal benefits program requiring periodic deductions from pay shall not be considered collection of a "debt" for the purposes of this section if the amount to be recovered was accumulated over four pay periods or less. In such cases, the FDIC shall not apply this subpart C, but will provide a clear and concise statement in the employee's earnings statement advising the employee of the previous overpayment at the time the adjustment is made.

§§ 313.56—313.79 [Reserved]

Subpart D—Administrative Wage Garnishment

§ 313.80 Scope and purpose.

(a) These administrative wage garnishment regulations are issued in compliance with 31 U.S.C. 3720D and 31 CFR 285.11(f). The subpart provides procedures for the FDIC to collect money from a debtor's disposable pay by means of administrative wage garnishment. The receipt of payments pursuant to this subpart does not preclude the FDIC from pursuing other debt collection remedies, including the offset of federal payments. The FDIC may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment. This subpart does not apply to the collection of delinquent debts from the wages of federal employees from their federal employment. Federal pay is subject to the federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

§ 313.81 Notice.

At least 30 days before the initiation of garnishment proceedings, the Director will send, by first class mail to the debtor's last known address, a written notice informing the debtor of:

(a) The nature and amount of the debt;

(b) The FDIC's intention to initiate proceedings to collect the debt through deductions from the debtor's pay until the debt and all accumulated interest penalties and administrative costs are paid in full;

(c) An explanation of the debtor's rights as set forth in § 313.82(c); and

(d) The time frame within which the debtor may exercise these rights. The FDIC shall retain a stamped copy of the notice indicating the date the notice was mailed.

§ 313.82 Debtor's rights.

The FDIC shall afford the debtor the opportunity:

(a) To inspect and copy records related to the debt;

(b) To enter into a written repayment agreement with the FDIC, under terms agreeable to the FDIC; and

(c) To the extent that a debt owed has not been established by judicial or

administrative order, to request a hearing concerning the existence or amount of the debt or the terms of the repayment schedule. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. The debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement.

§ 313.83 Form of hearing.

(a) If the debtor submits a timely written request for a hearing as provided in § 313.82(c), the FDIC will afford the debtor a hearing, which at the FDIC's option may be oral or written. The FDIC will provide the debtor with a reasonable opportunity for an oral hearing when the Director determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(b) If the FDIC determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the FDIC. An oral hearing may, at the debtor's option, be conducted either in person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(c) In cases when it is determined that an oral hearing is not required by this section, the FDIC will accord the debtor a "paper hearing," that is, the FDIC will decide the issues in dispute based upon a review of the written record.

§ 313.84 Effect of timely request.

If the FDIC receives a debtor's written request for hearing within 15 business days of the date the FDIC mailed its notice of intent to seek garnishment, the FDIC shall not issue a withholding order until the debtor has been provided the requested hearing, and a decision in accordance with § 313.88 and § 313.89 has been rendered.

§ 313.85 Failure to timely request a hearing.

If the FDIC receives a debtor's written request for hearing after 15 business days of the date the FDIC mailed its notice of intent to seek garnishment, the FDIC shall provide a hearing to the debtor. However, the FDIC will not delay issuance of a withholding order unless it determines that the untimely filing of the request was caused by factors over which the debtor had no control, or the FDIC receives information that the FDIC believes justifies a delay or cancellation of the withholding order.

§ 313.86 Hearing official.

A hearing official may be any qualified individual, as determined by the FDIC, including an administrative law judge.

§ 313.87 Procedure.

After the debtor requests a hearing, the hearing official shall notify the debtor of:

(a) The date and time of a telephonic hearing;

(b) The date, time, and location of an in-person oral hearing; or

(c) The deadline for the submission of evidence for a written hearing.

§ 313.88 Format of hearing.

The FDIC will have the burden of proof to establish the existence or amount of the debt. Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists, or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law. The hearing official shall maintain a record of any hearing held under this section. Hearings are not required to be formal, and evidence may be offered without regard to formal rules of evidence. Witnesses who testify in oral hearings shall do so under oath or affirmation.

§ 313.89 Date of decision.

The hearing official shall issue a written opinion stating his or her decision as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the FDIC. If the FDIC is unable to provide the debtor with a hearing and decision within sixty (60) days after the receipt of the request for such hearing:

(a) The FDIC may not issue a withholding order until the hearing is held and a decision rendered; or

(b) If the FDIC had previously issued a withholding order to the debtor's employer, the withholding order will be suspended beginning on the 61st day after the date the FDIC received the hearing request and continuing until a hearing is held and a decision is rendered.

§ 313.90 Content of decision.

The written decision shall include:

(a) A summary of the facts presented;

(b) The hearing official's findings, analysis and conclusions; and

(c) The terms of any repayment schedule, if applicable.

§ 313.91 Finality of agency action.

Unless the FDIC on its own initiative orders review of a decision by a hearing official pursuant to 17 CFR 201.431(c), a decision by a hearing official shall become the final decision of the FDIC for the purpose of judicial review under the Administrative Procedure Act.

§ 313.92 Failure to appear.

In the absence of good cause shown, a debtor who fails to appear at a scheduled hearing will be deemed as not having timely filed a request for a hearing.

§ 313.93 Wage garnishment order.

(a) Unless the FDIC receives information that it believes justifies a delay or cancellation of the withholding order, the FDIC will send by first class mail a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice of the FDIC's intent to seek garnishment) or, if a timely request for a hearing is made by the debtor, within 30 days after a decision to issue a withholding order becomes final.

(b) The withholding order sent to the employer will be in the form prescribed by the Secretary of the Treasury, on the FDIC's letterhead, and signed by the head of the agency or delegate. The order will contain all information necessary for the employer to comply with the withholding order, including the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(c) The FDIC will keep a stamped copy of the order indicating the date it was mailed.

§ 313.94 Certification by employer.

Along with the withholding order, the FDIC will send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the FDIC within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

§ 313.95 Amounts withheld.

(a) Upon receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraphs (b) through (d) of this section.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

(1) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which the debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(c) When a debtor's pay is subject to withholding orders with priority, the following shall apply:

(1) Unless otherwise provided by federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (b) of this section and shall have priority over other withholding orders which are served later in time. However, withholding orders for family support shall have priority over withholding orders issued under this section.

(2) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(i) The amount calculated under paragraph (b) of this section; or

(ii) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) If a debtor owes more than one debt to the FDIC, the FDIC may issue multiple withholding orders. The total amount garnished from the debtor's pay for such orders will not exceed the amount set forth in paragraph (b) of this section.

(d) An amount greater than that set forth in paragraphs (b) and (c) of this section may be withheld upon the written consent of the debtor.

(e) The employer shall promptly pay to the FDIC all amounts withheld in accordance with the withholding order issued pursuant to this section.

(f) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(g) Any assignment or allotment by the employee of the employee's earnings shall be void to the extent it interferes with or prohibits execution of the withholding order under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(h) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the FDIC to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

§ 313.96 Exclusions from garnishment.

The FDIC will not garnish the wages of a debtor it knows has been involuntarily separated from employment until the debtor has been re-employed continuously for at least 12 months. The debtor has the burden of informing the FDIC of the circumstances surrounding an involuntary separation from employment.

§ 313.97 Financial hardship.

(a) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the FDIC of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting a review under this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(c) If a financial hardship is found, the FDIC will downwardly adjust, by an amount and for a period of time agreeable to the FDIC, the amount garnished to reflect the debtor's financial condition. The FDIC will notify the employer of any adjustments to the amounts to be withheld.

§ 313.98 Ending garnishment.

(a) Once the FDIC has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the FDIC will send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the FDIC will review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

§ 313.99 Prohibited actions by employer.

The DCIA prohibits an employer from discharging, refusing to employ, or taking disciplinary action against the debtor due to the issuance of a withholding order under this subpart.

§ 313.100 Refunds.

(a) If a hearing official determines that a debt is not legally due and owing to the United States, the FDIC shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by federal law or contract, refunds under this section shall not bear interest.

§ 313.101 Right of action.

The FDIC may sue any employer for any amount that the employer fails to withhold from wages owed and payable to its employee in accordance with this subpart. However, a suit will not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations. For purposes of this subpart, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the FCCS (31 CFR 903.1 through 903.5) or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the FDIC has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

§§ 313.102—313.119 [Reserved]

Subpart E—Tax Refund Offset

§ 313.120 Scope.

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury to offset a delinquent debt owed to the United States Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due. In addition, the FDIC is authorized to collect debts by means of administrative offset under 31 U.S.C. 3716 and, as part of the debt collection process, to notify the Financial Management Service (FMS), a bureau of the Department of the Treasury, of the amount of such debt for collection by tax refund offset.

§ 313.121 Definitions.

For purposes of this subpart E:

(a) *Debt* or *claim* means an amount of money, funds or property which has been determined by the FDIC to be due

to the United States from any person, organization, or entity, except another federal agency.

(b) *Debtor* means a person who owes a debt or a claim. The term "person" includes any individual, organization or entity, except another federal agency.

(c) *Tax refund offset* means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

(d) T*ax refund payment* means any overpayment of federal taxes to be refunded to the person making the overpayment after the Internal Revenue Service (IRS) makes the appropriate credits.

§ 313.122 Notification of debt to FMS.

The FDIC shall notify FMS of the amount of any past due, legally enforceable non-tax debt owed to it by a person, for the purpose of collecting such debt by tax refund offset. Notification and referral to FMS of such debts does not preclude FDIC's use of any other debt collection procedures, such as wage garnishment, either separately or in conjunction with tax refund offset.

§ 313.123 Certification and referral of debt.

When the FDIC refers a past-due, legally enforceable debt to FMS for tax refund offset, it will certify to FMS that:

(a) The debt is past due and legally enforceable in the amount submitted to FMS and that the FDIC will ensure that collections are properly credited to the debt;

(b) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after the FDIC's right of action accrues;

(c) The FDIC has made reasonable efforts to obtain payment of the debt, in that it has:

(1) Submitted the debt to FMS for collection by administrative offset and complied with the provisions of 31 U.S.C. 3716(a) and related regulations;

(2) Notified, or has made a reasonable attempt to notify, the debtor that the debt is past-due, and unless repaid within 60 days after the date of the notice, will be referred to FMS for tax refund offset;

(3) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(4) Provided the debtor with an opportunity to make a written agreement to repay the debt; and

(d) The debt is at least $25.

§ 313.124 Pre-offset notice and consideration of evidence.

(a) For purposes of § 313.123(c)(2), the FDIC has made a reasonable effort to notify the debtor if it uses the current address information contained in its records related to the debt. The FDIC may, but is not required to, obtain address information from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), (5).

(b) For purposes of § 313.123(c)(3), if evidence presented by a debtor is considered by an agent of the FDIC, or other entities or persons acting on behalf of the FDIC, the debtor must be accorded at least 30 days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the FDIC of any unresolved dispute. The FDIC must then notify the debtor of its decision.

§ 313.125 Referral of past-due, legally enforceable debt.

The FDIC shall submit past-due, legally enforceable debt information for tax refund offset to FMS, as prescribed by FMS. For each debt, the FDIC will include the following information:

(a) The name and taxpayer identification number (as defined in 26 U.S.C. 6109) of the debtor;

(b) The amount of the past-due and legally enforceable debt;

(c) The date on which the debt became past-due; and

(d) The designation of FDIC as the agency referring the debt.

§ 313.126 Correcting and updating referral.

If, after referring a past-due legally enforceable debt to FMS as provided in § 313.125, the FDIC determines that an error has been made with respect to the information transmitted to FMS, or if the FDIC receives a payment or credits a payment to the account of the debtor referred to FMS for offset, or if the debt amount is otherwise incorrect, the FDIC shall promptly notify FMS and make the appropriate correction of the FDIC's records. FDIC will provide certification as required under § 313.123 for any increases to amounts owed. In the event FMS rejects an FDIC certification for failure to comply with § 323.123, the FDIC may resubmit the debt with a corrected certification.

§ 313.127 Disposition of amounts collected.

FMS will transmit amounts collected for past-due, legally enforceable debts, less fees charged under this section, to the FDIC's account. The FDIC will reimburse FMS and the IRS for the cost of administering the tax refund offset program. FMS will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program. To the extent allowed by law, the FDIC may add the offset fees to the debt.

§§ 313.128—313.139 [Reserved]

Subpart F—Civil Service Retirement and Disability Fund Offset

§ 313.140 Future benefits.

Unless otherwise prohibited by law, the FDIC may request that a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) be administratively offset in accordance with regulations at 5 CFR 831.1801 through 831.1808.

§ 313.141 Notification to OPM.

When making a request for administrative offset under § 313.140, the FDIC shall provide OPM with a written certification that:

(a) The debtor owes the FDIC a debt, including the amount of the debt;

(b) The FDIC has complied with the applicable statutes, regulations, and procedures of OPM; and

(c) The FDIC has complied with the requirements of 31 CFR parts 900 through 904, including any required hearing or review.

§ 313.142 Request for administrative offset.

The Director shall request administrative offset under § 313.140, as soon as practical after completion of the applicable procedures in order to help ensure that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor shall be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

§ 313.143 Cancellation of deduction.

If the FDIC collects part or all of the debt by other means before deductions are made or completed pursuant to § 313.140, the FDIC shall act promptly to modify or terminate its request for such offset.

Subpart G—Mandatory Centralized Administrative Offset

§ 313.160 Treasury notification.

(a) In accordance with 31 U.S.C. 3716, the FDIC as a creditor agency must notify the Secretary of the Treasury of all debts that are delinquent (over 180 days past due), as defined in the FCCS, to enable the Secretary to seek collection by centralized administrative offset. This includes debts the FDIC seeks to recover from the pay account of an employee of another agency by means of salary offset.

(b) For purposes of centralized administrative offset, a claim or debt is not delinquent if:

(1) It is in litigation or foreclosure;

(2) It will be disposed of under an asset sale program within one year after becoming eligible for sale;

(3) It has been referred to a private collection contractor for collection;

(4) It has been referred to a debt collection center;

(5) It will be collected under internal offset, if such offset is sufficient to collect the claim within three years after the date the debt or claim is first delinquent; and

(6) It is within a specific class of claims or debts which the Secretary of the Treasury has determined to be exempt, at the request of an agency.

§ 313.161 Certification of debt.

Prior to referring a delinquent debt to the Secretary of the Treasury, the Director must have complied with the requirements of 5 U.S.C. 5514, and 5 CFR part 550, subpart K, governing salary offset, and the FDIC regulations. The Director shall certify, in a form acceptable to the Secretary, that:

(a) The debt is past due and legally enforceable; and

(b) The FDIC has complied with all due process requirements under 31 U.S.C. 3716 and the FDIC's administrative offset regulations.

§ 313.162 Compliance with 31 CFR part 285.

The Director shall also comply with applicable procedures for referring a delinquent debt for purposes of centralized offset which are set forth at 31 CFR part 285 and the FCCS.

§ 313.163 Notification of debts of 180 days or less.

The Director, in his discretion, may also notify the Secretary of the Treasury of debts that have been delinquent for 180 days or less, including debts the FDIC seeks to recover by means of salary offset.

§§ 313.164—313.180 [Reserved]

Dated at Washington, DC, this 12th day of July, 2002.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary/Supervisory Counsel.

[FR Doc. 02–18656 Filed 7–24–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–02–AD; Amendment 39–12831; AD 2002–15–03]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Corporation Model 568F–1 Propellers.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes an emergency airworthiness directive (AD) 2002–05–51 that was sent previously to all known U.S. owners and operators of Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) model 568F–1 propellers. That AD requires replacement of propeller blades, part numbers (P/N's) R815505–2 and R815505–3, that have a serial number (SN) of FR1698 or lower, with serviceable propeller blades, a prohibition against installing any propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR428 or lower, that were previously installed on an ATR–42–400 or an ATR–72 airplane, on any other airplane, and initial and repetitive ultrasonic shear wave inspection of the blade tulip on installed blades P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower. This amendment requires those same actions, and also requires replacing certain SN blades before further flight. This amendment also requires initial and repetitive ultrasonic shear wave inspections of the blade tulip on installed blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower until they are replaced. This amendment is prompted by a report of a blade failure that resulted in damage to the airplane. The actions specified in this AD are intended to prevent blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control.

DATES: Effective August 9, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–02–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *"9-ane-adcomment@faa.gov"*. Comments sent via the Internet must contain the docket number in the subject line.

The applicable service information may be obtained from Hamilton Sundstrand Propeller Technical Team, One Hamilton Road, Mail Stop 1–3–AB43, Windsor Locks, CT 06096–1010, U.S.A.; Fax 1–860–654–5107. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: On March 7, 2002, the FAA issued emergency AD 2002–05–51, applicable to Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) model 568F–1 propellers installed with blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower. That AD requires:

- Replacement of propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, with serviceable propeller blades.
- A prohibition against installing any propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR428 or lower, that were previously installed on an ATR–42–400 or an ATR–72 airplane, on any other airplane.
- Ultrasonic shear wave inspection of the blade tulip on installed blades P/N's

R815505–2 and R815505–3, that have a SN of FR1698 or lower, within 50 hours after receipt to that emergency AD.

• Repetitive ultrasonic shear wave inspection of the blade tulip on installed blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, within 50 flight hours since-last-inspection.

That action was prompted by a report that a Hamilton Sundstrand propeller blade failed on an Aerospatiale ATR42–500 airplane. The failure occurred shortly after takeoff. The airplane was able to return safely to the point of departure. The position 5 blade failed outboard of the counterweight mounting flange. Additional damage to the propeller, engine, and nacelle was found. Root cause investigation has determined that the fracture began at an area of corrosion on the metallic portion of the blade just above and opposite the counterweight mounting flange. Engineering evaluation of the blade population that is susceptible to corrosion-induced fatigue has determined that the affected blades must be replaced to prevent blade failure. Subsequent investigation has determined that the suspect blade population must be inspected for fatigue cracks, due to corrosion pitting, using a repetitive ultrasonic shear wave inspection. This condition, if not corrected, could result in blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Hamilton Sundstrand Alert Service Bulletin No. 568F–61-A35, Revision 2, dated March 21, 2002, which provides procedures to perform the ultrasonic shear wave inspection of the blade tulip.

FAA's Determination of an Unsafe Condition and Required Actions

Since the unsafe condition described is likely to exist or develop on other propellers of the same type design, the FAA issued emergency AD 2002–05–51 to prevent blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control. This AD requires:

• Replacement of propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, that are installed on ATR 42–400 and ATR 72 airplanes, with serviceable propeller blades before further flight.

• A prohibition against installing any propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR428 or lower, that were previously installed on an ATR 42–400 or an ATR 72 airplane, on any other airplane after the effective date of this AD.

• Ultrasonic shear wave inspection of the blade tulip on installed blades P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, within 50 hours after the effective date of this AD.

• Repetitive ultrasonic shear wave inspection of the blade tulip on installed blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, within 50 flight hours since-last-inspection.

The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NE–02-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–15–03 Hamilton Sundstrand Corporation: Amendment 39–12831. Docket No. 2002–NE–02–AD. Supersedes AD 2002–05–51.

Applicability: This airworthiness directive (AD) is applicable to Hamilton Sundstrand

Corporation (formerly Hamilton Standard Division) model 568F–1 propellers installed with blades, part numbers (P/N's) R815505–2 and R815505–3, that have a serial number (SN) of FR1698 or lower. These propellers are installed on, but not limited to, Aerospatiale ATR 42–400 and –500 and ATR 72 airplanes.

Note 1: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control, do the following:

(a) For propeller blades P/N's R815505–2 and R815505–3, replace propeller blades SN FR265 or lower before further flight.

(b) Before further flight, replace propeller blades P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, installed on ATR 72 and ATR 42–400 airplanes.

(c) After the effective date of this AD, do not install any propeller blade that was removed in accordance with paragraph (b) of this AD on any airplane.

(d) Replace propeller blades P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, installed on ATR 42–500 airplanes, before December 31, 2002.

(e) After the effective date of this AD, do not install any propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, on any airplane unless an ultrasonic shear wave inspection of the blade tulip is done in accordance with the Accomplishment Instructions of Hamilton Sundstrand ASB 568F–61–A35, Revision 2, dated March 21, 2002, before installation of the propeller blade.

(f) Procedures for removing the propeller blade and installing a serviceable blade can be found in Hamilton Sundstrand Maintenance Manual P5206.

(g) Within 50 FH since-last-inspection, for propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, perform an ultrasonic shear wave inspection of the blade tulip in accordance with the Accomplishment Instructions of Hamilton Sundstrand ASB 568F–61–A35, Revision 2, dated March 21, 2002, and remove blades with unacceptable indications in accordance with the ASB.

(h) Thereafter, within 50 FH since-last-inspection, for propellers blades P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, perform an ultrasonic shear wave inspection of the blade tulip in accordance with the Accomplishment Instructions of Hamilton Sundstrand ASB 568F–61–A35, Revision 2, dated March 21, 2002, and remove blades with unacceptable indications in accordance with the ASB.

Optional Terminating Action

(i) Replacement of propeller blades, P/N R815505–2, with propeller blades, P/N R81505R2; or propeller blades, P/N R815505–3, with propeller blades, P/N R815505R3, constitutes terminating action for the repetitive inspection requirements specified in paragraph (h) of this AD.

Alternative Methods of Compliance

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

Special Flight Permits

(k) Special limited flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) for a nonrevenue flight to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(l) The actions required by this AD must be done in accordance with Hamilton Sundstrand Alert Service Bulletin No. 568F–61–A35, Revision 2, dated March 21, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Sundstrand Propeller Technical Team, Qne Hamilton Road, Mail Stop 1–3–AB43, Windsor Locks, CT 06096–1010, U.S.A.; Fax 1–860–654–5107. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(m) This amendment becomes effective August 9, 2002.

Issued in Burlington, Massachusetts, on July 15, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–18481 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–224–AD; Amendment 39–12827; AD 2002–14–27]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) that prohibits takeoff in certain icing conditions unless either a tactile inspection is performed or specific takeoff procedures are followed. This amendment requires adding a requirement, for certain airplanes, for modification of the wing leading edge ice protection system to include on-ground wing ice protection, and a new revision to the AFM. This amendment is prompted by the development of a modification that introduces a wing anti-icing system that will operate on the ground as well as in flight. The actions specified by this AD are intended to prevent takeoff with snow, ice, or frost on the critical surfaces of the airplane, which could result in reduced controllability of the airplane.

DATES: Effective August 29, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 29, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–25–03, amendment 39–9087 (59 FR 62563, December 6, 1994), which is applicable to all Fokker Model F.28 Mark series airplanes, was published in the **Federal Register** on November 8, 1999 (64 FR 60745). The action proposed to continue to require a revision to the Airplane Flight Manual (AFM) that prohibits takeoff in certain icing conditions unless either a tactile inspection is performed or specific takeoff procedures are followed. The action also proposed to add a requirement, for certain airplanes, for modification of the wing leading edge ice protection system to include on-ground wing ice protection, and a new revision to the AFM.

Since the Issuance of the Notice of Proposed Rulemaking (NPRM)

Fokker Services has issued Proforma Service Bulletin F28/30–032, including Appendix 1, dated December 1, 1999, applicable to Fokker Model F.28 Mark 4000 series airplanes. That proforma service bulletin describes certain corrections regarding the instructions and schematics for the modification of the wiring of the on-ground wing leading edge heating described in Fokker Proforma Service Bulletin F28/30–31 (which was referenced in the NPRM as the appropriate source of service information). Since Proforma Service Bulletin F28/30–032 only provides correction for certain procedures of 1 the modification of the wiring, the FAA has revised paragraph (b) of the final rule to also reference Proforma Service Bulletin F28/30–032. That proforma service bulletin was approved by the The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands.

Clarification of Applicability

The applicability of the NPRM affects all Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 series airplanes. However, paragraph (b) of the NPRM specifies that only airplanes identified in Appendix I, Revision 1, dated August 14, 1999, of Fokker Service Bulletin SBF100–30–018, and Appendix I, Revision 1, dated May 4, 1998, of Fokker SB F28/30–031; are subject to the requirements of paragraph (b) of the NPRM. The FAA notes that the effectivity of the proforma service bulletins assigns different operators the actual performance instructions based on a number designated in the Appendix. For example, one airline may be assigned the specific instructions for Appendix I. Therefore, we have revised the applicability of paragraph (b) of the final rule to clarify that Model F.28 Mark 0070 and 0100 series airplanes identified in Appendix I, Revision 1, dated August 14, 1999, of Fokker Proforma Service Bulletin SBF100–30–018; and Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes identified in Appendix I, Revision 1, dated May 4, 1998, of Fokker Proforma Service Bulletin F28/30–031, Revision 1, dated May 4, 1998; and in Fokker Proforma F28/30–032, including Appendix 1, dated December 1, 1999; are subject to the requirements specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with the appropriate proforma service bulletin, as applicable.

Public Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

1. Conditional Concurrence

One commenter expresses conditional concurrence with the proposed language of the NPRM. The commenter's concerns regarding certain issues are included in the discussions of other comments below.

2. Requests To Provide an Optional Method of Compliance

Several commenters identified certain concerns with an on-ground wing leading edge heating system. One of these commenters states that the ground wing leading edge anti-ice heating system will not accomplish the intent of the NPRM (i.e., to prevent degradation of aerodynamic lift during takeoff when icing conditions exist). Other commenters point out problem areas that could result, such as:

- Only partial surfaces (i.e., the leading edges) of the wings are heated. The rest of the wing remains unprotected.
- Deicing/anti-icing fluid flow-off may occur, and heating may change the effective holdover time of the fluid.
- Adverse aerodynamic effects from refreezing of runback water (runback ice).
- Risk of leading edge structural damage due to overheating caused by a ground wing leading edge heating system.

The commenters state that other means exist that are equal to or superior to the system proposed in the NPRM, and request that the FAA provide such methods of compliance as alternatives to requiring installation of a ground wing leading edge anti-ice heating system.

The FAA does not agree that the issues specified by the commenters are sufficient to justify not mandating a ground wing leading edge anti-ice heating system. Our specific responses to each of the concerns above are as follows:

- We acknowledge that only the leading edges of the wing are heated. However, we do not agree that heating some of the wing surfaces (i.e., leading edges) will not accomplish the intent of the NPRM. The intent of the NPRM is to ensure that the critical surfaces of the airplane are free from frost, ice, and snow at takeoff. This is accomplished by compliance with the operating rules of §§ 91.527 and 121.629 of the Federal Aviation Regulations (14 CFR 91.527 and 121.629), in combination with the operation of the wing leading edge heating system on the ground.
- We do not agree that operating the wing leading edge heat while on the ground will result in flow-off of fluid. The deicing fluid is typically heated to 60-degrees Centigrade (C) at the spray nozzle and would not be affected by 25-degree-C temperatures of the wing leading edge while being heated on the ground. We acknowledge that there may be some thinning of undiluted anti-icing fluids at the wing leading edge. However, there will be an offsetting benefit of having the wing leading edge heat on, which should delay the failure of the anti-icing fluid by keeping the water component above freezing.
- We do not agree that there is a reason to be concerned over runback ice. For instance, ice melting on the leading edge and water consequently running to another area of the wing and refreezing should not occur, since the on-ground wing leading edge heating system is not intended for deicing purposes. The system should be used in addition to approved deicing or anti-icing procedures. Likewise, turning on the wing leading edge heat to melt ice and not performing deicing procedures is unlikely to occur, since regulations are already in place that prohibit such actions. Therefore, for the purposes of this AD, runback ice and refreezing are not issues of concern.
- We do not agree that there is increased risk of structural damage to the leading edge due to overheating caused by the required heating system. We consider that, since the on-ground leading edge heating system complies with the requirements of § 25.1309 (14 CFR 25.1309), any failures of the heating system, such as overheating of the structure, have been accounted for and substantiated in accordance with the

hazard classification of a particular failure.

Based on the FAA's responses above to the commenter's concerns, no change to the final rule is necessary. However, we have revised the final rule to add a specific method acceptable for compliance based on another commenter's request. See the next comment and response below.

3. Request To Approve an Acceptable Method of Compliance

Two commenters request that the FAA approve the AlliedSignal "Contaminants—Fluid Integrity Measuring System," as an acceptable method of compliance with the requirements of the NPRM. The commenters present the following points in support of their request:

- C/FIMS™ is a FAA-approved system via the Supplemental Type Certification (STC) process.
- C/FIMS™ offers documented evidence as to its capabilities as an ice detector and as a fluid monitoring system, both in laboratory and in-service environments.
- More than 4 years of in-service evaluations have occurred on the Midway Airlines fleet of Fokker Model F.28 Mark 0100 series airplanes.
- Recorded documented performance is available for all weather conditions, including snow, freezing rain, and weather conditions specified as cautionary in AD 94–25–03.
- With the system validated against existing approved procedures including tactile checks and the use of holdover timetables, C/FIMS™ produced absolutely no false annunciations.
- C/FIMS™ installed on Fokker Model F.28 Mark 0100 series airplanes provides effective monitoring of the same surfaces addressed by the service bulletins specified in the NPRM.
- The commenters state that even Fokker Services has recommended that the FAA give serious consideration to certifying C/FIMS™ as an alternative solution, since the leading edge heating system is not universally favored by Model F.28 Mark 0100 series airplanes operators.

We acknowledge that STC ST291CH (applicable to Fokker Model F.28 Mark 0100 series airplanes) approves the installation of the C/FIMS™ as an advisory system that informs the flightcrew if specific anti-icing fluids have failed or if ice or snow has accumulated on one of the ice detectors. That STC also contains instructions to insert Allied Signal Aerospace Canada, Airplane Flight Manual Supplement, Document Number 6C–486, Revision 2, dated August 4, 1999, into the AFM. The AFM Supplement describes how the C/FIMS™ operates when the modification is installed. Certification as an advisory system means that the system cannot be used as the prime means of determining if the airplane must be initially deiced or anti-iced, or if the airplane must be deiced or anti-iced again because a fluid has failed.

However, we have determined that, in combination with a revision to the Limitations Section of the AFM to install the AFM Supplement described above, installation of STC ST291CH on Fokker Model F.28 Mark 0100 series airplanes is acceptable for compliance with the requirement to install an on-ground wing leading edge heating system. Although C/FIMS™ is approved as an advisory system, we find that it will provide additional assurance that the airplane will take off free of snow, ice, or frost on the critical surfaces. This finding is contingent upon using C/FIMS™ in combination with approved procedures for complying with Federal Aviation Regulations 14 CFR 91.527 and 14 CFR 121.629.

Therefore, the FAA has revised the final rule to add a new paragraph (d) of the final rule to specify that installation of a C/FIMS™ in accordance with STC ST291CH and certain AFM revisions required by paragraph (d) of the final rule are acceptable for compliance with the requirements of paragraph (b) of this AD, and constitute terminating actions for the requirements of this final rule.

In addition, we have added a new Note 5 to the final rule to remind operators that accomplishment of the actions specified in paragraph (d) of the final rule does not relieve the requirement that airplane surfaces are free of ice, frost, and snow accumulation as required by §§ 91.527 and 121.629 of the Federal Aviation Regulations (14 CFR 91.527 and 121.629).

4. Request To Withdraw the Proposal

One commenter states that, even with the on-ground wing thermal anti-icing system, operators will have to continue to rely upon using deicing or anti-icing fluids and performing the visual and tactile inspections for icing as the primary procedure for on-ground wing ice protection. Therefore, the commenter argues that there is insufficient improvement provided by the proposed heating system to warrant mandating the on-ground wing ice protection system. The FAA infers that the commenter is requesting that the NPRM be withdrawn.

The FAA does not agree. We acknowledge that operators will still have to rely on fluids and procedures that are necessary for compliance with §§ 91.527 (14 CFR 91.527) and 121.629 (14 CFR 121.629). However, the mandatory tactile inspection required by this AD will be terminated when the on-ground wing anti-ice system is installed. Because of the accident and incident history of these airplanes, we have determined that, although the operations rules (cited above) require that the critical surfaces of the airplane be free from frost, ice, and snow at takeoff, these airplanes require additional measures to ensure safety of flight. Operation of the wing anti-ice system while on the ground is a method to ensure that the critical surfaces of the airplane are free of snow, ice, and frost at takeoff. No change is necessary to the AD in this regard.

5. Request To Allow Credit for Accomplishment of New Service Information

One commenter states that it has accomplished the modification of the wing anti-ice system for operation on the ground, in accordance with Fokker Service Bulletin SBF100–30–018, Appendix I, Revision 1, dated August 14, 1999, rather than the original issuance of the service information as specified in the NPRM. The commenter requests that Revision 1 be specified as an alternative method of compliance.

The FAA agrees that accomplishment of Fokker Service Bulletin SBF100–30–018, Appendix I, Revision 1, dated August 14, 1999, provides an acceptable means of compliance with paragraph (b) of this AD. We have revised paragraph (b) of this AD to include Revision 1 of that service bulletin appendix.

6. Request To Revise Certain Modification Procedures

One commenter states that it is concerned about a safety issue if Fokker Service Bulletin F28/30–031, Appendix I, Revision 1, dated May 4, 1998 (which was specified in the NPRM as an appropriate service information), is accomplished. The commenter explains that accomplishment of that service bulletin would result in the engine anti-ice system being shut off from the operating engine should there be an engine failure during takeoff when the engine anti-ice system has been selected to the "on" position. This same commenter states that, although the commenter has accomplished the modification in accordance with Fokker Service Bulletin F28/30–031, Appendix I, the identified problem was corrected in accordance with additional service information received from Fokker. The commenter requests that the NPRM be

revised to reference the corrected modification instructions.

The FAA agrees with the commenter's request for the reasons given by the commenter. As discussed under the header entitled "Since the Issuance of the Proposed Rule," Fokker Services has issued a new Proforma Service Bulletin F28/30–032, dated December 1, 1999, that describes certain corrective procedures for modifying the wiring for the on-ground wing anti-ice system. Therefore, those corrected procedures have been required in the final rule to clarify the procedures for the modification.

7. Request To Clarify Operating Procedures If the Heating System Is Inoperative

One operator requests that the FAA confirm that current relief specified in the Minimum Equipment List (MEL) for the on-ground heated leading edge system (OGHLES) will remain in effect. Specifically, the operator requests that the FAA clarify that, when the airplane is operated with the OGHLES inoperative, the operating limitations required by AD 94–25–03 should again govern the airplane operation.

The FAA agrees that clarification is needed in this regard. First, as part of that clarification, paragraph (b)(2) of the NPRM, which requires incorporation of Fokker Manual Change Notifications (MCNOs) into the AFM, has been relettered as paragraph (c) of the final rule. Second, we point out that, incorporation of the MCNOs required by paragraph (c) of the final rule allow for alternative takeoff procedures or tactile inspections in the event the on-ground heating system is inoperative. Therefore, no change to the final rule is necessary in this regard.

8. Request To Specify the Modification as Terminating Action

One commenter notes that paragraph (b) of AD 94–25–03 specifies that modification of the thermal anti-ice system, so that it can be operated on the ground in accordance with a method approved by the FAA, constitutes terminating action for the requirements of that AD. However, the commenter also notes that the NPRM proposing to supersede AD 94–25–03 does not contain reference to the terminating action. The commenter suggests adding such reference to Note 3 of the NPRM.

The FAA agrees with the commenter, and has revised this AD to add a statement in paragraph (c) of this AD specifying that accomplishment of the actions required by paragraph (b) and (c) of the AD constitutes terminating action for the requirements of paragraph (a) of the AD.

9. Request To Revise the Cost Estimate

One commenter states that its experience in accomplishing the heating system modification reveals that it takes approximately 400 work hours per airplane to accomplish, as opposed to the estimate of 274 work hours provided in the NPRM.

The FAA acknowledges that the actual work hours necessary to accomplish the required modification exceeds the estimated work hours provided by the NPRM. That estimate of work hours was provided to the FAA by the manufacturer based on the best data available to date. As explained in the NPRM, that estimate is intended to represent the time necessary to perform only the modification required by this AD. We recognize that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. However, the cost analysis in AD rulemaking actions typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. However, after considering the information presented by the commenter, we agree that the number of work hours required is higher than previously estimated. Therefore, the cost impact information provided in this final rule has been revised to estimate 400 work hours for accomplishment of the required modification.

10. Request To Revise the Unsafe Condition

One commenter states that it takes exception to the statement of the unsafe condition as presented in the NPRM. The commenter states that, contrary to the statement in the NPRM, no ice protection system (IPS) can "* * * prevent degradation of aerodynamic lift * * *" The commenter further states that, at best, the proposed modification represents only slight improvements over the present system and procedures. The FAA infers that the commenter is requesting that the statement of the unsafe condition be revised.

The FAA acknowledges that the statement of the unsafe condition should be revised. We agree that deicing and anti-icing fluid will minimally affect the aerodynamic lift and have revised the wording for the unsafe condition to more accurately reflect the description of the unsafe condition. For those sections in the final rule that discuss the unsafe condition, we have eliminated reference to aerodynamic lift and specified that the unsafe condition is to prevent takeoff with snow, ice, or frost on the critical surfaces of the airplane.

11. Request To Revise Icing Related Language

One commenter requests that any icing related language must be accompanied by a specific warning to the flightcrew that no ice protection system can keep an airplane as clean as it was on the day it was certified, and that keeping it clean is the ultimate objective of deicing or anti-icing.

The FAA does not agree that additional warning to the flightcrew is necessary. Although we acknowledge that no ice protection system can keep an airplane absolutely "clean" (i.e., free of ice, snow, and frost), the flightcrew is required by existing operational rules to keep the airplane's critical surfaces free from ice, snow, and frost at takeoff even though a wing leading edge heating system is being operated on the ground. No change to the final rule is necessary in this regard.

12. Request To Emphasize Flightcrew Actions and Procedures

One commenter states that, until technological improvements such as airplane design changes are able to "remove the source of the problem" (e.g., performance degradations due to airframe ice accretions and in-flight encounters with icing conditions), emphasis must be placed on the flightcrew actions, and procedures must be identified to preclude icing encounters that may cause degraded airplane performance.

The FAA does not agree. The intent of this final rule is to prevent airplane takeoff with snow, ice, or frost on critical surfaces, and not to address in-flight icing encounters. Certain other regulations and procedures exist that address in-flight icing encounters. Therefore, no change to this final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 191 Fokker Model F.28 series airplanes of U.S. registry that will be affected by this AD.

The currently required AFM revisions required by this AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required AFM revisions of this AD on U.S. operators is estimated to be $60 per airplane.

The modification that is required by this new AD action for certain airplanes will take approximately 400 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $26,585 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $50,585 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9087 (59 FR 62563, December 6, 1994), and by adding a new airworthiness directive (AD), amendment 39–12827, to read as follows:

2002–14–27 Fokker Services B.V.: Amendment 39–12827. Docket 98–NM–224–AD. Supersedes AD 94–25–03, Amendment 39–9087.

Applicability: All Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent takeoff with snow, ice, or frost on the critical surfaces of the airplane, which could result in reduced controllability of the airplane; accomplish the following:

Restatement of Requirements of AD 94–25–03, Amendment 39–9087

(a) Within 10 days after December 21, 1994 (the effective date of AD 94–25–03, amendment 39–9087), incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) (this may be accomplished by inserting a copy of this AD in the AFM):

"Wing De-Icing/Anti-Icing Prior To Takeoff

Caution

The Model F.28 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge high lift devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or upper wing surfaces can cause significant reduction in the stall angle-of-attack. This can increase stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed.

Takeoff shall not be attempted unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow accumulation, as required by §§ 91.527 and 121.629 of the Federal Aviation Regulations (FAR).

In addition, takeoff shall not be attempted when the Outside Air Temperature (OAT) is below 6 degrees C (Centigrade) [42 degrees F (Fahrenheit)]; and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present, unless the operator complies with either Option 1 or Option 2 below:

Option 1

The leading edge and upper wing surfaces have been physically checked for ice/frost/snow and the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces has been accomplished and that the wing is clear of ice/frost/snow accumulation; or

Option 2

The following takeoff procedure is used:

Warning

The following technique cannot be used unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow, as required by §§ 91.527 and 121.629 of the FAR.

- (All Marks, except Mark 0100 and Mark 0070) When using flight director for takeoff, select HDG mode and 10 degrees pitch attitude.
- Select the largest flap setting that is permissible for the takeoff weight/altitude/temperature conditions.
- (All Marks, except Mark 0100 and Mark 0070) Use rated takeoff thrust.
- (Mark 0100 and Mark 0070) Use takeoff/go-around (TOGA) thrust.
- Do not use flexible thrust.
- At V_R rotate slowly (less than 3 degrees per second) to 10 degrees pitch attitude.
- When positively climbing, select gear UP.
- Do not exceed 10 degrees pitch until airspeed is above V_2 + 20 KTS.
- When above V_2 + 20 KTS, slowly increase the pitch attitude, keeping the speed above V_2 + 20 KTS.
- Retract the flaps at or above V_{FR} + 20 KTS.

Notes to Option 2

1. The available field length must be greater than or equal to 120 percent of the takeoff distance required by regulation for the actual gross weight. Also, the 20 percent increase in takeoff distance must be

accounted for in the obstacle clearance analysis. Weight must be off-loaded, if necessary, to meet these conditions.

2. (Mark 0100 and Mark 0070) Do not follow the Flight Director pitch command during rotation for takeoff and initial climb, as this will result in exceeding the recommended maximum pitch angle of 10 degrees before reaching the speed of V_2 + 20 KTS.

3. (Mark 0100 and Mark 0070) Do not engage the autopilot until leaving the Automated Flight Control and Augmentation System (AFCAS) takeoff (TO) mode.

4. For the case of an engine failure, refer to the applicable procedure in Section 4.17.01 Single Engine Operation of the F.28 Mark 0100 (Fokker 100) and F.28 Mark 0070 (Fokker 70) AFM, or Section 1.7.4 Operation Under Abnormal Conditions of the F.28 FHB, as applicable.

5. During takeoff, the first indication of wing contamination will probably be airframe buffet when the pitch angle is increased above 10 degrees, followed by wing drop and insufficient climb rate. Do not exceed 10 degrees pitch until airspeed is above V_2 + 20 KTS."

This action is required until the requirements of paragraph (c) of this AD are accomplished, or the actions specified in paragraphs (d) and (e) of this AD are accomplished.

Note 2: If an operator elects to implement in its fleet only one of the two options specified in this paragraph, the other OPTION does not have to be included in the Limitations Section of the AFM. However, the OPTION that is implemented must be incorporated in the AFM verbatim as it appears in this paragraph.

New Requirements of This AD

Modification

(b) Except as provided in paragraph (d) of this AD: Within 18 months after the effective date of this AD, modify the wing anti-ice system for operation on the ground as specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For Model F.28 Mark 0070 and 0100 series airplanes, modify in accordance with Fokker Service Bulletin SBF100–30–018, Revision 1, Appendix I, Appendix 1, dated August 14, 1999.

(2) For Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, modify in accordance with Fokker Service Bulletin F28/30–031, Appendix I, Revision 1, dated May 4, 1998; and Fokker Proforma Service Bulletin F.28/30–032, including Appendix 1, dated December 1, 1999; as applicable.

Manual Change Notification (MCNO)

(c) Prior to further flight after accomplishing the modification required by paragraph (b) of this AD, remove the AFM revisions required by paragraph (a) of this AD, and incorporate the flight manual changes specified in Fokker MCNO F100–003, dated September 19, 1997 (for Fokker Model F.28 Mark 070 and 0100 series airplanes); and Fokker MCNO F28–003, dated September 5, 1997 (for Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes); as applicable. Accomplishment of the actions specified in paragraphs (b) and (c) of this AD constitute terminating action for the requirements of this AD.

Note 3: Incorporation of the leading edge thermal anti-ice modification and associated operating instructions does not relieve the requirement that airplane surfaces are free of ice, frost, and snow accumulation as required by §§ 91.527 and 121.629 of the Federal Aviation Regulations (14 CFR 91.527 and 121.629).

Acceptable Method of Compliance With the Requirements of Paragraphs (b) and (c) of This AD

(d) For Fokker Model F.28 Mark 0100 series airplanes on which a "Contaminant/Fluid Integrity Measuring System" (C/FIMS") has been installed in accordance with Supplemental Type Certification ST291CH, as amended on August 20, 1998: Prior to further flight after accomplishment of STC ST291CH, as amended on August 20, 1998, remove the AFM revisions required by paragraph (a) of this AD, and incorporate the following into the Limitations Section of the FAA-approved AFM (This may be accomplished by inserting a copy of this AD in the AFM):

"Wing De-Icing/Anti-Icing Prior To Takeoff

Caution

The Model F.28 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge high lift devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or upper wing surfaces can cause significant reduction in the stall angle-of-attack. This can increase stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed.

Takeoff shall not be attempted unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow accumulation, as required by §§ 91.527 and 121.629 of the Federal Aviation Regulations (FAR).

In addition, takeoff shall not be attempted when the Outside Air Temperature (OAT) is below 6 degrees C (Centigrade) [42 degrees F (Fahrenheit)]; and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present; unless the operator complies with Option 1, Option 2, or Option 3.

Option 1

(i) Operate the C/FIMS" in accordance with AFM Supplement AlliedSignal Aerospace Canada Document Number 6C–486, Revision 2, dated August 4, 1999.

(ii) C/FIMS" is an advisory system that must not be used as the primary means of determining whether the airplane should be initially deiced or anti-iced or used as the primary means of determining that the fluid has failed.

(iii) C/FIMS" may be used only for the time periods covered by the dicing/anti-icing holdover time tables. C/FIMS" may not be used when the holdover time tables have been exceeded; or

If the C/FIMS™ is not operational:

Option 2

The leading edge and upper wing surfaces have been physically checked for ice/frost/snow and the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces has been accomplished and that the wing is clear of ice/frost/snow accumulation; or

If the C/FIMS™ is not operational:

Option 3

The following takeoff procedure is used:

Warning

The following technique cannot be used unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow, as required by §§ 91.527 and 121.629 of the FAR.

- Select the largest flap setting that is permissible for the takeoff weight/altitude/temperature conditions.
- Use takeoff/go-around (TOGA) thrust.
- Do not use flexible thrust.
- At VR rotate slowly (less than 3 degrees per second) to 10 degrees pitch attitude.
- When positively climbing, select gear UP.
- Do not exceed 10 degrees pitch until airspeed is above V_2 + 20 KTS.
- When above V_2 + 20 KTS, slowly increase the pitch attitude, keeping the speed above V_2 + 20 KTS.
- Retract the flaps at or above V_{FR} + 20 KTS.

Notes to Option 3

1. The available field length must be greater than or equal to 120 percent of the takeoff distance required by regulation for the actual gross weight. Also, the 20 percent increase in takeoff distance must be accounted for in the obstacle clearance analysis. Weight must be off-loaded, if necessary, to meet these conditions.

2. Do not follow the Flight Director pitch command during rotation for takeoff and initial climb, as this will result in exceeding the recommended maximum pitch angle of 10 degrees before reaching the speed of V_2 + 20 KTS.

3. Do not engage the autopilot until leaving the Automated Flight Control and Augmentation System (AFCAS) takeoff (TO) mode.

4. For the case of an engine failure, refer to the applicable procedure in Section 4.17.01 Single Engine Operation of the F.28 Mark 0100 (Fokker 100) AFM.

5. During takeoff, the first indication of wing contamination will probably be airframe buffet when the pitch angle is increased above 10 degrees, followed by wing drop and insufficient climb rate. Do not exceed 10 degrees pitch until airspeed is above V_2 + 20 KTS."

Accomplishment of the actions specified in this paragraph after the installation of STC ST291CH, as amended on August 20, 1998, constitute terminating action for the requirements of this AD.

Note 4: Operators should note that, while Option 1 specified in paragraph (d) of this AD must be incorporated into the Limitations Section of the AFM, operators may elect to incorporate either both or only one of the other two options specified in paragraph (d) of this AD. Only Option 1 and the elected option(s) need to be incorporated into the AFM. However, any option that is incorporated into the AFM must be identical to the option wording specified in paragraph (d) of this AD.

Note 5: Installation of the Contaminant/Fluid Integrity Measuring System (C/FIMS™) in accordance with Supplemental Type Certification ST291CH, as amended on August 20, 1998, and accomplishment of the actions specified in paragraph (d) of this AD, do not relieve the requirement that airplane surfaces are free of ice, frost, and snow accumulation as required by §§ 91.527 and 121.629 of the Federal Aviation Regulations (14 CFR 91.527 and 121.629).

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions required by paragraphs (b) and (c) of this AD shall be done in accordance with Fokker Service Bulletin SBF100–30–018, Appendix I, Revision 1, dated August 14, 1999; Fokker Service Bulletin F28/30–031, Appendix I, Revision 1, dated May 4, 1998; Fokker Proforma Service Bulletin F28/30–032, including Appendix 1, dated December 1, 1999; Fokker Manual Change Notification MCNO F100–003, dated September 19, 1997; and Fokker Manual Change Notification MCNO F28–003, dated September 5, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 29, 2002.

Issued in Renton, Washington, on July 12, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18624 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–1]

Revision of Class E Airspace; Cordova, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revises Class E airspace at Cordova, AK. It was determined that additional Class E surface area airspace is needed to protect instrument flight rules (IFR) operations at Cordova, AK. The additional Class E surface area airspace will ensure that aircraft executing straight-in standard instrument approach procedures to Runway 27 remain within controlled airspace. This rule provides adequate controlled airspace for aircraft flying instrument (IFR) procedures at Cordova, AK.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

History

On February 6, 2002, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Cordova, AK, was published in the **Federal Register** (67 FR 5531). An extension to Class E surface area airspace was proposed to ensure that aircraft flying instrument approach procedures aligned with Runway 27 at the Merle K. (Mudhole) Smith airport are entirely contained within controlled airspace. The Notice of Proposed Rulemaking (NPRM) also proposed to re-designate some E2 airspace to E4 airspace. This proposal was made to comply with the current definition of Class E4 airspace as stated in paragraph 6004 of FAA Order 7400.9J, *Airspace Designations and Reporting Points*, dated September 1, 2001 and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. Paragraph 6004 defines Class E4 airspace as "*Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.*" Subsequently, it has been determined by the FAA Airspace Management Branch, ATA–400, in Washington DC that this definition is incorrect. Paragraph 6004 is being amended to read: "*Class E Airspace Areas Designated as an Extension to a Class D Surface Area.*" Therefore, all Cordova Merle K. (Mudhole) Smith airport surface area airspace is designated as Class E2 airspace. Coordinates were also changed, to correctly define the intersection of the line that constitutes the north boundary of the Class E2 surface area airspace, with the 4.1 mile radius circle around the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9J, *Airspace Designations and Reporting Points*, dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Cordova, Alaska. An addition to Class E controlled airspace is necessary to contain IFR operations at Cordova, AK. The intended effect of this proposal is to provide adequate controlled airspace for instrument (IFR) operations at Merle K. (Mudhole) Smith airport, Cordova, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as a surface area for an airport.

* * * * *

AAL AK E2 Cordova, AK [Revised]

Cordova, Merle K. (MUDHOLE) Smith Airport, AK
(Lat. 60°29′31″ N., long. 145°28′39″ W.)
Glacier River NDB
(Lat. 60°29′56″ N., long. 145°28′28″ W.)

Within a 4.1 mile radius of the Merle K. (Mudhole) Smith airport and within 2.1 miles each side of the 222° bearing from the Glacier River NDB extending from the 4.1 mile radius to 10 miles southwest of the airport and within 2 miles either side of the 060° bearing from the Glacier River NDB extending from the 4.1-mile radius to 6 miles northeast of the airport and within 2.2 miles each side of the 142° bearing from the NDB extending from the 4.1-mile radius to 10.4 miles southeast of the airport, excluding that airspace north of a line from lat. 60°31′00″ N, long. 145°20′00″ W; to lat. 60°31′03″ N, long. 145°20′59″ W.

* * * * *

Issued in Anchorage, AK, on July 1, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–18620 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AAL–2]

Revision of Class E Airspace; Cold Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revises Class E airspace at Cold Bay, AK. Due to the development of an Area Navigation (RNAV) Global Positioning System (GPS) Runway (Rwy) 26 Instrument Approach Procedure for the Cold Bay airport, additional Class E airspace to protect Instrument Flight Rules (IFR) operations is needed. The additional Class E surface area airspace ensures that aircraft executing the RNAV (GPS) Rwy 26 standard instrument approach procedure remain within controlled airspace. This rule results in additional Class E airspace at Cold Bay, AK.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

History

On February 6, 2002, a proposal to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to add to the Class E airspace at Cold Bay, AK, was published in the **Federal Register** (67 FR 5529). Due to the development of a standard instrument approach procedure, RNAV (GPS) Runway 26, additional Class E controlled airspace is necessary to contain IFR operations at Cold Bay, AK Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9J, *Airspace Designations and Reporting Points*, dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 adds to the Class E airspace at Cold Bay, Alaska. Additional Class E airspace is being created to contain aircraft executing the RNAV (GPS) Runway 26 Approach and will be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Cold Bay Airport, Cold Bay, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001, and effective September 16, 2001, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Cold Bay, AK [New]

Cold Bay Airport, AK
(Lat. 55°12′20″ N., long. 162°43′27″ W.)
Cold Bay VORTAC
(Lat. 55°16′03″ N., long. 162°46′27″ W.)
Elfee NDB
(Lat. 55°17′46″ N., long. 162°47′21″ W.)
Cold Bay Localizer
(Lat. 55°11′41″ N., long. 162°43′07″ W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Cold Bay VORTAC extending clockwise from the 253° radial to the 041° radial of the VORTAC and within 4 miles south of the 253° radial Cold Bay VORTAC extending from the VORTAC to 7.2 miles west of the Cold Bay Airport and within 4 miles south of the 041° radial extending from the VORTAC to 7.2 miles east of the airport and within 4.5 miles west and 8 miles east of the Elfee NDB 318° bearing extending from the NDB to 21.7 northwest of the airport and that airspace within 3 miles each side of the Cold Bay VORTAC 150° radial extending from the VORTAC to 18.2 miles south of the airport and within 2.8 miles west of the Cold Bay Localizer back course extending from the airport to 15.7 miles south of the airport; excluding that airspace more than 12 miles from the shoreline; and that airspace extending from 1,200 feet above the surface within 18.3 miles from the Cold Bay VORTAC extending clockwise from the Cold Bay VORTAC 085° radial to the Cold Bay VORTAC 142° radial.

* * * * *

Issued in Anchorage, AK, on July 1, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–18621 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 191

[T.D. 02—39]

RIN 1515–AC67

Merhcandise Processing Fee Eligible To Be Claimed as Unused Merchandise Drawback

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, the interim rule amending the Customs Regulations that was published in the **Federal Register** on February 9, 2001, as T.D. 01–18. The interim rule amended the regulations to indicate that merchandise processing fees are eligible to be claimed as unused merchandise drawback. The change was made to reflect a recent court decision in which merchandise processing fees were found to be assessed under Federal law and imposed by reason of importation and therefore eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j). The amendment requires a drawback claimant to apportion the merchandise processing fee to that merchandise that provides the basis for drawback.

EFFECTIVE DATE: July 25, 2002.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Chief, Duty and Refund Determinations Branch, Office of Regulations and Rulings, U.S. Customs Service, Tel. (202) 572–8807.

SUPPLEMENTARY INFORMATION:

Background

Merchandise Processing Fees—19 U.S.C. 58c(a)(9)(A)

Merchandise processing fees are fees the Secretary of the Treasury charges and collects for the processing of merchandise that is formally entered or released into the United States. *See* 19 U.S.C. 58c(a)(9)(A). A merchandise processing fee is assessed as a percentage of the value of the imported merchandise, as determined under 19 U.S.C. 1401a. The *ad valorem* rate is currently 0.21 percent. (*See* 19 CFR 24.23). Section 58c(b)(8)(A)(i) provides that the fee charged under subsection (a)(9) may not be less than $25, unless adjusted pursuant to subsection (a)(9)(B) of this section.

Merchandise processing fees are subject to two monetary limits:

(1) A cap of $485 is imposed by 19 U.S.C. 58c(a)(9)(B)(i) for any release or entry, including weekly Free Trade Zone entries (*see* section 410 of the Trade and Development Act of 2000, Pub. L. 106–200, 114 Stat. 251, enacted on May 18, 2000), for which the value of merchandise subject to the fee exceeds $230,952.38 ($485 ÷ .0021 = $230,952.38), and;

(2) For certain monthly entries, as prescribed by Pub. L. 101–382, section 111(f), as amended, and implemented by § 24.23(d) of the Customs Regulations (19 CFR 24.23(d)), the merchandise processing fee is limited to the lesser of the following:

(i) A cap of $400 where the value of the merchandise subject to the fee exceeds $190,476.19 ($400 ÷ .0021 = $190,476.19); or

(ii) The amount determined by applying the *ad valorem* rate under paragraph (b)(1)(i)(A) of § 24.23 to the total value of such daily importations.

Drawback—19 U.S.C. 1313

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant under specific conditions. There are several types of drawback. Section 1313(j) concerns drawback for "unused merchandise," and provides, pursuant to specific conditions set forth therein, that a refund of 99 percent of each duty, tax, or fee "imposed under Federal law because of [an article's] importation" will be refunded as drawback.

Merchandise Processing Fees Eligible To Be Claimed as Unused Merchandise Drawback

The issue of whether a merchandise processing fee is "imposed under Federal law because of [an article's] importation," and therefore eligible to be claimed as unused merchandise drawback pursuant to the terms of section 1313(j), was recently examined by the Court of Appeals for the Federal Circuit (CAFC) in *Texport Oil* v. *United States*, 185 F.3d 1291 (Fed. Cir. 1999). In that case, the court held that as merchandise processing fees are "assessed under Federal law" (pursuant to 19 U.S.C. 58c(a)(9)) and "explicitly linked to import activities," they are imposed by reason of importation and therefore subject to unused merchandise drawback by application of the statute.

On February 9, 2001, Customs published in the **Federal Register** (66 FR 9647), as T.D. 01–18, an interim rule amending §§ 191.2, 191.3 and 191.51 to reflect the CAFC's decision in *Texport Oil*. In that document, the Customs Regulations were amended to allow

merchandise processing fees to be claimed as unused merchandise drawback, and to provide specific information as to how a drawback claimant is to correctly calculate that portion of a merchandise processing fee that is eligible to be claimed as unused merchandise drawback.

Discussion of Comments

Two commenters responded to the solicitation of public comment published in T.D. 01–18. A description of the comments received, together withCustoms analyses, is set forth below.

Comment

One commenter noted that the illustration presented in Example 2, as set forth in the amendments to § 191.51, is inaccurate and inconsistent with the provisions of § 191.51(b)(2)(iii). Pursuant to § 191.51(b)(2)(iii), "the amount of merchandise processing fee apportioned to each line item is multiplied by 99 percent to calculate that portion of the fee attributable to each line item that is eligible for drawback." It is noted that although Example 1 in § 191.51 illustrates the amount of merchandise processing fee eligible for drawback per line item by multiplying by 99 percent (0.99), Example 2 does not. As a result, some of the figures used in Example 2 are incorrect.

Customs Response

Customs agrees with the comment submitted regarding Example 2. Consequently, this document amends § 191.51, Example 2, to insert language that illustrates the amount of merchandise processing fee eligible for drawback per line item by multiplying the amount by 99 percent (0.99). As a result of this amendment, the figures in Example 2 will be revised. It is also noted that this document corrects a clerical error in Example 2, Line Item 1, and the figure $70,000 will be replaced by the figure $7,000.

Comment

One commenter opposed the apportionment formula set forth in T.D. 01–18 and proposed that the merchandise processing fees not be apportioned across the entire entry, but be allowed to be allocated to individual items. The commenter also notes that as drawback for merchandise processing fees is allowed pursuant to section 1313(p)(4)(B), the Customs Regulations should be amended to reflect this fact.

Customs Response

Customs does not agree with the commenter's proposal. It is noted that pursuant to 19 U.S.C. 58c(a)(9)(B)(i), a merchandise processing fee cap of $485 is applicable to each entry. For this reason, it is necessary that the merchandise processing fee be apportioned and refunded as a percentage of the entire entry.

The commenter's statement that the Customs Regulations should be amended to include reference to the fact that section 1313(p)(4)(B) authorizes drawback for merchandise processing fees has merit. Customs will prepare another document for publication in the **Federal Register** that amends the regulations in this regard.

Conclusion

After review of the comments and further consideration, Customs has decided to adopt as a final rule the interim rule published in the **Federal Register** (66 FR 6647) on February 9, 2001, as T.D.01–18, with changes, discussed above, regarding amendment to § 191.51, Example 2, to insert language that illustrates the amount of merchandise processing fee eligible for drawback per line item by multiplying the amount by 99 percent (0.99). As a result of this amendment, the figures in Example 2 will be revised. This document also corrects a clerical error in Example 2, Line Item 1, whereby the figure $70,000 will be replaced by the figure $7,000.

Inapplicability of Delayed Effective Date

These regulations serve to conform the Customs Regulations to reflect a recent decision by the Court of Appeals for the Federal Circuit and to finalize an interim rule that is already effective. In addition, the regulatory changes benefit the public by allowing merchandise processing fees to be claimed as unused merchandise drawback, and by providing specific information as to how a drawback claimant is to correctly calculate that portion of a merchandise processing fee that is eligible to be claimed as unused merchandise drawback. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 191

Claims, Commerce, Customs duties and inspection, Drawback.

Amendment to the Regulations

For the reasons stated above, the interim rule amending §§ 191.2, 191.3 and 191.51 of the Customs Regulations (19 CFR 191.2, 191.3 and 191.51), which was published at 66 FR 9647–9650 on February 9, 2001, is adopted as a final rule with the changes set forth below.

PART 191—DRAWBACK

1. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

2. In § 191.51(b)(2), Example 2 is revised to read as follows:

§ 191.51 Completion of drawback claims.

* * * * *

(b) *Drawback due.*—* * *

(2) *Merchandise processing fee apportionment calculation.* * * *

Example 2: This example illustrates the treatment of dutiable merchandise that is exempt from the merchandise processing fee and duty-free merchandise that is subject to the merchandise processing fee.

Line item 1—700 meters of printed cloth valued at $10 per meter (total value $7,000) that is exempt from the merchandise processing fee under 19 U.S.C. 58c(b)(8)(B)(iii)

Line item 2—15,000 articles valued at $100 each (total value $1,500,000)

Line item 3—10,000 duty-free articles valued at $50 each (total value $500,000)

The relative value ratios are calculated using line items 2 and 3 only, as there is no merchandise processing fee imposed by reason of importation on line item 1.

Line item 2—1,500,000 ÷ 2,000,000 = .75 (line items 2 and 3 form the total value of the merchandise subject to the merchandise processing fee).

Line item 3—500,000 ÷ 2,000,000 = .25.

If the total merchandise processing fee paid was $485, the amount of the fee attributable to line item 2 is $363.75 (.75 × $485 = $363.75). The amount of the

fee attributable to line item 3 is $121.25 (.25 × $485 = $121.25).

The amount of merchandise processing fee eligible for drawback for line item 2 is $360.1125 (.99 × $363.75). The amount of fee eligible for line item 3 is $120.0375 (.99 × $121.25).

The amount of drawback on the merchandise processing fee attributable to each unit of line item 2 is $.0240 ($360.1125 ÷ 15,000 = $.0240). The amount of drawback on the merchandise processing fee attributable to each unit of line item 3 is $.0120 ($120.0375 ÷ 10,000 = $.0120).

If 1,000 units of line item 2 were exported, the drawback attributable to the merchandise processing fee is $24.00 ($.0240 × 1,000 = $24.00).

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: July 19, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–18664 Filed 7–24–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Diclazuril and Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for use of approved single-ingredient diclazuril and bambermycins Type A medicated articles to make two-way combination drug Type C medicated feeds for growing turkeys.

DATES: This rule is effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: candres@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 3182, Union, NJ 07083, filed NADA 141–195 that provides for use of CLINACOX (0.2 percent diclazuril) and FLAVOMYCIN (2, 4, or 10 grams per pound (g/lb) of bambermycins activity) Type A medicated articles to make two-way combination drug Type C medicated feeds containing 0.91 g/ton diclazuril and 1 to 2 or 2 g/ton bambermycins for growing turkeys. The Type C feeds containing 0.91 g/ton diclazuril and 1 to 2 g/ton bambermycins are used for the prevention of coccidiosis caused by *E. adenoeides*, *E. gallopavonis*, and *E. meleagrimitis* and improved feed efficiency. The Type C feeds containing 0.91 g/ton diclazuril and 2 g/ton bambermycins are used for the prevention of coccidiosis caused by *E. adenoeides*, *E. gallopavonis*, and *E. meleagrimitis*, and for increased rate of weight gain and improved feed efficiency. The NADA is approved as of April 2, 2002, and the regulations are being amended in 21 CFR 558.198 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of each application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.198 is amended by adding paragraphs (d)(2)(iii) and (d)(2)(iv) to read as follows:

§ 558.198 Diclazuril.

* * * * *

(d) * * *

(2) * * *

Diclazuril grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(iii) 0.91 (1 ppm).	Bambermycins 1 to 2	Growing turkeys: As in paragraph (d)(2)(i) of this section; for improved feed efficiency.	As in paragraph (d)(2)(i) of this section. Bambermycins provided by No. 057926 in § 510.600(c) of this chapter.	000061
(iv) 0.91 (1 ppm).	Bambermycins 2	Growing turkeys: As in paragraph (d)(2)(i) of this section; for increased rate of weight gain and improved feed efficiency.	As in paragraph (d)(2)(i) of this section. Bambermycins provided by No. 057926 in § 510.600(c) of this chapter.	000061

Dated: July 8, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–18877 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 252

[T.D. ATF–477]

RIN 1512–AC44

Delegation of Authority; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms published a final rule in the April 15, 2002, **Federal Register** concerning the delegation of the Director's authorities in its exportation of liquors regulations. This document corrects the amendatory instructions in one paragraph of that final rule.

DATES: This rule is effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION: We published a final rule in the **Federal Register** on April 15, 2002, (67 FR18086) relating to the delegation of the Director's authorities in Part 252 of Title 27 of the Code of Federal Regulations, Exportation of Liquors. Paragraph 44 of that final rule contained incorrect amendatory instructions for § 252.250. This document provides the correct instructions for amending that section.

Correction

Rule document FR Doc. 02—8869, published on April 15, 2002, (67 FR 18086) is corrected as follows:

§ 252.250 [Corrected]

On page 18090, in the second column, paragraph 44 should read as follows:

Par. 44. Amend § 252.250 by:

a. Removing the words "regional director (compliance) with whom the application, notice, or notice and claim is filed" each place they appear and adding, in substitution, the words "appropriate ATF officer".

b. Removing the words "regional director (compliance) with whom the notice and claim is filed" in the second sentence of the introductory text and adding, in substitution, the words "appropriate ATF officer".

Signed: July 12, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–18553 Filed 7–24–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD08–02–015]

RIN 2115—AE84

Regulated Navigation Area; Lower Mississippi River Mile 529.8 to 537.0, Greenville, MS

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area for all waters of the Lower Mississippi River beginning at mile 529.8 and ending at mile 537.0 in Greenville, Mississippi. This regulated navigation area is needed to protect construction personnel, equipment, and vessels from potential safety hazards associated with two construction projects in this area. Deviation from this rule is prohibited unless specifically authorized by the Captain of the Port Memphis, or his designated representative.

DATES: This rule is effective from 12 a.m. on July 11, 2002 to 12 a.m. on November 30, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD8–02–015] and are available for inspection or copying at Marine Safety Office Memphis, 200 Jefferson Avenue, Memphis, TN 38103–2300 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Malcolm McLellan, Marine Safety Detachment Greenville, at (662) 332–0964.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish an NPRM or for Publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect construction personnel, equipment, and vessels from potential safety hazards associated with vessels transiting in this area.

Request for Comments

Although the Coast Guard has good cause in implementing this rule without engaging in the notice of proposed rule making process, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of the regulated navigation area in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, CCGD8–02–015, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Background and Purpose

This regulated navigation area (RNA) is being established as a result of two simultaneous construction projects. This regulated navigation area is needed to protect construction personnel, equipment, and vessels from potential safety hazards associated with two construction projects in this area.

The Army Corps of Engineers has requested a closure of the Lower Mississippi River from mile 530.0 to 537.0, to protect construction personnel, equipment, and vessels from potential safety hazards associated with vessels transiting in the vicinity of three, bendway weir construction sites on the right descending bank, in the vicinity of Vaucluse Trenchfill at mile 533.0. Construction of the bendway weirs is needed to maintain the integrity of the right descending bank.

Since 1972, the Greenville Bridge (Highway 82), mile 531.3 on the Lower Mississippi River, Greenville,

Mississippi, has been struck more times than any other bridge on the Mississippi River. As a result, a new bridge, the US 82 Benjamin G. Humphreys, is currently being constructed further from the river bend at mile 530.8 on the Lower Mississippi River.

Since bridge construction began, broadcasts to mariners have been made requesting mariners to navigate in the channel to avoid hazarding bridge construction activities, and to maintain contact with the on-scene work vessel when passing the bridge construction site. These broadcasts have not been effective.

As a result of both projects, the Eighth Coast Guard District Commander is establishing a regulated navigation area for all waters of the Lower Mississippi River from mile 529.8 to 537.0, extending the entire width of the river. All vessels other than construction vessels are prohibited from transiting through this area from 6 a.m. to 6 p.m. unless authorized by the Captain of the Port Memphis or his designated representative. Construction vessels are defined as those vessels contracted by the Army Corp of Engineers to perform bendway weir construction work and other vessels engaged in construction of the new Greenville Highway Bridge. The Captain of the Port Memphis may authorize vessels to transit the regulated navigation area between 6 a.m. and 6 p.m. when construction activities pause or are delayed. Vessels authorized to transit during these times must proceed at minimum safe speed when passing the bridge construction site. Mariners will be notified via marine broadcasts on channel 16.

From 6 p.m. to 6 a.m. and at any other time vessels are allowed to transit through the area the following restrictions apply. Vessels may not meet or overtake other vessels within the regulated navigation area. When downbound vessels reach mile 539.0, they shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated time of arrival at mile 537.0. When upbound vessels reach mile 528.3 they shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated time of arrival at mile 529.8. If a downbound vessel is already in the RNA the upbound vessel shall adjust its speed to avoid a meeting situation within the RNA. All vessels shall contact the Army Corps of Engineers on-scene vessel and continually monitor VHF–FM channel 13 while in and approaching the Regulated Navigation Area.

No vessel may transit between the caissons and the bank at mile 530.8.

Deviation from this rule is prohibited unless specifically authorized by the Captain of the Port Memphis, or his designated representative. They may be contacted via VHF Channel 13 or 16, or via telephone at (901) 544–3941.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal. This is not a 24-hour a day closure of the waterway. Vessel traffic is allowed to transit the regulated navigation area 12 hours a day and when the Captain of the Port Memphis authorizes vessels to navigate through the area between the hours of 6 a.m. to 6 p.m.

Representatives from both projects have met with local industry including the Lower Mississippi River Committee (LOMRC), to discuss ways to minimize the economic impact. LOMRC is an industry body, composed primarily of companies that transport commodities between Cairo, IL and New Orleans, LA. It represents carriers, facilities, and other maritime interests for the entire Lower Mississippi River. Local industry has agreed to implement voluntary measures to quickly clear waiting traffic and minimize delays during periods when the area is open for transit. The Army Corps of Engineers is providing a vessel to assist waiting vessels through the area as quickly as possible.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the Regulatory Evaluation above.

If you are a small business entity and are significantly affected by this regulation please contact LT Malcolm McLellan, Marine Safety Office Memphis, at (662) 332–0964.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, so we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08–064 is added to read as follows:

§ 165.T08–064 Regulated Navigation Area; Lower Mississippi River Mile 529.8 to 537.0, Greenville, Mississippi.

(a) *Definitions. Construction vessels* are defined as those vessels contracted for by the Army Corps of Engineers to perform bendway weir construction work and other vessels engaged in construction of the new Greenville Highway Bridge.

(b) *Location.* The following area is a regulated navigation area: the waters of the Lower Mississippi River from mile 529.8 to mile 537.0, extending the entire width of the river.

(c) *Effective date.* This section is effective from 12 a.m. on July 11, 2002 to 12 a.m. on November 30, 2002.

(d) *Regulations.* (1) All vessels other than construction vessels are prohibited from transiting through this area from 6 a.m. to 6 p.m., daily, unless authorized by the Captain of the Port Memphis or his designated representative. Vessels authorized to transit during these times must proceed at minimum safe speed when passing the bridge construction site.

(2) From 6 p.m. to 6 a.m. and at any other time the Captain of the Port Memphis authorizes vessels to transit through the area the following restrictions apply.

(i) Vessels may not meet or overtake other vessels within the regulated navigation area.

(ii) When downbound vessels reach mile 539.0, they shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated time of arrival at mile 537.0. When upbound vessels reach mile 528.3 they shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated time of arrival at mile 529.8. If a downbound vessel is already in the regulated navigation area the upbound vessel shall adjust its speed to avoid a meeting situation within the regulated area.

(iii) All vessels shall contact the Army Corps of Engineers on-scene vessel prior to entering the regulated navigation area. They shall continually monitor VHF–FM channel 13 while in and approaching the Regulated Navigation Area.

(iv) No vessel may transit between the caissons and the bank at mile 530.8.

(3) Deviation from this rule is prohibited unless specifically authorized by the Captain of the Port Memphis, or his designated representative. They may be contacted via VHF–FM channel 13 or 16, or via telephone at (901) 544–3941.

Dated: July 11, 2002.

R.J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–18759 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket #: Id–00–001; FRL–7251–3]

Clean Air Act Finding of Attainment; Portneuf Valley PM–10 Nonattainment Area, Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Portneuf Valley nonattainment area has attained the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter of less than or equal to 10 microns by the attainment date of December 31, 1996, as required by the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on August 26, 2002.

ADDRESSES: Copies of all information supporting this action are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Pacific Standard Time at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Steven Body, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0782.

SUPPLEMENTARY INFORMATION:

I. Background

On December 6, 2000, EPA solicited public comment on a proposal to find that the Portneuf Valley nonattainment area has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM–10) by the attainment date of December 31, 1996, as required by the Clean Air Act. *See* 65 FR 76203. On December 21, 2000, EPA granted a request to extend the comment period to January 19, 2001. *See* 65 FR 80397.

Although the finding at issue in the proposal was whether the area attained the PM–10 standards by the December 31, 1996 attainment date, EPA also discussed air quality data subsequent to the attainment date. During the end of December 1999 and the beginning of January 2000, there was a significant air pollution episode in the Portneuf Valley and Fort Hall PM–10 nonattainment areas during which three levels above the level of the 24-hour PM–10 NAAQS were reported at the Federal Reference Method (FRM) sampler at the Garrett and Gould monitoring station. None of the other monitoring stations in the Portneuf Valley area reported levels above the level of the 24-hour PM–10 standard during this time period. As discussed in the proposal, although these three exceedances were of concern to EPA, they did not represent a violation of the 24-hour PM–10 standard because three exceedances in three years results in an expected exceedance rate of 1.0 for the three-year period from 1997 to 1999. The 24-hour standard is attained when the expected exceedance rate is less than or equal to 1.0.

II. Air Quality Data Since Proposal

Because of concerns in the community regarding whether the Portneuf Valley area had in fact attained the PM–10 standards, including public comments received on the proposal, and the fact that a single exceedance at the Garrett and Gould FRM monitor during 2000 or 2001 would constitute a violation of the 24-hour PM–10 standard, EPA delayed taking final action on EPA's December 2000 proposal until air quality data for 2000 and 2001 was available. There have been no additional exceedances of the 24-hour PM–10 standard in 2000 or 2001 at the FRM sampler at Garrett and Gould. Therefore, the expected exceedance rate for the site is 1.0 for the years 1999, 2000, and 2001, just below the rate that would represent a violation of the 24-hour PM–10 standard. Therefore, the 24-hour PM–10 standard is attained at the Garrett and Gould FRM sampler as of December 31, 2001. There have been no exceedances of the 24-hour standard at the FRM sampler at the Sewage Treatment Plant in 2000 or 2001.[1]

In the beginning of 2001, IDEQ installed a continuous PM–10 sampler (TEOM) at the Garrett and Gould monitoring site. IDEQ has reported that a level of 166 ug/m3 was recorded at this TEOM sampler on May 5, 2001, which would represent an exceedance of the 24-hour PM–10 standard. IDEQ has flagged this exceedance as attributable to a high wind natural event under EPA's policy entitled "Areas Affected by Natural Events," dated May 30, 1996 (EPA's Natural Events Policy), and requested that this exceedance not be considered in determining the attainment status of the area. This exceedance is still under evaluation by EPA, both in terms of the value of the exceedance[2] and whether the exceedance qualifies as a natural event under EPA's Natural Events Policy. In any event, the exceedance at the TEOM sampler does not, in and of itself or in connection with the three exceedances that occurred at the Garrett and Gould FRM sampler in 1999, constitute a violation of the 24-hour PM–10 standard. For purposes of determining a violation of the 24-hour PM–10 standard, each sampler is evaluated separately. In other words, for there to be a violation of the 24-hour PM–10 standard, the data collected from a single sampler must document an expected annual exceedance rate of greater than 1.0 averaged over a three-year period. *See* Memorandum from Gerald A. Emison, Director, Office of Air Quality Planning and Standard, EPA, entitled "Revision to Policy on the Use of PM–10 measurement Data," dated November 21, 1988. For this reason, EPA believes that the Portneuf Valley PM–10 nonattainment area continues to attain the PM–10 NAAQS when considering PM–10 data collected through 2001.

III. Major Issues Raised by Commenters

EPA received four comment letters in response to the proposal, one supporting the proposed action and three objecting to the proposed action. The following is a summary of the issues raised in the adverse comments on the proposal, along with EPA's response to those issues.

[1] Operation of the FRM monitors at Idaho State University and Chubbuck School was discontinued in the summer of 1999.

[2] There are questions regarding how to "gap fill" for periods when the TEOM sampler did not operate on May 5, 2001.

A. Air Quality in the Portneuf Valley Area

All three adverse commenters disputed the characterization of the Portneuf Valley area as being in attainment of the PM–10 standards. These commenters stated that the air quality in the area is very poor, especially during the winter and during inversions. The commenters further stated that the poor air quality results in adverse health effects for the citizens of Pocatello, such as headaches, sinus infections, sore throats, burning eyes, and respiratory problems.

It is certainly correct that poor air quality can cause or aggravate health problems. However, the scope of the action that was proposed, is very narrow; the only issue is whether the Portneuf Valley area has attained the PM–10 standards as of December 31, 1996, the attainment date for the area. Under sections 179(c)(1) and 188(b)(2) of the Clean Air Act (CAA), such a finding is based exclusively upon measured air quality levels over the most recent and complete three calendar year period preceding the attainment date, not on health data. See 40 CFR part 50 and appendix K. EPA finds that monitored air quality data in the Portneuf Valley nonattainment area shows attainment of the PM–10 NAAQS as of the attainment date of December 31, 1996.

Although EPA is finding that the Portneuf Valley area has attained the PM–10 standards, the area will continue to be designated nonattainment for PM–10 until the State of Idaho (Idaho or IDEQ) completes all planning obligations required by the CAA. These obligations include maintaining compliance with the PM–10 NAAQS, developing and submitting a State Implementation Plan (SIP) that provides the regulatory framework for attaining the PM–10 NAAQS, and developing and submitting a maintenance plan that will assure maintenance of the PM–10 standards for an additional 10-year period. Both the SIP and maintenance plan must demonstrate that the PM–10 NAAQS is protected at all places in the Portneuf Valley nonattainment area at all times.

EPA also notes that one of the major sources of particulate matter and particulate precursor gasses in the area, the FMC/Astaris elemental phosphorus facility, just across the border from the Portneuf Valley PM–10 nonattainment area, has recently shut down manufacturing operations resulting in significantly reduced emissions of PM–10. EPA estimates that almost 400 tons

per year of PM–10 have been eliminated from this shutdown.

B. Planning for the Portneuf Valley Area

One commenter expressed concern that the Portneuf Valley area has no SIP in place that shows how the area will demonstrate attainment with the NAAQS for the next 10 years. The commenter states that EPA should not be moving to upgrade the nonattainment status of the Portneuf Valley area until such time as Idaho has an approved SIP that outlines a plan for improvement of air quality and that ensures compliance with air quality standards for the next decade.

As discussed above, this finding of attainment under section 179(c)(1) and 188(b)(2) of the CAA is based exclusively upon measured air quality levels over the most recent and complete three calendar year period preceding the attainment date. The status of the area's planning efforts are not relevant to a determination of attainment under section 179(c)(1) and 188(b)(2) of the CAA. In order for the Portneuf Valley PM–10 nonattainment area to be redesignated from nonattainment to attainment, however, Idaho must complete all planning obligations required by the CAA, including maintaining compliance with the PM–10 NAAQS, developing and submitting a SIP that provides the regulatory framework for attaining the PM–10 NAAQS, and developing and submitting a maintenance plan that assures maintenance of the PM–10 standards for an additional 10-year period. Although IDEQ has not yet completed its planning efforts for the area, EPA believes that Idaho has made substantial progress in its planning efforts, especially the nonattainment planning requirements under section 189 of the CAA.

C. Secondary Aerosols

One commenter stated that neither EPA nor IDEQ has any plan to deal with secondary aerosols (or their precursors) and that secondary aerosols constitute a large portion of overall air pollution in the area. The measured air quality data relied on in this action includes PM–10 contributions from secondary aerosols and their precursors. This data shows that secondary aerosols are not causing a violation of the PM–10 standards. As discussed above, the status of the area's planning efforts are not relevant to a determination of attainment under section 179(c)(1) and 188(b)(2) of the CAA.

D. December 1999 Data

One commenter noted the air pollution episode that occurred at the end of December 1999, suggesting this information should preclude a finding of attainment. As discussed above, the FRM at Garret and Gould recorded three exceedances of the 24-hour standard in 1999, there were no exceedances at this monitor during 1997, 1998, 2000, or 2001. Thus, the expected exceedance rate for each three-year period including 1999 is 1.0 and does not represent a violation of the 24-hour PM–10 NAAQS. In any event, the finding at issue in this action is whether the area attained the PM–10 standards as the attainment date of December 31, 2001.

IV. Implications of Today's Action

As discussed above, EPA finds that the Portneuf Valley PM–10 nonattainment area attained the PM–10 NAAQS by December 31, 1996, the attainment date for the area. This finding of attainment should not be confused, however, with a redesignation to attainment under CAA section 107(d) because the State has not, for the Portneuf Valley area, submitted a SIP or maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain moderate nonattainment for the Portneuf Valley PM–10 nonattainment area until such time as Idaho meets the CAA requirements for redesignations to attainment.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 12, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–18869 Filed 7–24–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7250–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is granting a petition submitted by Ormet Primary Aluminum Corporation (Ormet) to exclude (or "delist") vitrified spent potliner (VSP), generated and treated at the Ormet facility in Hannibal, Ohio from the lists of hazardous wastes. Spent potliners from primary aluminum reduction are listed as hazardous waste number K088 under the Resource Conservation and Recovery Act (RCRA).

Today's action conditionally excludes the petitioned waste from the list of hazardous wastes only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on July 25, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule, number R5-ORMT–01, is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at (312) 353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
  A. What Is a Delisting Petition?
  B. What Regulations Allow a Waste to Be Delisted?
II. Ormet's Delisting Petition
  A. What Waste Did Ormet Petition EPA to Delist?
  B. What Information Must the Generator Supply?
  C. What Information Did Ormet Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
  A. What Decision Is EPA Finalizing and Why?
  B. What Are the Terms of This Exclusion?
  C. When Is the Delisting Effective?
  D. How Does This Action Affect the States?
IV. Public Comment Received on the Proposed Exclusion and EPA's Responses
V. Regulatory Impact
VI. Congressional Review Act

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in Title 40, Code of Federal Regulations (CFR) 261.11 and in the background document for the waste. A petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether any factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

B. What Regulations Allow a Waste to Be Delisted?

Under 40 CFR 260.20 and 260.22, a generator may petition the EPA to remove its wastes from hazardous waste control by excluding it from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

II. Ormet's Delisting Petition

A. What Waste Did Ormet Petition EPA To Delist?

On April, 8, 1994, Ormet submitted an up front petition to exclude vitrified spent potliner, K088, generated at its Hannibal Ohio plant from the list of hazardous wastes contained in 40 CFR 261.31. In December 1999, Ormet submitted a revised petition to exclude an annual volume of 8,500 cubic yards of K088 generated under full scale operation. K088 is defined as spent potliners from primary aluminum reduction.

B. What Information Must the Generator Supply?

A generator must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the Administrator must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did Ormet Submit To Support This Petition?

To support its petition, Ormet submitted descriptions and schematic diagrams of its manufacturing and vitrification processes and detailed chemical and physical analysis of the vitrified potliner.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion for 8500 cubic yards of vitrified spent potliner generated and treated annually at the Ormet facility in Hannibal, Ohio.

Ormet petitioned EPA to exclude, or delist, the vitrified spent potliner because Ormet believes that the petitioned waste does not meet the criteria for which it was listed it and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22(d)(2)–(4).

On August 21, 2001 EPA proposed to exclude or delist Ormet's vitrified spent potliner from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (66 FR 43823). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that Ormet's waste should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

Ormet must dispose of the vitrified spent potliner in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. Any amount exceeding 8,500 cubic yards, annually, is not considered delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule are satisfied.

C. When Is the Delisting Effective?

This rule is effective July 25, 2002. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If Ormet transports the petitioned waste to or manages the waste in any state with delisting authorization, Ormet must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

IV. Public Comments Received on the Proposed Exclusion and EPA's Responses

One comment was received from Ormet which pointed out that the proposed rule required sampling on a quarterly basis but required subsequent data submittals on a monthly basis. The discrepancy has been corrected. Verification sampling and data submittals are both required quarterly.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or impose substantial direct compliance costs on Indian tribal governments as specified in Executive Order 13175, 65 FR 67249, November 6, 2000. For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, or impose substantial direct compliance costs state and local governments as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties (5 U.S.C. 804(3)). This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

List of Subjects in 40 CFR Part 261

Environmental Protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: July 9, 2002.

Phyllis A. Reed,

Acting Director, Waste, Pesticides and Toxins Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. In Table 2 of Appendix IX to part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Ormet Primary Aluminum Corporation.	Hannibal, OH	Vitrified spent potliner (VSP), K088, that is generated by Ormet Primary Aluminum Corporation in Hannibal (Ormet), Ohio at a maximum annual rate of 8,500 cubic yards per year and disposed of in a Subtitle D landfill, licensed, permitted, or registered by a state. The exclusion becomes effective as of July 25, 2002. 1. *Delisting Levels:* (A) The constituent concentrations measured in any of the extracts specified in paragraph (2) may not exceed the following levels (mg/L): Antimony—0.235; Arsenic—0.107; Barium—63.5; Beryllium—0.474; Cadmium—0.171; Chromium (total)—1.76; Lead—5; Mercury—0.17; Nickel—32.2; Selenium—0.661; Silver—4.38; Thallium—0.1; Tin—257; Vanadium—24.1; Zinc—320; Cyanide—4.11. (B) Land disposal restrictions (LDR) treatment standards for K088 must also be met before the VSP can be land disposed. Ormet must comply with any future LDR treatment standards promulgated under 40 CFR 268.40 for K088. 2. *Verification Testing:* (A) On a quarterly basis, Ormet must collect two samples of the waste and analyze them for the constituents listed in paragraph (1) using the methodologies specified in an EPA-approved sampling plan specifying (a) the TCLP method, and (b) the TCLP procedure with an extraction fluid of 0.1 Normal sodium hydroxide solution. The constituent concentrations measured in the extract must be less than the delisting levels established in paragraph (1). Ormet must also comply with LDR treatment standards in accordance with 40 CFR 268.40. (B) If the quarterly testing of the waste does not meet the delisting levels set forth in paragraph (1), Ormet must notify the Agency in writing in accordance with paragraph (5). The exclusion will be suspended and the waste managed as hazardous until Ormet has received written approval for the exclusion from the Agency. Ormet may provide sampling results that support the continuation of the delisting exclusion. 3. *Changes in Operating Conditions:* If Ormet significantly changes the manufacturing process, the treatment process, or the chemicals used, Ormet must notify the EPA of the changes in writing. Ormet must handle wastes generated after the process change as hazardous until Ormet has demonstrated that the wastes continue to meet the delisting levels set forth in paragraph (1) and that no new hazardous constituents listed in Appendix VIII of part 261 have been introduced and Ormet has received written approval from EPA. 4. *Data Submittals:* Ormet must submit the data obtained through quarterly verification testing or as required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 by February 1 of each calendar year for the prior calendar year. Ormet must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Ormet must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). 5. *Reopener Language*—(a) If, anytime after disposal of the delisted waste, Ormet possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent identified in paragraph (1) is at a level in the leachate higher than the delisting level established in paragraph (1), or is at a level in the groundwater higher than the point of exposure groundwater levels referenced by the model, then Ormet must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (5)(a) or any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the information does require Agency action, the Regional Administrator will notify Ormet in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Ormet with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Ormet shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days Ormet presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
.	.	. . . . .

[FR Doc. 02–18711 Filed 7–24–02; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 100

RIN 0906–AA55

National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: On July 13, 2001, the Secretary of Health and Human Services (the Secretary) published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) proposing changes to the regulations governing the National Vaccine Injury Compensation Program (VICP). Specifically, the Secretary proposed revisions to the Vaccine Injury Table (the Table). The primary proposal made in the NPRM was that vaccines containing live, oral, rhesus-based rotavirus be added to the Table as a distinct category, with intussusception listed as a covered Table injury. This proposal was based upon the Secretary's determination that the condition of intussusception can reasonably be determined in some circumstances to be caused by vaccines containing live, oral, rhesus-based rotavirus. The Secretary is now making this amendment to the Table by final rule. The Secretary is also making additional amendments to the Table and to the Table's Qualifications and Aids to Interpretation (Qualifications and Aids), described below under **SUPPLEMENTARY INFORMATION**, as proposed in the NPRM. The changes implemented here are authorized by section 2114(c) and (e) of the Public Health Service Act (the Act).

DATES: This regulation is effective on August 26, 2002. *Applicability dates:* As provided by section 13632(a)(3) of Public Law 103–66, the Omnibus Budget Reconciliation Act of 1993, the addition of vaccines containing live, oral, rhesus-based rotavirus took effect on October 22, 1998, the effective date of the excise tax for rotavirus vaccines, provided that they were administered on or before August 26, 2002. Under the same authority, the addition of pneumococcal conjugate vaccines took effect on December 18, 1999, the effective date of the excise tax for this categories of vaccines. See discussion under **SUPPLEMENTARY INFORMATION** in the NPRM underlying this final rule (66 FR 36735, July 13, 2001) for an explanation of these applicability dates.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Medical Director, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration (HRSA), Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443–4198.

SUPPLEMENTARY INFORMATION:

Introductory and Procedural History

On July 13, 2001, the Secretary published in the **Federal Register** (66 FR 36735, July 13, 2001) an NPRM to revise and amend the Table and the Qualifications and Aids. The NPRM was issued pursuant to Section 2114(c) of the Act, which authorizes the Secretary to promulgate regulations to modify the Table, and Section 2114(e), which directed the Secretary to add to the Table, by rulemaking, coverage of additional vaccines which are recommended by the Centers for Disease Control and Prevention (CDC) for routine administration to children.

The Department held a 6-month comment period, which ended on January 9, 2002, in connection with this NPRM. The Secretary did not receive any comments in response to the NPRM. A public hearing was held on December 6, 2001, as announced in the **Federal Register** (66 FR 58154, Nov. 20, 2001), but no individual or organization appeared to testify.

Because the Secretary has not received any comments, either written or oral, from any interested individual or organization on the proposals made in the NPRM, and because the Secretary continues to believe in the advisability of effectuating such proposals, this final rule implements the proposals made in the NPRM. One technical amendment to 42 CFR 100.3(c)(4), which was inadvertently omitted from the NPRM, is being implemented in this final rule. In addition, we are modifying the authority citation for 42 CFR part 100. The rationales for all other revisions and additions made in this final rule were explained fully in the Preamble to the NPRM. For the reasons set forth in the NPRM, the Secretary makes several amendments affecting the operation of the VICP in this rule.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive, and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget. Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that no resources are required to implement the requirements in this rule. Compensation will be made in the same manner. The final rule only lessens the burden of proof for certain potential petitioners. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

The Secretary has also determined that this rule does not meet the criteria for a major rule as defined by Executive Order 12866 and will have no major effect on the economy or Federal expenditures. We have determined that this rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Nor on the basis of family well-being will the provisions of this rule affect the following family elements: family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

The Department has also reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

As stated above, this rule will modify the Vaccine Injury Table and the Qualifications and Aids based on legal authority.

Impact of the New Rule

The final rule will have the effect of decreasing the burden of proof on expected future petitioners filing petitions alleging a vaccine-related injury caused or aggravated by a rotavirus vaccine. Under this rule, future petitioners alleging the injury of intussusception as the result of a live, oral rhesus-based rotavirus vaccine, the only type of rotavirus vaccine licensed to date in the United States, will be afforded a presumption of causation. This rule will not change the burden of proof applicable to petitioners alleging other injuries related to a rotavirus vaccine, who must rely on a causation in fact analysis.

Because the final rule limits the Table injury of intussusception to live, oral, rhesus-based rotavirus vaccines, administered on or before the effective date of the final rule, individuals seeking compensation for injuries related to such a vaccine administered after the final rule becomes effective will no longer receive the presumption of a Table injury for intussusception. Because the manufacturer of the only U.S.-licensed rotavirus vaccine voluntarily ceased distribution of the vaccine in July 1999, and because the CDC recommended that this vaccine no longer be recommended for infants in the United States in October 1999, the Secretary has concluded that no potential claims arising after this rule is published will be likely to exist.

This final rule will have a similar effect for petitioners seeking compensation for injuries related to hemophilus influenzae type b polysaccharide (unconjugated) vaccines. As explained in the NPRM, the Secretary believes that no potential claims relating to this category of vaccines exist. Thus, it is very unlikely that the removal of unconjugated Hib vaccines from the Table will have an adverse impact upon potential petitioners. Removing early-onset Hib disease from the Table's Qualifications and Aids to Interpretation will not have an adverse effect on petitioners because it will no longer be listed as an adverse event for any vaccine on the Table.

Similarly, because residual seizure disorder is not listed on the Table as an adverse event for any vaccine on the Table, removing residual seizure disorder will not have an adverse impact upon future petitioners.

Finally, this rule will have the effect of making petitioners seeking compensation for injuries related to pneumococcal conjugate vaccines eligible for compensation under a separate category on the Table.

Paperwork Reduction Act of 1980

This final rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, and Immunization.

Dated: March 14, 2002.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

Approved: May 17, 2002.

Tommy G. Thompson,

Secretary.

Accordingly, 42 CFR part 100 is amended as set forth below:

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for 42 CFR part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779–3782 (42 U.S.C. 300aa–1 note); sec. 2114(c) and (e) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645–646 (42 U.S.C. 300aa–14(c) and (e)); sec. 904(b) of Pub. L. 105–34, 111 Stat. 873; sec. 1503 of Pub. L. 105–277, 112 Stat. 2681–741; and sec. 523(a) of Pub. L. 106–170, 113 Stat. 1927–1928.

2. Section 100.3 is amended as follows:

a. In paragraph (a), the Table is amended by removing Item IX; redesignating Items X, XI, XII, and XIII as Items IX, X, XI, and XIV; and adding new Items XII and XIII to read as set forth below.

b. Paragraph (b)(3) is removed and reserved.

c. Paragraph (b)(4) is amended by revising the phrase "paragraphs (b)(2) and (3)" in the first sentence to read "paragraph (b)(2)".

d. Paragraph (b)(11) is removed.

e. Paragraph (c)(2) is amended by removing the words ", and XI" in the parenthetical phrase and adding the word "and" before the number "X".

f. Paragraph (c)(3) is revised as set forth below.

g. Paragraph (c)(4) is redesignated as (c)(5) and is amended by revising the phrase "Item XIII" in the parenthetical phrase to read "Item XIV".

h. A new paragraph (c)(4) is added to read as set forth below.

§ 100.3 Vaccine injury table.

(a) * * *

VACCINE INJURY TABLE

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
* * * * * * *		
XII. Vaccines containing live, oral, rhesus-based rotavirus.	Intussusception.	0–30 days.
XIII. Pneumococcal conjugate vaccines	No condition specified.	Not applicable.
* * * * * * *		

(c) * * *

(3) Rotavirus vaccines (Item XI of the Table) are included in the Table as of October 22, 1998. Vaccines containing live, oral, rhesus-based rotavirus (Item XII of the Table) are included in the Table as of October 22, 1998, provided that they were administered on or before August 26, 2002.

(4) Pneumococcal conjugate vaccines (Item XIII of the Table) are included in the Table as of December 18, 1999.

* * * * *

[FR Doc. 02–18827 Filed 7–24–02; 8:45 am]

BILLING CODE 4165–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 80

[PR Docket No. 92–257; RM–9664; FCC 02–74]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules that will streamline our licensing process for Automated Maritime Telecommunications System (AMTS) stations by utilizing a geographic area licensing system. With respect to high seas spectrum, the Commission will now process applications on a first-come, first-served basis, thereby precluding the filing of mutually exclusive applications and thus, the need to use competitive bidding procedures. The Commission believes that these decisions will increase competition in the provision of telecommunications services, promote more efficient use of maritime spectrum, increase the types of telecommunications services available to vessel operators, allow maritime commercial mobile radio service (CMRS) providers to respond more quickly to market demand, and reduce regulatory burdens on AMTS and high seas public coast station licensees.

EFFECTIVE DATE: Effective August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Fickner, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–7308.

SUPPLEMENTARY INFORMATION: The Commission's *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92–257, FCC 02–74, was adopted March 13, 2002, and released on April 8, 2002. The full text of this Commission's *Second Memorandum Opinion and Order and Fifth Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street NW., Washington, DC 20037. The full text may also be downloaded at: *http://www.fcc.gov/Wireless/Orders/2002/fcc0274.txt*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the Second Memorandum Opinion and Order

1. The Commission resolves a petition for reconsideration of the suspension of acceptance of applications for new AMTS and HF radiotelephone high seas public coast stations that went into effect on November 16, 2000. The Commission states that it believes that suspension of acceptance and processing of AMTS applications is warranted in order to facilitate the orderly and effective resolution of the matters pending in this proceeding. By maintaining the processing suspension, it states that it will be able to weigh the costs and benefits of the existing regulatory framework against its proposals.

2. The Commission also resolves a petition for declaratory ruling regarding section 309 of the Communications Act. The Commission states that sections 309(d)(2) and (e) do not restrict its authority to dismiss an AMTS application that, as of November 16, 2000, was mutually exclusive with other applications or for which the relevant period to file mutually exclusive applications had not expired. The Commission also rejects the petitioner's argument that in instances where a petition to deny was filed against one or more mutually exclusive applications that were subject to the processing suspension, section 309(j)(6)(E) requires the Commission to first address the petition to deny because a grant of the petition could resolve the mutual exclusivity, thus enabling the surviving application(s) to be processed. The Commission states that section 309(j)(6)(E) merely requires that it take certain measures, when it is in the public interest, to avoid mutual exclusivity within the framework of existing, not outmoded, licensing policies.

Summary of the Fifth Report and Order

3. The Commission concludes that the public interest will be best served by a transition to geographic area licensing for AMTS spectrum. Such an approach will speed assignment of subsequent AMTS licenses, reduce processing burdens on the Commission, facilitate the expansion of existing AMTS systems and the development of new AMTS systems, eliminate inefficiencies arising from the intricate web of relationships created by site-specific authorization, and enhance regulatory symmetry.

4. The Commission adopts a 10 dB co-channel interference protection standard because it will afford AMTS incumbents with sufficient protection. The Commission believes that 10 dB protection to an incumbent's 38 dBu service contour (the standard used in

the 220–222 MHz band) provides the incumbent with sufficient protection from potential interference. On the other hand, it believes that an overly conservative co-channel interference protection standard, such as 18 dB, would be spectrally inefficient because it would prevent geographic licensees from using AMTS spectrum in areas that could be served without harm to other licensees.

5. The Commission concludes that AMTS geographic licensees should be permitted to operate at a 38 dBu field strength at the geographic boundaries. This is the standard used in the 220–222 MHz band. To require a lower field strength might unnecessarily restrict AMTS licensees ability to provide quality service to mobile units operating in boundary areas.

6. The Commission concludes that the requirement that AMTS stations must serve a waterway is inconsistent with geographic licensing. It believes that requiring AMTS stations to serve coastlines or sizable navigable inland waterways could prevent service from being offered in some licensing areas. Therefore, it will permit a licensee to place stations anywhere within its service area so long as marine-originating traffic is given priority and incumbent operations are protected. However, licensees whose service areas include certain major waterways will be required to provide coverage to those waterways.

7. The Commission concludes that an AMTS geographic area licensee should be permitted to acquire both AMTS frequency blocks in the same geographic area. It believes that limiting bidders to one channel block could impede vigorous competitive bidding. Moreover, when it considers that there are already competing commercial mobile radio service (CMRS) providers, such as VPC and 220–222 MHz, it believes that allowing one applicant to acquire both AMTS channel blocks in the same geographic area will not have anti-competitive consequences for the public.

8. The Commission concludes that AMTS licensees should be required to make a substantial service showing only at the time of license renewal. It believes that requiring substantial service at the time of license renewal (ten years) will ensure efficient use of AMTS spectrum, as well as expeditious provision of service to the public. This standard also is consistent with other geographic area license services.

9. The Commission concludes that it is in the public interest to modify its current licensing procedures for assigning high seas public coast spectrum by requiring applications to be processed on a first-come, first-served basis, thereby precluding the filing of mutually exclusive applications and thus, the need to use competitive bidding procedures. The Commission believes that the extensive international coordination requirements of high seas spectrum as well as the need to conform to the changing allocations and allotments instituted by the World Radio Conference, makes it an inappropriate spectrum band for license grant via competitive bidding.

10. The Commission concludes that Medium Frequency (MF) private coast stations should be permitted to use unassigned public coast station radiotelephone frequency pairs in the 2 MHz band for non-CMRS services. It believes that permitting private coast stations to share 2 MHz public correspondence frequencies will promote the more efficient use of maritime spectrum and will reduce congestion for MF private coast licensees.

Final Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Third Further Notice of Proposed Rule Making* in this proceeding. The Commission sought written public comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[2]

A. Need for, and Objectives of, the Fifth Report and Order

12. Our objective is to simplify our licensing process for AMTS stations. Specifically, this action will: (1) Convert licensing of AMTS station spectrum from site-by-site licensing to geographic area licensing, (2) simplify and streamline the AMTS spectrum licensing procedures and rules, (3) increase licensee flexibility to provide communication services that are responsive to dynamic market demands, and (4) introduce market-based forces into the Maritime Services by using competitive bidding procedures (auctions) to resolve mutually exclusive applications for AMTS spectrum. We find that these actions will increase the number and types of communications services available to the maritime community and improve the safety of life and property at sea, and that the potential benefits to the maritime community exceed any negative effects that may result from the promulgation of rules for this purpose. Thus, we conclude that the public interest is served by amending our rules as described above.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

13. No comments were submitted in response to the IRFA. However, Mobex Communications, Inc., a commenter to the *Third Further Notice of Proposed Rulemaking*, suggested that we allow applicants to exclude operating revenues from activities which have been discontinued more than one year prior to the filing of the short form application when determining the average gross revenues for the preceding three years. The Commission carefully considered this comment when reaching the decision that it was in the public interest that such revenues continue to be included in the calculation of average gross revenues, because the inclusion of such revenues will help provide an accurate and equitable measure of the size of a business and whether that business is truly eligible for small business bidding credits.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6] A small

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[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 604.

[3] 5 U.S.C. 603(b)(3).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[6] Small Business Act, 15 U.S.C. 632 (1996).

organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[7]

15. The rules adopted herein will affect licensees using AMTS and high seas public coast spectrum. In the *Third Report and Order* in this proceeding, the Commission defined the term "small entity" specifically applicable to public coast station licensees as any entity employing fewer than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers.[8] Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of AMTS and high seas public coast station licensees that are small businesses, and no commenters responded to our request for information regarding the number of small entities that use or are likely to use public coast spectrum, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated in 1992 had 1,000 or more employees. There are three AMTS public coast station licensees and approximately thirteen high seas public coast station licensees. Based on the rules adopted herein, it is unlikely that more than seven licensees will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there are approximately twenty-three AMTS and high seas public coast station licensees that are small businesses, as that term is defined by the Small Business Administration.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

16. All small businesses that choose to participate in the competitive bidding for these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses, as required under part 1, subpart Q of the Commission's Rules, 47 CFR part 1, subpart Q. Any small business applicant wishing to avail itself of small business provisions will need to make the general financial disclosures necessary to establish that the business is in fact small. Prior to auction, each small business applicant will be required to submit an FCC Form 175, OMB Clearance Number 3060–0600. The estimated time for filling out an FCC Form 175 is 45 minutes.

17. In addition to filing an FCC Form 175, each applicant will have to submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and financial information demonstrating that a business wishing to qualify for installment payments and bidding credits is a small business.

18. Applicants that do not have audited financial statements available will be permitted to certify to the validity of their financial showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are intended to enable a small business working with the information in a bidder information package to file an application on its own.

19. When an applicant wins a license, it will be required to submit an FCC Form 601, which will require technical information regarding the applicant's proposals for providing service. This application will require information provided by an engineer who will have knowledge of the system's design. The estimated time for completing an FCC Form 601 is one hour and fifteen minutes.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

21. The Commission in this proceeding has considered comments on implementing broad changes to the maritime service rules. It has adopted alternatives which minimize burdens placed on small entities. It has decided to adopt for AMTS the small business provisions that were adopted in the auction of VHF public coast spectrum. Specifically, the Commission has concluded that AMTS small businesses will receive a bidding credit of 25 percent and very small businesses will receive a bidding credit of 35 percent. It has defined small businesses as those entities, together with their affiliates and controlling interests, with not more than fifteen million dollars in average gross revenues for the preceding three years, and very small businesses as those entities, together with their affiliates and controlling interests, with not more than three million dollars in average gross revenues for the preceding three years.[9]

22. The Commission considered and rejected several significant alternatives. It rejected the Mobex Communications, Inc. request that we allow applicants to exclude operating revenues from activities which have been discontinued more than one year prior to the filing of the short form application when determining the average gross revenues for the preceding three years. This was rejected because it could encourage bad business practices by large businesses that are designed to circumvent the Commission's small business provisions for the purpose of becoming eligible for bidding credits. The Commission also rejected the proposal that AMTS geographic area licensees be required to provide substantial service to their service areas within five years. Instead, the Commission has adopted a requirement that AMTS licensees provide substantial service within ten years, *i.e.*, at the time of license renewal. The ten-year substantial service requirement should prove to be less burdensome on small businesses than a five-year benchmark.

23. *Report to Congress:* The Commission will send a copy of the *Fifth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[10] In addition, the Commission will send a copy of the *Fifth Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small

[7] 5 U.S.C. 601(4).

[8] *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812 (now North American Industry Classification System (NAICS) Code 513322)).

[9] These small business size standards have been approved by the U.S. Small Business Administration, pursuant to Section 3 of the Small Business Act. *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (dated November 3, 2000) (approving size standards for AMTS and high seas public coast services); *see also* 15 U.S.C. 632(a)(2) (establishment of size standards by federal agencies); 13 CFR 121.90(b) (promulgation of special size standards by federal agencies).

[10] *See* 5 U.S.C. 801(a)(1)(A).

Business Administration. In addition, the *Fifth Report and Order* and FRFA (or summaries thereof) will be published in the **Federal Register**.[11]

24. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Fifth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 1 and 80

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, The Federal Communications Commission amends 47 CFR parts 1 and 80 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.227 is amended by revising paragraph (b)(4) to read as follows:

§ 1.227 Consolidations.

* * * * *

(b) * * *

(4) This paragraph applies when mutually exclusive applications subject to section 309(b) of the Communications Act and not subject to competitive bidding procedures pursuant to § 1.2102 of this chapter are filed in the Private Radio Services, or when there are more such applications for initial licenses than can be accommodated on available frequencies. Except for applications filed under part 101, subparts H and O, Private Operational Fixed Microwave Service, and applications for high seas public coast stations (see §§ 80.122(b)(1) (first sentence), 80.357, 80.361, 80.363(a)(2), 80.371(a), (b), and (d), and 80.374 of this chapter) mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA for applications requiring the fees set forth at part 1, subpart G of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. For applications in the Private Operational Fixed Microwave Service, mutual exclusivity will occur if two or more acceptable applications that are in conflict are filed on the same day. Applications for high seas public coast stations will be processed on a first come, first served basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applications. Applications for high seas public coast stations received on the same day will be treated as simultaneously filed and, if granting more than one would result in harmful interference, must be resolved through settlement or technical amendment.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

3. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.49 is amended by revising paragraph (a)(3) to read as follows:

§ 80.49 Construction and regional service requirements.

(a) * * *

(3) Each AMTS coast station geographic area licensee must make a showing of substantial service within its service area within ten years of the initial license grant, or the authorization becomes invalid and must be returned to the Commission for cancellation. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. For site-based AMTS coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within two years from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

* * * * *

5. Section 80.60 is amended by revising paragraphs (a) and (b)(2) and adding paragraph (d)(3) to read as follows:

§ 80.60 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* The following licensees may partition their service areas or disaggregate their spectrum. Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment pursuant to § 1.948 of this chapter.

(1) VHF Public Coast area licensees, *see* § 80.371(c)(1)(ii), may partition their geographic service area or disaggregate their spectrum pursuant to the procedures set forth in this section.

(2) AMTS geographic area licensees, *see* § 80.385(a)(3), may partition their geographic service area or disaggregate their spectrum pursuant to the procedures set forth in this section. Site-based AMTS public coast station licensees may partition their license or disaggregate their spectrum pursuant to the procedures set forth in this section, provided that the partitionee or disaggregatee's predicted 38 dBu signal level contour does not extend beyond the partitioner or disaggregator's predicted 38 dBu signal level contour. The predicted 38 dBu signal level contours shall be calculated using the F(50, 50) field strength chart for Channels 7–13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction for antenna height differential.

(3) Nationwide or multi-region LF, MF, and HF public coast station licensees, *see* §§ 80.357(b)(1), 80.361(a), 80.363(a)(2), 80.371(b), and 80.374, may partition their spectrum pursuant to the procedures set forth in this section, except that frequencies or frequency pairs licensed to more than one licensee as of March 13, 2002 may be partitioned only by the earliest licensee, and only on the condition that the partitionee shall operate on a secondary, non-interference basis to stations licensed as of March 13, 2002 other than the earliest licensee. Coordination with government users is required for partitioning of spectrum the licensing of which is subject to coordination with government users.

(b) * * *

(2) *Disaggregation.* VHF (156–162 MHz) spectrum may only be disaggregated according to frequency pairs. AMTS spectrum may be disaggregated in any amount.

* * * * *

(d) * * *

(3) *Site-based AMTS, and nationwide or multi-region LF, MF, and HF public coast.* Parties seeking to acquire a partitioned license or disaggregated spectrum from a site-based AMTS, or nationwide or multi-region LF, MF, and HF public coast licensee will be

[11] *See* 5 U.S.C. 604(b).

required to construct and commence "service to subscribers" in all facilities acquired through such transactions within the original construction deadline for each facility as set forth in § 80.49. Failure to meet the individual construction deadline will result in the automatic termination of the facility's authorization.

6. Section 80.70 is amended by revising the section heading and paragraph (c) to read as follows:

§ 80.70 Special conditions relative to coast station VHF facilities.

* * * * *

(c) A VHF (156–162 MHz) public coast licensee initially authorized on any of the channels listed in the table in § 80.371(c)(1), or an AMTS licensee initially authorized on any of the channel blocks listed in the table in § 80.385(a)(2), may transfer or assign its channel(s), or channel block(s), to another entity. If the proposed transferee or assignee is the geographic area licensee for the geographic area to which the frequency block is allocated, such transfer or assignment will be deemed to be in the public interest. However, such presumption will be rebuttable.

7. Section 80.122 is amended by revising paragraph (b)(1) to read as follows:

§ 80.122 Public coast stations using facsimile and data.

* * * * *

(b) * * *

(1) Frequencies in the 2000–27500 kHz bands in part 2 of this chapter as available for shared use by the maritime mobile service and other radio services are assignable to public coast stations for providing facsimile communications with ship stations. Additionally, frequencies in the 156–162 MHz and 216–220 MHz bands available for assignment to public coast stations for radiotelephone communications that are contained in subpart H of this part are also available for facsimile and data communications.

* * * * *

8. Section 80.153 is amended by revising paragraph (a), removing paragraphs (b) and (c)(1), and redesignating paragraph (c)(2) as paragraph (b), to read as follows:

§ 80.153 Coast station operator requirements.

(a) Except as provided in § 80.179, operation of a coast station transmitter must be performed by a person who is on duty at the control point of the station. The operator is responsible for the proper operation of the station.

* * * * *

9. Section 80.207 is amended by revising the table entries for 216–220 MHz in paragraph (d) to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

Types of stations	Classes of emission
Ship Stations [1]	
Radiotelegraphy:	
* * * * * * * *	
216–220 MHz [3]	F1B, F2B, F2C, F3C, F1D, F2D
* * * * * * * *	
Land Stations [1]	
Radiotelegraphy:	
* * * * * * * *	
216–220 MHz [3]	F1B, F2B, F2C, F3C, F1D, F2D
* * * * * * * *	

[1] Excludes distress, EPIRBs, survival craft, and automatic link establishment.

* * * * * * * *

[3] Frequencies used in the Automated Maritime Telecommunications System (AMTS). See § 80.385(b).

* * * * * * * *

10. Section 80.215 is amended by revising paragraph (h)(3)(i) to read as follows:

§ 80.215 Transmitter power.

* * * * *

(h) * * *

(3) * * *

(i) Shows that the proposed site is the only suitable location (which, at the application stage, requires a showing that the proposed site is especially well-suited to provide the proposed service);

* * * * *

11. Section 80.357 is amended by revising paragraph (b)(1) to read as follows:

§ 80.357 Morse code working frequencies.

* * * * *

(b) *Coast station frequencies.*—(1) *Frequencies in the 100–27500 kHz band.* The following table describes the working carrier frequencies in the 100–27500 kHz band which are assignable to coast stations located in the designated geographical areas. The exclusive maritime mobile HF bands listed in the table contained in § 80.363(b) of this part are also available for assignment to public coast stations for A1A or J2A radiotelegraphy following coordination with government users. With respect to frequencies that are assignable in more than one geographical area, once the frequency is assigned to one licensee, any subsequent license will be authorized on a secondary, non-interference basis with respect to the incumbent license's existing operation. If the first licensee later seeks authorization to operate in an additional geographic area, such authorization will be on a secondary, non-interference basis to other co-channel licensees.

* * * * *

12. Section 80.371 is amended by revising the entries to the table and footnote 1 and adding footnotes 4 and 5 in paragraph (a), and by (b) introductory text, revising paragraphs (c)(1)(ii) and (c)(4) to read as follows:

§ 80.371 Public correspondence frequencies.

(a) * * *

WORKING FREQUENCY PAIRS IN THE 2000–4000 KHZ BAND

Region	Carrier frequencies (kHz)	
	Ship transmit	Coast transmit
East Coast:	* * *	* * *
	2118.0	[1] 12514.0
	* * *	* * *
	2382.0	[5] 2482.0
	* * *	* * *
	2406.0	[4] 2506.0
West Coast:	* * *	* * *
	2430.0	[5] 2482.0
Gulf Coast:	* * *	* * *
	[1] 2158.0	[1] 2550.0
	* * *	* * *
	2382.0	[5] 2482.0
* * * * *		
Alaska	2131.0	[5] 2309.0
* * * * *		

[1] Unlimited hours of use from December 15 to April 1 and day only from April 1 to December 15. Harmful interference must not be caused to any station in the Great Lakes region.

* * * * *

[4] Harmful interference must not be caused to any coast station in the Caribbean region.

[5] *But see* section 80.373(c)(3) of this chapter.

(b) *Working frequencies in the 4000–27500 kHz band.* This paragraph describes the working carrier frequencies in the 4000–27500 kHz band. With respect to frequencies that are assignable in more than one geographical area, once the frequency is assigned to one licensee, any subsequent license will be authorized on a secondary, non-interference basis with respect to the incumbent license's existing operation. If the first licensee later seeks authorization to operate in an additional geographic area, such authorization will be on a secondary, non-interference basis to other co-channel licensees.

* * * * *

(c) * * *

(1) * * *

(ii) Service areas in the marine VHF 156–162 MHz band are VHF Public Coast Station Areas (VPCSAs). As listed in the table in this paragraph, VPCSAs are based on, and composed of one or more of, the U.S. Department of Commerce's 172 Economic Areas (EAs). *See* 60 FR 13114 (March 10, 1995). In addition, the Commission shall treat Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico as EA-like areas 173–176, respectively. Maps of the EAs and VPCSAs are available for public inspection and copying at the Federal Communications Commission, Public Safety and Private Wireless Division, 445 12th St., SW., Room 4–C330, Washington, DC. Except as shown in the table, the frequency pairs listed in paragraph (c)(1)(i) of this section are available for assignment to a single licensee in each of the VPCSAs listed in the table in this paragraph. In addition to the listed EAs listed in the table in this paragraph, each VPCSA also includes the adjacent waters under the jurisdiction of the United States.

* * * * *

(4) Subject to the requirements of § 1.924 of this chapter and § 80.21, each VPCSA licensee may place stations anywhere within its region without obtaining prior Commission approval provided:

* * * * *

13. Section 80.373 is amended by adding paragraph (c)(3) to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(c) * * *

(3) In addition to the frequencies shown in paragraph (c)(1) of this section, the following coast transmit frequencies listed in the table in § 80.371(a) of this chapter are available for assignment to private coast stations and authorized ship stations for simplex business and operational radiotelephone communications: in the East Coast, West Coast, and Gulf Coast regions, 2482 kHz; in the Alaska region, 2309 kHz. These frequencies shall not be assigned to public coast stations before July 25, 2002. After that date, only the above frequencies in the above regions that have been assigned to at least one private coast station shall continue to be available for assignment to private coast stations. If, by that date, in any of the above regions, any of the above frequencies has not been assigned to a private coast station, that frequency in that region shall be available for assignment only to public coast stations.

* * * * *

14. Section 80.385 is amended by revising paragraphs (a)(2) and (b), redesignating paragraph (a)(3) as paragraph (a)(4) and paragraph (c) as (d), and adding new paragraphs (a)(3) and (c) to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(a) * * *

(2) The following carrier frequencies are available for assignment to public coast stations for public correspondence communications with ship stations and units on land. AMTS operations must not cause harmful interference to the U.S. Navy SPASUR system which operates in the band 216.880–217.080 MHz.

Channel No.	Carrier frequency (MHz)		
	Ship transmit[1,3]	Coast transmit[2]	Group
101	.....	216.0125	D
102	.....	216.0375	
103	.....	216.0625	
104	.....	216.0875	
105	.....	216.1125	
106	.....	216.1375	
107	.....	216.1625	
108	.....	216.1875	
109	.....	216.2125	
110	.....	216.2375	
111	.....	216.2625	
112	.....	216.2875	
113	.....	216.3125	
114	.....	216.3375	
115	.....	216.3625	
116	.....	216.3875	

Channel No.	Carrier frequency (MHz)		
	Ship transmit[1,3]	Coast transmit[2]	Group
117		216.4125	
118		216.4375	
119		216.4625	
120		216.4875	
121		216.5125	C
122		216.5375	
123		216.5625	
124		216.5875	
125		216.6125	
126		216.6375	
127		216.6625	
128		216.6875	
129		216.7125	
130		216.7375	
131		216.7625	
132		216.7875	
133		216.8125	
134		216.8375	
135		216.8625	
136		216.8875	
137		216.9125	
138		216.9375	
139		216.9625	
140	219.0125	216.9875	
141	219.0375	217.0125	B
142	219.0625	217.0375	
143	219.0875	217.0625	
144	219.1125	217.0875	
145	219.1375	217.1125	
146	219.1625	217.1375	
147	219.1875	217.1625	
148	219.2125	217.1875	
149		217.2125	
150	219.2375	217.2375	
151	219.2625	217.2625	
152	219.2875	217.2875	
153	219.3125	217.3125	
154	219.3375	217.3375	
155	219.3625	217.3625	
156	219.3875	217.3875	
157	219.4125	217.4125	
158	219.4375	217.4375	
159	219.4625	217.4625	
160	219.4875	217.4875	
161	219.5125	217.5125	A
162	219.5375	217.5375	
163	219.5625	217.5625	
164	219.5875	217.5875	
165	219.6125	217.6125	
166	219.6375	217.6375	
167	219.6625	217.6625	
168	219.6875	217.6875	
169	219.7125	217.7125	
170	219.7375	217.7375	
171	219.7625	217.7625	
172	219.7875	217.7875	
173	219.8125	217.8125	
174	219.8375	217.8375	
175	219.8625	217.8625	
176	219.8875	217.8875	
177	219.9125	217.9125	
178	219.9375	217.9375	
179	219.9625	217.9625	
180	219.9875	217.9875	

[1] Ship transmit frequencies in Groups C and D are not authorized for AMTS use.

[2] Coast station operation on frequencies in Groups C and D are not currently assignable and are shared on a secondary basis with the Low Power Radio Service in part 95 of this chapter. Frequencies in the band 216.750–217.000 MHz band are available for low power point-to-point network control communications by AMTS coast stations under the Low Power Radio Service (LPRS). LPRS operations are subject to the conditions that no harmful interference is caused to the United States Navy's SPASUR radar system (216.88–217.08 MHz) or to TV reception within the Grade B contour of any TV channel 13 station or within the 68 dBu predicted contour of any low power TV or TV translator station operating on channel 13.

[3] Ship transmit frequencies in Groups A and B are permitted to provide mobile-to-mobile communications where the written consent of all affected licensees is obtained.

(3) As listed in the table in this paragraph, AMTS Areas (AMTSAs) are based on, and composed of one or more of, the U.S Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall treat Puerto Rico, the United States Virgin Islands, and the Gulf of Mexico as EA-like areas. Maps of the EAs and AMTSAs are available for public inspection and copying at the Federal Communications Commission, Public Safety and Private Wireless Division, 445 12th Street, SW., Room 4–C330, Washington, DC. The Group A and B frequency pairs listed in the table in paragraph (a)(2) of this section are available for assignment to a single licensee in each of the AMTSAs listed in the table in this paragraph. In addition to the listed EAs listed in the table in this paragraph, each AMTSA also includes the adjacent waters under the jurisdiction of the United States.

AMTS AREAS (AMTSAS)

AMTSAs	EAs
1 (Northern Atlantic)	1–5, 10.
2 (Mid-Atlantic)	9, 11–23, 25, 42, 46.
3 (Southern Atlantic)	24, 26–34, 37, 38, 40, 41, 174.
4 (Mississippi River)	35, 36, 39, 43–45, 47–53, 67–107, 113, 116–120, 122–125, 127, 130–134, 176.
5 (Great Lakes)	6–8, 54–66, 108, 109.
6 (Southern Pacific)	160–165.
7 (Northern Pacific)	147, 166–170.
8 (Hawaii)	172.
9 (Alaska)	171.
10 (Mountain)	110–112, 114–115, 121, 126, 128, 129, 135–146, 148–159.

* * * * *

(b) Subject to the requirements of § 1.924 of this chapter, §§ 80.215(h), and 80.475(a), each AMTS geographic area licensee may place stations anywhere within its region without obtaining prior Commission approval provided:

(1) The AMTS geographic area licensee must locate its stations at least 120 kilometers from the stations of co-channel site-based AMTS licensees. Shorter separations between such stations will be considered by the Commission on a case-by-case basis upon submission of a technical analysis indicating that at least 10 dB protection will be provided to an site-based licensee's predicted 38 dBu signal level contour. The site-based licensee's predicted 38 dBu signal level contour shall be calculated using the F(50, 50) field strength chart for Channels 7 through 13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction for antenna height differential. The 10 dB protection to the site-based licensee's predicted 38 dBu signal level contour shall be calculated using the F(50, 10) field strength chart for Channels 7–13 in § 73.699 (Fig. 10a) of this chapter, with a 9 dB correction factor for antenna height differential.

(2) The locations and/or technical parameters of the transmitters are such that individual coordination of the channel assignment(s) with a foreign administration, under applicable international agreements and rules in this part, is not required.

(3) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460–1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, Attn: Information Processing Branch, 1270 Fairfield Rd., Gettysburg, PA 17325–7245.

(4) The transmitters must not have a significant environmental effect as defined by §§ 1.1301 through 1.1319 of this chapter.

(c) Any recovered frequency blocks will revert automatically to the holder of the geographic area license within which such frequencies are included. Any frequency blocks recovered where there is no geographic area licensee will be retained by the Commission for future licensing.

* * * * *

15. Section 80.475 is amended by revising paragraph (a) to read as follows:

§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).

(a) A separate Form 601 is not required for each coast station in a system. However, except as provided in § 80.385(b) and paragraph (b) of this section, the applicant must provide the technical characteristics for each proposed coast station, including transmitter type, operating frequencies, emissions, transmitter output power, antenna arrangement, and location.

* * * * *

16. Section 80.479 is revising paragraph (a) and adding paragraphs (b) and (c) to read as follows:

§ 80.479 Assignment and use of frequencies for AMTS.

(a) The frequencies assignable to AMTS stations are listed in subpart H of this part. These frequencies are assignable to ship and public coast stations for public correspondence communications.

(b) The transmissions from a station of an AMTS geographic area licensee may not exceed a predicted 38 dBu field strength at the geographic area border, unless all affected co-channel geographic area licensees agree to the higher field strength. The predicted 38 dBu field strength is calculated using the F(50, 50) field strength chart for Channels 7 through 13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction factor for antenna height differential. Geographic area licensees must coordinate to minimize interference at or near their geographic area borders, and must cooperate to resolve any instances of interference in accordance with the provisions of § 80.70(a).

(c) AMTS frequencies may be used for mobile-to-mobile communications if written consent is obtained from all affected licensees.

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DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB55

Acquisition Regulations: Revision of Patent Regulations Relating to Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is adopting, with changes, as a final rule the interim final rule published on November 15, 2000, which amended the Department of Energy Acquisition Regulation (DEAR) to improve the patent coverage relating to the Department's management and operating contracts. The final rule generally reflects the contract clauses used by the Department in management and operating contracts over the last 5 years. The changes adapt patent-related clauses to subcontracting under management and operating contracts, restate the clauses in plain language, and provide a complete set of patent clauses for a variety of management and operating contracts.

DATES: This final rule is effective August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Robert M. Webb at (202) 586–8264

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Changes
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Congressional Review
J. Approval by the Office of the Secretary of Energy

I. Background

On November 15, 2000, at 65 FR 68932, the Department of Energy (DOE or Department) published an interim final rule containing amendments to the patent regulations covering its management and operating contracts. In response to the notice of interim final rulemaking, DOE received only one comment. That comment took no exception to the interim final rule and opined that the rule had achieved its intended purposes of clarity and organization. Internal deliberations of the Department have resulted in minor changes to the interim final rule. These are discussed in the next portion of this rule. Except as noted in this preamble, the regulations and clauses are as originally promulgated.

Since publication of the interim final rule, the regulations and clauses included in the interim final rule were republished as part of a final rule republishing Part 970 of the DEAR (65 FR 80994, Dec. 22, 2000). While the provisions themselves were not changed in any way in that republication, changes in numbering did occur. The numbering system of this final rule are different than those used in the publication of the interim final rule but are consistent with the republication of DEAR Part 970.

Finally, since the publication of the interim final rule, Congress enacted two statutes that affect the Technology Transfer Mission clause at 970.5227–3. Section 3196 of Pub. L. 106–398 limited the time for agency review and response to proposed joint work statements and proposed Cooperative Research and Development Agreements (CRADAs) at contractor-operated, government-owned laboratories. Also, Section 11 of the Technology Transfer Commercialization Act of 2000, Pub. L. 106–404, directs the Secretary to assure that certain of DOE's laboratory and facilities contractors designate a Technology Partnership Ombudsman to perform specified duties This final rule amends the Technology Transfer Mission clause to implement these statutes. The implementing language follows the statutory direction.

II. Discussion of Changes

In order to reflect Section 3196 of Pub.L. 106–398, changes have been made to paragraph (n) of the Technology Transfer Mission clause, now at 970.5227–3. These changes reflect the time for DOE review of proposed joint work statements and CRADAs that result after enactment of the statute. Additionally, a paragraph (p) has been added to the same clause to reflect Section 11 of the Technology Transfer Commercialization Act of 2000, Pub. L. 106–404. This latter change will assure that DOE's management and operating and other major contractors with a technology transfer mission designate a Technology Partnership Ombudsman to perform specified duties.

The threshold for flowdown of the clause at 970.5227–4, Authorization and Consent, has been raised to $100,000 to reduce the contractor's burden of including it in subcontracts, and paragraph (c) has been reorganized to improve its clarity. The flowdown threshold for the clause at 970.5227–5, Notice and Assistance Regarding Patent and Copyright Infringement, has been raised to $100,000 also to reduce the contractor's burden of including the clause in subcontracts.

The clause at 970.5227–8, Refund of Royalties, was altered as a result of experience gained since the publication of the interim final rule. Changes have been made to limit the scope of the clause to royalties payable for a licensing of an invention. The version originally published covered all royalties, including royalties for copyright. In this day of the purchase of large quantities of commercial software, that inclusion would be burdensome and not provide a return worth the investment of resources by both the contractor and DOE. Additionally, the version of the clause included in the interim final rule was written in a way that assumed there was a solicitation and that the royalties could be identified in the contract price for the term of the contract. While there are more solicitations leading to management and operating contracts than ever before, there remain many instances in which contracts are extended. In neither event would it be possible for the offeror or the contractor to identify all royalties associated with contract performance at the inception of the contract because of the broad research and development nature of these contracts; therefore, the Department has made changes to focus the clause to require that the contractor gain DOE approval before paying patent royalties of more than $250 during contract performance.

The Department has deleted the phrase "as DOE deems appropriate" as the last words of paragraph (b)(6) of the clause at 970.5227–10, Patent Rights-Management and Operating Contracts, Nonprofit Organizations or Small Business Firm Contractor and paragraph (b)(9) of the clause at 970.5227–12, Patent Rights-Management and Operating Contracts, For-Profit Contractor, Advance Class Waiver. The sentence without that phrase accomplishes its intended purpose of requiring the contractor to share royalties with a co-inventor who is a Federal employee. That additional phrase could have been construed as making the sharing scheme subject to DOE dictation or approval, neither of which was intended.

The Department has also inserted specific reference to the National Nuclear Security Administration in the definition of "weapons related inventions" in Alternates I to the clauses at 970.5227–10 and –12.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this final rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final regulation meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act does not apply to this rulemaking.

D. Review Under the Paperwork Reduction Act

Section 11 of the Technology Transfer Commercialization Act of 2000, Pub. L. 106–404, provides that each technology partnership ombudsman appointed pursuant to the Act "shall * * * report quarterly on the number and nature of complaints and disputes raised, along with the ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information" to specified DOE officials and employees. In this final rule, DOE is amending the Technology Transfer Mission clause at 970.5227–3 to include this reporting requirement. Although mandated by statute, the Technology Partnership Ombudsman reporting requirement is subject to review and approval by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* As provided in OMB's regulations implementing the Act, DOE will soon publish a separate notice in the **Federal Register** inviting public comment on this collection of information, after which it will submit the collection of information to OMB for approval pursuant to 5 CFR 1320.10.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this final rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6); therefore, this final rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then Executive Order 13132 requires agencies to engage in intergovernmental consultation and take other steps before promulgating such a regulation or rule. This final rule merely provides the Department a single set of clauses to govern patent rights in its contracts for the management and operation of major DOE sites and facilities. The action does not involve any substantial direct effects on States or other considerations stated in Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This final rule would only affect private sector entities, and the impact is less than $100 million.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This final rule would not affect the family.

I. Congressional Notification

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801), DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note that it has been determined that this rule does not constitute a "major rule" under that Act.

J. Approval by the Office of the Secretary of Energy

Issuance of this final rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC, on July 15, 2002.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, U.S. Department of Energy.

Accordingly, the interim rule amending Chapter 9 of Title 48 of the Code of Federal Regulations which was published at 65 FR 68932 on November 15, 2000, is adopted as a final rule with the following changes.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS.

1. The authority citation for Part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

Subpart 970.27—Patents, Data, and Copyrights.

2. The clause at 970.5227–3, Technology Transfer Mission, is amended as follows:

a. The clause date is revised;

b. Paragraph (n)(1)(iii) is revised;

c. Paragraph (n)(l)(iv) is deleted and paragraph (n)(l)(v) is redesignated as (n)(l)(iv);

d. Redesignated paragraph (n)(l)(iv) is amended by deleting the last sentence; and

e. In Alternate I, paragraph (p) is redesignated as paragraph (q) and the date is revised to read "(August 2002)", and a new paragraph (p) is added to the clause:

970.5227–3 Technology transfer mission.

* * * * *

Technology Transfer Mission (August 2002)

(n) * * *

(1)(i) * * *

(ii) * * *

(iii) Within thirty (30) days after submission of a JWS or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS or CRADA. The contracting officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

* * * * *

(p) Technology Partnership Ombudsman.

(1) The Contractor agrees to establish a position to be known as "Technology Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the laboratory, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contactor's laborratory staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the laboratory or facility, shall function as such senior official.

(3) The duties of the Technology Partnership Ombudsman shall include:

(i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the laboratory or facility regarding technology partnerships, patents, and technology licensing;

(ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

(iii) Submitting a quarterly report, in a format provided by DOE, to the Secretary of Energy, the Administrator for Nuclear Security, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information.

(End of clause)

3. The clause at 970.5227–4 is revised to read as follows:

970.5227–4 Authorization and Consent.

Insert the following clause in solicitations and contracts in accordance with 970.2702–1:

Authorization and Consent (August 2002)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.

(c)(1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227–1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed $100,000 at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed $100,000.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than $100,000 does not affect this authorization and consent.

(End of clause)

970.5227–5 [Amended]

4. Paragraph (c) of the clause at 970.5227–5 is amended by deleting the reference "$25,000" and inserting "$100,000" in its place.

5. The clause at 970.5227–8 is revised to read as follows:

970.5227–8 Refund of Royalties.

Insert the following clause in solicitations and contracts in accordance with 970.2702–4:

Refund of Royalties (August 2002)

(a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

(1) Name and address of licensor;

(2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

(3) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;

(4) Percentage or dollar rate of royalty per unit;

(5) Unit price of contract item;

(6) Number of units;

(7) Total dollar amount of royalties; and

(8) A copy of the proposed license agreement.

(b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer.If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.

(f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

(End of clause)

970.5227–10 [Amended]

6. The clause at 970.5227–10 is amended by:

a. Deleting the phrase "as DOE deems appropriate" at the end of paragraph (b)(6); and

b. By adding the phrase "or the National Nuclear Security Administration" at the end of Alternate 1 Weapons Related Subject Inventions, paragraph (a)(10).

970.5227–12 [Amended]

7. The clause at 970.5227–12 is amended by:

a. Deleting the phrase "as DOE deems appropriate" at the end of paragraph (b)(9); and

b. By adding the phrase "or the National Nuclear Security Administration" at the end of Alternate 1 Weapons Related Subject Inventions, paragraph (a)(9).

[FR Doc. 02–18825 Filed 7–24–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

50 CFR Parts 600 and 660

[Docket No. 011231209–2090–01; I.D. 062702C]

Magnuson-Stevens Act Provisions; Fisheries Off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Corrections

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Corrections to trip limit adjustments in the Pacific Coast groundfish fishery.

SUMMARY: This document contains corrections to trip limit tables in the trip limit adjustments in the Pacific Coast groundfish fishery published on July 5, 2002.

DATES: Effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, NMFS, (206) 526–6140.

SUPPLEMENTARY INFORMATION: Changes to current groundfish management measures were recommended by the Pacific Fishery Management Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its June 18–21, 2002, meeting in Foster City, CA. Adjustments to trip limits were made to slow the catch of overfished species, particularly darkblotched and bocaccio rockfish, and keep it within the optimum yield (OY) and acceptable biological catch (ABC). The specifications and management measures for the current fishing year (January 1 - December 31, 2002) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2002 (67 FR 1540, January 11, 2002), and as a proposed rule for all of 2002 (67 FR 1555, January 11, 2002), then finalized effective March 1, 2002 (67 FR 10490, March 7, 2002). The final rule was subsequently amended at 67 FR 15338, April 1, 2002; at 67 FR 18117, April 15, 2002; at 67 FR 30604, May 7, 2002; at 67 FR 40870, June 14, 2002; and at 67 FR 44778, July 5, 2002.

Trip limit adjustments published on July 5, 2002, contained errors in trip limit tables that require correction. This document corrects the errors and re-publishes trip limit tables for groundfish taken with limited entry trawl gear, limited entry fixed gear, and open access gear.

Corrections

In the rule FR Doc. 02–16811, in the issue of Friday, July 5, 2002 (67 FR 44778) make the following corrections:

1. On pages 44782 - 44784, Tables 3 and 4, respectively, are corrected to read as follows:

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Table 3. Trip Limits[1] and Gear Requirements[2] for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR **NORTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS **PROHIBITED**[3]. **NOTE FOR **SOUTH** OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUNDFISH IS **CLOSED** EXCEPT FOR DTS COMPLEX, SLOPE ROCKFISH SPECIES, AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES.						
1	**Minor slope rockfish**	1,800 lb/ 2 months				CLOSED[7]	
2	North						
3	South						
4	40°10' - 36° N. lat.	50,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb / 2 months	
5	South of 36° N. lat.	50,000 lb/ 2 months				15,000 lb/ 2 months	
6	**Splitnose - South**						
7	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb / 2 months	
8	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
9	**Pacific ocean perch - North**[4]	2,000 lb/ month		4,000 lb/ month	4,000 lb/ 2 months		
10	**Chilipepper - South**[4]						
11	mid-water trawl	25,000 lb/ 2 months			CLOSED[7]		
12	small footrope trawl	7,500 lb/ 2 months		4,000 lb/ 2 months			
13	large footrope trawl	500 lb/ trip, not to exceed small footrope cumulative 2-month limits at any time during the year					
14	**DTS complex - North**						
15	Sablefish	6,000 lb/ 2 months		3,500 lb/ 2 months	3,000 lb/ 2 months	CLOSED[7]	
16	Longspine thornyhead	10,000 lb/ 2 months		6,000 lb/ 2 months	1,500 lb/ 2 months		
17	Shortspine thornyhead	2,600 lb/ 2 months		2,000 lb/ 2 months	1,500 lb/ 2 months		
18	Dover sole	30,000 lb/ 2 months	28,000 lb/ 2 months	14,000 lb/ 2 months			
19	**DTS complex - South**						
20	Sablefish[5]	4,500 lb/ 2 months					
21	Longspine thornyhead	10,000 lb/ 2 months					
22	Shortspine thornyhead	2,600 lb/ 2 months					
23	Dover sole	22,000 lb/ 2 months					
24	**Flatfish - North**						
25	All other flatfish [5]	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder.		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of **petrale and rex sole** prohibited if large footrope gear is onboard.	SMALL FOOTROPE REQUIRED: 40,000 lb/ month, no more than 15,000 of which may be petrale sole	CLOSED[7]	
		SMALL FOOTROPE:		SMALL FOOTROPE:		CLOSED[7]	
		15,000 lb/ month	35,000 lb/ month	30,000 lb/ month, no more than 10,000 of which may be petrale sole			
26	Petrale sole	Not limited, large footrope allowed					
27	Rex sole						
28	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit.		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited		CLOSED[7]	
		SMALL FOOTROPE:					
		30,000 lb/ trip					
29	**Flatfish - South**						
30	All other flatfish [5]	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder.		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of **petrale and rex sole** prohibited if large footrope gear is onboard.	CLOSED[7] With the exception of 1,000 lb/ trip of rex sole, petrale sole, English sole, and arrowtooth flounder combined when landed with DTS complex. The amount of per trip flatfish landings must not exceed the amount of DTS landed. Landings can be made with small or large footrope gear.		
		SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs.		SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs. Of the species other than Pacific sanddabs, no more than 15,000 lb may be petrale sole.			
31	Petrale sole	Not limited, large footrope allowed					
32	Rex sole						
33	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit.		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited			
		SMALL FOOTROPE:					
		30,000 lb/ trip					
35	**Whiting**[6]	20,000 lb/ trip		Primary Season		CLOSED[7]	

Table 3. (CONTINUED) Trip Limits[1/] and Gear Requirements[2/] for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	"NOTE FOR NORTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS PROHIBITED[8/]. "NOTE FOR SOUTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUNDFISH IS CLOSED EXCEPT FOR DTS COMPLEX, SLOPE ROCKFISH SPECIES, AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES.						
37	**Minor shelf rockfish**						
38	North	300 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish		CLOSED[7/]	
39	South	500 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish	CLOSED[7/]		
40	**Canary rockfish**						
	North	200 lb/ 2 months		600 lb/ 2months	600 lb/ 2 months	CLOSED[7/]	
	South				CLOSED[7/]		
	Widow rockfish						
41	North						
42	mid-water trawl	CLOSED[7/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month			CLOSED[7/]
43	small footrope trawl	1,000 lb/ month				CLOSED[7/]	
	South						
	mid-water trawl	CLOSED[7/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month	CLOSED[7/]		
	small footrope trawl	1,000 lb/ month			CLOSED[7/]		
44	**Yellowtail - North[6/]**						
45	mid-water trawl	CLOSED[7/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			CLOSED[7/]
46	small footrope trawl	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 30,000 lb/ 2 months.				CLOSED[7/]	
47	**Bocaccio - South[6/]**	600 lb/ 2 months		1,000 lb/ 2 months	CLOSED[7/]		
48	**Cowcod**	CLOSED[7/]					
49	**Minor nearshore rockfish**						
50	North	300 lb/ month				CLOSED[7/]	
51	South	300 lb/ month			CLOSED[7/]		
	Lingcod[8/]						
	North	800 lb/ 2 months		1,000 lb/ 2 months		CLOSED[7/]	
	South			1,000 lb/ 2 months	CLOSED[7/]		
52	**Other Fish[10/]**	Not limited			Grenadier retention permitted	CLOSED[7/]	

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Gear requirements and prohibitions are explained above. See IV.A.(14).

3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies before and after the primary season.

5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. In areas where trawl gear is restricted, only one type of trawl gear is allowed on board at any one time. See above.

6/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

7/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ The minimum size requirement for sablefish is 22 inches (56 cm) total length and. No more than 500 lb of undersized sablefish may be landed per trip.

10/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4. Trip Limits[1/] for Limited Entry Fixed Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	**NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS CLOSED OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT FOR SABLEFISH, THORNYHEADS, AND SLOPE ROCKFISH. SEE FOOTNOTE 8/.						
1	**Minor slope rockfish**	1,000 lb/ month		5,000 lb/ 2 months			2,000 lb/ 2 months
2	North						
3	South						
4	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
6	**Splitnose - South**						
7	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
8	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb / 2 months	
9	**Pacific ocean perch - North[9/]**	2,000 lb/ month	4,000 lb/ month		4,000 lb/ 2 months		2,000 lb/ month
10	**Sablefish[9/]**						
11	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
12	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
13	**Longspine thornyhead**	9,000 lb/ 2 months					
14	**Shortspine thornyhead**	2,000 lb/ 2 months					
15	**Dover sole**	5,000 lb/ month (all flatfish)				5,000 lb/ month (all flatfish)[2/]	
16	**Arrowtooth flounder**						
17	**Petrale sole**						
18	**Rex sole**						
19	**All other flatfish[2/]**						
20	**Whiting[3/]**	20,000 lb/ trip					
21	**Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[5/]**	200 lb/ month					
22	North						
23	South						
24	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[4/]	Shoreward of 20 fm depth, 200 lb/ month, otherwise CLOSED[4/]		CLOSED[4/]	
25	South of 34°27' N. lat.	CLOSED[4/]	1,000 lb/ month				
26	**Canary rockfish**	CLOSED[4/]					
27	**Yelloweye rockfish**	CLOSED[4/]					
28	**Cowcod**	CLOSED[4/]					
29	**Bocaccio - South[5/]**						
30	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[4/]			CLOSED[4/]	
31	South of 34°27' N. lat.	CLOSED[4/]	200 lb/ month				
32	**Chilipepper - South[5/]**						
33	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[4/]			CLOSED[4/]	
34	South of 34°27' N. lat.	CLOSED[4/]	2,500 lb/ month				
35	**Minor nearshore rockfish**						
36	North	5,000 lb/ month, no more than 2,000 lb of which may be species other than black or blue rockfish[6/]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[6/]			
37	South						
38	40°10' - 34°27' N. lat.	1,600 lb/ 2 months	CLOSED[4/]	Shoreward of 20 fm depth, 1,600 lb/ 2 months, otherwise CLOSED[4/]	1,600 lb/ 2 months[8/]		CLOSED[4/]
39	South of 34°27' N. lat.	CLOSED[4/]	2,000 lb/ 2 months		2,000 lb/ 2 months[8/]		
40	**Lingcod[7/]**						
41	North	CLOSED[4/]		400 lb/ month			CLOSED[4/]
42	South						
43	40°10' - 34°27' N. lat.	CLOSED[4/]		Shoreward of 20 fm depth, 400 lb/ month, otherwise CLOSED[4/]	400 lb/ month[8/]		CLOSED[4/]
44	South of 34°27' N. lat.			400 lb/ month			

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies.

4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

5/ Yelloweye rockfish and widow rockfish coastwide and bocaccio and chilipepper rockfishes in the north are included in the trip limits for shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

6/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ South of 40°10' N. lat., trip limits apply to inside of 20 fm only. Beginning July 1, 2002, it is prohibited to prosecute groundfish fisheries with non-trawl gear outside 20 fm south of 40°10' N. lat.

9/ The minimum size requirement for sablefish is 22 inches (56 cm) total length.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

2. On page 44785, Table 5 and its footnotes are corrected to read as follows:

Table 5. Trip Limits[1/] for Open Access Gears
Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table
Exceptions for exempted gears at Section IV.C.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS CLOSED OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT SABLEFISH AND SLOPE ROCKFISH. SEE FOOTNOTE 8/.						
	** NOTE: EFFECTIVE JULY 1, 2002, THERE IS NO RETENTION OF GROUNDFISH WITH EXEMPTED TRAWL GEAR.						
1	**Minor slope rockfish**						
2	North	Per trip, no more than 25% of weight of the sablefish landed					
3	South						
4	40°10' - 38° N. lat.	10,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose - South**	200 lb/ month					
7	**Pacific ocean perch - North[4/]**	100 lb/ month					
8	**Sablefish[7/]**						
9	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
10	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
11	**Thornyheads**						
12	North of 34° 27' N. lat.	CLOSED[3/]					
13	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
14	**Dover sole**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs			3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs[#/]		
15	**Arrowtooth flounder**						
16	**Petrale sole**						
17	**Rex sole**						
18	**All other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[4/]**						
21	North	200 lb/ month					
22	South						
23	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3/]	Shoreward of 20 fm depth, 200 lb/ month, otherwise CLOSED[3/]	CLOSED[3/]		
24	South of 34°27' N. lat.	CLOSED[3/]	500 lb/ month				
25	**Canary rockfish**	CLOSED[3/]					
26	**Yelloweye rockfish**	CLOSED[3/]					
27	**Cowcod**	CLOSED[3/]					
28	**Bocaccio - South[4/]**						
29	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3/]		CLOSED[3/]		
30	South of 34°27' N. lat.	CLOSED[3/]	200 lb/ month				
31	**Chilipepper - South[4/]**						
32	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[3/]		CLOSED[3/]		
33	South of 34°27' N. lat.	CLOSED[3/]	2,500 lb/ month				
34	**Minor nearshore rockfish**						
35	North	3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[5/]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[5/]			
36	South						
37	40°10' - 34°27' N. lat.	1,200 lb/ 2 months	CLOSED[3/]	Shoreward of 20 fm depth, 1,200 lb/ 2 months, otherwise CLOSED[3/]	1,200 lb/ 2 months[#/]	CLOSED[3/]	
38	South of 34°27' N. lat.	CLOSED[3/]	1,200 lb/ 2 months				
39	**Lingcod[6/]**						
40	North	CLOSED[3/]		300 lb/ month		CLOSED[3/]	
41	South						
42	40°10' - 34°27' N. lat.	CLOSED[3/]		Shoreward of 20 fm depth, 300 lb/ month, otherwise CLOSED[3/]	300 lb/ month[#/]	CLOSED[3/]	
43	South of 34°27' N. lat.			300 lb/ month			

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border. "South" means 40°10' N. lat. To the U.S.-Mexico border 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

4/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

5/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ The minimum size requirement for sablefish is 22 inches (56 cm) total length.

8/ South of 40°10' N. lat., trip limits apply to inside of 20 fm only. Beginning July 1, 2002, it is prohibited to prosecute groundfish fisheries with non-trawl gear outside 20 fm south of 40°10' N. lat.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18858 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020311051–2135–02; I.D. 022002C]

RIN 0648–AN75

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Gear Restrictions, Seasonal Area Closure, and Other Sea Turtle Take Mitigation Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule implementing pelagic longline gear restrictions for the Western Pacific pelagic fisheries published on June 12, 2002. This action would clarify amendatory instruction 4 that removes unneeded text.

DATES: Effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: William Chappell, NMFS, at 301–713–2341.

SUPPLEMENTARY INFORMATION:

Background

The final rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region that implements the reasonable and prudent alternative of the March 29, 2001, Biological Opinion issued by NMFS under the Endangered Species Act, was published in the **Federal Register** on June 12, 2002 (67 FR 40232). This final rule did not clearly explain in amendatory instruction 4 that the introductory text of 50 CFR 660.32(a) was removed by the final rule.

Corrections

In the rule FR Doc. 02–14749, in the issue of Wednesday, June 12, 2002 (67 FR 40232), on page 40236, at the bottom of the first column, correct amendatory instruction 4 to read as follows:

"4. In § 660.32, the introductory text of paragraph (a) is removed, paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(4) and (a)(5) respectively, new paragraphs (a)(1) and (a)(2) are added, and paragraph (a)(3) is revised to read as follows:"

Dated: July 19, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–18859 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 143
Thursday, July 25, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV02–911–1]

Limes Grown in Florida; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of Florida limes to determine whether they favor continuance of the marketing order regulating the handling of limes grown in the production area.

DATES: The referendum will be conducted from September 9, through September 28, 2002. To vote in this referendum, growers must have been producing Florida limes during the period April 1, 2001, through March 31, 2002.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agent at 799 Overlook Drive, Suite A, Winter Haven, Florida, 33884, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida, 33884; telephone (863) 324–3375; or Kathleen Finn, Marketing Order Administration Branch, Fruit & Vegetable Programs, AMS, USDA, 1400 Independence Ave SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 911 (7 CFR Part 911), hereinafter referred to as the "order" and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted during the period September 9, through September 28, 2002, among Florida lime growers in the production area. Only growers that were engaged in the production of Florida limes during the period of April 1, 2001, through March 31, 2002, may participate in the continuance referendum.

The USDA has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The USDA would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of Florida limes represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the USDA will consider the results of the referendum and other relevant information regarding operation of the order. The USDA will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189 for Florida limes. It has been estimated that it will take an average of 20 minutes for each of the approximately 75 growers of Florida limes to cast a ballot. Participation is voluntary. Ballots postmarked after September 28, 2002, will not be included in the vote tabulation.

Doris Jamieson and Chris Nissen of the Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the USDA to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: July 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18789 Filed 7–24–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–11–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TPE331–3, –5, –6, –8, –10, and –11 Series Turboprop and TSE331–3 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331–3, –5, –6, –8, –10, and –11 series turboprop and TSE331–3 series turboshaft engines. This proposal would require removing weld repaired first stage compressor impellers from service. This proposal is prompted by an uncontained TPE331–11U turboprop engine failure and an in-flight shutdown due to the separation of the first stage Ti 6–4 compressor impeller. The actions specified by the proposed AD are intended to prevent uncontained

engine failures, in-flight shutdowns, and secondary damage.

DATES: Comments must be received by September 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–11–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in the proposed rule may be obtained from Honeywell Engines, Systems and Services, Technical Data Distribution, M/S 2101–201, PO Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial); fax: (602) 365–5577 (General Aviation and Commercial). This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood CA 90712–4137; telephone: (562) 627–5246; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–11–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–11–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On November 16, 1994, a TPE331–11U turboprop uncontained engine failure and in-flight shutdown occurred due to the separation of the first stage Ti 6–4 compressor impeller. The failed impeller, part number (P/N) 896223–3, which was weld repaired at 3,983 cycles-since-new (CSN), had accumulated 27,456 CSN. The crack initiated in the backface at the fillet adjacent to the curvic arm and propagated forward along the bore in low cycle fatigue (LCF). Compressor impellers, P/N's 896223–1, −2, −3 and −7 and 3107109–2, are similarly designed to P/N 896223–3, and are affected by this proposal. The FAA has determined that weld repairs and the associated heat treatment on these impellers reduce LCF mechanical properties and may contribute to impeller failures. Failure of the first stage compressor impeller, if not corrected, could result in an uncontained separation of the impeller, in-flight shutdown and secondary engine and aircraft damage.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Honeywell International Inc. Alert Service Bulletin (ASB) TPE331–A72–2083, Revision 1, dated May 17, 2002, which provides a listing of certain impellers by serial number which have been weld repaired and provides impeller replacement information.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Honeywell International Inc TPE331–3, −5, −6, −8, −10, and −11 series turboprop and TSE331–3 series turboshaft engines of the same type design, the proposed AD would require the replacement of suspect impellers with serviceable impellers. The actions would be required to be done in accordance with the ASB described previously.

Economic Analysis

There are approximately 2,040 engines of the affected design in the worldwide fleet. The FAA estimates that 1,020 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA estimates that 1,000 engines will have the required actions done during a scheduled engine overhaul. The FAA also estimates that it would take approximately 2 work hours per engine to do the proposed actions during scheduled engine overhauls and 80 work hours per engine during unscheduled engine overhauls, and that the average labor rate is $60 per work hour. Required parts would cost approximately $9,600 per engine to do the proposed actions during scheduled engine overhauls and $14,600 per engine which includes consumables, during unscheduled engine overhauls. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $10,108,000.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Honeywell International Inc.: Docket No. 2001–NE–11–AD.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331–3, –5, –6, –8, –10, and –11 series turboprop and TSE331–3 series turboshaft engines equipped with first stage compressor impeller, part number (P/N) 896223–1, –2, –3, –7, or 3107109–2. These engines are installed on, but not limited to: Ayres S–2R series; Beech 18 and 45 series and Models JRB–6, 3N, 3NM, 3TM, and B100; Cessna Model 441; Construcciones Aeronauticas, S.A. (CASA) C–212 series; De Havilland DH 104 series 7AXC (Dove); Dornier 228 series; Fairchild SA226 and SA227 series (Swearingen Merlin and Metro series); Grumman American G–164 series; Jetstream 3101; Mitsubishi MU–2B series (MU–2 series); Prop-Jets, Inc. Model 400; Rockwell Commander S–2R; Shorts Brothers and Harland, Ltd. SC7 (Skyvan); Pilatus PC–6 series (Fairchild Porter and Peacemaker); and Schweizer G–164 series; and Twin Commander Aircraft Corp. (Jetprop Commander) Models 695 and 695A airplanes; and Sikorsky S–55 series (Helitec Corp. S55T) helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent a uncontained engine failure, in-flight shutdown, and secondary damage, do the following:

Removal of Weld Repaired First Stage Compressor Impellers From Service

(a) Remove from service weld repaired first stage compressor impellers, P/N's 896223–1, –2, –3, and –7 and 3107109–2, with SN's listed in Table 1 and Table 2 of the Accomplishment Instructions in 2.A.(1) and 2.A.(2) of Honeywell Alert Service Bulletin TPE331–A72–2083, Revision 1, dated May 17, 2002, in accordance with the following schedule:

(1) Remove impellers with no record of cycles since weld repair, within 3,600 cycles-in-service (CIS) or at the next engine overhaul, or at the next major Continuous Airworthiness Maintenance (CAM) compressor section inspection, after the effective date of this AD, whichever occurs first.

(2) Remove impellers with more than 8,900 cycles since "weld repair," within 3,600 CIS, or at the next engine overhaul, or at the next major CAM compressor section inspection after the effective date of this AD, whichever occurs first.

(3) Remove impellers with 8,900 or less cycles since "weld repair," before reaching 12,500 cycles since weld repair after the effective date of this AD.

(b) For purposes of this AD, weld repaired or weld repair is defined as an impeller repair which involved heat treating and that was performed from 1980 through 1997 at Honeywell Aerospace Services, Aftermarket-Phoenix Repair and Overhaul, 1944 E. Sky Harbor Circle, Phoenix, AZ 85034 (FAA Certificate Number ZN3R030M). Former names and FAA certificate numbers for Honeywell's Repair and Overhaul Facility are listed in Section 2.A. of the Accomplishment Instructions in Honeywell Alert Service Bulletin TPE331–A72–2083, Revision 1, dated May 17, 2002.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from, Los Angeles ACO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on July 18, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–18816 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–2044; File No. S7–28–02]

RIN 3235–AH 26

Custody of Funds or Securities of Clients by Investment Advisers

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Proposed rule.

SUMMARY: The Commission is proposing amendments to the custody rule under the Investment Advisers Act of 1940. The proposed amendments would modernize the rule by, among other things, requiring advisers that have custody of client assets to maintain those assets with broker-dealers, banks, or other qualified custodians. The amendments also would clarify circumstances under which an adviser has custody of client assets. The amendments are designed to conform the rule to modern custodial practices and enhance protections for client assets while reducing burdens on advisers that have custody of client assets.

DATES: Comments must be received on or before September 25, 2002.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0609. Comments may also be submitted electronically at the following E-mail address: *rule-comments@sec.gov*.

All comment letters should refer to File No. S7–28–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site *(http://www.sec.gov)*.[1]

FOR FURTHER INFORMATION CONTACT: Vivien Liu, Senior Counsel, or Jennifer L. Sawin, Assistant Director, at 202–942–0719 or IArules@sec.gov, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on the proposed amendments to rule 206(4)–2 [17 CFR 275.206(4)–2] [2] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (the "Advisers Act" or "Act") and to Part II, Item 14 of Form ADV [17 CFR 279.1].

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Executive Summary

Rule 206(4)–2 under the Advisers Act requires each investment adviser that has custody of client funds or securities to deposit client funds in bank accounts and to segregate and identify client securities and hold them in safekeeping. The rule also requires the adviser to send quarterly account statements to each client whose assets are in the adviser's custody, and to have an independent public accountant conduct an annual surprise examination of the custodied assets.

The Commission is proposing to amend rule 206(4)–2 to reflect modern custodial practices and clarify circumstances under which an adviser has custody of client assets and thus must comply with the rule. The amendments would require advisers that have custody to maintain client funds and securities with a broker-dealer, bank or other "qualified custodian." If the qualified custodian sends monthly account statements directly to an adviser's clients, the adviser would be relieved from sending its own account statements and undergoing an annual surprise examination. The proposed amendments would exempt advisers from the custody rule with respect to clients that are registered investment companies or are limited partnerships or other pooled investment vehicles that are subject to annual audit by an independent public accountant. The proposed amendments would also add a definition of "custody" to the rule and illustrate circumstances under which an adviser has custody of client assets. Finally, the proposed amendments would remove the requirement in Form ADV that advisers with custody include an audited balance sheet in their disclosure brochure to clients.

I. Background

Rule 206(4)–2 requires advisers to protect the assets that their clients have entrusted to their custody. We adopted the rule in 1962, shortly after Congress amended the Advisers Act to give us rulemaking and inspection authority under the Act's anti-fraud provisions.[3] A key factor prompting us to ask Congress for this authority was concern about the custodial practices of advisers and the safety of client assets.[4]

Rule 206(4)–2 applies to advisers that are registered with the Commission and that have custody of client funds or securities.[5] Under the rule, the adviser must deposit client funds in bank accounts that contain only client funds, and must segregate and identify client securities and hold them in a reasonably safe place.[6] Immediately after accepting custody of a client's funds or securities, the adviser must notify the client of where and how they will be maintained.[7] Each quarter, the adviser must send clients account statements, and at least once each year, the adviser must have an independent public accountant conduct a surprise examination of all client funds and securities in the adviser's custody.[8]

We have not amended rule 206(4)–2 substantively since we adopted it over forty years ago.[9] Since then, custodial practices have changed and, as a result, portions of the rule have become outdated or inconsistent with modern custodial practices.[10] Advisers' business practices also have evolved, increasing the likelihood that advisers may obtain custody of client assets in circumstances that we may not have anticipated in 1962.[11] Our staff has attempted to

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[1] We do not edit personal or identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Unless otherwise noted, when we refer to rule 206(4)–2 or any paragraph of the rule, we are referring to 17 CFR 275.206(4)–2 of the Code of Federal Regulations in which the rule is published.

[3] Amendments to the Advisers Act (Pub. L. 86–750, 86th Cong., 2nd Sess., 74 Stat. 885, 1960) (amending sections 206(4) and 204 of the Advisers Act); *Adoption of Rule 206(4)–2 under the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 123 (Feb. 27, 1962) [27 FR 2149 (Mar. 6, 1962)].

[4] *See Securities Act Amendments, 1959: Hearings Before House Committee on Interstate and Foreign Commerce*, 86th Cong., 107 (1959) (statement of Edward Gadsby, Chairman of the Securities and Exchange Commission). *See also* Securities and Exchange Commission, *Protection of Clients' Securities and Funds in Custody of Investment Advisers: Report on Embezzlement of Clients' Securities and Recommendations for Amending the Investment Advisers Act of 1940 (1945)* (describing various frauds involving advisers' embezzlement of client assets and recommending the Commission be given authority to regulate advisers' custodial practices); Investment Advisers Act Release No. 39 (Jan. 31, 1945).

[5] As of June 2002, 867 advisers (approximately 11% of the 7,583 investment advisers registered with the Commission) reported on their Form ADV that they had custody of client funds or securities.

[6] Rule 206(4)–2(a)(1) and (2).

[7] Rule 206(4)–2(a)(3).

[8] Rule 206(4)–2(a)(4) and (5).

[9] Rule 206(4)–2 has been amended twice. In 1989, we amended the rule to require accountants conducting surprise examinations to include Form ADV–E [17 CFR 279.8] as a cover page when filing examination certificates with us. *See Forms for Filing by Accountants*, Investment Advisers Act Release No. 1181 (July 26, 1989) [54 FR 32048 (Aug. 4, 1989)]. In 1997, as part of implementing Title III of the National Securities Markets Improvement Act of 1996 (Pub. L. 104–290, 110 Stat. 3428), we amended the rule so that it applies only to advisers registered (or required to be registered) with us. *See Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)].

[10] For example, the rule requires an adviser to segregate, identify and safe-keep client securities. *See* rule 206(4)–2(a)(1). This requirement assumes that securities are held in physical certificates. Most securities are now, however, held through book-entry in custodians' accounts with securities depositories. *See Custody of Investment Company Assets with a Securities Depository*, Investment Company Act Release No. 25266 (Nov. 15, 2001) [66 FR 58412 (Nov. 21, 2001)] at n.7 and accompanying text. *See also* James Rogers, *Policy Perspectives on Revised UCC Article 8*, 43 UCLA L. Rev. 1431 (1996).

[11] For example, many firms today have (as general partners) formed limited partnerships through which they provide advisory services (as investment advisers). Form ADVs submitted by advisers registered with us show that as of May 16, 2002, 2560 advisers act (or have related persons that act) as general partners to limited partnerships or as managing members to limited liability companies. Advisers that serve as both general partner and adviser generally have custody over the assets of the limited partnerships. *See infra* Section II. A of this Release.

accommodate these evolving business practices, and to reduce unnecessary compliance burdens on advisers, by issuing numerous no-action and interpretive letters and releases that helped to clarify the operation of the rule.[12] Many underlying issues remain, however, that can be resolved only through amendments to the rule. In addition, the accumulated guidance in these no-action and interpretive letters, while helpful to advisers, has diminished the transparency of the rule's requirements because an adviser seeking to understand the rule must review a large body of letters in addition to the rule itself.

Today, as part of our ongoing effort to review and modernize federal securities law, we are proposing comprehensive amendments to rule 206(4)–2 under the Advisers Act. The amendments, which we describe in more detail below, are designed to enhance the protections afforded to advisory clients' assets, harmonize the rule with current custodial practices, and clarify circumstances under which advisers have custody of client assets.

II. Discussion

A. Definition of Custody

Currently, we define "custody" in our instructions to Form ADV.[13] We propose to incorporate that definition into rule 206(4)–2, provide examples that illustrate the application of the definition, and include, within the rule, a limited exception for advisers that inadvertently receive client assets.

The proposed definition would provide that an adviser has custody of client assets when it holds, "directly or indirectly, client funds or securities or [has] any authority to obtain possession of them."[14] Accordingly, an adviser must comply with the rule when it has access to client funds and securities as well as when the adviser holds those assets. In either circumstance, clients are at risk that their assets may be lost, misused, misappropriated, or subject to the adviser's financial reverses.[15]

We propose to include, in the definition, three examples designed to illustrate circumstances under which an adviser has custody of client assets.[16] The first example clarifies that an adviser has custody when it has *any* possession or control of client funds or securities.[17] An adviser that holds clients' stock certificates or cash, even temporarily, puts those assets at risk of misuse or loss. We recognize, however, that an adviser may inadvertently receive client assets when a third party sends funds or securities to a client via the adviser, or when a client attempts to route funds or securities to his custodian through the adviser's office. To avoid causing an adviser to violate the rule inadvertently as a result of actions by other persons, the rule would expressly exclude inadvertent receipt by the adviser of client funds or securities, so long as the adviser returns them to the sender within one business day of receiving them.[18] We also propose to clarify that an adviser's possession of a check drawn by the client and made payable to a third party will not be considered possession of client funds for purposes of the custody definition.[19] The client's relationship with the drawee bank should provide the client with protections comparable to the protections the proposed rule would provide.[20]

The second example clarifies that an adviser has custody if it has the authority to withdraw funds or securities from a client's account.[21] An adviser with power of attorney to sign checks on a client's behalf, to withdraw funds or securities from a client's account, or to dispose of client assets for any purpose other than authorized trading has access to the client's assets.[22] Similarly, an adviser authorized to deduct advisory fees or other expenses directly from a client's account has access to, and therefore has custody of, the client funds and securities in that account.[23] These advisers might not have possession of client assets, but they have the authority to obtain possession.

The last example clarifies that an adviser has custody if it is the legal owner of the client assets or has access to those assets.[24] One common instance is a firm that acts as both general partner and investment adviser to a limited partnership.[25] By virtue of its position

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[12] Our Division of Investment Management has issued approximately 90 no-action and interpretive letters, and one interpretive release, under the rule. *See Investment Advisers; Uniform Registration, Disclosure, and Reporting Requirements; Staff Interpretation*, Investment Advisers Act Release No. 1000 (Dec. 3, 1985) [50 FR 49835 (Dec. 5, 1985)].

[13] Advisers use Form ADV to register with us. We amended instructions to Form ADV in 1985 to, among other things, explain that an adviser has custody if it directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them. *See* Glossary of Terms, Form ADV; *Uniform Investment Adviser Registration Application Form*, Investment Advisers Act Release No. 991 (Oct. 15, 1985) [50 FR 42903 (Oct. 23, 1985)].

[14] Proposed rule 206(4)–2(c)(1).

[15] *See Proposal to Adopt Rule 206(4)–2 under the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 122 (Nov. 6, 1961) [26 FR 10607 (Nov. 10, 1961) (the custody rule was designed to require investment advisers to maintain client funds and securities "in such a way that they will be insulated from and not be jeopardized by any unlawful activities or financial reverses, including insolvency, of the investment adviser."). *See also supra* note 3.

[16] While these examples represent some of the most common circumstances, there are other circumstances in which an adviser may have custody of client assets. An adviser may, for example, have custody if its affiliate holds assets of the adviser's clients and the adviser either controls the affiliate's operations or has access to the client assets through the affiliate. *See* section 208(d) of the Advisers Act [15 U.S.C. 80b–8(d)] (adviser may not, indirectly or through or by any other person, do any act or thing that would be unlawful for the adviser to do directly). Our staff previously has expressed similar views. *See Crocker Investment Management Corp.*, SEC Staff Letter (Apr. 14, 1978); *Ryder Stilwell Investment Advisers*, SEC Staff Letter (Nov. 22, 1988); *Baker, Jongewaard & Levenson Financial Planning Group, Inc.*, SEC Staff Letter (Feb. 24, 1989); *Penn Davis McFarland, Inc.*, SEC Staff Letter (Apr. 2, 1990).

[17] Proposed rule 206(4)–2(c)(1)(i).

[18] Our staff has issued no-action letters agreeing not to recommend enforcement action to the Commission if an adviser failed to comply with rule 206(4)–2 in such circumstances. *See Hayes Financial Services, Inc.*, SEC Staff Letter (Apr. 2, 1991).

[19] Checks payable to an adviser for payment of advisory fees or similar fees due to the adviser also do not represent client funds within the meaning of the custody rule and therefore advisers would not have custody as a result of receiving those checks. An adviser would, however, have custody of client funds if it holds a check drawn by the client and made payable to the adviser with instructions to pass the funds through to a custodian or to a third party.

[20] The client's relationship with the drawee bank provides the client with periodic statements and other sources of information regarding the disposition of the check.

[21] Proposed rule 206(4)–2(c)(1)(ii).

[22] *See* Glossary of Terms, Form ADV (entry for Custody states that an advisory "firm has custody, for example, if it has a general power of attorney over a client's account or signatory power over a client's checking account"). The Commission staff also has interpreted the rule in this manner in several letters. *See, e.g., Eugene Kaufman Inc.*, SEC Staff Letter (Jan. 7, 1982); *Howard J. Gordon Investments*, SEC Staff Letter (Dec. 1, 1982); *Baldwin Brothers Inc.*, SEC Staff Letter (Sept. 1, 1989); and *Baker, Jongewaard & Levenson Financial Planning Group Inc.*, SEC Staff Letter (Feb. 24, 1989).

[23] We understand many advisers rely on a series of staff no-action letters to avoid application of the rule when they have authority to withdraw their advisory fees from client assets (and, in the case of general partners, withdraw capital from the partnerships) that are otherwise held by an independent custodian. *See, e.g., Investment Counsel Association of America, Inc.*, SEC Staff Letter (June 9, 1982); *John B. Kennedy*, SEC Staff Letter (June 5, 1996); and *Securities America Advisors Inc.*, SEC Staff Letter (Apr. 4, 1997). The no-action assurances in these letters are conditioned on the advisers' use of alternative procedures to protect client assets, including an independent custodian's periodic delivery, to the clients, of information about the withdrawals. We have designed the proposed rule so that these advisers would be able to comply with the rule without facing the burdens they previously sought to avoid. *See infra* Sections II. B and II. C of this Release.

[24] Proposed rule 206(4)–2(c)(1)(iii).

[25] This example applies equally to an adviser that acts as both managing member and investment

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as general partner, the adviser generally has authority to dispose of funds and securities in the limited partnership's account and thus has custody of client assets.[26]

Our proposed definition of "custody" is based on our longstanding interpretation of the term currently used in the rule.

- Should we revise the definition in any way?
- The proposed rule would continue to interpret "custody" broadly to include advisers' access to client funds and securities. Does that definition continue to work well to protect client assets?
- Advisers that withdraw their fees from clients' accounts and rely on staff letters to avoid application of the custody rule send clients invoices detailing how those fees were calculated. Should our rules require advisers that deduct fees from clients' accounts to send such invoices to those clients?
- Will the examples be helpful? Are there additional examples we should add?

B. Use of Qualified Custodians

Rule 206(4)–2 currently requires advisers to maintain client funds with a bank, but does not require that client securities be held in a brokerage account or with any other type of financial institution.[27] Almost all advisers that have custody of client securities maintain them in accounts with a broker or a bank, but on occasion our examiners discover an adviser keeping certificates in office files or in a safety deposit box. Such practices do not provide adequate protection for client securities, because these certificates may too easily be lost, stolen, or destroyed.[28] We are therefore proposing to amend the rule to require that advisers maintain both client funds and securities with a qualified custodian in an account either under the client's name or under the adviser's name as agent or trustee for its clients.[29]

"Qualified custodians" under the proposed rule would include the types of financial institutions that customarily provide custodial services and are regulated and examined by their regulators with respect to those services.[30] These would include banks,[31] savings associations,[32] registered broker-dealers,[33] and registered futures commission merchants.[34] We recognize that advisory clients often invest in securities traded on foreign exchanges and their advisers must, as a practical matter, maintain securities with financial institutions in foreign countries where the securities are traded.[35] With respect to securities for which the primary market is in a country other than the United States, and to cash and cash equivalents reasonably necessary to effect transactions in those securities, we would treat financial institutions that customarily hold financial assets in that country and that hold the client assets in customer accounts segregated from their proprietary assets as qualified custodians.

Many advisers registered with us also would be qualified custodians under the proposed rule.[36] These advisers could maintain their own clients' assets, subject to the account statement requirements described below and the custody rules imposed by the regulators of the advisers' custodial functions. Advisers could also maintain client assets with affiliates that are qualified custodians.

We request comment on our proposal to require client funds and securities to be maintained by a qualified custodian.

- Should we require that all client funds and securities be maintained with qualified custodians?
- Are there other financial institutions that should be included as qualified custodians?
- Is our proposal with respect to foreign qualified custodians too broad—

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adviser of a limited liability company or another type of investment vehicle, or as both trustee and investment adviser of a trust.

[26] Advisers that also act as general partners have, in the past, avoided application of rule 206(4)–2 to their activities by relying on staff no-action and interpretive letters. *See, e.g., Bennett Management Co.*, SEC Staff Letter (Feb. 26, 1990); *Canyon Management Company*, SEC Staff Letter (Oct. 15, 1991); *PIMS Inc.*, SEC Staff Letter (Oct. 21, 1991). The no-action assurances in these letters are conditioned on, among other things, an independent representative reviewing and authorizing the adviser's withdrawals of funds from the partnership accounts and on custodians sending quarterly account statements to the independent representative. Under the proposed rule, an adviser would not be subject to an annual surprise examination if the qualified custodian sends monthly account statements directly to the limited partners or to their independent representative—a requirement similar to the procedures that these advisers already follow under the staff letters. *See infra* Section II. C of this Release. Moreover, under our proposal, the custody rule would not apply to advisers with respect to limited partnerships that are audited annually. *See infra* Section II. D. 2 of this Release.

[27] Instead, the rule currently requires that client securities be held in a reasonably safe place. *See* rule 206(4)–2(a)(1) and (2).

[28] For discussions of risks in keeping securities certificates, *see* Uniform Commercial Code, Revised Article 8, Prefatory Note at I.C.; Randall D. Guynn, Modernizing Securities Ownership, Transfer and Pledging Laws 21 (Capital Markets Forum, International Bar Association 1996).

[29] Proposed rule 206(4)–2(a)(1). Under the proposed rule, client funds and securities would have to be maintained in a custodial account so that the qualified custodian can provide account information to the clients. Keeping securities certificates in a bank safety deposit box, for example, would not satisfy the requirements of the proposed rule.

[30] Regulatory agencies or self-regulatory organizations require (either by rule or by supervisory policy) these financial institutions to carry fidelity bonds to cover possible losses caused by their employees' fraudulent activities. *See, e.g.*, New York Stock Exchange ("NYSE") rule 319, 2 New York Stock Exchange Guide (CCH) ¶ 2319; National Association of Securities Dealers ("NASD") rule 3020, NASD Manual (CCH) 4836; 12 CFR 7.2013 (national banks); 12 CFR 563.190 (savings associations); 12 U.S.C. 1828(e) and *Federal Deposit Insurance Corporation Manual of Examination Policies*, Section 4.4 (insured state nonmember banks); *3–1555 Federal Reserve Regulatory Service* (Feb. 28, 1962) and *Federal Reserve Board Commercial Bank Examination Manual*, Section 4040.1 (insured state member banks).

We are not proposing to require advisers to look beyond the "primary" custodian to determine whether the client assets are maintained with a qualified custodian. As a result, our proposed definition of "qualified custodian" does not include clearing agencies or securities depositories because they usually hold or process funds and securities transmitted from primary custodians. *Compare* section 17(f)(2) of the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. 80a–17(f)(2)] and rules 17f–4 and 17f–7 [17 CFR 270.17f–4 and 17f–7] under the Investment Company Act.

[31] A "bank" under section 202(a)(2) of the Advisers Act [15 U.S.C. 80b–202(a)(2)] includes national banks, members of the Federal Reserve System, and other banks and trust companies having similar authority to national banks and supervised by state or federal banking agencies.

[32] "Qualified custodian" would include any "savings association" as defined in section 3(b)(1) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)(1)] and insured and supervised by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act [12 U.S.C. 1811].

[33] "Qualified custodian" would include any broker-dealer that is registered with and regulated by us under the Securities Exchange Act of 1934 (the "Exchange Act"), holding the client assets in customer accounts.

[34] Futures commission merchants are registered with the Commodity Futures Trading Commission ("CFTC") under section 4f(a) of the Commodity Exchange Act [7 U.S.C. 6f(a)] and regulated by the CFTC. "Qualified custodian" would include a registered futures commission merchant holding the client assets in customer accounts. Registered investment advisers that also provide clients with advice about futures, including "security futures," may be required by CFTC rules to maintain custody of those clients' funds and security futures with a futures commission merchant. *See* rule 4.30 [17 CFR 4.30] under the Commodity Exchange Act. *See also* the Commodity Futures Modernization Act (Pub. L. 106–554, 114 Stat. 2763 (2000)) (security futures are both securities and futures).

[35] *See Exemption for Custody of Investment Company Assets Outside the United States*, Investment Company Act Release No. 14132 (Sept. 7, 1984) [49 FR 36080 (Sept. 14, 1984)] (prohibiting foreign financial institutions from acting as qualified custodians for securities purchased on a foreign stock exchange would cause "inconvenience and expense associated with moving the securities away [from] their primary market").

[36] For example, Form ADVs submitted by SEC-registered advisers indicate that as of May 16, 2002, 647 advisers are broker-dealers registered with us under section 15 of the Exchange Act [15 U.S.C. 78o] and 77 advisers are banks (or separately identifiable departments or divisions of banks).

should we limit them to entities regulated by a foreign financial regulatory authority? Alternatively, is the proposal too narrow—how many advisory clients would need to have a foreign custodian hold funds or securities other than those permitted under the proposed amendments?

- Should the rule permit advisers that are qualified custodians to maintain their clients' funds and securities themselves? With affiliated qualified custodians?

C. Delivery of Account Statements to Clients

Rule 206(4)–2 seeks to deter misuse of client assets by requiring an adviser with custody to send each client quarterly account statements,[37] and to engage an independent public accountant to conduct an annual surprise examination of client assets in custody.[38] Advisers have complained about the cost of annual surprise examinations and have sought to avoid them.[39] Moreover, experience has shown that the current rule has limited deterrent effect. Advisers that intend to misuse client assets can fabricate client account statements[40] and, because the surprise examination is performed only annually, many months may pass before the accountant has an opportunity to detect a fraud.

After reviewing the operation of the current rule and evaluating its benefits and costs, we are proposing an entirely different approach to protect advisory clients—an approach that would rely on periodic disclosure of account information by a qualified custodian rather than rely on a surprise examination. We propose to exempt advisers from the requirements to send quarterly account statements and to undergo annual surprise examinations if the qualified custodian sends monthly account statements directly to each advisory client.[41] Qualified custodians' delivery of account statements to clients directly should provide clients with confidence that any erroneous or unauthorized transactions or withdrawals by an adviser have been reflected.

We recognize that our new approach may not work in all custodial arrangements. Some advisers do not disclose the identity of their clients to their custodians to prevent a potential competitor from having access to their clients. Others may wish to protect the privacy of certain well-known clients. To accommodate this business practice, the proposed rule would require an adviser to continue sending quarterly account statements to each client that does not receive account statements directly from the qualified custodian and to undergo an annual surprise examination to verify the funds and securities of those clients.[42] To enhance our ability to protect advisory clients' assets by intervening as early as possible, the proposed amendments would require notice of any material discrepancies found during the examination. The rule would require the accountant finding such discrepancies during an examination to notify our Office of Compliance Inspections and Examinations.[43]

The proposed amendments contain a special provision requiring account statements (whether delivered by the qualified custodian or the adviser) to be sent directly to the limited partners of a limited partnership (or to their independent representative) if the adviser to the limited partnership also acts as its general partner and has custody of client assets.[44] As general partner, the adviser generally has custody of these client assets.[45] This special provision would avoid the adviser's being the sole recipient of account statements in its capacity as general partner of the limited partnership.[46] Delivery of account statements to the adviser but not to the limited partners would not, of course, deter the adviser's misuse of client assets.

- We request comments on our proposal to rely on account statements delivered to clients by qualified custodians instead of relying on investment advisers sending account statements and undergoing annual surprise examinations. Would the proposal afford equivalent protection to clients? Should the rule expressly require advisers to review the custodian's statement and identify any discrepancies?
- Should advisers that are acting as their clients' qualified custodians or that are using affiliated qualified custodians continue to be subject to annual surprise examinations?
- We understand that many, perhaps most, qualified custodians already send account statements directly to customers as a matter of practice, and therefore the effect of our proposal would be to eliminate the cost of annual surprise examinations for many advisers without imposing additional burdens.

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[37] Rule 206(4)–2(a)(4). This requirement is applicable to advisers with respect to each client whose assets are in the advisers' custody.

[38] Rule 206(4)–2(a)(5).

[39] *See Baldwin Brothers, Inc.*, SEC Staff Letter (Apr. 22, 1985). *See also* staff letters listed in notes 23 and 26 *supra*.

[40] *See, e.g., In the Matter of Vector Index Advisors, Inc. and Steven H. Adler*, Investment Advisers Act Release No. 1996 (Nov. 15, 2001) (adviser sent clients false account statements to hide its fraudulent activities). *See also Securities and Exchange Commission* v. *RCS Financial Services, Inc.*, (N.D. Ohio) Civil Action No. 98 CV 1047, Litigation Release No. 15748 (May 19, 1998); *In the Matter of Robert Pierce and Carrie L. Williams Pierce*, Investment Advisers Act Release No. 1620 (Mar. 17, 1997); *Securities and Exchange Commission* v. *Teresa V. Fernandez*, (S.D.N.Y.) 96 Civ. 8702 (JES), Litigation Release No. 15159 (Nov. 19, 1996); *United States* v. *Steven D. Wymer*, Criminal Action No. 92–2–RG (C.D. Cal), Litigation Release No. 13635 (May 12, 1993); *In re Thomas Walter McKibbin and Equitrust, Inc.*, Investment Advisers Act Release No. 1165 (May 1, 1989).

Steven D. Wymer, an investment adviser, testified before a Congressional subcommittee that his ability to misuse client assets was dependent upon custodians making him the exclusive recipient of account statements. He was thus able to deliver fabricated statements to clients to hide unauthorized transactions and losses. *See* Investment Adviser Industry Reform, Hearing before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 103d Cong. 1st Sess. 88–89 (1993).

[41] Proposed rule 206(4)–2(a)(3). To avoid the situation in which an adviser would be violating the rule as a result of a qualified custodian's failure to deliver an account statement to a client, the rule would require the adviser to have a "reasonable belief" that the custodian is delivering the required account statements. An adviser could form a reasonable belief under the proposed rule if, for example, the qualified custodian provides the adviser with a copy of the account statement that was delivered to the client.

[42] Proposed rule 206(4)–2(a)(3)(ii). Our proposal in this regard has no effect on a qualified custodian's other legal obligations with respect to its customers.

[43] Proposed rule 206(4)–2(a)(3)(ii)(C). Our rules under the Exchange Act impose a similar requirement. *See* rule 17a–5(h)(2) [17 CFR 240.17a–5(h)(2)] (requiring an auditor, upon finding any material inadequacies in the audited broker-dealer's accounting system or procedures for safeguarding securities, to notify the broker-dealer, and requiring the broker-dealer to notify us within 24 hours of receiving the notice from the auditor).

[44] Proposed rule 206(4)–2(a)(3)(iii). The provision would also apply to advisers with respect to other pooled investment vehicles, including limited liability companies where the adviser also acts as the managing member of the limited liability company. Account statements must be sent directly to the limited liability company members or to their independent representative(s). Limited partnerships and other investment vehicles often engage an independent representative to receive account statements and monitor the status of assets in custody on behalf of all the limited partners.

For purposes of the rule, an "independent representative" would be a person that (i) acts as agent for investors in a pooled investment vehicle and by law or contract is obligated to act in the best interest of the investors; (ii) does not control, is not controlled by, and is not under common control with the adviser; and (iii) does not have, and has not had within the past two years a material business relationship with the adviser. *See* proposed rule 206(4)–2(c)(2).

[45] *See supra* discussions of "custody" under Section II. A of this Release.

[46] As discussed below in more detail, the custody rule, including proposed rule 206(4)–2(a)(3)(iii), would not apply to advisers with respect to pooled investment vehicles that are audited annually. *See* proposed rule 206(4)–2(b)(2).

We request comment on our understanding and expectations.

- We propose to require monthly account statements from qualified custodians so that clients may identify any irregularities earlier. We understand that most qualified custodians send monthly account statements to clients as a matter of practice.[47] We request comment on this understanding.
- The proposed rule would permit independent representatives to receive account statements from qualified custodians on behalf of investors in limited partnerships and other pooled investment vehicles. Are there any other types of clients that need independent representatives to receive account statements on their behalf?
- We also request comment on our proposal to require advisers with custody to continue sending quarterly account statements to clients and to continue undergoing annual surprise examinations if the qualified custodian does not send account statements directly to the adviser's clients. We understand that most custodians do send statements directly—is there a need for this alternative procedure? Should we require these advisers to obtain their clients' informed consent prior to using this alternative procedure? If not, should we require advisers that use this alternative procedure to disclose, to clients, the risks involved in receiving account statements quarterly from the adviser itself rather than monthly from a qualified custodian, or to make other disclosures?
- Should we require additional safeguards to deter misuse of clients' assets by advisers that send account statements to clients themselves—for example, should we require these advisers to send their statements to clients monthly rather than quarterly? Should the rule require surprise examinations to be conducted more often than annually? Are there other requirements or procedures that would further protect these advisers' clients' assets?

D. Exemptions

1. Registered Investment Companies

We propose to exempt advisers from the rule with respect to clients that are registered investment companies. Registered investment companies and their advisers must comply with the strict requirements of section 17(f) of the Investment Company Act of 1940 and the custody rules we have adopted under that section.[48] We believe that applying rule 206(4)–2 in addition to those requirements may not increase safeguards on investment company assets.

2. Pooled Investment Vehicles

We also propose to exempt advisers from the rule with respect to client assets held in pooled investment vehicles such as limited partnerships or limited liability companies if the pooled investment vehicle (i) has its transactions and assets audited at least annually; and (ii) distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 90 days of the end of its fiscal year.[49] These investors will have established, by contract, a means to protect themselves from misuse of pool assets. Moreover, a periodic report by auditors may be more useful to them than receiving reports of the large number of transactions in pool assets.

- We request comment on our proposal to exempt advisers from the rule with respect to pooled investment vehicles that are subject to an annual audit. Should the rule expressly require the adviser to maintain the assets of the pooled vehicle with a qualified custodian?
- We understand that this exemption would apply to most limited partnerships, limited liability companies and other pooled investment vehicles, and thus would eliminate a great number of issues and concerns that have arisen under the current rule and that have been addressed in numerous staff no-action or interpretive letters.[50] We ask for comment on this understanding.

3. Registered Broker-Dealers

We are not proposing to retain the current exemption from the rule for advisers that are also registered broker-dealers.[51] The proposed rule would permit advisers that are also registered broker-dealers (and advisers that are also other types of qualified custodians) to hold custody of their clients' funds and securities without being subject to annual surprise examinations so long as they send monthly statements to their clients. Broker-dealers already are required to send confirmations and account statements to their customers, including those that are advisory clients.[52] Most advisers that also are registered broker-dealers should therefore already be in compliance with the proposed rule and face no additional burdens.

E. Amendments to Part II of Form ADV

Advisers that have custody of client assets must include, in their disclosure statements ("brochures") sent to clients, a balance sheet audited by an independent public accountant.[53] We adopted the audited balance sheet requirement, in part, to assist clients in determining whether their adviser may face financial pressure to misuse the assets entrusted to it.[54] A balance sheet, however, may give an imperfect picture of the financial health of an advisory firm—many profitable advisers have few financial assets. Moreover, rule 206(4)–4[55] now requires advisers to disclose to their clients any financial condition that

[47] Broker-dealers that are members of the NASD, the NYSE or the American Stock Exchange (AMEX) are generally required to provide customers with immediate confirmations and account statements at least quarterly. While NYSE rules permit a member to send account statements to, for example, the investment adviser if the adviser holds power of attorney over the customer's account, such delivery would not satisfy the requirement under (a)(3)(i) of the proposed rule (account statements to clients by qualified custodian). *See* NASD Rules IM–2340, NASD Manual (CCH) 4292; NYSE rule 409, 2 New York Stock Exchange Guide (CCH) ¶ 2409; AMEX rule 419, 2 American Stock Exchange Guide (CCH) ¶ 9439. Banks effecting a purchase or sale of securities for a customer are required to provide immediate confirmations under regulations of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, subject to limited exceptions. These regulations permit banks and their customers to agree upon account statements at least quarterly in lieu of immediate confirmations for certain types of customer accounts, such as agency accounts for which the bank exercises investment discretion. 12 CFR 12.4, 12.5, 208.34, 344.5, 344.6 (2001). While these regulations generally require account statements to be sent quarterly, we understand that broker-dealers and banks send account statements to customers monthly as a matter of practice.

[48] 15 U.S.C. 80a–17(f) and rules 17f–1 through 17f–7 under the Investment Company Act of 1940 [17 CFR 270.17f–1 through 17 CFR 270.17f–7].

[49] *See* proposed rule 206(4)–2(b)(2). For purposes of this clause, "audit" has the meaning under section 2(d) of Article 1 of Regulation S–X [17 CFR 210.1–02(d)].

We are not proposing to require that any pooled investment vehicle undergo an annual audit. We understand, however, that many hedge funds and other pooled accounts do undergo an annual audit, and we believe requiring an adviser to comply with the requirements of proposed rule 206(4)–2 for those accounts may be unnecessary.

[50] As discussed earlier, advisers should no longer find it necessary to rely on these staff letters. *See supra* note 26.

[51] Rule 206(4)–2(b) exempts advisers that are also broker-dealers from the custody rule if they are subject to and in compliance with the net capital requirement under rule 15c3–1 [17 CFR 240.15c3–1] under the Exchange Act.

[52] *See supra* note 47.

[53] Part II, Item 14 of Form ADV.

[54] *See Investment Adviser Requirements Concerning Disclosure, recordkeeping, Applications for Registration and Annual Filings*, Investment Advisers Act Release No. 664 (Jan. 30, 1979) [44 FR 7870 (Feb. 7, 1979)] (adopting Part II of Form ADV, including the requirement to include an audited balance sheet).

[55] 17 CFR 275.206(4)–4.

is reasonably likely to impair the adviser's ability to meet its contractual commitments to its clients, a disclosure requirement that did not exist in 1979 when the audited balance sheet requirement was adopted.[56] We believe that this current disclosure requirement is a better means to warn clients of when their assets may be at additional risk, and that clients should not have to rely for protection on reviewing balance sheet information. We are therefore proposing to eliminate the requirement that advisers with custody include a balance sheet in their client brochures.

- We request comment on this proposal. Have advisory clients found the balance sheet useful in evaluating the risks to their assets in advisers' custody? Should we retain the requirement?

III. General Request for Comment

The Commission requests comment on the rule amendments proposed in this Release, suggestions for additional changes to the rules and comment on other matters that might have an effect on the proposals contained in this Release. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1966, the Commission also requests information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits resulting from its rules. Rule 206(4)–2 seeks to protect clients' assets in the custody of advisers from misuse or misappropriation, by requiring advisers to send each client quarterly account statements and to have independent public accountants conduct annual surprise examinations of the custodied assets. In the 40 years since we adopted the rule, custody practices in the securities markets have changed, and some provisions of the rule have become outdated. In addition, advisers have complained about the cost of annual surprise examinations. Moreover, experience has shown that the current rule has limited deterrent effect on investment advisers determined to misuse client assets. Our proposed amendments to the rule would require advisers to maintain clients' assets with qualified custodians and excuse advisers from annual surprise examinations if the qualified custodians send monthly account statements to the clients directly.

We believe the vast majority of advisers already maintain their clients' assets with qualified custodians who prepare monthly account statements. These amendments will enhance the protections afforded to clients' assets while at the same time reducing advisers' compliance burden. We have identified certain costs and benefits that may result from the proposed rule amendments. We request comment on the costs and benefits of the proposed rule amendments, and encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

A. Background

Our rules currently require advisers with custody of client assets to deposit client funds in bank accounts that contain only client funds, and to segregate and identify client securities and hold them in a reasonably safe place.[57] Each quarter, these advisers must send clients account statements, and at least once each year, these advisers must have an independent public accountant conduct a surprise examination of all the client funds and securities in the advisers' custody.[58] In addition, advisers with custody of client funds or securities must include an audited balance sheet with the disclosure brochure they send to their clients.

Rule 206(4)–2 has not been substantively amended since its adoption over 40 years ago. The proposed amendments would make several changes to the existing rule, to modernize it to reflect developments in securities market custody practices. First, advisers with custody of client funds and securities would be required to maintain those assets in accounts with qualified custodians, such as a broker or a bank.[59] Under the current rule, advisers are required to maintain clients' funds in a bank, but they are not required to maintain clients' securities with a qualified custodian. Second, if the qualified custodian sends monthly account statements directly to the advisory clients, the adviser would not be required to send account statements. The current rule requires advisers to send each client a quarterly account statement itemizing the funds and securities in the advisers' custody and all transactions for the account. Third, if the qualified custodian sends monthly account statements directly to the advisory clients, the adviser would not be required undergo an annual surprise examination. Under the current rule, advisers with custody must have an independent public accountant conduct an annual verification of the accuracy of account statements provided to the adviser's clients. Fourth, for any advisers subject to the annual surprise examination requirement, their independent public accountants would be required to notify the Commission of any material discrepancies that they uncover in the examination. The current rule does not require any such notice. Fifth, we would eliminate the current requirement that advisers with custody include an audited balance sheet with their disclosure brochures.

In addition, the proposed amendments would add new provisions to the custody rule to enhance its transparency and reflect advisers' business practices. First, the proposed amendments insert a definition of "custody" into the rule (based on the definition currently used in Form ADV) together with examples to illustrate circumstances under which an adviser has custody.[60] Second, a special provision would require account statements to be sent directly to the limited partners (or beneficial owners in other types of pooled investment vehicles) if the adviser also serves as the general partner of the limited partnership and has custody (or holds a managing position in other types of pooled investment vehicles and has custody). Third, we would exempt client assets held in a limited partnership or other pooled investment vehicle from the requirements of the rule if the partnership is audited at least annually and the audited financial statements are delivered to limited partners.

Based on advisers' filings with us, we estimate that a relatively small portion of investment advisers registered with us—approximately 11 percent—have custody of clients' assets.[61] Of the 867

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[56] *Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients*, Investment Advisers Act Release No. 1083 (Sept. 25, 1987) [52 FR 36915 (Oct., 2, 1987)] (adopting rule 206(4)–4, which requires disclosure of an adviser's precarious financial condition).

[57] Rule 206(4)–2(a)(1) and (2).

[58] Rule 206(4)–2(a)(4) and (5).

[59] Under proposed rule 206(4)–2(c)(3), a qualified custodian could be a bank, a savings association, a broker-dealer, a futures commission merchant, or in certain instances a foreign custodial institution.

[60] Proposed rule 206(4)–2(c)(1) would provide that an adviser has custody of client assets when it holds, "directly or indirectly, client funds or securities or [has] any authority to obtain possession of them." The examples, based on longstanding interpretation of the term currently used in the rule, address situations involving advisers' possession or control of clients' funds or securities, the authority to withdraw funds or securities from clients' accounts, or access to clients' funds or securities by virtue of the advisers' legal capacity.

[61] *See infra* note 80 and accompanying text (867 SEC-registered advisers report having custody, but

Continued

advisers who currently report having custody, many also report that they are broker-dealers (123) or banks (33).[62] Advisers that are also registered broker-dealers or banks would be "qualified custodians" under the proposed rule and may keep custody of their own clients' assets. We expect that all 156 of these advisers[63] would, in their capacity as qualified custodians, send monthly account statements to their advisory clients. Of the remaining 711 advisers that report having custody,[64] we estimate that 95 percent of them (675 advisers)[65] would arrange to have qualified custodians send monthly account statements to 99 percent of their clients, and would prepare their own statements for 1 percent of their clients.[66] We expect that the remaining 36 advisers[67] would prepare their own statements for all of their clients.[68]

B. Benefits

Improved protection for advisory clients. We have designed the proposed amendments to offer greater protection for advisory clients. As discussed above, the proposed amendments would exempt advisers from the requirements to send each client account statements and to undergo an annual surprise examination of the client's account if a qualified custodian sends monthly account statements directly to the advisory client. We expect that, as a result, most advisers will have qualified custodians deliver account statements directly to advisory clients, rather than pay the costs of annual surprise examinations. Clients' early identification of questionable transactions upon receipt of an accurate account statement from a qualified custodian on a monthly basis, rather than an annual surprise examination that may not occur for many months, should allow clients to move more swiftly and to reduce their assets' exposure to malfeasance by advisers. Similarly, we anticipate that the special provision for providing account statements for limited partnerships and other pooled investment vehicles should provide investors (or their independent representatives) the opportunity to identify any erroneous or unauthorized transactions or withdrawals by the partnership's adviser.

As discussed above, we expect that nearly all of the clients of advisory firms that currently have custody of their clients' assets will receive monthly statements from qualified custodians under the rule.[69] The potential benefit to each client is not, however, quantifiable. We also infer that most of these clients already receive monthly statements from qualified custodians, as a result of voluntary practices by their advisers. The potential benefit of having this practice institutionalized in a regulation is also not quantifiable.

In addition, as discussed above, we estimate that a few advisers will not avail themselves of the option to have qualified custodians send monthly account statements to some or all of their clients, and that approximately 28,845 clients will continue to be protected primarily by annual surprise examinations of these advisers as a result.[70] The proposed amendments would require independent public accountants conducting these examinations to advise the Commission of any material discrepancies they discover in the examination. This will enhance the safety of these clients' assets, because the Commission will be able to act promptly and preempt further losses resulting from malfeasance by the adviser. The potential benefit to clients in this regard is not quantifiable.

The rule will also provide greater protection for advisory clients by requiring advisers to maintain clients' securities with a qualified custodian. Based on our examination experience, it is rare for an adviser to retain physical custody of any particular client's securities. Thus, advisory clients are already receiving this benefit as a matter of practice in most instances. The potential benefit of having this practice institutionalized in a regulation is not quantifiable.

Remove unnecessary regulatory requirements. We estimate that approximately 744 advisers are currently required to undergo annual surprise examinations.[71] The Commission staff has estimated, in connection with Paperwork Reduction Act analyses, that on average, an adviser spends approximately 335 hours and pays an additional $8,000 annually in connection with undergoing annual surprise examinations under the existing rule.[72] The proposed amendments to rule 206(4)–2 would provide these advisers with the opportunity to avoid the costs of these annual surprise examinations. As discussed above, we estimate that only 36 advisers will continue to incur the costs of an annual surprise examination with respect to all their clients, and another 675 will only incur these costs with respect to one percent of their clients.[73] The new compliance requirements under the amended rule 206(4)–2 would focus on investment advisers ascertaining whether qualified custodians are sending monthly account statements to each of the adviser's clients. This sets forth a much simpler and less expensive compliance procedure.

We request comment on our estimates of the number of advisers that would avail themselves of the opportunity to avoid the time and costs of an annual surprise examination under the rule. We also request comments quantifying the reduction in costs that would be obtained through the new compliance procedure.

In addition, for other advisers who have custody but rely on procedures set out in staff no-action letters in lieu of complying with the annual surprise examination requirement, the proposed amendments would eliminate the cost of compliance with the procedures set forth in those letters. The number of advisers who have custody but rely on procedures set out in staff no-action letters in lieu of complying with the annual surprise examination requirement is difficult to estimate.[74] We request comments quantifying the costs advisers incur in connection with the alternative procedures under the staff no-action letters, how many

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this may under-represent the number of advisers who actually have custody).

[62] *See infra* note 82 and accompanying text.

[63] 123 + 33 = 156.

[64] 867 – 123—33 = 711.

[65] 711 × 0.95 = 675.

[66] We base this estimate on our experience examining investment advisers. As we discuss, *infra* note 90 and accompanying text, we estimate that SEC-registered investment advisers have a mean of 670 clients each. Thus, we estimate that this group of advisers would be preparing their own statements for an aggregate group of 4,725 clients (670 mean clients per adviser × 0.01 = 7 clients per adviser × 675 advisers = 4,725 clients).

[67] 867 – 123 – 33 – 675 = 36.

[68] We estimate that these 36 advisers would have 24,120 clients in the aggregate (36 × 670 = 24,120). *See supra* note 66.

[69] *See supra* notes 61–68 and accompanying text.

[70] *See supra* notes 66 and 68. We estimate the aggregate number of clients at 28,845 (4,725 + 24,120).

[71] As we discuss at notes 61–68 *supra* and accompanying text, 867 advisers report having custody. Of these, 123 report that they are also broker-dealers. Broker-dealers are exempt from the current rule. 867 – 123 = 744 non-exempt advisers with custody.

[72] This estimate is based on the estimate that an adviser (i) spends 0.5 hours per client in connection with the annual surprise examination, (ii) has an average of 670 clients (0.5 x 670 = 335), and (iii) pays $8,000 in fees to an independent public accountant. *See infra* notes 87–88 and accompanying text.

[73] These 675 advisers would benefit from reducing the hours and other costs they spend on surprise examinations. As discussed below, *infra* notes 90 and 93, each of these 675 advisers would spend approximately 3.5 hours and pay $1,000 annually in connection with undergoing annual surprise examinations under the proposed rule.

[74] *See infra* note 80 and accompanying text.

advisers incur such costs, and the reduction in costs that would be obtained through the new compliance procedure.

The proposed amendments would also eliminate the requirement set forth in Form ADV that advisers with custody must include, in their disclosure brochures sent to clients, a balance sheet prepared and audited by an independent public accountant. The elimination of this balance sheet requirement would reduce advisers' compliance burden. The Commission staff has estimated, in connection with Paperwork Reduction Act analyses, that an adviser not otherwise required to prepare audited financial statements presently spends approximately $15,000 annually to comply with this requirement, and that approximately 580 advisers with custody are currently incurring these costs.[75] We request comment on our estimate of these costs and the number of advisers who would be relieved from these costs as a result of the proposed amendments.

We do not anticipate that eliminating the balance sheet requirement will reduce protections to clients. Many profitable advisers have few financial assets, and a balance sheet may give an imperfect picture of the financial health of an advisory firm. Moreover, some clients may not have experience in interpreting the financial information presented in a balance sheet. Finally, rule 206(4)–4[76] now requires advisers to disclose to their clients any financial condition that is reasonably likely to impair the adviser's ability to meet its contractual commitments to its clients, and this disclosure is likely to be more useful to clients than a balance sheet; accordingly, we do not expect any reduction in investor protection to result from the proposed change.

Improved clarity and transparency of the rule. We anticipate that investment advisers will find it easier to understand and to comply with the rule as a result of the proposed amendments, and that this increased transparency may result in cost savings for advisers. We adopted rule 206(4)–2 in 1962 and the rule was designed to operate in the securities markets of that time. The proposed amendments would improve the clarity and transparency of the rule by inserting a definition of "custody" into the rule and by incorporating current custodial practices into our requirements. The definition of "custody" is based on the definition that has been used in the instructions to Form ADV since 1985, but our proposed amendments make the definition easier to use by providing examples of the custodial situations most likely to be encountered by an adviser in today's securities markets. Advisers will benefit from this transparency because they (or their counsel) will no longer need to refer to other materials such as staff no-action letters for these examples. Similarly, advisers relying on certain procedures set out in staff no-action letters discussed above, as an alternative to the annual surprise examination requirement, will no longer need to refer to this body of letters. We request comment on the costs advisers currently incur in this regard, such as attorneys' fees, and on the likely savings advisers would experience under the proposed amendments to the rule.

C. Costs

The proposed amendments would require that all client funds or securities be maintained with a qualified custodian. This requirement may impose costs on advisers that are not already maintaining clients' securities in accounts with qualified custodians. Based on our experience in examining advisers' operations, however, we estimate that no more than 1 percent of advisers with custody keep any clients' securities in places other than accounts with qualified custodians, and even these advisers maintain almost all of their clients' assets with qualified custodians. We estimate that the additional cost of this requirement, if any, would therefore be minimal.

In addition, while the proposed amendments would exempt most advisers that have custody from the costs of undergoing annual surprise examinations and sending account statements, that exemption would be conditioned on qualified custodians sending monthly account statements directly to the advisers' clients. This condition may impose costs on some advisers. Our understanding is that, in most instances, qualified custodians are already delivering monthly account statements to advisers' clients as a matter of practice.[77] However, qualified custodians that are not delivering account statements directly to clients and that would have to do so at the request of advisers may pass on the new costs to advisers. These costs are necessary for the protection of advisory clients and we estimate that they should be no greater, at an aggregate level, than the costs incurred under the current account statement delivery requirement. Moreover, an investment adviser has the option to continue under the old approach,[78] in the unlikely event that the costs are greater. We request comments quantifying the costs that advisers would incur under either approach.

D. Request for Comment

- The Commission requests comments on the potential costs and benefits identified in this release, as well as any other costs or benefits that may result from the proposals.
- We encourage comments to identify, discuss, analyze, and supply relevant data regarding these or additional costs and benefits.

V. Paperwork Reduction Act

The proposed amendments contain several "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[79] and the Commission has submitted the amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are "Rule 206(4)–2, Custody of Funds or Securities of Clients by Investment Advisers" and "Form ADV, Financial Information" under the Advisers Act. The rule and the form contain currently approved collection of information numbers under OMB control numbers 3235–0241 and 3235–0049, respectively. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The collections of information under rule 206(4)–2 are necessary to ensure that clients' funds and securities in the custody of advisers are safeguarded, and information contained in the collections is used by staff of the Commission in its enforcement, regulatory, and examination programs. The respondents are investment advisers registered with us that have custody of clients' funds or securities. The collections of information under Form ADV are necessary for use by staff of the Commission in its examination and oversight program. The respondents are investment advisers seeking to register with the Commission or to update their registration. Responses provided to the Commission are not kept confidential.

[75] *See infra* note 96 and accompanying text. pp

[76] 17 CFR 275.206(4)–4. When we adopted the balance sheet requirement in 1979, rule 206(4)–4 was not in existence. *See supra* note 54.

[77] Based on our experience in examining advisers, we estimate that less than 1% of advisory clients (excluding investors in pooled investment vehicles) do not receive account statements directly from custodians.

[78] Proposed rule 206(4)–2(a)(3)(ii).

[79] 44 U.S.C. 3501 to 3520.

A. Rule 206(4)–2

According to our records, 867 out of the 7,583 advisers registered with the Commission have custody of client funds or securities.[80] These records also show that 123 advisers registered with us that report having custody are also registered broker-dealers exempted from the current rule. The proposed amendments would remove this exemption, but these advisers should be in compliance with the proposed rule without facing additional burdens.[81]

The current rule requires advisers registered with us that have custody of clients' assets to send account statements to those clients at least quarterly and to undergo an annual surprise examination to verify the custodied assets. The proposed amendments would exempt advisers from these two requirements if qualified custodians send monthly account statements directly to the advisory clients. As discussed in detail below, we estimate that of the 867 advisers that reported to have custody of client assets, 156 would be fully exempted from these two requirements, 675 would be exempted from the requirements with respect to 99 percent of their clients and 36 would remain subject to both requirements with respect to all of their clients.

We estimate that advisers that are registered broker-dealers (123 firms) or banks (33 firms) would be exempt from these two requirements with respect to all of their clients.[82] We further estimate, based on our experience in examining advisers, that 95 percent of the other 711 advisers that have custody would use this exemption with respect to approximately 99 percent of their clients; these 675 advisers[83] would still be required to send account statements and undergo an annual surprise examination with respect to 1 percent of their clients; and 36 advisers would still be subject to these requirements with respect to all of their clients.

In addition, the proposed amendments would further reduce burdens by exempting all advisers from the custody rule with respect to their clients that are investment companies or audited limited partnerships.[84]

The above analysis shows that the proposed amendments would generally reduce the paperwork burden for advisers. The currently approved annual aggregate burden of collection of information under rule 206(4)–2 is 21,625 hours. This approved annual aggregate burden was based on estimates that (i) 173 advisers were subject to the rule, (ii) the advisers had, on average, 50 clients each, and (iii) each of these advisers spent an average of 2.5 hours annually in responses with respect to each client.[85] In addition, the approved annual burden includes an aggregate cost estimate of $692,000. This cost was based on an estimate that an adviser would pay an independent public accountant $4,000 to conduct the annual surprise examination.[86]

Updating those prior calculations based on current information from advisers registered with us, however, we would now estimate that (i) 744 advisers are subject to the existing rule, and (ii) advisers registered with us have, on average, 670 clients each. We would continue to estimate that the burden on each adviser is 2.5 hours annually for each client. These current data would increase the annual aggregate burden under the current rule to 1,246,200 hours.[87] In addition, we would now estimate the cost an adviser would incur in obtaining an annual surprise examination in the form of accounting fees would be $8,000, and these current data would increase the aggregate cost estimate to $5,952,000.[88]

As stated above, however, for purposes of estimating the burden hours under the proposed amendments, we now estimate that the number of advisers subject to the collections of information with respect to all of their clients for whom they have custody would decrease to 36 (5 percent of the 711 advisers that have custody and are not broker-dealers or banks), and a further 675 advisers (711 advisers × 95 percent) would be subject to these burdens with respect to only 1 percent of their clients.[89] Assuming an average of 670 clients per adviser registered with us, the aggregate annual burden that advisers would face under the proposed amendments would decrease to 72,113 hours.[90] In addition, the proposed amendments would require an independent public accountant to notify our Office of Compliance Inspections and Examinations upon finding any material discrepancy during the course of conducting an annual surprise examination of the client funds and securities in an adviser's custody. Of the 711 annual surprise examinations that would occur under the proposed

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[80] Based on information filed through the IARD system as of June 2002, 867 advisers registered with us report on their Form ADVs that they have custody. There may be additional advisers registered with us that would be deemed to have custody under the proposed revised rule but that are relying on staff letters (*see supra* notes 23 and 26) to avoid application of the current rule to their advisory business, and therefore do not report on their Form ADV that they have custody.

[81] Advisers that are also registered broker-dealers would be "qualified custodians" under the proposed rule and may keep custody of their own (and other advisers') clients' assets. Broker-dealer rules already require these firms to send account statements to their customers and we understand that broker-dealers generally send customers monthly account statements, as a matter of practice. Therefore these advisers should not be subject to the annual surprise examination requirement. *See supra* note 47.

[82] As noted earlier, 123 advisers registered with us that report having custody are also broker-dealers. Another 33 advisers registered with us that report having custody also report that they are actively engaged in business as a bank. As is the case for broker-dealers, banks would be qualified custodians under the rule and may keep custody of their own (and other advisers') clients' assets. *See supra* note 81. In addition, many of these 33 advisers that are banks may also use the exemption provided under proposed rule 206(4)–2(b)(1) (exempting advisers from the custody rule with respect to any client that is a registered investment company). Section 202(a)(11)(A) of the Advisers Act [15 U.S.C. 80b–2(a)(11)(A)] excludes banks from the definition of "investment adviser" except to the extent they advise a registered investment company, and many of these banks may therefore have only registered investment companies as their advisory clients.

[83] 0.95 × 711 = 675.

[84] *See supra* Section II. D. of this Release.

[85] The approved burden was based on an estimated 173 advisers that are subject to the custody rule (a total of 628 advisers with custody minus 455 broker-dealers exempted from the custody rule). The approved burden was also based on an estimate that these 173 advisers responded, on average, 5 times annually (4 times to prepare quarterly account statements and 1 time to respond to the annual surprise examination requirement) with respect to each of their 50 clients at an average of 0.5 hours per response, thus spending an estimated 2.5 hours per client annually. The total burden for each adviser was therefore estimated to be 125 hours annually (50 clients × 2.5 hours = 125 hours) and the annual aggregate burden for all advisers was estimated to be 21,625 hours (173 advisers × 125 hours = 21,625 hours).

[86] 173 advisers × $4,000 accounting fees = $692,000.

[87] 744 advisers x 670 clients × 2.5 hours annually per adviser per client = 1,246,200 hours.

[88] 744 advisers × $8,000 accounting fees = $5,952,000.

[89] As discussed earlier, 867 advisers registered with us currently report having custody of clients' funds or securities. We estimate that 123 broker-dealers and 33 banks will not be required to send quarterly account statements or undergo an annual surprise examination under the rule as proposed to be revised. We further estimate that, of the remaining 711 advisers that have custody, 95% (675 advisers) will use qualified custodians to deliver account statements to 99% of their clients, leaving an average of 7 clients per adviser for whom the adviser must send account statements and undergo an annual examination. The other 5% of advisers with custody (36 advisers) would be subject to the collections of information under the rule with respect to all of their clients (an average of 670 clients per adviser).

[90] 675 advisers would have 5 responses with respect to each of 7 clients annually for an average of 35 annual responses per adviser, or an aggregate of 23,625 annual responses. An additional 36 advisers would have 5 responses with respect to each of 670 clients annually for an average of 3,350 annual responses per adviser, or an aggregate of 120,600 annual responses. 23,625 + 120,600 = 144,225 total annual responses under the proposed rule. Each response is assumed to take approximately 0.5 hours, for a total hour burden of 72,112.5 (rounded to 72,113) hours annually for all advisers in the aggregate.

amended rule, we anticipate that not more than 1 examination per year would yield a material discrepancy, and that the burden on an accountant in providing notice to the Commission would be no more than 0.5 hours. This new requirement would not increase the total annual aggregate burden under the proposed amendments.[91]

The aggregate cost estimate for accounting fees for the annual surprise examination would be $288,000 for the 36 advisers who will be subject to the collection of information for all of their clients.[92] We estimate that accounting fees for the 675 advisers who would be subject to the collection of information for 1 percent of their clients would decrease to $1,000 per adviser, for an aggregate of $675,000.[93] As a result, the aggregate cost estimate would decrease to $963,000.[94]

We believe, however, that using the average of 670 clients per adviser affected by the rule may overstate the burden significantly. The 670 number is a mean, but a few large advisers represent a significant portion of the total client base, so the typical number of clients for advisers registered with us should be much smaller.

B. Form ADV, Part II, Item 14

We propose to eliminate the requirement set forth in Part II, Item 14 of Form ADV that an adviser with custody must include in its brochure a balance sheet audited by an independent public accountant.[95] This would reduce paperwork burden for advisers that have custody of client assets. We would continue to require an adviser to provide an audited balance sheet if the adviser requires prepayment of advisory fees of more than $500 per client and more than six months in advance.

In the currently approved annual aggregate burden of collection of information, we inadvertently failed to include an estimate of the cost advisers incur to pay their independent public accountants to prepare audited balance sheets. We estimate that the current aggregate annual cost of this requirement for advisers registered with us is $11,460,000. This aggregate is based on our estimate that (i) each adviser who must obtain an audited balance sheet in order to comply with the requirement pays approximately $15,000 on average in accounting fees, (ii) 184 advisers incur these costs under the advance fees provision, and (iii) 580 additional advisers incur these costs under the custody provision.[96]

For purposes of calculating this cost estimate under the proposed amendments, the 580 advisers that we estimate are currently incurring accountants' fees to comply with the balance sheet requirement under the custody provision will no longer incur these costs. Therefore, we estimate that the number of advisers subject to this requirement will be reduced to 184, and the aggregate annual cost of this requirement will be reduced to $2,760,000, for an average annual cost for each adviser registered with us of $364.[97]

C. Request for Comment

We request comment whether these estimates are reasonable. Any information received by the Commission related to the proposed rule amendments would not be kept confidential. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, Washington, DC 20503, and also should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609 with reference to File No. S7–28–02. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–28–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis ("IRFA") regarding proposed rule 206(4)–2 in accordance with section 3(a) of the Regulatory Flexibility Act.[98]

A. Reasons for Proposed Action

Rule 206(4)–2 seeks to protect clients' assets in the custody of advisers by requiring advisers to deposit client funds in bank accounts and to segregate and identify client securities and hold them in safekeeping. The rule also protects custodied assets by requiring advisers to send each client quarterly account statements and to have an independent public accountant conduct an annual surprise examination of the custodied assets. We have not amended the rule substantively since we adopted it over 40 years ago. Since then, custodial practices have changed and, as a result, portions of the rule have become outdated or inconsistent with modern custodial practices. Advisers' business practices have also evolved, increasing the likelihood that advisers may obtain custody of client assets in circumstances that we may not have anticipated in 1962.

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[91] As noted, supra note 90, the total hour burden is estimated at 72,112.5, rounded up to 72,113 hours. Adding 0.5 hours brings the total to 72,113, leaving the rounded number unchanged.

[92] 36 advisers × $8,000 accounting fees = $288,000.

[93] 675 advisers × $1,000 accounting fees = $675,000.

[94] $288,000 + $675,000 = $963,000.

[95] *See supra* Section II. E. of this Release.

[96] $15,000 fees × (184 advisers with advance fees + 580 additional advisers with custody) = $11,460,000. According to our records, 184 advisers registered with us require prepayment of fees, and 887 advisers registered with us provide an audited balance sheet to their clients under Part II, Item 14 of Form ADV. (Because advisers are not presently required to file Part II of ADV with the Commission, the 887 figure is from data collected before January 1, 2001.) Since 867 advisers report having custody of their clients' assets, and this number of advisers combined with those who require prepayment of fees exceeds the 887 providing balance sheets by 164, we estimate that 164 of the advisers with custody also require prepayment of fees. Of the 703 advisers providing balance sheets because of the custody provision (867 advisers with custody − 164 also requiring prepayment of fees = 703), 123 are also broker-dealers that are required to maintain audited financial statements under other rules, and only the remaining 580 advisers incur accountants' fees to comply with the balance sheet requirement under the custody provision.

[97] (184 × $15,000)/7,583 = $364.

[98] 5 U.S.C. 603(a).

As part of our ongoing effort to review and modernize federal securities law, we are proposing comprehensive amendments to rule 206(4)–2. These amendments are designed to harmonize the rule with current custodial practices, enhance the protections afforded to client assets, and clarify circumstances under which advisers have custody of client assets. The amendments would require advisers to maintain client funds and securities with a broker-dealer, bank, or other "qualified custodian." If the qualified custodian sends monthly account statements directly to an adviser's clients, the adviser would be relieved from sending its own account statements and from undergoing an annual surprise examination of those clients' accounts. The proposed amendments would exempt advisers from the rule with respect to clients that are registered investment companies, as well as with respect to limited partnerships and other pooled investment vehicles that are subject to annual audit by an independent public accountant.

The proposed amendments would add a definition of "custody" to the rule and illustrate the circumstances under which an adviser has custody of client assets. Advisers will benefit from this transparency because they (or their counsel) will no longer need to refer to other materials such as staff no-action letters for these examples. Finally, the proposed amendments would eliminate the requirement in Form ADV that advisers with custody include an audited balance sheet in their disclosure brochures to clients; other disclosures now provide clients with information that is likely to be more helpful to them in this regard.

B. Objectives and Legal Basis

The objectives of the proposed amendments to rule 206(4)–2 are threefold. First, the amendments would enhance the protections afforded to client assets. The proposed amendments would exempt advisers from the requirements to send each client account statements and to undergo annual surprise examinations of the client's account if the qualified custodian sends account statements directly to the advisory client monthly. Qualified custodians' delivery of account statements directly to clients should provide clients with confidence that any erroneous or unauthorized transactions by an adviser have been reflected. We believe nearly all advisers already maintain their clients' assets with qualified custodians, and will avail themselves of the option to avoid the costs of preparing statements and surprise examinations by electing to have the qualified custodian send account statements directly to the client.

Second, the amendments would harmonize the rule with current custodial practices. For example, the requirement under the current rule for advisers to segregate, identify, and safe-keep client securities assumes that securities are held as physical certificates. Now that most securities are held in book-entry form, the proposed amendments' requirement to maintain the securities with a qualified custodian would better reflect modern market practices.

Third, the amendments clarify circumstances under which advisers have custody of client assets, by providing a definition of custody that includes examples illustrating application of the definition. Advisers will benefit from this transparency because they (or their counsel) will no longer need to refer to other materials such as staff no-action letters for these examples.

The Commission is proposing to amend rule 206(4)–2 pursuant to the authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)]. Section 206(4) gives us authority to issue rules designed to prevent fraudulent, deceptive, or manipulative acts or practices. Section 211 gives us authority to clarify, by rule, persons and matters within our jurisdiction and to prescribe different requirements for different classes of persons, as necessary or appropriate to the exercise of our authority under the Act.

C. Small Entities Subject to Rule

Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[99] The Commission estimates that as of May 21, 2002 approximately 28 SEC-registered investment advisers that have custody of client assets were small entities.[100]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule would impose no new reporting and recordkeeping requirements. In addition, we believe that most advisers that maintain custody of client assets, including advisers that are small entities, already maintain these assets with qualified custodians. Therefore, the proposed amendments would not materially increase the effort necessary on advisers' behalf to comply with the Commission's rules. To the contrary, the proposed amendments provide advisers with the opportunity to eliminate costs they incur complying with the present rule's requirements to send account statements to clients and undergo an annual surprise examination.[101] In addition, we are proposing to amend Form ADV to eliminate the requirement that an adviser with custody of client assets provide its clients with a copy of its audited balance sheet, thereby further reducing advisers' compliance costs.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed rule.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for such small entities.

The overall impact of the proposed amendments is to decrease regulatory burdens on advisers, and small advisers, as well as large ones, will benefit from

[99] 17 CFR 275.0–7(a).

[100] This estimate is based on the information provided submitted by SEC-registered advisers in Form ADV, Part 1A [17 CFR 279.1].

[101] Under the proposed amendments, an adviser would not be required to send quarterly account statements or undergo a surprise examination with respect to accounts for which a qualified custodian that sends monthly account statements directly to clients.

the proposed rule. Moreover, the proposed amendments achieve the rule's objectives through alternatives that are already consistent in large part with advisers' current custodial practices. Therefore, the potential impact of the amendments on small entities should not be significant. For these reasons, alternatives to the proposed amendments, such as differing compliance or reporting requirements, simplification of compliance and reporting requirements, or the use of performance rather than design standards, are unlikely to minimize any impact that the proposed rule may have on small entities. Regarding exemption from coverage of the rule amendments, or any part thereof, for small entities, such an exemption would deprive small entities of the burden relief provided by the amendments. Moreover, since the protections of the Advisers Act are intended to apply equally to clients of both large and small advisory firms, it would be inconsistent with the purposes of the Act to specify different requirements for small entities or to establish different compliance or reporting requirements for small entities with regard to this requirement.

G. Solicitation of Comments

We encourage written comments on matters discussed in this IRFA. In particular, the Commission seeks comment on:

- The number of small entities that would be affected by the proposed rule; and
- Whether the effect of the proposed rule on small entities would be economically significant.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect.

VII. Statutory Authority

We are proposing amendments to rule 206(4)–2 pursuant to our authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)].

We are proposing amendments to Part II of Form ADV pursuant to the authority set forth in sections 203(c)(1), 204, and 211(a) of the Advisers Act [15 U.S.C. 80b–3(c)(1), 80b–4 and 80b–11(a)].

Text of Proposed Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.206(4)–2 is revised to read as follows:

§ 275.206(4)–2 Custody of funds or securities of clients by investment advisers.

(a) *Safekeeping required.* If you are an investment adviser registered or required to be registered under Section 203 of the Act (15 U.S.C. 80b–3), it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of Section 206(4) of the Act (15 U.S.C. 80b–6(4)) for you to have custody of client funds or securities unless:

(1) *Qualified custodian.* A qualified custodian maintains those funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients;

(2) *Notice to clients.* If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information; and

(3) *Account statements to clients.* (i) *By qualified custodian.* You have a reasonable basis for believing that the qualified custodian sends, to each of your clients for which it maintains funds or securities, a monthly account statement, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

(ii) *By adviser.* (A) You send a quarterly account statement to each of your clients whose funds or securities are maintained with a qualified custodian, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period;

(B) An independent public accountant verifies all of those funds and securities by actual examination at least once each calendar year at a time chosen by the accountant without prior notice to you, and files a certificate on Form ADV–E (17 CFR 279.8) with the Commission within 30 days after the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(C) The independent public accountant, upon finding any material discrepancies during the course of the examination, notifies the Commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Director of the Office of Compliance Inspections and Examinations.

(iii) *Special rule for limited partnerships and limited liability companies.* If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraphs (a)(3)(i) or (a)(3)(ii) of this section must be sent to each limited partner (or member or other beneficial owner), or to their independent representative.

(b) *Exceptions.* You are not required to comply with this section (17 CFR 275.206(4)–2) with respect to the account of:

(1) An investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64); or

(2) A limited partnership (or limited liability company, or another type of pooled investment vehicle) that has its transactions and assets audited (as defined in Section 2(d) of Article 1 of Regulation S–X (17 CFR 210.1–02(d)) at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 90 days of the end of its fiscal year.

(c) *Definitions.* For the purposes of this section:

(1) *Custody* means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. *Custody* includes:

(i) Possession or control of client funds (but not of checks drawn by clients and made payable to third parties) or securities, unless you receive them inadvertently and you return them to the sender within one business day of receiving them;

(ii) Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you legal ownership of or access to client funds or securities.

(2) *Independent representative* means a person that:

(i) Acts as agent for limited partners of a limited partnership (or members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the limited partners (or members, or other beneficial owners);

(ii) Does not control, is not controlled by, and is not under common control with you; and

(iii) Does not have, and has not had within the past two years, a material business relationship with you.

(3) *Qualified custodian* means:

(i) A bank as defined in section 202(a)(2) of the Advisers Act (15 U.S.C. 80b–2(a)(2));

(ii) A savings association as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811);

(iii) A broker-dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)), holding the client assets in customer accounts;

(iv) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)), holding the client assets in customer accounts; and

(v) With respect to securities for which the primary market is in a country other than the United States, and cash and cash equivalents reasonably necessary to effect transactions in those securities, a financial institution that customarily holds financial assets in that country and that holds the client assets in customer accounts segregated from its proprietary assets.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*, unless otherwise noted.

4. By amending Item 14 of Part II of Form ADV (referenced in § 279.1) by adding "(unless applicant is registered or registering only with the Securities and Exchange Commission)," after the words "client funds or securities".

Dated: July 18, 2002.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18698 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. PL02–6–000]

Notice of Inquiry Concerning Natural Gas Pipeline Negotiated Rate Policies and Practices

July 17, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Notice of Inquiry to seek comments on its negotiated rate policies and practices, established in Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Statement of Policy and Request for Comments, 74 FERC ¶ 61,076 (1996). Specifically, the Commission is undertaking a review of the recourse rate as a viable alternative and safeguard against the exercise of market power of interstate gas pipelines, as well as the entire spectrum of issues related to its negotiated rate program, and welcomes comments on these issues.

DATES: Written comments must be received by the Commission by August 26, 2002. Reply comments must be received by the Commission 30 days after the filing date for initial comments.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael G. Henry, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (202) 208–0532.

SUPPLEMENTARY INFORMATION:

Natural Gas Pipeline Negotiated Rates Policies and Practices

1. In this notice of inquiry (NOI), the Federal Energy Regulatory Commission (Commission) presents an opportunity for comments regarding its Negotiated Rates Policies and Practices, established in Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Statement of Policy and Request for Comments, 74 FERC ¶ 61,076 (1996). Specifically, the Commission is undertaking a review of the recourse rate as a viable alternative and safeguard against the exercise of market power of interstate gas pipelines, as well as the entire spectrum of issues related to its negotiated rate program, and welcomes comments on these issues.

Background

2. Since 1996 pipelines have had the option to use negotiated rates as an alternative to cost-of-service ratemaking. The Commission introduced negotiated rates to allow pipelines choosing not to seek market base rates by establishing a lack of market power or to undertake an incentive rate program, to adopt another alternative to traditional cost-of-service regulation. The original program was developed at a time when there was a great deal of concern about capacity "turnback" as a result of Order Nos. 436 and 636, and other factors.[1] Because the industry was shifting from traditional supply sources to other sources, many existing pipeline shippers no longer needed the same amount of firm capacity from their traditional pipeline's supply regions, and as a result sought to "turn back" transmission capacity when their transportation contracts expired. The negotiated rates program was thus developed to help pipelines market that turned-back capacity to new shippers, such as electric generators, as well as to help retain local distribution customers whose existing contracts were expiring.

3. Under the negotiated rates program, instead of cost-of-service regulation, the pipeline and a shipper may negotiate rates that vary from the pipeline's otherwise applicable tariff. A recourse rate that is on file in the pipeline's tariff is always available for those shippers preferring traditional cost-of-service rates. The Commission recognized, however, that potential problems could occur if capacity became constrained, as for example, if shippers that were willing to pay more than the maximum rate through a negotiated rate were bidding against shippers that were bidding the maximum recourse rate. The Commission required that, in those situations, customers bidding more than the maximum rate would be treated as

[1] *See, e.g.*, 74 FERC ¶ 61,079 at 61,225–26 (1996).

if they were bidding the recourse rate, and capacity was to be allocated *pro rata* among the negotiated rate bidder and recourse rate bidders. This, it was thought, would remove an incentive for negotiated rate shippers to bid more than the maximum recourse rates when capacity is constrained, because the shipper would have known it was paying more than was necessary to get the capacity.[2] In the last several years, there has been a significant increase in the reliance on negotiated rates to price natural gas transportation service. More recently, negotiated rate transactions based on price-index differentials have developed. These types of transactions, in particular, have raised serious concerns regarding the breadth and direction of the Commission's negotiated rate program.[3]

4. When the Commission introduced negotiated rates, at the suggestion of certain industry participants, it expected that negotiated rates would help achieve flexible, efficient pricing when market-based rates are not appropriate. Negotiated rates offered greater rate flexibility while limiting market power through the availability of the recourse rate.[4] The recourse rate option, the Commission explained, "would prevent pipelines from exercising market power by assuring that the customer can fall back to cost-based, traditional service if the pipeline unilaterally demands excessive prices or withholds service."[5]

5. So important was the availability of the recourse rate option that, as the Commission explained, the success of the negotiated rate policy relied upon the recourse rate "remain[ing] a viable alternative to negotiated service."[6] The failure of the recourse rate option to remain viable was an "impermissible" result.

6. Accordingly, the Commission finds that it is an appropriate time to assess the value and viability of its negotiated rate program. The Commission is seeking comments from all segments of the industry on these matters.

[2] *Id.* at 61,241.

[3] *See, e.g.*, Transwestern Pipeline Co., 94 FERC ¶ 61,233 (2001), *order to show cause*, 94 FERC ¶ 61,337 (2001), 95 FERC ¶ 61,143 (2001), and PG&E Gas Transmission, Northwest Corp., *order establishing hearing procedures*, 96 FERC ¶ 61,276 (2001).

[4] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Statement of Policy and Request for Comments, 74 FERC ¶ 61,076 at 61,240, *order on clarification*, 74 FERC ¶ 61,194, *reh'g denied*, 75 FERC ¶ 61,024 (1996).

[5] *Id.*

[6] *Id.*

Questions for Response

7. The Commission seeks responses to the following questions:

(A) Has the negotiated rate program been generally successful or unsuccessful in granting pipelines needed flexibility to serve new natural gas markets and retain existing markets? (Please support position taken with concrete specifics as much as possible.)

(B) Should the Commission modify its negotiated rate program?

(C) Do the negotiated rate filing requirements provide sufficient information for necessary transparency of the transactions? Should the Commission require pipelines to file negotiated rates on thirty days notice before such rates are implemented?

(D) Does the recourse rate option effectively mitigate pipeline market power? Are further mitigation measures necessary? And if so, which measures?

(E) Should the Commission disallow negotiated rates above the maximum recourse rate? Should the negotiated rate be limited to a certain multiple of the maximum recourse rate? Should the negotiated rate be limited to adjusting the levels of the reservations demand and commodity rate components, but the total revenue responsibility over the term of the contract remain equal the revenue responsibility under the recourse rate?

(F) Should the Commission disallow negotiated transportation rate deals based on price differentials of delivered gas between hubs?

(G) If such index price differential rates continue to be allowed, should some limits or restraints be placed on them? If so, what limits might be useful or appropriate?

Public Comment Procedure

8. The Commission invites interested persons to submit written comments on the matters and issues raised in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Upon evaluation of those comments, the Commission will determine what further action, if any, will be appropriate. Comments are due August 26, 2002. Comments must refer to Docket No. PL02–6–000, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

9. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Real Text Format, or ASCII format, as listed on the Commission's Web site at *http://ferc.gov*, under the e-filing link. The e-filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

10. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

11. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's home page using the FERRIS link.

Document Availability

12. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

13. From FERC's home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

14. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our Help line at (202) 208–2222 or the Public Reference Room at (202) 208–1371 Press 0, TTY (202) 208–1659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18782 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

RIN 1515–AC74

Expanded Weekly Entry Procedure for Foreign Trade Zones

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations, in conformance with the Trade and Development Act of 2000, to expand the weekly entry procedure for foreign trade zones to include merchandise involved in activities other than exclusively assembly-line type production operations. Under both the expanded procedure as well as the existing procedure for assembly-line type production operations, weekly entries covering estimated removals of merchandise from a foreign trade zone for any consecutive 7-day period, and the associated entry summaries, would have to be filed exclusively through the Automated Broker Interface, with duties, fees and taxes being scheduled for payment through the Automated Clearinghouse. The weekly entry is treated as a single entry or release of merchandise for purposes of the merchandise processing fee (MPF) that Customs assesses on importers in order to offset administrative costs incurred in processing imported merchandise that is formally entered or released.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Debbie Scott, Office of Field Operations, (202–927–1962).

SUPPLEMENTARY INFORMATION:

Background

The Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a–u) (the "FTZA"), provides for the establishment and regulation of foreign trade zones. Foreign trade zones are secured areas to which foreign and domestic merchandise (except that prohibited by law) may be brought for the purposes enumerated in the FTZA without being subject to the customs laws of the U.S. Foreign trade zones, by virtue of being exempt from the customs laws, are intended to attract and promote international trade and commerce. Part 146, Customs Regulations (19 CFR part 146), sets forth the documentation and recordkeeping requirements governing, among other things, the admission of merchandise into a zone, its manipulation, manufacture, storage, destruction, or exhibition while in the zone, and its entry or removal from the zone.

Generally speaking, the FTZA provides that when foreign merchandise is sent from a zone into customs territory, it is subject to the laws and regulations of the United States affecting imported merchandise (19 U.S.C. 81c(a)). This would include customs law governing the entry of imported merchandise. To this end, section 1484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), sets forth the procedures generally governing the entry of imported merchandise for customs purposes.

Under 19 U.S.C. 1484, Customs has permitted a limited weekly entry procedure for foreign trade zones since May 12, 1986 (as authorized in T.D. 86–16, 51 FR 5040). This limited weekly entry procedure, appearing in § 146.63(c)(1), Customs Regulations (19 CFR 146.63(c)(1)), is restricted to merchandise that was manufactured or changed into its final form just shortly (within 24 hours) before physical transfer from the zone.

It is noted that further general support for the weekly entry procedure was furnished when 19 U.S.C. 1484 was subsequently amended by section 637 of the Customs Modernization Act (included as Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, enacted on December 8, 1993).

Expanded Weekly Entry Procedure; Amendment of Section 1484 by Trade and Development Act of 2000

The Customs entry law, 19 U.S.C. 1484, has now been further amended by section 410 of the Trade and Development Act of 2000 (Pub. L. 106–200, 114 Stat. 251, enacted on May 18, 2000). Section 410 of this Act adds a new paragraph (i) to section 1484 (19 U.S.C. 1484(i)), that specifically provides for an expanded weekly entry procedure for foreign trade zones under certain limitations. The expanded weekly entry procedure under the statute is inextricably tied, as further discussed below, to the assessment of the merchandise processing fee which only applies to merchandise entered for consumption; thus, this entry procedure is limited to merchandise that is to be removed from a zone for consumption.

Under 19 U.S.C. 1484(i)(1), the expanded weekly entry procedure covers all merchandise (including merchandise of different classes, types and categories), with the exception of merchandise the entry of which is prohibited by law and merchandise for which the filing of an entry summary is required before it may be released from customs custody. The effect of section 1484(i) is to expand the weekly entry system beyond its current coverage, primarily to allow goods stored in a zone for the purpose of warehouse and distribution to be removed from the zone under a weekly entry process.

Thus, merchandise falling within the expanded procedure of section 1484(i)(1) that is to be removed from a zone during any 7-day period (not limited to a calendar week) may be the subject of a single estimated entry or release.

In accordance with 19 U.S.C. 1484(i)(2)(A)(i) and (ii), weekly entries under the expanded weekly entry program would be required to be filed electronically through the Automated Broker Interface (ABI). The party making entry who chooses to file a weekly entry from a zone would have to do so using ABI, or employ an ABI-qualified Customs broker for this purpose.

The electronic entry would have to contain the data equivalent to that required on Customs Form 3461 for the estimated removals of merchandise intended to occur during the related 7-day period. As provided in section 1484(i)(1), this estimated entry would need to be filed on or before the first day of the 7-day period in which the merchandise is to be removed from the zone.

An electronic entry summary containing the data equivalent to that required on Customs Form 7501 would be filed within 10 working days after the first day of the 7-day period covered by the electronic entry, with payment of applicable duties and taxes likewise scheduled for no later than 10 working days after the date of entry, using the Automated Clearinghouse (ACH) as prescribed in § 24.25, Customs Regulations (19 CFR 24.25).

In addition, under 19 U.S.C. 1484(i)(2)(B), the operator and/or the user of the zone, as applicable, would be required to provide accounting, transportation, and related controls over

merchandise subject to the weekly entry procedure that are adequate to protect the revenue and meet the requirements of other Federal agencies.

In the case of a general-purpose zone with multiple users, the operator of the zone, in compliance with § 146.4, Customs Regulations (19 CFR 146.4), would have to supervise and monitor the movement of merchandise, and provide for its proper storage and handling in the zone. The operator would also be required to maintain inventory records that accurately accounted for all transfers of merchandise from the zone related to the respective weekly entry of each person (zone user) using the procedure and otherwise comply with the requirements of § 146.4 and subpart B, Customs Regulations (19 CFR part 146, subpart B). Also, the person making entry (zone user) would have to keep inventory records with respect to the merchandise and its handling and/or processing in the zone that, if not computerized, would need to be maintained in an organized and readily retrievable manner, and be capable of being produced within a reasonable time after due notice.

Application of Merchandise Processing Fee to Weekly Entry

The estimated weekly entry or release is treated under section 1484(i)(1) as a single entry or release for purposes of the assessment of the merchandise processing fee (MPF) under section 13031(a)(9)(A) of the Consolidated Budget Reconciliation Act of 1985 (COBRA) (19 U.S.C. 58c(a)(9)(A)), and all fee exclusions and limitations of section 13031 of the COBRA also apply to the weekly entry or release, including the maximum and minimum fee amounts under section 13031(b)(8)(A)(i) (19 U.S.C. 58c(b)(8)(A)(i)).

Under 19 U.S.C. 58c(a)(9)(A), the MPF is the fee that Customs assesses on importers in order to offset administrative costs (salaries and expenses) that Customs incurs in connection with the processing of imported merchandise that is formally entered or released. Except as otherwise provided, merchandise that is formally entered or released is currently subject to an ad valorem MPF of .21 percent (19 U.S.C. 58c(a)(9)(A); and § 24.23(b)(1)(i)(A), Customs Regulations (19 CFR 24.23(b)(1)(i)(A))). However, on any one weekly entry or release, the MPF may not exceed the maximum amount of $485, subject to certain provisions not here relevant (19 U.S.C. 58c(a)(9)(B)(i); 19 U.S.C. 58c(b)(8)(A)(i); and § 24.23(b)(1)(i)(B), Customs Regulations (19 CFR 24.23(b)(1)(i)(B))).

It should be observed in this regard that, by a document published in the **Federal Register** (62 FR 12129) on March 14, 1997, Customs had previously proposed a similar expansion of the weekly entry procedure for foreign trade zones, under the then-existing general authority of 19 U.S.C. 1484; but, by a document published in the **Federal Register** (64 FR 13142) on March 17, 1999, Customs withdrew this proposal.

Conclusion

Accordingly, based upon the foregoing, this document proposes to amend § 146.63(c), Customs Regulations (19 CFR 146.63(c)), to implement 19 U.S.C. 1484(i), by adding a provision covering the expanded weekly entry procedure for foreign trade zones. The principal purpose of this proposed rule is to require electronic entry filing under the expanded procedure pursuant to 19 U.S.C. 1484(i)(2)(A). In addition, for the sake of consistency and administrative efficiency, Customs has determined that the existing weekly entry procedure for certain manufactured articles in § 146.63(c)(1) should similarly be revised to require electronic entry filing and to provide that a weekly entry under § 146.63(c)(1) may cover any 7-day period, and need no longer be confined to a calendar week. Also, under the proposed rule, if requested by Customs, the electronic data submitted would need to include the equivalent of a *pro forma* invoice or schedule, showing the estimated number of units of each type of merchandise to be removed during the weekly period and their zone and dutiable values.

Comments

Before adopting this proposed rule as final, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), at the U.S. Customs Service, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

The Regulatory Flexibility Act and Executive Order 12866

The proposed amendments are essentially intended to conform the Customs Regulations with statutory law, including the provision in the law that allows a requirement for electronic entry filing. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do the proposed amendments meet the criteria for a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collections of information contained in this proposed rule have already been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned the following OMB Control Numbers: 1515–0065 (Requirement to make entry; Entry summary and continuation sheet); and 1515–0214 (General recordkeeping and record production requirements). This proposed rule would not make any substantive changes to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number.

List of Subjects in 19 CFR Part 146

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Part 146, Customs Regulations (19 CFR part 146), is proposed to be amended as set forth below.

PART 146—FOREIGN TRADE ZONES

1. Revise the authority citation for part 146 to read as follows:

Authority: 19 U.S.C. 66, 81a-u, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1484(i), 1623, 1624.

2. Amend § 146.63 by revising paragraph (c) to read as set forth below:

§ 146.63 Entry for consumption.

* * * * *

(c) *Estimated activity.*—(1) *Weekly manufacturing.*—(i) *Electronic entry*

required. When any merchandise is manufactured or its physical condition as entered is otherwise changed (exclusive of packing) in a zone within 24 hours before physical transfer from the zone for consumption, the person making entry may file an entry for the estimated removals of such merchandise during any consecutive 7-day period. The 7-day period is not limited to being a calendar week. The entry must be filed through the Automated Broker Interface on or before the first day of the 7-day period in which the merchandise is to be removed from the zone. The electronic entry must contain data equivalent to that required on Customs Form 3461 for the estimated removals of merchandise intended to occur during the related 7-day period.

(ii) *Invoice upon request*. If requested by Customs, the electronic data submitted must include the equivalent of a *pro forma* invoice or schedule, showing the estimated number of units of each type of merchandise to be removed during the weekly period and their zone and dutiable values.

(2) *Other weekly entries*. (i) *Electronic entry required*. In addition to the merchandise already covered under paragraph (c)(1) of this section, the person making entry may file an estimated entry for all merchandise, including merchandise of different classes, types, and categories, except as provided in paragraph (c)(2)(ii) of this section, that is to be removed from a zone during any consecutive 7-day period. The weekly period is not limited to being a calendar week. The entry must be filed through the Automated Broker Interface on or before the first day of the 7-day period in which the merchandise is to be removed from the zone. The electronic entry must contain data equivalent to that required on Customs Form 3461 for the estimated removals of merchandise intended to occur during the related 7-day period.

(ii) *Invoice upon request*. If requested by Customs, the electronic data submitted must include the equivalent of a *pro forma* invoice or schedule, showing the estimated number of units of each type of merchandise to be removed during the weekly period and their zone and dutiable values.

(iii) *Excluded merchandise*. The following merchandise is excluded from the weekly entry procedure in paragraph (c)(2)(i) of this section:

(A) Merchandise whose entry is prohibited by law; and

(B) Merchandise for which the filing of an entry summary is required before it may be released from Customs custody.

(3) *Electronic entry summary*. Under paragraph (c)(1) or (c)(2) of this section, an electronic entry summary containing data equivalent to that required on Customs Form 7501 must be filed within 10 working days after the first day of the 7-day period covered by the electronic entry. The entry summary must be filed electronically through the Automated Broker Interface, with payment of applicable duties and taxes being scheduled, through the Automated Clearinghouse, for no later than 10 working days after the date of entry (see subpart D, part 143, and § 24.25 of this chapter). All merchandise will be dutiable as provided in § 146.65 of this subpart.

(4) *Inventory control*. The operator and/or user of the zone, as applicable, must provide accounting, transportation and related controls over merchandise subject to the weekly entry procedures set forth in paragraphs (c)(1) and (c)(2) of this section that are adequate to protect the revenue and meet the requirements of other Federal agencies, as provided in paragraphs (c)(4)(i) and (c)(4)(ii) of this section.

(i) *Operator responsibilities; general-purpose zone*. In the case of a general-purpose zone with multiple users, the operator of the zone, in compliance with § 146.4 of this part, must supervise and monitor the movement of the merchandise, and provide for its proper storage and handling in the zone. The operator must also maintain inventory records that accurately account for all transfers of merchandise from the zone related to the respective weekly entry of each person (zone user) using the procedure and must otherwise comply with the requirements of § 146.4 and subpart B of this part.

(ii) *Person making entry (zone user)*. The person making entry for the merchandise (the zone user) must keep inventory records with respect to the merchandise and its handling and/or processing in the zone. If not computerized, the records must be maintained in an organized and readily retrievable manner, and be capable of being produced within a reasonable time after due notice (see § 163.6(a) of this chapter).

(5) *Acceptance of weekly entry by port director*. Merchandise covered by an electronic entry made under the provisions of paragraph (c)(1) or (c)(2) of this section will be considered to be entered and may be removed from the zone only when the port director has accepted the entry. The time of entry will be determined as provided in § 141.68 of this chapter. If the actual removals will exceed the estimate for the related 7-day period, the person making entry will file an additional electronic entry as necessary to cover the additional units before their removal from the zone. When estimated removals exceed actual removals, such excess merchandise will not be considered to have been entered or constructively transferred from the zone and will not be included in the entry summary for the estimated entry or release. After acceptance of the weekly entry, and any additional entries as required, individual transfers of merchandise covered by the entry may be made from the zone.

(6) *Application of merchandise processing fee to weekly entry*. Under 19 U.S.C. 1484(i), the estimated weekly entry or release under paragraph (c)(1) or (c)(2) of this section is treated as a single entry or release for purposes of the assessment of the merchandise processing fee (MPF) under 19 U.S.C. 58c(a)(9)(A). All fee exclusions and limitations under 19 U.S.C. 58c also apply to the weekly entry or release, including the maximum and minimum fee amounts set forth in 19 U.S.C. 58c(b)(8)(A)(i) (see § 24.23(b)(1)(i) of this chapter).

* * * * *

3. In § 146.68(a), in the first sentence the reference "§ 146.63(c)" is removed, and the reference "§ 146.63(c)(1)" is added in its place.

Robert C. Bonner,

Commissioner of Customs.

Approved: July 19, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–18665 Filed 7–24–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–165706–01]

RIN 1545–BA46

Obligations of States and Political Subdivisions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed rulemaking relating to the obligations of States and political subdivisions.

DATES: The public hearing originally scheduled for Wednesday, August 7, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Guy Traynor of the Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on April 10, 2002 (67 FR 17309), and amended on June 28, 2002 (67 FR 43574), announced that a public hearing was scheduled for August 7, 2002 at 10 a.m., in Room 2615, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 150 of the Internal Revenue Code. The public comment period for these proposed regulations expired on July 9, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of topics to be addressed. As of July 18, 2002, no one has requested to speak. Therefore, the public hearing scheduled for August 7, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax & Accounting).

[FR Doc. 02–18791 Filed 7–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 948]

RIN 1512–AC71

Proposed Establishment of Capay Valley Viticultural Area (99R–449P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms requests comments concerning the proposed establishment of the "Capay Valley" viticultural area in northwest Yolo County, California. The proposed Capay Valley viticultural area covers approximately 150 square miles or about 102,400 acres. Approximately 25 acres are currently planted to wine grapes.

DATES: Written comments must be received by September 23, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attention: Notice No. 948). *See* the "Public Participation" section of this notice for instructions if you want to comment by facsimile or e-mail.

FOR FURTHER INFORMATION CONTACT: Kristy Colón, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR part 9, American Viticultural Areas.

What Is the Definition of an American Viticultural Area?

Section 4.25(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, and topography distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Section 4.25a(e)(2), title 27, CFR outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition must include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil, elevation physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Capay Valley Petition

ATF has received a petition from Tom Frederick and Pam Welch of Capay Valley Vineyards proposing to establish a viticultural area known as "Capay Valley" in northwestern Yolo County, California. The valley has several wine grape growers, including one who recently received awards for his wines. The petitioners state that the proposed Capay Valley viticultural area covers approximately 150 square miles or about 102,400 acres. Approximately 25 acres are currently planted to wine grapes.

What Name Evidence Has Been Provided?

The petitioners submitted as evidence an excerpt from the book "Capay Valley: The Land & The People," by Ada Merhoff. The information provided states the name "Capay Valley" was used in the late 1840's to identify the area when Pio Pico, Governor of the territory of Alta California, granted nine square leagues of land called the Rancho Canada de Capay to three Berryessa brothers. The book also contains a copy of an 1857 map of the valley, titled "Map of the Rancho Cañada De Capay." A copy of a map titled "Property owners 1858 Canada de Capay Grant" on page 6 of the book shows further subdivisions as lands were sold.

In addition, Merhoff's book mentions the Adobe Ranch, a 19th century Capay Valley ranch owned by John Gillig which also contained a vineyard and winery. Merhoff references other works that also mention Gillig's ranch. "The Western Shore Gazeteer & Commercial Directory for the State of California—Yolo County" by C.P. Sprague and H.W. Atwell stated in 1869 that the Capay Valley Winery at Gillig's ranch processed grapes from his and several other small vineyards in the vicinity that yielded 30,000 gallons of wine in both red and white varieties. Frank T.

Gilbert's "The Illustrated Atlas and History of Yolo County" stated in 1879 that Gillig's vineyard was "awarded the premium in 1861 for having the finest vineyard in the state." Merhoff's book also states that the word "Capay" comes from the Wintun Indian's word "capi", which means stream in their Native American language.

What Boundary Evidence Has Been Provided?

According to the petitioners, the proposed "Capay Valley" viticultural area is located in northwest Yolo County and borders Napa, Lake, and Colusa Counties. The natural boundaries of the valley are formed by the Blue Ridge Mountains to the west and the Capay Hills to the east. Additionally, Cache Creek runs the entire length of the valley. The boundaries of the petitioned viticultural area generally follow these natural physical boundaries. These also coincide with the boundaries of the Capay Valley General Plan, which is a subset of the Yolo County General Plan.

In addition to the required U.S.G.S. map, the petitioner provided a set of maps of Yolo County, California compiled in 1970 as part of a soil survey by the United States Department of Agriculture, Soil Conservation Service, and the University of California Agricultural Experiment Station. These maps show in further detail the boundaries of the proposed Capay Valley viticultural area.

What Evidence Relating to Geographical Features Has Been Provided?

Soils

The petitioners assert that the soils of the proposed "Capay Valley" viticultural area range from Yolo-Brentwood, which is a well-drained, nearly level, silty clay loam on alluvial fans, to Dibble-Millsholm, which is a well drained, steep to very steep loam to silty clay loam over sandstone.

Some areas have clay soils with creek rock and debris intermixed. Volcanic ash is also found in some areas, primarily in the rolling hills in the center of the valley. The petitioners contend that these clay soils intermixed with creek rock and volcanic ash, add a distinctive viticultural aspect to the area.

The petitioners state that one of the major soil differences between Capay Valley and the adjacent Central Valley area is the abundance of calcareous soils. This supply of calcium makes the clay soils of the Capay Valley less binding and allows grapevine roots to penetrate through the soils more easily. Water usage is therefore less than would be expected given the warm climatic conditions. The calcium-magnesium ratio in the soils is easier to manage because it is easier to add magnesium than calcium.

Elevation

The petitioners state that the elevation boundaries of the proposed Capay Valley viticultural area range from 100 meters on the valley floor, to 750 meters at the top of the Blue Ridge and 550 meters at the top of the Capay Hills.

Climate

According to the petitioners, hot, dry summers and a long growing season characterize the climate of the proposed Capay Valley viticultural area. Portions of the valley receive moderating breezes from the Sacramento Delta and San Francisco Bay. Fog creeps over the tops of the Blue Ridge during heavy fog periods in the bay, but the valley is shielded from the ground fog that is pervasive in the Sacramento Valley. Winters are moderate and late spring frosts are occasional enough to negate the need for active frost protection.

Also, the petitioners state that the Capay Valley climate is warmer than the Napa Valley to the west. This allows the Capay Valley to avoid the frost problems that are common in Napa and also offers an earlier growing season, typically 3–4 weeks. This warmer climate also reduces the need for as many sulfur sprays throughout the growing season.

Additionally, the petitioners state that the Capay Valley differs from its Central Valley neighbors to the east in that, while they share a warmer climate, Capay Valley's bud-break is typically 1–2 weeks later.

Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

ATF determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

ATF certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because the proposed regulation is not proposing new or revised record keeping or reporting requirements.

Public Participation and Request for Comments

Who May Comment on This Notice?

ATF requests comments from all interested parties. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Can I Review Comments Received?

Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection by appointment at the ATF Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. To make an appointment, telephone 202–927–7890. You may request copies of the full comments (at 20 cents per page) by writing to the ATF Reference Librarian at the address shown above.

Will ATF Keep My Comments Confidential?

ATF will not recognize any comment as confidential. All comments and materials will be disclosed to the public. If you consider your material to be confidential or inappropriate for

disclosure to the public, you should not include it in the comments. We will also disclose the name of any person who submits a comment.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be on paper 8½" x 11" in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-Mail) Comments?

You may submit comments by e-mail by sending the comments to *nprm@atfhq.atf.treas.gov*. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet Web site at: *http://www.atf.treas.gov*.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF Web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers, and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF library, as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov*, and select "Regulations," then "Notices of Proposed Rulemaking (Alcohol)" and this notice. Then click on the "view comments" link.

Drafting Information

The principal author of this document is Kristy Colon, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part—9

Administrative practice and procedure, Alcohol and alcoholic beverages, Consumer protection, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.176 to read as follows:

§ 9.176 Capay Valley

(a) *Name.* The name of the viticultural area described in this section is "Capay Valley."

(b) *Approved Maps.* The appropriate map for determining the boundary of the Capay Valley viticultural area is the United States Geological Survey (U.S.G.S.) topographic map titled: 30X60 Minute Quadrangle (Healdsburg, California 1972) (Scale: 1:100,000).

(c) *Boundaries.* The Capay Valley viticultural area is located in Yolo County, California. The beginning point is the junction of the Yolo, Napa, and Lake County lines.

(1) From the beginning point, proceed north then east along the Yolo-Lake County line;

(2) At the junction of the Yolo, Lake, and Colusa County lines, continue east along the Yolo-Colusa County line to its junction with the boundary between ranges R4W and R3W;

(3) Then south along the R4W and R3W boundary to its junction with the 250 meter contour line;

(4) Proceed generally southeast along the meandering 250 meter contour line to its junction with the T10N–T11N section line;

(5) Continue east along the T10N–T11N section line to the unnamed north-south secondary highway known locally as County Road 85;

(6) Then south along County Road 85, crossing Cache Creek, to its intersection with State Highway 16;

(7) Proceed east on Highway 16 to its junction with the unnamed north-south light duty road known locally as County Road 85B;

(8) Then south on County Road 85B to its junction with the unnamed east-west light duty road known locally as County Road 23;

(9) Proceed west on County Road 23 for approximately 500 feet to an unnamed light duty road known locally as County Road 85;

(10) Proceed south on County Road 85 until the road ends and continue south in a straight line to the T9N–T10N section line;

(11) Then west on the T9N–T10N section line to the Napa-Yolo County line;

(12) Continue northwest following the Napa-Yolo county line and return to the starting point.

Signed: July 5, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–18554 Filed 7–24–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–212391]

NHTSA Vehicle Safety Rulemaking Priorities: 2002–2005

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This document announces the availability of a planning document that describes NHTSA's proposed vehicle safety rulemaking priorities through 2005. The plan includes those rulemaking actions of highest priority for the period 2002 to 2005, based primarily on the greatest potential protection of lives and prevention of injury, that fall within the immediate four-year time frame. In addition, NHTSA has considered the realistic likelihood for successful action, especially considering the reality of numerous worthwhile options competing for budgetary resources. The priorities were defined through extensive discussions within the agency, taking into account the views heard in recent years at public meetings and comments submitted to the agency via rulemaking notices and requests for comment. The results produced by previous NHTSA rulemaking priority planning exercises also provided input to this process. While the plan includes other active areas, in addition to the rulemaking priorities, it discusses only a portion of all rulemaking actions the agency plans to undertake in the coming four-plus years. The absence of a particular regulatory activity from the plan does not necessarily imply that the agency will not pursue it. Although the execution of a priority plan is affected by factors beyond its control (e.g.,

petitions, budgets, legislation), this plan provides a blueprint for regulatory action on those vehicle safety goals the agency considers its highest priorities. NHTSA seeks public review and comment on the planning document. Comments received will be evaluated and incorporated, as appropriate, into the planned agency activities.

DATES: Comments must be received no later than September 23, 2002.

ADDRESSES: Interested persons may obtain a copy of the planning document by downloading a copy of the document from the Docket Management System, U.S. Department of Transportation, at the address provided below, or from NHTSA's Web site at *http://www.nhtsa.dot.gov/cars/rules/rulings.* Alternatively, interested persons may obtain a copy of the document by contacting the agency officials listed in the section titled, "For Further Information Contact," immediately below.

Submit written comments to the Docket Management System, U.S. Department of Transportation, PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should refer to the Docket Number (NHTSA–2002–212391) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" to obtain instructions for filing the comment electronically. In every case, the comment should refer to the docket number.

The Docket Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Docket Management System Web site at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Lawrence L. Hershman, Office of Safety Performance Standards, NPS–33, National Highway Traffic Safety Administration, Room 5104, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4929. E-mail: *lhershman@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: Motor vehicle crashes killed 41,821 individuals and injured 3,189,000 others in 6.4 million crashes in 2000. In addition to the terrible personal toll, these crashes make a huge economic impact on our society with an estimated annual cost of $230.6 billion, or an average of $820 for every person living in the United States. One of the most important ways in which NHTSA carries out its safety mandate is to issue and enforce Federal Motor Vehicle Safety Standards (FMVSS). Through these rules, NHTSA strives to reduce the number of crashes and to minimize the consequences of those crashes that do occur. NHTSA's rulemaking activities, via the Safety Performance Standards Program with support from the offices of Research and Development, Safety Assurance, Plans and Policy, and Chief Counsel, identify safety problem areas, develop countermeasures, and collect and analyze information to develop new FMVSS and amendments to existing FMVSS.

In the first years of the new century, NHTSA will strive to influence the automotive industry to incorporate the rapidly accelerating pace of advances in vehicle and safety technology into new vehicles while ensuring that the use of the new technologies enhances vehicle safety. The plan outlines the highlights of NHTSA's vehicle safety rulemaking plans through 2005. Agency priorities emanate from many sources, including: The size of the safety problem and likelihood of solutions, Executive initiatives, Congressional interest and mandates, petitions to the agency for rulemaking and other expressions of public interest, interest in harmonizing safety standards with those of other nations, and changes needed as a result of new vehicle technologies. The starting point for rulemaking priorities is the quest for the greatest potential protection of lives and prevention of injury.

The plan is organized along several broad categories: Crash Prevention includes crash avoidance data, driver distraction, vehicle visibility, crash warnings, and vehicle control and handling. Occupant Protection includes advanced crash dummies and protection in frontal, side, rollover, and rear crashes. Other sections cover Incompatibility Between Passenger Cars and Light Trucks, Heavy Truck Safety, and Special Population Protection, including safety for children, people with disabilities, and older people.

The plan includes several potential rulemaking projects that require additional research to determine whether rulemaking action is needed, but are priorities based on their potential for significantly sizeable death and injury prevention benefits. The plan also contains an appendix that discusses some other regulatory activities, particularly regulatory-related research activities, that may extend beyond the four-year horizon of the plan and that the agency considers important, although not rising to the same level of immediate high priority as the activities included in the main body of the plan. Another appendix discusses upcoming milestones in consumer information activities that the agency plans to pursue in the next few years, including the New Car Assessment Program (NCAP).

This document announces the availability of the document for public review and comment. The plan will be posted on NHTSA's website on July 23, 2002. Received comments will be evaluated and incorporated, as appropriate, into planned agency activities. The agency intends to periodically update the plan. Comments that cannot be accommodated in the current plan will be reviewed and considered in the context of future updates.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2002212391) in your comments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Docket Management System Web site at *http://dms.dot.gov* and click on "Help & Information" or "Help/Info" to obtain instructions.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety

Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington DC 20590.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted By Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

2. On that page, click on "search."

3. On the next page (*http://dms.dot.gov/search/*) type in the four-digit Docket number shown at the beginning of this document (NHTSA–2002–212391). Click on "search."

4. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 19, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–18760 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224 and 226

[Docket no. 020718171–2171–01 I.D. 071002B]

[RIN 0648–ZB25]

Listing Endangered and Threatened Species: Findings on a Delisting Petition, and Two Listing Petitions, Concerning 16 Evolutionarily Significant Units of Pacific Salmon and Steelhead

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of findings; request for comments.

SUMMARY: SUMMARY: The National Marine Fisheries Service (NMFS) has received a delisting petition, as well as two listing petitions, concerning a total of 16 Evolutionarily Significant Units (ESUs) of chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), chum salmon (*O. keta*), and steelhead (*O. mykiss*) currently listed as threatened or endangered under the Endangered Species Act of 1973, as amended (ESA). NMFS finds that these three petitions present substantial scientific and commercial information to suggest that the petitioned actions may be warranted.

DATES: Written comments on these petition findings must be received by August 26, 2002.

ADDRESSES: Information or comments on this action should be submitted to the Assistant Regional Administrator, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments will not be accepted if submitted via e-mail or the Internet. However, comments may be sent via facsimile to (503) 230–5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231–2005; Craig Wingert, NMFS, Southwest Region, (562) 980–4021; or Chris Mobley, NMFS, Office of Protected Resources, (301) 713–1401. Additional information, including the petitions addressed in this notice, are available on the Internet at *www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Salmon and Steelhead ESUs

NMFS is responsible for determining whether species, subspecies, or distinct population segments (DPSs) of Pacific salmon and steelhead are threatened or endangered species under the ESA. NMFS has determined that DPSs are represented by ESUs of Pacific salmon and steelhead, and treats ESUs as a "species" under the ESA (ESU policy; 56 FR 58612, November 20, 1991). To date, NMFS has completed comprehensive coastwide status reviews of Pacific salmonids and identified 51 ESUs in California, Oregon, Washington, and Idaho. Five of these ESUs are currently listed under the ESA as endangered, and 21 ESUs are listed as threatened.

Listing Factors and Basis for Petition Findings

Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving a petition for listing, reclassification, or delisting (among other things) the Secretary make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. The ESA implementing regulations for NMFS define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In evaluating a petitioned action, the Secretary must consider whether such a petition (1) clearly indicates the recommended administrative measure and the species involved, (2) contains a detailed narrative justification for the recommended measure, describing past and present numbers and distribution of the species involved and any threats faced by the species, (3) provides information regarding the status of the species over all or a significant portion of its range, and (4) is accompanied by appropriate supporting documentation (50 CFR 424.14(b)(2)). 50 CFR 424.11 describes the factors that must be considered in listing, reclassifying, or delisting a species under the ESA. Submitted petitions are considered in the context of these factors in determining whether a petition does or does not present substantial scientific and commercial information to suggest that the petitioned action may be warranted. A species may be listed or reclassified as a threatened or endangered species because of any one or a combination of the following factors: (1) The present or threatened destruction, modification, or

curtailment of a species' habitat or range; (2) overutilization for commercial, recreational, scientific or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting the species continued existence. A species may be delisted for one or more of the following reasons: (1) The species is extinct or has been extirpated from its previous range; (2) the species has recovered and is no longer endangered or threatened; or (3) investigations show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

Petitions Received

On March 14, 2002, NMFS received a petition from the Central Coast Forest Association (CCFA petition) to delist the threatened Central California Coast (CCC) coho salmon ESU. On April 29, 2002, NMFS received two petitions from Trout Unlimited and several co-petitioners (hereafter, Trout Unlimited petitions) to redefine and list a total of 15 ESUs currently listed as threatened or endangered. One of the Trout Unlimited petitions seeks to define the threatened Oregon coast coho ESU as including only natural fish (i.e., naturally spawned fish and their progeny, exclusive of all hatchery fish), and to list it as a threatened species under the ESA. The other Trout Unlimited petition seeks to define 14 ESUs as including only natural fish, and to list these ESUs as threatened or endangered species under the ESA. This petition addresses the naturally spawned portions of the: Puget Sound, Upper Willamette River, Snake River spring/summer, Snake River fall, Upper Columbia River spring, and Lower Columbia River chinook ESUs; Hood Canal summer and Columbia River chum ESUs; Southern Oregon/Northern California Coasts coho ESU; and the Upper Willamette River, Snake River, Middle Columbia River, Upper Columbia River, and Lower Columbia River steelhead ESUs.

Petition Findings

The petition findings on the CCFA and the Trout Unlimited petitions are informed by the September 2001 U.S. District Court ruling in *Alsea Valley Alliance* v. *Evans* (161 F. Supp. 2d 1154, D. Oreg. 2001; *Alsea* decision). The court ruled that it is arbitrary and capricious to exclude hatchery populations from listing if they are part of the same ESU as listed natural populations. The Court's ruling set aside NMFS' 1998 ESA listing of Oregon Coast coho salmon and ruled that the ESA does not allow NMFS to list a subset of an ESU by excluding hatchery fish within an ESU from listing. Although the Court's ruling affected only one ESU, the interpretive issue raised by the ruling called into question nearly all of the agency's Pacific salmonid listing determinations. In response to the *Alsea* decision, NMFS has announced that it will conduct status review updates for 25 ESUs potentially affected by the Court's ruling (67 FR 6215, February 11, 2002). Additionally NMFS announced that it would revise its policy on how it considers hatchery populations in making ESA listing determinations.

The CCFA petition seeks delisting of the CCC coho salmon ESU as a result of the *Alsea* decision. The CCC coho ESU was listed as a threatened species on October 31, 1996 (61 FR 56138). Only naturally spawned populations in the ESU were listed, and within-ESU hatchery populations were excluded from listing protection. Hence, the ESA interpretive issue raised by the Alsea decision pertains to the listing determination for the CCC coho ESU. NMFS thereby concludes that the CCFA petition presents substantial scientific and commercial information indicating the petitioned action may be warranted. This determination is consistent with previous NMFS findings on several petitions seeking to delist 14 other ESUs with unlisted hatchery populations (67 FR 6215, February 11, 2002).

The Trout Unlimited petitioners assert that hatchery populations are functionally distinct from naturally spawned populations in the 15 petitioned ESUs, and that the ESUs should be redefined to include only the naturally spawned populations. They present information describing continued adverse impacts and threats from hatchery production to the habitat, ocean survival, and long-term genetic fitness of natural populations in these ESUs. The petitioners provide a substantial collection of technical documents from the peer-reviewed scientific literature, as well as from the gray literature (e.g., non peer-reviewed data, reports, and technical memoranda from Federal and state management agencies), addressing the ecological and genetic relationship between hatchery and naturally spawned populations. These references describe threats posed by hatchery populations to natural populations, as well as differences between hatchery and natural populations in behavior, genetic composition, and fitness. In light of the substantial scientific information provided, the petitioners further assert that the inclusion of hatchery fish in ESUs with naturally spawned fish is inconsistent with the ESA statutory language and Congressional intent, as well as with NMFS' regulatory interpretations of the ESA.

NMFS maintains that its listing determinations have been wholly consistent with the existing regulations and policies guiding its listing determinations. The Alsea decision, however, ruled that NMFS' regulations guiding its consideration of hatchery populations in listing determinations are not consistent with the ESA. As mentioned above, NMFS is in the process of revising its policy on the consideration of hatchery fish in its ESA listing determinations to be consistent with the Alsea decision, and has initiated coastwide salmonid status review updates. The Trout Unlimited petitions provide scientific information that is relevant to NMFS' consideration of the relationship between hatchery and natural populations, and the delineation of Pacific salmon and steelhead ESUs. Accordingly, NMFS finds that the Trout Unlimited petitions present substantial scientific and commercial information indicating that the petitioned actions may be warranted.

Information Solicited

NMFS has already committed to conducting status review updates for the 16 Pacific salmon and steelhead ESUs addressed in the CCFA and Trout Unlimited petitions, as well as for nine other ESUs (67 FR 6215, February 11, 2002). The agency is also in the process of clarifying its policy on how it considers hatchery populations in making ESA listing determinations. NMFS will consider the information presented and the issues raised by these petitions in the course of revising its listing policy and conducting the coastwide status review updates.

NMFS has already solicited technical information to assist in these status review updates during two 60–day comment periods ending April 12, 2002, and August 12, 2002. NMFS is now requesting information and comment on the ecological and genetic relationship of hatchery and natural populations in the 15 ESUs addressed in the Trout Unlimited petitions. Additionally, NMFS seeks information and comment on the potential risks and benefits posed by artificial propagation to naturally spawning populations, and the extent to which such efforts may contribute to, or hinder, efforts being made to protect the species.

References

The complete citations for the references used in this document can be obtained by contacting NMFS or via the Internet (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 19, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–18861 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 071202A]

RIN 0648–AP41

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 5 to the Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted Amendment 5 to the Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States (FMP). This amendment would establish a limited access program for the rock shrimp fishery in the exclusive economic zone (EEZ) off Georgia and off the east coast of Florida (limited access area), establish a minimum mesh size for a rock shrimp trawl net in the limited access area, require the use of an approved vessel monitoring system (VMS) by vessels participating in the limited access program, and require an operator of a vessel in the rock shrimp fishery in the EEZ off the southern Atlantic states (North Carolina through the east coast of Florida) to have an operator permit. The intended effects are to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the harvest of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat, including an area that contains the last 20 acres of intact Oculina coral remaining in the world; and ensure the long-term economic viability of the rock shrimp fishery.

DATES: Written comments must be received on or before September 23, 2002.

ADDRESSES: Written comments on the Comprehensive SFA Amendment should be sent to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or the Internet.

Requests for copies of Amendment 5, which includes a final supplemental environmental impact statement, initial regulatory flexibility analysis, regulatory impact review, and a social impact assessment/fishery impact statement, should be sent to the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407–4699, Email: safmc@safmc.net.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, telephone: 727–570–5305; fax: 727–570–5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The shrimp fishery off the Southern Atlantic States in the EEZ is managed under the FMP approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

In its preliminary qualitative analysis of Federally managed fisheries conducted in March 2001, NMFS classified the rock shrimp fishery off the southern Atlantic states as one of the fisheries where there are indications of over-capacity. With over-capacity and open access to the fishery, any gains in the health of the stocks would likely attract new entrants and an increase in harvesting capacity. Accordingly, Amendment 5 proposes a limited access program for the fishery off Georgia and the east coast of Florida. The intended effects are to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the bycatch of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat, including an area that contains the last 20 acres of intact Oculina coral remaining in the world; and ensure the long-term economic viability of the rock shrimp industry.

The current requirement for a Federal vessel permit for the rock shrimp fishery remains in effect. However, in addition, to participate in the fishery off Georgia and the east coast of Florida, a limited access endorsement for South Atlantic rock shrimp would be required. Initially, NMFS would issue a limited access endorsement to the owner of a vessel that had a valid Federal permit for South Atlantic rock shrimp on or before December 31, 2000, and that had landings of at least 15,000 lb of rock shrimp from the South Atlantic EEZ during one of the calendar years 1996 through 2000. A vessel that had a Federal permit for South Atlantic rock shrimp would be determined solely from NMFS' permit records. Claimed landings would be verified from landings data in state or Federal database systems; the landings must have been submitted on or before January 31, 2001. For the purpose of initial eligibility for a limited access endorsement, the owner of a vessel that had a permit for rock shrimp during the qualifying period would retain the rock shrimp landings record of that vessel during the time of his/her ownership, unless a sale of the vessel included a written agreement that credit for qualifying landings was transferred to the new owner.

An owner issued a limited access endorsement could request that the permit be transferred to another vessel or to another vessel owner by submitting an application for transfer to the Regional Administrator (RA). An owner must report any costs associated with such transfer on the application for transfer. A transfer of a limited access endorsement to a new owner would include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to the new owner.

The RA would not reissue a limited access endorsement for South Atlantic rock shrimp if the permit is revoked or if a required application for renewal of the permit is not received within 1 year after the permit's expiration date. Additionally, a limited access endorsement for rock shrimp that is inactive for a period of 4 consecutive calendar years would not be renewed.

Historically, the cod end mesh size commonly used in the rock shrimp fishery was 1 7/8 to 2 inches (4.76 to 5.08 cm) stretched mesh. Some fishermen are now using smaller mesh or are putting a bag liner inside the cod end. This results in the catch of juvenile rock shrimp, some of which are unmarketable and are discarded dead. This Amendment would establish a minimum mesh size for the cod end of 1 7/8 inches (4.76 cm) and prohibit the

use of smaller-mesh bag liners. This would allow escapement of juvenile rock shrimp. There is virtually no information available on either the extent of escapement of juvenile rock shrimp or on the quantity of other bycatch; thus, NMFS has initiated 100 days of observer coverage on this fishery to obtain such information. This information should be available for inspection in about a year.

This Amendment would require the use of a NMFS-approved vessel monitoring system (VMS) by each vessel that has been issued a limited access endorsement for South Atlantic rock shrimp when such vessel is on a trip off the southern Atlantic states (North Carolina through the east coast of Florida). The VMS would consist of a mobile transmitting unit placed on each vessel and an associated communication service provider that supplies the link between the unit and NMFS. The VMS would advise NMFS when and where a vessel was fishing or had been fishing. Thus, it would provide effort data and would significantly aid in enforcement of areas closed to trawling, particularly the Oculina Bank habitat area of particular concern. There is a critical need to increase the level of surveillance in this area because it contains the last 20 acres of intact Oculina coral remaining in the world.

NMFS would publish in the **Federal Register** a list of approved VMS mobile transmitting units and associated communications service providers that meet the minimum standards for the rock shrimp fishery. A vessel that has been issued a limited access endorsement for the South Atlantic rock shrimp fishery would be required to have an operating VMS commencing 270 days after the final rule implementing this amendment is published.

To enhance enforcement of fishery regulations, the Amendment proposes to require operator permits in the South Atlantic rock shrimp fishery. "Operator" is defined as the master or other individual aboard and in charge of a vessel. Each vessel that has a Federal permit for the fishery would be required to have on board at least one person who has an operator permit when the vessel is at sea or offloading. In addition to penalties that currently exist for violations of the regulations, an operator permit could be sanctioned. For example, an operator whose permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 would not be allowed aboard any vessel subject to Federal fishing regulations in any capacity, if so sanctioned by NOAA, while the vessel is at sea or offloading. To enhance enforceability of this measure, a vessel's owner and operator would be responsible for ensuring that a person with such suspended, revoked, or modified operator permit is not aboard his/her vessel. A list of operators whose permits are revoked, suspended, or modified would be readily available from the RA. In general, an operator permit would be valid for a period of 3 years, expiring at the end of the individual's birth month.

Comments received by September 23, 2002, whether specifically directed to those management measures in Amendment 5 or to the proposed rule that NMFS plans to publish that would implement Amendment 5, will be considered by NMFS in its decision to approve, disapprove, or partially approve the proposed measures. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 5 or the proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 18, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18857 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020412085–2085–01; I.D. 022102B]

RIN 0648–AP66

Fisheries of the Exclusive Economic Zone Off Alaska; Electronic Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to amend regulations governing the North Pacific Groundfish Observer Program (Observer program). This action is necessary to refine requirements for the facilitation of observer data transmission and improve support for observers. The proposed rule is intended to ensure continued timely transmission of high-quality observer data to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (groundfish FMPs) for those industry sectors already subject to such requirements. It would improve the timely transmission of high-quality observer data for a sector of catcher vessels in these fisheries.

DATES: Comments on this proposed rule must be received by August 26, 2002.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this proposed regulatory action may be obtained from the same address. Send comments on information collection requests to NMFS and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Bridget Mansfield, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands management areas in the Exclusive Economic Zone (EEZ) under the groundfish FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations at 50 CFR part 679 implement the FMPs. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. Regulations implementing the interim Observer Program were published November 1, 1996 (61 FR 56425), amended December 30, 1997 (62 FR 67755) and December 15, 1998 (63 FR 69024), and extended through 2002 under a final rule published December 21, 2000 (65 FR 80381). The Observer Program provides for the collection of observer data necessary to manage the Alaska groundfish fisheries by providing information on total catch estimation, discard, prohibited species catch (PSC) and biological samples that are used for stock assessment purposes.

The observers also provide information related to compliance with regulatory requirements.

The regulations implementing the Observer Program at § 679.50 require observer coverage aboard fishing vessels and shoreside processors that participate in the Alaska groundfish fisheries. Timely communication between the fishing industry and NMFS through catch reports submitted to NMFS by both industry and observers is crucial to the effective in-season monitoring of the groundfish quotas and PSC allowances. At its June 1995 meeting, the Council recommended that NMFS issue regulations that would require all catcher/processors, motherships, and shoreside processors that process groundfish to have computer hardware and software that would enable observers to send electronic data to NMFS. Catcher/processors and motherships were recommended to have satellite communications technology to allow transmission of the data from the vessel.

Regulations requiring electronic submission of observer reports were implemented in 1995 at § 679.50(f) for catcher/processors, motherships and shoreside processors through the application of an observer communications system (OCS), previously referred to as the "ATLAS" system. This system is composed of specified electronic hardware supplied by the vessel or shoreside processor and dedicated software provided by NMFS that together allow observers to communicate daily with NMFS, including transmitting data. This permits real-time data processing, improves timeliness of making data available to managers, and allows managers to assess daily activities of the fishing fleet. These data have led to fishery closures that more accurately reflect actual catch levels and facilitate conservation and optimal management of this valuable living marine resource.

In a letter dated February 7, 2000, NMFS informed the Council that the agency intended to initiate rulemaking that would implement upgrades in the specifications for required hardware and software that support the OCS, and would extend these requirements to some catcher vessels. At its February 2000 meeting, the Council noted its support for this initiative.

NMFS proposes to require operations already subject to OCS requirements to adopt hardware upgrades to meet current technology standards necessary to support the OCS software and to require hardware installed in vessels to be maintained in a functional mode. NMFS further proposes to exclude some catcher vessels from the requirements, thereby amending an error in the final rule implementing the 1995 OCS requirements, which erroneously included all catcher vessels. This proposed rule would, however, require all catcher vessels required to carry observers during 100 percent of their fishing days to comply with the regulations at § 679.50(f) governing the installation and maintenance of necessary equipment supporting the OCS system.

Hardware Upgrades. Current regulations stipulate that any vessel required to carry one or more observers must facilitate transmission of observer data to NMFS by providing equipment consisting of a computer and communications equipment that meet certain specifications. Hardware requirements specified in these regulations to support OCS were considered state of the art at the time they were implemented in 1995. Computer technology has advanced at a rapid rate since then. As a result, the current minimum hardware requirements are technologically out of date and are difficult to maintain or even obtain. The OCS software application developed by NMFS to effect at-sea communication with observers has been updated recently to be more effective and now requires more powerful computers on which to run. Requiring the updated hardware is necessary to meet current technology standards.

Included in this hardware update is a requirement that allowable communications equipment provide point-to-point communications, which is a necessary function to support all of the operations that OCS requires. A point-to-point communications system allows the computer with OCS software to connect directly to the NMFS host computer and modem. Point-to-point communication connections would allow direct confidential communication between NMFS and observers, which has been shown to be necessary for effective problem solving in various at-sea situations. Examples of communication systems that provide point to point communications are INMARSAT Standard-A, Standard-B, mini-M, and Iridium. Vessels using INMARSAT Standard C terminals and associated software to transmit data, which are allowed under current regulations, do not provide point-to-point communication connections and would not meet the hardware requirement proposed in this rule. The inability of INMARSAT Standard C to allow observers and NMFS to maintain secure communications without interfacing with vessel personnel is of particular concern.

Functionality. Current regulations requiring the communications equipment aboard vessels to support OCS do not require that the hardware be functional. The equipment would be considered functional when specified equipment aboard a vessel can initiate a data transmission to a device, such as a satellite, that provides a point-to-point communication connection with minimum specifications outlined in the regulations. The vessel would not be responsible for ensuring the actual reception of the data by the satellite or other device. Regulations for shoreside processor communication equipment do require the equipment to be maintained in a functional mode.

The inadvertent omission of an equipment functionality requirement for vessels has resulted in NMFS' lack of ability to receive electronic observer data from up to nine catcher processors (approximately 10 percent of all catcher processors required to have this equipment) that have not properly installed or maintained the communications equipment. Additionally, other vessels have taken up to 7 months to repair or complete initial installation of functional equipment. This has compromised in-season monitoring of harvest quotas and has resulted in or contributed to events leading to quotas being exceeded. Therefore, NMFS proposes to amend the regulations to require that equipment be functional.

Catcher Vessels Requirements. Current regulations stipulate that any vessel required to carry one or more observers must facilitate transmission of observer data to NMFS by providing equipment meeting specifications outlined by regulations cited above. The original intent of the regulations was to apply these requirements to all catcher/processors, motherships, and shoreside processors subject to observer coverage requirements. Catcher-only vessels were not intended to be included in these requirements. The proposed rule for implementing these regulations (60 FR 45393, August 31, 1995) and the preamble to the final rule (61 FR 63759, December 2, 1996) correctly reflect the original intent to restrict the requirements to catcher/processor vessels, motherships, and shoreside processors. However, the regulatory language in the final rule incorrectly extends the regulations to all vessels subject to observer coverage, including all catcher vessels. This proposed rule would correct that error by amending the requirement so that it would not include indiscriminately all catcher

vessels but would require all catcher vessels that are required to maintain 100–percent observer coverage as specified in regulations at § 679.50(c)(1)(iv) to install and maintain hardware and software supporting the OCS communications system as amended in this proposed rule.

Prior to 2000, all shoreside harvest data from processors were faxed to NMFS in a weekly production report. Weekly submission of these reports roughly matched the availability of observer data from shoreside processors. In 2000, an electronic reporting system (distinct from OCS) was implemented to replace the weekly production report. Daily electronic reports from shoreside processors of shoreside deliveries provide NMFS with landings information within one day of a delivery. This allows for partial real-time management of the groundfish species such as pollock that are specifically allocated to the inshore sector or of harvest restrictions specific to catcher vessels under the American Fisheries Act sideboard provisions. However, availability to NMFS of observer PSC and discard data for a given delivery does not match the timeliness of the landings data.

The necessary timely monitoring for in-season management of PSC and discard data is not possible under the observer data reporting system currently used by catcher vessels delivering to inshore processors. Shoreside catcher vessel observers opportunistically transmit data via fax to NMFS from a shoreside processor, which can be between 5 and 14 days after a given haul is made. This delay is caused in part by the fact that an observer usually must return to sea immediately upon completion of the delivery, leaving no time for the observer to compile data into a format appropriate for fax transmission to NMFS, most often several hours worth of work. Once received by NMFS, the faxed data subsequently must be hand entered into an electronic database, further delaying the availability to in-season managers. Even if a catcher vessel observer had time available for data compilation and transmission from the shoreside processor, logistical problems remain. Shoreside processors do support OCS communication systems for transmission of observer data. However, OCS software on these systems is designed specifically for shoreside processor applications and does not support observer data collected at sea. While the shoreside system could be adapted to support data collected by vessel observers, other logistical problems prevent reliable use of these systems by catcher vessel observers. These difficulties include vessel observers having to return to sea prior to data input and transmission via the OCS communications system, as well as the lack of reliance on access to shoreside computers and communications equipment that support the OCS system. Offices that house this equipment at the shoreside processors generally are not open 24 hours a day, while deliveries may be completed at any time during the day.

Installation of OCS software, in combination with point-to-point modem communication capability aboard shoreside catcher vessels would allow daily electronic transmission of catch data. This would provide NMFS with observer data from catcher vessels within 24 hours of receiving their delivery reports from the shoreside processor. At-sea discards and PSC could then be accounted for together with the landings data in real-time for each OCS-equipped vessel. Such real-time, in-season management would be expected to result in fisheries closures that better approximate actual quotas.

Additionally, observer data quality problems can have a significant impact on PSC estimates and fishery closure projections. Resulting management errors can include early closure of a fishery, which results in direct lost revenue to the fleet, or over-harvest of a PSC fishery allowance, which can impact other fisheries as the total annual PSC limit is reached.

The OCS program provides several advantages and improvements to NMFS' current management systems which result in higher quality data. These include:

Improved data recording efficiency. Observers using OCS initially record data on deck forms. These data are then entered into the vessel's computer and sent electronically to NMFS. Data received by NMFS are automatically screened for errors and may be accessed by users in a database in a timely manner. Without OCS, data are transcribed from deck forms to paper and faxed to NMFS for subsequent electronic entry. Less paperwork provides observers with more time to dedicate to sampling.

Consistent, secure communications with observer program staff and a reduction in the overall frequency of errors. OCS communications allow NMFS to assign to each deployed observer an in-season advisor who screens data for errors and advises the observer throughout their deployment, resulting in improved observer performance and a reduction in errors. The quality of timely data available for in-season management decisions is thus greatly improved.

Faster, more efficient, and higher quality debriefing. The OCS application automatically screens out many potential data errors at the point of entry. These data are further screened by the in-season advisor, and all data are again screened by computer programs and corrected at the point of debriefing. These processes eliminate hand checking of paper data forms, further reducing debriefing time and allowing for faster availability of the final data.

Installation and maintenance of OCS aboard catcher vessels requiring 100-percent observer coverage would eliminate 1,100 faxed observer reports and the associated processing per year. Availability of timely data on PSC by this sector of the fleet, which is largely made up of American Fisheries Act-qualified catcher vessels that are members of inshore cooperatives, would improve in-season management of the BSAI pollock and Pacific cod trawl fisheries. In the BSAI pollock trawl fishery, salmon and herring PSC are of concern, and in the BSAI Pacific cod trawl fishery, halibut bycatch is of concern. Although the few Pacific cod trawl fishery closures that have occurred since 1998 have been based primarily on TACs being reached, prior to 1998, BSAI Pacific cod trawl fishery closures were based on halibut bycatch allowances being caught before the TAC was reached. Improved timeliness of PSC data transmission would allow NMFS resources to be reallocated to processing faxed data received from observers aboard vessels that are subject to 30-percent coverage requirements. Overall, this would result in the expedited availability to managers and improved quality of all in-season data from all catcher vessels in the BSAI and the Gulf of Alaska (GOA). This timely information is also of benefit to industry through access via NMFS web sites. Fleets coordinate their activity to avoid bycatch hot spots, reducing costly PSC closures. This can only work where rapid access to the information is available.

Additional need for more timely harvest data from catcher vessels comes from management measures implemented to temporally and spatially disperse some groundfish fisheries in near shore areas of the EEZ off Alaska (67 FR 956, January 8, 2002). These measures were developed in response to a Biological Opinion initiated as part of a formal consultation under section 7 of the Endangered Species Act on the impact of federally managed groundfish fisheries on

endangered Steller sea lions in Alaska. The measures involve some time-area restrictions for the pollock, Pacific cod and Atka mackerel fisheries including harvest limits in Steller sea lion critical habitat. To ensure compliance with these measures, levels of groundfish harvest must be monitored on a real-time basis.

Catcher vessels delivering to catcher/processors and motherships deliver unsorted codends with no fish retained aboard the catcher vessel. They, therefore, require no observer coverage. These catcher vessels would not be required to install and maintain the OCS on board. Catcher vessels greater than 60 ft (18.3 m) LOA fishing for groundfish using pot gear are subject to 30–percent observer coverage during a calendar quarter and would therefore be unaffected by this proposed rule.

Shoreside Processor Requirements. Shoreside processor responsibilities are clarified. Specifically, all shoreside processors required to maintain observer coverage at any time during the year are also required to install and maintain electronic reporting equipment—hardware and software—as specified in the rule.

Classification

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an RIR/IRFA, which describes the impact this proposed rule would have on small entities, if adopted.

An estimated five to 10 catcher/processors or motherships vessels would be required to upgrade their computers to meet the requirements in this proposed rule. Current market prices for a reliable computer at this level are about $800. An estimated 22 vessels would be required to upgrade their communications systems from INMARSAT Standard C communications hardware and would have to choose between Standard B hardware at about $20,000 per unit, Mini-M hardware at about $4,500, or Iridium at $2,200. The initial investment from all catcher processors and motherships required by these proposed requirements would be approximately $56,000, with annual maintenance and data transmission savings of $1,000. These savings relate to aggregate maintenance and data transmission costs for the catcher/processor or mothership class of vessels. The net savings of about $1,000 represent aggregate data transmission savings of about $2,263 minus aggregate additional annual maintenance costs of about $1,208.

Of the 27 shoreside processors that would be subject to requirements in this proposed rule, 15 are estimated to already be capable of using the new system. Eleven of the remaining shoreside processors need to install both the computer and the communications system; one shoreside processor needs to upgrade its computer. The initial investment from this sector as a whole would be approximately $34,000, with little change in annual maintenance and data transmission costs.

Assuming that none of the 31 catcher vessels required to carry an observer for 100 percent of their fishing days have installed the necessary communications equipment, but that approximately 30 percent of them have computers compatible with OCS specifications, the initial investment from this sector as a whole would be approximately $86,000, with annual maintenance and data transmission costs of about $19,000.

Catcher vessels requiring 30–percent observer coverage that deliver to shoreside processors would not be required by this proposed rule to install and maintain hardware and software needed to support the OCS. Although catcher vessels are not covered, had they been included in these requirements, the estimated initial investment from this sector as a whole would have been approximately $311,000, with annual maintenance and data transmission costs of $9,000. The $9,000 cost figure would have represented the aggregate cost for maintenance on catcher vessels requiring 30–percent observer coverage. Because the proposed rule does not apply to such catcher vessels, these costs are not incurred.

However, the benefits of real-time data reporting that the OCS would afford are significant. More timely availability of halibut PSC data from the GOA deep and shallow trawl complexes, as well as from the GOA Pacific cod hook-and-line gear fishery, is needed to improve the accuracy of those fisheries' closures. Catcher vessels subject to 30–percent observer coverage requirements are a considerable component of the fleets in these fisheries. Closures in the flatfish trawl fisheries in the GOA are based entirely on halibut caps being reached, and the lack of timely halibut bycatch data is a significant contributor to GOA trawl halibut mortality caps being frequently exceeded. The GOA Pacific cod hook-and-line gear fishery closures have been based on halibut caps, but those caps are often reached nearly concurrently with the TAC. However, availability of observer halibut bycatch data in this fishery is critical, because a significant portion of this fleet is less than 60 ft (18.3 m) LOA, and therefore not subject to any observer coverage.

NMFS is seeking to eventually fully implement electronic reporting of observer data fleet-wide for those operations subject to observer coverage requirements in a practicable manner. Methods to implement this will be considered in the next few years. Options for consideration will include equipping observers with their own laptop computers or other electronic devices capable of supporting the OCS software, as well as options for linking the observer OCS with electronic logbook reporting requirements that are currently being considered for fleet-wide implementation. NMFS is specifically seeking comments on this issue.

An Initial Regulatory Flexibility Analysis (IRFA) was conducted in accordance with the Regulatory Flexibility Act of 1980 (RFA) and the Small Business Regulatory Enforcement Fairness Act of 1996.

In the IRFA, the proposed alternatives could affect the following estimated numbers of small regulated entities: 38 small catcher/processors, no motherships, 5 processing plants, 31 catcher vessels with 100-percent observer coverage, 389 catcher vessels with 30-percent observer coverage, and 6 community development quota groups representing 65 western Alaska communities. The preferred alternative, Alternative C, would affect 38 small catcher/processors, no motherships, 5 processing plants, 31 catcher vessels with 100–percent observer coverage, and no catcher vessels with 30–percent observer coverage.

Under the preferred alternative (Alt. C), small catcher/processors would incur average investment expenses equal, on average, to about 0.2 percent of one year's gross revenues, and no additional annual operating expenses. Small catcher vessels required to have 100-percent coverage would incur average investment expenses equal, on average, to about 0.3 percent of one year's gross revenues and average annual expenditures equal to about 0.1 percent of a year's gross revenues. Small shoreside processors would incur average investment expenses equal to about 0.1 percent of annual gross revenues, and no significant additional expenses. The CDQ groups would be affected by the investments and joint ventures in catcher/processors, catcher vessels, and shoreside plants. The impacts on these entities were described above.

The RFA requires that the IRFA describe significant alternatives to the

proposed rule that accomplish the stated objectives of the applicable statutes and minimize any impact on small entities. The IRFA must discuss significant alternatives to the proposed rule such as (1) establishing different reporting requirements for small entities that take into account the resources available to small entities; (2) consolidating or simplifying reporting requirements; (3) using performance rather than design standards; and (4) allowing exemptions from coverage for small entities.

An additional alternative that would have further reduced the burden on small entities was considered for implementation but was rejected. This alternative would have increased data entry staff at NMFS to ensure speedier input of faxed data into the electronic database for availability to in-season managers. However, this alternative would not sufficiently address the timeliness of data availability and could not match the inherent data quality control of the OCS.

Additionally, the overall implementation of the Interim Observer Program includes measures that minimize the significant economic impacts of observer coverage requirements on at least some small entities. Vessels less than 60 ft (18.3 m) LOA are not required to carry an observer while fishing for groundfish. Similarly, vessels 60 ft (18.3 m) and longer, but less than 125 ft (38.1 m) LOA, have lower levels of observer coverage than those 125 ft (38.1 m) LOA and above. These requirements, which have been incorporated into the requirements of the North Pacific Groundfish Observer Program since its inception in 1989, effectively mitigate the economic impacts on some small entities without significantly adversely affecting the implementation of the conservation and management responsibilities under the Magnuson-Stevens Act. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0318.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 19, 2002.

Rebecca Lent

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.50, paragraphs (f)(1)(iii)(A), (f)(1)(iii)(B), (f)(1)(iii)(C), (f)(2) introductory text, (f)(2)(iii)(B), and (f)(2)(iii)(C) are revised and paragraph (f)(3) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2002.

* * * * *

(f) * * *

(1) * * *

(iii) * * *

(A) *Observer use of equipment.* Allowing NMFS-certified observers to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the NMFS-certified observers or the nation.

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor or mothership that is required to carry one or more observers, or a catcher vessel required to carry an observer as specified in paragraph (c)(1)(iv) of this section:

(*1*) *Hardware and software.* Making available for use by the observer a personal computer in working condition that contains a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5-inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in paragraph (f)(1)(iii)(B) of this section must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors utilizing a modem must have at least a 28.8kbs Hayes-compatible modem.

(*2*) *NMFS-Supplied software.* Ensuring that the catcher/processor, mothership, or catcher vessel specified in paragraph (f)(1)(iii)(B) of this section obtains and has installed the data entry software provided by the Regional Administrator for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communications equipment required at paragraph (f)(1)(iii)(B) of this section, and that is used by observers to enter and transmit data, is fully functional and operational, where "functional" means that data transmissions to NMFS can be initiated effectively aboard the vessel by such communications equipment.

* * * * *

(*2*) *Shoreside processor responsibilities.* A manager of a shoreside processor that is required to maintain observer coverage as specified under (d) of this section must:

(iii) * * *

(B) *Communication equipment requirements—*(*1*) *Hardware and software.* Making available for use by the observer a personal computer, in working condition, with a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5-inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in this paragraph must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors utilizing a modem must have at least a 28.8kbs Hayes-compatible modem.

(*2*) *NMFS-supplied software.* Ensuring that the shoreside processor obtains and installs the data entry software provided by the Regional Administrator for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communications equipment required at paragraph (f)(2)(iii)(B) of this section and that is used by observers to enter

and transmit data, is fully functional and operational, where functional means that data transmissions to NMFS can be initiated effectively by that equipment.

* * * * *

(3) The owner of a vessel, shoreside processor, or buying station is responsible for compliance and must ensure that the operator or manager of a vessel or shoreside processor required to maintain observer coverage under paragraphs (c) or (d) of this section complies with the requirements given in paragraphs (f)(1) and (f)(2) of this section.

* * * * *

[FR Doc. 02–18862 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 143
Thursday, July 25, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–060–1]

Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the control of rush skeletonweed, *Chondrilla juncea* (Asteraceae). The environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous organism, *Bradyrrhoa gilveolella* (Treitschke) (Lepidoptera: Pyralidae), into the environment for use as a biological control agent to reduce the severity of rush skeletonweed infestations. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before August 26, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–060–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No.02–060–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–060–1" on the subject line.

You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Tracy A. Horner, Entomologist, Biological and Technical Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–5213.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is considering an application from the University of Montana for a permit to release a nonindigenous organism, *Bradyrrhoa gilveolella* (Treitschke) (Lepidoptera: Pyralidae), to reduce the severity of rush skeletonweed, *Chondrilla juncea* (Asteraceae), in the continental United States.

Native to Eurasia, rush skeletonweed has become established in the District of Columbia and several States including California, Delaware, Georgia, Idaho, Indiana, Maryland, Michigan, Montana, New Jersey, New York, Oregon, Pennsylvania, Virginia, Washington, and West Virginia. This invasive weed infests roadsides, railways, rangelands, pastures, grain fields, coastal sand dunes, and shaley hillsides in mountainous regions. Rush skeletonweed causes losses in infested grain fields, reduces rangeland forage production, and reduces plant and animal diversity.

While chemical, mechanical, and cultural methods are available to control rush skeletonweed, these methods may damage the environment. In addition, the effectiveness of biological control agents that are currently used to control rush skeletonweed appears to vary depending upon the location; e.g., in California, a rust (*Puccinia chondrillina*) appears to be more effective in controlling rush skeletonweed, and in eastern Washington, a gall mite (*Aceria chondrillae*) appears to be more effective in controlling it.

The biological control agent *B. gilveolella* has the potential to suppress rush skeletonweed populations in the continental United States. *B. gilveolella* larvae feed on the roots of rush skeletonweed, causing the plant to die or increasing its susceptibility to pathogenic fungi. APHIS has completed an environmental assessment that considers the effects of, and alternatives to, releasing *B. gilveolella* into the environment for the biological control of rush skeletonweed infestations.

APHIS' review and analysis of the potential environmental impacts associated with releasing *B. gilveolella* into the environment are documented in detail in the environmental assessment, entitled "Field Release of *Bradyrrhoa gilveolella* (Lepidoptera: Pyralidae), for Biological Control of Rush Skeletonweed, *Chondrilla juncea* (Asteraceae)" (May 2002). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive by the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/* by accessing "Document/Forms Retrieval System," then "3-Permits-Pests"; the environmental assessment is document number 0032. You may request copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for

implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 19th day of July 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–18845 Filed 7–24–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–065–1]

Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the control of Siam weed, *Chromolaena odorata*, in Guam and the Northern Mariana Islands. The environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous fly, *Cecidochares (Procecicidochares) connexa*, into the environment for use as a biological control agent to reduce the severity of Siam weed. The environmental assessment provides a basis for our conclusion that the issuance of a permit for the field release of *Cecidochares (Procecicidochares) connexa* into the environment will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Tracy A. Horner, Entomologist, Biological and Technical Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–5213.

SUPPLEMENTARY INFORMATION:

Background

Siam weed, *Chromolaena odorata*, is a perennial shrub native to South America and Central America where it is controlled by competing plants and natural enemies. However, Siam weed has become an invasive weed in much of tropical Asia, Africa, and the western Pacific including Guam and the Northern Mariana Islands. It becomes the dominant vegetation in abandoned fields, vacant lands, disturbed forests, and roadsides, suppressing native vegetation and preventing the natural reseeding of forest trees. In addition, it interferes with the cultivation of crops such as rubber, oil palm, coffee, cocoa, teak, cashew, and coconut. During the dry season, Siam weed can become a fire hazard. The tangled thickets of this weed interfere with wildlife movement in forests, and the leaves of Siam weed are toxic to livestock.

Chemical, mechanical, and biological control methods are available to control Siam weed, but these methods have limitations. For instance, chemical and mechanical control methods are expensive, and chemical control method poses some environmental concerns. Of the four insects released in Guam for the biological control of Siam weed, only one insect has become established, with limited effectiveness. The effectiveness of the tiger moth, *Pareuchaetes pseudoinsulata*, has been limited to areas of dense thickets. A nonindigenous fly, *Cecidochares (Procecidochares) connexa* Macquart (Diptera: Tephritidae), would potentially complement the tiger moth in the control of Siam weed because *C. connexa* has the ability to locate, and become established within, patchy distributions of Siam weed.

The Animal and Plant Health Inspection Service (APHIS) received a permit application from the University of Guam to release *C. connexa* into the environment to reduce the severity of Siam weed infestations in Guam and the Northern Mariana Islands. APHIS prepared an environmental assessment entitled "Field Release of *Cecidochares (Procecidochares) connexa* Macquart (Diptera: Tephritidae), a non-indigenous, gall-making fly for control of Siam weed, *Chromolaena odorata* (L.) King and Robinson (Asteraceae) in Guam and the Northern Mariana Islands" (February 2002). The notice of availability and request for comments on the environmental assessment was published in the *Pacific Daily News*, March 7–9, 2002, the *Saipan Tribune*, March 5–7, 2002, and the *Honolulu Advertiser*, March 1, 2002. We received no comments on the environmental assessment.

We are advising the public of APHIS' record of decision and finding of no significant impact regarding the issuance of a permit for the field release of *C. connexa*, without conditions, for use as a biological control agent to reduce the severity of Siam weed infestations.

The environmental assessment and finding of no significant impact may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/* by accessing "Document/Forms Retrieval System," then "3-Permits-Pests," and document number 0031. You may request copies of the environmental assessment and finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies. The environmental assessment and finding of no significant impact are also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 19th day of July 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–18846 Filed 7–24–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review.

SUMMARY: On January 17, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on pencils from the People's Republic of China (PRC). The merchandise covered by this order is certain cased pencils (pencils). We initiated this review on 39 named respondents.[1] Three of the named respondents actively participated in this review: China First Pencil Company, Ltd. (CFP), Shanghai Foreign Trade Corporation (OIHSFTC), Kaiyuan Group Corporation (Kaiyuan) and their producers/suppliers. The period of review (POR) is December 1, 1999, through November 30, 2000.

Based on our analysis of the comments received, we have made changes in our margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed companies are listed below in the section entitled "Final Results of Review." For details regarding these changes, see the section of the notice entitled "Changes Since the Preliminary Results."

EFFECTIVE DATE: July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, Michele Mire, or Crystal Crittenden, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4474, (202) 482–4711, or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2000).

Background

On January 17, 2002, the Department published the preliminary results of the administrative review of the antidumping duty order on pencils from the PRC. *See Certain Cased Pencils From the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 2402 (January 17, 2002). We invited parties to comment on our preliminary results of review.

Since the publication of the preliminary results, the following events have occurred. During January and February 2002 we conducted verification of the questionnaire responses of CFP, Shanghai Three Star Stationery Company, Ltd. (Three Star), Guangdong Provincial Stationary & Sporting Goods Import and Export Corporation (Guangdong), Kaiyuan, and its supplier, Laizhou Pencil Making Factory (Laizhou). During March, and April, 2002 interested parties submitted publicly available information, comments and rebuttal comments regarding surrogate values. On May 8, 2002, the Department extended the time limit for completion of the final results until no later than July 16, 2002. *See Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 67 FR 35790 (May 21, 2002). During April and June, petitioners and respondents submitted factual information regarding CFP's relationship with Three Star. Interested parties submitted case briefs and rebuttal briefs during June, 2002.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this order are classified under item number 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS item number is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Final Partial Rescission

The Department verified that Laizhou City Guangming Pencil-Making Lead Co., Ltd. (Laizhou) did not export subject merchandise to the United States during the POR. Therefore, we are rescinding this review with respect to Laizhou.

Period of Review

The POR is December 1, 1999 to November 30, 2000.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (*Decision Memorandum*) from Bernard T. Carreau, Deputy Assistant Secretary, Important Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby

[1] We initiated this administrative review on 39 parties. The following three companies actively participated in this review: China First Pencil Company, Ltd.; Shanghai Foreign Trade Corporation; and Kaiyuan Group Corporation. The following three companies stated that they made no sales of subject merchandise during the POR: Guangdong Provincial Stationery & Sporting Goods Import & Export Corporation; Shanghai Three Star Stationery Company, Ltd.; and Laizhou City Guangming Pencil-Making Lead Co., Ltd. We sent questionnaires to the following 16 companies and received no response: Anhui Light Industrial Products I/E Corporation; Anhui Provincial Imports & Exports Corporation; Anhui Import/Export Group Corporation; Beijing Pencil Factory; Beijing Light Industrial Products I/E Corp.; Dalian Light Industrial Products Import/Export Corporation; Jinan Pencil Factory; Liaoning Light Industrial Products Import/Export Corporation; Qingdao Light Industrial Products Import/Export Corporation; Shandong Light Industrial Products Import/Export Corporation; Sichuan Light Industrial Products Import/Export Corporation; Songnan Pencil Factory; Tianjin Stationery and Sporting Goods Import/Export Corporation; Tianjin Pencil Factory; Xinbang Joint Venture Pencil Factory; and Zhenjiang Foreign Trade Corporation. We could not locate addresses for the following 12 companies: Anhui Bengbu Pencil Factory; Anhui Stationery Company; China Second Pencil Company, Ltd.; Guangdong Textile Factory; Harbin Pencil Factory; Jiangsu Pencil Factory; Juihai Pencil Factory; Julong Pencil Factory; New Century; Qingdao Pencil Factory; Shanghai JV Stationery Co., Ltd./Shanghai Jay-Vee Stationery Co., Ltd.; Factory; Shanghai JV Stationery Co., Ltd./Shanghai Jay-Vee Stationery Co., Ltd.; Shenyiang Pencil Factory. Questionnaires issued to the following five parties were returned to us as undeliverable: China National Light Industrial Products Import & Export Corporation (all branches); Dalian Pencil Factory; Donghua Pencil Factory; Jiangsu Light Industrial Products Import/Export Group Corp.; Jilin Provincial Machinery & Equipment Import & Export Corporation.

adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Record Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the International Trade Administration's Web site at www.ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable.

Rescission of Review With Respect to Guangdong and Three Star

Since the preliminary results in this review, evidence has been placed on the record regarding the relationship between CFP and Three Star which supports treating these two entities as a single entity for purposes of our antidumping analysis. See the *Decision Memorandum* to Comment 12. Because we find the CFP/Three Star entity to be distinct from the Three Star entity in the Three Star/Guangdong sales chain that was excluded from the antidumping duty order, we are no longer excluding the Three Star/Guangdong sales chain from the order. Thus, we have not rescinded this review with respect to Guangdong. We will instruct U.S. Customs to begin suspending liquidation of entries of pencils identified as produced by Three Star and exported by Guangdong effective as of the date of publication of this notice. All merchandise exported by Guangdong will be subject to cash deposit requirements at the PRC-wide rate. With respect to Three Star, we note that although Three Star did not ship subject merchandise directly to the United States during the POR, we are treating CFP and Three Star as a single entity for purposes of assigning an antidumping duty rate, and thus we have not rescinded the review with respect to Three Star. We will assign the CFP/Three Star entity the antidumping duty rate calculated for CFP in this review.

Factors of Production

Based on our findings at verification, and our analysis of comments received, we made adjustments to the factors of production, surrogate values, and methodologies used to calculate margins in the preliminary results. These adjustments are listed below and discussed in detail in the *Decision Memorandum*.

Surrogate Values

The Department has determined that South Korea, Thailand, and Indonesia maintain broadly available, non-industry specific export subsidies which may benefit all exporters to all export markets. Therefore, for the final results of this review, we eliminated the quantities and values of imports from these countries from the import statistics used to calculate surrogate values. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002).

For glue, cores, and lacquer, we eliminated aberrational prices for merchandise from countries with low import volumes from the Indian import statistics used to calculate surrogate values. For respondents, other than CFP, we valued erasers using Indonesian import statistics because we found the surrogate value calculated from Indian import statistics to be aberrational. *See*OIHSFTC, CFP, and Kaiyuan Calculation Memorandums and the *Decision Memorandum* at Comment 4. For CFP, we recalculated the surrogate value for erasers using the actual purchase price paid by CFP to a market economy supplier in U.S. dollars during the POR. *See* CFP Calculation Memorandum and the Decision Memorandum at Comment 3

We recalculated the financial ratios using the financial statements of a Philippine wood products producer. See OIHSFTC, CFP, and Kaiyuan Calculation Memorandums and the *Decision Memorandum* at Comment 5.

CFP

We made minor corrections identified at verification. *See* CFP Calculation Memorandum.

OIHSFTC

We revised the methodology used to value certain pencils sold to the United States by OIHSFTC. OIHSFTC obtained finished pencils from a supplier (supplier A) which obtained raw pencils from another supplier (supplier B). In the preliminary results, we valued raw pencils as a factor of production for supplier A. For the final results of this review, we modified our approach and valued the factors of production consumed by supplier B to produce a raw pencil and the factors of production consumed by supplier A to finish the pencils it subsequently supplied to OIHSFTC.

We recalculated the dumping margin for uncooperative suppliers using partial adverse facts available. *See* OIHSFTC Calculation Memorandum and the *Decision Memorandum* at Comment 10.

We made minor corrections identified at verification. *See* OIHSFTC Calculation Memorandum.

Kaiyuan

We made minor corrections identified at verification. *See*Kaiyuan Calculation Memorandum and the *Decision Memorandum* at Comment 11.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final results. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

Final Results of Review

We determine that the following weighted-average percentage margins exist for the period December 1, 1999 through November 30, 2000:

Exporter/Manufacturer	Margin (percent)
China First Pencil Co.,Ltd.[2]	11.39
Shanghai Foreign Trade Corporation	14.53
Kaiyuan Group Corporation	123.11
PRC Wide-Rate	123.11

[2] As noted above, Shanghai Three Star Stationery Company Ltd. is now considered to be part of China First Pencil Co., Ltd. Further, products produced by Shanghai Three Star Stationery

As noted in the preliminary results of review, the firms named in the notice of initiation that received, but did not respond to our questionnaire are not eligible for separate rate status and therefore will be treated as part of the PRC-wide entity. The firms named in the notice of initiation that did not receive our questionnaire have not been granted separate rate status in prior segments of this proceeding and thus will continue to be treated as part of the PRC-wide entity.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 123.11 percent; and 4) the cash deposit rate for non-PRC exporters will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment

The Department will determine, and the Customs Service will assess, antidumping duties on all entries of subject merchandise in accordance with these final results. For assessment purposes, we have calculated exporter-specific duty assessment rates for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. We calculated exporter-specific assessment rates because there was no information on the record which identified the importers of record. The Department will issue appraisement instructions directly to Customs.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

Dated: July 16, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Comments

Comment 1: Whether to Rescind the Review with Respect to Guangdong/Three Star

Comment 2: The Appropriate Surrogate Values for Semi-Finished Pencils

Comment 3: Whether CFP's Erasers Should be Valued Based on Purchases

Comment 4: Whether Indian Surrogate Values for Erasers, Cores, Glue, and Lacquer are Aberrational

Comment 5: The Appropriate Surrogate Source for Financial Ratios

Comment 6: Ministerial Error in OIHSFTC's Margin Calculation

Comment 7: Whether India is the Appropriate Principal Surrogate Market Economy Country

Comment 8: The Appropriate Surrogate Source for Logs and Slats

Comment 9: The Appropriate China-Wide Rate

Comment 10: Use of Partial Adverse Facts Available with Respect to OIHSFTC's Uncooperative Producers

Comment 11: Verification Discrepancies—Kaiyuan/Laizhou

Comment 12: Whether CFP and Three Star Should be Treated as a Single Entity for Antidumping Purposes

[FR Doc. 02–18856 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071702D]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Gulf of Alaska Working Group will meet in Anchorage.

DATES: The meeting will be held on August 21, 2002, from 9:30 a.m. until 5 p.m.

ADDRESSES: The meeting will be held at the Hawthorn Suites, Ltd., 1110 West 8th Avenue, Ballroom A, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council Staff at 907–271–2809.

SUPPLEMENTARY INFORMATION: On Wednesday, August 21st, the committee will meet to review Council direction on groundfish management issues related to rationalizing the Gulf of Alaska groundfish fisheries, committee assignments, and requested data reports.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: July 17, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18738 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071602D]

Marine Mammals; File No. 998–1678

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Gregory D. Bossart, Harbor Branch Oceanographic Institution, Inc., 5600 U.S. 1 North, Fort Pierce, FL 34946, has applied in due form for a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 26, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin or Lynne Barre, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to conduct a health assessment of bottlenose dolphins in the Indian River Lagoon, FL and the waters near Charleston, SC that would include the capture, examination, sampling, tagging and release of up to 400 animals (200 at each site) over a 5 year period. Dolphins of all age and sex classes would be captured except female-calf pairs containing calves presumed to be less than one year of age. Some individual dolphins may be harassed more than once per day but not more than three times per day. In addition, some individual dolphins may be captured more than once during the 5-year period, but not more than three times in any given year. The applicant also proposes to incidentally harass a maximum of 1,500 additional dolphins per site (FL and SC) during the process of locating individuals for health assessment examinations.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 18, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18860 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071202C]

Marine Mammals; File No. 782–1438

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, NMFS, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070, (Dr. Sue Moore, Principal Investigator (PI)) has been issued a minor amendment to scientific research Permit No. 782–1438.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980-4018;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 782–1438, issued on issued on May 8, 1998 (63 FR 27265) authorizes the National Marine Mammal Laboratory to take various large and small cetacean species through photographic aerial surveys (Project I); biopsy sampling, tagging and photo-identification (Project II); small cetacean species and pinnipeds through vessel surveys (Project III); gray whales through biopsy sampling, tagging, photo-id and harassment (Project IV); and beluga whales by satellite-tagging, flipper tagging, VHF radio/time depth recorder(TDR) suction cup-tagging and biopsy sampling (Project V). The amendment extends the expiration date of the permit. For Projects I, II, and III, the expiration date has been extended to September 30, 2003. For Project IV, the expiration date has been extended to June 30, 2003.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 19, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18863 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974, as Amended; System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Notice of proposed new Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Corporation for National and Community Service (hereinafter the "Corporation") gives notice of two new Privacy Act systems of records. The Corporation seeks comment on these two new systems of record as described in this notice in accordance with the requirements of the Privacy Act.

DATES: We must receive your comments on the proposed two new systems of records included in this notice on or before September 4, 2002. The proposed new systems of records will become effective September 6, 2002, unless any comments received delay the effective date.

ADDRESSES: Address all comments on the proposed new systems of records to the Corporation for National and Community Service, Attn: Bill Hudson, Corporation Privacy Officer, Room 8204, 1201 New York Avenue, NW., Washington DC, 20525. Please be sure to specify which system of records you are commenting on. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For information regarding the "Volunteer Service Tracking Tool", contact the Corporation for National and Community Service, Office of Public Affairs, Attn: Ms. Christine Benero, 1201 New York Avenue, NW., Washington, DC 20525. Telephone: (202) 606–5000, Ext. 193. For information regarding the "Join Senior Service Now" Web-based Recruiting System (JASON), contact the Corporation for National and Community Service, National Senior Service Corps, Attn: Mr. Peter Boynton, 1201 New York Avenue, NW., Washington, DC 20525. Telephone: (202) 606–5000, Ext 499.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C., 552a, the Corporation proposes to establish the following new systems of records:

(1) Volunteer Service Tracking Tool (Corporation-19)

In his State of the Union address, President Bush called on all Americans to perform some form of service to the nation for the equivalent of two years of their life. Americans serve their country in extraordinary and countless ways. Most of our Nation's civic work is being done without the aid of the Federal Government, but we believe the Federal Government can work to enhance the opportunities for Americans to serve their neighbors and their Nation. The Administration proposes to create and expand activities that will enhance homeland security, provide additional community-based service and volunteer opportunities, and assist people around the world. In January, the President announced the creation of the USA Freedom Corps which has three major components: a newly created Citizen Corps to engage citizens in homeland security; an improved and enhanced AmeriCorps and Senior Corps, programs of the Corporation; and a strengthened Peace Corps.

In support of the President's call to service, the Corporation has created an electronic record of service that provides citizens who accept his challenge a way to track their service time and record their service hours. Use of this tracking tool is 100 percent electronic in that users will establish a user ID and password that automatically creates a "record of service" account which is only accessible to that particular user. This record of service account can be updated only by the user who established the account. In addition, those users who create a record of service account can, by checking various blocks, elect to receive information about USA Freedom Corps and other national and community service volunteer activities.

(2) Join Senior Service Now Web-based Recruiting System (JASON) (Corporation-20)

Senior Corps volunteers serve with local projects of the Retired and Senior Volunteer Program (RSVP), the Foster Grandparent Program (FGP) and the Senior Companion Program (SCP). Individuals learn about these opportunities through a variety of means, including public service announcements, posters, advertisements, and visits to the Corporation's Web site and Web sites of local projects. These media and others will be used to direct interested individuals to the JASON Web site at *www.joinseniorservice.org*.

When they use JASON, prospective volunteers have the opportunity to find senior service projects of interest to them in two ways:

(1) *Fast Match*. By using the system's "Fast Match" feature, individuals can search for projects by selecting the senior service program(s) they are interested in and providing their ZIP code and the distance they are willing to travel. They also have the option to narrow their search by selecting one or more areas of service and/or entering one or more key words. They receive a listing of opportunities within the Senior Corps grantee network that match their service, distance, and/or other specifications and preferences.

(2) *Registration*. Individual seniors can also register with the system. Registration allows individuals the option of expressing interest in volunteering with senior service projects of their choosing and of sending certain information about themselves to the volunteer recruiters of those projects.

These two new systems of records reports, required by the Privacy Act, 5 U.S.C. 552a(r), have been submitted to the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), pursuant to Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996.

The two proposed new systems of records, described above, are published in their entirety below.

Dated: July 17, 2002.

Wendy Zenker,

Chief Operating Officer.

CORPORATION–19

SYSTEM NAME:

USA Freedom Corps Record of Service.

SYSTEM LOCATION:

Corporation for National and Community Service, Office of Public Affairs, 1201 New York Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have recorded information on their community service participation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Participant's e-mail address, participant's length of service, and

information about the volunteer's history of service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National and Community Service Act of 1990, as amended.

PURPOSE(S):

To provide citizens a way to track their service time and record their service hours.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a database maintained by a Corporation contractor.

RETRIEVABILITY:

The participant's e-mail address retrieves records.

SAFEGUARDS:

The information is available only to Corporation and USA Freedom Corps staff. It is not available to anyone else without the express written consent from the individual to release his/her information.

RETENTION AND DISPOSAL:

These records are maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Webmaster, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURE:

To determine whether there is a record in the system about an individual, a participant should contact the Corporation for National and Community Service, Attn: Webmaster, 1201 New York Avenue, NW., Washington, DC 20525, and provide his/her e-mail address.

RECORDS ACCESS PROCEDURES

See Notification procedures.

CONTESTING RECORDS PROCEDURES:

Anyone desiring to contest or amend information maintained in his/her electronic record may do so by addressing such request to the Corporation for National and Community Service, Attn: Privacy Act Officer, 1201 New York Avenue, NW., Washington, DC 20525.

RECORD SOURCE CATEGORIES:

Data is obtained from the electronic entries made by the participant into our registration system.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–20

SYSTEM NAME:

Join Senior Service Now Web-based Recruiting System (JASON).

SYSTEM LOCATION:

Electronic records may be maintained by either the National Senior Service Corps (Senior Corps) or a Corporation contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective senior volunteers who voluntarily elect to use the JASON system to seek placement with organizations seeking the services of senior volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Registration Data, Volunteer Interest Profile, Volunteer-Seeking Organization or Project Data Organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended.

PURPOSE(S):

To match prospective senior volunteers who voluntarily elect to use the JASON system to seek placement with organizations seeking the services of senior volunteers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

See General Routine Uses contained in Preliminary Statement. Information is collected electronically and stored on computers.

RETRIEVABILITY:

Information stored by an individual is retrievable by user name and password that provides access to the data he or she provided to the system.

SAFEGUARDS:

Electronic records are protected by the use of passwords.

RETENTION AND DISPOSAL:

Records will be retained indefinitely to permit longitudinal analyses, but archived periodically and stored in a secure location.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Program Officer, Technical Assistance and Project Information Systems, National Senior Service Corps, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURE:

To determine whether there is a record in the system about an individual, that individual should submit a request, in writing, to the system manager giving their full name, and user ID used to access JASON.

RECORD ACCESS PROCEDURE:

See Notification procedures.

CONTESTING RECORD PROCEDURE:

Anyone desiring to contest or amend information in this system should write to the system manager and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individual seniors seeking to opportunities to volunteer their services and from organizations with projects who are seeking senior volunteers. Furnishing of information to the system is voluntary.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–18820 Filed 7–24–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by August 26, 2002.

Title, Form, and OMB Number: NROTC Applicant Questionnaire; NAVCRUIT 1131/6; OMB Number 0703–0028.

Type of Request: Reinstatement.

Number of Respondents: 40,000.

Responses per Respondent: 1.

Annual Responses: 40,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 10,000.

Needs and Uses: The information is used by the Navy Recruiting Command to determine basic eligibility for the Four-Year NROTC Scholarship Program, and is necessary for the initial screening of prospective applicants. Use of this questionnaire is the only accurate and specific method to determine scholarship awardees. Each individual who wishes to apply to the scholarship program completes and returns the questionnaire.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Office: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–18777 Filed 7–24–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–30 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

17 JUL 2002
In reply refer to:
I-02/007331

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-30, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and services estimated to cost $1.5 billion. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

Major Defense Equipment*	$ .746 billion
Other	$ .754 billion
TOTAL	$1.500 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: remanufacture of 30 AH-64A APACHE helicopters to the AH-64D model aircraft. This proposed sale also includes: 32 AN/APG-78 AH-64D Longbow Fire Control Radar; 32 APR-48A Radar Frequency Interferometer; 32 T-700-GE-701C engines; 32 Modernized Target Acquisition Designation Sight/Pilot Night Vision Sensors; 240 AGM-114L3 HELLFIRE II laser guided missiles; 49 AGM-114M3 HELLFIRE II blast fragmentation missiles; 90 M299 HELLFIRE missile launchers; 33 AN/ALQ-211 Suite of Integrated Radio Frequency Countermeasures/Suite of Integrated Infrared Countermeasures; HAVE GLASS II capabilities; spare and repair parts; support equipment; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor technical support and other related elements of logistics support.

(iv) Military Department: Army (UDI)

(v) Prior Related Cases, if any:
FMS case JAH - $404 million – 11Dec91
FMS case JAH, Amd 1 - $ 9 million – 17Nov92
FMS case JAH, Amd 3 - $197 million – 31May94

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 17 JUL 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates – AH-64A APACHE Helicopters Remanufactured to AH-64D Model Aircraft

The Government of United Arab Emirates (UAE) has requested the remanufacture of 30 AH-64A APACHE helicopters to the AH-64D model aircraft. This proposed sale also includes: 32 AN/APG-78 AH-64D Longbow Fire Control Radar; 32 APR-48A Radar Frequency Interferometer; 32 T-700-GE-701C engines; 32 Modernized Target Acquisition Designation Sight/Pilot Night Vision Sensors; 240 AGM-114L3 HELLFIRE II laser guided missiles; 49 AGM-114M3 HELLFIRE II blast fragmentation missiles; 90 M299 HELLFIRE missile launchers; 33 AN/ALQ-211 Suite of Integrated Radio Frequency Countermeasures/Suite of Integrated Infrared Countermeasures; HAVE GLASS II capabilities; spare and repair parts; support equipment; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $1.5 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The United Arab Emirates desires these articles to fulfill their strategic commitments for self-defense, with coalition support, in the region. The proposed sale will upgrade UAE's anti-armor day/night missile capability, provide for the defense of vital installations and improve close air support for its military ground forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: The Boeing Company of Mesa, Arizona; Lockheed Martin Electronics and Missiles of Orlando, Florida; Lockheed Martin Systems Integration of Oswego, New York; General Electric of Lynn, Massachusetts; and Longbow International of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of 10 U.S. Government representatives for two-week intervals, twice annually, to participate in training, program management and technical reviews. There will be up to 40 contractor representatives in-country for two years to assist in the delivery of the helicopters. A U.S. Government representative will be in the OCONUS field office for two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AH-64D APACHE Attack Helicopter includes the following classified or sensitive components:

a. AN/APG-78 AH-64D Longbow Fire Control Radar (FCR) is an active fire control radar system providing detection, location, classification and prioritization of targets to be prosecuted by the Longbow HELLFIRE Modular Missile System or handed over to other on-board sensor systems. This enables the APACHE helicopter to detect and fire upon targets in weather and visual conditions that preclude the use of visual or infrared imaging systems. The hardware and releasable technical manuals for operation and organic level maintenance are Unclassified. When the system software is activated with the hardware, the system become Secret. The data, including operational software, proposed for release will not, in itself facilitate reverse engineering.

b. The AN/APR-48A Radar Frequency Interferometer (RFI) is part of the AN/APR-78 FCR. It passively detects, locates in azimuth, and identifies radar emitters and sends the emitter identification and location to either the FCR or to the APACHE Weapons Processor for display to the aircrew. Emitter information can also be used to cue the FCR, as well as for making decisions on FCR target prioritization. Hardware is classified Confidential when the User Data Module (UDM) is attached to the RFI Processor Assembly and Unclassified when the UDM is absent. Releasable technical manuals for operation and organic level maintenance are Unclassified. The data, including operational software, proposed for release will not facilitate reverse engineering.

c. The Modernized Target Acquisition and Designation Sight/Pilot Night Vision Sensor (MTADS/PNVS) provides second generation day and night target information, as well as night navigation capabilities and second generation thermal imaging that permits safer nap-of-the-earth flight. The co-pilot gunner is provided with improved search, detection, recognition, and designation by way of Direct View Optics (DVO), and second generation Forward Looking Infrared (FLIR) sighting systems that may be used singly or in combinations. Complete provisions are made for image fusion, automatic target recognition, and dynamic alignment. Hardware and technical manuals are classified up to Secret.

d. The AGM-114L3 HELLFIRE missiles hardware, and the documentation provided are Unclassified. However, sensitive technology is contained within the system itself. Sensitive software algorithms are contained within the system, but the L3 version contains several software security capabilities. Also, the missile source code is not releasable. This protects the sensitive software information from being compromised. The Longbow seeker contains critical components, but the technical data package will not be released.

e. The AGM-114M3 HELLFIRE II Blast Fragmentation Missile is a laser-guided helicopter launched missile. The warhead is designed to defeat targets such as ships, heavy equipment, light armor, electronics, bunkers, and personnel. The blast fragmentation warhead penetrates hulls, decks, light metal/frame construction and has a built-in time delay. The warhead detonates after penetration to maximize lethality. Missiles utilize the semi-active laser (SAL) terminal homing guidance system. The hardware is Unclassified.

f. The AN/ALQ-211 Suite of Integrated Radio Frequency Countermeasures (SIRFC) passively detects, geolocates, identifies and prioritizes radar emitters. SIRFC sends the emitter identification and location to whichever bus it is connected to for display to the aircrew. Emitter information is used to define the use of countermeasures to defeat the threat. The hardware is classified Secret when the User Data Module (UDM) is attached to the Processor Component; Unclassified when the UDM is absent. The data, including operational software, proposed for release will not facilitate reverse engineering. SIRFC is paired with the Suite of Integrated Infrared Countermeasures (SIIRCM) as part of the Air Survivability Equipment (ASE). Final decision is pending for the ASE, which will be either the SIRFC/SIIRCM System or the Helicopter Integrated Defensive Aids System (HIDAS) which is non-MDE.

g. The AN/ALQ-212 Countermeasures Set (ATIRCM/CMWS) senses, identifies and prioritizes and activates the correct system countermeasures necessary to defeat incoming threat infrared missiles. Due to the short time lines associated with this activity, countermeasures information is not displayed to the operator. The Countermeasure Receiver (Electronic Control Unit) of the system is classified Confidential when a Memory Card, Personal Computer (User Data Module) is installed. When the Memory Card is removed the receiver is Unclassified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that United Arab Emirates can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–18796 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–32]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–30 with attached transmittal and policy justification.

Dated: July 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

17 JUL 2002
In reply refer to:
I-02/007655

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-32, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Singapore for defense articles and services estimated to cost $120 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-32

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Singapore

(ii) Total Estimated Value:

Major Defense Equipment*	$ 10 million
Other	$110 million
TOTAL	$120 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: munitions, services and support for F-16C/D aircraft which includes 2 MQM-107 target drones, 9 AIM-9 Sidewinder coolant bottles, 105,000 20mm cartridges, 36 AGM-65G Infrared Guidance Control Sections, 324 GBU-10 and 108 GBU-12J/B guided bomb units, modification kits, maintenance, flight training, spare and repair parts, support equipment, program management, publications and documentation, personnel training, training equipment, logistics personnel services and other related elements of program support.

(iv) Military Department: Air Force (NCU)

(v) Prior Related Cases, if any: FMS case NCP - $88 million – 20Mar99

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: 17 JUL 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Singapore – Munitions, Services, and Support

The Government of Singapore has requested a possible sale of munitions, services and support for F-16C/D aircraft which includes 2 MQM-107 target drones, 9 AIM-9 Sidewinder coolant bottles, 105,000 20mm cartridges, 36 AGM-65G Infrared Guidance Control Sections, 324 GBU-10 and 108 GBU-12J/B guided bomb units, modification kits, maintenance, flight training, spare and repair parts, support equipment, program management, publications and documentation, personnel training, training equipment, logistics personnel services and other related elements of program support. The estimated cost is $120 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for economic progress in Southeast Asia.

This proposed sale would support Singapore's current and future F-16 aircraft inventory. These short-range precision munitions will provide Singapore with a credible defense capability while avoiding the collateral damage associated with conventional gravity munitions. The long-term pilot training program in CONUS continues a professional interaction and enhances operational interoperability with U.S. forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–18797 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–36]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–36 with attached transmittal and policy justification.

Dated: July 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

16 JUL 2002

In reply refer to:
I-02/008195

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-36, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Pakistan for defense articles and services estimated to cost $75 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-36

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Pakistan

(ii) Total Estimated Value:

Major Defense Equipment*	$11 million
Other	$64 million
TOTAL	$75 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: six used C-130E aircraft with engines, one C-130E operational capabilities upgrade aircraft for cannibalization with engines, upgrade of engines to Allison 56-A-15 engines, modification kits, spare and repair parts, devices, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support.

(iv) Military Department: Air Force (SEB)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress:

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Pakistan – C-130 Aircraft

The Government of Pakistan has requested a possible sale of six used C-130E aircraft with engines, one C-130E operational capabilities upgrade aircraft for cannibalization with engines, upgrade of engines to Allison 56-A-15 engines, modification kits, spare and repair parts, devices, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support. The estimated cost is $75 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for economic progress in South Asia.

Pakistan needs these aircraft to support a current and long-term airlift shortfall, both for Pakistan Air Force internal requirements, and as it seeks to support the U.S. Government with Operation Enduring Freedom. These C-130E aircraft will be used for the purpose of providing airlift support. Pakistan can easily absorb and utilize these within its existing structure.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Lockheed Martin Aeronautics Company of Fort Worth, Texas. There are no offset agreements proposed in connection with this potential sale.

The number of U.S. Government and contractor representatives required in-country to support the program will be determined in joint negotiations as the program proceeds through the development, production and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–18798 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–34]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–34 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUL 2002
In reply refer to:
I-02/007812

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-34, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Oman for defense articles and services estimated to cost $49 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-34

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Oman

(ii) **Total Estimated Value:**

Major Defense Equipment*	$38 million
Other	$11 million
TOTAL	$49 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** two Goodrich DB-110 or two BAE Systems F-9120 Podded reconnaissance systems, one Goodrich or one BAE Systems Exploitation Ground Station, support equipment, spares and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support.

(iv) **Military Department:** Air Force (SDC, Amendment 1)

(v) **Prior Related Cases, if any:** FMS case SDC - $701 million – 8May02

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 18 JUL 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Oman – Reconnaissance Systems and Support

The Government of Oman has requested a possible sale of two Goodrich DB-110 or two BAE Systems F-9120 Podded reconnaissance systems, one Goodrich or one BAE Systems Exploitation Ground Station, support equipment, spares and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $49 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will strengthen the military ties between the U.S. and the Sultanate of Oman. Strategically located at the Strait of Hormuz in the Persian Gulf, Oman has been a coalition partner for over thirty years. Oman's active participation during the Gulf crisis and their willingness to allow access to port facilities and air bases make them vital to any coalition success in the region. This proposed sale would strengthen Oman as a coalition partner by providing greater interoperability with U.S. and other coalition forces in the region.

The reconnaissance systems will be utilized on their newly purchased F-16 aircraft. Oman desires these articles to fulfill their strategic commitments for self-defense, with coalition support, in the region.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Goodrich Corporation of Charlotte, North Carolina or BAE Systems, North America of Syosset, New York. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one U.S. Government and two contractor representatives for one-week intervals, twice annually, to participate in program management and technical reviews. Contractor representatives specializing in various skills and disciplines will be required to provide in-country support for a short period of time. The specific requirements for this support will be established during program definition between representatives of the U.S. Government and Oman.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-34

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The reconnaissance systems being considered by the Royal Air Force of Oman include the Goodrich Corporation DB-110 and the BAE Systems F-9120 reconnaissance systems, neither of these systems is currently in use with U.S. forces. Both candidate sensors feature dual-band (electro-optical and infrared) medium and high-altitude field of view capability with provisions for medium range and over-flight fields of view. Both candidates also utilize a "pan scan" operation and have provisions for data linking information to an exploitation ground station for data analysis, which is part of the overall system being considered. Performance and specification data for both systems is Unclassified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures, which might reduce the effectiveness of the reconnaissance system, or be used in the development of a system with similar capabilities.

3. A determination has been made that Oman can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–18799 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–38]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–38 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUL 2002
In reply refer to:
I-02/008739

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-38, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $27 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$24 million
Other	$ 3 million
TOTAL	$27 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 1,000 Joint Direct Attack Munitions (JDAM) tail kits, 50 MK-84 inert bombs, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support.

(iv) Military Department: Air Force (YET)

(v) Prior Related Cases, if any: FMS case YEQ - $30 million – 9Feb00

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: see Annex attached

(viii) Date Report Delivered to Congress: 18 JUL 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel – Joint Direct Attack Munitions

The Government of Israel has requested a possible sale of 1,000 Joint Direct Attack Munitions (JDAM) tail kits, 50 MK-84 inert bombs, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support. The estimated cost is $27 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will contribute significantly to U.S. strategic and tactical objectives. Israel will maintain its qualitative edge with a balance of new weapons procurement and upgrades supporting its existing systems. Israel, which already has tail kits in its inventory, will have no difficulty absorbing these additional kits.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Company of St. Louis Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Joint Direct Attack Munition is actually a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance to existing inventories of MK-84 bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins.

2. Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

Access to accurate target coordinates.
INS/GPS capability
Operational Test and Evaluation Plan.

3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–18800 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2002 study on Immediate Attack Deep in Hostile Territory. The purpose of the meeting is to allow the SAB and study leadership to brief the Secretary of the Air Force on the results of their study. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: August 13, 2002.

ADDRESSES: The Pentagon, Room 4E869, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–18765 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Institute of Pathology Scientific Advisory Board

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following open meeting:

Name of Committee: Scientific Advisory Board (SAB).

Dates of Meeting: November 14–15, 2002.

Place: The Armed Forces Institute of Pathology (AFIP), Building 54, 14th St. & Alaska Ave., NW., Washington, DC 20306–6000.

Time: 8 a.m.–5 p.m. (November 14, 2002). 8:30 a.m.–12 p.m. (November 15, 2002).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Center for Advanced Pathology (CAP), AFIP Building 54, Washington, DC 20306–6000, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION:

General function of the board: The SAB provides scientific and professional advice and guidance on programs, policies and procedures of the AFIP.

Agenda: The Board will hear status reports from the AFIP Director, Principal Deputy Director, CAP Director, Director of the National Museum of Health and Medicine, and each of the pathology sub-specialty departments, which the Board members will visit during the meeting.

Open board discussions: Reports will be presented on all visited departments. The reports will consist of findings, recommended areas of further research, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Ridgely L. Rabold,

Executive Secretary, Scientific Advisory Board.

[FR Doc. 02–18854 Filed 7–24–02; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive License or Partially Exclusive Licensing of U.S. Patent Application Concerning Protection Glove

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In Accordance with 37 part 404.6, announcement is made of the availability of licensing of U.S. Patent No. US 6,415,446 B1 entitled "Protection Glove" issued July 9, 2002. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–18855 Filed 7–24–02; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Department of the Army is deleting a system of records notice from in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 26, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0037–103d SAFM

SYSTEM NAME:

Conversion Files (February 22, 1993, 58 FR 10002).

REASON:

The Department of the Army no longer collects and maintains this type of record. Therefore, the system of records notice is being deleted.

[FR Doc. 02–18776 Filed 7–25–02; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP02–404–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

July 19, 2002.

Take notice that on July 11, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP02–404–000 a request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon by removal in its entirety its delivery point to Allegheny Power, d.b.a. Mountaineer Gas Company, located in Hancock County, West Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request. Copies of this request are on file with the Commission and are available for public inspection. This request may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

Columbia proposes to abandon by removal in its entirety its point of delivery to Allegheny Power, located in Hancock County, West Virginia. Columbia states that the point of delivery is no longer needed for a dwelling on this property because the dwelling is scheduled to be demolished.

Columbia indicates that the abandonment activities will consist of removing the station in its entirety and capping the tap. Columbia asserts that the minor costs associated with the abandonment will be expensed.

Any questions regarding the prior notice request should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P. O. Box 1273, Charleston, West Virginia 25315–1273, at (304) 357–2359.

Any person or the Commission's staff may, within 45 day after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18833 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2032–000]

NRG New Jersey Energy Sales LLC; Notice of Issuance of Order

July 19, 2002.

NRG New Jersey Energy Sales LLC (NRG) submitted for filing a rate schedule under which NRG will engage in the sale of wholesale energy, capacity and ancillary services at market-based rates and for the reassignment of transmission capacity. NRG also requested waiver of various Commission regulations. In particular, NRG requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by NRG.

On July 12, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NRG should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, NRG is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of NRG, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NRG's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 12, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18830 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2080–000]

Ocean Peaking Power, L.P.; Notice of Issuance of Order

July 19, 2002.

Ocean Peaking Power, L.P. (OPP) submitted for filing a rate schedule under which OPP will engage in the sales of energy, capacity and certain ancillary services at market-based rates and for the reassignment of transmission capacity. OPP also requested waiver of various Commission regulations. In particular, OPP requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by OPP.

On July 12, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by OPP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214

of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, OPP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of OPP, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of OPP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 12, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18834 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–402–000]

Tennessee Gas Pipeline Company; Notice of Application

July 19, 2002.

Take notice that on July 3, 2002, Tennessee Gas Pipelines Company (Tennessee), 9 East Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP02–402–000 , for permission and approval pursuant to section 7(b) of the Natural Gas Act (NGA) to abandon certain pipeline and appurtenant facilities in the offshore Louisiana area, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

Specifically, Tennessee proposes to abandon a 200-foot segment of Line 527A–300 located in West Delta Block 61A (WD61A) at the point where the line connects with Mesa Petroleum Company's (Mesa) platform. Tennessee also proposes to abandon a meter designated as the WD61A receipt point. Tennessee states that the line and meter were installed in 1978 to gain access to gas supplies in West Delta Blocks 61 and 62. It is explained that production from the platform ceased as of May 20, 1998 and that Pioneer Resources, USA, Inc. (Pioneer), the successor to Mesa's interest in the WD61A platform, intends to abandon and remove the platform. Tennessee's application includes a copy of the letter from Pioneer dated April 9, 2002, informing Tennessee that the platform is being removed.

In addition, Tennessee requests a limited, one-time waiver of the Commission's capacity release regulations and the capacity release provisions in Tennessee's FERC Gas Tariff to allow the continuation of a replacement contract with a new receipt point made necessary by the proposed abandonment. It is explained that although Tennessee is no longer receiving gas supplies from the Block 61 platform, Tennessee still has an agreement with Columbia Gas of Ohio, Inc. (COH) to provide gas under an FT agreement at the meter being abandoned, and that COH has released a portion of its firm capacity to Mirant Americas Energy Marketing , L.P. for a one-year term ending October 31, 2002.

Any questions regarding this amendment should be directed to Susan T. Halbach Senior Counsel, at (832) 676–5556.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 9, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file

comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18829 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1595–001]

TME Energy Services; Notice of Filing

July 17, 2002.

Take notice that on July 15, 2002, TME Energy Services filed with the Federal Energy Regulatory Commission (Commission) an "Affiliate Sales Prohibited" clause to Rate Schedule No. 1.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 5, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18836 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–94–000, et al.]

Cargill-Alliant, LLC, et al.; Electric Rate and Corporate Regulation Filings

July 18, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Cargill-Alliant, LLC; Alliant Energy Corporation; Cargill, Incorporated

[Docket No. EC02–94–000]

Take notice that on July 15, 2002, Cargill-Alliant, LLC (Cargill-Alliant), Alliant Energy Corporation (Alliant), and Cargill, Incorporated (Cargill) tendered for filing a joint application for authorization for Alliant to transfer its membership interests in Cargill-Alliant to Cargill.

Comment Date: August 8, 2002.

2. Termo Norte Energia Ltda.

[Docket No. EG02–169–000]

Take notice that on July 16, 2002, Termo Norte Energia Ltda. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Federal Energy Regulatory Commission's Regulations.

Applicant, a Brazilian limited liability company, owns power generating facilities in Brazil. These facilities consist of a 345MW combined cycle electric generating facility and facilities necessary to make wholesale sales of electricity in Brazil.

Comment Date: August 6, 2002.

3. New England Power Pool

[Docket Nos. EL00–83–006 and ER00–2811–006]

Take notice that on July 16, 2002, the New England Power Pool(NEPOOL) Participants Committee tendered for filing with the FederalEnergy Regulatory Commission (Commission), its report of compliance with the Commission's June 17, 2002 order in the above-captioned dockets. This report of compliance identifies whether any issues raised in NEPOOL's August 25, 2000 compliance filing in the above-captioned dockets has not been acted upon by the Commission.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: August 6, 2002.

4. Berkshire Power Company, L.L.C.; Colorado Power Partners; BIV Generation Company, L.L.C.; Capital District Energy Center; Cogeneration Associates; Dartmouth Power Associates; Limited Partnership; Eagle Point Cogeneration Partnership; Cogen Technologies NJ Ventures; Camden Cogen, L.P.; ManChief Power Company, L.L.C.; Milford Power Company, L.L.C.; Mt. Carmel Cogen, L.L.C.; Newark Bay Cogeneration Partnership, L.P.; Pawtucket Power Associates Limited Partnership; Fulton Cogeneration Associates, L.P.; San Joaquin Cogen Limited; Vandolah Power Company, L.L.C.; Cedar Brakes I, L.L.C.; Cedar Brakes II, L.L.C; Utility Contract Funding, L.L.C.; Mohawk River Funding III, L.L.C.; Mohawk River Funding IV, L.L.C.; Power Contract Finance, L.L.C.; (Not Consolidated)

[Docket Nos. ER99–3502–001; ER99–3077–001; ER02–579–001; ER96–149–008; ER01–3055–002; ER02–1486–001; ER01–2756–002; ER02–1831–002; ER99–4102–001; ER02–1324–001; ER00–2887–002; ER02–580–001; ER01–324–002; ER00–1517–002; ER02–1336–001; ER01–2765–001; ER01–3056–003; ER02–137–001; ER01–2799–001; ER00–2885–002; ER02–1485–001; and ER99–3197–001]

Take notice that on July 15, 2002, the subsidiaries of El PasoCorporation that have been granted market-based rates by the FederalEnergy Regulatory Commission submitted for filing a triennial market analysis in support of their existing market-based rates authority.

Comment Date: August 5, 2002.

5. New England Power Pool

[Docket No. ER02–2315–000]

Take notice that on July 15, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-Seventh Agreement Amending New England Power Pool Agreement (the Eighty-Seventh Agreement), which proposes changes to (1) the Financial Assurance Policy for NEPOOL Members, which is Attachment L to the NEPOOL Tariff, (2) the Financial Assurance Policy for Non-Participant Transmission Customers, which is Attachment M to the NEPOOL Tariff, and (3) the New England Power Pool Billing Policy, which is Attachment N to the NEPOOL Tariff (collectively, the

"Policies"). The Eighty-Seventh Agreement proposes changes to the Policies to account for the implementation of the FTR Markets in NEPOOL and the presence of Non-Participant FTR Customers transacting in those markets and to clarify certain provisions of the Policies.

A September 16, 2002 effective date was requested. The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: August 5, 2002.

6. New York Independent System Operator, Inc.

[Docket No. ER02–2318–000]

Take notice that on July 12, 2002, the New York Independent System Operator, Inc. (NYISO) hereby respectfully requests that the Federal Energy Regulatory Commission (Commission) grant it permission to waive: (I) performance charges applicable to certain categories of Generators that were previously deferred on an interim basis by the NYISO; and (ii) performance charges applicable to suppliers of Regulation and Frequency Response Service (Regulation) that could not be accurately or fairly assessed.

Comment Date: August 2, 2002.

7. Idaho Power Company

[Docket No. ER02–2319–000]

Take notice that on July 15, 2002 Idaho Power Company filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between Idaho Power Company and FPL Energy Power Marketing, Inc., under its open access transmission tariff in the above-captioned proceeding.

Comment Date: August 5, 2002.

8. Idaho Power Company

[Docket No. ER02–2320–000]

Take notice that on July 15, 2002, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and FPL Energy Power Marketing, Inc., under it open access transmission tariff in the above-captioned proceeding.

Comment Date: August 5, 2002.

9. California Independent System Operator Corporation

[Docket No. ER02–2321–000]

Take notice that on July 15, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 46. The purpose of the amendment is to modify the provisions of the ISO Tariff concerning Metered Subsystems. The ISO also filed the Northern California Power Agency Metered Subsystem Aggregator Agreement; the City of Roseville Metered Subsystem Agreement; and the Silicon Valley Power Metered Subsystem Agreement. This filing is in accordance with an Offer of Settlement being filed in Docket Nos. ER01–2998–000, ER02–358–000, and EL02–64–000.

The ISO requests the amendment and the agreements be made effective on September 1, 2002. The ISO states that this filing has been served on the California Public Utilities Commission, all California ISO Scheduling Coordinators.

Comment Date: August 5, 2002.

10. New England Power Pool and ISO New England Inc.

[Docket No. ER02–2330–000]

Take notice that on July 15, 2002, the New England Power Pool (NEPOOL) Participants Committee, joined by ISO New England Inc., submitted Market Rule 1and related materials for filing at the Commission. Market Rule 1 contains comprehensive changes to the NEPOOL arrangements to adopt for New England a revised wholesale market design, commonly referred to in New England as the "standard market design", for the implementation of locational marginal pricing and a multi-settlement system. The NEPOOL Participants Committee and ISO New England request that the Commission accept Market Rule 1 to become effective on September 15, 2002.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: August 5, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 FirstStreet, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link,select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18784 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10855–002—Michigan Dead River Project]

Upper Peninsula Power Company; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

July 19, 2002.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Michigan State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Advisory Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 10855–002.

[1] 18 CFR 385.2010.

The Programmatic Agreement, when executed by the Commission, the SHPO, and the Advisory Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any license issued.

Upper Peninsula Power Company, as prospective licensee for Project No.10855–002, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 10855–002 as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.
David Hickey, City of Marquette, Board of Light and Power, 2200 Wright Street, Marquette, MI 49855–1366.
Robert J. Meyers, Supervisor—Hydros, Upper Peninsula Power Company, PO Box 537, Ishpeming, MI 49849–0537.
Brian D. Conway, SHPO, Michigan Historical Center, 717 West Allegan Street, Lansing, MI 48909.
Robert Powless, Tribal Historic Preservation Officer, Bad River Band of Lake Superior Chippewa Indians, P.O. Box 39, Odanah, WI 54861.
George Beck, Tribal Historic Preservation Officer, Lac Vieux Desert Band of Lake Superior Chippewa Indians, P.O. Box 249, Watersmeet, MI 49969.
Mary Manydeeds, Bureau of Indian Affairs, Midwest Regional Office, One Federal Drive, Room 550, Ft. Snelling, MN 55111.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE, Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–18831 Filed 7–24–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2589–024—Michigan Marquette Project]

Marquette Board of Power and Light; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

July 19, 2002.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Michigan State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Advisory Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 2589–024.

The Programmatic Agreement, when executed by the Commission, the SHPO, and the Advisory Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any license issued.

Marquette Board of Power and Light, as prospective licensee for Project No. 2589–024, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 2589–024 as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.
David Hickey, City of Marquette, Board of Light and Power, 2200 Wright Street, Marquette, MI 49855–1366.
Robert J. Meyers, Supervisor—Hydros, Upper Peninsula Power Company, PO Box 537, Ishpeming, MI 49849–0537.
Brian D. Conway, SHPO, Michigan Historical Center, 717 West Allegan Street, Lansing, MI 48909.
Robert Powless, Tribal Historic Preservation Officer, Bad River Band of Lake Superior Chippewa Indians, P.O. Box 39, Odanah, WI 54861.
George Beck, Tribal Historic Preservation Officer, Lac Vieux Desert Band of Lake Superior Chippewa Indians, P.O. Box 249, Watersmeet, MI 49969.
Mary Manydeeds, Bureau of Indian Affairs, Midwest Regional Office, One Federal Drive, Room 550, Ft. Snelling, MN 55111.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–18835 Filed 7–24–02; 8:45 am]
BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

July 19, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. CP01–415–000	7–12–02	Barbara Winn.
2. Project No. 1494–240	7–16–02	Cheryl B. Creekmore.
3. Project No. 1494–240	7–16–02	Stephen S. Adams.
4. Project No. 2055–000	7–16–02	Sandra L. Guchea.
5. Project No. 1494–233	7–17–02	Jim Martin (Frank Ronsse).

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02–18832 Filed 7–24–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7248–1]

State Innovation Pilot Grant Program, Solicitation of Proposals for 2002

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 19, 2002 the U.S. Environmental Protection Agency transmitted a solicitation for proposals for a pilot grant program to support innovation by State environmental regulatory agencies—the "State Innovation Pilot Grant Program," to the fifty-five state and Territorial Secretaries or Commissioners of those agencies.

DATES: Respondents will have until August 19, 2002 to respond with a brief pre-proposal and budget.

ADDRESSES: The URL address for the solicitation package is: *http://www.epa.gov/projectxl/2002state.htm*. Copies of the solicitation package will also be available from: Gerald Filbin (202–566–2182) (*filbin.gerald@epa.gov*) (FAX 202–566–2220); Office of Environmental Policy Innovation, Office of Policy Economics and Innovation; US Environmental Protection Agency (1807T); 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gerald Filbin at 202–566–2182.

SUPPLEMENTARY INFORMATION: Announcement of Availability of Solicitation for Pilot State Grants Program: In April 2002, EPA issued its plan for future innovation, published as Innovating for Better Environmental Results: A Strategy to Guide the Next Generation of Innovation at EPA (EPA 100–R–02–002; *http://www.epa.gov/opei/strategy*). The Agency's Strategy presents a framework for innovation consisting of four major elements:

(1) Strengthen EPA's innovation partnerships with States and Tribes;

(2) Focus on priority environmental areas:

—Reduce greenhouse gases
—Reduce smog
—Restore and maintain water quality
—Reduce the cost of water and wastewater infrastructure;

(3) Diversify our environmental protection tools and approaches:

—Information resources and technology
—Environmental technology
—Incentives
—Environmental Management Systems
—Results-based goals and measures;

(4) Foster a more "innovation-friendly" organizational culture and systems.

This pilot grant program will seek to strengthen EPA's innovation partnership with States by establishing a new system of funding to facilitate State efforts to address the priority environmental areas targeted in —and use the tools highlighted in—the Strategy. EPA would like to help States build on previous experience and undertake bigger, bolder and more strategic projects which test new models for "next generation" environmental protection and promise better environmental results.

With this 2002 pilot program, EPA is exploring the use of grants and cooperative agreements to support innovation at the State level. For 2002, and contingent upon Congressional approval of a re-programming request, EPA anticipates approximately $500,000.00 in total will be available for State innovation pilot assistance—this pilot fund will support approximately 3–7 projects that can produce results in

2–3 years. Only the States, the District of Columbia and the US Territories are eligible for this 2002 pilot grant program. It is EPA's intention to expand this pilot program to include innovation by American Indian Tribes, if funding becomes available in FY 2003.

The complete solicitation package was sent by express courier to the environmental regulatory agency Commissioners/Secretaries of every State, the District of Columbia and the Territories. It became available on the EPA's website on July 19, 2002.

Dated: July 19, 2002.

Christopher A. Knopes,

Associate Director, Office of Environmental Policy Innovation.

[FR Doc. 02–18864 Filed 7–24–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–2]

Additional Data Available on Wastes Studied in the Report to Congress on Cement Kiln Dust

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA) and request for comments.

SUMMARY: This notice announces the availability for public inspection and comment, of recently acquired data on cement kiln dust (CKD) studied in the Agency's December 1993 Report to Congress on Cement Kiln Dust (see 59 FR 709, 1/6/94). The Agency is now considering an approach whereby it would finalize the proposed option of issuing the protective CKD management standards as described in the August 20, 1999 proposal (64 CFR 45632) , as a RCRA Subtitle D rule. The Agency would temporarily suspend its active consideration of the proposed listing of mismanaged CKD as a hazardous waste, and assess how CKD management practices and state regulatory programs evolve over the next three to five years. Based on this assessment, EPA will then proceed to either formally withdraw or promulgate the portion of the 1999 proposal that classifies as a RCRA hazardous waste CKD that has been egregiously mismanaged.

DATES: Submit comments on or before September 23, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346 or (202) 260–3000; for technical information contact Anthony Carrell (5306W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *carrell.anthony@epa.gov*, (703) 308–0458.

SUPPLEMENTARY INFORMATION:

I. General Information

EPA has established an official public docket for this action under Docket ID No. RCRA–1999–0011. The official public docket is the collection of materials that is available for public viewing at the RCRA Information Center (RIC), 1235 Jefferson Davis Hwy, 1st Floor, Arlington, VA 22201. This Information Center is open from 9 a.m.–4 p.m., Monday through Friday, excluding legal holidays. The Center telephone number is (703) 603–9230.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.3.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/*

edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. RCRA–1999–0011. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to [RCRA-*docket@epamail.epa.gov*], Attention Docket ID No. RCRA–1999–0011. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address already identified. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Environmental Protection Agency, Mailcode: 5305–G, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. RCRA–1999–0011.

3. *By Hand Delivery or Courier.* Deliver your comments to: RCRA Information Center (RIC), 1235 Jefferson Davis Hwy, 1st Floor, Arlington, VA 22201, Attention Docket ID No. RCRA–1999–0011. Such deliveries are only accepted during the Center's normal hours of operation as identified above.

Background: On February 7, 1995, EPA issued the Regulatory Determination required by section 3001(b)(3)(C) of RCRA, finding that additional control of CKD was warranted (60 FR 7366). Specifically, the Agency stated that its concerns about the potential harm to human health and the environment posed by some CKD suggest the need for some level of regulation under RCRA Subtitle C authority. The Agency also decided to evaluate the need for additional controls for off-site use of CKD as use as a substitute for lime on agricultural fields.

On August 20, 1999, EPA issued a proposed rule (64 FR 45632) outlining the Agency's preferred regulatory approach; i.e., an exemption from hazardous waste listing for properly managed CKD, and several optional approaches including requirements solely under RCRA Subtitle D. Under the preferred approach, CKD would remain a non-hazardous waste provided the following management standards are met. First, for ground water protection, the Agency proposed management standards which require a landfill to be designed to control releases of toxic metals to ground water. EPA also proposed that ground water monitoring be required for all new and existing CKD management units to detect the presence of regulated constituents in the ground water. The Agency also proposed that within 90 days of finding that any of the part 261 inorganic constituents have been detected at a statistically significant level exceeding the groundwater protection standards as defined under § 259.45(h), the persons managing the CKD waste must initiate an assessment of corrective measures. The ground water monitoring and corrective action requirements proposed are based on requirements promulgated under part 258 for municipal solid waste landfills and hazardous waste regulations under part 264–subpart F for Solid Waste Management Units. Second, to control releases of fugitive dust, the proposed management standards would require persons managing CKD waste to cover or otherwise manage the landfill, CKD handling areas, and CKD storage areas to control wind dispersal of fugitive CKD. Third, EPA proposed concentration limitations on various pollutants in CKD used for agricultural purposes. Finally, the Agency proposed a hazardous waste listing and tailored standards for CKD where there are egregious or repeated violations of the management standards described above.

EPA also took comment on an approach that would promulgate the same protective management standards described above solely as RCRA Subtitle D requirements, relying on authority in RCRA section 4004(a). Under this approach the standards would be enforceable by the public through citizen suits. EPA would additionally encourage States to adopt standards developed under Subtitle D as enforceable standards under State law, but the Agency could not compel them to do so. Such standards would not be directly enforceable by EPA under the enforcement authorities of sections 3007 and 3008. However, EPA could take enforcement action under section 7003, upon a finding of imminent and substantial endangerment. In addition, the Agency requested comment on several other approaches. See 64 FR 45632 for a discussion of these other approaches.

The Agency received a total of 52 comments; two from the Association of State and Territorial Solid Waste Management Officials, 11 from states, two from the American Portland Cement Alliance, 23 from cement plants, six from other related industry commenters, five from CKD reusers or recyclers and three from geotechnical engineering companies or consultants. No written comments were submitted by citizens groups, environmental community groups or the general public. All comments are on file in the Docket to this NODA and may be reviewed; see the **ADDRESSES** section below. In addition, a summary of public comments document is available on the internet at www.epa.gov/epaoswer/other/ckd/index.htm.

New Data: On May 11, 2001, the American Portland Cement Alliance (APCA) submitted a rulemaking petition to EPA pursuant to 7004(a) of the RCRA requesting that the Agency (1) withdraw the regulations EPA proposed in 1999 relating to CKD and (2) reverse the 1995 regulatory determination for CKD. EPA met with APCA on July 6, 2001 to discuss the petition. APCA indicates that a decrease in waste CKD, an increase in groundwater monitoring, improved CKD management practices, improved fugitive dust controls and improvements in State programs obviate the need for federal CKD waste management regulations. APCA suggests that State programs have improved and provided regulatory language from six States illustrating they no longer allow placement of waste in old quarries down into the groundwater. APCA also contends that the amount of CKD disposed by the most significant disposers of the dust has been reduced by over 22 percent since 1990, while during the same period clinker production among these same plants has increased by almost 22 percent. APCA provided groundwater monitoring data for 18 CKD disposal facilities from a collection of information on 35 plants that together accounted for approximately 95 percent of the CKD landfilled in the United States in 2000.

Applicable State groundwater contaminant limits for these 18 facilities were also provided. APCA points out that 20 of the 35 plants (57%) monitor ground water, 34 (97%) practice landfill dust control techniques, 30 (86%) CKD employ compaction techniques, 32 (91%) practice road-dust control and 27 (77%) have water runoff controls. APCA's rulemaking petition and a summary of the July 6, 2001 meeting are on file in the Docket to this NODA. For access to these materials, see the **ADDRESSES** section below.

APCA also provided summary reports of groundwater monitoring data dated

October 2001 for 18 CKD disposal facilities operated by nine cement manufacturing companies in 10 States. EPA assessed these data for exceedances of groundwater maximum contaminant levels or health-based numbers. APCA's summary reports of groundwater monitoring data and EPA's analysis of the data are in the Docket to this NODA.

ADDRESSES: Supporting materials and comments on the 1999 proposed rule are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is RCRA–1999–0011. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

Comment Period: The Agency is soliciting comments only on the new data provided by APCA regarding reduced disposal, more extensive groundwater monitoring, increased fugitive dust controls, and improved CKD management and state programs. EPA is not reopening the comment period on the Report to Congress on Cement Kiln Dust or the 1999 proposed rule. Public comments on the new APCA data will be accepted through September 23, 2002.

Comment Submissions: Those persons, companies or organizations intending to submit comments for the record must send an original and two copies to the following address: RCRA Docket Information Center (5305), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460. Please place the docket number RCRA–1999–0011 on your comments.

Additional Information: As noted above, the 1999 proposal sought comment on a number of regulatory options for addressing the hazards associated with managing CKD. Among the options discussed, was the adoption of the management standards described in the proposed rule language (64 FR 45632) solely as RCRA Subtitle D requirements. As also noted above, we received numerous comments on the 1999 proposal from industry and States. The Agency has reviewed all comments on the proposed rule, including comments directed to the Subtitle D option. Based on our review of the comments, the Agency recognizes that even though detection of contaminants from CKD in groundwater, and fugitive dust emissions from CKD management units continue, improvements are occurring in cement manufacturing technology and processes that are resulting in an increase in CKD recycling back into the manufacturing process which translates to a decrease in waste CKD. We also recognize that there has been an increase in groundwater monitoring at CKD management units. We further recognize that additional States have regulatory programs that address CKD management and a number of other States are willing to develop or refine regulatory programs, but are reluctant to do so pending EPA's decision on the 1999 proposal.

In light of these developments, the Agency is now considering an approach whereby it would finalize the proposed option of issuing the CKD management standards as described in the August 20, 1999 proposal (64 CFR 45632) , as a RCRA Subtitle D rule and would temporarily suspend its active consideration of the proposed mismanagement-based listing (but would not formally withdraw the proposed rule) for a period of three to five years. During this time, EPA would collect data to evaluate the effectiveness of CKD management practices and States' regulatory programs. This approach would create a federal baseline that states could use to develop appropriate regulatory programs and allow adequate time for implementation of more protective CKD management standards. If after its evaluation the Agency deems CKD management practices and State regulatory programs to be effective in protecting human health and the environment, the Agency would formally withdraw the Subtitle C portion of the 1999 proposal and would revisit the 1995 CKD regulatory determination. On the other hand, if the Agency deems CKD management practices and State regulatory programs to be ineffective after this period, the Agency would pursue regulation of mismanaged CKD under RCRA Subtitle C, as described in the 1999 proposal.

Additionally, the Agency has determined that additional risk analyses for CKD used as an agricultural soil amendment substitute is warranted. The Agency will perform these analyses and report the results in a subsequent NODA. If additional controls are needed for CKD used as an agricultural soil amendment substitute, the Agency will issue agricultural use requirements.

Dated: July 16, 2002.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–18870 Filed 7–24–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Managemnet and Budget

July 17, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judith Boley Herman, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0954.

Expiration Date: 07/31/05.

Title: Implementation of the 911 Act.

Form No.: N/A.

Respondents: Business, not-for-profit institutions, and State, local, or tribal Government Entities.

Responses: 800.

Estimated Time Per Response: 4.5 hours.

Total Annual Burden: 3,100 hours.

Total Annual Cost: 0.

Description: The burdens are all needed to ensure prompt and smooth transition to universal 911 emergency calling services.

OMB Control No.: 3060–0987.

Expiration Date: 06/30/05.

Title: 911 Callback Capability; Non-initialized Phones.

Form No.: N/A.

Respondents: Business, State, local, or tribal Government Entities.

Responses: 3,137.

Estimated Time Per Response: 1 to 3 hours.

Total Annual Burden: 4,885 hours.

Total Annual Cost: $661.00.

Description: The labeling requirement, education requirement, and software/coding requirement are all

needed to make all parties involved in emergency calls originating from non-initialized and "911-only" phones aware that the calling party cannot be reached for further information, if necessary. Thus, complete, critical location information must be supplied to the PSAP as quickly as possible in the originating call.

OMB Control No.: 3060–0813.

Expiration Date: 06/30/05.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Calling Systems.

Form No.: N/A.

Respondents: Business or other for-profit, Federal Government, and State, local, or tribal Governments.

Responses: 47,031.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 198,200 hours.

Total Annual Cost: 0.

Description: The burdens are all needed to ensure that transition to wireless Enhanced 911 service is achieved in as smooth and timely fashion as technologically possible, with minimum burden on all concerned parties, including carriers, manufacturers, and PSAPs, while still achieving the important, public safety goals of the proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–18790 Filed 7–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATA AND TIME: Thursday, July 25, 2002, 10 a.m.

Meeting Open to the Public.

The following item was added to the agenda: Bipartisan Campaign Reform Act Rulemaking Calendar (revised).

The following item was held over to August 1, 2002: Draft Advisory Opinion 2002–08, David Vitter for Congress Committee by William J. Vanderbrook, Treasurer.

DATE AND TIME: Tuesday, July 30, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g. 438(b) and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 1, 2002 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2002–08: David Vitter for Congress Committee by William J. Vanderbrook, Treasurer.

Draft Advisory Opinion 2002–10: Green Party of Michigan by Marc Reichardt, Chair.

Draft Notice of Proposed Rulemaking on "Electioneering Communications."

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–18958 Filed 7–23–02; 10:56 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011733–005, –006.

Title: Common Ocean Carrier Platform Agreement.

Parties: Alianca Navegacao e Logistica Ltda.; A.P. Moller-Maersk Sealand; CMA CGM, S.A.; CP Ships Limited; Hamburg Sud; Hapag-Lloyd Container Linie GmbH; Mediterranean Shipping Company, S.A.; Nippon Yusen Kaisha; P&O Nedlloyd Limited; Safmarine Container Lines N.V.; United Arab Shipping Company (S.A.G.).

Synopsis: Proposed Amendment No. 005 would permit non-party ocean common carriers to use the Portal authorized by the agreement on a trial basis without becoming a party to the agreement. Amendment No. 006 adds CP Ships Limited, for and on behalf of its ocean common carrier subsidiaries, as a non-shareholder party to the agreement.

Dated: July 19, 2002.

By order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–18752 Filed 7–24–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Airsealand Express Incorporated, 2680 Donegal Avenue, So. San Francisco, CA 94080. Officers: Isidro H. Protasio, President (Qualifying Individual), Randall N. Harris, Chairman.

Eaglewings Freight Services Inc., 35 Lambert Street, Roslyn Heights, NY 11577. Officers: Ying Huang (Irene), President (Qualifying Individual), Su Hwa Lin, Secretary.

Pas Cargo USA Inc., 16351 SW 23rd Street, Miramar, FL 33027. Officers: Dirk Chee-A-Tow, President (Qualifying Individual), Jeanine Chee-A-Tow, Vice President.

Pacific-Net Logistics (NYC) Inc., 151–02 132 Avenue (AIP), Jamaica, NY 11434. Officers: Chi Ming Szeto, President (Qualifying Individual), Tony Yet Yu Ng, Secretary.

Gava Italian Airfreight Consolidators, Inc. dba Gava International Freight Consolidators, Inc., 419 S. Hindry Avenue, Unit B, Inglewood, CA 90301. Officers: Giovanni Valente, Vice President (Qualifying Individual), Mario G. Hummel, President/CEO.

ARC Air Logistics, Inc., 9133 S. La Cienega Blvd., Suite 170, Inglewood, CA 90301. Officer: Anthony Rimland, Managing Director (Qualifying Individual).

Dominicana Air & Ocean Freight, Corp., 1332 N.W. 36 Street, Miami, FL

33142. Officers: Isabel Ramirez, Vice President (Qualifying Individual), Denise A. Zitz, President.

International Ocean Logistics, 9390 NW 23rd Street, Pembroke Pines, FL 33024. Officer: Elizeth R. Goncalves, President (Qualifying Individual).

Prime Holidays Tour & Car Rentals Inc. dba Ultimate Solutions, 6130 Edgewater Drive, Suite H, Orlando, FL 33147. Officers: Marie Y. Baity, Director/Secretary (Qualifying Individual), Byron C. Gardner, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Eastern Network Express, Inc. dba Eastern Container Line, One Cross Island Plaza, Suite 111, Rosedale, NY 11422. Officer: Louisa Chiu, President (Qualifying Individual).

G.P.R. International, Inc., 8347 NW 68th Street, Miami, FL 33166. Officer: Roberto Diaz, President (Qualifying Individual).

Rende Li, 2794 Covered Bridge Road, Merrick, NY 11566. Sole Proprietor.

Global Quality Logistics, Inc., 18411 Crenshaw Blvd., Suite 210, Torrance, CA 90504. Officers: Daniel Lim, CEO (Qualifying Individual), Sumddi Kusuma, Director.

Brit-Am Logistic Management Services, Inc., 6425 Woodstone Way, Morrow, GA 30260. Officer: Carylon E. Simpson-Graves, President.

Cross Trans Service USA, Inc., 1480 Elmhurst Road, Elk Grove Village, IL 60007. Officers: Bonifacio Salas, Vice President (Qualifying Individual), Kurt Konodi-Floch, CEO.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

PK Logistics, Inc., 114 Maple Avenue, Red Bank, NJ 07701. Officers: Paul William Kelley, CEO/President (Qualifying Individual), Kristina Katja Kelley, Vice President.

Fox Freight Forwarders, Inc., 3727 NW 52nd Street, Miami, FL 33142. Officers: Maria S. Hugues, President (Qualifying Individual), Maria J. Boue, Vice President.

Universal Freight Forwarders Ltd., 12820 NE 185th Court, Bothell, WA 98011. Officers: Irmgard S. Harris, Gen. Manager/President (Qualifying Individual), George E. Tylen, Vice President.

TFS Acquisition Corp., 7959 NW 21 Street, Miami, FL 33122. Officers: Laura Almaguer, Vice President (Qualifying Individual), Richard Schuler, President.

ARK Technology, Inc. dba ARK International, 14545 Valley View Ave. #G, Santa Fe Springs, CA 90670. Officer: Gilbert Ji, President (Qualifying Individual).

Dolphin Call USA Inc., 321½ East First Street, Suite 200, Los Angeles, CA 90012–3920. Officer: Yasuyuki Kitajima, President (Qualifying Individual).

Shiprotectors International, 1730 Ximeno Avenue, Suite #12, Long Beach, CA 90815. Officer: Kevin J. Gregory, Managing Director (Qualifying Individual).

Dated: July 19, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–18749 Filed 7–24–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/Address	Date reissued
17180F	American Logistic Co. Inc., 10840 Warner Avenue, Suite 205, Fountain Valley, CA 92708.	May 23, 2002.
15590N	Express Global Freight, Inc., 400 S. Atlantic Blvd., Suite #308, Monterey Park, CA 91754.	April 24, 2002.
12279NF	Frontrunner Worldwide, Inc., 5001 U.S. Highway.30 West, Fort Wayne, IN 46801–0988.	April 12, 2002.
6053N	Sino-Am Marine Company, Inc., 601 East Linden Avenue, Linden, NJ 07036.	May 25, 2002.
17354N	Wingar Logistics Inc., 9690 Telstar Avenue, Suite 207, El Monte, CA 91731.	May 25, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–18750 Filed 7–24–02; 8:45 am]

BILLING CODE 65730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 16159F.
Name: American Pioneer Shipping L.L.C.
Address: 33 Wood Avenue, South, Suite 600, Iselin, NJ 08830.
Date Revoked: February 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3961.
Name: Ford Freight Forwarders, Inc.
Address: 8081 NW 67th Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15965N.
Name: Global Cargo U.S.A. Inc.
Address: 7500 W 18th Lane, Hialeah, FL 33014.
Date Revoked: April 27, 2002.
Reason: Failed to maintain a valid bond.

License Number: 1988N.
Name: HEG International Freight Forwarders, Inc.
Address: 5855 Naples Plaza, Suite 2, Long Beach, CA 90803.
Date Revoked: June 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15471N.
Name: Navicargo, Inc.
Address: 8325 NW. 55th Street, Suite 103, Miami, FL 33166.
Date Revoked: May 25, 2002.

Reason: Failed to maintain a valid bond.

License Number: 3177NF
Name: Pacific Freight, Inc.
Address: 2420 W. Carson Street, Suite #200, Torrance, CA 90501.
Date Revoked: June 13, 2002.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–18751 Filed 7–24–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 2002.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Sky Financial Group, Inc., Bowling Green, Ohio; to acquire an additional 8.2 percent, for a total of 19 percent of the voting shares of NSD Bancorp, Inc., Pittsburgh, Pennsylvania, and thereby indirectly acquire voting shares of Northside Bank, Pittsburgh, Pennsylvania.

2 Sky Financial Group, Inc., Bowling Green, Ohio; to merge with Three Rivers Bancorp, Monroeville, Pennsylvania, and thereby indirectly acquire The Three Rivers Bank and Trust, Jefferson Borough, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Rockhold Bancorp, Kirksville, Missouri; to acquire 8 percent of the voting shares of La Plata Bancshares, Inc., La Plata, Missouri, and thereby indirectly acquire voting shares of La Plata State Bank, La Plata, Missouri.

Board of Governors of the Federal Reserve System, July 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–18763 Filed 7–24–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulations Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulations Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 8, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Security Pacific Bancorp, Ontario, California; to engage *de novo* through Security Pacific Finance Company, Ontario, California, in lending activities, pursuant to §§§ 225.28(b)(1), (b)(2)(i), and (b)(2)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–18764 Filed 7–24–02; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

[Docket No. OMB Control No. 3090–0248]

Submission for OMB Review and Extension; GSAR 516.506, Solicitation Provisions and Contract Clauses, 552.216–72, Placement of Orders Clause and 552.216–73, Ordering Information Clause

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for review and extension of the collection (3090–0248).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection that pertains to GSAR 516.506, Solicitation provisions and contract clauses, and GSAR Placement of Orders clause and Ordering Information clause. The information collected is required by regulation. The information collected under this collection is collected through Electronic Data Interchange (EDI) in accordance with the Federal Government's mandate to increase electronic commerce. A request for public comments was published at 67 FR 19758, April 23, 2002. No comments were received.

Public comments are particularly invited on: Whether the information collection required by GSAR 516.506 and generated by the GSAR clauses, 552.216–72, Placement of Orders, and 552.216–73, Ordering Information, is necessary to ensure the Federal Supply Service (FSS) maximizes the use of

computer-to-computer electronic data interchange (EDI) to place delivery orders; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: *Comments Due Date:* August 26, 2002.

ADDRESSES: Please submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Ms. Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405, or fax to (202) 501–4067. Please cite OMB Control No. 3090–0248.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of Federal Supply Service's (FSS's) Stock, Special Order, and Schedules Programs. These mission responsibilities generate requirements that are realized through the solicitation and award of various types of FSS contracts. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 5380.
Responses Per Respondent: 1.
Total Responses: 5380.
Hours Per Response: .25.
Total Burden Hours: 1,345.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Acquisition Policy (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0248 in all correspondence.

Dated: July 15, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–18881 Filed 7–24–02; 8:45 am]

BILLING CODE 6820–14–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 26]

Federal Travel Regulation; eTravel Initiative

AGENCY: Office of Governmentwide Policy (MTT), GSA.

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin informs Federal agencies of the creation of the eTravel Initiative and of the intent to require agency use of the governmentwide, web-based, end-to-end travel management system.

EFFECTIVE DATE: This bulletin is effective June 18, 2002.

FOR FURTHER INFORMATION CONTACT: Tim Burke, General Services Administration, Office of Governmentwide Policy (MTT), Washington, DC 20405; e-mail, *timothy.burke@gsa.gov;* telephone (703) 872–8611.

SUPPLEMENTARY INFORMATION: The eTravel Initiative was born out of a Bush Administration governmentwide task force that was established to address performance gaps in existing Government systems as they relate to E-Government. The eTravel Initiative will establish a single portal by December 2003 that Federal employees making official business trips will use to obtain travel authorizations, make reservations and pay for airline tickets and other expenses. The system will work much like commercial web-based systems that the public uses to book business travel.

Dated: June 18, 2002.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

Attachment

Attachment

June 18, 2002
[GSA Bulletin FTR 26]
TO: Heads of Federal Agencies
SUBJECT: eTravel Initiative

1. *Purpose.* This bulletin notifies Federal agencies of the creation of the eTravel Initiative, a governmentwide, web-based, end-to-end travel management system. It is the intent of the General Services Administration to require agency use of the system.

2. *Background.* The eTravel initiative was born out of the governmentwide task force known as Quicksilver, that was established to address performance gaps in existing Government systems as they relate to E-Government, a key component of the President's Management Agenda.

3. *eTravel Objective.* To automate and consolidate the Federal Government's travel process through a self-service, web-based environment, offering end-to-end travel services from planning, authorization and reservation, through claims and voucher reconciliation. eTravel will eliminate the need for hardcopy travel documentation that is currently used at many agencies. It will re-engineer the entire travel process to realize significant cost savings, to improve employee productivity and to provide a unified, simplified official travel process. The eTravel system will be available by the end of 2003.

4. *Government Interest.* eTravel is in the best interest of the Government because it will produce:

a. A governmentwide, web-based, end-to-end travel management service;

b. A cost model that reduces capital investment and lowers the travel transaction cost for the Government; and

c. A policy environment based on the use of best travel management practices.

5. *Agency Planning.* Agencies will be required to use the new eTravel system. Therefore, any present effort to re-engineer agency travel processes should be geared for maximum flexibility, so that any new systems or processes will be adaptable to the new eTravel system. Agencies are cautioned against investment in new systems that will be agency-specific and non-transferable to the eTravel system.

6. *Point of Contact.* Tim Burke, Director, Travel Management Policy Division (MTT), Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone 703–872–8611; e-mail, *timothy.burke@gsa.gov.*

7. *Expiration Date.* This bulletin expires when the FTR (41 CFR 300–304) is revised to incorporate the specific modules of the Government eTravel management system.

[FR Doc. 02–18880 Filed 7–24–02; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

[Program Announcement No. OPHS 2002–01]

Announcement of the Availability of Financial Assistance and Request for Applications to Support Development and Delivery of Public Awareness Campaigns on Embryo Adoption

AGENCY: Office of Public Health and Science, Department of Health and Human Services.

ACTION: Notice.

Authority: Pub. L. 107–116.

SUMMARY: The Office of Public Health and Science (OPHS) of the Department of Health and Human Services (DHHS) announces the availability of funding and requests applications for public awareness campaigns on embryo adoption for fiscal year (FY) 2002 as authorized in Pub. L. 107–116, enacted on January 10, 2002. Approximately $900,000 in funding is available on a competitive basis for three to four new projects each in the range of $200,000 to $250,000. The Catalog of Federal Domestic Assistance (CFDA) number is 93.007. The CFDA is a government-wide compendium of enumerated Federal programs, projects, services and activities that provide assistance.

DATES: Applications must be received in the OPHS or clearly postmarked no later than August 26, 2002. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will not be accepted for review. OPHS will notify each late applicant that its application will not be considered in the current competition. OPHS cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to OPHS electronically will not be accepted.

ADDRESSES: Application kits may be requested from, and applications submitted to: Andrea Brandon, Grants Management Office, Office of Population Affairs, Office of Public Health and Science, Department of Health and Human Services, 4350 East West Highway, Suite 200, Bethesda, Maryland 20814. Application kits are also available online at: *http://opa.osophs.dhhs.gov/* or *http://4women.gov/owh/index.htm* Written requests for application materials may be faxed to (301) 594–5980.

FOR FURTHER INFORMATION CONTACT: Kaye Hayes, MPA at (202) 205–2003 for questions specific to project activities of the program or Andrea Brandon, (301) 594–4012 for grants policy, budget or business questions.

SUPPLEMENTARY INFORMATION: The purpose of this announcement is to award funds to organizations to develop and implement public awareness campaigns regarding embryo adoption. Applicants must demonstrate experience with embryo adoption programs that conform with professionally recognized standards governing embryo adoption, such as the guidelines for embryo donation published by the American Society for Reproductive Medicine,[1] or other applicable Federal or State requirements. For the purposes of this announcement, embryo adoption is defined as the donation of frozen embryo(s) from one party to a recipient who wishes to bear and raise a child.

Background

The OPHS is under the direction of the Assistant Secretary for Health (ASH), who serves as the Senior Advisor on public health and science issues to the Secretary of the Department of Health and Human Services. The Office serves as the focal point for leadership and coordination across the Department in public health and science; provides direction to program offices within OPHS; and provides advice and counsel on public health and science issues to the Secretary.

The increasing success of assisted reproductive technologies (ART) has resulted in a situation in which an infertile couple typically creates several embryos through in vitro fertilization (IVF). During IVF treatments, couples may produce many embryos in an attempt to conceive with several being cryopreserved (frozen) for future use. If a couple conceives without using all the stored embryos, they may choose to have the remaining unused embryos donated for adoption allowing other infertile couples the experience of pregnancy and birth. Embryo adoption is a relatively new process in which individuals who have extra frozen embryos agree to release the embryos for transfer to the uterus of another woman, either known or anonymous to the donor(s), for the purpose of the recipient(s) attempting to bear a child and be that child's parent.

Legislative Framework

With the passage of Public Law 107–116, the FY 2002 Departments of Labor, Health and Human Services, Education and Related Agencies Appropriations Act, the Congress authorized the Secretary to conduct a public awareness campaign to educate Americans about the existence of frozen embryos available for adoption.

Senate Report 107–84 (page 244) contains the following statement:

"During hearings devoted to Stem Cell research, the Committee became aware of approximately 100,000 spare frozen embryos stored in vitro fertilization (IVF) clinics throughout the United States. The Committee is also aware of many infertile couples who, if educated about the possibility, may chose to implant such embryos into the woman and, potentially, bear children. The Committee therefore directs the Department to launch a public awareness campaign to educate Americans about the existence of these spare embryos and adoption options. The Committee has provided $1,000,000 for this purpose."

Eligible Applicants

Eligibility to compete for this announcement is limited to particular applicant organizations. Only agencies and organizations, not individuals, are eligible to apply. Eligible applicants include public agencies, non-profit organizations, and for-profit organizations. One agency must be identified as the applicant organization and will have legal responsibility for the project. Additional agencies and organizations can be included as co-participants, subgrantees, subcontractors, or collaborators if they will assist in providing expertise and in helping to meet the needs of the recipients. Faith-based and community-based organizations meeting the eligibility requirements may apply, or they may be included as co-participants, subgrantees, subcontractors, or collaborators if they will assist in providing expertise and in helping to meet the needs of recipients. Eligibility is limited to organizations that can demonstrate previous experience with embryo adoption and are knowledgeable in all elements of the process of embryo adoption.

Applicants should note that § 74.81 of the DHHS grants administration regulations (45 CFR part 74) indicates that, except for awards under certain "small business" programs, no grant funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

Anticipated Number of Projects to be Funded

The OPHS proposes to award approximately three to four new grants from the competition resulting from this announcement. The total funding available for these awards is approximately $900,000. The OPHS anticipates that each award will be in the range of $200,000–250,000, although the number and size of the actual awards will vary based on the number and quality of applications received.

Project Duration

The term "project period" refers to the total time a project is approved for support. The term "budget period"

[1] Guidelines for embryo donation. Fertility and Sterility. Vol. 70, No. 4 Suppl. 3, October 1998. American Society for Reproductive Medicine Published by Elsevier Science, Inc. Also available on the Internet at: *http://www.asrm.org/Media/Practice/gamete.html#Psychologicalg.*

refers to the interval of time (usually 12 months) into which a multi-year period of assistance is divided for budgetary and funding purposes. For multi-year projects, continued Federal funding beyond the first budget period is dependent upon satisfactory performance by the grantee, availability of funds from future appropriations, and a determination that continued funding is in the best interest of the Government. Funding for projects under this announcement is expected to be a one time award with a one year project and budget period. Applicants should note that continued future funding beyond the initial project period is subject to continued appropriations, the availability of funds and competition for the funds.

Travel for Grantee Meeting

Approximately four to six weeks after the award of funding, the project directors for funded projects will be required to attend a two-day grantee orientation meeting in the Washington, DC area. During this meeting, DHHS staff will review currently available, nationally recognized guidelines regarding embryo adoption and discuss the implications for developing the public awareness campaign and related educational materials. Scheduling matters and plans for ensuring that the public awareness campaigns are appropriately focused and targeted to donors as well as potential recipients during the course of the project will be outlined and discussed. Budget plans should include funding for participation in this meeting.

Geographic Region

In the project narrative, applicants are required to describe the specific geographic region that will be served by the organization. This section should include a justification for the selection of the region, based on, for example, geographic size or the number and types of ART centers in the area, and an estimate of the number of frozen embryos available for adoption. There are no geographic restrictions on where the prospective projects may be conducted. The OPHS will accept applications for projects of national, regional, or local scope. The rationale for the project scope must be justified in detail.

Public Awareness Campaign

Applicants will be required to develop and implement programs for a public awareness campaign on embryo adoption. Applicants are required to submit a plan and time line that demonstrate that the proposed public awareness campaign: (a) Will be competency-based, (b) has experience with embryo donation programs that conform to professionally-recognized guidelines, and other relevant Federal or State requirements, (c) will be pilot tested and appropriately modified, as necessary, before use, and (e) can be reliably evaluated.

In the narrative section of the application, applicants are advised to describe the strategies and processes that they will use to design a public awareness campaign. The applicant should document its capacity to undertake a public awareness campaign focused on donors and/or potential recipients. Applicants are encouraged to present a description of approaches that may be used, as well as any supplemental materials (brochures, handouts, visual aids, and other resources). Moreover, applicants are advised to demonstrate a familiarity with and understanding of professionally recognized standards or practices (both medical and legal issues) pertaining to embryo adoption, as well as supportive services for donor or recipient couples. The applicant organization should clearly demonstrate its professional knowledge and experience in embryo adoption whether with donor or potential recipient populations.

Qualifications

The OPHS requires that funded organizations agree to make reasonable efforts to ensure that the individuals who design and implement the public awareness campaign are knowledgeable in all elements of the embryo adoption process and are experienced in providing such information. Applicant organizations should demonstrate that they have access to frozen embryos for adoption either directly or through partnership arrangements. Applicants should include information about the number of frozen embryos to which they have access, their history in working with either donor or potential recipient couples, and the organization's capacity to facilitate an embryo adoption public awareness campaign. As part of the project narrative, applicants are advised to describe the methods they will use to recruit, select, train and evaluate individuals who will implement the public awareness campaign. In the project narrative, applicants are encouraged to present a plan that may be used for working with potential donors and/or recipients under the proposed public awareness campaign.

Applicants, in the project narrative, are encouraged to present a plan for evaluation of the public awareness campaign. The evaluation plan should be two tiered to address: (1) Process, including the planning, content and quality of the public awareness campaign materials provided and (2) participant satisfaction and campaign effectiveness. Applicants that do not have the in-house capacity to conduct an evaluation are advised to propose contracting with a third-party social sciences evaluator or a university or college to conduct the evaluation.

Application Requirements

A. Application Content

Applicants should prepare a project description statement in accordance with the following general instructions. Use the information provided in this section and the evaluation criteria section to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in describing your program plan. The narrative should contain the following sections in the order presented below:

1. *Project Summary/Abstract:* Provide a summary of the project description not to exceed two pages. Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project since the abstract will be used to provide reviewers with an overview of the application, and will form the basis for an application summary in official documents. The OPHS maintains a summary of funded projects and may post this information on the OPHS Web site. The abstract will be used as the basis for this posting and for requests for summary information. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

2. *Specific Aims and Objectives:* Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as well as information about frozen embryos available for adoption. In developing the project description, the applicant may volunteer to provide information on the total range of related projects currently being conducted and supported (or to be initiated), some of

which may be outside the scope of the program announcement.

3. *Approach:* Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work, and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of program activities to be held, or appropriate measurable outcomes. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

4. *Evaluation:* Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

5. *Organizational Profiles:* Provide information on the applicant organization and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information.

6. *Budget and Budget Justification:* Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, and wage rates. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant. Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, and taxes, unless treated as part of an approved indirect cost rate. Include information on the costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend the grantee meeting should be detailed in the budget. For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition. Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested. Include information on the costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category. Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information.

B. Application Format

Applications must be prepared on the forms supplied (OPHS–1, Revised 6/2001) and in the manner prescribed in the application kits provided by the OPHS. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, applicants must submit one signed original of the application and two photocopies in one package, including all forms and attachments. Please label the application envelop: "Attention: Embryo Adoption Public Awareness Campaign". The submissions may not be faxed or sent electronically.

The application should be typed and should be no more than 50 double-spaced pages (excluding attachments), printed on one side, with one-inch margins, and unreduced font. All pages, including appendices should be numbered sequentially and stapled, or otherwise secured, in the upper left corner.

Additional Requirements

This program is not subject to the intergovernmental review requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100.

Matching or Cost Sharing Requirement

There is no matching or cost sharing requirement for this program.

Required Reports

Applicants must submit all required reports in a timely manner, in recommended formats (to be provided) and submit a final report on the project, including any information on evaluation results, at the completion of the project period.

Review Procedures and Evaluation Criteria

Each application will be evaluated individually against the following four criteria by an objective review panel appointed by the OPHS. Before the review panel convenes, each application will be screened for applicant organization eligibility, as well as to make sure the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration. A panel of at least three reviewers will use the evaluation criteria listed below to determine the strengths and weaknesses of each application, provide comments and assign numerical scores. Applicants should address each criterion in the project application. The point values (summing up to 100) indicate the maximum numerical weight each

criterion will be accorded in the review process.

Criterion 1: Objectives and Need for Assistance (30 Points)

Applicants must demonstrate a clear understanding of the legislative goals and demonstrate how their approach to the design of a public awareness campaign will contribute to achieve the legislative goals. Applicants must also demonstrate an understanding of the information and skills needed by the designated staff conducting such a public awareness campaign, as well as the information and service needs of potential donors and recipients. Applicants should provide letters of commitment or Memoranda of Understanding from organizations, agencies and consultants that will be partners or collaborators in the proposed project. These documents should describe the role of the agency, organization or consultant and detail specific tasks to be performed. Specific review criteria include:

(1) Extent to which the application reflects an understanding of the legislative goals of the public awareness campaign for embryo adoption, and shows how their approach to the design of a public awareness campaign and implementation will contribute to achieving the legislative goals;

(2) Extent to which the application clearly describes and documents an understanding of the need for assistance to support and/or enhance existing efforts regarding embryo adoption;

(3) Extent to which the application reflects a knowledge and understanding of the issues faced by donors and/or recipients;

(4) Extent to which the application reflects a knowledge and understanding of the medical and legal framework of embryo adoption and the services and resources in the geographic area in which the proposed project will be conducted;

(5) Extent to which the application explains how the proposed public awareness campaign will contribute to increased knowledge of the problems, issues, and effective strategies and best practices in the field;

(6) Extent to which the application reflects a knowledge and understanding of the challenges of developing a public awareness campaign and in providing support to donors and/or recipients; and

(7) Extent to which the application presents a vision of the campaign to be developed, and discusses broad contextual factors that will facilitate or impede the implementation of the campaign.

Criterion 2: Approach (30 Points)

In this section, applicants are expected to define goals and specific, measurable objectives for the project. Goals and objectives should not be confused. Goals are an end product of an effective project. Objectives are measurable steps for reaching goals. Applicants are advised to describe a preliminary, yet appropriate and feasible plan of action pertaining to the scope of the proposed public awareness campaign and provide details on how the proposed public awareness campaign will be accomplished. If the project involves partnerships with other agencies and organizations, then the roles of each partner should be clearly specified. Applicants are required to describe how the public awareness campaign will be evaluated to determine the extent to which it has achieved its stated goals and objectives. Applicants are expected to present a project design that includes detailed procedures for documenting project activities that is sufficient to support a sound evaluation. The evaluation design is expected to include process and outcome analyses with qualitative and quantitative components. Applicants are expected to report on their evaluation results in their final report to the OPHS upon completion of the project period. Applicants are required to describe the products that they will develop pursuant to the public awareness campaign. Applicants should discuss the intended audiences for these products (e.g., ART centers, adoption organizations, practitioners, professional organizations that work with infertile couples, potential recipients, or donors) and present a dissemination plan specifying the venues for conveying the information. This criterion consists of four broad topics: (A) Design of the public awareness campaign, (B) implementation, (C) evaluation, and (D) dissemination. Specific review criteria include:

(A) Design of the Public Awareness Campaign

(1) Extent to which the application reflects a familiarity with and understanding of professionally-recognized standards and/or other relevant Federal or State requirements pertaining to embryo adoption and supportive services for donors and recipients.

(2) Extent to which the proposed project goals, objectives and outcomes are clearly specified and measurable, and reflect an understanding of the characteristics of the donors and recipients and the context in which embryo adoption operates; and

(3) Extent to which the application presents an approach to the design of a public awareness campaign is: (a) Competency based, (b) linked to embryo adoption programs which are consistent with the nationally recognized guidelines, (c) pilot tested and appropriately modified, as necessary, before use, and (d) can be readily evaluated.

(B) Implementation

(1) Extent to which the application clearly describes and provides a justification for the selection of the geographic region that will be served by the project;

(2) Extent to which the application presents an appropriate, feasible and realistic plan for scheduling and conducting the public awareness campaign;

(3) Extent to which the application presents an appropriate, feasible and realistic plan for recruiting, selecting, and training individuals to provide information under the public awareness campaign;

(4) Extent to which the application provides an appropriate, feasible and realistic plan for documenting project activities and results, that can be used to describe and evaluate the public awareness campaign, and participant satisfaction with the campaign; and

(5) Extent to which the proposed project will establish and coordinate linkages with other appropriate agencies and organizations serving the target population.

(C) Evaluation

(1) Extent to which the methods of evaluation are feasible, comprehensive and appropriate to the goals, objectives and context of a public awareness campaign;

(2) Extent to which the applicant provides an appropriate, feasible and realistic plan for evaluating the public awareness campaign, including performance feedback and assessment of program progress that can be used as a basis for program adjustments;

(3) Extent to which the methods of evaluation include process and outcome analyses for assessing the effectiveness of program strategies and the implementation process; and

(4) Extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the program and will produce quantitative and qualitative results.

(D) Dissemination

(1) Extent to which the application provides an appropriate, feasible and realistic plan for dissemination of information in a public awareness campaign and related educational materials;

(2) Extent to which the intended audience is clearly identified and defined and is appropriate to the goals of the proposed program;

(3) Extent to which the program's products will be useful to the respective audiences;

(4) Extent to which the application presents a realistic schedule for developing these products, and provides a dissemination plan that is appropriate in scope and budget to each of the audiences; and

(5) Extent to which the products to be developed during the program are described clearly and will address the goal of dissemination of information and are designed to support evidence-based improvements of practices in the field.

Criterion 3: Organizational Profile (20 Points)

Applicants need to demonstrate that they have the capacity to implement the proposed program. Capacity includes: (1) Previous experience with similar projects; (2) experience with the target population; (3) qualifications and experience of the project leadership; (4) commitment to developing and sustaining working relationships among key stakeholders; (5) experience and commitment of any consultants and subcontractors; and, (6) appropriateness of the organizational structure. This criterion consists of three broad topics: (A) management plan, (B) staff qualifications, and (C) organizational capacity and resources.

Applicants are expected to present a sound and feasible management plan for implementing the proposed program. This section should detail how the program will be structured and managed, how the timeliness of activities will be ensured, how quality control will be maintained, and how costs will be controlled. The role and responsibilities of the lead agency should be clearly defined and, if appropriate, applicants should discuss the management and coordination of activities carried out by any partners, subcontractors and consultants. Applicants should include a list of organizations and consultants who will work with the project, along with a short description of the nature of their contribution or effort. Applicants are also expected to produce a time line that presents a reasonable schedule of target dates, and accomplishments. The time line should include the sequence and timing of the major tasks and subtasks, important milestones, reports, and completion dates. The application should also discuss factors that may affect project implementation or the outcomes and present realistic strategies for the resolution of these difficulties.

Applicants must provide evidence that project staff have the requisite experience, and expertise to carry out the proposed public awareness campaign on time, within budget, and with a high degree of quality. Include information on staff knowledge of the medical and legal issues concerning embryo adoption, and experience working in this area. Brief resumes of current and proposed staff, as well as job descriptions, should be included. Resumes must indicate the position that the individual will fill, and each position description must specifically describe the job as it relates to the proposed project.

Applicants must show that they have the organizational capacity and resources to successfully carry out the project on time and to a high standard of quality, including the capacity to resolve a variety of technical and management problems that may occur. If the proposed project involves partnering and/or subcontracting with other agencies/organizations, then the application should include an organizational capability statement for each participating organization documenting the ability of the partners and/or subcontractors to fulfill their assigned roles and functions. Specific review criteria include:

(A) Management Plan

(1) Extent to which the management plan presents a realistic approach to achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines and milestones for accomplishing project tasks;

(2) Extent to which the role and responsibilities of the lead agency are clearly defined and the time commitments of the project director and other key project personnel (including consultants) are appropriate and adequate to meet the objectives of the proposed project; and

(3) Extent to which the application discusses factors that may affect the development and implementation of the public awareness campaign and presents realistic strategies for the resolution of these difficulties.

(B) Staff Qualifications

(1) Extent to which the proposed project director, key project staff and consultants have the necessary technical skill, knowledge and experience to successfully carry out their responsibilities; and

(2) Extent to which staffing is adequate for the proposed project, including administration, program services, data processing and analysis, evaluation, reporting and implementation of the public awareness campaign, including related educational materials.

(C) Organizational Capacity and Resources

(1) Extent to which the applicant and partnering organizations collectively have experience in embryo adoption consistent with professionally recognized guidelines;

(2) Extent to which the applicant has experience in developing and implementing similar information or public awareness campaigns; and

(3) Extent to which the applicant has adequate organizational resources for the proposed project, including administration, program operations, data processing and analysis, and evaluation.

Criterion 4: Budget and Budget Justification (20 Points)

Applicants are expected to present a budget with reasonable project costs, appropriately allocated across component areas and sufficient to accomplish the objectives. Consideration shall be given to project delays due to start-up when preparing the budget. Applicants are expected to allocate sufficient funds in the budget to provide for the project director to attend a two-day orientation meeting in the Washington, DC area. Specific review criteria include:

(1) Extent to which applicant demonstrates that the project costs and budget information submitted for the proposed program are reasonable and justified in terms of the proposed tasks and the anticipated results and benefits; and,

(2) Extent to which the fiscal control and accounting procedures are adequate to ensure prudent use, proper and timely disbursement and an accurate accounting of funds received under this announcement.

Funding Decisions

The results of a competitive review are a primary factor in making funding decisions. In addition, Federal staff will conduct administrative reviews of the applications and, in light of the results

of the competitive review, will recommend applications for funding to the ASH. The ASH reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. The ASH may also solicit and consider comments from Public Health Service Regional Office staff and others within DHHS in making funding decisions. The ASH makes final decisions regarding the applications to be funded.

The OPHS does not release information about individual applications during the review process. When final decisions have been made, successful applicants will be notified by letter of the outcome of the final funding decisions. The official document notifying an applicant that a project as been approved for funding is the Notice of Grant Award (NGA), which sets forth the amount of funds granted, the terms and conditions of the award, the effective date of the grant, the budget period for which initial support will be given, and the total project period for which support is contemplated. The ASH will notify an organization in writing when its application will not be funded. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Dated: July 22, 2002.

Eve E. Slater,

Assistant Secretary for Health, Office of Public Health and Science.

[FR Doc. 02–18826 Filed 7–24–02; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For HealthCare Research and Quality Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Exploratory/ Developmental Research (R21) Grant Awards are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Primary Care Practice-Based Research Networks (PBRNS) Developmental Grant Projects.

Date: August 7–9, 2002 (Open on August 7, from 7:30 p.m. to 7:45 p.m. and closed for remainder of the meeting).

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 19, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–18882 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Evaluation of Demonstration: "Rewarding Results" Awards are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Evaluation of Demonstration: "Rewarding Results" Projects.

Date: July 26, 2002 (Open on July 26, from 8:30 a.m. to 8:45 a.m. and closed for remainder of the meeting).

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 19, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–18883 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–183]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from April 2002 through June 2002. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of

Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on May 9, 2002 [67 FR 31308]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between April 1, 2002 and June 30, 2002, public health assessments were issued for the sites listed below:

NPL Sites

District of Columbia

Washington Navy Yard (PB2002–104375).

New Jersey

Emmell's Septic Landfill (PB2002–104386).

Texas

Malone Service Company—Swan Lake Plant (PB2002–103158).

Washington

Cenex Supply and Marketing, Incorporated (a/k/a Western Farmers, Incorporated) (PB2002–104385).

Non NPL Petitioned Sites

None.

Dated: July 18, 2002.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–18779 Filed 7–24–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–70]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Antineoplastic Drug Exposure: Effectiveness of Guidelines—New—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). Antineoplastic, chemotherapeutic, or cytostatic drugs are widely used in the treatment of cancer. These drugs possess mutagenic, teratogenic, and carcinogenic properties, cause organ damage, and affect reproductive function. Healthcare workers such as pharmacists and nurses who handle, prepare, and administer these drugs are at increased risk of adverse health effects from these agents, if exposed. The Occupational Safety and Health Administration (OSHA) developed guidelines for healthcare workers for the safe handling of antineoplastic drugs in 1986 and revised those guidelines again in 1995. However, recent studies suggest that the guidelines have not been effective in preventing exposure. A 1999 industrial hygiene evaluation of six cancer centers in the U.S. and Canada reported that 75% of the wipe test samples in the pharmacy were found to have detectable levels of antineoplastic drugs. Similar findings were reported in the Netherlands, which has similar guidelines. In addition, healthcare workers may assume that gloves designed for bloodborne pathogen protection will also prevent drug exposure which is often not the case. Since air concentrations of antineoplastic drugs in many of the studies have been low to non-detectable, it appears that the dermal route may be an important consideration for internal absorption.

Numerous studies, including those after the OSHA guidelines were revised in 1995, have demonstrated adverse health effects from healthcare workers' exposure to antineoplastic agents. The most common endpoints have been either markers of exposure, such as metabolites in the urine, or genotoxic markers, such as micronuclei, sister chromatid exchange, and chromosomal aberrations. Female reproductive adverse effects have also been shown to occur with healthcare workers' exposure to antineoplastic drugs. Not only have spontaneous abortion and miscarriage been reported, but changes in the menstrual cycle have been demonstrated as well. Based upon animal and human data, one study estimated that exposure to cyclophosphamide by healthcare workers increases the risk of leukemia cases by 17–100 new cases/million workers/10 years.

This project addresses the continuing concern of healthcare workers' exposure to antineoplastic agents. This is a multifaceted project that involves environmental sampling of the workplace and the collection of biological samples to determine how much of the agent is absorbed and if there are any early biological effects

from that exposure. Biological measurements or biomarkers can detect effects of exposure long before a disease can be diagnosed. A questionnaire will be administered to determine confounders and other conditions that might affect exposure such as work history and work practices. This project will recruit oncology nurses, pharmacists, and pharmacy technicians and will be conducted in collaboration with the University of Maryland, the University of North Carolina, and the M.D. Anderson Cancer Center.

By utilizing a battery of sensitive biomarkers, the effects of low-level chronic exposure to antineoplastic agents can be determined. Using the results of the proposed study, exposures can be minimized or eliminated before adverse health effects occur. Ultimately, the study will contribute to the prevention of occupational disease from antineoplastic drug exposure. There are no costs to respondents.

Survey	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Genotoxicity Immunotocixicity Study*	150	1	1	150
Reproductive Health Study†	150	1	225/60	562.5
Total				714.50

*This part of the study involves the participant, after informed consent, voluntarily providing blood and urine samples and responding to a questionnaire concerning medical history, work history, and work practices to identify study eligibility, past exposures, and confounders.

†In the reproductive health part of the study and after informed consent, women are being asked to voluntarily give a daily urine sample for approximately 45 days and keep track of their menstrual cycle by entries into a diary. In addition, a short questionnaire is given to each participant to determine eligibility for inclusion into the study and confounders of hormone analysis.

Dated: July 18, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–18781 Filed 7–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–71]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Adult and Pediatric HIV/AIDS Confidential Case Reports (CDC 50.42A, 50.42B)—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). This data collection system was formerly included and approved under the National Disease Surveillance Program, OMB No. 0920–0009, National Center for Infectious Disease (NCID), CDC. CDC is seeking a 3-year OMB approval to continue data collection of the HIV/AIDS case reports, with revisions of the report forms to collect race and ethnicity data in adherence to OMB Statistical Policy Directive 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

The National Adult and Pediatric HIV/AIDS Confidential Case Reports are collected as part of the HIV/AIDS Surveillance System. CDC in collaboration with health departments in the states, territories, and the District of Columbia, conducts national surveillance for cases of human immunodeficiency virus (HIV) infection and the acquired immunodeficiency syndrome (AIDS), the end-stage of disease caused by infection with HIV. HIV/AIDS surveillance data collection by CDC is authorized under sections 301 and 306 of the Public Health Service Act (42 U.S.C. 241 and 242k).

Currently, 55 states (areas/territories) mandate and collect AIDS surveillance data. In addition, 35 areas mandate and collect surveillance data on HIV cases which have not progressed to AIDS in adults/adolescents and/or children using the HIV/AIDS case report forms. The purpose of HIV/AIDS surveillance data is to monitor trends in HIV/AIDS and describe the characteristics of infected persons (e.g., demographics, modes of exposure to HIV, manifestations of severe HIV disease, and deaths due to AIDS). Because HIV infection results in untimely death and most often infects younger adults in the prime years of life, large amounts of federal, state, and local government funding have been allocated to address all aspects of HIV infection, including prevention and treatment. HIV/AIDS surveillance data are widely used at all government levels to assess the impact of HIV infection on morbidity and mortality, to allocate medical care resources and services, and to guide prevention and disease control activities.

HIV/AIDS reports are sent to state/local health departments by laboratories, physicians, hospitals, clinics, and other health care providers using standard adult and pediatric case report forms. Areas use a microcomputer system developed by CDC (the HIV/AIDS Reporting System, HARS) to store and analyze data, as well as transmit encrypted data to CDC. An HIV program area module (PAM) for the National Electronic Disease Surveillance System (NEDSS) is in the early development stage and will replace HARS when it is complete.

In order to adhere to OMB Directive 15, the proposed data collection form will collect race and ethnicity separately, collect multiple races, and

disaggregate Asian/Pacific Islander into two categories: Asian and Native Hawaiian/Other Pacific Islander.

No other federal agency collects this type of national HIV/AIDS data. In addition to providing technical assistance for use of the case report forms, CDC also provides reporting areas with technical support for the HARS software. There is no cost to respondents.

Form	Number of respondents	Number of responses/respondent	Average burden/response/(in hours)	Total burden (in hours)
Adult Case Report: AIDS	55	782	10/60	7,168
Adult Case Report: HIV	35	1007	10/60	5,874
Peds Case Report: AIDS	55	3	10/60	28
Peds Case Report: HIV	35	16	10/60	93
Total				13,163

Dated: July 19, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–18818 Filed 7–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–39–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Report of Verified Case of Tuberculosis (RVCT) (CDC 72.9A, 72.9B, 72.9C) OMB No. 0920–0026—Revision—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, and TB Prevention (NCHSTP), Division of Tuberculosis Elimination (DTBE), proposes to continue data collection for the Report of Verified Case of Tuberculosis (RVCT) (CDC 72.9A, 72.9B, 72.9C), previously approved under OMB No. 0920–0026 in 1992, 1995, 1998, and 2001. This request is for a 3-year revision of OMB clearance approval beginning January 1, 2003 (current OMB No. 0920–0026 expiration date is December 31, 2002). CDC is requesting OMB clearance for revision of the RVCT which will change the race and ethnicity variables on the RVCT form to comply with the OMB "Standards for Maintaining, Collecting, and Processing Federal Data on Race and Ethnicity".

To accomplish the CDC goal of eliminating tuberculosis (TB) in the United States, CDC maintains the national TB surveillance system. The system, initiated in 1953, has been modified several times to better monitor and respond to changes in TB morbidity. The most recent modification was implemented in 1993 when the RVCT was expanded in response to the TB epidemic of the late 1980s and early 1990s and incorporated into a CDC software for electronic reporting of TB case reports to CDC. The expanded system improved the ability of CDC to monitor important aspects of TB epidemiology in the United States, including drug resistance, TB risk factors, including HIV coinfection, and treatment. The timely system also enabled CDC to monitor the recovery of the nation from the resurgence and identify that current TB epidemiology supports the renewed national goal of elimination. To measure progress in achieving this goal, as well as continue to monitor TB trends and potential TB outbreaks, identify high risk populations for TB, and gauge program performance, CDC proposes to extend use of the RVCT.

Data are collected by 60 Reporting Areas (the 50 states, the District of Columbia, New York City, Puerto Rico, and 7 jurisdictions in the Pacific and Caribbean) using the RVCT. An RVCT is completed for each reported TB case and contains demographic, clinical, and laboratory information. A comprehensive software package, the Tuberculosis Information Management System (TIMS) is used for RVCT data entry and electronic transmission of TB case reports to CDC. TIMS provides reports, query functions, and export functions to assist in analysis of the data. CDC publishes an annual report summarizing national TB statistics and also periodically conducts special analyses for publication in peer-reviewed scientific journals to further describe and interpret national TB data. These data assist public health officials and policy makers in program planning, evaluation, and resource allocation. Reporting Areas also review and analyze their RVCT data to monitor local TB trends, evaluate program success, and assist in focusing resources to eliminate TB.

No other federal agency collects this type of national TB data. In addition to providing technical assistance for use of the RVCT, CDC also provides Reporting Areas with technical support for the TIMS software. There annualized burden for this data collection is 8,338 hours.

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)
State/Local/Tribal Governments	60	278	30/60

Dated: July 17, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–18780 Filed 7–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Representatives of Industry Interests on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting representatives of industry interests to serve on the Blood Products Advisory Committee, in the Center for Biologics Evaluation and Research (CBER). Nominations will be accepted for vacancies that will or may occur through September 30, 2003.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from the biologics and/or drug industry.

DATES: Nominations should be received by July 30, 2002.

ADDRESSES: All nominations and curricula vitae should be sent to Linda A. Smallwood (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Linda A. Smallwood, Office of Blood Research and Review, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6128.

SUPPLEMENTARY INFORMATION: Section 120 of the FDA Modernization Act (FDAMA) of 1997 (21 U.S.C. 355) requires that newly formed FDA advisory committees include representatives from the biologics and/or drug manufacturing industries. This announcement is soliciting nominations for the committee listed below:

Blood Products Advisory Committee: One vacancy occurring in September 30, 2002; clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, statistics, biological and physical sciences, and other related scientific fields.

I. Function

Reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products intended for use in the diagnosis, prevention, or treatment of human diseases.

II. Nomination Procedures

Any organization in the blood, medical device and/or biologics manufacturing industry wishing to participate in the selection of an appropriate nonvoting industry representative for the Blood Products Advisory Committee should notify the contact person of their interest in nominating one or more qualified persons. Persons who nominate themselves as representatives of industry interests for a certain advisory committee may not participate in the overall selection process.

Nominees should be familiar with firms that manufacture products regulated by the agency including biologics and/or drug manufacturers. Nomination packages should include the name of the committee and the nominee's willingness to serve on the committee. To ensure that the nomination process continues within the set timelines, submitters are strongly encouraged to include a complete curriculum vitae for each nominee with the letter of nomination. The term of office is up to 4 years.

III. Selection Procedure

A letter will be sent to each nominating organization that submitted a nomination package to FDA for a particular advisory committee. The letter will provide the complete list of all nominees. It is the responsibility of each nominating organization to consult with one another to select a single member to represent the industry interests for the advisory committee. This must be completed within 60 calendar days. If no individual is selected, the Commissioner of Food and Drugs will select a nonvoting member to represent the industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: July 18, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–18775 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 6 and 7, 2002, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: On August 6, 2002, the committee will discuss new drug application (NDA) 21–449, adefovir dipivoxil tablets, Gilead Sciences, Inc., proposed for treatment of chronic hepatitis B infection (HBV). On August 7, 2002, the committee will discuss clinical trial design issues in the development of products for the treatment of chronic hepatitis B infection.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 30, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. each day. Time allotted

for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 30, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tara Turner at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the August 6 and 7, 2002, Antiviral Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Antiviral Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 18, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–18772 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Biotechnology Subcommittee of the Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Food Biotechnology Subcommittee of the Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 13, 2002, from 9 a.m. to 4:30 p.m. and August 14, 2002, from 9 a.m. to 4:30 p.m.

Location: Harvey W. Wiley Federal Bldg., 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2200.

Contact Person: Margaret E. Cole, Center for Food Safety and Applied Nutrition (HFS–006), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2397, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The purpose of the meeting is to discuss science-based approaches to assessing whether new proteins in bioengineered foods are likely to cause allergic reactions in some individuals in order to assist FDA in developing a draft guidance for industry.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 30, 2002. Oral presentations from the public will be scheduled between approximately 10:15 a.m. and 11:30 a.m. on August 14, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 30, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Margaret E. Cole at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 18, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–18773 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 16, 2002, from 10:30 a.m. to 4:30 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, ext. 127, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12522. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on a draft guidance entitled "Implantable Middle Ear Hearing Device; Draft Guidance for Industry and FDA." The topics for discussion will include the appropriate study population, objective measurement techniques for comparison of acoustic hearing aids and middle ear hearing devices, and subjective questionnaire development for determining postoperative effectiveness and quality of life outcome measures. The draft guidance is available to the public on the Internet at http://www.fda.gov/cdrh/ode/guidance/1406.html.

Background information, including the attendee list, agenda, and questions for the committee, will be available to

the public on August 15, 2002, on the Internet at http://www.fda.gov/cdrh/panelmtg.html.

Procedure: On August 16, 2002, from 12:30 p.m. to 4:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 8, 2002. Oral presentations from the public will be scheduled between approximately 12:40 p.m. and 1:10 p.m. and 3:45 p.m. and 4:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 8, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations. On August 16, 2002, from 10:30 a.m. to 12:30 p.m., the meeting will be closed to the public to permit discussion and review of trade secret and/or confidential information regarding pending issues and applications (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, at 301–594–1283, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 18, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–18774 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Demonstration Training Grants To Support Public Health Fellowships and Internships 93.249

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that Fiscal Year 2002 applications will be accepted to support one project under the Public Health Fellowship and Internship Demonstration Training Grant Program.

Authorizing Legislation: Applications are solicited under the authority of title VII, section 765 of the Public Health Service (PHS) Act, as amended. Section 765 authorizes the award of grants to increase the number of individuals in the public health workforce, to enhance the quality of such workforce, and to enhance the ability of the workforce to meet national, State, and local health care needs.

Purpose of Award: This Demonstration Training Grant is to support a program of innovative training and education opportunities to share expertise among public health faculty, fellow/interns, and health professionals at HRSA.

Eligible Applicants: An applicant must be: a health professions school (including an accredited school or program of public health, health administration, preventive medicine, or dental public health or a school providing health management programs), an academic health center, a State or local government, and any other appropriate public or private non-profit entity, including a faith-based and community based organization.

Review Criteria: The review criteria are: (1) Understanding of and approach to conducting a public health fellowship and internship program; (2) history of performance of applicant and its personnel; (3) adequacy of facilities and resources; (4) methods for achieving program objectives; (5) cost effectiveness; (6) national agency, and public health objectives, and (7) the ability to anticipate problems. Additional information pertaining to the review criteria will be listed in the supplement to instructions for application form HRSA 6025.

Estimated Amount of Available Funds: It is anticipated that up to $525,000 will be available in fiscal year 2002 for this program.

Estimated Number of Awards: It is estimated that 1 award will be made for fiscal year 2002.

Application Requests, Availability, Dates and Addresses: The HRSA 6025 application kit will be available on July 25, 2002 and may be downloaded via the web at *http://www.hrsa.gov/bhpr/grants2002*. The instructions for preparing the Public Health Fellowship and Internship Training Grant Applications are contained within application form HRSA 6025. Applicants may also request a hardcopy of the application material by contacting the HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879, by fax calling at 1–877–477–2133, or by fax at 1–877–477–2345. In order to be considered for competition, applications must be received by mail or delivered to HRSA Grants Application Center by no later than August 26, 2002. Applications received after the deadline date may be returned to the applicant and not processed.

FOR FURTHER INFORMATION CONTACT: Douglas Lloyd, M.D., Acting Director, CPH, DSCPH, Bureau of Health Professions, HRSA, Room 8–103, Parklawn Building, 5600 Fishers Land, Rockville, Maryland 20857, or e-mail address *dlloyd@hrsa.gov*. Dr. Lloyd's telephone number is 301–443–6853. Capt. Barry Stern, Sr., Environmental Health Advisor, CPH, Bureau of Health Professions, HRSA, Room 8–103, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; or e-mail address at *bstern@hrsa.gov*. Capt. Stern's telephone number is 301–443–6758.

Paperwork Reduction Act: The Application for the Public Health Fellowship and Internship Training Grant has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is also not subject to the Public Health Systems Reporting Requirements.

Dated: July 18, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–18778 Filed 7–24–02; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, T32: Training in Gastroenterology and Nutrition.

Date: August 15, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Room 749 Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18804 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Biosensor Mass Spectrometry Array.

Date: July 31, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS).

Dated: July 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18807 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council NADCRC, Review of RFAs.

Date: August 22, 2002.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, NIDCR, 31 Center Drive, Building 31C, Conf. Rm. 2C19, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Ricardo Martinez, MD, MPH, Associate Director for Program Development, Office of the Director, National Institute of Dental & Craniofacial Research, 31 Center Drive, Bldg. 31, Rm. 5B55, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: www.nidcr.nih.gov/discover/nadrc/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalog of Federal Domestic Assistance program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: July 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18809 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetes Endocrinology Research Center Applications Review.

Date: August 14, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriot, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lakshmanan Sankaran, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600. (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetes Research and Training Centers Grant Applications Review.

Date: August 15–16, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriot, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lakshmanan Sankaran, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600. (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, and Training Programs in Diabetes Research.

Date: August 15, 2002.

Time: 8 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIDDK Review Branch, 2 Democracy Plaza, 6707 Democracy Blvd., Suite 755, Bethesda, MD 20792. (Telephone Conference Call).

Contact Person: Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892. (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18810 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 DRG–A C5 S, Family and Fertility Research and Data Collection Design Planning Process.

Date: August 14, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 496–1845.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18811 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 DSR–R 04 R, Research on Adult and Family Literacy.

Date: August 12–13, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert H. Stretch, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E01, MSC 7510, Bethesda, MD 20892. (301) 435–6912.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18812 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 DRG–D 16 1/ Progestin Contraception and Endometrial Bleeding.

Date: August 6, 2002.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, Phd, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892. (301) 435–684.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864 Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18813 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 MCHG–B BS 1, Pathogenesis of Functional Hypothalamic Amenorrhea III.

Date: July 25, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, Phd., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room, 5E01, Bethesda, MD 20892. (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18814 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Purusant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 DSR–A 03 1/Partnerships for HIV/AIDS Research in African Populations.

Date: July 18–19, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD. Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5E01, Bethesda, MD 20892. (301) 496–1487. *anandr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalolgue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18815 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ET–1 (02) Transgenic Mice Models.

Date: July 25, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892. (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Pharmacology and Addiction.

Date: July 29, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center For Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892. (301) 435–0902. *krausem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral Biology and Medicine–1 Epidemiology.

Date: August 13, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781. *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 19, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. (301) 435–1041.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 20, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892. (301) 435–1210.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18805 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 15, 2002, 1 p.m. to July 15, 2002, 2 p.m., NIH, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on July 1, 2002, 67 FR 44224–44227.

The meeting will be held on July 25, 2002. The time and location remain the same. The meeting is closed to the public.

Dated: July 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18806 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 23, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard D. Rodewald, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Special Emphasis Panel.

Date: August 8, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18808 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF JUSTICE

Antitrust Division; Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on June 13, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Metaglue Corporation, Lexington, MA has been added as a party to this venture. Also, Snell & Wilcow, Petersfield, England, UNITED KINGDOM acquired AAF Member Post Impressions, Newbury, England, UNITED KINGDOM. No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends

to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 15, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 22, 2002 (67 FR 19587).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–18754 Filed 7–24–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment to Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Amendment to Consent Decree Entered on December 29, 1999 in *United States and State of Georgia* v. *City of Atlanta*, Civil Action No. 1:98–CV–1956–TWT, was lodged with the United States District Court for the Northern District of Georgia, Atlanta Division on July 12, 2002.

The First Amended Consent Decree involved the settlement of Claims brought by the United States and State pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.* and the Georgia Water Quality Control Act, O.G.A. §§ 12–5–21 *et seq.* The United States and State sought the assessment of civil penalties and injunctive relief to bring the City into compliance with the Clean Water Act and the Georgia Water Quality Control Act. The proposed and agreed upon Amendment would modify the Consent Decree by: (1) Substituting a tunnel project for a diversion project; (2) providing for a different date of completion for the tunnel project, and (3) changing the time in which the City must remit payment of stipulated penalties.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Each communication should refer on its face to *United States and State of Georgia* v. *City of Atlanta*, DOJ #90–5–1–4430.

The proposed Amendment to Consent Decree may be examined at the Office of the United States Attorney, Northern District of Georgia, 1800 U.S. Courthouse, 75 Spring Street, SW., Atlanta, Georgia 30335, and at the U.S. Environmental Protection Agency, Region 4 Office, 61 Forsyth Street, Atlanta, Georgia 30303. A copy of the proposed Amendment to Consent Decree may be obtained by (1) Mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of justice, Washington, DC 20044–7611; or by (2) faxing the request to Tonia Fleetwood, U.S. Department of justice, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $1.25 (25 cents per page reproduction cost), made payable to the U.S. Treasury.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–18755 Filed 7–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed consent decree in *United States* v. *Julie Deutschumann*, Civ. No. 02–10240 (MEL), was lodged with the United States District Court for the District of Massachusetts on July 15, 2002, ("Consent Decree"). The Consent Decree resolves the liability of Julie Deutschmann, ("Settling Defendant"), the sole current owner of the Toka Renbe Farm Superfund Site in Canton, Massachusetts ("Site") for the recovery of costs incurred by the United States in response to releases and threatened releases of hazardous substances at the Site pursuant to Sections 107(a) and 113 of the Comprehensive Environmental Response, Compensation, and Recovery Act, as amended ("CERCLA"), 42 U.S.C. 9607(a) and 9613. EPA has incurred at least $5,765,632.19 in response costs relating to this Site. The United States filed its Complaint on behalf of EPA on February 13, 2002.

This is an ability to pay settlement based upon expert review of financial documentation provided to the United States by the Settling Defendant. This settlement calls for the liquidation of all real estate owned by the Settling Defendant, except for her residence, in addition to an up-front cash payment to the United States and a cash payment to fund a trust for the purpose of liquidating real property for the benefit of the United States. The value of the settlement is estimated to be $2,500,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Julie Deutschmann*, DOJ Ref. #90–11–2–1032/1.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Massachusetts, 1 Court House Way, U.S. Courthouse, Suite 9200, Boston, Massachusetts 02210 (contact Assistant United States Attorney George B. Henderson, II); and the Region I Office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts, 02114–2023 (contact Senior Enforcement Counsel, Catherine Garypie). A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. BOx 7611, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.75 (25 cents per page reproduction costs) for the Consent Decree, payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–18753 Filed 7–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 277–2002]

Privacy Act of 1974 as Amended by The Computer Matching and Privacy Protection Act of 1988

This notice is published in the **Federal Register** in accordance with the requirements of the Privacy Act, (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (CMPPA) (Pub. L. 100–503) (5 U.S.C. 552a(e)(12)). The Immigration and Naturalization Service

(INS), Department of Justice (the source agency), is participating in computer matching programs with the District of Columbia and the State agencies listed below (all designated as recipient agencies). These matching activities will permit the recipient agencies to confirm the immigration status of alien applicants for, or recipients of, Federal benefits assistance under the "Systematic Alien Verification for Entitlements (SAVE)" program as required by the Immigration Reform and Control Act (IRCA) of 1986 (Pub. L. 99–603).[1]

Specifically, the matching activities will permit the following eligibility determinations:

(1) The District of Columbia Department of Employment Services, New York State Department of Labor, New Jersey Department of Labor, Texas Workforce Commission, and Massachusetts Department of Employment and Training will be able to determine eligibility for unemployment compensation;

(2) The California Department of Social Services will be able to determine eligibility status of aliens applying for or receiving benefits under the TANF ("Temporary Assistance for Needy Families") program, and upon the submission of favorable cost-benefit data to the Department of Justice (DOJ) Data Integrity Board, will also be able to determine eligibility status of non-TANF Food Stamp applicants and recipients;

(3) The California Department of Health Services will be able to determine eligibility status for the Medicaid program; and

(4) The Colorado Department of Human Services will be able to determine the eligibility status for the Medicaid, TANF, and the Food Stamps programs.

Section 121(c) of IRCA amends Section 1137 of the Social Security and other statutes to require agencies which administer the Federal entitlement benefit programs designated within IRCA as amended, to use the INS verification system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from these agencies may electronically access the database of an INS system of records entitled "Alien Status Verification Index, Justice/INS–009". From its automated records system, any agency (named above) participating in these matching programs may enter electronically into the INS database the alien registration number of the applicant or recipient. This action will initiate a search of the INS database for a corresponding alien registration number. Where such number is located, the agency will receive electronically from the INS database the following data upon which to determine eligibility: alien registration number, last name, first name, date of birth, country of birth (not nationality), social security number (if available), date of entry, immigration status data, and employment eligibility data. In accordance with 5 U.S.C. 552a(p), such agencies will provide the alien applicant with 30 days notice and an opportunity to contest any adverse finding before final action is taken against that alien because of ineligible immigration status as established through the computer match.

The original effective date of the matching programs (with the exception of the matching agreement with Massachusetts Department of Employment and Training) was January 29, 1990, for which notice was published in the **Federal Register** on December 28, 1989 (54 FR 53382). The original effective date of the Massachusetts matching program was February 28, 1990, for which notice was published in the **Federal Register** on January 29, 1990 (55 FR 2890). The programs have continued to date under the authority of a series of new approvals as required by the CMPPA. The CMPPA provides that based upon approval by agency Data Integrity Boards of a new computer matching agreement, computer matching activities may be conducted for 18 months and, contingent upon specific conditions, may be similarly extended by the Board for an additional year without the necessity of a new agreement. The most recent 1-year extension for those programs listed in items (1) through (4) above will expire on August 31, 2002, except that the agreement with the Massachusetts Department of Employment and Training will expire on September 12, 2002. The DOJ's Data Integrity Board has approved new agreements to permit the above named computer matching programs to continue for another 18-month period from the expiration date or after the notification period (described below) is satisfied, whichever is later.

Matching activities under the new agreements will be effective 30 days after publication of this computer matching notice in the **Federal Register**, or 40 days after a report concerning the computer matching programs has been transmitted to the Office of Management and Budget (OMB) and transmitted to Congress along with a copy of the agreements, whichever is later.

The agreements (and matching activities) will continue for a period of 18 months from the effective date, unless, within 3 months prior to the expiration of the agreement, the Data Integrity Board approves a 1-year extension pursuant to 5 U.S.C. 552a(o)(2)(D).

In accordance with 5 U.S.C. 552a(o)(2)(A) and (r), the required report has been provided to the OMB, and to the Congress together with a copy of the agreements.

Inquiries may be addressed to Kathleen M. Riddle, Procurement Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530.

Dated: July 19, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–18794 Filed 7–24–02; 8:45 am]

BILLING CODE 4410–10–P

[1] Effective July 1, 1997, IRCA was amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pubic Law 104–193, 110 Stat. 2168 (1996). The PRWORA amended IRCA by replacing the reference to "Aid to Families with Dependent Children" (AFDC), with a reference to its successor program, "Temporary Assistance for Needy Families" (TANF). As was the case with AFDC, states and the District of Columbia are required to verify through SAVE that an applicant or recipient is in an eligible alien status for TANF benefits. In addition, Section 840 of the PRWORA makes verification for eligibility under the Food Stamps program voluntary on the part of the State/District of Columbia agency rather than mandatory.

DEPARTMENT OF LABOR

Employment and Training Administration

Submission for OMB Review; Comment Request

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly

understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments about the proposed new collection of information as part of the Evaluation of Labor Exchange Services in a One-Stop Environment. The evaluation is partially composed of three surveys: an employer survey, an in-office job seeker survey, and an in-office survey of workshop participants.

DATES: Written comments must be submitted to the office listed in the addresses's section below on or before September 23, 2002.

ADDRESSES: Richard Muller, Office of Policy and Research, ETA, N–5637, US Department of Labor, 200 Constitution Ave., NW. Washington, DC 20210, (202) 693–3680 (this is not a toll-free number), e-mail: *RMULLER@DOLETA.GOV.*

SUPPLEMENTARY INFORMATION:

I. Background

Public labor exchanges (PLEX) were last evaluated by ETA in 1983. At that time, obtaining basic information about job-seekers' and employers' use of state labor exchanges was relatively easy, given that nearly all job seekers filled out registration forms and could only get a referral after being screened by staff at local offices. Similarly, employers had to describe job openings and key characteristics to staff to obtain referrals. Moreover, cost information was available because Wagner-Peyser Act funds were allocated to each state based on a type of performance-based budgeting, called the balanced placement formula, designed to stimulate improvements in placement services by allocating grants to state agencies on the basis of their actual performance.

While special purpose block grants simplified distribution of Wagner-Peyser Act funds, the removal of the balanced formula eliminated the need to determine how costly it is for staff to perform various services, and also reduced incentives to carefully track delivery of individual services. Job seekers can now utilize large public databases, such as America's Job Bank (AJB), and every state labor exchange, by using PC modems at home, in libraries and a variety of other sites. The block grants and the easy access to electronic job information has greatly limited the amount of quantifiable data available to perform a comprehensive evaluation. In order to accurately measure the costs and benefits of PLEXs today, surveys of job seekers and employers are required to assess the quantity and quality of services provided.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarify of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This study will examine the efficacy of labor exchange services in 6 States operating within selected State One-Stop delivery systems. The findings from the employer survey and in-office surveys will describe the results of mail surveys and follow-up telephone interviews with diverse employers, and will describe the experiences of job seekers. The study will provide, among other things, in-depth information on:

- The amount of hiring done at each establishment in a year;
- The methods used to obtain applicants for high and low paying jobs;
- Satisfaction with methods used to obtain applicants;
- The costs associated with hiring and recruitment efforts;
- The costs to the establishment for not filling various types of jobs; and
- How placements made from public labor exchanges affect recruiting and production costs.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Evaluation of Labor Exchange Services in a One Stop Environment.

OMB Number: 1205–0NEW.

Affected Public: Individuals or households/Business or other for profit/Not for profit institutions/Farms/Federal Government/State, Local or Tribal Government.

Cite/reference	Total respondents per state	Frequency	Total responses per state	Average time per response per hour	Burden hours per state
Employer survey & reminders	60	Once + reminder cards for non-respondents.	60	.5	30
Telephone interview	240	Once	240	.75	180
In-office survey	1200	Once	1200	.25	300
Workshop survey	1200	Once	1200	.25	300
Totals					810

Total Burden Cost: The total estimated cost of the study is $160,200 over a 36-month contract period, with a one-year option. Of the total costs, approximately 11 percent is allocated for surveys. The annualized cost of the surveys, over the 36 month period is approximately $53,400. The total burden in terms of time is 810 hours per State times 6 States, or 4860 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 18, 2002.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 02–18876 Filed 7–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Preliminary Finding of No Significant Impact (FONSI) for the Proposed Acquisition of the Property Located at 22 East Lincoln Street, Phoenix, AZ

AGENCY: Employment and Training Administration, Labor.

ACTION: Preliminary finding of no significant impact (FONSI) for the proposed acquisition of the property located at 22 East Lincoln Street, Phoenix, Arizona.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (CEQ) (40 CFR part 1500–08) implementing procedural provision of the National Environmental Policy Act (NEPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL), Office of the Job Corps, in accordance with 29 CFR 11.11(d), gives notice that and Environmental Assessment (EA) has been prepared and the proposed acquisition of the property located at 22 East Lincoln Street, Phoenix, Arizona, will have no significant environmental impact, and this Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Written comments must be received by August 26, 2002.

ADDRESSES: Any comments are to be submitted to Michael F. O'Malley, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW, Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA and additional information are available to interested parties by contacting Michael F. O'Malley, Architect, US Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor is proposing to acquire a 42,000 square foot property at 22 East Lincoln Street, Phoenix, Arizona in order to consolidate the Phoenix Job Corp Center operations, currently located both east and west of the proposed site, into a more campus-like setting. Initially, the U.S. Department of Labor Job Corps Program intends to leave the parcel vacant, possibly used for excess parking. The property possibly will be used in the future to provide space for a Child Development Center (CDC), recreation, dormitory, and/or an administration building. No new structures will be built on the property initially. The purpose and need for the U.S. Department of Labor's acquisition of this property is to allow for future expansion of the current Job Corps facilities currently located immediately to the east of the proposed project site.

General environmental conditions and potential impacts were evaluated for the proposed site and a general 0.5-mile study radius surrounding the site.

The area immediately surrounding the project area (0.5-mile study area) is a diverse mix of commercial, industrial, and residential areas. The residential areas contain a young and diverse population. The acquisition of the proposed property is not expected to have any negative impacts on the demographics of the surrounding area. The purpose of the Job Corps is to provide basic education, vocational skills training, health care, and work experience to allow disadvantaged persons from the Phoenix area to improve their position in the workplace and society. Initially, the property will only be used for classroom, shop, and support space; however, in the long term, the property will allow the center the flexibility for possible facility expansion which would provide more educational opportunities for the disadvantaged youth in the downtown area. Thus, the addition of this parcel to the Job Corps campus is expected to have a positive impact on the lives of disadvantaged youths living in Phoenix and specifically the diverse downtown area.

The acquisition of the proposed property is not expected to have any negative impacts on any of the facilities, services, or existing infrastructure in the surrounding study area. The proposed project will initially remain undeveloped and thus would not pose any additional strain to the public services, such as the police, fire departments or medical facilities. Future development of the site would be beneficial to the surrounding neighborhood and any additional need for infrastructure or public services would cause only a negligible impact on the departments or services in the area. The existing schools, libraries, parks, and transportation facilities are not expected to be impacted by the acquisition of this property. Local streets and transit facilities are more than adequate to facilitate the current use of the site and any proposed future development of the parcel.

The proposed property is not expected to have any negative impacts on land use or the surrounding residential communities. The acquisition of the property would be compatible with current land uses in the area including industrial, commercial, and residential. Additionally, the consolidation of the Job Corps facilities to a more campus-like environment would be a responsible and efficient use of space.

Residential communities in the area, located generally south of the property, would not be impacted by the acquisition and use of this property. The presence of the Job Corps program in the area is a positive catalyst for the education of the youth in the area and revitalization of the surrounding residential communities, which are consistent with neighborhood goals.

The acquisition of the proposed project property is not expected to have any negative impacts on air quality in the Phoenix metropolitan area. The Phoenix metropolitan area is currently in non-attainment of the 24-hour and annual health-based standard for particulate matter. If the site is developed in the future, short-term impacts may occur due to construction disturbance and clearing (dust). Such impacts would be localized and short-term in duration; however, the construction contractor should follow industry standards for minimizing dust and particulates at construction sites.

The acquisition of this property is not expected to have any negative impacts on the geology, soils and/or water resources in the study area. The vacant parcel will be used initially as parking, an activity which would only minimally disturb the surface of the property and would not result in any impacts on the subsurface of the property including groundwater. If the property is developed in the future, the proposed development options (a Child Development Center, recreation, dormitory, and/or an administration building) would not result in any negative impacts on the surface or subsurface including groundwater. In fact, improvements to sanitary sewers and drainage on the site as a result of development would be considered a positive benefit.

The proposed project site is located in a light industrial, downtown setting. Current, typical sources of noise on the site include traffic from local streets, ambient noise from local businesses and educational facilities, and railroad traffic north of the site. Potentially sensitive receptors in the area consist of one church facility located approximately 500 feet to the south of

the proposed property. Any of the proposed uses of the currently vacant parcel (parking, a Child Development Center, recreation, dormitory, and/or and administration building) are not expected to increase noise levels in excess of the current conditions, and thus the acquisition of the parcel is not expected to have any negative impacts to the noise in the area. Any future development on the site would more than likely create construction noise; however, this noise would be of short duration.

Acquisition of the proposed property would not result in adverse impacts on the visual environment. There is a future opportunity to improve the aesthetics of this property as it is developed into a campus-like learning center. Additionally, implementing landscaping along the property boundaries would contribute to the revitalization efforts occurring throughout the north and south areas of this neighborhood.

The project site is currently a vacant lot with little vegetation resources within the project site boundary. The small amount of vegetation at the property boundary will be removed. Landscaped vegetation near Lincoln Street will not be impacted. The proposed action will result in little to no impacts on vegetation resources.

Potential impacts on wildlife are expected to be low. For small mammals and birds, mainly rodents and pigeons, some habitat loss as well as loss of individuals (chiefly small mammals) will occur if and when the site is developed. Project disturbances (i.e., construction), although locally intense, would be temporary. No riparian or wetland areas occur within the project site or study area. Therefore, there will be no impacts on riparian and wetland vegetation. No endangered or threatened species are expected to occur in the study area. If any special status species is observed, necessary mitigation measures will be developed in coordination with USFWS and the Arizona Game and Fish Department.

The proposed acquisition of the project property and use of the area for parking are expected to have no adverse effect on any archaeological or historical properties listed on or eligible for the National Register. Thus, there should be no significant impacts as defined by NEPA, nor any cumulative impacts.

Any future construction of new facilities on the project site has potential to directly affect archaeological resources that may be buried on the project site and indirectly affect adjacent historic buildings. If future development is pursued, the U.S. Department of Labor should comply with Section 106 of NHPA by consulting with the CHPO and SHPO. A plan for archaeological testing may need to be developed and implemented, and subsequent data recovery studies might be required to mitigate any identified adverse effects. Consideration also may need to be given to designing any new construction to minimize any potential for adverse visual effects or any other types of indirect effects to nearby historic resources listed on or eligible for the National Register. It seems likely that any identified adverse effects of future development could be satisfactorily mitigated through studies to recover important archaeological data or by sensitive project design. Therefore no significant impacts, as defined by NEPA, are projected.

Based on information gathered in the preparation of the EA, negative impacts on the surrounding environment are not anticipated to be associated with this project. However, appropriate consideration to surrounding cultural and historic resources should be handled according to Section 106 of NHPA and any other applicable regulations. Mitigation for any possible impacts should be possible through archaeological studies and project design. Similarly, if any special status species is observed, necessary mitigation measures will be developed in coordination with USFWS and the Arizona Game and Fish Department.

Dated this 19th day of July, 2002.

Richard C. Trigg,

National Director of Job Corps.

[FR Doc. 02–18873 Filed 7–24–02: 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Preliminary finding of No significant impact (FONSI) for the Proposed Acquisition of the Property Located at 515 South First Street and 118 East Lincoln Street, Phoenix, AZ

AGENCY: Employment and Training Administration, Labor.

ACTION: Preliminary finding of no significant impact (FONSI) for the proposed acquisition of the property located at 515 South First Street and 118 East Lincoln Street, Phoenix, Arizona.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (CEQ) (40 CFR part 1500–08) implementing procedural provision of the National Environmental Policy Act (NEPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL), Office of the Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared and the proposed acquisition of the property located at 515 South First Street and 118 East Lincoln Street, Phoenix, Arizona, will have no significant environmental impact, and this Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Written comments must be received by August 26, 2002.

ADDRESSES: Any comments are to be submitted to Michael F. O'Malley, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA and additional information are available to interested parties by contacting Michael F. O'Malley, Architect, US Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor is proposing to acquire a 42,000 square foot property at 515 South First Street and 118 East Lincoln Street, Phoenix, Arizona in order to consolidate the Phoenix Job Corp Center operations, currently located both east and west of the proposed site, into a more campus-like setting. Acquiring this piece of property would allow this consolidation by eliminating the need for a current leased piece of property that is used for teaching and support of the "hard vocation" trades such as carpentry, building maintenance, electronic assembly, painting, cement masonry, and plastering. The "hard vocations" would relocate to the new property. The existing structures on the site would be modified and used as classroom, shop, and support space. This consolidation would also allow trainees at the facility to have safer and closer access for training in an area where high traffic volumes can pose safety concerns. Property dimensions would allow expansion or additions to the existing buildings in the future; however, no plans exist at this time for these expansions.

The purpose and need for the U.S. Department of Labor's acquisition of this property is to eliminate the need for

a current lease and accommodate the relocation of the existing classroom, shop, and support space used by the "hard vocations" program. The newly acquired property would also provide room for building expansion in the future.

General environmental conditions and potential impacts were evaluated for the proposed site and a general 0.5-mile study radius surrounding the site.

The area immediately surrounding the project area (0.5-mile study area) is a diverse mix of commercial, industrial, and residential areas. The residential areas contain a young and diverse population. The acquisition of the proposed property is not expected to have any negative impacts on the demographics of the surrounding area. The purpose of the Job Corps is to provide basic education, vocational skills training, health care, and work experience to allow disadvantaged persons from the Phoenix area to improve their position in the workplace and society. Initially, the property will only be used for classroom, shop, and support space; however, in the long term, the property will allow the center the flexibility for possible facility expansion which would provide more educational opportunities for the disadvantaged youth in the downtown area. Thus, the addition of this parcel to the Job Corps campus is expected to have a positive impact on the lives of disadvantaged youths living in Phoenix and specifically the diverse downtown area.

The acquisition of the proposed property is not expected to have any negative impacts on any of the facilities, services, or existing infrastructure in the surrounding study area. The buildings on the proposed project site will be converted to classroom, shop, and support space, taking the place of rented space with the same function, and thus would not pose any additional strain to the public services, such as the police, fire departments, or medical facilities. Future development of the site would be beneficial to the surrounding neighborhood and any additional need for infrastructure or public services would cause only a negligible impact on the departments or services in the area. The existing schools, libraries, parks, and transportation facilities are not expected to be impacted by the acquisition of this property. Local streets and transit facilities are more than adequate to facilitate the current use of the site and any proposed future development of the parcel.

The proposed project is not expected to have any negative impacts on land use or the surrounding residential communities. The acquisition of the property would be compatible with current land uses in the area including industrial, commercial, and residential. Additionally, the consolidation of the Job Corps facilities to a more campus-like environment would be a responsible and efficient use of space.

Residential communities in the area, located generally south of the property, would not be impacted by the acquisition and use of this property. The presence of the Job Corps program in the area is a positive catalyst for the education of the youth in the area and revitalization of the surrounding residential communities, which are consistent with neighborhood goals.

The acquisition of the proposed project property is not expected to have any negative impacts on air quality in the Phoenix metropolitan area. The Phoenix metropolitan area is currently in non-attainment of the 24-hour and annual health-based standard for particulate matter. If the buildings on the site are expanded or further developed in the future, short-term impacts may occur due to construction disturbance and clearing (dust). Such impacts would be localized and short-term in duration. The construction contractor should follow industry standards for minimizing dust and particulates at construction sites.

The acquisition of this property is not expected to have any negative impacts on the geology, soils, and/or water resources in the study area. The existing buildings will be modified for use as classroom, shop, and support space, which should not result in any impacts on the surface or subsurface of the property, including groundwater. If the buildings are expanded or property is further developed in the future, the expansions should not result in any negative impacts on the surface or subsurface, including groundwater.

The proposed project site is located in a light industrial, downtown setting. Current, typical sources of noise on the site include traffic from local streets, ambient noise from local businesses and educational facilities, and railroad traffic north of the site. Potentially sensitive receptors in the area consist of one church facility located approximately 500 feet to the south of the proposed property. The proposed modifications to the site are not expected to increase noise levels in excess of the current conditions, and thus the acquisition of the proposed site is not expected to have any negative impacts on the noise in the area. Any future development on the site, such as building expansions, would more than likely create construction noise; however, this noise would be of short duration.

Acquisition of the proposed property for the intended purpose would not result in adverse impacts on the visual environment. There is an opportunity to improve the aesthetics of this property as it is developed into a campus-like learning center.

The project site is currently an industrial site used for cold storage of foodstuffs with no vegetation resources within the project site boundary. Landscaped vegetation near Lincoln Street will not be impacted. The proposed action will result in little to no impacts on vegetation resources.

Potential impacts on wildlife are expected to be low. For small mammals and birds, mainly rodents and pigeons, some habitat loss as well as loss of individuals (chiefly small mammals) will occur if and when the site is developed. Project disturbances (i.e., construction), although locally intense, would be temporary. No riparian or wetland areas occur within the project site or study area. Therefore, there will be no impacts on riparian and wetland vegetation. No endangered or threatened species are expected to occur in the study area. If any special status species is observed, necessary mitigation measures will be developed in coordination with USFWS and the Arizona Game and Fish Department.

The proposed acquisition of the project property and interior modifications of the two buildings on the project site are expected to have no adverse effect on any archaeological or historical properties listed on or eligible for the National Register. Thus, there should be no significant impacts as defined by NEPA, nor any cumulative impacts. Any future expansion of the existing buildings or construction of new facilities on the project site has potential to directly affect archaeological resources that may be buried on the project site and indirectly affect adjacent historic buildings. A plan for archaeological testing may need to be developed and implemented, and subsequent data recovery studies might be required to mitigate any identified adverse effects. Consideration also may need to be given to designing any modification or new construction to minimize any potential for adverse visual effects or any other types of indirect effects to nearby historic resources listed on or eligible for the National Register. It seems likely that any identified adverse effects of future development could be satisfactorily mitigated through studies to recover important archaeological data or by sensitive project design. Therefore no

significant impacts, as defined by NEPA, are projected.

Based on information gathered in the preparation of the EA, negative impacts on the surrounding environment are not anticipated to be associated with this project. However, appropriate consideration to surrounding cultural and historic resources should be handled according to Section 106 of NHPA and any other applicable regulations. Mitigation for any possible impacts should be possible through archaeological studies and project design. Similarly, if any special status species is observed, necessary mitigation measures will be developed in coordination with USFWS and the Arizona Game and Fish Department.

Dated this 19th day of July, 2002.

Richard C. Trigg,

National Director of Job Corps.

[FR Doc. 02–18872 Filed 7–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the information collection request (ICR) incorporated in the regulation pertaining to Disclosure by Insurers to General Account Policyholders pursuant to ERISA Section 401(c) and 29 CFR 2550.401c–1. A copy of the ICR may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESS** section below on or before September 23, 2002.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 694–8410; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) amended ERISA by adding Section 401(c), which clarified the extent to which assets of an insurer's general accounts constitute assets of an employee benefit plan when that insurer has issued policies for the benefit of a plan, and such policies are supported by assets of the general account. Section 401(c) established certain requirements and disclosures for companies that offer and maintain policies for employee benefits plans where the underlying assets are held in the insurer's general account. Section 401(c) also required the Secretary to provide guidance on the statutory requirements, which was issued as a final rulemaking on January 5, 2000 (65 CFR 614). The regulation includes information collection provisions pertaining to one-time and annual disclosure obligations of insurers.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in the regulation pertaining to Disclosures by Insurers to General Account Policyholders. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Titles: Disclosures by Insurers to General Account Policyholders.

OMB Number: 1210–0114.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 104.

Frequency of Response: One-time; Annual.

Responses: 123,500.

Estimated Total Burden Hours: 466,667.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: July 19, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research Pension and Welfare Benefits Administration.

[FR Doc. 02–18874 Filed 7–24–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; ERISA Technical Release 91–1

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the extension of the information collection request (ICR) incorporated in its Technical Release 91–1 related to the transfer of excess assets from a defined benefit plan to a

retiree health benefits account. A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before September 23, 2002.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 693 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

ERISA section 101(e) sets forth certain notice requirements which must be satisfied before an employer may transfer excess assets from a defined benefit plan to a retiree health benefits account as otherwise permissible after satisfying the conditions set forth in section 420 of the Internal Revenue Code of 1986, as amended (Code). Section 101(e)(1) describes the plan administrator's obligation to provide advance written notification of such transfers to participants and beneficiaries. Section 101(e)(2)(A) describes the employer's obligation to provide advance written notification to the Secretaries of Labor and Treasury, the administrator, and each employee organization representing participants in the plan. The requirements relating to advance notification of transfers to retiree health benefit accounts were added to ERISA as part of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). The ICR included in ERISA Technical Release 91–1 provides guidance on the type of information to be provided in the notices to both the participants and beneficiaries and to the Secretaries.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in ERISA Technical Release 91–1. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Titles: ERISA Technical Release 91–1.

OMB Number: 1210–0084.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 52.

Frequency of Response: One time.

Responses: 182,000.

Estimated Total Burden Hours: 4,550.

Total Burden Cost (Operating and Maintenance): $37,986.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: July 19, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research Pension and Welfare Benefits Administration.

[FR Doc. 02–18875 Filed 7–24–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Presidential Libraries

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Presidential Libraries. In accordance with Office of Management and Budget (OMB) Circular A–135, OMB approved the inclusion of the Advisory Committee on Presidential Libraries in NARA's ceiling of discretionary advisory committees.

NARA has determined that the renewal of the Advisory Committee is in the public interest due to the expertise and valuable advice the Committee members provide on issues affecting the functioning of existing Presidential libraries and library programs and the development of future Presidential libraries. NARA will use the Committee's recommendations in its implementation of strategies for the efficient operation of the Presidential libraries. NARA's Committee Management Officer is Mary Ann Hadyka. She can be reached at 301–837–1782.

Dated: July 18, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–18823 Filed 7–24–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation (NSF).

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 11146 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding thse information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written commenets regarding (a) Whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Cross-Site Evaluation of the National Science Foundation's Directorate for Education and Human Resources' Urban Systemic Program.

OMB Approval Number: 3145–0186.

Abstract: The National Science Foundation (NSF) requests a three-year clearance for an evaluation of the Urban Systemic Program (USP), a study that has been on-going since October 1999 first under OMB 3145–0136 and now under OMB 3145–0186. Due to a change in OMB terms of clearance for OMB 3145–0136, NSF established an independent clearance for the USP study under the terms of an emergency clearance.

USP began in 1999 when NSF made competitive awards of up to $3 million per year, for up to 5 years, to 5 urban school districts. Since then, the program has made awards to 13 additional districts in 2000, and another 9 districts in 2001. The USP represents one of NSF's major investments in improving science and mathematics education in urban school systems across the country, and have third-party evaluation is important in order for the agency to interpret the worthiness of the investment.

NSF uses the data to: (1) Determine whether to modify or extend the USP concepts and (2) share best practices and lessons learned about reform in mathematics and science education for K–12 schools.

Specifically, during the first two years of the USP Cross-Site Evaluation, the third-party, COSMOS Corporation of Bethesda, MD, has produced reports for others at NSF (e.g., the National Science Board). Though there are other sources of such documentation, the information provided by the Cross-Site team is valued because the team is not associated in any way with the program sites. Second, the Division of Educational System Reform uses the information to supplement its annual program monitoring. Third, NSF will use the information, both to assess its investment in the USP program and potentially to help to guide the design of future programs, such as the Mathematics and Science Partnerships.

During the extended period of clearance, the cross-site evaluation will conduct site visits to the first 18 districts that received USP awards and will collect student achievement data in mathematics and science from all of the districts. This data collection complements earlier efforts already undertaken by the Cross-Site team under earlier OMB clearances.

Respondents: State, local or tribal governments.

Number of Respondents: 324.

Burden on the Public: 121.5 hours.

Dated: July 22, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–18824 Filed 7–24–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7 issued to Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia.

The proposed amendments would permit the licensee to delay the effective implementation date of the Improved Technical Specifications from no later than September 2, 2002, to no later than December 20, 2002.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes delay implementation of the Improved Technical Specifications (ITS) to permit completion of system modifications and final functional testing of the Control Room Bottled Air System. The proposed changes are administrative in nature in that they simply delay implementation of ITS for four months. Until the ITS are implemented the current Technical Specifications will remain in effect. Since the changes are administrative, they will not alter the operation or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. As a result, the probability of any accident previously evaluated is not significantly increased. The changes will not affect the design, function or operation of any system, structure or component nor will it affect any maintenance, modification or testing activities. Thus, there will be no impact on the capability of any structure, system or component to perform its intended safety function. Therefore, it is concluded that operation in accordance with the proposed changes will not involve a significant increase in the probability or consequences of accidents previously analyzed.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Deferral of the ITS implementation date is an administrative change. As such the changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, these changes do not create the possibility of a new or different kind of

accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Deferral of the ITS implementation date is an administrative change. The proposed changes do not affect the plant design or operations. The changes do not eliminate any requirements or impose any new requirements or alter any physical parameters, which could reduce the margin to an identified acceptance limit. Hence, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 26, 2002, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated July 18, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 19th day of July 2002.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18822 Filed 7–24–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Co., Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–36, issued to Maine Yankee Atomic Power Company (MYAPC or the licensee), for the Maine Yankee Atomic Power Station (Maine Yankee or the plant), located in Lincoln County, Maine. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the license to incorporate a new License Condition 2.B.(9). The license condition would terminate license jurisdiction for a portion of the Maine Yankee site (referred to as the Non-Impacted Backlands (West of Bailey Cove and West of Young's Brook and North of Old Ferry Road)), thereby releasing these lands from Facility Operating License No. DPR–36. The land in question is not used for any licensed activities. No radiological materials have historically been used on this land and the land will not be used to support ongoing decommissioning operations and activities.

The Backlands, approximately 260 hectares (640 acres), are located beyond the 610-meter (2,000-foot) exclusion area established under the requirements of 10 CFR part 100, except for a specific portion. As such, the area has been open and accessible to the general public and is bounded by residential land owners. The Backlands consists of open fields, woodland, and some shoreline property. The Backlands have been designated as a non-impacted area, which means the area was not impacted due to site operation.

The proposed action is in accordance with the licensee's application dated August 16, 2001, as supplemented by letter dated November 19, 2001.

The Need for the Proposed Action

The revision to the license is needed to release the Backlands from the jurisdiction of Facility Operating License No. DPR–36. Portions of this land, approximately 80 hectares (200 acres), will be donated to a tax exempt environmental organization to create a nature preserve and an environmental education center and to provide public access to coastal lands in the mid-coast region of Maine. This donation is part of a rate case settlement that MYAPC made with the Federal Energy Regulatory Commission. The release of the rest of the Backlands will facilitate potential redevelopment and reuse of property that has been part of the Maine Yankee site.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the amendment will not have any significant effect on accident risk or the possibility of environmental impact. The Commission has previously issued a No Significant Hazards Consideration Determination for the proposed action (67 FR 12604) dated March 19, 2002. The proposed action will not significantly increase the probability or consequences of any accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have the potential to

affect historic or cultural resources, nor will the proposed action affect endangered and threatened species. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action and retention of the Backlands under Facility Operating License No. DPR–36 (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station, dated July 1972.

Agencies and Persons Consulted

On June 11, 2002, the staff consulted with the Maine State official, Mr. Patrick Dostie of the State of Maine, Department of Human Services, regarding the environmental impact of the proposed action. The State official had a question related to the type of effluents (e.g. contaminated dust) that demolition of the slightly contaminated structures could generate. The NRC staff responded to Mr. Dostie's question and provided information that clarified this issue with respect to this licensing action.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 16, 2001, as supplemented by letter dated November 19, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 19th day of July 2002.

For the Nuclear Regulatory Commission.

William D. Reckley,

Acting Chief, Section 1, Project Directorate IV–1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18821 Filed 7–24–02; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The U.S. Commission on Ocean Policy will hold its eighth regional meeting, the Commission's tenth public meeting, to hear and discuss coastal and ocean issues of concern of the State of Alaska.

DATES: Public meetings will be held Wednesday, August 21, 2002 from 12:30 p.m. to 6 p.m. and Thursday, August 22, 2002 from 8:30 a.m. to 6 p.m.

ADDRESSES: The meeting location is the Hotel Captain Cook, Discovery Ballroom, 4th & K Street, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC 20036, 202–418–3442, *schaff@oceancommission.gov*.

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Pub. L. 106–256, section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by Monday, August 12, 2002 to the meeting Point of Contact. A public comment period is scheduled for Thursday, August 22, 2002. The meeting agenda, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's Website at *http://www.oceancommission.gov* prior to the meeting.

Dated: July 19, 2002.

Thomas R. Kitsos,

Executive Director, U.S. Commission on Ocean Policy.

[FR Doc. 02–18819 Filed 7–24–02; 8:45 am]

BILLING CODE 6820–WM–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

[Rule 17f–2(c), SEC File No. 270–35, OMB Control No. 3235–0029]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(c) allows persons required to be fingerprinted pursuant to section 17(f)(2) of the Securities Exchange Act of 1934 to submit their fingerprints through a national securities exchange or a national securities association in accordance with a plan submitted to and approved by the Commission. Plans have been approved for the American, Boston, Chicago, New York, Pacific, and Philadelphia stock exchanges and for the National Association of Securities Dealers and the Chicago Board Options Exchange.

It is estimated that 85,000 registered broker-dealers submit approximately 275,000 fingerprint cards to exchanges or a registered security association on an annual basis. It is approximated that it should take 15 minutes to comply with Rule 17f–2(c). The total reporting burden is estimated to be 68,750 hours.

Because the Federal Bureau of Investigation will not accept fingerprint

cards directly from submitting organizations, Commission approval of plans from certain exchanges and national securities associations is essential to the Congressional goal of fingerprint personnel in the security industry. The filing of these plans for review assures users and their personnel that fingerprint cards will be handled responsibly and with due care for confidentiality.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 18, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18838 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25667; 812–12801]

Matrix Capital Group, Inc. and Matrix Unit Trust; Notice of Application

July 19, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under (a) section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d) and 26(a)(2)(C) of the Act and rules 19b–1 and rule 22c–1 thereunder; and (b) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges.

Applicants: Matrix Capital Group, Inc. ("Matrix") and any entity controlling, controlled by or under common control with Matrix (collectively, the "Depositor"); Matrix Unit Trust ("Matrix Trust"); any future registered unit investment trusts sponsored by the Depositor (together with the Matrix Trust, the "Trusts") and the future and existing series of each Trust (each a "Series").[1]

Summary of Application: Applicants request an order to permit certain unit investment trusts ("UITs") to: (a) Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (b) offer unitholders certain exchange and rollover options; (c) publicly offer units without requiring the Depositor to take for its own account or place with others $100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

Filing Dates: The application was filed on March 21, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing of Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 13, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, 666 Fifth Avenue, 14th Floor, New York, NY 10103.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527 or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. Each Series will be a series of a Trust and each Trust will be a UIT registered under the Act.[2] The Depositor is registered under the Securities Exchange Act of 1934 as a broker-dealer and is the depositor of each Series. Each Series will be created by a trust indenture between the Depositor and a banking institution or trust company as trustee ("Trustee").

2. The Depositor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the Series' portfolio ("Units"). The Units are offered to the public by the Depositor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities plus a front-end sales charge. The Depositor may reduce the sales charge in compliance with rule 22d–1 under the Act in certain circumstances, which are disclosed in the prospectus.

3. The Depositor will maintain a secondary market for Units and continually offer to purchase these Units at prices based upon the market value of the underlying securities. Investors may purchase Units on the secondary market at the current public offering prices plus a front-end sales charge. If the Depositor discontinues maintaining such a market at any time for any Series, holders of the Units ("Unitholders") of that Series may redeem their Units through the Trustee.

A. Deferred Sales Charge and Waiver of Deferred Sales Charge Under Certain Circumstances

1. Applicants request an order to the extent necessary to permit one or more Series to impose a sales charge on a deferred basis ("deferred sales charge" or "DSC"). For each Series, the Depositor would set a maximum sales charge per Unit, a portion of which may be collected "up front" (*i.e.*, at the time an investor purchases the Units). The DSC would be collected subsequently in installments ("Installment Payments") as described in the application. The Depositor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Depositor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the

[1] Any future Series that relies on the requested order will comply with the terms and conditions of the application.

[2] All presently existing Trusts that currently intend to rely on the requested order have been name as applicants.

amount due, the Depositor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Depositor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Depositor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d–1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by Form N–1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus also will disclose that portfolio securities may be sold to pay an Installment Payment if distribution income is insufficient, and that securities will be sold *pro rata* or a specific security will be designated for sale.

B. Exchange Option and Rollover Option

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units to another Series ("Exchange Option") and Unitholders of a Series that is terminating to exchange their Units for Units for a new Series of the same type ("Rollover Option"). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or DSC.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Depositor and participating underwriters and brokers for their services in providing the DSC program.

3. Pursuant to the Exchange Option, an adjustment would be made if Units of any Series are exchanged within five months of their acquisition for Units of a Series with a higher sales charge ("Five Months Adjustment"). An adjustment also would be made if Units on which a DSC is collected are exchanged for Units of a Series that imposes a front-end sales charge and the exchange occurs before the DSC collected (plus any amount collected up front on the exchanged Units) at least equals the per Unit sales charge on the acquired Units ("DSC Front-End Exchange Adjustment"). If an exchange involves either the Five Months Adjustment or the DSC Front-End Exchange Adjustment, the Unitholder would pay the greater of the reduced sales charge or an amount which, together with the sales charge already paid on the exchanged Units, equals the normal sales charge on the acquired Units on the date of the exchange. With appropriate disclosures, the Depositor may waive such payment. Further, the Depositor would reserve the right to vary the sales charge normally applicable to a Series and the charge applicable to exchanges, as well as to modify, suspend, or terminate the Exchange Option as set forth in the conditions to the application.

Applicant's Legal Analysis

A. DSC and Waiver of DSC

1. Section 4(2) of the Act defines a "unit investment trust" as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a "redeemable security" as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value ("NAV"). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prosectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales loan. Section 2(a)(35) of the Act defines the term "sales load" as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from section 2(a)(35) and section 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (a) riskless trading in investment company securities due to backward pricing, (b) disruption of orderly distribution by dealers selling shares at a discount, and (c) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d–1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Depositor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Depositor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

B. Exchange Option and Rollover Option

1. Sections 11(a) and (c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Option and the Rollover Option. Applicants state that the Five Months

Adjustment and the DSC Front-End Exchange Adjustment in certain circumstances are appropriate to maintain the equitable treatment of various investors in each Series.

C. Net Worth Requirement

1. Section 14(a) of the Act requires that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants state that each Series will comply with this requirement because the Depositor will deposit substantially more than $100,000 of debt and/or equity securities, depending on the objective of the particular Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Depositor's intention to sell of the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in "eligible trust securities," as defined in the rule. Applicants state that they may not rely on rule 14a–3 because certain future Series (collectively, "Equity Series") will invest all or a portion of their assets in equity securities or registered investment company securities pursuant to an exemptive order, which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) of the Act to the extent necessary to exempt the Equity Series from the net worth requirement in section 14(a). Applicants state that the Series and the Depositor will comply in all respects with the requirement of rule 14a–3, except that the Equity Series will not restrict their portfolio investment to "eligible trust securities."

D. Capital Gains Distribution

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Equity Series do not limit their investments to eligible trust securities, however, the Equity Series will not qualify for the exemption in paragraph (c) of rule 19b–1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b–1.

2. Applicants state that their proposal meets the standard of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Series' expenses, Installment Payments, or by redemption requests, events over which the Depositor and the Equity Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

A. DSC and Exchange and Rollover Options

1. Whenever the Exchange Option or the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, *provided* that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated under that section, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or the Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the Rollover Option are subject to modification, termination or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c–10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N–1A relating to deferred sales charges, modified as appropriate to reflect the differences between UITs and open-end management investment companies, and a schedule setting forth the number and date of each Installment Payment.

B. Net Worth Requirement

Applicant will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to "eligible trust securities."

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18803 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25668; 812–12798]

Matrix Unit Trust, et al.; Notice of Application

July 19, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of Application: Applicants Matrix Capital Group, Inc. (the "Depositor"), Matrix Unit Trust ("Matrix Trust") and unit investment trusts ("UITs") organized in the future and sponsored by the Depositor (together with Matrix Trust, the "Trusts," and series of the Trusts, "Series") request an order (a) under section 12(d)(1)(J) of the Act to permit

Series to offer and sell to the public units ("Units") with a sales load that exceeds the limit in section 12(d)(1)(F)(ii) of the Act; and (b) under sections 6(c) and 17(b) from section 17(a) of the Act to permit the Series to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act.

Applicants: Matrix Unit Trust and Matrix Capital Group, Inc.

Filing Dates: The application was filed on March 21, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 13, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: c/o Mark J. Kneedy, Chapman and Cutler, 111 West Monroe Street, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Matrix Trust is registered under the Act as a UIT. The Depositor, a broker-dealer registered under the Securities Exchange Act of 1934, is the depositor for each Series. Each Series will be created under state law pursuant to a trust agreement that will contain information specific to that Series, and will incorporate by reference a master trust agreement between the Depositor and a financial institution that satisfies the criteria in section 26(a) of the Act (the "Trustee"). The trust agreement and the master trust agreement are referred to collectively as the "Trust Agreement". Pursuant to the Trust Agreement, the Depositor will deposit into each Series shares of existing registered investment companies ("Funds"), or contracts and monies for the purchase of shares of the Funds. Each of the Funds will be a closed-end investment company ("Closed-end Fund"), an open-end investment company or a UIT. In addition, certain of the Funds may be either an open-end investment company or a UIT that has received exemptive relief under the Act to sell its shares at negotiated prices on an exchange ("Exchange Funds").

2. The purpose of each Series is to provide retail investors with a practical, cost efficient means of investing in a diversified pool of securities of investment companies that has been professionally selected by the Depositor, and each Series' investment objective will be to seek capital appreciation, income, or any combination thereof by investing all or a portion of its assets in shares of investment companies. Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Depositor or one of its affiliates ("Affiliated Funds"). Applicants anticipate that most of the Funds selected will be unaffiliated with any of the applicants, including the Depositor ("Unaffiliated Funds"). Applicants state that the Series' investments in Affiliated and Unaffiliated Funds will comply with section 12(d)(1)(F) in all respects except for the sales load restriction of section 12(d)(1)(F)(ii).

3. The only Funds that will be eligible for inclusion in a Series are either no load Funds or Funds which, although they offer shares with a front-end sales charge to the public, agree to waive any otherwise applicable front-end sales load with respect to all shares sold or deposited in any Series. Shares of each of the Funds (except Closed-end Funds and Exchange Funds), therefore, will be sold for deposit into any Series at net asset value. Shares of Closed-end Funds and Exchange Funds will be purchased by a Series at their "market value".[1] Investors in a Series ("Unitholders") will pay a specified sales load to the Depositor in connection with the purchase of their Units.

4. A Series may pay an evaluation fee with regard to determining the value of a Fund's shares. If the Trustee receives service fees under a rule 12b–1 plan from the Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by a Series, the Trustee will reduce its regular fee to a Series directly by the fees it receives from the Funds and rebate any excess fees it receives to the Series. Any fees so rebated will be utilized by the Series to absorb other bona fide Series expenses. To the extent that these fees exceed the total Series expenses, the excess will be distributed along with other income earned by the Series.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by the investment companies generally. Section 12(d)(1)(C) of the Act prohibits an investment company, other investment companies having the same adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end management investment company.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliated persons own no more than 3% of an acquired company's total outstanding securities, provided that the acquired company does not impose a sales load of more than 1.5%. In addition, the section provides that no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same

[1] Market value will be determined by an evaluator and will be based on the closing prices (or if unavailable, the closing asking prices) for the securities traded on an exchange or on the Nasdaq Stock Market.

proportion as all other shareholders of the acquired company.

3. A Series will invest in Affiliated and Unaffiliated Funds in reliance on section 12(d)(1)(F) of the Act. If the requested relief is granted, the Series will offer Units to the public with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii).

4. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors.

5. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees with respect to Units of a Series will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules applicable to a fund of funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii) because the proposed limit would cap the aggregate sales charges of the Units and the Funds. Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

6. Applicants state that, with respect to shares of Closed-end Funds and Exchange Funds held by a Series, no front-end sales load, contingent deferred sales charges or redemption fees will be charged in connection with the sale or purchase of Funds shares by a Series. Applicants state that although the Series likely will incur brokerage commissions in connection with its market purchases of shares of Closed-end Funds or Exchange Funds, these commissions will not differ materially from commissions otherwise incurred in connection with the purchase or sale of comparable portfolio securities.

7. Applicants also agree, as a condition to the requested relief, that no Series will acquire securities of a Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

1. With regard to the Series' investments in Affiliated Funds, applicants request relief from section 17(a) of the Act under sections 6(c) and 17(b). Section 17(a) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with the other person. Applicants submit that the Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Depositor. Applicants state that purchases and redemptions of share of the Affiliated Funds by a Series could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provisions of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act provides that the Commission will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants state that shares of Affiliated Funds will be sold to the Series at net asset value, or, in the case of Closed-end Funds or Exchange Funds, at their market value. As a result, applicants believe that the proposed terms and conditions of the Series' transactions in Affiliated Fund shares, including the consideration to be paid or received, will be reasonable and fair and will not involve overreaching on the part of any person concerned. Furthermore, applicants believe that the proposed transactions will be consistent with the policies of the each Series as recited in their registration statements, including disclosure that each Series is to hold shares of various Funds.

Applicant's Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Units of a Series will not exceed the limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).

3. No Series will acquire securities of a Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. No Series will terminate within thirty days of the termination of any other Series that holds shares of one or more common Funds.

5. The prospectus of each Series and any sales literature or advertising that mentions the existence of an in-kind distribution option will disclose that Unitholders who elect to receive Fund shares will incur any applicable rule 12b–1 fees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18837 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46231; File No. SR–CHX–2002–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated to Reduce or Eliminate Certain Transaction Credit Programs for Specialists

July 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule ("Schedule"), effective July 1, 2002, to reduce or eliminate certain transaction credit programs for specialists. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to amend the Schedule by (1) eliminating the transaction credits paid to specialists with respect to trading in Nasdaq/NM securities; and (2) reducing the highest level of transaction credits and modifying the remaining credits paid to specialists with respect to trading in issues listed on the American Stock Exchange ("Tape B" securities).

The Exchange has proposed this change in direct response to the Commission's abrogation of certain proposed rule changes involving transaction credit rebate programs of other market centers.[4] The CHX's specialist transaction credit program was put in place in February 1997 [5] to provide specialists with credits based upon their market share in the issues that they traded.[6] The Exchange does not believe that its program has resulted in widespread abuses such as those noted by the Commission in its recent press release.[7] Nevertheless, the Exchange believes that the Commission's concerns about the potential impact of these programs on the national markets should be explored further. The Exchange, accordingly, has proposed the elimination and reduction of the credit programs described above, at the request of the Commission, to ensure that market participants are on similar footing with respect to these programs during the ongoing review of this issue. As further information is revealed about the actual impact of these types of programs on the national market system, the Exchange anticipates that it will examine the efficacy of its remaining credit programs as well.

The changes to the Schedule are effective as of July 1, 2002.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act [8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–2002–22, and should be submitted by August 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18841 Filed 7–24–02; 8:45 am]

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[4] *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (order of summary abrogation).

[5] *See* Securities Exchange Act Release Nos. 38237 (February 4, 1987, 62 FR 5492 (February 12, 1997) (instituting the specialist credit); and 41947 (September 29, 1999), 64 FR 54703 (October 7, 1999) (instituting a transaction credit for floor brokers).

[6] The program originally provided credits as follows: a specialist whose monthly market share was less than 7% received a credit equal to 18% of the market data revenue in that stock received by the Exchange; a specialist whose monthly market share was 7 to 12% received a 36% credit; and a specialist whose market share was greater than 12% received a 54% credit. These credit rates were marginal rates; in other words, a specialist whose market share was 9% received an 18% credit on the trades that made up its 7% market share and a 36% credit on all subsequent trading activity. The credit program was modified in March 2000 to slightly increase the credits available to specialists trading listed securities and to establish a credit program for specialists trading Nasdaq/NM securities. *See* Securities Exchange Act Release No. 42561 (March 22, 2000), 65 FR 16443 (March 28, 2000) (SR–CHX–2000–06).

[7] In its press release, the Commission noted that it is concerned "that the availability of large market data revenue rebates in certain markets may be creating incentives for traders to engage in transactions with no economic purpose other than to receive market data fees." The Commission also stated its concern that "the structure and size of market data revenue rebates may be distorting the reporting of trades and that these rebate programs may reduce the regulatory resources of the markets and reallocate the funding of regulation among participants."

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46228; File No. SR–ISE–2002–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Stock Exchange, Inc. To Eliminate Position and Exercise Limits for Certain Qualified Hedge Strategies

July 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 26, 2002, the International Stock Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend ISE Rule 413 to eliminate position and exercise limits when certain qualified hedge strategies are employed to establish a hedged equity option position and to establish a position and exercise limit of five times the standard limit for those strategies that include an OTC option contract. The current reporting procedures that serve to identify and document hedged positions will continue to apply. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to eliminate position and exercise limits when certain qualified strategies are employed to establish a hedged equity option position and to establish a position and exercise limit of five times the standard limit for those strategies that include an OTC option contract. Current ISE Rule 413 provides position and exercise limits for stock options of 13,500, 22,500, 31,500, 60,000 and 75,000 options contracts on the same side of the market depending on the level of underlying trading volume over a six-month period. The existing hedge exemption provides an exemption to position and exercise limits of up to three (3) times the standard limit for certain qualified hedge strategies as follows: (i) Long call and short stock; (ii) short call and long stock; (iii) long put and long stock; and (iv) short put and short stock.

The ISE represents that the types of hedge strategies employed by market participants are becoming increasingly more diversified. The Exchange believes that, through its experience in administering and processing equity hedge exemption information, it has learned that market participants no longer rely strictly on a stock-option hedge. Additionally, while traditional hedge strategies such as a covered call or reverse conversion strategy continue to be utilized, the ISE believes that listed options contracts are now employed to hedge a wider spectrum of securities.

In response to the Commission's liberalization in granting position limit relief for market neutral strategies, and to more fully accommodate the hedging needs of investors, the Exchange is proposing to eliminate position and exercise limits when certain qualified strategies are employed to establish a hedged equity options position. Accordingly, the ISE proposes to expand the definition of a "qualified" hedged position found in ISE Rule 413. The proposed qualified hedged strategies are as follows:

1. Where each option contract is "hedged" by the number of shares underlying the option contract or securities convertible into the underlying security or, in the case of an adjusted option, the same number of shares represented by the adjusted contract: (a) Long call and short stock; (b) short call and long stock; (c) long put and long stock; or (d) short put and short stock.

2. *Reverse Conversions*—A long call position accompanied by a short put position, where the long call expires with the short put and the strike price of the long call and short put is the same, and where each long call and short put contract is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.[3]

3. *Conversions*—A short call position accompanied by a long put position, where the short call expires with the long put and the strike price of the short call and long put is the same, and where each short call and long put contract is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.[4]

4. *Collars*—A short call position accompanied by a long put position, where the short call expires at the same time as the long put and the strike price of the short call equals or exceeds the strike price of the long put position and where each short call and long put position, is hedged with 100 shares of the underlying security (or other adjusted number of shares). Neither side of the short call/long put position can be in-the-money at the time the position is established.[5]

5. *Box Spreads*—A long call position accompanied by a short put position, where both the long call and short put have the same strike price, and a short call position accompanied by a long put position, where the short call and long put have the same strike price as each other, but a different strike price than the long call/short put position.

6. *Back-to-Back Options*—A listed option position hedged on a one-for-one basis with an over-the-counter ("OTC") option position on the same underlying security. The strike price of the listed option position and corresponding OTC option position must be within one strike price interval of each other and no more than one expiration month apart.

[3] For reverse conversion, conversion, and collar strategies, one of the option components can be an OTC option guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account. Hedge transactions and positions established pursuant to these strategies are subject to a position limit equal to five times the standards limit established under ISE Rule 412(c) and Supplementary Material .02 to Rule 412. For purposes of this rule filing, an OTC option contract is defined as an option that is not listed on a National Securities Exchange or cleared at the Options Clearing Corporation.

[4] *Id.*

[5] *Id.*

Within the list of proposed hedge strategies eligible for the Equity Hedge Exemption, the Exchange proposes that the option component of a reversal, a conversion or a collar position can be treated as one contract rather than as two (2) contracts. All three strategies serve to hedge a related stock portfolio. Because these strategies require the contemporaneous[6] purchase/sale of both a call and put component, against the appropriate number of shares underlying the option (generally 100 shares) the Exchange believes that the position should be treated as one contract for hedging purposes.

Under the proposed rule change, the standard position and exercise limits will remain in place for unhedged equity option positions. Once an account nears or reaches the standard limit, positions identified as a qualified hedge strategy will be exempted from position limit calculations. The exemption will be automatic (*i.e.*, does not require pre-approval from the Exchange) to the extent that the member identifies that a pre-existing qualified hedge strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to the Exchange.

The exemption will remain in effect to the extent that the exempt positions remain intact and the Exchange is provided with any required supporting documentation. Procedures to demonstrate that the option position remains qualified are similar to those currently in place. Exchange procedures currently require a qualified account to report hedge information each time the option position changes. Hedge information for member firm and customer accounts are electronically reported via the Large Options Positions Report. Market maker account information is also reported to the Exchange electronically by the member's clearing firm. The existing requirement imposed on a member firm to report hedge information for proprietary and customer accounts that maintain an options position in excess of 10,000 contracts will continue to apply.

The ISE believes that, with the exception of covered stock positions, all of the proposed qualified hedge strategies are market neutral.[7] Therefore, none of the proposed strategies lend themselves to market manipulation and should be exempt from position limits. In addition, the Exchange believes that the current reporting requirements under ISE rules and the surveillance procedures for hedged positions will enable the Exchange to closely monitor sizable option positions and corresponding hedges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general and furthers the objectives of section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The ISE has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal is substantially identical to proposed rule changes submitted by other options exchanges, which the Commission has approved.[12] The Commission also notes that these proposals were noticed for public comment and no comment was received. The Commission does not believe that the proposed rule change raises novel regulatory issues that were not already addressed in the approval orders to these proposed rule changes.[13] For these reasons, the Commission designates the proposal to be effective and operative as of the date of this order.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[6] At or about the same time.

[7] Where covered stock transactions are not market neutral (*i.e.*, long stock/short call; short stock/short put); the market exposure on such activity resides with the stock position where no limit is imposed. The ISE believes that, as the short option premium serves to mitigate the stock exposure, no limit should be imposed on this strategy.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* Securities Exchange Act Release No. 45737 (April 11, 2002), 67 FR 18975 (April 17, 2002) (SR–PCX–00–45); Securities Exchange Act Release No. 45650 (March 26, 2002), 67 FR 15638 (April 2, 2002) (SR–Amex–2001–72); Securities Exchange Act Release No. 44503 (March 20, 2002), 67 FR 14751 (March 27, 2002) (SR–CBOE–00–12).

[13] *Id.*

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2002–15 and should be submitted by August 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18839 Filed 7–24–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46232; File No. SR–NASD–2002–94]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Reinstate a Transaction Credit Pilot Program for Exchange-Listed Securities

July 19, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On July 17, 2002, Nasdaq amended the proposal.[3] Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As of July 1, 2002, Nasdaq proposes to reinstate its transaction credit pilot program for exchange-listed securities for a six-month pilot period, through December 31, 2002. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[7]

7010. System Services

(a)–(b) No change.

(c)(1) No change.

(2) Exchange-Listed Securities Transaction Credit.

For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. To qualify for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. A qualified NASD member may earn credits from the pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter starting with July 1, 2000 for Tape A reports (April 1, 2000 for Tape B reports) and ending with the calendar quarter starting on [April] *October* 1, 2002.

(d)–(r) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to reinstate through December 31, 2002 its pilot program to provide a transaction credit to NASD members that exceed certain levels of trading activity in exchange-listed securities. Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex").[8] The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. The NASD collects trade reports from broker-dealers trading these securities in the over-the-counter ("OTC") market and provides the trade reports to the Consolidate Tape Association ("CTA") for inclusion in the Consolidated Tape. As a participant in the CTA Plan, the NASD is entitled to a portion of the revenue that the CTA generates by selling this market data information. NASD's share of the revenues is based on trades that it reports on behalf of these broker-dealers in NYSE-listed

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* July 17, 2002 letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission and attachments ("Amendment No. 1"). In Amendment No. 1, Nasdaq provided clarification as to the procedural history of its transaction credit pilot program, and in particular, with regard to SR–NASD–2002–68. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on July 17, 2002, the date Nasdaq filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Nasdaq asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] On July 2, 2002, the Commission abrogated SR–NASD–2002–68. *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (order of summary abrogation). By abrogating SR–NASD–2002–68, the Commission eliminated the pilot program, despite the fact that the NASD Rules still contained NASD Rule 7010(c)(2). Because Nasdaq is reinstating the pilot program at this time, the Commission did not require Nasdaq to file a proposed rule change to eliminate the language of NASD Rule 7010(c)(2). As a result, the only language that appears in italics as new language is the language identifying the expiration date of the newly reinstated pilot program.

[8] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2002) (SR–NASD–00–323).

securities ("Tape A") and in Amex-listed securities ("Tape B").

The Transaction Credit Pilot Program (the "Program") began in 1999.[9] Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD) from the CTA, by providing a transaction credit to members who exceed certain levels of OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program is also an important tool for Nasdaq to compete against other exchanges (particularly CSE and CHX) that offer similar programs[10] and thereby maintain market share in listed securities.

Under the Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA (Tape A), the other representing 40% of the gross revenue received from the CTA for reporting Amex trades (Tape B). Eligibility for transaction credits is based on concurrent quarterly trading activity. For example, an InterMarket participant that enters the market for Tape A or Tape B securities during a particular quarter and prints an average of 500 daily trades of Tape A securities during the time it is in the market, or that averages 500 Tape B prints during such quarter, would be eligible to receive transaction credits based on its trades during that quarter. Only those members that continue to average an appropriate daily execution level are eligible for transaction credits. Eligible members receive a *pro-rata* portion of the Tape A and/or Tape B pool, as applicable.

The Program was scheduled to expire on June 30, 2002. Nasdaq submitted a proposed rule change on June 13, 2002 to extend the Program through December 31, 2002, and to modify the Program by providing transaction credits to the liquidity provider in a transaction rather than the reporting party.[11] On July 2, 2002, the Commission summarily abrogated SR–NASD–2002–68 and certain filings of the CSE and The Pacific Exchange, Inc. related to market data revenue sharing.[12] However, revenue sharing programs for Tape A and Tape B offered by the CSE and CHX remain in effect. Accordingly, Nasdaq, after consultation with Commission staff, is reinstating the Program, as it was in effect during the first half of 2002, to prevent competitive disparities from arising.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the Act, including section 15A(b)(5) of the Act,[13] which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and section 15A(b)(6) of the Act,[14] which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. By reinstating the Program, the proposed rule change will allow overall fees for InterMarket to remain at the level they were at during the first six months of 2002.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to reinstate the Program effective as of July 1, 2002, thereby eliminating competitive disparities between self-regulatory organizations that offer tape revenue sharing programs. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be

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[9] *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–99–13). The SEC issued notice of subsequent extensions of the Program. *See* Securities Exchange Act Release Nos. 42095 (November 3, 1999), 64 FR 61680 (November 12, 1999) (SR–NASD–99–59); 42672 (April 12, 2000), 65 FR 21225 (April 20, 2000) (SR–NASD–00–10); 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR–NASD–00–32); 43831 (January 10, 2001), 66 FR 4882 (January 18, 2001) (SR–NASD–00–72); 44098 (March 23, 2000), 66 FR 17462 (March 30, 2001) (SR–NASD–01–15); 44734 (August 22, 2001), 66 FR 4537 (August 26, 2001) (SR–NASD–2001–42); and 45273 (January 14, 2002); 67 FR 2716 (January 18, 2002) (SR–NASD–2001–92).

[10] *See* Securities Exchange Act Release No. 38237 (February 4, 1997), 62 FR 6592 (Feb. 12, 1997) (SR–CHX–97–01) and Securities Exchange Act Release No. 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997) (SR–CSE–97–12.)

[11] *See* Securities Exchange Act Release No. 46153 (July 1, 2002), 67 FR 45164 (July 8, 2002) (SR–NASD–2002–68).

[12] *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (order of summary abrogation).

[13] 15 U.S.C. 78o–3(b)(5).

[14] 15 U.S.C. 78o–3(b)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–94 and should be submitted by August 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18842 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46234; File No. SR–NASD–2002–73]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq Testing Facility Fees, and Adding the Ability to Test Computer-to-Computer Interface, Application Programming Interface, and Market Data Vendor Feeds Over Dedicated Circuits

July 19, 2002.

On June 4, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–thereunder,[2] a proposed rule change to apply the same schedule of fees in SR–NASD–2002–72[3] to non-member subscribers that use a dedicated circuit or circuits to test their communication interfaces and/or market data vendor feeds with Nasdaq's central processing facilities. The fees consist of monthly fees and one-time installation fees, and would be charged in addition to the hourly fees currently charged. The proposed rule change was published for notice and comment in the **Federal Register** on June 18, 2002.[4] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[5] and, in particular, the requirements of section 15A(b)(5),[6] which requires the rules of a national securities association to provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility which the association operates or controls. The Commission finds the proposed rule change is consistent with section 15A(b)(5) because the same fees will be charged to member and non-member subscribers that choose to test their communication systems interfaces with Nasdaq's central processing facilities over a dedicated circuit or circuits. The Commission accepts Nasdaq's representation that the fees are reasonable because the fees have been calculated to recover Nasdaq's actual costs of installation and maintenance of the dedicated circuit(s).

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7], that the proposed rule change (SR–NASD–2001–73) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18843 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46214; File No. SR–Phlx–2001–63]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing of and Order Granting Accelerated Approval to Amendment No. 3 Relating to New Product Allocations

July 16, 2002.

I. Introduction

On June 18, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to new product allocations. On February 28, 2002, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On April 5, 2002, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] On May 2, 2002, notice of the proposed rule change and Amendment Nos. 1 and 2 thereto was published in the **Federal Register**.[5] The Commission received no comments on the proposed rule change, as amended by Amendment Nos. 1 and 2. On June 25, 2002, the Phlx filed Amendment No. 3 to the proposed rule change with the Commission.[6] This order approves the proposed rule change, as amended, and grants accelerated approval to Amendment No. 3. The Commission is also soliciting comments on Amendment No. 3 from interested persons.

II. Description of Proposal

The Phlx proposes to amend Phlx Rule 511(b), Allocations, to permit the Equity Allocation, Evaluation and Securities Committee and the Options Allocation, Evaluation and Securities Committee (collectively "Committees") to allocate a new product[7] to an eligible

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[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46065 (June 12, 2002), 67 FR 41556 (June 18, 2002).

[4] Securities Exchange Act Release No. 46066 (June 12, 2002), 67 FR 41554.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 26, 2002 ("Amendment No. 1").

[4] *See* letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 4, 2002 ("Amendment No. 2").

[5] *See* Securities Exchange Act Release No. 45824 (April 25, 2002), 67 FR 22144.

[6] *See* letter from Linda S. Christie, Counsel, Phlx, to Kelly McCormick-Riley, Senior Special Council, Division, Commission, dated June 25, 2002 ("Amendment No. 3"). In Amendment No. 3, the Phlx clarified that the three types of business transactions enumerated in proposed Phlx Rule 511(b)(ii) are not the type of business transactions contemplated under Phlx Rule 1023. The Phlx explained that for purposes of its proposed Rule 511(b)(ii), its Rule 1023 shall be deemed to prohibit only business transactions which are material in value either to the issuer or the specialist, would provide access to material non-public information relating to the issuer, or would provide access to material non-public information relating to the issuer, or would give rise to a control relationship between the issuer and the specialist unit. The receipt of routine business services, goods, materials, insurance, on terms that would be generally available shall not be deemed a business transaction for the purposes of Phlx Rule 1023. The Phlx further elaborated that license agreements, trademarks, tradenames and intellectual property are routine business services that are generally available through an issuer and that these types of transactions do not give rise to the possibility of the specialist unit being controlled an issuer. The Phlx also represented that the transactions contemplated in proposed Phlx Rule 511(b)(ii) do not provide access to non-public information relating to the issuer. Rather, these types of business agreements between the parties are routine in nature and are not deemed prohibited transactions per Phlx Rule 1023.

[7] Phlx proposes to define a new product for purposes of Phlx Rule 511(b)(i) as anything other

Continued

specialist unit that develops such new product or is instrumental in developing or bringing such new product to the Exchange without soliciting applications from any other specialist units. Currently, Phlx Rule 506(a) requires, among other things, that the Committees solicit applications from all eligible specialist units when allocating an equity or options book. Specialists will continue to be required to satisfy all eligibility requirements.[8]

The proposal would also permit the Committees, as a condition to allocating a book for any equity, option, or futures product that involves the licensing or other acquisition of an index, trademark, tradename, patent or other intellectual property, to: (1) Require a specialist unit to indemnify the Exchange and/or any third party against any potential liabilities associated with the product; (2) require a specialist unit to agree to pay the Exchange and/or any third party any amounts related to the product or use of the product; and (3) enter into any necessary agreements or undertakings with the Exchange and/or third party concerning the intellectual property, however, no such agreement or undertaking may confer any ownership or proprietary rights upon the specialist unit with respect to the intellectual property or the book.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the requirements of sections 6(b)(4) and (5) of the Act[9] that the rules of an exchange, among other things, provide for the equitable allocation of reasonable fees, dues, and other charges among its members and issuers and other persons using its facilities, and be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.[10]

The Commission believes that the proposal to permit the Committees to allocate a new product to an eligible specialist unit that develops a new product or is instrumental in developing or bringing a new product to the Exchange without soliciting new applications from other specialist units will permit the Exchange to fulfill its obligation to protect investors and the public interest because specialist units will continue to be required to satisfy the existing specialist appointment criteria set forth in Phlx Rule 501. The proposal provides the Committees with the ability to consider a specialist's willingness to expend capital and other resources in developing and bringing new products to the Phlx. Further, the Commission notes that the Committees are not required to view the fact that an eligible specialist unit develops a new product or is instrumental in developing or bringing a new product to the Exchange as a conclusive factor in its allocation determination. The proposal merely provides the Committees with the discretion to consider such additional factors.

The Commission also believes that the proposal to permit the Committees to require certain indemnifications and agreements regarding payment and intellectual property is reasonable and should provide for the equitable allocation of charges incurred by the Exchange associated with the trading of new products. Further, the Commission believes that passing on these related costs should assist the Phlx in defraying some of the costs and may provide for a more effective utilization of Exchange resources.

The Commission also finds good cause for accelerating approval of Amendment No. 3 because it merely clarifies that the three types of business transactions enumerated in proposed Phlx Rule 511(b)(ii) are not business transactions contemplated under Phlx Rule 1023. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) of the Act,[11] and section 19(b)(2) of the Act [12] to accelerate approval of Amendment No. 3 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–63 and should be submitted by August 15, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change, as amended, (File No. SR–Phlx–2001–63) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18840 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–P

than common stock of an operating company, or options or futures on common stock of an operating company or straight debt of an operating company.

[8] *See, e.g.*, Phlx Rules 501, 506, and 511.

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3422]

State ofF Indiana; Amendment #3

In accordance with a notice received from the Federal Emergency Management Agency, dated July 15, 2002, the above numbered declaration is hereby amended to include Dearborn and Orange Counties in the State of Indiana as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring April 28, 2002 through June 7, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Franklin and Ohio Counties in Indiana; Boone County in Kentucky; and Butler and Hamilton Counties in Ohio. All other contiguous counties have been previously declared.

The economic injury number assigned to Ohio is 9Q6100.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 12, 2002, and for economic injury the deadline is March 13, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 17, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–18768 Filed 7–24–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9Q59]

State of New Mexico

Colfax, Rio Arriba, Santa Fe, San Miguel and Taos Counties and the contiguous Counties of Bernalillo, Guadalupe, Harding, Los Alamos, Mora, Quay, Sandoval, San Juan, Torrance and Union in the State of New Mexico; and Archuleta, Conejos, Costilla and Las Animas Counties in the State of Colorado constitute an economic injury disaster loan area as a result of wildfires that closed the Carson National Forest and the Santa Fe National Forest from May 9 through July 12, 2002. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on April 17, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent.

The number assigned for economic injury for this disaster is 9Q5900 for the State of New Mexico and 9Q6000 for the State of Colorado.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: July 17, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–18770 Filed 7–24–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428]

State of Texas (Amendment #3)

In accordance with a notice received from the Federal Emergency Management Agency, dated July 16, 2002, the above numbered declaration is hereby amended to include Duval, McMullen and Jim Wells Counties in the State of Texas as disaster areas due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Brooks, Jim Hogg, Kleberg, Nueces and San Patricio Counties in Texas. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 17, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–18769 Filed 7–24–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Federal Assistance To Provide Financial Counseling and Other Technical Assistance to Women

AGENCY: Small Business Administration.

ACTION: Amendment to **Federal Register** Notice, FR Doc. 02–16785, Filed 7–3–02, (67 FR 44920) pertaining to Program Announcement No. OWBO–2002–018. This amendment changes the application period and informs interested parties where to electronically access the program announcement and application materials.

SUMMARY: Whereas the previous notice stated that the application period is July 15, 2002 through August 12, 2002, this notice informs interested parties that the application period has changed to July 18, 2002 through August 15, 2002. Program Announcement No. OWBO–2002–018 may be electronically accessed at *http://www.onlinewbc.gov/grants.html.*

FOR FURTHER INFORMATION CONTACT: Sally S. Murrell at (202) 205–6673 or Mina Bookhard at (202) 204–7080.

Wilma Goldstein,

Assistant Administrator, SBA/Office of Women's Business Ownership.

[FR Doc. 02–18767 Filed 7–24–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4039]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct a series of open meetings, each at 9:30 a.m., on Thursday, August 15, September 12, October 10, November 14, December 12, 2002 and Wednesday, January 8, 2003. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, DC 20950. The purpose of these meetings is to prepare for the Seventh Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue, to be held the week of January 13–17, 2003, at IMO headquarters in London, England.

Among the items of particular interest are:

- Maritime Safety Information for Global Maritime Distress Satellite System (GMDSS)
- Development of a procedure for recognition of mobile satellite systems
- Revision of performance standards for Navigational Telex (NAVTEX) equipment
- Emergency radiocommunications, including false alerts and interference
- Large passenger ship safety
- Issues related to maritime security
- Developments in maritime radiocommunication systems and technology
- Matters concerning Search & Rescue

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing; Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, SW., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to *rlevin@comdt.uscg.mil.*

Dated: July 2, 2002.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 02–18851 Filed 7–24–02; 8:45 am]

BILLING CODE 4710–70–P

DEPARTMENT OF STATE

[Public Notice 4071]

Bureau of Nonproliferation; Imposition of Nonproliferation Measures Against Entities in the People's Republic of China and in India

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that the following persons have engaged in proliferation activities that require the imposition of measures pursuant to the Iran-Iraq Arms Non-Proliferation Act of 1992 and/or the chemical/biological nonproliferation provisions of the Arms Export Control Act and the Export Administration Act of 1979 (as continued by E.O. 13222 of August 17, 2001).

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: On general issues: Ron Parson, Bureau of Nonproliferation, Department of State, (202–647–0397). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to provisions of Section 1604 of the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102–484), the President's Memorandum Delegation of Authority dated September 27, 1994 (59 FR 50685), and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the Under Secretary of State for Arms Control and International Security Affairs has determined that the following persons have engaged in proliferation activities that require the imposition of measures as described in section 1604(b) of the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102–484).

Jiangsu Yongli Chemicals and Technology Import and Export Corporation (China), or any successor entities, parents or subsidiaries;

Q.C. Chen (China);

China Machinery and Equipment Import Export Corporation (China) and any successor entities, parents or subsidiaries;

China National Machinery and Equipment Import Export Corporation (China) and any successor entities, parents, or subsidiaries;

CMEC Machinery and Electric Equipment Import and Export Company Ltd. (China) and any successor entities, parents, or subsidiaries;

CMEC Machinery and Electrical Import Export Company, Ltd. (China) and any successor entities, parents, or subsidiaries;

China Machinery and Electric Equipment Import and Export Company (China) and any successor entities, parents, or subsidiaries;

Wha Cheong Tai Company Ltd. (China) and any successor entities, parents, or subsidiaries;

China Shipbuilding Trading Company (China) and any successor entities, parents, or subsidiaries;

Hans Raj Shiv (previously residing in India, and last believed to be in the Middle East).

Accordingly, until further notice and pursuant to the provisions of section 1604(b) of the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102–484), the following measures are imposed on these persons:

1. For a period of two years, the United States Government shall not procure, or enter into any contract for the procurement of, any goods, or services from the sanctioned person;

2. For a period of two years, the United States Government shall not issue any license for any export by or to the sanctioned person.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years, except to the extent subsequently determined otherwise.

Pursuant to section 81(a) of the Arms Export Control Act (22 U.S.C. 2798) and section 11C(a) of the Export Administration Act of 1979 (50 U.S.C. app 2410C (as continued by E.O. 13222 of August 17, 2001)), as amended by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Pub. L. 102–182), Executive Order 12851 of June 11, 1993 (58 FR 113), and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the Under Secretary of State for Arms Control and International Security Affairs has determined that the following foreign persons have engaged in chemical weapons proliferation activities that require the imposition of measures as described in section 81(c) of the Arms Export Control Act (22 U.S.C. 2798) and sections 11C(c)(1) of the Export Administration Act of 1979 (50 U.S.C. app 2410C (as continued by E.O. 13222 of August 17, 2001)).

Jiangsu Yongli Chemicals and Technology Import and Export Corporation, and its successors (China);

Q.C. Chen (China);

China Machinery and Equipment Import Export Corporation, and its successors (China);

China National Machinery and Equipment Import Export Corporation, and its successors (China);

CMEC Machinery and Electric Equipment Import and Export Company Ltd., and its successors (China);

CMEC Machinery and Electrical Import Export Company, Ltd., and its successors (China);

China Machinery and Electric Equipment Import and Export Company, and its successors (China);

Wha Cheong Tai Company Ltd., and its successors (China);

Accordingly, until further notice and pursuant to the provisions of section 81 (c) of the Arms Export Control Act (22 U.S.C. 2798) and section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app 2410c (as continued by E.O. 13222 of August 17, 2001)), the following measures are imposed on these entities:

1. The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned persons;

2. The importation into the United States of products produced by the sanctioned persons shall be prohibited.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for at least one year until further notice.

Dated: July 19, 2002.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 02–18852 Filed 7–24–02; 8:45 am]

BILLING CODE 4710–27–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Services (ISAC–13)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Services (ISAC–13) will hold a meeting on July 30, 2002, from 1:30 p.m. to 4:30 p.m. The meeting will be opened to the public from 1:30 p.m. to 2:10 p.m. The meeting will be closed to the public from 2:10 p.m. to 4:30 p.m.

DATES: The meeting is scheduled for July 30, 2002, unless otherwise notified.

ADDRESSES: The meeting will be held in Room 6087B of the Department of Commerce located on 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jennifer Moll, at (202) 482–1316,

Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda items will be discussed.

- Report on World Trade Organization (WTO) General Agreement on Trade in Services (GATS) Negotiations.
- Report from International Trade Commission representatives regarding their publication, Recent Trends in U.S. Services Trade.

Elizabeth A. Gianini,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison (A).

[FR Doc. 02–18871 Filed 7–24–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD09–01–123]

Great Lakes Regional Waterways Management Forum

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: "The Great Lakes Regional Waterways Management Forum" will hold a meeting to discuss various waterways management issues. Agenda items will include updates on the Great Lakes/St. Lawrence Seaway Navigation Study; maritime security issues; progress reports from Forum Subcommittees on Communications, Navigation Technologies, Outreach, Cruise Ships and Ballast Water; and discussions about the agenda for the next meeting. The meeting will be open to the public.

DATES: The meeting will be held August 13, 2002 from 1 p.m. to 4 p.m. Comments must be submitted on or before August 9, 2002 to be considered at the meeting

ADDRESSES: The meeting will be held in the U.S. Coast Guard Club located on the U.S. Coast Guard Moorings, 1055 East Ninth Street, Cleveland, OH 44199. Any written comments and materials should be submitted to Commander (map), Ninth Coast Guard District, 1240 E. 9th Street, Room 2069, Cleveland, OH 44199.

FOR FURTHER INFORMATION CONTACT: CDR Michael Gardiner (map), Ninth Coast Guard District, at (216) 902–6049. Persons with disabilities requiring assistance to attend this meeting should contact CDR Gardiner.

SUPPLEMENTARY INFORMATION: The Great Lakes Waterways Management Forum identifies and resolves waterways management issues that involve the Great Lakes region. The forum meets twice a year to assess the Great Lakes region, assign priorities to areas of concern and identify issues for resolution. The forum membership has identified agenda items for this meeting that include: updates on the Great Lakes/St. Lawrence Seaway Navigation Study; maritime security issues; progress reports from Forum Subcommittees on Communications, Navigation Technologies, Outreach, Cruise Ships and Ballast Water; and discussions about the agenda for the next meeting. Additional topics of discussion are solicited from the public.

Dated: July 16, 2002.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard , Commander, Ninth Coast Guard District.

[FR Doc. 02–18758 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–02–019]

Houston/Galveston Navigation Safety Advisory Committee Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Thursday, September 19, 2002 from 9 a.m. to 12 p.m. The meeting of the Committee's working groups will be held on Thursday, September 5, 2002 at 9 a.m. to 11 a.m. Members of the public may present written or oral statements at either meeting.

ADDRESSES: The full Committee meeting will be held at the Offices of the Houston Pilots Association, 8150 South Loop East, Houston, Texas (713–645–9620). The working groups' meeting will be held at the Offices of the Army Corps of Engineers, 2000 Fort Point Road, Galveston, Texas (409–766–3004).

FOR FURTHER INFORMATION CONTACT: Captain Kevin Cook, Executive Director of HOGANSAC, telephone (713) 671–5199, or Lieutenant Junior Grade Kelly Tobey, assistant to the Executive Secretary of HOGANSAC, telephone (713) 671–5103, e-mail katobey@vtshouston.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Casto) (or the Committee Sponsor's representative), Executive Director (CAPT Cook) and Chairman (Tim Leitzell).

(2) Approval of the May 23, 2002 minutes.

(3) Old Business:

(a) Dredging projects.

(b) Electronic navigation.

(c) AtoN Knockdown Working Group.

(d) Mooring subcommittee report.

(e) Bolivar Roads anchorage areas.

(f) Recreational boating education initiative.

(g) Port Security Subcommittee report.

(h) Bridge Allision Working Group.

(i) Swimmers near Lynchburg.

(4) New Business:

(a) Bayport Terminal Project.

Working Groups' Meeting. The tentative agenda for the working groups' meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

Procedural

Working groups have been formed to examine the following issues: dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, recreational boater education issues, and port security. Not all working groups will necessarily report out at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make presentations, oral or written, at either meeting.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director, or assistant to the Executive Secretary.

Dated: July 11, 2002.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–18785 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Release Airport Property at the Garden County Airport, Oshkosh, NE

AGENCY: Federal Aviation Administration, (FAA), (DOT).

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Garden County Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before August 26, 2002.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, Missouri 64106–2325. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Diane J. Hofer, P.E., Deputy Director of Planning & Engineering at the following address: State of Nebraska, Department of Aeronautics, 3431 Aviation Road, Suite 150, Lincoln, Nebraska 68524.

FOR FURTHER INFORMATION CONTACT: Nicoletta Oliver, Airports Compliance Specialist, FAA, Central Region, 901 Locust, Kansas City, MO 64106–2325, (816) 329–2642.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Garden County Airport under the provisions of AIR 21.

On May 23, 2002, the FAA determined that the request to release property at the Garden County Airport submitted by the Nebraska Department Aeronautics, as agent for the Garden County Airport Authority, met the procedural requirements of the Federal Aviation Administration. The FAA will approve or disapprove the request, in whole or in part, no later than September 30, 2002.

The following is a brief overview of the request.

The Garden County Airport Authority requests the release of approximately 52 acres of airport property. The land is currently not being used for aeronautical purposes. The purpose of this release is to transfer ownership to adjacent landowners in exchange for land that is needed for the extension of Runway 12.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the request in person at the Nebraska Department of Aeronautics, Lincoln, Nebraska.

Issued in Kansas City, Missouri, on May 23, 2002.

Glenn E. Helm,

Acting Manager, Airports Division, Central Region.

[FR Doc. 02–18761 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–44]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 14, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Phone: (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 12, 2002.

Richard McCurdy,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–11704.
Petitioner: Cirrus Design Corporation.
Section of 14 CFR Affected: 14 CFR 45.25(b)(2) and 45.29(b)(1), (c), (d) and (e).
Description of Relief Sought: To permit Cirrus to operate aircraft "anywhere in the Duluth Class D airspace and within the Duluth Approach Control airspace between 190 degree and 090 degree radials from the DLH VOR, north and west, up to including 14,000 feet MSL" without those aircraft displaying marks that meet the location and size requirements of part 45.

Docket No.: FAA–2002–12341.
Petitioner: EMBRAER—Empresa Brasileira de Aeronáutica S.A.
Section of 14 CFR Affected: 14 CFR part 36, appendix C, section C36.9(e)(1).

Description of Relief Sought: To permit EMBRAER to use the 1-g stall speed used for 14 CFR part 25 airworthiness certification for part 39 noise certification for the approach reference and test limitations on the EMBRAER EMB145XR model airplane.

Dispositions of Petitions

Docket No.: FAA–2001–8741.
Petitioner: Cessna Aircraft Company.
Section of 14 CFR Affected: 14 CFR 91.409(b).
Description of Relief Sought/ Disposition: To permit the owners and operators of C–172R, C–172S, C–182S, C–208 and C–208B airplanes to use Cessna's applicable PhaseCard Inspection Program rather than completing the required 100-hour inspection. *Grant, 06/07/2002, Exemption No. 6901C.*

Docket No.: FAA–2002–11750.
Petitioner: DalFort Aerospace, L.P.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit DalFort to make its inspection procedures manual (IPM) available electronically to its supervisory and inspection personnel rather than give a copy to each. *Grant, 06/13/2002, Exemption No. 7292A.*

Docket No.: FAA–2002–11752.
Petitioner: Peninsula Airways, Inc., dba PenAir.
Section of 14 CFR Affected: 14 CFR 91.411(b) and 91.413(c).
Description of Relief Sought/ Disposition: To allow PenAir to perform ATC transponder tests and inspections and altimeter system and altimeter reporting equipment tests and inspections for its 14 CFR part 121 aircraft maintained under its continuous airworthiness maintenance program. PenAir is also granted relief to perform similar tests and inspections on its 14 CFR part 135 aircraft maintained under an approved aircraft inspection program. *Grant 05/16/2002, Exemption No. 7770.*

Docket No.: FAA–2002–11764.
Petitioner: Executive Jet Management, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit EJM to assign copies of its IPM to key individuals within its departments and key areas within its shop and place an adequate number of copies of its IPM for access to all employees, rather than give a copy if the IPM to each of its supervisory and inspection personnel. *Grant, 06/13/2002, Exemption No. 7813.*

Docket No.: FAA–2002–11837.
Petitioner: F.S. Repair Services, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit FSRS to place and maintain its IPM in fixed locations within its facility rather than give a copy of its IPM to each of its supervisory and inspection personnel. *Grant, 06/13/2002, Exemption No. 7814.*

Docket No.: FAA–2002–11857.
Petitioner: L–3 Communications Integrated Systems.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit L–3 to make its IPM available electronically to its supervisory, inspection, and other personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel. *Grant, 06/13/2002, Exemption No. 7816.*

Docket No.: FAA–2002–11868.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: 14 CFR 25.365(e).
Description of Relief Sought: To permit a time-limited exemption for a period of time not to exceed three years to allow continued delivery of Model 767 airplanes, both in production and retrofit, which incorporate enhanced security flight deck doors meeting the requirements of 14 CFR 25.795(a)(1) and (2). Petition Withdrawn, 05/28/2002.

Docket No.: FAA–2002–11926.
Petitioner: Minneapolis Community & Technical College.
Section of 14 CFR Affected: 14 CFR 65.17(a), 65.19(b), and 65.75.
Description of Relief Sought/ Disposition: To permit MCTC to (1) administer oral and practical tests to its students at times and places identified in its FAA-approved operations handbook, (2) allow students to apply for retesting within 30 days after failure without presenting a signed statement certifying additional instruction in the failed area, (3) administer the aviation mechanic general written test immediately after students successfully complete the general curriculum but before they meet the experience requirements of § 65.77, and (4) administer oral and practical tests as an integral part of the AMT educational process rather than upon students' successful completion of the mechanic written tests. *Grant, 05/20/2002, Exemption No. 7771.*

Docket No.: FAA–2002–11942.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: 14 CFR 47.69(b).
Description of Relief Sought/ Disposition: To permit Boeing to conduct flight testing and sales demonstrations outside the United States with its Dealer Aircraft Registration Certificates and Temporary Registration Numbers. *Grant, 06/07/2002, Exemption No. 6627A.*

Docket No.: FAA–2002–11990.
Petitioner: Air Transport International, L.L.C.
Section of 14 CFR Affected: 14 CFR 121.310(d)(4).
Description of Relief Sought/ Disposition: To permit ATI to operate its McDonnell Douglas DC–8 airplanes in passenger-carrying operations without a cockpit control device for each emergency light. *Grant, 06/13/2002, Exemption No. 7815.*

Docket No.: FAA–2002–12164.
Petitioner: The Goodyear Tire & Rubber Company.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Goodyear to maintain a copy of its repair station IPM at fixed locations within its facilities, rather than give a copy of the manual to each of its supervisors and inspectors. *Grant, 05/31/2002, Exemption No. 5543E.*

Docket No.: FAA–2002–12246.
Petitioner: Midcoast-Little Rock, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Midcoast to place copies of its IPM in strategic locations throughout its repair station rather than giving a copy of the IPM to each of its supervisory and inspection personnel. *Grant, 06/13/2002, Exemption No. 7277A.*

[FR Doc. 02–18022 Filed 7–24–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System (MTS) National Advisory Council (MTSNAC) will hold a meeting to discuss SEA–21 and other MTS related issues. A public comment period is scheduled for 9 a.m.—9:30 a.m. on Wednesday, August 14, 2002. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three

minutes. Members of the public who would like to speak are asked to contact Raymond Barberesi by August 6, 2002. Mr. Barberesi can be reached at: telephone (202) 366–4357, fax (202) 366–6988, or e-mail *Raymond.Barberesi@marad.dot.gov.* Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by August 21, 2002. Send comments to the attention of Mr. Raymond Barberesi, Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration, 400 7th Street, SW., Room 7201, Washington, DC 20590.

DATES: The meeting will be held on Tuesday, August 13, 2002, from 2:30 p.m. to 5:30 p.m. and Wednesday, August 14, 2002, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Long Beach Hotel, 200 South Pine Avenue, Long Beach, California 90802.

For further information contact: Raymond Barberesi, (202) 366–4357; Maritime Administration, MAR–830, Room 7201, 400 Seventh St., SW., Washington, DC 20590; Raymond.Barberesi@marad.dot.gov.

(Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR part 102–3 DOT Order 1120.3B)

Dated: July 22, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18853 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12732]

Notice of Receipt of Petition for Decision That Nonconforming 1997–2001 and 2002 Porsche Boxster Passenger Cars Manufactured Before September 1, 2002 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 26, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Automobile Concepts, Inc. of North Miami, Florida ("AMC") (Registered Importer 01–278) has petitioned NHTSA to decide whether 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word "brake" on the dash in place of the international ECE warning symbol; (b) replacement of the speedometer with a U.S.-model component calibrated to read in miles.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps; (b) installation of U.S.-model side markers; (c) installation of U.S.-model tail lamp assemblies which incorporate rear sidemarker lights; (d) installation of a U.S.-model high mounted stop light assembly if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component, or inscription of the required warning statement on that mirror.

Standard No. 114 *Theft Protection:* activation of the warning buzzer.

Standard No. 118 *Power Window Systems:* reprogramming of the power window system so that the windows will not operate with the ignition off.

Standard No. 201 *Occupant Protection in Interior Impact:* inspection of each vehicle to ensure that appropriate components have been installed to meet the requirements of the standard, and replacement of any component that is not a U.S.-model part. The petitioner states that the manufacturer has identified the vehicle as meeting the upper interior head impact requirements of the standard.

Standard No. 208 *Occupant Crash Protection:* (a) Activation of the seat belt warning buzzer by reprogramming the unit; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the front and rear outboard designated seating positions have combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton. Petitioner further states that the vehicles are equipped with a seat belt warning lamp that is identical to the lamp installed on U.S.-certified models.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner states that the bumpers and bumper support structure on all vehicles must be inspected and, where necessary, replaced with U.S.-model bumper shocks, reinforcements, and pads to meet the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

The petitioner states that because anti-theft devices are installed on the vehicles, they are with exempt from the parts marking requirements of the Theft Prevention Standard at 49 CFR Part 541

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 18, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–18756 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12731]

Notice of Receipt of Petition for Decision That Nonconforming Left-Hand Drive Japanese Market 1997 Jeep Grand Cherokee Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming left-hand drive (LHD) Japanese Market 1997 Jeep Grand Cherokee multipurpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that LHD 1997 Jeep Grand Cherokee MPVs manufactured for sale in Japan that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 26, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Auto Enterprises of Warren Michigan (Registered Importer 93–013) has petitioned NHTSA to decide whether LHD 1997 Jeep Grand Cherokee MPVs originally manufactured for sale in Japan are eligible for importation into the United States. The vehicles which Auto Enterprises believes are

substantially similar are 1997 Jeep Grand Cherokee MPVs that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified LHD Japanese Market 1997 Jeep Grand Cherokee MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Auto Enterprises submitted information with its petition intended to demonstrate that non-U.S. certified LHD Japanese Market 1997 Jeep Grand Cherokee MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified LHD Japanese Market 1997 Jeep Grand Cherokee MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 101 *Controls and* Displays, 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic and Electric Brake Systems*, 106 *Brake Hoses*, 111 *Rearview Mirrors* (noting that the required warning statement is inscribed on the passenger-side rearview mirror), 113 *Hood Latch Systems*, 114 *Theft Protection* (noting that an audible alarm is activated when the ignition key is left in the ignition lock and the driver's door is open), 116 *Motor Vehicle Brake Fluids*, 118 *Power Window Systems* (noting that the power window transport is not activated when the ignition is switched off) 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 120 *Tire Selection and Rims for Vehicles other than Passenger Cars* (noting the presence of an OEM Export label in the door jamb that contains the required tire and rim information), 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection* (noting that the vehicle is equipped with a safety belt warning buzzer and dash panel light, with U.S.-model driver's and passenger's side air bags, and with Type 2 seat belts in all front and rear outboard seating positions), 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified LHD Japanese Market 1997 Jeep Grand Cherokee MPVs comply with the Bumper Standard found in 49 CFR part 581, and with the Vehicle Identification Number (VIN) plate requirement of 49 CFR part 565.

Petitioner further contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of the left and right headlamps, front markers, and front park lamps with U.S.-model components.

The petitioner states that all vehicles must be inspected prior to importation for compliance with the Theft Prevention Standard found in 49 CFR part 541, and that U.S.-model anti-theft devices must be installed on all vehicles lacking that equipment.

The petitioner also states that a certification label must be affixed to the left front door jamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 18, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–18757 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2002–11270, Notice No. 02–07]

Modification to Safety Advisory Concerning the Retesting of Cylinders Without Calibration of Test Equipment

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Modification of a safety advisory notice.

SUMMARY: On July 9, 2002, Research and Special Programs Administration (RSPA; we) published a safety advisory notice in the **Federal Register** (67 FR 45582) advising the public that we are investigating the alleged improper marking of DOT-specification cylinders and/or tube trailers by BKC Industries, Inc. 2117 Will Suitt Road, Creedmore, NC 27522. This safety advisory notice modifies the July 9, 2002 safety advisory notice.

FOR FURTHER INFORMATION CONTACT: Raymond LaMagdelaine, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–4700, Fax: (202) 366–2784; or Mark Toughiry, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–4545, Fax: (202) 366–3650.

SUPPLEMENTARY INFORMATION: The cylinders and tube trailers at issue in the July 9, 2002 safety advisory and in this safety advisory notice were marked by BKC industries, Inc. with the retester identification number (RIN) D236 and stamped with a retest date between August 1998 and October 2001. In the previous safety advisory notice, RSPA recommended that filled cylinders and tube trailers should be vented or otherwise safely discharged and then taken to a DOT-authorized cylinder retest facility for retesting. In addition, we recommended that the cylinders and tube trailers not be filled, refilled, or used for the their intended purpose until they had been reinspected, retested and recertified by a DOT-authorized facility.

Upon further review of this matter, we believe that the cylinders and tube trailers subject to the safety advisory notice may continue in service provided each cylinder and tube trailer is thoroughly inspected by external visual

examination at the time the cylinder or tube trailer is to be refilled. The visual examination should be conducted to the extent practicable without removing the cylinders or tubes from the trailer assembly. Records of the first visual examination conducted after the date of this safety advisory notice should be retained until the cylinder or tube is requalified. RSPA expects that BKC Industries will work with cylinder and tube trailer owners to arrange for requalification of the cylinders and tube trailers at issue.

Issued in Washington, DC on July 18, 2002.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–18771 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34209]

Norfolk Southern Railway Company-Trackage Rights Exemption-Delaware and Hudson Railway Company, Inc.

Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway (CPR), pursuant to a written trackage rights agreement entered into between CPR and Norfolk Southern Railway Company (NSR),[1] has agreed to grant overhead trackage rights to NSR over approximately 284.6 miles of CPR's freight main line, between NSR's connection with CPR at milepost 752.0 near Sunbury, PA, and CPR's connection with Guilford Rail System (GTI) at milepost 467.40 at Mechanicville, NY.

The transaction is expected to be consummated no sooner than the latter of (1) July 12, 2002 (7 days after the exemption was filed), or (2) the expiration of any labor notice period to which NSR may be subject.

Under the proposed transaction, NSR will obtain trackage rights for certain restricted types and volumes of traffic, including traffic for interchange with GTI and Canadian National Railway Company. The trackage rights will enable NSR to more efficiently access and serve customers in New York State, the New England States, and the eastern Canadian rail market, in conjunction with trackage rights concurrently being obtained in STB Finance Docket No. 34225, *Norfolk Southern Railway Company—Trackage Rights Exemption—Reading Blue Mountain and Northern Railroad Company.*[2]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

The notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34209, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John V. Edwards, Norfolk Southern Corp., Three Commercial Place, Norfolk, VA 23510–2191.

Board decisions and notices are available on our Web site at *"WWW.STB.DOT.GOV."*

Decided: July 18, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18847 Filed 7–24–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34225]

Norfolk Southern Railway Company—Trackage Rights Exemption—Reading Blue Mountain and Northern Railroad Company

Reading Blue Mountain and Northern Railroad Company (RBMN), pursuant to a written trackage rights agreement entered into between RBMN and Norfolk Southern Railway Company (NSR),[1] has agreed to grant overhead trackage rights to NSR over approximately 56.7 miles of RBMN's Lehigh Line between milepost 119.3 in Lehighton Yard and milepost 175.5 in Dupont, PA.[2]

The transaction is expected to be consummated no sooner than the latter of (1) July 12, 2002 (7 days after the exemption was filed), or (2) the expiration of any labor notice period to which NSR may be subject.

Under the proposed transaction, the trackage rights will enable NSR to efficiently route traffic between Allentown, PA, and points in New York State in conjunction with trackage rights concurrently being obtained in STB Finance Docket No. 34209, *Norfolk Southern Railway Company—Trackage Rights Exemption—Delaware and Hudson Railway Company*, Inc.[3]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

The notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34225, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John V. Edwards, Norfolk Southern Corp., Three Commercial Place, Norfolk, VA 23510–2191.

Board decisions and notices are available on our Web site at *"WWW.STB.DOT.GOV."*

Decided: July 18, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18848 Filed 7–24–02; 8:45 am]

BILLING CODE 4915–00–P

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[1] NSR is a wholly owned subsidiary of Norfolk Southern Corporation, a holding company.

[2] Reading Blue Mountain and Northern Railroad Company (RBMN) has agreed to grant NSR overhead trackage rights over approximately 56.7 miles of RBMN's Lehigh Line between milepost 119.3 in Lehighton Yard and milepost 175.5 in Dupont, PA.

[1] NSR is a wholly owned subsidiary of Norfolk Southern Corporation, a holding company.

[2] According to NSR's representative, due to historic reasons concerning the varied ownership of the line, there is a discrepancy of approximately one-half mile between the apparent and actual mileage between the milepost locations.

[3] Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway (CPR) has agreed to grant NSR overhead trackage rights over approximately 284.6 miles of CPR's freight main line, between NSR's connection with CPR at milepost 752.0 near Sunbury, PA, and CPR's connection with Guilford Rail System at milepost 467.40 at Mechanicville, NY.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 18, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 26, 2002 to be assured of consideration.

Special Instructions: The draft Suspicious Activity Report Money Services Businesses (SAR–MSB) form published in this **Federal Register** notice is for informational purposes only. Do not use the draft form to report suspicious activity. It is anticipated that the form will be final and available for use on October 1, 2002. Until that time, Money Services Businesses are to continue to use the Bank SAR form, Form TD F 90–22.47. *See*, 66 FR 67086 (December 28,2001) for further information about using the Bank SAR form until the final SAR–MSB form is available.

Money Services Businesses reporting possible terrorist financing suspicious activity must file a SAR as indicated above, but should also contact FinCEN's Financial Institutions Hotline ((866) 556–3974) to report the activity.

Contact FINCEN's Regulatory HelpLine at (800) 949–2732, if you have a question about the draft form.

Visit FinCEN's Internet site at *www.treas/fincen.gov* for a downloadable version of the draft SAR–MSB. Call FinCEN's Regulatory HelpLine ((800) 949–2732) after September 15, 2002, for individual copies of the form. Visit FinCEN's Internet site after September 15, 2002, for information about obtaining bulk copies of the form. Magnetic media filing specifications for filing the MSB SAR magnetically should be available on FinCEN's Internet site by December 31, 2002.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0015.
Form Number: TD F 90–22.56.
Type of Review: Revision.
Title: Reports by Money Services Businesses of Suspicious Transactions.

Description: Treasury is requiring certain money services businesses—money transmitters and money order and traveler's checks issuers, sellers, and redeemers—to report suspicious transactions.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 30,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 40 minutes.

Estimated recordkeeping/filing per response—5 minutes
Estimated record (SAR) completion time—35 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 20,000 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

BILLING CODE 4810–02–P

TD F 90-22.56
Treasury Form
July 2002

Suspicious Activity Report by Money Services Business

▶ **Please type or print. Always complete entire report (see instructions).**

OMB No 1506-0015

1 Check the box if this report corrects a prior report. (See instructions, page 7) ☐

2 Type of filer (check **all** financial services/products offered)

a ☐ Issuer of money order(s) b ☐ Redeemer of money order(s) c ☐ Seller of money order(s)
d ☐ Issuer of traveler's check(s) e ☐ Redeemer of traveler's check(s) f ☐ Seller of traveler's check(s)
g ☐ Money transmitter h ☐ U.S. Postal Service (see instructions) i ☐ Other _____

Part I Subject Information

3 ☐ Multiple subjects (See instructions, page 7)

4 Subject type (check only one box)
a ☐ Purchaser/Sender b ☐ Payee/Receiver c ☐ Both ("a" & "b") d ☐ Other

5* Individual's last name or Entity's full name	6* First name	7* Middle initial

8* Address

9* City	10* State	11* Zip code	12* Country (if not U.S.)

13* Government issued identification (if available)
a ☐ Driver's license/State I.D. b ☐ Passport c ☐ Alien registration d ☐ Other _____
e Number f Issuing state or country _____

14 * SSN/ITIN (individual) or EIN (entity)	15 Date of birth	16 Phone number (include area code)	17 Vehicle Lic.# / State (Optional) a number	b state
	___/___/___ MM DD YYYY	( ) -		

18 Customer number, if any	19 Occupation/Type of business

20* Endorser's (individual or Entity) name, if any	21* Bank account number of endorser, if any	22* Bank of first deposit, if any

Part II Suspicious Instrument/Money Transfer Information

23 Financial services involved in suspicious transaction(s) (Check **all** that apply.)
a ☐ Money Order b ☐ Traveler's Check c ☐ Money Transfer d ☐ Other _____

24 * Date or date range of suspicious activity	25 Total dollar amount involved in suspicious activity
From ___/___/___ To ___/___/___ (MM DD YYYY)	$ .00

26.1* Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. e Ending No.

26.2 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. e Ending No.

26.3 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. e Ending No.

27.1* Money transfer number	27.2 Money transfer number
a Issuer name _____	a Issuer name _____
b No.	b No.

27.3 Money transfer number a Issuer name _____ b No.	27.4 Money transfer number a Issuer name _____ b No.
27.5 Money transfer number a Issuer name _____ b No.	27.6 Money transfer number a Issuer name _____ b No.

28* Category of suspicious activity (Check all that apply.)
a ☐ Money laundering b ☐ Structuring c ☐ Terrorist financing d ☐ Other (specify)_____

29* Character of suspicious activity (check only one box "a, b, or c", then check all of (1) through (9) that apply)
a ☐ Unusual use of money order(s) or traveler's check(s) b ☐ Unusual use of money transfer(s) c ☐ Both

Check all of the following that apply

(1) ☐ Alters transaction to avoid completion of funds transfer record or money order or traveler's check record ($3,000 or more)
(2) ☐ Alters transaction to avoid filing a CTR form ($10,000 or more)
(3) ☐ Comes in frequently and purchases less than $3,000
(4) ☐ Changes spelling or arrangement of name
(5) ☐ Individual(s) using multiple or false identification documents
(6) ☐ Two or more individuals using the similar/same identification
(7) ☐ Two or more individuals working together
(8) ☐ Same individual(s) using multiple locations over a short time period
(9) ☐ Offers a bribe in the form of a tip/gratuity

Part III Transaction Location Information

30 ☐ Multiple selling and/or paying business locations

31 Type of business location (check only one box)
a ☐ Selling business location b ☐ Paying business location c ☐ Both

32* Legal name of business		33 Doing business as	
34* Permanent address (number, street, and suite no.)	35* City	36* State	37* Zip code
38* EIN (entity) or SSN/ITIN (individual)	39* Business phone number (include area code)		40 Country (if not U.S.)

Part IV Law Enforcement Agency Information

41 If a law enforcement agency has already been contacted (excluding submission of a SAR-MSB), check the appropriate box.

a ☐ DEA d ☐ U.S. Customs Service g ☐ Other Federal i ☐ Local law enforcement
b ☐ FBI e ☐ U.S. Postal Inspection Service h ☐ State law enforcement j ☐ Tribal law enforcement
c ☐ IRS f ☐ U.S. Secret Service

Include agency name when box g, h, i, or j is checked _____

42 Name of person contacted at law enforcement agency	43 Phone number (include area code)	44 Date contacted __/__/____ MM DD YYYY

Part V Reporting Business Information (if *different* from Location Information in Part III)

45* Legal name of business		46 Doing business as	
47* Permanent address (number, street, and suite no.)	48* City	49* State	50* Zip code
51* EIN (entity) or SSN/ITIN (individual)	52* Business phone number (include area code)		53 Country (if not U.S.)

Part VI Contact for Assistance

54* Last name of individual to be contacted regarding this report	55* First name	56 Middle initial
57* Title/Position	58* Work phone number (include area code)	59 Date report prepared __/__/____ MM DD YYYY

Paperwork Reduction Act Notice: The purpose of this form is to provide an effective means for a money services business (MSB) to notify appropriate law enforcement agencies of suspicious transactions and activities that occur by, through, or at a MSB. This report is authorized by law, pursuant to authority contained in 31 U.S.C. 5318(g). Information collected on this report is confidential (31 U.S.C. 5318(g)). Federal regulatory agencies, State law enforcement agencies, the U.S. Departments of Justice and Treasury, and other authorized authorities may use and share this information. Public reporting and recordkeeping burden for this form is estimated to average 35 minutes per response, and includes time to gather and maintain information for the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and the Budget, Paperwork Reduction Project, Washington, DC 20503 and to the Financial Crimes Enforcement Network, Attn.: Paperwork Reduction Act. P.O. Box 39, Vienna VA 22183-0039. The agency may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part VII Suspicious Activity Information - Narrative* 3

Explanation/description of suspicious activity. This section of the report is critical. The care with which it is completed may determine whether or not the described activity and its possible criminal nature are clearly understood by investigators. Provide a clear, complete and chronological description of the activity, including what is unusual, irregular or suspicious about the transaction(s). Use the checklist below, as a guide, as you prepare your description. The description should cover the material indicated in Parts I, II and III, but the money services business (MSB) should describe any other information that it believes is necessary to better enable investigators to understand the suspicious activity being reported.

a. **Describe** conduct that raised suspicion.
b. **Explain** whether the transaction(s) was completed or only attempted.
c. **Describe** supporting documentation and retain such documentation for your file for five years.
d. **Indicate** a time period, if it was a factor in the suspicious transaction(s), for example, specify the time and whether it occurred during AM or PM. If the activity covers more than one day, identify the time of day when such activity occurred most frequently.
e. **Retain** any admission or explanation of the transaction(s) provided by the subject(s), or other persons. Indicate when and to whom it was given.
f. **Retain** any evidence of cover-up or evidence of an attempt to deceive federal or state examiners, or others.
g. **Indicate** where the possible violation of law(s) took place (e.g., main office, branch, agent location, etc.).
h. **Indicate** whether the suspicious activity is an isolated incident or relates to another transaction.
i. **Indicate** for a foreign national any available information on subject's passport(s), visa(s), and/or identification card(s). Include date, country, city of issue, issuing authority, and nationality.
j. **Indicate** whether any information has been excluded from this report; if so, state reasons.
k. **Indicate** whether any U.S. or foreign instrument(s) were involved. If so, provide the amount, name of currency, and country of origin.
l. **Indicate** whether any transfer of money to or from a foreign country, or any exchanges of a foreign currency were involved. If so, identify the currency, country, and sources and destinations of money.
m. **Indicate** any additional account number(s), and any foreign bank(s) account numbers which may be involved in transfer of money.
n. **Identify** any employee or other individual or entity (e.g., agent) suspected of improper involvement in the transaction(s).
o. **For issuers, indicate** if the endorser of money order(s) and/or traveler's check(s) is different than payee. If so, provide the individual's name or entity name; bank's name, city, state and country; ABA routing number; endorser's bank account number; foreign non-bank name (if any); correspondent bank name and account number (if any); etc.
p. **For selling or paying locations, indicate** if there is a video recording medium or surveillance photograph of the customer.
q. **For selling or paying locations,** if you do not have a record of a government issued identification document, describe the type, issuer and number of any alternate identification that is available (e.g., for a credit card specify the name of the customer and credit card number.)
r. **For selling or paying locations, describe** the subject(s) if you do not have the identifying information in Part I or if multiple individuals use the same identification. Use descriptors such as male, female, age, etc.
s. **If correcting** a prior report, complete the form in its entirety and note the changes here in Part VII.

Information already provided in earlier Parts of this form need not necessarily be repeated if the meaning is clear.

Supporting documentation should not be filed with this report. Maintain the information for your files.

Enter explanation/description in the space below. If necessary, continue the narrative on a duplicate of this page or a blank page.

Part II Continued - Item 26 4

26.4 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.5 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.6 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.7 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.8 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.9 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.10 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.11 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.12 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.13 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.14 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.15 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.16 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.17 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.18 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.19 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.20 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.21 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.22 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

Part II Continued - Item 27 5

27.7 Money transfer number
a Issuer name
b No.

27.8 Money transfer number
a Issuer name
b No.

27.9 Money transfer number
a Issuer name
b No.

27.10 Money transfer number
a Issuer name
b No.

27.11 Money transfer number
a Issuer name
b No.

27.12 Money transfer number
a Issuer name
b No.

27.13 Money transfer number
a Issuer name
b No.

27.14 Money transfer number
a Issuer name
b No.

27.15 Money transfer number
a Issuer name
b No.

27.16 Money transfer number
a Issuer name
b No.

27.17 Money transfer number
a Issuer name
b No.

27.18 Money transfer number
a Issuer name
b No.

27.19 Money transfer number
a Issuer name
b No.

27.20 Money transfer number
a Issuer name
b No.

27.21 Money transfer number
a Issuer name
b No.

27.22 Money transfer number
a Issuer name
b No.

27.23 Money transfer number
a Issuer name
b No.

27.24 Money transfer number
a Issuer name
b No.

27.25 Money transfer number
a Issuer name
b No.

27.26 Money transfer number
a Issuer name
b No.

27.27 Money transfer number
a Issuer name
b No.

27.28 Money transfer number
a Issuer name
b No.

27.29 Money transfer number
a Issuer name
b No.

27.30 Money transfer number
a Issuer name
b No.

27.31 Money transfer number
a Issuer name
b No.

27.32 Money transfer number
a Issuer name
b No.

27.33 Money transfer number
a Issuer name
b No.

27.34 Money transfer number
a Issuer name
b No.

27.35 Money transfer number
a Issuer name
b No.

27.36 Money transfer number
a Issuer name
b No.

27.37 Money transfer number
a Issuer name
b No.

27.38 Money transfer number
a Issuer name
b No.

27.39 Money transfer number
a Issuer name
b No.

27.40 Money transfer number
a Issuer name
b No.

Suspicious Activity Report Instructions

6

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure".

Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) provides that a financial institution, and its directors, officers, employees, and agents, who report suspicious transactions to the government voluntarily or as required by 31 CFR 103.20, may not notify any person involved in the transaction that the transaction has been reported.

In situations involving suspicious transactions requiring immediate attention, such as ongoing money laundering schemes, a money transmitter, or issuer, seller, or redeemer of money orders and/or traveler's checks shall immediately notify, by telephone, an appropriate law enforcement authority. In addition, a timely SAR-MSB form shall be filed, including recording any such notification in Part IV on the form.

When To File A Report:

1. Money transmitters and issuers, sellers and redeemers of money orders and/or traveler's checks that are subject to the requirements of the Bank Secrecy Act and its implementing regulations (31 CFR Part 103) are required to file a suspicious activity report (SAR-MSB) with respect to:

   a. Any transaction conducted or attempted by, at, or through a money services business involving or aggregating funds or other assets of at least $2,000 (except as described in section "b" below) when the money services business knows, suspects, or has reason to suspect that:

      i. The transaction involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the nature, source, location, ownership or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

      ii. The transaction is designed, whether through structuring or other means, to evade any regulations promulgated under the Bank Secrecy Act; or

      iii. The transaction has no business or apparent lawful purpose and the money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

   b. To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or a pattern of transactions that involves or aggregates funds or other assets of at least $5,000.

2. File a SAR-MSB no later than 30 calendar days after the date of initial detection of facts that constitute a basis for filing the report.

3. The Bank Secrecy Act requires that each financial institution (including a money services business) file currency transaction reports (CTRs) in accordance with the Department of the Treasury implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR (IRS Form 4789) whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, a money transmitter, or issuer, seller or redeemer of money orders and/or traveler's checks must file two forms, a CTR to report the currency transaction and a SAR-MSB to report the suspicious aspects of the transaction. If the suspicious activity involves a currency transaction that is $10,000 or less, the institution is only required to file a SAR-MSB. Appropriate records must be maintained in each case.

   See 31 CFR Part 103

General Instructions 7

A. Abbreviations and Definitions

1. AKA--also known as (individual)
2. DBA--doing business as (entity)
3. DEA--Drug Enforcement Administration
4. EIN-- Employer Identification Number
5. FBI-- Federal Bureau of Investigation
6. IRS-- Internal Revenue Service
7. ITIN-- Individual Taxpayer Identification Number
8. SSN-- social security number
9. USPS--U.S. Postal Service
10. Instruments-- As used in this form includes Money order(s) and/or Traveler's Check(s)

B. How To Make A Report

1. Send each completed suspicious activity report to:

Detroit Computing Center
ATTN: SAR-MSB
P.O. Box 33117
Detroit, MI 48232-5980

2. Leave blank any items that do not apply or for which information is unavailable.

3. Items marked with an **asterisk** * are considered critical and **are required to be completed if known.**

4. Complete each suspicious activity report by providing as much information as possible on initial and corrected reports.

5. Do not include supporting documentation with the suspicious activity report filed. Identify and retain a copy of the suspicious activity report and all supporting documentation or business record equivalent for your files for five (5) years from the date of the suspicious activity report. All supporting documentation such as, copies of instruments; receipts; sale, transaction or clearing records; photographs, surveillance audio and/or video recording medium, must be made available to appropriate authorities upon request.

6. If more than one subject is being reported, make a copy of page 1 and complete only the subject information in Part I, and attach the additional page(s) behind page 1. If more space is needed to complete any other item(s), identify that item in Part VII by "item number", and provide the additional information.

7. Type or complete the report using block written letters.

8. Enter all **dates** in MM/DD/YYYY format where MM=month, DD=day, and YYYY=year. Precede any single number with a zero, i.e., 01, 02, etc.

9. Enter all **telephone numbers** with (area code) first and then the seven numbers, using the format, i.e., (XXX) XXX-XXXX. List international telephone and fax numbers in Part VII.

10. Always enter an **individual's name** by entering the last name, first name, and middle initial (if known). If a legal entity is listed, enter its name in the last name field.

11. Enter all **identifying numbers** (alien registration, driver's license/state ID, EIN, ITIN, Foreign National ID, passport, SSN, vehicle license number, etc.) starting from left to right. Do not include spaces, dashes or other punctuation.

12. Enter all **Post Office ZIP codes** with at least the first five numbers (all nine ZIP+4, if known) and listed from left to right.

13. Enter all **monetary amounts** in U.S. dollars. Use whole dollar amounts rounded up when necessary. Use this format: $0,000,000.00. If foreign currency is involved, state name of the currency and country of origin.

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14. **Addresses, general**. Enter the permanent street address, city, two letter state/territory abbreviation used by the U.S. Postal Service and ZIP code (ZIP+4, if known) of the individual or entity. A post office box number should not be used for an individual, unless no other address is available. For an individual also enter any apartment number or suite number, road or route number. If a P.O. Box is used for an entity, enter the street name, suite number, and road or route number. If the address of the individual or entity is in a foreign country, enter the city, province or state, postal code and the name of the country. Complete any part of the address that is known, even if the entire address is not known. If from the United States, leave country blank.

Item 1-- Check box, corrects prior report, if this report is filed to correct a previously filed SAR-MSB. To correct a report, a new SAR-MSB must be completed in its entirety. Also note corrected information in Part VII (see line "s").

Item 2-- Type of filer. Check the appropriate box(es) for the type of filer. USPS only required to check box "h".

Part I Subject Information

Item 3-- Multiple subjects. Check box if multiple subjects are involved. Attach additional copy(s) of Part 1 to this report.

Item 4-- Subject type. Check box "a" if the subject purchased a money order(s) or traveler's check(s) or sent a money transfer(s). Check box "b" if the subject cashed a money order(s) or traveler's check(s) or received payment of a money transfer(s). Check box "c" if both "a & b" apply. Check box "d" Other, and describe in Part VII, if the subject is an individual other than a customer, such as, an employee of an MSB or an individual serving as an agent of an MSB.

Items 5, 6, and 7-- *Name of subject. See General Instruction B10. If the name of the subject is known, complete Items 5 through 7. If the MSB knows that the individual has an "aka" or "dba" name, enter the name in Part VII. If the subject is an entity, enter its "dba" name in Item 5 if the legal name is not known. If there is more than one subject, make copies of page 1 and provide the information about each subject in Part I. Attach the additional copies to the SAR. When there is more than one purchaser and/or payee (e.g., two or more transactions), indicate whether each subject is a purchaser or payee and list the instrument or money transfer numbers associated with each customer in Part VII.

Items 8, 9, 10, 11 and 12-- *Permanent address. See General Instructions B12 and B14.

Item 13-- *Government issued identification (if avaliable). See General Instruction B11. Check the appropriate box showing the type of document used to verify the subject's identity. If you check box "d" (Other), be sure to specify the type of document used. In box "e" list the number of the identifying document. In box "f" list the issuing state or country. If more space is required, enter the information in Part VII.

Item 14-- *SSN/ITIN (individual) or EIN (entity). See General Instruction B11 and definitions. If the subject named in Items 5 through 7 is a U.S. Citizen or an alien with a SSN, enter his or her SSN in Item 14. If that person is an alien who has an ITIN, enter that number. If the subject is an entity, enter the EIN.

Item 15-- Date of birth. See General Instruction B8. If an individual is named in Items 5 through 7, enter the date of birth. If the month and/or day is not available or unknown, fill in with zeros (e.g., "01/00/1969" indicates an unknown date in January, 1969).

Item 16-- Telephone number. See General Instruction B9. Enter home or business number for individual or entity listed in Items 5 through 7. List any additional number(s) (e.g., hotel, etc.) in Part VII.

Item 17-- Vehicle license number (optional). Enter the subject's vehicle license plate number and issuing state if known or available. Do not ask for or make a special effort to obtain the license plate number.

Item 18-- Customer number, if any. Enter a preferred customer card number or a frequent user card number, etc.

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Item 19-- Occupation/Type of business. If known, identify the occupation, profession or business that best describes the individual in Part I (e.g., attorney, car dealer, carpenter, doctor, farmer, plumber, truck driver, etc.). Do not use nondescript terms such as businessman, merchant, store owner (unless store's name is provided), self employed, unemployed, or retired, unless the regular or former occupation is provided. If the individual's business activities can be described more fully, provide the additional information in Part VII. Indicate in Item 19 if "unknown."

Item 20-- *Endorser's (individual or entity) name, if any. If the reported activity involves instruments and the endorser's name (found on the reverse side of the instrument) can be determined, enter the name in Item 20.

Item 21-- *Bank account number of endorser, if any. See General Instruction B11. If the reported activity involves instruments and the endorser's bank account number (found on the reverse side of the instrument) can be determined, enter the account number.

Item 22-- *Bank of first deposit, if any. Enter the bank name as shown on the reverse side of the instrument.

Part II Suspicious Instrument/Money Transfer Information

Item 23-- Financial services involved in suspicious transaction(s). Check appropriate box(es) to indicate the type of financial service(s) involved in the suspect transaction(s). If you check box "d" for "**Other**", specify briefly the type of services involved but not listed in Item 23 and describe the character of such services in Part VII.

Item 24-- *Date or date range of suspicious activity. See General Instruction B8. Enter the date of the reported activity in the "**From**" field. If more than one day, indicate the duration of the activity by entering the first date in the **From field** and the last date in the **To field**.

Item 25-- Total dollar amount. See General Instruction B13. Enter the total dollar value involved in the reported activity. If the amount cannot be determined or estimated, enter zero (0). If multiple instruments and/or money transfer(s) are reported, enter the total dollar amount in Item 25. If more than one type of financial service is involved, list separately each financial service with its name and dollar value in Part VII. Foreign currancy convert amount to US dollars.

Item 26-- *Serial number(s) of money order(s) or traveler's check(s). If the suspicious activity involves a single instrument or a series of instruments with consecutive serial numbers, check the appropriate box for money order,"a", or traveler's check "b" and enter in "c" the name of the issuer. Enter in "d" the serial number for each instrument involved in the reported activity, when the instruments are not consecutively numbered. In the case of instruments with consecutive serial numbers, enter the first number in the series in "d" and the last number in the series in "e". Enter up to 22 non-consecutive or 22 sets of consecutive serial numbers in "d" and "e" in items 26.1 through 26.22 on pages 1 and 4 (Continuation). If the suspicious activity involves more than 22 make as many copies of page 4 of the form as necessary. Attach the additional page(s) to the report. If the filer is the issuer and the name of the issuer is entered in Part III or V, "c" may be left blank.

Item 27-- *Money transfer number(s). If the suspicious activity involves a money transfer number, enter in "a" the name of the money transfer company. Enter in "b" the identifying number of each money transfer involved in the reported activity. Enter up to 40 money transfer numbers in Items 27.1 through 27.40 on pages 1, and 5 (Continuation). If the suspicious activity involves more than 40 make as many copies of page 5 of the form as necessary. Attach the additional page(s) to the report. If the filer is the issuer and the name of the issuer is entered in Part III or V, "a" may be left blank.

Item 28-- Category of Suspicious activity. Check the box(es) which best identify the suspicious activity. Check box "b" for **Structuring** when it appears that a person acting alone, or in conjunction with, or on behalf of other persons, conducts or attempts to conduct activity designed to evade any record keeping or reporting requirement promulgated under the Bank Secrecy Act. If you check box "d" specify briefly the type of suspicious activity which occurred, but is not listed in Item 28, then describe the character of such activity in Part VII. Box "d" should only be used if no other type of suspicious activity box adequately categorizes the transaction.

Item 29-- *Character of suspicious activity. Check box "a" for unusual use of instruments, check box "b" for unusual use of money transfer(s), or check box "c" for both. Check box(es) 1 through 9 for each description that applies.

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Part III Transaction Location Information

Item 30-- Multiple selling and/or paying business locations. If the reported activity occurred at multiple selling and/or paying business locations, check the box, make as many copies of page 2 of the form as necessary, and provide the additional information in duplicate Part III. Attach the additional copies of page 2 to the SAR.

Item 31-- Type of business location(s). Check box "a" if this is the selling location where the customer purchased a money order(s) or traveler's check(s) or initiated a money transfer(s). Check box "b" if this is the paying location where the customer cashed a money order(s) or traveler's check(s) or received payment of a money transfer(s). Check box "c" if multiple transactions are reported and the business functioned as both a selling and paying location for one or more transactions.

Item 32-- *Legal name of business. Enter the legal name of the business where the transactions took place. If the transactions occurred at more than one place make as many copies of page 2 of the form as necessary, and provide the additional information in duplicates of Part III. Attach the additional copies of page 2 to the SAR.

Item 33-- Doing business as. Enter the trade name by which the business is commonly known (if other than the legal name).

Items 34, 35, 36, 37-- *Permanent address. See General Instructions B12 and B14.

Item 38-- *EIN (entity) or SSN/ITIN (individual). See General Instruction B11 and definitions. If the business identified in Item 32 has an EIN, enter that number in Item 38. If not, enter individual owner's SSN or ITIN.

Item 39-- Business telephone number. See General Instruction B9. Enter the number of the business listed in item 32.

Item 40-- Country. Leave blank if U.S.

Part IV Law Enforcement Contact Information

Item 41-- Contacting Enforcement Authorities. If no contact go to **Part V or Part VI,** as appropriate. See general Instructions "Abbreviations and Definitions" for law enforcement identities. If the MSB has advised any law enforcement agency of the suspicious activity, by telephone or written communication (*excluding submission of a* SAR-MSB), check the appropriate box and complete Items 42 through 44. If you check boxes "g, h, i, or j" specify the agency name on the line provided.

Item 42, 43 and 44-- Law enforcement contact. Complete only if a contact (item 41) has been made. Identify the individual contacted, the telephone number and the date contacted. List any additional contacts in Part VII. Contact with law enforcement agencies does not eliminate the requirement to file the SAR-MSB.

Part V Reporting Business Information (complete only if *different* from Location Information in Part III).

**Items 45 through 53-- *See instructions for completing items 32 through 40 above.

Part VI Contact for Assistance

Items 54, 55 and 56-- *Contact individual. See general instruction B10.

Item 57-- *Title/Position. Enter the job title/position of the contact individual.

Item 58-- *Work phone number. See General Instruction B9.

Item 59-- Date report prepared. See General Instruction B8.

Part VII Suspicious Activity Information — Narrative* See Page 3 for instructions

[FR Doc. 02–18828 Filed 7–24–02; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0003]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for burial benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 23, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0003" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of the information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21–530.

OMB Control Number: 2900–0003.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to apply for burial benefits, including transportation expenses. The information is used to determine if the deceased veteran had appropriate service and/or disability and that the applicant has made payment for burial or has contracted to make appropriate payment.

Affected Public. Individual or households and Business or other for-profit.

Estimated Annual Burden: 100,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Dated: July 10, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18786 Filed 7–24–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0251]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the status of a loan account that is in default.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 23, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0251" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Present Status of Loan, VA Form 26–8778.

OMB Control Number: 2900–0251.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8778 is used to collect information from the servicer regarding a defaulted loan and as a code sheet to input data in the automated Loan Service and Claims System. The information is needed to take the necessary action to cure the defaulted loan.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 29,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 175,000.

Dated: July 10, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18787 Filed 7–24–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0519]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 26, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0519."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0519" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Locality Pay System for Nurses and Other Health Care Personnel, VA Form 10–0132.

OMB Control Number: 2900–0519.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0132 is used to collect data to determine locality pay rates for registered nurses and nurse anesthetists at VA facilities. VA medical facility directors establish rates of pay based on rates of compensation for corresponding positions in the local labor market. The law requires that where available, data from the Bureau of Labor Statistics or other third party industry surveys will be used in determining the beginning rates of compensation. Without this information, VA cannot provide for a locality pay system to maintain competitive pay rates for the recruitment and retention of affected healthcare personnel.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 15, 2002, at pages 18304–18305.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,519 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,025.

By direction of the Secretary.

Dated: July 15, 2002.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18788 Filed 7–24–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
July 25, 2002

Part II

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the PM–10 Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ092–002; FRL–7141–3]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the PM–10 Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the serious area particulate matter (PM–10) plan for the Maricopa County portion of the metropolitan Phoenix (Arizona) PM–10 nonattainment area. We are also granting Arizona's request to extend the Clean Air Act deadline for attaining the annual and 24-hour PM–10 standards in the area from 2001 to 2006. Finally, we are approving Maricopa County Environmental Services Department's fugitive dust rules, Maricopa County's Residential Woodburning Restrictions Ordinance, and commitments by Maricopa County jurisdictions to implement PM–10 controls.

EFFECTIVE DATE: August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 947–4155, email: *wicher.frances@epa.gov*.

This document and the Technical Support Document are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means EPA. This supplementary information is organized as follows:

I. Summary of Today's Actions
II. The Serious Area PM–10 Plan for the Phoenix Area
III. Proposals for and Information Related to Today's Actions
  A. The Proposals for Today's Actions
  B. Already-Approved Elements of the Phoenix Serious Area PM–10 Plan
  C. Effect of Today's Actions on the 1998 Federal PM–10 Plan for the Phoenix Area
  D. Clean Air Act Sanctions in the Phoenix Area
  E. EPA's Policies on Approving Serious Area PM–10 Plans and Granting Attainment Date Extensions
IV. Response to Comments on the Proposed Actions
  A. Comments on EPA's Policy on Approving Serious Area PM–10 Plans and Granting Attainment Date Extensions
  B. Comments on EPA's Detailed Evaluation of the Phoenix Serious Area PM–10 Plan
V. Final Actions
  A. Approval of the Serious Area Plan
  B. Extension of the Attainment Date
  C. Approvals of Rules and Commitments
  D. Correction of Previous SIP Disapprovals
VI. Administrative Requirements

I. Summary of Today's Actions

We are approving the serious area state implementation plan (SIP) for attainment of the annual and 24-hour PM–10 standards in the metropolitan Phoenix (Maricopa County), Arizona, area. This action is based on our determination that this plan complies with the Clean Air Act's (CAA) requirements for attaining the PM–10 standards in serious PM–10 nonattainment areas such as the metropolitan Phoenix area.

Specifically, we are approving the following elements of the plan as they address both the 24-hour and annual PM–10 standards:

- The base year emissions inventory of PM–10 sources;
- The demonstration that the plan provides for implementation of reasonably available control measures (RACM) and best available control measures (BACM) for all source categories that contribute significantly to PM–10 standard violations;
- The demonstrations that attainment by the CAA deadline of December 31, 2001 is impracticable;
- The demonstrations that attainment will occur by the most expeditious alternative date practicable, in this case, December 31, 2006;
- The demonstration that the plan provides for reasonable further progress and quantitative milestones;
- The demonstration that the plan includes to our satisfaction the most stringent measures found in the implementation plan of another state or are achieved in practice in another state and can feasibly be implemented in the area;
- The demonstration that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations of the PM–10 standards;
- Contingency measures; and
- The transportation conformity mobile source emissions budget.

We are also approving Maricopa County's fugitive dust rules, Rules 310 and 310.01, and its residential woodburning restriction ordinance as well as commitments by the local jurisdictions in the Phoenix area to implement control measures.

Finally, we are granting Arizona's request to extend the attainment date for both the annual and 24-hour PM–10 standards from December 31, 2001 to December 31, 2006.

With today's action, EPA has now approved all elements of the serious area PM–10 plan for the Phoenix area. Today's final approvals also correct disapprovals of previous Phoenix PM–10 plans that resulted in the imposition of one CAA sanction in the Phoenix area and a clock running for the imposition of another. With these approvals, the sanction is lifted and the clock stopped.

This preamble summarizes our actions on the Phoenix serious area plan, gives some background to this action, and provides responses to the most significant comments we received on the proposals for this final action. We have not repeated the concise evaluation of the plan that we provided in the two proposals for today's action. We refer the reader to these proposals for this evaluation. See the annual standard proposal at 65 FR 19964 (April 13, 2000) and the 24-hour standard proposal at 66 FR 50252 (October 2, 2001). Our complete evaluation can be found in our technical support document (EPA TSD) that accompanies this final action. The EPA TSD also includes our full responses to all comments received on both proposals. The EPA TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

II. The Serious Area PM–10 Plan for the Phoenix Area

Arizona has made several submittals to address the CAA requirements for serious PM–10 nonattainment area plans in the Phoenix area. These submittals include the 1997 Microscale plan,[1] the 1997 BACM submittal,[2] the 2000 Revised Maricopa Association of Governments (MAG) plan,[3] the 2001 Best Management Practices (BMP) submittal (BMP TSD),[4] and a number of

[1] *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area*, Arizona Department of Environmental Quality (ADEQ), May, 1997, submitted May 9, 1997, approved in part and disapproved in part on August 3, 1997 (62 FR 41856).

[2] *Serious Area Committed Particulate Control Measures for PM–10 for the Maricopa County Nonattainment Area and Support Technical Analysis*, MAG, December 1997, submitted December 11, 1997.

[3] *Revised Maricopa Association of Governments 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area*, February 2000, submitted February 16, 2000. On January 8, 2002, Arizona submitted revisions to the Maricopa County's commitments to improve its fugitive dust rule which were in this plan.

[4] *Maricopa County PM–10 Serious Area State Implementation Plan Revision, Agricultural Best Management Practices (BMP)*, ADEQ, June 2000, submitted on June 13, 2001.

rules.[5] These submittals collectively comprise the full serious area PM–10 plan for the Phoenix area.

The MAG plan is the primary document for the serious area plan. It contains the base year inventory, the BACM demonstrations for all significant source categories (except agriculture) for both standards, the demonstration that attainment of both standards by 2001 is impracticable, the demonstration that attainment of the annual standard and the 24-hour standard (at all but four sites addressed by the microscale plan) will occur as expeditiously as practicable, the reasonable further progress (RFP) demonstration and quantitative milestones for the annual standard, contingency measures for the annual standard, the transportation conformity budget, and the request and supporting documentation—including the most stringent measure analysis (except for agriculture)—for an attainment date extension for both standards under CAA section 188(e).

The BMP TSD updates the MAG plan to reflect the State's May, 2000 adoption of the agricultural general permit rule to control PM–10 from agricultural sources in Maricopa County. It includes a background document which provides the BACM and most stringent measure demonstrations for agricultural sources for both standards, the final demonstration of attainment and RFP for the 24-hour standard at two monitoring sites, quantitative milestones for the 24-hour standard, and revisions to the contingency measure provisions for both standards. It also includes documentation quantifying emission reductions from the agricultural general permit rule and documentation related to implementing this rule. The BMP TSD was prepared by ADEQ.

The 1997 BACM submittal contains the initial commitments by the cities and towns in the Maricopa County portion of the Phoenix nonattainment area to implement BACM within their jurisdictions. These commitments were resubmitted in the revised MAG plan.

The Microscale plan is a serious area PM–10 plan that includes BACM, RFP, and attainment demonstrations for the 24-hour PM–10 standard at four Phoenix area monitoring sites: Salt River, Maryvale, Gilbert, and West Chandler. It was prepared and submitted by ADEQ in 1997 as a component of the overall serious area PM–10 plan for the Phoenix area.[6]

III. Proposals for and Information Related to Today's Actions

A. The Proposals for Today's Actions

Two proposals preceeded today's final action. The first proposal was published on April 13, 2000 (65 FR 19964) and addresses the Phoenix serious area plan's provisions for attaining the annual standard. The initial comment period for this proposal was 60 days but was extended twice and finally closed on July 27, 2000. We received 14 comments on this proposal from both public and private groups and from numerous private citizens.

The second proposal was published on October 2, 2001 (66 FR 50252) and addresses the Phoenix serious area plan's provisions for attaining the 24-hour standard and contingency measures for both PM–10 standards. In this second proposal, we also revised and reproposed several findings from the annual standard notice. These reproposals were necessary because of SIP submittals made by Arizona after the April 2000 proposal. The 30-day comment period for this proposal ended on November 1, 2001. We received one comment letter.

B. Already-Approved Elements of the Phoenix Serious Area PM–10 Plan

Two important elements of the metropolitan Phoenix serious area PM–10 plan have already been approved. These elements were submitted as either part of the Microscale plan or the BMP general permit rule and its TSD.

We approved the Microscale plan in part and disapproved the plan in part on August 4, 1997. We approved provisions for implementing BACM for 3 of the 8 source categories found to be significant contributors to 24-hour exceedances in the Phoenix area and disapproved them for 5 others. We also approved the attainment and RFP demonstrations for the Salt River and Maryvale sites because the Mircoscale plan demonstrated expeditious attainment at these sites but disapproved these demonstrations for the West Chandler and Gilbert sites because the plan did not demonstrate attainment at them. Except for our findings related to the implementation of BACM, we have not reevaluated and are not approving again those 24-hour provisions already approved as part of our actions on the Microscale plan.[7]

On October 11, 2001, we approved the State's agricultural BMP general permit rule and found that it provided for the implementation of RACM for the agriculture source category. See 66 FR 51869. We are today finding that the rule also provides for the implementation of BACM and meets the most stringent measure requirement in CAA section 188(e). These latter findings are in addition to and not in substitution for the October 11, 2001 RACM finding.

With today's action and these previous approvals, we have now approved all elements of the Phoenix serious area PM–10 plan.

C. Effect of Today's Actions on the 1998 Federal PM–10 Plan for the Phoenix Area

On August 3, 1998, we promulgated a moderate area PM–10 federal implementation plan (FIP) for the Phoenix area. In the FIP, we included a rule for controlling fugitive dust from vacant lots, unpaved parking lots, and unpaved roads. See 40 CFR 52.128 (modified, December 21, 1999). We also included a commitment to adopt and implement RACM for agricultural source categories. *See* 40 CFR 52.127 as published at 63 FR 41326, 41350 (August 3, 1998) (withdrawn at 64 FR 34726 (June 29, 1999)). With the Federal fugitive dust rule and commitment and already approved State and local controls, we demonstrated that the Phoenix area had in place RACM on all significant source categories, that the area would make reasonable further progress toward attainment but that attainment by 2001 was impracticable. *See* 63 FR 41326.

On June 29, 1999, we replaced the federal commitment to develop agricultural controls in the FIP with a

[5] These include the revised Maricopa County Environmental Services Department (MCESD) Rule 310, Fugitive Dust Sources (adopted February 16, 2000) and Rule 310.01, Fugitive Dust from Open Areas, Vacant Lots, Unpaved Parking Lots, and Unpaved Roadways (adopted February 16, 2000), both submitted on March 2, 2000; the revised Maricopa County Residential Woodburning Restrictions Ordinance (adopted November 17, 1999) submitted on January 28, 2000; and the Agricultural BMP General Permit Rule submitted on July 11, 2000, approved October 11 2001 (66 FR 51869).

[6] A complete history of the Microscale plan, including the reasons for its development, can be found in the proposal and final actions for that plan and in proposal for the 24-hour standard. See 62 FR 31025 (June 6, 1997), 62 FR 41856 (August 4, 1997) and the 24-hour standard proposal at 50254.

[7] According to the approved serious area plan attainment demonstration in the Microscale plan, the Salt River site should not have violated the 24-hour PM–10 standard after May, 1998. The site, however, continues to violate the standard. Because there is already an approved serious area plan attainment demonstration, the remedy under the CAA for correcting this demonstration is for EPA to issue a formal request to the State to revise it SIP pursuant to section 110(k)(5), a process known as a "SIP call." We will be proposing that SIP call soon. However, because the elements of the Phoenix serious area plan that we are approving today do not address the attainment of the 24-hour standard at the Salt River site, the issues with the site's attainment demonstration do not affect today's action.

State commitment to adopt best management practices for the agricultural sources. 64 FR 34726.

Today's actions do not withdraw or otherwise modify the demonstrations in the FIP or the federal fugitive dust rule.

D. Clean Air Act Sanctions in the Phoenix Area

In the 1998 FIP, we also disapproved the RACM and attainment demonstrations for the annual PM–10 standard in the 1991 MAG moderate area PM–10 plan. See 63 FR 41326 (August 3, 1998, effective September 2, 1998). Under CAA section 179(a), once we disapprove a SIP provision because it fails to meet a CAA requirement, a State has 18 months from the effective date of the disapproval to correct the deficiency before the first of two sanctions goes into place. If the state still has not corrected the deficiency within 24 months of the effective date of the disapproval, the second sanction goes into place.[8]

On March 2, 2000, before Arizona could submit and we could act to approve substitute RACM and attainment demonstrations, the 18-month clock expired and the 2:1 offset sanction went into place in the Phoenix area. The second clock for the highway funding limitations was set to expire on September 2, 2000.

Under section 179(a) and our sanctions regulations at 40 CFR 52.31(d)(1), we must approve a SIP revision that corrects the deficiencies to permanently end the sanctions clocks and lift any imposed sanctions. However, we may temporarily stay the clocks and any imposed sanctions if we have proposed to approve a SIP revision that corrects the deficiencies and have issued an interim final determination that the State has corrected the deficiencies. 40 CFR 52.31(d)(2)(i).

We proposed to approve the RACM and attainment demonstrations for the annual standard on April 13, 2000. 65 FR 19964. In a rule published concurrently with that proposal, we issued an interim final determination that stayed both the offset sanction and the clock running on the highway sanctions. 65 FR 19992.

With today's action, we are fully approving the State's substitute RACM and attainment demonstrations for the annual standard. These full approvals correct the deficiencies that resulted in the disapproval and permanently end the offset sanction and stop the clock for the highway sanctions.

The serious area plan for the Phoenix area was due on December 10, 1997; however, Arizona submitted only a partial plan. On February 6, 1998, we made a finding that the State had failed to submit a required SIP (published on February 25, 1998 at 63 FR 9423). This finding also started sanctions clocks and a two-year clock under CAA section 110(c) for EPA to promulgate a substitute federal implementation plan if the State did not have a fully approved one.

On July 8, 1999, Arizona submitted the full serious area plan, and on August 4, 1999, we found the plan complete. This finding stopped the sanction clocks for failure to submit; however, it did not stopped the FIP clock. Under section 110(c), the FIP clock continues until we approve the full serious area plan. Today's action approves the plan and ends our obligation to promulgate a serious area PM–10 FIP for the Phoenix area.

E. EPA's Policies on Approving Serious Area PM–10 Plans and Granting Attainment Date Extension

We have issued a General Preamble, 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992), and Addendum to the General Preamble ("Addendum"), 59 FR 41998 (August 16, 1994), describing our preliminary views on how we intend to review SIPs submitted to meet the Clean Air Act's requirements for PM–10 plans. The General Preamble mainly addresses the requirements for moderate areas and the Addendum, the requirements for serious areas.

In the proposal for the 24-hour standard, we also provided our preliminary interpretation of and policy on granting an extension of the attainment date under CAA section 188(e). We are finalizing this extension policy today only as it relates specifically to our action on the attainment date extension requested by the State of Arizona for the Phoenix area.

IV. Response to Comments on the Proposed Actions

The following are our responses to the most significant comments that we received on the proposals for today's actions. In section 7 of the EPA TSD, we provide more detailed responses to these comments as well as responses to all comments received. A copy of the EPA TSD may be downloaded from our website or obtained by writing or calling the contact listed above.

A. Comments on EPA's Policies for Approving Serious Area PM–10 Plans and Granting Attainment Date Extensions

Comment: EPA interprets the CAA to not require a state to apply BACM to any source or source category that it has demonstrated to be de minimis. See 59 FR 41998, 42011 (August 16, 1994). In its July 2000 comments on the annual standard proposal, ACLPI disagrees that EPA can exempt de minimis sources from the Act's BACM requirement. ACLPI argues that there are no exceptions to the Act's requirement that serious area plans include "provisions to assure that the best available control measures for the control of PM–10 shall be implemented." ACLPI incorporates by reference its arguments in its Brief for the Petitioners in *Ober* v. *Whitman* (9th Cir., No. 98–71158) (*Ober II*) at pp. 21–19, noting that although *Ober II* involves a challenge to our exemption of de minimis sources from the RACM requirement, the same reasoning applies to invalidate the BACM exemption as well.

Response: Ober II was a challenge to our 1998 PM–10 moderate area FIP for the Phoenix area. In the FIP, we exempted from the RACM requirement, source categories with de minimis impacts on PM–10 levels. We established a de minimis threshold of 1 μg/m\3\ for the annual standard and 5 μg/m\3\ for the 24-hour standard, initially taking these thresholds from the new source review (NSR) program for attainment areas. We showed that these were the correct thresholds for determining which source categories were de minimis for the RACM requirement by showing that the application of RACM on the de minimis source categories would not make the difference between attainment and nonattainment by the applicable attainment deadline. See 63 FR 41326, 41330 (August 3, 1998). In *Ober II*, ACLPI challenged our ability to exempt de minimis source categories from the RACM requirement and the specific thresholds that we used.

In March, 2001 (well after the close of the comment period on the annual standard proposal), the 9th Circuit issued its opinion in *Ober II*. *Ober* v. *Whitman*, 243 F.3d 1190 (9th Cir. 2001). The court held that we have the power to make de minimis exemptions to control requirements under the Clean Air Act and that our use of the de minimis levels from the NSR program is appropriate. In addition, the Court determined that it is appropriate for us

[8] The two CAA sanctions are a limitation on certain highway approvals and funding and an increase in the emissions offset ratio to 2 to 1 for any major new stationary source or major modification. See CAA section 179(b). Our sanctions regulations provide that the first sanction to be imposed is the offset ratio unless we have established at the time of the disapproval that the highway sanction will be first. 40 CFR 52.31(d).

to use, as a criterion for identifying de minimis sources, whether controls on the sources would result in attainment by the attainment deadline. *Ober II* at 1198

In finding that EPA had the authority to exempt de minimis source categories of PM–10 from CAA control requirements, the Court wrote:

> Courts have refused to allow de minimis exemptions where the statutory language does not allow it. * * * There is no explicit provision in the Clean Air Act prohibiting the exemption from controls for de minimis sources of PM–10 pollution. Nor is the statutory language uncompromisingly rigid. The Act provides that a plan must include "reasonably" available control measures to bring the area into attainment unless attainment is "impracticable." Those terms allow for the exercise of agency judgment. * * * We conclude that EPA, in discharging its duty to enforce the Act, is permitted under [*Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)] to exempt de minimis sources of PM–10 from pollution controls.

Ober II at 1194 (internal cites and quotes omitted).

The Court's reasoning is equally applicable to the BACM requirement. Like the RACM requirement, there is no explicit provision in the Act prohibiting the exemption from the BACM requirement for de minimis sources of PM–10 pollution. Nor is the language in section 189(b)(1)(B) requiring the implementation of BACM "uncompromisingly rigid." Like RACM, the Act and EPA policy provide that a PM–10 plan must include the "best" available control measures to bring the area into attainment unless attainment is "impracticable." The term "best"—no less than the term "reasonably"—allows for the exercise of agency judgment.

In *Ober II*, the Court also upheld the procedures and criteria we used to determine what constituted a de minimis source or source category for RACM. *Ober II* at 1198. We have applied exactly the same procedures and criteria for BACM. For BACM, we proposed the same NSR thresholds as a starting point for determining what constitutes a de minimis source category. See 24-hour standard proposal at 50281. We also required the State to demonstrate that its identified de minimis sources are in fact de minimis by showing that controls on them would not make the difference between attainment and nonattainment by the applicable deadline. See 24-hour standard proposal at 50281.

Finally, we note that we invoke a de minimis exemption from the Act's general but open-ended control requirements like RACM, BACM, and MSM as a means of ensuring that states focus their always limited resources on the controls most likely to result in real air quality benefits. It is more likely to harm air quality than to help it if these limited resources are diverted away from more substantive measures into the adoption and implementation of measures with trivial impacts.

Nowhere is the need to concentrate resources on the most significant sources more necessary then in large urban areas dominated by PM–10 fugitive dust sources, such as the metropolitan Phoenix area. Adequate controls in these types of areas require very large investments of both financial and human resources because of the number of sources and the type of needed controls.[9] As the court has recognized in *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360 (D.C.Cir. 1979), "[c]ourts should be reluctant to apply the literal terms of a statute to mandate pointless expenditures of effort. * * * The ability * * * to exempt de minimis situations from a statutory command is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design." Cited in *Ober II* at 1194.

Comment: In its July 2000 comments on the annual standard proposal, ACLPI argues that our de minimis exception violates the Act's central mandate for attainment of the PM–10 standards by December 31, 2001 or as expeditiously as possible thereafter because it allows us and the states to eschew otherwise available control measures based on an arbitrary de minimis test even if the aggregate effect of implementing controls on all "de minimis" sources would hasten attainment. It further comments that even if the de minimis exception is allowed, the thresholds set by EPA are arbitrary because they were not based on actual PM–10 conditions in the nonattainment area, but on levels borrowed from the wholly unrelated new source review (NSR) program.

Response: ACLPI misstates the scope of the BACM de minimis exemption. We do *not* consider a source category or groups of source categories to be de minimis if applying BACM to it or them would meaningfully expedite attainment in areas demonstrating attainment by December 31, 2001 or would make the difference between attainment and nonattainment by December 31, 2001 in areas requesting an extension. See 24-hour standard proposal at 50281 and Addendum at 42011.

Under our de minimis policy, whether the NSR thresholds are appropriate for an area depends on the specific facts of that area's PM–10 nonattainment problem, that is, it depends on the actual PM–10 conditions in the nonattainment area. We do not accept the NSR thresholds as the correct de minimis thresholds without first requiring a conclusive showing that they do not adversely affect the area's ability to show expeditious attainment. See Addendum at 42011.

We used these NSR thresholds in our 1998 FIP. ACLPI raised the same objections to their use there for the RACM requirement as it does here for the BACM requirement. *Ober II* at 1196. The Ninth Circuit in reviewing the FIP found that it was permissible for us to adopt the PM–10 de minimis thresholds already in place in the new source review program to identify de minimis sources for the RACM requirement. *Ober II* at 1196. Our reasoning for applying those thresholds for BACM is the same as our reasoning for applying them for RACM; therefore, we believe that the NSR thresholds are an appropriate starting point for determining which source categories are significant and which are de minimis for the purposes of applying BACM.

Comment: Under the section 188(e) extension provisions, a state must show that it has complied with all requirements and commitments in its implementation plan. We interpret this requirement to apply only to the control measures in the state's previously submitted PM–10 implementation plans. See 24-hour standard proposal at 50282. ACLPI argues that in addition to fully implementing the control measures in the SIP revisions that it has submitted, a state must also show that it has implemented other provisions of its SIP. ACLPI also comments that EPA's attempt to limit this requirement to PM–10 commitments has no basis in the Act.

Response: We believe that this criterion's purpose is to assure that a state is not rewarded with additional time to attain the PM–10 standards if it has not implemented earlier commitments and requirements to reduce PM–10 levels. Given this purpose, the focus of the test to determine if a state has met this

[9] There are literally thousands of sources subject to fugitive dust controls in the Phoenix area, including constructions sites, agricultural fields, vacant lots, unpaved roads, and paved roads. For example, MCESD issued 2500 construction permits in 1999; we mailed 50,000 letters to owners of vacant lots as part of our 1999 outreach on the PM–10 FIP. Effective fugitive dust control from many of these sources requires either an ongoing and extensive compliance and enforcement presence or large capital expenditures (e.g., paving unpaved roads, purchasing and operating PM–10 street sweepers).

criterion should be on the implementation of PM–10 emission reducing control measures rather then on the implementation of programs, such as monitoring and permitting, that make up the overall air quality program's infrastructure but are not emission reducing measures themselves.

Limiting the section 188(e) review to just the PM–10 implementation plan is firmly based on the structure, purpose and language of the Act. The attainment date extension provisions are located in title I, part D, subpart 4 "Additional Provisions for Particulate Matter Nonattainment Areas." Hence, any reference to *the* implementation plan within this subpart is to the PM–10 implementation plan, absent specific language to the contrary. The criterion "the State has complied with all requirements and commitments pertaining to that area in *the* implementation plan" in section 188(e) (emphasis added) contains no language that implies a reference to all of an area's implementation plans. Moreover, section 188(e) addresses setting the most expeditious attainment date for meeting the PM–10 air quality standards. There is at best a tenuous and strained connection between the implementation status of plans for attaining other air quality standards (*e.g.*, ozone or carbon monoxide) and the appropriate and most expeditious date for attaining the PM–10 standard.

The language in section 188(e) is almost identical to the language in section 188(d) that allows a one-year extension of the moderate area attainment date if, in part, "the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan." In interpreting and applying section 188(d), we have always considered "the applicable implementation plan" in question to be the State's SIP for PM–10. *See Memorandum*, Sally L. Shaver, OAQPS, to Regional Air Directors, "Criteria for Granting 1-Year Extensions of Moderate Area Attainment Dates, Making Attainment Determinations, and Reporting on Quantitative Milestones," November 14, 1994. *See* also, 66 FR 32752, 32754 (June 18, 2001) (Attainment date extensions for Utah's PM–10 nonattainment areas).

Comment: EPA interprets the CAA to allow states to exempt from the most stringent measures requirement in section 188(e) any source or source category that it has demonstrated to be de minimis. 24-hour standard proposal at 50283. ACLPI disagrees that EPA can exempt de minimis sources of PM–10 from the Act's MSM requirement, arguing that the Act requires areas seeking an extension of the serious area PM–10 attainment deadline to demonstrate that their plans include the most stringent measures that are included in the implementation plan of any State or achieved in practice in any State, and can feasibly be implemented in the area," and that there is no de minimis exception to this explicit mandate.

Response: As stated above in response to a similar comment regarding the exemption of de minimis sources from the BACM requirement, we believe the *Ober II* Court's reasoning in upholding that exemption for the RACM requirement is also applicable to the MSM requirement. Again, we invoke a de minimis exemption from the Act's general but open-ended control requirements like RACM, BACM, and MSM as a means to ensure that states focus their always limited resources on the controls most likely to result in real air quality benefits.

Like the RACM requirement, there is no explicit provision in the Act prohibiting a de minimis source category exemption from the MSM requirement. Nor is the language in section 188(e) "uncompromisingly rigid." In fact, the phrase—"to the satisfaction of the Administrator"—in the MSM provision specifically calls for the Agency to exercise its judgement in deciding how exactingly to apply the requirement. *See Ober II* at 1194.

In our policy on the MSM requirement, we are using the same principles for determining when a source is considered de minimis under the MSM requirement that we used for the RACM requirement upheld by the *Ober II* Court. In doing so, we have carefully constructed the de minimis exemption for the MSM requirement to prevent states from eliminating any controls on sources or source categories that alone or together would result in more expeditious attainment of the PM–10 standards. See annual standard proposal at 19967 and 24-hour standard proposal at 50583. We note that the Phoenix serious area plan did not reject any potential MSM on de minimis grounds.

Comment: ACLPI argues that EPA's proposed de minimis exception violates the Act's requirement that states seeking an extension demonstrate attainment by the most expeditious alternative date practicable because it allows EPA and the states to reject otherwise available control measures based on an arbitrary de minimis test even if the aggregate effect of implementing MSM on all de minimis sources would hasten attainment. It also argues EPA's proposal to determine an appropriate de minimis level by determining whether applying MSM to proposed de minimis source categories would "meaningfully hasten attainment" is vague and fails to comport with the Act.

Response: ACLPI misstates the scope of the MSM de minimis exemption. We do not consider a source category or groups of source categories to be de minimis if applying MSM to it or to them would hasten attainment. We stated this clearly in both the proposal for the annual standard provisions and for the 24-hour standard provisions: Annual standard proposal at 19969; 24-hour standard proposal at 50583.

In Ober II, the Court found:

> Using the [attainment] deadline to determine whether controls must be imposed makes sense. The deadline is not an arbitrary date unrelated to air quality concerns. * * * In this case, the [FIP] concludes that the deadline will not be met even if these small sources of PM–10 were controlled. Under those circumstances, it is reasonable to decline to control the de minimis sources of pollution.

Ober II at 1198.

In interpreting the MSM requirement to allow exemptions on de minimis grounds, we are also using the applicable attainment date to determine whether controls should be imposed. At the time a state submits its application for an attainment extension, (including the showing that its plan includes MSM), it must also submit a demonstration that attainment will occur by the "most expeditious alternative date practicable." See CAA section 188(e). If it can be shown that including a certain set of potential MSM would not result in more expeditious attainment, then it is consistent with the Act to not require their inclusion as a condition of approval.

What constitutes "meaningfully hastening attainment" depends on the actual PM–10 conditions in the nonattainment area and the particular PM–10 standard under consideration.[10] Because of this dependence, we cannot in policy specify a time period that is appropriate in all situations. We can propose the appropriate time period only within the context of acting on a specific extension request. For today's rulemaking, the plan did not invoke a de minimis exemption for evaluating MSM; therefore, we did not need to propose the time period we would

[10] This is similar to the de minimis thresholds which we also cannot specify in advance because they too must be set based on the actual PM–10 conditions in the nonattainment area and the particular PM–10 standard under the consideration. See Addendum at 42011.

consider meaningful for evaluating its de minimis exemption.

Comment: Under our policy on MSM, a state may reject a measure as infeasible for the area on economic grounds. *See* 24-hour standard proposal at 50283. ACLPI disagrees that a state can take economic considerations into account when determining the feasibility of MSM for the purposes of the MSM demonstration required under section 188(e). ACLPI argues that the Act only allows for the rejections of an MSM if it cannot feasibly be implemented in the area and any measure that is included in another SIP or achieved in practice in another state is by definition economically feasible because it is capable of being done or carried out if sufficient resources are devoted to it. ACLPI also argues that only its interpretation of MSM fits within the Act's strategy of offsetting longer attainment time frames with more stringent control requirements and that by allowing for the rejection of MSM based on cost, EPA has made MSM virtually indistinguishable from BACM.

Response: We believe that Congress very clearly intended that the phrase "feasible in an area" in section 188(e) to include economic considerations. Section 188(e) lists five criteria that we may consider in determining whether to grant an extension and the length of an extension, the last of which is "the technological *and economic* feasibility of various control measures." Emphasis added. The term "various control measures" clearly refers back, in part, to the requirement in the first part of section 188(e) that contains the requirement that the plan include "the most stringent measures that * * * can feasibly be implemented in the area."

By allowing us to consider the economic feasibility of measures in judging whether to grant an extension and how long an extension to grant, Congress necessarily also allowed states to consider economic feasibility in demonstrating the need for an extension of a given length. If section 188(e) compelled states to adopt all MSM that were technologically feasible no matter their cost, then there would be no economic feasibility issues for us to review in exercising our discretion to grant an extension. ACLPI's position would read the very explicit criterion—the technological and economic feasibility of various control measures—out of section 188(e). A statute should not be interpreted to render any provision of that statute meaningless. See *Northwest Forest & Resource* v. *Glickman*, 82 F.3d 825, 834 (9th Cir. 1996). See also *Gustafson* v. *Alloyd Co.*, 115 S. Ct. 1061, 1067 (1995) (no Act of Congress should "be read as a series of unrelated and isolated provisions."); *Department of Revenue of Oregon* v. *ACF Industries*, 114 S. Ct. 843, 848 (1994) ("a statute should be interpreted so as not to render one part inoperative") (quotation omitted).

We agree that the Act's general strategy is to offset longer attainment time frames with more stringent control requirements. We do not agree that the MSM requirement in section 188(e) is the primary mechanism that assures that increasingly stringent control requirements are adopted in areas requesting an extension. In fact, the most stringent control measure provision in section 188(e) will not necessarily result in the adoption of any additional control measures above and beyond those already adopted by the state to provide for BACM and expeditious attainment.

The MSM provision is written to assure that a state consider the most effective controls from elsewhere in the country for implementation in the area requesting an attainment date extension. The results of the analysis are completely dependent on how well other areas have controlled their PM–10 sources. If other areas have not controlled a particular source category well, then the resulting MSM for that source category will not be the more effective level of control than what is actually feasible for the area. The MSM provision, however, does not require a state to determine if the feasibility of controlling a source category at a level greater than the most stringent level from another area. In other words, it does not require states to determine the maximum level of control that could be applied to a source category given local conditions and the additional implementation time afforded by an extension.

In considering the MSM provision, there is a tendency to assume that there are always better controls elsewhere than there are in the local area. This assumption is unwarranted, especially for an area that has already gone through a systematic process of identifying and adopting BACM for their significant sources. These areas are likely to have already evaluated the best controls from other areas (as Arizona did, see MAG plan, Chapter 5) and either adopted them as BACM or rejected them as not feasible for their area. As a result, the likelihood of uncovering substantial new controls during a MSM evaluation is low.

More important than the MSM provision for assuring adoption of additional controls is the requirement in CAA sections 189(b)(1)(A)(ii) and 188(e) that the PM–10 plan demonstrate attainment by the most expeditious alternative date practicable but no later than December 31, 2006. The SIP revision containing this demonstration must accompany any request for extension of the attainment date under section 188(e). Because we are required to grant the shortest possible extension, a state must demonstrate that it has adopted the set of control measures that will result in the most expeditious date practicable for attainment. This requirement may mean that a state must adopt controls that go beyond the most stringent measures adopted or implemented elsewhere.

Comment: ACLPI disagrees with EPA's interpretation of the phrase "to the satisfaction of the Administrator" in section 188(e). Specifically, ACLPI rejects the notion that by using this phrase, Congress intended to grant EPA discretion to accept an MSM demonstration even if it falls short of having every MSM possible because this interpretation contradicts the express language of section 188(e) as well as the requirement that the area achieve attainment by the most expeditious date practicable. ACLPI argues that the Act uses the phrase to grant EPA the authority to determine whether a state has adequately demonstrated that its plan includes the most stringent measures that are feasible, not to give the agency carte blanche to circumvent the will of Congress by ignoring the State's failure to meet this requirement.

Response: First, the Act does not require states to adopt every possible MSM. There is nothing in the express language of section 188(e) that requires such an outcome. The MSM requirement in section 188(e) is not phrased as "all most stringent measures" or as "every most stringent measure practicable or possible."

Our interpretation of the MSM requirement is consistent with how we have historically interpreted the general RACM requirement in CAA section 172(c)(1), a requirement which does use the word "all." This section requires that nonattainment area plans "provide for the implementation of *all* reasonably available control measures * * * ". (emphasis added). In interpreting this requirement, we have long held that a state is not obligated to adopt and implement measures that will not contribute to expeditious attainment.[11]

[11] We would not consider a measure to be reasonable if it does not contribute to expeditious attainment. See General Preamble at 13560; 63 FR 15920, 15932 (April 1, 1998) (proposed Phoenix area PM–10 FIP); and 66 FR 26913, 26929 (May 15,

Continued

We established this position in a policy that predates the CAA Amendments of 1990. 44 FR 20372, 20375 (April 4, 1979). Congress did not revise the RACM requirement in the 1990 Amendments and thereby endorsed our position. We reaffirmed this position in 1992, see General Preamble at 13560 (April 16, 1992). The court has also endorsed this position in the specific context of the section 189(a) RACM requirement where the court found that using the attainment deadline to determine whether controls must be reasonable "makes sense." *Ober II* at 1198.

We are interpreting the MSM requirement using the same principle. We are again using the applicable attainment date to determine whether the MSM provision requires a particular control or set of controls to be imposed. Before we can grant an attainment date extension, the state must show that its plan will result in attainment by the "most expeditious alternative date practicable." See CAA sections 188(e) and 189(b)(1)(A)(ii). If a state can be shown that including a certain set of potential MSM would not result in more expeditious attainment, then it is reasonable and consistent with the Act not to require their inclusion as a condition of approval.

Second, Congress did not need to add the phrase "to the satisfaction of the Administrator" to grant us the authority to review the adequacy of a state's MSM demonstration. It had already given it to us by granting us the discretionary authority under section 188(e) to grant or to deny a state's extension request. By attaching the phrase specifically to the MSM requirement, Congress emphasized EPA's administrative authority to determine an appropriate interpretation of what is conceivably a very open-ended and exacting requirement.

Finally, in reviewing whether Arizona has appropriately excluded an otherwise feasible measure or group of feasible measures in its MSM analysis, we have invoked only one criterion: whether or not the measure or group of measures are necessary for attainment by the earliest alternative date practicable. Given that this is our sole criterion, our interpretation of "to the satisfaction of the Administrator" does not conflict with the Act's requirement for attainment by the earliest alternative date practicable.

2001) (approval of the Beaumont/Port Arthur ozone nonattainment area plan). Similarly, for the purposes of the MSM requirement, we would not consider such a measure to be feasible for the area.

Comment: ACLPI argues that EPA's proposed methodology for determining MSM is flawed because it apparently does not require states to quantify expected emission reductions from measures for purposes of making MSM demonstrations.

Response: We do not believe that quantification is always necessary or possible or can always be done accurately enough to be meaningful and therefore cannot be required as the sole means of determining relative stringency. Often, control measures are easily comparable without quantification. In these cases, quantification adds no additional information and is unnecessary. In other cases, quantification is not possible or cannot be done accurately enough because there is no methodology and/or insufficient data to calculate the difference in emissions reductions between measures.

Because quantification is often problematic, we have not established in our policy on the MSM provision a specific method that a state must use to compare the stringency of measures, rather we expect a state to select the best method for making this comparison on a case-by-case basis taking into account the need to provide a clear and conclusive demonstration. See 24-hour standard proposal at 50284.

B. Comments on EPA's Detailed Evaluation of the Phoenix Serious Area PM–10 Plan

Comment: ACLPI disagrees with EPA's statement that the Act does not require the metropolitan Phoenix serious area plan to address the adequacy of the PM–10 monitoring network, asserting that section 110(a)(2)(B)(i) specifically mandates this.

Response: Section 110(a)(2)(B)(i) in title 1, part A of the CAA requires implementation plans to provide for the establishment and operation of a system to monitor, compile and analyze data on ambient air quality. These systems must necessarily be in place and operating long before a state can develop a nonattainment area plan under title I, part D of the CAA (such as the Phoenix serious area plan) because it is the data from this monitoring network which establish the area's nonattainment status and its initial classification as well as the degree of control needed to attain the applicable standard. Therefore, SIP monitoring provisions are addressed separately and well in advance of the development of nonattainment area plans.

Nonattainment area plans are not, in general, required to address how the area's air quality network meets our monitoring regulations. Nor do we generally approve or disapprove monitoring networks as part of nonattainment area plans. These plans are submitted too infrequently to serve as the vehicle for assuring that monitoring networks remain adequate and current. Instead, our monitoring regulations in 40 CFR part 58 require states to submit reports on the adequacy of their ambient air quality monitoring networks annually. We discuss the adequacy of the monitoring network as part of our proposed action on the Phoenix plan to support our finding that the plan appropriately evaluates the PM–10 problem in the area. Reliable ambient data is necessary to validate the base year air quality modeling which in turn is necessary to assure sound attainment demonstrations. The network, however, does not need to meet all our regulatory requirements to be found adequate to support air quality modeling. A good spatial distribution of sites, correct siting, and quality-assured and quality-controlled data are the most important factors for generating adequate data for air quality modeling.

Comment: Several times in its comments, ACLPI asserts that the Phoenix serious area plan fails to includes a specific measure and also fails to provide a reasoned justification for the rejection of the measures and that this violates both the CAA and EPA guidance, which require serious area PM–10 SIP revisions to provide for the implementation of all BACM or provide a reasoned justification for their rejection.

Response: ACLPI is incorrectly characterizing both the CAA's BACM requirement and our guidance regarding it. Neither requires the implementation of *all* BACM. CAA section 189(b)(1)(B) requires that SIPs include "provisions to assure that the best available control measures for the control of PM–10 shall be implemented * * *" There is nothing in this express language of this section that requires the implementation of all BACM; the requirement is not phrased as "all best available control measures" or as "every best available control measure possible."

In our serious PM–10 nonattainment area planning guidance (Addendum at 42014), we have interpreted the BACM requirement to mean that a state must only provide for the implementation of BACM on its significant source categories: "in summary [of the process for selecting BACM for area sources], the State must document its selection of BACM by showing what control measures applicable to each source category (not shown to be de minimis)

were considered. The control measures selected should preferably be measures that will prevent PM–10 emissions rather than temporarily reduce them." See also Addendum at 42011 (De Minimis Source Categories). Again, this guidance does not require the implementation of all BACM.

Comment: ACLPI notes that the Arizona legislature repealed the remote sensing program during the 2000 regular session and thus the plan fails to demonstrate adequate legal authority for that measure. ACLPI also notes that the September 10, 2001 ruling by the Arizona Federal District Court found the State's repeal and discontinuation of the RSD program a violation of the CAA and asked that the ruling be included in the record for this rulemaking. Finally, ACLPI asserts that as a measure that has been implemented in the State for 3 years, it is a MSM and thus required under CAA section 188(e).

Response: The remote sensing (RSD) program is not a measure developed specifically for the MAG serious area PM–10 plan, but rather one Arizona adopted in 1994 as part of its carbon monoxide and ozone plans. In the MAG PM–10 plan, Arizona used the RSD program in the same manner as it used a number of other existing measures: to support its demonstration that the State has provided for the implementation of BACM for the on-road motor vehicle category.

In the 24-hour standard proposal, we reviewed the plan's BACM and MSM demonstrations for this source category assuming that the RSD program was no longer in place and determined that the plan still provided for the implementation of BACM and inclusion of MSM without it. See 24-hour standard proposal at 50259. Arizona has in place one of the nation's most comprehensiye programs to address on-road motor vehicle emissions. With the additional measures in the serious area plan (including a more stringent diesel I/M program and measures both encouraging and requiring diesel fleet turnover), we believe the plan easily provides for the implementation of BACM and inclusion of MSM for on-road motor vehicle exhaust. See 24-hour proposal at 50258.

The plan included a very small NO_X benefit of 4 kg per day, 0.003 percent of the daily NO_X inventory. See email, Cathy Arthur (MAG) to Frances Wicher (EPA), "Impact of Removal of Remote Sensing Program on NO_X in 2006," October 2, 2001. While not calculated in the serious area plan, a rough estimate of potential directly-emitted PM–10 reductions from the program is no more than one-half ton *per year* (or 2.6 lbs per day). Neither the NO_X benefit nor the directly-emitted PM–10 benefit would contribute to expeditious attainment of the PM–10 standards in the Phoenix area, so the State did not need to include the measure to assure expeditious attainment.

Arizona stopped implementing the RSD program because of its high cost per ton of reductions, in the order of thousands of dollars per ton of pollutant reduced; that is, its economic infeasibility. See ADEQ, Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Program, June 2001, p. 26. Under EPA's MSM policy, economic infeasibility is a valid reason for rejecting a measure as MSM. See 24-hour standard proposal at 50283.

Because we have determined that the Metropolitan Phoenix serious area plan provides for the implementation of BACM, inclusion of MSM and expeditious attainment without the RSD program, any deficiency in legal authority for the program does not affect our approving the plan or granting an attainment date extension under CAA section 188(e).

Comment: ACLPI disagrees that the plan provides a reasoned justification for the rejection of CARB diesel which ACLPI claims both EPA and MAG conceded is an MSM. ACLPI asserts that EPA did not accept the State's justification and developed its own justification for the failure to adopt the measure. Citing *Delaney* v. *EPA*, 898 F.2d 695 (9th Cir. 1990), ACLPI states that it is not EPA's role to supply justifications that the state has not itself claimed. ACLPI also asserts that BACM cannot be excused if it would not advance the attainment date by one year; a measure must be adopted if it would advance the attainment date by even one day.

Response: Neither EPA nor MAG concedes that CARB diesel is a most stringent measure that is feasible for the Phoenix area. The serious area plan rejects CARB diesel as infeasible for the Phoenix area based on costs. MAG plan, p. 9–46. Noting the uncertainties regarding this cost estimate, we could not judge whether this justification was reasonable or not. Annual standard proposal at 19973. The question then was whether we could still approve the MSM demonstration without CARB diesel and absent a reasoned justification for not including it.

Our sole criterion for determining if the plan provides for MSM is whether it has excluded any feasible MSM or a group of feasible MSM that, if adopted and implemented early, would result in attainment of the PM–10 standards more expeditiously. On-road and nonroad engines (the source categories that would be affected by CARB diesel) are not implicated in 24-hour exceedances of the PM–10 standard. Microscale plan, tables 3–2 to 3–5. Except for the Salt River monitoring site with its fugitive dust generating industrial sources, 24-hour exceedances in the Phoenix area are due exclusively to windblown dust from disturbed ground. Microscale plan, p. 16. Introducing CARB diesel would not contribute to expeditious attainment of the 24-hour standard.

Annual standard exceedances are also dominated by fugitive dust sources with on-road and nonroad engines contributing little to annual PM–10 levels in the area. The small emission reduction associated with the introduction of CARB diesel would not advance the attainment date in the area, either by itself or in combination with other measures. It takes a reduction of more than 4 metric tons per day to advance the annual standard attainment by a year in the Phoenix area. EPA TSD section "Reasonable Further Progress and Quantitative Milestones." The MAG plan estimates reductions from introducing CARB diesel at less than 0.8 mtpd in 2006. MAG plan, p. 10–37. Advancing attainment by one year is the appropriate increment for judging whether a measure would expedite attainment of the annual standard. One year is the smallest increment of time that one can advance attainment of the annual standard because the annual standard is measured over a calendar year, from January 1 to December 31. See 40 CFR part 50.

Because the including CARB diesel would not result in more expeditious attainment of either PM–10 standard, we find that the Phoenix serious area plan has meet the MSM requirement without it and without including a reasoned justification for rejecting it ACLPI's reliance on *Delaney* is misplaced. In that case, the Court found that EPA's 1979 guidance explicitly provided that certain measures were presumptively reasonably available and that it was the state's burden to overcome that presumption. In 1992, we repealed the provisions of the 1979 guidance at issue in *Delaney* and added provisions specifically for PM–10 that establishes no presumption for those measures. See General Preamble at 13560. Here, there was no EPA policy presumption that CARB diesel was a feasible measure for the Phoenix area which Arizona had to overcome.

Comment: ACLPI argues that the metropolitan Phoenix plan improperly rejects various TCMs related to congestion management and idling

reduction on the grounds that individually each measure would have a relatively small impact on PM–10 emissions because the CAA does not contain a "small impact" exception from BACM and the plan's purported justification for rejecting the TCMs does not comport with EPA's BACM guidance. ACLPI also argues that the omission of these measures based solely on the amount of their individual impact violates the requirement of attainment as expeditiously as practicable because collectively, the measures might have a significant impact.

Response: Table TCM–3 in the EPA TSD lists four congestion management or idling measures that were identified as potential BACM but were not adopted as part of the plan: off-peak movement of goods, truck restrictions during peak times, limit excessive car dealership vehicle starts, and limit idling time to 3 minutes. Contrary to ACLPI's assertions, the plan did not reject these measures on "small impact" grounds. Rather, it provides no clear justification for rejecting any of these measures.

Prior to the development of the serious area plan, the Phoenix area already had in place a comprehensive set of TCMs. See EPA TSD, Table TCM–2. With the additional measures in the serious area plan (including additional traffic light synchronization, transit improvements, and bicycle and pedestrian facility improvements), we believe the plan easily provides for the implementation of BACM for on-road motor vehicles even without the four measures listed above. See annual standard proposal at 19974 and 24-hour standard proposal at 50260. In addition, these measures have little PM–10 benefit; therefore, their adoption and implementation would not contribute to expeditious attainment of the PM–10 standards in the Phoenix area.

As we have discussed previously, neither the CAA nor EPA guidance requires the implementation of all BACM, only that a state provide for the implementation of best available control measures on its significant source categories. *See* CAA section 189(b)(1)(B) and the Addendum at 42014. Moreover, we do not believe that the CAA requires us to reject an otherwise sound plan because of minor issues that do not affect the principal purposes of the plan: implementation of BACM and progress towards and expeditious attainment. Because the measures would not contribute to expeditious attainment and the State has provided for the implementation of BACM without them, we do not believe that the lack of these measures or a reasoned justifications for rejecting the measures is grounds for disapproving the plan.

Comment: Several times in its comment letter, ACLPI states that some jurisdictions in the nonattainment area have not made commitments to adopt certain measures when other jurisdictions have and that the plan provides no explanation as to why the implementation of these measures by all jurisdictions is infeasible. ACLPI asserts that EPA guidance indicates that BACM should be adopted and implemented throughout a serious PM–10 nonattainment area unless 100 percent implementation is infeasible. ACLPI also contents that because some jurisdictions have committed to more stringent control measures than other jurisdictions, their measures must be considered BACM/MSM and the plan must either provide for these measures' implementation by all jurisdictions or demonstrate why this is infeasible.

Response: ACLPI cites our serious PM–10 nonattainment area planning guidance at Addendum at 42014 to support its first premise. This guidance states:

> When evaluating economic feasibility, States should not restrict their analysis to simple acceptance/rejection decisions based on whether full application of a measure to all sources in a particular category is feasible. Rather, a State should consider implementing a control measure on a more limited basis, *e.g.*, for a percentage of the sources in a category if it is determined that 100 percent implementation of the measure is infeasible. This would mean, for example, that an area should consider the feasibility of paving 75 percent of the unpaved roadways even though paving all of the roads may be infeasible.

Contrary to ACLPI's assertion, this guidance does not demand states implement a measure 100 percent unless 100 percent implementation is infeasible. Rather, it suggests that states not consider "full implementation on all sources in the nonattainment area" as the only possible implementation scenario for evaluating a measure's economic feasibility and that, before it rejects a measure as economically infeasible, it should first consider less extensive implementation.

The CAA's requirements to implement BACM and include MSM apply to the nonattainment area as a whole and not to each individual jurisdiction within that nonattainment area.[12] Consequently, we have reviewed whether the combined effect of all controls adopted in the metropolitan Phoenix area for a particular source category results in the implementation of BACM and the inclusion of MSM for that source category. Because BACM and MSM are nonattainment area-wide requirements, the actions of one jurisdiction within the nonattainment area cannot set a standard for BACM and/or MSM that must either be implemented by all other jurisdictions within the area or demonstrated to be infeasible.

Comment: Several times in its comment letter, ACLPI states that some jurisdictions in the nonattainment area have not made commitments to adopt certain measures when other jurisdictions have. In this context, ACLPI asserts that CAA section 110(a)(2)(E) requires that plans provide assurances of adequate personnel, funding and authority to implement control measures.

Response: ACLPI is incorrectly applying CAA section 110(a)(2)(E). Under this section, a state needs to provide assurances of adequate personnel, funding and authority only for those control measures that it has included in its submitted implementation plan. It does not need to provide such assurances for control measures that are not included in its submitted implementation plan, whether or not an argument could be made that such measures should have been included to meet another CAA provision. This is clear from the language of the section: "[e]ach implementation plan *submitted by a State* * * * shall * * * provide (i) necessary assurances that the State * * * will have adequate personnel, funding, and authority under State * * * law to carry out *such* implementation plan." (emphasis added). Therefore, where a jurisdiction has not committed to implement a measure, it is not required to provide assurances of adequate resources as part of its submittal in order to have it approved under CAA section 110(a)(2)(E).

Comment: For a number of reasons, ACLPI asserts that Rule 310.01 weakens the FIP rule requirements for disturbed vacant lots and unpaved roads. ACLPI further asserts that EPA's conclusion that the differences between the FIP rule

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[12] This is clear from the language of the applicable CAA sections. CAA section 189(b)(1)(b) requires that "a state in which all or part of a serious area is located shall submit an implementation plan for such area that includes * * * provisions to assure that [BACM] * * * shall be implemented * * * " CAA section 188(e) requires that "the State [requesting an extension of the attainment date] demonstrates * * * that the plan for that [serious] area includes the most stringent measures * * * " The requirements in both sections apply to the serious area and not to the individual jurisdictions within the serious area.

and Rule 310.01 will not have a significant impact on emission reductions is unsupported by quantification or analysis of the relative emission reductions and thus EPA's approval of the rule change as sufficient to provide the same level of control as the FIP rule is therefore arbitrary and capricious and violates the Act and EPA guidance that require BACM to go beyond existing RACM-level controls.

Response: We are not withdrawing or modifying the FIP fugitive dust rule in this action. Therefore, comments regarding the effect of approving Rule 310.01 on the FIP rule are not germane.

Neither the CAA nor EPA guidance mandates that a BACM-level control measure always go beyond the existing RACM-level control measure. While both the CAA and EPA guidance intend a greater level of stringency to apply in areas that are required to implement BACM than in those areas required only to implement RACM, the intent is that the *overall* PM–10 control strategy for a category should, in general, be more stringent rather than that every individual control measure in that strategy be more stringent.

A state can show that it has implemented BACM in more than one way. It can show it by demonstrating that its BACM-level control measures for a source category collectively go beyond existing RACM-level measures for that category. Addendum at 42013. It can also show it by demonstrating that its adopted measures meet the definition of BACM. Addendum at 42010. Thus, if a state has already adopted measures to meet the RACM requirement that are collectively the "maximum degree of emissions reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts" then it need not strengthen the measures further to meet the BACM requirement.

We also emphasize that a BACM demonstration is done source category by source category and not measure by measure. In determining whether a state has provided for the implementation of BACM on a particular source category, we need to look at all the control measures for that category. In this particular instance, Rule 310.01 alone does not constitute the entire BACM-level control strategy for vacant lots and unpaved roads. Rather, it is the combination of Rule 310.01, Rule 310, and city and town commitments that constitute the BACM strategy for this category. See annual standard proposal at 19977 and 19978 and 24-hour standard proposal at 50263 and 50264.

Comment: ACLPI comments that EPA's approval of the BACM/MSM demonstration for construction sites is contingent upon commitments by MCESD to add additional control requirements for dust suppression and to make other changes to MCESD Rule 310. While ACLPI agrees that Rule 310 needs strengthening, it asserts that a commitment to make unspecified changes to the rule to achieve a BACM/MSM level of control is inadequate because it does not meet the requirements of the Act for enforceable measures no later than June 10, 2000 (BACM) or as expeditiously as practicable (MSM) and offers no assurances that adequate changes will ever be adopted. ACLPI claims that the techniques for controlling emissions from construction activities and sites are well known.

ACLPI further asserts that EPA may only approve a plan based on a commitment pursuant to CAA section 110(k)(4) and then only if the state commits to adopt specific enforceable measures by a date certain but not later than 1 year after the date of approval of the plan revisions. ACLPI claims that MCESD's commitments to improve Rule 310 do not meet the requirements of CAA section 110(k)(4) because it does not commit to adopt specific enforceable measures but only to "research, develop and incorporate" additional unspecified measures for dust suppression practices/equipment into Rule 310 or the dust control plans required under that rule. Finally, ACLPI states that the serious area plan must include the BACM/MSM measures identified from South Coast, Clark County and Imperial County or provide a reasoned justification for their rejection and it is not enough for Maricopa County to commit to studying these measures.

Response: We are approving MCESD's commitments under CAA section 110(k)(3) and not section 110(k)(4). We believe—consistent with past practice—that the Act allows approval of enforceable commitments under section 110(k)(3) that are limited in scope where circumstances exist that warrant the use of commitments in place of adopted measures. These commitments are enforceable by EPA and citizens under, respectively, CAA sections 113 and 304 of the Act.[13]

Section 110(k)(4) provides for the conditional approval of State commitments; however, these commitments do not need to be enforceable. Commitments approved under section 110(k)(3) are not enforceable by either EPA or citizens, rather the Act provides that the conditional approval will convert to a disapproval if "the State fails to comply with such commitment."

MCESD's commitments have been adopted by the Maricopa County Board of Supervisors after appropriate public notice and hearing and meet Arizona state requirements for the adoption of enforceable SIP commitments by local jurisdictions. See A.R.S. 49–406 G. and Maricopa County Resolutions. Once we have approved them into the SIP under CAA section 110(k)(3), the commitments are fully enforceable against MCESD and the Board under CAA sections 113 and 304.

We are allowing the use of these enforceable commitment here because it is the only approach available at this time to assure the needed improvements to Rule 310. The information needed to make these improvements and to specify the details of these improvements does not currently exist and must be developed through additional research and investigation.

While the general techniques for controlling dust from construction activities are well known (*e.g.* watering), the most effective applications of these general techniques for controlling emissions from any particular construction site in Maricopa County (*e.g.*, how much water and when to apply it) are not well known. Construction sites differ in soils (affecting the quantity of water needed for effective control), meteorological conditions (affecting the frequency with which water must be applied), equipment size/use (affecting quantity and plume characteristics of dust generated), project phase (affecting quantity and time period of dust generated), and level of activity (affecting quantity of dust generated). The specifics of how controls should be applied to meet the 20 percent opacity standard and other applicable Rule 310 standards will vary depending on these and other site and activity parameters.

[13] In the past, we have approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. See, for example, *American Lung Association of New Jersey* v. *Kean*, 670 F. Supp. 1285 (D.N.J. 1987), affirmed, 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. of Environmental Conservation*, 668 F. Supp. 848 (S.D.N.Y.1987); *Citizens for a Better Environment* v. *Deukmejian*, 731 F. Supp. 1448, reconsideration granted in part, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air, et al.* v. *South Coast Air Quality Management District, CARB, and EPA*, No. CV 97–6916 HLH, (C.D. Cal. August 27, 1999). Further, if a state fails to meet its commitments, we can make a finding of failure to implement the SIP under Section 179(a), which would start an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

One of the enforceable commitments by MCESD is to develop parameters that address various site conditions and are sufficient to ensure that Rule 310's performance standards are met more consistently. The concern captured in this enforceable commitment is that, while it is important for sites to have some flexibility in selecting which control measure(s) to implement, there are field circumstances where the technique must be implemented in a certain manner to be effective. For example, where hydrophobic soils exist under dry meteorological conditions, it may be necessary to water several days prior to ground disturbance to allow water to penetrate to the depth of cut. In some other situations, a tackifyer or surfactant needs to be added to the water for better penetration. However, these approaches may be needed only under certain field conditions. MCESD needs additional time to investigate when and where it would be appropriate to require more specific controls and what those controls should be.

Another one of MCESD's commitments is to modify Rule 310's existing opacity standard/test method or add an additional opacity standard(s)/test method(s), so that they better characterize fugitive dust sources that create intermittent plumes. Information on how to do this most effectively is currently lacking. While derivations on EPA Reference Method 9 (the standard opacity test method) observations have been adopted in Rules 310 and 310.01 for unpaved roads and unpaved parking areas to better accommodate the temporal nature of plumes from vehicle passes, additional field research is needed to determine how observation intervals and other aspects of opacity readings can be better tailored to the variety of intermittent plumes generated by construction equipment and activities.

Once we determine that circumstances warrant the use of an enforceable commitment, we believe that three factors should be considered in determining whether to approve the enforceable commitments: (1) whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.[14]

First, MCESD's commitments address a very limited portion of the CAA's requirements for the implementation of BACM and the inclusion of MSM. In this case, MCESD's commitments are improvements to aspects of the already-adopted and implemented Rule 310; improvements that, we again emphasize, cannot be made at this time because additional research is needed.[15] Second, MCESD has committed resources adequate to fulfill its commitments and has provided information on its work plan for completing the necessary technical work. *See* Maricopa County commitments as revised December 19, 2001.

The final factor is whether the commitment is for a reasonable and appropriate period. All but one of the commitments have deadlines of December 2002, less than a year after their approval. The other commitment is the implementation of a second level of dust control education that will begin in the March to June 2003 time frame. *See* Maricopa County commitments as revised December 19, 2001. Given the complexity of the tasks required by the commitments, we believe that these schedules are expeditious. Moreover, they are consistent with the attainment and RFP demonstrations in the plan.

Our approach here of accepting enforceable commitments that are limited in scope is not new. We have historically recognized that under certain circumstances, issuing a full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See e.g.*, 62 FR 1150, 1187 (January 8, 1997) (ozone attainment demonstration for the South Coast Air Basin); 65 FR 18903 (April 10, 2000) (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326 (August 3, 1998) (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (State Implementation Plan for New Jersey).

Nothing in the Act speaks directly to the approvability of enforceable commitments. However, we believe that our interpretation is consistent with its provisions. For example, CAA section 110(a)(2)(A) provides that each SIP "shall include enforceable emission limitations and other control measures, means or techniques * * * *as well as schedules and timetables for compliance*, as may be necessary or appropriate to meet the applicable requirement of the Act." (Emphasis added.) The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to be fully adopted to meet the Act's applicable requirements for the implementation of BACM and inclusion of MSM. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments we are approving today—as long as the entire package of measures and rules provides for BACM and MSM.[16]

Comment: ACLPI comments that the CAA requires that SIPs must provide for the implementation of all RACM and that the Governor's Agricultural Best Management Practices Committee identified a variety of available and feasible control measures which are included in the agricultural general permit rule as BMPs. ACLPI asserts that the Rule does not meet the CAA requirement for all RACM because it only requires the implementation of one BMP from each of three categories of farm activities even if the implementation of more than one BMP would be technologically and economically feasible.

Response: This comment is neither germane to today's action nor timely. In today's action, we have addressed only whether Arizona's BMP general permit rule provides for the implementation of BACM and the inclusion of MSM. We have not addressed whether it also provided for the implementation of RACM because we have already done so in an earlier rulemaking that was finalized on October 11, 2001. The appropriate time for ACLPI to raise issues regarding whether the general permit rule meets the CAA's RACM requirement for agricultural sources in the Phoenix area was during the comment period on this earlier rulemaking. ACLPI made comments on this earlier rulemaking, and we fully addressed those comments in the final

[14] In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow States to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994). While we do not believe that case is directly applicable here, we agree with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. See *NRDC*, 22 F.3d at 1134.

[15] As we will discuss later, MCESD has also committed to adopt a rule for certain types of charbroilers. This commitment does not change our analysis here because, even when combined with the commitments to improve Rule 310, it is a very small part of the demonstration that the plan includes MSM.

[16] Our interpretation that the Act allows for an approval of limited enforceable commitments has been upheld by the Ninth Circuit Court of Appeals, as well as by other circuits. See *Kamp* v. *Hernandez*, 752 F.2d 1444 (9th Cir. 1985); *City of Seabrook* v. *EPA*, 659 F.2d 1349 (5th Cir. 1981); *Connecticut Fund for the Environment* v. *EPA*, 672 F.2d 998 (2d Cir.), cert. denied 459 U.S. 1035 (1982); *Friends of the Earth* v. *EPA*, 499 F.2d 1118 (2d Cir. 1974).

action. See 66 FR 51869, 51871. See also, 66 FR 34598 (June 29, 2001).

Comment: ACLPI asserts that the metropolitan Phoenix area plan fails to include the most stringent measures as required by CAA section 188(e) because it does not uniformly require the cessation of tilling on high wind days as South Coast Rule 403 rule does but rather includes it as one measure among several that a farmer may choose to implement. ACLPI further asserts that ADEQ's attempt to justify this deviation by stating that "no research currently exists which demonstrates that cessation of high wind tilling when gusty winds exceed 25 mph in the Maricopa County area is more effective at reducing PM–10 then the agricultural PM–10 general permit * * *" is irrelevant because the appropriate inquiry is whether the cessation of tilling on high wind days combined with the implementation of at least one other BMP would be more effective at reducing PM–10 which ACLPI claims, without support, it would be.

Response: South Coast Rule 403 does not require cessation of tilling on high wind days. Rule 403 includes a list of optional measures an affected source can use to reduce PM–10. For agricultural sources affected by Rule 403, the South Coast AQMD developed a series of farming practices that can be used by a grower as alternative means to comply with the requirements of Rule 403. These practices are listed in "Rule 403 Agricultural Handbook: Measures to Reduce Dust from Agricultural Operations in the South Coast Air Basin" ("Handbook"). If a grower decides to opt for compliance with the Rule by utilizing the dust control practices in the Handbook, the grower must cease tilling and soil preparation operations when winds are over 25 mph.

The requirement to cease tilling on high wind days is found in Rule 403.1 ("Wind Entrainment of Fugitive Dust"). The requirement is applicable only to the Coachella Valley (Palm Springs area) of the South Coast air basin and has a number of exemptions. *See* South Coast Rule 403.1, sections (a), (d)(4), and (h)(4).

The BMP general permit includes "limited activity during high wind events" among the list of BMPs from which a grower can select. The BMP Committee and Arizona decided not to require cessation of tilling on high wind days as a provision in the general permit for a number of technical and practical reasons, the main ones being the infrequency of high wind events in the Phoenix area, especially in comparison to the frequency of high wind events in the Coachella Valley.

Based on local meteorological data, MAG estimated that there were 11 days in 1995 with winds greater than 15 mph. In the Phoenix nonattainment area, the State determined that a small percentage (*i.e.*, 15 percent) of tilling occurs during the high wind season (*i.e.*, March through September). Within the high wind season, only 4 percent of days have wind speeds greater than 15 mph.[17] The Coachella Valley is much more windy, typically experiencing high wind greater than 25 mph on 47 days per year.[18] Based on this information, the BMP Committee and the State determined that an agricultural requirement developed specifically for Coachella Valley high wind conditions was not appropriate for the Phoenix area and that requiring cessation of tilling on high wind days would not be reasonable because since it would impact a small number of growers and provide minimal reductions.

Arizona has provided a reasonable justification for not requiring cessation of tilling during high wind events. In the Microscale plan, the State shows that it was windblown dust from an already tilled agricultural field and not the active tilling of that field that contributed to the 24-hour exceedance at West Chandler. *See* Microscale plan, pp. 16. In the serious area plan, the State demonstrates that the BMP general permit rule as adopted in combination with other adopted measures provides for expeditious attainment of the 24-hour PM–10 standard in the Phoenix area and is not necessary for expeditious attainment of the annual standard in the area. Finally, the State through its BMP committee has determined that the requirement for one BMP per category is the most effective economically and technologically feasible control measure for agricultural sources in the Phoenix area. Given all of this, the State has reasonably declined to mandate the cessation of tilling during high winds when faced with an absence of data that it would make the BMP rule more effective.[19]

Comment: ACLPI asserts that because Arizona is seeking an extension of the PM–10 nonattainment date to December 31, 2006, it must show that its plan includes the most stringent measure for each source category, including agriculture, citing CAA section 188(e). It then contends that South Coast Rule 403 is significantly more stringent than the general permit rule, noting that Rule 403 establishes six categories of management practices and requires operators to implement at least one of the listed practices in 5 of 6 categories (*i.e.*, Active, Farm Yard Area, Track-Out, Unpaved Roads, and Storage Pile) and three measures in the "Inactive" category. ACLPI claims that when the cessation of tilling on high wind days is included, each commercial farmer is required to implement a minimum of nine control measures and that Arizona's program only requires a total of three control measures. To qualify and obtain an extension of the attainment date, the Arizona SIP must include agricultural measures that are at least as stringent as Rule 403.

Response: Neither the CAA nor EPA policy requires that areas seeking attainment date extensions include without exception the most stringent measures for each source category. The CAA requires only that the plan include the most stringent measures found in the implementation plan of other States or used in practice that are feasible in the area. *See* CAA section 188(e). We interpret the MSM provision to not require any measure that is infeasible on technological or economic grounds, any measure for insignificant source categories, and any measure or group of measures that would not contribute to expeditious attainment. See 24-hour standard proposal at 50282–84.

ACLPI is not correctly characterizing the requirements of the South Coast's agricultural control measures (which are found in Rules 403 and 403.1). Agricultural operations are required to comply with the provisions of Rule 403 unless the person responsible for such

[17] In fact, when using mean hourly wind speed observations averaged over all monitoring sites in the Maricopa County nonattainment area for 1995, it was estimated that there 29 hours with wind speeds between 15 and 19.9 mph, 7 hours with wind speeds between 20 and 24.9 hours, and only one hour with wind speeds over 25 mph. MAG TSD, Appendix II, Exhibit 7 "Wind Criteria and Associated Emissions for Regional Particulate Matter Modeling," Updated April 13, 1999, p. 3.

[18] The Coachella Valley is not the only agricultural area in the South Coast district. Riverside (outside of the Coachella Valley) and San Bernardino Counties are the predominant agricultural areas in the region. These areas experience winds greater than 25 mph approximately 25 and 23 days per year, respectively, yet the South Coast does not impose the cessation of tilling requirement in these areas unless a grower opts to use the practices listed in the Handbook as the means of complying with Rule 403.

[19] We note that one exemption from Rule 403.1's cessation of tilling requirement is when tilling activities result in a net reduction of wind blown fugitive dust, an exemption that is applicable only if wind blown fugitive dust is not visible from tilled soil, but is visible from untilled soil within the same agricultural parcel. Rule 403.1 (h)(4)(B). This exemption shows that there are some situations when cessation of tilling during a high wind event is actually counter-productive and thus it is not always more effective to combine it with another BMP.

operations voluntarily implements the conservation practices contained in the most recent Rule 403 Handbook. See Rule 403 (h)(1)(B). The Handbook, and not the rule itself, has the requirement to implement at least one of the listed practices in 5 of 6 categories and three measures in the Inactive category. A grower, however, only has to implement practices for those categories of agricultural operations that they actually have; thus if s/he does not have one of the activity categories and/or inactive fields then the number of practices s/he must implement is fewer. As we have noted above, the requirement for cessation of tilling on high wind days applies only in the Coachella Valley portion of the South Coast district and is a requirement on all agricultural operations in the other portion of the district only when a grower opts for using the Handbook to comply with Rule 403. Therefore, ACLPI exaggerates the requirements of the South Coast agricultural control program when it claims the program requires each commercial farmer to implement a minimum of nine management practices.[20]

We agree that in general Rule 403 (or the Handbook) is likely to be more stringent than the general permit rule. We, however, also agree, as discussed below, with the State's assessment that the South Coast requirements are infeasible for the Phoenix area and that the general permit rule represents the most stringent economically and technologically feasible agricultural control program for the area.

In assessing South Coast's requirements, the BMP Committee and ADEQ determined that because of the lack of adequate technical information concerning BMP costs and effectiveness, requiring at least one BMP for the three agricultural categories adequately addressed agricultural sources of PM–10 in the Maricopa County nonattainment area. ADEQ concluded that:

> The agricultural general permit cannot mirror South Coast Rule 403 for a variety of reasons. One main reason is that agriculture in Maricopa area is primarily flood irrigated. The South Coast has dryland, irrigated, and sprinkler irrigated agriculture. The actual amount of irrigation water and frequency of irrigation can effect wind erosion estimates and the effectiveness of different control measures under different conditions. Therefore, the BMPs for Maricopa County were based on practical applications during those times when the fields were not flooded. Also, because the application of more than one BMP at a time for a selected category would only provide incremental PM–10 reductions, sometimes at an uneconomical cost, flexibility was provided in the rule to allow the expert (the farmer) to decide what BMP should be applied when and where.

As we discussed in the proposal for the 24-hour standard (see 24-hour standard proposal at 50268) and as we concluded in our original FIP measure for the agricultural sector (63 FR 41332), the BMP Committee found that agricultural PM–10 strategies must be based on local factors because of the variety, complexity, and uniqueness of farming operations and because agricultural sources vary by factors such as regional climate, soil type, growing season, crop type, water availability, and relation to urban centers.

While the Committee surveyed measures adopted in other geographic areas, including South Coast, these measures were of limited utility in determining what measures are available for the Maricopa County area. Given the limited scientific information available and the myriad factors that affect farming operations, the BMP Committee concluded that requiring more than one BMP could not be considered technologically justified and could cause an unnecessary economic burden to farmers. BMP TSD, p. 18.

Adding to concerns about the economic feasibility of requiring more BMPs per farming activity is the general uncertainty regarding the cost of the BMPs and continued viability of agriculture in Maricopa County. Between 1987 and 1997, the number of farms operating in Maricopa County declined by approximately 30 percent and the amount of land farmed declined by approximately 50 percent. This trend is expected to continue. Finally, in order to justify additional requirements for farming operations in the area beyond those in the general permit rule, the BMP Committee determined that a significant influx of money and additional research would be needed.

Based on all of these factors, the BMP Committee concluded that the Handbook's control requirements were neither technologically nor economically feasible for agricultural sources in Maricopa County and therefore are not feasible for the Phoenix area. BMP TSD, p. 18.

We agree with the analysis of the BMP Committee. As noted previously, the development of the general permit rule was a multi-year endeavor involving an array of agricultural experts familiar with Maricopa County agriculture. Maricopa County is only the second area in the country where formal regulation of PM–10 emissions from the agricultural sector has ever been attempted. We conclude that the Rule 403's and the Handbook's requirements are neither technologically nor economically feasible for Maricopa County and thus Arizona need not include them in the Phoenix serious area plan in order for us to grant an attainment date extension under CAA section 188(e).

Comment: ACLPI claims that there is no justification for relaxing the stringency of Rule 403 because virtually all of the control measures listed in Rule 403 are in the Arizona rule and so it is clear that their implementation is feasible. ACLPI asserts that Arizona's contention that "the application of more than one BMP at a time for a selected category would only provide for incremental PM–10 reductions sometimes at an uneconomical cost," is not supported by any competent data, improperly delegates regulatory discretion to the regulated community, and ignores the clear mandates of the Act.

Response: We agree that the many of the individual best management practices in the Rule 403 Agricultural Handbook are also feasible practices for the Phoenix area. Arizona, through the BMP committee, also agreed and incorporated many of them into the general permit rule. However, the feasibility and adoption of any one BMP has little relevance here because neither Rule 403, the Handbook, nor the general permit rule requires the implementation of any specific BMP, rather they require the implementation of at least one BMP from a list of possible BMPs for each of several categories of farm operations.

As has been noted many times before, little data is available on the cost of implementing specific BMPs in the Phoenix area. Using what little data was available and the technical expertise of local farmers, state and federal agricultural agencies,[21] and agricultural experts from the University of Arizona, Arizona determined that requiring the implementation at least one BMP for each of the three categories of

[20] We also note that for inactive fields, the Handbook allows agricultural operators to comply with local jurisdiction requirements in lieu of implementing three practices (Handbook, section II, p. 4.) and that a field which has been withdrawn from agricultural use in the Phoenix area becomes subject to MCESD Rule 310.01's BACM/MSM-level requirements for open areas and vacant lots. All these control options demonstrate that the six categories/nine practices versus three categories/three practices comparison is misleading.

[21] The BMP Committee is composed of five local farmers, the Director of ADEQ, the Director of the Arizona Department of Agriculture, the State Conservationist for the United States Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) state office, the Dean of the University of Arizona's College of Agriculture, and a soil scientist from the University of Arizona.

agricultural activities is the most stringent level of control that is economically and technologically feasible for the Phoenix area. This conclusion was arrived at only after a lengthy and open process and only after taking into consideration South Coast's approach to agricultural control. See 66 FR 3458, 34601.

We do not agree that the general permit rule improperly delegates regulatory discretion to the regulated community. The general permit rule follows the same general control format as Rules 310 and 310.01. This format allows the regulated entity (e.g., construction site operator, vacant lot owner, unpaved parking lot owner, etc.) to choose from a list of options for controlling its source.[22] For example, an unpaved parking lot owner may pave, gravel, or apply a chemical stabilizer. See Rule 310.01, section 303.1. This control format is the standard model for fugitive dust rules and has developed over time because of the need to impose effective but reasonable and feasible controls on a large number of similar but distinct sources. For the Phoenix serious area plan, we have found that the control measures using this format provide for the implementation of BACM and the inclusion of MSM for a number of significant source categories. As much as (if not more so than) an unpaved parking lot owner or a vacant lot owner, a grower is in the best position to determine which BMPs are best and most effective for the conditions on his/her farm.

Comment: ACLPI asserts that because the general permit rule fails to require any specific control requirements, there is no way that the State can know or meaningfully predict what the effect of the rule will be and thus any estimated emissions reduction is entirely speculative and thus inadequate under the CAA.

Response: As we noted in a previous comment, the general permit rule follows the same standard control format used by many fugitive dust rules, such as Rules 310 and 310.01 (and Rule 403 and the Rule 403 Agricultural Handbook). This format allows the regulated entity to choose from a list of options for controlling its source.

Emission reductions from these types of rules need to be quantified because they often constitute the primary control strategy needed to demonstrate attainment and/or RFP. The accepted methodology for quantifying them is to assume that some fraction of the regulated sources will choose a particular control option. For example, the assumption used in the Phoenix plan to quantify emission reductions from the unpaved parking lot measure is that one third of the regulated lots will be paved, one-third will be graveled, and one-third will be chemically stabilized. See MAG TSD, p. V–17. Provided that the assumptions are reasonable, we accept the resulting emission reductions estimate.

To prepare the emission reductions estimates for the general permit rule, ADEQ hired URS. To estimate the reductions, URS determined the most likely implementation scenario. This scenario was based on available data on the crops grown and their acreage in the Phoenix area as well as on interviews of growers in the Phoenix area about which BMPs they would most likely use in certain situations. The growers, having intimate knowledge of the crops and growing conditions in the area, are the technical experts on how the BMP rule will be implemented. By going to the technical experts, URS and Arizona reduced the level of uncertainty in the emission reduction estimates to the extent practicable.

We believe that their approach is reasonable given the situation. Most of the BMPs have never been applied in Maricopa County or elsewhere, and until the BMPs are fully implemented and ADEQ has had adequate time to evaluate their effectiveness, there will always be some degree of uncertainty regarding actual emission reductions. While it is possible that the reductions could be less than expected, it is equally plausible that the reductions will be greater than expected.

We note that no matter how specifically a rule is written, no one can ever know for certain what the future emission reductions from it will be. Estimates of future emission reductions require assumptions about future activities that are always speculative to a degree. In making emission reduction estimates, we attempt to reduce the uncertainties to the extent possible, but we can never totally eliminate them.

Quantification of emission reductions from rules is a necessary part of meeting the Act's requirements for reasonable further progress and attainment demonstrations and quantitative milestones. Beyond setting the requirements (and requiring attainment demonstrations be based on air quality modeling, see, for example, CAA section 189(b)(1)(A)), the Act leaves it to EPA's expertise to determine what constitutes technically acceptable demonstrations. As we have discussed above, Arizona followed standard and accepted procedures for quantifying emission reductions from the BMP general permit rule and as a result we find the resulting estimates acceptable for the serious area plan.

Comment: ACLPI disagrees with EPA's conclusion that the metropolitan Phoenix serious area plan adequately demonstrates that attainment by December 31, 2001 is impracticable because the plan fails to adopt all BACM for significant sources, fails to implement some measures in a timely manner or relies on mere commitments and improperly excludes BACM for de minimis sources. ACLPI asserts that the plan improperly fails to analyze whether the area would be in attainment by the 2001 deadline if all BACM were adopted and implemented on time.

Response: We have carefully reviewed the plan and have found that it provides for the implementation of BACM, assures timely implementation of measures, and relies on enforceable commitments only where they are the only feasible means of providing for the implementation of BACM as required by CAA section 189(b)(1)(B). *See* annual standard proposal at 19984 and the 24-hour standard proposal at 50273.

As we have discussed previously, neither the CAA or EPA guidance requires the implementation of all BACM. Both only require that a state provide for the implementation of best available control measures on its significant source categories. Both also allow the de minimis sources to be exempted from the BACM requirement. See CAA section 189(b)(1)(B) and the Addendum at 42014.

Contrary to ACLPI's assertion, the plan does provide a clear demonstration that even with the implementation of BACM on all source categories including de minimis categories, the Phoenix area would not be in attainment of either PM–10 standard by the end of 2001. This demonstration is a necessary part of showing that the plan correctly determines which source categories are de minimis and which are significant. *See* MAG plan, pp. 9–9 to 9–15 and the section "BACM Analysis—Step 2, Model to Identify Significant Sources" in the EPA TSD.

Comment: ACLPI disagrees with EPA's conclusion that the metropolitan Phoenix serious area plan adequately demonstrates attainment by the earliest date practicable after December 31, 2001 because the plan fails to adopt all feasible MSM, fails to implement some measures in a timely manner or relies on mere commitments and improperly excludes MSM for de minimis sources. ACLPI asserts that the plan improperly

[22] This control format is also used in South Coast's fugitive dust rules, including Rules 403, 403.1, and 1186. We approved these rules on December 9, 1998 (63 FR 67784).

fails to analyze whether the area would be in attainment earlier if all MSM were adopted and implemented in a timely manner.

Response: We have carefully reviewed the plan and have found that it includes all feasible MSM to our satisfaction, assures timely implementation of measures, and relies on enforceable commitments only where they are the only feasible means of providing for the implementation of MSM or other measures necessary for timely attainment. See annual standard proposal at 19984 and the 24-hour standard proposal at 50274. We note again that the Phoenix serious area plan did not exclude any MSM on the basis of de minimis source categories.

Comment: ACLPI comments that the plan fails to include contingency measures, noting the purpose of contingency measures is to assure continued progress toward attainment while the SIP is being revised if a state fails to make RFP or attain by the applicable attainment date. ACLPI asserts that if a state fails to make RFP or timely attain, the obvious conclusion is that the currently implemented control measures are insufficient and additional measures are needed and that this is true regardless of whether the implemented measures were relied upon in the RFP and attainment demonstrations and for this reason, EPA's suggestion that the contingency measure requirement can be satisfied by committed measures that are implemented but not relied upon in the demonstrations defeats the purpose. ACLPI contends that the proposed SIP must include contingency measures that will take effect without further action by the State or Administrator and the SIP does not include any such measures.

Response: The metropolitan Phoenix serious area plan does contain contingency measures. For the annual standard, the plan relies on the agricultural BMP general permit rule as a contingency measure. For the 24-hour standard, the plan relies on the paving or treatment of unpaved roads measure. Both measures are currently being implemented but the emission reductions from them are not necessary for demonstrating RFP and attainment for the annual standard (general permit rule) and 24-hour standard (unpaved road measures).

Failure to make RFP or attain does not necessarily mean that new controls must be adopted. Failure to make RFP or attain can be the result of the failure to implement already committed to or adopted controls, delays in the implementation of control measures, and noncompliance. In these cases, correcting the implementation problem or noncompliance corrects the RFP or attainment failure.

There are a number of benefits to allowing and even encouraging the early implementation of contingency measures. The chief benefit is that their emission reductions and thus their public health benefit are realized early. Another is that it allows states to build uncredited cushions into their attainment and RFP demonstrations, a cushion which makes actual failures to make progress or attain less likely.

Measures that have already been implemented clearly meet the section 172(c)(9) requirement that contingency measures take effect without further action by the State or Administrator.

Comment: ACLPI asserts that the Agricultural BMP general permit rule cannot be used as a contingency measure because it is not a "specific measure[ ] to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] * * *" and there is nothing in the rule that is triggered upon a showing of failure to make RFP. ACLPI quotes EPA guidance at 60 FR 56129 that "[c]ontingency measures should consist of other control measures that are not part of the area's control strategy."

Response: We note that the Agricultural BMP general permit rule is a contingency measure for the annual standard only. Emission reductions from the rule are not necessary to demonstrate RFP or expeditious attainment, and therefore, the rule is not part of Arizona's primary control strategy for attaining the annual standard. Emission reductions from the rule are necessary to demonstrate RFP and expeditious attainment of the 24-hour standard and the State chose a different measure, the unpaved road measure, to serve as the contingency measure for the 24-hour standard.

Nothing in CAA section 172(c)(9) requires that contingency measure be triggered only if there is a failure to make RFP or to attain. Contingency measure must be undertaken if there is a failure to make RFP or attain but the Act does not bar a state from using other triggers as a reason to implement them, *e.g.*, a determination that the measure is needed for attainment of another standard or to meet another CAA requirement. This is the case here; the BMP general permit rule is both needed for attainment of the 24-hour standard and to meet the CAA's BACM requirement.

Areas that must meet the BACM, MSM, and "attainment by the earliest alternative date practicable" requirement are in a difficult position when it comes to contingency measures. Adopted but unimplemented contingency measures are likely to be feasible BACM and/or MSM. We discussed this dilemma in the proposed approval for the 24-hour standard at 24-hour standard proposal at 50279:

> Certain core control measure requirements such as RACM, BACM, and MSM may result in a state adopting and expeditiously implementing more measures than are strictly necessary for expeditious attainment and/or RFP. Because of this and because these core requirements effectively require the implementation of all non-trivial measures that are technologically and economically feasible for the area, states are left with few, if any, substantive unimplemented control measures. In fact, under the Act's PM–10 planning provisions, if there were a measure or set of measures that were technologically and economically feasible and could collectively generate substantial emission reductions, *e.g.*, one year's worth of RFP, then a state would be hard pressed to justify withholding their implementation.
>
> If we read the CAA to demand that the only acceptable contingency measure are those that are adopted but not implemented, then states face a difficult choice: adopt the controls for immediate implementation and clearly meet the core control measure requirements but fail the contingency measure requirement or adopt the control measures but hold implementation in reserve to meet the contingency measure requirement but potentially fail the core control measure requirements.
>
> However, states do not need to face this difficult choice if we read the CAA to allow adopted and implemented measures to serve as contingency measures, provided that those measures' emission reductions are not needed to demonstrate expeditious attainment and/or RFP. There is nothing in the language of section 172(c)(9) that prohibits this interpretation.

ACLPI cites as EPA guidance, our 1995 proposed approval of the moderate area PM–10 SIP for the Yakima, Washington nonattainment area. This proposal, however, simply affirms our position here. In this case, Washington State used as a contingency measure for the Yakima area, a wood stove buy back program. At the time we proposed to approve it as a contingency measure, the program had been in operation for more than two years and had already replaced 70 wood stoves. We proposed to approve it as a contingency measure because the emission reductions from the program were "100 percent overcontrol," that is, not necessary for attainment. *See* 60 FR 56129, 56132 (November 7, 1995). We finalized this approval at 63 FR 5269 (February 2, 1998).

V. Final Actions

A. Approval of the Serious Area Plan

We are taking final action to approve the following elements of the serious area PM–10 plan for the metropolitan Phoenix area.

For the annual standard:

CAA provision (cite)	SIP submittal and date	Cite for proposed approval
Base year emission inventory (section 172(c)(3)).	MAG plan, February 16, 2000	Annual standard proposal at 19970.
Demonstration that the plan provides for the implementation of RACM and BACM for each significant source category (sections 189(a)(1)(c) and 189(b)(1)(b)):		
• On-road motor vehicles	MAG plan, February 16, 2000	Annual standard proposal at 19973 and 24-hour standard proposal at 50258.
• Non-road motor vehicles	MAG plan, February 16, 2000	24-hour standard proposal at 20260.
• Paved road dust	MAG plan, February 16, 2000	Annual standard proposal at 50274.
• Unpaved parking lots	MAG plan, February 16, 2000	Annual standard proposal at 19976.
• Disturbed vacant lots	MAG plan, February 16, 2000	Annual standard proposal at 19977.
• Unpaved roads	MAG plan, February 16, 2000	Annual standard proposal at 19978.
• Construction activities and sites	MAG plan, February 16, 2000	24-hour standard proposal at 50265.
• Agriculture (BACM only)	BMP TSD, June 13, 2001	24-hour standard proposal at 50268.
• Residential wood combustion	MAG plan, February 16, 2000	Annual standard proposal at 19982.
• Secondary ammonium nitrate sources	MAG plan, February 16, 2000	Annual standard proposal at 19982.
Demonstration of the impracticability of attainment by 2001 where the State has applied for an attainment date extension under section 188(e) (section 189(b)(1)(A) (ii)).	MAG plan, February 16, 2000	Annual standard proposal 19984.
Demonstration of attainment by the most expeditious alternative date practicable (section 189(b)(1)(A) (ii)).	MAG plan, February 16, 2000	Annual standard proposal 19985.
Demonstration of reasonable further progress (section 172(c)(2)).	MAG plan, February 16, 2000	Annual standard proposal 19988.
Quantitative Milestones (section 189(c))	MAG plan, February 16, 2000	Annual standard proposal 19988.
Inclusion of the most stringent measures (section 188(e)).	MAG plan, February 16, 2000 (except for agricultural sources); BMP TSD, June 13, 2001 (agricultural sources).	Annual standard proposal at 19984 (except for agricultural sources); 24-hour standard proposal at 50268 (agricultural sources).
Demonstration that major sources of PM-10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations (section 189(e)).	MAG plan, February 16, 2000	Annual standard proposal 19971.
Contingency measures (section 172(c)(9))	MAG plan, February 16, 2000 as revised by BMP TSD, June 13, 2001.	24-hour standard proposal at 50279.
Transportation conformity budget' (section 176(c)).	MAG plan, February 15, 2000	Annual standard proposal at 19970.
Provisions for assuring adequate resources, personnel, and legal authority to carry out the plan (section 110(a)(2)(E)(i)).	MAG plan, February 16, 2000 (for all categories for both standards except for agriculture sources).	Annual standard proposal at 19988 (except for agriculture sources), 24-hour standard proposal at 50280.
For the 24-hour standard:		
Base year emission inventory (section 172(c)(3)).	MAG plan, February 16, 2000	Annual standard proposal at 19970.
Demonstration that the plan provides for the implementation of RACM and BACM for each significant source category (sections 189(a)(1)(c) and 189(b)(1)(b)):		
• On-road motor vehicles	MAG plan, February 16, 2000	24-hour standard proposal at 50258 and 50259.
• Non-road motor vehicles	MAG plan, February 16, 2000	24-hour standard proposal at 50259.
• Paved road dust	MAG plan, February 16, 2000	24-hour standard proposal at 50260.
• Unpaved parking lots	MAG plan, February 16, 2000	24-hour standard proposal at 50263.
• Disturbed vacant lots	MAG plan, February 16, 2000	24-hour standard proposal at 50263.
• Unpaved roads	MAG plan, February 16, 2000	24-hour standard proposal at 50264.
• Construction activities and sites	MAG plan, February 16, 2000	24-hour standard proposal at 50265.
• Agriculture (BACM only)	BMP TSD, June 13, 2001	24-hour standard proposal at 50268.
• Residential wood combustion	MAG plan, February 16, 2000	24-hour standard proposal at 50271.
• Secondary ammonium nitrate sources	MAG plan, February 16, 2000	24-hour standard proposal at 50271.
Demonstration of the impracticability of attainment by 2001 where the State has applied for an attainment date extension under section 188(e) (section 189(b)(1)(A) (ii)).	MAG plan, February 16, 2000 (regional); BMP TSD, June 13, 2001 (Gilbert and West Chandler).	24-hour standard proposal at 50273.
Demonstration of attainment by the most expeditioius alternative date practicable (section 189(b)(1)(A)(ii)).	Mag plan, February 16, 2000 (regional); BMP TSD, June 13, 2001 (Gilbert and West Chandler).	24-hour standard proposal at 50275.

CAA provision (cite)	SIP submittal and date	Cite for proposed approval
Demonstration of reasonable further progress (section 172(c)(2)).	BMP TSD, June 13, 2001	24-hour standard proposal at 50278.
Quantitative Milestones (section 189(c))	BMP TSD, June 13, 2001	24-hour standard proposal at 50279.
Inclusion of the most stringent measures (section 188(e)).	MAG plan, February 16, 2000 except for (agricultural sources) BMP TSD, June 13, 2001 (agricultural sources).	24-hour standard proposal at 50274.
Demonstration that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations (section 189(e)).	MAG plan, February 16, 2000	24-hour standard proposal at 50257.
Contingency measures (section 172(c)(9))	MAG plan, February 16, 2000 as revised by BMP TSD, June 13, 2001.	24-hour standard proposal at 50279.
Transportation conformity budget (section 176(c)).	MAG plan, February 15, 2000	24-hour standard proposal at 50256.
Provisions for assuring adequate resources, personnel, and legal authority to carry out the plan (section 110(a)(2)(E)(i)).	MAG plan, February 16, 2000 (except for agriculture sources).	24-hour standard proposal at 50280.

B. Extension of the Attainment Date

As authorized by CAA section 188(e), we are granting Arizona's request for a five-year extension of the date for attaining both the annual and 24-hour PM–10 standards. Our decision to grant the extension is based on our determination that the State has met the necessary requirements for granting an extension of the attainment date under CAA section 188(e). See annual standard proposal at 19988 and 24-hour standard proposal at 50278. The five-year extension means that the statutory attainment date for both standards in the Phoenix nonattainment area is now December 31, 2006.

C. Approvals of Rules and Commitments

We are also approving the following rules and commitments that we proposed for approval in the annual standard proposal at 65 FR 19964:

Rule/commitment (Date of adoption of revision)	Submittal date
MCESD Rule 310 (Revised February 16, 2000)	March 2, 2000.
MCESD Rule 310.01 (Adopted February 16, 2000)	March 2, 2000.
Maricopa County Residential Woodburning Ordinance (Revised November 17, 1999)	January 28, 2000.

We are also approving numerous resolutions adopted in 1997, 1998, and 1999 by the cities and town of the metropolitan Phoenix area as well as by the Arizona Department of Transportation, Regional Public Transportation Agency, and ADEQ. Finally, we are approving Maricopa County's commitments including the revised commitments adopted on December 19, 2001 and submitted on January 8, 2002.

CAA section 110(l) prohibits us from approving a revision to the applicable implementation plan if that revision would interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act. We interpret section 110(l) to mean, among other things, that we cannot approve a plan revision if that revision would mean that the state's plans would no longer provide for attainment or RFP as these are required by the CAA or if the revision would mean that the State's plans would no longer meet another applicable requirement of the Act.

We are revising the Arizona SIP to incorporate the amended Rule 310, Rule 310.01 and the Maricopa County Residential Woodburning Ordinance in place of the previous version of Rule 310 approved in August, 1997 and of the ordinance approved in November, 1999. In addition to the effect on attainment and RFP, the "other applicable requirement of the Act" that we are concerned with here are the Act's requirements for implementation of RACM and BACM and the inclusion in the plan of MSM.

We are approving the expeditious attainment and RFP demonstrations for both PM–10 standards in the Phoenix serious area plan. These demonstrations are in part dependent on approval of the revised Rule 310, Rule 310.01, and the woodburning ordinance.

We are also finding that the Phoenix serious area plan provides for the implementation of RACM and BACM and the inclusion of the MSM for the sources subject to these rules and ordinance (construction sites, unpaved roads, unpaved parking lots, and disturbed vacant lands, and residential wood burning). Again, these findings are in large part dependent on approval of the revised Rule 310 and Rule 310.01. We, therefore, find that the approval of the revised Rule 310, Rule 310.01, and the Residential Woodburning Restrictions Ordinance will not interfere with Arizona PM–10 applicable implementation plan's compliance with the Clean Air Act's requirements for attainment, RFP, implementation of RACM and BACM, and inclusion of MSM.[23]

D. Correction of Previous SIP Disapprovals

We are finding that Arizona has corrected the deficiencies that resulted in the following disapprovals:

[23] Because the woodburning restrictions ordinance is also a provision in the State's carbon monoxide SIP, we have also considered the impact on the CO plan of approving the revised version. The revision to the ordinance strengthens its PM–10 provisions but does not make changes to its CO provisions; therefore, its approval will not interfere CO SIP's provisions for attainment, RFP, or RACM.

Disapproved element	Date and cite of disapproval	Correction
Implementation of RACM and BACM for unpaved roads, unpaved parking lots, disturbed vacant lots, and agriculture (24-hour standard).	August 4, 1997 62 FR 41856, 41862.	Approved RACM and BACM demonstration for the affected categories.[1]
Demonstration of attainment and RFP for the West chandler site (24-hour standard).	August 4, 1997 62 FR 41856, 41862.	Approved attainment and RFP demonstration.
Demonstration of attainment and RFP for the Gilbert site (24-hour)	August 4, 1997 62 FR 41856, 41862.	Approved attainment and RFP demonstration.
Implementation of RACM (annual standard)	August 3, 1998 63 FR 41326, 41329.	Approved RACM demonstration.
Demonstration of attainment (moderate area deadline, annual standard).	August 3, 1998 63 FR 41326, 41329.	Approved attainment demonstration.

[1] We approved the RACM demonstration for agricultural sources on October 11, 2001 at 66 FR 51869.

The correction of the deficiencies that caused the last two listed disapprovals also permanently lifts the offset sanction currently imposed but stayed on the Phoenix area and ends the clock for imposition of the highway funding sanction.

The full approval of the metropolitan Phoenix serious area PM–10 plan also ends the FIP clock started by the February 6, 1998 finding that the State had failed to submit the plan by the required deadline. See 63 FR 9423 (February 23, 1998).

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state plan and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 14, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(99), (100), (101), and (102) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(99) Plan revisions submitted on January 28, 2000 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County, Arizona.

(*1*) Residential Woodburning Restriction Ordinance adopted on November 17, 1999.

(100) Plan revisions submitted on February 16, 2000 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa Association of Governments, Maricopa County, Arizona.

(*1*) Resolution to Adopt the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area (including Exhibit A, 2 pages), adopted on February 14, 2000.

(B) City of Avondale, Arizona.

(*1*) Resolution No. 1711–97; A Resolution of the City Council of the City of Avondale, Maricopa County, Arizona, To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 14 pages), adopted on September 15, 1997.

(*2*) Resolution No. 1949–99; A Resolution of the Council of the City of Avondale, Maricopa County, Arizona, Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 7 pages), adopted on February 16, 1999.

(C) Town of Buckeye, Arizona.

(*1*) Resolution No. 15–97; A Resolution of the Town Council of the Town of Buckeye, Maricopa County, Arizona, To Implement Measures in the MAG 1997 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 5 pages), adopted on October 7, 1997.

(D) Town of Carefree, Arizona.

(*1*) Town of Carefree Resolution No. 97–16; A Resolution of the Mayor and Common Council of the Town of Carefree, Arizona, To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 3 pages), adopted on September 2, 1997.

(*2*) Town of Carefree Resolution No. 98–24; A Resolution of the Mayor and Common Council of the Town of Carefree, Arizona, To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 4 pages), adopted on September 1, 1998.

(*3*) Town of Carefree Ordinance No. 98–14; An Ordinance of the Town of Carefree, Maricopa County, Arizona, Adding Section 10–4 to the Town Code Relating to Clean-Burning Fireplaces, Providing Penalties for Violations (3 pages), adopted on September 1, 1998.

(E) Town of Cave Creek, Arizona.

(*1*) Resolution R97–28; A Resolution of the Mayor and Town Council of the Town of Cave Creek, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on September 2, 1997.

(*2*) Resolution R98–14; A Resolution of the Mayor and Town Council of the Town of Cave Creek, Maricopa County, Arizona, To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 1 page), adopted on December 8, 1998.

(F) City of Chandler, Arizona.

(*1*) Resolution No. 2672; A Resolution of the City Council of the City of Chandler, Arizona To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 16 pages), adopted on August 14, 1997.

(*2*) Resolution No. 2929; A Resolution of the City Council of the City of Chandler, Arizona, To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 9 pages), adopted on October 8, 1998.

(G) City of El Mirage, Arizona.

(*1*) Resolution No. R97–08–20; Resolution To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 8 pages), adopted on August 28, 1997.

(*2*) Resolution No. R98–08–22; A Resolution of the Mayor and Common Council of the City of El Mirage, Arizona, Amending Resolution No. R98–02–04 To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 5 pages), adopted on August 27,1998.

(*3*) Resolution No. R98–02–04; A Resolution To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 5 pages), adopted on February 12,1998.

(H) Town of Fountain Hills, Arizona.

(*1*) Resolution No. 1997–49; A Resolution of the Common Council of the Town of Fountain Hills, Arizona, Adopting the MAG 1997 Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area and Committing to Certain Implementation Programs (including Exhibit B, 5 pages and cover), adopted on October 2, 1997.

(*2*) Town of Fountain Hills Resolution No. 1998–49; Resolution To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 7 pages), adopted on October 1, 1998. [**Incorporation Note:** Incorporated materials are pages 4 to 10 of the 11-page resolution package; pages 1 and 2 are cover sheets with no substantive content and page 11 is a summary of measures previously adopted by the Town of Fountain Hills.]

(I) Town of Gilbert, Arizona.

(*1*) Resolution No. 1817; A Resolution of the Common Council of the Town of Gilbert, Maricopa County, Arizona, Authorizing the Implementation of the MAG 1997 Serious Area Particulate Plan for PM–10 and the MAG Serious Area Carbon Monoxide Plan for the Maricopa County Area (including 15 pages of attached material), adopted on June 10, 1997.

(*2*) Resolution No. 1864; A Resolution of the Common Council of the Town of Gilbert, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Attachment A, 5 pages), adopted on November 25, 1997. [**Incorporation note:** Attachment A is referred to as Exhibit A in the text of the Resolution.]

(*3*) Ordinance 1066; An Ordinance of the Common Council of the Town of Gilbert, Arizona Amending the Code of Gilbert by Amending Chapter 30 *Environment*, by adding New Article II *Fireplace Restrictions* Prescribing Standards for Fireplaces, Woodstoves, and Other Solid-Fuel Burning Devices in New Construction; Providing for an Effective Date of January 1, 1999; Providing for Repeal of Conflicting Ordinances; Providing for Severability (3 pages), adopted on November 25, 1997.

(*4*) Resolution No. 1939: A Resolution of the Common Council of the Town of Gilbert, Arizona, Expressing its Commitment to Implement Measures in

the Maricopa Association of Governments (MAG) 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Attachment A, 5 pages), adopted on July 21, 1998. [**Incorporation note:** Attachment A is referred to as Exhibit A in the text of the Resolution.]

(J) City of Glendale, Arizona.

(*1*) Resolution No. 3123 New Series; A Resolution of the Council of the City of Glendale, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 20 pages), adopted on June 10, 1997.

(*2*) Resolution No. 3161 New Series; A Resolution of the Council of the City of Glendale, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 6 pages), adopted on October 28, 1997.

(*3*) Resolution No. 3225 New Series; A Resolution of the Council of the City of Glendale, Maricopa County, Arizona, Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 9 pages), adopted on July 28, 1998.

(K) City of Goodyear, Arizona.

(*1*) Resolution No. 97–604 Carbon Monoxide Plan; A Resolution of the Council of the City of Goodyear, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 21 pages), adopted on September 9. [**Incorporation note:** Adoption year not given on the resolution but is understood to be 1997 based on resolution number.]

(*2*) Resolution No. 98–645; A Resolution of the Council of the City of Goodyear, Maricopa County, Arizona, Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Attachment III, 7 pages), adopted on July 27, 1998.

(L) City of Mesa, Arizona.

(*1*) Resolution No. 7061; A Resolution of the City Council of the City of Mesa, Maricopa County, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 13 pages plus index page), adopted on June 23, 1997.

(*2*) Resolution No. 7123; A Resolution of the City Council of the City of Mesa, Maricopa County, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 10 pages), adopted on December 1, 1997.

(*3*) Resolution No. 7360; A Resolution of the City Council of the City of Mesa, Maricopa County, Arizona, to Implement Measures in the MAG Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on May 3, 1999.

(*4*) Ordinance No. 3434; An Ordinance of the City Council of the City of Mesa, Maricopa County, Arizona, Relating to Fireplace Restrictions Amending Title 4, Chapter 1, Section 2 Establishing a Delayed Effective Date; and Providing Penalties for Violations (3 pages), adopted on February 2, 1998.

(M) Town of Paradise Valley, Arizona.

(*1*) Resolution Number 913; A Resolution of the Town of Paradise Valley, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 9 pages), adopted on October 9, 1997.

(*2*) Resolution Number 945; A Resolution of the Mayor and Town Council of the Town of Paradise Valley, Arizona, to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 5 pages), adopted on July 23, 1998.

(*3*) Ordinance Number 454; An Ordinance of the Town of Paradise Valley, Arizona, Relating to Grading and Dust Control, Amending Article 5–13 of the Town Code and Sections 5–13–1 Through 5–13–5, Providing Penalties for Violations and Severability (5 pages), adopted on January 22, 1998. [**Incorporation note:** There is an error in the ordinance's title, ordinance amended only sections 5–13–1 to 5–13–4; see section 1 of the ordinance.]

(*4*) Ordinance Number 450; An Ordinance of the Town of Paradise Valley, Arizona, Adding Section 5–1–7 to the Town Code Relating to Clean-Burning Fireplaces, Providing Penalties for Violations (3 pages), adopted on December 18, 1997.

(N) City of Peoria, Arizona.

(*1*) Resolution No. 97–37; A Resolution of the Mayor and Council of the City of Peoria, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibits A, 5 pages, and B, 19 pages), adopted on June 17, 1997.

(*2*) Resolution No. 97–113; A Resolution of the Mayor and Council of the City of Peoria, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area and Directing the Recording of This Resolution with the Maricopa County Recorder and Declaring an Emergency (including Exhibit A, 8 pages plus index page), adopted on October 21, 1997.

(*3*) Resolution No. 98–107; A Resolution of the Mayor and Council of the City of Peoria, Arizona, to Approve and Authorize the Acceptance to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 7 pages), adopted on July 21, 1998.

(O) City of Phoenix, Arizona.

(*1*) Resolution No. 18949; A Resolution Stating the City's Intent to Implement Measures to Reduce Air Pollution (including Exhibit A, 19 pages), adopted on July 2, 1997.

(*2*) Resolution No. 19006; A Resolution Stating the City's Intent to Implement Measures to Reduce Air Pollution (including Exhibit A, 13 pages), adopted on November 19, 1997.

(*3*) Ordinance No. G4037; An Ordinance Amending Chapter 39, Article 2, Section 39–7 of the Phoenix City Code by Adding Subsection G Relating to Dust Free Parking Areas; and Amending Chapter 36, Article XI, Division I, Section 36–145 of the Phoenix City Code Relating to Parking on Non-Dust Free Lots, adopted on July 2, 1997 (5 pages).

(*4*) Resolution No. 19141; A Resolution Stating the City's Intent to Implement Measures to Reduce Particulate Air Pollution (including Exhibit A, 10 pages), adopted on September 9, 1998.

(*5*) Ordinance No. G4062; An Ordinance Amending the Phoenix City Code By Adding A New Chapter 40 "Environmental Protections," By Regulating Fireplaces, Wood Stoves and Other Solid-Fuel Burning Devices and Providing that the Provisions of this Ordinance Shall Take Effect on December 31, 1998 (5 pages), adopted on December 10, 1997.

(P) Town of Queen Creek, Arizona.

(*1*) Resolution 129–97; A Resolution of the Town Council of the Town of Queen Creek, Maricopa County, Arizona to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 3 pages), adopted on June 4, 1997.

(*2*) Resolution 145–97; A Resolution of the Town Council of the Town of

Queen Creek, Maricopa County, Arizona to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 1 page), adopted on November 5, 1997.

(*3*) Resolution 175–98; A Resolution of the Town Council of the Town of Queen Creek, Maricopa County, Arizona to Implement Measures in the MAG 1998 Serious Area Particulate Plan for the Maricopa County Area (including Exhibit A, 9 pages), adopted on September 16, 1998.

(Q) City of Scottsdale, Arizona.

(*1*) Resolution No. 4864; A Resolution of the City of Scottsdale, Maricopa County, Arizona, To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area: Stating the Council's Intent to Implement Certain Control Measures Contained in that Plan (including Exhibit A, 21 pages), adopted on August 4, 1997.

(*2*) Resolution No. 4942; Resolution of the Scottsdale City Council To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 13 pages), adopted on December 1, 1997.

(*3*) Resolution No. 5100; A Resolution of the City of Scottsdale, Maricopa County, Arizona, To Strengthen Particulate Dust Control and Air Pollution Measures in the Maricopa County Area (including Exhibit A, 10 pages), adopted on December 1, 1998.

(R) City of Surprise, Arizona.

(*1*) Resolution No. 97–29; A Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on June 12, 1997.

(*2*) Resolution No. 97–67; A Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 3 pages), adopted on October 23, 1997.

(*3*) Resolution No. 98–51; A Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 6 pages), adopted on September 10, 1998.

(s) City of Tempe, Arizona.

(*1*) Resolution No. 97.39; Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 18 pages), adopted on June 12, 1997.

(*2*) Resolution No. 97.71, Resolution of the Council of the City of Tempe Stating Its Intent to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 6 pages), adopted on November 13, 1997.

(*3*) Resolution No. 98.42, Resolution of the Council of the City of Tempe Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on September 10, 1998.

(T) City of Tolleson, Arizona.

(*1*) Resolution No. 788, A Resolution of the Mayor and City Council of the City of Tolleson, Maricopa County, Arizona, Implementing Measures in the Maricopa Association of Governments (MAG) 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 12 pages), adopted on June 10, 1997.

(*2*) Resolution No. 808, A Resolution of the Mayor and City Council of the City of Tolleson, Maricopa County, Arizona, Implementing Measures in the Maricopa Association of Governments (MAG) 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A), adopted on July 28, 1998.

(*3*) Ordinance No. 376, N.S., An Ordinance of the City of Tolleson, Maricopa County, Arizona, Amending Chapter 7 of the Tolleson City Code by Adding a New Section 7–9, Prohibiting the Installation or Construction of a Fireplace or Wood Stove Unless It Meets the Standards Set Forth Herein (including Exhibit A, 4 pages), adopted on December 8, 1998.

(U) Town of Wickenburg, Arizona.

(*1*) Resolution No. 1308, Resolution To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on August 18, 1997.

(V) Town of Youngtown, Arizona.

(*1*) Resolution No. 97–15, Resolution To Implement Measures in the MAG 1997 Serious Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on September 18, 1997.

(*2*) Resolution No. 98–15: Resolution To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on August 20, 1998.

(*3*) Resolution No 98–05: Resolution Stating Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution (including Exhibit A, 2 pages), adopted February 19, 1998.

(W) Maricopa County, Arizona.

(*1*) Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1A998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 16 pages), adopted on June 25, 1997. [**Incorporation note:** "1A998" error in the original.]

(*2*) Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 9 pages), adopted on November 19, 1997.

(*3*) Resolution to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 10 pages), adopted on February 17, 1999.

(*4*) Resolution to Implement Measures in the MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 10 pages), adopted on December 15, 1999.

(X) Arizona Department of Transportation, Phoenix, Arizona.

(*1*) Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 24 pages plus index page), adopted on June 20, 1997.

(*2*) Resolution to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on July 17, 1998.

(Y) Regional Public Transportation Authority, Phoenix, Arizona.

(*1*) Resolution #9701: Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 23 pages), adopted on June 12, 1997.

(Z) State of Arizona.

(*1*) Arizona Revised Statute Section 49–542(F)(7) as added in Section 31 of Arizona Senate Bill 1002, 42nd Legislative Session, 7th Special Session (1996), approved by the Governor July 18, 1996.

(101) Plan revisions submitted on March 2, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 310 revised on February 16, 2000.

(*2*) Rule 310.01 adopted on February 16, 2000.

(*3*) Appendix C revised on February 16, 2000.

(102) Plan revisions submitted on January 8, 2002, by the Governor's designee.

(i) Incorporation by reference.

(1) Maricopa County, Arizona.

(*1*) Resolution to Update Control Measure 6 in the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 2 pages), adopted on December 19, 2001.

* * * * *

3. Section 52.123 is amended by removing and reserving paragraph (f)(1)(i)and adding paragraph (j) to read as follows:

§ 52.123 Approval status.

* * * * *

(j) The Administrator is approving the following elements of the Metropolitan Phoenix PM–10 Nonattainment Area Serious Area PM–10 Plan as contained in *Revised Maricopa Association of Governments 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area*, February 2000, submitted February 16, 2000 and *Maricopa County PM–10 Serious Area State Implementation Plan Revision, Agricultural Best Management Practices (BMP)*, ADEQ, June 2000, submitted on June 13, 2001:

(1) 1994 Base year emission inventory pursuant to Clean Air Act section 172(c)(3).

(2) The Provisions for implementing on all significant source categories reasonably available control measures (except for agricultural sources) and best available control measures for the annual and 24-hour PM–10 NAAQS pursuant to section Clean Air Act sections 189(a)(1)(c) and 189(b)(1)(b)).

(3) The demonstration of the impracticability of attainment by December 31, 2001 for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(b)(1)(A)(ii).

(4) The demonstration of attainment by the most expeditious alternative date practicable for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(b)(1)(A)(ii).

(5) The demonstration of reasonable further progress for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 172(c)(2).

(6) The quantitative milestones for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(c).

(7) The inclusion of the most stringent measures for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 188(e).

(8) The demonstration that major sources of PM–10 precursors do not contribute significantly to violations for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(e).

(9) The contingency measures for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 172(c)(9).

(10) The transportation conformity budget for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 176(c).

(11) The provisions for assuring adequate resources, personnel, and legal authority to carry out the plan for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 110(a)(2)(E)(i).

§ 52.124 [Amended]

4. Section 52.124 is amended by removing and reserving paragraphs (b) and (c).

[FR Doc. 02–18171 Filed 7–24–02; 8:45 am]

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H.J. Res. 87/P.L. 107–200

Approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level

radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste Policy Act of 1982. (July 23, 2002; 116 Stat. 735)

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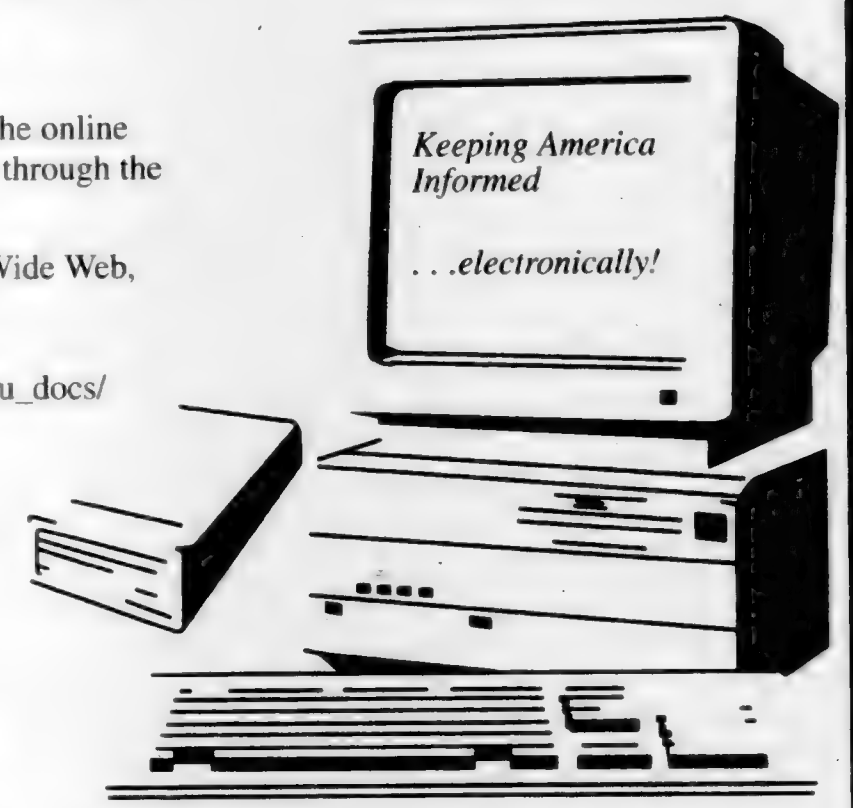

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Delegation of Authority With Respect to Concluding Amendments to the July 12, 1999, Agreement Concerning Trade in Certain Steel Products From the Russian Federation

Memorandum for the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, it is hereby ordered that the Secretary of Commerce is designated and empowered to exercise, following consultations with the United States Trade Representative and other agencies as appropriate, the authority vested in the President to conclude amendments to the July 12, 1999, Agreement Concerning Trade in Certain Steel Products from the Russian Federation in accordance with Article XI of the 1990 Agreement on Trade Relations between the United States of America and the Russian Federation, and title IV of the Trade Act of 1974. The Secretary may exercise such authority without approval, ratification, or other action of the President.

As the Secretary of Commerce may direct, the Assistant Secretary for Import Administration is authorized to exercise the authority vested in the Secretary by this memorandum.

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, July 23, 2002.

[FR Doc. 02–19137
Filed 7–25–02; 8:45 am]
Billing code 3510–BP–M

Rules and Regulations

Federal Register
Vol. 67, No. 144
Friday, July 26, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO–361–A35; DA–01–04]

Milk in the Mideast Marketing Area; Interim Order Amending the Order.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends certain pooling provisions of the Mideast Federal milk order on an interim basis. Disorderly marketing conditions from inadequate pooling provisions warrant these amendments. It implements amendments to the *Pool plant* provisions which eliminate automatic pool plant status for the 6-month period of March through August, eliminate the inclusion of milk shipments to a distributing plant regulated by another Federal milk order as pool-qualifying shipments, eliminate the "split plant" feature, eliminate the inclusion of diversions made by a pool supply plant located outside the marketing area to a pool distributing plant as the supply plant's qualifying shipments, and establish a "net shipments" provision for supply plants. For the *Producer milk* provisions, this interim order implements amendments that increase the number of days that the milk of a producer needs to be delivered to a pool plant before being eligible for diversion, establish year-round diversion limits for producer milk, adjusted seasonally, for distributing plants pooled on the order, and exclude from receipts the diversions made by a pool plant to a second pool plant from the calculation of the diversion limitation. More than the required number of producers in the Mideast marketing area have approved the issuance of the interim order as amended.

EFFECTIVE DATE: August 1, 2002.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, Stop 0231, Room 2968, USDA/AMS/Dairy Programs, Order Formulation Branch, 1400 Independence Avenue SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address *Gino.Tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses", the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. In October 2001, there were 11,120 producers pooled on and 40 handlers regulated by the Mideast order. Based on these criteria, the vast majority of the producers and handlers would be considered small businesses. The adoption of the amended pooling standards serve to revise and establish criteria that ensure the pooling of producers, producer milk, and plants that have a reasonable association with, and are consistently serving, the fluid milk needs of the Mideast milk marketing area. Criteria for pooling milk are established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market, and determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an equal fashion to both large and small businesses.

Prior documents in this proceeding:

Notice of Hearing: Issued September 21, 2001; published September 28, 2001 (66 FR 49571).

Tentative Final Decision: Issued June 4, 2002; published June 11, 2002 (67 FR 39871).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Mideast order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Mideast order:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Mideast order, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Mideast order, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional Findings. It is necessary and in the public interest to make these interim amendments to the Mideast order effective August 1, 2002. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The interim amendments to this order are known to handlers. The final decision containing the proposed amendments to this order was issued on June 4, 2002.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective on August 1, 2002. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Mideast order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the interim order amending the Mideast order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1033

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Mideast marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended on an interim basis, as follows:

The authority citation for 7 CFR Part 1033 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. Section 1033.7 is amended by:

a. Removing "; and" at the end of paragraph (c)(1)(iii) and adding a period in its place;

b. Removing paragraph (c)(1)(iv);

c. Revising paragraphs (c)(2), (c)(4), and (d)(2);

d. Removing the words "or its predecessor orders" in paragraph (e) introductory text;

e. Removing "and;" at the end of paragraph (h)(6) and adding a period in its place; and

f. Removing paragraph (h)(7).

The revisions read as follows:

§ 1033.7 Pool plant.

* * * * *

(c) * * *

(2) The operator of a supply plant located within the marketing area may include deliveries to pool distributing plants directly from farms of producers pursuant to § 1033.13(c) as up to 90 percent of the supply plant's qualifying shipments. Handlers may not use shipments pursuant to § 1033.13(c) to qualify plants located outside the marketing area.

* * * * *

(4) Shipments used in determining qualifying percentages shall be milk transferred or diverted and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

* * * * *

(d) * * *

(2) The 30 percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month. Shipments used in determining qualifying shipments in meeting this 30 percent delivery requirement shall be milk transferred or diverted and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants;

* * * * *

2. Section 1033.13 is amended by:

a. Revising paragraph (d)(2);

b. Redesignating paragraphs (d)(3) through (d)(6) as paragraphs (d)(4) through (d)(7);

c. Adding a new paragraph (d)(3); and

d. Revising newly designated paragraph (d)(4).

The revisions and additions read as follows:

§ 1033.13 Producer milk.

* * * * *

(d) * * *

(2) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of August through November;

(3) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of December through July if the requirement of paragraph (d)(2) of this section (§ 1033.13) in each of the prior months of August through November are not met, except in the case of a dairy farmer who marketed no Grade A milk during each of the prior months of August through November.

(4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c) of this chapter or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 60 percent in each of the months of August through February and 70 percent in each of the months of March through July.

* * * * *

Dated: July 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18923 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 00–105–1]

RIN 0579–AB36

Payments for Cattle and Other Property Because of Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations regarding payments made in connection with animals and other property disposed of because of bovine tuberculosis to provide that the Animal and Plant Health Inspection Service will make payments to owners of dairy cattle and other property used in connection with a dairy business, and a dairy processing plant in the area of El Paso, TX, provided the owners agree to dispose of their herds, close their existing dairy operations, and refrain from establishing new cattle breeding operations in the area. This action is necessary to further tuberculosis eradication efforts in the United States and protect livestock not affected with bovine tuberculosis from the disease.

DATES: This interim rule is effective July 26, 2002. We will consider all comments that we receive on or before September 24, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–105–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–105–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00–105–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (tuberculosis) is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, "Tuberculosis" and in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (UMR), January 22, 1999, edition, which is incorporated by reference into the regulations in part 77. Additionally, the regulations in 9 CFR part 50 (referred to below as the regulations) provide for the payment of indemnity to owners of certain animals destroyed because of tuberculosis, in order to encourage destruction of animals that are infected with, or at significant risk of being infected with, the disease.

Scope of This Interim Rule

In this interim rule, we are adding provisions to part 50 of the regulations to allow APHIS to make payments to owners of dairy cattle and other property in the area of El Paso, TX, in connection with the disposal of their herds and dairy operations, under the condition that the owners agree to dispose of their herds, close their existing dairies and refrain from establishing new cattle breeding operations in the area. The provisions of this interim rule apply to owners of dairy herds and other property only within a specified area in Texas. All other animals in the United States destroyed because of tuberculosis will continue to be eligible for indemnity in accordance with the existing regulations. To make this clear, we are designating the existing regulations in part 50 as subpart A, and are designating the provisions we are adding in this interim rule (new §§ 50.17 through 50.22) as subpart B of part 50. Additionally, we are adding language to § 50.2 to make clear our intent.

The action we are taking in this interim rule is part of a cooperative plan with the State of Texas to create a buffer zone along the United States-Mexico border that will contain no cattle that are at significant risk of being infected with tuberculosis. Since 1985, State animal health officials in Texas, along with APHIS, have been taking measures to eliminate tuberculosis in dairy herds in the El Paso area. (Tuberculosis has been diagnosed in only one herd of beef cattle in the area, and that infection was due to an infected steer from Mexico that was added to the herd. We believe the lack of tuberculosis infection in beef cattle is due to the relatively short time such cattle remain on a premises, compared to dairy cattle.) As a result of these eradication efforts, dairy herds in the El Paso area have become free of tuberculosis, only to be reinfected despite the application of sound agricultural practices designed to prevent reintroduction of the disease.

Recent epidemiological findings, including the DNA fingerprinting of tuberculosis isolates, have indicated that the reinfection of the dairy herds near El Paso is strongly correlated with the proximity of tuberculosis-infected herds in the area of Ciudad Juarez, Mexico. Based on this evidence, we consider it likely that any dairy herds that remain in the El Paso area will continue to be reinfected with tuberculosis, despite U.S. efforts to eradicate the disease.

Because of this situation, APHIS, in conjunction with State animal health officials in Texas, has determined that, in order to further the eradication of tuberculosis in the United States, it is necessary to remove all bovine dairy herds from the El Paso area. To make this possible, APHIS has secured funding to make payments to the owners of those dairy operations, including payments to owners for the loss of their animals and other property, for the cessation of their dairy operations, for the cessation of the use of their dairy properties for dairy operations, and for relocation of a dairy facility.

Eligibility for Payment

New § 50.17(a) provides that owners of dairy operations, including owners of dairy herds and other property, will be eligible for payment under the provisions of this rule if they meet all applicable requirements of the regulations and if their herds are located in the area in Texas circumscribed by the following boundaries: Beginning at the point where the Hudspeth-El Paso County line intersects U.S. Highway 62; then west along U.S. Highway 62 to the El Paso Toll Bridge; then southeast along the Rio Grande River to the Fort Hancock-El Porvenir Bridge; then northeast along spur 148 to Interstate 10; then northwest along Interstate 10 to the Hudspeth-El Paso County line; then north along the Hudspeth-El Paso County line to the point of beginning.

New § 50.17(b) provides that, to be eligible for payment under this interim rule, all owners of dairy operations, including owners of dairy herds and other property, within the area described above under the heading "Eligibility for Payment" must sign and adhere to an agreement with APHIS to do the following:

- Cease all dairy operations within the described area, and dispose of all sexually intact cattle on the dairy operation premises, no later than 2 years after all eligible owners have signed their respective agreements;
- Conduct no dairy farming or other dairy activity, including the rearing of any breeding cattle, but not including the grazing or feeding of steers and spayed heifers intended for terminal market, within the area described above until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements;
- Allow a covenant to be placed on the property where the dairy operations were conducted that will prevent the establishment of any cattle breeding operations (not including the grazing or feeding of steers and spayed heifers intended for terminal market) on the premises until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less then 20 years after all eligible owners have signed their respective agreements;
- Maintain responsibility for all cattle on the premises used in the dairy operation until those animals are removed from the premises;
- Make all arrangements for the removal of all sexually intact cattle from the premises; and
- Notify APHIS officials of the intended removal of all sexually intact cattle from the premises and provide APHIS officials with the opportunity to monitor and evaluate the removal operations.
- Such other terms, provisions, and conditions as agreed by each owner and APHIS.

Time Limit for Disposal of Cattle and Future Restrictions

There are approximately 12,200 dairy cattle in the described El Paso area. We are providing up to 2 years for owners to dispose of all cattle from dairy operations in the area to minimize any economic effects such disposal might otherwise have on the beef industry in that region.

We are requiring a minimum 20-year period without cattle breeding operations because reinfection of herds in the El Paso area has been linked to the existence of tuberculosis in nearby regions of Mexico, and we consider 20 years to represent a minimum reasonable time frame for the eradication of tuberculosis from those Mexican regions. Additionally, we believe it will take at least 20 years of heightened surveillance in the United States to confirm what we anticipate to be the complete eradication of tuberculosis in livestock in the United States in the next several years. Until that eradication is confirmed, we believe it is necessary to continue to prohibit the breeding of cattle in the El Paso region.

Amount of Payment

New § 50.17(c) provides that we will make payments for cattle and other property based on the following rates:

- For milking cows, an amount not to exceed $2,922 per animal; and
- For heifers, an amount not to exceed $834 per animal.

We used the income approach to determine the value to be paid for disposal of the herds and the cessation of dairy operations and the cessation of use of the properties for dairy operations. We calculated the net present value (NPV) of a milking cow. To calculate the NPV, we used discounted cash flow analysis, which takes into account the quantity, variability, and duration of the forecasted income stream over a specified income projection period, assuming 15 years' worth of expected remaining life of the dairy facility.

The valuation model can be expressed in the following equation form, where r = discount rate, I = annual income per cow, and y = number of years in the discount period:

$$NPV = (1 - 1/((1 + r)^y))/r*I$$

To calculate NPV using the above equation, we had to determine the annual income per cow, the discount rate, and the number of years income is paid. We discuss each of these factors below. For more information regarding our analysis, please contact Terry Disney, APHIS Center for Epidemiology and Animal Health, at 970–490–8000.

Annual income per milking cow. There was some variation in the actual annual net income per milking cow over the past several years among the dairy operations in the El Paso area. Taking this variation into account, we used $320 as the annual net income per milking cow.

Discount rate. The discount rate used in the present value calculation is 7 percent, which is the risk-adjusted rate estimated to be appropriate in this situation.

Number of years income is paid. For the purposes of our equation, we used a term of 15 years.

Difference between discounted fair market value and salvage value. We added a small differential (just under $8 per head) to the NPV to account for the difference between the fair market value of the milking cow discounted over 15 years (because our income calculations assumed that the size of the milking

cow herd would remain constant for 15 years) and the amount we estimated the owner would receive as salvage for a dairy cow that was sent to slaughter.

Value of heifers. Some of the dairy operations in the El Paso area include heifers that are not yet being used for milk production. We calculated the value of such heifers by subtracting from the present fair market value of each heifer the amount an owner could expect to receive if the heifer were sold for slaughter.

New § 50.17(d) provides that any dairy cattle added to a premises after the date an owner has signed the agreement discussed above will not be eligible for payment and must be disposed of within 2 years after all eligible owners have signed the agreement.

Amount of Additional Payments

New § 50.17(e) provides amounts for additional payments for two dairy facilities located within the geographic area covered by this interim rule.

Paragraph (e)(1) of § 50.17 provides for payment for relocating the equipment of a reverse osmosis plant. This plant removes water from milk. The plant was located on the premises of one of the dairy farms within the area covered by this interim rule. It would no longer be a viable operation at that location because of the removal of all dairy herds in the area. APHIS will pay the documented costs of relocating the plant's equipment to a location outside the area covered by this interim rule, up to a maximum of $675,000.

Paragraph (e)(2) of § 50.17 provides for payment for the permanent closure of a fluid milk processing plant that is located within the area covered by this interim rule. The fluid milk processing plant processes fresh milk. In determining the amount of payment that will be made for the processing plant, we used the following formula, where $Cost^G$ = amount to be paid by APHIS; ebitd = annual earnings before interest, taxes, and depreciation; and x = the industry standard multiple that is paid for similar businesses (an industry standard multiple takes into account the potential effects on the sale of a company of factors such as the age of the facility, its profitability, and the desirability of markets):

$Cost^G$ = ebitd * x − Salvage − Goodwill

In applying this formula to the fluid milk processing plant, we considered ebitd to be the average of the plant's last 4 years' earnings, as shown on the company's tax records. We estimated the industry standard multiple in this case to range from 4.5 to 5.25. We based salvage value on appraisals, and we also estimated goodwill (*e.g.*, the value of name recognition and customer base and loyalty). Using these figures, we determined that an amount not to exceed $950,000 was appropriate for the permanent closure of the milk processing plant.

APHIS will make payment to the owners of the fluid milk processing plant in the same manner and at the same times, on a pro rata basis, as we make payments to such owners for their dairy cattle and other property.

Identification and Disposal of Cattle

In order to allow for traceback, if necessary, of cattle disposed of under this interim rule, we are providing in new § 50.18(a) that all cattle so disposed of must travel from the premises of origin to their final destination with an approved metal eartag, supplied by APHIS or the State representative, bearing a serial number and attached to each animal's left ear.

New § 50.18(b) provides that cattle disposed of in accordance with this interim rule must be shipped under permit either (1) directly to slaughter at a Federal or State inspected slaughtering establishment or (2) directly to a livestock market and, under the supervision of an APHIS representative or State representative, through a livestock market pen that is dedicated to and marked exclusively for use for animals moved to slaughter, and then directly to slaughter at a Federal or State inspected slaughtering establishment.

Report of Salvage Proceeds

In order to confirm that dairy cattle affected under this interim rule are disposed of in some way, we are requiring in new § 50.19 a report of the salvage derived from the sale of each animal for which a claim for payment is made. We are requiring that the salvage form be one that is acceptable to APHIS and that is signed by the purchaser or by the selling agent handling the animals. If the cattle are sold by the pound, the salvage form must show the weight, price per pound, gross receipts, expenses if any, and net proceeds. If the cattle are not sold on a per-pound basis, the salvage form must show the net purchase price of each animal, accompanied by an explanation showing how that amount was derived. If the animals are not disposed of through regular slaughterers or through selling agents, the owner must furnish, in lieu of the salvage form, an affidavit showing the amount of salvage obtained by him or her and must certify that the amount is all he or she has received or will receive as salvage for the animals. The original of the salvage form or the affidavit of the owner must be furnished to the veterinarian in charge within 3 months of the destruction of the animals, if it is not already in his or her possession. Disposal of cattle by burial, incineration, or other means must (1) be supervised by an APHIS or State representative, who will prepare and transmit to the veterinarian in charge a report identifying the animals and showing their disposition; or (2) be documented by an affidavit of the owner identifying the animals and describing their disposition, a copy of which must be provided to the veterinarian in charge within 3 months of the destruction of the animals. The salvage form, disposal certificate, or affidavit will be for information purposes only and will have no effect on the amount of any payment due.

Claims for Payment

New § 50.20 sets forth procedures an owner must follow to submit a claim for payment. In order to coordinate claims, the timing for all claims for payment is based upon disposal of cattle, regardless of whether the payments are attributable to cattle or other property as agreed to by APHIS and the owner. These provisions are largely the same as those set forth in § 50.12 of the existing regulations for claiming indemnity for cattle, bison, captive cervids, or swine destroyed because of tuberculosis.

Under subpart B of part 50, claims for payment must be presented on payment claim forms furnished by APHIS. The payment claim forms may be obtained from the APHIS veterinarian in charge. On the claim form, the owner of the animals or other property must certify that the animals or other property are, or are not, subject to any mortgage. If the owner states that there is a mortgage, the claim form must be signed by the owner and by each person holding a mortgage, who must agree that the person specified on the claim form may receive any payment due. The APHIS veterinarian in charge or the official designated by the veterinarian in charge will record on the claim form the amount of payment that appears to be due the owner, and the owner will be furnished a copy of the APHIS payment claim form. The veterinarian in charge or official designated by the veterinarian in charge will then forward the APHIS payment claim form to the appropriate APHIS official for further action on the claim. Section 50.20 provides that the Department will not pay any costs arising from the holding of the animals pending slaughter or for trucking or other transportation costs, yardage, commission, slaughtering charges, or for

any other costs related to having the cattle slaughtered.

Payments

New § 50.21 provides that we will make payments at 90-day intervals, with the first payment to be made no earlier than 30 days after all owners eligible for payment have signed their respective agreements as required under § 50.17(b) of this interim rule. The Department will determine the amount to be paid to each owner in each payment by multiplying the total agreement amount for that owner by a fraction arrived at by dividing the initial census number of dairy cattle for the respective owner into the number of dairy cattle that have been removed from the owner's herd during that payment period. From this amount, 10 percent will be withheld until all animals in the herd have been disposed of and the requirements of this subpart have been met. The payments to owners of property other than animals will be determined by multiplying the total agreement amount for that other property times the same ratio that is used for the herd that is related to that other property, minus the 10 percent withholding.

We will not make final payments until the premises used for dairy operations have been without sexually intact cattle for at least 30 days and have been inspected by APHIS officials and been found to be free of manure, except for non-solid areas such as lagoons, and free of all feedstuffs that are not in barns, containers or feeders.

Claims Not Allowed

New § 50.22 provides that we will not allow claims for payment under this interim rule if the claimant has failed to comply with any of the requirements established by this interim rule, or if there is substantial evidence, as determined by the Administrator, that the claimant has in any way been responsible for any attempt to obtain payment unlawfully or improperly.

Definitions

We are adding definitions of *heifer* and *milking cow* to § 50.1 to read as follows:

Heifer. A female dairy cow that has not given birth.

Milking cow. A female dairy cow that has given birth and is being used for milk production.

Emergency Action

This rulemaking is necessary on an emergency basis to ensure that dairy cattle in the El Paso, TX, area, which are at significant risk of being infected with tuberculosis, are removed from that area as soon as possible. This prompt removal is necessary to help prevent the spread of bovine tuberculosis in the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. That document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this rule, we have prepared an economic analysis that provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential effects on small entities as required by the Regulatory Flexibility Act. The analyses are set forth below.

Cost-Benefit Analysis: Background

This interim rule provides for specified owners of dairy operations in the area of El Paso, TX, to be paid for the disposal of their herds and the cessation of their operations and the cessation of the use of their dairy properties for dairy operations. Past efforts to permanently eliminate tuberculosis from the El Paso milkshed dairies have been unsuccessful due to the proximity of this area to known tuberculosis-infected dairies in Ciudad Juarez, Mexico. Elimination of the Texas El Paso milkshed dairies would provide a benefit in the form of a permanent buffer zone that would serve to prevent the reintroduction of bovine tuberculosis from the Ciudad Juarez area into U.S. dairy herds. Ten dairy farms with 12,203 milking cows are located in the proposed buffer zone. Payment is needed to obtain producers' voluntary cooperation to cease their dairy operations permanently. With this payment, these producers are expected to neither gain nor lose financially, and the economic impact upon them can be considered neutral.

Additionally, payment will also be offered to one dairy entity in connection with the closure of its fluid milk processing operation, and to another for the relocation of its reverse osmosis equipment. These operations are located on or associated with two of the affected farms in the buffer zone. The discussion below describes how payment for these items is calculated, the total amount of payment expected to be paid to affected owners in El Paso, and impacts of the interim rule.

Milk Production in El Paso

El Paso is one of the top five milk producing counties in Texas and is located in the milkshed of the Southwest Federal Milk Marketing Order, which includes all of New Mexico and Texas. In El Paso County, milk production yielded more cash than any other agricultural product, accounting for about 27 percent of total sales in 2000. The 10 affected El Paso dairies produced about 258 million pounds of milk in 2000 (or a 5 percent share of the milk production of the State of Texas), valued at about $34 million.

Payment Calculation

In order to determine the value to be paid, an appraisal method was utilized by which the future earnings of the 10 affected dairy farms are estimated. These contributions are then discounted to present value over a period of 15 years, the assumed useful life of these profitable dairy farms.[1]

A discount rate of 7 percent was applied to estimates of future producer returns to risk, management, and capital investment. This rate is higher than the risk-free rate (approximately 4.9 percent) that the U.S. Government pays on Series I bonds, reflecting some degree of risk and uncertainty.

Future farm earnings are based on the returns per milking cow. Some of the 10 dairy herds have only milking cows and replacement animals (calves and heifers). Others have additional calves and heifers in excess of replacement needs. APHIS has historically used the fair market value (FMV) appraisal approach to evaluate the value of animals to be indemnified. With this approach, the market value of assets is evaluated by an appraiser(s) and the amount reimbursable to the producer is based on this appraisal. This method is suited to situations where established markets are available and animals are

[1] Armstrong, Dennis. *Arizona Dairy Feasibility Study for Southeast Arizona*. University of Arizona, Department of Animal Science, 1999. This report suggests that modern dairies are obsolete 10 to 15 years after after establishment due to urban encroachment, or technical obsolescence.

being removed and replaced with other animals on the farm. In the current situation, APHIS is requiring permanent cessation of dairying operations on the premises. Therefore, payment is being made for the value of animals plus the value of the cessation of dairy operations plus the value of the cessation of use of the dairy properties for dairy operations. The appraisal methodology used to determine the value is based on documented production records of annual earnings before interest, taxes, and depreciation (ebitd) generated per milking cow. Using this method, the ebitd value of a milking cow is estimated to be $320 per year, or a present value of $2,915 per animal over 15 years. The same valuation method is applied to each farm.

In addition, this interim rule requires each affected producer to sell all animals in the dairy herd to a terminal market for slaughter. The proceeds from this sale are commonly referred to as the salvage value. However, assuming that herd size and structure would be the same 15 years from now (individual animals may change, but the distribution remains the same), most of the animals would still have remaining milking value. The determination of the value should, therefore, be based on the difference between the present value of his herd's FMV (productive worth) 15 years from now and the herd's current salvage value. In sum, the value is composed of the present value of the net income stream per cow ($2,915), plus the difference between the discounted fair market value per cow (about $508) and the assumed salvage value per cow ($500).

Seven of the ten affected dairy operations have heifers beyond the number needed as replacement animals. A portion of the value is, therefore, determined by subtracting from the current FMV of each heifer the amount an owner could expect to receive if the heifer were sold for slaughter. Thus, that portion of the value is estimated at about $834 per head.

The total payment amount to be paid to owners of dairy cattle and other property based upon 12,203 milking cows and 7,190 additional heifers is estimated at nearly $42 million. Eighty-six percent of this total payment is determined by milking cows, and the remaining 14 percent is determined by heifers in excess of replacement needs. Approximately 85 percent of the payments is allocable to 5 farms. The largest payment to an owner is over $12 million. Three owners receive less than $1 million each.

In addition to the 10 dairy farms that are being closed, two additional dairy operations are considered for payment on a case-by-case basis as part of the El Paso buffer zone payment package. The first case involves a reverse osmosis plant that is located on one of the affected farms. The plant, owned by a producer cooperative, would cease operation in its current location and be moved to an area outside the buffer zone. Payments would cover the cost of relocating the equipment and would be limited to qualifying expenditures submitted with receipts. It is estimated that these expenditures would include costs of a reverse osmosis milk unit, silos, boiler and refrigeration equipment, and transport expense. The total amount eligible for payment is estimated at $675,000. This amount does not include the cost of a new building (estimated at $300,000), which will be absorbed by the cooperative.

The second case involves the closure of a dairy processing plant that has been in business for nearly 60 years. This plant processes fresh milk exclusively from one of the affected dairy farms, and with the closing of the latter, this niche market would no longer be commercially maintainable.

The model used to calculate payment for the closure of the processing plant relies on the industry standard framework for purchasing dairy facilities. The framework typically follows the following formula:

(1) FMV = ebitd * x,

where FMV represents the fair market value of the dairy plant, ebitd represents annual earnings before interest, taxes, and depreciation are removed, and x reflects the industry standard multiple that is paid for similar businesses.

As APHIS will not be taking possession of the processing plant, the initial formula (1) is therefore modified to reflect the ability of the plant owner to salvage any value remaining in the physical facilities once the plant no longer processes milk. The payment amount will be based on the following formula:

(2) $Cost^G$ = ebitd * x − Salvage,

where $cost^G$ is the payment amount. The term salvage (salvage value) can be broken down into two parts: Traditional salvage value of buildings and equipment and the goodwill value that may or may not be marketable independently of the farm's brand name. The final formula for payment can be rewritten as:

(3) $Cost^G$ = ebitd * x − Salvage − Goodwill.

In applying formula (3) to the processing plant, ebitd is the average earnings over the last 4 years, obtained directly from tax records. The value of the multiple x was determined based on extensive conversations with industry contacts experienced with similar dairy plant buyouts. Estimates of salvage value of the building and equipment were obtained from an auction house. Goodwill is a difficult concept to quantify, but estimates were made using information from various industry contacts.

Several scenarios for payment were calculated for the processing plant. These scenarios resulted in similar overall estimates of payment. The average compensation estimate was $950,000 for the closure of the processing plant.

In sum, the total amount to be paid by APHIS for the closure of 10 El Paso dairy farm operations and an associated processing plant, and the relocation of a reverse osmosis plant, is almost $44 million.

Impact of the Interim Rule

The impact of the rule on the 10 affected El Paso dairy farms is expected to be economically neutral as owners of the farms will be paid for their animals and other property and the cessation of operations. However, closure of these farms may indirectly affect interrelated activities in the county and/or State such as bottling plants and dairy products manufacturing plants in the area. These effects are expected to be small whether farms move away from Texas or relocate to other areas within Texas.

If the affected farms were to move away from Texas, bottling and dairy plants would likely be minimally impacted due to the close proximity of the affected area to milk-abundant counties of New Mexico. The lost milk production in El Paso will probably be offset over time by increases in milk production in the rest of Texas and New Mexico.

According to discussions with area market economists and with representatives of the Southwest Federal Milk Marketing Order, the farmers are likely to remain in the dairy business and would prefer to relocate to other areas of the State. In this case, the impact on the local economy would be similarly small over time. Therefore, we do not anticipate any long-term increases in milk prices paid by milk processors or retail prices paid by consumers due to the buyout. Furthermore, the impact on beef prices of sending 12,200 dairy cattle to slaughter under this interim rule will be mitigated by the 2-year period allowed to complete depopulation.

Texas has not been able to achieve Statewide tuberculosis accredited-free status because efforts to permanently eliminate tuberculosis from the El Paso dairies has been unsuccessful. The loss to Texas producers from not having accredited-free status, not only for the dairy enterprises, but for the beef cow and cattle-on-feed enterprises, was estimated to be $260 million for a 5-year time horizon. This loss was calculated according to the methodology adapted from Leefers *et al.* (1998) that estimated the economic impact on Michigan of losing its tuberculosis accredited-free status.[2] The impact of the higher producer costs attributed to stricter tuberculosis testing regimen in that study is measured as the difference between the present value of sales with accreditation and without accreditation. The loss to Texas producers of not having accredited-free status is calculated by extrapolating from the percent decline in present value of sales for each of the three types of cattle enterprises (dairy enterprises, beef cow, and cattle-on-feed), as calculated by Leefers *et al.* for Michigan.

Even without taking trade implications of tuberculosis into consideration, the costs associated with the El Paso buyout are relatively small compared to the benefits arising from reducing the risk of spreading tuberculosis to other dairy and livestock herds in other parts of Texas, New Mexico, and other States.

Regulatory Flexibility Analysis

The Small Business Administration defines small dairy cattle and milk production facilities (North American Industry Classification System code 112120) as those earning $750,000 or less in annual receipts. The 10 dairies affected by this rule produced about 258 million pounds of milk in 2000, valued at about $34 million. Assuming an annual milk production per cow of 20,000 pounds, only 1 of the 10 dairy farms has annual gross revenues of less than $750,000. In any event, all 10 dairy farms will be fully paid for the disposal of their herds and other property and cessation of operation.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

[2] Leefers, Larry, John Erris, and Dennis Propst. "*Economic Consequences Associated with Bovine Tuberculosis in Northeastern Michigan,*" Michigan State University, September 1977 (revised February 1998).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0193 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 00–105–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 00–105–1 and send your comments within 60 days of publication of this rule.

Under this interim rule, owners of dairy cattle herds and dairy operations in the area of El Paso, Texas, will be eligible for payment from the Department for disposal of their herds and other property and for cessation of their dairy operations and relocation of a dairy plant's equipment. Implementing this payment program will entail the use of a number of information collection activities, including an agreement to cease operations, metal eartags, movement permits, salvage reports, salvage and disposal affidavits, and payment claim forms. We are soliciting comments from the public, as well as from affected agencies, concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.483 minutes per response.

Respondents: Owners of dairy operations, owners and operators of livestock markets and slaughtering plants, cattle purchasers and selling agents, State animal health authorities, and accredited veterinarians.

Estimated annual number of respondents: 95.

Estimated annual number of responses per respondent: 6.210526.

Estimated annual number of responses: 590.

Estimated total annual burden on respondents: 875 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

Accordingly, we are amending 9 CFR part 50 as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 8304–8306, 8308, 8310, and 8315; 7 CFR 2.22, 2.80, and 371.4.

2. Section 50.1 is amended by revising the introductory text and adding definitions of *heifer* and *milking cow*, in alphabetical order, to read as follows:

§ 50.1 Definitions.

For the purposes of this part, the following terms mean:

* * * * *

Heifer. A female dairy cow that has not given birth.

* * * * *

Milking cow. A female dairy cow that has given birth and is being used for milk production.

* * * * *

3. The heading "Subpart A—General Indemnity" is added immediately before § 50.2.

4. Section 50.2 is revised to read as follows:

§ 50.2 Applicability of this subpart; cooperation with States.

(a) The provisions of this subpart apply to all payments made by the Department for the destruction of animals because of tuberculosis, except as specifically provided in subpart B of this part.

(b) The Administrator cooperates with the proper State authorities in the eradication of tuberculosis and pays Federal indemnities for the destruction of cattle, bison, captive cervids, or swine affected with or exposed to tuberculosis.

5. A new subpart B is added to read as follows:

Subpart B—Dairy Cattle and Facilities in the El Paso, Texas, Region

Sec.

50.17 Payment.
50.18 Identification and disposal of cattle.
50.19 Report of salvage proceeds.
50.20 Claims for payment.
50.21 Schedule of payments.
50.22 Claims not allowed.

§ 50.17 Payment.

(a) *Eligibility for payment.* Owners of dairy operations, including owners of dairy cattle and other property used in connection with a dairy business or fluid milk processing plant, are eligible to receive payment from the Department under this subpart in connection with a buffer zone depopulation program due to tuberculosis, provided the owners meet all applicable requirements of this subpart and the dairy cattle herd is within the area circumscribed by the following boundaries: Beginning at the point where the Hudspeth-El Paso County line intersects U.S. Highway 62; then west along U.S. Highway 62 to the El Paso Toll Bridge; then southeast along the Rio Grande River to the Fort Hancock-El Porvenir Bridge; then northeast along spur 148 to Interstate 10; then northwest along Interstate 10 to the Hudspeth-El Paso County line; then north along the Hudspeth-El Paso County line to the point of beginning.

(b) To be eligible for payment, each of the owners of dairy cattle and other property within the area described in paragraph (a) of this section must sign and adhere to an agreement with APHIS to do the following:

(1) Cease all dairy cattle operations within the described area and dispose of all sexually intact cattle on the dairy operation premises no later than 2 years after all eligible owners have signed their respective agreements;

(2) Conduct no dairy farming or other dairy activity, including the rearing of breeding cattle, but not including the grazing or feeding of steers and spayed heifers intended for terminal market, within the area described in paragraph (a) of this section until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements.

(3) Allow a covenant to be placed on their properties where dairy operations have been conducted that will prevent the establishment of any breeding cattle operations (not including the grazing or feeding of steers and spayed heifers intended for terminal market) on the premises until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements.

(4) Maintain responsibility for all cattle on the premises used in the dairy operation until those animals are removed from the premises;

(5) Make all arrangements for the removal of sexually intact cattle from the premises;

(6) Notify APHIS officials of the intended removal of all sexually intact cattle from the premises and provide APHIS officials with the opportunity to monitor and evaluate the removal operations; and

(7) Such other terms, provisions, and conditions as agreed by each owner and APHIS.

(c) *Amount of payment for cattle and other property.* Upon approval of a claim submitted in accordance with § 50.20 of this subpart, owners eligible for payments under paragraph (a) of this section will receive payments for cattle and other property, the amount of which is determined by the following rates:

(1) For milking cows, an amount not to exceed $2,922 per animal; and

(2) For heifers, an amount not to exceed $834 per animal.

(d) Any dairy cattle added to a premises after the date an owner has signed the agreement required under paragraph (b) of this section will not be included in the rate calculation in paragraph (c) of this section and must be disposed of within 2 years after all eligible owners have signed their respective agreements.

(e) *Amount of payment for certain other property.* In addition to the amounts paid under paragraph (c) of this section, amounts will be paid as follows:

(1) For expenses in relocating equipment of a reverse osmosis plant in El Paso County, TX, an amount equal to the costs of relocating the plant's equipment, not to exceed $675,000.

(2) In conjunction with the permanent closure of a fluid milk processing plant in El Paso County, TX, an amount not to exceed $950,000, with payment to be made in the same manner and at the same times, on a pro rata basis, as payments are made to such owners for their dairy cattle and other property.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.18 Identification and disposal of cattle.

(a) All dairy cattle disposed of under this subpart must travel from the premises of origin to their final destination with an approved metal eartag, supplied by APHIS or the State representative, bearing a serial number and attached to each animal's left ear.

(b) Dairy cattle disposed of under this subpart must be shipped under permit either:

(1) Directly to slaughter at a Federal or State inspected slaughtering establishment; or

(2) Under permit directly to a livestock market and, under the supervision of an APHIS representative or State representative, through a livestock market pen that is dedicated to and marked exclusively for use for animals moved to slaughter, and then directly to slaughter at a Federal or State inspected slaughtering establishment.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.19 Report of salvage proceeds.

A report of the salvage derived from the sale of each animal for which a claim for payment is made under this subpart must be made on a salvage form acceptable to APHIS that must be signed by the purchaser or by the selling agent handling the animals. If the cattle are

sold by the pound, the salvage form must show the weight, price per pound, gross receipts, expenses if any, and net proceeds. If the cattle are not sold on a per-pound basis, the net purchase price of each animal must be stated on the salvage form and an explanation showing how the amount was arrived at must be submitted. In the event the animals are not disposed of through regular slaughterers or through selling agents, the owner must furnish, in lieu of the salvage form, an affidavit showing the amount of salvage obtained by him or her and must certify that such amount is all he or she has received or will receive as salvage for the animals. The original of the salvage form or the affidavit of the owner must be furnished to the veterinarian in charge within 3 months of destruction of the animals, if such document is not already in his or her possession. Disposal of cattle by burial, incineration, or other means must be supervised by an APHIS or State representative, who will prepare and transmit to the veterinarian in charge a report identifying the animals and showing their disposition, or be documented by an affidavit of the owner that identifies the animals and describes their disposition. The owner must provide a copy of the affidavit to the veterinarian in charge within 3 months of destruction of the animals. The salvage form, disposal certificate, or affidavit will be for information purposes only and will have no effect on the amount of any payment due.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.20 Claims for payment.

Claims for payment, other than for reimbursement of relocation expenses of the reverse osmosis dairy plant, must be presented on payment claim forms furnished by APHIS.[3] On the claim form, the owner must certify that the animals or other property are, or are not, subject to any mortgage. If the owner states that there is a mortgage, the claim form must be signed by the owner and by each person holding a mortgage on the cattle or other property, who must agree that the person specified on the claim form may receive any payment due. The APHIS veterinarian in charge or the official designated by him or her will record on the claim form the amount of payment that appears to be due to the owner, and the owner will be furnished a copy of the APHIS payment claim form. The veterinarian in charge or official designated by him or her will then forward the APHIS payment claim form to the appropriate APHIS official for further action on the claim. The Department will not pay any costs arising from the holding of the cattle pending slaughter, or for trucking and other transportation costs, yardage, commission, slaughtering charges, or for any other costs related to having the cattle slaughtered. The owner of the reverse osmosis plant must submit copies of the relevant documentation for relocation of equipment to the veterinarian in charge.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.21 Schedule of payments.

(a) The Department will make payment, other than for reimbursement of relocation expenses of the equipment of the reverse osmosis plant, at 90-day intervals. The first payment will be made no earlier than 30 days after all owners eligible for payment have signed their agreements required under § 50.17(b). The Department will determine the amount to be paid to each owner in each payment by multiplying the total agreement amount for that owner by a fraction that is arrived at by dividing the initial census number of dairy cattle for the respective owner into the number of dairy cattle that have been removed from the owner's herd during that payment period. From this amount, 10 percent will be withheld until all animals in the herd have been disposed of and the requirements of this subpart have been met. The payments to other property owners will be determined by multiplying the total agreement amount for that other property times the same ratio as for the herd related to that other property, minus 10 percent. The Department will make payment for reimbursement of relocation expenses of the reverse osmosis plant within 30 days after the relocation of the plant is completed and the owner of the plant has submitted to APHIS all documentation of the costs of the relocation.

(b) The Department will not make final payments until the premises used for dairy operations have been without sexually intact cattle for at least 30 days and until APHIS has inspected the premises and has found them to be free of manure, except for non-solid areas such as lagoons, and free of all feedstuffs that are not in barns, containers or feeders.

§ 50.22 Claims not allowed.

The Department will not allow claims for payment if the claimant has failed to comply with any of the requirements of this subpart, or there is substantial evidence, as determined by the Administrator, that the claimant has been responsible for any attempt to obtain payment funds for such cattle or other dairy property unlawfully or improperly.

Done in Washington, DC, this 19th day of July 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02–18701 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–34–U

[3] Claim forms may obtained from the veterinarian in charge. The location of the veterinarian in charge may be obtained by writing to National Animal Health Program VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737, or by referring to the local telephone book.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. FAA–202–12504]

Security Considerations for the Flightdeck on Foreign Operated Transport Category Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the contact information for a final rule published in the **Federal Register** June 21, 2002 regarding improved flightdeck security on passenger-carrying aircraft and some cargo aircraft.

In rule FR Doc 02–15524, published on June 21, 2002 (67 FR 42450), second column page 42450, the **FOR FURTHER INFORMATION CONTACT** section is corrected to read as set forth below.

FOR FURTHER INFORMATION CONTACT: For part 25 issues, contact Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136; facsimile (425– 227–1149; e-mail: *jeff.gardlin@faa.gov*. For part 129 issues, contact Michael E. Daniel, International Liaison Staff, AFS–50, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–4510; facsimile (202) 385–4561; e-mail: *mike.e.daniel@faa.gov*.

Issued in Washington, DC on July 18, 2002.

Richard McCurdy,

Manager Airworthiness Law Branch.

[FR Doc. 02–18762 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–43–AD; Amendment 39–12797; AD 2002–13–09]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to Airworthiness Directive (AD) 2002–13–09 applicable to Pratt & Whitney JT8D–200 engines that was published in the **Federal Register** on July 3, 2002 (67 FR 44527). In the regulatory information, Table part B., Parts Requiring Inspection, one item under Description and one item under Engine Manual are incorrect. This document corrects these items. In all other respects, the original document remains the same.

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive FR Doc, 02–16535 applicable to Pratt & Whitney JT8D–200 series turbofan engines, was published in the **Federal Register** on July 3, 2002 (67 FR 44527). The following correction is needed:

§ 39.13 [Corrected]

On page 44528, in the third column, in the regulatory information, Table part B., Parts Requiring Inspection, first column, the last Description "Disk, 4th Stage Turbine—" is corrected to read "Disk, 4th Stage Turbine—All P/N's'.

On page 44528, in the third column, in the regulatory information, Table part B., Parts Requiring Inspection, second column, the sixth Engine Manual Section "2–53–16" is corrected to read "72–53–16'.

Issued in Burlington, MA, on July 22, 2002.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–19034 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–19–AD; Amendment 39–12792; AD 2002–13–04]

RIN 2120–AA64

Airworthiness Directives; Teledyne Continental Motors; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2000–NE–19 applicable to Teledyne Continental Motors O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines that was published in the **Federal Register** on June 27, 2002 (67 FR 43230). The superseded AD number was inadvertently omitted from the regulatory information, paragraph 2. of § 39.13 [Amended]. This document corrects that omission. In all other respects, the original document remains the same.

EFFECTIVE DATE: July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7870, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A final rule; request for comments airworthiness directive FR Doc. 02–16174 applicable to Teledyne Continental Motors O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines, was published in the **Federal Register** on June 27, 2002 (67 FR 43230). The following correction is needed:

§ 39.13 [Corrected]

On page 43231, in the second column, § 39.13 Amended, paragraph 2. in the seventh line, "2000–NE–19–AD." is corrected to read "2000–NE–19–AD. Supersedes AD 2000–11–51".

Issued in Burlington, MA, on July 22, 2002.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–19035 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–4]

Amendment to Class E Airspace; Norton, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Norton, KS.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 20, 2002 (67 FR 35426). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or ■ written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 3, 2002. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on July 17, 2002.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 02–19000 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5f, 31, and 602

[TD 9010]

RIN 1545–AW48

Information Reporting Requirements for Certain Payments Made on Behalf of Another Person, Payments to Joint Payees, and Payments of Gross Proceeds From Sales Involving Investment Advisors

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations

SUMMARY: This document contains regulations under section 6041 that provide information reporting requirements for escrow agents and other persons making payments on behalf of another person, clarify who is the payee for information reporting purposes if a check or other instrument is made payable to joint payees, and clarify the amount to be reported. This document also contains regulations under section 6045 that incorporate the provisions of temporary regulations, which are removed, and that remove investment advisors from the list of exempt recipients.

DATES: *Effective date:* These regulations are effective January 1, 2003.

Applicability dates: For dates of applicability, see §§ 1.6041–1(j), 1.6045–1(c)(3)(C)(xii), 1.6049–4(a)(2), and 31.3406(a)–2(d).

FOR FURTHER INFORMATION CONTACT: Nancy L. Rose (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1705. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The estimate of the reporting burden in § 1.6041–1 is reflected in the burden of Form 1099–MISC. The estimate of the reporting burden in § 1.6045–1 is reflected in the burden of Form 1099–B.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR parts 1 and 5f) and Employment Tax Regulations (26 CFR part 31). These regulations finalize proposed regulations relating to payments to joint payees, payments made on behalf of another person, and payments of gross proceeds from sales involving investment advisors. A notice of proposed rulemaking (REG–246249–96) was published in the **Federal Register** (65 FR 61292) on October 17, 2000. A public hearing was held on February 7, 2001, at which two commentators presented oral comments. The IRS also received other written comments responding to the notice of proposed rulemaking. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

1. Payments Made on Behalf of Another Person

Comments were received requesting further clarification as to the meaning of the terms *management or oversight functions* and *significant economic interest* in § 1.6041–1(e)(1) of the proposed regulations. In response to these comments, the final regulations add language that was included in the preamble to the proposed regulations, explaining that a person who merely writes checks at another's direction is not exercising management or oversight with respect to the payment and that a person has a significant economic interest in a payment when such interest would be compromised if the payment were not made.

One commentator stated that an agent cannot perform management or oversight functions in connection with payments it receives and remits to its principal, and, therefore, an agent for a payee could never be required to report a payment to the payee under this standard. The commentator recommended that § 1.6041–1(e)(1) of the proposed regulation be revised to apply only to payments made by agents to third parties.

The determination of whether a person performs management or oversight functions with respect to a payment made on behalf of another, or has a significant economic interest in connection with such payment, is a factual one. Whether an agent has a reporting obligation under these standards must, therefore, be determined in each instance based on the particular facts and circumstances. The standards set forth in the proposed regulations are intended to apply to all persons making payments on behalf of another, whether they are making such payments on behalf of the payor or payee in a transaction. In keeping with the need for uniformity and consistency in this regard, the regulations also amend § 31.3406(a)–2 to eliminate the current distinction between payor agents and payee agents with respect to the obligation to backup withhold on payments. Therefore, while in some cases an agent for a payee may not be required to report a payment to its principal, the final regulation does not adopt the commentator's suggestion to eliminate the potential applicability of the regulation to all such payments.

With respect to one type of payee agent, however, the final regulation does contain an exception to the rules set forth in paragraph (e)(1). The final regulation adds paragraph (e)(3) exempting from information reporting payments made by an employee to his employer, in recognition of the principle that the employee received such payment from a third party and remitted it to his employer in the course of his employment. *Example 11* is added to illustrate this exception.

Comments were also received with respect to special reporting exceptions. One commentator asked that the current rule with respect to financial institutions be retained. The proposed regulations removed § 1.6041–3(n), which provided that banks making payments on an infrequent and isolated basis would not be subject to the reporting requirements. Banks will therefore now be subject to the same standards as other persons in determining whether they have an obligation to report payments. If a bank

exercises management or oversight functions over a payment, or has a significant economic interest in the payment, it will have a reporting obligation regardless of how frequently it makes such payments. Although this is a change that imposes a new reporting burden on financial institutions, the burden is no different than the one that applies to other persons, and the final regulations therefore do not adopt this suggestion.

Another commentator asked that we eliminate the reporting requirements for real estate agents, found in § 1.6041–3(d), as they conflict with the proposed regulations under § 1.6041–1. The proposed regulations made conforming amendments to § 1.6041–3(d), but retained the existing provision that rent paid by real estate agents is reportable, by cross-reference to the provisions of § 1.6041–1(a). We believe it is appropriate to require such agents to report under these regulations; therefore, we decline to adopt this comment. The final regulations do, however, change the term *real estate agents* to *rental agents* to more accurately describe the type of person who would be collecting rent from a tenant and remitting it to a landlord.

One commentator asked that the regulations clarify that insurance companies do not have a "significant economic interest" in payments they make to third parties pursuant to contracts with policyholders. Because this is a factual determination which should be made on a case by case basis, this suggestion was not adopted in the final regulations.

Several commentators expressed concern that more than one person might report the same payment pursuant to these rules. One commentator stated that a service-recipient might be obligated to report the payment made on his behalf, while the person making the payment might also report it. Another commentator described a situation where funds were transferred through several parties involved in a construction project before reaching the ultimate payee and each of the parties might meet the management or oversight/significant economic interest standard for reporting the payments.

Several of the examples illustrate the correct reporting of a payment by the parties to a transaction. In the event that several parties might be viewed as meeting the tests for reporting under § 1.6041–1(e) of the regulations, the final regulations set forth the rule that the party closest in the chain to the payee must report the payment, unless the parties agree, in writing, that one of the other parties meeting the test for reporting will report the payment. *Example 12* has been added to § 1.6041–1(e) of the regulations to illustrate this rule. This provision is not intended to preclude the optional method to report under § 1.6041–1(e)(4) of the regulations.

A commentator suggested that in *Example 3*, dealing with an agent who performs real estate closings, we clarify that the term *settlement agent* can include a number of different persons who perform real estate closings, such as title companies or title insurance underwriters. Since these examples are meant to be illustrative only, and since any person making a payment on behalf of another person is subject to these regulations, it is not necessary to list all possible individuals who may be performing the functions described in this example. Therefore, the final regulations do not adopt this suggestion.

2. Amount To Be Reported

One commentator objected to the rule in § 1.6041–1(f) of the proposed regulations that the amount to be reported is the gross amount, before fees and other expenses are deducted. The commentator pointed out the conflicting case law with respect to the issue of whether attorneys fees are income to the client. The final regulations provide that in cases in which the gross amount is income, the gross amount should be reported regardless of any expenses, commissions or other obligations, including backup withholding, that were deducted from the amount before the check was issued. To assist taxpayers in determining whether the gross amount or some lesser amount is includible in a particular payee's income, the Commissioner may provide guidance in the Internal Revenue Bulletin with examples. *Example 1* in § 1.6041–1(f) has been modified to illustrate this rule.

In response to a comment, we have added a cross-reference to section 6045(f) of the Internal Revenue Code and the regulations thereunder in the examples in § 1.6041–1(f).

3. Obsolescence of Revenue Rulings

One commentator asked that we include a statement in the regulations or commentary that the regulations render obsolete any revenue rulings that are factually encompassed by the proposed rules and that all other revenue rulings pertaining to third party payments would remain in effect unless specifically deemed obsolete.

The preamble to the proposed regulations stated that "Rulings that are factually encompassed by the proposed regulations will be obsoleted." A list of revenue rulings to become obsolete was included. The notice of proposed rulemaking also requested comments that identified other factually relevant rulings. No such comments were received. As the proposed regulations made clear that revenue rulings factually encompassed by the proposed regulations would be obsoleted and enumerated those rulings, there is no need to include this commentator's suggestion.

Another commentator recommended that Rev. Rul. 69–595 (1969–2 C.B. 242) and Rev. Rul. 70–608 (1970–2 C.B. 286), both of which were listed in the notice of proposed rulemaking as obsoleted by the proposed regulations, be obsoleted only to the extent they are inconsistent with the proposed regulations. The two revenue rulings cited contain guidance relating to the definition of medical service payments, which the commentator felt should be retained.

Rev. Rul. 70–608 is listed in the notice of proposed rulemaking as obsoleted only with respect to Situations 1, 2, and 5. Therefore, Situation 4 of the revenue ruling, which includes a description of medical service payments, was not obsoleted. Rev. Rul. 69–595 will likewise not be obsoleted with respect to the definition of medical service payments.

Effect on Other Documents

The following revenue rulings are obsolete as of January 1, 2003:

Rev. Rul. 93–70 (1993–2 C.B. 294)
Rev. Rul. 85–50 (1985–1 C.B. 345)
Rev. Rul. 77–53 (1977–1 C.B. 368)
Rev. Rul. 73–232 (1973–1 C.B. 541)
Rev. Rul. 70–608 (1970–2 C.B. 286), Situations 1, 2, and 5
Rev. Rul. 69–595 (1969–2 C.B. 242), except with respect to the definition of medical service payments
Rev. Rul. 67–197 (1967–1 C.B. 319)
Rev. Rul. 65–129 (1965–1 C.B. 519)
Rev. Rul. 64–36 (1964–1 C.B. 446)
Rev. Rul. 59–328 (1959–2 C.B. 379)
Rev. Rul. 55–606 (1955–2 C.B. 489)
Rev. Rul. 54–571 (1954–2 C.B. 235)

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. A final regulatory flexibility analysis under 5 U.S.C. section 604 has been prepared for the collection of information in this Treasury decision. This analysis is set forth in this preamble under the heading

"Final Regulatory Flexibility Analysis." Pursuant to section 7805(f), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Final Regulatory Flexibility Analysis

The collection of information contained in § 1.6041–1(e) is needed to clarify the requirements for filing an information return under section 6041 when a person makes a payment on behalf of another person or to joint payees. The objectives of the proposed regulations are to provide uniform, practicable, and administrable rules under section 6041 for persons making payments on behalf of another person or to joint payees. The types of small entities to which the regulations may apply are small businesses. An estimate of the number of small entities affected is not feasible because of the large variety of entities and transactions to which the regulations may apply.

There are no known Federal rules that duplicate, overlap or conflict with these regulations. The regulations are considered to have the least economic impact on small entities of all alternatives considered.

The collection of information contained in § 1.6045–1(c)(3) will not have a significant economic impact on a substantial number of small entities. The regulations will relieve investment advisors of the requirement to make information returns under section 6045(a), and few, if any, financial custodians that may be affected by the regulations are small entities.

Drafting Information

The principal author of these regulations is Nancy L. Rose, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Parts 1 and 5f

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 5f, 31, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.6041–1 also issued under 26 U.S.C. 6041(a). * * *

Par. 2. Section 1.6041–1 is amended as follows:

1. In paragraph (b)(1), the second sentence is amended by removing the language "paragraph (g)" and adding the language "paragraph (i)" in its place.

2. Paragraph (c) is amended by adding two sentences after the penultimate sentence.

3. Paragraphs (e), (f), and (g) are redesignated as paragraphs (g), (h), and (i), respectively.

4. Adding new paragraphs (e), (f), and (j).

The additions read as follows:

§ 1.6041–1 Return of information as to payments of $600 or more.

* * * * *

(c) * * * A payment made jointly to two or more payees may be fixed and determinable income to one payee even though the payment is not fixed and determinable income to another payee. For example, property insurance proceeds paid jointly to the owner of damaged property and to a contractor that repairs the property may be fixed and determinable income to the contractor but not fixed and determinable income to the owner, and should be reported to the contractor. * * *

* * * * *

(e) *Payment made on behalf of another person*—(1) *In general.* A person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make a return of information under this section with respect to that payment if the payment is described in paragraph (a) of this section and, under all the facts and circumstances, that person—

(i) Performs management or oversight functions in connection with the payment (this would exclude, for example, a person who performs mere administrative or ministerial functions such as writing checks at another's direction); or

(ii) Has a significant economic interest in the payment (i.e., an economic interest that would be compromised if the payment were not made, such as by creation of a mechanic's lien on property to which the payment relates, or a loss of collateral).

(2) *Determination of payor obligated to report.* If two or more persons meet the requirements for making a return of information with respect to a payment, as set forth in paragraph (e)(1) of this section, the person obligated to report the payment is the person closest in the chain to the payee, unless the parties agree in writing that one of the other parties meeting the requirements set forth in paragraph (e)(1) of this section will report the payment.

(3) *Special rule for payment by employee to employer.* Notwithstanding the provisions of paragraph (e)(1) of this section, an employee acting in the course of his employment who makes a payment to his employer on behalf of another person is not required to make a return of information with respect to that payment.

(4) *Optional method to report.* A person that makes a payment on behalf of another person but is not required to make an information return under paragraph (e)(1) of this section may elect to do so pursuant to the procedures established by the Commissioner. See, *e.g.*, Rev. Proc. 84–33 (1984–1 C.B. 502) (optional method for a paying agent to report and deposit amounts withheld for payors under the statutory provisions of backup withholding) (see § 601.601(d)(2) of this chapter).

(5) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. Bank B provides financing to C, a real estate developer, for a construction project. B makes disbursements from the account for labor, materials, services, and other expenses related to the construction project. In connection with the payments, B performs the following functions: approves payments to the general contractor or subcontractors; ensures that loan proceeds are properly applied and that all approved bills are properly paid to avoid mechanics' or materialmen's liens; conducts site inspections to determine whether work has been completed (but does not check the quality of the work). B is performing management or oversight functions in connection with the payments and is subject to the information reporting requirements of section 6041 with respect to payments.

Example 2. Mortgage company D holds a mortgage on business property owned by E. When the property is damaged by a storm, E's insurance company issues a check payable to both D and E in settlement of E's claim. Pursuant to the contract between D and E, D holds the insurance proceeds in an escrow account and makes disbursements, according to E's instructions, to contractors and subcontractors performing repairs on the property. D is not performing management or

oversight functions, but D has a significant economic interest in the payments because the purpose of the arrangement is to ensure that property on which D holds a mortgage is repaired or replaced. D is subject to the information reporting requirements of section 6041 with respect to the payments to contractors.

Example 3. Settlement agent F provides real estate closing services to real estate brokers and agents. F deposits money received from the buyer or lender in an escrow account and makes payments from the account to real estate agents or brokers, appraisers, land surveyors, building inspectors, or similar service providers according to the provisions of the real estate contract and written instructions from the lender. F may also make disbursements pursuant to oral instructions of the seller or purchaser at closing. F is not performing management or oversight functions and does not have a significant economic interest in the payments, and is not subject to the information reporting requirements of section 6041. For the rules relating to F's obligation to report the gross proceeds of the sale, see section 6045(e) and § 1.6045–4.

Example 4. Assume the same facts as in *Example 3.* In addition, the seller instructs F to hire a contractor to perform repairs on the property. F selects the contractor, negotiates the cost, monitors the progress of the project, and inspects the work to ensure it complies with the contract. With respect to the payments to the contractor, F is performing management or oversight functions and is subject to the information reporting requirements of section 6041.

Example 5. G is a rental agent who manages certain rental property on behalf of property owner H. G finds tenants, arranges leases, collects rent, responds to tenant inquiries regarding maintenance, and hires and makes payments to repairmen. G subtracts her commission and any maintenance payments from rental payments and remits the remainder to H. With respect to payments to repairmen, G is performing management or oversight functions and is subject to the information reporting requirements of section 6041. With respect to the payment of rent to H, G is subject to the information reporting requirements of section 6041 regardless of whether she performs management or oversight functions or has a significant economic interest in the payment. See § 1.6041–3(d) for rules relating to rental agents. See § 1.6041–1(f) to determine the amount that G should report to H as rent.

Example 6. Literary agent J receives a payment from publisher L of fees earned by J's client, author K. J deposits the payment into a bank account in J's name. From time to time and as directed by K, J makes payments from these funds to attorneys, managers, and other third parties for services rendered to K. After subtracting J's commission, J pays K the net amount. J does not order or direct the provision of services by the third parties to K, and J exercises no discretion in making the payments to the third parties or to K. J is not performing management or oversight functions and does not have a significant economic interest in the payments and is not subject to the information reporting requirements of section 6041 in connection with the payments to K or to the third parties. For the rules relating to L's obligation to report the payment of the fees to K, see paragraphs (a)(1)(i) and (f) of this section. For the rules relating to K's obligation to report the payment of the commission to J and the payments to the third parties for services, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example 7. Attorney P deposits into a client trust fund a settlement payment from R, the defendant in a breach of contract action for lost profits in which P represented plaintiff Q. P makes payments from the client trust fund to service providers such as expert witnesses and private investigators for expenses incurred in the litigation. P decides whom to hire, negotiates the amount of payment, and determines that the services have been satisfactorily performed. In the event of a dispute with a service provider, P withholds payment until the dispute is settled. With respect to payments to the service providers, P is performing management or oversight functions and is subject to the information reporting requirements of section 6041.

Example 8. Assume the same facts as in *Example 7.* In addition, assume that after paying the service providers and deducting his legal fee, P pays Q the remaining funds that P had received from the settlement with R. With respect to the payment to Q, P is not performing management or oversight functions, does not have a significant economic interest in the payment, and is not subject to the information reporting requirements of section 6041. For the rules relating to R's obligation to report the payment of the settlement proceeds to P, see section 6045(f) and the regulations thereunder. For the rules relating to R's obligation to report the payment of the settlement proceeds to Q, see paragraphs (a)(1)(i) and (f) of this section. For the rules relating to Q's obligation to report the payment of attorney fees to P, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example 9. Medical insurer S operates as the administrator of a health care program under a contract with a state. S makes payments of government funds to health care providers who provide care to eligible patients. S receives and reviews claims submitted by patients or health care providers, determines if the claims meet all the requirements of the program (*e.g.*, that the care is authorized and that the patients are eligible beneficiaries), and determines the amount of payment. S is performing management or oversight functions and is subject to the information reporting requirements of section 6041 with respect to the payments.

Example 10. Race track employee T holds deposits made by horse owner U in a special escrow account in U's name. U enters into a contract with jockey V to ride U's horse in a race at the track. As directed by U, T pays V the fee for riding U's horse from U's escrow account. T is not performing management or oversight functions, does not have a significant economic interest in the payment, and is not subject to the information reporting requirements of section 6041. For the rules relating to U's obligation to report the payment of the fee to V, see paragraph (a)(1)(i) of this section.

Example 11. X is a certified public accountant employed by Firm Y, and is not a partner. Client Z pays X directly for accounting services. X remits the amount received to Y, as required by the terms of his employment. X does not have any reporting obligation with respect to the payment to Y. For the rules relating to Z's obligation to report the payment to Y for services, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example 12. Bank contracts with Title Company with respect to the disbursement of funds on a construction loan. Pursuant to their arrangement, the contractor sends draw requests to Title Company, which inspects the work, verifies the amount requested, and then sends the draw request to Bank with supporting documents. Bank pays Title Company the amount of the draw request, and Title Company insures Bank against any loss if it cannot obtain the necessary lien waivers. Bank has a significant economic interest in the payment as a mortgagee, and Title Company exercises management or oversight over the payment. Since Title Company is closest in the chain to the contractor, Title Company should report the payment, unless the parties agree in writing that Bank will report the payment.

(f) *Amount to be reported when fees, expenses or commissions are deducted*—(1) *In general.* The amount to be reported as paid to a payee is the amount includible in the gross income of the payee (which in many cases will be the gross amount of the payment or payments before fees, commissions, expenses, or other amounts owed by the payee to another person have been deducted), whether the payment is made jointly or separately to the payee and another person. The Commissioner may, by guidance published in the Internal Revenue Bulletin, illustrate the circumstances under which the gross amount or less than the gross amount may be reported.

(2) Examples. The provisions of this paragraph (f) are illustrated by the following examples:

Example 1. Attorney P represents client Q in a breach of contract action for lost profits against defendant R. R settles the case for $100,000 damages and $40,000 for attorney fees. Under applicable law, the full $140,000 is includible in Q's gross taxable income. R issues a check payable to P and Q in the amount of $140,000. R is required to make an information return reporting a payment to Q in the amount of $140,000. For the rules with respect to R's obligation to report the payment to P, see section 6045(f) and the regulations thereunder.

Example 2. Assume the same facts as in *Example 1*, except that R issues a check to Q for $100,000 and a separate check to P for $40,000. R is required to make an information return reporting a payment to Q in the amount of $140,000. For the rules with respect to R's obligation to report the

payment to P, see section 6045(f) and the regulations thereunder.

* * * * *

(j) *Effective date.* The provisions of paragraphs (b), (c), (e), and (f) apply to payments made after December 31, 2002.

Par. 3. Section 1.6041–3 is amended as follows:

1. Revising paragraph (d).

2. Removing paragraph (n) and redesignating paragraphs (o), (p) and (q) as paragraphs (n), (o) and (p), respectively.

The revisions read as follows:

§ 1.6041–3 Payments for which no return of information is required under section 6041.

* * * * *

(d) Payments of rent made to rental agents (but the agent is required to report payments of rent to the landlord in accordance with § 1.6041–1(a)(1)(i)(B) and (2)).

* * * * *

Par. 4. Section 1.6045–1 is amended as follows:

1. Revising paragraph (a) introductory text.

2. Revising paragraphs (c)(3) and (c)(4).

3. In paragraph (g)(3)(iv), first and third sentences, removing the language "§ 5f.6045–1(c)(3) of this chapter" and adding "paragraph (c)(3) of this section" in its place.

4. In paragraph (g)(4) *Examples 1, 4, 5, 6, 7*(i), *8*(i), and *9*(i), removing the language "§ 5f.6045–1(c)(3)(ii) of this chapter" and adding "paragraph (c)(3)(iii) of this section" in its place in each place it appears.

The revisions read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

(a) *Definitions.* The following definitions apply for purposes of this section and § 1.6045–2:

* * * * *

(c) * * *

(3) *Exceptions*—(i) *Sales effected for exempt recipients*—

(A) *In general.* No return of information is required with respect to a sale effected for a customer that is an exempt recipient under paragraph (c)(3)(i)(B) of this section.

(B) *Exempt recipient defined.* The term *exempt recipient* means—

(*1*) A corporation as defined in section 7701(a)(3), whether domestic or foreign;

(*2*) An organization exempt from taxation under section 501(a) or an individual retirement plan;

(*3*) The United States or a State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, a wholly owned agency or instrumentality of any one or more of the foregoing, or a pool or partnership composed exclusively of any of the foregoing;

(*4*) A foreign government, a political subdivision thereof, an international organization, or any wholly owned agency or instrumentality of the foregoing;

(*5*) A foreign central bank of issue as defined in § 1.895–1(b)(1) (i.e., a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency);

(*6*) A dealer in securities or commodities registered as such under the laws of the United States or a State;

(*7*) A futures commission merchant registered as such with the Commodity Futures Trading Commission;

(*8*) A real estate investment trust (as defined in section 856);

(*9*) An entity registered at all times during the taxable year under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*);

(*10*) A common trust fund (as defined in section 584(a)); or

(*11*) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization.

(C) *Exemption certificate.* A broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in § 31.3406(h)–3) of this chapter, on the broker's actual knowledge that the payee is a person described in paragraph (c)(3)(i)(B), or on the applicable indicators described in § 1.6049–4(c)(1)(ii)(A) through (M). A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is so designated by the Internal Revenue Service in a revenue ruling or revenue procedure (*see* § 601.601(d)(2) of this chapter).

(iii) *Multiple brokers.* If a broker is instructed to initiate a sale by a person that is an exempt recipient described in paragraph (c)(3)(i)(B)(*6*), (*7*), or (*11*) of this section, no return of information is required with respect to the sale by that broker. In a redemption of stock or retirement of securities, only the broker responsible for paying the holder redeemed or retired, or crediting the gross proceeds on the sale to that holder's account, is required to report the sale.

(iv) *Cash on delivery transactions.* In the case of a sale of securities through a cash on delivery account, a delivery versus payment account, or other similar account or transaction, only the broker that receives the gross proceeds from the sale against delivery of the securities sold is required to report the sale. If, however, the broker's customer is another broker (second-party broker) that is an exempt recipient, then only the second-party broker is required to report the sale.

(v) *Fiduciaries and partnerships.* No return of information is required with respect to a sale effected by a custodian or trustee in its capacity as such or a redemption of a partnership interest by a partnership, provided the sale is otherwise reported by the custodian or trustee on a properly filed Form 1041, or the redemption is otherwise reported by the partnership on a properly filed Form 1065, and all Schedule K–1 reporting requirements are satisfied.

(vi) *Sales at issue price.* No return of information is required with respect to a sale of an interest in a regulated investment company that can hold itself out as a money market fund under Rule 2a–7 under the Investment Company Act of 1940 that computes its current price per share for purposes of distributions, redemptions, and purchases so as to stabilize the price per share at a constant amount that approximates its issue price or the price at which it was originally sold to the public.

(vii) *Obligor payments on certain obligations.* No return of information is required with respect to payments representing obligor payments on—

(A) Nontransferable obligations (including savings bonds, savings accounts, checking accounts, and NOW accounts);

(B) Obligations as to which the entire gross proceeds are reported by the broker on Form 1099 under provisions of the Internal Revenue Code other than section 6045 (including stripped coupons issued prior to July 1, 1982); or

(C) Retirement of short-term obligations (i.e., obligations with a fixed maturity date not exceeding 1 year from the date of issue) that have original issue discount, as defined in section 1273(a)(1), with or without application of the de minimis rule.

(D) Demand obligations that also are callable by the obligor and that have no premium or discount.

(viii) *Foreign currency.* No return of information is required with respect to a sale of foreign currency other than a sale pursuant to a forward contract or regulated futures contract that requires delivery of foreign currency.

(ix) *Fractional share.* No return of information is required with respect to a sale of a fractional share of stock if the gross proceeds on the sale of the fractional share are less than $20.

(x) *Certain retirements.* No return of information is required from an issuer or its agent with respect to the retirement of book entry or registered form obligations as to which the relevant books and records indicate that no interim transfers have occurred.

(xi) *Cross reference.* For an exception for certain sales of agricultural commodities and certificates issued by the Commodity Credit Corporation after January 1, 1993, see paragraph (c)(7) of this section.

(xii) *Effective date.* The provisions of this paragraph (c)(3) apply for sales effected after December 31, 2002.

(4) *Examples.* The following examples illustrate the application of the rules in paragraph (c)(3) of this section:

Example 1. P, an individual who is not an exempt recipient, places an order with B, a person generally known in the investment community to be a federally registered broker/dealer, to effect a sale of P's stock in a publicly traded corporation. B, in turn, places an order to sell the stock with C, a second broker, who will execute the sale. B discloses to C the identity of the customer placing the order. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(*6*) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

Example 2. Assume the same facts as in *Example 1* except that B has an omnibus account with C so that B does not disclose to C whether the transaction is for a customer of B or for B's own account. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(*6*) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

Example 3. D, an individual who is not an exempt recipient, enters into a cash on delivery stock transaction by instructing K, a federally registered broker/dealer, to sell stock owned by D, and to deliver the proceeds to L, a custodian bank. Concurrently with the above instructions, D instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to this transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

Example 4. Assume the same facts as in *Example 3* except that E, a federally registered investment advisor, instructs K to sell stock owned by D and to deliver the proceeds to L. Concurrently with the above instructions, E instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to the transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

Example 5. Assume the same facts as in *Example 4* except that the records of both K and L with respect to the transaction show an account in the name of E. Pursuant to paragraph (h)(1) of this section, E is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because E is L's customer and is not an exempt recipient. E is required to make a return of information with respect to the sale because D is E's customer and is not an exempt recipient.

Example 6. F, an individual who is not an exempt recipient, owns bonds that are held by G, a federally registered broker/dealer, in an account for F with G designated as nominee for F. Upon the retirement of the bonds, the gross proceeds are automatically credited to the account of F. G is required to make a return of information with respect to the retirement because G is the broker responsible for making payments of the gross proceeds to F.

* * * * *

§ 1.6045–2 [Amended]

Par. 5. In § 1.6045–2, paragraph (b)(2)(ii), is amended by removing the language "§ 5f.6045–1(c)(3)(i)(B) of the Temporary Income Tax Regulations under the Tax Equity and Fiscal Responsibility Act of 1982" and adding the language "§ 1.6045–1(c)(3)(i)(B)" in its place.

Par. 6. In § 1.6049–4, paragraph (a)(2) is revised to read as follows:

§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

(a) * * *

(2) *Payor.* For payments made after December 31, 2002, a payor is a person described in paragraph (a)(2)(i) or (ii) of this section.

(i) Every person who makes a payment of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter) to any other person during a calendar year.

(ii) Every person who collects on behalf of another person payments of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter), or who otherwise acts as a middleman (as defined in paragraph (f)(4) of this section) with respect to such payment.

* * * * *

PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 7. The authority citation for part 5f is amended by removing the authority citation for "Sec. 5f.6045–1" to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 5f.6045–1 [Removed]

Par. 8. Section 5f.6045–1 is removed.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 9. The authority citation for part 31 continues to read in part as follows:

Authority:

Par. 10. Section 31.3406–0 is amended by:

1. Revising the entry in the table for § 31.3406(a)–2, paragraph (b).
2. Adding an entry to the table for § 31.3406(a)–2, paragraph (d).

The revision and addition read as follows:

§ 31.3406–0 Outline of the backup withholding regulations.

* * * * *

§ 31.3406(a)–2 Definition of payors obligated to backup withhold.

* * * * *

(b) Persons treated as payors.

* * * * *

(d) Effective date.

* * * * *

Par. 11. Section 31.3406(a)–2 is revised to read as follows:

§ 31.3406(a)–2 Definition of payors obligated to backup withhold.

(a) *In general. Payor* means the person that is required to make an information return under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, or 6050N, with respect to any reportable payment (as described in section 3406(b)), or that is described in paragraph (b) of this section.

(b) *Persons treated as payors.* The following persons are treated as payors for purposes of section 3406—

(1) A grantor trust established after December 31, 1995, all of which is owned by two or more grantors (treating for this purpose spouses filing a joint return as one grantor);

(2) A grantor trust with ten or more grantors established on or after January 1, 1984 but before January 1, 1996;

(3) A common trust fund; and

(4) A partnership or an S corporation that makes a reportable payment.

(c) *Persons not treated as payors.* A person on the following list is not treated as a payor for purposes of section 3406 if the person does not have a reporting obligation under the section on information reporting to which the payment relates—

(1) A trust (other than a grantor trust as described in paragraph (b)(1) or (2) of this section) that files a Form 1041 containing information required to be shown on an information return, including amounts withheld under section 3406; or

(2) A partnership making a payment of a distributive share or an S corporation making a similar distribution.

(d) *Effective date.* The provisions of this section apply to payments made after December 31, 2002.

§ 31.3406(a)–4 [Amended]

Par. 12. Section 31.3406(a)–4 is amended as follows:

1. In paragraph (c)(1), first sentence, removing the language "Any middleman (as defined in § 31.3406(a)–2(b))" and adding "A person that is a middleman and is a person defined in § 31.3406(a)–2(b) or in the section on information reporting to which the payment relates" in its place.

2. In paragraph (c)(3), first sentence, removing the language "§ 31.3406(a)–2(b)(4)" and adding "§ 31.3406(a)–2(b)(1) or (2)" in its place.

§ 31.3406(b)(3)–2 [Amended]

Par. 13. In § 31.3406(b)(3)–2, paragraph (b)(5) is amended by removing the language "§ 5f.6045–1(c)(3)(ix)" and adding "§ 1.6045–1(c)(3)(x)" in its place.

§ 31.3406(d)–4 [Amended]

Par. 14. In § 31.3406(d)–4, paragraph (a)(1) introductory text is amended by removing the language "the payor of the instrument (as defined in § 31.3406(a)–2(b)(3))," and adding "a broker holding a security (including stock) for a customer in street name," in its place.

§ 31.3406(h)–1 [Amended]

Par. 15. In § 31.3406(h)–1, paragraph (c), second sentence, is amended by removing the language "§ 5f.6045–1(c)(3)(ii) and (iii)" and adding "§ 1.6045–1(c)(3)(iii) and (iv)" in its place.

§ 31.3406(h)–2 [Amended]

Par. 16. Section 31.3406(h)–2 is amended as follows:

1. In paragraph (c), third sentence, removing the language "with two or more grantors described in § 31.3406(a)–2(b)(4), which is treated as a middleman payor" and adding "described in § 31.3406(a)–2(b)(1) or (2), which is treated as a payor" in its place.

2. In paragraph (d), first sentence, removing the language "A middleman payor (as defined in § 31.3406(a)–2(b))" and adding "A middleman payor (as defined in § 31.3406(a)–2(b) or in the section on information reporting to which the payment relates)" in its place.

3. In paragraph (f)(6), removing the language "§ 31.3406(a)–2(a)" and adding "§ 31.3406(a)–2" in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 17. The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 18. In section 602.101, paragraph (b) is amended by adding the following OMB control numbers in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6041–1	1545–1705
* * * * *	
1.6045–1	1545–1705
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 17, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–18793 Filed 7–25–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[TD 9011]

RIN 1545–AY05

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations governing practice before the Internal Revenue Service (Circular 230). These regulations affect individuals who are eligible to practice before the Internal Revenue Service. These regulations modify the general standards of practice before the Internal Revenue Service.

DATES: *Effective Date:* These regulations are effective July 26, 2002.

Applicability Date: For dates of applicability, *see* § 10.91.

FOR FURTHER INFORMATION CONTACT: Brinton Warren at (202) 622–4940.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1726. The collection of information in these final regulations is in §§ 10.6, 10.29, and 10.30.

Section 10.6 requires an enrolled agent to maintain records and educational materials regarding his or her satisfaction of the qualifying continuing professional education credit. Section 10.6 also requires sponsors of qualifying continuing professional education programs to maintain records and educational material concerning these programs and those who attended them. The collection of this material helps to ensure that individuals enrolled to practice before the Internal Revenue

Service are informed of the newest developments in Federal tax practice.

Section 10.29 requires a practitioner to obtain and retain for a reasonable period written consents to representation whenever such representation conflicts with the interests of the practitioner or the interests of another client of the practitioner. The consents are to be obtained after full disclosure of the conflict is provided to each party. Section 10.30 requires a practitioner to retain for a reasonable period any communication and the list of persons to whom that communication was provided with respect to public dissemination of fee information. The collection of consents to representation and communications concerning practitioner fees protects the practitioner against claims of impropriety and ensures the integrity of the tax administration system.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. The Secretary of the Treasury is authorized, after notice and an opportunity for a proceeding, to suspend or disbar from practice before the Department those representatives who are, inter alia, incompetent, disreputable, or who violate regulations prescribed under section 330 of title 31. Pursuant to section 330 of title 31, the Secretary has published the regulations in Circular 230 (31 CFR part 10). These regulations authorize the Director of Practice to act upon applications for enrollment to practice before the Internal Revenue Service, to make inquiries with respect to matters under the Director of Practice's jurisdiction, to institute proceedings for suspension or disbarment from practice before the Internal Revenue Service, and to perform such other duties as are necessary to carry out these functions.

The regulations have been amended from time to time to address various specific issues in need of resolution. For example, on February 23, 1984, the regulations were amended to provide standards for providing opinions used in tax shelter offerings (49 FR 6719). On October 17, 1985, the regulations were amended to conform to legislative changes requiring the disqualification of an appraiser who is assessed a penalty under section 6701 of the Internal Revenue Code for aiding and abetting the understatement of a tax liability (50 FR 42014). The regulations were most recently amended on June 20, 1994 (59 FR 31523), to provide standards for tax return preparation, to limit the use of contingent fees in tax return or refund claim preparation, to provide expedited rules for suspension, and to clarify or amend certain other items.

On June 15, 1999, an advance notice of proposed rulemaking was published (64 FR 31994) requesting comments on amendments to the regulations that would take into account legal developments, professional integrity and fairness to practitioners, taxpayer service, and sound tax administration. On May 5, 2000, an advance notice of proposed rulemaking was published (65 FR 30375) requesting comments on amendments to the regulations relating to standards of practice governing tax shelters and other general matters. On January 12, 2001, a notice of proposed rulemaking (REG–111835–99) was published (66 FR 3276) that proposed amendments to the regulations, requested comments on the proposed amendments, and announced a public hearing on the subject of the proposed amendments. The January 12, 2001 notice of proposed rulemaking addressed both general matters pertaining to practice before the Internal Revenue Service and also matters pertaining specifically to tax shelter opinions. A public hearing was held on these proposals on May 2, 2001. The final regulations in this document encompass only those proposals addressing non-tax shelter related matters pertaining to practice before the Internal Revenue Service. Accordingly, this document does not contain final regulations governing standards for tax shelter opinions. The standards that currently govern tax shelter opinions remain in effect. The Department of Treasury and Internal Revenue Service intend to issue a second notice of proposed rulemaking that re-proposes amendments for such standards. The Department of Treasury and Internal Revenue Service also intend to issue an additional advance notice of proposed rulemaking that will cover additional non-tax shelter matters pertaining to practice before the Internal Revenue Service. Many of the matters covered by the advance notice of proposed rulemaking will be distinct from those that have been the focus of the non-tax shelter revisions of Circular 230 to this point, e.g., matters concerning unenrolled practice and whether the use of contingent fee arrangements should be further restricted.

Summary of Comments

Fifty-one written comments were received concerning revisions to Circular 230. All comments were considered and are available for public inspection upon request. These comments addressed both the tax shelter and non-tax shelter related proposed amendments. Many commentators expressed general support for amending Circular 230. The following paragraphs provide a summary of significant comments concerning the non-tax shelter proposals.

One commentator recommended specific language for proposed § 10.6 with respect to determining credits for continuing professional education through distance learning programs, and another recommended that the standards for continuing professional education classes be modified to include more diverse subjects beyond those strictly related to taxation, such as in the fields of financial services and practice management.

With regard to unenrolled practice under proposed § 10.7(c)(1)(viii), one commentator argued that a restriction on the right of non-practitioners to practice hampers the ability of taxpayers to obtain a speedy and inexpensive resolution of matters before the Internal Revenue Service. In contrast, some commentators recommended that unenrolled practice as permitted by § 10.7(c)(1)(viii) be further restricted or eliminated outright. One of these commentators suggested that it is not appropriate to allow a tax return preparer who may not have demonstrated knowledge of tax law or tax procedure to represent a taxpayer during an examination merely because the preparer has signed the return under examination.

A number of commentators expressed concern regarding the information to be furnished to the Internal Revenue Service under proposed § 10.20. Commentators were concerned that the proposal is overly burdensome, puts an improper affirmative obligation on a practitioner, fails to respect privileged communications, and impairs a represented taxpayer's right to challenge an unlawful request for information by the Internal Revenue Service. Particular concern was expressed as to the removal

of the phrase "of doubtful legality," appearing in the current section governing the topic.

Commentators both supported and criticized the proposed amendment to § 10.21 regarding a practitioner's duties when discovering a client's error or omission on a return, claim for refund, or other document. Two commentators suggested that the proposal to mandate that a practitioner advise a client regarding the consequences of not taking corrective action was a good one, but should be expanded to include advice regarding the consequences of taking corrective action. Some commentators criticized the proposal on the ground that it would require some practitioners to offer advice beyond their competence.

Commentators suggested that the Internal Revenue Service's interpretation of § 10.26 is too strict and thus imposes obligations on the firms of former government employees that are more burdensome than the related criminal statute.

With regard to the proposed clarification of the prohibition on contingent fees in § 10.27, one commentator was supportive of the clarification, but recommended further amendments to address ambiguities, uncertainties, and opportunities for abuse with regard to the section's application. Another commentator urged that the section be amended so that contingent fees can be charged for advice regarding return positions on original returns when the practitioner reasonably anticipates that the return position will be substantively reviewed by the Internal Revenue Service prior to the filing of the return.

A number of commentators expressed concern regarding the proposed amendment in § 10.28 that would require a practitioner to return a client's records upon a client's request regardless of a dispute over fees. One commentator recommended that the section distinguish between records pertaining to tax and non-tax matters because Circular 230 should not attempt to regulate a practitioner's conduct with respect to non-tax matters. A number of commentators urged that the section be revised to distinguish more completely the records of the client from the practitioner's work product, so that a client may not take advantage of a practitioner by obtaining the practitioner's work product without paying for it. A number of commentators objected to the section on the grounds that it conflicts with state laws governing attorneys' liens.

With regard to the proposal regarding representation of conflicting interests in § 10.29, many commentators expressed concern with the use of the word "potential" to modify "conflicting interests," arguing that the use of the word made the section's application too ambiguous. A number of commentators objected to the proposal that consents from taxpayers be in writing, some arguing that the requirement could create disharmony among clients. Some commentators observed that the section incongruously failed to require written consents when the conflict arises with the practitioner's own interest.

Some commentators objected to the proposal in § 10.30 to prohibit enrolled agents from using the term licensed in describing their professional designation. These commentators argued that the term "licensed" is not misleading to the public and does accurately describe the professional status of enrolled agents.

With regard to the proposal to add censure as a sanction available under Circular 230, as proposed in § 10.50, some commentators questioned the statutory authority for the censure sanction. One commentator expressed concern that the censure sanction as proposed did not fulfill the role of an intermediate sanction because the remedial conditions proposed for censured practitioners appear to be of indefinite duration.

With regard to proposed § 10.53, governing the receipt of information by the Director of Practice concerning practitioners, some commentators recommended that the section provide for the destruction of information determined to be frivolous and also establish a timetable for the Director of Practice's destruction of records in general.

With regard to the proposed amendments in Subpart D, governing the conduct of disciplinary proceedings under Circular 230, one commentator praised the proposal to merge the provisions governing proceedings for appraisers into the same subpart. One commentator urged that the standard of proof in a Circular 230 hearing be specified, and that such standard should be one of clear and convincing evidence. This commentator also recommended that Subpart D be amended to provide for additional discovery procedures.

Explanation of Provisions

The final regulations adopted in this document concern only the non-tax shelter related provisions as proposed in the January 12, 2001, notice of proposed rulemaking. The Department of Treasury and Internal Revenue Service intend to issue a second notice of proposed rulemaking that re-proposes amendments for the standards governing tax shelter opinions.

Who May Practice

Paragraph (d)(2) of § 10.3 of the regulations adopts the proposed changes that expanded the list of issues with respect to which an enrolled actuary is authorized to represent a taxpayer in limited practice before the Internal Revenue Service. The list is expanded to include issues involving 26 U.S.C. 419 (treatment of funded welfare benefits), 419A (qualified asset accounts), 420 (transfers of excess pension assets to retiree health accounts), 4972 (tax on nondeductible contributions to qualified employer plans), 4976 (taxes with respect to funded welfare benefit plans), and 4980 (tax on reversion of qualified plan assets to employer).

Enrollment

Section § 10.6 sets forth the conditions and process for renewal of enrollment to practice before the Internal Revenue Service. One condition for renewal of enrollment is that the enrolled agent complete a minimum number of hours of continuing professional education in programs comprised of current subject matter in Federal taxation or Federal tax related matters. The final regulations do not adopt the commentator's suggestion to expand the subjects of qualifying tax programs to non-tax related matters, nor do they adopt the suggested language for determining distance learning credits.

Section § 10.6 as adopted differs from the proposed section in that it incorporates a system of rolling renewals for enrollment. The year in which enrolled agents will be required to apply for renewal of enrollment will vary based on the last digit of the enrolled agent's social security number. This change is ministerial only and is made in order to balance the workflow involved in processing renewals.

The final regulations adopt new paragraph 10.6(a) that clarifies that enrollment and the renewal of enrollment of actuaries is also governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 *et seq.*

Unenrolled Practice

The final regulations adopt the provisions governing unenrolled practice as proposed in paragraph 10.7(c)(viii). This amendment preserves the scope of unenrolled practice as it has existed and only makes non-substantive changes in nomenclature that are necessitated by the

organizational restructuring of the Internal Revenue Service.

Information To Be Furnished

Section 10.20 of the regulations adopts the proposed changes in modified form. Paragraph (a) of § 10.20 requires a practitioner to respond promptly to a proper and lawful request for records and information, unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged. The right and ability of practitioners to resist efforts that the practitioner believes to be of doubtful legality is preserved. The phrase "of doubtful legality" was excised from § 10.20 merely to eliminate the redundancy in the section's text, which requires requests from the Internal Revenue Service to be "proper and lawful," not to effectuate a substantive change with regard to a practitioner's ability to resist efforts by the government to obtain documents or information that are irrelevant to an inquiry, confidential, privileged, or otherwise immune from compulsion.

The final regulations adopt, with amendment and clarification, the proposed amendment to require a practitioner to provide information regarding the identity of persons the practitioner reasonably believes may have possession or control of requested documents. The requirement, in paragraph (a)(2) of § 10.20, applies only when requested records or information are not in the possession or control of the practitioner or the practitioner's client. The paragraph is modified from its proposed form to clarify that the practitioner's duty is limited only to making reasonable inquiry of the practitioner's client and that there exists no obligation on the practitioner to make inquiry of any other person or to independently verify information provided by a client.

The right and ability of a practitioner to resist a request by the Director of Practice regarding an alleged violation of Circular 230 that the practitioner believes to be of doubtful legality is similarly unchanged in paragraph (b), which requires practitioners to provide information to the Director of Practice regarding the alleged violations of Circular 230 by any person. An alleged violation under paragraph (b) is not limited to a violation that is the subject of a proceeding under subpart D, for the necessary reason that the Director of Practice should be able to obtain evidence regarding alleged violations to determine whether they merit formal charges.

Knowledge of Client's Omission

Section 10.21 of Circular 230 has historically required a practitioner to advise a client promptly of any noncompliance, error, or omission. The proposed rules expanded the practitioner's duty under § 10.21 to include providing advice to the client regarding the manner in which the error or omission might be corrected and the possible consequences of a failure to take such corrective action. Rather than adopting § 10.21 as proposed, the final regulations modify the preexisting duty by simply requiring that, in addition to notifying the client of the fact of the noncompliance, error, or omission, the practitioner advise the client of the consequences as provided under the Code and regulations of the noncompliance, error, or omission. This change requires practitioners to provide information that taxpayers who consult tax professionals typically expect to receive.

Diligence as to Accuracy

The final regulations adopt the proposed clarification in § 10.22 that a practitioner is presumed to have exercised due diligence if the practitioner relies on the work product of another person and the practitioner uses reasonable care in engaging, supervising, training, and evaluating such person, taking proper account of the relationship between the practitioner and the person. It is expected that practitioners will use common sense and experience in guiding their conduct under this section. The section applies both in the context of a firm and in circumstances involving a practitioner's engagement of an outside practitioner. For example, in circumstances in which a practitioner must hire another practitioner for a specialized or complicated matter, such practitioner's duty under the section will be more focused on the reasonable care taken in the engagement of the specialist. Supervising and training are not part of a practitioner's engagement of a specialist. Conversely, in the context of a firm, the section's application will focus more on supervising and training, if there is an issue with regard to a supervisory practitioner's reliance on a subordinate. Finally, the presumption of due diligence provided by this section does not apply for purposes of § 10.33 and § 10.34, governing tax shelter opinions and standards for advising with respect to tax return positions, respectively, which have their own rules concerning due diligence.

Practice by Former Government Employees, Their Partners and Their Associates

The final regulations adopt without change the proposed amendments found in § 10.25 (former § 10.26) governing the restrictions on the practice of former Government employees, their partners, and their associates with respect to matters that the former Government employees participated in during the course of their Government employment. This section reflects changes to the Federal statutes governing post-employment restrictions applicable to former Government employees. The former § 10.25, governing the practice of partners of former Government employees, is removed, as was proposed, because the statutory prohibition implemented by the provision was repealed.

Contingent Fees

The final regulations adopt the proposed clarification governing the prohibition on contingent fees in connection with advice rendered in connection with a position taken or to be taken on an original tax return. The Department of the Treasury and the Internal Revenue Service remain concerned regarding the use of contingent fees and will request further public comments regarding contingent fees in the upcoming advance notice of proposed rulemaking.

Return of Client's Records

The final regulations adopt, with substantial changes, the proposed amendment to § 10.28 that requires a practitioner to return a client's records upon the client's request, regardless of a fee dispute. As recommended by one commentator, the section's application is restricted by paragraph (a) to the client's records that are necessary for the client to comply with his or her Federal tax obligations.

Further, as recommended by a number of commentators, the term *records of the client* is defined to exclude items such as returns or other documents prepared by the practitioner that the practitioner is withholding pending the client's payment of fees for those documents. These changes are incorporated to protect practitioners from being disadvantaged or compromised by clients seeking to obtain an unfair advantage under this section. In consideration of various state laws that may permit liens on a client's records in favor of practitioners during the course of fee disputes, the regulations provide that a practitioner must only return those records that

must be attached to the client's return if a fee dispute has triggered an applicable state lien provision. The practitioner, however, must provide the client access to review and copy any of the client's records retained by the practitioner under state law that are necessary for the client to comply with his Federal tax obligations.

Conflicting Interests

The final regulations adopt the amendments as proposed in § 10.29, with modification. The modifier *potential* has been removed in the identification of conflicts of interest. The final regulations have been modified from the proposed regulations to conform more closely with the approach of the recently revised Model Rule 1.7 of the American Bar Association Rules of Professional Conduct. Section 10.29 requires a client to give informed consent, confirmed in writing, to representation by a practitioner when the representation of one client will be directly adverse to another client or there is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner. The adoption of this requirement results in parallel application to conflicts with another client and conflicts with the practitioner's own interest. The section requires a practitioner to retain the written consent for at least 36 months after the conclusion of the representation and to provide the written consents to the Internal Revenue Service, if requested to do so.

Solicitation

The final regulations adopt some but not all of the changes to the solicitation standards from the proposed regulations. Under the final regulations, a practitioner is prohibited from making written and oral solicitations of employment in matters related to the Internal Revenue Service if such solicitations would violate Federal or State statutes or other rules applicable to the practitioner regarding the uninvited solicitation of prospective clients. For example, if an attorney is prohibited under that attorney's governing State bar rules from making a certain type of uninvited solicitation, the attorney's uninvited solicitation with respect to a matter related to the Internal Revenue Service will constitute a violation of § 10.30. Conversely, if such a solicitation is permissible under the relevant State bar rule, the making of the solicitation with respect to a matter related to the Internal Revenue Service is permissible under § 10.30.

Section 10.30 also expands the prohibition of deceptive and other improper solicitation practices to cover private, as well as public, solicitations. The final regulations provide that a practitioner may not, in matters related to the Internal Revenue Service, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients, or otherwise practices in a manner forbidden under this section.

In consideration of the comments received, the final regulations do not adopt the change that would have prohibited enrolled agents from using the term *licensed* in describing their professional designation. The Department of Treasury and the Internal Revenue Service recognize the valuable services provided by the over thirty-thousand enrolled agents in the United States, but want to ensure that the respective roles of enrolled agents, attorneys and certified public accountants are understood by taxpayers. The Treasury Department and Internal Revenue Service will solicit comments in an advance notice of proposed rulemaking regarding whether an additional designation may be employed to describe the professional services of enrolled agents.

Sanctions

The final regulations adopt the additional sanction of censure, which is defined as a public reprimand, as proposed in the amendments to § 10.50. The sanction of censure is not listed with disbarment or suspension in 31 U.S.C. 330(b), but the authority of the Secretary to regulate practice before the Internal Revenue Service is not limited to those specific sanctions. A censure sanction is authorized by the general grant of authority to "regulate the practice of representatives of persons before the Department of the Treasury" as provided in 31 U.S.C. 330(a). Additionally, the final regulations are modified in § 10.79 to clarify that suspended representatives may be subject to conditions and the conditions placed upon suspended or censured practitioners may only be imposed for a period that is reasonable in light of the gravity of a practitioner's violations.

Disreputable Conduct

Section 10.51 defines disreputable conduct for which a practitioner may be censured, suspended, or disbarred. Such disreputable conduct includes the filing of a complaint against Internal Revenue Service personnel under section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998, if the practitioner knows the complaint is false. Similarly, disreputable conduct also includes knowingly advancing frivolous arguments in collection due process hearings, or in connection with offers in compromise, installment agreements, or the appeals process. Additionally, the definition of disreputable conduct is amended, as proposed, to include conviction of any felony involving conduct that renders the practitioner unfit to practice before the Internal Revenue Service.

Receipt of Information Concerning Practitioner

The final regulations incorporate provisions for the destruction of documents by the Director of Practice. Section 10.53 of the final regulations requires the Director of Practice to destroy reports as soon as permissible under the applicable record control schedules approved by the National Archives and Records Administration and designated in the Internal Revenue Manual.

Evidence that alleges practitioner misconduct, but which is on its face without merit, should not be maintained in a manner that falsely conveys a willingness of the Director of Practice to use such evidence at an indefinite time in the future. This same principle applies to evidence that merits investigation, but is eventually determined to be insufficient to justify the initiation of disciplinary proceedings. If the currently applicable records control schedule proves to be unsuitable in assuring fairness to practitioners, or if it proves to be unworkable given the demands placed upon the Director of Practice, the Internal Revenue Service will initiate the public process required to request a change of the records control schedule through the National Archives and Records Administration.

Consolidation of Appraiser Disqualification Rules

The final regulations adopt without change the consolidation of the virtually identical rules applicable to disciplinary proceedings against practitioners and appraisers that heretofore have been separately set out in separate subparts. The final regulations consolidate the rules regarding sanctions of practitioners and appraisers under subpart D.

Various Aspects of Disciplinary Proceedings

The final regulations adopt the proposed rules of subpart D regarding the conduct of disciplinary proceedings

largely without change. In response to the request of a commentator, § 10.76 has been modified to specifically provide that the standard of proof in Circular 230 proceedings is that of a preponderance of the evidence, if the sanction sought by the Director of Practice is censure or a suspension of less than six month's duration. If the Director of Practice seeks a sanction of disbarment or a suspension of six months or longer or the disqualification of an appraiser, the standard of proof is clear and convincing evidence. The Treasury Department and Internal Revenue Service conclude that the preponderance of evidence standard is justified in the case of the less severe sanctions of censure and suspension of a short duration. When the Director of Practice seeks a more significant sanction, the clear and convincing evidence standard is adopted to protect the interests of the practitioner.

Effective Date

These regulations are effective on July 26, 2002.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities because the general requirements, including the collection of information requirements, of these regulations are substantially the same as the requirements of the regulations that these regulations replace. Persons authorized to practice have long been required to comply with certain standards of conduct when practicing before the Internal Revenue Service. These regulations do not alter the basic nature of the obligations and responsibilities of these practitioners. These regulations clarify those obligations in response to public comments and judicial decisions, and make other modifications to reflect the development of electronic media. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal authors of these regulations are Richard S. Goldstein and Brinton T. Warren, of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 31 CFR Part 10

Accountants, Administrative practice and procedure, Lawyers, Reporting and recordkeeping requirements, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 31 CFR part 10 is amended as follows:

1. The table of contents reads as follows:

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Sec.
10.0 Scope of part.

Subpart A—Rules Governing Authority to Practice

10.1 Director of Practice.
10.2 Definitions.
10.3 Who may practice.
10.4 Eligibility for enrollment.
10.5 Application for enrollment.
10.6 Enrollment.
10.7 Representing oneself; participating in rulemaking; limited practice; special appearances; and return preparation.
10.8 Customhouse brokers.

Subpart B—Duties and Restrictions Relating to Practice Before the Internal Revenue Service

10.20 Information to be furnished.
10.21 Knowledge of client's omission.
10.22 Diligence as to accuracy.
10.23 Prompt disposition of pending matters.
10.24 Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees.
10.25 Practice by former Government employees, their partners and their associates.
10.26 Notaries.
10.27 Fees.
10.28 Return of client's records.
10.29 Conflicting interests.
10.30 Solicitation.
10.31 Negotiation of taxpayer checks.
10.32 Practice of law.
10.33 Tax shelter opinions.
10.34 Standards for advising with respect to tax return positions and for preparing or signing returns.

Subpart C—Sanctions for Violation of the Regulations

10.50 Sanctions.
10.51 Incompetence and disreputable conduct.
10.52 Violation of regulations.
10.53 Receipt of information concerning practitioner.

Subpart D—Rules Applicable to Disciplinary Proceedings

10.60 Institution of proceeding.
10.61 Conferences.
10.62 Contents of complaint.
10.63 Service of complaint; service and filing of other papers.
10.64 Answer; default.
10.65 Supplemental charges.
10.66 Reply to answer.
10.67 Proof; variance; amendment of pleadings.
10.68 Motions and requests.
10.69 Representation; ex parte communication.
10.70 Administrative Law Judge.
10.71 Hearings.
10.72 Evidence.
10.73 Depositions.
10.74 Transcript.
10.75 Proposed findings and conclusions.
10.76 Decision of Administrative Law Judge.
10.77 Appeal of decision of Administrative Law Judge.
10.78 Decision on appeal.
10.79 Effect of disbarment, suspension, or censure.
10.80 Notice of disbarment, suspension, censure, or disqualification.
10.81 Petition for reinstatement.
10.82 Expedited suspension upon criminal conviction or loss of license for cause.

Subpart E—General Provisions

10.90 Records.
10.91 Saving clause.
10.92 Special orders.
10.93 Effective date.

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 et. seq.; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 321; 31 U.S.C. 330.

§ 10.0 Scope of part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing taxpayers before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service; subpart B of this part prescribes the duties and restrictions relating to such practice; subpart C of this part prescribes the sanctions for violating the regulations; subpart D of this part contains the rules applicable to disciplinary proceedings; and subpart E of this part contains general provisions including provisions relating to the availability of official records.

2. In part 10, subpart A is revised to read as follows:

Subpart A—Rules Governing Authority to Practice

§ 10.1 Director of Practice.

(a) *Establishment of office.* The Office of Director of Practice is established in the Office of the Secretary of the Treasury. The Director of Practice is

appointed by the Secretary of the Treasury, or his or her designate.

(b) *Duties.* The Director of Practice acts on applications for enrollment to practice before the Internal Revenue Service; makes inquiries with respect to matters under his or her jurisdiction; institutes and provides for the conduct of disciplinary proceedings relating to attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers; and performs other duties as are necessary or appropriate to carry out his or her functions under this part or as are prescribed by the Secretary of the Treasury, or his or her delegate.

(c) *Acting Director of Practice.* The Secretary of the Treasury, or his or her delegate, will designate an officer or employee of the Treasury Department to act as Director of Practice in the absence of the Director or a vacancy in that office.

§ 10.2 Definitions.

As used in this part, except where the text clearly provides otherwise:

(a) *Attorney* means any person who is a member in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(b) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(c) *Commissioner* refers to the Commissioner of Internal Revenue.

(d) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, and representing a client at conferences, hearings, and meetings.

(e) *Practitioner* means any individual described in paragraphs (a), (b), (c), or (d) of § 10.3.

(f) A *tax return* includes an amended tax return and a claim for refund.

(g) *Service* means the Internal Revenue Service.

§ 10.3 Who may practice.

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as an attorney and is authorized to represent the party or parties on whose behalf he or she acts.

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as a certified public accountant and is authorized to represent the party or parties on whose behalf he or she acts.

(c) *Enrolled agents.* Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(d) *Enrolled actuaries.* (1) Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration stating that he or she is currently qualified as an enrolled actuary and is authorized to represent the party or parties on whose behalf he or she acts.

(2) Practice as an enrolled actuary is limited to representation with respect to issues involving the following statutory provisions in title 26 of the United States Code: sections 401 (relating to qualification of employee plans), 403(a) (relating to whether an annuity plan meets the requirements of section 404(a)(2)), 404 (relating to deductibility of employer contributions), 405 (relating to qualification of bond purchase plans), 412 (relating to funding requirements for certain employee plans), 413 (relating to application of qualification requirements to collectively bargained plans and to plans maintained by more than one employer), 414 (relating to definitions and special rules with respect to the employee plan area), 419 (relating to treatment of funded welfare benefits), 419A (relating to qualified asset accounts), 420 (relating to transfers of excess pension assets to retiree health accounts), 4971 (relating to excise taxes payable as a result of an accumulated funding deficiency under section 412), 4972 (relating to tax on nondeductible contributions to qualified employer plans), 4976 (relating to taxes with respect to funded welfare benefit plans), 4980 (relating to tax on reversion of qualified plan assets to employer), 6057 (relating to annual registration of plans), 6058 (relating to information required in connection with certain plans of deferred compensation), 6059 (relating to periodic report of actuary), 6652(e) (relating to the failure to file annual registration and other notifications by pension plan), 6652(f) (relating to the failure to file information required in connection with certain plans of deferred compensation), 6692 (relating to the failure to file actuarial report), 7805(b) (relating to the extent to which an Internal Revenue Service ruling or determination letter coming under the statutory provisions listed here will be applied without retroactive effect); and 29 U.S.C. 1083 (relating to the waiver of funding for nonqualified plans).

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (d)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants and enrolled agents.

(e) *Others.* Any individual qualifying under paragraph (d) of § 10.5 or § 10.7 is eligible to practice before the Internal Revenue Service to the extent provided in those sections.

(f) *Government officers and employees, and others.* An individual, who is an officer or employee of the executive, legislative, or judicial branch of the United States Government; an officer or employee of the District of Columbia; a Member of Congress; or a Resident Commissioner may not practice before the Internal Revenue Service if such practice violates 18 U.S.C. 203 or 205.

(g) *State officers and employees.* No officer or employee of any State, or subdivision of any State, whose duties require him or her to pass upon, investigate, or deal with tax matters for such State or subdivision, may practice before the Internal Revenue Service, if such employment may disclose facts or information applicable to Federal tax matters.

§ 10.4 Eligibility for enrollment.

(a) *Enrollment upon examination.* The Director of Practice may grant enrollment to an applicant who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Director of Practice and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of this part.

(b) *Enrollment of former Internal Revenue Service employees.* The Director of Practice may grant enrollment to an applicant who, by virtue of his or her past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of this part, under the following circumstances—

(1) The former employee applies for enrollment to the Director of Practice on a form supplied by the Director of Practice and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) An appropriate office of the Internal Revenue Service, at the request of the Director of Practice, will provide the Director of Practice with a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

(3) Enrollment based on an applicant's former employment with the Internal Revenue Service may be of unlimited scope or it may be limited to permit the presentation of matters only of the particular class or only before the particular unit or division of the Internal Revenue Service for which the applicant's former employment has qualified the applicant.

(4) Application for enrollment based on an applicant's former employment with the Internal Revenue Service must be made within 3 years from the date of separation from such employment.

(5) An applicant for enrollment who is requesting such enrollment based on his or her former employment with the Internal Revenue Service must have had a minimum of 5 years continuous employment with the Internal Revenue Service during which he or she must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations thereunder relating to income, estate, gift, employment, or excise taxes.

(6) For the purposes of paragraph (b)(5) of this section, an aggregate of 10 or more years of employment in positions involving the application and interpretation of the provisions of the Internal Revenue Code, at least 3 of which occurred within the 5 years preceding the date of application, is the equivalent of 5 years continuous employment.

(c) *Natural persons.* Enrollment to practice may be granted only to natural persons.

§ 10.5 Application for enrollment.

(a) *Form; address.* An applicant for enrollment must file an application on Form 23, "Application for Enrollment to Practice Before the Internal Revenue Service," properly executed under oath or affirmation, with the Director of Practice. The address of the applicant entered on Form 23 will be the address under which a successful applicant is enrolled and is the address to which the Director of Practice will send correspondence concerning enrollment. An enrolled agent must send notification of any change to his or her enrollment address to the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or at such other address specified by the Director of Practice. This notification must include the enrolled agent's name, old address, new address, social security number or tax identification number, signature, and the date.

(b) *Fee.* The application for enrollment must be accompanied by a check or money order in the amount set forth on Form 23, payable to the Internal Revenue Service, which amount constitutes a fee charged to each applicant for enrollment. This fee will be retained by the United States whether or not the applicant is granted enrollment.

(c) *Additional information; examination.* The Director of Practice, as a condition to consideration of an application for enrollment, may require the applicant to file additional information and to submit to any written or oral examination under oath or otherwise. The Director of Practice will, on written request filed by an applicant, afford such applicant the opportunity to be heard with respect to his or her application for enrollment.

(d) *Temporary recognition.* On receipt of a properly executed application, the Director of Practice may grant the applicant temporary recognition to practice pending a determination as to whether enrollment to practice should be granted. Temporary recognition will be granted only in unusual circumstances and it will not be granted, in any circumstance, if the application is not regular on its face, if the information stated in the application, if true, is not sufficient to warrant enrollment to practice, or if there is any information before the Director of Practice indicating that the statements in the application are untrue or that the applicant would not otherwise qualify for enrollment. Issuance of temporary recognition does not constitute enrollment to practice or a finding of eligibility for enrollment, and the temporary recognition may be withdrawn at any time by the Director of Practice.

(e) *Appeal from denial of application.* The Director of Practice must inform the applicant as to the reason(s) for any denial of an application for enrollment. The applicant may, within 30 days after receipt of the notice of denial of enrollment, file a written appeal of the denial of enrollment with the Secretary of the Treasury or his or her delegate. A decision on the appeal will be rendered by the Secretary of the Treasury, or his or her delegate, as soon as practicable.

§ 10.6 Enrollment.

(a) *Roster.* The Director of Practice will maintain rosters of all individuals—

(1) Who have been granted active enrollment to practice before the Internal Revenue Service;

(2) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(3) Whose enrollment has been placed in inactive retirement status;

(4) Who have been censured, suspended, or disbarred from practice before the Internal Revenue Service;

(5) Whose offer of consent to resign from enrollment to practice before the Internal Revenue Service has been accepted by the Director of Practice under § 10.61; and

(6) Whose application for enrollment has been denied.

(b) *Enrollment card.* The Director of Practice will issue an enrollment card to each individual whose application for enrollment to practice before the Internal Revenue Service is approved after July 26, 2002. Each enrollment card will be valid for the period stated on the enrollment card. An individual is not eligible to practice before the Internal Revenue Service if his or her enrollment card is not valid.

(c) *Term of enrollment.* Each individual enrolled to practice before the Internal Revenue Service will be accorded active enrollment status subject to his or her renewal of enrollment as provided in this part.

(d) *Renewal of enrollment.* To maintain active enrollment to practice before the Internal Revenue Service, each individual enrolled is required to have his or her enrollment renewed. Failure by an individual to receive notification from the Director of Practice

of the renewal requirement will not be justification for the failure to satisfy this requirement.

(1) All individuals licensed to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 0, 1, 2, or 3, except for those individuals who received their initial enrollment after November 1, 2003, must apply for renewal between November 1, 2003, and January 31, 2004. The renewal will be effective April 1, 2004.

(2) All individuals licensed to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 4, 5, or 6, except for those individuals who received their initial enrollment after November 1, 2004, must apply for renewal between November 1, 2004, and January 31, 2005. The renewal will be effective April 1, 2005.

(3) All individuals licensed to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 7, 8, or 9, except for those individuals who received their initial enrollment after November 1, 2005, must apply for renewal between November 1, 2005, and January 31, 2006. The renewal will be effective April 1, 2006.

(4) Thereafter, applications for renewal will be required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(1), (2) or (3) of this section according to the last number of the individual's social security number or tax identification number. Those individuals who receive initial enrollment after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment.

(5) The Director of Practice will notify the individual of his or her renewal of enrollment and will issue the individual a card evidencing enrollment.

(6) A reasonable nonrefundable fee may be charged for each application for renewal of enrollment filed with the Director of Practice.

(7) Forms required for renewal may be obtained from the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

(e) *Condition for renewal: Continuing professional education.* In order to qualify for renewal of enrollment, an individual enrolled to practice before the Internal Revenue Service must certify, on the application for renewal form prescribed by the Director of Practice, that he or she has satisfied the following continuing professional education requirements.

(1) *For renewed enrollment effective after March 31, 2004.* (i) A minimum of 16 hours of continuing education credit must be completed during each calendar year in the enrollment term.

(2) *For renewed enrollment effective after April 1, 2007.* (i) A minimum of 72 hours of continuing education credit must be completed during each three year period described in paragraph (d)(4) of this section. Each such three year period is known as an enrollment cycle.

(ii) A minimum of 16 hours of continuing education credit, including 2 hours of ethics or professional conduct, must be completed in each year of an enrollment cycle.

(iii) An individual who receives initial enrollment during an enrollment cycle must complete two (2) hours of qualifying continuing education credit for each month enrolled during the enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(f) *Qualifying continuing education*—(1) General. To qualify for continuing education credit, a course of learning must—

(i) Be a qualifying program designed to enhance professional knowledge in Federal taxation or Federal tax related matters, i.e., programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax preparation software and taxation or ethics; and

(ii) Be conducted by a qualifying sponsor.

(2) *Qualifying programs*—(i) *Formal programs.* A formal program qualifies as continuing education programs if it—

(A) Requires attendance. Additionally, the program sponsor must provide each attendee with a certificate of attendance; and

(B) Requires that the program be conducted by a qualified instructor, discussion leader, or speaker, i.e., a person whose background, training, education and experience is appropriate for instructing or leading a discussion on the subject matter of the particular program; and

(C) Provides or requires a written outline, textbook, or suitable electronic educational materials.

(ii) *Correspondence or individual study programs (including taped programs).* Qualifying continuing education programs include correspondence or individual study programs that are conducted by qualifying sponsors and completed on an individual basis by the enrolled individual. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs if they—

(A) Require registration of the participants by the sponsor;

(B) Provide a means for measuring completion by the participants (e.g., a written examination), including the issuance of a certificate of completion by the sponsor; and

(C) Provide a written outline, textbook, or suitable electronic educational materials.

(iii) *Serving as an instructor, discussion leader or speaker.* (A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program that meets the continuing education requirements of paragraph (f) of this section.

(B) Two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader, or speaker at such programs. It is the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum credit for instruction and preparation may not exceed 50 percent of the continuing education requirement for an enrollment cycle.

(D) An instructor, discussion leader, or speaker who makes more than one presentation on the same subject matter during an enrollment cycle, will receive continuing education credit for only one such presentation for the enrollment cycle.

(iv) *Credit for published articles, books, etc.* (A) Continuing education credit will be awarded for publications on Federal taxation or Federal tax related matters, including accounting, financial management, tax preparation software, and taxation, provided the content of such publications is current and designed for the enhancement of the professional knowledge of an individual enrolled to practice before the Internal Revenue Service.

(B) The credit allowed will be on the basis of one hour credit for each hour of preparation time for the material. It is the responsibility of the person claiming the credit to maintain records to verify preparation time.

(C) The maximum credit for publications may not exceed 25 percent

of the continuing education requirement of any enrollment cycle.

(3) *Periodic examination.* (i) Individuals may establish eligibility for renewal of enrollment for any enrollment cycle by—

(A) Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and

(B) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(ii) Courses designed to help an applicant prepare for the examination specified in paragraph (a) of § 10.4 are considered basic in nature and are not qualifying continuing education.

(g) *Sponsors.* (1) Sponsors are those responsible for presenting programs.

(2) To qualify as a sponsor, a program presenter must—

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(iii) Be recognized by the Director of Practice as a professional organization or society whose programs include offering continuing professional education opportunities in subject matters within the scope of paragraph (f)(1)(i) of this section; or

(iv) File a sponsor agreement with the Director of Practice and obtain approval of the program as a qualified continuing education program.

(3) A qualifying sponsor must ensure the program complies with the following requirements—

(i) Programs must be developed by individual(s) qualified in the subject matter;

(ii) Program subject matter must be current;

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content;

(iv) Programs must include some means for evaluation of technical content and presentation;

(v) Certificates of completion must be provided to the participants who successfully complete the program; and

(vi) Records must be maintained by the sponsor to verify the participants who attended and completed the program for a period of three years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(4) Professional organizations or societies wishing to be considered as qualified sponsors must request this status from the Director of Practice and furnish information in support of the request together with any further information deemed necessary by the Director of Practice.

(5) A professional organization or society recognized as a qualified sponsor by the Director of Practice will retain its status for one enrollment cycle. The Director of Practice will publish the names of such sponsors on a periodic basis.

(h) *Measurement of continuing education coursework.* (1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, *i.e.*, 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as one contact hour.

(3) Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(i) *Recordkeeping requirements.* (1) Each individual applying for renewal must retain for a period of three years following the date of renewal of enrollment the information required with regard to qualifying continuing professional education credit hours. Such information includes—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content;

(iv) Written outlines, course syllibi, textbook, and/or electronic materials provided or required for the course;

(v) The dates attended;

(vi) The credit hours claimed;

(vii) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and

(viii) The certificate of completion and/or signed statement of the hours of attendance obtained from the sponsor.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of three years following the date of renewal of enrollment—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content;

(iv) The dates of the program; and

(v) The credit hours claimed.

(3) To receive continuing education credit for publications, the following information must be maintained for a period of three years following the date of renewal of enrollment—

(i) The publisher;

(ii) The title of the publication;

(iii) A copy of the publication;

(iv) The date of publication; and

(v) Records that substantiate the hours worked on the publication.

(j) *Waivers.* (1) Waiver from the continuing education requirements for a given period may be granted by the Director of Practice for the following reasons—

(i) Health, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual is required to furnish any additional documentation or explanation deemed necessary by the Director of Practice. Examples of appropriate documentation could be a medical certificate or military orders.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be placed in inactive status, so notified by the Director of Practice, and placed on a roster of inactive enrolled individuals.

(5) If a request for waiver is approved, the individual will be notified and issued a card evidencing renewal.

(6) Those who are granted waivers are required to file timely applications for renewal of enrollment.

(k) *Failure to comply.* (1) Compliance by an individual with the requirements of this part is determined by the Director of Practice. An individual who fails to meet the requirements of eligibility for renewal of enrollment will be notified by the Director of Practice at

his or her enrollment address by first class mail. The notice will state the basis for the determination of noncompliance and will provide the individual an opportunity to furnish information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered by the Director of Practice in making a final determination as to eligibility for renewal of enrollment.

(2) The Director of Practice may require any individual, by notice sent by first class mail to his or her enrollment address, to provide copies of any records required to be maintained under this part. The Director of Practice may disallow any continuing professional education hours claimed if the individual fails to comply with this requirement.

(3) An individual who has not filed a timely application for renewal of enrollment, who has not made a timely response to the notice of noncompliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(4) Individuals placed in inactive enrollment status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are enrolled to practice before the Internal Revenue Service, or use the term *enrolled agent*, the designation "E. A.," or other form of reference to eligibility to practice before the Internal Revenue Service.

(5) An individual placed in an inactive status may be reinstated to an active enrollment status by filing an application for renewal of enrollment and providing evidence of the completion of all required continuing professional education hours for the enrollment cycle. Continuing education credit under this paragraph (k)(5) may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roster.

(6) An individual placed in an inactive status must file an application for renewal of enrollment and satisfy the requirements for renewal as set forth in this section within three years of being placed in an inactive status. The name of such individual otherwise will be removed from the inactive enrollment roster and his or her enrollment will terminate. Eligibility for enrollment must then be reestablished by the individual as provided in this section.

(7) Inactive enrollment status is not available to an individual who is the subject of a disciplinary matter in the Office of Director of Practice.

(l) *Inactive retirement status.* An individual who no longer practices before the Internal Revenue Service may request being placed in an inactive status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. Such individual must file a timely application for renewal of enrollment at each applicable renewal or enrollment period as provided in this section. An individual who is placed in an inactive retirement status may be reinstated to an active enrollment status by filing an application for renewal of enrollment and providing evidence of the completion of the required continuing professional education hours for the enrollment cycle. Inactive retirement status is not available to an individual who is subject of a disciplinary matter in the Office of Director of Practice.

(m) *Renewal while under suspension or disbarment.* An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action is required to be in conformance with the requirements for renewal of enrollment before his or her eligibility is restored.

(n) *Verification.* The Director of Practice may review the continuing education records of an enrolled individual and/or qualified sponsor in a manner deemed appropriate to determine compliance with the requirements and standards for renewal of enrollment as provided in paragraph (f) of this section.

(o) *Enrolled actuaries.* The enrollment and the renewal of enrollment of actuaries authorized to practice under paragraph (d) of § 10.3 are governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 through 901.71.

(Approved by the Office of Management and Budget under Control No. 1545–0946 and 1545–1726)

§ 10.7 Representing oneself; participating in rulemaking; limited practice; special appearances; and return preparation.

(a) *Representing oneself.* Individuals may appear on their own behalf before the Internal Revenue Service provided they present satisfactory identification.

(b) *Participating in rulemaking.* Individuals may participate in rulemaking as provided by the Administrative Procedure Act. *See* 5 U.S.C. 553.

(c) *Limited practice*—(1) *In general.* Subject to the limitations in paragraph (c)(2) of this section, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service in the circumstances described in this paragraph (c)(1), even if the taxpayer is not present, provided the individual presents satisfactory identification and proof of his or her authority to represent the taxpayer. The circumstances described in this paragraph (c)(1) are as follows:

(i) An individual may represent a member of his or her immediate family.

(ii) A regular full-time employee of an individual employer may represent the employer.

(iii) A general partner or a regular full-time employee of a partnership may represent the partnership.

(iv) A bona fide officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(v) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(vi) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(vii) An individual may represent any individual or entity, who is outside the United States, before personnel of the Internal Revenue Service when such representation takes place outside the United States.

(viii) An individual who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or regulations) to sign the tax return, may represent the taxpayer before revenue agents, customer service representatives or similar officers and employees of the Internal Revenue Service during an examination of the taxable year or period covered by that tax return, but, unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees of the Internal Revenue Service or the Department of Treasury.

(2) *Limitations.* (i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section.

(ii) The Director, after notice and opportunity for a conference, may deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section to any individual who has engaged in conduct that would justify censuring, suspending, or disbarring a practitioner from practice before the Internal Revenue Service.

(iii) An individual who represents a taxpayer under the authority of paragraph (c)(1) of this section is subject, to the extent of his or her authority, to such rules of general applicability regarding standards of conduct and other matters as the Director of Practice prescribes.

(d) *Special appearances.* The Director of Practice may, subject to such conditions as he or she deems appropriate, authorize an individual who is not otherwise eligible to practice before the Internal Revenue Service to represent another person in a particular matter.

(e) *Preparing tax returns and furnishing information.* Any individual may prepare a tax return, appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(f) *Fiduciaries.* For purposes of this part, a fiduciary (i.e., a trustee, receiver, guardian, personal representative, administrator, or executor) is considered to be the taxpayer and not a representative of the taxpayer.

§ 10.8 Customhouse brokers.

Nothing contained in the regulations in this part will affect or limit the right of a customhouse broker, licensed as such by the Commissioner of Customs in accordance with the regulations prescribed therefor, in any customs district in which he or she is so licensed, at a relevant local office of the Internal Revenue Service or before the National Office of the Internal Revenue Service, to act as a representative in respect to any matters relating specifically to the importation or exportation of merchandise under the customs or internal revenue laws, for any person for whom he or she has acted as a customhouse broker.

3. In part 10, subpart B is amended by revising §§ 10.20 through 10.32 and revising § 10.34.

Subpart B—Duties and Restrictions Relating to Practice Before the Internal Revenue Service

§ 10.20 Information to be furnished.

(a) *To the Internal Revenue Service.* (1) A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.

(2) Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting Internal Revenue Service officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

(b) *To the Director of Practice.* When a proper and lawful request is made by the Director of Practice, a practitioner must provide the Director of Practice with any information the practitioner has concerning an inquiry by the Director of Practice into an alleged violation of the regulations in this part by any person, and to testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

(c) *Interference with a proper and lawful request for records or information.* A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, or the Director of Practice, or his or her employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

§ 10.21 Knowledge of client's omission.

A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

§ 10.22 Diligence as to accuracy.

(a) *In general.* A practitioner must exercise due diligence—

(1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

(2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and

(3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

(b) *Reliance on others.* Except as provided in §§ 10.33 and 10.34, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

§ 10.23 Prompt disposition of pending matters.

A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

§ 10.24 Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees.

A practitioner may not, knowingly and directly or indirectly:

(a) Accept assistance from or assist any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter or matters constituting practice before the Internal Revenue Service.

(b) Accept assistance from any former government employee where the provisions of § 10.25 or any Federal law would be violated.

§ 10.25 Practice by former Government employees, their partners and their associates.

(a) *Definitions.* For purposes of this section—

(1) *Assist* means to act in such a way as to advise, furnish information to, or otherwise aid another person, directly or indirectly.

(2) *Government employee* is an officer or employee of the United States or any agency of the United States, including a *special government employee* as defined in 18 U.S.C. 202(a), or of the District of Columbia, or of any State, or a member of Congress or of any State legislature.

(3) *Member of a firm* is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent nongovernmental parties.

(4) *Practitioner* includes any individual described in paragraph (f) of § 10.2.

(5) *Official responsibility* means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action, with or without knowledge of the action.

(6) *Participate or participation* means substantial involvement as a Government employee by making decisions, or preparing or reviewing documents with or without the right to exercise a judgment of approval or disapproval, or participating in conferences or investigations, or rendering advice of a substantial nature.

(7) *Rule* includes Treasury Regulations, whether issued or under preparation for issuance as Notices of Proposed Rule Making or as Treasury Decisions; revenue rulings; and revenue procedures published in the Internal Revenue Bulletin. *Rule* does not include a *transaction* as defined in paragraph (a)(8) of this section.

(8) *Transaction* means any decision, determination, finding, letter ruling, technical advice, Chief Counsel advice, or contract or the approval or disapproval thereof, relating to a particular factual situation or situations involving a specific party or parties whose rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service, or other legal rights, are determined or immediately affected therein and to which the United States is a party or in which it has a direct and substantial interest, whether or not the same taxable periods are involved. *Transaction* does not include *rule* as defined in paragraph (a)(7) of this section.

(b) *General rules.* (1) No former Government employee may, subsequent to his or her Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate 18 U.S.C. 207 or any other laws of the United States.

(2) No former Government employee who participated in a transaction may, subsequent to his or her Government employment, represent or knowingly assist, in that transaction, any person who is or was a specific party to that transaction.

(3) A former Government employee who within a period of one year prior to the termination of Government employment had official responsibility for a transaction may not, within two years after his or her Government employment is ended, represent or knowingly assist in that transaction any person who is or was a specific party to that transaction.

(4) No former Government employee may, within one year after his or her Government employment is ended, appear before any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule in the development of which the former Government employee participated or for which, within a period of one year prior to the termination of his or her Government employment, he or she had official responsibility. This paragraph (b)(4) does not, however, preclude such former employee from appearing on his or her own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a transaction involving the application or interpretation of such a rule with respect to that transaction, provided that such former employee does not utilize or disclose any confidential information acquired by the former employee in the development of the rule.

(c) *Firm representation.* (1) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any transaction with respect to which the restrictions of paragraph (b)(2) or (3) of this section apply to the former Government employee, in that transaction, unless the firm isolates the former Government employee in such a way to ensure that the former Government employee cannot assist in the representation.

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the transaction(s) requiring isolation and it must be filed with the Director of Practice (and at such other place(s) directed by the Director of Practice) and in such other place and in the manner prescribed by rule or regulation.

(d) *Pending representation.* Practice by former Government employees, their partners and associates with respect to representation in pecific matters where actual representation commenced before July 26, 2002 is governed by the regulations set forth at 31 CFR part 10 revised as of July 1, 2002. The burden of showing that representation commenced before July 26, 2002 lies with the former Government employees, and their partners and associates.

§ 10.26 Notaries.

A practitioner may not take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the Internal Revenue Service and for which he or she is employed as counsel, attorney, or agent, or in which he or she may be in any way interested.

§ 10.27 Fees.

(a) *Generally.* A practitioner may not charge an unconscionable fee for representing a client in a matter before the Internal Revenue Service.

(b) *Contingent fees.* (1) For purposes of this section, a contingent fee is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

(2) A practitioner may not charge a contingent fee for preparing an original tax return or for any advice rendered in connection with a position taken or to be taken on an original tax return.

(3) A contingent fee may be charged for preparation of or advice in connection with an amended tax return or a claim for refund (other than a claim for refund made on an original tax return), but only if the practitioner reasonably anticipates at the time the fee arrangement is entered into that the amended tax return or refund claim will receive substantive review by the Internal Revenue Service.

§ 10.28 Return of client's records.

(a) In general, a practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her Federal tax obligations. The practitioner may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the practitioner of his or her responsibility under this section. Nevertheless, if applicable state law allows or permits the retention of a client's records by a practitioner in the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the taxpayer's return. The practitioner, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner under state law that are necessary for the client to comply with his or her Federal tax obligations.

(b) For purposes of this section, *Records of the client* include all documents or written or electronic materials provided to the practitioner, or obtained by the practitioner in the course of the practitioner's representation of the client, that preexisted the retention of the practitioner by the client. The term also includes materials that were prepared by the client or a third party (not including an employee or agent of the practitioner) at any time and provided to the practitioner with respect to the subject matter of the representation. The term also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current Federal tax obligations. The term does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner or the practitioner's firm, employees or agents if the practitioner is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

§ 10.29 Conflicting interests.

(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client in his or her practice before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if:

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) Each affected client gives informed consent, confirmed in writing.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients and the written consents must be provided to any officer or employee of the Internal Revenue Service on request. y

(Approved by the Office of Management and Budget under Control No. 1545–1726)

§ 10.30 Solicitation.

(a) *Advertising and solicitation restrictions.* (1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents, in describing their professional designation, may not utilize the term of art "certified" or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service."

(2) A practitioner may not make, directly or indirectly, an uninvited written or oral solicitation of employment in matters related to the Internal Revenue Service if the solicitation violates Federal or State law or other applicable rule, e.g., attorneys are precluded from making a solicitation that is prohibited by conduct rules applicable to all attorneys in their State(s) of licensure. Any lawful solicitation made by or on behalf of a practitioner eligible to practice before the Internal Revenue Service must, nevertheless, clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(b) *Fee information.* (1)(i) A practitioner may publish the availability of a written schedule of fees and disseminate the following fee information—

(A) Fixed fees for specific routine services.

(B) Hourly rates.

(C) Range of fees for particular services.

(D) Fee charged for an initial consultation.

(ii) Any statement of fee information concerning matters in which costs may be incurred must include a statement disclosing whether clients will be responsible for such costs.

(2) A practitioner may charge no more than the rate(s) published under paragraph (b)(1) of this section for at least 30 calendar days after the last date on which the schedule of fees was published.

(c) *Communication of fee information.* Fee information may be communicated in professional lists, telephone directories, print media, mailings, electronic mail, facsimile, hand delivered flyers, radio, television, and any other method. The method chosen, however, must not cause the communication to become untruthful, deceptive, or otherwise in violation of this part. A practitioner may not persist in attempting to contact a prospective client if the prospective client has made it known to the practitioner that he or she does not desire to be solicited. In the case of radio and television broadcasting, the broadcast must be recorded and the practitioner must retain a recording of the actual transmission. In the case of direct mail and e-commerce communications, the practitioner must retain a copy of the actual communication, along with a list or other description of persons to whom the communication was mailed or otherwise distributed. The copy must be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use.

(d) *Improper associations.* A practitioner may not, in matters related

to the Internal Revenue Service, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section.

(Approved by the Office of Management and Budget under Control No. 1545–1726)

§ 10.31 Negotiation of taxpayer checks.

A practitioner who prepares tax returns may not endorse or otherwise negotiate any check issued to a client by the government in respect of a Federal tax liability.

§ 10.32 Practice of law.

Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.

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§ 10.34 Standards for advising with respect to tax return positions and for preparing or signing returns.

(a) *Realistic possibility standard.* A practitioner may not sign a tax return as a preparer if the practitioner determines that the tax return contains a position that does not have a realistic possibility of being sustained on its merits (the realistic possibility standard) unless the position is not frivolous and is adequately disclosed to the Internal Revenue Service. A practitioner may not advise a client to take a position on a tax return, or prepare the portion of a tax return on which a position is taken, unless—

(1) The practitioner determines that the position satisfies the realistic possibility standard; or

(2) The position is not frivolous and the practitioner advises the client of any opportunity to avoid the accuracy-related penalty in section 6662 of the Internal Revenue Code by adequately disclosing the position and of the requirements for adequate disclosure.

(b) *Advising clients on potential penalties.* A practitioner advising a client to take a position on a tax return, or preparing or signing a tax return as a preparer, must inform the client of the penalties reasonably likely to apply to the client with respect to the position advised, prepared, or reported. The practitioner also must inform the client of any opportunity to avoid any such penalty by disclosure, if relevant, and of the requirements for adequate disclosure. This paragraph (b) applies even if the practitioner is not subject to a penalty with respect to the position.

(c) *Relying on information furnished by clients.* A practitioner advising a client to take a position on a tax return, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(d) *Definitions.* For purposes of this section—

(1) *Realistic possibility.* A position is considered to have a realistic possibility of being sustained on its merits if a reasonable and well informed analysis of the law and the facts by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits. The authorities described in 26 CFR 1.6662–4(d)(3)(iii), or any successor provision, of the substantial understatement penalty regulations may be taken into account for purposes of this analysis. The possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be settled may not be taken into account.

(2) *Frivolous.* A position is frivolous if it is patently improper.

4. In part 10, subparts C, D, and E are revised to read as follows:

Subpart C—Sanctions for Violation of the Regulations

§ 10.50 Sanctions.

(a) *Authority to censure, suspend, or disbar.* The Secretary of the Treasury, or his or her delegate, after notice and an opportunity for a proceeding, may censure, suspend or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable, fails to comply with any regulation in this part, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

(b) *Authority to disqualify.* The Secretary of the Treasury, or his or her delegate, after due notice and opportunity for hearing, may disqualify any appraiser with respect to whom a penalty has been assessed under section 6701(a) of the Internal Revenue Code.

(1) If any appraiser is disqualified pursuant to this subpart C, such appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until authorized to do so by the Director of Practice pursuant to § 10.81, regardless of whether such evidence or testimony would pertain to an appraisal made prior to or after such date.

(2) Any appraisal made by a disqualified appraiser after the effective date of disqualification will not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. An appraisal otherwise barred from admission into evidence pursuant to this section may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal.

§ 10.51 Incompetence and disreputable conduct.

Incompetence and disreputable conduct for which a practitioner may be censured, suspended or disbarred from practice before the Internal Revenue Service includes, but is not limited to—

(a) Conviction of any criminal offense under the revenue laws of the United States;

(b) Conviction of any criminal offense involving dishonesty or breach of trust;

(c) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service;

(d) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term *information.*

(e) Solicitation of employment as prohibited under § 10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or officer or employee thereof.

(f) Willfully failing to make a Federal tax return in violation of the revenue laws of the United States, willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax, or

knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

(g) Misappropriation of, or failure properly and promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(h) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor or thing of value.

(i) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, territory, possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

(j) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

(k) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations and statements, knowing them to be false, or circulating or publishing malicious or libelous matter.

(l) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (l) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the tax opinion or offering material are false or misleading. For purposes of this paragraph (l), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

§ 10.52 Violation of regulations.

A practitioner may be censured, suspended or disbarred from practice before the Internal Revenue Service for any of the following:

(a) Willfully violating any of the regulations contained in this part.

(b) Recklessly or through gross incompetence (within the meaning of § 10.51(l)) violating § 10.33 or 10.34.

§ 10.53 Receipt of information concerning practitioner.

(a) *Officer or employee of the Internal Revenue Service.* If an officer or employee of the Internal Revenue Service has reason to believe that a practitioner has violated any provision of this part, the officer or employee will promptly make a written report to the Director of Practice of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests.

(b) *Other persons.* Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the Director of Practice or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation to the Director of Practice.

(c) *Destruction of report.* No report made under paragraph (a) or (b) of this section shall be maintained by the Director of Practice unless retention of such record is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. The Director of Practice must destroy such reports as soon as permissible under the applicable records control schedule.

(d) *Effect on proceedings under subpart D.* The destruction of any report will not bar any proceeding under subpart D of this part, but precludes the Director of Practice's use of a copy of such report in a proceeding under subpart D of this part.

Subpart D—Rules Applicable to Disciplinary Proceedings

§ 10.60 Institution of proceeding.

(a) Whenever the Director of Practice determines that a practitioner violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the Director of Practice may reprimand the practitioner or, in accordance with § 10.62, institute a proceeding for censure, suspension, or disbarment of the practitioner. A proceeding for censure, suspension, or disbarment of a practitioner is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(b) Whenever the Director of Practice is advised or becomes aware that a penalty has been assessed against an appraiser under section 6701(a) of the Internal Revenue Code, the Director of Practice may reprimand the appraiser or, in accordance with § 10.62, institute a proceeding for disqualification of the appraiser. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(c) Except as provided in § 10.82, a proceeding will not be instituted under this section unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments (including an explanation or description of mitigating circumstances).

§ 10.61 Conferences.

(a) *In general.* The Director of Practice may confer with a practitioner or an appraiser concerning allegations of misconduct irrespective of whether a proceeding for censure, suspension, disbarment, or disqualification has been instituted against the practitioner or appraiser. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Resignation or voluntary censure, suspension or disbarment.* In lieu of a proceeding being instituted or continued under paragraph (a) of § 10.60, a practitioner may offer his or her consent to the issuance of a censure, suspension or disbarment, or, if the practitioner is an enrolled agent, may offer to resign. The Director of Practice may, in his or her discretion, accept or decline the offered censure, suspension,

disbarment, or offer of resignation by an enrolled agent, in accordance with the consent offered. In any declination, the Director of Practice may state that he or she would accept an offer of censure, suspension, or disbarment, or, if the practitioner is an enrolled agent, offer of resignation, containing different terms; the Director of Practice may, in his or her discretion, accept or reject a revised offer of censure, suspension, disbarment, or offer of resignation by an enrolled agent, submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Voluntary disqualification.* In lieu of a proceeding being instituted or continued under paragraph (b) of § 10.60, an appraiser may offer his or her consent to disqualification. The Director of Practice may, in his or her discretion, accept or decline the offered disqualification, in accordance with the consent offered. In any declination, the Director of Practice may state that he or she would accept an offer of disqualification containing different terms; the Director of Practice may, in his or her discretion, accept or reject a revised offer of censure, suspension or disbarment submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

§ 10.62 Contents of complaint.

(a) *Charges.* A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by the Director of Practice or a person representing the Director of Practice under § 10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that he or she is able to prepare a defense. In the case of a complaint filed against an appraiser, the complaint is sufficient if it refers to a penalty imposed previously on the respondent under section 6701(a) of the Internal Revenue Code.

(b) *Specification of sanction.* The complaint must specify the sanction sought by the Director of Practice against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) *Demand for answer.* The Director of Practice must, in the complaint or in a separate paper attached to the complaint, notify the respondent of the time for answering the complaint, the time for which may not be less than15 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Director of Practice to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

§ 10.63 Service of complaint; service and filing of other papers.

(a) *Service of complaint.*

(1) *In general.* The complaint or a copy of the complaint must be served on the respondent by any manner described in paragraphs (a)(2) or (3) of this section.

(2) *Service by certified or first class mail.* (i) Service of the complaint may be made on the respondent by mailing the complaint by certified mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Where service is by certified mail, the returned post office receipt duly signed by the respondent will be proof of service.

(ii) If the certified mail is not claimed or accepted by the respondent, or is returned undelivered, service may be made on the respondent, by mailing the complaint to the respondent by first class mail. Service by this method will be considered complete upon mailing, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(3) *Service by other than certified or first class mail.* (i) Service of the complaint may be made on the respondent by delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Service by this method will be considered complete, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(ii) Service of the complaint may be made in person on, or by leaving the complaint at the office or place of business of, the respondent. Service by this method will be considered complete and proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(iii) Service may be made by any other means agreed to by the respondent. Proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(4) For purposes of this paragraph (a), "respondent" means the practitioner or appraiser named in the complaint or any other person having the authority to accept mail on behalf of the practitioner or appraiser.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served on the respondent, or his or her authorized representative under § 10.69(a)(2) by:

(1) Mailing the paper by first class mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative,

(2) Delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative, or

(3) As provided in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section.

(c) *Service of papers on the Director of Practice.* Whenever a paper is required or permitted to be served on the Director of Practice in connection with a proceeding under this part, the paper will be served on the Director of Practice's authorized representative under § 10.69(a)(1) at the address designated in the complaint, or at an address provided in a notice of appearance. If no address is designated in the complaint or provided in a notice of appearance, service will be made on the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

(d) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding under this part, the original paper, plus one additional copy, must be filed with the Administrative Law Judge at the address specified in the complaint or at an address otherwise specified by the Administrative Law Judge. All papers filed in connection with a proceeding under this part must be served on the other party, unless the Administrative Law Judge directs otherwise. A certificate evidencing such must be attached to the original paper filed with the Administrative Law Judge.

§ 10.64 Answer; default.

(a) *Filing.* The respondent's answer must be filed with the Administrative Law Judge, and served on the Director of Practice, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge.

(b) *Contents.* The answer must be written and contain a statement of facts that constitute the respondent's grounds of defense. General denials are not permitted. The respondent must specifically admit or deny each allegation set forth in the complaint, except that the respondent may state that the respondent is without sufficient information to admit or deny a specific allegation. The respondent, nevertheless, may not deny a material allegation in the complaint that the respondent knows to be true, or state that the respondent is without sufficient information to form a belief, when the respondent possesses the required information. The respondent also must state affirmatively any special matters of defense on which he or she relies.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing.

(d) *Default.* Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under § 10.76.

(e) *Signature.* The answer must be signed by the respondent or the respondent's authorized representative under § 10.69(a)(2) and must include a statement directly above the signature acknowledging that the statements made in the answer are true and correct and that knowing and willful false statements may be punishable under 18 U.S.C. 1001.

§ 10.65 Supplemental charges.

If it appears that the respondent, in his or her answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has insufficient knowledge to form a belief, when the respondent in fact possesses such information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his or her censure, suspension, disbarment, or disqualification, the Director of Practice may file supplemental charges against the respondent. The supplemental charges may be heard with other charges in the case, provided the respondent is given due notice of the charges and is afforded an opportunity to prepare a defense to such charges.

§ 10.66 Reply to answer.

The Director of Practice may file a reply to the respondent's answer, but unless otherwise ordered by the Administrative Law Judge, no reply to the respondent's answer is required. If a reply is not filed, new matter in the answer is deemed denied.

§ 10.67 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in pleadings and the evidence adduced in support of the pleadings, the Administrative Law Judge, at any time before decision, may order or authorize amendment of the pleadings to conform to the evidence. The party who would otherwise be prejudiced by the amendment must be given a reasonable opportunity to address the allegations of the pleadings as amended and the Administrative Law Judge must make findings on any issue presented by the pleadings as amended.

§ 10.68 Motions and requests.

(a) *Motions.* At any time after the filing of the complaint, any party may file a motion with the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, motions must be in writing and must be served on the opposing party as provided in § 10.63(b). A motion must concisely specify its grounds and the relief sought, and, if appropriate, must contain a memorandum of facts and law in support. Before moving, a party must make a good faith effort to resolve with the other party any dispute that gives rise to, or is a concern of, the motion. The movant must certify such an attempt was made and state, if it is known, whether the opposing party opposes the motion.

(b) *Response.* Unless otherwise ordered by the Administrative Law Judge, the nonmoving party is not required to file a response to a motion. If the Administrative Law Judge does not order the nonmoving party to file a response, the nonmoving party is deemed to oppose the motion.

(c) *Oral motions and arguments.* The Administrative Law Judge may, for good cause and with notice to the parties, permit oral motions and oral opposition to motions. The Administrative Law Judge may, within his or her discretion, permit oral argument on any motion.

§ 10.69 Representation; ex parte communication.

(a) *Representation.* (1) The Director of Practice may be represented in proceedings under this part by an attorney or other employee of the Internal Revenue Service. An attorney or an employee of the Internal Revenue Service representing the Director of Practice in a proceeding under this part may sign the complaint or any document required to be filed in the proceeding on behalf of the Director of Practice.

(2) A respondent may appear in person, be represented by a practitioner, or be represented by an attorney who has not filed a declaration with the Internal Revenue Service pursuant to § 10.3. A practitioner or an attorney representing a respondent or proposed respondent may sign the answer or any document required to be filed in the proceeding on behalf of the respondent.

(b) *Ex parte communication.* The Director of Practice, the respondent, and any representatives of either party, may not attempt to initiate or participate in *ex parte* discussions concerning a proceeding or potential proceeding with the Administrative Law Judge (or any person who is likely to advise the Administrative Law Judge on a ruling or decision) in the proceeding before or during the pendency of the proceeding. Any memorandum, letter or other communication concerning the merits of the proceeding, addressed to the Administrative Law Judge, by or on behalf of any party shall be regarded as an argument in the proceeding and shall be served on the other party.

§ 10.70 Administrative Law Judge.

(a) *Appointment.* Proceedings on complaints for the censure, suspension or disbarment of a practitioner or the disqualification of an appraiser will be conducted by an Administrative Law Judge appointed as provided by 5 U.S.C. 3105.

(b) *Powers of the Administrative Law Judge.* The Administrative Law Judge, among other powers, has the authority, in connection with any proceeding under § 10.60 assigned or referred to him or her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings on motions and requests, which rulings may not be appealed prior to the close of a hearing except in extraordinary circumstances and at the discretion of the Administrative Law Judge;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as needed for the orderly disposition of proceedings;

(5) Rule on offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues with the consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make decisions.

§ 10.71 Hearings.

(a) *In general.* An Administrative Law Judge will preside at the hearing on a complaint filed under paragraph (c) of § 10.60 for the censure, suspension, or disbarment of a practitioner or disqualification of an appraiser. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556. A hearing in a proceeding requested under paragraph (g) of § 10.82 will be conducted *de novo.* An evidentiary hearing must be held in all proceedings prior to the issuance of a decision by the Administrative Law Judge unless: the Director of Practice withdraws the complaint; the practitioner consents to a sanction pursuant to § 10.61(b); a decision is issued by default pursuant to § 10.64(d), a decision is issued under § 10.82(e); the respondent requests a decision on the record without a hearing; or the Administrative Law Judge issues a decision on a motion that disposes of the case prior to the hearing.

(b) *Publicity of proceedings.* A request by a practitioner or appraiser that a hearing in a disciplinary proceeding concerning him or her be public, and that the record of such disciplinary proceeding be made available for inspection by interested persons may be granted by the Administrative Law Judge where the parties stipulate in advance to protect from disclosure confidential tax information in accordance with all applicable statutes and regulations.

(c) *Location.* The location of the hearing will be determined by the agreement of the parties with the approval of the Administrative Law Judge, but, in the absence of such agreement and approval, the hearing will be held in Washington, D.C.

(d) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after notice of the proceeding has been sent to him or her, the party will be deemed to have waived the right to a hearing and the Administrative Law Judge may make his or her decision against the absent party by default.

§ 10.72 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings or proceedings conducted under this part. The Administrative Law Judge may, however, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 10.73 may be admitted into evidence in any proceeding instituted under § 10.60.

(c) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Director of Practice are admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

(d) *Withdrawal of exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions that he or she deems proper.

(e) *Objections.* Objections to evidence are to be made in short form, stating the grounds for the objection. Except as ordered by the Administrative Law Judge, argument on objections will not be recorded or transcribed. Rulings on objections are to be a part of the record, but no exception to a ruling is necessary to preserve the rights of the parties.

§ 10.73 Depositions.

(a) Depositions for use at a hearing may be taken, with the written approval of the Administrative Law Judge, by either the Director of Practice or the respondent or their duly authorized representatives. Depositions may be taken before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in internal revenue matters.

(b) The party taking the deposition must provide the deponent and the other party with 10 days written notice of the deposition, unless the deponent and the parties agree otherwise. The notice must specify the name of the deponent, the time and place where the deposition is to be taken, and whether the deposition will be taken by oral or written interrogatories. When a deposition is taken by written interrogatories, any cross-examination also will be by written interrogatories. Copies of the written interrogatories must be served on the other party with the notice of deposition, and copies of any written cross-interrogation must be mailed or delivered to the opposing party at least 5 days before the date that the deposition will be taken, unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken must file the responses to the written interrogatories or a transcript of the oral deposition with the Administrative Law Judge and serve copies on the opposing party and the deponent. Expenses in the reporting of depositions will be borne by the party that requested the deposition.

§ 10.74 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Public Law 82–137)(65 Stat. 290)(31 U.S.C. 483a).

§ 10.75 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the parties must be afforded a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons to the Administrative Law Judge.

§ 10.76 Decision of Administrative Law Judge.

(a) As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge will enter a decision in the case. The

decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, disqualification, or dismissal of the complaint. If the sanction is censure or a suspension of less than six month's duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of evidence in the record. In the event that the sanction is disbarment or a suspension of a duration of six months or longer, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proven by clear and convincing evidence in the record. The Administrative Law Judge will provide the decision to the Director of Practice and a copy of the decision to the respondent or the respondent's authorized representative.

(b) In the absence of an appeal to the Secretary of the Treasury or his or her designee, or review of the decision on motion of the Secretary or his or her designee, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the agency 30 days after the date of the Administrative Law Judge's decision.

§ 10.77 Appeal of decision of Administrative Law Judge.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Secretary of the Treasury, or his or her delegate. The respondent must file his or her appeal with the Director of Practice in duplicate and a notice of appeal must include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If the Director of Practice files an appeal, he or she must provide a copy to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the reply brief is filed by the Director of Practice, he or she must provide a copy of it to the respondent. The Director of Practice must provide the entire record to the Secretary of the Treasury, or his or her delegate, after the appeal and any reply brief has been filed.

§ 10.78 Decision on appeal.

On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or his or her delegate, will make the agency decision. The Secretary of the Treasury, or his or delegate, will provide a copy of the agency decision to the Director of Practice and the respondent or the respondent's authorized representative. The decision of the Administrative Law Judge will not be reversed unless the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary of the Treasury, or his or her delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence. A copy of the agency decision or that of his or her delegate will be provided to the Director of Practice and the respondent contemporaneously.

§ 10.79 Effect of disbarment, suspension, or censure.

(a) *Disbarment.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for disbarment, the respondent will not be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Director of Practice pursuant to § 10.81.

(b) *Suspension.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for suspension, the respondent will not be permitted to practice before the Internal Revenue Service during the period of suspension. For periods after the suspension, the practitioner's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(c) *Censure.* When the final decision in the case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for censure, the respondent will be permitted to practice before the Internal Revenue Service, but the respondent's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(d) *Conditions.* After being subject to the sanction of either suspension or censure, the future representations of a practitioner so sanctioned shall be subject to conditions prescribed by the Director of Practice designed to promote high standards of conduct. These conditions can be imposed for a reasonable period in light of the gravity of the practitioner's violations. For example, where a practitioner is censured because he or she failed to advise his or her clients about a potential conflict of interest or failed to obtain the clients' written consents, the Director of Practice may require the practitioner to provide the Director of Practice or another Internal Revenue Service official with a copy of all consents obtained by the practitioner for an appropriate period following censure, whether or not such consents are specifically requested.

§ 10.80 Notice of disbarment, suspension, censure, or disqualification.

On the issuance of a final order censuring, suspending, or disbarring a practitioner or a final order disqualifying an appraiser, the Director of Practice may give notice of the censure, suspension, disbarment, or disqualification to appropriate officers and employees of the Internal Revenue Service and to interested departments and agencies of the Federal government. The Director of Practice may determine the manner of giving notice to the proper authorities of the State by which the censured, suspended, or disbarred person was licensed to practice.

§ 10.81 Petition for reinstatement.

The Director of Practice may entertain a petition for reinstatement from any person disbarred from practice before the Internal Revenue Service or any disqualified appraiser after the expiration of 5 years following such disbarment or disqualification. Reinstatement may not be granted unless the Director of Practice is satisfied that the petitioner, thereafter, is not likely to conduct himself contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

§ 10.82 Expedited suspension upon criminal conviction or loss of license for cause.

(a) *When applicable.* Whenever the Director of Practice determines that a practitioner is described in paragraph (b) of this section, the Director of Practice may institute a proceeding under this section to suspend the practitioner from practice before the Internal Revenue Service.

(b) *To whom applicable.* This section applies to any practitioner who, within 5 years of the date a complaint instituting a proceeding under this section is served:

(1) Has had his or her license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including a failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in § 10.51(i); or

(2) Has, irrespective of whether an appeal has been taken, been convicted of any crime under title 26 of the United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(3) Has violated conditions designed to promote high standards of conduct established pursuant to § 10.79(d).

(c) *Instituting a proceeding.* A proceeding under this section will be instituted by a complaint that names the respondent, is signed by the Director of Practice or a person representing the Director of Practice under § 10.69(a)(1), is filed in the Director of Practice's office, and is served according to the rules set forth in paragraph (a) of § 10.63. The complaint must give a plain and concise description of the allegations that constitute the basis for the proceeding. The complaint must notify the respondent—

(1) Of the place and due date for filing an answer;

(2) That a decision by default may be rendered if the respondent fails to file an answer as required;

(3) That the respondent may request a conference with the Director of Practice to address the merits of the complaint and that any such request must be made in the answer; and

(4) That the respondent may be suspended either immediately following the expiration of the period within which an answer must be filed or, if a conference is requested, immediately following the conference.

(d) *Answer.* The answer to a complaint described in this section must be filed no later than 30 calendar days following the date the complaint is served, unless the Director of Practice extends the time for filing. The answer must be filed in accordance with the rules set forth in § 10.64, except as otherwise provided in this section. A respondent is entitled to a conference with the Director of Practice only if the conference is requested in a timely filed answer. If a request for a conference is not made in the answer or the answer is not timely filed, the respondent will be deemed to have waived his or her right to a conference and the Director of Practice may suspend such respondent at any time following the date on which the answer was due.

(e) *Conference.* The Director of Practice or his or her designee will preside at a conference described in this section. The conference will be held at a place and time selected by the Director of Practice, but no sooner than 14 calendar days after the date by which the answer must be filed with the Director of Practice, unless the respondent agrees to an earlier date. An authorized representative may represent the respondent at the conference. Following the conference, upon a finding that the respondent is described in paragraph (b) of this section, or upon the respondent's failure to appear at the conference either personally or through an authorized representative, the Director of Practice may immediately suspend the respondent from practice before the Internal Revenue Service.

(f) *Duration of suspension.* A suspension under this section will commence on the date that written notice of the suspension is issued. A practitioner's suspension will remain effective until the earlier of the following—

(1) The Director of Practice lifts the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason; or

(2) The suspension is lifted by an Administrative Law Judge or the Secretary of the Treasury in a proceeding referred to in paragraph (g) of this section and instituted under § 10.60.

(g) *Proceeding instituted under § 10.60.* If the Director of Practice suspends a practitioner under this section, the practitioner may ask the Director of Practice to issue a complaint under § 10.60. The request must be made in writing within 2 years from the date on which the practitioner's suspension commences. The Director of Practice must issue a complaint requested under this paragraph within 30 calendar days of receiving the request.

Subpart E—General Provisions

§ 10.90 Records.

Availability. The Director of Practice will make available for public inspection at the Office of Director Practice the roster of all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers. Other records of the Director of Practice may be disclosed upon specific request, in accordance with the applicable disclosure rules of the Internal Revenue Service and the Treasury Department.

§ 10.91 Saving clause.

Any proceeding instituted under regulations in effect prior to July 26, 2002 that is not final prior to July 26, 2002 will not be affected by this part and will apply the rules set forth at 31 CFR part 10 revised as of July 1, 2002. Any proceeding under this part based on conduct engaged in prior to July 26, 2002, which is instituted after that date, shall apply Subpart D and E of this part, but the conduct engaged in prior to July 26, 2002 shall be judged by the regulations in effect at the time the conduct occurred.

§ 10.92 Special orders.

The Secretary of the Treasury reserves the power to issue such special orders as he or she deems proper in any cases within the purview of this part.

§ 10.93 Effective date.

Subject to § 10.91, this part is applicable on July 26, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 17, 2002.

David Aufhauser,

General Counsel, Office of the Secretary

[FR Doc. 02–18598 Filed 7–25–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–049]

RIN 2115–AE46

Special Local Regulations for Marine Events; Prospect Bay, Kent Island Narrows, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "Thunder on the Narrows" boat races, a marine event to be held on the waters of Prospect Bay near Kent Island Narrows, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Prospect Bay during the event.

DATES: This rule is effective from 9:30 a.m. (local time) on August 3, 2002 to 6:30 p.m. (local time) on August 4, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–049 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The event will begin on Saturday, August 3, 2002. There is not sufficient time to allow for an appropriate notice and comment period, prior to the event. Because of the danger inherent in high-speed boat races, special local regulations are necessary to provide for the safety of participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On August 3 and August 4, 2002, the Kent Narrows Racing Association will sponsor the "Thunder on the Narrows" powerboat races, on the waters of Prospect Bay, Kent Island Narrows, Maryland. The event will consist of 75 Hydroplanes and Jersey Speed Skiffs racing in heats counter-clockwise around an oval racecourse. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of Prospect Bay. The temporary special local regulations will be enforced from 9:30 a.m. to 6:30 p.m. local time on both August 3 and August 4, 2002. The effect will be to restrict general navigation in the regulated areas during the event. Except for participants in the "Thunder on the Narrows" powerboat races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the event area between races. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Although this rule prevents traffic from transiting a portion of Prospect Bay during the event, the effect of this rule will not be significant due to the limited duration of the regulation, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of Prospect Bay during the event.

Although this rule prevents traffic from transiting or anchoring in a portion of Prospect Bay during the event, the effect of this rule will not be significant because of its limited duration, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State law or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 9:30 a.m. (local time) on August 3, 2002 to 6:30 p.m. (local time) on August 4, 2002, add temporary section § 100.35–T05–049 to read as follows:

§ 100.35–T05–049 Prospect Bay, Kent Island Narrows, Maryland.

(a) *Definitions.* (1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant.* Includes all vessels participating in the Thunder on the Narrows Hydroplane Races under the auspices of the Marine Event Permit, issued to the Event Sponsor and approved by Commander, Coast Guard Activities Baltimore.

(b) *Regulated area.* Includes all waters of Prospect Bay enclosed by a line connecting the following points: starting at

Latitude	Longitude
38°57′52.0″ N,	076°14′48.0″ W, thence to
38°58′02.0″ N,	076°15′05.0″ W, thence to
38°57′38.0″ N,	076°15′29.0″ W, thence to
38°57′28.0″ N,	076°15′23.0″ W, thence to
38°57′52.0″ N,	076°14′48.0″ W.

All coordinates reference Datum NAD 1983.

(c) *Special local regulations:*

(1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol,

(ii) Proceed as directed by any official patrol.

(d) *Enforcement period.* This section will be enforced from 9:30 a.m. to 6:30 p.m. local time on August 3 and August 4, 2002.

Dated: July 16, 2002.

James D. Hull,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–18917 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–077]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Route 1 & 9 Bridge, at mile 1.8, across the Hackensack River in New Jersey. This deviation allows the bridge owner to require a two-hour advance notice for bridge openings from July 12, 2002 through September 9, 2002. This action is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from July 12, 2002 through September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Route 1 & 9 Bridge has a vertical clearance of 35 feet at mean high water, and 40 feet at mean low water in the closed position. The existing drawbridge operating regulations require the bridge to open on signal at all times.

The bridge owner, New Jersey Department of Transportation, requested a temporary deviation from the drawbridge operating regulations to facilitate scheduled structural maintenance, on the bridge.

This deviation from the operating regulations allows the bridge owner to require a two-hour advance notice for

bridge openings from July 12, 2002 through September 9, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: July 16, 2002.

V.S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–18924 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–011]

RIN 2115–AA97

Safety Zone; Fireworks Display, Columbia River, Astoria, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of Columbia River in the vicinity of Astoria, Oregon on August 10, 2002. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 9 p.m. (PDT) to 11 p.m. (PDT) on August 10, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket (CGD 13–02–011), are available for inspection or copying at the U.S. Coast Guard MSO/Group, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jeff Pile, at (503) 240–2585.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the fireworks launching area. Due to uncertainties related to planning, the event sponsor, the Astoria Fireworks Committee, was unable to provide the Coast Guard with notice of the final details until less than 30 days prior to the date of the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest. Although this has not been an annual event, the location of this fireworks display is a locally accepted standard and safety zones have been adopted at this site with no negative public comment.

Background and Purpose

The Coast Guard is establishing a temporary safety zone to allow a safe fireworks display. The fireworks display is scheduled to start at 10 p.m. (PDT) on August 10, 2002. This event will result in a number of vessels congregating near the fireworks launching area. The safety zone is needed to provide for the safety of spectators and their watercraft from the inherent safety hazards associated with the fireworks display. Without providing for an adequate safety zone, the public could be exposed to falling burning debris or stray within blast range should a catastrophic accident occur on the launching barge. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Discussion of Rule

The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. The safety zone will encompass all waters of the Columbia River at Astoria, Oregon within a 500-yard radius of the fireworks barge that will be in the vicinity of Green Buoy "37" that is in approximate position 46°11′46″ north latitude, 123°50′01″ west longitude [NAD 83]. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. This rule is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the rule would encompass less than one mile of the Columbia for a period of only two hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Columbia River from 9:00 p.m. (PDT) to 11:00 p.m. (PDT) on August 10, 2002. This rule will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only two hours in the evening when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion" is provided for temporary safety zones of less than one week in duration. This rule establishes a safety zone with a duration of two hours.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T13–008 is added to read as follows:

§ 165.T13–008 Safety Zone; Columbia River Astoria, Oregon.

(a) *Location.* The following area is a safety zone: All waters of the Columbia River at Astoria, Oregon within a 500-yard radius of the fireworks barge that will be in the vicinity of Green Buoy "37" that is in approximate position 46°11′46″ north latitude, 123°50′01″ west longitude [NAD 83].

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(c) *Effective dates.* This regulation is effective on August 10, 2002 from 9 p.m. (PDT) to 11 p.m. (PDT).

Dated: July 10, 2002.

James D. Spitzer,

Captain, Coast Guard, Captain of the Port.

[FR Doc. 02–18916 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AI44

Ankylosis and Limitation of Motion of Digits of the Hands

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the evaluation criteria for ankylosis and limitation of motion of the fingers and thumb in order to assure that veterans diagnosed with these conditions receive consistent evaluations.

DATES: *Effective Date:* This amendment is effective August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington DC, 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: As part of its review of the Schedule for Rating Disabilities (38 CFR part 4), VA published a proposal to amend that portion of the Schedule pertaining to ankylosis and limitation of motion of the fingers and thumb. The proposed rule was published in the **Federal Register** on November 2, 2001 (66 FR 55614). Interested persons were invited to submit written comments on or before January 2, 2002. We received one comment, from the Disabled American Veterans.

We proposed to change the name of the "middle finger" to "long finger" in the diagnostic codes pertaining to digit ankylosis and limitation of motion. The commenter suggested that we make the same change in diagnostic codes for finger amputations. In response, we have made that change. In addition, in current Plate III, one finger is labeled "middle finger," and we will be revising that as part of the overall revision of the orthopedic system to "long finger". Similarly, the commenter suggested that

we change "median transverse fold of palm" to "proximal transverse crease of palm" in 38 CFR 4.71, as we proposed to do in § 4.71a. We have also made that change.

We proposed to evaluate an ankylosed digit as amputation when both joints are ankylosed, and either is in extension or "full" flexion. The commenter felt that the proposed ratings do not adequately provide for the disability that occurs when a finger ankylosed in flexion obstructs the other fingers and reduces the strength of the hand in gripping or grasping motions. The commenter expressed the belief that this disability is worse than an amputation and should receive a higher evaluation.

Digits that inhibit the use of other fingers are sometimes amputated if they inhibit hand function. Since 38 CFR 4.68, "Amputation rule," however, prohibits an evaluation exceeding that which would be assigned if the finger were amputated, we have adopted another way of addressing this problem. In our judgment, if finger flexion deformity interferes with the function of other fingers or hand function overall, assessment of the other fingers or the hand overall should be taken into account in rating. This is both more appropriate than providing a higher evaluation for the ankylosed finger itself and consistent with the requirements of § 4.68. Provisions #2 and #5 of this portion of the rating schedule would apply in this situation. However, to assure that raters address any additional disability due to ankylosis of a single digit, we have revised the notes following the diagnostic codes for ankylosis of individual digits, which currently direct raters to consider rating as amputation, to read "Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand". In our judgment, this will be sufficient to alert raters to the possibility of additional disability due to a single ankylosed digit.

VA appreciates the comment submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted with the changes noted.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: May 16, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

2. In § 4.71, last sentence, remove "median transverse fold of the palm" and add, in its place, "proximal transverse crease of palm".

3. In § 4.71a under the tables MULTIPLE FINGER AMPUTATIONS and SINGLE FINGER AMPUTATIONS, remove "middle" every place it occurs and add in each place "long".

4. Section 4.71a is amended by removing the tables "MULTIPLE FINGERS: UNFAVORABLE ANKYLOSIS"; MULTIPLE FINGERS: FAVORABLE ANKYLOSIS"; and ANKYLOSIS OF INDIVIDUAL FINGERS" and adding, in their place, the following table to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

* * * * *

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND

	Rating	
	Major	Minor
(1) For the index, long, ring, and little fingers (digits II, III, IV, and V), zero degrees of flexion represents the fingers fully extended, making a straight line with the rest of the hand. The position of function of the hand is with the wrist dorsiflexed 20 to 30 degrees, the metacarpophalangeal and proximal interphalangeal joints flexed to 30 degrees, and the thumb (digit I) abducted and rotated so that the thumb pad faces the finger pads. Only joints in these positions are considered to be in favorable position. For digits II through V, the metacarpophalangeal joint has a range of zero to 90 degrees of flexion, the proximal interphalangeal joint has a range of zero to 100 degrees of flexion, and the distal (terminal) interphalangeal joint has a range of zero to 70 or 80 degrees of flexion	.....	.....
(2) When two or more digits of the same hand are affected by any combination of amputation, ankylosis, or limitation of motion that is not otherwise specified in the rating schedule, the evaluation level assigned will be that which best represents the overall disability (i.e., amputation, unfavorable or favorable ankylosis, or limitation of motion), assigning the higher level of evaluation when the level of disability is equally balanced between one level and the next higher level	.....	.....
(3) Evaluation of ankylosis of the index, long, ring, and little fingers:		
(i) If both the metacarpophalangeal and proximal interphalangeal joints of a digit are ankylosed, and either is in extension or full flexion, or there is rotation or angulation of a bone, evaluate as amputation without metacarpal resection, at proximal interphalangeal joint or proximal thereto	.....	.....
(ii) If both the metacarpophalangeal and proximal interphalangeal joints of a digit are ankylosed, evaluate as unfavorable ankylosis, even if each joint is individually fixed in a favorable position.		

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND—Continued

	Rating	
	Major	Minor
(iii) If only the metacarpophalangeal or proximal interphalangeal joint is ankylosed, and there is a gap of more than two inches (5.1 cm.) between the fingertip(s) and the proximal transverse crease of the palm, with the finger(s) flexed to the extent possible, evaluate as unfavorable ankylosis		
(iv) If only the metacarpophalangeal or proximal interphalangeal joint is ankylosed, and there is a gap of two inches (5.1 cm.) or less between the fingertip(s) and the proximal transverse crease of the palm, with the finger(s) flexed to the extent possible, evaluate as favorable ankylosis		
(4) Evaluation of ankylosis of the thumb:		
(i) If both the carpometacarpal and interphalangeal joints are ankylosed, and either is in extension or full flexion, or there is rotation or angulation of a bone, evaluate as amputation at metacarpophalangeal joint or through proximal phalanx		
(ii) If both the carpometacarpal and interphalangeal joints are ankylosed, evaluate as unfavorable ankylosis, even if each joint is individually fixed in a favorable position		
(iii) If only the carpometacarpal or interphalangeal joint is ankylosed, and there is a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers, evaluate as unfavorable ankylosis		
(iv) If only the carpometacarpal or interphalangeal joint is ankylosed, and there is a gap of two inches (5.1 cm.) or less between the thumb pad and the fingers, with the thumb attempting to oppose the fingers, evaluate as favorable ankylosis		
(5) If there is limitation of motion of two or more digits, evaluate each digit separately and combine the evaluations		
I. Multiple Digits: Unfavorable Ankylosis		
5216 Five digits of one hand, unfavorable ankylosis of	60	50
Note: Also consider whether evaluation as amputation is warranted.		
5217 Four digits of one hand, unfavorable ankylosis of:		
Thumb and any three fingers	60	50
Index, long, ring, and little fingers	50	40
Note: Also consider whether evaluation as amputation is warranted.		
5218 Three digits of one hand, unfavorable ankylosis of:		
Thumb and any two fingers	50	40
Index, long, and ring; index, long, and little; or index, ring, and little fingers	40	30
Long, ring, and little fingers	30	20
Note: Also consider whether evaluation as amputation is warranted.		
5219 Two digits of one hand, unfavorable ankylosis of:		
Thumb and any finger	40	30
Index and long; index and ring; or index and little fingers	30	20
Long and ring; long and little; or ring and little fingers	20	20
Note: Also consider whether evaluation as amputation is warranted.		
II. Multiple Digits: Favorable Ankylosis		
5220 Five digits of one hand, favorable ankylosis of	50	40
5221 Four digits of one hand, favorable ankylosis of:		
Thumb and any three fingers	50	40
Index, long, ring, and little fingers	40	30
5222 Three digits of one hand, favorable ankylosis of:		
Thumb and any two fingers	40	30
Index, long, and ring; index, long, and little; or index, ring, and little fingers	30	20
Long, ring and little fingers	20	20
5223 Two digits of one hand, favorable ankylosis of:		
Thumb and any finger	30	20
Index and long; index and ring; or index and little fingers	20	20
Long and ring; long and little; or ring and little fingers	10	10
III. Ankylosis of Individual Digits		
5224 Thumb, ankylosis of:		
Unfavorable	20	20
Favorable	10	10
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.		
5225 Index finger, ankylosis of:		
Unfavorable or favorable	10	10
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.		
5226 Long finger, ankylosis of:		
Unfavorable or favorable	10	10
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.		
5227 Ring or little finger, ankylosis of:		
Unfavorable or favorable	0	0

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND—Continued

	Rating	
	Major	Minor
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.		
IV. Limitation of Motion of Individual Digits		
5228 Thumb, limitation of motion:		
With a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	20	20
With a gap of one to two inches (2.5 to 5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	10	10
With a gap of less than one inch (2.5 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	0	0
5229 Index or long finger, limitation of motion:		
With a gap of one inch (2.5 cm.) or more between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, or; with extension limited by more than 30 degrees	10	10
With a gap of less than one inch (2.5 cm.) between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, and; extension is limited by no more than 30 degrees	0	0
5230 Ring or little finger, limitation of motion:		
Any limitation of motion	0	0

* * * * *

(Authority: 38 U.S.C. 1155)

[FR Doc. 02–18965 Filed 7–25–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MN72–7297a; FRL–7251–5]

Approval and Promulgation of Implementation Plans; Minnesota, and Designation of Areas for Air Quality Planning Purposes; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On June 20, 2002, the Minnesota Pollution Control Agency (MPCA) submitted to EPA a redesignation request and maintenance plan for the Saint Paul, Ramsey County particulate matter primary nonattainment area. In its submittal, the State requested that we redesignate Ramsey County to attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM) and that we approve the maintenance plan for the area into the Minnesota PM State Implementation Plan (SIP). In this action EPA is approving the state's request, because it meets all of the Clean Air Act (Act) requirements for redesignation.

If EPA receives adverse written comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

DATES: This "direct final" rule is effective September 24, 2002, unless EPA receives written adverse or critical comments by August 26, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Christos Panos, at (312) 353–8328, before visiting the Region 5 Office.)

A copy of this redesignation request is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section(AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA. This **SUPPLEMENTARY INFORMATION** section is organized as follows:

A. What action is EPA taking?
B. Why was this SIP revision submitted?
C. Why can we approve this request?
D. What requirements must be met for approval of a redesignation, and how did the state meet them?

A. What Action Is EPA Taking?

We are approving the State of Minnesota's request to redesignate the Ramsey County PM nonattainment area to attainment of the PM NAAQS. We are also approving the maintenance plan for this area into the Minnesota PM SIP.

B. Why Was This SIP Revision Submitted?

MPCA believes that the Ramsey County PM nonattainment area is eligible for redesignation because we have approved the Saint Paul PM SIP and monitors in the nonattainment area have not recorded any exceedances of the PM NAAQS since May 1995. The redesignation request submittal consists primarily of a maintenance plan and air quality monitoring data. The submittal contains text describing how the statutory requirements were met.

C. Why Can We Approve This Request?

Consistent with the Act's redesignation requirements of section 107(d)(3)(E), EPA developed procedures for redesignation of nonattainment areas that are in an EPA September 4, 1992 memorandum titled, "Procedures for Processing Requests to Redesignate Areas to Attainment." This EPA guidance document contains a number of requirements that a state must meet before it can request a change in designation for a federally designated nonattainment area. That memorandum and EPA's June 27, 2002 Technical

Support Document set forth the rationale in support of the redesignation of the Ramsey County PM nonattainment area to an attainment status.

D. What Requirements Must Be Met for Approval of a Redesignation and How Did the State Meet Them?

1. The State Must Show That the Area Is Attaining the Applicable NAAQS

There are two components involved in making this demonstration: (1) Ambient air quality monitoring representative of the area of highest concentration must show no more than one exceedance annually; and (2) EPA approved air quality modeling must show that the area in question meets the applicable standard. The 24-hour primary PM standard is 150 micrograms per cubic meter ($\mu g/m^3$), with no more than one expected exceedance per year. The annual primary PM standard is 50 $\mu g/m^3$ expected annual arithmetic mean. The secondary PM standards are identical to the primary standards.

MPCA submitted ambient air monitoring data for the years 1998–2000 and the period of January–September 2001, from two PM monitoring sites in the nonattainment area located at 1450 Red Rock Road and 1200 Warner Road. This data has been quality assured and is available for review in the Aerometric Information Retrieval System (AIRS), monitor numbers 271230866 and 271230870 respectively. No monitored exceedances of the PM NAAQS have occurred in Ramsey County since May 20, 1995.

MPCA initially submitted the modeling demonstration to EPA in 1991, 1992, and 1993. MPCA performed the modeling in accordance with the EPA document titled "Guideline on Air Quality Models, (Revised), including Supplement A," 1987. The Industrial Source Complex—Short Term (ISCST) model was used for the analysis. The demonstration explicitly modeled maximum allowable emissions for all industrial sources, included an estimate of actual emissions for the diffuse area sources such as public roadways, and added in a concentration representative of local background sources. The analysis showed that, with all control measures in operation, modeled concentrations combined with background PM concentrations did not violate the NAAQS. A more detailed discussion of the modeling demonstration can be found in the June 25, 1993 proposed rulemaking on the Saint Paul PM SIP revision (58 FR 34297). We concluded on February 15, 1994 (59 FR 7218) that the air dispersion modeling met the appropriate requirements of the Act.

Due to exceedances recorded at the Red Rock Road monitor between 1992 and 1995, MPCA recognized that the PM SIP submitted in 1992 no longer sufficiently characterized the area. The State determined that the exceedances were attributable to shifts and increases in local source activity (such as traffic newly occurring on unpaved surfaces) which had occurred since development of the prior plan, and not to any deficiencies in the prior plan. The State worked with EPA and the companies involved to address the new violations with sufficient additional controls to support an updated modeled attainment demonstration. MPCA submitted SIP revisions to EPA on February 9, 1996 and July 22, 1998, that included additional control measures and updated modeling to address these exceedances.

The revised modeling incorporated all the actual Red Rock Road facilities' stack and emissions data. It also updated the modeling of other nearby PM sources within 2 to 4 kilometers of the Red Rock Road monitor. The modeling analysis demonstrated attainment and maintenance of the PM NAAQS in the Red Rock Road area. Additional information can be found in our August 13, 1999 approval of the Saint Paul PM SIP (62 FR 39120).

2. The SIP for the Area Must Be Fully Approved Under Section 110(k) of the Act and Must Satisfy All Requirements That Apply to the Area

MPCA submitted PM SIP revisions in 1991, 1992 and 1993 to fulfill the requirements of Section 110 and Part D of the Act. The enforceable elements of the State's submittals were administrative orders for nine facilities in the Saint Paul area. We approved Minnesota's submittals as satisfying the applicable requirements for the Ramsey County PM nonattainment area on February 15, 1994 (59 FR 7218). In addition, MPCA submitted supplemental SIP revisions for the Red Rock Road portion of the nonattainment area in 1996 and 1998. These submittals contained additional emission limits and/or control measures for certain facilities located along Red Rock Road, and a revised modeled attainment demonstration for the Red Rock Road area. Changes to emissions that occurred at some of the facilities, including sources in the 2–4 kilometer range of the Red Rock Road area, were included in the revised modeling demonstration. We approved the Red Rock Road supplementary PM SIP on August 13, 1999 (64 FR 44131).

3. EPA Has Determined That the Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

Air quality improvement in the Ramsey County PM nonattainment area is attributed to PM emission limits and operating restrictions imposed on the facilities that contributed to the nonattainment status. These limits have been incorporated into the state PM SIP, through the use of non-expiring Administrative Orders or through non-expiring Title I conditions found in Title V or federally enforceable State permits that contain the requirements of an original Administrative Order, and are therefore permanent and enforceable. The PM dispersion modeling, conducted as part of the Saint Paul PM SIP revisions, predicts that the control measures included in the SIP are sufficient to provide for attainment and maintenance of the PM NAAQS.

4. The State Has Met All Applicable Requirements Under Section 110 and Part D of the Act That Were Applicable Prior to Submittal of the Complete Redesignation Request

Section 110(a)(2) of the Act contains the general requirements for nonattainment plans. Part D contains the general requirements applicable to all areas that are designated nonattainment based on a violation of the NAAQS. These requirements are satisfied by EPA's February 15, 1994 and August 13, 1999 approvals of the nonattainment plans that Minnesota submitted for the control of PM emissions in the Ramsey County area.

A Prevention of Significant Deterioration (PSD) program will replace the requirements of the part D new source review program after redesignation of the area. To ensure that the PSD program will become fully effective immediately upon redesignation, either EPA must delegate the federal PSD program to the state or the state must make any needed modifications to its rules to have the approved PSD program apply to the affected area upon redesignation. We delegated the PSD program to the State of Minnesota on March 26, 1979, and amended the delegation on October 15, 1980 and November 3, 1988.

5. EPA Has Fully Approved a Maintenance Plan, Including a Contingency Plan, for the Area Under Section 175A of the Act

Section 107(d)(3)(E) of the Act states that, for an area to be redesignated, EPA must fully approve a maintenance plan that meets the requirements of section

175A. Section 175A(a) of the Act requires states to submit a SIP revision that provides for the maintenance of the NAAQS in the area for at least 10 years after approval of the redesignation. The basic components needed to ensure proper maintenance of the NAAQS are: attainment inventory, maintenance demonstration, verification of continued attainment, ambient air monitoring network, and a contingency plan. Further, section 175A(b) requires states to submit a SIP revision 8 years after redesignation that provides for the maintenance of the NAAQS in the area for 10 years after the expiration of the first 10-year period required by section 175A(a). EPA is approving the maintenance plan in today's action as discussed below.

a. *Attainment Inventory.* The air dispersion modeling included in the state's SIP submittals contains the emission inventory of PM sources in the Ramsey County nonattainment area.

b. *Maintenance Demonstration and Verification of Continued Attainment.* The modeling analyses submitted by MPCA demonstrate attainment and maintenance of the PM NAAQS. The PM emitting sources involved in the Ramsey County PM redesignation are meeting the PM maximum allowable emission limits identified in the modeling. Protection of the NAAQS is further assured because actual PM emissions are generally less than the allowable PM emissions considered in the modeling.

MPCA will monitor growth in the area mainly through administration of the MPCA's permitting program, keeping track of new facility permit applications and permit amendment requests and ensuring compliance with the MPCA's permitting rules. The State permitting process requires any PM source potentially emitting 25 tons a year to demonstrate, through dispersion modeling, that attainment of the NAAQS is met before the source may obtain a permit.

c. *Monitoring Network.* Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In its submittal, the State commits to continue to operate and maintain the network of PM monitoring stations and to report the data in AIRS to demonstrate ongoing compliance with the PM NAAQS.

d. *Contingency Plan.* Section 175A of the Act requires that the maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area. MPCA included contingency measures for the Ramsey County PM nonattainment area in the Administrative Orders contained in its August 31, 1992, submittal. These measures are eligible to be used as the maintenance plan contingency measures, because the State was able to attain the PM NAAQS with the limitations and control measures already contained in the SIP approved by EPA in 1994 and the additional measures approved by EPA into the SIP in 1999.

Final Action

We have evaluated the state's submittal and have determined that it meets the applicable requirements of the Act, EPA regulations, and EPA policy. Therefore, we are approving the State of Minnesota's request to redesignate the Saint Paul, Ramsey County PM nonattainment area to attainment of the PM NAAQS. We are also approving the maintenance plan for the Ramsey County area into the Minnesota PM SIP.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective September 24, 2002 without further notice unless we receive relevant adverse written comments by August 26, 2002. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective September 24, 2002.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has

no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 12, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1230 is amended by adding paragraph (c) to read as follows:

§ 52.1230 Control strategy and rules: Particulates.

* * * * *

(c) Approval—On June 20, 2002, the State of Minnesota submitted a request to redesignate the Saint Paul, Ramsey County particulate matter nonattainment area to attainment of the NAAQS for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). In its submittal, the State also requested that EPA approve the maintenance plan for the area into the Minnesota PM SIP. The redesignation request and maintenance plan meet the redesignation requirements of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.324 is amended by revising the entire entry for Ramsey County under the "Minneapolis-Saint Paul Area" in the table entitled "Minnesota—PM–10" to read as follows:

§ 81.324 Minnesota.

MINNESOTA—PM–10

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* *	*	* *	*	*
Ramsey County	September 24, 2002 ..	Attainment		
* *	*	* *	*	*

* * * * *

[FR Doc. 02–18866 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0145; FRL–7187–8]

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of bifenthrin in or on forage and hay of orchardgrass. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on orchardgrass. This regulation establishes a maximum

permissible level for residues of bifenthrin in these feed commodities. The tolerance will expire and is revoked on June 30, 2004.

DATES: This regulation is effective July 26, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0145, must be received on or before September 24, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0145 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; e-mail address: conrath.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_0 0.html*, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0145. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the insecticide bifenthrin, (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate, in or on orchardgrass, forage and orchardgrass, hay at 0.05 part per million (ppm). These tolerances will expire and are revoked on June 30, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Bifenthrin on Orchardgrass and FFDCA Tolerances

Oregon produces nearly all of the nation's orchardgrass seed, which is primarily used as a high protein pasture grass. The key pest of orchardgrass in Oregon is the orchardgrass billbug, which lays eggs into the stem where they hatch and are unreachable by

topical insecticides. The effect of drought conditions in fields as seen in 2001 serves to magnify damage and loss associated with this pest. Chlorpyrifos once provided good efficacy against orchardgrass billbug; however, efficacy has recently dropped below acceptable levels. In addition, crop practices for long developing seed crops such as orchardgrass, and lack of readily available market for potential alternate seed and/or rotational vegetable crops preclude any cultural practices which might mitigate this pest situation. Significant yield losses, and subsequently economic losses, are expected without adequate control. EPA has authorized under FIFRA section 18 the use of bifenthrin on orchardgrass for control of orchardgrass billbug in Oregon. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of bifenthrin in or on orchardgrass forage and hay. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is establishing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2004, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on orchardgrass forage and hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed the level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether bifenthrin meets EPA's registration requirements for use on orchardgrass or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of bifenthrin by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Oregon to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for bifenthrin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of bifenthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of bifenthrin in or on orchardgrass hay and forage at 0.05 ppm.

No orchardgrass residue data were submitted for this request. The proposed use rate of bifenthrin for orchardgrass is approximately the same as that registered for use on alfalfa grown for seed. Therefore, the data from alfalfa was translated to orchardgrass for this section 18 use. The established tolerances for meat and milk commodities are adequate to cover any residues which may result from this section 18 use. Based upon previous feeding studies, the secondary residues in meat and milk will not exceed the established tolerances as a result of this section 18 use.

Residues of bifenthrin in/on orchardgrass are not expected to increase dietary exposure. Since orchardgrass is not consumed by humans, any exposure to residues of bifenthrin from this emergency exemption use will result from the consumption of meat or milk. The use of bifenthrin in orchardgrass is not expected to result in exceedances of the tolerances that already exist for meat and milk. Therefore, establishing the orchardgrass tolerances will not increase the most recent estimated aggregate risks resulting from the use of bifenthrin, as discussed in the **Federal Register** for September 27, 2001 (66 FR 49300) (FRL–6801–5) final rule establishing a tolerance for residues of bifenthrin in/on sweet potatoes, because in that prior action, risk was estimated assuming all meat and milk commodities contained tolerance level residues. Refer to the September 27, 2001 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A summary of the toxicological dose and endpoints for bifenthrin for use in human risk assessment is discussed in Unit IV.A. of the final rule mentioned above, published in the **Federal Register** of September 27, 2001 (66 FR 49300) (FRL–6801–5).

EPA assessed risk scenarios for bifenthrin under acute, chronic, and short- and intermediate-term exposures.

The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

The following assumptions were made for the acute exposure assessments: A probabilistic Monte Carlo analysis (Tier 3) was used; PCT (% crop treated) and anticipated residues were used for registered uses, and 100% crop treated was assumed for all other uses.

Using these exposure assessments, the EPA concluded that exposure to bifenthrin from food will utilize 60% of the acute population adjusted dose (aPAD) for the U.S. population, 40% for females 13 years and older, 75% for all infants <1 year old, and 99.7% of the aPAD for children 1 to 6 years old. In addition, despite the potential for acute dietary exposure to bifenthrin in drinking water, after calculating drinking water levels of concern (DWLOCs) and comparing them to conservative model estimated environmental concentrations (EECs) of

bifenthrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 1.

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO BIFENTHRIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
US Population (48 states)	0.01	60	0.1	0.006	140
Female 13+ years old	0.01	40	0.1	0.006	180
Children (1–6 years old)	0.01	99.7	0.1	0.006	0.30

The following assumptions were made for the chronic exposure assessments: The Agency used anticipated residue values which were determined from field trial data collected from studies conducted with maximum label rates and minimum preharvest intervals. Mean anticipated residue values were calculated. 100% crop treated was assumed for all crops except hops (43%) and cottonseed oil and meal (4%).

Using these exposure assessments, the EPA concluded that exposure to bifenthrin from food will utilize 3% of the chronic population adjusted dose (cPAD) for the US population, 3% for females 13 years and older, and 8.2% of the cPAD for children 1 to 6 years old. Based on the use pattern, chronic residential exposure to residues of bifenthrin is not expected. In addition, despite the potential for chronic dietary exposure to bifenthrin in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of bifenthrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BIFENTHRIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population (48 states)	0.015	3	0.032	0.006	530
Females 13+ years old	0.015	3	0.032	0.006	450
Children (1–6 years old)	0.015	8.2	0.032	0.006	140

Bifenthrin has been classified as a Group C chemical (possible human carcinogen) based upon urinary bladder tumors in mice. No Q* was assigned because the Reference dose (RfD) approach was recommended for cancer risk assessment. Based on this recommendation, a quantitative dietary cancer risk assessment was not performed since dietary risk concerns due to long-term consumption of bifenthrin are adequately addressed by the chronic exposure analysis using the RfD.

Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Bifenthrin is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for bifenthrin. EPA has concluded that food and residential exposures aggregated result in aggregate margin of exposure (MOEs) of 940 for adults, 350 for children (1–6 years old), and 470 for infants < 1 year old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of bifenthrin in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT AND INTERMEDIATE-TERM EXPOSURE TO BIFENTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Adult	940	100	0.032	0.006	320
Children (1–6 years old)	350	100	0.032	0.006	270
Infants <1 year old	470	100	0.032	0.006	71

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to bifenthrin residues.

V. Other Considerations

A. Analytical Enforcement Methodolo

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone

number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no Codex maximum residue limits (MRLs) established for bifenthrin on grass forage and hay. Therefore, no compatibility problems exist for the proposed tolerances.

C. Conditions

One application may be made. A maximum of 0.10 pound of active ingredient may be applied per acre using ground equipment. Bifenthrin is not to be applied within 30 days of grazing, feeding, or harvesting (cutting) forage or hay.

VI. Conclusion

Therefore, the tolerances are established for residues of bifenthrin, (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate, in or on orchardgrass forage, and orchardgrass hay at 0.05 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0145 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 24, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–2002–0145, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections

subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16; 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 12, 2002.

Ricard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.442 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Orchardgrass, forage	0.05	6/30/04
Orchardgrass, hay	0.05	6/30/04
* * * * *		

* * * * *

[FR Doc. 02–18867 Filed 7–25–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0142; FRL–7187–4]

1-Methylcyclopropene; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 1-Methylcyclopropene (1-MCP) in or on fruits and vegetables when used as a post harvest plant growth regulator, i.e., for the purpose of inhibiting the effects of ethylene. AgroFresh, Inc. (formerly BioTechologies for Horticulture) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 1-MCP.

DATES: This regulation is effective July 26, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0142, must be received on or before September 24, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0142 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Driss Benmhend, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9525; e-mail address:Benmhend.driss@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the *Federal Register* listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0142. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 21, 2000 (65 FR 38550) (FRL–6589–5), EPA issued a notice pursuant to section 408(d)(3) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d)(3), as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP OF6144) by AgroFrech, Inc. (formerly BioTechnologies for Horticulture, Inc.), 100 Independence Mall West, Philadelphia, PA 19106–2399. As required by section 408(d)(2)(A)(i)(I), this notice included a summary of the petition prepared by the petitioner AgroFresh, Inc. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First,

EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The end-use product, a white powder, when mixed with water or a buffer solution releases the gas 1-MCP. The active ingredient acts an inhibitor to ethylene, by blocking the attachment of ethylene to tissue, and thus, prolongs the life of the food commodity treated.

Toxicity studies submitted in support of the tolerance exemption petition, and the Agency reviews are compiled in the official record established for this action under the docket ID number OPP–2002–0142.

1. *Acute toxicity (MRIDs 444647–04 to 08).* 1-MCP exhibits low acute toxicity. It is a category IV biopesticide. The rat oral LD_{50} is greater than 5,000 milligrams/kilograms (mg/kg), the rabbit dermal LD_{50} is greater than 2,000 mg/kg and the rat inhalation LC_{50} is greater than 2.5 milligram/liter (mg/L) (or greater than 1,126 parts per million (ppm) v/v active ingredient in air). No deaths or clinical signs of systemic toxicity were observed following these acute exposures. 1-MCP produces minimal irritation of skin and eyes in rabbits and 1-MCP is not a skin sensitizer. No hypersensitivity incidents were observed following exposure to 1-MCP.

2. *Genotoxicity (MRID 444647–09).* 1-MCP was not mutagenic when tested as a gas in several short-term *in vitro/in vivo* assays, including a bacterial reverse mutation assay (Ames test), an *in vitro* mammalian point mutation assay in Chinese hamster ovary cells, an *in vitro* cytogenetics assay in human lymphocytes and an *in vivo* mouse micronucleus assay following inhalation exposure. In addition, 1-MCP is not mutagenic when tested as a suspension in cell media in the Ames test and in the *in vitro* mouse lymphoma forward mutation assay (MRID 444647–10) and is not mutagenic in the *in vivo* mouse micronucleus assay (MRID 444747–11) following oral exposure (gavage).

3. *Developmental toxicity (MRID 454586–08).* 1-MCP produces no developmental toxicity when tested in a standard developmental toxicity study in the rat via inhalation at concentrations up to and including 2.3 mg a.i./L (or 543 mg a.i./kg/day, 6 hr exposure/day). The no observed adverse effect level (NOAEL) for maternal toxicity was 0.24 mg a.i./L (56 mg a.i./kg/day, 6 hr exposure/day).

4. *Subchronic toxicity (MRID 456090-01).* 1-MCP was tested in a 90–day inhalation study at doses of 0.05, 0.24 and 2.3 mg a.i./kg in the rat. The NOAEL is 0.05 mg a.i./L (equivalent to 9 to 15 mg a.i./kg/day), based on minimal to mild effects on spleen and kidney histopathology at 0.24 mg a.i./L (equivalent to 39 to 66 mg a.i./kg/day). In this study there was no evidence of neurotoxicity, no effects on the respiratory tract and no effects on pathology of any endocrine or reproductive organs up to and including the highest dose tested of 2.3 mg a.i./L (or equivalent to 380 to 640 mg a.i./kg/day).

5. AgroFresh (the applicant) submitted a waiver request for the immune response data requirements based on the current toxicological data submitted on 1-MCP. The review of the 3–month inhalation rat study (mentioned in the previous paragraph) indicates, no effects on thymus weight and no effects on the histopathology of the thymus, bone marrow or spleen that would be attributed to an impact on the immune system were seen. There were no effects on white blood cell differential parameters (including monocytes, lymphocytes, segmented neutrophils or eosinophils) and no basophils were observed which may be indicative of an allergic reaction. The Agency concluded that 1-MCP did not induce dysfunction or inappropriate suppressive responses in components of the immune system. As a result, immune response data requirements were waived.

6. *Other.* 1-MCP has a mode of action in plants which is a non-persistent and non-toxic mode of action. 1-MCP prevents the natural chemical, ethylene, from binding to ethylene receptors in plants. This mode of action is not relevant in animals, since ethylene receptors are not present in animal tissues.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food—From food and feed uses.* The primary source for human exposure to 1-MCP will be from ingestion of the following raw food commodities and the processed food commodities derived from: apples, melons, tomatoes, pears, avocadoes, mangoes, papayas, kiwifruit, plums, apricots and persimmons. Studies submitted (MRID 456090–02) showed residues in treated apples to be extremely low (average residue was 0.004 ppm using an exaggerated treatment rate of 1,200 parts per billion (ppb) versus the 1,000 ppb proposed label rate). A worst-case scenario (using the 0.004 ppm average residue concentration found in treated apples and assuming that concentration is present in 100% of the diet regardless of crops treated) indicates that a daily diet of 1.5 kg/day could contain 0.006 mg 1-MCP. For the general population (assuming an average body weight of 60 kg), this would represent a daily intake of 0.0001 mg 1-MCP/kg body weight which is 90,000 to 150,000-fold less than the 9-15 mg/kg NOAEL indicated in the 90–day inhalation study.

Residues in other treated commodities are expected to be similar or even lower since the highest treatment rate is recommended for apples. Processing would be expected to further lower the residue levels in processed food commodities.

2. *Drinking water exposure.* Since 1-MCP will only be used on post-harvested fruits and vegetables in enclosed storage areas, there is little if any, potential for drinking water exposure.

B. Other Non-Occupational Exposure

The potential for non-dietary exposure to 1-MCP for the general population, is unlikely because potential use sites are commercial, agricultural, and horticultural. 1-MCP is currently registered for indoor, nonfood commercial use on flowers and ornamentals. The Agency has approved that use, based on the data submitted that show little potential for significant non-occupational exposure to the general population.

1. *Dermal exposure.* 1-MCP will only be sold enclosed in a generator for treatment of raw agricultural commodities. The generator will not release 1-MCP until the applicator has exited the storage area and entrances to the treatment area have been sealed. At

the end of the treatment period, the storage area will be vented before workers are permitted to reenter the area. This label mitigating language would eliminate the potential for dermal exposure to handlers or applicators.

2. *Inhalation exposure.* As mentioned in the previous paragraph, the use of this product according to the label instructions would result in little, if any, inhalation exposure to handlers or applicators.

V. Cumulative Effects

The Agency has considered the cumulative effects of 1-MCP and other substances in relation to a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. There is no indication of mammalian toxicity at the maximum doses tested, of this or other products containing 1-MCP.

VI. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population.* There is reasonable certainty that no harm will result from aggregate exposure to residues of 1-MCP to the U.S. population. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the very low levels of mammalian toxicity (no toxicity at the maximum doses tested, Toxicity Categories III and IV) and the minimum exposure associated with 1-MCP's use.

2. *Infants and children.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, the Agency concludes that 1-MCP is practically non-toxic to mammals, including infants and children. Thus, there are no threshold effects of concern and, as a result the provision requiring an additional margin of safety does not apply. Further, based on the lack of observed developmental toxicity and extremely low exposure, there is reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to 1-MCP residues. Exemption of 1-MCP from the requirements of a tolerance should pose no significant risk to humans or the environment

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA as amended by FQPA to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no scientific basis for including, as part of the program, the androgen- and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program(EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's Endocrine Disruptor Screening Program have been developed, 1-MCP may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

Based on available data, no endocrine system-related effects have been identified with consumption of 1-MCP. In addition, 1-MCP does not share any structural similarity to any known endocrine disruptive chemical.

B. Analytical Method(s)

EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation for the reasons stated above, including 1-MCP's lack of mammalian toxicity. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purposes for 1-MCP.

C. Codex Maximum Residue Level

No Codex maximum residue levels are established for residues of 1-MCP in or on any food or feed crop. There are no established tolerances or exemptions from tolerance for 1-MCP in the United States. The Agency has classified 1-MCP as a biochemical pesticide.

VIII. Conclusions

Based on the toxicology data submitted, there is reasonable certainty no harm will result from aggregate exposure of residues of 1-MCP to the U.S. population, including infants and children, when the proposed product is used in accordance with label instructions and good agricultural practices. This includes all anticipated dietary exposures and all other exposures for which reliable data were submitted, accepted and reviewed. The Agency has arrived at this conclusion based on the data submitted demonstrating no toxicity at the maximum doses tested. As a result, EPA establishes an exemption from tolerance requirements pursuant to FFDCA 408(c) and (d) for residues of 1-MCP in or on all food commodities.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0142 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 24, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR

178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0142, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications " as described in Executive Order 13175, entitled *Consultation and Coordination with*

Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 16, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1220 is added to subpart D to read as follows:

§ 180.1220 1-Methylcyclopropene; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of 1-Methylcyclopropene in or on fruits and vegetables when used as a post harvest plant growth regulator, i.e., for the purpose of inhibiting the effects of ethylene.

[FR Doc. 02–18868 Filed 7–25–02; 8:45am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–3074–F2]

RIN 0938–AK98

Medicare Program; End-Stage Renal Disease: Removing of Waiver of Conditions for Coverage Under a State of Emergency in the Houston, Texas Area

AGENCY: Centers for Medicare & Medicaid Services (CMS).

ACTION: Final rule.

SUMMARY: This final rule removes an emergency waiver of the Medicare end-stage renal disease (ESRD) conditions for coverage granted to permit the transplant team of an approved renal transplant center to furnish kidney transplant services in three specific hospitals in the Houston, Texas area during a state of emergency. The state of emergency has ceased, the primary kidney transplant center in the area is now fully operational, and the effective period of the waiver provisions has expired.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Rachael Weinstein, (410) 786–6775

SUPPLEMENTARY INFORMATION

I. Provisions of This Rule

On June 20, 2001, we published a final rule in the **Federal Register** (66 FR 33030–33031) that granted an emergency waiver of the Medicare end-stage renal disease (ESRD) conditions of coverage to permit the transplant team of an approved renal transplant center to furnish covered kidney transplant services in three specific hospitals in the Houston, Texas area during a state of emergency. The state of emergency (a natural disaster due to flooding) resulted in a severe health and safety threat to hospitals in the entire Houston, Texas area, including ESRD facilities that were approved to furnish kidney transplant services. Waivers of the conditions of coverage were granted to Memorial Hermann-Memorial City Hospital, Memorial Hermann Southwest Hospital, and Memorial Hermann Southeast Hospital to permit an approved transplant team to furnish kidney transplant services in the three hospitals, effective June 15, 2001, through the earlier of December 15, 2001, or until Memorial Hermann Hospital, the primary kidney transplant center, reopened.

Memorial Hermann Hospital is now reopened. In the June 20, 2001 final rule, we amended the Medicare regulations to include a new § 405.2175 that incorporated the waiver provisions. In § 405.2175, we specified that we would publish a rule removing the waiver provisions from the regulations after the waiver expired. The waiver has expired and we are removing the provisions from the Medicare regulations.

II. Waiver of Proposed Rulemaking and Delay of Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on a proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the findings and its reasons in the rule issued.

Further, we generally provide for final rules to be effective no sooner than 30 days after the date of publication unless we find good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date. The purpose of the 30-day waiting period between publication of an administrative agency final rule and its effective date is to give affected parties reasonable time to adjust their behavior before the final rule takes place.

The state of emergency under which we granted a waiver of the ESRD conditions of coverage is now over in the Houston, Texas area, and Memorial Hermann Hospital is reopened to furnish kidney transplant services. We announced in the June 20, 2001 final rule our intention to remove the

emergency waiver when the waiver expired, as well as our intention to publish a rule removing § 405.2175 from our regulations after the waiver expired. We find good cause to waive a notice-and-comment procedure to remove the waiver provisions from the regulation. We believe that a notice-and-comment procedure is unnecessary because the June 20, 2001 final rule puts the public on notice that the waiver of the conditions for coverage for the specifically named hospitals was created to address a public health crisis in Houston and it was to be of limited duration (it was to remain in effect until no later than December 15, 2001). This rule merely conforms the Medicare regulation to the mandate expressed by the agency on June 20. Therefore, we are waiving notice-and-comment procedures under 5 U.S.C. 553(b)(3)(B).

Given the fact that the waiver has already expired by its own terms, we find good cause to waive the 30-day delay in the effective date established by 5 U.S.C. 553(d)(3). We believe that delaying the effective date of this regulation is unnecessary since it does not require the public to adjust its behavior before the final rule takes place.

List of Subjects in 42 CFR Part 405

Administrative practice and procedures, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Part 405, Subpart U as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD)

1. The authority citation for Part 405, Subpart U continues to read as follows:

Authority: Secs. 1102, 1138, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1320b–8, 1365x, 1395y(a), 1395hh, 1395kk, and 1395rr, unless otherwise noted).

§ 405.2175 [Removed]

2. Section 405.2175 is removed.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: March 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 2, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–17622 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

CMS–1883–F3

RIN 0938–AI80

Medicare Program; Revision of the Procedures for Requesting Exceptions to Cost Limits for Skilled Nursing Facilities and Elimination of Reclassifications; Technical Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Technical correction.

SUMMARY: In the October 10, 2000 issue of the **Federal Register** (65 FR 60104), we published a technical correction to the August 5, 1999 issue of the **Federal Register** (64 FR 42610). This technical correction amends the regulations text to correct an inadvertent error that occurred when the Code of Federal Regulations (CFR) was published. It also explains a technical correction that is accurately reflected in the current language as it appears in the CFR, as it was intended in the correction notice of October 10, 2000.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Julie Stankivic, (410) 786–5725.

SUPPLEMENTARY INFORMATION:

Background

In the October 10, 2000 technical correction (65 FR 60104), we amended the regulations text to make technical corrections to those parts of the regulation unrelated to the skilled nursing facilities (SNFs) exception procedures that were inadvertently changed. In the regulations text corrected under 42 CFR 413.30(d), we stated that we were removing the words "the type of" from the first sentence. It was our intention to remove these words; however, we referenced the first sentence, and these words were found in the second sentence. We note that the regulations text as published in the Code of Regulations (CFR) actually accurately reflects the change that was intended in the correction notice of October 10, 2000. Therefore, we are not amending the regulations text in this technical correction.

In addition, in the most recent publication of the CFR in § 413.30(d), the word "as" has been inadvertently removed from the third sentence. In the October 10, 2000 technical correction, we did not intend to make any changes that would have resulted in the removal of the word "as" after the phrase "has operated" in the third sentence of § 413.30(d). We are reinserting the word as no change was intended.

Provisions of the Technical Correction

We are making the necessary technical correction to the regulations text to restore the text to conform to the stated purpose of the correction notice.

Waiver of Notice of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this document merely provides a technical correction to the regulations and does not make any substantive changes to the regulations. Therefore, for good cause, we waive notice and comment procedures.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and record keeping requirements.

Corrections to the Regulations Text

Accordingly, 42 CFR part 413 is corrected by making the following correcting amendment:

PART 413–PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883,

and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395(g), 13951(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

§ 413.30 [Corrected]

2. In paragraph (d) the word "as" is added after the phrase "has operated" in the third sentence.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: April 25, 2002.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 02–17620 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Part 146

[CMS–2033–IFC]

RIN 0938–AK00

Technical Change to Requirements for the Group Health Insurance Market; Non-Federal Governmental Plans Exempt From HIPAA Title I Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period amends the exemption election requirements that apply to self-funded non-Federal governmental plans. In it, we clarify the circumstances under which plan sponsors may exempt these plans from most of the requirements of title XXVII of the Public Health Service (PHS) Act and provide guidance on the procedures, limitations, and documentation associated with exemption elections.

In this interim final rule with comment period, we provide that a sponsor of a self-funded, non-Federal governmental plan may elect to exempt its plan from the Women's Health and Cancer Rights Act of 1998. Additionally, we revise a number of procedural requirements affecting the exemption election process and establish certain enrollee protections with respect to exemption elections.

In response to public comments on an interim final rule published in the **Federal Register** on April 8, 1997 (62 FR 16894), we amend our regulation to clarify that nothing in the statute or regulation affects a State's right to limit the extent to which its non-Federal governmental employers may exempt their self-funded plans from title XXVII of the PHS Act.

Finally, we include a technical correction to our regulation on guaranteed availability of health insurance coverage for employers in the small group market.

DATES: *Effective date:* These regulations are effective on September 24, 2002.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 4 p.m. on September 24, 2002.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2033–IFC, P.O. Box 8010, Baltimore, MD 21244–8010.

To ensure that mailed comments are received in time for us to consider, please allow for possible delays in delivery.

If you prefer, you may deliver (by hand or courier) your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–2033–IFC. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: David Holstein, (410) 786–1565.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection in Room C5–16–03, 7500 Security Blvd., Baltimore, Maryland 21244–1850, generally beginning approximately 3 weeks after the document has been published. Members of the public who are interested in reviewing timely public comments are asked to schedule an appointment by calling (410) 786–9994 Monday through Friday from 8:30 a.m. to 5 p.m.

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I. Background

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) added a new title XXVII to the PHS Act to establish various reforms to the group and individual health insurance markets. The group market reforms are contained under Part A of title XXVII, which includes, among other things, guaranteed availability of coverage to small group market employers and renewability of coverage in the small and large group markets; limitations on pre-existing condition exclusion periods; special enrollment periods under certain circumstances; and prohibition of discrimination against individual participants and beneficiaries based on health status.

Part A of title XXVII was amended by the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA), the Mental Health Parity Act of 1996 (MHPA), and the Women's Health and Cancer Rights Act of 1998 (WHCRA), which added new sections 2704, 2705 and 2706 (subpart 2 of Part A of title XXVII), respectively. NMHPA provides protections for mothers and newborn children for hospital stays following childbirth. MHPA, which applies to group health plans sponsored by employers with more than 50 employees, provides for parity between annual and lifetime dollar limits applicable to mental health benefits, and annual and lifetime dollar limits applicable to medical and surgical benefits. WHCRA requires group health plans that provide medical and surgical benefits for mastectomies to cover, among other things, reconstructive

surgery and prostheses following a mastectomy.

Section 2721(b)(2) of the PHS Act, as added by HIPAA and implemented at 45 CFR 146.180, permits non-Federal governmental employers to elect to exempt self-funded portions of their group health plans (that is, benefits not provided through health insurance coverage) from most of the requirements of title XXVII of the PHS Act. (This practice is sometimes referred to in this preamble as "opting out of HIPAA.") However, health plans cannot be exempted from certification and disclosure of creditable coverage requirements under section 2701(e) of the PHS Act.

We received numerous inquiries as to whether non-Federal governmental entities may "opt out" of various requirements added by NMHPA, MHPA and WHCRA, which were enacted after the initial HIPAA legislation. Section 2721(b)(2) of the PHS Act permits a plan sponsor of a self-funded non-Federal governmental plan to elect to exempt its group health plan from the requirements of "subparts 1 through 3" of Part A of title XXVII (except with respect to section 2701(e) of subpart 1). Therefore, the requirements of sections 2704, 2705 and 2706, which comprise subpart 2 of Part A of title XXVII, fall within the scope of section 2721(b)(2).

II. Technical Correction to § 146.150 Guaranteed Availability of Coverage for employers in the small group Market

The regulation at § 146.150(d)(2), which was intended to track the statute (section 2711(d)(2) of the PHS Act), misstates a statutory requirement. Under section 2711(d)(2), an issuer that denies group health insurance coverage to any small employer in a State on the basis that the issuer does not have financial reserves necessary to underwrite additional coverage, is prohibited from offering additional coverage in the small group market in the State for a period of 180 days after the date coverage is denied, or until the issuer demonstrates to the applicable State authority, if required under State law, that the issuer has sufficient financial reserves to underwrite additional coverage, "whichever is later." However, § 146.150(d)(2) is worded in a way that the issuer is required to wait 180 days after it demonstrates renewed financial capacity before it may offer additional coverage in the small group market.

Section 146.150(d)(2), which was simply intended to track the statute, is revised to correctly reflect section 2711(d)(2) of the PHS Act. Because the revision is a technical correction that is required by statute, the effective date of this revision is as if it was included in the regulations published on April 8, 1997 in the **Federal Register** at 62 FR 16894; that is, on June 7, 1997.

III. Analysis of and Response to Public Comments Received on the April 8, 1997 Interim Final Rule

(For ease of reference, unless otherwise specified, the acronym "HIPAA," as used subsequently in this preamble, refers to title I of HIPAA, as well as to NMHPA, MHPA, and WHCRA, and "HIPAA requirements" refers to requirements of all of these statutes.)

We received two letters of comment in response to the April 8, 1997 interim final rule with comment period published in the **Federal Register** (62 FR 16894) that pertained exclusively to 45 CFR 146.180 "Treatment of non-Federal governmental plans."

Comment: One commenter noted that there appeared to be an inconsistency in HIPAA between an amendment made to the PHS Act, and another amendment made to the Internal Revenue Code (the Code). The PHS Act, as amended by HIPAA, provides that non-Federal governmental plans are subject to HIPAA (while permitting self-funded non-Federal governmental plans to elect to be exempted); the Internal Revenue Code, as amended by HIPAA, states that HIPAA amendments to the Code do not apply to governmental plans. The commenter requested that we clarify whether the PHS Act or the Code is the appropriate authority.

Response: The group market provisions of HIPAA made parallel amendments to the PHS Act, the Internal Revenue Code, and the Employee Retirement Income Security Act (ERISA). However, the HIPAA provisions of each statute *generally* apply to a different set of entities. In particular, the PHS Act applies to health insurance issuers and non-Federal governmental plans, and the Code applies to employer-sponsored group health plans (including church plans) except governmental plans. The fact that the Code does not reference non-Federal governmental plans simply means that the Code is not the source of HIPAA requirements for those plans. Rather, the PHS Act is the source of those requirements. Thus, non-Federal governmental plans are subject to HIPAA (except to the extent that the plan sponsor has elected to exempt a self-funded plan under section 2721(b)(2) of the PHS Act), and authority for enforcing HIPAA requirements with respect to non-Federal governmental plans rests with HHS in accordance with section 2722(b)(1)(B) of the PHS Act.

Comment: The commenter stated that § 146.180 should be amended to clarify that an election to exempt a plan from HIPAA means that the plan becomes subject to State law, including any applicable provisions that might parallel the requirements of HIPAA. The commenter noted that governmental plans are exempted from ERISA, and, accordingly, some States regulate their State and local plans. The commenter cited section 2723(a) of the PHS Act, presumably as the authority for adopting the suggested change.

Response: We adopt the recommendation, but not on the basis of section 2723(a). Section 2723(a) of the PHS Act addresses the preemption of State laws" * * * solely relating to health insurance issuers in connection with group health insurance coverage. * * *" Self-funded plans are not provided through health insurance issuers. Section 2721(b)(2) of the PHS Act permits only plan sponsors of self-funded non-Federal governmental plans to elect to exempt their plans from HIPAA requirements.

There is nothing in section 2721(b)(2) that prevents a State, by law, regulation, or other State action having the effect of law, from establishing State requirements for non-Federal governmental plans that parallel HIPAA requirements, or from simply limiting the extent to which its non-Federal governmental employers may elect to exempt their self-funded plans from HIPAA requirements. States are free to regulate group health plans of non-Federal governmental employers because governmental group health plans, unlike group health plans sponsored by private employers, are exempt from ERISA requirements under section 4(b)(1) of ERISA. (Section 514(a) of ERISA preempts State laws relating to employee benefit plans, including group health plans, that are subject to ERISA.) We amend 45 CFR 146.180 by adding a new paragraph (l) *Construction* to make clear that HIPAA does not interfere with a State's right to regulate non-Federal governmental plans. (This change is referenced in section IV.L. of this preamble.)

IV. Amendments to § 146.180 "Treatment of non-Federal Governmental Plans"

This regulation amends § 146.180 by redesignating existing paragraphs and adding new text to this section. For reference purposes, a redesignation table is provided at the end of this section for specific citations under § 146.180.

A. Paragraph (a) Requirements Subject to Exemption

We amend § 146.180 by revising paragraph (a) and adding four new paragraphs. New paragraph (a)(1) summarizes the former prefatory text of § 146.180 and adds WHCRA requirements to the list of HIPAA requirements from which a non-Federal governmental plan sponsor may elect to exempt its self-funded plan.

New paragraph (a)(2)(i) clarifies that an exemption election cannot circumvent a HIPAA requirement to the extent the requirement applied to the plan before the effective date of the exemption election. Examples are provided.

New paragraph (a)(2)(ii) clarifies that if a group health plan is co-sponsored by two or more employers, only those participants and dependents enrolled in the plan through the non-Federal governmental employer or employers that have opted out of HIPAA are affected by the opt-out election. This limitation is in accordance with the express language of section 2721(b)(2) of the PHS Act, which permits only "* * * the plan sponsor of a nonfederal governmental plan" to opt out of HIPAA with regard to self-funded plans. To the extent a plan is sponsored by an employer that is not a governmental employer, the plan is not a "non-Federal governmental plan," which is defined at § 144.103 to mean "a governmental plan established or maintained for its employees by the government of any State or political subdivision thereof, or by any agency or instrumentality of either." Similarly, to the extent a plan is co-sponsored by governmental employers, not all of which have elected to opt out of HIPAA, HIPAA applies with respect to enrollees of the non-Federal governmental employers that have not opted out.

New paragraph (a)(3) deals with stop-loss or excess risk coverage. In general, the purchase of stop-loss or excess risk coverage by a self-funded non-Federal governmental plan has no effect on the plan sponsor's ability to opt out of HIPAA. However, if coverage offered by an issuer as stop-loss or excess risk coverage is regulated as group health insurance coverage under State law that has not been preempted by ERISA or otherwise invalidated by any court, then for purposes of § 146.180, the non-Federal governmental plan that purchases the coverage is considered to be fully insured. In that event, the plan is not permitted to opt out of HIPAA.

Accordingly, a sponsor of a non-Federal governmental plan that wishes to opt out of HIPAA should ensure that the stop-loss policy being considered is not regulated as group health insurance coverage by the State. Paragraph (a)(3) applies solely for purposes of § 146.180.

New paragraph (a)(4) clarifies that nothing in part 146 imposes collective bargaining obligations on any party to the collective bargaining process. However, as stated in the preamble to our initial HIPAA regulations published on April 8, 1997 in the **Federal Register** (62 FR 16906), § 146.180 does not preempt State and local collective bargaining laws. While neither title XXVII of the PHS Act nor this regulation mandates that HIPAA protections be collectively bargained, State or local law may do so.

B. Paragraph (b) Form and Manner of Election

(A model election document is provided under section V. of this preamble as an example to assist the reader.) Paragraph (b) is amended to list the requirements pertaining to the form and manner of an opt-out election under a new paragraph (b)(1). Paragraph (b)(1)(iii) incorporates existing paragraphs (d)(1) and (2) (with the exception of the parenthetical statement in the existing (d)(2), which is incorporated in a new paragraph (b)(2)). Paragraph (b)(1)(iii) requires an election document to include a statement specifying the beginning and ending dates of the applicable election period. That period may be a single specified plan year, or, in the case of a collectively bargained plan, the "term of the agreement" as defined in paragraph (b)(2) (discussed below). In order to facilitate administrative efficiency, paragraph (b)(1)(iv) requires the election document to include the name and telephone number of a person CMS may contact regarding the election.

New paragraph (b)(2) defines "term of the agreement," and clarifies the extent to which an opt-out election applies to the initial plan year under a collective bargaining agreement and the last plan year governed by the agreement. Except as provided in new paragraphs (b)(2)(i) and (ii), paragraph (b)(2) provides that for purposes of the opt-out provision, "term of the agreement" means all plan years governed by a single collective bargaining agreement.

For the last plan year governed by a collective bargaining agreement, it has come to our attention that a collective bargaining agreement may expire before the last plan year governed by the agreement expires. In that event, we interpret the statutory reference to an opt-out election applying "for the term of such agreement" to mean that the election applies to the last plan year (in its entirety) governed by a particular collective bargaining agreement. For instance, a collective bargaining agreement may expire on December 31 and the last group health plan year governed by that agreement may expire on June 30 of the following year. If, in this example, the plan sponsor decided not to renew its opt-out election, HIPAA requirements would *not* take effect in the middle of the plan year (that is, on January 1), but rather on July 1, the first day of the plan year following expiration of the last plan year governed by the prior collective bargaining agreement.

For purposes of the opt-out provision, new paragraph (b)(2), which incorporates and revises the parenthetical statement of existing paragraph (d)(2), may effectively extend the last plan year under a prior collective bargaining agreement or shorten the initial plan year under a new agreement. Paragraph (b)(2)(i) provides that if the last plan year governed by a collective bargaining agreement expires during the bargaining process for a new agreement, the term of the prior agreement continues until the latest of the following dates, as applicable: the date agreement is reached for the new agreement, the date of ratification of the agreement, or other closure of the collective bargaining process. Under paragraph (b)(2)(ii), the term of the new agreement begins at that point.

This rule revises the existing rule, which provided that the parties to the collective bargaining process had to "agree" that the prior agreement continued until the new agreement took effect. For purposes of the opt-out provision, we are revising the rule by deleting the precondition that the parties must agree to the extension, because the collective bargaining process should not, by default, cause HIPAA requirements that were not previously in effect to take effect, nor, conversely, to effectively permit a plan sponsor, for the period preceding closure of the collective bargaining process for a new agreement, to retroactively opt out of HIPAA requirements that continue to be in effect under a prior agreement.

Under section 2721(b)(2) of the PHS Act, the opt-out decision is vested solely in the plan sponsor (in the absence of applicable State law or regulation). Thus, it is our position that in instances when collective bargaining for a new agreement extends beyond the contract expiration date under which a plan was exempt from HIPAA requirements, those requirements should not take effect by default (merely because the

union does not agree that the prior agreement is extended), and thereby prevent a plan sponsor from electing to opt out of those requirements under the new agreement. This situation could arise in the case of a collectively bargained plan that is exempt from HIPAA requirements under the special effective date rule of section 102(c)(3) of HIPAA and § 146.125(a)(2) of the implementing regulations, and in the case where a plan was exempt from HIPAA requirements under a prior opt-out election.

The special effective date rule provides that for a group health plan that is governed by one or more collective bargaining agreements that were ratified before enactment of HIPAA (that is, before August 21, 1996), the requirements of title I of HIPAA do not take effect until the last of those collective bargaining agreements expires. The last of the collective bargaining agreements ratified before August 21, 1996 may expire before closure is reached for a new agreement. Also, the period of time during which a plan is exempt from HIPAA requirements under a prior opt-out election could expire before closure is reached for a new agreement and the opt-out election is renewed.

We believe that the rule permitting a HIPAA exemption to continue during the collective bargaining process for a new agreement does not unduly affect enrollees because the plan was previously exempt from HIPAA requirements. (Of course, if collective bargaining that continues beyond the beginning of a plan year leads to an agreement that the plan will comply with one or more HIPAA requirements that legitimately did not apply to the plan under the prior agreement, the plan must comply with the requirement(s) retroactively to the first day of the initial plan year governed by the new agreement.) The special rules for the term of the agreement under paragraphs (b)(2)(i) and (ii) apply only for purposes of § 146.180; that is, only for HIPAA requirements from which a plan opts out under the new agreement.

On the other hand, to the extent a plan was subject to HIPAA requirements under a prior agreement, a plan sponsor's decision to opt out of HIPAA for those requirements must have prospective effect in order to ensure that enrollees that have benefited from those HIPAA requirements cannot be disadvantaged retroactively. This situation could arise in the case of a collectively bargained plan that is subject to HIPAA because the plan sponsor had not previously opted out, as well as in the case of a plan that is generally exempt from HIPAA requirements under the special effective date rule discussed above, but that was amended solely to conform the plan to any HIPAA requirement, as permitted under section 102(c)(3) of HIPAA and § 146.125(a)(2) of the implementing regulations.

When a plan has been in compliance with one or more HIPAA requirements, there is a greater need to strike a balance between the interests of the plan and the interests of enrollees. For a collectively bargained plan that is in compliance with HIPAA, we believe that enrollees expect the plan to continue to comply with those requirements unless otherwise notified. The same is true of new enrollees. Permitting a plan in that situation, following closure of the collective bargaining process, to retroactively opt out of HIPAA to the first day of the plan year could seriously disadvantage enrollees.

For instance, under the prior collective bargaining agreement, a plan was in compliance with HIPAA. An enrollee with a serious medical condition enrolls in the plan under the HIPAA special enrollment period rules during ongoing collective bargaining with respect to a new agreement. Two months later, after a collective bargaining agreement has been reached, the plan sponsor opts out of the special enrollment period requirements effective with the beginning of the first plan year governed by the new agreement. Conceivably, in the absence of this rule, the plan could attempt to disenroll the individual retroactively, causing great financial harm to that individual. (This situation would not arise in the case where a plan under the prior agreement was exempt from the special enrollment period rules because, under that exemption, the individual would not have been entitled to a special enrollment period.) Thus, the definition of "term of the agreement" in paragraph (b)(2) precludes the possibility that someone who properly benefitted under HIPAA could be retroactively deprived of that benefit.

New paragraph (b)(3) clarifies that we do not arbitrate disputes regarding whether an opt-out election complies with all of a plan sponsor's rules. These disputes must be resolved by the parties to the election or by the courts. Also, paragraph (b)(3) clarifies that if a plan must comply with one or more HIPAA requirements for a given plan year or period of plan coverage, the plan sponsor is free to opt out of those requirements for a subsequent plan year or period of plan coverage. For instance, a plan may comply with HIPAA requirements because the plan sponsor declined to opt out, or decided after opting out to rescind its election in whole or in part. Also, a plan might have to comply with HIPAA requirements because its opt-out election is invalidated in whole or in part by CMS (refer to sections IV.J. & K of this preamble) or by a court order. Such occurrences do not inhibit a plan sponsor's ability to opt out of HIPAA requirements for subsequent plan years.

C. Paragraph (c) Mailing Address

A new paragraph (c) is added to specify the mailing address for a non-Federal governmental employer to mail its opt-out election.

D. Paragraph (d) Filing a Timely Election

Under paragraph (d)(1), which incorporates existing paragraph (c)(1), we made a minor revision to the filing deadline for an opt-out election for a plan that is not governed by a collective bargaining agreement. Since under the existing rule we had to *receive* the election document before the first day of the plan year, new paragraph (d)(1) now provides that, subject to a good cause extension, the election document must be filed (that is, mailed) before the first day of the plan year.

In new paragraph (d)(2), which incorporates existing paragraph (c)(2), we revise the filing deadline for a plan that is governed by a collective bargaining agreement. The existing regulation stipulates that an election must be received by us within 30 days after certain events associated with collective bargaining. New paragraph (d)(2) provides that, subject to an extension based on good cause, an election for a plan governed by a collective bargaining agreement must be filed (that is, mailed) before the first day of the first plan year governed by the agreement, or by the 45th day after the latest of the following dates, as applicable, if the 45th day falls on or after the first day of the plan year: the date of the agreement between the governmental employer and union officials; the date of ratification of the agreement; or the date impasse resolution, arbitration, or other closure of the collective bargaining process is finalized when agreement is not reached. (Paragraph (d)(2) incorporates these dates via cross reference to paragraph (b)(2)(i).) The date of impasse resolution, arbitration or other closure of the collective bargaining process is included to make clear that a non-Federal governmental plan sponsor is not foreclosed under HIPAA from opting out in the event agreement is not

reached with the union through collective bargaining.

Paragraph (d)(3) specifies that we will use the postmark on the envelope in which the election is submitted to verify timely filing.

Paragraph (d)(4), which incorporates existing paragraph (c)(3), clarifies that we may extend the filing deadlines established in paragraphs (d)(1) and (d)(2) by finding good cause if a plan substantially complies with the requirements of paragraph (f) of this regulation to notify enrollees of an opt-out election at the time of enrollment and on an annual basis. For example, we could find that good cause exists for extending an election filing deadline in a case where a plan is not in violation of paragraph (f) and a plan sponsor states that there was a miscommunication between the plan sponsor and another entity that administers the plan regarding which entity was to file the election document with us.

Under certain situations, we may find good cause even if the plan sponsor does not make a specific request. For example, the sponsor of a self-funded non-Federal governmental plan decides to opt out of HIPAA for an upcoming plan year that begins on January 1. During the annual open enrollment period, all employees are given a plan brochure that contains a prominently printed notice that the plan will be exempt from HIPAA requirements for the upcoming plan year. After the plan year begins, all new enrollees are provided notice of the opt-out election at the time of enrollment. Five months into the plan year, the Personnel Department discovers that it did not file an election document with us. It belatedly files the document, which includes a statement that the plan has complied with the enrollee notification requirements of paragraph (f) of this regulation. However, the plan sponsor does not request an extension of the filing deadline for good cause. In this case, we may find that good cause exists to accept the election as being timely filed.

We believe that extending the filing deadlines in situations such as these is appropriate. Enrollees are entitled to the group health plan benefit package offered by the plan sponsor. As long as a plan has complied with the enrollee notification requirements regarding an opt-out election, extending the election filing deadlines does not disadvantage enrollees beyond the extent to which they are disadvantaged directly by the statute, which permits non-Federal governmental employers that sponsor self-funded plans to opt out of HIPAA.

Paragraph (d)(5), which incorporates and revises existing paragraph (c)(4), provides that, absent an extension based on good cause, if an election is not timely filed, the plan becomes subject to HIPAA requirements for the entire plan year to which the election would have applied, or, in the case of a plan governed by collective bargaining, for any plan year under the agreement for which the election is not timely filed.

For a collectively bargained plan, in paragraph (d)(5) we revise the requirement of existing paragraph (c)(4) that provides that failure to file a timely election subjects the plan to HIPAA requirements for the term of the collective bargaining agreement. It is our position that it is inequitable to penalize a plan governed by collective bargaining to a greater extent than other plans, which, in the case of untimely filing, must comply with HIPAA requirements only for the single plan year to which the election would have applied. Therefore, in the case of a collectively bargained plan, the plan must comply with HIPAA requirements only for plan years for which the election is not timely filed.

For instance, a collective bargaining agreement governs a group health plan for a period of 5 years, but the plan sponsor does not submit its opt-out election to us until after the third plan year has begun. The plan complies with the enrollee notification requirements of paragraph (f) of this regulation beginning with the third plan year governed by the agreement. The plan must comply with HIPAA requirements solely with respect to the first 2 plan years governed by the collective bargaining agreement. Under the revised regulation, the election is considered to be filed timely with regard to the remaining 3 plan years.

E. Paragraph (e) Additional Information Required

This paragraph provides that, in response to a notice from us, a plan sponsor, or the entity that filed the election if other than the plan sponsor, must submit additional information by the end of the plan year or 45 days after the date of the written notification, whichever is later. We will use the postmark on the envelope in which the additional information is submitted to verify timely filing. We may invalidate an election in the event of a failure to respond timely.

F. Paragraph (f) Notice to Enrollees

(A model enrollee notice is provided under section V. of this preamble as an example to assist the reader.)

This paragraph consolidates existing paragraphs (f) and (g). Paragraph (f)(1)(i) provides that a plan must notify enrollees of an opt-out election and explain the consequences of the election. If the dependents of a participant reside with the participant, the plan need only provide a notice to the participant.

Paragraph (f)(1)(ii) provides that the opt-out notice must be in writing, and, subject to notice rules associated with the initial plan year under an opt-out election, must be given to enrollees at the time of enrollment, and on an annual basis, which generally means that the notice to plan enrollees must be provided no later than the last day of each plan year for which there is an election. Thus, in general, the annual notice may be provided to plan enrollees prior to the beginning of a plan year—for instance, during an annual open enrollment period—or at any time during a plan year. Also, paragraph (f)(1)(iii) clarifies that a notice provided to an enrollee at the time of enrollment can also serve as the initial annual notice for that enrollee. That is, a plan is not required to give an enrollee more than one notice with respect to a given plan year.

Paragraph (f)(2) sets forth new special rules applicable to notices associated with the initial plan year under an opt-out election. For a plan not governed by a collective bargaining agreement, paragraph (f)(2)(i) states that a plan must provide the annual notice to all enrollees *before* the first day of that plan year, and at the time of enrollment to individuals who enroll during that plan year.

For a collectively bargained plan, paragraph (f)(2)(ii) states that the plan must provide the annual notice for the initial plan year under an election before the first day of that plan year, or within 30 days after the latest of the following dates, as applicable, if the 30th day falls on or after the first day of the plan year: the date of the agreement between the governmental employer and union officials; the date of ratification of the agreement; or the date impasse resolution, arbitration, or other closure of the collective bargaining process is finalized when agreement is not reached. (Paragraph (f)(2)(ii) incorporates these dates via cross reference to paragraph (b)(2)(i)). Also, the plan must provide a notice at the time of enrollment to all individuals who enroll on or after the first day of the plan year when closure of the collective bargaining process is reached prior to the beginning of the plan year, or to individuals who enroll on or after the date of closure of the collective

bargaining process, if that date falls on or after the first day of the plan year.

For the initial plan year that is subject to an opt-out election, this regulation requires that the annual notice be provided "up front" to ensure that plan enrollees are informed from the beginning that their rights under HIPAA are limited. This is consistent with the intent of the statute that enrollees have this knowledge from the beginning, that is, from "the time of enrollment." This rule ensures that individuals who are already enrolled in the plan when the initial opt-out election takes effect will not be deprived of important information relevant to their health benefits, and the rule will help to eliminate situations where an enrollee assumes he or she is protected under HIPAA only to discover later that he or she is not.

For instance, if an enrollee who has had a mastectomy would be eligible to switch to other coverage, but declines to do so because she expects to have WHCRA protections under the non-Federal governmental plan, clearly she would be disadvantaged upon learning several months later (after it is too late to switch coverage) that she does not have those protections. Similarly, if someone covered under the plan expects to adopt a child, he or she may be relying on the fact that there are special enrollment rights under HIPAA, perhaps only to discover after the child is adopted that the plan sponsor has opted out of the special enrollment period requirements.

However, for a plan that is governed by collective bargaining, a plan may not be able to provide the initial opt-out notice by the beginning of the plan year because of ongoing collective bargaining. Under section 2721(b)(2) of the PHS Act, a plan must notify enrollees of the "fact and consequences" of an opt-out election. When a plan sponsor's intention to opt out of HIPAA is subject to collective bargaining, an (initial) election does not in "fact" exist until the collective bargaining process with respect to the election is completed. Therefore, when closure of the collective bargaining process occurs after the beginning of the initial plan year to which the election is to apply, a plan cannot disseminate a notice regarding the "fact" of that election prior to the point of closure.

In that event, individuals who enroll in the plan on or after the first day of the initial plan year that is to be subject to an opt-out election, but before closure of the collective bargaining process, are not entitled to an opt-out notice at the time of enrollment because the election in "fact" does not exist at that point. However, these individuals are afforded some protection by the rule in paragraph (b)(2) that prohibits an opt-out election from taking effect retroactively. (Refer to the previous discussion under item IV.B of this preamble.) Also, these individuals along with other enrollees will receive the annual notice, which must be provided within 30 days after closure of the collective bargaining process. Individuals who enroll on or after the date of closure of the collective bargaining process must be given a notice at the time of enrollment.

New paragraph (f)(3) incorporates existing paragraph (g) for notice content. A new paragraph (f)(3)(v) requires that the notice to plan enrollees regarding the opt-out election include a statement informing plan enrollees that the plan will provide for certification and disclosure of creditable coverage for covered employees and their dependents who lose coverage under the plan. This requirement is designed to benefit plan enrollees by ensuring that plans inform them of their rights regarding certification and disclosure of creditable coverage, regardless of the plan sponsor's decision to exempt the plan from other HIPAA requirements.

G. Paragraph (g) Subsequent Elections

(A model election renewal document is provided under section V. of this preamble as an example to assist the reader.)

New paragraph (g)(1) incorporates existing paragraph (e), and states that election renewals are subject to the timeliness standards in paragraph (d). Paragraph (g)(2) addresses the form and manner of renewing an election.

Paragraph (g)(3) specifies that if an opt-out election renewal includes a HIPAA requirement from which the plan sponsor did not elect to exempt the plan for the preceding plan year, the advance notification requirements that apply to initial elections (paragraph (f)(2)) also apply for the additional HIPAA requirements from which the plan sponsor is electing to exempt the plan. As in the case of initial elections, this rule requires that the annual notice be provided "up front" to ensure that plan enrollees are informed from the beginning that the plan sponsor is electing to exempt the plan from certain HIPAA requirements from which the plan was not exempted under the previous opt-out election.

Paragraph (g)(4) specifies new special rules regarding the renewal of an election under a collective bargaining agreement. Paragraph (g)(4)(i) requires that if protracted negotiations for a new agreement result in an extension of the term of the prior agreement under which an opt-out election was in effect (Refer to the previous discussion in section IV.B of this preamble), the plan sponsor must comply with the enrollee notification requirements of paragraph (f)(1), and file an election renewal with us in accordance with the time frames specified in paragraph (d)(2).

Also, if a non-Federal governmental employer provides coverage to employees and dependents under a single group health plan, but enters into separate collective bargaining agreements of varying lengths with various bargaining units, paragraph (g)(4)(ii) specifies that in the case of an election renewal, the timeliness standards of paragraph (d)(2) apply to the plan as governed by the agreement that results in the earliest filing date.

H. Paragraph (h) Certification and Disclosure of Creditable Coverage

Existing paragraph (h) is retained with minor editorial changes.

I. Paragraph (i) Effect of Failure to Comply With Certification and Notification Requirements

This paragraph revises existing paragraphs (i)(1) and (2). New paragraph (i)(1) generally provides that a substantial failure to comply with the enrollee notification requirements of paragraph (f) or the certification and disclosure requirements of paragraph (h) results in the invalidation of an opt-out election with respect to all plan enrollees for the entire plan year.

We determine whether a non-Federal governmental plan has substantially failed to comply based on a review of all relevant facts and circumstances, including the previous record of compliance, gravity of the violation, and whether the plan takes corrective action, as warranted, within 30 days of learning of the violation. However, in general, a failure to provide the opt-out notice to an enrollee at the time of enrollment or on an annual basis is considered to be a substantial failure to comply. In the case of a substantial failure that is limited to certain individuals, CMS may permit the election to remain in effect if the plan agrees not to apply the election with respect to the affected individuals for the plan year with respect to which the failure has occurred and so informs those individuals in writing.

New paragraph (i)(1) further specifies that in the case of a plan that is sponsored by multiple employers, the invalidation applies only for the employer(s) responsible for the substantial failure, and not for other employers that complied with the

requirements of paragraphs (f) or (h), unless the plan chooses to cancel its election entirely. For example, if 10 non-Federal governmental employers co-sponsor a plan, and one employer substantially fails to comply with the requirements of paragraph (f), the invalidation applies only with respect to enrollees of that one employer (unless the plan chooses to cancel its election entirely).

Examples illustrating the rules of new paragraph (i)(1) are provided in new paragraph (i)(2).

J. Paragraph (j) Election Invalidated

Paragraph (j) specifies the rules that apply if we invalidate an opt-out election.

K. Paragraph (k) Enforcement

Existing paragraph (i) (3) is redesignated and revised as new paragraph (k). Paragraph (k) cross-refers to part 150 of 45 CFR under which we enforce HIPAA requirements that apply to non-Federal governmental plans, including imposing a civil money penalty on a plan or plan sponsor when a non-Federal governmental plan is subject to the requirements of part 146 and fails to comply with one or more of those requirements. All non-Federal governmental plans must comply with requirements pertaining to certification and disclosure of creditable coverage under section 2701(e) of the PHS Act and § 146.115.

Paragraph (k) applies not only to a plan for which an election has not been filed, or for which an election has been invalidated, but also to a plan that has selectively opted out of HIPAA requirements and fails to comply with any requirements that are not subject to the opt-out election. For instance, a plan opts out of the preexisting condition exclusion limitations only, but also fails to comply with requirements pertaining to special enrollment periods. We enforce the special enrollment period rules under part 150.

L. Paragraph (l) Construction

This paragraph clarifies that States are not precluded from restricting the extent to which their non-Federal governmental employers may opt out of HIPAA. (Refer to our response to public comments on the April 8, 1997 interim final rule with comment period published in the **Federal Register** (62 FR 16894) that appears under section III. of this preamble.)

REDESIGNATION TABLE FOR § 146.180

Existing designation	New designation
Prefatory text and paragraph (a)	Paragraph (a)(1).
Paragraph (b)	Paragraph (b)(1).
Paragraph (c)(1) and (2)	Paragraph (d)(1) and paragraph (d)(2).
Paragraph (c)(3)	Paragraph (d)(4).
Paragraph (c)(4)	Paragraph (d)(5).
Paragraph (d)(1) and paragraph (2) (except parenthetical)	Paragraph (b)(1)(iii).
Paragraph (d)(2) (parenthetical)	Paragraph (b)(2)(i) and Paragraph (b)(2)(ii).
Paragraph (e)	Paragraph (g)(1).
Paragraph (f)	Paragraph (f)(1).
Paragraph (g)	Paragraph (f)(3).
Paragraph (h)	Paragraph (h).
Paragraph (i)(1) and paragraph (i)(2) (except invalidation notice)	Paragraph (i)(1).
Paragraph (i)(2) (invalidation notice)	Paragraph (j).
Paragraph (i)(3)	Paragraph (k).

V. Model Election/Election Renewal Document; Model Notice to Plan Enrollees

To assist non-Federal governmental employers that wish to exercise their option to exempt their self-funded plans from requirements of title XXVII of the PHS Act, we have developed a model election/election renewal document, and a model notice to plan enrollees. Use of these model documents, which are presented below, is not required. However, use of these model documents will satisfy applicable requirements of § 146.180(b)(1), (f)(3) and (g)(2). We encourage you to access these model documents at our Web site at *http://www.cms.hhs.gov/hipaa1*.

A. Model HIPAA Exemption Election/Election Renewal Document

The following may be submitted on plan sponsor's or plan administrator's letterhead:

Name of Plan: _____
Plan Sponsor: _____
Address: _____
(Not applicable if election document is on letterhead showing the plan sponsor's address.)
EIN: _____
Plan Number: _____ (if applicable)
Plan Year/Period of Plan coverage:
(beginning date) through (ending date)
(may reflect multiple plan years governed by a collective bargaining agreement.)
Plan Administrator:
Address: (If different from plan sponsor's)

(Name of plan, or portion of plan that is self-funded) is not provided through insurance. (Plan sponsor) elects under authority of section 2721(b)(2) of the Public Health Service (PHS) Act, and 45 CFR 146.180 of Federal regulations, to exempt (name of plan or self-funded portion) from the following requirements of title XXVII of the PHS Act (list any or all of the following requirements):

1. Limitations on preexisting condition exclusion periods.
2. Special enrollment periods.
3. Prohibitions against discriminating against individual participants and beneficiaries based on health status.
4. Standards relating to benefits for mothers and newborns.
5. Parity in the application of certain limits to mental health benefits.
6. Required coverage for reconstructive surgery following mastectomies.

This election has been made in conformity with all rules of the plan sponsor, including any public hearing, if required. I certify that the undersigned is authorized to submit this election on behalf of (name of plan). A copy of the notice to plan enrollees is enclosed. (In the case of an election renewal, in lieu of enclosing a copy of an updated notice to plan enrollees, the plan sponsor may include a statement that the notice has been, or will be, provided to plan enrollees in accordance with 45 CFR 146.180(f).) If CMS has any questions regarding this election, please contact (name) at (phone number).

Signature
Title

B. Model Notice to Enrollees in a Self-Funded Non-Federal Governmental Group Health Plan

Under a Federal law known as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, as amended, group health plans must generally comply with the requirements listed below. However, the law also permits State and local governmental employers that sponsor health plans to elect to exempt a plan from these requirements for any part of the plan that is "self-funded" by the employer, rather than provided through a health insurance policy. (Name of plan sponsor) has elected to exempt (name of plan) from (all) (or specify which ones) of the following requirements:

[The description of each listed requirement may be omitted.]

1. *Limitations on preexisting condition exclusion periods.* A preexisting condition exclusion period generally may not exceed 12 months, and generally must be reduced by prior health coverage an individual has had. Also, a plan may not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition, nor, under certain conditions, with respect to newborns or children adopted or placed for adoption.

2. *Special enrollment periods.* Group health plans are required to provide special enrollment periods for individuals who do not enroll in the plan because they have other coverage, but subsequently lose that coverage. Also, if a plan provides dependent coverage, the plan must provide a special enrollment period for new dependents (and the employee if not already enrolled) within 30 days after a marriage, birth, adoption or placement for adoption.

3. *Prohibitions against discriminating against individual participants and beneficiaries based on health status.* A group health plan may not discriminate in enrollment rules or in the amount of premiums or contributions it requires an individual to pay based on certain health status-related factors: health status, medical condition (physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability, and disability.

4. *Standards relating to benefits for mothers and newborns.* Group health plans offering health coverage for hospital stays in connection with the birth of a child generally may not restrict benefits for the stay to less than 48 hours for a vaginal delivery, and 96 hours for a cesarean section.

5. *Parity in the application of certain limits to mental health benefits.* Group health plans (of employers that employ more than 50 employees) offering mental health benefits may not set annual or lifetime dollar limits on mental health benefits that are lower than limits for medical and surgical benefits. A plan that does not impose an annual or lifetime dollar limit on medical and surgical benefits may not impose that type of limit on mental health benefits. These requirements do not apply to benefits for substance abuse or chemical dependency.

6. *Required coverage for reconstructive surgery following mastectomies.* Group health plans that provide medical and surgical benefits for a mastectomy must provide certain benefits in connection with breast reconstruction as well as certain other related benefits.

The exemption from these Federal requirements will be in effect for the (plan year) (period of plan coverage) beginning (specify date) and ending (specify date). The election may be renewed for subsequent plan years.

(If the Plan provides protections similar to any of the exempted requirements, either voluntarily or in accordance with State law, identify those protections.)

HIPAA also requires the Plan to provide covered employees and dependents with a "certificate of creditable coverage" when they cease to be covered under the Plan. There is no exemption from this requirement. The certificate provides evidence that you were covered under this Plan, because if you can establish your prior coverage, you may be entitled to certain rights to reduce or eliminate a preexisting condition exclusion if you join another employer's health plan, or if you wish to purchase an individual health insurance policy. (If someone will be available to answer questions, an appropriate contact, such as a third party administrator, or personnel officer may be identified).

VI. Response to Comments on this Interim Final Rule

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Waiver of Proposed Rulemaking

In accordance with the requirements of the Administrative Procedures Act (APA), we ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment before a final rule is made effective. The notice of proposed rulemaking required by the APA incorporates a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We are making various discretionary changes to the prior April 8, 1997 interim final rule (62 FR 16894) at § 146.180 under the broad authority granted by the Congress to the Secretary of Health and Human Services—"The Secretary may promulgate any interim final rules as the Secretary determines are appropriate to carry out this title [XXVII of the PHS Act]." (Section 2792 of the PHS Act, as added by HIPAA, Public Law 104–191.) Because this broad regulatory authority was made a permanent part of title XXVII of the PHS Act, it has continuing effect with respect to any rules the Secretary may promulgate for purposes of carrying out title XXVII of the PHS Act. We believe that it serves the public interest to issue these regulations in accordance with the authority granted by the Congress under section 2792 of the PHS Act.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this rule as an interim final rule with comment period. We are providing a 60-day public comment period and will respond to major comments we receive in any subsequent **Federal Register** document.

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The reporting and disclosure requirements referenced under § 146.180 are currently approved under OMB number 0938–0702 (HIPAA Group Market Information Collection Requirements), with a current expiration date of December 31, 2002.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to OMB for its review of these information collection requirements.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, DCES, SSG, Attn: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850; ATTN: CMS 0047–F

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

IX. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies.

For purposes of the RFA, all political subdivisions of States, and any agency or instrumentality of these political subdivisions, are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This regulation does not have the effect of imposing unfunded mandates on State or local governments.

We have previously estimated that between 3,500 and 5,000 non-Federal governmental plans would be affected by § 146.180 (62 FR 16927, April 8, 1997). (Only non-Federal governmental entities that provide group health plan coverage to employees on a self-funded basis (not through health insurance coverage) are eligible to elect to exempt their plans from the requirements of title XXVII of the PHS Act.) To date, we have received approximately 650 elections covering fewer than 2,000 non-Federal governmental entities, virtually all of which are small entities for purposes of the RFA.

As a group, non-Federal governmental entities that elect to opt out of HIPAA are diverse and difficult to categorize. Depending on the circumstances, elections can vary tremendously, from single plan groups, to those which incorporate multiple political and plan subdivisions. There have also been cases where plan sponsors that initially sought exemption from HIPAA requirements have subsequently elected to bring their plans into HIPAA compliance. Although there is no way to estimate the number of additional non-Federal governmental entities that will elect to exempt their plans from HIPAA requirements, based on our experience to date, we maintain that most of the eligible non-Federal governmental entities that intend to exempt their plans from one or more HIPAA requirements have already done so.

The Women's Health and Cancer Rights Act of 1998 (WHCRA) was effective for plan years beginning on or after October 21, 1998. However, we believe that, in general, non-Federal governmental entities that were eligible, but declined to exempt their plans from the requirements of HIPAA , the Newborns' and Mothers' Health Protection Act of 1996, and the Mental Health Parity Act of 1996 are not likely to elect to exempt their plans from the requirements of WHCRA. Thus, we do not anticipate that the number of opt-out elections will increase substantially as a result of WHCRA. Accordingly, we estimate that fewer than 2,000 non-Federal governmental entities are affected by these regulations, and we expect that number to remain fairly stable.

Non-Federal governmental entities are subject to these regulations *only* if they *elect* to exempt their plans from any requirements of title XXVII of the PHS Act. We did not consider alternatives to these regulations because regulations are necessary to modify existing regulations at § 146.180. Moreover, section 2721(b)(2)(A) of the PHS Act expressly calls for regulations—plan sponsors of non-Federal governmental plans may elect to exempt their self-funded group health plans from the requirements of title XXVII "in such form and manner as the Secretary may by regulations prescribe."

These regulations are designed to assist non-Federal governmental employers in exercising their prerogative under section 2721(b)(2) to exempt eligible plans from various requirements of title XXVII of the PHS Act, and to clarify that States are not precluded by section 2721(b)(2) and § 146.180 from limiting the extent to which non-Federal governmental plan sponsors may elect to exempt their self-funded group health plans from HIPAA requirements. The effect of not issuing these regulations would be to deprive non-Federal governmental employers and States of information pertinent to implementing section 2721(b)(2) of the PHS Act. However, not issuing these regulations would have negligible economic consequences for non-Federal governmental employers. The requirement that group health plans must notify enrollees regarding an exemption election at the time of enrollment and on an annual basis is prescribed by the statute. Our initial implementing regulations (62 FR 16894, April 8, 1997) address the consequences of a plan's failure to comply with those statutory enrollee notification requirements—a plan's exemption election is invalidated, and the plan must come into compliance with HIPAA requirements. Thus, the potential for incurring costs associated with bringing a plan into HIPAA compliance as a result of a plan's failure to comply with the enrollee notification requirements already exists and would not accrue to non-Federal governmental employers if these regulations are not issued.

For these reasons, we are not preparing an analysis for the RFA because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

X. Federalism

We have reviewed this regulation under the threshold criteria of Executive Order 13132. We have determined that this interim final rule with comment period does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects in 45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements, State regulation of health insurance.

For the reasons set forth in the preamble, 45 CFR Part 146 is amended as set forth below:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

A. Part 146 is amended as set forth below.

1. The authority citation for part 146 is corrected to read as follows:

Authority: Secs. 2701 through 2723, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–23, 300gg–91, and 300gg–92).

2. In § 146.150, paragraph (d)(2) is revised to read as follows:

§ 146.150 Guaranteed availability of coverage for employers in the small group market.

* * * * *

(d) Application of financial capacity limits.

* * * * *

(2) An issuer that denies group health insurance coverage to any small employer in a State under paragraph (d)(1) of this section may not offer coverage in connection with group health plans in the small group market in the State before the later of the following dates:

(i) The 181st day after the date the issuer denies coverage.

(ii) The date the issuer demonstrates to the applicable State authority, if required under applicable State law, that the issuer has sufficient financial reserves to underwrite additional coverage.

* * * * *

3. Section 146.180 is revised to read as follows:

§ 146.180 Treatment of non-Federal governmental plans.

(a) *Requirements subject to exemption.* (1) *Basic rule.* A sponsor of a non-Federal governmental plan may elect to exempt its plan, to the extent that the plan is not provided through health insurance coverage, (that is, it is self-funded), from any or all of the following requirements:

(i) Limitations on preexisting condition exclusion periods described in § 146.111.

(ii) Special enrollment periods for individuals and dependents described in § 146.117.

(iii) Prohibitions against discriminating against individual participants and beneficiaries based on health status described in § 146.121.

(iv) Standards relating to benefits for mothers and newborns described in § 146.130.

(v) Parity in the application of certain limits to mental health benefits described in § 146.136.

(vi) Required coverage for reconstructive surgery and certain other services following a mastectomy under section 2706 of the PHS Act.

(2) *Limitations.* (i) An election under this section cannot circumvent a requirement of this part to the extent the requirement applied to the plan before the effective date of the election.

(A) *Example 1.* A plan is subject to requirements of section 2706 of the PHS Act, under which a plan that covers medical and surgical benefits with respect to a mastectomy must cover reconstructive surgery and certain other services following a mastectomy. An enrollee who has had a mastectomy receives reconstructive surgery on August 24. Claims with respect to the surgery are submitted to and processed by the plan in September. The group health plan commences a new plan year each September 1. Effective September 1, the plan sponsor elects to exempt its plan from section 2706 of the PHS Act. The plan cannot, on the basis of its exemption election, decline to pay for the claims incurred on August 24.

(B) *Example 2.* An individual is hired by a non-Federal governmental employer and reports to work on August 6. The individual has diabetes. Under the terms of the plan in effect on August 6, if an individual files an enrollment application within the first 30 days of employment, enrollment in the plan is effective as of the first day of employment. The individual timely files an enrollment application. The application is processed on September 10. The group health plan commences a new plan year each September 1. Effective September 1, the plan sponsor elects to exempt its plan from § 146.121, which prohibits enrollment discrimination based on health status-related factors, by requiring new enrollees to pass medical underwriting. The plan cannot decline to enroll the individual effective August 6, even if he would not pass medical underwriting under the terms of the plan in effect on September 1.

(ii) If a group health plan is co-sponsored by two or more employers, then only plan enrollees of the non-Federal governmental employer(s) with a valid election under this section are affected by the election.

(3) *Stop-loss or excess risk coverage.* For purposes of this section—(i) Subject to paragraph (a)(3)(ii), the purchase of stop-loss or excess risk coverage by a self-funded non-Federal governmental plan does not prevent an election under this section.

(ii) Regardless of whether coverage offered by an issuer is designated as "stop-loss" coverage or "excess risk" coverage, if it is regulated as group health insurance under an applicable State law, then for purposes of this section, a non-Federal governmental plan that purchases the coverage is considered to be fully insured. In that event, a plan may not be exempted under this section from the requirements of this part.

(4) *Construction.* Nothing in this part should be construed as imposing collective bargaining obligations on any party to the collective bargaining process.

(b) *Form and manner of election.* (1) *Election requirements.* The election must meet the following requirements:

(i) Be made in writing.

(ii) Be made in conformance with all of the plan sponsor's rules, including any public hearing requirements.

(iii) Specify the beginning and ending dates of the period to which the election is to apply. This period can be either of the following periods:

(A) A single specified plan year, as defined in § 144.103 of this subchapter.

(B) The "term of the agreement," as specified in paragraph (b)(2) of this section, in the case of a plan governed by collective bargaining.

(iv) Specify the name of the plan and the name and address of the plan administrator, and include the name and telephone number of a person CMS may contact regarding the election.

(v) State that the plan does not include health insurance coverage, or identify which portion of the plan is not funded through health insurance coverage.

(vi) Specify each requirement described in paragraph (a) of this section from which the plan sponsor elects to exempt the plan.

(vii) Certify that the person signing the election document, including (if applicable) a third party plan administrator, is legally authorized to do so by the plan sponsor.

(viii) Include, as an attachment, a copy of the notice described in paragraph (f) of this section.

(2) *"Term of the agreement" defined.* Except as provided in paragraphs (b)(2)(i) and (b)(2)(ii), for purposes of

this section "term of the agreement" means all group health plan years governed by a single collective bargaining agreement.

(i) In the case of a group health plan for which the last plan year governed by a prior collective bargaining agreement expires during the bargaining process for a new agreement, the term of the prior agreement includes all plan years governed by the agreement plus the period of time that precedes the latest of the following dates, as applicable, with respect to the new agreement:

(A) The date of an agreement between the governmental employer and union officials.

(B) The date of ratification of an agreement between the governmental employer and the union.

(C) The date impasse resolution, arbitration or other closure of the collective bargaining process is finalized when agreement is not reached.

(ii) In the case of a group health plan governed by a collective bargaining agreement for which closure is not reached before the last plan year under the immediately preceding agreement expires, the term of the new agreement includes all plan years governed by the agreement excluding the period that precedes the latest applicable date specified in paragraph (b)(2)(i) of this section.

(3) *Construction.* (i) *Dispute resolution.* Nothing in paragraph (b)(1)(ii) of this section should be construed to mean that CMS arbitrates disputes between plan sponsors, participants, beneficiaries, or their representatives regarding whether an election complies with all of a plan sponsor's rules.

(ii) *Future elections not preempted.* If a plan must comply with one or more requirements of this part for a given plan year or period of plan coverage, nothing in this section should be construed as preventing a plan sponsor from submitting an election in accordance with this section for a subsequent plan year or period of plan coverage.

(c) *Mailing address.* The plan sponsor should mail the election to: Centers for Medicare & Medicaid Services, Private Health Insurance Group, CMSO, 7500 Security Boulevard, S3–16–16, Baltimore, MD 21244–1850.

(d) *Filing a timely election.* (1) *Plan not governed by collective bargaining.* Subject to paragraph (d)(4) of this section, if a plan is not governed by a collective bargaining agreement, a plan sponsor or entity acting on behalf of a plan sponsor must file an election with CMS before the first day of the plan year.

(2) *Plan governed by a collective bargaining agreement.* Subject to paragraph (d)(4) of this section, if a plan is governed by a collective bargaining agreement, a plan sponsor or entity acting on behalf of a plan sponsor must file an election with CMS before the first day of the first plan year governed by a collective bargaining agreement, or by the 45th day after the latest applicable date specified in paragraph (b)(2)(i) of this section, if the 45th day falls on or after the first day of the plan year.

(3) *Verifying timely filing.* CMS uses the postmark on the envelope in which the election is submitted to determine that the election is timely filed as specified under paragraphs (d)(1) or (d)(2) of this section, as applicable. If the latest filing date falls on a Saturday, Sunday, or a State or Federal holiday, CMS accepts a postmark on the next business day.

(4) *Filing extension based on good cause.* CMS may extend the deadlines specified in paragraphs (d)(1) and (d)(2) of this section for good cause if the plan substantially complies with the requirements of paragraph (f) of this section.

(5) *Failure to file a timely election.* Absent an extension under paragraph (d)(4) of this section, a plan sponsor's failure to file a timely election under paragraph (d)(1) or (d)(2) of this section makes the plan subject to all requirements of this part for the entire plan year to which the election would have applied, or, in the case of a plan governed by a collective bargaining agreement, for any plan years under the agreement for which the election is not timely filed.

(e) *Additional information required.* (1) *Written notification.* If an election is timely filed, but CMS determines that the election document (or the notice to plan enrollees) does not meet all of the requirements of this section, CMS may notify the plan sponsor, or other entity that filed the election, that it must submit any additional information that CMS has determined is necessary to meet those requirements. The additional information must be filed with CMS by the later of the following dates:

(i) The last day of the plan year.

(ii) The 45th day after the date of CMS's written notification requesting additional information.

(2) *Timely response.* CMS uses the postmark on the envelope in which the additional information is submitted to determine that the information is timely filed as specified under paragraph (e)(1) of this section. If the latest filing date falls on a Saturday, Sunday, or a State or Federal holiday, CMS accepts a postmark on the next business day.

(3) *Failure to respond timely.* CMS may invalidate an election if the plan sponsor, or other entity that filed the election, fails to timely submit the additional information as specified under paragraph (e)(1) of this section.

(f) *Notice to enrollees.* (1) *Mandatory notification.*

(i) A plan that makes the election described in this section must notify each affected enrollee of the election, and explain the consequences of the election. For purposes of this paragraph (f), if the dependent(s) of a participant reside(s) with the participant, a plan need only provide notice to the participant.

(ii) The notice must be in writing and, except as provided in paragraph (f)(2) of this section with regard to initial notices, must be provided to each enrollee at the time of enrollment under the plan, and on an annual basis no later than the last day of each plan year (as defined in § 144.103 of this subchapter) for which there is an election.

(iii) A plan may meet the notification requirements of this paragraph (f) by prominently printing the notice in a summary plan description, or equivalent description, that it provides to each enrollee at the time of enrollment, and annually. Also, when a plan provides a notice to an enrollee at the time of enrollment, that notice may serve as the initial annual notice for that enrollee.

(2) *Initial notices.* (i) If a plan is not governed by a collective bargaining agreement, with regard to the initial plan year to which an election under this section applies, the plan must provide the initial annual notice of the election to all enrollees before the first day of that plan year, and notice at the time of enrollment to all individuals who enroll during that plan year.

(ii) In the case of a collectively bargained plan (including a self-funded non-Federal governmental plan that has been exempted from requirements of this part under § 146.125(a)(2)), with regard to the initial plan year to which an election under this section applies, the plan must provide the initial annual notice of the election to all enrollees before the first day of the plan year, or within 30 days after the latest applicable date specified in paragraph (b)(2)(i) of this section if the 30th day falls on or after the first day of the plan year. Also, the plan must provide a notice at the time of enrollment to individuals who—

(A) Enroll on or after the first day of the plan year, when closure of the collective bargaining process is reached before the plan year begins; or

(B) Enroll on or after the latest applicable date specified in paragraph

(b)(2)(i) of this section if that date falls on or after the first day of the plan year.

(3) *Notice content.* The notice must include at least the following information:

(i) The specific requirements described in paragraph (a)(1) of this section from which the plan sponsor is electing to exempt the plan, and a statement that, in general, Federal law imposes these requirements upon group health plans.

(ii) A statement that Federal law gives the plan sponsor of a self-funded non-Federal governmental plan the right to exempt the plan in whole, or in part, from the listed requirements, and that the plan sponsor has elected to do so.

(iii) A statement identifying which parts of the plan are subject to the election.

(iv) A statement identifying which of the listed requirements, if any, apply under the terms of the plan, or as required by State law, without regard to an exemption under this section.

(v) A statement informing plan enrollees that the plan provides for certification and disclosure of creditable coverage for covered employees and their dependents who lose coverage under the plan.

(g) *Subsequent elections.* (1) *Election renewal.* A plan sponsor may renew an election under this section through subsequent elections. The timeliness standards described in paragraph (d) apply to election renewals under this paragraph (g).

(2) *Form and manner of renewal.* Except for the requirement to forward to CMS a copy of the notice to enrollees under paragraph (b)(1)(viii) of this section, the plan sponsor must comply with the election requirements of paragraph (b)(1) of this section. In lieu of providing a copy of the notice under (b)(1)(viii), the plan sponsor may include a statement that the notice has been, or will be, provided to enrollees as specified under paragraph (f) of this section.

(3) *Election renewal includes provisions from which plan not previously exempted.* If an election renewal includes a requirement described in paragraph (a) of this section from which the plan sponsor did not elect to exempt the plan for the preceding plan year, the advance notification requirements of paragraph (f)(2) of this section apply with respect to the additional requirement(s) of paragraph (a) from which the plan sponsor is electing to exempt the plan.

(4) *Special rules regarding renewal of an election under a collective bargaining agreement.* (i) If protracted negotiations with respect to a new agreement result in an extension of the term of the prior agreement (as provided under paragraph (b)(2)(i)) under which an election under this section was in effect, the plan must comply with the enrollee notification requirements of paragraph (f)(1), and, following closure of the collective bargaining process, must file an election renewal with CMS as provided under paragraph (d)(2) of this section.

(ii) If a single plan applies to more than one bargaining unit, and the plan is governed by collective bargaining agreements of varying lengths, paragraph (d)(2) of this section, with respect to an election renewal, applies to the plan as governed by the agreement that results in the earliest filing date.

(h) *Certification and disclosure of creditable coverage.* Without regard to an election under this section, a non-Federal governmental plan must provide for certification and disclosure of creditable coverage under the plan with respect to participants and their dependents as specified under § 146.115. CMS enforces this requirement as provided under paragraph (k) of this section.

(i) *Effect of failure to comply with certification and notification requirements.* (1) *Substantial failure.* (i) *General rule.* Except as provided in paragraph (i)(1)(iii) of this section, a substantial failure to comply with paragraphs (f) or (h) of this section results in the invalidation of an election under this section with respect to all plan enrollees for the entire plan year. That is, the plan is subject to all requirements of this part for the entire plan year to which the election otherwise would have applied.

(ii) *Determination of substantial failure.* CMS determines whether a plan has substantially failed to comply with a requirement of paragraph (f) or paragraph (h) of this section based on all relevant facts and circumstances, including previous record of compliance, gravity of the violation and whether a plan corrects the failure, as warranted, within 30 days of learning of the violation. However, in general, a plan's failure to provide a notice of the fact and consequences of an election under this section to an individual at the time of enrollment, or on an annual basis before a given plan year expires, constitutes a substantial failure.

(iii) *Exceptions.* (A) *Multiple employers.* If the plan is sponsored by multiple employers, and only certain employers substantially fail to comply with the requirements of paragraphs (f) or (h) of this section, then the election is invalidated with respect to those employers only, and not with respect to other employers that complied with those requirements, unless the plan chooses to cancel its election entirely.

(B) *Limited failure to provide notice.* If a substantial failure to notify enrollees of the fact and consequences of an election is limited to certain individuals, the election under this section is valid only if, for the plan year with respect to which the failure has occurred, the plan agrees not to apply the election with respect to the individuals who were not notified and so informs those individuals in writing.

(2) *Examples.* (i) *Example 1:* A self-funded non-Federal group health plan is co-sponsored by 10 school districts. Nine of the school districts have fully complied with the requirements of paragraph (f) of this section, including providing notice to new employees at the time of their enrollment in the plan, regarding the group health plan's exemption under this section from requirements of this part. One school district, which hired 10 new teachers during the summer for the upcoming school year, neglected to notify three of the new hires about the group health plan's exemption election at the time they enrolled in the plan. The school district has substantially failed to comply with a requirement of paragraph (f) with respect to these individuals.

The school district learned of the oversight six weeks into the school year, and promptly (within 30 days of learning of the oversight) provided notice to the three teachers regarding the plan's exemption under this section and that the exemption does not apply to them, or their dependents, during the plan year of their enrollment because of the plan's failure to timely notify them of its exemption. The plan complies with the requirements of this part for these individuals for the plan year of their enrollment. CMS would not require the plan to come into compliance with the requirements of this part for other enrollees.

(ii) *Example 2:* Same facts as in Example 1, except the noncompliant school district failed to notify any enrollees regarding an election under this section. That is, the school district failed to provide the annual notice to current plan enrollees as well as the notice at the time of enrollment to new enrollees. The school district has substantially failed to comply with the requirements of paragraph (f) of this section. At a minimum, the election is invalidated with respect to all enrollees of the noncompliant school district for the plan year for which the substantial failure has occurred. In this example, the plan decides not to cancel its election entirely. The election with regard to the other nine school districts remains in effect.

(iii) *Example 3.* Two non-Federal governmental employers cosponsor a self-funded group health plan. One employer substantially fails to comply with the requirements of paragraph (f) of this section. While the plan may limit the invalidation of the election to enrollees of the plan sponsor that is responsible for the substantial failure,

the plan sponsors determine that administering the plan in that manner would be too burdensome. Accordingly, in this example, the plan sponsors choose to cancel the election entirely. Both plan sponsors come into compliance with the requirements of this part with respect to all enrollees for the plan year for which the substantial failure has occurred.

(iv) *Example 4:* A non-Federal governmental employer has elected to exempt its collectively bargained self-funded plan from certain requirements of this part. The collective bargaining agreement applies to five plan years, 2001 through 2005. For the first three plan years, enrollees are notified annually and at the time of enrollment of the election under this section. The notice specifies that the election applies to the period January 1, 2001 through December 31, 2005. Prior to the dissemination of the annual notice for the 2004 plan year, the individual responsible for disseminating the notice terminates employment. His replacement, who is unaware of the requirement that plan enrollees be notified annually, continues to notify new enrollees at the time of enrollment but fails to disseminate the annual notice. CMS does not consider that failure to be a substantial failure because enrollees previously had actual notice that the election under this section applies for the period January 1, 2001 through December 31, 2005. Accordingly, CMS would not invalidate the election for the 2004 plan year.

(v) *Example 5:* A non-Federal governmental employer has elected to exempt its self-funded plan from certain requirements of this part. An individual terminates employment with the governmental employer, which fails to automatically provide a certificate of creditable coverage within the period specified in § 146.115(a)(2)(ii)(A). (The governmental employer generally provides certificates to terminated employees on an automatic basis, but neglected to do so in this case.) The oversight is brought to the employer's attention when the individual inquires as to why he has not received his certificate of creditable coverage. The governmental employer promptly (within 30 days) forwards a certificate to the individual. CMS would not view that situation as constituting a substantial failure and would not invalidate the election under this section.

(j) *Election invalidated.* If CMS finds cause to invalidate an election under this section, the following rules apply:

(1) CMS notifies the plan sponsor (and the plan administrator if other than the plan sponsor and the administrator's address is known to CMS) in writing that CMS has made a preliminary determination that an election is invalid, and states the basis for that determination.

(2) CMS's notice informs the plan sponsor that it has 45 days after the date of CMS's notice to explain in writing why it believes its election is valid. The plan sponsor should provide applicable statutory and regulatory citations to support its position.

(3) CMS verifies that the plan sponsor's response is timely filed as provided under paragraph (d)(3) of this section. CMS will not consider a response that is not timely filed.

(4) If CMS's preliminary determination that an election is invalid remains unchanged after CMS considers the plan sponsor's timely response (or in the event that the plan sponsor fails to respond timely), CMS provides written notice to the plan sponsor (and the plan administrator if other than the plan sponsor and the administrator's address is known to CMS) of CMS's final determination that the election is invalid. Also, CMS informs the plan sponsor that, within 45 days of the date of the notice of final determination, the plan, subject to paragraph (i)(1)(iii) of this section, must comply with all requirements of this part for the specified period for which CMS has determined the election to be invalid.

(k) *Enforcement.* To the extent that an election under this section has not been filed or a non-Federal governmental plan otherwise is subject to one or more requirements of this part, CMS enforces those requirements under part 150 of this subchapter. This may include imposing a civil money penalty against the plan or the plan sponsor, as determined under § 150.305.

(l) *Construction.* Nothing in this section should be construed to prevent a State from taking the following actions:

(1) Establishing, and enforcing compliance with, the requirements of State law (as defined in § 146.143(d)(1)), including requirements that parallel provisions of title XXVII of the PHS Act, that apply to non-Federal governmental plans or sponsors.

(2) Prohibiting a sponsor of a non-Federal governmental plan within the State from making an election under this section.

(Catalog of Federal Domestic Assistance Program No. 93.773), (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 7, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: March 20, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–17621 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

Security Requirements for Unclassified Information Technology Resources

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule adopts with changes the interim rule published in the **Federal Register** on July 12, 2001. The interim rule amended the NASA FAR Supplement (NFS) to clarify information technology (IT) security requirements for sensitive information contained in unclassified automated information resources

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Karl Beisel, NASA Headquarters, Code HC, Washington, DC 20546, (202) 358–0416, *kbeisel@mail.hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

NASA published an interim rule in the **Federal Register** at 66 FR 36490 on July 12, 2001, revising NFS section 1804.470 and the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources. These sections address security requirements for unclassified IT resources. The action implemented The Computer Security Act of 1987 and Appendix III of the Office of Management and Budget (OMB) Circular No. A–130, Security of Federal Automated Information Resources, which require adequate security be provided for all Agency information collected, processed, transmitted, stored, or disseminated. NFS section 1804.470 contains the requirement for all NASA contractors and subcontractors to comply with Federal and NASA policies in safeguarding unclassified NASA data held via information technology (IT).

Public comments were received from one source. The comments were considered in developing this final rule.

Changes are made in this final rule to section 1804.470–1, Scope, to reference Federal policies that are implemented through NASA's Procedures and Guidelines (NPG) 2810.1, Security of Information Technology, and amend paragraph (d)(3)(i) of the clause at 1852.204–76 to remove the exemption of certain information contained in Standard Form 85P, Questionnaire for Public Trust Positions.

NASA understands that the FAR Council is working with the OMB

Committee on Executive Branch Information Systems Security under the President's Critical Infrastructure Protection Board on the development of a government-wide IT security clause. The purpose of this work is to ensure that IT security requirements are included in all applicable Federal government contracts. Upon completion of this government-wide effort, NASA will modify its rule, as may be necessary, to ensure consistency with the FAR coverage.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because this rule only clarifies existing requirements and does not impose any new requirements.

C. Paperwork Reduction Act

This rule clarifies existing requirements that were previously approved by the Office of Management and Budget (OMB) under OMB Control No. 2700–0098.

List of Subjects in 48 CFR Parts 1804 and 1852

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Interim Rule Adopted as Final With Change

Accordingly, the interim rule amending 48 CFR parts 1804 and 1852, published at 66 FR 36492 on July 12, 2001, is adopted as final with the following changes:

1. The authority citation for 48 CFR parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Revise section 1804.470–1 to read as follows:

1804.470–1 Scope.

This section implements NASA's acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources. Federal policies include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*), the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 *et seq.*), Public Law 106–398, section 1061, Government Information Security Reform, OMB Circular A–130, Management of Federal Information Resources, and the National Institute of Standards and Technology security guidance and standards.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.204–76 [Amended]

3. Amend section 1852.204–76 in the clause heading by removing "(JULY 2001)" and adding "(July 2002)" in its place; and in paragraph (d)(3)(i) by removing "(Information regarding financial record, question 22, and the Authorization for Release of Medical Information are not applicable)".

[FR Doc. 02–19004 Filed 7–25–02; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 67, No. 144
Friday, July 26, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–02–002]

RIN 0581–AC10

Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the fees and charges for Federal voluntary egg, poultry, and rabbit grading. These fees and charges need to be increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

DATES: Comments must be received on or before August 26, 2002.

ADDRESSES: Send written comments to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, Room 3944-South, 1400 Independence Avenue, SW., Washington, DC 20250. Comments may be faxed to (202) 690–0941.

State that your comments refer to Docket No. PY–02–002 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, (202) 720–3271.

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*) authorizes official voluntary grading and certification on a user-fee basis of eggs, poultry, and rabbits. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered. The AMS regularly reviews these programs to determine if fees are adequate and if costs are reasonable.

A recent review determined that the existing fee schedule, effective January 1, 2002, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2003. Costs in FY 2003 are projected at $27.2 million. Without a fee increase, FY 2003 revenues are projected at $26.0 million and trust fund balances would be $15.2 million. With a fee increase, FY 2003 revenues are projected at $27.2 million and trust fund balances would remain at $16.4 million.

Employee salaries and benefits account for approximately 82 percent of the total operating budget. The last general and locality salary increase for Federal employees became effective on January 1, 2002 and it materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 3.6 percent, however, the increase was actually 4.52 to 5.42 percent, depending on locality. Another general and locality salary increase estimated at 2.6 percent is expected in January 2003. Also, from October 2001 through September 2003, salaries and fringe benefits of federally-licensed State employees will have increased by about 6 percent.

The impact of these cost increases was determined for resident, nonresident, and fee services. To offset projected cost increases, the hourly resident and nonresident rate would be increased by approximately 5.8 percent and the fee rate would be increased by approximately 6 percent. The hourly rate for resident and nonresident service covers graders' salaries and benefits. The hourly rate for fee service covers graders' salaries and benefits, plus the cost of travel and supervision.

Administrative charges that cover the cost of supervision for resident poultry and shell egg grading would also be increased as shown in the table below. Administrative charges for resident rabbit grading and nonresident services would not be changed.

The following table compares current fees and charges with proposed fees and charges for egg, poultry, and rabbit grading as found in 7 CFR parts 56 and 70:

Service	Current	Proposed
Resident Service (egg, poultry, rabbit grading)		
Inauguration of service	310	310
Hourly charges:		
Regular hours	31.52	33.36
Administrative charges—Poultry grading:		
Per pound of poultry	.00036	.00037
Minimum per month	250	260
Maximum per month	2,650	2,675
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs	.046	.048
Minimum per month	250	260
Maximum per month	2,650	2,675
Administrative charges—Rabbit grading:		
Based on 25% of grader's salary, minimum per month	260	260
Nonresident Service (egg, poultry grading)		
Hourly charges:		

Service	Current	Proposed
Regular hours	31.52	33.36
Administrative charges:		
Based on 25 % of grader's salary, minimum per month	260	260
Fee and Appeal Service (egg, poultry, rabbit grading)		
Hourly charges:		
Regular hours	54.40	57.68
Weekend and holiday hours	62.76	66.64

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

There are about 400 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

The AMS regularly reviews its user fee financed programs to determine if fees are adequate and if costs are reasonable. A recent review determined that the existing fee schedule, effective January 1, 2002, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2003. Costs in FY 2003 are projected at $27.2 million. Without a fee increase, FY 2003 revenues are projected at $26.0 million and trust fund balances would be $15.2 million. With a fee increase, FY 2003 revenues are projected at $27.2 million and trust fund balances would remain at 16.4 million.

This action would raise the fees charged to users of grading services. The AMS estimates that overall, this rule would yield an additional $1.2 million during FY 2003. The hourly rate for resident and nonresident service would increase by approximately 5.8 percent and the fee rate would increase by approximately 6 percent. The impact of these rate changes in a poultry plant would range from less than 0.007 to 0.037 cents per pound of poultry handled. In a shell egg plant, the range would be less than 0.021 to 0.036 cents per dozen eggs handled.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581–0128; and § 70.77(a)(4)—No. 0581–0127.

A 30-day comment period is provided for interested persons to comment on this proposed rule. This period is appropriate in order to implement, as early as possible in FY 2003, any fee changes adopted as a result of this rulemaking action.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that Title 7, Code of Federal Regulations, parts 56 and 70 be amended as follows:

PART 56—GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 56.46 is revised to read as follows:

§ 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $57.68 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $66.64 per hour. Information on legal holidays is available from the Supervisor.

3. In § 56.52, paragraph (a)(4) is revised to read as follows:

§ 56.52 Continuous grading performed on resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.048, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,675. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

4. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

5. Section 70.71 is revised to read as follows:

§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $57.68 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $66.64 per hour. Information on legal holidays is available from the Supervisor.

6. In § 70.77, paragraph (a)(4) is revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00037, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,675. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: July 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18922 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 2198–02; AG Order No. 2603–2002]

RIN 1115–AG61

Address Notification To Be Filed With Designated Applications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations of the Immigration and Naturalization Service (Service) by requiring every alien who is applying for immigration benefits to acknowledge having received notice that he or she is required to provide a valid current address to the Service, including any change of address within 10 days of the change; that the Service will use the most recent address provided by the alien for all purposes, including the service of a Notice to Appear if the Service initiates removal proceedings; and, if the alien has changed address and failed to provide the new address to the Service, that the alien will be held responsible for any communications sent to the most recent address provided by the alien. This rule will satisfy the requirements for advance notice to the alien of the obligation to provide a current address to the Service, and of the consequences that may result for failure to do so, including the entry of an *in absentia* removal order against the alien if the alien fails to appear at a removal hearing.

DATES: Written comments must be submitted on or before August 26, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division (HQRFS), Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536. To ensure proper handling please reference INS No. 2198–02 on your correspondence. You may also submit comments electronically to the Service at *insregs@usdoj.gov*. When submitting comments electronically, please include INS No. 2198–02 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Barry O'Melinn, Chief Appellate Counsel, 5113 Leesburg Pike, Room 200, Falls Church, Virginia 22041, (703) 756–6257.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 8 CFR 103.2 by adding a new paragraph that requires aliens to acknowledge having received notice of the existing statutory obligation to keep the Service informed of their current address, and that, if they change address and fail to provide notice of the change of address to the Service, they will be held responsible for all communications sent to the most recent address provided by the alien.

The proposed rule will assist aliens who apply for benefits to ensure that the Service will be able to contact them with respect to any issues relating to their applications for benefits, which may include requests by the Service for additional information or for the aliens to appear for an interview in connection with the applications. An alien who fails to respond to such communications from the Service may lose substantial rights, because the Service will deem the alien to have abandoned the application and deny it. *See* 8 CFR 103.2(b)(13).

The changes made by the proposed rule will also make clear to the alien that, should it ever become necessary for the Service to place the alien in removal proceedings, the Service will be able to effectuate service of the Notice to Appear, Form I–862, by mailing it to the most recent address provided by the alien for purposes of removal proceedings, as provided in section 239(c) of the Act, and that, if the alien fails to appear at a scheduled hearing, after notice of the hearing was sent to the most recent address provided by the alien, the alien is subject to being ordered removed *in absentia*. This rule is intended to avoid the kind of factual circumstances that gave rise to the decision by the Board of Immigration Appeals (Board) in *Matter of G–Y–R–*, 23 I&N Dec. 181 (BIA 2001), which concluded that an *in absentia* order cannot be entered against an alien who failed to appear at removal proceedings where the alien had not provided a new address in the last five years and the Service knew that the alien did not receive the Notice to Appear because it was returned by the Postal Service as undeliverable.

Why Is It Necessary To Add Mandatory Acknowledgments to Service Forms?

The Board's decision in *Matter of G–Y–R–* focused on the issue of constructive notice of the initiation of removal proceedings, in a case where the Service knew that the subject alien did not actually receive the Notice to Appear because it was returned by the Postal Service as undeliverable. In that circumstance, the Board held that an *in absentia* order of removal is inappropriate, because the record reflected that the alien did not actually receive, and could not be charged with receiving, the Notice to Appear informing the alien of the statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address. Under the present law and regulations, as construed by the Board, an alien cannot be charged with

having been advised of the obligation to provide a current address for purposes of removal proceedings, and of the associated penalties for failing to do so, until he or she is served with the Notice to Appear, which (under the current practice) is the first document that sets forth those specific notifications. The Board therefore concluded that it could not sustain an *in absentia* order of removal, unless the alien could properly be charged with having received the Notice of Appear and thus having received these warnings.

The Board based its reasoning on a reading of section 239(a) and (c) of the Act, 8 U.S.C. 1229(a) and (c), in conjunction with section 240(b)(5) of the Act, 8 U.S.C. 1229a(b)(5). The Board determined that these provisions were interrelated, and collectively precluded the entry of an *in absentia* order of removal when the alien had not received the Notice to Appear and thus did not know of the particular address obligations associated with removal proceedings. Specifically, the Board noted that section 239(a)(1)(F) of the Act mandates that the Notice to Appear apprise the alien of the particular address obligation respecting removal proceedings and also warn the alien of the potential for an *in absentia* order if the alien fails to provide address information as instructed by the Notice to Appear.

The Board read the *in absentia* provisions in section 240(b)(5)(A) of the Act, in conjunction with section 239(a)(1)(F) of the Act, to find that an alien does not provide a "section 239(a)(1)(F)" address (or "have provided" it and therefore not need to change it) unless the alien had been advised to do so. The Board noted that such a conclusion was reinforced by the language of section 239(c) of the Act, which permits service by mail when the address used is "provided by the alien in accordance with subsection (a)(1)(F)." The Board also observed that nothing in the existing regulations provides for a different result.

As noted by the dissent in *Matter of G–Y–R–*, however, this interpretation creates a quandary for the Service in those situations in which it must resort to service of a Notice to Appear by regular mail, which is expressly authorized by section 239(c) of the Act. Specifically, the Notice to Appear not only furnishes notice of the hearing, but also provides the required information pertaining to an alien's statutory address obligations and the consequences of failing to comply. Accordingly, an address to which the Service sends a Notice to Appear might be insufficient for purposes of *in absentia* hearings if the alien fails to appear for the scheduled hearing, unless the alien has actual knowledge of the advisories and is actually on notice of the consequences of a failure to provide a current address and a failure to appear at a removal hearing.

The Service acknowledges the importance of providing advance notice to aliens, as discussed in *Matter of G–Y–R–*. However, there is nothing in the existing law that would prevent the Service from providing such notice to aliens even *before* the service of a Notice to Appear. Indeed, section 239(a)(1)(F)—establishing the "requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting removal proceedings"—expressly contemplates that the alien might already "have provided" written notice of an address for purposes of removal proceedings even before receiving that notification in the Notice to Appear. Thus, more than one federal court of appeals has concluded without hesitation that "[t]he statute clearly provides that notice to the alien at the most recent address provided by the alien is sufficient notice, and that there can be an *in absentia* removal after such notice." *Dominguez* v. *United States Attorney General*, 284 F.3d 1258, 1260 (11th Cir. 2002); *see also Al-Rawahneh* v. *INS*, No. 00–4447, 2002 WL 1021866 (6th Cir. May 17, 2002) (following *Dominguez*); *Sabaileh* v. INS, 3 Fed. Appx. 521, 523 (7th Cir. 2001) (concluding that mailed service to the alien's "last known address" was sufficient under the materially identical prior version of the statute, because the alien "failed to promptly notify the INS of the change in his address, despite having been expressly warned of his responsibility to do so").

Accordingly, in order to ameliorate the practical difficulties that the decision in *Matter of G–Y–R–* poses for both aliens and the Service, this proposed rule will change the substance of the regulations and the notifications provided to aliens. As revised, the relevant forms will provide advance notice of the obligation to provide a current address that may be used by the Service for purposes of removal proceedings, and also of the consequences of the failure to provide such an address, in light of the Board's discussion of the issues in *Matter of G–Y–R–*.

Under this proposed rule, the Service will have the means to ensure that aliens who apply for immigration benefits will have received actual, advance notice of their statutory obligation to provide a current address to the Attorney General, including notice that the most recent address provided by the alien can be used for purposes of removal proceedings (should such proceedings ever be initiated), and the consequences of failing to provide a current address, even before the issuance of a Notice to Appear. The address provided by an alien on an application for benefits under the Act will be used by the Service for all purposes, including requests for additional information in considering the application, providing a final decision on the application, and any other communication, such as forwarding a Notice to Appear, if removal proceedings are instituted.

Specifically, the Service will amend the various application forms for immigration benefits, as well as Form AR–11 (Alien's Change of Address Card), to require that an alien must provide the Service with his or her current address, and to contain an express acknowledgment by the applicant that he or she has read and is aware of the obligation to provide the Service with notice of change of address within 10 days of such a change, and is aware that the Service may send written communications to the most recent address provided by the alien for all purposes, including removal proceedings. Finally, the amended forms will advise that an alien who changes address and fails to provide a current address to the Service will be held accountable for all written communications sent to the most recent address provided by the alien, which may include a Notice to Appear and a notice of scheduled immigration hearings. Accordingly, such an alien can properly be charged with having received the necessary notice, and may properly be ordered removed *in absentia* in accordance with section 240(b)(5) of the Act and 8 CFR 3.26, if he or she fails to appear at a scheduled hearing.

What Are an Alien's Obligations To Provide an Address to the Service?

Section 262(a) of the Act requires that virtually every alien over the age of 14 who remains in the United States for more than 30 days must register with the Service. Section 265(a) of the Act requires that every alien who is required to register must provide the Attorney General with each change of address and new address within 10 days from the date of such change of address.

What Are the Consequences of Not Registering or Filing a Change of Address?

A willful failure to register with the Service is punishable by imprisonment for not more than 6 months and a fine of not more than $1,000, or both, under section 266(a) of the Act. Section 266(b) of the Act provides that an alien who fails to give written notice of a change of address may be fined not to exceed $200, or imprisoned for not more than 30 days, or both. This section also provides that the alien shall be taken into custody and removed from the United States through removal proceedings.

Failure to file a change of address may also put the alien at risk of being placed in removal proceedings and ordered removed *in absentia* under section 240(b)(5) of the Act if the alien fails to appear at a scheduled hearing.

What Forms Will Be Affected?

This rule will require amendments to a number of forms, and the Service will be implementing this rule by amending each form as soon as practicable. Once each form is revised and made available for public use, the Service will require that all aliens use the revised version.

Specifically, the Service intends to place the requisite notices and warnings on all relevant forms, including, but not limited to: Form AR–11 (Alien's Change of Address Card); Form I–131 (Application for Travel Document); Form I–191 (Application for Advance Permission to Return to Unrelinquished Domicile); Form I–192 (Application for Advance Permission to Enter as Nonimmigrant); Form I–193 (Application for Waiver of Passport and/or Visa); Form I–212 (Application for Permission to Reapply for Admission Into the United States After Deportation or Removal); Form I–290B (Notice of Appeal to the Administrative Appeals Unit (AAU)); Form I–360 (Petition for Amerasian, Widow(er), or Special Immigrant); Form I–485 (Application to Register Permanent Residence or Adjust Status) and supplements (except when used to apply for LIFE legalization); Form I–539 (Application to Extend/Change Nonimmigrant Status) and supplement A (Filing Instructions for V Nonimmigrant Status); Form I–589 (Application for Asylum and Withholding of Removal); Form I–601 (Application for Waiver of Grounds of Excludability); Form I–602 (Application by Refugee for Waiver on Grounds of Excludability); Form I–694 (Notice of Appeal of Decision under section 210 or 245A of the Immigration and Nationality Act); Form I–730 (Refugee/Asylee Relative Petition); Form I–751 (Petition to Remove Conditions on Residence); Form I–765 (Application for Employment Authorization); Form I–817 (Application for Family Unity Benefits); Form I–821 (Application for Temporary Protected Status); Form I–823 (Application—Alternative Inspection Services); Form I–824 (Application for Action on an Approved Application or Petition); Form I–829 (Petition by Entrepreneur to Remove Conditions); Form I–855 (ABC Change of Address Form); Form I–866 (Application'Checkpoint Pre-enrolled Access Lane); Form I–881 (Application for Suspension of Deportation or Special Rule Cancellation of Removal); Form I–914 (Application for T Nonimmigrant Status); Form N–300 (Application to File Declaration of Intention); Form N–400 (Application for Naturalization); Form N–410 (Motion for Amendment of Petition (application)); Form N–455 (Application for Transfer of Petition for Naturalization); Form N–470 (Application to Preserve Residence for Naturalization Purpose); Form N–600 (Application for Certification of Citizenship); and Form N–644 (Application for Posthumous Citizenship).

What Are the Consequences of Failure To Make the Acknowledgments With the Designated Application Forms?

Once each benefit form is revised, the mandatory address notification and acknowledgments will become a part of the application process itself and will be made when the alien signs the application form. If the alien does not sign the form, and thus does not make the required acknowledgments, the Service will reject the form as improperly filed pursuant to 8 CFR 103.2(a)(7)(i).

How Will This Assist Aliens in Acquiring Benefits and Avoiding Adverse Consequences?

This proposed rule will provide a mechanism for ensuring that each alien applying for an immigration benefit has actual notice of the requirement to provide a change of address. Without a proper address on file at all times, an alien cannot respond to requests from the Service for additional information or to appear for an interview, or receive benefits in a timely fashion. Similarly, without a proper address on file at all times, if it becomes necessary to initiate proceedings before an immigration judge, the alien will not be able to receive a timely notice of the hearing. Although the Service will be able to send notice of the proceedings to the most recent address provided by the alien, an alien who has changed address and failed to provide a current address may fail to receive the notices and, accordingly, could be ordered removed *in absentia* without an opportunity to defend against the charges or to seek relief if the alien fails to appear at a scheduled hearing. Providing a mechanism that helps ensure that the Service has a current address for the alien also helps the alien by assuring that he or she will have the opportunity to see that his or her rights are adequately protected—including having the opportunity to present his or her views before an immigration judge and to seek any available relief during removal proceedings.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule adds a new requirement that an alien acknowledge, at the time certain forms are filed with the Service, that he or she has received notice of the obligation to keep the Service informed of his or her current address, including any changes of address, and of the consequences that may result for failure to do so. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

This rule requires the revision of several Service forms to ensure that the Service has an accurate address for the alien. The forms being revised are public use forms covered under the Paperwork Reduction Act. Accordingly, these forms will be submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Aliens, Immigration, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Accordingly, the Department of Justice proposes to amend 8 CFR chapter I as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1229, 1229a, 1252 note, 1252b, 1304, 1305, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166, 8 CFR part 2.

2. Add new paragraph (a)(8) to § 103.2 to read as follows:

§ 103.2 Applications, petitions, and other documents.

(a) * * *

(8) *Acknowledgment of consequences of failure to provide current address information.* (i) Forms published by the Service for use by aliens who are applying for an immigration benefit or work authorization from the Service, as well as Form AR–11 (Alien's Change of Address Card), will contain a mandatory address notification, on the face of the form above the alien's signature, by which the alien acknowledges having received notice that:

(A) He or she is required to provide a valid current address to the Service, including any change of address within 10 days of the change;

(B) The Service will use the most recent address provided by the alien for all purposes, including for purposes of removal proceedings under sections 239 and 240 of the Act should it ever be necessary for the Service to initiate removal proceedings;

(C) If the alien has changed address and failed to provide the new address to the Service, the alien will be held responsible for any communications sent to the most recent address provided by the alien; and

(D) If the alien fails to appear at any scheduled immigration hearing after notice of the hearing was mailed to the most recent address provided by the alien, or as otherwise provided by law, the alien is subject to being ordered removed in absentia.

(ii) An alien who submits an application, petition, appeal, motion, or other document that includes the mandatory address notification in paragraph (a)(8)(i) of this seciton acknowledges that the alien is providing an address to the Service for all purposes, including the service of a Notice to Appear, if such service becomes necessary, under sections 239(a)(1)(F), 239(c), and 240(b)(5) of the Act, and 8 CFR 3.26.

* * * * *

Dated: July 19, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–18896 Filed 7–25–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 657

[FHWA Docket No. FHWA–97–2219; 93–28]

RIN 2125–AC60

State Certification of Size and Weight Enforcement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Termination of proposed rulemaking.

SUMMARY: This document terminates a rulemaking proceeding to amend the Federal Highway Administration (FHWA) regulation covering State certification of size and weight enforcement of commercial motor vehicles. The agency initiated this action to consider revising the criteria for determining State compliance with existing Federal requirement for an annual certification of State size and weight enforcement. Recently, however, the National Research Council of the Transportation Research Board (TRB) issued a congressionally mandated report that, among other things, recommended revised Federal weight standards and further recommended additional study be undertaken of ways to improve enforcement of truck weight laws. The recommendations of the TRB report provide a basis for a broader review of the Federal and State truck size and weight programs. In light of this situation, we are terminating this rulemaking action and closing the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Davis, Office of Freight Management and Operations (202) 366–2997, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

Background

Since 1975, States have been required under 23 U.S.C. 141, to certify annually that they are enforcing their laws respecting maximum vehicle size and weight in order to receive their full entitlement of Federal-aid highway funds. Regulatory implementation of section 141 is found at 23 CFR Part 657, Certification of Size and Weight Enforcement. Except for technical corrections necessitated by statutory changes, the current content of part 657 has remained unchanged since

publication in the **Federal Register** on August 7, 1980, at 45 FR 52365.

Since that time the motor carrier industry as well as State enforcement efforts have undergone substantial change. Recognizing these changes, the Federal Highway Administration published an advance notice of proposed rulemaking (ANPRM) [58 FR 65830, December 16, 1993], as the first step in revising and updating the requirements of part 657.

In June 1994, as the FHWA began review and consideration of the comments received, then Federal Highway Administrator Rodney Slater committed the FHWA to a comprehensive review of all aspects of the truck size and weight issue. Since the Agency was now committed to a comprehensive review of truck size and weight issues, it decided to postpone further action on this rulemaking until the comprehensive study could review existing issues. When the study was at the point where it was clear that it would not contain any recommendations in the area of enforcement certification, the Agency resumed work on this effort.

On September 28, 2000, at 65 FR 58233, the FHWA issued a supplemental advance notice of proposed rulemaking (SANPRM), asking for comments on a number of issues affecting the way in which State size and weight enforcement programs are certified. Most of the issues raised were the same as those discussed in the 1993 ANPRM. The objective was to update information on State programs, provide an opportunity for respondents to the SANPRM to review the validity of the earlier comments, and give interested parties the opportunity to present new ideas, concepts, and information that they believe the FHWA should consider in revising the certification process. The SANPRM posed 11 questions on various topics dealing with State certification of size and weight program activities, including: Possible data system needs; standardization of practices concerning scale tolerances, fees, fines, and staff training; application of technologies; and specific treatment of special vehicle types.

Just as the FHWA was to issue an NPRM, the National Research Council of the Transportation Research Board (TRB) provided to Congress its Special Report 267, "Regulation of Weights, Lengths, and Widths of Commercial Motor Vehicles." [1] This report describes a number of potential actions that public and private sector officials may wish to consider. These include "organizational arrangements" that would promote the reforming of Federal size and weight regulations affecting commercial motor vehicles, as well as regulatory and managerial changes intended to both improve the efficiency of truck transportation and reduce the public cost of truck traffic.

Discussion of Comments to the SANPRM

Thirty-four interested parties submitted written comments to the SANPRM: a bi-partisan delegation from the U.S. Congress; 12 State departments of transportation; 6 State enforcement agencies; 2 county sheriff's departments; 1 State law enforcement association; 1 county commissioner; one city council; 3 highway safety advocacy groups [includes the Commercial Vehicle Safety Alliance (CVSA)]; 3 representatives of national and State automobile organizations; 2 representatives of national and State trucking organizations; an interstate truck driver; and 1 trucking equipment manufacturer association.

There was a distinct divergence of positions among the respondents on almost all issues, with the exception being the almost universal consensus that size and weight enforcement is indeed an integral part of commercial vehicle safety programs, in addition to its traditional infrastructure preservation focus, and should be formally recognized and supported as such. As the American Automobile Association (AAA) noted in its response, public safety, as well as infrastructure preservation, must be considered in the regulation of commercial vehicle size and weight. Some respondents supported more aggressive State size and weight enforcement, standardization of enforcement requirements among the States, improved tracking of permit operations and expanded application of data systems to determine wear and tear associated with legal and illegal overweight vehicle operations, elimination of multi-trip permits, greater fines, and greater application of resources to enforcement efforts. Others were somewhat less demanding of change. They suggested one of two choices based on their experience: either the current certification and enforcement process is generally effective in monitoring overweight operations and therefore needs minimal or no alteration, or that it could be improved by increased Federal funding of State operations and greater Federal assistance in providing "best practices" to State and local enforcement officials. The specifics of these opinions are detailed below.

General Comments by Respondents

In addition to addressing the 11 questions posed in the SANPRM, respondents also submitted general comments about the current practices and needs of State size and weight enforcement programs. A significant concern, expressed by a number of respondents, is the result of an unintended consequence of Federal laws on truck size and weight. According to respondents, the fact that Federal weight law applies only on Interstate highways,[2] with Federal size laws applying on the National Network (NN),[3] has resulted in an unintended diversion of overweight violators onto non-Interstate and often non-NN State and local highways. These alternative roadways are inherently less safe, are made more so by the violators' passage, and are more vulnerable to structural damage than the major systems being avoided. Greater Federal support of mobile enforcement efforts, including State use of mobile scales and electronic weighing, was therefore advocated to reduce by-pass efforts by overweight operators.

The current FHWA certification program was directly criticized by both members of a bipartisan U.S. House of Representatives group opposed to truck size and weight increases, and by the Advocates for Highway and Auto Safety (AHAS). The congressional group expressed concern about inadequate Federal oversight of State programs. The congressional delegation called for "new and effective systems for ensuring that State permitting practices are not used as a means of circumventing Federal standards' and thereby permit "back door" increases in vehicle weight. The AHAS criticized the rulemaking effort itself as a "dilatory treatment" of present day commercial vehicle safety

[1] Transportation Research Board, "Regulation of Weights, Lengths, and Widths of Commercial Motor Vehicles," June 2002, National Research Council, Special Report 267. Available online at *http://www.nationalacademies.org/trb/onlinepubs.nsf.*

[2] Interstate highways are defined in 23 U.S.C. 103, as a series of highways designed to connect America's "principal metropolitan areas, cities and industrial centers" and "serve the national defense."

[3] The National Network is defined under 23 CFR Part 658, "Truck Size and Weight, Route Designations "Length, Width and Weight Limitations," as the composite of the individual network of highways from each State on which vehicles authorized by the provisions of the Surface Transportation Assistance Act of 1982 are allowed to operate. The network in each State includes the Interstate System, exclusive of those portions excepted under Section 658.11(f) or deleted under Section 653.11(d), and those portions of the Federal-aid Primary System in existence on June 1, 1991, as set out by the FHWA in Appendix A of Part 658.

issues, calling it another delay in response to repeated congressional calls for reliable information about the effects of commercial vehicles on road safety and infrastructure.

Other respondents posed differing comments, typically addressing general policy concerns, as the following: (1) The overall need to strengthen certification requirements; (2) the appropriateness of current road tax structures, calling overweight vehicles' failure to pay their fair share for the damage they do "fundamentally unfair'; (3) the need for Federal funds to support "best practices," new technologies, and new data systems for State usage in monitoring overweight vehicle operations; (4) the need for flexibility in enforcement plans, in order to help States develop workable strategies that best meet individual State's needs; (5) the necessity of weighing all vehicles, including those vehicles now using technologies that allow by-passing of way stations; and (6) perhaps conversely, the need for procedures that help identify and capture the true violator without requiring that every commercial vehicle be stopped and weighed.

In June 2002, the TRB provided to Congress its mandated report on commercial vehicle truck size and weight, "Special Report 267, Regulation of Weights, Lengths, and Widths of Commercial Motor Vehicles." In it, the TRB called on the Congress to create an independent public organization to lead a broad-ranging program of research and assessment of current truck size and weight regulation; facilitate and support extensive evaluations of changes effected through State-conducted, federally supervised pilot programs and permit initiatives; and recommend regulatory changes to the Secretary of Transportation. The FHWA believes that the significant scope of the program changes proposed in the report and their possible ramifications overshadows the need for publication of the NPRM at this time. The FHWA may address the issue of revising truck size and weight enforcement regulations at a later date once the TRB report has been reviewed and acted upon.

Conclusion

For the reasons stated above, the FHWA is terminating this rulemaking and closing the docket.

Authority: Sec. 123, Pub. L. 95–599, 92 Stat. 2689; 23 U.S.C. 127, 141, and 315; 49 U.S.C. 31111–31114; sec. 1023, Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.48 (b) (19), (b) (23), (c) (1), and (c) (19).

Issued on: July 22, 2002.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 02–18907 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–106876–00]

RIN 1545–AY24

Revision of Income Tax Regulations Under Sections 897, 1445, and 6109 To Require Use of Taxpayer Identifying Numbers on Submissions Under the Section 897 and 1445 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations to require the use of taxpayer identifying numbers on submissions under sections 897 and 1445. The proposed regulations are necessary to properly identify foreign taxpayers for which submissions are made for the reduction or elimination of tax under sections 897 and 1445. The proposed regulations also address miscellaneous items, such as the amendment to section 1445(e)(3) under the Small Business Job Protection Act of 1996. This document also provides notice of a public hearing on these proposed regulations.

DATES: Electronic or written comments and requests to speak (with outlines of oral comments) at the public hearing scheduled for November 13, 2002, must be submitted by October 23, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–106876–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–106876–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Robert W. Lorence, (202) 622–3860; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S; Washington, DC 20224. Comments on the collections of information should be received by September 24, 2002.

The collections of information in this proposed regulation are in §§ 1.1445–2(d)(2) and 1.1445–3. The collections of information relate to the requirement that notices of nonrecognition or applications for withholding certificates be filed with the IRS with respect to (1) dispositions of U.S. real property interests that have been used by foreign persons as a principal residence within the prior 5 years and excluded from gross income under section 121 and (2) dispositions of U.S. real property interests by foreign persons in deferred like kind exchanges that qualify for nonrecognition under section 1031. This collection of information is necessary for the proper performance of the functions of the IRS because it notifies the IRS of dispositions of U.S. real property interests by foreign persons that otherwise are subject to taxation under section 897 and the collection of a withholding tax under section 1445 except as provided in these provisions. The likely respondents will be individuals and business or other for-profit institutions.

Estimated total annual reporting burden: 600 hours.

The estimated annual burden per respondent varies from 3 hours to 5 hours, depending on individual circumstances, with an estimated average of 4 hours.

Estimated number of respondents: 150.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Under section 897, a foreign transferor of a U.S. real property interest (USRPI) is generally taxed on gain from the disposition of the USRPI as if the taxpayer were engaged in a U.S. trade or business and as if such gain were effectively connected with such trade or business under section 871 or 882 (ECI). As a means to ensure the collection of the tax, the transferee of the USRPI generally has a withholding tax obligation under section 1445, which is generally 10 percent of the amount realized on the disposition. The withholding agent must report and pay over the tax withheld under section 1445 on Form 8288, "U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests", by the 20th day after the disposition of the USRPI. The foreign transferor also must report the gain subject to tax under section 897 by filing a U.S. income tax return. Any amounts withheld under section 1445 are credited against the foreign transferor's U.S. tax liability.

Withholding under section 1445 can be reduced or eliminated pursuant to various nonrecognition provisions (*e.g.*, certain reorganizations under section 368(a)), pursuant to an applicable U.S. income tax treaty, by reason of the tax-exempt status of the foreign transferor, or in situations where the transferor's maximum tax liability under section 897 is less than the withholding tax. To reduce or eliminate the amount to be withheld under section 1445, either the transferor or transferee (acting as the withholding agent) may request a withholding certificate from the IRS citing the grounds for the reduction or elimination of withholding and including any supporting documentation or other evidence substantiating the request.

A withholding certificate that is issued by the IRS prior to the disposition of the USRPI serves to notify the withholding agent that no withholding or reduced withholding is required. If an application for a withholding certificate is submitted before or on the date of the transfer (so it is considered to be pending with the IRS at the time of transfer), the withholding agent is not required to file the withholding tax return and pay over the withholding tax until 20 days after the date the IRS mails the withholding certificate or notice of denial. *See* § 1.1445–1(c)(2)(A). An application for a withholding certificate after the date of transfer can be combined with an application for an early claim for refund. *See* § 1.1445–3(g).

Under section 6109(a)(1), Treasury and the IRS have the authority to issue regulations requiring taxpayers to obtain taxpayer identifying numbers (TINs) for placement on returns, statements, or other documents for the purpose of securing the proper identification of taxpayers. Under the section 6109 regulations, which govern the extent to which foreign persons must have TINs, a foreign person is not required to have a TIN for inclusion on a return, statement, or other document, unless the foreign person: (1) Has ECI at any time during the taxable year, (2) has a U.S. office, U.S. place of business, or a U.S. fiscal or paying agent during the taxable year, or (3) files a tax return, an amended return, or a refund claim, excluding information returns, statements, or other documents. See § 301.6109–1(b)(2).

Explanation of Provisions

The sections 897 and 1445 regulations do not require foreign transferors of USRPIs to provide TINs on withholding tax returns, applications for withholding certificates, and other notices and elections unless the foreign transferor otherwise has previously obtained a TIN. The IRS proposes to amend regulations under sections 897 and 1445 (each discussed in greater detail below) to require foreign transferors to include TINs on such documents so that the IRS can better identify the foreign taxpayer and more easily match the applications, withholding tax returns, notices, and elections with the transferor's tax return for compliance purposes. For example, the use of the foreign transferor's TIN to match the withholding tax return with the foreign transferor's income tax return will facilitate verification of the amount of withholding tax that the foreign taxpayer may credit on its return. The use of the foreign transferor's TIN also will facilitate verification that the foreign transferor files a U.S. tax return reporting the transaction (which could be matched against a withholding tax return and any application for a withholding certificate that has been filed).

In most cases, the requirement of including a TIN under the proposed regulations will not impose a new obligation on the foreign person. Such foreign person typically will be required to file a tax return for the year in which the property was sold, which requires the foreign person to obtain a TIN at that time. Accordingly, the proposed regulations simply would accelerate the time by which the foreign person is required to obtain a TIN. The IRS is considering ways to facilitate obtaining TINs in connection with transactions subject to section 897 and 1445. For example, the IRS is considering approaches for combining an application for a reduced withholding certificate under § 1.1445–3 with an application for a TIN.

1. Section 6109 Regulations

Under section 6109, every person who makes a return, statement, or other document is required to furnish its TIN as required by regulation. Under the section 6109 regulations, a foreign person generally is required to have a TIN if (1) the foreign person has ECI at any time during the taxable year; (2) the foreign person has a U.S. office or place of business or a U.S. fiscal or paying agent during the taxable year; (3) the foreign person files a tax return, amended return, or a refund claim (excluding information returns, statements, or documents). § 301.6109–1(b)(2). A person is required to furnish the TIN of another person (including a foreign person) when filing a return, statement, or other document which requires the TIN of the other person, and the other person is required to have a TIN under the section 6109 regulations. If the person does not know the TIN of the other person, the first person must request it, and if this request is denied, then the first person must file an affidavit with the filing so stating. *See* § 301.6109–1(c).

The IRS and Treasury propose to amend the section 6109 regulations to include a specific reference to the new provisions requiring TINs for foreign taxpayers under sections 897 and 1445. The section 6109 regulations would be amended to provide that foreign persons will be required to have TINs for placement on any return, statement, or other document required by the regulations under section 897 or section 1445. *See* § 301.6109–1(b)(2). The section 6109 regulations also would be amended to provide that another person (*e.g.*, the transferee as withholding agent) making a return, statement, or other document will be required to furnish the TIN of a foreign person as required by the regulations under section 897 or section 1445. *See* § 301.6109–1(c).

2. Section 1445 Regulations

(a) Section 1.1445–1

In connection with the withholding requirements under section 1445, the transferee generally must report and pay over any tax withheld by the 20th day after the date of the transfer. § 1.1445–1(b)(1). Form 8288 "Withholding Tax Return" and Form 8288–A "Statement of Withholding" are used for this purpose. Form 8288–A serves as a receipt of withholding tax reported and paid over and is stamped by the IRS upon receipt and mailed to the transferor. The transferor must attach the Form 8288–A to its U.S. income tax return to verify the amount of withholding tax creditable on its return.

Under § 1.1445–1(d), Forms 8288 and 8288–A only require the TIN of the transferor and the transferee to the extent the transferor and transferee otherwise have TINs. If the transferee is a U.S. person it will have a TIN, and if the transferee is a foreign person, it must have or obtain a TIN under the section 6109 regulations when filing a Form 8288 (which is considered to be a tax return). A foreign transferor, however, will not have a TIN for placement on the Forms 8288 and 8288–A, unless it is otherwise required to have one under the section 6109 regulations (e.g., the foreign person otherwise has ECI). The section 1445 regulations will be amended to provide that the transferors and transferees must have TINs for placement on the Forms 8288 and 8288–A.

Finally, the section 1445 regulations provide for various documents (including applications for withholding certificates) to be sent to the Assistant Commissioner (International). Section 1.1445–1(g)(10) provides the address of the Assistant Commissioner (International). Because of the restructuring of the IRS, the Office of the Assistant Commissioner (International) no longer exists, and its duties regarding the administration of the section 1445 regulations are performed, in general, by the Philadelphia Service Center. Section 1.1445–1(g)(10) and other provisions in the section 1445 regulations will be amended to reflect this change.

(b) Section 1.1445–2

Under § 1.1445–2(d)(2), a transferee is not required to withhold under section 1445, if, by reason of a nonrecognition provision of the Internal Revenue Code or a U.S. income tax treaty provision, the transferor is not required to recognize gain or loss with respect to the transfer. The transferor must notify the transferee of the nonrecognition provision or treaty provision, and the transferee must provide a copy of the transferor's notice to the IRS by the 20th day after the date of the transfer. Section 1.1445–9T specifies the information the notice must contain, such as identifying information of the transferor, a description of the transaction, and a brief summary of the law and facts supporting the claim of nonrecognition of gain on the transaction. The notice is required to include a TIN of the transferor only if the foreign transferor otherwise has a TIN. The notice forwarded by the transferee to the IRS must include a cover letter identifying the transferee. The transferee must include its TIN on the cover letter only if it has one.

The proposed regulations would withdraw section 1.1445–9T and incorporate it into § 1.1445–2(d)(2). In addition, the information required for inclusion on the notice would be revised to provide that the transferor must have a TIN for inclusion on the notice of nonrecognition. The regulations also would be amended to provide that the transferee must have a TIN for placement on the cover letter.

Certificates of Non-Foreign Status Under § 1.1445–2

Under § 1.1445–2(b), no withholding is required under section 1445 if the transferor of a U.S. real property interest is not a foreign person. If the transferor provides a certificate of non-foreign status to the transferee of the U.S. real property interest prior to or at the time of the transfer, the transferee is not required to withhold under section 1445(a). The certificate of non-foreign status must certify that the transferor is not a foreign person, must set forth the transferor's name, identifying number and address, and must contain the transferor's signature under penalties of perjury.

The IRS is considering requiring Form W–9 to be used as certificates of non-foreign status under § 1.1445–2(b). Form W–9 generally contains the same information as a certificate of non-foreign status and currently is used in the context of section 1441 withholding to determine a taxpayer's non-foreign status. Because Form W–9 is not now required in real estate transactions and because payments with respect to real estate transactions are exempt from backup withholding under § 31.3406(g)–2(e) (although Form W–9 can be used to provide the TIN of the seller to the reporting person required to report the transaction on Form 1099 under § 1.6045–4(l)), the IRS requests comments on the use of Form W–9 in real estate transactions to avoid withholding under section 1445. The IRS believes that the use of Form W–9 could ease compliance with section 1445.

(c) Section 1.1445–3

Section 1.1445–3 provides procedures for the reduction or elimination of withholding under section 1445 pursuant to a withholding certificate issued by the IRS. A withholding certificate may be issued by the IRS in cases where the transferor is exempt from U.S. tax, the transferor's maximum tax liability under section 897 is less than the withholding tax, or where the transferor or transferee enters into an agreement for the payment of tax with the IRS. A withholding certificate that is applied for prior to or on the date of the transfer notifies the transferee that reduced or no withholding is required. A withholding certificate that is applied for after a transfer has been made may authorize a normal refund or an early refund. Either the transferor or transferee may apply for a withholding certificate.

Section § 1.1445–3(b)(2) identifies the information that must be furnished on an application for a withholding certificate. It includes the name and address of the transferee and the transferee's TIN, but only if the transferee has a TIN. It also includes the name and address of all other parties to the transaction (*e.g.*, transferors) and their TINs, but only if they have TINs. The applicant must determine if each party has a TIN, and if none exists for a particular party, the application must so state. The regulations would be amended to provide that the transferee and all other parties (*e.g.*, transferors) must have TINs for placement on an application for a withholding certificate. The regulations would further provide that the application will be denied if the TINs of all the parties are not provided.

(d) Section 1.1445–5

Under § 1.1445–5, special rules are provided concerning withholding required under section 1445(e) on distributions and other transactions involving domestic or foreign corporations, partnerships, trusts, and estates. Paragraph (b)(2) provides that no withholding is required for transfers of a USRPI described in section 1445(e) if no gain or loss is required to be recognized by a foreign person under a nonrecognition provision of the Internal Revenue Code or a provision of a U.S. income tax treaty. The entity or fiduciary otherwise required to withhold must deliver a notice of the nonrecognition transfer to the IRS by the 20th day after the transfer of the USRPI. The entity or fiduciary may obtain a

withholding certificate from the IRS to confirm the applicability of a nonrecognition provision, but is not required to do so.

The notice of a nonrecognition transfer delivered to the IRS must contain a description of the transfer and a supporting explanation of the claim of nonrecognition treatment, as well as identifying information of the entity or fiduciary submitting the notice and each foreign person with respect to which withholding would otherwise be required. The TINs of the entity or fiduciary and each foreign person are required to be furnished only if such persons otherwise have TINs. The regulations under § 1.1445–5(b)(2)(ii) would be amended to provide that the entity or fiduciary and all foreign persons must have TINs to be furnished on the notice of nonrecognition.

(e) Section 1.1445–6

Section 1.1445–6 provides procedures for obtaining a withholding certificate for distributions and other transactions involving domestic or foreign corporations, partnerships, trusts, and estates subject to withholding tax under section 1445(e) and § 1.1445–5. The procedures for obtaining a withholding certificate are modeled after § 1.1445–3, which provides the procedures for obtaining a withholding certificate under section 1445(a). Hence, the entity or fiduciary (acting as withholding agent) or the foreign taxpayer subject to section 897 can apply for a withholding certificate on the basis that the foreign person is exempt from U.S. tax, the transferor's maximum tax liability under section 897 is less than the withholding tax, or an agreement is entered into by the transferor or transferee for the payment of tax.

Section 1.1445–6(b) identifies the information that must be furnished on an application for a withholding certificate. It includes the name, address of the foreign taxpayer subject to section 897 and the foreign taxpayer's TIN, but only if the taxpayer otherwise has a TIN. The regulations will be amended to require the foreign taxpayer to have a TIN for placement on an application for a withholding certificate.

3. Section 897 Regulations

(a) Section 1.897–3

Section § 1.897–3 provides rules enabling a foreign corporation to make a section 897(i) election to be treated as a domestic corporation for purposes of sections 897 and 1445. A foreign corporation making a section 897(i) election is subject to all of the rules under section 897 and 1445 that apply to domestic corporations. For example, if a foreign corporation that has made the section 897(i) election is a USRPHC, interests in it are USRPIs that are subject to taxation under section 897 and withholding tax under section 1445. A foreign corporation that makes an election under section 897(i) is not treated as a domestic corporation for purposes of any other provision of the Code or regulations, except to the extent that it is required to consent to such treatment as a condition of making the election.

The election under section 897(i) must include the name, address, and place and date of incorporation of the foreign corporation and the foreign corporation's TIN but only if the foreign corporation otherwise has a TIN. The regulations would be amended to require the electing foreign corporation to have a TIN for placement on the election.

(b) Section 1.897–5T

Section § 1.897–5T provides that certain distributions of USRPIs (which otherwise qualify for nonrecognition treatment) are not subject to section 897 if any gain from a subsequent disposition of the USRPIs would be included in gross income of the distributee or transferee receiving the USRPI in the distribution. *See, e.g.,* § 1.897–5T(c)(2)(i). An interest will be considered subject to U.S. tax upon its subsequent disposition only if certain reporting requirements are satisfied. *See* § 1.897–5T(d)(1)(i). Under the reporting requirements, the distributor must file an income tax return for the taxable year of the distribution. The person filing the return must attach a document describing the distribution or exchange, including the name and address of the distributee, and its TIN, but only to the extent it has one. *See* § 1.897–5T(d)(1)(iii).

The regulations would be amended to require that the document attached to the return includes the TIN of the distributee. This is necessary to properly identify the foreign distributee which will be subject to section 897 upon a subsequent disposition of the USRPI.

4. Miscellaneous Items

(a) Section 1445(e)(3)

Section 1445(e)(3) provides that if a domestic corporation which is a U.S. real property holding corporation (or at any time during the preceding five year period was a U.S. real property holding corporation) distributes property to a foreign shareholder in redemption of stock under section 302 or in liquidation of the corporation, the corporation must withhold 10 percent of the amount distributed to the foreign shareholder. Withholding is not required if the domestic corporation was "purged" of its U.S. real property holding corporation status by disposing of all of its U.S. real property interests within the prior five-year period and recognizing gain (if any) pursuant to section 897(c)(1)(B).

Section 1445(e)(3) was amended by the Small Business Job Protection Act of 1996 (Pub. L. 104–188, Sec. 1704(c)) to provide that similar rules apply in the case of any distribution to which section 301 applies and which is not made out of earnings and profits of the domestic corporation. Because a section 301 distribution by a domestic corporation to a foreign shareholder is also governed by section 1441 (or 1442 or 1443), the section 1441 regulations provide coordination rules between withholding under sections 1445 and 1441 (or 1442 or 1443) in the case of section 301 distributions to foreign shareholders by a domestic corporation which is a U.S. real property holding corporation or was one at any time within the prior five-year period. *See* § 1.1441–3(c)(4).

In general, § 1.1441–3(c)(4) provides that a domestic corporation may elect to withhold on the entire distribution under section 1441 (or 1442 or 1443), and not under section 1445, regardless of whether a portion of the distribution constitutes a return of basis or capital gain. Alternatively, a domestic corporation may elect to withhold under both sections 1445 and 1441 (or 1442 or 1443), in which case the domestic corporation must withhold under section 1441 (or 1442 or 1443) on the portion of the distribution that is estimated to be a dividend under § 1.1441–3(c)(2)(ii)(A) and must withhold under section 1445(e)(3) on the remainder of the distribution. A domestic corporation may withhold a reduced amount on the distribution under section 1445(e)(3) by obtaining a withholding certificate establishing that the amount of capital gain under section 301(c)(3) is less than the withholding tax otherwise due under section 1445(e)(3).

Section 1.1445–5(e) currently provides that if a domestic corporation, the stock of which is a U.S. real property interest, distributes property to a foreign shareholder in a redemption of stock under section 302 or in liquidation of the corporation, the domestic corporation must withhold 10 percent of the fair market value of the property distributed to the foreign shareholder. Section 1.1445–5(e) would be amended to provide that withholding

is required in the case of a distribution of property under section 301(c). A cross-reference to § 1.1441–3(c)(4), which provides the coordination rules for withholding between sections 1445 and 1441 (or 1442 or 1443), is provided.

(b) Section 121 Exclusion

Prior to the Taxpayer Relief Act of 1997 (Pub. L. 105–34; 111 Stat. 788) (TRA 97), section 121 provided a one-time exclusion from gross income up to $125,000 for certain gains from the sale of a principal residence by a taxpayer that was 55 years or older. The amendment of section 121 under TRA 97 expanded the exclusion to all taxpayers (not just those 55 years of age and older) and increased the amount of the exclusion to $250,000 (or $500,000, in the case of a husband and wife filing a joint return). Section 121(e) denies the exclusion to nonresident alien taxpayers who expatriated from the United States and are subject to the provisions of section 877(a).

For section 121 to apply, the taxpayer must have owned and used the property as a personal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale. Section 121(a). An alien individual who owns and has used a U.S. real property interest as a personal residence during the 5-year period prior to the date of sale may nevertheless be a nonresident alien at the time of sale and subject to sections 897 and 1445. In addition, certain alien individuals (for example, full-time diplomats or employees of international organizations), who may own and use a U.S. real property interest as a personal residence at the time of sale, are treated as nonresident alien individuals for tax purposes under section 7701(b).

In connection with the amendments to section 121, section 1034 was repealed. Section 1034 had provided for nonrecognition of gain upon the sale of a personal residence provided that another personal residence of greater value was purchased within a specified period of time. Prior to the repeal of section 1034, withholding agents could rely on a notice of nonrecognition under § 1.1445–2(b)(2) on certain section 1034 exchanges because section 1034 exchanges were treated as nonrecognition exchanges for purposes of sections 897 and 1445. *See* § 1.897–6T(a)(5). Section 121 is not treated as a nonrecognition exchange for purposes of sections 897 and 1445. *See* § 1.897–6T(a)(2). Therefore, withholding agents cannot rely on a notice of nonrecognition under § 1.1445–2(b)(2) with respect to the section 121 exclusion, and dispositions of personal residences entitled to the section 121 exclusion are not entitled to a reduction in withholding absent a withholding certificate. Accordingly, the withholding certificate provisions of § 1.1445–3(c) are proposed to be amended to provide that a claimed adjustment to the maximum tax liability on the disposition of a U.S. real property interest will include the section 121 exclusion if the claim includes information establishing that the transferor is entitled to the benefit of section 121. Because section 1034 has been repealed, the following regulatory provisions concerning section 1034 will be withdrawn effective on the date of its repeal: § 1.897–6T(a)(5), § 1.897–6T(a)(7), *Examples 2* and *3*, and § 1.1445–9T(b)(6).

(c) Section 1031 Like-Kind Exchanges

Section 1031(a) provides for the nonrecognition of gain or loss on the exchange of like-kind property which is held for productive use in a trade or business or held for investment. Section 1031(a)(3) provides for the exchange of like-kind property in deferred exchanges, where the taxpayer has 45 days after it relinquishes the property to the transferee to identify replacement property and the transferee has until the earlier of 180 days or the due date of the tax return for the year of transfer to deliver such property to the transferor. In cases where there is a simultaneous exchange of like-kind U.S. real property interests, the foreign transferor can provide a notice of recognition under § 1.1445–2(d)(2) to the transferee, and the transferee can rely on such notice because the like-kind exchange will be fully completed on the day of the exchange.

In the case of a deferred like-kind exchange of U.S. real property interests, the issue has been raised whether the transferee can rely on a notice of nonrecognition under § 1.1445–2(d)(2) when the exchange is not completed (because of the 45 day and 180 day rule) and the determination of nonrecognition is not known by the 20th day after receipt of the relinquished property by the transferee (when it has the obligation to pay withholding tax and file a withholding tax return, Form 8288). It has been the view of the IRS and Treasury that the transferee cannot rely on a notice of nonrecognition in the case of a deferred like-kind exchange, because the transferee cannot be assured that the exchange will qualify for nonrecognition treatment under section 1031. Although § 1.1445–2(d)(2) does not apply to section 1031 transactions, taxpayers have requested withholding certificates under § 1.1445–3 in the case of deferred like-kind exchanges. This practice will be incorporated in the regulations by amending § 1.1445–3(c) to provide that taxpayers may obtain withholding certificates in the case of deferred like-kind exchanges under section 1031(a)(3) (*see* also the safe-harbor for reverse like-kind exchanges under Rev. Proc. 2000–37, 2000–40 I.R.B. 308).

(d) Transfers By an Entity Treated as a Disregarded Entity for U.S. Tax Purposes

Under § 1.1445–2(a), a transferee generally has the duty to withhold under section 1445(a) if the transferor is a foreign person and the transferee is acquiring a U.S. real property interest. A transferee generally is not required to withhold under section 1445(a) if the transferee receives a certificate of non-foreign status from the transferor without actual knowledge (or notice from an agent of the transferor or transferee) that the certificate is false. § 1.1445–2(b)(2). While the transferee is not required to request a certificate of non-foreign status and may rely on other means to determine the non-foreign status of the transferor, the transferee will be subject to the liability imposed under section 1445 if the transferor is in fact a foreign person and the transferor has not received a certificate of non-foreign status. § 1.1445–2(b)(1). Thus, the transferee may demand a certificate of non-foreign status and is entitled to withhold under section 1445 if a certificate of non-foreign status is not provided. Id.

Taxpayers have inquired about the operation of sections 897 and 1445 where the legal entity transferring a U.S. real property interest is disregarded as an entity separate from its owner for U.S. tax purposes, for example, under § 301.7701–3 (disregarded entity). If the transferor is a disregarded entity, the owner (and not the entity) is treated as the transferor of property for U.S. tax purposes, including sections 897 and 1445. *See, e.g.*, § 301.7701–3(a). Accordingly, if a disregarded entity disposes of a U.S. real property interest and its owner is a foreign person, the foreign person is treated as the transferor of the property and is subject to tax under sections 897 and 1445. If a disregarded entity disposes of a U.S. real property interest and its owner is a U.S. person, then the U.S. person is the transferor of the property and may provide a certificate of non-foreign status.

In order to clarify the treatment of disregarded entities, the regulations are amended to provide that a disregarded entity may not provide a certificate of

non-foreign status because the disregarded entity is not the transferor. The sample certifications which an entity may provide to the transferee with respect to its non-foreign status (as provided in § 1.1445–2(b)(2)) are amended to include a certification that the entity is not a disregarded entity for U.S. tax purposes.

Proposed Effective Date

These regulations are proposed to apply to transactions occurring 30 days or more after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on U.S. small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a singed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 13, 2002, beginning at 10 am, in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by October 23, 2002.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Robert W. Lorence, Jr., of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting, and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1— INCOME TAXES

1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. In § 1.897–1, paragraph (p), the first sentence is amended by adding the language "or the identification number assigned by the Internal Revenue Service (*see* § 301.6109–1 of this chapter)" immediately after the language "United States social security number'.

3. Section 1.897–2 is amended as follows:

For each of the paragraphs listed in the first column, remove the language in the second column and add in its place the language in the third column:

Paragraphs	Remove	Add
(g)(1)(i)(B)	Director, Foreign Operations District ("Director").	Commissioner, Small Business/Self Employed Division (SB/SE).
(g)(1)(i), fourth sentence of concluding text immediately following paragraph (g)(1)(i)(B).	Director	Commissioner.
(g)(1)(iii) heading	Director	Commissioner.
(g)(1)(iii)(A), first, fourth, and last sentences	Director	Commissioner.
(g)(1)(iii)(A), third sentence	Director, Foreign Operations District; 1325 K St. NW.; Washington, DC 20225.	Commissioner, Small Business/Self Employed Division (SB/SE); S C3–413 NCFB, 500 Ellin Road, Lanham, MD 20706.
(g)(1)(iii)(B) heading	Director's	Commissioner's.
(g)(1)(iii)(B) introductory text	Director	Commissioner.
(g)(1)(iii)(B) concluding text immediately following (g)(1)(iii)(B)(*2*).	Director	Commissioner.
(g)(1)(iii)(C) both places it appears	Director	Commissioner.
(g)(1)(iii)(D) heading	Director	Commissioner.
(g)(1)(iii)(D)	Director	Commissioner.
(g)(2)(i)(B)	Director	Commissioner.
(g)(2)(iii) heading	Director	Commissioner.
(g)(2)(iii)(A), first, fourth, and fifth sentence (both places it appears).	Director	Commissioner.
(g)(2)(iii)(A), third sentence	Director, Foreign Operations District; 1325 K St. NW.; Washington, DC 20225.	Commissioner, Small Business/Self Employed Division (SB/SE); S C3–413 NCFB, 500 Ellin Road, Lanham, MD 20706.
(g)(2)(iii)(B) heading	Director's	Commissioner's.
(g)(2)(iii)(B) introductory text	Director	Commissioner.
(g)(2)(iii)(B) concluding text immediately following (g)(2)(iii)(B)(*2*).	Director	Commissioner.

Paragraphs	Remove	Add
(g)(2)(iii)(C), first and second sentences	Director	Commissioner.
(g)(2)(iii)(D) heading	Director	Commissioner.
(g)(2)(iii)(D)	Director	Commissioner.
(g)(2)(iv), fourth sentence	Director	Commissioner.
(h)(2)(v), third sentence	Assistant Commissioner. (International), Director, Office of Compliance, OP:I:C:E:666, 950 L'Enfant Plaza South, SW, COMSAT Building, Washington, DC 20024.	Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.
(h)(4)(ii), first sentence	Assistant Commissioner (International), Director, Office of Compliance, OP:I:C:E:666, 950 L'Enfant Plaza South, SW, COMSAT Building, Washington, DC 20024.	Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.

4. Section 1.897–3 is amended as follows:

1. For each of the paragraphs listed in the first column, remove the language in the second column and add in its place the language in the third column:

Paragraphs	Remove	Add
(c), introductory text	Director of the Foreign Operations District, 1325 K St., NW., Washington, DC 20225.	Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.
(c)(1), introductory text, last sentence	which must set forth	which must contain all the following information.
(d)(1), fourth sentence	Foreign Operations District	Philadelphia Service Center.
(d)(2)(i), penultimate sentence	Director, Foreign Operations District	U.S. Treasury.
(f)(1), second sentence	Director, Foreign Operations District, 1325 K St., NW., Washington, DC 20225.	Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.
(f)(1), fifth sentence	Foreign Operations District	Philadelphia Service Center.
(g)(1), second sentence	Director of the Foreign Operations District	Director, Philadelphia Service Center.

2. In paragraph (c)(1)(i), remove the parenthetical "(if any)" after the words "identifying number'.

5. Section 1.897–5 is added to read as follows:

§ 1.897–5 Corporate distributions.

(a) through (d)(1)(iii)(E) [Reserved]. For further guidance, see § 1.897–5T(a) through (d)(1)(iii)(E).

(d)(1)(iii)(F) Identification by name and address of the distributee or transferee, including the distributee's or transferee's taxpayer identification number;

(d)(1)(iii)(G) through (d)(4) [Reserved]. For further guidance, see § 1.897–5T(d)(1)(iii)(G) through (d)(4).

(e) *Effective date.* This section is applicable to transfers and distributions after 30 days after publication of final regulations in the **Federal Register**.

6. In § 1.897–5T, paragraph (d)(1)(iii)(F) is revised to read as follows:

§ 1.897–5T Corporate distributions (temporary).

* * * * *

(d) * * * (1) * * *

(iii) * * *

(F) [Reserved]. For further guidance, see § 1.897–5(d)(1)(iii)(F).

* * * * *

§ 1.897–6T [Amended]

7. Section 1.897–6T is amended as follows:

1. In paragraph (a)(2), second sentence, the language ", 1034" is removed.

2. Paragraph (a)(5) is removed and reserved.

3. Paragraph (a)(7), *Example 2* and *Example 3* are removed and reserved.

8. Section 1.1445–1 is amended as follows:

1. In paragraph (c)(1), second sentence, remove the language "filed with the Internal Revenue Service Center, Philadelphia, PA 19255" and add in its place the language "filed at the location as provided in the instructions to Forms 8288 and 8288–A".

2. In paragraph (c)(2)(i)(B), second sentence, remove the phrase ",if any," after the words "taxpayer identification number".

3. In paragraphs (d)(1)(i) and (d)(1)(ii), remove the parenthetical "(if any)" after the words "identifying number".

4. In paragraphs (d)(2)(i), (d)(2)(iv)(B), and (d)(2)(vi)(B), remove the parenthetical "(if any)" after the words "identifying number".

5. Paragraphs (g)(9) and (g)(10) are revised.

The revisions read as follows:

§ 1.1445–1 Withholding on dispositions of U.S. real property interests by foreign persons: In general.

* * * * *

(g) * * *

(9) *Identifying number.* Pursuant to § 1.897–1(p), an individual's identifying number is the social security number or the identification number assigned by the Internal Revenue Service (see § 301.6109–1 of this chapter). The identifying number of any other person is its United States employer identification number.

(10) *Address of the Director, Philadelphia Service Center.* Any written communication directed to the Director, Philadelphia Service Center is to be addressed as follows: P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.

9. Section 1.1445–2 is amended as follows:

1. Paragraph (b)(2)(iii) is redesignated as paragraph (b)(2)(iv), and new paragraph (b)(2)(iii) is added.

2. Newly designated paragraph (b)(2)(iv)(B) is revised.

3. In paragraph (d)(2)(i)(B), the language "Assistant Commissioner (International)" is removed, and "Director, Philadelphia Service Center" is added in its place, and the parenthetical "(if any)," is removed after the words "identifying number".

4. Paragraphs (d)(2)(iii) and (d)(2)(iv) are added immediately following the concluding text following paragraph (d)(2)(ii)(B).

5. In paragraphs (d)(3)(iii)(A)(*2*) and (d)(3)(iii)(A)(*3*), the parenthetical "(if any)" is removed after the words "identifying number".

The revision and additions read as follows:

§ 1.1445–2 Situations in which withholding is not required under section 1445(a).

* * * * *

(b) * * *

(2) * * *

(iii) *Disregarded entities.* A disregarded entity may not certify that it is the transferor of a U.S. real property interest, as the disregarded entity is not the transferor for U.S. tax purposes, including sections 897 and 1445. Rather, the owner of the disregarded entity is treated as the transferor of property and must provide a certificate of non-foreign status to avoid withholding under section 1445. A disregarded entity for these purposes means an entity that is disregarded as an entity separate from its owner under § 301.7701–3 of this chapter, a qualified REIT subsidiary as defined in section 856(i), or a qualified subchapter S subsidiary under section 1361(b)(3)(B). Any domestic entity must include in its certification of non-foreign status with respect to the transfer a certification that it is not a disregarded entity.

(iv) * * *

(B) *Entity transferor.*

"Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by [name of transferor] , the undersigned hereby certifies the following on behalf of [name of the transferor]:

1. [Name of transferor] is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. [Name of transferor] is not a disregarded entity as defined in § 1.1445–2(b)(2)(iii);

3. [Name of transferor]'s U.S. employer identification number is _____; and

4. [Name of transferor]'s office address is _____.

[Name of transferor] understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of [name of transferor].

[Signature(s) and date]

[Title(s)]"

* * * * *

(d) * * *

(2) * * *

(iii) *Contents of the notice.* No particular form is required for a transferor's notice to a transferee that the transferor is not required to recognize gain or loss with respect to a transfer. The notice must be verified as true and signed under penalties of perjury by the transferor, by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee or equivalent fiduciary in the case of a trust or estate. The following information must be set forth in paragraphs labeled to correspond with the designation set forth as follows—

(A) A statement that the document submitted constitutes a notice of a nonrecognition transaction or a treaty provision pursuant to the requirements of § 1.1445–2(d)(2);

(B) The name, identifying number, and home address (in the case of an individual) or office address (in the case of an entity) of the transferor submitting the notice;

(C) A statement that the transferor is not required to recognize any gain or loss with respect to the transfer;

(D) A brief description of the transfer; and

(E) A brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer.

(iv) *No notice allowed.* The provisions of this paragraph (d)(2) do not apply to exclusions from income under section 121 and to non-simultaneous like-kind exchanges under section 1031 where the transferee cannot determine that the exchange has been completed and all the conditions for nonrecognition have been satisfied at the time it is otherwise required to pay the section 1445 withholding tax and file the withholding tax return (Form 8288, "U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests"). In these cases, the transferee is excused from withholding only upon the timely application for and receipt of a withholding certificate under § 1.1445–3 (*see* § 1.1445–3(b)(5) and (6) for specific rules applicable to transactions under sections 121 and 1031).

* * * * *

10. Section 1.1445–3 is amended as follows:

1. For each of the paragraphs listed in the column below, remove the language "Assistant Commissioner (International)", and add "Director, Philadelphia Service Center" in its place.

Paragraphs
(b)(1), first sentence
(f)(1), first sentence
(f)(2)(iii), heading
(f)(2)(iii), first sentence
(g), third sentence, introductory text

2. In paragraph (b)(1), last sentence, remove the language "of this section" and add ", and to the extent applicable, paragraph (b)(5) or (6) of this section" in its place.

3. Paragraph (b)(2) is revised.

4. Paragraphs (b)(5) and (b)(6) are added.

5. In paragraphs (f)(3)(i) and (g)(1), remove the parenthetical "(if any)" after the words "identifying number".

The revision and additions read as follows:

§ 1.1445–3 Adjustments to amount required to be withheld pursuant to withholding certificate.

* * * * *

(b) * * *

(2) *Parties to the transaction.* The application must set forth the name, address, and identifying number of the person submitting the application (specifying whether that person is the transferee or transferor), and the name, address, and identifying number of other parties to the transaction (specifying whether each such party is a transferee or transferor). The Service will deny the application if complete information, including the identifying numbers of all the parties, is not provided. Thus, for example, the applicant should determine if an identifying number exists for each party, and, if none exists for a particular party, the applicant should notify the particular party of the obligation to get an identifying number before the application can be submitted to the Service. The address provided in the case of an individual must be that individual's home address, and the address provided in the case of an entity must be that entity's office address. A mailing address may be provided in addition to, but not in lieu of, a home address or office address.

* * * * *

(5) *Special rule for exclusions from income under section 121.* A withholding certificate may be sought on the basis of a section 121 exclusion as a reduction in the amount of tax due under paragraph (c)(2)(v) of this section. The application must include

information establishing that the transferor, who is a nonresident alien individual at the time of the sale (and is therefore subject to sections 897 and 1445) is entitled to claim the benefits of section 121. For example, a claim for reduced withholding as a result of section 121 must include information that the transferor occupied the U.S. real property interest as his or her personal residence for the required period of time.

(6) *Special rule for like-kind exchanges under Section 1031.* A withholding certificate may be requested with respect to a like-kind exchange under section 1031 as a transaction subject to a nonrecognition provision under paragraph (c)(2)(ii) of this section. The application must include information substantiating the requirements of section 1031. The IRS may require additional information during the course of the application process to determine that the requirements of section 1031 are satisfied. In the case of a deferred like-kind exchange, the transferee is excused from withholding only if the transferee or transferor submits an application for a withholding certificate prior to or on the date of transfer, in which case the withholding tax will be placed in escrow pursuant to procedures established by the IRS and ultimately paid to the IRS if the withholding certificate is denied or released for the benefit of the taxpayer if the withholding certificate is granted. See § 1.1445–1(c)(2) for rules concerning delayed reporting and payment where an application for a withholding certificate has been submitted to the IRS prior to or on the date of transfer.

* * * * *

§ 1.1445–4 [Amended]

11. In § 1.1445–4, paragraph (c)(2), second sentence, is amended by removing the language "Assistant Commissioner (International)" and adding "Director, Philadelphia Service Center" in its place.

12. Section 1.1445–5 is amended as follows:

1. In paragraph (b)(2)(ii), first sentence, remove the language "Assistant Commissioner (International)" and add "Director, Philadelphia Service Center" in its place.

2. In paragraphs (b)(2)(ii)(B) and (b)(2)(ii)(C), remove the parenthetical "(if any)" after the words "identifying number".

3. Paragraph (b)(8)(iii) is revised.

4. In paragraph (c)(3)(v), first and fifth sentences, remove the language "Assistant Commissioner (International)" and add "Director, Philadelphia Service Center" in its place.

5. Paragraph (e)(1)(ii) is revised.

6. Paragraph (e)(2) is redesignated as paragraph (e)(3), and new paragraph (e)(2) is added,

7. In newly designated paragraph (e)(3)(iii)(B), remove the language "§ 1.1445–5(e)(2)(iii)(B)" and add "§ 1.1445–5(e)(3)(iii)(B)" in its place; and remove the language "paragraph (e)(2)(iii)(B)" and add "paragraph (e)(3)(iii)(B)" in its place.

The revisions and additions read as follows:

§ 1.1445–5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.

* * * * *

(b) * * *

(8) * * *

(iii) *Distributions by certain domestic corporations to foreign shareholders.* The provisions of section 1445(e)(3) and paragraph (e)(1) of this section, requiring withholding upon distributions in redemption of stock under section 302(a) or liquidating distributions under Part II of subchapter C of the Internal Revenue Code by U.S. real property holding corporations to foreign shareholders, shall apply to distributions made on or after January 1, 1985. The provisions of section 1445(e)(3) and paragraph (e)(1) of this section requiring withholding on distributions under section 301 by U.S. real property holding corporations to foreign shareholders shall apply to distributions made after August 20, 1996. The provisions of paragraph (e) of this section providing for the coordination of withholding between sections 1445 and 1441 (or 1442 or 1443) for distributions under section 301 by U.S. real property holding corporations to foreign shareholders apply to distributions after December 31, 2000 (*see* § 1.1441–3(c)(4) and (h)).

* * * * *

(e) * * * (1) * * *

(ii) There is a distribution of property in redemption of stock treated as an exchange under section 302(a), in liquidation of the corporation pursuant to the provisions of Part II of subchapter C of the Internal Revenue Code (sections 331 through section 341), or with respect to stock under section 301 that is not made out of earnings and profits of the corporation.

(2) *Coordination rules for Section 301 distributions:* If a domestic corporation makes a distribution of property under section 301 to a foreign person whose interest in such corporation constitutes a U.S. real property interest under the provisions of section 897 and the regulations thereunder, then see § 1.1441–3(c)(4) for rules coordinating withholding obligations under sections 1445 and 1441 (or 1442 or 1443)).

* * * * *

13. Section 1.1445–6 is amended as follows:

1. The section heading and paragraph (b)(3) are revised.

2. For each of the paragraphs listed in the column below, remove the language "Assistant Commissioner (International)" and add "Director, Philadelphia Service Center" in its place.

Paragraphs

(f)(1), first sentence

(f)(2)(iii), heading

(f)(2)(iii)

(g), introductory text, second sentence

3. Paragraphs (f)(3)(i) and (g)(1) are amended by removing the parenthetical "(if any)" after the words "identifying number".

The revision reads as follows:

§ 1.1445–6 Adjustments pursuant to withholding certificate of amount required to be withheld under section 1445(e).

* * * * *

(b) * * *

(3) *Relevant taxpayers.* An application for withholding certificate pursuant to this section must include all of the following information: the name, identifying number, and home address (in the case of an individual) or office address (in the case of an entity) of each relevant taxpayer with respect to which adjusted withholding is sought.

* * * * *

§ 1.1445–9T [Removed]

14. Section 1.1445–9T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

15. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

16. Section 301.6109–1 is amended as follows:

1. In paragraph (b)(2)(v), remove the word "and".

2. In paragraph (b)(2)(vi), remove the period at the end of the paragraph and add "; and" in its place.

3. Paragraph (b)(2)(vii) is added.

4. In paragraph (c), first and third sentences, remove the language "or (vi) of this section" and add "(vi), or (vii) of this section" in its place.

The addition reads as follows:

§ 301.6109–1 Identifying numbers.

* * * * * *

(b) * * *
(2) * * *
(vii) A foreign person whose taxpayer identifying number is required to be furnished on any return, statement, or other document as required by the income tax regulations under section 897 or 1445.
* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.
[FR Doc. 02–18792 Filed 7–25–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–090]

RIN 2115–AA97

Safety Zone; East River, Manhattan, NY

AGENCY: Coast Guard, DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in a portion of the waters of the East River, Western Channel, between Manhattan and Roosevelt Island, NY. This action is necessary to provide for the safety of construction crews and motorists during rehabilitation of a portion of the Franklin Delano Roosevelt (FDR) Drive between East 56th Street and East 63rd Street in Manhattan, NY. This action is intended to prevent vessels from the hazards associated with construction, operation and disassembly of a temporary Outboard Detour Roadway and its protective fendering system, and to minimize the risk of allision with those structures, once constructed, by restricting marine traffic within the zone.

DATES: Comments and related material must reach the Coast Guard on or before August 16, 2002.

ADDRESSES: You may mail comments and related material to the Waterways Oversight Branch (CGD01–02–090), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble, will become part of this docket and will be available for inspection or copying at Room 202, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments can also be made via electronic mail to: *Actny-wwm/wob/forms@d1.uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Luis E. Martinez, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the document number for this rulemaking (CGD01–02–090), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. We may change this proposed rule in view of the comments.

Public Meeting

The Coast Guard does not now plan to hold a public meeting. Persons may request a public meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one will aid this rulemaking, we will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The New York State Department of Transportation (NYSDOT) is undertaking the rehabilitation of the FDR Drive in Manhattan, NY. The project is scheduled to begin on September 1, 2002 and to continue until approximately June 2007. It will include the building of a temporary Outboard Detour Roadway (causeway) adjacent to the northbound lanes of a portion of the FDR Drive that will provide three lanes of motor vehicle traffic over the Western Channel of the East River between East 56th Street and East 63rd Street in Manhattan.

The temporary Outboard Detour Roadway will be protected from marine traffic interference by a fendering system positioned adjacent to and just outside the western edge of the navigable channel in the East River's Western Channel. The fendering system will run the length of the Outboard Detour Roadway. It is designed to withstand an allision by a vessel displacing 38,000 long tons (38,610 metric tons) striking at a speed of 6.8 knots and a 7.5 degree angle of approach.

The proposed rule would exclude all vessels from the immediate vicinity of the Outboard Detour Roadway during the construction, operation and disassembly of the structure and its protective fendering system. By excluding marine traffic, the zone would protect maritime users from the hazards associated with the construction, operation and disassembly of those structures and protect Outboard Detour Roadway users from the risk of vessel allision or interference with that structure. The proposed safety zone would commence on September 1, 2002.

In order to provide further protection for roadway users, we contemplate the subsequent establishment of a Regulated Navigation Area (RNA) in the Western Channel of the East River between 23rd Street, Manhattan (Poorhouse Flats Range) and East 96th Street, Manhattan (Hell's Gate). No vessel with a displacement of greater than 38,000 long tons would be permitted to enter the RNA without tugboat assistance. That RNA will be the subject of separate rulemaking process as we draw closer to the projected opening of the Outboard Detour Roadway in 2004.

Discussion of Proposed Rule

The proposed rule would establish a safety zone in the waters of the East River, Western Channel, extending from the Manhattan riverbank to the western boundary of the federal navigable channel and running approximately along the length of the projected Outboard Detour Roadway's protective fendering system. More specifically, the zone would include all waters enclosed by a line connecting the following points: beginning on the Manhattan riverbank at a point 40°45′35.7″ N, 073°57′25.2″ W (Point A), thence southeasterly to a point 40°45′34.6″ N, 073°57′24.4″ W (Point B), thence southwesterly along the western boundary of the Federal navigable channel to a point 40°45′10.1″ N, 073°57′46.6″ W (Point C), then northwesterly to the Manhattan riverbank at a point 40°45′10.5″ N, 073°57′48.9″ W (Point D), thence northeasterly along the riverbank to the place of beginning (Point A).

The safety zone would protect mariners from hazards associated with the construction, operation and disassembly of the Outboard Detour Roadway and its protective fendering

system and would help preserve the security and integrity of those structures. No person would be allowed to enter or remain in the safety zone at any time without the permission of the Captain of the Port. Every person or vessel in a safety zone would be required to obey any direction or order of the Captain of the Port.

The safety zone would commence on September 1, 2002, when construction begins on the temporary Outboard Detour Roadway. Action would be taken to withdraw the rule when the safety zone is no longer required. On the basis of information currently available to the Coast Guard, we project that the safety zone would be necessary until approximately June 2007.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

The effect of this proposed rule would not be significant as it would not prevent maritime traffic from navigating the East River, Western Channel. The proposed safety zone would merely prevent vessels from entering a relatively small area of water west of the navigable channel to prevent interference with the construction, operation and disassembly of an Outboard Detour Roadway and its protective fendering system.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to enter a small portion of the East River, Western Channel, during the times the proposed safety zone would be in effect.

This proposed rule would not have a significant economic impact on a substantial number of small entities because it will not prevent maritime traffic from navigating the East River. The proposed safety zone would merely prevent vessels from entering a relatively small area of water west of the navigable channel in order to prevent interference with the construction, operation and disassembly of an Outboard Detour Roadway and its protective fendering system.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant L.E. Martinez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant

energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add a new § 165.167 to read as follows:

§ 165.167 Safety Zone; East River Western Channel, Manhattan, NY.

(a) *Location.* The waters of the East River enclosed by a line connecting the following boundaries are established as a safety zone: beginning on the Manhattan riverbank at a point 40°45′35.7″ N, 073°57′25.2″ W (Point A), thence southeasterly to a point 40°45′34.6″ N, 073°57′24.4″ W (Point B), thence southwesterly along the western boundary of the federal navigable channel to a point 40°45′10.1″ N, 073°57′46.6″ W (Point C), then northwesterly to the Manhattan riverbank at a point 40°45′10.5″ N, 073°57′48.9″ W (Point D), thence northeasterly along the riverbank to the place of beginning (Point A). All coordinates are North American Datum 1983.

(b) *Regulations.* The general regulations contained in § 165.23 of this part apply.

Dated: July 18, 2002.

C.E. Bone,

Captain, Coast Guard, Captain of the Port, New York.

[FR Doc. 02–18921 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–023]

RIN 2115–AA97

Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety and security zones for liquefied natural gas carrier (LNGC) vessels and a liquefied natural gas facility within the Boston Captain of the Port Zone. Entry into or movement within these zones would be prohibited without prior authorization from the Captain of the Port (COTP), Boston, MA. These zones are needed to safeguard the LNGC vessels and Liquid Natural Gas (LNG) facility, the public and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature, and are needed to protect persons, vessels and others in the maritime community from the safety hazards associated with the transit and limited maneuverability of an LNGC vessel.

DATES: Comments and related material must reach the Coast Guard on or before August 26, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket (CGD01–02–023), will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3030.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD1–02–023), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

The Coast Guard does not plan to hold a public meeting regarding this proposed rule. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address listed under **ADDRESSES**, explaining why one would be beneficial. If we determine a meeting would aid in this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In light of the terrorist attacks in New York City and Washington, D.C. on September 11, 2001, safety and security zones are being established to safeguard the liquefied natural gas carrier (LNGC) vessels and Liquefied Natural Gas (LNG) facilities, the public and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature, and to protect persons, vessels and others in the maritime community from the hazards associated with the transit and limited maneuverability of a LNGC vessel. These safety and security zones would prohibit entry into or movement within the specified areas.

The Coast Guard proposes establishing safety and security zones around LNGC vessels while the vessels are anchored in the waters of Broad Sound. This rule would also create a moving safety zone around any LNGC vessel within navigable waters of the United States in the Captain of the Port (COTP) Boston zone, as defined in 33 CFR 3.05–10. To the extent that it is applicable, under the Ports and Waterways Safety Act, (33 U.S.C.S. 1221 *et seq.*, and 46 U.S.C.S. 391a) navigable waters of the United States include all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988. This Presidential Proclamation declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States determined in accordance with international law.

The Captain of the Port anticipates some impact on vessel traffic due to this proposed regulation. However, the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone.

Discussion of Proposed Rule

The Coast Guard proposes to establish three pairs of safety and security zones with identical boundaries, within the COTP Boston zone. The first pair of safety and security zones are proposed in all waters of Broad Sound within a 500-yard radius of any anchored LNGC vessel located within an area bounded by a line starting at position 42°25′ N, 070°58′ W; then running southeast to position 42°22′ N, 070°56′ W; then running east to position 42°22′ N, 070°50′ W; then running north to position 42°25′ N, 070°50′ W; then running west back to the starting point. The second pair of zones proposed would be in all waters of the Mystic River within a 400-yard radius of any LNGC vessel moored at the Distrigas LNG facility in Everett, MA. Finally, except as enumerated above, safety and security zones are proposed two miles ahead and one mile astern, and 500 yards on each side of any LNGC vessel underway within the COTP Boston zone. All coordinates are NAD 83.

This proposed rulemaking would replace the established safety zone listed at 33 CFR 165.110. That safety zone does not provide the current level of necessary protection. Section 165.110 recognizes the safety concerns with transits of LNGC vessels, but is inadequate to protect LNGC vessels from possible terrorist attack, sabotage or other subversive acts. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Due to the flammable nature of LNGC vessels and impact the ignition of this cargo could have on the port of Boston and surrounding areas, increased protection of these vessels and the Distrigas facility is necessary.

This proposed rulemaking would provide increased protection for LNGC vessels moored at the Distrigas facility and establishes protection for the vessels in Broad Sound. It would also provide continuous protection for LNGC vessels 2 miles ahead, 1 mile astern, and 500 yards on each side of an LNGC vessel anytime a vessel is underway within the COTP Boston zone, rather than limiting this protection to the Boston Main Ship Channel while a vessel is transiting Boston Harbor and Boston North Channel (as does the previous zone in § 165.110).

The increased protection provided in this proposed rulemaking also recognizes the safety concerns associated with an unloaded LNGC vessel. 33 CFR 165.110 only establishes safety zones around loaded LNG tank vessels or while the vessel is transferring its cargo. This proposed rulemaking would establish safety and security zones around any LNGC vessel, loaded or unloaded, while anchored in Broad Sound, at the Distrigas facility pier, and any time a LNGC vessel is located in the Boston Marine Inspection Zone and Captain of the Port Zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. These zones would provide necessary protection to unloaded vessels, which continue to pose a safety and security risk if unprotected. This proposed rulemaking also recognizes the continued need for safety zones around LNGC vessels, which are necessary to protect persons, facilities, vessels and others in the maritime community, from the hazards associated with the transit and limited maneuverability of a LNGC vessel laden with LNG or residual cargo.

The Coast Guard recognizes that operational marine terminals are presently adjacent to the Distrigas, Everett MA facility and could be impacted by this proposed rule. The Coast Guard does not seek to hinder the operations these facilities conduct in the course of their normal business. The Coast Guard would not restrict the normal everyday business of these adjacent facilities under this proposed rule, and would permit them to continue normal pierside and waterside activities as they always have. However, in the event a significant security risk exists on their properties or a terrorist event is imminent or has occurred, these activities may come under increased scrutiny and possible restrictions.

No person or vessel would be able to enter or remain in the proposed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone would be required to obey any direction or order of the Captain of the Port. The Captain of the Port would be able to take possession and control of any vessel in a security zone and remove any person, vessel, article or thing from a security zone. No person would be able to board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. To the extent that it is applicable, these regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225, 1226.

Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

There may be some adverse effects on the maritime community by this proposed rule, but those effects would be minimized by: the minimal time that vessels would be restricted from the areas, the ample room for vessels to navigate around the zones in Broad Sound and, in most portions of the navigable waters of the United States, the fact that vessels could transit ahead, behind, or after the passage of LNGC vessels. In addition, vessels would be able to request permission from the Captain of the Port or representatives on scene to pass through the zones, and advance notifications would be made to the local maritime community by marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the

following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Broad Sound or Boston Harbor. For the reasons enumerated in the *Regulatory Evaluation* section above, in addition to the fact that small entities have been operating in the Captain of the Port Boston Zone under a similar regulation for over 16 years, these safety and security zones would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have questions concerning its provisions or options for compliance, please call LT Dave Sherry, at (617) 223–3030. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comments on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this proposed rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.110 to read as follows:

§ 165.110 Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Massachusetts.

(a) *Definitions.* For purposes of this section, *navigable waters of the United States* includes all waters of the territorial sea as described in Presidential Proclamation No. 5928 of December 27, 1988. Presidential Proclamation No. 5928 of December 27, 1988 declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States.

(b) *Location.* The following areas are safety and security zones:

(1) *Vessels underway.* All navigable waters of the United States within the Captain of the Port (COTP) Boston zone, as defined in 33 CFR 3.05–10, two miles ahead and one mile astern, and 500 yards on each side of any liquefied natural gas carrier (LNGC) vessel while underway.

(2) *Vessels anchored in the Broad Sound.* All waters within a 500-yard radius of any anchored LNGC vessel located in the waters of Broad Sound bounded by a line starting at position 42°25′ N, 070°58′ W; then running southeast to position 42°22′ N, 070°56′ W; then running east to position 42°22′ N, 070°50′ W; then running north to position 42°25′ N, 070°50′ W; then running west back to the starting point (NAD 83).

(3) *Vessels moored at the Distrigas LNGfacility.* All waters within a 400-yard radius of any LNGC vessel moored at the Distrigas LNG facility in Everett, MA.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 and § 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Boston, or his authorized representative.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

Dated: June 11, 2002.

B.M. Salerno,

Captain, Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–18920 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–2002–12876]

Port Access Routes Study; In the Approaches to Chesapeake Bay, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard is conducting a Port Access Routes Study (PARS) to evaluate the continued applicability of and the need for modifications to current vessel routing measures or the creation of new vessel routing measures in the approaches to Chesapeake Bay, Virginia. The goal of the study is to help reduce the risk of marine casualties and increase vessel traffic management efficiency in the study area. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: Comments and related material must reach the Docket Management Facility on or before September 24, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2002–12876), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this document. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, call Lieutenant Junior Grade Anne Grabins, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, telephone 757–398–6559, e-mail *Agrabins@lantd5.uscg.mil;* or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–0574, e-mail *Gdetweiler@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this study by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice of study (USCG–2002–12876), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this study, we will hold one at a time and place to be announced by a later notice in the **Federal Register**.

Definitions

The following definitions are of terms we may use during the Port Access Routes Study (PARS). We include them here for those who are unfamiliar with these terms and their abbreviations.

Area to be avoided (ATBA) means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

Deep-water route is a route within defined limits, which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

Inshore traffic zone is a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of ships in transit, which is often marked by centerline buoys.

Recommended track is a route which has been specifically examined to ensure so far as possible that it is free of dangers and along which ships are advised to navigate.

Regulated navigation area (RNA) is a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Roundabout is a routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by

moving in a counterclockwise direction around the separation point or zone.

Separation zone or *separation line* means a zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of ships proceeding in the same direction.

Traffic lane means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic separation scheme (TSS) means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route is a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

Port Access Route Study Requirements. Under the Ports and Waterways Safety Act (PWSA)(33 U.S.C. 1223(c)), the Secretary of Transportation may designate necessary fairways and TSS's to provide safe access routes for vessels proceeding to and from U.S. ports. The Secretary's authority to make these designations was delegated to the Commandant, U.S. Coast Guard, in title 49 of the Code of Federal Regulations, 49 CFR 1.46. The designation of fairways and TSS's recognizes the paramount right of navigation over all other uses in the designated areas.

The PWSA requires the Coast Guard to conduct a study of port access routes before establishing or adjusting fairways or TSS's. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses.

Port access route study. The approaches to the Chesapeake Bay, VA, were last studied in 1989, and the final results were published in the **Federal Register** on July 13, 1989 (54 FR 29627). The study primarily examined the Southern Approach to Chesapeake Bay to accommodate vessels requiring a deep-water route. The PARS concluded that the existing Eastern Approach and Precautionary Area should remain unchanged, and it proposed the creation of the current deep-water route of the Southern Approach. A final rule, entitled "Traffic Separation Scheme; In The Approaches to Cheasapeake Bay" was published April 28, 1994 (59 FR 21935).

Why is a new port access route study necessary? Recent National Oceanic and Atmospheric Administration (NOAA) hydrographic data from a survey conducted April 12–17, 2001, indicate that Nautilus Shoal, bordering the northern edge of the Eastern Approach to Chesapeake Bay, is slowly moving southward and is encroaching the inbound traffic lane, which is limiting the use of this traffic lane to those vessels with drafts less than 27 feet (8.2 meters). This slow, continuous southward movement of Nautilus Shoal has spawned the need to evaluate the current location of the Eastern Approach and to determine if there is a different location that will better accommodate vessels that use this route to access Chesapeake Bay.

Based on potential changes to the Eastern Approach, it requires us to also study the Southern Approach to Chesapeake Bay. Therefore, we will study all the data concerning vessel movements in the Southern Approach to determine if modifications are needed for this approach as well.

Timeline, study area, and process of this PARS. The Fifth Coast Guard District will conduct this PARS to determine the need to modify existing routing measures and the effects of potential modifications in the study area. The study will begin immediately and we anticipate the study will take 6 to 12 months to complete.

The study area will encompass the area bounded by a line connecting the following geographic points (All coordinates are NAD 1983):

Latitude	Longitude
37°00.00′ N	075°56.00′ W
37°00.00′ N	075°40.00′ W
36°45.00′ N	075°40.00′ W
36°45.00′ N	075°56.00′ W

The study area encompasses the Eastern and Southern approaches to Chesapeake Bay used by commercial and public vessels.

As part of this study, we will consider previous studies, analyses of vessel traffic density, and agency and stakeholder experience in vessel traffic management, navigation, ship handling, and affects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate continued applicability of existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and vessel traffic management efficiency. Study recommendations may lead to future rulemakings or appropriate international agreements.

Potential Study Recommendations

We are attempting to determine the scope of any safety problems associated with vessel transits in the study area. We expect that information gathered during the study will identify any problems and appropriate solutions. The study may recommend that we—

- Maintain the current vessel routing measures;
- Disestablish the Eastern Approach TSS;
- Relocate the Eastern Approach TSS to the south of its current location;
- Modify the Southern Approach as necessary;
- Establish an Area to Be Avoided (ATBA) in shallow areas where the risk of grounding is present;
- Disestablish Chesapeake Light; and
- Replace Chesapeake Light with a lighted buoy or a smaller structure.

Questions

To help us conduct the port access route study, we request comments on the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer, and follow the instructions under Request for Comments above.

1. What navigational hazards do vessels operating in the study area face? Please describe.

2. Are there strains on the current vessel routing system (increasing traffic density, for example)? If so, please describe.

3. Are modifications to existing vessel routing measures needed to address hazards and strains and improve traffic management efficiency in the study area? Why or why not? If so, what measures should the study of port access routes address for potential implementation?

4. What costs and benefits are associated with the measures listed as potential study recommendations? What measures do you think are most cost-effective?

5. What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?

Dated: July 16, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection

[FR Doc. 02–18914 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MN72–7297b; FRL–7251–4]

Approval and Promulgation of Implementation Plans; Minnesota, and Designation of Areas for Air Quality Planning Purposes; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve the State of Minnesota's request to redesignate the Saint Paul, Ramsey County, Minnesota primary particulate matter nonattainment area to attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). In conjunction with this action, EPA is also proposing to approve the maintenance plan for the Ramsey County PM nonattainment area, which was submitted to ensure that attainment of the NAAQS will be maintained. The Minnesota Pollution Control Agency submitted the redesignation request and maintenance plan on June 20, 2002. In the final rules section of this **Federal Register**, we are approving these actions as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse written comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse written comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 26, 2002.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: July 12, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–18865 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–6012–N2]

RIN 0938–AL13

Medicare Program; Establishment of the Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics; Meeting Announcement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meetings.

SUMMARY: This notice announces the establishment of the Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. On June 17, 2002, the Secretary signed the charter that established the committee.

The purpose of this committee is to advise us on developing a proposed rule that would establish special payment provisions and requirements for suppliers of prosthetics and certain custom-fabricated orthotics under the Medicare program. The committee consists of representatives of interested parties that are likely to be significantly affected by the proposed rule.

This notice also announces the dates and locations for the first and second meetings in accordance with section 10(a) of the Federal Advisory Committee Act. These meetings are open to the public.

DATES: The first meeting of the advisory committee is scheduled for October 1 through October 3, 2002 from 9 a.m. until 5 p.m. e.s.t. The second meeting is scheduled for October 29 through October 31, 2002 from 9 a.m. until 5 p.m. e.s.t. Subsequent meetings will be announced in the **Federal Register**.

ADDRESSES: Both meetings will be held at the Hilton Pikesville at 1726 Reisterstown Road, Baltimore, MD 21208 (Telephone 410–653–1100). Subsequent meetings will be held at locations to be announced.

FOR FURTHER INFORMATION CONTACT: Kathryn Cox, 410–786–5954 (General inquiries concerning prosthetics and custom-fabricated orthotics and additional meeting information), Centers for Medicare & Medicaid Services (CMS), 7500 Security Blvd, Baltimore MD 21244; or Lynn Sylvester, 202–606–9140, Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427; or Ira Lobel, 518–431–0130, Federal Mediation and Conciliation Services, 1 Clinton Square, Room 952, Albany, NY 12207.

SUPPLEMENTARY INFORMATION:

Background

Section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub.L. 106–554, enacted on December 21, 2000) mandated the establishment of a negotiated rulemaking committee in accordance with the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561–570. The purpose of the committee is to advise us on the content of a proposed rule regarding the special payment provisions and requirements set forth in section 427 of BIPA for prosthetics and certain custom-fabricated orthotics. The committee will also establish an initial list of those custom-fabricated orthotic items that will be subject to the new rulemaking. No item may be included on the list unless the item is individually fabricated for the patient using a positive model of the patient.

Through the use of face-to-face negotiations, the committee will attempt

to reach consensus on the substance of the proposed rule. If consensus is reached, the committee will transmit to us a report containing required information for developing a proposed rule and we will use the report as the basis for the proposed rule. The committee is responsible for identifying the key issues, gauging their importance, analyzing the information necessary to resolve the issues, arriving at a consensus, and recommending the text and content of the proposed regulation.

Facilitators

We will be using the services of facilitators from the Federal Mediation and Conciliation Services, specifically, Commissioner Lynn Sylvester and Commissioner Ira B. Lobel.

Agendas for the Public Meetings

At the initial 3-day meeting on October 1–3, 2002, the facilitators will offer an overview of the negotiated rulemaking process, the obligations of committee members, and the substantive issues to be resolved by the committee. The facilitators will conduct a brief training session on negotiation techniques.

The facilitators will propose ground rules for the negotiation committee. These are the procedural rules that the committee will adopt at its first meeting. The facilitators will distribute proposed ground rules, which will address, among other things—

1. The composition of the Committee,
2. The use of alternates;
3. The definition of consensus;
4. The procedures for public participation;
5. Preparation of meeting minutes; and
6. The essential commitment of the members to attend the meetings and participate meaningfully.

The proposed ground rules will emphasize the importance of the members' communication with their constituencies, including keeping them abreast of the negotiations. The proposed ground rules will also address "bargaining" in good faith to reach consensus.

At the October 29 through October 31 meeting, the committee will begin to discuss the following issues:

- What and who should be covered by the rule?
- How and by whom will practitioners be certified, credentialed, or licensed?
- What are the special needs that must be addressed, such as dealing with rural areas?
- How will the program be implemented?

This list of issues is preliminary in nature and will serve as the basis to begin the negotiations.

Public Participation

All interested parties are invited to attend both public meetings. No advance registration is required. Seating will be available on a first-come, first-served basis.

Interested parties may comment on the proposed meeting agendas, submit written statements to the Committee regarding substantive issues, and request an opportunity to make a 5-minute oral presentation to the Committee. The Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants unless the facilitators have specifically approved these questions. The number of oral presentations may be limited by the time available.

The deadline for submitting oral presentation requests and comments on the proposed agenda for the October 1 through 3 meeting is 12 noon on September 3, 2002. The deadline for submitting such requests and comments regarding the October 29 through October 31 meeting is 12 noon on October 1, 2002. To assure distribution of written statements to the Committee members before a particular meeting, we encourage interested parties to submit all such statements by the relevant deadline for oral presentation requests and agenda comments. Agenda comments, oral presentation requests, and substantive written statements may be mailed to the following address: Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427, Attention: Lynn Sylvester, or call Lynn Sylvester at (202) 606–9140.

Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Kathryn Cox at the e-mail address specified above or call (410) 786–5954 at least 10 days before the meeting.

Meetings

Subsequent meetings will be held as necessary, although we anticipate that a minimum of six meetings (one meeting per month consisting of 2 or 3 day sessions) will be held. The committee will decide on the dates for the remaining meetings. We will publish notices of future meetings in the **Federal Register**. All future meetings will be open to the public without advance registration.

Authority: Federal Advisory Committee Act (5 U.S.C. App. 2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–18614 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1199–P]

RIN 0938–AL11

Medicare Program; Electronic Submission of Cost Reports

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 42 CFR part 413 by requiring that, for cost reporting periods ending on or after December 31, 2002, all hospices, organ procurement organizations, rural health clinics, federally qualified health centers, community mental health centers, and end-stage renal disease facilities must submit cost reports currently required under the Medicare regulations in a standardized electronic format. This rule also allows a delay or waiver of this requirement when implementation would result in financial hardship for a provider. The provisions of this rule allow for more accurate preparation and more efficient processing of cost reports.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 24, 2002.

ADDRESSES: In commenting, please refer to file code CMS–1199–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1199–P, P.O. Box 8014, Baltimore, MD 21244–8014.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Tom Talbott, (410) 786–4592.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call (410) 786–7197.

I. Background

Generally, under the Medicare program, hospices, organ procurement organizations, rural health clinics (RHCs), federally qualified health centers (FQHCs), community mental health centers (CMHCs), and end-stage renal disease (ESRD) facilities are paid for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. Sections 1815(a) and 1833(e) of the Social Security Act (the Act) provide that no payments will be made to a provider unless it has furnished the information, requested by the Secretary of the Department of Health and Human Services (the Secretary), needed to determine the amount of payments due the provider. In general, providers submit this information through cost reports that cover a 12-month period. Rules governing the submission of cost reports are set forth in §§ 413.20 and 413.24 of the Code of Federal Regulations (CFR).

Under § 413.20(a), all providers participating in the Medicare program are required to maintain sufficient financial records and statistical data for proper determination of costs payable under the program. In addition, providers must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the health care industry and related fields. Under §§ 413.20(b) and 413.24(f), providers are required to submit cost reports annually, with the reporting period based on the provider's accounting year. Additionally, under § 412.52, all hospitals participating in the prospective payment system must meet cost reporting requirements set forth at §§ 413.20 and 413.24.

Section 1886(f)(1)(B)(i) of the Act requires the Secretary to establish a standardized electronic cost reporting system for all hospitals participating in the Medicare program. This provision was effective for hospital cost reporting periods beginning on or after October 1, 1989. On January 2, 1997, we revised our regulations at § 413.24(f)(4)(ii) to extend the electronic cost reporting requirement to skilled nursing facilities (SNFs) and home health agencies (62 FR 26–31).

The required cost reports must be electronically transmitted to the intermediary in American Standard Code for Information Interchange (ASCII) format. In addition to the electronic file, hospitals, SNFs, and HHAs were initially required to submit a hard copy of the full cost report. We later revised our regulations in § 413.24(f)(4)(iv) to state that providers were required to submit, instead, a hard copy of a one-page settlement summary, a statement of certain worksheet totals found in the electronic file, and a statement signed by the provider's administrator or chief financial officer certifying the accuracy of the electronic file. In order to preserve the integrity of the electronic file, in the January 1997 final rule we specified procedures regarding the processing of the electronic cost report once it is submitted to the intermediary (62 FR 27).

II. Provisions of the Proposed Regulations

In this rule, we propose to apply the current hospital, SNFs, and HHAs electronic cost reporting requirements to hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities with the exception that, for the first 2 years, the hard copy of the cost report must be submitted with the electronic cost report. Over that 2-year period, the hard copy will continue to be the official copy. We believe that the use of electronically prepared cost reports will be beneficial for hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities because the cost reporting software for these reports will virtually eliminate computational errors and substantially reduce preparation time. Moreover, the use of cost reporting software will save time whenever the provider needs to change individual entries in a cost report.

In this rule we also propose that a hospice, organ procurement organization, RHC, FQHC, CMHC, or ESRD facilities may submit a written request for a waiver or a delay of these requirements if it believes that implementation of the electronic submission requirement would cause a financial hardship. Consistent with the existing regulations (*see* § 413.24), we are continuing to allow providers with low or no Medicare utilization to request a waiver of electronic cost reporting.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA 1995), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.
- We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 413.24—Adequate Cost Data and Cost Finding

Paragraph (f)(4)(ii) requires that, for cost periods ending on or after December 31, 2002, hospices, organ procurement organizations, RHCs,

FQHCs, CMHCs, and ESRD facilities, submit cost reports to fiscal intermediaries in a standardized electronic format readable by the fiscal intermediary's automated system. The electronic file must contain the input data required to complete the cost report and to pass specified edits. Paragraph (f)(4)(iii) requires that the fiscal intermediary make a "working copy" of the as-filed electronic cost reports filed by these providers to be used, as necessary, throughout the settlement process (that is, desk review, processing audit adjustments, and final settlement). Paragraph (f)(4)(iv) requires that, for cost reporting periods after December 31, 2002, hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities must submit a hard copy of a settlement summary, a statement of certain worksheet totals found within the electronic file, and a statement signed by its administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. During a transition period (first two cost-reporting periods on or after December 31, 2002), hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities must submit a hard copy of the completed cost report forms in addition to the electronic file.

We believe the burden associated with these provisions will actually reduce the amount of time currently spent on preparing and collating hardcopy documents. Because we are unsure how much time will be saved for the various providers, however, we are requesting comments on these provisions so that we can more accurately determine how much time may be saved.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, DCES, SSG, ATTN.: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn: Brenda Aguilar, CMS Desk Officer.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 19, 1980 Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This rule is not considered to have a significant economic impact on hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities, like hospitals, and, therefore, is not considered a major rule. There are no requirements for hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities to initiate new processes of care, and reporting; to increase the amount of time spent on providing or documenting patient care services; or to purchase computer software.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having annual receipts of $5 million to $25 million or less annually (See 65 FR 69432). For purposes of the RFA, all providers and small businesses that distribute cost-report software to providers are considered small entities. Our intermediaries are not considered small entities for the purposes of the RFA. Individuals and States are not included in the definition of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

As stated above, under §§ 413.20(b) and 413.24(f), providers are required to submit cost reports annually, with reporting periods based on the provider's accounting year. This proposed rule would require hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities, like hospitals, SNFs and HHAs, to submit their Medicare cost reports in a standardized electronic format. We anticipate that this requirement would take effect for cost reporting periods ending on or after December 31, 2002, meaning that the first electronic cost reports would be due May 31, 2003.

Currently, approximately 55 percent of all hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities submit a hard copy of an electronically prepared cost report to the intermediary. We believe that the provisions of this proposed rule would have little or no effect on these providers, except to reduce the time involved in copying and collating a hard copy of the report for intermediaries. Under this proposed rule, instead of submitting a complete hard copy of the report, providers would be required to submit only hard copies of a settlement summary, statement of certain worksheet totals, and a statement signed by the administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. In addition to the 55 percent of providers that currently use electronic cost reporting, this rule would not affect those providers that do not file a full cost report and, as stated above, would not be required to submit cost reports electronically.

This proposed rule may have an impact on those providers who do not prepare electronic cost reports, some of whom may have to purchase computer equipment, obtain the necessary software, and train staff to use the software. However, as discussed below, we believe that the potential impact of this proposed rule on those providers who do not prepare electronic cost reports would be insignificant.

First, a small number of the 45 percent of providers that do not submit electronic cost reports may have to

purchase computer equipment to comply with the provisions of this proposed rule. These providers are generally owned and operated by one or two individuals and are often located in rural areas. They include approximately 1500 RHCs and 1500 FQHCs. We estimate that 1350 of the 3000 RHCs and FQHCs may not have the necessary computer equipment. We believe, however, that most providers already have access to computer equipment, which they are now using for internal record keeping purposes, as well as for submitting electronically generated bills to their fiscal intermediaries, for example. Thus, we do not believe that obtaining computer equipment would be a major obstacle to electronic cost reporting for most providers. For those providers that would have to purchase computer equipment, we note that, in accordance with current regulations governing payment of provider costs, we would pay for the cost of the equipment as an overhead cost. Rural health clinics and FQHCs would be reimbursed subject to a payment limit; organ procurement organizations reimbursed based on costs; hospices reimbursed according to fee schedule; ESRDs paid a composite rate, and CMHCs would be reimbursed through a blend of prospective payment (PPS) and cost.

We recognize that a potential cost for providers that do not submit electronic cost reports would be that of training staff to use the software. Since most hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities currently use computers, we do not believe that training staff to use the new software would impose a large burden on providers. An additional cost would be the cost of the software offered by commercial vendors. However, providers could eliminate this cost by obtaining the necessary software from us, free of charge. In those instances when these requirements may cause hardship, a waiver can be granted.

The requirement that hospitals submit cost reports in a standardized electronic format has been in place since October 1989. Since that time, the accuracy of cost reports has increased and we have received very few requests for waivers. Additionally, we have not received any comments from the hospital industry indicating that the use of electronic cost reporting is overly burdensome. We believe that electronic cost reporting would be equally effective for hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities, with the benefits (such as increased accuracy and decreased preparation time) outweighing the costs of implementation for most providers. We solicit comments on the potential benefits and implementation costs of these rules for all providers.

Section 202 of the Unfunded Mandate Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, that exceeds the inflation-adjusted threshold of $110 million. This rule does not impose any costs that would exceed the $110 million threshold on the governments mentioned, or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this proposed rule and have determined that this rule will not have a negative impact on the rights, rules, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

2. Section 413.24 is amended by revising existing paragraphs (f)(4)(i) through (f)(4)(v) to read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(f) *Cost reports.* * * *

(4) *Electronic submission of cost reports.* (i) As used in this paragraph, "provider" means a hospital, skilled nursing facility, home health agency, hospice, organ procurement organization, rural health clinic, federally qualified health clinic, community mental health center, or end-stage renal disease facility.

(ii) Effective for cost reporting periods beginning on or after October 1, 1989 for hospitals, cost reporting periods ending on or after December 31, 1996 for skilled nursing facilities and home health agencies, and cost reporting periods ending on December 31, 2002 for hospices, organ procurement organizations, rural health clinics, federally qualified health centers, community mental health centers, and end-stage renal disease facilities, a provider is required to submit cost reports in a standardized electronic format. The provider's electronic program must be capable of producing the CMS standardized output file in a form that can be read by the fiscal intermediary's automated system. This electronic file, which must contain the input data required to complete the cost report and to pass specified edits, must be forwarded to the fiscal intermediary for processing through its system.

(iii) The fiscal intermediary stores the provider's as-filed electronic cost report and may not alter that file for any reason. The fiscal intermediary makes a "working copy" of the as-filed electronic cost report to be used, as necessary, throughout the settlement process (that is, desk review, processing audit adjustments, and final settlement). The provider's electronic program must be able to disclose if any changes have been made to the as-filed electronic cost report after acceptance by the intermediary. If the as-filed electronic cost report does not pass all specified edits, the fiscal intermediary must return it to the provider for correction. For purposes of the requirements in paragraph (f)(2) of this section concerning due dates, an electronic cost report is not considered to be filed until it is accepted by the intermediary.

(iv) Effective for cost reporting periods ending on or after September 30, 1994 for hospitals, cost reporting periods ending on or after December 31, 1996 for skilled nursing facilities and home health agencies, and cost reporting periods ending on or after December 31, 2002 for hospices, organ procurement organizations, rural health clinics, federally qualified health centers, community mental health centers, and end-stage renal disease facilities, a provider must submit a hard copy of a settlement summary, a statement of certain worksheet totals found within the electronic file, and a statement signed by its administrator or chief financial officer certifying the

accuracy of the electronic file or the manually prepared cost report. During a transition period (first two cost-reporting periods on or after December 31, 2002), hospices, organ procurement organizations, rural health clinics, federally qualified health centers, community mental health centers, and end-stage renal disease facilities must submit a hard copy of the completed cost report forms in addition to the electronic file. The following statement must immediately precede the dated signature of the provider's administrator or chief financial officer:

I hereby certify that I have read the above certification statement and that I have examined the accompanying electronically filed or manually submitted the cost report and the Balance Sheet Statement of Revenue and Expenses prepared by _____ (Provider Name(s) and Number(s)) for the cost reporting period beginning ___ and ending ___ and that to the best of my knowledge and belief, this report and statement are true, correct, complete and prepared from the books and records of the provider in accordance with applicable instructions, except as noted. I further certify that I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations.

(v) A provider may request a delay or waiver of the electronic submission requirement in paragraph (f)(4)(ii) of this section if this requirement would cause a financial hardship or if the provider qualifies as a low or no Medicare utilization provider. The provider must submit a written request for delay or waiver with necessary supporting documentation to its intermediary no later than 30 days after the end of its cost reporting period. The intermediary reviews the request and forwards it, with a recommendation for approval or denial, to CMS central office within 30 days of receipt of the request. CMS central office either approves or denies the request and notifies the intermediary within 60 days of receipt of the request.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 4, 2002.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 29, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–18982 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–01–9832]

RIN 2137–AD59

Pipeline Safety: Hazardous Liquid Pipeline Operator Annual Report Form

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) would require hazardous liquid pipeline operators to submit an annual report (proposed form RSPA F7000–1.1). The report form asks for information that the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) does not currently collect, such as: breakout tank location and capacity; hazardous liquid pipeline mileage by State, diameter and decade installed. The report will be due March 15 of each year for the previous calendar year, aligning with the annual reporting schedule for natural gas pipeline operators. RSPA/OPS will use information from the report to more effectively compile national statistics on system inventory; analyze accidents; identify safety problems and potential solutions; and target inspections. The proposed form asks for information similar to information RSPA/OPS currently collects for natural gas pipelines. The proposed information collection is part of RSPA's/OPS's overall strategy for improving the quality of pipeline statistics and addresses a longstanding data gap in hazardous liquid pipeline inventory information.

DATES: Comments on this NPRM must be received on or before September 24, 2002.

ADDRESSES: You may submit written comments by mail or in person by delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Or, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov. See* the **SUPPLEMENTARY INFORMATION** section for additional filing information.

FOR FURTHER INFORMATION CONTACT: Roger Little by phone at (202)366–4569, by e-mail at *roger.little@rspa.dot.gov*, or by mail at the Office of Pipeline Safety, Room 7128, 400 7th St. SW., Washington, DC, 20590, regarding the subject matter of this notice or to access comments in the docket.

SUPPLEMENTARY INFORMATION:

Filing Information, Electronic Access, and General Program Information

The Dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. All comments should identify the docket number of this notice, RSPA–01–9832. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. To file written comments electronically, after logging onto *http://dms.dot.gov*, click on "Electronic Submission" and follow the instructions. You can read comments and other material in the docket at this Web address: *http://dms.dot.gov*. General information about our pipeline safety program is available at *http://ops.dot.gov*.

Background

RSPA Pipeline Safety Mission

RSPA's/OPS's mission is to ensure the safe, reliable, and environmentally sound operation of the nation's approximately 154 thousand miles of hazardous liquid pipelines. RSPA/OPS shares responsibility for inspecting and overseeing the nation's pipelines with State pipeline safety offices. Both Federal and State regulators depend on accident reports submitted by pipeline companies to manage inspection programs and to identify trends in hazardous liquid pipeline safety. In recent years, the U.S. Congress, the National Transportation Safety Board (NTSB) and the DOT's Office of the Inspector General (OIG) have urged RSPA/OPS to improve the quality of accident data required to be submitted by hazardous liquid pipeline operators and to seek inventory information sufficient for trending the accident data. RSPA/OPS revised hazardous liquid accident reporting requirements on January 8, 2002 (67 FR 831) as part of the strategy to improve pipeline

accident reporting. The proposed annual report form will provide information that will allow us to characterize the hazardous liquid pipeline infrastructure by decade installed, diameter, material, percentage able to accommodate internal testing devices, percentage tested by hydrotesting or other internal inspection technology, and other criteria needed by Federal and State pipeline safety offices and other interested parties.

Pipeline Safety Data

RSPA/OPS maintains a hazardous liquid pipeline accident database that it uses to identify safety issues and to target risk-based inspections of hazardous liquid pipeline facilities. RSPA/OPS collects hazardous liquid pipeline accident information on RSPA Form F7000–1 Accident Report—Hazardous Liquid Pipelines. This form has been in use since 1970, and has been revised twice; once in 1984 and again on January 8, 2002. The Accident Report form does not, however, collect inventory information necessary for trending the accident information or for determining the extent and type of hazardous liquid pipelines in operation in the United States.

NTSB Recommendation

In its special investigation report PB96–917002 (January 23, 1996), the National Transportation Safety Board (NTSB) issued recommendation P–96–1 which directed RSPA/OPS to develop a comprehensive plan for the collection and use of gas and hazardous liquid pipeline accident data that details the type and extent of data to be collected, to provide RSPA/OPS with the capability to perform methodologically sound accident trend analysis and evaluations of pipeline operator performance using normalized accident data.

The process of making elements of data comparable for comparison purposes (as, for example, in finding a common denominator) is known as "normalizing" the data.

Congressional Recommendations

Recent pipeline accidents focused attention of the regulators, Congress, the media, and the public on the need for better pipeline safety information. Congress advised RSPA/OPS to take quick action to improve the quantity, quality, and usefulness of safety information to better perform its safety mission.

Industry Recognition of the Need for Better Information

Joint Industry/State/Federal Data Team

RSPA/OPS has worked jointly with an industry/State/Federal team since 1997 to examine the need for improved hazardous liquid pipeline accident data. The team determined that the best way to address accident reporting deficiencies was to adopt the accident causes proposed by the American Society of Mechanical Engineers (ASME) B31.4 committee and to collect the inventory information needed to normalize the data. The team determined that the American Petroleum Institute (API) could develop and collect additional hazardous liquid pipeline data using a voluntary reporting system. API developed the data collection scheme in a system known as the Pipeline Performance Tracking Initiative (PPTI) and has been collecting information since January 1, 1999. The PPTI information collection is voluntary, and may not be sufficiently detailed for State and Federal government safety and environmental regulation purposes. Moreover, companies provide the data anonymously. RSPA/OPS and State pipeline safety offices cannot evaluate an individual company's performance unless the company identifies itself and its pipe inventory.

Standardization of Accident Data Across Industry

RSPA/OPS is implementing some of the recommendations of the NTSB and Congress through this rulemaking. Although RSPA/OPS has never collected inventory information from hazardous liquid pipeline operators, RSPA/OPS has been collecting this information from natural gas pipeline operators since the 1970s. In a 1983 **Federal Register** notice (48 FR 13450), RSPA/OPS solicited comments on proposed revisions to certain reports, including annual reports for gas pipeline operators. In that notice, RSPA/OPS said: "[o]n the suggested annual forms, consistency of column titles will enable cross comparison of data on a larger scale and will present a workable method to facilitate analysis of possible safety problems. Therefore, in light of the size of the nationwide pipeline system and the importance of the [OPS] role in developing and enforcing an effective pipeline safety program, the annual report represents the foundation for conducting analyses of the pipeline data."

RSPA/OPS believes that this hazardous liquid annual report information collection also represents the foundation for conducting analyses of the hazardous liquid pipeline accident data. RSPA/OPS acknowledges the need for consistent pipeline information for both natural gas and hazardous liquid pipelines. The resulting information will allow RSPA/OPS to standardize pipeline safety statistics for most types of pipelines, which will make data analysis more efficient and meaningful.

RSPA/OPS utilizes the information it receives from gas transmission and distribution annual report and incident forms in many ways. For example, RSPA/OPS uses the annual report information to calculate corrosion leaks per mile, per company. This information may be used along with other information to prioritize pipeline inspections. RSPA/OPS can also track reductions in the mileage of cast iron pipe. RSPA/OPS can investigate whether the use of plastic pipe correlates to fewer accidents, especially in natural gas distribution systems.

New by-state reporting requirements for natural gas transmission annual reporting will allow us to provide State pipeline safety offices, State governors and State legislators with better information on pipeline mileage under their jurisdiction. Leak rates per mile per company can be tallied and used in evaluation of pipeline operator safety performance. This data will enable individual companies to measure the effectiveness of their safety practices. We need national data to help determine whether pipelines are more or less safe as a result of pipeline system improvements. These are just some of the benefits of receiving annual report information from natural gas pipeline companies. RSPA/OPS anticipates similar improvements in hazardous liquid safety information from use of the proposed form.

The proposed form is substantially similar to the Annual Report form for gas transmission and gathering systems, (Form RSPA F7100–2.1). This form was updated on August 8, 2001. Similarity of forms translates into improved analytical capability for both the gas and hazardous liquid pipeline industries. RSPA/OPS proposes to name the new Hazardous Liquid Pipeline Operator Annual Report form "RSPA F7000–1.1 Hazardous Liquid Pipeline Operator Annual Report form." RSPA/OPS proposes to collect information on the form annually by March 15 for the preceding calendar year. Operators will be able to submit the form in hard copy to the RSPA/OPS Information Resources Manager, at the same address for filing hazardous liquid accident reports; or, by electronic submission on the RSPA/OPS

Online Data Entry System, a World-Wide-Web-based reporting system available via the RSPA/OPS Internet Home Page at *http://ops.dot.gov.*

RSPA/OPS includes the proposed hazardous liquid pipeline operator annual report form and instructions with this notice and invites comments on them.

What Information Does RSPA/OPS Propose To Collect on the Annual Report Form?

The proposed annual report form asks whether an operator's system carries crude oil, highly volatile liquid (HVL), refined petroleum product, or other hazardous liquid (i.e., anhydrous ammonia and carbon dioxide). The form also asks for total miles of pipeline in each State, in intrastate and interstate commerce; cathodically protected versus bare steel pipeline; steel pipeline by decade and diameter; electric resistance welded (ERW) pipeline by decade and weld type; and regulated and unregulated gathering lines. In addition, the form would require reporting of the percentage of systems that have been internally inspected; percentage of transmission systems in a rural area (the definition of "rural area" is in 49 CFR 195.2); information on breakout tanks; an additional report form for each state within which the system operates; and an additional report form for offshore mileage.

Why Does RSPA/OPS Need an Annual Report Form for Hazardous Liquid Operators?

Normalizing the Data

RSPA/OPS will be able to use data from the annual report form to compute a leak rate per mile of pipeline and other statistics. Armed with better statistics, RSPA/OPS will be able to better understand safety trends and to focus inspection efforts. To illustrate, let's consider what is needed to compare the corrosion leak frequency of two companies. Suppose that Company A and Company B are two companies with the same number of corrosion leaks over a ten year period. From the hazardous liquid accident report we can determine the frequency (number) of leaks that occur as a result of corrosion. Suppose that both Company A and Company B reported 25 corrosion leaks in the last decade in the same state. The number of leaks that each company had within the state in the last decade is insufficient information to determine whether Company A or Company B has the higher rate of corrosion.

To determine which of the two companies has the higher rate of corrosion within the state, we must compute the leak rate per mile for each of the companies. This computation requires additional information that RSPA/OPS does not currently collect and that the proposed hazardous liquid annual report form would supply, namely, total miles of pipeline installed for each of the companies within the state. Assume, for our example, that Company A operates 500 miles of pipeline in the state while Company B operates 2000 miles of pipeline in the state. Company A's corrosion leak rate for the decade in the state computes to 25 leaks /500 miles /10 years, or .005 leaks per mile per year. Company B's corrosion leak rate for the decade in the state computes to 25 leaks/2000 miles /10 years, or .00125 leaks per mile per year. Company A is therefore 4 times more likely to have a corrosion leak in the state than Company B. The above analysis is an exercise in "normalizing" the data. Comparisons such as the one above are useful in safety analyses. The proposed form requests information that will make such comparisons possible.

Other Uses of the Data

RSPA/OPS needs accurate, meaningful pipeline information for: general trending of pipeline safety data; risk assessment; scheduling standard safety inspections; deciding which pipelines need replacement versus rehabilitation; comparing individual operator performance with industry performance; cost-benefit analysis; regulatory development; monitoring industry performance and regulatory compliance; and RSPA/OPS resource allocation.

State pipeline safety programs with hazardous liquid pipeline safety responsibility also need the information for these purposes. Currently, the information collected from the gas pipeline operator annual report (available on the RSPA/OPS website) is widely used by third parties, including State governors, Congress, metropolitan planners, pipeline research engineers, industry safety experts, the media, and the public.

The proposed annual report form will collect data that hazardous liquid pipeline operators can use to measure their performance against other operators and the industry. We believe that having national minimum standards for inventory information will assist companies in their development of operational, maintenance, and other procedural documentation. Improved inventory record-keeping will yield better data for pipeline safety research, the goals of which are safer pipelines and a cleaner environment.

What Alternatives to an Annual Report Form for Hazardous Liquid Operators Did RSPA/OPS Consider?

RSPA/OPS considered collecting the annual report information through API's already established PPTI. Because participation in PPTI is voluntary and anonymous, RSPA/OPS determined that this option was inadequate. PPTI data would not meet the needs of RSPA/OPS, the States, and the public for complete information on the safety and environmental performance of pipeline facilities. RSPA/OPS needs to collect this information because it is not otherwise available.

RSPA/OPS also considered collecting the information via the National Pipeline Mapping System (NPMS). Practical problems arose in attempting to integrate annual report information into the NPMS database. Submission of inventory information to NPMS would have to be on a per-pipeline-segment basis, greatly increasing the labor and costs for NPMS submissions. For example, if we were to collect pipeline diameter information via NPMS, each company would have to provide pipeline segment information each time the operator changed the diameter of the pipe. Currently pipeline diameter is an optional reporting item on NPMS.

Finally, unresolved issues regarding frequency of NPMS data submission, standards for accuracy of submission, and its voluntary nature render NPMS an imperfect vehicle for collecting hazardous liquid pipeline inventory data.

Rulemaking Analyses

Executive Order 12866 and DOT Policies and Procedures

RSPA/OPS does not consider this NPRM to be a significant regulatory action under Section 3(f) of Executive Order 12866. RSPA/OPS also does not consider this NPRM to be significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

A copy of the Draft Regulatory Evaluation is available for review in the docket. This section summarizes the findings of the draft regulatory evaluation. This NPRM is intended to supply data necessary for the proper analysis of hazardous liquid pipeline safety issues.

This proposal amends the pipeline safety regulations by requiring hazardous liquid pipeline operators to annually report information on: pipe inventory by state, diameter, and decade of installation; information about breakout tank number and capacity; and other aspects of their pipeline systems.

Benefits

Hazardous liquid pipeline system inventory information is needed for: meaningful trending of hazardous liquid pipeline accident safety issues; risk assessment; recommendations regarding rehabilitation or replacement of pipeline segments; analysis of costs and benefits; and comparison of individual operator performance against industry performance. This safety information will be used by RSPA/OPS for daily decision making in RSPA's/OPS's assessment of pipeline risks, regulatory development, and programmatic resource allocation. RSPA/OPS also uses the information in monitoring industry performance and regulatory compliance, and for planning company standard safety inspections. States, local community planners, and emergency responders will benefit from having information about hazardous liquid pipeline systems for comparing local risks against the national level and for other purposes. Industry will ultimately benefit when RSPA/OPS establishes from the collected information a baseline measurement for pipeline company safety performance.

Costs

The form asks for information that should be readily available to the operator on the operator's databases. RSPA/OPS expects that ultimately the time required to complete the form will decrease as operators adjust their computerized systems to track the requested information. RSPA/OPS estimates it will take an operator 12 hours (246 fields × 3 minutes per field) to complete the form the first year and half as long (6 hours annually) in subsequent years. RSPA/OPS recognizes that where companies have merged with other companies, information about pipeline mileage by decade installed may not be available. The form provides a category labeled "unknown" in which an operator may estimate the decade the pipeline was installed.

Based on the number of participants in the NPMS, the number of hazardous liquid pipeline operators filing annual reports will be approximately 300.

RSPA/OPS estimated the hourly cost of the person completing the form at $40. The $40 figure was based on the U.S. Department of Labor's National Occupational Employment and Wage Earnings for 1999. According to that document, the hourly wage for a Transportation, Storage, and Distribution Manager (the closest category to a pipeline manager) was $26.03 per hour. The $26.03 figure was multiplied by 1.35 to account for fringe benefits ($26.03 × 1.35 = $35.14). RSPA/OPS added an inflation factor of 14% to account for inflation from 1999 to 2002 ($35.14 × 1.14 = $40.05).

RSPA/OPS estimates that it will take an operator about 12 hours to complete the form the first year it is in use. Based on an average cost of $40 per hour, the cost to industry of completing the form for the first year will be $144,000.00 (300 forms × 12 hours × $40 per hour = $144,000.00). Total hours expended by industry to complete the form in the first year will be 3,600 hours (300 forms × 12 hours = 3,600 hours).

After the first year, once company computer systems are adjusted to provide the information in the format requested, the total annual industry cost will be $72,000.00 (1,800 × $40 = $72,000.00). After the first year, total hours expended by industry to complete the form will be 1,800 hours (300 forms × 6 hours = 1,800 hours).

Conclusion

RSPA/OPS believes that the initial annual cost of $144,000.00 and ongoing annual cost of $72,000.00 annually is a relatively modest burden on the hazardous liquid pipeline industry. The benefits accruing to RSPA/OPS and the pipeline industry through the increased utility of the hazardous liquid accident data should easily outweigh this modest cost. The additional information will allow RSPA/OPS and the hazardous liquid pipeline industry to identify safety issues and trends, and allow operators to make changes to procedures and practices that will ultimately reduce pipeline accidents and improve pipeline safety.

Regulatory Flexibility Act

The NPRM's first year industry cost of $144,000.00, divided by the approximately 300 hazardous liquid pipeline operators, results in an average cost of $480.00 per operator. Subsequent annual costs to complete the form is approximately $240.00 per operator ($72,000.00 divided by 300 operators).

The Small Business Administration's (SBA) criteria for defining a small entity in the hazardous liquid pipeline industry is 1,500 employees, as specified in the North American Industry Classification System codes (486110—Pipeline Transportation of Crude Oil and 486910—Pipeline Transportation of Refined Petroleum Products). RSPA/OPS does not collect information on number of employees or revenues for pipeline operators. Such a collection would require OMB approval. RSPA/OPS nevertheless continues to seek information about the number of small pipeline operators from which to more fully determine impact on small entities (companies with less than 1,500 employees, counting employees of parent corporations). For several years RSPA/OPS has sought public comment from small hazardous liquid operators.

For the RSPA/OPS Hazardous Liquid Pipeline Accident Reporting Revisions Notice of Proposed Rulemaking (66 FR 15681; March 20, 2001), RSPA/OPS sought input from the public on the impact of the NPRM on small entities. No one responded to this request. The SBA Chief Counsel for Advocacy, however, made comments on behalf of small businesses. SBA asked how many hazardous liquid pipeline operators would RSPA/OPS characterize as small operators. RSPA/OPS solicited public comment from small operators in its recent rulemakings on pipeline integrity management. No comments from small hazardous liquid operators were forthcoming.

The hazardous liquid pipeline industry is a highly competitive, capital intensive industry which in recent years has seen many mergers and buyouts. If you are an operator of a small company, RSPA/OPS requests that you identify yourself to us to help us more accurately determine impact on small businesses of this and future rulemakings (see the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections above for how to provide comments).

Although RSPA/OPS does not have information that can identify which companies are small businesses per SBA's criteria, the cost to be imposed by this rulemaking is very small. The average cost for all companies based on an estimated total impact of $72,000 annually is $240.00 per operator ($72,000/300 operators) with an initial first year cost of $480.00 per operator ($144,000/300 operators). We believe the benefits of this NPRM far outweigh this small per company cost.

Based on the small cost to companies of any size and to the industry at large of this NPRM, I certify pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this NPRM would not have a significant impact on a substantial number of small entities.

If you have any information that this conclusion about the impact on small entities is not correct, please provide that information to the public docket described in the **SUPPLEMENTARY INFORMATION** section.

Paperwork Reduction Act

This NPRM contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the DOT has submitted a copy of the Paperwork

Reduction Act Analysis to the Office of Management and Budget (OMB) for its review.

The approximately 300 hazardous liquid pipeline operators will be required to submit one report annually per company, or 300 reports annually. The total hour burden the first year will be 12 hours per operator. For the entire industry, the burden will be 3,600 hours (12 hours × 300 operators) costing $144,000.00 the first year ($40 per hour × 3,600 hours). Every year thereafter, the burden will be 6 hours per operator. For the entire industry, the burden will be 1800 hours (6 hours per operator × 300 operators = 1800 hours). The total annual cost after the first year is 1,800 hours × $40/hr = $72,000.00.

Organizations and individuals desiring to submit comments on the information collection should direct them to the addresses listed in the **ADDRESSES** section of the preamble. Also see the **SUPPLEMENTARY INFORMATION** section for how to submit comments. Comments must be sent within 60 days of the publication of this notice.

The OMB is specifically interested in the following issues concerning the information collection:

1. Evaluating whether the collection is necessary for the proper performance of the functions of the DOT, including whether the information would have a practical use;

2. Evaluating the accuracy of the DOT's estimate of the burden of the collection of information, including the validity of assumptions used;

3. Enhancing the quality, usefulness and clarity of the information to be collected; and

4. Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

The Paperwork Reduction Act of 1995 does not require a person to respond to a collection of information unless a valid OMB control number is displayed. The valid OMB control number for this information collection will be published in the **Federal Register** after it is approved by OMB. For more details, see the Paperwork Reduction Analysis available for copying and review in the public docket.

Executive Order 13175

The NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because the NPRM would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Unfunded Mandates Reform Act of 1995

This NPRM would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We have analyzed the NPRM for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the NPRM parallels present reporting requirements and practices for gas pipeline operators, we have preliminarily determined that the NPRM would not significantly affect the quality of the human environment. Generally, collection of information does not result in an environmental impact. A final determination on environmental impact will be made after the end of the comment period. If you disagree with our preliminary conclusion, please submit your comments to the docket.

Executive Order 13132

The NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). The NPRM does not propose any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

RSPA/OPS has determined that this NPRM does not constitute a significant energy action within the meaning of EO 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." This NPRM will not result in adverse effects on energy supply, distribution, or use.

Executive Order 13212

Because this NPRM is not an energy-related project, EO 13212, "Actions to Expedite Energy-Related Projects," does not apply.

Executive Order 12630

This NPRM does not affect or potentially affect the use or value of real, personal, or intellectual property. Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," does not, therefore, apply to this NPRM.

List of Subjects in 49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA/OPS proposes to amend 49 CFR part 195 as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for part 195 would continue to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. The title to Subpart B would be revised to read as follows:

Subpart B—Annual, Accident, and Safety-Related Condition Reporting

3. Section 195.49 would be added to Subpart B to read as follows:

§ 195.49 Annual report.

Each operator of a hazardous liquid or carbon dioxide pipeline system shall submit an annual report for that system on DOT form RSPA F7000–1.1. This report must be submitted each year, not later than March 15, for the preceding calendar year.

Issued in Washington, DC on July 18, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

Instructions for Completing Form RSPA F 7100.2–1 (Rev. 11–2000)

Annual Report for Calendar Year YYYY Hazardous Liquid Pipeline Systems

General Instructions

All section references are to Title 49 of the Code of Federal Regulations.

Each hazardous liquid system operator with a total of 1 or more miles of pipeline is required to file an annual report. Complete a separate report for mileage for each state in which the operator's pipeline system operates.

The terms "barrel", "breakout tank", "carbon dioxide", "gathering line", "intrastate", "interstate", "hazardous liquid", "highly volatile liquid (HVL)",

"offshore", "outer continental shelf (OCS)", "specified minimum yield strength (SMYS)" are defined in § 195.2. The term "operator" is defined in § 195.2 as a person who owns or operates pipeline facilities. For purposes of this report, the operator is further defined as the person ("person" is defined in 49 CFR 195.2) who exercises substantial control over the operation of the pipeline.

Reporting requirements will be at *§ 195.49—Annual report*, Title 49 of the Code of Federal Regulations (CFR) Transportation of Hazardous Liquids by Pipeline upon completion of rulemaking. Annual reports must be submitted by March 15 for the preceding calendar year. Report Total miles of pipeline in the system at the end of the reporting year, including additions to the system during that year. Reports should be submitted to the address in § 195.58 (currently Information Resources Manager, Office of Pipeline Safety, Room 7128, 400 7th St. SW., Washington, DC.

If you have questions about the report or these instructions, or need copies of Form RSPA F 7000–1.1(01–03), please contact the Information Resources Manager, RSPA, Office of Pipeline Safety, at (202) 366–4569. Copies of the form and instructions are on the Office of Pipeline Safety home page, *http://ops.dot.gov* in the FORMs section of the ONLINE LIBRARY upon completion of rulemaking. Please type or print all entries.

Please round all mileage to the nearest mile. DO NOT USE DECIMALS OR FRACTIONS. Round decimals or fractions to the nearest whole number, e.g., 3/8 or 0.375 should be rounded down; 3/4 or 0.75 should be rounded up; 1/2 or 0.5 should be rounded up. The entry for "Total miles of pipe" in Part B and Part C should be identical and reflect system totals. Note: the form requests reporting in miles of pipeline, not feet.

Make an entry in each block for which data is available. Estimate data if necessary. Try to avoid entering mileage in the Unknown columns if possible. We recognize that some companies may have very old pipe for which installation records may not exist. Enter estimate of the total of such mileage in the "Pre-40 or UNKNOWN" section of Part B: "Miles of Pipe by Location/Protection/Decade".

Specific Instructions

Enter the Calendar Year for which the report is being filed. Check Initial Report if this is the original filing for this calendar year. Check Supplemental Report if this is a follow-up to a previously filed report to amend or correct information. On Supplemental Reports, enter all information requested in Parts A and J, and only the new or revised information for the remainder of the form.

Enter *the State for which information is being reported*. An operator should submit a separate report for all hazardous liquid operations for each State in which it operates. A company may submit separate reports for subsidiaries or affiliate operations. Please do not report any pipeline facility more than once.

For System Type, check all boxes that apply.

Include petroleum gathering line mileage under crude oil systems.

Part A—Operator Information

Insert the operator name and address data. Enter the address where additional information can be found.

The operator's five digit identification number appears on the RSPA mailing label. If the person completing the report does not have the identification number, this information may be omitted.

Please adhere to definitions in Title 49 part 195 of the Code of Federal Regulations when reporting pipeline mileage.

Part B—Miles of Steel Pipe by Location/Protection/Decade

Coated means pipe coated with an effective hot or cold applied dielectric coating or wrapper.

Part F—Miles of Gathering Lines

Report mileage of regulated and unregulated gathering lines within each state. Report any and all mileage offshore in a separate report. Gathering lines are defined in CFR § 195.2 as "a pipeline 219.1 mm (8⅝ or less nominal outside diameter that transports petroleum from a production facility." Rural gathering lines are considered to be unregulated gathering lines in accordance with 195.1(b)(4).

Part G—Breakout Tanks

List number of tanks by capacity and by commodity. For purposes of this reporting, we seek information in 4 commodity categories: crude, refined products, highly volatile liquids (HVL), or Anhydrous Ammonia/Carbon Dioxide. In the "Total Capacity, Barrels" section, enter the total number of tanks in the appropriate box for each of these 4 commodity categories.

Part H—Total Volumes

Include annual volume transported totals in barrel-miles regardless of state. We recognize that it is difficult or impossible to currently measure volume transported by state. We therefore require, for those operators with pipelines in multiple states, that Part H be completed only for the first of the operator's states in alphabetical order. For each subsequent report by state, please reference the state for which Part H is completed (*e.g.*, if operator has pipelines in Alabama and Texas, then on the Texas form in Part H the operator enters "reported for State of AL").

Part J—Preparer And Authorized Signature

PREPARER is the name of the person most knowledgeable about the report or the person to be contacted for more information. Please include the preparer's E-mail address if there is one.

Authorized Signature may be the preparer or an officer or other person whom the operator has designated to review and sign reports.

BILLING CODE 4910–60–P

Notice: This report is required by 49 CFR Part 195. Failure to report can result in a civil penalty not to exceed $25,000 for each violation for each day that such violation persists except that the maximum civil penalty shall not exceed $500,000 as provided in 49 USC 60122.

U.S. Department of Transportation
Research and Special Programs Administration

ANNUAL REPORT FOR CALENDAR YEAR 20___
HAZARDOUS LIQUID OR CARBON DIOXIDE SYSTEMS

INITIAL REPORT ☐
SUPPLEMENTAL REPORT ☐

Important: Please read the separate instructions before completing this form.

STATE IN WHICH SYSTEM OPERATES: _____

*(Provide a **separate** report for each state in which system operates. File a **separate** report for Offshore/OCS mileage)*

System Type: 1. Crude Oil ☐ 2. HVL ☐ 3. Refined Petroleum ☐ 4. CO_2/Anhydrous Ammonia ☐

Total Miles in this state: in **intra**state commerce: _____ in **inter**state commerce: _____

PART A - *OPERATOR INFORMATION

DOT USE ONLY

1. NAME OF COMPANY OR ESTABLISHMENT

IF SUBSIDIARY, NAME OF PARENT

2. LOCATION OF OFFICE WHERE ADDITIONAL INFORMATION MAY BE OBTAINED

Number & Street

City & County

State & Zip Code

3. OPERATOR'S 5 DIGIT IDENTIFICATION NUMBER

(If Known) / / / / / /

*The operator is the *person (as defined in 49 CFR 195.2)* who exercises substantial control over the operation of the pipeline.

4. HEADQUARTERS NAME & ADDRESS, IF DIFFERENT

Number & Street

City & County

State & Zip Code

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PART B – MILES OF STEEL PIPE BY LOCATION / PROTECTION / DECADE

			Decade Pipe Installed	Pre-40 or Unknown	1940 - 1949	1950 - 1959	1960 - 1969	1970 - 1979	1980 - 1989	1990 - 1999	2000 - 2009	Total
Onshore	Cathodic Protected	Bare										
		Coated										
	Un-Protected	Bare										
		Coated										
	Subtotal											
Offshore	Cathodic Protected	Bare										
		Coated										
	Un-Protected	Bare										
		Coated										
	Subtotal											
Total Miles of Pipe												

PART C – MILES OF STEEL PIPE BY NOMINAL SIZE / DECADE

Decade Pipe Installed	Pre-40 or Unknown	1940 - 1949	1950 - 1959	1960 - 1969	1970 - 1979	1980 - 1989	1990 - 1999	2000 - 2009	Total
4 inches or less									
Over 4 up to 6 inches									
Over 6 up to 8 inches									
Over 8 up to 10 inches									
Over 10 up to 12 inches									
Over 12 up to 14 inches									
Over 14 up to 16 inches									
Over 16 up to 18 inches									
Over 18 up to 20 inches									
Over 20 up to 22 inches									
Over 22 up to 24 inches									
Over 24 up to 26 inches									
Over 26 up to 28 inches									
Over 28 up to 30 inches									
Over 30 up to 32 inches									
Over 32 up to 34 inches									
Over 34 up to 36 inches									
Over 36 inches									
Total Miles of Pipe									

Continued on Reverse Side

Reproduction of this form is permitted.

PART D. MILES OF Electric Resistance Weld (ERW) PIPE BY DECADE/WELD TYPE

Decade Pipe Installed	Pre-40 or Unknown	1940 - 1949	1950 - 1959	1960 - 1969	1970 - 1979	1980 - 1989	1990 - 1999	2000 - 2009	Total
High Frequency									
Low Frequency and DC									
Total Miles of Pipe									

PART E. MILES OF PIPE BY SPECIFIED MINIMUM YIELD STRENGTH (SMYS)

	Onshore Miles	Offshore Miles
Less than 20 % SMYS		
Greater or equal to 20% SMYS		

PART F. MILES OF GATHERING LINES

Regulated	Unregulated

PART G. BREAKOUT TANKS

Commodity	Less than or equal to 50,000 Barrels	50,001 to 100,000 Barrels	100,001 to 150,000 Barrels	Over 150,000 Barrels	Total
Total s					

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PART H. TOTALVOLUME TRANSPORTED

Volume in barrel-miles of crude oil: _____

Volume in barrel-miles of petroleum products other than HVLs: _____

Volume in barrel-miles of HVLs or other fluid which is gas at ambient conditions: _____

Volume in barrel-miles of carbon dioxide: _____

Volume in barrel-miles of anhydrous ammonia: _____

PART I. INTERNAL INSPECTION

Percent of system that has been hydrotested in last 10 years: _____	Percent of System Pigged in last 10 years by a:
Percent of system that is capable of being pigged in last 10 years: _____	High Resolution Magnetic Flux tool _____
Percent of system inspected by Other Tools in last 10 years (specify tool used): _____	Low Resolution Magnetic Flux tool _____
	UT tool _____
	Geometry tool _____
	Caliper tool _____
	Crack tool _____
	Hard Spot tool _____
	Other tool _____

PART J - PREPARER AND AUTHORIZED SIGNATURE

_____ (type or print) Preparer's Name and Title — _____ Area Code and Telephone Number

_____ Preparer's E-mail Address — _____ Area Code and **Facsimile** Number

_____ Authorized Signature — _____ (type or print) Name and Title — _____ Date — _____ Area Code and Telephone Number

Draft Form RSPA F 7000.1-1 (01-2003)

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[FR Doc. 02–18908 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–60–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2001–10856; Notice 2]

RIN 2127–AI29

Motor Vehicle Safety; Disposition of Recalled Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice seeks comments on a May 9, 2002 comment from the Rubber Manufacturers Association (RMA), in response to our December 18, 2001 Notice of Proposed Rulemaking (NPRM) on Disposition of Recalled Tires (66 FR 65165).

In the NPRM, we proposed to require that tire dealers render returned recalled tires unsuitable for use on the day removed from the vehicle or from stock, and then dispose of them in accordance with manufacturers' plans and applicable laws, in ways that minimize the deposit of the tires in landfills. RMA urged NHTSA to allow tire manufacturers the option of requiring that dealers return all recalled tires directly to the manufacturer, instead of requiring tire dealers and distributors to dispose of the tires themselves. RMA also urged us to consider a number of other suggested revisions to the NPRM. RMA attached suggested regulatory language to its comment.

We seek comments on the merits of RMA's general approach, on whether RMA's proposal is consistent with statutory requirements, and on RMA's proposed regulatory text.

DATES: *Comments:* You should submit your comments early enough to ensure that Docket Management receives them not later than August 26, 2002.

ADDRESSES: You should mention the docket number of this document in your comments, and submit your comments in writing to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on "Help & Information" or "Help/info" to obtain instructions for filing the document electronically.

Regardless of how you submit your comments, you should mention the docket number of this document in your comments.

You may call Docket Management at 202–366–9324. You may visit Docket Management from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, tel. (202) 366–5226. For legal issues, contact Enid Rubenstein, Office of Chief Counsel, tel. (202) 366–5263.

SUPPLEMENTARY INFORMATION: Section 7 of the Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act expanded 49 U.S.C. 30120(d) to require a manufacturer's remedy program for tires to include a plan for preventing, to the extent reasonably within the manufacturer's control, the resale of replaced tires for use on motor vehicles, as well as a plan for the disposition of replaced tires, particularly through methods such as shredding, crumbling, recycling, recovery, or other "beneficial non-vehicular uses" rather than in landfills. Further, Section 7 requires the manufacturer to include information about the implementation of its plan in quarterly reports that it is required to make to the Secretary about the progress of its notification and remedy campaigns involving tires.

In order to implement Section 7's new requirements, we proposed on December 18, 2001 to amend 49 CFR 573.5 and 573.6 to impose requirements on tire manufacturers and on tire dealers. We proposed in the NPRM to require manufacturers that conduct tire recalls to file programs and reports about their plans for incapacitating and disposing of recalled tires that addressed three major concerns: (1) Ways of assuring that entities replacing the tires are aware of the legal prohibitions on the sale of defective or noncompliant tires; (2) mechanisms to impair recalled tires so that they cannot be used on a vehicle; and (3) the disposition of recalled tires, consistent with applicable laws and in ways that minimize their deposit in landfills, and to implement those plans. We also proposed to require "exceptions reporting," by manufacturer-controlled tire outlets to manufacturers monthly, and by manufacturers to NHTSA in quarterly reports, that identify aggregate numbers of recalled tires that have not been rendered unsuitable for reuse or that have been disposed of in violation of applicable state and local requirements; and that describe failures by tire outlets to act in accordance with manufacturers' directions for disposing of recalled tires, including an identification of the outlets in question. We sought comments on the reporting burdens.

Rather than requiring dealers to render tires unsuitable for use and then transfer those tires to authorized disposal facilities, RMA suggested that the rule should permit manufacturers to require dealers to return all recalled tires directly to the manufacturer, at a central facility. *See* RMA's comment, on file in DOT's Docket Management System (DMS) at Docket 10856, Document Number NHTSA–2001–10856–9. Manufacturers would then inspect and sort the tires, destroy those that contain the defect or noncompliance, and, where appropriate, brand those tires that do not contain the defect or noncompliance (to permit their resale). According to RMA, this would simplify the process of recalling and disposing of defective or noncompliant tires, as well as the associated reporting requirements, and, in addition, avoid the unnecessary disposition of tires that are not defective or noncompliant.

RMA argued that the alternative of returning tires to a central location would permit manufacturers both to better control the recall process, as described above, and to test returned recalled tires in order to better understand the failure mechanism. RMA also urged us to eliminate the proposed requirement for dealers to alter recalled tires by the close of business on the day on which the recalled tire has been removed from the vehicle.

In its suggested regulatory text, RMA also proposed to require manufacturers to provide written guidance, either annually or for any recall involving 10,000 or more tires not returned to the tire manufacturer or manufacturer-controlled facility, to manufacturer-owned and manufacturer-controlled tire outlets as well as other tire outlets, about how to alter recalled tires permanently so that they cannot be used on vehicles. *See* RMA Comment, p. 3, "Suggested Regulatory Language" at §§ 573.5(c)(9)(A), (B)(1), (B)(2), and (C).

RMA further suggested revising our proposed "exceptions reporting" requirement, by changing the timing of required reports from manufacturer-owned or manufacturer-controlled outlets from monthly to within 30 days of removal of a recalled tire from a vehicle, and by requiring those outlets also to report to the manufacturer, within the same time frame, any deviation from the manufacturer-supplied recall plan and any violation of applicable laws and regulations on disposal of scrap tires. *See* RMA Comment at p. 2; RMA Suggested

Regulatory Language at p. 3, proposed §§ 573.5(c)(9)(B)(3), (C)(3).

We seek comments on whether the RMA proposal would effectuate section 7 of the TREAD Act, and whether it would better address the first two major concerns, identified above, than the proposal in the NPRM. We would expect that in most tire recalls, repairs and resale following inspection will not be possible. This was true in the recent Bridgestone/Firestone ATX, ATXII and Wilderness AT recalls, and also in the 1978–79 Firestone 500 recall. Further, we seek comments on mechanisms for assuring the security of recalled tires prior to shipment to the manufacturer, so that those tires do not enter the marketplace inadvertently.

We request comments on whether RMA's proposal fulfills Congress' intentions in the TREAD Act with respect to minimizing the likelihood that recalled tires are disposed of in landfills and, specifically, with respect to encouraging independent tire dealers (as well as manufacturer-owned or manufacturer-controlled outlets) to meet their obligations under state and local law to dispose appropriately of recalled tires.

In addition, we seek comments on the issue of whether RMA's proposed alternative is consistent with 49 U.S.C. 30120(i) and (j), which by their terms preclude the resale of recalled tires that have not been remedied. Section 30120(i) provides that:

> [i]f notification (of a defect or noncompliance) is required . . . and the manufacturer has provided to a dealer notification about a new * * * item of replacement equipment in the dealer's possession at the time of notification that contains a defect * * * or does not comply * * *, the dealer may sell or lease the * * * item of replacement only if—(A) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease[.]

Section 30120(j) provides that:

> [n]o person may sell or lease any motor vehicle equipment (including a tire), for installation on a motor vehicle, that is the subject of a decision under section 30118(b) or a notice require under section 30118(c) in a condition that it may reasonably be used for its original purpose unless—(1) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease[.]

In responding to this question, please provide a discussion that includes the reasons for your conclusion, as well as statutory analysis.

Finally, we seek comments on RMA's proposal to permit manufacturers the option of notifying dealers of their recall responsibilities either annually or for any recall that covers more than 10,000 tires, as opposed to requiring such notifications for all recalls.

We are not reproposing regulatory language because at this time, we have not made a tentative decision to adopt RMA's suggestion. After considering comments on this Supplemental Notice of Proposed Rulemaking, we may adopt an approach that includes one or more features of RMA's proposal, or we may choose to follow an approach that is closer to the one we proposed in the NPRM.

I. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

When we issued the NPRM, we considered the impact of this proposed rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. The NPRM was not reviewed under E.O. 12866, "Regulatory Planning and Review." This rulemaking was not considered "significant" under the Department of Transportation's regulatory policies and procedures. We expected the impacts of our proposed rule to be so minimal as not to warrant preparation of a full regulatory evaluation, because the proposal essentially would require only the supplementing of reports that manufacturers already must file with limited information about the disposition of recalled tires.

We estimated that the additional economic impact of the proposed rule upon manufacturers would be small. Manufacturers already assume the costs of the tire recalls that they conduct. They already are required by our regulations to notify dealers of recalls and to file plans and quarterly reports about their recalls with our Office of Defects Investigation (ODI). We stated that the additional notification and reporting elements that this rule would add would be very limited and wholly descriptive, and that they would not impose significant costs on manufacturers.

RMA's proposed alternative might limit still further the costs of the proposed rule. If, upon inspection, numerous recalled tires were found not to be defective or non-compliant, the RMA proposal could reduce the costs of disposition of recalled tires. The costs to dealers of incapacitating and recycling the recalled tires would be eliminated under the RMA proposed alternative. There could be increased costs to ensure the security of recalled tires. The extent to which the costs to dealers of shipping recalled tires to the manufacturer at a central location, and ultimately the costs to manufacturers of reimbursing dealers for those shipping costs, would depend on the locations to which recalled tires were shipped.

B. Regulatory Flexibility Act

We have also considered the impacts of RMA's proposed alternative under the Regulatory Flexibility Act. For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this proposal would not have a significant economic impact on a substantial number of small entities. The primary impact of RMA's proposal would be felt by the major tire manufacturers, which are not small entities. This impact would be relatively minor, since it primarily would involve manufacturers' adding a requirement to ship recalled tires to central location(s) to their remedy programs, notifying affected retail outlets of the remedy plans, and providing minimal reporting on the plans in the quarterly reports that manufacturers already must file with NHTSA. We estimated the cost of our original proposal at approximately $1.00 per tire for transportation and $2.00 per tire for recycling. If the effect of RMA's proposal is to eliminate the need to recycle significant numbers of tires, the total recycling costs should be reduced.

We originally estimated the cost to manufacturers of notifying dealers of their plans at $1.00 per tire manufacturer per affected retail outlet, and stated that the cost could well be less because manufacturers might already be including descriptions similar to our proposed requirements in their notices to dealers. Under the first alternative in RMA's proposal, the cost could be even lower, because the content of the manufacturers' notices of recalls would be limited to one or two lines instructing dealers to ship the recalled tires to a designated central location. Under RMA's second proposed alternative, the cost to manufacturers could be somewhat higher, since they would include an annual mailing to all retail outlets of the manufacturers' requirements for the disposition of recalled tires.

We stated in the NPRM that the proposed rule could also have an impact on the nation's 3,500 tire dealers, many of which are small entities. We estimated the reporting costs associated with monthly "exceptions reporting" to manufacturers of any instances in which the dealer did not comply with the manufacturer's plan for disposing of

recalled tires at $1.00 per affected dealer per recall. Also, we estimated the potential one-time costs to each dealer for obtaining equipment to incapacitate tires so that the tires could not be resold to the public (although we believed that many dealers already owned such equipment) at between $70.00 (to purchase a power drill and a drill bit) and $95.00 (to purchase a cutoff saw and blade(s)) per affected dealer, or a maximum of between $245,000 and $332,500, assuming that each of the 3,500 dealers purchased a new drill and bit or cutoff saw and blade. We noted that, because not every dealer is involved in a tire recall every year, the aggregate one-time cost would be incurred over a multi-year time period. Under RMA's alternative proposal, all of these costs to dealers could be eliminated.

C. National Environmental Policy Act

We have reviewed this proposal for the purposed of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and determined that it would not have a significant impact on the quality of the human environment. The proposed rule would not require manufacturers to conduct any recalls beyond those that they already are required to conduct. The sale of recalled tires is prohibited by other provisions in the Safety Act. Disposal requirements are already governed by other State laws and regulations.

D. Paperwork Reduction Act

As we indicated in the NPRM, our proposed rule would impose new collection of information burdens within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35). However, those burdens should be minimal. Manufacturers already are required by our regulations to file plans and quarterly reports about tire recalls with us. There would be an incremental burden of adding to the manufacturers' descriptions of their programs. Even this impact would be minor, since it only would involve adding a description of plans for incapacitating and disposing of recalled noncompliant or defective tires to their remedy programs and providing minimal reporting on the plans in the quarterly reports that manufacturers already must file with NHTSA. The limited additional "exceptions reporting" that our proposed rule would have required of manufacturers and of manufacturer-controlled outlets that implement recalls, i.e. periodic Aexceptions reporting" of aggregate numbers of recalled tires that have not been incapacitated for use or that have been disposed of unlawfully, describing any failure to comply with the manufacturer's plan to render tires unsuitable for installation on a motor vehicle for resale and any failure to comply with the disposal requirements of applicable state and local laws and regulations of which the manufacturer becomes aware, would be still more limited under RMA's proposal. We believe that both the proposed rule and RMA's proposal would not impose significant additional costs or burdens either on the manufacturers that conduct the tire recalls or on the manufacturer-controlled outlets that implement them.

Because this proposed rule would impose information collection requirements, albeit minimal, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1329, we stated in the NPRM that we plan to submit the proposed requirements to OMB for its approval, as required by the PRA. We sought comments on the information collection burdens associated with the NPRM. We now seek comments on the information collection burdens associated with the RMA proposal.

E. Executive Order 13132 (Federalism)

Executive Order 13132 on AFederalism" requires us to develop an accountable process to ensure Ameaningful and timely input" by State and local officials in the development of Aregulatory policies that have federalism implications." The Executive Order defines this phrase to include regulations Athat have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the NPRM, we stated that our proposed rule, which would require that manufacturers include a plan for disposal of recalled tires in their remedy programs under either section 30118(b) or 30118(c) of the Safety Act, will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. Both the NPRM and RMA's proposal do not have those implications because both apply directly only to manufacturers who are required to file a remedy plan under sections 30118(b) or 30118(c), rather than to the States or local governments, and because they directs manufacturers to file plans that conform with applicable state and/or local requirements.

F. Civil Justice Reform

Neither the RMA proposal nor our proposed rule would have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because neither our proposed rule nor the RMA proposal would have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this rule.

II. Submission of Comments

A. How Can I Influence NHTSA's Thinking on This Notice?

Your comments will help us decide whether to adopt RMA's alternative proposal, in whole or in part. We invite you to provide different views on this proposal, new approaches we have not considered, new data, information about

how this proposal may affect you, or other relevant information. Your comments will be most effective if you follow the suggestions below. Explain your views and reasoning as clearly as possible:

- Provide solid information to support your views.
- If you estimate potential numbers or reports or costs, explain how you arrived at the estimate.
- Tell us which parts of the rule you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the rule, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

B. How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

C. How Can I be Sure that My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

D. How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel (NCC–30), NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

E. Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

F. How Can I Read the Comments Submitted by Other People and Other Materials Relevant to this Rulemaking?

You may view the materials in the docket for this rulemaking on the Internet. These materials include background information on the use of tires in landfills and written comments submitted by other interested persons. You may read them at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments and materials on the Internet. To read them on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/)*

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–2000–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the materials in the docket you selected, click on the desired comments. You may download the comments.

(5) To view the RMA comment. which responds to docket NHTSA–2001–10856, type 10856, click on "search." and click on Document Number NHTSA–2001–10856–9.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further. some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: July 22, 2002.

L. Robert Shelton,

Executive Director.

[FR Doc. 02–18996 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AI36

Injurious Wildlife Species; Snakeheads (family Channidae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to amend 50 CFR 16.13 to add snakeheads (family Channidae) to the list of injurious fish, mollusks, and crustaceans. This listing would have the effect of prohibiting the interstate transportation and importation of any live animal or viable egg of snakeheads into the United States. The best available information indicates that this action is necessary to protect the wildlife and wildlife resources from the purposeful or accidental introduction and subsequent establishment of snakehead populations in ecosystems of the United States. As proposed, live snakeheads or viable eggs could be imported only by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits would also be required for the interstate transportation of live snakeheads or viable eggs currently held in the United States, for scientific, medical, educational, or zoological purposes.

DATES: Comments must be submitted on or before August 26, 2002.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax

Drive, Suite 322, Arlington, VA 22203, FAX (703) 358–1800. You may send comments by electronic mail (e-mail) to: *Snakeheads@fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species at (703) 358–2464 or *kari_duncan@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to prevent the accidental or intentional introduction of snakeheads (family Channidae) and the possible subsequent establishment of populations of these fish in the wild. The Fish and Wildlife Service is initiating this proposed rule based upon information we have obtained that indicates that snakeheads may be injurious to the wildlife and wildlife resources of the United States.

Description of the Proposed Rule

The regulations contained in 50 CFR part 16 implement the Lacey Act (18 U.S.C. 42) as amended. Under the terms of the law, the Secretary of the Interior is authorized to prohibit by regulation certain activities involving wild mammals, wild birds, fish (including mollusks and crustaceans), amphibians, reptiles, and the offspring or eggs of any of the foregoing, that are injurious to human beings, to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. The lists of injurious wildlife species are at 50 CFR 16.11–15. If snakeheads are determined to be injurious, their importation into, or transportation between, States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited, except by permit for zoological, educational, medical, or scientific purposes (in accordance with permit regulations at 50 CFR 16.22), or by Federal agencies without a permit solely for their own use, upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. In addition, no live snakeheads, progeny thereof, or viable eggs acquired under permit could be sold, donated, traded, loaned, or transferred to any other person or institution unless such person or institution has a permit issued by the Director of the U.S. Fish and Wildlife Service. The interstate transportation of any live snakeheads or viable eggs currently held in the United States for any purposes not permitted would be prohibited.

Biology

Two genera are currently recognized in the family Channidae. They are *Channa* (snakeheads of Asia, Malaysia, and Indonesia) and *Parachanna* (African snakeheads). Synonyms include *Bostrychoides, Ophicephalus* and its misspelled form *Ophiocephalus,* and *Parophiocephalus*. Although 86 species and 4 subspecies have been described (Eschmeyer, 1998), current taxonomy is in flux with approximately 28 species recognized as valid (Musikasinthorn, 2001; Table 1). Because their morphology is very similar, it is very difficult to differentiate among species of snakeheads. Juvenile and adult color patterns are often quite different (Day, 1875; Lee and Ng, 1991, 1994), and some are quite variable in size and color, and may represent species complexes. A taxonomic revision of the family, expected to be published within the next two years, will likely result in additional species being recognized as valid and perhaps new species described.

TABLE 1.—CURRENTLY RECOGNIZED SPECIES OF THE FAMILY CHANNIDAE (AFTER MUSIKASINTHORN, 2000, 2001)

Channa amphibeus (McClelland, 1845)—no common name known
Channa argus (Cantor, 1842)—northern snakehead
Channa asiatica (Linnaeus, 1758)—Chinese snakehead
Channa aurantimaculata Musikasinthorn, 2000—no English common name; nagacheng (Assam, India)
Channa bankanensis (Bleeker, 1852)—Bangka snakehead
Channa baramensis (Steindachner, 1901)—Baram snakehead
Channa barca (Hamilton, 1822)—barca snakehead
Channa bleheri Vierke, 1991—rainbow snakehead
Channa cyanospilos (Bleeker, 1853)—bluespotted snakehead
Channa gachua (Hamilton, 1822)—dwarf snakehead
Channa harcourtbutleri (Annandale, 1918)—Inle snakehead
Channa lucius (Cuvier, 1831)—splendid snakehead
Channa maculata (Lacepède, 1802)—blotched snakehead
Channa marulius (Hamilton, 1822)—bullseye snakehead
Channa maruloides (Bleeker, 1851)—emperor snakehead
Channa melanoptera (Bleeker, 1855)—no common name known
Channa melasoma (Bleeker, 1851)—black snakehead
Channa micropeltes (Cuvier, 1831)—giant snakehead
Channa nox (Zhang, Musikasinthorn, and Watanabe, 2002)—no English common name
Channa orientalis Schneider, 1801—Ceylon snakehead
Channa panaw Musikasinthorn, 1998—no English common name; ng panaw (Myanmar)
Channa pleurophthalmus (Bleeker, 1851)—ocellated snakehead
Channa punctata (Bloch, 1793)—spotted snakehead
Channa stewartii (Playfair, 1867)—golden snakehead
Channa striata (Bloch, 1797)—chevron snakehead
Parachanna africana (Steindachner, 1879)—Niger snakehead
Parachanna insignis (Sauvage, 1884)—Congo snakehead
Parachanna obscura (Günther, 1861)—African snakehead

Snakeheads have distinctive morphological features as follows: Long, almost cylindrical body; long dorsal and anal fins, and all fins supported only by rays; large scales on head, somewhat similar to the large epidermal scales on the heads of snakes (hence the common name, snakeheads); eyes dorsolateral (back and side) and located on the anterior portion of the head; tubular, anterior nostrils; pectoral and caudal fin margins rounded; large mouth with protruding lower jaw; lower jaw always toothed, and prevomer and palatines often toothed; some lower jaw teeth canine-like, and canines present or absent on prevomer and palatines; most species with pelvic fins present; and ventral aorta typically divided into two portions, one serving the gills and the other the suprabranchial (above the gills) chambers. Suprabranchial chambers of *Channa* are non-labyrinthic (complex system of paths/tunnels), and made up of two plates, one formed by the first epibranchial (above the gills), the second from the hyomandibular; those of *Parachanna* consist of a single cavity with elements from the epibranchial of the first gill arch and hyomandibular absent.

Two larger snakehead species, *Channa marulius* and *C. maruloides,* superficially resemble the native bowfin, *Amia calva,* in that all three are elongated fishes, have long dorsal fins, tubular nostrils, and an ocellus

(eyespot) at the base of the upper portion of the caudal fin. The bowfin, however, has its pelvic fins in a more abdominal rather than thoracic or anterior-abdominal position, and the anal fin is not elongated. Moreover, the bowfin does not have a rosette (circular arrangement) of enlarged scales on top of the head.

Species and species complexes of the genus *Channa* are native from southeastern Iran and eastern Afghanistan eastward through Pakistan, India, southern Nepal, Bangladesh, Myanmar (Burma), Thailand, Laos, Malaysia, Sumatra, Indonesia, and China northward into Siberia. Of the currently recognized 25 species of *Channa*, 9 species and representatives of 4 species complexes occur in peninsular Malaysia, Sumatra, and/or Indonesia. Of the same 25 species, 16 species and members of 5 species complexes are tropical to subtropical; members of three species complexes are temperate; and one species is temperate to boreal and can live beneath ice in the northern portion of its range. The three species of *Parachanna* are native to Africa and are tropical.

Snakeheads are considered as non-ostariophysan primary freshwater fishes (Mirza, 1975, 1995), meaning they have little or no tolerance for seawater. Habitat preferences vary by species or species complex, with a majority occurring in streams and rivers. Others occur in swamps, rice paddies, ponds, and ditches. All can tolerate hypoxic (low oxygen) conditions because they are airbreathers from late juvenile stages. Where known, pH range, varies by species with one (*Channa bankanensis*) preferring highly acidic (pH 2.8–3.8) waters. At least three species are tolerant of a wide pH range; *C. gachua*, *C. punctata*, and *C. striata* survived for 72 hours at pH levels ranging from 4.25 to 9.4 (Varma, 1979).

Spawning seasons vary by species. While information on reproductive biology of many species is lacking, several conclusions can be drawn from those for which this information is available. Breeding in several species occurs primarily in summer months (June through August), and in at least two (the *Channa striata* species complex and *C. punctata*), breeding pairs can be found throughout the year. Some species spawn twice each year. Okada (1960) reported that female northern snakeheads, *C. argus*, are capable of spawning five times per year. There are several reports that when snakeheads pair, the pair remains monogamous for a spawning season, perhaps longer, but a pair may not mate for life.

Snakeheads build nests by clearing a generally circular area in aquatic vegetation, often weaving the removed vegetation around the centrally cleared area. This results in a vertical column of water surrounded by vegetation. One species (*C. punctata*) prepares elaborate tunnels through vegetation leading into the nest column. At time of spawning, the male and female move upward into the central region of the nest column. The male entwines his body around that of the female, with some species appearing to "dance" in the water column as eggs are released and fertilized (Breder and Rosen, 1966; Ng and Lim, 1990). Eggs are buoyant, rising to the surface of the nest column, where they are vigorously guarded by one or both parents. Snakeheads in two species complexes (*C. gachua* and *C. orientalis*) are mouthbrooders, with the male being the mouthbrooder of fertilized eggs and, later, fry. Most snakeheads, however, are not mouthbrooders, but one or both parents guard their young vigorously; one species (*C. micropeltes*) reportedly attacked and in some instances killed humans who approached the mass of young (Kottelat, 1993). Thus, parental care, whether by mouthbrooding or guarding, is a behavioral characteristic of snakeheads. Successful spawning in the absence of vegetation has also been reported for three species of snakeheads (Parameswaran and Murgesan (1976b).

Fecundity and Early Development

There is limited information on fecundity (capacity to produce offspring) except for those snakeheads of commercial importance. Nevertheless, that information shows a pattern that likely applies to the entire family Channidae. Smaller species, such as *Channa gachua* and *C. orientalis*, produce few oöcytes or unfertilized "eggs" (about 20 when sexual maturity is first reached and later up to 200; Lee and Ng, 1991, 1994). Both are considered to be "species complexes" and one or both "species" contain mouthbrooding adults; low fecundity is a general rule among mouthbrooding fishes (Breder and Rosen, 1966). Fecundity increases greatly in larger snakehead species and appears to follow increasing body length. For example, Quayyum and Quasim (1962) recorded fecundity ranging from 2,300—26,000 oöcytes for *C. striata*, increasing in number with increasing body length. The bullseye snakehead, *C. marulius*, the largest species of snakehead, has been reported to produce approximately 40,000 oöcytes (Jhingran, 1984). Frank (1970) reported that the northern snakehead, *C. argus*, produced approximately 50,000 oöcytes (Frank, 1970). Frank's data came from Nikol'skiy (1956) who recorded fecundity of 22,000–51,000 in northern snakehead from the Amur basin. Dukravets and Machulin (1978) gave fecundity rates of 28,600 to a high of 115,000 for northern snakehead (probably from Yangtze River stock) introduced to the Syr Dar'ya basin of Turkmenistan/Uzbekistan. They also noted that, although the growth of northern snakehead is slower than that reported for this species from the Amur basin, growth rates from both stocks become equal once sexual maturity is reached.

Oöcytes, when released from the female parent, are small, ranging from approximately 1 mm to slightly over 2 mm in diameter, depending on species. Fertilization takes place by the male releasing milt (sperm) on the oöcytes (or eggs) as they emerge from the female. Eggs contain an oil droplet within the yolk mass, which causes them to rise to the surface. Development time to hatching varies with water temperature and, to a lesser extent, with the species involved. For example, hatching occurred in 54 hours at 16–26°C and 30 hours at 28–33°C in *Channa punctata* (Khan, 1924). In the northern snakehead, *C. argus*, eggs hatch in 28 hours at 31°C, 45 hours at 25°C, and 120 hours at 18°C.

Early Life History

In general, newly hatched fry, depending on species, are about 3.0—3.5 mm in length. Following yolk absorption, snakehead fry begin feeding on zooplankton. Fry typically remain together until they reach early juvenile stage, guarded by one or both adults, or until they can fend for themselves (Lee and Ng, 1994). Late juveniles of the giant snakehead, *Channa micropeltes*, school and feed in packs (Lee and Ng, 1991). Although there are few reports of early life history except for species of commercial importance, it appears that, as larval snakeheads mature to early juvenile stages, the diet changes to small crustaceans and insects, particularly insect larvae. Presence of phytoplankton, plant material, and detritus in the digestive system of young snakeheads, as well as adults, appears to occur from incidental ingestion.

Respiration and Overland Migrations

Snakeheads are highly evolved airbreathing teleostean (bony) fishes, and many are capable of overland migration by wriggling motions (Lee and Ng, 1991; Berra, 2001). They possess suprabranchial (above the gills) chambers for aerial respiration, and the ventral aorta is divided into two

portions to permit bimodal (aquatic and aerial) respiration (Das and Saxena, 1956; Graham, 1997). The suprabranchial chambers become functional during the juvenile stage of growth (Graham, 1997), following which some species of snakeheads are obligate (limited, bound to a restricted environment) and others are facultative (optional, ability to live under varied conditions) airbreathers. In *Channa, the chambers open into the pharynx through inhalent openings.* The chamber lining contains respiratory "islets" with vascular papillae. The chambers can be filled with air or water. In addition, in *C. striata*, there are also vascular structures in the mouth and pharynx that can be utilized for respiration; these, however, can be retracted into depressions to prevent damage when feeding (Munshi and Hughes, 1992).

Some channids, perhaps all, have a circadian rhythm in oxygen uptake. *Channa marulius*, for example, showed a peak in oxygen uptake at night. *C. striata* and *C. gachua* peaked in early night hours, and *C. punctata* at dusk (Munshi and Hughes, 1992). Munshi and Hughes (1992) attributed these rhythms to evolution in swamp ecosystems (i.e., the rhythm is a property of the ecosystem).

It is unknown how many species of snakeheads are capable of overland migrations, but several are known to do so. These migrations from drying habitats in search of those with water are probably driven by instinctive behavior. Overland migrations likely apply to those species whose native range is subject to seasonal dry/wet (or monsoonal) conditions (encompassing much of western to southeastern Asia, where a majority of snakehead species exist).

Hypoxic Survival

Snakeheads are either obligate or facultative airbreathers. Therefore, survival in hypoxic waters is not problematic to these fishes. When prevented from access to the surface, adult snakeheads will drown due to lack of oxygen (Day, 1868, Lee and Ng, 1991). Moreover, snakeheads can remain out of water for considerable periods of time as long as they remain moist. Some snakeheads, especially *Channa striata*, can bury themselves in mud during times of drought (Smith, 1965). They are known to secrete mucus that helps to reduce desiccation and facilitates cutaneous breathing (Mittal and Banerji, 1975; Lee and Ng, 1991). Fishers in Thailand are aware of this habit and, during drought periods, will slice into the mud until they locate the fish (Smith, 1965).

For larger species of snakeheads such as *Channa marulius*, young are facultative airbreathers and adults are obligate breathers (Wee, 1982), but all species are airbreathers.

Life Span

No specific information on life span can be found in the literature. Nevertheless, one species (*C. marulius*) is reported to reach a total length of 1.8 meters in Maharashtra State, India (Talwar and Jhingran, 1992), indicating a relatively long life span. Smaller snakeheads, such as members of the *C. gachua* and *C. orientalis* species complexes, may not live for more than a few years. Most larger snakeheads are reported to reach sexual maturity in two years, after which growth slows but fecundity increases with increasing size.

Feeding Habits

There are few studies of feeding habits of snakeheads. For those species studied, following yolk-sac absorption, snakehead fry feed mostly on zooplankton. As juveniles, they feed on insect larvae, small crustaceans, and fry of other fishes (Munshi and Hughes, 1992). What is universal in reports of adult feeding habits is that snakeheads are predators with many species showing a preference for other fishes, although they may also consume crustaceans, frogs, smaller reptiles, and sometimes birds and small mammals. Under conditions of food deprivation, snakeheads can become cannibalistic on their own young. The piscivorous (fish-eating) nature of snakeheads has led to the use of some species (*C. striata* and *C. micropeltes* in particular) to control tilapia populations in aquaculture.

Associated Diseases and Parasites

Investigations of diseases and parasites of snakeheads concentrate on those species of importance in aquaculture. Bykhovskaya-Pavlovskaya *et al.* (1964) cited *Channa argus* as hosting 18 parasite species (Table 2). Two of the same parasites listed by Bykhovskaya-Pavlovskaya *et al.* (1964) were reported from the digestive tracts of northern snakeheads from Kyungpook Province, Korea, from 115 specimens collected between 1995 and 1997. The trematode *Azygia hwangtsinyi* was found in 47% of the samples and the nematode *Pingis sinensis* in 73%.

TABLE 2.—PARASITES OF NORTHERN SNAKEHEAD, CHANNA ARGUS

[Adapted from Bykhovskaya-Pavolovskaya et al. (1964)]

Parasite	Group	Host issues	Other fishes affected
Myxidium ophiocephali	Myxosporidia	gall bladder, liver ducts.	
Zschokkella ophiocephalli	Myxosporidia	kidney tubules.	
Neomyxobolus ophiocephalus	Myxosporidia	gill filaments.	
Mysosoma acuta	Myxosporidia	gill filaments	crucian carp.
Myxobolus cheisini	Myxosporidia	gill filaments.	
Henneguya zschokkei	Myxosporidia	gills, subcutaneous, musculature	salmonids (tubercle disease of salmonids).
Henneguya ophiocephali	Myxosporidia	gill arches, suprabranchial chambers.	
Henneguya vovki	Myxosporidia	body cavity.	
Thelohanellus catlae	Myxosporidia	kidneys.	
Gyrodactylus ophiocephali	Monogenoidea	fins.	
Polyonchobothrium ophiocephalina	Cestoidea	intestine.	
Cysticercus Gryporhynchus cheilancristrotus.	Cestoidea	gallbladder, intestine	cyprinids, perches.
Azygia hwangtsiui	Trematoda	intestines.	
Clinostomum complanatum	Trematoda	body cavity	perches.
Pingis sinensis	Nematoda	intestine.	
Paracanthocephalus curtus	Acanthocephala	intestine	cyprinids, esocids, sleepers, bagrid catfishes.
Paracanthocephalus tenuirostris	Acanthocephala	intestine.	

TABLE 2.—PARASITES OF NORTHERN SNAKEHEAD, *Channa argus*—Continued

[Adapted from Bykhovskaya-Pavolovskaya et al. (1964)

Parasite	Group	Host issues	Other fishes affected
Lamproglena chinensis	Copepoda	gills.	

Literature on parasites of snakeheads includes numerous descriptions of new species, not detailed herein, but indicates that most studies concentrate on cultured fishes such as *Channa argus, C. punctata,* and *C. striata*. The potential threat of these parasites to native North American fishes has yet to be examined.

A disease that received broad attention is epizootic ulcerative syndrome (EUS) that causes high mortality in snakeheads, particularly *Channa striata* and *C. punctata* under intensive culture. EUS involves several pathogens, including motile aeromonad bacteria (eg., *Aeromonas hydrophila, A. caviae, Pseudomonas fluorescens;* Prasad et al., 1998; Qureshi *et al.*, 1999), a fungus *Aphanomyces invadans* (considered a primary pathogen; Mohan et al., 1999; Miles *et al.*, 2001), and perhaps a rhabdovirus (Kanchanakhan et al., 1999; Lio-Po *et al.*, 2000). Another bacterium, *Aquaspirillum* sp., has also been implicated in the disease (Lio-Po *et al.*, 1998). EUS may have originated in India in the 1980s, but has since been found in Pakistan, Thailand, and the Philippines with outbreaks reported from all these areas during the 1990s. Snakeheads are not the only fishes affected by this disease. It is also known to occur in airbreathing catfish (*Clarias*), the bagrid catfish genus *Mystus*, two cyprinid genera (*Cyprinus* and *Puntius*), mastacembalid eels (*Mastacembalus*), and the nandid genus *Nandus* in India (Mukherjee, 1998). In Thailand, it has been found in giant gourami (*Osphronemus gouramy*) and climbing perch (*Anabas testudineus*) during an outbreak in 1996–1997 (Kanchanakhan et al., 1999).

History of introduction in the United States: Four species of snakeheads (*Channa argus, C. marulius, C. micropeltes,* and *C. striata*) have been recorded from open waters of the United States (California, Florida, Hawaii, Maine, Maryland, Massachusetts, and Rhode Island), and two have become established as reproducing populations. At least 13 States prohibit possession of live snakeheads (Alabama, California, Colorado, Florida, Georgia, Idaho, Kentucky, Mississippi, Nevada, Oregon, Texas, Utah, and Washington) and there has been illegal activity, confiscations, citations issued, or investigations initiated in six of those States within the past two years (Alabama, California, Florida, Kentucky, Texas, and Washington).

Florida

An established population of the bullseye snakehead, *Channa marulius*, was discovered in residential lakes and adjoining canals in Tamarac, Broward County, Florida, in 2001 (Florida Fish and Wildlife Conservation Commission, 2001). It is unknown how long this species has occupied these waters, perhaps several years, but both juveniles and adults have been collected, which indicates reproductive success. This species is the largest of snakeheads, with adults commonly reaching lengths of 120–122 cm (Talwar and Jhingran, 1992). It has been reported that in Maharashtra State, India, it can reach a length of 1.8 m and a weight of 30 kg (Talwar and Jhingran, 1992). A length of 30 cm can be reached in one year (Talwar and Jhingran, 1992). The pathway of the introduction to Florida is unknown. The species may have escaped from a fish farm (although there are none known in Tamarac), been purposefully introduced to establish a food or aquarium fish resource, or they may have been introduced by aquarists. Tamarac is located just east of Water Conservation Area II, north of Everglades National Park, and interconnected canal systems lead into this area. Nevertheless, there are water control structures on canals leading into Water Conservation Area II that would have to be open to allow this snakehead access to that area. It is likely that *C. marulius* will expand its range in peninsular Florida as its native range includes tropical to temperate climates. The bullseye snakehead is considered predacious (Jhingran, 1984; Talwar and Jhingran, 1992), especially on other fishes (Schmidt, 2001).

The northern snakehead, *Channa argus*, is also reported from Florida waters. Two individuals were caught in the St. Johns River below Lake Harney, Seminole and Volusia counties, in 2000. Unconfirmed reports indicate three additional individuals having been caught nearby. An attempt to collect additional specimens by U.S. Geological Survey personnel by electroshocking was unsuccessful, but will be repeated in 2002. Until reproduction has been confirmed, the species is considered present but not established. This species is not involved in the aquarium fish trade, but is sold in live food fish markets as a food fish. The most likely pathway is introduction of live food fish, perhaps to establish a local source. The northern snakehead is sold in live food fish markets and some restaurants in Boston and New York, where snakeheads are legal. Live *C. argus* were confiscated in Washington (100 individuals, alive on ice, destined for the international district of Seattle), a market in Houston, Texas (Howells et al., 2002), markets in Miami and Plantation, southeastern Florida, in 2001, and in Orlando, Florida, in March 2002, all indications of the availability of this species in States where possession is illegal. Moreover, a few U.S. aquarium fish retailers sell snakeheads via the Internet. USGS scientists purchased three species from a reputable dealer in Rhode Island, who first requested a copy of the State permit that allowed USGS to possess the fish in Florida. Private purchases can also be made through several Internet "chat rooms" where possession of permits is not discussed.

California

California Department of Fish and Game personnel collected a snakehead while electrofishing in a reservoir, Silverwood Lake, in 1997. Silverwood Lake is in the Mohave River drainage, east-northeast of Los Angeles and north of San Bernardino in the San Bernardino Mountains. The specimen was subsequently frozen and later discarded (Camm Swift, pers. comm.). It was identified as *Channa argus* (John Sunada, pers. comm. to W.R. Courtenay, Jr.). It is believed that the fish got in the lake from the California Aqueduct that runs from the San Joaquin River south of Stockton into Lake Silverwood, one of several reservoirs that serves Los Angeles.

Hawaii

The chevron snakehead, (*Channa striata*) has been established on Oahu, Hawaii, since the late 1800s and was introduced from southern China (Herre, 1924). For whatever reasons, it does not appear to have been introduced to other

waters of Hawaii and is confined to reservoirs on Oahu (Maciolek, 1984). In addition, the species is now being cultured as a food fish on Oahu. This species is regarded as carnivorous with a preference for other fishes (Moshin and Ambak, 1983; Conlu, 1986). Lee and Ng (1991) described it as a territorial ambush feeder. It is also used to control tilapia populations in the Philippines (Conlu, 1986).

Maryland

Two adults and eight juveniles of *Channa argus* were found in a pond in Crofton, Anne Arundel County, Maryland in late June and early July 2002. The adults are known to have over-wintered in the pond. The fish were purchased from a live food fish market in New York City, transported to Maryland, and kept in an aquarium; and two fish were released into the pond in 2000. This species appears to be the most common snakehead available in food markets and restaurants as a live food fish.

New England States

A specimen of the northern snakehead, *Channa argus*, was collected in October 2001 from Newton Pond, Sudbury, Worcester County, Massachusetts, by Massachusetts Department of Fish and Wildlife personnel. The likely source is from live food fish markets. It is capable of establishment in most fresh waters of the United States. Okada (1960) reported adults as voracious feeders, particularly on other fishes.

Specimens of the giant snakehead, *Channa micropeltes*, have been collected from open waters in Maine, Massachusetts, and Rhode Island (Courtenay et al, 1984; Fuller *et al.*, 1999). This tropical/subtropical species could not become established in those temperate waters. Juveniles of the species are cardinal red with two dark stripes on either side of the body, and sold by aquarium fish retailers as red or redline snakeheads. Aquarist-oriented web sites note that this species requires much animal food and that growth is rapid. These sites often advise that, once these fish reach approximately 15–20 cm in length, no more than one individual should be kept in a single aquarium because they are aggressive predators. The pathway into these New England States was likely aquarists who released their "pets" when they grew too large for their aquaria and/or because it was too costly to feed them. Releases of this species into subtropical waters in southern Florida or Hawaii could lead to establishment of this snakehead, regarded as the most predaceous channid and known to have attacked humans (Ng and Lim, 1990; Lee and Ng, 1991; Kottelat *et al.*, 1993).

Uses

According to U.S. Fish and Wildlife Service Law Enforcement data, 16,554 individuals or 20,527 kilograms of all species of snakeheads were imported into the United States between 1997 and 2000 at a declared value of $85,425 (records of imports report numbers of individual fish OR weight in kilograms). Importations of snakeheads into the contiguous United States do not appear to represent a significant portion of live fish imports at present. However, from the raw data, it is clear that the trend has been upward in recent years.

Snakeheads have been imported into the United States for two purposes: As aquarium fish and for use as food. In Southeast Asia, particularly in Thailand and Malaysia, and to a lesser extent in Japan, there are developing recreational fisheries for the larger snakehead species (see *http://www.fishingasia.com* as an example).

Several species of snakeheads are listed on aquarium fish websites. Some of these entries are for information purposes and a few others list fish for sale. The most popular species are, in order of importance and availability: *Channa micropeltes*, juveniles sold as red or redline snakehead; *C. marulius*, juveniles sold as cobra snakehead; *C. bleheri*, sold as rainbow snakehead; *C. barca* sold as barca or tiger snakehead; *C. gachua* sold under a variety of names; and *Parachanna africana*, juveniles sold as African snakehead. Some are cultured and others are captured from the wild. Rarely does one see listings for *C. asiatica*, *C. orientalis*, *C. pleuropthalma*, *C. punctata*, or *C. stewartii*. This is somewhat surprising because several are attractive aquarium fishes, and they can be purchased from dealers in southeast Asia via the Internet. *Channa bleheri*, *C. gachua*, and *C. orientalis* are small snakeheads, unlike *C. micropeltes* and *C. marulius* that grow quickly to large sizes. All but the smallest snakeheads are unsuitable for community tanks, and even they may kill other fishes in aquaria. Larger snakeheads require very large aquaria and must be kept alone. The number of aquarium hobbyists interested in keeping snakeheads appears to be small, and snakeheads represent a minor component in the aquarium fish industry (Marshall Myers, pers. comm. to J.D. Williams).

Conversely, use of snakeheads as food fishes is growing in the United States (Table 3). Live snakeheads of the larger species can be purchased in live food fish markets and in some restaurants in States where these fishes are not prohibited, but they are also appearing in markets in States where possession is prohibited (Howells et al., 2002). Some restaurants display live snakeheads in aquaria, a common practice where these fishes are native, allowing customers to choose a fish to be prepared for a meal. This is reminiscent of many U.S. seafood restaurants where one can select a lobster to be cooked from an aquarium.

During FY 1999, the USDA Small Business Innovation Research Program funded a Phase II project to the Hawaii Fish Company of Waialua, Hawaii, to develop commercial culture of the chevron snakehead, *Channa striata*. It is now being cultured in Hawaii as a food fish.

TABLE 3.—SPECIES OF THE FAMILY CHANNIDAE CURRENTLY KNOWN TO BE CULTURED FOR FOOD AND/OR AQUARIUM FISH TRADE

*Channa argus***
Channa maculatus
Channa marulius
*Channa micropeltes****
Channa punctata
*Channa striata**
Parachanna africana
Parachanna obscura

* Species most widely cultured for food. Also being cultured in Hawaii.

** Second most important species cultured for food.

*** Appears to be the most important species cultured for the aquarium fish trade.

Although several snakehead species may be found for sale alive in live food fish markets, the most available species is the northern snakehead, *Channa argus*. It is being sold in Boston and New York City, where snakeheads are legal. Through confiscation by State fish and game personnel in 2001, it has also been found in the live food fish trade of three States (Florida, Texas, and Washington) where possession of snakeheads is prohibited. The northern snakehead is able to tolerate a considerable temperature range, from warm temperate to boreal climates, where this species can live under ice. Additionally, its airbreathing capabilities enhance its transport and marketing. Marketing and customer preferences, however, are not synonymous. For example, persons of southeastern Asian descent prefer chevron snakehead, *C. striata*, above any other species. It is currently being cultured in much of southeastern Asia, the Philippines, and Hawaii.

Potential Range

Temperature is the most important environmental factor that would determine potential range of snakeheads in the United States. Because there are few data providing thermal tolerance ranges for snakeheads, potential range must be inferred from distribution within native ranges. The family Channidae contains nine species that are strictly tropical, and if introduced, would survive in the warmest waters such as extreme southern Florida, perhaps parts of southern California, Hawaii, and certain thermal spring systems and their outflows in the American west. Another four can be considered tropical to subtropical, indicating a similar potential range of distribution as for tropical species but with a greater likelihood of survival during cold winters and more northward limits. One is subtropical. Another 12 (4 of which appear to be species complexes) snakeheads can tolerate tropical or subtropical to warm temperate conditions, indicative of species that could survive in most southern States. One is warm temperate, and another warm temperate to cold temperate (*Channa argus* with a temperature range of 0–>30° C).

In summary, there are few waters in the United States or territories of the United States that, based on temperature, would preclude some member(s) of the family Channidae from becoming established.

Need for Proposed Rule—Environmental Consequences

Factors That Contribute to Injuriousness

The likelihood of release or escape of snakeheads is high. One species, *Channa striata*, was released and became established in waters of Oahu, Hawaii, before 1900. It was likely introduced as a food fish. A second species, *Channa marulius*, is a recent introduction to southeastern Florida (Broward County) and has also become established. The pathway for this introduction was release of either food or aquarium fish. Two specimens of *Channa argus* were caught in the St. Johns River near Sanford, Florida, and three more were alleged to have been caught at or near the same location. This species is available only through live food fish markets. The same species was captured from a pond in central Massachusetts in October 2001. The snakehead captured in Lake Silverwood, California, was also *C. argus*. Two adults and eight juveniles of *C. argus* were collected from a pond in Crofton, Maryland, in June and July 2002. Individual specimens of *Channa micropeltes* were caught in Maine, Massachusetts, and Rhode Island in past years, the source of which were most likely aquarium fish releases. Those New England States are temperate and could not support establishment of this tropical/subtropical snakehead.

Escape from culture has resulted in establishment of other nonindigenous fishes. If, however, these fish are being shipped to markets in other States, release of live food fish becomes a viable pathway for introduction of this species and they could become established from Florida to or above the U.S.-Canadian border and in many territories of the United States.

If snakeheads escaped, or were released into the wild, the likelihood that they would survive and/or become established with or without reproduction is dependent upon the species of snakehead involved and the location of the release. Waters of southern Florida, Hawaii, the Caribbean territories, and certain thermal springs in the western United States are suitable for survival and establishment of probably all tropical/subtropical to warm temperate snakehead species. That *Channa striata* has been established for over a century in Hawaii and, more recently, *C. marulius* has become established as a reproducing population in southeastern Florida is indicative of the likelihood of survival and potential for establishment of snakehead fishes. Although *C. striata* is largely confined to reservoirs on Oahu, *C. marulius* has ample opportunity to expand its range in southeastern Florida through the large network of interconnected canals and Water Conservation Areas to the west of the metropolitan areas. The native range of this species extends above 30° N.

The availability of *Channa argus* in live food fish markets raises the probability that this species will be released into open water. Moreover, its native range extends from the Yangtze basin in central China northward into the Amur basin and some of its northern tributaries. Its lower thermal limit is 0° C. That two documented specimens were captured by angling from the St. Johns River near Sanford, Florida, and another taken by electrofishing in a pond in central Massachusetts is evidence that this fish is being released.

The likelihood and magnitude of spread would be high for all species within their thermal limits. Both the northern snakehead, *Channa argus*, and, to a somewhat lesser extent, the blotched snakehead, *C. maculata*, expanded their ranges of distribution from sites of initial introduction in Japan. Since introduction of the northern snakehead into the Aral Sea basin in the 1960s, there has been a dramatic range expansion in waters of Kazakhstan, Turkmenistan, and Uzbekistan. Range expansion also occurred in the Philippines following introduction of the chevron snakehead, *C. striata*. As discussed above in the Biology section, there are few waters in the United States or territories of the United States that, based on temperature, would preclude some member(s) of the family Channidae from becoming established.

At all life stages, snakeheads will compete for food with native species. As discussed above in the Biology section, snakehead fry feed on zooplankton; juveniles feed on insect larvae, small crustaceans, and fry of other fishes; and adults are predators, feeding on other fishes, crustaceans, frogs, smaller reptiles (snakes, lizards), and sometimes birds (particularly young waterfowl) and mammals. Through predation, ecosystem balance could be modified drastically should snakeheads become established in waters with low diversity of native fishes and low abundance or absence of native predatory species.

While the potential for snakeheads to transfer pathogens to native wildlife is largely unknown, all snakehead species examined are host to at least several species of parasites. At least two snakehead species, *Channa punctata* and *C. striata*, are susceptible to epizootic ulcerative syndrome (EUS), a disease believed to be caused by several species of bacteria, a fungus, and perhaps a retrovirus, under intensive culture conditions. EUS is not specific to snakeheads and has affected other fishes, such as clariid catfishes, bagrid catfishes, two cyprinid genera, mastacembalid eels, and a nandid fish in India; in Thailand, it has been found in giant gourami and climbing perch. There have been no studies undertaken to examine transfer of parasites or diseases to native North American fishes.

Due to the highly predatory nature of snakeheads, the likelihood and magnitude of effect on threatened and endangered species is high. Of all the taxa listed as endangered or threatened in U.S. aquatic habitats, 16 amphibians, 115 fishes, and 5 of the 21 crustaceans (the surface-dwelling crayfish and shrimp) would be the most likely to be affected. Based on habitat requirements and life history, fishes are more likely to be affected by introduced snakeheads than amphibians and the surface-dwelling crustaceans. Nonetheless, the possibility of an additional nonindigenous predator in the aquatic

community with any listed amphibian or crustacean would constitute a threat.

In the western United States, habitat requirements of listed fishes range from steep-gradient, coldwater mountain streams, lower-gradient large desert rivers, to thermal (warm) springs in desert areas. Eastern fishes likewise occupy a variety of habitats, including springs, creeks, large rivers, and the Great Lakes. One or more species of snakeheads would be capable of living in any of the above habitats. Since all snakehead species prey on fish, to a greater or lesser extent, all of the fishes listed as endangered or threatened would be vulnerable to predation at some stage in their life history. The degree of threat would vary from extremely high for any species of snakeheads introduced in relatively small, isolated habitats, such as desert thermal springs and their outflows in the American southwest, to somewhat less in steep-gradient coldwater mountain streams. Based on the food habits and habitat preferences of snakeheads, it is likely to invade the habitat, feed on, and further threaten Federally listed freshwater fishes. Snakeheads are likely to also further threaten numerous other potential candidates for Federal protection.

The likelihood that one or more species may be placed in danger of extinction or become endangered within the foreseeable future as a result of introduction/establishment is high. The introduction of a small number of individuals (<5) into isolated spring habitats could result in the extinction of endemic spring-adapted fishes or crustaceans. The snakeheads would not have to establish a reproducing population to reduce or eliminate a fish or crustacean species confined to a small section of a stream or isolated spring habitat. A small number of snakeheads introduced, but not established, in a stream or lake would likely have less of an impact. However, any snakehead that becomes established in a water body would represent a significant threat and could potentially put any listed amphibian, fish, or crustacean at risk of extinction.

The likelihood and magnitude of ancillary wildlife resource damage due to control measures is high. Chemical control using rotenone or other similar toxins would likely be damaging to non-target organisms.

Only one species of snakehead, *Channa micropeltes*, a tropical/subtropical species, is reported to have attacked human beings. There have been reports of human deaths as a result. All such incidents apparently happened when humans approached a nest or group of young, and attacks were perpetrated by guarding adults. Therefore, the likelihood and magnitude of direct impacts on human beings is low.

Factors That Reduce or Remove Injuriousness

The ability and effectiveness of measures to prevent escape or establishment of snakeheads are low. As discussed above, the pathways for introduction include intentional and unintentional releases from the live food fish trade and aquarists. All but the smallest snakeheads are unsuitable for community tanks, and even they may kill other fishes in aquaria. Some outgrow their tanks, and the tendency of aquarium hobbyists has been to release fish into open waters rather than killing a pet (Courtenay and Hensley, 1980; Courtenay and Stauffer, 1991; Courtenay and Williams, 1992; Courtenay, 1993; OTA, 1993). The availability of live snakeheads increases the probability of introductions to create localized sources of live fish for live food fish markets and probably encourages some entrepreneurs to consider culturing these species within the continental United States. Additionally, the likelihood of individuals traveling relatively short distances over land or being swept into other water bodies by flooding is high.

The ability to eradicate or control snakehead populations depends on where they are found. If established in large lakes or river systems, eradication and/or control is expected to be nearly impossible, and they would likely become permanent members of the fish community. Control in smaller water bodies depends upon the amount of vegetation, the accessibility to the water body, and the effectiveness of the control methods. When a population is discovered, it is typically too late for removal unless the population is isolated. Additionally, controlling the spread of pathogens once they have been introduced in the wild is practically impossible.

There is no known method of removing all snakeheads following introduction. Piscicides work by preventing fish from removing oxygen from the water. Chemical control using rotenone and similar toxins would likely be ineffective to airbreathing snakeheads and damaging to nontarget organisms except in closed situations. Electrofishing and netting may provide some level of control of snakehead populations; however, eradication using these methods would be too selective on size classes to remove a population of snakeheads.

Since effective measures to eradicate, manage, or control the spread of snakeheads once they are established are not currently available, the ability to rehabilitate or recover ecosystems disturbed by the species is low. Significant risks associated with snakehead release relate to endangerment and extinction of native amphibians, fishes, and crustaceans. Re-establishment of extirpated populations, if biologically possible, would be labor and cost intensive and would depend on eradication of snakeheads within those habitats.

Because snakeheads are likely to escape or be released into the wild; are likely to survive or become established if they escape or are released; are likely to spread since there are no known limiting factors; are likely to compete with native species for food; may transmit parasites to native species; are likely to feed on native species, which will negatively affect native fishes, amphibians, crustaceans, birds, small reptiles, and small mammals; and because it will be difficult to prevent, eradicate, manage, or control the spread of snakeheads; and because it will be difficult to rehabilitate or recover ecosystems disturbed by the species, the Service finds snakeheads to be injurious to the wildlife and wildlife resources of the United States.

Required Determinations

Paperwork Reduction Act

Currently we have approval from OMB to collect information under OMB control number 1018–0092. This approval expires July 31, 2004. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless we display a currently valid OMB control number.

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this rule is not a significant regulatory action.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and economic analysis is not required.

The net economic effect of prohibiting the importation of snakeheads is difficult to determine because of the minimal amount of data available for a relatively new species to the import trade. There is a trade-off between damage avoided by not letting snakeheads get into U.S. water bodies

and the economic benefits received by fish markets and aquarium owners who want to own the species. Since only $85,000 worth of snakeheads were imported during the four-year period between 1997 and 2000, and the potential damage that could be done by snakeheads if they get into U.S. waters would be in the millions of dollars from the loss of native species, including threatened and endangered species, this rule will have a net positive benefit. The dollar amount of imported value is not the net economic value of this fish, but the relatively small amount of imported value compared to environmental damage avoided by prohibiting these species is convincing that this rule will not have a major negative economic effect.

(b) This rule will not create inconsistencies with other agencies. This rule pertains only to regulations promulgated by the Fish and Wildlife Service under the Lacey Act. No other agencies are involved in these regulations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients. This rule does not affect entitlement programs. This rule is aimed at regulating the importation and movement of non-indigenous species that have the potential to cause significant economic and other impacts on natural resources.

(d) This rule does not raise novel legal or policy issues. No previous listings of wildlife as injurious have raised legal or policy concerns.

Regulatory Flexibility Act and SBREFA

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more, and does not have significant adverse effects on competition, employment, investment productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

No individual small industry within the United States will be significantly affected if snakehead importation and interstate transport are prohibited. Live food fish markets, restaurants, and aquarium hobbyists are the entities most likely to be affected by this rule. The number of aquarium hobbyists interested in keeping snakeheads appears to be small, and snakeheads represent a minor component in the aquarium fish industry (Marshall Myers, pers. comm.. to J.D. Williams). With only 16,554 individual snakeheads imported over four years and most of these going to restaurants for human consumption, the number of entities engaging in selling and buying these fish is very small. There is no recreational fishery for these species. The number of entities involved in the trade of these species is not known, but it is assumed to be very small because of the small number of these fish imported. This rulemaking will have the indirect effect of protecting native fishes, amphibians, and crustaceans from the intentional or accidental introduction of snakeheads into U.S. water bodies. The snakeheads would likely devastate many native wildlife populations if introduced into a waterway. It is very unlikely that this rulemaking will affect a substantial number of small entities and those entities affected will not be significantly affected because of the very small numbers of these fish imported. This rulemaking, by protecting the environment from the spread of a nonnative species that would devastate native fishes, amphibians, and crustaceans, will indirectly work to sustain the economic benefits enjoyed by numerous small establishments engaged in the recreational fishing industry, among others.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rulemaking will not affect costs or prices for any fish species other than snakeheads. If the species are found injurious, and importation and interstate movement are banned, the maximum loss would be approximately $22,000 per year to the few entities that deal in these species.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities; will not produce a Federal mandate of $100 million or greater in any year and therefore, is not a "significant regulatory action".

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule will not impose significant requirements or limitations on private property use.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The proposed rule has been reviewed to eliminate drafting errors and ambiguity, was written to minimize litigation, provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

NEPA

We have reviewed this rule in accordance with the criteria of the National Environmental Policy Act and our Departmental Manual in 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The action is categorically excluded under the Department's NEPA procedures (516 DM 2, Appendix 1.10), which apply to policies, directives, regulations, and guidelines of an administrative, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis.

Tribal Consultation

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal

Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects. This rule involves the importation and interstate movement of live snakeheads.

Effects on Energy

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposal is intended to prevent the accidental or intentional introduction of snakeheads and the possible subsequent establishment of populations of these fish in the wild, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

This notice solicits economic, biological, or other information concerning snakeheads of the family Channidae. The information will be used to determine if this family of fishes is a threat, or potential threat, to those interests of the United States delineated above, and thus warrants addition to the list of injurious fish in 50 CFR 16.13.

Public Comments Solicited

Please send comments to Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22030. Comments may be hand delivered or faxed to (703) 358–1800. If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN 1018–AI36]" and your name and return address in your e-mail message. Please note that this email address will be closed at the termination of this public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us for to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Due to the highly predatory nature of these fishes and the inability to control them and therefore the need for rapid regulatory action, the public comment period has been limited to 30 days.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in this rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any written comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail comments to *Exsec@ios.doi.gov*.

References Cited

A complete list of all references cited in this rule is available upon request from the Division of Environmental Quality (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we propose to amend part 16, subchapter B, of Chapter I, Title 50 of the Code of Federal Regulations as set forth below.

PART 16—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 18 U.S.C. 42.

2. Amend § 16.13 by revising paragraph (a)(2) to read as follows:

§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their eggs.

(a) * * *

(2) The importation, transportation, or acquisition of any live fish or viable eggs of the walking catfish, family Clariidae; live mitten crabs, genus *Eriochei,* or their viable eggs; live mollusks, veligers, or viable eggs of zebra mussels, genus *Dreissena;* and any live fish or viable eggs of the snakehead, Family Channidae, is prohibited except as provided under the terms and conditions set forth in § 16.22.

* * * * *

Dated: July 22, 2002.

Paul Hoffman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–19016 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–55–U

Notices

Federal Register
Vol. 67, No. 144
Friday, July 26, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–997–1 NC]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension to a currently approved information collection in support of the Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Marketing Agreement No. 146. The information collection for this program expires September 30, 2002.

DATES: Comments on this notice must be received by September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–8139, Fax (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement.

OMB Number: 0581–0163.

Expiration Date of Approval: September 30, 2002.

Type of Request: Extension of a currently approved information collection.

Abstract: Public Law 101–220, enacted December 12, 1989, amended section 608b of the Agricultural Marketing Agreement of 1937 (Act), as amended (7 U.S.C. 601–674) to require that all handlers who have not signed the Peanut Marketing Agreement No. 146 (7 CFR part 998) be subject to quality, handling, and inspection requirements to the same extent and manner as are required under the Agreement. Regulations (7 CFR part 997) to implement Public Law 101–220 were issued and made effective on December 4, 1990 (55 FR 49983).

The non-signatory handling regulations ensure that peanuts intended for human consumption must meet edible quality requirements. Under the regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principle source of aflatoxin) are required to be diverted to non-edible uses. The regulations also provide that shelled peanuts meeting minimum outgoing quality requirements must be chemically analyzed for aflatoxin contamination. It is estimated that 5 percent of the domestic peanut crop is marketed by non-signatory handlers.

Peanut handlers are business entities that buy raw peanuts from farmers and process them into shelled product (kernels) that is sold to manufacturers who make peanut butter and other peanut products. Under this information collection burden, peanut handlers are respondents and recordkeepers. The forms that are needed to administer the non-signer regulations are as follows:

(1) Handlers Monthly Report of Farmers Stock—Form FV–117, requests information on each handler's shelled peanuts and how those shelled peanuts are prepared for sale to manufacturers. This report is filed monthly.

(2) Monthly Report of Dispositions of Peanuts—Form FV–117–1, requests information on each handler's acquisitions and dispositions of farmers stock peanuts. Farmers stock peanuts are raw, inshell peanuts delivered by farmers to peanut handlers. This report is also filed monthly.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.33 hours (20 minutes) per response.

Respondents: Peanut handlers who have not signed the peanut marketing Agreement.

Estimated Number of Respondents: 33.

Estimated Number of Responses per Respondent: 24.

Estimated Total Annual Burden on Respondents: 264 hrs.

Because the information collection for this program expires on September 30, 2002, AMS is requesting an extension of OMB approval for the applicable forms.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, and mechanical or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0163 and the Peanut Import Regulation, Part 999.600, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov*. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in a final request for OMB approval. All comments will become a matter of public record.

Dated: July 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18981 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–999–2 NC]

Notice of Request for an Emergency Approval and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an emergency approval and revision of a currently approved information collection for the Regulation Governing Imports of Peanuts. The information collection for this program expires July 31, 2002. The emergency request was necessary because insufficient time was available to follow normal clearance procedures.

DATES: Comments on this notice must be received by September 24, 2002.

ADDITIONAL INFORMATION OR COMMENTS: Contact Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–8139, Fax (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Regulation Governing Imports of Peanuts, 7 CFR part 999.600.

OMB Number: 0581–0176.

Expiration Date of Approval: July 31, 2002.

Type of Request: Emergency approval and revision of a currently approved information collection.

Abstract: The peanut import regulation appears at 7 CFR part 999.600. This regulation has been authorized by Section 108B(f)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445c3), as amended in 1990 and 1993, and by section 155 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7271). Section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) (the 2002 Farm Bill) also provides for regulation of imported peanuts.

The import program ensures that peanuts intended for human consumption in the United States meet edible quality requirements. Peanuts which fail quality requirements must either be reconditioned to meet quality requirements, or be disposed to non-edible outlets. Poor quality peanuts may contain Aspergillus flavus mold (which may cause aflatoxin, a natural carcinogen).

The import regulation was issued June 11, 1996 (61 FR 31306), and the first practical effective date was January 1, 1997, when the import quota for Mexican peanuts was opened for 1997. The import quota for all foreign produced peanuts totals less than 3.5 percent of domestic peanut production of approximately 3.7 billion pounds.

Under the import program, no forms are required to be completed and filed. However, copies of documents on failing lots obtained during the importation and inspection process must be filed. These documents include: Failing grade inspection certificates, failing aflatoxin certificates, re-inspection grade and aflatoxin certificates, shipping bills of lading, and sales receipts to non-edible outlets (animal feed, crushing certificates), and re-export certification.

AMS is responsible for monitoring compliance with these quality and disposition regulations and uses the documents to ensure that importers comply with the regulations.

The information collected is used only by authorized representatives of the Department of Agriculture (USDA), including AMS, Fruit and Vegetable Programs' regional and headquarter's staff.

The estimated total burden is revised from the most recently approved hours of 256. While the total responses per respondents decreased, the total burden hours increased because the number of respondents increased from 15 to 38. The estimated total burden was, therefore, revised and increased.

Estimate of Burden: Total estimated burden for this collection is 433 hours. This includes a record keeping burden of 380 hours (38 respondents × 10 hours). In addition, there is a public reporting burden for this collection of information estimated to average .07 hours or about 4 minutes per response for a total of 53 burden hours.

Respondents: Peanut importers, as well as Customs brokers and other entities filing on behalf of importers.

Estimated Number of Respondents: 38.

Estimated Number of Responses per Respondent: 19.

Estimated Total Annual Burden on Respondents: 433 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0176 and the Peanut Import Regulation, Part 999.600, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov*. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18983 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Cibola National Forest Bluewater Ecosystem Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to initiate vegetation treatments to reach desired conditions within the Bluewater Watershed in the Zuni Mountains on the Mt. Taylor

Ranger District within McKinley and Cibola counties in New Mexico.

DATES: Comments concerning the scope of the analysis must be received by August 23, 2002. The draft environmental impact statement is expected September 2002 and the final environmental impact statement is expected December 2002.

ADDRESSES: Send written comments to Planning Staff, Forest Supervisor's Office, Cibola National Forest, 2113, Osuna Rd., NE, Suite A, Albuquerque, NM 87113–1001, Attn: Planning Staff.

For further information, mail correspondence to: Forest Supervisor, Cibola National Forest Supervisor's Office, 2113 Osuna Rd., NE., Suite A, Albuquerque, NM 87113–1001, phone (505) 346–3900.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor, Cibola National Forest Supervisor's Office, 2113 Osuna Rd., NE., Suite A, Albuquerque, NM 87113–1001, phone (505) 346–3900.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need of the Proposed Action for the Bluewater Ecosystem Management Project, Mt. Taylor Ranger District, Cibola National Forest is to:

- Create conditions where wildfire intensities allow fire to resume its natural ecological role and intensity in the forest mosaic of the Bluewater area within the framework of watershed restoration.
- Create a condition where wildfire intensities in the Bluewater wildland-urban interface are at a level where fire suppression forces can safely remain on site in the face of an advancing fire.

Proposed Action

The USDA Forest Service, Cibola National Forest, Mt. Taylor Ranger District proposes to initiate vegetation treatments to reach desired conditions within the Bluewater Watershed in the Zuni Mountains. The proposed project would be implemented over a period of 5 to 7 years. All endangered, threatened and sensitive species habitat will be surveyed prior to treatment. All cultural resource surveys will be conducted prior to treatment.

No new roads would be constructed under any of the proposed treatments, existing roads will be used. Some overland access to remove material will be allowed under strict contract or permit administration. These access routes will be rehabilitated following use. The following vegetation treatments are proposed:

Piñon/Juniper Wildland Urban Interface

The Piñon/juniper WUI (Wildland Urban Interface) is found along the northern forest boundary just south and west of the Village of Bluewater.

This treatment would restore the grassland and shrub vegetation community and reduce fire hazard in selected piñon-juniper invaded areas along the WUI. Approximately 770 acres of piñon/juniper would be treated through personal use and commercial fuel wood harvest. Groups and corridors of ponderosa pine and piñon/juniper will remain scattered throughout the area. In addition, patches of trees on north and east facing slopes five acres in size and at least 300 feet wide will be retained for thermal and hiding cover for large mammals. Non-useable forest products (*i.e.* small trees and limbs) will be treated by prescribed burning.

Treatments are expected to take 3–7 years to complete.

Maintenance of Piñon/Juniper Control Units

There are three areas of piñon/juniper control units along the wildland urban interface, totaling approximately 2,475 acres, that were originally treated in 1968 or 1971 to enhance rangeland production. Under this prescription the original treatment areas would be maintained by removing most conifer tree vegetation to enhance the grassland/shrub community and reduce fuel continuity. Groups and corridors of conifer species left from the original treatment would be maintained. In addition, hiding and thermal cover may be maintained in 5-acre patches where appropriate to benefit wildlife. Trees will be removed mechanically and non-useable forest products (*i.e.* small trees and limbs) will be treated by burning. The treatment will be implemented in years 3 to 5.

Fuelbreak

The proposed action will treat approximately 12.5 miles (roughly 652 acres) of wildland urban interface along the northern boundary of the project area. These areas are primarily piñon/juniper vegetation types with some ponderosa pine. The objective is to create a 400-foot wide fuelbreak to reduce the continuity of crown fuels and lesten the probability of high intensity crown fire spreading to adjacent homes and other structures. Because natural features will be incorporated when present, fuelbreak treatments will not always be 400 feet wide. Tree density will be reduced by removing primarily smaller diameter trees. The largest diameter trees remain on site after treatment. Non-useable forest products (*i.e.* small trees and limbs) will be treated by prescribed burning. The burning of slash is normally conducted one or two seasons after treatment activities.

Upland Meadow Treatments

These treatments are designed to re-establish upland meadows to their pre-fire suppression condition based on soil type. The treatment areas were either (1) attempted to be reforested during the mid to late 1980's or (2) have been invaded by conifer species as a result of heavy historic grazing and fire suppression. Only large diameter ponderosa pine and trees adjacent to historic tree evidence (large diameter logs and stumps) will be retained.

Approximately 1,900 acres will be treated by mechanical means (hand felling, mechanical sheer). Roughly 380 acres will be treated each year for five successive years. Non-useable forest products (*i.e.* small trees and limbs) will be treated by prescribed burning.

Ponderosa Pine Uneven-Aged Management

This treatment constitutes the predominant vegetation treatment proposed for the Bluewater Ecosystem Management Project. The primary objective of this treatment in the ponderosa pine ecosystem is to create conditions where wildfire intensities allow fire to resume its natural role and intensity in the forest mosaic within the framework of watershed restoration.

Approximately 18,809 acres are proposed for vegetation treatments that will reduce the number of trees within treatment blocks. Treatment blocks will be delineated and prioritized based on stand characteristics, fire risk, access availability, and wildlife objectives.

Approximately (1,960 acres) will be managed for higher tree density to meet northern goshawk habitat standards and guidelines for nesting and post-fledging family areas as specified in the Cibola Forest Plan.

The larger trees will be left standing after treatment. Thinning from below (removing smaller diameter trees) will create a non-uniform, clumpy structure with all ages and all species (pine, juniper, oak, *etc.*) represented across the landscape. Some groups of trees with interlocking crowns will be retained. Tree groups may consist of any age-class. Large woody material (snags, logs, tree limbs) will be retained across the landscape in accordance with the Cibola Forest Plan standards and guidelines. All oak greater than 10 inches would be retained. Stand openings (1 to 4 acres in size) will be re-established or

maintained where they previously existed.

Useable wood products will be made available to the public through personal use permits or commercial sales. Non-useable forest products (*i.e.* small trees and limbs) will be treated by prescribed burning.

Possible Alternatives

Possible alternatives to the proposed action include: (1) Alternate methods of slash treatment and (2) taking no action to allow fire to resume its natural role within the ecosystem and to create conditions along the wildland urban interface, which will allow fire suppression forces to remain and defend property against wildfire. The no action alternative would also exclude the use of various methods of vegetation treatments to reach the desired conditions.

Responsible Official

The responsible official is Liz Agpaoa, Forest Supervisor, Cibola National Forest Supervisor's Office, 2113 Osuna Rd., NE., Suite A., Albuquerque, NM 87113–1001.

Nature of Decision To Be Made

The Forest Supervisor, as the Responsible Official, will:

1. Select the Proposed Action or an alternative.
2. Determine what mitigation measures will be needed to protect resources.

Scoping Process

Public participation will be important at several times during the analysis. The first time is during the scoping period [Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act (CFR) at 40 CFR 1501.7]. The Agency will be seeking written issues with the Proposed Action from Federal, State, and local agencies, any affected Indian tribes, and other individuals who may be interested in or affected by the Proposed Action. The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts to threatened and endangered species habitat if any such species are found to exist in the potential treatment areas. This input will be used to develop additional alternatives. The scoping process includes:

- Identifying potential issues;
- Selecting significant issues with the Proposed Action, needing in-depth analysis;
- Eliminating insignificant issues; issues that have been analyzed and documented in a previous EIS, issues that controvert the need for the Proposed Action, or issues that are outside the authority of the Responsible Official to decide;
- Exploration of additional alternatives based on the issues identified during the scoping process; and

Identification of potential environmental effects of the proposed action and alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions). A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **FEDERAL REGISTER.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **FEDERAL REGISTER.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 15, 2002.

Liz Agpaoa,

Forest Supervisor.

[FR Doc. 02–18900 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will hold its next meeting.

DATES: The meeting will be held on August 8, 2002, and will begin at 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Other Project Proposals/Possible Action, (5) Sunflower Coordinated Resource Presentation/Possible Action, (6) Valentine Ridge Project Proposal/ Possible Action, (7) General Discussion. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 22, 2002.

James F. Giachino,

Designated Federal Official.

[FR Doc. 02–18947 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Little Red River Water Management Project; White County, AR

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the creation of a water management plan to assist the Little Red River Regional Irrigation District in its efforts to reduce the useage of declining groundwater and to enhance fish and wildlife habitat. The project area is located in White County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Room 3416 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, Telephone (501) 301–3100.

SUPPLEMENTARY INFORMATION: The project area comprises approximately 81,000 acres of which 35,000 irrigated acres are currently used for grain production such as soybeans and rice. A large majority of the marginal cropland has been converted to non-crop uses such as grass cover and reforestation through the Natural Resources Conservation Service' Conservation Reserve Program. In addition, many acres of on-farm water storage reservoirs and tailwater recovery systems have already been installed under a previous Natural Resources Conservation watershed project. Due to potential public concern regrading the project, Kalven L. Trice, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

Alternatives presently under consideration other than the "no Action" alternative, include the diversion and delivery of water from the Little Red River near West Point, Arkansas, construction of on-farm water storage reservoirs, underground pipelines, tailwater recovery systems, and improved irrigation management. In addition, the feasibility of providing water to the Arkansas Game and Fish Commission Raft Creek Wildlife Management Area (WMA) will also be explored.

A draft environmental impact statement (DEIS) will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A public scoping meeting will be held to solicit input from the public and to determine the scope of the environmental impact statement on August 15, 2002 from 7 p.m. to 9 p.m. at the Griffithville Senior Citizen's Center located at 208 Main Street (Hwy 385) in Griffithville, Arkansas.

Submit written comments and suggestions on the proposal, or requests to be placed on the EIS mailing list, to Jim Ellis, Biologist, Natural Resources Conservation Service, Natural Resources Planning Staff, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, or e-mail to *Jim.Ellis@ar.usda.gov.*

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: July 22, 2002.

David A. Weeks,

Assistant State Conservationist, Natural Resources Planning.

[FR Doc. 02–18909 Filed 7–25–02; 8:45 am]

BILLING CODE 3210–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Arizona NRCS State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Arizona NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Arizona that changes must be made in the NRCS State Technical Guide, specifically in the Conservation Practice Standards. Specifically, Arizona will revise the NRCS National Practice Standards for use in Arizona.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: Steve Barker, Rangeland Management Specialist, Natural Resources Conservation Service, 3003 North Central Avenue, Suite 800, Phoenix, AZ 85012; Phone: 602–280–8823; Fax: 602–280–8805.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture

Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: June 28, 2002.

Michael Somerville,

State Conservationist.

[FR Doc. 02–18910 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED.

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 25, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1582 (Set of 8, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1583 (Set of 6, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1584 (Set of 4, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–00–NIB–1585 (Set of 8, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–00–NIB–1586 (Set of 6, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–00–NIB–1587 (Set of 4, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1636 (Set of 8, fine point, assorted colors).
Product/NSN: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1637 (Set of 6, fine point, assorted colors).
Product/NSN: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1638 (Set of 4, fine point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–00–NIB–1639 (Set of 8, fine point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–00–NIB–1640 (Set of 6, fine point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–01–392–5295 (Set of 4, fine point, assorted colors).
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Paper, Copy, Chlorine-free 50% PCW, 7530–00–NIB–0644 (8½″ x 11″).
Product/NSN: Paper, Copy, Chlorine-free 50% PCW, 7530–00–NIB–0645 (8½″ x 14″).
Product/NSN: Paper, Copy, Chlorine-free 50% PCW, 7530–00–NIB–0646 (8½″ x 11″ 3-hole).
Product/NSN: Paper, Copy, Chlorine-free 50% PCW, 7530–00–NIB–0647 (11″ x 17″).
NPA: Louisiana Association for the Blind, Shreveport, Louisiana.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Administrative Services, MEDCOM Health Care Acquisition Activity. Fort Sam Houston, Texas.
NPA: Goodwill Industries of San Antonio, San Antonio, Texas.
Contract Activity: MEDCOM Health Care Acquisition Activity, Fort Sam Houston, Texas.
Service Type/Location: Administrative Support Services, GSA Greater Chicagoland Service Center. Chicago, Illinois.
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois.
Contract Activity: GSA Greater Chicagoland Service Center, Chicago, Illinois.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

The following product is proposed for deletion from the Procurement List:

Product

Product/NSN: Tape, Postage Meter, 7530–00–912–3924.
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–19002 Filed 7–25–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 25, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 1, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 4944) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the service to the Government.

2. The action will result in authorizing a small entity to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Facilities Maintenance Services, U.S. Courthouse and Federal Office Building, Central Islip, New York..

NPA: The Corporate Source, Inc., New York, New York.

Contract Activity: GSA, Public Buildings Service, Brooklyn, New York.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–19003 Filed 7–25–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 020723173–2173–01]

RIN 0607–ZA05

Voting Rights Act Amendments of 1992, Determinations Under Section 203

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The notice's purpose is to publish the Bureau of the Census (Census Bureau) Director's determination as to which political subdivisions are subject to the minority language assistance provisions of Section 203 of the Voting Rights Act.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice, please contact Ms. Catherine M. McCully, Chief, Census Redistricting Data Office, Bureau of the Census, U.S. Department of Commerce, Federal Building 3, Room 3631, 301–457–4039.

For information regarding the statutory provisions, enforcement, or compliance, contact Mr. Joseph D. Rich, Chief, Voting Section-NWB, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, 1–800–253–3931 or 202–307–2767, or visit the Voting Section Internet site at <*www.usdoj.gov.crt/voting*>.

SUPPLEMENTARY INFORMATION: In August 1992, Congress amended the Voting Rights Act of 1965, Title 42, United States Code, 1973 *et seq.* (See Public Law 102–344.) Among other changes, the minority language assistance provision set forth in Section 203 of the Act was extended to August 6, 2007. Section 203 mandates that a state or political subdivision must provide language assistance to voters if more than 5 percent of the voting age citizens are members of a single-language minority group who do not "speak or understand English adequately enough to participate in the electoral process" and if the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade. When a state is covered for a particular language minority group, an exception is made for any political subdivision in which less than 5 percent of the voting age citizens are members of the minority group and are limited in English proficiency, unless the political subdivision is covered independently. A political subdivision also is covered if more than 10,000 of the voting age citizens are members of a single-language minority group, do not "speak or understand English adequately enough to participate in the electoral process," and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade.

Finally, if more than 5 percent of the American Indian or Alaska Native voting age citizens residing within an American Indian Reservation (and off-reservation trust lands) are members of a single language minority group, do not "speak or understand English adequately enough to participate in the electoral process," and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade, any political subdivision, such as a county, which contains all or any part of that Indian reservation, is covered by the minority language assistance provision set forth in Section 203. An American Indian Reservation is defined as any area that is an American Indian or Alaska Native area identified for purposes of the decennial census. For Census 2000, these areas were identified by the federally-recognized tribal governments, Bureau of Indian Affairs, and state governments. The Census Bureau worked with American Indian tribes and Alaska Natives to identify statistical areas, such as Oklahoma Tribal Statistical Areas, State-Designated American Indian Statistical Areas, and Alaska Native Village Statistical Areas.

Pursuant to Section 203, the Census Bureau Director has the responsibility to determine which states and political subdivisions are subject to the minority language assistance provisions of

Section 203. The states and political subdivisions obligated to comply with the requirements are listed in the attachment.

Section 203 also provides that "determinations of the Director of the Census under this subsection shall be effective upon publication in the **Federal Register** and shall not be subject to review in any court." Therefore, as of this date, those jurisdictions that are listed as covered by Section 203 have a legal obligation to provide the minority language assistance prescribed by Section 203 of the Act. In the cases where a state is identified as covered, those counties or county equivalents not displayed in the attachment are exempt from the obligation. Those jurisdictions subject to Section 203 of the Act previously, but not included on the list below, are no longer obligated to comply with Section 203. The previous determinations under Section 4(f)(4) of the Voting Rights Act remain in effect and are unaffected by this determination. (*See* Title 28, Code of Federal Regulations, Part 55, Appendix.)

Dated: July 22, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000

State and political subdivision	Group
Alaska:	
Aleutians West Census Area	Aleut.
Bethel Census Area	Eskimo.
Bethel Census Area	American Indian (Tribe not specified).
Bethel Census Area	American Indian (Other Tribe specified).
Denali Borough	Athabascan.
Dillingham Census Area	Eskimo.
Dillingham Census Area	American Indian (Other Tribe specified).
Dillingham Census Area	Native (Other Group specified).
Kenai Peninsula Borough	American Indian (Tribe not specified).
Kenai Peninsula Borough	Aleut.
Kodiak Island Borough	Filipino.
Lake and Peninsula Borough	Athabascan.
Lake and Peninsula Borough	Aleut.
Lake and Peninsula Borough	Eskimo.
Nome Census Area	Eskimo.
North Slope Borough	American Indian (Tribe not specified).
North Slope Borough	Eskimo.
Northwest Arctic Borough	Eskimo.
Northwest Arctic Borough	Alaska Native (Other Group specified).
Southeast Fairbanks Census Area	Athabascan.
Southeast Fairbanks Census Area	Native (Other Group specified).
Valdez-Cordova Census Area	Athabascan.
Wade Hampton Census Area	Eskimo.
Wade Hampton Census Area	American Indian (Chickasaw).
Wade Hampton Census Area	American Indian (Tribe not specified).
Yukon-Koyukuk Census Area	Athabascan.
Yukon-Koyukuk Census Area	Eskimo.
Yukon-Koyukuk Census Area	American Indian (Other Tribe specified).
Arizona:	
Apache County	American Indian (Apache).
Apache County	American Indian (Navajo).
Apache County	American Indian (Pueblo).
Cochise County	Hispanic.
Coconino County	American Indian (Navajo).
Coconino County	American Indian (Pueblo).
Gila County	American Indian (Apache).
Graham County	American Indian (Apache).
Greenlee County	Hispanic.
Maricopa County	Hispanic.
Maricopa County	American Indian (Tohono O'Odham).
Navajo County	American Indian (Apache).
Navajo County	American Indian (Navajo).
Navajo County	American Indian (Pueblo).
Pima County	Hispanic.
Pima County	American Indian (Tohono O'Odham).
Pima County	American Indian (Yaqui).
Pinal County	American Indian (Apache).
Pinal County	American Indian (Tohono O'Odham).
Santa Cruz County	Hispanic.
Yuma County	Hispanic.
Yuma County	American Indian (Yuman).
California:	
State Coverage	Hispanic.
Alameda County	Hispanic.
Alameda County	Chinese.
Colusa County	Hispanic.
Contra Costa County	Hispanic.
Fresno County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Imperial County	Hispanic.
Imperial County	American Indian (Central or South American).
Imperial County	American Indian (Yuman).
Kern County	Hispanic.
Kings County	Hispanic.
Los Angeles County	Hispanic.
Los Angeles County	Chinese.
Los Angeles County	Filipino.
Los Angeles County	Japanese.
Los Angeles County	Korean.
Los Angeles County	Vietnamese.
Madera County	Hispanic.
Merced County	Hispanic.
Monterey County	Hispanic.
Orange County	Hispanic.
Orange County	Chinese.
Orange County	Korean.
Orange County	Vietnamese.
Riverside County	Hispanic.
Riverside County	American Indian (Central or South American).
Sacramento County	Hispanic.
San Benito County	Hispanic.
San Bernardino County	Hispanic.
San Diego County	Hispanic.
San Diego County	Filipino.
San Francisco County	Hispanic.
San Francisco County	Chinese.
San Joaquin County	Hispanic.
San Mateo County	Hispanic.
San Mateo County	Chinese.
Santa Barbara County	Hispanic.
Santa Clara County	Hispanic.
Santa Clara County	Chinese.
Santa Clara County	Filipino.
Santa Clara County	Vietnamese.
Stanislaus County	Hispanic.
Tulare County	Hispanic.
Ventura County	Hispanic.
Colorado:	
Alamosa County	Hispanic.
Conejos County	Hispanic.
Costilla County	Hispanic.
Crowley County	Hispanic.
Denver County	Hispanic.
La Plata County	American Indian (Navajo).
La Plata County	American Indian (Ute).
Montezuma County	American Indian (Navajo).
Montezuma County	American Indian (Ute).
Otero County	Hispanic.
Rio Grande County	Hispanic.
Saguache County	Hispanic.
Connecticut:	
Bridgeport town (Fairfield County)	Hispanic.
Hartford town (Hartford County)	Hispanic.
Meriden town (New Haven County)	Hispanic.
New Britain town (Hartford County)	Hispanic.
New Haven town (New Haven County)	Hispanic.
Waterbury town (New Haven County)	Hispanic.
Windham town (Windham County)	Hispanic.
Florida:	
Broward County	Hispanic.
Broward County	American Indian (Seminole).
Collier County	American Indian (Seminole).
Glades County	American Indian (Seminole).
Hardee County	Hispanic.
Hendry County	Hispanic.
Hillsborough County	Hispanic.
Miami-Dade County	Hispanic.
Orange County	Hispanic.
Osceola County	Hispanic.
Palm Beach County	Hispanic.
Hawaii:	
Honolulu County	Chinese.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Honolulu County	Filipino.
Honolulu County	Japanese.
Maui County	Filipino.
Idaho:	
Bannock County	American Indian (Other Tribe specified).
Bingham County	American Indian (Other Tribe specified).
Caribou County	American Indian (Other Tribe specified).
Owyhee County	American Indian (Other Tribe specified).
Power County	American Indian (Other Tribe specified).
Illinois:	
Cook County	Hispanic.
Cook County	Chinese.
Kane County	Hispanic.
Kansas:	
Finney County	Hispanic.
Ford County	Hispanic.
Grant County	Hispanic.
Haskell County	Hispanic.
Kearny County	Hispanic.
Seward County	Hispanic.
Louisiana: Allen Parish	American Indian (Other Tribe specified).
Maryland: Montgomery County	Hispanic.
Massachusetts:	
Boston city (Suffolk County)	Hispanic.
Chelsea city (Suffolk County)	Hispanic.
Holyoke city (Hampden County)	Hispanic.
Lawrence city (Essex County)	Hispanic.
Southbridge town (Worcester County)	Hispanic.
Springfield city (Hampden County)	Hispanic.
Michigan: Clyde township (Allegan County)	Hispanic.
Mississippi:	
Attala County	American Indian (Choctaw).
Jackson County	American Indian (Choctaw).
Jones County	American Indian (Choctaw).
Kemper County	American Indian (Choctaw).
Leake County	American Indian (Choctaw).
Neshoba County	American Indian (Choctaw).
Newton County	American Indian (Choctaw).
Scott County	American Indian (Choctaw).
Winston County	American Indian (Choctaw).
Montana:	
Big Horn County	American Indian (Cheyenne).
Rosebud County	American Indian (Cheyenne).
Nebraska:	
Colfax County	Hispanic.
Sheridan County	American Indian (Sioux).
Nevada:	
Clark County	Hispanic.
Elko County	American Indian (Other Tribe specified).
Elko County	American Indian (Shoshone).
Humboldt County	American Indian (Other Tribe specified).
Lyon County	American Indian (Paiute).
Nye County	American Indian (Shoshone).
White Pine County	American Indian (Shoshone).
New Jersey:	
Bergen County	Hispanic.
Cumberland County	Hispanic.
Essex County	Hispanic.
Hudson County	Hispanic.
Middlesex County	Hispanic.
Passaic County	Hispanic.
Union County	Hispanic.
New Mexico:	
State Coverage	Hispanic.
Bernalillo County	Hispanic.
Bernalillo County	American Indian (Navajo).
Bernalillo County	American Indian (Pueblo).
Catron County	American Indian (Pueblo).
Chaves County	Hispanic.
Cibola County	American Indian (Navajo).
Cibola County	American Indian (Pueblo).
De Baca County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Dona Ana County	Hispanic.
Eddy County	Hispanic.
Grant County	Hispanic.
Guadalupe County	Hispanic.
Harding County	Hispanic.
Hidalgo County	Hispanic.
Lea County	Hispanic.
Luna County	Hispanic.
McKinley County	American Indian (Navajo).
McKinley County	American Indian (Pueblo).
Mora County	Hispanic.
Rio Arriba County	Hispanic.
Rio Arriba County	American Indian (Navajo).
Roosevelt County	Hispanic.
San Juan County	American Indian (Navajo).
San Juan County	American Indian (Ute).
San Miguel County	Hispanic.
Sandoval County	American Indian (Navajo).
Sandoval County	American Indian (Pueblo).
Santa Fe County	Hispanic.
Santa Fe County	American Indian (Pueblo).
Socorro County	Hispanic.
Socorro County	American Indian (Navajo).
Socorro County	American Indian (Pueblo).
Taos County	Hispanic.
Taos County	American Indian (Pueblo).
Torrance County	Hispanic.
Union County	Hispanic.
Valencia County	Hispanic.
Valencia County	American Indian (Pueblo).
New York:	
Bronx County	Hispanic.
Kings County	Hispanic.
Kings County	Chinese.
Nassau County	Hispanic.
New York County	Hispanic.
New York County	Chinese.
Queens County	Hispanic.
Queens County	Chinese.
Queens County	Korean.
Suffolk County	Hispanic.
Westchester County	Hispanic.
North Dakota:	
Richland County	American Indian (Sioux).
Sargent County	American Indian (Sioux).
Oklahoma:	
Harmon County	Hispanic.
Texas County	Hispanic.
Oregon: Malheur County	American Indian (Other Tribe specified).
Pennsylvania: Philadelphia County	Hispanic.
Rhode Island:	
Central Falls city (Providence County)	Hispanic.
Providence city (Providence County)	Hispanic.
South Dakota:	
Bennett County	American Indian (Sioux).
Codington County	American Indian (Sioux).
Day County	American Indian (Sioux).
Dewey County	American Indian (Sioux).
Grant County	American Indian (Sioux).
Gregory County	American Indian (Sioux).
Haakon County	American Indian (Sioux).
Jackson County	American Indian (Sioux).
Lyman County	American Indian (Sioux).
Marshall County	American Indian (Sioux).
Meade County	American Indian (Sioux).
Meade County	American Indian (Cheyenne).
Mellette County	American Indian (Sioux).
Roberts County	American Indian (Sioux).
Shannon County	American Indian (Sioux).
Stanley County	American Indian (Sioux).
Todd County	American Indian (Sioux).
Tripp County	American Indian (Sioux).

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Ziebach County	American Indian (Sioux).
Texas:	
State Coverage	Hispanic.
Andrews County	Hispanic.
Atascosa County	Hispanic.
Bailey County	Hispanic.
Bee County	Hispanic.
Bexar County	Hispanic.
Borden County	Hispanic.
Brewster County	Hispanic.
Brooks County	Hispanic.
Caldwell County	Hispanic.
Calhoun County	Hispanic.
Cameron County	Hispanic.
Castro County	Hispanic.
Cochran County	Hispanic.
Concho County	Hispanic.
Crane County	Hispanic.
Crockett County	Hispanic.
Crosby County	Hispanic.
Culberson County	Hispanic.
Dallas County	Hispanic.
Dawson County	Hispanic.
Deaf Smith County	Hispanic.
DeWitt County	Hispanic.
Dimmit County	Hispanic.
Duval County	Hispanic.
Ector County	Hispanic.
Edwards County	Hispanic.
El Paso County	Hispanic.
El Paso County	American Indian (Pueblo).
Fisher County	Hispanic.
Floyd County	Hispanic.
Frio County	Hispanic.
Gaines County	Hispanic.
Garza County	Hispanic.
Glasscock County	Hispanic.
Goliad County	Hispanic.
Gonzales County	Hispanic.
Guadalupe County	Hispanic.
Hale County	Hispanic.
Hall County	Hispanic.
Hansford County	Hispanic.
Harris County	Hispanic.
Harris County	Vietnamese.
Hidalgo County	Hispanic.
Hockley County	Hispanic.
Howard County	Hispanic.
Hudspeth County	Hispanic.
Irion County	Hispanic.
Jeff Davis County	Hispanic.
Jim Hogg County	Hispanic.
Jim Wells County	Hispanic.
Karnes County	Hispanic.
Kenedy County	Hispanic.
Kinney County	Hispanic.
Kleberg County	Hispanic.
Knox County	Hispanic.
Lamb County	Hispanic.
La Salle County	Hispanic.
Live Oak County	Hispanic.
Loving County	Hispanic.
Lubbock County	Hispanic.
Lynn County	Hispanic.
Madison County	Hispanic.
Martin County	Hispanic.
Matagorda County	Hispanic.
Maverick County	Hispanic.
Maverick County	American Indian (Other Tribe specified).
McMullen County	Hispanic.
Medina County	Hispanic.
Menard County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Midland County	Hispanic.
Mitchell County	Hispanic.
Moore County	Hispanic.
Nolan County	Hispanic.
Nueces County	Hispanic.
Parmer County	Hispanic.
Pecos County	Hispanic.
Presidio County	Hispanic.
Reagan County	Hispanic.
Reeves County	Hispanic.
Refugio County	Hispanic.
Runnels County	Hispanic.
San Patricio County	Hispanic.
Schleicher County	Hispanic.
Scurry County	Hispanic.
Starr County	Hispanic.
Sterling County	Hispanic.
Sutton County	Hispanic.
Swisher County	Hispanic.
Tarrant County	Hispanic.
Terrell County	Hispanic.
Terry County	Hispanic.
Titus County	Hispanic.
Tom Green County	Hispanic.
Travis County	Hispanic.
Upton County	Hispanic.
Uvalde County	Hispanic.
Val Verde County	Hispanic.
Victoria County	Hispanic.
Ward County	Hispanic.
Webb County	Hispanic.
Wharton County	Hispanic.
Willacy County	Hispanic.
Wilson County	Hispanic.
Winkler County	Hispanic.
Yoakum County	Hispanic.
Zapata County	Hispanic.
Zavala County	Hispanic.
Utah:	
San Juan County	American Indian (Navajo).
San Juan County	American Indian (Ute).
Washington:	
Adams County	Hispanic.
Franklin County	Hispanic.
King County	Chinese.
Yakima County	Hispanic.

[FR Doc. 02–19033 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1232]

Grant of Authority; Establishment of a Foreign-Trade Zone; Washington County, MD

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board of County Commissioners of Washington County, Maryland (the Grantee), has made application to the Board (FTZ Docket 36–2001, filed 8/31/01), requesting the establishment of a foreign-trade zone at sites in Washington County, Maryland, adjacent to the Baltimore Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (66 FR 46772, 9/7/01); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 255, at the sites described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 3rd day of July 2002.

Foreign-Trade Zones Board.

Donald L. Evans,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 02–19014 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on August 13, 2002, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Industry and Security on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the public,
3. Report on BIS licensing initiatives regarding uncooled thermal imaging.
4. Perspective of European importers on U.S. export regulations and practices.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address:

Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 29, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: July 23, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–19005 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–874]

Certain Ball Bearings and Parts Thereof from the People's Republic of China: Notice of Extension of Preliminary Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Preliminary Antidumping Duty Determination.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Cindy Lai Robinson at (202) 482–3965 and (202) 482–3797, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

Postponement of Preliminary Determination

The Department of Commerce (the Department) is postponing the deadline for issuance of the preliminary determination in the antidumping duty investigation of certain ball bearings and parts thereof from the People's Republic of China until October 1, 2002.

On March 25, 2002, the Department initiated the above-referenced investigation. *See Notice of Initiation of Antidumping Duty Investigation: Certain Ball Bearings and Parts Thereof from the People's Republic of China*, 67 FR 15787 (April 3, 2002). Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), states that the Department of Commerce (the Department) will issue the preliminary determination of an antidumping duty investigation within 140 days after the date of initiation. Therefore, the notice of initiation stated that the Department would issue its preliminary determination no later than August 12, 2002.

On July 16, 2002, the American Bearing Manufacturers Association (petitioner) made a request pursuant to 19 CFR 351.205(e) for a 50–day postponement of the preliminary determination, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended, (the Act). Petitioner's request for postponement was timely, and the Department finds no compelling reason to deny the request. See memorandum from Melissa Skinner to Bernard T. Carreau, (July 22, 2002), which is on file in the Central Records Unit, room B–099 of the main Commerce building. Therefore, in accordance with section 733(c)(1) of the Act, the Department is postponing the deadline for issuing the preliminary determination until October 1, 2002. The Department will issue the final determination in this investigation no later than 75 days after the signature date of the preliminary determination.

This notice of postponement is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: July 22, 2002.

Bernard T. Carreau,

Acting Assistant Secretary Import Administration.

[FR Doc. 02–19010 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: On May 20, 2002, the Department of Commerce (the Department) published the notice of initiation and preliminary results of its changed circumstances review examining whether ThyssenKrupp Mexinox S.A. de C.V. is the successor-in-interest to Mexinox S.A. de C.V. by virtue of its corporate name change. *See*

Stainless Steel Sheet and Strip in Coils from Mexico: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 67 FR 35476 (May 20, 2002) (Initiation and Preliminary Results). We have now completed this changed circumstances review in accordance with 19 CFR 351.216 and 351.221(c)(3).

As a result of this review, the Department determines that ThyssenKrupp Mexinox S.A. de C.V. is the successor-in-interest to Mexinox S.A. de C.V., and that ThyssenKrupp Mexinox S.A. de C.V. should retain the deposit rate assigned to Mexinox S.A. de C.V. by the Department for all entries of the subject merchandise produced or exported by ThyssenKrupp Mexinox S.A. de C.V.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2002).

Background

On May 20, 2002, the Department published the notice of initiation and preliminary results of this changed circumstances review. *See Initiation and Preliminary Results*. We gave interested parties 21 days to comment on this initiation and preliminary results. However, no interested parties provided comments, and no request for a hearing was received by the Department.

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[5]

Successorship and Final Results of Review

On the basis of the record developed in this changed circumstances review, we determine that ThyssenKrupp Mexinox S.A. de C.V. is the successor-in-interest to Mexinox, S.A. de C.V. for purposes of determining antidumping duty liability. In order to make this determination, we examined the management, organizational structure, ownership, production facilities, supplier relationships, and customer base of ThyssenKrupp Mexinox S.A. de C.V. and Mexinox S.A. de C.V. Since record evidence shows that ThyssenKrupp Mexinox S.A. de C.V. has maintained the same management, organizational structure, ownership, production facilities, supplier relationships, and customer base as Mexinox S.A. de C.V., we determine that ThyssenKrupp Mexinox S.A. de C.V. is the successor company to Mexinox S.A. de C.V. For a more thorough discussion of the basis for this decision, *see Initiation and Preliminary Results* (67 FR 35476). Therefore, ThyssenKrupp Mexinox S.A. de C.V. shall retain the antidumping duty deposit rate assigned to Mexinox, S.A. de C.V. by the Department in the most recent administrative review of the subject merchandise.

This notice also serves as a final reminder to parties subject to adminstrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 (a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

We are issuing and publishing this finding and notice in accordance with sections 751(b) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(c)(3) and 19 CFR 351.216.

Dated: July 19, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19011 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

Vanderbilt University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–020. *Applicant:* Vanderbilt University, Nashville, TN 37232. *Instrument:* Electron Microscope, Model Tecnai G2 F30 TWIN Helium. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 44424, July 2, 2002. *Order Date:* December 12, 2001.

Docket Number: 02–022 *Applicant:* National Institutes of Health, Bethesda, MD 20892–5766. *Instrument:* Electron Microscope, Model Tecnai TF30T. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at

67 FR 44424, July 2, 2002. *Order Date:* March 20, 2002.

Docket Number: 02–023. *Applicant:* University of California, Los Alamos National Laboratory, Los Alamos, NM 87545. *Instrument:* Electron Microscope, Model Tecnai G2 F30 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 44425, July 2, 2002. *Order Date:* December 14, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–19012 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–031. *Applicant:* University of Colorado, JILA, UCB 440, JILA Building, Room S/175, Boulder, CO 80309.

Instrument: Nd:YAG Solid-state Laser. *Manufacturer:* InnoLight GmbH, Germany. *Intended Use:* The instrument is intended to be used for the purpose of Optical Frequency Standard and to investigate the frequency noise, amplitude noise, tunability thermal stability, and optical power of the laser. A high resolution iodine cell based spectrometer will be set up to explore sub-Doppler iodine spectra near 532 nm. The Nd:YAG laser frequency will be doubled and the information of the iodine signal will be used to control the laser frequency. Application accepted by Commissioner of Customs: July 11, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–19013 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071902D]

Marine Mammals; Permit No. 473–1433–02, Permit No. 662–1345–01, and Permit No. 545–1488–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications to amend permits.

SUMMARY: Notice is hereby given that Janice Straley, Assistant Professor of Marine Biology, University of Southeast Alaska, 1332 Seward Avenue, Sitka, Alaska 99835–9498; Dena Matkin, P.O. Box 22, Gustavus, Alaska 99826; and The North Gulf Oceanic Society, SPWS Bldg., 3776 Lake Avenue, Suite 204, Homer, AK 99603 (Principal Investigator: Craig O. Matkin) have requested to take the following species of marine mammals for scientific research purposes: Steller sea lions (*Eumetopias jubatus*), humpback whales (*Megaptera novaeangliae*, minke whales (*Balaenoptera acutorostrata*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoinoides dalli*), harbor seals (*Phoca vitulina*), gray whales (*Eschrichtius robustus*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) and Northern fur seals (*Callorhinus ursinus*).

The permit holders are each requesting identical annual takes for the above species to collect dead parts and incidentally harass during killer whale predation studies.

DATES: Written or telefaxed comments on the new applications, amendment requests or Environmental Assessment must be received on or before August 26, 2002.

ADDRESSES: The applications, amendment requests and related documents, and the Environmental Assessment are available for review upon written request, by downloading from the internet, or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910, (301) 713–2289, or the Division's web page at *www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_review.html; and*

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits and amendments are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Applications to Amend Permits

Permit No. 473–1433–02, originally issued to Jan Straley December 12, 1997 (62 FR 67052) and amended on October 7, 1999 and February 16, 2001 (66 FR 11274), authorizes the annual take of humpback whales, killer whales, minke whales, gray whales, and fin whales (*B. physalus*) by photo-identification. Additionally, the permit authorizes the take of sperm whales (*Physeter catodon*) by photo-identification and suction cup tagging. The objective of the research is to develop long-term sighting histories of individual whales to assess stock structure, life history parameters, feeding behaviors, social behaviors of feeding populations, and population estimates.

Permit No. 662–1345–01, originally issued to Dena Matkin on May 30, 1997 (62 FR 13368) and amended on June 21, 2002 (67 FR 43283), authorizes the annual take of killer whales and humpback whales by photo-identification. The purpose of the research is to continue long-term, year-

round photo-identification work in Southern Alaska to define the population size, structure and range of killer whales, and to obtain identification of photographs of humpback whales opportunistically in conjunction with the killer whale research.

Permit No. 545–1488–00, originally issued to the North Gulf Society (Principal Investigator: Craig Matkin) on April 30, 1999 (64 FR 24592), authorizes the annual take of killer whales by photo-identification, biopsy sampling and incidental harassment. The purposes of the authorized research is to study killer whale population analyses, describe mating systems and social structures in well-known resident pods and analyze blubber samples for contaminants and genetic studies.

NOAA environmental review procedures provide that scientific research permits are generally categorically excluded from the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) requirements to prepare an environmental assessment (EA) or environmental impact statement (EIS). However, because of the magnitude and intensity of proposed research on Steller sea lions, which is largely related to the recent funding opportunities (see 66 CFR 15842), and the intense public interest in this species, NMFS prepared an EA to consider the scope of Steller sea lion research activities. NMFS has determined that the current applicants' proposed research activities are consistent with those activities previously considered in the EA which resulted in a finding of no significant impact. The EA has been made available on the Permits, Conservation and Education Division website listed previously.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 19, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19001 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

July 19, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59582, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 19, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002.

Effective on July 26, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
341/641	233,370 dozen.
347/348	786,998 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–18905 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

July 19, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://www.otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 620 is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63036, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 19, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 30, 2002, you are directed to reduce the current limit for Category 620 in Group I to 9,618,434 square meters [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–18904 Filed 7–25–02; 8:45 a.m.

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

July 19, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://www.otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63038, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 19, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 26, 2002, you are directed to reduce the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
338/339	925,479 dozen of which not more than 583,961 dozen shall be in Categories 338–S/339–S [2].
347/348	650,700 dozen of which not more than 373,749 dozen shall be in Categories 347–T/348–T [3].
351/651	271,519 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–18903 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage of Import Limits and Visa and Certification Requirements for Certain Part-Categories Produced or Manufactured in Malaysia

July 22, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION:
COMMISSIONER OF CUSTOMS AMENDING COVERAGE FOR IMPORT LIMITS AND VISA AND CERTIFICATION REQUIREMENTS.

EFFECTIVE DATE: August 1, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Daly, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Harmonized Tariff Schedule of the United States (HTS) has been amended, and certain HTS classification numbers are being changed for products in part-Categories 438–W and 438–O. The Uruguay Round Agreement on Textiles and Clothing and the U.S.-Malaysia export visa arrangement both utilize the HTS and include such goods within their scope. To facilitate implementation of these agreements, CITA is directing the Commissioner of Customs to amend monitoring and import control directives and visa and certification requirement directives for Malaysia to account for this change, amending part-Categories 438–W and 438–O.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend monitoring, import control, and visa and certification requirements with respect to part-Categories 438–W and 438–O.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 22, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the monitoring and import control directives, and all visa and certification requirement directives for Malaysia, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include wool textile products in part-Categories 438–W and 438–O produced or manufactured in Malaysia and imported into the United States on and after, regardless of the date of export.

Effective on August 1, 2002, you are directed to make the changes shown below in the aforementioned directives for products entered in the United States for consumption or withdrawn from warehouse for consumption on and after August 1, 2002 for part-Categories 438–W and 438–O, regardless of the date of export:

Category	HTS change
438–W	Delete 6110.10.2080
.....	Replace with 6110.11.0080, 6110.12.2080, 6110.19.0080
438–O	Delete 6110.10.2070
.....	Replace with 6110.11.0070, 6110.12.2070, 6110.19.0070

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
James C. Leonard III
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–18906 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 2, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–19046 Filed 7–24–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 9, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–19047 Filed 7–24–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 16, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–19048 Filed 7–24–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 23, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–19049 Filed 7–24–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 30, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–19050 Filed 7–24–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received September 24, 2002.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TRICARE Management Activity, Office of General Counsel, 16401 E. Centretech Parkway, Attn: James Douglas, Aurora, CO 80011.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call TRICARE Management Activity, Office of General Counsel at (303) 676–3705.

Title Associated with Form, and OMB Number: Statement of Personal Injury—Possible Third Party Liability Champus, DD Form 2527, OMB Number 0720–0003.

Needs and Uses: This information collection is completed by CHAMPUS beneficiaries suffering from personal injuries and receiving medical care at Government expense. The information is necessary in the assertion of the Government's right to recovery under the Federal Medical Care Recovery Act. The data is used in the evaluation and processing of these claims.

Affected Public: Individuals or household, Federal government.

Annual Burden Hours: 87,500.

Number of Respondents: 350,000.

Responses per Respondent: 1.

Average Burden per Response: 35 minutes.

Frequency: On occasion, only when a beneficiary is insured under circumstances creating possible liability in a third party.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Federal Medical Care Recovery Act, 42 U.S.C. 25/651–2653 as implemented by Executive Order No. 11060 and 28 CFR part 43 provides for recovery of the reasonable value of medical care provided by the United States to a person who is injured or suffers a disease under circumstances creating tort liability in some third person. DD Form 2527 is required for investigating and asserting claims in favor of the United States arising out of such incidents.

When a claim for CHAMPUS benefits is identified as involving possible third party liability and the information is not submitted with the claim, the TRICARE/CHAMPUS contractor requests that the injured party (or a designee) complete DD Form 2527. To protect the interests of the Government, the contractor suspends claims processing until the requested third party liability information is received. The contractor conducts a preliminary evaluation based upon the collection of information and refers the case to a designated appropriate legal officer of the Uniformed Services. The responsible Uniformed Services legal officer uses the information as a basis for asserting and settling the Government's claim. When appropriate, the information is forwarded to the Department of Justice as the basis for litigation.

Section 1 of the Form is used to collect general information, such as name, address and telephone numbers about the military sponsor and the injured beneficiary.

Section 2 of the Form allows the injured beneficiary to explain in his or her own words how the injury occurred. This allows the beneficiary to explain that he or she was not injured in an accident or that no third party was responsible. If either of these conditions exist, the beneficiary does not have to complete the rest of the form.

Section 3 of the Form is used to collect information about accidents that do not involve motor vehicles. Information such as location, time, date, property owner's name and address and the names of persons involved or witnesses is collected in this section of the form. Other information relating to police investigations, other injured family members, whether the accident was work related and insurance coverage is also collected.

Section 4 of the Form is used to collect information about motor vehicle accidents. Most of the investigations for possible third party liability involve motor vehicle accidents. A beneficiary must attach a copy of the official police report to the form. Additional information not usually included in police reports is entered in Section 4, including information about insurance coverage of the parties, and whether the accident was work related is collected.

Section 5 of the Form is used for miscellaneous information such as possible medical treatment in a Government hospital, the name and address of the beneficiary's attorney, and information regarding any possible releases or settlements with another party to the accident.

Section 6 of the Form contains the certification, date and signature of the beneficiary (or a designee).

Dated: July 22, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–18901 Filed 7–25–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0083]

Federal Acquisition Regulation; Submission for OMB Review; Qualification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning qualification requirements. A request for public comments was published in the **Federal Register** at 67 FR 20745, on April 26, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology;

ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0083, Qualification Requirements in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified. The solicitation at FAR 52.209–1, Qualification Requirements, requires offerors who have met the qualification requirements to identify the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known).

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known). Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

B. Annual Reporting Burden

Respondents: 2,207.
Responses Per Respondent: 100.
Annual Responses: 220,700.
Hours Per Response: .25.
Total Burden Hours: 55,175.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0083, Qualification Requirements, in all correspondence.

Dated: July 22, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–19007 Filed 7–25–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2002 study on the Threat of Asymmetric Attack. The purpose of the meeting is to allow the SAB and study leadership to brief the Secretary of the Air Force on the results of their study. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: August 13, 2002.

ADDRESSES: Room 4E869, Pentagon, Washington, DC 20330.

FOR FURTHER INFORMATION CONTACT: Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–18925 Filed 7–25–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 26, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 22, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.
Title: Federal Family Education Loan (FFEL) Deferment Requests.
Frequency: Annually.
Affected Public: Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 1,148,819.
Burden Hours: 183,811.

Abstract: These forms will serve as the means of collecting information necessary to determine whether a FFEL borrower qualifies for a specific type of loan deferment.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 1985. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address

vivan.reese@ed.gov. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–18930 Filed 7–25–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–271]

Application To Export Electric Energy; Wolverine Power Supply Cooperative, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Wolverine Power Supply Cooperative, Inc. (Wolverine) has applied to export electric energy from the United States to Canada for a period of five years, pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 26, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 28, 2002, Wolverine applied to the Department of Energy (DOE) for authority to export electric energy from the United States to Canada. Wolverine is a Michigan generation and transmission electric cooperative providing wholesale service to its five member cooperatives: Cherryland Electric Cooperative, Great Lakes Energy Cooperative, Presque Isle Electric & Gas Co-op, Homeworks Tri-County Electric Cooperative and Wolverine Power Marketing Cooperative, Inc. These five member cooperatives resell Wolverine power at retail to end-use customers located within northern and western portions of Michigan's lower peninsula. Electric energy delivered by Wolverine to Canada will originate either inside or outside of Wolverine's system depending upon existing market conditions at the time of each sale. Any electric power Wolverine would export to Canada would be in excess of any native load commitments and firm power contracts it has with its member system cooperatives.

In FE Docket No. EA–271, Wolverine proposes to export electric energy to Canada and to arrange for the delivery of those exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by Wolverine has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Wolverine application to export electric energy to Canada should be clearly marked with Docket EA–271. Additional copies are to be filed directly with Stephen J. Videto, General Counsel, Wolverine Power Supply Cooperative, Inc., P.O. Box 229, 10125 W. Watergate Road, Cadillac, MI 49601.

A final decision will be made on this application after the environmental impact has been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Regulatory" Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on July 22, 2002.

Ellen Russell,

Acting Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–18963 Filed 7–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, August 2, 2002, 3:30 p.m.–8:30 p.m.; Saturday, August 3, 2002, 8 a.m.–3 p.m.

ADDRESSES: Rothchild Catering, 8807 Kingston Pike, Knoxville, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

August 2, 2002

- Presentations and discussions with the Department of Energy, the Tennessee Department of Environment and Conservation, and

the Environmental Protection Agency Region 4 to discuss the topics that each agency would like the Board to consider in developing its Fiscal Year (FY) 2003 Annual Work Plan

August 3, 2002

- Evaluate the Board's effectiveness and approach the impact of its achievements over the past year
- Develop the FY 2003 Annual Work Plan by identifying issues and activities from input received from the three agencies, the public, and the FY 2003 standing committee and recommendation evaluations

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on July 22, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–18961 Filed 7–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 15, 2002, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order; Introductions; Approve July Minutes; Review Agenda
6:10 p.m.—DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m.—Ex-officio Comments
6:40 p.m.—Public Comments and Questions
6:50 p.m.—Review of Action Items
7:05 p.m.—Break
7:15 p.m.—Presentation
- Seismic Study Report

7:45 p.m.—Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:30 p.m.—Administrative Issues
- Preparation/Discussion—October Chair's Meeting
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments

8:50 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC, on July 23, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–18964 Filed 7–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 02–38–NG, 02–41–NG, 02–20–NG, 02–42–NG, 02–40–NG, 02–43–NG, 02–45–NG, 02–39–NG, and 02–46–NG]

Chevron U.S.A. Inc., United States Gypsum Company, Chehalis Power Generating, Limited Partnership, Boise Cascade Corporation, St. Lawrence Gas Company, Inc., Premstar Energy Canada Ltd., Calpine Energy Services, L.P., Anadarko Energy Services Company, Power City Partners, L.P.; Orders Granting Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2002, it issued Orders granting authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at *http://www.fe.doe.gov* (select gas

regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July, 2002.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1785	6–4–02	Chevron U.S.A. Inc., 02–38–NG.	18 Bcf	.....	Import natural gas from Canada, beginning on July 1, 2002, and extending through June 30, 2004.
1786	6–5–02	United States Gypsum Company 02–41–NG.	7.3 Bcf	.....	Import natural gas from Canada, beginning on November 1, 2001, and extending through October 31, 2003.
1787	6–10–02	Chehalis Power Generating, Limited Partnership, 02–20–NG.	65.7 Bcf	.....	Import natural gas from Canada, beginning on January 1, 2003, and extending through December 31, 2004.
1788	6–14–02	Boise Cascade Corporation, 02–42–NG.	10 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2002, and extending through October 31, 2004.
1789	6–17–02	St. Lawrence Gas Company, 02–40–NG.	25.8 Bcf	.....	Import natural gas from Canada, Inc. beginning on July 26, 2002, and extending through July 25, 2004.
1790	6–17–02	Premstar Energy Canada Ltd. 02–43–NG.	400 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on July 1, 2003, and extending through June 30, 2004.
1791	6–20–02	Calpine Energy Services, L.P. 02–45–NG.	300 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on July 1, 2002, and extending through June 30, 2004.
1792	6–25–02	Anadarko Energy Services Company, 02–39–NG.	100 Bcf/50 Bcf		Import and export a combined total of natural gas from and to Canada, and import LNG from various sources beginning on May 1, 2002, and extending through April 30, 2004.
1793	6–25–02	Power City Partners, L.P. 02–46–NG.	146 Bcf	.....	Import natural gas from Canada, beginning on July 1, 2002, and extending through June 30, 2004.

[FR Doc. 02–18962 Filed 7–25–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–168–000, et al.]

UEG Araucaria Ltda., et al.; Electric Rate and Corporate Regulation Filings

July 19, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. UEG Araucaria Ltda.

[Docket No. EG02–168–000]

Take notice that on July 16, 2002, UEG Araucaria Ltda. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Brazilian limited liability company, owns power generating facilities in Brazil. These facilities consist of an 480 MW electric generating facility and facilities necessary to make wholesale sales of electricity in Brazil.

Comment Date: August 6, 2002.

2. DTE Energy Company

[EC01–146–006]

Take notice that on July 16, 2002, International Transmission Company and DTE Energy Company tendered a filing in compliance with an order of the Federal Energy Regulatory Commission (Commission) issued on May 22, 2002.

Comment Date: August 6, 2002.

3. Pacific Gas and Electric Company

[Docket Nos. ER02–358–002, ER01–2998–002, and EL02–64–002]

Take notice that on July 15, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing the Settlement Agreement pursuant to Rule 602 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.602. This Settlement Agreement will replace the Interconnection Agreement between PG&E and Northern California Power Agency and the Interconnection Agreement between PG&E and the City of Santa Clara, Silicon Valley Power on file with the Commission respectively as PG&E First Revised Rate Schedules FERC Nos. 142 and 85.

Copies of this filing have been served upon all members of the Official Service Lists of the above-mentioned dockets, the California Public Utilities Commission and the California Independent System Operator

Comment Date: August 5, 2002.

4. Niagara Mohawk Power Corporation

[Docket No. ER02–1266–002]

Take notice that on July 16, 2002, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) submitted its Compliance Filing in this proceeding in conformance with the Federal Energy Regulatory Commission's July 1, 2002 Order in Docket No. ER02–1266–001.

Comment Date: August 6, 2002.

5. Ameren Services Company

[Docket No. ER02–2236–000]

On July 9, 2002, the Commission issued a "Notice of Filing" in docket number ER02–2237–000 pertaining to an unexecuted Service Agreement for Long-Term Firm Point-To-Point Transmission Services between ASC and American Electric Power Services Corp. The Notice has been re-docketed to ER02–2236–000.

6. Ameren Services Company

[Docket No. ER02–2237–000]

On July 9, 2002, the Commission issued a "Notice of Filing" in docket number ER02–2236–000 pertaining to an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and Southwestern Electric Cooperative, Inc. The Notice as been re-docketed to ER02–2237–000.

7. Niagara Mohawk Power Corporation

[Docket No. ER02–2322–000]

Take notice that on July 16, 2002, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) filed its Second Revised Schedule A amending its Rate Schedule FERC No. 204 to provide for the termination of transmission service under that agreement to the Power Authority of the State of New York (NYPA) for delivery to the Oneida-Madison Electric Cooperative, Inc. (Oneida-Madison) effective November 18, 1999, the date on which service to NYPA for delivery to Oneida-Madison converted to Niagara Mohawk's Rate Schedule FERC No. 312.

Comment Date: August 6, 2002.

8. Public Service Company of New Mexico

[Docket No. ER02–2323–000]

Take notice that on July 16, 2002, Public Service Company of New Mexico (PNM) submitted for filing a unilaterally executed copy of a service agreement with the California Independent System Operator dated July 12, 2002, for electric energy and/or capacity sales at negotiated market-based rates under PNM's Power and Energy Sales Tariff (FERC Electric Tariff, First Revised volume No. 3). PNM has requested an effective date of June 18, 2002 for the service agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of this filing have been served upon the California Independent System Operator, the New Mexico Public Regulation Commission, and the New Mexico Attorney General.

Comment Date: August 6, 2002.

9. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–2325–000]

Take notice that on July 16, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with Southern Illinois Power Cooperative.

Ameren Energy seeks Commission acceptance of these service agreements effective July 3, 2002. Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: August 6, 2002.

10. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–2326–000]

Take notice that on July 16, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with Westar Energy, Inc. Ameren Energy seeks Federal Energy Regulatory Commission acceptance of these service agreements effective June 26, 2002.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and counterparty.

Comment Date: August 6, 2002.

11. Xcel Energy Services, Inc. Northern States Power Company

[Docket No. ER02–2327–000]

Take notice that on July 16, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company (NSP) submitted for filing with the Federal Energy Regulatory Commission (Commission) the First Revision of: The Letter Agreement extending the Distribution Facilities Agreement; and the Letter Agreement extending the Interim Wholesale Rate between Northern States Power and the City of Shakopee, Minnesota.

NSP requests the letter agreements be accepted for filing effective January 1, 2002, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Comment Date: August 6, 2002.

12. Arizona Public Service Company

[Docket No. ER02–2328–000]

Take notice that on July 16, 2002, Arizona Public Service Company (APS) tendered for filing two Service Agreements to provide point-to-point transmission service to Public Service Company of New Mexico, Wholesale Power Marketing under APS" Open Access Transmission Tariff.

A copy of this filing has been served on Public Service Company of New Mexico, Wholesale Power Marketing, New Mexico Public Regulation Commission, and the Arizona Corporation Commission.

Comment Date: August 6, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18902 Filed 7–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 4204–024 Project Nos. 4660–028, Project Nos. 4659–026, Arkansas]

City of Batesville, AR, Independence County, AR; Notice of Availability of Multi-Project Environmental Assessment

July 22, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for license amendments for the White River Lock and Dam No. 1 Project (P–4204–024), White River Lock and Dam No. 2 Project (P–4660–028), and White River Lock and Dam No. 3 Project (P–6059–006), located on the White River in Independence County, Arkansas, and has prepared a multi-project Environmental Assessment (EA) for the projects. There are no Federal lands or Indian reservations occupied by projects' works or located within the projects' boundaries.

The EA contains the staff's analysis of the potential environmental impacts of the amendments and concludes that issuing the amendments, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 4204–024, 4660–028 and 4659–026 to all comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

For further information, contact Janet Hutzel at (202) 208–2271.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18986 Filed 7–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516, South Carolina]

South Carolina Electric & Gas Company; Notice of Availability of Final Environmental Assessment

July 22, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has prepared a Final Environmental Assessment (FEA) for the Saluda Dam Seismic Remediation Project. The Saluda Dam is a part of the Saluda Project (FERC No. 516) and is located on the Saluda River in Lexington, Richland, Newberry, and Saluda counties, South Carolina.

The FEA contains the staff's analysis of the potential environmental impacts of the dam remediation project and contains measures to minimize those impacts. The FEA concludes that the project, with recommended mitigation measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA may also be viewed on the Web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance), or at http://www.ferc.gov/hydro/docs/saludafea.pdf.

For further information, contact John Mudre at (202) 219–1208 or john.mudre@ferc.gov.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18985 Filed 7–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–40–008]

Florida Gas Transmission Company; Notice of Meeting

July 22, 2002.

On August 6, 2002, Commission staff will attend a meeting sponsored by Representative Michael Bilirakis of Florida to address issues regarding Florida Gas Transmission Company's planned Compressor Station 27 near Thonotosassa, Florida.

The meeting will take place at 5:30 p.m. at the Sterling Heights Recreation Center, 11706 Thonotosassa Road, Thonotosassa, FL 33592. Anyone interested in attending the meeting may contact the Commission's Office of External Affairs, toll free at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18984 Filed 7–25–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–6]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described in the beginning of **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before October 24, 2002.

ADDRESSES: 1200 Pennsylvania Avenue, NW, Attn: 3802R, Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in Section B of the Supplementary Information.

FOR FURTHER INFORMATION OR A COPY CONTACT: For specific information on the individual ICRs see Section B of the Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

A. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) Monthly Progress Reports, EPA ICR No. 1039.09, OMB Control No. 2030–0005, expires 2/28/03.

(2) Oral and Written Purchase Orders, 1900–8 and 1900–13, EPA ICR No. 1037.06, OMB Control No. 2030–0007, expires 2/28/03.

(3) Contractor Cumulative Claim and Reconciliation, 1900–10, EPA ICR No. 0246.07, OMB Control No. 2030–0016, expires 2/28/03.

B. Contact Individuals for ICRs

(1) Monthly Progress Reports, Frances Smith, phone (202) 564–4368, fax (202) 565–2475, e-mail *smith.frances@epa.gov*, (OMB Control No. 2030–0005; EPA ICR No. 1039.09) expiring 2/28/03.

(2) Oral and Written Purchase Orders, 1900–8 and 1900–13, Frances Smith, phone (202) 564–4368, fax (202) 565–2475, e-mail *smith.frances@epa.gov*, (OMB Control No. 2030–0007; EPA ICR No. 1037.06) expiring 2/28/03.

(3) Contractor Cumulative Claim and Reconciliation, 1900–10, Frances Smith, phone (202) 564–4368, fax (202) 565–2475, e-mail *smith.frances@epa.gov*, (OMB Control No. 2030–0016; EPA ICR No. 0246.07) expiring 2/28/03.

C. Individual ICRs

(1) Monthly Progress Reports, EPA ICR No. 1039.09, OMB Control No. 2030–0005, expires 2/28/03.

Affected Entities: Entities potentially affected by this action are those holding cost reimbursable contracts with EPA.

Abstract: Agency contractors who have cost reimbursable, time and material, labor hour, or indefinite delivery/indefinite quantity fixed rate contracts will report the technical and financial progress of the contract on a monthly basis. EPA will use this information to monitor the contractor's progress under the contract. Responses to the information collection are mandatory for contractors performing under a cost reimbursement contract, and are required to receive monthly reimbursement. Information submitted is protected from public release in accordance with the Agency's confidentiality regulations, 40 CFR 2.201 *et seq.*

Burden Statement: EPA estimates that the annual hourly burden for this collection will remain the same as reported in the previous information collection because there has been no change in the information being collected and approximately the same number of contracts remain active. As such, it is estimated that each response will take approximately 36.25 hours. EPA anticipates that the total active cost reimbursement contracts will remain approximately 407, times 12 submissions per year to yield about 4,884 annual collections. Each collection is estimated to cost $2,592 based on a variety of contractor personnel performing individual tasks required for information gathering and submission. The anticipated 4,884 annual submissions are estimated to cost $12,656,886 annually. Minimal operation and maintenance costs are expected for photocopying and postage.

(2) Oral and Written Purchase Orders, 1900–8 and 1900–13, EPA ICR NO.1037.06, OMB Control No. 2030–0007, expires 2/28/03.

Affected Entities: Entities potentially affected by this action are those which seek to provide supplies and services to the EPA under simplified acquisition procedures.

Abstract: When EPA has a requirement for supplies or services and the value of same is under the simplified acquisition threshold, the Agency solicits verbal or written quotes from potential vendors. Vendor responses are voluntary and generally consist of item name, unit cost, delivery terms, company name, small business status, address, phone number, and point of contact. The Agency uses the collected information to make award decisions and obtain needed supplies and services. An agency many not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulation are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Burden Statement: Based on historical information collections, the estimated time required to complete each response to an oral or written purchase order is 15 minutes. Vendors must listen to questions asked, consult company price list, and respond to inquiry. Vendors are not required to type, sign, or mail anything. An average salary for vendor/salesperson is estimated to be $16.04 an hour. This is based on the rate used in the previous clearance multiplied by a factor of 3% per year to reflect wage increases since 1996. The total number of responses is derived by doubling the total number of purchase orders issued by the Agency in the preceding 12 month period. The total number of purchase orders issued was doubled to reflect the historical average of receiving at least two responses per oral or written purchase order. Normally, at least three vendors are contacted, but depending upon dollar value, an average of two information collections per award has been estimated. Therefore, the estimated total annual burden is summarized as follows: *Total Annual Burden Dollars:* $3.90 per response times 37,492 responses = $146,219; *Total Annual Burdens Hours:* 15 minutes per response times 37,492 responses = 9,373 hours. No capital/start-up costs or operation and maintenance costs are anticipated.

(3) Contractor Cumulative Claim and Reconciliation, 1900–10, EPA ICR No. 0246.07, OMB Control No. 2030–0016, expires 2/28/03.

Affected Entities: Entities potentially affected by this action are those holding cost reimbursable contracts with the Agency.

Abstract: At the completion of a cost reimbursement contract, contractors will report final costs incurred, including direct labor, materials, supplies, equipment, and other direct charges, subcontracting, consultant fees, indirect costs, and fixed fee. Contractors will report this information on EPA

Form 1900–10. EPA will use this information to reconcile the contractor's costs. Establishment of the final costs and fixed fee is necessary to close-out the contract. Responses to the information collection are mandatory for those completing work under a cost reimbursement contract, and are required to receive final payment. Information submitted is protected from public release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 *et seq.*

Burden Statement: EPA estimates that the annual hourly burden for this collection will remain the same as reported in the previous information collection because there has been no change in the information being collected and approximately the same number of contracts represents the total number of annual contracts that are closed-out. EPA estimates that the annual hourly burden will be 42.9 hours based on the following: Each response will take approximately 40 minutes, and EPA closes-out approximately 65 contracts per year. The annual dollar burden is estimated at $1,346.15 based on a combination of contractor employees providing the information. The total cost of the contractor provided information is estimated to be $20.71 for the 40 minute period. Minimal operation and maintenance costs are expected for photocopying and postage.

Dated: July 31, 2002.

Larry Wyborski,

Acting Manager, Policy and Oversight Service Center.

[FR Doc. 02–18989 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for Customer Satisfaction Surveys

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for Customer Satisfaction Surveys, EPA # 1711.04, OMB Control Number 2090–0019, expiring 03/31/03. Before submitting the ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 24, 2002.

ADDRESSES: USEPA, Office of the Administrator, Office of Policy, Economics and Innovation, PPCD/CSP–1807T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. To fax requests and comments, call: 202–566–2200. E-mail comments to: *bonner.patricia@epa.gov*. When completed, the ICR application will be available electronically at: *http://www.epa.gov/icr/icr/1711.htm* and in printed form from 202–566–2216.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bonner, telephone: 202–566–2204; fax 202–566–2200.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which request or receive Agency information, products or services, or participate in Agency processes.

Title: Information Collection Request for Customer Satisfaction Surveys, OMB Control Number 2090–0019, EPA ICR Number 1711.04, expiring 03/31/03.

Abstract: Voluntary customer surveys will involve individuals who experience EPA services directly. Though EPA will use all available feedback gathering mechanisms to determine the level of customer satisfaction with attributes of its services, much of this collection will be electronic (60%). The EPA will use information obtained to assist in evaluating and improving service delivery and processes. The Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The EPA encourages comments to evaluate or suggest: whether the proposed collection of information is necessary for the proper performance of the functions of the Agency; the accuracy of the Agency's burden estimate, and the validity of the methodology and assumptions used; how to enhance the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the collection of information on those who are to respond, including appropriate applications of information technology.

Burden: The average estimated respondent burden is 7.2 minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency, including the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Time is the only direct respondent cost. Respondent cost was calculated using the March 2002 Bureau of Labor Statistics figure of $23.15 as the hourly wage (with benefits) for civilian wage and salary workers. The EPA estimates the following for the year 2003—2005:

Year	Respondents	Burden hours	Respondent cost
2003	39,823	4691	$2.72/response ($108,596.65).
2004	40,148	4821	$2.77/response ($111,606.15).
2005	40,073	4821	$2.78/response ($111,606.15).

Dated: July 18, 2002.

Betsy Shaw,

Director, Office of Environmental Policy Innovation, Office of Policy, Economics and Innovation, Office of the Administrator.

[FR Doc. 02–18995 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Acid Rain Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Acid Rain Program, OMB Control Number 2060–0258, Expiration date September 30, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 26, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1633.13 and OMB Control No. 2060–0258, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1633.13. For technical questions about the ICR contact Kenon Smith at (202–564–9164).

SUPPLEMENTARY INFORMATION:

Title: Acid Rain Program, OMB Control No. 2060–0258, EPA ICR No.1633.13, expiration date 9/30/2002. This is a request for extension of a currently approved collection.

Abstract: The Acid Rain Program was established under Title IV of the 1990 Clean Air Act Amendments. The program calls for major reductions of the pollutants that cause acid rain while establishing a new approach to environmental management. This information collection is necessary to implement the Acid Rain Program. It includes burden hours associated with developing and modifying permits, transferring allowances, obtaining allowances from the conservation and renewable energy reserve, monitoring emissions, participating in the annual auctions, completing annual compliance certifications, participating in the Opt-in program, and complying with NO_X permitting requirements. Most of this information collection is mandatory under 40 CFR parts 72 through 78. Some parts of it are voluntary or to obtain a benefit, such as participation in the annual auctions under 40 CFR part 73, subpart E. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on2/13/2002 (67 FR 6706); No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average91 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Electric Utilities and Industrial Sources.

Estimated Number of Respondents: 1,450.

Frequency of Response: Occasionally, Quarterly, and Annually.

Estimated Total Annual Hour Burden: 1,600,807 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $171,969,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the above addresses. Please refer to EPA ICR No. 1633.13 and OMB Control No. 2060–0258 in any correspondence.

Dated: July 18, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–18992 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements

Filed July 14, 2002 Through July 19, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020308, DRAFT EIS, SFW, AZ, Roosevelt Habitat Conservation Plan, Issuance of an Incidental Take Permit to Allow Continued Operation of Roosevelt Dam and Lake, Implementation, Gila and Maricopa Counties, AZ, *Comment Period Ends:* September 17, 2002, *Contact:* Sherry Barrett (520) 670–4617.

EIS No. 020309, FINAL EIS, AFS, CA, Star Fire Restoration Removal of Fire-Killed Trees, Road Reconstruction, and Associated Restoration, Eldorado National Forests (ENF) Georgetown Ranger District, Middle Fork American River, Chipmunk Ridge and the North Fork of Long Canyon, Placer County, CA, *Wait Period Ends:* August 26, 2002, *Contact:* Patricia Ferrell (530) 642–5146.

EIS No. 020310, DRAFT EIS, NRS, MO, Little Otter Creek Watershed Plan, Installation of One Multi-Purpose Reservoir and Development of Basic Facilities for Recreational Use, Implementation, Caldwell County, MO, *Comment Period Ends:* September 09, 2002, *Contact:* Roger A. Hansen (573) 876–0901.

EIS No. 020311, FINAL EIS, AFS, AK, Chugach National Forest, Proposed Revised Land and Resource Management Plan, Implementation,

Glacier, Seward and Cordora Ranger Districts, Kenai Peninsula Borough, AK, *Wait Period Ends:* August 26, 2002, *Contact:* Dave R. Gibbons (907) 743–9500. This document is available on the Internet at: *http://www.agdc.usgs.gov/cnp.*

EIS No. 020312, FINAL EIS, FRC, WA, Georgia Strait Crossing Pipeline (LP) Project, Construction and Operation, To Transport Natural Gas from the Canadian Border near Sumas, WA to US/Canada Border at Boundary Pass in the Strait of Georgia, Docket Nos. CP01–176–000 and CP01–179–000, Whatcom and San Juan Counties, WA, *Wait Period Ends:* August 26, 2002, *Contact:* Paula Felt (202) 208–1088. This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 020313, FINAL EIS, BLM, NV, Leeville Mining Project, Propose to Develop and Operate an Underground Mine and Ancillary Facilities including Dewatering Operation, Plan-of-Operations/Right-of-Way Permits and COE Section 404 Permit, Elko and Eureaka Counties, NV, *Wait Period Ends:* August 26, 2002, *Contact:* Deb McFarlane (775) 753–0200.

EIS No. 020314, DRAFT EIS, AFS, OR, Granite Area Mining Projects, Propose to Approve Plans of Operation on 16 Mining Claims within the Granite Creek Watershed, Implementation, North Fork John Day Ranger District, Umatilla National Forest, Grant County, OR, *Comment Period Ends:* September 09, 2002, *Contact:* Robert Reed (541) 427–5335.

EIS No. 020315, FINAL EIS, FHW, DC, NC, VA, Southeast High Speed Rail Corridor, From Washington, DC to Charlotte, NC, To Provide a Competitive Transportation Choice to Traveler, Funding and Federal Permits, DC, VA, NC, *Wait Period Ends:* August 26, 2002, *Contact:* Nicholas L. Graf (919) 508–1917.

EIS No. 020316, DRAFT EIS, NAS, 00, PROGRAMMATIC—MARS Exploration Rover—2003 (MER–2003) Project, Continuing the Long-Term Exploration of MARS, Implementation, *Comment Period Ends:* September 09, 2002, *Contact:* David Lavery (202) 358–4800. This document is available on the Internet at: *http://www.spacescience.nasa.gov/admin/pubs/mereis/index.htm.*

EIS No. 020317, FINAL EIS, BLM, NV, Table Mountain Wind Generating Facility Project, Construction of a 150 to 205 Megawatt (MW) Wind Powered Electric Generation Facility and Ancillary Facilities, Right-of-Way Grant, Spring Mountain Range between the Communities of Goodsprings, Sandy Valley, Jean and Primm, Clark County, NV, *Wait Period Ends:* August 26, 2002, *Contact:* Jerry Crockford (505) 599–6333.

Amended Notices

EIS No. 020281, DRAFT EIS, USA, UT, Activities Associated with Future Programs at US Army Dugway Proving Ground, Implementation, Tooele and Jaub Counties, UT, *Comment Period Ends:* August 19, 2002, *Contact:* Nicholas J. Cavallaro (703) 697–8995. Revision of FR Notice Published on 07/05/2002: CEQ Comment Period Ending 08/19/2002 has been Reestablished to 09/09/2002. Due to Incomplete Distribution of the DEIS at the time of Filing with USEPA under Section 1506.9 of the CEQ Regulations.

Dated: July 22, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–19008 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–L65396–ID Rating LO, Mann Creek Vegetation Management and Watershed Restoration Project, Implementation, Payette National Forest, Weiser Ranger District, Washington County, ID.

Summary: EPA expressed a lack of objections to the proposal.

ERP No. D–AFS–L65400–ID Rating LO, The West Gold Creek Project, Forest Management Activities Plan, Implementation, Idaho Panhandle National Forests, Sandpoints Ranger District, Bonner County, ID.

Summary: EPA expressed a lack of objections to the proposal.

ERP No. D–FHW–D40317–VA Rating EC2, Capital Beltway Study, Transportation Improvements to the 14-mile Section Capital Beltway (I–495) between the I–95/I–395/I–495 Interchange and the American Legion Bridge, Fairfax County, VA.

Summary: EPA expressed environmental concern regarding impacts to residences and businesses and the inability of the proposed alternatives to provide a long-term solution to congestion problems. EPA has identified several issues that need to be more thoroughly explained in the Final EIS.

ERP No. D–FHW–F40406–00 Rating EC1, Ironton-Russell Bridge Replacement Project, LAW–93C–0.00, PID 17359, Structurally-Deficient and Functionally-Obsolete Bridge Replacement, Funding, NPDES, US Coast Guard Section 9 Bridge Permits and US Army COE Section 10 and 404 Permits Issuance, Lawrence County, OH and Greenup County, KY.

Summary: EPA recognizes that the preferred alternative will impact cultural resources, waters of the United States, hazardous material sites, and will require relocations. EPA requests the inclusion of clarifying information in the FEIS.

ERP No. D–FHW–J40155–CO Rating EC2, CO–9 (Frisco to Breckenridge) Highway Improvements Project to Improve a 14.5-kilometer (9-mile) stretch of CO–9 between the Towns of Frisco and Breckenridge to Decrease Travel Time, Improve Safety, Support Transportation needs of Local and Regional Travelers, Funding, Right-of-Way and US Army COE Section 404 Permits, Summit County, CO.

Summary: EPA expressed environmental concerns regarding direct, indirect and cumulative impacts to wetlands, lynx, and the mountain ecosystem as a result of growth. EPA is concerned that adequate mitigation and environmentally-preferred alternatives were not fully addressed.

ERP No. D–FTA–G40170–TX Rating LO, Northwest Corridor Light Rail Transit (LRT) Line to Farmers Branch and Carrollton, Construction and Operation, NPDES and US Army COE Section 404 Permits Issuance, Dallas Area Rapid Transit, Dallas and Denton Counties, TX.

Summary: EPA has no objections to the selection of the preferred alternative as described in the DEIS, but requests that additional information be included in the FEIS to strengthen the overall NEPA analysis.

ERP No. D–NPS–K65239–AZ Rating EC2, Tonto National Monument, General Management Plan, New

Administrative Facility Construction within the Monument Boundaries, Implementation, AZ.

Summary: EPA expressed environmental concerns due to potential impacts to surface/ground water quality from the existing septic tank system and construction-related activities and because the EIS did not reflect a range of feasible mitigation to reduce potential adverse impacts consistent with pollution prevention guidance.

ERP No. D–USA–E11050–KY Rating LO, Blue Grass Army Depot, Destruction of Chemical Munitions, Design, Construction, Operation and Closure of a Facility to Destroy the Chemical Agent and Munitions, Madison County, KY.

Summary: EPA has no objections to the demilitarization proposal or the various technologies which will be used to accomplish this proposal.

ERP No. DS–AFS–L65232–OR Rating NS, Deep Vegetation Management Project, Implementation, Additional Information on Four Alternatives, Ochoo National Forest, Paulina Ranger District, Crook and Wheeler Counties, OR.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. DS–FHW–D40295–WV Rating EC2, New River Parkway Project, New and Relevant Information, Design, Construction and Management between I–64 Interchanges to Hinton, Raleigh and Summers Counties, WV.

Summary: EPA has environmental concerns regarding the mitigation measures proposed to offset the potential secondary and cumulative impacts likely to occur with project implementation. EPA requests additional information and details regarding the proposed measures.

Final EISs

ERP No. F–AFS–D65024–PA, Lewis Run Project, Management Strategies for Road Construction and Reconstruction, Timber Management Activities, Soil and Water Improvements, Wildlife Habitat Enhancements and Recreation Improvements, Implementation, Lewis Run Project Area, Bradford Ranger District, Allegheny National Forest, McKean County, PA.

Summary: EPA's prior comments on the draft EIS have been adequately addressed in this document. Therefore, EPA concurs with your analysis of impacts and findings.

ERP No. F–AFS–L36113–WA, Upper Charley Subwatershed Ecosystem Restoration Projects, Implementation, Pomeroy Ranger District, Umatilla National Forest, Garfield County, WA.

Summary: EPA has no objection to the proposed action, as this document adequately responded to EPA's previous comments on the draft EIS.

ERP No. F–AFS–L65382–ID, Meadow Face Stewardship Pilot Project, Implementation, Nez Perce National Forest, Clearwater Ranger District, Idaho County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–L54004–WA, Sound Transit, Lakewood-to-Tacoma Commuter Rail and WA–512 Park and Ride Expansion, Construction and Operation, Central Puget Sound Regional Transit Authority, City of Tacoma and City of Lakewood, WA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: July 23, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–19009 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–8]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of two proposed settlement agreements. On July 15, 2002, the United States Environmental Protection Agency ("EPA") filed one settlement agreement with the United States Court of Appeals for the District of Columbia Circuit, and the other settlement agreement with the United States Court of Appeals for the First Circuit. These two settlement agreements address challenges to two separate final actions EPA took, determining that the one-hour ozone national ambient air quality standard ("NAAQS") no longer applied in different areas of the country. On August 8, 1998, Environmental Defense filed a petition for review pursuant to section 307(b) of the Act, 42 U.S.C. 7607(b), challenging EPA's June 5, 1998 rule determining that the one-hour ozone NAAQS no longer applied in approximately 2000 counties across the country. *Environmental Defense* v. *EPA,* No. 98–1363 (DC Cir.). On August 9, 1999, Appalachian Mountain Club filed a petition for review under section 307(b) of the CAA, challenging EPA's June 9, 1999, final rule determining that the one-hour ozone standard no longer applied in an additional ten areas. *Appalachian Mountain Club* v. *EPA,* No. 99–1880 (1st Cir.).

DATES: Written comments on the proposed settlement agreements must be received by August 26, 2002.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed settlement agreements are available from Phyllis J. Cochran, (202) 564–5566. On July 15, 2002, a copy of the proposed settlement agreement with Environmental Defense was filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit and a copy of the proposed settlement agreement with Appalachian Mountain Club was filed with the Clerk of the United States Court of Appeals for the First Circuit.

SUPPLEMENTARY INFORMATION: Environmental Defense and Appalachian Mountain Club (collectively referred to as "Petitioners") allege that EPA acted contrary to law by determining that the one-hour ozone standard no longer applied to the areas in the challenged actions.

The EPA promulgated the one-hour ozone standard in 1979. On July 18, 1997, EPA promulgated a revised ozone standard—the eight-hour ozone standard. At that time, EPA also promulgated a regulation providing that the one-hour standard would "no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard." 62 FR 38856, codified at 40 CFR 50.9(b) (revised on July 20, 2000). In part, EPA based this approach on its interpretation that the provisions of subpart 2 of part D of title I of the CAA applied only for purposes of the one-hour ozone standard. Thus, once an area attained the one-hour standard, EPA could determine the one-hour standard and thus, subpart 2, no longer applied to that area. Subsequently, EPA took three final actions in which it determined the one-hour standard no longer applied to most areas in the country. 63 FR 31014 (June 5, 1998); 63 FR 39432 (July 22, 1998); 64 FR 30911 (June 9, 1999). These actions are commonly referred to as "revoking" the one-hour standard.

The revised ozone standard was challenged and on May 14, 1999, the DC Circuit issued an opinion that, among other things, called into question EPA's authority to implement the revised standard. *American Trucking Assoc. v. EPA*, 175 F.3d 1027 (DC Cir. 1999). On rehearing, the Court made minor modifications to the portion of its decision regarding implementation, but did not change its earlier conclusions regarding EPA's implementation authority. *American Trucking Assoc. v. EPA*, 195 F.3d 4 (DC Cir. 1999). EPA sought review in the Supreme Court of several aspects of the DC Circuit's decision, including the ruling on EPA's implementation authority.

In the interim, due to the uncertainty regarding its implementation authority, on October 25, 1999, EPA proposed to reinstate the one-hour standard in all areas in which it had been revoked. 64 FR 57425. The preamble to that proposed rule provides a more thorough history of EPA's revocation rules and the DC Circuit rulings. *See* 64 FR at 57424–57425.

On July 20, 2000, EPA issued a final rule reinstating the one-hour standard in all areas in which it had been revoked. 65 FR 45182. EPA also modified the regulatory provision for determining the one-hour standard no longer applies to provide: "* * * after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in this section will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard."

On February 27, 2001, the Supreme Court issued a decision, remanding the implementation issue to the Agency to develop a reasonable interpretation that provides a role for subpart 2 in implementing the eight-hour ozone NAAQS.

Each Settlement Agreement provides that upon finalization of the Settlement Agreement, the Parties will jointly seek a stay of the litigation pending the following actions. First, no later than three months following the finalization of the Settlement Agreement, EPA will propose a stay of its authority under 40 CFR 50.9(b) to determine that an area has attained the one-hour standard and that therefore the one-hour standard no longer applies in that area. The basis for the proposed stay would be for EPA to consider through rulemaking whether this provision in 40 CFR 50.9(b) should be modified in light of the Supreme Court's decision in *Whitman v. American Trucking Assoc.*, 121 S.Ct. 903 (2001). In that proposed stay, EPA would state that in the rulemaking regarding whether that provision in 40 CFR 50.9(b) should be modified, EPA would take comment on which, if any, implementation activities for an eight-hour ozone standard, including designations and classifications, would need to occur before EPA would determine that the one-hour ozone standard no longer applied to an area, and the effect of revising the ozone NAAQS on existing designations for the pollutant ozone. EPA would take final action on its proposed stay no later than 6 months after the proposal is published in the **Federal Register**. Each Settlement Agreement provides for the Petitioners to dismiss their case if, consistent with the proposal, EPA's final action (a) stays the effectiveness of the provision in 40 CFR 50.9(b) regarding the determination of whether an area has met the one-hour standard until such time as EPA completes a subsequent rulemaking determining whether that provision should be modified; and (b) commits to consider and address in the subsequent rulemaking any comments concerning (i) which, if any, implementation activities for a revised ozone standard (including but not limited to designation and classification of areas) would need to occur before EPA would determine that the one-hour ozone standard no longer applied to an area, and (ii) the effect of revising the ozone NAAQS on existing designations for the pollutant ozone.

The sole remedy for the Petitioners under the Settlement Agreement is the right to ask the Court to lift the stay of proceedings and establish a schedule for further proceedings regarding the Revocation Rule.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Settlement Agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the Settlement Agreement will be final.

Dated: July 22, 2002

Lisa Friedman,

Associate General Counsel.

[FR Doc. 02–18993 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–1]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Request for Public Comment.

SUMMARY: The Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liability under CERCLA of Specialty Castings Corporation ("Settling Party") for response costs incurred and to be incurred at the Malvern TCE Superfund Site, East Whiteland and Charlestown Townships, Chester County, Pennsylvania, relating to the Malvern TCE Superfund Site ("Site").

DATES: Comments must be provided by August 26, 2002.

ADDRESS: Comments should be addressed to Joan A. Johnson (3RC41), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and should refer to the Malvern TCE Superfund Site, East Whiteland Township, Chester County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Joan A. Johnson (3RC41), Assistant Regional Counsel, 215/814–2665, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

SUPPLEMENTARY INFORMATION: Notice of *de minimis* Settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Malvern TCE Superfund Site, in East Whiteland Chester County, Pennsylvania. The administrative settlement is subject to review by the public pursuant to this Notice. This agreement has been approved by the Attorney General, United States Department of Justice, or his designee.

Specialty Castings Corporation ("Settling Party") has agreed to pay $50 to the Hazardous Substances Trust Fund subject to the contingency that EPA may elect not to complete the settlement if comments received from the public

during this comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. This amount to be paid by the Settling Party was based upon EPA's review of financial information relating to the Settling Party and a determination by EPA that the Settling Party has a limited ability to pay monies to settle EPA's claims. Monies collected from the Settling Party will be applied towards past and future response costs incurred by EPA or PRPs performing work at or in connection with the Site.

EPA is entering into this agreement under the authority of Sections 107 and 122(g) of CERCLA, 42 U.S.C. 9607 and 9622(g). Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund Sites without incurring substantial transaction costs. Under this authority, EPA proposes to settle with Settling Party in connection with the Malvern TCE Superfund Site, based upon a determination by EPA that Settling Party is responsible for 0.75 percent or less of the volume of hazardous substance sent to the Site.

The Environmental Protection Agency will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent can be obtained from Joan A. Johnson (3RC41). Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029, or by contacting Joan A. Johnson at (215) 814–2619.

Thomas C. Voltaggio,

Acting Regional Administrator, United States Environmental Protection Agency, Region III.

[FR Doc. 02–18988 Filed 7–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0040; FRL–7190–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 23, 2002 to July 5, 2002, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket ID number OPPT–2002–0040 and the specific PMN number, must be received on or before August 26, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0040 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/.* On the Home Page select "Laws and Regulations"," Regulations and Proposed Rules, and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an official record for this action under docket ID number OPPT–2002–0040. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0040 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: *oppt.ncic@epa.gov,* or mail your

computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0040 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 23, 2002 to July 5, 2002, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 27 PREMANUFACTURE NOTICES RECEIVED FROM: 06/23/02 TO 07/05/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0795	06/24/02	09/22/02	CBI	(G) Oil-field additive	(G) Copolymer
P–02–0796	06/24/02	09/22/02	Nagase America Corporation	(G) Additive for a lubricant	(G) Polyglycerin alkyl ether
P–02–0797	06/24/02	09/22/02	CBI	(G) Oil-field additive	(G) Copolymer
P–02–0798	06/25/02	09/23/02	CBI	(G) Reactive hot melt adhesive	(G) Polyurethane/polyester copolymer
P–02–0799	06/25/02	09/23/02	CBI	(G) Coating additive	(G) Acrylic resin
P–02–0800	06/25/02	09/23/02	Arteva Specialties S.A.R.L. d/b/a Kosa	(S) Raw material in the manufacture of rigid polyurethane foam	(G) Aromatic polyester polyol
P–02–0801	06/26/02	09/24/02	CBI	(G) Encapsulant curative for open, non-dispersive use	(G) Castor oil, mixed esters with carboxylic acid anhydrides
P–02–0802	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0803	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0804	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0805	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0806	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0807	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0808	06/27/02	09/25/02	Reichhold, Inc.	(G) Coating resin	(G) Amine salt of iscyanate, polymer with polyester, vegaetable oils, alkyleneamines, hydroxy substituted carboxylic acid and tetra hydroxy alkane
P–02–0809	06/27/02	09/25/02	CBI	(G) Lubricant base oil [open/non-dispersive use]	(G) Polyester polymer

I. 27 PREMANUFACTURE NOTICES RECEIVED FROM: 06/23/02 TO 07/05/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0810	06/27/02	09/25/02	CBI	(G) Processing aid	(G) Titanium-aluminum complex
P–02–0811	06/27/02	09/25/02	CBI	(G) Processing aid	(G) Titanium-aluminum complex
P–02–0812	06/27/02	09/25/02	Southwest Distributing Co., Inc.	(S) Flame retardant for polyurethane plastics	(G) Tri-block copolymer of e-caprolactone and dibromoneopentyl glyclol or hydroxy-terminated liquid copolymer of e-caprolactone and dibromoneopentyl glycol
P–02–0813	06/27/02	09/25/02	The Prince Manufacturing Company	(S) Adhesion promoter for polyolefin substrates	(G) Maleic anhydride and acryls modified polyolefine
P–02–0814	06/28/02	09/26/02	CBI	(G) Component of odorant compositions for highly dispersive applications	(G) Aliphatic unsaturated ketone
P–02–0815	07/01/02	09/29/02	CBI	(G) Ink-jet ink	(G) Copper phthalocyaninato-aminosulfonyl sulfo derivatives-sodium/ammonium salts
P–02–0816	07/02/02	09/30/02	3M Company	(G) Protective treatment	(G) Polyaromatic urethane
P–02–0817	07/02/02	09/30/02	CBI	(G) Component of a coating	(G) Polyamino, polyhydroxy polyether resin
P–02–0818	07/02/02	09/30/02	CBI	(G) Component of coating with open use	(G) Isocyanate amine adduct
P–02–0819	06/27/02	09/25/02	CBI	(G) Adhesives for open, non-dispersive use	(G) Polymer of alkylene polyester and methylenebis [isocyanatobenzene]
P–02–0820	06/27/02	09/25/02	CBI	(G) Adhesives for open, non-dispersive use	(G) Polymer of (alkylene ether)glycol, methylene bis[isocyanatobenzene] and toluene diisocyanate
P–02–0821	06/27/02	09/25/02	CBI	(G) Adhesives for open, non-dispersive use	(G) Polymer of (alkylene ether) glycol, methylene bis [isocyanatobenzene] and toluene diisocyanate

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 06/23/02 TO 07/05/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–02–0009	07/02/02	08/16/02	CBI	(G) Component of coating with open use	(G) Isocyanate amine adduct

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 16 NOTICES OF COMMENCEMENT FROM: 06/23/02 TO 07/05/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–02–0087	07/01/02	05/13/02	(S) Cyclopentanol, 2-cyclopentylidene
P–02–0089	06/26/02	06/07/02	(G) Alkyl silsesquioxane
P–02–0127	06/26/02	06/02/02	(S) 3-mercaptohexyl acetate
P–02–0185	07/02/02	06/07/02	(G) Aluminum chelate compound
P–02–0186	07/02/02	06/07/02	(G) Aluminum chelate compound
P–02–0216	06/25/02	06/14/02	(G) Diol
P–02–0311	06/25/02	05/25/02	(G) Acrylic copolymer
P–02–0312	07/02/02	05/30/02	(G) Poly(ester-ether)
P–02–0326	07/03/02	06/21/02	(S) Benzenamine, 2-nitro-4-(trifluoromethyl)-
P–02–0345	07/02/02	05/18/02	(G) Polyalkoxylated fatty acid
P–02–0367	07/02/02	06/11/02	(G) Polyalkoxylated phenol derivative
P–02–0377	06/25/02	06/13/02	(G) Polyamide
P–02–0450	06/27/02	06/21/02	(G) Polyether modified polyisocyanate, reaction product with diamine
P–02–0514	07/05/02	07/05/02	(G) Diethoxybenzenamine derivative, diazotized, coupled with aminonaphthalenesulfonic acid derivative, ammonium salt
P–96–0730	06/25/02	05/23/00	(G) Salt of a substituted alkylenepolyamine

III. 16 NOTICES OF COMMENCEMENT FROM: 06/23/02 TO 07/05/02—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–97–0044	06/25/02	01/18/99	(G) Dibasic acid / glycol polyester, organic acid capped

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 17, 2002.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–18994 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the August 8, 2002 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9 a.m. on Thursday, August 1, 2002. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4009, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: July 24, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–19066 Filed 7–24–02; 11:09 am]

BILLING CODE 6705–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Fire Academy's Course Evaluation Form.

Type of Information Collection: Extension of existing approved collection.

OMB Number: 3067–0233.

Abstract: This National Fire Academy Course Evaluation Form is used in all field two-day (off-campus) and State Weekend Program courses. The form is primarily used to assess the effectiveness of the course materials and instructor delivery. The demographic information is used in developing needs assessments for future course development/revision efforts.

Number of Respondents: 25,000.

Estimated Time per Respondent: .25 hour.

Estimated Total Annual Burden Hours: 6,250.

Frequency of Response: 1.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov.*

Dated: July 8, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–18949 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Fire Academy Long-Term Evaluation Form for Supervisors, National Fire Academy Long-term Evaluation Form for Students.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0260.

Abstract: The National Fire Academy long-term evaluation forms " one for students and one for the student's supervisor—will obtain course specific feedback regarding impact of course content on job performance. The information is needed to improve instruction and content. Demographic data is needed to identify differentials in course impact.

Number of Respondents: 1,500 (Students 750/Supervisors 750).

Estimated Hours per Respondent: Student .33 and Supervisor .17.

Estimated Total Annual Burden Hours: 375.

Frequency of Response: 1.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal

Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov*.

Dated: July 8, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–18950 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1423–DR]

Alaska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska, (FEMA–1423–DR), dated June 26, 2002, and related determinations.

EFFECTIVE DATE: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alaska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 26, 2002:

The Alaska Native Communities of Alakanuk and Emmonak in the Lower Yukon Regional Educational Attendance Area for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18951 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Bandera, Bexar, Blanco, Gillespie, Kendall, Kerr, Medina, and Uvalde Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 USC 5174 and Categories A and B under the Public Assistance program).

Duval, McMullen, and Jim Wells Counties for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 USC 5174.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18952 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Callahan, Live Oak, San Patricio, and Zavala Counties for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 USC 5174.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18953 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1428–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1428–DR), dated July 12, 2002, and related determinations.

EFFECTIVE DATE: July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July

12, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Vermont, resulting from severe storms and flooding on June 5, 2002, through June 13, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance, in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas P. Davies of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster:

Caledonia, Franklin, Lamoille, and Orleans Counties for Individual Assistance.

Caledonia, Essex, Franklin, and Orleans Counties for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18954 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–02–P

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Cancellation of an Optional Form by the Department of State

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State is cancelling the following Optional Form because of low demand in the Federal Supply Service:

OF 171, Appointment Letter for Immigrant Visa Applicants.

This form will be converted to a State Department. You can request copies of the new form from: Department of State, A/RPS/DIR, 18th and G Streets, NW., Suite 2400, Washington, DC 20522–2201.

DATES: Effective July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202–312–9605.

Dated: July 17, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02–18948 Filed 7–25–02; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Program Support Center (PSC), publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following information collection was recently submitted to OMB:

1. *Proposed Project:* Application to the Board for Correction of Public Health Service (PHS) Commissioned Corps Records (PSC–54)—(OMB 0937–0095)—Extension.

An application is submitted by commissioned officers of the PHS Commissioned Corps, former officers, their spouses or heirs who appeal to the Board for Correction to request removal of an alleged error or injustice in an officer's record. The information submitted is used by the Board for Correction to determine if an error or injustice has occurred and to rectify such error or in justice. An appeal cannot be considered without the information furnished on this form. *Respondents:* Individuals or households and Federal employees. Total Number of Respondents: ten per calendar year. Number of Responses per Respondent: one response per request. Average Burden per Response: four hours. Estimated Annual Burden: 40 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection package listed above can be obtained by calling the PSC Reports Clearance Officer on (301) 443–0433. Written commens and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Irene S. West, PSC Reports Clearance Officer, Room 17A39, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 30 days of this notice.

Dated: July 18, 2002.

Curtis L. Coy,

Director, Program Support Center.

[FR Doc. 02–18974 Filed 7–25–02; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Public Health Emergency Preparedness; Statement of Organization, Function, and Delegation of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AA, Immediate Office of the Secretary, as last amended at 67 FR 1980, dated 1/15/2002; and at Chapter

AC, "Office of Public Health and Science (OPHS)," as last amended at 62 FR 33081–82, dated 6/18/1997. This reorganization will establish a new Chapter (AN), "Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP)" within the Office of the Secretary. OASPHEP will be headed by an Assistant Secretary for Public Health Emergency Preparedness (ASPHEP) as authorized under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. This reorganization will transfer the Office of Emergency Preparedness (ACK), Office of Public Health and Science, to OASPHEP, and rename the Office of Emergency Preparedness as the Office of Emergency Response. Further, this reorganization will transfer the Office of Public Health Preparedness from the Immediate Office of the Secretary to OASPHEP and rename it as the Office of BioDefense, and will place the Secretary's Emergency Operations Center in OASPHEP.

The changes, which will among other things, centralize related preparedness and response activities, are as follows:

I. Under Part A, Chapter AC, "Office of Public Health and Science," make the following changes:

A. Under Section AC.10 Organization, delete the following: "I. Office of Emergency Preparedness."

B. Under Section AC.20 Functions, delete paragraph, "I. Office of Emergency Preparedness (ACK)," in its entirety.

II. Under Part A, Office of the Secretary, make the following changes:

A. Under Chapter AA, delete Chapter AAB, the "Office of Public Health Preparedness," in its entirety.

B. Establish a new Chapter AN, "Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP)" to read as follows:

Office of the Assistant Secretary for Public Health Emergency Preparedness (AN)

AN.00 Mission

AN.10 Organization

AN.20 Functions

Section AN.00 Mission. On behalf of the Secretary, the Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP) directs and coordinates HHS-wide efforts with respect to preparedness for and response to bioterrorism and other public health emergencies. OASPHEP will direct the National Disaster Medical System (NDMS) and any other emergency response activities within the Department of Health and Human Services that are related to bioterrorism and other public health emergencies. OASPHEP is responsible for ensuring a "One-Department" approach to developing such preparedness and response capabilities and directs and coordinates relevant activities of the OPDIVs.

Section AN.10 Organization: The Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP) is headed by an Assistant Secretary for Public Health Emergency Preparedness (ASPHEP), who reports directly to the Secretary, and includes the following components:

- Immediate Office of the ASPHEP (ANA)
- Office of BioDefense (ANB)
- Office of Emergency Response (ANC)
- Secretary's Emergency Operations Center (ANE)

Section AN.20 Functions

1. *Immediate Office of the Assistant Secretary for Public Health Emergency Preparedness (ANA).* The Immediate Office of the ASPHEP provides executive direction to OASPHEP components. The ASPHEP is the principal advisor to the Secretary on matters relating to bioterriorism and other public health emergencies, and for coordinating interagency interfaces between HHS, other Departments, agencies, offices of the United States, State and local entities with responsibility for emergency preparedness, and directing activities relating to protecting the civilian population from acts of bioterrorism and other public health emergencies. The ASPHEP provides the necessary leadership and coordinates activities for emergency preparedness matters internal to the Office of the Secretary's components and represents the DHHS in working closely with the Federal Emergency Management Agency and other Federal departments and agencies. OASPHEP acts as the lead Federal agency for Emergency Support Function #8 within the Federal Response Plan.

2. *Office of BioDefense (ANB).* The Office of BioDefense (OB) is headed by a Director, who reports to the ASPHEP and supports his/her roles as the Secretary's principal advisor on matters relating to bioterrorism and public health emergencies, the Department's principal liaison with the Office of Homeland Security; and the principal representative of the Department to other Federal agencies and the private sector in all matters related to bioterrorism, and other public health emergencies. On behalf of the ASPHEP, OB directs and coordinates HHS Operating and Staff Divisions implementation of a comprehensive HHS strategy to protect the civilian population from acts of bioterrorism and other public health emergencies. In carrying out these responsibilities, the OB directs and coordinates the OPDIVs and STAFFDIVs to ensure the adequacy of HHS strategy for preparing, preventing, responding to, and recovering from acts of bioterrorism and other public health emergencies. The OB develops national plans and programs and executes necessary actions to ensure that HHS components are prepared to perform essential functions during major disasters.

3. *Office of Emergency Response (ANC).* The Office of Emergency Response (OER) is headed by a Director, who reports to the ASPHEP and serves as the principal advisor to the ASPHEP for emergency actions. OER provides staff support to the ASPHEP in the accomplishment of emergency preparedness responsibilities. In support of the ASPHEP, OER maintains the operational readiness required for timely and effective responses to Federal, State, and local government requests for social services, health and medical assistance following major disasters or terrorist incidents.

a. *The Division of Program Development (ANC1).* The Division of Program Development (DPD) is responsible for developing planning and implementation of processes to improve local response capabilities and the integration of national and local response resources. A key function of DPD is the development of Metropolitan Medical Response Systems. DPD also supports the Director of OER and the ASPHEP in coordinating activities with the Centers for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry, and the Food and Drug Administration and other OPDIVs to develop technical support systems to deal with the consequences of Weapons of Mass Destruction (WMD) terrorist events.

b. *The Division of Emergency Readiness and Operations (ANC2).* The Division of Emergency Readiness and Operations (DERO) is responsible for improving the range of emergency response capabilities and for assuring emergency response readiness. To accomplish these tasks, DERO supports the interdepartmental National Disaster Medical System (NDMS) Senior Policy Group, Directorate, and Directorate Staff; coordinates the NDMS Disaster Medical Assistance Teams (DMATs) and provides administrative support to DMAT personnel; manages the Rockville Emergency Operations Center

during emergencies; develops national WMD response capable DMATs; improves the communications infrastructure to support DMAT deployments; works with the Department of Veterans Affairs to assure appropriate pharmaceutical availability, especially for WMD incidents; and establishes Medical Support Units at the site of emergencies.

c. *The Division of Administration and Support (ANC3).* The Division of Administration and Support (DAS) is responsible for OER budget execution and formulation, personnel and procurement actions, as well as other administrative activities. To accomplish these tasks, DAS works with the OASPHEP Operations Officer, the Office of the Secretary Executive Office (OSEO) and OER Division Directors to develop solutions to administrative related problems and to develop more effective and efficient administrative support for accomplishing OER activities. DAS also provides staff support for the OASPHEP Operations Officer in coordinating cross-cutting activities, such as, the management of Regional Emergency Coordinator Work Plans and Regional Advice of Allowance.

4. *Secretary's Emergency Operations Center (AND).* The Secretary's Emergency Operations Center (SEOC) is the focal point of a secure command, control, and communications system to support the HHS Secretary and overall needs of the Department in the prevention, response and mitigation activities during major national security mobilizations such as a bioterrorism event. The SEOC ensures that all HHS emergency operations centers, emergency response teams, and other critical emergency personnel located throughout HHS are linked to the Secretary.

III. Continuation of Policy: Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Office of Public Health Preparedness (AAB) and the Office of Emergency Preparedness (ACK) Office of the Secretary, heretofore issued and in effect prior to the date of this reorganization are continued to full force and effect.

IV. Delegations of Authority: All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

V. Funds, Personnel and Equipment: Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

Dated: July 22, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–19006 Filed 7–25–02; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4037–N]

Medicare Program: Meeting of the Advisory Panel on Medicare Education—September 26, 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on September 26, 2002. The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: The meeting is scheduled for September 26, 2002, from 9 a.m. to 4 p.m., e.d.s.t.

Deadline for Presentations and Comments: September 19, 2002, 12 noon, e.d.s.t.

ADDRESSES: The meeting will be held at the Holiday Inn on the Hill, 415 New Jersey Avenue, NW., Washington, DC, 20001, (202) 638–1616.

FOR FURTHER INFORMATION CONTACT: Nancy Caliman, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–5052. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.hcfa.gov/events/apme/homepage.htm*) for additional information and updates on committee activities, or contact Ms. Caliman via E-mail at *ncaliman@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7849) and approved the renewal of the charter on January 18, 2001. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Joyce Dubow, Senior Policy Advisor, Public Policy Institute, AARP; Timothy Fuller, Executive Director, National Gray Panthers; John Graham IV, Chief Executive Officer, American Diabetes Association; Dr. William Haggett, Senior Vice President, Government Programs, Independence Blue Cross; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Brian Lindberg, Executive Director, Consumer Coalition for Quality Health Care; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Laurie Powers, Co-Director, Center on Self-Determination, Oregon Health Sciences University; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Dr. Susan Reinhard, Co-Director, Center for State

Health Policy, Rutgers University; Dr. Everard Rutledge, Vice President of Community Health, Bon Secours Health Systems, Inc.; Jay Sackman, Executive Vice President, 1199 Service Employees International Union; Dallas Salisbury, President and Chief Executive Officer, Employee Benefit Research Institute; Rosemarie Sweeney, Vice President, Socioeconomic Affairs and Policy Analysis, American Academy of Family Physicians; and Bruce Taylor, Director, Employee Benefit Policy and Plans, Verizon Communications.

The agenda for the September 26, 2002 meeting will include the following:

- Recap of the previous (May 23, 2002) meeting.
- *Medicare & You* Campaign update.
- Update on 2002 Medicare National Multi-Media and Education Campaign.
- CMS quality initiative.
- Briefing on *www.medicare.gov*.
- Listening session with the Administrator.
- Public comment.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should contact Ms. Caliman by 12 noon, September 19, 2002. A written copy of the oral presentation should also be submitted to Ms. Caliman by 12 noon, September 19, 2002. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Caliman by 12 noon, September 19, 2002. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Ms. Caliman at least 15 days before the meeting.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217(a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3). (Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–18613 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration), Department of Health and Human Services (HHS).

ACTION: Notice of modified or altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a system of records, "Medicaid Statistical Information System (MSIS), System No. 09–70–6001." We propose to delete published routine use number 1 pertaining to a contractor, number 5 pertaining to employees of a state government, number 6 pertaining to another Federal agency, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA). Disclosures previously covered by routine uses number 5, 6, and to the SSA will be accomplished by adding a new routine use number 2 which authorizes release of information in this system to "another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent." We propose to modify the language of routine use number 1 to clarify the circumstances for disclosure under this routine use and retain the proposed placement of this routine use as number 1.

The security classification previously reported as "None" will be modified to reflect that the data in this system is considered to be "Level Three Privacy Act Sensitive." We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the system of records is to establish an accurate, current, and comprehensive database containing standardized enrollment, eligibility, and paid claims of Medicaid beneficiaries to be used for the administration of Medicaid at the Federal level, produce statistical reports, support Medicaid related research, and assist in the detection of fraud and abuse in the Medicare and Medicaid programs. Information in this system will also be used to: Support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, support research of policy issues, quality and effectiveness of care, and of epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the Agency related to this system of records, and combat fraud and abuse in certain Federally funded health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See *Effective Dates* section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 5, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Ron North, Technical Advisor, Division of Informational Analysis and Technical Assistance, Center for Medicaid and State Operations, CMS, Room S3–17–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–5651.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System of Records

Statutory and Regulatory Basis For System of Records

In 1994, CMS established a system of records under the authority of § 1902 (a)(6) of the Social Security Act (the Act)(42 Code of Federal Regulations (CFR) 1396a(a)(6)), and the Balanced Budget Act (Public Law 105–33). Notice of this system, MSIS, System No. 09–70–6001," was published in the **Federal Register** at 59 FR 41327 (Aug. 11, 1994), an unnumbered routine use was added for SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information concerning Medicaid beneficiaries, physicians, and other providers of services to Medicaid beneficiaries. Information on beneficiaries consist of an assigned Medicaid identification number, social security number (SSN), health insurance claims number (HICN), date of birth, sex, ethnicity and race, medical services, equipment, and supplies for which Medicaid reimbursement is requested, and materials used to determine amount of benefits allowable under Medicaid. Information on physicians and other providers of services to the beneficiary consist of an assigned provider identification number, and information used to determine whether a sanction or suspension is warranted.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release MSIS information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of MSIS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, establish an accurate, current, and comprehensive database for administration of the Medicaid program at the Federal level, produce statistical reports, support Medicaid related research, and assist in the detection of fraud and abuse in the Medicaid program.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MSIS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper management of Medicare/Medicaid benefits; and/or

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. To assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require MSIS information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and /or the quality of health care services provided in the state.

SSA may require MSIS data to enable them to assist in the implementation and maintenance of the Medicare/Medicaid program.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, XIX and XXI of the Act, and for the administration of the Medicaid program.

Data will be released to the state only on those individuals who are eligibly enrollees, and beneficiaries under the services of a Medicaid program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require MSIS information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system of records.

3. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

MSIS data will provide for the research, evaluations, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicaid beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare/Medicaid beneficiaries and the policy that governs the care.

4. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require MSIS information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, 65 FR 82462 (Dec. 28, 00), as amended by 66 FR 12434 (Feb. 26, 01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The MSIS system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems," Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system

database configuration includes five classes of database users:

- Database Administrator class owns the database objects; *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential individual identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the MSIS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards:

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of MSIS data. MSIS information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of MSIS data.

CMS will take precautionary measures (*see* item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: July 5, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

System No. 09–70–6001

SYSTEM NAME:

Medicaid Statistical Information System (MSIS), HHS/CMS/CMSO.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on Medicaid beneficiaries, and physicians and other providers involved in furnishing services to Medicaid beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system include an assigned Medicaid identification number, social security number (SSN), health insurance claims number (HIC), date of birth, sex, ethnicity and race, medical services, equipment, and supplies for which Medicaid reimbursement is requested, and materials used to determine amount of benefits allowable under Medicaid. Information on physicians and other providers of services to the beneficiary consist of an assigned provider identification number, and information used to determine whether a sanction or suspension is warranted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this system of records is given under § 1902 (a)(6) of the Social Security Act (42 United States Code (U.S.C.) § 1396a (a)(6), and the Balanced Budget Act (Public Law 105–33).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system of records is to establish an accurate, current, and comprehensive database containing standardized enrollment, eligibility, and paid claims of Medicaid beneficiaries to be used for the administration of Medicaid at the Federal level, produce statistical reports, support Medicaid related research, and assist in the detection of fraud and abuse in the Medicaid program. Information in this system will also be used to: support regulatory and policy functions performed within the

Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, support research of policy issues, quality and effectiveness of care, and of epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the Agency related to this system of records, and combat fraud and abuse in certain Federally funded health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine use in this system meets the compatibility requirement of the Privacy Act.

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (Dec. 28, 00), as amended by 66 FR 12434 (Feb. 26, 01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information that will be maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper management of Medicare/Medicaid benefits; and/or

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

3. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

6. To CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the assigned beneficiary identification number, SSN, HICN, and the assigned physician or other providers of services identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the MSIS system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Disposal occurs ten years after the final determination of the case is completed.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Informational Analysis and Technical Assistance, Center for Medicaid and State Operations, CMS, Room S3–18–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system

manager who will require the system name, identification number, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

CMS obtains the identifying information contained in this system from state Medicaid agencies, or Medicaid Management Information Systems maintained by the individual states, and information contained on CMS Form 2082.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–18170 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, "Individuals Authorized Access to the CMS Data Center, System No. 09–70–0064." We propose to amend the name of this system to more accurately reflect the purpose of this system to read "Individuals Authorized Access to the CMS Computer Services (IACS)." We propose to delete an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA). Disclosure of data from this system to the SSA is no longer necessary since SSA has been established as a separate agency outside of the HHS and a routine use for the purpose stated is no longer necessary.

The security classification previously reported as "None" will be modified to reflect that data in this system are considered to be "Level Three Privacy Act Sensitive." We are modifying the language in the remaining routine uses to provide clarity to CMS intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take this opportunity to update any sections of this SOR that were affected by the recent reorganization and to modify language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is for assigning, controlling, tracking, and reporting authorized access to and use of CMS's computerized information and resources. Information in this system will be used will be used to support regulatory and policy functions performed within the Agency or by a contractor or consultant; support constituent requests made to a Congressional representative; and to support litigation involving the Agency related to this SOR. We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the Aroutine use" portion of the system be published for comment, CMS invites comments on all portions of this notice. See *Effective Dates* section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 19, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Kenneth Olga, Technology Services Group, Office of Information Services, CMS, Room N1–19–18, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–4067.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Statutory and Regulatory Basis For SOR

In 1994, CMS established an SOR under the authority of 5 U.S.C. 5552(e)(10). Notice of this system, "Individuals Authorized Access to the CMS Data Center, System No. 09–70–0064," was published at 59 **Federal Register** (FR) 41330 (Aug. 11, 1994).

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains the name, work address, work phone number, an assigned user identification (UserID) number, an associated password, and the software system(s) that the individual is authorized to use.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release IACS information that can be associated with an individual as provided for under "Section III.A. Entities Who May Receive Disclosures Under Routine Use." Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with IACS information and identifiers. Non-identifiable data includes individual records with IACS information and masked identifiers or IACS information with identifiers stripped out of the file.

We will only disclose the minimum personal data necessary to achieve the

purpose of IACS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., developing and refining payment systems and monitoring the quality of care provided to patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the IACS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when

a. The Agency or any component thereof; or

b. Any employee of the Agency in his or her official capacity; or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information".

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The IACS system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: The Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and the Office and Management and Budget (OMB) Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems. Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against

excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To insure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the IACS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log on—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System on Individual Rights

A. CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of IACS. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information in this system to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: July 22, 2002.

Thomas A. Scully,

Administrator, . Centers for Medicare & Medicaid Services.

09–70–0064

SYSTEM NAME:

"Individuals Authorized Access to the Centers for Medicare & Medicaid Services (CMS) Computer Services (IACS), HHS/CMS/OIS, System No. 09–70–0064."

SECURITY CLASSIFICATION:

Level 3 Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with an approved need for access to the computer resources and information maintained by CMS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name, work address, work phone number, an assigned user identification (UserID) number, an associated password, and the software system(s) that the individual is authorized to use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under 5 U.S.C. 552(e)(10).

PURPOSE(S):

The primary purpose of the SOR is for assigning, controlling, tracking, and reporting authorized access to and use of CMS's computerized information and resources. Information in this system will be used to support regulatory and policy functions performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; and to support litigation involving the Agency related to this SOR.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used

for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine use in this system meets the compatibility requirement of the Privacy Act. This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information".

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information that will be maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. the Agency or any component thereof; or

b. any employee of the Agency in his or her official capacity; or

c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. the United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the name and assigned UserID number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the IACS system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems (AIS) Guide, Systems Securities Policies; and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Disposal occurs three years from the time the individual no longer requires access to the HDC.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Technology Services Group, Office of Information Services, CMS, Room N1–19–18, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–4067.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay), address, date of birth, and sex.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from applications submitted by the individuals requiring access to computer services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–19022 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; System of Records Notice

AGENCY: Office of Family Assistance (OFA) and the Office of Planning, Research, and Evaluation (OPRE), ACF, DHHS.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Family Assistance and the Office of Planning, Research and Evaluation, Administration for Children and Families (ACF), are publishing a notice of a new system of records entitled TANF (Temporary Assistance for Needy Families) Data System. The collection of the data elements for this system is authorized by title IV–A of the Social

Security Act (Act) (42 U.S.C. 601–619). The TANF Data System includes the data elements on individual TANF recipients that States report under sections 403 and 411 of the Act.

Information in the TANF Data System is used for three major purposes: (1) To determine whether States are meeting certain requirements prescribed by the Act; (2) to report to Congress on the TANF program; and (3) to compute the scores and rank States on their performance in assisting TANF recipients to obtain and retain employment in connection with the award of High Performance Bonus funds.

DATES: We invite interested parties to submit comments on this notice within August 26, 2002. Pursuant to paragraph 4c of Appendix I to Office of Management and Budget (OMB) Circular No. A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, we have sent copies of this notice as required by 5 U.S.C. 552(a) to the Committee on Government Reform and Oversight of the U.S. House of Representatives, the Committee on Governmental Affairs of the U.S. Senate, and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The new system of records is proposed to be established effective September 2, 2002, unless ACF receives comments that would result in a contrary determination.

ADDRESSES: Please address comments to: Sean D. Hurley, Director, Division of TANF Data Collection and Analysis, Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW.; Suite 706, Washington, DC 20447, Phone: 202–401–9297, Fax: 202–205–3598, E-mail: *shurley@acf.hhs.gov*.

Comments received will be available for public inspection at the address specified above from 9 a.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sean D. Hurley, Director, Division of Data Collection and Analysis, at the above address.

SUPPLEMENTARY INFORMATION: The Temporary Assistance for Needy Families program under title IV–A of the Act became effective on August 22, 1996. In order to monitor the progress of States (*i.e.*, the 50 States, District of Columbia, Puerto Rico, U.S. Virgin Islands and Guam) implementing the TANF program, Congress specified mandatory data collection and reporting requirements in section 411 of the Act. This section also requires the Department to transmit to Congress an annual report on the Department's findings as to whether States are:

- Meeting the work participation rates; and,
- Increasing the employment and earnings of needy families, increasing child support collections, and decreasing out-of-wedlock pregnancies and child poverty.

The annual report must also describe:

- The demographic and financial characteristics of families applying for, receiving, and becoming ineligible for TANF;
- The characteristics of State TANF programs; and,
- The trends in employment and earnings of needy families with minor children living at home.

In addition to the foregoing requirements, the statute also allows (but does not require) States to compete for an award of High-Performance Bonus funds. These funds are awarded to applicant States which successfully assist TANF recipients in obtaining and retaining employment.

Until the regulations for the TANF program and the High Performance Bonus system were finalized, including the data collection requirements, States were required to meet minimal reporting requirements under the Emergency TANF Data Report, which did not include any individual identifiers.

Final rules published on April 12, 1999, expanded TANF data collection and reporting requirements. These requirements, published at 45 CFR part 265, required States to report specific individual identifiers, including the Social Security Numbers (SSNs) of TANF recipients collected pursuant to section 1137 of the Act. States are required to collect the prescribed data elements monthly and report the data quarterly to ACF. States may report these data elements on the entire universe of families that receive assistance in a reporting month or for a representative sample of recipients. Approximately 30 States currently report universe data.

Final rules regarding the award of TANF High Performance Bonus (HPB) funds were published on August 30, 2000 and amended on December 4, 2000 and May 10, 2001. These rules, which are found at 45 CFR part 270, specify the data and other information which States must report in order to compete for bonus awards.

Consistent with the requirements noted above, the Office of Family Assistance and the Office of Planning, Research, and Evaluation propose to establish a new system of records: The TANF Data System (TDS). In addition, since States that wish to compete on the four work measures in the HPB system in FY 2002 or later are required to provide the Social Security Numbers (SSNs) of all adult recipients in each fiscal quarter, such SSNs will also be included in the TDS. These SSNs are used to obtain information on the employment and earnings of TANF recipients by matching them with the National Directory of New Hires (NDNH) data set maintained by the Office of Child Support Enforcement (OCSE), ACF.

The records in this system will be maintained in a secure manner compatible with their content and use. Approved users will be required to adhere to the provisions of the Privacy Act. The System Manager will control access to the data.

Dated: June 19, 2002.

Andrew S. Bush,

Director, Office of Family Assistance.

Dated: June 18, 2002.

Howard Rolston,

Office of Planning, Research, and Evaluation.

09–90–0151

SYSTEM NAME:

Temporary Assistance for Needy Families (TANF) Data System, Administration for Children and Families, Department of Health and Human Services.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The TANF data are reported by the individual States for each (Federal) fiscal quarter. (The term State is used in this notice to refer to the 50 States, the District of Columbia, and the jurisdictions of Puerto Rico, the U.S. Virgin Islands, and Guam). States (CIT) of the National Institutes of Health (NIH) located at Building 12A, Bethesda, MD 20892. The State data are pooled to create a national database for each quarter, which is also kept in the computer system of CIT. The whole system is maintained under the technical and management control of: (1) The Office of Information Systems, Office of Administration, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447; and (2) the Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The TANF Data System (TDS) contains information on: (1) Members of families (as defined by regulation at 45 CFR 265.2) who received assistance under the TANF program in any month, and (2) members of families (as defined by regulation at 45 CFR 265.2) in which an individual was assisted by a Separate State Program (SSP) which is not subject to Federal work or time limit requirements but for which expenditures are or will be claimed by the State to satisfy TANF Maintenance of Effort (MOE) requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are three distinct groups of data in the TDS: family-level data; adult-level or minor-child-head-of-household data; and child data.

Family level data maintained in the TDS may include the following items of information on every family that received assistance during one or more months: State Federal Information Processing Standard (FIPS) code; Region code; county FIPS code; report year and month; stratum code; case identification number (assigned by the State); Zip code; funding stream; disposition status; new applicant status; number of family members; type of family for work participation; receipt of subsidized housing; receipt of medical assistance; receipt of food stamp assistance; amount of food stamp assistance; receipt of subsidized child care; amount of subsidized child care; amount of child support; amount of family's cash resources; cash, or cash equivalent, amount of assistance and number of months of that assistance; TANF child care (amount, number of children covered, and number of months of assistance); transportation assistance (amount and number of months of assistance); transitional services (amount and number of months of assistance); other assistance (amount and number of months of assistance); amount of reductions in assistance; reason for assistance reductions (sanctions, recoupment of prior over payment, and other); waiver evaluation experimental and control group status; exemption status from the federal time-limit provisions; and new child-only-family status.

Adult-level or minor child-head-of-household data maintained in the TDS may include: case identification number (same as the family's identification number); report year and month, State FIPS code; family affiliation; non-custodial parent indicator; date of birth; SSN; race and ethnicity; gender; receipt of disability benefits; marital status; relationship to head of household; parent-with-minor-child-in-the-family status; needs of a pregnant woman; education level; citizenship; cooperation with child support; number of months countable towards Federal time-limit; number of countable months remaining under State's time-limit; exemption status of the reporting month from the State's time-limit; employment status; work participation status; unsubsidized employment hours; subsidized private and public sector employment hours; work experience hours; on-the-job training hours; job search and job readiness assistance hours; community service program hours; vocational educational training hours; hours of job skills training directly related to employment; hours of education directly related to employment for individuals with no high school diploma or certificate of high school equivalency; hours of satisfactory school attendance for individuals with no high school diploma or certificate of high school equivalency; hours of providing child care services to an individual who is participating in a community service program; hours of additional work activities permitted under a Waiver demonstration; hours of other work activities; required hours of work under a Waiver demonstration; amount of earned income; and amount of unearned income (earned income tax credit, Social Security benefit, Supplemental Security Income (SSI), worker's compensation, and other unearned income).

Child data (i.e., data pertaining to every child in a recipient TANF family) may include: case identification number (same as the family's identification number); State FIPS code; report year and month; family affiliation; date of birth; SSN; race and ethnicity; gender; receipt of disability benefits; relationship to head of household; parent-with-minor-child-in-the-family status; education level; citizenship; amount of unearned income (SSI and other).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Legal authority for the collection and maintenance of the system is contained in Title IV-A of the Social Security Act (Act), 42 U.S.C. 601–619. TANF data collection and reporting regulations are found in 45 CFR part 265. Legal authority for the collection of information for the High Performance Bonus award program is found in section 403 of the Social Security Act and in 45 CFR part 270.

PURPOSE(S):

Information in the TANF Data System is used for three major purposes: (1) To determine whether States are meeting certain requirements prescribed by the Act, including prescribed work and time-limit requirements; (2) to compile information used to report to Congress on the TANF program; and, (3) to compute State scores on work measures and rank States on their performance in assisting TANF recipients to obtain and retain employment in connection with the award of High Performance Bonus funds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records containing data collected pursuant to section 411 of the Social Security Act may be disclosed :

1. To supply raw or tabulated data without personal identifiers in response to specific requests from private and public entities.

2. To supply raw (untabulated) data for research purposes in response to requests from researchers who have agreed in writing not to use such data to identify any individual whose information is included therein.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

States electronically transmit the TANF data for each fiscal quarter to a computer in the Center for Information Technology (CIT) of the National Institute of Health. The data sets received from the States in accordance with the requirements of section 411 of the Social Security Act and 45 CFR part 265 are pooled to create a national database for each fiscal quarter. The national database thus created for a given fiscal year is also kept in a computer disk on the mainframe of the CIT for up to 24 months after the end of such fiscal year. Afterwards, the database is copied to compact discs (CDs) and securely kept in ACF under lock and key or on personal computers by individuals whose access to the CDs has been authorized by OPRE and/or the ACF's Office of Information Services, Office of Administration.

Although SSNs of adult TANF recipients collected from States which have chosen to compete for High-Performance bonuses are stored on the CIT as well, they are also provided to Office of Child Support Enforcement for

matching with records of individual employment information contained in the National Directory of New Hires portion of OCSE's Location and Collection System, No. 09–90–0074, last published at **Federal Register**, Vol. 65, No. 187, pages 57817–57820, dated September 26, 2000. Thereafter, match results are transmitted back to OPRE without SSNs in a form which is not individually identifiable and the SSNs supplied to perform the match are destroyed by OCSE.

RETRIEVABILITY:

The national database kept in the CIT is accessed by authorized users of the data following established procedures. The authorized users are selected individuals in the Office of Administration, ACF (including its contractors who may handle processing of the data and the creation of the national database), and selected individuals in the Division of Data Collection and Analysis, Office of Planning, Research, and Evaluation, ACF (who perform analyses of the data). The database is accessed and downloaded by authorized individuals to secure personal computers (PCs). Sharing of the data downloaded to individual PCs is allowed only with permission of the System Manager. Although all data elements in the database can be retrieved, the SSNs are not generally included in any retrieval, since they are not used in the routine analyses of the data.

SAFEGUARDS:

1. *Physical security:* The CIT of NIH, as a U.S. government facility, abides by all U.S. government policies with regard to the physical security of the data kept there. The CIT has the following: an uninterruptible power supply; climate control; a central backup and recovery system; a disaster recovery program; security procedures for data access; and normal physical and system security procedures (restricted physical access to computer machine rooms and output handling areas, which is enforced by a round-the-clock security guard stationed at the main entrance to the area, valid government identification (ID) badge or photo identification and registration with the security guard to obtain a temporary entry badge for a specifically authorized purpose, such as maintenance service or repair of equipment, etc.). The outputs generated at the facility are placed in locked boxes that can be accessed only by users knowing the correct box access code. To ensure physical security of data kept on tapes or other portable media, the CIT requires that the sponsor of an account authorize the removal of them from the CIT. When such items are taken out, the person receiving the items provides the following to the production unit staff of the CIT: name and signature; ID badge number; driver's license number and State; and organization's (which is represented by the person) name and phone number. Only after confirming these items of information by the production unit staff will the items be given to the person. Data older than 24 months is downloaded by authorized individuals to secure PCs, then copied to CDs which are then kept under lock and key. After copying the data to CDs, the data on the PCs are deleted.

2. *Authorized access:* Access to the data is strictly regulated with passwords and other controls. Only individuals whose work responsibilities specifically include accessing the data system (either for processing or for analysis) are allowed to access these data. They include designated individuals (including contractors) in the Division of Application Development Services, Office of Information Services, Office of Administration, ACF (mostly for processing incoming data and database creation), and designated individuals in the Division of Data Collection and Analysis, OPRE, ACF.

3. *Procedural and technical safeguards:* The individuals who are authorized to access the data have been adequately instructed on the privacy and confidentiality of the data, and they have been trained to handle the data in such a manner as to protect its privacy and confidentiality. Release of any personal identification particulars by these individuals is strictly forbidden, and release of even tabulated data is allowed only under specific authorization. Established clearance procedures must be observed before any release of the information contained in the data system.

RETENTION AND DISPOSAL:

The data transmitted by a State for a fiscal quarter to the CIT's computer are backed up to a computer tape after the initial processing of the data. The backed-up version of the data is kept only for a period of 30 days.

The data transmitted by the States for a fiscal quarter, after processing and acceptance, are pooled to create a national database for the quarter. The national database is stored in the CIT's computer for up to 24 months after the end of the fiscal year. Afterwards, the database is copied to a compact disc, and the original data in CIT's computer is scratched. The data on the compact disc is securely maintained by ACF for up to 20 years in order to facilitate research on caseload trends, changes in the characteristics of TANF recipients, or other pertinent research. The eventual disposal of the data will be by means of physical destruction of the CD's containing the data. The Office of Information Systems of the Office of Administration and OPRE, ACF, are responsible for the retention and disposal of the data system.

The SSNs obtained for the HPB award program for a performance year, although initially kept in an electronic file in the CIT, are erased after identifying the States that merited awards for that performance year. The erasing of these SSN data file will be done within a year after the award year, which immediately follows the performance year. Aggregate data files based on information provided for the HPB award program are also erased.

SYSTEM MANAGER(S) AND ADDRESS:

1. Director, Division of Applications Development Services, Office of Information Services, Office of Administration, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

2. Director, Division of Data Collection and Analysis, Office of Planning, Research, and Evaluation, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to either of the System Managers noted above. The Privacy Act provides that, except under certain conditions specified in the law, only the subject of the records may have access to them. All requests must be submitted in the following manner: Identify the system of records that is desired to be searched; have the request for search notarized certifying the identity of the requestor; and indicate that the requestor is aware that the knowing and willful request for or acquisition of Privacy Act record under false pretenses is a criminal offense subject to a $10,000 fine. The letter of request should also provide sufficient particulars to enable the System Manager to distinguish among records on subject individuals with the same name.

RECORD ACCESS PROCEDURES:

Write to either of the System Managers listed above to obtain access to the records. Requestors should provide a detailed description of the record contents they are seeking.

CONTESTING RECORD PROCEDURES:

Write to either of the System Managers listed above, at the address noted, identifying the record and specifying the information to be contested and corrective action sought, together with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

All items of information contained in the system of records are obtained from the States.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–18885 Filed 7–25–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0563]

Beauregard Plasma, Inc., Jackson Plasma, Inc., Baton Rouge Plasma, Inc., and Claiborne Plasma, Inc.; Revocation of U.S. License Nos. 1030, 1031, 1032, and 1033

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the biologics licenses (U.S. License Nos. 1030, 1031, 1032, and 1033) issued to Beauregard Plasma, Inc., Jackson Plasma, Inc., Baton Rouge Plasma, Inc., and Claiborne Plasma, Inc., for the manufacture of Source Plasma. These establishments did not respond to a notice of opportunity for a hearing on a proposal to revoke their licenses.

DATES: The revocation of the biologics licenses (U.S. License Nos. 1030, 1031, 1032, and 1033) is effective July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Earline Robinson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is revoking the biologics license (U.S. License No. 1030) issued to Beauregard Plasma, Inc., P.O. Box 96, Hwy. 27, DeQuincy, LA 70633; the biologics license (U.S. License No. 1031) issued to Jackson Plasma, Inc., P.O. Box 788, Hwy. 68, Jackson, LA 70748; the biologics license (U.S. License No. 1032) issued to Baton Rouge Plasma, Inc., P.O. Box 174, Hwy. 74, St. Gabriel, LA 70776; and the biologics license (U.S. License No. 1033) issued to Claiborne Plasma, Inc., Route 2, Box 75, Homer, LA 71040, for the manufacture of Source Plasma. FDA initiated proceedings to revoke the licenses because authorized FDA employees were unable to gain access to any of the establishments to carry out required inspections of the facilities, and manufacturing of products had been discontinued to an extent that meaningful inspections could not be made.

In a certified, return-receipt letter dated May 11, 2001, FDA notified the authorized official of the establishments that attempts to conduct inspections of the establishments were unsuccessful because the establishments were apparently no longer in operation and had apparently discontinued the manufacture of Source Plasma. The letter advised the authorized official that, under 21 CFR 601.5(b)(1)(i) and (b)(1)(ii) (formerly codified as 21 CFR 601.5(b)(1) and (b)(2)), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection under 21 CFR 600.21 or that manufacturing of a product has been discontinued to an extent that a meaningful inspection could not be made, the Commissioner of Food and Drugs shall institute proceedings for license revocation. In the same letter, FDA notified the establishments of FDA's intent to revoke U.S. License Nos. 1030, 1031, 1032, and 1033 and its intent to offer an opportunity for a hearing.

Under 21 CFR 12.21(b), FDA published in the **Federal Register** of January 9, 2002 (67 FR 1223), a notice of opportunity for a hearing on a proposal to revoke the license of Beauregard Plasma, Inc., Jackson Plasma, Inc., Baton Rouge Plasma, Inc., and Claiborne Plasma, Inc. In the notice, FDA explained that the proposed license revocations were based on the inability of authorized FDA employees to conduct a meaningful inspection of the facilities because they were no longer in operation, and noted that documentation in support of license revocation had been placed on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The notice provided the establishments 30 days to submit a written or electronic request for a hearing and 60 days to submit any data and information justifying a hearing. The notice provided other interested persons 60 days to submit written or electronic comments on the proposed revocation. The notice also stated that a licensee's failure to file timely written requests for a hearing constitutes an election by the licensee not to avail itself of the opportunity for a hearing concerning the proposed license revocation. The establishments did not respond within the 30-day time period with a written or electronic request for a hearing, and under 21 CFR 12.21(b), the 30-day time period prescribed in the notice of opportunity for a hearing may not be extended. No other comments were received.

Accordingly, under 21 CFR 12.38, section 351 of the Public Health Service Act (42 U.S.C. 262), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the biologics licenses (U.S. License Nos. 1030, 1031, 1032, and 1033), issued to Beauregard Plasma, Inc., Jackson Plasma, Inc., Baton Rouge Plasma, Inc., and Claiborne Plasma, Inc., respectively, are revoked, effective July 26, 2002.

Dated: July 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19017 Filed 7–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01P–0533]

Determination That Cyanocobalamin Injection Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that cyanocobalamin injection (Rubramin PC), 1 milligram (mg)/milliliter (mL) in a 10 mL vial (cyanocobalamin injection) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for cyanocobalamin injection.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Borgerding, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price

Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (21 CFR 314.161(a)(1)). FDA may not approve an ANDA that does not refer to a listed drug.

Cyanocobalamin injection (Rubramin PC), 1mg/mL in a 10 mL vial is the subject of NDA 6–799. On November 28, 1951, Bristol-Myers Squibb Co. received approval to market cyanocobalamin injection. Cyanocobalamin is vitamin B_{12}. Subsequently, Bristol-Meyers Squibb Co. withdrew cyanocobalamin injection from sale.

On November 29, 2001, PharmaForce, Inc., submitted a citizen petition (Docket No. 01P–0533) under 21 CFR 10.30 to FDA requesting that the agency determine whether cyanocobalamin injection was withdrawn from sale for reasons of safety or effectiveness. FDA has reviewed its records and determined that cyanocobalamin injection was not withdrawn from the market for safety or efficacy reasons. Accordingly, the agency will list cyanocobalamin injection in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to cyanocobalamin injection may be approved by the agency.

Dated: July 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18976 Filed 7–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0023]

Determination of Regulatory Review Period for Purposes of Patent Extension; Definity

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Definity and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Definity (perflutren lipid microspheres). Definity is indicated for use in patients with suboptimal echocardiograms to opacify the left ventricular chamber and to improve the delineation of the left ventricular endocardial border. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Definity (U.S. Patent No. 5,527,521) from Dupont Contrast Imaging, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Definity represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Definity is 2,160 days. Of this time, 1,193 days occurred during the testing phase of the regulatory review period, while 967 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: September 3, 1995. The applicant claims September 13, 1995, as the date the investigational new drug application (IND) became

effective. However, FDA records indicate that the IND effective date was September 3, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 8, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for Definity (NDA 21–064) was initially submitted on December 8, 1998.

3. *The date the application was approved*: July 31, 2001. FDA has verified the applicant's claim that NDA 21–064 was approved on July 31, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,418 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 24, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 22, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit a single copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–18975 Filed 7–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0254]

Draft Guidance for Industry on Inhalation Drug Products Packaged in Semipermeable Container Closure Systems; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Inhalation Drug Products Packaged in Semipermeable Container Closure Systems." This draft guidance is intended to provide guidance for industry on inhalation drug products that are packaged in semipermeable primary container closure systems. This draft guidance also covers related chemistry, manufacturing, and controls (CMC) considerations. FDA is issuing this draft guidance to address public health concerns raised by the possible leaching and entry of chemical contaminants into inhalation drug products packaged in semipermeable primary container closure systems.

DATES: Submit written or electronic comments on the draft guidance by October 24, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Badrul Chowdhury or Guirag Poochikian, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Inhalation Drug Products Packaged in Semipermeable Container Closure Systems." Inhalation drug products used in the treatment of patients with asthma or chronic obstructive pulmonary disease may be packaged in semipermeable primary container closure systems, such as low-density polyethylene. Over time, chemical impurities can accumulate in an inhalation drug product packaged in semipermeable primary container closure systems as a result of the degradation of formulation components, leaching from the container closure system, and/or entry from the local environment. Volatile chemical components from the local environment, including the secondary packaging, can react with the drug product formulation to form different impurities. The clinical consequences of chemical contamination of inhalation drug products are uncertain; however, given the known sensitivity of patients using these products to respiratory irritants and sensitizers, it is possible that these chemical contaminates may induce bronchospasm. Because bronchospasm is also the indication for which the inhalation drug product is used, it is difficult in the clinical setting to establish whether bronchospasm after the use of a drug product may be due to chemical contaminants or to a patient's underlying disease. Since it is possible that chemical contaminants in the inhalation drug products used to treat critically ill patients could adversely affect such patients, FDA is issuing this draft guidance to provide recommendations for inhalation drug products packaged in semipermeable primary container closure systems. This draft guidance provides recommendations on: (1) Appropriate protective secondary packaging, (2) embossing and/or debossing of the primary container in lieu of paper labels, and (3) general guidance on the number of unit-dose containers to be contained within each protective secondary package. These recommendations apply to drug products, both those in development and those already approved and marketed in the United States.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on inhalation drug products packaged in semipermeable container closure systems. It does not create or confer any

rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: July 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19020 Filed 7–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Training Program for Regulatory Project Managers; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER), is announcing the continuation of the Regulatory Project Manager Site Tours. This training program, initiated in 1999, gives CDER's regulatory project managers an opportunity to tour pharmaceutical facilities. The program provides regulatory project managers and their industry counterparts an opportunity to share their regulatory experiences. The program is intended to enhance review efficiency and quality by providing CDER staff with a better understanding of the pharmaceutical industry and its operation, and to improve communication and cooperation between CDER staff and industry. The purpose of this notice is to invite pharmaceutical companies interested in participating in these programs to contact CDER.

DATES: Pharmaceutical companies may submit proposed agendas by September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Sean J. Belouin, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2481, FAX 301–827–2523, e-mail: BELOUINS@cder.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

An important part of CDER's commitment to make safe and effective drugs available to all Americans is optimizing the efficiency and quality of the drug review process. To support this primary goal, CDER has initiated various training and development programs to promote high performance in its regulatory project management staff. CDER seeks to significantly enhance review efficiency and review quality by providing the staff with a better understanding of the pharmaceutical industry and its operations. To this end, CDER is continuing the Regulatory Project Manager Site Tours to give regulatory project managers the opportunity to tour pharmaceutical facilities. The goals are to provide: (1) Firsthand exposure to industry's drug development processes, and (2) a venue for sharing information about project management procedures (but not drug-specific information) with industry representatives.

II. Regulatory Project Manager Site Tours and Regulatory Interactions

In this program, over a 2- to 3-day period, small groups (five or less) of regulatory project managers, including a senior level regulatory project manager, may observe operations of pharmaceutical manufacturing, packaging facilities, pathology/toxicology laboratories, and regulatory affairs operations. The purpose of this tour, or any part of the program, is meant to improve mutual understanding and to provide an avenue for open dialogue.

During the site tours, regulatory project managers and their industry counterparts will also participate in daily workshops focusing on selective regulatory issues important to both CDER staff and industry. The primary objective of the daily workshops is to learn about the team approach to drug development, including drug discovery, preclinical evaluation, project tracking mechanisms, and regulatory submission operations.

The overall benefit to regulatory project managers will be exposure to project management team techniques and processes employed by the pharmaceutical industry. By participating in this program, the regulatory project manager will grow professionally by gaining a better understanding of industry processes and procedures.

III. Site Selection

All travel expenses associated with the site tours will be the responsibility of CDER, therefore, selection of potential facilities will be based on available resources for this program.

If your firm is interested in offering a site tour or learning more about this training opportunity, please submit a proposed agenda to Sean J. Belouin (see **FOR FURTHER INFORMATION CONTACT**).

Dated: July 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19019 Filed 7–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Regulations and Forms (OMB No. 0915–0126)—Revision

The National Practitioner Data Bank (NPDB) was established through Title IV of Pub. L. 99–660, the Health Care Quality Improvement Act of 1986, as amended. Final regulations governing the NPDB are codified at 45 CFR part 60. Responsibility for NPDB

implementation and operation resides in the Bureau of Health Professions, Health Resources and Services Administration, U.S. Department of Health and Human Services (DHHS). The NPDB began operation on September 1, 1990.

The intent of Title IV of Pub. L. 99–660 is to improve the quality of health care by encouraging hospitals, State licensing boards, professional societies, and other entities providing health care services, to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure of practitioner previous damaging or incompetent performance.

The NPDB acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information on medical malpractice payments, adverse licensure actions, adverse clinical privileging actions, adverse professional society actions, and Medicare/Medicaid exclusions is collected from, and disseminated to, eligible entities. It is intended that NPDB information should be considered with other relevant information in evaluating a practitioner's credentials.

This request is for a revision of reporting and querying forms previously approved on April 30, 1999. The reporting forms and the request for information forms (query forms) must be accessed, completed, and submitted to the NPDB electronically through the NPDB Web site at *http://www.npdb-hipdb.com*. All reporting and querying is performed through this secure website. Due to overlap in requirements for the Healthcare Integrity and Protection Data Bank (HIPDB), some of the NPDB's burden has been subsumed under the HIPDB.

Estimates of burden are as follows:

Regulation citation	Number of respondents	Responses per respondent	Hours per responses (in minutes)	Total burden hours
60.6(a), Errors & Omissions	400	4.625	15	462.5
60.6(b), Revisions to Actions	100	1.5	30	75
60.7(b), Medical Malpractice Payment Report	660	28.03	45	13,875
60.8(b), Adverse Action Reports—State Boards	[1] 0	0	0	0
60.9(a)3, Adverse Action Clinical Privileges & Professional Society	1,000	1.2	45	900
Requests for Hearings by Entities	1	1	480	8
60.10(a)(1), Queries by Hospital-Practitioner Applications	6,000	240,000	5	20,000
60.10(a)(2), (Queries by Hospitals-Two Yr. Cycle	6,000	960,000	5	80,000
60.11(a)(1), Disclosure to Hospitals	[2] 0	0	0	0
60.11(a)(2), Disclosure to Practitioners (Self Query)	[3] 0	0	0	0
60.11(a)(3), Disclosure to Licensure Boards	125	15,000	5	1,250
60.11(a)(4), Queries by Non-Hospital Health Care Entities	4,000	2,200,000	5	183,333
60.11(a)(5), Queries by Plaintiffs' Attorneys	5	5	30	2.5
60.11(a)(6), Queries by Non-Hospital Health Care Entities-Peer Review	[4] 0	0	0	0
60.11(a)(7), Requests by Researchers for Aggregated Data	100	100	30	50
60.14(b), Practitioner Places a Report in Disputed Status	1,000	1,000	15	250
60.14(b), Practitioner Statement	2,325	2,325	60	2,325
60.14(b), Practitioner Requests for Secretarial Review	110	110	480	880
60.3, Entity Registration-Initial	500	500	60	500
60.3, Entity Registration-Update	1,000	1,000	5	83
60.11(a), Authorized Agent Designation-Initial	500	500	15	125
60.11(a), Authorized Agent-Update	50	50	5	4.17
60.12(c), Account Discrepancy Report	300	300	5	75
60.12(c), Electronic Funds Transfer Authorization	400	400	15	100
60.3, Entity Reactivation	100	100	60	100
Total	.....	.....	.....	304,398

[1] Included in estimate for reporting adverse licensure actions to the HIPDB in 45 CFR part 61.
[2] Included in estimates for 60.10(a)(1).
[3] Included in estimate for self queries to the HIPDB in 45 CFR part 61.
[4] Included in estimate for hospital queries under 60.11(a)(4).

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 23, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–19059 Filed 7–25–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Call for Applications for the Director's Council of Public Representatives

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), the Federal government's primary agency for supporting and conducting medical research leading to the improvement in the nation's health, has established a national advisory council—the Director's Council of Public Representatives (COPR). The Chair of the COPR is the Director of the NIH. This notice describes the process for the selection of new members of the COPR that the NIH will use, as current members complete their terms.

DATES: The application deadline for the COPR is September 16, 2002—all applications must be postmarked on or before September 16, 2002; the notification of selection date is January 2003; the term start date is April 1, 2003; and the first COPR meeting date

for new members is April 20 and 21, 2003.

FOR FURTHER INFORMATION CONTACT: NIH Director's Council of Public Representatives (COPR), c/o Palladian Partners, Inc., 1010 Wayne Avenue, Suite 1200, Silver Spring, MD, 20910, telephone (301) 650–8600, fax (301) 650–8676, e-mail *COPR@palladianpartners.com*. If you are interested in serving as a member of the COPR, please contact Palladian Partners, Inc., to have an application mailed to you or go on-line to *http://public-council.nih.gov/COPRapplication.asp* to access the COPR application instructions. If you have questions about your application or the submission process, please feel free to contact the staff working on this project by mail, telephone, fax, or e-mail, as indicated in the above information.

ADDRESSES: Please mail your application to NIH Director's Council of Public Representatives (COPR), c/o Palladin Partners, Inc., 1010 Wayne Avenue, Suite 1200, Silver Spring, MD, 20910, telephone (301) 650–8660, fax (301) 650–8676, e-mail *COPR@palladianpartners.com*.

SUPPLEMENTARY INFORMATION: The Director of the NIH created the COPR in 1999 as an important forum for information exchange between the public and the NIH at the highest level. The COPR consists of up to 21 individuals who are selected from among the way diverse communities that benefit from, and have an interest in, NIH research, programs, and activities. The COPR is an important avenue for representatives of the public to advise the NIH Director on the viewpoints, input, and feedback of the broader public regarding emerging health and science priorities identified by the NIH Director and/or the COPR. COPR members also serve as NIH ambassadors by taking information from the NIH back to the broader public. COPR terms are typically three years.

The minimum eligibility criteria are that the applicant must:

- Have some interest in the work of the NIH (such as being a patient or family member of a patient; a care giver; or a volunteer in the health or science arena; a scientist or student of science; a health communicator, educator or professional in the medical field, but certainly not limited to these examples).
- Be in a position (formally or informally) to communicate regularly with the broader public or segments of the public about the activities of the COPR and the NIH.
- Commit to participating fully in activities of the COPR, including COPR meeting discussions and conference calls, outreach activities, and subcommittee and/or/working group activities that will take time in addition to COPR meeting attendance twice a year.

In addition, COPR members—while participating in COPR activities—will have to agree to subordinate disease-specific or program-specific interests to broader, crosscutting matters of importance to the NIH in addition to being responsive to special charges from the NIH Director in priority issue areas. COPR members must also agree to represent as broad a "public viewpoint" as possible and to at least keep the spirit of this goal at the forefront during all COPR discussions and activities.

Please contact Palladian Partners, Inc., to have an application mailed to you or go on-line to *http://public-council.nih.gov/COPRapplication.asp* to access to COPR application instructions. The NIH Director's COPR staff is located in the Office of Communications and Public Liaison, Office of the Director, National Institutes of Health. *Application packages postmarked after September 16, 2002 will be considered in the next year's application cycle, which will end in September 2003.*

After applications are screened for completeness, they will be reviewed and scored by external reviewers who are familiar with the responsibilities of the COPR. The NIH Director will make the final selection of candidates with the goal of creating a Council that reflects the breadth and diversity of the public's interest in the NIH, and will take into consideration many varied factors, including age, gender, culture, and geography. We expect that candidates will be selected in January 2003.

Thank you for your interest in the COPR. We look forward to receiving your application packet.

Dated: July 18, 2002.

John Burklow,

Acting Associate Director for Communications, NIH.

[FR Doc. 02–18943 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Loan Repayment Program for Health Disparities Research

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) and the National Center on Minority Health and Health Disparities (NCMHD) invite applications for the extramural Loan Repayment Program for Health Disparities Research (HDR–LRP or Program) for fiscal year 2002. Pursuant to the authority granted by section 103 of Public Law 106–525, the Minority Health and Health Disparities Research and Education Act of 2000, that added section 485G of the Public Health Service (PHS) Act (42 U.S.C. 287c–33), the Director of NCMHD, has established a loan repayment program that offers the repayment of educational loan debt to qualified health professionals who agree to conduct research on minority health or other health disparities for a minimum of 2 years.

DATES: Interested persons may request information about the HDR–LRP beginning on July 26, 2002, and August 23, 2002 at 5 p.m. (eastern time) is the closing date and time for the application process.

ADDRESSES: Information regarding the requirements and application procedures for the HDR–LRP may be obtained by calling or writing: National Center on Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, MSC 5465, Bethesda, MD 20892–5465, Attention: Kenya McRae, non-toll-free number: (301) 402–1366, e-mail: mcraek@od.nih.gov, Web site: *http://www.ncmhd.nih.gov*; or the Office of Loan Repayment Program, National Institutes of Health, toll-free-number: (866) 849–4047, e-mail: *lrp@nih.gov*, Web site: *http://www.lrp.nih.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

(1) "Debt threshold" is the minimum amount of qualified educational loan debt an applicant must have in order to be eligible for Program benefits. An applicant must have qualified educational loan debt equal to at least 20% of the applicant's institutional base salary or compensation at the time of execution of the LRP contract.

(2) "Health disparities population" as determined by the Director of NCMHD, after consultation with the Director of the Agency for Healthcare Research and Quality, is defined as a population where there is significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population. For purposes of this announcement, the following populations are determined to be health disparities populations: Blacks/African

Americans, Hispanics/Latinos, Native Americans, Alaska Natives, Asian Americans, Native Hawaiians, Pacific Islanders and the medically underserved such as individuals from the Appalachian region.

(3) "Health disparities research" is defined as basic, clinical, and behavioral research on a health disparities population (including individual members and communities of such populations) including the causes of such health disparities and methods to prevent, diagnose and treat such disparities.

(4) "Medically underserved" refers to individuals that lack access to primary and specialty care either because they are socioeconomically disadvantaged and may or may not live in areas with high poverty rates or because they reside in rural areas. The term also refers to individuals that reside in geographic areas where the Index of Medical Underservice (IMU) is 62 or less. The Health Resource Services Administration (HRSA) criteria designates a service area with an IMU of 62 or less as a "medically underserved area (MUA)". The IMU is a weighted score derived from four variables: the ratio of primary medical care physicians per 1,000 population, infant mortality rate, percentage of population below the federal poverty level, and percentage of the population age 65 years or over.

(5) "Minority health conditions" refers to all diseases, disorders, and other conditions (including mental health and substance abuse) that are unique to, more serious, or more prevalent in racial and ethnic minorities, for which the medical risk factors or types of medical interventions may be different, or research involving such populations as subjects or data on such individuals is insufficient.

(6) "Minority health disparities research" is defined as basic, clinical, or behavioral research on minority health conditions, including research to prevent, diagnose, and treat such conditions.

(7) "Qualified educational loan debt" is defined as educational loan debt incurred by health professionals for their undergraduate, graduate and/or health professional school educational expenses incurred at accredited institutions. It consists of the principal, interest, and related expenses of qualified Government and commercial loans obtained by the applicant for: (a) Tuition expenses; (b) other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and (c) the cost of room and board, and other reasonable living expenses as determined by the Director of NCMHD.

(8) "Repayable debt" means the difference between the applicant's qualified educational loan debt and 50% of the applicant's debt threshold.

Background

The Minority Health and Health Disparities Research and Education Act of 2000 (Public Law 106–525) was enacted on November 22, 2000, amending the Public Health Service (PHS) Act and adding section 485G that authorizes the Director of the National Center on Minority Health and Health Disparities (NCMHD) to establish a program entering into contracts with qualified health professionals. These health professionals are required to conduct minority health or other health disparities research for a minimum of two years, in consideration of the Federal Government repaying a portion of the principal and interest of their educational loans, up to a maximum of $35,000 per year, for each year of service. In addition to establishing the program, the Director, NCMHD, must ensure that not fewer than 50 percent of the contracts are awarded to qualified health professionals that are members of health disparities populations. This program is known as the Loan Repayment Program for Health Disparities Research (HDR–LRP). Selected applicants become participants of the HDR–LRP only upon the execution of a contract by the Director of NCMHD.

Eligibility Requirements

Specific eligibility criteria with regard to participation in the HDR–LRP include the following:

(1) Applicants must be a United States citizen, national, or permanent resident.

(2) Applicants must have a M.D., Ph.D., Pharm.D., D.O., D.D.S., D.M.D., D.P.M., Sc.D., or equivalent doctorate degree from an accredited institution.

(3) Applicants must have qualifying outstanding educational loan debt equal to or in excess of 20 percent of their institutional base salary or compensation. (Example: An applicant with a base salary of $40,000 per year must have a minimum outstanding educational loan debt of $8,000).

(4) Applicants must not be Federal employees.

(5) Applicants must have a research sponsor or mentor with experience in the area of the proposed research and may be enrolled in a training program or appointed under a temporary or permanent employment mechanism for at least two years. (Postdoctoral fellows and physicians completing their residencies are eligible to apply provided they meet all other eligibility requirements).

(6) Applicants must agree to engage in qualified minority health or other health disparities research for the entire period of their contract.

(7) Individuals with existing service obligations to Federal, State, or other entities may not apply for the HDR–LRP, unless and until the existing service obligation is discharged or deferred for the length of Program participation.

(8) Individuals that have a Federal judgment lien against their property arising from a Federal debt from receiving Federal funds may not apply for the HDR–LRP until the judgment has been paid in full or otherwise satisfied.

(9) Individuals will not be excluded from consideration under the HDR–LRP on the basis of age, race, culture, religion, gender, sexual orientation, disability or other non-merit factors.

Application Procedures and Selection Process

Individuals should submit their completed on-line application package to the Director of the Office of Loan Repayment (OLR) who will forward it to the NCMHD, 6707 Democracy Boulevard, Suite 800, MSC 5465, Bethesda, MD 20892–5465. The NCMHD and OLR have provided the current deadlines, sources for assistance, and additional details regarding application procedures in an Applicant Information Bulletin that is located on the NIH LRP home page at *http://www.lrp.nih.gov*.

The NCMHD will forward all qualified applications to the NCMHD Loan Repayment Review Panel (Panel), chaired by the Deputy Director, NCMHD, for review. The Panel will review and rank the applications based on criteria deemed appropriate, such as the personal statement, recommendations, training plan, research statement, institutional statement and research environment.

Only applications receiving approval from the Panel and having contracts executed by the Director of NCMHD will receive funding, subject to the receipt of an appropriation and/or allocation of funds from the U.S. Congress, the NIH and/or NCMHD.

As specified by statute, the Director, NCMHD, must ensure that at least 50 percent of the awards are made to qualified health professionals who are members of health disparities populations. By placing an emphasis on the recruitment and retention of investigators from health disparities populations, it is believed that not only

do the investigators have the potential of impacting the medical processes within their communities, but also, the ability to engage in, as well as promote the development of research programs that reflect an understanding of the variety of issues and problems associated with disparities in health status. This emphasis is consistent with the statute and the goals of both the NCMHD and the NIH to develop a diversified biomedical and behavioral research workforce and to reduce health disparities. Being a member of a health disparities population, however, is not a prerequisite for participation in the HDR–LRP. Any qualified health professional may apply for the program, provided the individual is conducting minority health or other health disparities research and meets all other eligibility requirements.

Participant's Obligation

In exchange for the NCMHD repaying the participants' educational loans, participants must agree to: (1) Engage in minority health or other health disparities research for a minimum of 2 years; (2) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (3) pay monetary damages as required for breach of contract; and (4) satisfy other terms and conditions of the contract and application procedures.

Program's Obligations

Under the HDR–LRP, the NCMHD will make loan repayments to the designated lenders following the completion of each full quarter (3 months) of service by the participants and upon receipt of requested documentation from the participants and their supervisors/mentors. The total repayment amount shall not exceed $35,000 per year for each year of obligated service.

Participants will not automatically qualify for the maximum amount of loan repayment. The amount the NCMHD will consider for repayment during the initial two-year contract shall be calculated as follows: one-fourth the repayable debt per year, up to a maximum of $35,000 per year. (Example: A participant with a base salary of $40,000 per year and an outstanding eligible educational loan debt of $100,000, would have a debt threshold of $8,000 and the repayable debt would be $96,000. Of the $96,000 repayable debt amount, the NCMHD would repay $24,000 a year in loan repayments—a total of $48,000 would be repaid over the two-year contract period.) Following the conclusion of the initial two-year contract, participants may apply for renewal contracts to satisfy any remaining repayable debt. Requests for renewal contracts are considered for approval on a competitive year-to-year basis. Funding of renewal contracts is contingent upon appropriation and/or allocation of funds from the U.S. Congress, the NIH and/or NCMHD.

Payment of Loans

Because the first payment to the lenders on behalf of the participants will not commence until the end of the first full quarter of obligated service, participants should continue to make monthly loan payments until they have been informed that payments have been forwarded to their lenders. This measure enables the participants to maintain their loans in a current payment status.

The HDR–LRP will repay loans in the following order unless the Director of NCMHD, determines that significant savings would result from repaying loans in a different priority order:

(1) Loans issued or guaranteed by the U.S. Department of Health and Human Services;

(2) Loans issued or guaranteed by the U.S. Department of Education;

(3) Loans issued or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans issued or guaranteed by an Academic Institution; and

(5) Other qualifying loans.

If the participant has multiple loans in a given category, loans will be prioritized according to the interest rate (highest to the lowest).

Financial obligations that do not qualify for repayment under the HDR–LRP include:

(1) Loans not obtained from a government entity, academic institution, or commercial or other chartered lending institution (such as loans obtained from friends, relatives, or other individuals);

(2) Loans for which contemporaneous documentation is not available;

(3) Loans or portions of loans obtained for educational or living expenses which exceed a reasonable level as determined by the HDR–LRP upon review of the standard school budget or additional contemporaneous documentation for the year in which the loan was made;

(4) Delinquent loans, loans in default, loans not current in their payment schedule, loans already repaid or those for which promissory notes have been signed after the contract has been executed by the Director of NCMHD;

(5) Parent Loan for Undergraduate Students (PLUS);

(6) Loans consolidated with another individual, including a spouse;

(7) Equity loans that include educational loans as part of their balance or any other types of equity loans; and

(8) Loans, financial debts or service obligations that convert to a loan or debt for failure to satisfy the service obligation. Programs that incur service obligations include but are not limited to the following:

- Physicians Shortage Area Scholarship Programs;
- National Research Service Award Program;
- National Health Service Corps Scholarship Program;
- Armed Forces (Army, Navy or Air Force) Health Professions Scholarship Program; and
- Indian Health Service Scholarship Program.

During lapses in loan repayments, due either to administrative complications or a break in service, HDR–LRP participants are wholly responsible for making payments or other arrangements to keep loans in a current payment status and to avoid incurring any additional increase in either principal or interest. Penalties assessed participants as a result of administrative complications may be considered for reimbursement.

Additional Program Information

This program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs. Under the requirements of the Paperwork Reduction Act of 1995, OMB has approved the application forms for use by the HDR–LRP under OMB Approval No. 0925–0361 (expires December 31, 2004).

The *Catalog of Federal Domestic Assistance* number for the HDR–LRP is 93.307.

Dated: July 19, 2002.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 02–18941 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Extramural Clinical Research Loan Repayment Program for Individuals From Disadvantaged Backgrounds

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) invites applications for the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR–LRP or Program) for fiscal year 2002. Pursuant to authority granted by Public Law 106–554, The Consolidated Appropriations Act of 2001, that amended section 487E of the Public Health Service (PHS) Act (42 U.S.C. 288–5), as added by the National Institutes of Health Revitalization Act of 1993 (Public Law 103–43), the Secretary of Health and Human Services (Secretary), acting through the Director of NIH, has established a loan repayment program that offers the repayment of educational loan debt to qualified health professionals from disadvantaged backgrounds, that have substantial debt relative to income, and agree to conduct clinical research. The Director of NIH may enter into contracts with qualified health professionals from disadvantaged backgrounds that agree to engage in clinical research for a minimum of 2 years in exchange for loan repayments toward their outstanding educational loan debt, up to a maximum of $35,000 per year.

DATES: Interested persons may request information about the ECR–LRP beginning on July 26, 2002, and August 23, 2002, at 5 p.m. (eastern time) is the closing date and time for the application process.

ADDRESSES: Information regarding the requirements and application procedures for the ECR–LRP may be obtained by calling or writing: National Center on Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, MSC 5465, Bethesda, MD 20892–5465, Attention: Kenya McRae, non-toll-free number: (301) 402–1366, e-mail: *mcraek@od.nih.gov*, Web site: *http://www.ncmhd.nih.gov;* or the Office of Loan Repayment Program, National Institutes of Health, toll-free-number: (866) 849–4047, e-mail: *lrp@nih.gov*, Web site: *http://www.lrp.nih.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

(1) "Clinical research" is defined as patient-oriented clinical research conducted with human subjects, or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials.

(2) "Debt threshold" is the minimum amount of qualified educational loan debt an applicant must have in order to be eligible for Program benefits. An applicant must have qualified educational loan debt equal to at least 20% of the applicant's institutional base salary or compensation at the time of execution of the LRP contract.

(3) An "individual from a disadvantaged background" is defined as one who: (a) Comes from an environment that inhibited the individual from obtaining the knowledge, skill and ability required to enroll in and graduate from a health professions school; or (b) comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for the changes in the Consumer Price Index, and adjusted by the Secretary of the U.S. Department of Health and Human Services (Secretary) for use in all health professions programs. The Secretary periodically publishes these income levels in the **Federal Register**. An applicant must certify his/her disadvantaged status under the above definition by submitting: (a) A written statement from the individual's former health professions school(s) that indicates that he/she qualified for Federal disadvantaged assistance during attendance; or (b) a personal statement explaining the applicability of the above definition to his/her circumstances (such statement should indicate the city, state and county where the applicant received the majority of his/her secondary education); or (c) documentation that he/she has received any of the following financial aid: Health Professions Student Loans (HPSL); Loans for Disadvantaged Student Program; Scholarship for Individuals with Exceptional Financial Need; or other specific loans or scholarships designated for disadvantaged students. Current financial need alone is NOT sufficient to classify an individual as being from a disadvantaged background.

(4) "Qualified educational loan debt" is defined as educational loan debt incurred by health professionals for their undergraduate, graduate and/or health professional school educational expenses incurred at accredited institutions. It consists of the principal, interest, and related expenses of qualified Government and commercial loans obtained by the applicant for: (a) Tuition expenses; (b) other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and (c) the cost of room and board, and other reasonable living expenses as determined by the Secretary or his designee.

(5) "Repayable debt" means the difference between the applicant's qualified educational loan debt and 50% of the applicant's debt threshold.

Background

The Consolidated Appropriations Act of 2001 (Public Law 106–554) was enacted on December 21, 2000, amending 487E of the Public Health Service (PHS) Act to authorize the Secretary of the Department of Health and Human Services (Secretary), through the Director of the National Institutes of Health (NIH), to enter into contracts with qualified health professionals from disadvantaged backgrounds. These health professionals are required to engage in clinical research in consideration of the Federal Government repaying a portion of the principal and interest of their educational loans, up to a maximum of $35,000 per year, for each year of service. The program is known as the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR–LRP). Selected applicants become participants of the ECR–LRP only upon the execution of a contract by the Secretary or his designee.

Eligibility Requirements

Specific eligibility criteria with regard to participation in the ECR–LRP include the following:

(1) Applicants must be a United States citizen, national, or permanent resident.

(2) Applicants must have a M.D., Ph.D., Pharm.D., D.O., D.D.S., D.M.D., D.P.M., Sc.D., or equivalent doctorate degree from an accredited institution.

(3) Applicants must come from a disadvantaged background.

(4) Applicants must have qualifying outstanding educational loan debt equal to or in excess of 20 percent of their institutional base salary or compensation. (Example: An applicant with a base salary of $40,000 per year must have a minimum outstanding educational loan debt of $8,000).

(5) Applicants must not be Federal employees.

(6) Applicants must have a research sponsor or mentor with experience in the area of proposed research and may be enrolled in a training program or

appointed under a temporary or permanent employment mechanism for at least two years. (Postdoctoral fellows and physicians completing their residencies are eligible to apply provided they meet all other eligibility requirements).

(7) Applicants must agree to engage in qualified clinical research for the entire period of their contract.

(8) Individuals with existing service obligations to Federal, State, or other entities may not apply for the ECR–LRP, unless and until the existing service obligation is discharged or deferred for the length of program participation.

(9) Individuals that have a Federal judgment lien against their property arising from a Federal debt from receiving Federal funds may not apply for the ECR–LRP until the judgment has been paid in full or otherwise satisfied.

(10) Individuals will not be excluded from consideration under the ECR–LRP on the basis of age, race, culture, religion, gender, sexual orientation, disability or other non-merit factors.

Application Procedures and Selection Process

Individuals should submit their completed on-line application package to the Director of the Office of Loan Repayment (OLR) who will forward it to the NCMHD, 6707 Democracy Boulevard, Suite 800, MSC 5465, Bethesda, MD 20892–5465. The NCMHD and OLR have provided the current deadlines, sources for assistance, and additional details regarding application procedures in an Applicant Information Bulletin located at the NIH LRP home page at *http://www.lrp.nih.gov*.

The NCMHD will forward all qualified applications to the NCMHD Loan Repayment Review Panel (Panel), chaired by the Deputy Director, NCMHD, for review. The Panel will review and rank the applications based on criteria deemed appropriate, such as the personal statement, recommendations, training plan, research statement, institutional statement and research environment.

Only applications receiving approval from the Panel and having contracts executed by the Director of NCMHD will receive funding, subject to the receipt of an appropriation and/or allocation of funds from the U.S. Congress, the NIH and/or NCMHD.

Participant's Obligation

In exchange for the NCMHD repaying the participants' educational loans, participants must agree to: (1) Engage in qualified clinical research for a minimum of 2 years; (2) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (3) pay monetary damages as required for breach of contract; and (4) satisfy other terms and conditions of the contract and application procedures.

Program's Obligations

Under the ECR–LRP, the NCMHD will make loan repayments to the designated lender following the completion of each full quarter (3 months) of service by the participant and upon the receipt of requested documentation from the participants and their supervisors/mentors. The total repayment amount shall not exceed $35,000 per year for each year of obligated service.

Participants will not automatically qualify for the maximum amount of loan repayment. The amount the NCMHD will consider for repayment during the initial two-year contract shall be calculated as follows: one-fourth the repayable debt per year, up to a maximum of $35,000 per year. (*Example:* A participant with a base salary of $40,000 per year and an outstanding eligible educational loan debt of $100,000, would have a debt threshold of $8,000 and the repayable debt would be $96,000. Of the $96,000 repayable debt amount, the NCMHD would repay $24,000 a year in loan repayments—a total of $48,000 would be repaid over the two-year contract period.) At the end of the initial two-year contract, participants may apply for renewal contracts to satisfy any remaining repayable debt. Requests for renewal contracts are considered for approval on a competitive year-to-year basis. Funding of renewal contracts is contingent upon appropriation and/or allocation of funds from the U.S. Congress, the NIH and/or NCMHD.

Payment of Loans

Because the first payment to the lenders on behalf of the participants will not commence until the end of the first full quarter of obligated service, participants should continue to make monthly loan payments until they have been informed that payments have been forwarded to their lenders. This measure enables the participants to maintain their loans in a current payment status.

The ECR–LRP will repay loans in the following order unless the Secretary determines that significant savings would result from repaying loans in a different priority order:

(1) Loans issued or guaranteed by the U.S. Department of Health and Human Services;

(2) Loans issued or guaranteed by the U.S. Department of Education;

(3) Loans issued or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans issued or guaranteed by an Academic Institution; and

(5) Other qualifying loans.

If the participant has multiple loans in a given category, loans will be prioritized according to the interest rate (highest to the lowest).

Financial obligations that do not qualify for repayment under the ECR–LRP include:

(1) Loans not obtained from a government entity, academic institution, or commercial or other chartered lending institution (such as loans obtained from friends, relatives, or other individuals);

(2) Loans for which contemporaneous documentation is not available;

(3) Loans or portions of loans obtained for educational or living expenses which exceed a reasonable level as determined by the ECR–LRP upon review of the standard school budget or additional contemporaneous documentation for the year in which the loan was made;

(4) Delinquent loans, loans in default, loans not current in their payment schedule, loans already repaid or those for which promissory notes have been signed after the contract has been executed by the Secretary;

(5) Parent Loan for Undergraduate Students (PLUS);

(6) Loans consolidated with another individual, including a spouse;

(7) Equity loans that include educational loans as part of their balance or any other types of equity loans; and

(8) Loans, financial debts, or service obligations that convert to a loan or debt on failure to satisfy the service obligation. Programs with service obligations include, but are not limited to the following:

- Physicians Shortage Area Scholarship Programs;
- National Research Service Award Program;
- National Health Service Corps Scholarship Program;
- Armed Forces (Army, Navy or Air Force) Health Professions Scholarship Program; and
- Indian Health Service Scholarship Program.

During lapses in loan repayments, due either to administrative complications or a break in service, ECR–LRP participants are wholly responsible for making payments or other arrangements to keep loans in a current payment status and to avoid incurring any

additional increase in either principal or interest. Penalties assessed participants as a result of administrative complications may be considered for reimbursement.

Additional Program Information

This program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs. Under the requirements of the Paperwork Reduction Act of 1995, OMB has approved the application forms for use by the ECR–LRP under OMB Approval No. 0925–0361 (expires December 31, 2004).

The *Catalog of Federal Domestic Assistance* number for the ECR–LRP is 93.308.

Dated: July 19, 2002.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 02–18942 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Suppressing Unencoded MRI Signal Contribution in Multi-Phase Myocardial Tagging and Phase-Contrast Based Methods

Anthony H. Aletras (NHLBI)
DHHS Reference No. E–079–02/0
Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov.*

The invention is a method for obtaining clear functional magnetic resonance (MR) cardiac images without significantly increasing signal acquisition time. During functional magnetic resonance imaging (MRI) the specimen magnetization is spatially encoded by application of one or more radio frequency pulses (RF) and gradient magnetic fields. This spatially encoded magnetization is then read out to produce images that can be used to assess specimen motion. During this process the contrast decreases from the beginning of the cardiac cycle as the magnetization decays or relaxes, making the images more difficult to process and interpret over time. This is currently solved by acquiring the images twice (with a modified signal excitation phase) to suppress unwanted unencoded MRI signal contributions; therefore improving the contrast. Unfortunately, this prolongs the acquisition by a factor of two. In the invention, an RF inversion pulse is used to suppress the undesirable unencoded MRI signal contributions, thereby improving the contrast. This RF frequency drives the undesired signal to an equilibrium around zero, while preserving the desired encoded signal. The application of the RF inversion pulse doubles the resolution of the image and does not increase acquisition time. It allows for immediate evaluation of myocardial contractility throughout the whole cardiac cycle without requiring user intervention during phase-based data processing. There is also the possibility that this method could be used in other areas of the body, including the spinal cord, and the invention may be applicable to the study of brain motion. This new method speeds up the quantification of datasets, suppresses undesired signal contributions, and doubles the resolution of the images without doubling acquisition time.

ELISA Assay of Serum Soluble CD22 to Assess Tumor Burden/Relapse in Subjects with Leukemia and Lymphoma

Robert Kreitman et al. (NCI)
DHHS Reference No. E–065–02/0 filed May 20, 2002
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov.*

Disclosed are methods of using previously unknown soluble forms of CD22 (sCD22) present in the serum of subjects with B-cell leukemias and lymphomas to assess tumor burden in the subjects. Also disclosed are methods of diagnosing or prognosing development or progression of a B-cell lymphoma or leukemia in a subject, including detecting sCD22 in a body fluid sample taken or derived from the subject, for instance serum. In some embodiments, soluble CD22 levels are quantified. By way of example, the B-cell lymphoma or leukemia can be hairy cell leukemia, chronic lymphocytic leukemia, or non-Hodgkin's lymphoma. Soluble CD22 in some embodiments is detected by a specific binding agent, and optionally, the specific binding agent can be detectably labeled.

Also disclosed are methods of selecting a B-cell lymphoma or leukemia therapy that include detecting an increase or decrease in sCD22 levels in a subject compared to a control, and, if such increase or decrease is identified, selecting a treatment to prevent or reduce B-cell lymphoma or leukemia or to delay the onset of B-cell lymphoma or leukemia.

Other embodiments are kits for measuring a soluble CD22 level, which kits include a specific binding molecule that selectively binds to the CD22, e.g. an antibody or antibody fragment that selectively binds CD22.

Further disclosed methods are methods for screening for a compound useful in treating, reducing, or preventing B-cell lymphomas or leukemias, or development or progression of B-cell lymphomas or leukemias, which methods include determining if application of a test compound lowers soluble CD22 levels in a subject, and selecting a compound that so lowers sCD22 levels.

Mutated Anti-CD22 Antibodies with Increased Affinity to CD22-Expressing Leukemia Cells

Ira Pastan et al. (NCI)
HHS Reference No. E–129–01/0 filed Sep 26, 2001
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov.*

The present invention provides improved antibodies for binding to CD22-expressing cells (CD22 is expressed on B cells and B-cell malignancies), especially cancer cells that express CD22 on their exterior surface. In this regard, the invention provides anti-CD22 antibodies with a variable light (V_L) chain having the sequence of antibody RFB4 and a variable heavy (V_H) chain having the sequence of antibody RFB4, but in which residues 100, 100A and 100B of CDR3 of said V_H chain (as numbered by the Kabat and Wu numbering system)

have an amino acid sequence selected from the group consisting of: THW, YNW, TTW, and STY. The antibody can be a full length antibody molecule, but is preferably a single chain Fv ("scFv"), a disulfide stabilized Fv ("dsFv"), an Fab, or an F(ab').

The invention further provides compositions comprising these antibodies conjugated or fused to a therapeutic moiety or a detectable label. The therapeutic moiety can be a cytotoxin, a drug, a radioisotope, or a liposome loaded with a drug or a cytotoxin. In preferred embodiments, the effector moiety is a cytotoxin. The cytotoxin can be selected from the group consisting of ricin A, abrin, ribotoxin, ribonuclease, saporin, calicheamycin, diphtheria toxin or a cytotoxic subunit or mutant thereof, a *Pseudomonas* exotoxin, a cytotoxic portion thereof, a mutated *Pseudomonas* exotoxin, a cytotoxic portion thereof, and botulinum toxins A through F. In preferred forms, the cytotoxin is a *Pseudomonas* exotoxin or cytotoxic fragment thereof, or a mutated *Pseudomonas* exotoxin or a cytotoxic fragment thereof. In particularly preferred forms, the *Pseudomonas* exotoxin is selected from the group consisting of PE35, PE38, PE38KDEL, PE40, PE4E, and PE38QQR. In the most preferred embodiment, the *Pseudomonas* exotoxin is PE38. The compositions may further comprise a pharmaceutically acceptable carrier.

Dated: July 19, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–18944 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–Py

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Subcommittee E—Cancer Epidemiology, Prevention & Control, July 30, 2002, 4 p.m., to July 31, 2002, 5:30 p.m., 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on June 26, 2002, 67FR43132.

The meeting has been amended to change the end date from July 31, 2002 to August 1, 2002. The meeting is closed to the public.

Dated: July 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18931 Filed 7–25–02; 8:45 am]

BILLING CODE 4440–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. Mechanisms of Fetal Hemoglobin Gene Silencing for Treatment of Sickle Cell Disease and Cooley's Anemia

Date: October 1–2, 2002.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18932 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, NIAMS Small Grant Program for New Investigators—R03.

Date: August 6, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 1 Democracy, 6701 Democracy Blvd., Suite 707 MSC 4870, Bethesda, MD 20892–4870. (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892. (301) 594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Fellowship Awards.

Date: August 7, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 1 Democracy, 6701 Democracy Blvd., Suite 707 MSC 4870, Bethesda, MD 20892–4870. (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Disease, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892. (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18934 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Ancillary Studies to NIMH Multi-Site Clinical Trials.

Date: July 30, 2002.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Joel Sherrill, Phd., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606. 301–443–6102. *jsherrill@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18935 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MBRS Special Emphasis Panel.

Date: July 30, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS–13, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Helen R Sunshine, PhD, Chief, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–13, Bethesda, MD 20892. (301) 594–2881.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18936 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Mentored Research Career Development Award (K23).

Date: August 13, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Alec Ritchie, PhD, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616. 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18938 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Web Site Dissemination of Information about Mental Health.

Date: August 23, 2002.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. 301–443–1513. *psherida@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281 Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y,. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18939 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Ethnic Resources for Clinical Researchers.

Date: August 16, 2002.

Time: 8 AM to 3 PM.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608. 301–443–1178. *benxu1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18940 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892. (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 5, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 5, 2002.

Time: 4:15 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MISC 7848, Bethesda, MD 20892. (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 6, 2002.

Time: 11 a.m. to 12 p.m

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 12–13, 2002.

Time: 4 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892. (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA–Diabetes Retinotopathy.

Date: August 20, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Central, 1501 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892. (301) 435–1251. *bannerc@drg.nih.gov.*

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 6, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892. (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 8, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18933 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pathology A.

Date: July 24, 2002.

Time: 11:30 a.m.to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892. (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18937 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4738–N–01]

Notice of Proposed Information Collection: Comment Request; Requirements for Notification of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 24, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, AYO, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410; fax: 202–708–3135; e-mail *Wayne_Eddins@HUD.gov*.

FOR FURTHER INFORMATION CONTACT: David Levitt, LS, Lead Technical Assistance Division, Office of Healthy Homes & Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *David_K._Levitt@hud.gov* telephone (202) 755–1785 Ext. 156; Fax: (202) 755–1000 (these are not toll-free numbers) for other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Requirements for Notification of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance.

OMB Control Number, if applicable: 2539–0009.

Description of the need for the information and proposed use: Requirements for Notification of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is 236,827, number of respondents is 1,289,006, frequency of respoonse is "on occasion," and the hours per response is 0.18 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 19, 2002.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 02–18899 Filed 7–25–02; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–29]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Applying to HUD for Designation of State or Locally Developed Housing in the State of New York as "Covered Units" Eligible for Inclusion in the Federal Public Housing Program; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of The Assistant Secretary for Public and Indian Housing.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3507(j)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 2, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503; e-mail: *Lauren Wittenberg@omb.eop.gov;* fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package for Public Housing Agencies (PHAs) eligible under court orders regarding federalization language contained within section 519(n) of the Quality Housing and Work Responsibility Act (QHWRA) of 1998 to request that State and Locally Developed public housing units in the State of New York be included in the Federal public housing program and receive Federal operating and capital funds.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Applying to HUD for Designation of State or Locally Developed Housing in the State of New York as "Covered Units" Eligible for Inclusion in the Federal Public Housing Program.

Description of Proposed Information Collection: Notice to Public Housing Agencies (PHAs) in the State of New York they may apply for designation of public housing units developed and funded in accordance with New York law as "covered units," up to 7,000 of which will be eligible to receive Federal public housing operating and capital funds allocated according to statutory and regulatory formulas; provide information about all developments and units that could be "covered units"; and communicate PHAs' preferences as to which of their developments and units they would want included in the Federal housing program. Specifically, PHAs will be asked to submit information on: (1) Name of developments; (2) Number of units; (3) Location (census tract); (4) Age and general condition; (5) Composition of units by bedroom size, and family, elderly, or disabled designation; (6) Current vacancy rate and vacancy rate for past two years; (7) If readily available, actual operating expenses for the last two fiscal years; if not readily available, any unusually large recent, current or projected operating costs (e.g. extraordinarily high utilities costs); (8) Summary of large capital improvements made over preceding five-year period; (9) Projected capital need for next five years; (10) Debt service amounts (if any); (11) Extraordinary liabilities the Federal government may need to assume (e.g. litigation); (12) Most recent Public Housing Assessment System (PHAS) rating and designation for the PHA from HUD, or copy of any recent performance assessment from applicable State or local government or other independent entity; and (13) Other information requested by HUD as necessary to complete its review. This information will be used to aid HUD in determining which units shall receive the "covered" designation.

OMB Control Number: Pending OMB approval.

Agency Form Numbers: None.

Members of Affected Public: State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: Of the 24 PHAs with State or Locally developed public housing units, 22 PHAs have total unit counts ranging from 50 to 300 units. The remaining 2 PHAs each have over 1,000 such units. It is anticipated the information requested shall be readily available from existing planning and reporting documents, with the possible exception of on-site capital assessments as mentioned above. The overall estimate of average hours per response includes the time to research available data sources, extract relevant data, conduct on-site property inspections, complete five-year capital improvement assessments, and compile and assemble information in the required format. An estimation of the total number of hours needed to prepare the information collection is 960, number of respondents is 24, frequency response is annually, and the hours of response is 40.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35, as amended.

Dated: July 18, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–18898 Filed 7–25–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–30]

Notice of Submission of Proposed Information Collection to OMB; Contract for Development of Architect and Engineer Services

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 26, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0015) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Contract for Development of Architect and Engineer Services.

OMB Approval Number: 2577–0015.

Form Numbers: HUD–51915, HUD–51915A.

Description of the Need for the Information and its Proposed Use: Federal Law or regulation requires a contractual agreement between public housing agencies, owners, and an architect/engineer for design and construction services.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,630	1		2.25		5,917

Total Estimated Burden Hours: 5,917.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 19, 2002.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–18959 Filed 7–25–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 18, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–18601 Filed 7–25–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary for Water and Science, Interior.

ACTION: Notice of intent to negotiate a contract between the Central Utah Water Conservancy District and Department of the Interior for prepayment of costs allocated to municipal and industrial

water from the Bonneville Unit of the Central Utah Project, Utah County, Utah.

SUMMARY: Public Law 102–575, Central Utah Project Completion Act, Section 210, as amended through Public Law 104–286, stipulates that: "The Secretary shall allow for prepayment of the repayment contract between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and supplemented on November 26, 1985, providing for repayment of municipal and industrial water delivery facilities for which repayment is provided pursuant to such contract, under terms and conditions similar to those contained in the supplemental contract that provided for the prepayment of the Jordan Aqueduct dated October 28, 1993. The prepayment may be provided in several installments to reflect substantial completion of the delivery facilities being prepaid and may not be adjusted on the basis of the type of prepayment financing utilized by the District." In accordance with the above referenced legislation, the Central Utah Water Conservancy District (CUWCD) intends to prepay the costs obligated under repayment contract No. 14–06–400–4286, as supplemented. This contract will provide for the fourth installment in a series of prepayments. The terms of the prepayment are to be publicly negotiated between CUWCD and the Department of the Interior.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this Federal Register Notice can be obtained by contacting Mr. Wayne Pullan, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, Utah 84606–6154, (801) 379–1194, *wpullan@uc.usbr.gov.*

Dated: June 18, 2002.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 02–18912 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Hualapai Tribe of Arizona Liquor Code Amendment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Hualapai Tribe of Arizona Liquor Code Amendment as set forth by Resolution No. 08–2002. The Liquor Code of the Hualapai Tribe was originally published in the **Federal Register** of March 14, 1969. This amendment extends tribal regulation of liquor sales to commercial helicopter tours on the Hualapai Reservation in conjunction with tourism and is in conformity with the laws of the State of Arizona, where applicable and necessary. Although the Code Amendment was adopted on February 15, 2002, it does not become effective until published in the **Federal Register**, because the failure to comply with the Code may result in criminal charges.

DATES: The Code Amendment is effective on July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Hualapai Reservation Liquor Code Amendment, Resolution No. 08–2002, was duly adopted by the Tribal Council of the Hualapai Tribe on February 15, 2002. The Hualapai Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Hualapai Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution 08–2002, the Hualapai Tribe of Arizona Liquor Code Amendment duly adopted by the Hualapai Tribal Council on February 15, 2002.

Dated: July 12, 2002.

Neal A. McCaleb,

Assistant Secretary, Indian Affairs.

The Hualapai Tribe of Arizona Liquor Code Amendment, Resolution No. 08–2002, reads as follows:

Hualapai Tribal Code

Commercial Champagne Flights Ordinance

Sec. 1—Commercial Champagne Flight.

(a) *General Provisions.*

(1) *Title.* This section shall be known as the Hualapai Tribe Commercial Champagne Flight Ordinance.

(2) *Authority.* This section is enacted pursuant to the Act of August 15, 1953 (Public Law 83–277, 67 Stat. 588, 18 U.S.C. 1161), as interpreted by the United States Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), and Article V of the Hualapai Tribe Constitution.

(3) *Purpose.* The purpose of this section is to allow for, regulate, and control the limited possession, transportation, sale, and consumption of champagne or similar sparkling wine beverages in conjunction with commercial helicopter tours on the Hualapai Reservation. Enactment of this section will increase the ability of the Community government to regulate Reservation alcohol possession and consumption, and at the same time provide an important source of revenue for the continued operation and strengthening of the Community and the delivery of Community government services.

(4) *Scope and Territory.* This section applies to all sales, purchases, distributions, possession, and consumption of alcoholic beverages made in conjunction with any tribally authorized commercial helicopter tour conducted within the exterior boundaries of the Hualapai reservation.

(5) *Application of 18 U.S.C. Section 1161.* All acts and transactions under this section shall be in conformity with this section and in conformity with the laws of the State of Arizona, as that term is used in Title 18 of the United States Code, Section 1161.

(6) *Effective date.* This section shall take effect on the date it is approved by the Secretary of the Interior or the Secretary's designate.

(b) *Definitions.*

In this section, unless the context otherwise requires, the meaning of terms used have the following meaning:

Alcohol and Alcoholic Beverage. Beer, wine or any other spirituous liquor.

Champagne and Similar Sparkling Wine Beverage. Any alcoholic sparkling wine beverage with an alcohol content not to exceed fourteen percent (14%).

Community. The Hualapai Tribe.

Customer. One who patronizes a commercial champagne tour.

Person. A natural person or a corporation duly chartered by a jurisdiction within the United States.

Reservation. All Indian lands under the control and authority of the Hualapai Tribe.

Sell, Sold, Buy. Furnish, dispose of, give, receive or acquire.

Tribal Official. A tribal police officer, an officer or Director of the Grand Canyon Resort Corporation, or a member of the Tribal Council.

Tribe or Hualapai Tribe. The Hualapai Indian Tribe of the Hualapai Indian Reservation, a federally recognized Indian tribe. Unless specifically provided for in subsection (e) below, this section does not invalidate or alter the limitations on the use, sale, purchase, possession, or consumption of alcohol set forth in Sections 6.21(A), 6.34, 6.34(A), 6.58 or elsewhere in the Hualapai Tribal Code.

(c) *Unlawful Acts*. Unless specifically provided for in subsection (e) below, this section does not invalidate or alter the limitations on the use, sale, purchase, possession, or consumption of alcohol set forth in Sections 6.21(A), 6.34, 6.34(A), 6.58 or elsewhere in the Hualapai Tribal Code.

(d) *Limited Use of Alcohol for Commercial Champagne Helicopter Tours*. Notwithstanding limitations on the use, sale, purchase, possession, or consumption of alcohol set forth elsewhere in the Hualapai Tribal Code, the limited use of alcohol for commercial champagne helicopters is allowed, consistent with the following provisions:

(1) A helicopter vendor may transport up to two bottles, not to exceed 36 ounces each, of champagne or similar sparkling wine beverages for purposes of providing or selling such beverages to customers in conjunction with tribally authorized commercial champagne helicopter tours. All other alcoholic beverages are specifically excluded from the helicopter champagne tour and are otherwise banned from the application of this section. Passengers on commercial champagne helicopter tours may consume such beverages outside of the helicopter and within the regular sightseeing areas located near the vendor's helipad landing sites at the base of the Grand Canyon.

(2) A helicopter operator, vendor employee, or vendor contractor who becomes aware of an individual violation of this section must instruct the violator to immediately desist from his or her unauthorized use of alcohol. Such a helicopter operator, vendor employee, or vendor contractor shall immediately, or as soon thereafter as is practicable, notify a Tribal Official of the violation and shall provide the name, address and other identifying information of the violator. Failure of a helicopter operator, vendor employee, or vendor contractor to perform the requirements of this subsection is a violation of this section.

(3) At no time may a helicopter vendor provide, nor may customers consume more than one bottle of champagne or similar sparkling wine per couple.

(4) At no time may a helicopter operator, vendor employee, or vendor contractor consume any alcoholic beverages during such periods such person is or persons are working in conjunction with a commercial champagne helicopter tour.

(5) The transportation and consumption of alcohol pursuant to this section must at all times be consistent with all Federal Aviation Administration requirements.

(e) *Removal of Alcoholic Beverages*. All alcoholic beverages and containers must be removed from the Hualapai Reservation by the helicopter operator, vendor employee or vendor contractor on the same helicopter champagne tour which introduced said beverages onto the Reservation.

(f) *Violation of Section*.

(1) A customer who violates any provision of this section shall be subject to a civil fine not to exceed $1,000.00, plus court costs.

(2) A helicopter vendor, vendor employee, or contractor who violates any provision of this section shall be subject to a civil fine not to exceed $5,000.00, plus court costs, and such violation shall be reported to the Grand Canyon Resort Corporation (GCRC) for its consideration of revoking the vendor's operating certificate.

(3) Violations of this Section shall be cited into the Tribal Court, and the rules of the Tribal Court shall control such actions.

(g) *Agreement to Consent of Civil Jurisdiction Required*. Any customer, helicopter vendor, vendor employee, or vendor contractor who seeks to transport or consume champagne or similar sparkling wine beverages pursuant to this section shall, before transporting or consuming such beverages, enter into a written agreement explicitly consenting to Hualapai Tribe civil jurisdiction over all matters arising from the applicants' activities within the exterior boundaries of the Tribe's reservation.

(h) *Saving and Severability*. In the event any section or provision of this section or its application to any particular activity is held to be invalid, the remaining sections and provisions of this section and the remaining applications of such sections and provisions shall continue in full force and effect.

(i) *No Waiver of Sovereign Immunity*. Nothing in this section shall serve to waive the Hualapai Tribe's sovereign immunity, which is hereby expressly affirmed.

(j) *Amendments*. This section may be amended by official action of the Tribal Council.

(k) *Repeal of Prior Laws*. This section, upon becoming effective, shall operate to revise any inconsistent portion of the Hualapai Tribal Code.

[FR Doc. 02–18884 Filed 7–25–02; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1320–PB–24]

Extension of Approved Information Collection, OMB Approval Number 1004–0073

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from any person, association, corporation, subsidiary, or affiliate interested in leasing or developing Federal coal. The BLM uses the information to determine if the applicant is qualified to hold a Federal coal lease.

DATES: You must submit your comments to BLM at the address below on or before September 24, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0073" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact William Radden Lesage, Solid Minerals Group, on (202) 452–

0360 (Commercial or FTS). Person who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Lesage.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimate of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM manages the leasing and development of Federal coal under the regulations at 43 CFR Group 3400. These regulations implement numerous statutes including:

(1) The Mineral Leasing Act of 1920;

(2) The 1976 coal amendments (30 U.S.C. 181 *et seq.*);

(3) The Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359);

(4) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*);

(5) The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*);

(6) The Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531);

(7) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); and

(8) The Act of October 30, 1978 (92 Stat. 2073–2075).

BLM uses the information provided by the applicant(s) on BLM Forms 3400–12 and 3440–1 to determine if the applicant to lease or develop Federal coal is qualified to hold such a lease.

Based on BLM's experience administering the activities described below, we estimate the public reporting burden for the information collected is 20 hours and 15 minutes per response and the total annual burden is 23,896 hours. We estimate the number of responses per year is 1,185. The respondents are applicants to lease or develop Federal coal and vary from individuals to small businesses and major corporations. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

Type of application	43 CFR	Hrs. per response	Number of reps.	Total hrs.
Application for an exploration license	3410.2–1	36	10	360
Issuance and termination of an exploration license	3410.3–1	12	5	60
Operation under and modification of an exploration license	3410.3–3	1	1	1
Collection and submission of data from an exploration license	3410.4	18	5	90
Call for coal resource and other resource info.	3420.1–2	3	0	0
Surface owner consultation	3420.1–4	1	7	7
Expressions of leasing interest	3420.3–2	7	0	0
Response to notice of sale	3422.2	56	8	448
Consultation with Attorney General	3422.3–4	4	7	28
Leasing on application	3425	308	15	4,620
Surface owner consent	3427.2(c)	1	7	7
Preference right lease application	3430.3–1, 3430.4–1	800	3	2,400
Lease modifications	3432.1	12	5	60
License to mine	3440	21	2	42
Relinquishments	3452.1–1, 3452.1–2	18	30	540
Transfers, assignments, subleases	3453.2–1	10	43	430
Bonds	3410.3–4, 3453.2–4, 3474.1, 3474.2.	8	196	1,568
Land description requirements	3471.1–1	2	15	30
Future interest lease application	3471.4	16	0	0
Special leasing qualifications	3472.1–2	3	4	12
Qualification statement	3472.2	3	4	12
Lease rental and royalty rate reductions	3473.3–4	13	9	117
Lease suspensions	3473.4, 3483.3	20	7	140
Lease form	3475.1	1	12	12
Logical mining units	3475.6, 3481.2, 3487	170	5	850
General obligations of the operator/lessee	3481.1	1	1	1
Exploration plans	3482.1(a)	30	11	330
Resource recovery and protection plan	3482.1(b)	192	4	768
Modifications to exploration plans and resource recovery and protection plans.	3482.2	16	79	1,264
Mining operations maps	3482.3	20	311	6,220
Request for payment of advance royalty in lieu of continued operation.	3483.4	22	12	264
Performance standards for exploration (Retention of samples)	3484.1(a)	1	22	22
Performance standards for surface and underground coal mines.	3484.1(b)	1	6	6
Exploration reports	3485.1(a), 3485.1(b), 3485.1(c).	4	7	28
Production reports	3485.1(d), 3485.3	10	323	3,230
Notices and orders	3486.2	3	1	3

Type of application	43 CFR	Hrs. per response	Number of reps.	Total hrs.
Enforcement	3486.3	2	8	16
Total			1,185	23,986

Any member of the public may request and obtain, without charge, a copy of the BLM Forms 3400–12 and 3400–1 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: July 11, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–18887 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–960–1410–PB–24–1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0191

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from Alaska Native Vietnam Era Veterans interested in applying for a 160-acre allotment of Federal lands in Alaska. BLM uses Form AK 2561–10 to collect the requested information to determine if they qualify and are eligible to obtain a 160-acre allotment of Federal land in Alaska.

DATES: You must submit your comments to BLM at the address below on or before September 24, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "Attn: 1004–0191" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Dennis Benson, Alaska State Office, on (907) 271–3248 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Benson.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Under Section 432 of the Veterans Administration and Housing and Urban Development Appropriations Act (Public Law 105–276), the Alaska Native Claims Settlement Act was amended to include a new section which allows certain Alaska Native Vietnam Era Veterans to apply for native allotments. The implementing regulations are 43 CFR 2568—Alaska Native Allotments for Certain Veterans.

Based on BLM's experience administering this program, we estimate the public reporting burden to complete Form AK 2561–10 is 30 minutes and 27 hours and 30 minutes to gather and complete the required information such as marking the corners of the lands applied for, and requesting/completing a cadastral survey of the lands. BLM estimates that we receive 732 applications annually, with a total annual burden of 20,496 hours. The respondents are Alaskan Native Vietnam Era Veterans. The frequency of response is once for each applicant.

Any member of the public may request and obtain, without charge, a copy of BLM Form AK 2561–10 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: July 16, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–18888 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–04–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0025

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collection information from all owners of unpatented mining claims or mill sites who desire to apply for a mineral patent to their mining claim or mill site. The BLM uses the information to determine the right to a mineral patent and to secure a settlement of all disputes concerning the property in order to issue the patent to the rightful owner.

DATES: You must submit your comments to BLM at the address below on or

before September 24, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0025" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Roger A. Haskins, Solid Minerals Group, on (202) 452–0355 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Haskins.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use:

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Under the General Mining Law (30 U.S.C. 29, 30, and 39), we grant the opportunity to obtain legal title (patent) to the land of those who explore for and locate valuable mineral deposits on the public domain lands. BLM implements the patent process under regulations 43 CFR 3860. Under 43 CFR 3870, any rival claimant with overlapping claims to the land applied for or anyone challenging BLM to issue the patent based on failure to follow the law or regulations must file with BLM certain required statements and evidence supporting the challenge or we will statutorily dismiss the challenge. The implementing regulations require a patent applicant to provide the following information:

(1) Mineral survey application. Under 43 CFR Subpart 3861, the holder of a claim must submit to BLM a mineral survey for all lode claims, most mill sites, and placer claims located upon surveyed public lands, as a requisite to apply for a patent. BLM uses Form 3860–5 to collect the mining claim or site recording, chain-of-title, and geographic location information so that we can authorize a Deputy U.S. Mineral Surveyor to survey the claims or sites.

(2) Mineral patent application. Under 43 CFR 3862, 3863, and 3864, a mineral patent applicant must file certain proofs of ownership to demonstrate clear title to the claim(s) or millsite(s), bonafide of development, and the existence of a commercial mineral deposit subject to the General Mining Law of 1872, as amended. BLM used Form 3860–2 for title verification until Congress implemented a moratorium on new mineral patent applications.

Based on BLM's experience administering the General Mining Law, we estimate the public reporting burden to complete Form 3860–5 is one hour and for adverse claims or protests it is two hours. BLM estimates that we receive 30 mineral survey applications and 10 protests annually, with a total annual burden of 50 hours. The respondents are owners of unpatented mining claims and mill sites upon the public lands, reserved mineral lands of the United States, National Forests, and National Parks. The frequency of response is once for each mineral survey, each application for patent, and each filing of a protest or adverse claim. Since October 1, 1994, Congress has passed an annual moratorium which prevents the BLM for processing mineral patent applications unless the applications were grandfathered under the initial legislation. This moratorium does not affect mineral surveys, contests, or protests to existing mineral patent applications.

Any member of the public may request and obtain, without charge, a copy of BLM Form 3860–5 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: July 9, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–18889 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA–32028]

Arizona; Proposed Classification of Public Lands for State Indemnity Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Classification of Public Lands for State Indemnity Selection.

SUMMARY: The Arizona State Board of Land Commissioners has filed a petition for classification and application to acquire the public lands, including the mineral estate, as applicable, described in paragraph 5 below, under the provisions of sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), in lieu of certain school lands granted to the State under the enabling act of June 20, 1910 (36 Stat. 557, 572–575), that were encumbered by other rights or reservations before the State's title could attach. This application has been assigned Serial Number AZA–32028.

SUPPLEMENTARY INFORMATION:

1. The Bureau of Land Management will examine these lands for evidence of prior valid rights or other statutory constraints that would bar transfer. This proposed classification is pursuant to Title 43, Code of Federal Regulations, subpart 2400; and section 7 of the Act of June 28, 1934. (48 Stat. 1269).

2. Information concerning these lands and the proposed transfer to the State of Arizona may be obtained from the Bureau of Land Management, Arizona State Office.

3. For a period of 60 days from the date of publication of this notice in the **Federal Register**, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the State Director, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004.

Any adverse comments will be evaluated by the State Director who will issue a notice of determination to proceed with, modify, or cancel the action. In the absence of any action by the State Director, this classification action will become the final determination of the Department of the Interior.

As provided by Title 43 Code of Federal Regulations, Subpart 2462.1(b), a public hearing may be scheduled by the State Director if he determines that sufficient public interest exists to

warrant the time and expense of a hearing.

4. The lands/minerals included in the proposed classification are as follows:

Group I—For Oil and Gas Only:

Gila and Salt River Meridian, Arizona

T. 9 N., R. 30 E.
Sec. 13, SW¼SW¼;
Sec. 24, NE¼.
T. 9 N., R. 31 E.
Sec. 3, Lots 1–3, inclusive, Lots 5–7, inclusive, SW¼NE¼, SE¼NW¼;
Sec. 10, Lots 1–4, inclusive, W½E½, E½W½;
Sec. 15, Lots 1–4, inclusive, W½NE¼;
Sec. 22, Lots 3 and 4, SW¼SE¼, SE¼SW¼;
Sec. 27, Lots 1–3, inclusive, W½NE¼, NE¼NW¼, NW¼SE¼.
T. 10 N., R. 30 E.
Sec. 25, All.

The areas described aggregate approximately 1,852.98 acres, more or less.

Group II—For All Minerals, including Oil and Gas:

Gila and Salt River Meridian, Arizona

T. 10 N., R. 30 E.
Sec. 11, SE¼, SE¼SW¼;
Sec. 14, All;
Sec. 23, All;
Sec. 33, W½NE¼, W½, NW¼SE¼, S½SE¼.
T. 11 N., R. 29 E.
Sec. 21, E½SE¼;
Sec. 22, NW¼SW¼;
Sec. 23, NW¼SW¼.
T. 11 N., R. 31 E.
Sec. 30, Lots 1–4, inclusive, E½, E½W½.
T. 12 N., R. 29 E.
Sec. 24, All.
T. 12 N., R. 30 E.
Sec. 19, Lots 2–4, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 20, S½N½, S½;
Sec. 24, All;
Sec. 25, All;
Sec. 27, W½, SE¼.
T. 12 N., R. 31 E.
Sec. 18, Lots 1–4, inclusive, E½, E½W½;
Sec. 19, Lots 1–4, inclusive, E½, E½W½;
Sec. 20, All;
Sec. 29, All;
Sec. 30, Lots 1–4, inclusive, E½, E½W½;
Sec. 31, Lots 1–4, inclusive, E½, E½W½.

The areas described aggregate approximately 9,963.62 acres, more or less.

Group III—For All Surface and Subsurface (including Oil and Gas):

Gila and Salt River Meridian, Arizona

T. 12 N., R. 29 E.
Sec. 32, E½E½.
T. 12 N., R. 30 E.
Sec. 8, S½S½;
Sec. 21, All;
Sec. 28, All;
Sec. 29, All;
Sec. 34, All;
Sec. 35, NW¼, S½.

The areas described aggregate approximately 3,360.00 acres, more or less.

Group IV—For Surface Only:

Gila and Salt River Meridian, Arizona

T. 12 N., R. 28 E.
Sec. 14, E½NE¼, NW¼NE¼, W½NW¼, NW¼SW¼, W½SE¼, SE¼SE¼.
T. 12 N., R. 29 E.
Sec. 12, N½NE¼, SW¼NE¼, W½NW¼;
Sec. 18, Lots 2–4, inclusive, SW¼NE¼, E½SW¼, SE¼;
Sec. 20, SE¼SE¼;
Sec. 21, NE¼, N½NW¼, SE¼NW¼, S½;
Sec. 27, All;
Sec. 28, All.
T. 12 N., R. 30 E.
Sec. 1, Lots 1–16, inclusive, SW¼;
Sec. 3, Lots 1–12, inclusive;
Sec. 4, Lots 1–12, inclusive;
Sec. 5, Lots 1 & 2, Lots 5–8, inclusive;
Sec. 9, E½;
Sec. 10, All;
Sec. 11, Lots 1–16, inclusive;
Sec. 12, NW¼;
Sec. 13, S½;
Sec. 14, NE¼, SW¼NW¼, W½SW¼, SE¼SW¼, E½SE¼;
Sec. 17, N½N½;
Sec. 23, E½NE¼, SW¼NE¼, NW¼NW¼, S½SW¼, SE¼;
Sec. 26, NE¼, N½NW¼, S½SW¼.
T. 12 N., R. 31 E.
Sec. 21, All;
Sec. 22, Lots 1–4, inclusive, W½E½, W½;
Sec. 27, Lots 1–4, inclusive, W½E½, W½;
Sec. 28, All;
Sec. 33, All;
Sec. 34, Lots 1–4, inclusive, W½E½, W½.

The areas described aggregate approximately 11,870.55 acres, more or less.

Group V—For Surface and/or Subsurface (Minerals and/or Oil and Gas)

Gila and Salt River Meridian, Arizona

T. 10 N., R. 29 E.
Sec. 18, E½.
T. 11 N., R. 28 E.
Sec. 14, E½E½, NW¼NE¼, SW¼SE¼.
T. 12 N., R. 28 E.
Sec. 10, NW¼SE¼;
Sec. 12, NW¼NE¼, NE¼NW¼, W½SW¼.
T. 12 N., R. 31 E.
Sec. 15, Lots 1–4, inclusive, W½E½, W½.

The areas described aggregate approximately 1,305.82 acres, more or less.

The following listed corporations and individuals are holders of valid leases, permits, and/or rights-of-way on the public lands described above:

Oil and Gas Lease Holders

Gary L. Kiehne, Box 3855, Midland, Texas 79702, AZA–30203, AZA–30206, AZA–30208, AZA–30210, AZA–30211, AZA–30212, AZA–30214, AZA–30216, AZA–30218, AZA–30220, AZA–30221
Ridgeway AZ Oil Corporation, Box 1110, St. Johns, Arizona 85936, AZA–28337, AZA–30213, AZA–30215, AZA–30217, AZA–30224, AZA–30225, AZA–30226, AZA–30227, AZA–30228
Menard Energy Corporation, 5701 Woodway, #350, Houston, Texas 77057, AZA–30202

Recreation and Public Purpose

Arizona State Parks, 800 West Washington, Phoenix, Arizona 85007, AZA–18072

Special Recreation Permittes

National Outdoor Leadership School, Peter Miers, 2751 N. Soldier Trail, Tucson, Arizona 85749, AZA–28264
Handrich Guides and Outfitters, Dave Handrich, P.O. Box 276, Glenwood, New Mexico 88039, NM–038–8–01
Newell Dryden, P.O. Box 543, Thatcher, Arizona 85552, AZA–28308
Gila Buggy Adventures, Earl Morcomb, P.O. Box 1035 Safford, Arizona 85546, AZA–31065
Phantom Ridge Outfitters, Daniel Ward, P.O. Box 575, Thatcher, Arizona 85552, AZA–30643
Robert Corbell, P.O. Box 760, Morenci, Arizona 85540, AZA–31085

Grazing Lease Holders

Royden & Jack Brown, 4343 E. Keim Drive, Paradise Valley, Arizona 85253, Allotment Number 06033
Clifford A. Thorn, P.O. Box 1091, St. Johns, Arizona 85936, Allotment Number 06061
Johnson Cattle Company, 1132 W. McLellen Road, Mesa, Arizona 85201, Allotment Number 06069
JCK, LLC, 1601 E. McKellips Road, Mesa, Arizona 85203, Allotment Number 06158
James Datrice, 17120 Iron Mountain Drive, Poway, California 92064, Allotment Number 06159
Dale G. & Pamela J. Deratany, HC 62, Box 235, Reserve, New Mexico 87830, Allotment Number 06224
Barbara Garcia, 5796 Hollyridge Drive, Camarillo, California 93010, Allotment Number 06253

Range Improvement Holders

Royden & Jack Brown, 4343 E. Keim Drive, Paradise Valley, Arizona 85253, Project Number 1039
Clifford A. Thorn, PO Box 1091, St. Johns, Arizona 85936, Project Number 0981, 0988
JCK, LLC, 1601 E. McKellips Road, Mesa, Arizona 85203, Project Number 2398
James Datrice, 17120 Iron Mountain Drive, Poway, California 92064, Project Number 2322, 2402

Right-of-Way Holders

Navopache Electric Corporation, Box 308, Lakeside, Arizona 85929, AZAR–017703, AZA–023995, AZA–006016
AT & T, 1200 Peach Tree, PA168, Atlanta, Georgia 30309, AZAR–033064, AZA–023608
Apache County Board of Supervisors, Box 238, Lakeside, Arizona 85936, AZA–018952
Lyman Water Company, Box 235, St. Johns, Arizona 85936, AZA–014912, AZPHX–086671

5. Rights-of-way granted by the Bureau of Land Management on the above lands will transfer with the land or may be reserved to the United States (see Sec. 508 of Federal Land Policy Management Act). Oil and gas leases (geothermal, other leasing act minerals)

will remain in effect under the terms and conditions of the lease. (Upon expiration or termination of the leases, or any authorized extensions thereof, such rights shall automatically vest in the State.)

Upon receipt of title to the federal lands under application, the Arizona State Land Department is prepared to offer the existing federal grazing lessee(s) an opportunity to apply for a State grazing lease. The State will honor the currently established livestock carrying capacity for the term of the federal lease. In addition, the State shall recognize the federal lessee's interest in federally approved improvements. This classification notice constitutes official notice to holders of grazing use authorizations from the Bureau of Land Management that such authorizations will be terminated in part upon transfer of the land described above to the State of Arizona.

For a period of 45 days from the date of publication, persons asserting a claim to or interest in the described lands, other than holders of leases, permits, or rights-of-way listed above, may file such claim with the State Director, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004, with evidence that a copy thereof has been served on the Board of Land Commissioners, State of Arizona, 1616 West Adams, Phoenix, AZ 85007.

Dated: June 19, 2002.

Joanie Losacco,

Associate State Director.

[FR Doc. 02–18955 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–02–0777XX–241A]

Call for Nomination for Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior

ACTION: Notice of vacancy on Resource Advisory Council and call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for the Bureau of Land Management's (BLM's) Mojave Southern Great Basin Resource Advisory Council (RAC) to fill a vacancy on the RAC for an individual employed by the State of Nevada. The RAC provides advice and recommendations to BLM's Las Vegas and Ely field offices on land use planning and management of the public lands within their geographic areas. Public nominations will be received for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, the interests represented by the individuals appointed to the RAC must be balanced and representative of the various issues concerned with the management of public lands.

These include three categories, one of which is category three, holders of State, county or local elected office, employees of a State agency responsible for management of natural resources, academicians involved in natural sciences, representatives of Indian tribes, and the public-at-large.

The State employee whose term has not yet expired has left state government, and this notice is to solicit nominations for replacements. Nominations should be sent to Jo Simpson, BLM Nevada State Office, 1340 Financial Boulevard, P.O. Box 12000, Reno, Nevada, 89520–0006; telephone (775) 861–6586.

FOR FURTHER INFORMATION CONTACT: Jo Simpson, U.S. Department of the Interior, Bureau of Land Management, Communications, P.O. Box 12000, Reno, Nevada, 89520–0006.

Dated: October 25, 2001.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 02–18890 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA–668–1826 (P)]

Santa Rosa and San Jacinto Mountains National Monument Advisory Committee: Notice of Call for Nominations

AGENCIES: Bureau of Land Management, Interior; Forest Service, Agriculture.

ACTION: Notice of call for nominations for the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee under the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, Public Law 106–351 (16 USC 431 note).

The appointments are for a duration of 3 years and apply to five membership slots that expire November 2002.

SUMMARY: The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (Act) required that the Secretaries of the Interior and Agriculture establish a National Monument Advisory Committee (Committee) to advise them on resource management issues associated with the Santa Rosa and San Jacinto Mountains National Monument, specifically providing guidance on the National Monument Plan. This notice requests the public to submit nominations for five memberships on the Committee. The Committee is managed under the provisions of the Federal Advisory Committee Act.

The call for nominations is for representatives for the County of Riverside, the cities of Indian Wells and Cathedral City, the Coachella Valley Mountains Conservancy, and the Winter Park Authority.

DATES: Submit nominations to one of the addresses listed below no later than 30 days after publication in the **Federal Register**.

ADDRESSES: Send nominations to: Advisory Committee Nominations, Ms. Danella George, Bureau of Land Management, P.O. Box 581260, North Palm Springs, California, 92258–1260 (760) 251–4804.

FOR FURTHER INFORMATION CONTACT: Ms. Danella George, Santa Rosa and San Jacinto Mountains National Monument, (760) 251–4804.

SUPPLEMENTARY INFORMATION: As directed by the Act, the Secretary of the Interior and the Secretary of Agriculture jointly established an advisory committee for the Santa Rosa and San Jacinto Mountains National Monument (Monument). The Committee's purpose is to advise the Secretaries with respect to the preparation and implementation of a management plan for the Monument. The Committee meets every other month on a Saturday. The purpose of the Committee is to gather and analyze information, conduct studies and field examinations, hear public testimony, ascertain facts, and, in an advisory capacity only, develop recommendations concerning planning for the management and uses of the National Monument. The designated

Federal officer, or his or her designee, in connection with special needs for advice, may call additional meetings. A Committee Chairperson and Vice Chairperson will be elected by the Committee from among its' members annually.

Any individual or organization may nominate one or more persons to serve on the Committee. Individuals may nominate themselves for Committee membership. You may obtain nomination forms from the BLM or Forest Service by contacting the individuals listed in **ADDRESSES** above. To make a nomination, you must submit a completed nomination form, letters of reference from the represented interests or organization, and any other information that speaks to the nominee's qualification, to the offices listed above. You may make nominations for the following categories of interest, as specified in the Act: (1) A representative of the Country of Riverside, California; (2) a representative from each of the following cities: Cathedral City and Indian Wells; (3) a representative of the Coachella Valley Mountains Conservancy; (4) a representative of the Winter Park Authority. Nominations to the Committee should describe and document the proposed member's qualifications for membership on the Advisory Committee.

Committee members will be appointed to serve 3-year terms. All members will serve without pay but will be reimbursed for travel and per diem expense at the current rates for government employees under 5 U.S.C. 5703.

The Secretary of the Interior will make appointments to the Committee with the concurrence of the Secretary of Agriculture.

Dated: July 8, 2002.

Danella George,

Monument Manager, Santa Rosa and San Jacinto Mountains, National Monument, Bureau of Land Management.

Dated: July 3, 2002.

Laurie Rosenthal,

District Ranger, Idyllwild Ranger District, San Bernardino National Forest.

[FR Doc. 02–18957 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1990–EX]

Final Environmental Impact Statement; Leeville Project, Eureka Co., NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Elko Field Office of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Final Environmental Impact Statement on Newmont Mining Corporation's Leeville Project, located in Eureka County, Nevada.

EFFECTIVE DATES: The Final Environmental Impact Statement will be distributed and made available to the public on July 26, 2002. The period of availability for public review for the Final Environmental Impact Statement ends August 26, 2002. At that time a Record of Decision will be issued regarding the Proposed Action.

ADDRESSES: A copy of the Final Environmental Impact Statement can be obtained from: Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada 89801. The Final Environmental Impact Statement may also be downloaded from the Elko Field Office Internet site at *http://www.nv.blm.gov/elko.*

FOR FURTHER INFORMATION CONTACT: Deborah McFarlane, Project Manager, at the above Elko Field Office address or telephone (775) 753–0200.

SUPPLEMENTARY INFORMATION: Proposed action is to develop and operate an underground mine and ancillary facilities, including dewatering. An abbreviated Final Environmental Impact Statement has been produced. The abbreviated Final Environmental Impact Statement contains copies of substantive comments received on the draft EIS, responses to those comments, and an errata section with specific modifications and corrections to the draft in response to the comments. Alternatives analyzed include the Proposed Action, No Action, (A) Eliminate Canal Portion of Water Discharge Pipeline System, (B) Backfill Shafts, and (C) Relocation of the Waste Rock Disposal Facility and Refractory Ore Stockpile. The Bureau of Land Management's preferred alternative is to implement A, B, and C.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 02–18186 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1990–EX]

Record of Decision; South Operations Area Project Amendment, Eureka Co., NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: This notice announces the signing of the Record of Decision on the proposed South Operations Area Project Amendment. The decision to approve the mining operation will be in full force and effect, when the Field Office Manager signs the Record of Decision

EFFECTIVE DATES: The decision to approve the mining operation will be in full force and effect, on July 26, 2002 when the Field Office Manager signs the Record of Decision. A petition for a stay of the decision must be filed in accordance with 43 CFR 4.411 and 4.413. If you believe you are adversely affected by the Record of Decision you have 30 days, from the date of publication of this notice, to file a Notice of Appeal in the Elko Field Office (See 43 CFR 4.411 and 4.413).

ADDRESSES: You may obtain a copy of the Record of Decision from: Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, NV 89801, and you must also send a copy to: Office of the Regional Solicitor, Salt Lake City Federal Building, 125 South State Street, Salt Lake City, UT 84138.

FOR FURTHER INFORMATION CONTACT: Roger Congdon, Project Coordinator, Elko Field Office, Bureau of Land Management, 3900 Idaho Street, Elko, Nevada 89801, (775) 753–0200.

SUPPLEMENTARY INFORMATION: As authorized by Section 202 of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Elko Field Office prepared an Environmental Impact Statement (EIS) under a third party contract, to analyze impacts and alternatives for Newmont Mining Corporation's proposed South Operations Area Project Amendment. The proposed project expansion would result in disturbance of an additional 1392 acres of federal and private lands located in Eureka County, Nevada. The

Notice of Availability of the Final EIS was published in the **Federal Register** April 26, 2002 (67 FR 20821).

The Elko Field Office Manager will sign the Record of Decision (ROD) concurrent with this notice approving the project and incorporating mitigating modifications analyzed under the proposed action. The decision to approve the mining operation will be in full force and effect, effective when the Field Office Manager signs the Record of Decision. A petition for a stay of the decision must be filed in accordance with the regulations at 43 CFR part 4.

Copies of the ROD can be obtained from the Elko Field Office at 3900 Idaho Street, Elko, Nevada, or by calling (775) 753–0200 and requesting a copy of the document. You may also download the document from the Elko Field office internet site at *http://www.nv.blm.gov/elko.* Additionally, we will mail a copy of the ROD to individuals, agencies or companies that commented during the scoping process, or on the Draft and Final EIS.

Dated: July 10, 2002.

Helen Hankins,

Elko Field Office Manager.

[FR Doc. 02–18494 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–02–5101–ER–F323; NVN66472, NVN73726, N–66150, N–61191]

Notice of Availability of the Final Environmental Impact Statement for the Table Mountain Wind Generating Facility

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA) to (1) announce the 30-day waiting period per 40 CFR 1506.10 after publication of this Final Environmental Impact Statement (FEIS) for the Table Mountain Wind Generating Facility (WGF); and (2) announce locations where copies of the FEIS can be obtained for reading.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act (NEPA) of 1969, a FEIS has been prepared by the Bureau of Land Management (BLM), Las Vegas Field Office for the Table Mountain WGF. The FEIS was prepared to analyze the impacts of issuing rights-of-way for arrays of wind turbines and ancillary facilities located on 300 acres of public land within the Table Mountain WGF study area administered by the BLM.

DATES: The FEIS 30-day waiting period will start with the Environmental Protection Agency (EPA) publication in the **Federal Register** of the Notice of Availability for the FEIS on July 26, 2002. Copies of the FEIS will be mailed to individuals, agencies, or companies who previously requested copies.

ADDRESSES: Public reading copies of the FEIS will be available for reading at public libraries located at the following addresses:

- 650 West Quartz Avenue, Sandy Valley, NV
- 365 West San Pedro, Goodsprings, NV
- 4280 South Jones Blvd., Las Vegas, NV

A limited number of copies of the document will be available at the following BLM offices:

- Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV
- Bureau of Land Management, Las Vegas Field Office, 4701 Torrey Pines Drive, Las Vegas, NV

FOR FURTHER INFORMATION CONTACT: Jerry Crockford, Project Manager, Bureau of Land Management, Las Vegas Field Office, 4701 Torrey Pines Drive, Las Vegas, NV 89130–2301. Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401; telephone (505) 599–6333, cellular telephone (505) 486–4299, or electronic mail *jcrockfo@nm.blm.gov.*

SUPPLEMENTARY INFORMATION: The FEIS addresses alternatives to resolve the following major issues: air quality, increased recreation, mining claims, birds and bats, big horn sheep, threatened or endangered species, cultural resources and traditional cultural properties, transportation, visual resources, noise, and socioeconomics. The proposed action and alternatives can be summarized as: Proposed Action—Construct arrays containing a total of 153 wind turbine generators (WTGs) consisting of a combination of the two sizes of turbines identified in Alternatives A and B, and ancillary facilities; *Alternative A*—Construct arrays containing a total of 187 NEG Micon Model 900/52 WTGs and ancillary facilities; *Alternative B*—Construct arrays containing a total of 135 NEG Micon Model 1500 C WTGs and ancillary facilities; and *Alternative C*—No Action.

The proposed action is the Agency Preferred Alternative. It is to construct, operate, and maintain a WGF producing 205-megawatts (MWs) and ancillary facilities on approximately 300 acres of public land within the Table Mountain WGF study area. The fully constructed WGF would consist of arrays containing a total of 153 WTGs. The WTGs installed would be a combination of the NEG Micon Model 900/52 (each producing 800 kilowatts) and NEG Micon 1500 C (each producing 1.5 MWs) turbines. Ancillary facilities consist of access roads, underground and overhead 34.5 kilovolt (kV) distribution lines, 230 kV electric transmission lines, an electric sub-station, a control building, and various temporary use areas. The WGF would operate 24 hours per day, 365 days a year, and produce in excess of 460 million kilowatt-hours annually. The anticipated life of the facility would be longer than 20 years. The rights-of way would be granted for 20 years with the right to renew.

Alternative A would essentially be the same as the Proposed Action but would consist of arrays containing a total of 187 NEG Micon Model 900/52 WTGs and ancillary facilities. Under Alternative A, there would be 22 percent more towers, turbines, and transformers. This would cause an increase in total of land disturbance as compared to the Proposed Action.

Alternative B would essentially be the same as the Proposed Action but would consist of arrays containing a total of 135 NEG Micon Model 1500 C WTGs and ancillary facilities. Under Alternative B, there would be 12 percent fewer towers, turbines, and transformers. This would cause a reduction in total acres of land disturbance as compared to the Proposed Action.

Under the No Action Alternative, BLM would not issue right-of-way grants for the WGF and ancillary facilities. The WTGs, access roads, underground and overhead 34.5 kV distribution lines, 230 kV electric transmission lines, electric sub-station, control building, and various temporary use areas would not be constructed/utilized. Wind resources at Table Mountain would remain undeveloped.

Public participation is occurring throughout the processing of this project. A Notice of Intent was filed in the **Federal Register** on December 29, 2000. Two rounds of public meetings consisting of three meetings each were held. Comments presented throughout the process have been considered.

Dated: May 31, 2002.

Angie C. Lara,

Acting Field Manager.

[FR Doc. 02–18401 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–0293–02–1310–PB–026L–241A]

National Petroleum Reserve-Alaska Research and Monitoring Advisory Team (RMT) Public Meeting

AGENCY: Northern Field Office, Bureau of Land Management, Interior.

ACTION: Notice of the National Petroleum Reserve—Alaska Research and Monitoring Advisory Team Public Meeting.

SUMMARY: A public meeting of the National Petroleum Reserve—Alaska Research and Monitoring Advisory Team (NPR–A RMT) will be held in Fairbanks, Alaska on September 17, 2002, to discuss research and monitoring needs in NPR–A and to make recommendations to the Authorized Officer on priority projects to be funded by the BLM.

DATES: The public meeting will be held at the BLM Northern Field Office, 1150 University Avenue, Fairbanks, Alaska from 9 a.m. to 4 p.m. on September 17, 2002.

PUBLIC PARTICIPATION: Public comments will be taken during the meeting from 1 p.m. to 1:30 p.m.

FOR FURTHER INFORMATION: Additional information concerning the NPR–A Research and Monitoring Advisory Team may be obtained from Herb Brownell, Arctic Team Manager, BLM Northern Field Office, 1150 University Avenue, Fairbanks, Alaska 99709–3844. Mr. Brownell may be reached at (907) 474–2333 or at 1–800–437–7021, x2333, or by e-mail at *Herb_Brownell@ak.blm.gov*.

SUPPLEMENTARY INFORMATION: The RMT advises the BLM on NPR–A research and monitoring needs. It also assesses whether existing mitigative stipulations, established in the 1998 Record of Decision for the Northeast NPR–A Integrated Activity Plan/Environmental Impact Statement, are effective and appropriate. The Team develops and recommends research priorities, and it applies improved technology and operating practices to oil and gas exploration and possible development in NPR–A. The RMT's membership, appointed by the Secretary of the Interior, consists of representatives from the public at large, environmental and conservation groups, the oil and gas industry, the academic research community, and governmental agencies. In addition to the BLM, agencies with representatives on the RMT include the U.S. Geological Survey—Biological Resources Division, Minerals Management Service, Department of Energy, U.S. Fish and Wildlife Service, and the North Slope Borough.

Dated: June 13, 2002.

Robert W. Schneider,

Field Manager.

[FR Doc. 02–18878 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–01–0777–30]

Northeastern Great Basin Resource Advisory Council meeting location and time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council's Meeting Location and Time

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for this meeting includes: approval of minutes of the previous meetings, Off-Highway Vehicle Draft Guidelines, Vegetation Draft Guidelines, 3809 Guidelines, Field Managers' and District Rangers' reports.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Dates, Times, Place: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, BLM Ely Field Office, 702 North Industrial Way, Ely, Nevada, 89301; August 15, 2002, beginning at 9 a.m.; public comment period 1:30 p.m.; tentative adjournment at 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Specialist, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801, telephone (775) 753–0386.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Helen Hankins,

Field Office Manager, Elko Field Office.

[FR Doc. 02–18891 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–1220–HS: G 01–156]

Temporary Motor Vehicle Closure; Three River Resource Area, Hines, OR

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of temporary motor vehicle closure on public land administered by the BLM, Burns District, Three Rivers Resource Area, Hines, Oregon.

SUMMARY: The following described public land in Harney County is being temporarily closed to the use of motorized vehicular traffic pursuant to 43 CFR 8364.1:

The closure applies to the following road segments:

The Skull Creek Road No. 7203–0–OO, from its junction with the Radar Hill County Road in the SW¼NE¼, Section 3, T. 23 S., R. 30 E., W.M. approximately 20 miles north to its junction with the Emigrant Crossing Road in NW¼NW¼, Section 33, T. 20 S., R. 29 E., W.M.

The Horton Mill Road No. 7208–0–CO, from its junction with Forest Road 47 in the SW¼SE¼, Section 6, T. 22 S., R. 29 E., W.M. approximately 4 miles east to its junction with the Skull Creek Road in the NW¼NW¼, Section 2, T. 22 S., R. 29 E., W.M.

The Moon Reservoir Road Nos. 7227–1–OO and 7227–1–AO, from its junction with the "OO" County Road in the SE¼SE¼, Section 15, T. 25 S., R. 28 E., W.M. approximately 7.5 miles northwest to gates leading into private land in the NW¼NW¼, Section 30, T. 24 S., R. 28 E., W.M. and the NE¼NW¼, Section 25, T. 24 S., R. 27 E., W.M.

All public land in Section 29, T. 23 S., R. 26 E., W.M. west of the Chickahominy Reservoir Access Road; south and west of the waterline of Chickahominy Reservoir; and north of U.S. Highway 20; and NE¼SW¼, Section 28, T. 23 S., R. 26 E., W.M. except that land in Chickahominy Campground, as gated and posted.

This closure is necessary to prevent damage to roads and adjacent resources during extremely wet springtime conditions. Unrestricted traffic during this time of year is creating excessive impacts to soil and vegetative resources

resulting in erosion. Indiscriminate springtime off-road vehicle use also contributes to sedimentation of Chickahominy Reservoir. Additionally, funds are not readily available to routinely repair and maintain roads damaged by vehicular traffic.

DATES: This closure will take effect when wet conditions dictate and upon posting the land as closed to vehicular traffic. The closure will remain in effect until the soil conditions have dried sufficiently to prevent damage to the road and adjacent resources, as determined by the Authorized Officer.

Exemptions: Persons who are exempt from these rules include:

1. Any Federal, State, or local officer or employee in the scope of their duties, members of any organized rescue or fire fighting force in performance of an official duty.

2. Motorized watercraft or snowmobiles.

3. Other individuals in the possession of a written waiver or other authorization who, as determined by the Authorized Officer, have a demonstrated need to travel by motorized vehicle in the area being closed.

Supplementary Rules for Road Closure Area: Under 43 CFR 8364.1, the BLM will enforce the following rules on the public land within the road closure area, Three Rivers Resource Area, Burns District, Hines, Oregon. You must follow these rules:

1. You must not operate a motorized vehicle on a closed road or area.

2. You must obey all posted signs in a road closure area.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Fred McDonald, BLM, 28910 Hwy 20 West, Hines, Oregon 97738, phone (541) 573–4453.

Dated: July 17, 2002.

Joan M. Suther,

Three Rivers Resource Area Field Manager.

[FR Doc. 02–18956 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Survey Plat Filings

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Filing of amended protraction diagram plats.

SUMMARY: The plats of the amended protraction diagram accepted June 11, 2002, of the following described lands, are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Principal Meridian, Montana

Tps. 8, 9, 10, 11, and 12 S., Rs. 1, 2, and 3 W.

The plat, representing the Amended Protraction Diagram 58 Index of unsurveyed Townships 8, 9, 10, 11, and 12 South, Ranges 1, 2, and 3 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 8 S., R. 2 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 8 South, Range 2 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 9 S., R. 2 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 9 South, Range 2 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 9 S., R. 1 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 9 South, Range 1 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 10 S., R. 2 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 10 South, Range 2 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 11 S., R. 2 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 11 South, Range 2 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 11 S., R. 1 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 11 South, Range 1 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 12 S., R. 1 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 12 South, Range 1 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 12 S., R. 2 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 12 South, Range 2 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 12 S., R. 3 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 12 South, Range 3 West, Principal Meridian, Montana, was accepted June 11, 2002.

The amended protraction diagram was prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagram, accepted June 11, 2002, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this amended protraction diagram, accepted June 11, 2002, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagram will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. 36800, Billings, Montana 59107–6800, telephone (406) 896–5125 or (406) 896–5009.

Dated: June 26, 2002.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–18886 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–933–1430–ET; AA–40482]

Public Land Order No. 7529; Partial Revocation of Departmental Order dated May 14, 1929, as Modified; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Departmental Order, insofar as it affects approximately 1,892 acres of land withdrawn for Power Site Classification No. 221 at Lake Kathleen. The land is

no longer needed for the purpose for which it was withdrawn. The land is within the Tongass National Forest, and is part of the Admiralty Island National Monument Wilderness. Approximately 926.57 acres have been conveyed out of Federal ownership.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Susan J. Lavin, Bureau of Land Management Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–217–5477.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Departmental Order dated May 14, 1929, as modified, which withdrew National Forest System land for Power Site Classification No. 221 in the Lake Kathleen area, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

Tongass National Forest

All lands below an altitude of 500 feet above sea level adjacent to Lake Kathleen and the stream which is its outlet. The outlet stream of Lake Kathleen enters a small bight called Jima Cove in approximate latitude 57°53½′ N., longitude 134°44′ W., and more particularly described in the U.S. Geological Survey Interpretation No. 247 dated January 20, 1936, as:

T. 46 S., R. 66 E., sec. 9, lots 1 to 5, inclusive, and E½; sec. 16, NE¼NE¼; and All unsurveyed lands within ¼ mile of Lake Kathleen, and all unsurveyed lands within ¼ mile on the south side of the stream which is its outlet, and all unsurveyed lands between said outlet stream and the projection east to Lake Kathleen of the line constituting the north boundary of section 9.

The area described contains approximately 1,892 acres.

2. The National Forest System land will remain withdrawn as part of the Tongass National Forest, and the Admiralty Island National Monument Wilderness pursuant to Section 703(a)(1) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 1132 (1994). This action is for record clearing purposes as to those lands that have been conveyed out of Federal ownership.

Dated: July 2, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–18893 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 7033 and AZAR 034182]

Public Land Order No. 7528; Revocation of Public Land Order Nos. 3684 and 5368; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Land Order Nos. 3684 and 5368 in their entirety as to 1,059.61 acres of National Forest System lands withdrawn for several water sources within the Superstition Wilderness Area, the Tortilla Flat Campground, and the Weaver's Needle Recreation Area. All of the lands are located within the Superstition Wilderness Area, therefore the withdrawals are no longer needed.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

Public Land Order Nos. 3684 (30 FR 7821) and 5368 (38 FR 20329), which withdrew National Forest System lands for several water sources within the Superstition Wilderness Area, the Tortilla Flat Campground, and the Weaver's Needle Recreation Area, are hereby revoked in their entirety.

SUPPLEMENTARY INFORMATION: The lands are located within the Superstition Wilderness Area, Tonto National Forest. The lands still need protection from mining but since they are located within the Wilderness Area, which closes the lands to mining, the withdrawals are no longer needed.

Dated: July 2, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–18892 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–ET; IDI–15261]

Public Land Order No. 7526; Modification of Secretarial Order Dated October 7, 1908; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a Secretarial Order insofar as it affects 201.65 acres of public lands withdrawn for the Bureau of Reclamation's Minidoka Reclamation Project. The lands are no longer needed for the purpose for which they were withdrawn and the modification is needed to permit a land tenure adjustment. This action will open the lands to exchange only.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3867.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated October 7, 1908, which withdrew lands for the Bureau of Reclamation's Minidoka Reclamation Project, is hereby modified insofar as it affects the following described public lands to allow for exchange in accordance with Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended, 43 U.S.C. 1716 (1994):

Boise Meridian

T. 9 S., R. 20 E.,
sec. 13, lots 1 to 7, inclusive;
sec. 14, lots 3 to 5, inclusive.

The areas described aggregate 201.65 acres in Lincoln County.

2. The lands described in paragraph 1 are hereby made available for exchange in accordance with Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended, subject to valid existing rights, the provisions of existing withdrawals, other segregation of record, and the requirements of applicable law.

Dated: July 2, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–18879 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent To Prepare an Environmental Impact Statement for the Systems Conveyance and Operations Program

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for the Systems Conveyance and Operations Program.

SUMMARY: Under the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA, the Bureau of Reclamation, Lower Colorado Region (Reclamation) and the National Park Service (NPS), Lake Mead National Recreation Area, propose to prepare an Environmental Impact Statement (EIS). Reclamation and the NPS are preparing the EIS as joint-lead Federal agencies to evaluate the potential impacts associated with the construction, operation, and maintenance of the Systems Conveyance and Operations Program (SCOP), which may include process improvements, supplemental treatment facilities, and/or a transmission facility to convey treated effluent directly into and under the surface of the Colorado River system within the Lake Mead National Recreation Area.

Current effluent discharge is causing erosion problems to wetlands within the Las Vegas Wash, especially within the Clark County Wetlands Park where wetland restoration is underway. The SCOP is intended to maintain the integrity and quality of the treated effluent as it increases through time and is conveyed into Lake Mead. The project will also reduce erosion within Las Vegas Wash and the Clark County Wetlands Park aiding in their restoration.

ADDRESSES: You may submit comments concerning the EIS's scope, the issues to cover, the alternatives to consider, and other resource concerns. Your comments may be submitted by mail or hand delivered to Mr. James Green, Regional Environmental Officer, Bureau of Reclamation, Lower Colorado Region, LC–2530, P.O. Box 61470, Boulder City, NV 89006–1470; or Mr. William K. Dickinson, Superintendent, National Park Service, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, NV 89005. Comments will be accepted for 45 days after publication of this notice and will conclude on September 1, 2002.

Written comments received by Reclamation and the NPS become part of the public record associated with this action. Accordingly, Reclamation and the NPS make these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their name and address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment letter. We will make all submissions from organizations or businesses, and from individuals themselves as representatives or officials of organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety. Anonymous comments will not be considered.

Hearing impaired, visually impaired, and/or mobility impaired persons planning to attend these meeting may arrange for necessary accommodations by contacting Ms. Carrie Stewart at telephone (702) 939–6101, extension 222 or faxogram (702) 939–6108, no later than two weeks prior to the meeting date.

DATES: Reclamation, the NPS, and the Clean Water Coalition will conduct public meetings in open house format to involve the public in issue identification and the alternative development processes. Oral and written comments will be accepted at the public scoping meetings to be held at the following locations:

August 12, 2002, 6:30–8:30 p.m., Henderson Convention Center, 200 S. Water St., Henderson, Nevada.

August 13, 2002, 6:30–8:30 p.m., Winchester Community Center, 3130 S. McLeod Dr., Las Vegas, Nevada.

August 14, 2002, 6:30–8:30 p.m., West Flamingo Senior Center, 6255 W. Flamingo Road, Las Vegas Nevada.

August 15, 2002, 6:30–8:30 p.m., West Sahara Library, 9600 W. Sahara Avenue, Las Vegas, Nevada.

August 19, 2002, 6:30–8:30 p.m., Tempe Mission Palms Resort, 60 E. 5 St., Tempe, Arizona.

August 20, 2002, 6:30 to 8:30 p.m., Black Canyon Conference Center, 9440 N. 25th Ave., Phoenix, Arizona.

August 22, 2002, 6:30 to 8:30 p.m., Regency Room, Radisson in Mission Valley, 1433 Camino del Rio So., San Diego, California.

August 23, 2002, 6:30 to 8:30 p.m., Hyatt Regency Conference Center, 285 N. Palm Canyon Dr., Palm Springs, California.

FOR FURTHER INFORMATION: Contact Mr. James Green, Bureau of Reclamation; or Mr. William K. Dickinson, National Park Service at the addresses provided above under **ADDRESSES.**

SUPPLEMENTARY INFORMATION: The project proponent of the SCOP is the Clean Water Coalition, which is comprised of the City of Las Vegas, City of Henderson, and the Clark County Sanitation District, Las Vegas, Nevada. Construction activities and infrastructure associated with the SCOP would be located on private land, City of Las Vegas land, City of Henderson land, Clark County land. Reclamation lands in the area of the Las Vegas Wash, and lands administered by the NPS.

Currently, about 150 million gallons of treated effluent are discharged daily into the Las Vegas Wash, which then flows into Lake Mead. By 2030 it is estimated that this amount will increase to about 300 million gallons per day. The treated effluent meets Environmental Protection Agency and Nevada Department of Environmental Protection quality and quantity standards and will do so into the future. Before this treated effluent reaches Lake Mead, perchlorate and other contaminants in the Las Vegas shallow aquifer, and other non-point source contaminants, discharge into the Las Vegas Wash and mix with the treated effluent.

The EIS will address a range of alternatives, which include the no-action alternative and a number of action alternatives. The action alternatives will have a common physical element, which is an 84-inch to 114-inch diameter buried pipeline referred to as the Effluent Interceptor. It would have a capacity of about 300 million gallons per day of treated effluent derived from the three treatment facilities, and would end at a point located upstream of Lake Las Vegas. The action alternatives would diverge at the terminus of the Effluent Interceptor. The EIS will evaluate the potential environmental impacts associated with the Effluent Interceptor and the various alternatives including: no action (there will be no change to the current treatment processes and discharge locations); process improvements at the three treatment facilities; construction and operation of supplemental treatment facilities; and, construction and operation of a pipeline

that would transport highly-treated effluent from the three treatment facilities to one or more receiving areas underwater within the Colorado River system. An impairment analysis will be conducted for the portion of the project that will be located on NPS-administered land. The EIS will evaluate the alternatives to determine their effects on a number of resource issues including but not limited to the following: water quality, surface water hydrology, groundwater, biological resources/endangered species, cultural resources, recreation, land use, air quality, noise, socioeconomics, and other appropriate resource issues identified during the scoping process.

Dated: July 1, 2002.

Lorri Gray,

Assistant Regional Director, Lower Colorado Region.

[FR Doc. 02–18911 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–474]

Certain Recordable Compact Discs and Rewritable Compact Discs; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 24, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of U.S. Philips Corporation of Tarrytown, New York. Letters supplementing the complaint were filed on July 10, 2002 and July 16, 2002. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain recordable compact discs and rewritable compact discs by reason of infringement of claims 1, 5, and 6 of U.S. Letters Patent 4,807,209, claim 11 of U.S. Letters Patent 4,962,493, claims 1–3 of U.S. Letters Patent 4,972,401, claims 1, 3, and 4 of U.S. Letters Patent 5,023,856, claims 1–6 of U.S. Letters Patent 4,999,825, and claims 20, and 23–34 of U.S. Letters Patent 5,418,764. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON–LINE) at *http://dockets.usitc.gov/eol/public*.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, *Esq.*, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2606.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2002).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on July 19, 2002, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain recordable compact discs or rewritable compact discs by reason of infringement of claims 1, 5, or 6 of U.S. Letters Patent 4,807,209, claim 11 of U.S. Letters Patent 4,962,493, claims 1, 2, or 3 of U.S. Letters Patent 4,972,401, claims 1, 3, or 4 of U.S. Letters Patent 5,023,856, claims 1–5 or 6 of U.S. Letters Patent 4,999,825, or claims 20, 23–33, or 34 of U.S. Letters Patent 5,418,764, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: U.S. Philips Corporation, 580 White Plains Road, Tarrytown, New York 10591.

(b) The respondents are the following companies alleged to be in violation of section 337, and are parties upon which the complaint is to be served:

Acme Production Industries, Room B & C, 7/F, Tai Chi Factory Building, 25–29 Kok Cheung Street, Tai Kok Tsui, Kowloon, Hong Kong.

Bregusa Micro International LLC, 22622 Lambert Street, Suite 306, Lake Forest, California 92630.

Digital Storage Technology Co., Ltd., 42 Kung 4 Road, LinKou 2nd Industrial Park, Taipei Hsien, Taiwan.

DiscsDirect.Com, 2165 South Bascom Avenue, Campbell, California 95008.

GigaStorage Corporation Taiwan, 2, Kuang Fu South Road, Hsinchu Industrial Park, Hsinchu, Taiwan.

GigaStorage Corporation USA, 174 Lawrence Drive, Suite C, Livermore, California 94550.

Jacsonic Group, 246 Clary Avenue, San Gabriel, California 91776.

J&E Enterprises, Inc., 7900 San Fernando Road, #B1, Sun Valley, California 91352.

KingPro Mediatek Inc., No 28, Chung Cheng 1st Street, Yung Kang City, 71042, Tainan Hsien, Taiwan.

Linberg Enterprise Inc., 1 Charles Avenue, Building 130 B, West Orange, New Jersey 07052.

NewEgg.Com, Inc., 132 South 6th Avenue, La Puenta, California 91746.

PNY Technologies, Inc., 299 Webro Road, Parsippany, New Jersey 07054.

QTC Computer Systems, Inc., 1374 East Edinger Avenue, Santa Ana, California 92705.

STI Certified Products, Inc., 42982 Osgood Road, Fremont, California 94539.

Symmetry Group, Inc., 11–27 44th Road, Long Island City, New York 11101.

Tiger Direct, Inc., 7795 West Flagler Street, Suite 35, Miami, Florida 33144.

TKO Media Inc., 9440 Telstar Avenue, Suite 2, El Monte, California 91731.

U.S. DigitalMedia, Inc., 21430 North 20th Avenue, Phoenix, Arizona 85027.

Xtraplus Corporation, 38929 Cherry Street, Newark, California 94560.

(c) Jeffrey R. Whieldon, *Esq.*, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–A, Washington,

DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: July 22, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–18945 Filed 7–25–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–473]

In the Matter of Certain Video Game Systems, Accessories, and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 21, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Microsoft Corporation of Redmond, Washington. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video game system accessories by reason of infringement of the claims of U.S. Patent Des. 452,282 and U.S. Patent Des. 452,534. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: Rett V. Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2599.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 17, 2002, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain video game systems, accessories, or components thereof by reason of infringement of the claims of U.S. Patent Des. 452,282 or U.S. Patent Des. 452,534, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Ultimate Game Club Ltd., 1491 Boston Post Road, Old Saybrook, Connecticut 06475.

(c) Rett V. Snotherly, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–O, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 19, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–18726 Filed 7–25–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2215–02; AG Order No. 2602–2002]

RIN 1115–AE26

Extension of the Designation of Somalia Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Somalia under the Temporary Protected Status (TPS) Program will expire on September 17, 2002. This notice extends the Attorney General's designation of Somalia for 12 months until September 17, 2003, and sets forth procedures necessary for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) with TPS to re-register for the additional 12-month period. Re-registration is limited to persons who both registered under the initial designation and also timely re-registered under each subsequent extension of designation, or who registered under the re-designation (which ends September 17, 2002). Nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of the TPS designation for Somalia is effective September 17, 2002, and will remain in effect until September 17, 2003. The 60-day re-registration period begins July 26, 2002 and will remain in effect until September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Emily Crowder Frazelle, Program Analyst, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Attorney General Have To Extend the Designation of Somalia Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (the Act) states that at least 60 days before the end of a designation, or any extension thereof, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer continues to meet the conditions for designation, the period of designation is extended automatically for 6 months pursuant to section 244(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for a period of 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C).

Why Did the Attorney General Decide To Extend the TPS Designation for Somalia?

On September 16, 1991, the Attorney General designated Somalia under the TPS program (56 FR 46804). Since that time, the Departments of Justice and State have continuously reviewed conditions in Somalia, most recently extending and re-designating Somalia under the TPS program on September 4, 2001 (66 FR 46288).

A recent Department of State report found that "[o]pen conflict remains a fact of life in southern Somalia, where numerous actors compete for land and power. While the two northern regions of Somalia are more stable, their security is jeopardized by the instability in the south." State Department Report (May 16, 2001) (State Department Report). There has been no central authority controlling Somalia since 1991. Immigration and Naturalization Service's (INS) Resource Information Center (RIC) Report (May 14, 2002). Although a peace process led to the establishment of a Transitional National Government (TNG), the "legitimacy of the transitional administration * * * has been strongly contested by several local militias, as well as by the de facto governments that pre-date the TNG in the northern part of the country. Leaders in Puntland have publicly stated that they do not recognize the TNG, while Somaliland has openly sought international recognition on its own since 1991. Many TNG officials have been threatened or killed; an atmosphere of lawlessness continues." State Department Report.

Fighting in the Gedo region in southern Somalia has continued throughout 2002. The Department of State reports that "[f]ighting in April result[ed] in a new outflow of an estimated 5,000 refugees into Kenya. The use of landmines in the region is also increasing. Hundreds of families were displaced in February in this region as a result of fighting between the Somali Restoration and Reconciliation Council and the Juba Valley Alliance. There is also reporting that Puntland, previously considered to be relatively stable, is becoming increasing [sic] insecure." State Department Report.

The United Nations Secretary-General reported in February 2002 that "Somalia remains one of the most dangerous environments in which the United Nations operates," and concluded that the conditions do not currently exist to re-establish a comprehensive peace-building programme in Somalia. Report of the Secretary-General on the situation in Somalia (February 21, 2002). Such reports indicate that ongoing, armed conflict continues to threaten seriously the personal safety of those living and working in Somalia.

Based on this review, the Attorney General, after consultation with appropriate government agencies, finds that the conditions that prompted designation of Somalia under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). There is an ongoing armed conflict within Somalia and, due to such conflict, requiring the return of aliens who are nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(1)(A). Furthermore, there exist extraordinary and temporary conditions in Somalia that prevent nationals of Somalia (and aliens having no nationality who last habitually resided in Somalia) from returning home in safety. 8 U.S.C. 1254a(b)(1)(C). Finally, permitting nationals of Somalia to remain temporarily in the United States is not contrary to the national interest of the United States. *Id.* On the basis of these findings, the Attorney General concludes that the TPS designation for Somalia should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Benefits Through the Somalia TPS Program, Do I Still Re-Register for TPS?

Yes. If you have already have TPS benefits through the Somalia TPS program, your benefits will expire on September 17, 2002. Accordingly, you must re-register for TPS in order to maintain your benefits through September 17, 2003. See the following re-registration instructions. TPS benefits include temporary protection against removal from the United States, as well as work authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I Am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted benefits under the Somalia TPS program who wish to maintain such benefits must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the $50 filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches × 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the fifty dollar ($50) fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the $50 fingerprint fee with the application for extension.

Submit the completed forms and applicable fee, if any, to the INS district office having jurisdiction over your place of residence during the 60-day re-registration period that begins on July 26, 2002 and ends on September 24, 2002 (inclusive of such end date).

If	Then
You are applying for an Employment Authorization Document that is valid through September 17, 2003.	You must complete and file the Form I–765, Application for Employment Authorization, with the $120 fee.
You already have an Employment Authorization Document or do not require such a document.	You must complete and file Form I–765 with no fee.
You are applying for an Employment Authorization Document and are requesting a fee waiver.	You must complete and file: (1) Form I–765 with no fee, and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Somalia (or alien having no nationality who last habitually resided in Somalia) who is otherwise eligible for TPS and has applied for, or plans to apply for asylum but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's eligibility to apply for TPS, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B)(i).

Does This Extension Allow Nationals of Somalia (or Aliens Having no Nationality Who Last Habitually Resided in Somalia) Who Entered the United States After September 4, 2001, to Apply for TPS?

No. This is a notice of an extension of the TPS designation for Somalia, not a notice of re-designation of Somalia under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to include nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who have not been continuously physically present in, and have not continuously resided in, the United States since September 4, 2001.

Is Late Initial Registration Possible?

Yes. Some persons may be eligible for late initial registration under 8 CFR 244.2. To apply for late initial registration an applicant must:

(1) Be a national of Somalia (or alien who has no nationality and who last habitually resided in Somalia);

(2) Have been continuously physically present in the United States since September 4, 2001;

(3) Have continuously resided in the United States since September 4, 2001; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period from September 4, 2001, through September 17, 2002, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration or termination of the conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Somalia Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(1), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Somalia for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Somalia under section 244(b) of the Act is extended for an additional 12-month period from September 17, 2002, to September 17, 2003. 8 U.S.C. 1254a(b)(3)(C).

(2) As of July 12, 2002, there are approximately 250 nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who are eligible for re-registration.

(3) To maintain TPS, a national of Somalia (or an alien having no nationality who last habitually resided in Somalia) who previously has applied for or received TPS benefits must re-register for TPS during the 60-day re-registration period from July 26, 2002 until September 24, 2002.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). There is no fee for a Form I–821 filed as part of the re-registration application. If the applicant requests employment authorization documentation, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization

documentation must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on September 17, 2003, the Attorney General will review the designation of Somalia under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register.** 8 USC 1254a(b)(3)(A).

(6) Information concerning the extension of designation of Somalia under the TPS program will be available at local INS offices upon publication of this notice and the INS National Customer Service Center at 1–800–375–5283. This information will also be published on the INS Web site at *http://www.ins.usdoj.gov.*

Dated: July 19, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–18897 Filed 7–25–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions, thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

District of Columbia
DC020001 (Mar. 1, 2002)
DC020003 (Mar. 1, 2002)

Volume III

Florida
FL020001 (Mar. 1, 2002)
FL020014 (Mar. 1, 2002)
FL020017 (Mar. 1, 2002)

Volume IV

Wisconsin
WI02001 (Mar. 1, 2002)
WI02002 (Mar. 2, 2002)
WI02005 (Mar. 1, 2002)
WI02008 (Mar. 1, 2002)
WI02010 (Mar. 1, 2002)
WI02011 (Mar. 1, 2002)
WI02013 (Mar. 1, 2002)
WI02019 (Mar. 1, 2002)

Volume V

Kansas
KS020009 (Mar. 1, 2002)
KS020019 (Mar. 1, 2002)
KS020025 (Mar. 1, 2002)
KS020026 (Mar. 1, 2002)
KS020063 (Mar. 1, 2002)

Texas

TX020007 (Mar. 1, 2002)
TX020018 (Mar. 1, 2002)
TX020019 (Mar. 1, 2002)
TX020063 (Mar. 1, 2002)
TX020069 (Mar. 1, 2002)

Volume VI

Oregon
OR020001 (Mar. 1, 2002)
Washington
WA010001 (Mar. 1, 2002)
WA020005 (Mar. 1, 2002)
WA020008 (Mar. 1, 2002)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be

found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extension Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 17th Day of July 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–18523 Filed 7–25–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–092]

NASA Advisory Council, Aerospace Technology Advisory Committee, Aviation Safety Reporting System Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory (NAC) Council, Aerospace Technology Advisory Committee (ATAC), Aviation Safety Reporting System Subcommittee meeting (ASRSS).

DATES: Wednesday, September 25, 2002, 9 a.m. to 5 p.m.

ADDRESSES: General Aviation Manufacturers Association, 1400 K Street NW., Suite 801, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/960–6059.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

- Report on Aviation Safety Reporting System
- Future Planning for ASRS

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: July 22, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–19015 Filed 7–25–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 150–00004–CivP (EA 01–271), and ASLBP No. 02–802–01–CivP]

Decisive Testing, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.205, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding: Decisive Testing, Inc., San Diego, California, Order Imposing Civil Monetary Penalty.

This Board is being established pursuant to the request of Decisive Testing, Inc., for a hearing regarding an order issued by the NRC staff, dated June 11, 2002, entitled "Order Imposing Civil Monetary Penalty" (67 FR 41,741 (June 19, 2002)).

The Board is comprised of the following administrative judges:

Ivan Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Dr. Peter S, Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents and other materials shall be filed with the Panel Judges in accordance with 10 CFR § 2.701.

Issued at Rockville, Maryland, this 22nd day of July, 2002.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–18969 Filed 7–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–25]

Foster Wheeler Environmental Corporation's Proposed Idaho Spent Fuel Facility; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent (NOI).

SUMMARY: Foster Wheeler Environmental Corporation (FWENC) submitted a license application on November 19, 2001 (67 FR 43358, June 27, 2002) for the receipt, possession, storage and transfer of spent nuclear fuel (SNF) and other radioactive materials associated with SNF at its proposed Idaho Spent Fuel Facility, an independent spent fuel storage installation (ISFSI), to be located on the Idaho National Engineering and Environmental Laboratory (INEEL) site in Butte County, Idaho. The license application will be considered under the provisions of NRC regulations at 10 CFR part 72. If granted, the license will authorize the applicant to store SNF in a dry storage system at the applicant's Idaho Spent Fuel Facility site.

Additionally, in accordance with Nuclear Regulatory Commission (NRC) regulations at 10 CFR part 51 and the National Environmental Policy Act (NEPA), an environmental impact statement (EIS) is being prepared to

examine the potential environmental impacts of the proposed licensing action (*i.e.* to construct and operate an ISFSI, including transfer of certain SNF from wet storage to dry interim storage pending its final transfer to a geologic repository).

At this time, the NRC is soliciting public comments on the scope of this EIS. Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the EIS, and to identify the significant issues related to the proposed action. It is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. Please see supplementary information for more details.

DATES: The public scoping process required by NEPA begins with publication of this NOI in the **Federal Register** and continues until September 16, 2002. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practical. Comments will also be accepted by electronic or facsimile submission.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules and Directives Branch, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 72–25 when submitting comments. Due to the current mail situation in the Washington, DC area, commentors are encouraged to send comments electronically to *isffacility@nrc.gov* or by facsimile to (301) 415–5398, ATTN: Matt Blevins.

FOR FURTHER INFORMATION CONTACT: For environmental review questions, please contact Matt Blevins at (301) 415–7684, e-mail: *mxb6@nrc.gov*. For questions related to the safety review or licensing of the Idaho Spent Fuel Facility, please contact Randall Hall at (301) 415–1336.

Availability of Documents for Review: Information and documents associated with the Idaho Spent Fuel Facility project, including the Environmental Report submitted on November 19, 2001, and the License Application, may be obtained from the Internet on NRC's Idaho Spent Fuel Facility Web page: *http://www.nrc.gov/waste/spent-fuel-storage.html* (case sensitive). In addition, documents are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm.html*. Documents may also be obtained from NRC's Public Document Room located at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION:

1.0 Background

During the last 40 years, the U.S. Department of Energy (DOE) and its predecessor agencies have generated, transported, received, stored, and reprocessed SNF at DOE facilities nationwide. Part of this SNF originated from non-DOE domestic, licensed facilities, including training, research, and test reactors at universities, commercial reactors, and government-owned installations for which DOE has contractual obligations to accept SNF. Most of this SNF is in wet storage at a site that overlies the Snake River Plain Aquifer, a major water source for the region. Among the SNF stored by DOE at the INEEL is SNF resulting from operation of the Peach Bottom Unit 1 nuclear power reactor, which was licensed by the Atomic Energy Commission and operated between 1966 and 1974. A Settlement Agreement dated October 17, 1995, between the DOE, the U.S. Navy, and the State of Idaho requires the transfer and dry storage of this SNF until it can be removed from Idaho. As part of its compliance with the Settlement Agreement, the DOE contracted with FWENC to design, license, construct, and operate the Idaho Spent Fuel Facility ISFSI at the INEEL to provide interim dry storage for a portion of the SNF covered by the Settlement Agreement.

DOE has previously issued a Record of Decision (60 FR 28680) pertaining to its SNF management program. DOE's decisions were based in part on the information and analyses contained in the final Environmental Impact Statement, "*Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement, DOE/EIS–0203–F.*" Volume 2 of the DOE EIS evaluates the potential impacts of the SNF management program at the INEEL (Appendix C of the DOE EIS contains additional information on foreseeable projects, including the Idaho Spent Fuel Facility ISFSI).

Previous to this application, NRC issued a license to DOE in 1998 for the construction and operation of another ISFSI at the INEEL for the storage of SNF from the Three Mile Island—Unit 2 reactor (TMI–2). This license was supported, in part, by the document, "*Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation to Store the Three Mile Island Unit 2 Spent Fuel at the Idaho National Engineering and Environmental Laboratory.*" The TMI–2 ISFSI is located adjacent to the proposed site of the Idaho Spent Fuel Facility.

Therefore, it is conceivable that many of the environmental impacts have been previously reviewed. The NRC and its contractor, Argonne National Laboratory, are currently reviewing appropriate documents to ensure efficiency and to make decisions regarding their use (*i.e.* supplementing, tiering, or adoption) in preparation of the Idaho Spent Fuel Facility EIS.

2.0 Idaho Spent Fuel Facility at INEEL

The Idaho Spent Fuel Facility is designed to provide safe interim dry storage for three basic kinds of SNF currently stored at the INEEL. The facility will primarily be used for storage of SNF from the Peach Bottom Unit 1 reactor but it will also be used for storage of SNF from the Shippingport reactor and SNF from the Training, Research, Isotope reactors built by General Atomics (TRIGA reactors). The Peach Bottom Unit 1 and Shippingport reactors ceased operation in 1974 and 1983, respectively. Because of the lengthy cooling period since final operation, these fuels produce relatively low decay heat compared to typical commercial SNF. The TRIGA reactor SNF originated from TRIGA research reactors worldwide. Although the age of the TRIGA reactor SNF varies, it also generates very low decay heat because of the design and operational characteristics of the TRIGA research reactors.

The Idaho Spent Fuel Facility will provide for receipt and repackaging of the SNF into sealed storage canisters. The canisters provide the primary confinement boundary for the SNF. These canisters are designed to ensure ready retrievability of the SNF and facilitate transfer of the SNF to a repository for eventual permanent disposal without the need for further direct handling or repackaging. The loaded and sealed canisters will be stored in individual storage tubes that have a bolted lid with double metallic O-ring seals. The storage tubes provide a redundant confinement boundary for the SNF. The storage area provides radiological shielding, passive natural convection air-cooling, and easily retrievable storage capability for the canisters. When a high-level waste geologic repository becomes available, the canisters may then be removed from the Idaho Spent Fuel Facility, loaded

into a transportation cask (to be certified in accordance with 10 CFR part 71), and transported off-site.

3.0 Purpose and Need for Agency Action

The proposed action to build the Idaho Spent Fuel Facility is intended to satisfy the requirements of a Settlement Agreement dated October 17, 1995, between the DOE, the U.S. Navy, and the State of Idaho that requires the transfer and dry storage of SNF until the SNF can be removed from Idaho.

4.0 Alternatives To Be Evaluated

Note that NRC is limited to issuing, issuing with conditions, or denying the materials license for the Idaho Spent Fuel Facility ISFSI at the INEEL. The DOE has already decided to pursue the "regionalization by fuel type" and the "modified 10-year plan" (which includes dry storage upgrades) approaches for management of SNF (60 FR 28680; June, 1, 1995). These decisions will not be revisited by NRC. Other alternatives not listed here may be identified through the scoping process.

4.1 Proposed Action

The proposed action involves the construction and operation of the Idaho Spent Fuel Facility ISFSI at the INEEL. The applicant would be issued an NRC license under the provisions of 10 CFR Part 72 that would authorize the applicant to transfer, repackage, and place into dry storage, certain types of spent nuclear fuel.

4.2 No Action: Do Not Issue License

The no-action alternative would be not to build the proposed Idaho Spent Fuel Facility. Under the no-action alternative, NRC would not approve the license application to construct and operate the proposed Idaho Spent Fuel Facility ISFSI and DOE would continue to store the SNF in it's current location on the INEEL in spent fuel pools.

5.0 Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the EIS. This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of the EIS. Additions to or deletions from this list may occur as a result of the public scoping process.

—*Health and Safety:* potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios;
—*Waste Management:* types of wastes expected to be generated, handled, and stored; and the potential consequences to public safety and the environment;
—*Water Resources:* surface and groundwater hydrology, water use and quality, and the potential for degradation;
—*Air Quality:* meteorological conditions, ambient background, pollutant sources, and the potential for degradation;
—*Earth Resources:* physical geography, topography, geology and soil characteristics;
—*Ecological Resources:* wetlands, aquatic and terrestrial resources, economically and recreationally important species, and threatened and endangered species;
—*Socioeconomic:* demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources;
—*Natural Disasters:* floods, hurricanes, tornadoes, and seismic events;
—*Cumulative Effects:* impacts from past, present and reasonably foreseeable actions at and near the site(s);
—*Indirect Effects:* transportation to the Idaho Spent Fuel Facility;
—*Unavoidable Adverse Impacts;* and
—*Environmental Justice:* any potential disproportionately high and adverse impacts to minority and low-income populations.

Alternatives other than those presented in this document may warrant examination, and new issues may be identified for evaluation.

6.0 Scoping Comment Period

One purpose of this NOI is to encourage public involvement in the EIS process, and to solicit public comments on the proposed scope and content of the EIS. The NRC invites the following entities to participate in the scoping process:

a. The applicant, Foster Wheeler Environmental Corporation.
b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.
c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.
d. Any affected Indian tribe.
e. Any person who requests or has requested an opportunity to participate in the scoping process.
f. Any person who intends to petition for leave to intervene.

Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the EIS, and to identify the significant issues related to the proposed action. It is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. The principal goals of the scoping process are to:

a. Ensure that concerns are identified early and are properly studied;
b. Identify alternatives that will be examined;
c. Identify significant issues that need to be analyzed;
d. Eliminate unimportant issues;
e. Identify and reference issues that have been previously analyzed; and
f. Identify public concerns.

7.0 Scoping Comments

Written comments should be mailed to: Michael T. Lesar, Chief, U.S. Nuclear Regulatory Commission, Rules & Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T6D59, Washington, DC 20555–0001. Please note Docket No. 72–25 when submitting comments.

Comments will also be accepted by e-mail. Interested parties may e-mail their comments to *isffacility@nrc.gov*. Comments will also be accepted by fax at 301–415–5398, ATTN: Matt Blevins.

The NRC will make the scoping summaries and project-related materials available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm.html*. The scoping meeting summaries and project-related materials will also be available on the NRC's Idaho Spent Fuel Facility Web page *http://www.nrc.gov/waste/spent-fuel-storage.html* (case sensitive).

8.0 The NEPA Process

The EIS for the Idaho Spent Fuel Facility will be prepared according to the National Environmental Policy Act (NEPA) of 1969 and NRC's NEPA Regulations (10 CFR part 51).

The draft EIS is scheduled to be published in May 2003. A 45-day comment period on the draft EIS is planned, and public meetings to receive comments will be held approximately three weeks after distribution of the draft EIS. Availability of the draft EIS, the dates of the public comment period, and information about the public meetings will be announced in the **Federal Register**, on NRC's Idaho Spent Fuel Facility Web page, and in the local news media when the draft EIS is distributed. The final EIS, which will incorporate public comments received

on the draft EIS, is expected in December 2003.

Dated at Rockville, Maryland, this 19th day of July, 2002.

For the Nuclear Regulatory Commission.

Cheryl Trottier,

Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–18967 Filed 7–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support Network; Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Licensing Support Network Advisory Review Panel (LSNARP) will hold its next meeting on Wednesday and Thursday, September 18–19, 2002, at the Alexis Park, located at 375 East Harmon, Las Vegas, Nevada 89109. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

AGENDA: The meeting will be held from 8:30 a.m. to 5:00 p.m. on Wednesday, September 18 and from 8:30 to close of business on Thursday, September, 2001. The preliminary agenda is as follows:

Wednesday, September 18

8:30 am–8:45—LSNARP Chairman's Opening Remarks
8:45 am–9:30—LSN Administrator Progress Report on Status of LSN; Panel Discussion; Questions and Answers
9:30 am–10:00—LSN Project Manager Report on Status of Integration Efforts and Results of System Security Risk Assessment Performed by NSA
10 am–10:15—Break
10:15 am–10:45—Experience of Local Government in Setting Up Web site to make documents available To LSN (Lincoln County—Tentative)
10:45 am–11:15—Identification of participant training needs expectations for use of the LSN; training strategies and approaches; points of contact for coordination of training efforts; Discussion
11:15 am–12—Lessons Learned from Private Fuel Storage Hearings
12 pm–1:15—Lunch
1:15 pm–2—Revised Topical Guidelines 3.69
2 pm–2:45—Recapitulation of June 25–26 NRC/DOE Technical Meeting on "Electronic Submission" of Large Documents
2:45 pm–3—Break
3 pm–3:30—Review of Relevancy; Discussion
3:30 pm–4—Role of a rural county in the licensing—(distinction between party with standing, interested governmental party, etc.)
4 pm–4:30—Explain the importance of participation in the Licensing Support Network as a prerequisite for being a participant in the licensing process
4:30 pm—Open Discussion and Public Comments on Wednesday Topics

Thursday, September 19, 2001

9 am–10—Demonstration of Production Version 2.0 of the LSN
10 am–10:30—System Upgrade Prior to License Application
10:30 am–10:45—Break
10:45 am–11:15—Public Access via NRC & DOE reading rooms and Nevada libraries
11:15 am–12—Overview of NRC plans for the digital courtroom environment
12–1—Lunch
1–1:30—Impact of Homeland Security Reviews on Document Access via the LSN
1:30 pm–2—Open Discussion and Public Comments on Thursday Topics
Adjourn

SUPPLEMENTARY INFORMATION: The LSN is an internet based electronic discovery database being developed to aid the NRC in complying with the schedule for decision on the construction authorization for the high-level waste repository contained in Section 114(d) of the Nuclear Waste Policy Act of 1982, as amended. In 1998, the NRC Rules of Practice in 10 CFR Part 2, Subpart J, were modified to provide for the creation and operation of the LSN, an internet-based technological solution to the submission and management of records and documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste. (63 FR 71729.) Pursuant to 10 CFR 2.1011(d), the agency has chartered the LSNARP, an advisory committee that provides advice to the NRC on fundamental issues relating to LSN design, operation, maintenance, and compliance monitoring.

FOR FURTHER INFORMATION CONTACT: U.S. Nuclear Regulatory Commission, Office of the Secretary, Mail Stop O–16 C1, Washington, DC 20555–0001; Attn: Andrew Bates (telephone 301–415–1963; e-mail *ALB@NRC.GOV*) or Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, Attn: Jack G. Whetstine (telephone 301–415–7391; e-mail *JGW@NRC.GOV*).

Public Participation: Interested persons may make oral presentations to the LSNARP or file written statements. An oral presentations request should be made to one of the contact persons listed above as far in advance as practicable so that appropriate arrangements can be made.

Dated: July 22, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–18970 Filed 7–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft guide, temporarily identified by its task number, DG–3021 (which should be mentioned in all correspondence concerning this draft guide), is "Site Evaluations and Determination of Design Earthquake Ground Motion for Seismic Design of Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations." This draft guide is being developed to provide guidance on methods acceptable to the NRC staff on (1) identifying and characterizing capable tectonic sources and seismogenic sources, (2) conducting investigations to identify and characterize uncertainty in seismic sources important for the probabilistic seismic hazard analysis, (3) conducting probabilistic seismic hazard analyses for the site, and (4) determining the design earthquake ground motion for independent spent fuel storage installations and monitored retrievable storage installations.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received

may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by October 7, 2002.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *cag@nrc.gov*. For information about the draft guide and the related documents, contact Mr. M. Shah at (301) 415–8537; e-mail *mjs3@nrc.gov*.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *pdr@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *Distribution@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 22nd day of July, 2002.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 02–18968 Filed 7–25–02; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Application for Benefits Due but Unpaid at Death; OMB 3220–0055.

Under section 2(g) of the Railroad Unemployment Insurance Act (RUIA), benefits under that Act that accrued but were not paid because of the death of an employee shall be paid to the same individual(s) to whom benefits are payable under section 6(a)(1) of the Railroad Retirement Act.

The provisions relating to the payment of such benefits are prescribed in 20 CFR 325.5 and 20 CFR 335.5

The RRB provides Form UI–63 for use in applying for the accrued sickness or unemployment benefits unpaid at the death of the employee and for securing the information needed by the RRB to identify the proper payee. Completion is voluntary. One response is requested of each respondent.

The RRB propose no changes to the UI–63. The completion time for the UI–63 is estimated at 7 minutes. The RRB estimates that approximately 200 responses are received annually.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–18913 Filed 7–25–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Employee's Certification; OMB 3220–0140.

Section 2 of the Railroad Retirement Act (RRA), provides for the payment of an annuity to the spouse or divorced spouse of a retired railroad employee. For the spouse or divorced spouse to qualify for an annuity, the RRB must determine if any of the employee's previous marriages create an impediment either to the current marriage between the employee and his or her spouse or to the marriage which previously existed between the employee and his or her former spouse.

The requirements relating to obtaining evidence for determining valid marital relationships are prescribed in 20 CFR 219.30 through 219.35.

Section 2(e) of the RRA requires that an employee must relinquish all rights to any railroad employer service before a spouse annuity can be paid.

The RRB uses Form G–346 to obtain the information needed for determining if any of the employee's previous marriages create an impediment to the current marriage. Form G–346 is completed by the retired employee who is the husband or wife of the applicant for a spouse annuity. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes no changes to Form G–346. The RRB estimates that 5,400 G–346's are completed annually at an estimated completion time of five

minutes per response. Total respondent burden is estimated at 450 hours.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–18927 Filed 7–25–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Request for Internet Services.

(2) *Form(s) submitted:* Not applicable.

(3) *OMB Number:* 3220–XXXX.

(4) *Expiration date of current OMB clearance:* Not applicable.

(5) *Type of request:* New.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 5,000.

(8) *Total annual responses:* 10,000.

(9) *Total annual reporting hours:* 541.

(10) *Collection description:* The Railroad Retirement Board (RRB) will collect information needed to provide customers with the ability to request a Password Request Code and subsequently, to establish an individual PIN/Password, the initial steps in providing the option of conducting transactions with the RRB on a routine through the Internet as required by the Government Paperwork Elimination Act.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–18926 Filed 7–25–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Global Light Telecommunications, Inc., Common Stock, no par value) File No. 1–14864

July 19, 2002.

Global Light Telecommunications, Inc., a Canada corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the Territory of Yukon, Canada, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer states that it will continue listing its Security on the TSX Venture Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and registration under Section 12(b)[3] of the Act or its obligation to be registered under Section 12(g) of the Act.[4]

The Board of Trustees ("Board") of the Issuer unanimously approved a resolution on June 28, 2002 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board states that the Company obtained an order in the Supreme Court of British Columbia granting it certain relief under the Companies' Creditors Arrangement Act in Canada, including a stay of proceedings and protection from creditors.

Any interested person may, on or before August 12, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–18929 Filed 7–25–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Boston Stock Exchange, Inc. (Implant Sciences Corporation, Common Stock, $.10 par value, and Warrants, no par value) File No. 1–15087

July 19, 2002.

Implant Sciences Corporation, a Massachusetts corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.10 par value, and Warrants, no par value ("Securities"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The Issuer stated in its application that it has complied with the Rules of the BSE that govern the removal of securities from listing and registration on the Exchange. In making the decision to withdraw the Securities from listing and registration on the BSE, the Issuer considered the relative liquidity provided by the BSE versus other securities exchanges and the direct and indirect cost associated with maintaining multiple listings. The Issuer stated in its application that the Securities have been trading on the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

American Stock Exchange LLC ("Amex") since May 8, 1999. The Issuer represented that it will maintain its listing on the Amex.

The Issuer's application relates solely to the Securities' withdrawal from listing on the BSE and shall not affect its listing on the Amex or its obligation to be registered under section 12(b) of the Act[3].

Any interested person may, on or before August 12, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–18928 Filed 7–25–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46235; File No. SR–Amex–2001–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending Exchange Rule 175 To Limit Specialists' Affiliations

July 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 175 to prohibit Amex specialists from maintaining affiliations with persons that engage directly or indirectly in primary market making activities in the same security on another national securities exchange or facility of a national securities association.

The text of the proposed rule change appears below. New text is in *italics.*

Rule 175. Specialist Prohibitions

Paragraphs (a) through (c)—No change.

(d) No specialist or his member organization or any member, limited partner, officer, or approved person thereof shall act as a specialist or function in any capacity involving primary market making responsibilities on another national securities exchange or facility of a national securities association with respect to a security as to which the specialist is registered as such.

Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 175. No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange states that in recent years member organizations that serve a market making function on the floor of the Exchange as specialists have grown in size and have become active on other United States markets. Similarly, market makers whose beginnings were in other markets have grown in size and have become active on the Exchange as market makers or specialists. The Exchange believes that while, generally, this has been a positive development for investors in that larger pools of capital are available for trading on the Exchange and other markets, questions have arisen as to whether a specialist on the Amex could act as the specialist or perform primary market making responsibilities in its Amex specialty securities on another market.

The Exchange believes that an Amex specialist or its affiliates should not act as a specialist or perform primary market making responsibilities on another market with respect to its Amex specialty securities.[3] The Exchange also believes that such affiliations raise competitive and conflict of interest concerns that cannot be ameliorated through internal controls, such as the Amex's Rule 193 information fire-wall procedures. Thus, having the same firm, or affiliates thereof, act as a primary market maker in the same security in two or more markets may tend to limit competition across markets. The Exchange asserts that a primary market maker may not be as vigorous in competing against a primary market maker on another marketplace that is part of the same firm or an affiliated entity. While the possible presence of other, non-affiliated market makers on one or both exchanges may help mitigate this competitive concern, the Exchange believes that the consistent presence of such market makers would vary from one security or market to another and is not assured.

The Exchange further believes that fulfilling primary market making responsibilities on more than one market poses conflict of interest issues for a firm. For example, according to the Exchange, it is perfectly appropriate in the context of Amex Rule 193 for the management of a member firm that operates an Amex specialist as well as other broker-dealer activities to allocate resources and assign personnel within the firm. The Exchange believes that if such a firm were to have an Amex specialist and a primary market maker in the same security on another market, these permissible resource allocation decisions could impact the competitive capabilities of the Amex specialist or the market maker on the other exchange to the possible detriment of the respective market makers and investors.

Therefore, the Exchange believes that codifying the Exchange's existing policy of prohibiting Amex specialists from being affiliated with a person that performs primary market making responsibilities in another United States market would maintain competition in the trading of securities because no

[3] According to the Exchange, the term "specialty security" includes Exchange-Traded Funds, options, equities, and Security Futures Products.

individual specialist unit would be permitted to trade the same security as a primary market maker on more than one market.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[4] in general and furthers the objectives of section 6(b)(5) of the Act,[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would impose no burden on competition and, in fact, will tend to strengthen and maintain competition. The Exchange further believes that competition among markets (and, as the result, the interests of investors) would be adversely impacted if a firm were permitted to act as the primary market maker in more than one market in the same security. The Exchange believes also that it is virtually impossible for a firm that acts as a primary market maker in the same security in more than one market to compete with itself, and that resource allocation decisions by the firm would tend to strengthen the capabilities of one of the market making operations to the detriment of the other(s). The prospect of the same or related firms posting inconsistent quotes and providing varying executions in different markets also may raise other concerns. As a result, the Exchange believes that it is appropriate and in the interests of promoting competition among markets and protecting the interests of investors to prohibit Amex specialists and their affiliates from acting in a primary market making capacity in the same security on another national securities exchange or facility of a national securities association.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2001–55 and should be submitted by August 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18972 Filed 7–25–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46233; File No. SR–CHX–2002–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

July 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule19b–4 thereunder,[2] notice hereby is given that on June 28, 2002, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the CHX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule effective through July 31, 2002, to provide for continued assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria, described below. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed change to the CHX fee schedule would provide for continued assessment of a marketing fee, in an amount equal to $.01 per share,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

applicable to transactions occurring on or before July 31, 2002. The marketing fee would apply only to "Subject Transactions" [3] in "Subject Issues" [4] and would not be assessed if the specialist trading the Subject Issue elected to forego collection of the marketing fee.

The CHX currently assesses a marketing fee under a provision of the CHX fee schedule that is scheduled to expire by its terms on June 30, 2002.[5] Under the system currently in place, the CHX calculates, bills, and collects the marketing fee and gives the proceeds to the specialist firm trading the Subject Issue. The specialist firm then distributes the funds to order-sending firms in accordance with its payment-for-order flow arrangements relating to the Subject Issue (and possibly also to market makers who contribute to market share growth in certain instances).[6] The remaining undistributed funds in excess of $1000 are refunded, on a quarterly basis, to the paying parties *pro rata*, in proportion to the fees they have paid.

The marketing fee provision proposed herein does not differ from the previous version except that it would extend application of the marketing fee through July 31, 2002. This additional month will give the CHX the opportunity to evaluate further whether the marketing fee should be continued.

The CHX intends that the continued imposition of the marketing fee will allocate equitably the financial burden of seeking order flow for Subject Issues. According to the CHX, in the absence of the marketing fee the CHX specialist trading a Subject Issue is the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as licensing fees that the licensor of the product imposes.[7] CHX market makers participating in transactions in Subject Issues, conversely, do not currently share any of these costs. The proposed rule change would allow a specialist trading a Subject Issue to elect or decline imposition of the marketing fee depending on whether the specialist believes it is appropriate for a part of the financial burden of trading the Subject Issue to be allocated among those trading the Subject Issue. The CHX anticipates that the proposed rule change will continue to provide specialists trading Subject Issues with sufficient incentive to continue their efforts to attract additional order flow and increase market share.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b)(4) of the Act [8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The CHX received one written comment from a member in advance of the CHX Finance Committee meeting on June 18, 2002. This letter from Steven Shapiro of SJS Securities, Inc., a CHX specialist firm, asserted that the number of CHX market makers trading in exchange-traded funds ("ETFs") has dropped from 15–20 to 3–5 since the imposition of the marketing fee. According to the CHX, Mr. Shapiro further argued that the marketing fee "has no value at this time" and that the CHX needed to focus on initiatives that would help the CHX market maker program "thrive and prosper."

The CHX believes that this analysis mistakenly attributes the decline in CHX market maker activity to the imposition of the marketing fee. In fact, the CHX believes that this decline is attributable to other factors, including significant competition for ETF order flow from other national market participants and alternative trading systems ("ATSs"). Indeed, as has been highly publicized in recent weeks, one ATS has recently captured nearly a one-third market share in the Nasdaq 100 "QQQ" product, a market share higher than that sustained by the QQQ listing market. Moreover, while the CHX acknowledges that imposition of the marketing fee does increase a market maker's cost of trading Subject Issues on the CHX, the CHX believes that the often significant costs associated with the Subject Issues, including increasingly hefty license fees, amply justify asking the CHX members who trade the Subject Issues to share the costs of attracting the order flow and trading these popular products on the CHX.

The CHX believes that this rationale is also readily applicable in response to a letter that the Commission received from Alvin Boutte, Jr., a CHX member who formerly traded the QQQ as a market maker. Mr. Boutte submitted a comment letter with respect to the CHX's prior submission extending the marketing fee through June 30, 2002. The Commission received Mr. Boutte's comment letter after the expiration of the abrogation period for that filing. The CHX believes that it is necessary and helpful to address Mr. Boutte's comment letter in the context of the CHX's proposed further extension of the marketing fee.

According to the CHX, Mr. Boutte contends that the additional expense borne by market makers that are subject to the marketing fee is an economic burden that cannot be sustained by smaller market participants and that, as a result, it is unfair. The CHX asserts that, contrary to Mr. Boutte's contentions, the marketing fee is not intended to hurt smaller market participants in any way. Rather, as set forth above, the CHX intends that the marketing fee would merely help shift some of the economic burden borne by specialists to other parties also trading exchange-traded fund products.

The CHX believes that Mr. Boutte is mistaken about two other points. First, Mr. Boutte states that the CHX does not have a process in place to ensure that specialist firms distribute the funds to order-sending firms in accordance with their payment for order flow arrangements relating to a particular security. The CHX believes, however, that it has taken steps to ensure that these funds are properly spent. The CHX notes that, in fact, the CHX

[3] "Subject Transaction" means (a) any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the CHX via the MAX system or where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

[4] "Subject Issue" means any issue which constitutes an exchange-traded fund and meets the following two criteria: (a) average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

[5] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (announcing immediate effectiveness of the new marketing fee provision to the CHX fee schedule through December 31, 2001; Securities Exchange Act Release No. 45282 (January 15, 2002), 67 FR 3517 (January 24, 2002) (extending program through June 30, 2002).

[6] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR-CHX–2001–10) (describing potential arrangements between specialists and market makers). According to the CHX, no such arrangements are currently in place. Conversation between Kathleen M. Boege, Associate General Counsel, CHX, and Patrick M. Joyce, Special Counsel, Division of Market Regulation, Commission, on July 18, 2002.

[7] The marketing fee, under the rule change proposed herein, will be assessed only against exchange-traded fund products, which virtually always have an associated licensing fee.

[8] 15 U.S.C. 78f(b)(4).

requires each specialist firm that receives marketing fees to certify, each month, that it is using the funds in accordance with payment for order flow arrangements in the issues for which the fee was collected. The CHX represents that, if it has reason to believe that a certification has been falsely given, it would review the specialist firm's books and, if the certification were found to be false, initiate appropriate disciplinary action against the firm.

According to the CHX, Mr. Boutte also states that the specialist firms have the right to choose whether a fee is charged or not, giving the impression that the specialist firms have a great deal of power in determining the fee. The CHX asserts that, as described above, it has imposed the $.01/share marketing fee on all trades that meet the definition of a Subject Transaction in a Subject Issue; a specialist firm may choose to waive the fee in a particular issue altogether, or it may receive the fees that are collected. The CHX notes, however, that a firm cannot choose to have the fee assessed only to certain market makers, nor can it decide to decrease the amount of the fee, whether for some or all market makers in the issue.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other CHX charge and therefore has become effective pursuant to section 19(B)(3)(A) of the Act [9] and Rule 19b–4(f)(2) thereunder.[10] At any time within 60 days of the filing of the rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–19 and should be submitted by August 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18971 Filed 7–25–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46239; File No. SR–PCX–2002–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Relating to Exchange Fees and Charges

July 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges by changing the following fees for options: Regulatory fees (FOCUS filing fee, Registered Representative fee, and Designated Examining Authority ("DEA") fee) and Floor and Market Maker fees (floor brokerage fees, telephone fees, the options surcharge, and the LMM shortfall fee). In addition, the Exchange, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation") proposes to amend its Schedule of Fees and Charges to change its Regulatory fees (Focus filing fee, Registered Representative fee, and DEA fee) applicable to ETP Holders and Sponsored Participants that access the Archipelago Exchange ("ArcaEx") trading facility.

The text of the rule change is available at the Office of the Secretary of the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make the following changes to its Schedule of Fees and Charges.

a. Regulatory Fees

i. FOCUS Filing Fee

The Exchange proposes to increase rates for Financial and Operational Combined Uniform Single Report ("FOCUS report") filers from $25 to $100 per year. Pursuant to Commission rules, all broker-dealers for which the Exchange serves as the DEA are required to file FOCUS reports with the Exchange either monthly, quarterly or annually. The proposed fee increase is designed to offset the internal staff costs associated with processing hard-copy FOCUS report filings, including the cost of re-typing the report and reconciling any differences. The proposed fee applies to both options and equities.

ii. Registered Representative Fee

The Exchange currently charges a $50 annual fee for new applications, maintenance and transfer of registration status for each Registered Representative and each Registered Options Principal whose firm is a Member Firm of the Exchange. The Exchange proposes to increase the fee to $55 for options and equities. The Exchange believes this fee change is warranted based upon the Exchange's

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

increased costs relating to its regulatory oversight and enforcement program.

iii. DEA Fees

The Exchange proposes to increase its DEA fee to $250 per quarter for firms that do not engage in a public business. The Exchange will apply the fee to options and equities in order to offset actual costs incurred in performing its DEA function. The Exchange will not apply the fee to "off floor" trading firms that currently pay a $2,000 per month examination fee or to Member Organizations that can demonstrate that at least 25% of their income, as reflected on the most recently submitted FOCUS report, was derived from on-floor activities.

b. Floor and Market Maker Fees

i. Floor Brokerage Fees

The Exchange proposes to implement a fixed $500 monthly options floor brokerage fee. This new fee is intended to recover the cost of providing facilities and services for floor brokers on the Exchange.

ii. Telephone Fees

The proposal would increase telephone charges from $60 to $95 a month per telephone turret. The rate increase is necessary because the current rates that the Exchange charges for use of its telephone system does not cover the cost necessary to support the system and does not account for cost of dedicated staff to sustain the system. Moreover, the rate increase is intended to recover the Exchange's cost of replacing handsets. Finally, due to firm consolidation on the floor, there has been an increase in uncovered overhead cost that must be redistributed to the Members and Member Organizations.

iii. Options Surcharge

The Exchange proposes to increase the Options Surcharge Fee from 2.5% to 5.0%. This charge is intended to recover the Exchange's expenses in providing facilities and services to its Members.

iv. LMM Shortfall Fee

The Exchange proposes to increase the current Shortfall Fee threshold from 10% to 12% of the total national market share in an option issue. The fee is assessed at a rate of $0.35 on the shortfall amount for the top 120 issues (ranked by national volume) that do not meet the market share threshold.[3] This fee change is intended to recover the Exchange's expenses in providing facilities and services to its members. The Exchange proposes to change only the amounts of the fees that are included in the proposed Schedule of Rates.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act, in general, and section 6(b)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-PCX–2002–38 and should be submitted by August 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18973 Filed 7–25–02; 8:45 am]

BILLING CODE 8010–01–P

[3] See Securities Exchange Act Release No. 45351 (January 29, 2002), 67 FR 5631 (February 6, 2002).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9Q62]

State of Oklahoma

Muskogee and Sequoyah Counties and the contiguous Counties of Adair, Cherokee, Haskell, LeFlore, McIntosh, Okmulgee and Wagoner Counties in the State of Oklahoma; and Crawford and Sebastian Counties in the State of Arkansas constitute an economic injury disaster loan area as a result of the catastrophic collapse of the I–40 Bridge over the Arkansas River on May 26, 2002. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on April 22, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, FT. Worth, TX 76155.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent.

The number assigned for economic injury for this disaster is 9Q6200 for the State of Oklahoma and 9Q6300 for the State of Arkansas.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: July 22, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–18977 Filed 7–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428]

State of Texas; Amendment #5

In accordance with a notice received from the Federal Emergency Management Agency, dated July 17, 2002, the above numbered declaration is hereby amended to include Nueces County in the State of Texas as a disaster area due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

All contiguous counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 19, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–18978 Filed 7–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428]

State of Texas; Amendment #4

In accordance with a notice received from the Federal Emergency Management Agency, dated July 17, 2002, the above numbered declaration is hereby amended to include Callahan, Live Oak, San Patricio and Zavala Counties in the State of Texas as disaster areas due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

All contiguous counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 19, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–18979 Filed 7–25–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12897]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

DATES: CFIVAC will meet on Tuesday, August 21, 2002, from 9 a.m. to 5 p.m. and Wednesday, August 22, 2002, from 9 a.m. to 5 p.m. The meeting may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before August 2, 2002. Written material for distribution at the meeting should reach the Coast Guard on or before August 14, 2002. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before August 9, 2002.

ADDRESSES: CFIVAC will meet at the Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, Virginia 23699. The hotel's world wide Web site can be found at: *www.radisson.com/hamptonva*. Send written material and requests to make oral presentations to Mr. Kevin Frost, Commandant (G–MOC–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *www.dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Frost, Assistant to the CFIVAC Executive Director, telephone (202) 267–0315, fax (202) 267–0506. You can also visit the CFIVAC world wide Web site at: *http://www.uscg.mil/hq/g-m/cfvs/cfivac.htm* for up to date meeting information and a listing of the past meeting minutes.

SUPPLEMENTARY INFORMATION: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public. Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Approval of last meeting's minutes.

(2) Report from the Coast Guard on the status of legislative change proposals and regulatory projects with respect to mandatory exams, training requirements, stability requirements, and immersion suit requirements.

(3) Updated status report from the Coast Guard on casualty data and statistics.

(4) Presentation and discussion on Mid-Atlantic fishery issues.

(5) Discussions of industry roles and concerns under the new national security posture.

(6) Discussions and working group sessions by the committee on mandatory exams, security requirements, stability requirements, and regionalization issues.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than August 2, 2002. Written material for distribution at the meeting should reach the Coast Guard no later than August 14, 2002. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Executive Director no later than August 9, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: July 16, 2002.

Joseph J. Angelo,

Acting Assistant Commandant for Marine, Safety, Security & Environmental Protection.

[FR Doc. 02–18915 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Passenger Facility Charge Audit Guide for Air Carriers—Procedures for Examining Air Carrier Passenger Facility Charge Collection, Remittance, and Reporting Practices

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Final Guidance Notice of Availability.

SUMMARY: The Federal Aviation Administration (FAA) is issuing final

guidance for conducting annual audits of air carrier Passenger Facility Charge (PFC) collection remittance, and reporting practices. An air carrier collecting PFC's from at least 50,000 passengers annually is required to provide for an annual audit of its PFC accounts by an accredited independent public accountant. An auditor engaged to audit the air carrier's PFC accounts is required to report "on the fairness and reasonableness of the carrier's procedures for collecting, holding, and dispersing PFC revenues." In addition, an auditor is required to report whether the quarterly reports of PFC accounts that the air carriers must provide to airports "fairly represent the net transactions in the PFC account."

The guidance is issued in final form after a review and comment period, during which the FAA evaluated the use of the guidance. Although the FAA did not receive formal comments on the use of the guidance, informal discussions with audit practitioners has lead the FAA to determine that the guidance meets its intended objectives. While the use of the guidance is voluntary, the FAA will have greater confidence in audits conducted in accordance with the guide.

Interested parties may access the Passenger Facility Charge Audit Guide for Air Carriers through the Internet at *http://www.faa.gov/arp/Reports/acaudit.pdf*.

Interested parties may access the Passenger Facility Charge Audit Guide for Air Carriers through the Internet at *http://www.faa.gov/arp/Reports/acaudit.pdf*. Alternatively, the guide may be obtained by contacting the individual listed below under the heading **FOR FURTHER INFORMATION CONTACT**.

DATES: Final guidance effective July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Hebert, Program Analyst, Passenger Facility Charge Branch, Airports Financial Assistance Division (APP–530), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3845.

Issued in Washington, DC on July 22, 2002.

Catherine M. Lang,

Director, Office of Airport Planning and Programming.

[FR Doc. 02–18999 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Route 9 Dover/Lakewood Project, Ocean County, NJ

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA and New Jersey Department of Transportation (NJDOT) are issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed widening of Route 9 to four lanes between Indian Head Road in Dover Township and Main Street in Lakewood Township in Ocean County, New Jersey. The four lanes would be separated by a grass median that would provide left-turn lanes at major intersections.

FOR FURTHER INFORMATION CONTACT: If you wish to be placed on the mailing list to receive further information as the study develops, contact Mr. Young Kim at Federal Highway Administration, 840 Bear Tavern Road, Suite 310, West Trenton, NJ 08628, Telephone: (609) 637–4233 or Mr. Steve Mikulak at New Jersey Department of Transportation, 1035 Parkway Avenue, P.O. Box 600, Trenton, NJ 08625–0600, Telephone: (609) 530–6558.

SUPPLEMENTARY INFORMATION:

I. Project Need and Description

Route 9 through Dover and Lakewood is a two-lane signalized roadway with a high volume of vehicles throughout the day, and especially during the morning and evening commuting hours, and the summer. This large vehicular volume, combined with left turning vehicles, and narrow shoulders results in poor levels of service for multiple hours of the day. This proposed project was developed to improve the operation, safety and level of service along this corridor.

The Township of Dover in 1999 and Township of Lakewood in 2000 each approved Resolutions of Support for the four lanes with grass median and left turn lanes concept. This concept will be studied under, at least, three alternatives: Left turn lane scheme with expansion to the east side of Route 9; Left turn lane scheme with expansion to the west side of Route 9; and, Left turn lane scheme that would "snake" the expansion between the east and west sides of Route 9. A fourth scheme that would be analyzed is the provision of jug-handles instead of left-turn lanes at select locations. The Draft EIS will document the analysis and elimination of alternatives, and only viable, constructible alternatives will be carried through the environmental analysis phase.

II. Scoping

The FHWA and NJDOT invite all interested individuals and organizations, and federal, state, and local agencies to provide comments on the scope of the study. During the scoping process, comments should focus on identifying specific social, economic, or environmental issues to be evaluated and suggesting alternatives, which may be less costly or have less environmental impacts, while achieving the similar transportation objectives. Comments should focus on the issues and alternatives for analysis and not on a preference for a particular alternative.

A public hearing will be held after publication of the Draft Environmental Impact Statement (DEIS) to obtain comments on the document. Public notice will be given of the time and place of the DEIS public hearing.

Scoping Meeting: Public scoping meetings for the Route 9 Dover/Lakewood EIS will be held on: Wednesday, September 18, 2002, 3 p.m. to 7 p.m., Lakewood Municipal Building, 231 Third Street, Lakewood, NJ 08701; and Wednesday, September 25, 2002, 3 p.m. to 7 p.m., Dover Township Municipal Complex, 33 Washington Street, Toms River, NJ 08753.

People with special needs should contact Mr. Steve Mikulak at NJDOT (a sign language interpreter will be made available upon request). The buildings are accessible to people with disabilities.

Oral and written comments may be given at the scoping meetings; a stenographer will record all comments.

Comment Due Date: Written comments on the scope of the EIS should be sent to Mr. Young Kim with FHWA by October 16, 2002 at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205. Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 18, 2002.

Young Kim,

Area Engineer, FHWA—New Jersey Division, Trenton.

[FR Doc. 02–19024 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–11733]

Agency Information Collection Submission for OMB Review: Notice of Request for Renewal of a Currently-Approved Information Collection: Federal Motor Carrier Safety Regulations, Accident Recordkeeping Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The FMCSA announces that the Information Collection Request (ICR) described in this notice is being sent to the Office of Management and Budget (OMB) for review and approval. On April 5, 2002, the FMCSA published a "Notice of Request for Renewal of a Currently Approved Information Collection: Federal Motor Carrier Safety Regulations, Accident Recordkeeping Requirements" in the **Federal Register**. Comments on the proposed information burden were solicited. No comments regarding the ICR were received. We are required to send ICRs to OMB under the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 26, 2002.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goal of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Research and Standards, (202) 366–4009, Department of Transportation, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Accident Recordkeeping Requirements.

OMB Number: 2126–0009.

Background: The Federal Motor Carrier Safety Regulations (FMCSRs), at section 390.15 of title 49 of the Code of Federal Regulations (CFR), require motor carriers to make all records and information pertaining to crashes (accidents) available to an authorized representative or special agent of the FMCSA upon request or as part of an inquiry. For the purposes of § 390.15, the word "accident" is defined as an occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in: (1) A fatality; (2) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident; or (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle (49 CFR 390.5). Occurrences involving only boarding and alighting from a stationary motor vehicle or involving only the loading or unloading of cargo are not included in the definition.

Motor carriers are required to maintain an accident register for one year after the date of the accident. The register must include a list of each accident. The information for each accident must include, at a minimum, the following elements: date of accident; city or town in which or most near where the accident occurred and the State in which the accident occurred; driver name; number of injuries; number of fatalities; and whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released. In addition, the register must contain copies of all accident reports required by State or other governmental entities or insurers.

There are no prescribed forms. The records are used by the FMCSA and its representatives as a source of information for investigations or special studies, and to assess the effectiveness of motor carriers' safety management controls.

Respondents: Motor carriers.

Estimated Burden: The FMCSA estimates approximately 155,000 accidents involving trucks and 17,000 accidents involving buses as defined in section 390.5 of the FMCSRs occur annually (source: National Highway Traffic Safety Administration General Estimates System). Of these, approximately 80 percent involve trucks and buses operated by interstate motor carriers. About 85 percent of the buses involved in crashes are school or transit buses and are not subject to this recordkeeping requirement. The number of accidents is therefore estimated to be 126,040 (124,000 (0.80 × 155,000) + 2,040 (0.80 × 0.15 × 17,000) = 126,040).

The agency estimates it takes approximately 18 minutes for interstate motor carriers to collect and record the seven elements of information on the accident register. Based on these assumptions, the agency estimates a time burden of 37,812 hours (126,040 × 18 minutes divided by 60 minutes) per year for accident report register information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.73.

Issued on: July 19, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–18918 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–11732]

Agency Information Collection Submission for OMB Review: Financial Responsibility, Trucking and Freight Forwarding

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The FMCSA announces that the Information Collection Request (ICR) described in this notice is being sent to the Office of Management and Budget (OMB) for review and approval. On March 26, 2002, FMCSA published a "Notice of Request for Renewal of a Currently Approved Information Collection: Financial Responsibility, Trucking and Freight Forwarding" in the **Federal Register**. Comments on the proposed information burden were solicited. No comments regarding the ICR were received. We are required to send ICRs to OMB under the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 26, 2002.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is necessary

for FMCSA to meet its goal of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Lee, (202) 358–7028, Insurance Compliance Division (MC–ECI), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Financial Responsibility; Trucking and Freight Forwarding.

OMB Number: 2126–0017.

Background: The Secretary of Transportation (Secretary) is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registrations to the FMCSA. Registration remains valid only as long as the transportation entities maintain, on file with the FMCSA, evidence of the required levels of insurance coverage pursuant to 49 U.S.C. 13906. Regulations governing financial responsibility requirements are found at 49 CFR part 387.

Forms BMC–91, 91X, and 82 provide evidence of the required coverage for bodily injury and property damage (BI&PD) liability. Forms BMC–34 and 83 establish compliance with cargo liability requirements. Forms BMC–84 and 85 are filed by brokers to comply with the requirement for a $10,000 surety bond or trust fund agreement. Forms BMC–35, 36, and 85 cancel prior filings. Forms BMC–90 and 32 are endorsements that must be attached to BI&PD and cargo insurance policies, respectively, but are not filed with the FMCSA.

Motor carriers can also apply to self-insure BI&PD and/or cargo liability in lieu of filing certificates of insurance or surety bonds with the FMCSA. Form BMC–40 is the application used to apply for self-insurance authority.

Respondents: Motor carriers, freight forwarders, and brokers.

Estimated Burden Per Response: The estimated average burden per response for the BMC–40 is 40 hours. The estimated average burden per response for each of the other forms (BMC–32, 34, 35, 36, 82, 83, 84, 85, 90, 91, and 91X) is 10 minutes per form.

Estimated Total Annual Burden: The estimated total annual burden is 200 hours for the BMC–40 based on 5 filings per year (5 filings per year × 40 hours to complete = 200). The estimated total annual burden for all of the other forms described above is 45,025 hours based on 270,152 filings per year (270,152 filings per year × 10 minutes to complete divided by 60 minutes = 45,025 total burden hours). Therefore, the total burden hour request is 45,225 (200 estimated annual burden hours for the BMC–40 + 45,025 hours for the other forms = 45,225 total burden hours).

Frequency: Certificates of insurance, surety bonds, and trust fund agreements are required when the transportation entity first registers with the FMCSA and then when such coverages are replaced. Notices of cancellation are required only when such certificates of insurance, surety bonds, or trust fund agreements are canceled. Form BMC–40 is generally filed only when a carrier seeks approval to self-insure its BI&PD and/or cargo liability.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.73.

Issued on: July 19, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–18919 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub–No. 6)]

Railroad Revenue Adequacy—2001 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On July 26, 2002, the Board served a decision announcing the 2001 revenue adequacy determinations for the Nation's Class I railroads. No carrier is found to be revenue adequate.

EFFECTIVE DATE: This decision is effective July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 2001, determined to be 10.2% in *Railroad Cost of Capital—2001*, STB Ex Parte No. 558 (Sub-No. 5) (STB served June 20, 2002). This revenue adequacy standard was applied to each Class I railroad, and no carrier was found to be revenue adequate for 2001.

Additional information is contained in the Board's formal decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20423. Telephone: 202 293–7776. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.] The decision is also available on the Board's Internet site at *www.stb.dot.gov*.

Environmental and energy considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. Regulatory flexibility analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: July 19, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18849 Filed 7–25–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34222]

Fraser N.H. LLC—Acquisition Exemption—Rail Lines of Berlin Mills Railway, Inc.

Fraser N.H. LLC (Fraser), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from

Berlin Mills Railway, Inc. (Berlin Mills), approximately: (1) 5.5 miles of rail line between milepost 154.6 at Berlin, NH, and milepost 149.1 at Gorham, NH; and (2) 0.5 miles of rail line in the vicinity of Berlin, a total distance of approximately 6.0 miles in Coos County, NH.[1]

Fraser certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier, and that such revenues will not exceed $5 million annually.

The effective date of the exemption was July 10, 2002 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34222, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Amy S. Koch, Cameron McKenna LLP, 2175 K Street, NW., 5th Floor, Washington, DC 20037.

Board decisions and notices are available on our Web site at *"www.stb.dot.gov."*

Decided: July 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18439 Filed 7–25–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Fraser recently acquired various assets of American Tissue, Inc. (ATI), as part of a sale within ATI's bankruptcy proceeding, including the railroad lines and other assets of Berlin Mills, a subsidiary of ATI. Fraser filed this exemption once it became aware of the need for Board approval. St. Lawrence & Atlantic Railroad Company (SLR) operates over the lines pursuant to a lease and operation exemption. *See St. Lawrence & Atlantic Railroad Company—Lease and Operation Exemption—Berlin Mills Railway, Inc.*, STB Finance Docket No. 33485 (STB served Oct. 24, 1997). According to Fraser, SLR will continue to operate over the lines under a lease agreement to be entered into with Fraser, whereupon SLR will file a petition for exemption under 49 U.S.C. 10502 for the lease transaction.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–314 (Sub–No. 2X)]

Chicago Central & Pacific Railroad Company—Abandonment Exemption-in Linn County, IA

On July 8, 2002, Chicago Central & Pacific Railroad Company (CCP) filed with the Surface Transportation Board (Board) a petition under U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a segment of the Marion-Louisa Industry Lead, extending from milepost ZA 225.7 to milepost ZA 229.5, a distance of approximately 3.8 miles in Linn County, IA. The line traverses U.S. Postal Service Zip Codes 52402 and 52302 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CCP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 25, 2002.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 19, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–314 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Michael J. Barron, Jr., 455 North Cityfront Plaza Dr., Chicago, IL 60611–5317. Replies to the CCP petition are due on or before August 19, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *"www.stb.dot.gov."*

Decided: July 18, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18717 Filed 7–25–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used In Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning July 1, 2002, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2002–33 (*see*, 2002–25 IRB ____, dated June 25, 2002), the IRS determined the rates of interest for the calendar quarter beginning July 1, 2002, and ending September 30, 2002. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for the calendar quarter beginning October 1, 2002, and ending December 31, 2002.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
Prior to—				
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
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Dated: July 23, 2002.

Robert C. Bonner,

Commissioner of Customs.

[FR Doc. 02–18946 Filed 7–25–02; 8:45 am]

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H.R. 3971/P.L. 107–203

To provide for an independent investigation of Forest Service firefighter deaths that are caused by wildfire entrapment or burnover. (July 24, 2002; 116 Stat. 744)

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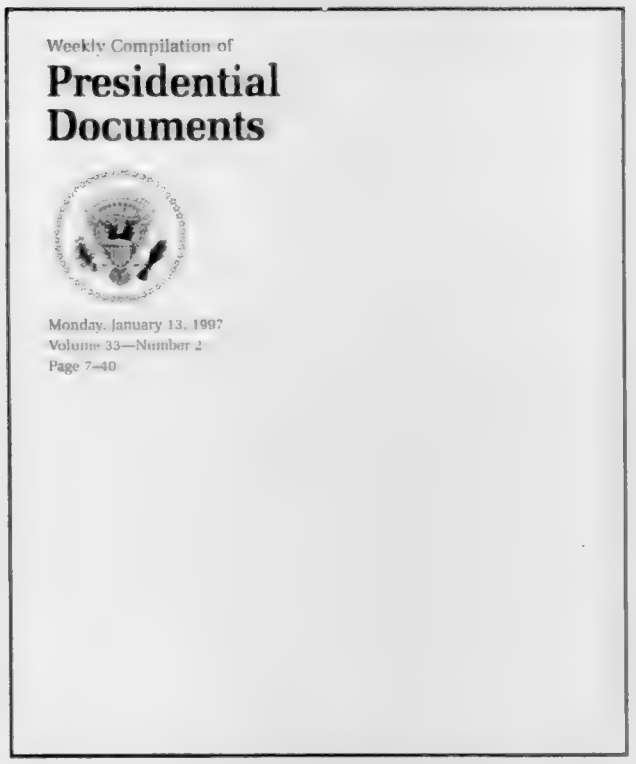

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–99–04]

RIN 0581–AB59

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service (General Specifications) by reducing the maximum allowable bacterial estimate and somatic cell count in producer herd milk, by reducing the maximum allowable bacterial estimate in commingled milk, and by modifying the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate. These changes will align the General Specifications with model regulations relating to quality and sanitation requirements of the production and processing of manufacturing grade milk. In addition, this document amends the process by which drug residue test methods are evaluated and accepted to provide greater consistency with the Grade A milk program and makes certain other changes to the regulations for clarity and consistency.

EFFECTIVE DATE: August 28, 2002.

FOR FURTHER INFORMATION CONTACT: Susan Sausville, Chief, Dairy Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2746, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250–0230, (202) 720–7473, *Susan.Sausville@usda.gov*.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

The final rule has been reviewed in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and AMS has considered the economic impact of this action on small entities. It is determined that its provisions will not have a significant economic impact on a substantial number of small entities.

AMS provides, under the authority of the Agricultural Marketing Act of 1946, voluntary, user-fee funded inspection and grading services to approximately 400 dairy manufacturing plants. All of the dairy manufacturing plants utilizing the program would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

The amendments will not have a significant economic impact because many State regulatory agencies have already incorporated these changes into State laws and regulations governing dairy manufacturing plants. The amendments will more closely align the General Specifications with mandatory State regulatory requirements in a number of areas including:

- The reduction of producer herd milk somatic cell count,
- The reduction of producer herd milk bacterial estimate,
- The follow-up protocol for producers whose herd milk exceeds the permitted bacterial estimate,
- The reduction in the bacterial estimate for commingled milk counts,
- The laboratory procedures that determine somatic cell content of producer herd milk, and
- The drug residue monitoring program.

Furthermore, the amendments will not have a significant economic impact since participation in the USDA-approved plant program is voluntary and the cost to those utilizing the program will not increase.

B. Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations or policies, unless they represent an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

C. Paperwork Reduction Act

The information collection requirements that appear in Part 58 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0110 under the Paperwork Reduction Act (44 U.S.C. Chapter 35). This action will not impose any additional reporting or recordkeeping requirements on large or small dairy processors.

Background and Proposed Changes

Under provisions of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621—1627), the United States Department of Agriculture maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk. The Recommended Requirements are a separate document developed by AMS and recommended for State adoption and enforcement by the various States that regulate manufacturing grade milk. The purpose of the model requirements is to promote, through State adoption and enforcement, uniformity in State dairy laws and regulations relating to manufacturing grade milk. The Recommended Requirements are available from the Dairy Standardization Branch at the address provided in the **ADDRESSES** Section of this proposal. Additionally, the Recommended Requirements are available by accessing AMS' Home Page on the Internet at *www.ams.usda.gov/dairy/stand.htm*.

On November 12, 1996, AMS reduced the somatic cell count and the bacterial estimate provisions in the Recommended Requirements (61 FR 48120). This reduction was requested by the National Association of State Departments of Agriculture (NASDA) and was developed in cooperation with NASDA, dairy trade associations, and

producer groups. Now that State regulatory agencies have had an opportunity to implement these new limits and the dairy industry has had time to adapt to this new level, the Department is recommending similar changes be made in the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. This alignment is needed in order to support the reduced levels of somatic cells and bacteria in the USDA Recommended Requirements and to promote improvements in the quality of raw milk utilized by USDA approved plants.

In addition, AMS has also identified additional areas where changes are being made to improve the regulations. All of the changes are explained in further detail below. AMS is amending the General Specifications as follows:

1. Reduce the Maximum Bacterial Estimate Permitted in Producer Herd Milk and Modify the Follow-Up Procedures When Herd Milk Exceeds the Maximum Allowable Bacterial Estimate

Current § 58.135 provides for a maximum permissible bacteria count in producer herd milk of 1,000,000 per milliliter. These amendments will reduce the maximum bacteria estimate permitted in producer herd milk in § 58.135 to 500,000 per milliliter for the following reasons:

The number of bacteria present in milk increases when the equipment and utensils used to collect and store the milk are improperly cleaned and sanitized. This number increases rapidly in milk that is not cooled promptly or that is not maintained at refrigerated temperatures throughout storage. Enhanced milk quality can be attained when dairy equipment is properly cleaned and sanitized and when milk is promptly cooled and stored at refrigerated temperatures. Improvements in sanitation practices and milk cooling equipment have resulted in enhanced milk quality. Therefore, to reflect these improvements in enhanced milk quality, this final rule will reduce the maximum permissible bacteria count in producer herd milk from 1,000,000 to 500,000 per ml. This and additional changes to § 58.135 are as follows:

Current § 58.135(a) references "Standard Methods for the Examination of Dairy Products," for test methods that may be used to determine the bacterial estimate of the milk from individual producers. These amendments will identify this reference as a publication of the American Public Health Association and provide the following list of acceptable methods for determining the bacterial estimate of milk from individual producers: Direct Microscopic Clump Count, Standard Plate Count, Plate Loop Count, Pectin Gel Plate Count, Petrifilm Aerobic Count, Spiral Plate Count, Hydrophobic Grid Membrane Filter Count, Impedence/Conductance Count, and Reflectance Calorimetry.

Current § 58.135(b) provides bacterial estimate classifications for milk from individual producers of: No. 1 (Not over 500,000 per ml.), No. 2 (Not over 1,000,000 per ml.) and Undergrade (Over 1,000,000 per ml.). These amendments will lower the maximum allowable bacterial estimate in milk from individual producers to a maximum of 500,000 per ml., thus eliminating the need to classify milk as No.1, No. 2, or Undergrade. Therefore, this final rule will delete all information currently contained in § 58.135(b).

Current § 58.135(c) establishes the frequency at which individual producer milk is to be tested for bacterial estimate. These amendments maintain the current frequency, add a provision that the samples be analyzed in accordance with State regulations, and redesignate this information to § 58.135(b).

Current § 58.135(d) provides for the acceptance of milk based on information previously contained in § 58.135(b). These amendments will establish new procedures for an individual producer's milk that exceeds the maximum allowable bacterial estimate to provide consistency with the Recommended Requirements and many State regulations. This new procedure would require that the producer be notified of all bacterial estimates exceeding the maximum permitted. In addition, when two of the last four consecutive bacterial estimates exceed the maximum permitted, the appropriate regulatory authority will be notified. The producer will be provided a written notice that two of the last four bacterial estimates exceed the maximum permitted. When two out of the last four bacterial estimates exceed the maximum permitted, the amendments provide that an additional sample be taken, the result of which determines the acceptability of milk from a producer. These amendments will provide increased uniformity with producer herd milk bacteria and somatic cell follow-up procedures and provide greater adaptability to computer-based recordkeeping. This revised section will now appear as § 58.135(c). Revised § 58.135(b) and § 58.135(c), provide the information necessary to determine the acceptability of milk for bacterial content. Accordingly, § 58.135(d) is no longer needed and is being removed.

Current § 58.135(e) provides for retests based on information previously contained in § 58.135(b) and § 58.135(c). Revised § 58.135(b) and § 58.135(c) provide the information necessary to determine the acceptability of milk for bacterial content. Accordingly, § 58.135(e) is no longer needed and is being removed.

2. Reduce the Maximum Somatic Cell Count Permitted in Producer Herd Milk and Delete the Laboratory Screening Tests for Somatic Cells (No Changes are being Proposed for Goat Milk)

Current § 58.133(b)(5), § 58.133(b)(5)(ii), and § 58.133(b)(6) provide for a maximum somatic cell count in producer herd milk of 1,000,000 per milliliter. These amendments will revise these sections by reducing the maximum allowable somatic cell count in producer herd cow's milk to 750,000 per milliliter for the following reasons:

The number of leukocytes (somatic cells) present in milk increases as a result of mammary gland infection (mastitis) and provides information regarding the health of the dairy herd. Through effective herd management, dairy farmers have reduced the number of somatic cells present in raw milk. Identification and treatment of infected animals and improved milking techniques are two examples of herd management tools being used to reduce somatic cell counts. Therefore, to reflect these improvements in enhanced milk quality, this proposal would reduce the maximum permissible somatic cells in producer herd milk from 1,000,000 to 750,000 per ml. Because the number of somatic cells found in milk produced from healthy goats is normally higher than the number found in cow's milk, similar reductions are not being proposed for goat milk. Research indicates that physiological and microbiological differences exist in goat and cow milk independent of disease status which justify different standards between the two species.[1]

Current § 58.133(b)(2) lists the California Mastitis Test (CMT) and the Wisconsin Mastitis Test (WMT) as acceptable screening tests for somatic cells in producer herd milk samples. These amendments will revise § 58.133 (b)(2) by limiting the California Mastitis Test (CMT) and Wisconsin Mastitis Test (WMT) as screening tests for somatic

[1] G.F. Haenlein, L.S. Hinckley, "Goat Milk Somatic Cell Count Situation in the United States". Goat Management: (http://bluehen.ags.udel.edu/deces/goatmgt/gm-11.htm).

cells in goat herd milk samples for the following reasons:

The CMT and the WMT are used as screening tests for somatic cells. However, these screening tests are reliable for samples containing 1,000,000 or more somatic cells per milliliter. Because this action would reduce the maximum somatic cell count in cow's milk to 750,000 per ml., the CMT and WMT tests are not accurate enough to screen cow milk at the reduced level. Since the maximum somatic cell count for goat milk remains at 1,000,000 per ml. the CMT and WMT tests may continue to be used to screen goat milk. Also, since screening tests would no longer apply to cow's milk, the amendments will revise § 58.133(b)(3) to indicate that the listed tests are only considered confirmatory when performed on goat's milk. The revised lists in § 58.133(b)(3)—the Direct Microscopic Somatic Cell Count, the Electronic Somatic Cell Count (particle counter), and the Electronic Somatic Cell Count (fluorescent dye)—are tests that may be used to determine somatic cell count. In addition, this final rule provides for additional methods that may later be included in the latest edition of "Standard Methods for the Examination of Dairy Products," a publication of the American Public Health Association. A copy of this document is available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

3. Reduce the Maximum Permitted Bacterial Estimate in Commingled Milk

Current § 58.143(b) provides for a maximum allowable bacterial estimate in commingled milk in storage tanks of 3,000,000 per milliliter. These amendments will revise § 58.143(b) by reducing the maximum allowable bacterial estimate in commingled milk in storage tanks to 1,000,000 per milliliter for the following reasons:

Commingled milk is the combined milk from more than one producer. Farm improvements in sanitation practices and milk cooling equipment have resulted in enhanced milk quality. Therefore, to reflect these improvements and the resulting improvements of enhanced commingled milk quality, these amendments will reduce the maximum permissible bacterial estimate in commingled milk from 3,000,000 to 1,000,000 per milliliter.

4. Update Procedures for Excluding Milk

Current § 58.137(b) provides for the exclusion of milk that has been classified as Undergrade for bacterial estimate for more than four successive weeks. The amendments to § 58.135 will eliminate the bacterial-based classification of milk (No. 1, No. 2, or Undergrade). These amendments will revise § 58.137(b) to follow the protocol in § 58.135(c)(3) and exclude milk when three of the last five milk samples have exceeded the maximum bacterial estimate of 500,000 per ml.

Current § 58.137(c) provides for milk to be excluded when three out of the last five milk samples have exceeded the maximum somatic cell count level of 1,000,000 per ml. These amendments will lower the maximum somatic cell count level to 750,000 per ml. These amendments will revise § 58.137(c) to exclude milk when three out of the last five milk samples have exceeded the maximum somatic cell count level of 750,000 per ml.

5. Update the Drug Residue Testing Program

These amendments will revise § 58.133(c) to provide greater consistency with current Grade A milk requirements. When the General Specifications were revised in 1993, provisions detailing a drug residue testing program were added. At that time, those provisions were consistent with the drug residue program developed by the National Conference for Interstate Milk Shipment and used to monitor drug residues in Grade A milk. When the Grade A milk drug residue monitoring program was developed, the program allowed for the approval of test methods by the Virginia Polytechnic Institute and State University. Since that time, the Grade A milk program has changed to allow further independent evaluations and to not specifically be limited to the Virginia Polytechnic Institute and State University. These amendments will revise § 58.133(c) to provide greater consistency in the methods used to analyze samples for drug residues, and test methods would now be independently evaluated or evaluated by the Food and Drug Administration (FDA) and accepted by FDA as effective to detect drug residues at current safe or tolerance levels.

6. Update of 3–A Sanitary Standards References

These amendments will update the 3–A Sanitary Standard references in § 58.131(a)(2) to properly reflect the title of the two standards for dairy farm cooling and storage tanks. Therefore, we are revising § 58.131(a)(2) to reference the 3–A Sanitary Standard for Farm Cooling and Holding Tanks and the 3–A Sanitary Standard for Farm Milk Storage Tanks. In addition, these amendments will reflect a change in the title of the document detailing methods to produce culinary steam in § 58.127(d). The current title is the 3–A Accepted Practices for a Method of Producing Steam of Culinary Quality. Copies of each of these documents are available from the International Association for Food Protection, 6200 Aurora Ave., Suite 200 W, Des Moines, Iowa 50322–2863.

7. Inclusion of USDA Equipment Guidelines

These amendments will reference the "USDA Guidelines for the Sanitary Design and Fabrication of Dairy Processing Equipment" in § 58.128(o). The Guidelines address design and fabrication requirements for dairy processing equipment not covered by an existing 3–A Sanitary Standard.

8. Increase the Keeping Quality Test Temperature of Whipped Butter

Currently, § 58.346(b)(1) provides for a keeping quality test temperature for whipped butter of 70° F. These amendments will revise § 58.346(b)(1) by raising the keeping quality test temperature of whipped butter from 70° F to 72° F. These amendments will provide consistent keeping quality test temperature requirements for butter and whipped butter. Agricultural Marketing Service graders have confirmed that accurate keeping quality results can be achieved for both butter and whipped butter when using 72° F. Alignment of this temperature requirement will allow the storage of both butter and whipped butter samples in the same temperature-controlled keeping quality cabinet.

9. Addition of Reduced Fat, Light, and Fat Free Cottage Cheese and Ice Cream

Current § 58.505(b)(3) provides for the term lowfat cottage cheese. We are revising § 58.505(b)(3) by including terms consistent with FDA labeling requirements such as "reduced fat," "light," and "fat free" cottage cheese.

Current § 58.605(c) provides for the term ice milk. We are revising § 58.605(c) by replacing the term ice milk with terms consistent with FDA labeling requirements such as "reduced fat," "light," and "fat free" ice cream. These amendments will also add the following CFR references to the General Specifications: "Nutrient content claims for fat, fatty acid, and cholesterol content of foods" (21 CFR 101.62) and "Requirements for foods named by use of a nutrient content claim and a standardized term" (21 CFR 130.10).

10. Other Changes

- The amendments will correct § 58.124 by revising (j) and adding (k). These errors were inadvertent and occurred when the section was printed in the **Federal Register** and reproduced in the Code of Federal Regulations. A portion of the information in paragraphs (j) and (k) was inadvertently dropped from the CFR. Section 58.124(j) incorrectly contains the following wording: "(j) proper storage conditions for packaging methods and materials." These amendments will correct this error by revising the information to read "(j) proper storage conditions for ingredients and dairy products, or (k) suitable and effective packaging methods and materials."
- These amendments will update citations made to CFR references in § 58.101(e), § 58.405(a), § 58.505, § 58.605, § 58.705(a), § 58.905, § 58.915, and § 58.938 to provide accurate information.
- These amendments will update Dairy Division to Dairy Programs in § 58.245 and § 58.812 and will update AMS Science Division to AMS Science and Technology Programs in § 58.126(e)(5)(ii) to reflect the name changes.
- These amendments will update the compositional standards in § 58.905 for evaporated milk, concentrated milk, and sweetened condensed milk to reflect compositional changes in the FDA Standards of Identity for evaporated milk (21 CFR 131.130), concentrated milk (21 CFR 131.115), and sweetened condensed milk (21 CFR 131.120).
- These amendments will update the association names and addresses in § 58.101 for the Association of Official Analytical Chemists, the American Public Health Association, and the International Association for Food Protection.
- These amendments will improve the current definition of a sanitizing treatment in § 58.101(e) and provide a definition consistent with terminology currently used in the dairy industry.
- These amendments will provide information in § 58.134(a) on how to obtain sediment standards.
- These amendments will include DA Instruction 918–RL in § 58.245 as a reference for methods of laboratory analysis and delete DA Instructions 918–103, 918–109–1, and 918–109–3. These DA instructions have been combined into 918–RL and no longer exist.

Public Comments

On August 13, 2001, the Department published a proposed rule (66 FR 42458) to amend the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. The public comment period closed October 12, 2001. No comments were received.

List of Subjects in 7 CFR Part 58

Dairy Products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58, subpart B, is amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR Part 58, continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Amend § 58.101 by revising paragraphs (e), (m), (v), and (w) to read as follows:

§ 58.101 Meaning of words.

* * * * *

(e) *Sanitizing treatment.* Subjection of a clean product contact surface to steam, hot water, hot air, or an acceptable sanitizing solution for the destruction of most human pathogens and other vegetative microorganisms to a level considered safe for product production. Such treatment shall not adversely affect the equipment, the milk or the milk product, or the health of consumers. Sanitizing solutions shall comply with 21 CFR 178.1010.

* * * * *

(m) *Official Methods of Analysis of the Association of Official Analytical Chemists.* "Official Methods of Analysis of the Association of Official Analytical Chemists," a publication of the Association of Official Analytical Chemists International, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

* * * * *

(v) *Standard Methods for the Examination of Dairy Products.* "Standard Methods for the Examination of Dairy Products," a publication of the American Public Health Association, 1015 Fifteenth Street, NW Washington, D.C. 20005.

(w) *3–A Sanitary Standards and Accepted Practice.* The latest standards for dairy equipment and accepted practices formulated by the 3–A Sanitary Standards Committees representing the International Association for Food Protection, the Food and Drug Administration, and the Dairy Industry Committee. Published by the International Association for Food Protection, 6200 Aurora Avenue, Suite 200 W, Des Moines, Iowa 50322–2863.

* * * * *

3. Amend § 58.124 by revising (j) and adding (k) to read as follows:

§ 58.124 Denial or suspension of plant approval.

* * * (j) proper storage conditions for ingredients and dairy products, or (k) suitable and effective packaging methods and material.

4. Amend § 58.126 by revising paragraph (e)(5)(ii) to read as follows:

§ 58.126 Buildings.

* * * * *

(e) * * *

(5) * * *

(ii) Approved laboratories shall be supervised by the USDA resident inspector in all aspects of official testing and in reporting results. Plant laboratory personnel in such plants may be authorized by USDA to perform official duties. The AMS Science and Technology Programs will provide independent auditing of laboratory analysis functions.

* * * * *

5. Amend § 58.127 by revising paragraph (d) to read as follows:

§ 58.127 Facilities.

* * * * *

(d) *Steam.* Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Culinary steam used in direct contact with milk or dairy products shall be free from harmful substances or extraneous material and only those boiler water additives that meet the requirements of 21 CFR 173.310 shall be used, or a secondary steam generator shall be used in which soft water is converted to steam and no boiler compounds are used. Steam traps, strainers, and condensate traps shall be used wherever applicable to insure a satisfactory and safe steam supply. Culinary steam shall comply with the 3–A Accepted Practices for a Method of Producing Steam of Culinary Quality, number 609. This document is available from the International Association for Food Protection, 6200 Aurora Avenue, Suite 200 W, Des Moines, Iowa 50322–2863.

* * * * *

6. Amend § 58.128 by revising paragraph (o) to read as follows:

§ 58.128 Equipment and utensils.

* * * * *

(o) *New replacement or modified equipment, processing system, or utensils.* All new, replacement, or modified equipment and all processing systems, cleaning systems, utensils, or replacement parts shall comply with the most current, appropriate 3–A Sanitary

Standards or 3–A Accepted Practices. If 3–A Sanitary Standards or 3–A Accepted Practices are not available, such equipment and replacements shall meet the general criteria of this section and the USDA Guidelines for the Sanitary Design and Fabrication of Dairy Processing Equipment available from USDA, Agricultural Marketing Service, Dairy Programs, Dairy Grading Branch, or by accessing the Internet at www.ams.gov/dairy/grade.htm.

* * * * *

7. Amend § 58.131 by revising the first sentence of paragraph (a)(2) to read as follows:

§ 58.131 Equipment and Facilities.

* * * * *

(a) * * *

(2) *Farm bulk tanks.* Farm bulk tanks shall comply with 3–A Sanitary Standards for Farm Cooling and Holding Tanks or 3–A Sanitary Standards for Farm Milk Storage Tanks, as applicable.

* * *

* * * * *

8. Amend § 58.133 by revising paragraphs (b)(2), (b)(3), (b)(4), (b)(5) introductory text, (b)(5)(ii), (b)(6), and (c)(1) to read as follows:

* * * * *

§ 58.133 Methods for quality and wholesomeness determination.

* * * * *

(b) * * *

(2) A screening test may be conducted on goat herd milk. When a goat herd screening sample test exceeds either of the following results, a confirmatory test identified in paragraph (b)(3) of this section shall be conducted.

(3) Milk shall be tested for somatic cell content by using one of the following procedures or by any other method approved by Standard Methods for the Examination of Dairy Products (confirmatory test for somatic cells in goat milk):

(i) Direct Microscopic Somatic Cell Count (Single Strip Procedure). Pyronin Y-methyl green stain or "New York" modification shall be used as the confirmatory test for goat's milk.

(ii) Electronic Somatic Cell Count (particle counter).

(iii) Electronic Somatic Cell Count (fluorescent dye).

(4) The somatic cell test identified in paragraph (b)(3) of this section shall be considered as the official results.

(5) Whenever the official test indicates the presence of more than 750,000 somatic cells per ml. (1,000,000 per ml. for goat milk), the following procedures shall be applied:

(i) * * *

(ii) Whenever two out of the last four consecutive somatic cell counts exceed 750,000 per ml. (1,000,000 per ml. for goat milk), the appropriate State regulatory authority shall be notified and a written notice given to the producer. This notice shall be in effect as long as two of the last four consecutive samples exceed 750,000 per ml. (1,000,000 per ml. for goat milk).

(6) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (b)(5)(ii) of this section. If this sample also exceeds 750,000 per ml. (1,000,000 per ml. for goat milk), subsequent milkings shall not be accepted for market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer may be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 750,000 per ml. (1,000,000 per ml. for goat milk). The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

(c) *Drug residue level.* (1) USDA-approved plants shall not accept for processing any milk testing positive for drug residue. All milk received at USDA-approved plants shall be sampled and tested prior to processing for beta lactam drug residue. When directed by the regulatory agency, additional testing for other drug residues shall be performed. Samples shall be analyzed for beta lactams and other drug residues by methods that have been independently evaluated or evaluated by the Food and Drug Administration (FDA) and that have been accepted by the (FDA) as effective to detect drug residues at current safe or tolerance levels. Safe and tolerance levels for particular drugs are established by the FDA and can be obtained from the U.S. Food and Drug Administration Center for Food Safety and Applied Nutrition, 200 C Street SW., Washington, DC 20204.

* * * * *

9. Amend § 58.134 by revising paragraph (a) to read as follows:

§ 58.134 Sediment content.

(a) *Method of testing.* Methods for determining the sediment content of the milk of individual producers shall be those described in the latest edition of Standard Methods for the Examination of Dairy Products. Sediment content shall be based on comparison with applicable charts of the United States Sediment Standards for Milk and Milk Products, available from USDA, AMS, Dairy Programs, Dairy Standardization Branch.

* * * * *

10. Revise § 58.135 to read as follows:

§ 58.135 Bacterial estimate.

(a) *Methods of Testing.* Milk shall be tested for bacterial estimate by using one of the following methods or by any other method approved by Standard Methods for the Examination of Dairy Products.

(1) Direct Microscopic clump count;

(2) Standard plate count;

(3) Plate loop count;

(4) Pectin gel plate count;

(5) Petrifilm aerobic count;

(6) Spiral plate count;

(7) Hydrophobic grid membrane filter count;

(8) Impedance/conductance count;

(9) Reflectance calorimetry.

(b) *Frequency of Testing.* A laboratory examination to determine the bacterial estimate shall be made on a representative sample of each producer's milk at least once each month at irregular intervals. Samples shall be analyzed at a laboratory in accordance with State regulations.

(c) *Acceptance of milk.* The following procedures shall be applied with respect to bacterial estimates:

(1) Whenever the bacterial estimate indicates the presence of more than 500,000 bacteria per ml., the producer shall be notified with a warning of the excessive bacterial estimate.

(2) Whenever two of the last four consecutive bacterial estimates exceed 500,000 per ml., the appropriate regulatory authority shall be notified and a written warning notice given to the producer. The notice shall be in effect so long as two out of the last four consecutive samples exceed 500,000 per ml.

(3) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (c) (2) of this section. If this sample also exceeds 500,000 per ml., subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed when an additional sample of herd milk is tested and found satisfactory.

11. Amend § 58.137 by revising paragraphs (b) and (c) to read as follows:

§ 58.137 Excluded Milk.

* * * * *

(b) Three of the last five milk samples have exceeded the maximum bacterial estimate of 500,000 per ml. (§ 58.135 (c)(3)).

(c) Three of the last five milk samples have exceeded the maximum somatic cell count level of 750,000 per ml. (1,000,000 per ml. for goat milk) (§ 58.133 (b)(6)); or

* * * * *

12. Revise § 58.143(b) to read as follows:

§ 58.143 Raw product storage.

* * * * *

(b) The bacteriological quality of commingled milk in storage tanks shall not exceed 1,000,000/ml.

13. Revise § 58.245 to read as follows:

§ 58.245 Method of sample analysis.

Samples shall be tested according to the applicable methods of laboratory analysis contained in either DA Instruction 918–RL as issued by the USDA, Agricultural Marketing Service, Dairy Programs, or Official Methods of Analysis of the Association of Analytical Chemists or Standard Methods for the Examination of Dairy Products.

14. Amend § 58.346 by revising paragraph (b)(1) to read as follows:

§ 58.346 Whipped butter.

* * * * *

(b) * * *

(1) Proteolytic count, not more than 50 per gram; yeast and mold count, not more than 10 per gram; coliform count, not more than 10 per gram; and keeping-quality test, satisfactory after 7 days at 72° F.

* * * * *

15. Amend § 58.405 by revising paragraph (a) to read as follows:

§ 58.405 Meaning of words.

* * * * *

(a) *Cheese.* The fresh or matured product obtained by draining after coagulation of milk, cream, skimmed, or partly skimmed milk or a combination of some or all of these products and including any cheese that conforms to the requirements of the Food and Drug Administration for cheeses and related cheese products (21 CFR part 133).

* * * * *

16. Amend § 58.505 by revising paragraphs (b)(1), (2), and (3), (c), (d), and the last sentence of paragraph (f) to read as follows:

§ 58.505 Meaning of Words.

* * * * *

(b) * * *

(1) *Cottage cheese dry curd.* The soft uncured cheese meeting the requirements of the Food and Drug Administration for dry curd cottage cheese (21 CFR 133.129).

(2) *Cottage Cheese.* The soft uncured cheese meeting the requirements of the Food and Drug Administration for cottage cheese (21 CFR 133.128).

(3) *Reduced Fat, Light, and Fat Free Cottage Cheese.* The products conforming to all applicable Federal Regulations including "Cottage cheese," Food and Drug Administration (21 CFR 133.128), "Dry curd cottage cheese," Food and Drug Administration (21 CFR 133.129), "Nutrient content claims for fat, fatty acid, and cholesterol content of foods," Food and Drug Administration (21 CFR 101.62), and "Requirements for foods named by use of a nutrient content claim and a standardized term," Food and Drug Administration (21 CFR 130.10).

(c) *Direct acidification.* The production of cottage cheese, without the use of bacterial starter cultures, through the use of approved food grade acids. This product shall be labeled according to the requirements of the Food and Drug Administration, 21 CFR 133.128 or 133.129, as appropriate.

(d) *Cottage Cheese with fruits, nuts, chives, or other vegetables.* Shall consist of cottage cheese to which has been added fruits, nuts, chives, and other vegetables. The finished cheese shall comply with the requirements of the Food and Drug Administration for cottage cheese (21 CFR 133.128).

* * * * *

(f) * * * The creaming mixture in its final form may or may not be homogenized and shall conform to the requirements of the Food and Drug Administration (21 CFR 133.128(b)).

17. Amend § 58.605 by revising paragraphs (a), (b), (c), (d), and (e).

§ 58.605 Meaning of words.

* * * * *

(a) *Ice cream.* The product conforming to the requirements of the Food and Drug Administration for ice cream (21 CFR 135.110).

(b) *Frozen custard.* The product conforming to the requirements of the Food and Drug Administration for frozen custard (21 CFR 135.110).

(c) *Reduced Fat, Light, or Fat free Ice Cream.* The products conforming to all applicable Federal Regulations including "Ice cream and frozen custard," Food and Drug Administration (21 CFR 135.110), "Nutrient content claims for fat, fatty acid, and cholesterol content of foods," Food and Drug Administration (21 CFR 101.62), and "Requirements for foods named by use of a nutrient content claim and a standardized term," Food and Drug Administration (21 CFR 130.10).

(d) *Sherbet.* The product conforming to the requirements of the Food and Drug Administration for sherbet (21 CFR 135.140).

(e) *Mellorine.* The product conforming to the requirements of the Food and Drug Administration for mellorine (21 CFR 135.130).

* * * * *

§ 58.651 [Removed and Reserved].

18. Remove and reserve § 58.651.

19. Amend § 58.705 by revising paragraph (a) to read as follows:

§ 58.705 Meaning of words.

(a) *Pasteurized process cheese and related products.* Pasteurized process cheese and related products are the foods which conform to the applicable requirements of the Food and Drug Administration for cheeses and related cheese products (21 CFR part 133).

* * * * *

20. Revise § 58.812 to read as follows:

§ 58.812 Methods of sample analysis.

Samples shall be tested according to the applicable methods of laboratory analysis contained in either DA Instruction 918–RL, as issued by the USDA, Agricultural Marketing Service, Dairy Programs, or the Official Methods of Analysis of the Association of Official Analytical Chemists, or Standard Methods for the Examination of Dairy Products.

21. Amend § 58.905 by revising paragraphs (a), (b), and (c) to read as follows:

§ 58.905 Meaning of words.

* * * * *

(a) *Evaporated milk.* The liquid food made by evaporating sweet milk to such point that it contains not less than 6.5 percent of milkfat and not less than 16.5 percent of the total milk solids. The finished product shall conform to the requirements of the Food and Drug Administration for evaporated milk (21 CFR 131.130).

(b) *Concentrated milk, plain condensed milk.* The product which conforms to the standard of identity for evaporated milk except that it is not processed by heat to prevent spoilage. The container may be unsealed, and stabilizing ingredients are not used. The finished product shall conform to the requirements of the Food and Drug Administration for concentrated milk (21 CFR 131.115).

(c) *Sweetened condensed milk.* The liquid or semi-liquid food made by evaporating a mixture of sweet milk and refined sugar (sucrose) or any combination of refined sugar (sucrose) and refined corn sugar (dextrose) to such point that the finished sweetened

condensed milk contains not less than 28.0 percent of total milk solids and not less than 8.0 percent of milkfat. The quantity of sugar used is sufficient to prevent spoilage. The finished product shall conform to the requirements of the Food and Drug Administration for sweetened condensed milk (21 CFR 131.120).

* * * * *

22. Revise § 58.915 to read as follows:

§ 58.915 Batch or continuous in-container thermal processing equipment.

Batch or continuous in-container thermal processing equipment shall meet the requirements of the Food and Drug Administration for thermally processed low-acid foods packaged in hermetically sealed containers (21 CFR part 113). The equipment shall be maintained in such a manner as to assure control of the length of processing and to minimize the number of damaged containers.

23. Amend § 58.938 by revising paragraph (g) to read as follows:

§ 58.938 Physical requirements and microbiological limits for sweetened condensed milk

* * * * *

(g) *Composition.* Shall meet the minimum requirements of the Food and Drug Administration for sweetened condensed milk (21 CFR 131.120). In addition, the quantity of refined sugar used shall be sufficient to give a sugar-in-water ratio of not less than 61.5 percent.

* * * * *

Authority: (7 U.S.C. 1621–1627)

Dated: July 22, 2002.

A.J. Yates,

Administrator.

[FR Doc. 02–18980 Filed 7–26–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 02–40]

RIN 1515–AD04

Access to Customs Security Areas at Airports

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to those provisions of the Customs Regulations that concern standards for employee access to Customs security areas at airports that accommodate international air commerce. The principal amendments set forth in this document involve the addition of a biennial access approval reapplication requirement, an expansion of the grounds for denial of an application for access, the addition of a requirement that each employee granted access must report to Customs certain changes in the employee's circumstances, the inclusion of several new employer responsibilities, an expansion of the grounds for revocation or suspension of access, the inclusion of separate procedures for immediate revocation or suspension of access and for proposed revocation or suspension of access, and a limitation of the opportunity to have a hearing in a revocation or suspension action to only cases in which there is a genuine issue regarding a material fact. These changes are needed to enhance the security environment at airports in Customs security areas and are commensurate with the heightened enforcement posture of the Federal Government following the September 11, 2001, terrorist attacks on the United States.

DATES: Interim rule effective July 29, 2002; comments must be submitted by September 27, 2002.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Tritt, Passengers Programs, Office of Field Operations (202–927–0530).

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1986, Customs published in the **Federal Register** (51 FR 4161) T.D. 86–12 setting forth an amendment to the Customs Regulations to require the use and display of a Customs-approved identification card, strip, or seal on identification cards worn by employees at airports accommodating international air commerce. This Customs-approved identification requirement applies to all persons (other than government law enforcement personnel) who are located at, or operate out of, or are employed by, affected airports and who request access to Customs security areas in order to perform functions associated with their employment. Those regulatory requirements were originally contained in § 6.12a of the Customs Regulations (19 CFR 6.12a) but are currently set forth as Subpart S of part 122 of the Customs Regulations (19 CFR part 122).

In the preamble portion of T.D. 86–12 Customs explained the need for, and purpose of, those regulatory provisions as follows: "Customs finds it necessary to improve integrity and security in authorized inspection areas, due in large measure to the recent sharp increases in threats to airport security posed by terrorist organizations. The current regulations in 19 CFR part 6 are inadequate for controlling access to the Customs security areas to the extent necessary. The arrival of an aircraft from abroad necessitates the services of numerous persons representing various specialties, such as ground crews, refueling personnel, baggage handlers, and food service personnel, among others. While all of these persons may have legitimate business associated with the arrival of an international flight, Customs needs a method by which access to the aircraft and inspection areas will be restricted, as well as some assurance that the service personnel themselves have been found trustworthy by their employers. While the Federal Aviation Administration has general responsibility for security at airports, Customs has determined that it is necessary to amend 19 CFR part 6 to provide Customs with the needed authority and procedures to achieve these goals at the areas under the Customs jurisdiction. The purpose of this amendment is to establish an identification system for all employees whose duties require access to Customs security areas at airports handling international air commerce, with the exception of uniformed Federal, State, and local law enforcement personnel. Because of recent terrorist incidents at foreign airports, threats of violence at U.S. airports, and in an effort to improve the security of these areas by restricting access to authorized employees, Customs will require that employees apply for a Customs approved identification strip or seal to be affixed to existing identification cards once an authorized official of the employer attests that background checks of employment history have been conducted. Customs will issue the identification strip or seal, once satisfied that the issuance of the additional identification will neither endanger the revenue nor threaten the security of the entire security area (which may include the arriving airplane, ramp area, and Customs

baggage and passenger inspection facilities)."

The regulatory provisions contained in Subpart S of part 122 prior to the publication of this document consisted of §§ 122.181 through 122.188 (19 CFR 122.181 through 122.188) which may be summarized as follows:

Section 122.181 set forth a definition of the term "Customs security area;"

Section 122.182 set forth the basic identification card, strip, or seal requirement (paragraph (a)), outlined certain employer responsibilities (paragraph (b)), set forth identification card, strip, or seal application procedures and employer bond requirements (paragraph (c)), provided for background checks of applicants (paragraph (d)), provided for the issuance of identification cards, strips, or seals to law enforcement officers and other Federal, State, and local officials without applying the paragraph (c) and paragraph (d) requirements (paragraph (e)), prescribed standards for the issuance of replacement identification cards, strips, and seals (paragraph (f)), and set forth standards for notifying Customs and surrendering the identification card, strip, or seal when it was no longer needed (paragraph (g));

Section 122.183 dealt with the denial of applications for access and included provisions regarding grounds for denial (paragraph (a)), notification of denial (paragraph (b)), appeal of denial (paragraph (c)), and further appeal of denial (paragraph (d));

Section 122.184 provided for removal of the identification card, strip, or seal from the employee where, for security reasons, a change in the nature of the identification was necessary;

Section 122.185 required a prompt written report in the event of a loss or theft of an identification card, strip, or seal and provided for replacement in accordance with § 122.182(f);

Section 122.186 provided for the removal and destruction of an identification card, strip, or seal that was presented by a person other than the one to whom it was issued and also provided that an approved identification card, strip, or seal may be removed from an employee by any Customs officer designated by the port director;

Section 122.187 covered the revocation or suspension of access and included grounds for revocation or suspension (paragraph (a)), provided for giving notice of the revocation or suspension to the employee with a copy to the employer (paragraph (b)), permitted the employee to file a written notice of appeal and to request a hearing in the notice of appeal (paragraph (c)), set forth rules for the conduct of a hearing (paragraph (d)), permitted the employee to submit additional written views after the hearing had been held (paragraph (e)), and provided for issuance and service of the decision after the hearing (paragraph (f)); and

Section 122.188 concerned temporary identification cards, strips, and seals and included provisions regarding the conditions for issuance of a temporary card, strip, or seal (paragraph (a)), the period of validity of the temporary card, strip, or seal (paragraph (b)), the application of the section to temporary employees and official visitors (paragraph (c)), and the revocation of a temporary card, strip, or seal and denial of temporary access (paragraph (d)).

The Need for Increased Security Enforcement Measures

The September 11, 2001, terrorist attacks involving four U.S. commercial aircraft underscored the importance of a properly maintained security environment at the nation's airport facilities. The nature of the attacks, which involved the use of aircraft as weapons against persons and property in the United States, and the nature of the perpetrators, who are believed to be affiliated with a terrorist organization that has an almost global network and that has declared its opposition to U.S. foreign policy and presence in the Middle East and its intention to engage in further attacks against the United States, support the conclusion that there is now, if anything, an even greater need for security precautions at airports than there was when the regulations described above were promulgated.

On December 6, 2001, the Federal Aviation Administration (FAA) published in the **Federal Register** (66 FR 63474) a final rule document entitled "Criminal History Records Checks" which amended its regulations to require each airport operator and each aircraft operator that has adopted a security program under 14 CFR part 107 or 14 CFR part 108 to conduct fingerprint-based criminal history record checks (CHRCs) for individuals if they have not already undergone CHRCs. These FAA rules, which took effect on the date of publication, apply to those who either have, or apply for, (1) unescorted access authority to the Security Identification Display Area (SIDA) of an airport, (2) authority to authorize others to have unescorted access to the SIDA, and (3) passenger and carry-on property screening functions. In the background portion of this final rule document the FAA first noted the September 11, 2001, terrorist attacks and related potential threats to U.S. civil aviation. The FAA went on to explain that the new rules were necessary because the current employment investigation method was not adequate, in particular, because the present method did not require CHRCs for all individuals. The FAA also noted that, by requiring that all employees in the specified positions undergo a CHRC based on their fingerprints, there may be some individuals who now are in the covered positions who will be disqualified under the resulting new checks.

Following the September 11, 2001, terrorist attacks, Customs similarly initiated a review of the security standards and procedures that apply for purposes of access to the Customs security areas at airports that accommodate international air commerce. That review included, among other things, a review of the existing regulatory standards and an expanded fingerprinting and associated criminal record checks of individuals currently having authorized access to a Customs security area. The review disclosed a number of problems that require immediate regulatory solutions in order to enable Customs to maintain an enhanced security environment at airports in those areas over which Customs must exercise some jurisdiction regarding access. The principal identified problem areas and solutions are as follows:

1. *Problem:* The grounds for denial of applications for access do not adequately reflect security considerations and, particularly as regards the applicant's criminal history, are not sufficiently specific. **SOLUTION:** The regulations should contain, as a basis for denial of access, a general statement regarding risk to public health, interest or safety, national security, or aviation safety. In addition, the regulations should amplify the criminal history grounds for denial of access by including, for example, the detailed list of aircraft-related and other specific violations listed in 14 CFR 107.209 and 14 CFR 108.229 as published by the FAA in the December 6, 2001, final rule document referred to above.

2. *Problem:* The present regulations do not provide an adequate legal framework for ongoing security enforcement regarding the conduct of employees who have access to the Customs security area, particularly with regard to events that occur after the application for approved access has been granted. *Solution:* The regulations should (1) affirmatively state the obligation of the employee to use the approved access only in furtherance of

his employment, (2) impose on an employee with approved access an ongoing obligation to inform Customs of any change in circumstances (for example an arrest or conviction) that would be a ground for denial or revocation or suspension of access and to inform Customs if the employee's access to the SIDA has been suspended under the FAA regulations, and (3) add as grounds for revocation or suspension of access a failure to comply with any of the foregoing requirements. In addition, the regulations should impose an obligation on the employer to report to Customs any change in an employee's circumstances that could affect his right to have access and also to ensure that each employee uses the approved access only in connection with his employment. A failure on the part of the employer to comply with these requirements could result in a claim for liquidated damages under the employer's bond.

3. *Problem:* The procedures for revocation or suspension of an employee's approved access to the Customs security area constitute an obstacle to enhanced security initiatives because they are inefficient, time consuming and burdensome, in principal part due to a provision in the regulations that gives the employee an absolute right to a hearing in connection with an appeal of a revocation or suspension action, even where there is no substantial issue of a material fact to be addressed at the hearing. At a number of locations where Customs performed fingerprinting and associated criminal record checks which disclosed grounds for a revocation or suspension action, in almost every case the affected employee requested a hearing, thus delaying the time at which the employee would lose access (and therefore extending the security risk) and straining the personnel and fiscal resources of Customs due to the costs associated with conducting a formal hearing. *Solution:* The regulations should (1) limit hearings on appeals to those cases in which there is a genuine issue of fact that is material to the revocation or suspension action, similar to the procedure used in courts of law whereby cases involving no issues of fact but rather only issues regarding the construction of the law are resolved in summary fashion on the written pleadings and without oral argument, (2) provide for issuance of access approval for a limited period of time and for reissuance only upon reapplication for a new period, with the new application (which may include fingerprinting and associated criminal record checks) being subject to de novo review, and (3) provide for immediate revocation or suspension of access in emergency situations involving public health, safety, or security, whether or not the affected employee would be entitled to a hearing upon appeal.

Accordingly, this document sets forth amendments to Subpart S of Part 122 of the Customs Regulations in order to address the problems discussed above, and the document also includes a number of other changes not related to security concerns that also represent improvements to those regulatory texts. Similar to the approach taken by the FAA in the December 6, 2001, final rule document referred to above, Customs believes that the immediate and ongoing significance of these security considerations requires that the regulatory amendments take effect on the date of publication in the **Federal Register** even though the document affords the public an opportunity to comment on the regulatory changes prior to publication of a final rule. The regulatory amendments are explained in more detail below except in the case of changes that involve merely minor, non-substantive wording changes.

Explanation of Regulatory Amendments

Before proceeding to a section-by-section discussion of the substantive amendments, it should be noted that throughout the texts the words "identification card, strip, or seal" and all variations of those words have been replaced by the words "Customs access seal" or "access seal." This change in terminology is simply intended to reflect current practice whereby, upon approval of an application for access to the Customs security area, Customs places a seal on a card or other identification medium issued either by Customs or by the airport authority, air carrier or other employer of the employee to whom access is granted.

Section 122.181

In the first sentence the words "or departing to" have been added after the words "arriving from" to clarify that the Customs security area also includes airport areas that accommodate outgoing aircraft.

Section 122.182

Paragraph (a) has been revised to incorporate the following changes:

1. In the first sentence, a reference to "aircraft passengers and crew" has been added to reflect the Customs practice of not requiring those persons to apply for approved access, because those persons normally pass through the Customs security area only when going to or from an aircraft.

2. The second sentence has been modified by the addition of a requirement that the approved Customs access seal must be used only in furtherance of the employment of the person in whose name it is issued, in accordance with the description of duties submitted by the employer under paragraph (c)(1) of the section, for the reason explained above.

3. In the third sentence, references to immediate surrender of a Customs access seal "as provided in paragraph (g) of the section" (that is, when the access seal is simply no longer needed by the employee) and "for any cause referred to in § 122.187(a)" (that is, in connection with a revocation or suspension action) have been added to clarify that there are two contexts under the regulations which provide for the surrender of a Customs access seal.

4. Two new sentences have been added at the end to prescribe a 2-year validity period for an approved Customs access seal and to provide for retention beyond the applicable 2-year period only if a new application is filed under paragraph (c)(2) of the section.

In paragraph (b), which concerns employers' responsibilities, the references to bond liability have been removed because they can be more appropriately dealt with elsewhere (see the discussion of new § 122.189 below).

Paragraph (c), which sets forth access application requirements, has also been revised in order to set forth the prior text as paragraph (c)(1) headed "initial application" and in order to add a new text as paragraph (c)(2) headed "reapplication." The following points are noted regarding the revised text:

1. In the first sentence of paragraph (c)(1), a requirement has been added regarding submission of a written request and justification for issuance prepared by the applicant's employer which must include a description of the duties to be performed by the employee while in the Customs security area. Customs believes that this requirement is necessary and appropriate because it (1) more clearly addresses the relationship of the applicant to the employer whose business affairs require the employee access, (2) provides additional relevant information to assist Customs in making an informed decision on the application, and (3) will assist Customs in monitoring the employee's activities within the Customs security area to determine whether they are necessary and proper.

2. At the end of paragraph (c)(1), a sentence has been added to cover the submission of fingerprints, proof of

citizenship or residency, and a photograph. These requirements, which were previously in paragraph (d) (which concerns background checks), have been moved to this paragraph because they are more directly related to the application submission process.

3. Paragraph (c)(2) sets forth requirements concerning the new reapplication procedure which must be initiated at least 30 days before the end of the 2-year approval validity period prescribed in paragraph (a) if the employee wishes to retain the approved Customs access seal beyond that 2-year period. The 30-days minimum reapplication period was chosen in order to ensure that Customs will have enough time to review and make a decision on the application before the current validity period lapses. This new paragraph (c)(2) provides that the new application must be filed in the same manner as that specified for an initial application under paragraph (c)(1), including the submission of fingerprints if required by the port director, and that the new application will be subject to a *de novo* review (which may include a background check) as if it were an initial application except that the employer's attestation under paragraph (d) will not be required if there has been no change in the applicant's employment.

Paragraph (d), which concerns background checks, has been revised in order to (1) remove the reference in the first sentence to employees hired on or after November 1, 1985, (2) remove the third sentence regarding employees hired before November 1, 1985, and (3) reflect the transfer of the fingerprint and proof of citizenship or residency provisions to paragraph (c) as discussed above. The removal of the provisions regarding the November 1, 1985, date is necessary because those provisions are out-of-date and because the effect of these provisions, which is to "grandfather-in" employees hired before that date as regards the type of employer attestation that must be made, is incompatible with the present heightened security enforcement posture of Customs as reflected in the other regulatory changes contained in this document. Customs further notes that those November 1, 1985, provisions also may not be compatible with the new background check requirements reflected in the December 6, 2001, FAA regulatory changes referred to above.

In paragraph (g), the first sentence (which provides that employers must give notice to Customs and surrender access seals to Customs when they are no longer needed by their employees) has been amended to also require notice and surrender where the 2-year approval validity period under paragraph (a) has expired and a new application under paragraph (c)(2) has not been approved, because Customs believes that this is also consistent with the principle that employers must bear some responsibility for ensuring the proper use of access seals by their employees, and the words "who no longer requires access" at the end of the second sentence have been removed to conform to the new wording of the first sentence. In addition, the penultimate sentence of the prior text (which concerned the filing of a summary of information regarding the disposition of access seals on a quarterly or other basis established by the port director) has been removed, see the discussion below regarding new paragraph (c) of § 122.184. Finally, the last sentence of the prior text (which allowed an employee to return to duties in the Customs security area within 1 year without having to file an application under paragraph (c)) has been removed because Customs now believes that an application should be required in that case.

Section 122.183

Paragraph (a), which concerns grounds for the denial of access to the Customs security area, has been revised primarily in order to address the first principal problem area discussed earlier in this document. The following points are noted regarding the changes reflected in the revised text:

1. In the introductory text of the paragraph, the words "or pose an unacceptable risk to public health, interest or safety, national security, or aviation safety" have been added after the words "endanger the revenue or the security of the area."

2. In paragraph (a)(1), which refers to any cause which would justify suspension or revocation under § 122.187, references to "a demand for surrender" and to "§ 122.182(g)" have been added to clarify (1) that § 122.187 refers not only to suspension or revocation of access but also to the surrender of the access seal and (2) that the surrender of access seals is also the subject of § 122.182(g). With regard to the latter point, it is noted that under the amended texts a failure to surrender an access seal, if demanded by Customs because the new 2-year approval period has expired and no new application has been approved, would constitute a basis for denial under this provision.

3. In paragraph (a)(2), which under the prior paragraph (a) text was the only other listed ground for denial and referred specifically to evidence of a pending or past investigation which establishes criminal, or dishonest conduct, or a verified record of such conduct, the words "which establishes * * * such conduct" have been replaced by the words "establishing probable cause to believe that the applicant has engaged in any conduct which relates to, or which could lead to a conviction for, a disqualifying offense listed under paragraph (a)(4) of this section." This wording change was made in consideration of the addition of new paragraph (a)(4) discussed below, and it is noted in this regard that, with the addition of that new paragraph and new paragraph (a)(3) discussed below, the "probable cause" standard appears to be more appropriate in the instant context.

4. A new paragraph (a)(3) has been added which refers to a case in which an applicant has been arrested for, or charged with, a disqualifying offense listed under paragraph (a)(4) and disposition of the arrest or charge is pending. Customs believes that this paragraph is necessary to fill in the gap between the investigation stage described in revised paragraph (a)(2) and the disqualifying offense stage described in new paragraph (a)(4). It is also noted that the FAA regulations adopted in the December 6, 2001, final rule document referred to above contain provisions of similar effect (see 14 CFR 107.209(g)(1) and 14 CFR 108.229(g)(1)).

5. A new paragraph (a)(4) has been added which lists, as grounds for denial, disqualifying offenses which an applicant has been convicted of, or found not guilty of by reason of insanity, or has committed any act or omission involving, during the 14 preceding 5-year period (or any longer period as may be appropriate in a specific case) prior to the application or at any time while in possession of a Customs access seal. This paragraph was added to § 122.183 because Customs believes that the issue of established criminal conduct is appropriate for detailed treatment in an application context, and it is noted that under the prior Part 122 texts specific felony or misdemeanor conviction references were contained only in the context of revocation or suspension actions under § 122.187. The paragraph parallels the FAA approach reflected in the December 6, 2001, final rule document in referring to a "disqualifying" offense, in covering applicants found not guilty by reason of insanity, in referring to offenses both in the pre-application period and while having approved access, and in setting forth a detailed list of specific disqualifying offenses, including a

number of offenses relating directly to aircraft under Title 49 of the United States Code, for which access may be denied (see 14 CFR 107.209(d) and 14 CFR 108.229(d)). Customs believes that it is useful, wherever practicable, to use similar standards as those of the FAA since the need to address security concerns at airports is universal and the same people will be given access to areas at airports that are concentric or overlapping under the separate approval regimes of the two agencies. However, because the mission of Customs is not in all cases the same as that of the FAA, the new paragraph (a)(4) text also lists some additional offenses not included in the FAA regulations, including offenses that relate directly to a Customs statutory enforcement mandate.

6. A new paragraph (a)(5) has been added which sets forth as a ground for denial the fact that an applicant was denied unescorted access authority to an SIDA, or had his unescorted access authority to an SIDA suspended, pursuant to regulations of the FAA or other government agency. As in the case of new paragraph (a)(4) discussed above, this provision reflects the fact that there are security considerations that are common to Customs and to the FAA. Accordingly, if the FAA denies an application for unescorted access to an SIDA or suspends a person's access to an SIDA and Customs is aware of the FAA action, Customs must deny that person's application for access to the Customs security area because (1) the basic security concerns reflected in the FAA action would also apply in a Customs security area context and (2) granting the application, and thus allowing the person into the Customs security area, would be incompatible with the FAA action from an operational standpoint.

7. Finally, a new paragraph (a)(6) has been added to set forth as a ground for denial the fact that neither the employer nor Customs is able to complete a meaningful background check or investigation of the applicant because relevant records do not exist or are not available. Customs believes that this provision is necessary because the granting of an application should represent a knowledgeable, informed decision and thus should not be made in circumstances where there is a lack of relevant records. Thus, for example, an application could be denied if the applicant has not lived in the United States for a period of time sufficiently long for Customs to make a meaningful verification of any U.S. criminal history and a similar records check in the applicant's prior country of residence cannot be made.

In paragraph (c), which concerns the appeal of a denial, the last sentence has been revised to require the port director to advise the applicant of the procedures for filing a further appeal if the application is denied on appeal.

Paragraph (d), which concerns the further appeal of a denial, has been revised primarily in order to replace the references to the Commissioner (or his designee) with references to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director who denied the application under paragraph (b) and considered the first appeal under paragraph (c). Thus, the further appeal of the denial would no longer be considered at Customs Headquarters in Washington, DC.

Section 122.184

The section heading has been revised and the prior section text has been designated as paragraph (a) in order to accommodate the addition of new paragraphs (b) and (c).

New paragraph (b), which is headed "change in circumstances of employee," imposes on an employee who has approved access to the Customs security area an obligation to advise the port director in writing in the following cases: (1) Within 24 hours, if a circumstance arises that constitutes a ground for denial of access or for revocation or suspension of access and surrender of the employee's Customs access seal; (2) within 5 calendar days, if the employee was arrested or prosecuted for a disqualifying offense and there is a final disposition of that arrest or prosecution; and (3) within 24 hours, if the employee's unescorted access authority to an SIDA is suspended pursuant to the regulations of the FAA or other government agency. Customs believes that these new requirements, which impose an ongoing obligation on the part of each person granted access to the Customs security area to advise Customs of changes that might affect that person's access privilege, are appropriate and necessary for the security of the areas under Customs control. Customs also notes that a similar ongoing reporting requirement regarding disqualifying offenses is contained in the FAA regulations adopted in the December 6, 2001, final rule document referred to above (see 14 CFR 107.209(l)(2) and 14 CFR 108.229(l)(2)).

New paragraph (c), which is headed "additional employer responsibilities," sets forth employer responsibilities that are in addition to those specified for employers under § 122.182. The first sentence requires an employer to report to Customs any known change in an employee's circumstances referred to in new paragraph (b), even if the employee also reports it under paragraph (b); even though this results in a duplicate reporting requirement, Customs believes that this result is justifiable because the overriding consideration is that Customs must have the information in question in order to properly assess the security risk and thus should not have to decide whether one possible source of the information is more appropriate than another. The second and third sentences set forth a quarterly reporting requirement regarding employees who have an approved access seal, including additions to and deletions from the previous report, and in effect replace the quarterly reporting requirement which has been removed from paragraph (g) of § 122.182 as discussed above. The fourth and final sentence, which requires each employer to take appropriate steps to ensure that an employee uses an approved Customs access seal only for employment-related purposes, is a corollary to the employee requirement added to the second sentence of paragraph (a) of § 122.182 as discussed above.

Section 122.187

Paragraph (a), which concerns the grounds for revocation or suspension of access to the Customs security area, has been divided into two subparagraphs, with paragraph (a)(1) constituting an expanded general statement regarding revocation or suspension and paragraph (a)(2) setting forth revised specific grounds for revocation or suspension. The following points are noted regarding the revised paragraph (a) texts:

1. Paragraph (a)(1)(i) requires the port director to immediately revoke or suspend an employee's access to the Customs security area and demand the immediate surrender of the employee's approved Customs access seal for any ground specified in paragraph (a)(2).

2. Paragraph (a)(1)(ii) authorizes the port director to propose the revocation or suspension of an employee's access to the Customs security area and the surrender of the employee's approved Customs access seal whenever in the judgment of the port director it appears, for any ground not specified in paragraph (a)(2), that continued access might "pose an unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area." The quoted language parallels the wording of the introductory text of revised paragraph (a) of § 122.183 regarding access application denials and in effect

replaces prior paragraph (a)(4) of § 122.187 which referred to a circumstance in which continuation of privileges would "endanger the revenue or security of the area."

3. Paragraph (a)(2)(i) refers to an approved Customs access seal obtained through fraud or the misstatement of a material fact and thus corresponds to prior paragraph (a)(1). However, a reference to "probable cause to believe" has been added to the text because, given the priority that must be given to matters involving airport security, Customs believes that probable cause to believe (rather than actual proof of the fact) is the proper standard. Customs further notes in this regard that an employee's rights can be appropriately protected by the appeal procedure which affords the employee an opportunity to have a hearing if there is a genuine issue of fact that is material to the action taken by Customs.

4. Paragraph (a)(2)(ii) refers to employees convicted of crimes and thus corresponds to prior paragraph (a)(2). However, the new text differs from the prior text by (1) including a reference to an employee "found not guilty by reason of insanity," (2) including "probable cause to believe" language, and (3) replacing the recitation of specific crimes by a cross-reference to "an offense listed in § 122.183(a)(4)." This text reflects the view of Customs that the commission of any "disqualifying offense" on which a denial of an application for access may be based under revised paragraph (a) of § 122.183 also should be a basis for revocation or suspension of access and surrender of the Customs access seal under § 122.187.

5. Paragraph (a)(2)(iii), which has no counterpart in the prior texts, refers to an employee who has been arrested for, or charged with, an offense listed in § 122.183(a)(4) and prosecution or other disposition of the arrest or charge is pending. It thus parallels the application denial terms of new paragraph (a)(3) of § 122.183.

6. Paragraph (a)(2)(iv), which has no counterpart in the prior texts, refers to an employee who has engaged in any other conduct (that is, conduct other than that covered by paragraph (a)(2)(ii) or (iii)) that would constitute a ground for denial of an application for access under § 122.183. This provision is the necessary counterpart of paragraph (a)(1) of § 122.183 in that it reflects the position of Customs that any ground for denial of an application for access to the Customs security area should also constitute a valid basis for revocation or suspension of access and surrender of the Customs access seal under § 122.187.

7. Paragraph (a)(2)(vi), which has no counterpart in the prior texts, refers to an employee who uses the approved access seal in connection with a matter not related to his employment or not constituting a duty described in the employer justification required by paragraph (c)(1) of § 122.182. This provision relates specifically to the employee requirement regarding proper use of the access seal which was added to the second sentence of paragraph (a) of § 122.182 as discussed above.

8. In paragraph (a)(2)(viii), which corresponds to prior paragraph (a)(6) and concerns bond sufficiency, the words "for all employees of the bond holder" have been added at the beginning of the text to clarify that, in the context of a revocation or suspension of access, bond sufficiency relates to all employees of the principal on the bond (that is, the employer) rather than to only one individual employee.

9. Paragraph (a)(2)(x), which has no counterpart in the prior texts, refers to the failure of an employee or employer to notify Customs of a change in circumstances under new paragraph (b) or (c) of § 122.184 and the failure of an employee to report the loss or theft of a Customs access seal as required by § 122.185.

Paragraph (b), which concerns the notice of revocation or suspension, represents a significant expansion of the prior text in order to address some of the principal problems mentioned earlier in this document. The changes involve both a modification of the prior paragraph (b) text and the addition of two new paragraphs (b)(1) and (b)(2). The following points are noted regarding these changes:

1. With regard to the prior text, which has become the introductory text of paragraph (b), a reference to demanding surrender of the Customs access seal has been added in the first sentence because this is an integral part of a revocation or suspension action. In addition, the text has been shortened and at the end provides that the notice of revocation or suspension will indicate whether the action is effective immediately or is proposed.

2. New paragraph (b)(1), which is headed "immediate revocation or suspension," provides that the port director will issue a final notice of revocation or suspension when the revocation or suspension of access and surrender of the Customs access seal are effective immediately. The paragraph also allows the port director or his designee to deny physical access to the Customs security area and demand surrender of an approved Customs access seal at any time on an emergency basis prior to issuance of a final notice of revocation or suspension whenever in his judgment an emergency situation involving public health, safety, or security is involved. In the latter case, a final notice of revocation or suspension would be issued to the affected employee within 10 days of the emergency action. The text also provides that the final notice of revocation or suspension issued under this paragraph will state the specific grounds for the immediate action, will direct the employee to immediately surrender the access seal if he has not already done so, and will advise the employee that he may pursue one of the following two options: (1) Submit a new application for a Customs access seal on or after the 180th day after the date of the final notice of revocation or suspension; or (2) file a written administrative appeal with the port director in accordance with paragraph (c) within 30 days of the date of the final notice of revocation or suspension. Finally, the text provides that, if the employee chooses to appeal, the appeal may request that a hearing be held in accordance with paragraph (d) but in that case must demonstrate that there is a genuine issue of fact that is material to the revocation or suspension action. These new provisions regarding immediate revocation or suspension have been included to address one of the security and related concerns outlined in the third principal problem area mentioned earlier in this document.

3. New paragraph (b)(2), which is headed "proposed revocation or suspension," is the alternative to an immediate action under paragraph (b)(1). Paragraph (b)(2)(i) concerns issuance of the notice of proposed revocation or suspension and provides that the notice will state the specific grounds for the proposed action, will inform the employee that he may continue to have access to the Customs security area and retain his access seal pending issuance of a final notice under paragraph (b)(2)(ii), and will advise the employee that he may file a written response with the port director within 10 days and may ask for a meeting with the port director to discuss the proposed action. Paragraph (b)(2)(ii) concerns the issuance of a notice of final determination regarding the employee's right of access to the Customs security area. It provides that if the employee does not respond to the notice of proposed action, or if the employee files

a timely response and the port director's final determination is adverse to the employee, the port director will issue a final notice of revocation or suspension within 30 days of the notice of proposed action, or within 30 days of receipt of the employee's response, which states the specific grounds for the action, directs the employee to immediately surrender the Customs access seal, and advises the employee that he may choose to pursue one of the two options specified under paragraph (b)(1), that is, reapplication or appeal. These paragraph (b)(2) provisions are not directly related to the security concerns that are the primary focus of this document, but Customs believes that they represent a distinct due process improvement over the prior proposed revocation or suspension notice procedures.

Paragraph (c), which concerns appeal procedures, represents a significant expansion of the prior text primarily in order to address the appeal hearing issue referred to in the third principal problem area outlined earlier in this document. The changes involve redesignation of the prior paragraph (c) text as paragraph (c)(1) with the heading "filing of appeal" and the addition of two new paragraphs (c)(2) and (c)(3). The following points are noted regarding redesignated paragraph (c)(1) and new paragraphs (c)(2) and (c)(3):

1. In redesignated paragraph (c)(1), the last sentence regarding requesting a hearing in the notice of appeal has been replaced by a new sentence that gives the port director discretion to allow more time for the employee to submit information in support of the appeal.

2. New paragraph (c)(2), which is headed "action by the port director," provides that if the appellant requests a hearing, the port director will first review the appeal to determine whether there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required because the port director finds that there is a genuine issue of fact that is material to the revocation or suspension action, a hearing will be held, and a decision on the appeal will be rendered, in accordance with paragraphs (d) through (f). On the other hand, if no hearing is requested or if a requested hearing is not required, no hearing will be held and the port director will forward the administrative record, together with the port director's response to any statements made in the notice of appeal, to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director for a decision on the appeal under paragraph (c)(3).

3. New paragraph (c)(3), which is headed "action by the director," provides for issuance of a written decision on the appeal by the director of field operations within 30 days based on the administrative record forwarded by the port director under paragraph (c)(2). The paragraph provides for transmittal of the decision to the port director for service on the employee and states that the decision on the appeal will constitute the final administrative action on the matter.

In paragraph (d), which concerns hearing procedures, a new sentence has been added at the beginning to restate the rule regarding when a hearing will be held, that is, only when requested in an appeal and only if the affected employee demonstrates that there is a genuine issue of fact that is material to the revocation or suspension action. In addition, except as regards designation of the hearing officer, all references to "the Commissioner or his designee" have been replaced by references to "the director of field operations" who will receive the appropriate record from the hearing officer for purposes of rendering a decision on the appeal.

The following changes have been made to paragraph (e) which provides for the submission of additional written views following the hearing: (1) References to the Commissioner or his designee in the prior text have been replaced by references to the director of field operations; (2) the words "the employee" in the prior text have been replaced by "either party" because Customs believes that both the employee and the government should have the opportunity to submit additional written views; (3) a sentence has been added to require that a copy of a submission be provided to the other party; and (4) two sentences have been added at the end to provide that the other party may within 10 days file a reply to a submission with the director of field operations, with a copy being provided to the other party, and to provide that no further submissions will be accepted. These changes have been included for due process or other procedural purposes and are not related to the security concerns addressed elsewhere in this document.

In paragraph (f), which concerns issuance of the decision after a hearing, the first sentence has been changed by the addition of a reference to consideration of "any additional written submissions and replies made under paragraph (e)" and by providing that the decision will be made by the director of field operations rather than by the Commissioner or his designee. In addition, a sentence has been added at the end stating that a decision on an appeal rendered under that paragraph will constitute the final administrative action on the matter. These procedural changes are also not related to security concerns.

New § 122.189

This new section, which is headed "bond liability," is intended to clarify that a principal may face consequences for a failure to comply with the conditions of the bond required under § 122.182(c) which include an obligation to comply with the Customs Regulations applicable to Customs security areas at airports. This new section refers specifically to an employer because an employer would be a principal on the bond to whom specific requirements apply under § 122.182(b) and under new § 122.184(c).

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes contained in this document are primarily intended to enhance the security environment at airports in those areas designated as Customs security areas. The amendments promote public safety and airport security and therefore are in the public interest. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim

regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0026.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these interim regulations is in § 122.182. This information is used by Customs to determine whether an individual's application for access to a Customs security area should be granted, to monitor current use of the access privilege by individuals, to determine whether an individual has engaged in conduct that might warrant revocation or suspension of access, and to determine whether access should be granted on a temporary basis. The likely respondents are individuals and business organizations including aircraft operators, airport operators, and subcontractors of aircraft and airport operators.

Estimated annual reporting and/or recordkeeping burden: 9,750 hours.

Estimated average annual burden per respondent/recordkeeper: 13 minutes.

Estimated number of respondents and/or recordkeepers: 30,000.

Estimated annual frequency of responses: 1.5.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Bonds, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements, Security measures, Surety bonds.

Amendments to the Regulations

For the reasons set forth in the preamble, part 122, Customs Regulations (19 CFR part 122), is amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. In § 122.181, the first sentence is amended by adding after the words "arriving from" the words ", or departing to,".

3. In § 122.182:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by removing the words "and liability" in the paragraph heading and by removing the last sentence;

c. Paragraphs (c) and (d) are revised;

d. The first sentence of paragraph (e) is amended by removing the words "identification card, strip, or seal" and adding, in their place, the words "Customs access seal";

e. Paragraph (f) is amended by removing the word "identification" in the paragraph heading and adding, in its place, the words "access seal", by removing the words "identification card, strip or seal" in the introductory text and adding, in their place, the words "Customs access seal", and by removing the words "identification card, strip, or seal" in paragraph (f)(4) and adding, in their place, the words "Customs access seal"; and

f. Paragraph (g) is amended by removing the word "cards" in the paragraph heading and adding, in its place, the words "access seal", by adding the words "or where the 2-year period referred to in paragraph (a) of this section expires and a new application under paragraph (c)(2) of this section has not been approved," in the first sentence after the words "or other reason,", by removing the words "identification card, strip, or seal" in the first and second sentences and adding, in their place, the words "Customs access seal", by removing the words "who no longer requires access" at the end of the second sentence, and by removing the last two sentences.

The revisions read as follows:

§ 122.182 Security provisions.

(a) *Customs access seal required.* With the exception of all Federal and uniformed State and local law enforcement personnel and aircraft passengers and crew, all persons located at, operating out of, or employed by any airport accommodating international air commerce or its tenants or contractors, including air carriers, who have unescorted access to the Customs security area, must openly display or produce upon demand an approved access seal issued by Customs. The approved Customs access seal must be in the possession of the person in whose name it is issued whenever the person is in the Customs security area and must be used only in furtherance of that person's employment in accordance with the description of duties submitted by the employer under paragraph (c)(1) of this section. The Customs access seal remains the property of Customs, and any bearer must immediately surrender it as provided in paragraph (g) of this section or upon demand by any authorized Customs officer for any cause referred to in § 122.187(a). Unless surrendered pursuant to paragraph (g) of this section or § 122.187, each approved Customs access seal issued under paragraph (c)(1) of this section will remain valid for 2 years from January 1, 2002, in the case of a Customs access seal issued prior to that date and for 2 years from the date of issuance in all other cases. Retention of an approved Customs access seal beyond the

applicable 2-year period will be subject to the reapplication provisions of paragraph (c)(2) of this section.

* * * * *

(c) *Application requirements*—(1) *Initial application.* An application for an approved Customs access seal, as required by this section, must be filed by the applicant with the port director on Customs Form 3078 and must be supported by a written request and justification for issuance prepared by the applicant's employer that describes the duties that the applicant will perform while in the Customs security area. The application requirement applies to all employees required to display an approved Customs access seal by this section, regardless of the length of their employment. The application must be supported by the bond of the applicant's employer or principal on Customs Form 301 containing the bond conditions set forth in § 113.62, § 113.63, or § 113.64 of this chapter, relating to importers or brokers, custodians of bonded merchandise, or international carriers. If the applicant's employer is not the principal on a Customs bond on Customs Form 301 for one or more of the activities to which the bond conditions set forth in § 113.62, § 113.63, or § 113.64 relate, the application must be supported by an Airport Customs Security Area Bond, as set forth in appendix A of part 113 of this chapter. The latter bond may be waived, however, for State or local government-related agencies in the discretion of the port director. Waiver of this bond 29 does not relieve the agency in question or its employees from compliance with all other provisions of this subpart. In addition, in connection with an application for an approved Customs access seal under this section:

(i) The port director may require the applicant to submit fingerprints on form FD–258 or on any other approved medium either at the time of, or following, the filing of the application. If required, the port director will inform the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the Customs administrative processing fee, the total of which must be tendered by, or on behalf of, the applicant with the application; and

(ii) Proof of citizenship or authorized residency and a photograph may also be required.

(2) *Reapplication.* If a person wishes to retain an approved Customs access seal for one or more additional 2-year periods beyond the 2-year period referred to in paragraph (a) of this section, that person must submit a new application no later than 30 calendar days prior to the start of each additional period. The new application must be filed in the manner specified in paragraph (c)(1) of this section for an initial application, and the port director may also require the submission of fingerprints as provided in paragraph (c)(1)(i) of this section. The new application will be subject to review on a de novo basis as if it were an initial application except that the written attestation referred to in paragraph (d) of this section will not be required if there has been no change in the employment of the applicant since the last attestation was submitted to Customs.

(d) *Background check.* An authorized official of the employer must attest in writing that a background check has been conducted on the applicant, to the extent allowable by law. The background check must include, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceding 5 years. The authorized official of the employer must attest that, to the best of his knowledge, the applicant meets the conditions necessary to perform functions associated with employment in the Customs security area. Additionally, the application may be investigated by Customs and a report prepared concerning the character of the applicant. Records of background investigations conducted by employers must be retained for a period of one year following cessation of employment and made available upon request of the port director.

* * * * *

4. In § 122.183, paragraph (a), the last sentence of paragraph (c), and paragraph (d) are revised to read as follows:

§ 122.183 Denial of access.

(a) *Grounds for denial.* Access to the Customs security area will not be granted, and therefore an approved Customs access seal will not be issued, to any person whose access to the Customs security area will, in the judgment of the port director, endanger the revenue or the security of the area or pose an unacceptable risk to public health, interest or safety, national security, or aviation safety. Specific grounds for denial of access to the Customs security area include, but are not limited to, the following:

(1) Any cause which would justify a demand for surrender of a Customs access seal or the revocation or suspension of access under § 122.182(g) or § 122.187;

(2) Evidence of a pending or past investigation establishing probable cause to believe that the applicant has engaged in any conduct which relates to, or which could lead to a conviction for, a disqualifying offense listed under paragraph (a)(4) of this section;

(3) The arrest of the applicant for, or the charging of the applicant with, a disqualifying offense listed under paragraph (a)(4) of this section on which prosecution or other disposition is pending;

(4) A disqualifying offense committed by the applicant. For purposes of this paragraph, an applicant commits a disqualifying offense if the applicant has been convicted of, or found not guilty of by reason of insanity, or has committed any act or omission involving, any of the following in any jurisdiction during the 5-year period, or any longer period that the port director deems appropriate for the offense in question, prior to the date of the application submitted under § 122.182 or at any time while in possession of an approved Customs access seal:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation (49 U.S.C. 46306);

(ii) Interference with air navigation (49 U.S.C. 46308);

(iii) Improper transportation of a hazardous material (49 U.S.C. 46312);

(iv) Aircraft piracy in the special aircraft jurisdiction of the United States (49 U.S.C. 46502(a));

(v) Interference with flight crew members or flight attendants (49 U.S.C. 46504);

(vi) Commission of certain crimes aboard aircraft in flight (49 U.S.C. 46506);

(vii) Carrying a weapon or explosive aboard aircraft (49 U.S.C. 46505);

(viii) Conveying false information and threats (49 U.S.C. 46507);

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States (49 U.S.C. 46502(b));

(x) Lighting violations involving transportation of controlled substances (49 U.S.C. 46315);

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements (49 U.S.C. 46314);

(xii) Destruction of an aircraft or aircraft facility (18 U.S.C. 32);

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;
(xxii) Armed or felony unarmed robbery;
(xxiii) Distribution of, or intent to distribute, a controlled substance;
(xxiv) Felony arson;
(xxv) Felony involving:
(A) A threat;
(B) Willful destruction of property;
(C) Importation or manufacture of a controlled substance;
(D) Burglary;
(E) Theft;
(F) Dishonesty, fraud, or misrepresentation;
(G) Possession or distribution of stolen property;
(H) Aggravated assault;
(I) Bribery; or
(J) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than one year;
(xxvi) Violence at an airport serving international civil aviation (18 U.S.C. 37);
(xxvii) Embezzlement;
(xxviii) Perjury;
(xxix) Robbery;
(xxx) Crimes associated with terrorist activities;
(xxxi) Sabotage;
(xxxii) Assault with a deadly weapon;
(xxxiii) Illegal use or possession of firearms or explosives;
(xxxiv) Any violation of a U.S. immigration law;
(xxxv) Any violation of a Customs law or any other law administered or enforced by Customs involving narcotics or controlled substances, commercial fraud, currency or financial transactions, smuggling, failure to report, or failure to declare;
(xxxvi) Airport security violations; or
(xxxvii) Conspiracy or attempt to commit any of the offenses or acts referred to in paragraphs (a)(4)(i) through (a)(4)(xxxv) of this section;
(5) Denial or suspension of the applicant's unescorted access authority to a Security Identification Display Area (SIDA) pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency; or
(6) Inability of the applicant's employer or Customs to complete a meaningful background check or investigation of the applicant.

* * * * *

(c) * * * The port director will render his decision on the appeal to the applicant in writing within 30 calendar days of receipt of the notice of appeal and, if the application is denied on appeal, the decision will advise the applicant of the procedures for filing a further appeal pursuant to paragraph (d) of this section.

(d) *Further appeal of denial.* Where the application on appeal is denied by the port director, the applicant may file a further written notice of appeal with the director of field operations at the Customs Management Center having jurisdiction over the office of the port director within 10 calendar days of receipt of the port director's decision on the appeal. The further notice of appeal must be filed in duplicate and must set forth the response of the applicant to the decision of the port director. The director of field operations will review the appeal and render a written decision. The final decision will be transmitted to the port director and served by him on the applicant.

5. Section 122.184 is revised to read as follows:

§ 122.184 Change of identification; change in circumstances of employee; additional employer responsibilities.

(a) *Change of identification.* The Customs access seal may be removed from the employee by the port director where, for security reasons, a change in the nature of the identification card or other medium on which it appears is necessary.

(b) *Change in circumstances of employee.* If, after issuance of a Customs access seal to an employee, any circumstance arises (for example, an arrest or 36 conviction for a disqualifying offense) that constitutes a ground for denial of access to the Customs security area under § 122.183(a) or for revocation or suspension of access to the Customs security area and surrender of the Customs access seal under § 122.187(a), the employee must within 24 hours advise the port director in writing of that change in circumstance. In the case of an arrest or prosecution for a disqualifying offense listed in § 122.183(a)(4), the employee also must within 5 calendar days advise the port director in writing of the final disposition of that arrest or prosecution. In addition, if an airport operator or an aircraft operator suspends an employee's unescorted access authority to a Security Identification Display Area pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency and the employee also has an approved Customs access seal, the employee must within 24 hours advise the port director in writing of the fact of, and basis for, the suspension.

(c) *Additional employer responsibilities.* If an employer becomes aware of any change in the circumstances of its employee as described in paragraph (b) of this section, the employer must immediately advise the port director of that fact even though the employee may have separately reported that fact to the port director under paragraph (b) of this section. In addition, each employer must submit to the port director during the first month of each calendar quarter a report setting forth a current list of all its employees who have an approved Customs access seal. The quarterly report must list separately all additions to, and deletions from, the previous quarterly report. Moreover, each employer must take appropriate steps to ensure that an employee uses an approved Customs access seal only in connection with activities relating to his employment.

6. Section 122.185 is revised to read as follows:

§ 122.185 Report of loss or theft of Customs access seal.

The loss or theft of an approved Customs access seal must be promptly reported in writing by the employee to the port director. The Customs access seal may be replaced, as provided in § 122.182(f).

7. Section 122.186 is revised to read as follows:

§ 122.186 Presentation of Customs access seal by other person.

If an approved Customs access seal is presented by a person other than the one to whom it was issued, the Customs access seal will be removed and destroyed. An approved Customs access seal may be removed from an employee by any Customs officer designated by the port director.

8. Section 122.187 is revised to read as follows:

§ 122.187 Revocation or suspension of access.

(a) *Grounds for revocation or suspension of access*—(1) *General.* The port director:
(i) Must immediately revoke or suspend an employee's access to the Customs security area and demand the immediate surrender of the employee's approved Customs access seal for any ground specified in paragraph (a)(2) of this section; or
(ii) May propose the revocation or suspension of an employee's access to the Customs security area and the surrender of the employee's approved Customs access seal whenever, in the judgment of the port director, it appears for any ground not specified in paragraph (a)(2) of this section that continued access might pose an

unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area. In this case the port director will provide the employee with an opportunity to respond to the notice of proposed action.

(2) *Specific grounds.* Access to the Customs security area will be revoked or suspended, and surrender of an approved Customs access seal will be demanded, in any of the following circumstances:

(i) There is probable cause to believe that an approved Customs access seal was obtained through fraud, a material omission, or the misstatement of a material fact;

(ii) The employee is or has been convicted of, or found not guilty of by reason of insanity, or there is probable cause to believe that the employee has committed any act or omission involving, an offense listed in § 122.183(a)(4);

(iii) The employee has been arrested for, or charged with, an offense listed in § 122.183(a)(4) and prosecution or other disposition of the arrest or charge is pending;

(iv) The employee has engaged in any other conduct that would constitute a ground for denial of access to the Customs security area under § 122.183;

(v) The employee permits the approved Customs access seal to be used by any other person or refuses to openly display or produce it upon the proper demand of a Customs officer;

(vi) The employee uses the approved Customs access seal in connection with a matter not related to his employment or not constituting a duty described in the written justification required by § 122.182(c)(1);

(vii) The employee refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation;

(viii) For all employees of the bond holder, if the bond required by § 122.182(c) is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time;

(ix) The employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance because of a change in duties, termination of employment, or other reason; or

(x) The employee or employer fails to provide the notification of a change in circumstances as required under § 122.184(b) or (c) or the employee fails to report the loss or theft of a Customs access seal as required under § 122.185.

(b) *Notice of revocation or suspension.* The port director will revoke or suspend access to the Customs security area and demand surrender of the Customs access seal by giving notice of the revocation or suspension and demand in writing to the 40 employee, with a copy of the notice to the employer. The notice will indicate whether the revocation or suspension is effective immediately or is proposed.

(1) *Immediate revocation or suspension.* When the revocation or suspension of access and the surrender of the Customs access seal are effective immediately, the port director will issue a final notice of revocation or suspension. The port director or his designee may deny physical access to the Customs security area and may demand surrender of an approved Customs access seal at any time on an emergency basis prior to issuance of a final notice of revocation or suspension whenever in the judgment of the port director or his designee an emergency situation involving public health, safety, or security is involved and, in such a case, a final notice of revocation or suspension will be issued to the affected employee within 10 calendar days of the emergency action. A final notice of revocation or suspension will state the specific grounds for the immediate revocation or suspension, direct the employee to immediately surrender the Customs access seal if that Customs access seal has not already been surrendered, and advise the employee that he may choose to pursue one of the following two options:

(i) Submit a new application for an approved Customs access seal, in accordance with the provisions of § 122.182(c), on or after the 180th calendar day following the date of the final notice of revocation or suspension: or

(ii) File a written administrative appeal of the final notice of revocation or suspension with the port director in accordance with paragraph (c) of this section within 30 calendar days of the date of the final notice of revocation or suspension. The appeal may request that a hearing be held in accordance with paragraph (d) of this section, and in that case the appeal also must demonstrate that there is a genuine issue of fact that is material to the revocation or suspension action.

(2) *Proposed revocation or suspension*—(i) *Issuance of notice.* When the revocation or suspension of access and the surrender of the Customs access seal is proposed, the port director will issue a notice of proposed revocation or suspension. The notice of proposed revocation or suspension will state the specific grounds for the proposed action, inform the employee that he may continue to have access to the Customs security area and may retain the Customs access seal pending issuance of a final notice under paragraph (b)(2)(ii) of this section, and advise the employee that he may file with the port director a written response addressing the grounds for the proposed action within 10 calendar days of the date the notice of proposed action was received by the employee. The employee may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The employee also may ask for a meeting with the port director or his designee to discuss the proposed action.

(ii) *Final notice*—(A) *Based on nonresponse.* If the employee does not respond to the notice of proposed action, the port director will issue a final notice of revocation or suspension within 30 calendar days of the date the notice of proposed action was received by the employee. The final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may 42 choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(B) *Based on response.* If the employee files a timely response, the port director will issue a final determination regarding the status of the employee's right of access to the Customs security area within 30 calendar days of the date the employee's response was received by the port director. If this final determination is adverse to the employee, then the final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(c) *Appeal procedures*—(1) *Filing of appeal.* The employee may file a written appeal of the final notice of revocation or suspension with the port director within 10 calendar days following receipt of the final notice of revocation or suspension. The appeal must be filed in duplicate and must set forth the response of the employee to the statement of the port director. The port director may, in his discretion, allow the employee additional time to submit documentation or other information in support of the appeal.

(2) *Action by port director*—(i) *If a hearing is requested.* If the appeal requests that a hearing be held, the port director will first review the appeal to determine whether there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required because the port director finds that there is a genuine 43 issue of fact that is material to the revocation or suspension action, a hearing will be held, and a decision on the appeal will be rendered, in accordance with paragraphs (d) through (f) of this section. If the port director finds that there is no genuine issue of fact that is material to the revocation or suspension action, no hearing will be held and the port director will forward the administrative record as provided in paragraph (c)(2)(ii) of this section for the rendering of a decision on the appeal under paragraph (c)(3) of this section.

(ii) *CMC review.* If no hearing is requested or if the port director finds that a requested hearing is not required, following receipt of the appeal the port director will forward the administrative record to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director for a decision on the appeal. The transmittal of the port director must include a response to any disputed issues raised in the appeal.

(3) *Action by the director.* Following receipt of the administrative record from the port director, the director of field operations will render a written decision on the appeal based on the record forwarded by the port director. The decision will be rendered within 30 calendar days of receipt of the record and will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

(d) *Hearing.* A hearing will be conducted in connection with an appeal of a final notice of revocation or suspension of access to the Customs security area only if the 44 affected employee in writing requests a hearing and demonstrates that there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required, it must be held before a hearing officer designated by the Commissioner, or his designee. The employee will be notified of the time and place of the hearing at least 5 calendar days before the hearing. The employee may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in the proceeding, including substantiation of charges and the answer to the charges, must be presented. Both parties will have the right of cross'examination. A stenographic record of the proceedings will be made upon request and a copy furnished to the employee. At the conclusion of the proceedings or review of a written appeal, the hearing officer must promptly transmit all papers and the stenographic record to the director of field operations, together with the recommendation for final action. If neither the employee nor his attorney appears for a scheduled hearing, the hearing officer must record that fact, accept any appropriate testimony, and conclude the hearing. The hearing officer must promptly transmit all papers, together with his recommendations, to the director of field operations.

(e) *Additional written views.* Within 10 calendar days after delivery of a copy of the stenographic record of the hearing to the director of field operations, either party may submit to the director of field operations additional written views and arguments on matters in the record. A copy of any submission will be provided to the other party. Within 10 calendar days of receipt of the copy of the submission, the other party may file a reply with the director of field operations, and a copy of the reply will be provided to the other party. No further submissions will be accepted.

(f) *Decision.* After consideration of the recommendation of the hearing officer and any additional written submissions and replies made under paragraph (e) of this section, the director of field operations will render a written decision. The decision will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

9. In § 122.188:

a. The section heading is amended by removing the word "identification" and adding, in its place, the words "Customs access seal";

b. Paragraph (a) is amended by removing the words "identification card, strip, or seal" in two places in the first sentence and adding, in their place, the words "Customs access seal" and by removing the words "identification card" in the last sentence and adding, in their place, the words "Customs access seal";

c. Paragraph (b) is amended by removing the words "identification card, strip, or seal" wherever they appear and adding, in their place, the words "Customs access seal";

d. Paragraph (c) is amended by removing the words "identification card, strip, or seal" in the second and third sentences and adding, in their place, the words "Customs access seal" and by removing the words "identification cards, strips, or seals" in the last sentence and adding, in their place, the words "Customs access seal"; and

e. Paragraph (d) is amended by removing the words "identification card, strip, or seal" wherever they appear and adding, in their place, the words "Customs access seal".

10. New § 122.189 is added to read as follows:

§ 122.189 Bond liability.

Any failure on the part of a principal to comply with the conditions of the bond required under § 122.182(c), including a failure of an employer to comply with any requirement applicable to the employer under this subpart, will constitute a breach of the bond and may result in a claim for liquidated damages under the bond.

Robert C. Bonner,

Commissioner of Customs.

Approved: July 24, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–19055 Filed 7–26–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–063]

Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during August 2002. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: The safety zone for the Maritime Day Fireworks, occurring in Marine City, MI, will be enforced from 9:30 p.m. until 11 p.m. on August 10, 2002. The safety zone for the Venetian

Festival Boat Parade & Fireworks, occurring in St. Clair Shores, MI, will be enforced from 8:30 p.m. until 10:30 p.m. on August 10, 2002.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9580.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing the permanent safety zones in 33 CFR 165.907(a)(22) and (23), for fireworks displays in the Captain of the Port Detroit Zone during August 2002.

The following safety zones will be enforced during fireworks displays occurring in the month of August 2002:

Maritime Day Fireworks, Marine City, MI. This safety zone will be enforced on August 10, 2002 from 9:30 p.m. until 11 p.m.

Venetian Festival Boat Parade & Fireworks, St. Clair Shores, MI. This safety zone will be enforced on August 10, 2002, from 8:30 p.m. until 10:30 p.m.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be enforced for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Detroit to transit the safety zone. Approval will be made on a case-by case basis. Requests must be made in advance and approved by the Captain of Port Detroit before transits will be authorized. The Captain of the Port Detroit may be contacted via U.S. Coast Guard Group Detroit on Channel 16, VHF–FM.

Dated: July 19, 2002.

P. G. Gerrity,

Commander, Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–19138 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 01–278; FCC 02–211]

Radar Detectors

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document requires radar detectors to comply with limits on radiated emissions in the 11.7–12.2 GHz band to prevent interference to satellite services. Radar detectors are required to be approved by the Federal Communications Commission or another designated organization before they can be marketed within the United States.

DATES: Effective August 28, 2002. See § 15.37(k) for Applicability Dates.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report and Order*, ET Docket No. 01–278, FCC 02–211, adopted July 12, 2002, and released July 19, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the First Report and Order

1. By this action, the Commission is requiring that radar detectors comply with radiated emission limits in the 11.7–12.2 GHz band under part 15 of the rules, and that all radar detectors be certified to demonstrate compliance with the emission limits before they can be marketed. The requirements will become effective thirty days from the publication of the rules in the **Federal Register** for radar detectors being manufactured and imported, and sixty days after publication of the rules in the **Federal Register** for radar detectors being marketed. This action will significantly reduce interference from radar detectors to very small aperture satellite terminals (VSATs.)

2. Most receivers contain one or more oscillators that generate radio frequency signals intended to be used internally within the device in tuning the received signal. These generated signals can radiate from the receiver and have the potential to interfere with other nearby receivers. For this reason, part 15 of the Commission's rules requires certain receivers to meet the radiated emission limits for "unintentional radiators" to minimize the possibility of interference. The current rules require only receivers that tune in the range of 30–960 MHz and Citizen's Band receivers to comply with these limits. Other receivers are not required to comply with the limits, but the rules require that any receiver that causes interference must cease operation. When these requirements were established, most consumer receivers tuned only below 960 MHz. Because there was less probability of receivers that tune above 960 MHz causing interference, the rules did not require such receivers to meet emission limits or to receive an equipment authorization. The emission limit that applies to unintentional radiators other than receivers at frequencies above 960 MHz is a field strength limit of 500 μV/m measured at a distance of 3 meters.

3. Radar detectors that warn of the presence of police speed-measuring radars are currently exempt from complying with the part 15 emission limits because they are receivers that tune only above 960 MHz. They are designed to monitor for the presence of police radar in several frequency bands, including the 10.50–10.55 GHz, 24.05–24.25 GHz and 33.4–36.0 GHz bands. Radar detectors contain a tuning oscillator that operates above the 10.50–10.55 GHz band. In older models this oscillator generally operated on frequencies below the 11.7–12.2 GHz VSAT downlink band, and we have not received complaints of interference to VSATs from such models. However, the potential for radar detectors to interfere with VSATs has recently increased because radar detector manufacturers have begun using oscillators at higher frequencies that place swept frequency emissions within the VSAT downlink band. The purpose of these changes was to enhance detection of police radar while making it more difficult for police to detect the presence of radar detectors in vehicles.

4. On October 15, 2001, the Commission adopted a *Notice of Proposed Rule Making and Order* ("NPRM") 66 FR 59209, November 27, 2001, that proposed to make a number of changes to part 15 and other parts of the rules. The *NPRM* sought comment on whether there is a need to require radar detectors to comply with radiated emission limits to minimize the possibility of interference to authorized services including VSAT operations, and if so, the appropriate limits that should be applied. The *NPRM* also sought comments on whether there are other receivers that tune above 960 MHz that should be required to comply with emission limits, and if so, the appropriate limits and frequency bands where they should apply. Further, the *NPRM* sought comment concerning the timeframe for affected receivers that should be required to comply with any new emission limits.

5. We have found that radar detectors being marketed emit high level radio signals that can cause interference to VSATs. Accordingly, we conclude that

there is a need for limits on the radiated emissions from radar detectors to protect VSATs from interference. Tests on several radar detectors at the Commission's laboratory found emission levels ranging from 33,000 μV/m to 231,000 μV/m at 3 meters within the VSAT band. The information in the record in this proceeding claims that some radar detector emissions exceed 100,000 μV/m at 3 meters in the VSAT band, which is consistent with our measurements. These levels are far greater than the satellite receive signal levels in the 11.7–12.2 GHz band. These levels are also greater than the levels part 15 permits for some transmitters operating in Industrial, Scientific and Medical (ISM) bands, and are over 200 times greater than the part 15 limit for spurious emissions above 960 MHz. Such levels have a high potential for causing interference to satellite operations, and the information in the record does in fact document many instances of harmful interference caused by radar detectors to satellite operations. VSATs use relatively small receive antenna dishes, on the order of one to two meters, which are less directional and less able to reject signals outside the main receive axis than larger antenna dishes. Also, VSATs are commonly used by small businesses such as stores and gas stations, so they are typically located close to the ground and in close proximity to automobiles. For these reasons, they can not tolerate the levels of interfering signals being emitted by radar detectors.

6. Part 15 requires the operator of an unlicensed device (in this case, the user of a radar detector) to cease operation in the event the device causes harmful interference, even if that device is not subject to specific emission limits. However, identifying each individual source of interference from radar detectors is not practical for a satellite operator because these devices are mobile and therefore interfere intermittently. Further, these interference sources are not under the control of the satellite operator, so in most cases it is not possible for the satellite operator to remedy the interference even if the source could be identified. Under Section 302 of the Communications Act, the Commission has authority to make reasonable regulations governing the interference potential of devices which in their operation are capable of emitting radio frequency radiation in sufficient degree to cause harmful interference to radio communications, and to require devices marketed to comply with these regulations. We conclude that the only reasonable solution to this interference situation is to require radar detectors to comply with emission limits before they are marketed.

7. We will define a radar detector as a receiver designed to signal the presence of radio signals used for determining the speed of motor vehicles because that is the type of device that has caused interference to VSATs and this definition best covers the general range of these products. We do not intend for this definition to encompass the receiver incorporated within a radar transceiver certified under the Commission's rules such as a police radar gun or an anti-collision radar because those devices have not been a source of interference to VSATs.

8. We will require radar detectors to comply with the same limit in the 11.7–12.2 GHz VSAT band that applies to other unintentional radiators operating under part 15 of the rules. This limit is 500 μV/m measured at a distance of 3 meters, and is based on the use of measurement equipment with a 1 MHz measurement bandwidth and an average detector function. As with other part 15 devices, the emission levels measured with a peak detector function may not exceed the average limit by more than 20 dB. This emission limit has a long and successful history of controlling interference to authorized services and will protect VSATs from harmful interference caused by radar detectors in virtually all cases. In those rare cases where radar detector emissions at that level cause harmful interference, the non-interference requirement of § 15.5 will continue to apply. We are applying emission limits in only the VSAT downlink band because the only complaints of interference that we have received are to VSAT receivers in the 11.7–12.2 GHz band. We expect that adopting these limits will result in manufacturers changing receiver local oscillators to frequencies outside this band, so as a practical matter only spurious emissions will fall within the VSAT downlink band. These emissions will typically be far below the emission limit we are adopting and are unlikely to result in harmful interference to VSATs.

9. As stated in part 15 of the rules, we expect manufacturers to use good engineering practice in the design of their equipment and suppress emissions as much as practicable. We will consider modifying the emission limits we are adopting for radar detectors if a need is shown for such changes, such as if interference to VSAT operations or other authorized services occurs. We are also willing to consider, in future proceedings, limiting radar detector primary oscillators to particular frequencies, should that prove necessary to avoid harmful interference.

10. Because many radar detectors being marketed today emit high level signals that can cause interference to VSATs, we conclude that the public interest is best served by requiring that all radar detectors marketed within the United States meet the new emission limits quickly. Accordingly, we are requiring that all radar detectors marketed beginning sixty days after publication of this decision and the associated rules in the **Federal Register** must comply with the new rules. This plan will provide a reasonable amount of time for manufacturers, wholesalers and retailers to be notified of the rule changes so they can cease marketing non-compliant units. Furthermore, we are requiring that radar detectors imported into the United States or manufactured in this country for use within this country comply with the new rules beginning thirty days after publication of this decision and the associated rules in the **Federal Register**. In requiring that manufacturing and importation of radar detectors meet the new requirements before the marketing cut-off date, we are providing manufacturers time to introduce compliant models before the sixty-day marketing cutoff. This will also prevent the manufacture or importation of large numbers of non-compliant devices prior to the marketing cutoff date. The new rules will apply only to devices being imported, manufactured and marketed after the specified effective dates. We are not adopting specific rules concerning devices already sold, but such devices will continue to be subject to the non-interference requirement in § 15.5 of the rules.

11. We will require that radar detectors be authorized under our certification procedure because they have been found to emit spurious RF energy at levels that can cause harmful interference to authorized radio services. The certification procedure provides a higher level of oversight of equipment compliance prior to marketing than either the Declaration of Conformity (DoC) or the verification self-approval procedures. As we noted previously, equipment with the potential to create significant interference to communication services requires a higher level of oversight than manufacturer's self-approval. In view of the fact that the new rules we are establishing for radar detectors are clear and the testing methods used to determine compliance with the rules are straightforward, we will permit Telecommunication Certification Bodies

(TCBs) to certify them. Allowing TCBs to certify radar detectors will permit manufacturers to obtain an equipment approval in an expeditious manner because manufacturers will have more than one approval body to choose from. The tests that will be required for radar detectors are field strength measurements over a single frequency band, which TCBs accredited to make radiated measurements above 1 GHz are already capable of performing. The staff of the Office of Engineering and Technology will work with TCBs to promptly address any implementation issues which may arise.

12. We recognize that requiring radar detectors to be certified within thirty days after publication of the new rules in the **Federal Register** may pose some logistical problems for manufacturers. Many radar detectors may already comply with the new emission limits and could thus be certified quickly. However, because many of these units may already be in transit from the manufacturer to wholesalers and retailers, it would be difficult for manufacturers to bring these devices into compliance with the administrative requirements for certified devices within this timeframe. Specifically, all equipment authorized under the certification procedure is required to be labeled with an FCC identification number. In addition, part 15 requires a warning label stating that the device may not cause harmful interference and must accept any interference received, and requires the user's manual to contain a statement that unauthorized changes or modifications could void the user's authority to operate the equipment. It is unlikely that manufacturers could comply with these administrative requirements within thirty days because the time needed to make changes on the assembly line and ship products would generally be greater than thirty days. We believe that the rules' intention to notify customers can be satisfied by other means without causing delays to manufacturers. We will therefore permit radar detectors manufactured or imported within 180 days of the publication of the new rules in the **Federal Register** to be labeled with the FCC identification number and part 15 warning statement on the individual equipment carton rather than on the device itself, so long as certification has been obtained for those units. In addition, we will not require the statement about unauthorized changes to be placed in the user's manual during this time period. This approach will eliminate the need for manufacturers to cease manufacturing and importing equipment to implement the new labeling requirements, and will provide a practical means to label products that comply with the technical requirements but that were produced without labels.

13. Radar detector manufacturers have offered to provide the Commission with lists of radar detector serial numbers to assist in identifying products manufactured before and after the date on which equipment authorization is required. We believe that such lists could assist us in determining whether radar detectors being marketed were legally manufactured and imported. Accordingly, we will require all parties that manufacture or import radar detectors as of the manufacturing and importation cutoff date we are adopting to supply such lists. The Office of Engineering and Technology will issue a public notice that will ask parties to supply this information once the necessary Office of Management and Budget (OMB) approval to collect this information has been obtained.

14. We disagree with comments that a Further Notice of Proposed Rule Making is needed before we can adopt emission limits for radar detectors because the *NPRM* did not propose specific regulations. Under the Administrative Procedure Act, it is not necessary for the *NPRM* to propose specific regulations. Rather, it must include either the terms or substance of the proposed rules, or a description of the subjects and issues involved. The *NPRM* clearly described the subject and issues involved, which is that we were considering adopting emission limits for radar detectors, and sought comment on the appropriate limits. The large number of comments received from both the satellite industry and the radar detector industry show that parties had adequate notice of potential rule changes, so a Further Notice of Proposed Rule Making is unnecessary.

15. We decline to adopt emission limits for other receivers operating above 960 MHz. There is not sufficient information in the record in this proceeding to justify emission limits for receivers above 960 MHz other than radar detectors. We are adopting emission limits for radar detectors because they have been found to emit high level signals that can cause interference to VSATs. No information was provided to show that similar circumstances exist with other receivers operating above 960 MHz. Therefore, we find that requiring other receivers operating above 960 MHz to comply with emission limits is not necessary at this time. This does not preclude our ability to impose such limits in the future if the need becomes apparent.

Final Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making*, Review of Part 15 and other Parts of the Commission's Rules (NPRM).[2] The Commission sought written public comments on the proposals in the Notice, including comment on the IRFA.[3] This present analysis conforms to the RFA.[4]

A. Need for, and Objectives of, the First Report and Order

17. Section 11 of the Communications Act of 1934, as amended, and Section 202(h) of the Telecommunications Act of 1996 require the Commission (1) to review biennially its regulations pertaining to telecommunications service providers and broadcast ownership; and (2) to determine whether economic competition has made those regulations no longer necessary in the public interest. The Commission is directed to modify or repeal any such regulations that it finds are no longer in the public interest.

18. As part of the biennial review for the year 2000, the Commission reviewed its regulations pertaining to telecommunications service providers and broadcast ownership and recommended a number of changes to those rules. While not specifically required by statute, the Commission also reviewed parts 2, 15 and 18 of the Commission's Rules as part of this process.[5]

19. The First Report and Order requires radar detectors, which have been currently exempt from complying with emission limits, to meet the part 15 limits in the 11.7–12.2 GHz band to avoid causing interference to satellite services.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

20. Comments on the IRFA were received from radar detector manufacturers, who state they are small entities. RADAR Members, a trade

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[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] See Notice of Proposed Rule Making and Order in ET Docket No. 01–278, 66 FR 59209 (November 27, 2001).

[3] See id.

[4] See generally 5 U.S.C. 604.

[5] See 47 CFR parts 2, 15, 18.

association, argues that the adoption of limits across a wide band of spectrum would eliminate radar detectors from the consumer market, and that some companies would be unable to survive in the face of such a regulation. It states that as an alternative, manufacturers will voluntarily reduce emission in the 11.7–12.2 GHz band where interference to satellite operations was actually reported. Cobra Electronics Corporation states that it is a small entity that deserves consideration under the Regulatory Flexibility Act. It states that redesigning its product line, especially considering the very real possibility that doing so would eliminate the market for this product, obviously would be detrimental to small businesses such as Cobra. It further states that there is evidence that the industry is already addressing the satellite interference complaints.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[9]

22. Our present action will affect some manufacturers of radio frequency equipment (RF manufacturers). The U.S. Small Business Administration (SBA) has designated a small business size standard for entities engaged in Radio and Television Broadcasting or Wireless Communications Equipment Manufacturing.[10] According to SBA, such a manufacturer must have 750 or fewer employees in order to qualify as a small business.[11] According to Census Bureau data from 1992, there were 858 such firms in the United States, and 778 had 750 or fewer employees.[12]

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. The First Report and Order requires radar detectors used on vehicles to meet the part 15 emission limits in the 11.7–12.2 GHz band to prevent interference to satellite services. It requires that radar detectors be certified to show that they comply with these requirements before they can be imported or marketed. Certification requires the manufacturer to have the equipment tested for compliance with the rules, and then file an application with the test data and information on the product with the Commission or a designated Telecommunication Certification Body (TCB). The manufacturer must wait until the application is granted before the equipment can be imported or marketed. Equipment that is certified must also be labeled with an FCC identification number and warning label stating that operation of the equipment must cease in the event it causes harmful interference to authorized radio services.

24. As a result of the rule change, some manufacturers will be required to redesign radar detectors to reduce emissions in the 11.7–12.2 GHz band. This could be accomplished by a change in the internal oscillator frequencies. Radar detector manufacturers state that 73 percent of units currently marketed can meet the emission limits in the 11.7–12.2 GHz band, and that the remainder will meet the limit by January 2003.

25. Because many radar detectors being marketed today emit high level signals that can cause interference to VSATs, the First Report and Order requires that all radar detectors marketed within the United States meet the new emission limits beginning sixty days after publication of this decision and the associated rules in the **Federal Register** must comply with the new rules. This plan will provide a reasonable amount of time for manufacturers, wholesalers and retailers to be notified of the rule changes so they can cease marketing non-compliant units. The First Report and Order also requires that radar detectors imported into the United States or manufactured within this country comply with the new rules beginning thirty days after publication of this decision and the associated rules in the **Federal Register**. This will provide manufacturers time to introduce compliant models before the sixty-day marketing cutoff. This will also avoid the manufacture or importation of large numbers of non-compliant devices prior to the marketing cutoff date. Manufacturers will be permitted to label radar detectors on the individual carton, rather than on the device itself, for a period of 180 days. In addition, manufacturers will not be required to place a statement about "unauthorized changes" in the instruction manuals until after this time period. These new rules will apply only to devices being imported, manufactured and marketed after the specified effective dates.

26. We are also requiring a one-time filing of radar detector serial numbers to aid in our enforcement of the new rules.[13]

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

27. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[14]

28. The First Report and Order requires emission limits on radar detectors, which will have an impact on small equipment manufacturers. We find that emission limits on radar detectors are necessary because manufacturers have been building them without any suppression on radiated emissions, and the radiated signals have been found to cause interference to satellite radio services. Because interference has been reported only in the 11.7–12.2 GHz satellite band, and in light of comments filed by small

[6] 5 U.S.C. 604.

[7] 5 U.S.C. 601(6).

[8] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[9] Small Business Act, 15 U.S.C. 632 (1996).

[10] See 13 CFR 121.201, North American Industrial Classification System (NAICS) code 334220.

[11] Id.

[12] See U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995). These data have been updated for year 1997, but without the small business breakout. See Summary, Economic Census, Subject Series: Manufacturing at 1–19 (issued June 2001). By 1997, the census total for firms in this category had increased to 1,096. Id.

[13] See ¶ 13, supra.

[14] *See* 5 U.S.C. 603(c).

businesses in this proceeding, we are requiring radiated emission limits in only the one band. This will minimize the impact on small manufacturers, because emission limits applied across a wide band would require significant redesign of the equipment, which would substantially increase its cost.

29. The effective dates for our actions are necessary for an orderly transition to compliance. Alternative time frames might assist small businesses to comply, yet would be inconsistent with the goal of reducing interfering equipment. Because many radar detectors may already comply with the new emission limits, the requirement to obtain certification within 30 days is not expected to have a significant impact on manufacturers. The impact on small manufacturers will be further reduced by allowing labeling to appear on the individual equipment carton rather than the device for a period of 180 days, because that will permit manufacturers to obtain certification for, and label equipment already in shipment.

30. Finally, we are requiring a one-time filing of serial numbers to aid in our enforcement efforts, and believe that this is a minimal compliance burden.

31. Report to Congress: The Commission will send a copy of the *First Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *First Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *First Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

32. Pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 USC Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304, and 307, part 15 of the Commission's Rules is amended.

33. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

34. When requested by Public Notice, all parties that manufactured or imported radar detectors as of August 28, 2002 of these rules shall supply a list of radar detector models and information on their serial numbers which permits identification of their manufacturing date to the Office of Engineering and Technology. This requirement is subject to OMB review and approval and will become effective after such approval is obtained.

List of subjects in 47 CFR Part 15

Communications equipment, Labeling, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 to read as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

2. Section 15.3 is amended by adding paragraph (ee) to read as follows:

§ 15.3 Definitions.

* * * * *

(ee) *Radar detector.* A receiver designed to signal the presence of radio signals used for determining the speed of motor vehicles. This definition does not encompass the receiver incorporated within a radar transceiver certified under the Commission's rules.

3. Section 15.37 is amended by adding paragraph (k) to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(k) Radar detectors manufactured or imported after August 28, 2002 and marketed after September 27, 2002 shall comply with the regulations specified in this part. Radar detectors manufactured or imported prior to January 27, 2003 may be labeled with the information required by §§ 2.925 and 15.19(a) of this chapter on the individual equipment carton rather than on the device, and are exempt from complying with the requirements of § 15.21.

4. Section 15.101, paragraph (a) is amended by adding a new entry to the table following the entry for "Scanning receiver" and by revising paragraph (b) to read as follows:

§ 15.101 Equipment authorization of unintentional radiators.

(a) * * *

Type of device	Equipment authorization required
. . . . .	. . .
Radar detector	Certification.
. . . . .	. . .

(b) Only those receivers that operate (tune) within the frequency range of 30–960 MHz, CB receivers and radar detectors are subject to the authorizations shown in paragraph (a) of this section. However, receivers indicated as being subject to Declaration of Conformity that are contained within a transceiver, the transmitter portion of which is subject to certification, shall be authorized under the verification procedure. Receivers operating above 960 MHz or below 30 MHz, except for radar detectors and CB receivers, are exempt from complying with the technical provisions of this part but are subject to § 15.5.

* * * * *

5. Section 15.109 is amended by adding paragraph (h) to read as follows:

§ 15.109 Radiated emission limits.

* * * * *

(h) Radar detectors shall comply with the emission limits in paragraph (a) of this section over the frequency range of 11.7–12.2 GHz.

[FR Doc. 02–19178 Filed 7–26–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 145
Monday, July 29, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–2001–10370]

RIN 2125–AE90

Commercial Vehicle Width Exclusive Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is requesting comments on two proposals. The first would increase the distance that width exclusive devices could project from the side of a commercial vehicle from three to four inches. The agency views this proposal as a first step in the process to harmonize size and weight limits where possible in accordance with the provisions of the North American Free Trade Agreement (NAFTA). The second proposal would remove recreational vehicles (RVs) from consideration as a commercial motor vehicle. When recreational vehicles (RVs) are being moved to the point of customer delivery, e.g., from a manufacturing location to a dealer, or between a dealer and a tradeshow, they are currently considered to be commercial vehicles and therefore subject to the 102-inch vehicle width limitation. When a customer takes possession of the RV, however, it becomes personal property and is no longer subject to these regulations, unless the RV is clearly being used in a commercial enterprise. This proposed rule would eliminate the RV from consideration as a commercial vehicle and the subsequent need for overwidth permit for the trip from the manufacturer to the dealer and the dealer to the customer, if add-on customer convenience devices extend beyond the regular width exclusion zone.

DATES: Comments must be received on or before September 27, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Forjan, Office of Freight Management and Operations (202) 366–6817, or Mr. Raymond W. Cuprill, Office of the Chief Counsel (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit*. Acceptable formats include: MSWord (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software, from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

This NPRM addresses two separate issues. They will each be discussed individually, as follows: (1) The increased allowance of width measurement, and (2) the removal of recreational vehicles from the definition of a commercial vehicle.

1. Increase of Width Exclusive Distance

Section 411(h) of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424, 96 Stat. 2097) gave the Secretary of Transportation (Secretary) authority to exclude from the measurement of vehicle length any safety and energy conservation devices found necessary for the safe and efficient operation of commercial motor vehicles (CMVs). Section 416(b), now 49 U.S.C. 31113(b), authorized similar exclusions when measuring vehicle width. Section 411(h) also provided that no device excluded from length measurement by the Secretary could have, by design or use, the capability to carry cargo. That authority is now codified at 49 U.S.C. 31111(d). The current regulation, 23 CFR 658.16(b)(ii)(B), limits the distance that such devices may extend from the side of a commercial vehicle to three inches.

A notice of proposed rulemaking is being issued today for comments on the potential safety and operational effects of increasing the allowable distance that non-property carrying devices may extend from the side of the vehicle, from three inches to four inches.

In October 1999, the Land Transportation Standards Subcommittee (LTSS), Working Group 2 on Vehicle Weights and Dimensions, created by the North American Free Trade Agreement (NAFTA) in 1994, issued a discussion paper on vehicle performance criteria for vehicles that might be allowed to operate in the three NAFTA countries (Canada, Mexico and the United States). The report, "Highway Safety Performance Criteria In Support of Vehicle Weight and Dimension Regulations," (a copy of which is included with this docket) contained candidate vehicle performance criteria and recommended threshold values. The definition of "overall width" proposed for standard use by the three countries as part of the discussion paper included, in part, "exclusive of devices or appurtenances at the sides of a truck, tractor, semitrailer, or trailer whose

function is related to the safe operation of the vehicle. Such devices may extend no more than 10 centimeters beyond the side of the vehicle." Using accepted conversion factors, 10 centimeters equates to 3.937 inches.

The primary objective of Working Group 2 has been, and continues to be, to seek areas within the broad range of vehicle weights and dimensions that can be harmonized among the participating countries. The FHWA, as an active participant in the activities of the LTSS and Working Group 2, is attempting to harmonize size and weight limits where possible. The exclusion of non-property carrying devices, extending up to three inches from the side of a commercial vehicle, is based on agency policy and industry practice that has evolved since the first Federal statute describing maximum vehicle width appeared in 1956. This three-inch limit itself is not statutory, and thus may be subject to administrative change by the agency.

2. Exemption of Recreational Vehicles From Commercial Vehicle Definition

When recreational vehicles (RVs) are being moved to the point of customer delivery, e.g., from a manufacturing location to a dealer, or between a dealer and a tradeshow, they are currently considered to be commercial vehicles (the vehicle itself is the merchandise being transported). Therefore, the 102-inch vehicle width limitation in 23 CFR part 658 is applicable to that movement. When a customer takes possession of the RV, it becomes personal property and is no longer subject to part 658, unless the RV is clearly being used in a commercial enterprise. Therefore, the treatment of additions to the vehicle's width limitations become a matter for State determination.

Recreation Vehicles often include additions that are attached to the sides of the unit for use when parked, or for other designed purposes. When RVs are moving, these devices either fold up or roll up against the unit frame. As long as the devices remained within the 3-inch zone, States have traditionally excluded these devices (as long as they do not carry cargo), even while the unit is in a commercial status.

An increasing number of new RVs, however, are now coming equipped with roll up awnings for use when parked. The RV maufacturers, to add additional stability and strength, are building awnings into the structure of the RVs. These awnings come with the vehicle, rather than being an aftermarket or dealer add-on. However, when rolled up in the traveling position, the roll extends up to 6 inches from the side of the unit. Customarily, the motor carrier would be required to obtain an over-width special permit for an RV moving as a commercial vehicle, if it has an appurtenance extending beyond 3 inches on each side of the vehicle. Again, once a customer takes possession for private, personal use, there is no Federal requirement that States issue over width permits. In recent years, many States have enacted legislation specifically exempting roll-up awnings from any width requirements for personal use vehicles.

In providing comments to a notice of proposed rulemaking on length and width exclusive devices published on August 18, 2000, at 65 FR 50471 (Docket No. FHWA–1997–2234), the Wisconsin DOT, the Recreational Vehicle Industry Association (RVIA), and the U.S. House of Representatives Committee on Transportation and Infrastructure, all commented that this "one-time" requirement is not in the public interest. All noted that, for the short time and distance (relative to its eventual use) these units are a commercial vehicle, they should be exempted from any permit requirements. These requirements allegedly add to the transportation (and eventually buyer) cost, and create unnecessary administrative burdens on State permitting offices already stretched thin with increased commercial needs. These commenters proposed amending the definition of "commercial vehicle" used in this part. Because such an action was beyond the scope of the length and width exclusive device rulemaking, the FHWA decided to address it in this separate NPRM.

Additionally, the Senate report that accompanied the U.S. DOT Appropriations Act for fiscal year 2002 included language encouraging the FHWA to amend its regulation to include an allowance, with reasonable safety limitations, for the commercial transport of these RVs with appurtenses. (See S. Rep. No. 107–38, at 66). Therefore the FHWA is proposing to amend those sections of the regulations in this part to exclude RVs from the requirements that a carrier obtain a special over-width permit for the limited time the vehicle is considered commercial.

The proposed changes include: (1) An amendment of the definition of commercial vehicle, and (2) the clarification of the language in § 658.15. regarding special use permits for vehicles exceeding 102 inches in width.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

We have determined that this proposed action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal and that there will not be any additional cost incurred by any affected group as a result of this proposal. Therefore, a regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. The two issues discussed in this proposed rule involve the manner in which States are to treat various vehicles. In each instance what is being proposed would reduce the regulatory requirements with which commercial vehicle drivers must comply. For these reasons, the FHWA certifies that this proposed action would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The proposal to remove RVs from the definition of commercial motor vehicle does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This proposal would simply remove a Federal requirement and return the authority to enforce various requirements to the States.

The proposal to increase the width exclusive device extension distance from 3 to 4 inches on the other hand, could preempt State law or regulation in some States. At present the agency is unable to determine the federalism implications of this proposal. Comments received on this proposal will help the agency determine the need for a federalism summary impact statement, if this proposal proceeds to a final rule. Many States simply enforce the "Federal rule" without establishing their own standard. Changing the distance from 3 to 4 inches would

change what is enforced, but would not actually change State law.

These proposals will not affect the State's ability to discharge traditional State government function.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program, Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). What is being proposed in each of the two issues of this proposed rule would reduce the regulatory requirements that commercial vehicle operators must comply with.

Executive Order 12988 (Civil Justice Reform)

This proposal meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposal under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This proposal is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

We have analyzed this proposal for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and have determined that this proposed action would not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000, and believes that the proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs in Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this proposal is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants Program—transportation, Highways and roads, Motor carrier—size and weight.

Issued on: July 23, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 23 CFR part 658 as follows:

PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATIONS_LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for part 658 continues to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; 49 CFR 1.48(b)(19) and (c)(19).

2. Amend § 658.5 by revising the term "commercial motor vehicle" to read as follows:

§ 658.5 Definitions.

* * * * *

Commercial motor vehicle. For purposes of this regulation, a motor vehicle designed or regularly used for carry freight, merchandise, or more than ten passengers, whether loaded or empty, including buses, but not including vehicles used for vanpools, or vehicles built and operated as recreational vehicles.

* * * * *

3. Revise § 658.15(c) to read as follows:

§ 658.15 Width.

* * * * *

(c) Notwithstanding the provisions of this section or any other provision of law, the following are applicable:

(1) A State may grant special use permits to motor vehicles, including manufactured housing, that exceed 102 inches in width; and

(2) A State may allow recreational vehicles with safety and/or non-cargo carrying appurtenances extending beyond four inches from the side of the vehicle to operate without a special use over-width permit.

4. Revise § 658.16(b)(2)(ii) to read as follows:

§ 658.16 Exclusions from length and width determinations.

* * * * *

(b) * * *

(2) * * *

(ii) That do not extend more than 4 inches beyond each side or the rear of the vehicle or,

* * * * *

5. Amend appendix D to part 658 by revising item number 3 to read as follows:

Appendix D to Part 658—Devices That Are Excluded From Measurement Of the Length or Width of a Commercial Motor Vehicle

* * * * *

3. Devices excluded from width determination, not to exceed 4 inches from the side of the vehicle including, but not limited to, the following:

(a) through (h) * * *

(b) Tarping systems for flatbed semitrailers or trailers described as follows:

Also excluded from length and width measurement are load tarping systems where no component part extends farther than 4 inches from sides or back of the vehicle when the vehicle is in operation. This exclusion applies to component parts of these systems including: a headboard (not intended or designed to meet the front end structure cargo restraint requirements of 49 CFR 393.106) up to 110 inches wide properly centered as part of the installation process so that neither edge extends farther than 4 inches from the structural edge of the vehicle, side rails running the length of the vehicle, rear doors if the only function of the doors is to complete a seal of the cargo and anchor the sliding walls, transition pieces or "wings" between a front-end structure designed to meet the requirements of 49 CFR 393.106 (and limited to 102-inches wide), and the movable portion of a tarping system as long as they are not attached to any other property-carrying or supporting part of the flatbed structure, and remain as an add-on piece as opposed to a single piece bulkhead structure designed to accommodate cargo restraint requirements and a tarping system;

(a) through (l) * * *

[FR Doc. 02–19029 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106359–02]

RIN 1545–BA57

Compensatory Stock Options Under Section 482

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance regarding the application of the rules of section 482 governing qualified cost sharing arrangements. These proposed regulations provide guidance regarding the treatment of stock-based compensation for purposes of the rules governing qualified cost sharing arrangements and for purposes of the comparability factors to be considered under the comparable profits method. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 28, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for November 20, 2002, must be received by October 30, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–106359–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–106359–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs*. The public hearing will be held in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Douglas Giblen, (202) 874–1490; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by September 27, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information requirements are in proposed §§ 1.482–7(d)(2)(iii)(B) and 1.482–7(j)(2)(i)(F). This information is required by the IRS to monitor compliance with the federal tax rules for determining stock-based compensation costs related to intangible development to be shared among controlled participants in qualified cost sharing arrangements. The likely respondents are taxpayers who enter into these arrangements. Responses to this collection of information are required to determine these taxpayers' proper shares of stock-based compensation costs incurred with respect to these arrangements.

Section 1.482–7(d)(2)(iii)(B) of the proposed regulations provides that controlled participants may elect an alternative method of measurement of certain stock-based compensation by clearly referring to the election in the written cost sharing agreement required under existing regulations or by amending a cost sharing agreement already in effect to refer to the election. Section 1.482–7(j)(2)(i)(F) requires controlled participants to maintain documentation necessary to establish the amount taken into account as operating expenses attributable to stock-based compensation, including the method of measurement and timing used in computing that amount, and the data, as of the date of grant, used to identify stock-based compensation related to the development of intangibles.

Estimated total annual reporting and/or recordkeeping burden: 2,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: The estimated annual burden per respondent varies from 2 hours to 7 hours, depending on individual circumstances, with an estimated average of 4 hours.

Estimated number of respondents and/or recordkeepers: 500.

Estimated frequency of responses: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control

number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 482 of the Internal Revenue Code generally provides that the Secretary may allocate gross income, deductions and credits between or among two or more taxpayers owned or controlled by the same interests in order to prevent evasion of taxes or clearly to reflect income. On July 8, 1994, Treasury and the IRS published in the **Federal Register** (59 FR 34988) final regulations (T.D. 8552, 1994–2 C.B. 93) under section 482 in areas other than cost sharing. On December 20, 1995, Treasury and the IRS published in the **Federal Register** (60 FR 65553) final cost sharing regulations (T.D. 8632, 1996–1 C.B. 85), effective for taxable years beginning on or after January 1, 1996. Amendments to T.D. 8632 were published in the **Federal Register** on May 13, 1996, at 61 FR 21955 (T.D. 8670, 1996–1 C.B. 99), and on January 3, 2001, at 66 FR 280 (T.D. 8930, 2001–1 I.R.B. 433).

The 1994 final regulations under section 482 contain general provisions at § 1.482–1 describing the arm's length standard and the best method rule. The final cost sharing regulations at § 1.482–7 generally require that controlled participants in a qualified cost sharing arrangement share intangible development costs in proportion to their shares of the reasonably anticipated benefits attributable to the development of the intangibles covered by the arrangement. These proposed regulations clarify that stock-based compensation is taken into account in determining the operating expenses treated as a controlled participant's intangible development costs for purposes of the cost sharing provisions; provide rules for measuring the cost associated with stock-based compensation; clarify that the utilization and treatment of stock-based compensation is appropriately taken into account as a comparability factor for purposes of the comparable profits method under § 1.482–5; and clarify the coordination of the cost sharing rules of § 1.482–7 with the arm's length standard as set forth in § 1.482–1.

Explanation of Provisions

Overview

The Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 2561 *et seq.* (reprinted at 1986–3 C.B. (Vol. 1) 1, 478) (the Act), amended section 482 to require that consideration for intangible property transferred in a controlled transaction be commensurate with the income attributable to the intangible. The legislative history of the Act indicated that in adding this commensurate with income standard to section 482, Congress did not intend to preclude the use of bona fide research and development cost sharing arrangements as an appropriate method of allocating income attributable to intangibles among related parties, "if and to the extent such agreements are consistent with the purpose of this provision that the income allocated among the parties reasonably reflect the actual economic activity undertaken by each. Under such a bona fide cost-sharing arrangement, the cost-sharer would be expected to bear its portion of all research and development costs * * *." H.R. Rep. No. 99–841, at II–638 (1986) (the Conference Report).

The Conference Report recommended that the IRS conduct a comprehensive study and consider whether the regulations under section 482 (issued in 1968) should be modified in any respect. In response to this directive, on October 18, 1988, Treasury and the IRS issued a study of intercompany pricing (the White Paper), published as Notice 88–123, 1988–2 C.B. 458. With respect to cost sharing arrangements, the White Paper observed that Congress intended such arrangements to produce results consistent with the purposes of the commensurate with income standard in section 482, and in particular that allocations of income among the participants reasonably reflect the participants' respective economic activity. 1988–2 C.B. at 459, 495. The White Paper further observed that Congress intended that Treasury and the IRS apply and interpret the commensurate with income standard consistently with the arm's length standard. 1988–2 C.B. at 458, 477.

Section 1.482–1 of the 1994 final regulations provides that a controlled transaction meets the arm's length standard if the results of the transaction are consistent with the results that would have been realized if uncontrolled taxpayers had engaged in the same transaction under the same circumstances. A method selected under the best method rule is used to determine whether a controlled transaction produces an arm's length result. The regulations reference §§ 1.482–2 through 1.482–6 as providing specific methods to be used in this determination.

Section 1.482–7 of the 1995 final regulations implements the commensurate with income standard in the context of cost sharing arrangements. The final cost sharing regulations require that controlled participants in a qualified cost sharing arrangement share all costs incurred that are related to the development of intangibles in proportion to their shares of the reasonably anticipated benefits attributable to that development. Section 1.482–7(d)(1) defines these intangible development costs as including operating expenses as defined in § 1.482–5(d)(3), other than depreciation or amortization, plus an arm's length rental charge determined under § 1.482–2(c) for the use of any tangible property made available to the qualified cost sharing arrangement. Section 1.482–5(d)(3) defines operating expenses, for purposes of the comparable profits method under section 482, as including all expenses not included in cost of goods sold except for interest expense, foreign and domestic income taxes, and any other expenses not related to the operation of the relevant business activity. In the context of cost sharing, the relevant business activity is the development of intangibles covered by the cost sharing arrangement.

Since the promulgation of the final cost sharing regulations in 1995, the issue has been raised whether operating expenses within the meaning of § 1.482–7(d)(1) include compensation provided by a controlled participant in the form of stock options. Related questions have been posed in this context regarding the interaction between the arm's length standard and the cost sharing regulations.

These proposed regulations amend the final regulations to clarify that stock-based compensation must be taken into account in determining operating expenses under § 1.482–7(d)(1) and to provide rules for measuring stock-based compensation costs. These proposed regulations also clarify that stock-based compensation should be taken into account in comparability determinations pursuant to the comparable profits method under § 1.482–5. Finally, the proposed regulations amend the final regulations to include express provisions to coordinate the cost sharing rules of § 1.482–7 with the arm's length standard as set forth in § 1.482–1.

Inclusion of Stock-Based Compensation in Intangible Development Costs

The proposed regulations provide that in determining a controlled participant's operating expenses within the meaning of § 1.482–7(d)(1), all compensation, including stock-based compensation, must be taken into account. The proposed regulations also provide rules for measuring the operating expenses attributable to stock-based compensation.

The definition of stock-based compensation for purposes of these proposed regulations is broad, comprising any compensation provided by a controlled participant to an employee or independent contractor in the form of equity instruments, stock options, or rights in (or determined by reference to) such instruments or options, regardless of whether the compensation ultimately is settled in the form of cash, stock, or other property. Thus, these proposed regulations are intended to reach such forms of compensation as restricted stock, nonstatutory stock options, statutory stock options (incentive stock options described in section 422(b) and options granted under an employee stock purchase plan described in section 423(b)), stock appreciation rights, and phantom stock. Statutory stock options are within the scope of the definition regardless of whether the employer is entitled to an income tax deduction with respect to those options.

The proposed regulations provide that the determination of whether stock-based compensation is related to the development of intangibles covered by the qualified cost sharing arrangement is to be made as of the date the stock-based compensation is granted. For example, controlled participants must share the costs attributable to stock-based compensation that is granted to an employee who, at the time of grant, is performing research services related to the qualified cost sharing arrangement. Treasury and the IRS believe that this rule appropriately identifies the stock-based compensation to be shared because the grant of compensation generally is the economic event most closely associated in time with the services being compensated. Because a controlled participant may choose whether to provide stock-based or cash compensation, this rule also promotes neutrality of treatment as among various forms of compensation. Finally, because the grant-date identification rule applies irrespective of the method used by the controlled participant to measure or determine the timing of inclusion of stock-based compensation in the intangible development costs to be shared, the rule ensures that the same items of stock-based compensation will be taken into account under any method, thus promoting neutrality in the choice of measurement method afforded by the proposed regulations.

In applying the grant-date identification rule in cases where a stock option is repriced or otherwise modified, the rules of section 424(h) and related regulations will be used to determine whether the grant of a new stock option has occurred.

Treasury and the IRS recognize that tax and other accounting principles permit the cost associated with stock-based compensation to be measured and taken into account as of different points in time and under various methodologies for different purposes. For example, for general income tax purposes, the amount of compensation taxed to an employee and deductible by an employer upon exercise of a stock option not governed by sections 421–424 (commonly referred to as a nonstatutory stock option) generally is measured by the "spread" between the option price and the fair market value of the underlying stock at the date of exercise. *See* §§ 83(a), 83(h), 1.83–1(a)(1), 1.83–6(a)(1).

For various other tax purposes, however, the IRS has adopted modified versions of economic pricing models, such as the Black-Scholes model, for valuing stock options at specific points in time prior to exercise. See Rev. Proc. 98–34, 1998–1 C.B. 983 (estate and gift tax valuation); Rev. Proc. 2002–13, 2002–8 I.R.B. 549, as modified by Rev. Proc. 2002–45, 2002–27 I.R.B. 40 (measurement of stock-option-based golden parachute payments under sections 280G and 4999). Pricing models also have been adopted in the context of financial accounting. The Financial Accounting Standards Board (FASB) refers to pricing models for measurement of the stock-based compensation expense that a company is required to report at "fair value," either as a charge to income or, at the company's option, in a pro forma footnote disclosure. *See* FASB Statement 123, Accounting for Stock-Based Compensation (October 1995).

Generally accepted pricing models can be applied at the date of grant to estimate the economic cost of a stock option to the issuer. General support for the use of economic measures of cost in the transfer pricing context may be found in the legislative history of the commensurate with income standard and in the White Paper, which state that to be consistent with the commensurate with income standard, cost sharing arrangements must "reflect the actual economic activity" of participants. Conference Report at II–638 and White Paper at 1988–2 C.B. 495.

In establishing rules for measurement of the operating expenses attributable to stock-based compensation for cost sharing purposes, Treasury and the IRS believe that due regard must be given to the emphasis placed on economic factors in the legislative history of the commensurate with income standard and in the White Paper. Treasury and the IRS also recognize the importance of providing rules that are administrable.

The proposed regulations prescribe a general rule of measurement based primarily on the amount and timing of the income tax deduction associated with stock-based compensation, while in certain cases permitting controlled participants in a qualified cost sharing arrangement to elect a rule of measurement with respect to stock options based on the amount and timing of the fair value of the option that is required to be computed for purposes of financial accounting in accordance with United States generally accepted accounting principles (U.S. GAAP).

To provide for uniform measurement of the cost associated with both statutory and nonstatutory stock options, the general deduction-based measurement rule is applied as if section 421 did not apply upon the exercise of a statutory stock option. Thus, although section 421 generally disallows compensation deductions with respect to the exercise of statutory stock options except in the case of certain disqualifying dispositions, the proposed regulations treat the exercise of a statutory stock option as giving rise to a deduction for purposes of the deduction-based measurement rule. Consequently, the operating expense with respect to all stock options, whether statutory or nonstatutory, generally will be measured by the "spread" and taken into account as of the date the stock option is exercised.

To place a foreign controlled participant on an equal footing with a United States controlled participant, an amount is treated as deductible by a foreign controlled participant, solely for purposes of the general deduction-based measurement rule, as if the amount were paid or incurred by a United States taxpayer, even if the foreign controlled participant is not subject to United States taxing jurisdiction and so would not otherwise be entitled to a deduction under United States income tax law.

Solely for purposes of the general deduction-based measurement rule, any item of stock-based compensation that is eligible to be exercised and that remains

outstanding on the expiration or termination of a qualified cost sharing arrangement will be treated as being exercised immediately before the expiration or termination, provided that the fair market value of the underlying stock at that time exceeds the price at which the stock-based compensation is exercisable. The result of this treatment is that the excess of the fair market value of the underlying stock over the price at which the stock-based compensation is exercisable is taken into account as an operating expense for the taxable year in which the qualified cost sharing arrangement expires or terminates. This special rule would apply, for example, in the case of a currently exercisable statutory stock option or a substantially vested nonstatutory stock option where the fair market value of the underlying stock exceeds the option price at the time the qualified cost sharing arrangement is terminated. The rule ensures that controlled participants take into account for cost sharing purposes all stock-based compensation that is attributable to the development of intangibles and has become exercisable during the term of the cost sharing arrangement. In cases where significant amounts of stock-based compensation have been granted, but are not exercisable at the time of the termination of the arrangement, the IRS anticipates that factual issues regarding the termination of the qualified cost sharing arrangement will arise if the arrangement is reinstated.

A similar rule applies if, during the term of the qualified cost sharing arrangement, a newly granted stock option is determined to result from a repricing or other modification of another stock option and is not related to the development of intangibles at the time of the modification. In this situation, an amount is taken into account for purposes of the general deduction-based measurement rule as if the original stock option had been exercised immediately before the modification.

The proposed regulations permit an elective method of measurement and timing with respect to options on publicly traded stock of companies subject to financial reporting under U.S. GAAP, provided that the stock is traded on a United States securities market.

Under the election, the amount of the operating expense associated with compensatory stock options is their "fair value," generally measured by reference to economic pricing models as of the date of grant, as reflected either as a charge against income or as a footnote disclosure in the company's audited financial statements, in compliance with current U.S. GAAP. Where the election is made with respect to stock in a company that does not take stock-based compensation expense as a charge against income for financial accounting purposes but rather chooses, as permitted by current U.S. GAAP (for example, FASB Statement 123), to disclose such compensation in a footnote to the financial statements, stock-based compensation is taken into account in the same amount, and as of the same time, as the pro forma fair value figures reflected in the footnote.

The election to measure the operating expense associated with compensatory stock options in accordance with financial accounting rules must be clearly referenced in the written cost sharing agreement required under § 1.482–7(b)(4) and must bind all controlled participants. A transition rule permits controlled participants to amend pre-existing cost sharing agreements not later than the latest due date (without regard to extensions) for an income tax return of a controlled participant for the first taxable year beginning after the effective date of final regulations incorporating this rule.

The proposed regulations contain consistency rules to ensure that all controlled participants in a qualified cost sharing arrangement normally will use the same method of measurement for all options on publicly traded stock with respect to that arrangement. Once a method of measurement has been adopted with respect to stock options granted in a taxable year following the effective date of the proposed regulations, the method of measurement may not be changed for those stock options. With respect to subsequently granted stock options to which the transition rule does not apply, the proposed regulations provide that a method of measurement different from that adopted following the effective date of the proposed regulations may be adopted only with the consent of the Commissioner.

To ensure that taxpayers maintain documentation supporting all amounts taken into account as operating expenses attributable to stock-based compensation, these proposed regulations add to the documentation requirements of § 1.482–7(j)(2)(i) an item specifically relating to stock-based compensation.

Treatment of Stock-Based Compensation Under Other Provisions

The treatment of stock-based compensation as a cost or operating expense for purposes of the transfer pricing of services and for purposes of applying the comparable profits method will be considered by Treasury and the IRS in a separate regulation project. Accordingly, these regulations do not propose amendments to the definitions of cost or operating expense in § 1.482–2(b) or § 1.482–5(d)(3). However, these proposed regulations amend § 1.482–5(c)(2)(iv) to clarify that in applying the comparable profits method, material differences among the tested party and uncontrolled comparables with respect to the utilization or treatment of stock-based compensation are an appropriate basis for comparability adjustments.

Coordination of Cost Sharing With the Arm's Length Standard

These proposed regulations add express provisions coordinating the cost sharing rules of § 1.482–7 with the arm's length standard as set forth in § 1.482–1. New § 1.482–7(a)(3) clarifies that in order for a qualified cost sharing arrangement to produce results consistent with an arm's length result within the meaning of § 1.482–1(b)(1), all requirements of § 1.482–7 must be met, including the requirement that each controlled participant's share of intangible development costs equal its share of reasonably anticipated benefits attributable to the development of intangibles. The proposed regulations also make amendments to § 1.482–1 to clarify that § 1.482–7 provides the specific method to be used to evaluate whether a qualified cost sharing arrangement produces results consistent with an arm's length result, and to clarify that under the best method rule, the provisions of § 1.482–7 set forth the applicable method with respect to qualified cost sharing arrangements.

Through these new provisions, Treasury and the IRS intend to clarify that all of the specific rules necessary to the determination of costs, reasonably anticipated benefits and other aspects of qualified cost sharing arrangements are either contained or cross-referenced within § 1.482–7. Thus, for example, regarding buy-in payments with respect to pre-existing intangibles made available to qualified cost sharing arrangements, §§ 1.482–7(a)(2) and 1.482–7(g) cross-reference various other sections of the regulations under section 482. For the determination of reasonably anticipated benefits, § 1.482–7(f)(3) expressly requires that certain comparability factors described in § 1.482–1(c)(2)(ii) under the best method rule be considered. With respect to identification of the costs to be shared, the rules are contained within § 1.482–7(d)(1), which refers to "all" intangible development costs and cross-references the definition of operating expenses in § 1.482–5(d)(3) and the provisions of

§ 1.482–2(c) governing determination of arm's length rental charges for tangible property. The § 1.482–7(d)(1) definition of intangible development costs is supplemented by the provisions of § 1.482–7(c)(2), which cross-references the provisions of § 1.482–4(f)(3)(iii) to determine arm's length consideration for research assistance performed by a controlled taxpayer that is not a controlled participant.

Proposed Effective Date

These regulations are proposed to apply to stock-based compensation granted in taxable years beginning on or after the date these regulations are published as a Treasury Decision promulgating final regulations in the **Federal Register**. Notwithstanding this prospective effective date, Treasury and the IRS intend that taxpayers may rely on these proposed regulations until the effective date of the final regulations. No inference is intended with respect to the treatment of stock-based compensation granted in taxable years beginning before the effective date of the final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few small entities are expected to enter into qualified cost sharing arrangements involving stock-based compensation, and that for those who do, the burdens imposed under §§ 1.482–7(d)(2)(iii)(B) and 1.482–7(j)(2)(i)(F) will be minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Treasury and the IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 21, 2002, at 10 a.m., in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 30, 2002. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Douglas Giblen of the Office of Associate Chief Counsel (International). However, other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.482–1, 1.482–5 and 1.482–7 also issued under 26 U.S.C. 482. * * *

Section 1.482–0 is amended by:

1. Redesignating the entry for § 1.482–7(a)(3) as the caption for § 1.482–7(a)(4).

2. Adding a new entry for § 1.482–7(a)(3).

3. Redesignating the entry for § 1.482–7(d)(2) as the caption for § 1.482–7(d)(3).

4. Adding new entries for § 1.482–7(d)(2).

The additions and revisions read as follows:

§ 1.482–0 Outline of regulations under section 482.

* * * * *

§ 1.482–7 Sharing of costs.

(a) In general.

* * * * *

(3) Coordination with § 1.482–1.

(4) Cross references.

* * * * *

(d) Costs.

* * * * *

(2) Stock-based compensation.

(i) In general.

(ii) Identification of stock-based compensation related to intangible development.

(iii) Measurement and timing of stock-based compensation expense.

(A) In general.

(*1*) Transfers to which section 421 applies.

(*2*) Deductions of foreign controlled participants.

(*3*) Modification of stock option.

(*4*) Expiration or termination of qualified cost sharing arrangement.

(B) Election with respect to options on publicly traded stock.

(C) Consistency.

(3) Examples.

* * * * *

Section 1.482–1 is amended by:

1. Revising the sixth sentence of paragraph (a)(1).

2. Adding a sentence following the sixth sentence of paragraph (a)(1).

3. Adding a sentence at the end of paragraph (b)(2)(i).

4. Adding a sentence at the end of paragraph (c)(1).

5. Adding paragraph (j)(5).

The additions and revisions read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

(a) * * *

(1) * * * Section 1.482–7T sets forth the cost sharing provisions applicable to taxable years beginning on or after October 6, 1994, and before January 1, 1996. Section 1.482–7 sets forth the cost sharing provisions applicable to taxable years beginning on or after January 1, 1996. * * *

* * * * *

(b) * * *

(2) * * *

(i) * * * Section 1.482–7 provides the specific method to be used to evaluate whether a qualified cost sharing arrangement produces results consistent with an arm's length result.

* * * * *

(c) * * *

(1) * * * See § 1.482–7 for the applicable method in the case of a qualified cost sharing arrangement.

* * * * *

(j) * * *

(5) The last sentences of paragraphs (b)(2)(i) and (c)(1) of this section and of paragraph (c)(2)(iv) of § 1.482–5 are effective for taxable years beginning on or after the date of publication of the Treasury Decision incorporating those sentences into final regulations in the **Federal Register**.

Section 1.482–5 is amended by adding a sentence to paragraph (c)(2)(iv) to read as follows:

§ 1.482–5 Comparable profits method.

* * * * *

(c) * * *

(2) * * *

(iv) * * * As another example, it may be appropriate to adjust the operating profit of a party to account for material differences in the utilization of or accounting for stock-based compensation (as defined by § 1.482–7(d)(2)(i)) among the tested party and comparable parties.

* * * * *

Section 1.482–7 is amended by:

1. Redesignating paragraph (a)(3) as paragraph (a)(4).

2. Adding paragraph (a)(3).

3. Redesignating paragraph (d)(2) as paragraph (d)(3).

4. Adding paragraph (d)(2).

5. Removing the word "and" at the end of paragraph (j)(2)(i)(D).

6. Removing the period and adding a semicolon and the word "and" at the end of paragraph (j)(2)(i)(E).

7. Adding paragraph (j)(2)(i)(F).

8. Revising paragraph (k).

The additions and revisions read as follows:

§ 1.482–7 Sharing of costs.

(a) * * *

(3) *Coordination with § 1.482–1.* A qualified cost sharing arrangement produces results that are consistent with an arm's length result within the meaning of § 1.482–1(b)(1) if, and only if, each controlled participant's share of the costs (as determined under paragraph (d) of this section) of intangible development under the qualified cost sharing arrangement equals its share of reasonably anticipated benefits attributable to such development (as required by paragraph (a)(2) of this section) and all other requirements of this section are satisfied.

(4) Cross references. * * *

* * * * *

(d) * * *

(2) *Stock-based compensation.*—(i) *In general.* For purposes of this section, a controlled participant's operating expenses include all costs attributable to compensation, including stock-based compensation. As used in this section, the term *stock-based compensation* means any compensation provided by a controlled participant to an employee or independent contractor in the form of equity instruments, options to acquire stock (stock options), or rights with respect to (or determined by reference to) equity instruments or stock options, including but not limited to property to which section 83 applies and stock options to which section 421 applies, regardless of whether ultimately settled in the form of cash, stock, or other property.

(ii) *Identification of stock-based compensation related to intangible development.* The determination of whether stock-based compensation is related to the intangible development area within the meaning of paragraph (d)(1) of this section is made as of the date that the stock-based compensation is granted. Accordingly, all stock-based compensation that is granted during the term of the qualified cost sharing arrangement and is related at date of grant to the development of intangibles covered by the arrangement is included as an intangible development cost under paragraph (d)(1) of this section. In the case of a repricing or other modification of a stock option, the determination of whether the repricing or other modification constitutes the grant of a new stock option for purposes of this paragraph (d)(2)(ii) will be made in accordance with the rules of section 424(h) and related regulations.

(iii) *Measurement and timing of stock-based compensation expense.*—(A) *In general.* Except as otherwise provided in this paragraph (d)(2)(iii), the operating expense attributable to stock-based compensation is equal to the amount allowable to the controlled participant as a deduction for federal income tax purposes with respect to that stock-based compensation (for example, under section 83(h)) and is taken into account as an operating expense under this section for the taxable year for which the deduction is allowable.

(*1*) *Transfers to which section 421 applies.* Solely for purposes of this paragraph (d)(2)(iii)(A), section 421 does not apply to the transfer of stock pursuant to the exercise of an option that meets the requirements of section 422(a) or 423(a).

(*2*) *Deductions of foreign controlled participants.* Solely for purposes of this paragraph (d)(2)(iii)(A), an amount is treated as deductible by a foreign controlled participant otherwise not entitled to a deduction under United States income tax law as if the amount were paid or incurred by a United States taxpayer.

(*3*) *Modification of stock option.* Solely for purposes of this paragraph (d)(2)(iii)(A), if the repricing or other modification of a stock option is determined, under paragraph (d)(2)(ii) of this section, to constitute the grant of a new stock option not related to the development of intangibles, the stock option that is repriced or otherwise modified will be treated as being exercised immediately before the modification, provided that the stock option is then substantially vested within the meaning of § 1.83–3(b) (or, in the case of stock options to which section 421 applies, exercisable) and the fair market value of the underlying stock then exceeds the price at which the stock option is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(2)(iii)(A)) to the controlled participant upon exercise of the stock option immediately before the modification must be taken into account as an operating expense as of the date of the modification.

(*4*) *Expiration or termination of qualified cost sharing arrangement.* Solely for purposes of this paragraph (d)(2)(iii)(A), if an item of stock-based compensation related to the development of intangibles is not exercised during the term of a qualified cost sharing arrangement, that item of stock-based compensation will be treated as being exercised immediately before the expiration or termination of the qualified cost sharing arrangement, provided that the stock-based compensation is then substantially vested within the meaning of § 1.83–3(b) (or, in the case of stock options to which section 421 applies, exercisable) and the fair market value of the underlying stock then exceeds the price at which the stock-based compensation is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(2)(iii)(A)) to the controlled participant upon exercise of the stock-based compensation must be taken into account as an operating expense as of the date of the expiration or termination of the qualified cost sharing arrangement.

(B) *Election with respect to options on publicly traded stock.* With respect to stock-based compensation in the form of options on publicly traded stock, the controlled participants in a qualified cost sharing arrangement may elect to take into account all operating expenses attributable to those stock options in the same amount, and as of the same time, as the fair value of the stock options reflected as a charge against income in audited financial statements or

disclosed in footnotes to such financial statements, prepared in accordance with United States generally accepted accounting principles by or on behalf of the company issuing the publicly traded stock. As used in this section, the term *publicly traded stock* means stock that is regularly traded on an established United States securities market and is issued by a company whose financial statements are prepared in accordance with United States generally accepted accounting principles for the taxable year. The election described in this paragraph (d)(2)(iii)(B) is made by an explicit reference to the election in the written cost sharing agreement required by paragraph (b)(4) of this section or in a written amendment to the cost sharing agreement entered into with the consent of the Commissioner pursuant to paragraph (d)(2)(iii)(C) of this section. In the case of a qualified cost sharing arrangement in existence on the effective date of this paragraph (d)(2)(iii)(B), the election must be made by written amendment to the cost sharing agreement not later than the latest due date (without regard to extensions) of a federal income tax return of any controlled participant for the first taxable year beginning after the effective date of this paragraph, and the consent of the Commissioner is not required.

(C) *Consistency.* Generally, all controlled participants in a qualified cost sharing arrangement taking options on publicly traded stock into account under paragraph (d)(2)(iii)(A) or (d)(2)(iii)(B) of this section must use that same method of measurement and timing for all options on publicly traded stock with respect to that qualified cost sharing arrangement. Controlled participants may change their method only with the consent of the Commissioner and only with respect to stock options granted during taxable years subsequent to the taxable year in which the Commissioner's consent is obtained. All controlled participants in the qualified cost sharing arrangement must join in requests for the Commissioner's consent under this paragraph. Thus, for example, if the controlled participants make the election described in paragraph (d)(2)(iii)(B) of this section upon the formation of the qualified cost sharing arrangement, the election may be revoked only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained. Similarly, if controlled participants already have granted stock options that have been or will be taken into account under the general rule of paragraph (d)(2)(iii)(A) of this section, then except in cases specified in the last sentence of paragraph (d)(2)(iii)(B) of this section, the controlled participants may make the election described in paragraph (d)(2)(iii)(B) of this section only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained.

(3) *Examples.* * * *

* * * * *

(j) * * *

(2) * * *

(i) * * *

(F) The amount taken into account as operating expenses attributable to stock-based compensation, including the method of measurement and timing used with respect to that amount as well as the data, as of date of grant, used to identify stock-based compensation related to the development of intangibles covered by the qualified cost sharing arrangement.

* * * * *

(k) *Effective date.* This section is generally effective for taxable years beginning on or after January 1, 1996. However, paragraphs (a)(3), (d)(2) and (j)(2)(i)(F) of this section are effective for taxable years beginning on or after the date of publication of the Treasury Decision adopting those rules as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–19126 Filed 7–26–02; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 67, No. 145
Monday, July 29, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant, and Fetal Nutrition; Notice of Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

Date and Time: September 4–6, 2002, 9 a.m.–5 p.m.

Place: Food and Nutrition Service, 3101 Park Center Drive, Conference Room 204–C, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: The Council will continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP). The agenda items will include a discussion of general program issues.

Status: Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the contact person named below, before or after the meeting.

Contact Person for Additional Information: Persons wishing additional information about this meeting should contact Jackie Rodriguez, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302. Telephone: (703) 305–2747.

Dated: July 12, 2002.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 02–19076 Filed 7–26–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section 4 of the Nevada State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Nevada NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Nevada that changes must be made in the NRCS State Technical Guide specifically in practice standard 590 Nutrient Management, to account for state specific requirements and improved technology. This practice applies all lands were plant nutrients and soil amendments are applied and is used in systems that managed the amount, source(s), placement, form and timing of application of nutrients and soil amendments.

DATES: Comments will be received for a period of 30 days following the publication date of this notice.

FOR FURTHER INFORMATION CONTACT: Nicholas Pearson, State Conservationist, Natural Resources Conservation Service, 5301 Longley Lane, Bldg. F, Suite 201, Reno, Nevada 89511–1805; phone (775) 784–5863; or fax (775) 784–5939.

SUPPLEMENTARY INFORMATION: If you would like to review the practice standard mentioned above, contact Nicholas Pearson at the above address or phone number or William Daily or Peggy Hughes at the above address or phone (775)784–5318 or visit our Web site at *www.nv.nrcs.usda.gov*.

For the next 30 days, the NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made to subject standard.

Dated: July 9, 2002.

Richard Vigil,

Deputy State Conservationist, Nevada.

[FR Doc. 02–19108 Filed 7–26–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Assistance Center Internet Website Form; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 27, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at MClayton@doc.gov.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Jason Sproule, U.S. Department of Commerce, Newport Beach U.S. Export Assistance Center, 3300 Irvine Avenue, Ste-305, Newport Beach, CA 92660; Phone number: (949) 660–1668, and fax number: (949) 660–8039.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Newport Beach U.S. Export Assistant Center, which is a combined effort of the U.S. Department of Commerce, Export-Import Bank, and Small Business Administration provides a comprehensive array of export counseling and trade finance services to small and medium-sized U.S. exporting firms. It proposes the extension of the Office of Management and Budget's authorization for this information collection form to continue the usefulness of its interactive website In

addition, this generic form will be used in its entirety or with minor modifications by all U.S. Export Assistance Centers and the Office of Domestic Operations. The form will ask U.S. exporting firm respondents to provide general background information and identify which service(s) they are interested in.

II. Method of Collection

The form is submitted via Internet, telephone, fax, or e-mail.

III. Data

OMB Number: 0625–0237.

Form Number: Not applicable.

Type of Review: Regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5,750.

Estimated Time Per Response: 5–20 minutes.

Estimated Total Annual Burden Hours: 667 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $40,020.00 ($23,345.00 for respondents and $16,675.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 23, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–19028 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils from Germany: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany (64 FR 40557 (July 27, 1999)). On June 12, 2002, ThyssenKrupp Nirosta GmbH, formerly Krupp Thyssen Nirosta GmbH, informed the Department of its corporate name change effective December 19, 2001, and requested that the Department initiate and conduct an expedited changed circumstances review. Based on information provided in its June 12, 2002 letter, we preliminarily determine that ThyssenKrupp Nirosta GmbH is the successor firm to Krupp Thyssen Nirosta GmbH.[1]

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 29, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On July 27, 1999, the Department published the antidumping duty order on stainless steel sheet and strip in coils from Germany. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 40557 (July 27, 1999). In a June 12, 2002 letter to the Department, ThyssenKrupp Nirosta GmbH requested that the Department initiate and conduct an expedited changed circumstances administrative review pursuant to section 751(b) of the Tariff Act to determine whether it is the successor-in-interest to Krupp Thyssen Nirosta GmbH for purposes of the antidumping duty order on stainless steel sheet and strip in coils from Germany. The company also asked the Department to issue preliminary results concurrently with the notice of initiation, pursuant to 19 CFR 351.221(c)(3)(ii). In its request, ThyssenKrupp Nirosta GmbH, formerly Krupp Thyssen Nirosta GmbH, notified the Department that effective December 19, 2001, its corporate name had changed to ThyssenKrupp Nirosta GmbH, and despite this change in corporate name, the management, production facilities, supplier relationships, and customer base are identical to those of the former Krupp Thyssen Nirosta GmbH. Citing the Department's determination in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Notice of Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 66 FR 67513 (December 31, 2001) (*S4 from Korea Changed Circumstances Review*), ThyssenKrupp Nirosta GmbH claimed the Department should determine that it is the successor-in-interest to Krupp Thyssen Nirosta GmbH.

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or

[1] In addition to ThyssenKrupp Nirosta GmbH the following companies involved in the production, importation, and U.S. sale of subject merchandise have changed their corporate names: Krupp Thyssen Nirosta North America, Inc. to ThyssenKrupp Nirosta North America, Inc.; Krupp VDM GmbH to ThyssenKrupp VDM GmbH; and Krupp VDM Technologies Corporation to ThyssenKrupp VDM USA, Inc.

otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated,*etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy, S.A.

stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[6]

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

In accordance with section 751(b) of the Tariff Act, the Department is initiating a changed circumstances administrative review to determine whether ThyssenKrupp Nirosta GmbH is the successor company to Krupp Thyssen Nirosta GmbH. In making such a determination, the Department examines several factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) supplier relationships, and (4) customer base. *See, e.g., S4 from Korea Changed Circumstances Review*, 66 FR 67513, 67515 and *Brass Sheet and Strip from Canada; Final Results of Changed Circumstances Review*, 57 FR 20460, 20461 (May 13, 1992). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of the predecessor. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944, 6946 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the new company as the successor-in-interest to the predecessor.

We have examined the information provided by ThyssenKrupp Nirosta GmbH in its June 12, 2002 letter and preliminarily determine that ThyssenKrupp Nirosta GmbH has established a *prima facie* case that it is the successor-in-interest to Krupp Thyssen Nirosta GmbH. In addition, we preliminarily determine ThyssenKrupp Nirosta North America, Inc., ThyssenKrupp VDM GmbH, and ThyssenKrupp VDM USA, Inc. are successors-in-interest to Krupp Thyssen Nirosta North America, Inc., Krupp VDM GmbH, and Krupp VDM Technologies Corp., respectively. ThyssenKrupp Nirosta GmbH has provided sufficient documentation to support our preliminary finding. Exhibits 8–A of ThyssenKrupp Nirosta GmbH's letter of June 12, 2002 illustrates that the management and supervisory Board of ThyssenKrupp Nirosta GmbH is identical to the management and supervisory Board of Krupp Thyssen Nirosta GmbH after the December 19, 2001 name change. It lists Jurgen H. Fechter as the chairman of the management board and Dr. Helmut Hadrys as the chairman of the supervisory board for both Krupp Thyssen Nirosta GmbH and ThyssenKrupp Nirosta GmbH. Exhibit 8–B illustrates the Board of Directors for Krupp Thyssen Nirosta North America, Inc. is identical to ThyssenKrupp Nirosta North America, Inc. *See* proprietary version of Exhibit 8–B of ThyssenKrupp Nirosta GmbH's June12, 2002 submission. Exhibit 8–C lists Rolf-Dieter Grosskopf as chairman of the management board and Dr. Helmut Hadrys the chairman of the supervisory board for Krupp VDM GmbH and ThyssenKrupp VDM GmbH. The board membership for Krupp VDM Technologies Corp. is identical to ThyssenKrupp VDM USA, Inc. as listed in Exhibit 8–D. Exhibit 7 of ThyssenKrupp Nirosta GmbH's June 12, 2002 letter demonstrates there has been no change in the ownership. As determined in the original investigation of stainless steel sheet and strip in coils from Germany, the former Krupp Thyssen Nirosta GmbH was a privately-held company; ThyssenKrupp Nirosta GmbH is also a privately held company with an ownership structure identical to that found in the most recently-completed administrative review of stainless steel sheet and strip in coils from Germany. In addition to ThyssenKrupp Nirosta GmbH, we preliminarily find ThyssenKrupp Nirosta North America, Inc., ThyssenKrupp VDM GmbH, and ThyssenKrupp VDM USA, Inc. are also privately held companies with an ownership structure identical to the ownership structure found in the most recently-completed administrative review of Krupp Thyssen Nirosta North America, Inc., Krupp VDM GmbH, Krupp VDM Technologies Corp., respectively. Exhibit 10–A of the June 12, 2002 submission contains an affidavit from Dorothea Kettendorf, a solicitor in the legal department of ThyssenKrupp Steel A.G., certifying that i) the corporate name change was pursuant to a directive issued by ThyssenKrupp A.G.; ii) the shareholders of Krupp Thyssen Nirosta GmbH and Krupp VDM GmbH approved the changes in the companies' respective corporate names; and iii) the changes have been registered with the relevant government authorities in Germany. She also states ThyssenKrupp Nirosta GmbH and ThyssenKrupp VDM GmbH did not undergo any material changes in operations resulting from the corporate name changes. Exhibit 10–B of the June 12, 2002 submission contains an affidavit from Erhard Meier, the treasurer of ThyssenKrupp Nirosta North America, Inc., stating effective December 27, 2001 Krupp Thyssen Nirosta North America, Inc. officially changed its corporate name to ThyssenKrupp Nirosta North America, Inc. Mr. Meier certified the company underwent a name change and it has not affected the ownership, management, corporate structure, production facility, production process, sales operation, customer base, or supplier base as a result of the name change. Exhibit 10–C of the June 12, 2002 submission contains an affidavit from Vincent D. Coppolecchia, President of ThyssenKrupp VDM USA, Inc., stating effective May 23, 2002 Krupp VDM Technologies Corp. officially changed its corporate name to ThyssenKrupp VDM USA, Inc. Mr. Coppolecchia certified the company underwent a name change and it has not affected the ownership, management, corporate structure, production facility, production process, sales operation,

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

customer base, or supplier base as a result of the name change. Finally, ThyssenKrupp Nirosta GmbH, ThyssenKrupp Nirosta North America, Inc., ThyssenKrupp VDM GmbH, and ThyssenKrupp VDM USA, Inc., have provided sufficient documentation of the name change. *See, e.g.*, Exhibits 3 through 6 of the June 12, 2002 submission (notarized document that at the general meeting of the company it agreed to change the name of the company, and certificate of amendment to the certificate of incorporation). Therefore, we preliminarily determine that ThyssenKrupp Nirosta GmbH, ThyssenKrupp Nirosta North America, Inc., ThyssenKrupp VDM GmbH, and ThyssenKrupp VDM USA, Inc., have maintained the same management, production facilities, supplier relationships, and customer bases as did Krupp Thyssen Nirosta GmbH, Krupp Thyssen Nirosta North America, Inc., Krupp VDM GmbH, Krupp VDM Technologies Corp., respectively. Based upon the foregoing, we preliminarily determine that ThyssenKrupp Nirosta GmbH, ThyssenKrupp Nirosta North America, Inc., ThyssenKrupp VDM GmbH, and ThyssenKrupp VDM USA, Inc. are the successors-in-interest to Krupp Thyssen Nirosta GmbH, Krupp Thyssen Nirosta North America, Inc., Krupp VDM GmbH, Krupp VDM Technologies Corp., respectively, and we find it appropriate to issue the preliminary results in combination with the notice of initiation in accordance with 19 CFR 351.221(c)(3)(ii). If there are no changes in the final results of the changed circumstances review, ThyssenKrupp Nirosta GmbH and ThyssenKrupp VDM GmbH will retain the antidumping duty cash deposit rate assigned to Krupp Thyssen Nirosta GmbH and Krupp VDM GmbH in the most recent administrative review of the subject merchandise.

Public Comment

Pursuant to 19 CFR 351.310, any interested party may request a hearing within 10 days of publication of this notice. Case briefs and/or written comments from interested parties may be submitted no later than 21 days after the date of publication of this notice. Rebuttal briefs and rebuttals comments, limited to the issues raised in those case briefs or comments, may be filed no later than 28 days after the publication of this notice. All written comments must be submitted and served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Any hearing, if requested, will be held no later than 30 days after the date of publication of this notice, or the first working day thereafter. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish in the **Federal Register** a notice of final results of this changed circumstances antidumping duty administrative review, including the results of its analysis of any issues raised in any written comments.

During the course of this changed circumstances review, we will not change any cash deposit instructions on the merchandise subject to this review, unless a change is determined to be warranted pursuant to the final results of this review.

We are issuing and publishing this determination and notice in accordance with sections 751(b) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(c)(3) and 19 CFR 351.216.

Dated: July 16, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19110 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Program and National Estuarine Research Reserve

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Delaware National Estuarine Research Reserve and the Delaware National Estuarine Research Reserve and the Delaware Coastal Management Program. Since the Coastal Management Program and the National Estuarine Research Reserve are administered by the same office, they are being evaluated together.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923, subpart L. The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 921, subpart E and part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as party of the site visit.

Notice is hereby given of the dates of the site visit for the listed evaluations, and the date, local time, and location of the public meeting during the site visit.

The Delaware Coastal Management Program and National Estuarine Research Reserve evaluation site visit will be held September 16–20, 2002. One public meeting will be held during the week. The public meeting will be on Tuesday, September 17, 2002, from 6 p.m. to 8 p.m., in the Delaware Department of Natural Resources and Environmental Control Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware 19901.

Copies of the state's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Douglas Brown, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring, Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Douglas Brown, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver spring, Maryland 20910, (301) 713–3155, Extension 215.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 24, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–19116 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072202A]

Receipt of an Application for an Incidental Take Permit (1398)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit (Permit) from the North Carolina Division of Marine Fisheries (NCDMF) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, NCDMF's application includes a conservation plan designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile sea turtles associated with otherwise lawful commercial fall gill net fisheries for flounder operating in Pamlico Sound, NC. The duration of the proposed Permit is for 3 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on this document. All comments received will become part of the public record and will be available for review.

DATES: Written comments from interested parties on the Permit application and Plan must be received at the appropriate address or fax number (see *ADDRESSES*) no later than 5 p.m. Eastern daylight time on August 28, 2002.

ADDRESSES: Written comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. The application is available for download and review at http://www.nmfs.noaa.gov/prot_res/PR3 / Permits / ESA Permit.html.. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: David Bernhart (ph. 727– 570– 5312, fax 727– 570– 5517, e-mail David.Bernhart @ noaa.gov). Comments received will also be available for public inspection, by appointment, during normal business hours by calling 301– 713–1401.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in this Notice

The following species are included in the conservation plan and Permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles.

Background

NMFS issued Permt ı1259 to NCDMF (65 FR 65,840, November 2, 2000) and Permit ı1348 (66 FR 51,023, October 5, 2001) for managing the sea turtle interactions in certain factions of the 2000 and 2001 commercial fall gill net fisheries for flounder in the southeastern portion of Pamlico Sound. On July 18, 2002, NCDMF submitted an application to NMFS for a Permit (ı1398) authorizing incidental take of ESA-listed sea turtles associated with the shallow water fishery for the 2002, 2003, and 2004 fall fishing seasons. This application includes endangered Kemp's ridley, leatherback, and hawksbill sea turtles and the threatened green and loggerhead sea turtles. This fishery targets flounder. The proposed implementation of this fishery will allow for the continued commercial harvest of this species. This fishery is estimated to have a value of over one million dollars per year. This fishery supports fishermen and the local economy.

Conservation Plan

The conservation plan prepared by NCDMF describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed sea turtles. The conservation plan includes managing the shallow water large and small mesh gill net fishery which operates from April through December in areas adjacent to the Outer Banks and mainland in Pamlico Sound. Three gill net restricted areas (GNRAs) will be designated for the eastern Pamlico Sound and two GNRAs in the western Pamlico Sound along the mainland in Hyde and Pamlico Counties.

The three eastern GNRAs consist of waters extending out from the barrier islands to a depth of less than 20 feet (6.1 m). The three GNRAs from south to north are as follows: (1) the area from Wainwright Island including Ocracoke Inlet bound by Core Banks; (2) the area north of Ocracoke Inlet to and encompassing Hatteras Inlet; (3) the area north of Hatteras Inlet to and encompassing Oregon Inlet. The shallow water fishery operates from April through December in depths typically less than 3 feet (1.0 m). Vessels are usually open skiffs ranging from 15 to 25 feet (4.6 to 7.6 m) in length. Each fisherman sets 500 to 2000 yards (457 to 1,828 m) of large mesh (5.5 to 7.0 inch (14.0 to 17.8 cm)) or small mesh (3.5 to 4.5 inch (8.90 to 11.4 cm)) gill net, which are soaked overnight and retrieved by hand.

Monitoring during the 2000 fishing season consisted of 4.3 percent coverage of this fishery with 37 trips observed. Four sea turtle interactions were observed and all were green turtles, three were released alive. During the 2001 fishing season, 131 large mesh trips were observed which represented 9 percent coverage. Four green sea turtles and one hawksbill were observed in the large mesh gill net fishery. For the small mesh fishery, 47 trips were observed for the "set" net and 12 trips observed for the "runaround" accomplishing 20 and 8.4 percent coverage, respectively. No sea turtle interactions were observed.

In addition to the Outer Banks fisheries, a mainland based flounder gill net fishery occurs in the shallow water bays and along the shoreline of Hyde and Pamlico Counties. The two GNRAs consist of all mainland areas within 200 yards (183 m) of shore between 76 30'W and 76 50'W. The fishery operating in this area is similar to the Outer Banks fishery with the effort from April through December. Fishing depths are typically less than 3 feet (1.0 m), and each fisherman sets 500 to 2000 yards (457 to 1,828 m) of large mesh (5.5 to 7.0 inch (14.0 to 17.8 cm)), which are soaked overnight and retrieved by hand. This fishery did not operate during the 2001 fishing season due to the 2001 closure of Pamlico Sound (66 FR 50350, October 3, 2001). No observer trips have been conducted within this fishery and therefore there have been no

documented sea turtle takes. However, NCDMF has been conducting an independent gill net survey in this area since May 2001 and completed approximately 1,800 unattended 30 yard (27.4 m) gill net sets composed of large and small stretched mesh with no sea turtle interactions to date.

The annual anticipated lethal and nonlethal incidental take of sea turtles is anticipated to be 72 and 492, respectively. This level is anticipated to consists of equal portions of Kemp's ridley, green, and loggerhead turtles. NCDMF is proposing to limit the commercial fall gill net fishery for flounder such that the incidental impacts on ESA-listed sea turtles will be minimized. NCDMF would use a variety of adaptive fishery management measures and restrictions through their state proclamation authority to reduce sea turtle mortality in the fall gill net fishery by 50 percent, compared to the mortality level indicated by strandings in 1999. NCDMF considered and rejected one other alternative, not applying for a permit and closing the fishery, when developing their conservation plan.

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed sea turtles under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30–day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: July 22, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19115 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071702C]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on August 14–15, 2002. The Council will convene on Wednesday, August 14, 2002, from 9 a.m. to 4 p.m., and the Administrative Committee will meet from 4:15 p.m. to 5:30 p.m. On Thursday, August 15, 2002, the Council will meet from 9 a.m. to 5 p.m., approximately.

ADDRESSES: The meetings will be held at the Divi Carina Bay Resort and Carina, in 25 Estate Turnerhole, Christiansted, St. Croix, USVI.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 109th regular public meeting to discuss the items contained in the following agenda:

August 14, 2002, 9 a.m.–5:30 p.m.

Call to Order

Election of Officials

Adoption of Agenda

Consideration of 108th Council Meeting Verbatim Transcription

Sustainable Fisheries Act Comprehensive Amendment

Essential Fish Habitat-Environmental Impact Assessment Progress Report

4:15 p.m.–5:30 p.m.

Administrative Committee Meeting

–Advisory Panel/SSC/HAP Membership
–Budget Projection
–Personnel Retirement Issues
–Other Business

August 15, 2002, 9 a.m.–5 p.m.

Queen Conch Fishery Management Plan

–Data Update – Monica Valle
–Recovery Plan
–Revision Queen Conch Amendment

Reeffish Fishery Management Plan

–Aquarium Trade

Enforcement

–Federal Government
–Puerto Rico
–U.S. Virgin Islands
–U.S. Coast Guard

Administrative Committee Meeting Recommendations

Stock Assessment Review Committee Meeting

Meetings Attended by Council Members and Staff

Other Business

Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 24, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19113 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072302C]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Ad Hoc Red Snapper Advisory Panel (AP) from August 12–14, 2002.

DATES: The Council's Ad Hoc Red Snapper AP will convene at 8:30 a.m. (CST) on Monday, August 12, 2002 and conclude by 5 p.m. on Wednesday, August 15, 2002.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP will convene to discuss the issues related to and continue the development of an individual fishing quota (IFQ) profile for the commercial red snapper fishery. The profile will examine the benefits and consequences of using IFQs to manage the commercial red snapper fishery. When the profile is completed by the AP and Council, it will be submitted to the current participants in the fishery for a referendum to determine if the majority of the participants favor management by IFQs.

The AP members consist of commercial fishermen holding Class 1 or Class 2 commercial red snapper licenses, and licensed commercial reef fish dealers. They are assisted by 4 non-voting members with expertise in fishery economics, fishery biology, environmental science, and law enforcement. The completion of the profile will require several subsequent meetings of this AP.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813-228-2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 5, 2002.

Dated: July 24, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19114 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense (DoD).

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Interference Capability will meet in closed session on August 21, 2002, in Washington, DC (place to be determined). This Task Force will review: New interference capabilities, identifying potentially high-payoff and high-threat capabilities; existing data, assessing technical merits; and potential threats to U.S. assets.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate the Department's ability to provide information on high-payoff and high-threat capabilities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–19030 Filed 7–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense (DoD).

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Against Terrorists' Use of Biological Weapons will meet in closed session on August 19, 2002; September 19, 2002; and October 18, 2002, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will assess the scope of activities conducted by the DoD to ensure its future preparedness to deter, defend against, respond to, and attribute attack of the U.S. homeland by terrorists using biological weapons.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will conduct an assessment of the probable biological threats and the implications of new technologies on the threat spectrum, deterrence and consequence management; identify new technologies to provide satisfactory surveillance and verification of known and emerging diseases to ensure implementation of proactive defense measures and event mitigation; identify reliable and effective vaccines, anti-viral drugs and antibiotics, including the availability of sufficient vaccine and drug manufacturing capacity; determine logistical adequacy of the current supply chain for drug and vaccine production; identify capabilities to achieve reliable attribution of attackers once a BW attack has occurred; and identify defense capabilities and postures that have the largest potential for comprehensive protection of military and civilian targets.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force

meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–19031 Filed 7–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of the Inspector General of the Department of Defense (DoD).

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Services (SES) Performance Review Board (PRB) for the OIG DoD, as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings, perforamnce awards and recertification to the Inspector General.

DATES: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Peterson, Director, Personnel and Security, Office of Administration and Information Management, OIG DoD, 400 Army Navy Drive, Arlington, VA 22202, (703) 602–4516.

Charles W. Beardall, Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, OAIG—for Investigations.
Thomas J. Bonnar, Deputy Assistant Inspector General for Investigations.
Patricia A. Brannin, Deputy Assistant Inspector General for Audit Policy and Oversight, OAIG—Auditing.
David A. Brinkman, Director, Audit Followup and Technical Support, OAIG—Auditing
C. Frank Broome, Director, Office of Departmental Inquiries.
Thomas F. Gimble, Director, Acquisition, Management, OAIG—Auditing.
Paul J. Granetto, Director, Contract Management, OAIG–Auditings.
Joel L. Leson, Director, Administration and Information Management.
Carol L. Levy, Assistant Inspector General for Investigations.
David K. Steensma, Deputy Assistant Inspector General for Auditing.
Shelton R. Young, Director, Readiness and Logistics Support, OAIG—Auditing.
Edward L. Blansitt, Deputy Inspector General, Department of Commerce.
Joel S. Gallay, Deputy Inspector General, General Services Admin.
Gary L. Johnson, Deputy Inspector General, Environmental Protection Agency.
Todd J. Zinser, Deputy Inspector General, Department of Transportation.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–19032 Filed 7–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 23, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: No Child Left Behind—Blue Ribbon Schools Program.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 420.

Burden Hours: 16,800.

Abstract: The purpose of the program is to recognize and present as models elementary and secondary schools in the United States with high numbers of students from disadvantaged backgrounds that dramatically improve student performance to a high level on state or nationally-normed assessments and to recognize schools whose students achieve in the top 10 percent on state or nationally-normed assessments.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2074. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19036 Filed 7–26–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 23, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Federal PLUS Program Master Promissory Note.

Frequency: On Occasion.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: Phased in before 2004.

Burden Hours: 1845–0009.

Abstract: This promissory note is the means by which a Federal PLUS Program loan borrower promises to repay his or her loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2096. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to SCHUBART at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19068 Filed 7–26–02; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 23, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Federal Direct PLUS Loan Application and Master Promissory Note (MPN), and Endorser Addendum.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 225,000

Burden Hours: 225,000.

Abstract: The PLUS MPN is the means by which an individual applies for and agrees to repay a Federal Direct PLUS Loan. If an applicant for a Federal Direct

PLUS Loan is determined to have an adverse credit history and obtains an endorser, the Endorser Addendum is the means by which an endorser agrees to repay the loan if the borrower does not repay it.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2112. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* of faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joeseph Schubart at (202) 708–9266 or via his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19069 Filed 7–26–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Notice of Extension of Project Period and Waiver

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of extension of project period and waiver.

SUMMARY: The Secretary waives the requirements in Education Department General Administrative Regulations (EDGAR), at 34 CFR 75.250 and 75.261(a), that generally prohibit project periods exceeding 5 years and project extensions involving the obligation of additional Federal funds to enable the Technical Assistance **ALLIANCE** for Parent Centers to receive funding from October 1, 2002 until March 31, 2003.

EFFECTIVE DATE: August 28, 2002.

FOR FURTHER INFORMATION CONTACT: For further information contact Debra Sturdivant or Donna Fluke, U.S. Department of Education, 400 Maryland Avenue, SW., room 3527, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8038 and 205–9161, respectively. FAX: (202) 205–8105. If you prefer to use the Internet, use the following address: *Debra_Sturdivant@ed.gov*, or *Donna_Fluke@ed.gov*.

If you use a telecommunication device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the above-listed contact persons.

SUPPLEMENTARY INFORMATION: In order to foster more efficient use of the Federal funds, the Secretary intends to redesign the technical assistance component of the Training and Information for Parents of Children with Disabilities program and provide funding in fiscal year 2003.

However, the grant for the current technical assistance provider, the Technical Assistance Alliance for Parent Centers will expire, after a 5-year project period, on September 30, 2002. Technical assistance is provided on an ongoing basis to parent centers, and it would be contrary to the public interest to have any service lapses for the parent centers being served by the current grantee. This would also include planning for, and conducting a scheduled annual National conference to be held in January 2003. The conference provides a forum for all of the parent centers to network, and participate in topical workshops and attend plenary sessions to learn about current research and best practices from National experts.

To avoid any lapse in service for the intended beneficiaries before the redesigned technical assistance component can be implemented, the Secretary has decided to fund this project until March 31, 2003. However, to do so, the Secretary has waived the requirements in 34 CFR 75.250 and 75.261(c)(2), which prohibit project periods exceeding 5 years and period extensions that involve the obligation of additional Federal funds.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rulemaking. However, the waiver of the requirements in 34 CFR 75.250 and 75.261 applicable to the maximum project period and extension of the project period for this grant on a one-time only basis is procedural and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

In addition, given the fact that the additional period of funding is only for a six-month period, the Secretary has determined that proposed rulemaking on this waiver is unnecessary and impracticable. Thus, proposed rulemaking also is not required under 5 U.S.C. 553(b)(B).

Regulatory Flexibility Act Certification

The Secretary certifies that the waiver and extension of the project period will not have a significant economic impact on a substantial number of small entities. The only small entity that would be affected is the PACER Center, Inc., which operates the Technical Assistance ALLIANCE for Parent Centers project.

Paperwork Reduction Act of 1980

This extension and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number 84.328, Training and Information for Parents of Children with Disabilities)

Dated: July 19, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–19078 Filed 7–26–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Tribally Controlled Postsecondary Vocational and Technical Institutions Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of extension of project period and waiver.

SUMMARY: We waive the requirement in 34 CFR 75.261(c)(2) as it applies to projects funded under the Tribally Controlled Postsecondary Vocational and Technical Institutions Program (TCPVTIP) in fiscal year (FY) 2001. We waive this requirement in order to be able to extend the project periods for the two current FY 2001 grants awarded under the TCPVTIP. A waiver means that: (1) current grants may be continued at least through FY 2004 (depending on the availability of appropriations for TCPVTIP in subsequent fiscal years under the current statutory authority), instead of ending in FY 2002; and (2) we will not announce a new competition or make new awards in FY 2002, as previously planned.

DATES: This notice is effective July 29, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon A. Jones, U.S. Department of Education, 400 Maryland Avenue, SW., room 4515, Mary E. Switzer Building, Washington, DC 20202–7242. Telephone (202) 205–9870.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this extension and waiver in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: On April 12, 2002 we published a notice in the **Federal Register** (67 FR 17976) proposing an extension and waiver in order to—

(1) Give the current grantees early notice of the possibility that additional years of funding may be available through continuation awards;

(2) Provide other eligible entities with notice that if the proposal for extension and waiver is published in final form, the Department will not be announcing a competition under this program in FY 2002; and

(3) Request comments on the proposed extension and waiver.

Analysis of Comments and Changes

In response to the Assistant Secretary's invitation in the notice of proposed extension and waiver, two parties submitted comments. The two commenters agreed with the proposal to extend the grants of the two current grantees. We did not receive any comments opposing the proposed extension and waiver. An analysis of comments and of changes in the notice since publication of the proposal follows. Generally, we do not address technical and other minor changes, as well as suggested changes the law does not authorize us to make. Moreover, we do not address comments that do not express views on the substance of the proposed notice.

Comments

One commenter thought that the proposed notice was silent regarding the applicability of certain sections of 34 CFR 75.253 in the Education Department General Administrative Regulations (EDGAR). Specifically, the commenter was not sure if we planned to apply § 75.253(a)(2)(i), which permits us to make a continuation award if the grantee makes substantial progress toward meeting the objectives of the approved application or § 75.253(a)(2)(ii), which permits us to make a continuation award if the grantee has obtained our approval of changes in the project that do not increase the cost of the grant and enable the recipient to meet those objectives in succeeding budget periods. The commenter thought only § 75.253(a)(2)(i) should be applied.

Discussion

The notice explained that decisions regarding continuation awards would be made based on Grant Performance Reports submitted by the two current grantees and the regulations in part 75 of EDGAR, most notably, 34 CFR 75.253. The process by which continuation decisions will be made this year is the same process by which those decisions have been made in the past in the TCPVTIP when multi-year project grants have been awarded. Consistent with 34 CFR 75.253, we would extend a grant if we determined, among other things, and based on information provided by the grantee, that it was making substantial progress performing grant activities. We said in our April 12th notice that "making substantial progress" would be considered "among the other things." We did not intend to imply that we would apply only the EDGAR provisions specifically mentioned in the notice when making decisions regarding continuations.

We would also like to reiterate here for purposes of clarification, that decisions to continue a grant will also be based on information provided by each grantee. Since the FY 2001 grants were based on applications that described activities and budgets for one year, in accordance with § 75.253(c)(2), each grantee will necessarily have to send a written statement describing the activities it intends to carry out in FY 2002, FY 2003, and possibly FY 2004, if Congress appropriates funds under the current statutory authority. The activities described must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's approved FY 2001 application. (34 CFR 75.261(c)(3)). As also provided in EDGAR, each grantee must submit a budget and budget narrative for each year it requests a continuation award. (34 CFR 75.118 and 75.253(c)(2)(i)).

While these provisions are contained in part 75 of EDGAR, we have described them in this notice so that grantees may be clear about what is needed to request a continuation award.

Change

None.

Comments

A commenter suggested that the start dates for FY 2002 projects should be the same for all grantees under the TCPVTIP. The commenter thought this was necessary in order for the Department to be able to determine the award amounts, particularly whether the appropriation in a given year is sufficient to pay in full the amount that approved applicants are eligible to receive.

Discussion

We currently ask grantees to provide the information we need to make continuation awards at the same time so we can (1) simultaneously review the scope of work and budgets of each grantee and (2) determine whether the appropriation is sufficient to pay in full the amount that approved applicants are eligible to receive. We can make those determinations without grantees having the same start dates. In addition, we believe that a grantee's start date is best

decided by the grantee, in cooperation with the Department.

Change

None.

Comments

One commenter thought continuation grants should include funding for only the eligible institutions and should not include what the commenter referred to as urban centers or other organizations that do not meet the eligibility criteria of the TCPVTIP or the Indian tribe or tribal organization.

Discussion

We will make continuation awards for only the two current FY 2001 grants awarded under the TCPVTIP and only for allowable costs. The two current grantees continue to meet the eligibility criteria in the Act.

Change

None.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule shall be published at least 30 days before its effective date, except as otherwise provided for good cause (20 U.S.C. 553(d)(3)). During the 30-day public comment period on this notice, no substantive comments or objections were received on the proposed extension and waiver, and no substantive changes have been made in this notice to the proposed project extension. For this reason, and in order to make timely continuation grants to the small number of entities affected, the Secretary has determined that a delayed effective date is not required.

Background

On March 28, 2001 (66 FR 17036), we issued a notice inviting applications for new awards under the TCPVTIP for FY 2001. In that notice, we announced that the project period would be three years for grants awarded under the competition. On May 16, 2001 (66 FR 27080), we issued a notice modifying the March 28th notice by reducing the project period from three years to one year and extending the application deadline. The one-year project period was intended to provide time for affected parties to confer with us and the Congress on the future implementation of the TCPVTIP. However, after the May 16th notice was published, Congress enacted the Supplemental Appropriations Act, 2001, Public Law 107–20. Section 2701 of Public Law 107–20 amended section 117 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins Act), which authorizes the TCPVTIP, and clarified congressional intent with respect to the implementation of the TCPVTIP by—

(a) Limiting eligibility to tribally controlled postsecondary vocational and technical institutions that do not receive Federal support under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a *et seq.*); and

(b) Authorizing the use of funds under the TCPVTIP for institutional support.

In light of section 2701 of Public Law 107–20, and congressional action taken regarding eligibility and use of funds for institutional support, we believe that multi-year awards, rather than one-year awards, are now more appropriate for projects under this program and that they would result in a more effective use of Federal funds. Specifically, we believe that it is now in the best interest of the TCPVTIP for us to issue continuation awards to the existing FY 2001 grantees, rather than hold a new competition in FY 2002.

Moreover, the Perkins Act, which includes the TCPVTIP, expires at the end of FY 2003. With the uncertainties presented by the absence of authorizing legislation for the TCPVTIP beyond FY 2003, it does not appear to be appropriate to hold a competition in FY 2003 for projects that would operate in FY 2004. We are generally reluctant to announce a competition in which eligible entities would be expected to prepare and submit an application while they are lacking critical information about the future of the program, and we do not think that it would be in the public interest to do so in this case.

In addition, it is unlikely that the very limited group of eligible tribally controlled postsecondary vocational and technical institutions, other than the two current grantees, would undertake the effort and cost of applying for funding in FY 2002 or FY 2003 with the authorizing legislation expiring at the end of FY 2003. Further, as we indicated earlier in this notice, we received no comments objecting to this project extension for current grantees in lieu of a new competition. Thus, a new competition would be likely only to cause existing grantees to expend valuable time and resources applying for program funding under the existing authority, while not providing a meaningful funding opportunity for the limited group of other eligible applicants to apply for Federal funding.

EDGAR Requirement

In order to provide for multi-year awards, we must waive the requirement in 34 CFR 75.261(c)(2), which establishes the conditions for extending a project period, including prohibiting the extension of a program's project period if it involves the obligation of additional Federal funds.

This extension and waiver allows us to make continuation grants at least in FY 2002 and FY 2003 and perhaps beyond FY 2003 if Congress continues to appropriate funds for the TCPVTIP under the current statutory authority.

Programs Affected

The two FY 2001 grantees affected by this extension and waiver are Crownpoint Institute of Technology (CIT) and United Tribes Technical College (UTTC). This extension and waiver allow us to extend the current grantees' project periods for two years and for any additional years for which Congress appropriates funds under the current statutory authority. Decisions regarding continuation awards will be made based on Grant Performance Reports submitted by CIT and UTTC and the regulations at 34 CFR 75.253. Consistent with 34 CFR 75.253, we will extend each grant if we determine, among other things, and based on information provided by each grantee, that each grantee is making substantial progress performing grant activities. Under this extension and waiver, (1) the project period for the current grantees could be extended to FY 2004, and (2) additional continuation awards could be made for any additional year or years for which Congress appropriates funds under existing statutory authority.

We do not interpret the waiver as exempting the two current grantees from the account closing provisions of Pub. L. 101–510, or as extending the availability of FY 2001 funds awarded to the grantees. As a result of Pub. L. 101–510, appropriations available for a limited period may be used for payments of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose.

Instructions for Requesting a Continuation Award Under EDGAR Part 75

Under applicable EDGAR provisions, each grantee wishing to receive an annual continuation grant must submit a performance report providing the most

current performance and financial expenditure information on its TCPVTIP project. (34 CFR 75.118)). Each grantee must also submit a program narrative that describes the activities it intends to carry out during FYs 2002, 2003, and 2004, of a continuation award. The activities described must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's approved application. (34 CFR 75.261(c)(3)). In addition, each grantee must also submit a budget and budget narrative for each year it requests a continuation award. (34 CFR 75.253(c)(2)).

Paperwork Reduction Act of 1995

This extension and waiver does not contain any information collection requirements.

Intergovernmental Review

The TCPVTIP is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the notice of proposed extension and waiver we requested comments on whether the proposed extension and waiver would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the notice of proposed extension and waiver and our own review, we have determined that this final notice of extension and waiver does not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.245 Tribally Controlled Postsecondary Vocational and Technical Institutions Program)

Program Authority: 20 U.S.C. 2327.

Dated: July 23, 2002.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 02–19077 Filed 7–26–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065 California]

El Dorado Irrigation District; Notice of Site Visit

July 23, 2002.

On August 15 and August 16, 2002, the Office of Energy Projects Staff (Staff) and the applicant will conduct an on-site visit of the El Dorado Project located on the South Fork of the American River in El Dorado, Alpine, and Amador Counties, California. On both days, the site visit will begin at 8:30 a.m, meeting at Harvey's Casino Hotel on Route 50 at Stateline Avenue, in Stateline, Nevada.

All interested parties and individuals are welcome to attend both days of the site visit. Group transportation by van or bus is planned; therefore, those planning to attend need to contact Susan O'Brien at (202) 219–2840 or susan.obrien@ferc.gov as soon as possible, but no later than August 1, 2002. Individuals who do not contact Ms. O'Brien by this date may have to provide their own transportation.

Tentative schedule for site visit (times given are in Pacific Daylight Savings):

Thursday, August 15
8:30 am:
  Site Visit Group departs from Harvey's Hotel in Stateline, NV
morning:
  Canal: tour stops at diversion dam, tunnel portal, canal viewpoints along Highway 50
lunch:
  in Placerville, CA
afternoon:
  Tour of forebay, powerhouse
4 pm:
  Return to hotel, stops at Horsetail falls (Pyramid Creek) or other points, as time and interest allows

Friday, August 16
8:30 am:
  Site Visit Group departs from Harvey's Hotel in Stateline, NV
morning:
  Tour of Caples Lake, Caples Creek area
lunch:
  at Silver Lake/Kirkwood, Ca
afternoon:
  Tour of Silver lake area, then Echo Lake area
4 pm:
  Leave for hotel 4:30 pm:—Arrive at hotel—end tour

This schedule is tentative and may change. If anyone would like to meet up with the site visit group for only a part of the site visit, please contact Ms. O'Brien in advance so that this can be arranged.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19037 Filed 7–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1932–004, 1933–010 and 1934–010]

Southern California Edison Company; Notice of Meeting To Discuss Section 10(j) and Endangered Species Act Issues

July 23, 2002.

a. *Date and Time of Meeting:* August 8, 2002, 9 a.m. Pacific Coast Time.

b. *Place:* Conference Call.

c. *FERC Contact:* Jon Cofrancesco at jon.cofrancesco@ferc.gov; (202) 219–0079.

d. *Purpose of Meeting:* Commission staff, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game (CDFG) will discuss U.S. Department of the Interior's and CDFG's recommendations under Section 10(j) and any Endangered Species Act (ESA) issues for the Lytle Creek, Santa Ana River 1 & 3, and Mill Creek 2/3 Projects, P–1932–004, P–1933–010, and P–1934–010, respectively. Section 10(j) issues include water quality monitoring, minimum flows, fish screen, fish surveys and reports, Keller Creek diversion dam decommissioning, and adaptive management. The projects are located in San Bernardino County, California.

e. *Proposed Agenda:* 1. Introduction; 2. Recognition of Participants; 3. Meeting Procedures; 4. Section 10(j) issues discussion; 5. ESA Discussion; 6. Close Meeting

f. All local, state, and Federal agencies, Indian Tribes, and other interested parties are invited to join the conference call. Please call Jon Cofrancesco at (202) 219–0079 at least one day in advance for instructions on how to join the conference call.

g. *Procedural schedule:* The license applications will be processed

according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate:

Initiate 10(j) Process, May 7, 2002.

Notice of the availability of the final NEPA document, September 30, 2002.

Ready for Commission decision on the application, January 31, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19038 Filed 7–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11077–022 Alaska]

Goat Lake Hydro Inc.; Notice of Availability of Draft Environmental Assessment

July 23, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for amendment of the license for the Goat Lake Hydroelectric Project, located on Pitchfork Falls, near the town of Skagway, in the First Judicial District, Alaska, and has prepared a Draft Environmental Assessment (DEA) for the project. The project occupies lands of the Tongass National Forest.

The DEA contains the staff's analysis of the potential environmental impacts of modifications to the project and concludes that amending the license for the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The DEA may be viewed on the web at *http://www.ferc.gov* (call (202) 208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 11077–022 to all comments. Comments may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov*.

For further information, contact Michael Henry at (503) 944–6762.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19040 Filed 7–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Prepare a Multi-Project Environmental Assessment and Notice of Paper Scoping and Soliciting Scoping Comments

July 23, 2002.

Take notice that the following hydroelectric applications have been filed with Commission and are available for public inspection:

a. *Type of Applications:* New Minor Licenses.

b. *Project Nos.:* Enterprise Mill Project, P–2935–015, Sibley Mill Project, P–5044–008.

c. *Dates filed:* Enterprise Mill Project, September 24, 2001, Sibley Mill Project, April 2, 2001.

d. *Applicants:* Enterprise Mill Project, Enterprise Mill, LLC, Sibley Mill Project, Avondale Mills Inc.

e. *Name of Projects:* Enterprise Mill Project, Sibley Mill Project.

f. *Location:* On the Augusta Canal about 5 and 6 miles downstream of the Augusta Canal diversion dam, adjacent to the Savannah River, Richmond County, Augusta, GA. The projects are two of three hydropower projects located in the Augusta Canal. The projects do not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

h. *Applicant Contact:* Enterprise Mill Project, Beth E. Harris, Project Engineer, CHI Energy, Inc., P.O. Box 8597, Greenville, SC 29604, (864) 281–9630; Sibley Mill Project, Mr. J. H. Vaughn, III Avondale Mills Inc., P.O. Box 128, Graniteville, SC 29829, (803) 663–2116.

i. *FERC Contact:* Monte TerHaar, (202) 219–2768 or *monte.terhaar@ferc.gov*.

j. *Deadline for filing scoping comments:* 30 days from issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. *Project Descriptions: Enterprise Mill:* The existing Enterprise Mill Hydroelectric Project consists of: (1) Intake works including two steel sliding, vertical lift intake gates; (2) primary and secondary steel trash racks; (3) two 300-foot-long, 8-foot-diameter penstocks; (4) two vertical shaft turbine/generator units with an installed capacity of 1.2 megawatts and a rated maximum discharge of 590 cfs, located inside the reinforced concrete and masonry Enterprise Mill structure; (5) an underground 350-foot-long tailrace, and open 500-foot-long tailrace section returning flow to the Augusta Canal, and (6) appurtenant facilities. There is no dam or impoundment, as approximately 580 cfs of water is withdrawn from the Augusta Canal when operating at full capacity. Developed head is approximately 30 feet. The applicant estimates that the annual generation would be between 5,000 and 8,000 megawatthours (MWh). Generated power is utilized within the applicant's Enterprise Mill which houses residential and commercial tenants, and excess power will be sold to Georgia Power Company. No new facilities are proposed.

Sibley Mill: The existing Sibley Mill Project consists of: (1) Intake works including four steel diversion gates on a 50-foot-long by 15-foot-high intake structure equipped with 1-inch trashracks; (2) a concrete headrace 290 feet long, 42 feet wide, and 15 feet deep; (3) a brick powerhouse; (4) three vertical shaft Francis turbine/generator units with an installed capacity of 2.475 MW; (5) an open tailrace 350 foot long, 30 feet wide, and 38 feet deep; and (6) appurtenant facilities. There is no dam or impoundment, as approximately 936 cfs of water is withdrawn from the Augusta Canal when operating at full capacity. The applicant estimates that the total average annual generation would be 11,000 MWh. All generated power is utilized within the industrial manufacturing facility in the Sibley Mill. No new facilities are proposed.

m. A copy of the application is on file with the Commission and is available

for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

n. *Scoping Process:* Scoping is intended to advise all parties regarding the proposed scope of the EA and to seek additional information pertinent to this analysis. The Commission intends to prepare one Environmental Assessment (EA) for the Enterprise Mill Project and Sibley Mill Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action. Should substantive comments requiring reanalysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

At this time, the Commission staff does not anticipate holding formal public or agency scoping meetings near the project site. Instead, staff will conduct paper scoping.

A Scoping Document (SD) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

As part of scoping the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from comments all available information, especially quantifiable data, on the resources at issue; (3) encourage comments from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Consequently, interested entities are requested to file with the Commission any data and information concerning environmental resources and land uses in the project area and the subject project's impacts to the aforementioned.

O. The preliminary schedule for preparing the subject EA is as follows:

Milestone	Target date
Issue Scoping Document 1 (Paper Scoping).	July/August 2002.
Additional Information (if needed).	October 2002.
Issue Acceptance Letter.	October 2002.
Issue Notice of Ready for Environmental Analysis.	December 2002.
Deadline for Filing Agency Recommendations.	February 2003.
Issue Notice of availability of EA.	April 2003.
Public Comments on EA Du.	May 2003.
Initiate 10(j) Process	June 2003.
Ready for Commission decision on the application.	September 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19039 Filed 7–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2004 Resource Pool-Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of adjustment to final allocations.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces an adjustment to its Salt Lake City Area Integrated Projects (SLCA/IP) Post-2004 Resource Pool Final Allocation of Power developed under the requirements of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program (Program) Final Rule. Final allocations were published in the **Federal Register** on February 4, 2002. Information received since then has made it necessary to revise the allocations.

Adjusted final allocations are published to indicate Western's decisions prior to beginning the contractual phase of the allocation process. Firm electric service contracts, negotiated between Western and allottees, will permit delivery of power allocations from the October 2004 billing period through the September 2024 billing period.

DATES: The Adjusted Post-2004 Resource Pool Final Allocation of Power will become effective August 28, 2002, and will remain in effect through September 30, 2024.

ADDRESSES: All documents developed or retained by Western in developing the adjusted final allocations are available for inspection and copying at the CRSP Management Center, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111.

SUPPLEMENTARY INFORMATION: Western published Final Post-2004 Resource Pool Allocation Procedures (Procedures) in the **Federal Register** (64 FR 48825, September 8, 1999) to implement Subpart C-Power Marketing Initiative of the Program's Final Rule (10 CFR part 905), published in the **Federal Register** (60 FR 54151, October 20, 1995). The Program, developed in part to implement Section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. The goal of the Program is to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. One aspect of the Program is to establish project-specific power resource pools and allocate power from these pools to new preference customers.

The Procedures, in conjunction with the Post-1989 Marketing Plan (51 FR 4844, February 7, 1986), establish the framework for allocating power from the SLCA/IP Post-2004 Power Pool.

Proposed allocations were published in the **Federal Register** (66 FR 31910, June 13, 2001). Public information/comment forums concerning the proposed allocations were held August 10, 15, 16, 21, and October 4, 2001. The public comment period closed October 11, 2001.

Final allocations were published in the **Federal Register** (67 FR 5113, February 4, 2002). Information received by Western since that date has indicated that misinterpretation of data by Western made it necessary to adjust these allocations.

I. Reason for Adjustment

Following publication of the final allocations, Western received information indicating that because of errors made in evaluating the data used to calculate the final allocations, three tribes' allocations were incorrect. Western has stated in the criteria that it would be consistent in determining the allocations of all tribes. It is necessary to adjust the allocations to correct these errors. The first of these is the San Carlos Apache Tribe (San Carlos). The San Carlos Apache Reservation is served by three utilities. Only one of these utilities currently receives Federal

power that is used to serve the reservation. In calculating the allocation for San Carlos, the percentage of Federal power received by this utility was applied to San Carlos's total load. The result of this calculation was that San Carlos received a smaller allocation than it should have.

The second adjustment made was to the allocation of the Yavapai Prescott Tribe. The non-residential load information submitted with the Applicant Profile Data by Yavapai Prescott was misinterpreted resulting in only two commercial accounts being identified as tribally-owned and thus eligible for an allocation. However, a number of other tribal businesses, administrative offices, and eligible loads should have been included. These loads have been identified, and an adjustment made to Yavapai Prescott's allocation.

The third allottee to identify a problem was the Tohono O'odham Utility Authority (TOUA). TOUA is a tribal utility which currently receives an allocation of Federal power. The information available to Western and used to determine the percentage of TOUA's load served by its present Federal allocation was shown to be incorrect. This resulted in TOUA receiving a lower level of service in 2004 than other tribes. TOUA's allocation was adjusted by using the correct percentage of current Federal power in the calculations.

To maintain consistency in its treatment of all tribes Western believes it is necessary to make these corrections. Since the entire resource pool has been allocated, any adjustment to an allocation results in all of the allocations being changed. The result of these adjustments is that other tribes' allocations are reduced slightly from the previously published amounts. With these adjustments, the tribes' SLCA/IP allocations, combined with existing and future Western hydropower benefits, were reduced slightly to approximately 55.2 percent of eligible load in the Summer season and 57.2 percent in the Winter season based on the adjusted seasonal energy data submitted by each tribe.

Another result of recalculating the allocations is that the Kiabab Paiute Tribe (Kiabab) will not receive an allocation. The utility which serves Kiabab receives a greater portion of its power supply through its allocation than Western is able to provide to the Tribes.

II. Final Power Allocation

Since the proposed allocations were published in June 2001 and subsequently in February 2002, tribes have had sufficient time to review the allocations and point out any inconsistencies with the criteria. The following final power allocations are made in accordance with the Procedures. All of the allocations are subject to the execution of a firm electric service contract in accordance with the Procedures. Western will proceed to offer firm electric service contracts to the tribes receiving allocations in the amounts shown below.

The adjusted final allocations for Indian tribes and organizations are shown in this table.

SALT LAKE CITY AREA PROJECTS POST-2004 POWER POOL FINAL ALLOCATIONS

Tribe	Summer energy (kWh)	Winter energy (kWh)	Summer CROD (kW)	Winter CROD (kW)
Alamo Navajo Chapter	399,824	453,518	184	196
Canoncito Navajo Chapter	292,937	335,242	135	145
Cocopah Indian Tribe	2,779,230	2,454,829	1,281	1,058
Colorado River Indian Tribes	12,969,838	8,747,829	5,978	3,772
Confederated Tribes of the Goshute Reservation	84,952	144,200	39	62
Duckwater Shoshone Tribe	149,225	156,069	69	67
Ely Shoshone Tribe	168,395	299,306	78	129
Fort Mojave Indian Tribe	612,855	631,886	282	272
Ft. McDowell Mojave-Apache Indian Community	5,089,153	5,263,924	2,346	2,270
Gila River Indian Community	30,202,512	30,918,295	13,920	13,330
Havasupai Tribe	432,433	548,898	199	237
Hopi Tribe	5,892,469	6,517,369	2,716	2,810
Hualapai Tribe	1,357,114	1,411,736	625	609
Jicarilla Apache Tribe	1,257,753	1,703,852	580	735
Las Vegas Paiute Tribe	1,563,305	1,213,043	721	523
Mescalero Apache Tribe	2,116,562	2,295,175	976	990
Nambe Pueblo	126,990	151,509	59	65
Navajo Tribal Utility Authority	45,155,581	56,535,996	20,812	24,375
Paiute Indian Tribe of Utah	343,334	357,388	158	154
Pascua Yaqui Tribe	2,864,577	2,393,821	1,320	1,032
Picuris Pueblo	164,296	51,199	76	22
Pueblo De Cochiti	401,422	520,585	185	224
Pueblo of Acoma	911,224	950,635	420	410
Pueblo of Isleta	2,381,563	2,572,647	1,098	1,109
Pueblo of Jemez	464,155	613,561	214	265
Pueblo of Laguna	1,610,018	1,745,884	742	753
Pueblo of Pojoaque	451,379	628,599	208	271
Pueblo of San Felipe	711,597	977,634	328	422
Pueblo of San Ildefonso	136,791	148,335	63	64
Pueblo of San Juan	647,460	702,893	298	303
Pueblo of Sandia	2,045,141	1,894,685	943	817
Pueblo of Santa Clara	463,973	613,363	214	264
Pueblo of Santo Domingo	980,004	1,016,679	452	438
Pueblo of Taos	480,420	787,815	221	340
Pueblo of Tesuque	1,361,547	1,387,845	628	598
Pueblo of Zia	148,471	196,276	68	85
Pueblo of Zuni	2,212,186	2,748,632	1,020	1,185
Quechan Indian Tribe	1,095,632	1,691,226	505	729

SALT LAKE CITY AREA PROJECTS POST-2004 POWER POOL FINAL ALLOCATIONS—Continued

Tribe	Summer energy (kWh)	Winter energy (kWh)	Summer CROD (kW)	Winter CROD (kW)
Ramah Navajo Chapter	650,681	954,717	300	412
Salt River Pima-Maricopa Indian Community	35,026,125	31,034,316	16,144	13,380
San Carlos Apache Tribe	9,008,264	8,766,824	4,152	3,780
Santa Ana Pueblo	997,747	950,995	460	410
Skull Valley Band of Goshute Indians	33,098	34,336	15	15
Southern Ute Indian Tribe	2,435,344	2,723,333	1,122	1,174
Tohono O'Odham Utility Authority	2,270,947	7,060,054	1,047	3,044
Tonto Apache Tribe	829,541	810,134	382	349
Ute Indian Tribe	991,484	1,596,382	457	688
Ute Mountain Ute Tribe	1,034,236	1,177,682	477	508
White Mountain Apache Tribe	12,632,129	13,914,290	5,822	5,999
Wind River Reservation	1,050,627	1,138,890	484	491
Yavapai Apache Nation	4,106,724	3,399,015	1,893	1,465
Yavapai Prescott Indian Tribe	1,589,784	1,867,486	733	805
Yomba Shoshone Tribe	68,129	70,678	31	30
Total	203,251,178	217,281,509	93,679	93,680

IV. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–621, requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

V. Environmental Compliance

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995). Western's NEPA review assured all environmental effects related to these procedures have been analyzed.

VI. Determination 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, this notice requires no clearance by the Office of Management and Budget.

VII. Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: July 5, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–19070 Filed 7–26–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Waste Minimization Partnership Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The EPA published a document in the **Federal Register** of June 21, 2002, concerning a proposed information collection request for the National Waste Minimization Partnership Program.

FOR FURTHER INFORMATION CONTACT: Newman Smith, 703–308–8757.

SUPPLEMENTARY INFORMATION: The EPA published a document in the **Federal Register** of June 21, 2002, (67 FR 42251), in FR Doc. 02–15725. This document corrects the docket number in the **ADDRESSES** section in the second and third column of page 42251 to read "RCRA–2002–0022"; and also corrects the docket address in the second column to read: RCRA Docket Information Center, Office of Solid Waste (5305G) U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Dated: July 19, 2002.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–19106 Filed 7–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2001–2; FRL–7252–1]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Dougherty County Landfill, Flemming/Gaissert Road Facility; Albany (Dougherty County), GA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated July 3, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to Dougherty County Landfill, Flemming/Gaissert Road Facility (Dougherty) located in Albany, Dougherty County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public Interest (GCLPI or Petitioner) on behalf of the Sierra Club. Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this document under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/dougherty_decision2001.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of the Sierra Club to the Administrator on August 22, 2001, requesting that EPA object to a state title V operating permit issued by EPD to Dougherty. The Petitioner maintains that the Dougherty permit is inconsistent with the Act because of: (1) Inadequate reporting requirements related to monitoring; (2) the permit's apparent limitation of enforcement authority; (3) inadequate public notice procedures; and (4) the permit's apparent limitation of credible evidence.

On July 3, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the Dougherty permit is not in compliance with the requirements of the Act on the grounds raised.

Dated: July 19, 2002.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 02–19107 Filed 7–26–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 22, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 27, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1-C804 or Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Radar Detectors Operating Under Part 15.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, and state, local or tribal governments.

Number of Respondents: 8.

Estimated Time Per Response: 2 hours.

Frequency of Response: One time reporting requirement; third party disclosure requirement.

Total Annual Burden: 16 hours.

Total Annual Cost: $2,000.

Needs and Uses: The collection of information is made necessary by changes to part 15 of the Commission's Rules that require that all radar detectors to be certified to demonstrate compliance with certain radiated emission limits before they can be marketed. To assist in identifying products manufactured before and after a certain date on which certification is required. Radar detector manufacturers will be required to provide the Commission with a list of radar detector serial numbers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19062 Filed 7–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–46–B (Auction No. 46); DA 02–1628]

Auction No. 46 Revised License Inventory and Auction Start Date; Comment Sought on Revisions to Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document revises the license inventory and starting date for Auction No. 46. This document also seeks comment on revisions to the Bureau's proposed procedures for Auction No. 46. With the exception of the changes described in the *Auction No. 46 Revised License Inventory and Auction Start Date Public Notice*, the Bureau's proposed procedures for Auction No. 46 remain unchanged from the *Auction No. 46 Comment Public Notice* released on May 24, 2002.

DATES: Comments were due on or before July 22, 2002, and reply comments are due on or before July 29, 2002.[1]

ADDRESSES: Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires

[1] This document was received by the Office of the Federal Register on July 25, 2002.

that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction46@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: For legal questions: Francis Gutierrez (202) 418–0660. For general auction questions: Lyle Ishida (202) 418–0660 or Lisa Stover (717) 338–2888. For service rule questions: Brian Marenco (202) 418–0838.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 46 Revised License Inventory and Auction Start Date Public Notice* released on July 15, 2002. The complete text of the *Auction No. 46 Revised License Inventory and Auction Start Date Public Notice* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. The *Auction No. 46 Revised License Inventory and Auction Start Date Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Revised Auction No. 46 License Inventory

1. The *Auction No. 46 Comment Public Notice*, 67 FR 42773 (June 25, 2002), announced that Auction No. 46 would include licenses in the paired 1392–1395 and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz, 1670–1675 MHz, and the 2385–2390 MHz bands. The Auction No. 46 license inventory has been revised and only the 1670–1675 MHz band nationwide license will be offered in Auction No. 46. Dates for the auction of licenses in the paired 1392–1395 and 1432–1435 MHz bands and the unpaired 1390–1392 MHz and 2385–2390 MHz bands will be announced by separate public notice.

New Auction Start Date

2. Auction No. 46 will begin on October 30, 2002. A complete list of all relevant dates for the auction will be provided in a subsequent public notice.

Activity Rules

3. In order to ensure that the auction closes within a reasonable period of time, the Commission establishes activity rules that require bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than wait until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

4. In the *Auction No. 46 Comment Public Notice* the Bureau proposed to divide Auction No. 46 into three stages, each characterized by an increased activity requirement. However, in light of the reduction in the number of licenses that will be available in Auction No. 46, the Bureau proposes a single stage auction with the following activity requirement: in each round, a bidder desiring to maintain eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain; if a bidder has no activity rule waivers remaining, its eligibility will be reduced, effectively eliminating the bidder from the auction. The Bureau seeks comment on this proposal.

Activity Rule Waivers and Reducing Eligibility

5. In the *Auction No. 46 Comment Public Notice* the Bureau proposed that each bidder be provided with five activity rule waivers. The Bureau believes that in a single stage auction of one license, it will not be necessary to allow five activity rule waivers. Therefore the Bureau proposes to limit each bidder to two activity rule waivers that may be used at the bidder's discretion during the course of the auction, as described in the *Auction No. 46 Comment Public Notice*. The Bureau seeks comment on this proposal.

Information Regarding Bid Withdrawal

6. In the *Auction No. 46 Comment Public Notice* the Bureau proposed to limit each bidder to withdrawing standing high bids in no more than two rounds during the course of the auction. As noted in the *Auction No. 46 Comment Public Notice*, the Commission has previously explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. In Auction No. 46, however, aggregation of licenses will not be possible because only a single license will be auctioned. Accordingly, for this auction, the Bureau proposes that bidders not be permitted to withdraw bids in any round. The Bureau seeks comment on this proposal.

Conclusion

7. Comments are due on or before July 22, 2002, and reply comments are due on or before July 29, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction46@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 46 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

8. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte rules*. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.

Federal Communication Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–19177 Filed 7–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2563]

Petitions for Reconsideration of Action in Rulemaking Proceedings

July 17, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing

and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by August 13, 2002. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies on an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotments (MM Docket No. 00–245, RM–9971, RM–10185, RM–10186).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19063 Filed 7–26–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2564]

Petitions for Reconsideration of Action in Rulemaking Proceedings

July 22, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by August 13, 2002. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the matter of implementation of Sections of the Communications Act of 1934 as Amended (WT Docket No. 99–87).

Number of Petitions Filed: 1.

Subject: In the matter of telecommunications relay services and speech-to-speech services for individuals with hearing and speech disabilities (CC Docket No. 98–67).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19064 Filed 7–26–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Notification of Performance of Bank Services.

OMB Number: 3064–0029.

Form Number: 6120/06.

Annual Burden:

Estimated annual number of respondents: 412.

Estimated time per response: ½ hour.

Total annual burden hours: 206 hours.

Expiration Date of OMB Clearance: August 31, 2002.

Supplementary Information: Insured state nonmember banks are required to notify the FDIC, under section 7 of the Bank Service Company Act (12 U.S.C. 1867), of the relationship with a bank service company. Form FDIC 6120/06 (Notification of Performance of Bank Services) may be used by banks to satisfy the notification requirement.

2. *Type of Review:* Renewal of a currently approved collection.

Title: Prompt Corrective Action.

OMB Number: 3064–0115.

Annual Burden:

Estimated annual number of respondents: 10.

Estimated time per response: 4 hours.

Total annual burden hours: 40 hours.

Expiration Date of OMB Clearance: August 31, 2002.

Supplementary Information: The prompt corrective action provisions of section 38 of the Federal Deposit Insurance Act require or permit the FDIC and other federal financial regulators to take certain supervisory actions when FDIC-insured institutions fall within one of five categories. The collection consists of applications to otherwise restricted activities.

OMB Reviewer: Joseph Lackey, (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before August 28, 2002, to both the OMB reviewer and the FDIC contact listed above.

Addresses: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: July 23, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–19067 Filed 7–26–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1424–DR]

Montana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Montana (FEMA–1424–DR), dated July 3, 2002, and related determinations.

EFFECTIVE DATE: June 21, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 21, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–19056 Filed 7–26–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1424–DR]

Montana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Montana, (FEMA–1424–DR), dated July 3, 2002, and related determinations.

EFFECTIVE DATE: July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Montana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 3, 2002:

Hill County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–19057 Filed 7–26–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425-DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Burnet and Coleman Counties for Public Assistance.

Atascosa, Brown, Callahan, Eastland, Goliad, Guadalupe, LaSalle, Taylor, and Wilson Counties for Public Assistance (already designated for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174).

Comal County for Categories C through G under the Public Assistance Program (already designated for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174 and Categories A and B under the Public Assistance program).

Nueces County for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–19058 Filed 7–26–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 12, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. L&T Investment Limited Partnership, Greenbrier, Arkansas; to acquire voting shares of First Service Bancshares, Inc., Dermott, Arkansas, and thereby indirectly acquire voting shares of First Service Bank, Greenbrier, Arkansas.

Board of Governors of the Federal Reserve System, July 23, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–19045 Filed 7–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be

obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. FBOP Corporation, Oak Park, Illinois; to acquire American Home Loan Corporation, Phoenix, Arizona, and thereby indirectly inquire Bank USA, a Federal Savings Bank, Phoenix, Arizona, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

2. Southwest Company, Oakland, Iowa; to acquire Fremont County Savings Bank, Sidney, Iowa; and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 23, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–19044 Filed 7–26–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02138]

Technology Transfer of a Community-level Intervention for Young Men at Risk for HIV Infection; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Technology Transfer of a Community-level Intervention for Young Men at Risk for HIV Infection. This program addresses the "Healthy People 2010" focus dealing with HIV and AIDS prevention.

The purpose of the program is to implement an HIV prevention, community level intervention in locations that served as comparison communities in research funded through the previous Program Announcement 96001.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Human Immunodeficiency Virus, Sexually Transmitted Disease and Tuberculosis (HIV, STD, & TB Prevention). Through the implementation of HIV prevention programs, reduce the number of cases of HIV infection and AIDS: 1. Acquired heterosexually, 2. related to injecting drug use, 3. associated with male-to-male homosexual contact, and 4. acquired perinatally.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317 (k)(2) of the Public Health Service Act, 42 U.S.C. section 241. The Catalog of Federal Domestic Assistance number is 93.943.

C. Eligible Applicants

Eligibility is limited to organizations (identified in this announcement as lead organizations) that were collaborative partners, or served as part of the local advisory group, in the comparison communities for the HIV prevention research study funded under Program Announcement 96001. Listed are eligible organizations located in the following communities: Atlanta, Georgia—AID Atlanta, AIDS Education Services for Minorities, Brothers Back to Back, Fulton County Health Department, Second Sunday, State of Georgia, Department of Health, STD/HIV Division (in Decatur, Georgia), and Unity Fellowship Church; Detroit, Michigan—Midwest AIDS Prevention Project (in Ferndale, Michigan); Minneapolis, Minnesota—The Bridge for Runaway Youth, The City, Inc., District 202, Face to Face Health and Counseling Services, Inc. (in Saint Paul, Minnesota), HIM Program—Red Door Clinic, Lutheran Social Services, Minnesota AIDS Project, Out4Good, Out for Equity (in Saint Paul, Minnesota), Pillsbury House, Project Solo, and Youth Link (formerly Minneapolis Youth Diversion); Queens (Jackson Heights), New York City, New York—Hispanic AIDS Forum; San Diego, California—Asian Pacific Islander Community AIDS Project and Gay and Lesbian Center; San Gabriel Valley, California—AltaMed, Bienestar, Community Health Foundation, The Wall-Los Memorias, and Whittier-Rio Hondo.

Universities and research organizations are not eligible for funding as a lead organization but can be part of the collaborative team.

In addition, eligible applicants must meet the following criteria:

(1) Where applicable, must target the following racial/ethnic populations: Asian and Pacific Islanders(San Diego); African-Americans (Atlanta); Latinos/Hispanics (Queens [Jackson Heights]; San Gabriel Valley).

(2) Must have an agreement to collaborate with the investigator on the proposed program as evidenced by a letter of support.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $1.2 million is available in FY 2002 to fund approximately six awards. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000. It is expected that the awards will begin on or about September 16, 2002 and will be made for a 12-month budget period.

Although applicants are encouraged to contract with other organizations under these cooperative agreements, applicants must perform a substantial portion of the activities (including program management and operations) for which funds are requested.

Funding Preferences

Each applicant may submit only one application and the intent is to fund one award in each of the specified communities, therefore applicants from the same geographic area are encouraged to collaborate.

Matching funds is not a requirement for this program announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Establish a collaborative team of prevention service providers and other community partners to implement a multi-component HIV prevention intervention for young men (aged 15–25) who have sex with men (YMSM). The collaborative team should consist of the organizations that will jointly implement intervention activities for YMSM. The collaborative team will include a lead organization, a researcher that was previously funded through Program Announcement 96001, and at least one other community organization. The lead organization and other collaborating organizations may be state or local health departments, community-based organizations, AIDS service organizations, or other social service organizations, and organizations

affiliated with the state/local Community Planning Group (CPG).

b. Participate in a planning process that will involve a review of interventions that have been found to be effective for YMSM, selection of intervention activities that will be implemented jointly by the organizations in the collaborative team, and tailoring of the intervention protocols to the context of the community. The collaborative teams should consider interventions identified in the state/local Comprehensive HIV Prevention Plans but should also consider interventions that have been identified by CDC as effective for this population that may not be mentioned in a state/local plan. All activities supported under this announcement must be consistent with the goals of the state/local Comprehensive HIV Prevention Plan.

c. Implement the HIV prevention intervention for YMSM. This may involve any or all of the following activities: peer outreach, social marketing, social events with an HIV prevention theme, and small group workshops.

d. Collaborate with academic or other appropriate institutions to develop and implement a plan for evaluating program activities.

e. Establish mechanisms with other public and/or private groups to maintain support for the program at the conclusion of federal support.

f. Collaborate with appropriate partners to inform, and educate state and local CPG's, other HIV prevention providers and researchers regarding the experiences and lessons learned in technology transfer of the selected intervention activities for YMSM in these communities.

g. Collaborate with appropriate partners to inform and educate others regarding the experiences and lessons learned from the project.

2. CDC Activities

a. Provide up to date information and recommendations on effective intervention strategies for YMSM.

b. Provide consultation and technical assistance in the planning and evaluation of program activities.

c. Monitor recipient performance of program activities and compliance with other requirements.

d. Identify mechanisms for disseminating lessons learned from the project.

F. Content

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and twelve point fonts. The 25 pages does not include the budget or appendices.

G. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 [(OMB Number 0920–0428) (adhere to the instructions on the Errata Instruction Sheet for PHS 398)]. Forms are at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms may also be obtained by contacting the Grants Management listed in the "Where to Obtain Additional Information" section of this announcement. Forms may not be submitted electronically.

On or before August 28, 2002, submit the application to the: Technical Information Management Section, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are: Received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above will be returned to the applicant.

H. Evaluation Criteria

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals)as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

(1) Intervention implementation plan (30 points)

a. The applicant should describe the planning process for reviewing HIV prevention interventions that have shown evidence of effectiveness; and selecting intervention activities for their community. The planning process should include strategies for tailoring the planned intervention to the target population and the community context.

b. The applicant should provide a plan for implementing, with members of the collaborative team and community members, the selected HIV prevention intervention for young men who have sex with men. This intervention may include any or all of the following activities: Peer outreach, social marketing, social events with an HIV prevention theme, small group workshops, and capacity-building. Applicants are encouraged to improve existing services with proven effective prevention programs in order to enhance the sustainability of the effort.

c. The proposed implementation plan should include overall goals and specific objectives that are time-phased, measurable, realistic, and related to the proposed goals.

d. A time line of planned program activities should be included in the appendix for this section. The time line should allow for a planning process of at least three but no more than six months prior to intervention implementation.

e. The applicant should provide a plan for sustaining the intervention beyond the federal funding period, including potential alternate sources of funding.

(2) Organizational capacity of lead agency (25 points)

a. The applicant should describe experience conducting HIV prevention activities directly with the target population, or as part of a coalition or collaborative team working with the target population, for at least two of the previous four years in the selected community.

b. The applicant should describe the staffing plan for the proposed program. At a minimum, staffing should include a full-time program coordinator, a full-time peer outreach coordinator, and a part-time program assistant. Except for the program coordinator, some of these positions may be housed within other coalition members' organizations.

c. The applicant should provide descriptions of any other collaborative ventures within the past four years, and document the accomplishments of those collaborations.

(3) Collaborative Team (25 points)

a. The applicant must describe the members of the collaborative team by type of organization and relative organizational experience. (At a minimum, the collaborative team should include at least the lead agency, the original researcher funded under

Cooperative Agreement 96001, and at least one other community organization). The applicant should be able to show strong representation by the targeted YMSM population in the collaborative team.

b. The applicant should provide evidence of an established relationship with one of the investigators funded under Cooperative Agreement 96001 and/or an agreement to collaborate with the researcher on this program as evidenced by a letter of support. The applicant should describe the specific role the researcher will perform in the implementation and evaluation of the intervention.

c. Signed letters of support or other official documentation (e.g., memorandum of agreement) of the relevant collaboration should be appended to the document but not included in this section of the narrative.

(4) Evaluation Plan (10 points)

a. Applicant should provide a description of the evaluation and monitoring process that the applicant will use to track and measure program progress.

b. An evaluation plan should be provided that includes time-phased, specific, and measurable objectives that account for the major activities of the intervention implementation plan, and any other relative process measures.

(5) Dissemination of Lessons Learned (10 points)

The applicant should describe how successful approaches and lessons learned will be shared with other organizations.

(6) Budget (not scored)

The applicant should provide a line-item budget with a detailed narrative justification that is consistent with the purpose and objectives of this cooperative agreement.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Quarterly progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the project period.
4. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–4 HIV/AIDS Confidentiality Provisions

AR–5 HIV Program Review Panel Requirements

AR–7 Executive Order 12372 Review

AR–8 Public Health System Reporting Requirements

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–14 Accounting System Requirements

AR–15 Proof of Non-Profit Status

AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Lynn Mercer, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2810, Email address: *lzm2@cdc.gov*.

For program technical assistance, contact: Craig Studer, Behavioral Intervention Research Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS E–37, Atlanta, GA 30333, Telephone number: (404) 639–1900, Email address: *ccs1@cdc.gov*.

Dated: July 23, 2002.

Edward J. Schultz,

Deputy Director, Procurement and Grants Office, Centers for Disease Control Prevention.

[FR Doc. 02–19061 Filed 7–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02179]

National Environmental Public Health Tracking Program; Notice of Availability of Funds

Addendum

A notice announcing the availability of Fiscal Year (FY) 2002 funds for a cooperative agreement program to support development of a National Environmental Public Health Tracking Program was published on July 18, 2002, Volume 67, Number 138, pages 47371–47381. The following appendix is added to this announcement: Appendix V.

The Agency for Toxic Substances and Disease Registry (ATSDR) has also recently released a request for proposals "Linking Chronic Disease and Environmental Data Sources". This is separate from CDC Environmental Public Health Tracking Program announcements PA02179, and PA02180 (Centers for Excellence in Environmental Public Health Tracking). ATSDR will fund two to three projects. The purpose of these projects are to conduct research on the potential impact of environmental exposures on chronic disease outcomes. If interested in learning more about this other funding opportunity, applicants should refer to ATSDR's announcement which is posted on CDC's Web site at: *http://www.cdc.gov/od/pgo/funding/02155.htm*. CDC and ATSDR have been collaborating on their respective announcements and will continue to coordinate these activities at the Federal level.

In future years, CDC's announcement (PA02179) and ATSDR's announcement (PA02155) will be combined and all activities will be included in one announcement. Therefore, applicants should be aware of the criteria in both announcements. For example, criteria on developing systems that are compatible with NEDSS, Bioterrorism, and EPA's National Environmental Information Exchange Network will be critical for all aspects of tracking.

For more information, CDC has introduced a new environmental public health tracking Web site. It can be accessed at: *www.cdc.gov/nceh/tracking*.

Dated: July 23, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19060 Filed 7–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: DHHS/ACF Employment Retention and Advancement (ERA) Evaluation 12-Month Survey.

OMB No.: New collection.

Description: The Employment Retention and Advancement (ERA) Evaluation is the most ambitious, comprehensive effort to learn what works in this area to date and is explicitly designed to build on past research by rigorously testing a wide variety of approaches to promoting employment retention and advancement for a range of populations. The project, conceived and sponsored by the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS), seeks to "conduct a multi-site evaluation that studies the net impact and cost-benefits of programs designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or families at-risk of needing TANF benefits retain and advance in employment." The ERA Evaluation involves up to 15 random assignment experiments in eight states, testing a diverse set of strategies designed to promote stable employment and/or career advancement for current and former welfare recipients and/or career advancement for current and former welfare recipients and other low-income parents. Over the next several years, the ERA project will generate a wealth of rigorous data on the implementation, effects, and costs of these alternative approaches. The data collected will be used for the following purposes:

- To study ERA's impacts on employment, earnings, participation, educational attainment and income;
- To collect data on a wider range of outcome measures than is available through welfare or UI records in order to understand how individuals were affected by ERA; job retention and job quality; educational attainment; interactions with an knowledge of the ERA program; household composition; income; and childcare, transportation, and health coverage;
- To supplement research on the implementation of ERA across sites;
- To conduct non-experimental analyses to explain participation decisions and provide a descriptive picture of the circumstances of low-wage workers;
- To obtain participation information important to the evaluation's benefit-cost component; and
- To obtain contact information for possible future follow-up, information that will be important to achieving high response rates for the 36-month survey.

Respondents: The respondents of the 12-month survey are Temporary Assistance for Needy Families (TANF) applicants, current and former TANF recipients, or individuals in families at-risk of needing TANF benefits (working poor and hard-to-employ) from eight states participating in the ERA Evaluation: California, Oregon, New York, Ohio, Minnesota, Illinois, South Carolina, and Texas. Survey respondents can be grouped according to three program clusters: advancement projects; placement and retention (hard-to-employ) projects; and mixed goal projects. All three program clusters will receive the 12-month core survey. The placement and retention (hard-to-employ) participants will also receive the hard-to-employ survey module. Survey participants will be administered a telephone survey (for those individuals who cannot be reached by phone, staff at the survey firm will attempt to contact them in person) approximately 12 months after random assignment. Approximately 6,250 participants will complete the core survey only and 1,800 participants will complete the core plus hard-to-employ module survey.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
12-Month Survey (Core Only)	3,125	1	37 minutes or .6166 hours	1,927.08
12-Month Survey (Core plus Hard-to-Employ Module).	900	1	45 minutes or .75 hours	675.00
Estimated Total Annual Burden Hours				2,602.08

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: July 24, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–19071 Filed 7–26–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Public Comment on the Reporting Period for the National Child Abuse and Neglect Data System

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice of request for public comment.

SUMMARY: The Children's Bureau, in the Administration on Children, Youth and Families administers the National Child Abuse and Neglect Data System (NCANDS), through which States collect and report data on child maltreatment. The Children's Bureau (CB) uses these data as a basis for States' conformity with title IV–B and IV–E State plan requirements as determined by a Child and Family Services (CFS) Review, among other purposes. States reviewed in 2001 noted a number of concerns when NCANDS data were used in this manner. Specifically, States and ACF experienced difficulty with interpreting NCANDS data because they are reported on a calendar year basis, while the reporting period for the other primary data source for the CFS Reviews, the Adoption and Foster Care Analysis and Reporting System (AFCARS), is a Federal fiscal year. CB is proposing a change in the NCANDS reporting period to address this issue. The Administration on Children and Families invites comments from States and other interested parties regarding the NCANDS reporting period.

DATES: Written comments must be submitted to the office listed in the ADDRESSES section below on or before August 28, 2002.

ADDRESSES: E-mail written comments to John Gaudiosi, Children's Bureau, at *jgaudiosi@acf.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: John Gaudiosi, Mathematical Statistician, Children's Bureau, *jgaudiosi@acf.hhs.gov* or 202–205–8625.

SUPPLEMENTARY INFORMATION:

NCANDS Background

Public Law 100–294 amended the Child Abuse Prevention and Treatment Act (CAPTA) [42 U.S.C. 5101 *et seq.*] and directed the Secretary of the Department of Health and Human Services to establish a national data collection and analysis program on child abuse and neglect. The Department responded by establishing the NCANDS as a voluntary national reporting system. States report aggregate summary data and detailed case-level such as the number of children abused and neglected, the types of abuse, the number of fatalities due to maltreatment, and the types of services provided to address maltreatment and prevent future abuse. Public Law 104–235 further amended CAPTA to establish that States that participate in NCANDS and receive the Basic State Grant would work with the Secretary to provide, to the maximum extent practicable, a report that includes several data items, including the number of children reported as abused or neglected; the number that did or did not receive services; the number removed from their families during the year; the number of families that received preventive services; the number of deaths resulting from child abuse or neglect; and others [42 U.S.C. 5106a]. The Department incorporated these requirements into the NCANDS.

ACF uses NCANDS data for a variety of purposes, including:

- An annual publication on child maltreatment;
- Child Welfare Outcomes Annual Report to Congress;
- The Child and Family Services Reviews;
- Responding to data requests from other Federal agencies concerning child abuse and neglect; and
- Research activities.

In FY 2000, 17 States submitted aggregate data and 34 States submitted case-level data. The recent increases in the number of States submitting case-level data is linked strongly to ACF's use of the NCANDS data to evaluate and report child welfare outcomes nationally.

Interpreting Child Welfare Outcomes Using NCANDS Data

Although CB has used NCANDS data for more than 10 years to provide a national picture of child maltreatment, the use of NCANDS data to determine child welfare outcomes and State compliance with Federal child welfare requirements is a recent event. The CFS Reviews (see 45 CFR 1355.31–1355.37) measure compliance with the State plan requirements under titles IV–B and IV–E of the Social Security Act by evaluating child and family outcomes. As part of these reviews, CB provides each State under reviews with data profiles generated from data submitted to NCANDS and AFCARS. States report detailed data to AFCARS on children removed from their homes and placed in foster care and children adopted within a State with the involvement of the State child welfare agency.

Data from both AFCARS and NCANDS must be used simultaneously to evaluate child welfare outcomes, because the majority of families and children who are reported in AFCARS are also included in NCANDS. Since the reviews are comprehensive and cover child protective services, foster care, adoption, family preservation, family support and independent living, the only means of obtaining critical national data on children and families for some of these programs is to use the NCANDS and AFCARS data together. These data are used to help States and the Federal government understand what happens to children and families as they move through State child welfare systems, to identify strengths and areas needing improvement in State child welfare systems, and to determine the State's conformity with applicable requirements.

As currently configured, using NCANDS and AFCARS data together presents challenges to States and CB. At the November 2001 meeting of the Children's Bureau with the first 17 States that had undergone a CFS Review, States identified several challenges in using the Federal data sets to measure conformity and evaluate child welfare outcomes. One challenge noted is the reporting period. AFCARS data are based on the Federal fiscal year, on the other hand, PI–CB–98–15, issued September 19, 1998, gave States the option to submit NCANDS data using the calendar year, the Federal fiscal year, or the State fiscal year. Presently, all States now submit data on calendar year basis. As a result, States must analyze and evaluate their effectiveness in preventing child maltreatment and out-of-home placement using data sets from different time periods. Furthermore, CB has developed a national standard for the incidence of child abuse and/or neglect in foster care for the CFS Reviews using both AFCARS and NCANDS data.[1] To generate this measure, CB uses nine months of data (January through September) rather than a full year of data because of the different reporting periods. CB uses a similar measure in the Child Welfare Outcomes Annual Report to Congress that tracks State child welfare agency performance on key outcome measures.[2] Synchronizing the reporting periods will make the NCANDS data available three months earlier. This will enable CB to generate more timely safety profiles for the CFS Reviews and contextual data for the Child Welfare Outcomes Annual Report to Congress. CB believes changing the reporting period for NCANDS ensures the best use of the data reported by States. Since AFCARS data are used in Federal budget projections and State grant allocations,[3] changing the

[1] See ACYF–CB–IM–01–07 for further discussion on the national standards in the CFS reviews.

[2] Log onto *http://www.acf.dhhs.gov/programs/cb/publications/index.htm* for the most recent report to Congress and a discussion of the outcome measures.

[3] For instance, AFCARS data are used in determining State allotments under the Chafee Foster Care Independence Program under section 477 of the Social Security Act. AFCARS data is also used in determining whether a State qualifies for incentive payments under the Adoption Incentive Program under section 4 473A of the Social

AFCARS reporting period would significantly disrupt other priorities.

Changing the NCANDS Reporting Period to a Federal Fiscal Year

To address the above concerns, we are considering changing the NCANDS reporting period to coincide with the Federal fiscal year (October 1 through September 30). This change will make future NCANDS data inconsistent with previous years' data. However, statistical procedures can be used to make appropriate adjustments for analytic purposes, thus diminishing this disadvantage. The proposed changes for submitting NCANDS data are delineated in the table below.

Data year	CB requests data	States submit data	CB finalizes data	CB completes draft annual report
CY 2000	**March 2001**	**June 15, 2001**	**October 2001**	**March 2002.**
CY 2001	**March 2002**	**June 15, 2002**	**October 2002**	**March 2003.**
FFY 2002 (Oct. 2001–Sept. 2002)	December 2002	March 15, 2003	July 2003	December 2003.
FFY 2003 (Oct. 2002–September 2003)	December 2003	March 15, 2004	July 2004	December 2004.

Bold-faced text=past or current data collection schedules. Note FFY 2002 would collect October 2001–December 2001 again from the States. The March 2003 report would be considered the Annual report for 2001; the December 2003 report would be the report for 2002, etc.

ACF is interested in public comment on this issue. In particular, we invite comments regarding:

- The advantages or disadvantages of calendar year versus Federal fiscal year reporting for NCANDS data for States, particularly in interpreting child welfare outcome data
- The advantages or disadvantages of calendar year versus Federal fiscal year reporting of NCANDS data for researchers and other interested parties
- The fiscal and administrative impact on States of changing NCANDS to Federal fiscal year reporting (i.e., costs to Statewide child welfare information systems, burden of proposed submission dates, etc.)
- Other suggestions for addressing the concerns noted regarding the data reporting periods.

Dated: July 16, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth, and Families.

[FR Doc. 02–18377 Filed 7–26–02; 8:45 am]

BILLING CODE 4184–01–M

Security Act. Both programs rely on using available data that are consistent with a Federal fiscal year.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–20]

Notice of Submission of Proposed Information Collection to OMB Real Estate Settlement Procedures Act (RESPA) Disclosures

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: August 28, 2002.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Joseph_F._Lackey_Jr@OMB.EOP.GOV.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Real Estate Settlement Procedures Act (RESPA) Disclosures.

OMB Approval Number: 2502–0265.

Form Numbers: HUD–1, HUD–1–A.

Description of the Need for the Information and its proposed Use: The Real Estate Settlement Procedures Act of 1974 requires settlement providers to disclose to homebuyers certain information at or before settlement and pursuant to the servicing of the loan and escrow account. This includes a Special Information Booklet, a Good Faith Estimate, an Initial Servicing Disclosure, a Settlement Statement (the Form HUD–1 or Form HUD–1A), and when applicable an Initial Escrow Account Statement, an Annual Escrow Account Statement, an Escrow Account Disbursement Disclosure, an Affiliated Business Arrangement Disclosure, and a Servicing Transfer/Disclosure. This information requirement under OMB control number 2502–0265 consolidates information previously collected under OMB control numbers 2502–0458, 2502–0491, 2502–0501, 2502–0516, and 2502–0517.

Respondents: Individuals or households, business or other for-profit entities.

Frequency of Submission: On occasion and annually.

	Number of respondents	Annual	Hours per response	Burden hours
Reporting Burden	20,000	105,300,000	0.04	6,500,000

Total Estimated Burden Hours: 6,500,000.

Status: Reinstatement, with changes, of a previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 23, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–19117 Filed 7–26–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–04]

First Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of meeting of the Manufactured Housing Consensus Committee.

SUMMARY: This notice announces the first meeting of the Manufactured Housing Consensus Committee (the Committee) and sets forth the proposed agenda for the meeting. The meeting is open to the public and the site is accessible to individuals with disabilities.

DATES: Meetings will be held on Tuesday, August 13, 2002, from 9 a.m. to 4 p.m., Wednesday, August 14, 2002 from 9 a.m. to 4 p.m., and Thursday, August 15, 2002, from 9 a.m. to 12 p.m.

ADDRESSES: These meetings will be held at the Marriott DC at Metro Center, 775 12th Street, NW., Washington, DC 20005, telephone (202) 737–2200.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 4503(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with developing proposed model installation standards. The purpose of this meeting is to initiate the Consensus Committee activities and develop committee procedures.

Tentative Agenda

A. Welcome and Introductions
B. Manufactured Housing Improvement Act of 2000 (Title VI, Pub. L. 106–569, 114 Stat. 2944)
C. Objectives for Administering Organizations's Various Contract Periods
D. HUD Address in Vision and Goals
E. Committee Charter and Federal Advisory Committee Act Procedures
F. ANSI Procedures
G. Committee Procedures and By-Laws
H. Installation Standards
I. Prioritization of Other Work Permitted by the Act
J. Process/Format for Proposed Changes to the Standards and Regulations
K. Scheduling of future meeting(s)

Dated: July 23, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–19118 Filed 7–26–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Mojave Southern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Mojave Southern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave Southern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include managers' reports of field office activities; an update on the Southern Nevada Public Land Management Act of 1998; and other topics the council may raise.

All meetings are open to the public. The public may present written and/or oral comments to the council at 3 p.m. Thursday August 22, 2002. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact Phillip Guerrero at (702) 515–5046 by August 1, 2002.

DATE AND TIME: The RAC will meet August 21, 22 and 23, 2002 at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely NV. 89301–9408 from 8:30 a.m. to 4 p.m. The information phone number at the Ely Field Office is 775–289–1800.

FOR FURTHER INFORMATION CONTACT: Phillip L. Guerrero, Public Affairs Officer, BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas NV 89130–2301, or by phone at (702) 515–5046.

Dated: June 14, 2002.

Phillip L. Guerrero,

Public Affairs Officer, Las Vegas Field Office.

[FR Doc. 02–19051 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–01–1220–AA]

Notice of Public Meeting, California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S.

Department of the Interior, Bureau of Land Management (BLM) California Desert District Advisory Council (DAC) will meet at the following dates and locations.

September 13–14, 2002: On Friday, September 13, the Council and members of the public will assemble at the parking lot of the Baker Community Center at 7:15 a.m. and depart 7:30 a.m. for a field tour of BLM-administered public lands The community center is located at 56725 Park Ave in Baker. The Council will meet in formal session on Saturday, September 14 from 8 a.m to 5 p.m. at the Baker Community Center, Baker, California. Scheduled agenda topics will include the following:

Public comment for items on the agenda and other issues
Council members and BLM District and field office manager activity reports
Discussions on proposed Congressional wilderness bills
BLM reports on wilderness values
Update on BLM wilderness management
Economic report from Imperial County

December 13–14, 2002: On Friday, December 13, the Council and members of the public will assemble for a field tour at the Best Western China Lake Inn parking lot at 7:15 a.m. and depart at 7:30 a.m. for a field tour of BLM-administered public lands. The Inn is located at the Best Western China Lake Inn, located at 400 South China Lake Boulevard, in Ridgecrest. The Council will meet in formal session on Saturday, December 14 from 8 a.m to 5 p.m. in the Burroughs High School Fine Arts Theater located at 500 French Avenue, in Ridgecrest, California. Agenda items will discussions on the following topics:

Public comment for items on the agenda and other issues
Council members and BLM managers reports
Update on the West Mojave Plan Draft Habitat Conservation Plan
Routes of travel network
Economic reports from Kern and San Bernardino Counties

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, BLM California Desert District Public Affairs Specialist, (909) 697–5220.

SUPPLEMENTARY INFORMATION: The public is welcome to participate in the field tours, but should plan on providing their own transportation, drinks, and lunch.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is also scheduled at the beginning of the meeting. Time for individual oral comments may be limited depending on the number of people who register to comment and time available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should contact the BLM as provided below

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

Dated: July 8, 2002.

Linda Hansen,

Acting District Manager, California Desert District.

[FR Doc. 02–19052 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1120–PG]

Notice of Public Meeting, Upper Columbia-Salmon Clearwater Resource Advisory Council Meetings; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Columbia-Salmon Clearwater (UCSC) District Resource Advisory Council (RAC) will meet as indicated below.

DATES: Three separate meetings are planned: October 16 and 17, 2002; March 12 and 13, 2003; and June 18 and 19, 2003. Each meeting will begin at 1 p.m. on the first day and end at approximately 5 p.m. on the second day. The public comment period will begin at approximately 3 p.m. on the first day of each meeting. Meetings will be held at the C'mon Inn, 2775 Expo Parkway, Missoula, Montana, because Missoula is centrally located for Council members traveling from the northern and south-central parts of Idaho.

FOR FURTHER INFORMATION CONTACT: Stephanie Snook, RAC Coordinator, BLM UCSC District, 1808 N. Third Street, Coeur d'Alene, Idaho 83814 or telephone (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The following topics will be discussed at the October, 2002 meeting:

—Review past accomplishments, Nomination of Officers
—Idaho BLM Table of Organization and Goals
—Briefings on issues such as OHV use, Resource Management Plans and implementation, fire management, and noxious weeds.
—Future issues as identified by the Council

The meetings to be held in March and June 2003, will continue discussions or work on the above agenda items as well as other resource issues. Additional agenda items for the meetings in 2003 will be published in newspapers covering the BLM UCSC District prior to these meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Dated: July 10, 2002.

Jenifer L. Arnold,

Acting District Manager.

[FR Doc. 02–19053 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1020–AC]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S.

Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held September 19, 2002, in Red Lodge, MT, beginning at 7:30 a.m. When determined, the meeting place will be announced in a News Release. The public comment period will begin at approximately 9:15 a.m. and the meeting will adjourn at approximately 4 p.m.

FOR FURTHER INFORMATION CONTACT: Linda Reder, Acting Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301, telephone (406) 233–2824.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics we plan to discuss include: Healthy Land Monitoring Presentation/Field Trip, National RAC Meeting, Access and Outfitters and Guides Update, Oil and Gas EIS Update and other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: July 5, 2002.

Sandra S. Brooks,

Field Manager.

[FR Doc. 02–19054 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park; Notice of Intent To Prepare an Environmental Impact Statement for the Schoodic General Management Plan Amendment

SUMMARY: In accordance with the National Environmental Policy Act of 1969 [Pub. L. 91–109 Section 102(c)], the National Park Service is preparing an Environmental Impact Statement (EIS) for the Schoodic General Management Plan Amendment. The purpose of the EIS is to assess the impacts of alternative management strategies that will be described in the general management plan amendment for the Schoodic District of Acadia National Park. The National Park Service is formulating a range of alternatives for natural and cultural resource protection, visitor use and interpretation, facilities development, and operations.

SUPPLEMENTARY INFORMATION: Acadia National Park encompasses 100.1 acres of the former Naval Security Group Activity Winter Harbor at Schoodic Point. The former Navy base contains approximately 40 major buildings totaling 178,000 square feet that include a dormitory, apartment complex, cafeteria, medical clinic, fire station, commissary, gymnasium, child day-care center, maintenance facility, recreational facilities, warehouse, and related utility systems. The original Navy apartment and operations building and its generator house are eligible for the National Register of Historic Places.

Pursuant to Public Laws 80–260 and 107–107, the Department of the Navy transferred its property at Schoodic Point to the NPS on July 1, 2002. The NPS is preparing an amendment to Acadia's 1992 General Management Plan for the 2,366-acre Schoodic District of the park to determine the appropriate range of uses for the former Navy facilities and address effects on the park's resources and visitor experiences at Schoodic. The Schoodic District is zoned a "natural area" in the park's 1992 General Management Plan and is managed to retain its current use levels and opportunities for low-density recreation.

The three alternatives for the reuse of the site include: (1) Multi-partner approach; (2) National Park Service approach; and (3) no action, as required by the National Environmental Policy Act. The multi-partner approach will emphasize the use and occupancy of the site for research and educational purposes by one or more partners. The partners would contribute to the park's research and education efforts and conduct programs that are consistent with its mission. This alternative will also accommodate the uses described under the National Park Service approach. The National Park Service approach will emphasize the park's use of the site for administering the Schoodic District, providing interpretive services to visitors, facilitating park-specific research, offering resident environmental education programs, and housing NPS employees.

Public Scoping

The NPS is seeking feedback from interested parties who wish to express concerns, make suggestions, and raise issues about the future development and management of the Schoodic District of Acadia National Park. You may submit written comments on the general management plan amendment alternatives, scope of the EIS, and related issues to the National Park Service by postal mail, fax, e-mail, or hand delivery. Mail comments to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609. Fax comments to: (207) 288–5507. E-mail comments to: *acad_planning@nps.gov*. Hand deliver comments during normal business hours to: Acadia National Park Headquarters, McFarland Hill, Rt. 233, Bar Harbor, Maine. Please include your complete name and address along with your comments. If you wish to have your name and address withheld from the public record, you must state so prominently at the beginning of your comments. We will honor your request to the extent allowable by law. Comments must be submitted within 30 calendar days from July 29, 2002.

A draft general management plan amendment and EIS is expected to be completed and available for public review in early fall 2002. After public and agency review of the draft document, the NPS will consider comments and complete a final general management plan amendment and EIS in early 2003, with a Record of Decision to follow.

FOR FURTHER INFORMATION CONTACT: John T. Kelly, Park Planner, at Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609; telephone: (207) 288–5472; fax: (207) 288–5507; e-mail: *john_t_kelly@nps.gov*. Additional information about the Schoodic General Management Plan Amendment and EIS is also available on Acadia National Park's Web site at: *www.nps.gov/acad/schoodic/intro.htm*.

Dated: July 18, 2002.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 02–19096 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Jamestown Project Development Concept Plan, Draft Environmental Impact Statement, Colonial National Historical Park, Jamestown Unit, Jamestown, VA, and Jamestown National Historic Site, Jamestown, VA

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the draft environmental impact statement for the Jamestown Project Development Concept Plan, Colonial National Historical Park, Jamestown Unit, and Jamestown National Historic Site.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of a draft Environmental Impact Statement for the Jamestown Project Development Concept Plan, Colonial National Historical Park, Jamestown Unit, Jamestown, Virginia, and Jamestown National Historic Site, Jamestown, Virginia.

DATES: The National Park Service will accept comments from the public on the Draft Environmental Impact Statement for 60 days after publication of this notice. A public meeting will be held within the 60 day period, on September 12, 2002 between 3 pm and 9 pm at the Williamsburg Community Building, 401 North Boundary Street, Williamsburg, VA.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Colonial National Historical Park, Yorktown, Virginia, in the administrative offices located below the Yorktown Visitor Center. It will also be available at the following locations: Jamestown Visitor Center, Jamestown, Virginia, Colonial National Historical Park; Gloucester County Library, 6382 Main Street, Glouscester, VA 23061; Hampton City Library, 936 Big Bethel Road, Hampton, VA 23666; James City County Library, 7770 Croaker Road, Williamsburg, VA 23188; John D. Rockefeller, Jr. Library, 313 1st Street, Williamsburg, VA 23185; Newport News City Library, 700 Town Center Drive, Suite 300, Newport News, VA 23606; Surry County Library, 11640 Rolfe Highway, Surry, VA 23883; Williamsburg Regional Library, 515 Scotland Street, Williamsburg, VA 23185; York County Public Library, 8500 George Washington Highway, Yorktown, VA 23692.

FOR FURTHER INFORMATION CONTACT: Mike Litterst, Information Officer, Colonial National Historical Park, 757/898–2409.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Alec Gould, Superintendent, Colonial National Historical Park, P.O. Box 210, Yorktown, VA 23690. You may also comment via the Internet to *www.nps.gov/colo*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Jamestown Project" and your name and return address in your Internet message. Finally, you may hand-deliver comments to the office of the Superintendent, Colonial National Historical Park, Yorktown, Virginia, in the administrative offices located below the Yorktown Visitor Center. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 12, 2002.

Patricia Phelan,

Acting Director, Northeast Region, National Park Service.

[FR Doc. 02–19095 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–986 and 987 (Final)]

Ferrovanadium From China and South Africa

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–986 and 987 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China and South Africa of ferrovanadium, provided for in subheading 7202.92.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON-LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of ferrovanadium from China and South Africa are being sold in the United

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as all ferrovanadium produced in China and South Africa, regardless of the grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as ferrovanadium. The scope of these investigations specifically excludes vanadium additives other than ferrovanadium, such as nitrided vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues, and fly ash. Merchandise classifiable in the Harmonized Tariff Schedule of the United States subheadings 2850.00.20, 8112.40.30, and 8112.49.60 is specifically excluded.

States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on November 26, 2001, by the Ferroalloys Association Vanadium Committee and its members: Bear Metallurgical Co., Butler, PA; CS Metals of Louisiana LLC, Convent, LA; Gulf Chemical & Metallurgical Corp., Freeport, TX; Shieldalloy Metallurgical Corp., Cambridge, OH; and U.S. Vanadium Corp., Danbury, CT.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on November 8, 2002, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on November 22, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 12, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 15, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is November 18, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 3, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 3, 2002. On December 16, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 18, 2002, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: July 23, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–19026 Filed 7–26–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–376, 377, and 379 and 731–TA–788–793 (Final) (Remand)]

Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan; Amended Notice and Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its final antidumping and countervailing buy investigations, *Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, Nos. 701–TA–376, 377 and 379 (Final) and 731–TA–788–793 (Final).

EFFECTIVE DATE: July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Woodley, Timberlake, Office of Investigations, telephone 202–205–3188 or Neal J. Reynolds, Office of General Counsel, telephone 202–205–3093, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

In May 1998, the Commission determined, by a four-to-two vote, that an industry in the United States was not being materially injured or threatened

with material injury by reason of imports of cold-rolled stainless steel plate in coils from Belgium and Canada. On August 28, 2002, the Court of International Trade affirmed this determination as being in accordance with law and supported by substantial evidence. *Allegheny Ludlum Corp.* v. *United States*, 116 F.Supp. 2d 1276 (CIT 2000). On April 19, 2002, the U.S. Court of Appeals for the Federal Circuit vacated lower court's ruling, finding that the Commission's volume and impact findings with request to cold-rolled stainless steel plate were not in accordance with law and that its pricing finding for cold-rolled plate was unsupported by substantial evidence. *Allegheny Ludlum Corp.* v. *United States*, Appeal No. 01–1223 (April 19, 2002). On June 18, 2002, in accordance with the Federal Circuit's decision, the Court of International Trade vacated it earlier decision and remanded to the Commission its final negative determination with respect to cold rolled stainless steel plate. In its order, the Court of International Trade remands the determination to the Commission "for proceedings not inconsistent with the Federal Circuit's decision in Appeal No. 01–1223." It also directs the Commission to issue a remand determination within sixty days of the date of the order, *i.e.*, by August 19, 2002.

Scheduling the Vote

The Commission will vote on the remand determination at a public meeting to be held on Monday, August 12, 2002. The meeting is tentatively scheduled for 2 p.m.

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation to seek additional data with respect to the impact of the subject imports from Belgium and Canada on the domestic industry producing cold-rolled stainless steel plate in coils:

Participating in the Proceedings

Only those persons who were interested parties to the original administrative proceedings (*i.e.*, persons listed on the Commission Secretary's service list) may participate in this remand proceeding.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to parties under the administrative protective order ("APO") in effect in the original investigation. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the final investigation and this remand investigation available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of the Commission's notice of reopening the record on remand in the **Federal Register**. Applications must be filed for persons who are on the Judicial Protective Order in the related CIT case, but are not currently covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Written Submissions

Each party who is an interested party in this remand proceeding may submit a written brief to the Commission. The brief must be concise and be limited to comments on how the data obtained in this remand proceeding affect the Commission's original determination with respect to cold-rolled stainless steel plate products. Any material in the comments not addressing this limited issue will stricken from the record. The brief must be doubled-spaced, single-sided, and on stationary measuring 8 ½ inches. The comments will be limited to thirty (30) pages, and must be filed no later than the close of business on August 7, 2002.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: July 23, 2002.
By order of the Commission.

Marilyn Abbott,

Secretary.

[FR Doc. 02–19025 Filed 7–26–02; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Presidential Task Force on Employment of Adults With Disabilities (PTFEAD) Youth Advisory Committee; Notice of Open Meeting and Agenda

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of meeting.

SUMMARY: The Office of the Secretary, United States Department of Labor, is notifying the public that the Youth Advisory Committee to the Presidential Task Force on Employment of Adults with Disabilities will conduct an open meeting on Monday, August 12, 2002 in Washington, DC.

DATE: The Youth Advisory Committee will meet from 9 a.m. until approximately 4 p.m., on Monday, August 12 at the Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, Maryland, 20814.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Horne, Senior Policy Advisor, Presidential Task Force on Employment of Adults with Disabilities (phone: (202) 693–4923; TTY (202) 693–4920; FAX (202) 693–4929; e-mail *Horne-Richard@dol.gov*).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Because of time constraints, oral testimony from the public will not be possible. Anyone wishing to do so, however, may submit a written statement. Written statements should be kept as brief as possible. The Committee is interested in comments and suggestions for future directions related to the following areas: Employment; Education; Health Care and Income Supports; Transportation, Housing, Independent Living, and Public Awareness. Written submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. To ensure that a written statement is received in time to be part of the record of the meeting, the statement should be mailed to the contact person at least five business days prior to the meeting. People with disabilities who need special accommodations should contact Dr. Richard Horne (phone: (202) 693–4923; TTY (202) 693–4920; FAX (202) 693–4929; e-mail *Horne-Richard@dol.gov*) no later than one week before the meeting.

The agenda for this meeting includes:

—Report out on work of subcommittees.
—Discussion and vote by entire committee on which subcommittee

recommendations will be included in the committee's final report.

An official record of the meeting will be available for public inspection in Room S 1303 of the Department of Labor Building (Francis Perkins Building) located at 200 Constitution Avenue, NW. , Washington, DC 20210. For additional information contact Dr. Richard Horne (phone: (202) 693–4923; FAX (202) 693-4929; or e-mail *Horne-Richard@dol.gov*)

Signed at Washington, DC, this 23rd day of July, 2002.

Gary Reed,

Acting Executive Director, Presidential Task Force on Employment of Adults with Disabilities.

[FR Doc. 02–19123 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,195; Wellman Thermal Systems, Inc., Shelbyville, IN

TA–W–41,429; Concord Wire, Worcester, MA

TA–W–41.480; Newell Manufacturing Corp., Lowell, MI

TA–W–41,286; Semitool, Inc., Kalispell, MT and Operating at the Following Locations A; San Jose, CA, B; Beaverton, OR, D; Dallas, TX, D; Austin, TX, E; Tempe, AZ, F; Cary, NC, G; Nashua, NH, H; Libby, MT

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–41,672; VMV Paducahbilt, VMV Enterprises, Paducah, KY

TA–W–40,410; Thyseen Mining Construction of Canada, A Contractor for Stillwater Mining Co., Nye, MT

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,307; Canton Drop Forge, Inc., A Wholly Owned Subsidiary of Engineering Materials, Inc., Canton, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,422; McCain Foods USA, Inc., Anchor Appetizer Group, Appleton, WI

TA–W–41,161; Wheeling Pittsburgh Steel Corp., Wheeling, WV, A; Beech Botton, WV, B; Allenport, PA, C; Steubenville, OH, D; Martins Ferry, OH, E; Yorkville, OH

TA–W–41,165; Flextronics Enclosures, Smithfield, NC

TA–W–41,485; Fold-Pak, Gulf States Paper Cop., Newark NY

TA–W–41,363; Regal-Beloit Corp., Inc., Mitchell, IN

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,465; Energy Converters, Inc., Dallas, PA: February 7, 2001.

TA–W–41,455; Werbak, Inc., Webster, MA: March 14, 2001.

TA–W–41,376; Techalloy Co., Inc., Florence, MA: April 4, 2001.

TA–W–41,373; Springs Window Fashions, LP, Montgomery, PA: April 12, 2001.

TA–W–41,365 Germantown (USA) Co. Including Workers of Volt Services Group and Westaff, West Chester, PA: March 21, 2001.

TA–W–41,360; Warnaco, Calvin Klein Jeans Div., Nesquehoning, PA: March 28, 2001.

TA–W–41,249; Getinge/Castle, Inc., Rochester, NY: February 15, 2001.

TA–W–41,231; Corning, Inc., Telecommunications Products Div., Wilmington, NC: February 5, 2001.

TA–W–41,014; Exabyte Corp., Boulder, CO: February 22, 2001.

TA–W–40,757 A, B; Sony Electronics, Inc., Sony Technology Center, Aperture Grille Div. Including Leased Workers at Tops Temporary and Adecco, Mount Pleasant, PA and Projection Television Picture Tube Div., Mount Pleasant, PA and Pittsburgh Television Group Div., Including Leased workers at Tops Temporary, Adecco and Burn Staffing Services, Mount Pleasant, PA: October 10, 2000.

TA–W–39,276; Cutting Edge Texstyles, Boston, MA: May 7, 2000.

TA–W–38,915; Verson Press, A Div. Of Allied Products Corp., Chicago, IL: March 12, 2000.

TA–W–40,587; UCAR Carbon Co., Clarksburg Works, Clarksburg, WV: November 14, 2000.

TA–W–40,984; Timesavers, Inc., Crystal, MN: February 5, 2001.

TA–W–41,037; Devant Ltd, Monroe, NC: February 19, 2001.

TA–W–41,091; Halliburton Energy Services, Tucson, AZ, A; Bakersfield, CA, B; Duncan, OK, C; Carrollton, TX, D; Winnemucca, NE: February 21, 2001.

TA–W–41,243; Texaco Exploration and Production, Inc. (TEPI), Operating in The Following States: AL, A; CA, B; CO, C; LA, D; NM, E; OK, F; TX, G; WY: June 8, 2001.

TA–W–41,336; C and W Fabricators, Gardner, MA: April 4, 2001.

TA–W–41,414; Honeywell International, Inc., Consumer Products Group, Nevada, MO: April 18, 2001.

TA–W–41,436; Tyco Electronics, Formerly CII Technologies, Corcom Div., El Paso, TX: March 21, 2001.

TA–W–41,457; Sandisk Corp., Sunnyvalle, CA: March 28, 2001.

TA–W–41,463; Knight Textile Corp., Knight Industries, Saluda, SC: April 19, 2001.

TA–W–41,464; Analog Devices, Inc., Final Test Operations, Wilmington, MA: April 12, 2001.

TA–W–41,474; Aerus, LLC, Formerly Electrolux, LLC, Bristol, VA: April 2, 2001.

TA–W–41,482; D. Hersh Neckwear, Inc., Worcester, MA: April 12, 2001.
TA–W–41,486; Mirro Co., Div. Of Newell-Rubbermaid, Administrative and Technical Support Personnel, Manitowoc, WI: January 14, 2001.
TA–W–41,614; Great Northern Paper, Inc., Millinocket, ME: May 17, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06120; Aerus, LLC, Formerly Electrolux, LLC, Bristol, VA
NAFTA–TAA–06165; Regal Originals, Inc., New York, NY
NAFTA–TAA–05912; Timesavers, Inc., Crystal, MN
NAFTA–TAA–05921; Devant Ltd, Monroe, NC
NAFTA–TAA–06110; Newell Manufacturing Corp., Lowell, MI

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06243; VMV Paducahbilt, VMV Enterprises, Paducah, KY
NAFTA–TAA–06183 & A; Union of Needletrades, Industrial & Textile Employees, Columbus, GA and Phenix City, AL
NAFTA–TAA–06337; Trico Products Corp., Buffalo, NY
NAFTA–TAA–06259; Stream International, Memphis, TN
NAFTA–TAA–06250; Florsheim Distribution Center, Florsheim Group, Inc., Jefferson City, MO
NAFTA–TAA–06218; Insystems Technologies, Ltd, Roanoke, VA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04909; Cutting Edge Texstyles, Boston, MA: May 7, 2000.
NAFTA–TAA–06055; C and W Fabricators, Inc., Gardner, MA: April 4, 2001.
NAFTA–TAA–06085; London Harness and Cable, Trenton, NJ: March 6, 2001.
NAFTA–TAA–06127; Knight Textile Corp., Knight Industries, Saluda, SC: April 19, 2001.
NAFTA–TAA–06141; Smiths-Group PLC, Portex, Inc., Fort Myers, FL: April 22, 2001.
NAFTA–TAA–06170; Tyco Electronics, Formerly CII Technologies, Corcom Div., El Paso, TX: March 25, 2001.
NAFTA–TAA–06307; Vishay Dale Electronics, Columbus, NE: June 25, 2001.
NAFTA–TAA–05958; Wellman Thermal Systems, Inc., Shelbyville, IN: March 13, 2001.
NAFTA–TAA–06078; Corning, Inc., Telecommunications Products Div., Wilmington, NC: March 16, 2001.

I hereby certify that the aforementioned determinations were issued during the months of July, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 22, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19087 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,505]

Beacon Light Products Inc., Meridian, ID; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investi-gation was initiated on May 13, 2002 in response to a petition filed by a company official, on behalf of workers at Beacon Light Products, Inc., Meridian, Idaho.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19089 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,525, TA–W–40,525E, and TA–W–40,525F]

The Boeing Company, Commercial Airplane Group, Seattle, WA, and Corinth, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 18, 2002, applicable to workers of The Boeing Company, Commercial Airplane Group, Seattle, Washington. On April 26, 2002, the certification was amended to include workers of The Boeing Company plants in Corinth and Irving, Texas. The notice was published in the **Federal Register** on June 4, 2002 (67 FR 38523).

At the request of the State agency, the Department again reviewed the amended certification for workers of the

subject firm. The review of the TAA petition certification revealed that the impact date established for workers of The Boeing Company, Seattle, Washington, was February 25, 2002, the day immediately following the expiration of the previous certification for the Boeing workers in Seattle, Washington (TA–W–37,129).

The review further found that had The Boeing Company's Seattle workers not been previously certified, the impact date would have been set at December 18, 2000, one year prior to the date of the petition.

Other findings show that when the amendment was issued to include workers of The Boeing Company in Corinth and Irving, Texas, the Department failed to set the earliest impact date for those workers.

Therefore, the Department is again amending the certification to change the impact date for workers of The Boeing Company, Corinth and Irving, Texas, from February 25, 2002 to December 18, 2000.

The amended notice applicable to TA–W–40,525 is hereby issued as follows:

All workers of The Boeing Company, Commercial Airplane Group, Seattle, Washington (TA–W–40,525), who became totally or partially separated from employment on or after February 25, 2002 through March 18, 2004, and workers of The Boeing Company, Commercial Airplane Group, Corinth, Texas (TA–W–40,525E), and Irving, Texas (TA–W–40,525F), who became totally or partially separated from employment on or December 18, 2000 through March 18, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19086 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 8, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 8, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 8th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 07/08/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,775	Husscy Copper (Wkrs)	Lectsdale, PA	03/21/2002	Copper Sheets and Strips.
41,776	Worthington Steel ( )	Malvern, PA	05/02/2002	Nickel Strip Steel.
41,777	Patterson Drilling (Wkrs)	Snyder, OH	04/29/2002	Crude Oil.
41,778	Robert Bosch (UAW)	Ashland, OH	04/30/2002	Braking Systems.
41,779	Robert Bosch (Wkrs)	Lithia Springs, GA	04/26/2002	Alternators and Starters.
41,780	Motorola, Inc. (Co.)	Plantation, FL	04/18/2002	Two-Way Radios.
41,781	Turfer Sportswear (Wkrs)	Woonsocket, RI	06/28/2002	Sportswear.
41,782	Brach Confections (IBT)	Chicago, IL	06/04/2002	Candy.
41,783	Oxford Industries (Wkrs)	New York, NY	03/25/2002	Women Clothing.
41,784	Doutt Tool (Co.)	Venango, PA	06/19/2002	Machine Parts.
41,785	Cairn Studio (Co.)	Mooresville, NC	06/13/2002	Art Reproductions.
41,786	National Textiles (Wkrs)	Winston Salem, NC	06/20/2002	Knit Fabrics.
41,787	Strattec Security (Co.)	Milwaukee, WI	06/19/2002	Mechanical Locks.
41,788	Johnson Control (Co.)	Lapeer, MI	06/19/2002	Chevy Blazers and Pickup Parts.
41,789	General Electric (IUE)	Murfreesboro, TN	06/19/2002	Washington Machine Motors.
41,790	Fleetwood Homes of Lumber (Wkrs)	Lumberton, NC	06/20/2002	Homes.
41,791	Neuroscan, Inc. (Wkrs)	El Paso, TX	06/18/2002	Medical Research Equipment.
41,792	JB Tool and Machine (Wkrs)	Wapakoneta, OH	06/17/2002	TV Frames.
41,793	General Cable (UE)	Sanger, CA	06/24/2002	Wire and Cable.
41,794	Sunbeam Corporation (Wkrs)	Hattiesburg, MS	06/06/2002	Household Appliances.
41,795	Edward Vogt Value (Wkrs)	Jeffersonville, IN	06/26/2002	Valves and Fittings.
41,796	Tredegar Film Products (Wkrs)	Carbon Dale, PA	3/18/2002	Breathable Film.
41,797	Lewiston Shoe (Co.)	Lewiston, ME	06/27/2002	Shoe Machinery.
41,798	Exide (IBEW)	Kankakee, IL	06/04/2002	Absolyte II Technology.
41,799	General Electric Industry (Wkrs)	Salem, VA	06/20/2002	Turbine Control Panels.
41,800	Flextronics Enclosure (Co.)	New Braunfels, TX	06/18/2002	Model, Metal Stamping, Electronic Assemb.
41,801	Bard Endoscopic Tech (Co.)	Mentor, OH	05/29/2002	Gastrointestinal Medical Devices.

APPENDIX—Continued

[Petitions instituted on 07/08/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,802	U.S. Conec (Wkrs)	Hickory, NC	06/17/2002	Fiber Optics.
41,803	Copeland Corp. (Wkrs)	Ava, MO	06/12/2002	Air Conditioner.
41,804	Premier Turbines (Wkrs)	Independence, KS	06/24/2002	Air Craft Engines.
41,805	Schneider Automation (Co.)	North Andover, MA	07/01/2002	Control Equipment.
41,806	Bethel Furniture Stock (Co.)	Bethel, ME	06/20/2002	Wood Components.
41,807	North American Refractori (Wkrs)	Pittsburgh, PA	03/12/2002	Ladle Slide Gate Components.

[FR Doc. 02–19100 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,359]

L. Lawrence Products, Huntingdon Valley, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 22, 2002 in response to a petition filed by a company official, on behalf of workers at L. Lawrence Products, Huntingdon Valley, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of July, 2002

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19088 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 8, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 8, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 1st day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 07/01/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,733	Lenox China (Comp)	Oxford, NC	06/24/2002	China Giftware & China Holloware.
41,734	Santiam Forest Products (Comp)	Sweet Home, OR	06/21/2002	Softwood Lumber.
41,735	MSC Pinole Point Steel (Wkrs)	Richmond, CA	06/11/2002	Steel Coils and Sheet.
41,736	Therm-O-Disc (Comp)	Muskegon, MI	06/18/2002	Various Therm-O-Disc Products.
41,737	Severn Trent Services (Comp)	Fieldale, VA	06/19/2002	Wastewater Contractor.
41,738	Customer Satisfaction Fir (Wkrs)	Wiles-Barre, PA	06/07/2002	Customer Service.
41,739	Wemco Precision Tool (Comp)	Meadville, PA	06/14/2002	Machining Services.
41,740	Sulzer Pumps (Comp)	Portland, OR	06/10/2002	Industrial Pumps.
41,741	Weyerhauser (Comp)	Woodburn, OR	06/17/2002	I-Joist.
41,742	Komatsu America Corp. (Comp)	Peoria, IL	06/12/2002	Outsourcing Machined Parts.
41,743	Alfa Laval (Tri-Clover) (IAMAW)	Kenosha, WI	05/13/2002	Values and Clamps.
41,744	Angelica Image Apparel (Wkrs)	St. Louis, MO	06/12/2002	Uniforms.
41,745	Angelica Image Apparel (Wkrs)	Collinwood, TN	05/23/2002	Healthcare Garments.
41,746	Kelly Technical Services (Wkrs)	Independence, OH	04/26/2002	Flat and Hot Roll Steel.
41,747	G&T Industrial Sheet (Comp)	Bend, OR	05/17/2002	Pipes.
41,748	IBM (Wkrs)	Research Triang, NC	05/15/2002	Technical Assistance.
41,749	Toro Co. (UAW)	Bloomington, MN	05/20/2002	Mowers and Sprayers.

APPENDIX—Continued

[Petitions instituted on 07/01/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,750	D and L Tool (Comp)	Meadville, PA	06/11/2002	Molds.
41,751	Gilbert Mfg. Co. (Comp)	South Hill, VA	05/28/2002	Under Cabinet Lighting.
41,752	Super Steel Schenectady (Wkrs)	Scotia Glenvill, NY	05/17/2002	Locomotive Parts.
41,753	Gerber Technology, Inc. (Wkrs)	Richardson, TX	06/06/2002	Cutting Machines.
41,754	T.C. Timber Habermass (Comp)	Skaneateles, NY	06/13/2002	Wooden Toys.
41,755	Dale Hollow Apparel (Wkrs)	Byrdstown, TN	06/07/2002	Shirts and Blouses.
41,756	H and L Tool (Comp)	Erie, PA	06/12/2002	Mold Building and Repair.
41,757	Curt G. Joa, Inc. (Wkrs)	Boynton Beach, FL	06/14/2002	Processing Machinery.
41,758	Parker Hosiery Co. (Comp)	Old Fort, NC	06/13/2002	Socks.
41,759	United Chair (Comp)	Leeds, AL	05/15/2002	Office & General Institution Seating.
41,760	Industrial Coils (Comp)	Baraboo, WI	06/12/2002	Magnetic Windings.
41,761	Glen Oaks/Marietta Sports (Wkrs)	Dallas, TX	06/13/2002	Men's Dress Socks.
41,762	Valeo Climate Control (Comp)	Decatur, IL	06/03/2002	AC Components.
41,763	Pabst Meat Supply (Comp)	Invergrove Hgts, MN	05/10/2002	Meat.
41,764	Corning Frequency Control (Comp)	Mercersburg, PA	06/10/2002	Crystal Blanks and Resonators.
41,765	Regal Plastics (UAW)	Roseville, MI	06/18/2002	Retainer Jack Stowage Cover.
41,766	Crucible Specialty Metals (Wkrs)	Syracuse, NY	06/14/2002	Valve Steel.
41,767	Intermix Foods (Wkrs)	El Paso, TX	06/10/2002	Tortillas, Chilli.
41,768	Bridal Originals (Comp)	DuQuoin, IL	06/07/2002	Formal Dresses.
41,769	Siemens Demag Delaval (Wkrs)	Trenton, NJ	05/29/2002	Steam Turbines.
41,770	RFS Ecusta (Wkrs)	Pisgah Forest, NC	05/21/2002	Cigarette Papers.
41,771	Standard Container (Comp)	Edgar, WI	05/15/2002	Bassinets.
41,772	Fisher Products Group (Wkrs)	Pittsburgh, PA	06/17/2002	PH Meters.
41,773	Degussa (Wkrs)	Theodore, AL	06/14/2002	Polyoxymenthlene.
41,774	Racine Steel Castings (UAW)	Racine, WI	06/14/2002	Automobile Seats.

[FR Doc. 02–19099 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning a proposed extension of a currently approved data collection: the Youth Employment Survey (YES). The extension will allow for an analysis of changes in the youth employment and educational attainment rates in the Youth Opportunity areas. The baseline estimates have already been completed under the current OMB approval; the extension of this collection will allow for the completion of the follow-ups.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 27, 2002.

ADDRESSES: Kerri Vitalo, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Ave. NW, Room N–5637, Washington, DC 20210; 202–693–3912 (this is not a toll-free number); *kvitalo@doleta.gov;* Fax: 202–693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Youth Opportunity Area (Kulick) Demonstration is an initiative designed to improve the labor market prospects of out-of-school youth in a small number of high poverty areas. Under this demonstration, eleven Opportunity Areas have been created to expand employment, education, and training opportunities for out-of-school youth ages 16–24, with priority given to high school dropouts. Each Opportunity Area consists of an identified target area within a designated empowerment zone or enterprise community with a population between 10,000 and 20,000 persons and a poverty rate among the highest in the community. Grants were awarded starting in 1996, 1997, and 1999. The Opportunity Areas are in the cities of Chicago, Los Angeles, Houston, New York. Boston, Detroit, Denver, Baltimore, Oakland, San Diego, and in Kentucky's Lake County Area Development District. They have been designated incrementally over a three year period.

In February 2000, ETA awarded 36 Youth Opportunity (YO) Grants as Kulick grants' successors to cities, rural areas, and Native American reservations across the nation to attack the problem of persistent unemployment and underemployment among youth in high-poverty urban and rural areas. The YO grants are intended to be the foundation for community-wide efforts to mobilize resources in helping these youth to enter the economic mainstream. The YO grants are a sustained, five-year effort in each community that, in addition to increasing the labor market and educational success of area youth, also are to provide other developmental benefits for program participants. It is expected that communities will supplement the YO grants with other programs funded at the Federal, state, and local levels that are designed to

help youth make a successful transition to employment or to post-secondary education or training.

An important part of determining whether these demonstrations and grants are successful is to measure the youth employment rate in the subject areas before the program begins in each area and again after several years of operation. The pre-program estimates for both Kulick and YO grants have already been completed under the current OMB approval; the extension of this collection will allow for the completion of the post-program comparisons in the final five Kulick sites (Detroit, Denver, Baltimore, Oakland, San Diego) and the thirty-six YO sites. The currently approved YES survey is strongly based on the Current Population Survey (OMB Control No. 1220–0100).

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions or responses.

III. Current Actions

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Youth Employment Survey.

OMB Number: 1205–0373.

Affected Public: Individuals and households.

Estimated Total Burden Hours: See chart below. The total burden to respondents is 19,499 hours—13,345 for the screener and 6,154 for the administration of the questionnaire.

Site	Total respondents		Burden (hours)	
	Screener	Questionnaire	Screener	Questionnaire
Kulick Site	12,350	3,285	1,027	820
YO Site	147,814	21,338	12,318	5,334
Total	160,050	24,623	13,345	6,154

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 22, 2002.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 02–19098 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—6089]

Delphi Harrison Thermal Systems Lockport, NY; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on August 21, 2001 in response to a petition filed on behalf of workers at Delphi Harrison Thermal Systems, Lockport, New York.

This case is being terminated because the separated workers have been rehired since the filing of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of July 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19090 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—6198]

General Electric Company, Motors Divisicn, Transformer Division, Fort Wayne, IN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on May 13, 2002, in response to a worker petition which was filed by the IUE–CWA, Local 901, on behalf of workers at General Electric Company, Motors Division, Transformer Division, Fort Wayne, Indiana.

Currently, an active certification covering the petitioning group of workers remains in effect NAFTA #5034. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 16th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19092 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06295]

Sun Belt Interplex, Inc., Tamarac, FL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 22, 2002, in response to a petition filed by a company official on behalf of workers at Sun Belt Interprex, Inc., Tamarac, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19093 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6329]

Tyco International, White City, OR; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 30, 2001, in response to a petition filed by the company on behalf of workers at Tyco International, White City, Oregon.

The investigation revealed that this petition is a copy of the petition for which the Department issued a negative determination on November 7, 2001 (NAFTA–4935). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19094 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—06181]

VF-Imagewear (West), Inc., Mt. Pleasant, TN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 13, 2002, in response to a petition filed by a company official on behalf of workers at VF-Imagewear (West), Inc., Mt. Pleasant, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19091 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–528, 50–529, and 50–530]

Arizona Public Service Company, Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. NPF–41, NPF–51, and NPF–74 for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (Palo Verde) to the extent held by Arizona Public Service Company (APS), as a co-owner (29.1 percent interest) and the licensed operator of Palo Verde. The transfer would be to Pinnacle West Energy Corporation (PWE). The Commission is also considering amending the licenses, including the antitrust conditions attached thereto, for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by APS, PWE would acquire APS's current 29.1 percent ownership interest in Palo Verde and become responsible for the operation and maintenance of Palo Verde, following approval of the proposed license transfers. The remaining 70.9 percent ownership interest in Palo Verde would remain with the following six other current licensees of Palo Verde: Salt River Project Agriculture Improvement and Power District (17.49 percent interest), El Paso Electric Company (15.80 percent interest), Southern California Edison Company (15.80 percent interest), Public Service Company of New Mexico (10.20 percent interest), Southern California Public Power Authority (5.91 percent interest), and Los Angeles Department of Water and Power (5.70 percent interest). No physical or operational changes to Palo Verde are being proposed in the application. The present plant organization, the oversight organizations, and the engineering and support organizations will be transferred from APS to PWE essentially intact.

The proposed amendments would generally replace references to APS in the licenses, including the antitrust conditions attached thereto, with references to PWE to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific

application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By August 19, 2002, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Jay M. Gutierrez, Esq., Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, NW., Washington, D.C. 20004; Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by August 28, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated April 15, 2002, and supplement thereto dated July 11, 2002, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 23rd day of July 2002.

For the Nuclear Regulatory Commission.

Jack Donohew,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–19073 Filed 7–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

Virgil C. Summer Nuclear Station; Notice of Withdrawl of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of South Carolina Electric & Gas Company (the licensee) to withdraw its December 28, 2000, application, as supplemented September 20, 2001, and January 9, 2002, for proposed amendment to Facility Operating License No. 50–395 for the Virgil C. Summer Nuclear Station, located in Fairfield County, South Carolina.

The proposed amendment would have revised the Virgil C. Summer Nuclear Station Technical Specifications pertaining to the Engineered Safety Feature Actuation System Instrumentation, Functional Unit 5.b. (Automatic Actuation Logic and Actuation Relay) Turbine Trip and Feedwater Isolation.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 18, 2001 (66 FR 20009). However, by letter dated June 27, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 28, 2000, supplements dated September 20, 2001, and January 9, 2002, and the licensee's letter dated June 27, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of July.

For the Nuclear Regulatory Commission.

Karen R. Cotton,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–19072 Filed 7–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

Florida Power & Light Company, et al., St. Lucie Plant, Units Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to the Facility Operating Licenses Nos. DPR–67 and NPF–16, issued to Florida Power and Light Company (the licensee) for operation of the St. Lucie Plant, Units 1 and 2, respectively, located in St. Lucie County, Florida. Therefore, pursuant to 10 CFR 51.21 and 51.32, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend Section 4.2 of the St. Lucie Units 1 and 2 Environmental Protection Plans (Non-radiological) to incorporate the revised terms and conditions of the Incidental Take Statement (ITS) included in the Biological Opinion issued by the National Marine Fisheries Service (NMFS) on May 4, 2001, as clarified by NMFS letter dated October 8, 2001, and to reflect a change in the administration of the National Pollutant Discharge Elimination System (NPDES) permitting programs from the U.S. Environmental Protection Agency to the Florida Department of Environmental Protection.

The proposed action is in accordance with the licensee's application dated January 25, 2002.

The Need for the Proposed Action

The proposed action is needed to reflect the revised terms and conditions of the ITS as set forth in the May 4, 2001, Biological Opinion, as clarified by NMFS letter dated October 8, 2001, and to document the change in the permitting authority of the NPDES permit.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed changes are administrative in nature and have no effect on plant equipment or plant operation. No changes will be made to the design, licensing bases, or the applicable procedures for the units.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluent that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect any non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative.) Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not include the use of any different resources than those previously considered in the Final Environmental Statement for St. Lucie Unit 1, dated June 1973, and in the Final Environmental Statement for St. Lucie Unit 2, dated April 1983 (NUREG–0842).

Agencies and Persons Consulted

On July 9, 2002, the staff consulted with the Florida State official, William Passetti, of the Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comment or objections.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 25, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of July 2002.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Acting Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–19074 Filed 7–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–31]

Yankee Atomic Electric Company; Issuance of Environmental Assessment and Finding of No Significant Impact for the Proposed Exemption

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 to the Yankee Atomic Electric Company (YAEC). The requested exemption would allow YAEC to deviate from the requirements of Certificate of Compliance No. 1025 (the Certificate), Appendix A, Technical Specifications (TS), Table A2–2, Intact Fuel Assembly Characteristics for the NAC–MPC. The exemption would modify the specified fuel enrichment parameters to incorporate fuel enrichment fabrication tolerances into the Yankee-Class fuel parameters which would allow YAEC to maintain continuity of the fuel loading campaign at Yankee Nuclear Power Station (YNPS) in Rowe, Massachusetts.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated May 10, 2002, YAEC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 to deviate from the requirements of Certificate of Compliance No. 1025, Appendix A, Table A2–2. YAEC is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR part 72, subpart K.

YAEC plans to use the NAC–MPC cask system to store spent nuclear fuel, generated at YNPS, at an independent spent fuel storage installation (ISFSI) located in Rowe, Massachusetts, on the YNPS site. The YNPS ISFSI has been constructed for interim dry storage of spent nuclear fuel.

By exempting YAEC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214, YAEC will be authorized to store fuel with enrichments 0.03 wt % U–235 larger than those enrichments specified in the existing technical specifications for Yankee-Class fuel. The revised fuel enrichment parameters for the Yankee-Class fuel are as follows (all enrichments are in wt % of U–235):

Combustion Engineering Type A	Maximum—3.93	Minimum—3.66
Combustion Engineering Type B	Maximum—3.93	Minimum—3.66
Exxon Type A	Maximum—4.03	Minimum—3.46
Exxon Type B	Maximum—4.03	Minimum—3.46
Westinghouse Type A	Maximum—4.97	Minimum—4.90
Westinghouse Type B	Maximum—4.97	Minimum—4.90
United Nuclear Type A	Maximum—4.03	Minimum—3.96
United Nuclear Type B	Maximum—4.03	Minimum—3.96

The specifications above would be in lieu of those in the current Certificate of Compliance No. 1025, Rev. 1, Appendix A, Table A2–2. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

On April 18, 2002, the Certificate holder, NAC International (NAC), submitted to the NRC an application to amend Certificate of Compliance No. 1025. The requested amendment includes the same revisions to Table A2–2 in Appendix A to the Certificate as requested in this exemption. The NRC staff has reviewed the application and agreed with the applicant's conclusion that the NAC–MPC system is not significantly affected by increasing the enrichment by 0.03 wt % above the previous design basis enrichment and does not impact the ability of the NAC–MPC to meet the requirements of 10 CFR part 72.

Need for the Proposed Action: The revised Table A2–2 will authorize for storage, fuel with enrichments that incorporate enrichment fabrication tolerances for the Yankee-Class fuel. This will allow YAEC to maintain continuity of fuel loading activities to permit inspection of the fuel assemblies in the lower tier of the spent fuel pool. The exemption will also support YAEC's goal of a timely decommissioning of the YNPS site. The overall result of not granting the exemption would be unnecessary delays in schedule and delayed completion of decommissioning activities with negligible impact on safety. Because the 10 CFR part 72 rulemaking to amend the Certificate will not be completed prior to the date that YNPS plans to begin loading fuel into the NAC–MPC cask systems, the NRC is proposing to grant this exemption based on the staff's technical review of information submitted by YAEC and NAC.

Environmental Impacts of the Proposed Action: The Commission has already determined that spent fuel can be stored safely and without significant environmental impact at an onsite ISFSI in the NAC–MPC cask system (65 FR 12444, dated March 9, 2000). Staff's review of NAC's application for an amendment of its Certificate confirmed that changes in fuel parameters to take into account fabrication tolerances for enrichment will not increase the probability or consequences of accidents. No changes have been requested to the types or quantities of any radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. There are no significant radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and use the fuel assembly parameters table in the current Certificate. Denial of the exemption will result in unnecessary delays in schedules and delayed completion of decommissioning activities. With the proposed actions, the applicant continues to meet all applicable safety requirements.

Agencies and Persons Consulted: On July 9, 2002, Mr. Jim Muckerhide, Nuclear Engineer, Nuclear Safety, Massachusetts Emergency Management Agency was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 allowing YAEC to use revised intact fuel enrichment parameters in Table A2–2 at YNPS ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted.

The request for the exemption was docketed under 10 CFR Part 71, Docket 72–31. For further details with respect to this action, see the exemption request dated May 10, 2002. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 24th day of July, 2002.

For the Nuclear Regulatory Commission.

M. Wayne Hodges,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–19197 Filed 7–26–02; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Privacy Act of 1974; System of Records

AGENCY: Peace Corps.

ACTION: Notice of establishment of new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Peace Corps is establishing a new system of records, PC–26, entitled "Peace Corps Computer Systems Activity and Access Records."

DATES: Please submit any comments on or before September 9, 2002. Unless the Peace Corps receives comments that would require another determination, this system becomes effective on September 9, 2002.

ADDRESSES: Please submit any comments within 40 days of publication on or before [40 days from publication insert date] to Gayle Rucker, Office of Information Resources Management, Room 3217, 1111 20th Street, NW., Washington, DC 20526. Ms. Rucker may be reached by phone at 202–692–1310 or by email at *grucker@peacecorps.gov*. General information about the Peace Corps as an agency is provided at *www.peacecorps.gov*.

SUPPLEMENTARY INFORMATION: Section 552a(e)(4) and (11) of Title 5 of the United States Code provides that the public be given a 30-day period in which to comment on the new system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed system. In accordance with 5 U.S.C. 552a(r), Peace Corps has provided a report on this system to OMB and the Congress.

PEACE CORPS (PC–26)

SYSTEM NAME:

Peace Corps Computer Systems Activity and Access Records.

SYSTEM LOCATION:

Peace Corps offices (and other sites utilized by the Peace Corps) throughout the world. Headquartered at Peace Corps, Office of Information Resource Management, 1111 20th Street, NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All or any individuals who access Peace Corps network computers or mainframe/enterprise servers, including individuals who send and receive electronic communications, access Internet sites, or access system databases, files, or applications from Peace Corps computers or sending electronic communications to Peace Corps computers; and individuals attempting to access Peace Corps computers or systems without authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system of records may include: Records on the use of interoffice and Internet e-mail systems, including the e-mail address of the sender and receiver of the e-mail message, subject, date, and time; records on user access to Peace Corps networks, including user ID, date and time of log on and log off, and denials of access to unauthorized files or directories; records of Internet access from a Peace Corps computer, such as the Internet Protocol (IP) address of the computer being used to initiate the Internet connection, the site accessed, date, and time; records relating to mainframe/enterprise server access, such as user ID of the individual accessing the mainframe, date and time, and the process being run on the mainframe; records relating to verification or authorization of an individual's access to systems, files, or applications, such as user IDs, passwords, user names, title, and agency.

Logs of Internet access from a Peace Corps computer do not contain names or similar personal identifiers. However, for official government business purposes, a name may be associated with an IP address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Computer Security Act of 1987, 49 U.S.C. 1441 note, requires Federal agencies to plan for the security and privacy of their computer Systems nad the Peace Corps Act, 22 U.S.C. 2501, *et seq.*

PURPOSE(S):

The underlying raw data in this system of records is used by the Peace Corps' systems and security personnel, or persons authorized to assist these personnel, to plan and manage system services and to otherwise perform their official duties. Authorized Peace Corps managers may use the records in this system to investigate improper access or other improper activity related to computer system access; to initiate disciiplinary or other such action; and/or where the record(s) may appear to indicate a violation or potential violation of the law, to refer such record(s) to the appropriate investigative arm of Peace Corps, or other law enforcement agency for investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

A. *Disclosure for Law Enforcement Purposes.* Information may be disclosed to the appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information indicates a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. *Disclosure Incident to Requesting Information.* Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, or to identify the type of information requested); when necessary to obtain information relevant to a Peace Corps decision concening retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit.

C. *Disclosure to Requesting Agency.* Information may be disclosed to a Federal, State, local, or other public authority of the fact that this system of records contains information relevant to the requesting agency's retention of an employee, the retnetion of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for part or all of the record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. *Disclosure to Office of Management and Budget.* Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordiantion and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

E. *Disclosure to Congressional Offices.* Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. *Disclosure to Department of Justice.* Information may be disclosed for purposes of litigation, provided that in each case the disclosure is compatible with the purpose for which the records were collected. Disclosure for these

purposes may be made to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Peace Corps is authorized to appear. This disclosure may be made when: 1. The Peace Corps, or any component thereof; 2. Any employee of the Peace Corps in his or her official capacity; 3. Any employee of the Peace Corps in his or her individual capacity where the Department of Justice or the Peace Corps has agreed to represent the employee; or 4. The United States (when the Peace Corps determines that litigation is likely to affect the Peace Corps or any of its components); is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Peace Corps is deemed by the Peace Corps to be relevant and necessary to the litigation.

G. *Disclosure to the National Archives.* Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. *Disclosure to Contractors, Grantee, and Others.* Information may be disclosed to contractors, grantees, consultants, or Volunteer performing, or working on a contract, service, grant, cooperative agreement, job, or other activity for the Peace Corps and who have a need to have access to the information in the performance of their duties or activities for the Peace Corps. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. *Disclosures for Administrative Claims, Complaints, and Appeals.* Information may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. *Disclosure to the Office of Personnel Management.* Information may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. *Disclosure in Connection with Litigation.* Information may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Peace Corps, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

In addition to the routine uses stated above in A, B, C, D, E, F, G, H, I, J, and K, the following shall apply to this system.

Disclosure to provide information to any person(s) and authorized to assist in an approved investigation of improper usage of Peace Corps systems.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic and/or paper form.

RETRIEVABILITY:

Records may be retrieved by user name, user ID, e-mail address, or other identifying search term employed, depending on the record category. The Peace Corps does not usually connect IP addresses with a person. However, in some instances, for official government business purposes, the Department may connect the IP address with an individual, and records may be retrieved by IP address.

SAFEGUARDS:

Access is limited to those who have an official need to know. Specifically, only systems and security personnel or persons authorized to assist these personnel have access to automated records and magnetic storage media. These records are kept in a locked room with controlled entry. The use of password protection identification features and other automated data processing system protection methods also restrict access. All records are located in buildings with restricted access.

RETENTION AND DISPOSAL:

Records of verification, authorization, computer system access, and other activities generated by the system shall be retained no longer than one year, unless required for management review. After one year, they are destroyed or deleted. (Records retention schedule pending approval by the Archivist of the United States.)

SYSTEM MANAGER(S) AND ADDRESS:

Office of Information Resource Management, Peace Corps, 1111 20th Street, NW., Washington, DC 20526.

NOTIFICATION PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(5), this system is exempted from the provisions of the Privacy Act of 1974 that permit access and correction. Individual notification of this system and declaration of acceptance of this policy appears in the form of a Privacy Screen that must be acknowledged by each individual before access is granted to use a Peace Corps computer. This prompt appears with every beginning access or initiation of systems on the computer.

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of records, should make a written request to the System Manager. Requesters will be required to provide adequate identification such as a driver's license or employee identification card, or other identiying document. The written request should provide name, assigned computer location, and a description of information being sought, including the time frame during which the record(s) may have been generated. Provide verification of identity. Identify the information being contested, the reason for contesting it, and the correction requested. In general, this information is computer-generated and is not subject to contest.

CONTESTING RECORD PROCEDURES:

See Notification Procedures above.

RECORD ACCESS PROCEDURES:

See Notification Procedures above.

RECORD SOURCE CATEGORIES:

Most records are generated internally, i.e., computer activity logs; individuals covered by the system; and management officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

This notice is issued in Washington, DC on July 23, 2002.

Gopal K. Khanna,

Chief Information Officer.

[FR Doc. 02–19112 Filed 7–19–02; 8:45 am]

BILLING CODE 6051–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection: Comment Request for Review of Expiring Information Collection: OPM 1647

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for renewal of authorization for information collection. OPM Form 1647, Combined Federal Campaign Eligibility Application, is used to review the eligibility of national, international, and local charitable organizations that wish to participate in the Combined Federal Campaign.

We estimate 1,400 Form 1647's will be completed annually. Each form takes approximately three hours to complete. The annual estimated burden is 4,200 hours.

Comments are particularly invited on:

• Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

• Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

• Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202/606–2150, FAX 202/418–3251, or E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Curtis Rumbaugh, Office of CFC Operations, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5450, Washington, DC 20415.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–19097 Filed 7–26–02; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25670; 813–198]

Credit Suisse First Boston, Inc.; Notice of Application

July 23, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application under sections 6(b) and 6(e) of the Investment Company Act of 1940 ("Act") for an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), sections 30(c), (d), (f), (g), (i) and (j), and sections 36 through 53, and the rules and regulations thereunder.

Summary of Application: Credit Suisse First Boston, Inc. ("CSFB") requests an order to supersede an existing order ("Prior Order") [1] exempting CSFB and certain partnerships ("Partnerships") formed for the benefit of key employees of CSFB and its affiliates from certain provisions of the Act. Each Partnership will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act.

Filing Dates: The application was filed on November 3, 1998, and amended on July 10, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, Eleven Madison Avenue, New York, NY 10010.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

[1] *Credit Suisse First Boston, Inc.*, Investment Company Act Release Nos. 22808 (Sept. 3, 1997) (notice) and 22836 (Sept. 29, 1997) (order).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. CSFB, a Delaware corporation, is a subsidiary of Credit Suisse First Boston, a Swiss bank, which is, in turn, a subsidiary of Credit Suisse Group, a Swiss corporation. CSFB and its affiliates as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the "Exchange Act") ("Affiliates" and, together with CSFB, the "Credit Suisse Group") provide a range of financial, banking, insurance, advisory, and investment services to corporations, governments, and other clients throughout the world. Credit Suisse First Boston Corporation ("CSFB Corporation"), a broker-dealer registered under the Exchange Act, is a wholly-owned subsidiary of CSFB.

2. Under the Prior Order, CSFB has offered and proposes to continue to offer various investment programs for the benefit of certain key employees. These programs may be structured as different Partnerships, or as separate plans within the same Partnership. Each Partnership will be a limited partnership or other investment vehicle formed as an "employees" securities company" within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified, management investment company.[2] The Partnerships

[2] Applicant also may implement a pretax plan arrangement ("Pretax Plan"). In this case, no investment vehicle will be formed with respect to such Pretax Plan. Pursuant to a Pretax Plan, Credit Suisse Group will enter into arrangements with certain Eligible Employees, as defined below, of Credit Suisse Group, which will generally provide that (a) an Eligible Employee will defer a portion of his or her compensation payable by Credit Suisse Group, (b) such deferred compensation will be treated as having been notionally invested in investments designated for these purposes pursuant to the specific compensation plan, and (c) an Eligible Employee will be entitled to receive cash, securities or other property at the times and in the amounts set forth in the specific compensation plan, where the aggregate amount received by such Eligible Employee would be based upon the investment performance of the investments designated for these purposes pursuant to such compensation plan. The Pretax Plan will not actually purchase or sell any securities. Credit Suisse Group expects to offer, through Pretax Plans, economic benefits comparable to what would have been offered in an arrangement where an investment vehicle is formed. For purposes of the application, a Partnership will be deemed to be formed with respect to each Pretax Plan and each reference in the application to "Partnership," "capital contribution," "General Partner," "Limited Partner," "loans," and "Interest" will be deemed to refer to the Pretax Plan, the notional capital contribution to the Pretax Plan, Credit Suisse

will be established primarily for the benefit of highly compensated employees of Credit Suisse Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

3. The general partner of each Partnership will be an Affiliate of CSFB ("General Partner"). The General Partner will manage, operate, and control each of the Partnerships. The General Partner will be authorized to delegate investment management responsibility to a Credit Suisse Group entity, a committee of Credit Suisse Group employees, or certain unaffiliated third-party investment managers in connection with a "third party sponsored program."[3] The ultimate responsibility for the Partnerships' investments will remain with the General Partner. Any Credit Suisse Group entity that is delegated the responsibility of making investment decisions for a Partnership will register as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") if required under applicable law. The General Partner, Credit Suisse Group or any employees of the General Partner or Credit Suisse Group may be entitled to receive a performance-based fee (such as a "carried interest") based on the gains and losses of the investment program or of the Partnership's investment portfolio.[4]

4. Interests in the Partnerships ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act"), or Regulation D under the Securities Act, and will be sold only to "Eligible Employees" and "Qualified Participants," in each case as defined below, or to Credit Suisse Group entities (collectively, "Participants").[5] Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards.

5. An "Eligible Employee" is (a) an individual who is a current or former employee, officer, director, or "Consultant" of Credit Suisse Group and, except for certain individuals who manage the day-to-day affairs of the Partnership in question ("Managing Employees")[6] and a limited number of other employees of Credit Suisse Group,[7] meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act, or (b) an entity that is a current or former "Consultant" of Credit Suisse Group and meets the standards of an accredited investor under rule 501(a) of Regulation D.[8] Eligible Employees will be experienced professionals in the investment banking and securities businesses, or in related administrative, financial, accounting, legal, or operational activities.

6. A "Qualified Participant" (a) is an Eligible Family Member or Qualified Investment Vehicle (in each case as defined below) of an Eligible Employee, and (b) if the individual or entity is purchasing an Interest from a Partnership, comes within one of the categories of an "accredited investor" under rule 501(a) of Regulation D. An "Eligible Family Member" is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee, including step and adoptive relationships. A "Qualified Investment Vehicle" is (a) a trust of which the trustee, grantor and/or beneficiary is an Eligible Employee, (b) a partnership, corporation or other entity controlled by an Eligible Employee,[9] or (c) a trust or other entity established solely for the benefit of Eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, in a partnership agreement (the "Partnership Agreement"), which will be furnished at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year, except for any Partnership that was formed to make a single portfolio investment (in which case audited financial statements will be prepared for either the Partnership or the entity that is the single portfolio investment).[10] In

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Group, a participant of the Pretax Plan, notional loans, and participation rights in the Pretax Plan, respectively.

[3] In a "third party sponsored program," a Partnership will co-invest with an investment fund, pooled investment vehicle or separate account for which entities or persons unaffiliated with the Credit Suisse Group are the sponsors or over which such entities or persons exercise investment discretion. Under a third party sponsored program, a Partnership will only be permitted to invest if a Credit Suisse Group entity will co-invest with the Partnership in the portfolio investments making up the third party sponsored program.

[4] A carried interest is an allocation to the General Partner, Limited Partner or the Credit Suisse Group entity acting as the investment adviser to a Partnership based on net gains in addition to the amount allocable to such entity in proportion to its capital contributions. A General Partner, Limited Partner or Credit Suisse Group entity that is registered as an investment adviser under the Advisers Act may charge a carried interest only if permitted by rule 205–3 under the Advisers Act. Any carried interest paid to a General Partner, Limited Partner or Credit Suisse Group entity that is not registered under the Advisers Act also will comply with rule 205–3 as if such General Partner, Limited Partner or Credit Suisse Group entity were so registered.

[5] If applicant implements a Pretax Plan, participation rights in such Pretax Plan will only be offered to Eligible Employees who are current employees or Consultants, as defined below, of Credit Suisse Group.

[6] A Managing Employee may invest in a Partnership if he or she meets the definition of "knowledgeable employee" in rule 3c–5(a)(4) under the Act as if the Partnership were a "covered company" within the meaning of the rule.

[7] With respect to any Partnership, up to 35 employees (including Managing Employees, except to the extent that a Managing Employee meets the requirements of rule 501(a)(4) under the Securities Act), may be permitted to invest his or her own funds in the Partnership if, at the time of the employee's investment, he or she (a) has a graduate degree in business, law, or accounting, (b) has a minimum of five years of consulting, investment banking or similar business experience, and (c) has had reportable income from all sources of at least $100,000 in each of the two most recent years and a reasonable expectation of income from all sources of at least $140,000 in each year in which such person will be committed to make investments in a Partnership. In addition, such an employee will not be permitted to invest in any year more than 10% of his or her income from all sources for the immediately preceding year in the aggregate in such Partnership and in all other partnerships in which he or she has previously invested.

[8] A "Consultant" is a person or entity whom Credit Suisse Group has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with Credit Suisse Group and Credit Suisse Group employees.

[9] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of "Qualified Investment Vehicle" is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles over which they exercise investment discretion or vehicles the management or affairs of which they otherwise control. In the case of a partnership, corporation, or other entity controlled by a Consultant entity, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an "accredited investor" under rule 501(a)(6) of Regulation D and who will have access to the directors and officers of the General Partner.

[10] If applicant implements a Pretax Plan, Eligible Employees participating in such Pretax Plan will be furnished with a copy of the Pretax Plan, which will set forth at a minimum the same terms of the proposed investment program as those that would have been set forth in a Partnership Agreement for a Partnership. The Credit Suisse Group will prepare an audited informational statement with respect to the investments deemed to be made by such Pretax Plan, including, with respect to each investment, the name of the portfolio company and the amount deemed invested by such Pretax Plan in the portfolio company. The Credit Suisse Group will send each participant of such Pretax Plan a separate statement prepared based on the audited

Continued

addition, as soon as practicable after the end of each tax year of a Partnership, each Participant will receive a report showing the Participant's share of income, credits, deductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner.[11] No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or a Credit Suisse Group entity. No sales load will be charged in connection with the sale of Interests.

9. An Eligible Employee's interest in a Partnership may be subject to repurchase or cancellation if: (a) The Eligible Employee's relationship with Credit Suisse Group is terminated for cause; (b) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of Credit Suisse Group; or (c) the Eligible Employee voluntarily resigns from employment with Credit Suisse Group. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (a) the amount actually paid by the Eligible Employee to acquire the Interest (less prior distributions, plus interest), and (b) the fair market value of the Interest as determined at the time of repurchase or cancellation by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

10. Subject to the terms of the applicable Partnership Agreement, a Partnership will be permitted to enter into transactions involving (a) a Credit Suisse Group entity, (b) a portfolio company, (c) any Partner or person or entity affiliated with a Partner, (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with Credit Suisse Group and over which a Credit Suisse Group entity will exercise investment discretion ("Third Party Fund"), or (e) any person or entity who is not affiliated with Credit Suisse Group and is a partner or other investor in a Third Party Fund or a third party sponsored program that is not affiliated with Credit Suisse Group (a "Third Party Investor"). Prior to entering into any of these transactions, the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. A Credit Suisse Group entity (including the General Partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership or a portfolio company in connection with a Partnership's purchase or sale of securities, provided that such placement fees, advisory fees, or other compensation can be deemed to be "usual and customary." Such fees or other compensation will be deemed "usual and customary" only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds or Third Party Investors who are similarly purchasing or selling securities, (b) the fees or other compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds or Third Party Investors, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds and Third Party Investors. Credit Suisse Group entities, including the General Partner, also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities.

Applicant's Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) of the Act provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicant requests an order under sections 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), sections 30(c), (d), (f), (g), (i) and (j), and sections 36 through 53, and the rules and regulations under those sections.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicant requests an exemption from section 17(a) to permit: (a) A Credit Suisse Group entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) any Partnership to invest in or engage in any transaction with any Credit Suisse Group entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any Credit Suisse Group entity or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any Credit Suisse Group entity or Third Party Fund is or will become affiliated; and (c) any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with a Partnership or any company controlled by the Partnership.

4. Applicant states that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the

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informational statement within 120 days after the end of the fiscal year of the Credit Suisse Group or as soon as practicable thereafter.

[11] If applicant implements a Pretax Plan, an Eligible Employee's participation rights in such plan may not be transferred, other than to a Qualified Participant in the event of the Eligible Employee's death.

Partnerships. Applicant states that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with Credit Suisse Group. Applicant also states that, as professionals employed in the investment banking and securities businesses, Participants will be able to understand and evaluate the attendant risks. Applicant asserts that the community of interest among the Participants and Credit Suisse Group will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicant requests relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicant submits that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with Credit Suisse Group's large capital resources, and its experience in structuring complex transactions. Applicant also submits that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicant contends that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicant notes that each Partnership will be organized for the benefit of Eligible Employees as an incentive for them to remain with Credit Suisse Group and for the generation and maintenance of goodwill. Applicant believes that, if co-investments with Credit Suisse Group are prohibited, the appeal of the Partnerships would be significantly diminished. Applicant asserts that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of Credit Suisse Group enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by Credit Suisse will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicant asserts that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicant states that the concern that permitting co-investments by Credit Suisse Group and a Partnership might lead to less advantageous treatment of the Partnership should be mitigated by the fact that Credit Suisse Group will be acutely concerned with its relationship with the investors in the Partnership, and the fact that senior officers and directors of Credit Suisse Group entities will be investing in the Partnership. In addition, applicant asserts that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Participant or other affiliated person of the Partnership (or any Affiliate of the affiliated person) made a similar investment.

8. Co-investments with Third Party Funds, or by a Credit Suisse Group entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3 below. Applicant notes that it is common for a Third Party Fund to require that Credit Suisse Group invest its own capital in Third Party Fund investments, and that Credit Suisse Group investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicant believes it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicant asserts that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to Credit Suisse Group. Applicant contends that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by Credit Suisse Group in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships and a Third Party Fund.

9. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicant requests an exemption from section 17(e) to permit a Credit Suisse Group entity (including the General Partner) that acts as an agent or broker to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation can be deemed "usual and customary." Applicant states that for the purposes of the application, fees or other compensation will be deemed "usual and customary" only if (a) the Partnership is purchasing or selling securities alongside other unaffiliated third parties, including Third Party Funds or Third Party Investors, who are similarly purchasing or selling securities, (b) the fees or other compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds and Third Party Investors, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds or Third Party Investors. Applicant asserts that, because Credit Suisse Group does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicant asserts that the fees or other compensation paid by a Partnership to a Credit Suisse Group entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) under the Act requires that a majority of directors who are not "interested persons" (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Rule 17e–1(c) under the Act requires that a majority of the directors not be interested persons, that those directors select and nominate other disinterested directors and that any person who acts as legal counsel for the disinterested directors be an independent legal counsel. Applicant requests an exemption from rule 17e–1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in paragraph (b) of the rule and without having to satisfy the standards set forth in paragraph (c) of the rule. Applicant states that because all the directors of the General Partner will be affiliated persons, without the relief requested, a

Partnership could not comply with rule 17e–1. Applicant states that each Partnership will comply with rule 17e–1(b) by having a majority of the directors of the Partnership take actions and make approvals as are set forth in rule 17e–1. Applicant states that each Partnership will comply with all other requirements of rule 17e–1.

11. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–1 under the Act imposes certain requirements when the custodian is a member of a national securities exchange. Applicant requests an exemption from section 17(f) and rule 17f–1 to permit a Credit Suisse Group entity to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicant also requests an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicant states that, because of the community of interest between Credit Suisse Group and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicant will comply with all other requirements of rule 17f–1.

12. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicant requests exemptive relief to permit the General Partner's directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicant states that, because all directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the Partnership's directors take actions and make determinations as are set forth in rule 17g–1. Applicant also states that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) of the Act and paragraph (b) of rule 17j–1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicant requests an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicant requests an exemption from the requirements in sections 30(a), 30(b), and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicant contends that the forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicant requests exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicant also requests an exemption from section 30(h) of the Act to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicant asserts that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 under the Act to which a Partnership is a party (the "Section 17 Transactions") will be effected only if the General Partner determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners and do not involve overreaching of such Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners, such Partnership's organizational documents, and such Partnership's reports to its Partners. In addition, the General Partner will record and preserve a description of all Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis therefor. All records relating to an investment program will be maintained until the termination of such investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[12]

2. In connection with the section 17 Transactions, the General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Partnership, or any affiliated person of such a person, promoter, or principal underwriter.

3. The General Partner will not invest the funds of any Partnership in any investment in which a "Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and a Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term "Co-Investor" with respect to any Partnership means any person who is: (a) An "affiliated person" (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) a Credit Suisse Group entity; (c) an officer or director of a Credit Suisse Group entity; or (d) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which such Co-Investor is a direct or

[12] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of such Co-Investor, including step and adoptive relationships, or a trust or other investment vehicle established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; (e) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities; or (f) when the investment is comprised of securities that are government securities as defined in section 2(a)(16) of the Act.

4. Each Partnership and the General Partner will maintain and preserve, for the life of such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in such Partnership, and each annual report of such Partnership required to be sent to such Participants, and agree that all such records will be subject to examination by the SEC and its staff.[13]

5. The General Partner of each Partnership will send to each Participant in such Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants, except in the case of a Partnership formed to make a single portfolio investment. In such cases, financial statements will be unaudited, but each Participant will receive financial statements of the single portfolio investment audited by such entity's independent accountants. At the end of each fiscal year and at other times as necessary in accordance with customary practice, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of such Partnership will send a report to each person who was a Participant in such Partnership at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Participant of his, her or its U.S. federal and state income tax returns, and a report of the investment activities of the Partnership during that fiscal year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with such Partnership by reason of a 5% or more investment in such entity by a Credit Suisse Group director, officer, or employee, such individual will not participate in such Partnership's determination of whether or not to effect such purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19121 Filed 7–26–02; 8:45 am]

BILLING CODE 8010–01–P

[13] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

eConnect; Order of Suspension of Trading

July 25, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of eConnect, a Nevada corporation. Questions have been raised about the accuracy of publicly disseminated information concerning, among other things, the value of an investment of corporate bonds in eConnect by another company; the projected opening date of Bank eConnect; the value of a purchase order from another company for eConnect's eCashPads and the ability of that company to pay for the eCashPads.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, July 25, 2002, through 11:59 p.m. EDT, on August 7, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19219 Filed 7–25–02; 12:31 pm]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12741]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; addition to agenda.

SUMMARY: The Coast Guard is modifying the agenda for the July 29–30, 2002, meeting of the Great Lakes Pilotage Advisory Committee (GLPAC) to add member discussion and selection of a candidate to recommend to the Secretary of Transportation for appointment as the seventh GLPAC member. The meeting will be open to the public.

DATES: GLPAC will meet on Monday, July 29, 2002, from 1:30 p.m. to 5 p.m. and on Tuesday, July 30, 2002, from 9 a.m. to 4 p.m. The meeting may close early if all business is finished.

ADDRESSES: GLPAC will meet in Deck Room B of the Maritime Institute of Technology, 5700 Hammonds Ferry Road, Linthicum Heights, Maryland. Send written material and requests to make oral presentations to Margie Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. We had planned to have the selection of the seventh member at a closed session of the GLPAC, however we have reevaluated that decision in order to expedite the selection of this member. The revised agenda is printed below.

Agenda of Meeting

The agenda includes the following:

(1) Automatic Identification System (AIS) Technology and Training Requirements.

(2) Update on the Great Lakes Pilotage Office Relocation Study.

(3) Update on Bridge Hour Study.

(4) Discussion and Selection of 7th GLPAC Member to recommend to Secretary of Transportation for appointment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: July 23, 2002.

Paul J. Pluta,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–19139 Filed 7–24–02; 4:37 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Wiscasset and Edgecomb, ME

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in the Towns of Wiscasset and Edgecomb, Sagadahoc County, Maine.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Hasselmann, Manager, Right of Way and Environment, Maine Division, Federal Highway Administration, 40 Western Ave. Augusta, Maine 04330, Tel. 207/622–8355, ext. 24; Edward W. Hanscom, P.E., Project Manager, Maine Department of Transportation, State House Station 16, Augusta, Maine 04333–0016, Tel. 207/624–3320.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maine Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve public safety, increase mobility and reduce congestion through the U.S. Route 1 corridor in the Wiscasset-Edgecomb area. The purpose of this EIS is to establish a preferred alternative that will address the study purpose and need. Alternatives under consideration include (1) taking no action, (2) transportation system management including upgrades within the existing highway facilities and construction of a limited access highway on new location.

This project began in 1999 as an environmental assessment and the first public meeting was held in December 1999. An agency scoping meeting was held April 10, 2000 in Augusta, Maine and public scoping meetings were held in Wiscasset, Maine on May 24, 2000 and November 1, 2000.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: July 17, 2002.

Paul L. Lariviere,

Division Administrator, Federal Highway Administration, Augusta, Maine.

[FR Doc. 02–19027 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2002–12907.

Applicant: Burlington Northern Santa Fe Railway, Mr. DJ Mitchell II, Assistant Vice President, 2600 Lou Menk Drive, P.O. Box 961034, Fort Worth, Texas 76161–0034.

Burlington Northern Santa Fe Railway (BNSF) seeks temporary relief from the requirements of Part 236, Section 236.566, of the Rules, Standard and Instructions, to the extent that BNSF be permitted to operate the non-equipped steam locomotive ATSF 3751, as the lead locomotive in consist, in automatic train stop (ATS) territory between Barstow, California, milepost 745.9 and Needles, California, milepost 578.0, on the Southern California Division, Needles Subdivision, and between Needles, California, milepost 578.0 and Williams, Arizona, milepost 374.3, on the Southwest Division, Seligman Subdivision, during August 19 through August 26, 2002, restricted to a maximum authorized speed of 70 mph.

Applicant's justification for relief: The National Railroad Historical Society is planning to operate a special train, with Amtrak as the contract operator, from Los Angeles, California to Williams, Arizona and return, during August 19–26, 2002, routed over the ATS equipped trackage.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Due to the short time constraints, communications must be received as soon as possible from the date of this notice and will be considered by the FRA as far as practicable before final action is taken. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 23, 2002.

Edward W. Pritchard,

Acting Director, Office of Safety Assurance and Compliance.

[FR Doc. 02–19133 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 26, 2002. No comments were received.

DATES: Comments must be submitted on or before August 28, 2002.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

FOR FURTHER INFORMATION CONTACT: Kenneth Kline, Maritime Administration, 400 Seventh Street, Southwest, Washington, DC 20590. Telephone: 202–366–5744; FAX: 202–366–7901, or e-mail: *kenneth.kline@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Obligation Guarantees—46 CFR part 298, Title XI.

OMB Control Number: 2133–0018.

Type of Request: Extension of currently approved collection.

Affected Public: Individuals/ businesses interested in obtaining loan guarantees for construction or reconstruction of vessels satisfying criteria under the Merchant Marine Act.

Form(s): MA–163, MA–163A.

Abstract: In accordance with the Merchant Marine Act, 1936, MARAD is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels. In addition, the program allows for financing shipyard modernization and improvement projects.

Annual Estimated Burden Hours: 1470 hours.

Comments Are Invited On

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on July 24, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19102 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12911]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AMULET.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12911. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: AMULET. *Owner:* Charter Cruises, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "62-foot Little Harbor sloop; sleeps 6 plus 2 in crew; *Displacement:* 88, 000 lbs.; *Ballast:* 31, 5000 lbs."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Charter vessel cruising; East Coast of United States and Caribbean."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1982. *Place of construction:* Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "No impact on other commercial passenger vessels."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "No impact on U.S. Shipyards."

Dated: July 23, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19041 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12912]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CORWITH CRAMER.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12912. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: CORWITH CRAMER.

Owner: Sea Education Association (SEA).

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "LOA: 98 FEET; *Beam:* 26 feet; *Draft:* 13 feet; *ITC tonnage:* 158 gross tons, 47 net tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Upon receiving the waiver we intend to use the CORWITH CRAMER to carry no more than twelve passengers for hire throughout the United States coastal waters on an occasional basis to enhance our regular operations as a sailing school vessel. By U.S. coastal waters we include the U.S. east coast, west coast, Gulf of Mexico coast as well as the coastal waters of Hawaii and Alaska. Our SSV operations occur offshore throughout the Atlantic and Pacific waters most of the year but approximately 60 days may be spent operating with passengers for hire in the U.S. coastal waters. Any particular port visit is usually less than one week in length. The not more than 12 passengers would include people that SEA invites aboard based on their interest in our vessel and on board education research programs."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1987. *Place of construction:* ASTACE Shipyard in Bilbao, Spain.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Granting a waiver for the CORWITH CRAMER will have no adverse impact on other commercial passenger vessel operators for two reasons. First, we will invite only passengers with an interest in our specific vessel and programs and second; we will spend limited time in any one U.S. coastal port as our operations carry us throughout a vast latitudinal region annually."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This waiver will have no negative impact on U.S. shipyards as we currently conduct all of our maintenance and repair in U.S. shipyards. It is possible that we will use a wider variety of U.S. shipyards than the three where we currently work."

Dated: July 23, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19043 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12922]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GITANA.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an

unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12922. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* GITANA. *Owner:* Western Maritime, Inc.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "91' sailboat, with accommodations to sleep 6 guests plus crew accommodations for 4. Our International Tonnage indicates that the gross tonnage is 74 and the net is 22."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The intended use for the vessel is recreation/charter. The geographic regions of intended operation are the Caribbean, East Coast of the U.S., Central America, Northwest Mediterranean (Spain, Balearics, France)."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1991. *Place of construction:* Gosport, Hants, United Kingdom.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "The waiver would have no effect on other commercial passenger vessel operators. We are a recreational vessel, which charters less than 8 times a year."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "If we get the waiver, we would be able to have work done in the U.S., which would help the U.S. shipyards."

Dated: July 24, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19101 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12923]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SHANACHIE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12923. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: SHANACHIE. Owner: William O'Connell.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Capacity: Gross Tonnage 25; Net Tonnage 23 per 46 U.S.C. 14502."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Atlantic Coast and Chesapeake Bay regions. The vessel will operate in New England waters during the summer months and Florida waters during the winter months with interim stops in the Chesapeake Bay."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1984. Place of construction: Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This vessel will carry a maximum of six passengers in private charter visiting small local marinas and will not impact commercial passenger vessel operators. Commercial passenger vessel operators do not operate in this mode."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The granting of this waiver will not impact U.S. shipyards because of the very limited capacity of this vessel."

Dated: July 23, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19103 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12913]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WESTWARD.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12913. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: WESTWARD. *Owner:* Sea Education Association (SEA).

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "LOA: 94 Feet, *Beam:* 22 feet, *Draft:* 12 feet, *ITC tonnage:* 114 gross tons, 34 net tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Upon receiving the waiver we intend to use the WESTWARD to carry no more than twelve passengers for hire throughout the United States coastal waters on an occasional basis to enhance our regular operations as a sailing school vessel. By U.S. coastal waters we include the U.S. east coast, west coast, Gulf of Mexico coast as well as the coastal waters of Hawaii and Alaska. Our SSV operations occur offshore throughout the Atlantic and Pacific waters most of the year but approximately 60 days may be spent operating with passengers for hire in the U.S. coastal waters. Any particular port visit is usually less than one week in length. The not more than 12 passengers would include people that SEA invites aboard based on their interest in our vessel and on board education research programs."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1961. *Place of construction:* Abeking-Rasmussen Shipyard in Lemwerder, Germany.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Granting a waiver for the WESTWARD will have no adverse impact on other commercial passenger vessel operators for two reasons. First, we will invite only passengers with an interest in our specific vessel and programs and second; we will spend limited time in any one U.S. coastal port as our operations carry us throughout a vast latitudinal region annually."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This waiver will have no negative impact on U.S. shipyards as we currently conduct all of our maintenance and repair in U.S. shipyards. It is possible that we will use a wider variety of U.S. shipyards than the three where we currently work."

Dated: July 23, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19042 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS). This index will be used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

RAILROAD FREIGHT INDEX

Year	Index	Deflator percent
1991	409.50	[1] 100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72
2000	428.64	95.45
2001	436.48	93.73

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201*, 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from $10 million (1978 dollars) to $20 million (1991 dollars).

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Scott Decker (202)565–1531. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

Decided: July 19, 2002.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18850 Filed 7–26–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–LTC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–LTC, Long-term Care and Accelerated Death Benefits.

DATES: Written comments should be received on or before September 27, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Long-Term Care and Accelerated Death Benefits.

OMB Number: 1545–1519.

Form Number: 1099–LTC.

Abstract: Under the terms of Internal Revenue Code sections 7702B and 101g, qualified long-term care and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of $175 per day are taxable. Code section 6050Q requires all such amounts to be reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals or households, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Responses: 79,047.

Estimated Time Per Response: 14 min.

Estimated Total Annual Burden Hours: 18,181.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 16, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–19125 Filed 7–26–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 145

Monday, July 29, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Cooperative Agreement To Establish a National Poverty Research Center and Area Poverty Research Centers: Correction

Correction

In notice document 02–17990 appearing on page 46985 in the issue of Wednesday, July 17, 2002, make the following correction:

On page 46985, in the third column, the fourth line should read "(c) Research Agenda".

[FR Doc. C2–17990 Filed 7–26–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
July 29, 2002

Part II

Federal Election Commission

11 CFR Parts 100, et al.
Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 104, 106, 108, 110, 114, 300, and 9034

[Notice 2002 –11]

Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its rules relating to funds raised, received, and spent by party committees under the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"). The revisions are based on the Bipartisan Campaign Reform Act of 2002 ("BCRA"), which adds to the Act new restrictions and prohibitions on the receipt, solicitation, and use of certain types of non-Federal funds, which are commonly referred to as "soft money." BCRA and the revised rules prohibit national parties from raising or spending non-Federal funds. They also permit State, district, and local party committees to fund certain "Federal election activity," including certain voter registration and get-out-the-vote ("GOTV") drives, with money raised pursuant to new limitations, prohibitions, and reporting requirements under BCRA, or with a combination of funds subject to various requirements of the Act and BCRA. They also address fundraising by Federal and non-Federal candidates and Federal officeholders on behalf of political party committees, other candidates, and non-profit organizations. Further information is contained in the Supplementary Information that follows.

DATES: The effective date is November 6, 2002, except for 11 CFR 106.7(a) which is effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vergelli, Acting Assistant General Counsel; or Attorneys Mr. Anthony T. Buckley, Mr. Jonathan M. Levin, Ms. Dawn Odrowski, Ms. Anne A. Weissenborn, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Public Law 107–155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), 2 U.S.C. 431 *et seq.* This is the first of a series of rulemakings the Commission is undertaking this year in order to meet the rulemaking deadlines set out in BCRA. These rules address BCRA's new limitations on party, candidate, and officeholder solicitation and use of non-Federal funds.[1]

Section 402(c)(2) of BCRA establishes a 90-day deadline for the Commission to promulgate these rules. Since BCRA was signed into law on March 27, 2002, the 90-day deadline was June 25, 2002.[2] The Commission promulgated these rules on June 22, 2002. The new rules will take effect on November 6, 2002, the day following the November 2002 general election, except rules that take effect after the transition period. 2 U.S.C. 431 note.

Because of the extremely tight deadline for promulgating these rules, the Commission adhered to a shorter-than-usual timeline for receiving and considering public comments. The Notice of Proposed Rulemaking ("NPRM") on which these rules are based was published in the **Federal Register** on May 20, 2002. 67 FR 35654 (May 20, 2002). Comments were received from the Alliance for Justice; the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"); the American Federation of State, County, and Municipal Employees ("AFSCME"); the Association of State Democratic Chairs ("ASDC"); Dr. Peter Bearse; the California Republican Party; the Campaign and Media Legal Center; the Center for Responsive Politics ("CRP") and FEC Watch (joint comment); Common Cause and Democracy 21 (joint comment); the Connecticut Republican State Central Committee; the Democratic National Committee ("DNC"), the Democratic Senatorial Campaign Committee ("DSCC") and the Democratic Congressional Campaign Committee ("DCCC") (joint comment); Development Strategies Corporation; Benjamin L. Ginsberg, Esq.; Ms. Janice P. Johnson; the Latino Coalition and National Taxpayer Network, Inc. (joint comment); the Michigan Democratic Party ("MDP"); Mindshare Internet Campaigns L.L.C.; the NAACP National Voter Fund ("NAACP NVF"); the National Republican Congressional Committee ("NRCC"); OMB Watch; Senators John S. McCain and Russell D. Feingold, and Representatives Christopher Shays and Marty Meehan (joint comment), and a supplemental comment from Senator McCain; Representative Bob Ney; Norman D. Petrick; and the Republican National Committee ("RNC").

The Commission held a public hearing on the NPRM on June 4 and 5, 2002, at which it heard testimony from representatives of the ASDC; the AFL–CIO; the Campaign and Media Legal Center; Common Cause and Democracy 21; CRP and FEC Watch; the DNC, DSCC and DCCC; the Latino Coalition and the Taxpayer Network, Inc.; NAACP NVF; the MDP; the RNC, the RNCC, and the Republican State Chairmen; and Mr. Ginsberg. Please note that, for purposes of this document, the terms "commenter" and "comment" cover both written comments and oral testimony at the public hearing.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money were transmitted to Congress on July 16, 2002.

Explanation and Justification

I. Terminology

Because the term "soft money" is used by different people to refer to a wide variety of funds under different circumstances, the Commission is using the term "non-Federal funds" in the final rules rather than the term "soft money." BCRA does not use the term "soft money" except in the heading of Title I and the headings within Title IV. Nonetheless, the Commission sought comment on whether use of the term "soft money" would in some instances be preferable.

Not all commenters addressed this issue, and several of those who did not address the issue used the term "soft money" throughout their comments. Most of those who addressed this question, however, urged the Commission to use the terms "Federal funds" and "non-Federal funds" in

[1] Future rulemakings will address: (1) Electioneering communications and issue ads; (2) coordinated and independent expenditures; (3) the so-called "millionaires" amendment," which increases contribution limits for congressional candidates facing self-financed candidates on a sliding scale, based on the amount of personal funds the opponent contributes to his or her campaign; (4) the increase in contribution limits; and (5) other new and amended provisions, including contribution prohibitions and reporting. This last rulemaking will address contributions by minors, foreign nationals, and U.S. nationals; inaugural committees; fraudulent solicitations; disclaimers; personal use of campaign funds; and civil penalties. BCRA's impact on national nominating conventions will be addressed in a separate rulemaking.

[2] BCRA's deadline for promulgation of the remaining rules is 270 days after the date of enactment, or December 22, 2002.

place of what they characterized as the often-misunderstood term "soft money." One commenter urged the Commission to use the terms "regulated" and "unregulated" funds, arguing that the terms "Federal" and "non-Federal" funds are also confusing. However, the terms "Federal" and "non-Federal" have been used by the Commission for many years throughout the rules and are thus familiar to those active in this area. *See*, for example, 11 CFR 102.5 ("Federal" and "non-Federal" accounts); 11 CFR 106.5 ("Federal" and "non-Federal" disbursements). The terms "regulated" and "unregulated" could also be subject to different interpretations. Moreover, non-Federal funds are regulated by State law. The Commission is, therefore, using the terms "Federal" and "non-Federal" throughout the text of the regulations and the accompanying Explanation and Justification.

II. The Statutory Framework

The Act limits the amount that individuals can contribute to candidates, political committees, and political parties for use in Federal elections. 2 U.S.C. 441a. The Act also prohibits corporations and labor organizations from contributing their general treasury funds for these purposes. 2 U.S.C. 441b. Contributions from national banks, 2 U.S.C. 441b(a); government contractors, 2 U.S.C. 441c; foreign nationals, 2 U.S.C. 441e; and minors, new 2 U.S.C. 441k, as enacted by BCRA; as well as contributions made in the name of another, 2 U.S.C. 441f; are also prohibited. These strictures regulate what is often referred to as "hard money," or Federal funds.

Some donations that do not meet the FECA hard money requirements, for example, corporate and labor organization general treasury contributions, may not be used for Federal elections, and are referred to as non-Federal funds. Non-Federal funds may not be used for the purpose of influencing any election for Federal office. Funds raised that are used by State or local parties or State or local candidates on non-Federal elections are governed by State or local law. Prior to BCRA's revisions, the FECA permitted national party committees, Federal candidates, and officeholders to raise money not subject to some of the Act's source limitations and prohibitions. Beginning November 6, 2002, under BCRA, national party committees "may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U.S.C. 441i(a).

BCRA also requires State, district, and local political party committees to pay for "Federal election activities," which is a new term introduced and defined by BCRA, 2 U.S.C. 431(20), with entirely Federal funds or, in some cases, a mix of Federal funds and a new type of non-Federal funds, which the rules call "Levin funds." These two provisions are related in that the latter is intended to prevent evasion of the former. A State, district, or local political party committee may not evade the restrictions in BCRA by receiving funds transferred from a national party committee and spending those funds on Federal election activity. A State, district, or local party committee must spend Federal and Levin funds it raises itself on these activities. *See* 148 Cong. Rec. H408–409 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

As discussed below, these new and revised rules partially supersede the following advisory opinions relating to preemption as to party office buildings: Advisory Opinions 2001–12, 2001–1, 1998–8, 1998–7, 1997–14, 1993–9, 1991–5, and 1986–40. Other advisory opinions may no longer be relied upon to the extent they conflict with BCRA. Further guidance will be forthcoming in future advisory opinions and rulemakings.

III. Part 100—Scope and Definition

11 CFR 100.14 Definition of "State Committee, Subordinate Committee, District, or Local Committee"

Several provisions of BCRA refer to "State, district, and local committees of a political party." *See, e.g.*, the "Levin Amendment," 2 U.S.C. 441i(b)(2). In the NPRM, the Commission pointed out that the terms "State committee," "subordinate committee," and "party committee," are already defined in the regulations, although "district committee" and "local committee" are not. 11 CFR 100.14, 100.5(e)(4); *see also* 2 U.S.C. 431(15).

In paragraph (a) of section 100.14, status as a State committee is determined by reference to the party bylaws or State law. This provision, which did not draw comment, allows the regulation to cover those States in which party committee status is a matter of State law and those in which it is a matter of party bylaws.

The proposed regulation published in the NPRM provided, in paragraphs (a), (b), and (c), with regard to "State committees," "subordinate committees," and "district or local committees," respectively, that an organization must be "part of the official party structure" and be "responsible for the day-to-day operation of the political party" to meet the definition. Three commenters, including the principal Congressional sponsors of BCRA, objected to this conjunctive requirement. These commenters collectively believe that limiting the definition to organizations that are part of the "official party structure" will open the door to purportedly "unofficial" party organizations that would be able to avoid BCRA's requirement while "manifestly engaged in party operations." Instead, they propose a disjunctive definition, which would provide that a party organization meets the respective definitions if it is part of the official party structure *or* responsible for the day-to-day operation of the party. The Commission has concluded that requiring a committee to be part of the official party structure before it satisfies the regulatory definition is an important safeguard, ensuring that BCRA's provisions sweep only as far as necessary to accomplish its ends. The Commission also believes that its definition of "subordinate committee of a State, district, or local committee," which includes any organization that is directly or indirectly established, financed, maintained, or controlled by the State, district, or local committee fully addresses the sponsor's regulatory concerns in this area.

Paragraph (b) is a new provision defining "district or local committee." (This provision was labeled paragraph (c) in the NPRM, while subordinate committees were covered by paragraph (b). In the final rules, the Commission has covered subordinate committees in paragraph (c). This reordering of paragraphs within section 100.14 reflects the priority given to district and local party committees in BCRA.) This definition largely parallels paragraph (a) but for political subdivisions below the State level, and encompasses those political party committees that do not necessarily operate formally under the "control or direction" of the State party committee. In the final rules, the Commission has deleted the phrase, "including an entity that is directly or indirectly established, financed, maintained, or controlled by the district or local committee."

The principal Congressional sponsors of BCRA commented that the words, "under State law," as they appeared in the NPRM, are redundant given the preceding reference to "operation of State law." The Commission agrees, and has deleted the redundant words in the final rule.

Three commenters objected to adding language, "as determined by the Commission," in paragraph (b) of section 100.14. An association of State party officials stated, referring to paragraph (b), "there should be no discretion left to the Commission to decide whether a particular organization is a local party committee." A national party committee described status as a local committee as a "quintessential State and local" issue. The Commission has not included the phrase, "as determined by the Commission," in paragraph (b) of section 100.14.

With regard to subordinate committees, in paragraph (c) of section 100.14, the phrase, "as determined by the Commission," which was included in the proposed regulation published in the NPRM, has not been included in the final rules. The Commission has concluded that this language, which refers to the availability of the advisory opinion process, is not appropriate with regard to committees other than State committees, whose status as State party committees, as determined by the Commission, makes them eligible for higher contribution limits and permits them to make coordinated expenditures under FECA. The principal Congressional sponsors of BCRA commented that, as proposed in the NPRM, this definition did not, but should, include within the definition an entity that is directly or indirectly established, financed, maintained, or controlled by the subordinate committee. The Commission has included such a provision in paragraph (c) of section 100.14 of the final rules.

11 CFR 100.24 Definition of "Federal Election Activity"

Many of the operative provisions of Title I of BCRA use the term "Federal election activity" ("FEA"). *See, e.g.,* 2 U.S.C. 441i(b)(1), (2), 2 U.S.C. 441i(d). Congress defined the term at 2 U.S.C. 431(20). The Commission is adopting new regulation 11 CFR 100.24 to implement the statutory definition.

The definition of FEA proposed in the NPRM drew numerous comments urging divergent interpretations of key statutory terminology. Many of these comments focused on four important phrases that are used in the statutory definition at 2 U.S.C. 431(20). In light of these comments, the Commission has revised the regulation proposed in the NPRM by adding a new first paragraph, 11 CFR 100.24(a), which defines these four terms for the purposes of the rest of the regulation and for use in part 300 of chapter 1 of Title 11. These terms are "voter registration activity" (*see* 2 U.S.C. 431(20)(A)(i)), "in connection with an election in which a candidate for Federal office appears on the ballot," "get-out-the-vote activity" ("GOTV"), and "voter identification" (*see* 2 U.S.C. 431(20)(A)(ii)).

A. Elections in Which Federal Candidates "Appear on the Ballot"

The statutory definition of FEA provides that certain activities are FEA if they are "in connection with an election in which a candidate for Federal office appears on the ballot." 2 U.S.C. 431(20)(A)(ii). Congress clearly intended to establish certain periods of time in which no candidates for Federal office appear on the ballot. The NPRM requested comment as to how to interpret this statutory provision. Several commenters, including the principal Congressional sponsors of BCRA, urged the Commission to construe this phrase to mean "starting at the beginning of a two-year Federal election cycle, except in states holding regularly scheduled state elections in odd-numbered years." These commenters argued that this approach is "consistent with the Commission's current practice with respect to allocation of generic voter drive and administrative expenses," and comports with the plain meaning of the statute.

In contrast, two commenters, a national party committee and a labor organization, urged the Commission to pick a date certain, January 1 of even-numbered years, to identify the time-frame that is "in connection with an election in which a candidate for Federal office appears on the ballot." The commenters commended this approach as "practical" and "reasonable." One of these commenters suggested that the concept of even-numbered Federal election years is already familiar, and that party activities are "more diverse" in odd-numbered years, in that they are more focused on local and State activities. The Commission notes that a large number of State and local elections take place in odd-numbered years (*e.g.,* mayoral elections in some large cities). Activities in connection with such elections are presumably not "conducted in connection with an election in which a candidate for Federal office appears on the ballot," even under the most expansive reading of the statute.

A civil rights organization urged the Commission to interpret the term, "in connection with an election in which a candidate for Federal office appears on the ballot," to mean that period of time beginning on the day on which a Federal candidate is actually certified for the ballot in a given jurisdiction. This commenter argues this interpretation is the plainest possible reading of the statute. This civil rights organization also cautioned that an overly broad definition of when a candidate "appears on the ballot" would unduly hamper their legitimate fundraising efforts, and thus impede many, if not all, of their non-partisan GOTV efforts. A Latino rights group and a taxpayers' organization suggested that the Commission interpret the statutory term to mean the earliest date on which a Federal candidate could qualify for the ballot in a given jurisdiction.

Paragraph (a)(1) of 11 CFR 100.24 defines "in connection with an election in which a candidate for Federal office appears on the ballot" to mean two specific periods of time. The first begins on the earliest filing deadline for access to the primary election ballot for Federal candidates, as determined by State law, or in those States that do not conduct primaries, on January 1 of each even-numbered year. This time period ends on the date of the general election, up to and including the date of any general runoff. This definition of "in connection with an election in which a candidate for Federal office appears on the ballot" closely tracks the statutory language of 2 U.S.C. 431(20)(A)(ii) by tying the definition to the actual date that Federal candidates appear on the ballot. Although this definition may result in all fifty States having different time-periods in which "a candidate for Federal office appears on the ballot," for purposes of the Act, there will be only one relevant date in any particular State. Thus, this is not at all burdensome on State and local party committees, who are the primary actors affected by this clause, especially since many of these committees must already pay attention to State dates in order to file certain pre-election reports with the Commission. Finally, this definition harmonizes the rule for regularly scheduled Federal elections and special elections for Federal office held outside normal election time frames. (*See* next paragraph.)

The second time-frame that is "in connection with an election in which a candidate for Federal office appears on the ballot" occurs in odd-numbered years in which a special election for a Federal office occurs. Paragraph (a)(1)(ii) prescribes that the period beginning on the date the special election date is set and ending on the day of the special election is considered to be "in connection with an election in which a candidate for Federal office appears on the ballot."

B. Voter Registration Activity

BCRA does not define "voter registration activity," as that term is used in the statutory definition of "Federal election activity," although "voter registration activity" is "Federal election activity" only when it is conducted 120 days or fewer before a regularly scheduled Federal election. 2 U.S.C. 431(20)(A)(i). Paragraph (a)(2) of section 100.24, in the final rules, defines voter registration activity to encompass individualized contact for the specific purpose of assisting individuals with the process of registering to vote. The definition in paragraph (a)(2) also includes the costs of printing and distributing voter registration information, such as registration forms, and voting information, for example, pamphlets of similar materials explaining the voter-registration process.

The Commission has expressly rejected an approach whereby merely encouraging voter registration would constitute Federal election activity. The regulation requires concrete actions to assist voters, rather than mere exhortation. A more expansive definition would run the risk that thousands of political committees and grassroots organizations that merely encouraged voting as a civic duty, who have never been subject to Federal regulation for such conduct, would be swept into the extensive reporting and filing requirements mandated under Federal law.

C. Get-Out-the-Vote

Based upon the comments received in response to the rules proposed in the NPRM, the testimony at the public hearing, and its own analysis of BCRA, the Commission has concluded that it must define GOTV in a manner that distinguishes the activity from ordinary or usual campaigning that a party committee may conduct on behalf of its candidates. Stated another way, if GOTV is defined too broadly, the effect of the regulations would be to federalize a vast percentage of ordinary campaign activity.

The Commission received several comments on this topic. A State political party and an association of State party officials argued that the timing (i.e., relative to the election) should not be relevant to determining whether an activity is GOTV. Rather, both commenters suggested that GOTV "should refer to actual communications with voters for the purpose of encouraging them to vote." Two public interest groups agreed that timing relative to the election is not relevant to determining whether an activity is GOTV. Neither group, however, suggests an actual definition of the term. The Congressional sponsors "strongly disagree with the suggestion that * * * voter contacts may constitute [GOTV] only if they occur 'on Election day or shortly before.' Contacting voters to encourage voting is [GOTV] whenever it occurs." A labor organization suggested that timing is relevant, and urged that the Commission's definition of GOTV be limited to activities that occur on election day.

In the final rules, at 11 CFR 100.24(a)(3), the Commission adopts a definition of "GOTV activity" as "contacting registered voters * * * to assist them in engaging in the act of voting." This definition is focused on activity that is ultimately directed to *registered* voters, even if the efforts also incidentally reach the general public. Second, GOTV has a very particular purpose: assisting registered voters to take any and all necessary steps to get to the polls and cast their ballots, or to vote by absentee ballot or other means provided by law. The Commission understands this purpose to be narrower and more specific than the broader purposes of generally increasing public support for a candidate or decreasing public support for an opposing candidate.

Paragraph (a)(3) provides a list of two examples of get-out-the-vote activity that is intended to assist in applying the regulation to particular factual situations. The first example, in paragraph (a)(3)(i), is activity whereby an individual is provided specific information on voting within 72 hours of an election, such as the date of the election, the location of polling places, and the hours the polls are open. The second example, in paragraph (a)(3)(ii), is offering to transport or actually transporting voters to the polls.

The regulation explicitly excludes "any communication by an association or similar group of candidates for State and local office or of individuals holding State or local office if such communication refers only to one or more state or local candidates." Similar to the exclusion for voter identification discussed below, this exclusion keeps State and local candidates' grassroots and local political activity a question of State, not Federal law. Interpreting the statute to extend to purely State and local activity by State and local candidates would potentially bring into the Federal regulatory scheme thousands of State and local candidates that are currently outside the Federal system. The Commission declines to undertake such a vast federalization of State and local activity without greater direction from Congress.

In the NPRM, the Commission posed several questions as to how the term "get-out-the-vote" activity should be interpreted in the statute. Among the issues raised was whether there should be an exception for "non-partisan" GOTV. In their comment, the principal Congressional sponsors of BCRA strongly opposed a non-partisan exception as "flatly inconsistent with BCRA." They argued that the plain language of the statute does not permit such an exception. Three other commenters, all of whom are public interest groups, make the same general argument. These commenters, and the Congressional sponsors, each opposed regulations that might contemplate "non-partisan" voter-drive activities by party committees and candidates, which one of the commenters labeled as "oxymoronic."

In contrast, one commenter, a non-profit corporation, urged the Commission to adopt a "non-partisan exception" for non-profit organizations that engage in non-partisan voter-drive activities such as GOTV and voter registration. This group noted that the proposed regulations would restrict fundraising on behalf of a non-profit by political party committees and Federal candidates if the non-profit spent money for FEA. It contended that, if the Commission fails to distinguish between partisan and non-partisan voter-drive activities, the efforts of legitimate, non-partisan groups to encourage voting will be hampered, perhaps fatally, in the case of some organizations. This commenter also argued that the Commission should create a "safe harbor" to allow political party committees and Federal candidates to raise funds on behalf of section 501(c)(3) organizations that legally engage in non-partisan voter-drive activities.

In Title I of BCRA, Congress expressly addressed party fundraising for tax-exempt organizations. Congress specifically provided that national, State, district, and local political party committees "shall not solicit any funds for, or make or direct any donations to" section 501(c) organizations that spend money on Federal election activity. 2 U.S.C. 441i(d)(1). The Commission does not discern, from the plain language of section 441i(d)(1), any authority to craft a regulatory exception to the definition of FEA that would modify the effect of section 441i(d)(1). This conclusion is supported by the fact that Congress did provide a limited exception for fundraising by Federal candidates on behalf of 501(c) organization that engage in FEA. *See* 2 U.S.C. 441i(e)(4)(B)

(which provides that a Federal candidate is permitted to raise up to $20,000 per calendar year from individuals for a section 501(c) organization, even if the organization engages in certain FEA.) Clearly, Congress could have crafted a non-partisan exception, but did not do so with regard to party committees' GOTV drives. Therefore, the Commission declines to adopt a "non-partisan" exception in 11 CFR 100.24 with regard to the definition of FEA.

In the NPRM, the Commission solicited comments as to whether there should be a *de minimis* exception allowing a certain, nominal amount of GOTV related to a Federal election that would nonetheless not render these activities as FEA. The principal Congressional sponsors of BCRA and a public interest group commented that there is no basis in the statute for a *de minimis* exception, and that such an exception "would be contrary to the plain meaning of the statute." A labor organization, a national party, and a State political party committee support the inclusion of a *de minimis* exception. The State party committee suggests a $5,000 exception, so that "informal and occasional GOTV and grassroots activities do not invoke the full force of federal regulations." One of the labor organizations asserts the exception would prevent the regulation from having a "strict liability" aspect. The Commission declines to adopt a *de minimis* exception in 11 CFR 100.24.

D. Slate Cards, Sample Ballots, and Other Exempt Activities

In the NPRM, the Commission specifically sought comment as to the use of printed slate cards, sample ballots, palm cards, and similar listings of three or more candidates in the context of GOTV. The Commission also sought comment about the larger issue of the relationship of "exempt activities" to "Federal election activities." 67 FR 35656.

The term "exempt activities" refers to three types of spending by State and local party organizations, each of which is excluded from the statutory definitions of contribution and expenditure in 2 U.S.C. 431(8) and (9). That is, a payment by a State or local party organization for an exempt activity is not a "contribution," within the meaning of the Act, to a candidate benefited by the activity, nor an "expenditure," within the meaning of the Act, by the party organization.

Slate cards are one type of exempt activity. A payment for the "costs of preparation, display, or mailing or other distribution . . . with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office," is not a contribution or expenditure. The exclusion does not apply to spending for displaying the slate card "on broadcast stations, or in newspapers, magazines, or similar types of general public political advertising." 2 U.S.C. 431(8)(B)(v) (contribution); 2 U.S.C. 431(9)(B)(iv) (expenditure). *See also* 11 CFR 100.7(b)(9), 100.8(b)(10). Note that the exemption extends to the costs of a mass mailing of the slate card.

"The original intent of the slate card amendment was to allow parties to print slate cards, sample ballots, etc., to educate voters and encourage straight party voting without being subject to the disclosure provisions and contribution and expenditure limitations in Federal law." H.R. Rep. No. 93–1239, at 142 (1974) (House Committee on Administration Report on the Federal Election Campaign Act Amendments of 1974) (Supp. View of Rep. Frenzel). Other statements in the legislative history tend to confirm this view of the intent behind the provision. *See, e.g.,* H.R. Rep. No. 93–1438, at 65 (1974) (Conference Report on Federal Election Campaign Act Amendments of 1974) (intent of provision "is to allow State and local parties to educate the general public as to the identity of the candidates of the party.")

Several commenters have addressed the relationship between FEA and exempt activities, including slate cards. One State party committee commented that it understands BCRA to have "clearly redefined all such * * * activities as Federal election activities that must be funded entirely by hard money." The principal Congressional sponsors of BCRA commented that slate cards, sample ballots, and palm cards should be included in GOTV. With regard to the larger issue of the relationship between all exempt activities and FEA, the principal sponsors urged that if an activity constitutes FEA, then it must be treated as such. A public interest group argues that "federal election activity subsumes all previously allocable expenses," with certain exceptions not relevant here.

In a joint comment, a national party committee and two Congressional campaign committees advocated the opposite conclusion: "Congress did not leave any suggestion in the legislative history that these important exceptions were somehow overridden * * * by BICRA." These commenters argued that the Commission's current treatment of exempt activities is consistent with BCRA because BCRA focuses on "soft money" spending for "issue advertising," whereas exempt activities are, by definition, at the grassroots level. Thus, they conclude, "exempt activities should not be deemed to be 'Federal election activity,' and that the costs of exempt activities should continue to be allocated between Federal and non-Federal funds," by which they mean non-Federal funds other than Levin funds. Another national party committee, a State party committee, and a labor organization made essentially the same points, agreeing that the definition of Federal election activity should exclude exempt activities.

The Commission does not interpret the Act, as amended by BCRA, to permit blanket conclusions about the relationship of exempt activities and FEA, in the sense of asserting that all exempt activities are necessarily now FEA, or *vice versa*. It is clear that not all exempt activities are FEA. For example, voter registration activities undertaken by a State or local political party on behalf of the Presidential ticket more than 120 days before a regularly scheduled election is an exempt activity under 2 U.S.C. 431(8)(B)(xii) and (9)(B)(ix), but not a Federal election activity. 11 CFR 100.24(b)(1). It is also clear that some activities satisfy one of the definitions of exempt activities and simultaneously satisfy one of the definitions of FEA. For example, voter registration activities undertaken by a State or local political party on behalf of the Presidential ticket fewer than 120 days before a regularly scheduled election satisfy both the definition of exempt activity and of Federal election activity. 2 U.S.C. 431(8)(B)(xii), (9)(B)(ix), and 20(A)(i).

In cases where a given activity undertaken by a State, district, or local political party committee is both an exempt activity and a Federal election activity, the issue is how it may or must be paid for. On this point, BCRA and the Commission's pre-BCRA regulations appear to be in conflict. Under BCRA, as interpreted in these final rules, if the activity is deemed a FEA, it must be paid for with Federal funds, Levin funds, or with an allocated mix of Federal and Levin funds. *See* 11 CFR 300.32(b). Under the Commission's pre-BCRA regulations, if the activity is deemed an exempt activity that is combined with non-Federal activity it may be paid for with an allocated mix of Federal and non-Federal funds. 11 CFR 100.7(b)(9), (15), (17), 100.8(b)(10), (16), (18), and 106.5(a)(2)(iii). *See Common Cause* v. *Federal Election Com'n*, 692 F.Supp. 1391, 1394–1396 (D.D.C. 1987). The *Common Cause* case directly addressed two of the three categories of exempt activities:

campaign materials used by volunteers (*see* 11 CFR 100.7(b)(15) and 100.8(b)(16)) and voter registration and GOTV activities on behalf of the Presidential ticket (*see* 11 CFR 100.7(b)(17) and 100.8(b)(18)), establishing that allocation of payments for these activities between Federal and non-Federal funds was properly a matter for the Commission to address in its regulations. *Common Cause*, 692 F.Supp. at 1396. While not directly addressed in *Common Cause*, the allocation of the costs of slate cards is also addressed in the Commission's regulations, but not in FECA. Compare 2 U.S.C. 431(8)(B)(v) and (9)(B)(iv) (which does not specifically provide for allocation) with 11 CFR 100.7(b)(9) and 100.8(b)(10) (which provides for allocation).

Since the Commission's regulations may not override the Act, as amended by BCRA, if an activity undertaken by a State, district, or local political party committee simultaneously constitutes both exempt activity and Federal election activity, that activity must now be paid for as a Federal election activity, not as an exempt activity.

The Commission emphasizes, however, that payments by a State, district, or local political party committee for an activity that is within one of the exempt activity categories remains excluded from the definitions of "contribution" and "expenditure." That is, the conclusion explained in the preceding paragraph goes only to how the activity must be paid for, not to characterizing the payment as a contribution or expenditure under the Act.

With these considerations in mind, the Commission sees no valid reason to handle slate cards differently from any other type of exempt activity with regard to the definition of Federal election activity. If a State, district, or local political party committee uses slate cards as part of GOTV activity, or in a public communication that promotes or supports, or attacks or opposes a Federal candidate, then the committee must pay for the costs of these slate cards as a Federal election activity (*see* 2 U.S.C. 431(20)(A)(ii), (iii)), although these payments are excluded from the definition of "expenditure." On the other hand, if a State, district, or local political party committee uses slate cards mentioning Federal and non-Federal candidates in the course of campaigning that does not constitute Federal election activity, then it may allocate the costs of these slate cards between Federal and non-Federal funds.

E. Voter Identification

In BCRA, Congress included "voter identification" within the definition of "Federal election activity." 2 U.S.C. 431(20)(A)(ii). In the NPRM, the Commission sought comment as to whether the proposed definition was too narrowly or broadly crafted, and, in the alternative, what activities should be incorporated into the definition of "voter identification." A consortium of non-profit groups expressed concern that the term "voter identification" could be read too broadly by encompassing "efforts to identify the shared interests of individuals for non-electoral purposes." They urged the Commission to restrict the definition to "activities designed primarily to identify the political preferences of individuals in order to influence their voting." Similarly, a State political party commented that the definition in the proposed regulation was "far too broad and instead should be defined to include only activity that involved actual contact of voters, by phone, in person or otherwise, to determine their likelihood of voting generally or their likelihood of voting for a specific Federal candidate." This State party committee specifically urged that the final definition exclude the costs of "acquisition or enhancement of a list of voters, or the acquisition of publicly available demographic information regarding these voters," arguing that such functions are properly treated as administrative expenses because they are part of the party's "fundamental functions." Several national party committees offered essentially similar views. A labor organization commented that "voter identification" should be defined as telephone calls or canvassing "to identify voters for other Federal election activities," and agreed that gathering data about voters should be excluded. Another labor organization commented that "voter identification" should be limited to determining voter intent with regard to specific Federal candidates only.

In contrast, the principal Congressional sponsors of BCRA commented that "voter identification" should include all activities designed to determine registered voters, likely voters, or voters indicating a preference for a specific candidate or party." They also commented that voter identification efforts should not be excluded simply because no mention is made of a Federal candidate. A public interest group commented that "voter identification" includes "all efforts to identify voters, even if done in the name of state and local candidates."

With regard to the Commission's question, posed in the NPRM, about distinguishing voter identification from GOTV, the principal Congressional sponsors commented that the distinction "makes no difference" because both types of activity are covered under the same provision of BCRA (*see* 2 U.S.C. 431(20)(A)(ii)). A public interest group urged the Commission not to limit voter identification to efforts to identify voters for other Federal election activities, arguing that only a "tortured reading" of the statute allows [GOTV] activity to modify "voter identification." A labor union disagreed, arguing that only voter identification for the purposes of GOTV should be included. Another public interest group argued against distinguishing the two activities according to proximity in time to the election. (*See* previous discussion under the discussion of GOTV.)

The Commission requested comments as to whether the regulations should include a *de minimis* exception to voter identification activities. One labor union requested that there be a *de minimis* exception, particularly to allow for the maintenance and development of voter files during non-election years. Both the Congressional sponsors and a public interest group argued that such an exception would be contrary to the plain language and intent of BCRA.

In paragraph (a)(4) of section 100.24, the Commission adopts a definition of "voter identification" that includes the costs of "creating or enhancing voter lists by verifying or adding information about the voters' likelihood of voting or likelihood of voting for specific candidates." The Commission notes that "voter identification" is one of the types of Federal election activity that will occur only during those times when a candidate for Federal office appears on the ballot. *See* 11 CFR 100.24(a)(1).

The Commission recognizes that even during the period when a Federal candidate appears on the ballot, the act of acquiring a voter list in and of itself does not constitute voter identification. Committees have a number of reasons for acquiring voter lists, including fundraising and off-year party building activities. Such activity, on its face, does not constitute "voter identification" with respect to the statute, as there lacks a nexus between the activity and the statutory language that contemplates activity "in connection with an election in which a candidate appears on the ballot."

The final rule excludes from the definition certain voter identification undertaken by groups or associations of State or local candidates or

officeholders, solely in reference to State or local candidates. The Commission included this exclusion because it finds it implausible that Congress intended to federalize State and local election activity to such an extent without any mention of the issue during the floor debate for BCRA. BCRA makes voter identification a subset of Federal election activity, and the regulatory implications of engaging in Federal election activity are significant. For the Commission to exercise its discretion so as to sweep within Federal regulation candidates for city council, or the local school board, who join together to identify potential voters for their own candidacies, the Commission would require more explicit instruction from Congress.

F. Definition of "Federal Election Activity"

Paragraph (b) of section 100.24 defines Federal election activity. Paragraph (b)(1) implements 2 U.S.C. 431(20)(A)(i) by including voter registration activity during the period that begins on the date that is 120 calendar days before the date of a regularly scheduled Federal election. "Special elections" are not "regularly scheduled," and therefore excluded from the definition. Paragraph (b)(2) of section 100.24 implements 2 U.S.C. 431(20)(A)(ii) by including with the definition of Federal election activity voter identification, GOTV, and generic campaign activity when they are conducted in connection with an election in which a Federal candidate appears on the ballot.

11 CFR 100.24(b)(3) follows new 2 U.S.C. 431(20) by providing that a public communication that refers to a clearly identified candidate for Federal office would constitute "Federal election activity" that must be paid for with entirely Federal funds if the communication promotes, supports, attacks, or opposes any candidate for that Federal office. This is true even if a candidate for State or local office is also mentioned or identified. "Public communication" is defined in proposed 11 CFR 100.26, discussed below. Public communications falling within this category of the definition of "Federal election activity" extend beyond communications expressly advocating a vote for or against a candidate.

11 CFR 100.24(b)(4) implements 2 U.S.C. 431(20)(A)(iv) by providing that Federal election activity includes services provided during any month by an employee of a State, district, or local committee of a political party who spends over 25% of that individual's compensated time on activities in connection with a Federal election. There were no comments on this definition. A number of issues involving employees are discussed below in the Explanation and Justification for section 300.33. The Commission has concluded that the statute is clear on its face, and therefore paragraph (b)(4) follows that statutory language without additional interpretation.

G. Activities Excluded From the Definition of "Federal Election Activity"

In BCRA, Congress specifically excluded certain activities from the definition of Federal election activity. 2 U.S.C. 431(20)(B). Activities falling within one of the exceptions may be paid for with entirely non-Federal funds. 11 CFR 100.24(c) implements these statutory exceptions. Paragraphs (c)(1) through (c)(4) of section 100.24 parallel the statutory exclusions at 2 U.S.C. 431(20)(B)(i) through (iv).

Paragraph (c)(1) excludes a public Communication that refers solely to one or more clearly identified State or local candidates, and does not promote or support, or attack or oppose, a clearly identified candidate for Federal office, provided that the public communication is not a voter registration activity, or GOTV, or voter identification. 2 U.S.C. 431(20)(B)(i). As an example of the application of this paragraph, this exception does not apply to a telephone bank on the day before an election where there is a Federal candidate on the ballot and where GOTV phone calls are made to over 500 voters, even if the calls only refer to a State or local candidate. 2 U.S.C. 431(20)(B)(i); *see* 11 CFR 100.24(b)(2).

Paragraph (c)(2) excludes a contribution to a State or local candidate, provided that the contribution is not designated to pay for voter registration activity, voter identification, GOTV, generic campaign activity, a public communication promoting or supporting, or attacking or opposing, a clearly identified Federal candidate, or employee services as set forth in paragraphs (b)(1) through (b)(4) of section 100.24. 2 U.S.C. 431(20)(B)(ii). In the final rules, the Commission has added a reference to employee services as set forth in paragraph (b)(4) for the sake of completeness.

Paragraph (c)(3) excludes the costs of State, district, or local political conventions, meetings, or conferences. The principal Congressional sponsors of BCRA commented that this approach was too broad, in that it included "a meeting or conference," whereas the statutory provision it implemented, 2 U.S.C. 431(20)(B)(iii), refers only to "conventions." These commenters failed to note, however, that meetings or conferences do not fall within the statutory definition of Federal election activity, and this remains true whether the Commission explicitly states it or not. Therefore, paragraph (c)(3) excludes the costs of a State, district, or local convention, meeting or conference. 2 U.S.C. 431(20)(B)(iii). The principal Congressional sponsors otherwise supported paragraphs (c)(1) through (c)(4).

Paragraph (c)(4) excludes the costs of grassroots campaign materials that name or depict only State and local candidates. 2 U.S.C. 431(20)(B)(iv). The list of examples of such materials in paragraph (c)(4) includes certain items not mentioned in the statute. The Commission received no comments objecting to the additional items.

In the version of the regulation published in the NPRM, the Commission included two additional exceptions that it has subsequently determined should not be listed as exceptions to the definition of Federal election activity in paragraph (c). These provisions would have covered voter registration activity at any time other than the period of time that is within 120 days of a regularly scheduled Federal election, and GOTV and voter identification in elections in which no Federal candidate appears on the ballot. While these activities are not Federal election activities, under certain circumstances payments for these activities must be allocated between Federal funds and non-Federal funds. *See* 11 CFR 106.5. In this regard, these two types of activities differ from the activities described in paragraphs (c)(1) through (c)(4) of section 100.24, which always may be paid for with entirely non-Federal funds. Therefore, the Commission has removed these two provisions from the final regulation.

11 CFR 100.25 Definition of "Generic Campaign Activity"

Section 100.25 implements the statutory definition of "generic campaign activity," which has been added to the Act by BCRA. "Generic campaign activity" is defined in BCRA as campaign activity "that promotes a political party and does not promote a candidate or non-Federal candidate." 2 U.S.C. 431(21).

Generic campaign activity is a form of Federal election activity when it takes place in connection with an election in which a candidate for Federal office appears on the ballot. 11 CFR 100.24(b)(2)(ii). The Commission is defining "in connection with an election in which a candidate for

Federal office appears on the ballot" to include special elections fitting that description. 11 CFR 100.24(a)(1). Therefore, generic campaign activity may, in principle, occur in connection with a special election in which a candidate for Federal office appears on the ballot, provided, of course, that the elements of the definition are otherwise satisfied. An association of State party officials commented favorably on this approach. A public interest group pointed out that Advisory Opinion 1998–9, which was issued to a State party committee, addressed a special election in which only one Federal office was at stake, and thus only one candidate of the party on the ballot. The Commission opined that under such circumstances a candidate was clearly identified, and allocable "generic activities" by the party under pre-BCRA 11 CFR 106.5(a)(2)(iv) were thus not possible with regard to that special election. The final regulation is consistent with the reasoning of Advisory Opinion 1998–9 in defining "generic campaign activity."

The final regulation elaborates on the statute by including within the definition of "generic campaign activity" those activities that oppose a political party without opposing a specific candidate. A labor organization commented that the regulation impermissibly goes beyond the statute by including activities in opposition to another party. In the Commission's experience, however, such activities in opposition to another party implicitly promote the party undertaking the activities, and are thus properly included in the definition. A national party committee also argued against the approach taken in the proposed regulation, characterizing it as "confusing" because it is framed in terms of promoting and opposing the party, which "unnecessarily clouds the distinction of voter registration and GOTV activities." This commenter would have the Commission define "generic campaign activity" as an "activity that promotes or opposes the particular party's ticket, without mentioning or referring to candidates by name." The Commission believes most of these concerns are addressed in the definitions of voter registration activity and GOTV at 11 CFR 100.24(a)(2) and (3), respectively. Also, the distinction drawn by the commenter, that is, between promoting the party and promoting the party's ticket, is limited in practical application. Whether an activity is characterized as voter registration, GOTV, or generic campaign activity, it is treated as a Federal election activity when conducted in certain relation to a Federal election, *see* 100.24(b)(1) and (2), and is, in each case, a Federal election activity on which Levin funds may be spent, *see* 11 CFR 300.32(b)(1).

In the version of the regulation proposed in the NPRM, "generic campaign activity" would have been defined as a "campaign activity" that promotes or opposes a political party but not a candidate. In the final rules, the definition instead refers to a "public communication" that promotes or opposes a political party but not a candidate. The Commission made this change to ensure that the definition encompasses only the external activities of a political party committee, that is, activities targeted to the public. This interpretation is also consistent with the plain meaning of the statutory provision, since it is difficult to envision how a campaign activity could effectively promote or oppose a political party without it taking the form of a public communication. This interpretation is also consistent with Advisory Opinion 1998–9, which dealt with numerous campaign activities that involved public communications.

In the final rules, the Commission has added the words "clearly identified" to qualify the phrase, "Federal candidate or a non-Federal candidate." The intent of this addition is to remove ambiguity from the definition.

In the NPRM, the Commission sought comment on the extent, if any, to which the exclusions for exempt activities in 11 CFR 100.7(b)(9), (15), and (17) and 100.8(b)(8), (10), and (16), should apply to the definition of "generic campaign activity." A public interest group commented that "exempt activities should not be excluded from the definition of 'generic campaign activity.'" An association of State party officials commented that there appears to be no overlap between exempt activities and generic campaign activities since the former, "by definition, reference a clearly identified Federal candidate," while the latter, by definition, may not.

The Commission understands two of the categories of exempt activities, slate cards (*see* 11 CFR 100.7(b)(9) and 100.8(b)(8)) and voter registration on behalf of the Presidential ticket (*see* 11 CFR 100.7(b)(17) and 100.8(b)(16)), to have no applicability to payments for generic campaign activity. This is so because these two types of exempt activities, by their nature, promote one or more candidates, and activities that promote a candidate are outside the scope of the definition of generic campaign activity. The remaining category of exempt activity—payments for certain campaign materials used by party volunteers (*see* 11 CFR 100.7(b)(15) and 100.8(b)(10))—may in certain circumstances also qualify as generic campaign activity under 11 CFR 100.25. If the campaign materials used by the volunteers promote only the party, and do not promote a candidate, then this activity would be both exempt and a generic campaign activity. A public interest group included an essentially similar analysis of this point in their comment.

11 CFR 100.26 Definition of "Public communication"

BCRA amends 2 U.S.C. 431 by adding a new definition for the term "public communication." BCRA defines "public communication" to include communications by broadcast, cable, satellite, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising.

The Commission did not include the Internet as a form of "general public political advertising" in proposed 11 CFR 100.26 because this provision of BCRA does not refer to the Internet. The Commission, however, sought comment as to whether the definition of "public communication" in proposed 11 CFR 100.26 should include or exclude communications provided through the use of World Wide Web sites available to the public, widely distributed electronic mail, or other uses of the Internet, such as "Webcasts" or the transmission of high-quality voice, graphics, or video advertisements.

Many commenters addressed this issue. A national political party, an association of State party officials, an LLC that provides technical services to campaigns, a State political party, a public interest group, and a labor union urged the Commission not to include the Internet in the definition of "public communication." Four commenters pointed to the lack of inclusion of the Internet in the list of modes of public communications, noting that Congress had had an opportunity to include the Internet in this definition, but declined to do so.

A number of commenters argued that the Internet provides a low cost way for parties and other interested persons to disseminate their message widely, and the Commission should not attempt to regulate their doing so. The commenter who provides technical services to campaigns wrote, "[the Internet] is an open, decentralized platform on which every user has the capacity to reach literally every other user. Candidates

and interest groups can and do use this medium to engage in meaningful, two-way dialogue * * *. Congress did not include other forms of two-way dialogue such as candidate forums, rallies, debates, or other events that are open to the public."

The same commenter noted the practical impossibility in fashioning restrictions on Internet communications given the rapidly changing environment: "Although the Internet itself has been in existence since the early 1970s, it is only recently that the medium has emerged in the mainstream * * * Internet technology continues to evolve, and so does its application."

Other commenters were strongly opposed to the exclusion of the Internet from the media classified as public communications. The principal Congressional sponsors of BCRA and three public interest groups who support campaign finance reform argued that failure to include the Internet in this definition could carve out an exception for a widespread and growing form of political advertising. A public interest group echoed the words of the Congressional sponsors: "A broad *per se* exclusion of that nature would be inadvisable because it could permit state and local party entities to exploit rapidly developing technology and new communications media to re-create or prolong the current soft money system."

The Commission has considered the issue of Internet communication, both in the context of this rulemaking, as well as in previous rulemakings and the advisory opinion process. The Commission concludes that excluding the Internet from the definition of "public communication" is consistent with the plain meaning of the statute, consistent with Congress' decision not to include the Internet in the statutory definition of "public communication," and is the best policy decision with regard to implementation of BCRA.

The Commission is convinced that the exclusion is appropriate from the perspective of statutory construction because the Internet is excluded from the list of media that constitute public communication under the statute. BCRA does not reference the "Internet" or "electronic mail" in this section, although Congress used the terms "Internet," "website," and "World Wide Web address" in other sections of BCRA. *See*, for example, 2 U.S.C. 434 note, enacted by BCRA section 201 (Federal Communications Commission to compile and maintain on its website information the FEC may need to carry out Title 2, Subtitle A, of BCRA, relating to electioneering communications); 2 U.S.C. 438a, as enacted by BCRA section 502 (Commission to maintain a website of election reports). Congress has also used the terms "Internet" and "electronic mail" in other statutes and distinguished them from "telecommunications services." *See* Communications Decency Act of 1996, 47 U.S.C. § 230(f)(1) (defining "Internet") and 231(e)(4) (including "electronic mail" and excluding "telecommunications services" from definition of "Internet access service"). BCRA does reference "any other form of general public political advertising" in the definition of "public communication." General language following a listing of specific terms, however, does not evidence Congressional intent to include a separate and distinct term that is not listed, such as the Internet. *See* Sutherland Statutes and Statutory Construction, section 47; 17 *Ejusdem generis*, Vol. 2A (6th ed. 2000). It is also noted that there is no indication in the legislative history that Congress contemplated including the Internet in the definition of public communication.

Perhaps most important, there are significant policy reasons to exclude the Internet as a public communication. The Commission fails to see the threat of corruption that is present in a medium that allows almost limitless, inexpensive communication across the broadest possible cross-section of the American population. Unlike media such as television and radio, where the constraints of the medium make access financially prohibitive for the general population, the Internet is by definition a bastion of free political speech, where any individual has access to almost limitless political expression with minimal cost. As one public interest group who favors campaign finance reform argued: "There are good policy reasons for leaving the Internet out of the definition, as it is cheap and widely available. Internet communications are not part of the campaign finance problem, and should not be regulated as such unless Congress specifically mandates it."

11 CFR 100.27 Definition of "Mass Mailing"

BCRA amends 2 U.S.C. 431 by adding a new definition of the term "mass mailing" at section 431(23). This definition, which is set out in new 11 CFR 100.27, includes any mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. For the reasons explained in the Explanation and Justification for 11 CFR 100.26, the term "mass mailing" excludes communications sent over the Internet. It also excludes "electronic mail." *Cf.* 47 U.S.C. 231(e)(4) ("electronic mail" is included in the definition of "Internet access service").

The term "substantially similar" is also used in the Commission's disclaimer regulations at 11 CFR 110.11(a)(3). When the disclaimer rules were adopted in 1995, the Commission explained that technological advances now permit what is basically the same communication to be personalized to include the recipient's name, occupation, geographic location, and similar variables. Communications are considered "substantially similar" for purposes of the disclaimer rules if they would be the same but for such individualization. *See Explanation and Justification for Regulations on Communications Disclaimer Requirements*, 60 FR 52069, 52070 (Oct. 5, 1995). The Commission proposed in the NPRM that the term "substantially similar" in 11 CFR 100.27 have the identical meaning.

Several commenters expressed the view that this definition of "substantially similar" is too narrow as applied to mass mailings. They pointed out, for example, that the sponsoring group could change an internal sentence every 490 letters and thereby escape coverage under this definition. Also, many communications are largely identical but contain a separate paragraph addressing a targeted group, such as retired teachers or those with a particular hobby. The Commission has therefore revised the final rules to state that communications are considered substantially similar for purposes of this section if they include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

11 CFR 100.28 Definition of "Telephone Bank"

BCRA amends 2 U.S.C. 431 by adding a new definition of the term "telephone bank" at section 431(24). This definition, which is set out in new 11 CFR 100.28, includes more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. A telephone bank does not include electronic mail sent over telephone lines. *See* 47 U.S.C. 231(e)(4) (distinguishing "electronic mail" from "telecommunications services"). Nor does it include Internet communications transmitted over telephone lines, for the reasons discussed above in the Explanation and Justification for 11 CFR 100.26.

The Commission also proposed addressing the meaning of "substantially similar" in the text of the rules. *See* discussion of 11 CFR 100.27, above. As with the definition of "mass mailing," discussed above, several commenters urged the Commission to broaden the definition of "substantially similar" contained in the proposed rules. They pointed out that, even more so than with mass mailings, phone conversations, even those where the caller is using a prepared script, are likely to vary somewhat from call to call. The Commission accordingly has revised the language of section 100.28 as proposed in the NPRM to provide that, consistent with the definition of "mass mailing" contained in section 100.27, communications are considered substantially similar for purposes of section 100.28 if they include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

IV. Part 102—Registration, Organization, and Recordkeeping by Political Committees

11 CFR 102.5 Organizations Financing Political Activity in Connection With Federal and Non-Federal Elections, Other Than Through Transfers and Joint Fundraisers: Accounts and Accounting

This section continues to set out requirements for accounts or accounting methods that must be established and maintained by organizations, including political committees, that fund activities in connection with Federal elections and non-Federal elections. The section has, however, been revised in several respects. 2 USC 441i(a) expressly prohibits national party committees from raising and spending non-Federal funds. Paragraph 102.5(c) addresses the application of this section to national party committees, while corresponding changes have been made to other portions of 11 CFR 102.5 to clarify that various provisions are now applicable to only State, district, and local party committees and organizations. While this section will continue to apply to all these party committees between November 6, 2002 and December 31, 2002, after the latter date, national party committees will no longer be covered by its provisions.

Paragraph (a)(1) remains largely unchanged except for the addition of language clarifying that State, district, and local party committees are the party organizations covered in these provisions, the addition of certain citations to other regulatory provisions, including 11 CFR part 300, and the separate discussions of administrative expenses incurred by party committees and by other political committees that are not party committees.

Paragraph (a)(2) is revised to require committees to meet at least one of the three listed conditions for depositing contributions into their Federal accounts. The purpose of this regulation is to assure that funds placed in this account are from contributors who know the intended use of their contributions, and the Commission believes that this purpose can be fulfilled by means of either contributor designations, solicitations for express purposes, or solicitations or notifications that inform contributors that their contributions are subject to the prohibitions and limitations of the Act.

New paragraph (a)(3) addresses the new category of "Levin funds" created by BCRA to be used by State, district, and local party committees for certain Federal election activity. These funds are subject to certain prohibitions and limitations pursuant to 11 CFR 300.31 and may be used by these party committees to pay allocable shares of particular Federal election activities under particular circumstances, including voter registration, voter identification, get-out-the-vote and generic campaign activities. *See also* 11 CFR 100.24 and 11 CFR 300.32(b) and 300.33.

The NPRM proposed requiring State, district, and local party committees to establish separate Levin accounts. Responses to the NPRM from the principal Congressional sponsors of BCRA urged retention of this requirement; however, several other responses, in particular those from party committees, requested the Commission to make such separate accounts an option rather than a requirement. One commenter stated that "although it would seem generally prudent to establish separate 'Levin accounts,' imposing such a requirement in the regulations would be problematic," noting that some States prohibit party committees from establishing more than one depository account. In light of theses concerns, and because BCRA's statutory provisions do not mandate the creation of separate Levin accounts, revised paragraphs (a)(3)(i) and (ii) set out generally two alternative methods of accounting for Levin funds: a separate Levin account and the use of a reasonable accounting method approved by the Commission that will permit the committee to demonstrate that funds received and disbursed by the party committee in its existing non-Federal account meet the requirements of the Act as amended by BCRA. Paragraph (a)(3)(ii) also requires those party committees electing not to establish a separate Levin account to maintain records of funds used for Levin activities and to make these records available to the Commission upon request. Party committees intending to undertake activities pursuant to 11 CFR 300.32(b) are urged to consult 11 CFR 300.30(c) for more detailed rules regarding alternative required accounts and accounting methods.

A comment submitted in response to the NPRM expressed concern that the draft regulations could have been construed as allowing Federal candidates and officeholders to solicit funds that would be excessive or prohibited under Federal law, if the solicitation being used stated that the funds would be used for a non-Federal purpose. To address this concern, paragraph (a)(4) has been added to emphasize that the restrictions on solicitations by Federal candidates and Federal officeholders in 11 CFR 300.31(e) and 11 CFR part 300, subpart D, apply to solicitations for State, district, and local party committees.

The final rules also include a new paragraph (a)(5) that clarifies the permissibility of State, district, and local party committees and organizations creating separate allocation accounts to be used for funding Levin activities that are allocable between Federal and Levin funds pursuant to 11 CFR 300.33 and for funding other activities allocable between a committee's Federal and non-Federal funds pursuant to 11 CFR 106.7. *See also* the Explanation and Justification below for new 11 CFR 106.7 and for new 11 CFR 300.33.

11 CFR 102.5(b) addresses organizations that are not political committees. Pursuant to paragraph (b)(1), when such organizations make contributions and expenditures or payments for exempt activities under 11 CFR 100.7(b)(9), (15), and (17) and 100.8(b)(10), (16), and (18), they must maintain records of the related receipts and disbursements and must make those records available to the Commission upon request. These organizations must also be able to demonstrate through a reasonable accounting method that funds used to make contributions, expenditures, and payments for exempt activities meet the requirements of the Act.

Paragraph (b)(2) of 11 CFR 102.5 applies to those State, district, and local party organizations that are not political committees but that wish to undertake Federal election activities pursuant to

11 CFR 300.32(b). Pursuant to 11 CFR 102.5(b)(2)(i) and (ii), these party organizations are given a choice of accounting methods: establishment of a separate Levin account or use of a reasonable accounting method approved by the Commission that will permit the organization to demonstrate that permissible funds from its existing accounts were used for permissible activities. They must also make their records of funds received and expended for these activities available to the Commission upon request. Party organizations that intend to undertake activities pursuant to 11 CFR 300.32(b) are urged to consult 11 CFR 300.30(c) for more detailed rules regarding alternative required accounts and accounting methods.

11 CFR 102.17 Joint Fundraising by Committees Other Than Separate Segregated Funds

The ban on national party non-Federal fundraising affects the Commission's joint fundraising rules at 11 CFR 102.17. The Commission is, therefore, adding introductory language to this section, advising readers that "[n]othing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities." Part 300 is discussed below.

V. Part 104—Reports by Political Committees

11 CFR 104.8 and 104.9 Uniform Reporting of Receipts and Disbursements

As of November 6, 2002, BCRA prohibits national committees of political parties and entities directly or indirectly established, financed, maintained, and controlled by them, including their subordinate committees, from raising and spending non-Federal funds. BCRA further requires that national party committees, including subordinate committees thereof, dispose of all non-Federal funds by December 31, 2002 in accordance with 11 CFR 300.12, and report the disposition of those funds pursuant to section 300.13. Since national party committees will no longer maintain non-Federal accounts, including office building and facility accounts, the national party non-Federal account reporting rules at 11 CFR 104.8(e) and (f), and 11 CFR 104.9(c), (d) and (e) will no longer be necessary. Therefore, the final rules covering receipts by non-Federal accounts at 11 CFR 104.8(e) and (f), and disbursements in the form of transfers to State and local party committees at 11 CFR 104.9(e), have been amended so that they apply to reports covering non-Federal account activity through December 31, 2002. In contrast, the final rules governing disbursements of non-Federal funds at 11 CFR 104.9(c) and (d) are amended to remain in effect for reports covering activity on or before March 31, 2003, rather than December 31, 2002 as provided in the NPRM. This change is prompted by the Commission's decision to permit national party committees to refund to donors by December 31, 2002 any excess non-Federal funds as provided in 11 CFR 300.12(c) and (d). Any refund checks not cashed by February 28, 2003, must be disgorged to the United States Treasury by March 31, 2003. Consequently any such disgorgements must be reported in disclosure reports covering activity through that date.

11 CFR 104.10 Reporting by Separate Segregated Funds and Nonconnected Committees of Expenses Allocated Among Candidates and Activities

Section 104.10 of the pre-BCRA regulations addressed the reporting of expenses that are allocated among more than one clearly identified candidate (paragraph (a)) and expenses that are allocated among specific types of mixed Federal/non-Federal activities by political party committees and by separate segregated funds and nonconnected committees (paragraph (b)). However, allocation with respect to certain mixed party activities has changed as a result of BCRA, notably in the introduction of the use of Levin funds. Some of the activity that was allocable under former 11 CFR 106.5 (allocation of mixed Federal/non-Federal activities by party committees) is now Federal election activity under certain circumstances. In addition, most of the categories are now allocated according to specified percentages. Moreover, the use of non-Federal funds by national party committees has been eliminated.

In view of these new circumstances, the rules for reporting of allocable expenses are being divided into three sections: 11 CFR 104.10 applies to political committees that are separate segregated funds or nonconnected committees; new 11 CFR 104.17 applies to payments allocated between the Federal and non-Federal accounts of State, district, and local party committees; and new 11 CFR 300.36 covers payments allocated by those party committees between Federal funds and Levin funds, pursuant to 11 CFR 300.32(b)(1) and 300.33.

Pre-BCRA section 104.10(a), which addressed payments entailing combined expenditures and disbursements on behalf of more than one clearly identified Federal and non-Federal candidate, is being changed very little at this point. Paragraph (a) is being amended to specify that it applies only to separate segregated funds and nonconnected committees, and to delete references to section 106.5(g) (now section 106.7(f)), which addresses non-Federal to Federal transfers made by party committees for the purpose of mixed payments.

Similar changes are being made to paragraph (b) of section 104.10. In view of the removal of party committees from this section, other adjustments are being made. In the discussion of itemization of allocated disbursements for administrative and generic voter drive expenses, the references to the Senate and House campaign committees of a political party are being deleted from paragraph (b)(1)(i) and (ii). In paragraph (b)(1)(ii), the specific reference to the types of committees using the funds expended method is being deleted because all committees addressed in this regulation would use the funds expended method for those two allocation categories. References to exempt activities are also deleted because those exemptions do not apply to the activities of separate segregated funds and nonconnected committees.

The only specific comments received on section 104.10 were general expressions of support from the principal Congressional sponsors of BCRA and two commenters on behalf of State party committees. Consequently, the final rules follow the proposed rules, except for two small reversions back to the pre-BCRA regulation. Instead of citing to 11 CFR 106.1 specifically as the regulation providing instructions on allocation for candidate support, the revised citation is to 11 CFR part 106 because 11 CFR 106.4 is applicable to the allocation of polling costs.

11 CFR 104.17 Reporting of Allocable Expenses by Party Committees

As indicated in the Explanations and Justifications for 11 CFR 104.10 and 106.1, pre-BCRA section 104.10 has been divided into two sections for the reporting of allocable payments. Section 104.10 now addresses reporting of allocable expenses by separate segregated funds and non-connected committees. Section 104.17, which had been a reserved section prior to the enactment of BCRA, now addresses reporting of allocable expenses by party committees.

Paragraph (a) of new section 104.17 addresses allocation of the support of candidates, including Federal and non-Federal candidates, by national party committees and by State, district, and local party committees. As indicated below, national party committees must use all Federal funds, while State, district, and local party committees may use a mixture of Federal and non-Federal funds under certain circumstances. Paragraph (b) of this section addresses the reporting of the allocation of expenditures and disbursements for mixed Federal/non-Federal activities that are not Federal election activities undertaken by State, district, and local party committees. These include, for example, administrative costs and the costs of exempt activities that do not fall within the definition of Federal election activity. Reporting requirements with regard to specific Federal election activities allocable between Federal and Levin funds pursuant to 11 CFR 300.33 are addressed separately in 11 CFR 300.36.

The NPRM included proposed 11 CFR 104.17(a) to address payments on behalf of more than one clearly identified candidate, including payments that entail an expenditure on behalf of one or more Federal candidates and a disbursement on behalf of one or more non-Federal candidates. The NPRM explained that all such payments must be made with Federal funds and must be reported.

Proposed paragraphs (a)(1) and (a)(2) provided for the use of a unique identifying title or code for each program or activity conducted on behalf of more than one candidate and for the retention of records in accordance with 11 CFR 104.14. These requirements were in pre-BCRA 11 CFR 104.10.

The Commission sought comments on the proposed requirement that a State, district, or local party use only Federal funds for the combined payments on behalf of clearly identified Federal and clearly identified non-Federal candidates. As indicated in the Explanation and Justification of 11 CFR 106.1, a number of commenters noted that materials and communications that refer to both Federal and non-Federal candidates, but are not public communications and do not otherwise meet the definition of Federal election activity, should continue to be subject to allocation based on the time or space devoted to each candidate. Other commenters asserted that only Federal funds could be used.

The final rule in 11 CFR 104.17 clarifies the issue as to the use of Federal funds. Paragraph (a) makes clear that, where a national party committee makes a payment that consists of both an expenditure on behalf of a Federal candidate and a disbursement on behalf of a non-Federal candidate, the amounts attributed to each candidate must be disclosed, but only a Federal account may be used.

Paragraph (a) changes the approach taken in the NPRM with respect to State, district, and local party committees, which, unlike national party committees, may have non-Federal accounts under BCRA. The application of the new Federal election activity provisions of BCRA means that many disbursements by State, district, and local party committees mentioning Federal candidates that in the past were allocable between Federal and non-Federal accounts pre-BCRA must now be paid solely with Federal funds. There will still be, however, other payments entailing expenditures by State, district, and local party committees on behalf of Federal candidates and disbursements by these committees on behalf of non-Federal candidates that will not be Federal election activities; these will continue to be allocable between Federal and non-Federal accounts.

Accordingly, paragraph (a)(1) in the final rule generally follows pre-BCRA 11 CFR 104.10(a)(1), including the retention of the requirement of unique identifying titles or codes. All report entries that reflect the same allocable program or activity will share the same title or code to better track the particular program or activity. The use of unique identifiers for other various categories of mixed party activities is discussed below.

Paragraphs (a)(2) and (a)(3) of 11 CFR 104.17 follow pre-BCRA 11 CFR 104.10 with a minor citation change. Paragraph (a)(2) includes reporting of transfers to allocation accounts, which did not appear in either paragraph (a) or (b) of proposed 11 CFR 104.17. Proposed paragraph (a)(2), addressing recordkeeping, is re-numbered as (a)(4) in the final rules.

Section 104.17(b) in the NPRM addressed the reporting of all allocations of disbursements for activities of State, district, and local party committees, including disbursements for allocable Federal election activities, i.e., certain activities eligible to be paid in part with Levin funds pursuant to 11 CFR 300.33. For purposes of clarity, the final rule covers only the reporting of disbursements for allocable party activities that are not Federal election activities. The reporting of allocable Federal election activities is subject to the rules in 11 CFR 300.36.

Section 104.17(b) establishes that State, district, and local party committees that have set up Federal and non-Federal accounts, including any allocation accounts being used to make disbursements for allocable activities, must report all payments that are allocated pursuant to 11 CFR 106.7.

Paragraph (b)(1)(i) requires statements by State, district, and local party committees in their initial reports at the beginning of a calendar year of the percentages the committee will use for payments to be allocated between Federal and non-Federal accounts for specific categories of party activity. Paragraph (b)(1)(ii) requires a statement of the category for each allocable disbursement and the total amounts spent that year for each category. These requirements are similar to those contained in the pre-BCRA regulations.

With regard to a requirement of unique identifiers in the reports of allocable activities, the NPRM asked for comments as to whether such identifying codes would be useful. The principal Congressional sponsors of BCRA in their comments left this decision to the Commission, although they stated that identifying codes would be of "significant utility in greater specificity in reporting." Two of the comments from party committees argued against such a requirement, arguing that the purpose of the codes in the past had been to distinguish among activities that had differing allocation ratios and that use of the same allocation ratio made the codes unnecessary.

The final rule at paragraph (b)(1)(iii) of 11 CFR 104.17 requires party committees to assign unique identifiers to certain allocable activities, excluding allocable administrative costs. This requirement follows requirements in the pre-BCRA regulations at 11 CFR 104.10(b)(2) with regard to the reporting of the direct costs of fundraising and the costs of exempt activities. Paragraph (b)(1)(iii) also specifies that unique identifying titles or codes are not required for salaries and wages under 11 CFR 106.7(c)(1) because salaries and wages are not allocable.

The Commission recognizes that, as noted by certain party committees in their comments, the rules will now require use of the same set of percentages in a given year for almost all allocable party activity categories, thereby weakening one of the previous rationales for using unique identifiers for some categories of activities. Such identifying mechanisms are, however, still needed to enable reviewers of a party committee's reports, including members of the public, to track

accurately the specific transactions involved in a particular allocable activity. It is significant that party committees frequently make many disbursements to the same vendor for differing purposes and that a number of vendors may be paid for similar activities. Thus, the Commission is requiring that certain allocable activities or programs carry a unique identifying title or code. The Commission has also concluded that, while unique identifiers for administrative costs would be of some utility, it will continue the practice of not requiring them in order to avoid imposing an additional administrative burden on party committees. All entries of disbursements to pay for an allocated program or activity must include a reference to the unique identifier, if an identifier is required for that allocation category. In addition, each reporting entry of a transfer (from the non-Federal account to the Federal or allocation account) for a program or activity must include a reference to the unique identifier, if an identifier is required for that allocation category.

Paragraph (b)(2) of 11 CFR 104.17 addresses the reporting of transfers from the non-Federal to the Federal account, or from both accounts into the allocation account, of funds to be used for allocable expenses. As did the pre-BCRA rules, this paragraph requires memo entries on reports as to the allocable expenses for which the transfer is being made and the date of the transfer. If more than one activity is covered by a transfer, the report must itemize the amounts designated for each category of expense. The Commission received no comments on this provision.

Section 104.17(b)(3)(i) sets out the details required in the reporting of disbursements for allocable activity by State, district, and local committees of political parties.

Section 104.17(b)(3)(ii) addresses the reporting of State, district, and local party disbursements for activity that is allocable between a committee's Federal and Levin funds by referring the reader to the requirements of 11 CFR 300.36.

Section 104.17(b)(4) requires the retention of all documents supporting allocations of expenditures and disbursements for three years, consistent with FECA.

VI. Part 106—Allocations of Candidate and Committee Activities

11 CFR 106.1 Allocation of Expenses Between Candidates

Pre-BCRA 11 CFR 106.1 addressed the allocation of expenditures and/or disbursements among more than one candidate. Paragraph (a)(1) set out the general rule for allocation of an expenditure made on behalf of more than one clearly identified Federal candidate. It also addressed allocation of a payment involving both an expenditure made on behalf of one or more clearly identified Federal candidates and a disbursement on behalf of one or more non-Federal candidates. The proposed regulation in the NPRM added language indicating that a party committee must use only Federal funds for both kinds of situations, not just the first one. This was based on proposed 11 CFR 300.33(c)(1), which stated that only Federal funds could be used for activities that referred to a Federal candidate. It was also based on BCRA and proposed 11 CFR 100.24(a)(3), which provided that only Federal funds may be used for a public communication that refers to a clearly identified Federal candidate and that promotes, attacks, supports, or opposes the candidate (regardless of whether a non-Federal candidate is also mentioned).

The NPRM divided pre-BCRA section 104.10, which addressed reporting of allocation by nonconnected committees and separate segregated funds, as well as by party committees, into two sections: 11 CFR 104.10 for nonconnected committees and separate segregated funds, and 11 CFR 104.17 for party committees. In view of this rearrangement, the proposed rules in paragraph (a)(2) of section 106.1 added a reference to 11 CFR 104.17(a) to cover party committee reporting. In addition, the pre-BCRA rules addressing allocation among Federal and non-Federal candidates was modified in the NPRM to delete the citation to party committee transfer procedures. This was premised on the position that such payments had to be made entirely with Federal funds.

The NPRM proposed no changes to pre-BCRA paragraphs (b), (c), and (d) of 11 CFR 106.1. Paragraph (e) is a signpost to the sections that address allocation of specific types of mixed Federal/non-Federal activity, other than expenditures and/or disbursements on behalf of clearly identified candidates. The NPRM proposed to delete from this paragraph a reference to 11 CFR 106.5, to add a reference to 11 CFR 300.33, and to amend the list of allocation categories to conform to other proposed regulations, including a deletion of exempt activities.

The NPRM narrative asked whether the proposed requirement that a State, district, or local party committee use only Federal funds for all payments made on behalf of both clearly identified Federal and clearly identified non-Federal candidates is appropriate under BCRA. The NPRM also asked for comments on, and discussed whether exempt party activities [3] for both Federal and non-Federal candidates (i.e., entailing disbursements for Federal candidates that were exempt from the definition of contribution or expenditure) still exist as an allocable category after passage of BCRA.

Three commenters on behalf of party committees stated that not every activity that mentions a clearly identified Federal candidate must be paid for exclusively with Federal funds. They argued that materials and communications that refer to both Federal and non-Federal candidates but are not public communications and do not otherwise meet the definition of Federal election activity should continue to be subject to allocation based on time or space devoted to the Federal and non-Federal candidates as under the pre-BCRA regulations. One of these commenters also argued that the costs of "non-communicative activities" that result in an in-kind contribution and donation to Federal and non-Federal candidates respectively should continue to be allocable between Federal and non-Federal accounts.

The principal Congressional sponsors of BCRA stated that BCRA required the proposed result for such payments by State, district, and local party committees. Another commenter referred to several specific provisions in BCRA to support the view that only Federal funds can be used for the payment on behalf of both a Federal and non-Federal candidate: (1) 2 U.S.C. 441i(b)(1), which provides that costs for Federal election activity shall be paid for with Federal funds; and (2) 2 U.S.C. 441i(b)(2)(A) and (B), which allow for allocation of some Federal election activities but not when the activity refers to a clearly identified Federal candidate. A third commenter agreed that national party committees must use only Federal funds for payments involving both expenditures on behalf of a Federal candidate and disbursements on behalf of a non-Federal candidate but did not comment on State, district, or local party committees.

The comments on the relationship of Federal election activities to exempt activities are summarized in the

[3] For discussion of exempt activities, *see* Explanation and Justification for 11 CFR 100.24, above; *see also* 2 U.S.C. 431(8)(B)(v), (ix), and (xi), and 431(9)(B)(iv),(viii), and (ix).

Explanation and Justification of 11 CFR 100.24, above. Some commenters concluded that exempt activities should not be included within Federal election activity at all or that many exempt activities are not redefined as Federal election activity. Thus, they concluded that there are a number of exempt activities that are not Federal election activity. Others believe that exempt activities are nearly or completely subsumed by, or redefined as, Federal election activity. Within both groups, there was a variety of opinion as to the precise relationship.

The final rule at 11 CFR 106.1 has been changed from the proposed regulation with respect to the use by a party committee of both Federal and non-Federal funds for a payment that is an expenditure on behalf of a clearly identified Federal candidate and a disbursement on behalf of a clearly identified non-Federal candidate. Any such payment that is for a Federal election activity requires the use of Federal funds only, as set out in 11 CFR 106.1(a)(2). The final rule, in paragraph (a)(2), also includes references to other sections to the effect that payments for Federal election activities that are also attributable to clearly identified candidates are subject to new 11 CFR 300.33 and that the allocation among the particular candidates must be reported, in accordance with 11 CFR 104.17(a).

However, a payment that is not for Federal election activities but that is an expenditure on behalf of a clearly identified Federal candidate and also a disbursement on behalf of a clearly identified non-Federal candidate is either allocable between Federal and non-Federal accounts or payable with Federal funds only. Hence, the last sentence of proposed paragraph (a)(1), indicating that only Federal funds can be used, is deleted from the final rules. In addition, the final rule does not include language from proposed paragraph (a)(2) to the effect that only separate segregated funds and nonconnected committees may make a payment that includes an expenditure of Federal funds on behalf of a Federal candidate and a disbursement on behalf of a non-Federal candidate. Moreover, the reference to party committee transfer procedures for allocable expenses is added back into paragraph (a)(2).

Paragraph (a)(1) of the final rule includes also the appropriate method for attributing expenditures and disbursements among candidates in the case of a phone bank. This method is derived from pre-BCRA 11 CFR 106.5(e) (re-numbered 11 CFR 106.7), which addressed Federal/non-Federal allocation in the analogous situation of exempt activities. This method, which has provided guidance for allocation of expenditures and disbursements for direct candidate support, is no longer in the new regulations after December 31, 2002 for other mixed party activities. Therefore, the regulations at 11 CFR 106.1 directly address phone banks.

Federal election activity includes some of the activities that also meet the definition of exempt activities. As indicated in the Explanation and Justification of 11 CFR 100.24, a Federal election activity that, pre-BCRA, would have been allocable as an exempt activity, is now a Federal election activity covered by the allocation rules at 11 CFR 300.33. Under 11 CFR 106.7, however, exempt activities still exist as an allocable category of expenses in a number of situations. Hence, a complete list of particular allocable costs other than those addressed in 11 CFR 106.1 should include exempt activities. The final rule at 11 CFR 106.1(e) does not list individual allocation categories but still serves as a signpost to sections addressing the allocation of mixed Federal/non-Federal or mixed Federal/Levin payments.

Exempt party activities also relate to section 106.1 as follows. If an activity supporting clearly identified Federal and non-Federal candidates is a Federal election activity and is not also an exempt activity, the portion of the payment attributable to each Federal candidate is an expenditure for that candidate, and may constitute an in-kind contribution, an independent expenditure, or a coordinated expenditure. If the payment is for a Federal election activity that is also an exempt activity, the amounts are exempted from the definition of "expenditure" or "contribution." Although the expense must be paid for entirely with Federal funds, only the amounts that are attributable to the Federal candidates or Federal elections (but using the new percentages in 11 CFR 106.7) count toward the political committee registration threshold at 2 U.S.C. 431(4)(C) for local party committees, which is more than $5,000 in exempt activity payments. See 11 CFR 100.5(c) and the Explanation and Justification for 11 CFR 100.24(a) and 11 CFR 300.36(a).

11 CFR 106.5 Allocation of Expenses Between Federal and Non-Federal Activities by National Party Committees

The NPRM proposed amending 11 CFR 106.5 to explain the allocation rules for State, district, and local party committees. Proposed paragraph (a) also stated that because national party committees would no longer be able to raise and spend non-Federal funds, they would no longer be able to allocate their expenses between their Federal and non-Federal accounts. *See* 67 FR 35679. While this is true after December 31, 2002, national party committees will be able to spend non-Federal funds for limited purposes during the transition period of November 6, 2002, through December 31, 2002. For discussion of the transition period, *see* the Explanation and Justification for 11 CFR 300.12, below. The Commission realizes that the regulations need to contain allocation rules for national party committees during this transition period. Therefore, the final rules include several technical amendments to section 106.5 to make it applicable solely to national party committees and only during the transition period. The current allocation rules remain unchanged for national party committees. The final rules that apply to State, district, and local party committees, set out in proposed 11 CFR 106.5, are being designated as new 11 CFR 106.7 in the final rules. *See* below.

Consistent with this reorganization, the word "national" is placed before "party committees" in several places in 11 CFR 106.5, including the title of the section, to clarify that this section only applies to national party committees. A title is added to paragraph (a)(1) for consistency because all other paragraphs under paragraph (a) have titles. Paragraphs (a)(2)(iii), (d), and (e) are removed and reserved because they apply to State, district, and local party committees. Paragraph (h) is added to be a sunset provision. Paragraph (h) states that section 106.5 only applies during the transition period and will no longer be effective after December 31, 2002.

11 CFR 106.7 Allocation of Expenses Between Federal and Non-Federal Accounts by Party Committees, Other Than for Federal Election Activities

Section 106.7 sets forth rules governing the allocation of certain expenses between the Federal and non-Federal accounts of political parties. Much of new section 106.7 covers topics formerly addressed in pre-BCRA 11 CFR 106.5. The final rules addressing allocation of expenditures and disbursements at 11 CFR 106.7 and 11 CFR 300.33 separate between the two sections respectively those activities that are not "Federal election activity" and those that are. This reorganization is based in large part upon the need to clarify in the rules the relationship between "exempt activities" and "Federal election activities," particularly given certain timing

parameters involved in the sub-set of Federal election activities that may be paid in part with Levin funds. *See* 11 CFR 300.32 and 300.33. Therefore, 11 CFR 106.7 addresses allocation of expenses for all State, district, and local party activity that falls outside the definition of Federal election activity, which are allocable between Federal and non-Federal accounts. In contrast, 11 CFR 300.33 addresses the allocation of those types of Federal election activity that may be allocated between Federal and Levin accounts.

A. Allocable Activities That Are Not FEA

The content of 11 CFR 106.7(a) and (b) remains much the same as the NPRM, when it was designated 11 CFR 106.5(a) and (b), although new language has been added to emphasize that these provisions address activities other than Federal election activities. These paragraphs state the general principles that after December 31, 2002: (1) National party committees are no longer permitted to raise and spend non-Federal funds,[4] and thus are unable to allocate expenses between Federal and non-Federal accounts; and (2) State, district, and local party committees that make expenditures and disbursements for activities other than Federal election activities in connection with both Federal and non-Federal elections must either use only Federal funds for these purposes or must establish separate Federal and non-Federal accounts and allocate expenditures between or among those accounts.

The prohibitions on national party committee use of non-Federal funds has resulted in the complete elimination of pre-BCRA 11 CFR 106.5(b) and (c). Thus, the provisions in new 11 CFR 106.7(b) through (f) only apply to State, district, and local party committees, and do not apply to national party committees.

B. Salaries and Wages

Paragraph 106.7(c) addresses costs that must be either paid totally from Federal accounts or allocated by State, district, and local party committees between their Federal and non-Federal accounts. Under paragraph (c)(1), however, State, district, and local party committees must pay entirely with funds that comply with State law the salaries and wages of employees who spend 25% or less of their compensated time on Federal election activity or an activity in connection with Federal elections. The inclusion of "wages" is intended to include hourly employees. The compensation of other employees who spend more time on Federal election activity or activity in connection with Federal elections is addressed in paragraph (d)(1)(ii) and new 11 CFR 300.33. BCRA defines "Federal election activity" to include the cost of all services provided by an employee in any month in which the individual spends more than 25% of his or her compensated time on activities in connection with a Federal election. 2 U.S.C. 431(20)(A)(iv). This federalizes a high proportion of salary payments that were previously paid for with an allocation of Federal and non-Federal dollars. By requiring the salaries and wages related to many activities that are primarily, or even entirely, State or local in their orientation to be paid for with Federal funds, when the amount of time spent on them exceeds 25%, Congress clearly expressed its desire to federalize these costs. By implication, Congress appears to have concluded that salaries for employees spending 25% or less of their time on activities in connection with a Federal election or on Federal election activities do not have to be paid from any mix of Federal funds. Thus, this new regulation in 11 CFR 106.7(c) is in accord with Congressional intent, and it comports with Congress's expectation that the Commission would develop allocation regulations for Federal election activity paid for in part with Levin funds.

The proposed regulations at 11 CFR 300.33(b)(1) would have required State, district, and local party committees to keep time records for all employees, the purpose being to provide documentation for allocation purposes. The NPRM set out three possible alternative methods by which a committee could collect such documentation. In response to the NPRM, a State party committee asserted that time sheets would be "burdensome," that written certifications by employees would be "equally impractical," but that a tally sheet kept by the employer would be "more reasonable." The same commenter nonetheless urged the Commission not to require any particular method of documentation. For the reasons noted by the commenters, the final rule at 11 CFR 106.7(d)(1) requires only that a monthly log be kept of the percentage of time each employee spends in connection with a Federal election.

C. Administrative Costs

One category of allocable expenses in 11 CFR 106.7 is "administrative costs." Under paragraph (c)(2), these costs cover administrative expenses except for employee salaries and wages. The final rule requires allocation of these costs between a party committee's Federal and non-Federal accounts, unless they can be attributed to a clearly identified Federal candidate, in which case they are totally Federal costs to be paid with Federal funds.

A number of the comments received in response to the NPRM argued that, because BCRA does not address administrative costs, State, district, and local party committees should be able to pay them totally out of their non-Federal accounts. One commenter representing a State party emphasized the many State and local elections and ballot initiatives with which his party is involved as compared to the number of Federal elections. Other commenters, however, including the principal Congressional sponsors of BCRA, argued that BCRA was never intended to change the allocations required by the pre-BCRA regulations, and that administrative costs should continue to be allocable between Federal and non-Federal accounts.

While the Commission recognizes that non-Federal activity consumes a large portion of State party time and finances, there is no doubt that Federal candidates benefit from such party committees' efforts to reach and motivate potential voters. The Commission also agrees that nothing in BCRA or the legislative history suggests that Congress intended the Commission to abandon its longstanding allocation requirement for these expenses. Therefore, the final rules continue to require allocation of administrative costs under a simplified allocation method discussed below.

D. Exempt Activities

Under the Act, as amended by BCRA, how the costs of voter registration, voter identification, get-out-the-vote ("GOTV") and other campaign activities that may promote or oppose a political party without promoting or opposing a candidate are allocated depends on whether such activities come within the definition of "Federal election activity" or not. *See* 11 CFR 100.24(a), (b). Numerous commenters focused upon the relationship between the provisions in FECA and in the Commission's regulations that exempt certain party activities from the definitions of "contribution" and "expenditure" and the provisions in BCRA establishing "Federal election activities" as a general category, and activities for which Levin funds may be used. The comments and the Commission's determinations in this regard are discussed in the Explanation

[4] The actual ban on this activity takes effect on November 6, 2002.

and Justification for 11 CFR 100.24 defining "Federal election activity."

The final rules in 11 CFR 106.7(c)(3) set out the permitted allocations of costs for categories of party expenditures and disbursements for activities that are exempt party activities but are not Federal election activities. The party committee must either pay the costs of this activity from its Federal account or allocate the costs between its Federal and non-Federal accounts.

E. Fundraising Costs

11 CFR 106.7(c)(4) addresses the direct costs of a fundraising program or event when the State, district, or local party committee is raising both Federal and non-Federal funds for itself. The NPRM indicated that all *direct* fundraising costs must be paid from a Federal account, while other fundraising-related costs not directly related to particular fundraising programs or events could be allocated between Federal and non-Federal accounts as administrative costs.

There was no consensus among the public comments addressing this topic. The principal Congressional sponsors of BCRA supported the proposed rules that would have required entirely Federal funds to be used for these purposes. A public interest group and a party committee urged the Commission to continue to use the previous funds received method for allocating these fundraising costs. Two party committees urged allocation of only those fundraising costs that are directly associated with a particular fundraising program or event.

The Commission observes that BCRA requires the use by State, district, and local party committees of funds "subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U.S.C. 441i(c). Thus, the Commission has concluded that not only Federal funds, but Levin funds as well, may be used to raise funds that are used, in whole or in part, for Federal election activities. *See* 11 CFR 300.33(c)(3). Non-Federal funds may not be used. The reasons for this conclusion are set out in greater details in the Explanation and Justification for 11 CFR 300.32 below.

With regard to fundraising purposes other than Federal election activity, the final rule at 11 CFR 106.7(c)(4) permits the direct costs of fundraising to be allocated between Federal and non-Federal funds, provided that none of the proceeds so raised will ever be used for Federal election activities. In addition, the rule requires the segregation of the proceeds in bank accounts that are never used for Federal election activity. Paragraph (c)(4) specifies that direct costs of fundraising include the solicitation costs and the costs of planning and administering a particular fundraising event or program.

F. Certain Voter Drive Activities

11 CFR 106.7(c)(5), which did not appear in the version of the regulation published in the NPRM, addresses expenses, other than salaries and wages, for voter-drive activities and other party committee activities that are not candidate-specific and that do not qualify as Federal election activities. These may include, for example, certain voter identification, GOTV, or other activities that do not promote or oppose a Federal candidate or non-Federal candidate, and that do not qualify as Federal election activities because they are not in connection with an election in which a Federal candidate appears on the ballot. *See* 11 CFR 100.24(a)(1) and (b)(2). Paragraph (c)(5) provides that the costs of such activities may be allocated between the Federal and non-Federal accounts of the State, district, or local party committee.

G. Allocation Percentages and Recordkeeping

One goal of the final rule is to assure that activities deemed allocable are not paid for with a disproportionate amount of non-Federal funds. Another goal is to simplify the allocation process, in particular by establishing formulas that do not vary from State to State. Therefore, in lieu of the State-by-State ballot composition ratios for administrative costs and generic campaign activity and in lieu of the time or space method applied to exempt State activities, which were required by the pre-BCRA regulations, the rules at 11 CFR 106.7(d)(2) and (3) establish fixed percentages for all States for certain activities. The percentages vary only in terms of whether or not a Presidential campaign and/or a Senate campaign is to be held in a particular election year.

In the NPRM, the Commission set out proposed required allocation percentages for the Federal shares of salaries and other compensation paid employees who spend 25% or less of their time on Federal elections, for administrative expenses, and for exempt party activities that are not Federal election activities. For the reasons explained above, the Commission has decided that no salaries and wages are to be allocated. With regard to administrative costs and exempt activities, State, district, and local party committees must allocate no less than the following amounts to their Federal accounts during the following years (and in the preceding year):

(i) Presidential only election year—28% of costs

(ii) Presidential and Senate election year—36% of costs

(iii) Senate only election year—21% of costs

(iv) Non-Presidential and Non-Senate election year—15% of costs.

These figures were derived by taking averages of the ballot composition-based allocation percentages reported by State party committees in four groupings of States selected for their diversities of size and geographic location and for the particular elections held in each State in 2000 and 2002. The groupings were: (1) Six States (Alabama, Colorado, Illinois, New Hampshire, Oklahoma, and Oregon) in which there was a Presidential but no Senate campaign in 2000; (2) 10 States (California, Delaware, Georgia, Florida, Michigan, New York, North Dakota, Texas, Vermont, and Wyoming) in which there were both a Presidential campaign and a Senate campaign in 2000; (3) six States (Delaware, Georgia, Michigan, Oklahoma, Texas, and Wyoming) in which there will be a Senate campaign in 2002; and (4) six States (California, Florida, New York, North Dakota, Vermont, and Washington) in which there will be no Senate campaign in 2002.

In 2000, the Federal percentages for the two parties in six States with only a Presidential campaign ranged from 20% to 33.33%, with an average of 28%, while the Federal percentages for the two parties in ten States which held both Presidential and Senate campaign that year ranged from 30% to 43%, with an average of 36%. In 2002, the Federal percentages for the two parties in six States with a Senate campaign ranged from 20% to 25%, with an average of 21%, while the Federal percentages for the two parties in six States with no Senate campaign ranged from 11.11% to 16.67%, with an average of 15%. The rules apply the average percentages in each of the four groupings of States to all 50 States.

One comment on the proposed rules from a public interest organization addressed the Commission's proposed fixed percentages by providing two alternatives to the Commission's figures. The first alternative would have set a flat 33% requirement for Federal shares of what the commenter termed "Levin expenditures" (*see* 11 CFR 300.33) and for allocable costs other than administrative costs in odd-numbered years or in non-Presidential election years, and a flat 40% requirement for Federal shares of these same categories

of activities in Presidential election years. This alternative would also have required a 25% allocation for administrative costs in all years. The commenter based these percentages on what were termed "the current assumption" as to what State party committees spend in certain years.

The second alternative urged by this commenter adopted the Commission's calculations, but called for the use of the higher percentages in the sample States for what the response termed "Levin spending" and for voter registration outside the 120 day period before an election, plus the average percentages for non-Levin expenses such as administrative costs. The commenter also urged the Commission to be clear that its allocation percentages apply to a two-year election cycle, not just to the year of a Federal election.

The comment submitted on behalf of the principal Congressional sponsors of BCRA with regard to fixed allocation percentages was very similar to that of the public interest organization's response cited above in that, as one alternative approach, it called for at least a 33% Federal allocation of what it termed "Levin activities" and of voter registration activities outside the 120 period before an election, plus 25% Federal allocations for administrative expenses. It also called for 40% Federal allocations of Levin activities and of voter registration activities that are not Federal election activities in Presidential election years. This alternative assumed the application of the percentages to two-year Federal election cycles. As a second alternative, this commenter also agreed to use of the Commission's percentages for administrative costs in a two year cycle, but urged the application over that cycle of the highest, not the average, Federal percentages for what it termed "Levin activities and voter registration activities that are not 'Federal election activity' * * * ." Another comment from a public interest organization also called for use of the highest percentages in the identified States, not the average percentages.

The comments received from party committees with regard to fixed percentages for Federal allocations ranged from support for the Commission's position to giving party committees a choice at the beginning of each cycle between the proposed formula and ballot composition ratios.

The final rules at 11 CFR 106.7(d) include the phrase, "and in the preceding year," to clarify that the allocation formula in this section apply to both years of a Federal election cycle.

With regard to the amounts of the fixed minimum Federal allocations, the final rules adopt the percentages contained in the NPRM because they represent averages of actual allocation ratios used in specific States at specific times, not assumptions as to possible State, district, and local party behavior in the future. These percentages represent a clear, bright line test intended to be more easily understood and applied than the previous regulations, consistent with statutory intent. As noted above, the percentages apply throughout a two-year cycle—i.e., from January 1st of odd-numbered years through December 31st of even-numbered years.

H. Allocable Fundraising Costs

The NPRM sought comment as to whether costs of fundraising, other than fundraising for Federal election activities, should be allocated under the "funds received" method in previous 11 CFR 106.5(f). Two commenters, a political party organization and a public interest organization, supported the idea of using the "funds received" method for fundraising where the funds raised are not used for Federal election activity.

The Commission has decided to continue the use of the "funds received" method for allocating direct costs of fundraising. This is set out in a new 11 CFR 106.7(d)(4). Under this method, the State, district, or local party committee must allocate based on the ratio of funds received into the Federal account to the total receipts for the fundraising program or event. The ratio must be estimated prior to each such program or event based upon a reasonable prediction and, as provided in the rule, subsequent adjustments must be made, if necessary. New 11 CFR 106.7(e)(4) clarifies that fundraising costs for Federal election activities are governed by new 11 CFR 300.32.

I. Non-Allocable Costs

Section 106.7(e) sets out those activities that are not allocable between Federal and non-Federal accounts. Paragraph (e)(1) requires that a payment for any activity that refers only to one or more candidates for Federal office must not be allocated between Federal and non-Federal accounts. These costs must be paid for entirely with funds from a Federal account. Paragraphs (e)(2) and (3) indicate that employee salaries and wages under certain conditions must not be allocated between Federal and non-Federal accounts, but must be paid for entirely with non-Federal funds.

J. Transfers

Section 106.7(f), which addresses transfers to pay for allocable activities, is similar to the proposed rule, with the addition of language providing for allocation accounts as an alternative to the use of Federal accounts for initial payments of allocable expenditures and disbursements. This provision tracks for the most part the language and requirements of pre-BCRA 11 CFR 106.5(g). No comments addressed the continuation of this requirement. Reimbursements from a non-Federal account to a Federal account must take place within a specified number of days. The continuation of these timing provisions will ensure that party committees need not change this aspect of their operations.

Section 106.7(f)(2)(ii), like former 11 CFR 106.5(g)(2)(B)(iii), explains that any payment outside this time frame, absent the need for an advance payment of a reasonably estimated amount, could result, depending on the circumstances, in a loan of non-Federal funds to the Federal account and a violation of the Act. No commenters addressed this provision.

VII. Part 108—Filing Copies of Reports and Statements With State Officers

11 CFR 108.7 Effect of State Law

Section 108.7 addresses Federal preemption of State law based on 2 U.S.C. 453(a) and its legislative history. Paragraph (c) lists the types of State laws that are not preempted or superseded by the Act and the regulations. BCRA amended the Act at 2 U.S.C. 453(b), providing for the application of State law to the use of non-Federal funds for the purchase or construction by a State or local party of its office building. Federal preemption continues to exist when Federal funds are used. This amendment is implemented in new section 300.35. Paragraph (c) of section 108.7 is therefore being amended to include the application of State law to the use of non-Federal funds for the purchase or construction of a State or local party office building in accordance with 11 CFR 300.35.

VIII. Part 110—Contribution and Expenditure Limitations and Prohibitions

11 CFR 110.1 Contributions by Persons Other than Multicandidate Political Committees

BCRA amended 2 U.S.C. 441a(a)(1) to raise the amount that individuals may donate to State committees of political parties from $5,000 to $10,000 in any

calendar year. New 11 CFR 110.1(c)(5) incorporates this increased contribution limitation, which is effective January 1, 2003. The principal Congressional sponsors of BCRA included in their comment an emphasis upon the fact that this is an increase in the limitation on Federal funds. No other comments on this provision were received.

IX. Part 114—Corporate and Labor Organization Activity

11 CFR 114.1 Definitions

The pre-BCRA text of 11 CFR 114.1(a)(2)(ix) follows the repealed statutory provision as to the purchase or construction by a national or State party committee of an office facility. It is therefore being deleted and replaced with an annotated cross-reference to new 11 CFR 300.35 which describes how the purchase or construction of an office building by a State or local party committee may be funded. A national committee's office building must be purchased or constructed only with Federal funds. *See* new section 300.10. The texts of the regulations currently at 11 CFR 100.7(b)(12) and 100.8(b)(13), which are similar to the pre-BCRA text of section 114.1(a)(2)(ix), are the subject of a separate rulemaking. *See Notice of Proposed Rulemaking*, 67 FR 40881 (June 14, 2002).

X. Part 300—Non-Federal Funds

11 CFR 300.1 Scope and Effective Date, and Organization

The bulk of the new rules that address non-Federal funds of political party committees are contained in 11 CFR part 300. Section 300.1 addresses the scope of new part 300, sets forth the effective date of the provisions contained in the new part, and outlines the organization of the new part. Specifically, paragraph (a) of section 300.1 states that new part 300 implements changes to the FECA enacted by Title I of BCRA. It also notes that nothing in part 300 is intended to alter the definitions, restrictions, liabilities, and obligations imposed by sections 431–455 of Title 2 of the United States Code or in the regulations prescribed thereunder in 11 CFR parts 100–116.

The effective date of BCRA, except where otherwise stated, is November 6, 2002. *See* 2 U.S.C. 431 note, section 402(a). Consistent with BCRA, paragraph (b) of section 300.1 states that part 300 takes effect on November 6, 2002, except for the following: (1) Where otherwise stated in part 300; (2) subpart B of part 300 relating to State, district, and local party committees does not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to November 6, 2002; (3) the increase in individual contribution limits to State party committees as set forth in proposed 11 CFR 110.1(c)(5) applies to contributions made on or after January 1, 2003; and (4) national parties must spend any remaining non-Federal funds received before November 6 and in their possession on that date before January 1, 2003, subject to the transition rules set forth in proposed 11 CFR 300.12.

Finally, paragraph (c) of section 300.1 explains that part 300 is organized into five subparts, with each subpart addressing a specific category of persons affected by BCRA. Subpart A of part 300 prescribes rules pertaining to national party committees; subpart B prescribes rules pertaining to State, district, and local party committees and organizations; subpart C addresses rules affecting certain tax-exempt organizations; subpart D prescribes rules pertaining to Federal candidates and Federal officeholders; and subpart E prescribes rules pertaining to State and local candidates. In addition, BCRA requires changes in other parts of Title 11 of the *Code of Federal Regulations*, which are also addressed in this rulemaking. One commenter supported the provisions of this section. The final rules follow the proposed rules, with the exception of minor revisions to clarify the scope of each subpart.

11 CFR 300.2 Definitions

A. 11 CFR 300.2(a) Definition of "501(c) organization that makes expenditures or disbursements in connection with a Federal Election"

New 11 CFR 300.2(a) defines a 501(c) organization "that makes expenditures or disbursements in connection with a Federal election." BCRA prohibits national and State party committees, their officers and agents, and certain entities associated with them, from soliciting any funds for, or making or directing any donations to, 501(c) organizations that fit this definition.

The NPRM sought comments on whether the definition of 501(c) organizations affected by the prohibition on party fundraising and donations should contain a temporal requirement so that this prohibition is not overbroad and does not encompass, for example, an organization that made expenditures and disbursements in connection with a Federal election many years ago but has not done so recently and does not plan to do so in the future.

Commenters were in general agreement that a temporal requirement was a good idea. Several commenters suggested that the prohibition should encompass organizations that have made expenditures and disbursements in connection with a Federal election during the past three election cycles, or six years. Other commenters stated that the definition was overbroad without a temporal requirement but offered no suggestion for a specific time frame.

The final rule at 11 CFR 300.2(a) defines a 501(c) organization "that makes expenditures or disbursements in connection with a Federal election" as one that plans to make such expenditures or disbursements, including for Federal election activity, within the current election cycle or plans to pay a debt incurred in a prior election cycle for making such expenditures or disbursements. Because BCRA uses the present tense in referring to affected 501(c) organizations, the Commission believes that the prohibition on party fundraising should only apply to Section 501(c) organizations that undertake such spending within the current two-year election cycle. The definition in new 11 CFR 300.2(a) also includes organizations that plan to pay debts incurred in a prior election cycle for such expenditures or disbursements. This will prevent, for example, an organization from certifying that it does not plan to make expenditures or disbursements in connection with a Federal election in the current 2-year election cycle, if it receives donations or fundraising assistance from a party committee and uses those funds to pay off debt incurred for such expenditures or disbursements relating to a prior election cycle.

The proposed definition in the NPRM would have also delineated the types of activity that constitute expenditures or disbursements in connection with a Federal election. One commenter expressed support for this proposed rule. The final rule does not, however, set out specific activities that constitute such expenditures or disbursements. Federal election activity is defined at new 11 CFR 100.24 so that one component of the definition is clear. Moreover, the Commission believes that advisory opinions and closed enforcement matters provide guidance as to what constitutes activities in connection with a Federal election. Attempting to include specific activities in the definition in 11 CFR 300.2(a) might result in an overbroad definition.

B. 11 CFR 300.2(b) Definition of "Agent"

Many of the prohibitions and restrictions of BCRA apply to a principal entity, such as a political party

committee or a candidate, and to the "agents" of such principals where they act on behalf of those principals. *See, e.g.*, 2 U.S.C. 441i(a)(1), (2); 2 U.S.C. 441i(b)(1); 2 U.S.C. 441i(e)(1). Congress did not define the term, "agent," in BCRA. In the NPRM, the Commission proposed a regulatory definition framed in terms of "a person who has actual express oral or written authority" to act on behalf of a principal. This definition would have defined "actual authority" as "instructions, either oral or written," from the principal. The Commission solicited comments on several aspects of this proposed definition, such as the potential applicability of the definition to volunteers, whether the principal's actual knowledge of the putative agent's activities is relevant, and the potential applicability of the concept of apparent authority.

The Commission received many comments on the proposed definition of agent. Several commenters found the proposed definition "too narrow." One described the requirement that an agent's authority must be actual and express to be a "loophole that would utterly swallow the rule," arguing that in the "real world" fundraising is accomplished largely through agents without express authority in a "technical" or "legal" sense. The principal Congressional sponsors of BCRA commented that the proper definition of "agent" is critical to prevent evasion of the "soft-money" prohibitions at the center of Title I of BCRA. The definition, they believe, should encompass "anyone who has an agency relationship under common law," including apparent authority. The principal Congressional sponsors and a public interest group commented that the new definition should not be narrower than the definition of agent currently used by the Commission in regulating independent expenditures. *See* 11 CFR 109.1(b)(5). The sponsors also commented that the Commission should not exclude volunteers and vendors *per se*. A public interest group also urged the Commission to include apparent authority within the definition. This group argued that "bestowing" a title or position on an individual implies that the individual is working on behalf of the principal who bestowed the title or position.

In contrast, other commenters, comprised of national and State political party committees and labor organizations, applauded the proposed rule's conjunctive requirement that the agent's authority must be actual and express. Three national party committees commented that the definition should be further limited to individuals with "substantive decision-making authority." Many of these commenters stressed that the Commission should consider two issues in implementing the regulatory definition of "agent." The first issue is the nature of an agent's "individual liability" for his or her own actions. The second issue is the perceived "vicarious liability" of the principal. With regard to the first issue, several commenters, including a State party committee, an association of State party officials, and several national party committees, suggested the Commission use 11 CFR 109.1(b)(5) as a model for the new definition, presumably modified to provide that authority must be actual and express. Regarding the second issue, several commenters urged the Commission to give full effect to a requirement that the agent must be acting on behalf of the principal before the principal incurs liability derived from the agent's actions. Two labor organizations commented that the principal's derivative liability should not extend beyond activities the agent has been specifically authorized to conduct. Two national party committees commented that the final definition must impose liability only when a principal exercises actual control over the actions of the agent, arguing that it would be unfair to impose liability for actions beyond the principal's control. Another commenter, a State party committee, framed its suggestion in terms of limiting a principal's liability to actions taken by an agent on the principal's "explicit instructions."

The final rules define "agent" for purposes of Title I of BCRA as "any person who has actual authority, either express or implied." The final rules make clear that the definition of "agent" is limited to those individuals who have actual authority, express or implied, to act on behalf of their principals and does not apply to individuals who do not have any actual authority to act on their behalf, but only "apparent authority" to do so. The final regulation thus differs from the regulation proposed in the NPRM. The Commission makes this change for reasons articulated by the United States Supreme Court. In *Community for Creative Non-Violence* v. *Reid, 490 U.S. 730, 739 (1989)* the High Court held that the defining of statutory terms should be guided by "settled meaning under * * * the common law * * * unless the statute otherwise dictates." In this regard, the Commission notes that under the common law of agency, an "agent's authority may be actual or apparent." *Moriarty* v. *Glueckert Funeral Home, Ltd.*, 155 F.3d 859, 865–866 (7th Cir. 1998) (quoting Restatement (Second) of Agency, 26). But the Supreme Court has made it equally clear that not every nuance of agency law should be incorporated into Federal statutes where full incorporation is not necessary to effect the statute's underlying purpose. *See Faragher* v. *City of Boca Raton*, 524 U.S. 775, 802 n.3 (1998) (The "obligation is not to make a pronouncement of agency law in general or to transplant [the Restatement (Second) of Agency into a Federal statute, but] is to adapt agency concepts to the [statute's] practical objectives.")

For these reasons, the definition of "agent" in the final regulation does not incorporate apparent authority. "[A]pparent authority to do an act is created as to a third party by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third party to believe that the principal consents to have the act done on his behalf by the person purporting to act for him." Restatement (Second) of Agency, 27. As has been noted by commenters, apparent authority is largely a concept created to protect innocent third parties who have suffered monetary damages as a result of reasonably relying on the representations of individuals who purported to have, but did not actually have, authority to act on behalf of principals. Unlike other legislative areas, such as consumer protection and anti-fraud legislation, BCRA does not affect individuals who have been defrauded or have suffered economic loss due to their detrimental reliance on unauthorized representations. Rather, the Commission interprets Title I of BCRA to use agency concepts to prevent evasion or avoidance of certain prohibitions and restrictions by individuals who have actual authority and who do act on behalf of their principals. In this light, apparent authority concepts are not necessary to give effect to BCRA.

It is necessary, however, to define "agent" to include implied and express authority in order to fully implement Title I of BCRA. Otherwise, agents with actual authority would be able to engage in activities that would not be imputed to their principals so long as the principal was careful enough to confer authority through conduct or a mix of conduct and spoken words. The comments and testimony received by the Commission perhaps reveal some confusion about the term "implied authority." Implied authority *is* a form of actual authority. *Moriarty, supra*, 155 F.3d at 865–866 (7th Cir. 1998) (quoting Restatement (Second) of Agency, 26)

(actual authority may be express or implied). Implied authority should not be confused with apparent authority, which is a distinct concept. Restatement (Second) of Agency, 8, cmt a. It is well settled that whether an agent has implied authority is within the control of the principal. Thus, the Commission emphasizes that a principal may not be held liable, under an implied actual authority theory, unless the principal's own conduct reasonably causes the agent to believe that he or she had authority. For example, a party committee cannot be held liable for the actions of a rogue or misguided volunteer who purported to act on behalf of the committee, unless the committee's own written or spoken word, or other conduct, caused the volunteer to reasonably believe that the committee desired him or her to so act. Once an agent has actual authority, however, "[u]nless otherwise agreed, authority to conduct a transaction includes authority to do acts which are incidental to it, usually accompany it, or are reasonably necessary to accomplish it." Restatement (Second) of Agency, 35; *see U.S.* v. *Flemmi*, 225 F.3d 78, 85 (1st Cir. 2000).

Title I of BCRA refers to "agents" in order to implement specific prohibitions and limitations with regard to particular, enumerated activities on behalf of specific principals. The final regulation limits the scope of the definition accordingly in paragraphs (b)(1) through (b)(4). Each provision in paragraphs (b)(1) through (b)(4) is tied to a specific provision in Title I of BCRA that relies on agency concepts to implement a specific prohibition or limitation. The Commission emphasizes that, under the Commission's final regulation, a principal cannot be held liable for the actions of an agent unless (1) the agent has actual authority, (2) the agent is acting on behalf of his or her principal, and (3) the agent is engaged in one of the specific activities described in paragraphs (b)(1) through (4).

Paragraph (b)(1) limits a national party committee's liability to an agent's authorized actions with regard to two activities. The first is soliciting, directing, or receiving any contribution, donation, or transfer of funds on behalf of the national party committee. 2 U.S.C. 441i(a)(1), (2). The second is soliciting funds for, or making or directing donations to, section 501(c) and 527 organizations. 2 U.S.C. 441i(d).

Paragraph (b)(2) limits the liability of State, district, or local political party committees to the actions of an agent who has actual authority in four particular areas. The first is to make expenditures or disbursements of any funds for Federal election activity on behalf of the State, district or local party committee. 2 U.S.C. 441i(b)(1). The second is to transfer, or to accept a transfer of, funds to make expenditures or disbursements for Federal election activity on behalf of the State, district or local party committee. 2 U.S.C. 441i(b)(2)(B)(iv). The third is to engage in joint fundraising activities on behalf of the State, district or local party committee with any person if any part of the funds raised are used, in whole or in part, to pay for Federal election activity. 2 U.S.C. 441i(b)(2)(C). The fourth is to solicit funds for, or to make or direct donations to, section 501(c) and 527 organizations. 2 U.S.C. 441i(d).

Paragraph (b)(3) limits the liability of a Federal candidate to the actions of an agent who has actual authority to solicit, receive, direct, transfer, or spend funds in connection with any election on behalf of the Federal candidate. 2 U.S.C. 441i(e)(1). The Commission notes that the exception to 2 U.S.C. 441i(e)(1)'s general rule found in paragraph (e)(2) of that section also applies to agents of such Federal candidates who are or were State or local candidates.

Paragraph (b)(4) applies to State candidates, and limits their liability to actions taken by their agents who have actual authority to spend funds for public communications on their behalf. 2 U.S.C. 441i(f).

Under the Commission's final rules defining "agent," a principal can only be held liable for the actions of an agent when the agent is acting on behalf of the principal, and not when the agent is acting on behalf of other organizations or individuals. Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal. This additional requirement ensures that liability will not attach due solely to the agency relationship, but only to the agent's performance of prohibited acts for the principal. In light of the foregoing, it is clear that individuals, such as State party chairmen and chairwomen, who also serve as members of their national party committees, can, consistent with BCRA, wear multiple hats, and can raise non-Federal funds for their State party organizations without violating the prohibition against non-Federal fundraising by national parties.

C. 11 CFR 300.2(c) Definition of "Directly or Indirectly Established, Financed, Maintained, or Controlled"

11 CFR 300.2(c) defines "directly or indirectly establish, finance, maintain, or control," a term that is used in several provisions of BCRA. The term appears in BCRA in the context of national party committees (*see* 2 U.S.C. 441i(a)(2)), of State, district, and local political party committees (*see, e.g.*, 2 U.S.C. 441i(b)(2)(B)(iii)), and of Federal candidates and Federal officeholders (*see, e.g.*, 2 U.S.C. 441i(e)(1)). The phrase "established, financed, maintained, or controlled," without the modifier "directly or indirectly," was already used in the anti-proliferation provisions of the FECA and in the Commission's "affiliation" regulation. *See* 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g), and 110.3.

Paragraph (c)(1) of section 300.2 enumerates the persons to whom the regulation applies, and employs the shorthand "sponsor" to refer collectively to these persons. A public interest group commented that the regulation should apply to national, as well as to State, district, and local political party committees. Accordingly, given that the term, "directly or indirectly established, financed, maintained, or controlled," is applied to national party committees in 2 U.S.C. 441i(a)(2), the Commission is incorporating this suggestion in the final regulation. Another commenter suggested that agents should be included in the description of the term "sponsor," rather than addressed in another part of the rule. The final rules also adopt this suggestion. In paragraph (c)(1), the statutory concept of "indirect" establishment, financing, maintenance, or control is addressed by including actions taken by a sponsor's agents on behalf of the sponsor.

The version of 11 CFR 300.2(c) proposed in the NPRM defining the term "directly or indirectly establish, finance, maintain, or control" included factors that extended beyond the affiliation provisions of 11 CFR 100.5(g). Several commenters, including an association of State party officials, several national party committees, and two State party committees, objected to this portion of the regulation proposed in the NPRM, and suggested uniformly that the final regulation should be based solely upon the existing affiliation regulation in 11 CFR 100.5(g), which one commenter described as "relatively well-established and well-understood." A Latino rights group and a taxpayers' organization concurred with this approach. In addition, a civil rights

organization stated that the regulation proposed in the NPRM was "not only vague as to provide no practical guidance, but also is likely to deem entities as being 'controlled' by a party committee when the BCRA never intended to reach such entities." On the other hand, two public interest groups supported the Commission's proposed use of factors extending beyond the reach of 11 CFR 100.5(g), one of whom argued that Congress used the term, "directly or indirectly established, financed, maintained, or controlled," in several contexts to "make it clear that Congress wanted to move beyond the current affiliation rules."

The Commission has concluded that the affiliation factors laid out in 11 CFR 100.5(g) properly define "directly or indirectly established, financed, maintained, or controlled" for purposes of BCRA. Therefore, in paragraph (c)(2), the affiliation factors found at 11 CFR 100.5(g)(4)(ii) have been recast in the terminology demanded by the BCRA context. Paragraphs (c)(2)(i) through (x) of section 300.2 generally correspond to paragraphs (g)(4)(ii)(A) through (J) of section 100.5. This change in terminology, for example, substituting "entity" for "committee," and "sponsor" for "sponsoring organization," recognizes that affiliation concepts are being applied in a different context. Besides the changes in terminology, the words "and otherwise lawfully" have been added to the phrase about joint fundraising in paragraphs (c)(2)(vii) and (viii) of section 300.2(c). This addition is intended to preclude any confusion that might arise between these provisions and the joint fundraising restrictions in subpart B of part 300.

In the NPRM, the Commission sought comment on whether this regulation should be based on the actions and activities of entities occurring solely after November 6, 2002, the effective date of BCRA. The Commission considered taking this course of action to prevent a retroactive application of BCRA or, specifically, to prevent the actions and activities of entities before November 6, 2002, that are legal under current law from creating potential legal liability based on the new requirements of BCRA, which do not take effect until after November 5, 2002. The Commission also asked, alternatively, whether there should be a rebuttable presumption that entities organized before a given date are not directly or indirectly established by a sponsor, provided that the sponsor and the entity are not affiliated. 67 FR 35658.

The principal Congressional sponsors of BCRA and two public interest groups opposed these options. The principal Congressional sponsors stated, "There is nothing in the statutory language that permits the term * * * to apply only to entities established after the effective date of the Act * * *." Such a rebuttable presumption, they continued, would "create an obvious loophole for organizations established or controlled by members of Congress that are currently raising soft money." One of the public interest groups commented that "grandfathering" existing entities would "effectively prop the [soft-money] loophole open." The other public interest group opposing this idea said: "This would, as a practical matter, allow the activity sought to be regulated by BCRA to continue on an unregulated basis through the preexisting entity."

A non-profit organization commented that the Commission should not apply the new regulation to existing entities that may have been directly or indirectly established, financed, maintained, or controlled by a sponsor because, "otherwise, the rule would go against any conceivable precept of the BCRA having an effective date after the 2002 general elections." This organization asserted, "the only relevant question * * * is whether an entity is controlled by a sponsor after the effective date of BCRA." This organization supported the idea of a rebuttable presumption. Several party committees urged the Commission to apply the regulation if there is affiliation "on or after the effective date of BCRA." Notably, a civil rights organization concluded that "the only relevant question for the purposes of BCRA is whether an entity is controlled by a sponsor after the effective date of BCRA." The civil rights organization further stated that "we agree with the Commission's suggestion that there should be a rebuttable presumption that entities 'organized' before a given date are not directly or indirectly established by a sponsor. [To proceed otherwise] would go against any conceivable precept of the BCRA having an effective date after the 2002 elections."

For the foregoing reasons, the Commission has concluded that BCRA should not be interpreted in a manner that penalizes people for the way they ordered their affairs before the effective date of BCRA. This will help ensure that BCRA is not enforced in a retroactive manner with respect to activities that were legal when performed. Therefore, the Commission has added, in the final rules, a new paragraph (c)(3). The paragraph, under the heading, "safe harbor," provides that on or after November 6, 2002 (the effective date of BCRA), an entity shall not be deemed to be directly or indirectly established, maintained, or controlled by another entity unless, based on the entities' actions and activities solely after November 6, 2002, they satisfy the requirements of 11 CFR 300.2(c). The Commission notes that financing, within the meaning of this definition, presents special considerations. Therefore, with regard to financing, paragraph (c)(3) provides that if an entity receives funds from another entity prior to November 6, 2002, and the recipient entity disposes of the funds prior to November 6, 2002, the receipt of such funds prior to November 6, 2002 shall have no bearing on determining whether the recipient entity is financed by the sponsoring entity within the meaning of 11 CFR 300.2(c). If funds received from another entity prior to November 6, 2002, are spent by the recipient entity on or after that date, that fact will be relevant to a determination under section 300.2(c).

In the NPRM, the Commission sought comment as to whether there should be an exception for a *de minimis* level of funding by a sponsor. 67 FR 35659. Only one commenter, a State party committee, supported this idea and suggested $5,000 for this purpose. The Commission has not included a *de minimis* exception in the final regulation. Such an exception does not square with the overall, situation-specific approach of the regulation, which is to weigh factors such as "[w]hether a sponsor or its agent provides funds or goods in a significant amount or on an ongoing basis to the entity" "in the context of the overall relationship between sponsor and the entity." *See* 11 CFR 300.2(c)(2), (c)(2)(vi). Nor does a *de minimis* exception appear to be supported by the plain language of the statute.

Paragraph (c)(4) (which was labeled (c)(2) in the version of the regulation proposed in the NPRM) provides a mechanism for a sponsor or an entity to request a determination by the Commission through the advisory opinion process that the sponsor is no longer deemed to finance, maintain, or control an entity, even if the sponsor established the entity. There have been several changes from the version of the regulation published in the NPRM. In paragraph (c)(4)(i), the Commission has clarified that the requestor of an advisory opinion must demonstrate that the entity is not directly or indirectly financed, maintained, or controlled by the sponsor. Under paragraph (c)(4)(ii) of the final rules, the requestor must demonstrate that all material connections between the sponsor and

the entity have been severed for two years.

The Commission notes that nothing in paragraph (c)(4) should be construed to require any given entity that has not directly or indirectly established, financed, maintained, or controlled another entity to obtain a determination to that effect before the two entities may operate independently of each other. Therefore, in the final rules, the Commission has added a new paragraph (c)(4)(iii), which provides that nothing in section 300.2(c) should be construed to require entities that are separate organizations on November 6, 2002, to obtain an advisory opinion to operate separately from one another.

D. 11 CFR 300.2(d) Definition of "Disbursement"

Both FECA and BCRA use the term "disbursement," but do not provide a definition. The NPRM contained a proposed definition of "disbursement" as "any purchase or payment made by a political committee or organization that is not a political committee." One commenter pointed out that this term should not be limited to payments by political parties or organizations, since it covers spending by individuals or entities that do not constitute political parties or organizations. *See*, for example, 2 U.S.C. 441i(b)(1), which refers to disbursements by (among others) "an association or similar group of candidates * * * or of individuals." The Commission, therefore, is revising the proposed definition in the final rule to clarify that it covers purchases and payments by a political party or other person, including an organization that is not a political committee, that is nevertheless subject to FECA or BCRA.

E. 11 CFR 300.2(e) Definition of "donation"

In BCRA, Congress uses but does not define the term "donation." The Commission proposed in the NPRM to define a "donation," in 11 CFR 300.2(e), as a payment, gift, subscription, loan, advance, deposit, or anything of value given to a non-Federal candidate, party committee, 501(c) organization, or 527 organization, but not including a contribution or transfer.

Comments were sought on specifically excluding from "donation" some of the exemptions to "contribution" set forth in existing 11 CFR 100.7(b). The comments were split on this approach.

The Commission did not include these exemptions, or any others, in the final rule, because donations in many cases will be essentially a matter of State law, and thus the inclusion or exclusion of certain payments should be left to State campaign finance law. For example, in the Levin Amendment, donations of Levin funds must be in accordance with State law, with one Federal limitation: a $10,000 amount limitation per year per donor. 2 U.S.C. 441i(b)(2)(B)(iii). The Commission believes States should be free to craft their own exemptions to donations of Levin funds, subject only to the $10,000 overall limitation imposed by BCRA.

Several commenters asked the Commission to specifically incorporate additional exemptions, such as money spent for redistricting, election recounts, FECA civil penalties, and legal defense funds. The exemption for recounts is addressed in the Commission's current rules at 11 CFR 100.7(b)(20); as are payments for civil penalties, *cf.* 11 CFR 9034.4(b)(4). The Commission's interpretations on the raising and spending of funds for the purposes of redistricting were done in the context of Advisory Opinions that interpreted the terms "contribution" and "expenditure." *See* Advisory Opinions 1990–23 and 1982–37. The question of legal defense funds implicates not only the definition of "contribution," but also the Commission's personal use regulations at 11 CFR 113.1(g) in the case of a candidate legal defense fund. With respect to legal defense funds or any other legal expenses incurred by national party committees, the Commission does not interpret the broad language of 2 U.S.C. 441i(a) to permit the receipt or use of any non-Federal funds for such purposes.

As with the exemptions in 11 CFR 100.7(b), discussed above, State laws may address each of these payments in a variety of different ways. In addressing these issues, the Commission does not believe it is appropriate to require States to follow the Commission's precedents, which were established to implement the specific, detailed provisions of the FECA regarding "contributions" and "expenditures" for the purpose of influencing Federal elections. Moreover, to do so could present issues involving the preemption of State law.

Several commenters suggested that the definition of "donation" be expanded to include anything of value given to a "person," to conform with the use of this term in 11 CFR 300.10, 300.11, 300.37, 300.50, and 300.51. The Commission has made this change to 11 CFR 300.2(e), given the broad statutory reach of the term "donation" in 2 U.S.C. 441i(a)(1). The Commission has also deleted the reference to "transfers," because those are covered elsewhere in these rules. *See* 11 CFR 300.34.

F. 11 CFR 300.2(f) Definition of "Federal Account"

Paragraph (f) of section 300.2 defines "Federal account" as an account at a campaign depository that contains funds to be used in connection with a Federal election. The term "financial depository institution" proposed in the NPRM has been changed to the more accurate term "campaign depository." *See* 2 U.S.C. 432(h) and 11 CFR 103.2.

Some commenters asked the Commission to include in this definition the requirement that only Federal funds and funds transferred for the purpose of paying the non-Federal share of allocated expenditures may be deposited into these accounts. This topic is treated elsewhere in the Commission's rules and in this rulemaking. *See* 11 CFR 103.3, 106.5(g), 300.30, and 300.33.

G. 11 CFR 300.2(g) Definition of "Federal Funds"

Paragraph (g) of section 300.2 defines "Federal funds" to mean funds that comply with the limitations, prohibitions, and reporting requirements of the FECA. The Commission received no comments regarding this definition.

H. 11 CFR 300.2(h) Definition of "Levin Account"

Section 300.2(h) defines "Levin account" as an account established by a State, district, or local committee of a political party pursuant to 11 CFR 300.30 for purposes of making expenditures or disbursements for Federal election activity or non-Federal activity (subject to State law) under 11 CFR 300.32(b). The Commission revised the definition proposed in the NPRM to clarify that these accounts must be established at a campaign depository in accordance with 2 U.S.C. 432(h).

The NPRM raised substantive questions on the operation of these accounts. The comments that addressed these questions are discussed in connection with 11 CFR 300.30, below.

I. 11 CFR 300.2(i) Definition of "Levin Funds"

As explained above, BCRA's Levin Amendment provides that State, district, and local political party committees may spend certain non-Federal funds for Federal election activities if those funds comply with certain requirements. 2 U.S.C. 441i(b)(2)(A)(ii). Thus, these funds are unlike Federal funds, which are fully subject to the Act's requirements, and unlike ordinary non-Federal funds because they are subject to certain additional requirements under BCRA.

Section 300.2(i) defines these funds as "Levin funds," with the intention that "Levin funds" become a definite, unambiguous reference to such funds. The Commission has slightly modified the definition proposed in the NPRM for streamlining purposes, but has made no substantive changes.

One commenter requested that the Commission use a "functionally descriptive" term, such as "specially allocated," for these funds, rather than the name of their legislative sponsor. It proved difficult, however, to draft a term that clearly and unambiguously includes these funds, while excluding all others. For that reason, the Commission has retained the term "Levin funds" in the final rules.

Two commenters suggested that the definition should include the limits on the use of the term "Levin funds" found at 2 U.S.C. 441i(b)(2)(A). These restrictions go to the use of the funds, and are implemented in 11 CFR 300.32, to which the definition in 11 CFR 300.2(i) already expressly refers. Therefore, these restrictions are not repeated in this definitional paragraph.

J. 11 CFR 300.2(j) Definition of "Non-Federal Account"

Section 300.2(j) defines "non-Federal account" as an account that contains funds to be used in connection with a State or local election or allocable expenses under 11 CFR 106.7, 300.30, or 300.33. The term "financial depository institution" proposed in the NPRM has been deleted because non-Federal accounts are not required to comply with 2 U.S.C. 432(h).

Consistent with the revisions to 11 CFR 106.7 discussed above, the definition has been expanded to include accounts used for payment of certain allocable activities. The account may also serve as a depository for Levin funds, provided that the committee complies with the requirements of 11 CFR 300.30, below.

No commenters addressed this paragraph.

K. 11 CFR 300.2(k) Definition of "Non-Federal Funds"

This section defines "non-Federal funds" as funds that are not subject to the limitations and prohibitions of the Act. No commenters addressed this definition.

L. 11 CFR 300.2(m) and (n) Definitions of "To Solicit," and "To Direct"

The NPRM proposed a definition of "to solicit or direct" a contribution or donation, which would be located at 11 CFR 300.2(m). The proposed definition included a request, suggestion, or recommendation to make a contribution or donation, including those made through a conduit or intermediary. The Commission's final rule defines "to solicit" as "to ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary." Similarly, the Commission defines "to direct" as "to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value, including through a conduit or intermediary."

Comment was sought as to whether the proposed definition was too broad or narrow, as well as to whether the term "direct" in BCRA should be interpreted to follow the earmarking rules regarding contributions directed through a conduit or intermediary under 2 U.S.C. 441a(a)(8). Comment was also sought as to whether the passive providing of information in response to an unsolicited request for information should be specifically excluded from this definition.

Two commenters, a labor organization and a public interest organization, expressed qualified support for the proposed rule. The labor organization stated that it concurred with the proposed rule, and that it particularly endorsed the express acknowledgment that the mere provision of information or guidance as to applicable legal requirements does not fall within the statutory language. The public interest organization stated that the proposed rule was "generally consistent" with the letter and spirit of BCRA. For purposes of clarity, it suggested that the proposed rule be revised to read: "Merely providing information or guidance as to the requirements of applicable law is not a solicitation."

In contrast, five commenters argued that the proposed rule was too vague or broad. A group representing certain State parties stated that the phrase "request, suggest and recommend" is an invitation for endless Commission investigation. This commenter urged that "solicit" be limited to an explicit request that a person make a contribution. This commenter also supported including examples in the Explanation and Justification of what is not soliciting or directing. Likewise, national party political organizations asserted that the final rule should not contain a reference to "suggestion" because that is too vague a term, and compels inquiry into whether a communication conveys a sense, or creates an impression, of a solicitation. These commenters believed BCRA's rules should be concrete. This group further urged that clear exclusions should be provided, such as for inquiries into positions or issues, as well as political speech or commentary to an audience who may respond with contributions in the absence of an express request for them.

Another commenter, a public interest organization, stated that "ambiguous standards" such as "suggest[ion]" or "series of conversations" will merely lead to confusion. This commenter suggested that the Commission look to past advisory opinions for guidance. Similarly, a State and a national political party argued that "request, suggest and recommend" is unconstitutionally vague and potentially overbroad, as it would involve an investigation into what a person meant in a series of conversations, and would thus chill political speech. A Latino rights group and a taxpayers' organization commented that in light of the "severe restrictions now imposed by BCRA," there need to be "clear definitive guidelines" in this area. Specifically, the Latino rights group and the taxpayers' organization argued that "[a]mbiguous standards such as 'suggestion' or a 'series of conversations which taken together constitute a request for a contribution or donation, but which do not do so individually' will lead to more confusion and allegations of violations." Several party committee commenters argued that solicitation should be confined to an explicit request that an entity make a contribution.

Three commenters argued that the proposed rule was too lenient. One public interest organization stated that the discussion should include scenarios where a person suggests where a contributor, who has already decided to make a contribution, should send their contribution. This commenter read the proposed rule as confining itself to candidates, committees and nonprofits, and suggested it should also apply to solicitations from individuals, partnerships, labor organizations, and corporations. Another public interest organization agreed with the first point of the previous response. The sponsors of BCRA stated that the proposed definition failed to capture the plain meaning of the words and to effectuate the central goal of the law. They supported the position regarding suggestions to already-willing contributors. These commenters read the proposed rule in the same manner as the public interest organization, as if

it only applies to candidates, committees and nonprofits. They stated that, "certain provisions in the Act apply to soliciting contributions from any 'person,' which would obviously include individuals and corporations." They urged that the rule be modified to reflect this.

The Commission has determined that the concepts of "to solicit" and "to direct" embody different activity, and they thus should be separately defined. Accordingly, 11 CFR 300.2(m) defines "to solicit," and 11 CFR 300.2(n) contains the definition of "to direct." Both definitions include "transfer of funds" and "anything of value" in addition to "contribution" and "donation," because the phrases "transfer of funds" and "anything of value" or "any other thing of value" appear several times *in seriatim* with "contribution" and "donation" in applicable rules. *See, e.g.*, 11 CFR 300.2(b)(1)(i).

Comments were sought as to whether the concept of soliciting should apply to a series of conversations which, when taken together, constitute a request for contributions or donations. BCRA's sponsors and several public interest organizations supported applying the definition to a series of conversations if, when taken as a whole, they are consistent with a solicitation, stating that, otherwise, restrictions will be easily circumvented. One group of national political party organizations opposed applying the rule to a series of conversations, stating that it would involve heavy government involvement in deciphering political speech and that the Commission should look only at express statements.

The Commission does not believe it is appropriate to promulgate a regulation that would require examination of a private conversation to impute intent when the conversation is not clear on its face. The Commission is concerned that the ability to impute intent could lead to finding a violation when the individual who made the comment may have had no intention whatever of soliciting a contribution. Such a result is not dictated by BCRA's statutory language, and would raise constitutional concerns.

For the reasons set forth above, the Commission is not defining "to solicit" in terms of a series of conversations.

Regarding the definition of the term "to direct," the Commission sought comment as to whether it should be interpreted to follow earmarking rules under 2 USC 441a(a)(8). A group of State party leaders supported limiting "to direct" to the definition at 11 CFR 110.6(b)(2), as did one of the national political parties. One of the public interest organizations opposed this approach, stating that this was inconsistent with BCRA and far too narrow an approach. None of the commenters explained their criticisms in detail.

This issue of the meaning of "to direct" is also tied to another question asked by the Commission: whether the passive providing of information in response to an unsolicited request for information should be specifically excluded in this definition. Two commenters, a public interest organization and the sponsors, felt that the Commission should not exclude providing information if that information includes the names of organizations to which contributions can be made. One commenter, a national political party, said that such information should be excluded, because any other approach would be unworkable and would lead to endless accusations and investigations.

The Commission concludes that a precise definition in this context is necessary to avoid vague and overbroad application of the term. Therefore, the regulation defines "to direct" as "to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value."

The final rules in 11 CFR 300.2(m) and (n) each include a statement indicating that merely providing information or guidance as to the requirements of particular law is not solicitation or direction. Each rule confines itself to defining the term as it appears in part 300 of the Commission's regulations.

M. 11 CFR 300.2(o) Definition of "Individual Holding Federal Office"

New section 300.2(o), which parallels 11 CFR 100.4 (definition of "Federal office") and 11 CFR 113.1(c) (definition of "Federal officeholder"), has been added for the reader's convenience. Consistent with those sections and 2 U.S.C. 431(3), it states that "individual holding Federal office" means an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States. It does not, however, include officeholders who are appointed to positions such as the secretaries of departments in the executive branch, or other positions that are not filled by election.

Subpart A—National Party Committees

11 CFR 300.10 General Prohibitions on Raising and Spending Non-Federal Funds

BCRA prohibits national party committees from raising and spending non-Federal funds, that is, funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act. *See* 2 U.S.C. 441i(a). The Commission is placing the regulations that address this prohibition in a new part of the Code of Federal Regulations, 11 CFR part 300, subpart A. In addition to this new subpart, the Commission is amending several sections of its current rules to conform to these prohibitions. *See* Explanation and Justification for 11 CFR 102.5 and 106.5.

Paragraph (a) of new section 300.10 tracks the language of BCRA, which prohibits national party committees from soliciting, receiving, or directing to another person "a contribution, donation, or transfer of funds or any other thing of value," or spending funds that are not subject to the Act's prohibitions, limitations, and reporting requirements. Accordingly, as of November 6, 2002, BCRA's effective date, national party committees must not receive or solicit or direct to another person contributions or donations from corporations, labor organizations or other prohibited sources, and must not receive or solicit or direct to another person contributions or donations from individuals and others that exceed the amount limitations of the Act. Additionally, after a brief transition period set forth in 11 CFR 300.12, discussed below, all expenditures and disbursements made by a national party committee, including donations to State and local candidates and donations and transfers to State party committees, must be made with funds that comply with the limitations, prohibitions, and reporting requirements of the Act.

BCRA's ban on the raising and spending of non-Federal funds by national party committees has widespread application. Tracking the language in 2 U.S.C. 441i(a)(1) and (2), 11 CFR 300.10(a) and (c) provide that the ban on raising and spending non-Federal funds also applies to the national congressional campaign committees (currently, the Democratic Senatorial Campaign Committee, the National Republican Senatorial Committee, the Democratic Congressional Campaign Committee, and the National Republican Congressional Committee), to officers and agents acting on behalf of a national party committee or a national congressional campaign committee, and

to any entities directly or indirectly established, financed, maintained, or controlled by either. As noted by one of BCRA's congressional co-sponsors during the congressional debate, "[t]he provision is intended to be comprehensive at the national party level. Simply put, the national parties and anyone operating on behalf of them are not to raise or spend, nor to direct or control, soft money." 148 Cong. Rec. H408–409 (daily ed. February 13, 2002) (statement of Rep. Shays).

Thus, under BCRA and 11 CFR 300.10, a Federal candidate or a Federal officeholder acting on behalf of a national congressional campaign committee must not solicit or direct to any person funds from corporations or labor organizations, or funds from individuals or entities in amounts that exceed the Act's contribution limits.

Section 300.10(a)(3) makes clear that national parties cannot raise, spend, or direct to another person Levin funds. *See* 2 U.S.C. 441i(b)(2)(A) and (B) and 11 CFR 300.31, discussed below.

Section 300.10(b) tracks the statutory language at 2 U.S.C. 441i(c). It provides that national parties and others covered by section 300.10(a) must use only Federal funds to finance Federal election activity.

The NPRM noted that the Commission would address in a subsequent rulemaking whether BCRA bans national party committees, and their officers and agents, from directing non-Federal funds to a host committee for a national party convention in light of the statutory language that they are not permitted to direct non-Federal funds to other persons. *See* 2 U.S.C. 441i(a)(1). In comments submitted to the NPRM, BCRA's sponsors stated that since BCRA prohibits national parties and their agents from soliciting or directing non-Federal funds to any person, they could not raise or direct non-Federal funds to host committees. 2 U.S.C. 431(11) of FECA defines "person" to include "a committee * * * or any other organization or group of persons * * *" It has also been suggested that no further rulemakings are necessary, as a host committee would be treated as any other 501(c) organization under the Act. The Commission has decided that the sponsor's interpretation of BCRA and additional issues concerning BCRA's effect on conventions will be addressed, if necessary, in a future rulemaking on national party conventions.

Virtually all of the commenters opined that the definition of "agent" was critically important to many of BCRA's provisions, including 11 CFR 300.10.

The breadth of the national party non-Federal funds prohibition is limited in 2 U.S.C. 441i(a)(2) and in 11 CFR 300.11(c) to the extent that the prohibition applies to officers and agents "acting on behalf" of national parties. This limiting construction appears in other Federal statutes and indeed, in some State campaign finance laws. The Commission also has decided to limit the definition of "agent" to those individuals who have actual authority to act on behalf of their principals. *See* Explanation and Justification for 11 CFR 300.2(b) above.

Several party committee commenters expressed the view that, despite BCRA's broad prohibition on national parties' raising and spending non-Federal funds, the Commission should consider a rule that would permit national parties to continue to maintain non-Federal accounts devoted specifically to support State and local candidates as long as funds raised for such an account meet the source and contribution limits of the Act. The party committees' position is based on the NPRM's discussion of "leadership PACs" maintained by Federal candidates and on statements made by a principal BCRA sponsor during the Senate debate. 148 Cong. Rec. S2140 (daily ed. February 20, 2002) (statement of Senator McCain). Specifically, Senator McCain interpreted 2 U.S.C. 441i(e)(1)(A) and (B) (*see* 11 CFR 300.61 and 300.62) to permit a Federal candidate or officeholder to raise funds for both a Federal and non-Federal account of a leadership PAC, provided that the funds raised for the non-Federal account met the source and contribution limits of the Act. The party committees' comments specifically referenced another statement made by Senator McCain suggesting that an officeholder could solicit a donation up to the Act's contribution limits for the non-Federal account of a leadership PAC, even if the donor had already contributed to the PAC's Federal account. The application of these statutory provisions to leadership PACs and candidate PACs is discussed below. *See* Explanation and Justification for 11 CFR 300.62. Regardless of the application of BCRA to leadership PACs and candidate PACs under 2 U.S.C. 441i(e)(1), however, the plain language of the ban on national party non-Federal fundraising at 2 U.S.C. 441i(a) cannot be plausibly construed to allow party committees to continue to raise non-Federal funds for any purpose. The language is broad in prohibiting a national party committee from soliciting, receiving, or directing to another person "a contribution, donation, or transfer of funds or any other thing of value" or spending funds that are not subject to the Act's limitation, prohibitions, and reporting requirements. A separate "non-Federal" account, even if it contained funds that complied with the prohibitions of the Act, would not contain funds complying with the amount limitations of the Act, if for example, individuals gave $20,000 per year to a national party's account and also gave another $20,000 to the party's "non-Federal" account as suggested by the party committee commenters.

The legislative history supports this statutory interpretation. As noted above, a primary sponsor of BCRA in the House specifically explained the national party non-Federal funds ban as follows: "The soft money provisions of the Shays-Meehan bill regarding the national political parties operate in a straightforward way. The national parties are prohibited entirely from raising or spending any soft money * * * The purpose of these provisions is simple: to put the national parties entirely out of the soft money business." 148 Cong. Rec. H408 (daily ed. February 13, 2002) (statement of Rep. Shays). According to Congressman Shays, the prohibition "covers all activities of the national party committees, even those that might appear to affect only non-federal elections." Shays further explained the reason for the ban: "Because the national parties operate at the national level, and are inextricably intertwined with Federal officeholders and candidates, who raise money for the national party committees, there is a close connection between the funding of the national parties and the corrupting dangers of soft money on the federal political process." *Id.* at H409.

In addition, a comment by one of BCRA's principal sponsors stated that Congress' intent was absolutely clear that BCRA prohibits national party committees from raising, spending or directing non-Federal funds. He further pointed out that an amendment that would have allowed party committees to continue to raise "soft money" subject to limits on the amounts and purposes failed. The Commission notes that a House amendment that would have continued to permit national parties to raise non-Federal funds for certain activities in amounts not exceeding $20,000 per year per person was defeated. *See* 148 Cong. Rec. H459-H465 (daily ed. February 13, 2002).

Finally, the party committee commenters also maintained that the Commission should define the term "donation," which is not defined in BCRA, to exclude funds received by

national party committees for certain purposes such as funds provided for redistricting, legal expense funds, and the payment of civil penalties for violations of the Act. The parties argued that the Commission has, over time, recognized these activities as wholly exempt from the reach of FECA.

As discussed in the Explanation and Justification for the definition of "donation" at 300.2(e), the plain language of BCRA, supported by the legislative history, indicates that the ban on national party raising and spending non-Federal funds was intended to be broad, prohibiting a party from raising, receiving, or directing to another person " a contribution, donation or transfer of funds, or *any other thing of value*" or spending "*any funds*" that are not subject to the Act's limitations, prohibitions, and reporting requirements (emphasis added). Consequently, neither 11 CFR 300.10 nor the definition of "donation" in 11 CFR 300.2(e) contains a sweeping exclusion of donations that would permit national parties to raise funds for these purposes under any and all circumstances. See the Explanation and Justification for 11 CFR 300.2(e) (definition of "donation").

11 CFR 300.11 Prohibitions on Fundraising for and Donating to Certain Tax-Exempt Organizations

BCRA prohibits national party committees, their officers and agents, and entities directly or indirectly established, financed, maintained, or controlled by them from raising any funds for, or making or directing any donations to, certain tax-exempt organizations. 2 U.S.C. 441i(d). BCRA's prohibition on this type of donor and fundraising activity extends only to tax-exempt organizations with a political purpose or that conduct activities in connection with a Federal election. Specifically, this prohibition extends to organizations exempt from taxation under 26 U.S.C. 501(c) that "[make] expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity)." *Id.* (Organizations formed under 26 U.S.C. 501(c) are referred to as "501(c) organizations" below.) The ban also extends to political organizations exempt from taxation under 26 U.S.C. 527 (referred to as "section 527 organizations" below). These entities are defined in the Internal Revenue Code as parties, committees, associations, funds, or other organizations organized and operated primarily to directly or indirectly accept contributions and make expenditures for the "exempt function" of influencing or attempting to influence the selection, nomination, election or appointment of an individual to a Federal, State, or local public office, political organization office, or election of Presidential and Vice Presidential electors. 26 U.S.C. 527(e)(1) and (2). BCRA excludes from the prohibition certain section 527 organizations as discussed below.

The regulations implementing this provision are set forth in new 11 CFR 300.11. A parallel provision of this regulation, 11 CFR 300.50, and others affecting tax-exempt organizations that appear elsewhere in part 300, have been placed together in subpart C for the convenience of those interested in locating rules pertaining to fundraising and donations to tax-exempt organizations.

Section 300.11 as proposed closely tracked the language of BCRA. The final rule has taken into account comments received on questions posed in the NPRM, as discussed below. The Commission also notes that since 11 CFR 300.37 contains a comparable provision applicable to State, district, and local party committees, the discussion below also applies to those entities unless otherwise indicated.

A. General Prohibition

Paragraphs (a)(1) and (2) of the final rules in section 300.11 remain unchanged from the proposed rule except for minor language changes to the description of national congressional campaign committees to conform with other formulations of the phrase.

Paragraph (a)(3) of the final rules implements BCRA's prohibition on national party committee fundraising for, and donating to, a section 527 organization unless the organization is a "political committee," a State or local party committee, or an authorized committee of a State or local candidate. In the context of a parallel provision in 11 CFR 300.37 applicable to State, district, and local party committees, the NPRM asked whether "political committee" should mirror the definition of that term in 2 U.S.C. 431(4), which would encompass only organizations that make contributions and expenditures in connection with Federal elections, or whether the term should be interpreted to also encompass State-registered political committees that support only State and local candidates.

As discussed in the Explanation and Justification for 11 CFR 300.37, commenters supported a broader interpretation of "political committee" in the context of donations by State and local party committees. None of the commenters addressed this issue in the context of the national party prohibition, however. The Commission concludes that the broad prohibition applicable to national party fundraising and spending in 2 U.S.C. 441i(a) (see 11 CFR 300.10) prevents a broader construction of "political committee" in 11 CFR 300.11. Thus, 2 U.S.C. 441i(a) prohibits national party committees from soliciting or directing to another person "a contribution, donation or transfer of funds or any other thing of value" or spending any funds that are not subject to the limitations, prohibitions and reporting requirements of the Act. Funds solicited or directed by a national party committee to a State-registered section 527 organization are not subject to the reporting requirements of the Act. Accordingly, in the final rules, paragraph (a)(3)(i) of 11 CFR 300.11 prohibits national party committees from soliciting funds for, or making donations to a section 527 "political committee" unless the organization is a "political committee" as defined in 11 CFR 100.5.

Paragraph (b) of 11 CFR 300.11, which describes the other persons and entities to whom the prohibition applies, remains unchanged from the proposed rule. The NRPM asked whether the final rule should provide examples of the types of persons and entities covered by this provision, and sought specific examples that might illuminate the scope of this provision. Although many commenters expressed approval for including examples as to who is covered by the provision, none provided specific examples. The final rule does not include specific examples.

The NPRM also sought comments on whether the regulations should contain a temporal requirement so that the prohibition on national and State party fundraising and donations to non-profits is appropriately circumscribed and does not encompass, for example, an organization that made expenditures and disbursements in connection with a Federal election many years ago but has not done so recently and does not plan to do so in the future. After further consideration, the Commission has determined that a temporal requirement is unnecessary because the statutory language, "makes expenditures and disbursements * * *" is in the present tense. Thus, the final rules do not contain a temporal requirement. The definition of a 501(c) organization "that makes expenditures and disbursements in connection with a Federal election" at 11 CFR 300.2(a) encompasses an organization's activities in the current two-year election cycle only. *See* the

Explanation and Justification of 11 CFR 300.2(a) for further discussion.

One non-profit organization urged the Commission to exclude 501(c)(3) organizations from the party committee fundraising/donation prohibition. This commenter argued that because 501(c)(3) organizations are required by tax law to undertake only election-related activity that cannot benefit any particular candidate or party, they should not be subject to the prohibition. However, the plain language of BCRA applies to all 501(c) organizations that make disbursements or expenditures in connection with Federal elections, including expenditures and disbursements for Federal election activity. Financing certain voter registration and GOTV activities are considered Federal election activities under BCRA and new 11 CFR 100.24. Moreover, even nonpartisan voter registration and GOTV activities are capable of having an impact on Federal elections. Indeed, BCRA's co-sponsors specifically indicated in their comments that nonpartisan voter registration drives or GOTV activities were not intended to be excluded from the definition of Federal election activity. The Commission notes that this provision does not prohibit non-profit organizations from undertaking any type of voter registration or GOTV activities. Because Congress clearly could have excluded 501(c)(3) organizations from this provision but chose not to do so, the final rules do not include any such exclusion or exemption.

B. Safe Harbor Provisions

The NPRM asked whether a safe harbor provision should be provided so that a national or State party committee and others affected by the prohibition may raise funds for or make donations to a section 501(c) or a section 527 organization if they take certain steps to ensure that the organization is not one that falls within the prohibition. The NPRM listed examples of possible safe harbors such as requiring party committees to: (1) Obtain and examine a 501(c) organization's application for tax-exempt status or annual IRS Form 990 returns to determine whether the organization has reported making, or indicates plans to make, expenditures or disbursements in connection with a Federal election, or (2) with respect to current or planned activity, obtain and examine a certification from the organization that indicates it does not make, or plan to make, such expenditures.

The commenters agreed that the regulations should provide a safe harbor for national and State party committees. The commenters split, however, on what the safe harbor should be. The primary sponsors of BCRA and one public interest group suggested that section 501(c) and section 527 organizations be required to file sworn certifications with the Commission, enforceable under 18 U.S.C. 1001, upon which a party committee could rely in determining whether it could solicit funds for, or make or direct donations to, such organizations. The sponsors of BCRA urged that party committees be held strictly liable for any violations of the Act if, in the absence of such a certification, an organization misrepresents itself.

Without addressing the concept of a safe harbor, another public interest group commented that a party committee should be required to obtain a sworn certification from a section 501(c) or a section 527 organization for whom it wishes to solicit or to whom it wishes to donate or direct funds.

Several party committee commenters expressed approval for a safe harbor that would permit a party committee to obtain and rely on applications for tax-exempt status or IRS Form 990 returns to determine whether it could permissibly fundraise for, or donate to, a tax-exempt organization. One commenter suggested that party committees be given a choice between obtaining certifications or relying upon publicly available tax documents. A labor organization argued that the regulations should not require party committees to investigate non-profits it wishes to donate to or assist. Rather, this commenter urged that the Commission adopt specific language that a party committee could use, presumably in a cover letter, when it makes a donation to a 501(c) to serve as a safe harbor "from prosecution." The commenter suggested that the party committee merely be required to state to the section 501(c) organization that any funds it donated cannot be used for activities that would "constitute an expenditure in a Federal election."

In considering how to implement these BCRA provisions, the Commission has concluded that a safe harbor is an appropriate way to help ensure that party committees, and others to whom 11 CFR 300.11 and 300.37 apply, comply with the Act. The Commission believes that requiring a 501(c) organization to file a certification with the Commission would be burdensome. However, requiring party committees and others covered by this provision to obtain a written certification from an official with knowledge of an organization's activities is the best way to ensure that the party committee or other person has information as to whether a particular organization engages in certain election-related activities. IRS Form 990s may not clearly show whether an organization has undertaken specific election-related activities. Moreover, these forms do not provide information on current activities. Accordingly, new paragraph (c) of the final rule provides that a party committee may obtain and rely upon a certification from a section 501(c) organization to determine whether it may permissibly raise funds for, or make or direct donations to, the organization.

New paragraph (d) of the final rule sets forth specific criteria a certification must include. These criteria are: (1) That the certification is a signed written statement by an officer or other authorized representative with knowledge of the organization's activities; (2) that the certification states that, within the current two-year election cycle, the organization has not made, and does not intend to make, expenditures or disbursements in connection with an election for Federal office (including for Federal election activity); and (3) that the certification states that the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior two-year election cycle. The Commission believes that a requirement that the certification be sworn to is unnecessary and that a certification is sufficiently reliable if it is made in writing by an official of a tax-exempt organization with knowledge of the organization's activities. Moreover, requiring that the certification contain a statement that an organization does not intend to pay Federal-election related debts from a prior cycle will help ensure that the prohibition is not evaded.

New paragraph (e) states that a certification cannot be relied upon if a national party committee, its officers or agents, or others covered by the prohibition has actual knowledge that the certification is false.

Finally, the NPRM sought comments on whether it would be considered "directing" a donation if a party committee responded to an unsolicited request for information about organizations that share a party's political, social, or philosophical goals. Commenters who addressed this point stated that sharing such information would be permissible. One party commenter opined that it would be unconstitutional to try to prohibit this sharing of information as well as

difficult to enforce. A public interest group commenter noted that responding to such requests was permissible but would amount to "directing" a donation if the donor's request or the party's response was in connection with a proposed "or potential" donation.

The Commission agrees that a rule prohibiting this type of information-sharing is not necessary to enforce BCRA and would create significant constitutional concerns. Therefore, new paragraph (f) of the final rules states that it is not prohibited for a national party or its agents to respond to a request for information about a tax-exempt group that shares the party's political or philosophical goals.

11 CFR 300.12 Transition Rules

One of the BCRA amendments to the FECA prohibits national party committees from raising and spending non-Federal funds after November 5, 2002, the effective date of BCRA.[5] 2 U.S.C. 431 note. BCRA, however, created a transition period between November 6, 2002 and December 31, 2002, that permits national party committees to spend non-Federal funds in their accounts as of November 5, 2002, for certain expenses and debts. The rules governing the use of non-Federal funds by national party committees, including national congressional campaign committees, during this transition period are set forth in 11 CFR 300.12.

A. Permissible Uses of Excess Non-Federal Funds During the Transition Period

Paragraph (a) of section 300.12 describes the two permissible uses of funds in a national committee's non-Federal accounts, other than an office building or facility account, as of November 5, 2002. They are: (1) To retire outstanding non-Federal debts or non-Federal obligations incurred solely in connection with an election held before November 6, 2002; or (2) to pay non-Federal expenses or retire outstanding non-Federal debts or obligations incurred solely in connection with any run-off election, recount, or election contest resulting from an election held prior to November 6, 2002. BCRA expressly provides that, subject to the restrictions incorporated into paragraph (b) of 11 CFR 300.12, these non-Federal funds must be used solely for the two enumerated purposes and must be spent before January 1, 2003. 2 U.S.C. 431 note.

[5] The raising and spending of non-Federal funds by State, district, and local committees or organizations are addressed in 11 CFR part 300, subpart B, discussed below.

The NPRM sought comments on whether the use of the word "solely" in the enumeration of the permissible uses of non-Federal funds in paragraph (a) during the transition period precluded permitting any funds remaining thereafter to be disgorged to the United States Treasury or donated to a charitable organization. The Commission received several comments on this issue as well as suggestions for other permissible uses under paragraph (a).

The commenters split on whether the Commission should permit remaining non-Federal funds in any non-Federal account to be donated to charity. BCRA's sponsors and one public interest group stated that BCRA provides no statutory basis for transferring any non-Federal funds as of November 6, 2002, to non-profit organizations and doing so could undermine a central purpose of the law which is to prohibit national party non-Federal funds from being used in the 2004 elections. Since charitable organizations under section 170 include section 501(c)(3) organizations, the sponsors pointed out that there is a potential that any donated funds could be used for Federal election purposes in the next election. Section 501(c)(3) organizations are permitted to engage in voter registration, get-out-the-vote activities, and other activities defined as "Federal election activities" in BCRA.

The sponsors suggested, instead, that any funds remaining in a national party committee's non-Federal accounts be either disgorged to the United States Treasury or refunded to donors on a *pro rata* basis. Another commenter concurred with this suggestion, pointing out that because the statutory language only permitted specific uses during the transition period, any funds remaining thereafter must be disgorged or refunded.

On the other hand, other commenters believed that permitting donations to at least some charitable organizations was permissible. A public interest group commented that the Commission could require disgorgement or permit donations to charitable organizations as long as the charitable organization is not one that the national parties would be prohibited from donating to under 11 CFR 300.10(b). A commenter from a non-profit organization maintained that BCRA should be construed to permit national parties to use any non-Federal funds remaining after payment of non-Federal election-related debts for any purpose currently permitted under FECA. According to this commenter such a construction is warranted because BCRA is silent as to the disposition of funds during the transition period after permissible debts are paid under paragraph (a) of 11 CFR 300.12, and only specific uses are prohibited in paragraph (b). The commenter further stated that the rules should permit national parties to transfer non-Federal funds remaining after non-Federal debt is paid to 501(c) organizations because these organizations are required to engage in non-partisan charitable or social welfare activity under tax law. None of the party committee commenters addressed this issue.

The final rules address the disposal of excess non-Federal funds in new paragraph (c), discussed below. Other minor changes made to paragraph (a) in the final rules include: the word "only" has been changed to "solely" to better track the language used in BCRA and a reference to paragraph (e) has been deleted. Changes in the organization of 11 CFR 300.12 are discussed below.

B. Prohibited Uses of Non-Federal Funds After November 5, 2002

BCRA provides that the permissible uses of non-Federal funds enumerated in paragraph (a) are subject to certain restrictions. The final rules at 11 CFR 300.12(b) set forth these restrictions. Specifically, paragraph (b) states that national party committees will no longer be able to use non-Federal funds for any of the following activities after November 5, 2002: (1) To pay any expenditure as defined in 2 U.S.C. 431(9); (2) to retire outstanding debts or obligations that were incurred for any expenditure; or (3) to defray the costs of the construction or purchase of any office building or facility. The final rules track the language in the proposed rules. The Commission did not receive any comments concerning this paragraph, other than those pertaining to building funds, which are discussed below.

C. Disposal of Remaining Non-Federal Funds

New paragraph (c) provides that any non-Federal funds remaining after payment for permissible debts and obligations described in paragraph (a) must be either disgorged to the United States Treasury or returned by check to the donors by December 31, 2002. This approach gives effect to the use of the word "solely" in 2 U.S.C. 431 note, and to the legislative intent to prohibit national party non-Federal money from being used in future Federal elections. The Commission did not adopt the suggestion that refunds must be made to contributors on a *pro rata* basis. National party committees have the

option of making these refunds on a last-in, first-out (LIFO) or first-in, first-out (FIFO) basis. Paragraph (c) further provides that all refund checks not cashed by donors by February 28, 2003 must be disgorged to the United States Treasury by March 31, 2003. The latter provision ensures that the national party committees do not make use of any uncashed refund checks. Requiring either disgorgement to the United States Treasury or refunds to donors is consistent with the Commission's practice in enforcement matters when a contributor has made, and a political committee has accepted, funds prohibited under the Act.

D. National Party Committee Office Building or Facility Accounts

BCRA treats non-Federal funds contained in national party building fund accounts more stringently than non-Federal funds in the national party committees' other non-Federal accounts. Under current law, funds in a national party building fund account may be used only for the purchase or construction of the national party committees' office building or facility. Beginning November 6, 2002, however, any funds remaining in a national party building fund account must not be used for the purchase or construction of any office building or facility. *See* 2 U.S.C. 431 note. Consequently, the Commission proposed requiring that funds on deposit in any party office building or facility account be disgorged to the United States Treasury or donated to a organization described in 26 U.S.C. 170(c) no later than December 31, 2002.

As discussed above, although some commenters suggested that national party committees be permitted to donate the remaining non-Federal funds to a charitable organization, other commenters noted that such organizations include organizations exempt under 26 U.S.C. 501(c)(3) which could result in non-Federal funds making their way into future Federal elections since 501(c)(3) organizations may engage in Federal election activity such as voter registration and get-out-the-vote activities. For this reason, the final rule in 11 CFR 300.12(d) follows the approach taken in paragraph (c) for disposal of excess non-Federal funds: Paragraph (d) requires that non-Federal funds remaining in national party building and office facility accounts on November 6, 2002 be disgorged or refunded to donors by December 31, 2002. As in paragraph (c), any refund checks not cashed by donors by February 28, 2003, must be disgorged to the United States Treasury by March 31, 2003.

Additionally, in their comments, the sponsors pointed out that while the proposed rule only prohibited excess building funds from being used to construct or purchase a national party office building, the statutory language prohibits the use of such funds to defray construction or purchase costs for "any" office building or facility. *See* 2 U.S.C. 431 note. Paragraph (d) of the final rules also incorporates this change.

E. Application

The final rule at 11 CFR 300.12(e) clarifies that the transition rules apply to officers and agents acting on behalf of a national party committee or a national congressional campaign committee, and to entities that are directly or indirectly established, financed, maintained, or controlled by a national party committee or a national congressional campaign committee. The Commission did not receive any comments relating to this provision. The final rule follows the proposed rule at 300.12(c) except that it has been redesignated as paragraph (e).

F. Allocation and Payment of Expenses During the Transition Period

Section 300.12(f) clarifies that the allocation rules applicable to national party non-Federal and Federal accounts in revised 11 CFR 106.5 remain in effect during the transition period. No comments addressed this provision. The final rules in paragraph (f) are identical to proposed paragraph (d).

11 CFR 300.13 Reporting

BCRA requires national party committees, including national congressional campaign committees, and any subordinate committee of either, to report all receipts and disbursements during regular reporting periods. 2 U.S.C. 434(e). New 11 CFR 300.13(a) tracks the statutory language.

The NPRM sought comment on whether this provision of BCRA was intended to require reporting by existing entities that currently are not required to report and sought the identity of any such entities. The primary sponsors of BCRA commented that the term "subordinate committee" was intended to ensure that any new committees created by the national party committees would file required reports for all receipts and disbursements. The sponsors further stated that this provision requires existing entities that are subordinate to the national parties to report all of their receipts and disbursements whether or not they are required to do so under current law. The sponsors and several other public interest group commenters identified the College Democrats and College Republicans as subordinate committees of the national parties. None of the party committee commenters addressed this point.

Although neither BCRA nor FECA contains a definition of a "subordinate committee" of a national political party, the phrase is used in 2 U.S.C. 441a(a)(4). That provision states that limitations on contributions do not apply to transfers between and among political committees that are national, State, district, or local committees of the same political party "including any subordinate committee thereof." In Advisory Opinion 1976–112, the Commission concluded that Democrats Abroad was a subordinate committee of the Democratic National Committee for purposes of 2 U.S.C. 441a(a)(4). The advisory opinion noted that the group was "an organization of American citizens living overseas who support the basic principles of the National Democratic Party," had a central office in London, and local clubs in several countries that anticipated reaching political committee status. The Commission concluded that Democrats Abroad functioned as a part of the official structure of the Democratic Party and represented the Democratic Party to Americans living in foreign countries. Factors relied upon in this conclusion included: the group held fundraisers, the proceeds of which were donated to the DNC; the Democratic Party charter authorized a voting delegate from the group to participate at the 1976 party convention; the Call to Convention gave the group three votes to be cast by six delegates elected by group members in accordance with the rules of the party's Compliance Review Commission; the group was allowed representation on the Standing Committee of the Democratic Party; and the group functioned as a party committee by participation in voter registration and GOTV drives for the Democratic Party in 1976. The Commission specifically rejected the conclusion that Democrats Abroad was the equivalent of a State party committee based on the statutory definitions of "State committee" and "State."

Based on the prior construction of the term in Advisory Opinion 1976–112, the Commission concludes that a "subordinate committee" of a national party committee is one that is affiliated with, and participates in, the official party structure of the national party committee. As applied to a particular group, whether an organization is a subordinate committee of a national party is a factual determination. Based on the broad legislative intent to

prohibit national parties from raising and spending non-Federal funds, however, the Commission further concludes that a subordinate committee for purposes of 11 CFR 300.13(a) is an entity that is directly or indirectly established, financed, maintained, or controlled by a national committee of a political party.

Since national party committees and entities directly or indirectly established, financed, maintained, or controlled by them cannot solicit, receive, direct, or spend non-Federal funds as of November 6, 2002, and must dispose of all funds in their non-Federal accounts as of December 31, 2002, 11 CFR 300.13(b) requires national party committees and their subordinate committees to file termination reports for all non-Federal accounts, whether or not a subordinate committee was required to file disclosure reports under FECA prior to BCRA. Paragraph (b) of the final rule also takes into consideration the Commission's determination that excess non-Federal funds must be either refunded to donors or disgorged to the United States Treasury. If a national party committee does not issue refund checks, the national party committee must file a termination report for all non-Federal accounts, including building fund accounts by January 31, 2003. If a national party committee issues refund checks to donors, it must file a termination report covering the period ending March 31, 2003 disclosing the refunds and the disgorgement of any refund checks not cashed by February 28, 2003.

Paragraph (c) of § 300.13 makes clear that the reporting regulations at 11 CFR 104.8 and 104.9 applicable to non-Federal accounts, including building funds, will remain in effect during the transition period. Paragraph (c)(2) provides that reporting requirements at 11 CFR 104.9(c) and (d) covering disbursements from non-Federal account and building fund accounts remain in effect for reports covering the period through March 31, 2003. In contrast, under paragraph (c)(1), the reporting requirements at 11 CFR 104.8(e) and (f), covering receipts of non-Federal and building fund accounts and 11 CFR 104.9(e) covering non-Federal account transfers to State party committees, remain in effect only until December 31, 2002.

Subpart B—State, District, and Local Party Committees and Organizations

11 CFR 300.30 Accounts

Under proposed 11 CFR 300.30 in the NPRM, State, district, and local party organizations would have been required to maintain certain separate Levin accounts in depositories if they paid for the costs of voter registration within a fixed time period or for certain voter identification, GOTV, and generic campaign activity pursuant to 11 CFR 100.24 and 300.32(b)(1). Several of the comments received in response to the NPRM agreed with the proposal that all State, district, and local party committees and organizations be required to maintain separate Levin accounts, no matter the organization's size, level of activity and political committee status, if they desired to undertake certain Federal election activities pursuant to 11 CFR 300.32(b). Other comments raised directly or indirectly the issue of whether the Commission should or even could require such accounts, particularly in light of laws in certain States either limiting the number of non-Federal accounts that a State party organization may hold or, more often, requiring numerous such accounts for varying purposes. It was also argued that the number of non-Federal accounts held by a party committee or party organization is a State, not a Federal issue.

The final rules do not require a separate Levin account. Instead, State, district, and local party organizations that decide to undertake activities pursuant to 11 CFR 300.32(b) may deposit Levin funds in either a separate Levin account or their non-Federal account. If a committee's non-Federal account also functions as its Levin account, it must demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that it has sufficient Levin funds to cover the non-Federal share of any disbursement it makes for allocable Federal election activity.

The Commission recognizes that some States already require multiple accounts, while a few may prohibit more than one account for all activity. Most importantly, the Commission is very aware of, and concerned about, the complexities of FECA as amended by BCRA, and wants to provide party organizations with procedural flexibility to facilitate compliance with the substantive conditions and restrictions arising from the Levin Amendment.

The NPRM proposed a requirement that, in order for donations to be placed in a Levin account, either the solicitations for the donations must have expressly stated that donations will be subject to the special limitations and prohibitions of section 300.31, or there must have been an express designation to the Levin account by the donors. Several commenters objected to these requirements, arguing that they are not in BCRA and would be unnecessary, inappropriate, and could make it difficult for State, district and local party committees to engage in bona fide Levin activities. The Commission agrees, and the final rules contain no such requirement.

Paragraph (a) provides an overview of the section and specifies that 11 CFR 300.30 applies to any State, district, or local committee or organization of a political party that has receipts or makes disbursements for Federal election activity, whether or not such committee is a political committee under 11 CFR 100.5.

Paragraph (b) describes the requirements for four different types of accounts: Federal accounts, Levin accounts, non-Federal accounts, and allocation accounts. Paragraph (b)(1) provides for the use of non-Federal accounts by State, district, and local party committees, to the extent permitted by State law, and lists the provisions under which non-Federal funds may be used in connection with Federal elections. Paragraph (b)(2) provides for an account solely for Levin funds, and references 11 CFR 300.31 and 300.32(b), which track the statutory requirements for raising Levin funds and disbursing Levin funds, respectively.

Paragraph (b)(3)(i) requires that only contributions permissible under the Act be deposited into a State, district, or local party committee's Federal account, even when such funds may be used in connection with both Federal and non-Federal elections. It also provides a cross-reference to 11 CFR 103.3, which explains the procedure for dealing with impermissible funds. Paragraph (b)(3)(ii) describes the information that must be provided to or received from contributors regarding contributions deposited in a Federal account. Paragraph (b)(3)(iii) requires that only Federal accounts or allocation accounts be used to make disbursements, contributions, or expenditures in connection with Federal elections. This procedure tracks the longstanding requirements at 11 CFR 106.5 for transfers to Federal accounts or to allocation accounts for shared Federal and non-Federal activity.

Paragraph (b)(3)(iv) provides that, when a Federal rather than an allocation account is to be used to make allocable expenditures, the initial payment must be made from the Federal account with timely reimbursements from other accounts involved in a transaction. Paragraph (b)(3)(v) prohibits transfers

into a party committee's Federal account from other accounts of the same party committee or from other party committees or party organizations to pay for Federal election activity, except as permitted by 11 CFR 300.30(b)(3)(iv), 300.33, and 330.34. The language of this paragraph in the NPRM has been changed to better track the requirements of BCRA.

The NPRM requested comments on whether the Commission should continue to permit the use of allocation accounts for purposes of making allocable expenditures. The consensus of those responding to this question was in the affirmative. Therefore, a new paragraph (b)(4) is being added expressly permitting the establishment of such allocation accounts in lieu of making all allocated expenditures from a Federal account and setting out the requirements for the use of such allocation accounts. Paragraphs (b)(4)(i) and (ii) state that only certain funds may be deposited in each allocation account, depending upon whether the purpose of the account is to make expenditures and disbursements that have been allocated between a party committee's Federal and non-Federal accounts or to make expenditures and disbursements that have been allocated between its Federal and Levin accounts. This rule is necessitated by the requirements in BCRA that define the specific funds that can and cannot be used for such activities. Paragraph (b)(4)(iii) requires that, once allocation accounts are established, they must be used for all allocable expenses so long as the accounts are maintained. Pursuant to paragraph (b)(4)(iv) and (v), only the amount needed to meet the allocable share of expenses may be transferred into these allocation accounts and no funds from these accounts may be transferred out to other accounts.

Paragraph (c) provides three different options for paying for Federal election activity. Paragraph (c)(1) requires that one or more Federal account be established, which would need to be used to pay for Federal election activity that is not allocable, as well as to pay the Federal portion of Federal election activity that is allocable. Paragraph (c)(1) also allows Federal funds to be used in non-Federal elections, provided that the contributors of the Federal funds have been informed that their contributions will be subject to the limitations and prohibitions of the Act and provided that the disbursements are reported pursuant to section 300.36. The phrase "subject to State law" has been added in response to a comment on the NPRM.

Paragraph (c)(2) provides the option of having at least three separate accounts: one or more Federal, Levin, and non-Federal accounts.

Paragraph (c)(3) provides that if a committee opts not to have a separate Levin account, but instead uses its non-Federal account for depositing and disbursing Levin funds, the committee must demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that the committee has sufficient Levin funds on hand to cover disbursements for Levin activity.

Paragraph (d) requires all party organizations to keep records and to make them available to the Commission upon request.

11 CFR 300.31 Receipt of Levin Funds

In BCRA, Congress placed several restrictions on how State, district, and local political party committees raise Levin funds. New 11 CFR 300.31 implements these statutory restrictions. Paragraph (a) states as a general proposition a key point in the statute: a State, district, or local political party committee that spends Levin funds must raise those funds solely by itself. 2 U.S.C. 441i(b)(2)(B)(iv).

Paragraphs (b) and (c) of section 300.31 elaborate on the statutory requirement that Levin funds must be raised from donations that comply with the laws of the State in which the State, district, or local party committee is organized. 2 U.S.C. 441i(b)(2)(B)(iii). Paragraph (b) states this as a general requirement. More specifically, paragraph (c) clarifies the status of donations from sources that are permitted under State law, but prohibited by the Act. A prime example is donations from corporations and labor organizations. Under 2 U.S.C. 441b of the Act, "[i]t is unlawful * * * for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election" for Federal office. 2 U.S.C. 441b(a). Under the campaign finance laws of several States, however, donations by corporations or labor organizations to political party committees are legal. Section 300.31(c) clarifies that in such States, a political party committee may solicit and accept donations of Levin funds from corporations and labor organizations, subject to the other conditions of the Act. (Of course, if donations from corporations or labor organizations to a political party committee are illegal in a State, political party committees in that State would not be able to accept Levin fund donations from those sources.)

Three commenters expressed concern that section 300.31(c), as published in the NPRM, could be misinterpreted to allow donations from foreign nationals. One of these commenters suggested adding the phrase, "other than 2 U.S.C. 441e," after the word "chapter." Although the sweeping nature of the 2 U.S.C. 441e as amended by BCRA seems to preclude the possibility that a donation by a foreign national to a party committee could be lawful under any State law, the Commission has revised paragraph (c) of section 300.31 as suggested.

The principal Congressional sponsors commented that paragraph (c) should not be misinterpreted to allow a donation of Levin funds to a State, district, or local political party committee from a person established, financed, maintained, or controlled by a person forbidden from providing Levin funds to the committee. The Commission has addressed this concern in paragraphs (e) and (f) of section 300.31. (*See* discussion below.)

Paragraph (d), in general, addresses amount limitations on donations of Levin funds to a State, district, or local party committee. In the Levin Amendment, Congress placed a $10,000 per calendar year per donor limitation on donations to a State, district, and local political party committee to be used as Levin funds. This statutory amount limitation applies to a person, including "any person established, financed, maintained, or controlled by such person." 2 U.S.C. 441i(b)(2)(B)(iii). Paragraph (d)(1) clarifies that this is an aggregate limit per recipient committee (i.e., the aggregate limit applies separately to each party committee) and, therefore, a person may contribute to an unlimited number of State, district, and local committees of a political party. *See* discussion of 11 CFR 300.31(d)(3), below. Paragraph (d)(1) did not draw comment. In the NPRM, the Commission sought comment on whether its current "affiliation" regulation (11 CFR 100.5(g)) would appropriately determine whether a person is "established, financed, maintained, or controlled," within the meaning of this paragraph. The Commission received no comments on this point. The Commission, in this rulemaking, is adopting 11 CFR 300.2(c), which is based on 11 CFR 100.5(g), which should be applied to determine whether certain persons share a $10,000 per year per committee contribution amount limitation under paragraph (d)(1).

Paragraph (d)(2) addresses those cases in which State law imposes an amount limitation on donations to a State, district, or local party committee that differs from the amount limitation in 2 U.S.C. 441i(b)(2)(B)(iii) and paragraph (d)(1). Paragraph (d)(2) strikes a balance between respect for State law and protecting the integrity of the Levin Amendment amount limitation. It makes clear that lower State law amount limitations prevail over the $10,000 limitation in the Levin Amendment, but that the Levin Amendment $10,000 limit controls where State law amount limitations exceed $10,000. There were no public comments on paragraph (d)(2).

Paragraph (d)(3) of section 300.31 addresses the question of whether State, district, and local committees of the same political party are affiliated for purposes of applying the donation amount limitation as set forth in paragraphs (d)(1) and (d)(2) of section 300.31. *See generally* 11 CFR 110.3. The paragraph clarifies that such committees are not considered affiliated only for the purpose of determining compliance with paragraph (d)(1). *See* 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

The last sentence of paragraph (d)(3) is intended to make clear that there is no limit to the number of State, district, and local committees to which a person may donate Levin funds. The phrase "individually or together with" in paragraph (d)(3) is intended to clarify that the amount limitations in paragraphs (d)(1) and (d)(2) apply collectively to the amounts donated to a particular party committee by a person and by any entities established, financed, maintained, or controlled by such person.

Three commenters discussed paragraph (d)(3). A national party committee supported the provision. Another commenter suggested that there should be a "rebuttable presumption" of affiliation of party organizations "at the same political or geographic unit" in order to prevent a possible proliferation of party organizations each with its own $10,000 per donor limit. The legislative history indicates, however, that Congress contemplated the possibility of such a proliferation of party committees and chose to address it by imposing a ban on transfers of Levin funds between party committees rather than by affiliating the committees under a single contribution limit. 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002) (statement of Rep. Shays); *see* 2 U.S.C. 441i(b)(2)(B)(iv). Therefore, the Commission has not adopted this suggestion.

As mentioned above in the discussion of paragraph (a) of section 300.31, a key point made in the statute is that expenditures and disbursements of Levin funds by a State, district, or local political party committees must be "made solely from funds raised by the * * * committee which makes such expenditure or disbursement * * *." 2 U.S.C. 441i(b)(2)(B)(iv). Congress elaborated on this fundamental requirement by specifically providing that Levin funds must not be "solicited, received, directed, transferred, or spent by or in the name of" a national committee of a political party, including a national Congressional campaign committee, or a Federal candidate or individual holding Federal office. 2 U.S.C. 441i(b)(2)(C)(i). This statutory prohibition extends to an agent acting on behalf of a national party committee or a candidate or Federal officeholder, and to any entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee or a candidate or Federal officeholder. 2 U.S.C. 441i(a)(2), and (e)(1); *see* 2 U.S.C. 441i(b)(2)(C).

Paragraph (e) of section 300.31 implements these specific statutory restrictions. Paragraph (e)(1) provides that a State, district, or local political party committee must not "accept or use" as Levin funds any funds "solicited, received, directed, transferred or spent" by a national committee of a political party, including a national Congressional campaign committee. Paragraph (e)(2) extends the same prohibition to funds "solicited, received, directed, transferred or spent" by a Federal candidate or officeholder. Two commenters pointed out that paragraphs (e)(1) and (e)(2), as published in the NPRM, did not consistently or expressly refer to agents of, or to entities directly or indirectly established, financed, maintained, or controlled by, national party committees and Federal candidates and officeholders. The prohibition in paragraph (e)(1) has been revised in the final regulation to extend explicitly to agents of, and to entities directly or indirectly established, financed, maintained, or controlled by, national party committees and by Federal candidates and officeholders. Similarly, paragraph (e)(2) has been revised to refer expressly to agents of Federal candidates and officeholders.

Confusion could arise about the relationship of the Commission's long standing joint fundraising regulation, 11 CFR 102.17, and the restrictions imposed in paragraphs (e)(1) and (e)(2) of section 300.31. Therefore, both paragraphs (e)(1) and (e)(2) explicitly provide that 11 CFR 102.17 does not permit joint fundraising of Levin funds by a State, district, or local political party committee, and a national party committee or a Federal candidate or officeholder. Paragraph (e)(1) also clarifies that a State, district, or local political party committee may jointly raise, under 11 CFR 102.17, Federal funds not to be used for Federal election activity.

Congress specifically addressed other joint fundraising of Levin funds by providing that a State, district, or local political party committee must not use as Levin funds any amounts "solicited, received, or directed through fundraising activities conducted jointly by two or more State, local, or district committees of any political party or their agents." 2 U.S.C. 441i(b)(2)(C)(ii). This prohibition extends across State lines. *Ibid.* New paragraph (f) implements this statutory prohibition against joint fundraising of Levin funds by more than one State, district, or local committee of a political party, including such parties from more than one State. Paragraph (f) also clarifies that nothing in BCRA forbids two or more State, district, or local political party committees from jointly raising Federal funds that are not to be used for Federal election activity.

The provisions of paragraphs (e)(1), (e)(2), and (f) of section 300.31 regarding joint fundraising drew several comments. A national party committee suggested that the Commission clarify that these joint fundraising prohibitions extend only to Levin funds. In response, the Commission emphasizes that the section heading and the language in the introduction to paragraph (e) explicitly limit the scope of these provisions to "Levin funds." Similarly, the Commission emphasizes that paragraph (f) explicitly refers to "Levin funds."

One commenter approved of the scope of joint fundraising provisions of paragraphs (e)(1), (e)(2), and (f), stating that the joint fundraising prohibition should extend beyond particular "events" to all fundraising activities for Levin funds that are conducted jointly. Conversely, three commenters, a national party committee, a State party committee, and an association of State party officials, urged the Commission to limit the reach of the joint fundraising prohibition in paragraphs (e)(1), (e)(2), and (f) to "specific joint fundraising events," in contrast to joint fundraising "activities." They urge that such joint fundraising "activities" for Levin funds should be permitted. In support, they quote Rep. Shays, who said, "joint fundraisers between state committees or state and local committees are not

permitted * * * The joint fundraising prohibition will prevent a single fundraiser for multiple state and local party committees." 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002). These commenters apparently have focused upon Rep. Shays' use of the term "single fundraiser," which they seem to interpret to mean a dinner, a speech, or similar "event." Presumably, a fundraising "activity," such as a direct mail campaign, would be permitted under the commenters' suggested interpretation. In response, the Commission notes that statements by any member of Congress during the floor debate should not be used to contradict the plain language of the statute. BCRA itself broadly refers to "fundraising *activities* conducted jointly" by State, district, or local political party committees. 2 U.S.C. 441i(b)(2)(C)(ii) (emphasis added). In addition, the specific statement made by Rep. Shays, referring to a "single fundraiser," could easily encompass either a dinner or a specific direct mail campaign.

In the final rules, the Commission has added as a separate paragraph (g) a rule stated in the NPRM as the final sentence of paragraph (f). Paragraph (g), under the heading "Safe harbor," provides that the use of a common vendor by more than one State, district, or local political party committees does not constitute joint fundraising within the meaning of section 300.31. In the version of the regulation published in the NPRM (then in paragraph (f)), the rule would have provided that the use of a common vendor would not, by itself, be deemed joint fundraising. The Commission revised this language in order to provide a "bright-line" rule. The principal Congressional sponsors of BCRA, responding to the NPRM, agreed with this provision in principle, but noted that use of a common vendor may, in some circumstances, be a means of carrying out actual 'joint fundraising' schemes. The sponsors urged the Commission to be "highly attentive" to this practice.

11 CFR 300.32 Expenditures and Disbursements

11 CFR part 300, subpart B, generally addresses expenditures and disbursements of Federal funds and of Levin funds for Federal election activities. 11 CFR 300.32 specifically addresses both kinds of spending by a State, district, or local political party committee, and clarifies that BCRA does not affect spending of non-Federal funds for purely State or local activity. 11 CFR 300.32 also implements part of 2 U.S.C. 441i(b)(1), which requires that an association or similar group of candidates for State or local office, or an association of State or local officeholders, must make expenditures or disbursements for Federal election activity solely with Federal funds.

In the NPRM, the Commission solicited comments about the term, "association or similar group of candidates for State or local office, or an association of State or local officeholders," specifically asking whether it should be further defined in the regulations, and if so, about examples of such associations or groups to include in the final regulations. The Commission received no comments on this point, nor did the Commission receive any other comments about paragraph (a)(1).

Paragraph (a)(1) requires that an association or similar group of candidates for State or local office, or an association of State or local officeholders, must make expenditures or disbursements for Federal election activity solely with Federal funds. Paragraph (a)(2) makes clear that the general rule in BCRA is that a State, district, or local political party committee spending on Federal election activity must use Federal funds for that spending, except as provided in 2 U.S.C. 441i(b)(1). The Commission received no comments regarding this provision.

Paragraphs (a)(3) and (a)(4) address how State, district, or local party committees must pay the costs of raising funds used to pay for Federal election activities. In BCRA, Congress required that spending by a State, district, or local committee of a political party "to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U.S.C. 441i(c). As published in the NPRM, paragraphs (a)(3) and (a)(4) sought to implement section 441i(c) as it applied to Federal funds raised for Federal election activity and Levin funds raised for Federal election activity, respectively.

In the NPRM, the Commission sought comment about section 441i(c) with regard to Levin funds. In particular, the Commission sought comment on (1) whether proposed paragraph (a)(4) could be limited to the direct costs (see pre-BCRA 11 CFR 106.5(a)(2)(ii)) of raising Levin funds; and (2) whether the costs of fundraising for Levin funds could be allocated between a party committee's Federal and non-Federal accounts under the "funds received" method. *See* pre-BCRA 11 CFR 106.5(f). Comments were also sought as to whether, generally, greater specificity should be provided in proposed section 300.32 as to the nature of fundraising costs in this section. 67 FR 35664.

The Commission received several comments about paragraphs (a)(3) and (a)(4). The principal Congressional sponsors of BCRA and a public interest group suggested that both paragraphs (a)(3) and (a)(4) should be clarified by including the statutory language, "in whole or in part." The Commission has included this suggestion in the final regulation. The added language better conforms the scope of the regulation to the scope of the statute.

Another commenter suggested that both paragraphs (a)(3) and (a)(4) should be limited to the direct costs of raising funds to be spent for Federal election activity, in contrast to the regulation proposed in the NPRM, which would have covered all costs of fundraising. The Commission has included this suggestion in the final rules. The purposes of 2 U.S.C. 441i(c) are adequately served by regulating only the direct costs of raising funds for Federal election activity. This limitation also avoids unnecessary confusion about allocation of administrative costs in the fundraising context in that covering the direct costs of fundraising is consistent with the Commission's longstanding regulation of fundraising costs. Given this change in the final regulation, the Commission has imported language from its pre-BCRA allocation regulation describing what constitutes direct costs.

A public interest group supported paragraph (a)(4) of the NPRM, while a State party committee objected to paragraph (a)(4) to the extent that it forbids a State, district, or local political party committee from spending Levin funds to raise Levin funds. This commenter suggests that Levin funds are subject to the limitations, prohibition, and reporting requirements of the Act, as specified in 2 U.S.C. 441i(c).

The Commission notes that 2 U.S.C. 441i(b)(2)(A), which addresses the use of Levin funds for certain Federal election activity, refers to "amounts which are not subject to the limitations, prohibitions, and reporting requirements of this Act (other than any requirements of this subsection)." Although that statutory phrase is somewhat incomplete, in that it omits any reference to the reporting requirements for Levin activity that are found in a different section of the Act (2 U.S.C. 434(e)), it is nonetheless a recognition that Levin funds are subject to requirements of the Act.

Yet even without this phrase, the Commission would find that Levin

funds are subject to the limitations and prohibitions found in the Act at 2 U.S.C. 441i(b)(2), and the reporting requirements found in the Act at 2 U.S.C. 434(e)(2)(A). The Commission notes that 2 U.S.C. 441i(b)(2)(B) places a $10,000 limit on Levin funds donated to any one State, district, or local committee of a political party, which is greater than the amount limitation for contributors to authorized committees under 2 U.S.C. 441a(a)(1)(A), but less than the amount limitation for contributors to national committees under 2 U.S.C. 441a(a)(1)(B). The Commission finds that even though there are different amount limitations that apply to different contexts in the Act, that does not cause any of those limitations to not be limitations "of the Act." Similarly, 2 U.S.C. 441i(b)(2)(B) and 441i(b)(2)(C)—which, among other things, prohibit the use of Levin funds for activity that refers to a Federal candidate and prohibit the receipt of Levin funds raised by other party committees—contain different prohibitions than other sections of the Act (*see*, e.g., 2 U.S.C. 441b), but are prohibitions "of the Act" nonetheless. And finally, reporting requirements under the Act can vary depending on the amount and nature of the receipt or disbursement, as well as on the nature of the entity that is receiving and disbursing the amount at issue. *See* 2 U.S.C. 434. The same variables apply to the reporting requirements for funds raised and disbursed for Federal election activity. *See* 2 U.S.C. 434(e). In light of the statutory limitations, prohibitions and reporting requirements to which Levin funds are subject, the Commission concludes that State, district, and local party committees or organizations may spend Levin funds to raise Levin funds.

Paragraph (b) of section 300.32 lists the types of activities for which a State, district, or local political party committee may spend Levin funds. Paragraph (b)(1) spells out the two kinds of Federal election activity for which Levin funds may be spent, *see* 2 U.S.C. 441i(b)(2)(A), and provides that such spending must be made subject to the conditions set out in paragraph (c) of section 300.32. The principal Congressional sponsors of BCRA suggested that the word "only" be included to preclude any possible misinterpretation of the provision. The Commission has adopted this suggestion in the final regulation.

Paragraph (b)(2) of section 300.32, as proposed in the NPRM, drew several comments. A national party committee and a State party committee supported the provision. The principal Congressional sponsors of BCRA and a public interest group expressed concern that paragraph (b)(2) could be misinterpreted to allow spending of Levin funds for the Federal election activities described in 2 U.S.C. 431(20)(A)(iii) and (iv). In response to this concern, the Commission has added the language, "other than the Federal election activities defined in 11 CFR 100.24(b)(3) and (4)," which implement section 431(20)(A)(iii) and (iv).

As published in the NPRM, paragraph (b)(2) of section 300.32 would have allowed a State, district, or local political party committee to spend Levin funds for any purposes allowed by State law, and would have also provided that such spending was not subject to paragraph (c) (*see* below). The principal Congressional sponsors of BCRA expressed concern that the latter provision could be misinterpreted to allow fundraising and unallocated spending of Levin funds otherwise forbidden in other regulations. The Commission agrees. Therefore, the final rule, paragraph (b)(2), exempts spending of Levin funds for purposes permissible under State law from only paragraphs (c)(1) and (c)(2) of section 300.32 because those two paragraphs are specifically focused on spending for Federal election activities. As revised, the final rule subjects all spending of Levin funds to paragraphs (c)(3) and (c)(4). The heading for paragraph (c) has been changed slightly in the final rule to conform with this change.

While the Levin Amendment permits the spending of Levin funds for the purposes set out in paragraphs (b)(1) and (2), it places restrictions and conditions on that spending when it is for Federal election activity. Paragraph (c) sets out in one place important restrictions and conditions that are stated in different sections of BCRA. Paragraph (c)(1) implements the restriction that the Federal election activity paid for partly with Levin funds must not refer to a clearly identified Federal candidate. *See* 2 U.S.C. 441i(b)(2)(B)(i). Paragraph (c)(2) implements the restriction that the Federal election activity paid for partly with Levin funds must not be for any broadcast, cable, or satellite communications, other than a communication that refers solely to a clearly identified candidate for State or local office. *See* 2 U.S.C. 441i(b)(2)(B)(ii). Paragraph (c)(3) ties together the provisions of this regulation with 11 CFR 300.31, which covers the raising of Levin funds. Paragraph (c)(4) requires allocable Federal election activity (i.e., voter registration, voter identification, GOTV, or generic campaign activity that does not refer to a clearly identified Federal candidate and is not a broadcast, cable, or satellite communication) that exceeds in the aggregate $5,000 in a calendar year to be paid for either entirely with Federal funds, or with a combination of Federal funds and Levin funds pursuant to the allocation percentages set forth in 11 CFR 300.33. Disbursements that aggregate $5,000 or less in a calendar year for this restricted category of Federal election activity may be paid for entirely with Federal funds, entirely with Levin funds, or pursuant to the allocation percentages set forth in 11 CFR 300.33.

In implementing 2 U.S.C. 441i(b)(2)(A), the Commission chose to permit a greater amount of Levin funds to be used when disbursements for allocable Federal election activity do not exceed in the aggregate $5,000 in a calendar year for several reasons. First, the Commission notes that the reporting requirements for Federal election activity contain an exception for activity below $5,000 in the aggregate in a calendar year. *See* 2 U.S.C. 434(e)(2)(A). While that exception applies to aggregate receipts and disbursements, rather than just aggregate disbursements, it does suggest that Congress did not take a rigid approach to low levels of Federal election activity. Second, the Commission is particularly sensitive to the nature of the Federal election activity to which this provision applies: Grassroots activities for which references to Federal candidates are prohibited. There is a far weaker nexus between Federal candidates and this category of Federal election activity than other types of Federal election activity for which Levin funds are prohibited. Finally, the Commission notes that $5,000 is only half of what any single donor may donate (subject to State law) to each and every State, district, and local party committee under 2 U.S.C. 441i(b)(2), so there is no danger that allowing a committee to use entirely Levin funds for allocable Federal election activity that aggregates $5,000 or less in a calendar year will somehow lead to circumvention of the amount limitations set forth in 2 U.S.C. 441i(b)(2). The distinction in paragraph (c)(4) between allocable Federal election activity below $5,000 and allocable Federal election activity above $5,000 reflects these considerations.

Paragraph (d) serves as a clarifying reminder that spending of non-Federal funds by a State, district, or local political party committee for State or local political activity, including the raising of non-Federal funds, remains a matter of State law. In response to

several comments, the Commission is making two minor clarifications to this paragraph in the final rules. First, the paragraph heading has been changed to refer to "activities," rather than "funds," as it read in the NPRM, to be more descriptive of the actual subject of the paragraph. Second, the first sentence of the paragraph now refers to spending "Federal, *Levin*, or non-Federal" funds to conform this paragraph with paragraph (b)(2) of section 300.32.

11 CFR 300.33 Allocation of Costs of Federal Election Activity

The final regulations in this section address only the allocations of expenditures and disbursements by State, district, and local party committees for Federal election activity, pursuant to the requirements of BCRA. The requirements for allocations by these committees of other categories of expenditures and disbursements that are not Federal election activity are to be found at 11 CFR 106.7. This division of rules represents an attempt to clarify how different categories of activities are addressed with regard to allocation, depending upon their nature, timing and, in certain instances, the presence or absence of a Federal candidate on the ballot, i.e., whether they come or do not come within the definition of "Federal election activity" at 11 CFR 100.24. Provisions at proposed 11 CFR 300.33 that addressed activities not within the definition of Federal election activity now appear in new 11 CFR 106.7. *See also* the Explanation and Justification for 11 CFR 106.7.

Section 441i(b)(1) of Title 2, United States Code, states that State, district, and local party committees must make all disbursements and expenditures for Federal election activity with Federal funds, with one exception. This requirement holds even when the expenses involved are also related to activities in connection with non-Federal elections. The exception to the required use of Federal funds in connection with Federal election activity involves certain activities to be paid in part with Levin funds, pursuant to 2 U.S.C. 441i(b)(2).

Section 441i(b)(2)(A) permits State, district, and local party committees, under certain conditions, to use Levin funds from a Levin or non-Federal account for particular categories of activity, including voter registration, voter identification, get-out-the-vote ("GOTV"), and generic campaign activities during the time periods when they constitute Federal election activity. These funds must have been received by a party committee pursuant to specific limitations, and are to be used to meet expenses related to voter registration activity that takes place within 120 days of a Federal election and/or expenses related to voter identification, GOTV activities, and generic campaign activities that are conducted when a Federal candidate appears on the ballot. Such activities must not refer to a clearly identified candidate for Federal office. Section 441i(b)(2)(A) permits the use of Levin funds for these purposes "to the extent that" the costs of the activities are allocated. Levin funds may also be used for non-Federal purposes permissible under State law. *See* 11 CFR 300.32(b)(2).

Paragraphs 300.33(a)(1) and (2) of the proposed regulations, which addressed the costs of salaries and wages paid to employees who spend less than 25% of their time in connection with Federal elections and of other administrative costs, are being replaced by new 11 CFR 106.7(c)(1) and (d)(1) for the reasons explained in the Explanation and Justification for that section.

In the final rules, 11 CFR 300.33(a) addresses costs that may be allocated between Federal and Levin funds. Paragraphs (a)(1) and (a)(2) represent a division of the proposed rule into two parts, the first addressing voter registration within 120 days of the date of an election and the second the costs of voter identification, GOTV, and generic campaign activities occurring during time periods when they constitute Federal election activity. The relevant time periods for the latter categories of activity are set out at 11 CFR 100.24(a)(1). Both paragraphs (a)(1) and (a)(2) are subject to 11 CFR 300.32(c), which permits committees to fund these activities entirely with Levin funds only when the disbursements for the activities do not exceed $5,000 in the aggregate in a calendar year.

Paragraph (b) of section 300.33 sets out fixed minimum amounts of Federal funds to be required for the Federal portions of costs of the specified activities for which allocation between Federal and Levin funds is permissible. One goal of the allocation rules is to assure that activities deemed allocable are not paid for with a disproportionate amount of Levin funds. Another goal is to simplify the allocation process, in particular by establishing formulas that do not vary from State to State and that do not require measurements of time or space. Therefore, in lieu of the State-by-State ballot composition ratios for generic campaign activity and in lieu of the time or space method applied to exempt State party activities in the pre-BCRA regulations, the rules establish a fixed formula for all States that would vary only in terms of whether or not a Presidential campaign and/or a Senate campaign is to be held in a particular election year.

In the NPRM, the Commission set out allocation percentages for the Federal shares of the allocable Federal election activities described in paragraph (a). The final rules at 11 CFR 300.33(b)(1) through (4) use the same minimum Federal percentages. Thus, State, district, and local party committees and organizations must allocate no less than the following amounts to their Federal accounts:

(i) Presidential only election year—28% of costs

(ii) Presidential and Senate election year—36% of costs

(iii) Senate only election year—21% of costs

(iv) Non-Presidential and Non-Senate election year—15% of costs.

As with the percentages used in 11 CFR 106.7 for the allocation of activities that are not Federal election activities, the percentages for those allocable Federal election activities that may be paid for in part with Levin funds were derived by taking averages of the ballot composition-based allocation percentages reported by State party committees in four groupings of States selected for their diversities of size and geographic location and for the particular elections held in each State in 2000 and 2002. The groupings were: (1) Six States (Alabama, Colorado, Illinois, New Hampshire, Oklahoma, and Oregon) in which there was a Presidential but no Senate campaign in 2000; (2) ten States (California, Delaware, Georgia, Florida, Michigan, New York, North Dakota, Texas, Vermont, and Wyoming) in which there were both a Presidential campaign and a Senate campaign in 2000; (3) six States (Delaware, Georgia, Michigan, Oklahoma, Texas, and Wyoming) in which there will be a Senate campaign in 2002; and (4) six States (California, Florida, New York, North Dakota, Vermont, and Washington) in which there will be no Senate campaign in 2002.

In 2000, the Federal percentages for the two parties in six States with only a Presidential campaign ranged from 20% to 33.33%, with an average of 28%, while the Federal percentages for the two parties in the ten States that held both Presidential and Senate campaigns that year ranged from 30% to 43%, with an average of 36%. In 2002, the Federal percentages for the two parties in six States with a Senate campaign ranged from 20% to 25%, with an average of 21%, while the Federal percentages for the two parties in six States with no Senate campaign ranged from 11.11% to

16.67%, with an average of 15%. The rules apply the average percentages in each of the four groupings of States to all 50 States.

As discussed in the Explanation and Justification for 11 CFR 106.7, one comment on the NPRM from a public interest organization addressed the Commission's proposed fixed percentages by providing two alternatives to the Commission's figures. The first alternative would have set a flat 33% requirement for Federal shares of what the response termed "Levin expenditures" and for allocable costs other than administrative costs in odd-numbered years or in non-Presidential election years, and a flat 40% requirement for Federal shares of these same categories of activities in Presidential election years. The commenter based these percentages on what was termed "the current assumption" as to what State party committees spend in certain years.

The second alternative posed by the same commenter adopted the Commission's calculations, but called for the use of the higher percentages in the sample States for what the response termed "Levin spending" and for voter registration outside the 120 day period before an election, plus the average percentages for certain non-Levin expenses. The commenter also urged the Commission to apply the allocation percentages to a two-year election cycle, not just to the year of a Federal election.

The comment submitted on behalf of the principal Congressional sponsors of BCRA with regard to fixed allocation percentages was very similar to that of the public interest organization's response cited above in that, as one alternative approach, it called for at least a 33% Federal allocation of what it termed "Levin activities" and of voter registration activities outside the 120 day period before an election. It also called for 40% Federal allocations of Levin activities and of voter registration activities that are not Federal election activities in Presidential election years. This alternative urged the application of the percentages to two-year Federal election cycles. As a second alternative, this commenter also agreed to use of the Commission's percentages for administrative costs in a two year cycle, but urged the application over that cycle of the highest, not the average, Federal percentages for what it termed "Levin activities" and voter registration activities that are not 'Federal election activity'. * * *" Another comment from a public interest organization also called for use of the highest percentages in the identified States, not the average percentages.

Comments on the NPRM received from party committees with regard to fixed percentages for Federal allocations ranged from support for the Commission's position to giving party committees a choice at the beginning of each cycle between the proposed formula and ballot composition ratios.

The final rules at paragraph 300.33(b) retain the fixed percentage approach to allocation proposed in the NRPM and adopt the percentages proposed in the NPRM to disbursements for Federal election activities. As discussed above, disbursements for salaries and wages, and allocations of administrative costs, are addressed at 11 CFR 106.7. The final rules at 11 CFR 300.33(b) also contain additional language to clarify that the allocation percentages must be used for activities that occur within the time periods described in 11 CFR 100.24, time periods that establish when specific activities are to be treated as "Federal election activity" under BCRA. The time periods differ between voter registration on the one hand and voter identification, GOTV, and generic campaign activities on the other. *See* 11 CFR 100.24(a) and (b). As explained in the Explanation and Justification for 11 CFR 100.24, the complete two-year cycle approach urged by some commenters has not been adopted for Federal election activities.

With regard to the amounts of the fixed minimum Federal allocations, the Commission has retained the percentages contained in the NPRM because they represent averages of actual allocation ratios used in specific States at specific times, not assumptions of State, district, and local party behavior. The Explanation and Justification for 11 CFR 106.7 explains the basis for this approach in greater detail.

Paragraphs (c)(1) and (2) of section 300.33 set out the categories of Federal election activity costs that must not be allocated between Federal funds and Levin funds. These categories include: (1) The costs of public communications as defined at 11 CFR 100.26, which must be paid with all Federal funds, and (2) the costs of salaries and wages for employees who spend more than 25% of their compensated time in a month on activities in connection with a Federal election, which must also be paid entirely with Federal funds. The costs of salaries and wages for employees that spend 25% or less of their compensated time in a month on activities in connection with a Federal election must be paid entirely with non-Federal funds that comply with State law. *See* 11 CFR 106.7(c)(1). This approach to salaries and wages is explained more fully in the Explanation and Justification for 11 CFR 106.7.

Section 300.33(c)(3) requires that the *direct* costs of raising funds for Federal election activities be paid solely from the party committee's Federal funds, pursuant to 2 U.S.C. 441i(e), or with Levin funds. The Explanation and Justification for 11 CFR 106.7 and 300.32 explain the reasons for this approach. The proposed rules had indicated that non-Federal funds could be used in certain limited fundraising situations involving non-Federal activity. This language has been deleted from the final rules for the reasons explained in the accompanying Explanation and Justification for 11 CFR 106.7.

Paragraph 300.33(d) addresses transfers of Levin funds from a State, district, or local party committee's Levin account or from its non-Federal account to its Federal account or to an allocation account to meet the Levin fund portion of the costs of allocable expenditures made pursuant to 2 U.S.C. 441i(b)(2). The final rule largely tracks pre-BCRA 11 CFR 106.5(g) by requiring that reimbursements from a Levin account or from a non-Federal account to a Federal account or to an allocation account take place within a specified number of days. New paragraph (d), like former 11 CFR 106.5(g)(2)(B)(iii), states that any payment outside this time frame, absent the need for an advance payment of a reasonably estimated amount, could result, depending upon the circumstances, in a loan to the Federal account and a violation of the Act. No commenters addressed this provision.

11 CFR 300.34 Transfers

As explained above, the Levin Amendment permits spending on certain Federal election activities subject to restrictions and conditions, one of which is that the spending must be allocated between Levin funds and Federal funds. 2 U.S.C. 441i(b)(2)(A)(i), (ii). A State, district, or local committee must raise by itself all money spent under the Levin Amendment. 2 U.S.C. 441i(b)(2)(B)(iv). Congress expressly stated that a State, district, or local committee must not use as Levin funds "any funds provided to such committee" by certain enumerated entities. These entities are: any other State, district, or local committee; any national political party committee; any agent of a political party committee; and any entity directly or indirectly established, financed, maintained, or controlled by a political party committee. 2 U.S.C. 441i(b)(2)(B)(iv)(I) through (IV). By the plain language of these provisions, these restrictions

extend to the Federal funds component of the disbursement allocated between Levin funds and Federal funds. *See* 148 Cong. Rec. H410 (daily ed. February 13, 2002) (Rep. Shays).

This provision of the Levin Amendment could cause confusion given the pre-existing rule that party committees of the same political party may transfer Federal funds among themselves without limit on amount. *See* 11 CFR 102.6(a)(1)(ii).[6] Paragraph (a) of section 300.34 makes clear that 11 CFR 102.6(a)(1)(ii) does not override the Levin Amendment as to transfers of Federal funds. Specifically, the committee must not use such transferred Federal funds to pay the Federal portion of Federal election activity. A State party committee and an association of State party officials commented that this provision about transferred Federal funds should apply only to transferred Federal funds "earmarked" for spending under the Levin Amendment by the transferring committee. The Commission has not adopted this suggestion in the final rules. Congress, at 2 U.S.C. 441i(b)(2)(B)(iv), specifically bars a State, district, or local committee spending Federal funds (and Levin funds) for Federal election activity from using transferred funds. How a transferring committee may or may not characterize the transfer is irrelevant to this prohibition.

In response to the NPRM, a public interest group noted that a State, district, or local political party committee's Federal account may commingle Federal funds raised by the committee itself, which are eligible for spending for Federal election activities, and transferred Federal funds, which are not so eligible. This commenter suggested that the Commission should require party committees to use "a reasonable and industry-accepted accounting method" to ensure that they have sufficient self-raised, non-transferred Federal funds to cover expenditures for Federal election activities as the expenditures are made. The Commission has responded to this suggestion in the final rules. Paragraph (a) of section 300.34 is organized into two paragraphs. Paragraph (a)(1) contains the language published in the NPRM, without change. Paragraph (a)(2) provides that a State, district, or local political party committee must demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that its Federal account has sufficient Federal funds raised by the committee itself to make a given disbursement of Federal funds for Federal election activity. Paragraph (a)(2) alternatively permits, but does not require, a State, district, or local political party committee to establish a separate Federal account to use for spending on Federal election activities, and into which it deposits only Federal funds it has raised by itself.

The principal Congressional sponsors of BCRA commented that 11 CFR 300.34 should not be interpreted to forbid a State, district, or local political party committee from using Federal funds raised lawfully on its behalf by a Federal or State candidate or officeholder as long as the funds are contributed directly to the party committee. The Commission agrees with the sponsors' interpretation, and emphasizes that 11 CFR 300.34 applies to transfers of funds from the persons described in paragraphs (b)(1) and (b)(2).

The final sentence of paragraph (a)(1) states as a positive requirement that a State, district, or local political party committee that spends Levin funds must raise the Federal funds component of those funds by itself. As already mentioned above, the Levin Amendment imposes this fundraising requirement. 2 U.S.C. 441i(b)(2)(B)(iv).

The Levin Amendment specifically forbids particular transfers of Levin funds; that is, a State, district, or local party committee may not use as Levin funds any funds transferred to it by certain persons. 2 U.S.C. 441i(b)(2)(B)(iv)(I) through (IV). 11 CFR 300.34(b)(1) and (b)(2) implement these transfer prohibitions by expressly identifying these persons to, and from, which transfers must not be made.

Paragraph (c) of section 300.34 cross-refers to 11 CFR 300.30, which sets forth the permissible account structures for Levin funds, and 11 CFR 300.33, in which are the rules for allocation transfers between the accounts of a given State, district, or local political party committee.

11 CFR 300.35 Office Buildings

BCRA repealed 2 U.S.C. 431(8)(B)(viii), which had exempted from the definition of contribution any donation of money or anything of value, or loan, to a national or State party committee that is specifically designated to "defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office." In subsequent technical amendments, however, Congress enacted 2 U.S.C. 453(b), which states: "Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee." 2 U.S.C. 453(b).

New section 300.35 addresses three areas in implementing 2 U.S.C. 453(b). Paragraphs (a) and (b) provide for the application of State law to the source and use of funds, and provide that Federal law will not preempt the application of State law with respect to the use of non-Federal funds and Levin funds, but that Federal law will preempt State law if Federal funds are used. Paragraph (c) specifically allows a party committee to lease space in its office building to others with conditions on the deposit of funds into a Federal or non-Federal account. Finally, paragraph (d) addresses the transitional requirements for the current State party office building funds established under the repealed statutory section.

A. Application of State Law

A principal sponsor of the technical amendments described the party office building provision as "[r]especting the primacy of State law in financing State and local party buildings." 148 Cong. Rec. S2339 (daily ed. March 22, 2002) (statement of Sen. McConnell). A principal sponsor of BCRA described the proposal as providing that Federal law would no longer allow a State or local party committee to receive non-Federal donations to purchase or construct an office building where such donations violated State law, that State law governs the receipt and disbursement of non-Federal donations used by State or local parties for such purposes, and that there is no "required match consisting of Federal contributions." 148 Cong. Rec. S2143–2144 (daily ed. March 20, 2002) (statement of Sen. Feingold).

The final rule at paragraph (a) of new section 300.35 provides that a State or local party committee may spend either Federal funds or non-Federal funds that are not subject to the limitations, prohibitions, or disclosure provisions of the Act, so long as such funds are not contributed or donated by a foreign national. If non-Federal funds are used, they are subject to State law. If Federal funds are used, they are subject to

[6] The Commission emphasizes that revisions to section 102.6(a) regarding transfers may be forthcoming in a future rulemaking to implement changes to 2 U.S.C. 441a(d) made by BCRA. The present discussion and this rulemaking extend only to Title I of BCRA. Pub L. 107–155, March 27, 2002.

Federal law. The paragraph also incorporates language from the repealed statute and deleted regulations to the effect that the exemptions from Federal limits and prohibitions are based on the building not being purchased or constructed for the purpose of any particular Federal candidacy, but, rather, for the functioning of the party, which entails the support of most or all of the party's candidates over a number of years. The purchase or construction of the building to assist the campaign of a particular Federal candidate would entail the use of impermissible funds in a manner contrary to the basic purpose of the Federal law.

Paragraph (b) explains the coverage of State law with respect to non-Federal funds or Levin funds received by a State or local party that are spent for the purchase or construction of its office building. Other than with respect to donations by foreign nationals, Federal law would not preempt State law as to the source of non-Federal funds, State restrictions on the use of those funds (i.e., the State can prohibit or limit the use of funds with respect to the purchase or construction), or the reporting of the receipt and disbursement of those funds. In addition, Levin funds (which also exclude foreign national funds) may be used for purchase or construction, subject to State law.

The application of State law to the use of non-Federal funds is derived directly from the wording of 2 U.S.C. 453(b) and from Congressional statements. Commission advisory opinions have addressed the question of whether the repealed contribution exemption, which permitted donations to a building fund from such Federally impermissible sources as corporations, preempted State law prohibitions on the use of such funds for campaign purposes. Advisory Opinions 2001–12, 1998–8, 1998–7, 1997–14, 1993–9, 1991–5, and 1986–40. The Commission stated in these opinions that: (1) Congress decided not to place restrictions on the subject even though it could have determined that the purchase of the facility was for the purpose of influencing a Federal election; (2) Congress took the affirmative step of deleting the receipt and disbursement of funds for such activity from the proscriptions of the Act; and (3) there is no indication that Congress intended to limit the preemptive effect to some allocable portion of the purchase costs. New section 300.35 supersedes these Commission advisory opinions to the extent that they might pertain to Federal preemption with respect to use of funds from a State (and now local) party committee's non-Federal account for the purchase or construction of its office building. For example, corporate donations and donations that are excessive under Federal law, and that are in a non-Federal account, may be used for the purchase or construction of a State party office building where State law permits, and if State law forbids corporate donations and donations in excess of a particular amount, Federal law would not preempt the application of State law prohibiting the use of funds from a party committee's non-Federal account.

Although receipts and disbursements from the non-Federal accounts must comply with State law, section 300.35 does not contemplate that the Commission would take enforcement action against a party committee for violating State law with respect to the purchase or construction of its office building. Such an action is the State's responsibility. Moreover, although section 300.35 does not require the establishment of a separate bank account or book account for the receipt and disbursement of non-Federal funds for purchase or construction of the office building, Federal law does not preempt a State law requirement to establish such an account.

Paragraphs (a) and (b) of the proposed rules in the NPRM differed from the final rules. They were revised, in part, in response to public comments. Proposed paragraph (a) did not refer to the prohibition on contributions or donations from foreign nationals. In addition, paragraphs (a) and (b) provided that if the party committee used funds from the Federal account, Federal law would not preempt State law as to the permissibility of the disbursements and as to the source of funds where State law establishes additional limits or prohibitions.

Several commenters remarked on the provisions in proposed paragraphs (a) and (b) relating to the application of State law. Two commenters representing party committees expressed the concern that, with respect to the use of Federal account funds, Federal law would not supersede a State law that would further limit or prohibit contributions. They stated that this could conceivably prevent a party committee from using 100 percent Federal funds to pay for a building. They asserted that there is no support in the BCRA legislative history for this proposition, and that BCRA's intent was simply to allow State and local parties to pay for their buildings entirely with non-Federal funds and would not require them to use non-Federal funds.

Three comments, including one from the four principal sponsors of BCRA, stated that the provisions regarding application of State law should not be read to allow for the use of contributions or donations by foreign nationals to pay for the purchase or construction of the party office buildings. They indicated that BCRA was not intended to allow for such funds to be used. Two of those commenters recommended that these rules should make this prohibition clear.

As indicated above, the final rules reflect commenter input on both of these issues. The Commission notes that the exemption from Federal preemption at section 453(b) refers to the use of "exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act," subject to State law. It did not extend non-preemption to Federal funds. The Commission concurs with those commenters who interpret BCRA as allowing use of funds from the committee's non-Federal account, so long as they complied with State law, but as not subjecting funds from the committee's Federal account to State law. Hence, funds in the Federal account (that are lawful under Federal law) may be used, even if they are not in compliance with the limitations and prohibitions of State law.

The final rules in paragraphs (a) and (b) also reflect the comments on the explicit inclusion of a ban on the use of funds contributed or donated by foreign nationals, and incorporate such a ban. The prohibition at 2 U.S.C. 441e is so sweeping and explicit (including an explicit prohibition of donations "to a committee of a political party") that it would be difficult to read the intent of BCRA as allowing for the use of such funds by a party committee for those activities. One of BCRA's principal sponsors stated that BCRA "prohibits foreign nationals from making any contribution to a committee of a political party or any contribution in connection with federal, state or local elections * * * This clarifies that the ban on contributions [by] foreign nationals applies to soft money donations." 148 Cong. Rec. S1994 (daily ed. March 18, 2002) (statement of Senator Feingold). *See also United States* v. *Kanchanalak*, 192 F.3d 1037 (D.C. Cir. 1999). This ban also applies to any in-kind contribution or donation by a foreign national such as a direct payment to a seller, builder, or other vendor for purchase or construction.

Paragraphs (a) and (b) of the final rules include technical changes to state more clearly than the proposed rule that

the pertinent funds include funds that are in the accounts but were not received specifically for the purchase or construction, as well as funds specifically received for that purpose. In addition, the sentence in paragraph (a) discussing the application of State law is changed to conform to other parts of the regulation emphasizing that this exemption is meant to apply only to a State or local committee paying for its own building.

B. Proposals Excluded From the Final Rule

The proposed rule included two paragraphs, (c) and (d), which are not included in the final rule. Proposed paragraph (c) would have defined "purchase or construction of an office building" by defining the individual terms, "office building," "purchase," and "construction." The terms were defined to explicitly include and exclude certain items or actions. The proposed definition of "office building," particularly as it pertained to the explicit exclusion of certain items, would have treated the use of the term "building" in 2 U.S.C. 453(b), instead of the term "facility" in the repealed exemption, as signifying a Congressional intent to narrow the scope of the covered costs. Recent advisory opinions stated that expenses that were "capital expenditures" under the Internal Revenue Code would be payable by the building fund (as opposed to business expenses). These opinions have been interpreted to allow building fund payments to purchase office equipment, furniture, and similar items. *See* Advisory Opinions 2002–12, 2001–01, and 1998–7; *see also* 26 CFR 1.263(a)–(1) and 1.263(a)–(2).

Proposed exclusions explicitly listed in the draft definitions of "purchase" and "construction" were drawn from exclusions specified in previous Commission advisory opinions (in those aspects of the opinions that did not pertain to Federal preemption). The NPRM narrative for these definitions also included examples of what would and would not constitute "construction." Proposed paragraph (d) would have stated that an expense that did not fit within the definition of "purchase or construction of an office building" would be an allocable administrative cost unless it fell within another category, such as a support of a Federal candidate.

The Commission sought comment on whether the proposed definition of "building" should include, rather than explicitly exclude, items such as office equipment, machinery, or furniture. More generally, the Commission sought comment on whether BCRA's use of the term "building" instead of "facility" contemplated a narrowing of the range of expenses falling within the exemption.

Three commenters representing party committees asserted that BCRA did not intend the change in terminology from "facility" to "building" to represent a change in the expenses covered by the exemption. One commenter noted that the McCain-Feingold bill as passed by the Senate in 2001 eliminated the building fund exemption for national and State parties and also provided that "Federal election activity" would specifically not include "the cost of constructing or purchasing an office facility or equipment for a State, district, or local committee." An amendment adopted by the House eliminated a transition provision allowing national party committees to spend building fund donations raised prior to the effective date of the new law, and that amendment also eliminated the language as to the purchase of an office facility or equipment. The commenter characterized the technical amendment now in effect as merely a restoration of the deleted provision on the State and local office facility or equipment, noting that one of BCRA's principal sponsors characterized this as a non-substantive amendment.

One of the party committee commenters urged the Commission to continue to use principles from the Internal Revenue Code "such that capital expenditures would be allowed from the building fund (subject to state law) and ongoing expenses would not." Two of the party committee commenters maintained that the question of narrowing the definition is a moot point because they believe that if certain costs were not deemed to be within the definition, they would be classified as administrative costs and should be payable with 100% non-Federal funds.

In contrast, three comments, including one from the principal sponsors, maintained that the change from "facility" to "building" indicated a Congressional intent to narrow the scope of the exemption and that items such as office equipment, machinery, or furniture should not be included within the exemption. They agreed with the proposed definition of "office building." The sponsors also stated that it was their intent that administrative expenses related to office buildings should be allocable between Federal and non-Federal accounts or Federal and Levin accounts.

The Commission also sought comment on whether more examples should be included in the sub-definitions of "purchase" or "construction," or whether the advisory opinion process would best suit that purpose. Specifically, it asked whether payments for a long-term lease with an option to purchase the rented building should be included within the definition of purchase. One commenter stated that, to avoid abuses, the Commission should establish a bright line rule that treats purchases as falling within the exemption and leases as administrative expenses.

The final rule does not include the proposed definitions of "office building," "purchase," or "construction," or the proposed allocation provision. The Commission does not view section 453(b) as evidence of any Congressional intent to narrow or otherwise change the scope of the activities (from that of the repealed exemption) for which building fund monies may be donated or spent. Specifically, the Commission concludes that BCRA does not supercede or in any way displace the Commission's various advisory opinions regarding building fund activities as applied to State, district or local political party committees. Accordingly, those advisory opinions remain in force and effect. The Commission believes that State and local party committees needing information as to the scope of the costs covered can receive guidance from the Commission's previous advisory opinions.

C. Leasing a Portion of the Office Building to Others

Paragraph (c) of the final rule allows a State or local party committee to lease a portion of its office building to others at the usual and normal rental charge. The sources of funds will determine the account in which the rent revenues can be deposited.

This provision did not appear in the NPRM. The Commission requested comments, however, on whether a party that owned an entire office building would also be able to lease space in the building to others at fair market rates in order to generate income. The Commission also sought comments on whether the sources of the funds used to purchase or construct the office building should govern or guide the Commission in the determination of the lawful uses of such income.

One commenter, speaking on behalf of party committees, stated that party committees should be permitted to rent space in their office buildings to State and local candidates regardless of the source of funds used to purchase the buildings. The comment from the principal sponsors of BCRA stated that

BCRA permits a party committee to generate income by leasing parts of its building and describes how to determine whether the funds may be deposited in a Federal or non-Federal account. Specifically, a purchase in whole or in part with non-Federal funds would require the deposit of rental income into the non-Federal account to be used only for non-Federal purposes. Rental income generated from a building purchased solely with Federal funds may be deposited in the committee's Federal account only if all the revenues collected comply with the limitations, prohibitions, and reporting requirements of the Act.

The Commission has concluded that the source of funds used to construct or purchase the building must determine where the rental revenues may be deposited. If only Federal funds were used, the revenues may be deposited in the Federal account. If any non-Federal funds were used, the revenues must be deposited in a non-Federal account, provided that State law permits. These requirements ensure that the committee's Federal account is not indirectly funded (through rental payments) by donations that do not meet the requirements of the Act, such as corporate donations.

Consistent with the jurisdiction of State law over non-Federal accounts, the rule provides that the revenue received by the non-Federal account must comply with State law. The rental amounts deposited in the Federal account would have to be disclosed as an "other receipt," pursuant to 11 CFR 104.3(a)(4)(vi). The Commission notes that the purchase or rental of a committee asset is considered a contribution, unless excepted through the advisory opinion process with respect to specific types of assets or particular circumstances (e.g., isolated sales of specific committee assets developed or purchased for the committee's own use, rather than for fundraising, and campaign equipment and leftover supplies of an authorized committee wishing to terminate). *See, e.g.*, Advisory Opinions 1992–24, 1991–34, 1990–26, 1989–4, and 1986–14; *see also* 11 CFR 100.7(a)(2). Commission advisory opinions have also interpreted the regulations to allow a committee to invest its funds and to treat the interest, dividends, or other returns on the investment (under particular circumstances) as "other receipts." *See* Advisory Opinions 1999–8, 1989–6, and 1986–18. The Commission views the leasing of portions of the building as the equivalent of obtaining income through the investment of committee assets or funds. Under particular circumstances, such leasing out may also be viewed as an isolated sale of a unique committee asset purchased for the committee's own use. Hence, the payment of rent for office building space to the party committee at the usual and normal charge is not a contribution. If the tenant pays rent in excess of the usual and normal charge and the rent is deposited in the Federal account, then the amount in excess would be a contribution and reportable as such. An excess payment from a corporate tenant would be in violation of 2 U.S.C. 441b. *See* Advisory Opinions 1992–24 and 1990–26.

D. Transitional Provisions for State Party Building or Facility Account

The final rule at 11 CFR 300.35(d) addresses office building accounts set up by State party committees under repealed 2 U.S.C. 431(8)(B)(viii). The regulation states that up to and including November 5, 2002, such accounts may accept funds that are "designated for the purchase or construction of an office building." The rule then states that, starting on November 6, 2002, the funds in the account may not be used for Federal account or Levin account purposes but may be used for any other non-Federal purposes as permitted by State law.

The NPRM differed from the final rule in two respects. Like the final rule, the proposed rule provided that, up until November 5, 2002, a State party committee could accept funds into the account, but then indicated that the funds in the account could only be used for the construction or purchase of an office building or facility. In place of the language on the use of the funds in the account, the final rule states that it applies to funds "designated for the purchase or construction of an office building." Both the final rule and the proposed rule provide that, starting on November 6, 2002, the funds are not useable for Federal account or Levin account purposes but may be used for any other non-Federal purposes, as permitted by State law. However, the proposed rule also would have provided that the funds would be subject to specific paragraphs of the proposed rule, including the definitional paragraph that is now deleted.

Two commenters from the party committees criticized the NPRM version of the transitional provisions, stating that unlike the national party building and facility fund transition provisions in BCRA, there is no BCRA provision covering the spending of funds by the already existing State party office facility fund. One of those commenters criticized the State law limitation on the use of the funds from the account once BCRA goes into effect, noting that the funds had been lawfully raised under the exemption in the repealed statutory section.

The final rule as to the use of building fund accounts prior to the effective date of BCRA is not meant to deviate from any current permissible uses of those accounts. As to the use of those accounts after the effective date, the regulation was written to conform the treatment of the funds in the accounts established under the repealed statutory section with BCRA and still allow their use for election purposes. As unlimited non-Federal funds, they could not be used for Federal account or Levin account purposes. As such, however, they may be used for non-Federal purposes, and the Commission also recognizes the control by State law over the permissibility of such funds.

11 CFR 300.36 Reporting Federal Election Activity; Recordkeeping

BCRA establishes certain reporting requirements for State, district, and local committees that are political committees and that finance Federal election activities. *See* 2 U.S.C. 434(e)(2). This requirement for these political committees extends generally to all receipts and disbursements for Federal election activities if the aggregate amount of receipts and disbursements for such activity is $5,000 or more per calendar year, 2 U.S.C. 434(e)(2)(A), and specifically extends to receipts and disbursements of Levin funds. 2 U.S.C. 434(e)(2)(B). These requirements added by BCRA are in addition to the existing FECA requirements to report expenditures of Federal funds under 2 U.S.C. 434. *See* also 11 CFR part 104.

Paragraph (a) of new section 300.36 applies to two types of entities. The first is a State, district, or local political party committee that has not qualified as a political committee under 2 U.S.C. 431(4) or 11 CFR 100.5. The second is an association or similar group of candidates for State or local office or of individuals holding State or local office (*see* 2 U.S.C. 441i(b)(1)) that has not qualified as a political committee under 11 CFR 100.5. In the NPRM, the Commission sought comments as to what, if any, reporting requirements an association or similar group of candidates for, or holders of, State and local office may have under 2 U.S.C. 434(e)(2) if it is not a political committee. The Commission received one comment, from a public interest group, which suggested that the result should depend on whether the association or similar group has attained

political committee status under 11 CFR 100.5. The Commission has concluded that such an association or similar group that has not qualified as a political committee has no reporting requirements under 2 U.S.C. 434(e)(2) because that section, by its own terms, applies to "political committees." The Commission further concludes such an association or similar group is in a position analogous to a political party organization that is not a political committee under 11 CFR 100.5 to the extent both engage in Federal election activity. Therefore, in the final rules, such an association or similar group that has not qualified as a political committee under 11 CFR 100.5 must comply with paragraph (a) of section 300.36.

Paragraph (a) recognizes that neither type of organization has reporting requirements under BCRA because it is not a political committee. *See* 2 U.S.C. 434(e)(2). Under paragraph (a)(1), both types of organizations must demonstrate through a reasonable accounting method that they have sufficient Federal funds on hand to pay the required Federal portion of the costs of Federal election activity under 11 CFR 300.32 and 300.33. Paragraph (a)(1) also requires each type of organization to keep records of Federal receipts and disbursements and to make those records available to the Commission upon request. A State party committee and an association of State party officials commented in support of paragraph (a)(1), to the extent that it applies to political party committees.

A national party committee commented in opposition to proposed paragraph (a)(2), which would have required a payment for Federal election activity to be treated as an expenditure, regardless of whether it qualified as an expenditure under the statutory definition. *See* 2 U.S.C. 431(9). This commenter objected to characterizing a payment of Federal funds for Federal election activity as an expenditure "even if such activity does not reference any Federal candidate." A State party committee and an association of State party officials made very similar comments, citing Advisory Opinion 1999–4. The State party committee characterizes this advisory opinion as "rul[ing] that only disbursements that influence a specific Federal election count towards the dollar thresholds in [11 CFR 100.5(c)]." The State party committee's primary concern is that "thousands" of local and district committees not currently required to register and file reports with the Commission will be required to do so. One of the commenters stated that the Commission has "effectively acknowledged" in paragraph (a)(1) of section 300.36 that "Congress did not intend first-dollar disclosure of" Federal election activity spending. Conversely, a public interest group commented in support of this paragraph.

Paragraph (a)(2) clarifies that a payment of Federal funds or Levin funds for the costs of Federal election activity does not constitute an expenditure for purposes of determining whether or not a State, district, or local political party committee, or an association or similar group of candidates for State or local office or of individuals holding State or local office, becomes a political committee, under 11 CFR 100.5, unless the payment otherwise qualifies as an expenditure under 2 U.S.C. 431(9). Paragraph (a)(2) also states that a payment of Federal funds for the costs of Federal election activity that refers to a clearly identified Federal candidate and that meets the definition of "exempt activities" (*see* 11 CFR 100.8(b)(10), (16), and (18)) is to be treated as a payment for exempt activities for the purposes of determining political committee status under 2 U.S.C. 431(4)(C) and 11 CFR 100.5(c).

Paragraph (b) of section 300.36 applies to State, district, and local political party committees, and to an association or similar group of State and local candidates and officeholders, that disburse Federal funds for Federal election activities and that have qualified as political committees under 11 CFR 100.5. The heading of paragraph (b)(1) is revised from the version of the regulation published in the NPRM. The new heading makes clear that paragraph (b)(1) applies to State, district, and local political party committees that have qualified as political committees and that have less than $5,000 in total receipts and disbursements for Federal election activity (*see* 2 U.S.C. 434(e)(2)(A)), and to an association or similar group of candidates for State or local office or of individuals holding State or local office at all times. Paragraph (b)(1) provides that such committees must report all receipts and disbursements of Federal funds for all or part of the costs of Federal election activity. Paragraph (b)(1) goes on to state that this requirement applies even if the committee has less than $5,000 of aggregate receipts and disbursements for Federal election activity. *See* 2 U.S.C. 434(e)(2)(A). A national party committee and a State party committee commented in opposition to the requirement of itemization of Federal receipts for Levin activity, because "Federal receipts will be used fungibly for multiple purposes." The Commission points out that Federal receipts are not fungible, as far as spending for Federal election activity goes, to the extent that receipts include transfers from other party committees. A State, district, or local committee must not use transferred funds for Federal election activity spending. 2 U.S.C. 441i(b)(2)(B)(iv). Moreover, Congress has specifically required itemization of these receipts. 2 U.S.C. 434(e)(3). The final sentence of 11 CFR 300.36(b)(1) provides that a disbursement of Federal funds or Levin funds for Federal election activity will not be deemed an expenditure and reported as such, unless it satisfies the definition of expenditure in 2 U.S.C. 431(9).

In the final rules, the Commission has corrected an inadvertent omission that appeared in the version of paragraph (b)(1) of section 300.36 published in the NPRM. The words "receipts and" have been inserted before the word "disbursement" in the second sentence. The preamble of 11 CFR 300.36(b)(1) correctly discussed the paragraph, referring to "receipts and disbursements." 67 FR 35671. The Commission has also deleted an unnecessary and potentially confusing introductory clause in one of the sentences in this paragraph.

Paragraph (b)(2) implements the broader reporting provisions of 2 U.S.C. 434(e)(2)(A) and (B) with regard to State, district, and local political party committees. The heading of this paragraph has been revised from the version of the regulation published in the NPRM. The change is intended to make clear that this paragraph applies to State, district, and local political party committees that are political committees and that have $5,000 or more of total receipts and disbursements for Federal election activity. 2 U.S.C. 434(e)(2)(A) and (B). Paragraph (b)(2) does not apply to an association or similar group of State and local candidates and officeholders that disburses Federal funds for Federal election activities because such groups are not authorized to raise and spend Levin funds, and thus may not allocate disbursements for Federal election activity between Federal funds and Levin funds. *See* 2 U.S.C. 441i(b)(2), which applies only to party committees. These committees always report under part 104 of Title 11 because they may have no Levin funds to report pursuant to paragraph (a), discussed above.

The first sentence of paragraph (b)(2) states the basic rule that all receipts and disbursements for Federal election activity must be reported if the political committee has an aggregate of $5,000 or more of such receipts and

disbursements in a calendar year. The second sentence makes it clear that this basic reporting rule extends to Levin funds used for Federal election activity.

Paragraphs (b)(2)(i) through (iv) have been revised, or added, since the version of the regulation published in the NPRM. As published in the NPRM, the regulation would have referred the reader to 11 CFR 104.17(b) to identify important elements of information that must be reported under this section 300.36. Instead, paragraphs (b)(2)(i) through (iv), as adopted in the final rules, state these requirements expressly, for the convenience of the reader. These requirements generally parallel the requirements adopted in 11 CFR 104.17(b) with certain modifications appropriate to the context of expenses allocated among Federal election activities.

Paragraph (b)(2)(i) pertains to disclosure of the methods State, district, or local committees use to report allocating expenses for Federal election activity between Federal funds and Levin funds. Paragraph (b)(2)(i)(A) of section 300.36 specifies that a committee must state the allocation percentages for Federal election activity disbursements that are used in its reports. This paragraph includes a specific cross-reference to 11 CFR 300.33(b), where these allocation percentages for Federal election activity are set out.

Paragraph (b)(2)(i)(B) of section 300.36 requires the committee to report which allocable category of Federal election activity a given allocated disbursement falls into. In paragraph (b)(2)(i)(B), the reference to allocable category of Federal election activity means the type of Federal election activity as defined in 11 CFR 100.24 (e.g., voter registration activity as defined in section 100.24(b)(1), or voter identification as defined in section 100.24(b)(2)(i)). Note that expenses for certain categories of Federal election activity are not allocable between Federal funds and Levin funds (e.g., public communications that promote or support, or attack or oppose, a clearly identified Federal candidate under 11 CFR 100.24(b)(3)). *See* 11 CFR 300.33(a).

Paragraph (b)(2)(ii) pertains to reporting of allocation transfers between a Levin or non-Federal account and a Federal account, or among a Levin or non-Federal account, a Federal account, and a designated allocation account for allocated Federal election activity. All transfers related to a category of Federal election activity must identify that category. Paragraph (b)(2)(iii) specifies the elements of information that must be reported for an allocated disbursement for Federal election activity, including the name and address of the payee, the date of the payment, and the purpose of the payment. This paragraph also sets out itemization requirements for disbursements covering more than one program or activity. Paragraph (b)(2)(iv) covers itemization of disbursements of more than $200. 2 U.S.C. 434(e)(3).

Paragraph (b)(3) alerts the reader to the rules for reporting payments allocated between Federal funds and non-Federal funds that are not covered in paragraph (b)(2). As explained above, paragraph (b)(2) applies only to payments for Federal election activity allocated between Federal funds and Levin funds under 11 CFR 300.33. The reporting regulation for payments allocated between Federal funds and non-Federal funds are contained in 11 CFR 104.17. For example, section 104.17 addresses reporting of administrative expenses.

Paragraph (c)(1) implements BCRA's new requirement for monthly filing by party committees that come under new section 434(e) of the Act. 2 U.S.C. 434(e)(4). This is accomplished by referring to the Commission's existing regulation specifying monthly reporting, e.g., 11 CFR 104.5(c)(3).

In the NPRM, the Commission sought comments on the applicability of the $50,000 annual threshold for electronic filing to receipts and disbursements for Federal election activities. *See* 11 CFR 104.18. The Commission received two comments. An association of State party officials opposed applying receipts and disbursements for Federal election activities toward the electronic filing threshold because these "will also be disclosed on the party committee's regularly filed reports." The Commission notes that this comment, while true, could be applied to any committee with regard to electronic filing. A public interest group commented that receipts and disbursements for Federal election activity should apply to the electronic filing threshold.

Consistent with 2 U.S.C. 434(a)(11), paragraph (c)(2) of section 300.36 provides that contributions and expenditures of Federal funds for Federal election activity apply to the $50,000 threshold for mandatory electronic filing. When determining whether a receipt of Federal funds for Federal election activities is a contribution, the Commission's regulation at 11 CFR 100.7, including the exclusions in paragraph (b) of that section, must be applied. Similarly, when determining whether a disbursement of Federal funds for Federal election activity is an expenditure, the Commission's regulation at 11 CFR 100.8, including the exclusions in paragraph (b) of that section, must be applied. The Commission discerns no reason why a contribution or expenditure should be treated differently for this purpose simply because it is related to a Federal election activity. The Commission emphasizes that this provision does not apply to receipts and disbursements of Levin funds for Federal election activity, and does not apply to receipts and disbursements that are not "contributions" or "expenditures" as defined by the FECA.

Finally, paragraph (d) of section 300.36 supports the disclosure provisions outlined above by adding a recordkeeping requirement. Paragraph (d) refers to the Commission's existing regulation on recordkeeping, 11 CFR 104.14. This requirement is necessary to ensure that sufficient documentation exists to ensure compliance with the disclosure provisions of BCRA.

11 CFR 300.37 Prohibitions on Fundraising for and Donating to Certain Tax-Exempt Organizations

BCRA prohibits State, district, and local party committees, their officers and agents acting on their behalf, and entities directly or indirectly established, maintained, financed, or controlled by them, from soliciting any funds for, or making or directing any donations to certain tax exempt organizations engaged in certain election-related activity. 2 U.S.C. 441i(d). Except as discussed below, the ban on State party fundraising for tax-exempt organizations at new 11 CFR 300.37 mirrors the provision applicable to the prohibition on national party committee fundraising for these organizations at new 11 CFR 300.11. *See* Explanation and Justification for 11 CFR section 300.11 above for a discussion of comments received in response to specific questions raised in the NPRM.

Paragraph (a)(3) implements BCRA's prohibition on State party committee fundraising for, and donations to, a section 527 organization unless the organization is a "political committee," a State or local party committee, or an authorized committee of a State or local candidate. The NPRM asked whether the term "political committee" in 11 CFR 300.37 should mirror the definition of that term in 2 U.S.C. 431(4), which would encompass only organizations that make contributions and expenditures in connection with Federal elections or whether it should be interpreted to also encompass State-registered political committees that support only State and local candidates.

BCRA's cosponsors stated that it would be in keeping with the intent of BCRA to permit State, district, and local party committees "to make a non-federal donation to a section 527 organization registered as a State PAC as long as such a State PAC does not make expenditures and disbursements in connection with an election for Federal office, including expenditures and disbursements for Federal election activity." Several party committee commenters and at least one public interest group agreed with this approach. One public interest commenter disagreed, stating that permitting State and local party committees to fundraise for, or donate to, State political committees "would be contrary to the letter and spirit of BCRA."

Accordingly, in the final rules, new paragraph (a)(3)(iv) of section 300.37 permits a State, District or local party committee to solicit funds for, or donate to, a political committee registered under State law that supports only State or local candidates and does not make expenditures or disbursements in connection with an election for Federal office, including expenditures and disbursements for Federal election activity. The Commission agrees with the sponsors and other commenters that this new paragraph is consistent with the major purpose of BCRA—to prohibit non-Federal funds from being used in connection with Federal elections. As long as the section 527 organization for which funds are being raised exclusively supports non-Federal candidates and does not finance activities that could benefit Federal candidates, such as get-out-the-vote activities in connection with an election in which a Federal candidate appears on the ballot, BCRA's intent is preserved.

As discussed in the Explanation and Justification for 11 CFR 300.11, a safe harbor provision has been added at 11 CFR 300.37(c). Because 11 CFR 300.37(a) permits State, district and local party committees to solicit funds for, or donate funds to, section 527 organizations that are State-registered political committees and that meet certain other requirements, paragraph (c)(2) of the final rules contains an additional safe harbor provision applicable to those organizations. This safe harbor is similar to the safe harbor provision applicable to section 501(c) organizations in paragraph (c)(1). The safe harbor provides that a State, district, and local party committee may obtain and rely upon a certification from certain section 527 organizations to determine whether such organizations fall outside the fundraising/donations prohibition.

Paragraph (d) of 11 CFR 300.37 sets forth the criteria for the certification for both 501(c) organizations and certain section 527 organizations. This paragraph for the most part tracks the criteria for certifications by section 501(c) organizations set forth in 11 CFR 300.11(d). *See* Explanation and Justification for 11 CFR 300.11. Additionally, paragraph (d)(1) of 11 CFR 300.37 provides that in the case of a section 527 organization that is a State-registered political committee pursuant to paragraph (a)(3)(iv), the certification is a written statement signed by the committee treasurer. As the individual who oversees expenditures of a political committee, the treasurer has knowledge of the types of activities undertaken by the organization. The remaining certification requirements are identical to those for section 501(c) organizations.

New paragraphs (e) and (f) of 11 CFR 300.37 mirror the provisions in 11 CFR 300.11(e) and (f) as applied to State, district, and local party committees and other covered persons rather than national party committees. *See* Explanation and Justification for 11 CFR 300.11.

Subpart C—Tax-exempt Organizations

For the convenience of readers interested in locating rules pertaining to fundraising and donations to tax-exempt organizations, subpart C of new part 300 combines in a single place the prohibitions on national, State, district, and local party committee donations to, and fundraising for, certain 501(c) and 527 tax-exempt organizations and the rules governing fundraising by Federal candidates and officeholders for 501(c) organizations.

The proposed rules for 11 CFR 300.50 (national party prohibition) and 11 CFR 300.51 (State party prohibition) were identical to proposed 11 CFR 300.11 (national party prohibition) and proposed 11 CFR 300.37 (State party prohibition), respectively.

The final rule at 11 CFR 300.50 (national party prohibition) is identical to the final rule at 11 CFR 300.11; the final rule at 11 CFR 300.51 (State party prohibition) is identical to the final rule at 11 CFR 300.37; and the final rule at 11 CFR 300.52 (regulations governing Federal candidate and officeholder solicitations for 501(c) organizations) is identical to the final rule at 11 CFR 300.65. The Explanation and Justification for 11 CFR 300.11, 300.37 and 300.65 apply to 11 CFR 300.50, 300.51 and 300.52, respectively.

Subpart D—Federal Candidates and Officeholders

11 CFR 300.60 Scope

BCRA places limits on the amounts and types of funds that can be raised by Federal candidates and officeholders for both Federal and State candidates. *See* 2 U.S.C. 441i(e). The Commission is placing the regulations that address these limitations in 11 CFR part 300, subpart D.

Section 300.60 explains that these restrictions apply to Federal candidates and officeholders, their agents, and entities directly or indirectly established, maintained, or controlled by, or acting on behalf of, any such candidate(s) or officeholder(s). As defined in 2 U.S.C. 431(3) and existing 11 CFR 100.4, "Federal office" means the elective office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States. There is a similar definition of "Federal officeholder" in 11 CFR 113.1(c). As noted above, the Commission is adding a comparable definition at 11 CFR 300.2(o). Persons covered by the restrictions in this subpart may not "solicit, receive, direct, transfer or spend" non-Federal funds unless certain requirements are satisfied, and subject to certain exceptions explained below.

No comments were received on this section.

11 CFR 300.61 Federal Elections

Section 300.61 as proposed in the NPRM prohibited any Federal candidate or officeholder, his or her agent, or any person described in section 300.60, above, from soliciting, receiving, directing, transferring, or spending non-Federal funds in connection with an election for Federal office, including funds for any Federal election activity described in 11 CFR 100.24, discussed above. 2 U.S.C. 441i(e)(1)(A). One commenter urged the Commission to construe this language to prohibit a candidate only from raising non-Federal funds that would eventually benefit the candidate's own campaign. Because the Commission does not find support in the statutory language for this approach, it is not incorporating this recommendation.

The principal sponsors of BCRA asked the Commission to include "disburse" in the list of specified actions, so as to clarify that a person described in 11 CFR 300.60 must use Federal funds when disbursing funds in connection with an election for Federal office. The Commission appreciates the desire for uniformity between sections

300.61 and 300.62, discussed below; and also notes that drawing a distinction between funds that are "spent" and funds that are "disbursed" for certain purposes could prove problematic. Accordingly, it is adding "disburse" to the list of covered activities in section 300.61.

11 CFR 300.62 Non-Federal Elections

BCRA also prohibits any Federal candidate or officeholder, his or her agent, or any other person described in § 300.60, from raising, receiving, directing, transferring, or spending or disbursing funds in connection with any non-Federal election, unless the funds are not in excess of the amounts permitted with respect to contributions to candidates and political committees and are not from sources prohibited by the Act from making contributions in connection with Federal elections. 2 U.S.C. 441i(e)(1)(B).

The NPRM limited this restriction to Federal funds subject to the limitations and prohibitions of the Act. One comment requested the Commission to remove the term "Federal" from this definition, to make it cover all funds that are subject to the limitations and prohibitions of the Act. The Commission is making this change, which is consistent with the statutory language; and is making additional changes to further parallel the statutory language.

In discussing proposed 11 CFR 300.61 and 300.62, the NPRM stated that these prohibitions encompassed "leadership PACs" and "candidate PACs" because they are entities "directly or indirectly established, financed, maintained, or controlled by" Federal candidates and/or officeholders as defined in 11 CFR 300.2(c). Generally, "leadership PACs" and "candidate PACs" are political organizations set up by congressional leaders and other Federal candidates and officeholders, in part, as a way to support other candidates' campaigns. Although candidate PACs and leadership PACs are not specifically mentioned, the legislative history indicates that 2 U.S.C. 441i(e)(1) is intended to prohibit Federal officeholders and candidates from soliciting any funds for these committees that do not comply with FECA's source and amount limitations. *See* 148 Cong. Rec. S2140 (Daily ed. March 20, 2002) (statement of Sen. McCain). Consequently, the NRPM stated that Federal candidates and officeholders and their leadership and candidate PACs must not solicit, receive, direct, transfer, or spend funds for such a PAC's Federal or non-Federal account unless the funds complied with the Act's source and limitations requirements.

The comments of the national party committees construed the NPRM statements, in light of statements made in the Senate debates, to mean that a person could contribute $5,000 to the Federal account of a "leadership" PAC and could donate an additional $5,000 to the non-Federal account of the same committee. These commenters expressed support for such an interpretation of the proposed rules and further argued that the national party ban on raising and spending non-Federal funds found at 2 U.S.C. 441i(a) should be construed similarly. As noted elsewhere, the Commission believes that the plain language of 2 U.S.C. 441i(a) prevents such an interpretation as to the national party committees. No other commenters addressed this point in their written comments, although some commenters testified that the statutory language could be interpreted either to permit solicitations of $5,000 each for a Federal and non-Federal account of a leadership PAC in light of the floor statements, or not to permit such PACs to have non-Federal accounts at all. Another commenter argued that the statutory language did not include the term "non-Federal accounts," but instead permitted a Federal officeholder to solicit, receive, direct and spend funds "in connection with non-Federal elections."

The Commission notes first that the definition of an entity "directly or indirectly established, financed, maintained, or controlled" is being modified in the final rules from the definition contained in the proposed rule at section 300.2(c). The final rule defines this phrase by incorporating the affiliation factors set forth at 11 CFR 100.5(g)(4)(ii). Consequently, 11 CFR 300.62, permitting solicitations and spending for funds "in connection with" a non-Federal election applies to a candidate PAC or leadership PAC to the extent that the PAC comes within the new definition of 11 CFR 300.2(c). Secondly, in discussing BCRA's restrictions on the solicitation and spending of non-Federal funds by Federal candidates and officeholders, the co-sponsors stated that these provisions were part of a "system of prohibitions and limitations on the ability of Federal officeholders and candidates, to raise, spend and control soft money" in order "to stop the use of soft money as a means of buying influence and access with Federal officeholders and candidates." *See* 148 Cong. Rec. S2139 (Daily ed. March 20, 2002) (statement of Sen. McCain). In light of this purpose, the Commission notes that new 11 CFR 300.62 permits Federal candidates and officeholders to solicit, receive, direct, transfer, spend, or disburse funds in connection with Federal and non-Federal elections only from sources permitted under the Act and only when the combined amounts solicited and received from any particular person or entity do not exceed the amounts permitted under the Act's contribution limits and are not from prohibited sources. In other words, a Leadership PAC that comes within the definition of 11 CFR 300.2(c) can raise up to a *total* of $5,000 from any particular person or entity, regardless of whether the funds are contributed to the PAC's Federal account, donated to its non-Federal account, or allocated between the two. In addition, the Commission agrees with commenters who pointed out that 11 CFR 300.62 does not permit Federal candidates and officeholders, their agents and entities established, financed, maintained, or controlled by them to solicit, receive, direct, transfer, spend, or disburse non-Federal funds for Federal elections.

11 CFR 300.63 Exception for Non-Federal Candidates

An exception to the fundraising prohibition applies when a Federal candidate or Federal officeholder is a candidate for State or local office. 2 U.S.C. 441i(e)(2). Such candidates may raise and spend non-Federal funds for their State campaign, as long as their activities are consistent with State law and refer only to their status as a State or local candidate, to other candidates for that same office, or both. This exception is reflected in new 11 CFR 300.63. Please note that if a State or local candidate is simultaneously a candidate for Federal office, he or she must raise and spend only Federal funds in connection with the Federal campaign. No comments addressed this provision.

11 CFR 300.64 Exemption for Attending, Speaking, or Appearing as a Featured Guest at Fundraising Events

BCRA contains an exemption from the fundraising prohibition for Federal candidates and officeholders who attend, speak, or appear as a featured guest at a State, district, or local party committee fundraising event. 2 U.S.C. 441i(e)(3). The NPRM sought comment on how to construe and implement this exemption, particularly in light of the separate general prohibition on Federal candidates and officeholders soliciting non-Federal funds in connection with an election for Federal, State, or local office. The NPRM sought comment on the provision in light of Sen. McCain's

explanation in the Senate debate that Federal candidates and officeholders "cannot solicit soft money funds, funds that do not comply with Federal contribution limits and source prohibitions, for any party committee—national, State, or local." 148 Cong. Rec. S2139 (daily ed. March 20, 2002) (statement of Sen. McCain). The Commission initially sought comment on a rule proposing that, while such individuals could attend, speak, or be a featured guest at a State or local party fundraising event, they could not say anything that could be construed as soliciting or otherwise seeking non-Federal funds. In the alternative, the NPRM sought comment on whether the fundraising event provision was a total exemption from the general solicitation ban, whereby Federal candidates and officeholders and their agents may attend and speak freely at such events. The phrase "featured guest" strongly suggests that State, district, or local party committees may publicize in advance that a Federal candidate or officeholder will be attending and speaking at an event, and the Commission sought comments on whether this means that Federal candidates and officeholders may be referred to in invitation materials for the event, or appear as members of a host committee, or be honored at the event.

The Commission received a range of comments on these issues. Some advocated a restrictive approach, arguing that any other construction would undercut the fundraising prohibition. Others noted that it could be almost impossible for a Federal candidate or officeholder not to become involved in at least indirect fundraising, such as thanking people in a rope line for their support, by virtue of the fact that they are appearing and speaking at a fundraising event, which the statutory exemption expressly permits. Some claimed that monitoring every word the speaker said could turn the Commission into "speech police," raising First Amendment concerns. U.S. CONST. amend. I ("Congress shall make no law * * * abridging the freedom of speech * * *"). Also, the fact that a candidate or officeholder is to be honored at an event implies that his or her name or picture may appear prominently on invitations, flyers, and other material distributed in connection with the event.

The Commission has decided to construe the statutory exemption permitting Federal candidates and officeholders to attend, speak, and appear as a featured guest at State, district or local party committee fundraising events without regulation or restriction. This conclusion is compelled by the plain language of the section and the structure of the section within BCRA. The structure of the statute requires the Commission to construe the provision as a total exemption to the solicitation prohibition, applicable to Federal candidates and officeholders, when attending and speaking at party fundraising events, because the statutory section is styled as such. To conclude otherwise would require the Commission to read the restrictions itemized in the general prohibition into a statutory exemption that clearly and unambiguously excludes those restrictions by it own terms. It would also require the Commission to regulate and potentially restrict what candidates and officeholders say at political events, which is contrary to the plain meaning of the statutory exemption and would raise serious constitutional concerns. Accordingly, candidates and officeholders are free under the rule to speak at such functions without regulation or restriction. In addition, as several commenters urged, State, district, and local party committees are free within the rule to publicize featured appearances of Federal candidates and officeholders at these events, including references to these individuals in invitations. The Commission concludes, however, that Federal candidates and officeholders are prohibited from serving on "host committees" for a party fundraising event or from personally signing a solicitation in connection with a State, local, or district party fundraising event, on the basis that these pre-event activities are outside the permissible activities described above flowing from a Federal candidate's or officeholder's appearance or attendance at the event. The rule, consistent with the statute, places no restriction on the speech of Federal candidates and individuals holding Federal office at these fundraising events.

11 CFR 300.65 Exceptions for Certain Tax-Exempt Organizations

In 2 U.S.C. 441i(e)(1), BCRA prohibits candidates and officeholders from soliciting, receiving, directing, transferring, or spending funds unless the funds meet the source and amount restrictions of the Act. *See also* new 11 CFR 300.61 and 11 CFR 300.62. BCRA creates two exceptions from that general rule in 2 U.S.C. 441i(e)(4): (1) It allows candidates, officeholders, and individuals who are agents acting on behalf of either to make general solicitations, without source or amount restrictions for a 501(c) organization unless the "principal purpose" of the organization is to conduct certain Federal election activity, specifically voter registration, voter identification, GOTV activities, or generic campaign activity, so long as the solicitation is not to obtain funds in connection with a Federal election; and (2) it permits Federal candidates and officeholders, and individuals who are agents acting on their behalf, to make a solicitation explicitly to obtain funds for a 501(c) organization whose principal purpose is to conduct Federal election activity as described above or for a 501(c) organization to conduct these activities provided that only individuals are solicited for no more than $20,000 per calendar year. The final rule at 11 CFR 300.65 implements these exceptions for Federal candidate and officeholder solicitations for 501(c) organizations. It mirrors the final rule at 11 CFR 300.52 contained in subpart C, discussed above.

In response to the NPRM, BCRA's principal sponsors and a public interest group stated that the proposed rule at 11 CFR 300.52(a)(1) (mirrored in 300.65(a)(1)) could be interpreted to prohibit candidate/officeholder solicitations that were not meant to be prohibited. The proposed rules stated that a Federal candidate or officeholder may make a general solicitation on behalf of a 501(c) organization without regard to source or amount restrictions "only if the solicitation does not specify how the funds will or should be spent," if the solicitation is not for a 501(c) organization whose principal purpose is to conduct certain enumerated Federal election activity, and if the solicitation is not for that enumerated Federal election activity. These commenters expressed concern that the proposed regulation could be erroneously interpreted as prohibiting Federal candidates or officeholders from making a general or specific solicitation, without source or amount limitations, for an organization such as the Red Cross, which engages in no "electoral activities" whatsoever. BCRA's principal sponsors also argued that this provision could be interpreted to prohibit specific solicitations, without source or amount limitations, for a 501(c) organization whose principal purpose is not to engage in Federal election activity, but who nonetheless engages in some election activity, provided that the solicitation is not for activity in connection with an election. The sponsors argued that the final rules should permit such specific solicitations. The examples given by the sponsors to illustrate this point included a specific solicitation for the

NAACP College Fund or the NRA firearms training program, even though the NAACP and the NRA engage in certain election activity.

The Commission agrees that 11 CFR 300.65 should not be misinterpreted to prohibit candidates, officeholders, or their agents from soliciting funds for a 501(c) organization that engages in no election activity, such as the Red Cross. Accordingly, the final rule at 11 CFR 300.65 addresses the commenters' concerns by more specifically setting forth the circumstances under which Federal candidates, officeholders, and their agents can make general solicitations on behalf of 501(c) organizations, without regard to source or limitation, and by setting forth in paragraph (b) the circumstances under which they can made specific, limited solicitations to individuals to obtain funds to carry out certain Federal election activities.

In response to a question in the NRPM regarding the scope of the term "agent" in 2 U.S.C. 441i(e), the sponsors stated that it was their intent that the restrictions on candidate/officer holder solicitations apply to an agent "acting on behalf of" either. Accordingly, the final rule states throughout that it applies to an individual who is an agent "acting on behalf of" a Federal candidate or officeholder. BCRA's sponsors and the same public interest commenter also pointed out that proposed 11 CFR 300.52(b)(2) (mirrored in proposed 11 CFR 300.65(b)(2)) did not make clear that the specific solicitations permitted for Federal election activity or organizations principally engaged in such activities applies only to 501(c) organizations and not to other tax exempt organizations, such as section 527 organizations. The Commission agrees. Accordingly, the introductory language in the final rule specifically states that the requirements for solicitations in the rule apply to 501(c) organizations.

Paragraph (c) of the final rule enumerates the specific types of Federal election activity for which a Federal candidate or officeholder can make specific solicitations and incorporates the definitions of those activities at 11 CFR 100.24(a). Because BCRA permits limited solicitations only for specific Federal election activities, new paragraph (d) of the final rule makes clear that solicitations are not permitted for other election activities, including Federal election activity such as public communications promoting or opposing clearly identified Federal candidates. *See* 11 CFR 100.24(b)(3).

In response to questions raised in the NPRM, BCRA's principal sponsors, a public interest group, and a non-profit organization agreed that 11 CFR 300.65 should include a safe harbor provision for Federal candidates, officeholders, and their agents, similar to the one for party committees in 11 CFR 300.11 and 11 CFR 300.37. Accordingly, new paragraph (e) provides that a Federal candidate, officeholder, or agent acting on behalf of either, may obtain and rely upon a certification from a section 501(c) organization in determining the scope of the permissible solicitations they may make on behalf of the organization. Paragraph (e) also sets forth the requirements for such a certification: the certification is a written statement signed by an officer or other authorized representative of the organization with knowledge of the organization's activities; the certification states the organization's principal purpose is not to conduct election activities, including Federal election activities described in paragraph (c) of this section; and the certification states that the organization does not intend to pay debts incurred in a prior election cycle for expenditures and disbursements made in connection with an election for Federal office (including for Federal election activity).

A non-profit organization raised several concerns about the restrictions on Federal officeholders soliciting for 501(c) organizations. First, the non-profit group maintained that the regulations should create a presumption that the principal purpose of any 501(c) organization is not to conduct election activity because "under federal tax law, no 501(c) organization may conduct partisan electoral activity as its primary purpose." The commenter was concerned that requiring a candidate or officeholder to verify whether or not an organization engages in election activity as its principal purpose will "result in an unnecessary chilling effect on their assistance" to 501(c) organizations. The commenter was also concerned that IRS Form 990 tax returns and other tax forms mentioned in the NPRM as possible ways to determine an organization's activities or principal purpose would not provide a candidate or officeholder with the necessary information. Second, the commenter urged that any definition of "principal purpose" be based on a multi-year average of an organization's expenditures for Federal election activity to more accurately capture an organization's actual level of electoral activity, which necessarily occurs closer to elections. Finally, the group urged that the regulations include a safe harbor permitting candidates and officeholders to appear at a Section 501(c) organization's fundraiser or convention as long as no solicitations are made for funds for election activities, or alternatively, for any funds.

Determining whether a particular organization's principal purpose is to conduct election activities, such as voter registration or GOTV, is a fact-based determination that must be made as to a particular organization. Thus, creating a presumption that the principal purpose of any 501(c) organization is not to engage in election activity is inappropriate and could conflict with IRS determinations. As for including a definition of "principal purpose" that is based on a multi-year average of an organization's election expenditures, the Commission lacks sufficient information to establish a particular percentage or average at this time. Finally, the Commission notes that the general and specific solicitations contemplated in 11 CFR 300.65 may take place at a fundraising event conducted by the 501(c) organization.

The Commission agrees with the commenter that IRS Form 990s may not clearly indicate whether or not an organization engages in specific election activities. Therefore, the safe harbor provision in the final rule does not require a Federal candidate or office holder to obtain or rely upon such forms.

As for the concern that Federal candidates and officeholders will be chilled from assisting 501(c) organizations in fundraising, the safe harbor provided in paragraph (e) is intended to ease concerns as to inadvertent violations of the Act, as amended by BCRA. On the other hand, new paragraph (f) of the final rules makes clear that a Federal candidate, Federal officeholder, or individual agents acting on behalf of either may not rely upon a certification obtained from an organization if the individual has actual knowledge that the certification is false. This provision is identical to the provisions applicable to party committees in 11 CFR 300.11 and 300.37.

Subpart E—State and Local Candidates

11 CFR 300.70 Scope

Subpart E implements two provisions of BCRA regarding State and local candidates. 2 U.S.C. 441i(f)(1), (2). Section 300.70 explains that this subpart applies to any candidate for State or local office, individual holding State or local office, or an agent acting on behalf of any such candidate or individual. 2 U.S.C. 441i(f)(1). For example, the subpart applies to an

individual holding Federal office who is a candidate for State or local office. It does not, however, apply to an association or similar group of candidates for State or local office, or of individuals holding State or local office, because they are not addressed in this section of BCRA. The Commission received no comments on this section.

11 CFR 300.71 Federal Funds Required for Certain Communications

BCRA prohibits State and local candidates and officeholders from funding certain public communications with non-Federal funds. 2 U.S.C. 441i(f)(1). This prohibition is contained in new 11 CFR 300.71. The prohibition on use of non-Federal funds encompasses *public communications* that refer to a clearly identified candidate for Federal office, if the communication promotes, supports, attacks, or opposes any candidate for that Federal office, regardless of whether the communication expressly advocates voting for or against any candidate. *See* 2 U.S.C. 431(20)(A)(iii). The section contains a cross reference to section 11 CFR 100.26, which defines the new term *public communication* for purposes of the Act. State and local candidates and officeholders may, however, use Federal funds for these public communications.

No commenters addressed this section.

11 CFR 300.72 Federal Funds Not Required for Certain Communications

BCRA contains an exception to the prohibition on the use of Federal funds for certain public communications that permits State and local candidates and officeholders to use non-Federal funds for public communications that refer to Federal candidates but do not promote, support, attack, or oppose any candidate for Federal office. 2 U.S.C. 441i(f)(2). This exception is set forth at new 11 CFR 300.72. Section 300.72 follows the statutory language.

XI. Part 9034—Entitlements

11 CFR 9034.8 Joint Fundraising

The ban on national party non-Federal fundraising affects the Commission's joint fundraising rules under the Presidential Primary Matching Payment Act at 11 CFR 9034.8. The Commission is, therefore, adding introductory language to this section, advising readers that "[n]othing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities."

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the national, State, and local party committees of the two major political parties are not small entities under 5 U.S.C. 601, and the number of other small entities to which the rules would apply is not substantial.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, political committees and parties, political candidates.

11 CFR Part 108

Elections, reporting and recordkeeping.

11 CFR Part 110

Campaigns, political parties and committees.

11 CFR Part 114

Business and industry, elections, labor.

11 CFR Part 300

Campaign funds, nonprofit organizations, political committees and parties, political candidates, reporting and recordkeeping requirements.

11 CFR Part 9034

Campaign funds, reporting and recordkeeping requirements.

For reasons set out in the preamble, Chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for 11 CFR part 100 continues to read as follows:

Authority: 2 U.S.C. 431; 434(a)(11), 438(a)(8).

2. Section 100.14 is revised to read as follows:

§ 100.14 State committee, subordinate committee, district, or local committee (2 U.S.C. 431(15)).

(a) *State committee* means the organization that by virtue of the bylaws of a political party or the operation of State law is part of the official party structure and is responsible for the day-to-day operation of the political party at the State level, including an entity that is directly or indirectly established, financed, maintained, or controlled by that organization, as determined by the Commission.

(b) *District or local committee* means any organization that by virtue of the bylaws of a political party or the operation of State law is part of the official party structure, and is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State.

(c) *Subordinate committee of a State, district, or local committee* means any organization that at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the control or direction of the State committee, and is directly or indirectly established, financed, maintained, or controlled by the State, district, or local committee.

3. Sections 100.24, 100.25, 100.26, 100.27, and 100.28 are added to read as follows:

§ 100.24 Federal election activity (2 U.S.C. 431(20)).

(a) As used in this section, and in part 300 of this chapter,

(1) *In connection with an election in which a candidate for Federal office appears on the ballot* means:

(i) The period of time beginning on the date of the earliest filing deadline for access to the primary election ballot for Federal candidates as determined by State law, or in those States that do not conduct primaries, on January 1 of each even-numbered year and ending on the date of the general election, up to and including the date of any general runoff.

(ii) In an odd-numbered year, the period beginning on the date on which the date of a special election in which a candidate for Federal office appears on the ballot is set and ending on the date of the special election.

(2) *Voter registration activity* means contacting individuals by telephone, in person, or by other individualized means to assist them in registering to vote. Voter registration activity

includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms.

(3) *Get-out-the-vote activity* means contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting. Get-out-the-vote activity shall not include any communication by an association or similar group of candidates for State or local office or of individuals holding State or local office if such communication refers only to one or more State or local candidates. Get-out-the-vote activity includes, but is not limited to:

(i) Providing to individual voters, within 72 hours of an election, information such as the date of the election, the times when polling places are open, and the location of particular polling places; and

(ii) Offering to transport or actually transporting voters to the polls.

(4) *Voter identification* means creating or enhancing voter lists by verifying or adding information about the voters' likelihood of voting in an upcoming election or their likelihood of voting for specific candidates. This paragraph shall not apply to an association or similar group of candidates for State or local office or of individuals holding State or local office if the association or group engages in voter identification that refers only to one or more State or local candidates.

(b) As used in part 300 of this chapter, *Federal election activity* means any of the activities described in paragraphs (b)(1) through (b)(4) of this section.

(1) Voter registration activity during the period that begins on the date that is 120 calendar days before the date that a regularly scheduled Federal election is held and ends on the date of the election. For purposes of voter registration activity, the term "election" does not include any special election.

(2) The following activities conducted in connection with an election in which one or more candidates for Federal office appears on the ballot (regardless of whether one or more candidates for State or local office also appears on the ballot):

(i) Voter identification.

(ii) Generic campaign activity, as defined in 11 CFR 100.25.

(iii) Get-out-the-vote activity.

(3) A public communication that refers to a clearly identified candidate for Federal office, regardless of whether a candidate for State or local election is also mentioned or identified, and that promotes or supports, or attacks or opposes any candidate for Federal office. This paragraph applies whether or not the communication expressly advocates a vote for or against a Federal candidate.

(4) Services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

(c) *Exceptions. Federal election activity* does not include any amount expended or disbursed by a State, district, or local committee of a political party for any of the following activities:

(1) A public communication that refers solely to one or more clearly identified candidates for State or local office and that does not promote or support, or attack or oppose a clearly identified candidate for Federal office; provided, however, that such a public communication shall be considered a Federal election activity if it constitutes voter registration activity, generic campaign activity, get-out-the-vote activity, or voter identification.

(2) A contribution to a candidate for State or local office, provided the contribution is not designated to pay for voter registration activity, voter identification, generic campaign activity, get-out-the-vote activity, a public communication, or employee services as set forth in paragraphs (a)(1) through (4) of this section.

(3) The costs of a State, district, or local political convention, meeting or conference.

(4) The costs of grassroots campaign materials, including buttons, bumper stickers, handbills, brochures, posters, and yard signs, that name or depict only candidates for State or local office.

§ 100.25 Generic campaign activity (2 U.S.C. 431(21)).

Generic campaign activity means a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate.

§ 100.26 Public communication (2 U.S.C. 431(22)).

Public communication means a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising. The term public communication shall not include communications over the Internet.

§ 100.27 Mass mailing (2 U.S.C. 431(23)).

Mass mailing means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. A mass mailing does not include electronic mail or Internet communications. For purposes of this section, *substantially similar* includes communications that include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

§ 100.28 Telephone bank (2 U.S.C. 431(24)).

Telephone bank means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. A telephone bank does not include electronic mail or Internet communications transmitted over telephone lines. For purposes of this section, *substantially similar* includes communications that include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

4. Sections 100.29 through 100.50 are added and reserved.

5. Sections 100.1 through 100.50 are designated as subpart A—General Definitions.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

6. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

7. Section 102.5 is revised to read as follows:

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers: Accounts and Accounting.

(a) *Organizations that are political committees under the Act, other than national party committees.*

(1) Each organization, including a State, district, or local party committee, that finances political activity in connection with both Federal and non-Federal elections and that qualifies as a political committee under 11 CFR 100.5 shall either:

(i) Establish a separate Federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate Federal

political committee that must comply with the requirements of the Act including the registration and reporting requirements of 11 CFR parts 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate Federal account. *See* 11 CFR 103.3. All disbursements, contributions, expenditures, and transfers by the committee in connection with any Federal election shall be made from its Federal account, except as otherwise permitted for State, district, and local party committees by 11 CFR part 300 and paragraph (a)(5) of this section. No transfers may be made to such Federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-Federal elections, except as provided by 11 CFR 300.33, 300.34, 106.6(c), and 106.7(f). Administrative expenses for political committees other than party committees shall be allocated pursuant to 11 CFR 106.6 between such Federal account and any other account maintained by such committee for the purpose of financing activity in connection with non-Federal elections. Administrative expenses for State, district, and local party committees are subject to 11 CFR 106.7 and 11 CFR part 300; or

(ii) Establish a political committee that shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with Federal or non-Federal elections. Such organization shall register as a political committee and comply with the requirements of the Act.

(2) Only contributions meeting any of the conditions set forth in paragraphs (a)(2)(i), (ii), or (iii) of this section may be deposited in a Federal account established under paragraph (a)(1)(i) of this section, see 11 CFR 103.3, or may be received by a political committee established under paragraph (a)(1)(ii) of this section:

(i) Contributions designated for the Federal account;

(ii) Contributions that result from a solicitation which expressly states that the contribution will be used in connection with a Federal election; or

(iii) Contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act.

(3) State, district, and local party committees that intend to expend Levin funds raised pursuant to 11 CFR 300.31 for activities identified in 11 CFR 300.32(b)(1) must either:

(i) Establish one or more separate Levin accounts pursuant to 11 CFR 300.30(c)(2); or

(ii) Demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that whenever such organization makes a payment that organization has received sufficient funds subject to the limitations and prohibitions of the Act or the requirements of 11 CFR 300.30(c)(1) or (3) to make such payment. Such organization shall keep records of amounts received or expended under this paragraph and, upon request, shall make such records available for examination by the Commission.

(4) Solicitations by Federal candidates and Federal officeholders for State, district, and local party committees are subject to the restrictions in 11 CFR 300.31(e) and 11 CFR part 300, subpart D.

(5) State, district, and local party committees and organizations may establish one or more separate allocation accounts to be used for activities allocable pursuant to 11 CFR 106.7 and 11 CFR 300.33.

(b) *Organizations that are not political committees under the Act.*

(1) Any organization that makes contributions, expenditures, and exempted payments under 11 CFR 100.7(b)(9), (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18), but that does not qualify as a political committee under 11 CFR 100.5, must keep records of receipts and disbursements and, upon request, must make such records available for examination by the Commission. The organization must demonstrate through a reasonable accounting method that, whenever such an organization makes a contribution or expenditure, or payment, the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure, or payment.

(2) Any State, district, or local party organization that makes payments for certain Federal election activities under 11 CFR 300.32(b) must either:

(i) Establish one or more Levin accounts pursuant to 11 CFR 300.30(b) into which only funds solicited pursuant to 11 CFR 300.31 may be deposited and from which payments must be made pursuant to 11 CFR 300.32 and 300.33. See 11 CFR 300.30(c)(2)(i); or

(ii) Demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that whenever such organization makes a payment that organization has received sufficient funds subject to the limitations and prohibitions of the Act or the requirements of 11 CFR 300.31 to make such payment. Such organization shall keep records of amounts received or expended under this paragraph and, upon request, shall make such records available for examination by the Commission. See 11 CFR 300.30(c)(2)(ii).

(3) All such party organizations shall keep records of deposits to and disbursements from such Federal and Levin accounts, and upon request, shall make such records available for examination by the Commission.

(c) *National party committees.* Between November 6, 2002, and December 31, 2002, paragraphs (a) and (b) of this section apply to national party committees. After December 31, 2002, national party committees are prohibited from raising and spending non-Federal funds. Therefore, this section does not apply to national party committees after December 31, 2002.

8. Section 102.17 is amended by adding introductory language to paragraph (a) to read as follows:

§ 102.17 Joint fundraising by committees other than separate segregated funds.

(a) *General.* Nothing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

9. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

10. Section 104.8 is amended by revising paragraphs (e) and (f) to read as follows:

§ 104.8 Uniform reporting of receipts.

* * * * *

(e) For reports covering activity on or before December 31, 2002, national party committees shall disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's non-Federal account(s). This information shall include the donating individual's or entity's name,

mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

(f) For reports covering activity on or before December 31, 2002, national party committees shall also disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's building fund account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

11. Section 104.9 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 104.9 Uniform reporting of disbursements.

* * * * *

(c) For reports covering activity on or before March 31, 2003, national party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's non-Federal account(s), together with the date, amount, and purpose of such disbursement, in accordance with paragraph (b) of this section. As used in this section, *purpose* means a brief statement or description as to the reasons for the disbursement. *See* 11 CFR 104.3(b)(3)(i)(A).

(d) For reports covering activity on or before March 31, 2003, national party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's building fund account(s), together with the date, amount, and purpose of such disbursement, in accordance with paragraph (b) of this section. As used in this section, *purpose* means a brief statement or description as to the reasons for the disbursement. *See* 11 CFR 104.3(b)(3)(i)(A).

(e) For reports covering activity on or before December 31, 2002, national party committees shall report in a memo Schedule B each transfer from their non-Federal account(s) to the non-Federal accounts of a State or local party committee.

12. Section 104.10 is revised to read as follows:

§ 104.10 Reporting by separate segregated funds and nonconnected committees of expenses allocated among candidates and activities.

(a) *Expenses allocated among candidates.* A political committee that is a separate segregated fund or a nonconnected committee making an expenditure on behalf of more than one clearly identified candidate for Federal office shall allocate the expenditure among the candidates pursuant to 11 CFR part 106. Payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates shall also be allocated pursuant to 11 CFR part 106. For allocated expenditures, the committee shall report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate. If a payment also includes amounts attributable to one or more non-Federal candidates, and is made by a political committee with separate Federal and non-Federal accounts, then the payment shall be made according to the procedures set forth in 11 CFR 106.6(e), but shall be reported pursuant to paragraphs (a)(1) through (a)(4) of this section, as follows:

(1) *Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates.* In each report disclosing a payment that includes both expenditures on behalf of one or more Federal candidates and disbursements on behalf of one or more non-Federal candidates, the committee shall assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, shall state the allocation ratio calculated for the program or activity, and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts attributed to each candidate, to date, for each joint program or activity.

(2) *Reporting of transfers between accounts for the purpose of paying expenses attributable to specific Federal and non-Federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one program or activity, the committee shall itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates.

(3) *Reporting of allocated disbursements attributable to specific Federal and non-Federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall also report each disbursement from its Federal account or its separate allocation account in payment for a program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. The committee shall also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate, and the total amount attributed to the non-Federal candidate(s). In addition, the committee shall report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocation on behalf of specific Federal and non-Federal candidates, in accordance with 11 CFR 104.14.

(b) *Expenses allocated among activities.* A political committee that is a separate segregated fund or a nonconnected committee and that has established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising and generic voter drives according to 11 CFR 106.6, and shall report those allocations according to paragraphs (b)(1) through (5) of this section, as follows:

(1) *Reporting of allocation of administrative expenses and costs of generic voter drives.*

(i) In the first report in a calendar year disclosing a disbursement for administrative expenses or generic voter drives, as described in 11 CFR 106.6(b), the committee shall state the allocation ratio to be applied to these categories of activity according to 11 CFR 106.6(c), and the manner in which it was derived.

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement for administrative expenses or generic voter drives:

(A) The committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amount spent by the Federal and non-Federal accounts that year, to date, for each such category.

(B) The committees shall also report in a memo entry the total amounts expended in donations and direct disbursements on behalf of specific State and local candidates, to date, in that calendar year.

(2) *Reporting of allocation of the direct costs of fundraising.* In each report disclosing a disbursement for the direct costs of a fundraising program, as described in 11 CFR 106.6(b), the committee shall assign a unique identifying title or code to each such program or activity, shall state the allocation ratio calculated for the program or activity according to 11 CFR 106.6(d), and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts spent by the Federal and non-Federal accounts that year, to date, for each such program or activity.

(3) *Reporting of transfers between accounts for the purpose of paying allocable expenses.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee shall itemize the transfer, showing the amounts designated for administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b).

(4) *Reporting of allocated disbursements.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall also report each disbursement from its Federal account or its separate allocation account in payment for a joint Federal and non-Federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

(5) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocated disbursements for three years, in accordance with 11 CFR 104.14.

13. Part 104 is amended by adding § 104.17 to read as follows:

§ 104.17 Reporting of allocable expenses by party committees.

(a) *Expenses allocated among candidates.* A national party committee making an expenditure on behalf of more than one clearly identified candidate for Federal office must report the allocation between or among the named candidates. A national party committee making expenditures and disbursements on behalf of one or more clearly identified Federal candidates and on behalf of one or more clearly identified non-Federal candidates must report the allocation among all named candidates. These payments shall be allocated among candidates pursuant to 11 CFR part 106, but only Federal funds may be used for such payments. A State, district, or local party committee making expenditures and disbursements for Federal election activity as defined at 11 CFR 100.24 on behalf of one or more clearly identified Federal and one or more clearly identified non-Federal candidates must make the payments from its Federal account and must report the allocation among all named candidates. A State, district, or local party committee making expenditures and disbursements on behalf of one or more clearly identified Federal and one or more clearly identified non-Federal candidates where the activity is not a Federal election activity may allocate the payments between its Federal and non-Federal account and must report the allocation among all named candidates. For allocated expenditures, the committee must report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each candidate. If a payment also includes amounts attributable to one or more non-Federal candidates, and is made by a State, district, or local party committee with separate Federal and non-Federal accounts, and is not for a Federal election activity, then the payment shall be made according to the procedures set forth in 11 CFR 106.7(f), but shall be reported pursuant to paragraphs (a)(1) through (a)(4) of this section, as follows:

(1) *Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates.* In each report disclosing a payment that includes both expenditures on behalf of one or more Federal candidates and disbursements on behalf of one or more non-Federal candidates, the committee must assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, state the allocation ratio calculated for the program or activity, and explain the manner in which the ratio applied to each candidate was derived. The committee must also summarize the total amounts attributed to each candidate, to date, for each program or activity.

(2) *Reporting of transfers between accounts for the purpose of paying expenses attributable to specific Federal and non-Federal candidates.* A State, district, or local party committee that pays allocable expenses in accordance with 11 CFR 106.7(f) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the State, district, or local party committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one

program or activity, the State, district, or local party committee must itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates.

(3) *Reporting of allocated disbursements attributable to specific Federal and non-Federal candidates.* A State, district, or local committee that pays allocable expenses in accordance with 11 CFR 106.7(f) shall also report each disbursement from its Federal account or its separate allocation account in payment for a program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. In the report covering the period in which the disbursement occurred, the State, district, or local party committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. The State, district, or local party committee must also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate, and the total amount attributed to the non-Federal candidate(s). In addition, the State, district, or local party committee must report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) *Recordkeeping.* The treasurer of a State, district, or local party committee must retain all documents supporting the committee's allocations on behalf of specific Federal and non-Federal candidates, in accordance with 11 CFR 104.14.

(b) *Allocation of activities that are not Federal election activities.* A State, district, or local committee of a political party that has established separate Federal and non-Federal accounts, including related allocation accounts, under 11 CFR 102.5 must report all payments that are allocable between these accounts pursuant to the allocation rules in 11 CFR 106.7. Disbursements for activities that are allocable between Federal and Levin accounts, including related allocation accounts, must be reported pursuant to 11 CFR 300.36.

(1) *Reporting of allocations of expenses for activities that are not Federal election activities.*

(i) In the first report in a calendar year disclosing a disbursement allocable pursuant to 11 CFR 106.7, a State, district, or local committee shall state and explain the allocation percentages to be applied to each category of allocable activity (e.g., 36% Federal/64% non-Federal in Presidential and Senate election years) pursuant to 11 CFR 106.7(d).

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement, the State, district, or local party committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amounts expended from Federal and non-Federal accounts, or from allocation accounts, that year to date for each such category.

(iii) In each report disclosing disbursements for allocable activities as described in 11 CFR 106.7, the State, district, or local party committee shall assign a unique identifying title or code to each such program or activity, and shall state the applicable Federal/non-Federal percentage for any direct costs of fundraising. Unique identifying titles or codes are not required for salaries and wages pursuant to 11 CFR 106.7(c)(1), or for other administrative costs allocated pursuant to 11 CFR 106.7(c)(2).

(2) *Reporting of transfers between the accounts of State, district, and local party committees and into allocation accounts for allocable expenses.* A State, district, or local committee of a political party that pays allocable expenses in accordance with 11 CFR 106.7 shall report each transfer of funds from its non-Federal account to its Federal account, or each transfer from its Federal account and its non-Federal account into an allocation account, for the purpose of payment of such expenses. In the report covering the period in which each transfer occurred, the State, district, or local party committee must explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the State, district, or local party committee must itemize the transfer, showing the amounts designated for each category of expense as described in 11 CFR 106.7.

(3) *Reporting of allocated disbursements for certain allocable activity that is not Federal election activity.*

(i) A State, district, or local committee of a political party that pays allocable expenses in accordance with 11 CFR 106.7 shall report each disbursement from its Federal account for allocable expenses, or each payment from an allocation account for such activity. In the report covering the period in which the disbursement occurred, the State, district, or local committee shall state the full name and address of each individual or vendor to which the disbursement was made, the date, amount, and purpose of each such disbursement, and the amounts allocated to Federal and non-Federal portions of the allocable activity. If the disbursement includes payment for the allocable costs of more than one activity, the State, district, or local party committee must itemize the disbursement, showing the amounts designated for payments of particular categories of activity as described in 11 CFR 106.7. The State, district, or local party committee must also report the total amount paid that calendar year to date for each category of allocable activity.

(ii) A State, district, or local committee of a political party that pays allocable expenses from a Federal account and a Levin account in accordance with 11 CFR 300.33 shall report disbursements from those accounts according to the requirements of 11 CFR 300.36.

(4) *Recordkeeping.* The treasurer of a State, district, or local party committee must retain all documents supporting the committee's allocations of expenditures and disbursements for the costs and activities cited at paragraph (b) of this section, in accordance with 11 CFR 104.14.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

14. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

15. Section 106.1 is amended by revising paragraphs (a)(1), (a)(2), and (e) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.*

(1) Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified Federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For

example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. In the case of a fundraising program or event where funds are collected by one committee for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates. In the case of a phone bank, the attribution shall be determined by the number of questions or statements devoted to each candidate as compared to the total number of questions or statements devoted to all candidates. These methods shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates.

(2) An expenditure made on behalf of more than one clearly identified Federal candidate shall be reported pursuant to 11 CFR 104.10(a) or 104.17(a), as appropriate. A payment that also includes amounts attributable to one or more non-Federal candidates, and that is made by a political committee with separate Federal and non-Federal accounts, shall be made according to the procedures set forth in 11 CFR 106.6(e) or 106.7(f), but shall be reported pursuant to 11 CFR 104.10(a) or 104.17(a). If a State, district, or local party committee's payment on behalf of both a Federal candidate and a non-Federal candidate is for a Federal election activity, only Federal funds may be used for the entire payment. For Federal election activities, the provisions of 11 CFR 300.33 and 104.17(a) will apply to payments attributable to candidates.

* * * * *

(e) State, district, and local party committees, separate segregated funds, and nonconnected committees that make mixed Federal/non-Federal payments for activities other than an activity entailing an expenditure for a Federal candidate and disbursement for a non-Federal candidate, or that make mixed Federal/Levin fund payments, shall allocate those expenses in accordance with 11 CFR 106.6, 106.7, or 300.33, as appropriate.

16. Section 106.5 is revised to read as follows:

§ 106.5 Allocation of expenses between federal and non-federal activities by national party committees.

(a) *General rules.*

(1) *Disbursements from Federal and non-Federal accounts.* National party committees that make disbursements in connection with Federal and non-Federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established separate Federal and non-Federal accounts under 11 CFR 102.5(b)(1)(i), or that make Federal and non-Federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii), shall also allocate their Federal and non-Federal expenses according to this section. This section covers:

(i) General rules regarding allocation of Federal and non-Federal expenses by party committees;

(ii) Percentages to be allocated for administrative expenses and costs of generic voter drives by national party committees;

(iii) Methods for allocation of administrative expenses, costs of generic voter drives, and of fundraising costs by national party committees; and

(iv) Procedures for payment of allocable expenses. Requirements for reporting of allocated disbursements are set forth in 11 CFR 104.10.

(2) *Costs to be allocated.* National party committees that make disbursements in connection with Federal and non-Federal elections shall allocate expenses according to this section for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where Federal and non-Federal funds are collected by one committee through such program or event; and

(iii) [Removed and reserved]

(iv) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(b) *National party committees other than Senate or House campaign committees; fixed percentages for allocating administrative expenses and costs of generic voter drives.*

(1) *General rule.* Each national party committee other than a Senate or House campaign committee shall allocate a fixed percentage of its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, to its Federal and non-Federal account(s) each year. These percentages shall differ according to whether or not the allocable expenses were incurred in a presidential election year. Such committees shall allocate the costs of each combined Federal and non-Federal fundraising program or event according to paragraph (f) of this section, with no fixed percentages required.

(2) *Fixed percentages according to type of election year.* National party committees other than the Senate or House campaign committees shall allocate their administrative expenses and costs of generic voter drives according to paragraphs (b)(2) (i) and (ii) as follows:

(i) *Presidential election years.* In presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their Federal accounts at least 65% each of their administrative expenses and costs of generic voter drives.

(ii) *Non-presidential election years.* In all years other than presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their Federal accounts at least 60% each of their administrative expenses and costs of generic voter drives.

(c) *Senate and House campaign committees of a national party; method and minimum Federal percentage for allocating administrative expenses and costs of generic voter drives.*

(1) *Method for allocating administrative expenses and costs of generic voter drives.* Subject to the minimum percentage set forth in paragraph (c)(2) of this section, each Senate or House campaign committee of a national party shall allocate its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, according to the funds expended method, described in paragraphs (c)(1)(i) and (ii) as follows:

(i) Under this method, expenses shall be allocated based on the ratio of Federal expenditures to total Federal and non-Federal disbursements made by the committee during the two-year

Federal election cycle. This ratio shall be estimated and reported at the beginning of each Federal election cycle, based upon the committee's Federal and non-Federal disbursements in a prior comparable Federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its Federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total Federal and non-Federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(ii) On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual Federal and non-Federal disbursements made, to date. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.

(2) *Minimum Federal percentage for administrative expenses and costs of generic voter drives.* Regardless of the allocation ratio calculated under paragraph (c)(1) of this section, each Senate or House campaign committee of a national party shall allocate to its Federal account at least 65% each of its administrative expenses and costs of generic voter drives each year. If the committee's own allocation calculation under paragraph (c)(1) of this section yields a Federal share greater than 65%, then the higher percentage shall be applied. If such calculation yields a Federal share lower than 65%, then the committee shall report its calculated ratio according to 11 CFR 104.10(b), and shall apply the required minimum Federal percentage.

(3) *Allocation of fundraising costs.* Senate and House campaign committees shall allocate the costs of each combined Federal and non-Federal fundraising program or event according to paragraph (f) of this section, with no minimum percentages required.

(d) [Reserved].

(e) [Reserved].

(f) *National party committees; method for allocating direct costs of fundraising.*

(1) If Federal and non-Federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising, as described in paragraph (a)(2) of this section, according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its Federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its Federal and non-Federal revenue from that program or event, and shall be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio.

(2) No later than the date 60 days after each fundraising program or event from which both Federal and non-Federal funds are collected, the committee shall adjust the allocation ratio for that program or event to reflect the actual ratio of funds received. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. If the Federal account has paid more than its allocable share, the committee shall make any transfers of funds from its non-federal to its federal account to reflect the adjusted allocation ratio within the 60-day time period established by this paragraph. The committee shall make note of any such adjustments and transfers in its report for any period in which a transfer was made, and shall also report the date of the fundraising program or event that serves as the basis for the transfer. In the case of a telemarketing or direct mail campaign, the date for purposes of this paragraph is the last day of the telemarketing campaign, or the day on which the final direct mail solicitations are mailed.

(g) *Payment of allocable expenses by committees with separate Federal and non-Federal accounts.*

(1) *Payment options.* Committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i) shall pay the expenses of joint Federal and non-Federal activities described in paragraph (a)(2) of this section according to either paragraph (g)(1)(i) or (ii), as follows:

(i) *Payment by Federal account; transfers from non-Federal account to Federal account.* The committee shall pay the entire amount of an allocable expense from its Federal account and shall transfer funds from its non-Federal account to its Federal account solely to cover the non-Federal share of that allocable expense.

(ii) *Payment by separate allocation account; transfers from Federal and non-Federal accounts to allocation account.*

(A) The committee shall establish a separate allocation account into which funds from its Federal and non-Federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint Federal and non-Federal activities. Once a committee has established a separate allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its Federal and non-Federal accounts to its allocation account in amounts proportionate to the Federal or non-Federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) *Timing of transfers between accounts.*

(i) Under either payment option described in paragraphs (g)(1)(i) or (ii) of this section, the committee shall transfer funds from its non-Federal account to its Federal account or from its Federal and non-Federal accounts to its separate allocation account following determination of the final cost of each joint Federal and non-Federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as determined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-Federal account to its Federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

(B) Except as provided in paragraph (f)(2) of this section, such funds may not be transferred more than 10 days before or more than 60 days after the payments for which they are designated are made.

(iii) Any portion of a transfer from a committee's non-Federal account to its Federal account or its allocation account that does not meet the requirements of paragraph (g)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-Federal account to a Federal account, in violation of the Act.

(3) *Reporting transfers of funds and allocated disbursements.* A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

(h) *Sunset provision.* This section applies from November 6, 2002, to December 31, 2002. After December 31, 2002, *see* 11 CFR 106.7(a).

17. Section 106.7 is added to part 106 to read as follows:

§ 106.7 Allocation of expenses between Federal and non-Federal accounts by party committees, other than for Federal election activities.

(a) National party committees are prohibited from raising or spending non-Federal funds. Therefore, these committees shall not allocate expenditures and disbursements between Federal and non-Federal accounts. All disbursements by a national party committee must be made from a Federal account.

(b) State, district, and local party committees that make expenditures and disbursements in connection with both Federal and non-Federal elections for activities that are not Federal election activities pursuant to 11 CFR 100.24 may use only funds subject to the prohibitions and limitations of the Act, or they may allocate such expenditures and disbursements between their Federal and their non-Federal accounts. State, district, and local party committees that are political committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to paragraphs (c) and (d) of this section. Party organizations that are not political committees but have established separate Federal and non-Federal accounts, or that make Federal and non-Federal disbursements from a single account, shall also allocate their Federal and non-Federal expenses according to paragraphs (c) and (d) of this section. In lieu of establishing separate accounts, party organizations that are not political committees may choose to use a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) pursuant to 11 CFR 102.5 and 300.30.

(c) *Costs allocable by State, district, and local party committees between Federal and non-Federal accounts.*

(1) *Salaries and wages.* State, district, and local party committees must pay salaries and wages from funds that comply with State law for employees who spend 25% or less of their time in any given month on Federal election activity or activity in connection with a Federal election. *See* 11 CFR 300.33(c)(2).

(2) *Administrative costs.* State, district, and local party committees may either pay administrative costs, including rent, utilities, office equipment, office supplies, postage for other than mass mailings, and routine building maintenance, upkeep and repair, from their Federal account, or allocate such expenses between their Federal and non-Federal accounts, except that any such expenses directly attributable to a clearly identified Federal candidate must be paid only from the Federal account.

(3) *Exempt party activities that are not Federal election activities.* State, district, and local party committees may pay expenses for party activities that are exempt from the definitions of contribution and expenditure under 11 CFR 100.7(b)(9), (15), or (17), and 100.8(b)(10), (16), or (18), that are conducted in conjunction with non-Federal activity, and that are not Federal election activities pursuant to 11 CFR 100.24, from their Federal accounts, or may allocate these expenses between their Federal and non-Federal accounts.

(4) *Certain fundraising costs.* State, district, and local party committees may allocate the direct costs of certain fundraising programs or events between their Federal and non-Federal accounts provided that none of the proceeds from the activities or events will ever be used for Federal election activities. The proceeds of fundraising allocated pursuant to this paragraph must be segregated in bank accounts that are never used for Federal election activity. Direct costs of fundraising include disbursements for the planning and administration of specific fundraising events or programs.

(5) *Voter-drive activities that do not qualify as Federal election activities and that are not party exempt activities.* Other than for salaries and wages as described in paragraph (c)(1) of this section, expenses for voter identification, voter registration, and get-out-the-vote drives, and any other activities that urge the general public to register or vote, or that promote or oppose a political party, without promoting or opposing a candidate or non-Federal candidate, that do not qualify as Federal election activities and that are not exempt party activities, must be paid with Federal funds or may be allocated between the committee's Federal and non-Federal accounts.

(d) *Allocation percentages, ratios, and record-keeping.*

(1) *Salaries and wages.* Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election. Allocations of salaries and wages shall be undertaken as follows:

(i) Salaries and wages paid for employees who spend 25% or less of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election shall be paid from funds that comply with State law.

(ii) Salaries and wages paid for employees who spend more than 25% of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election must be paid only from a Federal account. *See* 11 CFR 300.33(c)(2), and paragraph (e)(2) of this section.

(2) *Administrative costs.* State, district, and local party committees that choose to allocate administrative expenses may do so subject to the following requirements:

(i) *Presidential election years.* In any even year in which a Presidential candidate, but no Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 28% of administrative expenses to their Federal accounts.

(ii) *Presidential and Senate election year.* In any even year in which a Presidential candidate and a Senate candidate appear on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 36% of administrative expenses to their Federal accounts.

(iii) *Senate election year.* In any even year in which a Senate candidate, but no Presidential candidate, appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 21% of administrative expenses to their Federal account.

(iv) *Non-Presidential and non-Senate year.* In any even year in which neither a Presidential nor a Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 15% of administrative expenses to their Federal account.

(3) *Exempt party activities and voter drive activities that are not Federal election activities.* State, district, and local party committees that choose to allocate expenses for exempt activities conducted in conjunction with non-Federal activities and voter drive activities, that are not Federal election activities, must do so subject to the following requirements:

(i) *Presidential election years.* In any even year in which a Presidential candidate, but no Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 28% of these expenses to their Federal accounts.

(ii) *Presidential and Senate election year.* In any even year in which a Presidential candidate and a Senate candidate appear on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 36% of these expenses to their Federal accounts.

(iii) *Senate election year.* In any even year in which a Senate candidate, but no Presidential candidate, appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 21% of these expenses to their Federal account.

(iv) *Non-Presidential and non-Senate year.* In any even year in which neither a Presidential nor a Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committee must allocate at least 15% of these expenses to their Federal account.

(4) *Fundraising for Federal and non-Federal accounts.* If Federal and non-Federal funds are collected by a State, district, or local party committee through a joint fundraising activity, that committee must allocate its direct fundraising costs using the funds received method and according to the following procedures:

(i) The committee must allocate its fundraising costs based on the ratio of funds received into its Federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its Federal and non-Federal revenue from that program or event, and must be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event must be allocated according to this estimated ratio.

(ii) No later than the date 60 days after each fundraising program or event from which both Federal and non-Federal funds are collected, the committee shall adjust the allocation ratio for that program or event to reflect the actual ratio of funds received. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. If the Federal account has paid more than its allocable share, the committee shall make any transfers of funds from its non-Federal to its Federal account to reflect the adjusted allocation ratio within the 60-day time period established by this paragraph. The committee shall make note of any such adjustments and transfers in its report for any period in which a transfer was made, and shall also report the date of the fundraising program or event that serves as the basis for the transfer. In the case of a telemarketing or direct mail campaign, the date for purposes of this paragraph is the last day of the telemarketing campaign, or the day on which the final direct mail solicitations are mailed.

(e) *Costs not allocable by State, district, and local party committees between Federal and non-Federal accounts.* The following costs incurred by State, district, and local party committees shall be paid only with Federal funds:

(1) Disbursements for State, district, and local party committees for activities that refer only to one or more candidates for Federal office must not be allocated. All such disbursements must be made from a Federal account.

(2) *Salaries and wages.* Salaries and wages for employees who spend more than 25% of their compensated time in a given month on activities in connection with a Federal election must not be allocated. All such disbursements must be made from a Federal account. *See* 11 CFR 300.33(c)(2).

(3) *Federal election activities.* Activities that are Federal election activities pursuant to 11 CFR 100.24 must not be allocated between Federal and non-Federal accounts. Only Federal funds, or a mixture of Federal funds and Levin funds, as provided in 11 CFR 300.33, may be used.

(4) *Fundraising Costs.* Expenses incurred by State, district, and local party committees directly related to programs or events undertaken to raise funds to be used, in whole or in part, for activities in connection with Federal and non-Federal elections that are Federal election activities pursuant to 11 CFR 100.24 must not be allocated between Federal and non-Federal accounts. Except as provided in 11 CFR 300.32(a)(4), all such disbursements must be made from a Federal account.

(f) *Transfers between accounts to cover allocable expenses.* State, district, and local party committees may transfer funds from their non-Federal to their Federal accounts or to an allocation account solely to meet allocable expenses under this section and only pursuant to the following requirements:

(1) *Payments from Federal accounts or from allocation accounts.*

(i) State, district, and local party committees must pay the entire amount of an allocable expense from their Federal accounts and transfer funds from their non-Federal account to the Federal account solely to cover the non-Federal share of that allocable expense; or

(ii) State, district, or local party committees may establish a separate allocation account into which funds from its Federal and non-Federal accounts may be deposited solely for the purpose of paying the allocable expenses of joint Federal and non-Federal activities.

(2) *Timing.*

(i) If a Federal or allocation account is used to make allocable expenditures and disbursements, State, district, and local party committees must transfer funds from their non-Federal to their Federal or allocation account to meet allocable expenses no more than 10 days before and no more than 60 days after the payments for which they are designated are made from a Federal or allocation account, except that transfers may be made more than 10 days before a payment is made from the Federal or allocation account if advance payment is required by the vendor(s) and if such payment is based on a reasonable estimate of the activity's final costs as determined by the committee and the vendor(s) involved.

(ii) Any portion of a transfer from a committee's non-Federal account to its Federal or allocation account that does not meet the requirement of paragraph (f)(2)(i) of this section shall be presumed to be a loan or contribution from the non-Federal account to the Federal or allocation account, in violation of the Act.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

18. The authority citation for part 108 continues to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

19. Section 108.7 is amended by revising paragraphs (c)(4) and (c)(5) and adding paragraph (c)(6) to read as follows:

§ 108.7 Effect on State law (2 U.S.C. 453).

* * * * *

(c) * * *

(4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses;

(5) Candidate's personal financial disclosure; or

(6) Application of State law to the funds used for the purchase or construction of a State or local party office building to the extent described in 11 CFR 300.35.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

20. The authority citation for part 110 continues to be read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h.

21. Section 110.1 is amended by adding new paragraph (c)(5) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees

(2 U.S.C. 441a(a)(1)).

* * * * *

(c) * * *

(5) On or after January 1, 2003, no person shall make contributions to a political committee established and maintained by a State committee of a political party in any calendar year that, in the aggregate, exceed $10,000.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

22. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8), 441b.

23. Section 114.1 is amended by revising paragraph (a)(2)(ix) to read as follows:

§ 114.1 Definitions.

(a) * * *

(2) * * *

(ix) Donations to a State or local party committee used for the purchase or construction of its office building are subject to 11 CFR 300.35. No exception applies to contributions or donations to a national party committee that are made or used for the purchase or construction of any office building or facility; or

* * * * *

24. Subchapter C consisting of part 300 is added to Chapter I to read as follows:

SUBCHAPTER C—BIPARTISAN CAMPAIGN REFORM ACT OF 2002—(BCRA) REGULATIONS

PART 300—NON-FEDERAL FUNDS

Sec.

300.1 Scope, effective date, and organization.
300.2 Definitions.

Subpart A—National Party Committees

300.10 General prohibitions on raising and spending non-Federal funds (2 U.S.C. 441; (a) and (c)).
300.11 Prohibition on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441; (d)).
300.12 Transition rules.
300.13 Reporting (2 U.S.C. 431 note and 434 (e)).

Subpart B—State, District, and Local Party Committees and Organizations

300.30 Accounts.
300.31 Receipt of Levin funds.
300.32 Expenditures and disbursements.
300.33 Allocation of costs of Federal election activity.
300.34 Transfers.
300.35 Office buildings.
300.36 Reporting Federal election activity; recordkeeping.
300.37 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i (d)).

Subpart C—Tax-Exempt Organizations

300.50 Prohibited fundraising by national party committees (2 U.S.C. 441i(d)).
300.51 Prohibited fundraising by State, district, and local party committees (2 U.S.C. 441i(d)).
300.52 Fundraising by Federal candidates and Federal officeholders (2 U.S.C. 441i(e)(4)).

Subpart D—Federal Candidates and Officeholders

300.60 Scope (2 U.S.C. 441i (e)(1)).
300.61 Federal elections (2 U.S.C. 441i (e)(1)(A)).
300.62 Non-Federal elections (2 U.S.C. 441i (e)(1)(B)).
300.63 Exception for State party candidates (2 U.S.C. 441i (e)(2))
300.64 Exemption for attending, speaking, or appearing as a featured guest at fundraising events (2 U.S.C. 441i (e)(3)).
300.65 Exceptions for certain tax-exempt organizations (2 U.S.C. 441i (e)(1) and (4)).

Subpart E—State and Local Candidates

300.70 Scope (2 U.S.C. 441i (f)(1)).
300.71 Federal funds required for certain public communications (2 U.S.C. 441i(f)(1)).
300.72 Federal funds not required for certain communications (2 U.S.C. 441i(f)(2)).

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a)(i), 441i, 453.

§ 300.1 Scope and effective date, and organization.

(a) *Introduction.* This part implements changes to the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), enacted by Title I of the Bipartisan Campaign Finance Reform Act of 2002 ("BCRA"). Public Law 107–155. Unless expressly stated to the contrary, nothing in this part alters the definitions, restrictions, liabilities, and obligations imposed by sections 431 to 455 of Title 2, United States Code, or regulations prescribed thereunder (11 CFR parts 100 to 116).

(b) *Effective dates.*

(1) Except as otherwise specificaliy provided in this part, this part shall take effect on November 6, 2002. However, subpart B of this part shall not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date. *See* 11 CFR 300.12 for transition rules applicable to subpart A of this part.

(2) The increase in individual contribution limits to State committees of political parties, as described in 11 CFR 110.1(c)(5), shall apply to contributions made on or after January 1, 2003.

(c) *Organization of part.* Part 300, which generally addresses non-Federal funds and closely related topics, is organized into five subparts. Each subpart is oriented to the perspective of a category of persons facing issues related to non-Federal funds.

(1) Subpart A of this part prescribes rules pertaining to national party committees, including general non-Federal funds prohibitions, fundraising, and donation prohibitions with regard to certain tax-exempt organizations, transition rules as BCRA takes effect, and reporting.

(2) Subpart B of this part pertains to State, district, and local political party committees and organizations. Subpart B of this part focuses on "Levin Amendment" to BCRA; office buildings; and fundraising and donation prohibitions with regard to certain tax-exempt organizations.

(3) Subpart C of this part addresses non-Federal funds from the perspective of tax-exempt organizations, setting out rules about prohibited fundraising for certain tax-exempt organizations by national party committees, State, district, and local party committees, and Federal candidates and officeholders.

(4) Subpart D of this part includes regulations pertaining to soliciting non-Federal funds from the perspective of Federal candidates and officeholders in Federal and non-Federal elections; including exceptions for those who are also State candidates and exemptions for those attending, speaking, and appearing as featured guests at fundraising events, or who solicit for certain tax-exempt organizations.

(5) Subpart E of this part focuses on State and local candidates, including regulations about using Federal funds for certain public communications, and

exceptions for entirely non-Federal communications.

(6) For rules pertaining to convention and host committees, see 11 CFR part 9008.

§ 300.2 Definitions.

(a) *501(c) organization that makes expenditures or disbursements in connection with a Federal election.* A 501(c) organization *that makes expenditures or disbursements in connection with a Federal election* as that term is used in 11 CFR 300.11, 300.37, 300.50, and 300.51 includes an organization that, within the current election cycle, plans to:

(1) Make expenditures or disbursements in connection with an election for Federal office including for Federal election activity; or

(2) Pay a debt incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(b) *Agent.* For the purposes of part 300 of chapter I, agent means any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of the specified persons:

(1) In the case of a national committee of a political party:

(i) To solicit, direct, or receive any contribution, donation, or transfer of funds; or,

(ii) To solicit any funds for, or make or direct any donations to, an organization that is described in 26 U.S.C 501(c) and exempt from taxation under 26 U.S.C. 501(a) (or has submitted an application for determination of tax exempt status under 26 U.S.C. 501(a)), or an organization described in 26 U.S.C. 527 (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

(2) In the case of a State, district, or local committee of a political party:

(i) To expend or disburse any funds for Federal election activity; or

(ii) To transfer, or accept a transfer of, funds to make expenditures or disbursements for Federal election activity; or

(iii) To engage in joint fundraising activities with any person if any part of the funds raised are used, in whole or in part, to pay for Federal election activity; or

(iv) To solicit any funds for, or make or direct any donations to, an organization that is described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a) (or has submitted an application for determination of tax exempt status under 26 U.S.C. 501(a)), or an organization described in 26 U.S.C. 527 (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

(3) In the case of an individual who is a Federal candidate or an individual holding Federal office, to solicit, receive, direct, transfer, or spend funds in connection with any election.

(4) In the case of an individual who is a candidate for State or local office, to spend funds for a public communication (*see* 11 CFR 100.26).

(c) *Directly or indirectly establish, maintain, finance, or control.*

(1) This paragraph (c) applies to national, State, district, and local committees of a political party, candidates, and holders of Federal office, including an officer, employee, or agent of any of the foregoing persons, which shall be referred to as "sponsors" in this section.

(2) To determine whether a sponsor directly or indirectly established, finances, maintains, or controls an entity, the factors described in paragraphs (c)(2)(i) through (x) of this section must be examined in the context of the overall relationship between sponsor and the entity to determine whether the presence of any factor or factors is evidence that the sponsor directly or indirectly established, finances, maintains, or controls the entity. Such factors include, but are not limited to:

(i) Whether a sponsor, directly or through its agent, owns controlling interest in the voting stock or securities of the entity;

(ii) Whether a sponsor, directly or through its agent, has the authority or ability to direct or participate in the governance of the entity through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(iii) Whether a sponsor, directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity;

(iv) Whether a sponsor has a common or overlapping membership with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;

(v) Whether a sponsor has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;

(vi) Whether a sponsor has any members, officers, or employees who were members, officers or employees of the entity that indicates a formal or ongoing relationship between the sponsor and the entity, or that indicates the creation of a successor entity;

(vii) Whether a sponsor, directly or through its agent, provides funds or goods in a significant amount or on an ongoing basis to the entity, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully;

(viii) Whether a sponsor, directly or through its agent, causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully;

(ix) Whether a sponsor, directly or through its agent, had an active or significant role in the formation of the entity; and

(x) Whether the sponsor and the entity have similar patterns of receipts or disbursements that indicate a formal or ongoing relationship between the sponsor and the entity.

(3) *Safe harbor.* On or after November 6, 2002, an entity shall not be deemed to be directly or indirectly established, maintained, or controlled by another entity unless, based on the entities' actions and activities solely after November 6, 2002, they satisfy the requirements of this section. If an entity receives funds from another entity prior to November 6, 2002, and the recipient entity disposes of the funds prior to November 6, 2002, the receipt of such funds prior to November 6, 2002 shall have no bearing on determining whether the recipient entity is financed by the sponsoring entity within the meaning of this section.

(4) *Determinations by the Commission.*

(i) A sponsor or entity may request an advisory opinion of the Commission to determine whether the sponsor is no longer directly or indirectly financing, maintaining, or controlling the entity for purposes of this part. The request for such an advisory opinion must meet the requirements of 11 CFR part 112 and must demonstrate that the entity is not directly or indirectly financed, maintained, or controlled by the sponsor.

(ii) Notwithstanding the fact that a sponsor may have established an entity within the meaning of paragraph (c)(2) of this section, the sponsor or the entity

may request an advisory opinion of the Commission determining that the relationship between the sponsor and the entity has been severed. The request for such an advisory opinion must meet the requirements of 11 CFR part 112, and must demonstrate that all material connections between the sponsor and the entity have been severed for two years.

(iii) Nothing in this section shall require entities that are separate organizations on November 6, 2002 to obtain an advisory opinion to operate separately from each other.

(d) *Disbursement. Disbursement* means any purchase or payment made by:

(1) A political committee; or

(2) Any other person, including an organization that is not a political committee, that is subject to the Act.

(e) *Donation.* For purposes of part 300, *donation* means a payment, gift, subscription, loan, advance, deposit, or anything of value given to a person, but does not include contributions.

(f) *Federal account. Federal account* means an account at a campaign depository that contains funds to be used in connection with a Federal election.

(g) *Federal Funds. Federal funds* mean funds that comply with the limitations, prohibitions, and reporting requirements of the Act.

(h) *Levin account. Levin account* means an account at a campaign depository established by a State, district, or local committee of a political party pursuant to 11 CFR 300.30, for purposes of making expenditures or disbursements for Federal election activity or non-Federal activity (subject to State law) under 11 CFR 300.32.

(i) *Levin funds* mean funds that are raised pursuant to 11 CFR 300.31 and are or will be disbursed pursuant to 11 CFR 300.32.

(j) *Non-Federal account* means an account that contains funds to be used in connection with a State or local election or allocable expenses under 11 CFR 106.7, 300.30, or 300.33.

(k) *Non-Federal funds* mean funds that are not subject to the limitations and prohibitions of the Act.

(l) [Reserved].

(m) *To solicit.* For the purposes of part 300, to *solicit* means to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether the contribution, donation, transfer of funds, or thing of value, is to be made or provided directly, or through a conduit or intermediary. A solicitation does not include merely providing information or guidance as to the requirement of particular law.

(n) *To direct.* For the purposes of part 300, *to direct* means to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value, including through a conduit or intermediary. Direction does not include merely providing information or guidance as to the requirement of particular law.

(o) *Individual holding Federal office. Individual holding Federal office* means an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

Subpart A—National Party Committees

§ 300.10 General prohibitions on raising and spending non-Federal funds (2 U.S.C. 441i(a) and (c)).

(a) *Prohibitions.* A national committee of a political party, including a national congressional campaign committee, must not:

(1) Solicit, receive, or direct to another person a contribution, donation, or transfer of funds, or any other thing of value that is not subject to the prohibitions, limitations and reporting requirements of the Act;

(2) Spend any funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act; or

(3) Solicit, receive, direct, or transfer to another person, or spend, Levin funds.

(b) *Fundraising costs.* A national committee of a political party, including a national congressional campaign committee, must use only Federal funds to raise funds that are used, in whole or in part, for expenditures and disbursements for Federal election activity.

(c) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee or a national congressional campaign committee; and

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee or a national congressional campaign committee.

§ 300.11 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C 441i(d)).

(a) *Prohibitions.* A national committee of a political party, including a national congressional campaign committee, must not solicit any funds for, or make or direct any donations to the following organizations:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party; or

(iii) The authorized campaign committee of a State or local candidate;

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee, including a national congressional campaign committee;

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee, including a national congressional campaign committee, or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a national, State, district, or local committee of a political party, including a national congressional campaign committee.

(c) *Determining whether a section 501(c) organization makes expenditures or disbursements in connection with Federal elections.* In determining whether a section 501(c) organization is one that makes expenditures or disbursements in connection with a Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraphs (a)(1) and (2) of this section, a national committee of a political party, including a national congressional campaign committee, or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(d) *Certification.* A national committee of a political party, including

a national congressional campaign committee, or any person described in paragraph (b) of this section, may rely upon a certification that meets all of the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities;

(2) The certification states that within the current election cycle, the organization has not made, and does not intend to make, expenditures or disbursements in connection with an election for Federal office (including for Federal election activity); and

(3) The certification states that the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(e) If a national committee of a political party or any person described in paragraph (b) of this section has actual knowledge that the certification is false, the certification may not be relied upon.

(f) It is not prohibited for a national party or its agent to respond to a request for information about a tax-exempt group that shares the party's political or philosophical goals.

§ 300.12 Transition rules.

(a) *Permissible uses of excess non-Federal funds.* Non-Federal funds received before November 6, 2002, by a national committee of a political party, including a national congressional campaign committee, and in its possession on that date, must be used before January 1, 2003. Subject to the restrictions in paragraph (b) of this section, such funds may be used solely as follows:

(1) To retire outstanding debts or obligations that were incurred solely in connection with an election held prior to November 6, 2002; or

(2) To pay expenses, retire outstanding debts, or pay for obligations incurred solely in connection with any run-off election, recount, or election contest resulting from an election held prior to November 6, 2002.

(b) *Prohibited uses of non-Federal funds.* Non-Federal funds received by a national committee of a political party, including a national congressional campaign committee, before November 6, 2002, and in its possession on that date, may not be used for the following purposes:

(1) To pay any expenditure as defined in 2 U.S.C. 431(9);

(2) To retire outstanding debts or obligations that were incurred for any expenditure; or

(3) To defray the costs of the construction or purchase of any office building or facility.

(c) Any non-Federal funds remaining after payment of debts and obligations permitted in paragraph (a) of this section must be either disgorged to the United States Treasury, or returned by check to the donors, no later than December 31, 2002. Any refund checks not cashed by February 28, 2003 must be disgorged to the United States Treasury by March 31, 2003.

(d) *National party committee office building or facility accounts.* Before November 6, 2002, a national committee of a political party, including a national congressional campaign committee, may accept funds into its party office building or facility account, established pursuant to repealed 2 U.S.C. 431(8)(B)(viii), and may use the funds in the account only for the construction or purchase of an office building or facility. After November 5, 2002, the national party committees may no longer accept funds into such an account and must not use such funds for the purchase or construction of any office building or facility. Funds on deposit in any party office building or facility account on November 6, 2002, must be either disgorged to the United States Treasury or returned by check to the donors no later than December 31, 2002. Any refund checks not cashed by February 28, 2003 must be disgorged to the United States Treasury by March 31, 2003.

(e) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee or a national congressional campaign committee; and

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee or a national congressional campaign committee.

(f) *Treatment of Federal and non-Federal accounts during transition period.* The following provisions applicable to the allocation of, and payment for, expenses between Federal and non-Federal accounts of national party committees shall remain in effect between November 6 and December 31, 2002: 11 CFR 106.5(a),(b), (c), (f) and (g).

§ 300.13 Reporting (2 U.S.C. 431 note and 434(e)).

(a) *In general.* The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(b) *Termination report for non-Federal accounts.* Unless a committee described in paragraph (a) of this section issues refund checks to donors as permitted by 11 CFR 300.12(c), each committee described in paragraph (a) of this section must file a termination report disclosing the disposition of funds in all non-Federal accounts and building fund accounts by January 31, 2003. Each committee that issues refund checks to donors must file a termination report covering the period ending March 31, 2003 disclosing the disposition of any refund checks not cashed by February 28, 2003, as required by 11 CFR 300.12(c) and (d).

(c) *Transitional reporting rules.*

(1) The reporting requirements covering receipts in 11 CFR 104.8(e) and (f) and disbursements in 11 CFR 104.9(e) for national party committee non-Federal accounts and building fund accounts shall remain in effect for the reports covering activity between November 6 and December 31, 2002.

(2) The reporting requirements covering disbursements in 11 CFR 104.9 (c) and (d) for national party committee non-Federal accounts and building fund accounts shall remain in effect for the reports covering activity between November 6, 2002 and March 31, 2003.

Subpart B—State, District, and Local Party Committees and Organizations

§ 300.30 Accounts

(a) *Scope and introduction.* This section applies to State, district, or local committees or organizations of a political party, whether or not the committee is a political committee under 11 CFR 100.5, that have receipts or make disbursements for Federal election activity. Paragraph (b) of this section describes and explains the types of accounts available to a political party committee or organization covered by this section. Paragraph (c) of this section sets out the account structure that must be maintained by a political party committee or organization covered by this section.

(b) *Types of accounts.* Each State, district, and local party organization or committee that has receipts or makes disbursements for Federal election activity must establish one or more of the following types of accounts, pursuant to paragraph (c) of this section.

(1) *Non-Federal accounts.* The funds deposited into this account are governed by State law. Disbursements, contributions, and expenditures made wholly or in part in connection with

Federal elections must not be made from any non-Federal account, except as permitted by paragraph (c)(3)(ii) of this section, 11 CFR 102.5(a)(4), 11 CFR 106.7(d)(1)(i), 11 CFR 300.33 and 11 CFR 300.34.

(2) *Levin account.* The funds deposited into this account must comply with 11 CFR 300.31. Such funds may be used for the categories of activities described at 11 CFR 300.32(b).

(3) *Federal account.* Federal accounts may be used for the deposit of contributions and the making of expenditures pursuant to the following conditions:

(i) Only contributions that are permissible pursuant to the limitations and prohibitions of the Act may be deposited into any Federal account, regardless of whether such contributions are for use in connection with Federal or non-Federal elections. *See* 11 CFR 103.3 regarding impermissible funds.

(ii) Only contributions solicited and received pursuant to the following conditions may be deposited in a Federal account:

(A) Contributions must be designated by the contributors for the Federal account;

(B) The solicitation must expressly state that contributions may be used wholly or in part in connection with a Federal election; or

(C) The contributor must be informed that all contributions are subject to the limitations and prohibitions of the Act.

(iii) All disbursements, contributions, and expenditures made wholly or in part by any State, district, or local party organization or committee in connection with a Federal election must be made from either:

(A) A Federal account, except as permitted by 11 CFR 300.32; or

(B) A separate allocation account (*see* paragraph (b)(4) of this section).

(iv) If all payments in connection with a Federal election, including payments for Federal election activities, are to be made from a Federal account, expenditures and disbursements for costs that are allocable pursuant to 11 CFR 106.7 or 11 CFR 300.33 must be made from the Federal account in their entirety, with the shares of a non-Federal account or of a Levin account being transferred to the Federal account pursuant to 11 CFR 106.7 and 11 CFR 300.33.

(v) No transfers may be made to a Federal account from any other account(s) maintained by a State, district, or local party committee or organization from any other party organization or committee at any level for the purpose of financing activity in connection with Federal elections, except as provided by paragraph (b)(3)(iv) of this section or 11 CFR 300.33 and 300.34.

(4) *Allocation accounts.* At the discretion of the party committee or organization, separate allocation accounts may be established for purposes of making allocable expenditures and disbursements.

(i) Only funds from the party organization's or committee's Federal and non-Federal accounts may be deposited into an allocation account used to make allocable expenditures and disbursements for activities in connection with Federal and non-Federal elections.

(ii) Only funds from the party organization's or committee's Federal account and Levin funds from its non-Federal or Levin account(s) may be deposited into an allocation account used to make allocable expenditures and disbursements for activities undertaken pursuant to 11 CFR 300.32(b).

(iii) Once a party organization or committee has established a separate allocation account for activities in connection with Federal and non-Federal elections and a separate account for activities undertaken pursuant to 11 CFR 300.32(b), all allocable expenses must be paid from the appropriate allocation account for as long as that account is maintained.

(iv) The party organization or committee must transfer to the appropriate allocation account funds from its Federal and non-Federal or Levin accounts in amounts proportionate to the Federal, non-Federal and Levin shares of each allocable expense pursuant to 11 CFR 106.7 and 11 CFR 300.33. The transfers must be made pursuant to 11 CFR 300.33 and 300.34.

(v) No funds contained in an allocation account may be transferred to any other account maintained by the party committee or organization.

(vi) For reporting purposes, all allocation accounts must be treated as Federal accounts.

(c) *Required account or accounts.* Each State, district, and local party organization or committee that has receipts or makes disbursements for Federal election activity must establish its accounts in accordance with paragraphs (c)(1), or (c)(2), or (c)(3) of this section.

(1) One or more Federal accounts in a campaign depository, in accordance with 11 CFR part 103, which must be treated as a separate political committee and be required to comply with the requirements of the Act including the registration and reporting requirements of 11 CFR part 102 and part 104. State, district, and local party organizations or committees may choose to make non-Federal disbursements, subject to State law, and disbursements for Federal election activity from a Federal account provided that such disbursements are reported pursuant to 11 CFR 104.17 and 11 CFR 300.36, and provided that contributors of the Federal funds so used were notified that their contributions were subject to the limitations and prohibitions of the Act.

(2) Establish at least three separate accounts in depositories as follows—

(i) One or more Federal accounts;

(ii) One or more Levin accounts; and

(iii) One or more Non-Federal accounts.

(3) Establish two separate accounts in depositories as follows:

(i) One or more Federal accounts, and;

(ii) An account that must function as both a Non-Federal account and a Levin account. If such an account is used, the State, district, and local party must demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that whenever such organization makes a disbursement for activities undertaken pursuant to 11 CFR 300.32(b), that organization had received sufficient contributions or Levin funds to make such disbursement.

(d) *Recordkeeping.* All party organizations or committees must keep records of deposits into and disbursements from such accounts, and, upon request, must make such records available for examination by the Commission.

§ 300.31 Receipt of Levin funds.

(a) *General rule.* Levin funds expended or disbursed by any State, district, or local committee must be raised solely by the committee that expends or disburses them.

(b) *Compliance with State law.* Each donation of Levin funds solicited or accepted by a State, district, or local committee of a political party must be lawful under the laws of the State in which the committee is organized.

(c) *Donations from sources permitted by State law but prohibited by the Act.* If the laws of the State in which a State, district, or local committee of a political party is organized permit donations to the committee from a source prohibited by the Act and this chapter, other than 2 U.S.C. 441e, the committee may solicit and accept donations of Levin funds from that source, subject to paragraph (d) of this section.

(d) *Donation amount limitation.*

(1) *General rule.* A State, district, or local committee of a political party must not solicit or accept from any person (including any entity established, financed, maintained, or controlled by such person) one or more donations of Levin funds aggregating more than $10,000 in a calendar year.

(2) *Effect of different State limitations.* If the laws of the State in which a State, district, or local committee of a political party is organized limit donations to that committee to less than the amount specified in paragraph (d)(1) of this section, then the State law amount limitations shall control. If the laws of the State in which a State, district, or local committee of a political party is organized permit donations to that committee in amounts greater than the amount specified in paragraph (d)(1) of this section, then the amount limitations in paragraph (d)(1) of this section shall control.

(3) *No affiliation of committees for purposes of this paragraph.* For purposes of determining compliance with paragraph (d) of this section only, State, district, and local committees of the same political party shall not be considered affiliated. Subject to the amount limitations specified in paragraphs (d)(1) and (d)(2) of this section, a person (including any entity directly or indirectly established, financed, maintained, or controlled by such person) may donate without additional limitation to each and every State, district, and local committee of a political party.

(e) *No Levin funds from a national party committee or a Federal candidate or officeholder.* A State, district, or local committee of a political party disbursing Levin funds pursuant to 11 CFR 300.32 must not accept or use for such purposes any donations or other funds that are solicited, received, directed, transferred, or spent by or in the name of any of the following persons:

(1) A national committee of a political party (including a national congressional campaign committee of a political party), any officer or agent acting on behalf of such a national party committee, or any entity that is directly or indirectly established, financed, maintained, or controlled by such a national party committee. Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with a national committee of a political party, any officer or agent acting on behalf of such a national party committee, or any entity that is directly or indirectly established, financed, maintained, or controlled by such a national party committee. Nothing in this section shall be construed to prohibit a State, district, or local committee of a political party from jointly raising, under 11 CFR 102.17, Federal funds not to be used for Federal election activity with a national committee of a political party, or its agent, or any entity directly or indirectly established, financed, maintained, or controlled by such a national party committee.

(2) A Federal candidate, or an individual holding Federal office, or an agent of a Federal candidate or officeholder, or an entity directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more Federal candidates or individuals holding Federal office. Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with a Federal candidate, an individual holding Federal office, or an entity directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more candidates or individuals holding Federal office. A Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party at which Levin funds are raised. *See* 11 CFR 300.64.

(f) *Certain joint fundraising prohibited.* Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of any joint fundraising activity with any other State, district, or local committee of any political party, the agent of such a committee, or an entity directly or indirectly established, financed, maintained, or controlled by such a committee. This prohibition includes State, district, and local committees of a political party organized in another State. Nothing in this section shall be construed to prohibit two or more State, district, or local committees of a political party from jointly raising, under 11 CFR 102.17, Federal funds not to be used for Federal election activity.

(g) *Safe Harbor.* The use of a common vendor for fundraising by more than one State, district, or local committee or a political party, or the agent of such a committee does not constitute joint fundraising within the meaning of this section.

§ 300.32 Expenditures and disbursements.

(a) *Federal funds.*

(1) An association or similar group of candidates for State or local office, or an association or similar group of individuals holding State or local office, must make any expenditures or disbursements for Federal election activity solely with Federal funds.

(2) Except as provided in this part, a State, district, or local committee of a political party that makes expenditures or disbursements for Federal election activity must use Federal funds for that purposes, subject to the provisions of this chapter.

(3) State, district, and local party committees that raise Federal funds to be used, in whole or in part, for Federal election activities must pay the direct costs of such fundraising only with Federal funds. The direct costs of a fundraising program or event include expenses for the solicitation of funds and for the planning and administration of actual fundraising programs and events.

(4) State, district, and local party committees that raise Levin funds to be used, in whole or in part, for Federal election activity must pay the direct costs of such fundraising with either Federal or Levin funds. The direct costs of a fundraising program or event include expenses for the solicitation of funds and for the planning and administration of actual fundraising programs and events.

(b) *Levin funds.* A State, district, or local committee of a political party may spend Levin funds in accordance with this part on the following types of activity:

(1) Subject to the conditions set out in paragraph (c) of this section, only the following types of Federal election activity:

(i) Voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; and

(ii) Voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot).

(2) Any use that is lawful under the laws of the State in which the committee is organized, other than the Federal election activities defined in 11 CFR 100.24(b)(3) and (4). A disbursement of Levin funds under this paragraph need not comply with paragraphs (c)(1) and (c)(2) of this section, except as required by State law.

(c) *Conditions and restrictions on spending Levin funds.*

(1) The Federal election activity for which the disbursement is made must

not refer to a clearly identified candidate for Federal office.

(2) The disbursement must not pay for any part of the costs of any broadcasting, cable, or satellite communication, other than a communication that refers solely to a clearly identified candidate for State or local office.

(3) The disbursement must be made from funds raised in accordance with 11 CFR 300.31.

(4) The disbursements for allocable Federal election activity that exceed in the aggregate $5,000 in a calendar year may be paid for entirely with Federal funds or may be allocated between Federal funds and Levin funds according to 11 CFR 300.33. Disbursements for Federal election activity that may be allocated and that aggregate $5,000 or less in a calendar year may be paid for entirely with Federal funds, entirely with Levin funds, or may be allocated between Federal funds and Levin funds according to 11 CFR 300.33.

(d) *Non-Federal activities.* A State, district, or local committee of a political party that makes disbursements for non-Federal activity may make those disbursements from its Federal, Levin, or non-Federal funds, subject to the laws of the State in which it is organized. A State, district, or local party committee that engages in fundraising for solely non-Federal funds may pay the costs related to such fundraising from any account, subject to State law, including a Federal account.

§ 300.33 Allocation of costs of Federal election activity.

(a) *Costs of Federal election activity allocable by State, district, and local party committees and organizations.*

(1) *Costs of voter registration.* Subject to the conditions of 11 CFR 300.32(c), State, district, and local party committees and organizations may allocate disbursements or expenditures, except salaries and wages for employees, between Federal funds and Levin funds for voter registration activity, as defined in 11 CFR 100.24(a)(2), that takes place during the period that begins on the date that is 120 days before the date of a regularly scheduled Federal election and that ends on the date of the election, provided that the activity does not refer to a clearly identified Federal candidate.

(2) *Costs of voter identification, get-out-the-vote activity, or generic campaign activities within certain time periods.* Subject to the conditions of 11 CFR 300.32(c), State, district, and local party committees and organizations may allocate disbursements or expenditures, except salaries and wages for employees, between Federal funds and Levin funds for voter identification, get-out-the-vote activity, or generic campaign activities, as defined in 11 CFR 100.24(a)(3) and (4) and 11 CFR 100.25, that are conducted in connection with an election in which a candidate for Federal office is on the ballot and within the time periods set forth in 11 CFR 100.24(a)(1), provided that the activity does not refer to a clearly identified Federal candidate.

(b) *Allocation percentages.* State, district, and local party committees and organizations that choose to allocate between Federal funds and Levin funds their expenditures and disbursements, except for salaries and wages, in connection with activities described in paragraph (a) of this section that take place within the time periods set forth in 11 CFR 100.24(a)(1) or paragraph (a) of this section must allocate the following minimum percentages to their Federal funds:

(1) *Presidential election years.* If a Presidential candidate, but no Senate candidate appears on the ballot, State, district, and local party committees and organizations must allocate at least 28% of expenses for activities described in paragraph (a) of this section to their Federal funds.

(2) *Presidential and Senate election year.* If a Presidential candidate and a Senate candidate appear on the ballot, State, district, and local party committees and organizations must allocate at least 36% of expenses for activities described in paragraph (a) of this section to their Federal funds.

(3) *Senate election year.* If a Senate candidate, but no Presidential candidate, appears on the ballot, State, district, and local party committees and organizations must allocate at least 21% of expenses for activities described in paragraph (a) of this section to their Federal funds.

(4) *Non-Presidential and non-Senate year.* If neither a Presidential nor a Senate candidate appears on the ballot, State, district, and local party committees and organizations must allocate at least 15% of expenses for activities described in paragraph (a) of this section to their Federal funds.

(c) *Costs of Federal election activity not allocable by State, district, and local party committees.* The following costs incurred by State, district, and local party committees and organizations must be paid only with Federal funds:

(1) *Public communications.* Expenditures for public communications as defined in 11 CFR 100.26 by State, district, and local party committees and organizations that refer to a clearly identified candidate for Federal office and that promote, support, attack, or oppose any such candidate for Federal office must not be allocated between or among Federal, non-Federal, and Levin accounts. Only Federal funds may be used.

(2) *Salaries and wages.* Salaries and wages for employees who spend more than 25% of their compensated time in a given month on Federal election activity or activities in connection with a Federal election must not be allocated between or among Federal, non-Federal, and Levin accounts. Only Federal funds may be used. Salaries and wages for employees who spend 25% or less of their compensated time in a given month on Federal election activity or activities in connection with a Federal election shall be paid from funds that comply with State law.

(3) *Fundraising costs.* Disbursements for direct fundraising costs incurred by State, district, and local party committees and organizations for funds to be used, in whole or in part, for Federal election activity, including the activities described in paragraph (a) of this section, must not be allocated between or among Federal, non-Federal and Levin funds. Only Federal or Levin funds may be used.

(d) *Transfers between accounts to cover allocable expenses.* State, district, and local party committees and organizations may transfer Levin funds from their Levin or non-Federal accounts to their Federal accounts or to allocation accounts solely to meet expenses allocable pursuant to paragraphs (a)(1) and (2) of this section and only pursuant to the following methods:

(1) *Payments from Federal accounts or from allocation accounts.*

(i) If Federal accounts are used to make payments for allocable activities, State, district, and local party committees and organizations must pay the entire amount of allocable expenses from their Federal accounts and transfer Levin funds from their Levin or non-Federal accounts to their Federal accounts solely to cover the portions of the expenses for which Levin funds may be used; or

(ii) State, district, and local party committees and organizations may establish separate allocation accounts into which Federal funds and Levin funds may be deposited solely for the purpose of paying allocable expenses.

(2) *Timing.*

(i) If Federal or allocation accounts are used to make allocable expenditures and disbursements, State, district, and local party committees and organizations must transfer Levin funds

to their Federal or allocation accounts to meet allocable expenses no more than 10 days before and no more than 60 days after the payments for which they are designated are made from a Federal or allocation account, except that transfers may be made more than 10 days before a payment is made from the Federal or allocation account if advance payment is required by the vendor(s) and if such payment is based on a reasonable estimate of the activity's final costs as determined by the committee and the vendor(s) involved.

(ii) Any portion of a transfer of Levin funds to a party committee or organization's Federal or allocation account that does not meet the requirement of paragraph (d)(2)(i) of this section shall be presumed to be a loan or contribution from the Levin or non-Federal account to the Federal or allocation account, in violation of the Act.

§ 300.34 Transfers.

(a) *Federal funds.*

(1) Notwithstanding 11 CFR 102.6(a)(1)(ii), a State, district, or local committee of a political party must not use any Federal funds transferred to it from, or otherwise accepted by it from, any of the persons enumerated in paragraphs (b)(1) and (b)(2) of this section as the Federal component of an expenditure or disbursement for Federal election activity under 11 CFR 300.32. A State, district, or local committee of a political party must itself raise the Federal component of an expenditure or disbursement allocated between Federal funds and Levin funds under 11 CFR 300.32 and 300.33.

(2) A State, district, or local committee of a political party that makes an expenditure or disbursement of Federal funds for Federal election activities must demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that the Federal funds used to make the expenditure or disbursement do not include Federal funds transferred to the committee in violation of this section. Alternatively, a State, district, or local committee of a political party may establish a separate Federal account into which the committee deposits only Federal funds raised by the committee itself, and from which all expenditures or disbursement of Federal funds for Federal election activities are made.

(b) *Levin funds.* Levin funds must be raised solely by the State, district, or local committee of a political party that expends or disburses the funds. A State, district, or local committee of a political party must not use as Levin funds any funds transferred or otherwise provided to the committee by:

(1) Any other State, district, or local committee of any political party, any officer or agent acting on behalf of such a committee, or any entity directly or indirectly established, financed, maintained or controlled by such a committee; or,

(2) The national committee of any political party (including a national congressional campaign committee of a political party), any officer or agent acting on behalf of such a committee, or any entity directly or indirectly established, financed, maintained, or controlled by such a committee.

(c) *Allocation transfers.* Transfers of Levin funds between the accounts of a State, district, or local committee of a political party for allocation purposes must comply with 11 CFR 300.30 and 11 CFR 300.33.

§ 300.35 Office buildings.

(a) *General provision.* For the purchase or construction of its office building, a State or local party committee may spend Federal funds or non-Federal funds that are not subject to the limitations, prohibitions, and disclosure provisions of the Act, so long as such funds are not contributed or donated by a foreign national. *See* 2 U.S.C. 441e. If non-Federal funds are used, they are subject to State law. An office building must not be purchased or constructed for the purpose of influencing the election of any candidate in any particular election for Federal office. For purposes of this section, the term *local party committee* shall include a *district party committee.*

(b) *Application of State law.* Non-Federal funds received by a State or local party committee that are spent for the purchase or construction of its office building are subject to State law as set forth in paragraphs (b)(1) and (2) of this section.

(1) *Non-Federal account.* If a State or local party committee uses non-Federal funds, Federal law does not preempt or supersede State law as to the source of funds used, the permissibility of the disbursements, or the reporting of the receipt and disbursement of such funds, except as provided in paragraph (a) of this section.

(2) *Levin funds.* Levin funds may be used for the purchase or construction of a State or local party committee office building, if permitted by State law.

(c) *Leasing a portion of the party office building.* A State or local party committee may lease a portion of its office building to others to generate income at the usual and normal charge. If the building is purchased or constructed in whole or in part with non-Federal funds, all rental income shall be deposited in the committee's non-Federal account and used only for non-Federal purposes. Such rental income and its use must also comply with State law. If the building is purchased or constructed solely with Federal funds, the rental income may be deposited in the Federal account. The receipt of such funds shall be reported in compliance with 11 CFR 104.3(a)(4)(vi).

(d) *Transitional Provisions for State Party Building or Facility Account.* Up to and including November 5, 2002, the State committee of a political party may accept funds into its party office building or facility account, established pursuant to repealed 2 U.S.C. 431(8)(B)(viii), designated for the purchase or construction of an office building. Starting on November 6, 2002, the funds in the account may not be used for Federal account or Levin account purposes, but may be used for any non-Federal purposes, as permitted under State law.

§ 300.36 Reporting Federal election activity; recordkeeping.

(a) *Requirements for a State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that is not a political committee.*

(1) A State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that is not a political committee (*see* 11 CFR 100.5) must demonstrate through a reasonable accounting method that whenever it makes a payment of Federal funds or Levin funds (if it is permitted to spend Levin funds) for Federal election activity (*see* 11 CFR 300.32 and 300.33) it has received sufficient funds subject to the limitations and prohibitions of the Act to make the payment. Such an organization must keep records of amounts received or expended under this paragraph and, upon request, shall make such records available for examination by the Commission.

(2) Notwithstanding the foregoing, a payment of Federal funds or Levin funds for Federal election activity shall not constitute an expenditure for purposes of determining whether a State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, qualifies as a

political committee under 11 CFR 100.5, unless the payment otherwise qualifies as an expenditure under 2 U.S.C. 431(9). A payment of Federal funds for Federal election activity that refers to a clearly identified Federal candidate and that meets the criteria of 11 CFR 100.8(b)(10), (16), or (18) *(exempt activities)* shall be treated as a payment for exempt activity in accordance with all applicable provisions of this chapter, including, but not limited to, 11 CFR 100.5(c).

(b) *Requirements for a State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that is a political committee.*

(1) *Requirements for a State, district, or local committee of a political party that has less than $5,000 of aggregate receipts and disbursements for Federal election activity in a calendar year, and for an association or similar group of candidates for State or local office or of individuals holding State or local office at all times.* This paragraph applies to a State, district, or local committee of a political party that is a political committee, and that has less than $5,000 of aggregate receipts and disbursements for Federal election activity in a calendar year; and, at all times, to an association or similar group of candidates for State or local office or of individuals holding State or local office that is a political committee (*see* 11 CFR 100.5). Such a party committee or association of candidates or officeholders must report all receipts and disbursements of Federal funds for Federal election activity, including the Federally allocated portion of a payment for Federal election activity. A disbursement of Federal funds or Levin funds for Federal election activity (*see* 11 CFR 300.32 and 300.33) by either such a party committee or association of candidates or officeholders shall not be deemed an expenditure and reported as such pursuant to 11 CFR part 104, unless the disbursement otherwise qualifies as an expenditure under 2 U.S.C. 431(9).

(2) *Requirements for a State, district, or local committee of a political party that has $5,000 or more of aggregate receipts and disbursements for Federal election activity in a calendar year.* A State, district, or local committee of a political party that is a political committee (*see* 11 CFR 100.5) must report all receipts and disbursements made for Federal election activity if the aggregate amount of such receipts and disbursements is $5,000 or more during the calendar year. The disclosure required by this paragraph must include receipts and disbursements of Federal funds and of Levin funds used for Federal election activity.

(i) *Reporting of allocation of expenses between Federal funds and Levin funds.* A State, district, or local committee of a political party that makes a disbursement for Federal election activity that is allocated between Federal funds and Levin funds (*see* 11 CFR 300.33) must report for each such disbursement:

(A) In the first report of a calendar year disclosing an allocated disbursement for Federal election activity, the committee must state the allocation percentages to be applied for allocable Federal election activity pursuant to 11 CFR 300.33(b).

(B) In each subsequent report in the calendar year itemizing an allocated disbursement for Federal election activity, the committee must state the category of Federal election activity (*see* 11 CFR 100.24(b)) for which each allocated disbursement was made, and must disclose the total amounts disbursed from Federal funds and Levin funds for that year to date for each such category.

(ii) *Reporting of allocation transfers.* A committee that makes allocated disbursements for Federal election activities in accordance with 11 CFR 300.33(d) shall report each transfer of Levin funds from its Levin or non-Federal account, to its Federal account, and each transfer from its Federal account and its Levin or non-Federal account into an allocation account, for the purpose of making such disbursements. In the report covering the period in which each transfer occurred, the committee must explain in a memo entry the allocated disbursement to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one category of Federal election activity, the committee must itemize the transfer, showing the amounts designated for each category.

(iii) *Reporting of allocated disbursements.* For each disbursement allocated between Federal funds and Levin funds, the committee must report the full name and address of each person to whom the disbursement was made, the date of the disbursement, amount, and purpose of the disbursement. If the disbursement is for the allocable costs of more than one category of Federal election activity, the committee must itemize the disbursement, showing the amounts designated for each category. The committee must also disclose the total amount disbursed from Federal funds and Levin funds for Federal election activity that calendar year, to date, for each category of Federal election activity.

(iv) *Itemization.* The disclosure required by paragraph (b)(2) of this section must include, in addition to any other applicable reporting requirement of this chapter, the itemized disclosure of receipts and disbursements of $200 or more to or from any person for Federal election activities.

(3) *Reporting of disbursements allocated between Federal funds and non-Federal funds, other than Levin funds.* A State, district, or local committee of a political party that makes a disbursement for costs allocable between Federal and non-Federal funds, other than the costs of Federal election activity that is allocated between Federal funds and Levin funds under 11 CFR 300.33, must comply with 11 CFR 104.17.

(c) *Filing.*

(1) *Schedule.* A State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that must file reports under paragraph (b) of this section must comply with the monthly filing schedule in 11 CFR 104.5(c)(3).

(2) *Electronic filing.* Receipts of Federal funds for Federal election activity that constitute contributions under 11 CFR 100.7, and disbursements of Federal funds for Federal election activity that constitute expenditures under 11 CFR 100.8, apply when determining whether a political committee must file reports in an electronic format under 11 CFR 104.18.

(d) *Recordkeeping.* A State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that must file reports under paragraph (b) of this section must comply with the requirements of 11 CFR 104.14.

§ 300.37 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A State, district, or local committee of a political party must not solicit any funds for, or make or direct any donations to:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party;

(iii) The authorized campaign committee of a State or local candidate; or

(iv) A political committee under State law, that supports only State or local candidates and that does not make expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a State, district, or local committee of a political party;

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee or a political party or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a State, district, or local committee of a political party.

(c) *Determining whether an organization makes expenditures or disbursements in connection with a Federal election.*

(1) In determining whether a section 501(c) organization is one that makes expenditures or disbursements in connection with a Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraphs (a)(1) and (2) of this section, a State, district, or local committee of a political party or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(2) In determining whether a section 527 organization is a State-registered political committee that supports only State or local candidates and does not make expenditures or disbursements in connection with an Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraph (a)(3)(iv) of this section, a State, district, or local committee of a political party or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(d) *Certification.* A State, district, or local committee of a political party or any person described in paragraph (b) of this section may rely upon a certification that meets all of the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities or by the treasurer of the State-registered political committee described in paragraph (a)(3)(iv) of this section;

(2) The certification states that within the current election cycle, the organization or political committee has not made, and does not intend to make, expenditures or disbursements in connection with an election for Federal office (including for Federal election activity); and

(3) The certification states that the organization or political committee does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(e) If a State, district, or local committee of a political party or any person described in paragraph (b) of this section has actual knowledge that the certification is false, the certification may not be relied upon.

(f) It is not prohibited for a State, district, or local committee of a political party or its agents to respond to a request for information about a tax-exempt group that shares the party's political or philosophical goals.

Subpart C—Tax-Exempt Organizations

§ 300.50 Prohibited fundraising by national party committees (2 U.S.C. 441i(d)).

(a) *Prohibitions on fundraising and donations.* A national committee of a political party, including a national congressional campaign committee, must not solicit any funds for, or make or direct any donations to the following organizations:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party; or

(iii) The authorized campaign committee of a State or local candidate;

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee, including a national congressional campaign committee;

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee, including a national congressional campaign committee, or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a national, State, district, or local committee of a political party, including a national congressional campaign committee.

(c) *Determining whether a section 501(c) organization makes expenditures or disbursements in connection with Federal elections.* In determining whether a section 501(c) organization is one that makes expenditures or disbursements in connection with a Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraphs (a)(1) and (2) of this section, a national committee of a political party, including a national congressional campaign committee, or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(d) *Certification.* A national committee of a political party, including a national congressional campaign committee, or any person described in paragraph (b) of this section, may rely upon a certification that meets all of the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities;

(2) The certification states that within the current election cycle, the organization has not made, and does not intend to make, expenditures or disbursements in connection with an election for Federal office (including for Federal election activity); and

(3) The certification states that the organization or political committee does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(e) *Reliance on false certification.* If a national committee of a political party or any person described in paragraph (b) of this section has actual knowledge that the certification is false, the certification may not be relied upon.

(f) *Requests for information.* It is not prohibited for a national party or its agent to respond to a request for information about a tax-exempt group that shares the party's political or philosophical goals.

§ 300.51 Prohibited fundraising by State, district, or local party committees (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A State, district, or local committee of a political party must not solicit any funds for, or make or direct any donations to:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party;

(iii) The authorized campaign committee of a State or local candidate; or

(iv) A political committee under State law, that supports only State or local candidates and that does not make expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a State, district, or local committee of a political party;

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee or a political party or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a State, district, or local committee of a political party.

(c) *Determining whether an organization makes expenditures or disbursements in connection with a Federal election.*

(1) In determining whether a section 501(c) organization is one that makes expenditures or disbursements in connection with a Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraphs (a)(1) and (2) of this section, a State, district, or local committee of a political party or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(2) In determining whether a section 527 organization is a State-registered political committee that supports only State or local candidates and does not make expenditures or disbursements in connection with a Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraph (a)(3)(iv) of this section, a State, district, or local committee of a political party or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(d) *Certification.* A State, district, or local committee of a political party or any person described in paragraph (b) of this section may rely upon a certification that meets all of the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities or by the treasurer of the State-registered political committee described in paragraph (a)(3)(iv) of this section;

(2) The certification states that within the current election cycle, the organization or political committee has not made, and does not intend to make, expenditures or disbursements in connection with an election for Federal office (including for Federal election activity); and

(3) The certification states that the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(e) If a State, district, or local committee of a political party or any person described in paragraph (b) of this section has actual knowledge that the certification is false, the certification may not be relied upon.

(f) It is not prohibited for a State, district, or local committee of a political party or its agents to respond to a request for information about a tax-exempt group that shares the party's political or philosophical goals.

§ 300.52 Fundraising by Federal candidates and Federal officeholders (2 U.S.C. 441i(e)(1)&(4)).

A Federal candidate, an individual holding Federal office, and an individual agent acting on behalf of either may make the following solicitations of funds on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c):

(a) *General solicitations.* A Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either, may make a general solicitation of funds, without regard to source or amount limitation, if:

(1) The organization does not engage in activities in connection with an election, including any activity described in paragraph (c) of this section; or

(2)(i) The organization conducts activities in connection with an election, but the organization's principal purpose is not to conduct election activities or any activity described in paragraph (c) of this section; and

(ii) The solicitation is not to obtain funds for activities in connection with an election or any activity described in paragraph (c) of this section.

(b) *Specific solicitations.* A Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either, may make a solicitation explicitly to obtain funds for any activity described in paragraph (c) of this section or for an organization whose principal purpose is to conduct that activity, if:

(1) The solicitation is made only to individuals; and

(2) The amount solicited from any individual does not exceed $20,000 during any calendar year.

(c) *Voter registration, voter identification, get-out-the-vote activity and generic campaign activity.* This section applies to only the following types of Federal election activity:

(1) Voter registration activity, as described in 11 CFR 100.24(a)(2), during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; or

(2) The following activities conducted in connection with an election in which one or more Federal candidates appear on the ballot (*see* 11 CFR 100.24(a)(1)), regardless of whether one or more State candidates also appears on the ballot:

(i) Voter identification as described in 11 CFR 100.24(a)(4);

(ii) Get-out-the-vote activity as described in 11 CFR 100.24(a)(3); or

(iii) Generic campaign activity as defined in 11 CFR 100.25.

(d) *Prohibited solicitations.* A Federal candidate, an individual holding Federal office, and an individual who is an agent acting on behalf of either, must not make any solicitation on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c) for any election activity other than a Federal election activity as described in paragraph (c) of this section.

(e) *Safe Harbor.* In determining whether a 501(c) organization is one whose principal purpose is to conduct election activities, including activity described in paragraph (c) of this section, a Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either, may obtain and rely upon a certification from the organization that satisfies the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities;

(2) The certification states that the organization's principal purpose is not to conduct election activities, including election activity described in paragraph (c) of this section; and

(3) The certification states that the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(f) If a Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either has actual knowledge that the certification is false, the certification may not be relied upon.

Subpart D—Federal Candidates and Officeholders

§ 300.60 Scope (2 U.S.C. 441i(e)(1)).

This subpart applies to:

(a) Federal candidates;

(b) Individuals holding Federal office (*see* 11 CFR 300.2(o));

(c) Agents acting on behalf of a Federal candidate or individual holding Federal office; and

(d) Entities that are directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more Federal candidates or individuals holding Federal office.

§ 300.61 Federal elections (2 U.S.C. 441i(e)(1)(A)).

No person described in 11 CFR 300.60 shall solicit, receive, direct, transfer, spend, or disburse funds in connection with an election for Federal office, including funds for any Federal election activity as defined in 11 CFR 100.24, unless the amounts consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act.

§ 300.62 Non-Federal elections (2 U.S.C. 441i(e)(1)(B)).

A person described in 11 CFR 300.60 may solicit, receive, direct, transfer, spend, or disburse funds in connection with any non-Federal election, only in amounts and from sources that are consistent with State law, and that do not exceed the Act's contribution limits or come from prohibited sources under the Act.

§ 300.63 Exception for State party candidates (2 U.S.C. 441i(e)(2)).

Section 300.62 shall not apply to a Federal candidate or individual holding Federal office who is a candidate for State or local office, if the solicitation, receipt or spending of funds is permitted under State law; and refers only to that State or local candidate, to any other candidate for that same State or local office, or both. If an individual is simultaneously running for both Federal and State or local office, the individual must raise, accept, and spend only Federal funds for the Federal election.

§ 300.64 Exemption for attending, speaking, or appearing as a featured guest at fundraising events (2 U.S.C. 441i(e)(3)).

Notwithstanding the provisions of 11 CFR 100.24, 300.61 and 300.62, a Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, including but not limited to a fundraising event at which Levin funds are raised, or at which non-Federal funds are raised. In light of the foregoing:

(a) State, district, or local committees of a political party may advertise, announce or otherwise publicize that a Federal candidate or individual holding Federal office will attend, speak, or be a featured guest at a fundraising event, including, but not limited to, publicizing such appearance in pre-event invitation materials and in other party committee communications; and

(b) Candidates and individuals holding Federal office may speak at such events without restriction or regulation.

§ 300.65 Exceptions for certain tax-exempt organizations (2 U.S.C. 441i(e)(1) and (4)).

A Federal candidate, an individual holding Federal office, and an individual agent acting on behalf of either may make the following solicitations of funds on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c):

(a) *General solicitations.* A Federal candidate, an individual holding Federal office or an individual agent acting on behalf of either, may make a general solicitation of funds, without regard to source or amount limitation, if:

(1) The organization does not engage in activities in connection with an election, including any activity described in paragraph (c) of this section; or

(2)(i) The organization conducts activities in connection with an election, but the organization's principal purpose is not to conduct election activities or any activity described in paragraph (c) of this section; and

(ii) The solicitation is not to obtain funds for activities in connection with an election or any activity described in paragraph (c) of this section.

(b) *Specific solicitations.* A Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either, may make a solicitation explicitly to obtain funds for any activity described in paragraph (c)

of this section or for an organization whose principal purpose is to conduct that activity, if:

(1) The solicitation is made only to individuals; and

(2) The amount solicited from any individual does not exceed $20,000 during any calendar year.

(c) *Voter registration, voter identification, get-out-the-vote activity and generic campaign activity.* This section applies to only the following types of Federal election activity:

(1) Voter registration activity, as described in 11 CFR 100.24(a)(2), during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; or

(2) The following activities conducted in connection with an election in which one or more Federal candidates appear on the ballot (see 11 CFR 100.24(a)(1)), regardless of whether one or more State candidates also appears on the ballot:

(i) Voter identification as described in 11 CFR 100.24(a)(4);

(ii) Get-out-the-vote activity as described in 11 CFR 100.24(a)(3); or

(iii) Generic campaign activity as defined in 11 CFR 100.25.

(d) *Prohibited solicitations.* A Federal candidate, an individual holding Federal office, and an individual who is an agent acting on behalf of either, must not make any solicitation on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c) for any election activity other than a Federal election activity as described in paragraph (c) of this section.

(e) *Safe Harbor.* In determining whether a 501(c) organization is one whose principal purpose is to conduct election activities, including activity described in paragraph (c) of this section, a Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either may obtain and rely upon a certification from the organization that satisfies the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities;

(2) The certification states that the organization's principal purpose is not to conduct election activities, including election activities described in paragraphs (c) of this section.

(3) The certification states that the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(f) If a Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either has actual knowledge that the certification is false, the certification may not be relied upon.

Subpart E—State and Local Candidates

§ 300.70 Scope (2 U.S.C. 441i(f)(1)).

This subpart applies to any candidate for State or local office, individual holding State or local office, or an agent acting on behalf of any such candidate or individual. For example, this subpart applies to an individual holding Federal office who is a candidate for State or local office. This subpart does not apply to an association or similar group of candidates for State or local office or of individuals holding State or local office.

§ 300.71 Federal funds required for certain public communications (2 U.S.C. 441i(f)(1)).

No individual described in 11 CFR 300.70 shall spend any funds for a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified), and that promotes or supports any candidate for that Federal office, or attacks or opposes any candidate for that Federal office (regardless of whether the communication expressly advocates a vote for or against a candidate) unless the funds consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act. *See* definition of *public communication* at 11 CFR 100.26

§ 300.72 Federal funds not required for certain communications (2 U.S.C. 441i(f)(2)).

The requirements of section 11 CFR 300.71 shall not apply if the public communication is in connection with an election for State or local office, and refers to one or more candidates for State or local office or to a State or local officeholder but does not promote, support, attack, or oppose any candidate for Federal office.

PART 9034—ENTITLEMENTS

25. The authority citation for Part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

26. Section 9034.8 is amended by adding introductory language to paragraph (a) to read as follows:

§ 9034.8 Joint fundraising.

(a) *General.* Nothing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities.

* * * * *

Dated: July 16, 2002.

Karl J. Sandstrom,

Vice-Chairman, Federal Election Commission.

[FR Doc. 02–18311 Filed 7–26–02; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 3500

Real Estate Settlement Procedures Act (RESPA); Simplifying and Improving the Process of Obtaining Mortgages To Reduce Settlement Costs to Consumers; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–4727–P–01]

RIN 2502–AH85

Real Estate Settlement Procedures Act (RESPA); Simplifying and Improving the Process of Obtaining Mortgages To Reduce Settlement Costs to Consumers

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development is issuing this proposed rule under the Real Estate Settlement Procedures Act (RESPA), to simplify and improve the process of obtaining home mortgages and reduce settlement costs for consumers. The current disclosure requirements under RESPA have not been substantially revised in decades. The current disclosures were comprehensively reviewed as recently as 1998 by HUD and the Board of Governors of the Federal Reserve System, but the problems identified then remain. Nevertheless, since 1998, there have been continuing changes in the marketplace, new products, and greater accessibility of mortgage information via the Internet, all of which are reducing settlement costs and, if properly addressed by Government, could result in greater price reductions for consumers. First, to simplify and improve the mortgage loan process, this proposal would address the issue of loan originator compensation, specifically the problem of lender payments to mortgage brokers, by fundamentally changing the way in which these payments in brokered mortgage transactions are recorded and reported to consumers. Second, it would significantly improve HUD's Good Faith Estimate (GFE) settlement cost disclosure and HUD's related RESPA regulations to make the GFE firmer and more usable, to facilitate shopping for mortgages, to make mortgage transactions more transparent, and to prevent unexpected charges to consumers at settlement. Finally, the rule would promote competition by removing regulatory barriers to allow guaranteed packages of settlement services and mortgages to be made available to consumers, to simplify shopping by consumers and further reduce settlement costs. The proposed rule also includes proposed, revised forms and solicits comments on additional changes including changes to HUD's settlement disclosure form and disclosure requirements.

DATES: Comment Due Date: Deadline for comments on this proposed rule, including comments on the proposed information collection requirements: October 28, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

HUD also invites interested persons to submit comments on the proposed information collection requirements of this proposed rule. Comments should refer to the above docket number and title, and should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Acting Director, Interstate Land Sales and RESPA Division, Room 9146, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0502 (this is not a toll-free number) or for legal questions Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, or Steven J. Sacks or Teresa L. Baker (Senior RESPA Attorneys); Room 9262, telephone (202) 708–3137. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. The address for the above listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Introduction

The American mortgage finance system is justifiably the envy of the world. It has offered unparalleled financing opportunities under virtually all economic conditions to a very wide range of borrowers that, in no small part, have led to the highest homeownership rate in the Nation's history. At the same time, however, the process of financing or refinancing a home, which is regulated under RESPA, 12 U.S.C. 2601 *et seq.*, remains too complicated, too costly, and too opaque for many borrowers. The monies needed to close on a home are a significant impediment to homeownership, and settlement costs are a significant component of these costs. In light of the Administration's commitment to reach even higher levels of homeownership, the RESPA regulatory scheme deserves particular scrutiny and necessary reform.

The current disclosure requirements under RESPA have not been substantively revised in decades. Although the RESPA disclosures were comprehensively reviewed as recently as 1998 by both HUD and the Board of Governors of the Federal Reserve System, the problems identified in that review remain largely unaddressed.

Recent judicial developments regarding lender [1] payments to mortgage brokers [2] (yield spread premiums and other named payments based on borrowers' transactions) have heightened the importance of increasing borrower awareness regarding how mortgage brokers are paid and how borrowers can benefit from payments made by lenders based on mortgages exceeding par interest rate.[3] Some borrowers [4] understand, agree to, and properly use higher interest rates to lower up front settlement costs. Others report, however, that they paid substantial origination costs in up front fees for mortgages and then learned that they were charged interest rates higher than those they qualified for merely to support an additional payment to their mortgage broker.

Under the current rules, many borrowers are provided estimated settlement cost information on a GFE only after paying a significant fee required by a loan originator,[5] which prevents the borrower from shopping among additional originators using the

[1] The term "lender" is used throughout this document to mean any person who is the "real source of funds" for a federally related mortgage loan.

[2] Except as specifically described in footnote 17, the term "mortgage broker" is used throughout the document to mean a person (not an employee of a lender) who table funds or acts an intermediary in a federally related mortgage loan. Mortgage brokers that are the "real source of funds" for a federally related loan are not regarded as brokers in such transactions.

[3] The term "par interest rate" is used throughout this document to mean the interest rate at which there is not payment made by the lender to the borrower or from the borrower to the lender.

[4] The terms "consumer" and "borrower" are used interchangeably throughout the document.

[5] The term "loan originator" is used throughout this document to refer to lenders and mortgage brokers.

GFE. Also, when borrowers receive estimated settlement cost information after applying for a mortgage, the estimates are often unreliable and prove too low. Final charges at settlement often include additional surprise "junk fees,"[6] which increase the original estimates. HUD's current rules provide little guidance on the standards that originators should be held to in providing good faith settlement cost estimates.

By requiring a long listing on the GFE of each estimated settlement charge, the current disclosure fails to highlight the major costs and seems to lead only to a proliferation of charges without any actual increase in the work performed or enhanced borrower understanding to assist in shopping for services and guard against unnecessary charges. The current requirements allow an individual such as a loan originator, to charge several fees for origination, document preparation, and document review. It is difficult for borrowers to distinguish or understand the precise purpose of these various itemized services provided by the same originator. Excessive itemization thus enables originators to charge more than if the borrower could review and shop the total origination charges. The same holds true for title and other third party services. The types of fees charged by loan originators, title agents and other service providers have multiplied in recent years making it steadily more difficult for borrowers to compare settlement costs.

Industry advocacy groups have indicated that they support better disclosure of mortgage broker compensation specifically and loan origination charges in general. Consumer groups have called for protections against yield spread premiums that were not bargained for, more shoppable settlement cost disclosures, and much firmer interest rates and settlement service costs.

Settlement cost disclosures need to be improved so that the information they provide is simpler, clearer, more reliable, and reasonably available to facilitate shopping, increase competition, and lower settlement costs. Although HUD has called for better disclosures in policy statements and opinions, its regulations need to be updated to establish requirements that are more useful to consumers.

While technology and market forces have played a significant role in lowering costs in the settlement process, it is not clear that under existing rules these benefits are passed on to the borrower in the form of lower settlement prices. HUD's rules implementing Section 8 of RESPA require originators to pass through third party costs without "mark-ups" or "upcharges," and generally prohibits volume discount arrangements. Many industry and consumer advocates assert, however, that these regulatory restrictions prevent activities and innovations which would lower prices to borrowers. Many mortgage industry providers also report that while they follow the rules, they are competitively disadvantaged by those who do not because of the lack of adequate enforcement by HUD.

Specifically, some assert that HUD's RESPA rules impede arrangements for the packaging of settlement services, which would allow packagers to draw on their knowledge of the market and familiarity with the products offered by providers of specific services to develop lower settlement cost packages for borrowers. They assert that such packages would increase competition and enhance borrower shopping, lowering costs more effectively than restrictions against referral fees or unearned fees. In the joint HUD and the Board of Governors of the Federal Reserve System, Joint Report to the Congress Concerning Reform of the Truth in Lending Act and the Real Estate Settlement Procedures Act, (July 1998), (hereafter HUD-Federal Reserve Report) both agencies agreed that an exemption should be established to facilitate the provision of settlement services and to improve consumers' ability to shop effectively for a mortgage loan and thereby allow competitive forces to reduce the cost of financing a home. HUD-Federal Reserve Report at 33. At that time, some settlement service providers claimed that such an exemption would legalize kickbacks and referral fees. HUD has examined this concern and concluded that guaranteed packaging arrangements should be permitted in a carefully circumscribed safe harbor. Deregulation, transparency and a free market will wring out kickbacks, referral fees, and other excesses more effectively than the current restrictions and, for this reason, the establishment of a safe harbor is warranted. Under this proposal, settlement service providers may choose either to operate using an improved GFE disclosure, or to participate in packages qualifying for the safe harbor. Accordingly, this dual approach will provide industry and borrowers alike with an opportunity to test both methods where they should be tested, in the marketplace, to determine which is more effective in lowering settlement costs.

Late last year, in Statement of Policy 2001–1, Clarification of Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers, and Guidance Concerning Unearned Fees Under Section 8(b), 66 FR 53052 (October 18, 2001), the Secretary announced his intention to make full use of his regulatory authority to provide clear requirements and guidance regarding the disclosure of mortgage broker fees, and more broadly, to improve the mortgage settlement process to better serve borrowers. The Secretary has established the following principles to guide HUD's RESPA reform and enforcement efforts:

1. Borrowers should receive settlement cost information early enough in the process to allow them to shop for the mortgage product and settlement services that best meet their needs;

2. Disclosures should be as firm as possible to avoid surprise costs at settlement;

3. Regulatory amendments should be utilized to remove unintended barriers to marketing new products, competition, and technological innovations that could lower settlement costs;

4. Many of the current system's problems derive from the complexity of the process; with simplification of disclosures and better borrower education, the loan origination process can be improved; and

5. RESPA should be vigorously enforced to protect borrowers and ensure that honest industry providers have a level, competitive playing field.

In accordance with these principles, this proposed rule would first fundamentally change the way in which mortgage broker compensation is reported by requiring, in all loans originated by mortgage brokers, that any payments from a lender based on a borrower's transaction, other than the payment for the par value[7] of the loan, including payments based upon an above par interest rate on the loan (payments commonly denominated "yield spread premiums"), be reported on the Good Faith Estimate (and the HUD–1/1A Settlement Statement) as a lender payment to the borrower. Additionally, in brokered loans, any borrower payments to reduce the interest rate ("discount points") must

[6] "Junk fee" is a term used throughout this document to mean any fee charged for a service to a borrower that has little or no value in relation to the charge, and/or may be duplicative, to increase a loan originator's profits.

[7] The term "par value" of the loan is used throughout this document to mean the principal amount of the loan.

equal the discount in the price of the loan paid by the lender, and be reported on the GFE (and HUD–1/1A) as borrower payments to the lender. These changes would require mortgage brokers to disclose, at the outset, the maximum amount of compensation they could receive from a transaction, and include the amount in the "origination fees" block of the GFE and separately on the GFE Attachment A–1. They would then disclose the amount of the lender payment to the borrower that would be received at the interest rate quoted, if any. Mortgage brokers would be unable to increase their compensation without the borrower's knowledge, either by placing the borrower in an above par loan, and receiving a payment from the lender (yield spread premiums), or by retaining any part of any borrower payment intended to reduce the loan rate (discount points).

Through these changes in reporting requirements, HUD believes that virtually all disputes regarding broker compensation in table funded transactions and intermediary transactions involving yield spread premiums would be resolved. Maximum broker compensation would be clear and brokers would have no incentive to seek out lenders paying the largest yield spread. They would instead be motivated to find the best loan product they can for the borrower. At the same time, HUD believes that since these new disclosure requirements will allow borrowers to focus on the total origination costs for shopping purposes, they will not disadvantage brokers in competition with lenders.

Second, the proposed rule would improve the existing RESPA disclosure scheme by establishing a new required format for the Good Faith Estimate providing greater accuracy and usefulness for borrowers, which would: (1) Inform the borrower that mortgage brokers and other loan originators do not offer loans from all funding sources and cannot guarantee the lowest price or best terms available in the market; (2) explain to the borrower the option of paying his or her settlement costs through the use of lender payments based on higher interest rates, or reducing the interest rate by paying the lender additional amounts at settlement; (3) disclose the loan originators' fees, including the mortgage broker's and lender's total charges to borrowers; and (4) require, in transactions originated by mortgage brokers, that all payments from a lender other than for the par value for the loan (including "yield spread premiums," servicing release premiums, and all other payments from lenders), be reported on the GFE and the HUD–1 Settlement Statement as a lender payment to the borrower and any discount points charged to the borrower must equal the discount in the price of the loan paid by the lender and be reported on the GFE and the HUD–1 Settlement Statement as borrower payments to the lender. These changes will ensure that borrowers receive the full benefit of any payments from or to lenders in brokered transactions, either by reducing their up front settlement costs in exchange for accepting a loan with a higher rate, or by reducing their interest rate and monthly payments by paying additional amounts to the lender at settlement.

The new GFE would also better inform borrowers of the costs of obtaining a mortgage loan from a mortgage broker, as well as from mortgage bankers, lenders or other loan originators, and would better protect borrowers from unnecessary surprise charges at settlement. It would:

(1) Include an interest rate quote in the form of the mortgage loan's note rate and APR, and notification of any prepayment penalties, to assist the borrower in shopping among mortgages;

(2) Disclose subtotals of major categories of settlement costs (including, for example, loan origination costs and title services) to borrowers to eliminate the proliferation of fees by individual settlement service providers, and to allow borrowers to focus on and compare major fees; and

(3) Provide additional shopping information for borrowers that would provide a breakdown of lender and broker origination charges, title insurance and title agent charges, and inform the borrower of lender required and selected services and those third party services that can be shopped for by the borrower.

The proposed rule would further improve the existing disclosure scheme, by amending Regulation X to establish new rules for the provision of the GFE which would: (1) Clarify the basic information needed in an "application" to obtain a GFE; (2) limit fees paid by borrowers for the GFE, if any, to the amounts necessary to provide the GFE itself and exclude amounts used to defray later appraisal or underwriting charges, in order to facilitate shopping with GFEs; (3) require that loan originators not exceed the amounts reported on the GFE regarding their total compensation, lender required and selected third party services, and government charges through settlement (absent unforeseeable and extraordinary circumstances); (4) require that loan originators comply with upper limits or "tolerances" for specified major settlement charge categories so they do not exceed those stated on the GFE by more than 10%; and (5) clarify that loan originators can make arrangements with third party settlement service providers to lower prices for their customers, provided that these prices and any charges are reflected accurately on the GFE and are not "marked up" or "up charged."

Third, the proposed rule would remove regulatory barriers to allow packages of settlement services and mortgage loans to be made available to borrowers. These transactions would be even simpler and more transparent for borrowers, and would allow market forces, borrower shopping, and competition to further reduce the costs of settlement services to better achieve the purposes of the statute.

To accomplish this objective, HUD would establish a carefully circumscribed safe harbor under RESPA for "Guaranteed Mortgage Package" (GMP) transactions. Any entity (a lender, broker, other settlement service provider, or other entity), hereinafter a "packager," may qualify for the safe harbor as long as it offers a GMP. The packager must offer the GMP to a borrower following his or her submission of application information, but before the borrower's payment of any fee to the packager. The GMP must include: (1) A guaranteed package price for a comprehensive package of loan origination and virtually all other settlement services required by the lender to close the mortgage (including without limitation, all application, origination and underwriting services, the appraisal, pest inspection, flood review, title services and insurance, and any other lender required services except hazard insurance, *per diem* interest, and escrow deposits); (2) a mortgage loan with an interest rate guarantee, whether when the "Guaranteed Mortgage Package Agreement" (GMPA) is given or subject to change (prior to borrower lock-in) only pursuant to market changes evident from an observable and verifiable index or other appropriate data or means; and (3) a contract offer in the form of a GMPA to guarantee the price for settlement services and the mortgage interest rate through settlement, if the offer is accepted by the borrower. Additionally, in order to ensure that the borrower receives the settlement package of services and the mortgage loan, the proposed rule would require that the packager sign the GMPA agreeing to provide the Guaranteed Mortgage Package at the Guaranteed Mortgage Package price and that non-lender packagers have a lender sign the

GMPA after borrower acceptance agreeing to provide the loan included in the Guaranteed Mortgage Package.

The GMPA would describe the package as "including all services required by the lender to close the mortgage" but would not itemize the specific services to be provided. The packager would, however, be required to inform the borrower if certain items of interest to the borrower are anticipated to be excluded from the package, specifically lender's title insurance, pest inspections, and a property appraisal. Additionally, where the packager anticipates obtaining a pest inspection, appraisal, or credit report, the packager must disclose that information on Attachment A–1 and make such documents available at the borrower's request. The HUD–1 would list the services ultimately provided, but not the charges for specific services. HUD is requesting comments on whether this approach satisfies, or whether alternative approaches should be developed, to ensure that consumers' rights under TILA and HOEPA are protected while facilitating packaging.

The Secretary is exercising the exemption authority under Section 8(c)(5) and Section 19 of RESPA to establish this Guaranteed Mortgage Packaging safe harbor for those Guaranteed Mortgage Package transactions that meet the requirements set forth in this rule. The Secretary has determined that the establishment of this carefully circumscribed safe harbor is necessary to allow this class of transactions to be available to consumers and to achieve the purposes of the Act. The Secretary has concluded that the availability of these packages to consumers at single guaranteed prices with an interest rate guarantee will simplify consumers' shopping for mortgages and allow them to gain the benefit of an active competitive marketplace in which market forces produce lower settlement costs. For the same reasons, the Secretary has determined that payments among packagers and participating settlement service providers and the earnings of packager in Guaranteed Mortgage Packages, as set forth in this rule, shall not be construed as prohibited under Section 8 of RESPA as long as the requirements in this rule are satisfied. Pursuant to Section 8(c)(5) the Secretary has undertaken the necessary consultation with other agency heads as required prior to promulgating this exemption.

The safe harbor from Section 8 will permit the packager to charge for services within the package and will permit payments to, or exchanges of other things of value between entities participating in the package. Section 8 would, however, continue to prohibit any payments for the referral of business, kickbacks, splits of fees and unearned fees between the packager and any of the entities participating in the package on the one hand and entities outside of the package on the other. Under the safe harbor, packagers would provide the GMPA in lieu of a GFE. HUD regards such provision of a GMPA as fully, indeed more than, satisfying the requirements of Section 5 of RESPA that borrowers receive a Good Faith Estimate of the amount of charges for settlement services the borrower is likely to incur. HUD believes that the GMPA, by providing a Guaranteed Mortgage Package price encompassing virtually all settlement charges, along with a limited number of itemized charges, including owner's title insurance, also more than satisfies the requirements of Section 4 of RESPA. Nevertheless, as long as the requirements of the safe harbor are satisfied, HUD is also prepared to exercise the exemption authority under Section 19 to create a safe harbor for packagers from the requirements of Sections 4 and 5 of RESPA, if it deems such an exemption necessary.

The safe harbor is proposed to be available only where the transaction does not result in a high cost loan as that term is defined in the Home Ownership Equity Protection Act, 15 U.S.C.1601(Supp II 1996). The safe harbor also may not be available to mortgages that exceed other limits, or include other features identified through this rulemaking, resulting in unreasonable settlement charges or loan terms inimical to the purposes of RESPA.

The proposed rule's new regulatory requirements will apply to first and second lien transactions, purchase money loans, and refinances. Home equity transactions are addressed in § 3500.7(f), under current RESPA regulation. At Question 26 the Department invites comments on this issue.

The Department also is inviting comments specifically on whether, and to what extent modification of the existing HUD–1/1A Settlement Statement and Instructions, found at 24 CFR part 3500, Appendix A, is necessary to make it comparable to the new GFE. HUD also announces that it plans to revise the Special Information Booklet concerning settlement costs consistent with the final rule, and to develop new booklets for refinance and junior lien transactions.

In this proposed rule at Appendix C and F, the Department is publishing for comment new proposed required formats for the Good Faith Estimate (GFE) and new GMPA. HUD believes that the content of the material in these proposed forms gives the consumer the information needed to shop for loan products and to assist them during the settlement process. HUD recognizes that in order for these forms to be useful shopping tools, they must be consumer friendly. The Department seeks public comment on these proposed forms In addition, the Department will arrange focus groups during the comment period to elicit comments on how to make the material in the new proposed forms as consumer friendly as possible including considering, among other things, how the new proposed forms are best compared by consumers to the HUD–1 and what revisions, if any, to the HUD–1 would be most helpful.

In addition, the Department will facilitate the provision of web based information to consumers on settlement costs and pursue other efforts to ensure that RESPA regulation encourages technological advances to facilitate competition, and lower costs and prices to consumers. Beyond this rulemaking, the Department is examining possible changes to its rules to facilitate electronic mortgage transactions consistent with the Electronic Signatures in Global and National Commerce Act, Public Law 106–229. The Department will also undertake efforts with Federal and State regulators and others to better address technological changes to lower costs.

Additionally, the Department plans to finalize the 1997 Section 6 transfer of servicing proposed rule; however, in the meantime the Section 6 language in the statute may be provided in conjunction with the GFE. Separate from this rulemaking, the Secretary is increasing the resources dedicated to enforcing and regulating RESPA.

Following the background materials, this proposal includes a description of today's proposed rule, specific questions for public comment, and proposed rule language. Public comment on this proposal will be important to formulating a final rule that is consistent with RESPA's purpose, workable in the marketplace, and best serves the financing needs of America's families.

II. General Background

A. Legal Authority

The Department is proposing this rule in accordance with 5 U.S.C. 552, Sections 19 and 8(c)(5) of the Real Estate

Settlement Procedures Act of 1974 (12 U.S.C. 2617).

RESPA Overview

In 1974, Congress enacted the Real Estate Settlement Procedures Act (Pub. L. 93–533, 88 Stat. 1724, 12 U.S.C. 2601 *et seq.*) after finding that "significant reforms in the real estate settlement process are needed to ensure that borrowers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from the unnecessarily high settlement charges that have developed in some areas of the country." *Id.* RESPA's stated purpose is to "effect certain changes in the settlement process for residential real estate that will result:

(1) In more effective advance disclosure to home buyers and sellers of settlement costs;

(2) In the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;

(3) In a reduction in the amounts home buyers are required to place in escrow accounts established to ensure the payment of real estate taxes and insurance; and

(4) In significant reform and modernization of the local record keeping of land title information." Id.

RESPA's requirements apply to transactions involving "settlement services" for "federally related mortgage loans." Under the statute the term "settlement services" includes any service provided in connection with a real estate settlement.[8] The term "federally related mortgage loan" is broadly defined to encompass virtually all purchase money and refinance mortgages.[9] Section 4(a) of RESPA requires the Secretary to develop and prescribe "a standard form for the statement of settlement costs which shall be used * * * as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans." The rule further requires that the form "conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement. * * *" Section 5 requires the Secretary to prescribe a Special Information Booklet for borrowers. Section 5(c) requires that a Good Faith Estimate (GFE) be provided at or within 3 days of loan application, authorizes the Secretary to prescribe the contents of the GFE, and requires that the GFE state "the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Secretary." Notice of transfer of servicing language was added to RESPA at Section 6 in 1990 and amended most recently in 1996, and requires notification to borrowers at the time of application for the mortgage, and during the life of the loan, of whether the servicing of the loan may be or has been assigned, sold, or transferred.

Section 8(a) prohibits any person from giving and any person from accepting "any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise," that real estate settlement service business shall be referred to any person. 12 U.S.C. 2607(a). Section 8(b) prohibits anyone from giving or accepting "any portion, split, or percentage of any charge made or received" for the rendering of a real estate settlement service "other than for services actually performed." 12 U.S.C. 2607(b). Section 8(c) of RESPA provides, in part, that "[n]othing in [Section 8] shall be construed as prohibiting * * * (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed." * * * or "(5) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Secretary, after consultation with the Attorney General, the Secretary of Veterans Affairs, the Federal Home Loan Bank Board,[10] the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System and the Secretary of Agriculture." 12 U.S.C. 2607(c)(2).

Section 9 forbids any seller of property from requiring buyers to purchase title insurance covering the property from any particular title company as a condition of sale. Section 10 limits the amounts that lenders or servicers may require borrowers to deposit in escrow accounts, and requires that borrowers be provided with both initial and annual escrow account statements. Section 12 prohibits lenders and loan servicers from imposing any fee or charge on any other person for the preparation and submission of the Settlement Statement, the escrow account statements required under Section 10(c), or any disclosures required by the Truth in Lending Act.

Section 19 of RESPA specifically authorizes the Secretary "to prescribe such rules and regulations, * * * and to grant such reasonable exemptions for classes of transactions * * *, as may be necessary to achieve the purposes of [RESPA]."

B. Background

HUD's RESPA Rules

In 1975, HUD promulgated its first set of RESPA rules including limited disclosure requirements. Real Estate Settlement Procedures and Cost, 40 F.R. 22448 (1975). These rules included a requirement that the HUD–1 form be given to borrowers within seven days of a loan commitment, with the provision that estimates were permitted for those items the lender could not accurately provide cost information for at the time of loan commitment. Congress amended the RESPA statute in 1976 and included a requirement that borrowers be provided with a Good Faith Estimate along with the special information booklet at, or within 3 days of a loan application. Following these amendments, HUD promulgated rules in 1977 that included a suggested format for the GFE and requirements for its provision to borrowers at or within 3 days of application, as well as a Uniform Settlement Statement, designated as the HUD–1, to itemize settlement charges to borrowers in every settlement involving a federally related mortgage loan where there is a borrower

[8] These services include, but are not limited to, "title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing of settlement." 12 U.S.C. 2602(3).

[9] Specifically, the term covers mortgages "secured by a first or subordinate lien on residential real property (including individual units of condominium and cooperatives) designed principally for the occupancy of one to four families"; mortgages made "in whole or in part by any lender the deposits or accounts of which are insured by the Federal Government or is made in whole or in part by any lender which is regulated by any agency of the Federal Government" or "insured, guaranteed, supplemented or assisted in any way by HUD or any officer or agency of the Federal Government," intended to be sold to Fannie Mae, Ginnie Mae, Freddie Mac or an institution from which it will be purchased by Freddie Mac, or is made in whole or in part by any loan originator, among other things, "who makes or invests in residential real estate loans aggregating more than $1,000,000.00 per year." 12 U.S.C. 2602(3).

[10] The Federal Home Loan Bank Board (FHLBB) was abolished Effective October 8, 1989, by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (Pub. L. 101–73). Its successor agency, the Office of Thrift Supervision, Department of the Treasury, assumed the FHLBB's regulatory functions.

and a seller, along with instructions and requirements for its use.

On November 2, 1992, HUD amended its rules to implement the 1984 amendments to RESPA establishing a "controlled business exemption" (now known as an "affiliated business exemption"), a controlled (now known as an "affiliated") business disclosure to be provided at the time of a referral, and a disclosure of required providers to accompany the GFE. 57 FR 49600. The 1992 amendments also made other significant additions and changes, including defining the term mortgage broker,[11] and applying disclosure requirements to mortgage brokers, as more fully discussed below. In 1994, at 59 FR 6506, HUD amended its rules to conform with the 1992 amendments to the law covering refinancings and junior lien transactions. At that time, HUD promulgated a new disclosure form, the HUD–1A, for use in refinancing and subordinate loan transactions where there is no seller. While the 1992 and 1994 amendments necessitated additional disclosures, the formats of the GFE and HUD–1, and the disclosure requirements, have remained substantially unchanged since they were originally established in 1977.

Contents of Good Faith Estimate and the HUD–1

HUD's RESPA rules require that lenders and mortgage brokers who are not exclusive agents of lenders provide a GFE to all applicants for federally related mortgage loans, and contain a suggested format in Appendix C to 24 CFR part 3500. The suggested GFE format lists twenty common settlement services and provides spaces for the charges for such services. The instructions indicate that any other possible services and charges should also be listed.[12] The GFE provides a place for the "amount of or range" of each charge that the borrower is likely to incur in connection with the settlement. Between the name and amount of each charge is a reference to where the same charge will be disclosed on the HUD–1 or HUD 1–A at settlement. If the lender requires the use of particular settlement service provider(s) and requires the borrower to pay for any portion of such provider's services, the rules require that the GFE state: that the use of the provider is required and that the estimate is based on the selected provider's price; the provider's name, address and telephone, and the nature of any relationship between the provider and the lender.[13] The current GFE does not identify the particular items that the borrower may shop for after he has selected a lender or broker, such as a title or settlement agent, title insurance, and a pest inspector.

The HUD–1, described in detail in Appendix A of HUD's RESPA rules, discloses the charges at settlement in major groupings or series. The left hand column on the front of the HUD–1 summarizes the borrower's transaction, listing the cash due at settlement from the borrower, as a result of the gross amounts due less any amounts paid by or on behalf of the borrower prior to settlement. This part of the HUD–1 lists credits to the borrower as well as the total settlement charges due from line 1400 on the back of the form. The right hand column on the front of the HUD–1 summarizes the seller's transaction, listing the total amount due to the seller as the gross amount due to the seller adjusted for items such as settlement charges to the seller and the payoff(s) of any mortgages, and any other items due from seller (such as taxes), to arrive at a total amount due seller.

The 700 series of the HUD–1 lists real estate broker commissions; the 800 series lists origination fees and certain third party settlement services payable in connection with the loan; the 900 series lists items required by the lender to be paid in advance; the 1000 series lists reserves deposited with lender; the 1100 series lists all title related charges; the 1200 series lists government charges; the 1300 series lists any additional settlement charges; and line 1400 discloses the total settlement charges.

The current GFE and HUD–1/1A forms require a listing of the settlement charge for each service, which appears to have led to an increasing proliferation of enumerated services by individual settlement service providers (e.g., loan originators, title agents, etc.) and an artificial separation and inflation of the total charges of certain settlement service providers resulting in higher total costs to borrowers than a more consolidated list would provide. For example, the current requirements encourage loan originators to charge for several separate "services"—origination, document preparation, document review. Similarly, title service providers are required to separate their charges into "abstract," "document preparation," "attorney's fees," and other charges. Moreover, neither the GFE nor the HUD–1 specify the total amount of fees that each major recipient receives and retains, including the lender, the broker, and the title agent. It is reported that some originators charge "junk" fees for "services" to increase profits by filling in as many blank lines on the form as possible. It also has been reported that some originators compete on rate and points when giving quotes and then charge a variety of additional fees to increase their profits.

Provision of the Good Faith Estimate

The RESPA rules require that the loan originator must provide the GFE either by delivering it or placing it in the mail to the borrower not later than three business days after a loan application[14] is received or prepared. In practice, loan originators frequently insist on the borrower's completion of a full application form and payment of a significant fee to cover the costs of an appraisal and credit check before a GFE is provided. Therefore, by the time that the borrower receives a GFE he or she has typically already selected a particular loan originator, and paid substantial fees, and is highly unlikely to shop further for another loan originator. In addition, because the GFE is not generally provided until the borrower applies for a loan, the form does not provide borrowers with sufficient opportunity to focus on and compare the full costs of the originator and other major recipients of fees, nor does it indicate clearly other individual settlement services including title services that the borrower may shop for. Borrowers must shop on their own without the aid of a GFE.

Current Definition of "Good Faith"

HUD's RESPA rules currently require that a GFE must be made in good faith, bear a "reasonable relationship" to the charge the borrower is likely to be

[11] HUD's RESPA rules, found at 24 CFR part 3500 (Regulation X), currently define a "mortgage broker" to be "a person (not an employee or exclusive agent of a lender) who brings a borrower and lender together to obtain a federally-related mortgage loan, and who renders services" as described in the rule (24 CFR 3500.2(b)).

[12] Specifically, the GFE format lists the loan origination fee, loan discount fee, appraisal fee, credit report, inspection fee, mortgage broker fee, CLO access fee, tax related service fee, interest at "dollars" per day, mortgage insurance premium, hazard insurance premium, reserves, settlement fee, abstract or title search, document preparation fees, attorney's fee, title insurance, recording fees, city/county tax stamps, state tax, survey, pest inspection and the form provides space for additional fees that may be added.

[13] 24 CFR 3500.7(e)(3). Except for a provider that is the lender's chosen attorney, credit reporting agency, or appraiser, if the lender is in an affiliated business relationship with the provider (see § 3500.15), the lender may not require the use of that provider.

[14] The rules define an "application" as the submission of a borrower's financial information in anticipation of a credit decision involving a federally related loan on a specific property. 24 CFR 3500.2(b).

required to pay at settlement, and "be based upon experience in the locality of the mortgaged property." 24 CFR 3500.7(c)(2). The rules, however, do not establish any bright lines or tolerances to assure that there is, in fact, a reasonable relationship between these estimates and final costs at settlement. Although the rules do require additional disclosure where the lender requires the use of a particular provider, stating that the lender must "make its estimate based upon the lender's knowledge of the amounts charged by the provider," the rules do not establish any bright lines for the loan originator with respect to their estimates of these or other third party charges, or even with respect to their own charges. Id.[15] Under HUD's rules, charges on the Good Faith Estimate are to be disclosed as "a dollar amount or range of each charge" which will be listed in section L of the HUD–1 or HUD–1A. Frequently, borrowers report to HUD that brokers' or lenders' own charges at settlement include one or more additional fees that were not disclosed on the GFE, or that the charges for particular services rendered by or for the loan originator substantially exceed the estimated amounts. RESPA contains no sanctions for inaccurate or incomplete GFEs, or even for outright failure to provide a GFE. Bank and other regulators do enforce these requirements with respect to regulated institutions, although other originators are not subject to such enforcement.

Use and Provision of the HUD–1, HUD–1A

Settlement agents are required to use the HUD–1 in every settlement transaction involving a federally related mortgage loan in which there is a borrower and a seller.[16] The settlement agent is required to complete the HUD–1 in accordance with the instructions at Appendix A to HUD's RESPA rules and to deliver a completed HUD–1 (or HUD–1A where applicable) at or before the settlement to the borrower, the seller (if applicable), and the lender (if the lender is not the settlement agent) or their agents. 24 CFR 3500.8(a). RESPA and HUD's RESPA rules permit the borrower to inspect, a day before settlement, the HUD–1 or HUD–1A containing those items that are known to the settlement agent at the time of the inspection. 24 CFR 3500.10.

Mortgage Brokers[17]

At the time RESPA was enacted, single-family mortgages were mainly originated and held by savings and loans, commercial banks, and mortgage bankers. During the 1980's and 1990's, the rise of secondary mortgage market financing resulted in the emergence of new retail entities, notably mortgage brokers, to compete with traditional mortgage originators, lending institutions, and mortgage bankers. Today, mortgage brokers are estimated to originate more than 60% of the nation's mortgages.

Mortgage brokers essentially provide retail lending services, including counseling borrowers on loan products, collecting application information, ordering required reports and documents, and otherwise gathering data required to complete the loan package and mortgage transaction. As retailers, brokers also provide the borrower and lender with goods and facilities such as reports, equipment, and office space to carry out retail functions.[18] The amount of work mortgage brokers provide in particular transactions depends, in part, on the level of difficulty involved in qualifying applicants for particular loan programs. Differences in credit ratings, employment status, levels of debt, assets, and experience frequently translate into varying degrees of effort required to originate a loan. Also, mortgage brokers may be required to perform different components of origination services (i.e., underwriting) pursuant to specific agreements with individual wholesale lenders.[19]

Mortgage brokers have various means of obtaining funding for the loans they originate. Some mortgage brokers close mortgage loans in their own name but, at the time of settlement, transfer the loan to a lender that simultaneously advances funds for the loan. Immediately after the loan is consummated, the mortgage broker delivers the loan package to that lender, including the promissory note, mortgage, evidence of insurance, and all rights in the loan that the mortgage broker held. This type of transaction is known in the lending industry, and defined in HUD's regulations, as "table funding."

Some mortgage brokers function purely as intermediaries between borrowers and lending sources. They originate loans by providing loan processing and arranging for the provision of funds by lenders. Loans which they originate are closed in the names of the funding lenders.

Other mortgage brokers originate loans that are closed in the mortgage brokers' names, fund the loans temporarily using their own funds or a warehouse line of credit, and sell the loans after settlement. These transactions by mortgage brokers are treated similarly to loans made by mortgage bankers, and other lenders, and hence any compensation received by the mortgage broker, as a result of the bona fide transfer of a loan obligation in the secondary market, is not subject to Section 8 of RESPA due to the "secondary market transaction" exemption. 24 CFR 3500.5(b)(7).

Mortgage Broker Functions and Compensation

Since the advent of mortgage brokers in the mid-1980s, there has been confusion among borrowers concerning the mortgage broker's functions and fees,—i.e., whether brokers do or do not shop on the borrower's behalf, as well as how they are paid and how much they are paid, and by whom.

Some mortgage brokers indicate to borrowers that they will, in essence, act as their agent to shop for the best mortgage loan for them.[20] Other brokers state that they work with a number of funding sources to provide loans, and

[15] While the current rules need improvement, they are not entirely without standards. They do require estimates to be in good faith and tell the borrower what charges he or she is likely to incur at settlement based on the originator's experience. For example, on July 5, 2002, HUD issued a letter to the State of Washington that indicated that a range of charges of 0–$15,000 on a GFE for points did not meet these requirements.

[16] 16 Under current rules, where there is a borrower and no seller, such as in a refinance or a subordinate lien loan, the HUD–1 may be utilized using the borrower's side of the HUD–1 statement, or the HUD–1A may be used as an alternative.

[17] In the discussion of mortgage brokers in the background section of this preamble, the term is being used in a broader sense than the proposed amended HUD definition, and the way the term is used throughout the rest of the proposed rule. In this section when referring to mortgage brokers the term also includes those individuals who are the real source of funds through a warehouse line of credit or otherwise.

[18] HUD Statement of Policy-1999–1 Regarding Lender Payments to Mortgage Brokers provided a list of compensable loan origination services originally developed by HUD in a response to an inquiry from the Independent Bankers Association of America (IBAA), which HUD considers relevant in evaluating mortgage broker services. In analyzing each transaction to determine if services are performed by mortgage brokers, HUD stated that it believes the 1999 Statement of Policy should be used as a guide. As stated there, the IBAA list is not exhaustive, and while technology is changing the process of performing settlement services, HUD believes that the list is still a generally accurate description of settlement services.

[19] The terms "wholesale lender" or "funding lender" are used throughout the document to mean a lender who does not originate the mortgage loan but provides funds for the loan and may purchase the loan.

[20] In some states, for example North Carolina, mortgage brokers may be held to have an agency relationship or a legal responsibility to the borrower.

will arrange a favorable loan with one of them for their borrower. Whether brokers serve as the borrower's agent as a strict legal matter, the fact is that many brokers are perceived by borrowers as shopping on their behalf for the best loan to meet the borrower's needs. This perception frequently deters borrowers from shopping themselves for the loan originator and mortgage product that best meets their needs.

Mortgage brokers receive compensation for their services by various methods. A broker may be paid directly by the borrower, indirectly by the lender or wholesale lender who purchases the mortgage loan, or through a combination of both. Brokers may charge borrowers directly at or before settlement for loan origination as well as for other services including the application, document preparation and document review. In some cases, broker origination charges may be denominated as an origination fee and sometimes as an "origination point" (one point equals 1% of the loan amount), while other fees for named services (e.g., application fees, document preparation fees, processing fee, etc.) are charged as separate cost items on the GFE.[21] Some brokers receive both percentage based fees and fees for named services.

Where brokers receive a payment for compensation from someone other than the borrower, most commonly the lender, it is called indirect compensation. Such indirect compensation from lenders is ordinarily based upon an above market interest rate on the loan entered into by the broker with the borrower. This type of compensation is often referred to as a "yield spread premium," (YSP) though it sometimes shows up under a different label, e.g. servicing release premium.

The use of a YSP can reduce up front settlement costs to a borrower by building these costs into the borrower's interest rate and monthly payments over the life of the borrower's loan. In issuing RESPA Policy Statement 2001–1, discussed in greater detail below, HUD stated that borrowers should continue to have the choice of paying their total settlement costs up-front or using the yield spread premium payment as a credit to pay all or part of these costs. Consumer advocates assert, however, that all too frequently brokers place the borrower in an above par rate loan without the borrower's knowledge, provide the borrower with little or no benefit in the form of reduced up front costs, and use the YSP payment solely or primarily as a means of increasing their total compensation.

[21] Mortgage broker fees are not always described in the same terms. Sometimes mortgage brokers fees are expressed in straight dollar amounts and sometimes as "points." "Points" are charges based on a percentage of the borrower's loan. Points therefore have a dollar equivalent to the borrower.

Current Broker Disclosure Requirements

Under HUD's current rules, where mortgage brokers originate and table fund loans or act as intermediaries, they are required to disclose their direct charges and any indirect payments to be made to them on the GFE, and deliver or mail it to the borrower no later than 3 days after loan application. 24 CFR 3500.7(a)–(c). Such disclosure must also be provided to borrowers, as a final figure, at settlement on the HUD–1 and HUD–1A settlement statement. 24 CFR 3500.8. In table funded and intermediary transactions, direct broker fees are treated like the fees of other settlement service providers, such as title agents, attorneys, appraisers, etc, whose fees are disbursed at or before settlement. However, HUD's current rules require that on the GFE and HUD–1, lender-paid (indirect) mortgage broker fees are to be shown as "Paid Outside of Closing" (P.O.C.), listed outside the columns, and excluded from the computation of borrower's total settlement costs. 24 CFR 3500.7(a)(2). This approach does not assure that YSPs are understood and credited to the borrower to reduce up front settlement costs.

Disclosure of Fees by Lenders

Lenders are also compensated by borrowers through various methods. When lenders originate mortgage loans, they may charge borrowers directly at or before settlement for loan origination as well as for other services including the application, document preparation and document review. In some cases, lender origination charges may be denominated as an origination fee and sometimes as an "origination point" (one point equals 1% of the loan amount), while other fees for named services (e.g., application fees, document preparation fees, processing fee, etc.) are charged as separate cost items on the GFE.[22]

Lenders may also require "discount points" from the borrower for the stated purpose of lowering the interest rate of the loan. It is unclear to what extent discount points represent the present value of the difference between the par mortgage interest rate and the rate on the loan on one hand, or provide additional compensation to lenders on the other.

The functional equivalent of a yield spread premium may also be present in loans originated by lenders. Lenders routinely offer loans with low or no up front costs required at settlement. They can do so just like brokers do by charging higher interest rates for these loans and then recouping the costs by selling the loans into the secondary market for a premium representing the difference between the interest rate on the loan and the par, or wholesale market interest rate. Alternatively, the lender can hold the loan and earn the above market return in exchange for any lender paid settlement costs.

HUD's current rules require lenders to disclose only direct fees paid to them by borrowers including origination fees or "origination points" as well as other direct fees for named services and discount points. However, neither the current GFE, nor the HUD–1, provides totals of all charges paid to the lender. The rules also do not require lenders to disclose indirect fees earned in secondary market transactions from the sale of borrowers' loans. This is because the compensation earned from the bona fide transfer of the loan obligation in the secondary market is exempt from HUD's RESPA rules. HUD's RESPA rules provide "[i]n determining what constitutes a bona fide transfer HUD will consider the real source of funding and the real interest of the funding lender." 24 CFR 3500.5(b)(7). HUD's rules explicitly provide, however, that table-funded mortgage broker transactions are not secondary market transactions. Lender sales into the secondary market are considered secondary market transactions.

Legality of Mortgage Broker Fees

Over the last decade, there has been persistent litigation concerning the legality of indirect fees to mortgage brokers. More than 150 lawsuits have been brought since the mid-1990s seeking class action certification, based in whole or in part on the theory that the indirect fees paid by lenders to mortgage brokers are fees for the referral of business in violation of section 8 of RESPA.[23]

[22] Lenders' fees are not always described in the same terms. Sometimes lenders' fees are expressed in straight dollar amounts and sometimes as "points." "Points" may be used to describe "origination fees" or "discount points" and both types of points may be charged in the same transaction. "Points" are just percentage amounts of the borrowers loans, and these "points," just like any other terms used to describe fees to loan originators, have a dollar equivalent to the borrower.

[23] See e.g., *Mentecki* v. *Saxon Mortgage*, No. 96–1629–A, slip op. (E.D. Va. Jan. 10, 1997). The court held initially that indirect fees to mortgage brokers in the form of "yield spread premiums" violated section 8(a) of RESPA as referral fees. However, subsequently, in an order and opinion dated July 11, 1997, the Court refused to certify the class.

Continued

HUD's RESPA rules, amended in 1992 to require disclosure of indirect fees to mortgage brokers, did not explicitly take a position on whether yield spread premiums or any other named class of back-funded or indirect fees paid by lenders to brokers are per se legal or illegal. See Illustrations of Requirements of RESPA, Fact Situations 5 and 12 in Appendix B to 24 CFR part 3500. The rule specifically listed "servicing release premiums" and "yield spread premiums" as fees required to be itemized on the HUD–1/1A Settlement Statement. Accordingly, while the rule specifically acknowledged the existence of such fees and provided illustrations of how they are to be reflected on HUD disclosure forms, HUD took the position that the rule does not create a presumption of per se legality or illegality.

Between 1992 and 1999, HUD provided various interpretations and other issuances under its RESPA rules stating the Department's position that the legality of a payment to a mortgage broker does not depend on the name of the particular fee. Rather, HUD has consistently advised that the issue under RESPA is whether the total compensation to a mortgage broker is reasonably related to the total value of the goods or facilities actually furnished or services actually performed. If the compensation, or a portion thereof, is not reasonably related to the goods or facilities actually furnished or the services actually performed, there is a compensated referral or an unearned fee in violation of Section 8(a) or 8(b) of RESPA, whether the compensation results from a direct or indirect payment or a combination thereof.

In 1995, as a result of concerns that the requirement that mortgage brokers disclose indirect fees placed mortgage brokers on an unequal footing with other mortgage loan providers, and that information on indirect fees was confusing to borrowers, HUD issued a proposed rule to obtain the public's views on the disclosure and legality of broker fees. 60 FR 47650 (September 13, 1995). At that time, plaintiff borrowers began initiating class action lawsuits claiming that payments to mortgage brokers by lenders were per se illegal. Shortly afterwards, HUD embarked on a negotiated rulemaking on these subjects. See notices published on October 25, 1995 (60 FR 54794) and December 8, 1995 (60 FR 63008).

The 1995–1996 negotiated rulemaking on mortgage broker fees did not result in a final rule. It did, however, result in a clear consensus by rulemaking participants that borrowers were confused about the functions of mortgage brokers and the amounts and sources of their fees. See Report on Negotiated Rulemaking on Mortgage Broker Disclosure—Final Report, A.L.J. Alan W. Heifetz, (July 19, 1996). This confusion may translate into borrowers failing to compare services and fees, thereby paying unnecessarily high settlement costs. Most of the rulemaking participants, except for the representative of the mortgage brokerage industry and one consumer advocate, agreed on a regulatory framework that would create a pre-application agreement between a borrower and a broker fully disclosing the broker's function and compensation, in return for a limited "safe harbor" for transactions where these contracts were entered into. In 1997, HUD issued a proposed rule on mortgage broker fees that would have established a safe harbor for brokers who contractually commit to borrowers regarding their total compensation, along the lines agreed to by the majority in the negotiated rulemaking. The proposed rule also provided that during the rulemaking process, a ceiling on the amount of fees eligible for the safe harbor would be established to protect against predatory lending. The rule was strongly opposed by the mortgage brokerage industry and other segments of the mortgage industry. HUD did not finalize the 1997 rule and efforts to do so were soon eclipsed by HUD's effort to clarify its position on the legality of mortgage broker fees under existing law.

1999 Statement of Policy on Lender Payments to Mortgage Brokers

In 1998, in the Conference Report on HUD's 1999 Appropriations Act, Congress directed HUD to clarify its position on the legality of mortgage broker fees and to work with industry, Federal agencies, consumer groups, and other interested parties on a statement of policy on the subject. The Report also stated that Congress never intended payments by lenders for goods or facilities actually furnished or for services actually performed to violate Section 8(a) or (b) of RESPA.

On March 1, 1999, in response to Congress's directive, HUD issued RESPA Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers, following extensive discussions with industry, consumer groups, and essential agreement among them on the interpretation embodied in the Statement. The Statement said that, in applying Section 8 and HUD's regulations to lender payments to mortgage brokers, HUD did not consider such payments to be legal or illegal per se. The Statement said that the "fees in cases and classes of transactions are illegal if they violate the prohibitions of Section 8 of RESPA." 64 FR 10084.

The Statement established a two-part test to determine the legality of lender payments to mortgage brokers under RESPA which requires that: (1) Goods or facilities must actually be furnished or services actually performed for the compensation paid; and (2) payments must be reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed. In applying this test, HUD stated that total compensation should be scrutinized to assure that it is reasonably related to goods, facilities, or services furnished or performed to determine whether it is legal under RESPA.[24]

As a Statement of Policy, the 1999 Statement interpreted HUD's existing rules. Nonetheless, beyond these rules, the Statement emphasized the importance of disclosing brokerage fees, including yield spread premiums, to borrowers as early as possible in the borrower's process of shopping for a mortgage. See 64 FR at 10087.

The 1999 Statement said:

There is no requirement under existing law that consumers be fully informed of the broker's services and compensation prior to the GFE. Nevertheless, HUD believes that the broker should provide the consumer with information about the broker's services and compensation, and agreement by the consumer to the arrangement should occur as early as possible in the process. Mortgage brokers and lenders can improve their ability to demonstrate the reasonableness of their fees if the broker discloses the nature of the broker's services and the various methods of compensation at the time the consumer

Culpepper v. *Inland Mortgage Corp.*, 953 F.Supp. 367 (N.D. Ala. 1997). The court held that a payment for a loan above market was permissible under section 8(c) of RESPA as payment for a "good." *Barbosa* v. *Target Mortgage*, No. 94–1938, U.S.D.C., Southern District of Florida; *Martinez* v. *Weyerhauser Mortgage*, No. 94–160, U.S.D.C., Southern District of Florida; *Monoz* v. *Crossland Mortgage Company*, Civil Action No. 96–12260, U.S.D.C. for the District of Massachusetts. These last two Federal district courts concluded that yield spread premiums (or differentials) were not per se violations of RESPA and therefore refused to certify class actions on this issue.

[24] The 1999 Statement of Policy also said, "[t]he Department considers that higher interest rates alone cannot justify higher total fees to mortgage brokers. All fees will be scrutinized as part of total compensation to determine that total compensation is reasonably related to the goods or facilities actually furnished or services actually performed." 64 FR 10084.

first discusses the possibility of a loan with the broker. 64 FR at 10087.

Post 1999–1 Statement of Policy Circuit Court Decision

After HUD issued its 1999 Statement of Policy, most Federal District courts held that yield spread premium payments from lenders to mortgage brokers are legal provided that such payments meet the test for legality articulated in the 1999 Statement of Policy and otherwise comport with RESPA. However, in *Culpepper* v. *Irwin Mortgage Corp.*, 253 F.3d 1324 (11th Cir. 2001), the U.S. Court of Appeals for the Eleventh Circuit upheld class certification in a case alleging that yield spread premiums violated Section 8 of RESPA where the defendant lender, pursuant to a prior understanding with mortgage brokers, paid yield spread premiums to brokers based on the lender's use of a rate sheet and the brokers' delivery of above par interest rate loans, without the lender knowing whether, or to what extent, the brokers had performed services. The court concluded that a jury could find that yield spread premiums were illegal kickbacks or referral fees under RESPA where the lender's payments were based exclusively on interest rate differentials reflected on rate sheets, and the lender had no knowledge of what services, if any, the brokers had performed. The court also said that HUD's 1999 Statement of Policy was ambiguous.

Following Culpepper,[25] representatives of the mortgage industry urged HUD to issue a clarification to the 1999 Statement of Policy to make clear that the lenders could make payments to brokers through rate sheets and that, to properly apply the 1999 test, all payments must be examined, not simply the payment from the lender, to determine if the broker's total compensation is reasonable. These representatives said that if the Culpepper interpretation prevailed, without further guidance from HUD, the industry could no longer offer yield spread premiums as an option to borrowers to lower their up front settlement costs.

Representatives of the mortgage industry, including representatives of the Mortgage Bankers Association and the National Association of Mortgage Brokers, assured the Department that following a clarification by HUD, they also would support a HUD rule requiring improved fee disclosure.[26]

Statement of Policy 2001–1

On October 17, 2001, the Department issued Statement of Policy 2001–1, Clarification of Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers, and Guidance Concerning Unearned Fees Under Section 8(b). The 2001 Policy Statement reiterated and clarified the test articulated in the 1999 Statement of Policy that where compensable services are performed, application of both parts of the HUD test is required before a determination can be made regarding the legality of a lender payment to a mortgage broker. 66 FR 53052, 53054–55. The 2001 Statement also said:

> [n]either Section 8(a) of RESPA nor the 1999 Statement of Policy supports the conclusion that a yield spread premium can be presumed to be a referral fee based solely upon the fact that the lender pays the broker a yield spread premium that is based upon a rate sheet, or because the lender does not have specific knowledge of what services the broker has performed. 66 FR 53052, 53055.

The 2001 Statement of Policy also interpreted HUD's existing rules then further detailed what HUD regards as meaningful disclosure of mortgage broker fees to borrowers:

> In HUD's view, meaningful disclosure includes many types of information: What services a mortgage broker will perform, the amount of the broker's total compensation for performing those services (including any yield spread premium paid by the lender), and whether or not the broker has an agency or fiduciary relationship with the borrower. The disclosure should also make the borrower aware that he or she may pay higher up front costs for a mortgage with a lower interest rate, or conversely pay a higher interest rate in return for lower up front costs, and should identify the specific trade-off between the amount of the increase in the borrower's monthly payment (and also the increase in the interest rate) and the amount by which up front costs are reduced. HUD believes that disclosure of this information, and written acknowledgment by the borrower that he or she has received the information, should be provided early in the transaction. Such disclosure facilitates comparison shopping by the borrower, to choose the best combination of up front costs and mortgage terms from his or her individual standpoint. HUD regards full disclosure and written acknowledgment by the borrower, at the earliest possible time, as a best practice. 66 FR 53056.

The 2001 Policy Statement also specifically acknowledged the utility to borrowers of treating and reporting all interest rate based lender payments as monies belonging to the borrower. The Policy Statement endorsed this approach, stating:

> [I]t has been suggested to the Department that the yield spread premium should be reported as a credit to the borrower in the "200" series, among the "Amounts Paid by or in Behalf of Borrowers." The homebuyer or homeowner could then see that the yield spread premium is reducing closing costs, and also see the extent of the reduction.
>
> HUD believes that improved early disclosure regarding mortgage broker compensation and the entry of yield spread premiums as credits to borrowers on the GFE and the HUD–1 settlement statement are both useful and complementary forms of disclosure. The Department believes that used together these methods of disclosure offer greater assurance that lender payments to mortgage brokers serve borrowers' best interests. 66 FR 53056.

C. HUD's Commitment to Mortgage Reform

The HUD-Federal Reserve Report

Since the mid-1990s, HUD has been examining ways to improve the mortgage process for borrowers to lower settlement costs.[27] In June of 1998, in response to a Congressional directive in Section 2101 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009), HUD and the Board of Governors of the Federal Reserve ("the Board") issued a joint report on reforming RESPA. The HUD-Federal Reserve Report. The Report called for legislative changes to reform both laws. The Report did not attempt to differentiate where changes could be made under existing law pursuant to the Board's and HUD's existing regulatory authorities from areas where new legislation was required. Subsequently, the Board has exercised its regulatory authority under TILA to effectuate certain of the Report's recommendations. See 66 FR 65604, December 20, 2001.

Major Findings of the Report

The HUD-Federal Reserve Report posed and addressed several questions involving the disclosure scheme under both RESPA and TILA, and both HUD

[25] In this proposed rule Culpepper refers to *Culpepper* v. *Irwin Mortgage Corp.*, 253 F.3d 1324 (11th Cir. 2001). There were earlier reported decisions in this same litigation.

[26] Letter to Secretary Martinez, Submitted by America's Community Bankers, American Banking Association, Consumer Mortgage Coalition, and Mortgage Bankers Association of America (December 27, 2001); National Association of Mortgage Brokers, Position Paper: Prospective HUD Rulemaking Concerning Mortgage Originator Disclosure, Correspondence to the Department (December 4th, 2001).

[27] HUD and others have considered proposals to permit lenders to package settlement services almost from the time the law was enacted. Senator Proxmire introduced S. 2775 which would have required lenders to bear certain settlement costs with the view that the lenders have the sophistication and bargaining power to keep costs down.

and the Board recommended in part[28] that:

- Loan originators be required to provide firmer quotes for settlement costs disclosed under RESPA; and
- The timing of RESPA and TILA disclosures to borrowers be advanced, so that borrowers receive them earlier and use them to shop.

In order to achieve firmer cost information, both agencies also recommended that lenders and other providers be given the choice of:

- Offering a "packaging" or a guaranteed cost approach; or
- Providing a GFE where estimated costs would be subject to tolerances, to improve the current disclosure scheme by reducing the instances in which consumers may incur additional costs at closing.

Both agencies recommended an exemption from Section 8 to facilitate packaging. HUD also said that to receive the exemption, both the settlement costs and the interest rate on a mortgage should be guaranteed.

Timing of Disclosures

The Report observed that in home secured transactions, the borrower currently receives TILA or RESPA disclosures at several different times. Borrowers receive generic information such as HUD's Special Information Booklet at the time of application. Additionally, for residential mortgage transactions, lenders and brokers provide through mailing or delivery within 3 days after application, specific information including the GFE and the initial TILA disclosure disclosing the finance charge and the "APR" or "annual percentage rate" for the mortgage. TILA § 128(b)(2); Reg. Z § 226.19(a). TILA may require additional new disclosures for home-purchase loans if early disclosures have become inaccurate. See TILA 128(b) and Reg. Z § 226.17(b). A settlement agent gives final disclosures on the HUD–1 at settlement based on information provided by the lender.

Both agencies recommended that the disclosure process could be improved for industry if the timing requirements for disclosures were made more consistent between RESPA and TILA[29] and it would be improved for borrowers if disclosures were given when they would be most useful. In the Report, HUD recommended that generic information, e.g., HUD's Special Information Booklet, be given when the borrower first contacts settlement service providers, including loan originators and real estate agents. Both HUD and the Board also recommended that borrowers be given initial disclosures, including firm information about settlement costs, interest rates and points as early in the shopping process as possible so that they can shop and make informed choices. The HUD-Federal Reserve Report at 41. Although HUD and the Board differed somewhat in their approaches, both indicated that advances in technology and market competition promised to provide borrowers better information at or near the time of application. HUD said that it supported requiring that estimated costs disclosures be provided earlier than three days after application—ideally at first contact with lenders. HUD indicated, however, that while it seeks early disclosures, it recognizes that sometimes there will be a trade-off between having an early disclosure and ensuring that a disclosure is firm and complete enough to allow borrowers to shop and protect against increases in costs. In such cases, HUD recommended that timing requirements be flexible to allow enough time to provide guaranteed information.

Moreover, in the interest of promoting shopping, HUD recommended that borrowers not be required to pay a significant fee to the loan originator prior to receiving initial cost information. Id. at 42.

Providing Firmer Cost Disclosures

In arriving at the recommendation that cost disclosures must be firmer, the Report observed that borrowers reported many instances in which the costs disclosed on the GFE were significantly lower than those actually charged at settlement or that costs were completely left out of the GFE. The HUD-Federal Reserve Report at 20. The Report noted that more reliable settlement cost information could promote shopping. Id. at 32. In recommending that the choice of providing "guaranteed cost packages" or a more reliable GFE subject to tolerances be offered, the agencies stated that a dual system would create an opportunity for the market to test whether guaranteed cost arrangements offer more economical and efficient means for consumers to obtain mortgage loans.

Packages/Guaranteed Costs

Under the packaging or guaranteed cost approach envisioned in the Report, the lender or other packager would set a lump-sum price for settlement costs and would be held to that figure from the time the package is agreed to through settlement. Most charges for services that the borrower currently pays at settlement for origination, title work and insurance, credit report, appraisal, document review, inspection, up front mortgage insurance, pest inspection and flood review, etc., would be included in the package.[30] Government charges associated with filing a mortgage or release that can be determined easily also would be included. The Report suggested that any costs excluded from the guaranteed settlement costs would be disclosed as either "other required costs" or as "optional costs." "Other required costs" would include charges such as per diem interest, which fit the definition of those costs that the borrower will have to pay at settlement, but the amount of which the packager cannot be readily determined at the time the package is provided to the borrower.[31] The Report suggested, however, that there are means for per diem interest to be included in the package; lenders could be required to state a maximum amount

[28] The Report also concluded that the APR and finance charge disclosures under TILA should be retained and improved to include all costs required by the creditor to get the credit and that additional substantive protections should be added to TILA.

[29] Under current TILA rules, Regulation Z, the TILA disclosure may be given simultaneously along with the GFE, TILA § 128 (b); Reg. Z § 226.17(b).

[30] In developing the Report, the agencies considered whether services should be itemized within the package. Some entities claim that for there to be true competition, borrowers must be able to know what is included in each package to compare. These entities point out that borrowers generally like to know what services are included in packages and that without itemization lenders may choose to forego many services for their packages while insisting that nonlenders have more expansive packages, making borrower information and competition impossible. On the other hand, it was observed that a requirement for full itemization of services might lead some packagers to create longer lists, ultimately confusing borrowers and hindering their evaluation of different loans. Also, lenders pointed out that services are performed in large measure to protect their security and when the initial disclosure is provided they may not know what is needed in each case. The Board and HUD concluded that in packages, lenders could disclose the guaranteed amount for settlement costs without any elaboration on the early disclosure, and subsequently provide a list of services actually performed on the final settlement disclosure. Alternatively, lenders could provide a list of services that might be performed on the early disclosure with an explanation, if appropriate, that all items may not be performed, and then indicate on the settlement statement the services actually performed. The Report also observed that disclosing the cost of each service also could present problems, particularly where lenders or other packagers enter into volume-based contracts. The HUD-Federal Reserve Report at 25–26.

[31] Charges for per diem or "odd days" interest, which floats along with the interest rate, cover the time between the date of settlement and the date regular monthly interest starts accruing. As an illustration, if a loan closes on January 15 and the first monthly payment (due on March 1) begins to accrue interest on February 1, interest for the days between January 15 and February 1 is generally required to be paid at settlement as per diem interest. Some lenders do not collect per diem interest at settlement but add the amount to the first monthly payment.

based on thirty days (a full month) or to disclose the daily interest to allow borrowers to calculate the actual amount as the date of settlement becomes certain. The Report also suggested that mortgage insurance should be included in the package price even though it is difficult to calculate until final underwriting.

According to the Report "optional costs" would include charges that depend on whether the borrower chooses to purchase the service, and on the level of service chosen. The HUD-Federal Reserve Report at 27–28. Examples include owner's title insurance and optional hazard insurance chosen by the borrower.

The Report observed that packagers would arrive at their package prices based on their experience or, more likely, enter into volume-based contracts with affiliated and other settlement service providers for those goods and services required by lenders to close a loan. Id. at 23.

Support for Packaging

Many of the nation's largest mortgage lenders and their representatives expressed support for a "packaging" approach. They said that borrowers rarely shop for individual settlement services, and also that borrowers are more interested in the overall price of their mortgage loan than the prices of individual settlement services, and that borrowers would shop for mortgages if all they needed to compare was a single guaranteed price for all the settlement services needed to close the loan. Advocates of packaging said that by packaging services, discounts that would be secured by lenders under these arrangements will be passed on to borrowers. Through this dynamic and by making it easier for borrowers to shop, costs would be lowered.[32]

In the development of the Report, entities other than lenders, including real estate firms and affinity groups, also expressed some interest in packaging. These entities asserted that if packaging was restricted only to lenders, competition would be unnecessarily restricted and borrowers could be deprived of lower prices. Some industry representatives voiced the fear that large lenders will make it difficult for non-lenders to develop any packages other than those the lenders themselves retail, by refusing to participate in other entities' packages.[33] On the other hand, lenders asserted that since settlement services are largely required to protect the lender's security, lenders should not have to accept unconditionally any other settlement service providers' settlement packages. In the HUD-Federal Reserve Report HUD recommended that any entity should be permitted to package as long as it can provide a Guaranteed Mortgage Package and a mortgage loan at a guaranteed interest rate.

Consumer advocates also supported packaging, but asserted that any packages must include a loan with an interest rate guarantee to be useful to borrowers. Although consumer advocacy groups believed that guaranteeing settlement costs has value, they noted that these costs are a small portion of the overall cost of a mortgage loan. Advocates said that unless borrowers also receive a firm commitment on the interest rate and any applicable points they cannot truly comparison shop. Without such a firm commitment, consumer advocates said some lenders may provide the borrower with a guaranteed settlement cost quote and then increase the interest rate to offset any savings offered to the borrower on the settlement costs. These lenders would then realize additional profits based on the mortgage's pricing. These advocates expressed the fear that unwary borrowers will be lured into particular loan products by inexpensive or below-market settlement cost packages and then find themselves in higher rate loans that more than offset any purported cost savings. The HUD-Federal Reserve Report at 22.

Lender representatives expressed varying views on guaranteeing rates as part of a specific package. Some lenders stated that underwriting is costly and time-intensive and that mortgage brokers and other retail originators cannot provide guaranteed rates that bind lenders early in the mortgage loan process. Other industry representatives asserted, however, that requiring lenders to provide guaranteed rates along with guaranteed settlement costs is viable. Many of today's mortgage originators provide firm rate information to shoppers early in the process based on nearly instantly available credit information, without any assurance that the borrower will go forward with the transaction and the originator will receive compensation.

Section 8 Exemption for Packaging

Lenders' representatives asserted at the time of the Report that an exemption from RESPA's Section 8 prohibitions is necessary for packaging to work. These representatives pointed out that Section 8 prohibits volume-based discounts between settlement service providers, since they fear such arrangements would be viewed as compensated referral arrangements in violation of the statute. Also, while Section 8 prohibits kickbacks, compensated referrals, and unearned fees, the statute provides no bright line on how to determine when a payment has been earned for goods or services (which is permissible under RESPA) or is compensation for a referral, or is an unearned fee (which are illegal and subject to criminal sanctions and civil action under Section 8). Moreover, RESPA prohibits requiring the use of an affiliated settlement service provider except in limited circumstances,[34] which can be an additional impediment to packaging services. Proponents of packaging further asserted that because of Section 8's prohibitions and questions about how they apply, lenders and others do not currently package. These proponents said that were an exemption granted and packaging of services prevalent, borrowers would benefit more from the resulting lower costs than they do from RESPA's current Section 8 prohibitions. The HUD-Federal Reserve Report at 30. Consumer groups generally also supported an exemption for packaging, as long as packagers are required to guarantee both settlement costs and interest rates.

Members of the settlement services industry other than large lenders, however, including small lenders and title companies, expressed strong concern about and, in some cases, outright opposition to an exemption from Section 8 to encourage packaging. They said that only lenders would offer packages and that the lenders would squeeze out savings from small providers and then retain these savings in the form of higher profits, without passing them on to borrowers. Small settlement service providers also said that the only way they could remain competitive would be by offering packages themselves, and they expressed serious concern about their ability to do so. They further asserted

[32] For example, a packager could contract to have XYZ Appraisal Company complete all its appraisals for a given period for $300 each rather than the $350 the company normally charges for a standard appraisal. The packager could rely on that discounted contract price in pricing the package of guaranteed costs to the borrower. With their own costs negotiated in advance, packagers could disclose the cost for the entire package early in the borrower's mortgage shopping process with certainty, and the borrower then could compare different vendors' packages.

[33] Nonlenders also suggested that to provide a level playing field, the services in the package should be itemized.

[34] Generally, under Section 8(c)(4) of RESPA an entity may refer business to an affiliate as long as the affiliate arrangement is disclosed, there is no required use, and the only return to the entity making the referral is a return on capital.

that borrowers do in fact already shop for settlement services, that prices for these services are currently competitive, and that lifting Section 8 restrictions will harm rather than help borrowers because any savings from packaging will not be passed on to borrowers and fewer providers will be available to compete. Id. at 22.

During the development of the HUD-Federal Reserve Report the agencies noted that technology is enabling the provision of earlier, firmer, settlement cost information. Id. at 39. Moreover, during the development of the Report, HUD became aware of promising proposals that were advanced by consumer advocates and some industry representatives where lenders, after obtaining credit reports, would provide borrowers guaranteed rate and point information.[35] This guarantee would be subject to appropriate conditions such as market changes in the cost of money (where the rate and points are not locked), and verification of the value of the collateral and the borrower's creditworthiness. HUD supported these and similar efforts because it regards the full costs of obtaining a loan—including settlement costs, interest rate, and points—as the information that is essential to assist borrowers in shopping for a mortgage loan.

HUD concluded that an exemption should be provided for packaging to facilitate earlier comparison shopping by borrowers, greater competition among mortgage lenders and others, and guaranteed prices to borrowers from the time the borrower applies for a mortgage through settlement. The Board recommended an exemption to improve the consumer's ability to shop effectively and to allow competition to reduce the cost of financing a home. To encourage packaging, HUD recommended that a Section 8 exemption should be made available to loan originators and others who: (1) Offer borrowers a comprehensive package of settlement services needed to close a loan; (2) provide borrowers with a simple prescribed disclosure that gives the guaranteed maximum price for the package of services through settlement; and (3) disclose the rate offered to the borrower for the loan, with a guarantee that the rate will not increase, subject to prescribed conditions.

The Report suggested that fees paid and arrangements within packages would be exempt from Section 8. Fees for referrals to or from the packager of settlement services to or from those outside the package would continue to be subject to Section 8. For example a real estate agent could not receive a fee for referring a borrower to a packager. Entities that do not meet the requirements of the exemption would be subject to Section 8. The HUD-Federal Reserve Report at 33.

A More Reliable GFE

As an alternative to packaging, both the Board and HUD also recommended making disclosures firmer under the current practice, by requiring a more reliable GFE, subject to tolerances. The HUD-Federal Reserve Report at 31.

The Report suggested that tolerances could be based on a percentage of the total estimated costs; if the actual costs at settlement exceeded the sum of the estimated costs and the amount of the tolerance, the loan originator would generally be held liable. Alternatively, the tolerance could apply only to certain categories of costs such as those within the loan originator's control. The Report said that charges imposed directly by the loan originator would have to be accurate. On the other hand, an increase in costs resulting from a borrower's choice would not count against the loan originator in determining whether the total costs exceeded the tolerance. The HUD-Federal Reserve Report at 31.

The HUD-Treasury Report

Early in 2000, HUD, in cooperation with the Department of the Treasury, reviewed the problem of predatory mortgage lending. Following five hearings in New York, Chicago, Atlanta, Los Angeles and Baltimore, in June, HUD and the Treasury issued a major report on the subject of predatory mortgage lending. The Report, entitled "Curbing Predatory Home Mortgage Lending" (HUD-Treasury Report), detailed predatory or abusive lending practices in connection with higher cost loans in the mortgage market. In addition, among numerous recommendations to address predatory lending, the Report reiterated support for RESPA/TILA reform along the lines recommended in the HUD-Federal Reserve Report.

The HUD-Treasury Report stated: "that borrowers need firm information early in the loan process so that they can compare the products of one settlement service provider with another. If borrowers receive firm information but it comes too late in the loan process, they will not have the opportunity to shop. Moreover, if the information is available but the borrower must pay a significant fee to obtain it, borrowers may be disinclined to seek comparable information from multiple sources. *See* HUD-Treasury Report, 2000 at 66.

The HUD-Treasury Report pointed out that unscrupulous mortgage brokers "may receive compensation as a result of inflated upfront charges paid by borrowers and indirect fees paid by lenders * * *. Brokers and lenders may also structure charges so that they are less transparent to the borrower, through the use of mechanisms such as yield spread premiums, which may disguise the true cost of credit." HUD-Treasury Report, 2000, at 80.

III. This Proposed Rule

With the above background in mind, today's rule proposes a new framework for borrower disclosures under RESPA that would:

1. Address the issue of mortgage broker compensation, specifically the problem of lender payments to mortgage brokers, by fundamentally changing the way in which such lender payments in brokered mortgage transactions are recorded and reported to borrowers;

2. Significantly improve HUD's Good Faith Estimate (GFE) settlement cost disclosure, and amend HUD's related RESPA regulations, to make the GFE firmer and more usable, to facilitate shopping for mortgages, and to avoid unexpected charges to borrowers at settlement; and

3. Remove regulatory barriers to allow guaranteed packages of settlement services and mortgages to be made available to borrowers, to make borrower shopping for mortgages easier and further reduce settlement costs. A description of each of these aspects of the rule follows.

A. Addressing Mortgage Broker Compensation and Lender Payments to Brokers

The proposed rule would fundamentally change the way in which information on the mortgage broker's functions and charges are reported in the Good Faith Estimate as described below.

1. Describing the Loan Originator's Function

Under this proposed rule, the new GFE at Section I would require that mortgage brokers and all other loan originators describe their services. The proposed form does not ask that only brokers provide this description because the description of other originators' services is equally useful to borrowers. The GFE would advise that the loan originator performs origination services by arranging funding from one or more

[35] At the time of the Report some consumer and industry groups discussed the possibility that borrowers could pay credit repositories the costs of and arrange the provision of credit information to lenders to expedite the process and to avoid significant fees.

sources for the borrower. It also advises that the originator does not shop for nor offer loans from all mortgage funding sources and the originator cannot guarantee the lowest price or best terms available in the market. The GFE makes clear that the borrower should compare the prices on the form and shop for the loan originator, mortgage product, and settlement services that best meet the borrower's needs.

The rule would require that this information be provided on the GFE to effectuate the GFE's purpose of providing borrowers with settlement cost information and avoiding confusion particularly with respect to the role of mortgage brokers. This language seeks to disabuse borrowers of the notion that brokers or other loan originators are their agents, and therefore are automatically shopping for them, a notion that can prevent their own shopping. This new provision will be coupled with increased education through the Settlement Cost Booklet and other means to help borrowers.

2. Explaining to the Borrower the Option of Paying Settlement Costs through the Use of Lender Payments Based on Higher Interest Rate

The new GFE, at Section IV, would clearly show borrowers the effect of alternative interest rates and their effect on monthly payments and cash needed for settlement. The GFE would inform borrowers that they have the options to pay settlement costs: (1) Through cash payments at settlement, (2) by borrowing additional funds to pay settlement costs, (3) by paying settlement costs through a higher interest rate and higher monthly payment, or (4) by lowering the interest rate and monthly payment by paying discount points. These options are available in loans from originators other than brokers. The Department in both the 1999 and 2001 Policy Statements on Mortgage Broker Fees especially called for the provision of this information to borrowers by brokers in brokered loans.

The provision of this information on the form will help borrowers understand their options for paying settlement costs and decide whether to use any lender payments to the borrower, discussed in (4) below, to help defray some costs or all of their settlement costs, including but not limited to the mortgage broker's charges.

3. Disclosing the Loan Originators' Charges—Including the Mortgage Broker's and Lender's Total Charges to Borrowers

HUD's current rules require that the broker's direct charges be disclosed on the GFE while all indirect payments including yield spread premiums are disclosed separately as "Paid Outside of Closing" (P.O.C.).[36] The existing disclosure requirements and instructions do not make clear to the borrower the broker's total charges so that the borrower can focus on them, shop among brokers, or negotiate these total costs with the broker. Instead, because of the way indirect broker compensation is currently disclosed, many borrowers conclude incorrectly that such indirect payments have no effect on their loan costs.[37]

Section III A of the GFE, as proposed, would disclose to the borrower as a consolidated figure the total origination charges of the mortgage broker and the lender. (The zero tolerance applies to the total origination charges of the mortgage broker and the lender rather than any split between them.) Additionally, on Attachment A–1 there would be a breakdown of the origination charges into the total charges, respectively, of the broker and of the lender. This approach of providing total origination charges initially is taken to assist borrowers in comparing total origination charges of brokered loans to loans originated by lenders. At the same time, it ensures that the borrower knows the broker's and lender's charges. For mortgage brokers, these charges shall include all charges from the borrower that are paid to the mortgage broker for the transaction. For lenders, these charges shall include all or any portion of direct charges from the borrower that the lender receives for the transaction, other than discount points reported in line III B (2). Under the secondary market exemption, any additional fees realized by a lender from a bona fide transfer of a loan is not required to be disclosed under HUD's RESPA regulations. See 24 CFR 3500.5 (b)(7).

4. Requiring That in Brokered Transactions Lender Payments to the Borrower and Borrower Payments to the Lender Be More Appropriately Reported

A major provision of this rule is the requirement that in all loans originated by mortgage brokers, any payments from a lender based on a borrower's transaction, other than a payment to the broker for the par value of the loan, including payments based upon an above par interest rate on the loan (including payments formerly denominated as yield spread premium), be reported on the GFE (and the HUD–1/1A Settlement Statement) as a lender payment to the borrower. Additionally, the rule would require that any borrower payments to reduce the interest rate (discount points) in brokered loans must equal the discount points paid to the lender, and be reported as such on the GFE (and HUD–1/1A) as a borrower payment to the lender. These changes would require mortgage brokers to disclose the maximum amount of compensation they could receive from a transaction, by including the amount in the "origination charges" block of the GFE, and indicating the amount of the lender payment to borrower that would be received at the interest rate quoted, if any. Mortgage brokers would be unable to increase their compensation without the borrower's knowledge, by placing the borrower in an above par loan and receiving a payment from the lender (yield spread premiums), or by retaining any part of any borrower payment intended to reduce the loan rate (discount points).

Through these changes in reporting requirements, HUD believes that virtually all disputes regarding broker compensation in table-funded transactions and intermediary transactions involving yield spread premiums will be resolved. All mortgage broker compensation will be reported as direct compensation in the origination block of the GFE, maximum broker compensation will be clear and brokers will have no incentive to seek out lenders paying the largest yield spread. They will, instead, be motivated to find the best loan product they can for the borrower.

In requiring this methodology for reporting lender payments and discount points, it is important to note what the Department has not done. HUD has not taken away from borrowers the ability to select a higher rate loan in order to pay settlement costs (including, where the

[36] HUD's existing RESPA regulations do not provide explicit guidance on where to place a yield spread premium on the GFE, nor is there any express reference to such indirect payments on the GFE format. The regulations do suggest generally, however, that Appendix A Instructions for the HUD–1 should be followed in completing the GFE. See 24 CFR 3500.7(c)(1). As described above, these Instructions state that a mortgage broker's fee is to be disclosed on one of the blank lines in the 800 series. A corresponding line appears on HUD's current suggested GFE format (Appendix C to Regulation X) for listing such fees. HUD's instructions, however, do not require that the amount to be reported in the 800 series for mortgage broker fees must include yield spread premiums. To the contrary, HUD's Appendix A Instructions advise that yield spread premiums and other lender payments to mortgage brokers should be disclosed on the HUD–1 as payments by the lender to the broker that are "paid outside of closing" ("P.O.C."), and expressly state that such amounts should not be shown in the borrower's column. 24 CFR part 3500, Appendix A.

[37] HUD's Settlement Cost Booklet is also not helpful. It suggests, incorrectly, that yield spread premiums are not costs to the borrower. It will be revised.

borrower so chooses, broker compensation), or to pay additional sums at settlement in order to lower their interest rate and monthly payments. HUD has long recognized that these financing tools provide flexibility and have value to borrowers in specific circumstances. The Department emphasized this point most recently in Statement of Policy 2001–1. HUD's proposed rule, therefore, preserves these options, but seeks to the maximum extent possible within the Department's statutory and regulatory framework, to eliminate the possibility of abuse in the application of these financing tools, by ensuring that the full value of selecting either option is known and redounds to the borrower.

The Department acknowledges that the proposed rule results in different treatment of compensation in loans originated by lenders and those originated by mortgage brokers. This is not because the Department believes that the latter are necessarily more suspect or susceptible of abuse than the former. It results simply from the fact that the reporting of total lender compensation cannot be meaningfully regulated under RESPA, while total broker compensation can be regulated. This is so for both legal and practical reasons; first, as indicated above, lenders enjoy a secondary market exemption from RESPA Section 8 scrutiny, meaning that under HUD's regulations any compensation derived from the sale of a loan in the secondary market by a lender is outside RESPA's purview. Second, were there no such exemption, measuring indirect lender compensation (compensation derived from the loan rate) would be very difficult. A lender may retain the loan in its portfolio for the life of the loan, or sell it long after the settlement. Payments from lenders to borrowers in brokered loans, however, based on the lenders' rate sheets or otherwise, as well as discount points paid to lenders, are capable of quantification down to the last penny.

Currently, as indicated in the background, the GFE requires disclosure of the lender payment to the borrower (formerly the "yield spread premium") as a charge that is "POC" or "paid outside of closing," which has been a cause of confusion for borrowers. The form as proposed would now require that the lender payment be disclosed immediately after the origination charges. HUD believes that this new location for the disclosure of the lender payment will cure any confusion and clearly tell borrowers how much their mortgage broker is earning from the transaction. Furthermore in order to avoid borrower confusion about the mortgage brokers' charges as compared to other loan originators' charges and the impact of a lender payment, the proposed rule would require that immediately following disclosure of the lender payment the form will show the net loan origination charge due from the borrower. It is this number that HUD intends the borrower to focus on and HUD seeks to achieve this by highlighting that total on the form, so that the borrower understands that the payment is applied as a credit to reduce the borrower's total origination charges. HUD believes that this approach ensures clearer disclosure of all relevant broker fees and lender payments while avoiding disadvantaging brokers. With the understanding provided by the form the borrower can compare his or her net origination charges loan-to-loan, originator-to-originator.

B. Significantly Improved Good Faith Estimate (GFE)

As described in the Background, under RESPA and its implementing regulations, loan originators must provide the GFE either by delivering the GFE or by placing it in the mail to the loan applicant, not later than 3 business days after an application is received or prepared.[38] Frequently, a GFE is provided only after the borrower pays a significant fee or fees. The current suggested GFE calls for a listing of charges that may itself lead to a proliferation of charges. Moreover, there are few standards for loan originators to follow in calculating estimated costs, which allows the GFE to be unreliable.[39] For these reasons, the GFE is generally not a useful shopping tool to compare the charges of loan originators, other settlement service providers, or loan products. The GFE, and its attendant rules, also do not effectively prevent surprise costs at settlement.

Today's rule would make the GFE firmer and more usable, to facilitate borrower shopping for mortgages by making the mortgage transaction more transparent, and to prevent unexpected charges to the borrower at settlement. In order to improve the GFE HUD has concluded that establishment of a new required GFE format is necessary.

The rule therefore would establish a new, more informative, required GFE format to be provided to borrowers by loan originators in all RESPA covered transactions and new requirements for its provision. HUD believes that the content of the material in these proposed forms gives the consumer the information needed to shop for loan products and to assist them during the settlement process. HUD recognizes that in order for these forms to be useful shopping tools, they must be consumer friendly. The Department seeks public comment on these forms. In addition, the Department will arrange focus groups during the comment period to elicit comments on how to make the material in the new proposed forms as consumer friendly as possible, including considering how the new proposed forms are best compared by consumers to the HUD–1 and what revisions, if any, to the HUD–1 would be most helpful.

1. The New GFE

The proposed format for the new GFE and Instructions for completing it appear as Appendix C to this rule. The proposed form is intended for use in all federally related mortgage transactions. In addition to the changes to the GFE described in A above, the new required GFE format would:

a. Provide the Interest Rate and Costs for the Loan the Borrower Seeks

The current requirements for the GFE do not require the inclusion of an interest rate. Nonetheless, borrowers shop for mortgages based on the interest rate as well as settlement costs, and the inclusion of this information would be useful to borrowers. Accordingly, the new GFE, in Section II, would list the note rate, Annual Percentage Rate (APR), and loan amount for the loan that the GFE is based on. Any mortgage insurance premium included in the APR would be separately disclosed in Section II. Section V would contain information on interest rates and adjustments to adjustable rate mortgages and applicable prepayment penalties and balloon payments. In Section III, the GFE would include a disclaimer indicating that unless the borrower locks at this time, the interest rate may change.

b. Simplify and Consolidate Major Categories on the GFE

As detailed in the Background section, under current RESPA rules, the GFE simply lists estimated charges or ranges of charges for settlement services. There is no requirement for grouping or subtotaling charges to the same recipients. The costs listed on the GFE include loan originator/lender-retained charges, such as loan origination and underwriting charges; charges by third parties for lender required services, such as appraisal, title and title

[38] The rule indicates that the GFE must be given within 3 days of the time an application is received or prepared to accommodate those instances where originators prepare applications for borrowers.

[39] See note 13, infra.

insurance fees; state and local charges imposed at settlement, such as recording fees or city/county stamps; and amounts the borrower is required to put into an escrow account, or reserves, for items such as property taxes or hazard insurance. At settlement, borrowers receive a second RESPA disclosure—the Uniform Settlement Statement (the HUD–1/1A)—that enumerates the final costs associated with both the loan and, if applicable, the purchase transaction.

As proposed, the revised GFE, in Section III, would group and consolidate all fees and charges into major settlement cost categories, with a single total amount estimated for each category. This approach would reduce any incentive for loan originators and others to establish a myriad of "junk fees" and provide them in a long list, in order to increase their profits. Loan originators would be required to include all fees they receive in their total, including all points and origination charges. The interest rate dependent payment would include all fees formerly to the mortgage broker from the lender as well as any such fees in the future.

In addition to the loan originator charges and the interest rate dependent payment, the major cost categories on the revised GFE would be: (1) Lender required and selected third party services; (2) title charges and title insurance premiums; (3) shoppable lender required third party services; (4) state and local government charges; (5) escrow/reserves (for taxes and insurance); (6) hazard insurance; (7) per diem interest; and (8) optional owner's title insurance. The proposed form then would include a final total of all settlement charges so the borrower can focus on the total costs to properly compare offers.

c. Identifies Shoppable and Required Services

The GFE in Section III E, would aid shopping after application by requiring loan originators to separately identify those third party settlement services that are loan originator selected and required and those that the borrower may shop for independently.[40] This provision will enable borrowers to shop for major services to the extent possible, even after the borrower has selected a loan originator. As described above, HUD's current rules at 24 CFR 3500.7(e) requires lenders to list on the GFE the particular providers of settlement services that they require their customers to use.[41] Attachment A–1 to the proposed form will list those "Required Use" providers while also identifying the services that are required, but which borrowers can shop for providers on their own. Additionally, the rule proposes to ease the "Required Use" disclosure requirement, by only requiring the loan originator to state the service, the name of the provider, and the cost estimate. The Department proposes to forego the requirement that this listing also include the lender's relationship to the required provider.

Attachment A–1 will, as noted, also include the breakdown of the origination charges into lender and broker charges so that borrowers can better understand the respective lender and broker charges, and where possible even negotiate lower costs. In a similar vein, Attachment A–1 also breaks out title agent services and title insurance into separate subtotals for the actual title insurance versus compensation to the title agent. Title agents routinely receive direct payments from borrowers for their services as well as commissions from the insurance premium for the sale of insurance. The title agent subtotal will add up these costs so that the borrower can compare, and possibly negotiate, these charges.

2. New GFE Requirements

To improve the existing disclosure scheme, this proposed rule would amend Regulation X to establish new rules for the GFE including the following:

a. Clarifying the Application Requirements

Under the proposed rule, the GFE would be delivered or mailed at or within 3 days of application. The proposed rule, however, would only require a borrower to provide basic credit information and a property address in verbal, written or computerized form, but before the payment of any significant fee to the loan originator in order to receive a GFE. The GFE would be conditioned on the borrower's credit approval following final underwriting and appraisal of the property to be secured by the mortgage.

To carry out this approach, the rule proposes to first clarify the definition of the term application, in HUD's RESPA rules at 24 CFR 3500.2(b). The new definition of application would make clear, in accordance with informal HUD advice, that an application is deemed to exist whenever a prospective borrower provides a loan originator sufficient information (typically a social security number, a property address, basic employment information, the borrower's information on the house price or a best estimate on the value of the property, and the mortgage loan needed), whether verbally, in writing or computer generated, to enable the loan originator to make a preliminary credit decision concerning the borrower so that the originator can provide a GFE. See HUD Old Informal Opinion (March 27, 1980) and HUD Old Informal Opinion (October 15, 1982). HUD proposes this new definition to facilitate the provision of GFEs in response to virtually any type of request for a GFE, in order to give the borrower the necessary information for shopping. Under current rules, an application is the "submission of a borrower's financial information, in anticipation of a credit decision whether written or computer generated relating to a federally related loan" identifying a specific property. The proposed rule would explicitly broaden the definition to cover verbal and other requests as long as these requests contain sufficient information for the originator to provide a GFE. HUD also will consider comments on whether it should provide a brief form for the application.

Under RESPA, a "Good Faith Estimate" is to be provided with a settlement cost booklet by a lender to each person "from whom it receives or for whom it prepares a written application." 12 U.S.C. 2604(d). Because an originator begins the process of preparing an application on behalf of the borrower when the borrower submits application information, the borrower's information itself need not be provided in writing.

RESPA's time limits for delivery of the GFE would run from the point that an originator receives "an application." While the statute allows the loan originator to mail or deliver the GFE 3 days after application, it is likely that the originator will provide the GFE as quickly after the borrower's request as possible.[42] HUD recognizes that the proposed rule's change of the definition of application, and the requirement that

[40] Lender required, lender selected third party services are to include items such as flood certification services and mortgage insurance, to the extent an upfront premium is charged.

[41] HUD's RESPA regulations contain certain restrictions on Affiliated Business Arrangements. See 24 CFR 3500.15. Section 9 of RESPA also prohibits sellers of property from requiring, directly or indirectly, the buyer to purchase title insurance from any particular title company.

[42] As indicated in the background section, supra, during the development of the HUD/Fed Report, HUD became aware of proposals where borrowers would arrange and pay for credit reports to loan originators of their selection. HUD supports these efforts as a way to lessen the burden on the originator's customers of paying the costs of those who are shopping.

GFE be provided to prospective borrowers early in the shopping process, frequently before they select a loan originator, may have implications for the content and delivery of required disclosures under the Truth in Lending Act (TILA). Question 28 specifically seeks comments on how HUD's proposed GFE changes impact other federal disclosure requirements, and invites suggestions on ways to consolidate or coordinate existing statutory disclosure requirements.

The rule proposes that GFE estimates would be valid for a minimum of 30 days from when the document is delivered or mailed to the borrower. This is proposed in light of the tolerances to avoid committing originators indefinitely. Within the 30 days the borrower must agree to go forward and pay any additional money required to complete the underwriting process. If the borrower fails to accept the offer within 30 days, the borrower would need to return to the loan originator to request the originator to provide a new GFE or ratify the previous one. Commenters are asked in Question 5 below whether this is an appropriate time period for the GFE.

b. Facilitating Shopping With the GFE

As stated above, to achieve the purposes of the Act, the proposed rule would limit fees paid by the borrower for the GFE, if any, to the amounts necessary for the originator to provide the GFE itself. The fee could not include amounts to defray later appraisal or underwriting costs. This approach would both facilitate shopping and reduce the possibility that fees for the GFE are unearned, in violation of RESPA's proscription against such fees. While HUD recognizes that there may be costs attendant to obtaining credit information from third parties and evaluating that information manually and/or electronically, the provision of the GFE does not today, and would not in the future, necessitate full underwriting and appraisal. These steps come afterwards, and under the approach in this proposal, GFEs explicitly would be given subject to underwriting and appraisal. Therefore, any charge at the time of application should be limited only to those costs that result directly from providing the GFE. This is not to say that all loan originators would be expected to charge for GFEs. HUD would prefer that originators not impose any charge for a GFE, since providing a GFE before the payment of any fee will further facilitate shopping. HUD believes it would be reasonable for loan originators to treat shoppers for mortgages in much the same way other retailers treat shoppers, where the price of the product includes marketing expenses and purchasers pay the costs incurred to serve shoppers who do not purchase the goods or services. Such an approach would better serve the purposes of the statute.

c. Providing an Accurate GFE

As described in the background section, Regulation X currently defines "Good faith estimate" as "an estimate, prepared in accordance with Section 5 of RESPA, of charges that a borrower is likely to incur in connection with a settlement." Pursuant to 24 CFR 3500.7(c) of Regulation X, loan originators are required to state on the GFE the dollar amount or range of charges that the borrower will normally pay at or before settlement based upon common practice in the locality of the mortgaged property. While the rules require that the estimate be made in "good faith" and "bear a reasonable relationship" to the charges the borrower is likely to incur at settlement, there is no further explication of what a "Good Faith Estimate" demands, either with respect to the loan originator's own charges/compensation, or with regard to lender required third party charges and other settlement costs.

Three decades of experience has shown that too often the estimates appearing on GFEs are significantly lower than the amount ultimately charged at settlement, are not made in good faith (*e.g.*, a range of $0–$10,000), and do not provide meaningful guidance on the costs borrowers ultimately will face at settlement. The Department recognizes that, occasionally, unforeseeable circumstances can and do drive up costs in particular transactions. HUD believes, however, that in most cases loan originators have the ability to estimate final settlement costs with great accuracy. The loan originator's own fee/compensation, which is entirely within the originator's control, can be stated with certainty, absent unforeseeable and extraordinary circumstances. Moreover, most third party costs such as appraisal charges, pest inspection fees, and tax/flood reviews, are fixed, and others, such as upfront mortgage insurance premiums, and title services and insurance, typically only vary depending on the value of the property or the loan amount. State and local recording charges, stamps, taxes are also generally well known to loan originators or, where necessary, can readily be calculated based on the loan amount or estimated precisely, on a pro rata basis, based on a projected settlement date.

HUD also believes that recent advances in technology and telecommunications in loan processing make the routine provision of accurate estimates of third party costs both easier and cheaper.

Notwithstanding, the GFE has too often failed to represent an accurate estimate of final settlement costs for a number of reasons. The absence of more precise regulatory standards for measuring accuracy has not helped ensure greater accuracy and reliability. Beyond that, some originators appear to purposely underestimate settlement costs as a means of inducing prospective borrowers to use their services, or as a way to obfuscate the amounts they plan to receive later in the final mortgage transaction. In too many cases, charges that never appeared on the GFE materialize at settlement. Such "junk fees" typically result in additional compensation for the originator and/or third party settlement service providers.

In light of these considerations, HUD believes that in order for the GFE to serve its intended purpose, which is to apprise prospective borrowers of the charges they are likely to incur at settlement, new standards must be established under existing law to better define "good faith" and the standards applicable to the GFE.[43] Accordingly, the proposed rule would make a number of specific changes to GFE requirements.

First, the rule would prohibit loan originators from exceeding the charges stated on the GFE for their own services, lender required and lender selected third party services, and government charges at settlement absent "unforeseeable and extraordinary circumstances" beyond the loan originator's control such as acts of God, war, disaster, or any other emergency, making it impossible or impractical to perform.

Second, the rule would establish an upper limit, or 10% "tolerance," so that actual charges at settlement for shoppable lender required third party services, borrower selected title services and insurance, and reserves/escrow, cannot vary by more than 10% of the estimates of those fees and charges

[43] Differing editions of Black's Law Dictionary have defined "good faith" as "a state of mind consisting in * * * honesty in belief or purpose * * * [and faithfulness to one's duty or obligation," and "freedom from knowledge of circumstances which ought to put the holder upon inquiry" as well as "absence of all information, notice, or benefit or belief of facts which render [a transaction unconscientious." Inherent in these definitions is the concept that where a party makes an estimate in good faith they will take into account all relevant information available to them, and will exercise reasonable care in ascertaining and evaluating such information before providing such an estimate.

stated on the GFE absent unforeseeable and extraordinary circumstances. The 10% tolerance applies to all lender selected third party services, and to third party services from providers who have been suggested to the borrower by the loan originator. It does not apply to third party services from providers selected by the borrower independently of the originator's recommendation.

The inclusion of these tolerances will assure that borrowers can either find prices within the estimates in the marketplace or return to the lender who will identify sources that will honor those prices. However, if the borrower chooses to purchase a more expensive service than is available or than the lender can provide, the lender will not be held to have exceeded the tolerance. The 10% level for tolerances has been selected to inject discipline into estimates while providing a margin for legitimate error based on market changes. Commenters are asked to provide their views on whether this is or is not the appropriate tolerance level, tolerance, and why.

Third, the rule would include redisclosure requirements triggered by changed circumstances. Specifically, if, after full underwriting, a loan originator selected by a borrower to obtain a mortgage loan determines that the prospective borrower does not qualify for the loan product identified in a previously provided GFE, the loan originator shall inform the borrower that the loan originator does not offer loan products meeting the borrower's needs or credit status. Alternatively if the loan originator does offer other products meeting the borrower's circumstances, the loan originator must so inform the borrower and the borrower may request a new GFE. Furthermore, when, after receiving a GFE, a borrower selects a loan originator to obtain a mortgage loan and qualifies for the loan product identified, but elects not to lock-in the interest rate and the interest rate dependent payment quoted on the GFE, the loan originator shall provide the borrower with an amended GFE at such time as the borrower does lock the rate and the interest rate dependent payment if either has changed from that quoted on the original GFE. The amended GFE shall identify those cost categories that have changed as a result of the change in the interest rate. In no case may an amended GFE include increases in cost categories which are not dependent on the interest rate (Section III. B.).

By limiting the extent to which final settlement charges can exceed GFE estimates, the Department intends to render the GFE a much firmer, more reliable, and meaningful disclosure for borrowers. If the cost at settlement exceeds the amount reported on the Good Faith Estimate, absent unforeseeable and extraordinary circumstances, the borrower may withdraw the application and receive a full refund of all loan-related fees. Such circumstances would have to be documented in writing by the loan originator and such documentation retained by the loan originator. These circumstances may be further defined in HUD's final regulations, and comments are requested in response to Question 2 below on both the definition of unforeseeable and extraordinary circumstances, and borrower rights where there is noncompliance with GFE requirements. Concurrent with finalization of this rule, HUD also will establish procedures for closely scrutinizing loan originators that fail to meet these new GFE requirements for possible Section 8 violations.

d. Negotiating Discounts From Third Party Settlement Service Providers

The establishment of tolerances under the proposal will require that loan originators actively follow the market prices for settlement services in their communities. HUD recognizes that the new GFE's tighter requirements on estimated third party charges may cause many loan originators not already doing so to seek to establish pricing arrangements with specific third party settlement service providers in advance, in order both to ensure they are able to meet the tolerances and to ensure lower prices for their customers. As part of negotiations for such arrangements, many originators, particularly those with a substantial volume of business, may seek prices from third party providers that are lower than those providers offer on a retail basis. However, because Section 8 of RESPA broadly prohibits providing a "thing of value," which is specifically defined to include discounts, in exchange for the referral of business, many loan originators have been reluctant to openly seek such pricing benefits, even where any such discount in the price is passed on to the borrower. HUD believes that the fundamental purpose of RESPA is to lower settlement costs to borrowers, and it is therefore contrary to the law's objectives to interpret the anti-referral fee provisions of Section 8 to prohibit one settlement service provider from using its market power to negotiate discounted prices, as long as the entire discounted price negotiated by the originator is charged to the borrower and reported as part of the total charge within Sections III(C) through (J) as appropriate. The proposed rule amends Regulation X to make this clear. HUD also solicits comments on this issue in Question 4 below.

e. Revising the HUD–1/1A and Appendix A Instructions

Consistent with the proposed rule's new approach to the reporting of lender payments to borrowers, the proposal would require that on the HUD–1 all such payments be reflected in the borrower's column, in the applicable series (e.g., 800 series for payments to mortgage brokers; 1300 series for payments to other third party settlement service providers). However, inasmuch as there is no place for identifying and reporting credits on the HUD–1 A, in any transaction where there is such payment, the rule requires that the HUD–1 must be used. The proposed rule's revisions to the Appendix A instructions for the HUD–1 appear immediately following the proposed amendments to Regulation X.

Also, the proposed new GFE, while reducing the number of cost items reported on the face page, and consolidating the presentation to the borrower of important cost information, is not readily comparable to either the HUD–1 or HUD–1A form, which the borrower will receive at settlement. This is because certain cost items on the GFE are currently reported in numbered sections of the HUD1/1A forms not corresponding to their GFE counterparts. Thus, for example, while the proposed GFE clearly distinguishes between those settlement costs attributable to the loan originator(s) (section A. on the new GFE) and other lender required third party settlement services (sections C. and E. on the new GFE), the HUD–1/1A forms combine loan originator costs and some third party costs under the same heading ("Items Payable in Connection with the Loan") and numbered section (800). The HUD1/1–A forms include credit report fees, appraisal fees, mortgage insurance application fees, and inspection fees in this category. Other third party services, such as pest inspection fees, permit fee, and surveys are separately reported on the HUD–1/1A (1300). In addition, the new GFE identifies as separate major cost categories some items reported, in whole or in part, under the same heading on the HUD–1/1A. For example, the new GFE lists hazard insurance and per diem interest as separate categories. However, on the HUD–1/1A, where hazard insurance premiums are paid in advance they are reported, along with other items such as per diem interest and pre-paid mortgage insurance premiums, in section 900, "Items Required by Lender to be Paid in

Advance." Moreover, where a portion of the hazard insurance premium is required to be escrowed, that amount is reported on the HUD–1/1A in section 1000, along with other escrow items, as "Reserves Deposited With Lender."

As proposed, the new GFE would consolidate certain charges into lump sum categories (e.g. lender required third party services). The Department has made only minor changes to the HUD–1 instructions, to assist the borrower in comparing the new GFE to the HUD–1. The Department took this approach because the HUD–1 is well accepted as a listing of settlement service charges by industry and consumers alike and HUD is reluctant to change the form unnecessarily. However, there is a risk that if the forms are not clearly comparable, lenders could deviate from the prices given in the GFE or GMPA and the borrower would not realize the deviations. Modifications could be made to the HUD–1 so that the fee categories on the new GFE would correspond to similar groupings on the HUD–1 and the two documents could be more easily compared. HUD invites comments in Question 9 below on whether or not the HUD–1 should be modified. HUD plans to use focus groups to ensure that the proposed forms are consumer friendly including considering, among other things, how the new proposed forms are best compared by consumers to the HUD–1 and what revisions, if any, to the HUD–1 would be most helpful.

For purposes of TILA, the packager must list the finance charges needed to calculate the APR on an addendum to the HUD–1 or HUD–1A and HUD invites comments in Question 20 on this issue. The proposed rule seeks comment on whether there should be further modifications to the HUD–1/1A forms so that they more accurately correspond to the new GFE. However, the Department believes that, in the absence of further changes to the HUD–1/1A forms, borrowers can be assisted in comparing the two disclosures, and, to that end, the new GFE identifies, next to each GFE category, where on the current HUD–1/1A the corresponding cost information is to be found. As the preceding discussion makes clear, this necessitates identifying more than one HUD–1/1A section number next to some GFE categories.[44]

[44] Specifically, the new GFE contains the following cross-references to the HUD–1/1A for each GFE category: A. Origination Fees, 800; C. Lender Required/SelectedThird Party Services, 800, 900, 1000, 1300; D. Title Services/Insurance, 1100; E. Lender Required/Shoppable Third Party Services, 800, 900, 1000, 1300; F. Government Charges—Taxes, 1000, 1200; G. Reserves/Escrow, 1000; H. Per Diem Interest, 900; I. Hazard Insurance, 900, 1000; J. Optional Owner's Title, 1100.

3. Section 6 Transfer of Servicing Language

In 1990, Congress amended RESPA to include a disclosure, which informs borrowers that their loan or the servicing of their loan, may be sold. 12 U.S.C. 2605, Public Law 93–533 section 6 (November 28, 1990). In 1997, HUD proposed a rule to implement the amended statute. Many comments were received and the rule was never finalized. 62 FR 25740. The Department plans to finalize the 1997 proposed rule shortly. However, in the meantime, the Section 6 language in the statute may be provided in conjunction with the GFE instead of the language currently indicated in § 3500.21 and Appendix MS–1.

C. Remove Regulatory Barriers To Allow Guaranteed Packages of Settlement Services and Mortgages To Be Made Available to Borrowers

1. A New Safe Harbor for Guaranteed Mortgage Packages (GMP) Created Through HUD's Exemption Authority

Consistent with its earlier recommendations in the HUD-Federal Reserve Report, described in the background section of this rule, the Department believes that the most effective means of simplifying the process of obtaining a mortgage, promoting competition to lower costs and facilitating shopping is to offer borrowers Guaranteed Mortgage Packages containing a lump sum price for all loan originator and governmental required settlement costs associated with obtaining a mortgage combined with an interest rate guarantee for the loan. The Department believes that such packages offer borrowers the possibility of lower prices through innovation by packagers, the pricing discipline involved in arranging packages, and competition among packagers.

Under a Guaranteed Mortgage Package approach packagers would offer a lump-sum price for settlement costs, and an interest rate guarantee at no cost to the borrower until the borrower selects the package. The packager would be held to those figures from the time the package is agreed to through settlement. This approach would allow the borrower to rely on the quoted price and rate and to compare fewer numbers in shopping for the best loan to meet his or her needs. Even with improvements to the current disclosure scheme, including more reliable quotes for major settlement costs under the new GFE (see B(2)(c), above), it will not be as easy for borrowers to shop and compare as it would be if they could simply comparison shop for mortgages based on a few prices as under this proposal.

The Secretary has determined, therefore, that effective packaging of settlement services will depend on packagers negotiating lower costs with third party settlement service providers, and then providing borrowers with an alternative disclosure, the Guaranteed Mortgage Package Agreement (GMPA). This proposal will increase the opportunities for borrowers to shop among packages fostering competition to lower costs further. Under Section 8(c)(5) of the Act, the Secretary is authorized to issue regulations that remove certain payments or classes of payments or other transfers from the Section 8 prohibitions on kickbacks and unearned fees after consultation with designated regulatory agencies. Also, under Section 19 (a) of the Act, the Secretary is authorized to grant reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of the Act. Accordingly, under these authorities, HUD is proposing to establish a carefully circumscribed safe harbor from RESPA's provisions at Section 8 to facilitate the development and marketing of Guaranteed Mortgage Packages.

2. Who May Package

The purpose of the Guaranteed Mortgage Package safe harbor is to stimulate competition and improve the borrower's ability to shop. Under this proposal, entities other than lenders may qualify as packagers for a safe harbor, as long as their packages include a mortgage and otherwise satisfy the requirements of the safe harbor. In this connection, in order to ensure that the borrower receives the settlement package of services and the mortgage loan, the proposed rule would require that the packager sign the GMPA agreeing to provide the Guaranteed Mortgage Package at the Guaranteed Mortgage Package price and that non-lender packagers have a lender sign the GMPA after borrower acceptance agreeing to provide the loan included in the Guaranteed Mortgage Package.

3. Requirements for the Safe Harbor

Packagers that provide the GMP and abide by its terms and the other requirements of this rule, along with any settlement service providers participating in such a package, would receive a safe harbor from scrutiny under Section 8 of RESPA as described below. Specifically, to qualify for the

safe harbor, packagers, within 3 days of borrower's application, would have to offer, without an upfront fee: (1) A guaranteed price for the loan origination and virtually all other lender required settlement services needed to close the mortgage, including without limitation, all application, origination, underwriting, appraisal, pest inspection, flood and tax review, title services and insurance, and any other lender required services, and governmental charges; (2) a mortgage loan with an interest rate guarantee, subject to change (prior to borrower lock-in) resulting only from a change in an observable and verifiable index or based on other appropriate data or means to ensure the guarantee;[45] and (3) a Guaranteed Mortgage Package Agreement (GMPA) as a prospective contract with the borrower that is binding through settlement containing the maximum settlement costs. The GMP offer would remain open as an offer for a minimum of 30 days from when the document is delivered or mailed to the borrower. The GMPA becomes a binding contractual commitment immediately upon borrower acceptance of the package and payment of a minimal engagement fee, subject only to acceptable final underwriting and property appraisal.

The guaranteed package also would include up-front costs of mortgage insurance. The cost of mortgage insurance is based on the ratio of the loan amount to the value of the property and is not finally determined with certainty until the lender knows the property value. In the GMP price, the packager shall include any maximum upfront mortgage insurance premium based upon the borrower's estimate of the property value and the amount that needs to be borrowed. The GMPA will inform the borrower that the upfront mortgage insurance premium, if any, may decrease or become unnecessary depending on the final appraised value of the property. The "Other Required Settlement Costs", discussed immediately below, would include any required reserves for mortgage insurance premiums. Because full underwriting information will not be available to the packager at the time the GMPA is provided, implementation issues are presented. Commenters are invited in Question 21 below to provide their views on how mortgage insurance should be addressed in Guaranteed Mortgage Package Agreements.

Under the proposal, reserves that are escrowed would be disclosed on the GMPA as "Other Required Costs" and subject to a 10% tolerance. The only costs that could be excluded from the guarantee and not subject to any tolerance would be those that fluctuate depending upon the borrower's choice, such as hazard insurance, per diem interest, and optional owner's title insurance. However, the Questions below ask commenters whether these items should also be included in the package at the required minimum amounts with a notation that "optional costs" are the responsibility of the borrower.

The proposal does not require packagers to itemize the services included in the GMPA. HUD believes however, that there are certain settlement services that are of specific interest and value to the borrower such as pest inspection, appraisal and the purchase of lender's title insurance (which may affect the cost of owner's title insurance). Some lenders may choose to forego some or all of these services. Therefore, HUD proposes that if any of these particular services are not anticipated to be included in the GMP, this fact must be disclosed on the GMPA.

Packagers may in GMP transactions provide a GMPA in lieu of the GFE. The revised instructions for the HUD–1/1A require that in Guaranteed Mortgage Packages, the HUD–1/1A must itemize the services provided, but not the specific charges for those services. However, because the amounts of certain individual charges needed to compute the finance charge and the APR under TILA and HOEPA, the packager must list the finance charges needed to calculate the APR on an addendum to the HUD–1 or HUD–1A. At Question 20, commenters are asked to provide their views on whether this approach adequately protects and preserves consumers' rights under TILA and HOEPA while facilitating packaging, and to suggest alternatives, if needed. Entities that do not choose to seek this safe harbor will continue to provide the GFE and HUD–1/1A disclosure scheme, as amended by this rule.

4. Contents of the Guaranteed Mortgage Package Agreement

The premise underpinning packaging is that firm, simple, guaranteed price quotes will enable borrowers to shop for mortgage loans with much greater confidence and certainty. The GMPA starts with a brief description of the function of the packager—what the packager is providing—and a statement that the interest rate on the proposed form, and the settlement costs quotation (if any), represent an offer to the borrower which is open and guaranteed for 30 days from when the document is delivered or mailed to the borrower, and which will immediately become a binding contractual agreement upon borrower acceptance and payment of a minimal engagement fee, subject only to acceptable final underwriting and property appraisal. The opening description also makes clear that any required settlement costs not separately itemized and estimated in Section III of the GMPA are the responsibility of the packager.

Section I of the GMPA provides the interest rate guarantee and APR along with an explanation that the interest rate is guaranteed through settlement if the borrower agrees now to the GMPA and locks-in this rate by a specified date/time. Any mortgage insurance premium included in the APR would be separately disclosed in Section I. It provides that if the borrower does not choose to commit immediately, it is guaranteed that the quoted interest rate will not change except in relation to changes in a specified index rate (or other such appropriate data or means as HUD may determine to assure that changes in the rate are reflective of the cost of funds and not simply to increase the packager's compensation).

Section II of the GMPA states that this package price covers all services, besides those listed in Section III, that are necessary to close the loan. The packager would, however, be required to inform the borrower if certain designated items are not anticipated to be included as part of the package including lender's title insurance, the pest inspection, and appraisal. Under the GMPA, any pest inspection report, credit report, and appraisal would be provided to the borrower upon the borrower's request. (On the HUD–1, borrowers will receive a listing of the specific services provided, but not the specific prices for each service. The total settlement costs will be provided.)

Section III of the GMPA provides a description of "Other Required Settlement Costs" which are outside the package and informs the borrower that reserves/escrow are subject to a 10% upper limit, or tolerance, at settlement absent unforeseeable and extraordinary circumstances. However, the 10% tolerance does not apply to hazard insurance and per diem interest in this category. The GMPA also makes clear that any required settlement cost not specifically identified on the GMPA as

[45] Through this requirement, discussed infra, HUD seeks to ensure that the rate of the loan does not vary after the borrower commits to a packager for reasons other than an increase in the cost of funds. There may be a variety of ways to solve this problem and HUD is seeking comments, in parficular, on how to implement an interest rate guarantee.

outside a package, and itemized on the GMPA, is included in the guaranteed price quote and is the responsibility of the packager.

Section IV of the GMPA provides the borrower the cost of owner's title insurance, if available. For any package where the packager offers the borrower the option of paying all or part of the stated guaranteed and/or estimated settlement costs through a higher interest rate, that option will be explained in accordance with Section V of the GMPA. Similarly, where a packager offers the borrower the option of lowering the stated guaranteed interest rate by paying additional amounts at settlement, commonly referred to as discount points, that option will also be explained in accordance with Section V of the GMPA.

Section VI provides interest rates and adjustment terms related to adjustable rate mortgages, applicable prepayment penalties, and balloon payments. Section VII of the GMPA must be signed by an authorized agent of the packager and the borrower to become a binding contract for the Guaranteed Mortgage Package at the Guaranteed Mortgage Package price. After acceptance by the borrower, non-lender packagers must ensure that the lender sign the GMPA agreeing to provide the loan included in the Guaranteed Mortgage Package. HUD solicits comments on the issue of lender signatures on the GMPA in Question 18 below. Notwithstanding the basic objective of packaging, which is to dramatically improve the borrower's capacity to comparison shop, different entities may offer two types of packages. Some packagers may offer GMPs in which all settlement costs are included in the interest rate guarantee (in which case no guaranteed settlement cost quote will be provided), while other packagers may quote a guaranteed price for all settlement costs along with a (presumably lower) interest rate guarantee. The Special Information Booklet and other consumer education materials will alert borrowers to compare the combined impact of both settlement cost and interest rate guarantees when shopping among packagers, and will suggest that a borrower might wish to compare the APRs of the two products as well as consider how long the borrower plans to stay in the property; a longer mortgage term may mitigate in favor of a borrower choosing to pay settlement costs through a higher rate.

5. Interest Rate Guarantee

In the rule, HUD is requiring that Guaranteed Mortgage Packages include an interest rate guarantee. HUD's rationale for this requirement is that both the settlement costs and the interest rate need to be firm for borrowers to compare loan products. HUD recognizes, however, that after a borrower requests a GMPA but before locking in a rate, the interest rate on a loan may change based on market forces. Similarly, some borrowers choose to float even after they have committed to an originator, in the hopes that market interest rates will fall. In such instances, HUD believes that in the context of GMPs, it is necessary to assure that when the borrower is ready to lock, the interest rate will only be changed based on observable market changes, or based on other data or appropriate means to ensure the guarantee. One possibility is to have the rate move with an observable and verifiable index. Another is to have a rate publicly available. Whatever the ultimate methodology, it must be easily useable and verifiable by the borrower and the industry. Commenters are asked to address Question 13 concerning the use of an index or a substitute therefore to address this problem.

6. Scope of the Safe Harbor

The Secretary is exercising exemption authority under Section 8(c)(5) and Section 19 of RESPA to establish this carefully circumscribed guaranteed mortgage packaging safe harbor. The Secretary is establishing this safe harbor only for those Guaranteed Mortgage Package transactions that meet the requirements set forth in this rule. The Secretary has determined that the establishment of this safe harbor is necessary to allow this class of transactions— guaranteed packages of settlement services with the protections required under this rule— to be available to consumers to achieve the purposes of the Act. The Secretary has concluded that the availability of these packages to consumers will simplify their shopping for settlement services and allow them to gain the benefit of an active competitive marketplace where market forces lower settlement costs. For the same reasons, the Secretary has determined that payments and pricing arrangements between packagers and participating settlement service providers for Guaranteed Mortgage Packages as set forth in this rule shall not be construed as prohibited under Section 8 of RESPA as long as the requirements in this rule are satisfied. Pursuant to Section 8(c) (5) the Secretary has undertaken the necessary consultation with other agency heads as required prior to promulgating this exemption.

This safe harbor will allow packagers to inject pricing discipline to negotiate firm overall prices for essentially all settlement services and mortgage interest rates with participating settlement service providers. Some GMPs may require the use of affiliated entities, a practice prohibited by Section 8 except in limited circumstances. Other GMPs may involve arrangements between independent providers based on the projected volume of business to be referred. The safe harbor will apply in both of these arrangements. Without this safe harbor, Section 8(a)'s prohibition on referral fees may bar such arrangements and Section 8 (b)'s prohibitions may deter packagers from retaining profits that result from packaging, which could be regarded as unearned. Outside the safe harbor, where loan originators arrange discounted prices that are charged to consumers, HUD is proposing in this rulemaking to clarify that Section 8 is not violated (see above). Because HUD believes that the benefits to borrowers of packaging outweigh any protections offered by Section 8's provisions, the Secretary has concluded that such a carefully circumscribed safe harbor is appropriate, subject to the eligibility conditions set forth in this rule.

Accordingly, pursuant to Section 19, the Secretary has determined that the safe harbor is necessary for these prescribed transactions to achieve the purposes of the Act. Where the requirements are met, the safe harbor from Section 8 will permit payments or other things of value exchanged between a packager and entities participating in the package, and will insulate packager earnings from Section 8 scrutiny. Section 8 would, however, continue to prohibit any payments for the referral of business, kickbacks, splits of fees and unearned fees between the packager and any of the entities participating in the package on the one hand, and entities outside of the package on the other.[46] As long as the requirements of the safe harbor are satisfied, the exemption authority under Section 19 will create a safe harbor for packagers from the Section 8 requirements.

Under the safe harbor, as noted above, packagers would provide the GMPA in lieu of a GFE. HUD regards the provision of a GMPA as fully, indeed, more than satisfying the requirements of Section 5 of RESPA that borrowers receive a Good Faith Estimate of the

[46] Thus, for example, a real estate agent, outside of the package, would continue to be subject to Section 8 for accepting a payment from a packager for referring a customer to a package.

amount of charges for settlement services the borrower is likely to incur. Additionally, HUD believes that the GMPA, by itemizing a Guaranteed Mortgage Package price encompassing virtually all settlement charges, along with a limited number of itemized charges, including owner's title insurance, also more than satisfies the requirements of Section 4 of RESPA. Nevertheless, HUD is prepared to exercise the exemption authority under Section 19 to create a safe harbor for packagers from the disclosure requirements of Sections 4 and 5 of RESPA, if it deems such an exemption necessary.

The safe harbor is proposed to be available only where the transaction does not result in a high cost loan as that term is defined in the Home Ownership Equity Protection Act. See 15 U.S.C. 1601 (Supp II 1996). The safe harbor also may not be available for mortgages that exceed other limits or include other features identified by the Department during the course of this rulemaking as resulting in unreasonable settlement charges or other loan terms inimical to the purposes of RESPA.

In this rulemaking, in Question 12 below, HUD is soliciting comments on the scope of the safe harbor and in particular, how the safe harbor should apply to affiliated business arrangements.

D. Scope of the Proposed Rule

The proposed rule's new regulatory requirements will apply to first and second lien transactions, purchase money loans, and refinances. Home equity transactions are addressed in § 3500.7(f), under current RESPA regulations. At Question 26 the Department invites comments on this issue.

E. Contractual Remedies and Enforcement Priorities

For the safe harbor, the proposed rule intends that borrowers, individually or, where appropriate, as a class, may sue for specific performance or for damages pursuant to applicable State contract law provisions in the event a packager breaches a contract entered into pursuant to C., above.

Beyond any contractual remedies available to borrowers under state laws, HUD will regard noncompliance with a GMPA as an enforcement priority, and any entity found in violation of such a contract will not be able to claim a safe harbor under Section 8. As a result, those found in violation of a GMPA will be subject to Section 8 scrutiny and possible penalties as well as individual or class relief.

F. Preemption

Pursuant to Section 18 of RESPA, 12 U.S.C. 2616, the Secretary is authorized to determine whether any provisions of State law are inconsistent with any provision of RESPA. Where such a determination is made, after consultation with other appropriate Federal agencies, the Secretary may exempt any person subject to RESPA from compliance with said State law to the extent such compliance is inconsistent with RESPA. Question 22 below seeks comments on how this provision of RESPA should be applied in light of the provisions in the proposed rule.

IV. Questions for Commenters

Commenters are asked to address the following questions in their comments to the extent that they have views on these subjects.

The New Good Faith Estimate (GFE) Requirements

1. As proposed in Section III.A.(1), the proposed GFE form would briefly explain the originator's functions and that the borrower, not the originator, is responsible for shopping for his or her best loan. Does the language proposed adequately convey this message? If the commenter thinks otherwise, it should provide alternative language for the form that better explains the loan originator 's function to the borrower. Should the form also address agency requirements under state laws and how?

2. In Section III.B.(2) c., the proposed rule requires that the amounts estimated on the GFE for mortgage broker and lender origination charges may not vary at settlement absent unforeseeable circumstances. Should the rule provide for this "unforeseeable circumstances" exception? Are the particular circumstances specified in HUD's formulation in this proposal sufficiently encompassing? What evidence should a broker or lender be required to retain to prove the existence of such circumstances and justify any increase in charges at settlement?

3. In Section III.B.(2) c., the proposed rule establishes a 10% limit, or "tolerance," for categories of settlement services and costs including third party services that the borrower shops for and escrow/reserves by which such costs cannot exceed the GFE estimates by 10% at settlement absent unforeseeable and extraordinary circumstances. It also establishes zero tolerances for origination charges and lender required lender selected third party costs and government charges that cannot vary from the estimate through settlement absent unforeseen circumstances. Are these appropriate tolerances and tolerance levels or should other tolerances/tolerance levels be established for these categories? Also, should a tolerance be established for borrower's title insurance? What alternative or additional means might be employed to ensure that loan originators take the care necessary to complete the GFE to ensure that it represents a Good Faith Estimate of final settlement costs?

4. In Section III.B.(2) d., the proposed rule would amend Regulation X to make clear that loan originators may enter into volume arrangements where such discounted prices are charged to their customers. Commenters are invited to provide their views on the ramifications, if any, of this clarification.

5. In Section III.B.(2) c., the proposed rule requires that the tolerances will apply to the GFE from the time the form is given by the loan originator through settlement. Also, in case it takes a substantial time for the borrower to decide to use the loan originator from the date the form is given, the rule and the form provide that the GFE need only be open for borrower acceptance for a minimum of 30 days from when the document is delivered or mailed to the borrower. After that time, the GFE could be ratified or superseded by the originator at the borrower's request. Is this expiration date appropriate to protect against unnecessary costs flowing from an indeterminate liability or for other reasons? Is 30 days too long or too short? Another possibility that commenters may consider is whether the numbers on the GFE should apply only from the time the borrower enters into an agreement with the loan originator. HUD also invites commenters' views on whether HUD now should require a borrower's signature on the GFE to memorialize acceptance and begin the period during which the estimates are binding.

6. In Section III.B.(1) b., the proposed rule simplifies the GFE by placing all loan origination costs in a small number of primary categories. This is intended to facilitate borrower understanding and shopping of major loan costs and minimize the proliferation of "junk fees" and duplicative charges. How could the GFE be made even simpler to facilitate borrower shopping? If the commenter believes greater itemization is desirable, what should be itemized and why?

7. In Section III.A.(3), the proposed rule requires that on the front of the proposed form mortgage brokers disclose the lender credit right below the total origination charges to: (a) Make

the borrower aware of the effect that the credit has to reduce total origination costs; (b) avoid confusion among borrowers; and (c) avoid giving any competitive disadvantage to either a broker or lender for the same loan. What, if any, other approach to address these concerns is better and why? Should the new GFE form disclose this credit at the bottom of the proposed form because the credit can be applied to all settlement costs?

8. As proposed in Section III. A. (3), as another step to avoid borrower confusion and any competitive disadvantage among lenders and brokers, the proposed rule breaks out on Attachment A–1, rather than on the front of the proposed form, the "Loan Origination Charges" into "Lender Charge" and "Broker Charge." How, if at all, does this approach advantage or disadvantage either lenders or brokers or confuse borrowers in comparison shopping? Would the industry and borrowers be better served if there is a breakout of "Lender charges" and "Broker charges" on the front of the form and why?

9. As proposed in Section III. B. (2) e, the new GFE will consolidate certain charges into lump sum categories (e.g. lender required third party services). To permit the borrower to compare the new GFE to the HUD–1, it will be necessary for HUD to establish additional instructions to guide the reader so that the new GFE could be compared to the HUD–1. Would it be better to change the HUD–1 so the fee categories correspond to the groupings on the GFE and the two documents can be more easily compared? If commenters support changes to the HUD–1 to make it more comparable to and compatible with the new GFE, how extensive should these changes be and in what areas? Should the HUD–1 continue to list all charges for services or should it also be shortened and simplified as well to cover only categories of services?

10. Should a safe harbor from Section 8 scrutiny be established for transactions where the mortgage broker signs and contractually commits to its charges on the GFE? The purpose of proposing this safe harbor would be to encourage a firm contractual commitment to borrowers, before they pay a fee and commit to a particular mortgage broker, so that the borrower can shop among mortgage brokers. Considering the proposed changes to the GFE, the proposed packaging safe harbor and HUD's current guidance on mortgage broker fees, is this safe harbor necessary for industry or borrowers and why? In light of the proposed rule's other provisions is any other additional disclosure for mortgage brokers warranted, such as an additional statement of what the broker's fees are and how they function?

Guaranteed Mortgage Package Agreements

11. Is a safe harbor along the lines proposed in Section III. C. (1) of this rule necessary to allow lump sum packages of settlement services to become available to borrowers? Would the proposed clarification by HUD that discounts may be arranged, if passed on to borrowers and not marked up, suffice to make packages available to borrowers? Would a rule change to approve volume discounts and/or mark-ups when a package is involved suffice? Would it suffice to trim the disclosure requirements for packaging and offer the option of providing a streamlined GFE to those who packaged?

12. As proposed in Section III. C. (6) is the scope of the safe harbor appropriately bounded in applying to all packagers and participants in packages? The safe harbor also currently does not apply to referrals to the package. Should there also be a bar against part time employees of other providers working for the package to steer business? How should the safe harbor apply to affiliated business arrangements to protect borrowers from steering?

13. As proposed in Section III. C (5), to qualify for the safe harbor, the packager must include an interest rate guarantee with a means of assuring that when the rate floats, it reflects changes in the cost of funds not an increase in originator compensation. For this purpose, the rule suggests tying the rate to an observable index or other appropriate means. What other means could assure borrowers that the rate of a lender was not simply being increased to increase origination profits? For example, would a lender's commitment to constantly make rates public on a web site be a useful control? If an index is the best approach, how should it be set? If an index approach is approved, should each lender be allowed to pick its own observable index?

14. As discussed in the preamble to the rule in Section III. C (5), if an observable index or other appropriate means of protecting borrowers from increases in lender compensation when the borrower floats in a guaranteed packaging approach is not practical, should HUD provide a packaging safe harbor only for mortgage brokers? Such a mortgage broker safe harbor would require disclosing the lender credit to the borrower in broker guaranteed packages. The theory for the safe harbor would be that any amounts in indirect fees could be credited to borrowers taking away any incentive for an increase in rates to increase compensation. Should this be offered in any event?

15. As proposed in Section III. C (6), under the rule, mortgages with total fees or a rate covered by the Home Ownership and Equity Protection Act (HOEPA) would be subject to the new GFE disclosure requirements; however, HOEPA loans would not qualify for the guaranteed package safe harbor. Is this exclusion appropriate considering, on the one hand, that packaging promises borrowers a simpler way to shop and make transactions more transparent? On the other hand, the safe harbor could be provided for a loan that has very high rate and/or fees and may be predatory. The proposal also says that during the rulemaking other limitations may be established to exclude high cost and/or loans with predatory features from the packaging provisions. HUD invites comments on whether HOEPA loans, any other loans, or features of loans should be included or excluded from the safe harbor and why.

16. As proposed in Section III.C (3), the GMPA provides that the offer must be open to the borrower for at least 30 days from when the document is delivered or mailed to the borrower. Is this an appropriate minimum time period to ensure that the borrower has an adequate opportunity to shop?

17. As proposed in Section III. C (4), the rule currently provides that the Guaranteed Mortgage Package agreement must indicate that certain reports such as the appraisal, credit report, and pest inspection are available to the borrower upon the borrower's request. Also, packagers may decide to forego such reports or services (i.e. lender's title insurance) and must inform the borrower that such reports or services are not anticipated to be included in the package price. Are these adequate protections for the borrower? HUD is aware that other laws such as Regulation B (ECOA) provide certain rights to borrowers with respect to obtaining some of these reports. In order to qualify for the safe harbor HUD has created additional reporting requirements. Are these additional reporting requirements appropriate?

18. Should additional consumer protections be established for packaging? For example, should additional qualifications be established for "packagers" to ensure that borrowers are protected against non-performance including the unavailability of a mortgage that could result in a borrower "losing" a house? For example, should

there be a requirement that a packager must have sufficient financial resources to credibly back the guarantee? Is it necessary to require a lender signature on the GMPA to ensure that the borrower receives the loan at the time of settlement? How can the borrower's interests be protected without unduly burdening the process or unduly limiting the universe of packagers?

19. Consistent with the HUD-Fed Report, the rule proposes that certain charges, such as hazard insurance and reserves, are outside the package as other or optional costs. Is this the right approach or should these charges be disclosed as the minimum amounts required by the lender and required to be inside the package? Would the latter better serve the objective of establishing a single figure for the borrower to shop with?

20. The rule proposes in Section III. C (3), that under Guaranteed Mortgage Packaging, the HUD–1 will list the settlement services in the package but not the specific charges for each service. Certain third party charges are excluded from the calculation of the finance charge and the APR under TILA and HOEPA. Commenters are invited to express their views on whether the approach in the rule satisfies or whether alternative approaches to cost disclosures should be established to ensure consumers' rights under TILA and HOEPA are protected while facilitating packaging. More broadly, commenters are invited to provide their views on means of better coordinating RESPA and TILA disclosures.

21. Commenters are asked to provide their views on how the rules should treat mortgage insurance? The rule proposes in Section III. C (3), that the guaranteed package would include any mortgage insurance premiums in the APR and up-front costs of mortgage insurance in the guaranteed package. "Other Required Costs" would include reserves for mortgage insurance premiums. However, because the packager will not have an appraisal at the time the GMPA is provided, the packager may not have firm information to provide a definite figure. Another possibility is to exclude mortgage insurance from the package but notify the borrower that mortgage insurance may be an "Other Required Costs" and present the borrower an estimate subject to a tolerance, if mortgage insurance is necessary. This approach would exclude a major charge from the package. HUD recognizes that there are state laws that prohibit rebates or any splitting of commissions for mortgage insurance. How, if at all, should this impact the decision to include mortgage insurance in packages of settlement services?

22. To what extent, if any, do inconsistencies currently exist, or would they exist upon promulgation of the proposed rule between State laws and RESPA? Specifically, what types of State laws result in such inconsistencies and merit preemption? What, if any, provisions of the proposal should be revised to facilitate any necessary preemption?

23. The rule proposes that the GFE and the GMPA be given subject to appraisal and underwriting. How should the final rule address the matter of loan rejection or threatened rejection as a means of allowing the originator to change the GFE or GMPA to simply earn a higher profit?

24. To what extent, if any, should direct loan programs such as those provided by the Rural Housing Service of the Department of Agriculture be treated differently under the new regulatory requirements proposed by this rule?

25. As proposed, the GFE and GMPA currently contain sections for loan originators and packagers to indicate the specific loan terms for adjustable rate mortgages, prepayment penalties, and balloon payments. Are these appropriate loan terms to include on these forms, and what, if any, other mortgage terms or conditions should be listed on the forms?

26. What are the arguments for or against limiting the proposed rule to purchase money, first and second lien, and refinancing loans as opposed to offering it to home equity, reverse mortgage and other transactions? Should there be any additional requirements for so-called B, C, and D loans?

27. As proposed, the Guaranteed Mortgage Package includes one fee for settlement services required to complete a mortgage loan. The fee for the package will include loan origination fees, typically referred to as "points." As points are generally deductible under IRS rules, comments are invited as to how to determine which portion of the package prices should be deemed to constitute points.

28. To what extent do the proposed changes to the definition of application in Section III. B (2) a., and requirements for delivery of the GFE impact other federal disclosure requirements, such as those mandated by the Truth in Lending Act? How can the disclosure objectives of the proposed rule be harmonized with such other disclosure requirements?

29. The proposed rule in Section III. B (2) c., would require a loan originator capable of offering an alternative loan product to provide a prospective borrower, upon the borrower's request, with a new GFE if, after full underwriting, the borrower does not qualify for the loan identified on the original GFE. Is this approach appropriate? What other options should be considered where borrowers do not qualify for the loan product initially sought?

30. The proposed rule in Section III. B (2) c., would require loan originators to provide qualified borrowers with an amended GFE, identifying any changes in costs associated with changes in the interest rate, where the borrower elects not to lock-in the interest rate quoted on the original GFE at the time it is provided. Is this an appropriate requirement? What alternatives, if any, should HUD consider?

V. Findings and Certifications

The Paperwork Reduction Act

The information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Real Estate Settlement Procedures Act of 1974 requires settlement providers to disclose to homebuyers certain information at or before settlement and pursuant to the servicing of the loan and escrow account. This includes a Special Information Booklet, a Good Faith Estimate, an Initial Servicing Disclosure, a Settlement Statement (the Form HUD–1 or Form HUD 1–A), and when applicable an Initial Escrow Account Statement, an Annual Escrow Account Statement, an Escrow Account Disbursement Disclosure, an Affiliated Business Arrangement Disclosure, and a Servicing Transfer/Disclosure. This information requirement under OMB control number 2502–0265 consolidates information previously collected under OMB control numbers 2502–0458, 2502–0491, 2502–0501, 2502–0516, and 2502–0517.

Estimate of the total reporting and recordkeeping burden that will result from this information requirement is as follows:

Respondents: Individuals or households, business or other for-profit entities.

Frequency of submission: On occasion and annually.

Reporting burden: Number of respondents: 20,000, Annual responses: 105,300,000, Hours per response: 0.04.

Total estimated burden hours: 6,500,000.

The status of this information collection is that it is a reinstatement, with changes, of a previously approved collection. In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4668) and must be sent to:

Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, *lauren_wittenberg@opm.eop.gov*, Fax: (202) 395–6974

and;

Gloria Diggs, Reports Liaison Officer, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing & Urban Development, 451 Seventh Street, SW, Room 9116, Washington, DC 20410.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"), which the President issued on September 30, 1993. This rule was determined economically significant under E.O. 12866. Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–0500. The Initial Economic Analysis prepared for this rule is also available for public inspection in the Office of the Rules Docket Clerk.

Federalism Impact

This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled "Federalism").

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and has determined that the rule would have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

In accordance with section 603 of the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and has been made part of the Economic Analysis prepared under Executive Order 12866. The IRFA portion, however, of the combined analysis is published as an appendix to this proposed rule. The IRFA was also submitted to the Chief Counsel for Advocacy of the Small Business Administration for review and comment on its impact on business.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not, within the meaning of the UMRA, impose any Federal mandates on any State, local, or tribal governments nor on the private sector.

Congressional Review of Final Rules

This rule constitutes a "major rule" as defined in the Congressional Review Act (5 U.S.C. Chapter 8). At the final rule stage, this rule will have a 60-day delayed effective date and be submitted to the Congress in accordance with the requirements of the Congressional Review Act.

VI. Rule Language

List of Subjects in 24 CFR part 3500

Consumer protection, Condominiums, Housing, Mortgagees, Mortgage servicing, Reporting, and recordkeeping requirements.

Accordingly, for the reasons set out in the preamble, part 3500 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation shall continue to read as follows:

Authority: 12 U.S.C. 2601 *et. seq.*; 42 U.S.C. 3535(d).

2. In § 3500.2, paragraph (b) is amended by revising the definitions of Application, Good faith estimate, and Mortgage broker and adding the following definitions of Guaranteed mortgage package, Loan originator, Mortgage broker loan, No tolerance, Packager, Packaged services, Participating settlement service provider, Par value, Tolerance, Unforeseeable and extraordinary circumstances, and Zero tolerance:

§ 3500.2 Definitions.

* * * * *

(b) * * *

Application means the submission of credit information (Social Security number, property address, basic income information, the borrower's information on the house price or a best estimate on the value of the property, and the mortgage loan needed) by a borrower in anticipation of a credit decision, whether oral, written or electronic, relating to a federally related mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a federally related mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.

* * * * *

Good faith estimate means an estimate of settlement costs on the required format prescribed at Appendix C to this part prepared in accordance with § 3500.7.

* * * * *

Guaranteed mortgage package means a guaranteed package of mortgage related settlement services and an interest rate guarantee for a federally related mortgage loan that is offered to a consumer under a Guaranteed Mortgage Package Agreement (GMPA) in accordance with § 3500.16.

Loan originator means a lender or mortgage broker.

* * * * *

Mortgage broker means a person or entity that renders origination services in a table funding or intermediary transaction. Where a mortgage broker is the source of the funds for a transaction, the mortgage broker is a "lender" for purposes of this part.

* * * * *

Mortgage broker loan is a federally related mortgage loan that is originated by a mortgage broker.

No tolerance means that the charges may vary without being subject to any tolerance.

Packager means a person or other entity that offers and provides guaranteed mortgage packages to borrowers in accordance with § 3500.16.

Packaged services are settlement services that the lender requires for settlement and includes all services except per diem interest, hazard insurance, escrow/reserves, and optional settlement services.

Participating settlement service provider means a settlement service provider that provides settlement services in a guaranteed mortgage package and whose charges are included in the guaranteed mortgage package price.

Par value means the principal amount of the loan.

* * * * *

Tolerance means a variation above an estimate of a category of settlement costs. Tolerance is expressed as a percentage of the estimate.

Unforeseeable and extraordinary circumstances means acts of God, war, disaster, or any other emergency, making it impossible or impractical to perform.

Zero tolerance means the amount listed may not vary at closing, except in unforeseeable and extraordinary circumstances.

* * * * *

3. In § 3500.7, paragraph (a) introductory text and (a)(2) through (e) are revised, paragraph (f) is redesignated as paragraph (g); and a new paragraph (f) is added to read as follows:

§ 3500.7 Good faith estimate

(a) Lender to provide. Except as provided in paragraphs (a), (b) or (f) of this section, or where a guaranteed mortgage package agreement is provided in accordance with § 3500.16 of this part, the lender shall provide all applicants for a federally related mortgage loan with a good faith estimate. The lender shall provide the good faith estimate either by delivering the good faith estimate or by placing it in the mail to the loan applicant, not later than three business days after an application is received or prepared. If the application is denied before the end of the three-business-day period, the lender need not provide the denied borrower with a good faith estimate. A lender shall not collect any fee in connection with the application or the good faith estimate beyond that which is necessary to provide the good faith estimate.

* * * * *

(2) For all mortgage loans, third party settlement services, governmental fees and charges, any other loan related expenses that are not paid to and retained by the originator must be reported in their entirety in the appropriate categories on the good faith estimate.

* * * * *

(b) Mortgage broker to provide. In the event an application is received by a mortgage broker who is not an exclusive agent of the lender, the mortgage broker must provide a good faith estimate by delivering the good faith estimate or by placing it in the mail to the loan applicant, not later than three business days after an application is received or prepared. As long as the mortgage broker has provided the good faith estimate, the funding lender is not required to provide an additional good faith estimate, but the funding lender is responsible for ascertaining that the good faith estimate has been delivered. If the application is denied before the end of the three-business-day period, the mortgage broker need not provide the denied borrower with a good faith estimate. A mortgage broker shall not collect any fee in connection with the application or the good faith estimate beyond that which necessary to provide the good faith estimate.

(c) Content of good faith estimate. As prescribed in and completed in accordance with the instructions in Appendix C to this part, the good faith estimate must state the property address, loan amount, interest rate used to calculate the estimated amounts, the Annual Percentage Rate (APR) for the loan including mortgage insurance, and the monthly payment for principal and interest and mortgage insurance. The form must also state whether the loan is an adjustable rate mortgage, contains a prepayment penalty clause or has a balloon payment, the functions of the originator, and the total amount of charges for each category of services: loan origination, interest rate dependent payment, lender required and selected third party services, title services and title insurance, shoppable lender required third party services, government services, amounts for escrow/reserves, per diem interest, hazard insurance and optional owner's title insurance. Attachment A–1 of the good faith estimate must indicate the subtotals of the origination charges to the lender and to the mortgage broker, and the subtotals of all the charges and fees for title and for settlement agent services.

(d) Accuracy of good faith estimate. (1) The amounts of the categories of loan origination charges, lender required and selected third party settlement service provider charges, lender selected title services and title insurance, and governmental fees and charges reported on the good faith estimate shall not vary from the time the good faith estimate is given to the borrower and may not be exceeded at settlement absent unforeseeable and extraordinary circumstances. The estimates in the good faith estimate shall be open to the borrower for a minimum of 30 days from when the document is delivered or mailed to the borrower. Within the 30 days the borrower must agree to go forward and pay the additional money to complete the underwriting process. If the offer expires, the borrower may ask the loan originator to ratify such estimate or request a new one. If the cost at settlement exceeds the estimate reported on the good faith estimate, absent unforeseeable and extraordinary circumstances, the borrower may withdraw the application and receive a full refund of all loan-related fees and charges. The loan originator must document any such circumstances and retain the document in accordance with § 3500.10(e).

(2) The amounts for lender required third party services must include an estimate of the maximum mortgage insurance premium to be charged upfront to the borrower based upon the borrower's assertion of the value of the property and loan amount needed and indicate that the mortgage insurance premium may decrease or be removed after full underwriting;

(3) The amounts of the categories of borrower selected title services and title insurance, shoppable lender required third party services, and reserves/escrow deposits charged to a borrower may not vary at settlement by greater

than a tolerance of 10% from the amounts for such categories reported on the good faith estimate, except when a borrower chooses to purchase a more expensive service, absent unforeseeable and extraordinary circumstances.

(4) The amounts of the categories of per diem interest, hazard insurance and optional owner's title insurance reported on the good faith estimate shall be carefully prepared based upon the originator's knowledge of relevant prices, but are not subject to tolerances, which means that charges may vary without being subject to any tolerance.

(5) In mortgage broker loans, the borrower payment to the lender for a lower interest rate must be paid in full to the lender and the lender payment to the borrower for a higher rate must include any lender payments for the transaction other than for the par value of the loan.

(6) Loan originators must include all charges correctly within their prescribed category on the good faith estimate and not include any "mark ups" or "up charges" in their estimates of charges for categories III(C) through (J) of the good faith estimate. The Loan originator shall include all of its charges in the origination charges and interest rate dependent categories.

(7) No loan originator shall be held responsible for charges imposed on the borrower at settlement for shoppable lender required third party services unless the borrower asked where the services could be obtained within the tolerance, used a settlement service provider identified by the originator, and was charged an amount in excess of the tolerance.

(e) Form of good faith estimate. A good faith estimate required format is set forth in Appendix C to this part. The good faith estimate may be provided together with disclosures required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, so long as all required material for the good faith estimate is grouped together.

(f) Particular providers required by lender. (1) If the lender requires the use (see § 3500.2, "required use") of a particular provider of a settlement service, other than the lender's own employees, and also requires the borrower to pay any portion of the cost of such service, the good faith estimate must identify the required settlement service provider.

(2) Except for a provider that is the lender's chosen attorney, credit reporting agency, or appraiser, if the lender is in an affiliated business relationship (see § 3500.15) with a provider, the lender may not require the use of that provider.

(3) If the lender maintains a controlled list of required providers (five or more for each discrete service) or relies on a list maintained by others, and at the time of application the lender has not yet decided which provider will be selected from that list, then the lender may satisfy the requirements of this section if the lender provides the borrower, on the good faith estimate, with the names of the required providers, and the estimated charge for the particular settlement service.

* * * * *

4. In § 3500.8, the third sentence of paragraph (a) is revised to read as follows:

§ 3500.8 Use of HUD–1 or HUD–1A settlement statements.

(a) * * * Alternatively, the form HUD–1A may be used for these transactions, but not for transactions in which there is a lender credit to the borrower. * * *

* * * * *

5. In § 3500.10, a new sentence is added to paragraph (e) to immediately follow the second sentence to read as follows:

§ 3500.10 One-day advance inspection of HUD–1 or HUD–1A settlement statement; delivery; recordkeeping.

(e) * * * Loan originators shall retain documentation of unforeseeable and extraordinary circumstances related to good faith estimates provided to borrowers and packagers shall retain documentation of such circumstances related to guaranteed mortgage package agreements provided to borrowers for five years after settlement.* * *

* * * * *

6. In § 3500.14, a new paragraph (g)(1)(viii) is added to read as follows:

§ 3500.14 Prohibition against kickbacks and unearned fees.

* * * * *

(g)(1)(viii) Any discounts negotiated among settlement service providers, packagers, or any other entities for settlement services provided that the entire discounted price is charged to the borrower and reported as part of the total charge within Sections III(C) through (J) of the good faith estimate as appropriate.

* * * * *

§ 3500.16 [Redesignated as §3500.20]

7. In § 3500.16 is redesignated as § 3500.20 and a new § 3500.16 is added to read as follows:

§ 3500.16 Guaranteed Mortgage Package—Safe Harbor.

(a) General. A guaranteed mortgage package is defined in § 3500.2.

(b) Violation and safe harbor. A guaranteed mortgage package, including payments, discounts, pricing arrangements or any other exchanges of things of value by and between persons or entities offering their services and compensated through guaranteed mortgage packages (hereinafter "packagers") and participating settlement service providers as part of such a transaction, shall not violate section 8 of RESPA or § 3500.14 and satisfies sections 4 and 5 of RESPA if the conditions set forth in this section are met.

(c) Criteria for guaranteed mortgage package. In order to qualify for the safe harbor stated in paragraph (b) of this section, packagers must deliver a guaranteed mortgage package offer within 3 days of application or such time as may be reasonable in special cases but prior to the borrower paying any fee, that includes:

(1) A package of designated lender required settlement services at a guaranteed price from the time the guaranteed mortgage package is offered by the packager to the borrower through settlement provided that the borrower accepts the guaranteed mortgage package agreement within 30 days, or such greater period offered by the packager, from when the document is delivered or mailed to the borrower;

(2) A mortgage loan with an interest rate guarantee and an Annual Percentage Rate (APR) that is guaranteed through settlement provided that the borrower accepts the guaranteed mortgage package agreement within 30 days, or such greater period offered by the packager, and the interest rate is adjusted only to reflect changes in market interest rates based on movement in a observable and verifiable index or other appropriate measure; and

(3) A guaranteed mortgage package agreement as prescribed in and completed in conformity with Appendix F to this part which:

(i) Explains that the guaranteed mortgage package includes necessary settlement services required by the lender and guarantees a package price for these services through settlement provided that the borrower accepts the GMPA within 30 days, or such greater period offered by the packager, from when the document is delivered or mailed to the borrower;

(ii) Commits the packager to provide all settlement services and includes all charges required to complete your mortgage except those specified as other required settlement costs and advises the borrower if the packager anticipates whether a pest inspection, lender's title

insurance, credit report, and/or appraisal will be anticipated;

(iii) Identifies and provides estimates for other required settlement costs, such as per diem interest, reserves/escrow, and hazard insurance, and optional owner's title insurance and explains that any required settlement costs not separately itemized and estimated are the responsibility of the packager;

(iv) Identifies and explains any borrower option to utilize payments to or from the lender as a result of the interest rate to pay settlement costs or adjust the interest rate and mortgage payments;

(v) Identifies any reports such as the pest inspection, lender's title insurance, appraisal or credit report for the loan transaction that are available to the borrower at the borrower's request;

(vi) Specifies that the packager will ensure that a mortgage loan is provided as part of the package and that, after acceptance by the borrower and the lender, the lender participating in the package shall provide a loan with the same terms as set forth in the guaranteed mortgage package agreement;

(vii) Advises the borrower of whether the loan is an adjustable rate mortgage and the terms of the mortgage, whether there is a prepayment penalty and that the borrower can request its terms, whether there is a balloon payment, whether the guaranteed mortgage package price includes an upfront maximum mortgage insurance premium based upon the borrowers assertion of the value of the property and loan amount needed and that the mortgage insurance premium may decrease or be removed after full underwriting; and

(viii) Commits the packager to the terms of the guaranteed mortgage package agreement upon borrower acceptance and payment of any fee, subject only to acceptable final underwriting and property appraisal.

(d) Impact on Good faith estimate and HUD–1/1A. Where a packager satisfies the criteria in paragraph (c) of this section, the packager shall provide the borrower the guaranteed mortgage package agreement in lieu of the good faith estimate. In loans originated through guaranteed mortgage package agreements, the HUD–1/1–A shall be completed at settlement by itemizing all the included services (but not the charges) of third party settlement service providers that were performed for the guaranteed mortgage package price. The guaranteed mortgage package price shall be shown as the origination fee on line 801 of the HUD–1/HUD–1A. Additionally, the packager must list the finance charges needed to calculate the APR on an addendum to the HUD–1 or HUD–1A.

(e) Exclusions from safe harbor.

(1) Notwithstanding the existence of a guaranteed mortgage package, section 8 of RESPA remains applicable to payments by and between packagers or participating settlement service providers and parties outside the guaranteed mortgage package.

(2) The Affiliated Business Arrangement (AfBA) exemption requirements, set forth in § 3500.15, remain in effect when a borrower is referred to a packager by a person or entity not otherwise participating in the guaranteed mortgage package who is an affiliate of the packager or any participating settlement service provider.

(3) The guaranteed mortgage package safe harbor shall not be available where the rate or points and fees of a Federally related mortgage loan make the loan subject to the Home Ownership Equity Protection Act (HOEPA).

§ 3500.19 [Amended]

8. In § 3500.19(c) the cross references to "§ 3500.16" and to "section 3500.16" are both revised to read "§ 3500.20"

9. Appendix A to part 3500—Instructions for Completing HUD–1 and HUD–1A Settlement Statements is amended as follows:

Appendix A to Part 3500—Instructions for Completing HUD–1 and HUD 1–A Settlement Statements; Sample HUD–1 and HUD 1A Statements

a. The second paragraph of the General Instructions is revised to read as follows:

General Instructions

* * * * *

Except with respect to a loan resulting from a Guaranteed Mortgage package, the settlement agent shall complete the HUD–1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay for at settlement. Charges to be paid outside of settlement, including cases where a non-settlement agent (i.e., attorneys, title companies, escrow agents, real estate agents or brokers) holds the Borrower's deposit against the sales price (earnest money) and applies the entire deposit towards the charge for the settlement service it is rendering, shall be included on the HUD–1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and shall not be included in computing totals. P.O.C. items should not be placed in the Borrower or Seller columns, but rather on the appropriate line next to the columns. In the case of loans where settlement services are paid through the interest rate, any charges to be paid by the lender should not be marked as P.O.C. but should be shown in the appropriate column and used in computing totals. In loans originated through guaranteed mortgage package agreements, the HUD–1/1-A shall indicate through checkmarks in the appropriate column which third party settlement services were performed for the guaranteed mortgage package price. The guaranteed mortgage package price shall be shown on line 801. Additionally, the finance charges needed to calculate the APR will be disclosed in an addendum on the HUD–1.

* * * * *

b. The Line Item Instructions for the HUD–1 paragraph describing line 204–209 are revised to read as follows:

* * * * *

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Examples include cases in which the Seller has taken a trade-in or other property from the Borrower in part payment for the property being sold. They may also be used in cases in which a Seller (typically a builder) is making an "allowance" to the Borrower for carpets or drapes which the Borrower is to purchase separately. Lines 204–209 can also be used to indicate any Seller financing arrangements or other new loan not listed in Line 202. For example, if the Seller takes a note from the Borrower for part of the sales price, insert the principal amount of the note with a brief explanation on Lines 204–209. Additionally, a blank line in this series shall be used to record the total of all payments from the Lender to the Borrower based on the transaction, including payments based on a higher interest rate.

* * * * *

c. Following the instructions for HUD–1 Line 603, Section L. Settlement Charges is revised to read as follows:

* * * * *

Section L. Settlement charges. For all items except for those paid to and retained by the Loan Originator, the name of the person or firm ultimately receiving the payment should be shown. In the case of loans where settlement services are paid through the interest rate, any charges to be paid by the lender should be shown in the appropriate column used in computing totals.

* * * * *

d. The paragraph immediately following "Line Item Instructions for Completing HUD—1A" is revised to read as follows:

* * * * *

Note: HUD–1A is an optional form that may be used for refinancing and subordinate lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property or does not involve any lender payments to the borrower based on the transaction, including any payments based on a higher interest rate. The HUD–1 form may also be used for such transactions, by utilizing the borrower's side of the HUD–1 and following the relevant parts of the Line Item Instructions. The use of the HUD–1 or HUD–A is not mandatory for open-end lines

of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

* * * * *

e. For HUD 1–A, the second paragraph following "General Instructions" is revised to read as follows:

* * * * *

The settlement agent shall complete the HUD–1A to itemize all charges imposed upon the borrower by the lender, whether to be paid at settlement or outside of settlement, and any other charges that the borrower will pay for at settlement. For all items except for those paid to and retained by the lender, the name of the person or firm ultimately receiving the payment should be shown together with the total amount paid to such person in connection with the transaction. In loans originated through guaranteed mortgage package agreements, the HUD–1A shall be completed at the time of settlement by indicated through checkmarks in the appropriate column which settlement services were performed for the guaranteed mortgage package price. The guaranteed mortgage package price shall be shown on line 801. Additionally, the finance charges needed to calculate the APR will be disclosed in an addendum on the HUD–1A.

10. Appendix C to part 3500 is revised in its entirety, including the heading, to read as follows:

Appendix C to Part 3500—Instructions for Completing Good Faith Estimate; Sample Good Faith Estimate

Instructions for completing the Good Faith Estimate

The following are instructions for completing the Good Faith Estimate required under section 5 of RESPA and Regulation X of the Department of Housing and Urban Development (24 CFR 3500.7). This form is to be used as a statement of estimated settlement charges. The instructions for completion of the Good Faith Estimate are primarily for the benefit of the loan originator who prepares the form and need not be transmitted to the borrower(s) as an integral part of the Good Faith Estimate.

General Instructions

The loan originator preparing the Good Faith Estimate may fill in information and amounts on the form by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Under these instructions the "form" refers to the Good Faith Estimate form.

All fees and charges shall be disclosed in dollar amounts. Percentages may be added, when applicable.

Specific Instructions

I. *Our Services.* Loan originators shall include a paragraph substantially the same as the paragraph set forth on the form in this Appendix. This paragraph explains the services provided by the loan originator and emphasizes that the borrower should shop and compare different loans and originators to find the best loan for his or her individual situation.

II. *Loan Terms.* Loan originators shall fill in the mortgage amount, indicate whether the loan is a fixed or variable loan, specify the interest rate and Annual Percentage Rate (APR) and fill in the length of the loan (i.e. number of years/months) and the monthly payment, including any mortgage insurance.

III. *Settlement Costs.* This section covers the settlement costs associated with the mortgage loan and warns the borrower that the costs may change if a different mortgage product is chosen or the interest rate changes.

III.A. *Origination Charges.* Loan originators shall total all origination charges to the lender and the broker in this category on the form. For mortgage brokers, these charges shall include all charges from the borrower that are paid to the mortgage broker for the transaction. For lenders, these charges shall include all direct charges from the borrower for the transaction, other than discount points reported in line III B (2). The estimated total origination charges shall not vary from the actual costs at the time of settlement (0% tolerance), absent unforeseeable and extraordinary circumstances.

III.B. *Interest Rate Dependent Payment.*

(1) In loans originated by mortgage brokers, mortgage brokers shall subtotal any lender payments to the borrower for a higher interest rate as well as any other lender payments for the transaction other than for the par value of the loan in this category on the form.

(2) In loans originated by mortgage brokers, mortgage brokers shall subtotal any borrower payments to the lender for a lower interest rate.

The mortgage broker shall include the payments in (1) and (2) when computing the net loan origination charge due from borrower (Sum of A and B). Lenders may complete this section at their option.

III.C. *Lender Required and Selected Third Party Services.* Loan originators shall subtotal all charges for lender required and lender selected third party services in this section on the form. This subtotal shall cover all such services except for title related services and title insurance in connection with the borrower's loan and shall not vary from actual costs at the time of settlement (0% tolerance), absent unforeseeable and extraordinary circumstances.

III.D. *Title Services and Title Insurance.* Loan originators shall subtotal all fees or charges for title and settlement agent services and title insurance in this category of the form. On the form, the loan originator also must indicate whether the services and insurance are loan originator selected or borrower selected. If title services and insurance are loan originator/lender selected, the estimate shall not vary from actual costs at the time of settlement (0% tolerance), absent unforeseeable and extraordinary circumstances. If title services and/or insurance are shoppable by the borrower, and the borrower ultimately elects to use a provider identified by the loan originator/lender, the final amount at settlement may not exceed the estimate by more than 10% (10% tolerance) absent unforeseeable and extraordinary circumstances, except when a borrower chooses to purchase a more expensive service.

III.E. *Shoppable Lender Required Third Party Services.* Loan originators shall subtotal all charges for loan originator/lender required third party services in this section. If services are shoppable by the borrower, and the borrower ultimately elects to obtain some or all of these services through the loan originator, the final amount at settlement may not exceed the loan originator's estimate by more than 10% (10% tolerance) absent unforeseeable and extraordinary circumstances, except when a borrower chooses to purchase a more expensive service.

III.F. *Government Charges—Taxes (State and Local).* Loan originators shall subtotal all state and local fees, charges, and taxes that will be required at settlement in this section. This estimate shall be based on an assumed settlement date that the loan originator will specify on the form. The estimate shall not vary from actual costs at the time of settlement (0% tolerance) for the assumed settlement date, absent unforeseeable and extraordinary circumstances.

III.G. *Reserves/Escrow.* Loan originators shall subtotal reserves/escrow amounts that will be required by the lender at settlement. This section shall include only required escrow items such as taxes, hazard insurance, and mortgage insurance. The estimate shall not vary from the actual costs required for reserves/escrow at the time of settlement by more than 10% (10% tolerance) absent unforeseeable and extraordinary circumstances, except when a borrower chooses to purchase a more expensive service.

III.H. *Per Diem Interest.* Loan originators shall disclose the estimated cost of the minimum amount of per diem interest that the lender will charge in this section. Although loan originators are expected to provide reliable figures in this section based on their experience, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

III.I. *Hazard Insurance.* Loan originators shall disclose the estimated cost of the minimum amount of hazard insurance that the lender will require in this section. Although loan originators are expected to provide reliable figures in this section based on their experience, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

III.J. *Optional Owner's Title Insurance.* Loan originators shall disclose the estimated subtotal of optional homeowner's title insurance that the borrower may choose to purchase. Although loan originators are expected to provide reliable figures in this section based on their experience, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

IV. *Options to Pay Settlement Costs and Lower Your Interest Rate.* Loan originators shall explain the borrower's options for paying settlement costs in this section of the form by using material that is essentially the same as that contained in paragraphs A, B, C and D of this section at Appendix C along with discussing these issues with the

borrower, as needed. The loan originator must fill in the chart to demonstrate to the borrower how the borrower's chosen interest rate, monthly payments, and settlement costs compare to a loan of the same size with a lower and a higher interest rate. The completed chart serves as an example for the loan originator of how to fill out the categories. Loan originators shall use figures relevant to the borrower's transaction.

V. *Additional Loan Terms.* Loan originators shall indicate whether the mortgage loan is subject to a prepayment penalty and whether the loan has a balloon payment due at the conclusion of the loan term. If there is a prepayment penalty, the loan originator shall advise the borrower that he or she is entitled to a copy of the prepayment penalty terms upon request. For Adjustable Rate Mortgage Loans, loan originators must indicate the interest rates and adjustment terms of the adjustable rate mortgage loan.

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Good Faith Estimate of Settlement Costs (GFE)

This form provides a reliable estimate of the funds that will be required from you, _____, the borrower(s) to obtain a mortgage using our company as your loan originator. This GFE covers both our charges, the charges of other settlement service providers who perform services that are required by the lender to close your mortgage loan, and applicable State and local government charges and taxes due at settlement.

The following estimate is valid for ____ days [30 days or greater] from the date this form is delivered or mailed to you, if you qualify for this mortgage based on your credit rating, the appraisal, and other appropriate criteria.

THE PROPERTY: You seek to [purchase][refinance] a residential property at
(Address)_____

I. OUR SERVICES:

As a loan originator, we perform the services necessary to obtain and process your mortgage loan with our own funds or one or more funding sources. **We do not offer loans from all funding sources and we cannot guarantee the lowest price or best terms available in the market. You should compare the prices in the boxes below and shop for the loan originator, mortgage product, and settlement services that best meet your financing needs.**

II. LOAN TERMS:

For a mortgage amount of $_____, at a [fixed] interest rate of ___%, your APR will be ____%,, which includes ____% for mortgage insurance. Your loan term will be [ ] years with [ ] monthly payments. Your [initial] monthly payment for principal and interest and mortgage insurance on this loan will be $ _____. *See Section V. for loan terms related to adjustable rate mortgages, applicable prepayment penalties and balloon payments.*

III. SETTLEMENT COSTS:

If you choose a different mortgage product or you do not lock your interest rate, some of the estimates listed below may change. The following costs will have to be paid at or before loan closing:

A. Origination Charges(HUD-1 800 Series)* $_____

See Attachment A-1 listing origination charge subtotals for the lender and the broker.

B. Interest Rate Dependent Payment (200, 900)***

Until you lock in your interest rate these payments may change.

(1) (+) Borrower Payment to Lender for Lower Interest Rate: $_____

(2) (-) Lender Payment to Borrower for Higher Interest Rate: $_____

NET LOAN ORIGINATION CHARGE DUE FROM BORROWER (Sum of A and B): $_____

C. Lender Required and Selected Third Party Services (800, 1300)* $_____

These are third party services that are required and selected by the lender, these services must be disclosed to you. *See Attachment A-1 itemizing these services.*

D. Title Services and Title Insurance (1100) $_____

(1) ____ lender selected*

(2) ____ borrower selected**

E. Shoppable Lender Required Third Party Services (800, 1300)** $_____

These are third party services that are required by the lender but you may shop for (other than title services and title insurance). *See Attachment A-1 itemizing these services.*

F. Government Charges –Taxes, State and Local (1200)* $_____

Government charges due at the time of settlement assuming a closing on _____.

G. Reserves/Escrow, (if required) (1000)** $_____

H. Per Diem Interest (900) ***

Per Diem Daily Rate $_____ at _____ days with an estimated settlement date of_____. $_____

I. Hazard Insurance(900)***

$_____

J. Optional Owner's Title Insurance (1100)***

$_____

TOTAL SETTLEMENT COSTS DUE FROM BORROWER (Sum of A-J): $_____

***The charges listed in A, C, D (if selected by the lender), F, and H (daily rate) will not vary except in unforeseeable and extraordinary circumstances as prescribed by federal regulation.**

****The charges listed in D (if selected by the borrower), E, and G must not be exceeded at settlement by more than 10% absent unforeseeable and extraordinary circumstances, except when a borrower chooses to purchase a more expensive service.**

*****The charges listed in B, H, I, and J are not subject to a tolerance, therefore these charges may vary.**

IV. OPTIONS TO PAY SETTLEMENT COSTS AND LOWER YOUR INTEREST RATE

A. Cash Payment at Settlement: You may pay all or part of your required settlement costs at settlement using your available funds.

B. Borrowing Additional Funds to Pay Settlement Costs: You may be able to pay all or part of your settlement costs by borrowing the needed funds as part of your mortgage loan principal. If you chose this option, your monthly payments will increase.

C. Pay Settlement Costs Through a Higher Interest Rate:
You may be able to lower your settlement costs in exchange for paying a higher interest rate on your mortgage loan. This higher interest rate will increase your monthly payments.

D. You May Lower Your Interest Rate:
You may be able to lower the interest rate on your loan by paying additional funds at closing, commonly referred to as "discount points." The reduced interest rate will lower your monthly payments.

The following table will show you how higher and lower interest rates affect your loan and loan payments.

	GFE Terms You Selected	Higher Interest Rate	Lower Interest Rate
New Loan Balance	$100,000	$100,000	$100,000
Interest Rate	7.00%	7.25%	6.75%
Monthly Principal & Interest & PMI	$700.30	$717.18	$683.60
Credit	$100	$1,100	N.A.
Discount Points	N.A.	N.A.	$900
Change in Cash to Close From GFE Terms You Selected		$1,000 less	$1,000 more
Change in Monthly P&I from GFE Terms You Selected		$16.88 more	$16.70 less

V. ADDITIONAL LOAN TERMS

- ☐ **This mortgage IS subject to Prepayment Penalty.**
- ☐ **This mortgage IS NOT subject to Prepayment Penalty.**
- ☐ **This mortgage HAS a balloon payment of _____, which will be due at the conclusion of the loan term.**
- ☐ **This mortgage DOES NOT HAVE a balloon payment.**

Adjustable Rate Mortgage (ARM) Loans

This is an Adjustable Rate Mortgage (ARM) Loan. The initial interest rate for this ARM loan is _____. The first adjustment will occur after ____months/years and every _____months/years thereafter for a period of _____ months/years. The interest rate is based on the ____index and may increase by a margin of ____ percent over this index with each adjustment. The maximum rate increase adjustment per period is _____and the maximum interest rate that can ever apply to this loan is _____.

Attachment A–1 instructions

Attachment A–1. "Required Use" and Shoppable Third Party Providers.

A. The loan originator must itemize on this form any services that may be independently obtained by the borrower and the estimated cost (based on local market averages for the area where the property is located). The loan originator must also indicate (by checking the appropriate box) any lender-required, lender selected services, along with the estimated charge (based on local market averages for the area where the property is located), and name of the provider.

B. In reporting subtotals for mortgage broker/lender and title agent/title insurance, the loan originator must indicate the names of the service providers and the subtotals of all their charges and fees.

Attachment A-1

A. "Required Use" and Shoppable Third Party Providers

Federal regulation 3500.7(f) requires that if a lender requires the use of a particular provider of a settlement service, other than the lender's own employees, and also requires the borrower to pay any portion of the cost of such service, then the good faith estimate must: (1) state that the particular provider is required; (2) state the providers name; and (3) state the estimated charge. These services are marked as "required use."

The services marked as shoppable on this list that are also required by us to close your loan, however, unlike the "required use" services, we do not require that you use a particular provider. You may want to shop for these services on your own to find the best price and service to meet your needs. However, if you chose to use a company that is more expensive then our selection, then the excess over our estimate below is excluded from the 10% limit on the closing cost estimate given by us. The following lists the services and companies used by us and price estimates for those services.

Req. Use	Shoppable	Service	Provider	Estimate

B. Loan Origination and Title Services Subtotals

Federal regulation 3500.7(c) requires that this Attachment indicate the subtotals of the lender and mortgage broker origination charges; the subtotals of all the charges for title and settlement agent services, including any commissions for title insurance; and the subtotal for the title insurance premium.

Service	Subtotal
Mortgage Broker Charges (HUD 1 line 800)	
Lender Charges (800)	
Title Agent Charges(1101)	
Title Insurance Premium (1108)	

BILLING CODE 4210–27–C

11. A New Appendix F to part 3500 is added to read as follows:

Appendix F to Part 3500—Instructions for Completing Guaranteed Mortgage Package Agreement; Sample Guaranteed Mortgage Package Agreement

Instructions for Completing the Guaranteed Mortgage Package Agreement

The following are instructions for completing the guaranteed mortgage package agreement under Regulation X of the Department of Housing and Urban Development (24 CFR 3500.16(g)(1)(ix)). This form is to be used as a statement of guaranteed settlement charges, interest rate, and costs. The instructions for completion of the guaranteed mortgage package agreement are primarily for the benefit of the packager who prepares the form and need not be transmitted to the borrower(s) as an integral part of the guaranteed mortgage package agreement.

General Instructions

The loan packager preparing the guaranteed mortgage package agreement may fill in information and amounts on the form by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Under these instructions the "form" refers to the guaranteed mortgage package agreement form.

The guarantee includes all services provided in connection with the mortgage package, except for per diem interest, reserves/escrow, hazard insurance, and optional owner's title insurance.

Specific Instructions

Packagers shall include a paragraph substantially the same as the introductory paragraph set forth in Appendix F that explains the nature of the package and that the guaranteed mortgage package agreement remains open for a minimum of 30 days, or such greater period offered by the packager, from when the document is delivered or mailed to the borrower. Within that time period the borrower must accept the agreement and pay a minimal fee to make it binding. The packager shall fill out the property address and indicate whether the transaction is a purchase or refinance.

I. *Interest Rate Guarantee.* The packager shall specify an interest rate guarantee and Annual Percentage Rate (APR), as well as the amount of any mortgage insurance that is the APR, in this section of the form, which the borrower may accept and lock at application. While the guaranteed mortgage package agreement offer is open, if the borrower does not accept or lock, the interest rate shall be tied to an observable and verifiable index, or other appropriate data or means, and may not change except in relation to said index or measure during the time the offer is pending. If the borrower does not apply for a loan within 30 days, or such greater period offered by the packager, the offer will expire.

II. *Guaranteed Mortgage Package.* The packager shall specify a lump sum package price for covered settlement services in this section of the form. At a minimum, this amount must include all origination services, title services and title insurance, other packager or lender required third party services, all government charges, and an upfront maximum mortgage insurance premium, if applicable.

III. *Other Required Settlement Costs.* The packager shall itemize any other required settlement charges in this section of the form as permitted under § 3500.16. Any settlement costs not separately itemized in this section are presumed to be included in the Section II guarantee.

III.A. *Per Diem Interest.* The packager shall disclose the estimated cost of the minimum amount of per diem interest that the lender will require in this section. Although loan originators are expected to provide reliable figures in this section based on their experience, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

III.B. *Reserves/Escrow.* The packager shall accurately indicate the estimated subtotal for reserves/escrow in this section on the form. This estimate shall cover all reserves/escrow deposits required by the lender for such items as taxes, hazard insurance, and mortgage insurance. The final amount required to be placed in reserves/escrow at settlement may not exceed the estimate by more than 10% (10% tolerance), absent unforeseeable and extraordinary circumstances. The packager must document any such circumstances and retain the document in accordance with § 3500.10(e) of this part.

III.C. *Hazard Insurance.* The packager shall estimate the cost of the minimum amount of hazard insurance that the lender will require in this section on the form. Although loan originators are expected to provide reliable figures in this section based on their experience, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

IV. *Optional Owner's Title Insurance.* The packager shall estimate the cost of optional owner's title insurance that the borrower may choose to purchase. Although packagers are expected to provide reliable figures in this category, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

V. *Options to Pay Settlement Costs and Lower Your Interest Rate.* Packagers shall explain the borrower's options for paying settlement costs in this section by using material that is essentially the same as that contained in paragraphs A, B, C and D of this section at Appendix F, along with discussing these issues with the borrower, as needed. The packager must fill in the chart to demonstrate to the borrower how the borrower's chosen interest rate, monthly payments, and settlement costs compare to a loan of the same size with lower and higher interest rates. The completed chart serves as an example for the packager of how to fill out the categories. Packagers shall use figures relevant to the borrower's transaction.

VI. *Additional Loan Terms.* Packagers shall indicate whether the mortgage loan is subject to a prepayment penalty and whether the loan has a balloon payment due at the conclusion of the loan term. If there is a prepayment penalty, the packager shall advise the borrower that he or she is entitled to a copy of the prepayment penalty terms upon request. For Adjustable Rate Mortgage Loans, packagers must indicate the interest rates and adjustment terms of the adjustable rate mortgage loan.

VII. *Guaranteed Mortgage Package Agreement.* This section must be signed by an authorized agent of the packager and the borrower to become a binding contract for the guaranteed mortgage package at the guaranteed mortgage package price. After acceptance by the borrower, non-lender packagers must ensure that the lender signs the GMPA agreeing to provide the loan included in the guaranteed mortgage package.

BILLING CODE 4210–27–P

Guaranteed Mortgage Package Agreement

This **GUARANTEED MORTGAGE PACKAGE AGREEMENT** commits us, _____, the **PACKAGER**, to provide you, _____, the **BORROWER(S)**, upon your acceptance and payment of a $____ fee within ____days (30 days or greater)] of the date this form is delivered or mailed to you: (1) a mortgage loan on the property described below at a **GUARANTEED INTEREST RATE**, (2) a **GUARANTEED MORTGAGE PACKAGE PRICE** for settlement services required by the lender; (3) a firm estimate (within 10%) of the amount of **OTHER REQUIRED SETTLEMENT COSTS** you will pay at or before settlement; and (4) a sum of the **TOTAL ESTIMATED SETTLEMENT COSTS** that you will be required to pay at or before settlement to obtain your mortgage.

This Agreement is subject to verification of your credit rating, final property appraisal, and other appropriate underwriting criteria. **Other providers offer similar packages, or alternative approaches to mortgage origination. You should shop to find the best packager or originator and mortgage product to meet your needs.**

THE PROPERTY: You seek to [purchase][refinance] a residential property at
(Address)_____

I. INTEREST RATE GUARANTEE

We guarantee to provide you an [initial] interest rate of ____on a [fixed rate] [adjustable] mortgage of $_____ for [ ] years with [ ] monthly payments. Your [initial] monthly payment for principal and interest and monthly mortgage insurance on this loan will be $ _____. Your APR will be ____%, which includes _____% for mortgage insurance.

This interest rate is guaranteed through settlement if you accept and sign this agreement now, and lock-in this rate by [insert date/time]. If you choose not to accept by this time, we guarantee that the interest rate will not exceed ____% [over] [under] the [prime] [index] rate for ____days [30 days or greater]. If you do not accept within this period, this offer will expire. If you accept this agreement, but elect not to lock-in the rate at the time of acceptance, we further guarantee that your interest rate will not exceed ___% [over][under] the [prime][index] rate or other standard measurement in lieu of an index when you do lock-in.

II. GUARANTEED MORTGAGE PACKAGE

We will provide you a **GUARANTEED MORTGAGE PACKAGE** for all settlement services and charges required to complete your mortgage, except those specifically set forth in Section IV below, at a **GUARANTEED MORTGAGE PACKAGE PRICE**. You will pay this **GUARANTEED PRICE** in addition to the **OTHER REQUIRED SETTLEMENT COSTS** itemized in Section III. The precise services for each transaction may vary. See Attachment A-1 for an indication of whether we anticipate pest inspection, lender's title insurance and property appraisal services being included in your guaranteed mortgage package.

This guaranteed mortgage package price may include a maximum mortgage insurance premium based upon your assertion of the value of the property and loan amount needed. The mortgage insurance premium may decrease or be removed after full underwriting.

GUARANTEED MORTGAGE PACKAGE PRICE: $_____

III. OTHER REQUIRED SETTLEMENT COSTS:

In addition to the **GUARANTEED MORTGAGE PACKAGE PRICE**, you are or may be required to pay advanced mortgage and hazard insurance premiums, and to establish escrow reserves at settlement. Some of these costs may vary depending on when your loan closes and how much insurance you are required to obtain. **No cost may be imposed on you at settlement that is not specifically itemized and estimated in this Section other than the Guaranteed Mortgage Package Price.**

A. Per Diem Interest (HUD-1 900 Series) $_____
Per Diem at $_____ @ _____ days with an estimated settlement date of_____.

B. Reserves/ Escrow, (if required) **(1000)*** $_____

C. Hazard Insurance (900) $_____

IV. OPTIONAL OWNER'S TITLE INSURANCE (1100) $_____

TOTAL ESTIMATED SETTLEMENT COSTS (SUM OF SEC. III, IV, AND V): $_____

*** Generally, pursuant to federal regulations, the amount stated in line B may not be exceeded at settlement by more than 10% absent unforeseeable and extraordinary circumstances**

V. OPTIONS TO PAY SETTLEMENT COST& LOWER YOUR INTEREST RATE

A. **Cash Payment at Settlement:** You may pay all or part of your required settlement costs at settlement using your available funds.

B. **Borrowing Additional Funds to Pay Settlement Costs:** You may be able to pay all or part of your settlement costs by borrowing the needed funds as part of your mortgage loan principal. If you chose this option, your monthly payments will increase.

C. **Pay Settlement Costs Through a Higher Interest Rate:**
You may be able to lower your settlement costs in exchange for paying a higher interest rate on your mortgage loan. This higher interest rate will increase your monthly payments.

D. **Lower Your Interest Rate:**
You may be able to lower the interest rate on your loan by paying additional funds at closing, commonly referred to as "discount points." The reduced interest rate will lower your monthly payments. The following table will show you how higher and lower interest rates affect your loan and loan payments.

	GMPA Terms You Selected	Higher Interest Rate	Lower Interest Rate
New Loan Balance	$100,000	$100,000	$100,000
Interest Rate	7.00%	7.25%	6.75%
Monthly Principal & Interest & PMI	$700.30	$717.18	$683.60
GMPA Price	$2,600	$1,600	$3,600
Change in Cash to Close From GMPA Terms You Selected		$1,000 less	$1,000 more
Change in Monthly P,I, & PMI from GMPA Terms You Selected		$16.88 more	$16.70 less

VI. ADDITIONAL LOAN TERMS

- ☐ **This mortgage IS subject to Prepayment Penalty.**
- ☐ **This mortgage IS NOT subject to Prepayment Penalty.**
- ☐ **This mortgage HAS a balloon payment of _____, which will be due on _____.**
- ☐ **This mortgage DOES NOT HAVE a balloon payment.**

Adjustable Rate Mortgage (ARM) Loans

This is an Adjustable Rate Mortgage (ARM) Loan. The initial interest rate for this ARM loan is _____. The first adjustment will occur after ____months/years and every _____months/years thereafter for a period of _____ months/years. The interest rate is based on the ____index and may increase by a margin of ____ percent over this index with each adjustment. The maximum rate increase adjustment per period is _____and the maximum interest rate that can ever apply to this loan is _____.

VII. Guaranteed Mortgage Package Agreement:

We are providing this GMPA to you at no cost. If you agree to seek a mortgage loan using our services within 30 days, by signing, dating, and returning this GMPA to us on or before ____, along with a $___ application fee, we will be contractually bound to the terms of this GMPA provided that you qualify for this mortgage based on your credit rating, the appraisal, and other appropriate criteria.

_____ _____
Signature of Authorized Agent Date Signature of Lender Date

_____
Signature(s) of Borrower(s) Date

Attachment A–1 instructions

Attachment A–1. The packager shall indicate in the chart (either yes or no) whether specific services are anticipated to be included in the guaranteed mortgage package price, such as the pest inspection, lender's title insurance, appraisal, and credit report.

Attachment A-1

This list indicates whether we anticipate specific services being included in your guaranteed mortgage package. Upon request, you are entitled to receive a copy of the reports generated by any of the services listed below that are included in your package.

Service	Anticipated (Y/N)
Pest Inspection (HUD-1 line 1302)	
Lender's Title Insurance (HUD-1 line 1109)	
Property Appraisal (HUD-1 line 803)	
Credit Report	

BILLING CODE 4210–27–C

Dated: July 5, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix to FR–4727 Proposed Rule Regulatory Flexibility Analysis

Note: This appendix will not appear in the Code of Federal Regulations.

The following Regulatory Flexibility Analysis is Chapter 5 of the rule's Economic Impact Analysis, which is available for public inspection.

Summary of the Rule's Benefits and Impacts on Small Businesses

The proposed RESPA rule offers a dual approach to problems in the settlement market: A new, simplified GFE combined with tolerances on final settlement costs and a new method for reporting wholesale lender payments in broker transactions; and a guaranteed cost approach based on packaging of settlement services. This chapter provides a summary of benefits, costs, transfers, efficiencies, and market impacts of these two approaches, highlighting the effects on small businesses. Section I discusses the new GFE approach while Section II discusses the guaranteed cost approach, or packaging. The chapter also summarizes alternative approaches that HUD considered that potentially impacted small businesses. The format in this chapter is to list the major findings; additional details about the new GFE approach and packaging are available in Chapters 3 and 4, respectively.

I. New GFE Approach

The main benefits, costs, transfers, and market impacts of the new GFE approach are outlined below, along with the specific impacts on small businesses. Since most brokers and settlement service providers are small businesses, the main impacts of the new GFE approach on these entities are highlighted below in subsections I.C, I.D and I.F.

A. Shopping Benefits

The new GFE approach will improve consumer shopping for mortgages, which will result in better mortgage products at lower prices for consumers.

- The new GFE format in the proposed rule simplifies the process of originating mortgages by consolidating costs into a few major cost categories. This is a substantial improvement over today's GFE, which contains a long list of individual charges that encourages fee proliferation and junk fees, and can often overwhelm and confuse consumers.
- The new GFE contains a statement that clarifies the role that the originator plays in the loan process. It states, for example, that the originator does not distribute the loan products of all funding sources, that the originator does not guarantee the best loan terms, and that the consumer should shop. This will put all borrowers on notice that they should protect their interests by shopping.
- The new GFE also makes cost estimates more certain, by requiring that loan originators adhere to amounts reported on the GFE for major cost categories (such as origination fees), and on additional cost categories give estimates subject to a 10% upper limit, or tolerance. This will reduce the all too frequent problem of borrowers being surprised by additional costs at settlement.
- The new GFE will better inform consumers about their financing choices by requiring that lenders explain the different interest rate and closing cost options available to consumers. For example, consumers will fully understand the trade-offs between reducing their closing costs and increasing the interest rate on the mortgage.
- Altogether, the simplicity and certainty offered by the new GFE should improve comparison shopping for mortgage loans, reduce interest rates and settlement prices for borrowers, and eliminate surprises at settlement. There will be less of the sub-optimal consumer shopping that often characterizes today's mortgage market. In addition, originators will be less able to take advantage of uninformed shoppers.

B. Summary of Estimated Benefits, Costs, Transfers, and Efficiencies

Chapter 3 provided estimates of the magnitude of the benefits, costs, transfers, and efficiencies. Transfers totaled $6.3 billion to borrowers, with $4.5 billion coming from originators and $1.8 billion from third party settlement service providers. In addition to these transfers, there are efficiency gains: Borrowers realize $826 million in efficiency gains from less time spent shopping; and loan originators and third party settlement service providers experience $1.630 billion in efficiency gains, some or all of which have the potential to be passed through to borrowers through competition. Costs to originators rise by approximately $250–$275 million. These estimates are explained further below. While they are based on specific assumptions (see Chapter 3), they provide a sense of the overall effects of the new GFE approach.

- Under one set of assumptions, Chapter 3 estimates that $7.5 billion of the $15 billion in total yield premium payments (YSPs) is not passed through to borrowers to reduce closing costs. If the proposed rule results in half of this $7.5 billion being recaptured by borrowers, then the annual impact would be $3.75 billion. While this figure will vary depending on specific assumptions, it provides a sense of how large the effects of the proposed rule could be on the return of YSPs to borrowers as reduced closing costs.
- Direct origination fees are estimated to be $15 billion (which when added to the $15 billion in YSPs results in total originator compensation of $30 billion). In addition to the $3.75 billion in YSPs recaptured by borrowers, it is also assumed that improved shopping enables borrowers to capture five percent (or $0.75 billion) of originators' direct origination fees of $15 billion.
- Chapter 3 estimates that $18 billion in third-party fees would be subject to increased price pressure as a result of the imposition of tolerances and expanded shopping by originators. While it is difficult to estimate how much tolerances and expanded originator shopping will reduce the $18 billion, this figure provides a base on which this effect will be felt. The estimates reported below assume that third-party fees would fall by 10 percent, or $1.8 billion.
- It was estimated that borrowers would save $6.3 billion in annual settlement

charges.[1] This $6.3 billion represents transfers to borrowers from higher priced producers, with $4.5 billion coming from originators[2] and $1.8 billion from third party settlement service providers. While these figures will vary depending on specific assumptions, it provides a sense of how large the effects of the proposed rule could be on settlement charges to borrowers.

- In addition to the transfers, there are several efficiencies associated with the GFE. Borrowers realize $826 million savings in time spent shopping for loans and third party services. Loan originators save $1.280 billion in time spent with shoppers, in efforts spent seeking out vulnerable borrowers, and from the substitution of more efficient for less efficient originators. Third party settlement service providers save $350 million in time spent with shoppers and from the substitution of more efficient for less efficient third party settlement service providers. Some or all of the $1.280 billion and $350 million in efficiency gains have the potential to be passed through to borrowers through competition.
- Costs to originators rise by $226 million if it takes 10 extra minutes to handle the forms and by $26 to $52 million to make third party arrangements in response to tolerances. (See "Costs and other Impacts" below.)
- As discussed throughout this chapter, the benefit, cost, transfer, and efficiency estimates are based on specific assumptions. The estimates provide a sense of the overall net benefits of the proposed new GFE approach to consumers. The rest of this summary highlights the main impacts of the new GFE approach.

C. New Treatment of Wholesale Lender Payments and Impacts on Brokers

An important feature of the new GFE approach is that it addresses the problem of lender payments to mortgage brokers.

- The proposed rule ensures that in brokered transactions, borrowers receive the full benefit of the higher price paid by wholesale lenders for a loan with an above-par interest rate, that is, yield spread premiums will go directly to the borrower. On both the GFE and HUD–1, the portion of any wholesale lender payments that arise because a loan has an above-par interest rate is passed through directly to borrowers as a credit against other costs. Thus, there is assurance that borrowers who take on an above-par loan receive funds to offset their settlement costs.
- Similarly, the proposed rule ensures that in brokered transactions, consumers who choose to pay discount points receive the full market benefit in terms of lower mortgage interest rates.
- Under these new rules, brokers must report the total origination fees they receive on the GFE and the HUD–1—rather than their origination fees *net* of any yield spread premium they receive. Thus, the new GFE clarifies what brokers are receiving for loan origination.
- Most brokers are small businesses. The above changes in the method for reporting wholesale lender payments on the GFE and HUD–1 will reduce the incomes of those brokers who have been overcharging consumers by receiving a combination of origination fees and yield spread premium payments that is greater than that suggested by competitive markets. The new GFE will clearly indicate both (a) the broker's total origination fee received and (b) the net upfront origination fee to the borrower, after reduction for any yield spread premium that the wholesale lender pays the borrower. Consumers will have full information about broker fees, which will allow them to comparison shop and pay lower fees, compared with the situation they face in today's market.
- As explained in the proposed rule, it is not practical to implement such a system for lenders, which means that lenders can continue to report their origination fees on a net basis if they so choose.[3] However, HUD has designed the new GFE form so that it reduces any anti-competitive effects between brokers and lenders. For purposes of comparing lender and broker offers, the new GFE focuses the borrower's attention on the right number, which is the subtotal after reducing total origination fees by any lender payment to the borrower (i.e. yield spread premium). This should reduce any anti-competitive impacts of the proposed rule on small businesses.
- Furthermore, it is anticipated that market competition will increase the likelihood that yield spread premium payments will be passed through to borrowers throughout the market, in lender (i.e., non-broker) as well as broker transactions. The information that consumers gain from broker transactions concerning the money back on premium loans should make consumers act competitively with respect to premiums on similar loans from non-brokers.
- Brokers as a group will remain highly competitive actors in the mortgage market. Chapter II discusses the factors that will continue to keep brokers competitive with other lenders. As noted above, HUD has also designed the GFE to lessen any anti-competitive effects from the different reporting requirements of lenders and brokers on the new GFE. Therefore, there is no evidence to suggest that there would be any major anti-competitive impact on the broker industry as a whole from the new GFE provisions in the proposed rule.
- Rather, the main impact on brokers (both small and large) of the proposed new treatment of payments by wholesale lenders would be on those brokers (as well as other originators) who have been overcharging uninformed consumers, through the combination of high origination fees and yield spread premiums. As noted above, it is anticipated that market competition, under this new GFE approach, will have a similar impact on those lenders (non-brokers) who have been overcharging consumers through a combination of high yield spread premiums and origination costs.
- As noted above, according to some estimates $7.5 billion in YSPs is not passed through to borrowers to reduce closing costs. While this figure will vary depending on specific assumptions, it provides a sense of how large the effects of the proposed rule could be on the return of YSPs to borrowers as reduced closing costs.

D. Lower Settlement Service Prices

In addition to reducing originator fees, the tighter tolerances of the new GFE approach would result in lower prices for third party settlement services. Settlement service providers who are small businesses would be impacted by any reduction in settlement service prices arising from the tighter tolerances on settlement fees.

- The imposition of tolerances on fees will encourage originators to seek discounts and cut settlement service prices. The proposed rule clarifies that loan originators can make arrangements with their third party settlement service providers (appraisers, settlement service agents, etc.) to lower prices for their customers (i.e., borrowers), provided these prices or any fees on the GFE are not "marked up" or "up charged."
- Section V of Chapter 3 examines the magnitude of third-party fees that would be subject to increased price pressure as a result of the imposition of tolerances and expanded shopping by the originator. As noted above, $18 billion in third party fees would fall into this category. While it is difficult to estimate how much tolerances and expanded originator shopping will reduce the $18 billion, this figure provides a base on which this effect will be felt. The estimates reported above under "Summary of Estimated Impacts" assumed that third-party revenues would fall by $1.8 billion, or 10 percent.
- It is estimated that small settlement service providers would account for $1.3 billion of the $1.8 billion decline in third party revenues. But as discussed in Chapter 3, this estimate is subject to variation.

E. Costs and Other Impacts

Chapter 3 identifies several factors might impact the costs of handling the new GFE form. As noted below, many of these factors tend to offset each other with end result being that annual additional costs appear to be small.

- There are some direct costs to originators from complying with the GFE portion of the proposed rule. These do not appear to be very large. While the new GFE format requires less itemization than today's GFE, the HUD–1, with its detailed itemization, remains essentially the same. Originators and closing agents will have to expend some minimal effort in explaining to consumers the cross walk between the new streamlined GFE and the more detailed HUD–1. There is a new page of the GFE showing interest rate

[1] As explained in Section IV.C of Chapter 3, the $6.3 billion represents about 13 percent of the baseline settlement costs, which include origination fees and selected third party costs (appraisal, credit report, tax service and flood certificate and title insurance and settlement agent charges). Survey, pest inspection, and mortgage insurance are not included, as they are not required on all loans. Thus, the $6.3 billion may be a conservative figure. This assumes, of course, that all the other assumptions underlying this scenario are correct.

[2] The $3.75 billion in YSPs recaptured by borrowers plus the $0.75 billion in reduced direct origination fees give $4.5 billion in transfers to borrowers from originators.

[3] This also includes those brokers who have wholesale lines of credit.

alternatives, which should not impose much additional costs, given that most originators do that in some form today. Annual costs to originators rise by $226 million if it takes 10 extra minutes to handle the new GFE form. Chapter 3 also estimates that first-year startup costs could range from $55–$95 million.

- There will be some costs to originators from the need for additional preliminary underwriting in order to generate new GFEs. While this underwriting is already occurring for full applications today, it is expected that some borrowers under the new GFE will get multiple applications and use them to shop. However, it is difficult to estimate how many additional GFEs and preliminary underwritings will result under the new GFE scheme. In addition, as discussed in Chapter 3, the number of applicants going to full underwriting could decline under the proposed rule.
- The imposition of zero and 10 percent tolerances on fees will require lenders to take some actions that will increase their costs. For example, arrangements will have to be made with third party settlement service providers, in order for the originator to come up with estimates that can be delivered within the 10 percent tolerance. As noted above, these are estimated to range from $26 to $52 million.

F. Small Business Impacts—A Summary and Alternatives Considered

Chapter 3 estimates that $3.5 billion of the $6.3 billion in transfers would come from small businesses. The above summary bullets highlight the mechanisms in which this will happen. Improved consumer shopping among originators and more aggressive competition by originators for settlement services will lead to price reductions. Originators (both small and large) and settlement service providers (both small and large) that have been charging high prices will experience reductions in their revenues. Of the $3.5 billion impact on small businesses, it is estimated the $2.2 billion will come from small originators and $1.3 billion, from small settlement service providers.

Market impacts on different types of businesses are discussed throughout Chapter 3, as well as in the summary bullets under C and D above. Chapter 3 also discussed alternative policies that HUD considered when developing the rule. Examples of alternatives that would impact small businesses include:

- One alternative considered was to place the interest rate dependent payment at the bottom of the form rather than directly after the origination charge. This was rejected since an unsophisticated borrower might misinterpret the broker's higher origination charge (relative to a lender who can net the yield spread premium out of the origination charge rather than list it separately as ■ lender payment to the borrower) as indicating that the broker's loan is more costly.
- The Department considered placing the division of the origination charge into broker and lender portions on the front page of the GFE but rejected that idea since the information was not useful in bottom line comparison shopping. Loans with identical origination charges will now have the same numbers presented in the origination charge whether originated by a broker or lender.
- The Department considered having zero tolerance on both the lender and broker components of the origination charge instead of zero tolerance on the total. Zero tolerance on the components would have given brokers less flexibility in switching lenders, even if the total of the lender and broker fees would remain the same. The method selected makes it easier for brokers to switch lenders, so long as the total origination charge does not rise.
- The Department considered having different statements of the services of the originator. The purpose of this section of the GFE is to alert borrowers to shop in order to protect their interests. Different statements could favor brokers over lenders, or vice versa. The Department adopted the idea that every originator would have to deliver the same message, so that every borrower gets the same warning and no originator is at a disadvantage in delivering the message.

II. Guaranteed Cost Packaging or Packaging

The main benefits, costs, transfers, and market impacts of the guaranteed cost or packaging are outlined below, along with the specific impacts on small businesses. Since most brokers and settlement service providers are small businesses, the main impacts of packaging on these entities are highlighted below in subsection II.F.

A. Overview of Packaging Benefits

First, guaranteed packaging will improve and increase borrower shopping for mortgages. Basically, guaranteed packaging reduces the loan offer to:a settlement package price, an interest rate, an APR, and a PMI premium rate. The package price and the PMI premium has zero tolerance, and the interest rate is guaranteed if locked (otherwise the rate varies with a market index). In addition, the offer is free and, if agreed upon by the borrower, the offer becomes a contract that is enforceable. These are all advantages over today's process of shopping for mortgages. Economic efficiencies result from easier and less time consuming shopping under packaging. Borrowers are better informed, shop better, and reach better deals.

Second, the guaranteed packing approach would remove regulatory barriers that are today preventing market competition from reducing settlement prices. Under current law, a providers' efforts to enter into volume arrangements with settlement service firms may be regarded as illegal and restrictions against mark-ups of third party costs may impede the packaging of services. Under HUD's proposed rule, packagers will be able to enter into cost-reducing, volume-discount arrangements, and competition among packagers will pass these lower costs through to borrowers at mortgage settlement.

B. Summary of Estimated Benefits, Costs, Transfers, and Efficiencies

Chapter 4 presents estimates of the magnitude of the benefits, costs, transfers, and efficiencies associated with packaging. Transfers total $10.3 billion to borrowers, with $6.7 billion coming from originators and $3.6 billion from third party settlement service providers. In addition to these transfers, there are efficiency gains: borrowers realize $1.652 billion in efficiencies from less time spent shopping and loan originators and third party settlement service providers realize $3.410 in efficiency gains, some or all of which have the potential to be passed through to borrowers through competition. These estimates are explained further below. While they are based on specific assumptions (see Chapter 4), they provide a sense of the overall effects of packaging.

While these benefits of packaging are basically similar to the benefits of the new Good Faith Estimate approach discussed in Section I, it is anticipated that packaging will improve shopping and lower settlement costs to an even greater extent than the GFE approach. Above, it was estimated that borrowers could save $6.3 billion in annual settlement costs under the new GFE approach. It is anticipated that a system based on packaging alone would lead to even greater savings for borrowers, as transfers from firms to borrowers will rise by $4 billion for a total of $10.3 billion. Originators contribute $6.7 billion of this and third party settlement service providers, $3.6 billion. This benefit to consumers comes from further reductions in overcharges that competition passes on to borrowers. Under this scenario, the final savings to the borrower would depend on how the market settles down between the two methods of loan origination—the new GFE approach and packaging. If it is half and half, borrower gains are slightly over $8 billion.

In addition to the transfers, there are several efficiencies associated with packaging (see the summary in Section VII in Chapter 4). Borrowers realize $1.652 billion savings in time spent shopping for loans and third party services. Loan originators save $2.710 billion in time spent with shoppers, in efforts spent seeking out vulnerable borrowers, and from the substitution of more efficient for less efficient originators. Third party settlement service providers save $700 million in time spent with shoppers and from the substitution of more efficient for less efficient third party settlement service providers. Some or all of the $2.710 billion and $700 million in efficiency gains have the potential to be passed through to borrowers through competition.

The simplification and other advantages of the new GMPA will lead to lower costs than under the new GFE. It is assumed that costs under the GMPA will be the same as today's GFE. As discussed in Chapter 4, one area of uncertainty about packaging and the new GMPA concerns the index that is used to ensure that changes in the interest (note) rate reflect changes in the market. Until the exact mechanism is selected, it is difficult to determine the effect of the index on packaging.

Concerns have been expressed about the impacts of the packaging approach on small lenders and small service providers. Chapter 4 estimated that small businesses (i.e., small originators and small service providers) would account for $5.9 billion of the $10.3 billion in transfers. The effects on small businesses are discussed below in II.F.

C. Shopping Benefits

Packaging offers numerous shopping advantages for consumers, compared to today's process of shopping for mortgages. Under packaging, borrowers are better informed and better able to comparison shop.

- Guaranteed packaging will improve and increase borrower shopping for mortgages. Basically, guaranteed packaging reduces the loan offer to two numbers (a settlement package price and an interest rate), has zero tolerance on the package price, and guarantees the interest rate if locked (otherwise the rate varies with a market index). In addition, the offer is free and, if agreed upon by the borrower, the offer becomes a contract that is enforceable. These are all advantages over today's process of shopping for mortgages, as well as over the Good Faith Estimate approach outlined in Chapter 3.
- The simplified loan offer under packaging does away with the proliferation of fees, including junk fees that often characterizes today's mortgage offers.
- The packaging agreement eliminates the separate reporting of the premium or discount associated with brokered loans. This is done to facilitate competition and comparison shopping.
- Economic efficiencies result from easier and less time consuming shopping under packaging. Borrowers are better informed, shop better, and reach better deals.
- In this case, the main transfers will be from originators who are charging above market prices to borrowers who are more informed and better able to comparison shop (see the $6.7 billion estimate reported above).

D. Lower Settlement Service Prices

The packaging approach will result in even lower prices for third party settlement services than estimated above for the new GFE approach.

- The Section 8 safe harbor will allow greatest protection to entities within the package from charges of illegal referral fees, kickbacks, and unearned fees. This will free up packagers to pursue lower prices for third party services in their package without concern that the technique used could be a Section 8 violation. Competition is substituted for regulation.
- Thus, packaging will result in lower prices paid for settlement services, as packagers aggressively seek discounts in third-party service prices. A better shopper (the packager) is substituted for the borrower as the searcher for third party settlement services.
- In addition, there are several efficiencies associated with packaging that could lead to lower costs. Under packaging, originators may deal with one packager, rather than a whole array of third party providers and the packager, who specializes in this activity, may be more efficient than the originator.
- Given the likelihood that there will be competition among a number of packagers, the lower third party service prices will be passed through to borrowers as lower costs for closing a loan. In this case, the main transfers will be from settlement service providers to borrowers (see the $3.6 billion estimate reported above).

E. Impact on Business Operations and Market Structure

The proposed RESPA rule offers a dual approach to settlement market problems—(1) a new, simplified GFE combining tolerances on final settlement costs and a new method for reporting wholesale lender payments; and (2) a guaranteed cost approach based on packaging. Consumers and originators can use either approach, which has the advantage of allowing the market determine the best approach under a given set of circumstances. While there are reasons to expect originators to move toward the packaging approach, it is difficult to estimate the share of the market that will ultimately fall under packaging, as well as the timing of the move toward packaging.

- An uncertainty with respect to the implementation of packaging concerns the interest rate index that determines changes in mortgage rates for borrowers who are shopping (before they sign the guaranteed packaging offer) and for borrowers who choose to "float" rather than "lock-in" their interest rate (at the time they sign the offer). Packaging depends on lenders finding an acceptable interest rate index, or some other mechanism for ensuring that any changes in the interest rate reflect overall market changes. As noted below, there will likely be some costs associated with lenders' guaranteeing that interest rates move only with market conditions, depending on the indexing technique chosen.
- As explained in this chapter, packaging could take several forms—for example, originators could develop their own packages or specialized firms could develop packages, or components of packages, which they would then sell them to originators. The section on small business below highlights several additional market impacts of packaging.

F. Compliance and Other Costs

The simplification and other advantages of the new Guaranteed Mortgage Packaging Agreement (GMPA) will lead to lower costs than under the new GFE.

- The GMPA and HUD–1 with packaging will have substantially fewer numbers and less detail than the current GFE and HUD–1. Only six numbers are required on the first page of the Guaranteed Mortgage Packaging Agreement. This will lead to a more efficient origination process since less time will be spent by the originator and the borrower in deciphering the proliferation of fees that now characterizes the GFE and HUD–1.
- Packaging eliminates the reporting of individual fees within the package and in so doing permits, in effect, average cost pricing. This reduces costs because firms do not have to keep up with an itemized, customized cost for each borrower.
- As mentioned above, there could be some additional costs associated with lenders having to use an as yet undetermined index in order to guarantee market interest rates (a) during the time that the consumer is shopping (after the packager has made the offer) and (b) during the time between the offer being accepted and final closing for those borrowers who choose to "float" rather than "lock-in" their interest rate. The proposed rule asks for comments on how the interest rate index could be determined.
- Originators make a free offer that is also guaranteed. This will require additional information gathering and preliminary underwriting to the extent that borrowers seek multiple offers, beyond what they do in today's market. There could also develop some degree of uncertainty and costs associated with originator's making guaranteed offers based on preliminary underwriting, particularly for those borrowers who typically require extensive underwriting. As explained in Chapter 4, however, this would simply result in the originator making a new loan offer or sending their customer elsewhere.
- There will be some costs associated with the arrangements that packagers have to make with third party settlement service providers, in order for the packager to ensure that there would be no change in the pre-arranged third party prices. But as discussed in Chapter 4, other efficiencies resulting from packagers dealing with third party providers are expected to offset these costs.

G. Summary of Small Business Impacts and Alternatives Considered

As noted above, concern has been expressed about the market impacts of packaging, particularly as they relate to small businesses. The main findings regarding the effects of packaging on small businesses are as follows:

- The nature of locally-provided, third party services (such as appraisal, survey, pest inspection, closing agents) could remain the same under packaging—the main change will involve who purchases these services. Packagers will be the new purchasers of these services, and third party service prices will be lower.
- Under packaging, those third party service providers (both large and small) who are currently charging high prices for their settlement services would experience reductions in the prices of their services. To the extent that third party settlement service providers happen to be small businesses, they would, of course, experience a reduction in their revenues. Of the $3.6 billion in price reductions for third party services, the small business share is $2.5 billion.
- It is estimated that small businesses (i.e., small originators and small service providers) would account for $5.9 billion of the $10.3 billion in transfers to consumers noted above—$3.4 billion of this would come from small originators and $2.5 billion would come from small settlement service providers. As in the case with the new GFE approach, firms suffering losers under packaging are originators and third party providers who are currently charging high prices for their services.
- Still, there is no strong reason to expect that locally-based small businesses could not continue providing third party settlement services under packaging, albeit at possibly lower prices and revenues, as noted above. Services that are local in nature (such as appraisals) will continue to be demanded under the packaging approach. Services that are national in nature and characterized by economies of scale (such as credit reporting)

are already being conducted by larger firms on a national scale.

• There has also been a concern that small lenders would be placed at a disadvantage under packaging because of the "bulk" buying power of large lenders. While this may be the case, it does not have to be. First, there is no evidence of this effect today where large lenders can purchase services such as appraisals on a "bulk" basis. Second, if specialized packaging firms develop, it seems reasonable to expect them to offer their packages to small lenders as well as large lenders. It is difficult to reach firm conclusions about the magnitude of the impact on small lenders.

• Brokers, most of whom are small businesses, could pursue a number of avenues under packaging. They could develop their own package, purchase one from specialized firms, or use the package offered by the wholesale lender they are dealing with. Under packaging, brokers will continue their main function of reaching the consumer, just as they do today. This customer outreach function is not going to go away with packaging.

• Furthermore, Chapter 2 of this Economic Analysis reports that technology improvements and other recent changes in the mortgage market have probably increased the competitive position of brokers relative to other originators. These underlying strengths of brokers are also not going to disappear with packaging.

Chapter 4 discusses alternative policies that were considered with respect to packaging. The Department considered writing this proposed rule as if only lenders could package. This idea was rejected in favor of allowing anyone to package so long as the package contains a loan. This further affords smaller firms the opportunity to offer their services and benefit from a packaging environment.

Under packaging, there is no separate treatment of yield spread premiums or discounts and no special rules for brokers. Thus, all originators present their loans the same way and all the market's competitive forces are applied to everything in the package regardless of the type of originator. No broker, or any other kind of originator for that matter, is at a competitive disadvantage.

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Monday,
July 29, 2002

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2002–03 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2002–03 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2002–03 migratory bird hunting season.

DATES: We will accept all comments on the proposed regulations that are postmarked or received in our office by August 8, 2002.

ADDRESSES: Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, 1849 C Street, NW, Washington, DC 20240 or fax comments to (703)358–2272. All comments received will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1714).

SUPPLEMENTARY INFORMATION: In the March 19, 2002, **Federal Register** (67 FR 12501), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2002–03 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 29 Indian tribes, based on the input we received in response to the March 19, 2002, proposed rule. As described in that rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian tribes in response to tribal requests for recognition of their reserved hunting rights and, for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of the usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations esta' lished under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). The guidelines apply to those tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of **Federal Register** publications pertaining to migratory bird management to all State Directors, tribes, and other interested parties. It is the responsibility of the States, tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource.

Before developing the guidelines, we reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include:

(a) Harvest anticipated under the requested regulations;

(b) Methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, *etc.*);

(c) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

We may modify or establish regulations experimentally, after evaluation and confirmation of harvest information obtained by the tribes.

We believe the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and, therefore, made them final beginning with the 1988–89 hunting season. We should stress here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Population Status

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

May Breeding Waterfowl and Habitat Survey

The May Breeding Waterfowl and Habitat Survey was delayed and extended due to the unusually cold and late spring and only recently completed. Thus, this information is preliminary and population estimates are not yet available. Habitat conditions in May for breeding waterfowl in Canada and the U.S. are generally worse this year than they were last year, due primarily to lack of water in the prairies and cold spring temperatures in the East.

Most survey areas started this spring with a water deficit left over from the winter. Spring rains helped recharge wetlands in most of the northeast, but conditions remained very dry in the west. Conditions in the southern Saskatchewan produced prairies that were the driest in over 30 years. Much of southern Manitoba also was dry this year, and drought continued in most of Alberta. There were fewer wetlands available to birds, because most temporary and seasonal wetlands were dry. In the Dakotas, Montana, and southern Saskatchewan, birds were forced to crowd onto the remaining semi-permanent and permanent ponds. A bright spot in the prairies was the Dakotas, where permanent wetlands remained in good condition from the wet period of 1993–2001. Preliminary reports and survey results suggest that many ducks over-flew these dry areas in the prairies to the boreal forest, where water levels are more stable.

A further negative impact on nesting waterfowl this year was the cold spring temperatures. Winter-like conditions hit the entire surveyed area in early May, and snowstorms and cold temperatures caused birds to halt migration. Migration was delayed for several weeks, as many birds waited for temperatures to warm up and ice to thaw. Snow and cold may have caused some nest loss in the prairies. In many of the northern survey areas, survey biologists reported that this was the latest spring ice breakup in memory. Breakup was so late in northern Ontario, northern Quebec, and Labrador that survey biologists suspected that it came too late for waterfowl to breed in these northeastern areas. However, spring breakup was not too late to prevent breeding in the northwestern areas, from the northern portions of the prairie provinces to Alaska. Conditions there were generally good, but the cold temperatures likely had a negative impact on early-nesting species such as mallards, green-winged teal, and pintails. The only region where habitat conditions for breeding waterfowl are better this year than they were last year is Alaska, where conditions went from poor/fair in 2001 to fair/good in 2002. This improvement is a result of the warmer post-thaw temperatures this year than last year. However, because the ice-melt was very rapid when it finally happened, nests may have been flooded out in parts of Alaska and Labrador.

Since the surveys were flown, water conditions have improved in Montana, the western Dakotas, southern Saskatchewan, and southern Alberta. These areas have received from several inches to a foot or more of rain and/or snow. However, this amount of moisture in such a short period of time has resulted in a lot of flooding, and most biologists think that the rain was probably too late to help nesting waterfowl this year. These improved conditions may help some broods, and may lead to improved water conditions next year.

In summary, waterfowl production is expected to be below normal in most southwestern survey areas, except for the Dakotas, where conditions are better. Production in the northwestern survey areas is harder to assess, because habitat conditions are good but cold spring temperatures likely will have a negative impact on early-nesting species. In the eastern survey areas, conditions ranged from good to excellent in the southern regions, to poor in the north where ice-thaw came too late.

Status of Teal

Preliminary estimates for blue-winged teal from surveyed areas total 4.2 million blue-winged teal, which is below the 4.7 million needed to trigger the 16-day teal season in the Central and Mississippi Flyways.

The 2001–02 season was the fourth consecutive year of an extended (16 days vs. 9 days) September teal season in the Central and Mississippi Flyways. The Atlantic Flyway also had a 9-day teal season. Harvest estimates are not available at this time.

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes has generally stabilized at comparatively high levels, following increases in the 1970s. The Central Platte River Valley, Nebraska, spring index for 2002, uncorrected for visibility, was 313,600 cranes. The photo-corrected 3-year average for 1999–2001 was 396,167, which is within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their respective States in 2001–02. About 8,650 hunters participated in these seasons, which was 24 percent higher than the number participating in the previous year. An estimated 13,964 cranes were harvested in the Central Flyway during the 2001–02 seasons, which was similar to the previous year's estimate. Retrieved harvests in the Pacific Flyway, Canada, and Mexico were estimated to be about 12,381 cranes for the 2001–02 period. The total North American sport harvest, including crippling losses, was estimated at 28,821, about 13 percent lower than the previous year's estimate. The long-term trend analysis for the Mid-Continent Population during 1982–2000 indicates that harvests have been increasing at a higher rate than the trend in population growth over the same period.

The fall 2001 pre-migration survey estimate for the Rocky Mountain Population of sandhill cranes was 16,559, which was similar to the previous year's estimate of 19,990. Limited special seasons were held during 2001 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in a record high harvest of 898 cranes.

Woodcock

Singing-ground and wing-collection surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data for 2002 indicate

that the number of displaying woodcock in the Eastern Region was 1.3 percent lower than levels observed in 2001; however, this decrease was not significant (P>0.10). In the Central Region, there was a 7.9 percent decrease in the number of woodcock heard displaying; however, this change was also not significant. Trends from the Singing-ground Survey during 1992–2002 were −2.1 and −1.5 percent change per year for the Eastern and Central regions, respectively (P<0.01). There were long-term (1968–02) declines (P<0.01) of 2.3 percent per year in the Eastern Region and 1.6 percent per year in the Central Region.

The 2001 recruitment index for the Eastern Region (1.4 immatures per adult female) was the same as the 2000 index, but was 18 percent below the long-term regional average. The recruitment index for the Central Region (1.3 immatures per adult females) was slightly higher than the 2000 index of 1.2 immatures per female, but was 23 percent below the long-term regional average. The index of daily hunting success in the Eastern Region was 2.0 woodcock per successful hunt in both 2000 and 2001, and seasonal hunting success was 8.7 woodcock per successful hunter in both years. In the Central Region, the daily success index increased slightly from 2.0 woodcock per successful hunt in 2000 to 2.1 in 2001; but seasonal hunting success decreased from 10.7 to 10.5 woodcock per successful hunter.

Band-Tailed Pigeons and Doves

A significant decline in the Coastal population of band-tailed pigeons occurred during 1968–2001, as indicated by the Breeding Bird Survey (BBS); however, no trend was noted over the most recent 10 years. Additionally, mineral-site counts at 10 selected sites in Oregon indicate a general increase over the most recent 10 years. Call-count surveys conducted in Washington showed a significant increase during 1997–01 and a non-significant increase during 1975–01. The Interior band-tailed pigeon population is stable with no trend indicated by the BBS over the short- or long-term periods.

Analyses of Mourning Dove Call-count Survey data indicated significant declines in doves heard over both the most recent 10 years and the entire 37 years of the survey in the Central and Western Management Units. In the Eastern Unit, a significant decline was detected over 37 years but no significant trend was indicated over the most recent 10 years. In contrast, a significant increase was found for doves seen over the 10-year period, in the Eastern Unit, while no trends were found in the Central and Western Units. Over the 37-year period, no trend was found for doves seen in the Eastern and Central Units, while a decline was indicated for the Western Unit. A project is under way to develop mourning dove population models for each unit to provide guidance for improving our decision-making process with respect to harvest management. Additionally, a small-scale banding study is being planned to obtain additional information.

The number of white-winged doves in Arizona has been fairly stable since the 1970s. The average number of doves heard per route in 2002 was 26.7. Estimated harvests (99,900 in 2001) are low compared to those occurring several decades ago. In Texas, the range and density of white-winged doves continue to expand. In 2002, the whitewing population in Texas was estimated to be 2,329,000 birds, an increase of 5.7 percent from 2001. A more inclusive count in San Antonio documented more than 1 million birds. An estimated 197,000 whitewings were taken during the special whitewing season in south Texas, with an additional 986,000 birds taken statewide during the regular mourning dove season. The expansion of whitewings northward and eastward from Texas has led to nesting being reported in Louisiana, Arkansas, Oklahoma, Kansas, and Missouri. They have been sighted in Colorado, Montana, Nebraska, Iowa, and Minnesota. Whitewings are believed to be expanding northward from Florida and have been seen in Georgia, the Carolinas, and Pennsylvania.

White-tipped doves are maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting. The count in 2002 averaged 0.97 birds per stop, a 43 percent increase over the count in 2001. The estimated harvest during the special 4-day whitewing season was about 2,400 birds.

Hunting Season Proposals From Indian Tribes and Organizations

For the 2002–03 hunting season, we received requests from 29 tribes and Indian organizations. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage tribes to work with us to develop agreements for management of migratory bird resources on tribal lands. It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a mid-August 2002 **Federal Register** that will include tribal regulations for the early-hunting season. The early season generally begins on September 1 each year and most commonly includes such species as American woodcock, sandhill cranes, mourning doves and white-winged doves. A final rule will also be published in a September 2002 **Federal Register** that will include regulations for late-season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as "Same as permitted in Pacific Flyway States under final Federal frameworks," and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 17, 2002 (67 FR 47224); early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 29 tribes with proposals that meet the established criteria are shown below.

(a) Bois Forte Band of Chippewa, Nett Lake, Minnesota (Tribal Members and Non-Tribal Hunters)

The Bois Forte Band of Chippewa is located in northern Minnesota, as specified in **Federal Register** 66, No. 83. Bois Forte is a 103,000-acre land area, home to 800 Band members. The reservation includes Nett Lake, a 7,400-acre wild rice lake.

In their 2002–2003 proposal, dated June 14, 2002, Bois Forte requested the authority to establish a waterfowl

season on their reservation. The season would be the same as that established by the State of Minnesota, except that shooting hours on opening day would be one-half hour before sunrise to one-half hour after sunset for tribal members. We note that shooting hours for non-tribal members can only go from one-half hour before sunrise to sunset on the reservation. Harvest under their proposal would not alter possession limits or species allowances already in place in Minnesota. Bois Forte requests these hours on opening day and for every hunting day for the remainder of the State's official, established season.

Bag limits for non-tribal hunters will not be changed from current, State of Minnesota established levels. Non-tribal persons hunting on Nett Lake on the first day of the season will be required to complete a survey upon completion of the day's hunting requesting: (1) Name and contact information; (2) hunting permit number (State and tribal); (3) number of hours hunted; (4) location of hunting site; (5) tribal guide name; (6) number and species of waterfowl harvested in possession; and (7) number and species of waterfowl shot but not recovered. Results will be collected and tallied and subsequently compared to previous season data.

Harvest information from the 2001–02 migratory bird season included 900 total ducks taken. Of these 900 taken, 700 were ring-neck ducks, 100 blue/green-winged teal, and 100 mallards. They had 224 hunters, similar to levels in the past.

The Band's Conservation Department regulates non-tribal harvest limits under the following regulations: (1) Non-tribal hunters must be accompanied at all times by a Band Member guide; (2) non-tribal hunters must have in their possession a valid small game hunting license, a Federal migratory waterfowl stamp, and a Minnesota State waterfowl stamp; (3) non-tribal hunters and Band Members must have only Service-approved non-toxic shot in possession at all times; (4) non-tribal hunters must conform to possession limits established and regulated by the State of Minnesota and the Bois Forte Band.

We propose to approve the Bois Forte Band of Chippewa regulations for the 2002–03 hunting season.

(b) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The Tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 2002–03 proposal, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 2002. Daily bag limits would be 10 mourning or 10 white-winged doves either singly or in the aggregate. The late season for doves is proposed to open November 16, 2002, and close January 13, 2003. The daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The Tribes also propose duck hunting seasons. The season would likely open September 28, 2002, and run until January 25, 2003. The Tribes propose the same season dates for mergansers, coots and common moorhens. The daily bag limit for ducks, including mergansers, would be the same as that allowed under Pacific Flyway Frameworks, except that the daily bag limits could contain no more than two goldeneye and two cinnamon teal. The possession limit would be twice the daily bag limit. The daily bag and possession limit for coots and common moorhens would be 25, singly or in the aggregate.

For geese, the Colorado River Indian Tribes propose a season of November 10, 2002, through January 19, 2003. The daily bag limit for geese would be four, but could include no more than three light geese or two dark geese. The possession limit would be eight, but could include no more than six light geese or four dark geese.

In 1996, the Tribe conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and, based upon past seasons, we and the Tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit in their possession while hunting. As in the past, the regulations would apply both to tribal and non-tribal hunters, and nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2002–03 hunting season.

(c) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Nontribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation. The Tribes' proposed special regulations for waterfowl hunting were submitted in a May 21, 2002, proposal.

As in the past, tribal regulations for nontribal members would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot or other Federally-approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

The requested season dates and bag limits are similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by non-tribal hunters.

We propose to approve the Tribes' request for special migratory bird regulations for the 2002–03 hunting season.

(d) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. Since the 1993–94 season, the Tribe has selected special waterfowl hunting regulations independent of the State of South Dakota. The Tribe observes migratory bird hunting regulations contained in 50 CFR part 20.

In their 2002 proposal, the Tribe requested a duck and merganser season of October 5 to December 17, 2002, with a daily bag limit of six ducks, including no more than five mallards (only two of which may be hens), one canvasback, two redheads, two wood ducks, three

scaup, and one pintail. The merganser daily bag limit would be five and include no more than one hooded merganser. The daily bag limit for coots would be 15. For Canada geese, the Tribe proposes an October 19, 2002, to January 21, 2003, season with a three-bird daily bag limit. For white-fronted geese, the Tribe proposes a September 28 to December 22, 2002, season with a daily bag limit of two. For snow geese, the Tribe proposes a September 28, 2002, to January 2, 2003, season with a daily bag limit of 20. Similar to the last several years, the Tribe also requests a sandhill crane season from September 14 to October 20, 2002, with a daily bag limit of three. The Tribe proposes a mourning dove season from September 1 to October 31, 2002, with a daily bag limit of 15. In all cases, except snow geese, the possession limits would be twice the daily bag limit. There would be no possession limit for snow geese. Shooting hours would be from one-half hour before sunrise to sunset.

The season and bag limits would be essentially the same as last year and as such, the Tribe expects similar harvest. In 1994–95, duck harvest was 48 birds, down from 67 in 1993–94. Goose harvest during recent past seasons has been less than 100 geese. Total harvest on the reservation in 2000 was estimated to be 179 ducks and 868 geese.

We propose to approve the Tribe's requested seasons. We also remind the Tribe that all sandhill crane hunters are required to obtain a Federal sandhill crane permit. As such, the Tribe should contact us for further information on obtaining the needed permits. In addition, as with all other groups, we request the Tribe continue to survey and report harvest.

(e) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 22, 2002, proposal covers land set apart for the band under the Treaties of 1837 and 1854 in northeast and east-central Minnesota.

The band's proposal for 2002–03 is essentially the same as that approved last year. Specifically, the Fond du Lac Band proposes a September 14 to December 1, 2002, season on ducks, mergansers, coots and moorhens, and a September 1 to December 15, 2002, season for geese. For sora and Virginia rails, snipe, and woodcock, the Fond du Lac Band proposes a September 1 to December 1, 2002, season. Proposed daily bag limits would consist of the following:

Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 9 scaup, 6 wood ducks, 6 redheads, 3 pintails, and 3 canvasbacks.

Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Geese: 12 geese.

Coots and Common Moorhens (Common Gallinules): 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: Eight common snipe.

Woodcock: Three woodcock.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The Band anticipates harvest will be fewer than 500 ducks and geese.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewas.

(f) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized Tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2002–03 season, the Grand Traverse Band of Ottawa and Chippewa Indians proposes that the tribal member duck season would run from September 15, 2002, through January 15, 2003. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens). For Canada geese, the Tribe proposes a September 1 through November 30, 2002, and a January 1, 2002, through February 8, 2003, season. For white-fronted geese, brant, and snow geese, the Tribe proposes a September 20 through November 30, 2002, season. The daily bag limit for all geese (including brant) would be five birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe.

For woodcock, snipe, and sora rail, the Tribe proposes a September 1 to November 14, 2002, season. The daily bag limit will not exceed five birds per species.

For mourning doves, the Tribe proposes a September 1 to November 14, 2002, season. The daily bag limit would be 10.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2001–2002 hunting season indicate that approximately 34 tribal hunters harvested an estimated 105 ducks and 70 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians' requested 2002–03 special migratory bird hunting regulations.

(g) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian

Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and we have approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, the GLIFWC requested, and we approved, special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. We acknowledge the State's concern, but point out that the U.S. Government has recognized the Indian hunting rights decided in the Voigt case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. We believe this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, we have approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in our decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

In a May 30, 2002, letter, the GLIFWC proposed off-reservation special migratory bird hunting regulations for the 2002–03 seasons on behalf of the member Tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas) and the Bay Mills Indian Community (for the 1836 Treaty area). Member Tribes of the Task Force are: The Bad River Band of Lake Superior Tribe of Chippewa Indians, The Lac Courte Oreilles Band of Lake Superior Tribe of Chippewa Indians, the Lac du Flambeau Band of Lake Superior Tribe of Chippewa Indians, the Red Cliff Band of Lake Superior Tribe of Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), the Mille Lacs Band of Chippewa Indians in Minnesota, the Lac Vieux Desert Band of Chippewa Indians and the Keweenaw Bay Indian Community in Michigan. Details of the proposed regulations are shown below. In general, the proposal is essentially the same as the regulations approved for the 2001–02 season.

Results of 1987–98 hunter survey on off-reservation tribal duck harvest in the Wisconsin/Michigan entire ceded territory ranged from 1,022 to 2,374 with an average of 1,422. Estimated goose harvest has ranged from 72 to 586, with an average of 310. Under the proposed regulations, harvest is expected to remain within these ranges. Tribal harvest in the Minnesota ceded territory is anticipated to be much smaller than in the Wisconsin/Michigan area since waterfowl hunting has been limited to 10 individuals thus far. Due to the limited distribution of doves and dove habitat in the ceded territory, and the relatively small number of tribal off-reservation migratory bird hunters, harvest is expected to be negligible.

We believe that regulations advanced by the GLIFWC for the 2002–03 hunting season are biologically acceptable and recommend approval. If the regulations are finalized as proposed, we would request that the GLIFWC closely monitor the member band duck harvest and take any actions necessary to reduce harvest if locally nesting populations are being significantly impacted.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. Its intent is to provide long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this proposal.

The GLIFWC's proposed 2002–03 waterfowl hunting season regulations are as follows:

Ducks

A. *Wisconsin and Minnesota 1837 and 1842 Zones:*

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. *Michigan 1836 and 1842 Treaty Zones:*

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers: All Ceded Areas

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: Five mergansers.

Geese: All Ceded Areas

Season Dates: Begin September 1 and end December 1, 2002. In addition, any portion of the ceded territory which is open to State-licensed hunters for goose hunting after December 1 shall also be open concurrently for tribal members.

Daily Bag Limit: 10 geese in aggregate.

Other Migratory Birds: All Ceded Areas

A. *Coots and Common Moorhens (Common Gallinules):*

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. *Sora and Virginia Rails:*

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Possession Limit: 25.

C. *Common Snipe:*

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: Eight common snipe.

D. *Woodcock:*

Season Dates: Begin September 3 and end December 1, 2002.

Daily Bag Limit: Five woodcock.

E. *Mourning Dove:* 1837 and 1842 Ceded Territories:

Season Dates: Begin September 1 and end October 30, 2002.

Daily Bag Limit: 15 mourning dove.

General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by federal courts in the *Lac Courte Oreillesv. State of Wisconsin (Voigt) and Mille Lacs Band* v. *State of Minnesota* cases. The respective Chapter 10 of these Model Codes regulate territory migratory bird hunting. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR Part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Particular regulations of note include:

A. Nontoxic shot will be required for all waterfowl hunting.

B. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

C. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

D. The Tribe proposes that the balting restrictions included in the respective sections 10.05 (2)(h) of the model ceded territory conservation codes be amended to include language which parallels that in place for non-tribal members as published in 64 FR 29804, June 3, 1999.

E. They also propose to remove the shell limit restrictions included in the respective sections 10.05 (2)(b) of the model ceded territory conservation codes.

4. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions that parallel applicable Michigan laws concerning duck blinds and/or decoys.

(h) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The Tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

In a May 23, 2002, proposal, the Tribe proposed a 2002–03 waterfowl season beginning October 5 and a closing date of November 30, 2002. Daily bag and possession limits for waterfowl would be the same as Pacific Flyway States. The Tribe proposes a season on Canada geese with a two-bird daily bag limit. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2001–02 season, estimated duck harvest was 889, which is within the historical harvest range. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised 3 percent of the total harvest in 2001. The estimated harvest of geese was 26 birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2002–03 waterfowl harvest would be around 1100 ducks and 30–40 geese.

We propose to approve the Tribe's requested 2002–03 hunting seasons.

(i) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The Tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The Tribe enjoys excellent wildlife management relations with the State. The Tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife. The nontribal member seasons described below pertain to a 176-acre waterfowl management unit. The Tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 2002–03 migratory bird hunting seasons, the Kalispel Tribe proposed, in a May 21, 2002, letter, tribal and nontribal member waterfowl seasons. For nontribal members, the Tribe requests that the season for ducks begin September 20, 2002, and end January 26, 2003. In that period, nontribal hunters would be allowed to hunt approximately 92 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe. The Tribe also requests the season for geese begin on September 1, to September 15, 2002, and begin on October 1, 2002, to January 26, 2003. Daily bag and possession limits would be the same as those for the State of Washington.

The Tribe reports a 2001–02 nontribal harvest of 105 ducks and 0 geese. Under the proposal, the Tribe expects harvest to be similar to last year and less than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of non-toxic shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel propose outside frameworks for ducks and geese of September 1, 2002, through January 31, 2003. However, during that period, the Tribe proposes that the season run continuously. Daily bag and possession limits would be concurrent with the Federal rule.

The Tribe reports that there was no 2001–02 tribal harvest. Under the proposal, the Tribe expects harvest to be less than 500 birds for the season with less than 200 geese. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway. For the 2002–03 season, outside Federal frameworks for ducks in the Pacific Flyway under the "moderate" and "liberal" regulatory alternatives are September 21, 2002, through January 26, 2003. For geese, frameworks for special early Canada goose seasons are September 1 through September 15, 2002, while regular seasons frameworks are September 28, 2002, through January 20, 2003. All seasons for nontribal hunters must conform with the 107-day maximum season length established by the Treaty.

(j) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamaths. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and

tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

The Klamath Tribe proposed season dates of October 1, 2002, through January 28, 2003. Daily bag limits would be nine for ducks and six for geese, with possession limits twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, the Tribe expects that this year's harvest will be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath Basin.

We propose to approve the Klamath Tribe's requested regulations.

(k) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized Tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2002–03 season, the Tribe requests a duck season starting on September 14 and ending December 31, 2002. They request a goose season to run from September 1 through December 31, 2002. Daily bag limits for both ducks and geese would be 10. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by tribal members on the Leech Lake Reservation is estimated at 1,000–2,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's requested 2002–03 special migratory bird hunting regulations.

(l) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

The Little River Band of Ottawa Indians is a self-governing, federally recognized Tribe located in Manistee, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties.

For the 2002–03 season, the Little River Band of Ottawa Indians proposes duck, merganser, coots, and common moorhen seasons from September 28 through December 5, 2002. A daily bag limit of six ducks would include no more than one pintail, one canvasback, one black duck, two wood ducks, two redheads, three scaup, and four mallards (only one of which may be a hen). The daily bag limit for mergansers would be five, of which only one could be a hooded merganser. Possession limits for mergansers is 10, only 2 of which may be hooded mergansers. The daily bag limit for coots and common moorhens would be 15. Possession limits would be twice the daily bag limit.

For Canada geese, the Tribe proposes a September 1 through September 15, 2002, early season, a September 28 through December 5, 2002, regular season, and a January 1 through February 8 2003, late season. Daily bag limits would be five geese in the early and late season and two geese in the regular portion of the season. The possession limit would be twice the daily bag limit. For white-fronted geese, snow geese, Ross geese, and brant, the Tribe proposes a September 28 through December 5, 2002, season. The daily bag limit for all geese (including brant) would be 5 birds. Possession limits would be 10.

For snipe, woodcock, and rails, the Tribe proposes a September 15 to November 14, 2002, season. The daily bag limit would be 8 common snipe, 3 woodcock, and 8 rails. Possession limits for snipe and woodcock would be twice the daily bag limit. The possession limit for rails would be 25.

For mourning dove, the Tribe proposes a September 15 to November 14, 2002, season. The daily bag limit would be 10 and possession limit of 20.

The Tribe proposes to monitor harvest through mail surveys. General Conditions are as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2002–03 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We propose to approve Little River Band of Ottawa Indians' requested 2002–03 special migratory bird hunting regulations.

(m) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

The Little Traverse Bay Bands of Odawa Indians is a self-governing, federally recognized Tribe located in Petoskey, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2002–03 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to other Tribes in the 1836 treaty area. The tribal member duck season would run from September 20, 2002, through January 20, 2003. A daily bag limit of 10 would include no more than 1 pintail, 1 canvasback, 1 hooded merganser, 2 black ducks, 2 wood ducks, 2 redheads, and 5 mallards (only 2 of which may be hens). For Canada geese, the Tribe proposes a September 1, 2002 through January 20, 2003 season. For white-fronted geese, brant, and snow geese, the Tribe proposes an October 1 through November 30, 2002, season. The daily bag limit for all geese (including brant) would be five birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe. Possession limits are twice the daily bag limit.

For woodcock, snipe, and sora rail, the Tribe proposes a September 1 to November 14, 2002, season. The daily bag limit shall not exceed five birds per species. The possession limit shall not exceed two days bag limit for all birds.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. In particular, the Tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians'

requested 2002–03 special migratory bird hunting regulations.

(n) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via an MOA with the State of South Dakota. The MOA provided the Tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers taken lands. For the 2002–03 season, the two parties have come to an agreement that provides the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters.

For the 2002–03 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season length of 97 days, the same number of days tentatively allowed under the "liberal" regulatory alternative in the High Plains Management Unit for this season. The Tribe's proposed season would run from October 5, 2002, through January 9, 2003. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, two wood ducks, three scaup, one canvasback, and one mottled duck. Non-member canvasback season is closed. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The Tribe also proposes a youth waterfowl hunt on September 28–29, 2002.

The Tribe's proposed Canada goose season would run from October 19, 2002, through January 21, 2003, with a daily bag limit of three Canada geese. The tribe's proposed white-fronted goose season would run from October 19, 2002, through January 12, 2003, with a daily bag limit of two white-fronted geese. The tribe's proposed light goose season would run from October 19, 2002, through January 18, 2003, and February 25 through March 10, 2003. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 2001–02 season, hunters harvested an estimated 2,787 geese and 754 ducks. In the 2001–02 season, duck harvest species composition was primarily mallard (81 percent), gadwall (5 percent), wigeon (5 percent), and green-winged teal, redhead, scaup, pintail, bufflehead, and wood duck (9 percent collectively). Goose harvest species composition in 2001 at Mni Sho Sho was approximately 91 percent Canada geese, 7 percent snow geese, and 1 percent white-fronted geese. Harvest of geese harvested by other hunters was approximately 95 percent Canada geese, 4 percent snow geese, and 1 percent white-fronted geese. However, typical harvest is 100 percent Canada geese with less than 1 percent snow geese.

The tribe anticipates a duck harvest similar to the 8-year average (418) and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed by the tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We propose to approve the tribe's requested regulations for the Lower Brule Reservation.

(o) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the State of Washington Game Management Units 601–603 and 607.

The Makah Indian Tribe proposes a duck and coot hunting season from September 15, 2002, to January 13, 2003. The daily bag limit is seven ducks including no more than one canvasback and one redhead. The daily bag limit for coots is 25. The tribe has a year-round closure on wood ducks and harlequin ducks. For geese, the tribe proposes the season open on September 15, 2002, and close January 13, 2003. The daily bag limit for geese is four. The tribe notes that there is a year-round closure on Aleutian and Dusky Canada geese. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

The tribe anticipates that harvest under this regulation will be relatively low since fewer than 20 hunters are likely to participate at this time. The tribe expects fewer than 70 ducks and 20 geese are expected to be harvested during the 2002–03 migratory bird hunting season.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the tribe: (1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area; (2) hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl; (3) the Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within one mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation; (4) the use of live decoys and/or baiting to pursue any species of waterfowl is prohibited; (5) steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; (6) the use of dogs is permitted to hunt waterfowl.

We propose to approve the Makah Indian Tribe's requested 2002–03 special migratory bird hunting regulations.

(p) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The Navajo Nation owns almost all lands on the reservation and has full wildlife management authority.

The tribe requests special migratory bird hunting regulations on the reservation for both tribal and nontribal members for the 2002–03 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For waterfowl, the Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits permitted Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through 30, 2002, with daily bag limits of 10 and 5 for mourning dove and

band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

The Nation requires tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face of the stamp. Special regulations established by the Navajo Nation also apply on the reservation.

The tribe anticipates a total harvest of less than 300 mourning doves, 100 band-tailed pigeons, 500 ducks, coots, and mergansers, and 300 Canada geese for the 2002–03 season. Harvest will be measured by mail survey forms. Through the established Tribal Nation Code, Title 17 and 18 U.S.C. 1165, the tribe will take action to close the season, reduce bag limits, or take other appropriative actions if the harvest is detrimental to the migratory bird resource.

We propose to approve the Navajo Nation's request for these special regulations for the 2002–03 migratory bird hunting seasons.

(q) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced their own hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the tribe and Wisconsin.

In a May 23, 2002, letter, the tribe proposed special migratory bird hunting regulations. For ducks, the tribe described the general "outside dates" as being September 28 through November 30, 2002, inclusive. The tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), five wood ducks, one canvasback, one redhead, two pintails, and one hooded merganser.

For geese, the tribe requests a season between September 1 and December 31, 2002, with a daily bag limit of three Canada geese. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. The tribe will close the season November 16 to 24, 2002. If a quota of 150 geese is attained before the season concludes, the tribe will recommend closing the season early.

For woodcock, the tribe proposes a season between September 14 and November 15, 2002, with a daily bag and possession limit of 5 and 10, respectively.

The tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the tribe must comply with all State of Wisconsin regulations. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Indian hunters would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

(r) Point No Point Treaty Tribes, Kingston, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, consisting of the Skokomish, Port Gamble S'klallam, Jamestown S'klallam, and Elwha S'klallam tribes, have cooperated to establish special regulations for migratory bird hunting. The four tribes have reservations located on the Olympic Peninsula in Washington. All four tribes have successfully administered tribal hunting regulations since 1985, and each tribe has a comprehensive hunting ordinance.

For the 2002–03 season, we have not yet heard from the tribe regarding this season's proposal. Based on last year, we assume the tribe would request seasons for ducks, geese, brant, coots, snipe, and mourning doves. For ducks, coots, geese, brant, and snipe, the season would run from September 15, 2002, to January 15, 2003, with a daily bag limit of 7 ducks, 25 coots, 4 geese (including no more than 3 light geese), 2 brant, and 8 snipe. The duck daily bag limit would include mergansers and could include no more than two hen mallards, two pintails, one canvasback, and two redheads. The season is closed on harlequin ducks and Aleutian Canada geese. All possession limits would be twice the daily bag limit. For mourning doves, the season would start September 1, 2002, and end January 15, 2003, with a daily bag limit of 10.

The tribes require that all hunters authorized to hunt migratory birds on the reservation obtain a tribal hunting permit from the respective tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office. Tribal harvest in 1999 under similar regulations was approximately 185 ducks, 22 geese, and 15 coots.

We propose to approve the Point No Point Treaty Tribe's 2002–03 regulations provided the tribe provides the appropriate confirmation for the seasons.

(s) Seminole Tribe of Florida, Big Cypress Seminole Reservation, Clewiston, Florida (Tribal Members and Nontribal Hunters)

The Seminole Tribe of Florida and the Service have cooperated since 1995 to establish regulations for the 70,000-acre Big Cypress Seminole Reservation. Located northwest of Miami, the Big Cypress Seminole Reservation is totally tribally owned, and the tribe has full wildlife management authority.

For the 2002–03 season, we have not yet heard from the tribe regarding this season's proposal. Based on last year, we assume the tribe would request a mourning dove season from September 16, 2002, through January 20, 2003. Hunting would be allowed for tribal and non-tribal members, but would be on Sundays only. Daily bag limits would be the same as those allowed within the Federal frameworks for the State of Florida. All other Federal regulations contained in 50 CFR part 20 would apply. In 1997, under identical regulations, hunters harvested 2,078 doves on the reservation. The anticipated harvest of doves taken during the 2002 season would be limited to 12,000 birds. The tribe controls all entry to the hunt area.

We propose to approve the Seminole Tribe's requested 2002–03 special migratory bird hunting regulations upon receipt of their proposal and confirmation that the tribe would like to have a special season.

(t) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by non-tribal members on reservation lands

owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they seemed to provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2002–03 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a proposal for the 2002–03 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted for Pacific Flyway States, under final Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as last year, the season would have an opening date of October 5, 2002, and a closing date of January 5, 2003. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted for Pacific Flyway States. The tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as in previous years, the season would have an opening date of October 12, 2002, and a closing date of January 11, 2003. The tribes anticipate harvest will be between 4,000 and 6,000 geese.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year and propose they be approved for the 2002–03 hunting season.

(u) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

For 2002–03, the tribe requested to establish duck and coot seasons that would run from September 15, 2002, through January 15, 2003. The daily bag limit for ducks would be five per day and could include only one canvasback. The season on harlequin ducks would be closed. For coots the daily bag limit would be 25. For snipe, the tribe proposes the season start on September 15, 2002, and end on January 15, 2003. The daily bag limit for snipe would be eight.

For geese, the tribe proposes establishing a season that would run from September 15, 2002, through January 15, 2003. The daily bag limit for geese would be four and could include only two snow geese and one dusky Canada goose. The season on Aleutian and cackling Canada geese would be closed. For brant, the tribe proposes to establish a September 15 to December 31, 2002, season with a daily bag limit of two. The tribe also propose a September 1 to December 31, 2002, season for band-tailed pigeons with a daily bag limit of five.

In all cases, the possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to one-half hour after sunset, and steel shot would be required for migratory bird hunting. Further, the tribe requires that all harvest be reported to their Natural Resources Office within 72 hours.

In 1995, the tribe reported no harvest of any species. Tribal regulations are enforced by the tribe's Law Enforcement Department.

We propose to approve the Squaxin Island Tribe's 2002–03 special migratory bird hunting regulations.

(v) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe is proposing regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, Port Susan to the border of the Tulalip Tribe's Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a federally recognized tribe and reserves the Treaty Right to hunt (*U.S.* v. *Washington*).

The tribe proposes that duck (including mergansers, sea ducks, and coots), goose, and snipe seasons run from October 1, 2002 to January 31, 2003. The daily bag limit on ducks (including sea ducks and mergansers) is 10 and shall include no more than 7 mallards (only 3 of which can be hens), 3 pintail, 3 redhead, 3 scaup, and 3 canvasback. The daily bag limit for coot is 25. For geese, the daily bag limit is six. The daily bag limit on brant is three. The daily bag limit for snipe is ten. Possession limits are totals of two daily bag limits.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a non-toxic shot as required by Federal regulations.

The tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 50 brant, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the request for special migratory bird hunting regulations for the Stillaguamish Tribe of Indians.

(w) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a Federally recognized Indian tribe consisting of the Suiattle, Skagit, and Kikialos. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in the Puget Sound area north of Seattle, Washington.

The tribe proposes to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. The tribe requests to establish duck, merganser, Canada goose, brant, and coot seasons opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes its season. The Swinomish request an additional three birds of each species over that

allowed by the State for daily bag and possession limits.

The Community normally anticipates that the regulations will result in the harvest of approximately 300 ducks, 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish utilize a report card and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community would propose a hunting season for the above-mentioned species beginning on the earliest possible opening date and closing March 9, 2002. The Swinomish manage harvest by a report card permit system and anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely affect migratory bird populations. We propose to approve the Tribal Community's regulations for the 2002–03 season.

(x) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

The Tulalip Tribes are the successors in interest to the tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation just north of the City of Everett in Snohomish County, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

The Tulalip Tribes proposed tribal and nontribal hunting regulations for the 2002–03 season. Migratory waterfowl hunting by Tulalip Tribal members is authorized by Tulalip Tribal Ordinance No. 67. For ducks, mergansers, coot, and snipe, the proposed season for tribal members would be from September 15, 2002, through February 28, 2003. In the case of nontribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 7 and 14 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established in accordance with final Federal frameworks. For nontribal hunters, bag and possession limits would be the same as those permitted under final Federal frameworks. Nontribal members should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified tribal member. Such a hunt shall have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

For geese, tribal members are proposed to be allowed to hunt from September 15, 2002, through February 28, 2003. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 7 and 14, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks. For nontribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the Pacific Flyway. The Tulalip Tribes also set a maximum annual bag limit for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and nontribal hunters under 1,000 ducks and 500 geese, annually.

We propose approval of the Tulalip Tribe's request for the above seasons. We request that harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

(y) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The tribe has jurisdiction over lands within Skagit and Whatcom Counties, Washington. Migratory bird hunting would take place in Washington State Game Units 407, 437, and 418, which comprises the northern portion of the lands under tribal jurisdiction. Tribal hunters are issued a harvest report card that will be shared with the State of Washington.

For the 2002–03 season, the Tribe requests a season of November 1, 2002, and ending February 8, 2003. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The coot daily bag limit is 20 with a possession limit of 30. The Tribe proposes a goose season from November 1, 2002, to February 8, 2003, with a daily bag limit of seven geese and five brant. The possession limit for geese and brant are 10 and 7, respectively.

The Tribe proposes a mourning dove season between September 1 to December 31, 2002, with a daily bag limit of 12.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR.

The Service proposes to approve the request for special migratory bird hunting regulations for the Upper Skagit Indian Tribe. We request that the tribe closely monitor harvest of this special migratory bird hunting season.

(z) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

The Wampanoag Tribe of Gay Head is a federally-recognized tribe located on the island of Martha's Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

For the 2002–03 season, the tribe proposes a duck season of October 28, 2002, to February 24, 2003. The tribe proposes a daily bag limit of six birds, which could include no more than two hen mallards, two black ducks, two

mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, and one pintail. The season for harlequins would be closed. The tribe proposes a teal (green-winged and blue) season of October 19, 2002, to January 31, 2003. A daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, the tribe proposes a season between October 28, 2002, and February 24, 2003, with a daily bag limit of seven, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For geese, the tribe requests a season between September 14 to September 21, 2002, and November 1, 2002, through February 28, 2003, with a daily bag limit of 5 Canada geese during the first period and three Canada geese during the second period. They propose a daily bag limit of 15 snow geese.

For woodcock, the tribe proposes a season between October 19 and November 30, 2002, with a daily bag limit of three.

The tribe currently has 20 registered tribal hunters and estimates harvest to be no more than 40 geese, 50 mallards, 50 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20.

The Service proposes to approve the request for special migratory bird hunting regulations for the Wampanoag Tribe of Gay Head and requests that the tribe closely monitor harvest in this first season of establishing special migratory bird hunting regulations.

(aa) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Ojibwe is a federally-recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The tribe and the Service first cooperated to establish special tribal regulations in 1999.

For the 2002–03 migratory bird hunting season, the White Earth Band of Ojibwe request a duck, merganser, and coot season to start September 7 and end December 16, 2002. For ducks, they request a daily bag limit of 10 including no more than 2 mallards and 2 canvasback. The merganser daily bag limit would be 5 with no more than 2 hooded mergansers, and the coot daily bag limit would be 20. For geese, the tribe proposes a September 1 to December 15, 2002, season with a daily bag limit of five geese.

For dove, rail, woodcock, and snipe, the tribe would propose a September 7 to December 31, 2002, season with daily bag limits of 25 doves, 25 rails, 10 woodcock, and 10 snipe. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the tribe anticipates harvest of 1,000 to 2,000 Canada geese and 1,000 to 1,500 ducks. The White Earth Reservation Tribal Council employs 4 full-time Conservation Officers to enforce migratory bird regulations.

We propose to approve the White Earth Band of Ojibwe requested 2002–03 special migratory bird hunting regulations for this year. We, however, note that our approval of the September 7 opening date for ducks is contingent upon the selection of either a "liberal" or "moderate" package for the 2002–03 season. We further request that the tribe closely monitor the effects of harvest from the early opening date for ducks upon final approval.

(bb) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: the entire length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3 will be open to waterfowl hunting during the 2002–03 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2002–03 season.

For nontribal and tribal hunters, the tribe proposes a continuous duck, coot, merganser, gallinule and moorhen hunting season, with an opening date of October 5, 2002, and a closing date of January 26, 2003. The tribe proposes a daily duck (including mergansers) bag limit of four, which may include no more than two redheads or one canvasback and one redhead, one pintail, and three mallards (including no more than one hen mallard). The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate. For geese, the tribe is proposing a season from October 5, 2002, through January 26, 2003. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 4 through September 18, 2002, in Wildlife Management Unit 10 and all areas south of Y–70 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We propose to approve the regulations requested by the tribe for the 2002–03 season.

(cc) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

On May 17, 2002, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 2002–03 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and nontribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For ducks (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 12, 2002, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be 6 ducks, which may include no more than 5 mallards (no more than 2 hens), 1 canvasback, 2 redheads, 3 scaup, 1 pintail, or 2 wood ducks. The bag limit for mergansers is 5, which would include no more than 1 hooded merganser. The coot daily bag limit is 15.

For geese, the tribe has requested a dark geese (Canada geese, brant, white-fronts) season starting October 26, 2002, and closing January 31, 2003. The daily

bag limit would be three geese (including no more than one whitefront or brant). Possession limits would be twice the daily bag limit. For white geese, the proposed hunting season would start October 26, 2002, and run for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the same as those adopted by the State of South Dakota.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 2001–02 hunting season, the tribe reported that 79 nontribal hunters took 425 Canada geese, 22 light geese, and 62 ducks. Twenty-two tribal members harvested less than 50 geese and 50 ducks.

We concur with the Yankton Sioux proposal for the 2002–03 hunting season.

Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, desire to obtain the comments and suggestions of the public, other governmental agencies, nongovernmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations, which limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust appropriately their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow the comment period past the date specified is contrary to the public interest.

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.** You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in the final rules.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from us at the address indicated under the caption **ADDRESSES.** In addition, an August 1985 Environmental Assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the same address.

Endangered Species Act Considerations

Prior to issuance of the 2002–03 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

We will include findings from these consultations in a biological opinion and may cause modification of some regulatory measures proposed in this document. The final rule will reflect any modifications. Our biological opinion resulting from the Section 7 consultation is a public document available for public inspection in the Service's Division of Endangered Species and Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small

businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Executive Order (E.O.) 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned control number 1018–0023 (expires 07/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

Energy Effects—E.O. 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this supplemental proposed rule is not expected to significantly affect energy supplies, distribution, or use, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Based on the results of soon-to-be-completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 2002,

on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers), and geese.

The rules that eventually will be promulgated for the 2002–03 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

Dated: July 18, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–19018 Filed 7–26–02; 8:45 am]

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Federal Register

Monday,
July 29, 2002

Part V

Department of Education

Disability and Rehabilitation Research Projects (DRRP) Program; Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers (RRTC) Program; Notice

DEPARTMENT OF EDUCATION

Disability and Rehabilitation Research Projects (DRRP) Program

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a final priority on Disability in Rural Communities under the Rehabilitation Research and Training Centers (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in FY 2002 and in later years. We take this action to focus research attention on an identified national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority is effective August 28, 2002.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Description of the Rehabilitation Research and Training Centers (RRTC) Program

The RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge, to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, or promote maximum social and economic independence for persons with disabilities. RRTCs operate in collaboration with institutions of higher education or providers of rehabilitation or other appropriate services. Additional information on the RRTC program can be found at: *http://www.ed.gov/offices/OSERS/NIDRR/Programs/res_program.html#RRTC*

General Requirements

The RRTC must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties;
- Serve as a center for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html*.

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products*.

We published a notice of proposed priority (NPP) for the Disability in Rural Communities in the **Federal Register** on May 6, 2002 (67 FR 30530). Except for minor revisions there are no differences between the notice of proposed priority (NFP) and this notice of final priority (NFP).

Analysis of Comments and Changes

In response to our invitation in the NPP, six parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the NPP is published as an appendix at the end of this notice.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

The background for the priority was published in the NPP.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute Priority

Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive Preference Priority

Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational Priority

Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

This priority supports one Rehabilitation Research and Training Center on Disability in Rural Communities. The purpose of the priority is to generate new knowledge, through research and development activities, that improves the effectiveness of rehabilitation services. The RRTC project must propose research and development activities that are focused on each of the following areas of inquiry: (1) Rural Employment, and Community and Economic Development Policy; (2) Rural Health and Disability; and (3) Rural Community Transportation.

(1) Rural Employment, and Community and Economic Development Policy:

(a) Identify economic and community development policies and evaluate their impact on the employment status of individuals with disabilities living in rural areas, public and private service delivery systems, and service providers;

(b) Investigate the effectiveness of policies and strategies for addressing existing and emerging problems for individuals with disabilities in rural communities.

(c) Identify and evaluate employment policies and employment strategies, including those used in State vocational rehabilitation systems, and investigate the impact on employment outcomes for individuals with disabilities.

(2) Rural Health and Disability:

(a) Identify and investigate the needs of healthcare providers and health care needs of individuals with disabilities in

rural communities and factors contributing to secondary conditions.

(b) Investigate the impact of inadequate health promotion, wellness, and prevention activities on the health status and disability outcomes for individuals with disabilities, including secondary disabling conditions.

(c) Develop and evaluate health promotion intervention strategies or identify and evaluate effective health promotion strategies for improving health outcomes for individuals with disabilities in rural communities, including an emphasis on prevention of secondary conditions. Investigate the impact of inadequate wellness and health promotion on healthcare service systems in rural communities.

(d) Develop and test training materials for healthcare providers and consumers to enhance knowledge of disability, secondary conditions, and effective wellness and health promotion intervention strategies.

(3) Rural Community Transportation:

(a) Identify or develop and test new transportation ideas and investigate their effectiveness to increase access for individuals with disabilities, and assess whether they are cost effective.

(b) Investigate the impact of alternate means of transportation on disability outcomes, especially employment and health outcomes, and

(c) Identify and investigate the impact of transportation policies, programs, and resource allocations on access and community integration for individuals with disabilities;

In carrying out the purposes of the priority, the RRTC must:

- Disseminate information about disability issues in rural communities;
- Use advances in telecommunications and web-based technologies, where appropriate, to ensure broad access to research results and their practical application; and
- Involve individuals with disabilities, their family members, and consumers, as appropriate, in all stages of the research process and related activities.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Center)

Program Authority: § 29 U.S.C. 762(g) and 764(b)(2).

Dated: July 24, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

Comment: One commenter addressed the need for distance training courses in rural areas for people with disabilities.

Discussion: An applicant could address the need for distance training courses in rural areas for people with disabilities. However, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate the merits of the proposal.

Change: None.

Comment: One commenter stated that it was unclear if the proposed RRTC will be a two-year or a five-year project.

Discussion: The proposed RRTC is a five-year project. The reference to fiscal years 2002–2004 reflects the period of time the priority as written.is valid.

Change: None.

Comment: One commenter asked for clarification of the sub-bullets under employment, health, and transportation. The commenter questioned if the items were examples of types of research projects in which NIDRR is interested or mandatory projects to be addressed.

Discussion: As stated in the NPP, NIDRR designates a priority as absolute, competitive preference, or invitational. This priority is absolute. Therefore, the applicant must propose to address each of the specific activities included in the priority.

Change: None.

Comment: One commenter inquired as to whether the emphasis on the term "policy" is meant to be a narrow prescription to conduct research on policies only or if it can be interpreted broadly as the continuum from policy formation, through development of strategies to implement policies, and finally the evaluation of the impact of policy.

Discussion: Applicants have the discretion to propose the specific activities that the RRTC will undertake in order to fulfill the purposes of the RRTC as set forth in the priority. Providing this degree of discretion to applicants is an acknowledgement of the various approaches that applicants could take. The peer review process will determine the merits of the suggested activities.

Change: None.

Comment: The priority includes an emphasis on healthcare providers. Given the relative shortage of healthcare providers in many rural and remote areas, exchanging the term "service provider" for "healthcare provider" would encourage a broader array of potential projects that have the potential of impacting rural residents who live in healthcare shortage areas.

Discussion: An applicant may propose to include the term service providers in conjunction with the term healthcare providers. The peer review process will determine the merits of the suggested activities.

Change: None.

Comment: Two commenters expressed their concerns that independent living (IL) was not included in this priority.

Discussion: An applicant may propose to include service providers, including IL, in the strategies that are developed to address issues. The peer review process will evaluate the merits of the proposal.

Change: None.

Comment: One commenter suggested that the research and development activities include rural housing.

Discussion: An applicant could address rural housing. However, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate the merits of the proposal.

Change: None.

Comment: One commenter inquired as to whether NIDRR intended to expand the responsibilities of the current RRTC or to propose funding for a new RRTC under this proposed priority.

Discussion: NIDRR proposes to fund an applicant, selected through the peer review process, to carry out the research agenda as set forth in this priority. The current RRTC's responsibilities will not be expanded by the priority.

Change: None.

Comment: One commenter inquired as to the definition of the term "healthcare providers" and asked if this can be addressed through a traditional medical care model, a social health care model, or a combination of both.

Discussion: Any professional person concerned with the maintenance or restoration of the health of the body or mind could be considered a healthcare provider. The applicant has the discretion to address the scope of this term. The peer review process will evaluate the merits of the proposal.

Change: None.

Comment: One commenter wanted to know if NIDRR had given any consideration to transportation issues affecting individuals with disabilities living in remote areas where there are no roads and where communities are only accessible by air.

Discussion: Applicants can address transportation needs of individuals with disabilities living in remote areas in the Rural

Community Transportation priority area. The peer review process will evaluate the merits of the proposal.

Change: None.

[FR Doc. 02–19119 Filed 7–26–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers (RRTC) Program; Notice Inviting Applications for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of the Program: The purpose of the RRTC Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act), as amended.

For FY 2002 the competition for new awards focuses on projects designed to meet the priorities we describe in the *Priorities* section of this application notice. The priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Application Available: July 29, 2002.

Deadline for Transmittal of Applications: September 12, 2002.

Maximum Award Amount: $600,000.

Note: We will reject any application that proposes a budget exceeding $600,000 for a single budget period of 60 months.

Estimated Number of Awards: 1.

Project Period: Up to 60 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86, and 97, and (b) The program regulations 34 CFR part 350.

Priority

This competition focuses on a project designed to meet the priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2002, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Selection Criteria

We use the following selection criteria to evaluate applications under this program.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

An additional 10 points may be earned by an applicant depending on how well the additional selection criterion elsewhere in this notice is met.

(a) Responsiveness to an Absolute or Competitive Priority (4 Points)

(1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers the extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority.

(b) Importance of the Problem (9 Points Total)

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of one or more disabled populations (3 points).

(iii) The extent to which the proposed activities address a significant need of rehabilitation service providers (3 points).

(c) Design of Research Activities (35 Points Total)

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(i) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) Design of Training Activities (11 points Total)

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are

accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) Design of Dissemination Activities (8 Points Total)

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) Design of Technical Assistance Activities (4 Points Total)

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) Plan of Operation (4 Points Total)

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) Collaboration (2 Points Total)

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicants proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) Adequacy and Reasonableness of the Budget (4 Points Total)

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) Plan of Evaluation (7 Points Total)

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) Project Staff (8 Points Total)

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(l) Adequacy and Accessibility of Resources (4 points)

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the facilities, equipment, and other resources are

appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

Additional Selection Criterion (10 points)

We use the following additional criterion to evaluate applications under each priority.

Up to 10 points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities. Thus, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Application Procedures

The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (*See* 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(1) A one-page abstract;

(2) An Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more 125, numbered, double-spaced (no more than 3 lines per vertical inch) 8″x 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) If You Send Your Application by Mail

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Mail your application to: U. S. Department of Education, Application Control Center, Attention: (CFDA # 84.133B), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) If You Deliver Your Application by Hand

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133B), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

Application Forms and Instructions

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, and various assurances and certifications. Please organize the parts and additional materials in the following order:

- Part I: Application for Federal Assistance (ED 424 (Rev. 11/30/2004)) and instructions.
- Part II: Budget Form—Non-Construction Programs (ED 524) and instructions and definitions.
- Part III: Application Narrative.
- Part IV: Additional Materials
- Estimated Public Reporting Burden.
- Assurances—Non-Construction Programs (Standard Form 424B).
- Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)
- Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), may call the TDD number at (202) 205–4475.

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Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Dated: July 24, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1820–0027. Expiration date: 2/28/2003. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your submission of this form, write directly to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645.

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15%. An applicant for a DRRP should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate..

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out if It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out if My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider

submitting similar applications in future competitions.

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
_____ _____ _____ _____
City State County ZIP Code + 4

Organizational Unit
_____

2. Applicant's D-U-N-S Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]

3. Applicant's T-I-N [ ][ ] - [ ][ ][ ][ ][ ][ ][ ]

4. Catalog of Federal Domestic Assistance #: 8 4 [ ][ ][ ][ ]
Title: _____
_____

5. Project Director: _____
Address: _____
_____ _____ _____
City State ZIP Code + 4
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.) [ ]

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify):
_____
_____
_____

Application Information

9. Type of Submission:

—PreApplication
☐ Construction
☐ Non-Construction

—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0 .00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

_____

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ **Prime** ☐ **Subawardee** Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $	
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
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[FR Doc. 02–19120 Filed 7–26–02; 8:45 am]

BILLING CODE 4000–01–C

Federal Register

Monday,
July 29, 2002

Part VI

Department of State

Culturally Significant Objects Imported for Exhibition Determinations: "Greuze the Painter: Los Angeles Works in Context"; Notice

DEPARTMENT OF STATE

[Public Notice 4073]

Culturally Significant Objects Imported for Exhibition Determinations: "Greuze the Painter: Los Angeles Works in Context"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Greuze the Painter: Los Angeles Works in Context," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum in Los Angeles, from on or about September 10, 2002 to on or about December 1, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, Department of State (telephone: 202/619–5078). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 23, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–19235 Filed 7–26–02; 8:53 am]

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LIST OF PUBLIC LAWS

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H.R. 2362/P.L. 107–202
Benjamin Franklin Tercentenary Commission Act (July 24, 2002; 116 Stat. 739)

H.R. 3971/P.L. 107–203
To provide for an independent investigation of Forest Service firefighter deaths that are caused by wildfire entrapment or burnover. (July 24, 2002; 116 Stat. 744)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

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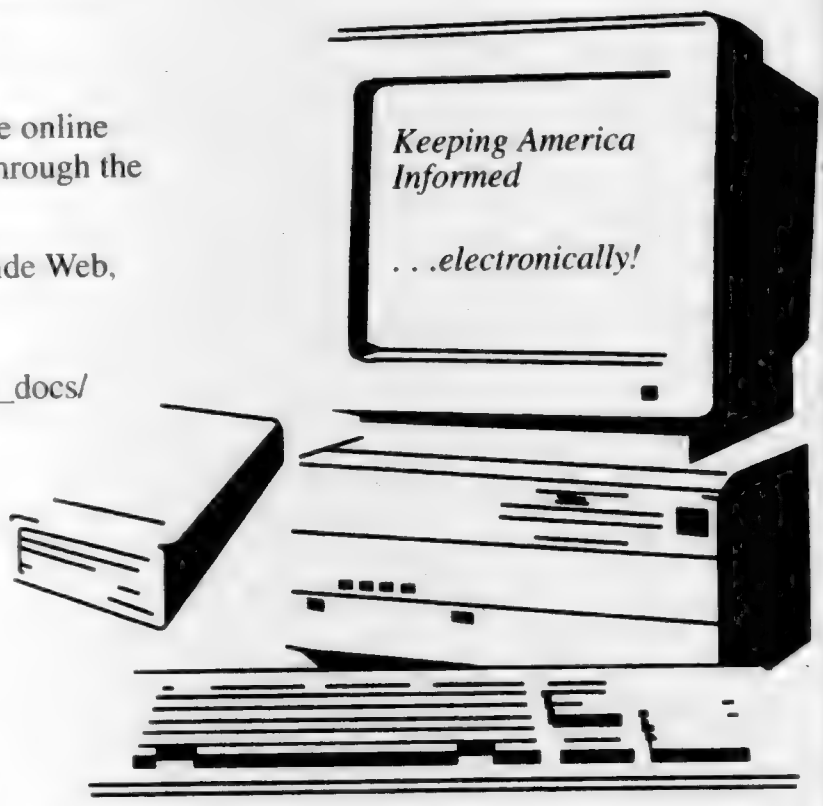

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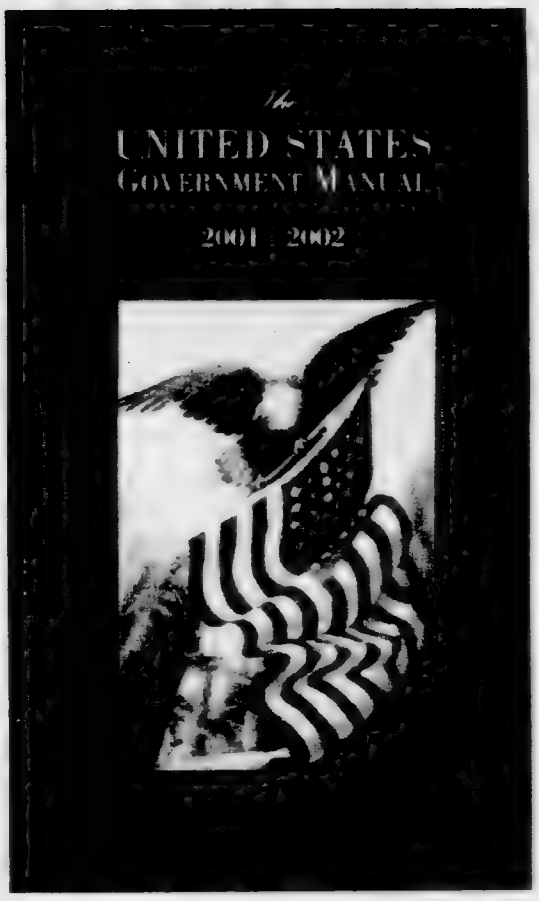

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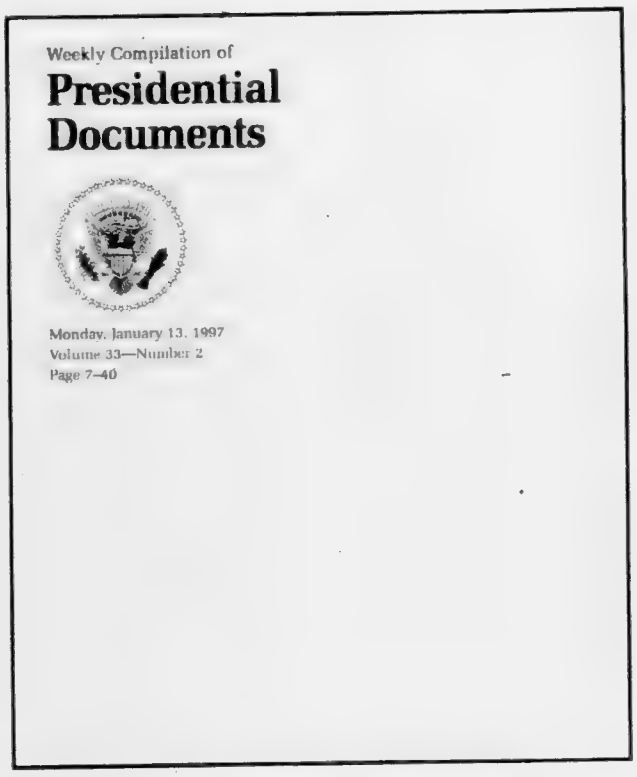

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 217, 241, 291 and 298

[Docket No. OST 98–4043]

RIN 2139–AA08

Air Carrier Traffic and Capacity Data By Nonstop Segment and On-Flight Market

AGENCY: Office of Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation is modifying the T–100/T–100(f) Traffic Reporting System. For traffic reporting purposes, the distinction between large and small aircraft is removed. All U.S. certificated and commuter air carriers and all foreign air carriers that operate to the United States will report their traffic movements in the T–100/T–100(f) Traffic Reporting System regardless of the size of aircraft used. Joint-service operations will be reported by the operating carrier. This rule modifies the current T–100 Reporting System to require U.S. carriers to report the detailed market and segment information for all their military, domestic all-cargo, and domestic charter flights. The detailed statistics from military operations will be withheld from public disclosure. The submission of Form 41 Supplemental T–1, T–2, and T–3 schedules is eliminated. The Department is requiring U.S. carriers that submit Form 41 financial reports to submit for each reported aircraft type, total aircraft hours, fuel consumed, and aircraft days assigned to service. Currently, there is a lack of market and segment data for domestic all-cargo, domestic charter and small aircraft operations. These changes will eliminate the data gaps for these rapidly growing segments of the air transportation industry.

DATES: This rule will be effective on October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Clay Moritz, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590–0001, (202) 366–4387 or 366–4385, respectively. They may also be contacted by e-mail at *clay.moritz@bts.gov* or *bernard.stankus@bts.gov* or by fax at (202) 366–3383.

SUPPLEMENTARY INFORMATION:

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Background

This rule is part of a joint effort by the Bureau of Transportation Statistics (BTS) and the Office of the Secretary of Transportation (OST) to conduct a broad-based review of the requirements for aviation data and to modernize the way BTS collects, processes, and disseminates aviation data. This rule is being issued under the rulemaking authority delegated to BTS (*See* 49 CFR 1.71(a)(3)).

As the first step in this effort, BTS and OST's Office of the Assistant Secretary for Aviation and International Affairs jointly issued an advance notice of proposed rulemaking (ANPRM) (July 15, 1998, 63 FR 28128). The Department solicited comments on the nature, scope, source, and means for collecting, processing, and distributing airline information. The ANPRM covered BTS' major data systems, including those providing traffic, fare, and financial data. The Department invited comments about whether existing aviation data collections should be amended, supplemented, or replaced; whether selected forms and reports should be retained, modified, or eliminated; whether aviation data should be filed electronically; and how the aviation data systems should be re-engineered to enhance efficiency and reduce costs for both the Department and airline industry. The Department subsequently conducted additional outreach and research activities to further assess data requirements and how the data reporting and processing systems could be improved.

The ANPRM, outreach and program analysis took a very broad approach, examining not only the types of traffic, fare, and financial information that should be collected, but also the sources of the data and how the data should be collected and processed. BTS believes it is more practical and manageable to proceed with this rule to correct immediate deficiencies by addressing a distinct aspect of the overall Departmental review.

This final rule deals with the types of market and segment data BTS should collect and from what sources. BTS believes this is an appropriate topic because the reporting changes meet several of the Department's immediate data needs. Support for these changes has also been expressed by several commenters.

Public Comments

On August 28, 2001, BTS published the notice of proposed rulemaking on *Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market* in the **Federal Register** (66 FR 45201).

Comments were received, from the Airports Council International—North America (ACI–NA), America West, Atlas Air, the City of Houston and the Greater Houston Partnership, Data Base Products, Federal Express, Mr. Daniel Kasper, Mr. Robert M. Pryor, Rickenbacker Port Authority, Southern Air, and United Air Lines. The substance of these comments is discussed below under a series of topical captions.

1. Reporting of Domestic All-Cargo, Domestic Charter, and Military Operations

The City of Houston and the Greater Houston Partnership (Houston), Federal Express, Data Base Products, Rickenbacker International Airport and ACI–NA all support reporting detailed nonstop segment and on-flight market information for domestic all-cargo, domestic charter, and military operations.

Houston believes the reporting of domestic all-cargo and charter services would improve the coverage and consistency of traffic reports.

Rickenbacker International Airport in Columbus, Ohio, is an airport that predominantly serves all-cargo air carriers, charter-passenger air carriers, and the military. The collection of detailed data from cargo and charter carriers would provide it with much needed planning and marketing information. More importantly, Rickenbacker International Airport believes the data would assist the FAA in further understanding airport traffic patterns enabling them to make better determinations on the allocation of Airport Improvement Program (AIP) funds.

ACI–NA states that "the proposed changes would produce information regarding on-board traffic loads that is more useful to U.S. airports in understanding market developments including gaps in passenger and cargo service; marketing their airports and communities to U.S. and foreign combination and all-cargo carriers; planning and monitoring a wide-range of airport facilities and services; substantiating to the U.S. Government the need for airport and related facilities and the value of domestic and international air services; and participating in domestic and international policy deliberations and competitive proceedings."

Federal Express supports BTS' goal to fill data gaps, but believes BTS did not go far enough. Federal Express believes that all carriers licensed under 49 U.S.C. 41103 should submit the financial reports required under 14 CFR part 241.

A further expansion of the financial reporting universe goes beyond the scope of this rulemaking. BTS does plan, however, to review air carrier financial reporting matters and address any proposed changes that may be identified in a separate rulemaking. Federal Express' comments will be addressed at that time.

Atlas Air is against reporting detailed segment and market data for military operations because the dissemination of such data could compromise national security.

We agree with Atlas Air that the dissemination of detailed segment or market data for military operations has the potential to compromise national security. The risk is lessened by the fact that the data are reported 30 days after the applicable month. Nevertheless, we believe the appropriate safeguard is to withhold the detailed segment or market data for military operations from public release. Military operations are identified by a separate service-class code that BTS is easily able to segregate from the carriers' other reported operations.

Previously, large certificated air carriers did not provide either market or segment data for domestic charter and domestic all-cargo services, nor did they provide detailed information for their military operations. Small certificated and commuter air carriers reported their traffic statistics under the less sophisticated Form 298–C reporting system. Part 291 all-cargo carriers did not report market or segment data. Foreign carriers did not report operations with small aircraft (60 seats or less or 18,000 pounds of payload capacity or less).

The detailed nonstop segment data include the following items:

Carrier entity code
Reporting period date
Origin airport code
Destination airport code
Service class code
Aircraft type code
Revenue passengers transported
Revenue freight transported
Revenue mail transported
Available capacity payload
Available seats, total
Revenue aircraft departures performed
Revenue aircraft departures scheduled
Revenue aircraft hours (airborne)
Aircraft hours (ramp-to-ramp)

The detailed on-flight market data include the following items:

Carrier entity code
Reporting period date
Origin airport code
Destination airport code
Service class code
Revenue passengers enplaned
Revenue freight enplaned
Revenue mail enplaned

Since the Department will be collecting detailed nonstop segment and on-flight market data for all types of flight operations, the Department will calculate from the segment and market records the following data items for all reporting air carriers, thus relieving the carriers of this task:

Revenue passenger-miles
Revenue cargo tons enplaned
Revenue tons transported
Revenue ton-miles
Revenue ton-miles, passenger
Revenue ton-miles, freight
Revenue ton-miles, mail
Available ton-miles
Available seat-miles
Revenue aircraft miles flown
Revenue aircraft miles scheduled
Inter-airport distance

2. Joint-service Operations To Be Reported by Operating Carrier

Atlas Air disagrees with the proposal that wet-lessor carriers should report detailed nonstop segment and on-flight market data for two reasons. Atlas states that the wet lessee is better able to collect and submit this information; and wet lessor reporting may be confusing to the investment community because it is the lessee that is bearing the financial risks of the operation.

ACI–NA agrees that it will be less confusing about which carrier should report the data if the operating carrier is required to file. However, it further maintains that the reporting carrier should also identify the marketing carrier so that interested parties are not required to reconcile multiple data bases. A similar comment was made by Rickenbacker International Airport.

Southern Air submitted to this docket and to the Docket OST–01–10885 comments stating that revenue ton-miles conducted under wet-lease operations should be recognized for the lessor under the Air Transportation Safety and System Stabilization Act.

We do not agree with Atlas Air's assertion that it is easier for the lessee to report T–100 data. In the past, we have received arguments from lessees that they do not have all the required aircraft operational data for T–100 reporting. Capacity, revenue ton-miles, flight hours, and block hours are statistics within the purview of the lessor. In a joint operation, there must be cooperation between the partners for accurate reporting.

We agree with Atlas that the majority of the economic risk for wet-lease service falls on the lessee; however, lessors also suffer a decline in service during economic downturns as exhibited by some carriers following the tragedy of September 11, 2001. Nonetheless, we believe the need for operational data by the FAA and the National Transportation Safety Board (NTSB) outweigh the needs of the investment community. Placing the reporting requirement on the operating carrier removes the confusion as to which carrier must report a joint operation. There were times when cargo

carriers were confused as to whether they were performing a wet-lease operation for a direct air carrier or performing a charter for an air freight forwarder. There are companies that have both direct air carrier and freight forwarder subsidiaries. Currently, wet-lease operations are reported by the lessee while charters for a freight forwarder are reported by the operating carrier.

In passenger service, a hybrid type of operation between code-share and wet-lease operations has developed. In these situations, the operating carrier receives a lower lease payment but receives a share of the passenger revenues. Thus, both parties share in the economic risk of the operation. Designating the operating carrier as the reporting carrier removes any confusion about which carrier is required to report the operation.

Regional carrier service is a growing segment of the air transportation industry. Major carriers are increasing the extent to which they hand over service to their code-share partners. The level of service to small communities can be positively or negatively affected by code-sharing. This creates an important need for DOT to monitor the impact of code-sharing on the affected communities. To effectively monitor these industry changes, the Department, the FAA, and NTSB require data on the air carriers actually operating the aircraft under joint-service agreements.

While we agree with ACI–NA that identifying the marketing carrier would be helpful information, neither the Office of the Secretary nor the FAA identified the data element as fundamental to their needs. The requirement to report marketing carriers would generally fall on the smaller code-share partners of major carriers. Some of these small operators have multiple code-share arrangements between the same city-pairs. While the total burden to report the marketing carrier may not be substantial to the industry as a whole, it may be an inordinate burden to several smaller carriers. Based on these factors, at this time, we have elected not to collect this data item.

Southern's comments have been addressed in Docket OST–01–10885, and are outside the scope of this rulemaking.

3. Citizenship Data

ACI–NA requests that BTS expand the T–100 System to collect citizenship data. ACI–NA recognizes that the Department of Commerce collects I–92 citizenship data, but argues that it is of limited use because it excludes Canada-U.S. traffic. Citizenship data would be helpful in calculating the economic benefits derived from foreign tourists and business travelers.

BTS agrees that citizenship data needs to be improved, especially the data gap for Canada-U.S. operations. At the same time, BTS believes that the data gap can best be filed by the Department of Commerce, which already has a system in place to collect citizenship data. BTS recommends that ACI–NA petition the Department of Commerce to expand I–92 citizenship data to include Canada-U.S. operations.

4. Traffic Reporting by Small Certificated and Commuter Air Carriers

The City of Houston strongly supports the proposal to require small certificated and commuter air carriers to report T–100 data. It believes that the Part 298 reporting rules are obsolete for the regional airline industry operations. It further states that: "There is no reason to maintain separate reporting systems that complicate the ability to track the activity of both large and small aircraft at our nation's airports."

United Air Lines supports the proposal to expand the T–100 collection to include data from all commuter carriers regardless of the type of aircraft used in the service.

America West supports the lowering of the reporting threshold to include aircraft with seating capacities of 50 seats or lower.

ACI–NA strongly supports T–100 traffic reporting by all carriers and states that: "These changes will improve the allocation of Airport Improvement funds and make it easier to track Passenger Facility Charges."

Mr. Robert M. Pryor states that the BTS proposal will provide a significant improvement to the nation's reporting system.

Mr. Daniel M. Kasper fully supports requiring small certificated and commuter air carriers to report T–100 data. However, he does express concerns about dropping the requirement to report Form 298–C, Schedule T–1, Report of Revenue Traffic by On-Line Origin and Destination, without imposing a corresponding requirement to submit the Passenger Origin-Destination Survey Report. Similar concerns were expressed by Mr. Earl Doolin of Data Base Products and ACI–NA.

For the purpose of reporting traffic statistics, BTS is removing distinction of large and small aircraft. All operations will be reported on Schedule T–100. While there is agreement that small certificated and commuter air carriers should report T–100 data, some parties believe that BTS should have gone further and required these carriers to report the Passenger Origin-Destination Survey data. As stated earlier, this rulemaking is the first step in modernizing aviation data. In the future, the Department will issue a rulemaking that addresses the Passenger Origin-Destination Survey Report. That rulemaking will address the reporting universe, the required data elements, and the technology to be used for submitting the Passenger Origin-Destination Survey Report. Given the future rulemaking, it would not be cost effective to require a segment of the industry to adopt a reporting system that may soon become obsolete.

As an alternative to the Passenger Origin-Destination Survey Report, the commenter proposed that the small certificated and commuter air carriers continue to file Form 298–C, Schedule T–1 *Report of Revenue Traffic by On-Line Origin and Destination*. Schedule T–1 provides for an air carrier's on-line origin and destination of its passengers. On-line origin is the airport where a passenger enters a carrier's system. On-line destination is the airport where a passenger exits that carrier's system. Intermediate points or connecting points are not reported under this system.

There are a number of advantages that will result from moving small certificated and commuter air carriers to the T–100 system. The reporting changes will result in: (1) A unified traffic reporting system for all types of operations; (2) small certificated and commuter air carriers reporting traffic movements for intermediate points; (3) the FAA having the airport enplanement data it needs for distributing Airport Improvement Program (AIP) funds, auditing the collection of Passenger Facilities Charges, and forecasting future traffic trends and movements; (4) airports having data that will facilitate their analysis of traffic flows and infrastructure needs; (5) the newly created Transportation Security Administration having the data it needs to review an air carrier's remittance of civil aviation security service fees; and (6) the Essential Air Service Program (EAS) having market data for hub airports for use in analyzing the service of small communities. The Department through the EAS program guarantees small communities access to the national aviation system; therefore, it is more important to know a small community's total traffic into a hub rather than its traffic into a number of spoke airports.

There are some disadvantages in that the on-line origin-destination passenger

data will not be available from small certificated and commuter air carriers. Schedule T–100 is designed to track aircraft movements. We will have information on where a passenger got on and off a particular flight rather than where the passenger got on and off a particular carrier's route network. As stated before, Form 298–C Schedule T–1 tracks where passengers enter and exit a carrier's route system. Under this rule, on-line origin-destination data are lost when a passenger changes flights within a small certificated or a commuter air carriers' route network. This is a problem that is generally associated with a hub-and-spoke network. Passengers traveling from spoke-to-spoke will be shown as two passenger enplanements under T–100. When there is a change in flight numbers, one enplanement is recorded for the flight into the hub and another enplanement is recorded for the flight to the destination spoke. There will not be market data for spoke-to-spoke passengers when there is a change in flight numbers and those passengers' itinerary did not involve passage on a carrier that submits the Passenger Origin-Destination Survey Report.

There are costs and benefits to the proposal to require small air carriers to report both T–100 and Form 298–C Schedule T–1 data until the Department implements changes to the current Passenger Origin-Destination Survey. The benefit is that we would retain the on-line market data for local spoke-to-spoke travelers. Under T–100, we still will have the enplanement data at the spoke airports, which is used to make EAS determinations and allocate AIP funds. Moreover, not all small carriers operate hub-and-spoke systems where there would be a loss of on-line market data. We believe that the costs of dual reporting exceed the benefits at this time.

Mr. Kasper identified a number of medium to large-size markets (40,000 to 275,000 quarterly passengers) that are substantially under-reported in the Passenger Origin-Destination Survey Report. These include:

Market	O&D passengers	Percent under reported
• SEA–PDX	273,550	25
• LGA–CMH	222,900	30
• SLC–BOI	182,720	25
• SAN–LAX	157,460	30
• IAD–EWR	116,230	66
• SAV–ORD	87,220	50
• RDU–IAD	86,700	73
• IND–IAD	65,180	83
• BTV–BOS	49,480	86
• PWM–IAD	43,040	93

The above list makes a strong argument for reviewing the threshold requirements for submitting the Passenger Origin-Destination Survey Report. Requiring small carriers to continue to report On-Line Passenger Origin-Destination data will not resolve or ease the problem. Each of the markets listed above is served on a nonstop basis by a small air carrier. These carriers will report the market data in their monthly T–100 on-flight market records.

BTS has not identified a regulatory need to require dual reporting of T–100 and Form 298–C Schedule T–1 reporting. The burden to the small carriers outweighs the Department's need for spoke-to-spoke market data.

5. Total Aircraft Hours, Aircraft Days Assigned to Service, and Fuel Issued

Ms. Lucretia Frederich, Mr. Robert Pryor, and Mr. Earl Doolin all proposed that carriers report total aircraft hours, aircraft days assigned to service, and aircraft fuels by aircraft type on Form 41 Schedules P–5.1 and P–5.2, *Aircraft Operating Expenses*, rather than on Schedule P–2, *Notes to BTS Form 41 Report*.

These data items are currently reported on the supplemental Schedule T–2 because these data elements cannot be calculated by BTS from the detailed Schedule T–100 reports. Based on the importance of these data elements and the fact we are eliminating Schedule T–2, we must find an appropriate reporting location. BTS agrees with the comments that locating them on the Schedules P–5.1 and P–5.2 is a better alternative than placing them in the free form Schedule P–2. By adding these items to the aircraft operating expense schedules, it will be easier for analysts to calculate expenses per hour, cost of fuel per gallon, and aircraft utilization.

Small certificated and commuter air carriers do not currently submit Form 41 financial reports, and we are not requiring them to do so now. Small certificated air carriers submit Form 298–C, Schedule F–2 *Report of Aircraft Operating Expenses and Related Statistics*, which already contains gallons of fuel issued. Commuter air carriers submit a basic quarterly income statement, with no detailed aircraft costing information. Since BTS will calculate revenue block hours and departures from the detailed T–100 data, we are eliminating these two elements from Form 298–C Schedule F–2.

6. Elimination of Supplemental Schedules T–1, T–2, and T–3

Mr. Robert Pryor expressed his concern about the public availability of the data elements that were reported on supplemental Schedules T–1, T–2, and T–3. In the NPRM, BTS stated that it would calculate the data elements eliminated on the supplemental schedules by using the detailed market and segment data reported on Schedule T–100. However, BTS did not specifically address the issue of public availability of the computed data. Mr. Pryor proposed that BTS amend Part 241 to state that BTS will construct Schedules T–1, T–2, and T–3 and that BTS will make these schedules publicly available after processing. Also, Mr. Pryor was concerned that restrictions on detailed international data may impact the release of supplemental data.

BTS will continue to make available to the public the data elements that were reported on supplemental Schedules T–1, T–2, and T–3. These data will be available after BTS completes its editing and processing. BTS' current information technology plans call for adding more data elements to the BTS web site to expand data availability to the public. BTS does not believe it is necessary to revise its regulations to include Mr. Pryor's proposal since it has been and will continue to be BTS policy to release Schedule T–1, T–2 and T–3 data.

BTS will use international segment and market data in its creation of supplemental T–1, T–2, and T–3 data. Nevertheless, the supplemental schedules do not include the detailed market information that is competitively sensitive. Consequently, the supplemental reports will not be withheld from public release.

7. Definition of Scheduled Service

Rickenbacker International Airport commented that part 291 should be clarified by defining *scheduled service*. It stated that the airport receives regular scheduled all-cargo flights. Some of these flights are operated daily, others are operated three times a week or weekly. While these flights are available to the public, they are not always published in the Official Airline Guide (OAG). Rickenbacker wants to be assured that these flights are considered to be scheduled flights.

We will add a definition of scheduled service to § 291.2. We agree with Rickenbacker's interpretation that a scheduled cargo flight does not have to operate daily or be published in the OAG to meet the definition of scheduled service. The definition will read:

Service, scheduled cargo means transport service operated pursuant to published flight schedules including extra sections. There is no requirement on the number of weekly flights nor is

there a requirement that the schedule must be published in the OAG.

8. Collecting Traffic Data From Foreign Air Carriers for Small Aircraft Operations

There were general comments from Data Base Products, Mr. Robert Pryor, the City of Houston, and ACI–NA in favor of the proposed changes. There were no comments opposing foreign air carriers being required to report small aircraft operations.

Given the proliferation of regional jet aircraft in trans-border service between the U.S. and Canada, the intense level of competition in the marketplace, the maturity of the industry, and the advances in information technology, the absence of data for this segment of the air transportation industry accounts for a significant adverse gap in the Department's ability to perform industry analyses. To close this gap, the Department is eliminating the provision that allows foreign air carriers to exclude segment and market data for aircraft operations conducted wholly with small aircraft. Currently, foreign air carriers are required to report only operations conducted with large aircraft, which are defined as aircraft with more than 60 seats or greater than 18,000 pounds of payload capacity.

Foreign air carriers have replaced large aircraft with regional jet aircraft. For many trans-border operations, regional jets account for a significant number of trans-border enplanements. Regional jets also replaced large aircraft on some longer haul routes, such as Ottawa-Washington. When regional jets were substituted for large jet aircraft, operations that were once included on Schedule T–100(f) were no longer reported, further widening the data gap. As the use of the regional jet becomes even more prevalent, the absence of data increases the volume of market traffic-flow information that is either incomplete or nonexistent.

It appears that the current small aircraft exclusion for foreign air carriers no longer serves a purpose. In fact, Air Canada, which may conduct the most small aircraft operations to the United States, communicated to the Department that it is cumbersome to identify and then exclude statistics for small aircraft in their T–100(f) submissions. Air Canada is, in fact, reporting detailed T–100 data for its small aircraft operations on a voluntary basis.

The FAA uses enplanement data for U.S. airports to distribute the annual AIP entitlement funds to eligible primary airports. U.S. airports receiving significant service from foreign air carriers operating small aircraft could thus be receiving less than their fair share of AIP entitlement funds. Collecting Schedule T–100(f) data for small aircraft operations will enable the FAA to more fairly distribute these funds.

9. Standardized Formats for Electronic Submissions

The BTS encourages carriers to use advanced information technologies to submit their reports to BTS. To avoid a multitude of file formats that could lead to inefficiencies in processing, we are adopting a standard length of fields for submission of personal computer (PC) generated reports. The field descriptions and field lengths are identical to the fields prescribed for magnetic tape/cartridge submissions. Submitters must separate fields by using commas or tabs (comma delimited ASCII or tab delimited ASCII format). The Department will accept alternative formats after prior approval by the Assistant Director—Airline Information, Bureau of Transportation Statistics.

NONSTOP SEGMENT LAYOUT

Field No.	Positions	Mode	Description
1	1	1T	S To identify Segment Record.
2	2–6	5T	Carrier Entity Code.
3	7–12	6T	Report Date (YYYYMM).
4	13–15	3T	Origin Airport Code.
5	16–18	3T	Destination Airport Code.
6	19	1T	Service Class (F, G, L, N, P or R).
7	20–23	4T	Aircraft Type Code.
8	24–28	5N	Revenue Departures Performed.
9	29–38	10N	Available Capacity Payload (lbs.).
10	39–45	7N	Available Seats.
11	46–52	7N	Revenue Passengers Transported.
12	53–62	10N	Revenue Freight Transported in lbs.
13	63–72	10N	Revenue Mail Transported in lbs.
14	73–77	5N	Revenue Aircraft Departures Scheduled.
15	78–87	10N	Revenue Hours (Block) in Minutes.
16	88–97	10N	Revenue Hours (Airborne) in Minutes.

ON-FLIGHT MARKET RECORD LAYOUT

Field No.	Positions	Mode	Description
1	1	1T	M To identify Market Record.
2	2–6	5T	Carrier Entity Code.
3	7–12	6T	Report Date (YYYYMM).
4	13–15	3T	Origin Airport Code.
5	16–18	3T	Destination Airport Code.
6	19	1T	Service Class (F,G,L,N,P or R).
7	20–26	7N	Total Revenue Passengers in Market.
8	27–36	10N	Revenue Freight in Market (in lbs.).
9	37–46	10N	Revenue Mail in Market (in lbs.).

T=Text.
N=Numeric.

10. Effective Date for Reporting

United Air Lines supports the changes to T–100 but requests at least 90 days implementation time.

We have set October 1, 2002 as the effective date. The first reports are due at BTS by November 30, 2002.

Cost/Benefit Analysis

Costs

A regulatory evaluation was placed in Docket OST 98–4043. We welcomed comments on the evaluation. BTS did not receive any comments addressing its evaluation.

The costs of this rule are the expenses incurred in making the necessary changes to air carrier information gathering systems. These include: (1) The expense for small certificated, commuter, and all-cargo air carriers to report their air traffic activity under the T–100 Traffic Reporting System; (2) the expense to modify U.S. carriers' reporting systems to provide the detailed market and segment information for all their military, domestic all-cargo, and domestic charter flights; (3) the expense to all-cargo air carriers to report monthly traffic and fuel consumption data; and (4) the expense to foreign air carriers to include small aircraft operations to/from the United States in their monthly submissions.

BTS believes the costs mentioned above are minor because all the information requested should be readily available to the affected air carriers (see regulatory evaluation). Mitigating the cost of compliance to the air carriers is the fact the Department will supply the carriers with T–100 reporting software that carriers may use at their discretion.

Benefits

U.S. carriers are relieved of the burden of submitting the supplemental Schedules T–1, T–2, and T–3. Small certificated and commuter air carriers are relieved of the burden of submitting Form 298–C Schedules A–1 and T–1. Small certificated air carriers are also relieved of the burden of submitting Form 298–C Schedule E–1.

The Department, other federal agencies, state and local governments, the airline industry, academia, and the public will benefit from the collection of improved aviation data such as: (1) Detailed segment and market data for domestic all-cargo operations, (2) enplanement statistics for intermediate points served by small certificated and commuter air carriers, (3) detailed segment and market data for small aircraft services operated by foreign air carriers, and (4) fuel consumption data collected from domestic all-cargo carriers.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget.

This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The purpose of the rule is to improve the accuracy and utility of reported traffic data. This objective is achieved by amending 14 CFR Parts 217, 241, 291, and 298 to require market and segment data for all operations and the collection of traffic statistics from operating air carriers.

Executive Order 13132

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and will not have a substantial direct effect on the states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. The rule does not impose substantial direct compliance costs on State and local governments or preempt state law. Thus, the BTS has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act Analysis

I certify this rule will not have a significant economic impact on a substantial number of small entities. Approximately 100 small entities will be impacted by this final rule.

Although this final rule amends the reporting requirements for small air carriers, any increase in reporting burden should be minimal. To reduce the impact on small businesses, the BTS will supply affected carriers with software to facilitate their reporting of the required traffic data. In addition, BTS plans to conduct outreach efforts to inform small carriers of the changes in the reporting requirements. This rule also eases the reporting burden on small air carriers by eliminating the Form 298–C traffic schedules.

The Department recognizes that changes in reporting formats initially increase reporting burden due to a need to familiarize staff with a revised reporting system. After carrier staff becomes proficient with the new software, carrier reporting burden should be less under the T–100 System than if carriers continued to file Form 298–C traffic reports.

The Regional Airline Association (RAA), which represents small airline companies, had commented at the advance notice of proposed rulemaking stage that the current traffic reporting system for small operators is both inappropriate and inconsistent. We believe that this rule addresses RAA's concerns. The RAA did not comment on the NPRM.

National Environmental Protection Act

The BTS analyzed the amendments for the purpose of the National Environmental Protection Act. The amendments will not have any impact on the quality of the human environment.

Paperwork Reduction Act Analysis

The reporting and recordkeeping requirements associated with this rule were sent to the Office of Management and Budget in accordance with 44 U.S.C. chapter 35 under OMB NO: 2138–0040. ADMINISTRATION: Bureau of Transportation Statistics; TITLE: Report of Traffic and Capacity Statistics—The T–100 System; NEED FOR INFORMATION: Statistical information on airline passenger movements; PROPOSED USE OF INFORMATION: Balance of benefits analyses for international agreements, assignment of passenger enplanements to the proper airports and monitoring the adequacy of air service to small communities; FREQUENCY: Monthly; BURDEN ESTIMATE: 25,000 annual hours; AVERAGE ANNUAL BURDEN HOURS PER RESPONDENT AFTER REPROGRAMMING IS COMPLETED—70. For further information contact: The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attention Desk Officer for the Department of Transportation or Bernie Stankus at the address listed under **FOR FURTHER INFORMATION CONTACT**.

Unfunded Mandates Reform Act

This final rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2139–AA08 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

14 CFR Part 217

Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 241

Air carriers, Reporting and recordkeeping requirements, Uniform System of Accounts.

14 CFR Part 291

Administrative practice and procedure, Air carriers, Freight, Reporting and recordkeeping requirements.

14 CFR Part 298

Air taxis, Reporting and recordkeeping requirements.

Final Rule

Accordingly, the Department amends chapter II of 14 CFR, as follows:

PART 217—[AMENDED]

1. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 413, 417.

2. Section 217.1 is amended by removing the definitions for *Large Aircraft* and *Small Aircraft*, and by adding the new definitions in alphabetical order to read as follows:

§ 217.1 Definitions.

* * * * *

Reporting carrier for T–100(f) purposes means the air carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own operating authority.

* * * * *

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

3. Section 217.2 is revised to read as follows:

§ 217.2 Applicability.

This part applies to foreign air carriers that are authorized by the Department to provide civilian passenger and/or cargo service to or from the United States, whether performed pursuant to a permit or exemption authority.

4. Appendix to § 217.10 is amended as follows:

a. Revise paragraph (a)(2);
b. Revise paragraph (f)(1)(i);
c. Revise paragraph (g)(1)(ii); and
d. Revise paragraph (i)(2).

The revisions read as follows:

Appendix to Section 217.10 of 14 CFR Part 217—Instructions to Foreign Air Carriers for Reporting Traffic Data on Form 41 Schedule T–100(F)

(a) * * *

(2) Applicability. Each foreign air carrier holding a § 41302 permit or exemption authority shall file Schedule T–100(f).

* * * * *

(f) * * *

(1) * * *

(i) Reporting medium. ADP data submission must be on IBM compatible disks. Carriers using mainframe or minicomputers shall download (transcribe) to the required IBM compatible disk. Carriers wishing to use a different ADP procedure or e-mail must obtain written approval to do so from the BTS Assistant Director—Airline Information under the waiver provisions in § 217.9 of this part. Requests for approval to use alternative methods must disclose and describe in sufficient detail the proposed data transmission methodology.

* * * * *

(g) * * *

(1) * * *

(ii) Line A–2 Report date. This is the year and month to which the data are applicable. For example, 200009 indicates the year 2000, and the month of September.

* * * * *

(i) * * *

(2) Joint-service operations shall be reported on BTS Form 41 Schedules T–100 and T–100(f) by the air carrier in operational control of the flight, i.e., the air carrier that uses its flight crew to perform the operation. If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information at the address in paragraph (a)(3) of this appendix.

* * * * *

5. Section 217.11 is amended by revising paragraph (a) to read as follows:

§ 217.11 Reporting compliance.

(a) Failure to file reports required by this part will subject an air carrier to civil penalties prescribed in Title 49 United States Code section 46301.

* * * * *

PART 241—[AMENDED]

6. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 411, 417.

7. Part 241 Section 03 is amended by revising the definition for *Aircraft days assigned to service-carrier's equipment* and adding in alphabetical order the definitions for *Reporting carrier* and *Wet-lease Agreement* to read as follows:

Section 03—Definitions for Purposes of This System of Accounts and Reports

* * * * *

Aircraft days assigned to service-carrier's equipment means the number of days that aircraft owned or acquired through rental or lease are in the possession of the reporting air carrier and are available for service on the reporting carrier's routes plus the number of days such aircraft are in service on routes of others under wet-lease agreements. Includes days in overhaul, or temporarily out of service due to schedule cancellations. Excludes days that newly acquired aircraft are on hand but not available for productive use, days dry-leased or rented to others, and days in possession but formally withdrawn from air transportation service.

* * * * *

Reporting carrier for T–100 purposes means the air carrier in operational control of the flight, i.e., the carrier that uses its flight crew under its own FAA operating authority.

* * * * *

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

8. Part 241 Sec. 19–1 is amended by revising paragraphs (a) and (c) to read as follows:

Section 19—Uniform Classification of Operating Statistics

Sec. 19–1 Applicability.

(a) *United States air carrier.* Each large certificated U.S. air carrier shall file with the Department, on a monthly basis, Form 41 Schedule T–100 "U.S. Air Carrier Traffic and Capacity Data By Nonstop Segment and On-flight Market," and summary data as prescribed in this section and in sections 22 and 25 of this part.

* * * * *

(c) Each U.S. air carrier shall use magnetic computer tape or IBM compatible disk for transmitting the prescribed data to the Department. Upon good cause shown, OAI may approve the request of a U.S. air carrier, under section 1–2 of this part, to use hardcopy data input forms or submit data via e-mail.

* * * * *

9. Part 241 Sec. 19–3 is amended by removing and reserving paragraph (b).

10. Part 241 Sec. 19–5 is amended by revising paragraph (b) to read as follows:

Sec. 19–5 Air transport traffic and capacity elements.

* * * * *

(b) These reported items are as follows:

Code	Description	Segment	Market	Computed by DOT
	Carrier, carrier entity code	S	M	
	Reporting period date	S	M	
	Origin airport code	S	M	
	Destination airport code	S	M	
	Service class code	S	M	
	Aircraft type code	S		
110	Revenue passengers enplaned		M	
130	Revenue passengers transported	S		
140	Revenue passenger-miles			CFD*
210	Revenue cargo tons enplaned			CFD*
217	Enplaned freight		M	
219	Enplaned mail		M	
230	Revenue tons transported			CFD*
237	Transported freight	S		
239	Transported mail	S		
240	Revenue ton-miles			CFD*
241	Revenue ton-miles passenger			CFD*
247	Revenue ton-miles freight			CFD*
249	Revenue ton-miles mail			CFD*
270	Available capacity payload	S		
280	Available ton-miles			CFD*
310	Available seats, total	S		
320	Available seat-miles			CFD*
410	Revenue aircraft miles flown			CFD*
430	Revenue aircraft miles scheduled			CFD*
501	Inter-airport distance			CFD*
510	Revenue aircraft departures performed	S		
520	Revenue aircraft departures scheduled	S		
610	Revenue aircraft hours (airborne)	S		
630	Aircraft hours (ramp-to-ramp)	S		
650	Total aircraft hours (airborne)	S		

*CFD = Computed by DOT from detail Schedule T–100 and T–100(f) data.

* * * * *

11. Part 241 Section 19–6 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

Section 19–6 Public disclosure of traffic data.

(a) Detailed domestic on-flight market data and nonstop segment data except military data shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession. Domestic military operations are reported under service codes N or R.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports, except military data, shall be publicly available immediately following the Department's determination that the database is complete, but no earlier than six months after the date of the data. Military operations are reported under service codes N or R. Data for on-flight markets and nonstop segments involving no U.S. point shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the confidentiality period as follows:

* * * * *

12. In Part 241 Section 22:

a. The List of Schedules in BTS Form 41 Report is amended by removing the entries for Schedules T–1, T–2, and T–3.

b. The chart of DUE DATES OF SCHEDULES IN BTS FORM 41 REPORT is amended in the last column by removing Schedules T–1, T–2, and T–3, wherever they appear.

13. Part 241 Section 24 is amended as follows:

a. By revising the first sentence of Schedule P–5.1(e);

b. By adding Schedule P–5.1 (j), (k) and (l); and

c. By revising the title of Schedule P–5.2.

The revisions and addition are as follows:

Section 24—Profit and Loss Elements

* * * * *

Schedule P–5.1 * * *

(e) This schedule shall show the direct and indirect expenses incurred in aircraft operations plus total aircraft hours, gallons of fuel issued, and aircraft days assigned to service. * * *

* * * * *

(j) Line 17 "Total Aircraft Hours" shall equal the sum of revenue and nonrevenue aircraft hours.

(k) Line 18 "Gallons of Fuel Issued" shall equal the aircraft fuels issued (account Z921).

(l) Line 19 "Aircraft Days Assigned to Service" equals the number of days that aircraft owned or acquired through rental or lease are in the possession of the reporting air carrier and are available for service on the reporting carrier's routes plus the number of days such aircraft are in service on routes of others under wet-lease agreements. Includes days in overhaul, or temporarily out of service due to schedule cancellations. Excludes days that newly acquired aircraft are on hand but not available for productive use, days dry-leased or rented to others, and days in possession but formally withdrawn from air transportation service.

Schedule P–5.2—Aircraft Operating Expenses and Related Statistics

* * * * *

14. Part 241 Section 25 is amended as follows:

a. By revising paragraph (b);

b. By removing Schedule T–1 U.S. Air Carrier Traffic and Capacity Summary-By Service Class, Schedule T–2 U.S. Air Carrier Traffic and Capacity Statistics-By Aircraft Type, and Schedule T–3 U.S. Air Carrier Airport Activity Statistics; and

c. By revising paragraph (a) in Schedule T–100 U.S. Air Carrier Traffic and Capacity Data By Nonstop Segment and On-Flight Market paragraph and adding a new paragraph (d).

The revisions and additions read as follows:

Section 25—Traffic and Capacity Elements

* * * * *

(b) Carriers submitting Schedule T–100 shall use magnetic computer tape or IBM compatible disk for transmitting the prescribed data to the Department. Upon good cause shown, OAI may approve the request of a U.S. air carrier, under section 1–2 of this part, to use hardcopy data input forms or submit data via e-mail.

* * * * *

Schedule T–100 U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market

(a) Schedule T–100 collects detailed on-flight market and nonstop segment data on all revenue flights flown by U.S. certificated air carriers. This schedule is filed monthly. Separate data shall be reported for each operating entity (Latin America, Atlantic, Pacific; International, or Domestic) of the air carrier. Data for each operating entity shall be reported using the five digit entity code prescribed under section 19–5(c) of this part.

* * * * *

(d) *Joint-service operations.* The air carrier in operational control of the aircraft (the carrier that uses its flight crews under its own FAA operating authority) must report joint-service operations.

15. The appendix to Part 241 Section 25 is revised to read as follows:

Appendix to Section 241.25 of 14 CFR Part 241-Instructions to U.S. Air Carriers for Reporting Traffic and Capacity Data on Form 41 Schedule T–100

(a) *Applicability.* Each large U.S. air carrier that holds a 49 U.S.C. "41102 certificate must file the monthly Schedule T–100.

(b) Schedules, Frequency, and entity: (1) Schedule T–100 collects summarized flight stage data by reporting entity for scheduled and nonscheduled passenger, and cargo operations. The term entity refers to the geographic location designator prescribed by the Department in "241.19–5(c)(2). Thus, domestic entity operations are distinguished from international entity operations.

(2) [Reserved]

(c) *Format of reports:*

(1) *Automatic Data Processing (ADP) magnetic tape.* Refer to paragraph (f) of this appendix for instructions pertaining to mainframe and minicomputer reporting. The Department will issue "Accounting and Reporting Directives" to make necessary technical changes to these T–100 instructions. Technical changes which are minor in nature do not require public notice and comment.

(2) *Microcomputer diskette.*

(i) *Optional specification.* If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following specifications for filing data on diskette media apply:

(ii) *Reporting medium.* Microcomputer ADP data submission of T–100 information must be on IBM compatible disks. Carriers wishing to use a different ADP procedure must obtain written approval to do so from the BTS Assistant Director—Airline Information. Requests for approval to use alternate methods must disclose and describe the proposed data transmission methodology. Refer to paragraph (k) of this appendix for microcomputer record layouts.

(iii) Microcomputer file characteristics. The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (") and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by its juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(d) *Filing date for reports.* The reports must be received at BTS within 30 days following the end of each reporting period.

(e) Address for filing: Data Administration Division, K–14, Room 4125, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(f) *ADP format for magnetic tape:* (1) *Magnetic tape specifications.* IBM compatible 9-track EBCDIC recording. Recording density of 6250 or 1600 bpi. The order of recorded information is:

Volume label
Header label
Data records
Trailer label

(2) [Reserved]

(g) External tape label information:

Carrier name
Report date
File identification
Carrier address for return of tape reel

(h) *Standards.* It is the policy of the Department to be consistent with the American National Standards Institute and the Federal Standards Activity in all data processing and telecommunications matters. It is our intention that all specifications in this application be in compliance with standards promulgated by these organizations.

(i) *Volume, header, and trailer label formats:*

(1) Use standard IBM label formats. The file identifier field of the header labels should be "T–100.SYSTEM".

(2) [Reserved]

(j) *Magnetic tape record layouts for T–100.*

(1) *Nonstop segment record layout:*

Field No.	Positions	Mode	Description
1	1	1T	Record type code (S = nonstop segment).
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–23	4T	Aircraft type code.
8	24–28	5N	Revenue departures performed (F, G, L, N, P, R510).
9	29–38	10N	Available capacity payload (lbs) (F, G, L, N, P, R270).
10	39–45	7N	Available seats (F, L, N310).
11	46–52	7N	Passengers transported (F, L, N130).

Field No.	Positions	Mode	Description
12	53–62	10N	Rev freight transported (F, G, L, N, P, R237)(in lbs).
13	63–72	10N	Revenue mail transported (F, G, L, N, P, R239) (in lbs).
14	73–77	5N	Revenue aircraft departures scheduled (F, G520).
15	78–87	10N	Rev hrs, ramp-to-ramp (F, G, L, N, P, R630) (in minutes).
16	88–97	10N	Rev hrs, airborne (F, G, L, N, P, R610) (in minutes).

T= Text.
N= Numeric.

(2) On-flight market record layout:

Field No.	Positions	Mode	Description
1	1	1T	Record type: M = on-flight market record.
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–26	7N	Total passengers in market (F, L, N110).
8	27–36	10N	Rev freight in market (F, G, L, N, P, R217) (in lbs).
9	37–46	10N	Revenue mail in market (F, G, L, N, P, R219) (in lbs).

T=Text.
N-Numeric.

(k) *Record layouts for microcomputer diskettes.* The record layouts for diskettes are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks, tabs and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(1) *File characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (") and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, it is critical that each record contain the exact number of data elements, all of which must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisk files in this format.

(2) *File naming conventions for diskettes.* For microcomputer reports, each record type shall be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions should be followed:

Record type S = SEGMENT.DAT
Record type M = MARKET.DAT

(l) Discussion of Reporting Concept. (1) Schedule T–100 collects summarized flight stage data and on-flight market data. All traffic statistics shall be compiled in terms of each revenue flight stage as actually performed. The detail T–100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. The first grouping, the nonstop segment information, is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type or flight number.

(2) [Reserved]

(m) *Joint Service.* (1) *Joint-service operations.* The Department may authorize joint-service operations between two direct air carriers. Examples of these joint-service operations are: Blocked-space agreements; part-charter agreements; code-sharing agreements; wet-lease agreements, and other similar arrangements.

(i) Joint-service operations are reported by the carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority. The traffic moving under these agreements is reported on Schedule T–100 the same way as any other traffic on the aircraft.

(ii) If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information (fax no. 202 366–3383, telephone no. 202 366–4373).

(iii) *Operational control.* The air carrier in operational control of the aircraft (the carrier that uses its flight crew under its own FAA operating authority) must report joint-service operations.

(2) [Reserved]

(n) Glossary of data elements. § 241.19–5 and § 241.03.

PART 291—[AMENDED]

16. The authority citation for part 291 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 411 and 417.

17. Section 291.2 is amended by adding the new definitions in alphabetical order to read as follows:

§ 291.2 Definitions.

* * * * *

Reporting carrier for Schedule T–100 purposes means the air carrier in operational control of the aircraft, i.e., the carrier that uses its flight crew under its own FAA operating authority.

* * * * *

Service, scheduled cargo means transport service operated pursuant to published flight schedules including extra sections. There is no requirement on the number of weekly flights nor is there a requirement that the schedule be published in the Official Airline Guide.

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

18. Section 291.42 is amended by revising the section heading and paragraph (a) to read as follows:

§ 291.42 Section 41103 financial and traffic reporting.

(a) *General instructions.* Carriers operating under section 41103 certificates that are not subject to part 241 of this chapter shall file Form 291–A, "Statement of Operations for Section 41103 Operations", Schedule T–100, "U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market", and Schedule P–12(a), "Fuel Consumption by Type of Service and Entity" with the Department's Bureau of Transportation Statistics (BTS).

(1) A single copy of the BTS Form 291–A report shall be filed annually with the Office of Airline Information (OAI) for the year ended December 31, to be received on or before February 10

of the immediately following year. A single copy of the monthly BTS Schedule P–12(a) is due at OAI within 20 days after the end of each month. An electronic filing of the monthly Schedule T–100 is due at OAI within 30 days after the end of each month. Due dates falling on a Saturday, Sunday or Federal holiday will become effective on the next work day.

(2) Reports required by this section shall be filed at the Office Airline Information, K–14, Room 4125, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

* * * * *

19. A new § 291.43 is added to Subpart E to read as follows:

§ 291.43 Statement of operation for section 41103 operations.

Form 291–A contains the following data elements:

(a) Total operating revenue, categorized as follows:

(1) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(2) Transport revenues from the carriage of mail in scheduled and nonscheduled service; and

(3) Transport-related revenues;

(b) Total operating expenses;

(c) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues; and

(d) Net income, computed by subtracting the total operating and nonoperating expenses, including interest expenses and income taxes, from the total operating and nonoperating revenues.

20. A new § 291.44 is added to Subpart E to read as follows:

§ 291.44 BTS Schedule P–12(a), Fuel Consumption by Type of Service and Entity.

(a) For the purposes of BTS schedule P–12(a), type of service shall be either scheduled service or nonscheduled service as those terms are defined in § 291.45(c)(2) and (3).

(b) For the purpose of this schedule, scheduled service shall be reported separately for:

(1) Intra-Alaskan operations;

(2) Domestic operations, which shall include all operations within and between the 50 States of the United States (except Intra-Alaska), the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands, or a U.S. territory or possession to a place in any State of the United States the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands, or a U.S. territory or possession;

(3) International operations are flight stages with one or both terminals outside the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands, or a U.S. territory or possession.

(c) For the purpose of this schedule, nonscheduled service shall be reported separately for domestic operations and international operations as defined in paragraphs (b)(2) and (b)(3) of this section, except that domestic and international Military Airlift Command (MAC) operations shall be reported on separate lines.

(d) The cost data reported on each line shall represent the average cost of fuel, as determined at the station level, consumed in that geographic entity.

(e)(1) The cost of fuel shall include shrinkage, but excludes:

(i) "Throughput" and "in to plane" fees, i.e., service charges or gallonage levies assessed by or against the fuel vendor or concessionaire and passed on to the carrier in a separately identifiable form; and

(ii) Nonrefundable Federal and State excise taxes.

(2) However, "through-put" and "in to plane" charges that cannot be identified or segregated from the cost of fuel shall remain a part of the cost of fuel as reported on this schedule.

(f) Each air carrier shall maintain records for each station showing the computation of fuel inventories and consumption for each fuel type. The periodic average cost method shall be used in computing fuel inventories and consumption. Under this method, an average unit cost for each fuel type shall be computed by dividing the total cost of fuel available (Beginning Inventory plus Purchases) by the total gallons available. The resulting unit cost shall then be used to determine the ending inventory and the total consumption costs to be reported on this schedule.

(g) Where amounts reported for a specific entity include other than Jet A fuel, a footnote shall be added indicating the number of gallons and applicable costs of such other fuel included in amounts reported for that entity.

(h) Where any adjustment(s) recorded on the books of the carrier results in a material distortion of the current month's schedule, carriers shall file a revised Schedule P–12(a) for the month(s) affected.

21. A new § 291.45 is added to Subpart E to read as follows:

§ 291.45 BTS Schedule T–100, U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market.

(a) Each section 41103 all-cargo air carrier shall file Schedule T–100, "U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market".

(b) Schedule T–100 shall be filed monthly.

(1) Schedule T–100 collects summarized flight stage data and on-flight market data for revenue flights. All traffic statistics shall be compiled in terms of each flight stage as actually performed. The detail T–100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. First, the nonstop segment information which is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type or flight number.

(2) *Joint-service operations.* The Department may authorize joint-service operations between two direct air carriers. Examples of these joint-service operations are: blocked-space agreements; part-charter agreements; code-sharing agreements; wet-lease agreements, and similar arrangements.

(i) Joint-service operations are reported by the carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority. The traffic moving under these agreements is reported on Schedule T–100 the same way as any other traffic on the aircraft.

(ii) If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information (fax no. 202 366–3383, telephone no. 202 366–4373). Joint-service operations are reported in Schedule T–100 in accordance with this paragraph (b).

(iii) *Operational control.* The air carrier in operational control of the aircraft (the carrier that uses its flight crews under its own FAA operating authority) must report joint services.

(c) *Service classes.*

(1) The statistical classifications are designed to reflect the operating characteristics attributable to each distinctive type of service offered. The combination of scheduled and nonscheduled operations with passenger, all-cargo, and military

services are placed into service classes as follows:

Code	Type of service
F	Scheduled Passenger/Cargo.
G	Scheduled All-Cargo.
L	Nonscheduled Civilian Passenger/Cargo/
P	Nonscheduled Civilian Cargo.
N	Nonscheduled Military Passenger/Cargo.
R	Nonscheduled Military Cargo.

(2) Scheduled services include traffic and capacity elements applicable to air transportation provided pursuant to published schedules and extra sections of scheduled flights. Scheduled Passenger/Cargo (Service Class F) is a composite of first-class, coach, and mixed passenger/cargo service.

(3) Nonscheduled services include all traffic and capacity elements applicable to the performance of nonscheduled aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules.

(d) *Air transport traffic and capacity elements.* Within each of the service classifications, carriers shall report air transport traffic and capacity elements. The elements are reported on segment and/or market records as follows:

Code	Description	Segment	Market	Computed by DOT
	Carrier, carrier entity code	S	M	
	Reporting period date	S	M	
	Origin airport code	S	M	
	Destination airport code	S	M	
	Service class code	S	M	
	Aircraft type code	S	M	
110	Revenue passengers enplaned	S		CFD*
130	Revenue passengers transported			CFD*
140	Revenue passenger-miles		M	
210	Revenue cargo tons enplaned		M	
217	Enplaned freight			CFD*
219	Enplaned mail			
230	Revenue tons transported	S		
237	Transported freight	S		CFD*
239	Transported mail			CFD*
240	Revenue ton-miles			CFD*
241	Revenue ton-miles passenger			CFD*
247	Revenue ton-miles freight			CFD*
249	Revenue ton-miles mail	S		
270	Available capacity payload			CFD*
280	Available ton-miles	S		
310	Available seats, total			CFD*
320	Available seat-miles			CFD*
410	Revenue aircraft miles flown			CFD*
430	Revenue aircraft miles scheduled			CFD*
501	Inter-airport distance	S		
510	Revenue aircraft departures performed	S		
520	Revenue aircraft departures scheduled	S		
610	Revenue aircraft hours (airborne)	S		
630	Aircraft hours (ramp-to-ramp)	S		
650	Total aircraft hours (airborne)			

*CFD = Computed by DOT from detail Schedule T–100 and T–100(f) data.

(e) These reported items are further described as follows:

(1) *Reporting period date.* The year and month to which the reported data are applicable.

(2) *Carrier, Carrier entity code.* Each air carrier shall report its name and entity code (a five digit code assigned by BTS that identifies both the carrier and its entity) for its particular operations. The Office of Airline Information (OAI) will assign or confirm codes upon request. OAI's address is Office of Airline Information, Bureau of Transportation Statistics, DOT, Room 4125, K–14, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Service class code.* The service class codes are prescribed in section 298.45(c). In general, classes are divided into two broad categories, either scheduled or nonscheduled, where scheduled = F + G and nonscheduled = L + N + P + R.

(4) *Record type code.* This code indicates whether the data pertain to non-stop segment (record type S) or on-flight market (record type M).

(5) *Aircraft type code.* This code represents the aircraft types, as described in the BTS' Accounting and Reporting Directives.

(6) *Origin, Destination airport code(s).* These codes represent the industry designators. An industry source of these industry designator codes is the Official Airline Guide (OAG). OAI assigns codes, upon request, if not listed in the OAG.

(7) *110 Revenue passengers enplaned.* The total number of revenue passengers enplaned at the origin point of a flight, boarding the flight for the first time; an unduplicated count of passengers in a market.

(8) *130 Revenue passengers transported.* The total number of revenue passengers transported over a single flight stage, including those already on the aircraft from a previous flight stage.

(9) *140 Revenue passenger-miles.* Computed by multiplying the inter-airport distance of each flight stage by the number of passengers transported on that flight stage.

(10) *210 Revenue cargo tons enplaned.* The total number of cargo tons enplaned. This data element is a sum of the individual on-flight market figures for each of the following categories: 217 Freight and 219 Mail. This element represents an

unduplicated count of the revenue traffic in a market.

(11) *217 Enplaned freight.* The total weight of revenue freight enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of freight in a market.

(12) *219 Enplaned mail.* The total weight of mail enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of mail in a market.

(13) *230 Revenue tons transported.* The number of tons of revenue traffic transported. This element is the sum of the following elements: 231 Passengers transported-total, 237 Freight, and 239 Mail.

(14) *237 Transported freight.* The total weight of freight transported over a single flight stage, including freight already on the aircraft from a previous flight stage.

(15) *239 Transported mail.* The total weight of mail transported over a single flight stage, including mail already on the aircraft from a previous flight stage.

(16) *240 Revenue ton-miles—total.* Ton-miles are computed by multiplying the revenue aircraft miles flown (410) on each flight stage by the number of tons transported on that stage. This element is the sum of 241 through 249.

(17) *241 Revenue ton-miles—passenger.* Equals the number of passengers times 200, times inter-airport distance, divided by 2000. A standard weight of 200 pounds per passenger, including baggage, is used for all operations and service classes.

(18) *247 Revenue ton-miles—freight.* Equals the volume of freight in whole tons times the inter-airport distance.

(19) *249 Revenue ton-miles—mail.* Equals the volume of mail in whole tons times the inter-airport distance.

(20) *270 Available capacity-payload.* The available capacity is collected in pounds. This figure shall reflect the payload or total available capacity for passengers, mail and freight applicable to the aircraft with which each flight stage is performed.

(21) *280 Available ton-miles.* The aircraft miles flown on each flight stage multiplied by the available capacity on the aircraft in tons.

(22) *310 Available seats.* The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. In the domestic entity, report the total available seats in item 130. Scheduled and nonscheduled available seats are reported in item 130.

(23) *320 Available seat-miles.* The aircraft miles flown on each flight stage multiplied by the seat capacity available for sale.

(24) *410 Revenue aircraft miles flown.* Revenue aircraft miles flown are computed based on the airport pairs between which service is actually performed; miles are generated from the data for scheduled aircraft departures (Code 520) times the inter-airport distances (Code 501).

(25) *430 Revenue aircraft miles scheduled.* The number of revenue aircraft miles scheduled. All such data shall be maintained in conformity with the airport pairs between which service is scheduled, whether or not in accordance with actual performance.

(26) *501 Inter-airport distance.* The great circle distance, in official statute miles as prescribed in part 247 of this chapter, between airports served by each flight stage. Official inter-airport mileage may be obtained from the Office of Airline Information.

(27) *510 Revenue aircraft departures performed.* The number of revenue aircraft departures performed.

(28) *520 Revenue aircraft departures scheduled.* The number of revenue aircraft departures scheduled, whether or not actually performed.

(29) *610 Revenue aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until its next landing.

(30) *630 Aircraft hours (ramp-to-ramp).* The elapsed time, computed from the moment the aircraft first moves under its own power from the boarding ramp at one airport to the time it comes to rest at the ramp for the next point of landing. This data element is also referred to as 'block' and 'block-to-block' aircraft hours.

(31) *650 Total aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until it touches down at the next landing. This includes flight training, testing, and ferry flights.

(f) *Public availability of Schedule T–100 data.* Detailed domestic on-flight market and nonstop segment data in Schedule T–100, except military data, shall be publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession.

Appendix to § 291.45—Instructions to U.S. Air Carriers for Reporting Traffic and Capacity Data on Schedule T–100

(a) *Format of reports.* (1) *Automatic Data Processing (ADP) magnetic tape.* Refer to paragraph (d) of this appendix for instructions pertaining to mainframe and minicomputer reporting. The Department will issue "Accounting and Reporting Directives" to make necessary technical changes to these T–100 instructions. Technical changes which are minor in nature do not require public notice and comment.

(2) *Microcomputer diskette.* (i) *Optional specification.* If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following specifications for filing data on diskette media apply.

(ii) *Reporting medium.* Microcomputer ADP data submission of T–100 information must be on IBM compatible disks. Carriers wishing to use a different ADP procedure must obtain written approval to do so from the BTS Assistant Director—Airline Information. Requests for approval to use alternate methods must disclose and describe the proposed data transmission methodology. Refer to paragraph (i) of this appendix for microcomputer record layouts.

(iii) *Microcomputer file characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (") and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(b) *Filing date for reports.* The reports must be received at BTS within 30 days following the end of each reporting period.

(c) *Address for filing.* Data Administration Division, K–14, Room 4125, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(d) *ADP format for magnetic tape.*

(1) *Magnetic tape specifications.* IBM compatible 9-track EBCDIC recording. Recording density of 6250 or 1600 bpi. The order of recorded information is:

(i) Volume label.
(ii) Header label.
(iii) Data records.
(iv) Trailer label.

(2) [Reserved]

(e) *External tape label information.*

(1) Carrier name.
(2) Report date.
(3) File identification.
(4) Carrier address for return of tape reel.

(f) *Standards.* It is the policy of the Department to be consistent with the

American National Standards Institute and the Federal Standards Activity in all data processing and telecommunications matters. It is our intention that all specifications in this application are in compliance with standards promulgated by these organizations.

(g) *Volume, header, and trailer label formats.*

(1) *Use standard IBM label formats.* The file identifier field of the header labels should be "T–100.SYSTEM".

(h) *Magnetic tape record layouts for T–100.*

(1) *Nonstop segment record layout.*

Field No.	Positions	Mode	Description
1	1	1T	Record type code (S = nonstop segment).
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–23	4T	Aircraft type code.
8	24–28	5N	Revenue departures performed (F, G, L, N, P, R510).
9	29–38	10N	Available capacity payload (lbs) (F, G, L, N, P, R270).
10	39–45	7N	Available seats (F, L, N310).
11	46–52	7N	Passengers transported (F, L, N130).
12	53–62	10N	Rev freight transported (F, G, L, N, P, R237) (in lbs).
13	63–72	10N	Revenue mail transported (F, G, L, N, P, R239) (in lbs).
14	73–77	5N	Revenue aircraft departures scheduled (F, G520).
15	78–87	10N	Rev hrs, ramp-to-ramp (F, G, L, N, P, R630) (in minutes).
16	88–97	10N	Rev hrs, airborne (F, G, L, N, P, R610) (in minutes).

T=Text.
N=Numeric.

(2) *On-flight market record layout.*

Field No.	Positions	Mode	Description
1	1	1T	Record type: M = on-flight market record.
2	2–6	5T	Carrier entity code.
3	7–12	4T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–26	7N	Total passengers in market (F, L, N110).
8	27–36	10N	Rev freight in market (F, G, L, N, P, R217) (in lbs).
9	37–46	10N	Revenue mail in market (F, G, L, N, P, R219) (in lbs).

T=Text.
N=numeric.

(i) *Record layouts for microcomputer diskettes.* The record layouts for diskette are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks, tabs and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(1) *File characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (") and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, it is critical that each record contain the exact number of data elements, all of which must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisk files in this format.

(2) *File naming conventions for diskettes.* For microcomputer reports, each record type should be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions should be followed:

(i) Record type S = SEGMENT.DAT
(ii) Record type M = MARKET.DAT

22. Add a new subpart G to part 291 as follows:

Subpart G—Public Disclosure of Data

§ 291.60 Public disclosure of data.

(a) Detailed domestic on-flight market data and nonstop segment data, except military data, shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession. Domestic military operations are reported under service codes N or R.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports, except military data, shall be publicly available immediately following the Department's determination that the database is complete, but no earlier than six months after the date of the data. Military operations are reported under service codes N or R. Data for on-flight markets and nonstop segments involving no U.S. points shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the confidentiality period as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and the U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country.

(2) To parties to any proceeding before the Department under Title IV of the Federal Aviation Act of 1958, as amended, as required by an Administrative Law Judge or other decision-maker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility.

(3) To agencies or other components of the U.S. Government for their internal use only.

PART 298—[AMENDED]

23. The authority citation for part 298 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 411 and 417.

24. Section 298.2 is amended by removing paragraph (m), by removing the alphabetic paragraph designations and placing the definitions in alphabetic order, and by adding the following new definitions in alphabetical order to read as follows:

§ 298.2 Definitions.

* * * * *

Reporting carrier for Schedule T–100 purposes means the air carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority.

* * * * *

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

25. Section 298.60 is amended by revising paragraphs (a) and (b) to read as follows:

§ 298.60 General reporting instructions.

(a) Each commuter air carrier and each small certificated air carrier shall file with the Department's Bureau of Transportation Statistics (BTS) the applicable schedules of BTS Form 298-C, AReport of Financial and Operating Statistics for Small Aircraft Operators' and Schedule T–100, AU.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market" as required by this section.

(b) A single copy of the BTS Form 298-C report shall be filed quarterly with the Office of Airline Information (OAI) for the periods ended March 31, June 30, September 30 and December 31 of each year to be received on or before May 10, August 10, November 10, and February 10, respectively. An electronic filing of the monthly Schedule T–100 is due at OAI within 30 days after the end of each month. Due dates falling on a Saturday, Sunday or Federal holiday will become effective on the next work day.

* * * * *

26. Section 298.61 is revised to read as follows:

§ 298.61 Reporting of traffic statistics.

(a) Each commuter air carrier and small certificated air carrier shall file Schedule T–100, AU.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market."

(b) Schedule T–100 shall be filed monthly as set forth in "298.60.

(1) Schedule T–100 collects summarized flight stage data and on-flight market data from revenue flights. All traffic statistics shall be compiled in terms of each flight stage as actually performed. The detail T–100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. The first grouping, the nonstop segment information, is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type or flight number.

(2) *Joint-service operations.* The Department may authorize joint service operations between two direct air carriers. Examples of these joint-service operations are: blocked-space agreements; part-charter agreements; code-sharing agreements; wet-lease agreements, and similar arrangements.

(i) Joint-service operations are reported by the carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority. The traffic moving under these agreements is reported on Schedule T–100 the same way as any other traffic on the aircraft.

(ii) If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information (fax no. 202 366–3383, telephone no. 202 366–4373). Joint-service operations are reported in Schedule T–100 in accordance with this paragraph (b).

(iii) *Operational control.* The air carrier in operational control of the aircraft (the carrier that uses its flight crews under its own FAA operating authority) must report joint-service operations.

(c) *Service classes.* (1) The statistical classifications are designed to reflect the operating characteristics attributable to each distinctive type of service offered. The combination of scheduled and nonscheduled operations with passenger, all-cargo, and military services are placed into service classes as follows:

Code	Type of Service
F	Scheduled Passenger/Cargo
G	Scheduled All-Cargo
L	Nonscheduled Civilian Passenger/Cargo
P	Nonscheduled Civilian Cargo
N	Nonscheduled Military Passenger/Cargo
R	Nonscheduled Military Cargo

(2) Scheduled services include traffic and capacity elements applicable to air transportation provided pursuant to published schedules and extra sections of scheduled flights. Scheduled Passenger/Cargo (Service Class F) is a composite of first class, coach, and mixed passenger/cargo service.

(3) Nonscheduled services include all traffic and capacity elements applicable to the performance of nonscheduled aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules.

(d) *Air transport traffic and capacity elements.* (1) Within each of the service classifications, carriers shall report air transport traffic and capacity elements. The elements are reported on segment or market records as follows:

Code	Description	Segment	Market	Computed by DOT
	Carrier, carrier entity code	S	M	
	Reporting period date	S	M	

Code	Description	Segment	Market	Computed by DOT
	Origin airport code	S	M	
	Destination airport code	S	M	
	Service class code	S	M	
	Aircraft type code	S		
110	Revenue passengers enplaned		M	
130	Revenue passengers transported	S		
140	Revenue passenger-miles			CFD*
210	Revenue cargo tons enplaned			CFD*
217	Enplaned freight		M	
219	Enplaned mail		M	
230	Revenue tons transported			CFD*
237	Transported freight	S		
239	Transported mail	S		
240	Revenue ton-miles			CFD*
241	Revenue ton-miles passenger			CFD*
247	Revenue ton-miles freight			CFD*
249	Revenue ton-miles mail			CFD*
270	Available capacity payload	S		
280	Available ton-miles			CFD*
310	Available seats, total	S		
320	Available seat-miles			CFD*
410	Revenue aircraft miles flown			CFD*
430	Revenue aircraft miles scheduled			CFD*
501	Inter-airport distance			CFD*
510	Revenue aircraft departures performed	S		
520	Revenue aircraft departures scheduled	S		
610	Revenue aircraft hours (airborne)	S		
630	Aircraft hours (ramp-to-ramp)	S		
650	Total aircraft hours (airborne)	S		

*CFD = Computed by DOT from detail Schedule T–100 and T–100(f) data.

(2) [Reserved]

(e) These reported items are further described as follows:

(1) *Reporting period date.* The year and month to which the reported data are applicable.

(2) Carrier, Carrier entity code. Each air carrier shall report its name and entity code (a five digit code assigned by BTS that identifies both the carrier and its entity) for its particular operations. The Office of Airline Information (OAI) will assign or confirm codes upon request; OAI's address is Office of Airline Information, BTS, DOT Room 4125, K–14, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Service class code.* The service class codes are prescribed in section 298.61(c). In general, classes are divided into two broad categories, either scheduled or nonscheduled, where scheduled = F + G and nonscheduled = L + N + P + R.

(4) *Record type code.* This code indicates whether the data pertain to non-stop segment (record type S) or on-flight market (record type M).

(5) *Aircraft type code.* This code represents the aircraft types, as described in the BTS' Accounting and Reporting Directives.

(6) *Origin, Destination airport code(s).* These codes represent the industry designators. An industry source of these industry designator codes is the Official Airline Guide (OAG). OAI assigns codes upon request if not listed in the OAG.

(7) *110 Revenue passengers enplaned.* The total number of revenue passengers enplaned at the origin point of a flight, boarding the flight for the first time; an unduplicated count of passengers in a market. Under the T–100 system of reporting, these enplaned passengers are the sum of the passengers in the individual on-flight markets. In the domestic entity, report only the total revenue passengers enplaned in item 110.

(8) *130 Revenue passengers transported.* The total number of revenue passengers transported over a single flight stage, including those already on the aircraft from a previous flight stage. In the domestic entity, report only the total revenue passengers transported in item 130.

(9) *140 Revenue passenger-miles.* Computed by multiplying the inter-airport distance of each flight stage by the number of passengers transported on that flight stage.

(10) *210 Revenue cargo tons enplaned.* The total number of cargo tons enplaned. This data element is a sum of the individual on-flight market figures for each of the following categories: 217 Freight and 219 Mail. This element represents an unduplicated count of the revenue traffic in a market.

(11) *217 Enplaned freight.* The total weight of revenue freight enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of freight in a market.

(12) *219 Enplaned mail.* The total weight of mail enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of mail in a market.

(13) *230 Revenue tons transported.* The number of tons of revenue traffic transported. This element is the sum of the following elements: 231 Passengers transported-total, 237 Freight, and 239 Mail.

(14) *237 Transported freight.* The total weight of freight transported over a single flight stage, including freight already on the aircraft from a previous flight stage.

(15) *239 Transported mail.* The total weight of mail transported over a single flight stage, including mail already on the aircraft from a previous flight stage.

(16) *240 Revenue ton-miles—total.* Ton-miles are computed by multiplying the revenue aircraft miles flown (410) on each flight stage by the number of tons transported on that stage. This element is the sum of 241 through 249.

(17) *241 Revenue ton-miles—passenger.* Equals the number of passengers times 200, times inter-airport distance, divided by 2000. A standard

weight of 200 pounds per passenger, including baggage, is used for all operations and service classes.

(18) *247 Revenue ton-miles—freight.* Equals the volume of freight in whole tons times the inter-airport distance.

(19) *249 Revenue ton-miles—mail.* Equals the volume of mail in whole tons times the inter-airport distance.

(20) *270 Available capacity-payload.* The available capacity is collected in pounds. This figure shall reflect the payload or total available capacity for passengers, mail, and freight applicable to the aircraft with which each flight stage is performed.

(21) *280 Available ton-miles.* The aircraft miles flown on each flight stage multiplied by the available capacity on the aircraft in tons.

(22) *310 Available seats.* The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. In the domestic entity, report the total available seats in item 130. Scheduled and nonscheduled available seats are reported in item 130.

(23) *320 Available seat-miles.* The aircraft miles flown on each flight stage multiplied by the seat capacity available for sale.

(24) *410 Revenue aircraft miles flown.* Revenue aircraft miles flown are computed based on the airport pairs between which service is actually performed; miles are generated from the data for scheduled aircraft departures (Code 520) times the inter-airport distances (Code 501).

(25) *430 Revenue aircraft miles scheduled.* The number of revenue aircraft miles scheduled. All such data shall be maintained in conformity with the airport pairs between which service is scheduled, whether or not in accordance with actual performance.

(26) *501 Inter-airport distance.* The great circle distance, in official statute miles as prescribed in part 247 of this chapter, between airports served by each flight stage. Official inter-airport mileage may be obtained from the Office of Airline Information.

(27) *510 Revenue aircraft departures performed.* The number of revenue aircraft departures performed.

(28) *520 Revenue aircraft departures scheduled.* The number of revenue aircraft departures scheduled, whether or not actually performed.

(29) *610 Revenue aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until its next landing.

(30) *630 Aircraft hours (ramp-to-ramp).* The elapsed time, computed from the moment the aircraft first moves under its own power from the boarding ramp at one airport to the time it comes to rest at the ramp for the next point of landing. This data element is also referred to as 'block' and 'block-to-block' aircraft hours.

(31) *650 Total aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until it touches down at the next landing. This includes flight training, testing, and ferry flights.

(f) *Public availability of Schedule T–100 data.* Detailed domestic on-flight market and nonstop segment data in Schedule T–100, except military data, shall be publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession.

Appendix to § 298.61—Instructions to U.S. Air Carriers for Reporting Traffic and Capacity Data on Schedule T–100

(a) *Format of reports.*

(1) *Automatic Data Processing (ADP) magnetic tape.* Refer to paragraph (f) of this appendix for instructions pertaining to mainframe and minicomputer reporting. The Department will issue "Accounting and Reporting Directives" to make necessary technical changes to these T–100 instructions. Technical changes which are minor in nature do not require public notice and comment.

(2) *Microcomputer diskette.*

(i) *Optional specification.* If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following specifications for filing data on diskette media apply.

(ii) *Reporting medium.* Microcomputer ADP data submission of T–100 information must be on IBM compatible disks. Carriers wishing to use a different ADP procedure must obtain written approval to do so from the BTS Assistant Director—Airline Information. Requests for approval to use alternate methods must disclose and describe the proposed data transmission methodology. Refer to paragraph (k) of this appendix for microcomputer record layouts.

(iii) *Microcomputer file characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (") and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(b) [Reserved]

(c) [Reserved]

(d) *Filing date for reports.* The reports must be received at BTS within 30 days following the end of each reporting period.

(e) *Address for filing.* Data Administration Division, K–14, Room 4125, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(f) *ADP format for magnetic tape.*

(1) *Magnetic tape specifications.* IBM compatible 9-track EBCDIC recording. Recording density of 6250 or 1600 bpi. The order of recorded information is:

(i) Volume label.

(ii) Header label.

(iii) Data records.

(iv) Trailer label.

(g) External tape label information.

(1) Carrier name.

(2) Report date.

(3) File identification.

(4) Carrier address for return of tape reel.

(h) *Standards.* It is the policy of the Department to be consistent with the American National Standards Institute and the Federal Standards Activity in all data processing and telecommunications matters. It is our intention that all specifications in this application are in compliance with standards promulgated by these organizations.

(i) *Volume, header, and trailer label formats.*

(1) *Use standard IBM label formats.* The file identifier field of the header labels should be "T–100.SYSTEM".

(2) [Reserved]

(j) *Magnetic tape record layouts for T–100.*

(1) *Nonstop segment record layout.*

Field No.	Positions	Mode	Description
1	1	1T	Record type code (S = nonstop segment).
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.

Field No.	Positions	Mode	Description
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–23	4T	Aircraft type code.
8	24–28	5N	Revenue departures performed (F, G, L, N, P, R510).
9	29–38	10N	Available capacity payload (lbs) (F, G, L, N, P, R270).
10	39–45	7N	Available seats (F, L, N310).
11	46–52	7N	Passengers transported (F, L, N130).
12	53–62	10N	Rev freight transported (F, G, L, N, P, R237)(in lbs).
13	63–72	10N	Revenue mail transported (F, G, L, N, P, R239) (in lbs).
14	73–77	5N	Revenue aircraft departures scheduled (F, G520).
15	78–87	10N	Rev hrs, ramp-to-ramp (F, G, L, N, P, R630) (in minutes).
16	88–97	10N	Rev hrs, airborne (F, G, L, N, P, R610) (in minutes).

T=Text.
N=Numeric.

(2) *On-flight market record layout.*

Field No.	Positions	Mode	Description
1	1	1T	Record type: M = on-flight market record.
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–26	7N	Total passengers in market (F, L, N110).
8	27–36	10N	Rev freight in market (F, G, L, N, P, R217) (in lbs).
9	37–46	10N	Revenue mail in market (F, G, L, N, P, R219) (in lbs).

T=Text.
N=Numeric.

(k) *Record layouts for microcomputer diskettes.* The record layouts for diskette are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(1) *File characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (") and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, it is critical that each record contain the exact number of data elements, all of which must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisks files in this format.

(2) *File naming conventions for diskettes.* For microcomputer reports, each record type should be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions shall be followed:

(i) Record type S = SEGMENT.DAT
(ii) Record type M = MARKET.DAT

27. Section 298.62 is amended by revising paragraph (d) to read as follows:

§ 298.62 Reporting of financial data.

* * * * *

(d) Data reported on this schedule shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates.

28. Section 298.63 is amended by removing paragraphs (h) and (i) and redesignating paragraph (j) as paragraph (h) and revising it to read as follows:

§ 298.63 Reporting of aircraft operating expenses and related statistics by small certificated air carriers.

* * * * *

(h) Line 17 "Total Gallons of Fuel Issued" shall include the gallons of fuel used in flight operations related to fuel cost reported in total and by aircraft type on Line 4.

§ 298.64 [Removed]

29. Section 298.64 is removed.

30. Add a new subpart G consisting of § 298.70 to part 298 to read as follows:

Subpart G—Public Disclosure of Data

§ 298.70 Public disclosure of data.

(a) Detailed domestic on-flight market data and nonstop segment data except military data shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession. Domestic military operations are reported under service codes N or R.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports, except military data, shall be publicly available immediately following the Department's determination that the database is complete, but no earlier than six months after the date of the data. Military operations are reported under service codes N or R. Data for on-flight markets and nonstop segments involving no U.S. points shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail.

(c) Schedule F–1 "Report of Financial Data" shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates.

(d) The Department may release nonstop segment and on-flight market detail data by carrier or individual Schedule F–1 "Report of Financial Data" before the end of the confidentiality period as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and the U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country.

(2) To parties to any proceeding before the Department under Title IV of the Federal Aviation Act of 1958, as amended, as required by an Administrative Law Judge or other decision-maker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility.

(3) To agencies or other components of the U.S. Government for their internal use only.

Issued in Washington, DC, on June 19, 2002.

Ashish Sen,

Director, Bureau of Transportation Statistics.

[FR Doc. 02–15978 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2001–8846]

RIN 2125–AE83

Revision of the Manual on Uniform Traffic Control Devices; Accessible Pedestrian Signals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting as final an interim rule that amends the 2000 Millennium Edition of the Manual on Uniform Traffic Control Devices (MUTCD) to revise the guidance and supporting information relating to the decisionmaking process concerning accessible pedestrian signals in Parts 1 and 4 of the MUTCD. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, and recognized as the national standard for traffic control devices used on all public roads.

EFFECTIVE DATE: August 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. W. Scott Wainwright, Office of Transportation Operations, Room 3408, (202) 366–0857, or Mr. Raymond Cuprill, Office of the Chief Counsel, Room 4230, (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Docket Facility, Room PL–401, by using the universal resource locator (URL) *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http:///access.gpo.gov/nara*.

Background

The FHWA published an interim final rule of Revision No. 1 on February 15, 2002, at 67 FR 7073. This interim final rule revised the guidance and supporting information relating to the decisionmaking process concerning accessible pedestrian signals in Parts 1 and 4 of the MUTCD Additionally, in the interim final rule, the FHWA provided a 60-day comment period for the public to review and make comment on the necessary changes to the pertinent electronic files on the FHWA's MUTCD Internet site (*http://mutcd.fhwa.dot.gov*) to comply with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

The text of this Revision No. 1 and the text of the 2000 Millennium Edition of the MUTCD with Revision No. 1 text incorporated are available for inspection and copying as prescribed in 49 CFR part 7 at the FHWA Office of Transportation Operations. Furthermore, Revision No. 1 changes are available on the MUTCD Internet site (*http://mutcd.fhwa.dot.gov*). The entire MUTCD text with Revision No. 1 text incorporated is also available on this Internet site.

Summary of Comments

The FHWA received no comments to the docket in response to the interim final rule, concerning either the text of the Revision No. 1 or the changes made to electronic files to comply with Section 508 of the Rehabilitation Act of 1973. Therefore, this final rule adopts the interim final rule without change as an amendment to the 2000 Millennium Edition of the MUTCD as Revision No. 1. This final rule revises the guidance and supporting information relating to the decisionmaking process concerning accessible pedestrian signals in Parts 1 and 4 of the MUTCD.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rulemaking will be minimal. The changes in this final rule provide additional guidance and support information relating to the decisionmaking process concerning whether or not to install accessible pedestrian signals. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this action on small entities. This final rule only revises guidance and support information related to the decisionmaking process concerning accessible pedestrian signals in the MUTCD. The changes are intended to improve traffic operations and safety, to expand guidance, and to clarify the application of traffic control devices as related to accessible pedestrian signals. For these reasons, the FHWA certifies that this action will not have a

significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*)

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have a substantial direct effect or sufficient federalism implications on States and local governments that would limit the policymaking discretion of the States and local governments. This action merely adds guidance and supporting information for the decisionmaking process concerning whether or not to install accessible pedestrian signals. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. This action merely adds guidance and supporting information for the decisionmaking process concerning whether or not to install accessible pedestrian signals. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain a collection of information requirement for the purposes of PRA.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, to eliminate ambiguity, and to reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—Transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

PART 655—TRAFFIC OPERATIONS

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways

In consideration of the foregoing and under the authority of 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b), the interim final rule amending 23 CFR Part 655, Subpart F which was published at 67 FR 7073 on February 15, 2002, is adopted as a final rule without change.

Issued on: July 24, 2002.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 02–19142 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 117 and 165

[USCG–2002–11544]

Safety Zones, Security Zones, Drawbridge Operation Regulations and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between April 1, 2002 and June 30, 2002, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, drawbridge operation regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard rules that became effective and were terminated between April 1, 2002 and June 30, 2002.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal

Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact LTJG Sean Fahey, Office of Regulations and Administrative Law, at telephone number (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation at (202) 366–5149..

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities. Drawbridge operation regulations authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events.

Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these special local regulations, drawbridge operation regulations, security zones, or safety zones by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of all substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, drawbridge operation regulations, security zones, and safety zones.

Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations, drawbridge operation regulations, and security zones listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following rules were place in effect temporarily during the period from April 1, 2002, through June 30, 2002, unless otherwise indicated. This notice also includes rules that were not received in time to be included on the quarterly notice for the second, third and fourth quarters of 2001 and the first quarter of 2002.

Dated: July 23, 2002.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

COTP Quarterly Report—2nd Quarter 2002

COTP docket	Location	Type	Effective date
Baltimore 02–004	Annapolis, Maryland	Security Zone	05/24/2002
Charleston 02–039	Myrtle Beach, SC	Safety Zone	04/29/2002
Guam 02–009	Outer Apra Harbor, Guam	Safety Zone	04/16/2002
Guam 02–010	North of Glass Breakwater, Guam	Safety Zone	04/18/2002
Houston-Galveston 02–005	Galveston, Texas	Security Zone	04/05/2002
Houston-Galveston 02–008	COPT Houston-Galveston Zone	Security Zone	04/15/2002
Houston-Galveston 02–013	Dredge Operation, Channel Closure	Safety Zone	04/22/2002
Houston-Galveston 02–014	Dredge Operation, Channel Closure	Safety Zone	05/21/2002
Houston-Galveston 02–015	Dredge Operation, Channel Closure	Safety Zone	06/08/2002
Huntington 02–002	Kanawha River, M. 57.5 to 62	Safety Zone	04/27/2002
Jacksonville 02–076	Indian River, New Smyrna Beach, FL	Safety Zone	06/29/2002
LA/Long Beach 02–008	Flight Demonstration, Long Beach, CA	Safety Zone	04/13/2002
Louisville 02–001	Ohio River, M. 470 to 471.5	Security Zone	06/17/2002
Miami 02–029	Palm Beach County, FL	Safety Zone	05/03/2002
Miami 02–031	Air Sea Show, Fort Lauderdale, FL	Safety Zone	05/01/2002
Miami 02–040	M/V Conti Seattle, Miami, FL	Safety Zone	05/02/2002
Miami 02–043	FL Keys National Marine Sanctuary	Safety Zone	05/12/2002
Miami 02–071	FL Keys National Marine Sanctuary	Safety Zone	05/20/2002
Morgan 02–003	Little Lake, Louisiana	Safety Zone	04/10/2002
New Orleans 02–007	LWR Mississippi River, M. 94 to 96	Safety Zone	04/13/2002
New Orleans 02–009	LWR Mississippi River, M. 94 to 96	Safety Zone	05/15/2002
Pittsburgh 02–008	Allegheny River, M. 3 to 6	Safety Zone	04/12/2002
Pittsburgh 02–009	Monongahela River, M. 14.1 to 11.2	Safety Zone	06/17/2002
San Diego 02–003	Lake Moovalya, Colorado River, AZ	Safety Zone	04/06/2002
San Diego 02–005	Colorado River, Davis Dam	Safety Zone	06/01/2002
San Diego 02–006	San Diego Bay, CA	Safety Zone	04/26/2002
San Diego 02–007	Oceanside, California	Safety Zone	05/05/2002
San Diego 02–011	Colorado River	Safety Zone	05/11/2002
San Diego 02–012	San Diego, CA	Safety Zone	05/23/2002
San Francisco 02–004	Suisun Bay, Concord, CA	Security Zone	04/15/2002
San Francisco 02–005	Suisun Bay, Concord, CA	Security Zone	04/24/2002
San Francisco 02–006	San Francisco Bay, San Francisco, CA	Safety Zone	05/01/2002
San Francisco 02–007	San Francisco Bay, San Francisco, CA	Safety Zone	05/11/2002
San Francisco Bay 02–009	Oakland Inner Harbor, Oakland, CA	Safety Zone	05/18/2002
San Francisco Bay 02–012	San Francisco Bay, San Francisco, CA	Safety Zone	06/14/2002
San Francisco Bay 02–013	Oakland Estuary, Alameda, CA	Security Zone	06/14/2002

COTP QUARTERLY REPORT—2ND QUARTER 2002—Continued

COTP docket	Location	Type	Effective date
San Juan 02–072	San Juan Harbor, San Juan, PR	Safety Zone	06/20/2002
Savannah 02–027	Atlantic Intercoastal Waterway, GA	Safety Zone	04/04/2002
Savannah 02–028	Memorial Park, Savannah, GA	Safety Zone	04/06/2002
St. Louis 02–006	Illinois River, M. 0 to 187	Safety Zone	05/16/2002

DISTRICT QUARTERLY REPORT—2ND QUARTER 2002

District docket	Location	Type	Effective date
01–02–006	Mystic Offshore Gran Prix, New London, CT	Safety Zone	05/03/2002
01–02–065	Yarmouth, Nantucket Sound, MA	Safety Zone	06/07/2002
01–02–073	Hingham, Massachusetts	Safety Zone	06/29/2002
05–02–018	Washington Channel, Washington DC	Security Zone	05/31/2002
05–02–023	James River, Williamsburg, VA	Safety Zone	05/05/2002
05–02–024	Elizabeth River, Portsmouth, Virginia	Safety Zone	05/26/2002
05–02–026	Severn River, Annapolis, MD	Special Local	05/21/2002
05–02–027	Pea Patch Island to Delaware City, Delaware	Special Local	06/08/2002
05–02–030	Willoughby Bay, Norfolk, Virginia	Safety Zone	06/04/2002
05–02–035	Hampton Roads, Elizabeth River, VA	Security Zone	06/04/2002
05–02–036	Thimble Shoals Channel, Hampton Roads, VA	Safety Zone	06/04/2002
05–02–037	Hampton Roads, Virginia	Safety Zone	06/13/2002
05–02–038	Hampton Roads, Elizabeth River, VA	Security Zone	06/11/2002
07–02–023	Fort Lauderdale, Broward County, FL	Drawbridge Operation	05/05/2002
07–02–045	Cooper River, North Charleston, SC	Special Local	06/15/2002
07–02–068	San Juan Harbor, San Juan, PR	Safety Zone	06/17/2002
09–02–014	Cleveland Harbor, Cleveland, OH	Safety Zone	05/03/2002
09–02–016	Lake Ontario, Youngstown, NY	Safety Zone	05/18/2002
09–02–019	Lake Michigan	Security Zone	05/05/2002
09–02–022	Buffalo River, Buffalo, NY	Safety Zone	05/28/2002
09–02–023	Pridefest 2002, Milwaukee, Wisconsin	Safety Zone	06/07/2002
09–02–025	River Splash 2002, Milwaukee, Wisconsin	Safety Zone	05/31/2002
09–02–030	U.S. Aerospace Challenge, Holland, MI	Safety Zone	05/18/2002
09–02–043	Ottawa River, Toledo, OH	Safety Zone	06/29/2002
09–02–045	Summerfest Big Bang, 2002, Milwaukee, WI	Safety Zone	06/27/2002
09–02–047	Betsie Bay, Frankfort, MI	Safety Zone	06/29/2002
09–02–054	Detroit River, Detroit, MI	Safety Zone	06/27/2002
09–02–056	Milwaukee, Wisconsin	Safety Zone	06/27/2002

REGULATIONS NOT ON PREVIOUS QUARTERLY REPORTS

COPT docket/district	Location	Type	Effective date
COPT Regulation for 2nd Quarter 2001			
Guam 01–010	Outer Apra Harbor, Guam	Safety Zone	06/06/01
COPT Regulation for 3rd Quarter 2001			
Louisiana 01–023	LMR from the seabuoys at SW Pass and South Pass to M 233, Highway 190 Bridge, AHP and the Mississippi River Gulf Outlet.	Security Zone	09/12/01
New Orleans 01–025	Lower Mississippi River M 106.1 to M 92.7.	Safety Zone	09/13/01
COPT Regulations for 4th Quarter 2001			
Houston-Galveston 01–011	Houston-Galveston	Security Zones	12/07/01
Tampa 01–148	Tampa Bay, Florida	Safety Zone	12/20/01
District Docket for 4th Quarter 2001			
08–01–040	Mississippi River, Iowa and Illinois	Drawbridge Operation Regulations	12/17/01
COPT Regulations for 1st Quarter 2002			
Houston 02–007	Houston, Texas	Safety Zone	03/24/02
Houston-Galveston 02–002	Port of Galveston, Galveston, TX	Security Zone	03/01/02
Mobile 02–005	Mobile, Alabama	Security Zone	03/20/02
Mobile 02–006	Tyndall AFB, East Bay, Panama City, FL.	Security Zone	03/23/02

REGULATIONS NOT ON PREVIOUS QUARTERLY REPORTS—Continued

COPT docket/district	Location	Type	Effective date
Pittsburgh 02–007	Ohio River M 67.5 to 68.5, Steubenville, Ohio.	Safety Zone	03/30/02
San Francisco Bay 02–002	Suisun Bay, Concord, CA	Security Zone	03/25/02
Tampa 02–018	St. Pete Beach, Florida	Security Zone	03/08/02
Tampa 02–019	Old Tampa Bay, Clearwater, Florida	Security Zone	03/08/02

[FR Doc. 02–19135 Filed 7–29–02; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–02–017]

RIN–2115–AE47

Drawbridge Operation Regulations; Saginaw River, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulation governing drawbridges over Saginaw River in Bay City, Michigan. This rule updates current owners of railroad bridges, adds Liberty Street bridge to the list of drawbridges with regulated hours, removes Sixth Street bridge from the list of drawbridges with regulated hours, and assigns standardized mile marker designations.

DATES: This rule is effective August 29, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket [CGD09–02–017] are available for inspection or copying at Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Room 2019, Cleveland, OH, 44199–2060.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Ninth Coast Guard District Bridge Branch, at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard published a notice of proposed rulemaking (NPRM) on May 10, 2002, entitled Drawbridge Operations Regulations, Saginaw River, Michigan, in the **Federal Register** (67 FR 31745). No letters or comments were received in response to the NPRM. No public hearing was requested, and none was held.

Background and Purpose

The current bridge operating regulations for drawbridges over Saginaw River are found in 33 CFR § 117.647. The current regulation does not contain an operating schedule for the Liberty Street bridge, which was constructed in 1987, and is located between the Independence and Veterans Memorial bridges. The new rule establishes drawbridge regulations for Liberty Street drawbridge. The former Sixth Avenue bridge at mile 17.1 was removed in 1985 and is still listed as a regulated drawbridge. The new rule removes the bridge from the regulation.

The railroad bridges listed at miles 2.5 and 4.4, respectively, have changed ownership and are updated through this final rule.

The mile marker designations for the bridges listed in this rulemaking have been revised to reflect the mile markers used in the United States Coast Pilot for proper cross-reference.

Discussion of Comments and Changes

No comments were received from the public in response to the NPRM. The Coast Guard did receive a correction from the City of Bay City. The NPRM incorrectly stated that the City of Bay City operated all highway drawbridges over Saginaw River. The City of Bay City operates the Liberty Street and Independence drawbridges, and the Michigan Department of Transportation operates the Lafayette and Veterans Memorial drawbridges. This information does not affect the operating schedule of the drawbridges, nor does it alter or affect the purpose of this rulemaking.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary due to the relatively minor adjustments to the current regulation. There are no additional limitations placed on navigation, and the proper sequencing of bridge openings is expected to improve service to navigation and vehicular traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

This rule is not expected to place any additional limitations on passing vessel traffic. No identified entities would be unable to pass the bridges, as needed. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. The Coast Guard has analyzed this rule under that order and has determined that this rule does not implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibility between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.647, revise paragraph (a), and paragraphs (b), introductory text, (b)(3), and (b)(4); remove paragraph (c); and redesignate paragraphs (d) and (e) as paragraphs (c) and (d), to read as follows:

§ 117.647 Saginaw River.

(a) The draws of the Lake State Railways railroad bridge, mile 3.10 at Bay City, and the Central Michigan railroad bridge, mile 4.94 at Bay City, shall open on signal; except that, from December 16 through March 15, the draws shall open on signal if at least 12 hours advance notice is provided.

(b) The draws of the Independence bridge, mile 3.88, Liberty Street bridge, mile 4.99, Veterans Memorial bridge, mile 5.60, and Lafayette Street bridge, mile 6.78, all in Bay City, shall open on signal from March 16 through December 15, except as follows:

* * * * *

(3) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Independence and Veterans Memorial bridges need not be opened for the passage of pleasure craft except from three minutes before to three minutes after the hour and half-hour.

(4) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Liberty Street and Lafayette Street bridges need not be opened for the passage of pleasure craft, except from three minutes before to three minutes after the quarter hour and three-quarter hour.

* * * * *

Dated: July 16, 2002.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 02–19136 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–096]

RIN 2115–AA97

Safety Zone; Chelsea River Safety Zone for McArdle Bridge Repairs, Chelsea River, East Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Chelsea River to aid completion of the McArdle Bridge repairs in East Boston, MA. The safety zone will temporarily close all waters 100-yards upstream and downstream of the McArdle Bridge. The safety zone prohibits entry into or movement within this portion of the Chelsea River and is needed to facilitate repair efforts and protect the maritime public from the hazards posed.

DATES: This rule is effective from July 18 until August 16, 2002.

ADDRESSES: Documents indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT David M. Sherry, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this rule. On May 15, 2002, we published in the **Federal Register** a temporary final rule entitled "Safety Zone; Chelsea River Safety Zone for McArdle Bridge Repairs, Chelsea River, East Boston, Massachusetts" (67 FR 34612). That rule expired on July 13, 2002. This rule establishes a safety zone in the same location as the expired safety zone established by the previous rule, to ensure the safety of mariners and vessels in the vicinity of the bridge during repairs. Good cause exists for not publishing an NPRM and for making this rule effective in less than 30 days after **Federal Register** publication. The bridge repairs are taking longer than originally anticipated, and repairs are currently ongoing, making it impossible to draft or publish an NPRM or a final rule 30 days in advance of its effective date. In order to protect the safety of mariners and vessels in the vicinity of the bridge during repairs, this rule is immediately necessary.

The McArdle Bridge repairs were determined necessary as a result of recent inspections by the Massachusetts Highway Department, during which steel grating and support failures on the McArdle Bridge were discovered. Waterway closures in the vicinity of and beneath the bridge are needed because repair equipment and portions of the bridge deck are extending over the waterway, and hotwork (welding and grinding) that shoots sparks over the waterway in the vicinity of the bridge is being conducted. Delaying this work for sufficient time to conduct a public notice rulemaking and advanced publication would be contrary to the public interest for the reasons outlined below.

Preventing the repair work from proceeding places the future operability of the bridge for waterway and roadway use at risk. It would also place at risk the ability of the marine terminals on the Chelsea River to continue to receive vessels. Also, the Massachusetts Highway Department will need to restrict road traffic over the bridge to a certain tonnage if the all repairs are not completed. If the repairs are not completed, road traffic may be completely restricted from the bridge, causing unmanageable traffic situations in Chelsea and East Boston, MA. Thus, it is in the best interest of maintaining safe marine commerce and avoiding significant road traffic problems that the safety zone be enacted to allow for the work to be completed. For these same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

This temporary safety zone is only effective for evening periods and will have a minimal impact on vessel transits due to the fact that the zone will be in effect only during night time when recreational boaters do not typically use the waterway, night time commercial vessel transits are already limited by the constraints of the Chelsea Street Bridge under 33 CFR 165, and the commercial users of the Chelsea River have stated that restricting night time use of the waterway during this time of the year will place the least burden on their operations.

Discussion of Rule

This rule establishes a safety zone on all waters of the Chelsea River 100-yards upstream and downstream of the McArdle Bridge. The safety zone is in effect from July 18, until August 16, 2002, and will be enforced from sunset until sunrise each day during this period. This safety zone prohibits entry into or movement within this portion of the Chelsea River and is needed to provide the Middlesex Corporation sufficient time to safely complete the necessary repairs, painting, steel support, and grating work. The work is needed to ensure the continued safe operability of the McArdle Bridge. The Captain of the Port does anticipate minimal negative impact on vessel traffic due to this repair work. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this rule prevents traffic from transiting a portion of the Chelsea River during the prescribed periods, the effect of this rule will not be significant for several reasons: the channel will be closed during night time when recreational boaters do not typically use the waterway; many of the commercial vessels are already limited by size to daylight only transits due to the regulations governing the Chelsea Street Bridge under 33 CFR 165.120; and the commercial users of the Chelsea River have stated that restricting night time use of the waterway during this time of the year will not burden their operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the Chelsea River from July 18 until August 16, 2002, during sunset to sunrise each day of this period. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The bridge will be closed during night time when recreational boaters do not typically use the waterway; most night time commercial traffic is already limited by the constraints of the regulations governing the Chelsea Street Bridge under 33 CFR 165.120; the commercial users of the Chelsea River have stated that restricting night time use of the waterway during this time of the year will not burden their operations; and the Coast Guard will issue maritime advisories widely available to users of Boston Harbor and the Chelsea River, before the effective period, via marine information broadcasts.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. From July 18 until August 16, 2002 add temporary § 165.T01–096 to read as follows:

§ 165.T01–096 Safety Zone: Chelsea River Safety Zone for McArdle Bridge Repairs, Chelsea River, East Boston, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Chelsea River 100-yards upstream and downstream of the McArdle Bridge, East Boston, MA.

(b) *Effective Date.* This section is effective from July 18 until August 16, 2002, and will be enforced from sunset until sunrise each day during this period.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the Captain of the Port (COTP) or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: July 18, 2002.

C.M. DeLeo,

Commander, U. S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–19241 Filed 7–25–02; 3:11 pm]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 01–316; FCC 02–203]

Petitions of Sprint PCS and AT&T for Declaratory Ruling Regarding CMRS Access Charges

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: In this document, the Commission responds to a primary jurisdiction referral from the U.S. District Court for the Western District of Missouri in an action styled *Sprint Spectrum L.P.* v. *AT&T Corp.* In its referral order, the court asked the Commission to decide two questions: whether Sprint may charge AT&T access fees for use of the Sprint PCS network, and if so, what rate may reasonably charged for such services. Based on the rules in effect during the period in dispute—from 1998 to the present—the Commission finds that Sprint PCS was not prohibited from charging AT&T access charges, but that AT&T was not required to pay such charges absent a contractual obligation to do so.

FOR FURTHER INFORMATION CONTACT: Steven Morris, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, or via the Internet at *sfmorris@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling in WT Docket No.

01–316 released on July 3, 2002. The full text of this document is available on the Commission's website in the Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

Background

In 1998, Sprint PCS, a CMRS provider, began sending invoices to AT&T, an IXC, asking that AT&T compensate Sprint PCS for the costs of terminating interexchange traffic bound for Sprint PCS's CMRS customers. Sprint PCS charged AT&T 2.8 cents per minute, the rate in the NECA tariff. AT&T refused to pay. As of September 1, 2001, the amount in dispute exceeded $60 million. In August 2000, Sprint PCS filed suit in state court in Missouri seeking recovery of the amount allegedly owed by AT&T. AT&T removed the case to the federal district court for the Western District of Missouri, and then requested that the court refer the issues to this Commission under the doctrine of primary jurisdiction. The court granted AT&T's request.

Both parties filed petitions for declaratory ruling on October 22, 2001, and the Commission sought comment on the petitions. In its petition, Sprint PCS asked the Commission to find that there is no federal law or Commission policy that bars Sprint PCS from recovering its call termination costs from AT&T. Sprint PCS also asked the Commission to find that AT&T's refusal to pay access charges to Sprint PCS is unreasonably discriminatory under section 202(a) of the Communications Act of 1934, as amended (the Act), and unjust and unreasonable under section 201(b) of the Act. In its petition, AT&T asked the Commission to find that CMRS carriers should continue to recover their costs from their end users, not by imposing access charges on IXCs. If CMRS carriers are permitted to impose access charges, AT&T asked that those charges be capped at the reciprocal compensation rate for local traffic and assessed only prospectively.

Discussion

Sprint PCS is correct that neither the Communications Act nor any Commission rule prohibits a CMRS carrier from attempting to collect access charges from an interexchange carrier. In 1994, in the *CMRS Second Report and Order*, the Commission addressed the question of which Title II requirements it should impose on CMRS carriers. The Commission decided that the market for retail CMRS services was sufficiently competitive that it was not necessary to regulate the retail rates of CMRS carriers, or to require (or permit) CMRS carriers to file tariffs for retail services. The Commission also decided temporarily to forbear from requiring or permitting the filing of tariffs for interstate access services offered by CMRS carriers. In a detariffed, deregulated environment such as this one, carriers are free to arrange whatever compensation arrangement they like for the exchange of traffic. Thus, for example, Sprint PCS and AT&T could agree that AT&T would pay Sprint PCS for the traffic exchange, that Sprint PCS would pay AT&T for the exchange, or that neither party would pay anything.

That Sprint PCS may seek to collect access charges from AT&T does not, however, resolve the question whether Sprint PCS may *unilaterally impose* such charges on AT&T. There are three ways in which a carrier seeking to impose charges on another carrier can establish a duty to pay such charges: pursuant to (1) Commission rule; (2) tariff; or (3) contract. As noted above, CMRS access services are subject to mandatory detariffing, and it is therefore undisputed that Sprint PCS could not have imposed access charges on AT&T pursuant to any tariff. Consequently, we need only consider whether Sprint PCS can impose access charges on AT&T pursuant to Commission rules or a contract between the parties.

We find that there is no Commission rule that enables Sprint PCS unilaterally to impose access charges on AT&T. In the *LEC–CMRS Interconnection NPRM*, the Commission specifically addressed the question whether CMRS carriers should be able to impose access charges on IXCs for calls that are exchanged through LEC facilities. The Commission tentatively concluded that CMRS carriers should be able to recover access charges from IXCs for the completion of interexchange calls in the same manner as LECs and competitive access providers (*i.e.*, by setting a rate to be paid by the IXC). The Commission noted, however, that some form of price regulation might be necessary if it adopted this tentative conclusion because CMRS carriers "may have some market power over IXCs that need to terminate calls to a particular CMRS provider's customer." The Commission has never adopted a final decision adopting or implementing this tentative conclusion, nor has it resolved the question of the appropriate form of price regulation for CMRS access charges. Accordingly, our rules do not enable Sprint PCS unilaterally to impose access charges on AT&T.

We disagree with Sprint PCS that the forbearance policy adopted in the *CMRS Second Report and Order* enables Sprint PCS to impose unilaterally whatever rate it wishes, subject only to AT&T's right to file a complaint under section 208 of the Act. Our policy of forbearing from regulating CMRS access rates means that we will not regulate rates pursuant to the tariffing process set forth in sections 203, 204, and 205 of the Act. Our forbearance policy does not, however, mean that a detariffed carrier unilaterally can impose a charge merely by billing an IXC, as Sprint PCS has attempted to do here. This interpretation of the *CMRS Second Report and Order* is consistent with our general policies on detariffing, which are premised on the expectation that carriers will establish a contractual relationship with customers to whom they sell service. Even in a competitive situation, where the customer has a choice of carriers, a contract is beneficial to both the carrier and the customer because it makes clear the rights and obligations of both parties. A contract is particularly important in the case of terminating access services because, as Sprint PCS acknowledges, CMRS carriers possess market power with respect to termination of calls to their subscribers.

We also do not agree with Sprint PCS's argument that the 1987 *Cellular Interconnection Order* entitles it to collect access charges in the absence of an agreement with AT&T. The *Cellular Interconnection Order* established a principle of "mutual switching compensation" between CMRS carriers and LECs. The Commission stated that "the principle of mutual switching compensation should apply to Type 2 but not Type 1 service. Cellular carriers and telephone companies are equally entitled to just and reasonable compensation for their provision of access, whether through tariff or by a division of revenues agreement." This statement regarding compensation for the "provision of access" clarified how the mutual switching compensation principle would apply to Type 1 and Type 2 interconnection, and the mechanism for compensation when it does apply (tariff or agreement). Following the *CMRS Second Report and Order*, tariffs no longer were available to CMRS carriers; therefore compensation is available only through an agreement.

There being no authority under the Commission's rules or a tariff for Sprint PCS unilaterally to impose access charges on AT&T, Sprint PCS is entitled to collect access charges in this case only to the extent that a contract imposes a payment obligation on AT&T.

While it is preferable for carriers to memorialize such contracts in a written agreement, the parties here agree that there is no written agreement or any express contract between AT&T and Sprint PCS. Nevertheless, the law recognizes—as has the Commission—that an agreement may exist even absent an express contract. Turning to the question whether there was such an agreement here, we believe that it is an issue that should be resolved by the Court. We interpret the Court's primary jurisdiction referral as seeking our input on the federal communications law questions related to this dispute. Because the existence of a contract is a matter to be decided under state law, we defer to the court to answer this question.

We offer the court two important observations regarding the regulatory regimes applicable to both IXCs and CMRS carriers during the period in dispute. First, CMRS carriers have never operated under the same calling party's network pays (CPNP) compensation regime as wireline LECs. Under a CPNP regime, LECs are compensated for terminating calls by the carrier of the customer that originates the call, not by the customer receiving the call. In contrast, since the advent of commercial wireless service, and continuing today, CMRS carriers have charged their end users both to make and to receive calls. Until 1998, when Sprint PCS first approached AT&T and other IXCs about payment for terminating access service, all CMRS carriers recovered the cost of terminating long distance calls from their end users, and not from interexchange carriers.

Second, there is a benefit to customers of both IXCs and CMRS carriers when CMRS carriers terminate IXC traffic. Because both carriers charge their customers for the service they provide, it does not necessarily follow that IXCs receive a windfall in situations where no compensation is paid for access service provided by a CMRS carrier. Nor do we believe that terminating access charges to CMRS carriers are necessarily imputed in IXCs' retail rates. The fact that the industry practice for 15 years has been for CMRS carriers to recover costs from their end users, together with the highly competitive nature of the interexchange market, makes it unlikely that an IXC that does not pay access charges to CMRS carriers somehow "overcharges" its customers.

We need not address Sprint PCS's claims under sections 201(b) or 202(a) at this time. Until the court determines the respective obligations of the parties, in particular whether AT&T has any obligation to pay Sprint PCS under a contract, the Commission has no basis on which to assess whether AT&T is subject to sections 201(b) or 202(a) in these circumstances and, if so, whether its actions violate those statutory provisions.

In addition to questions presented by the district court regarding our present policy on CMRS access charges, the pleadings filed in response to the declaratory ruling petitions raise a number of issues that relate either to the prospective treatment of CMRS–IXC interconnection or to issues beyond the scope of those presented for Commission resolution in the primary jurisdiction referral. Our order today clarifies requirements under our *existing* rules. Suggestions for changes to those rules will be addressed in our pending *Intercarrier Compensation* proceeding. Our goal in the *Intercarrier Compensation* proceeding is to move toward a unified compensation regime that eliminates the opportunity for arbitrage due to different regulatory treatment of different types of traffic. At that time we will address CMRS carriers' requests to be placed on equal footing with wireline carriers, whether through bill-and-keep or some other compensation mechanism.

In the interim, IXCs and CMRS carriers remain free to negotiate the rates, terms and conditions under which they will exchange traffic. Given the mutual benefit that CMRS and IXC customers realize when CMRS carriers terminate calls from IXCs, we anticipate that these negotiations will be conducted in good faith and prove fruitful for both sets of carriers. To the extent that carriers encounter problems with this regime, we encourage them to raise any concerns in the pending *Intercarrier Compensation* proceeding so that we may consider those concerns in any future compensation regime we may adopt.

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 201, and 332 of the Communications Act, as amended, 47 U.S.C. 154(i), 201, and 332, and section 1.2 of the Commission's rules, 47 CFR 1.2, the Petitions for Declaratory Ruling filed by AT&T and Sprint PCS are *denied* to the extent set forth herein.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19180 Filed 7–29–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 99–168; FCC 02–204]

Service Rules for the 746–764 and 776–794 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule, petitions for reconsideration.

SUMMARY: This document responds to public safety concerns, in resolving two petitions for reconsideration filed in this proceeding. The document establishes mandatory coordination zones near public safety base stations, within which commercial base station operators will be required to coordinate their operations with public safety licensees. In adopting this document, the Commission intends to establish an anticipatory, rather than reactive, process for controlling interference to public safety operators in the upper 700 MHz band.

DATES: Effective July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Stanley Wiggins, Attorney Advisor, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Memorandum Opinion and Order (MO&O) in WT Docket No. 99–168; FCC 02–204, adopted July 2, 2002, and released July 12, 2002. The complete text of this M O&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com*. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov*.

Synopsis of the Third Memorandum Opinion and Order

1. The Commission, in this Third Memorandum Opinion and Order (MO&O) continues its efforts to ensure the capabilities and responsiveness of both public safety and commercial wireless services in emergency situations. The MO&O responds to two petitions for reconsideration of the Second Memorandum Opinion and

Order (66 FR 4035, February 6, 2001) filed by the National Public Safety Telecommunications Council (NPSTC) and the Public Safety Wireless Network.

2. Specifically, the MO&O establishes "mandatory coordination zones" near public safety base stations, within which commercial base station operators will be required to coordinate their facility decisions with public safety licensees. This will establish an anticipatory, rather than reactive process for controlling interference to public safety operators in the upper 700 MHz band. The MO&O also reflects the Commission's interest in exploring measures that would approach the other side of the interference issue, providing for more robust public safety signals rather than simply constraining Commercial Mobile Radio Service (CMRS) signals.

3. NTPSC requests that the Commission restore the original 700 MHz band plan's limitation of commercial base stations to the lower band, and argues in favor of substantially more stringent out-of-band emission (OOBE) limits. The MO&O concludes that commercial base station transmitters should continue to be permitted in the upper band and that more stringent OOBE limits are not required to protect public safety operations. This discussion may be found in paragraphs 10 through 23 of the full text of the MO&O.

4. The Commission does, however, recognize the public safety community's concern over the substantially greater burdens of resolving, rather than preventing, instances of problematic interference. The Commission determines, therefore, that additional anticipatory protections should be adopted to minimize the possibility for base-to-base interference. The Commission, in the MO&O, thus establishes a "mandatory coordination zone" surrounding 700 MHz public safety base stations, and will require any commercial 700 MHz carrier to coordinate with the public safety community any base stations planned within that zone. If a commercial carrier has already begun operating a base station within the "mandatory coordination zone" of a future public safety base station, the carrier must coordinate the operation of its base station with the licensee of any such public safety base station and relocate or modify the CMRS base station if necessary. Details of the "mandatory coordination zone" may be found in paragraphs 17 through 19 of the MO&O and in the "Rule Changes" section of this summary.

5. NPTSC also recommends that the Commission adopt a position of "zero tolerance of interference to public safety." The Commission, as discussed in paragraphs 24 through 27 of the MO&O, declines to revise the 700 MHz service rules to adopt a "zero tolerance" approach as a means for limiting the effects of out-of-band interference, because the present 700 MHz band service rules establish a much more stringently protected environment for public safety operations than the service rules applicable to other bands. The "zero tolerance" approach would replace the Commission's traditional reliance on actual interference as a basis for mitigation measures with an anticipatory standard that would be both overbroad in concept and imprecise in application.

6. Finally, the MO&O expresses the Commission's interest in exploring proposals to increase public safety signal strength levels in the upper 700 MHz band. As indicated in paragraph 30 of the MO&O, should the public safety community wish to consider revising public safety signal strength standards governing public safety operators in the Upper 700 MHz band, the Commission would be receptive to considering such proposals.

Administrative Matters

7. The MO&O adopts a coordination regulation which constitutes a "third party contact" burden as defined by the Paperwork Reduction Act of 1995. Section 213 of the Consolidated Appropriation Act, 2000 states that the Regulatory Flexibility Act (as well as certain provisions of the Contract with America Advancement Act of 1996 and the Paperwork Reduction Act of 1995) shall not apply to the rules and competitive bidding procedures governing the frequencies in the 746–806 MHz band (currently used for television broadcasts on channels 60–69). In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and section 3507 and 3512 of Title 44 United States Code. Consolidated Appropriations Act, 2000. Public Law 106–113, 113 Stat. 2502, Appendix E, section 213(a)(4)(A)–(B); *See* 145 Cong. Rec. H12493–94 (November 17, 1999); 47 U.S.C.A section 337, note at section 213(a)(4)(A)–(B).

8. *Authority*. This action is taken pursuant to Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 316, 317, 319, 324, 331, 332, 336, 337 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 316, 317, 319, 324, 331, 332, 336, 337, and 534, and the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, Section 213.

Ordering Clauses

9. Part 27 of the Commission's Rules is revised as set forth in the Rule Changes section of this summary, and, in accordance with Section 213 of the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501 (1999), these rules shall be effective July 30, 2002.

10. The Petitions for Reconsideration filed by the National Public Safety Telecommunications Council and the Public Safety Wireless Network are denied as indicated in this summary.

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this MO&O, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, 47 CFR part 27 is amended to read as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.303 is added to read as follows:

§ 27.303 Upper 700 MHz commercial and public safety coordination zone.

(a) *General*. CMRS operators are required, prior to commencing operations on fixed or base station transmitters on the 777–792 MHz band that are located within 500 meters of existing or planned public safety base station receivers, to submit a description of their proposed facility to a Commission-approved public safety coordinator.

(1) The description must include, at a minimum;

(i) The frequency or frequencies on which the facility will operate;

(ii) Antenna location and height;
(iii) Type of emission;
(iv) Effective radiated power;
(v) A description of the area served and the operator's name.

(2) It is the CMRS operator's responsibility to determine whether referral is required for stations constructed in its area of license. Public safety base stations are considered "planned" when public safety operators have notified, or initiated coordination with, a Commission-approved public safety coordinator.

(b) CMRS operators must wait at least 10 business days after submission of the required description before commencing operations on the referenced facility, or implementing modifications to an existing facility.

(c) The potential for harmful interference between the CMRS and public safety facilities will be evaluated by the public safety coordinator.

(1) With regard to existing public safety facilities, the coordinator's determination to disapprove a proposed CMRS facility (or modification) to be located within 500 meters of the public safety facilities will be presumed correct, but the CMRS operator may seek Commission review of such determinations. Pending Commission review, the CMRS operator will not activate the facility or implement proposed modifications.

(2) With regard to proposed public safety facilities, the coordinator's determination to disapprove a proposed CMRS facility (or modification) to be located within 500 meters of the public safety facilities will be presumed correct, but the CMRS operator may seek Commission review and, pending completion of review, operate the facility during construction of the public safety facilities. If coordination or Commission review has not been completed when the public safety facilities are ready to operate, the CMRS operator must cease operations pending completion of coordination or Commission review. Such interim operation of the CMRS facility within the coordination zone (or implementation of modifications) will not be relied on by the Commission in its subsequent review and determination of measures necessary to control interference, including relocation or modification of the CMRS facility.

(d) If, in the event of harmful interference between facilities located within 500 meters proximity, the parties are unable, with the involvement of the coordinator, to resolve the problem by mutually satisfactory arrangements, the Commission may impose restrictions on the operations of any of the parties involved.

[FR Doc. 02–19179 Filed 7–29–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 95–31; FCC 02–192]

Reexamination of Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petitions for further reconsideration.

SUMMARY: In this document the Commission denies petitions for further reconsideration of the rules and procedures used to compare reserved channel noncommercial educational ("NCE") broadcast applicants. The Commission rejects suggestions that it adopt relatively small alterations to, or exemptions from, the current standards, finding that such changes are unwarranted. The effect of this document is to affirm the standards for comparing mutually exclusive NCE applicants on reserved channels.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Media Bureau, (202) 418–2700, Internet address: *ibleiwei@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of a Memorandum Opinion and Second Order on Reconsideration adopted on June 27, 2002 and released on July 5, 2002. The Memorandum Opinion and Second Order is also available during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Washington, DC 20554, Room CY–B402. It also appears on the internet at www.fcc.gov/mb in the headlines section.

Synopsis

In February 2000 and April 2001 the Commission adopted new procedures for comparing mutually exclusive applications to construct noncommercial educational broadcast stations on channels reserved for such use. For FM and FM translator applications the procedures begin with a preliminary analysis of fair distribution of service (FM) or fill-in service (FM translator). If the preliminary analysis is not determinative, the applicants are compared using a point system, which selects the applicant receiving the highest score. The point system also is used to compare applicants for noncommercial educational television stations. The reserved channel selection rules are published at 47 CFR 73.7000 through 47 CFR 73.7005. The Memorandum Opinion and Second Order denies petitions for further reconsideration, leaving unchanged the reserved channel selection rules, related rules and procedures announced earlier in this proceeding. Specifically, the Commission declined to adopt a suggestion to count, in the reserved channel fair distribution of service analysis, certain longstanding NCE stations operating on nonreserved channels. Also unchanged is use of a June 4, 2001 "look back" date for all pending applicants in closed groups to establish their non-technical qualifications for the point system. The Commission rejected a suggestion that, without a change in the look back date, older organizations might qualify for points as "established local applicants" even if the organization existed only on paper. It has never been the Commission's intent to award such points to organizations engaged in virtually no activities in the community of interest. The Commission also affirmed its requirement that the organization itself, not only its governing board, must be local for two years to be considered "established." Finally, the Commission declined to modify its rules concerning the applicability of attribution standards in NCE contexts.

Procedural Matters

This Memorandum Opinion and Second Order on Reconsideration promulgates no additional final rules, and we received no petitions for reconsideration of the Final Regulatory Flexibility Certification. Therefore, no additional Regulatory Flexibility Analysis is required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The previous final certification made in this proceeding remains unchanged. The actions taken in this Memorandum Opinion and Second Order on Reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 02–19181 Filed 7–29–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 01–290; FCC 02–176]

Implementation of the Cable Television Consumer Protection and Competition Act of 1992 and the Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act—Sunset of Exclusive Contract Prohibition

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this document, retains for five years, until October 5, 2007, the prohibition on exclusive contracts contained in section 628(c)(2)(D) of the Communications Act of 1934, as amended. Section 628(c)(2)(D) generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Under section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) would cease to be effective on October 5, 2002, ten years after its enactment through the 1992 Cable Act, unless the Commission found that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. To comply with section 628, the Commission conducted a proceeding in order to determine whether the exclusive contract prohibition should sunset. As a result of conducting its proceeding, the Commission found in this document that while the landscape of the market for the distribution of multichannel video programming changed for the better since 1992, the prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

DATES: Effective August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Karen A. Kosar, Media Bureau at 202–418–1053 or via the Internet at *kkosar@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in Docket No. 01–290, FCC 02–176. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, Courtyard Level, 445 12th Street, SW., Washington, DC, 20554. This document may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's website at *http://www.fcc.gov*.

Synopsis of the Report and Order

1. The Report and Order is issued in accordance with section 628(c)(5) of the Communications Act of 1934, as amended. Section 628(c)(2)(D), enacted through the 1992 Cable Act, generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Section 628(c)(5) directs that the prohibition on exclusive contracts contained in section 628(c)(2)(D) shall cease to be effective on October 5, 2002, ten years after its enactment, unless the Commission finds that such prohibition "continues to be necessary to preserve and protect competition and diversity in the distribution of video programming." The Commission issued a Notice of Proposed Rulemaking, 66 FR 54972, October 31, 2001, seeking comment on the possible sunset of Section 628(c)(2)(D). The Report and Order finds that the exclusivity prohibition should be retained for five years, until October 5, 2007.

2. In examining whether the exclusivity prohibition "continues to be necessary," the Commission sought guidance in the concerns Congress expressed in 1992, however, the Commission's analysis places substantial weight on whether, in the absence of the exclusivity prohibition, vertically integrated programmers would currently have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and program distributors using other technologies and, if they would, whether such behavior would result in a failure to protect and preserve competition and diversity in the distribution of video programming. The Report and Order recognizes that enforcement of the exclusivity prohibition against all vertically integrated programmers may not always serve the public interest and notes that retention of the prohibition does not foreclose all exclusive arrangements between vertically integrated programmers and cable operators. The Report and Order finds that Congress explicitly recognized the existence of such programming by creating a public interest exception to the prohibition. The Report and Order acknowledges that significant changes have taken place in the multichannel video programming distribution ("MVPD") market over the past ten years, and yet finds that vertically integrated programmers generally retain the incentive and ability to favor their cable affiliates over nonaffiliated cable operators and other competitive MVPDs to such a degree that, in the absence of the prohibition, competition and diversity in the distribution of video programming would not be preserved and protected.

3. In addressing the ability of programmers to favor their cable affiliates over other MVPDs, the Report and Order finds that access to vertically integrated programming continues to be necessary in order for competitive MVPDs to remain viable in the marketplace. In that regard, an MVPD's ability to provide service that is competitive with an incumbent cable operator is significantly harmed if denied access to "must have" vertically integrated programming for which there are no good substitutes. The Report and Order also finds that vertically integrated programmers retain the incentive to favor their affiliated cable operators over competitive MVPDs such that competition and diversity in the distribution of video programming would not be preserved and protected. In that regard, the Report and Order finds that cable operators today continue to dominate the MVPD marketplace and that horizontal consolidation and clustering combined with affiliation with regional programming, have contributed to cable's overall market dominance. In addition, the Report and Order determines that an economic basis for denial of access to vertically integrated programming to competitive MVPDs continues, and that such denial would harm such competitors' ability to compete for subscribers. The Report and Order further finds that a partial sunset of the exclusivity prohibition is not warranted at this time.

4. The Report and Order also finds that the scope of the exclusivity prohibition should not be narrowed to apply to particular types of programming or specified geographic

areas. The Report and Order also rejects expanding the prohibition to terrestrially delivered programming or non-vertically integrated programming. Finally, during the year before the expiration of the exclusivity prohibition on October 5, 2007, the Commission will undertake a review to again determine whether the prohibition continues to be necessary. During the five-year period, the Commission will continue to evaluate petitions for exclusivity, under the public interest factors established by Congress. If, however, a dramatic shift in the competitive landscape should occur before five years, the Commission may initiate its review earlier on its own motion or in response to a petition.

Paperwork Reduction Act Analysis

5. Although the Notice of Proposed Rulemaking (NPRM) indicated that some of the issues on which we sought comment might entail a modified information collection subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104–13, the rule change adopted herein does not affect the information collection previously approved by the Office of Management and Budget ("OMB") under Control Number: 3060–0551.

Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act of 1980, as amended, ("RFA"), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the Notice of Proposed Rulemaking in CS Docket No. 01–290. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The comments received are discussed below. This present Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

7. The purpose of section 628 of the Communications Act is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies, for example new MVPDs. Specifically, this proceeding involves section 628(c)(2)(D), which prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators unless the Commission determines that such exclusivity is in the public interest. The exclusivity prohibition set forth in section 628(c)(2)(D) ceases to be effective after a 10-year period ending October 5, 2002. Section 628(c)(5) of the Communications Act requires that restriction on exclusive contracts, within areas served by cable, are to sunset unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. Pursuant to this statutory mandate, we have concluded that the exclusivity prohibition set forth in section 628(c)(2)(D) continues to be necessary to preserve and protect competition and diversity in the distribution of video programming because cable MSOs continue to possess significant market power and continue to control a significant proportion of programming, to the detriment of DBS and other competitive MVPDs, some of which are smaller entities. Retention of the exclusivity prohibition in this proceeding addresses the competitive imbalance that continues to exist in the marketplace by maintaining and securing the ability of competitive MVPDs to access vertically integrated programming.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

8. The American Cable Association ("ACA") filed comments and states that access to satellite programming is essential for smaller cable systems and a sunset of the prohibition could result in small cable companies losing access to over one-third of their satellite programming services. To remedy the situation, the ACA urges the Commission to extend the sunset of the prohibition on exclusive contracts, as the loss of access rights to particular programming would have a significant impact on the continuing viability of many small cable businesses. The Commission considered the potential economic impact on small entities because this issue was pertinent to our determination whether to retain or sunset the exclusivity prohibition and it was a central concern raised in some comments. Cable operators control a formidable share of the market with 78 percent of MVPD subscribers receiving their video programming from a cable operator. DBS has made competitive strides to the point where its share of total MVPD subscribers has grown to 18 percent. But other competitive MVPDs, such as SMATV providers, OVS operators, MMDS, and cable overbuilders, to name a few of the competitive alternatives to cable, have not made similar inroads into cable's market dominance. In general, comments filed by competitive MVPDs, many of which are smaller entities, assert that the market is dominated by cable and not fully competitive. In enacting the exclusivity prohibition in 1992, Congress concluded that because cable MSOs dominated the video environment vertically integrated program suppliers had the incentive and ability to favor their affiliated cable operators over other multichannel programming distributors. Competitive MVPDs assert that the market dominance of cable has not significantly changed in the years since the enactment of the provision. They contend that there is a likelihood that access to particular programming affiliated with cable operators will be threatened and compromised if the prohibition against exclusivity contracts were allowed to sunset. Individual proposals as to how to address this problem generally support the position that the exclusivity prohibition should be retained. If the prohibition were not retained, these entities will not have access to significant programming that is vital to their subscribers. Comments from competitive MVPDs regarding the importance of the prohibition to their economic viability and survival and the Commission's decision and justification to continue to retain the exclusivity prohibition are discussed in the Section entitled Incentive and Ability in this Report and Order.

C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

9. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

10. Small MVPDs. The SBA has developed a small business size standard for cable and other program distribution services, "which includes all such companies generating $11 million or less in revenue annually. This category includes, among other, cable operators, closed circuit television services, direct broadcast satellite services, multipoint distribution services, open video systems ("OVS"). Satellite master antenna television ("SMATV") systems, and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

11. Cable Systems. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in this Report and Order.

12. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

13. Open Video Systems. Because OVS operators provide subscription services OVS falls within the SBA-recognized definition of "Cable and Other Pay Television Services. This definition provides that a small entity is one with $ 11 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

14. Program Producers and Distributors. The Commission has not developed a definition of small entities applicable to producers or distributors of cable television programs. Therefore, we will use the SBA classifications of Motion Picture and Video Tape Production (NAICS Code 51211), Motion Picture and Video Tape Distribution (NAICS Code 42199), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 71132, 51229, 53249). These SBA definitions provide that a small entity in the cable television programming industry is an entity with $21.5 million or less in annual receipts for NAICS Codes 56131, 51211, 42199, and 51212, and $5 million or less in annual receipts for NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 71131, 71132, 51229, and 53249. Census Bureau data indicate the following: (a) There were 7,265 firms in the United States classified as Motion Picture and Video Production (NAICS Code 51211), and that 6,987 of these firms had $16.999 million or less in annual receipts and 7,002 of these firms had $24.999 million or less in annual receipts; (b) there were 1,139 firms classified as Motion Picture and Video Tape Distribution (NAICS Codes 42199 and 51212), and 1007 of these firms had $16.999 million or less in annual receipts and 1013 of these firms had $24.999 million or less in annual receipts; and (c) there were 5,671 firms in the United States classified as Theatrical Producers and Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 51229, and 53249), and 5627 of these firms had $4.999 million or less in annual receipts.

15. Each of these NAICS categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated. Thus, we estimate that our rules may affect approximately 6,987 small entities primarily engaged in the production and distribution of taped cable television programs and 5,627 small producers of live programs that may be affected by the rules adopted in this proceeding.

16. Direct Broadcast Satellite Service ("DBS"). Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with $11 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

17. Home Satellite Dish Service ("HSD"). Because HSD provides subscription services, HSD falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with $11 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase

an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

18. According to the most recently available information, there are approximately four program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 1,476,700 subscribers nationwide. This is an average of about 370,000 subscribers per program package. This is smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

19. Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") and Local Multipoint Distribution Service ("LMDS"). MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS"). LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

20. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

21. The SBA definition of small entities for pay television services, which includes such companies generating $11 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

22. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

23. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

24. Satellite Master Antenna Television ("SMATV") Systems. The SBA definition of small entities for "Cable and Other Pay Television Services" specifically includes SMATV services and, thus, small entities are defined as all such companies generating $11 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of June 2000. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

25. In this Report and Order the Commission concludes that section 628(c)(2)(D) of the Communications Act continues to be necessary to preserve and protect competition and diversity in the video programming marketplace. The Report and Order does not present any specific reporting, recordkeeping or other compliance requirements adopted herein, other than complying with the prohibition against engaging in exclusive contracting between cable operators and vertically integrated program suppliers. Thus, the classes of small entities that potentially will be affected and required to comply with the continuing prohibition includes entities conducting business in these areas.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant alternatives that it has considered in proposing regulatory approaches, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2)

the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

27. In the NPRM the Commission sought comment on whether section 628(c)(2)(D) should cease to be effective, pursuant to the sunset provision in section 628(c)(5), or whether section 628(c)(2)(D) should be retained. Thus, the NPRM invited comments on a number of issues that may significantly impact small entities. In this Report and Order, the Commission discusses the effect that section 628(c)(2)(D) has had on the video programming marketplace and provides justification for retention of the provision. In enacting the exclusivity prohibition contained in section 628(c)(2)(D), the underlying rationale was that vertically integrated programming suppliers had the incentive and ability to favor in an unfair manner, affiliated cable operators in programming arrangements. Thus, the prohibition served to guard against such a practice and helped to encourage competition and diversity. While the provision has succeeded to a certain extent in achieving its objectives, the video landscape has not changed markedly since the inception of the exclusivity protection provision. Cable MSOs continue to hold market power, and while DBS has increased its subscribership levels in recent years, the levels do not compare to cable. Other smaller video competitors, such as MMDS, OVS, SMATV and HDS, have not fared as well and represent a small percentage of MVPD subscribership. These competitive MVPDs argue that they continue to face hurdles in seeking access to critical programming because cable MSOs continue to control essential video programming services and are concerned about the potential loss of such programming absent the section 628(c)(2)(D) prohibition. In its Initial Regulatory Flexibility Analysis Comments, while it supports extending the exclusivity prohibition, ACA suggests that an additional alternative that would achieve the objective of the statute and minimize the impact on small entities is exemption from coverage of the rule, or any part thereof, for small entities.

28. In this Report and Order we discuss the present state of competition among MVPDs and the availability of vertically integrated programming in the section entitled Incentive and Ability. We conclude that while there is a wide variety of programming services available from non-vertically integrated providers in recent years, nevertheless the market dominance of cable remains a concern because of the threat that cable MSOs will engage in exclusive arrangements and deprive competitive MVPDs and their subscribers of "must have," vertically integrated programming.

29. We considered the possibility of sunsetting section 628(c)(2)(D). However, we recognized that the marketplace had not progressed to the point where there were assurances that there is significant enough competition in the cable industry to forestall the domination by cable of "must have" programming. Therefore, we retain section 628(c)(2)(D) because it prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. The decision reached in this Report and Order to retain the prohibition against engaging in exclusive contracts allows for greater competition and diversity, which provides for increased participation by various competitive MVPDs and programming suppliers, a number of which are smaller entities. Therefore we conclude that our decision to retain section 628(c)(2)(D) benefits smaller entities as well as larger entities.

Report to Congress

30. The Commission will send a copy of the Report and Order, including this RFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

31. Accordingly, *it is ordered* that, pursuant to authority found in sections 4(i), 303(r) and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 548, the Commission's rules *are hereby amended* as set forth in the rule changes.

32. *It is further ordered* that the rule adopted herein *will become effective* August 14, 2002.

33. *It is further ordered* that the Commission's Consumer and Government Affairs Bureau *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure and Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1002 is amended by revising paragraph (c)(6) to read as follows:

§ 76.1002 Specific unfair practices prohibited.

* * * * *

(c) * * *

(6) *Sunset provision.* The prohibition of exclusive contracts set forth in paragraph (c)(2) of this section shall cease to be effective on October 5, 2007, unless the Commission finds, during a proceeding to be conducted during the year preceding such date, that said prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

* * * * *

[FR Doc. 02–19182 Filed 7–29–02; 8:45 am]

BILLING CODE 6712–02–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 215, 219, 225, and 252 and Appendix G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names and addresses, reference numbers, clause titles, and clause dates.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 204, 215, 219, 225, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 204, 215, 219, 225, and 252 and Appendix G to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 215, 219, 225, and 252 and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.7202–1 is amended in paragraph (a) by revising the last sentence to read as follows:

204.7202–1 CAGE codes.

(a) * * * DoD 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP), and Volume 7 of DoD 4100.39–M, Federal Logistics Information System (FLIS) Procedures Manual, prescribe use of CAGE codes.

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

215.407–4 [Amended]

3. Section 215.407–4 is amended as follows:

a. In paragraph (b)(2), in the first and last sentences, by removing "5000.2R" and adding in its place "5000.2"; and

b. In paragraph (c)(2)(A) introductory text, in the second parenthetical, by removing "31.001" and adding in its place "2.101".

215.407–5–70 [Amended]

4. Section 215.407–5–70 is amended in paragraph (a)(2) by removing "31.001" and adding in its place "2.101".

PART 219—SMALL BUSINESS PROGRAMS

219.708 [Amended]

5. Section 219.708 is amended in paragraphs (b)(1)(A) and (B) by removing "FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" and adding in its place "FAR 52.219–9, Small Business Subcontracting Plan".

PART 225—FOREIGN ACQUISITION

225.103 [Amended]

6. Section 225.103 is amended in paragraph (b)(iii)(C) by removing "Chief of the Technical Operations Division" and adding in its place "Director, Pharmaceuticals Group".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

7. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read "(JUL 2002)"; and

b. In paragraph (c), in entry "252.247–7023" by removing "(MAR 2000)" and adding in its place "(MAY 2002)".

8. Appendix G to Chapter 2 is amended in Part 3 by removing entry "N68558" and adding, in alpha-numerical order, entries "N62558" and "N65886" to read as follows:

Appendix G—Activity Address Numbers

* * * * *

Part 3—Navy Activity Address Numbers

* * * * *

N62558, 3H Officer-in-Charge, Naval Regional Contracting Center, Detachment London, PSC 821, Box 45, FPO AE 09421–1300

* * * * *

N65886, (MAJ00019), GV Commanding Officer, Naval Air Depot, Naval Air Station, Contracts Management Office, Building 101, Wasp Street, Jacksonville, FL 32212–0016

* * * * *

9. Appendix G to Chapter 2 is amended in Part 5 by revising entry "F29650" to read as follows:

Part 5—Air Force Activity Address Numbers

* * * * *

F29650, R3 377 CONS, 2000 Wyoming Boulevard SE, Kirtland AFB, NM 87117–5606

* * * * *

10. Appendix G to Chapter 2 is amended by revising Parts 7 through 13 to read as follows:

Part 7—Defense Information Systems Agency Activity Address Numbers

DCA100, VC DITCO–NCR, ATTN: DTN, 701 South Courthouse Road, Arlington, VA 22204–2199 (ZD10)

DCA200, VP Defense Information Technology Contracting Organization, Contracting Directorate, ATTN: AQSS, 2300 East Drive, Scott AFB, IL 62225–5406 (ZD11)

DCA300, 1F DITCO-Pacific, ATTN: AQP, 1080 Vincennes Avenue, Suite 100, Pearl Harbor, HI 96860–4535 (ZD13)

DCA400, WK DITCO-Europe, ATTN: AQE, Unit 4235, Box 375, APO AE 09136–5375 (ZD14)

DCA500, KH DITCO-Alaska, ATTN: AQA, 10441 Kuter Avenue, Suite 209 Elmendorf AFB, AK 99506–2615 (ZD15)

Part 8—National Imagery and Mapping Agency Activity Address Numbers

NMA100, BQ National Imagery and Mapping Agency, Contracting Support for Information Services, ATTN: ACI/D–88, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM10)

NMA201, Y2 National Imagery and Mapping Agency, Contracting Support for Acquisition Directorate, ATTN: ACA/N–43, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM21)

MA301, V2 National Imagery and Mapping Agency, Contracting Support for Directorate of Operations, ATTN: ACME/D–5, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM31)

NMA302, YQ National Imagery and Mapping Agency, Contracting Support for Directorate of Operations, ATTN: ACMW/L–13, 3200 South Second Street, St. Louis, MO 63118–3399 (ZM32)

NMA401, 8Y National Imagery and Mapping Agency, Washington Contracting Center, ATTN: ACW/D–6, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM41)

NMA402, YZ National Imagery and Mapping Agency, St. Louis Contracting Center, ATTN: ACS/L–13, 3200 South Second Street, St. Louis, MO 63118–3399 (ZM42)

Part 9—Defense Threat Reduction Agency Activity Address Numbers

DTRA01, 8Z Defense Threat Reduction Agency (AL), DTRA Annex, 8725 John J. Kingman Road, MSC 6201, Fort Belvoir, VA 22060–6201 (ZT01)

DTRA02, 0N Defense Threat Reduction Agency, Albuquerque Support Office (ALTK), 1680 Texas Street SE, Kirtland AFB, NM 87117–5669 (ZT02)

Part 10—Miscellaneous Defense Activities Activity Address Numbers

MDA112, E0 T–ASA, Sacramento Contracting Office, 3230 Peacekeeper Way, Building 209, McClellan, CA 95652–2600 (ZP12)

MDA113, VE T–ASA, March Contracting Office, 1363 Z Street, Building 2730, March ARB, CA 92518–2017 (ZP13)

MDA220, BC Defense Finance and Accounting Service, Acquisition Services Directorate—Arlington, 1931 Jefferson Davis Highway, Room 905, Arlington, VA 22240–5291 (ZF22)

MDA230, SU Defense Finance and Accounting Service, Acquisition Services Directorate—Cleveland, 1240 East 9th Street, Cleveland, OH 44199–2055 (ZF23)

MDA240, 9R Defense Finance and Accounting Service, Acquisition Services Directorate—Columbus, 3990 East Broad Street, Building 21, Columbus, OH 43215–1152 (ZF24)

MDA250, SV Defense Finance and Accounting Service, Acquisition Services Directorate—Denver, 6760 East Irvington Place, Denver, CO 80279–8000 (ZF25)
MDA260, ST Defense Finance and Accounting Service, Acquisition Services Directorate—Indianapolis, 8899 East 56th Street, Building 1, Room 216, Indianapolis, IN 46249–0240 (ZF26)
MDA280, SY Defense Finance and Accounting Service, Acquisition Services Directorate—Kansas City, 1500 East 95th Street, Kansas City, MO 64197–0001 (ZF28)
MDA410, DR DoD Education Activity, ATTN: Procurement Division, 4040 North Fairfax Drive, 4th Floor, Arlington, VA 22203–1635 (ZK10)
MDA412, 9Y DoD Education Activity, European Procurement Office, CMR 443, Box 6000, APO AE 09096–9649 (ZK12)
MDA414, Y4 DoD Education Activity, Education Supplies Procurement Office, 101 Buford Road, Richmond, VA 23235–5292 (ZK14)
MDA416, YT DoD Education Activity, Pacific Procurement Division, Unit 35007, APO AP 96376 (ZK16)
MDA904 Maryland Procurement Office, ATTN: N363, 9800 Savage Road, Fort George G. Meade, MD 20755–6000 (ZD04)
MDA905, B4 Uniformed Services University of the Health Sciences, ATTN: Directorate of Contracting, 4301 Jones Bridge Road, Bethesda, MD 20814–4799 (ZD05)
MDA906, U5 TRICARE Management Activity, Contract Management Directorate, 16401 East Centretech Parkway, Aurora, CO 80011–9043 (ZD06)
MDA907 Purchasing and Contracting Office, Menwith Hill Station, APO AE 09210 (ZD07)
MDA908, 2X Virginia Contracting Activity, ATTN: DAP, PO Box 46563, Washington, DC 20050–6563 (ZD50)
MDA928 Armed Forces Radiobiology Research Institute, ATTN: Directorate of Contracting, USUHS, 4301 Jones Bridge Road, Bethesda, MD 20814–4799 (ZD28)
MDA946 Washington Headquarters Services, Real Estate and Facilities Directorate, ATTN: REFCO, The Pentagon—Butler Building, 1155 Defense Pentagon, Washington, DC 20301–1155 (ZD46)
MDA947, DP Pentagon Renovation Office, 100 Boundary Channel Drive, Arlington, VA 22202–3712 (ZD47)
MDA972, WS DARPA, Contracts Management Office, 3701 North Fairfax Drive, Arlington, VA 22203–1714 (ZD72)

Part 11—Defense Microelectronics Activity Address Number

DMEA90, 2P Defense Microelectronics Activity, ATTN: Contracting Office, 4234–54th Street, McClellan, CA 95652–2100 (ZD90)

Part 12—Missile Defense Agency Activity Address Numbers

HQ0006, SS Missile Defense Agency, Contracts Directorate, ATTN: CT, 7100 Defense Pentagon, Washington, DC 20301–7100 (ZD60)
H95001, VV Joint National Integration Center, Contract Management, 730 Irwin Avenue, Schriever Air Force Base, CO 80912–7300 (ZD61)

Part 13—Defense Commissary Agency Activity Address Numbers

DECA01, ZG Defense Commissary Agency, Resale Contracting Division, ATTN: DeCA/PSMC, 1300 E Avenue, Fort Lee, VA 23801–1800 (ZD81)
DECA02, ZT Defense Commissary Agency, Resale Contracting Division, ATTN: DeCA/PSMC, 1300 E Avenue, Fort Lee, VA 23801–1800 (ZD82)
DECA03, 0H Defense Commissary Agency, Eastern Region, CIBA Contracting Division, 5151 Bonney Road, Suite 201, Virginia Beach, VA 23462–4314 (ZD83)
DECA04, BE Defense Commissary Agency, Contracting Business Unit, Equip/Supply & Revenue, ATTN: DeCA/CICE, 1300 E Avenue, Fort Lee, VA 23801–1800 (ZD84)
DECA06, 0J Defense Commissary Agency, Midwest Region, ATTN: DeCA/MW/RDCC, 300 AFCOMS Way, Building 3030, San Antonio, TX 78226–1330 (ZD86)
DECA07, 0Z Defense Commissary Agency, Western/Pacific Region, ATTN: DeCA/WP/RDCC, 3401 Acacia Street, Suite 115, McClellan, CA 95652–1002 (ZD87)
DECA08, 0K Defense Commissary Agency, Contracting Business Unit, Services Division, ATTN: DeCA/CICS, 1300 E Avenue, Fort Lee, VA 23801–1800 (ZD88)
DECA09, 0U Defense Commissary Agency, European Region, ATTN: DeCA/EU/AM, Unit 3060, APO AE 09094–3060 (ZD89)

Part 14—[Amended]

11. Appendix G to Chapter 2 is amended in Part 14 by removing entries USZA24, USZA25, USZA90, USZA91, USZA93, and USZA98.

[FR Doc. 02–19084 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 209, 243, and 252

[DFARS Case 99–D303]

Defense Federal Acquisition Regulation Supplement; Institutions of Higher Education

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: DoD has adopted as final, with minor changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 549 of the National Defense Authorization Act for Fiscal Year 2000. Section 549 amends statutory provisions pertaining to the denial of Federal contracts and grants to institutions of higher education that prevent Senior Reserve Officer Training Corps (ROTC) access or military recruiting on campus.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 99—D303.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements Section 549 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). Section 549 amends 10 U.S.C. 983 to prohibit DoD from providing funds by contract or grant to an institution of higher education (including any subelement of that institution) if the Secretary of Defense determines that the institution (or any subelement of the institution) has a policy or practice that prohibits, or in effect prevents, Senior ROTC units or military recruiting on campus.

DoD published an interim rule at 65 FR 2056 on January 13, 2000. Sixty-one sources submitted comments on the interim rule. After evaluating all comments, DoD converted the interim rule to a final rule with minor editorial changes. A summary of the comments and the DoD response is provided below:

Comment: The greatest concern expressed by respondents pertained to the extension of the prohibition to subelements of educational institutions. The respondents stated that Section 549 of Public Law 106–65 was intended to recodify prior legislation, which did not require extension of the prohibition to subelements; prior legislative history did not support extension to subelements; and the fact that the subelement language was contained in the Senate report but not in the House report, and that the Senate had receded to the House version of the bill, meant that DoD could not rely upon the Senate report as a basis for extending the rule to subelements of an institution.

DoD Response: Senate and House Committee reports generally are taken into consideration to determine legislative intent only when the statutory language is unclear. The final language of Section 549 of Public Law 106–65 clearly states that the policy applies to any subelement of an institution. A comparison of the previous and current legislation shows that the subelement language was a new addition to the statute resulting from the enactment of Section 549.

Comment: Several respondents believed that DoD did not have

sufficient cause to issue an interim rule without prior opportunity for public comment. *DoD Response:* Section 549 of Public Law 106–65 became effective upon enactment, on October 5, 1999. DoD issued a rule before receipt of public comments to promptly comply with the new statutory requirement.

Comment: One respondent stated that the rule calls for suspension and debarment without due process and asked what procedure exists for an educational institution to challenge a determination. *DoD Response:* This DFARS rule merely prescribes the action to be taken after an institution is determined to be ineligible for DoD contract awards. The procedures used to make that determination are addressed separately in the regulations at 32 CFR part 216.

Comment: One respondent stated that the requirements for stopping payments and terminating existing contracts go far beyond traditional suspension and debarment. *DoD Response:* These requirements are not new. They were added to the DFARS in 1995 to comply with Section 558 of Public Law 103–337, which prohibited DoD from providing funds to educational institutions that prevented military recruiting on campus. The current legislation contains a similar prohibition.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to institutions of higher education that do not permit Senior ROTC units or military recruiting on campus.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209, 243, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 209, 243, and 252, which was published at 65 FR 2056 on January 13, 2000, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR parts 209, 243, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

209.470–3 [Amended]

2. Section 209.470–3 is amended in paragraphs (b)(1), (2), and (3) by removing "Must" and adding in its place "Shall".

[FR Doc. 02–19081 Filed 7–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 253

[DFARS Case 2002–D012]

Defense Federal Acquisition Regulation Supplement; Weighted Guidelines Form

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the information on DD Form 1547, Record of Weighted Guidelines Application. The revisions correspond to changes to DoD profit policy published in the **Federal Register** on April 26, 2002.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2002–D012.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published a final rule in the **Federal Register** on April 26, 2002 (67 FR 20688), under DFARS Case 2000–D018. That rule amended policy for computation of profit objectives by reducing the value assigned to facilities capital employed for equipment, eliminating the values assigned to facilities capital employed for buildings, increasing the values for performance risk, and adding a special factor for cost efficiency.

This final rule amends DD Form 1547, Record of Weighted Guidelines Application, and corresponding completion instructions, to reflect the changes to profit policy published on April 26, 2002.

DD Form 1547, and other forms prescribed by the DFARS, are not included in the Code of Federal Regulations. The forms are available electronically via the Internet at *http://web1.whs.osd.mil/icdhome/ddeforms.htm*.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D012.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 215 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 215 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.404–71–2 is amended in paragraph (b) introductory text by revising the table to read as follows:

215.404–71–2 Performance risk.

* * * * *

(b) * * *

Item	Contractor risk factors	Assigned weighting	Assigned value	Base (item 20)	Profit objective
21	Technical	(1)	(2)	N/A	N/A
22	Management/Cost Control	(1)	(2)	N/A	N/A
23	Performance Risk (Composite)	N/A	(3)	(4)	(5)

* * * * *

215.404–71–3 [Amended]

3. Section 215.404–71–3 is amended as follows:

a. In paragraph (b) introductory text, in the table, by redesignating Items 25 and 26 as Items 24 and 25, respectively;

b. In paragraph (c)(2) by removing "(Block 26)" and adding in its place "(Block 25)"; and

c. In paragraph (c)(5), in the second sentence, by removing "Block 26" and adding in its place "Block 25".

4. Section 215.404–71–4 is amended in paragraph (b) introductory text by revising the table to read as follows:

215.404–71–4 Facilities capital employed.

* * * * *

(b) * * *

Item	Contractor facilities capital employed	Assigned value	Amount employed	Profit objective
26	Land	N/A	(2)	N/A
27	Buildings	N/A	(2)	N/A
28	Equipment	(1)	(2)	(3)

* * * * *

215.404–71–5 [Amended]

5. Section 215.404–71–5 is amended in paragraph (a), in the last sentence, by adding, before the period, "(Block 29)".

215.404–72 [Amended]

6. Section 215.404–72 is amended as follows:

a. In the heading of paragraph (b)(1), in the parenthetical, by removing "*Blocks 21–24*" and adding in its place "*Blocks 21–23*"; and

b. In the heading of paragraph (b)(2), in the parenthetical, by removing "*Block 25*" and adding in its place "*Block 24*".

215.407–4 [Amended]

7. Section 215.407–4 is amended in paragraph (c)(1) by revising the second parenthetical to read "(*http://www.dcma.hq.dla.mil/*)".

PART 253—FORMS

8. Section 253.215–70 is amended by revising paragraphs (c)(12) and (c)(15) to read as follows:

253.215–70 DD Form 1547, Record of Weighted Guidelines Application.

* * * * *

(c) * * *

(12) *Block 12—use code.* Enter the appropriate code for use of the weighted guidelines method—

Description	Code
Standard weighted guidelines method (215.404–71–2(c)(1)) ...	2
Alternate structured approach (215.404–73)	4
Modified weighted guidelines approach (215.404–72)	5
Technology incentive (215.404–71–2(c)(2))	6

* * * * *

(15) *Block 30—total profit objective.* Enter the total of Blocks 23, 24, 25, 27, 28, and 29. This section is not required to be completed when using an alternate structured approach (215.404–73).

* * * * *

[FR Doc. 02–19083 Filed 7–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

[DFARS Case 2001–D016]

Defense Federal Acquisition Regulation Supplement; Partnership Agreement Between DoD and the Small Business Administration

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with minor changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a partnership agreement between DoD and the Small Business Administration (SBA). The partnership agreement streamlines procedures for contract awards under SBA's 8(a) Program.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2001–D016.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 67 FR 11435 on March 14, 2002, to implement a partnership agreement between DoD and SBA. The partnership agreement permits DoD to award 8(a) contracts directly to 8(a) concerns, on behalf of SBA. DoD received one comment on the interim rule, and that comment was in support of the rule. Therefore, DoD is adopting the interim rule as a final rule with only minor editorial changes.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule affects only the administrative procedures used for award of contracts under the 8(a) Program.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not

impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 219 and 252, which was published at 67 FR 11435 on March 14, 2002, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 219 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.804–2 [Amended]

2. Section 219.804–2 is amended by removing "must" and adding, in its place, "shall" in the following places:

a. Paragraph (1) introductory text, in the first and last sentences;

b. Paragraph (1)(ii)(A);

c. Paragraph (2) introductory text, twice in the second sentence and once in the last sentence;

d. Paragraph (2)(ii), in the last sentence; and

e. Paragraph (3), in the first and last sentences.

219.806 [Amended]

3. Section 219.806 is amended in paragraph (1) and in the last sentence of paragraph (2) by removing "must" and adding in its place "shall".

219.811–1 [Amended]

4. Section 219.811–1 is amended in paragraph (a), in the first, second, and last sentences, by removing "must" and adding in its place "shall".

219.811–2 [Amended]

5. Section 219.811–2 is amended by removing "must" and adding in its place "shall".

[FR Doc. 02–19082 Filed 7–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2002–D011]

Defense Federal Acquisition Regulation Supplement; Trade Agreements Thresholds—Construction

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). The rule implements the determination of the U.S. Trade Representative to revise the dollar thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) to construction contracts.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D011.

SUPPLEMENTARY INFORMATION:

A. Background

On March 27, 2002 (67 FR 14763), the U.S. Trade Representative published a determination that decreased the threshold for application of the Trade Agreements Act to construction contracts from $6,806,000 to $6,481,000; and increased the threshold for application of NAFTA to construction contracts from $7,068,419 to $7,304,733. This final rule amends the prescriptions for use of the clauses at DFARS 252.225–7044, Balance of Payments Program—Construction Material, and 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, to reflect the new dollar thresholds.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D011.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.7503 [Amended]

2. Section 225.7503 is amended as follows:

a. In paragraph (a), and in paragraph (b) in the first and last sentences, by removing "$6,806,000" and adding in its place "$6,481,000"; and

b. In paragraph (b), in the last sentence, by removing "$7,068,419" and adding in its place "$7,304,733".

[FR Doc. 02–19080 Filed 7–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 253

[DFARS Case 2002–D010]

Defense Federal Acquisition Regulation Supplement; Reporting Requirements Update; Correction

AGENCY: Department of Defense (DoD).

ACTION: Correction to final rule.

SUMMARY: DoD is issuing a correction to the final rule published at 67 FR 46112–46123 on July 12, 2002, pertaining to contract action reporting requirements for Fiscal Year 2003. The correction adds a reporting agency code.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350.

Correction

In the issue of Friday, July 12, 2002, on page 46113, in the third column, section 253.204–70, paragraph (a)(3)(i)

is corrected by adding, after the last semicolon, "97AB (NIMA);".

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–19079 Filed 7–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 825, 832, 836, 846, and 852

RIN 2900–AJ56

VA Acquisition Regulation: Construction and Architect-Engineer Contracts

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulation (VAAR). This document updates position titles, makes minor grammatical corrections and revisions, revises and updates section numbers and titles, relocates material to correspond to the Federal Acquisition Regulation (FAR), and delegates authority. In addition, the document updates regulations and adds coverage regarding the authority of the National Cemetery Administration to award architect-engineer contracts. Also, it replaces a general prescription directing the use of all VAAR clauses relating to construction contracts with specific prescriptions for each clause, removes obsolete or duplicative material, updates the VAAR regarding the requirement for certificates of current cost or pricing data, and provides agency procedures regarding disclosure of the Government cost estimate on construction contracts. This document also removes a "guaranty" clause from the VAAR and provides agency procedures for VA contracting officers to use the FAR "warranty" clause for construction contracts exceeding the micro-purchase threshold in order to protect the best interests of the Government. In addition, this document revises provisions regarding the acceptance of foreign construction materials to correspond to changes made in the FAR and to comply with the Trade Agreements Act and the North American Free Trade Agreement.

DATES: *Effective Date:* August 29, 2002.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Program Management Team (0495A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, telephone (202) 273–8819.

SUPPLEMENTARY INFORMATION: On September 27, 2001, we published in the **Federal Register** (66 FR 49331) a proposed rule to amend the Department of Veterans Affairs Acquisition Regulation to make changes to part 836, Construction and Architect-Engineer Contracts, and related parts. Comments were solicited concerning the proposed rule for 60 days, ending November 26, 2001. We did not receive any comments.

Based on the rationale set forth in the proposed rule, we are adopting the provision of the proposed rule as a final rule with nonsubstantive changes discussed below.

The proposed rule included collections of information regarding clauses and provisions for use in both commercial and non-commercial item, service, and construction solicitations and contracts. The Office of Management and Budget (OMB) has approved the information collections under OMB Control Numbers 2900–0622 and 2900–0623.

The intent of the proposed rule was to update the VAAR to match the FAR regarding the requirement for submission of certificates of current cost or pricing data, but the proposed rule referenced an incorrect dollar threshold of $500,000. The FAR threshold for submission of certificates of current cost or pricing data has been revised to $550,000 and will be adjusted in the future to account for inflation. Therefore, to match the FAR, § 836.578(b) has been revised to clarify when cost or pricing data is required and § 836.578(c) has been revised to reference the FAR threshold for submission of cost of pricing data rather than a specific dollar amount and for clarity. In addition, the FAR requires the approval of the head of the contracting activity prior to requiring submission of cost or pricing data for pricing actions below this threshold, so a reference to this approval requirement has been added to § 836.578(c).

The intent of the proposed rule was to update the VAAR to correspond to the FAR regarding the acceptance of foreign construction materials and to comply with the Trade Agreements Act (TAA) and the North American Free Trade Agreement (NAFTA). The proposed rule designated Alternate I to the clause at 852.236–89 for use when NAFTA applied to a solicitation. This was incorrect. Under the current dollar thresholds in the FAR, Alternate I should reference the TAA rather than NAFTA, since the dollar threshold for application of the TAA is less than the dollar threshold for the application of NAFTA. Therefore, Alternate I has been revised to apply to the TAA to correspond with the FAR.

Also, we revised § 832.111 for purposes of clarity and §§ 836.209, 836.602–2, 836.602–4, and 836.603 to update titles and/or for purposes of clarity.

Paperwork Reduction Act

This document contains provisions constituting a collection of information that have been approved by the Office of Management and Budget (OMB) under OMB Control Numbers 2900–0622 and 2900–0623.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The changes are small-business neutral and will not have a significant economic impact on a substantial number of small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects

48 CFR Part 825

Foreign currencies, Foreign trade, Government procurement.

48 CFR Parts 832 and 846

Government procurement.

48 CFR Parts 801, 836 and 852

Government procurement, Reporting and recordkeeping requirements.

Approved: May 1, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is amended as follows:

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 801 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

801.103–70 [Redesignated as 801.104–70]

2. Section 801.103–70 is redesignated as section 801.104–70.

3. In section 801.301–70, paragraph (b) introductory text is added; paragraph (b)(1) is revised; and the table in paragraph (c) is amended by removing "852.236–81", and adding in its place "852.236–82", and by adding in numerical order the following section and OMB control numbers to read as follows:

801.301–70 Paperwork Reduction Act requirements.

* * * * *

(b) Contractors will not be requested to maintain systems of records unless prescribed in FAR or VAAR.

(1) A deviation to this prohibition may be processed in accordance with 801.403 in order to allow the contracting officer to require contractor reporting or recordkeeping beyond that prescribed in the FAR and VAAR. The request for deviation will clearly specify what information or recordkeeping will be required and why it is required. The request will be signed by the head of the contracting activity.

* * * * *

(c) * * *

48 CFR part or section where identified and described	Current OMB control No.
. . . . .	
852.236–80 (Alt. I)	2900–0422
. . . . .	
852.236–89	2900–0622
852.236 91	2900–0623
. . . . .	

PART 825—FOREIGN ACQUISITION

4. The authority citation for part 825 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

5. Subpart 825.9 is amended by:

A. Redesignating subpart 825.9 as 825.10 and revising the subpart heading.

B. Redesignating section 825.901 as 825.1001 and revising the section heading.

The redesignations and revisions read as follows:

Subpart 825.10—Additional Foreign Acquisition Regulations

825.1001 Waiver of right to examination of records.

6. Subpart 825.11 and section 825.1102 are added to read as follows:

Subpart 825.11—Solicitation Provisions and Contract Clauses

825.1102 Solicitation provisions and contract clauses.

(a) The Buy American Act (41 U.S.C. 10a–d), except as modified by the Trade Agreements Act (TAA) and the North American Free Trade Agreement (NAFTA)), requires that only domestic construction material shall be used in the performance of contracts for construction. To clarify VA's position on foreign material, the contracting officer shall insert the clause at 852.236–89, Buy American Act, in solicitations and contracts for construction that contain the FAR clause at 52.225–9, Buy American Act'Balance of Payments Program'Construction Materials.

(b) For solicitations and contracts for construction that include the FAR clause at 52.225–11, Buy American Act'Balance of Payment Program'Construction Materials Under Trade Agreements, with its Alternate I (i.e., subject only to the TAA), insert the clause at 852.236–89, Buy American Act, with its Alternate I.

(c) For solicitations and contracts that include the FAR clause at 52.225–11 without its Alternate I (i.e., subject to both the TAA and NAFTA), insert the clause at 852.236–89, Buy American Act, with its Alternate II.

PART 832—CONTRACT FINANCING

7. The authority citation for part 832 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

8. Subpart 832.1, consisting of section 832.111, is added to read as follows:

Subpart 832.1—Non-Commercial Item Purchase Financing

832.111 Contract clauses for non-commercial purchases.

(a) In solicitations and contracts for construction that include the FAR clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, but that do not contain a section entitled "Network Analysis System (NAS)," the contracting officer shall insert the clause at 852.236–82, Payments under fixed-price construction contracts (without NAS). When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

(b) In solicitations and contracts for construction that include the FAR clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, and that also contain a section entitled "Network Analysis System (NAS)," the contracting officer shall insert the clause at 852.236–83, Payments under fixed-price construction contracts (including NAS). When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

9. The authority citation for part 836 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

836.202 [Amended]

10. Section 836.202 is amended by:

A. In paragraph (b), removing "of contract" and adding, in its place, "of a contract".

B. In paragraph (c), adding a comma immediately after "FAR 52.236–5"; removing "the clause" and adding, in its place, "the contracting officer shall include the clause'; and removing "shall be included".

11. Section 836.203 is added to read as follows:

836.203 Government estimate of construction costs.

The overall amount of the Government estimate shall not be disclosed until after award of the contract. After award, the overall amount may then be disclosed upon request.

836.208 [Removed]

12. Section 836.208 is removed.

13. Section 836.209 is revised to read as follows:

836.209 Construction contracts with architect-engineer firms.

When it is considered necessary or advantageous to award a contract for construction of a design-bid-build project, as defined at FAR 36.102, to the firm or person that designed the project, prior approval will be requested from the facility director or manager or, for National Cemetery Administration contracts, the Director, Office of Construction Management, for contracts involving nonrecurring maintenance (NRM) funds or from the Chief Facilities Management Officer, Office of Facilities Management, for contracts involving construction funds. Complete justification will be furnished in the request. This section does not apply to design-build contracts, as defined at FAR 36.102.

836.211 [Removed]

14. Section 836.211 is removed.

15. Section 836.213–4 is added to read as follows:

836.213–4 Notice of award.

The contracting officer shall provide the contractor a notice of award (letter of acceptance) for any contract award in excess of $25,000.

836.371 [Redesignated as 836.213–70]

16. Section 836.371 is amended by:

A. Redesignating section 836.371 as 836.213–70.

B. In paragraph (b), removing "requested. It will" and adding, in its place, "requested, or any other method that provides signed evidence of receipt. The notice to proceed will"; and removing "post office." and adding, in its place, "post office or on the proof of delivery provided by the delivery service."

C. In paragraph (d), removing "mail is used, the certified mail receipt card returned by the post office will" and adding, in its place, "mail or other method of delivery is used, the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service will".

836.3 [Removed]

17. Subpart 836.3 is removed.

18. Section 836.501 is added to read as follows:

836.501 Performance of work by the contractor.

The contracting officer shall insert the clause at 852.236–72, Performance of work by the contractor, in solicitations and contracts for construction that contain the FAR clause at 52.236–1, Performance of Work by the Contractor. When the solicitations and contracts include a section entitled "Network Analysis System (NAS)," the contracting officer shall use the clause with its Alternate I.

19. Section 836.521 is added to read as follows:

836.521 Specifications and drawings for construction.

The contracting officer shall insert the clause at 852.236–71, Specifications and drawings for construction, in solicitations and contracts for construction that contain the FAR clause at 52.236–21, Specifications and Drawings for Construction.

20. Sections 836.570 through 836.579 are added to read as follows:

836.570 Correspondence.

The contracting officer shall insert the clause at 852.236–76, Correspondence, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

836.571 Reference to "standards."

The contracting officer shall insert the clause at 852.236–77, Reference to "standards," in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

836.572 Government supervision.

The contracting officer shall insert the clause at 852.236–78, Government supervision, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

836.573 Daily report of workers and materials.

The contracting officer shall insert the clause at 852.236–79, Daily report of workers and materials, in solicitations and contracts for construction expected to exceed the simplified acquisition threshold. The contracting officer may, when in the best interest of the Government, insert the clause in solicitations and contracts for construction when the contract amount is expected to be at or below the simplified acquisition threshold.

836.574 Subcontractors and work coordination.

The contracting officer shall insert the clause at 852.236–80, Subcontracts and work coordination, in solicitations and contracts for construction expected to exceed the micro-purchase threshold. When the solicitations or contracts are for new construction work with complex mechanical-electrical work, the contracting officer may use the clause with its Alternate I.

836.575 Schedule of work progress.

The contracting officer shall insert the clause at 852.236–84, Schedule of work progress, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold and that do not contain a section entitled "Network Analysis System (NAS)."

836.576 Supplementary labor standards provisions.

The contracting officer shall insert the clause at 852.236–85, Supplementary labor standards provisions, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

836.577 Worker's compensation.

The contracting officer shall insert the clause at 852.236–86, Worker's compensation, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

836.578 Contract changes—supplement.

(a) The contracting officer shall insert the clause at 852.236–88, Contract changes—supplement, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

(b) When negotiated changes exceed $500,000, paragraph (a) of the clause at 852.236–88 will apply. Because paragraph (a) does not provide ceiling rates for indirect expenses, the contractor must supply cost breakdowns and other supporting data on its rates for indirect expenses as part of its price proposal. The contracting officer must negotiate the rates for indirect expenses with the contractor and may request an audit in accordance with FAR 15.404–2. When the negotiated change will be $500,000 or less, paragraph (b) of the clause at 852.236–88 will apply.

(c) As provided in FAR 15.403–4, proposals exceeding the cost or pricing data threshold shall be accompanied by certificates of current cost or pricing data. The contracting officer, if authorized by the head of the contracting activity, may require the submission of cost or pricing data for proposals valued at less than the cost or pricing data threshold specified in FAR 15.403–4(a)(1) and may require that the data be certified in accordance with FAR 15.403–4(a)(2).

(d) It is emphasized that the indirect cost rates in paragraph (b) of the clause at 852.236–88, for changes costing $500,000 or less, are ceiling rates only and the contracting officer must negotiate the indirect expense rates within the ceiling limitations. The clause is a result of an approved FAR deviation pursuant to subpart 801.4.

836.579 Special notes.

The contracting officer shall insert the clause at 852.236–91, Special notes, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

836.602–1 [Amended]

21. Section 836.602–1, paragraph (c) is amended by removing "project, and" and adding, in its place, "project and their".

22. Section 836.602–2 is amended by:

A. In paragraph (a), removing "board will be chaired by the Director of the Architect-Engineer Evaluation Staff, or the Area Project Manager (or Deputy Area Project Manager) will be designated to act when" and adding, in its place, "board for the Office of Facilities Management will be chaired by the Director, A/E Evaluation and Program Support Service. The Project Director or Project Manager will be

designated to act as Chair when" removing "appropriate Area" and adding, in its place, "appropriate" and by adding a comma immediately after "board's members."

B. In paragraph (b), removing "activity and" and adding, in its place, "activity (HCA) (or the senior contracting officer at the facility if there is no HCA on site) and".

C. Paragraph (c) is added.

The addition reads as follows:

836.602–2 Evaluation boards.

* * * * *

(c) The evaluation board for National Cemetery Administration (NCA) contracts will be appointed by the Director, Office of Construction Management, and will consist of no less than three members, one of whom will serve as the board's Chair, and one of whom will be an NCA senior level contracting officer.

836.602–4 [Amended]

23. Section 836.602–4 is amended by removing "Central Office contracts) and" and adding, in its place, "Central Office contracts), the Director, Office of Construction Management (for National Cemetery Administration contracts), and".

24. Section 836.602–5 is revised to read as follows:

836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

Either of the procedures provided in FAR 36.602–5 may be used to select firms for architect-engineer contracts not expected to exceed the simplified acquisition threshold.

25. Section 836.603 is added to read as follows:

836.603 Collecting data on and appraising firms' qualifications.

The Chief Facilities Management Officer, Office of Facilities Management, for Central Office; the Director, Office of Construction Management, for National Cemetery Administration acquisitions; and the Chief, Engineering Service, for field facilities, are responsible for collecting Standard Forms 254 and 255 and for maintaining a data file on architect-engineer qualifications.

26. Section 836.606 heading is added immediately preceding 836.606–70, to read as follows:

836.606 Negotiations.

836.606–73 [Amended]

27. Section 836.606–73, paragraph (a)(3)(iii) is amended by adding a "comma" immediately after "samples".

PART 846—QUALITY ASSURANCE

28. The authority citation for part 846 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

846.302–70 [Amended]

29. Section 846.302–70 is amended by removing "852.210–72(a)" and adding, in its place, "852.211–72(a)", and by removing "852.210–72(b)" and adding, in its place, "852.211–72(b)".

30. Section 846.312 is added to read as follows:

846.312 Construction contacts.

The contracting officer shall insert the clause at 852.236–74, Inspection of construction, in solicitations and contracts for construction that contain the FAR clause at 52.246–12, Inspection of Construction.

31. Subpart 846.7, consisting of sections 846.710, 846.710–70, and 846.710–71, is added to read as follows:

Subpart 846.7—Warranties

Sec.
846.710 Construction contracts.
846.710–70 Special warranties.
846.710–71 Warranty for construction—guarantee period services.

Subpart 846.7—Warranties

846.710 Construction contracts.

Contracting officers shall insert the FAR clause at 52.246–21, Warranty of Construction, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

846.710–70 Special warranties.

The contracting officer shall insert the clause at 852.246–1, Special warranties, in solicitations and contracts for construction that include the FAR clause at 52.246–21, Warranty for Construction.

846.710–71 Warranty for construction—guarantee period services.

The contracting office shall insert the clause at 852.246–2, Warranty for construction'guarantee period services, in solicitations and contracts for construction that include the FAR clause at 52.246–21, Warranty for Construction, and also include guarantee period services.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

32. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

852.236–70 [Redesignated as 836.500]

33. Section 852.236–70 is amended by:

A. Redesignating section 852.236–70 as section 836.500 and transferring newly designated section 836.500 to subpart 836.5.

B. In paragraph (a) of new section 836.500, removing "section" and adding, in its place, "subpart".

C. Revising the new section heading.

The revision reads as follows:

836.500 Scope of subpart.

34. Section 852.236–71 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. In paragraph (d) of the clause, removing the comma immediately after "work".

D. Adding introductory text to the clause.

The revisions and addition read as follows:

852.236–71 Specifications and drawings for construction.

As prescribed in 836.521, insert the following clause:

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (JUL 2002)

The clause entitled "Specifications and Drawings for Construction" in FAR 52.236–21 is supplemented as follows:

* * * * *

35. Section 852.236–72 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Adding introductory text to the clause.

D. Revising paragraphs (b) and (d).

E. Revising the introductory Alternate I paragraph and paragraph (c) of Alternate I.

The revisions and addition read as follows:

852.236–72 Performance of work by the contractor.

As prescribed in 836.501, insert the following clause:

PERFORMANCE OF WORK BY THE CONTRACTOR (JUL 2002)

The clause entitled "Performance of Work by the Contractor" in FAR 52.236–1 is supplemented as follows:

* * * * *

(b) The contractor shall submit, simultaneously with the schedule of costs

required by the Payments Under Fixed-Price Construction Contracts clause of the contract, a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining the value of a branch or branches, or portions thereof, of the work for the purpose of this article.

* * * * *

(d) In the event the contractor fails or refuses to meet the requirement of the FAR clause at 52.236–1, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement that is accomplished by others. For the purpose of this clause, it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in accordance with the FAR clause at 52.236–1.

* * * * *

(End of clause)

Alternate I (Jul 2002)

For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

* * * * *

(c) If, during progress of work hereunder, the contractor requests a change in activities of work to be performed by the contractor's forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at his or her discretion, authorize a change in such activities of said work.

36. Section 852.236–74 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Adding introductory text to the clause.

The revisions and addition read as follows:

852.236–74 Inspection of construction.

As prescribed in 846.312, insert the following clause:

INSPECTION OF CONSTRUCTION (JUL 2002)

The clause entitled "Inspection of Construction" in FAR 52.246–12 is supplemented as follows:

* * * * *

852.236–75 (Redesignated as 852.246–2)

37. Section 852.236–75 is redesignated as 852.246–2, and is revised to read as follows:

852.246–2 Warranty for construction—guarantee period services.

As prescribed in 846.710–71, insert the following clause:

WARRANTY FOR CONSTRUCTION—GUARANTEE PERIOD SERVICES (JUL 2002)

The clause entitled "Warranty of Construction" in FAR 52.246–21 is supplemented as follows:

Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at FAR Section 52.249–10, Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor's refusal or failure to complete the work within this specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of clause)

38. In section 852.236–76, introductory text is added to read as follows:

852.236–76 Correspondence.

As prescribed in 836.570, insert the following clause:

* * * * *

39. Section 852.236–77 is amended by:

A. Adding introductory text.

B. Revising the undesignated center heading clause and its date.

The addition and revision read as follows:

852.236–77 Reference to "standards."

As prescribed in 836.571, insert the following clause:

REFERENCE TO "STANDARDS" (JUL 2002)

40. In section 852.236–78, paragraph (c) is amended by removing "may by written direction make" and adding, in its place "may, by written direction, make"; and a section introductory text is added to read as follows:

852.236–78 Government supervision.

As prescribed in 836.572, insert the following clause:

* * * * *

41. In section 852.236–79, section introductory text is added to read as follows:

852.236–79 Daily report of workers and materials.

As prescribed in 836.573, insert the following clause:

* * * * *

42. Section 852.236–80 is amended by:

A. Revising the introductory text.

B. Adding a new paragraph immediately following the phrase "(End of clause)".

The revision and addition read as follows:

852.236–80 Subcontracts and work coordination.

As prescribed in 836.574, insert the following clause:

* * * * *

(End of clause)

Alternate I (Jul 2002)

For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

* * * * *

43. Section 852.236–81 is amended by:

A. Removing the section introductory text.

B. Removing the undesignated center clause heading.

C. Adding a paragraph "(b)" designation to the undesignated clause paragraph.

D. Removing the phrase "(End of clause)" at the end of the newly designated paragraph (b).

E. Transferring the newly designated paragraph (b) to section 852.236.80 immediately following the "Alternate I" paragraph.

F. Removing section 852.236–81 section heading.

44. In section 852.236–82, the introductory text and paragraphs (b)(2) and (b)(3) are revised; the "Supplement I (JAN 1988)" clause is removed and an Alternate I clause is inserted in its place to read as follows:

852.236.82 Payments under fixed-price construction contracts (without NAS).

As prescribed in 832.111, insert the following clause in contracts that do not contain a section entitled "Network Analysis System (NAS)":

* * * * *

(b) * * *

(2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.

(3) The sum of the subbranches, as applied to each branch, shall equal the total cost of

such branch. The total cost of all branches shall equal the contract price.

* * * * *

Alternate I (Jul 2002)

If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of receipt of the notice to proceed, a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld, and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

45. Section 852.236–83 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Revising the clause introductory text.

D. Removing the "Supplement I (JAN 1988)" introductory text and inserting in its place an Alternate I paragraph, and revising paragraphs (6)(ii) and (iii).

The revisions read as follows:

852.236.83 Payments under fixed-price construction contracts (including NAS).

As prescribed in 832.111, insert the following clause in contracts that contain a section entitled "Network Analysis System (NAS)":

* * * * *

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (JUL 2002)

The clause entitled "Payments Under Fixed-Price Construction Contracts" in FAR 52.232–5 is implemented as follows:

* * * * *

(End of clause)

Alternate I (Jul 2002)

If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) * * *

(ii) The contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

852.236–84 [Amended]

46. In section 852.236–84, the introductory text is revised to read as follows:

852.236–84 Schedule of work progress.

As prescribed in 836.575, insert the following clause:

* * * * *

47. In section 852.236–85, introductory text is added to read as follows:

852.236.85 Supplementary labor standards provisions.

As prescribed in 836.576, insert the following clause:

* * * * *

48. Section 852.236–86 is revised to read as follows:

852.236–86 Worker's compensation.

As prescribed in 836.577, insert the following clause:

WORKER'S COMPENSATION (JUL 2002)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of States to apply their worker's compensation laws to all lands and premises owned or held by the United States.

(End of clause)

49. Section 852.236–88 is amended by:

A. Revising the section heading and introductory text.

B. Removing paragraph (a) of the section.

C. Revising the first clause undesignated center heading.

D. Redesignating paragraphs (a) through (d) of the first clause as paragraphs (a)(1) through (a)(4), respectively.

E. Adding a new paragraph (a) introductory text to the first clause.

F. Removing from newly designated paragraph (a)(1) "to be submitted" and adding, in its place, "to be submitted as expeditiously as possible but".

G. Removing from newly designated paragraph (a)(2) "submit a proposal" and adding, in its place, "submit a proposal, which includes the information required by paragraph (a)(1),".

H. Removing from newly designated paragraph (a)(3) the comma immediately following the phrase "the contract", and the comma immediately following the phrase "calendar days".

I. Removing at end of the first clause the parenthetical "(End of clause)".

J. Removing paragraph (b) of the section.

K. Removing the second clause introductory text immediately following the second undesignated center clause heading.

L. Redesignating paragraphs (a) through (k) of the second clause as paragraphs (b)(1) through (b)(11), respectively.

M. Adding a new clause paragraph (b) introductory text.

N. Removing from newly designated paragraph (b)(1) "to be submitted" and adding, in its place, "to be submitted as expeditiously as possible but"; and removing "data are required under FAR 15.403 for proposals over $100,000, the cost of pricing" and adding, in its place, "data or information other than cost or pricing data are required under FAR 15.403, the".

O. Removing from newly designated paragraph (b)(2) "submit a proposal for cost of changes in work within 30 calendar days." and adding, in its place, "submit with 30 calendar days a proposal, which includes the information required by paragraph (b)(1), for the cost of the changes in work."

P. Removing from newly designated paragraph (b)(3) the comma immediately following the phrase "the contract", and the comma immediately following the phrase "calendar days'.

Q. Removing from newly designated paragraph (b)(9) "Workmen's" and adding, in its place, "Worker's".

R. Removing the second clause undesignated center heading.

The revisions and additions read as follows:

852.236–88 Contract changes—supplement.

As prescribed in 836.578, insert the following clause:

CONTRACT CHANGES—SUPPLEMENT (JUL 2002)

* * * * *

(a) Paragraphs (a)(1) through (a)(4) apply to proposed contract changes costing over $500,000:

* * * * *

(b) Paragraphs (b)(1) through (b)(11) apply to proposed contract changes costing $500,000 or less:

* * * * *

852.236–89 [Amended]

50. Section 852.236–89 is revised to read as follows:

852.236–89 Buy American Act.

As prescribed in 825.1102, insert the following clause:

BUY AMERICAN ACT (JUL 2002)

(a) Reference is made to the clause entitled "Buy American Act—Balance of Payments Program—Construction Materials," FAR 52.225–9.

(b) Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–9, VA does not anticipate accepting an offer that includes foreign construction material.

(c) If a bidder chooses to submit a bid that includes foreign construction material, that bidder must provide a listing of the specific foreign construction material he/she intends to use and a price for said material. Bidders must include bid prices for comparable domestic construction material. If VA determines not to accept foreign construction material and no comparable domestic construction material is provided, the entire bid will be rejected.

(d) Any foreign construction material proposed after award will be rejected unless the bidder proves to VA's satisfaction: (1) It was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations required by (1), (2), and (3) of this paragraph shall be made in accordance with subpart 825.2 and FAR 25.2.

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of Cause)

Alternate I (JUL 2002)

As prescribed in 825.1102(b), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements," FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for Trade Agreements Act (TAA) designated country construction material, as defined in FAR 52.225–11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than TAA designated country construction material.

Alternate II (JUL 2002)

As prescribed in 825.1102(c), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements," FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for Trade Agreements Act (TAA) designated country construction material and North American Free Trade Agreement (NAFTA) country construction material, as defined in FAR 52.225–11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than TAA designated country construction material or NAFTA country construction material.

51. Section 852.236–91 is amended by:

A. Adding an introductory text to the section.

B. Revising the undesignated center clause heading and its date.

C. Revising paragraph (a) introductory text.

D. In paragraph (b), adding a comma immediately following the phrase "is permitted".

The additions and revisions read as follows:

852.236–91 Special notes.

As prescribed in 836.579, insert the following clause:

SPECIAL NOTES (JUL 2002)

(a) Signing of the bid shall be deemed to be a representation by the bidder that:

* * * * *

52. Section 852.246–1 is added to read as follows:

852.246–1 Special warranties.

As prescribed in 846.710–70, insert the following clause:

SPECIAL WARRANTIES (JUL 2002)

The clause entitled "Warranty of Construction" in FAR 52.246–21 is supplemented as follows:

Any special warranties that may be required under the contract shall be subject to the elections set forth in the FAR clause at 52.246–21, Warranty of Construction, unless otherwise provided for in such special warranties.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 574, 576, 579

[Docket No. NHTSA 2001–8677; Notice 4]

RIN 2127–AI25

Reporting of Information and Documents About Potential Defects Retention of Records That Could Indicate Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document is the assessment of the National Highway Traffic Safety Administration (NHTSA) of the applicability of the Unfunded Mandates Reform Act which was inadvertently omitted from the preamble of the final rule adopting the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act and amending other associated agency regulations.

DATES: The effective date of the final rule remains August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION: In FR Doc. 02–17103, 67 FR 45822, July 10, 2002, the National Highway Traffic Safety Administration (NHTSA) inadvertently omitted its assessment of the applicability of the Unfunded Mandates Reform Act from Section X of the preamble, titled "Regulatory Analyses." This document provides that assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments.

The final rule (67 FR 45822 at 45872–45883) is not estimated to result in expenditures by State, local or tribal governments of more than $109 million

annually. It is not estimated to result in the expenditure by motor vehicle and motor vehicle equipment manufacturers, child restraint system manufacturers, and tire manufacturers of more than $109 million annually.

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Issued on: July 24, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–19200 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 84

RIN 1018–AF51

National Coastal Wetlands Conservation Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes the requirements for participation in the National Coastal Wetlands Conservation Grant Program authorized by the Coastal Wetlands Planning, Protection and Restoration Act (Act) and provides guidance for the Program's administration by the U.S. Fish and Wildlife Service (referred to as "Service," "we," and "us" within this rule). It replaces interim procedures and clarifies guidance for preparation, submission, and evaluation of proposed projects and administration of funded projects.

DATES: This rule is effective July 30, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Division of Fish and Wildlife Management and Habitat Restoration, Fish and Wildlife Service, U.S. Department of the Interior, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Sally Valdes-Cogliano, Division of Fish and Wildlife Management and Habitat Restoration, by telephone (703) 358–2201; fax (703) 358–2232; *e-mail<sally_valdescogliano@fws.gov>* or Gary Reinitz, Division of Federal Aid, by telephone (703) 358–2159; fax (703) 358–1837; *e-mail:gary_reinitz@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

What Is the National Coastal Wetlands Conservation Grant Program?

The Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3951–3956) authorizes the Director of the Service to make matching grants to coastal States for acquisition, restoration, enhancement, management, and preservation of coastal wetlands. Grants are available annually on a competitive basis to coastal States. Funding for this Program comes from the Sport Fish Restoration Account, which is supported by excise taxes on fishing equipment, and motorboat and small engine fuels.

The primary goal of the National Coastal Wetlands Conservation Grant Program is the long-term conservation of coastal wetland ecosystems. It accomplishes this goal by helping States in their efforts to protect, restore, and enhance their coastal habitats. The Program's accomplishments are primarily on-the-ground and measured in acres.

Why Protect Coastal Wetlands?

Coastal wetlands provide essential fish and wildlife habitat. Coastal ecosystems comprise less than 10 percent of the Nation's land area, but support a much higher proportion of our living resources. Specifically, coastal areas support a high percentage of our threatened and endangered species, fishery resources, migratory songbirds, and migrating and wintering waterfowl.

In addition to wildlife benefits, wetlands provide substantial flood and storm control values and can reduce the need to construct expensive flood control structures. They make an important contribution to water quality by recharging groundwater, filtering surface runoff, and treating waste, and they provide natural areas important for recreational and aesthetic purposes. Uplands associated with wetlands provide food and cover to wildlife and buffer wetlands from soil erosion and contaminants. In the coterminous United States, more than half of the estimated original 221 million acres of American wetlands have been destroyed since European settlement. The concentration of the U.S. population in coastal areas is a continuing source of development pressure on the remaining coastal wetlands.

What Has the Program Accomplished?

Since the Service began awarding grants in 1992, we have awarded about $105 million to 25 States and 1 U.S. territory to protect and/or restore about 130,000 acres of coastal wetland ecosystems. The Program's emphasis on encouraging partnerships, supporting watershed planning, and leveraging ongoing projects has helped stretch program funds. The resource benefits of this Program have included habitat protection and restoration for migratory birds, shorebirds, waterfowl, endangered and threatened species, and fish and shellfish.

Why Do We Need This Rule?

The National Coastal Wetlands Conservation Grant Program is currently being administered using internal interim program guidance and the standard grant administration policies of our Federal Aid Program. We believe administration of the Program could be improved through regulations specifically tailored to meet the needs of the Program. Accordingly, the rule uses a plain English style, provides examples to illustrate concepts, and combines current guidance in one place. It should result in a streamlined proposal preparation, review and grant administration process.

Currently, we evaluate grant requests received from the State agencies on an annual schedule. In the last few years, the number of proposals received annually by the Service National Office has ranged from 29 to 36. A review panel consisting of Service personnel representing the coastal Regions of the Service and specific program areas (for example, the Fisheries and Habitat Conservation, Endangered Species, and Refuges Programs) reviews and ranks all proposals. Based on the rankings of the panel, recommendations are sent to the Director of the Service, who makes the final determination of which projects will receive grants. The basic schedule and procedures will not change significantly with this rule.

The criteria for selecting proposals in this final rule have been modified from the interim guidance. For example, a new criterion has been added to give credit to projects that provide benefits to migratory birds. Also, we have expanded the discussion of each criterion to clarify project scoring. The changes were based on comments provided by Service personnel who have reviewed National Coastal Wetlands Conservation Grant proposals. These criteria can be found in the rule portion of this document.

Summary of Comments and Recommendations

In the proposed rule that was published August 20, 2001 (66 FR 43555), we requested that interested parties submit any comments they might have. We particularly sought

comments from the affected State agencies. The comment period was from August 20, 2001, to October 4, 2001.

We received comments from nine State government agencies. These comment letters provided suggestions and comments on a wide range of topics. We have considered all the comment letters received during the comment period and have made minor changes to improve and clarify the rule in response. Summaries of the major comments or issues follow.

Issue 1: Do we need to extend the period for the development of the grant agreement?

Response: We agree that a longer period for development of the grant agreement is appropriate. Resolving all the compliance issues that need to be addressed before a grant agreement is signed can be difficult. We are revising § 84.42 so that funds allocated for a grant will be held until December 31 of the following year.

Issue 2: What is the relationship between the goals of the National Coastal Wetlands Conservation Grant program and the Long-term and Annual Performance Goals of the Service?

Response: Long-term conservation of coastal wetlands is the primary goal of the Program. The results can be quantified in terms of acres enhanced, protected, and/or restored. (See § 84.10 for the goal statement.) When States conserve their wetlands resources using this program we all achieve benefits to habitat and wildlife. The discussion of performance measures in the rule in § 84.30(a)(2)(v) has been clarified to explain where to find the Service's Long-term and Annual Performance Goals and the relationship of these goals to the Grants Program.

Issue 3: Should the annual grant schedule be changed?

Response: The schedule in the rule reflects the current operating schedule for the Grants Program. We examined the effects of moving deadlines but have decided to maintain the current schedule.

Issue 4: Is the definition of ineligible activities too restrictive? Do we need to distinguish between planning activities for stand-alone grants, and planning as a minimal part of a grant objective?

Response: The focus of this Grant Program has always been on-the-ground accomplishments—through land acquisitions, easements, restoration and enhancement activities—and its accomplishments are measured in acres. We have modified the description of ineligible activities in § 84.20(b) to clarify that planning activities of a minimal nature and necessary to complete the project could be allowable.

Issue 5: The definition of a "substantial proposal" should include that it is consistent with State and Regional watershed plans. Consistency should be encouraged and rewarded in the grant scoring process.

Response: We agree that project proposals should take into account watershed plans. One of the ranking criteria in § 84.32 is specifically designed to give credit to proposals that demonstrate the value of the proposal in connection with wider planning efforts.

Issue 6: For the purposes of this rule, how should we define maritime forests?

Response: The current definition is not intended to include all kinds of maritime forests that might be included from a strictly biological perspective. It is, instead, focused on protection of the maritime forests characteristic of the southeastern United States. This area was considered to be, when the Coastal Wetlands Planning, Protection and Restoration Act was passed, extremely beneficial in protecting the coast and also under severe development pressure.

Issue 7: Should regionally threatened wetland types be given the same priority as nationally decreasing wetland types?

Response: The Coastal Wetlands Planning, Protection and Restoration Act states that the Director of the Service should give priority to coastal wetlands conservation projects that are consistent with the National Wetlands Priority Conservation Plan developed under Section 301 of the Emergency Wetlands Resources Act (16 U.S.C. 3921). This Conservation Plan, which was published in 1991, categorized wetland types into declining, stable, and increasing. Types that were declining nationally do need to receive priority under the National Coastal Wetlands Conservation Grant Program scoring system.

We recognize that certain important wetland types can be declining regionally even if they are not declining nationally. For this reason, we included in this rule the possibility of regionally decreasing types receiving credit in the scoring system if the case for regionally declining types is well-documented (see § 84.32(a)(1)(i)).

Issue 8: How should we define long-term conservation? Should we handle restoration and acquisition differently?

Response: Long-term conservation is a requirement established by the Act for this program. This rule requires that projects provide conservation for at least 20 years. In selecting this number we looked at the requirements of other programs. For this one criterion, acquisition projects may have some advantage over restoration projects, but this is one criterion among many and we do not want to establish separate ranking criteria for acquisition and restoration.

Effective Date

This rule is effective upon publication. In accordance with 5 U.S.C. 553(d)(3), we believe that we have good cause for making this rule effective upon publication to ensure that the rule is in effect during the next funding cycle for the National Coastal Wetlands Conservation Grant Program. This rule will benefit those entities seeking grants under this Program. This rule provides helpful information to grant applicants in preparing their applications and will help ensure that the Service applies fair and consistent standards in reviewing the grant applications.

What Are the Environmental Effects of This Regulation?

This final rule is a regulation of an administrative and financial nature. Therefore, the action is categorically excluded under 516 DM 2, Appendix 1.10 from any environmental documentation pursuant to the National Environmental Policy Act (NEPA). However, subsequent actions involved with acquisition, restoration, or enhancement will require further compliance with NEPA on a case-by-case basis.

Compliance with NEPA and other environmental laws and Executive Orders such as the Endangered Species Act, Coastal Barrier Resources Act, Coastal Barrier Improvement Act, Coastal Zone Management Act, Executive Orders on Floodplains (E.O. 11988) and Wetlands (E.O. 11990), other applicable executive orders on historic/cultural resources, prime and unique farmlands, and the Clean Water Act will be satisfied before we approve grant agreements for any project.

Does This Rule Have Any Information Collection Requirements?

This rule's information collection requirements include those necessary to fulfill applicable requirements of 43 CFR part 12, and these have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*). This section of the Code of Federal Regulations provides the uniform administrative requirements for grants and cooperative agreements to States and local governments. The required forms include a grant agreement form, USFWS Form 3–1552 (OMB control number 1018–0049); an amendment to the grant agreement form, USFWS Form 3–1591 (OMB control

number 1018–0049); the Federal Aid Grant Application Booklet, which was approved by OMB on January 18, 2001, (OMB control number 1018–0109); the NEPA Compliance Checklist, USFWS Form 3–2185 (OMB control number 1018–0110); and the Summary Information for Ranking National Coastal Wetlands Grant Program Proposals, USFWS Form 3–2179 (OMB Control Number 1018–0111). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action. OMB makes the final determination of significance under Executive Order 12866.

This rule will not have an annual effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The entities affected by this final rule are State natural resource agencies. The primary intended effect is to augment State efforts to conserve their coastal wetland resources. The program is completely voluntary; States choose whether to submit proposals for matching grants. New funds available each year are determined as a percentage of monies received by the Sport Fish Restoration Fund. However, the total receipts for a given year for this program are limited by the Coastal Wetlands Planning, Protection and Restoration Act to $15 million. Receipts for the last few years have been in the $10 million to $13 million range. This last grant cycle included $13 million in new money and $1.5 million available as carryover from previous years.

This rule will not create inconsistencies with other agencies' actions. The Service is charged with administering the National Coastal Wetlands Conservation Program by the Coastal Wetlands Planning, Protection and Restoration Act. This Program supports and augments State efforts to conserve their resources. States voluntarily choose to participate, and no other Federal agencies have responsibilities associated with this Grant Program. Some Federal agencies have participated voluntarily on specific projects as cooperators with the State agencies.

This rule will not affect entitlements, user fees, loan programs, or the rights and obligations of their recipients. It will affect this specific grant program. The Service has been giving out matching grants to States under the National Coastal Wetlands Conservation Grant Program since 1992. If we continue to operate with interim procedures and general Federal Aid grant administration, the same amount of grant assistance will be given to coastal States. The main effect that we expect from this rulemaking is a streamlined proposal preparation and review and grant administration process.

This rule will not raise novel legal or policy issues. As stated above, the Service has been awarding grants to States and administering this Program under the authority of the Coastal Wetlands Planning, Protection and Restoration Act since 1992. However, the purpose of this new rule is to improve the process.

Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). By law, the only eligible recipients of this grant program are coastal State and territory government agencies. Operating with interim guidance, we have given out grants since 1992. This rule should not result in a major change to the Program. The Coastal Wetlands Planning, Protection and Restoration Act specifies an annual cap of $15 million that can be allocated to this program. An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is also not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

As stated above, the maximum amount, by law, that can be directed to this Grant Program is $15 million per year. This Program is directed exclusively at State governments. This rule might provide some contracting work at a local level for restoration projects, creating a minor positive effect on the local economy. All land purchased under this Program is paid at fair market value from willing sellers. The land involved is a relatively small amount spread over the 10 to 15 States and territories that typically receive grants in a given year. All lands acquired will be put under long-term conservation protection by the States. Some of the grants are for restoration work on lands already owned by the States.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this final rule will not significantly or uniquely affect small governments and will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Act. A Small Government Agency Plan is not required. As stated above, this rule pertains to a grant program directed at State governments. In a few cases, local governments have chosen to partner in a grant project proposed by the State. Participation in the Program is entirely voluntary. The Program income is limited to $15 million per year by the Coastal Wetlands Planning, Protection and Restoration Act.

Takings

In accordance with Executive Order 12630, this final rule does not have significant takings implications. A takings implication assessment is not required. The rule specifies that all acquisitions under this Program are from willing sellers. No private property will be taken from unwilling owners for the furtherance of this Program, and just compensation will be provided to willing owners.

Federalism

In accordance with Executive Order 13132, the final rule does not have significant Federalism effects. The rule allows eligible coastal States to make decisions regarding the selection of properties for acquisition, plan restoration projects, and take protective measures.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. To the extent of our knowledge, no legal cases have ever been associated with this grant

program. The rule should actually serve to reduce the possibility of litigation by establishing specific requirements for participation in the National Coastal Wetlands Conservation Grant Program and guidance for its administration by the Service. The rule will establish a clear legal standard for affected conduct.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and part 512, chapter 2 of the Department of the Interior Manual, we have evaluated potential effects on federally recognized Indian tribes and have determined that the effects are minimal. The Coastal Wetlands Planning, Protection and Restoration Act specifies the States that can participate in this Grant Program. The Act does not provide for grants directly to Indian tribes. Tribes have, in a few cases, participated as cooperators on projects.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issues Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

How Does the Intergovernmental Review of Federal Programs Work?

This National Coastal Wetlands Conservation Grant Program is covered under Executive Order (Order) 12372 "Intergovernmental Review of Federal Programs" and 43 CFR Part 9 "Intergovernmental Review of Department of the Interior Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Coastal States and territories that have chosen to participate in the Executive Order process have established Single Points of Contact (SPOCs). Applicants from jurisdictions that do not participate do not need to take any action regarding E.O. 12372. All other applicants should alert their SPOCs early in the application process. This step will insure that applicants find out about any SPOC requirements. If you as an applicant are required to submit materials to the SPOC, indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424.

List of Subjects in 50 CFR Part 84

Coastal zone-wetlands, Environmental protection-natural resources, Fisheries, Grant administration, Grant programs-natural resources, Intergovernmental relations, Marine resources, Natural resources, Reporting and recordkeeping requirements, and Wildlife.

For the reasons discussed in the supplementary information, we are amending subchapter F of chapter I, title 50 of the Code of Federal Regulations, by adding a new part 84, to read as follows:

PART 84—NATIONAL COASTAL WETLANDS CONSERVATION GRANT PROGRAM

Subpart A—General Background

Sec.
84.10 What is the purpose and scope of this rule?
84.11 How does the Service define the terms used in this rule?
84.12 What are the information collection, record keeping, and reporting requirements?

Subpart B—Applying for Grants

84.20 What are the grant eligibility requirements?
84.21 How do I apply for a National Coastal Wetlands Conservation Grant?
84.22 What needs to be included in grant proposals?

Subpart C—Project Selection

84.30 How are projects selected for grants?
84.31 An overview of the ranking criteria.
84.32 What are the ranking criteria?

Subpart D—Conditions on Acceptance/Use of Federal Money

84.40 What conditions must I follow to accept Federal money?
84.41 Who prepares a grant agreement? What needs to be included?
84.42 What if a grant agreement is not signed?
84.43 How do States get the grant monies?
84.44 What is the timetable for use of grant funds?
84.45 How do I amend a proposal?
84.46 What are the cost-sharing requirements?
84.47 What are allowable costs?
84.48 What are the procedures for acquiring, maintaining, and disposing of real property?
84.49 What if the project costs more or less than originally expected?
84.50 How does a State certify compliance with Federal laws, regulations, and policies?

Authority: 16 U.S.C. 3951–3956.

Subpart A—General Background

§ 84.10 What is the purpose and scope of this rule?

The regulations in this part establish the requirements for coastal State participation in the National Coastal Wetlands Conservation Grant Program authorized by Section 305 of the Coastal Wetlands Planning, Protection and Restoration Act (Pub L. 101–646, title III; 16 U.S.C. 3954). The primary goal of the National Coastal Wetlands Conservation Grant Program is the long-term conservation of coastal wetlands ecosystems. It accomplishes this by helping States protect, restore, and enhance their coastal habitats through a competitive grants program. Results are measured in acres protected, restored, and enhanced.

§ 84.11 How does the Service define the terms used in this rule?

Terms used have the following meaning in this part:

Coastal barrier. A depositional geologic feature that is subject to wave, tidal, and wind energies; protects landward aquatic habitats from direct wave attack; and includes all associated aquatic habitats such as adjacent wetlands, marshes, estuaries, inlets, and nearshore waters. These can include islands; spits of land connected to a mainland at one end; sand bars that connect two headlands and enclose aquatic habitat; broad, sandy, dune beaches; or fringing mangroves. Coastal barriers are found on coastlines including major embayments and the Great Lakes of the United States and its territories.

Coastal Barrier Resources System. A defined set of undeveloped coastal areas, designated by the Coastal Barrier Resources Act of 1982 (Pub. L. 97–348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591). Within these defined units of the System, Federal expenditures are restricted to discourage development of coastal barriers.

Coastal States. States bordering the Great Lakes (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin); States bordering the Atlantic, Gulf (except Louisiana), and Pacific coasts (Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington); and American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto

Rico, and the Virgin Islands. (Louisiana is not included because it has its own wetlands conservation program authorized by the Coastal Wetlands Planning, Protection and Restoration Act and implemented by the Corps of Engineers with assistance from the State of Louisiana, the Environmental Protection Agency, and the Departments of the Interior, Agriculture, and Commerce.)

Coastal wetland ecosystems. Ecosystems that consist of multiple, interrelated coastal land features. They include wetlands in drainage basins of estuaries or coastal waters that contain saline, brackish, and nearshore waters; coastlines and adjacent lands; adjacent freshwater and intermediate wetlands that interact as an ecological unit; and river mouths and those portions of major river systems affected by tidal influence—all of which interact as an integrated ecological unit. Shorelands, dunes, nearshore islands, barrier islands and associated headlands, and freshwater wetlands within estuarine drainages are included in the definition since these interrelated features are critical to coastal fish, wildlife, and their habitats.

The definition of a coastal wetland ecosystem also applies to the Great Lakes and their watersheds, where freshwater plays a similar hydrologic role. The Great Lakes coastal wetland ecosystem is made up of multiple interrelated coastal landscape features along the Great Lakes. The Great Lakes coastal wetland ecosystem includes wetlands located adjacent to any of the Great Lakes including Lake St. Clair and connecting waters, and mouths of river or stream systems draining directly into the Great Lakes. Shorelands, dunes, offshore islands, and barrier islands and associated headlands are included in the definition since these interrelated features are critical to Great Lakes fish, wildlife, and their habitats.

Coastal Wetlands Act or Act. The Coastal Wetlands Planning, Protection and Restoration Act of 1990 (16 U.S.C. 3951–3956).

Eligible applicant. Any agency or agencies of a coastal State designated by the Governor. It is usually a State natural resource or fish and wildlife agency.

Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland (undisturbed or degraded) site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present.

Fund. A fund established and used by a coastal State for acquiring coastal wetlands, other natural areas, or open spaces. The fund can be a trust fund from which the principal is not spent, or a fund derived from a dedicated recurring source of monies including, but not limited to, real estate transfer fees or taxes, cigarette taxes, tax checkoffs, or motor vehicle license plate fees.

Grant. An award of financial assistance by the Federal Government to an eligible applicant.

Long-term conservation. Protecting and restoring terrestrial and aquatic environments for at least 20 years. This includes the hydrology, water quality, and fish and wildlife that depend on these environments.

Maintenance. (These activities are ineligible under the program; the definition is included to distinguish these activities from acquisition, restoration, enhancement, and management.) Maintenance includes those activities necessary for upkeep of a facility or habitat. These activities include routine, recurring custodial maintenance such as housekeeping and minor repairs as well as the supplies, materials, and tools necessary to carry out the work. Also included is nonroutine cyclical maintenance to keep facilities or habitat improvements fully functional. Cyclical maintenance is major maintenance or renovation activities conducted at intervals normally greater than 1 year.

Management. (Includes habitat management only.) Habitat management includes vegetation manipulation and restoration of habitat to support fish and wildlife populations. Creation of wetlands where they did not previously exist is not included in the definition of management.

Maritime forest. Maritime forests are defined, for the purposes of this regulation, as broad-leaved forests that occur on barrier islands and along the mainland coast from Delaware to Texas. Examples are primarily characterized by a closed canopy of various combinations of live oak (*Quercus virginiana*), upland laurel oak (*Quercus hemisphaerica*), pignut hickory (*Carya glabra*), southern magnolia (*Magnolia grandiflora*), sugarberry (*Celtis laevigata*), and cabbage palm (*Sabal palmetto*). Shrubs and smaller trees typical of the understory include live oak, upland laurel oak, pignut hickory, red mulberry (*Morus rubra*), wild olive (*Osmanthus americanus*), American holly (*Ilex opaca*), yaupon (*Ilex vomitoria*), beautyberry (*Callicarpa americana*), bumelia (*Sideraxylon* spp.), and small-flowered pawpaw (*Asimina parviflora*). The herb layer is generally rich and diverse, typically including partridgeberry (*Mitchella repens*), coralbean (*Erythrina herbacea*), small-leaved milk pea (*Galactia microphylla*), tick trefoils (*Desmodium* spp.), and spikegrass (*Chasmanthium sessiliflorum*). Vines are represented by muscadine grape (*Vitis rotundifolia*), Virginia creeper (*Parrhenocissus quinquefolia*), and various briers (*Smilax* spp.).

This natural community type becomes established on old coastal dunes that have been stabilized long enough to sustain forests. In time, the accumulation of humus contributes to moisture retention of soils, while the canopy minimizes temperature fluctuations by reducing soil warming during the day and heat loss at night. Because of the underlying deep sands, maritime forests are generally well-drained.

Maritime forests have become prime resort and residential property because of their relatively protected locations along the coast. Although this community type originally occurred in virtually continuous strips along the Atlantic and Gulf Coasts, residential developments and infrastructure encroachments have severely fragmented most occurrences.

National Wetlands Inventory. A Service program that produces information on the characteristics, extent, and status of the Nation's wetlands and deepwater habitat. The program's strongest mandates come from the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901), which directs the Service to map wetlands, conduct wetlands status and trends studies, and disseminate the information produced.

National Wetlands Priority Conservation Plan. A plan developed by the Service for the U.S. Department of the Interior at the direction of Congress through the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901). The plan provides the criteria and guidance for identifying wetlands that warrant attention for Federal and State acquisition using Land and Water Conservation Fund appropriations.

Operations. (These activities are ineligible under the program; the definition is included to distinguish these activities from acquisition, restoration, enhancement, and management.) Operations include activities necessary for the functioning of a facility or habitat to produce desired results. These include public use management and facility management.

Program. The National Coastal Wetlands Conservation Grant Program. A program administered by the Service

that awards Federal grants through a competitive process to State agencies for projects to acquire, restore, manage, or enhance coastal wetlands.

Project. One or more related activities necessary to fulfill a stated objective to provide for the long-term conservation of coastal wetlands including the lands and waters, hydrology, water quality, and wetland-dependent wildlife. These activities can include acquisition, restoration, enhancement, or management of coastal wetlands.

Restoration. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded wetland.

§ 84.12 What are the information collection, record keeping, and reporting requirements?

(a) Information collection requirements include:

(1) An Application for Federal Assistance (Standard Form 424);

(2) A proposal, following the guidance of OMB Circular A–102 and the Federal Aid Grant Application Booklet (OMB Control Number 1018–0109), that includes statements of need and objective(s); a description of expected results or benefits; the approach to be used, such as procedures, schedules, key personnel and cooperators, location of the proposed action, and estimated costs to accomplish the objective(s); identification of any other actions that may relate to the grant; and a description of public involvement and interagency coordination;

(3) Discussion of ranking criteria, including a completed summary information form (USFWS Form 3–2179);

(4) Assurances of compliance with all applicable Federal laws, regulations, and policies (SF 424B or SF 424D); and

(5) Documents, as appropriate, supporting the proposal; for example, environmental assessments (including the NEPA compliance checklist, USFWS Form 3–2185) and evaluations of effects on threatened and endangered species.

(6) A grant agreement form if the proposal is selected for an award (USFWS Form 3–1552); and

(7) A grant amendment form if the agreement is modified (USFWS Form 3–1591).

(b) Record-keeping requirements include the tracking of costs and accomplishments related to the grant as required by 43 CFR 12.60, monitoring and reporting program performance (43 CFR 12.80), and financial reporting (43 CFR 12.81). The project report should include information about the acres conserved, with a breakdown by conservation method (for example, acquired, restored, or both) and type of habitat (list habitat types and include the acreage of each). Are the results of the project being monitored? Is there evidence that the resources targeted in the proposal (for example, anadromous fish, threatened and endangered species, and migratory birds) have benefited?

(c) Reporting requirements include retention and access requirements as specified in 43 CFR 12.82 and authorized by OMB through the Federal Aid Grant Application Booklet (OMB Control Number 1018–0109).

Subpart B—Applying for Grants

§ 84.20 What are the grant eligibility requirements?

(a) Eligible grant activities include:

(1) Acquisition of a real property interest in coastal lands or waters from willing sellers or partners (coastal wetlands ecosystems), providing that the terms and conditions will ensure the real property will be administered for long-term conservation.

(2) The restoration, enhancement, or management of coastal wetlands ecosystems, providing restoration, enhancement, or management will be administered for long-term conservation.

(b) Ineligible activities include but are not limited to:

(1) Projects that primarily benefit navigation, irrigation, flood control, or mariculture;

(2) Acquisition, restoration, enhancement, or management of lands to mitigate recent or pending habitat losses resulting from the actions of agencies, organizations, companies, or individuals;

(3) Creation of wetlands by humans where wetlands did not previously exist;

(4) Enforcement of fish and wildlife laws and regulations, except when necessary for the accomplishment of approved project purposes;

(5) Research;

(6) Planning as a primary project focus (planning is allowable as a minimal component of project plan development);

(7) Operations and maintenance;

(8) Acquiring and/or restoring upper portions of watersheds where benefits to the coastal wetlands ecosystem are not significant and direct; and

(9) Projects providing less than 20 years of conservation benefits.

§ 84.21 How Do I Apply for a National Coastal Wetlands Conservation Grant?

(a) Eligible applicants should submit their proposals to the appropriate Regional Director of the U.S. Fish and Wildlife Service. Proposals must be complete upon submission, and must include the information outlined in § 84.22 to be complete.

(1) Service Regional Federal Aid Offices' responsibilities for administration of this grant program include: Notifying the States of the program, its requirements, and any changes that occur; determining the State agencies designated by the Governor as eligible applicants; ensuring that only eligible applicants apply for grants; coordinating with various Service programs to ensure that sound and consistent guidance is communicated to the States; determining proposal eligibility and substantiality; and determining 75 percent match eligibility and notifying the States of approved and disapproved proposals.

(2) Service Divisions of Ecological Services in the regions and field and Fisheries and Habitat Conservation in the national office provide technical assistance and work with Federal Aid to encourage State participation in this process.

(3) Send your proposals to the appropriate Regional Offices, as follows:

Coastal states by service regions	Regional contact information
American Samoa, California, Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Oregon, and Washington (Region 1).	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181, (503) 231–6128.
Texas (Region 2)	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, SW, Albuquerque, New Mexico 87103, (505) 248–7450.
Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin (Region 3)	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, (612) 713–5130.

Coastal states by service regions	Regional contact information
Alabama, Florida, Georgia, Mississippi, North Carolina, Puerto Rico, South Carolina, and the Virgin Islands. Louisiana is not eligible to participate under Section 305 of 16 U.S.C. 3954, because Louisiana has its own separate program. (Region 4).	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 324, Atlanta, Georgia 30345, (404) 679–4159.
Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia (Region 5).	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, (413) 253–8508.
Alaska (Region 7)	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 786–3435.

(b) The Program operates on an annual cycle. Regional Federal Aid Offices request proposals from the States in early April. Proposals must be received by the Regional Director on or before a due date set in early June in order to be considered for funding in the following fiscal year. Check with your Regional Office each year for the exact due dates. Regions review proposals for eligibility and substantiality. Regions may rank eligible and substantial proposals and submit them to the national office of the Service in Washington, DC, by a date set in late June. A Review Panel coordinated by the Service's National Office of Fisheries and Habitat Conservation reviews and ranks proposals in early August using the criteria established in this rule. The Director selects the proposals and announces the grant recipients at the beginning of the new fiscal year (October 1).

(c) More than one agency in a State may submit proposals to the Service if the Governor determines that more than one agency has responsibility for coastal wetlands.

(d) A project proposal that includes several separate and distinct phases may be submitted in phases, but any succeeding phases must compete against other proposals in the year submitted. Obtaining money for one phase of a project will not be contingent upon acquiring money for another phase of that same project.

(e) The Federal (Program) share will not exceed $1 million per project.

(f) The percentage of non-Federal match (cash or in-kind) must not be less than 25 percent of the total costs if the State has a designated fund or not less than 50 percent without a fund.

§ 84.22 What needs to be included in grant proposals?

Proposals must include the following:

(a) Application for Federal Assistance (Standard Form 424);

(b) A Statement of Assurances of compliance with applicable Federal laws, regulations, and policies (either Standard Form 424B or 424D); and

(c) A project statement that identifies and describes:

(1) The need within the purposes of the Act;

(2) Discrete, quantifiable, and verifiable objective(s) to be accomplished during a specified time period;

(3) Expected results or benefits, in terms of coastal lands and waters, the hydrology, water quality, or fish and wildlife dependent on the wetlands;

(4) The approach to be used in meeting the objectives, including specific procedures, schedules, key personnel, and cooperators;

(5) A project location, including two maps: A map of the State showing the general location of the proposal, and a map of the project site;

(6) Estimated costs to attain the objective(s) (the various activities or components of each project should be broken down by cost and by cooperator);

(7) If the request is more than $100,000 (Federal share), the applicant must submit a Form DI–2010, certifying that the grant money will not be used for lobbying activities;

(8) A concise statement, with documentation, of how the proposal addresses each of the 13 numeric criteria including a summary using FWS Form No. 3–2179 (see § 84.32);

(9) A description of the State trust fund that supports a request for a 75 percent Federal share in sufficient detail for the Service to make an eligibility determination, or a statement that eligibility has been previously approved and no change has occurred in the fund;

(10) A list of other current coastal acquisition, restoration, enhancement, and management actions; agency(ies) involved; relationship to the proposed grant; and how the proposal fits into comprehensive natural resource plans for the area, if any; and

(11) Public involvement or interagency coordination on coastal wetlands conservation projects that has occurred or is planned that relates to this proposal (Specify the organizations or agencies involved and dates of involvement.).

Subpart C—Project Selection

§ 84.30 How are projects selected for grants?

Project selection is a three-step process: proposal acceptance, proposal ranking, and proposal selection.

(a) *Proposal acceptance.* (1) The Regional Federal Aid Offices decide whether a proposal should be accepted for consideration by determining if the proposal is complete, substantial, and contains activities that are eligible. Proposals that do not qualify are immediately returned to the State. Revision and resubmission of returned proposals is allowable during this period, which is in June (check with your Regional Office for the exact dates each year). If any of the factors of completeness, substantiality, or eligibility are not met, the Regions should not forward the proposal to the Washington Office.

(2) To be considered for acceptance, the proposal must be substantial in character and design. A substantial proposal is one that:

(i) Identifies and describes a need within the purposes of the Act;

(ii) Identifies the objective to be accomplished based on the stated need;

(iii) Uses accepted principles, sound design, and appropriate procedures;

(iv) Provides public conservation benefits that are cost effective and long-term, i.e., at least 20 years; and

(v) Identifies obtainable, quantified performance measures (acres enhanced, restored, or protected) that help achieve the management goals and objectives of the National Coastal Wetlands Conservation Grant Program. Through this program, the States' efforts and leadership will help the Service meet its Long-Term and Annual Performance Goals as expressed in the Service's Annual Performance Plan.[1]

(3) The grant limit is $1 million. Proposals requesting Program awards

[1] The Service's Annual Performance Plan can be found on the Service's homepage at *http://www//.fws.gov/r9gpra*. For more information you might also contact the Budget Office at 202–208–4596 or the Planning and Evaluation Staff at 202–208–2549.

that exceed $1 million will be returned to the appropriate State. Similarly, individual projects that have clearly been divided into multiple proposals for submission in one grant cycle to avoid this limit will be returned to the appropriate State. The State can revise and resubmit the proposal so that the request does not exceed the $1 million limit.

(b) *Proposal ranking.* Once a proposal is accepted by the Region, the Regional Federal Aid Office sends the proposal to the National Federal Aid Office, which works with the National Office of the Fish and Wildlife Management and Habitat Restoration Program for distribution to a Review Panel. The Review Panel includes representation from our coastal Regions and from other Service Programs, for example, the Endangered Species Program. The Fisheries and Habitat Conservation Program is responsible for coordinating the review and ranking of proposals according to the established criteria, a process that usually involves a national meeting.

(c) *Proposal selection.* The Review Panel's recommendations are forwarded to the Director of the Service for a final review and project selection. The Director announces the selection by October 1.

§ 84.31 An overview of the ranking criteria.

(a) The primary objective of the proposal will be to acquire, restore, enhance, or manage coastal wetlands to benefit coastal wetlands and the hydrology, water quality, and fish and wildlife dependent upon them. The Program will not provide grants, for example, for construction or repair of boat ramps or docks for recreational purposes and construction or support of research facilities or activities. The purpose of the ranking criteria is to provide a means for selecting the best projects—those that produce the maximum benefits to coastal wetlands and the fish and wildlife that depend on them.

(b) *Proposal ranking factors.* (1) *Ranking criteria.* As explained in § 84.32, we will evaluate proposals according to 13 ranking criteria. These criteria have varying point values. Proposals must address each of these 13 criteria.

(2) *Additional considerations.* Even though the criteria provide the primary evaluation of proposals, we may factor additional considerations into the ranking decision at the national level. In case of a tie, we will use these additional considerations to rank proposals having identical scores.

(c) The criteria in § 84.32 are not listed in priority order.

(d) Points are assigned on the basis of a completed project, rather than current conditions, e.g., count 50 acres of estuarine emergent wetlands if 50 acres of that habitat type will be restored when the project is completed.

(e) A range of points rather than a set point value allows the reviewer to distinguish between, for example, a proposal that provides some foraging habitat for a threatened species versus one that provides critical nesting habitat of several endangered species. Scoring guidance is included with the individual criteria.

(f) A total of 64 points is possible under the scoring system.

(g) If a grant proposal is not selected, the State may resubmit it for reconsideration in subsequent fiscal years. Resubmission of a grant proposal is the responsibility of the applicant.

§ 84.32 What are the ranking criteria?

(a) The U.S. Fish and Wildlife Service will rank proposals using the 13 criteria listed below. In the following list, a description of each criterion is followed by examples and the points they would receive for that criterion.

(1) *Wetlands conservation.* Will the project reverse coastal wetland loss or habitat degradation in decreasing or stable coastal wetland types? Will it conserve wetlands to prevent losses of decreasing or stable wetland types? (Maximum: 7 points)

(i) The majority of the project area (over 50 percent) is nationally decreasing coastal wetland types,[2] or the majority is regionally decreasing wetlands types in which the case for regionally decreasing is well-documented (Up to 7 points). The nationally decreasing types are estuarine intertidal emergent; estuarine intertidal forested; estuarine intertidal scrub-shrub; marine intertidal; palustrine emergent; palustrine forested; and palustrine scrub-shrub. Describe the wetlands using terms listed above. Include a breakdown showing the percentage of the proposal's total and wetland acreage in decreasing types. Provide National Wetlands Inventory codes/information if available. Information about these can be found on the National Wetland Inventory's web site at *http://wetlands.fws.gov.*

(ii) The majority of the project area (over 50 percent) is nationally stable coastal wetlands types [2] (Up to 5 points). The nationally stable types are estuarine intertidal non-vegetated and estuarine subtidal. Describe the wetlands using the terms listed above. Include a breakdown showing the percentage of the proposal's total and wetland acreage in stable types. Provide National Wetlands Inventory codes/information if available.

(iii) Wetlands benefited are less than 50 percent of the project area. (Up to 3 points)

(iv) If the project would benefit wetlands in the upper portion of the coastal watershed, but does not demonstrate significant and direct benefits to coastal wetlands, the proposal will not receive any points. (0 points)

(v) We will award a full 7 points to proposals that document that over 50 percent of their project area would be, upon project completion, decreasing coastal wetland types. A combination of decreasing and stable types that is over 50 percent of the project area could receive an intermediate score of 4, 5, or 6 points, depending on the balance between decreasing and stable types. If wetlands are 50 percent or less of the project area, use the following guide for allocating points: 25 to 50 percent of the project area is decreasing or stable wetlands, 2, 3, or 4 points; 5 to 24 percent, 1 or 2 points; and less than 5 percent, 0 points.

(2) *Maritime forests on coastal barriers.* Will the proposal significantly benefit maritime forests on coastal barriers? The coastal barrier does not need to be a unit of the Coastal Barrier Resources System. (Maximum: 7 points)

(i) The proposal documents significant benefit to maritime forests on a coastal barrier. Describe the forest in sufficient detail so reviewers can determine whether it meets the definition of "maritime forest." (Up to 7 points)

(ii) The proposal does not benefit maritime forests on a coastal barrier. (0 points)

(iii) For this criterion most scores should be either 0 or 7. If questions arise about the significance of the benefit or whether the forests meet the strict definition, an intermediate score could be given.

(3) *Long-term conservation.* Does the project ensure long-term conservation of coastal wetland functions? The project must provide at least 20 years of conservation benefits to be eligible. (Maximum: 7 points)

(i) Once the project is complete, the project will provide continuing coastal wetlands benefits in perpetuity (100 years or longer). (7 points)

[2] These designations are based on the National Wetlands Priority Conservation Plan. For more information about the plan, or to receive a copy of the document, refer to the contact information provided in § 84.21.

(ii) Once the project is complete, the project will provide continuing coastal wetland benefits for 50–99 years. (3 to 6 points)

(iii) Once the project is complete, the proposal will provide continuing coastal wetlands benefits for 20–49 years. (1 to 3 points)

(iv) The proposal should show how the project will be maintained and the benefits sustained over time. Proposals must include adequate documentation of long-term conservation of coastal wetland values, such as a 25-year easement, to receive points for this criterion. If part of the project's benefits will be perpetual (owned in fee title, for example) and part is estimated to last 20 years, reviewers should weigh the different elements of the project and give an intermediate score.

(4) *Coastal watershed management.* Would the completed project help accomplish the natural resource goals and objectives of one or more formal, ongoing coastal ecosystem or coastal watershed management plan(s) or effort(s)? Describe the management plan or effort(s). (Maximum: 3 points)

(i) The project supports the natural resource goals of identified formal, ongoing coastal ecosystem or coastal watershed management plans or efforts. Describe the management plan(s) and/or effort(s) and explain how this project relates to its objectives. A plan that very specifically identifies the site will receive more points than a plan containing many generic references. (Up to 3 points)

(ii) The project does not support the natural resource goals and objectives of a formal, ongoing coastal ecosystem or coastal watershed management effort. If the proposal benefits the upper portions of coastal watersheds, but provides no significant and direct benefits to the coastal wetlands ecosystems, the proposal will not receive points. (0 points)

(5) *Conservation of threatened and endangered species.* Will the project benefit any federally listed endangered or threatened species, species proposed for Federal listing, recently delisted species, or designated or proposed critical habitat in coastal wetlands? Will it benefit State-listed threatened and endangered species? (Maximum: 5 points)

(i) The project will provide, restore, or enhance important habitat (e.g., nesting, breeding, feeding, nursery areas) for federally listed or proposed endangered or threatened species that use the coastal area project site for at least part of their life cycle. The project will benefit recently delisted species and habitat conservation plans developed under the auspices of the Endangered Species Act. List the species and their status (e.g., threatened or endangered) and provide documentation (e.g., cite recovery plan, attach letter from species expert) of current or recent species occurrence in the coastal area project site. Describe the importance of the habitat. (Up to 5 points)

(ii) The project will provide, restore, or enhance important habitat for State-listed threatened and endangered species. (Up to 2 points)

(iii) The project will not provide, restore, or enhance important habitat for federally or State-listed or proposed endangered or threatened species in the coastal area project site for any part of their life cycle. If the proposal provides benefits to threatened and endangered species in the upper portion of the coastal watershed, but provides no significant and direct benefits to threatened and endangered species using coastal wetlands ecosystem habitat, the proposal will not receive any points. (0 points)

(iv) The combined scores of subparagraphs (a)(5)(i) and (a)(5)(ii) of this section cannot exceed the 5-point maximum.

(6) *Benefits to fish.* Will the project provide, restore, or enhance important fisheries habitat? (Maximum: 5 points)

(i) The project will provide, restore, or enhance important habitat (i.e., spawning, nursery, juvenile, or foraging habitat) for specific species that use the coastal area project site for at least part of their life cycle. These species may include anadromous, interjurisdictional, or other important species. List species, habitat types, and benefits to each species. (Up to 5 points)

(ii) The project does not document current or future benefits to fish species and their habitat. (0 points)

(iii) The more specific the information is on the use of the area and the importance of the habitat, the greater the points. An area specifically identified as critical for conservation in a fisheries management plan will, for example, receive more points than one which is not.

(7) *Benefits to coastal-dependent or migratory birds.* Will the project provide, restore, or enhance important habitat for coastal-dependent or migratory birds?

(i) The project will provide, restore, or enhance important habitat (i.e., breeding, staging, foraging, wintering/summering habitat) benefits for at least part of the life cycle of coastal dependent or migratory birds. List the species and habitat types, and describe the benefits to each. (Up to 5 points)

(ii) The project will not significantly benefit coastal-dependent or migratory birds. (0 points)

(iii) We will give maximum points to projects that benefit coastal-dependent species identified in the North American Waterfowl Plan or listed as species of management concern.[3] Proposals should also include information that demonstrates how the project will contribute to the regional goals developed under the U.S. Shorebird Conservation Plan, the North American Waterbird Conservation Plan, Partners in Flight, the North American Waterfowl Management Plan, or other bird conservation initiatives. Proposals that fail to do so will not receive maximum points. Indicate if the proposed area has been specifically identified by any program or agency for its migratory bird values.

(8) *Prevent or reduce contamination.* Will the project prevent or reduce input of contaminants to the coastal wetlands and associated coastal waters, or restore coastal wetlands and other associated coastal waters that are already contaminated? (Maximum: 5 points)

(i) The project will prevent significant inputs of contaminants or will provide significant improvements to the quality of the coastal wetland and associated waters through protection from contaminants or restoration, including assimilation of nutrients and nonpersistent toxic substances. Describe the types and sources of possible or current impairment to the coastal wetland and other associated coastal waters (e.g., to water quality, sediments, flora, or fauna). Describe how contaminant inputs or residues will be prevented, reduced, or eliminated. Preventing contaminants by precluding residential development through acquisition will not normally warrant full points unless the applicant can be shown that significant contamination would have occurred otherwise. (Up to 5 points)

(ii) The proposal will not significantly prevent impairment or improve the quality of the coastal wetland and associated coastal waters. If the proposal provides positive water quality benefits in the upper portions of watersheds, but provides no significant and direct positive water quality benefits to coastal wetland ecosystems, the proposal will not receive points. (0 points)

(iii) Show direct links between contamination and wildlife and aquatic habitats. To receive full points, you

[3] For more information about species of management concern, visit the website migratorybirds.fws.gov or contact the Division of Migratory Bird Management at 703–358–1714.

should provide documentation of the linkage. Reviewers may consider the extent of contaminants prevention/reduction when assigning points. Proposals having the potential to produce an attractive nuisance (e.g., acquiring and/or restoring a wetland that will be attractive to wildlife and that also has the potential to accumulate high levels of persistent toxic metals or hydrocarbon compounds) will not receive points.

(9) *Catalyst for future conservation.* Is the project proposal designed to leverage other ongoing coastal wetlands protection projects in the area, such as acquisition of areas to add to already acquired coastal lands, or provide impetus for additional restoration? (Maximum: 4 points)

(i) The project will be essential (e.g., key to completion or implementation of a greater conservation plan) to further advance or promote other coastal projects under way. Explain why. (Up to 4 points)

(ii) The project proposal does not demonstrate a positive impact on other coastal projects. (0 points)

(iii) To receive the maximum number of points, the proposal should be essential to the initiation or completion of a larger project. Examples may include acquisition of key in-holdings within a larger protected area, funds necessary to acquire fee simple interest in properties where a conservation easement has already been secured, and funds necessary to complete restoration activities to a protected area.

(10) *Partners in conservation.* Will the proposal receive financial support, including in-kind match, from private, local, or other Federal interests? (Maximum: 4 points)

(i) The proposal includes the State applicant plus one or more non-State financial partners. (Up to 4 points)

(ii) The proposal includes only financial support from the State applicant. (0 points)

(iii) A written description of commitment of funds or in-kind match from the partners must accompany the proposal. (This requirement is in addition to signing the Assurances Form.) The purpose of this criterion is to promote partnerships with private, local, or other Federal agencies rather than to increase the dollar amount of the matching share. Therefore, no specific minimum amount is indicated here. At least two partners, in addition to the State applicant, should have committed money to the project to receive maximum points.

(11) *Federal share reduced.* Does the proposal significantly reduce the Federal share by providing more than the required match amount? In the case of a Territory or Commonwealth that does not require match funds, does the proposal include financial support from sources other than the Territory or Commonwealth? (Maximum: 5 points)

(i) The State, territory, or commonwealth applicant must have a non-Federal funding source (in-kind match does not count for this criterion) that reduces the Federal share. (Up to 5 points)

(ii) The maximum Federal share is requested by the proposal. (0 points)

(iii) The purpose of this criterion is to increase the amount of money from non-Federal sources. This increase decreases the need for Federal match dollars, so that Federal dollars can help more projects. Documentation of each partner's financial commitment must accompany the proposal to receive points. If the State itself provides the excess match, the State should receive credit for reducing the Federal share. Each 5 percent above the required State match would be approximately equal to 1 point. The following two examples, using both a 50 and 75 percent Federal match share, define a 10 percent increase in a State's match amount.

(A) Example 1–50—Percent Federal Match

If the total project costs are $100,000, then the required State match share is $50,000.

If the State or a partner provides an additional cash contribution equal to 10 percent of the $50,000, $5,000. This is defined as a 10 percent increase in the State match.[4]

(B) Example 2–75—Percent Federal Match

If the total project costs are $100,000, then the required State match share is $25,000.

If the State or a partner provides an additional cash contribution equal to 10 percent of the $25,000, $2,500. This is defined as a 10 percent increase in the State match.[4]

(12) *Education/outreach program or wildlife-oriented recreation.* Is the project designed to increase environmental awareness and develop support for coastal wetlands conservation? Does it provide recreational opportunities that are consistent with the conservation goals of the site? (Maximum: 3 points)

(i) The proposal includes a site-specific, substantive education/outreach or wildlife-oriented recreation program. (Up to 3 points)

(ii) The proposal does not include a substantive education/outreach or wildlife-oriented recreation program. (0 points)

(iii) The proposal must describe what makes this program substantive and link it closely with the specific site to receive full points. Programs supported by activities or funds from partners should be encouraged over use of project dollars. Project proposals may include substantive education/outreach components necessary for the completion of the project. However, these should be activities that complement or support the primary goal of the project.

(13) *Other factors.* Do any other factors, not covered in the previous criteria, make this project or site particularly unique and valuable? Does the project offer important benefits that are not reflected in the other criteria? The following list includes examples of projects that provide benefits not reflected in other criteria. (Maximum: 4 points)

(i) The project might provide significant benefits to, for example: rare or threatened habitat types; biodiverse habitats; rare and declining species; and the local community.

(ii) The project would be particularly cost-effective, providing very significant resource benefits for the cost.

(iii) The project would assist in the prevention or control of invasive species.

(iv) The project would provide important cultural or historical resource benefits.

(v) The project would provide other benefits.

(vi) Reviewers should not assign points to resource values covered by other criteria. The proposal should provide a short narrative to support claims to *Other Factors* points.

(b) *Additional considerations.* We will factor the following considerations into the ranking process if two or more proposals have the same point totals. The tie-breaking factors are as follows:

(1) The project would prevent the destruction or degradation of habitat from pending sale of property, from adverse effects of current activities such as draining of wetlands, or from natural processes such as erosion at excessive rates;

(2) The project would protect unique and significant biological diversity;

(3) The project has lower costs per acre conserved; and

(4) In the project proposal the State or third party provides lands as opposed to using lands already owned by the State

[4] From sources other than Federal agencies. Natural Resource Damage Assessment funds may in some cases be defined as "non-Federal." See discussion under § 84.46 on *What are the cost-sharing requirements?*

or third party as part of the State matching share.

(c) All proposals must include the information described in paragraphs (b)(1)–(4) of this section. If a tie occurs between two or more proposals, the reviewers need to have this information available immediately to decide which proposal or proposals should be recommended for selection.

Subpart D—Conditions on Acceptance/Use of Federal Money

§ 84.40 What conditions must I follow to accept Federal grant money?

(a) The audit requirements for State and local governments (43 CFR part 12), and

(b) The uniform administrative requirements for grants and cooperative agreements with State and local governments (43 CFR part 12).

§ 84.41 Who prepares a grant agreement? What needs to be included?

The coastal State and the Fish and Wildlife Service work together to develop a Grant Agreement (Form 3–1552) upon completion of the review by the Regional Director to determine compliance with applicable Federal laws and regulations. The Grant Agreement includes the grant title, the grant cost distribution, the agreement period, other grant provisions, and special grant conditions. If a Coastal Barrier Unit is affected, the Service must conduct internal consultations pursuant to Section 6 of the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act, prior to providing any grant monies to that State.

§ 84.42 What if a grant agreement is not signed?

Monies that have been allocated for a grant will be held until December 31 of the following year. If a grant agreement has not been signed by the State and the Service and, therefore, the money has not been obligated for the approved grant by that date, the funds automatically are returned to the Program account in Washington.

§ 84.43 How do States get the grant monies?

Funding to States is provided on a reimbursable basis. See § 84.47 for information on what costs can be reimbursed. The Service may reimburse the State for projects completed, or make payments as the project progresses. For construction work and labor, the Service and the State may jointly determine, on a case-by-case basis, that payments may be made in advance. We will minimize the time elapsing between the transfer to the State and the State's need for the funds, and the time period will be subject to a specific determined need for the funds in advance. Except for extenuating circumstances, a reasonable time period to advance funds to a State is up to 3 days. OMB Circular A–102, Parts II and III, 43 CFR part 12, and 31 CFR part 205 provide specific information on methods and procedures for transferring funds.

§ 84.44 What is the timetable for the use of grant money?

Once money is granted to the coastal States, the money is available to those States for the time designated in the grant agreement. If a State needs more time, the State must apply for an extension of time by amending the grant agreement. If the Service does not extend the time, the unobligated monies return to the Service for expenditure on future grants. Also, if a State cannot spend the money on the approved project, the State must notify the appropriate Regional Director as soon as possible so that the money can revert back to the Service for future grants.

§ 84.45 How do I amend a proposal?

Following procedures in 43 CFR 12.70, you must submit a signed original and two copies of the revised SF 424, the revised portion of the project statement if appropriate, and an explanation of the reason for the revision to the Regional Director (Federal Aid).

§ 84.46 What are the cost-sharing requirements?

(a) Except for certain insular areas, the Federal share of an approved grant will not exceed 50 percent of approved costs incurred. However, the Federal share may be increased to 75 percent for coastal States that have established and are using a fund as defined in § 84.11. The Regions must certify the eligibility of the fund in order for the State to qualify for the 75 percent matching share.

(b) The following insular areas: American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, have been exempted from the matching share, as provided in Pub. L. 95–134, amended by Pub. L. 95–348, Pub. L. 96–205, Pub. L. 98–213, and Pub. L. 98–454 (48 U.S.C. 1469a). Puerto Rico is not exempt from the match requirements of this Program.

(c) The State may provide materials (e.g., heavy equipment) or other services as a noncash match for portions of the State's matching share. The State may also provide the value of land, including the land proposed for restoration, enhancement, or management as a noncash match, provided that the land is necessary and reasonable for completing the project. For example, if a State proposes to manage a contiguous wetland of 100 acres, and already owns 10 of the 100 acres, the State can apply the current value of the 10 acres, provided that the 10 acres are necessary to manage the entire 100 acres. If the 10-acre wetland were not contiguous and no connection could be made that the 10 acres were needed to manage the proposed wetland, the State could not use the 10 acres as a noncash match. Review 43 CFR 12.64 for determining the value of in-kind contributions.

(d) The requirements in 43 CFR 12.64 and Service Manual Part 522 FW 1.13[5] apply to in-kind matches or cost-sharing involving third parties. Third party in-kind contributions must represent the current market value of noncash contributions furnished as part of the grant by another public agency, private organization, or individual. In-kind matches must be necessary and reasonable to accomplish grant objectives.

(e) Coastal States must commit to their matching share of the total costs by signing the Application for Federal Assistance (SF 424), the Assurances (SF 424B or SF 424D), and the Grant Agreement (Form 3–1552).

(f) No Federal monies, non-Federal monies, in-kind contributions, or National Fish and Wildlife Foundation grant program monies that will be or have been previously used to satisfy the matching requirement of another Federal grant can be used as part of the coastal State's matching share.

(g) The coastal State is responsible for ensuring the full amount of that State's matching requirement, either with State funds or from contributions toward the proposal from other agencies, groups, or individuals. Sources other than State applicant funds must be documented and approved as eligible.

(h) Total Federal contributions (including all Federal sources outside of the Program) may not exceed the maximum eligible Federal share under the Program. This includes monies provided to the State by other Federal programs. If the amount of Federal money available to the project is more than the maximum allowed, we will reduce the Program contribution by the amount in excess.

[5] From the Fish and Wildlife Service Manual, available on-line at *http://www.fws.gov/directives/index.html*.

(i) Natural Resource Damage Assessment funds that are managed by a non-Federal trustee are considered to be non-Federal, even if these monies were once deposited in the Department of the Interior's Natural Resource Damage Assessment and Restoration Fund, provided the following criteria are met:

(1) The monies were deposited pursuant to a joint and indivisible recovery by the Department of the Interior and non-Federal trustees under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Oil Pollution Act (OPA);

(2) The non-Federal trustee has joint and binding control over the funds;

(3) The co-trustees agree that monies from the fund should be available to the non-Federal trustee and can be used as a non-Federal match to support a project consistent with the settlement agreement, CERCLA, and OPA; and

(4) The monies have been transferred to the non-Federal trustee.

§ 84.47 What are allowable costs?

(a) Allowable grant costs are limited to costs necessary and reasonable to achieve approved grant objectives and meet the applicable Federal cost principles in 43 CFR 12.62 (b).

(b) If a project or facility is designed to include purposes other than those eligible under the Act, the costs must be prorated among the various purposes.

(c) If you incur costs before the effective date of the grant, they cannot be reimbursed, with the exception that we can allow preliminary costs, but only with the approval of the appropriate Regional Director. Preliminary costs may include costs necessary for preparing the grant proposal, such as feasibility surveys, engineering design, biological reconnaissance, appraisals, or preparation of grant documents such as environmental assessments for compliance with the National Environmental Policy Act.

§ 84.48 What are the procedures for acquiring, maintaining, and disposing of real property?

(a) Acquisition, maintenance, and disposal of real property must follow the rules established in 43 CFR 12.71 and 50 CFR 80.14.

(1) Title to real property acquired under a grant or subgrant must be vested in the State or subgrantee, including local governments and nonprofit organizations. States must submit documentation (e.g., appraisals and appraisal reviews) to the Regional Director who must approve it before the State becomes legally obligated for the purchase. States will provide title vesting evidence and summary of land costs upon completion of the acquisition. The grant agreement and any deed to third parties (e.g., conservation easement or other lien on a third-party property) must include appropriate language to ensure that the lands and/or interests would revert back to the State or Federal Government if the conditions of the grant were no longer being implemented.

(2) In cases where the interest obtained is less than fee simple title, the interest must be sufficient for long-term conservation of the specified wetlands resources.

(3) Real property acquired with National Coastal Wetlands Conservation Grant funds must continue to serve the purpose for which it was acquired. If acquired property is used for reasons inconsistent with the purpose(s) for which acquired, such activities must cease and any adverse effects on the property must be corrected by the State or subgrantee with non-Federal monies in accordance with 50 CFR 80.14.

(4) The State or subgrantee may not dispose of or encumber its title or other interest in real property without prior approval of the appropriate Regional Director of the Service. Real property includes, but is not limited to, lands, buildings, minerals, energy resources, timber, grazing, and animal products. If real property is sold, the State or subgrantee must compensate the Service in accordance with 43 CFR 12.71(c)(2).

(5) If rights or interests obtained with the acquisition of coastal wetlands generate revenue during the Grant Agreement period, the State will treat the revenue as program income and use it to manage the acquired properties. If the State sells or leases real property, the State must treat the proceeds as program income and return the money to the Federal Aid program regardless of the grant period.

(6) Inconsistent use that is not corrected can be grounds for denying a State future grants under this Program.

(b) A coastal State is responsible for design, supervision, and inspection of all major construction projects in accordance with accepted engineering standards.

(1) The coastal State must have adequate rights to lands or waters where restoration or enhancement projects are planned to ensure protection and use of the facilities or structures throughout their useful life.

(2) The construction, enlargement, or rehabilitation of dams are subject to Federal standards for dam design. If requested, the State must provide to the Regional Office written certification that any proposed changes to a dam meet Federal standards.

(3) The coastal State must operate and maintain facilities, structures, or related assets to ensure their use for the stated project purpose and that they are adequately protected.

(c) Acquisition, property records, maintenance, and disposal of equipment must be made in accordance with 43 CFR 12.72.

§ 84.49 What if the project costs more or less than originally expected?

All requests for additional monies for approved coastal wetland grants will be subject to the entire review process along with new grants. Any monies left over after the project is complete, or if the project is not completed, should be returned to the Washington Office for use in following years. If a State has lands it wishes to acquire, restore, or enhance in close proximity to the original project, and the Region deems that spending project monies in these areas would provide similar benefits, the Region may use unspent balances to pay for these projects with prior approval from the Washington Office. States must provide adequate justification and documentation to the Regions that the lands acquired, restored, or enhanced are similar to those in the original proposal and provide similar benefits to fish and wildlife.

§ 84.50 How does a State certify compliance with Federal laws, regulations, and policies?

(a) In accepting Federal money, coastal State representatives must agree to and certify compliance with all applicable Federal laws, regulations, and policies. The applicant will need to submit a Statement of Assurances (either SF 424B or SF 424D) signed and dated by an authorized agency representative as part of the proposal.

(b) Compliance with environmental and other laws, as defined in the Service Manual 523 FW Chapter 1,[6] may require additional documentation. Consult with Regional Offices for how this applies to a specific project.

Dated: March 29, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–19065 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

[6] The Fish and Wildlife Service Manual, see footnote 3 for availability.

Proposed Rules

Federal Register
Vol. 67, No. 146
Tuesday, July 30, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1611

Privacy Act Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission is proposing to revise its regulations which implement the Privacy Act of 1974, to exempt two EEOC systems of records from some of the Act's requirements.

DATE: Written comments on the proposed rule must be received on or before September 30, 2002. The Commission proposes to consider any comments received and thereafter adopt final regulations.

ADDRESS: Comments should be addressed to the Office of Executive Secretariat, Equal Employment Opportunity Commission, Room 10402, 1801 L Street, NW., Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4078 (voice) or (202) 663–4077 (TTY). (These are not toll-free numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507, between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or Kathleen Oram, Senior Attorney, Office of Legal Counsel, (202) 663–4669 (voice) or (202) 663–7026 (TDD). This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend §1611.13 to exempt its system of records EEOC–15, Internal Harassment Inquiries, pursuant to section k(2) of the Privacy Act, from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act. In addition, the Commission proposes to add a new §1611.14, to exempt its system of records EEOC–16, Office of Inspector General Investigative Files, pursuant to section (j)(2) from sections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) and pursuant to section (k)(2) from sections (c)(3), (d)(1), (d)(2) and (e)(1) of the Act.

Section (k) of the Privacy Act allows an agency to exempt any system of records from the above-referenced subsections of the Act if it consists of "investigatory material compiled for law enforcement purposes." 5 U.S.C. 552(k)(2). Section (j) of the Privacy Act permits an agency to exempt a system of records from sections of the Act, including those noted above, if the system of records is "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws." 5 U.S.C. 552(j)(2). The files in the Internal Harassment Inquiries system of records contain information obtained by EEOC in its internal investigations of allegations of harassment filed by EEOC employees. The files in the Office of Inspector General Investigations Files system contain information obtained during investigations by the Office of Inspector General relating to programs and operations of the EEOC. It would impede the law enforcement activities of the Commission, and the Office of Inspector General to apply the disclosure and amendment provisions of the Privacy Act to the two systems of records. The regulation includes detailed reasons for the exemption of the two systems of records from the particular provisions of the Privacy Act.

Regulatory Procedures

List of Subjects in 29 CFR Part 1611

Privacy Act.

For the Commission.

Cari M. Dominguez,

Chair.

Accordingly, it is proposed to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1611—[AMENDED]

1. The authority citation for Part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1611.13 is revised to read as follows:

§ 1611.13 Specific Exemptions—Charge and complaint files

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (Title VII and Americans with Disabilities Act Discrimination Case Files), EEOC–15 (Internal Harassment Inquiries) and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other Federal agencies in the course of harassment inquiries, and investigations of charges and complaints that violations of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans With Disabilities Act and the Rehabilitation Act have occurred. In some instances, EEOC and agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the Commission and other agencies if these provisions of the Act applied to such records.

(b) The subject individuals of the files in these systems know that the Commission or their employing agencies are maintaining a file on their charge, complaint, or inquiry, and the general nature of the information contained in it.

(c) Subject individuals of the files in EEOC–1 (Age and Equal Pay Act

Discrimination Case Files), EEOC–3 (Title VII and Americans with Disabilities Act Discrimination Case Files, and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) have been provided a means of access to their records by the Freedom of Information Act. Subject individuals of the charge files in system EEOC–3 have also been provided a means of access to their records by section 83 of the Commission's Compliance Manual. Subject individuals of the case files in system EEOC/GOVT–1 have also been provided a means of access to their records by the Commission's Equal Employment Opportunity in the Federal Government regulation, 29 CFR 1614.108(f).

(d) Many of the records contained in system EEOC/GOVT–1 are obtained from other systems of records. If such records are incorrect, it would be more appropriate for an individual to seek to amend or correct those records in their primary filing location so that notice of the correction can be given to all recipients of that information.

(e) Subject individuals of the files in each of these systems have access to relevant information provided by the allegedly discriminating employer, accuser or harasser as part of the investigatory process and are given the opportunity to explain or contradict such information and to submit any responsive evidence of their own. To allow such individuals the additional right to amend or correct the records submitted by the allegedly discriminatory employer, accuser or harasser would undermine the investigative process and destroy the integrity of the administrative record.

(f) The Commission has determined that the exemption of these four systems of records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act is necessary for the agency's law enforcement efforts.

3. Section 1611.14 is added to read as follows:

§ 1611.14 Exemptions—Office of Inspector General Files

(a) *General.* The system of records entitled Office of Inspector General Investigative Files consists, in part, of information compiled by the OIG for the purpose of criminal law enforcement investigations. Therefore, to the extent that information in this system falls within the scope of Exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), this system of records is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(5) From subsection (e)(2), because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3), because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, permit the subject to evade apprehension, or cause interference with undercover activities.

(b) *Specific.* The system of records entitled Office of Inspector General Investigative Files consists, in part, of investigatory material compiled by the OIG for law enforcement purposes. Therefore, to the extent that information in this system falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected

may ultimately be evaluated and viewed as irrelevant and unnecessary to investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG could retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

[FR Doc. 02–18894 Filed 7–29–02; 8:45 am]
BILLING CODE 6570–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AD48

Operation of Child Care Centers at VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Veterans Affairs published a proposed rule to amend its regulations regarding the Operation of Child Care Centers at VA Facilities. The proposed rule and the comments we received have been superseded by events. Accordingly, this document hereby withdraws the proposed rule.

FOR FURTHER INFORMATION CONTACT: Renee Bruce, National Child Care Program Manager, telephone number 410–605–7388, VA Maryland Health Care System, 10 N. Greene Street, Baltimore, Maryland 21201.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on December 27, 1989 (54 FR 53078), VA proposed to amend its regulations regarding the Operation of Child Care Centers at VA Facilities. The proposed rule and comments VA received have been superseded by events.

The child care needs of VA employees are being met through the provision of child care services by non-VA entities, at, or near VA facilities. While VA does not have any authority other than Veterans' Canteen Service (VCS) statute, to provide child care services directly, VA facilities can provide, free-of-charge, space and services to privately operated child care centers pursuant to the Trible Amendment and VA leasing authority. *See* 38 U.S.C. 7809, 8122(a), 40 U.S.C. 490b. Use of the Trible Amendment and VA leasing authority has resulted in the existence of dozens of child care centers serving VA employees.

Further, we understand that VCS does not, nor does it intend to, operate any child care centers, directly or by contract. Thus, VA is withdrawing the proposed rule.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contacts, Grants program-health, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and Transportation expenses, Veterans.

Approved: July 5, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–19175 Filed 7–29–02; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002–D008]

Defense Federal Acquisition Regulation Supplement; Trade Agreements Act—Exception for U.S.-Made End Products

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the determination of the Under Secretary of Defense (Acquisition, Technology, and Logistics) that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 30, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002-D008 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002-D008.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

On March 14, 2002, the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) determined that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States. This determination expands the May 16, 1997, USD(AT&L) determination (presently implemented in DFARS Part 225) that it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made information technology products in Federal Supply Group 70 or 74. The March 14, 2002, determination is consistent with Federal Acquisition Regulation policy applicable to civilian agencies with regard to the treatment of U.S.-made end products.

This proposed DFARS rule implements the March 14, 2002, USD(AT&L) determination. The rule will simplify evaluation of offers in acquisitions subject to the Trade Agreements Act, because it will no longer be necessary to determine if a U.S.-made end product is also a domestic end product, *i.e.*, the cost of domestic components exceeds the cost of all components by more than 50 percent. Additionally, the provision at DFARS 252.225–7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, and the clause at DFARS 252.225–7007, Buy

American Act—Trade Agreements—Balance of Payments Program, will no longer be necessary, because the provision at DFARS 252.225–7020, Trade Agreements Certificate, and the clause at DFARS 252.225–7021, Trade Agreements, will be appropriate for all acquisitions subject to the Trade Agreements Act. This rule also applies the March 14, 2002, USD(AT&L) determination to acquisitions subject to the Balance of Payments Program, since the Balance of Payments Program is an extension of the Buy American Act restrictions to acquisitions of supplies for overseas use.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An initial regulatory flexibility analysis has been prepared and is summarized as follows:

The objective of the rule is to avoid treating products substantially transformed in the United States less favorably than products substantially transformed in a designated, Caribbean Basin, or NAFTA country. Under existing DFARS policy, offers of domestic end products are given a 50 percent price evaluation preference over offers of U.S.-made end products for which the cost of foreign components exceeds the cost of domestic components by 50 percent or more. However, for acquisitions subject to the Trade Agreements Act, an end product of a designated, Caribbean Basin, or NAFTA country is exempt from application of the 50 percent evaluation factor, regardless of the source of the components. Therefore, a company might be encouraged to manufacture a product in a designated, Caribbean Basin, or NAFTA country rather than in the United States. This DFARS rule proposes to revise evaluation procedures for acquisitions subject to the Trade Agreements Act to eliminate the 50 percent price advantage that DoD presently gives to domestic end products over U.S.-made end products with foreign component content of 50 percent or more. Therefore, the cost incentive to manufacture components in the United States will be removed. However, for companies that provide U.S.-made end products containing foreign components, the incentive to move end product manufacturing facilities to a designated, Caribbean Basin, or NAFTA country will be reduced.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D008.

C. Paperwork Reduction Act

The rule will eliminate the requirement for offerors to track and document the origin of components of U.S.-made end products in acquisitions subject to the Trade Agreements Act. This will reduce by 960 hours the annual paperwork burden requirements previously approved by the Office of Management and Budget under Control Number 0704–0229.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 225 and 252 as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.001 [Amended]

2. Section 225.001 is amended by removing paragraph (3)(ii) and redesignating paragraph (3)(iii) as paragraph (3)(ii).

225.003 [Amended]

3. Section 225.003 is amended as follows:

a. In paragraph (4) by removing "252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program;"; and

b. In paragraph (12), by removing "252.225–7007. Buy Americn Act—Trade Agreements—Balance of Payments Program;".

4. Section 225.103 is amended as follows:

a. By redesignating paragraph (a)(1) as paragraph (a)(i); and

b. By revising newly designated paragraph (a)(i)(B) to read as follows:

225.103 Exceptions.

(a)(i) * * *

(B) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that, for procurements subject to the Trade Agreements Act, it is inconsistent with the public interest to apply the Buy American Act to end products that are substantially transformed in the United States.

* * * * *

5. Section 225.402 is revised to read as follows:

225.402 General.

To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.401–70).

6. Section 225.502 is revised to read as follows:

225.502 Application.

(b) Use the following procedures instead of the procedures in FAR 25.502(b) for acquisitions subject to the Trade Agreements Act:

(i) Consider only offers of U.S.—made, qualifying country, or eligible end products, except as permitted by 225.403.

(ii) If price is the determining factor, award on the low offer.

(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American Act or the Balance of Payments Program.

(i) Treat offers of eligible end products under acquisitions subject to NAFTA as if they were qualifying country offers. As used in this section, the term "nonqualifying country offer" may also apply to an offer that is not an eligible offer under NAFTA.

(ii) Except as provided in paragraph (c)(iii) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (*see* 225.504(1)).

(A) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225–8, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation (*see* 225.504(1)(ii)).

(B) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(1) On an item-by-item basis; or

(2) On a group of items, if the solicitation specifically provides for award on a group basis.

(iii) When application of the factor would not result in the award of a

domestic end product, *i.e.*, when no domestic offers are received (*see* 225.504(3)) or when a qualifying or NAFTA country offer is lower than the domestic offer (*see* 225.504(2)), evaluate nonqualifying country offers without the 50 percent factor.

(A) If duty is to be exempted through inclusion of the clause at FAR 52.225–8, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225–7003, Information for Duty-Free Entry Evaluation (*see* 225.504(2)(ii) and (3)(ii)). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(B) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty (*see* 225.504(2)(i) and (3)(i)).

(iv) If these evaluation procedures result in a tie between a nonqualifying country offer and a domestic offer, make award on the domestic offer.

(v)(A) There are two tests that must be met to determine whether a manufactured item is a domestic end product—

(1) The end product must have been manufactured in the United States; and

(2) The cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all of its components. This test is applied to end products only, and not to individual components.

(B) Because of the component test, the definition of "domestic end product" is more restrictive than the definition for—

(1) "U.S.-made end product" under trade agreements;

(2) "Domestically produced or manufactured products" under small business set-asides or small business reservations; and

(3) Products of small businesses under FAR part 19.

225.504 [Amended]

7. Section 225.504 is amended by removing paragraph (4).

225.1101 [Amended]

8. Section 225.1101 is amended as follows:

a. In paragraph (2)(i) by removing "252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program;";

b. By removing paragraph (3)(ii) and redesignating paragraphs (3)(iii) and (3)(iv) as paragraphs (3)(ii) and (3)(iii), respectively;

c. By removing paragraphs (5) and (6) and redesignating paragraphs (7) through (14) as paragraphs (5) through (12), respectively;

d. In newly designated paragraph (9), by removing "when acquiring information technology products in Federal Supply Group 70 or 74" and adding in its place "if the acquisition is subject to the Trade Agreements Act"; and

e. In newly designated paragraph (12), by removing "252.225–7007, Buy American Act—Trade Agreements'Balance of Payments Program;".

9. Section 225.7501 is amended by revising paragraph (b)(1)(iii) to read as follows:

225.7501 Policy.

* * * * *

(b) * * *

(1) * * *

(iii) For acquisitions subject to the Trade Agreements Act, is a U.S.-made end product; or

* * * * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7006 and 252.225–7007 [Removed and Reserved]

10. Sections 252.225–7006 and 252.225–7007 are removed and reserved.

252.225–7008 [Amended]

11. Section 252.225–7008 is amended in the introductory text by removing "225.1101(7)" and adding in its place "225.1101(5)".

252.225–7009 [Amended]

12. Section 252.225–7009 is amended in the introductory text by removing "225.1101(8)" and adding in its place "225.1101(6)".

252.225–7010 [Amended]

13. Section 252.225–7010 is amended in the introductory text by removing "225.1101(9)" and adding in its place "225.1101(7)".

252.225–7020 [Amended]

14. Section 252.225–7020 is amended in the introductory text by removing "225.1101(10)" and adding in its place "225.1101(8)".

252.225–7021 [Amended]

15. Section 252.225–7021 is amended in the introductory text by removing "225.1101(11)" and adding in its place "225.1101(9)".

252.225–7035 [Amended]

16. Section 252.225–7035 is amended in the introductory text and in Alternate I by removing "225.1101(12)" and adding in its place "225.1101(10)".

252.225–7036 [Amended]

17. Section 252.225–7036 is amended in the introductory text and in Alternate I introductory text by removing "225.1101(13)" and adding in its place "225.1101(11)".

252.225–7037 [Amended]

18. Section 252.225–7037 is amended in the introductory text by removing "225.1101(14)" and adding in its place "225.1101(12)".

[FR Doc. 02–19085 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AG70

Injurious Wildlife Species; Black Carp (*Mylopharyngodon piceus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to amend its regulations to add black carp (*Mylopharyngodon piceus*) to the list of injurious fish, mollusks, and crustaceans. This listing would have the effect of prohibiting the importation of any live animal or viable egg of the black carp into the United States. The best available information indicates that this action is necessary to protect the interests of human beings, and wildlife and wildlife resources from the purposeful or accidental introduction and subsequent establishment of black carp populations into ecosystems of the United States. As proposed, live black carp or viable eggs could be imported only by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits would also be required for the interstate transportation of live black carp or viable eggs currently held in the United States for scientific, medical, educational, or zoological purposes. The proposal would prohibit interstate transportation of live black carp or viable eggs, currently held in the United States, for any other purpose.

DATES: Comments must be submitted on or before September 30, 2002.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22203,

FAX (703) 358–1800. You may send comments by electronic mail (email) to: *BlackCarp@fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species at (703) 358–2464 or *kari_duncan@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposal is to prevent the accidental or intentional introduction of black carp and the possible subsequent establishment of populations of these fish in the wild.

In February 2000 the Fish and Wildlife Service received a petition from the Mississippi Interstate Cooperative Resources Association (MICRA) to list the black carp (*Mylopharyngodon piceus*) under the Injurious Wildlife Provision of the Lacey Act. The petition was based upon State concerns about the potential impacts of black carp on native freshwater mussels and snails in the Mississippi River basin.

Description of the Proposed Rule

The regulations contained in 50 CFR part 16 implement the Lacey Act (18 U.S.C. 42) as amended. Under the terms of the law, the Secretary of the Interior is authorized to prescribe by regulation those wild mammals, wild birds, fish (including mollusks and crustaceans), amphibians, reptiles, and the offspring or eggs of any of the foregoing, which are injurious to human beings, to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. The lists of injurious wildlife species are at 50 CFR 16.11–16.15. If black carp are determined to be injurious, then as with all listed injurious animals, their importation into, or transportation between, States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited, except by permit for zoological, educational, medical, or scientific purposes (in accordance with permit regulations at 50 CFR 16.22), or by Federal agencies without a permit solely for their own use, upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. In addition, no live black carp, progeny thereof, or viable eggs acquired under permit could be sold, donated, traded, loaned, or transferred to any other person or institution unless such person or institution has a permit issued by the Director of the U.S. Fish and Wildlife Service. The interstate transportation of any live black carp or viable eggs currently held in the United States for any purposes not permitted would be prohibited.

Biology

Black carp, also known as snail carp, Chinese black carp, black amur, Chinese roach, or black Chinese roach, is a freshwater fish that inhabits lakes and lower reaches of large, fast moving rivers. The species inhabits most major drainages of eastern Asia from about 22°N to about 51°N latitude. The natural range of black carp includes China, parts of far eastern Russia, and possibly northern Vietnam. Several published records of black carp from Taiwan and Japan likely represent introductions.

Black carp typically grow to more than 3 feet in length and weigh, on average, 33 pounds. They reportedly can reach 5 feet in length and weigh up to 150 pounds. Individuals of the species are known to live to at least 15 years of age.

Black carp reach maturity from 6 to 11 years of age. They reproduce annually. Spawning occurs in their natural range when water temperatures are at least 65.5°F, water levels are rising, and mollusks are available. They spawn upstream in rivers and their eggs drift downstream. The eggs are carried by currents into floodplain lakes, smaller streams, and channels with little to no current. Female black carp produce 129,000 to 1.18 million eggs each year, depending on body size.

Black carp feed on zooplankton and fingerlings when small. As adults, powerful crushing teeth permit the black carp to crush the thick shells of large mollusks. Reports indicate that the fish can usually handle any food item that it can get into its mouth. In some instances, the fish is able to crack the edge of a shell, extract soft parts, and then spit out shell fragments. A four year old black carp was shown to eat, on average, 3–4 pounds of mussels per day.

Young black carp are difficult to distinguish from young grass carp (*Ctenopharyngodon idella*). Adults may be distinguished externally by the color and the more cylindrical form of the body, and internally by the pharyngeal teeth.

Available information indicates that black carp are currently being maintained in research and fish production facilities in Arkansas, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, and Texas. This species originally entered the United States in the early 1970s as "contaminant" in imported grass carp stocks. The black carp were imported from Asia and were sent to a private fish farm in Arkansas. The second introduction of black carp into the United States occurred in the early 1980s for yellow grub control and as a food fish. The species was also imported by a Mississippi fish farmer during the early 1980s and by a fish farm operation in Missouri during the period 1986–1988.

Need for Proposed Rule—Environmental Consequences

Factors That Contribute to Injuriousness

The likelihood of release or escape of black carp is high. Currently, the predominant use of black carp in the United States is for biological control of snails that are an intermediate host in the life cycle of a trematode that affects catfish being farmed for human consumption. Ninety-five percent of the catfish farms in production are located in the Southeastern United States. Much of the Mississippi River delta region is at moderate to high risk of natural disaster including tornados, floods, and hurricanes. A natural disaster in the Southeast region is likely to result in the release of black carp from catfish farms. The first and only known introduction of black carp into a natural waterway occurred during a flood event. These fish were thought to be triploid (sterile through chromosome number manipulation) and the species has not been found in the wild. Additional risks of release associated with fish farming include movement of live carp from farm ponds to natural waterways via predatory birds and mammals, or escape from aquaculture facilities. Black carp are farm-raised in aquaculture facilities throughout Asia and Eastern Europe for human consumption. If black carp becomes popular for human consumption in the United States and farmed on a larger scale, the associated risks of release would be similar to that described above. However, the risks would be of greater magnitude, as the black carp would be stocked at the aquaculture facilities at a higher rate than they are currently stocked for biological control purposes.

If black carp escaped, or were released into the wild, they would likely survive and/or become established with or without reproduction. Moreover, released black carp would likely spread throughout the United States since no known limiting factors would preclude them from becoming established in U.S.

waters. The black carp, a native of most Pacific drainages in eastern Asia, inhabits large river and lake habitats at the same latitudes as the United States. This carp feeds on aquatic snails and mussels that are similar to those locally abundant in many of our rivers. The grass carp (*Ctenopharyngodon idella*), a close Asian relative with similar reproductive requirements, has expanded into all of the lower 48 States except Montana and Vermont since its introduction into Arkansas and Alabama in 1963.

At all life stages, black carp will compete for food with native species As discussed above in the Biology section, the fish grow to lengths greater than 1 meter and can weigh up to 150 pounds. The literature indicates that 4-year-old black carp eat 3–4 pounds of mollusks per day. Within their native range, black carp feed on species that are similar to our native mollusk species. Black carp are also known to eat freshwater shrimp, crawfish, and insects. Based on their feeding habits, black carp, if introduced or established, are likely to have a considerable impact on native mussel and snail populations. Native fish (redear sunfish, pumpkinseed sunfish, freshwater drum, snail bullhead, copper redhorse, river redhorse, robust redhorse, and several catfish and sucker species); turtles (sawbacks and musk turtles); birds, including waterfowl (Everglades snail kite, scaup, and canvasback); and vertebrates, such as racoons, otters, and muskrats, are likely to be affected through competition for food.

Although their potential to cause habitat destruction, such as that associated with Cyprinid species, is low, black carp could impact stream communities where snails play an important role as grazers of attached algae. Algae mats could develop and upset the natural balance of wildlife habitats if snail populations become depressed.

Black carp host many parasites and flukes, as well as bacterial and viral diseases that are likely to infect sport, food, or threatened and endangered fish species. They may also be immune or serve as intermediate hosts to the many parasites that use mollusks as intermediate hosts (some of which are harmful to humans). Because black carp carry a diverse fauna of parasites, the potential for the transfer of pathogens is high.

The likelihood and magnitude of effect on threatened and endangered species is high. Black carp are molluscivores (mussel and snail feeders) and have the potential to negatively affect threatened and endangered mollusks, fish, turtles, and birds that rely on mollusks as a food source. The United States, particularly the Southeast, has one of the world's most diverse aquatic mollusk faunas. Currently, about 300 taxa of freshwater mussels are recognized nationwide and nearly 67 percent of this fauna (69 species are federally listed as threatened or endangered) are vulnerable to extinction or already extinct. Our Nation's freshwater snail diversity is about 600 species or about 15 percent of the world's diversity of this faunal group.

Based on the food habits and habitat preferences of the black carp, it is likely to invade the habitat, feed on, and further threaten most of the federally listed freshwater mussels and about one-third of the federally listed aquatic snails. Black carp are likely to also further threaten numerous other potential candidates for Federal protection. Since many freshwater mollusks require a fish as an intermediate host for reproduction, the mussels that require native fishes to reproduce are likely to rapidly decline if the fish are affected by black carp. The establishment of black carp populations in the Mississippi drainages has the potential to reduce mollusk populations to levels that would require listing of the mollusks and the other animals that depend on mollusks for food.

The introduction or establishment of black carp may have negative impacts on humans primarily from the loss of native aquatic mollusk biodiversity and bio-abundance. Freshwater mollusks play an important ecological role in maintaining the health of aquatic ecosystems. These losses would affect the aesthetic, recreational, and economic values currently provided by native mollusks and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health. Black carp also have the potential to negatively affect the cultured pearl industry through predation on commercial mussel species.

Factors That Reduce or Remove Injuriousness

The ability and effectiveness of measures to prevent escape or establishment are low. Most available protective measures available to prevent escape of black carp from aquaculture facilities are expected to be cost-prohibitive to initiate and maintain. Even with protective measures in place, it is unlikely they would eliminate risks of accidental escape from facilities. Those facilities that are located in floodplains and susceptible to natural storm events are particularly vulnerable. The ability to eradicate or control black carp populations depends on where they are found. If established in large lakes or river systems, eradication and/or control of black carp is expected to be nearly impossible and they would likely become permanent members of the fish community. Additionally, controlling the spread of pathogens once they have been introduced in the wild is practically impossible.

No good tools are currently available to manage established black carp populations. Chemicals are the best option, but their use on a large scale is prohibitively expensive, can cause mortality to non-target fish and aquatic species, are not accepted by the public, and must be repeatedly used. Chemicals rarely kill every fish, and not all life stages are equally susceptible to chemicals. Additionally, some areas cannot be effectively treated due the size of the area, the distribution of the target species, and the effects on the non-target species, for example.

Since effective measures to eradicate, manage, or control the spread of black carp once they are established are not currently available, the ability to rehabilitate or recover ecosystems disturbed by the species is low. Significant risks associated with black carp release relate to endangerment and extinction of native mussels and snails. Re-establishment of extirpated mussel and snail populations, if biologically possible, would be labor and cost intensive and would depend on eradication of black carp within the habitat of the mussels and snails.

While triploidy and sterility may impede breeding of black carp in the natural environment, non-breeding populations are likely to still have significant negative impacts on natural systems. While triploid black carp may not be able to reproduce, allowing black carp in commerce still presents problems. First and foremost, in order to have black carp for sale, someone must have reproducing pairs of the fish, which means that reproductively active fish could escape. Second, the current methods of producing triploidy fish do not ensure that all of the fish are triploid and testing each fish would be cost-prohibitive; therefore, reproductively active fish will be found in otherwise triploid lots of fish. Finally, black carp will feed on native mollusks regardless of their reproductive ability. As described above, black carp eat 3–4 pounds of mussels per day and can live in excess of 15 years. Therefore, non-breeding populations of black carp are likely to have significant negative

impacts on native snail and mussel populations.

Because black carp are likely to escape or be released into the wild; are likely to survive or become established if escaped or released; are likely to spread since there are no known limiting factors; are likely to compete with native species for food; may serve as intermediate hosts for and/or transmit parasites to native species; are likely to feed on native mollusks, which is likely to negatively affect native mollusks, as well as the native fish, turtles, and birds that rely on mollusks as a food source; and because it will be difficult to prevent, eradicate, manage, or control the spread of black carp; it will be difficult to rehabilitate or recover ecosystems disturbed by the species; and because non-breeding populations of black carp are likely to have significant negative impacts on native snail and mussel populations, the Service finds black carp to be injurious to the interests of human beings and the wildlife and wildlife resources of the United States.

Required Determinations

Currently we have approval from OMB to collect information under OMB control number 1018–0092. This approval expires July 31, 2004. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless we display a currently valid OMB control number.

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this rule is not a significant regulatory action.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and economic analysis is not required. Catfish producers are the entities most likely to be affected by this rule. However, catfish producers have alternative means of control for snail infestation of catfish ponds. Chemical control with such items as hydrated lime, copper sulfate, and aquatic herbicides greatly reduces the snail population and, in conjunction with biological control, can eliminate snail infestation during the production of catfish. The elimination of the use of black carp as the biological control agent will allow an increase in the non-marketability of some of the catfish. The estimated maximum loss is expected to be less than $9 million per year for the affected catfish producers.

(b) This rule will not create inconsistencies with other agencies. This rule pertains only to regulations promulgated by the Fish and Wildlife Service under the Lacey Act. No other agencies are involved in these regulations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients. This rule does not affect entitlement programs. This rule is aimed at regulating the importation and movement of a non-indigenous species that has the potential to cause significant economic and other impacts on natural resources that are the trust responsibility of the Federal Government.

(d) This rule does not raise novel legal or policy issues. No previous listings of wildlife as injurious in the past have caused legal or policy problems.

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. No individual small industry within the United States will be significantly affected if black carp importation and interstate transport is prohibited.

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more. The black carp is not commercially traded in the United States. No recreational fishery exists for this species. Two firms currently produce and sell black carp, and the Fish and Wildlife Service believes that black carp production is a small part of these businesses so they should not be significantly affected by this rule. As a result, the regulation of this species will only affect catfish farmers that are infected with the yellow grub. Since about 1.5 percent of catfish farmers have permits to use the black carp as a biological control measure for snails in farm ponds, we do not expect that this rule will have a substantial impact on U.S. catfish producers. Alternative control measures for snail infestation are available, and more are being researched and developed. This rulemaking will have the effect of protecting commercial shellfish fisheries as well as endangered and threatened mollusks in the Mississippi watershed from the introduction of black carp. The black carp would devastate many shellfish resources if it escaped from catfish ponds and entered a waterway. This rulemaking, by protecting the environment from the spread of a non-native species that would likely devastate local mollusk populations, will indirectly work to sustain the economic benefits enjoyed by numerous small establishments.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Substitute control mechanisms for the control of yellow grubs are available, although they may not be as economical as the use of black carp. The six catfish farms using black carp for snail control account for approximately 1.5 percent of total U.S. catfish production. Under the worst case that all catfish produced at these farms was not marketable, the affected catfish would only amount to 1.5 percent of the annual U.S. production. This small impact would not appreciably affect costs or prices to consumers. Since alternative control methods are available, the economic effect is not expected to be significant. Six firms out of nearly 300 would have a slight increase in production cost.

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities, and does not have significant adverse effects on competition, employment, investment productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule will not impose significant requirements or limitations on private property use.

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

In accordance with Executive Order 12988, the Office of the Solicitor has

determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The proposed rule has been reviewed to eliminate drafting errors and ambiguity, was written to minimize litigation, provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

We have reviewed this rule in accordance with the criteria of the National Environmental Policy Act and our Departmental Manual in 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The action is categorically excluded under the Department's NEPA procedures (516 DM 2, Appendix 1.10), which apply to policies, directives, regulations, and guidelines of an administrative, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposal is intended to prevent the accidental or intentional introduction of black carp and the possible subsequent establishment of populations of these fish in the wild, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

This proposed rule solicits economic, biologic, or other information concerning black carp. The information will be used to determine if the species is a threat, or potential threat, to those interests of the United States delineated above, and thus warrants addition to the list of injurious fish in 50 CFR 16.13.

Public Comments Solicited

Please send comments to Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22030. Comments may be hand delivered or faxed to (703) 358–1800. If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN 1018–AG70]" and your name and return address in your e-mail message. Please note that this email address will be closed at the termination of this public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us for to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we propose to amend part 16, subchapter B, of Chapter I, Title 50 of the Code of Federal Regulations as set forth below.

PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 18 U.S.C. 42.

2. Amend § 16.13 by revising paragraph (a)(2) to read as follows:

§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their eggs.

(a) * * *

(2) The importation, transportation, or acquisition of any live fish or viable eggs of the walking catfish, family Clariidae; live mitten crabs, genus *Eriochei*, or their viable eggs; live mollusks, veligers, or viable eggs of zebra mussels, genus *Dreissena;* and any live black carp (*Mylopharyngodon piceus*) or their viable eggs, is prohibited except as provided under the terms and conditions set forth in § 16.22.

* * * * *

Dated: July 18, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–19158 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 071802B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Sustainable Fisheries Act (SFA) Requirements for Species in the U.S. Caribbean; Comprehensive Amendment Addressing SFA Definitions in Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands; Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of scoping meetings; request for comments.

SUMMARY: The Council will convene scoping meetings to solicit additional public comments on the scope of issues to be addressed in a draft supplemental environmental impact statement (DSEIS) that will assess the impacts on the natural and human environment of the various managed fisheries related to the management measures proposed under the draft Comprehensive Amendment Addressing SFA Definitions and Other Required Provisions of the Magnuson-Stevens Fishery Conservation and Management Act in the Fishery Management Plans (FMPs) of Puerto Rico and the U.S. Virgin Islands (Comprehensive SFA Amendment). The purpose of this document is to solicit additional public comments on the scope of the issues to be addressed in the DSEIS, which will be submitted to NMFS for filing with the Environmental Protection Agency (EPA) for publication of a Notice of Availability for public comment.

DATES: The scoping meetings will be held on August 6 and 7, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times for the scoping meetings.

ADDRESSES: Scoping meetings will be held in Miami, FL. See **SUPPLEMENTARY INFORMATION** for specific meeting locations.

FOR FURTHER INFORMATION CONTACT: Graciela Garcia-Moliner; phone: 787–766–5926; e-mail: *Graciela.Garcia-Moliner@noaa.gov* or Michael C. Barnette; phone: 727–570–5305; fax: 727–570–5583; e-mail: *Michael.Barnette@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Council is preparing to amend the FMPs for Corals and Reef Associated Plants and Invertebrates, Queen Conch, Reef Fish Fishery, and Spiny Lobster to: (1) address the consistency with new definitions; (2) address bycatch management measures and bycatch reporting requirements; (3) provide descriptions of the commercial, recreational, and charter fisheries and quantify trends in landings and data specified for each sector; (4) address fishery impact statements to insure they incorporate the likely effects of management measures on fishing communities; and (5) address overfishing provisions specifying objective and measurable criteria for identifying whether a species is overfished, and provide subsequent measures to rebuild overfished stocks.

The DSEIS will describe the proposed management measures in the Comprehensive SFA Amendment and will assess the environmental impacts of these proposed and alternative measures. To ensure compliance with the requirements of the SFA in the various FMPs, the Council intends to evaluate numerous management measures such as permits; commercial reporting requirements, including species-specific and bycatch reporting; limited entry; time/area closures, including closures for spawning aggregations and habitat protection; size limits; trip limits; gear restrictions; and recreational possession limits. The Council originally published a notice of intent (NOI) to prepare a DSEIS, requested written comments, and notified the public of scoping meetings in the **Federal Register** on May 31, 2002 (67 FR 38060).

Once the Council completes the DSEIS, it will submit it to NMFS for filing with the EPA. The EPA will publish a notice of availability of the DSEIS for public comment in the **Federal Register**. The DSEIS will have a 45–day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500-1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations. The Council will consider public comments received on the DSEIS before adopting final management measures for the Comprehensive SFA Amendment. The Council intends to prepare a final supplemental environmental impact statement (FSEIS) in support of the final Comprehensive SFA Amendment. The Council would then submit the final Comprehensive SFA Amendment and supporting FSEIS to NMFS for Secretary of Commerce (Secretarial) review, approval, and implementation under the Magnuson-Stevens Act. NMFS will announce availability of the Comprehensive SFA Amendment for public review during the Secretarial review period through a notification published in the **Federal Register**. During Secretarial review, NMFS will also file the FSEIS with the EPA for a final 30–day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the Comprehensive SFA Amendment. All public comment periods on the Comprehensive SFA Amendment, its proposed implementing regulations, and its associated FSEIS will be announced through a notice published in the **Federal Register**. NMFS will consider all public comments received during the 60–day Secretarial review period, whether they are on the Comprehensive SFA Amendment, the FSEIS, or the proposed regulations, prior to final agency action.

The scoping meetings will be held from 9 a.m. to 5 p.m. at the following location and dates:

1. *August 6, 2002:* National Marine Fisheries Service Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami , FL, telephone: 305–361–4285; and

2. *August 7, 2002:* National Marine Fisheries Service Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami , FL, telephone: 305–361–4285

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Graciela Garcia-Moliner at the Council (*see* **ADDRESSES**).

Dated: July 24, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19232 Filed 7–29–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 146
Tuesday, July 30, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, August 9, 2002. The meeting will be held in the Zuni Ballroom, Inn at Loretto, 211 Old Santa Fe Trail, Santa Fe, New Mexico, beginning at 9 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers, a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Report of the Executive Committee
  A. FY 2004 Budget Strategy
  B. Committee Restructuring
III. Report on the Preservation Initiatives Committee
  A. Cooperative Agreement with Department of Agriculture
  B. Followup from Heritage Tourism Session
  C. Heritage Areas Legislation
IV. Report on the Federal Agency Programs Committee
  A. Federal Program Improvement Priorities and Initiatives
  B. Coordination between Section 4(f) of the Department of Transportation Act and Section 106
  C. Section 106 Cases
  D. Cooperative Agreement with the General Services Administration
V. Report of the Communications, Education, and Outreach Committee
  A. Historic Preservation Awards
  B. Council Publications Program
VI. Chairman's Report
  A. Historic Preservation Executive Order
  B. Preserve America Initiative
VII. Executive Director's Report
  A. Technical Amendments to Section 106 Regulations
  B. FY 2003 Appropriations Process
VIII. New Business
IX. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC 202–606–8503, at least seven (7) days prior to meeting.

For further information contact: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: July 24, 2002.

John M. Fowler,

Executive Director.

[FR Doc. 02–19128 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–10–M

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB to Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0004.

Form Number: AID 11.

Title: Application for Approval of Commodity Eligibility.

Type of Submission: Renewal of Information Collection.

Purpose: USAID provides loans and grants to some developing countries in the form of Commodity Import Programs (CIPs). These funds are made available to host countries to be allocated to the public and private sectors for purchasing various commodities from the U.S., or in some cases, from other developing countries. In accordance with section 604(f) of the Foreign Assistance Act of 1961, as amended, USAID may finance only those commodities which are determined eligible and suitable in accordance with various statutory requirements and agency policies. Using the Application for Approval of Commodity Eligibility (Form AID 11), the supplier certifies to USAID information about the commodities being supplied, as required in section 604(f), so that USAID may determine eligibility.

Annual Reporting Burden:

Respondents: 260.

Total annual responses: 850.

Total annual hours requested: 425 hours.

Dated: July 24, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–19199 Filed 7–29–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics Forestry Research Advisory Council; meeting

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. app., the United States Department of Agriculture (USDA) announces a meeting of the Forestry Research Advisory Council.

SUPPLEMENTARY INFORMATION: Section 1441(c) of the Agriculture and Food Act of 1981 requires the establishment of the Forestry Research Advisory Council (FRAC) to provide advice to the Secretary of Agriculture on accomplishing efficiently the purposes of the Act of October 10, 1962 (16 U.S.C. 582a, *et seq.*), known as the McIntire-Stennis Act of 1962. FRAC also provides advice related to the Forest Service research program, authorized by the Forest and Rangeland Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600 (note)). FRAC is composed of 18 voting members from Federal and state agencies, forest industries, forestry schools and state agricultural experiment stations, and volunteer public groups. FRAC will meet to (a) hear reports from the Forest Service (USDA), the Cooperative State Research, Education, and Extension Service (USDA), forest industries, and the National Association of Professional Forestry Schools and Colleges, and (b) to formulate advice on Federal and state forestry research for the Secretary of Agriculture.

DATES AND LOCATION: FRAC will meet on July 30, 2002, from 8:30 a.m. to 4:00 p.m., and on July 31, 2002, from 8:30 a.m. to 12:00 noon, in the Plant and Animal Systems conference from (room 3455) of the Waterfront Centre located at 800 9th Street SW., Washington, DC 20024. A complete agenda will be available prior to the meeting. To request a copy of the agenda contact Dr. Catalino A. Blanche, FRAC Coordinator, at (202) 401–4190, or fax your request to (202) 401–1706, or e-mail to *cblanche@reeusda.gov.*

Comments

The public may file written comments with the FRAC Coordinator before the meeting or by August 31, 2002. All statements will become a part of the official records of the Forestry Research Council and will be kept on file for public review in the FRAC Coordinator's office, Room 3413, Waterfront Center, 800 9th Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Catalino A. Blanche, FRAC Coordinator; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Mail Stop 2210; 1400 Independence Avenue SW., Washington, DC 20250–2210; telephone: (202) 401–4190; fax: (202) 401–1706; e-mail: *cblanche@reeusda.gov.*

Done at Washington, DC, this 20th day of July, 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–19258 Filed 7–29–02; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF AGRICULTURE

Forest Service

Buckman Water Diversion Project; Meetings

AGENCY: Forest Service, Santa Fe National Forest, USDA.

ACTION: Notice of scoping meetings.

SUMMARY: The USDA Forest Service (FS)—in conjunction with the Department of Interior's Bureau of Land Management and Bureau of Reclamation—will hold public scoping meetings to discuss the Buckman Water Diversion Project. The Notice of Intent to prepare an environmental impact statement was published in the **Federal Register** (67 FR 47764, July 22, 2002).

The Notice of Intent provides specific information regarding the project. This public scoping meeting notice intends to inform interested and potentially affected parties of the meeting schedule to be conducted during the scoping phase of this environmental analysis.

DATES: Two scoping meetings will be held. The first will be held on Tuesday, August 20, 2002, from 3 to 5 p.m. The second meeting will be held on Thursday, August 29, 2002, from 7 to 9 p.m. Both meetings will be held in Santa Fe, New Mexico.

ADDRESSES: The two scoping meetings will be held at the Santa Fe Sweeney Center, 201 W. Marcy Street, Santa Fe, New Mexico, 87501 (505 955–6218).

FOR FURTHER INFORMATION CONTACT: Mr. Sandy Hurlocker, NEPA Coordinator, Española Ranger District, (505) 753–7331.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 22, 2002.

Gilbert Zepeda,

Acting Santa Fe Forest Supervisor.

[FR Doc. 02–19145 Filed 7–29–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, and USDA Forest Service

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Wednesday, September 11, 2002, in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting September 11th begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include; orientation, roles and responsibilities, working guidelines and election of committee chairperson, to meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Contact Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or Assistant Public Affairs Officer, Leona Rodreick, at (530) 257–2151.

Dated: July 24, 2002.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 02–19162 Filed 7–29–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting Notice

AGENCY: Rural Telephone Bank, USDA.

ACTION: Privatization committee meeting.

TIME AND DATE: 8:30 a.m., Thursday, August 15, 2002.

PLACE: Conference Room 5030–South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

The business advisor will report on the status of current privatization projects.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, August 15, 2002.

PLACE: Conference Room 0204–South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Annual retirement of class A stock.
2. Annual class C stock dividend rate.
3. Loan loss reserve for FY 2002.
4. Contract for legal advisor.
5. Annual report for FY 2001.
6. Current telecommunications industry issues.
7. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9 a.m., Friday, August 16, 2002.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Oath of office for new board members.
3. Action on Minutes of the May 8, 2002, board meeting.
4. Secretary's Report on loans approved.
5. Treasurer's Report.
6. Report on the allowance for loan loss reserve for FY 2002.
7. Privatization Committee Report.
8. Consideration of resolution to retire class A stock in FY 2002.
9. Consideration of resolution to set annual class C stock dividend rate.
10. Consideration of resolution to approve the annual report for FY 2001.
11. Consideration of resolution to approve Curtis Anderson to serve as the Deputy Governor of the Bank.
12. Governor's Remarks.
13. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: July 24, 2002.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

[FR Doc. 02–19251 Filed 7–26–02; 11:34 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Notice of Extension of Time Limit of Preliminary Results of New Shipper Review: Silicon Metal from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary results of the new shipper review of the antidumping duty order on silicon metal from the People's Republic of China (PRC) until no later than November 20, 2002. The period of review is June 1, 2001 through November 30, 2001. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Christian Hughes or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0648 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statutes and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 351 (2001).

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act requires the Department to issue the preliminary results of a new shipper review within 180 days from the date of initiation of the review. However, if the Department determines that the case is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend this deadline to a maximum of 300 days.

Background

On December 31, 2001, the Department received a timely request from China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp. (Lin Fen), in accordance with section 751(a)(2)(ii) of the Act and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on silicon metal from the PRC. *See Antidumping Duty Order: Silicon Metal From the People's Republic of China*, 56 FR 26649 (June 10, 1991). Because the request met all of the requirements set forth in section 751(a)(2)(ii) of the Act and section 351.214(d) of the regulations, we initiated a new shipper review of the antidumping duty order on silicon metal from the PRC for the period June 1, 2001 to November 30, 2001. On January 31, 2002, the Department initiated this new shipper review (67 FR 5966).

Extension of Time Limits for Preliminary Results

Due to the extraordinarily complicated nature of this case, we are unable to complete this review within the time limits mandated by section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214 (i). In particular, the Department needs additional time in which to address the issues of Lin Fen's relationship with other companies, and whether Lin Fen should be given a separate rate. Furthermore, the Department requires additional time to gather surrogate value information. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214 (i) (2), the Department is extending the time limit for the completion of preliminary results. These preliminary results will now be due no later than November 20, 2002.

This notice is issued and published pursuant to sections 751(a)(1) and 777 (i) (1) of the Act.

Dated: July 23, 2002

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–19234 Filed 7–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted

according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

Textile Trade Mission to Mexico

Mexico City and Guadalajara, October 23–25, 2002, Recruitment closes on August 30, 2002

For further information contact: Ms. Rachel Alarid, U.S. Department of Commerce, telephone (202) 482–5154, e-mail *Rachel_Alarid@ita.doc.gov*. or Ms. Pamela Kirkland, U.S. Department of Commerce, telephone (202) 482–3587, e-mail *Pamela_Kirkland@ita.doc.gov*.

Medical Device Trade Mission to Vietnam, Thailand, Malaysia, and Singapore

Hanoi, Ho Chi Minh City, Bangkok, Kuala Lumpur, Singapore, March 23 to April 3, 2003, Recruitment closes on February 7, 2003

For further information contact: Ms. Lisa C. Huot, U.S. Department of Commerce, telephone 202–482–2796, e-mail *Lisa_Huot@ita.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Nisbet, U.S. Department of Commerce, telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov*.

Dated: July 23, 2002.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 02–19147 Filed 7–29–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070102D]

Small Takes of Marine Mammals Incidental to Specified Activities; Building Demolition Activities at Mugu Lagoon, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the Department of the Navy, Naval Base Ventura County (NBVC) for an authorization to take small numbers of marine mammals by harassment incidental to the demolition and removal of buildings located at the entrance of Mugu Lagoon in Point Mugu, CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize NBVC to incidentally take, by harassment, small numbers of harbor seals and other marine mammals in the above mentioned area from September 26, 2002 through September 26, 2003. This authorization proposal is identical to the authorization issued to NBVC on September 26, 2001.

DATES: Comments and information must be received no later than August 29, 2002.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments cannot be accepted if submitted via e-mail or the Internet. A copy of the application and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, (301) 713–2322, or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Pursuant to section 101(a)(5)(D), NMFS issued an Incidental Harassment Authorization (IHA) to NBVC on September 26, 2001, for the harassment of small numbers of marine mammals incidental to the demolition and removal of buildings located at the entrance of Mugu Lagoon in Point Mugu, CA during a 1–year period. On April 10, 2002, NMFS received a letter from NBVC requesting that the IHA be re-issued for an additional year to allow the completion of building demolition and removal activities at Mugu Lagoon. These activities are summarized below. A more complete description may be found in the original proposal of IHA issuance published on October 1, 2001 (66 FR 50416).

Description of Activities

This proposed authorization for the harassment of small numbers of marine mammals incidental to the demolition and removal of approximately 12 buildings and associated infrastructures is almost identical to that proposed in the October 1, 2001 **Federal Register** notice. The one difference is that the current proposal is only for phase two of the demolition activities. Phase one activities, involving cleanup and removal of contaminated building materials, sand, and soil were completed in 2001 and a satisfactory marine mammal monitoring report covering this phase of the work was submitted to NMFS on December 21, 2001.

The second phase of the project, scheduled to begin after August 1, 2002, will be the demolition and removal of the remaining structures using standard construction procedures and equipment.

NBVC has requested a new authorization to ensure that all phase two activities are in compliance with the MMPA in case work is not completed within the 1–year time period of the authorization ending September 26, 2002. Specific construction equipment to be used during phase two will include: a 973 loader; a 450 Hitachi excavator; a 320 loader; a Case 621 loader; a 710 4–wheel-drive backhoe; a 545D skip loader; a 1000–gallon water truck; a dump truck; and a Bobcat loader. A more detailed description of the work proposed for 2002 is contained in the application (The Environmental Company and LGL Ltd., 2001) which is available upon request (see **ADDRESSES**).

The demolition site encompasses a total area of approximately 8 acres (3.2 hectares (ha)) at the entrance of Mugu Lagoon in Point Mugu, CA. No explosives will be used during the project and demolition crews will work only during daylight periods.

Description of Habitat and Marine Mammals Affected by the Activity

Mugu Lagoon is one of the largest salt marshes in southern California, encompassing approximately 350 acres (142 ha) of water and tidal flats. The beaches around the Mugu Lagoon entrance are used year-round by harbor seals (*Phoca vitulina*) for resting, molting, and breeding. The Navy reported a peak count of 361 adults in the Mugu Lagoon on June 6, 2000 (The Environmental Company and LGL Ltd., 2001). Two other pinniped species are known to occur infrequently in the area of the proposed activity during certain times of the year: northern elephant seals (*Mirounga angustirostris*) and California sea lions (*Zalophus californianus*). When present, these latter species haul out at the mouth of the lagoon and on Family Beach, located south of the demolition project area on the ocean side. Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Hanan (1996), Stewart and Yochem (1994, 1984), Forney et al. (2000), Koski et al. (1998), Barlow et al. (1993), Stewart and DeLong (1995), and Lowry et al. (1992). Please refer to those documents for information on these species.

Isolated observations of cetaceans have occurred in the Mugu Lagoon area. Two gray whale (*Eschrichtius robustus*) strandings have been recorded (one 20 years ago and one in the early 1980s). There is also one recorded observation of a gray whale moving in and out of the entrance to Mugu Lagoon (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 2001). Sightings of Dall's porpoise (*Phocoenoides dalli*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis or D. capensis*), and pilot whale (*Globicephala macrorhynchus*) have been made within 3 nautical miles (nm) (5.6 kilometers (km)) of shore in the vicinity of Point Mugu (Koski et al., 1998); however, none of these species would be expected to occur within the lagoon.

Potential Effects of Demolition Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the demolition and removal activities, as well as the increased presence of personnel, may cause short-term disturbance to pinnipeds hauled out closest to the work area. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during the Point Mugu demolition project, sound levels from all equipment (except the concrete breaker to be used during the first phase) drops to below 100 decibels, A-weighted (dBA) within 50 feet (ft)(15.2 meters (m)) of the source (CALTRANS, 2001).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a "looming" visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens et al., 1988). The onset of operations by a loud sound source, such as the concrete breaker during phase one, may elicit such a reaction. In addition, the movements of the large hydraulic arms of the backhoes or the Hitachi excavator may represent a "looming" visual stimulus to seals hauled out in close proximity. Seals exposed to such acoustic and visual stimuli may either exhibit a startle response or leave the haul-out site.

Harbor seals that haul out in Mugu Lagoon have clearly habituated to very loud airborne sounds at this location, as well as to the presence of humans and vehicle movement along the road that passes through the demolition area. For instance, biologists observed harbor seal haul-out sites in Mugu Lagoon during repeated overflights of a F–14a Tomcat jet aircraft in full afterburner as it performed touch-and-go maneuvers at nearby Mugu airfield. No more overt reactions than a momentary elevation of the hind flippers of a single juvenile seal were observed (The Environmental Company and LGL Ltd., 2001). Based on Air Force data, the received sound levels at the Mugu Lagoon haul-out sites under the jet's flight path could have reached a sound exposure level (SEL) of 117–121 dB re 20 micro-Pascal (Pa) during these maneuvers (from C. Malme, data in the USAF aircraft noise database). In areas where harbor seals are not exposed to regular aircraft noise or other acoustic stimuli, this type of reaction is not typical. For instance, Bowles and Stewart (1980) reported that harbor seals on San Miguel Island, CA reacted to low-altitude jet overflights with alert postures and often with rapid movement across the haul-out sites, especially when aircraft were visible.

For the purposes of their application, NBVC assumes that when behavioral patterns of pinnipeds are disrupted by the demolition activities, they will be taken by harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, then there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, may have adverse effects on individuals and are considered a "take" by NMFS because of the potential for injury or death. As described in this document, harbor seals in the Mugu Lagoon are exposed to noise levels far greater than those expected during the demolition activities described in NBVC's application, and there is no evidence that noise-induced injury or deaths have occurred. The effects of the demolition activities are expected to be limited to short-term and localized behavioral changes (The Environmental Group and LGL Ltd., 2001).

According to NBVC's 2001–2002 marine mammal monitoring report, seals present at the haul-out site responded to the front loader back-up alarm (measured at approximately 78 dBA) by raising their heads and looking toward the construction site. During sounding of the alarm, approximately 7 seals in the haul-out moved around the site, but did not enter the water. Shortly after the alarm stopped, the seals resumed their "normal" haul-out behavior. After this occurred, the back-up alarm was disengaged to minimize disturbance.

For a further discussion on the anticipated effects of the planned demolition activities on marine

mammals in the area and their food sources, please refer to the application (The Environmental Company and LGL Ltd., 2001). Information in the application and referenced sources is preliminarily adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Taken

NBVC estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	Potential Harassment Takes 2002
Harbor Seals*	288
Northern Elephant Seal*	8
California Sea Lion*	12

* Some individual seals may be harassed more than once

Possible Effects of Demolition Activities on Marine Mammal Habitat

NBVC anticipates no loss or modification to the habitat used by marine mammal populations that haul out within the Mugu Lagoon. Demolition activities will occur on shore above the highest tide mark, and the demolition contractor will ensure that building refuse will not enter the waters of the lagoon (New World Technology, 2001). The tidal patterns in the lagoon and structure of the nearby sandy haul-out areas will not be altered by these shore-based demolition activities.

The pinnipeds that may be present in Mugu Lagoon leave the lagoon area to feed in the open sea (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 1998); therefore, it is not expected that the demolition activities will have any impact on the food or feeding success of these marine mammals.

Possible Effects of Demolition Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters; thus there are no anticipated effects on subsistence needs.

Mitigation

No pinniped mortality and no significant long-term effect on the stocks of pinnipeds hauled out in the Mugu Lagoon are expected based on the relatively low levels of sound generated by the demolition equipment (i.e., 100 dBA within 50 ft (15.2 m) from the source) and the relatively short time period over which the project will take place (approximately 8 weeks). However, NBVC does expect that the demolition activities may cause disturbance reactions by some of the pinnipeds on the beaches. To reduce the potential for disturbance from visual and acoustic stimuli associated with the demolition project, NBVC will undertake a variety of mitigation measures. In addition to these measures to be taken by NBVC, the construction contractor has developed detailed work plans for the project, which emphasize that special consideration is required to minimize disturbances to the resident harbor seal population (New World Technology, 2001). Mitigation measures will include:

(1) Prior to each day of demolition or removal activities, NBVC Point Mugu Environmental Division personnel will inspect the work site to ensure compliance with the construction contractor's work plan, and to assess the number and types of marine mammals that are occupying the lagoon. Depending on results of initial observations and subsequent planned activities, the NBVC personnel will decide each day whether marine mammal monitoring for the entire day is needed (see Monitoring section). Work will be suspended or conducted in another area in the event that a monitoring biologist or a member of the demolition crew sights a marine mammal hauled out in an area where there is a risk that the animal may come into physical contact with construction machinery or personnel.

(2) The demolition contractor will ensure that work areas are caution taped as a barricade against inadvertent entry of unauthorized personnel where physical barriers are not already present. Before start of the activities, demolition personnel will be advised of all marine mammal mitigation measures.

(3) Work outside of the fenced boundary on the lagoon side of the site will be minimized to the extent possible. Work within 100 feet (30.48 meters) of the lagoon will be done manually where possible (New World Technology, 2001).

(4) During excavations, tarps will be carefully placed over areas in such a way as to reduce "flapping" during installation by unfolding the tarps in sections as they are installed. The edges of the tarps will be held down and secured with sandbags and/or tent stakes to prevent movement of the tarp during windy conditions.

(5) To reduce sound levels in proximity to harbor seal haul-out sites, concrete slabs that form the bases of some buildings and the pools will be sectioned using concrete cutting saws, rather than the hydraulic concrete breaker, where possible.

Monitoring

As part of its application, NBVC provided a proposed monitoring plan for assessing impacts to marine mammals from demolition activities in Mugu Lagoon. This monitoring would be entirely land-based and is designed to determine if there are disturbance reactions, to determine the area over which reactions occur, and to characterize harbor seal reactions to demolition sounds.

The monitoring program would be via direct visual observation. NBVC proposes to conduct a minimum of twice-daily monitoring efforts during each day of demolition, and conduct all-day monitoring when marine mammals are present or when new procedures or equipment are employed relative to previous project activities. Marine mammal monitors would record a variety of information including: (1) date and time, (2) weather, (3) tide state, (4) composition and locations of the haul-out groups of pinnipeds within the lagoon, (5) horizontal visibility (estimated by determining what the furthest visible object is relative to the interacting seals using known positions of local objects and accounting for obstructing terrain), and (6) occurrence, or planned occurrence, of any other military aircraft activity or other anthropogenic activities in or around the lagoon.

Through direct visual observation the number of seals hauled out and haul-out locations would be documented during the demolition. After each day's demolition activities, the marine mammal monitor would again inspect the work site and record information about the marine mammals within the lagoon. This monitoring plan would also provide data required to characterize the extent and nature of "taking".

Reporting

NBVC will provide an initial report to NMFS within 90 days after the demolition and removal activities cease. This report will provide dates and locations of demolition activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In the unanticipated event that any cases of pinniped mortality are judged to result from demolition activities, this will be reported to NMFS immediately.

Endangered Species Act (ESA)

NBVC has not requested the take of any species listed under the ESA and the proposed authorization would not affect any such species. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required at this time.

National Environmental Policy Act (NEPA)

The Department of the Navy, following Council on Environmental Quality regulations (40 CFR 1500), has found that demolition and disposal involving buildings or structures neither on, nor eligible for, listing on the National Register of Historic Places and requiring removal of hazardous materials, are categorically excluded from further documentation under NEPA (32 CFR 775, Department of Navy Procedures for Implementing the National Environmental Policy Act). NBVC has prepared a Record of Categorical Exclusion for all phases of this demolition project.

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act , May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined, based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996); the content and analysis of the NBVC's request for an IHA and its Site Work/Final Survey Plan, that the proposed issuance of this IHA to NBVC by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, based on this analysis, the action of issuing an IHA for these activities meets the definition of a "Categorical Exclusion" as defined under NOAA Administrative Order 216–6 and is exempted from further environmental review.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting demolition and removal activities in Mugu Lagoon will result, at worst, in a temporary modification in behavior by harbor seals, and potentially northern elephant seals and California sea lions. While behavioral modifications may be made by these species to avoid the resultant acoustic and visual stimuli, previous observations of the responses of pinnipeds to loud military overflights and regular human activities near the Mugu Lagoon haul-out sites have not shown injury, mortality, or extended disturbance. Therefore, NMFS preliminarily concludes that the effects of the planned demolition activities will have no more than a negligible impact on pinnipeds.

Due to the localized nature of these activities, the number of potential takings by harassment are estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near Mugu Lagoon during the period of demolition activities.

Proposed Authorization

NMFS proposes to issue an IHA to NBVC for demolition activities to take place in Mugu Lagoon, CA during a 1–year period provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals and potentially northern elephant seals and California sea lions; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Dated: July 23, 2002.

David Cottingham,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19233 Filed 7–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062102A]

Small Takes of Marine Mammals Incidental to Specified Activities; Taking of Marine Mammals Incidental to Power Plant Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a 1–year Letter of Authorization (LOA) to take harbor, gray, harp and hooded seals incidental to intake cooling water operations at Seabrook Station nuclear power plant, Seabrook, NH has been issued to the North Atlantic Energy Service Corporation (North Atlantic).

DATES: Effective from June 26, 2002 through June 25, 2003.

ADDRESSES: A copy of the application is available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contact listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128 or Salvatore Testaverde, Northeast Regional Office, NMFS, (978) 281–9368.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means

effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of several species of seals incidental to intake cooling water operations at Seabrook Station nuclear power plant were published on May 25, 1999 (64 FR 28114), and remain in effect until June 30, 2004. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of harbor seals (Phoca vitulina), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) at Seabrook Station.

Summary of Request

NMFS received a request from North Atlantic on June 4, 2002, for renewal of their LOA, which expires on June 26, 2002, to lethally take 20 harbor seals and 4 of any combination of gray, harp, and hooded seals at Seabrook Station. However, North Atlantic noted in their annual report that no seals have been entrapped in Seabrook's offshore intake structures since the installation of the Seal Deterrent Barriers in August 1999.

Authorization

Based on the determinations made in 1999 (64 FR 28114, May 25, 1999) and that annual reports submitted by North Atlantic indicate that no seals have been killed incidental to operations at Seabrook Station, NMFS has issued an LOA to North Atlantic for the taking of harbor seals, gray seals, harp seals, and hooded seals incidental to operations of the Seabrook Station with the understanding that the mitigation, monitoring, and reporting requirements described in 50 CFR 216.134–135 and in the LOA are undertaken.

Dated: July 24, 2002.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19231 Filed 7–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–42]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–42 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/008901

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-42 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Netherlands for defense articles and service estimated to cost $21 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-42

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Netherlands**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$15 million
Other	$ 6 million
TOTAL	$21 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 14 SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD missiles (5 tactical missiles with warheads and 9 telemetry missiles), 14 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.**

(iv) **Military Department: Navy (AFU)**

(v) **Prior Related Cases, if any:**
FMS case AFN - $29 million – 29Nov99
FMS case AEY - $20 million – 28Sep90
FMS case AEM - $26 million – 30Oct85

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 22 JUL 2002

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Netherlands – SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD Missiles

The Government of the Netherlands has requested a possible sale of 14 SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD missiles (5 tactical missiles with warheads and 9 telemetry missiles), 14 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $21 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of the Netherlands and furthering standardization and interoperability.

The Netherlands will install these missiles on its new frigates and operate the frigates in a manner similar to its current ship operations. The Netherlands, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Company of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-42

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-2 Block IIIA STANDARD missile is a U.S. Navy surface launched guided missile and is classified Secret. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles, and ships). The guidance system employs a continuous-wave or interrupted continuous wave radar link for homing in a target. Steering and roll commands from the adaptive auto-pilot system provide flight stability via four aft mounted control surfaces. Propulsion is provided by a solid propellant, dual thrust rocket motor that is an integral part of the missile airframe. The target detecting device (TDD) is a complex fuze with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the Netherlands can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–19148 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–43]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. this is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–43 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/008931

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-43 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to The Republic of Korea for defense articles and service estimated to cost $66 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-43

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$12 million
Other	$54 million
TOTAL	$66 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 9 excess P-3B aircraft; 16 T56-A-14 and 20 T56-A-10W engines, refurbishment and modification of T-56 engines, propellers, and landing gears; secure communications systems, missile warning systems, countermeasures dispensing systems, aircraft cockpit enhancements, acoustic receiver and processor system, missile warning and missile countermeasures dispensing systems, data management system, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical data, system software development and installation, ground/flight testing of new systems and system modifications, U.S. Government and contractor engineering and logistics services and other related elements of program support.

(iv) Military Department: Navy (SDJ)

(v) Prior Related Cases, if any: FMS case SCG - $245 million – 28May91

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 22 JUL 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea – P-3B Aircraft

The Republic of Korea (ROK) Government has requested a possible sale of 9 excess P-3B aircraft; 16 T56-A-14 and 20 T56-A-10W engines, refurbishment and modification of T-56 engines, propellers, and landing gears; secure communications systems, missile warning systems, countermeasures dispensing systems, aircraft cockpit enhancements, acoustic receiver and processor system, missile warning and missile countermeasures dispensing systems, data management system, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical data, system software development and installation, ground/flight testing of new systems and system modifications, U.S. Government and contractor engineering and logistics services and other related elements of program support. The estimated cost is $66 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The ROK Navy (ROKN) intends to use the P-3B aircraft to patrol its economic exclusion zone, including anti-submarine warfare, anti-surface warfare and search/rescue operation.

The principal contractors will be Rolls-Royce Engine Services of Oakland, California and Knight Aerospace Product, Incorporated of San Antonio, Texas. One or more proposed offset agreements may be related to this proposed sale.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Implementation of this proposed sale will require the assignment of up to ten Contractor Engineering Technical Services for two years to the Republic of Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-43

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The P-3B Maritime Surveillance Aircraft have been declared excess defense articles to the U.S. Navy inventory. There is currently no sensitive technology aboard these aircraft that are being provided "as is, where is." Upon delivery, the successful competitive contractor, to modernize the aircraft, will incorporate undetermined releasable technology equivalent to the U.S. Navy Anti-Surface Warfare Improvement Program (AIP)/Block Modification Upgrade Program (BMUP) aircraft and will include technology similar to the Republic of Korea Navy (ROKN) current P-3C Update III aircraft. Featured in the ROKN current aircraft are the AN/APS-
137(V)(6 – 360 degree Inverse Synthetic Aperture Radar (ISAR), AN/ALR-66B(V)3 + ADACS Electronics Surveillance Measure (ESM) system, AN/UYS-1(V)10 acoustic processor, AN/ASQ-212/CP-2044 tactical computer and the AN/AWG-19C(V)1 Harpoon Missile/Control armament system.

2. A determination has been made that the Republic of Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–19149 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–45]

36(b)(1) Arms Sales Notification

AGENCY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–45 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 23: 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/009500

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-45 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Australia for defense articles and services estimated to cost $106 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Australia**

(ii) **Total Estimated Value:**

Major Defense Equipment*	**$ 85 million**
Other	**$ 21 million**
TOTAL	**$106 million**

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: up to 92 JAVELIN anti-tank missile systems (consisting of up to 92 JAVELIN command launch units, up to 666 JAVELIN missile rounds, and 10 lot acceptance missiles), simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.**

(iv) **Military Department: Army (ZYH)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 2 2 JUL 2002

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Australia – JAVELIN Anti-tank Missile Systems

In support of a proposed Australia open tender competition, the Government of Australia has requested a possible sale of up to 92 JAVELIN anti-tank missile systems (consisting of up to 92 JAVELIN command launch units, up to 666 JAVELIN missile rounds, and ten lot acceptance missiles), simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is up to $106 million.

If down-selected by Australia, the proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an ally which has been and continues to be an important force for political stability and economic progress in the Asia Pacific region.

If this system is down-selected, Australia will use these JAVELIN anti-tank missile systems to enhance their direct fire capability for infantry, cavalry and commando units against armored vehicles, buildings and field fortifications. This system will provide Australia with a strong man-portable direct fire capability and will increase interoperability with U.S. forces. Australia will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor, if selected, will be JAVELIN Joint Venture (Raytheon and Lockheed Martin) of Orlando, Florida. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team or two U.S. Government and one contractor representatives to Australia for one week to assist in the delivery and deployment of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale if down-selected.

Transmittal No. 02-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major components; a reusable command launch unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. JAVELIN's key technical feature is the use of fire-and-forget technology that allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–19150 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–48]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Corporation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–48 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/009672

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-48 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Czech Republic for defense articles and services estimated to cost $35 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-48

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Czech Republic

(ii) Total Estimated Value:

Major Defense Equipment*	$25 million
Other	$10 million
TOTAL	$35 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 150 AIM-9M-8/9 Sidewinder missiles, training missiles, All-Up-Round containers, test and tool sets, support equipment, maintenance facilities, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and personnel services, and other related elements of logistics support.

(iv) Military Department: Navy (AAB)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 22 JUL 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Czech Republic – AIM-9M-8/9 Sidewinder Missiles

The Government of the Czech Republic has requested a possible sale of 150 AIM-9M-8/9 Sidewinder missiles, training missiles, All-Up-Round containers, test and tool sets, support equipment, maintenance facilities, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and personnel services, and other related elements of logistics support. The estimated cost is $35 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of the Czech Republic and further weapon system standardization and interoperability with U.S. forces.

The proposed sale of the AIM-9M missile system is being addressed in conjunction with the planned upgrade of Advance Light Attack Combat aircraft (L-159). These missiles will enhance the Czech Republic Armed Forces' current air-to-air intercept capability to equipment capabilities within their region of operations.

The prime contractor will be Raytheon Systems Corporation of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Implementation of this proposed sale will require the assignment of several U.S. Government and contractor representatives for one week intervals to participate in program review and technical reviews to the Czech Republic.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-48

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The external view of the AIM-9M-8/9 Sidewinder missile is Unclassified and not sensitive. Advanced technology included in the missile: Active Optical Target Detector (AOTD), Gyro Optics Assembly within the Guidance Control Section (GCS), Infrared Countermeasures (IRCM) Detection and Rejection Circuitry, and a reduced smoke rocket motor. The equipment/hardware, software, and maintenance are classified Confidential. Pilot training is classified Secret. Manuals and technical documents are classified Secret. Performance and operating information are classified Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that could reduce overall effectiveness.

3. A determination has been made that the Czech Republic can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–19151 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–49]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassfied text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Trasmittal 02–49 with attached transmittal and policy justification.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/009752

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith transmittal no. 02-49 and under separate cover, the classified documents thereto. This transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Poland for defense articles and services estimated to cost $1,049 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Separate Cover:
Classified Annex
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-49

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) **Prospective Purchaser: Poland**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 957 million
Other	$ 92 million
TOTAL	$1,049 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 4 F-16C Block 50/52 aircraft with either the F100-PW-229 or F110-GE-129 engines and APG-68(V)9 FMS radars, 10 LAU-129 Launchers, 22 PANTERA weapon targeting systems, 6 reconnaissance pods, 48 conformal fuel tanks, 8 autonomous air combat maneuvering instruments, 48 Joint Helmet Mounted Cueing Systems, 48 Link 16 NATO Datalink Systems, 48 Advanced Integrated Defensive Electronic Warfare Suites, 20 Night Vision Goggles, 4 AN/APX-113 Identification Friend or Foe systems, 8 AN/ARC-210 SINCGAR radios with HAVE QUICK II, 1 Pratt and Whitney F-100-PW-229 or F-110-GE-129 spare engine, 1 spare APG-68(V)9 FMS radar set, 178 AIM-9X Sidewinder missiles, 24 AIM-9X Sidewinder training missiles, 280 AGM-154A/C Joint Stand-Off Weapons, 215 MK-82 500# general purpose bombs, 140 CBU-97 bombs with Wind Correct Munitions Dispenser, and 214 GBU-22/24 Paveway III guided bomb units, associated support equipment, software development/integration, Night Vision Goggle-compatible cockpits, practice bombs, training missiles, ammunition, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Air Force (SAC)**

(v) **Prior Related Cases, if any:**
FMS case SAA - $245 million – pending
FMS case SAB - $4,300 million - pending

*** as defined in Section 47(6) of the Arms Export Control Act.**

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover

(viii) Date Report Delivered to Congress: 22 JUL 2002

POLICY JUSTIFICATION

Poland - F-16C Aircraft

The Government of Poland has requested a possible sale of 4 F-16C Block 50/52 aircraft with either the F100-PW-229 or F110-GE-129 engines and APG-68(V)9 FMS radars, 10 LAU-129 Launchers, 22 PANTERA weapon targeting systems, 6 reconnaissance pods, 48 conformal fuel tanks, 8 autonomous air combat maneuvering instruments, 48 Joint Helmet Mounted Cueing Systems, 48 Link 16 NATO Datalink Systems, 48 Advanced Integrated Defensive Electronic Warfare Suites, 20 Night Vision Goggles, 4 AN/APX-113 Identification Friend or Foe systems, 8 AN/ARC-210 SINCGAR radios with HAVE QUICK II, 1 Pratt and Whitney F-100-PW-229 or F-110-GE-129 spare engine, 1 spare APG-68(V)9 FMS radar set, 178 AIM-9X Sidewinder missiles, 24 AIM-9X Sidewinder training missiles, 280 AGM-154A/C Joint Stand-Off Weapons, 215 MK-82 500# general purpose bombs, 140 CBU-97 bombs with Wind Correct Munitions Dispenser, and 214 GBU-22/24 Paveway III guided bomb units, associated support equipment, software development/integration, Night Vision Goggle-compatible cockpits, practice bombs, training missiles, ammunition, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $1,049 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Poland while enhancing weapon system standardization and interoperability with U.S. forces.

This proposed sale of the F-16 aircraft would enhance NATO interoperability and simultaneously provide operational capabilities as Poland's inventory of Soviet-era aircraft is eventually retired. This proposed sale would not impact the regional military balance of power.

The principal contractors will be Lockheed Martin Aeronautics Company in Fort Worth, Texas; Pratt and Whitney in East Hartford, Connecticut; General Electric Aircraft Engines in Cincinnati, Ohio; Raytheon Corporation in Lexington, Massachusetts; and Boeing Company in Seattle, Washington. One or more proposed offset agreements may be related to this proposed sale.

Implementation will require the assignment of approximately 12 each U.S. Government and contractor representatives for a period of up to four years to provide program support commencing with delivery of the aircraft to Poland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–19152 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–50]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–50 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/009918

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-50 and, under separate cover, the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Spain for defense articles and services estimated to cost $57 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies

Richard J. Millies
Acting Director

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-50

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U), as amended

(i) Prospective Purchaser: Spain

(ii) Total Estimated Value:

Major Defense Equipment*	$45 million
Other	$12 million
TOTAL	$57 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 29 SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD missiles (29 tactical missiles with warheads), 29 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (ANC)

(v) Prior Related Cases, if any:
FMS case AMB - $33 million – 17Dec99
FMS case AKX - $93 million - cancelled

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 22 JUL 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Spain – SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD Missiles

The Government of Spain has requested a possible sale of 29 SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD missiles (29 tactical missiles with warheads), 29 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $57 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of Spain and furthering standardization and interoperability.

The SM-2 Block IIIA missiles will replace Spain's expiring SM-1 inventory and increase their stock levels. The missiles will be used on AEGIS F100 Class ships being built in Spain. Spain, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: STANDARD Missile Company of McLean, Virginia, and Raytheon Missile Systems Company of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-50

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-2 Block IIIA STANDARD missile is a U.S. Navy surface-launched guided missile and is classified Secret. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles, and ships). The guidance system employs a continuous wave or interrupted continuous wave radar link for homing in a target. Steering and roll commands from the adaptive auto-pilot system provide flight stability via four aft-mounted control surfaces. Propulsion is provided by a solid propellant, dual thrust rocket motor that is an integral part of the missile airframe. The target detecting device (TDD) is a complex fuze with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Spain can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–19153 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 30, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 24, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.
Title: William D. Ford Federal Direct Loan Program Repayment Plan Selection Form.
Frequency: On Occasion.
Affected Public: Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 1,927,000.
Burden Hours: 635,910.
Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to select a repayment plan for their loans.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2116. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address Vivian.Reese@ed.gov. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his email address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19157 Filed 7–29–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Draft Environmental Assessment (EA) for Future Location of the Heat Source/Radioisotope Power System Assembly and Test Operations Currently Located at the Mound Site—Issued for public comments

AGENCY: Department of Energy.

ACTION: Solicitation of public comments.

SUMMARY: In compliance with the requirements of the National Environmental Policy Act of 1969, the Department has prepared a draft EA for the future location of the Heat Source/Radioisotope Power Systems (HS/RPS) assembly and test operations program currently located at the Mound site in Miamisburg, Ohio. After the events of September 11, 2001, a department-wide review of security identified the need for enhanced security measures at Mound to protect the materials associated with the program and the surrounding community. The Department analyzed a range of options including, upgrading the existing infrastructure at Mound site to enable the program to remain in that location as well as transferring the operations to more secure locations at the Pantex Site in Texas or the Argonne National Laboratory-West site in Idaho. The Department's highest priority is ensuring the health and safety of the workers at its sites and the communities surrounding them. With this responsibility at the forefront, the Department held four public meetings to discuss the future of this program. Information received from this public scoping process and preliminary assessments of the costs and schedules associated with the various alternatives, led to identification of DOE's Argonne National Laboratory-West site as the preferred site for the future location of the HS/RPS program. The Department is soliciting comments on the draft EA from the affected Federal, state, and local agencies and Tribal governments, and interested public.

DATES: Comments on the draft EA are due on August 20, 2002.

ADDRESSES: Copies of the EA are available from Mr. Timothy A. Frazier and comments should be transmitted to him in any of the following ways: U.S. mail to: Mr. Timothy A. Frazier, U.S. Department of Energy, PO Box 66, Miamisburg, OH 45343–0066 [Phone: (937) 865–3748]; Facsimile: (937) 865–4489; electronic mail: *Tim.Frazier@HQ.DOE.GOV*.

SUPPLEMENTARY INFORMATION: The Department issued a **Federal Register** notice on May 31, 2002, announcing the public scoping meetings for the subject EA. Public scoping meetings were held in Washington, DC metropolitan area, Miamisburg, Ohio, Amarillo, Texas, and Idaho Falls, Idaho. Comments received on the scope of the EA were considered in preparation of the draft of the EA which is now being made available to the public and affected government agencies and Tribes. For consideration in preparation of the final EA, comments should be transmitted to Mr. Timothy A. Frazier, as specified above,

no later than August 20, 2002. Comments received after that date will be considered to the extent practicable. The Department has now identified the Argonne National Laboratory-West site as the preferred site for the future location of the HS/RPS program. On the basis of the significance of environmental impacts evaluated in the EA, the Department will issue a Finding of No Significant Impact or proceed with the preparation of an Environmental Impact Statement.

Issued in Washington, DC, July 23, 2002.

William D. Magwood, IV,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 02–19220 Filed 7–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–389–000]

ANR Pipeline Company; Notice of Proposed Change to FERC Gas Tariff

July 24, 2002.

Take notice that on July 15, 2002, ANR Pipeline Company (ANR), tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighth Revised Sheet No. 45E.01 to be effective August 15, 2002.

ANR states that the purpose of this filing is to designate in its tariff a new point eligible for service under its existing Rate Schedule IPLS.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19216 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–4021]

Buck Creek Corporation; Notice of Site Visit

July 24, 2002.

Buck Creek Corporation, licensee for the Lake Tahoma Hydroelectric Project (Project), is requesting to surrender its license. On August 14, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site visit of the Project. Representatives of Buck Creek Corporation will accompany the OEP staff. All interested parties may meet at 10:00 a.m. at the Project powerhouse located at the Lake Tahoma dam. Attendees must provide their own transportation.

For further information, please contact Shannon Dunn at (202) 208–0853 or the Commission's Office of External Affairs at (866) 208–FERC.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19205 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–058]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

July 24, 2002.

Take notice that on July 18, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction: FTS–1 Service Agreement No. 73130 between Columbia Gulf Transmission Company and Conoco, Inc., dated July 1, 2002.

Transportation service is to commence July 1, 2002 under the agreement.

Columbia Gulf states that copies of the filing has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19211 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–403–000]

Dominion Transmission, Inc.; Notice of Application

July 24, 2002.

Take notice that on July 10, 2002, Dominion Transmission, Inc. (Dominion), 445 West Main Street, Clarksburg, West Virginia, 26301, filed in Docket No. CP02–403–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon its Storage Wells Nos. RN–2178 and RN–2189 of the Racket Newberne Storage Complex in Gilmer County, West Virginia, all as more fully set forth in the application.

All as more thoroughly described in the application on file with the Commission and open to public inspection. Copies of this application are on file with the Commission and are

available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "Rims" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Dominion states that the physical condition of the facilities proposed for abandonment have deteriorated to the extent that an expensive repair or abandonment is required. Dominion further states that it has determined that repairs would be uneconomic due to the poor performance of the wells and the use of the wells is unnecessary for the continued operation of the Racket Newberne Storage Complex.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia, 26301 at (304) 627–3462 or by fax at (304) 627–3305.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 14, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19201 Filed 7–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–390–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 24, 2002.

Take notice that on July 18, 2002 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 193; Original Sheet No. 193A, and First Revised Sheet No. 194.

Eastern Shore states that the tariff sheets are being submitted to comply with Commission Order No. 587–N, issued on March 11, 2002 in Docket No. RM96–1–019. Order No 587–N requires interstate pipelines to make tariff filings to be effective July 1, 2002 "to comply with the requirement to implement recalls of scheduled and unscheduled capacity for the Timely and Evening Nomination cycles and for recalls of unscheduled capacity."

Eastern Shore states that copies of its filing has been mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19217 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–118003]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

July 24, 2002.

Take notice that on July 18, 2002, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Substitute Fifth Revised Sheet No. 171. HIOS requests that this sheet be made effective January 4, 2002.

HIOS states that the referenced sheet is being filed in compliance with the Federal Energy Regulatory Commission's July 3, 2002 Order in the referenced proceeding, which required HIOS to use the recourse rate as the cap on the valuation of a negotiated rate nomination for interruptible service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This

filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19215 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–066]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

July 24, 2002.

Take notice that on July 17, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective August 1, 2002.

Natural states that the purpose of this filing is to implement two (2) negotiated rate transactions with Natural and Illinois Power Company under Natural's Rate Schedules FTS and NSS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to interested state commissions and all parties set out on the Commission's official service list at Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19212 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–403–002 and RP01–388–003]

Northern Border Pipeline Company; Notice of Compliance Filing

July 24, 2002.

Take notice that on July 17, 2002, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 revised tariff sheets listed on Appendices A and B to the filing.

Northern Border states that the revised tariff sheets are being filed in order to comply with the Commission's May 16, 2002 Order in the referenced proceedings, which relates to Northern Border's previous filings to comply with Order Nos. 637, 637-A, and 637-B.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted Shippers, interested state regulatory commissions, and all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19213 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–11–003]

Pan Energy Louisiana Intrastate, LLC; Notice To Change Statement of Operating Conditions

July 24, 2002.

Take notice that on June 28, 2002, Pan Energy Louisiana Intrastate, LLC (PELICO) filed, pursuant to Section 284.123(e) of the Commission's regulations, a revised Statement of Operating Conditions to reflect a change in the index price for delivery points from the Gas Daily Tennessee, 100 Leg Index to the Gas Daily Tennessee, 500 Leg Index. In addition, PELICO is reflecting a change in name from Pan Energy Louisiana Intrastate Company to Pan Energy Louisiana Intrastate, LLC. PELICO requests a proposed effective date of July 1, 2002.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to protest this rate proceeding must file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed with the Secretary of the Commission on or before August 8, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This petition is on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the

instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19210 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–108–000]

Truckee Donner Public Utility District v. Idaho Power Company, IDACORP Energy, L.P., and IDACORP, Inc.; Notice of Complaint

July 24, 2002.

Take notice that on July 23, 2002, the Truckee Donner Public Utility District (Truckee) filed a complaint against Idaho Power Company, IDACORP Energy, L.P., and IDACORP, Inc. (the Idaho parties).

In the complaint, Truckee seeks reformation or termination of a long-term contract for the purchase of wholesale electric power from the Idaho parties, which the parties entered into (under Idaho Power's market-based tariff) during the recent crisis in Western electric power markets, and other related relief.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before August 12, 2002.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before August 12, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.

Deputy Secretary

[FR Doc. 02–19202 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–497–001 and RP01–47–003]

Viking Gas Transmission Company; Notice of Compliance Filing

July 24, 2002.

Take notice that on July 17, 2002, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the tariff sheets listed on Appendix A to the filing, to become effective September 15, 2002.

Viking states that the purpose of this filing is to comply with the Order on Compliance with Order Nos. 637, 587-G and 587-L, that the Commission issued on June 17, 2002 in Docket No. RP00–497–000 ("June 17, 2002 Order").

Viking states that copies of the filing have been mailed to all of its jurisdictional customers, to affected state regulatory commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19214 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–170–000, et al.]

Bonnet Carre Power, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 23, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Bonnet Carre Power, L.L.C.

[Docket No. EG02–170–000]

Take notice that on July 19, 2002, Bonnet Carre Power, L.L.C. (Applicant), a Delaware limited liability company, with its principal office located at 101 Ash Street, San Diego, California 92101, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended. Applicant states it will be engaged directly and exclusively in operating an approximately 1200 MW natural gas-fueled electric generating facility (the Facility) located in St. John the Baptist Parish, four miles south of the City of LaPlace, Louisiana, and selling energy at wholesale from the Facility.

Comment Date: August 13, 2002.

2. PacifiCorp

[Docket No. ER02–2333–000]

Take notice that on July 16, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) the First Amendment and Restated Long-Term Power Sales Agreement between PacifiCorp and Southern California Edison Company, (Agreement). The Agreement amends PacifiCorp's FERC Electric Rate Schedule No. 248 (as supplemented). PacifiCorp requests an effective date of January 1, 2002, as well as waiver for good cause of the Commission's prior Notice and Filing Requirements.

Copies of the filing were served upon Southern California Edison Company and the state commissions of California,

Montana, Oregon, Washington, Utah, and Idaho.

Comment Date: August 6, 2002.

3. Virginia Electric and Power Company

[Docket No. ER02–2334–000]

Take notice that on July 17, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the following Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Dominion Energy Marketing, Inc. designated as Service Agreement No. 368 under the Company's FERC Electric Tariff, Second Revised Volume No. 5; and Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Dominion Energy Marketing, Inc. designated as Service Agreement No. 369 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to Dominion Energy Marketing, Inc. under the rates, terms and conditions of the Open Access Transmission Tariff. Dominion Virginia Power requests an effective date of June 18, 2002, as requested by the customer.

Copies of the filing were served upon Dominion Energy Marketing, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission. *Comment Date:* August 7, 2002.

4. PacifiCorp

[Docket No. ER02–2335–000]

Take notice that on July 18, 2002, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission's Rules and Regulations, an Amended and Restated Long Term Power Sales Agreement with Utah Municipal Power Agency.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon. *Comment Date:* August 8, 2002.

5. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–2336–000]

Take notice that on July 19, 2002, Union Electric Company d/b/a/ AmerenUE (AmerenUE), pursuant to Part 35 of the regulations of the Federal Energy Regulatory Commission (Commission), submitted for filing an executed interchange Agreement with Associated Electric Cooperative. UE seeks Commission acceptance of this agreement effective July 19, 2002.

Copies of this filing were served on the Missouri Public Service commission and the counter party.

Comment Date: August 9, 2002.

6. Energy Investments Management, Inc.

[Docket No. ER02–2338–000]

Take notice that on July 18, 2002, Energy Investments Management, Inc. (EIM) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of EIM Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

EIM intends to engage in wholesale electric power and energy purchases and sales as a marketer. EIM is not in the business of generating or transmitting electric power.

Comment Date: August 8, 2002.

7. Citadel Energy Products LLC

[Docket No. ER02–2339–000]

Take notice that on July 18, 2002, Citadel Energy Products LLC submitted for filing, pursuant to section 205 of the Federal Power Act, and part 35 of the Commission's regulations, an application for authorization to make sales, as a power marketer, of capacity, energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; and to resell firm transmission rights (FTRs).

Comment Date: August 8, 2002.

8. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–2340–000]

Take notice that on July 18, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 156 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply requests a waiver of notice requirements for an effective date of June 24, 2002 for Indianapolis Power & Light Company.

Copies of the filing have been provided to all parties of record.

Comment Date: August 8, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19196 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4273–012, et al.]

Cargill-Alliant, LLC, et al.; Electric Rate and Corporate Regulation Filings

July 22, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Cargill-Alliant, LLC

[Docket No. ER97–4273–012]

Take notice that on July 15, 2002, Cargill-Alliant, LLC, tendered for filing a notification of change in status with respect to its authority to engage in wholesale sales of capacity, energy, and ancillary services at market-based rates.

Comment Date: August 5, 2002.

2. San Diego Gas & Electric Company

[Docket No. ER02–1558–001]

Take notice that on July 18, 2002, San Diego Gas & Electric (SDG&E) tendered for filing Amendment No. 1 to Service

Agreement No. 5 of SDG&E's FERC Electric Tariff, First Revised Volume No. 6. The Amendment No. 1 reflects changes made to Appendix J, the monthly Operation & Maintenance (O&M) charge that SDG&E will assess.

Comment Date: August 8, 2002.

3. UGI Utilities, Inc.

[Docket No. ER02–2042–001]

Take notice that on July 16, 2002, UGI, Utilities, Inc. (UGI) tendered for filing a substitute market-based rate schedule showing the correct designation as FERC Electric Rate Schedule No. 10 under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates. UGI requests an effective date of August 1, 2002.

Comment Date: August 6, 2002.

4. Nevada Power Company

[Docket No. ER02–2329–000]

Take notice that on July 16, 2002, Nevada Power Company (Nevada Power) tendered for filing an executed Memorandum of Understanding (MOU) between Nevada Power and Reliant Energy Bighorn, LLC.

Comment Date: August 6, 2002.

5. PacifiCorp

[Docket No. ER02–2331–000]

Take notice that on July 16, 2002, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission's Rules and Regulations, a First Amended Long Term Power Sales Agreement with Public Service Company of Colorado.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: August 6, 2002.

6. Florida Power & Light Company

[Docket No. ER02–2332–000]

Take notice that on July 16, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission an unexecuted Interconnection and Operation Agreement between FPL and Midway Generating Company, L.L.C. (Midway) that sets forth the terms and conditions governing the interconnection between Midway's generating project located in St. Lucie County, Florida and FPL's transmission system.

A copy of this filing has been served on Midway and the Florida Public Service Commission. The Interconnection and Operation Agreement is designated as Florida Power & Light Company Original Service Agreement No. 209 to its OATT, FERC Electric Tariff, Second Revised Volume No. 6.

Comment Date: August 6, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19195 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1982–017, 2567–009, 2639–009, 2491–025, and 2440–040—Wisconsin and Project No. 2670–014—Wisconsin]

Northern States Power Company, and City of Eau Claire; Notice of Availability of Environmental Assessment

July 24, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for new license for the Holcombe, Wissota, and Dells Projects, and amendments to license for the Chippewa Falls, Jim Falls, and Cornell Projects, located on the Chippewa River, in Chippewa, Rusk, and Eau Claire Counties, Wisconsin, and has prepared an Environmental Assessment (EA) for the projects. In the EA, the Commission's staff has analyzed the potential environmental effects of the projects, and has concluded that approval of the projects and amendments, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions. Please call (202) 208–2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Holcombe, Wissota, Dells, Cornell, Jim Falls, and Chippewa Falls Project Nos. 1982–017, 2567–009, 2670–014, 2639–009, 2491–025, and 2440–040" to all comments. For further information, contact Mark Pawlowski at (202) 219–2795 or e-mail *mark.pawlowski@ferc.gov*. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19203 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2652–007, Montana]

PacifiCorp; Notice of Availability of Final Environmental Assessment

July 22, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects staff has reviewed the application for a subsequent license for the Bigfork Hydroelectric Project located on the Swan River, in Flathead County,

Montana, and has prepared a final environmental assessment (EA) for the project. The project does not occupy any Federal or tribal lands. In the final EA, the Commission's staff has analyzed the potential environmental effects of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

On April 12, 2002, Commission staff issued a draft EA for the project and requested comments within 45 days. Five entities filed comments which are addressed in this final EA.

Copies of the final EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, NE., Washington, DC 20426, or by calling 202–208–1371. The document also can be viewed on the web at *http://rimsweb1.ferc.gov/rims* (call 202–208–2222 for assistance).

For further information, contact Steve Hocking at 202–219–2656.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18987 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11566–000–Maine]

Ridgewood Maine Hydro Partners, L.P.; Notice of Availability of Final Environmental Assessment

July 24, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486,52 FR 47879), the Office of Energy Projects has reviewed the application for an original license for the Damariscotta Mills Project, located on the Damariscotta River, in Lincoln, County, Maine, and has prepared an Environmental Assessment (EA) for the project. There are no Federal lands occupied by the project works or located within the project boundary. In the EA, the Commission staff has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2-A, of the Commission's offices at 888 First street, NE., Washington, DC 20426. The EA may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link-select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19206 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Addendum to January 30, 2002; Offer of Settlement

July 24, 2002.

Take notice that the following addendum to an offer of settlement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Addendum to January 30, 2002 Offer of Settlement.

b. *Project Nos.:* 2364–012 and 2365–023.

c. *Date Filed:* July 16, 2002.

d. *Applicant:* Madison Paper Industries.

e. *Name of Projects:* Abenaki and Anson Projects.

f. *Location:* On the Kennebec River, in the towns of Anson and Madison, Somerset County, Maine. The projects do not occupy any federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's rules of practice and procedure, 18 CFR 385.602.

h. *Applicant Contact:* Christopher C. Bean; Vice-President of Engineering, Maintenance, and Utilities; Main Street; P.O. Box 129, Madison, ME; (207) 696–1195. The applicant requests that copies of all correspondence be provided to Maureen Winters, Project Manager, Kleinschmidt Associates, 75 Main Street, P.O. Box 576, Pittsfield, ME 04967; (207) 487–3328.

I. *FERC Contact:* Nan Allen, (202) 219-2938, e-mail: *nan.allen@ferc.gov*

j. *Deadline for filing comments*: 20 days from the date of this notice. Reply comments due 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. Madison Paper Industries (MPI) filed an addendum to its January 30, 2002 offer of settlement on behalf of itself and the U.S. Fish and Wildlife Service; National Park Service, Bureau of Indian Affairs; Maine State Planning Office; Maine Department of Inland Fisheries and Wildlife; Maine Department of Marine Resources; Maine Department of Conservation; Maine Atlantic Salmon Commission; Town of Anson; Town of Madison; Appalachian Mountain Club; Trout Unlimited, including the Kennebec Valley Chapter of Trout Unlimited; Kennebec Valley Trails; Friends of the Kennebec Salmon; Maine Council of the Atlantic Salmon Federation; Maine Historic Preservation Commission; and American Rivers. In the addendum, the signatories agree that their intent is that the licensee not be obligated to implement any protection, mitigation, or enhancement measures earlier than May 1, 2004. The addendum additionally states that a parcel of land included in the shoreland buffer zone under the offer of settlement has been reserved by MPI for future development, and therefore, a separate set of conservation easement restrictions would be developed for the parcel.

l. A copy of the Addendum to the January 30, 2002 Offer of Settlement is on file with the Commission and is available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19204 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

July 24, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12258–000.

c. Date filed: June 20, 2002.

d. Applicant: Rathbun Hydro, LLC.

e. Name and Location of Project: The Rathbun Dam Hydroelectric Project would be located on the Chariton River in Appanoose County, Iowa. The project would utilize the U.S. Army Corps of Engineers' existing Rathbun Dam.

f. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)—825(r).

g. Applicant Contact: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. FERC Contact: James Hunter, (202) 219–2839.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions and may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link. Please include the project number (P–12258–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed project, using the existing Rathbun Dam and Lake, would consist of: (1) A proposed 700-foot-long, 8-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 3.5 megawatts, (3) a proposed one-mile-long, 25-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 10.4 gigawatthours.

k. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19207 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

July 24, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12264–000.

c. Date filed: June 24, 2002.

d. Applicant: Hannibal Hydro, LLC.

e. Name and Location of Project: The Hannibal L&D Hydroelectric Project would be located on the Ohio River in Wetzel County, West Virginia. The project would utilize the U.S. Army Corps of Engineers' existing Hannibal Locks and Dam.

f. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)—825(r).

g. Applicant Contact: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. FERC Contact: James Hunter, (202) 219–2839.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions and may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link. Please include the project number (P–12264–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed project, using the existing Hannibal Locks and Dam, would consist of: (1) Two proposed 50-foot-long, 196-inch-diameter concrete penstocks, (2) a proposed powerhouse containing two generating units, each with an installed capacity of 10 megawatts, (3) a proposed one-mile-long, 50-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 185 gigawatthours.

k. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19208 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

July 24, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12270–000.

c. Date filed: June 25, 2002.

d. Applicant: Universal Electric Power Corporation.

e. Name and Location of Project: The Gathright Dam Hydroelectric Project would be located on the Jackson River in Allegheny County, Virginia. The project would utilize the U.S. Army Corps of Engineers' existing Gathright Dam.

f. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)—825(r).

g. Applicant Contact: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. FERC Contact: James Hunter, (202) 219–2839.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions and may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link. Please include the project number (P–12270–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. *j. Description of Project:* The proposed project, using the existing Gathright Dam and Reservoir, would consist of: (1) A proposed penstock connecting to the existing discharge conduit, (2) a proposed powerhouse containing three generating units with a total installed capacity of 4.54 megawatts, (3) a proposed 12.7-kilovolt transmission line connecting to an existing substation, and (4) appurtenant facilities. The project would have an average annual generation of 17 gigawatthours.

k. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19209 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

July 24, 2002.

The following notice of metting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 31, 2002, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.— Items listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMAITON: Magalie R. Salas, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the reference and information center.

801st—Meeting July 31, 2002, Regular Meeting, 10:00 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
Docket# RM01–12, 000, Electricity Market Design and Structure

E–2.
Docket# ER02–2153, 000, ISO New England Inc.

E–3.
Docket# ER02–2233, 000, Grid America Participants

E–4.
Docket# ER02–2014, 000, Entergy Services, Inc.

E–5.
Omitted

E–6.
Docket# ER02–2043, 000, California Independent System Operator Corporation
Other#s ER02–2046, 000, California Independent System Operator Corporation

E–7.
Docket# ER02–2033, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–2033, 001, Midwest Independent Transmission System Operator, Inc.

E–8.
Omitted

E–9.
Omitted

E–10.
Omitted

E–11.
Docket# RT01–15, 002, Avista Corporation, Nevada Power Company, Portland General Electric Company and Sierra Pacific Power Company
Other#s ER02–323, 000, TransConnect, LLC

E–12.
Docket# RT01–35, 005, Avista Corporation, Bonneville Power Administration, Idaho Power Company, Nevada Power Company, Northwestern Energy, L.L.C., PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company and British Columbia Hydro and Power Authority
Other#s RT01–35, 007, Avista Corporation Bonneville Power Administration, Idaho Power Company, Nevada Power Company, Northwestern Energy, L.L.C., PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company and British Columbia Hydro and Power Authority

E–13.
Omitted

E–14.
Omitted

E–15.
Omitted

E–16.
Omitted

E–17.
Docket# ER97–2358, 002, Pacific Gas and Electric Company
Other#s ER97–2355, 002, Southern California Edison Company
ER97–2364, 002, San Diego Gas & Electric Company
ER97–4235, 002, San Diego Gas & Electric Company
ER98–497, 002, San Diego Gas & Electric Company
ER98–2322, 000, Southern California Edison Company
ER98–2351, 001, Pacific Gas and Electric Company
ER98–2371, 000, San Diego Gas & Electric Company

E–18.
Omitted

E–19.
Omitted

E–20.
Docket# TX02–1, 000, Pinnacle West Capital Corporation
Other#s TX02–1, 001, Pinnacle West Capital Corporation

E–21.
Docket# ER02–456, 001, Electric Generation LLC

E–22.
Omitted

E–23.
Omitted

E–24.
Omitted

E–25.
Docket# EL02–46, 001, Generator Coalition v. Entergy Services, Inc.
Other#s ER01–2201, 002, Entergy Services, Inc.

E–26.
Docket# EL02–58, 001, Public Service Company of New Mexico v. Arizona Public Service Company

E–27.
Omitted

E–28.
Docket# EL02–99, 000, Baja California Power, Inc.

E–29.
Omitted

E–30.
Docket# RM02–12, 000, Standardization of Small Generator Interconnection Agreements and Procedures

E–31.
Docket# EL02–65, 000, Alliance Companies
Other#s RT01–88, 016, Ameren Corporation

E–32.
Docket# EL02–98, 000, PSEG Power Cross Hudson Corporation

E–33.
Docket# EL02–63, 000, Constellation Power Source, Inc. v. California Power Exchange Corporation
Other#s EL02–104, 000, California Power Exchange Corporation

E–34.
Docket# EL02–95, 000, Constellation Power Source, Inc. v. American Electric Power Service Corporation and Southwest Power Pool, Inc.
Other#s ER02–2028, 000, American Electric Power Service Corporation

E–35.
Omitted

E–36.
Docket# ER00–2360, 000, Pacific Gas and Electric Company
Other#s ER00–2360, 001, Pacific Gas and Electric Company
ER00–2360, 003, Pacific Gas and Electric Company

E–37.
Omitted

E–38.
Omitted

E–39.
Omitted

E–40.
Omitted

E–41.
Docket# RT02–1, 000, Arizona Public Service Company
Other#s EL02–9, 000, Arizona Public Service Company

E–42.
Docket# ER00–2413, 008, American Electric Power Service Corporation
Other#s ER00–3435, 004, Carolina Power & Light Company
ER01–247, 006, Virginia Electric & Power Company

E–43.
Docket# PL02–7, 000, Policy Statement Regarding Standard of Review for Proposed Changes to Market-Based Rate

Contracts for Wholesale Sales of Electric Energy by Public Utilities

Miscellaneous Agenda

M–1.
Docket# RM02–11, 000, Civil Monetary Penalty Inflation Adjustment Rule
M–2.
Docket# RM02–10, 000, Electronic Registration
M–3.
Docket# RM02–3, 000, Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP02–147, 000, ANR Pipeline Company
Other#s RP02–147, 001, ANR Pipeline Company
G–2.
Docket# RP02–385, 000, Questar Southern Trails Pipeline Company
G–3.
Docket# RP96–389, 055, Columbia Gulf Transmission Company
G–4.
Docket# RP02–383, 000, Columbia Gas Transmission Corporation
G–5.
Docket# RP02–384, 000, Columbia Gulf Transmission Company
G–6.
Docket# RP96–312, 076, Tennessee Gas Pipeline Company
Other#s RP96–312, 077, Tennessee Gas Pipeline Company
RP96–312, 078, Tennessee Gas Pipeline Company
RP96–312, 079, Tennessee Gas Pipeline Company
RP96–312, 080, Tennessee Gas Pipeline Company
RP96–312, 081, Tennessee Gas Pipeline Company
G–7.
Omitted
G–8.
Docket# RP02–382, 000, Crossroads Pipeline Company
G–9.
Omitted
G–10.
Docket# RP02–379, 000, CMS Trunkline LNG Company, LLC
G–11.
Omitted
G–12.
Docket# RP01–350, 000, Colorado Interstate Gas Company
Other#s CP00–452, 000, Colorado Interstate Gas Company
CP01–1, 000, Colorado Interstate Gas Company
RP01–200, 000, Colorado Interstate Gas Company
RP01–350, 008, Colorado Interstate Gas Company
G–13.
Omitted
G–14.
Docket# RP02–367, 000, Northern Border Pipeline Company
G–15.
Omitted
G–16.
Omitted
G–17.
Docket# RP02–378, 000, Texas Gas Transmission Corporation
G–18.
Docket# RP02–368, 000, Midwestern Gas Transmission Company
G–19.
Omitted
G–20.
Omitted
G–21.
Docket# IS02–109, 002, Platte Pipe Line Company
G–22.
Omitted
G–23.
Omitted
G–24.
Docket# RP02–212, 001, Columbia Gulf Transmission Company
G–25.
Docket# RP02–213, 001, Columbia Gas Transmission Corporation
G–26.
Omitted
G–27.
Docket# MG02–2, 000, Central New York Oil and Gas Company, LLC
G–28.
Docket# RP02–309, 000, Sunoco, Inc. (R&M) v. Transcontinental Gas Pipe Line Corporation
G–29.
Omitted
G–30.
Docket# RP99–485, 000, Enbridge Pipelines (KPC)
G–31.
Docket# OR02–5, 000, Big West Oil, LLC, Chevron Products Company and Tesoro Refining and Marketing Company v. Elberta Energy Company, Ltd., Express Pipeline LLC and Platte Pipe Line Company
Other#s OR02–8, 000, Big West Oil, LLC, Chevron Products Company, Sinclair Oil Corporation and Tesoro Refining and Marketing Company v. Express Pipeline LLC
Other#s IS02–384, 000, Platte Pipe Line Company
G–32.
Docket# RP00–482, 002, Reliant Energy Gas Transmission Company
Other#s RP01–12, 002, Reliant Energy Gas Transmission Company
RP01–317, 003, Reliant Energy Gas Transmission Company

Energy Projects—Hydro

H–1.
Docket# P–6032, 044, Niagara Mohawk Power Corporation and Fourth Branch Associates (Mechanicville)
H–2.
Omitted
H–3.
Omitted
H–4.
Docket# P–1864, 016, North Shore Concerned Citizens Group of Lake Gogebic v. Upper Peninsula Power Company
H–5.
Docket# P–6132, 008, John C. Jones
H–6.
Omitted

Energy Projects—Certificates

C–1.
Docket# CP00–166, 002, Williams Gas Pipelines Central, Inc.
C–2.
Docket# CP99–76, 000, Transcontinental Gas Pipe Line Corporation
C–3.
Omitted
C–4.
Omitted
C–5.
Docket# CP96–583, 002, Kinder Morgan Texas Pipeline, Inc.
C–6.
Docket# CP02–382, 000, West Texas Gas, Inc.
C–7.
Docket# CP99–233, 000, Florida Gas Transmission Company
C–8.
Omitted
C–9.
Omitted
C–10.
Omitted
C–11.
Omitted
C–12.
Docket# CP01–87, 003, Dominion Transmission, Inc.

Magalie R. Salas,
Secretary.
[FR Doc. 02–19194 Filed 7–29–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

July 24, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 31, 2002 (30 Minutes Following Regular Commission Meeting).

PLACE: Hearing Room 5, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public. Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 208–0400.

Chairman Wood and Commissioners Massey, Breathitt and Brownell voted to

hold a closed meeting on July 31, 2002. Attached is the certification of the General Counsel explaining the action closing the meeting.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19278 Filed 7–25–02; 4:48 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7252–6]

EPA Science Advisory Board, Contaminated Sediments Science Plan Panel; Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for nominations to serve on the Contaminated Sediments Science Plan Panel of the U. S. Environmental Protection Agency's Science Advisory Board.

SUMMARY: The U.S. Environmental Protection Agency's (Agency, EPA) Science Advisory Board (SAB) is announcing the formation of a Contaminated Sediments Science Plan Panel and its solicitation of nominations of qualified individuals to serve on this Panel.

The SAB provides independent scientific and technical advice to the EPA Administrator on Agency positions; in this case, the SAB will advise on a Contaminated Sediments Science Plan that the Agency will use to develop and coordinate Agency-wide science activities in the area of contaminated sediments. Those selected to serve on the SAB's Contaminated Sediments Science Plan Panel will review the Science Plan in the Autumn of 2002.

The approved policy under which the EPA Science Advisory Board selects review panels is described in a recent SAB Commentary [*EPA Science Advisory Board (SAB) Panel Formation Process: Immediate Steps to Improve Policies and Procedures—An SAB Commentary* (EPA–SAB–EC–COM–002–003), which can be found on the SAB website (*http://www.epa.gov/sab*) at *http://www.epa.gov/sab/ecm02003.pdf*.]

Any interested person or organization may nominate qualified individuals for membership on the Panel. Nominations (preferably in electronic format) must include the individual's name, occupation, position, qualifications to address the issue, and contact information (*i.e.*, telephone number, fax number, mailing address, email, and/or Website). To be considered, all nominations must include a current bio, CV or resume (preferably electronic in MSWord or WordPerfect) providing information on the nominee's background, experience, and qualifications for this Panel.

The SAB staff asks that nominations be provided in the following way:

1. Send the nomination by e-mail to: *martin.lawrence@epa.gov.*
2. Use one email per person being nominated.
3. Please use "contaminated sediments" in the subject field, followed by the last name of the candidate you are nominating. (For example, "Contaminated Sediments: Smith).
4. Attach supporting information in MS Word or WordPerfect files ending in ".doc" or ".wpd".
5. In a separate file from the bio, CV or resume, please provide the following information in the order shown:

For the Nominating Individual:
First Name:
Last Name:
Email Address:
Organization Title:
Mailing Address:
Work Phone:
Work Fax:

For the Candidate being nominated:
First Name:
Last Name:
Professional Title:
Department:
School or Unit:
University or Organization:
Mailing Address:
Work Phone:
Fax Work Phone:
Email Address:
Website for CV (if one exists):

Nominator's Assessment of Expertise: The following areas of expertise will be useful in this review. Please indicate the areas of expertise the candidate could contribute:

- Human health effects assessment (particularly in persistent, bioaccumulative & toxic materials, *e.g.* PCBs)
- Ecological effects assessment (particularly in persistent, bioaccumulative and toxic materials, *e.g.* PCBs)
- Physico-chemical nature of sediments
- Soil contamination remediation technologies
- Baseline and post remediation site monitoring
- Risk communication to the public
- Information data management systems
- Ecological fate and transport modeling of contaminants in surface waters and sediments
- Exposure assessment
- Cost-benefit valuation

Background: The Contaminated Sediments Science Plan is a mechanism for the U.S. Environmental Protection Agency (EPA) to develop and coordinate Agency-wide science activities in the contaminated sediments area. Along with the EPA's contaminated sediments science activities database, this plan provides an analysis of the current Agency science activities in this area, identifies and evaluates the science gaps, and provides a strategy for filling these gaps.

The Contaminated Sediments Science Plan has three goals to promote the vision of providing a strong scientific basis for addressing contaminated sediments: (1) To develop and disseminate the tools and science necessary to address the management of contaminated sediments; (2) To enhance the level of coordination and communication of science activities dealing with contaminated sediments across the EPA's Progam and Regional Offices and the Office of Research and Development; and (3) To develop an effective, cost-efficient strategy to promote these scientific activities and research.

To allow interested parties to view the Draft Contaminated Sediments Science Plan, which is receiving public comment, the July 22, 2002 **Federal Register** (Volume 67, Number 140, Notices, Pages 47798–47800) announced the following Internet Web addresses for viewing the Plan: *http://www.epa.gov/superfund/action/guidance/cssp.pdf* and *http://www.epa.gov/superfund/action/guidance/cssp-appendix.pdf.*

For technical inquiries, you may contact Lee Hofmann, Office of Solid Waste and Emergency Response, Mail Code 5103T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at telephone number 202–566–1928, or by e-mail at: *hofmann.lee@epa.gov.*

Charge to the Panel: Details of the Charge may change as a result of discussions between the Agency and the Panel. Updates will be posted on the SAB Website: (*www.epa.gov/sab*).

The EPA solicits comments from the U.S. Environmental Protection Agency's

Science Advisory Board on all aspects of the draft science plan. In particular, the EPA requests comments and information on the following questions contained in the current draft charge to the SAB panel:

1. The Contaminated Sediments Science Plan (Science Plan) is the first official Agency science plan of its kind designed to address a significant cross-agency environmental issue in a systematic and integrated fashion. Does the Science Plan adequately convey the need for such a strategic planning document, i.e., are the goals and objectives of the plan understandable and appropriate to the subject?

2. Are the major areas of contaminated sediments science (sediment site characterization, exposure assessment, human health effects and risk assessment, ecological effects and risk assessment, sediment remediation, baseline and post-remediation monitoring, risk communication, and information management and exchange activities) appropriately addressed? Are any major areas missing?

3. Are the key recommendations clearly defined and appropriate to resolve the science needs discussed in Chapter 3?

4. Are there other issues or key recommendations which should be considered in this Science Plan?

FOR FURTHER INFORMATION CONTACT: Nominations in electronic format should be submitted to *martin.lawrence@epa.gov*. Anyone unable to submit in electronic format should send the nomination paperwork to Mr. Lawrence Martin, Designated Federal Official (DFO), EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–6497; FAX (202) 501–0323. Nominations should arrive no later than August 14, 2002. The SAB will not formally acknowledge or respond to nominations.

The nominations received through this solicitation will be combined with other sources; e.g., the Agency, SAB members, and external outreach. From this larger group of nominees (termed the "WIDECAST"), a smaller subset (the "Short List") will be identified for more detailed consideration. The Short List will include the names of candidates, a short biosketch of each candidate, and the names of those who nominated them. The Short List will be posted on the SAB Website (*http://www.epa.gov/sab/fiscal02.htm*) and public comments accepted on the expertise, conflict-of-interest, and apparent lack of impartiality (as defined by federal regulation) of individual candidates as well as on the overall balance of views represented on the Panel. At the SAB, a balanced panel is characterized by inclusion of the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors can be influenced by work history and affiliation), and the collective breadth of experience to address the charge adequately.

Public reaction to the Short List candidates will be considered in the selection of the Panel, along with information provided by candidates and information gathered by SAB Staff independently on the background of each candidate. Criteria to be used in evaluating an individual panelist include: (a) Expertise, knowledge, and experience (primary factors); (b) Availability and willingness to serve; (c) Scientific credibility and impartiality; and (d) Skills working in committees and advisory panels.

Panel members will be asked to attend at least one public face-to-face meeting and, probably, several public conference call meetings over the anticipated 3-month course of the activity. The Executive Committee (EC) of the SAB will review the Panel's report in a public meeting and reach a judgment about its transmittal to the Administrator.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in the *EPA Science Advisory Board FY2001 Annual Staff Report* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256, or at *http://www.epa.gov/sab/annreport01.pdf*.

Dated: July 24, 2002.

A. Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board.

[FR Doc. 02–19225 Filed 7–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7252–2]

Environmental Laboratory Advisory Board (ELAB) Meeting Date, and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference meeting.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) will have a teleconference meeting on August 21, 2002, at 11 a.m. EDT to discuss the ideas, comments, and suggestions presented at the July 9 ELAB Open Forum and July 11 ELAB Meeting, as well as new business. Items to be discussed include: (1) Restructuring of the National Environmental Laboratory Accreditation Conference (NELAC) to allow it to better serve the future needs of EPA, the States, and the private sector, (2) discussion of ELAB recommendations to EPA, (3) recommendations for increasing small laboratory participation in NELAC and (4) recommendations for increasing the number of States that are Accrediting Authorities. ELAB is soliciting input from the public on these and other issues related to the National Environmental Laboratory Accreditation Program (NELAP) and the NELAC standards. Written comments on NELAP laboratory accreditation and the NELAC standards are encouraged and should be sent to Mr. Edward Kantor, DFO, PO Box 93478, Las Vegas, NV 89193, faxed to (702) 798–2261, or e-mailed to *kantor.edward@epa.gov*. Members of the public are invited to listen to the teleconference calls and, time permitting, will be allowed to comment on issues discussed during this and previous ELAB meetings. Those persons interested in attending should call Edward Kantor at 702–798–2690 to obtain teleconference information. The number of lines are limited and will be distributed on a first come, first serve basis. Preference will be given to a group wishing to attend over a request from an individual.

Dated: July 22, 2002.

J. Gareth Pearson,

Acting Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–19227 Filed 7–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7252–3]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is

announcing the 2002 Annual Meeting of the Ozone Transport Commission (OTC). During this meeting, the OTC will deal with appropriate matters within the Ozone Transport Region in the Northeast and Mid-Atlantic States, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The OTC meeting will be held on Tuesday, August 6, 2002 starting at 9 a.m. (DST).

ADDRESSES: The Inn at Essex, 70 Essex Way, Essex Junction, Vermont 05452; (802) 878–1100. Important Note: The Mid-Atlantic/Northeast Visibility Union (MANE–VU) Board will meet the previous day, on Monday, August 5, 2002, from 1 p.m. until 5 p.m. (DST), at the same location.

FOR FURTHER INFORMATION CONTACT: Judith M. Katz, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2100. For Documents and Press Inquiries Contact: Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@sso.org;* Web site: *http://www.sso.org/otc.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain, at Section 184, provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an "Ozone Transport Region" (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia, and the District of Columbia. The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the OTC is to deal with ground level ozone formation, transport, and control within the OTR.

The purpose of this notice is to announce that this Commission will meet on August 6, 2002. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of the OTC are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840 (by e-mail: *ozone@sso.org* or via the OTC Web site at *http://www.sso.org/otc*) on Tuesday, July 29, 2002. The MANE–VU agenda will be available at the same time, but separately on MANE–VU's Web site at *http://www.sso.manevu.org*. The purpose of this meeting is to review major ozone health studies, discuss the role of clean energy and energy efficiency in ozone reduction efforts, and discuss regional approaches to reducing ground-level ozone, including ozone transport.

Dated: July 23, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–19228 Filed 7–29–02; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Privacy Act of 1974; Publication of Notices of Systems of Records and Proposed New Systems of Records

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice; publication of notices of systems of records, and proposed new systems of records.

SUMMARY: This notice proposes four new systems of records and changes to a number of existing systems of records. This notice republishes all of EEOC's notices for its systems of records subject to the Privacy Act in one issue of the **Federal Register** so that an accurate and complete text of the notices is available for use by individuals and by agency Privacy Act officers.

DATES: The changes to the existing systems of records are effective on July 30, 2002. The proposed new systems of records will become effective, without further notice, on September 27, 2002, unless comments dictate otherwise.

ADDRESSES: Written comments may be sent to the Office of Executive Secretariat, Equal Employment Opportunity Commission, Room 10402, 1801 L Street, NW., Washington, DC 20507. Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Publications Center by calling 1–800–699–3362.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel or Kathleen Oram, Senior Attorney (202) 663–4669 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission last published its Privacy Act systems notices in 1994. The Commission proposes four new systems of records to cover, in two cases, new programs that will collect individually identifiable records and, in the other two cases, existing records that through the use of information technology have become individually identifiable. In addition, the Commission is amending several of its systems to include additional categories of individuals or of records. The Commission is adding two new routine uses to its two private sector case files systems and four new routine uses to its government-wide system of records covering federal sector complaint and appeal records. Finally, the Commission has amended several system notices to reflect current office names and has amended Appendix A to reflect current addresses of Commission offices. To ensure that users will have a copy of the current text of each of its system notices, the Commission is publishing the complete text of all of its systems notices.

A brief description of the major changes follows:

EEOC–1 Age and Equal Pay Act Discrimination Case Files. A new category of individuals was added to cover individuals who file complaints under section 321 of the Government Employees Rights Act of 1991.

EEOC–1 Age and Equal Pay Act Discrimination Case Files and EEOC–3 Title VII and Americans With Disabilities Act Discrimination Case Files. Two new routine uses are proposed for each system. One would permit disclosure of information to officials of state or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before EEOC. The proposed routine use in EEOC–3, the Title VII and ADA case files system, is limited to disciplinary boards or committees under the control of a state or local government because these files are covered by the confidentiality provisions contained in Title VII, 42 U.S.C. 2000e–5(b) and 8(e), and may not be disclosed to members of the public. Officials of state or federal governments are not members of the public. The second new routine use would permit disclosure of information to federal officials in connection with hiring, issuing a security clearance, or conducting a background check. The Commission has determined that these proposed routine uses are compatible with the law enforcement purpose of the systems of records.

EEOC–5 General Correspondence Records. The system of records was

amended to cover all correspondence and communications, by letter, phone call, or email, throughout the agency to reflect the use of computerized tracking systems in many offices.

EEOC–7 Employee Pay and Leave Records. Routine use i was amended to replace the General Services Administration with the Department of Interior. EEOC has switched its pay and leave system administration from the General Services Administration to the Department of the Interior.

EEOC–8 Employee Travel and Reimbursement Records. Routine use e was amended to replace the General Services Administration with the Department of Interior. EEOC has switched its financial management administrative services from GSA to the Department of the Interior.

EEOC–9 Claims Collection Records. Routine use j was amended to replace the General Services Administration with the Department of Interior. EEOC has switched its financial management administrative services from GSA to the Department of the Interior.

EEOC–12 Telephone Call Detail Records. The categories of individuals and records were amended to include U.S. government phone card holders and phone card records, including billing records.

EEOC–13 Employee Identification Cards. The categories of records was amended to cover proximity card lists and records throughout the agency, where applicable. The system was previously limited to Headquarters proximity card holders.

EEOC–15 Internal Harassment Inquiries. The Commission approved an internal order governing investigations of allegations of harassment made by EEOC employees. This new system of records covers current or former EEOC employees' complaints or reports of harassment, witness statements, reports of interviews, findings and recommendations, decisions and corrective actions taken and related correspondence and exhibits. Nine routine uses are proposed for the system. In addition, it is proposed to exempt this system from certain provisions of the Privacy Act pursuant to section (k)(2) of the Act. A Notice of Proposed Rulemaking is published separately in today's **Federal Register** proposing amendments to EEOC's Privacy Act regulations that describe this exemption.

EEOC–16 Office of Inspector General Investigative Files. The Office of the Inspector General has reorganized its filing system and will be maintaining its investigative files by the name of the individuals who are subjects of investigations by the Office relating to the programs and operations of the EEOC. The Commission is adding a system of records covering those files. Six routine uses are proposed for the new system. In addition, it is proposed to exempt this system of records from certain provisions of the Privacy Act pursuant to sections (j)(2) and (k)(2) of the Act. A Notice of Proposed Rulemaking is published separately in today's **Federal Register** proposing amendments to EEOC's Privacy Act regulations that describe those exemptions.

EEOC–17 Defensive Litigation Files. The Commission's Office of Legal Counsel has upgraded its computerized tracking system and filing system covering its defensive litigation files and has created a set of files containing testimony, affidavits and declarations given by individuals during EEOC's defense of lawsuits brought against the agency. Consequently, the Commission is adding a system of records covering the Office of Legal Counsel's defensive litigation files. The system covers all documents related to civil or administrative litigation brought against the Commission, which are retrievable by the name of the individual who filed the litigation or the name of the individual witnesses who gave testimony, affidavits or declarations during the course of such litigation. Five routine uses are proposed for the new system.

EEOC–18 Reasonable Accommodation Records. The Commission has issued an internal order establishing procedures for providing reasonable accommodation for individuals with disabilities under the Rehabilitation Act of 1973. This new system of records covers all current and former EEOC employees and applicants' requests for reasonable accommodations, medical records, notes or records made about requests, decisions on requests and records made to implement or track decisions on requests. Four routine uses are proposed for the system.

The proposed routine uses in the four new systems of records noted above meet the compatibility criteria since the information involved is collected for the purpose of the applicable routine uses. We anticipate that any disclosure pursuant to these routine uses will not result in any unwarranted adverse effects on personal privacy.

EEOC/GOVT–1 Equal Employment Opportunity in the Federal Government Complaint and Appeal Records. The two routine uses proposed to be added to EEOC–1 and EEOC–3, permitting disclosure to bar associations or disciplinary boards and to federal agencies when hiring, or conducting background checks or security clearances are proposed to be added to this system as well. They are described in greater detail above. In addition, the Commission proposes to add a new routine use permitting disclosure of information to employees of contractors engaged by an agency to carry out the agency's responsibilities under 29 CFR part 1614. Finally, the Commission proposes to add a new routine use permitting disclosure of information to potential witnesses during the course of an investigation, as may be appropriate and necessary to perform the agency's functions under 29 CFR part 1614. The Commission has determined that these four proposed routine uses are compatible with the law enforcement purpose of the system of records.

A complete list of all EEOC systems of records is published below. The complete text of the notices follows.

For the Commission.

Cari M. Dominguez,

Chair.

EEOC Systems of Records

EEOC–1 Age and Equal Pay Act Discrimination Case Files.
EEOC–2 Attorney Referral List.
EEOC–3 Title VII and Americans With Disabilities Act Discrimination Case Files.
EEOC–4 Biographical Files.
EEOC–5 Correspondence and Communications.
EEOC–6 Employee Assistance Program Records.
EEOC–7 Employee Pay and Leave Records.
EEOC–8 Employee Travel and Reimbursement Records.
EEOC–9 Claims Collection Records.
EEOC–10 Grievance Records.
EEOC–11 Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service.
EEOC–12 Telephone Call Detail Records.
EEOC–13 Employee Identification Cards.
EEOC–14 Employee Parking Records.
EEOC–15 Internal Harassment Inquiries.
EEOC–16 Office of Inspector General Investigative Files.
EEOC–17 Defensive Litigation Files.
EEOC–18 Reasonable Accommodation Records.
EEOC/GOVT–1 Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

EEOC–1

SYSTEM NAME:

Age and Equal Pay Act Discrimination Case Files.

SYSTEM LOCATION:

Field Office where the charge or complaint of discrimination was filed (see Appendix A). Records of

complaints filed under section 321 of the Government Employees Rights Act of 1991 are located in the Office of Federal Operations, 1801 L Street, NW., Washington, DC 20507, after a hearing has been requested.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons other than federal employees and applicants who file charges or complaints with EEOC alleging that an employer, employment agency or labor organization has violated the Age Discrimination in Employment Act of 1967 or the Equal Pay Act of 1963, or who file complaints under section 321 of the Government Employees Rights Act of 1991.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the records compiled during the investigation of age and equal pay discrimination cases and during the investigation and hearing of complaints filed under section 321 of the Government Employees Rights Act of 1991. These records include:

a. Documents submitted by charging party or complainant such as charge of discrimination, personal interview statement, and correspondence.

b. Documents submitted by employer such as statement of position, correspondence, statements of witnesses, documentary evidence such as personnel files, records of earnings, employee benefit plans, seniority list, job titles and descriptions, applicant data, organizational charts, collective bargaining agreements, petition to revoke or modify subpoena.

c. Records gathered and generated by EEOC in the course of its investigation and, in complaints filed under section 321 of the Government Employees Rights Act of 1991, during the hearing, such as letters of referral to state fair employment practices agencies, correspondence with state fair employment practices agencies, witness statements, investigator's notes, investigative plan, report of initial and exit interview, investigator's analyses of evidence and charge, subpoenas, decisions and letters of determination, conciliation agreements, correspondence and any additional evidence gathered during the course of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 29 U.S.C. 209, 211, 216, 217, 625; 44 U.S.C. 3101; 2 U.S.C. 1220.

PURPOSE(S):

This system is maintained for the purpose of enforcing the prohibitions against employment discrimination contained in the Age Discrimination in Employment Act, the Equal Pay Act and section 321 of the Government Employees Rights Act of 1991.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under the Age Discrimination in Employment Act or Equal Pay Act.

b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.

c. To disclose non-confidential and non-privileged information from closed ADEA/EPA case files (a file is closed when the Commission has terminated its investigation and has decided not to sue) to the employer where a lawsuit has been filed against the employer involving that information, to other employees of the same employer who have been notified by the Commission of their right under 29 U.S.C. 216 to file a lawsuit on their own behalf, and their representatives.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of a party to the charge.

e. To disclose pertinent information to the appropriate federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To disclose information to officials of state or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before EEOC.

h. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer databases.

RETRIEVABILITY:

These records are retrievable by charging party name, employer name and charge number.

SAFEGUARDS:

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Cases that are dismissed or closed for other than no cause are destroyed six months following the date of dismissal or closure. No cause files that are of value in the development of future class action or pattern and practice cases are retired to the Federal Records Center one year after the date of the last action and destroyed after three additional years. All other no cause files are destroyed one year after the date of the last action. Negotiated settlement files are destroyed one year after the calendar year in which the settlement agreement is signed or after all obligations under the agreement are satisfied, whichever occurs later. Where monetary benefits are realized in concurrent Age, Equal Pay, and Title VII cases, the file is destroyed three years after the date of the last action. Other files are retired to the Federal Records Center one year after the date of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance) and destroyed after three additional years, except landmark cases. Landmark cases are transferred to the nearest Federal Records Center two years after final court action and offered to the National Archives ten years after final court action.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the field office where the charge was filed (see Appendix A).

Director of the Office of Federal Operations, 1801 L Street, NW., Washington, DC 20507.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

EEOC–2

SYSTEM NAME:

Attorney Referral List.

SYSTEM LOCATION:

All District Offices (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys who represent plaintiffs in employment discrimination litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains attorneys' names, business addresses and telephone numbers, the nature and amount of civil rights litigation experience, state and federal bar admission, whether the attorneys have the capacity and desire to handle class actions; whether the attorneys charge consultation fees (and how much); whether the attorneys will waive the consultation fee; the types of fee arrangements the attorneys will accept, and whether the attorneys speak a foreign language fluently.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2000e–4(g); 44 U.S.C. 3101.

PURPOSE(S):

This system is maintained for the purpose of providing charging parties, upon their request, with information about local attorneys who represent plaintiffs in employment discrimination litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer charging parties to attorneys who handle litigation of employment discrimination lawsuits.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on prepared forms, index cards and computer databases.

RETRIEVABILITY:

Indexed alphabetically by names of the attorneys.

SAFEGUARDS:

Access to this system of records is restricted to EEOC personnel who have a legitimate use for the information. This system is stored in filing cabinets. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Files are reviewed and updated annually.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Attorney at each District Office (*see* Appendix A).

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the appropriate system manager. It is necessary to furnish the following information: (1) Full name of the individual whose records are requested; (2) mailing address to which reply should be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

EEOC–3

SYSTEM NAME:

Title VII and Americans With Disabilities Act Discrimination Case Files.

SYSTEM LOCATION:

Field Office where the charge of discrimination was filed (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons, other than federal employees and applicants, who file charges alleging that an employer, employment agency, labor organization or joint labor-management apprenticeship committee has violated Title VII of the Civil Rights Act of 1964 or the Americans With Disabilities Act of 1990, or both.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records compiled during the investigation of race, color, religion, sex, and national origin discrimination cases and cases of discrimination against individuals with disabilities. These records include:

a. Documents submitted by charging party, such as charge of discrimination, personal interview statement, medical records and correspondence.

b. Documents submitted by employer such as statement of position, correspondence, statements of witnesses, documentary evidence such as personnel files, records of earnings, EEO data, employee benefit plans, seniority list, job titles and descriptions, applicant data, organizational charts, collective bargaining agreements, petition to revoke or modify subpoena.

c. Records gathered and generated by EEOC in the course of its investigation such as letters to state or local fair employment practice agencies, correspondence with state fair employment practice agencies, witness statements, investigator's notes, investigative plan, investigator's analyses of the evidence and charge, report of initial and exit interviews, copy of deferral to state, subpoenas, decisions and letters of determination, analysis of deferral agency action, conciliation agreements, correspondence and any additional evidence gathered during the course of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2000e–5, –8 and –9; 42 U.S.C. 12117; 44 U.S.C. 3101.

PURPOSE(S):

This system is maintained for the purpose of enforcing the prohibitions against employment discrimination contained in Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990.

b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.

c. To disclose non-confidential or non-privileged information contained in these records to the following persons after a notice of right to sue has been issued:

1. Aggrieved persons and their attorneys in case files involving Commissioner Charges provided that such persons have been notified of their status as aggrieved persons;

2. Persons or organizations filing on behalf of an aggrieved person provided that the aggrieved person has given written authorization to the person who filed on his or her behalf to act as the aggrieved person's agent for this purpose, and their attorneys;

3. Employers and their attorneys, provided that the charging party or aggrieved person has filed suit under Title VII or the Americans With Disabilities Act, or both.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of a party to the charge.

e. To disclose pertinent information to the appropriate federal, state or local agencies responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To disclose information to officials of disciplinary boards or committees under the control of a state or local government when they are investigating complaints against attorneys in connection with their representation of a party before EEOC.

h. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer databases.

RETRIEVABILITY:

These records are retrievable by charging party name, employer name and charge number.

SAFEGUARDS:

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Cases that are dismissed or closed for other than no cause are destroyed six months following the date of dismissal or closure. No cause files that are of value in the development of future class action or pattern and practice cases are retired to the Federal Records Center one year after the date of the last action and destroyed after three additional years. All other no cause files are destroyed one year after the date of the last action. Negotiated settlement files are destroyed one year after the calendar year in which the settlement agreement is signed or after all obligations under the agreement are satisfied, whichever occurs later. Where monetary benefits are realized in concurrent Age, Equal Pay, Title VII and Americans With Disabilities Act cases, the file is destroyed three years after the date of the last action. Other files are retired to the Federal Records Center one year after the date of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance) and destroyed after three additional years, except landmark cases. Landmark cases are transferred to the nearest Federal Records Center two years after final court action and offered to the National Archives ten years after final court action.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the field office where the charge was filed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Act.

EEOC–4

SYSTEM NAME:

Biographical Files.

SYSTEM LOCATION:

Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Commissioners, General Counsels and Commission officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes for each the name, date and place of birth, education, employment history, and other biographical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 42 U.S.C. 2000e–4.

PURPOSE(S):

This system is maintained for the purpose of providing information about EEOC officials to members of the Congress and the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used

a. To answer public and congressional inquiries regarding EEOC Commissioners, General Counsels and Commission officials.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in locking metal file cabinets available to office employees and on computer databases.

RETREIVABILITY:

Indexed by last name of the Commissioner, General Counsel or Commission official.

SAFEGUARDS:

Files are kept in the Office of Communications and Legislative Affairs, which is locked evenings, weekends and holidays. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual and the mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

EEOC–5

SYSTEM NAME:

Correspondence and Communications.

SYSTEM LOCATION:

All locations listed in appendix A and all headquarters offices, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Charging parties, members of the general public, members of Congress and current and former federal employees who seek information or assistance from EEOC.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Inquiries from Members of Congress, the White House and members of the general public, including current and former federal employees.

b. EEOC responses to the above inquiries.

c. Computer tracking system indicating the dates inquiries are received, to whom and when they are assigned for response and the dates they are answered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 2000e–4.

PURPOSE(S):

This system is maintained for the purpose of responding to inquiries from members of Congress and the public seeking information or assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual.

b. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file cabinets and on computer databases.

RETRIEVABILITY:

Computer entries are retrievable by name of author of a letter, by subject, by key word, by reference number, by name of person to whom assigned, and by dates assigned, due and answered.

SAFEGUARDS:

These records are kept in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are maintained for three years from the date of the last communication and then destroyed. Tracking system information is maintained in the computer for four years.

SYSTEM MANAGER(S) AND ADDRESS:

Director of each Commission field and Headquarters office. (*See* Appendix A.)

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual and the mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Members of Congress, their staffs, the White House, charging parties, members of the general public, current and former federal employees.

EEOC–6

SYSTEM NAME:

Employee Assistance Program Records.

SYSTEM LOCATION:

Employee Assistance Program contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current EEOC employees who have been referred to or contacted the Employee Assistance Program because of personal problems, emotional problems, or alcohol or drug abuse.

CATEGORIES OF RECORDS IN THE SYSTEM:

May contain information relating to individuals counseled by the Employee Assistance Program including supervisor's referral, (if the employee was referred by the supervisor), documentation of visits to employee counselors (federal, state, local government, or private), and notes or records made by the counselor of discussions held with the employee or with the physician, therapist or health care professional of the employee. In addition, records in this system may include documentation of treatment by a therapist at a federal, state, local government, or private institution, summary information produced at case closure, and other documents deemed pertinent to the provision of program services to the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–1 and 3; 290ee–1 and 3; 5 U.S.C. 7901; 44 U.S.C. 3101.

PURPOSE(S):

This system is maintained for the purpose of providing counseling services to EEOC employees who have been referred to or contacted the Employee Assistance Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to authorized personnel of the contractor that administers the EEOC Employee Assistance Program.

b. To disclose information to medical personnel to meet a bona fide medical emergency.

c. To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by the Commission, all patient identifying information shall be removed).

Note: Disclosure of these records beyond officials of the Commission having a bona fide need for them or to the person to whom they pertain is rarely made because disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited to comply with the restrictions of the regulations regarding the

Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR part 2, as authorized by 42 U.S.C. 290dd–3 and 290ee–3. Records pertaining to the physical and mental fitness of employees are, as a matter of Commission policy, afforded the same degree of confidentiality and are generally not disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computer databases.

RETRIEVABILITY:

Indexed by name of employee.

SAFEGUARDS:

Files are maintained in locked cabinets accessible only to Employee Assistance Program personnel. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained until three years after the employee has ceased contact with the counselor or until the employee's separation or transfer, whichever comes first.

SYSTEMS MANAGER(S) AND ADDRESS:

Administrator, Employee Assistance Program, Office of Human Resources, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507; Field Office Directors (see Appendix A).

NOTIFICATION PROCEDURES:

Any person wanting to know whether this system of records contains information about him or her should contact the appropriate system manager. Such person should provide his or her full name, date of birth, and social security number.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The sources of these records are:

a. The employee or members of the employee's family;

b. Persons to whom the employee has been referred for assistance;

c. Commission officers and employees;

d. Program counselors.

EEOC–7

SYSTEM NAME:

Employee Pay and Leave Records.

SYSTEM LOCATION:

All locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of EEOC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance cards and forms; leave records (includes employee name, branch or office, pay period ending, leave and overtime used during the pay period); requests for leave (earned or advance) or leave of absence; requests for an authorization of overtime; annual attendance record (indicates name, social security number, service computation date, hours and dates worked and taken as leave, pay plan, salary and occupation code, grade, leave earned and used); thrift savings plan participation, deductions for medicare, FICA, taxes, life and health insurance, union contributions, charitable contributions, savings allotments and bond issuance and bond balance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S):

The records in this system are maintained in accordance with the requirements set forth by statutes, regulations and guidance from the Office of Personnel Management, the General Services Administration and the Thrift Savings Board. They are maintained for the purpose of providing salaries and other benefits to EEOC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

b. To provide a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of Treasury pursuant to 5 U.S.C. 5516, 5517 or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

c. To disclose copies of executed city tax withholding certificates to a city pursuant to a withholding agreement between the city and the Department of the Treasury (5 U.S.C. 5520) in response to a written request from an appropriate city official.

d. To disclose the social security number only, in the absence of a withholding agreement, to a taxing jurisdiction that has furnished this agency with evidence of its independent authority to compel disclosure of the social security number, in accordance with section 7 of the Privacy Act, 5 U.S.C. 552a note.

e. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's Government information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

g. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

h. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

i. To disclose to officers and employees of the Department of the Interior in connection with administrative services provided to this agency under agreement with DOI.

j. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the

government is a party to the judicial or administrative proceeding.

k. To disclose information to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator system (FPLS) and Federal Tax Offset system for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action.

l. To disclose information to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

m. To disclose information to the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored electronically and in file folders.

RETRIEVABILITY:

Indexed by an assigned employee code.

SAFEGUARDS:

Access to these records is limited to employees whose official duties require such access.

RETENTION AND DISPOSAL:

The records are destroyed after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Director of each Commission Office (See Appendix A).

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information: (1) Name; (2) social security number; (3) mailing address to which the response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Official personnel folder, data submitted by employees and data submitted by the offices where the individuals are or were employed.

EEOC–8

SYSTEM NAME:

Employee Travel and Reimbursement Records.

SYSTEM LOCATION:

All locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes travel orders, travel vouchers, records of travel advances, amounts owed the agency by employees for travel and other purposes, amounts payable to the employee for travel and other purposes, payments made to the employees for travel and other reimbursable transactions and a record of the difference between the cost of official travel as estimated in the travel order and the amount actually expended by the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512, 44 U.S.C. 3101.

PURPOSE(S):

These records are maintained in accordance with the General Service Administration's regulations for the purpose of allowing EEOC employees to travel for official business and reimbursing travel expenses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's Government, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

c. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

d. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

e. To disclose to officers and employees of the Department of the Interior in connection with administrative services provided to this agency under agreement with DOI.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on prepared forms and on computer databases.

RETRIEVABILITY:

Indexed alphabetically by name, social security number, and/or chronologically by event and name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Files are stored in standard cabinets, safes and secured rooms. Access to computerized

records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

These records are destroyed in accordance with GSA General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management Division, Office of Chief Financial Officer and Administrative Services, EEOC, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURE:

Employees of the Commission wishing to know whether information about them is maintained in this system of records should address inquiries to the Director of the Office where employed (see Appendix A). The individual should provide his or her full name, date of birth, social security number and mailing address.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Bills, receipts and claims presented by employees and original data generated by the Commission.

EEOC–9

SYSTEM NAME:

Claims Collection Records.

SYSTEM LOCATION:

These records are located in the Finance Management Division, Office of Chief Financial Officer and Administrative Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is indebted to the United States as a result of his or her interaction or financial activities with the Commission or another federal agency including, but not limited to, any current or former Commission employee.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains:

a. Case Files. These files contain information and evidence on the identity and location of the individual who is subject to a claim, the origin and amount of the indebtedness, decisions and determinations regarding a claim, actions taken to collect a claim, and the results of those actions. Depending on the status of a claim, a case file may include such records as documents evidencing indebtedness, written demands for payment, required notices, financial statements, medical disability statements, agency investigative reports, credit reports, written agreements for payment, intra-agency and inter-agency memoranda of consultation and opinion on the collection action, documentation resulting from a hearing, requests for waiver, requests for reconsideration, written determinations and decisions, certifications of indebtedness by this or another agency, counterclaims, judgments and documents evidencing payment or compromise of the debt.

b. Internal Revenue Service (IRS) Mailing Address Index. Consists of cards containing the name or other identifying information on the individual for whom mailing address information has been requested and received from the IRS, the date on which this information was received from the IRS, and the purpose to which the information has been put.

c. Index on Disclosures to Consumer Reporting Agencies. Records containing the name and other identifying information on the individual whose delinquent debt has been reported to consumer reporting agencies, i.e., credit bureaus, and the kind and type of information reported.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5514, 5522, 5584, 5705, 5724(f); 15 U.S.C. 1692; 26 U.S.C. 6331; 31 U.S.C. 3701, 3702, 3711, 3716, 3717, 3718, 3719; 44 U.S.C. 3101; 4 CFR parts 91–93, 101–105.

PURPOSE(S):

This system is maintained for the purpose of collecting debts owed the United States by individuals as a result of their interaction with the Commission or another federal agency. The debts are collected in accordance with the Commission's regulatory debt collection procedures, which include salary offset, administrative offset, Federal income tax refund offset and wage garnishment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to appropriate officials and employees of the Department of Justice for the purposes of litigation and forced collection on administratively uncollected debts.

b. To disclose information to appropriate officials of the Department of the Treasury and the Office of Management and Budget to provide reports on debt collection activities.

c. To disclose information to another federal agency for the purpose of collecting a debt owed to the Commission by an individual through EEOC's debt collection procedures undertaken by the other agency upon proper certification or evidence of the debt owed from the Commission.

d. To disclose information to another federal agency for the purpose of collecting a debt owed to that agency by an individual through EEOG's debt collection procedures undertaken by the Commission upon proper certification or evidence of the debt owed from the other agency.

e. To disclose a debtor's name and social security number to the Secretary of the Treasury or his or her designee for the purpose of obtaining the debtor's mailing address from the IRS.

f. To disclose mailing addresses obtained from the IRS to consumer reporting agencies only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

h. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

i. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

j. To disclose to officers and employees of the Department of the Interior in connection with administrative services provided to this agency under agreement with DOI.

k. To disclose information to the Defense Manpower Data Center, Department of Defense, to secure

computer matching services for the purpose of identifying and locating individuals who are receiving federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. government under programs administered by the Equal Employment Opportunity Commission in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub L. 97–365) by voluntary repayment, or administrative or salary offset procedures.

l. To disclose information to the U.S. Postal Service to secure computer matching services for the purpose of identifying and locating individuals who are receiving federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. government under programs administered by the Equal Employment Opportunity Commission in order to collect the debts under the voluntary provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, or by administrative or salary offset procedures.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

RETRIEVABILITY:

These records are indexed by the name of the individual and social security number. The records may be retrieved by either of these indexes.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Individual case files are usually retained for two years after the claim is collected. Case records on individuals whose delinquent debts are reported to consumer reporting agencies are retained indefinitely. Other case files may be maintained for a period up to ten years. IRS Mailing Address Index on any individual is not maintained beyond six years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Chief Financial Officer and Administrative Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

Under the Debt Collection Act, individuals are notified if claims collection records are maintained on them in accordance with statutory procedures for debt collection, and disclosing information to a consumer reporting agency. Individuals may also contact the System Manager in order to obtain notification of claims collection records on themselves.

Individuals must provide their full names under which records may be maintained, their social security number, and a mailing address to which a reply should be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by or from:

a. The individual on whom the record is maintained;

b. Other Federal agencies;

c. Personnel, payroll, travel records, contract records or other records;

d. Administrative hearings;

e. Court records;

f. Consumer reporting agencies.

EEOC–10

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

These records are located in Office of Human Resources, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507 and in other headquarter offices and field offices where the grievances were filed (*see* Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former EEOC employees who have submitted grievances to the EEOC in accordance with part 771 of the regulations of the Office of Personnel Management (OPM)(5 CFR part 771) and EEOC Order No. 570.003, or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiners' findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that EEOC has or may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 5 U.S.C. 7121.

PURPOSE(S):

These records result from EEOC employees' grievances, filed under the Commission's administrative grievance procedures or the formal grievance procedures contained in section 7121 of the Civil Service Reform Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

b. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

d. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

e. To provide information to a congressional office from the record of an individual in response to an inquiry

from that congressional office made at the request of that individual.

f. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

g. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters effecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

Retrievability:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

These records are shredded or burned 3 years after closing the case.

SYSTEM MANAGER(S) AND ADDRESS:

If the grievance is pending at or was never raised beyond the office level, the system manager is the head of the office. (See Appendix A.) In all other situations, the system manager is the Director, Office of Human Resources, EEOC, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (a) Name; (b) approximate date of closing of the case and kind of action taken; (c) organizational component involved.

RECORDS ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained;

b. By testimony of witnesses;

c. By agency officials;

d. From related correspondence from organizations or persons.

EEOC–11

SYSTEM NAME:

Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service.

SYSTEM LOCATION:

These records are located in Office of Human Resources, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507 or in the headquarters and field offices in which the actions have been taken.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former nonpreference eligible, excepted service Equal Employment Opportunity Commission (EEOC) employees against whom an adverse action has been proposed or taken and who have not completed two years of current and continuous service in the same or similar positions. (This system covers only those adverse action files not covered by OPM/GOVT–3.)

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on the processing of adverse actions for employees who are nonpreference eligibles in the excepted service and who do not have two years of continuous service in their positions. The records include copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witnesses, reports, and agency decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

PURPOSE(S):

These records result from the proposal, processing, and documentation of adverse actions taken by the Commission against nonpreference eligible, excepted service EEOC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in records may be used:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, or the classifying of jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

RETRIEVABILITY:

These records are retrieved by the names or social security number of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked metal filing cabinets to which only authorized personnel have access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records documenting an adverse action are disposed of 4 years after the closing of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, and Directors of Field Offices (see Appendix A).

NOTIFICATION PROCEDURES:

Individuals receiving notice of a proposed action are provided access to all documents supporting the notice. They may also contact the personnel office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name

b. Approximate date of closing of case and kind of action taken

c. Organizational component involved.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained

b. By witnesses

c. By agency officials.

EEOC–12

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

Telecommunications and Networking Division, Office of Information Resources Management, EEOC, 1801 L Street, NW., Washington DC 20507, and each field office listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally EEOC employees) who make long distance telephone calls from EEOC telephones, individuals who received long distance telephone calls placed from or charged to EEOC telephones, and individuals who are assigned U.S. government phone cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of EEOC telephones and government phone cards to place long distance calls; records indicating the assignment of telephone numbers to employees; records relating to the location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

PURPOSE(S):

These records are maintained for the purpose of keeping an account of long distance telephone calls made from EEOC telephones and charged to U.S. government phone cards held by EEOC employees and ensuring that phone calls and card charges are made for official business only.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

c. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government in response to its request, or at the initiation of the EEOC, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

f. To disclose to a telecommunications company providing telecommunications support to permit servicing the account.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

RETRIEVABILITY:

Records are retrieved by employee name or identification number, by name of recipient of telephone call, by telephone number.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are disposed of as provided in the National Archives and Records Administration's General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Telecommunications and Networking Division, Office of Information Resources Management, EEOC, 1801 L Street, NW., Washington, DC 20507 and the Directors of the field offices listed in Appendix A.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) social security number; (3) telephone number (office number if Commission employee); (4) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibilities for placement of specific long distance calls; government phone card bills.

EEOC–13

SYSTEM NAME:

Employee Identification Cards.

SYSTEM LOCATION:

Resource Management Division, Office of the Chief Financial Officer and Administrative Services, EEOC, 1801 L Street, NW., Washington DC 20507, and each of the field offices in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current EEOC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification cards that include name, signature, social security number, date of issue and photograph, and list of all persons who possess current identification cards. In addition, for office locations permitting access by proximity cards, numbered proximity cards and list of all persons with their assigned proximity card numbers, all doors controlled by the proximity cards and all persons permitted access to each door.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

44 U.S.C. 3101; 41 CFR 101–20.3.

PURPOSE(S):

These records are maintained for the purpose of ensuring that EEOC offices and buildings are secure and that only authorized individuals have access to those offices and buildings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose to other government agencies and to the public whether an individual is a current employee of the EEOC.

c. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

d. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

RETRIEVABILITY:

Records are retrieved by employee name, by identification number, and, for proximity card holders, by proximity card number.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are destroyed one year after termination of employment relationship.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Resource Management Division, Office of Chief Financial Officer and Administrative Services, EEOC, 1801 L Street, NW., Washington DC, 20507, and the Directors of the field offices listed in Appendix A.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) social security number; (3) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the employee and, for proximity card holders, from his or her use of the assigned proximity card.

EEOC–14

SYSTEM NAME:

Employee Parking Records.

SYSTEM LOCATION:

Resource Management Division, Office of the Chief Financial Officer and Administrative Services, 1801 L Street, NW., Washington DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EEOC employees who apply for or have been assigned parking spaces in the Headquarters building and members of their car pools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for parking space form and addendum form for members of car pools containing employee name, office and telephone number, signature and date, and list of employees with their assigned spaces.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 41 CFR 101–20.1.

PURPOSE(S):

These records are maintained for the purpose of assigning parking spaces to EEOC headquarters employees in the building parking garage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information in response to a request for discovery or for the appearance of a witness, to the extent that the information disclosed is relevant to the subject matter involved in the pending judicial or administrative proceeding.

c. To disclose information in a proceeding before a court or adjudicative body to the extent the information is relevant and necessary to the proceeding.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and electronically.

RETRIEVABILITY:

Records are retrieved by employee name.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of the records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are disposed of upon termination of employment relationship or earlier release of assigned parking space.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Resource Management Division, Office of the Chief Financial Officer and Administrative Services, EEOC, 1801 L Street, NW., Washington DC 20507.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) assigned parking space number or approximate date of application; (3) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

EEOC–15

SYSTEM NAME:

Internal Harassment Inquiries.

SYSTEM LOCATION:

Office of the Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former EEOC employees who have submitted complaints or reports of harassment under EEOC Order 560.005, Prevention and Elimination of Harassment in the Workplace, and current and former EEOC employees who have been accused of harassment under that Order.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all documents related to a complaint or report of harassment, including statements of witnesses, reports of interviews, investigator's and Coordinator's findings and recommendations, final decisions and corrective action taken, and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 633a; 29 U.S.C. 791; 42 U.S.C. 2000e–16; 44 U.S.C. 3101; Exec. Order No. 11478, 34 FR 12985; Exec. Order No. 13087, 63 FR 30097.

PURPOSE(S):

These records are maintained for the purpose of conducting internal investigations into allegations of harassment brought by EEOC employees and taking appropriate action in accordance with EEOC Order 560.005.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information as necessary to any source from which additional information is requested in the course of processing a complaint or report of harassment made pursuant to EEOC Order 560.005.

b. To disclose pertinent information to the appropriate federal, state or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

f. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

g. To disclose to the complaining party who filed the complaint or report of harassment and to the alleged harasser the outcome of any inquiry that may have been conducted and of disciplinary and corrective steps taken.

h. To provide to officials of labor organizations recognized under the Civil Service Reform Act information to which they are statutorily entitled when relevant and necessary to their duties of exclusive representation concerning personnel polices, practices, and matters affecting work conditions.

i. To provide to the Office Head of the office handling a statutory or collective bargaining claim whose subject matter is identical to that of a complaint or report of harassment filed under EEOC Order 560.005 written notice of the actions taken under the Order regarding that complaint or report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

RETRIEVABILITY:

These records are cross-indexed by the name of the individual who files a complaint or report of harassment, the name of the alleged victim of harassment, if any, and the name of the alleged harasser. The records may be retrieved by any of the above three indexes.

SAFEGUARDS:

The records are maintained in locked metal filing cabinets to which only authorized personnel have access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

These records are maintained for one year after the complaint or report of harassment is closed and then transferred to the Federal Records Center where they are destroyed after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Coordinator of Complaints and Reports of Harassment, EEOC, 1801 L Street, NW., Washington, DC 20507.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

EEOC–16

SYSTEM NAME:

Office of Inspector General Investigative Files.

SYSTEM LOCATION:

Office of Inspector General (OIG), Equal Employment Opportunity Commission (EEOC), 1801 L Street, NW, Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are subjects of investigations by the Office of Inspector General relating to the programs and operations of the Equal Employment Opportunity Commission. Subject individuals include, but are not limited to, current and former employees; current and former agents or employees of contractors and subcontractors in their personal capacity, where applicable; and other individuals whose actions affect the EEOC, its programs or operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken during the investigation, and accompanying exhibits; documents, notes, investigative notes, staff working papers, draft materials and other documents and records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to the alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. App.3.

PURPOSE(S):

Pursuant to the Inspector General Act of 1978, as amended, this system of records is maintained for the purpose of: (1) Documenting the conduct and outcome of investigations by the OIG and other investigative agencies regarding EEOC programs and operations; (2) reporting the results of investigations to other Federal agencies, other public authorities or professional organizations which have the authority to bring criminal prosecutions, or civil or administrative actions, or to impose other disciplinary sanctions; (3) maintaining a record of the activities which were the subject of investigations; (4) reporting investigative findings to other components of EEOC for their use in operating and evaluating their programs or operations, and in the imposition of civil or administrative sanctions; (5) coordinating relationships with other Federal agencies, state and local governmental agencies and nongovernmental entities in matters relating to the statutory responsibilities of the OIG; and (6) acting as a repository and source for information necessary to fulfill the reporting requirements of the Inspector General Act, 5 U.S.C. App.3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

a. To disclose pertinent information to the appropriate federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source, private or governmental, to the extent necessary to secure from such source information relevant to and in furtherance of a legitimate OIG investigation, audit, inspection, or other inquiry.

c. To disclose information to agencies, offices or establishments of the executive, legislative, or judicial branches of the Federal or state governments:

(1) Where such agency, office, or establishment has an interest in an individual for employment purposes, including a security clearance or determination as to access to classified information, and needs to evaluate the individual's qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or

(2) Where such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for making a determination of qualifications, suitability or loyalty to the United States Government, or access to classified information or restricted areas, or

(3) Where the records or information in those records is relevant and necessary to a decision with regard to the hiring or retention of an employee or disciplinary or other administrative action concerning an employee.

d. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

e. To disclose information to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the written request of that individual.

f. To private contractors who have been retained by OIG to perform any functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection, or inquiry.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Investigative Files consist of paper records maintained in file folders, cassette tapes of interviews and an automated data base maintained on computer diskettes.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

The folders, cassettes and diskettes are stored in locked file cabinets in the OIG. Access is restricted to EEOC personnel whose official duties require such access.

RETENTION AND DISPOSAL:

Records are held for five (5) years and then retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Equal Employment Opportunity Commission, P. O. Box 18858, Washington, DC 20036–8858.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Specific: Pursuant to 5 U.S.C. 552a(k)(2) the Office of Inspector General Investigative Files are exempt from subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act.

General: Pursuant to 5 U.S.C. 552a(j)(2), investigatory materials compiled for criminal law enforcement in the Office of Inspector General Investigative Files are exempt from subsections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2), and (e)(3) of the Privacy Act.

EEOC–17

SYSTEM NAME:

Defensive Litigation Files.

SYSTEM LOCATION:

Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed civil or administrative litigation against EEOC

and individuals who have given sworn testimony, affidavits, or declarations under penalty of perjury in such actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains all documents related to litigation brought against the Commission. These records include:

a. Documents submitted or filed by plaintiffs, grievants, and EEO complainants to prosecute civil or administrative litigation against the EEOC, such as complaints, grievances, unfair labor practice claims, motions and briefs.

b. Documents submitted by the EEOC to defend the action against it such as an answer to a civil complaint or a motion to dismiss or for summary judgment, and a reply to an administrative EEO complaint, grievance, or unfair labor practice.

c. Administrative determinations at issue in the litigation such as final agency EEO decisions, final grievance decisions, final decisions on personnel actions, final agency administrative dispositions of tort claims, and agency determinations under the Freedom of Information Act.

d. Discovery and investigatory materials such as witness statements, affidavits, declarations under penalty of perjury, correspondence, records, exhibits and other documentary evidence.

e. Litigation materials, such as attorney work product, attorney notes, hearing transcripts, legal memoranda, and related correspondence and exhibits.

e. Final judgments, orders, decisions, decrees, and settlement agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

PURPOSE(S):

These records are maintained for the purpose of defending EEOC in litigation brought against it by current and former employees, charging parties, respondents and members of the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information as may be appropriate or necessary for the Commission to defend itself in a civil action or administrative proceeding, or to seek enforcement of a settlement, order or final decision involving the same or a similar matter.

b. To provide information to a congressional office in response to an inquiry from the congressional office made at the request of a party to the administrative or civil proceeding to which the record pertains.

c. To disclose pertinent information to an appropriate federal court, agency or administrative body responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation, or in order to seek enforcement or clarification of an order or decision for or against the EEOC to which the record pertains.

d. To disclose information to another federal agency or to a court when the government is a party to the judicial or administrative proceeding.

e. To disclose, in response to an order, information that is relevant to a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in locked filing system. Information identifying existing files is maintained in electronic form accessible by computer.

RETRIEVABILITY:

These records are cross-indexed by name of the plaintiff/complainant/grievant/aggrieved individual, and Office of Legal Counsel reference number. The records may be retrieved by either index.

SAFEGUARDS:

Paper records maintained at EEOC headquarters are kept in locked cabinets in the Office of Legal Counsel. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked evenings, weekends and holidays. Paper records which have been retired are maintained at the Federal Records Center. Access to computerized records is limited, through use of passwords, to those whose official duties require access, input and retrieval of information.

RETENTION AND DISPOSAL:

Two years after the date of closure of the underlying civil or administrative action (*e.g.*, final order, decision on appeal), records pertaining to that action are retired to the Federal Records Center. Thereafter, files are destroyed seven years after the date of closure of the underlying action.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street, NW. Washington, DC 20507.

NOTIFICATION PROCEDURES:

Any person wanting to know whether this system of records contains information about him or her should contact the System Manager. Such person should provide his or her full name, date of birth, social security number, and mailing address to which a response is to be sent, and forum, filing date, and docket number of the action involved, if available.

RECORD ACCESS PROCEDURES:

The records described herein are compiled in reasonable anticipation of a civil action or proceeding. Pursuant to section (d)(5) of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(d)(5), an individual is precluded from access to such records.

CONTESTING RECORDS PROCEDURES:

Same as the Notification Procedures above.

RECORD SOURCE CATEGORIES:

Plaintiffs, grievants, complainants, aggrieved individuals, current and former EEOC employees.

EEOC–18

SYSTEM NAME:

Reasonable Accommodation Records.

SYSTEM LOCATION:

All locations listed in Appendix A and all headquarters offices, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former EEOC employees and applicants who have requested reasonable accommodations under the Rehabilitation Act of 1973.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for reasonable accommodations; medical records; notes or records made during consideration of requests; decisions on requests; records made to implement or track decisions on requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Rehabilitation Act of 1973, 29 U.S.C. 791; E.O. 13164.

PURPOSE(S):

This system is maintained for the purpose of considering, deciding and implementing requests for reasonable accommodation made by EEOC employees and applicants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information to medical personnel to meet a bona fide medical emergency.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

c. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

d. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computer databases.

RETRIEVABILITY:

Indexed by name of employee or applicant.

SAFEGUARDS:

Files are maintained in locked cabinets. Access is restricted to EEOC personnel whose official duties require such access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

These records will be maintained for the longer of an employee's tenure with EEOC, or for 5 years. Thereafter, they will be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Disability Program Manager, Office of Equal Opportunity, EEOC, 1801 L Street, NW., Washington, DC 20507.

EEOC/GOVT–1

SYSTEM NAME:

Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

SYSTEM LOCATION:

Equal employment opportunity complaint files are maintained in an Office of Equal Employment Opportunity or other designated office of the agency or department where the complaint was filed. EEO Appeal files (including appeals from final negotiated grievance decisions involving allegations of discrimination) and petitions for review of decisions of the Merit Systems Protection Board are maintained in the Office of Federal Operations, Equal Employment Opportunity Commission, Washington, DC 20507 and in EEOC field offices (*see* Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for federal employment and current and former federal employees who contact an EEO counselor or who file complaints of discrimination or reprisal with their agency, or who file appeals on EEO complaints, petitions for review of decisions of the Merit Systems Protection Board, or appeals of final decisions in negotiated grievance actions involving allegations of discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents compiled during the pre-complaint counseling and the investigation of complaints filed under section 717 of Title VII, section 15 of the Age Discrimination in Employment Act, section 501 of the Rehabilitation Act, and the Equal Pay Act and all appeals.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

42 U.S.C. 2000e–16(b) and (c); 29 U.S.C. 204(f) and 206(d); 29 U.S.C. 633(a); 29 U.S.C. 791; Reorg. Plan No. 1 of 1978, 43 FR 19607 (May 9, 1978); Exec. Order No. 12106, 44 FR 1053 (Jan. 3, 1979).

PURPOSE(S):

These records are maintained for the purpose of counseling, investigating and adjudicating complaints of employment discrimination brought by applicants and current and former federal employees against federal employers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose information to officials of state or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before EEOC.

g. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

h. To disclose information to employees of contractors engaged by an agency to carry out the agency's responsibilities under 29 CFR part 1614.

i. To disclose information to potential witnesses as appropriate and necessary to perform the agency's functions under 29 CFR part 1614.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer databases.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

These records are maintained for one year after resolution of the case and then transferred to the Federal Records Center where they are destroyed after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Within the agency or department where the complaint of discrimination or reprisal was filed, the system manager is the Director of the Office of Equal Employment Opportunity or other official designated as responsible for the administration and enforcement of equal employment opportunity laws and regulations within the agency or department.

Where an individual has appealed an EEO complaint or final negotiated grievance decision to the EEOC or petitioned the EEOC to review a decision of the Merit Systems Protection Board, the system manager of the appeal or petition file is the Director, Office of Federal Operations, Equal Employment Opportunity Commission, Washington, DC 20507.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

Appendix A

U.S. EEOC Albuquerque District Office, 505 Marquette Street, NW., Suite 900, Albuquerque, New Mexico 87102–2158.
U.S. EEOC Atlanta District Office, 100 Alabama Street, SW, Suite 4R30, Atlanta, Georgia 30303.
U.S. EEOC Baltimore District Office, City Crescent Building, 10 South Howard Street, 3rd Floor, Baltimore, Maryland 21201–2526.
U.S. EEOC Birmingham District Office, Ridge Park Place, 1130 22nd Street, Suite 2000, Birmingham, Alabama 32205.
U.S. EEOC Boston Area Office, John F. Kennedy Fed Bldg., 2400 Government Center, Rm 475, East Tower, Boston, Massachusetts 02114.
U.S. EEOC Buffalo Local Office, 6 Fountain Plaza, Suite 350, Buffalo, New York 14202.
U.S. EEOC Charlotte District Office, 129 West Trade Street, Suite 400, Charlotte, North Carolina 28202.
U.S. EEOC Chicago District Office, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.
U.S. EEOC Cincinnati Area Office, 550 Main Street, Suite 10019, Cincinnati, Ohio 45202.
U.S. EEOC Cleveland District Office, Tower City—Skylight Office Tower, 1660 West Second Street, Suite 850, Cleveland, Ohio 44113–1454.
U.S. EEOC Dallas District Office, 207 South Houston Street, 3rd Floor, Dallas, Texas 75202–4726.
U.S. EEOC Denver District Office, 303 East 17th Avenue, Suite 510, Denver, Colorado 80203.
U.S. EEOC Detroit District Office, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226–9704.
U.S. EEOC El Paso Area Office, The Commons Building C, Suite 100, 4171 North Mesa Street, El Paso, Texas 79902.
U.S. EEOC Fresno Local Office, 1265 West Shaw Avenue, Suite 103, Fresno, California 93711.
U.S. EEOC Greensboro Local Office, 2303 W. Meadowview Road, Suite 201, Greensboro, North Carolina 27405–7813.
U.S. EEOC Greenville Local Office, Wachovia Bldg., 301 North Main Street, Suite 1420, Greenville, South Carolina 29601.
U.S. EEOC Honolulu Local Office, 300 Ala Moana Boulevard, Room 7123–A, P.O. Box 50082, Honolulu, Hawaii 96850–0051.
U.S. EEOC Houston District Office, 1919 Smith Street, 7th Floor, Houston, Texas 77002.
U.S. EEOC Indianapolis District Office, 101 West Ohio Street, Suite 1900, Indianapolis, Indiana 46204–4203.
U.S. EEOC Jackson Area Office, 100 West Capitol Street, Suite 207, Jackson, Mississippi 39269.
U.S. EEOC Kansas City Area Office, 400 State Avenue, Suite 905, Kansas City, Missouri 66101.
U.S. EEOC Little Rock Area Office, 425 West Capitol Avenue, Suite 625, Little Rock, Arkansas 72201.
U.S. EEOC Los Angeles District Office, 255 East Temple Street, 4th Floor, Los Angeles, California 90012.
U.S. EEOC Louisville Area Office, 600 Dr. Martin Luther King Jr., Pl., Suite 268, Louisville, Kentucky 40202.
U.S. EEOC Memphis District Office, 1407 Union Avenue, Suite 621, Memphis, Tennessee 38104.
U.S. EEOC Miami District Office, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.
U.S. EEOC Milwaukee District Office, 310 West Wisconsin Avenue, Suite 800, Milwaukee, Wisconsin 53203–2292.
U.S. EEOC Minneapolis Local Office, 330 South 2nd Avenue, Suite 430, Minneapolis, Minnesota 55401–2224.
U.S. EEOC Nashville Area Office, 50 Vantage Way, Suite 202, Nashville, Tennessee 37228–9940.
U.S. EEOC Newark Area Office, One Newark Center, 21st Floor, Newark, New Jersey 07102–5233.
EEOC New Orleans District Office, 701 Loyola Avenue, Suite 600, New Orleans, Louisiana 70113–9936.
U.S. EEOC New York District Office, 201 Varick Street, Room 1009, New York, New York 10014.
U.S. EEOC Norfolk Area Office, Federal Building, Suite 739, 200 Granby Street, Norfolk, Virginia 23510.
U.S. EEOC Oakland Local Office, 1301 Clay Street, Suite 1170–N, Oakland, California 94612–5217.
U.S. EEOC Oklahoma Area Office, 210 Park Avenue, Suite 1350, Oklahoma City, Oklahoma 73102.
U.S. EEOC Philadelphia District Office, 21 South 5th Street, Suite 400, Philadelphia, Pennsylvania 19106.
U.S. EEOC Phoenix District Office, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012–2504.
U.S. EEOC Pittsburgh Area Office, 1001 Liberty Avenue, 3rd Floor, Pittsburgh, Pennsylvania 15222–4187.
U.S. EEOC Raleigh Area Office, 1309 Annapolis Drive, Raleigh, North Carolina 27608–2129.
U.S. EEOC Richmond Area Office, 830 East Main Street, 6th Floor, Richmond, Virginia 23219.
EEOC San Antonio District Office, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229–3555.
U.S. EEOC San Diego Area Office, 401 B Street, Suite 1550, San Diego, California 92101.
EEOC San Francisco District Office, 901 Market Street, Suite 500, San Francisco, California 94103.
U.S. EEOC San Jose Local Office, 96 North 3rd Street, Suite 200, San Jose, California 95112.
San Juan Area Office, 525 F.D. Roosevelt Ave., Plaza Las Americas, Suite 1202, San Juan, Puerto Rico 00918–8001.
U.S. EEOC Savannah Local Office, 410 Mall Boulevard, Suite G, Savannah, Georgia 31406–4821.
U.S. EEOC Seattle District Office, Federal Office Building, 909 First Avenue, Suite 400, Seattle, Washington 98104–1061.
U.S. EEOC St. Louis District Office, Robert A. Young Building, 1222 Spruce Street, 8th Floor, Room 8.100, St. Louis, Missouri 63103.
U.S. EEOC Tampa Area Office, 501 East Polk Street, Room 1020, Tampa, Florida 33602.
U.S. EEOC Washington Field Office, 1400 L Street, NW, Suite 200, Washington, DC 20005.

[FR Doc. 02–18895 Filed 7–29–02; 8:45 am]
BILLING CODE 6570–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 1, 2002, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4024, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

Approval of Minutes

- July 11, 2002 (Open).

Dated: July 26, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–19370 Filed 7–26–02; 2:56 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY:

Background

June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 30, 2002.

ADDRESSES: Comments should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to Approve Under OMB Delegated Authority to Revise, Without Extension, The Following Reports:

Report title: Financial Statements for Bank Holding Companies

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9CS

OMB control number: 7100–0128

Frequency: Quarterly and semiannually

Reporters: Bank holding companies (BHCs)

Annual reporting hours: 321,581 hours

Estimated average hours per response: FR Y–9C: 33.98 hours, FR Y–9LP: 4.55 hours, FR Y–9SP: 3.89 hours, FR Y–9CS: 30 minutes, FR Y–9ES: 30 minutes

Number of respondents: FR Y–9C: 1,859, FR Y–9LP: 2,193, FR Y–9SP: 3,566, FR Y–9CS: 600; FR Y–9ES: 100

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier bank holding companies that have total assets of $150 million or more and by lower–tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each bank holding company that files the FR Y–9C. In addition, for tiered bank holding companies, a separate FR Y–9LP must be filed for each lower tier bank holding company.

The FR Y–9SP is a parent company only financial statement filed semiannually by one–bank holding companies with total consolidated

assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y–9C and FR Y–9SP reports.

Current actions: The Federal Reserve proposes to implement the Financial Statements for Employee Stock Ownership Plan Bank Holding Companies (FR Y–9ES) for BHCs that are Employee Stock Ownership Plans (ESOPs) that currently submit either the FR Y–9LP or the FR Y–9SP. The proposed FR Y–9ES form, because it is more consistent with the ESOP's current reporting requirements for other purposes, should significantly lower burden for those ESOPs that currently file the FR Y–9LP or FR Y–9SP. Additionally, data collected on the FR Y–9ES would more accurately reflect the ESOP's financial condition and therefore complement the data collected on the consolidated statements (FR Y–9C).

The proposed new report draws upon aspects of (1) the IRS Form 5500 Annual Return/Report of Employee Benefit Plan filed by ESOPs, (2) requirements found in the AICPA's Audit Guide for Employee Benefits Plans, (3) Statement of Position No. 76–3 Accounting Practices for Certain Employee Stock Ownership Plans, (4) Statement of Position No. 93–6 Employers' Accounting for Employee Stock Ownership Plans, and (5) other publications relating to ESOPs.

This report would be filed annually by approximately 100 Employee Stock Ownership Plans (ESOPs) that are considered bank holding companies. Bank holding companies that are subsidiaries of ESOP BHCs will continue to submit the FR Y–9C, FR Y–9LP, or FR Y–9SP in accordance with the appropriate reporting requirements.

The proposed FR Y–9ES would be a three–page form that would collect information on the benefit plan activities made by ESOP BHCs. There are four schedules on the FR Y–9ES: Statement of Changes in Net Assets Available for Benefits, Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The annual FR Y–9ES would be collected as of December 31 and submitted to the Federal Reserve by July 31. The Federal Reserve is considering granting extensions if the respondent has been granted an extension for filing their IRS/DOL Form 5500. The IRS allows institutions to extend their submission until October 15, by submitting Form 5558 on or before July 31. The respondent would be required to send a copy of their Form 5558 to the appropriate Reserve Bank by July 31. The Federal Reserve is specifically seeking comment on the proposed deadline for the FR Y–9ES.

Board of Governors of the Federal Reserve System, July 24, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–19111 Filed 7–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 14, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Southern Bancorp, Inc., Employee Stock Ownership Plan, Marietta, Georgia; to retain voting shares of Southern Bancorp, Inc., Marietta, Georgia, and thereby indirectly retain voting shares of Southern National Bank, Marietta, Georgia.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. S&E Pritchard Enterprises, Ltd., San Antonio, Texas; to acquire voting shares of InterContinental Banksahres Corp, San Antonio, Texas, and thereby indirectly acquire voting shares of InterContinental National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, July 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–19224 Filed 7–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. North Star Holding Company, Inc., Jamestown, North Dakota; to acquire 100 percent of the voting shares of Northern Plains Investment, Inc., Jamestown, North Dakota, and thereby

indirectly acquire voting shares of Stutsman County State Bank, Jamestown, North Dakota.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Bethlehem Financial Corporation, Belen, New Mexico, to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Belen, Belen, New Mexico.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. ISB Holdings, Inc., Perryton, Texas, and ISB Delaware Holdings, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Interstate Bank, SSB, Perryton, Texas.

Board of Governors of the Federal Reserve System, July 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–19223 Filed 7–29–02; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, August 5, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–19353 Filed 7–26–02; 2:56 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–72]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: State Influenza Coordinators Survey—New—National Center for Infectious Diseases (NCID), Centers for Disease control and Prevention (CDC.) Influenza epidemics in the United States are associated with approximately 20,000 deaths and 114,000 hospitalizations each year; influenza pandemics are responsible for dramatic increases in morbidity and mortality worldwide. In order to detect "novel" viruses, changes in circulating strains, and the clinical impact of circulating strains, surveillance systems must present a broad picture of influenza activity. Data on morbidity and mortality are essential and must be reported in a timely manner.

Influenza Surveillance at CDC consists of four components: U.S. Sentinel Physician Network, State and Territorial Epidemiologist Reports, 122 Cities Mortality Report, and the WHO/NRVESS Laboratory Reports. Each of the 50 states as well as the District of Columbia participate in at least one of the CDC's four surveillance components, however, additional surveillance activities within the states are currently unclear. In order to develop or enhance current Influenza surveillance activities at CDC and prepare for the future, including possible pandemics, it is crucial that we are aware of any existing surveillance systems at the state level. We are proposing a survey of state health departments, specifically each state's Influenza Surveillance Coordinator in order to ascertain the nature of flu surveillance in his/her state as well as how prepared the state is for things to come. The data collected will be used to improve and/or enhance national surveillance efforts.

The questionnaire that will be used focuses on state surveillance systems as well as pandemic preparedness. Questions will be asked regarding current surveillance including: Sentinel Physicians Systems, Nursing home surveillance, and School Absenteeism. There is no cost to respondents.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
State health departments	53	1	30/60	27
Total				27

Dated: July 23, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–19144 Filed 7–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02191]

Expansion of HIV/AIDS/TB Care and Prevention Activities Among People With HIV/AIDS in the Republic of Uganda; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds for cooperative agreements for the Expansion of HIV/AIDS/TB Care and Prevention Activities Among People with HIV/AIDS in the Republic of Uganda was published in the **Federal Register**, June 20, 2002, Volume 67, No. 119, pages 42006–42007. The notice is amended as follows: On page 42006, Column 3, Paragraph "I. Submission and Deadline", remove "July 17, 2002" and insert in its place "August 9, 2002".

Dated: July 24, 2002.

Rebecca B. O'Kelley,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19161 Filed 7–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02198]

International Programs To Prevent and Control Micronutrient Malnutrition; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the international prevention and control of micronutrient malnutrition.

The purpose of this program is to achieve the elimination of micronutrient malnutrition, especially iron, iodine and vitamin A deficiencies by: Component 1 supporting and strengthening program development, epidemiology, laboratory, intervention, and communications capacity of nutrition/micronutrient programs in selected countries through regional strategies activities, including distribution of vitamin A capsules, iron, and folic acid supplements to target populations worldwide; component 2 developing and implementing program policy and standards, maintaining relationships with ministries of health (MOH) and other policy makers, and setting international standards for nutritional status; component 3 testing the usefulness of the micronutrient version of CDCynergy as a planning, training or evaluation tool for developing countries participating in national or regional food fortification and supplementation programs.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.945.

C. Eligible Applicants

Assistance will be provided only to those potential applicants that are eligible as described below:

All components must involve work with developing countries only.

Eligibility for Component 1

Assistance will be provided only to the United Nations Children's Fund (UNICEF), New York, New York. No other applications are solicited.

UNICEF is the only organization that has country-based offices to support direct delivery of public health programs and services in nearly every country in the world. Additionally, UNICEF's mandate also address educational related health issues. This focus has enabled UNICEF programs to develop a leadership role in micronutrient deficiency intervention programs across multiple sectors of society because of the significant impact of such programs on health and population-based health education. In addition to national offices, UNICEF supports sub-national programs which provide direct access to local public health and education programs.

UNICEF supports micronutrient deficiency intervention programs around the world through the distribution of vitamin A capsules, as well as iron and folic acid supplements to target populations. UNICEF supports country-based salt iodization programs around the world to reduce the burden of iodine deficiency disorders.

Eligibility for Component 2

Assistance will be provided only to the World Health Organization (WHO) and its Eastern Mediterranean Regional Office (EMRO). No other applications are solicited.

WHO is the most appropriate and qualified agency to conduct the activities under this component because it is the only organization that (a) has demonstrated the necessary expertise and experience in technical, policy, and program issues relating to micronutrient malnutrition; (b) maintains relationships with MOH officials and other policy makers throughout the region; and (c) serves as the source of international standards for nutritional status, including micronutrient status.

WHO supports micronutrient malnutrition intervention programs. WHO is a partner in a global initiative to eliminate micronutrient malnutrition.

In the past ten years WHO/EMRO has made progress in working towards the prevention of iron deficiency anemia (IDA) and the elimination of iodine deficiency disorders (IDD). WHO/EMRO identified flour fortification with iron and folate as the best preventive and most sustainable strategy for IDA, as bread and other wheat-flour products are widely consumed in the countries of region. Through regional workshops, WHO/EMRO has helped countries write action plans for flour fortification with iron and folate, and at present, six countries have either begun or are in the process of beginning flour fortification. Additionally, WHO/EMRO supports country-based salt iodization programs throughout the region which has had a significant impact on reducing the burden of iodine deficiency disorders.

Eligibility for Component 3

Applicants must have a presence and/or office in a country and demonstrate the ability to implement the activity within the country.

Assistance will be provided to public and private nonprofit organizations and institutions working in developing countries; such as, educational institutions, universities, colleges, research institutions, hospitals, faith-based organizations and other organizations and institutions. Applicants must have the authorization and overall resources to implement a micronutrient program in a country or region of a country.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Special Guidelines for Technical Assistance Conference Call

Technical assistance will be available for potential applicants for Component 3 on a conference call to be held August 6, 2002 at 8:30 a.m. Eastern Standard Time.

Potential applicants are requested to call in using only one telephone line. The conference call can be accessed by calling 1–800–311–3437 (Federal call (404) 639–3277) and entering access code 750237. The purpose of the conference call is to help potential applicants to:

1. Understand the scope and intent of the program Announcement for the International Micronutrient Malnutrition Program.

2. Be familiar with the Public Health Service's funding policies and application and review procedures.

Participation in this conference call is not mandatory. At the time of the call, if you have problems accessing the call, contact 404–639–7550.

D. Availability of Funds

Approximately 1,900,000 is available in FY 2002 to fund approximately four awards.

Component Funding

Approximately $1,400,000 is available in FY 2002 to fund UNICEF (Component 1) and WHO (Component 2). It is expected that $1,000,000 will be awarded for component 1 and $400,000 will be available for Component 2. Approximately $500,000 is available in FY 2002 to fund two awards under Component 3. The average award for Component 3 is expected to be $250,000.

Matching funds are not required for this program.

It is expected that awards under this program announcement will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of one year. Funding estimates may change.

Use of Funds

1. Cooperative agreement funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities consistent with the scope of the cooperative agreement. Funds provided under this program cannot be used to supplant existing program funds, provide personal health services, medications, patient rehabilitation or to support facilities construction or renovation.

2. All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

3. The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions: Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the WHO, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location, major alteration and renovation, customs and import duties, and, with limited exception, patient care.

E. Program Requirements

In conducting activities to achieve the purpose of this cooperative agreement, the recipient will be responsible for conducting the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities for Component 1

a. Identify, prioritize and support developing countries based on demonstration of interest and commitment of government to support population-based micronutrient deficiency interventions. Through surveys, assess the burden of micronutrient deficiencies, in support of recognized population-based intervention strategies, (i.e. food fortification and/or micronutrient supplementation). Assessment projects may include (1) an analysis of quantitative and qualitative data to determine micronutrient status and needs of populations; (2) assess relevant knowledge, attitudes and practices of target populations, health professionals and programs, and other relevant entities; (3) assess the infrastructure needed for various intervention strategies; and (4) allow for basic formative research needed for health communication strategies.

b. Survey data should be used for program development and determination of baseline data on process and/or impact indicators to allow for intervention program monitoring and assessing impact on micronutrient status of the population.

c. Identify, prioritize, and support developing countries to design and implement innovative surveillance systems to monitor and evaluate the process of the intervention programs (e.g. quality control of fortified foods at production, retail and/or household level; and population coverage of intervention program) and their impact on the micronutrient status of the population. Developing countries should: (1) Implement or have existing population-based micronutrient deficiency intervention programs, specifically, food fortification or universal supplementation strategies, and (2) demonstrate national support for surveillance system maintenance after initial development.

d. Support selected country programs to plan, implement and evaluate population-based intervention strategies to prevent and control iron deficiency among preschool children (especially 6–24 months old) with an emphasis on fortification of complementary foods and/or supplementation.

e. Strengthen micronutrient epidemiology and health communication capacity through training activities.

f. Identify staff personnel to be housed in selected regional office(s), to provide oversight and support for country level activities.

g. Utilize a grass roots approach to carry out micronutrients activities in selected countries.

1. Recipient Activities for Component 2

a. Develop and provide strategies for training capacity building and organizing regional training programs and strategies on surveillance and monitoring of population-based micronutrient deficiency interventions, (especially flour fortification), and for formative research in support of micronutrient communication strategies. Training should be linked to relevant follow up activities at the country levels.

b. Develop and provide guidance on food fortification and micronutrient status assessment. Provide policy, technical and other support to countries in the region in developing and carrying out micronutrient status surveys to estimate the prevalence of micronutrient deficiencies; assess relevant knowledge, attitudes and practices of target populations, health professionals and programs, and other relevant entities.

c. Provide policy and technical support for countries within a region with existing population-based micronutrient deficiency intervention programs to design and implement innovative surveillance systems to monitor the process and impact of the intervention programs, especially flour fortification.

d. Convene regional meetings to develop policy and program strategies,

guidance and standards for food fortification, and micronutrient status assessment and monitoring strategies.

e. Identify staff person to be housed in selected regional office(s) to provide oversight and support to regional level activities.

1. Recipient Activities for Component 3 Activities (a) through (e) are first priority activities.

a. Conduct assessment activities to identify communication gaps and needs in a country with an existing micronutrient programs, and utilize CDCynergy for Micronutrients to create and begin implementation of a micronutrient communication plan. Activities specified in the plan should include: (1) Conduct stakeholder meetings to plan communication activities; (2) gather country- and region-specific background information on micronutrient program, in general and specific to communication; (3) conduct formative research to clarify communication goals; (4) develop communication concepts and messages to test; (5) conduct pre-testing research and pilot tests; (6) draft and disseminate creative materials (e.g. print, audio, video); (7) produce and disseminate materials; and (8) conduct process and impact evaluation at the level of behavior change. Translate the text of the existing tutorial and examples, on an as needed basis.

b. Develop performance measures to assess the overall usefulness of CDCynergy and its applicability to country or regional efforts in micronutrient communication planning.

c. Train staff at appropriate professional levels to use CDCynergy. Prepare a micronutrient communication "case-study" in a step-wise fashion, of a relevant national or regional experience to be used on future editions of CDCynergy.

d. Conduct training for students, international trainees and other learners about communication planning for nutrition programs. Prepare model curricula for multiple teaching and training situations.

e. Provide technical support on a short-term basis to manage applications of CDCynergy.

f. Establish necessary operational links with global partners in country or region in which CDCynergy is to be tested.

g. Customize CDCynergy for Micronutrients for Country/Regional Use. NOTE: This activity should be considered a secondary priority to be started after activities (a) through (f) have been completed.

Customization would begin with: (1) Translation of tutorial into a language appropriate to the target population and in common use throughout the region or country (such as, Chinese, Arabic, French, Portugese, Russian, Spanish or other widely-used language in country or region; (2) identify culturally and geographically relevant examples, drawing on the "case study" examples created during CDCynergy training workshops, of successful communication interventions for fortification or supplement distribution programs. Prepare the examples as "case study" according to CDCynergy Phases and steps. (3) identify and make available data and planning documents that support the example (e.g. Country/Regional versions of "State of the World's Children," National planning documents for micronutrients, etc.); and (4) identify language appropriate, current references to explain methodological issues (e.g. health communication, education or health promotion theories, program evaluation).

h. Conduct model training and evaluation of "draft" version of customized version by:

(1) Identifying up to 20 persons engaged in communication planning for micronutrients;

(2) Train program staff to use CDCynergy to plan communication activities over the natural course of a communication program;

(3) Develop process measures for how CDCynergy has affected program planning, implementation or evaluation; and

(4) Evaluate training activities.

i. Finalize custom version of the appropriate revised components within CDCynergy. Based on training and program utility, develop final version of CDCynergy.

j. Develop and disseminate the new customized version of CDCynergy through training and collaborative activities with partners.

2. CDC Activities (a, b and c Applicable for Both Components and 2; d and e Applicable to Component 3)

a. Provide epidemiologic, laboratory and communications technical assistance in support of regional or country-based activities.

b. Provide technical assistance and support in development and provision of policy, guidance and standards for food fortification, micronutrient status assessment and monitoring strategies.

c. Participate in process to identify staff person(s) to be housed in selected regional offices of UNICEF and WHO.

d. Provide implementation training technical assistance, including development of Epi Info-based software to help standardize micronutrient status assessment and reporting procedures.

e. Assist in the development and dissemination of a customized version(s) of CDCynergy focused on micronutrient malnutrition.

F. Application Content

All applicants should use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated using the criteria listed, so it is important to follow them in laying out your program plan. Applications should not exceed 30 double-spaced pages, printed on one side, with one-inch margins, in 12-point font, excluding budget, justification, and appendixes. All applicants applying for component three should also submit appendices including resumes, job descriptions, organizational chart, and any other supporting documentation as appropriate. All materials must be suitable for photocopying (*i.e.*, no audiovisual materials, posters, tapes, etc.).

Applicants must designate in the Executive Summary of their application the component (1, 2, or 3) for which they are applying. Provide the following information:

1. Executive Summary

All applicants must provide a summary of the program described in the proposal (two pages maximum).

2. Background and Need (eight pages)

Describe the need and the current resources available for component activities, to include: Development of a plan for building capacity through training and support.

a. Existing initiatives, capacity, and infrastructure (e.g. collaborations/partnerships; surveillance activities and systems; evaluation activities; information, media and health communications; and education and outreach strategies) within which elimination of micronutrient malnutrition is possible.

b. The overall country/region barriers currently faced related to developing and implementing a program for the elimination of micronutrient malnutrition.

c. The overall micronutrient malnutrition burden for the country/region.

d. Description of the need for micronutrient malnutrition funding to enhance existing efforts.

e. The gaps in resources, staffing, capabilities, and programs that, if addressed, might further the progress of the elimination of micronutrient malnutrition.

3. Staffing (not included in 20-page limitation)

Describe program staffing. Provide resumes or job descriptions for budgeted positions at regional levels.

4. Training Capacity (five pages)

Provide a description and evidence of training capabilities deemed appropriate to the program.

5. Work Plan (five pages)

The applicant should provide a detailed work plan that describes how the proposed activities will be conducted. The work plan should include the following:

a. Goals and objectives.

b. Activities planned to achieve objectives.

c. Data that will be used to assess program activities.

d. Time line for assessing progress.

e. Who is responsible for activities.

f. Overall measures of effectiveness.

6. Organizational Support (five pages)

Provide a plan for program management, including an organizational chart. Describe those positions which have oversight responsibility. Address leadership and administrative plans for the next budget period. Discuss strategies for ensuring appropriate communication among key staff on the status of program implementation, maintenance, and related issues.

7. Budget and Budget Justification

Provide a detailed line-item budget with justifications consistent with the purpose and proposed objectives.

Requested Budget Information

Applicants are urged to submit a separate budget for each component applied for in response to this program announcement: (1) A detailed budget and narrative justification that supports the activities for funding in response to this program announcement, and (2) a categorical budget consistent with budget Form 424A.

G. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. They may also be obtained by calling the Grants Management Specialist listed in the where to obtain Additional Information Section of this announcement.

Applications must be received on or before 5:00 p.m., EST, August 29, 2002. Submit the application to:

Technical Information Management Section—PA 02198, Procurement and Grants Office, Centers of Disease Control, 2920 Brandywine Drive, Atlanta, Georgia 30341.

Applications may not be submitted electronically.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before 5:00 p.m. Eastern Time on the deadline date.

Applications which do not meet the criteria above will be returned to the applicant.

H. Evaluation Criteria

Measures of Effectiveness

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

The applications received will be evaluated against the following component criteria and will be reviewed by an independent review group appointed by CDC.

1. All Components (1, 2, and 3) Evaluation Criteria (total 100 points)

a. Work Plan (60 Points total)

(1) The extent to which the plan for achieving the proposed activities appears realistic and feasible and relates to the stated program requirements and purposes of this cooperative agreement (30 Points).

(2) The extent to which the proposed plan for evaluating progress toward meeting objectives appears reasonable and feasible (10 Points).

(3) The degree to which the collaboration on development of a training plan with partners is demonstrated through documented and collaborative activities (10 Points).

(4) The degree to which objectives are specific, time-phased, measurable, realistic, and related to identified needs, program requirements, and purpose of the program (10 Points)

b. Staffing (20 Points)

The degree to which the proposed staff have the relevant background, qualifications, and experience; and the degree to which the organizational structure supports staffs' ability to conduct proposed activities and provide staff in country/regional areas.

c. Background and Need (10 Points)

The extent to which the applicant identifies specific needs, resources and interest (commitment of government) available for the activities and presents data justifying the need for the program in terms of the magnitude of the burden.

d. Training capacity (10 Points)

The extent to which the applicant provides evidence of other training capabilities deemed appropriate to the program.

e. Budget (Not Scored)

The extent to which the budget appears reasonable and consistent with the proposed activities and intent of the program.

f. Human Subjects

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

I. Other Requirements

Progress Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports. The first report is due April 30, 2003. The final report is due 90 days after the end of the budget period. Semi-annual progress reports should include:

a. A comparison/description of actual accomplishments (narrative) to the goals established during the first six months of the budget period and should consist of no more than 20 pages.

b. The reason for which established goals were not met and strategies to be implemented to achieve unmet objectives.

c. A description of any new objectives to support the implementing of the findings from research and other assessment activities.

d. Provide measures of effectiveness to evaluate the accomplishment of the various identified objectives of the cooperative agreement. These measures must be objective and must measure the intended outcome. These measures shall be reported in semi-annual and annual progress reports.

2. Final financial and performance reports, no more than 90 days after the end of the project period.

Fiscal Reporting Requirements

a. Awardee is required to obtain annual audit of these CDC funds (program-specific audit) by a U.S. based

audit firm with International branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

b. A Fiscal Recipient Capability Assessment may be required, pre or post award, with potential awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the "Where To Obtain Additional Information" Section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobby Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC Home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Cynthia Collins, Grants Management Specialist, International/Territories Acquisition and Assistance Branch, Procurement and Grants Office, Program Announcement 02198, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–5539, Telephone: 770–488–2757, E-mail address: *coc9@cdc.gov*.

For program technical assistance, for Components 1 and 2 contact: Dan Sadler, Deputy Director, Division of Nutrition and Physical Activity, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., MS K–24, Atlanta, GA 30341, Telephone number: 770–488–6042, FAX: 770–488–6000, E-mail address: *mds1@CDC.Gov*.

For program technical assistance, for Component 3 contact: Dr. Claudia Parvanta, Director, Division of Health Communications, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS D–42, Atlanta, GA 30333, Telephone number: 404–639–7281, FAX: 404–639–7391, E-mail address: *cip0@cdc.gov*.

Dated: July 24, 2002.

Rebecca B. O'Kelley,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19169 Filed 7–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 2002.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Date and Time: August 5, 2002; 8:30 a.m.–5 p.m., August 6, 2002; 8 a.m.–4:00 p.m.

Place: The Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting is open to the public.

Agenda items will include, but not be limited to: Welcome; plenary discussion of the role of the grant programs under Title VII, Part D, Public Health Service Act in meeting Public Health Preparedness objectives; interdisciplinary training issues related to bioterrorism; reinforcement of community-based linkages; presentations by speakers representing: the Division of Health Careers Diversity and Development, Bureau of Health Professions, the Office of Minority Health, Health Resources and Services Administration; and the Office of Public Health Preparedness, Department of Health and Human Services; and Committee members. Meeting content will address preparation of the Committee's annual report to the Secretary and the Congress and the scheduling of topics for the next Committee meeting in October 2002.

Public comment will be permitted before lunch and at the end of the Committee meeting on August 5, 2002. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Bernice A. Parlak, Executive Secretary, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1898.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but wish to make an oral statement may register to do so at the Doubletree Hotel, Rockville, Maryland, on August 5, 2002. These persons will be allocated time as the Committee meeting agenda permits.

Anyone requiring information regarding the Committee should contact Bernice A. Parlak, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1898.

Proposed agenda items are subject to change as priorities dictate.

Dated: July 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–19301 Filed 7–29–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Protection and Advocacy for Individuals with Mental Illness (PAIMI) Annual Program Performance Report (OMB No. 0930–0169, Revision)

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act (42 U.S.C. 10801 *et seq.*) authorized funds to support protection and advocacy services on behalf of individuals with severe mental illness and severe emotional impairment who are at risk for abuse and neglect and other civil rights violations while under treatment in a residential facility.

Under the PAIMI Act, formula grant awards are made to protection and advocacy (P&A) systems designated by the governors of the 50 states and 6 territories, and the District of Columbia to ensure that the rights of individuals with severe mental illness and severe emotional disturbance are not violated. In October 2000, the PAIMI Act was amended to create a 57th P&A system—the Native American Consortium in Shiprock, New Mexico. Whenever the annual PAIMI appropriation reaches $30 million or more, State P&A systems may serve eligible individuals with serious mental illness or severe emotional impairments, as defined under the Act, residing in the community, including their own homes. However, PAIMI eligible persons residing in public and private residential care or treatment facilities have priority for all P&A system services. The Children's Health Act of 2000 (42 U.S.C. 290aa *et seq.*), also referenced State P&A authority to obtain information on incidents of seclusion, restraint and related deaths (*See* Parts H and I of that Act.).

The PAIMI Act requires P & A systems to file an annual report on their activities and accomplishments and to provide information on such topics as: Numbers of individuals served, types of complaints addressed, and the number of intervention strategies used to resolve the presenting issues. Under the Act, there is an Advisory Council which is also required to submit an annual report that assesses the effectiveness of the services provided to, and the activities conducted by, the P&A systems on behalf of PAIMI eligible individuals and their family members.

The Substance Abuse Mental Health Services Administration (SAMHSA) is revising the PAIMI Annual Program Performance Report for the following reasons: (1) To make it consistent with the requirements of the annual reporting requirements under the PAIMI Act and the PAIMI Rules (42 CFR part 51), as well as the new reporting requirements under Parts H & I of the Children's Health Act of 2000 and Part C of the Developmental Disabilities and Patient's Bill of Rights Act of 2000 (42 U.S.C. 6001 *et seq.*); (2) to conform to the GPRA requirements that SAMHSA obtain information that closely measures actual outcomes of programs that are funded by the agency, and (3) to determine if the reporting burden can be reduced by removing any information that does not facilitate evaluation of the programmatic and fiscal effectiveness of a State P&A system.

SAMHSA proposes revisions to the Annual Advisory Council Report to reflect the statutory and regulatory requirements of the PAIMI Act. Planned revisions to the PAIMI Annual Program Performance Report include, but may not be limited to the following items: (1) Addition of annual actual budget/financial expenditures and sub-contractor information, as required by the PAIMI Act (42 U.S.C. 10805(a)(7) and the PAIMI Rules 42 CFR 51.8); (2) Advisory Council, Governing Board and PAIMI staff demographic information, such as, filled and vacant positions, will be revised in a comprehensive graph format; (3) P&A systems will have more choices so that all "information not available" and "no information provided" statements will be deleted to ensure that the systems focus on gathering more accurate client data during the intake and referral process; (4) Sections (such as, PAIMI program mechanisms for public comment, individual PAIMI clients, grievance procedures) will be revised to capture critical information required under the PAIMI Act, the PAIMI Rules and the Children's Health Act of 2000 and placed in a graph format; (5) Case complaints and problems of the PAIMI eligible individuals served by P&A systems will be modified to capture more accurate information, such as, the number of PAIMI eligible clients not served due to resource and/or priority limitations; (6) Information on the number of open and closed cases involving incidents of abuse, neglect, and civil rights complaints will be expanded to reflect the new PAIMI authorities, *e.g.*, investigations of seclusion, and restraint, and related fatalities in public and private facilities, such as, emergency rooms of general hospitals, interim-care facilities, nursing homes, non-medical community-based facilities for children and youth, etc.; (7) Information on the actual annual program priorities and objectives achieved in the reporting year will be compared to the projected priorities and objectives, submitted with the corresponding grant application for that reporting year, to determine whether the P&A effectively used its resources to achieve individual, systemic or legislative advocacy outcomes and accomplishments on behalf of PAIMI eligible clients; (8) Sections focused on the types of intervention strategies, the public education, training and awareness activities of the P&A systems will be placed in a chart format; and, (9) the Advisory Council Report will be revised so that data collected is consistent with that captured in the Annual PAIMI Performance Report. The revised report formats will be effective for the report due on January 1, 2004.

The annual burden estimate is as follows:

	No. of respondents	No. of responses per respondent	Hours per response	Total hour burden
Annual Program Performance Report	57	1	28	1,596
Activities and Accomplishments			(20)	(1,140)
Performance outcomes			(3)	(171)
Expenses			(2)	(114)
Budget			(2)	(114)
Priority statements and objectives			(1)	(57)

	No. of respondents	No. of responses per respondent	Hours per response	Total hour burden
Advisory Council Report	57	1	10	570
Total	114			2,166

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 23, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–19165 Filed 7–29–02; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

National Survey of Characteristics and Funding of School Mental Health Services—New

SAMHSA's Center for Mental Health Services will sponsor this national study of the mental health services provided in U.S. public schools. A substantial proportion of public schools provide some level of mental health screening, prevention, and treatment services to their students. However, no national-level data are available on these services. The study is designed to document the types of mental health problems encountered in schools, the mental health services provided, the types and qualifications of staff providing the services, the arrangements for delivery of services, and the funding of those services. The study will examine the prevalence of these mental health resources and their distribution across schools in the nation as they vary by grade level, size, locale, and the student populations served.

The survey will be conducted as a self-administered mail survey (with telephone followup) of a nationally representative sample of 2,000 public elementary, middle and secondary schools. The districts associated with the sampled schools will be asked to answer questions about funding sources, budgets, and issues related to funding. The results of the study will be available in the summer of 2003. Response burden for the survey is summarized in the following table.

Questionnaire	Number of respondents	Responses/ respondent	Burden/response (hrs.)	Total burden hours
Telephone call to school district	1,200	1	.17	204
School district	1,200	1	.5	600
School	2,000	1	1.0	2,000
Total	3,200			2,804

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 23, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–19166 Filed 7–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Opioid Drugs in Maintenance and Detoxification Treatment of Opioid Dependence

42 CFR Part 8 (OMB No. 0930–0206, Revision)—This regulation establishes a certification program managed by SAMHSA's Center for Substance Abuse Treatment (CSAT). The regulation requires that Opioid Treatment Programs (OTPs) be certified. "Certification" is the process by which SAMHSA determines that an OTP is qualified to provide opioid treatment under the Federal opioid treatment standards established by the Secretary of Health and Human Services. To become certified, an OTP must be accredited by a SAMHSA-approved accreditation body. The regulation also provides standards for such services as individualized treatment planning, increased medical supervision, and assessment of patient outcomes. This submission seeks continued approval of the information collection requirements in the regulation, minor changes to Form SMA–162, and approval of a new form to be used in implementing the regulation.

SAMHSA currently has approval for the Application for Certification to Use Opioid Drugs in a Treatment Program Under 42 CFR 8.11 (Form SMA–162) and the Application for Approval as Accreditation Body Under 42 CFR 8.3(b) (Form SMA–163). SAMHSA also is seeking approval of a new form that has been developed at the request of the treatment field, the Exception Request and Record of Justification Under 42 CFR 8.12 (Form SMA–168), which may be used on a voluntary basis by physicians when there is a patient care situation in which the physician must make a treatment decision that differs from the treatment regimen required by the regulation. This is a simplified, standardized form to facilitate the documentation, request, and approval process for exceptions. The tables that follow summarize the annual reporting burden associated with the regulation, including burden associated with the forms.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES

42 CFR citation	Purpose	No. of respondents	Responses/ respondents	Hours/ response	Total hours
8.3 (b)(1–11)	Initial approval (SMA–163)	2	1	3.0	6.0
8.3 (c)	Renewal of approval (SMA–163)	2	1	1.0	2.0
8.3 (e)	Relinquishment notification	1	1	0.5	0.5
8.3 (f)(2)	Non-renewal notification to accredited OTP's	1	90	0.1	9.0
8.4(d)(2) (b)(1)(ii)	Notification to SAMHSA for seriously noncompliant programs.	2	2	1.0	4.0
8.4 (b)(1)(iii)	Notification to OTP for serious noncompliance	2	2	1.0	4.0
8.4 (d)(1)	General documents and information to SAMHSA upon request.	7	4	0.5	14.0
8.4(d)(2)	Accreditation survey to SAMHSA upon request	7	53	0.02	7.42
8.4 (b)(3)	List of surveys, surveyors to SAMHSA upon request	7	6	0.2	8.4
8.4 (d)(4)	Report of less than full accreditation to SAMHSA	7	2.5	0.5	8.75
8.4 (d)(5)	Summaries of Inspections	7	50	0.5	175.0
8.4(e)	Notifications of Complaints	7	5	0.5	17.5
8.6(a)(2) and (b)(3)	Revocation notification and to Accredited OTP's	1	50	0.3	15.0
8.6(b)	Submission of 90-day Corrective plan to SAMHSA	1	1	10	10.0
8.6(b)(1)	Notification to accredited OTP's of Probationary Status.	1	50	0.3	15.0
TOTAL		7			297

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS

42 CFR citation	Purpose	No. of respondents	Responses/ respondents	Hours/ response	Total hours
8.11(b)	New programs approval (SMA–162)	75	1	1.50	112.50
8.11(b)	Renewal of approval (SMA–162)	350	1	1.00	350.00
8.11(b)	Relocation of Program (SMA–162)	35	1	1.17	40.95
8.11(d)	Application for transitional certification (SMA–162)*	7	1	1.58	11.06
8.11(e)(1)	Application for provisional certification	75	1	1	75.00
8.11(e)(2)	Application for extension of provisional certification	30	1	.25	7.50
8.11(f)(5)	Notification of sponsor or medical director change (SMA–162).	60	1	.2	12.00
8.11(g)(2)	Documentation to SAMHSA for interim maintenance	1	1	1	1.00
8.11(h)	Request to SAMHSA for Exemption from 8.11 and 8.12 (SMA–168).	1,100	6	.152	1003.2
8.11(i)(1)	Notification to SAMHSA Before Establishing Medication Units (SMA–162).	10	1	.25	2.5
8.12(j)(2)	Notification to State Health Officer When Patient Begins Interim Maintenance.	1	20	.33	6.6
8.24	Contents of Appellant Request for Review of Suspension.	2	1	.25	.50
8.25(a)	Informal Review Request	2	1	1.00	2.00
8.26(a)	Appellant's Review File and Written Statement	2	1	5.00	10.00
8.28(a)	Appellant's Request for Expedited Review	2	1	1.00	2.00
8.28(c)	Appellant Review File and Written Statement	2	1	5.00	10.00
TOTAL		1,100			1,647

*This is a one-time requirement that will be fully met during the first three years of approval for the final rule.

SAMHSA believes that the recordkeeping requirements in the regulation are customary and usual practices within the medical and rehabilitative communities and has not calculated a response burden for them. The recordkeeping requirements set forth in 42 CFR 8.4, 8.11 and 8.12 include maintenance of the following: 5-year retention by accreditation bodies of certain records pertaining to accreditation; documentation by an OTP of the following: A patient's medical examination when admitted to treatment, a patient's history, a treatment plan, any prenatal support provided the patient, justification of unusually large initial doses, changes in a patient's dosage schedule, justification of unusually large daily doses, the rationale for decreasing a patient's clinic

attendance, and documentation of physiologic dependence.

The rule also includes requirements that OTPs and accreditation organizations disclose information. For example, 42 CFR 8.12(e)(1) requires that a physician explain the facts concerning the use of opioid drug treatment to each patient. This type of disclosure is considered to be consistent with the common medical practice and is not considered an additional burden. Further, the rule requires, under § 8.4(i)(1) that accreditation organizations shall make public their fee structure; this type of disclosure is standard business practice and is not considered a burden.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 23, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–19167 Filed 7–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 29, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Michael Robert Daley, Modesto, CA, PRT–060090.

The applicant requests a permit to import the sport hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Mick W. Wagner, Springdale, AR, PRT–060054.

The applicant requests a permit to import the sport-hunted trophy of two male bonteboks (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: John P. McLaurin, III, Fairfax, VA, PRT–057424.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Dana G. Kirk, Kerrville, TX, PRT–057429.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: July 19, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–19154 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE839777

Applicant: Don R. Helms, Bellevue, Iowa.

The applicant requests a permit pursuant to 50 CFR 17.22 to take (capture, handle and release) the Topeka shiner (Notropis topeka) throughout Iowa. Research activities are proposed for studies to identify populations of Topeka shiners, develop methods to minimize or avoid project related impacts to those populations, and to identify new populations. The scientific research is aimed at enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who requests a copy of such documents from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, *peter_fasbender@fws.gov*, telephone (612) 713–5343, or FAX (612) 713–5292.

Dated: July 16, 2002.

Charlie Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–19163 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to scientific research and enhancement of survival of endangered species.

DATES: Written comments on these requests for permits must be received August 29, 2002.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

SUPPLEMENTARY INFORMATION: The following applicants have requested renewal of scientific research and enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: North Eastern Wisconsin Zoo, Green Bay, Wisconsin, TE–051829.

The applicant requests a permit to possess black-footed ferrets (*Mustela nigripes*) for public display in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

Applicants: Dawn Martin, Buys and Associates, Inc., Englewood, Colorado, TE–056165; Kris R. Gruwell, HDR Engineering, Inc . Salt Lake City, Utah, TE–058896.

The applicants request permits to survey for southwestern willow flycatchers (*Empidonaz traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Central Nebraska Public Power and Irrigation District, Gothenburg, Nebraska, TE–038221.

The applicant requests a permit amendment to add take of interior least terns (*Sterna antillarum athalassos*) and piping plovers (*Charadrius melodus)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Scott W. Campbell, University of Kansas, Kansas Biological Survey, Lawrence, Kansas, TE–038527.

We propose to amend this permit for additional Topeka shiner (*Notropis topeka*) collection from Willow Creek, Wallace County, Kansas, in conjunction with reintroduction and recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Kevin R. Bestgen, Colorado State University, Fort Collins, Colorado, TE–046795.

The applicant requests a permit amendment to add take of humpback chub (*Gila cypha*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: June 28, 2002.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 02–19168 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

On April 18, 2002, a notice was published in the **Federal Register** (67 FR 19207), that an application had been filed with the Fish and Wildlife Service by Francis J. Kelsch for a permit (PRT–055028) to import one polar bear taken from the Northern Beaufort Sea population, Canada, for personal use.

Notice is hereby given that on June 18, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On April 25, 2002, a notice was published in the **Federal Register** (67 FR 20545), that an application had been filed with the Fish and Wildlife Service by Louis F. Spadaccino for a permit (PRT–055444) to import one polar bear taken from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on June 18, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On May 7, 2002, a notice was published in the **Federal Register** (67 FR 30721), that an application had been filed with the Fish and Wildlife Service by Jeffry Stohr for a permit (PRT–055673) to import one polar bear taken from the Northern Beaufort Sea population, Canada, for personal use.

Notice is hereby given that on June 24, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On May 30, 2002, a notice was published in the **Federal Register** (67 FR 37852–37853), that an application had been filed with the Fish and Wildlife Service by Alaska Science Center, U.S. Geological Survey, Anchorage, AK, for a permit (PRT–740507) to renew and amend a permit authorizing the following annual activities with Northern sea otter (*Enhydra lutris lutris*): take up to 300 animals, including but not limited too, incidental take, capture/recapture, release, collect biological samples, tag, mark, implant, and import biological samples as part of a long term study on the species.

Notice is hereby given that on July 9, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: July 19, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–19155 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Hanford Reach National Monument Federal Advisory Committee Meetings Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Hanford Reach National Monument Federal Advisory Committee Meetings.

SUMMARY: The U.S. Fish and Wildlife Service is announcing four meetings of the Hanford Reach National Monument Federal Planning Advisory Committee (Committee). All meetings will take place at the Consolidated Information Center, Washington State University Tri-Cities Campus in Richland, Washington (see **ADDRESSES**). Verbal comments will be considered during the course of the meeting and written comments will be accepted that are submitted by the close of the meeting.

DATES: The Hanford Reach National Monument Advisory Committee meetings are:

1. Wednesday, August 14, 2002, from 9:30 a.m. to 4:00 p.m.
2. Tuesday, September 10, 2002, from 9:00 a.m. to 4:00 p.m.
3. Wednesday, October 16, 2002, from 9:00 a.m. to 4:00 p.m.
4. Tuesday, November 19, 2002, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: All meetings will take place at the Consolidated Information Center, Washington State University Tri-Cities Campus, 2770 University Drive, Richland, Washington, in Rooms 120 and 120A. Any member of the public wishing to submit written comments should send their comments to Greg Hughes, Designated Federal Official for the Hanford Reach National Monument Federal Planning Advisory Committee, Hanford Reach National Monument/ Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, Washington 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Official.

FOR FURTHER INFORMATION CONTACT: For further information concerning any of the meetings please contact Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) Federal Planning Advisory Committee; phone (509) 371–1801, fax (509) 375–0196.

SUPPLEMENTARY INFORMATION: Over the next several months, the Hanford Reach National Monument Federal Planning Advisory Committee will consider feedback received during the public scoping process from June 12, 2002, through October 12, 2002. Parallel to the scoping process, the Committee will meet to hear from surrounding Native Americans on their valid existing rights and traditional uses in the Monument, and to consider baseline information received during the Cultural Resources, Wildlife and Habitat, and Public Uses Reviews. The Committee will also consider draft visions and goals for the Monument Comprehensive Conservation Plan (CCP).

Dated: July 15, 2002.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–19254 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee will hold its second meeting. The meeting location is the Green Center on the campus of the Colorado School of Mines in Golden, Colorado. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will review a draft of the 5-year plan of the U.S. Geological Survey's National Earthquake Hazards Reduction Program. This will include a critique of the goals and objectives of the Program over the next 5 years in earthquake hazards assessments, in research on earthquake processes and effects, an in earthquake monitoring and notification.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: August 26, 2002, commencing at 9 a.m. and adjourning at 4:30 p.m. on August 27, 2002.

CONTACT: Dr. John R. Filson, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6785.

Dated: July 10, 2002.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 02–19160 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0194

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) request the Office of Management and Budget (OMB) to extend an existing approval to collect information to ensure operators and mining claimants meet their responsibilities while conducting exploration, mining, and reclamation work on public lands. BLM uses Forms 3809–1, 3809–2, and 3809–4 to collect financial guarantee bond information for surface management activities. The nonform information under 43 CFR 3809 authorizes operators and mining claimants to perform surface management activities under the General Mining Law.

DATES: You must submit your comments to BLM at the address below on or before September 30, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0194" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Rick Deery, Solid Minerals Group, on (202) 452–0353 (Commercial or FTS). Persons who use a

telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Deery.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Under the General Mining Law, a citizen may enter onto public domain lands that are subject to the law to prospect and explore for valuable mineral deposits. They may do so without seeking the government's permission beforehand. The rights to a deposit of a valuable mineral are granted through the act of discovering the mineral deposit. After making a discovery, a prospector may choose to locate and record a mining claim to protect investments in exploration and to have a secure tenure to discovered valuable mineral deposits. Locating a mining claim is not a prerequisite for conducting operations on the public lands, nor is it even a requirement for carrying out mining operations. BLM uses the regulations at 43 CFR 3809 to govern hardrock mineral exploration and development on the public lands and Federal interests in the lands. The hardrock minerals are subject to the provisions of the 1872 General Mining Law (30 U.S.C. 22, *et seq.*, as amended).

BLM collects nonform information on surface management activities from mining claimants and operators.

Information collection for surface mgmt activities	Estimated hours
Notice Level Activities:	
1. Small exploration operations	16
2. Medium scale exploration operations	48
Plan Level Activities:	
3. Small placer operation	80
4. Placer mine operations	160
5. Industrial mineral operations	160
6. Small underground mine	160
7. Open pit mine operations	480
8. NEPA compliance:	
Exploration	320
EA-level mines, simple	320
EA-level mines, standard	890
EIS-level mines	2,480
9. Section 106 of NHPA	30

You must submit the requested information and forms to the proper BLM office. BLM uses Form 3809–1—Surface Management Surety Bond Form, 3809–2—Surface Management Personal Bond Form, and 3809–4—Generalized Bond Rider Form for submitting financial guarantee on surface management activities.

Based on BLM's experience administering this program, we estimate the public reporting burden is 8 minutes each to complete Forms 3809–1, 3809–2 and 3809–4. These estimates include the time spent on research, gathering, and assembling information, reviewing instructions, and completing the respective forms. In FY 2000, BLM estimated 1,897 surface management activity responses are filed annually, with a total annual burden of 306,536 hours. Respondents vary from individuals and small businesses to large corporations.

Any member of the public may request and obtain, without charge, a copy of BLM Forms 3809–1, 3809–2, and 3809–4 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: July 23, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–19188 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1220–PC–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0165

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from individuals submitting nominations for significant caves under the Federal Cave Resources Protection Act of 1988 and requesting confidential cave information. BLM needs the information to determine which caves we will list as significant and decide whether to grant access to confidential cave information.

DATES: You must submit your comments to BLM at the address below on or before September 30, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "Attn: 1004–0165" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact James Goodbar, BLM Field Office, Carlsbad, New Mexico, on (505) 234–5929 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Goodbar.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Federal Cave Resources Protection Act of 1988, 102 Stat. 4546, 16 U.S.C. 4301, requires identifying, protecting, and maintaining significant caves on public lands the Department of the Interior, BLM manages. The implementing regulations are found at 43 CFR 37-Cave Management. Federal agencies must consult with "cavers" and other interested parties and develop a list of significant caves. The regulations establish criteria for identifying significant caves and integrate cave management into existing planning and management processes to protect cave resource information. We protect this information to prevent vandalism and disturbance of significant caves. Other Federal or state agencies, bona fide educational or research institutes, or individuals or organizations who assist land management agencies with cave management activities may request access to confidential cave information. BLM uses the Significant Cave Nomination Worksheet to collect some of the requested information on cave management activities.

Based on BLM's experience administering this program, we estimate the public reporting burden is 3 hours for each nomination and 30 minutes for each request for confidential cave information. In FY 2000, BLM estimated 50 cave nominations and 10 requests for confidential cave information are filed annually, with a total annual burden of 155 hours. Respondents are cavers and other interested parties.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: July 19, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–19190 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. WO–320–1330–PB–1A]

Extension of Approved Information Collection, OMB Approved Number 1004–0121

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from applicants to lease and develop solid minerals other than coal and oil shale. BLM uses the information to determine whether an applicant, permittee, or lessee is qualified to hold an interest under the terms of the implementing regulations at 43 CFR Part 3500.

DATES: You must submit your comments to BLM at the address below on or before September 30, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to *WOComment@blm.gov*. Please include "Attn: 1004–0121" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L. Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Phillip Allard, Solid Minerals Group, on (202) 452–5195 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Allard.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

These regulations implement numerous statutes including:

(1) The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*)

(2) The Mineral Leasing Act of 1947 (30 U.S.C. 351–359);

(3) Section 402 of Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix);

(4) The Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531);

(5) The National Environmental Policy Act of 1976 (43 U.S.C. 1710 *et seq.*).

The implementing regulations (43 CFR part 3500) outline procedures for members of the public to submit applications, offers, statements, petitions, and various forms. BLM uses Forms 3510–1, 3520–7, 3510–2, 3504–1, 3504–3, and 3504–4 to collect the information to determine whether an applicant qualifies to hold a lease to obtain a benefit under the terms of the MLA, its subsequent amendments, related statutes, and the regulations. The affected public consists of all present and prospective holders of Federal solid material leases other than coal or oil shale, prospecting permits, use permits, and exploration licenses.

BREAKDOWN OF INFORMATION COLLECTIONS AND TOTAL HOURS

Type of info collection	Number of responses	Hrs. per response	Total hours
Prospecting Permit	25	1	25
Exploration Plan for Prospecting Permit	20	80	1,600
Prospecting Permit Extension	5	1	5

BREAKDOWN OF INFORMATION COLLECTIONS AND TOTAL HOURS—Continued

Type of info collection	Number of responses	Hrs. per response	Total hours
Preference Right Lease	2	100	200
Competitive Lease Bid	5	40	200
Fringe Acreage Lease or Lease Modification	5	40	200
Assignment or Sublease	40	2	80
Lease Renewals or Adjustmenets	15	1	15
Use Permit	1	1	1
Exploration License	1	3	3
Exploration Plan for Exploration License	1	80	80
Development Contract	1	1	1
Bond	150	4	600
Mine Plan	5	150	750
Total	276	.....	3,760

Based on BLM's experience administering the leasing program, we estimate the public reporting burden as indicated in the above chart to complete the applications, petitions, offers, and statements as required. BLM estimates that we receive 276 filings annually, with a total annual burden of 3,760 hours. The respondents vary from individuals to small businesses and major corporations.

Any member of the public may request and obtain, without charge, a copy of BLM Forms 3510–1, 3520–7, 3510–2, 3504–3, and 3504–4 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: July 17, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–19191 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–02–1610–DE–24–1A]

Notice of Extension of Call for Nomination Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Extension of Call for Nominations for the Grand Staircase—Escalante National Monument Advisory Committee.

SUMMARY: This notice is issued to extend the call for nominations for the Grand Staircase-Escalante National Monument's (GSENM) Advisory Committee from July 30, 2002, to August 20, 2002.

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the GSENM Advisory Committee. Individuals may nominate themselves for committee membership. You may obtain nomination forms from the GSENM office or download the application from the following Internet address: *www.ut.blm.gov/monument*. To make a nomination, you must submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications. Applications must be submitted to the Monument Manager, Grand Staircase-Escalante National Monument, Bureau of Land Management, 190 E. Center Street, Kanab, Utah, 84741, by close of business August 20, 2002. The Grand Staircase-Escalante National Monument Advisory Committee advises the Bureau of Land Management on resource management issues associated with the National Monument.

FOR FURTHER INFORMATION CONTACT: David Hunsaker, Acting Monument Manager, (435) 644–4300, or the following Web site address: *www.ut.blm.gov/monument*.

Dated: July 18, 2002.

Robert A. Bennett,

Associate State Director.

[FR Doc. 02–19192 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–02–1020–PG]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Western Montana Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held September 5, 2002 at the BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana beginning at 8 a.m. The public comment period will begin at 11:30 a.m. and the meeting will adjourn at approximately 2 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At this meeting, topics we plan to discuss include: updates from the RAC Subgroups on Travel Management, Wild and Scenic River Suitability, and Commercial Use. If time allows, the RAC may hear an update on implementation of the Sage Grouse Conservation Plan. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for

individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617 or Jon Raby, Acting Field Manager, Dillon Field Office, telephone 406–683–2337.

Dated: June 27, 2002.

Jon Raby,

Acting Field Manager.

[FR Doc. 02–19185 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–02–1420–BJ]

Arizona; Notice of Filing of Plats of Survey

July 12, 2002.

Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004

1. The plats of survey of the following described land were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines and the subdivision of sections 13, 14, 24, 26 and 27, Township 9 North, Range 2 East of the Gila and Salt River Meridian, Arizona, accepted February 10, 2002 and officially filed February 16, 2002.

This plat was prepared at the request of the Phoenix Field Office, Bureau of Land Management.

A plat representing the dependent resurvey of the Fourth Standard Parallel North, through portions of Ranges 4 and 5 East (north boundary), a portion of the south and east boundaries, and a portion of the subdivisional lines, the subdivision of certain sections and a metes-and-bounds survey in section 22, in Township 16 North, Range 4 East of the Gila and Salt River Meridian, Arizona, accepted January 22, 2002 and officially filed January 25, 2002.

This plat was prepared at the request of the United States Forest Service.

A plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 15 and metes-and-bounds surveys in section 15, in Township 18 North, Range 4 East of the Gila and Salt River Meridian, Arizona, accepted January 7, 2002 and officially filed January 16, 2002.

This plat was prepared at the request of the United States Forest Service.

A plat representing the dependent resurvey of a portion of the subdivisional lines, the survey of a portion of the subdivisional lines, the subdivision of sections 15, 16 and 21, a metes-and-bounds survey of Public Land Order 5687 in sections 8, 9, 16, 17, 21 and 28, and a traverse along the 3720 foot contour in section 15, in Township 41 North, Range 9 East of the Gila and Salt River Meridian, Arizona, accepted June 3, 2002 and officially filed June 7, 2002.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Fifth guide Meridian East, (east boundary), the south, west and north boundaries, and the subdivisional lines, in Township 31 North, Range 20 East of the Gila and Salt River Meridian, Arizona, accepted January 30, 2002 and officially filed February 13, 2002.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eight Standard Parallel North, (south boundary), in Township 33 North, Range 27 East of the Gila and Salt River Meridian, Arizona, accepted January 30, 2002 and officially filed February 13, 2002.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), in Township 33 North, Range 28 East of the Gila and Salt River Meridian, Arizona, accepted January 30, 2002 and officially filed February 13, 2002.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), the Seventh Guide Meridian East, (west boundary), the east and north boundaries, and the subdivisional lines, in Township 33 North, Range 29 East of the Gila and Salt River Meridian, Arizona, accepted June 3, 2002 and officially filed June 7, 2002.

This plat was prepared at the result of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of portions of the west and north boundaries, in Township 37 North, Range 30 East of the Gila and Salt River Meridian, Arizona, accepted January 30, 2002 and officially filed February 13, 2002.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, the subdivision of sections 3 and 4, the metes-and-bounds survey of the Beaver Dam Wilderness Area boundaries through sections 3, 4, 10 and 15 and an informative traverse in section 3, in Township 41 North, Range 14 West of the Gila and Salt River Meridian, Arizona, accepted June 13, 2002 and officially filed June 19, 2002.

This plat was prepared at the request of the Arizona Strip Field Office, Bureau of Land Management.

A plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 21, in Township 6 South, Range 19 East of the Gila and Salt River Meridian, Arizona, accepted May 20, 2002 and officially filed May 22, 2002.

This plat was prepared at the request of the Safford Field Office, Bureau of Land Management.

2. All inquiries in relation to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 02–19184 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on the dates specified:

The plat representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, and the subdivision of section 35 and the metes-and-bounds survey of lots 2 and 4, section 35, in T. 14 N., R. 18 E., Boise Meridian, Idaho, was accepted October 29, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the south boundary, the corrective dependent resurvey of portions of the south boundary, the dependent resurvey of portions of the subdivisional lines, the corrective dependent resurvey of portions of the subdivisional lines, and the dependent resurvey of portions of Tract 37, and the subdivision of sections 29 and 32, and the metes-and-bounds survey of Tract 38, in T. 2N., R. 4 W., Boise Meridian, Idaho, was accepted November 1, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat for T. 1 S., R. 2 W. and T. 1 S., R. 1 W., Boise Meridian, Idaho, was accepted November 6, 2001. The plat was prepared to meet certain administrative needs of the U.S. Fish and Wildlife Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 11, in T. 1 S., R. 3 W., Boise Meridian, Idaho, was accepted November 8, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the first standard parellel south, T. 6 S., R. 24 E., portions of the east boundary, and of the subdivisional lines and the subdivision of sections 5, 9, 14, 15, and 24, in T. 7 S., R. 25 E., Boise Meridian, Idaho, was accepted November 13, 2001.

The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the depending resurvey of a portion of the west boundary, and a portion of the subdivisional lines, and the subdivision of sections 19 and 20, in T. 7 S., R. 26 E., Boise Meridian, Idaho, was accepted November 14, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines of T. 4 N., R. 2 E., Boise Meridian, Idaho, was accepted November 30, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the subdivision of section 2, in T. 1 N., R. 1 W., Boise Meridian, Idaho, was accepted December 5, 2001. The plat was prepared to meet certain administrative needs of the Birds of Prey National Conservation Area.

The plat representing the dependent resurvey of portions of the subdivisional lines, H.E.S. 37, H.E.S. 38, and of the boundaries of certain mineral surveys, and the subdivision of sections 2 and 3, and certain metes-and-bounds surveys in sections 2 and 3, in T. 5 N., R. 11 E., Boise Meridian, Idaho, and the plat representing the dependent resurvey of portions of the first standard parallel north, the subdivisional lines, and of H.E.S. 39, and the subdivision of section 34, and a metes-and-bounds survey in section 34, in T. 6 N., R. 11 E., Boise Meridian, Idaho, were accepted December 7, 2001. The plats were prepared to meet certain administrative needs of the U.S.D.A., Forest Service.

FOR FURTHER INFORMATION CONTACT: Duane E. Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: January 9, 2002.

Duane E. Olsen,

Chief, Cadastral Surveyor for Ohio.

Editorial note: This document was received at the Office of the Federal Register on July 25, 2002.

[FR Doc. 02–19187 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–02–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

Indian Meridian, Oklahoma: T. 18 N., R. 5 E., approved May 21, 2002, for Group 62 OK;

Kansas: T. 34 S., R. 41 E., approved May 31, 2002, for Group 25 KS;

Protraction Diagrams for: T. 25 S., R. 22 E., approved April 18, 2002, NM;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: July 18, 2002.

Bob Bewley,

Acting Chief Cadastral Surveyor for New Mexico.

[FR Doc. 02–19189 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Survey Plat Filings

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Intent for Filing of Plat of Survey.

SUMMARY: The plat of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Black Hills Meridian, South Dakota

T. 4 S., R. 11 E.

This plat, in 3 sheets, represents the dependent resurvey of a portion of the north boundary of the Pine Ridge Indian Reservation, a portion of the subdivisional lines, the adjusted original meanders of the left bank of the South Fork of the Cheyenne River through sections 16, 21, 28, 29, 31, and 32, and the adjusted original meanders of the right bank of the South Fork of the Cheyenne River through sections 16 and 21, and the survey of the medial line and certain partition lines of the abandoned channel of the South Fork of the Cheyenne River in sections 16 and 21, a certain division of accretion line,

the new meanders of the left bank of the South Fork of the Cheyenne River through sections 28, 29, 30, 31, and 32, and a portion of section 21, and the new mean ers of a portion of the right bank of the South Fork of the Cheyenne River through section 21, in Township 4 South, Range 11 East, Black Hills Meridian, South Dakota, was officially accepted June 3, 2002.

The survey was requested by the U.S. Forest Service, Nebraska National Forest, and was necessary to identify lands administered by the U.S. Forest Service.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Steve L. Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5121 or (406) 896–5009.

Dated: June 11, 2002.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–19183 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Survey Plat Filings

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Intent for Filing of Plat of Survey.

SUMMARY: The plats of the following described land are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Black Hills Meridian, South Dakota

T. 1 S., R. 13 E.

The plat, in four sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, the adjusted original meanders of the former right bank of the South Fork of the Cheyenne River through sections 13, 23, 24, 27, and 28, and the adjusted original meanders of an island in the South Fork of the Cheyenne River in sections 27 and 28, and the subdivision of sections 13, 23, 24, and 26, the survey of the meanders of the present right bank of the South Fork of the Cheyenne River, downstream, in sections 13, 27, and 28, the median line of an abandoned channel in the South Fork of the Cheyenne River in sections 27 and 28, and a certain division of accretion line in section 27, Township 1 South, Range 13 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 2 S., R. 13 E.

The plat, in two sheets, representing the dependent resurvey of a portion of the west boundary (Third Guide Meridian East) through Township 2 South, between Ranges 12 and 13 East, a portion of the east boundary, a portion of the north boundary, a portion of the subdivisional lines, and the adjusted original meanders of the former right bank of the South Fork of the Cheyenne River through section 6, and the subdivision of sections 1, 4, and 6, the survey of the meanders of the present right bank of the South Fork of the Cheyenne River through a portion of section 6, and a division of accretion line in section 6, Township 2 South, Range 13 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 1 S., R. 14 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the adjusted original meander line of the former left bank of the South Fork of the Cheyenne River through portions of sections 7, 8, and 18, and the subdivision of section 18, the survey of portions of the meander line of the present left bank of the South Fork of the Cheyenne River through sections 7, 8, and 18, and a division of accretion line in section 8, Township 1 South, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 1 N., R. 14 E.

The plat, in four sheets, representing the dependent resurvey of a portion of the Black Hills Base Line through Ranges 13 and 14 East, portions of the east and west boundaries, a portion of the subdivisional lines, and a portion of the adjusted original meander lines of the right and left banks of the South Fork of the Cheyenne River through sections 31 and 32, and the subdivision of sections 1, 6, 10, 17, 18, 29, 31, and 32, the survey of a portion of the meander lines of the present right and left banks of the South Fork of the Cheyenne River, and certain division of accretion lines in sections 31 and 32, Township 1 North, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 2 N., R. 14 E.

The plat, in three sheets, representing the dependent resurvey of portions of the south, east, west, and north boundaries, a portion of the subdivisional lines, and a portion of the adjusted original meanders of the right bank of the South Fork of the Cheyenne River, and the subdivision of sections 1, 2, 3, 10, 11, 14, 22, 31, and 35, and the survey of the meanders of the present left bank of the South Fork of the Cheyenne River, downstream, through a portion of section 11, sections 12 and 13, and a portion of section 35, Township 2 North, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 3 N., R. 14 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 11, 15, 21, and 22, Township 3 North, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 3 N., R. 15 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the west boundary, and a portion of the subdivisional lines, and the subdivision of sections 1, 2, 6, 11, and 24, and the survey of the meanders of the present right bank of the South Fork of the Cheyenne River, upstream, through a portion of section 6, Township 3 North, Range 15 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 4 N., R. 14 E.

The plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 1, Township 4 North, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 4 N., R. 15 E.

The plat, in four sheets, representing the dependent resurvey of the south boundary, a portion of the east boundary, the west boundary, a portion of the subdivisional lines, and the adjusted original meanders of the former left bank through sections 7 and 18, the

former right bank through section 31, upstream, and an island, former lot 9, in section 31 of the South Fork of the Cheyenne River, and the subdivision of certain sections and the survey of certain partition lines and a portion of the medial line of the abandoned channel between an island, former lot 9, in section 31, and the former right bank of the South Fork of the Cheyenne River, certain division of accretion 4 lines and meanders of the present left and right banks of the South Fork of the Cheyenne River, upstream and downstream, Township 4 North, Range 15 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 5 N., R. 13 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the First Standard Parallel North, through Range 13 East, a portion of the Third Guide Meridian East through Township 5 North between Ranges 12 and 13 East, a portion of the east boundary, a portion of the north boundary, and a portion of the subdivisional lines, and the subdivision of sections 2, 3, 6, 8, 10, 11, 12, 13, 15, 22, and 24, the survey of a division of accretion line and the meander line of the present left bank of the Belle Fourche River, downstream, through portions of section 22, Township 5 North, Range 13 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 5 N., R. 14 E.

The plat, in four sheets, representing the dependent resurvey of a portion of the First Standard Parallel North, through Range 14 East, a portion of the east boundary, a portion of the north boundary, a portion of the subdivisional lines, and the adjusted original meanders of the right bank of the Belle Fourche River, through sections 1 and 12, and the subdivision of sections 1, 6, 12, 21, 22, and 23, the survey of certain division of accretion lines and certain meanders of the present left and right banks of the Belle Fourche River, Township 5 North, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 5 N., R. 15 E.

The plat, in four sheets, representing the dependent resurvey of a portion of the First Standard Parallel North, through Range 15 East, the east boundary, a portion of the north boundary, and a portion of the subdivisional lines, and the subdivision of sections 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 26, 32, 34, and 35, the dependent resurvey of certain adjusted original meanders of the South Fork of the Cheyenne and Belle Fourche Rivers in Townships 5 and 6 North, Ranges 15 East, the survey of certain division of accretion lines in Township 5 North, Range 15 East and the survey of certain meanders of the present banks of the South Fork of the Cheyenne and Belle Fourche Rivers in Townships 5 and 6 North, Ranges 15 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 5 N., R. 16 E.

The plat, in four sheets, representing the dependent resurvey of a portion of the First Standard Parallel North, through Range 16 East, a portion of the east boundary, a portion of the north boundary, a portion of the subdivisional lines, and the adjusted original meanders of the left bank, upstream, through sections 2 and 3 and the right bank, downstream, through section 2, of the Cheyenne River, and the subdivision of sections 2, 3, 4, 5, 7, 8, 9, 10, 15, 19, 23, 24, 25, 31, and 32, and the survey of a certain division of accretion line and the meander lines of the present right bank of the Cheyenne River through a portion of section 4, Township 5 North, Range 16 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

The survey was executed at the request of the District Manager (Field Manager), Miles City District (Miles City Field Office) and was necessary to identify lands administered by the Bureau of Land Management.

Copies of the preceding described plats and related field notes will be immediately placed in the open files and will be available to the public as a matter of information.

If protests against these surveys, as shown on these plats, are received prior to the dates of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5121 or (406) 896–5009.

Dated: July 18, 2002.

Michael T. Birtles,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–19186 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Survey Plat Filings

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Intent for Filing of Plat of Survey.

SUMMARY: The plat of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Black Hills Meridian, South Dakota

T. 4 S., R. 11 E.

This plat, in 3 sheets, represents the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, certain adjusted original meanders of the left and right banks of the South Fork of the Cheyenne River through sections 2, 3, 9, 10, and 16, and an island situated in the South Fork of the Cheyenne River and the subdivision of sections 2, 3, 10, and 11, and the survey of the medial lines and a partition line of the abandoned channel and the relicted channel of the South Fork of the Cheyenne River, certain division of accretion lines, and certain new meanders of the left and right banks of the South Fork of the Cheyenne River through sections 2, 3, 9, 10, and 16, in Township 4 South, Range 11 East, Black Hills Meridian, South Dakota, was officially accepted July 15, 2002.

The survey was requested by the U.S. Forest Service, Nebraska National Forest, and was necessary to identify lands administered by the U.S. Forest Service.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Steve L. Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5121 or (406) 896–5009.

Dated: July 16, 2002.

Heidi L. Pfosch,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–19193 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–DN–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–02–021]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 6, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Final) (Reconsideration) (Remand) (Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' views on remand to the Court of International Trade on or before September 13, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 25, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–19347 Filed 7–26–02; 2:56 pm]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of July 29, August 5, 12, 19, 26, September 2, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 29, 2002

There are no meetings scheduled for the Week of July 29, 2002.

Week of August 5, 2002—Tentative

There are no meetings scheduled for the Week of August 5, 2002.

Week of August 12, 2002—Tentative

Tuesday, August 13, 2002

9:30 a.m. Briefing on Special Review Group Response to the Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–415–1703)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of August 19, 2002—Tentative

Wednesday, August 21, 2002

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Janice Dunn Lee, 301–415–1780)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

2 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of August 26, 2002—Tentative

There are no meetings scheduled for the Week of August 26, 2002.

Week of September 2, 2002—Tentative

There are no meetings scheduled for the Week of September 2, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information

By a vote of 4–0 on July 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of (a) Duke Energy Corporation (McGuire Nuclear Station, Units 1 & 2, Catawba Nuclear Station, Units 1 & 2) Appeal of LBP–02–04: SAMA Contention and (b) Direct Final Rule on Electronic Maintenance and Submission of Information" be held on July 23, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule. html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 25, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–19335 Filed 7–26–02; 12:41 pm]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting

Board Meeting: September 10, 2002—Las Vegas, Nevada: The Nuclear Waste Technical Review Board will hold a meeting to discuss DOE technical and scientific activities related to the proposed development of a repository for spent nuclear fuel and high-level radioactive waste disposal at Yucca Mountain, Nevada. Issues to be discussed include performance assessment and repository system barrier analyses.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Tuesday, September 10, 2002, the Nuclear Waste Technical Review Board (Board) will meet in Las Vegas, Nevada, to discuss U.S. Department of Energy (DOE) technical activities related to a proposed repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nevada. At the meeting, the DOE will present updates on important aspects of its technical and scientific program and will participate along with other interested parties in a round-table discussion of performance assessment and repository system barrier analysis. The meeting is open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of DOE activities related to managing spent nuclear fuel and high-level radioactive waste.

The Board meeting will be held at the Alexis Park Hotel, 375 Harmon Avenue, Las Vegas, Nevada 89109. The telephone numbers are (702) 796–3300 or (800) 453–8000; the fax number is (702) 796–3354. The meeting will start at 8 a.m.

A greeting by the Board's incoming chairman, Dr. Michael Corradini, will open the morning session followed by remarks by outgoing chairman, Dr. Jared Cohon. Four additional new Board members will be introduced, and four members departing the Board will be recognized. The greeting and introductions will be followed by a general overview of the DOE program and a briefing on the Yucca Mountain project's plans. The DOE will then provide an update on its science and engineering activities followed by a report on the proposed science and technology program. The final presentation before lunch will be given by a representative of Inyo County, California, who will report on the County's regional ground water monitoring program. Immediately following the lunch break, the chair of the DOE's Igneous Consequences Peer Review Panel will present an interim report from the Panel. This presentation will be followed by updates on corrosion testing and repository design. The final session of the afternoon will focus on performance assessment and barrier analysis, during which representatives of the DOE and the Electric Power Research Institute (EPRI) will make presentations. A round-table discussion of these topics will follow the presentations. Round-table participants will include representatives from the State of Nevada, the DOE, the EPRI, the Nuclear Regulatory Commission, the Advisory Committee on Nuclear Waste, and others. Round-table participants will discuss underlying causes for differences in TSPA estimates, the significance of those differences, and issues related to different repository-system barrier analyses.

A public comment period has been scheduled for 5:30–6:00 p.m. However, if members of the public are unable to comment at that time, time will be provided on as-needed basis before the lunch break. Those wanting to speak during the public comment period are encouraged to sign the "Public Comment Register" at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Beginning October 10, 2002, transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff.

A block of rooms has been reserved at the Alexis Park Hotel. To obtain the meeting rate, reservations must be made by August 21, 2002. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. For more information, contact the NWTRB; Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: July 26, 2002.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 02–19146 Filed 7–29–02; 8:45 am]

BILLING CODE 6820–AM–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1 p.m, Monday, August 5, 2002; 8:30 a.m., Tuesday, August 6, 2002.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: August 5–1 p.m. (Closed); August 6–8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, August 5–1 p.m. (Closed)

1. Financial Performance.
2. Fiscal Year 2003 Establish/Deploy Report.
3. Preliminary Fiscal Year 2003 Integrated Financial Plan.
4. Strategic Planning.
5. Personnel Matters and Compensation Issues.

Tuesday, August 6–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 1–2, 2002.
2. Remarks of the Postmaster General and CEO.
3. National Postal Forum Report.
4. Briefing on Pipe Bomb Investigation.
5. Fiscal Year 2002 Borrowing Resolution.
6. Financial the Postal System.
7. Capital Investments.
   a. Fairfax, Virginia, Main Post Office.
   b. Office of Inspector General—Office Space Additional Funding Request.
   c. 76 automated Package Processing Systems.
8. Tentative Agenda for the September 5–6, 2002, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 02–19275 Filed 7–25–02; 4:32 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46238; File No. SR–BSE–2002–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Competing Specialists and Objections to Competing Specialist Competition

July 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain sections of its rules related to competing specialists (as defined in BSE Rules, Chapter XV, *Dealer Specialists*, section 18, *Procedures for Competing Specialists*) and objections to competition that may be raised by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

regular specialists when competing specialists apply for the right to compete with regular specialists. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Chapter XV

Dealer Specialists

Procedures for Competing Specialists

Sec. 18 * * *

* * * 2. Objections to Competition

a. *A specialist may object to competition.*[3] *After notice of such objection to permit competition is provided by the regular specialist, the specialist must reduce his objection, and the reason(s) therefore, to writing* [Any objection by the regular specialist to permit competition in one or more of such specialist's stocks must be in writing on a form designated by the Exchange] and *file it* [filed] with the Exchange within 48 hours[4] of notice[5] of the competing specialist's application.

[b. Once a specialist has objected to competition, the reasons for objection must be set forth in writing and delivered to the Exchange within 24 hours of the objection.]

[c] *b.* A Market Performance Committee meeting will be scheduled to review the reasons for objection, and to determine whether an entering competitor could jeopardize the fair and orderly market maintained by the regular specialist in relation to the stock at issue. The regular specialist will be permitted to appear before the Committee to give the Committee the opportunity to question the regular specialist in regard to the reasons for objection. The applicant (competitor) will also be permitted to appear before the Committee to respond to any issues raised. After the Market Performance Committee renders its decision, either party may appeal to the Executive Committee and then, if necessary, to the Board of Governors.[6]

d. [In the event that the Market Performance Committee rules in favor of competition and the regular specialist seeks to appeal that decision] *Pending Market Performance Committee review of any objection, competition in the security may be permitted upon the affirmative determination of a majority of the floor members of the Market Performance Committee, based on the standard set forth in Paragraph b. of this section 18. Pending the outcome of any appeal process,* competition in the security at issue will [commence] *be permitted. The results of such competition may be used by either the regular specialist in support of their objection, or considered by the Market Performance Committee, Executive Committee, or Board of Governors, in their respective determinations.* [pending the outcome of the appeal process.]

* * * * *

[3] Only the regular specialist can object to competition in his/her stocks.

[4] Unless the regular specialist is unavailable, in which case within [48] *24* hours of becoming available.

[5] Once an application is received by the Exchange [a written] notification will be issued to the regular specialist(s) in whose stocks competition is being sought.

[6] All appeals must be submitted within ten (10) business days of the final decision of either the Market Performance Committee or the Executive Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the section of the Exchange's Competing Specialist Initiative ("CSI") procedures relating to objections to competition filed by a regular specialist. The Exchange is seeking to implement a procedure that would permit competition pending a review of any objection to competition filed by a regular specialist.

Under current CSI procedures set forth in Chapter XV, *Dealer Specialists,* section 18, *Procedures for Competing Specialists,* any objection to competition by a regular specialist will prevent a competing specialist from trading, and competing with the regular specialist, in the security at issue, until the objection is adjudicated by the Exchange's Market Performance Committee ("MPC"). The result of this procedure is that competition is therefore prohibited during the period between the time a specialist first states an objection, and the time when an MPC meeting can be convened, and the objection fully vetted and decided upon by the committee. By current design, this process takes several days, as the specialist is permitted 48 hours to formally present his objection and the reason therefore to the Exchange, and a meeting of the 15 person Market Performance Committee is then convened. In the meantime, competition is not permitted in the security in question, regardless of the reasons supporting the regular specialist's objection, and regardless of the volatility or other characteristics of the security.

In order to streamline this process, the Exchange is proposing that a majority of the floor members of the MPC can vote to permit competition in a security pending the formalization of a regular specialist's objection and the subsequent convening of a full meeting of the MPC to review the objection. This will enhance competition to the ultimate benefit of investors, while still offering the regular specialist the opportunity to formalize an objection, and have that objection be heard before the full MPC. At the same time, it will allow competition in instances in which a majority of the floor members of the MPC deem it, after consideration of the pertinent facts, to be warranted.

The standard by which the MPC judges whether competition is warranted is the "fair and orderly maintenance of the market." This standard will be imposed, as it is currently, on the full MPC during their ultimate hearing of any objection, but also on the floor members of the MPC during any interim decisions. By mandating this standard, the Exchange is ensuring that at all stages of objection, each MPC member is consistent in his consideration and decision making. Moreover, the Exchange is preventing a situation whereby a regular specialist may object for competitive or other reasons unrelated to the fair and orderly maintenance of the market.

It should be noted that nothing in this proposal will affect the MPC's ultimate decision making authority relating to whether competition in a security should be permitted. If competition is permitted based on an affirmative vote of the majority of the floor members of the MPC, it can be withdrawn at a subsequent meeting of the full committee, if the full committee agrees that the fair and orderly maintenance of the market would be adversely affected by continued competition. It should also be noted that, since the establishment of the CSI program at the Exchange in 1996, there have been only three objections to competition by regular specialists, only one of which was upheld by the MPC based on the

standard of the maintenance of a fair and orderly market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[7] in general, and section 6(b)(5) of the Act,[8] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2002–07 and should be submitted by August 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19156 Filed 7–29–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 29, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: New Markets Venture Capital (NMVC) Program. Application Funding and Reporting.

No's: 2184, 2185.

Frequency: On Occasion.

Description of Respondents: Program Applicants and participants; SSBIC's receiving grants under the NMVC program.

Responses: 1,131.

Annual Burden: 13,925.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–19170 Filed 7–29–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3364, Amdt #5]

State of New York

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 31, 2003.

The deadline for filing applications for economic injury has also been amended to January 31, 2003. All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–19172 Filed 7–29–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428, Amdt. #6]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency, dated July 22, 2002, the above numbered declaration is hereby amended to include DeWitt and Victoria Counties in the State of Texas as disaster areas due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous

counties may be filed until the specified date at the previously designated location: Jackson and Calhoun Counties in Texas. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–19171 Filed 7–29–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4074]

Culturally Significant Objects Imported for Exhibition Determinations: "Fabergé and the Age of Imperial Russia"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Fabergé and the Age of Imperial Russia," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at Bellagio Gallery of Fine Art, Las Vegas, NV from on or about August 26, 2002 to on or about January 26, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Orde Kittrie, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/401–4779). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 23, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–19236 Filed 7–29–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Allegheny, Beaver and Butler Counties, PA

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Cancellation of the notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent (issued February 10, 1997—Vol. 62, No. 27) to prepare an Environmental Impact Statement for a proposed transportation improvement in the vicinity of northern Allegheny County and southern Beaver and Butler Counties.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3411—OR—Tom Fox, Assistant District Engineer for Design, Pennsylvania Department of Transportation, District 11–0, 45 Thoms Run Road, Bridgeville, PA 15017, Telephone (412) 429–5005.

SUPPLEMENTARY INFORMATION: Additional traffic analyses have indicated that no single reasonable and cost effective alternative exists for the large-scale study corridor. Environmental Assessments and/or Categorical Exclusion Evaluations may be pursued, as appropriate, based on a revised project scoping.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: July 23, 2002.

James A. Cheatham,

FHWA Division Administrator, Harrisburg, PA.

[FR Doc. 02–19143 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Alaska Railroad Corporation

[Docket Number FRA–2002–12407]

The Alaska Railroad Corporation (ARRC) of Anchorage, Alaska, has petitioned the Federal Railroad Administration (FRA) for a temporary waiver of compliance from the requirements of the Railroad Locomotive Safety Standards, 49 CFR part 229.137, Locomotive Cab Sanitation.

The Alaska Railroad Corporation is asking for an extension of time for a period of three (3) years to make modifications and conversions to 52 locomotives to bring them into compliance with the Locomotive Cab Sanitation Rule. These conversions need to take place in the wintertime outside of their busy season. However, the maximum they are able to remove from service in the wintertime is approximately 10 locomotives from a fleet consisting of 52 locomotives of which 27 locomotives have already been converted and are in compliance. This leaves a total of 25 locomotives that need to be converted. The three (3) year time period that is requested should be quite adequate. This is on account of a lack of availability of funds and service requirements so as not to hinder their normal operation.

At present, the ARRC is currently utilizing portable toilets and will continue to use them until such time that their fleet is brought into compliance with federal regulations. The ARRC will endeavor to utilize non-complying locomotives in the lead position as little as possible.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they

should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–12407) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC on July 22, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–19131 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Finger Lakes Railway, Corp.

[Docket Number FRA–2001–10215]

The Finger Lakes Railway, Corp. seeks to amend a previously granted waiver of compliance from the requirements of the Safety Glazing Standards-Passenger Car, 49 CFR 223.15, which requires all windows be FRA certified glazing and a minimum of four emergency windows. The petitioner requests the waiver for four cars recently purchased from Via Rail Canada, Inc. The coaches were built between 1954 and 1956, and were equipped with tempered glazing which met the Canadian glazing requirements. The coaches would be utilized in charter service in the rural Finger Lakes Region of New York State for trips between 15 to 20 miles in length. The original request was granted for speeds not to exceed 15 mph. The Finger Lakes Railway indicates that they have upgraded various sections of their track and are requesting to amend the previously granted waiver to allow speed not to exceed 25 mph.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2001–10215) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC on July 22, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–19132 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR), §§ 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

National Railroad Passenger Corporation

Union Pacific Railroad

[Docket Number FRA–2002–12836]

The Union Pacific Railroad (UP) and The National Railroad Passenger Corporation (Amtrak) seek a waiver of compliance from certain sections of 49 CFR parts 216, Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment; 217, Railroad Operating Rules; 218, Railroad Operating Practices; 229, Railroad Locomotive Safety Standards; 233, Signal Systems Reporting Requirements; 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of part 236; 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; and 240, Qualification and Certification Of Locomotive Engineers, under § 211.51, Tests, to allow them to develop, implement, and test technology designed to prevent train collisions and overspeed violations and to protect track maintenance personnel from trains. The program will enable the industry to demonstrate and validate the technology, referred to as Positive Train Control, (PTC) before it is implemented on a larger scale.

PTC is a communications-based train control system designed to monitor each communicating train's position, velocity, and acceleration in real time and prompt the engineer to take action before a violation occurs associated with the limits of authority, track bulletins, track speed, temporary speed restrictions, and working limits of track maintenance personnel. If the engineer fails to take the necessary action to slow or stop the train, PTC will initiate a full service brake application to stop the train before a violation occurs.

PTC will interface with the UP computer-aided dispatching (CAD) system, from which it will receive track bulletins, form-based authorities, and the dispatcher's requests for switches and signals. The PTC system will consist of four segments that work together to provide enforcement against train movement violations: the central office segment; the locomotive segment; the wayside segment, and the communications segment. The central office segment will consist of the PTC server that will develop and issue

enforceable movement authorities and speed restrictions for each PTC-equipped train. This information is sent through the communications segment to the locomotive segment located on board the controlling locomotive of each train. The locomotive segment enforces a train's movement and speed limits by monitoring the train's location and speed, providing warnings, and applying the brakes to stop the train if necessary to prevent a violation of speed limit or authority. The wayside segment monitors the status of switches, signals, and track circuits, and forwards this status, via the communications segment, to the central office segment. The locomotive and wayside segments work in concert to provide for the advance activation of grade crossings with constant warning times for train speeds greater than 79 mph.

The PTC program will be tested and demonstrated on the UP's Joliet and Springfield subdivisions in the State of Illinois between Mazonia, milepost 62.6 and Ridgley, milepost 181.0, a distance of approximately 118.4 miles. Relief is sought for the PTC test operations on all main track and signalized sidings between Mazonia and Ridgley. The present method of operation in the territory is by signal indications of a traffic control system. The current method of operation will remain in effect whether PTC is operative, fails, or is cut-out. Tests at speeds of 80 mph or more ,or those involving the display of the PTC aspect on wayside signals will be conducted under Absolute Block conditions only. During tests at speeds of 80 mph or more, flaggers will provide warning in each direction of highway traffic at crossings equipped with active crossing signals. No PTC tests requiring the exercise of the requested waiver will be conducted on revenue trains. Benign tests not requiring the exercise of the requested waivers such as tests of communications coverage or location determination system accuracy may be conducted using revenue trains.

PTC testing will temporarily require additional operating practices of a benign nature, but only on PTC-equipped test trains and only when a test is in progress. The additional operating practices contemplated for PTC test trains will include PTC initialization procedures, digital transmission and onboard display of authorities and restrictions, enforcement of limits of authority and speed limits/restrictions through automatic brake applications, and procedures for recovery following an enforcement action.

The waiver is requested for a testing period commencing September 1, 2002, and extending to the conclusion of the test phase. The test period is not expected to exceed two years and will terminate August 31, 2004, unless the UP notifies the FRA of an earlier termination date. A high speed demonstration run will be conducted in the test territory. This demonstration will allow Railroad, Government, and contractor officials the opportunity to witness the operation of the PTC system.

The following are the current waiver requests and the petitioners' justification:

Section 216.13

Special notice for repairs—locomotive. Waiver is requested for PTC-equipped locomotives to the extent that non-operation of PTC equipment installed on board, whether through malfunction or deactivation shall not be construed as an unsafe condition requiring special notice for repairs; waiver is sought for non-PTC-equipped locomotives operating in the PTC pilot territory to the extent that the absence of PTC equipment on board shall not be construed as an unsafe condition requiring special notice for repairs.

Justification: With or without PTC equipment operating on board the controlling locomotive, a train remains subject to existing operating rules. PTC tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. The PTC tests will involve only a small subset of locomotives that will be PTC-equipped for testing.

Section 217.9

Program of operational tests and inspections; recordkeeping. Waiver is requested exempting operation of PTC equipment and procedures from the requirements for operational tests and inspections and associated recordkeeping.

Justification: During the PTC test phase, procedures for using PTC equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the General Code of Operating Rules (GCOR). In any case, PTC is expected to have minimal impact on the operating rules.

Section 217.11

Program of instruction on operating rules; recordkeeping; electronic recordkeeping. Waiver is requested exempting tests of PTC equipment and procedures from the requirements for instruction and recordkeeping.

Justification: During the PTC test phase, procedures for using PTC equipment and functions will be refined and modified. Until such procedures are defined they cannot be addressed in the GCOR. In any case PTC is expected to have minimal impact on the operating rules.

Part 218

(Subpart D) Prohibition Against Tampering With Safety Devices. Waiver is requested exempting onboard PTC equipment from the requirements of §§ 218.51, 218.53, 218.55, 218.57, 218.59, and 218.61 to the extent that PTC equipment on board a locomotive shall not be considered a "safety device" subject to the provisions of this subpart at any time during the test phase.

Justification: PTC tests require flexibility in installing, removing, turning on, and turning off the onboard equipment. The UP also needs the flexibility to permanently disable or remove PTC equipment in the event that a production system is not implemented.

Section 229.135

Event recorders. Waiver is requested to the extent that PTC equipment on board a locomotive shall not be considered an "event recorder" subject to the provisions of this section during the test phase.

Justification: PTC equipment by design will operate intermittently during the test phase. The data accumulated by the onboard PTC equipment will be used to develop and refine PTC functions. Such data can be expected to contain anomalies that do not reflect true operating conditions but by analysis will contribute to achieving necessary objectives in the PTC design.

Section 233.9

Annual reports. Waiver is requested exempting PTC operations in the test phase from the reporting requirements of this section.

Justification: PTC tests require flexibility in installing, removing, turning on, and turning off PTC equipment. UP also requires the flexibility to permanently disable or remove PTC equipment in the event that a production system is not implemented.

Section 235.5

Changes requiring filing of application. Waiver is requested exempting the PTC from the requirements of this section during the test phase.

Justification: PTC tests require flexibility in installing, removing, modifying, turning on, and turning off

the PTC equipment. UP also requires the flexibility to permanently disable or remove PTC equipment in the event that a production system is not implemented.

Section 236.0

Applicability, minimum requirements, and civil penalties. Waiver is requested from the requirements of paragraph (d) to the extent that PTC may be tested on test trains operated at speeds of 80 or more miles per hour.

Justification: During the PTC test phase, PTC will be tested to assure the system will function as intended at all speeds up to but not exceeding 110 mph. Tests at speeds of 80 or more mph will be made under absolute block conditions with no other train present. In addition, an appropriately equipped flagger will provide warning for each direction of highway traffic at each crossing equipped with active crossing warning signals for each test run made a speeds of 80 or more mph.

Section 236.4

Interference with normal functioning of device. Waiver is requested to the extent that PTC equipment shall be excluded from this requirement during the test phase.

Justification: During the PTC test phase, the "normal functioning" of PTC will be identified, defined and refined. PTC tests require flexibility in installing, removing, turning on, and turning off the PTC equipment. With or without PTC equipment operating on board the controlling locomotive, the train remains subject to the provisions of the rules governing the existing methods of operation.

Section 236.5

Design of control circuits on closed circuit principle. Waiver is requested excepting PTC equipment from the closed circuit design requirement.

Justification: PTC is composed of solid-state components that are software driven. Neither the hardware nor software can technically be designed to meet the provisions of this section.

Section 236.11

Adjustment, repair, or replacement of component. Waiver is requested exempting PTC components on board a locomotive from the requirements of this section.

Justification: PTC tests require flexibility in installing, removing, modifying, turning on and turning off PTC equipment. Failure of a PTC component during the test phase will not jeopardize the safety of train operations.

Section 236.15

Timetable instructions. Waiver is requested exempting the PTC territory from the timetable designation requirement of this section during the PTC test phase.

Justification: The PTC test phase will consist of tests and demonstrations, at undetermined levels and identifying the test territory in the timetable as would be both premature and an unnecessary paperwork burden.

Section 236.23

Aspects and indications. Waiver is requested to the extent that the PTC display on board an equipped locomotive shall not be construed to represent or correspond to signal aspects or indications subject to the requirements of this section.

Justification: The PTC design excludes any visual display of signal aspects or indications. PTC enforceable authorities, which may or may not derive from signal indications on board. Text authorities, such as track bulletins, are displayed to the train crew. Since PTS is a safety overlay, trains remain subject to wayside signals. Information on the PTC display will correspond with but in no way represent authority conveyed through wayside signals.

Section 236.76

Tagging of wires and interference of wires or tags with signal apparatus. Waiver is requested exempting PTC equipment from the wire tagging requirement.

Justification: PTC hardware consists of computers, computer peripherals, and communication devices. While the inapplicability of this section to circuit boards, connectors, and cables would appear obvious, waiver is sought for clarification.

Section 236.101

Purpose of inspection and tests; removal from service of relay or device failing to meet test requirements. Waiver is requested exempting PTC equipment from the requirement for removal of failed equipment from service.

Justification: PTC tests require flexibility in installing, removing, turning on, and turning off the equipment. With or without PTC equipment operating on board, a train remains subject to the safety provisions of existing method of operation.

Section 236.107

Ground tests. Waiver is requested exempting PTC equipment from the requirement for ground testing during the test phase.

Justification: PTC hardware consists of computers, computer peripherals, and communication devices. Ground tests would serve no purpose in ensuring safety and could be damaging to this equipment.

Section 236.109

Time releases, timing relays and timing devices. Waiver is requested exempting PTC equipment from the testing requirement of this section during the test phase.

Justification: The timing devices in PTC equipment are software-driven, have no moving parts, and are far more reliable than the devices for which this regulation was promulgated to address.

Section 236.110

Results of tests. Waiver is requested exempting PTC tests from the record keeping requirements of this section.

Justification: During the PTC test phase, the types of tests necessary to ensure appropriate levels of maintenance will be defined.

Section 236.501

Forestalling device and speed control. Waiver is requested exempting PTC from the requirement for medium-speed restriction.

Justification: PTC will not be connected to the signal system in the same manner as a conventional automatic train control system and will not enforce speed restrictions indicated by signal aspects. PTC will enforce permanent speed restrictions reflected in the track database, temporary speed restrictions issued through the CAD system, and speed reductions as required by the limits of authority or conditions ahead.

Section 236.504

Operation interconnected with automatic block-signal system. Waiver is requested exempting PTC from the requirement of interconnection with an automatic block-signal system.

Justification: PTC will not be connected to the signal system in the same manner as a conventional automatic train stop, train control, or cab signal system. However PTC will receive input from the signal system and operate to perform its intended function in the event of failure of the engineer to obey a restrictive condition displayed in the cab.

Section 236.511

Cab signals controlled in accordance with block conditions stopping distance in advance. Waiver is requested

exempting the PTC onboard display from the cab-signal requirements in this section.

Justification: PTC is not an automatic cab signal system and will not be connected to the signal system in the same manner as a conventional cab signal system, but will receive input from the signal system that forms the basis for limits of authority and high speed operations that will be depicted on the PTC display.

Section 236.514

Interconnection of cab signal system with roadway signal system. Waiver is requested exempting PTC from the requirement of interconnection with a roadway signal system.

Justification: PTC system will not be connected to the roadway signal system in the same manner as a conventional cab signal system, but will receive input from the signal system that forms the basis for limits of authority and high speed operations.

Section 236.515

Visibility of cab signals. Waiver is requested exempting any PTC display from the visibility requirement of this section during the test phase.

Justification: PTC is not a cab signal system and the design excludes any visual representation of signal aspects or indications.

Section 236.534

Entrance to equipped territory; requirements. Waiver is requested exempting the PTC from the requirements of this section during the test phase.

Justification: PTC tests require flexibility in installing, removing, turning on, and turning off PTC equipment.

Section 236.551

Power supply voltage; requirement. Waiver is requested exempting the onboard PTC power supply from the voltage requirement in this section.

Justification: PTC onboard equipment will function with more than a 50% variation in voltage.

Section 236.552

Insulation resistance; requirement. Waiver is requested exempting PTC equipment from the insulation resistance requirement of this section.

Justification: PTC on-board equipment consists of computers, computer peripherals, and communications equipment. Insulation resistance tests could be damaging to such components.

Section 236.553

Seal, where required. Waiver is requested exempting PTC from the seal requirement of this section.

Justification: The PTC system will allow for manual disablement of on-board PTC functions and equipment both remotely from the dispatching office and through an onboard manual function. Use of the onboard cutout function will be electronically monitored and reported to the dispatcher as an alarm.

Section 236.566

Locomotive of each train operating in train stop, train control or cab signal territory; equipped. Waiver is requested to the extent that the equipment requirements in this section shall not apply to PTC during the test phase.

Justification: A small subset of locomotives operating in the test territory will be PTC-equipped; the majority of trains will not be equipped. PTC tests require flexibility in installing, removing, turning on and turning off the onboard equipment. In any case, all PTC tests will be conducted under the provisions of the rules governing the existing rules of operation.

Section 236.567

Restrictions imposed when device fails and/or is cut out enroute. Waiver is requested exempting PTC tests from the restrictions associated with device failure or cutout.

Justification: PTC tests require flexibility in installing, removing, turning on and turning off the onboard equipment. All PTC tests will be conducted under the provisions of the rules governing the existing methods of operation and a failure or deactivation of PTC equipment will not jeopardize safety of train operations.

Section 236.586

Daily or after trip test. Waiver is requested exempting the PTC from the requirements of this section during the test phase.

Justification: During the PTC test phase, the requirements for a daily or after trip test, if necessary, will be defined. An objective is to perform this test without human intervention.

Section 236.587

Departure test. Waiver is requested exempting the PTC from the requirements of this section during the test phase.

Justification: During the PTC test phase, the requirements for a departure test will be defined. An objective is to perform this test without human intervention.

Section 236.588

Periodic test. Waiver is requested exempting PTC from the requirements of this section during the test phase.

Justification: During the PTC test phase, the requirements for periodic testing will be defined.

Section 236.703

Aspect. Clarification is requested exempting the PTC display from this definition.

Justification: PTC is not an automatic cab signal system and its design does not include any visual representation of signal aspects or indications.

Section 236.805

Signal, cab. Clarification is requested exempting the PTC display from this definition.

Justification: PTC is not an automatic cab signal system and its design does not include any visual representation of signal aspects or indications.

Section 240.127

Criteria for examining skill performance. Waiver is requested exempting PTC from the testing requirements of this section during the PTC test phase.

Justification: Criteria and procedures for PTC performance evaluation do not yet exist; they will be identified during the PTC test phase.

Section 240.129

Criteria for monitoring operational performance of certified engineers. Waiver is requested exempting PTC from the performance monitoring procedures during the PTC test phase.

Justification: Criteria and procedures for PTC performance evaluation do not yet exist; they will be identified and defined during the PTC test phase.

It is acknowledged for clarification that PTC, when fully operative during the test phase, will comply with the following regulations:

Part 234

Grade crossing signal system safety. All sections.

Section 236.8

Operating characteristics of electromagnetic, electronic, or electrical apparatus. PTC computing equipment will comply with this regulation.

Section 236.501

Forestalling device and speed control. PTC is designed to enforce maximum authorized speeds, speed restrictions,

slow speed and absolute stop. PTC will comply with Section 236.501 except for paragraph (b)(2).

Section 236.502

Automatic brake application, initiation by restrictive block conditions stopping distance in advance. PTC is designed to initiate an automatic brake application stopping distance in advance of the end of limits of authority; a train or locomotive; or the beginning of each lower speed restriction in the route.

Section 236.503

Automatic brake application; initiation when predetermined rate of speed exceeded. PTC will comply with this regulation.

Section 236.505

Proper operative relation between parts along roadway and parts on locomotive. PTC will function as intended under all conditions of speed, weather, oscillation and shock. PTC will comply with this regulation.

Section 236.506

Release of brakes after automatic application. After a PTC-initiated brake application, brakes cannot be released until the train is stopped.

Section 236.507

Brake application; full service. PTC will comply with this regulation.

Section 236.508

Interference with application of brakes by means of brake valve. PTC equipment will not interfere with or impair the efficiency of the automatic or independent brake valves.

Section 236.509

Two or more locomotives coupled. PTC will be made operative only on the controlling locomotive; however, PTC tests that do not affect train operations may occur on trailing locomotives.

Section 236.513

Audible indicator. The audible indicator for PTC will have a distinctive sound and be clearly audible under all operating conditions.

Section 236.516

Power supply. PTC equipment will have its own isolated power supply.

Section 236.565

Provision made for preventing operation of pneumatic brake-applying apparatus by double-heading cock; requirement. Operation of the double-heading cock (cutoff pilot valve) will not cut out PTC before the automatic brake is cut out.

Section 236.590

Pneumatic apparatus. Pneumatic apparatus will be inspected and cleaned as required.

Part 236 Subpart G

Definitions. As applicable except § 236.703 and § 236.805.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2002–12113) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC., 20590–0001. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC.

Edward W. Pritchard,

Acting Director, Office of Safety Assurance and Compliance.

[FR Doc. 02–19134 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2002–12924]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to revise the following currently approved information collection: Rail Fixed Guideway Systems, State Safety Oversight.

DATES: Comments must be submitted before September 30, 2002.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Field, Office of Program Management, (202) 366–0197.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Rail Fixed Guideway Systems, State Safety Oversight (*OMB Number: 2132–0558*).

Background: 49 U.S.C. 5330 requires each State to designate a State Safety Oversight agency to oversee the safety and security operations of "a rail fixed guideway system" within the State's jurisdiction. To comply with Section 5330, State oversight agencies must require System Safety Program Plans (SSPPs) from rail fixed guideway systems; review and approve these SSPPs; require notification of unacceptable hazardous conditions according to the American Public Transportation Association (APTA) Hazard Classification Matrix; require and review corrective action plans from rail fixed guideway systems to eliminate such conditions; require an ongoing safety audit process at the rail fixed guideway systems; and submit both an annual certification to FTA that the State is in compliance with the requirements of section 5330 and an

annual report documenting safety activities. Collection of this information will enable the State oversight agency to monitor effectively the safety of the rail fixed guideway system. Without certification from the State oversight agency, FTA would be unable to determine each State's compliance with Section 5330.

If a State fails to comply with the requirements of section 5330, FTA may withhold up to five percent of funds apportioned under section 5307 to a State, or urbanized area within a State, beginning in Fiscal Year 1997.

Estimated Annual Burden on Respondents: Approximately 663.50 hours for each of the 56 respondents.

Estimated Total Annual Burden: 37,158 hours.

Frequency: Annual.

Issued: July 24, 2002.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 02–19130 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–12479; Notice 1]

Dorel Juvenile Group; Receipt of Application for Determination of Inconsequential Non-Compliance

Dorel Juvenile Group [Cosco] (DJG), of Columbus, Indiana, failed to comply with S5.4.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," which incorporates S5.1(d) of FMVSS No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." DJG has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

The following summarizes the DJG petition based upon information provided with the petition in accordance with the requirements of 49 CFR part 556, "Exemption for Inconsequential Defect or Noncompliance."

Summary of the Petition

On July 11, 2001, as a result its fiscal year 2001 testing, NHTSA notified DJG, by telephone, of a potential noncompliance regarding DJG's tether webbing. The noncompliance is the webbing utilized for tether assemblies on many of DJG child restraints produced from January 2000 through September 30, 2001 (39 Models and 3,957,826 units). DJG determined that one of the suppliers of tether webbing utilized in the tether assemblies had provided some webbing that did not meet the abrasion test requirements. DJG's unabraded tether webbing strength, measured by NHTSA's FY 2001 compliance testing, was 4,450 pounds, and after abrasion it was 2,450 pounds (a ratio of abraded/unabraded webbing strength of 55%). Section 5.4.1(a) of FMVSS No. 213 requires webbing to have an abraded strength of not less than 75% of its unabraded breaking strength.

DJG believes that because its unabraded webbing strength was high (4,450 pounds), not meeting the 75% abrasion strength requirement of S5.4.1(a) of FMVSS No. 213 is inconsequential to motor vehicle safety. DJG believes that its abraded strength at 2,450 pounds is far in excess of the anchorage strength requirements specified in FMVSS No. 225 "Child restraint anchorage systems" at 1,191 pounds. DJG also believes that the abraded webbing strength test procedure set forth in S5.4.1(a) of FMVSS No. 213 is flawed and that minimum abraded breaking strength should be specified. Therefore, DJG filed this petition on the basis that the noncompliance is inconsequential to motor vehicle safety.

Availability of the Petition and Other Documents

The petition and other relevant information are available for public inspection in NHTSA Docket No. NHTSA–2002–12479. You may call the Docket at (202) 366–9324 or you may visit the Docket Management in Room PL–401, 400 Seventh Street, SW, Washington, DC 20590 (10:00 a.m. to 5 p.m., Monday through Friday). You may also view the petition and other relevant information on the Internet. To do this, do the following:

(1) Go to Docket Management System (DMS) Web page for the Department of Transportation (*http://dms.dot.gov*)

(2) On that page, click on "Simple Search."

(3) On the next page (*http://dms.dot.gov/search/SearchFormSimple.cfm*), type the docket number "12479." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

Comments

Interested persons are invited to submit written data, views and arguments on the petition of DJG described above. Comments should refer to the Docket Number and be submitted to: U.S Department of Transportation Docket Management, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 29, 2002.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 23, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–19141 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 618)]

CSX Transportation, Inc.—Discontinuance—at Memphis, in Shelby County, TN

On July 10, 2002, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) an application for permission to discontinue service over a 1.1-mile portion of its Midwest Region, Nashville Division, Memphis Terminal line between milepost ONI 224.00, at Memphis and milepost ONI 222.9 east of Memphis, in Shelby County, TN.[1]

[1] CSXT previously filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon the above line, plus an additional 12.24 miles of rail line, extending from milepost ONI 224.00 near Memphis, to milepost ONI 210.66 near Cordova. The Board denied the petition in *CSX Transportation, Inc.—Abandonment Exemption—(Between Memphis and Cordova) in Shelby County,*

Continued

The line traverses U.S. Postal Service ZIP Codes 38111 and 38112. Applicant has indicated that the line includes the station of Memphis.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it. The applicant's entire case for discontinuance (case-in-chief) was filed with the application.

The line of railroad has appeared on CSXT's system diagram map or has been included in its narrative in category 1 since March 6, 2002.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed discontinuance or protests (including the protestant's entire opposition case), by August 26, 2002. Because this is a discontinuance proceeding, and not an abandonment, trail use/rail banking, and public use requests are not appropriate. Also, only offers of financial assistance (OFA) under 49 U.S.C. 10904 to subsidize (not purchase) the line will be entertained.

Persons opposing the discontinuance who wish to participate actively and fully in the process should file a protest. Persons who may oppose the discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

In addition, a commenting party or protestant may provide: (i) An OFA to subsidize rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner); and (ii) recommended provisions for protection of the interests of employees.

The line sought to be discontinued will be available for subsidy for continued rail use, if the Board decides to permit the discontinuance, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning subsidy terms is set forth below.

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 618) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Esq., Ball Janik, LLP, 1455 F St., NW., Suite 225, Washington, DC 20005. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in discontinuance proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 24, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–19218 Filed 7–29–02; 8:45 am]

BILLING CODE 4915–00–P

TN, STB Docket No. AB–55 (Sub-No. 590X) (STB served Dec. 12, 2001), finding that CSXT had failed to show that the current situation imposed a burden on it that outweighed the harm if the line were to be abandoned. The Board's denial of the petition was without prejudice to CXST's refiling an appropriate application or a petition for exemption. On March 29, 2002, CSXT filed a petition under 49 U.S.C. 10502 for exemption from 49 U.S.C. 10903 in *CSX Transportatioin, Inc.—Discontinuance Exemption—(Between East of Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB–55 (Sub-No. 615X) to discontinue service over the 12.24-mile segment of the line between milepost ONI 222.9, east of Memphis, and milepost ONI 210.66, near Cordova, at the end of the line. The Board granted the petition by decision served on July 17, 2002.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 949; ATF O 1130.29]

Delegation Order—Delegation of The Director's Authorities in 27 CFR Part 26, Liquors and Articles From Puerto Rico and the Virgin Islands

To: All Bureau Supervisors

1. *Purpose.* This order delegates certain authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents which are not ATF forms.

2. *Background.* The Director has the authority to take final action on matters relating to liquors and articles from Puerto Rico and the Virgin Islands. Certain of these authorities have been delegated to lower organizational levels through ATF O 1130.23—Delegation Order—Delegation of the Director's Authorities in 27 CFR part 250, Liquors and Articles from Puerto Rico and the Virgin Islands. ATF is currently restructuring the part numbering system in title 27 of the Code of Federal Regulations (CFR). The regulations relating to liquors and articles from Puerto Rico and the Virgin Islands, previously located in 27 CFR part 250, are now recodified as 27 CFR part 26. Due to this restructuring, ATF O 1130.23 must be cancelled and a new order must be issued to reflect the new part number.

3. *Cancellation.* ATF O 1130.23, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 250, Liquors and Articles from Puerto Rico and the Virgin Islands, dated 8/13/2001, is canceled.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR part 26 to subordinate officials. Also, this ATF order prescribes the subordinate officials with whom applications, notices, and reports required by 27 CFR part 26, which are not ATF forms, are filed. The attached table identifies the

regulatory sections, authorities and documents to be filed, and the authorized ATF officials. The authorities in the table may not be redelegated.

5. *Questions.* If you have questions about this ATF order, contact the Regulations Division (202–927–8210).

Bradley A. Buckles,
Director.

Regulatory section	Officer(s) authorized to act or receive document.
§ 26.2(a)	Chief or Deputy Chief, Regulations Division
§ 26.11—liquor bottle definition	Specialist, Alcohol Labeling and Formulation Division (ALFD)
§ 26.37	Inspector, Specialist or Special Agent
§ 26.43	Chemist, Inspector, Specialist or Special Agent
§ 26.52(b) and (c)	Chief, Puerto Rico Operations
§ 26.62a	Chief, Puerto Rico Operations
§ 26.65	Chief, Puerto Rico Operations
§ 26.70	Chief, Puerto Rico Operations
§ 26.70a	Specialist, Puerto Rico Operations
§ 26.71(c) and (d)	Chief, Puerto Rico Operations
§ 26.72	Chief, Puerto Rico Operations
§ 26.74	Chief, Puerto Rico Operations
§ 26.75	Chief, Puerto Rico Operations
§ 26.81	Chief, Puerto Rico Operations
§ 26.96	Chief, Puerto Rico Operations
§ 26.105	Chief, Puerto Rico Operations
§ 26.110	Chief, Puerto Rico Operations
§ 26.112(c)(1) and (4) and (e)	Chief, Puerto Rico Operations
§ 26.112a(b)(1) and (3) and (c)(1)	Chief, Puerto Rico Operations
§ 26.116	Inspector, Specialist or Special Agent
§ 26.119	Chief, Puerto Rico Operations, to whom forms are forwarded. Inspector, Specialist or Special Agent to examine forms.
§ 26.126	Chief, Puerto Rico Operations
§ 26.128	Inspector, Specialist or Special Agent
§ 26.173(a)	Chief, Puerto Rico Operations
§ 26.174(a) and (e)	Inspector, Specialist or Special Agent
§ 26.193(b)	Chief, Puerto Rico Operations
§ 26.194	Area Supervisor or Chief, Puerto Rico Operations
§ 26.197	Unit Supervisor, National Revenue Center (NRC)
§ 26.209	Specialist, Regulations Division, or Chemist, ATF Laboratory
§ 26.222(b) and (c)	Chief, Puerto Rico Operations
§ 26.275(a)	Section Supervisor, NRC to authorize files to be located at another business location. Inspector, Specialist or Special Agent to examine files.
§ 26.276	Inspector, Specialist or Special Agent to inspect and copy records. Director of Industry Operations to extend record retention.
§ 26.303	Section Chief, NRC
§ 26.309(a)	Chief, Puerto Rico Operations
§ 26.310(a) and (e)	Inspector, Specialist or Special Agent
§ 26.314(b)	Specialist, ALFD
§ 26.316	Specialist, ALFD
§ 26.318	Specialist, ALFD
§ 26.319	Section Chief, NRC
§ 26.331	Chief or Deputy Chief, Regulations Division

BILLING CODE 4810–31–P

ATF Organization - not a complete organization chart

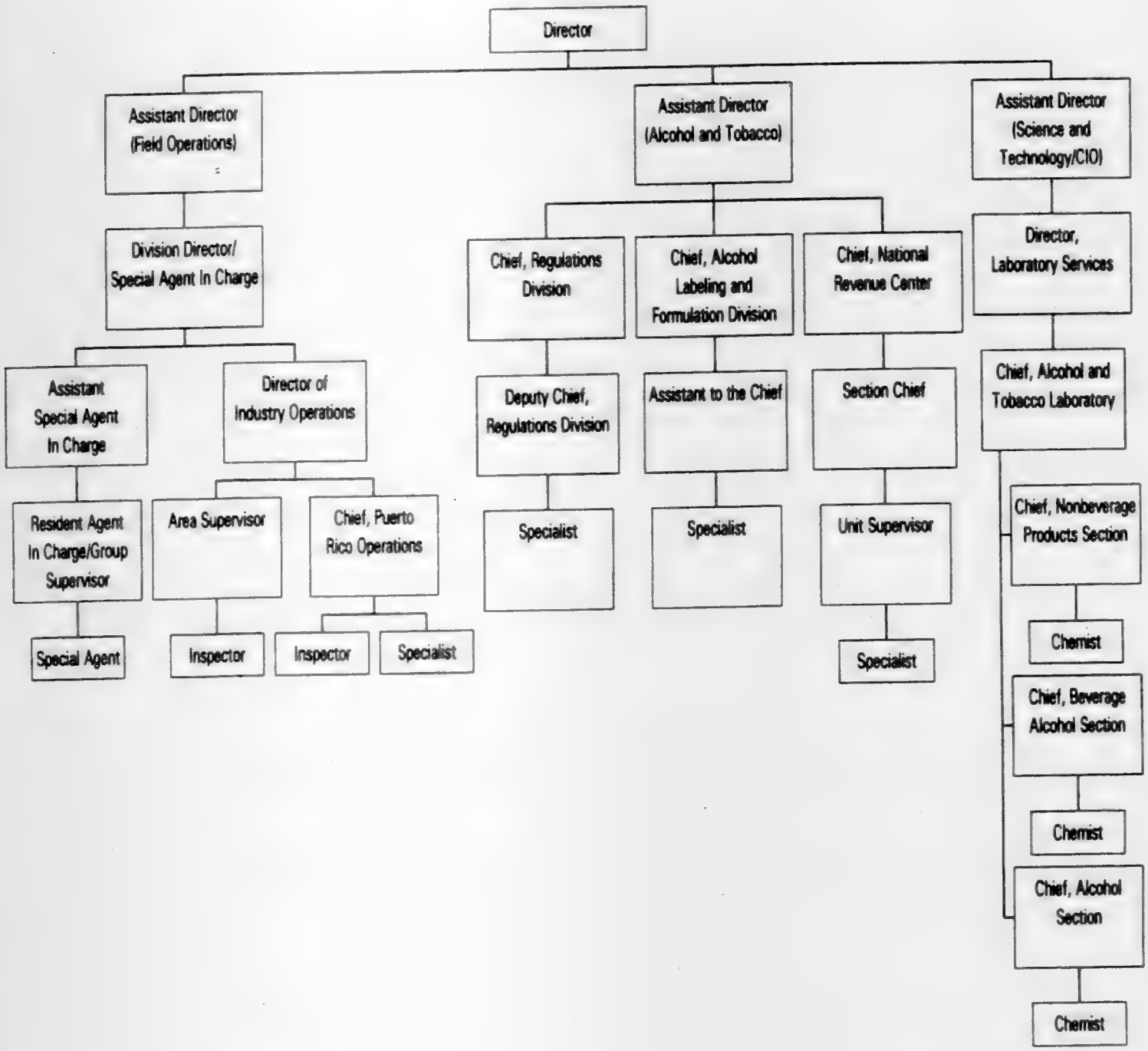

[FR Doc. 02–19129 Filed 7–29–02; 8:45 am]
BILLING CODE 4810–31–C

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0107]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to audit accountings of fiduciaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 30, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0107" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certificate as to Securities, VA Form 21–4709.

OMB Control Number: 2900–0107.

Type of Review: Extension of a currently approved collection.

Abstract: VA is required to supervise benefits paid to fiduciaries on behalf of beneficiaries who are incompetent or under legal disability. Supervision includes a requirement that the fiduciary account periodically for the funds he/she has received on behalf of the beneficiary. VA Form 21–4709 is used by estate analysts employed by VA to verify investment in savings bonds and other securities reported in the beneficiary estate.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Annual Burden: 863 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 4,316.

Dated: July 17, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–19173 Filed 7–29–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0108]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine eligibility for income-based benefits programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 30, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0108"" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report on Income from Property or Business, VA Form 21–4185.

OMB Control Number: 2900–0108.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to derive net income from property or business. The information is used to determine whether the beneficiary is eligible for VA benefits and, if eligibility exists, to determine the proper rate of benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 29,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 59,000.

Dated: July 17, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–19174 Filed 7–29–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Establishment of New System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled, "Alternative Dispute Resolution Tracking System-VA" (116VA09).

DATES: Comments on this new system of records must be received no later than August 29, 2002. If no public comment is received, the new system will become effective August 29, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or email comments to *OGCRegulations@mail.va.gov*. All relevant material received before August 29, 2002 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Frederic Conway (09), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (202) 273–6743.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

VA is committed to the appropriate use of alternative dispute resolution (ADR) for resolving conflicts and disputes. To monitor the use of ADR within VA, VA is creating an ADR tracking system. The proposed system will capture information about the type and frequency of use of ADR within VA. It will track the number of times ADR is utilized, the types of disputes submitted to ADR, the length of time it took to use the ADR process, the outcome of the ADR and the degree of satisfaction of the users of ADR with the process. Collection and analysis of this data will enable VA to determine the effectiveness of the ADR program and identify areas for improvement.

VA will gather the information through a web-based tracking system. Individual ADR coordinators at the facility or regional level will enter data in the system. Regional levels are determined by the VA Staff Office or Administration involved. For example, the regional level in the Veterans Health Administration is the Veterans Integrated Service Network (VISN) level. ADR coordinators will have individually assigned unique passwords to enter and access data, and will only be able to access the data that they enter. This information may be maintained locally by the ADR coordinator and will be maintained nationally by the Dispute Resolution Specialist (09).

The Categories of Individuals Covered by the System may include the ADR Coordinators, the individuals who conduct the ADR process, e.g., mediators and arbitrators, the individuals who requested ADR, the respondents, and the representatives of the ADR requesters and respondents. ADR requesters are any individuals who may use the VA ADR process and who seek to use ADR as a method to resolve disputes. Examples of ADR requesters may include management officials, VA employees, contract employees, or individuals who have filed a tort claim under the Federal Tort Claims Act based upon a claim allegedly involving VA or its employees. Respondents may be any individuals who have been asked to participate in an ADR process, such as management officials, co-workers, or contracting officers.

The Categories of Records in the System may include such information as: the name, grade and step of the ADR requesters and respondents; the type of ADR requested, e.g., mediation or arbitration; the source of the individual(s) conducting the ADR, e.g., another Federal agency; the grades and steps of the individuals conducting the ADR process; administrative data on the particular ADR case, e.g., date requested; date concluded and total hours spent on the ADR; the nature of the dispute, e.g., discrimination or harassment; the stage in the dispute in which ADR is inserted, the jurisdictional forum in which the dispute was located when ADR was requested, any waiver of rights under 29 CFR part 1614, the terms of any settlement agreement, e.g., damages, attorneys fees, reassignment, and the satisfaction of the parties with the ADR process.

The Department is gathering this information for the following purposes. VA will use the information to track and monitor agency dispute resolution activities at the local level. VA also intends to analyze the data to evaluate ADR utilization VA-wide, identify agency ADR best practices, and determine whether certain forms of ADR may be more appropriate in various types of cases.

VA's policies and practices for storing, retrieving, accessing, retaining and disposing of records will be as follows. VA will store the ADR tracking system on a server located in a [enter site location and operator]. Records are indexed and retrieved by the names or identification numbers of the ADR program participants, such as the ADR requestors respondents, and mediators. The safeguards for the data limit access to only those individuals who either administer the ADR tracking system or serve as ADR coordinators. VA will retain and dispose of these records in accordance with the applicable records control schedule approved by the Archivist of the United States.

II. Proposed Routine Use Disclosures of Data in the System

VA is proposing to establish the following Routine Use disclosures of information maintained in the system:

1. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before VA. The Member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

2. Disclosure may be made to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of Title 44 U.S.C.

NARA is responsible for archiving old records no longer actively used, but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal Government's records. VA must be able to turn records over to NARA in order to determine the proper disposition of such records.

3. Records from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear when: (1) The Agency, or any component thereof; (2) any employee of the Agency in his or her official capacity, where DOJ or the Agency has agreed to represent the employee; or (3) the United States, when the Agency determines that litigation is likely to affect the Agency or any of its components; is a party to litigation, and has an interest in such litigation, and the use of such records by DOJ or the Agency is deemed by the Agency to be relevant and necessary to the litigation, provided, however, that the disclosure is compatible with the purpose for which the records were collected.

Whenever VA is involved in litigation, or occasionally when another party is involved in litigation and VA policies or operations could be affected by the outcome of the litigation, VA would be able to disclose information to the court or parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by use of the information in the particular litigation is compatible with a purpose for which VA collects the information.

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

VA must be able to provide information to contractors or subcontractors with whom VA has a contract or agreement in order to perform the services of the contract or agreement.

5. VA may disclose on its own initiative any information in this system that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order.

VA must be able to comply with the requirements of agencies charged with enforcing the law and investigations of violations or possible violations of law. VA must also be able to provide information to Federal, State, local, tribal and foreign agencies charged with protecting the public health as set forth in law.

6. Disclosure may be made to an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

Whenever VA is involved in an appeal, grievance, or complaint, or occasionally when another party is involved and VA policies or operations could be affected by the outcome, VA would be able to disclose information to the examiner or other official or parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by use of the information is compatible with a purpose for which VA collects the information. The information may be needed by the examiner or investigator in order to resolve a grievance. Inability to release the data may have a negative impact on the individual filing the grievance.

7. Disclosure may be made to the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the General Accounting Office (GAO) in order for them to perform their responsibilities for evaluating Federal programs.

VA must be able to provide information to these agencies in order for them to carry out their responsibilities for evaluating Federal programs.

8. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. Chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

VA must be able to disclose information to officials of labor organizations to assist them in fulfilling their responsibilities in representing employees. This routine use is intended to provide no greater authority to release records to officials of labor unions than provided under 5 U.S.C. 7114(b)(4).

9. Information may be disclosed to officials of the Merit Systems Protection Board or the Office of the Special Counsel when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

VA must be able to disclose information to these agencies to assist them in fulfilling their responsibilities.

10. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law.

VA must be able to disclose information to the Commission in order for it to fulfill its responsibilities to protect employee rights.

11. Information may be disclosed to the Federal Labor Relations Authority (including its General Counsel) when appropriate jurisdiction has been established and the information has been requested in connection with the investigation and resolution of allegations of unfair labor practices or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; and to the Federal Service Impasses Panel in matters they are considering.

VA must be able to disclose information to these agencies in order for them to fulfill their responsibilities.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: July 15, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

116VA09

SYSTEM NAME:

Alternative Dispute Resolution Tracking System-VA.

SYSTEM LOCATION:

VA will store the ADR tracking system on a web development server located in Silver Spring, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning VA employees and other individuals who have participated in a VA alternative dispute resolution program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may contain information related to the name, grade and step of the ADR requesters and respondents; the type of ADR requested, e.g., mediation or arbitration; the type of ADR used; the source of the individual(s) conducting the ADR, e.g., another Federal agency; the grades and steps of the individuals conducting the ADR process; administrative data on the particular ADR case, e.g., date requested; date concluded and total hours spent on the ADR; the nature of the dispute, e.g., discrimination or harassment; the stage in the dispute in which ADR is inserted, the jurisdictional forum in which the dispute was located when ADR was requested, any waiver of rights under 29 CFR part 1614, the terms of any settlement agreement, e.g., damages, attorneys fees, reassignment, and the satisfaction of the parties with the ADR process, and, the source of the neutral third party who conducted the procedure, e.g., the facility's program, a local shared neutral's program, the national program, or a private, non governmental program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code, sections 571–584; Federal Acquisition , Regulation; Part 33, Protests, Disputes, and Appeals and/or VA Acquisition Regulation, Part 833, Protests, Disputes, and Appeals; and Title 29, Code of Federal Regulations, section 1614.

PURPOSE(S):

VA will use the information to track and monitor agency dispute resolution activities at the local level. VA also intends to analyze the data to evaluate ADR utilization VA-wide, identify agency ADR best practices, and determine whether certain forms of ADR may be more appropriate in various types of cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

VA is proposing to establish the following routine use disclosures of the information that will be maintained in the system:

1. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

2. Disclosure may be made to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of Title 44 U.S.C.

3. Records from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear when: (1) The Agency, or any component thereof; (2) any employee of the Agency in his or her official capacity, where DOJ or the Agency has agreed to represent the employee; or (3) the United States, when the Agency determines that litigation is likely to affect the Agency or any of its components; is a party to litigation, and has an interest in such litigation, and the use of such records by DOJ or the Agency is deemed by the Agency to be relevant and necessary to the litigation, provided, however, that the disclosure is compatible with the purpose for which the records were collected.

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

5. VA may disclose on its own initiative any information in this system that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA must be able to comply with the requirements of agencies charged with enforcing the law and investigations of violations or possible violations of law.

6. Disclosure may be made to an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

7. Disclosure may be made to the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the General Accounting Office (GAO) in order for them to perform their responsibilities for evaluating Federal programs.

8. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. Chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

9. Information may be disclosed to officials of the Merit Systems Protection Board or the Office of the Special Counsel when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law.

11. Information may be disclosed to the Federal Labor Relations Authority (including its General Counsel) when appropriate jurisdiction has been established and the information has been requested in connection with the investigation and resolution of allegations of unfair labor practices or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; and to the Federal Service Impasses Panel in matters they are considering.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on a web development server.

RETRIEVABILITY:

Records are retrieved by name or other assigned identifiers of the individuals who participate in the VA ADR process.

SAFEGUARDS:

1. Access to and use of these records is limited to those persons whose official duties require such access.

2. Access to the ADR tracking system is controlled by using an individually unique user identification code.

3. Access to the VA facility where the ADR tracking system is maintained is controlled at all hours by the Federal Protective Service, VA, or other security personnel and security access control devices.

4. Public use files prepared for purposes of research and analysis are purged of personal identifiers.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Dispute Resolution Specialist (09), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should address written inquiries to Dispute Resolution Specialist (09), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write Dispute Resolution Specialist (09), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by employees who serve as local ADR program coordinators who obtain information from the ADR program participants.

[FR Doc. 02–19176 Filed 7–29–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 146

Tuesday, July 30, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 29-2002]

Foreign–Trade Zone 20—Newport News, Application for Subzone, Canon Virginia, Inc. (Computer Printers and Related Products), Newport News, VA

Correction

In notice document 02–17853 beginning on page 46632 in the issue of Tuesday, July 16, 2002, make the following correction:

On page 46633, in the first column, in the fifth line "[60 days from date of publication]" should read "September 16, 2002".

[FR Doc. C2–17853 Filed 7–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board; Request for Nominations

Correction

In notice document 02–18274 beginning on page 47525 in the issue of Friday, July 19, 2002, make the following correction:

On page 47526, in the first column, in paragraph numbered (3), in the fourth line, "ten–miles" should read "ton–miles ".

[FR Doc. C2–18274 Filed 7–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

Local Flexibility Demonstration Program Office of Elementary and Secondary Education, Department of Education; Notice inviting applications for the Local Flexibility Demonstration Program

Correction

In notice document 02–18306, beginning on page 47528 in the issue of Friday, July 19, 2002, make the following correction:

On page 47528, in the second column, in the fifth paragraph headed *Applications Available:*, in the first line, the date "September 17, 2002" is changed to read "July 19, 2002".

[FR Doc. C2–18306 Filed 7–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 97N–0023]

RIN 0910–AA99

Use of Ozone-Depleting Substances; Essential-Use Determinations

Correction

In rule document 02–18610 beginning on page 48370 in the issue of Wednesday, July 24, 2002, make the following correction:

On page 48370, in the third column, under the heading "**ACTION:**", in the first line, insert the words "Final rule.".

[FR Doc. C2–18610 Filed 7–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–AD]

RIN 2120–AA64

Airworthiness Directives; Vulcanair S.p.A P 68 Series Airplanes

Correction

In proposed rule document 02–17601 beginning on page 46427 in the issue of Monday, July 15, 2002, make the following correction:

§39.13 [Corrected]

On page 46429, in the table, in §39.13, under the heading Model, in the second line, "P 68 "OBSERVER" should read "P 68 "OBSERVER 2" ".

[FR Doc. C2–17601 Filed 7–29–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 30, 2002

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Site Remediation; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7241–6]

RIN 2060–AH41

National Emission Standards for Hazardous Air Pollutants: Site Remediation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes National Emission Standards for Hazardous Air Pollutants (NESHAP) under the authority of section 112 of the Clean Air Act (CAA) for the site remediation source category. The EPA has determined that site remediation activities can be major sources of organic hazardous air pollutants (HAP) (including benzene, ethyl benzene, toluene, vinyl chloride, xylenes) and other volatile organic compounds (VOC). The range of potential human health effects associated with exposure to these organic HAP and VOC include cancer, aplastic anemia, upper respiratory tract irritation, liver damage, and neurotoxic effects (e.g., headache, dizziness, nausea, tremors). The proposed rule would implement section 112(d) of the CAA by requiring those affected site remediation activities to meet emissions limitations, operating limit, and work practice standards reflecting the application of the maximum achievable control technology (MACT). When implemented, we estimate that the proposed rule would reduce annual regulated HAP emissions from the source category by approximately 50 percent or 570 megagrams per year (Mg/yr) (630 tons per year (tpy)) and reduce nationwide VOC emissions by 3,680 Mg/yr (4,050 tpy).

DATES: *Comments.* Submit comments on or before September 30, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by September 19, 2002, a public hearing will be held on August 27, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–20, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–20, U.S. EPA, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be begin at 10:00 a.m. and will be held at the new EPA facility complex in Research Triangle Park, North Carolina, or at an alternate site nearby. You should contact Ms. JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division, U.S. EPA (C439–03), Research Triangle Park, NC 27711, telephone (919) 541–5671 to request a public hearing, to request to speak at a public hearing, or to find out if a hearing will be held.

Docket. Docket No. A–99–20 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460, in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Copies of docket materials may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, Waste and Chemical Processes Group, Emission Standards Division (C439–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–3078, facsimile number (919) 541–0246, electronic mail address "nizich.greg@epa.gov".

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: "*a-and-r-docket@epa.gov.*" Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–99–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Mr. Greg Nizich, c/o OAQPS Document Control Officer, U.S. EPA (C404–02), RTP, NC 27711.

The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring whether a hearing is to be held should contact Ms. JoLynn Collins of the EPA at (919) 541–5671 at least 2 days before the public hearing. Persons interested in attending the public hearing must also call Ms. Collins to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of the proposed rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and potentially affected industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to the proposed rule are available for review in the docket, or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Background Information. The background information for the proposed rule is not contained in a formal background information document. Background information we used in developing the proposed rule is presented in technical memoranda that

we have included in Docket No. A–99–20.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS*	Examples of regulated entities
Industry	325211 325192 325188 32411 49311 49319 48611 42269 42271	Site remediation activities at businesses at which organic materials currently are or have been in the past stored, processed, treated, or otherwise managed at the facility. These facilities include: organic liquid storage terminals, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with collocated site remediation activities.
Federal Government		Federal agency facilities that conduct site remediation activities.

*North American Industry Classification System (NAICS) code. Representative industrial codes at which site remediation activities have been or are currently conducted at some but not all facilities under a given code. The list is not necessarily comprehensive as to the types of facilities at which a site remediation cleanup may potentially be required either now or in the future.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action.

A comprehensive list of North American Industry Classification System (NAICS) codes cannot be compiled for businesses or facilities potentially regulated by the proposed rule due to the nature of activities regulated by the source category. The industrial code alone for a given facility does not determine whether the facility is or is not potentially subject to the proposed rule. The proposed rule may be applicable to any type of business or facility at which a site remediation is conducted to clean up media contaminated with organic HAP and other hazardous material. Thus, for many businesses and facilities subject to the proposed rule, the regulated sources (i.e., the site remediation activities) are not the predominant activity, process, operation, or service conducted at the facility. In these cases, the industrial code indicates a primary product produced or service provided at the facility rather than the presence of a site remediation performed to support the predominant function of the facility. For example, NAICS code classifications where site remediation activities are currently being performed at some but not all facilities include, but are not limited to, petroleum refineries (NAICS code 32411), industrial organic chemical manufacturing (NAICS code 3251xx) and plastic materials and synthetics manufacturing (NAICS code 3252xx). However, we are also aware of site remediation activities potentially subject to the proposed rule being performed at facilities listed under NAICS codes for refuse systems, waste management, business services, miscellaneous services, and nonclassifiable.

To determine whether your facility is regulated by the action, you should carefully examine the applicability criteria in the proposed rule. If you have questions regarding the applicability of the proposed rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

Outline. The following outline is provided to assist you in reading this preamble.

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I. Background

A. What Is the Source of Authority for Development of the Proposed Rule?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's proposed rule was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are defined by section 112 of the CAA to be those sources that emit or have the potential to emit at least 10 tpy of any single HAP or 25 tpy of any combination of HAP. As a supplement to the list of source categories published on July 16, 1992, the EPA developed the publication entitled "Documentation of Developing the Initial Source Category List" (EPA–450/3–91–030, July 1992). This document contains descriptions of the types of activities included within each source category of major sources. This document states that future information may be used to refine the source category descriptions (EPA–450/3–91–030, page A–2).

We included site remediation on the NESHAP source category list to address HAP emissions from technologies and work practices used to clean up or reduce chemical contamination in soils, groundwater, other types of contaminated media and other materials at those facilities that are major sources of HAP as defined by section 112(a)(1) of the CAA.

During the initial development of the proposed rule, we obtained additional information regarding the cleanup of contamination from leaking underground storage tanks at those facilities that are not associated with industrial or manufacturing facilities and where the predominant, if not only, potential source of HAP emissions is the remediation cleanup activity itself (e.g., cleanup of contaminated soil or groundwater due to a leaking underground tank at a small commercial business, farm, or private residence). Our analysis shows that the HAP emissions from a typical cleanup of contamination from the size and types of underground tanks commonly used at these facilities to store motor fuels or heating oils is significantly below the major source levels (i.e., 10 tpy of a single HAP or 25 tpy of all HAP) (see docket A–99–20). Therefore, we plan to modify our initial description for the site remediation source category to exclude remediation activities at residential and farm sites, and from leaking underground storage tanks located at gasoline service stations (businesses typically associated with NAICS codes 447110 and 447190). The source category description will be revised at the next update of the source category list as required under CAA section 112(c).

B. What Is a Site Remediation?

A site remediation is performed in response to the release of hazardous substances into the environment (e.g., soil, groundwater, or other environmental media). It involves taking appropriate action to remove, store, treat, and/or dispose of the hazardous substances to the extent necessary to protect human health and the environment. The term "cleanup" generally refers to the activities performed to address the hazardous substance contamination. This term frequently is used interchangeably with the term "remediation."

Site remediations can be performed to address hazardous substance contamination resulting from either past or current human activities. Examples of such activities include accidental releases of chemical substances; undetected leaks in tanks or pipelines; releases from the use of incorrectly designed or poorly maintained equipment for the management of materials containing hazardous substances; improper disposal of hazardous substances in surface impoundments, containers, waste piles, or landfills; and abandoned hazardous substances.

Organic materials such as chlorinated hydrocarbons, petroleum products, polycyclicaromatic hydrocarbons, and phenols are emitted into the air from site remediations. Site remediations are also performed to clean up contamination from the release of heavy metals (most commonly lead, chromium, arsenic, and cadmium) and other inorganic hazardous substances.

Some site remediations address contamination resulting from management practices used at a given facility for special types of waste materials such as mixed wastes (wastes containing both radioactive and non-radioactive hazardous constituents) and low-level radioactive wastes.

The actions taken at a given contamination site to protect human health and the environment vary depending on site-specific conditions such as the composition, physical form, and quantity of the hazardous substance and the relative degree of contamination. Typically, remediation or cleanup activities involve a contaminated media of one physical form or another (e.g., contaminated soil or groundwater). However, at some sites remediation or cleanup involves materials other than contaminated media; this might include, for example, wastes left in tanks and containers or other "pure" materials in the environment that do not include media (e.g., oil pumped from below ground). We use the term "remediation material" for both contaminated media and pure materials that are remediated.

At some sites, the remediation material is left undisturbed and containment techniques are used to prevent or significantly reduce further migration of the contaminants to surrounding soils or to underlying groundwater aquifers (e.g., installation of a physical barrier or cap on the surface of a contaminated landfill). At many sites, the remediation material is treated to remove or destroy the hazardous substance, transform the hazardous substance into a non-hazardous form, or reduce the concentration of the hazardous substance below a threshold level.

Treatment processes are available that allow the remediation material to be treated in place (commonly referred to as "in situ" treatment). Other treatment processes require first extracting the remediation material from the ground and then placing it in a treatment unit located at the site (commonly referred to as "ex situ" treatment).

Alternatively, all of the remediation material may be extracted from the site and the remediation material sent off-site to a facility for treatment or disposal, as appropriate for the form and characteristics of the remediation material (e.g., contaminated soils trucked to a hazardous waste treatment, storage, and disposal facility; or contaminated groundwater discharged through a sewer system to a publicly owned treatment works).

C. Why Is Site Remediation a Unique NESHAP Source Category?

The development of a NESHAP for site remediation presents a unique set of considerations unlike any other source category for which we have established a NESHAP. The sole purpose of conducting a site remediation is to clean up an existing environmental problem. Any HAP emissions from site remediation are the direct result of the remedial activities or operations taken with the intent of protecting human health and the environment from exposure to hazardous substances. The HAP emissions do not result from processing or refining raw material, manufacturing a product, distributing a product to consumers, or even managing waste to avoid an environmental problem. In developing a NESHAP for site remediation, careful consideration

must be given to establishing a proposed rule that balances the need for effective HAP emissions control with the overall goal of removing the threat to human health and the environment posed by the hazardous substances in the remediation material.

Site remediation cannot be categorized by a particular industry sector or group of industry sectors. Site remediation potentially may be conducted at any type of business or facility at which contamination has occurred due to past events or current activities at the facility. These facilities may be privately or government owned. Site remediation is also performed at facilities that have closed or have been abandoned.

Implementation problems resulting from the fact that a Site Remediation NESHAP would potentially be applicable to facilities across a wide spectrum of industry sectors are not insurmountable. We have promulgated NESHAP for some source categories that also affect multiple industry sectors. For example, many types of businesses and federal facilities in the United States have operations subject to the Off-Site Waste and Recovery Operations (OSWRO) NESHAP under 40 CFR part 63, subpart DD. Establishing a NESHAP for this type of broad-based source category, however, does affect the regulatory approach and format used as well as how to evaluate the impacts of the proposed rule.

For the NESHAP source categories defined in terms of a specific industrial or manufacturing sector, the facilities comprising the source category (or, in some cases, subcategories within the source category) share similar processes and emissions points. In contrast to these NESHAP source categories, the HAP emissions sources in the site remediation source category are dependent on site-specific factors. These factors determine the remedy required for a cleanup and, thereby, the sources and level of air emissions released, if any, by implementing activities associated with the selected remedy.

Another consideration is the finite period for which a site remediation is conducted. The objective of a site remediation is to mitigate a detected risk to public health or the environment by successfully completing the cleanup of the area contaminated by a hazardous substance. For NESHAP source categories associated with industrial processes or product distribution, the air emission sources typically remain in operation for many years (i.e., 10 years, 20 years, or even longer for some sources). Once an existing source reaches the end of its useful service life, it is often reconstructed or replaced with a new source. In contrast, the air emission sources associated with site remediations cease to exist once the remediation cleanup criteria are achieved. Depending on site-specific facts such as the extent of the contamination and the type of remediation activities needed, the life span of a given site remediation may be a short period lasting several weeks to a more extended period lasting several years. Even for those site remediation activities requiring a number of years to complete, it is important to recognize that ultimately the remediation activities at a facility will be completed, and the air emission sources will no longer exist.

D. What Are the Sources of Organic HAP Emissions From Site Remediation Activities?

Site remediation activities may emit HAP. The levels of organic HAP emissions at any given facility at which a cleanup of remediation material is being conducted depends on site-specific factors including the type of processes used and activities conducted; the quantity, organic HAP composition, and other characteristics of the remediation material; and the time required to complete the cleanup. The following sections briefly summarize potential types of HAP emission sources related to site remediation activities.

1. In situ Treatment Processes

In situ treatment processes are available for cleanup of soils and groundwater contaminated with hazardous organic substances. The in situ processes most frequently in use at existing remediation sites physically extract volatile and semi-volatile organics by inducing controlled air flow through the remediation material. Examples of these processes are soil vapor extraction for contaminated soil and air sparging for contaminated groundwater. If not controlled, the organic vapors extracted from the soil or aqueous media are released directly to the atmosphere. Bioremediation is another category of in situ treatment process that is commonly used to remove organic contaminants. These processes are destruction processes based on stimulating microbes in the soil or groundwater to grow using the organic contaminant compound as a food and energy source. A variety of other chemical, thermal, and physical treatment processes also have been used in limited numbers of in situ applications.

Organic HAP emissions from in situ treatment processes primarily occur through a process vent. A process vent is a pipe or duct that extends above ground level through which an air or gas stream from the remediation process is exhausted to the atmosphere. Emissions occur at the point at which the organic vapor stream exits the process vent outlet into the atmosphere. Because in situ treatment allows the contaminated material to be treated in place, the primary HAP emissions points for in situ treatment processes are process vents. Avoiding the need to first extract the contaminated media eliminates potential HAP sources associated with accumulating, handling, storing, and treating the remediation material in aboveground units.

2. Ex situ Treatment Processes

Ex situ treatment processes also remove, destroy, or transform the contaminants but first require the contaminated media to be extracted from the ground or water body before it can be treated. For a given site, using an ex-situ treatment process in place of an in situ treatment process generally allows the remediation to be completed in a shorter period; it also provides greater control of the consistency of the treatment results because of the ability to mix the extracted materials and better adjust the process parameters for optimal performance. However, total remediation costs likely will be higher using an ex situ treatment because of additional costs for material extraction and handling, worker protection, treated residual disposal, and other factors.

Many ex situ processes treat the extracted material in a tank, vessel, reactor, combustion unit, or similar type of contained process unit. Extracted material for some ex situ treatment processes is treated directly on the land surface or in a surface impoundment. The ex situ treatment processes frequently used at remediation sites are groundwater pump and treat, solidification/stabilization, and incineration. Thermal desorption, bioremediation, and air stripping are also types of ex situ treatment technologies commonly used for cleanup of soils and groundwater contaminated with hazardous organic substances.

Solidification/stabilization technologies are primarily used to treat metals and other types of inorganic contaminants. In general, these technologies have limited effectiveness for treatment of organics. Solidification and stabilization processes reduce the mobility of a contaminant by physically binding or enclosing it within a

stabilized mass (solidification), or by chemically binding to a stabilizing agent (stabilization).

Incineration can be used to destroy organics in contaminated soils and other contaminated solid wastes by combustion at high temperatures (i.e., 870 to 1,200°C (1,400 to 2,200°F)). The contaminated material is burned in a rotary, circulating-bed, fluidized-bed, or other type of combustor. Often an auxiliary fuel such as natural gas is also burned to initiate and sustain combustion of the contaminated material. Treatment of contaminated materials by incineration is most frequently conducted by sending the material to a permanent, off-site incinerator facility, although mobile incinerators are available and sometimes brought on-site. Incinerators used to treat remediation wastes are subject to existing air emission regulations. We promulgated interim standards for the NESHAP for hazardous waste combustion sources under 40 CFR part 63, subpart EEE with final standards to be promulgated by June 14, 2005. If the remediation wastes are classified as hazardous under the Resource Conservation and Recovery Act (RCRA) subtitle C regulations, the waste must be burned in a RCRA-permitted incinerator. Incinerators required to meet the hazardous waste combustion NESHAP or RCRA standards use extensive air pollution control systems to achieve emissions limitation standards for organics, particulate matter, metals, and chloride emissions. These systems treat the incinerator exhaust gas stream to control emissions of particulate matter, acid gases, and other pollutants.

Thermal desorption is another process used for treating contaminated soils. Unlike incineration, the process is not designed to destroy organics but instead to physically separate the organics from the media. The contaminated soil or other material is heated in a vessel to volatilize organic compounds. Two common vessel designs are the rotary dryer and thermal screw. The bed temperatures and residence times used for the process are at a level that will volatilize selected organic contaminants but will typically not oxidize them. A carrier gas or vacuum system is used to vent the volatilized organics from the vessel to a gas stream treatment system where the organic vapors are removed or destroyed. The organic contaminants typically are either removed through condensation followed by carbon adsorption, or they are destroyed in a secondary combustion chamber or a catalytic oxidizer.

The thermal desorption process is used at site remediation activities for the separation of organics from refinery wastes, hydrocarbon-contaminated soils, coal tar wastes, wood-treating wastes, creosote-contaminated soils, pesticides, and paint wastes. Many of these process units are transportable and are temporarily set up at the remediation site for the duration of the cleanup.

Air stripping is a physical separation process widely used to remove volatile organics from contaminated groundwater. Air stripping involves the mass transfer of VOC from the water to air by contacting the water with an induced air flow. For groundwater remediation, the air stripping process is typically conducted by pumping the groundwater from extraction wells to a packed tower or an aeration tank. Air strippers can be operated continuously or in a batch mode where the air stripper is intermittently fed from a collection tank. Using batch mode operation improves the air stripper performance consistency and energy efficiency compared to a continuously operated unit because mixing in the storage tanks provides a uniform feed water composition.

The typical packed tower air stripper uses a spray nozzle at the top of a tower to distribute the contaminated water over packing in the column. A fan or blower forces air upward from the bottom of the tower countercurrent to the water flow. A sump at the bottom of the tower collects decontaminated water while a vent on the top of the tower discharges the air/vapor stream. Depending on the organic concentrations in the groundwater and local air permitting requirements, the vent stream may be discharged directly to the atmosphere or through an appropriate organic air emission control device such as activated carbon adsorber, catalytic vapor oxidizer, or thermal vapor oxidizer.

Aeration tanks strip VOC by bubbling air into an open-top tank through which contaminated water flows. A forced air blower and a distribution manifold are designed to provide good air-water contact without the need for any packing materials. If the aeration tank is uncovered, the stripped VOC are emitted to the atmosphere.

Bioremediation technologies are successfully used to clean up excavated soils, dredged sludges and sediments, and pumped groundwater contaminated with petroleum hydrocarbons, solvents, pesticides, wood preservatives, and other organic chemicals. These processes rely on indigenous or inoculated micro-organisms (e.g., fungi, bacteria, and other microbes) to degrade organic contaminants found in the soil or groundwater by metabolism. In the presence of sufficient oxygen (aerobic conditions) and other nutrient elements, microorganisms convert many organic compounds to carbon dioxide, water, and microbial cell mass. In the absence of oxygen (anaerobic conditions), microorganisms convert the organic compounds to methane, limited amounts of carbon dioxide, and trace amounts of hydrogen gas.

For ex situ biotreatment of contaminated soils and dredged sediments, the excavated material is first processed to physically separate stones and other debris. The contaminated solids are then mixed with water to a predetermined concentration dependent upon the concentration of the contaminants, the rate of biodegradation, and the physical nature of the soils. This soil slurry is placed in a reactor vessel (i.e., a bioreactor) and mixed with nutrients and, in some cases, other additives. If the process is an aerobic process, air or oxygen is blown into the reactor. When biodegradation is complete, the soil slurry is dewatered using clarifiers, pressure filters, vacuum filters, sand drying beds, or centrifuges. Use of ex situ bioreactors often is favored over using an in situ bioremediation process for heterogenous soils, low-permeability soils, or when a shorter remediation period is required.

Biodegradation processes are used at many industrial facilities to treat process wastewaters containing organics. These same processes can be used to treat contaminated groundwater containing organics. At those remediation sites where bioremediation is used to treat contaminated groundwater pumped from the ground, the common practice is to discharge the water either to the facility's existing process wastewater treatment facility or directly to a sewer for treatment at an off-site wastewater treatment facility.

As an alternative to conducting biodegradation in a bioreactor or other type of enclosed vessel, land treatment and land farming are open biodegradation processes performed on top of the ground surface. For these processes, the extracted material is applied on top of the ground in thin, lined beds or, in some cases, tilled directly back into the upper soil layer. Aerobic microbes decompose the organic compounds contained in the applied material. The material is periodically turned over or tilled to aerate the waste. Organic emissions are generated due to the volatilization of organics from the exposed surface of the

materials primarily during initial application and tilling. After application and tilling, organic emissions continue to occur from the material mixture, although at a decreasing rate, until nearly all of the volatile organics originally in the applied material are either emitted or biologically degraded.

Like in situ treatment processes, primary sources of HAP emissions from many types of ex situ treatment processes are process vents. However, unlike in situ treatment processes, there are other potential HAP emissions sources associated with ex situ treatment processes because the contaminated media is extracted from the ground and subsequently managed at the facility as essentially a waste material. Even if treatment of the material is not performed at the facility, any tanks, containers, and other types of equipment used to handle and/or temporarily store the material before it is shipped off-site are potential sources of air emissions. These potential HAP emissions sources are discussed in the next section.

3. Other Extracted-Media Sources

Material extraction activities. Depending on the characteristics of the remediation material and the extraction method used, organic HAP may be emitted by the extraction activities. Soils, sludges, and sediments are frequently extracted using heavy construction equipment. Volatilization of organics from the freshly exposed surfaces of the extracted materials can release organic HAP into the atmosphere.

Tanks. Tanks can be used at a facility to accumulate, temporarily store, or treat extracted materials containing organics. These tanks can either be open tanks (i.e., the surface of the waste material is exposed directly to the atmosphere) or covered tanks (i.e., the surface of the waste material is enclosed by a roof or cover). Organic HAP emissions result from the volatilization of organic-containing materials placed in the tank, and the subsequent release of these organic vapors to the atmosphere. For open tanks, the organic vapors released from the surface of the material are dispersed immediately into the atmosphere by diffusion and wind effects. Covering a tank (referred to as a "fixed-roof tank") significantly lowers organic emissions compared to open tanks. However, organic HAP emissions still occur from fixed-roof tanks from the displacement of organic vapors that have collected in the enclosed space above the surface of the stored material through vents on the tank roof. This displacement occurs during tank filling operations when the vapors are pushed out through the tank vents by the rising level of material in the tank (commonly referred to as "working losses") and to a lesser extent, when the volume of the vapor in the tank is increased by fluctuations in ambient temperature or pressure (commonly referred to as "breathing losses".) The quantity of organic emissions from a fixed-roof tank varies depending on volatility of the organic constituents in the extracted materials.

Separators. Separators are used to separate oil or organics from water. Organic emissions from these sources are similar to those occurring from open-top wastewater treatment tanks.

Containers. Containers such as drums, dumpsters, and roll-off boxes may be used to accumulate, store, and treat extracted materials. Organic HAP emissions from containers can result from several emission mechanisms. Organic emissions occur during loading of liquid, slurry, and sludge waste materials into containers due to the displacement of organic vapors to the atmosphere through container openings by the rising level of material in the container. Once loaded, containers that remain open to the atmosphere are an emission source when organics evaporate from the exposed surface of the material placed in the container.

Surface Impoundments. Although extracted groundwater, slurries, and sludge materials are managed in tanks at most site remediations, these materials under special circumstances may be managed in surface impoundments. A surface impoundment is an earthen pit, pond, or lagoon. Organic emissions from surface impoundments occur as organics evaporate from the exposed surface of the materials placed in the impoundment. Surface impoundments containing organic-containing materials may have high organic emissions because of the large exposed surface area and the extended residence time that materials remain in the impoundment (sometimes weeks or months).

Transfer Equipment. Organic HAP emissions can potentially occur during the transfer of a material if the transfer system is open to the atmosphere. Volatilization of organics from the exposed surfaces of the extracted materials can release organic HAP into the atmosphere. Examples of such systems include individual drain systems (with all associated drains, junction boxes, and sewer lines), channels, flumes, gravity-operated conveyors (such as a chute), and mechanically-powered conveyors (such as a belt or screw conveyor).

Equipment Leaks. Leaks from pumps, valves, and other ancillary equipment needed to operate material handling and treatment processes can be a potential source of organic HAP emissions. Organic vapors can be emitted directly to the atmosphere by flowing through small openings created in worn or defective pump and valve packings, flange gaskets, or other types of equipment seals. In addition, organic emissions occur when liquids leak outside the equipment exposing the leaked fluid to the ambient air. Emissions result when organics contained in the drip, puddle, or pool of leaked liquid evaporate into the atmosphere. Although the quantity of organic emissions from a single leak is small, when many equipment leaks occur at a facility, the total organic HAP emissions from equipment leaks can be significant.

E. What Are the Potential Health Effects Associated With Organic HAP Emitted From Site Remediation Activities?

The range of potential human health effects associated with exposure to organic HAP and VOC include cancer, aplastic anemia, upper respiratory tract irritation, liver damage, and neurotoxic effects (e.g., headache, dizziness, nausea, tremors). Thus, the proposed rule has the potential for providing both cancer and noncancer related health benefits. The following is a summary of the potential health effects associated with exposure to some of the primary HAP emitted from site remediation activities.

1. Benzene

Acute (short-term) inhalation exposure of humans to benzene may cause drowsiness, dizziness, and headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. Chronic (long-term) inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia, in occupational settings. Reproductive effects have been reported for women exposed by inhalation to high levels, and adverse effects on the developing fetus have been observed in animal tests. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene. We have classified benzene as a Group A, known human carcinogen.

2. Ethyl benzene

Acute exposure to ethyl benzene in humans results in respiratory effects such as throat irritation and chest

constriction, irritation of the eyes, and neurological effects such as dizziness. Chronic exposure to ethyl benzene by inhalation in humans has shown conflicting results regarding its effects on the blood. Animal studies have reported effects on the blood, liver, and kidneys from chronic inhalation exposures. No information is available on the developmental or reproductive effects of ethyl benzene in humans, but animal studies have reported developmental effects, including birth defects in animals exposed via inhalation. We have classified ethyl benzene in Group D, not classifiable as to human carcinogenicity.

3. Toluene

Humans exposed to toluene for short periods may experience irregular heartbeat and effects on the central nervous system (CNS) such as fatigue, sleepiness, headaches, and nausea. Repeated exposure to high concentrations may induce loss of coordination, tremors, decreased brain size, and involuntary eye movements, and may impair speech, hearing, and vision. Chronic exposure to toluene in humans has also been indicated to irritate the skin, eyes, and respiratory tract, and to cause dizziness, headaches, and difficulty with sleep. Children exposed to toluene before birth may suffer CNS dysfunction, attention deficits, and minor face and limb defects. Inhalation of toluene by pregnant women may increase the risk of spontaneous abortion. We have developed a reference concentration of 0.4 milligrams per cubic meters (mg/m^3) for toluene. Inhalation of this concentration or less over a lifetime would be unlikely to result in adverse noncancer effects. No data exist that suggest toluene is carcinogenic. We have classified toluene in Group D, not classifiable as to human carcinogenicity.

4. Vinyl Chloride

Acute exposure to high levels of vinyl chloride in air has resulted in CNS effects such as dizziness, drowsiness, and headaches in humans. Chronic exposure to vinyl chloride through inhalation has resulted in liver damage to humans. Human and animal studies show adverse effects that raise a concern about potential reproductive and developmental hazards to humans from exposure to vinyl chloride. Cancer is a major concern from exposure to vinyl chloride via inhalation, as vinyl chloride exposure has been shown to increase the risk of a rare form of liver cancer in humans. We have classified vinyl chloride as a Group A, known human carcinogen.

5. Xylenes

Acute inhalation of mixed xylenes (a mixture of three closely related compounds) in humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Chronic inhalation of xylenes in humans may result in CNS effects such as headaches, dizziness, fatigue, tremors, and incoordination. Other reported effects include labored breathing, heart palpitation, severe chest pain, abnormal electrocardiograms, and possible effects on the blood and kidneys. We have classified xylenes in Group D, not classifiable as to human carcinogenicity.

6. Volatile Organic Compounds

By requiring facilities to reduce organic HAP emitted from site remediation activities, the proposed rule would also reduce emissions of those VOC that are not HAP but contribute to adverse human health affects. Many VOC react photochemically with nitrogen oxides in the atmosphere to form tropospheric (low-level) ozone. A number of factors affect the degree to which VOC emission reductions will reduce ambient ozone concentrations.

Human laboratory and community studies have shown that exposure to ozone levels that exceed the national ambient air quality standards (NAAQS) can result in various adverse health impacts such as alterations in lung capacity and aggravation of existing respiratory disease. Animal studies have shown increased susceptibility to respiratory infection and lung structure changes. The VOC emissions reductions resulting from the proposed rule will reduce low-level ozone and have a positive impact toward minimizing these health effects.

Among the welfare impacts from exposure to air that exceeds the ozone NAAQS are damage to some types of commercial timber and economic losses for commercially valuable crops such as soybeans and cotton. Studies have shown that exposure to excessive ozone can disrupt carbohydrate production and distribution in plants. This can lead in turn to reduced root growth, reduced biomass or yield, reduced plant vigor (which can cause increased susceptibility to attack from insects and disease and damage from cold), and diminished ability to successfully compete with more tolerant species. In addition, excessive ozone levels may disrupt the structure and function of forested ecosystems.

F. What Is the Relationship of the Rule to Other EPA Regulatory Actions Affecting Site Remediation Activities?

Existing requirements for site remediations conducted under the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) and RCRA programs are administered under the oversight of EPA's Office of Solid Waste and Emergency Response (OSWER). A site remediation may be regulated under one of three OSWER programs.

1. Superfund Removal and Remedial Actions

Remediation activities under the Superfund program are exempt from the requirements of the proposed rule. See discussion in section II.A of this preamble.

2. RCRA Corrective Actions

Remediation activities under the RCRA Corrective Action program are exempt from the requirements of the proposed rule. See discussion in section II.A of this preamble.

3. Underground Storage Tanks

Subtitle I of RCRA directs the EPA to establish regulatory programs to prevent, detect, and clean up releases from underground storage tanks (UST) containing petroleum or hazardous substances listed under section 101(14) of CERCLA (petroleum is specifically excluded from this CERCLA list). The EPA's Office of Underground Storage Tanks is responsible for developing and implementing the UST program. Federal regulations for UST have been developed which specify requirements for tank notification, interim prohibition, new tank standards, reporting and recordkeeping requirements for existing tanks, corrective action, financial responsibility, compliance monitoring and enforcement, and approval of State programs. The technical standards are codified in 40 CFR part 280 and 40 CFR part 281 with the list of CERCLA hazardous substances in 40 CFR part 302.4.

The EPA is authorized under subtitle I to delegate UST regulatory authority to approved State programs. States with delegated authority administer and enforce their own approved UST program instead of the Federal regulations. There are currently 25 States and the District of Columbia with approved UST programs. Each of the approved State UST programs is codified in 40 CFR part 282. In the other States without an approved UST program, EPA administers and enforces the Federal regulations.

An UST is a tank having a capacity greater than 110 gallons for which the volume of the tank (including the volume of any connected underground pipes) is 10 percent or more beneath the surface of the ground. The major category of UST regulated under this program are tanks used to store petroleum and petroleum-based substances including crude oil, motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. The regulations also apply to underground tanks used to store any hazardous substance defined in section 101(14) of CERCLA but are not regulated as a hazardous waste under RCRA subtitle C. The regulations do not apply to underground tanks used for a number of specific applications listed in the applicability and definition sections of the rules.

The owners and operators of petroleum or hazardous substance UST systems must clean up any spills, leaks, or other releases from the tank into groundwater, surface water, or subsurface soils. Subpart F under 40 CFR part 280 specifies the general requirements for a release response and for corrective action. The specific requirements are determined based on the site-specific circumstances. In cases where contamination of soil or groundwater has occurred, the site remediation may proceed according to a corrective action plan approved by the EPA or the designated State or local agency responsible for implementing the UST program at the UST site. Under the subpart F requirements, this plan must provide for adequate protection of human health and the environment as determined by the site-specific factors including an exposure assessment.

G. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that standards are set at levels that assure that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitations achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

II. Summary of the Proposed Rule

The proposed rule would amend title 40, chapter I, part 63 of the Code of Federal Regulations by adding a new subpart GGGGG—National Emission Standards for Hazardous Air Pollutants for Site Remediation. The following is a summary of the requirements for the proposed rule.

A. Who is Affected by the Proposed Rule?

1. General Applicability

The proposed rule would affect owners and operators of facilities, with certain exceptions described below, that are major sources of HAP emissions, where a MACT activity is also conducted, and at which a site remediation is performed. All three criteria must exist for the rule to apply. For the purpose of implementing the proposed rule, a site remediation is one or more activities or processes used to remove, destroy, degrade, transform, or immobilize organic HAP constituents in soils, sediments, groundwater, surface waters, or other types of solid or liquid environmental media as well as pure materials that are not mixed with environmental media.

2. Major Source Determination

A major source of HAP is defined under CAA section 112 as any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year. In determining whether or not your facility is a major source, you would consider all sources of HAP emissions or potential emissions at your facility.

A major source determination includes consideration of a facility's potential to emit (PTE) as well as actual emissions. The PTE is the maximum capacity of a stationary source to emit under its physical and operational design. Any physical or operational limitations on the source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation, or on the type or amount of material combusted, stored, or processed, is treated as part of the source's design if the limitation is enforceable by the EPA Administrator.

There are a number of tools and resources available to assist an owner or operator in estimating and inventorying their facility's or source's HAP emissions. For example, our Air Clearinghouse for Inventories and Emission Factors (CHIEF) website (*www.epa.gov/ttn/chief/software/airchief*) provides the public and private sector users access to air emission data specific to estimating the types and quantities of pollutants that may be emitted from a variety of sources. For those sources or emission points most typically associated with site remediation activities (such as tanks and surface impoundments), our WATER9 computer program provides an analytical model for estimating compound specific air emissions from waste and wastewater collection, storage, and treatment systems.

For additional information on determining if your source is a major source, EPA policy memoranda and other guidance on major source determinations and PTE can be found on the Internet at *www.epa.gov/ttn/oarpg* under "OAR Policy and Guidance Information" or on the Air Toxics Website at *www.epa.gov/ttn/atw/pte/ptepa*

3. MACT Activity

A "MACT activity" is defined as a non-remediation activity that is covered by one of the listed major source categories. This list is compiled pursuant to CAA section 112(c) and was first published on July 16, 1992 (57 FR 31576). The list is updated periodically with the most recent update published in the **Federal Register** on February 12, 2002 (67 FR 6521). The term "covered" here does not mean that the non-remediation activity is necessarily subject to a MACT standard, just that the activity is included within the scope of a particular MACT source category.

4. Exemptions

The proposed rule would not apply to site remediations we are specifically excluding from applicability.

a. CERCLA Cleanups and RCRA Corrective Action

The proposed rule exempts sites addressed under CERCLA authority and corrective action activities initiated under permits or orders, including such activities under authorized state programs, at RCRA Treatment, Storage and Disposal facilities. Superfund National Priorities List (NPL) sites have extensive contamination that often require many years of study to determine a permanent remedy. Superfund sites are regulated under a program created by CERCLA that was enacted in 1980 and amended by the Superfund Amendments and Reauthorization Act in 1986.

The Superfund program is designed to protect public health and the environment while providing the flexibility to use effective and innovative remediation approaches that best suit the site-specific conditions at each CERCLA site (CERCLA section 121). The Superfund program conducts extensive evaluation of the contamination at each NPL site (see 40 CFR 300.430). As part of the evaluation process, a decision document (i.e., Record of Decision (ROD)) is developed for response actions, documenting the extent of contamination and the cleanup method(s) to be used at the site. Under this process, a site-specific analysis, considering the impacts to air, soil and groundwater, is conducted and an appropriate remedy is selected. During the ROD process, the general public is given the opportunity for input in the decision-making process through public hearings and submission of written comments. The public plays an important role in identifying and characterizing site-specific factors, such as the type of contaminants, the level and extent of contamination and other site-specific factors. We believe this procedure results in selection of the best plan for cleaning up each site and achieving the program's goals.

As implemented under the requirements of RCRA, hazardous waste treatment, storage and disposal facilities (TSDF) must obtain a permit specifying requirements for managing hazardous waste. As a condition of obtaining this permit, facilities are required to undertake corrective action addressing releases of hazardous waste and hazardous constituents from units at the facility which do not themselves require RCRA permits (solid waste management units) (RCRA section 3004(u)). For such designated contamination areas at TSDF, requirements for the cleanup of the contamination are included in the facility's RCRA permit, or Federal Order where applicable. Such cleanup activities are known as "corrective actions." Although RCRA is a separate program from Superfund, the RCRA permitting or Federal Order process for TSDF share several significant characteristics with Superfund cleanup activities at NPL sites. First, it is also the intent of the RCRA Corrective Action program to protect public health and the environment while allowing flexibility in choosing solutions to eliminate or reduce site contamination. Second, RCRA permitting and Federal Order procedures involve the public in the decision-making process through informal public meetings, public hearings or written comment. Finally, an extensive site-specific evaluation is performed at the RCRA facility to evaluate the extent of the contamination, while considering appropriate remedies through a multi-media (i.e., air, soil, groundwater) perspective.

We believe that requiring remediation activities at Superfund NPL sites and at permitted or Federal Order RCRA corrective action sites to meet the requirements of this proposed rule could either create incentives to avoid cleanup, or result in the selection of a remediation approach that is less desirable, protective or permanent (e.g., capping or containing the contaminated media instead of permanently removing or treating the contaminants). (Cf. Louisiana Environmental Action Network v. EPA, 172 F. 3d 65, 67, 70 (D.C. Cir. 1999) (EPA lacks authority in many instances to compel excavation of wastes, so that imposition of requirements on excavated wastes discourages more protective remediations; EPA may permissibly adjust rules applicable to excavated wastes to avoid this result.)) Furthermore, we believe that these existing programs are the most appropriate, comprehensive and effective regulatory approach to address air emissions resulting from site remediation activities at sites addressed using CERCLA authority and RCRA corrective action sites and to avoid transfer from one medium to another.

b. Other Exemptions

The proposed rule would not apply to site remediation activities involving the cleanup of radioactive mixed waste managed in accordance with all applicable regulations under Atomic Energy Act and Nuclear Waste Policy Act authorities. Another applicability exemption is provided for those site remediations performed to clean up remediation material containing little or no organic HAP. The proposed rule would not apply to any facility for which the owner or operator demonstrates that the total annual organic HAP mass content of the remediation material to be cleaned up at the facility is less than one Mg/yr.

5. Application of Once In, Always In Policy

Due to the potential short term nature of site remediations, we have evaluated how the proposed rule fits with existing policies for CAA section 112 standards. Our current policy is that once a facility or source is subject to a MACT standard, it remains subject to that standard as long as the affected source definition or criteria are met. This is called the "once in, always in" policy. Because of the uniqueness of this source category and the nature of the activities that are being regulated in the proposed rule, we have evaluated how our once in, always in policy should apply relative to the site remediation source category.

The existing policy may affect facilities that conduct site remediations in situations where a facility is presently an area source and the remediation activities would increase the total facility PTE such that the facility exceeds the 10/25 tons of HAP criteria for a major source under CAA section 112. Because the facility is now considered a major source of HAP, another operation at the facility, such as a manufacturing process, would now be subject to NESHAP for other source categories located at their facility. Furthermore, after the remediation is completed, the facility would, in terms of emissions, essentially be back to where it was as an area source (assuming no change in the facility plant operations). Under the once in, always in policy, the facility would remain subject to the NESHAP that was triggered by the short-term change of source status from area to major brought about by the site remediation activity.

In the situation described above, we believe the once in, always in policy would create an obvious disincentive for owners or operators to engage in site remediations, particularly since voluntary remediation would be affected by the proposed rule. Our intent is to not prescribe requirements that create incentives to avoid a cleanup or result in the selection of less desirable or less protective or permanent remediation approaches. Therefore, we have determined that the once in, always in policy does not apply relative to the site remediation source category for those facilities that are area sources prior to and after the cleanup activity.

The above application of the once in, always in policy to site remediation activities addresses the issue of a facility's MACT obligation after completing a remediation activity. We believe a situation could occur, based on language in the CAA, that this policy does not address. Specifically, certain area sources for non-remediation activities could become major sources once a remediation activity begins operation. While the facility would have no MACT obligation (Site Remediation MACT or otherwise) after completing all remediation, compliance with a non-remediation MACT standard may be required due to the increase in PTE from the remediation activity. An example of this situation would be an area source chemical processing plant not currently subject to the Hazardous Organic NESHAP (HON), but with manufacturing operations covered by that MACT standard. After operating for many years as an area source, the facility initiates a remediation operation that increases its PTE to major source levels. Since the facility is now a major source of HAP, the facility would have to comply with the HON for the operations covered by that MACT standard. Furthermore, since the compliance dates for the various processes regulated by the HON have all passed, any controls required by the HON would have to be in place at the time the facility became a major source as specified by the HON. Prior to commencing the remediation activity, the facility may find it preferable to install federally enforceable controls on certain emission points and maintain area source status to avoid becoming subject to the industry-relevant MACT standard. We realize this option is not achievable in every case.

6. Exemption of Short-Duration Site Remediations

The EPA is proposing to exempt sources from the requirements of the proposed rule where the contamination requiring remediation occurs within 7 days prior to the remediation activity. This exemption is intended to apply to contamination commonly caused by a spill where the cleanup is initiated soon after the spill event and is of very short duration (i.e., typically 30 days or less). The purpose of this exemption is to encourage prompt attention to remediating contaminant spills and leakages.

Although the Agency is not proposing any other duration-based exemptions in the proposed rule, it is possible that other duration-based exemptions may be appropriate in light of the policy goal of encouraging voluntary site remediations to remove risk to human health and the environment. For example, there may be some site remediations that can be completed in the time required by this proposal to modify relevant permits; it may make sense in cases like this to complete the remediation activity as quickly as possible without waiting for paperwork modifications to be completed. The Agency requests comment on which situations, if any, might be appropriate for further duration-based exemptions to today's proposed rule.

B. What Are the Affected Sources?

The proposed rule defines three groups of affected sources, (1) process vents, (2) remediation material management units, and (3) equipment leaks. The affected source for process vents is the entire group of process vents associated with both in situ and ex situ remediation activities. The affected source for remediation material management units is the entire group of tanks, surface impoundments, containers, oil/water separators, and transfer systems used to store, transfer, treat, or otherwise manage remediation material. The affected source for equipment leaks is the entire group of remediation equipment components (pumps, valves, etc.) that contain or contact remediation material having a total organic HAP concentration equal to or greater than 10 percent by weight, and are intended to operate for 300 hours or more during a calendar year.

C. What Are the Standards for Process Vents?

The proposed rule would establish emission limitation and operating standards for certain process vents associated with site remediation treatment processes. The same standards would apply to both in situ and ex situ treatment processes. These standards would apply to the entire group of affected process vents associated with all of the treatment processes used for your site remediation. The standards would be the same for existing and new sources.

The air emission control requirements under the proposed rule would not apply to certain process vent streams with low flow, low HAP concentration characteristics. A process vent would be exempted from the air emission control requirements of the NESHAP if the owner or operator determines the process vent stream flow rate to be less than 0.005 standard cubic meters per minute. Also exempted would be those process vent streams having a flow rate less than 6.0 standard cubic meters per minute and a total HAP concentration in the vent stream less than 20 parts per million by volume (ppmv). This process vent exemption requires that both the process vent flow rate and the organic HAP concentration criteria be met to qualify for the exemption. A process vent would also be exempted from the air emission control requirements if the HAP concentration of the remediation material being treated by the vented process is less than 10 parts per million by weight (ppmw).

Under the proposed rule, you would have two compliance options for the affected process vents. The first option would be to reduce the total organic HAP emissions from all affected process vents at the facility to a level less than 1.4 kilograms per hour (kg/h) (approximately 3.0 pounds per hour) and 2.8 Mg/yr (approximately 3.1 tpy). You would have to achieve both of these mass emission limitations to comply with this option under the proposed rule. If the total organic HAP emissions from all affected process vents associated with your site remediation exceed either the hourly or annual mass emission limitation then you would need to use appropriate controls to reduce the emission levels to comply with the emission limitations. If you can meet both of the total organic HAP mass emission limitations using no controls or the existing controls you already have in place to meet federally-enforceable organic emission standards, then no additional controls would be required under the proposed rule for your affected process vents.

As an alternative to complying with the mass emission limits, a second option proposed under the proposed rule would be to reduce the total organic HAP emissions from all of the affected process vents by at least 95 weight percent. At sites with multiple affected process vent streams, you may comply with this option by a combination of controlled and uncontrolled process vent streams that achieve the 95 percent reduction standard on an overall mass-weighted average. For those process vent streams controlled by venting to a control device, the closed vent system and control device would need to meet certain requirements specified in the proposed rule.

D. What Are the Standards for Remediation Material Management Units?

The proposed rule would establish emissions limitation and operating standards for certain remediation management units (i.e., units associated with the management of remediation materials) or those remediation material management units required to

use air emission controls, the proposed rule would establish by source type (i.e., tanks, oil-water separators, containers, surface impoundments, transfer systems) separate sets of emission limitation, operating limit, and work practice standards as appropriate for each source type. The standards would be the same for existing and new sources. Air emission controls would be required on a remediation material management unit used to manage remediation material having an organic HAP (VOHAP) concentration equal to or greater than 500 ppmw. Remediation material with a VOHAP concentration of less than 500 ppmw is not required to be managed in controlled units.

The proposed rule also provides an exemption that would allow an owner or operator to selectively designate, on a site-specific basis, certain individual units to be exempt from the air emission control requirements regardless of the VOHAP concentration of the remediation material placed in the unit. Application of this discretionary exemption by the owner or operator would be limited based on remediation material organic HAP content. Under this provision, the total annual organic HAP mass content of the regulated remediation material placed in all of the units designated by the owner or operator as exempt units could not exceed 1 Mg/yr as determined in accordance with the procedures specified in the proposed rule.

Determination of VOHAP concentration can be made by either direct measurement of samples of the remediation material or through use of knowledge of the remediation material (i.e., application of owner/operator expertise using appropriate information regarding the remediation material). In using direct measurement, the VOHAP concentration of the collected samples would be measured using Method 305 in 40 CFR part 63, appendix A. As an alternative to using Method 305, you would be allowed to determine the organic HAP concentration using any one of the several alternative test methods, as applicable to the remediation material stream, and then adjust the test results using factors specified in the proposed rule to determined the VOHAP concentration.

The VOHAP determination using direct measurement for a given remediation material unit would be based on samples collected prior to placing the remediation material in the unit at any point you choose before the organic constituents in the material have the potential to volatilize and be released to the atmosphere. For example, you may sample the remediation material stream at the point where it is extracted from the ground ("point-of-extraction" as defined in the proposed rule). Alternatively, you may choose to sample the remediation material stream within the remediation material unit (provided that organic constituents in the material have not been allowed to volatilize and be released to the atmosphere, as specified in the proposed rule).

Allowing the use of knowledge to determine the VOHAP concentration of a remediation material provides flexibility for the owner or operator to use any appropriate information to determine VOHAP concentration of a remediation material. The basis for knowledge of the remediation material could include existing information collected by the owner or operator for other purposes or new information collected specifically for the VOHAP remediation material determination.

For remediation material management units downstream of the contaminated area in particular, it is important to note that the determination of the VOHAP concentration is made within each remediation material management unit. This approach simplifies the determination process for varying treatment processes and addresses both the situation of management of a single remediation stream or management of two or more material streams combined (either remediation or non-remediation, or both). If a single material stream, or combination of streams, have a VOHAP concentration of 500 ppmw or greater in the management unit, then the unit is subject to the air emission control requirements for the particular unit as specified in the proposed rule. Once the VOHAP concentration falls below the 500 ppmw action level, the material need not be managed in controlled units. If the HAP concentration is increased to 500 ppmw or more in a downstream unit, that unit will need control.

For example, a facility remediation project involves a pump and treat system that generates groundwater with more than 500 ppmw VOHAP, measured as it exits the groundwater pumping/piping system. It is initially pumped into a holding tank managing the single remediation stream. The remediation material, the groundwater in this case, has a VOHAP concentration greater than 500 ppmw, and, therefore, the holding tank would be subject to the tank standards under the proposed rule. From the holding tank, the groundwater is sent to a larger mixing tank where the groundwater is mixed with other wastewater streams, where the combined VOHAP concentration is less than 500 ppmw, and the resultant mixture is treated to adjust the pH of the mixture. Because the VOHAP concentration of the combined streams is below 500 ppmw, the mixing tank would not be subject to the tank standards under the proposed rule.

Following this mixing operation, the combined wastewater is sent to an on-site wastewater treatment system. Since the mixture leaving the mixing tank has a VOHAP concentration of less than 500 ppmw, all downstream processes and management units (e.g., tanks, surface impoundments, containers or transfer systems) would not be subject to the control requirements for remediation material management units unless the concentration is increased to 500 ppmw or greater through phase separation or other method.

In general, we expect remediation streams to be managed separately so a stream would be managed in controlled units until it is treated to reduce the concentration below 500 ppmw. We believe, however, that in some cases a remediation stream may be combined with one or more streams and treated downstream from the mixing point. Mixing merely for the purposes of dilution is not allowed, but if mixing occurs to facilitate treatment (i.e., to treat all streams in a centralized operation), and the resulting stream has a VOHAP concentration below 500 ppmw, then that stream does not have to be managed in controlled units.

We realize this approach deviates somewhat from other rules regulating wastewater-type management or treatment units that require air emission controls after the VOHAP concentration falls below 500 ppmw due to mixing. For site remediation operations, this is an appropriate approach since we believe remediation activities are typically of a limited duration, relatively low-flow in comparison to facilitywide wastewater management operations, and often treated effectively in a facility-wide treatment system. We do not want to create obstacles that could inhibit overall treatment effectiveness. Moreover, we believe remediation streams would get some level of HAP reduction, and, thus, emission reduction, through biological treatment within a facility's wastewater treatment system.

1. Tanks

The proposed rule would establish emission limitation and work practice standards to control organic HAP emissions from those tanks managing remediation material having an average VOHAP concentration equal to or greater than the 500 ppmw action level.

For those tanks required to meet the air emission control requirements, you would need to achieve one of two levels of control. The required level of control would be determined by the tank design capacity and the maximum HAP vapor pressure of the extracted material in the tank.

For each tank required to use Level 1 controls, you would be required to comply with the existing 40 CFR part 63, subpart OO—National Emission Standards for Tanks—Level 1. For these tanks, you could also comply with the proposed rule by using Level 2 controls if you choose to do so.

For each tank required to use Level 2 controls, you would have five compliance options under the proposed rule. The compliance alternatives provided under the proposed rule would allow you to either: (1) Use a fixed-roof tank with an internal floating roof; (2) use an external floating roof tank; (3) vent the tank through a closed vent system to a control device that meets the requirements specified in the proposed rule; (4) locate an open tank inside an enclosure vented through a closed-vent system to a control device that meets the requirements specified in the proposed rule; or (5) use a pressurized tank that operates as a closed system during normal operations. The specific technical requirements for each of these alternatives are implemented under the proposed rule by cross-referencing the existing Tank Level 2 control standards in 40 CFR 63.685(d) of the OSWRO NESHAP.

2. Containers

The proposed rule would establish emission limitation and work practice standards to control organic HAP emissions from containers having a design capacity greater than 0.1 cubic meters (approximately 26 gallons) used to manage remediation material having a VOHAP concentration of 500 ppmw or more. For those containers required to use air emission controls, you would need to achieve one of three levels of control that would be determined by the container design capacity, the organic content of the extracted material in the container, and whether the container is used for a waste stabilization process. You would be required to comply with the specified requirements for the applicable control level in the existing 40 CFR part 63, subpart PP—National Emission Standards for Containers. Except for containers used for waste stabilization, these standards would require that you manage the extracted material in containers that use covers according to the requirements specified in the proposed rule. Should affected containers be used for a waste stabilization process, containers would be required to be vented to a control device.

Application of the container standards and the various levels of control is illustrated in the following example. In the situation where contaminated soil (i.e., the remediation material in this case) is excavated and placed in a dump truck (i.e., a container under the definitions used in the proposed rule), the truck containing the soil would be required to meet Level 1 controls if the VOHAP concentration is equal to or greater than 500 ppmw and the criteria for Level 2 controls is not met. If this were the case, as it likely would be in most remediation situations, then a cover such as tarp covering the remediation material would be adequate to meet the Level 1 control requirements. If the vapor pressure and VOHAP concentration were such that Level 2 controls were required then a more strenuous set of controls would apply.

3. Surface Impoundments

For each surface impoundment required to use air emission controls, you would be required to comply with the existing 40 CFR part 63, subpart QQ—National Emission Standards for Surface Impoundments. Under this subpart, you must meet one of two options: (1) Use a cover over the surface impoundment and vent through a closed-vent system to a control device; or (2) use a floating membrane cover designed and operated according to requirements specified in the proposed rule.

4. Oil-Water and Organic-Water Separators

For each oil-water or organic-water separator required to use air emission controls, you would be required to comply with the existing 40 CFR part 63, subpart VV—National Emission Standards for Oil-Water and Organic-Water Separators. Under this subpart, you must meet one of three options: (1) Use a floating roof on the separator; (2) use a cover over the separator that is vented through a closed-vent system to a control device; or (3) use a pressurized separator designed and operated according to requirements specified in the proposed rule.

5. Material Transfer Systems

For each individual drain system required to use air emission controls, you would be required to comply with the existing 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems. For transfer systems required to use air emission controls other than individual drain systems, you would be required to comply with one of three options: (1) Use covers; (2) use continuous hard-piping; or (3) use an enclosure vented to a control device.

E. What are the Standards for Equipment Leaks?

The proposed rule would establish work practice and equipment standards to control organic HAP emissions from leaks in pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, and product accumulator vessels that either contain or contact a regulated material that is a fluid (liquid or gas) and has a total organic HAP concentration equal to or greater than 10 percent by weight. These work practice and equipment standards would not apply to equipment that operates less than 300 hours per calendar year. You would have the option of complying with the provisions of either 40 CFR part 63, subpart UU—National Emission Standards for Equipment Leaks—Control Level 1 or 40 CFR part 63, subpart UU—National Emission Standards for Equipment Leaks—Control Level 2. Both of these subparts require you to implement a leak detection and repair program (LDAR) and to make certain equipment modifications.

F. What Are the Requirements for Remediation Material Sent Off-Site?

Under the proposed rule, if you transfer remediation material containing organic HAP to another party, another facility, or receive it from another facility, this material would need to be managed according to the provisions of this subpart. In other words, if the material has a VOHAP concentration of 500 ppmw or more, as determined according to the procedure in the proposed rule, then at the new facility this material would need to be managed in units that meet the air emission control requirements under the Site Remediation NESHAP for the applicable remediation material management unit type (i.e., tank, containers, etc.). Similarly, any treatment process used for the transferred remediation material would need to meet the process vent control requirements.

G. What Are the General Compliance Requirements?

Under the proposed rule, you would be required to meet each applicable emission limitation and work practice standard in the proposed rule at all

times, except during periods of startup, shutdown, and malfunction. You must develop and implement a written startup, shutdown, and malfunction plan for your site remediation according to the provisions of 40 CFR 63.6(e)(3).

Also with regard to compliance, it is important to note that under the provisions of the proposed rule, if an affected source (i.e., a remediation management or treatment unit) is subject to and complying with the control requirements under another part 61 or part 63 standard (e.g., has either installed air emission controls or has taken other actions to reduce HAP emissions to levels dictated by the other part 61 or part 63 standards) then the affected source is exempt from the control requirements of the proposed rule in 40 CFR 63.7883 through 40 CFR 63.7933. However, the source must be controlling air emissions under the other rule; the exemption under the proposed rule does not apply if the source is merely exempt from the control requirements of the other rule and has not taken action to limit HAP emissions.

H. What Are the Testing and Initial Compliance Requirements?

Initial compliance for process vents would be demonstrating that either: (1) The total organic HAP emissions from all affected process vents is less than 1.4 kg/h and 2.8 Mg/yr; or (2) the total organic HAP emissions from all of the affected process vents is reduced by at least 95 weight percent.

Initial compliance for remediation material units would be demonstrating that either: (1) The VOHAP concentration of the remediation material managed in the unit is below the 500 ppmw action level; or (2) the unit meets all applicable air emission control requirements for the unit. If a control device is used, initial compliance is determined by either: (1) Performing a performance test according to 40 CFR 63.7 of the general provisions and using specific EPA reference test methods; or (2) performing a design evaluation according to procedures specified in the proposed rule. You also must establish your operating limits for the control device based on the values measured during the performance test or determined by the design evaluation.

I. What Are the Continuous Compliance Provisions?

To demonstrate continuous compliance with the applicable emission limitations and work practice standards under the proposed rule, you would perform periodic inspections and continuous monitoring of certain types of air pollution control equipment you use to comply with the proposed rule. In those situations when a deviation from the operating limits specified for a control device is indicated by the monitoring system or when a damaged or defective component is detected during an inspection, you must implement the appropriate corrective measures.

To demonstrate continuous compliance with an emission limitation for a given source, you would continuously monitor air emissions or operating parameters appropriate to the type of control device you are using to comply with the standard, and keep a record of the monitoring data. Compliance is demonstrated by maintaining each of the applicable parameter values within the operating limits established during the initial compliance demonstration for the control device.

There are different requirements for demonstrating continuous compliance with the work practice standards, depending on which standards are applicable to a given emission source. To ensure that the control equipment used to meet an applicable work practice standard is properly operated and maintained, the proposed rule would require that you periodically inspect and monitor this equipment. When a cover is used to comply with a work practice standard, you must visually inspect the cover periodically and keep records of the inspections. In addition, for external floating roofs, seal gap measurements must be performed on the secondary seal once per year and on the primary seal every 5 years. Leak detection monitoring using Method 21 would be required for certain types of covers to ensure gaskets and seals are in good condition, and for closed-vent systems to ensure all fittings remain leak-tight. In general, annual inspection and leak detection monitoring of covers is proposed. Annual inspection and leak detection monitoring would be required for closed-vent systems. Any defects or conditions causing failures detected by an inspection or monitoring need to be promptly repaired and records of the repairs kept.

You would be allowed to use an alternative to the monitoring required by these proposed standards. If you choose to do so, you would be required to request approval for alternative monitoring according to the procedures in 40 CFR 63.8 of the General Provisions.

J. What Are the Notification, Recordkeeping, and Reporting Requirements?

The proposed rule would require you to keep records and file reports consistent with the notification, recordkeeping, and reporting requirements of the General Provisions of 40 CFR part 63, subpart A. Two basic types of reports are required: initial notification and semiannual compliance reports. The initial notification report advises the regulatory authority of applicability for existing sources or of construction for new sources.

The initial compliance report demonstrates that compliance has been achieved. This report contains the results of the initial performance test or design evaluation, which includes the determination of the reference operating parameter values or range and a list of the processes and equipment subject to the standards. Subsequent compliance reports describe any deviations of monitored parameters from reference values; failures to comply with the startup, shutdown, and malfunction plan (SSMP) for control devices; and results of LDAR monitoring and control equipment inspections.

Records required under the proposed standards must be kept for 5 years, with at least 2 of these years being on the facility premises. These records include copies of all reports that you have submitted to the responsible authority, control equipment inspection records, and monitoring data from control devices demonstrating that operating limits are being maintained. Records from the LDAR program and storage vessel inspections, and records of startups, shutdowns, and malfunctions of each control device are needed to ensure that the controls in place are continuing to be effective.

K. What Are the Implications of This NESHAP for Clean Air Act Title V Requirements?

1. What is the title V Program?

This program is a permit program established under title V of the CAA in 1990. A title V permit is intended to consolidate all of the air pollution control requirements into a single operating permit for a source's air pollution activities.

2. Under what circumstances am I required to obtain a title V permit for my remediation activity?

Title V requires all major sources to obtain permits (see 40 CFR 70.3, or 40 CFR 71.3). Major source status is triggered for a source under title V when actual emissions or potential to emit meets or exceeds certain major source

thresholds (see definition of major source at 40 CFR 70.2, or 40 CFR 71.2). Although a source subject to the Site Remediation MACT will be major for title V purposes based on emissions of HAP, title V also requires permits for sources that are major for other air pollutants, (e.g., the criteria pollutants). Sources that are subject to the Site Remediation MACT, by virtue of being major sources, will typically have to obtain an operating permit, if they don't already have one, or modify their existing permit under title V (either 40 CFR part 70 or 71). An option for avoiding major source status under title V for some sources that are not major prior to the remediation activity is voluntarily requesting practically-enforceable limitations (often operation or emissions-related) to reduce their potential to emit or actual emissions to levels below the major source thresholds. This option should be pursued through your permitting authority.

3. Who is responsible for obtaining the title V permit for a remediation activity?

Typically the party responsible for obtaining the title V major source permit will be either: (1) The owner or operator of the site remediation equipment or activities, or (2) the owner or operator of the source already existing at the facility that is covered by another MACT source category activity (the other collocated source). The decision as to who should apply for the permit in any specific case will be made on a case-by-case basis (site-dependent) and should be evaluated in consultation with the permitting authority, however, normal practice will be to issue the permit to the entity that has common control of all activities at the facility. Under the definition of major source used for HAP in 40 CFR part 70 or 71, all activities within a contiguous area under common control will be aggregated (grouped) together as a single source to determine major source status. While the source is ultimately responsible for making these determinations, permitting authorities will commonly assist sources in this task. Also note that the question of who may be required to apply for the permit will likely be affected by the way that pre-construction review permits (also referred to as New Source Review or NSR permits) were issued to such sources. Initial NSR permits are required prior to the commencement of construction activities, while initial title V operating permits are required generally after commencement of operations. Thus, permitting authorities are likely to follow decisions made in issuing NSR permits when looking at this question for title V purposes.

4. If I already have a title V permit, is a modification required for my remediation activity?

When there is a major source in a MACT source category that already has a title V operating permit, and a site remediation activity commences operation at the same facility and all activities at the facility are considered part of the same source (i.e., under common ownership and control), permitting authorities will require the previously issued operating permit to either be reopened or revised to reflect the new applicable requirements of the Site Remediation MACT. Permit reopening under 40 CFR 70.7(f), or 40 CFR 71.7(f), is required when a major source has a permit, there are 3 years or more left on the term of the permit, and we promulgate a new MACT standard (or other applicable requirement) that applies to the source. For such sources, if less than 3 years is left on the permit term, the State may generally wait until renewal to update the permit. On the other hand, modifications under 40 CFR 70.7(e), or 40 CFR 71.7(e), are required when a source has a permit and the source becomes subject to the MACT standard after the standard is promulgated (in most cases, these will be significant modifications under 40 CFR 70.7(e)(4), or 40 CFR 71.7(e)(3), but in some circumstances other permit modification procedures may apply).

5. If I have an existing title V permit, do I have to wait for completion of the permit modification before I begin the remediation activity?

In general, when site remediation activities are not addressed or prohibited by your existing operating permit, you may commence such activities at any time prior to the finalization of any formal title V permit modification procedures. However, when permit modification is required due to a new remediation activity and the new activity conflicts with (or is expressly prohibited by) the existing permit terms or conditions, the permit must be formally revised prior to commencing operation of such activities or you will be in violation of the permit prior to their revision.

6. The increase in potential-to-emit from a remediation activity will make my facility a major source overall, but only for a limited time. Am I required to get a title V permit? What activities can occur before my title V permit is issued?

All major sources are required by 40 CFR 70.5(a)(1), or 40 CFR 71.5(a)(2) to submit their permit application no later than 12 months after they commence operation, but State law could require it sooner. After that, 40 CFR 70.7(a)(2), or 40 CFR 71.7(a)(2), allows permitting authorities up to 18 months to issue the final permit, but State law may also require issuance sooner.

Major sources that expect to operate for 12 months or more obviously must submit a permit application in all cases. Sources that expect to operate less than 12 months (or whatever deadline the State sets) may decide not to prepare a permit application, at the risk of operating past that deadline without submitting the required application. Also note that policies concerning the permitting of such sources may vary from State to State; so it is also a good idea to contact your permitting authority concerning the steps necessary to fulfill your obligations under the operating permit program.

7. What are the requirements for remediation equipment that moves from one facility to another after completing each remediation activity?

Permitting authorities will decide how to permit such sources on a case-by-case basis, taking into account the particular circumstances known to them at that time. Many permitting authorities have policies or specific rules to address the permitting of portable sources, or other activities of short-duration, which are usually those expected to operate less than 1 or 2 years at any one location, and which are expected to operate in more than one location during a typical 5-year permit term. In addition, 40 CFR 70.6(e), or 40 CFR 71.6(e), addressing temporary sources, allows permitting authorities to issue a single operating permit for a major source that will operate in multiple locations during its 5-year permit term.

8. My facility's current operations are covered by an existing title V permit, do I have the option of obtaining a separate title V permit for a new remediation activity?

In some cases, permitting authorities have authority to issue multiple operating permits to a single source, and if this is the case, they may agree to issue a separate permit for the remediation activities. Although title V permits are typically thought of as a single permit that covers all the applicable requirements and all emissions units at a single source, the CAA allows permitting authorities to issue multiple permits to a single source. Such issuance would be consistent with title V as long as the assemblage of permits for a single major source addresses all applicable requirements at all subject emission

units (in the same way that a single major source permit would).

L. What Are the Implications for This NESHAP for Clean Air Act New Source Review Requirements?

This NESHAP does not change any of the existing requirements under the NSR program. The questions and answers within this section summarize the NSR program and a source's general requirements under this program.

1. How is the NSR program structured?

The NSR program is divided into three parts: Nonattainment NSR for major sources, Prevention of Significant Deterioration (PSD) for major sources, and minor source NSR. The term "NSR" is used to refer to both the overall program, and to the requirements that apply in nonattainment areas (e.g., nonattainment NSR). Nonattainment NSR applies to large facilities (major sources) located in areas where air quality is unhealthy to breathe —i.e. where the NAAQS for a CAA pollutant is not being met. These areas are called nonattainment areas.

Note: The term major source as it applies to the NSR program is discussed in detail in the July 23, 1996 **Federal Register** (61 FR 38429)). Nonattainment NSR for major sources of certain pollutants also applies in the federally designated ozone transport region (OTR), which consists of eleven northeastern states.[1] Prevention of significant deterioration (PSD) applies to major sources located in areas where air quality is currently acceptable—i.e. where the NAAQS for a CAA pollutant is being met. These are called attainment areas. Minor NSR applies to smaller sources and modifications that contribute to air pollution throughout the country.

2. Who runs the NSR and PSD programs?

The NSR program is administered by State and local air pollution permitting authorities, who are responsible for issuing all permits. Each state or local permitting authority is required to incorporate NSR and PSD requirements into its State Implementation Plan (SIP), which is the State's plan to ensure progress toward, or maintenance of, attainment of all NAAQS. A State's PSD program may be SIP-approved or delegated. If the State designs its own program, EPA may approve it so long as it meets the criteria listed in Federal PSD regulations. Otherwise, the State may take delegation of the Federal PSD program, as it is written in the Federal PSD regulations. A State's nonattainment NSR program must be a SIP-approved program meeting the criteria listed in Federal NSR regulations.

3. Who is subject to major NSR and PSD requirements?

No one may begin constructing a new major stationary source or undertake a major modification at an existing stationary source without obtaining an NSR or PSD permit from the permitting authority. The new major source would not need an NSR or PSD permit unless it had new potential emissions that qualify as major. Moreover, an existing major source that undertakes a major modification is subject to NSR or PSD only if there is a significant increase in emissions.

4. Do sources always need an NSR permit for a construction project?

Sources may avoid major NSR or PSD altogether by not increasing their emissions (e.g., by making changes that do not increase emissions, by installing controls on one part of the facility to offset increases at another part of the facility, or by agreeing to emission limits in their permit). Alternatively, facilities may comply with NSR by including modern controls in conjunction with an upgrade project or a new facility.

5. How long does the process take to complete?

The EPA estimates that the average time it takes to get a major NSR or PSD permit is about 7 months from receipt of the permit application.

6. When NSR or PSD applies, what must sources do?

a. Major Nonattainment NSR in Nonattainment Areas

New and existing major sources undertaking major modifications subject to nonattainment NSR must apply state of the art emission controls that meet the lowest achievable emissions rate (referred to as LAER). The LAER is based on the most stringent emission limitation in any State's SIP, or achieved in practice by the source category under review.

To get a permit, the applicant must also offset its emission increase by securing emissions reductions offsets from other sources in the area. The amount of the offset must be as great or greater than the new increase, and is based on the severity of the area's nonattainment classification. The more polluted the air is where the source is locating or expanding, the greater the emissions reductions required to offset the proposed increase. Offsets must be real reductions in emissions, not otherwise required by the CAA, and must be enforceable by the EPA.

Each applicant must also conduct an analysis of "alternative sites, sizes, production processes, and environmental control techniques * * * (that) demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs of its location, construction, or modification." The applicant must also certify that all other sources operating within the State are operating in compliance with the CAA and SIP requirements. Finally, the public must be given adequate notice and opportunity to comment on each permit application.

b. Prevention of Significant Deterioration in Attainment Areas

New major sources and existing sources that undertake major modifications that are subject to PSD must apply best available control technology (BACT). The BACT determination ultimately made by the permitting authority allows for a consideration of energy, environmental, and economic impacts and other costs on a case-by-case basis that is specific to the facility's situation. The permitting authority then specifies an emission limit for the source that represents BACT.

Each PSD applicant must also perform an air quality analysis to demonstrate that the new emission increase will not cause or contribute to a violation of any applicable NAAQS or result in a significant deterioration of the air quality. Finally, each applicant must also conduct an analysis to ensure that the increase does not result in adverse impact on air quality related values, including visibility, that affect designated Class I areas, such as wilderness areas and national parks.

c. Minor NSR

For sources not otherwise covered by major PSD or NSR, the CAA requires permitting authorities to regulate construction and modifications to ensure that the NAAQS are achieved. State programs have widely varying requirements. Some are comprehensive, while others provide numerous exclusions. Some require a technology review, in addition to air quality modeling.

III. Rationale for Selecting the Proposed Standards

A. What Is the Scope of the Source Category To Be Regulated?

As we discussed in section I.A of this preamble, site remediation is one of the approximately 170 categories of sources included on the NESHAP source category list. The facilities included

[1] Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Washington, DC.

within the scope of this source category include sites at which the cleanup is required to comply with requirements under a State regulatory program as well as sites at which cleanups are performed on a voluntary basis. In section II.A of this preamble, we discuss how statutory directives under RCRA and CERCLA direct us to address the control of air emissions from certain site remediations and that those activities under the RCRA Corrective Action and CERCLA authorities are exempt from the requirements of the proposed rule.

B. How Did We Select the Pollutants To Be Regulated?

The specific chemicals, compounds, or groups of compounds designated by Congress to be HAP are listed in CAA section 112(b). Included on the list are organic and inorganic chemicals. From this list of HAP, we selected the specific HAP to be regulated under this NESHAP for site remediations.

1. Organic HAP

Organic HAP potentially can be emitted from site remediations at many different types of facilities. We considered but decided not to select all of the organic HAP listed under section 112(b) for regulation in the Site Remediation NESHAP. Instead, we decided to be consistent with the approach we used for the OSWRO NESHAP as well as other NESHAP promulgated for source categories with large diversity in the organic chemical constituents present in the materials managed at any given facility and instead regulate on the basis of a surrogate that reasonably ensures MACT control of the organic HAP present. See *National Lime* v. *EPA*, 238 F. 3d, (D.C. Cir. 2000, upholding use of surrogates in establishing MACT standards).

When we developed the organic HAP list for the OSWRO NESHAP, we evaluated each organic chemical or chemical group listed as a HAP in CAA section 112(b) with respect to its potential to be emitted from a waste management or recovery operation. The criteria used to characterize and evaluate emission potential was based on a chemical constituent's Henry's law constant, evaluation of the aqueous and organic volatility characteristics of the chemical, and the ability of the analytical test methods to quantitate the chemical. Based on our evaluation, we selected 98 specific organic HAP compounds or compound groups to be regulated under the proposed rule (Table 1 to 40 CFR part 63, subpart DD.).

Although the OSWRO NESHAP, by an exclusion under the rule applicability, does not apply to units managing wastes from site remediations, the data base that we used to select the list of organic HAP for the OSWRO NESHAP included remediation wastes sent to hazardous waste TSDF. We believe that this data base is also representative of the range of organic HAP chemicals having the potential to be emitted from the sites requiring cleanup of media contaminated with volatile or semi-volatile organics and other remediation material. Therefore, we are proposing that same list of organic HAP used for the OSWRO NESHAP also be used for the Site Remediation NESHAP. This list is presented in Table 1 to proposed Subpart GGGGG. We request comment on the proposal to use this list of organic HAP for the Site Remediation NESHAP.

2. Inorganic HAP

The types of inorganic compounds listed as HAP in CAA section 112(b) that are most likely to be in contaminated media requiring remediation are heavy metals (i.e., antimony, arsenic, beryllium, cadmium, chromium cobalt, lead, manganese, mercury, nickel, and selenium). A widely used remediation approach for cleanup of soils, sludges, or sediments contaminated with heavy metals involves excavating the contaminated media, treating the remediation material in a solidification or stabilization process, and disposing of the treated material in an appropriate landfill (which may be on-site or an off-site facility). Metals in the contaminated soil are immobilized by the added binder material used for the fixation process. In situations where groundwater is contaminated with heavy metals, site remediation typically involves extracting the groundwater by pumping it to the surface and then removing the metals by a physical or chemical process (e.g., precipitation, ion exchange). The metals remain in the wet precipitate or other extraction media and are not released to the atmosphere.

For some site remediations involving the cleanup of media containing both metals and organic contaminates, the extracted remediation waste is burned in an incinerator or other combustion device. Metal HAP contained in the remediation waste vaporize at high combustion temperatures or become airborne as fine particles and can remain in combustion gases in either a gaseous or particulate form. Any metal HAP contained in the combustion gases that is not captured and removed by a control device is emitted to the atmosphere.

Based on our information regarding the cleanup of media contaminated with metals or other inorganic HAP, many of the remediation techniques used do not release the inorganic HAP to the atmosphere. In cases where remediation material containing inorganic HAP is burned in an incinerator, the incinerator used must already meet air standards under the CAA and RCRA that limit organic, particulate matter, metals, and chloride emissions. (See, e.g. 40 CFR part 263, subpart EEE (MACT standards for hazardous waste combustion sources).) Therefore, we are proposing that metals and other inorganic compounds listed as HAP in CAA section 112(b) not be regulated by this Site Remediation NESHAP. We are specifically requesting comment on this proposal and, in particular, would appreciate receiving data regarding the sources and quantity of inorganic HAP emissions from site remediations and available control technologies applicable to the sources in order to either support or revise our decision not to regulate inorganic HAP emissions under this NESHAP.

C. How Did We Select the Affected Source To Be Regulated?

For the purpose of implementing a NESHAP under 40 CFR part 63, "affected source" is defined to mean the stationary source, or portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the CAA. Each relevant standard is to designate the affected source for the purposes of that standard. Within a source category, we must decide which of the sources of HAP emissions (i.e., emission points or groupings of emission points) to which the proposed rule applies.

One option for the Site Remediation NESHAP is to define the affected source as the entire set of activities performed for a given site remediation such as the cleanup of contaminated soil or the cleanup of contaminated groundwater. The affected source would consist of the mix of emission points for the sequence of activities in which the contaminated media or other remediation material is extracted (if needed), stored, conveyed, treated, or, otherwise handled at the facility. Under this broad definition option, a separate emission limitation for MACT would be determined for the entire group of emission points associated with a site remediation to clean up the contaminated soil. Another emission limitation for MACT would be determined for the entire group of emission points associated with a site remediation to clean up the contaminated groundwater. Unlike the NESHAP source categories that can be

readily characterized by one or several standardized process configurations which are used throughout the industrial segment representing the source category, the operations used for all contaminated soil or contaminated groundwater remediations cannot. The activities, equipment configurations, and sequencing of operations used are not consistent from site remediation to site remediation. Therefore, we concluded that this option is not an appropriate approach for defining the affected sources for the Site Remediation NESHAP.

Another option we considered is to define the affected source in terms of common groupings of processes and equipment used for management and cleanup of contaminated media and other remediation materials (i.e., tanks, containers, process vents, and equipment leaks). Under this option, MACT is determined for each emission source group. We believe that this option is an appropriate way to define the affected source for the Site Remediation NESHAP. Designating the affected source to be a group of similar emission point types ensures that air emission controls of equivalent performance are applied at the same time to all of the units used to manage a remediation material stream. Also, this approach to defining sources is consistent with other NESHAP for related waste management operations (e.g., the OSWRO NESHAP). Therefore, for the Site Remediation NESHAP, we determined separate MACT for common groups of emission point sources.

The first group of common emission points designated to be an affected source for the Site Remediation NESHAP is the group of pipes, stacks, or ducts that allow the passage of gases, vapors, or fumes containing organic HAP to the atmosphere from any treatment process used at the facility to remove, destroy, or otherwise transform the hazardous substances in remediation material. These pipes, stacks, and ducts are collectively referred to as process vents in the proposed rule. The process vent may be either associated with an in situ process (e.g., soil vapor extraction used to treat contaminated soil) or ex situ process (e.g., air stripper used to treat contaminated ground water, or thermal desorption unit used to treat contaminated soil). For the purposes of applying the standards, a process vent is neither a vent that operates as a safety device nor a stack or duct used to exhaust combustion products from a boiler, furnace, incinerator, or other enclosed combustion device that is being used to treat a remediation waste or material. If these combustion devices are being used as an air pollution control device to control air emissions then the vent could be subject to the standards.

The next group of common emission points designated to be an affected source for the Site Remediation NESHAP is the group of units used at the facility which handle, temporarily store, or otherwise manage the remediation material once it has been extracted from the ground. This group of sources includes units that treat extracted contaminated media but do not use a process vent (e.g., a tank used for biological degradation treatment of contaminated groundwater). These units are tanks, containers, surface impoundments, oil-water and organic-water separators, individual drain systems, and other stationary transfer or conveyance. The units regulated under this affected source designation are collectively referred to as remediation material management units in the propose rule.

A third group of common emission points designated to be an affected source for the Site Remediation NESHAP is the group of equipment components prone to emitting organic HAP as a result of liquid or vapor leaks. This group of equipment consists of pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves and lines, valves, connectors, and instrumentation systems that contain or contact remediation material once it has been extracted from the ground.

We have identified two other types of remediation activities that may emit organic HAP but do not belong in any of the above three affected source groups. These activities are the excavation of contaminated soil and land treatment process for contaminated soils, sediments, and sludges. Excavation of contaminated soil involves the use of heavy machinery to dig up the soil. The excavated material is then either placed directly into dump trucks for transport offsite or moved to another location at the facility for storage or treatment. Land treatment processes are open biodegradation processes in which the contaminated soil, sediment, or sludge is excavated, re-applied in shallow layers on the ground surface, and periodically turned over or tilled to aerate the applied material. The organic contaminants are neutralized, destroyed or transformed by biological actions of microbes in the materials.

Our information indicates that there are no add-on controls currently in use to control organic emissions from these activities, nor are we aware of any practical work practices or process modification that can be implemented to reduce organic HAP emissions from these activities. Therefore, we are proposing not to develop standards under this NESHAP for either excavation operations or land treatment activities. We specifically request comment on the technical and practical feasibility of controlling HAP emissions from these remediation activities, actual HAP emissions rates that occur, and the costs of applying any applicable controls.

D. How Did We Determine MACT for the Affected Sources?

Section 112(d)(3) of the CAA specifies that the MACT standards for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources. There are many more than 30 site remediations being conducted nationwide. Therefore, the MACT floor for existing sources at site remediations is established by the best-performing 12 percent of existing sources.

We reviewed our information for site remediations to find an approach for identifying the best-performing 12 percent of existing sources, arraying the data for each category of emission point. Our data includes individual existing sites where remediation activities use add-on air emission controls (e.g., venting air strippers through carbon adsorbers, management of remediation wastes in covered tanks). However, there are remediation sites in our data base at which no air emission controls are used. The use of air emission controls at a given location depends on a combination of factors including, but not limited to, the type and extent of contamination requiring cleanup, the nature of the site remediation activities used for the cleanup, and the requirements imposed by the agency having oversight of the site remediation.

Determining a MACT floor based on use of control measures other than add-on controls (e.g., fuel switching, material substitution or reformulation, process modification, material recycling within the process) is not technically appropriate for, or applicable to, the site remediation source category. This source category addresses HAP emissions that are released from the cleanup of pre-existing environmental contamination problems. By the time the need for site remediation has been identified, the opportunity has passed for applying any pollution prevention or source reduction techniques.

The use of add-on air emission controls by some existing site remediation activities indicates that the average emission limitation being achieved by the best performing 12 percent of these sources is at some level above applying no controls (i.e., the emission limitation achieved by best performing 12 percent of the sources is greater than zero). The difficulty we are presented with is not having the information to determine average emission limitation achieved by the best performing 12 percent of existing sources at site remediations nationwide. We do not have comprehensive nationwide facility survey data by which we can state, with a reasonable level of confidence, that the sources for which we do have air emission control data do indeed represent the top 12 percent of the best performing existing sources nationwide. These sources may represent well more than the top 12 percent but there also is the possibility that the sources represent less than the top 12 percent. We do not have the data needed to definitively calculate the statistical distribution of air emission controls used at existing remediation sites nationwide.

Obtaining nationwide counts of existing site remediation activities is not a trivial task given the uniqueness of the site remediation source category. Many site remediations are voluntary actions and are not reported for inclusion in existing EPA site remediation data bases. Furthermore, some existing site remediations are performed to address a unique contamination situation and may not be relevant to site remediations that are performed in the future. A comprehensive information collection survey to collect the needed data would require very significant time and resource commitments by both us and the survey respondents, and would not necessarily provide us with all of the information we need. In addition, it is not clear that on-going remediation activities have the available data needed to adequately characterize the source category.

Given the uniqueness of the site remediation source category, the extent of information currently available to us, and the complexities of gathering additional meaningful information, we decided to forgo statistically computing an emission limitation or identifying a specific control technology that represents the MACT floor for site remediations. The MACT floor for existing affected sources is some level of air emission control beyond no controls. Because the provisions of section 112 allow us to select MACT for a source category that is more stringent than the MACT floor (provided that the control level selected is technically achievable and that we consider the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements associated with the selected control level (CAA section 112(d)(2)), we chose to select the MACT technology directly.

To select a MACT technology from alternatives beyond the MACT floor for each affected source, we looked at the types of air emission controls required under national air standards for sources similar to those sources that potentially may be associated with site remediations. These air standards are NESHAP for other source categories, particularly the OSWRO NESHAP under 40 CFR part 63, subpart DD, and the air standards for RCRA hazardous waste treatment, disposal, and facilities under subparts AA, BB, and CC in 40 CFR parts 264 and 265 (RCRA Air Rules). The control levels established by the emission limitation and work practices we are proposing here are being implemented at existing sources subject to these similar rules; this demonstrates that the control levels are technically achievable.

As stated in the previous paragraph, these control requirements and action levels already exist in either the RCRA Air Rules or the OSWRO NESHAP, or both. Given that these existing rules specify control requirements for sources similar to those comprising the affected source group for the Site Remediation NESHAP, and that sources already regulated by these existing standards will likely manage and/or treat remediation material regulated by the Site remediation NESHAP also, we believe that the requirements within these existing rules represent industry practice for remediation activities and therefore MACT for the Site Remediation NESHAP. Nevertheless, we recognize that the existing standards were designed for controlling emissions from ongoing industrial activities that would continue for many years, rather than for limited-duration activities such as site remediations. The Agency requests comment on the appropriateness of using the existing standards for limited-duration site remediations.

E. How Did We Select the Format of the Proposed Standards?

The proposed standards for the Site Remediation NESHAP consist of a combination of several formats: numerical emission limits and operating limits, equipment standards, and work practice standards. We selected the formats for each of the proposed standards to be consistent with the formats used in other NESHAP for similar organic HAP sources.

F. How Did We Select the Testing and Initial Compliance Requirements?

The Site Remediation NESHAP would control three different groups of emission points: process vents, remediation material management units, and equipment leaks. The control technologies and work practices used to control these emission point groups would have different testing and initial compliance requirements. The methods proposed for testing and for demonstrating initial compliance with the proposed standards are consistent with those in other NESHAP that require using these same control technologies and work practices.

We selected the performance testing requirements to demonstrate compliance with the control device emission limits based on the use of the applicable EPA test methods. We propose in the proposed rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3, 4, 9, 18 (total organic HAP or total organic compounds), 22, 25, 25A, 305 and 316 of 40 CFR part 60, appendix A, and SW 846 9095A. Consistent with the National Technology Transfer and Advancement Act (NTTAA), we conducted searches to identify potential voluntary consensus standards that could be used in place of these EPA methods. As discussed further in section V.H of this preamble, no applicable voluntary consensus standards were identified as practical alternatives to the EPA Methods included in the proposed rule.

G. How Did We Select the Continuous Compliance Requirements?

Continuous monitoring is required under each NESHAP so that we can determine whether a source remains in compliance following the initial compliance determination. When determining appropriate monitoring options, we considered the availability and feasibility of a number of monitoring strategies ranging from continuous emission monitoring to process and control device parameter monitoring.

Monitoring of control device operating parameters is considered most appropriate for many other similar emission sources and, therefore, we have included this as the primary monitoring approach in these proposed standards. We selected operating parameters for the following types of control devices that are reliable indicators of control device performance: thermal and catalytic

oxidizers, flares, adsorbers, condensers, boilers, incinerators, and process heaters. In general, we are proposing selected parameters and monitoring provisions that were included in the OSWRO NESHAP. Sources would monitor these parameters to demonstrate continuous compliance with the emission limits and operating limits.

H. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

The required notifications and other reporting are based on the General Provisions in subpart A of 40 CFR part 63. The initial notification and the semiannual compliance reports include information on the remediation material and affected site remediation activities, and they require any changes to this information to be reported in subsequent reports. Similarly, records are required that will enable an inspector to verify the facility's compliance status. Due to the nature of control devices that would be installed on site remediation processes and the emissions being controlled, we have determined that control device parameter monitoring is appropriate in this circumstance. The required records and reports are necessary to allow the regulatory authority to verify that the source is continuing to comply with the standards.

IV. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Emissions Reductions?

We estimated nationwide organic HAP emissions from the site remediations potentially subject to the proposed rule based on the information available to us including remediation waste quantity and treatment practice data for the year 1997 and earlier. Nationwide organic HAP emissions from regulated sources are estimated to be approximately 1,140 Mg/yr. Nationwide VOC emissions from regulated sources are estimated to be approximately 7,360 Mg/yr. (Although not all VOC are organic HAP, we may permissibly note the air benefits from controlling non-HAP pollutants such as VOC when considering a MACT standard. (See S. Rep. 101–228, 101st Cong. 1st sess. 172) We estimate that implementation of the proposed rule would reduce these nationwide air emissions by approximately 50 percent to 570 Mg/yr of HAP and 3,680 Mg/yr of VOC.

B. What Are the Cost Impacts?

The nationwide total capital investment cost and the annual operating cost of the control equipment required to meet the proposed standards are estimated to be $17.6 million and $5.8 million per year, respectively. When fully implemented, the proposed rule is estimated to result in a total annual cost of $8.2 million per year.

C. What Are the Economic Impacts?

The proposed rule would affect owners and operators of facilities, subject to the exceptions described in section I.A of this preamble, that are major sources of HAP emissions and at which a site remediation is conducted to clean up media or other material contaminated with any of the organic HAP substances listed in the proposed rule. Because of the nature of activities regulated by the source category, a comprehensive list of NAICS codes cannot be compiled for businesses or facilities potentially regulated by this action. As a result, the economic impact analyses focused on a set of industries from the 1997 Biennial Reporting System (BRS) database that were known to be large quantity generators of hazardous waste and who were remediating hazardous waste as part of a site remediation. We believe that the data provides an adequate overview of the potential impacts of the proposed rule. However we recognize that the actual industries directly impacted by the proposed rule in the year the proposed rule is implemented and the costs incurred by these industries may differ somewhat from the set of industries identified in the 1997 BRS data and the costs assigned to these industries for the purposes of the economic analysis.

In general, we did not find evidence of significant impacts at the industry level. From the BRS data, over 80 industries were predicted to have annual compliance costs as a result of the proposed rule, and 15 industries accounted for 91 percent of the national compliance cost estimate of $8.16 million[2]. We employed an engineering or financial analysis to estimate impacts, which takes the form of the ratio of compliance costs to the value of sales (cost-to-sales ratio (CSR)). We calculated CSR for 12 industries and found all had CSR below 0.02 percent. The CSR are less than the lower quartile return on sales for all industries with profitability data available. We did not compute CSR for the remaining three industries because revenue data were not available.

The CSR will likely overstate the impact on firms and understate the impact on consumers. The CSR assumes that there are no changes in the market as a result of the higher costs of production faced by the firms and that the firms continue to produce the same quantities, sell at the same price and absorb the full amount of the compliance costs.

Small business impacts were particularly difficult to assess because of the uncertainty over the facilities that will actually be impacted by the proposed rule. As a result, we concluded that sufficient data and related information did not exist to conduct a small business screening analysis.

D. What Are the Non-Air Quality Environmental and Energy Impacts?

Compliance with the standards in the proposed rule requires using types of control equipment commonly in use to control organic emissions from process sources at many of the industrial facilities at which site remediations are most likely to occur. The non-air environmental and energy impacts associated with implementing the requirements of the proposed rule primarily are expected to result from the operation of these control devices. No significant adverse water, solid waste, or energy impacts are expected as a result of the proposed rule.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

[2] Value reported in $2000. For the economic impact analysis, EPA adjusted this estimate to $1997 using a cost factor (0.9753) developed from the Chemical Engineering Composite Plant Cost Index. Thus, the total annual compliance costs in $1997 is $7.96 million.

or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

The EPA has concluded that the proposed rule may have tribal implications since site remediation activities could be conducted on tribal lands. We do not have any information identifying specific remediation activities being conducted at this time. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt State law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to the proposed rule.

Consistent with EPA policy, EPA nonetheless has made attempts to invite tribal representatives to participate in the rulemaking activities early in the process of developing this proposed rule to permit them to have meaningful and timely input into its development. We have contacted tribal representatives and groups directly to notify them of this proposed rule development activity and to solicit their participation. Despite these efforts, EPA has not been contacted by tribal representatives to participate in the rulemaking process to date.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits comment on the proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the proposed rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local,. and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating

an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the proposed rule for any year has been estimated to be about $23.4 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA) As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Under the Regulatory Flexibility Act, the Agency must prepare a Regulatory Flexibility Analysis unless the Administrator certifies that the rule, if promulgated, will not impose a significant economic impact on a substantial number of small entities. The Courts consistently have held that the provisions of the RFA apply only with respect to small entities that are subject to the proposed rule. The proposed rule sets minimum standards to be met when parties engage in future site remediation activities, but it does not itself require any party to undertake such activities. States may choose to direct a party to undertake site remediation, or parties may undertake remediation activities voluntarily. Today's action places no requirement on any party to initiate site remediation activities. The EPA anticipates that parties that undertake site remediation activities generally will do so voluntarily and that the impact of the proposed rule on those parties would not be significant. Further, because States and other parties will decide whether to undertake site remediation activities, it is extremely difficult, if not impossible, to predict how many or what types of small entities will undertake such activities. In addition, the proposed rule is structured to avoid impacts on small businesses. The proposed rule specifically excludes from its scope remediation activities conducted at gasoline stations, farm sites and residential sites (on the ground that these remediation activities would not exceed the threshold for major sources). Moreover, the proposed rule would apply only to remediation sites located at a facility that is a major source under the CAA and engages in a "MACT activity" (defined as a non-remediation activity covered in the MACT list of major source categories pursuant to CAA section 112(c)). Such sources tend to be large businesses. The proposed rule also contains emissions thresholds that are not likely to apply to small businesses. For example, the proposed rule exempts sources where the total annual quantity of HAP contained in all extracted remediation material at the facility is less than 1 Mg/yr. For these reasons, I certify that the rule, if promulgated, will not impose a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

We will submit the information collection requirements in the proposed rule for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2062.01) and you may obtain a copy from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions in subpart A to 40 CFR part 63. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden to affected sources for this collection (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be 341,737 labor-hours per year, with a total annual cost of $17.7 million per year. These estimates include a one-time performance test and report (with repeat tests where needed), one-time submission of an SSMP with semiannual reports for any event when the procedures in the plan were not followed, semiannual compliance reports, maintenance inspections, notifications, and recordkeeping.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA".; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW., Room 6143, Washington, DC 20460 (202) 566–1700. Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 30, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by August 29, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law No. 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

The proposed rulemaking involves technical standards. The EPA proposes in the proposed rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3, 4, 9, 18 (total organic HAP or total organic compounds), 22, 25, 25A, 305 and 316 of 40 CFR part 60, appendix A, and Method 9095A in SW 846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods included in the proposed rule.

The search for emissions measurement procedures identified 12 VCS as potential alternatives to the EPA methods specified in the proposed rule. Following further evaluation, the EPA determined that ten of these 12 standards identified for measuring emissions of HAP or surrogates subject to emissions standards in the proposed rule were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, the EPA does not intend to adopt these standards. The reasons for the determinations of these nine methods are discussed below.

The standard ISO 10780:1994, "Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts," is impractical as an alternative to EPA Method 2 in the proposed rule. This standard, ISO 10780:1994, recommends the use of L-shaped pitots, which historically have not been recommended by EPA because the S-type design has large openings which are less likely to plug up with dust.

The standard ASTM D3464–96, "Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer," is impractical as an alternative to EPA Method 2 for the purposes of the proposed rule primarily because applicability specifications are not clearly defined, (e.g., range of gas composition, temperature limits). Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the ASTM standard limit EPA's ability to make a definitive comparison of the method in these areas.

The VCS ASTM D6060 (in review 2000), "Practice for Sampling of Process Vents with a Portable Gas Chromatograph," is an impractical alternative for EPA Method 18 for the purposes of the proposed rule because it lacks acceptance criteria for calibration, details on using other collection media (e.g., solid sorbents), and reporting/documentation requirements that are included in EPA Method 18.

The VCS ASTM D6420–99, "Standard Testing Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS)," also is an impractical alternative for EPA Method 18 for the purposes of the proposed rule. This method only detects 25 of the 98 specific organic HAP constituents subject to regulation by the proposed rule. The specific organic HAP composition of the remediation material to be cleaned up is often unknown and using a method to determine compliance with total organic HAP emissions limitations that only detects a narrow subset of the entire group of 98 organic HAP compounds subject to the proposed rule is not appropriate. Method 18 is the only method currently available to ensure that all 98 HAP compounds regulated by the proposed rule are accounted for in the computation of the total organic HAP emissions from an affected source. We request comment on our decision not to include ASTM method D6420–99.

Two VCS, EN 12619:1999 "Stationary Source Emissions-Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method" and ISO 14965:2000(E) "Air Quality-Determination of Total Nonmethane Organic Compounds-Cryogenic Preconcentration and Direct Flame Ionization Method," are impractical alternatives to EPA Method 25A for the purposes of this rulemaking because the standards do not apply to solvent process vapors in concentrations greater than 40 ppm for EN 12619 and 10 ppm carbon for ISO 14965. Methods with whose upper limits are this low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Four of the nine VCS are impractical alternatives to EPA test methods for the purposes of the proposed rule because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3796–90 (Reapproved 1996), "Standard Practice for Calibration of Type S Pitot Tubes," for EPA Method 2; ASME C00031 or PTC 19–10–1981—Part 10, "Flue and Exhaust Gas Analyses," for EPA Method 3; ASTM E337–84 (Reapproved 1996), "Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures)," for EPA Method 4; and ASTM D3154–91, "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Methods 1, 2, 2C, 3, and 4. Two of the 11 VCS identified in this search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 1 (and possibly 2); and ASME/BSR MFC 12M, "Flow in Closed Conduits Using

Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2. While we are not proposing to include these two VCS in today's proposed rule, the EPA will consider the standards when they are finalized.

The EPA takes comment on the compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable VCS. The commenter should also explain why this regulation should adopt these VCS in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A was used).

Section 63.2406 and Table 5 of the proposed subpart GGGGG list the EPA testing methods and performance standards included in the proposed rule. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, under § 63.7(f) of subpart A of 40 CFR part 63, the proposed rule also allows any State or source to apply to the EPA for permission to use an alternative method in place of any of the EPA testing methods or performance standards listed in the proposed rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 3, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart GGGGG to read as follows:

Subpart GGGGG—National Emission Standards for Hazardous Air Pollutants: Site Remediation

What This Subpart Covers

Sec.
63.7880 What is the purpose of this subpart?
63.7881 Am I subject to this subpart?
63.7882 What activities at my facility does this subpart cover?
63.7883 When do I have to comply with this subpart?

Emissions Limitations and Work Practice Standards

63.7890 What emissions limitations and work practice standards must I meet?

General Compliance Requirements

63.7900 What are my general requirements for complying with this subpart?
63.7901 What requirements must I meet if I transfer remediation material to another party, another facility, or receive remediation material from another facility?

Testing and Initial Compliance Requirements

63.7910 By what date must I conduct performance tests or other initial compliance demonstrations?
63.7911 When must I conduct subsequent performance tests?
63.7912 What tests, design evaluations, and other procedures must I use?
63.7913 What are my monitoring installation, operation, and maintenance requirements?
63.7914 How do I demonstrate initial compliance with the emissions limitations and work practice standards?

Continuous Compliance Requirements

63.7920 How do I monitor and collect data to demonstrate continuous compliance?
63.7921 How do I demonstrate continuous compliance with the emissions limitations and work practice standards?

Notifications, Reports, and Records

63.7930 What notifications must I submit and when?
63.7931 What reports must I submit and when?
63.7932 What records must I keep?
63.7933 In what form and how long must I keep my records?

Other Requirements and Information

63.7940 What parts of the General Provisions apply to me?
63.7941 Who implements and enforces this subpart?
63.7942 What definitions apply to this subpart?

Tables to Subpart GGGGG of Part 63

Table 1 to Subpart GGGGG of Part 63—Hazardous Air Pollutants
Table 2 to Subpart GGGGG of Part 63—Emissions Limitations for Process Vent Affected Sources
Table 3 to Subpart GGGGG of Part 63—Emissions Limitations for Remediation Material Management Unit Affected Sources
Table 4 to Subpart GGGGG of Part 63—Operating Limits and Associated Work Practices for Control Devices
Table 5 to Subpart GGGGG of Part 63—Work Practice Standards
Table 6 to Subpart GGGGG of Part 63—Requirements for Performance Tests
Table 7 to Subpart GGGGG of Part 63—Initial Compliance With Emissions Limitations
Table 8 to Subpart GGGGG of Part 63—Initial Compliance with Work Practice Standards
Table 9 to Subpart GGGGG of Part 63—Continuous Compliance with Emissions Limitations
Table 10 to Subpart GGGGG of Part 63—Continuous Compliance with Operating Limits
Table 11 to Subpart GGGGG of Part 63—Continuous Compliance with Work Practice Standards
Table 12 to Subpart GGGGG of Part 63—Requirements for Reports
Table 13 to Subpart GGGGG of Part 63—Applicability of General Provisions to Subpart GGGGG

Subpart GGGGG—National Emission Standards for Hazardous Air Pollutants—Site Remediation

What This Subpart Covers

§ 63.7880 What is the purpose of this subpart?

This subpart establishes national emissions limitations and work practice standards for hazardous air pollutants (HAP) emitted from site remediation activities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emissions limitations and work practice standards.

§ 63.7881 Am I subject to this subpart?

(a) This subpart covers remediation activities within the site remediation source category, which excludes remediation at gasoline stations, farm sites and residential sites.

(b) This subpart applies to you if you meet all of the criteria listed in paragraphs (b)(1) and (2) of this section:

(1) You own or operate a site remediation activity that is collocated within a facility with other sources that are individually or collectively a major source of HAP emissions; and

(2) A MACT activity, as defined in § 63.7942, is performed at the facility.

(c) Remediation means the cleanup of remediation material. For the purposes of this subpart, monitoring or measuring contamination levels through wells, or by sampling, is not considered to be remediation.

(d) A major source of HAP is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year. A source that is not a major source is an area source.

(e) You are not subject to the requirements of this subpart if any of the criteria in paragraphs (d)(1) through (7) of this section apply.

(1) Your facility is an area source; or

(2) A MACT activity is not performed at your facility; or

(3) You are not conducting a remediation activity at your facility; or

(4) You do not have an affected source involved in any remediation activity conducted at the facility; or

(5) Your facility is a research and development facility, consistent with section 112(b)(7) of the CAA.

(6) The remediation is performed under the authority of the Comprehensive Environmental Response and Compensation Liability Act.

(7) Your remediation activity is a corrective action:

(i) At a Resource Conservation and Recovery Act (RCRA) Treatment, Storage and Disposal facility (TSDF) permitted either by the U.S. Environmental Protection Agency (EPA) or under a state program authorized by EPA under RCRA section 3006;

(ii) At an interim status TSDF conducted under an order imposed by EPA or a state program authorized for corrective action under RCRA section 3006; or

(iii) at any facility as required by orders authorized under RCRA section 7003.

(f) You are not subject to the requirements of this subpart, except for the recordkeeping requirements in § 63.7933, if all remediation activities at your facility subject to this subpart are completed and you have notified the Administrator in writing that all remediation activities subject to this subpart are completed. All future remediation activity meeting the applicability criteria in paragraph (b) of this section must comply with the requirements of this subpart.

§ 63.7882 What activities at my facility does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing remediation affected source. The emissions sources listed in paragraphs (b)(1) through (3) of this section located at a facility meeting the criteria specified in § 63.7881(a) constitute the affected source:

(b)(1) *Process vents.* The affected source is the entire group of process vents associated with both in situ and ex situ remediation.

(2) *Remediation material management units.* The affected source is the entire group of tanks, surface impoundments, containers, oil/water separators, organic/water separators and transfer systems involved in remediation. For the purpose of implementing the standards under this subpart, a unit that meets the definition of a tank or container that is also equipped with a vent that serves as a process vent for processes including, but not limited to, air stripping and solvent extraction, as defined in § 63.7942, is not a remediation material management unit, but instead is a process vent and is to be included in the appropriate affected source group under paragraph (b)(1) of this section.

(3) *Equipment leaks.* The affected source is the entire group of equipment components (pumps, valves, etc.) involved in remediation, meeting both of the conditions specified in paragraphs (b)(3)(i) and (ii) of this section. If either of these conditions do not apply to an equipment component, then that component is not part of the affected source for equipment leaks.

(i) The equipment component contains or contacts remediation material having a total HAP concentration equal to or greater than 10 percent by weight; and

(ii) The equipment component is intended to operate for 300 hours or more during a calendar year in remediation material service, as defined in § 63.7942.

(c) *Exceptions.* (1) *Facility-wide exemption.* You are exempt from the requirements of this subpart where the total annual quantity of HAP contained in all extracted remediation material at the facility (including HAP emitted from process vents) is less than 1 megagram per year. For your facility to be exempt under the provisions of this paragraph, you must meet the requirements in paragraphs (c)(1)(i) through (iii) of this section.

(i) You must prepare an initial determination of the total annual HAP quantity in the extracted remediation material at the facility. This determination is based on the total quantity of HAP in Table 1 of this subpart as determined at the point-of-extraction for each remediation material component. The quantity of HAP contained in vent streams from in situ remediation operations must be included in the determination of the total annual organic HAP quantity in Table 1 of this subpart. The HAP quantity in the vent streams must be determined prior to any control devices.

(ii) You must prepare a new determination whenever the extent of changes to the quantity or composition of the remediation material extracted at the facility could cause the total annual HAP quantity in Table 1 of this subpart in the extracted remediation material to exceed 1 megagram per year.

(iii) You must maintain documentation to support your determination of the total annual HAP quantity in the extracted remediation material. This documentation must include the basis and data used for determining the HAP content of the extracted remediation material.

(2) *Affected source exemption.* Any affected source that is also subject to another subpart under 40 CFR part 61 or 40 CFR part 63, where you are controlling the HAP in Table 1 of this subpart that are emitted from the source in compliance with the provisions specified in the other applicable subpart under part 61 or 63, is exempt from the requirements of §§ 63.7883 through 63.7933.

(3) *Process vents.* You are exempt from the requirements of §§ 63.7890 through 63.7933 for process vents if any of the criteria listed in paragraphs (c)(3)(i) through (iv) of this section are met, except that the records of the determination of these criteria must be maintained as required in § 63.7932(a)(4):

(i) Affected process vents where the emissions of HAP in Table 1 of this subpart from all vents at the facility involved in remediation are below 1.4 kilograms per hour (3 pounds per hour) and 2.8 megagrams per year (3.1 tons per year) as determined by the procedures specified in § 63.7912(f).

(ii) Individual process vents associated with ex situ remediation operations that manage remediation material with a Table 1 (of this subpart) HAP concentration less than 10 parts per million by weight (ppmw). The HAP concentration must be determined in accordance with the procedures specified in § 63.7912(a). Documentation must be prepared by the owner or operator and maintained at the facility to support the determination of the remediation material concentration. This documentation must include identification of each process vent exempted under this paragraph and any test results used to determine the HAP concentration.

(iii) Individual process vents where you determine that the process vent stream flow rate is less than 6.0 cubic meters per minute (m^3/min) at standard conditions (as defined in 40 CFR 63.2) and the total HAP concentration is less than 20 parts per million by volume (ppmv). The process vent stream flow rate and total HAP concentration must be determined in accordance with the procedures specified in § 63.694(m). For the purposes of this subpart, when you read the term "HAP listed in Table 1 of this subpart" in 40 CFR Subpart DD, you should refer to Table 1 of this Subpart. Documentation must be prepared by the owner or operator and maintained at the facility to support the

determination of the process vent stream flow rate and total HAP concentration. This documentation must include identification of each process vent exempted under this paragraph and the test results used to determine the process vent stream flow rate. You must perform a new determination of the process vent stream flow rate and total HAP concentration when the extent of changes to operation of the unit on which the process vent is used could cause either the process vent stream flow rate to exceed the limit of 6.0 m^3/min or the total HAP concentration to exceed the limit of 20 ppmv.

(iv) Individual process vents where you determine that the process vent stream flow rate is less than 0.005 m^3/min at standard conditions (as defined in 40 CFR 63.2). The process vent stream flow rate must be determined in accordance with the procedures specified in § 63.694(m). Documentation must be prepared by the owner or operator and maintained at the facility to support the determination of the process vent stream flow rate. This documentation must include identification of each process vent exempted under this paragraph and the test results used to determine the process vent stream flow rate.

(4) *Remediation material management units.* You are exempt from the requirements of §§ 63.7890 through 63.7932 for units where any of the criteria listed in paragraphs (c)(4)(i) or (ii) of this section are met, except that the records of the determination of these criteria must be maintained as required in § 63.7932(a)(4):

(i) The volatile organic HAP (VOHAP) concentration of the remediation material managed in the unit is less than 500 ppmw. You must follow the requirements in § 63.7912(a) to demonstrate that the VOHAP concentration of the remediation material is less than 500 ppmw. Once the VOHAP concentration has been determined to be less than 500 ppmw, all management units downstream from the point of determination are exempt from the control requirements of this subpart unless a remediation process is used that concentrates all, or part of, the remediation material being managed in the unit such that the VOHAP concentration equals or exceeds 500 ppmw (e.g., free-product separation).

(ii) At your discretion, one or a combination of remediation material management units may be exempted from the requirements in this subpart when the quantity of total annual HAP in Table 1 of this subpart placed in the units exempted under this paragraph is less than 1 megagram per year. For the units to be exempted from the requirements of this subpart, you must meet the requirements in § 63.683(b)(2)(ii)(A) and (B). You may change the units selected to be exempted under this paragraph by preparing a new designation for the exempt units as required by § 63.683(b)(2)(ii)(A) and performing a new determination as required by § 63.683(b)(2)(ii)(B).

(5) *Tanks and surface impoundments.* You are exempt from the requirements of §§ 63.7890 (excluding § 63.7890(a)) through 63.7932 for any tank or surface impoundment used for biological treatment processes where the requirements of § 63.683(b)(2)(iii)(A) or (B) and monitored in accordance with § 63.684(e)(4) are met, except that the records of the determination of these criteria must be maintained as required in § 63.7932(a)(4).

(6) Cleanup of any contamination where removal or treatment of the material begins within seven days from the time that the contamination occurs. The cleanup process should be continuous (i.e., performed every workday) and typically completed in 30 days or less.

(7) Radioactive mixed waste managed in accordance with all applicable regulations under the Atomic Energy Act and the Nuclear Waste Policy Act authorities.

(d) An affected source is a new affected source if you commenced construction of the affected source after July 30, 2002 and you meet the applicability criteria in § 63.7881 at the time you commenced construction.

(e) An affected source is reconstructed if you meet the criteria as defined in § 63.2 of subpart A of this part.

(f) An affected source is existing if it is not new or reconstructed.

§ 63.7883 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to the guidance in paragraphs (a)(1) and (2) of this section.

(1) If you startup your affected source before the effective date of the subpart, then you must comply with the emissions limitations and work practice standards in this subpart no later than the effective date of the subpart. If you startup your affected source before the effective date of the subpart, but the affected source will not operate on or after the effective date of the subpart, then that affected source is not subject to any of the requirements contained in this subpart.

(2) If you startup your affected source after the effective date of the subpart, then you must comply with the emissions limitation and work practice standards in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emissions limitations and work practice standards for existing sources no later than 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**]. If you have an existing affected source that will not be in operation on or after 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], then the affected source is not subject to any of the requirements contained in this subpart.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, paragraphs (c)(1) and (2) of this section apply:

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the source must be in compliance with this subpart by no later than 3 years after it becomes a major source.

(d) You must meet the notification requirements in § 63.7931(a) according to the schedule in § 63.7931(b) and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emissions limitations and work practice standards in this subpart.

Emissions Limitations and Work Practice Standards

§ 63.7890 What emissions limitations and work practice standards must I meet?

(a) You must meet each emissions limitation for process vent affected sources in Table 2 of this subpart that applies to you.

(b) You must meet each emissions limitation for remediation material management unit affected sources in Table 3 of this subpart that applies to you.

(c) You must meet each operating limit in Table 4 of this subpart that applies to you. In lieu of the operating limits in Table 4 of this subpart, you may choose to establish an operating limit based on total organic or HAP emissions concentration using a continuous emissions monitoring system (CEMS). In this case, the average outlet total organic or HAP

concentration in any 24-hour period must not exceed the average concentration established during the performance test (see § 63.7913(f)).

(d) You must meet each work practice standard in Table 5 of this subpart that applies to you.

(e) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section. If you apply for permission to use an alternative to the work practice standards in this section, you must submit the information described in § 63.6(g)(2).

General Compliance Requirements

§ 63.7900 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emissions limitations (including operating limits) and the work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) For each monitoring system required in this section, you must develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that addresses the following:

(1) Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (e.g., calibrations).

(e) In your site-specific monitoring plan, you must also address the following:

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8);

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(f) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(g) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

§ 63.7901 What requirements must I meet if I transfer remediation material to another party, another facility or receive remediation material from another facility?

(a) You may elect to transfer remediation material to an on-site remediation operation not owned or operated by the owner or operator of the remediation material, or to an off-site treatment operation. If you manage remediation material meeting the criteria in § 63.7882 you must comply with the requirements in paragraphs (a)(1) through (4) of this section.

(1) The owner or operator transferring the remediation material must:

(i) Comply with the provisions specified in §§ 63.7890 through 63.7933 of this subpart for each affected source that manages remediation material prior to shipment or transport.

(ii) Include a notice with the shipment or transport of each remediation material item. The notice must state that the remediation material contains organic HAP that are to be treated in accordance with the provisions of this subpart. When the transport is continuous or ongoing (for example, discharge to a publicly owned treatment works), the notice must be submitted to the treatment operator initially and whenever there is a change in the required treatment.

(2) You may not transfer the remediation material unless the transferee has submitted to the EPA a written certification that the transferee will manage and treat the remediation material received from a source subject to the requirements of this subpart in accordance with the requirements of §§ 63.7890 through 63.7933. The certifying entity may revoke the written certification by sending a written statement to the EPA and the owner or operator providing at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions listed in this paragraph. Upon expiration of the notice period, you may not transfer the remediation material to the treatment operation.

(3) By providing this written certification to the EPA, the certifying entity accepts responsibility for compliance with the regulatory provisions listed in paragraph (a)(2) of this section with respect to any shipment of remediation material covered by the written certification. Failure to abide by any of those provisions with respect to such shipments may result in enforcement action by the EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of these provisions by owners or operators of sources.

(4) Written certifications and revocation statements to the EPA from the transferees of remediation material must be signed by the responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office at the addresses listed in 40 CFR 63.13. Such written certifications are not transferable by the treater.

Testing and Initial Compliance Requirements

§ 63.7910 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) For existing sources, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.7883(b).

(b) For new sources, you must conduct initial performance tests and other initial compliance demonstrations according to the provisions in § 63.7(a)(2)(i) and (ii).

§ 63.7911 When must I conduct subsequent performance tests?

For non-flare control devices, you must conduct the performance testing required in Table 6 of this subpart at any time the EPA requires you to in accordance with section 114 of the CAA.

§ 63.7912 What tests, design evaluations, and other procedures must I use?

(a) *Determination of average VOHAP concentration of material prior to, or at, the point of management or treatment.* This section specifies the testing methods and procedures required for determining the average VOHAP concentration for remediation material.

(1) These methods may be used to determine the average VOHAP concentration of any material listed in (a)(1)(i) through (iii) of this section.

(i) A single remediation material stream; or

(ii) Two or more remediation material streams that are combined prior to, or within, a management or treatment unit or operation; or

(iii) Remediation material that is combined with one or more non-

remediation material streams prior to, or within, a management or treatment operation or unit.

(2) The average VOHAP concentration of a material must be determined using either direct measurement as specified in paragraph (a)(3) of this section or by knowledge as specified in paragraph (a)(4) of this section.

(3) *Direct measurement* to determine VOHAP concentration.

(i) *Sampling.* Samples of each material stream must be collected from the container, pipeline, or other device used to deliver each material stream prior to entering the treatment or management unit in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VOHAP concentration for the material stream on a mass-weighted average basis must be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the material stream but must not exceed 1 year. For streams that are combined, an averaging period representative for all streams must be selected.

(B) No less than four samples must be collected to represent the complete range of HAP compositions and HAP quantities that occur in each material stream during the entire averaging period due to normal variations in the material stream(s). Examples of such normal variations are variation of material HAP concentration within a contamination area or seasonal variations in non-remediation material quantity.

(C) All samples must be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the material stream(s) are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846 or Method 25D in 40 CFR part 60, appendix A.

(ii) *Analysis.* Each collected sample must be prepared and analyzed in accordance with either one of the methods listed in § 63.694(b)(2)(ii), or any current EPA Contracts Lab Program method (or future revisions) capable of identifying all the HAP in Table 1 of this subpart.

(iii) *Calculations.* The average VOHAP concentration $\overline{C}$ on a mass-weighted basis must be calculated by using the results for all samples analyzed in accordance with paragraph (a)(3)(ii) of this section and Equation 1 of this section as follows:

$$\overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i) \qquad \text{(Eq. 1)}$$

where:

$\overline{C}$ = Average VOHAP concentration of the material on a mass-weighted basis, ppmw.

i= Individual sample "i" of the material.

n = Total number of samples of the material collected (at least 4 per stream) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of material stream represented by C_i, kilograms per hour (kg/hr).

Q_T = Total mass quantity of all material during the averaging period, kg/hr.

C_i = Measured VOHAP concentration of sample "i" as determined in accordance with the requirements of (a)(3)(ii) of this section, ppmw.

(4) *Knowledge of the material* to determine VOHAP concentration.

(i) Documentation must be prepared that presents the information used as the basis for the owner's or operator's knowledge of the material stream's average VOHAP concentration. Examples of information that may be used as the basis for knowledge include: material balances for the source(s) generating each material stream; species-specific chemical test data for the material stream from previous testing that are still applicable to the current material stream; test data for material from the contamination area(s) being remediated; or other knowledge based on information included in manifests, shipping papers, or waste certification notices.

(ii) If test data are used as the basis for knowledge, then the owner or operator must document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VOHAP concentration. For example, an owner or operator may use HAP concentration test data for the material stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A of this part as the basis for knowledge of the material. This information must be provided for each material stream where streams are combined.

(iii) An owner or operator using species-specific chemical concentration test data as the basis for knowledge of the material may adjust the test data to the corresponding average VOHAP concentration value which would be obtained had the material samples been analyzed using Method 305. To adjust these data, the measured concentration for each individual HAP chemical species contained in the material is multiplied by the appropriate species-specific adjustment factor (f_{m305}) listed in Table 1 of this subpart.

(iv) In the event that the Administrator and the owner or operator disagree on a determination of the average VOHAP concentration for a material stream using knowledge, then the results from a determination of VOHAP concentration using direct measurement as specified in paragraph (a)(3) of this section must be used to establish compliance with the applicable requirements of this subpart. The Administrator may perform or request that the owner or operator perform this determination using direct measurement.

(b) You must conduct either each performance test in Table 6 of this subpart that applies to you or each design analysis specified in § 63.693(d)(2)(ii), (e)(2)(ii), (f)(2)(ii), or (g)(2)(i)(B) that applies to you.

(c) You must conduct each performance test according to the requirements in § 63.7(e)(1) and under the specific conditions that this subpart specifies in Table 6 of this subpart.

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour. During the performance test conducted according to this section, you must collect the appropriate operating parameter monitoring system data (see Table 4 of this subpart), average the operating parameter data over each test run, and set operating limits, whether a minimum or maximum value, based on the average of values for each of the three test runs. If you use a control device design analysis to demonstrate control device performance, then the minimum or maximum operating parameter value must be established based on the control device design analysis and supplemented, as necessary, by the control device manufacturer

recommendations or other applicable information.

(e) *Compliance with control device percent reduction requirement.* You must use Equations 2, 3 and 4 of this section to determine initial and ongoing compliance with the control device percent reduction limit in Table 2 of this subpart for the combination of all affected process vents at the facility. You must use Equations 2, 3 and 5 of this section to determine initial and ongoing compliance with the control device percent reduction limit in Table 3 of this subpart for remediation material management units, except that the references to uncontrolled vents for Equations 2 and 3 of this section do not apply.

(1) To calculate control device inlet and outlet concentrations use Equations 2 and 3 as follows:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad \text{(Eq. 2)}$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o \qquad \text{(Eq. 3)}$$

Where:

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, dry basis, parts per million by volume. For uncontrolled vents, $C_{ij} = C_{oj}$ and equal the concentration exiting the vent;

E_i, E_o = Mass rate of total organic compounds (TOC) (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour. For uncontrolled vents, $E_i = E_o$ and equal the concentration exiting the vent;

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole. For uncontrolled vents, $M_{ij} = M_{oj}$ and equal the gas stream molecular weight exiting the vent;

Q_i, Q_o = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meters per minute (dscm/min). For uncontrolled vents, $Q_i = Q_o$ and equals the flowrate exiting the vent;

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$(gram-mole per standard cubic meter)(kilogram/gram)(minute/hour, where standard temperature (gram-mole per standard cubic meter) is 20°C;

n = the number of components in the sample.

(2) To calculate control device emissions reductions for process vents use Equation 4 of this section as follows:

$$R_V = \frac{\sum_{j=1}^{n} E_i - \sum_{j=1}^{n} E_o}{\sum_{j=1}^{n} E_i} \times 100 \qquad \text{(Eq. 4)}$$

Where:

R_v = Overall emissions reduction for all affected process vents, percent

E_i = Mass rate of TOC (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the inlet to the control device, or exiting the vent for uncontrolled vents, as calculated in this section, kilograms TOC per hour or kilograms HAP per hour;

E_o = Mass rate of TOC (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the outlet to the control device, or exiting the vent for uncontrolled vents, as calculated in this section, kilograms TOC per hour or kilograms HAP per hour. For vents without a control device, $E_o = E_i$;

n = number of affected source process vents.

(3) To calculate control device emissions reductions for remediation material management units use Equation 5 of this section as follows:

$$R_{cd} = \frac{E_i - E_o}{E_i} \times 100 \qquad \text{(Eq. 5)}$$

Where:

R_{cd} = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (e)(1) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (e)(1) of this section, kilograms TOC per hour or kilograms HAP per hour.

(4) If the vent stream entering a boiler or process heater is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total HAP or TOC (minus methane and ethane) across the device must be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(f) *Compliance with the total organic mass emissions rate.*

(1) The requirements of paragraphs (f)(2) through (4) of this section must be used to determine compliance with the emissions rate limits in Table 2 of this subpart.

(2) Initial and ongoing compliance with the total organic mass flow rates specified in Table 2 of this subpart must be determined using Equation 6 of this section as follows:

$$E_h = Q_{sd}\left\{\sum_{i=1}^{n} C_i MW_i\right\}[0.0416]\left[10^{-6}\right] \qquad \text{(Eq. 6)}$$

Where:

E_h = Total organic mass flow rate, kg/h;

Q_{sd} = Volumetric flow rate of gases entering or exiting control device (or exiting the process vent if no control device is used), as determined by Method 2, dscm/h;

n= Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion from molar volume, kg-mol/m^3 (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm, ppm^{-1}.

(3) Ongoing compliance with the annual total organic emissions rate specified in Table 2 of this subpart must be determined using Equation 7 of this section as follows:

$$E_A = (E_h)(H) \qquad \text{(Eq. 7)}$$

Where:

E_A = Total organic mass emissions rate, kilograms per year;

E_h = Total organic mass flow rate for the process vent, kg/h;
H = Total annual hours of operation for the affected unit, h.

(4) Ongoing compliance with the total organic emissions limit from all affected process vents at the facility in Table 2 of this subpart must be determined by:

(i) summing the total hourly organic mass emissions rates (E_h as determined in Equation 6 of this section); and

(ii) summing the total annual organic mass emissions rates (E_A, as determined in Equation 7 of this section) for all affected process vents at the facility.

(g) *Compliance with HAP concentration limit.*

(1) To determine compliance with the enclosed combustion device total HAP concentration limits specified in Table 2 of this subpart, you must use either Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A, to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that have been validated according to Method 301 of appendix A of this part, may be used. The following procedures must be used to calculate ppmv concentration, corrected to 3 percent oxygen:

(2) The minimum sampling time for each run must be 1 hour, in which either an integrated sample or a minimum of four grab samples must be taken. If grab sampling is used, then the samples must be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(3) The TOC concentration or total HAP concentration must be calculated according to paragraph (g)(3)(i) or (ii) of this section.

(i) The TOC concentration is the sum of the concentrations of the individual components and must be computed for each run using Equation 8 of this section as follows:

$$C_{TOC} = \frac{\sum_{i=1}^{x}\sum_{j=1}^{n} C_{ji}}{X} \qquad \text{(Eq. 8)}$$

Where:
C_{TOC} = Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.
C_{ji} = Concentration of sample component j of sample i, dry basis, parts per million by volume.
n = Number of components in the sample.
X = Number of samples in the sample run.

(ii) The total HAP concentration must be computed according to Equation 8 in paragraph (g)(3)(i) of this section, except that only HAP listed in Table 1 of this subpart must be summed.

(4) The TOC concentration or total HAP concentration must be corrected to 3 percent oxygen according to paragraphs (g)(4)(i) and (ii) of this section.

(i) The emissions rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B, 40 CFR part 60, appendix A, must be used to determine the oxygen concentration. The samples must be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

(ii) The TOC and HAP concentration must be corrected for percent oxygen by using Equation 9 of this section as follows:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \qquad \text{(Eq. 9)}$$

Where:
C_c = TOC concentration or total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.
C_m = TOC concentration or total HAP concentration, dry basis, parts per million by volume.
$\%O_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(h) You must conduct each design evaluation of a control device according to the specific requirements for the control device in § 63.693(c) through (h). For the purposes of this subpart, when you read the term "HAP listed in Table 1 of this subpart" in 40 CFR Subpart DD, you should refer to Table 1 of this subpart.

(i) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(j) When conducting testing to comply with a HAP or TOC reduction efficiency limit, you must conduct simultaneous sampling at the inlet and outlet of the control device. You must conduct inlet sampling after the final product recovery device. If a vent stream is introduced with the combustion air or as an auxiliary fuel into a boiler or process heater, the location of the inlet sampling sites must be selected to ensure that the measurement of total HAP concentration or TOC concentration includes all vent streams and primary and secondary fuels introduced into the boiler or process heater.

(k) When complying with the emissions rate limit in row (1)(b) of Table 2 of this subpart or a HAP or TOC emissions concentration limit in Table 3 of this subpart, you must conduct sampling at the outlet of the control device.

(l) If you use Method 18, 40 CFR part 60, appendix A, either an integrated sample or a minimum of four grab samples must be taken. If you use grab sampling, then you must take the grab samples at approximately equal intervals in time (such as 15 minutes) during the run. Also, you must first determine which HAP are present in the inlet gas stream using knowledge of the remediation material or the screening procedure described in Method 18, 40 CFR part 60, appendix A, quantify the emissions for all HAP identified as present in the inlet gas stream for both the inlet and outlet gas streams of the control device.

(m) If you use Method 25A, 40 CFR part 60, appendix A, you must calibrate the instrument in accordance with the monitoring plan of § 63.7900 using the single organic HAP representing the largest percent by volume of the emissions. The Method 25A, 40 CFR part 60, appendix A, results are acceptable if: (1) the response from the high level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on its most sensitive scale, and (2) the span value of the analyzer must be less than 100 ppmv.

(n) You must conduct each CMS performance evaluation according to the requirements in § 63.8(e).

§ 63.7913 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CMS according to the requirements in § 63.695(a) through (d), (e)(1) and (e)(2). In addition, you must collect and analyze temperature, flow, pressure, or pH data according to the requirements in paragraphs (a)(1) through (4) of this section:

(1) To calculate a valid hourly value, you must have at least three of four equally spaced data values (or at least two, if that condition is included to allow for periodic calibration checks) for that hour from a CMS that is not out of control according to the monitoring plan referenced in § 63.7900.

(2) To calculate the average emissions for each averaging period, you must have at least 75 percent of the hourly averages for that period using only block hourly average values that are based on valid data (i.e., not from out-of-control periods).

(3) Determine the hourly average of all recorded readings.

(4) Record the results of each inspection, calibration, and validation check.

(b) For each temperature monitoring device, you must meet the requirements in paragraph (a) of this section and also meet the requirements in paragraphs (b)(1) through (8) of this section:

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a noncryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.2° C or 0.75 percent of the temperature value, whichever is larger.

(3) For a cryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.2° C or 2 percent of the temperature value, whichever is larger.

(4) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(5) If a chart recorder is used, it must have a sensitivity in the minor division of at least 20° F.

(6) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7° C of the process temperature sensor's reading.

(7) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(8) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) For each flow measurement device, you must meet the requirements in paragraphs (a)(1) through (4) and paragraphs (c)(1) through (5) of this section:

(1) Locate the flow sensor and other necessary equipment such as straightening vanes in a position that provides a representative flow.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(3) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(4) Conduct a flow sensor calibration check at least semi-annually.

(5) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) For each pressure measurement device, you must meet the requirements in paragraph (a)(1) through (4) and paragraphs (d)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(4) Check pressure tap pluggage daily.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(e) For each pH measurement device, you must meet the requirements in paragraph (a)(1) through (4) and paragraphs (e)(1) through (4) of this section:

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(f) *Alternative to parametric monitoring for any control device.* As an alternative to the parametric monitoring required in paragraphs (a) through (e) of this section, you may install, calibrate, and operate a CEMS to measure the control device outlet total organic emissions or organic HAP emissions concentration. The CEMS used on combustion control devices must include a diluent gas monitoring system (for O_2 or CO_2) with the pollutant monitoring system in order to correct for dilution (e.g., to 0 percent excess air). You must verify the performance of the CEMS initially according to the procedures in Performance Specification 8 (for a total organic emissions CEMS) or Performance Specification 9 (for a HAP emissions CEMS) and Performance Specification 3 (for an O_2 or CO_2 CEMS) of appendix B of 40 CFR part 60. The relative accuracy provision of Performance specification 8, sections 2.4 and 3 need not be conducted. You must prepare a site-specific monitoring plan for operating, calibrating, and verifying the operation of your CEMS in accordance with the requirements in §§ 63.8(c), (d), and (e). You must establish the emissions concentration operating limit according to paragraphs (f)(1),(2), and (3) of this section.

(1) During the performance test required by § 63.7912, you must monitor and record the total organic or HAP emissions concentration at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average total organic or HAP emissions concentration maintained during the performance test. The average total organic or HAP emissions concentration, corrected for dilution as appropriate, is the maximum operating limit for your control device.

(3) Use the CEMS data to verify that the daily (24-hour) average total organic or HAP emissions concentration remain below the established operating limit.

§ 63.7914 How do I demonstrate initial compliance with the emissions limitations and work practice standards?

(a) You must demonstrate initial compliance with each emissions limitation and work practice standard that applies to you according to Tables 7 and 8 of this subpart.

(b) You must establish each site-specific operating limit in Table 4 of this subpart that applies to you according to the requirements in § 63.7912 and Table 6 of this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.7931(e).

Continuous Compliance Requirements

§ 63.7920 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section and the monitoring plan of § 63.7900.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out of control periods and required quality assurance or control activities in data averages and calculations used to report emissions or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.7921 How do I demonstrate continuous compliance with the emissions limitations, operating limits and work practice standards?

(a) You must demonstrate continuous compliance with each emissions limitation, operating limit and work practice standard in Tables 2 through 5 of this subpart that applies to you according to methods specified in Tables 9, 10, and 11 of this subpart.

(b) You must report each instance in which you did not meet each emissions limitation and each operating limit in Tables 9 and 10 of this Subpart that apply to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet the requirements in Table 11 of this subpart that apply to you. These instances are deviations from the emissions limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.7931.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with the startup, shutdown, and malfunction plan.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. We will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notification, Reports, and Records

§ 63.7930 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), 63.8(f)(4) and (6), and 63.9(b) through (h) that apply to you.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after the effective date, you must submit an Initial Notification no later than 120 calendar days after initial startup.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 6, 7, or 8 of this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration required in Tables 7 or 8 of this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Tables 6, 7 or 8 of this subpart that includes a performance test conducted according to the requirements in Table 6 of this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.7931 What reports must I submit and when?

(a) You must submit each report in Table 12 of this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 12 of this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section:

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7883 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.7883.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.7883.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (7) of this section:

(1) Company name and address.

(2) Statement by a responsible official, including that official's name, title, and signature, certifying the truth, accuracy and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) Any changes to the information listed in paragraph (d) of this section that have occurred since the last report.

(5) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(6) If there are no deviations from any emissions limitations (emissions limit or operating limit) that applies to you and there are no deviations from the requirements for work practice standards in Table 11 of this subpart, a statement that there were no deviations from the emissions limitations or work practice standards during the reporting period.

(7) If there were no periods during which the CMS and operating parameter monitoring systems were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during the which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emissions limitation (emissions limit,

operating limit) and for each deviation from the requirements for work practice standards in Table 11 of this subpart that occurs at an affected source where you are not using a CMS to comply with the emissions limitations or work practice standards in this subpart, the compliance report must contain the information in (c)(1) through (4) of this section, and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the action taken to correct the cause of the deviation.

(e) For each deviation from an emissions limitation (emissions limit, operating limit) occurring at an affected source where you are using a CMS in accordance with the monitoring plan of § 63.7900 to comply with the emissions limitation in this subpart, you must include the information in paragraphs (c)(1) through (4), and paragraphs (e)(1) through (12) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) An identification of each hazardous air pollutant that was monitored at the affected source.

(9) A brief description of the process units.

(10) A brief description of the CMS.

(11) The date of the latest CMS certification or audit.

(12) A description of any changes in CMS, processes, or controls since the last reporting period.

(f) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 12 of this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emissions limitation(including any operating limit), or work practice requirement in this subpart, submission of the compliance report must be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report must not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

§ 63.7932 What records must I keep?

(a) You must keep records as described in paragraphs (a)(1) through (4) of this section:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(1) and (b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startups, shutdowns, and malfunctions.

(3) Results of performance tests.

(4) The records of initial and ongoing determinations for affected sources that are exempt from control requirements under this subpart.

(b) For each CMS, you must keep the records as described in paragraphs (b)(1) and (2) of this section:

(1) Records described in § 63.10(b)(2)(vi) through (xi) that apply to your CMS.

(2) Performance evaluation plans, including previous (i.e., superseded) versions of the plan as required in § 63.8(d)(3).

(c) You must keep the records required in Tables 9, 10, and 11 of this subpart to show continuous compliance with each emissions limitation and work practice standard that applies to you.

§ 63.7933 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep your files of all information (including all reports and notifications) for 5 years following the date of each occurrence, measurement, maintenance, action taken to correct the cause of a deviation, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

(d) If, after the remediation activity is completed, there is no other remediation activity at the facility, and you are no longer the owner of the facility, you may keep all records for the completed remediation activity at an offsite location provided you notify the Administrator in writing of the name, address and contact person for the offsite location.

Other Requirements and Information

§ 63.7940 What parts of the General Provisions apply to me?

Table 13 of this subpart shows which parts of the General Provisions in § 63.1–§ 63.15 apply to you.

§ 63.7941 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office (see list in § 63.13) to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this Subpart to a State, local, or tribal agency under section 40 CFR part 63, Subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as follows.

(1) Approval of alternatives to the non-opacity emissions limitations and

work practice standards in § 63.7890(a) through (d) under § 63.6(g).

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7942 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section. If the same term is defined in another subpart and in this section, it will have the meaning given in this section for purposes of this subpart.

Air stripping means a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers and bubble-cap, sieve, or valve-type plate towers are among the process configuration used for contacting the air and a liquid.

Boiler means an enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater.

Closed-vent system means a system that is not open to the atmosphere and is composed of hard-piping, ductwork, connections, and, if necessary, fans, blowers, or other flow-inducing device that conveys gas or vapor from an emissions point to a control device.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that prevents or reduces air pollutant emissions to the atmosphere by blocking an opening in a cover when the device is secured in the closed position. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

Container means a portable unit used to hold material. Examples of containers include, but are not limited to drums, dumpsters, roll-off boxes, bulk cargo containers commonly known as portable tanks or totes, cargo tank trucks, dump trucks and tank rail cars.

Continuous record means documentation of data values measured at least once every 15 minutes and recorded at the frequency specified in this subpart.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minutes or more frequent block averages.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Control device means equipment used for recovering or oxidizing organic vapors. Examples of such equipment include but are not limited to carbon adsorbers, condensers, vapor incinerators, flares, boilers, and process heaters.

Cover means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the remediation material managed in a unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit (such as a tarp) or a cover may be formed by structural features permanently integrated into the design of the unit.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation (including any operating limit), or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation, (including any operating limit), or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emissions limitation means any emissions limit, opacity limit, operating limit, or visible emissions limit.

Emissions point means an individual tank, surface impoundment, container, oil/water, organic/water separator, transfer system, vent, or enclosure.

Enclosure means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapor through a closed vent system to a control device.

Equipment means each pump, pressure relief device, sampling connection system, valve, and connector used in remediation material service at a facility.

External floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a tank with no fixed roof.

Facility means all contiguous or adjoining property that is under common control including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof. A unit or group of units within a contiguous property that are not under common control (e.g., a wastewater treatment unit located at the facility but is owned by a different company) is a different facility.

Fixed roof means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the liquid managed in the unit.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Floating roof means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the liquid being contained, and is equipped with a continuous seal.

HAP means hazardous air pollutants.

Hard-piping means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

Individual drain system means a stationary system used to convey wastewater streams or residuals to a remediation material management unit or to discharge or disposal. The term includes hard-piping, all drains and junction boxes, together with their associated sewer lines and other junction boxes (*e.g.*, manholes, sumps, and lift stations) conveying wastewater streams or residuals. For the purpose of this subpart, an individual drain system is not a drain and collection system that is designed and operated for the sole purpose of collecting rainfall runoff (*e.g.*, stormwater sewer system) and is segregated from all other individual drain systems.

Internal floating roof means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it inside a tank that has a fixed roof).

Light-material service means the container is used to manage remediation material for which both of the following conditions apply: the vapor pressure of one or more of the organic constituents in the remediation material is greater than 0.3 kilopascals (kPa) at 20° C and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20° C is equal to or greater than 20 percent by weight.

Liquid-mounted seal means a foam- or liquid-filled continuous seal mounted in contact with the liquid in a unit.

MACT activity means a non-remediation activity that is covered by a category of major sources listed pursuant to section 112(c) of the CAA. An activity is a MACT activity whether or not it is subject to the control requirements of its appropriate MACT standard(s).

Maximum HAP vapor pressure means the sum of the individual HAP equilibrium partial pressure exerted by remediation material at the temperature equal to either: the monthly average temperature as reported by the National Weather Service when the remediation material is stored or treated at ambient temperature; or the highest calendar-month average temperature of the remediation material when the remediation material is stored at temperatures above the ambient temperature or when the remediation material is stored or treated at temperatures below the ambient temperature. For the purpose of this subpart, maximum HAP vapor pressure is determined using the procedures specified in § 63.694(j). For the purpose of this subpart, when you read the term "Table 3 or Table 4 of this subpart" in § 63.694(j) you should refer to Table 3 of this subpart.

Media means materials found in the natural environment such as soil, ground water, surface water, and sediments, or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of media. This definition does not include debris (as defined in 40 CFR 268.2).

Metallic shoe seal means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in 63.694(k).

Oil/water separator means a separator as defined for this subpart that is used to separate oil from water.

Operating parameter value means a minimum or maximum value established for a control device or treatment process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emissions limitation or standard.

Organic/water separator means a separator as defined for this subpart that is used to separate organics from water.

Point-of-extraction means the point where you first extract the remediation material prior to placing the remediation material in a management unit or other unit, but before the first point where the organic constituents in the remediation material have the potential to volatilize and be released to the atmosphere. For the purpose of applying this definition to this subpart, the first point where the organic constituents in the remediation material have the potential to volatilize and be released to the atmosphere is not a fugitive emissions point due to an equipment leak from any of the following equipment components: pumps, compressors, valves, connectors, instrumentation systems, or safety devices.

Process heater means an enclosed combustion device that transfers heat released by burning fuel directly to process streams or to heat transfer liquids other than water.

Process vent means any open-ended pipe, stack, duct, or other opening intended to allow the passage of gases, vapors, or fumes to the atmosphere and this passage is caused by mechanical means (such as compressors, vacuum-producing systems or fans) or by process-related means (such as volatilization produced by heating). For the purposes of this subpart, a process vent is neither a safety device (as defined in this section) nor a stack, duct or other opening used to exhaust combustion products from a boiler, furnace, heater, incinerator, or other combustion device.

Remediation material means material, including contaminated media, which is managed as a result of implementing remedial activities required under Federal, State or local authorities, or voluntary remediation activity.

Remediation material management unit means a tank, container, surface impoundment, oil/water separator, organic/water separator or transfer system used to manage remediation material.

Remediation material service means any time when a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, or instrumentation system contains or contacts remediation material.

Responsible official means responsible official as defined in 40 CFR 70.2.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emissions control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emissions control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

Separator means a remediation material management unit, generally a tank, used to separate oil or organics from water. A separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to any additional treatment units such as an air flotation unit clarifier or biological treatment unit. Examples of a separator include, but are not limited to, an API separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

Single-seal system means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

Sludge means sludge as defined in § 260.10 of this chapter.

Soil means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil.

Solvent extraction means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two being mutually insoluble) to preferentially dissolve and transfer one or more components into the solvent.

Stabilization process means any physical or chemical process used to either reduce the mobility of contaminants in media or eliminate free liquids as determined by Test Method 9095—Paint Filter Liquids Test in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992. (As an alternative, you may use any more recent, updated version of Method 9095 approved by the EPA). A stabilization process includes mixing remediation material with binders or other materials, and curing the resulting remediation material and binder mixture. Other synonymous terms used to refer to this process are fixation or solidification. A stabilization process does not include the adding of absorbent materials to the surface of remediation material, without mixing, agitation, or subsequent curing, to absorb free liquid.

Surface impoundment means a unit that is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquids. Examples of surface impoundments include holding, storage, settling, and aeration pits, ponds, and lagoons.

Tank means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support and is designed to hold an accumulation of liquids or other materials.

Temperature monitoring device means a piece of equipment used to monitor temperature and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius (°C) or ±1.2 degrees °C, whichever value is greater.

Transfer system means a stationary system for which the predominant function is to convey liquids or solid materials from one point to another point within waste management operation or recovery operation. For the purpose of this subpart, the conveyance of material using a container (as defined of this subpart) or self-propelled vehicle (*e.g.*, a front-end loader) is not a transfer system. Examples of a transfer system include but are not limited to a pipeline, an individual drain system, a gravity-operated conveyor (such as a chute), and a mechanically-powered conveyor (such as a belt or screw conveyor).

Treatment process means a process in which remediation material is physically, chemically, thermally, or biologically treated to destroy, degrade, or remove hazardous air pollutants contained in the material. A treatment process can be composed of a single unit (*e.g.*, a steam stripper) or a series of units (*e.g.*, a wastewater treatment system). A treatment process can be used to treat one or more remediation material streams at the same time.

Vapor-mounted seal means a continuous seal that is mounted such that there is a vapor space between the liquid in the unit and the bottom of the seal.

Volatile organic hazardous air pollutant concentration or *VOHAP concentration* means the fraction by weight of the HAP listed in Table 1 of this subpart that are contained in the remediation material as measured using Method 305, 40 CFR part 63, appendix A and expressed in terms of parts per million (ppm). As an alternative to using Method 305, 40 CFR part 63, appendix A, you may determine the HAP concentration of the remediation material using any one of the other test methods specified in § 63.694(b)(2)(ii). When a test method specified in § 63.694(b)(2)(ii) other than Method 305 in appendix A of this part is used to determine the speciated HAP concentration of the contaminated material, the individual compound concentration may be adjusted by the corresponding f_{m305} listed in Table 1 of this subpart to determine a VOHAP concentration.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

As stated in §§ 63.7882 (c)(1)(i) and (ii), (c)(2), (c)(3)(i) through (iii); 63.7912(a)(3)(ii), (g)(3)(ii), (h); and 63.7942; you must use the information in the following table to determine the total annual HAP quantity in the extracted remediation material at the facility:

TABLE 1 TO SUBPART GGGGG OF PART 63—HAZARDOUS AIR POLLUTANTS

CAS No.[a]	Compound Name	$f_{m\ 305}$
75070	Acetaldehyde	1.000
75058	Acetonitrile	0.989
98862	Acetophenone	0.314
107028	Acrolein	1.000
107131	Acrylonitrile	0.999
107051	Allyl chloride	1.000
71432	Benzene (includes benzene in gasoline)	1.000
98077	Benzotrichloride (isomers and mixture)	0.958
100447	Benzyl chloride	1.000
92524	Biphenyl	0.864
542881	Bis(chloromethyl)ether[b]	0.999
75252	Bromoform	0.998
106990	1,3-Butadiene	1.000
75150	Carbon disulfide	1.000
56235	Carbon Tetrachloride	1.000
43581	Carbonyl sulfide	1.000
133904	Chloramben	0.633
108907	Chlorobenzene	1.000
67663	Chloroform	1.000
107302	Chloromethyl methyl ether[b]	1.000

TABLE 1 TO SUBPART GGGGG OF PART 63—HAZARDOUS AIR POLLUTANTS—Continued

CAS No.[a]	Compound Name	f_{m_atos}
126998	Chloroprene	1.000
98828	Cumene	1.000
94757	2,4-D, salts and esters	0.167
334883	Diazomethane[c]	0.999
132649	Dibenzofurans	0.967
96128	1,2-Dibromo-3-chloropropane	1.000
106467	1,4-Dichlorobenzene(p)	1.000
107062	Dichloroethane (Ethylene dichloride)	1.000
111444	Dichloroethyl ether (Bis(2-chloroethyl ether)	0.757
542756	1,3-Dichloropropene	1.000
79447	Dimethyl carbamoyl chloride[c]	0.150
57147	1,1-Dimethyl hydrazine.	0.0025
64675	Diethyl sulfate	0.086
77781	Dimethyl sulfate	0.0008
121697	N,N-Dimethylaniline	0.0077
51285	2,4-Dinitrophenol	0.0848
121142	2,4-Dinitrotoluene	0.869
123911	1,4-Dioxane (1,4-Diethyleneoxide)	0.939
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	1.000
106887	1,2-Epoxybutane	1.000
140885	Ethyl acrylate	1.000
100414	Ethyl benzene	1.000
75003	Ethyl chloride (Chloroethane)	0.999
106934	Ethylene dibromide (Dibromoethane)	1.000
107062	Ethylene dichloride (1,2-Dichloroethane)	0.867
151564	Ethylene imine (Aziridine)	1.000
75218	Ethylene oxide	1.000
75343	Ethylidene dichloride (1,1-Dichloroethane)	[e]
	Glycol ethers[d] that have a Henry's Law constant value equal to or greater than 0.1 Y/X(1.8 X 10–6 atm/gm-mole/m^3) at 25°C.	
118741	Hexachlorobenzene	0.97
87683	Hexachlorobutadiene	0.88
67721	Hexachloroethane	0.499
110543	Hexane	1.000
78591	Isophorone	0.506
58899	Lindane (all isomers)	1.000
67561	Methanol	0.855
74839	Methyl bromide (Bromomethane)	1.000
74873	Methyl chloride (Choromethane)	1.000
71556	Methyl chloroform (1,1,1-Trichloroethane)	1.000
78933	Methyl ethyl ketone (2-Butanone)	0.990
74884	Methyl iodide (Iodomethane)	1.000
108101	Methyl isobutyl ketone (Hexone)	0.979
624839	Methyl isocyanate	1.000
80626	Methyl methacrylate	0.999
1634044	Methyl tert butyl ether	1.000
75092	Methylene chloride (Dichloromethane)	1.000
91203	Naphthalene	0.994
98953	Nitrobenzene	0.394
79469	2-Nitropropane	0.989
82688	Pentachloronitrobenzene (Quintobenzene)	0.839
87865	Pentachlorophenol	0.0898
75445	Phosgene[c]	1.000
123386	Propionaldehyde	0.999
78875	Propylene dichloride (1,2-Dichloropropane)	1.000
75569	Propylene oxide	1.000
75558	1,2-Propylenimine (2-Methyl aziridine)	0.945
100425	Styrene	1.000
96093	Styrene oxide	0.830
79345	1,1,2,2-Tetrachloroethane	0.999
127184	Tetrachloroethylene (Perchloroethylene)	1.000
108883	Toluene	1.000
95534	o-Toluidine	0.152
120821	1,2,4-Trichlorobenzene	1.000
71556	1,1,1-Trichloroethane (Methyl chlorform)	1.000
79005	1,1,2-Trichloroethane (Vinyl trichloride)	1.000
79016	Trichloroethylene	1.000
95954	2,4,5-Trichlorophenol	0.108
88062	2,4,6-Trichlorophenol	0.132
121448	Triethylamine	1.000
540841	2,2,4-Trimethylpentane	1.000
108054	Vinyl acetate	1.000

TABLE 1 TO SUBPART GGGGG OF PART 63—HAZARDOUS AIR POLLUTANTS—Continued

CAS No.[a]	Compound Name	$f_{m\ 305}$
593602	Vinyl bromide	1.000
75014	Vinyl chloride	1.000
75354	Vinylidene chloride (1,1-Dichloroethylene)	1.000
1330207	Xylenes (isomers and mixture)	1.000
95476	o-Xylenes	1.000
108383	m-Xylenes	1.000
106423	p-Xylenes	1.000

Notes:
$f_{m\ 305}$ = Fraction measure factor in Method 305, 40 CFR part 63, appendix A of this part.
[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.
[b] Denotes a HAP that hydrolyzes quickly in water, but the hydrolysis products are also HAP chemicals.
[c] Denotes a HAP that may react violently with water.
[d] Denotes a HAP that hydrolyzes slowly in water.
[e] The $f_{m\ 305}$ factors for some of the more common glycol ethers can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

As stated in §§ 63.7890(a) and 63.7912(e), (f)(1) through (4), (g)(1), and (k), you must meet each emissions limitation for process vent affected sources in the following table that applies to you:

TABLE 2 TO SUBPART GGGGG OF PART 63.—EMISSIONS LIMITATIONS FOR PROCESS VENT AFFECTED SOURCES

For . . .	You must meet the following emissions limitation . . .
1. All new and existing affected source process vents associated with remediation activities.	a. For each 24-hour period, reduce emissions of HAP, listed in Table 1 of this subpart, or TOC (minus methane and ethane) from all affected process vents by 95 weight-percent by venting emissions through a closed-vent system to any combination of control devices meeting the requirements of § 63.693. Instead of achieving the performance specifications listed in § 63.693(d) through (g), you must meet a performance level for each control device necessary to achieve the 95% control level for all process vents combined; or b) For each period specified, reduce emissions of TOC (minus methane and ethane) from all affected source process vents at the facility below 1.4 kg/h (3.0 lb/h) and b. 8 mg/yr (3.1 tons/yr). Instead of achieving the performance specifications listed in § 63.693(d) through (g), you must meet a performance level for each control device necessary to achieve the overall emissions rate limit for all process vents (whether controlled or uncontrolled) combined.

As stated in §§ 63.7890(b), 63.7912 (e) and (k), and 63.7942, you must meet each emissions limitation for remediation material management unit affected sources in the following table that applies to you:

TABLE 3 TO SUBPART GGGGG OF PART 63.—EMISSIONS LIMITATIONS FOR REMEDIATION MATERIAL MANAGEMENT UNIT AFFECTED SOURCES

For each . . .	Where . . .	Then you must . . .
1. New and existing tank that is an affected source with a design capacity less than 38 cubic meters (m^3) (10,000 gallons).	a. The maximum HAP vapor pressure of the remediation material in the tank is less than 76.6 kilopascals (kPa) (11.1 psia).	i. For each 24-hour period, reduce emissions of HAP, listed in Table 1 of this subpart, or TOC (minus methane and ethane) by 95 weight-percent (or, for combustion devices, to an exhaust concentration of 20 parts per million by volume, on a dry basis, corrected to 3% oxygen) by venting emissions through a closed-vent system to any combination of control devices meeting the requirements of § 63.693; or ii. Comply with one of the work practice standards (control level 1 or 2) specified in Table 5, item 1 of this subpart.
2. New and existing tank that is an affected source with a design capacity greater than or equal to 38 m^3 and less than 151 m^3 (40,000 gallons).	a. The maximum HAP vapor pressure of the remediation material in the tank is less than 13.1 kPa (1.9 psia).	Same as Table 3, items 1(a) of this subpart;
3. New and existing tank that is an affected source with a design capacity greater than or equal to 38 m^3 and less than 151 m^3 (40,000 gallons).	a. The maximum HAP vapor pressure of the remediation material in the tank is greater than or equal to 13.1 kPa (1.9 psia).	i. Same as Table 3, item 1(a) of this subpart; or ii. Comply with the work practice standards (for control level 2) specified in Table 5, item 2 of this subpart.
4. New and existing tank that is an affected source with a design capacity greater than or equal to 151 m^3.	a. The maximum HAP vapor pressure of the remediation material in the tank is less than 0.7 kPa (0.1 psia).	Same as Table 3, item 1(a) of this subpart.

TABLE 3 TO SUBPART GGGGG OF PART 63.—EMISSIONS LIMITATIONS FOR REMEDIATION MATERIAL MANAGEMENT UNIT AFFECTED SOURCES—Continued

For each . . .	Where . . .	Then you must . . .
5. New and existing tank that is an affected source with a design capacity greater than or equal to 151 m^3.	a. The maximum HAP vapor pressure of the remediation material in the tank is greater than or equal to 0.7 kPa (0.1 psia).	i. Same as Table 3, item 1(a) of this subpart; or ii. Comply with the work practice standards (for control level 2) specified in Table 5, item 2 of this subpart.
6. New and existing container that is an affected source.	a. The design capacity is greater than 0.1 m^3 (26 gallons) and less than or equal to 0.46 m^3 (119 gallons).	i. Same as Table 3, item 1(a) of this subpart; or ii. Comply with one of the work practice standards (control level 1, 2 or 3) specified in Table 5, items 3 or 4 of this subpart.
7. New and existing container that is an affected source.	a. The design capacity is greater than 0.46 m^3 and the container is not in light-material service as defined in § 63.7942.	i. Same as Table 3, item 1(a) of this subpart; or ii. Comply with one of the work practice standards (control level 1, 2 or 3) specified in Table 5, item 3 or 4 of this subpart.
8. New and existing container that is an affected source.	a. The design capacity is greater than 0.46 m^3 and the container is in light-material service as defined in § 63.7942.	i. Same as Table 3, item 1(a) of this subpart; or ii. Comply with one of the work practice standards (control level 2 or 3) specified in Table 5, item 4 or 5 of this subpart.
9. New and existing container that is an affected source.	a. The design capacity is greater than 0.1 m^3 and the container is used for a stabilization process.	i. Comply with one of the following whenever the remediation material is exposed to the atmosphere: (1) The requirements of Table 3, item 1(a) of this subpart; or (2) The work practice standards (for control level 3) specified in Table 5, item 4 of this subpart.
10. New and existing surface impoundment that is an affected source.	i. Same as Table 3, item 1(a) of this subpart; or.	ii. Comply with one of the work practice standards specified in Table 5, items 6 or 7 of this subpart.
11. New and existing oil/water separator and organic/water separator.	i. Same as Table 3, item 1(a) of this subpart, or.	ii. Comply with one of the work practice standards specified in Table 5, items 8 or 9 of this subpart.

As stated in §§ 63.7890(c), 63.7912(d), 63.7914(b) and 63.7942, you must meet each operating limit in the following table that applies to you:

TABLE 4 TO SUBPART GGGGG OF PART 63.—OPERATING LIMITS AND ASSOCIATED WORK PRACTICES FOR CONTROL DEVICES

For . . .	You must . . .
1. Each existing and each new affected source using a thermal incinerator to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Maintain the daily average firebox temperature greater than or equal to the temperature established during the design evaluation or performance test. b. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).
2. Each existing and each new affected source using a catalytic incinerator to comply with an emissions limit in Table 2 and 3 of this subpart.	a. replace the existing catalyst bed with a bed that meets the replacement specifications established during the design evaluation or performance test before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test; and b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the temperature established during the design evaluation or performance test. c. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).

TABLE 4 TO SUBPART GGGGG OF PART 63.—OPERATING LIMITS AND ASSOCIATED WORK PRACTICES FOR CONTROL DEVICES—Continued

For . . .	You must . . .
3. Each existing and each new affected source using a condenser to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Maintain the daily average condenser exit temperature less than or equal to the temperature established during the design evaluation or performance test. b. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).
4. Each existing and each new affected source using a carbon adsorption system with adsorbent regeneration to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test in accordance with § 63.693(d)(2) through (4); and b. Maintain the frequency of regeneration greater than or equal to the frequency established during the design evaluation or performance test in accordance with § 63.693(d)(2) through (4); and c. Maintain the 1-hour average total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the stream mass flow established during the design evaluation or performance test in accordance with § 63.693(d)(2) through (4); and d. Maintain the 1-hour average temperature of the adsorption bed during regeneration (except during the cooling cycle) greater than or equal to the temperature established during the design evaluation or performance test in accordance with § 63.693(d)(2) through (4); and e. Maintain the 1-hour average temperature of the adsorption bed after regeneration (and within 15 minutes after completing any cooling cycle) less than or equal to the temperature established during the design evaluation or performance test in accordance with § 63.693(d)(2) through (4). f. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test in accordance with § 63.693(d)(2) (applies for CEMS only).
5. Each existing and each new affected source using a carbon adsorption system without adsorbent regeneration to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test in accordance with § 63.693(d)(2); and b. Maintain the 1-hour average temperature of the adsorption bed less than or equal to the temperature established during the design evaluation or performance test in accordance with § 63.693(d)(2). c. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).
6. Each existing and each new affected source using a boiler or process heater to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Maintain the daily average firebox temperature within the operating level established during the performance test. b. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).
7. Each existing and each new affected source using a flare to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Operate the flare at all times when emissions may be vented to it and with no visible emissions in accordance with § 63.11(b)(4); and b. Maintain the presence of a flame at all times inaccordance with § 63.11(b)(5); and c. Meet the heat content specification in § 63.11(b)(6)(ii) and the maximum tip velocity specifications in § 63.11(b)(8) or (7), or meet the requirements in § 63.11(b)(6)(i). d. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).

As stated in § 63.7890(d), you must meet each work practice standard in the following table that applies to you:

TABLE 5 TO SUBPART GGGGG OF PART 63.—WORK PRACTICE STANDARDS

For each . . .	You must . . .
1. New or existing tank that is an affected source meeting any set of capacity and vapor pressure limits specified in Table 3, items 1, 2 or 4 of this subpart.	a. As an alternative to the emissions limit in Table 3 of this subpart, comply with the requirements of subpart OO (control level 1) of this part; or b. Comply with the requirements of § 63.685(d) (control level 2) of this part.
2. New or existing tank that is an affected source meeting any set of capacity and vapor pressure limits specified in Table 3, items 3 or 5 of this subpart.	As an alternative to the emissions limit in Table 3 of this subpart, comply with the requirements of § 63.685(d) (control level 2) of this part.
3. New or existing container that is an affected source {meeting any set of capacity limits specified in Table 3, items 6 or 7 of this subpart} that is not vented to a control device.	a. As an alternative to the emissions limit in Table 3 of this subpart, comply with the requirements of § 63.922 (control level 1); or b. Comply with the requirements of § 63.923 (control level 2).
4. New or existing container that is an affected source {meeting any set of capacity limits specified in Table 3, items 6, 7, 8 or 9 of this subpart} that is vented to a control device.	As an alternative to the emissions limit in Table 3 of this subpart, comply with the requirements of § 63.924 (control level 3).
5. New or existing container that is an affected source {meeting the capacity limits specified in Table 3, item 8 of this subpart} that is not vented to a control device.	As an alternative to the emissions limit in Table 3 of this subpart, comply with the requirements of § 63.923 (control level 2).
6. New or existing surface impoundment that is an affected source that is not vented to a control device.	Install a floating membrane cover designed to meet specifications in § 63.942(a) through (c). The membrane must float on the surface at all times during normal operations.
7. New or existing surface impoundment that is an affected source that is vented through a closed vent system to a control device.	a. Install a cover meeting the requirements in § 63.943(b) and (c); and b. Design and operate the closed vent system in accordance with the requirements of § 63.693.
8. New and existing oil/water separator, or organic/water separator that is an affected source that is not vented to a control device.	Follow the requirements of §§ 63.1042 (fixed roof), 63.1043 (floating roof), or 63.1045 (pressurized roof), as appropriate.
9. New and existing oil/water separator, or organic/water separator that is an affected source that *is* vented through a closed vent system to a control device.	a. Follow the requirements of § 63.1044; and b. design and operate the closed vent system in accordance with the requirements of § 63.693.
10. New and existing equipment component that is an affected source	Comply with the requirements of subpart TT (control level 1); or subpart WW (control level 2).
11. New and existing transfer system that is an affected source	a. For individual drain systems, as defined in this subpart, comply with the requirements of subpart RR; and b. For transfer systems, other than individual drain systems, comply with the requirements of § 63.689(c).

As stated in §§ 63.7911(a), 63.7912(b) and (c), 63.7914(b), and 63.7930(e)(2), you must conduct the performance testing required in the following table at any time the EPA requires for non-flare control devices in accordance with section 114 of the CAA:

TABLE 6 TO SUBPART GGGGG OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, and organic/water separators complying with a HAP or TOC reduction efficiency limit in Table 2 or 3 of this subpart, an emissions rate limit in Table 2 of this subpart, or an emissions concentration limit in Table 3 of this subpart.	Select sampling port locations and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A of § 63.7(d)(1)(i).	Sampling sites must be located at the inlet (if emissions reduction or destruction efficiency testing is required) and outlet of the control device and prior to any releases to the atmosphere.
2. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, and organic/water separators complying with a HAP or TOC reduction efficiency limit in Table 2 or 3 of this subpart or an emissions rate limit in Table 2 of this subpart.	Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to part 60 of this chapter.	For HAP or TOC reduction efficiency or emissions rate testing; not necessary for determining compliance with 20 ppmv concentration limit.

TABLE 6 TO SUBPART GGGGG OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
3. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, complying with a HAP or TOC reduction efficiency limit in Table 2 or 3 of this subpart or an emissions rate limit in Table 2 of this subpart.	Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A to part 60 of this chapter.	For flow rate determination only.
4. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, and organic/water separators complying with an emissions concentration limit in Table 3 of this subpart.	Measure O_2 concentration	Method 3A or 3B in appendix A to part 60 of this chapter.	For correcting HAP and TOC concentrations measured from combustion control device to 3% O_2 for comparing to 20 ppmv concentration limit. See § 63.7912(f)(4).
5. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, and organic/water separators complying with a HAP or TOC reduction efficiency limit in Table 2 or 3 of this subpart, an emissions rate limit in Table 2 of this subpart, or an emissions concentration limit in Table 3 of this subpart.	Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	For flow rate determination and correction to dry basis.
6. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, and organic water separators complying with a HAP or TOC reduction efficiency limit in Table 2 or 3 of this subpart.	a. Measure organic HAP concentration at inlet and outlet locations. b. Measure TOC concentration at inlet and outlet locations.	i. Method 18 in appendix A to part 60 of this chapter. i. Method 18 or Method 25A or Method 25 in appendix A to part 60 of this chapter.	(1) The organic HAP used for the calibration gas for Method 25A must be the single organic HAP representing the largest percent by volume of emissions; and (2) during the performance test or a design evaluation, you must establish the operating parameter limits within which total organic HAP emissions are reduced by 95 weight-percent (or to the level necessary to meet the emissions rate limits in Table 2 of this subpart) or to 20 ppmv exhaust concentration.
7. All affected source process vents associated with remediation activities complying with the emissions rate limit in item (1)(b) of Table 2 of this subpart.	Measure organic HAP at the outlet location.	Method 18 in appendix A to part 60 of this chapter.	
8. New and existing affected source tanks, containers, surface impoundments, oil/water separators, and organic/water separators complying with a HAP or TOC emissions concentration limit in Table 3 of this subpart.	a. Measure organic HAP at the outlet location. b. Measure TOC at the outlet location.	i. Method 18 in appendix A to part 60 of this chapter. i. Method 18 in appendix A to part 60 of this chapter, or. ii. Method 25A in appendix A to part 60 of this chapter.	

Use the following table to determine if you have demonstrated initial compliance for each affected source in Table 2 or 3 of this subpart and for process vents in Table 2 of this subpart:

TABLE 7 TO SUBPART GGGGG OF PART 63.—INITIAL COMPLIANCE WITH EMISSIONS LIMITATIONS

For . . .	For the following emissions limitation . . .	You have demonstrated initial compliance if . . .
1. Each affected source listed in Table 2 or 3 of this subpart.	Reduce total organic HAP, listed in Table 1 of this subpart, or TOC emissions by at least 95 weight-percent.	Total organic HAP, listed in Table 1 of this subpart, or TOC emissions, based on the results of the performance testing specified in Table 6 of this subpart, are reduced by at least 95 weight-percent; and you have a record of the operating requirement(s) listed in Table 4 of this subpart for the process unit over the performance test during which emissions did not exceed 95 weight-percent.
2. Each affected source listed in Table 3 of this subpart.	Limit emissions of total HAP, listed in Table 1 of this subpart, or TOC concentration to ≤20 ppmv.	The average total HAP, listed in Table 1 of this subpart, or TOC emissions, measured using the methods in Table 6 of this subpart over the 3-hour initial performance test, do not exceed 20 ppmv; and you have a record of the operating requirement(s) listed in Table 4 of this subpart for the process unit over the performance test during which emissions did not exceed 20 ppmv.
3. Affected source process vents listed in Table 2 of this subpart.	Reduce total HAP, listed in Table 1 of this subpart, or TOC emissions below 1.4 kg/h (3.0 lb/hr) and 2.8 Mg/yr (3.1 ton/yr).	The average total HAP, listed in Table 1 of this subpart, or TOC emissions, measured using the methods in Table 6 of this subpart over the 3-hour initial performance test, do not exceed 1.4 kg/h (3.0 lb/hr); and you have a record of the operating requirement(s) listed in Table 4 of this subpart for the process unit(s) over the performance test during which emissions did not exceed 1.4 kg/h (3.0 lb/hr).

Use the following table to determine if you have demonstrated initial compliance for tanks; containers; surface impoundments; oil/water separators or organic/water separators; equipment; closed-vent systems; and transfer systems:

TABLE 8 TO SUBPART GGGGG OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each * * *	For the following work practice standard * * *	You have demonstrated initial compliance if * * *
1. Tank complying with the requirements of subpart OO (control level 1) of this part.	Install a fixed roof designed and operated in accordance with § 63.902.	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a fixed roof that meets the specifications in § 63.902, you have performed the initial inspection following installation of the roof in accordance with § 63.906, and you have a record documenting the roof design and inspection results.
2. Tank complying with the requirements of § 63.685(d) (control level 2), of this part.	Operate a fixed-roof tank with an internal floating roof (IFR) in accordance with § 63.685(e).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed an IFR that meets the applicable specifications in § 63.685(e), you have performed the initial inspection following installation of the IFR in accordance with § 63.695(b)(1), and you have a record documenting the IFR design and inspection results.

TABLE 8 TO SUBPART GGGGG OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each * * *	For the following work practice standard * * *	You have demonstrated initial compliance if * * *
3. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	Install an external floating roof (EFR) designed and operated in accordance with § 63.685(f).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed an EFR that meets the specifications in § 63.685(f), you have performed the initial inspection following installation of the EFR in accordance with § 63.695(b)(2)(i), and you have a record documenting the EFR design and inspection results.
4. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	Vent the tank to a control device in accordance with § 63.685(g).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a fixed roof that meets the applicable specifications in § 63.685(g)(1) and (b), you have performed the initial inspection following installation of the fixed roof in accordance with § 63.695(b)(3), and you have a record documenting the fixed roof design and inspection results.
5. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	Use a pressure tank designed and operated in accordance with § 63.685(h).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have designed a pressure tank meeting the applicable specifications in § 63.685(h), and you have a record documenting the tank design.
6. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	A tank located inside an enclosure in accordance with § 63.685(i).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that the enclosure meets the applicable specifications in § 63.685(i), you have performed the initial inspection in accordance with § 63.685(i)(1), and you have a record documenting the enclosure design and inspection results.
7. Container complying with § 63.922 (level 1 controls).	Install a cover meeting the requirements of § 63.922 whenever remediation material is in the container.	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that the cover meets § 63.922 and you have visually inspected the container and its cover and closure devices for visible cracks, holes, gaps, or other open spaces within 24 hours after the material is placed in the container and maintain a record of the inspection.
8. Container complying with § 63.923 (level 2 controls).	Install a cover meeting the requirements of § 63.923 and be installed whenever remediation material is in the container.	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that the cover meets § 63.923 and you have visually inspected the container and its cover and closure devices for visible cracks, holes, gaps, or other open spaces within 24 hours after the material is placed in the container and maintain a record of the inspection.

TABLE 8 TO SUBPART GGGGG OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each * * *	For the following work practice standard * * *	You have demonstrated initial compliance if * * *
9. Container complying with § 63.924 (level 3 controls).	Vent the container through a closed-vent system (CVS) to a control device according to the specifications of § 63.924(b).	You have met the work practice standard, and for containers vented inside an enclosure, as part of the Notification of Compliance Status, you submit a signed statement that you meet the requirements of § 63.924(c)(1). Note: see item number 17 of this table for work practic requirements for closed-vent systems.
10. Surface impoundment subject to § 63.940 that is not vented to a control device.	Install a floating membrane cover designed in accordance with specifications in § 63.942(a) through (c).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a floating membrane cover the meets the specifications in § 63.942(b), you have performed the initial inspection following installation of the cover in accordance with § 63.946(a)(2), and you have a record documenting the cover design and inspection results.
11. Surface impoundment subject to § 63.940 that is vented to a control device.	Install a cover designed in accordance with specifications in § 63.943(b).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a cover the meets the specifications in § 63.943(b), you have performed the initial inspection following installation of the cover as required by § 63.946(b)(1)(ii), and you have a record documenting the cover design and inspection results.
12. Oil/water separator, or organic/water separator complying with § 63.1042.	Install a fixed roof designed in accordance with the specifications in § 63.1042(b).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a fixed roof that meets the specifications in § 63.1042(b), you have performed the initial inspection following installation of the fixed roof as required by § 63.1047(a), and you have a record documenting the fixed roof design and inspection results.
13. Oil/water separator, or organic/water separator complying with § 63.1043.	Install a floating roof designed in accordance with the specifications in § 63.1043(b).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a floating roof that meets the specifications in § 63.1043(b), you have performed the initial inspection following installation of the floating roof as required by § 63.1047(b), and you have a record documenting the floating design and inspection results.
14. Oil/water separator, or organic/water separator complying with § 63.1044.	Install a fixed roof designed in accordance with the specifications in § 63.1044(b) and vent headspace to a control device through a CVS.	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a fixed roof that meets the specifications in § 63.1044(b), you have performed the initial inspection following installation of the fixed roof as required by § 63.1047(c), and you have a record documenting the fixed roof design and inspection results.

TABLE 8 TO SUBPART GGGGG OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each * * *	For the following work practice standard * * *	You have demonstrated initial compliance if * * *
15. Oil/water separator, or organic/water separator that is complying with § 63.1045.	Operate the separator as a closed system in accordance with the specifications in § 63.1045(b).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that the separator operates as a closed-system, you have performed the no detectable organic emissions test required in § 63.1046, and you have a record documenting the separator design and inspection results.
16. Item of equipment	Carry out a leak detection and repair program to comply with the requirements of subpart TT (control level 1); or subpart WW (control level 2)..	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that equipment subject to the work practice requirements has been identified and you make available written specifications for the leak detection and repair program or equivalent control approach.
17. Closed-vent system (CVS) conveying emissions to a control device.	Design and operate the CVS in accordance with the specifications in § 63.693.	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that CVS meets the specifications in § 63.695(c) and you perform the initial inspection required by § 63.695(c)(1)(i) and have a record documenting the design and inspection results.
18. Transfer system that is an individual drain system complying with the applicable requirements in subpart RR.	Meet the design and operating requirements in § 63.962(a).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have designed the applicable controls in accordance with § 63.962(a) and (b) and performed the initial inspection requirements in § 63.964(a)(1)(iv) and have a record documenting the design and inspection results. Systems conveying emissions through a CVS to a control device should meet the requirements in item 17 of this table.
19. Transfer system that is not an individual drain system and complies with the requirements in § 63.689(c).	Design and operate a transfer system using covers in accordance with § 63.689(d).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have designed and installed the covers as required by § 63.689(d)(1) through (5), performed the inspection requirements in § 63.695(d)(2) and have a record documenting the design and inspection results.
20. Transfer system that is not an individual drain system and complies with the requirements in § 63.689(c).	Design and operate a transfer system using hard piping in accordance with § 63.689(c)(2).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed the hard piping as specified in § 63.689(c)(2).

Use the following table to determine if you have demonstrated continuous compliance for each unit in Table 2 or 3 of this subpart:

TABLE 9 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSIONS LIMITATIONS

For * * *	For the following emissions limitation * * *	You have demonstrated continuous compliance by * * *
1. Each unit listed in Table 2 or 3 of this subpart.	a. Reduce total organic HAP, listed in Table 1 of this subpart, or TOC emissions by at least 95 weight-percent,	i. Performing CMS monitoring and collecting data according to §§ 63.7914, 63.7921, and 63.7930; ii. Maintaining the site-specific operating limits within the ranges established during the design evaluation or performance test; and iii. Continuously monitoring and recording the total organic or HAP concentration at least every 15 minutes, reducing the CEMS data to 1-hour and then 24-hour block averages, and maintaining the 24-hour block average total organic or HAP concentration less than or equal to the concentration established during the performance test; and iv. Keeping the applicable records required in § 63.10.
2. Each unit listed in Table 3 of this subpart...	Limit emissions of total HAP, listed in Table 1 of this Subpart, or TOC concentration of ≤20 ppmv.	Same as in item 1 of Table 9 of this Subpart
3. Each unit listed in Table 2 or 3 of this subpart.	Limit emissions of total HAP, listed in Table 1 of this subpart, to below 1.4 kg/hr (3.0 lb/hr) and 2.8 Mg/yr (3.1 ton/yr).	Same as in item 1 of Table 9 of this subpart.

Use the following table to determine if you have demonstrated continuous compliance for each affected source unit in Table 2 or 3 of this subpart:

TABLE 10 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

For * * *	For the following operating limit * * *	You must demonstrate continuous compliance by * * *
1. Affected source using a thermal oxidizer to comply with an emissions limit in Table 2 or 3 of this subpart.	a. Maintain the hourly average firebox temperature greater than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording firebox temperature every 15 minutes and maintaining the hourly average firebox temperature greater than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
2. Affected source using a catalytic oxidizer to comply with an emissions limit in Table 2 or 3 of this subpart.	a. Replace the existing catalyst bed with a catalyst bed that meets the replacement specifications established during the design evaluation or performance test before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test.	i. Replacing the existing catalyst bed with a catalyst bed that meets the replacement specifications established during the design evaluation or performance test before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
	b. Maintain the hourly average temperature at the inlet of the catalyst bed greater than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes and maintaining the hourly average temperature at the inlet of the catalyst bed greater than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
	c. Maintain the hourly average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test.	i. Continuously monitoring and recording the temperature at the outlet of the catalyst bed every 15 minutes and maintaining the hourly average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.

TABLE 10 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For * * *	For the following operating limit * * *	You must demonstrate continuous compliance by * * *
3. Affected source using a condenser to comply with an emissions limit in Table 2 or 3 of this subpart.	a. Maintain the hourly average condenser exit temperature less than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording the temperature at the exit of the condenser at least every 15 minutes and maintaining the hourly average condenser exit temperature less than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in §63.10.
4. Affected source using an adsorption system with adsorbent regeneration to comply with an emissions limit in Table 2 or 3 of this subpart.	a. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test.	i. Replacing the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test; and ii. Keeping the applicable records required in §63.10.
	b. Maintain the frequency of regeneration greater than or equal to the frequency established during the design evaluation or performance test.	i. Maintaining the frequency of regeneration greater than or equal to the frequency established during the design evaluation or performance test; and ii. Keeping the applicable records required in §63.10.
	c. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the stream mass flow established during the design evaluation or performance test.	i. Continuously monitoring and recording the total regeneration stream mass flow during the adsorption bed regeneration cycle and maintaining the flow greater than or equal to the stream mass flow established during the design evaluation or performance test; and ii. Keeping the applicable records required in §63.10.
	d. Maintain the hourly temperature of the adsorption bed during regeneration (except during the cooling cycle) greater than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording the hourly temperature of the adsorption bed during regeneration (except during the cooling cycle) and maintaining the hourly temperature greater than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in §63.10.
	e. Maintain the hourly temperature of the adsorption bed after regeneration (and within 15 minutes after completing any cooling cycle) less than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording the hourly temperature of the adsorption bed after regeneration (and within 15 minutes after completing any cooling cycle) and maintaining the hourly temperature less than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in §63.10.
5. Affected source using an adsorption system without adsorbent regeneration to comply with an emissions limit in Table 2 or 3.	a. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test.	i. Replacing the existing adsorbent in each segment of the bed with an adsorption that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test; and ii. Keeping the applicable records required in §63.10.

TABLE 10 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For * * *	For the following operating limit * * *	You must demonstrate continuous compliance by * * *
	b. Maintain the hourly temperature of the adsorption bed less than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording the hourly temperature of the adsorption bed and maintaining an hourly temperature less than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in §63.10.
6. Affected source using a flare to comply with an emissions limit in Table 2 or 3 of this subpart.	a. Maintain a pilot flame present in the flare at all times that vapors are not being vented to the flare (§63.11(b)(5)).	i. Continuously operating a device that detects the presence of the pilot flame; and ii. Keeping the applicable records required in §63.695(e).
	b. Maintain a flare flame at all times that vapors are being vented from the emissions source (§63.11(b)(5)).	i. Maintaining a flare flame at all times that vapors are being vented from the emissions; and ii. Keeping the applicable records required in §63.10.
	c. Operate the flare with no visible emissions, except for up to 5 minutes in any 2 consecutive hours (§63.11(b)(4)).	i. operating the flare with no visible emissions exceeding the amount allowed; and ii. Keeping the applicable records required in §63.10
	d. Operate the flare with an exit velocity that is within the applicable limits in §63.11(b)(6), (7), and (8).	i. Operating the flare within the applicable exit velocity limits; and ii. Keeping the applicable records required in §63.10.
	e. Operate the flare with a net heating value of the gas being combusted greater than the applicable minimum value in §63.11(b)(6)(ii).	i. Operating the flare with the gas net heating value within the applicable limit; and ii. Keeping the applicable records required in §63.10.

Use the requirements in the following table to demonstrate continuous compliance for tanks; containers; surface impoundments; oil/water separators or organic/water separators; equipment; closed-vent systems; and transfer systems:

TABLE 11 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For each * *	For the following work practice standard * * *	You must demonstrate continuous compliance by * * *
1. Tank complying with subpart OO (control level 1) of this part.	a. install a fixed roof designed and operated in accordance with the applicable specifications in §63.902.	i. following the inspection and repair procedures in §63.906(a) and (b); and ii. keeping the records required in §63.907.
2. Tank complying with the requirements of §63.685(d) (control level 2) of this part.	a. operate a fixed-roof tank with an internal floating roof (IFR) in accordance with §63.685(e).	i. following the inspection and repair requirements in §63.695(b)(1) and (4); and ii. keeping the records required in §63.696.
3. Tank complying with the requirements of §63.685(d) (control level 2) of this part.	a. install an external floating roof (EFR) designed and operated in accordance with §63.685(f).	i. following the inspection and repair requirements in §63.695(b)(2) and (4); and ii. keeping the records required in §63.696(d).
4. Tank complying with the requirements of §63.685(d) (control level 2) of this part.	a. vent the tank through a closed vent system (CVS) to a control device in accordance with §63.685(g).	i. following the inspection and repair requirements in §63.695(b)(3) and (4); and ii. following the inspection and monitoring requirements for the CVS in §63.695(c)(1)–(3); and iii. keeping the records required in §63.696(e).
5. Tank complying with the requirements of §63.685(d) (control level 2) of this part.	use a pressure tank designed and operated in accordance with §63.685(h).	operating the pressure tank at all times in accordance with the specifications in §63.685(h).
6. Tank complying with the requirements of §63.685(d) (control level 2) of this part.	a. a tank located inside an enclosure in accordance with §63.685(i).	i. meeting the recordkeeping requirements of §63.696(f); and ii. meeting the requirements for a closed-vent system specified in item 19 of this table.
7. Container complying with §63.922 (level 1 controls).	install a cover meeting the requirements of §63.922 whenever remediation material is in the container.	following the inspection and repair requirements in §63.926(a)(2) and (3).

TABLE 11 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each * *	For the following work practice standard * * *	You must demonstrate continuous compliance by * * *
8. Container complying with § 63.923 (level 2 controls).	install a cover meeting the requirements of § 63.923 whenever remediation material is in the container.	following the inspection and repair requirements in § 63.926(c)(2) and (3).
9. Container complying with § 63.924 (level 3 controls).	a. vent the container through a closed-vent system (CVS) to a control device according to the specifications of § 63.924(b).	i. following the inspection and monitoring requirements for the CVS in § 63.695(c)(1)–(3); and ii. keeping the records required in § 63.927.
10. Surface impoundment complying with the applicable requirements in subpart QQ that is not vented to a control device.	install a floating membrane cover designed according to the specifications in § 63.942(a)–(b) and maintain the membrane floating on the liquid surface at all times.	maintaining the membrane floating on the liquid surface and visually inspecting the membrane at least once every year, making a first attempt at repair of any defects within 5 calendar days of detection, completing repair within 45 calendar days of detection, and keeping the records required in § 63.947(a).
11. Surface impoundment that is a new or existing affected source subject to subpart QQ that is vented to a control device.	install a cover designed to meet the applicable specifications in § 63.943(b); and vent the emissions through a closed-vent system (CVS) to a control device.	maintaining a cover on the surface impoundment in accordance with the specifications in § 63.943(c), visually inspecting the cover in accordance with § 63.946(b), repairing any defects as specified in § 63.946(c), and keeping a record of the inspection as required in § 63.947; Note: see item no. 19 in this Table for CVS requirements.
12. Oil/water separator, or organic/water separator complying with § 63.1042.	install a fixed roof designed to meet specifications in § 63.1042(b).	performing the inspection required by § 63.1047(a) once every calendar year, and maintaining the records required by § 63.1048.
13. Oil/water separator, or organic/water separator complying with § 63.1043.	install a floating roof designed to meet specifications in § 63.1043(b).	performing the inspections required by § 63.1047(b), and maintaining the records required by § 63.1048.
14. Oil/water separator, or organic/water separator that is complying with § 63.1044.	install a fixed roof designed to meet the specifications in § 63.1044(b) and vent headspace to a control device through a CVS.	performing a visual inspection of the fixed roof at least once every calendar year under § 63.1047(c)(1)(ii), operating, inspecting and monitoring the CVS in accordance with the requirements in § 63.693, and keeping the records required by § 63.1048.
15. Oil/water separator, or organic/water separator that is complying with § 63.1045.	operate the separator as a closed system in accordance with the specifications in § 63.1045(b).	operating the separator as a closed-system and performing the no detectable organic emissions test required by § 63.1046.
16. Piece of equipment complying with either subpart TT or WW of this part.	carry out a leak detection and repair program complying with the requirements of subpart TT (control level 1) or subpart WW (control level 2).	meeting the monitoring, repair and record-keeping requirements of either subpart TT or subpart WW.
17. Affected source conveying emissions to a control device using a closed-vent system (CVS).	a. design and operate the CVS in accordance with the specifications in § 63.693.	i. following the inspection, repair and monitoring requirements in § 63.695(c)(1) through (3); and ii. keeping the records required by § 63.696(a). For the purposes of this subpart, the term "Table 2 of this subpart" in 40 CFR Part 63 Subpart DD means "Table 13".
18. Transfer system that is an individual drain system complying with the applicable requirements in subpart RR.	a. meet the design and operating requirements in § 63.962(a).	i. following the operating requirements in § 63.962(b), the inspection and repair requirements in § 63.964(a)and (b); and ii. keeping the records required by § 63.965(a). iii. systems conveying emissions through a CVS to a control device should meet the requirements in item 19 of this table.

TABLE 11 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each * *	For the following work practice standard * * *	You must demonstrate continuous compliance by * * *
19. Transfer system that is not an individual drain system and complies with the requirements in § 63.689(c).	a. transfer system using covers in accordance with § 63.689(d).	i. following the operating requirements in § 63.689(d)(5) and the inspection and repair requirements in § 63.695(d); and ii. keeping the records required by § 63.696.

Use the following table to determine which reports to submit:

TABLE 12 TO SUBPART GGGGG OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n) * * *	The report must contain * * *	You must submit the report * * *
1. Compliance report	a. A statement that there were no deviations from the emissions limitations and work practice standards during the reporting period if there are no deviations from any emissions limitations (emissions limit, operating limit, opacity limit, and visible emissions limit) that applies to you, and there are no deviations from the requirements for work practice standards in Table 11 of this subpart that apply to you. If there were no periods during which the CMS, including CEMS, COMS, and operating parameter monitoring systems, was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during the which the CMS was out-of-control during the reporting period; and.	i. Semiannually according to the requirements in § 63.7931(b).
	b. The information in § 63.7931(c) and (d) if you have a deviation from any emissions limitation (emissions limit, operating limit, opacity limit, and visible emissions limit) or work practice standard during the reporting period; and.	i. Semiannually according to the requirements in § 63.7931(b).
	c. The information in § 63.7931(c) and (d) if there were periods.	i. Semiannually according to the requirements in § 63.7931(b).
2. immediate startup, shutup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan.	a. Actions taken for the event	i. by fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii)	i. by letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

As stated in § 63.7940, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.1	Applicability	Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications.	Yes
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities	Prohibited Activities; Compliance date; Circumvention, Severability.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§63.6(a)	Applicability	GP apply unless compliance extension GP apply to area sources that become major.	Yes.
§63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for 112(f).	Yes.
§63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§63.6(b)(6)	[Reserved]		
§63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§63.6(c)(1)–(2)	1. Compliance Dates for Existing Sources.	a. Comply according to date in subpart, which must be no later than 3 years after effective date. b. For 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§63.6(c)(3)–(4)	[Reserved]		
§63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§63.6(d)	[Reserved]		
§63.6(e)(1)–(2)	1. Operation & Maintenance	a. Operate to minimize emissions at all times b. Correct malfunctions as soon as practicable c. Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes. Yes. Yes.
§63.6(e)(3)	1. Startup, Shutdown, and malfunction Plan (SSMP).	a. Requirement for SSM and startup, shutdown, and Malfunction plan. b. Content of SSMP	Yes Yes.
§63.6(f)(1)	Compliance Except During SSM.	You must comply with emissions standards at all times except during SSM.	Yes.
§63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§63.6(h)	Opacity/Visible Emissions (VE) Standards.	Requirements for opacity and visible emissions limits	Yes. However, there are no opacity standards.
§63.6(h)(1)	Compliance with opacity/VE Standards.	You must comply with Opacity/VE emissions limitations at all times except during SSM.	Yes. However, there are no opacity standards.
§63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	If standard does not state test method, use Method 9 for opacity and Method 22 for VE.	Yes. However, there are no opacity standards.
§63.6(h)(2)(ii)	[Reserved].		
§63.6(h)(2)(iii)	Using Previous Tests to Demonstrate Compliance with Opacity/VE Standards.	Criteria for when previous opacity/VE testing can be used to show compliance with this rule.	Yes. However, there are no opacity standards.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.6(h)(3)	[Reserved].		
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Must notify Administrator of anticipated date of observation ..	Yes. However, there are no opacity standards.
§ 63.6(h)(5)(i), (iii)-(v)	Conducting Opacity/VE Observations.	Dates and Schedule for conducting opacity/VE observations	Yes. However, there are no opacity standards.
§ 63.6(h)(5)(ii)	Opacity Test Duration and Averaging Times.	Must have at least 3 hours of observation with thirty, 6-minute averages.	No.
§ 63.6(h)(6)	Records of Conditions During Opacity/VE observations.	Must keep records available and allow Administrator to inspect.	Yes. However, there are no opacity standards.
§ 63.6(h)(7)(i)	Report COMS Monitoring Data from Performance Test.	Must submit COMS data with other performance test data	No.
§ 63.6(h)(7)(ii)	Using COMS instead of Method 9.	Can submit COMS data instead of Method 9 results even if rule requires Method 9, but must notify Administrator before performance test.	No.
§ 63.6(h)(7)(iii)	Averaging time for COMS during performance test.	To determine compliance, must reduce COMS data to 6-minute averages.	No.
§ 63.6(h)(7)(iv)	COMS requirements	Owner/operator must demonstrate that COMS performance evaluations are conducted according to §§ 63.8(e), COMS are properly maintained and operated according to 63.8(c) and data quality as § 63.8(d).	No.
§ 63.6(h)(7)(v)	Determining Compliance with Opacity/VE Standards.	COMS is probative but not conclusive evidence of compliance with opacity standard, even if Method 9 observation shows otherwise. Requirements for COMS to be probative evidence-proper maintenance, meeting PS 1, and data have not been altered.	Yes. However, there are no opacity standards.
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Administrator will use all COMS, Method 9, and Method 22 results, as well as information about operation and maintenance to determine compliance.	Yes. However, there are no opacity standards.
§ 63.6(h)(9)	Adjusted Opacity Standard	Procedures for Administrator to adjust an opacity standard ...	No.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for Conducting Initial Performance Testing and Other Compliance Demonstrations. Must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA Section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling ...	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§ 63.7(c)	1. Quality Assurance/Test Plan.	a. Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with:.	Yes.
		i. Test plan approval procedures	Yes.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
		ii. Performance audit requirements	Yes.
		iii. Internal and External QA procedures for testing	Yes.
§63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions. Cannot conduct performance tests during SSM. Not a violation to exceed standard during SSM.	Yes.
§63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§63.7(e)(3)	1. Test Run Duration	a. Must have three test runs of at least one hour each	Yes.
		b. Complaince is based on arithmetic mean of three runs	Yes.
		c. Conditions when data from an additional test run can be used.	Yes.
§63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§63.7(g)	1. Performance Test Data Analysis.	a. Must include raw data in performance test report	Yes.
		b. Must submit performance test data 60 days after end of test with the Notification of Compliance Status.	Yes.
		c. Keep data for 5 years	Yes.
§63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test	Yes.
§63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.
§63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of part 60 apply	Yes.
§63.8(a)(3)	[Reserved].		
§63.8(a)(4)	Monitoring with Flares	Unless your rule says otherwise, the requirements for flares in 63.11 apply.	Yes.
§63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§63.8(b)(2)–(3)	1. Multiple Effluents and Multiple Monitoring Systems.	a. Specific requirements for installing monitoring systems	Yes.
		b. Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise.	Yes.
		c. If more than one monitoring system on an emissions point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§63.8(c)(1)(i)	Routine and Predictable SSM	Follow the SSM plan for routine repairs. Keep parts for routine repairs readily available. Reporting requirements for SSM when action is described in SSM plan.	Yes.
§63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSM plan.	Yes.
§63.8(c)(1)(iii)	1. Compliance with Operation and Maintenance Requirements.	a. How Administrator determines if source complying with operation and maintenance requirements.	Yes.
		b. Review of source O&M procedures, records, Manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes.
§63.8(c)(2)–(3)	1. Monitoring System Installation.	a. Must install to get representative emissions and parameter measurements.	Yes.
		b. Must verify operational status before or at performance test.	Yes.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	No.
§ 63.8(c)(4)(i)–(ii)	Continuous Monitoring System (CMS) Requirements.	COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period. CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes. However, COMS are not applicable. Requirements for CPMS are listed §§ 63.7900 and 63.7913.
§ 63.8(c)(5)	COMS Minimum Procedures	COMS minimum procedures	No.
§ 63.8(c)(6)	CMS Requirements	Zero and High level calibration check requirements	Yes. However requirements for CPMS are addressed in §§ 63.7900 and 63.7913.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods, including reporting	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc. Must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	No.
§ 63.8(g)(1)–(4)	Data Reduction	COMS 60-minute averages Calculated over at least 36 evenly spaced data points. CEMS 1-hour averages computed over at least 4 equally spaced data points.	Yes. However, COMS are not applicable. Requirements for CPMS are addressed in §§ 63.7900 and 63.7913.
§ 63.8(g)(5)	Data Reduction	Data that can't be used in computing averages for CEMS and COMS.	No.
§ 63.9(a)	Notification Requirements	Applicability and State Delegation	Yes.
§ 63.9(b)(1)–(5)	1. Initial Notifications	a. Submit notification 120 days after effective date.	Yes.
		b. Notification of intent to construct/reconstruct; Notification of commencement of construct/reconstruct; Notification of startup.	Yes.
		c. Contents of each	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	Yes. However, there are no opacity standards.
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents; Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previcus Information.	Must submit within 15 days after the change	Yes.
§ 63.10(a)	1. Recordkeeping/Reporting	a. Applies to all, unless compliance extension b. When to submit to Federal vs. State authority c. Procedures for owners of more than 1 source	Yes. Yes. Yes.
§ 63.10(b)(1)	1. Recordkeeping/Reporting	a. General Requirements b. Keep all records readily available c. Keep for 5 years	Yes.. Yes. Yes.
§ 63.10(b)(2)(i)–(iv)	1. Records related to Startup, Shutdown, and Malfunction.	a. Occurrence of each of operation (process equipment) b. Occurrence of each malfunction of air pollution equipment c. Maintenance on air pollution control equipment d. Actions during startup, shutdown, and malfunction	Yes. Yes. Yes. Yes.
§ 63.10(b)(2)(vi) and (x)–(xi)	1. CMS Records	a. Malfunctions, inoperative, out-of-control b. Calibration checks c. Adjustments, maintenance	Yes. Yes. Yes.
§ 63.10(b)(2)(vii)–(ix)	1. Records	a. Measurements to demonstrate compliance with emissions limitations. b. Performance test, performance evaluation, and visible emissions observation results. c. Measurements to determine conditions of performance tests and performance evaluations.	Yes. Yes. Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test	No.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)	Records	Additional Records for CMS	No.
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	No.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM on a unit; written copy of performance evaluation; 3 copies of COMS performance evaluation.	Yes. However, COMS are not applicable.
§ 63.10(e)(3)	Reports	Excess Emissions Reports	No.
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	No.
§ 63.10(e)(3)(iv)–(v)	1. Excess Emissions Reports	a. Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedance (now defined as deviations)..	No.
		b. Provision to request semiannual reporting after compliance for one year.	No.
		c. Submit report by 30th day following end of quarter or calendar half.	No.
		d. If there has not been an exceedance or excess emissions (now defined as deviations), report contents is a statement that there have been no deviations.	No.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Must submit report containing all of the information in § 63.10(c)(5–13), § 63.8(c)(7–8).	No.
§ 63.10(e)(3)(vi)–(viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMSs (now called deviations). Requires all of the information in § 63.10(c)(5–13), § 63.8(c)(7–8).	No.
§ 63.10(e)(4)	Reporting COMS data	Must submit COMS data with performance test data	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11	Flares	Requirements for flares	Yes.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 413, 415, and 417
Licensing and Safety Requirements for Launch; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 413, 415, and 417

[Docket No. FAA–2000–7953; Notice No. 02–12]

RIN 2120–AG37

Licensing and Safety Requirements for Launch

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The Federal Aviation Administration (FAA) is amending an earlier proposal to amend the commercial space transportation regulations governing licensing and safety requirements for launch. The FAA takes this action to propose certain changes, respond to comments on the earlier proposal, and clarify assumptions underlying the costs analysis associated with the original proposal. The intended effect of this action is to allay commenters' concerns that the costs of launching from a federal launch range will increase as a result of this rulemaking.

DATES: Send your comments on or before October 28, 2002. The FAA will host a public meeting in Washington, DC at 800 Independence Avenue, SW., on September 6, 2002 from 8:30 a.m. to 4 p.m.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You may also submit and review comments through the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For technical information: Michael Dook, (202) 385–4707. For legal information: Laura Montgomery, (202) 267–3150. If you would like to present a statement at the public meeting, or if you have questions about the logistics of the meeting, contact Brenda Parker, (202) 385–4713 before August 23, 2002.

SUPPLEMENTARY INFORMATION:

I. Comments Invited
II. Background
III. Changes to October 2000 Proposal
  A. Grandfathering
  B. Risk Limit for Each Hazard
  C. Debris Thresholds for Use in Flight Safety Analysis
IV. Issues of Concern to Commenters
  A. Authority and Need for Rulemaking
  B. Cost Impacts on Licensed Launches from Federal Launch Ranges
  C. FAA and Air Force Process for Relief from Common Launch Safety Requirements
V. Section-by-Section Analysis of the SNPRM
VI. Procedural Matters

I. Comments Invited

You may participate in this rulemaking by submitting written data, views, or arguments. We also invite comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

You may also present comments at the public meeting. The FAA will prepare an agenda of speakers, which will be available at the meeting. If we receive your request after the date specified above, your name may not appear on the written agenda. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Persons requiring audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The DOT Rules Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable, and consistent with statutory deadlines. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2000–7953." The postcard will be date stamped and mailed to the commenter.

Public Meeting Procedures

The FAA will present a description of the SNPRM at the public meeting. The FAA will use the following procedures to facilitate the meeting:

(1) The meeting is designed to give interested parties an overview of the contents of the SNPRM to facilitate the public comment process. Therefore, the meeting will be informal and non-adversarial. No individual will be subject to cross-examination by any other participant; however, FAA representatives may ask questions to clarify a statement and to ensure a complete and accurate record. Participants will also have the opportunity to ask questions about the SNPRM.

(2) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who are scheduled to present statements or who register between 8:30 a.m. and 9 a.m. on the day of the meeting. While we will make every effort to accommodate all persons wishing to participate, admission will be subject to availability of space in the meeting room. The meeting may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meeting.

(3) Speakers may be limited to a 10-minute statement. If possible, we will notify speakers if additional time is available.

(4) We will try to accommodate all speakers. If the available time does not permit this, we will generally schedule speakers on a first-come-first-served basis. However, we reserve the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(5) Sign and oral interpretation can be available at the meeting, as well as an assistive listening device, if requested at least 10 calendar days before the meeting.

(6) Representatives of the FAA will chair the meeting. A panel of FAA personnel involved in this proposal will be present.

(7) We will make a transcript of the meeting using a court reporter. We will include in the public docket a transcript of the meeting and any material accepted by the FAA representatives during the meeting. Any person who is interested in buying a copy of the transcript should contact the court reporter directly. Additional transcript purchase information will be available at the meeting.

(8) The FAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or arguments related to the SNPRM may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. We request that persons participating in the meeting provide six copies of all materials presented for distribution to the FAA representatives. You may provide other copies to the audience at your discretion.

(9) Statements made by FAA representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by an FAA representative is not intended to be, and should not be construed as, an official position of the FAA.

Availability of SNPRM

You can get an electronic copy of this SNPRM using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this SNPRM.

II. Background

Under existing regulations, the FAA evaluates, on an individual basis, a launch operator seeking an FAA license to launch from a non-federal launch site. A non-federal launch site is not located at a federal launch range. We issue a safety approval when we determine that the launch demonstrates an equivalent level of safety to that provided by a launch from a federal launch range. *See* 14 CFR part 415, subpart F for more details. For a licensed launch operator launching from a federal launch range, 14 CFR part 415, subpart C applies. For launch from a federal launch range, the FAA issues a safety approval if an applicant satisfies subpart C and has contracted with a federal launch range for safety-related launch services and property whose provision and use are within the experience of the federal launch range. 14 CFR 415.31.

On October 25, 2000, the FAA proposed licensing and safety requirements for the conduct of a launch. *Licensing and Safety Requirements for Launch; Notice of Proposed Rulemaking*, 65 FR 63921 (Oct. 25, 2000) ("October 2000 NPRM" or "NPRM"). The FAA proposed requirements for obtaining a license for a launch from a non-federal launch site. The proposed requirements for obtaining a license would not, however, apply to any launch from a non-federal launch site where a federal launch range performed the safety functions. For this type of launch, the licensing requirements of 14 CFR part 415, subpart C apply. The FAA proposes no revisions to subpart C of part 415.

The October 2000 NPRM also proposed to codify the safety requirements that a launch operator must satisfy to protect the public from the hazards of launch. The safety requirements would apply to all licensed launches of expendable launch vehicles, whether from a federal launch range or a non-federal launch site.

The FAA received comments to the original proposal on April 23, 2001.[1] Comments on the October 2000 NPRM generally fall into three categories: comments that caused the FAA to propose changes to the NPRM here; comments that did not cause changes, but did cause the FAA to address commenters' concerns in this preamble; and comments that the FAA is still considering and will address in the final rule. The next two sections of this preamble address the first two categories of comments. Interested readers should also see the section-by-section analysis portion later in this preamble for a description of the specific changes. The changes to the October 2000 NPRM proposed in this SNPRM include addressing how and when the proposed regulations would apply to pre-existing launch systems, changes to the measure of acceptable risk, and changes to the debris thresholds that would be used in flight safety analysis. The FAA is, through this supplemental notice of proposed rulemaking ("SNPRM"), also revising and reorganizing its proposed regulations regarding flight safety analysis. The FAA is still reviewing and considering the many technical comments and suggestions, which will be addressed in the final rule.

Since 1998[2], the FAA and the Air Force ranges have been working together to achieve common safety standards that may be universally applied to licensed and government launches. The FAA anticipates that for licensed launches that are conducted at federal launch ranges, the ranges will continue to implement these requirements. As explained in past rulemakings, the FAA conducts a baseline assessment of the adequacy of the federal launch ranges to determine whether the FAA may rely on the safety requirements of the ranges and on their implementation of those requirements.[3] The FAA's baseline assessments document the capabilities, safety program, standards and policies of each federal launch range. The FAA recognizes, of course, that the federal launch ranges of the Department of Defense and National Aeronautics and Space Administration have their own missions separate from the support of commercial or otherwise licensed launches. Accordingly, the FAA proposes to codify the ranges' safety requirements to fulfill, in part, the FAA's own responsibilities for safety. Codification identifies those requirements upon which the FAA relies for licensed launch operators to achieve safety, and, in the unlikely

[1] *Aircraft Owners and Pilots Association*, Apr. 13, 2001; The Boeing Company, Int'l Launch Services, Lockheed Martin Corporation, Orbital Sciences Corporation, and Sea Launch Company (the "Joint Commenters") in *Consolidated Industry Response to FAA NPRM, Licensing and Safety Requirements for Launch, October 25, 2000*, Vol.s 1 and 2 (Apr. 23, 2000) ("JC Vol. I" and "JC Vol. II"); Comments, Hugh Q. Cook, (Mar. 13, 2001); *Comments to Licensing and Safety Requirements for Launch; Notice of Proposed rulemaking October 25, 2000*, Kistler Aerospace Corporation, (Apr. 23, 2001); Letter from Tom Marsh, Lockheed Martin Corporation, (Apr. 6, 2001); *Comments on DOT NPRM Licensing and Safety Requirements for Launch, Docket No. FAA–2000–7953*, Lou Gomez, NMOSC (undated); Orbital Sciences Corporation (Apr. 23, 2001); Sea Launch Company, L.L.C (Apr. 20, 2001); *XCOR Aerospace Comments in Response to FAA Notice of Proposed Rulemaking on Licensing and Safety Requirements for Launch* (undated) ("XCOR Comments"). Under separate cover, a number of commenters filed cost impact assessments: *Boeing Proprietary Cost Impact Analysis in Response to NPRM on Licensing and Safety Requirements (Docket No. FAA–2000–7953)*, (April 20, 2001) ("Boeing Costs"); *Lockheed Martin Cost Impact Analysis* ("Lockheed Cost Estimates") (proprietary); *Orbital NPRM Cost Impact Assessment*, Orbital Sciences Corporation (Apr. 23, 2001)("Orbital Cost Impact Assessment") (proprietary); Sea Launch Company, L.L.C. (Apr. 20, 2001) ("Sea Launch Costs") (proprietary).

[2] In recognition of the efforts of the FAA and the ranges to achieve common safety standards, an interagency working group led by the Office of Science and Technology Policy and the National Security Council of the White House recommended, among other things, that the FAA and the U.S. Air Force "continue their cooperative development of common safety requirements to be applied to government and commercial launches at federal and non-federal launch sites." White House Office of Science and Technology Policy and National Security Council, *The Future Management and Use of the Space Launch Bases and Ranges*, 38 (Feb. 8, 2000). At the same time, the working group recommended that the FAA and the U.S. Air Force formalize their respective responsibilities for the safety of space launches through a memorandum of agreement. *Id.* at 39. The report urged that the federal ranges retain current responsibilities for the safety of government activities, and retain safety of commercial flight activities at the Eastern and Western Ranges. On January 16, 2001, the FAA Administrator and the Assistant Secretary of the Air Force entered into a Memorandum of Agreement Between Department of the Air Force and Federal Aviation Administration on Safety for Space Transportation and Range Activities. A copy of the MOA is available on AST's Web site (*http://ast.faa.gov*).

[3] *See Commercial Space Transportation Licensing Regulations*, 64 FR 19586, 19596–97 (Apr. 21, 1999).

event that either of the ranges can no longer provide support on a non-interference basis for commercial launch, ensures that a launch operator is informed of the safety requirements with which it must comply. Because the different ranges experience different meteorological, geographical and population environments, the ranges do not always implement their requirements in the same manner. The FAA attempted, in the NPRM, to identify the underlying intent shared by the ranges' safety requirements, and then presented those principles in the NPRM, in a more generally applicable and abstract form, which may be unfamiliar to those accustomed to launching from a particular range.

III. Changes to October 2000 Proposal

A. Grandfathering

Although the proposed requirements are derived from existing range requirements, there are, for any number of different reasons, launch vehicles and launch operators who would not comply with the requirements as proposed in the NPRM. For example, in the NPRM, the FAA noted that there might be instances where the ranges had granted waivers to the requirements of Eastern and Western Range 127–1, Range Safety Requirements ("EWR 127–1"). NPRM, 65 FR 63941. Additionally, the FAA recognizes that there are launch operators operating under older versions of EWR 127–1 who would not meet current federal range standards or, therefore, the proposed FAA requirements. In the NPRM, the FAA noted that launch operators might experience cost impacts from bringing their operations into compliance with the proposed requirements, and requested comments on the FAA's plan not to "grandfather" such noncompliances.

The FAA received comments suggesting that, in addition to existing waivers, other candidates for grandfathering exist. JC Vol. I at 9. The comments noted that the ranges grandfather sub-systems on launch vehicles that become non-compliant when the ranges implement new safety requirements. Additionally, comments called the FAA's attention to the ranges' "tailoring" process, by which a range determines whether a launch operator's proposed alternative, although not compliant with the letter of the range requirements, nonetheless meets the intent behind the requirement. Commenters urged the FAA to accept existing tailoring agreements. For all these scenarios, including waivers, tailoring and existing range grandfathering arrangements, launch operators urged that the FAA "grandfather" current launch systems. Launch operators urged cost and range practice as the reasons for grandfathering. The FAA is considering adopting some of the suggestions contained in the comments to this rulemaking, but requests additional comment and information in light of the considerations discussed below.

1. Applicability and Effective Dates of Requirements

Commenting launch operators requested that the FAA provide more detail regarding how and whether grandfathering would work. The FAA specifies an effective date for each rule promulgated. There are a number of options for determining an effective date. A rule might apply, for example, to all launches that took place after a certain date, regardless of when the launch vehicle was designed or built. Usually, for such a decision an agency would provide a fairly lengthy lead-time. Alternatively, a rule might apply to all launch vehicle components manufactured after a certain date. Again, a lengthy lead-time might be necessary to allow a licensee to incorporate any changes into its design and subsequently manufactured hardware. Finally, in accordance with Department of Transportation and FAA usage, the FAA's proposed regulatory requirements will not employ the term "grandfather," but will, instead, describe how and when part 417 would or would not apply.

For a meets intent certification or noncompliance to qualify under the FAA's proposed version of grandfathering, the federal range approval of such relief from a safety requirement would have to exist as of the effective date of proposed part 417. The FAA intends to allow sufficient time between the issuance of the final rule and the date that part 417 would become effective for federal ranges to make decisions on pending requests for relief that might be in work at the time a final FAA rule is issued. For launches from Air Force ranges, the Air Force and the FAA intend to have the joint relief process, discussed in section IV.C of this supplemental notice, in place prior to the effective date of part 417. This will allow for a smooth transition from pre-existing Air Force relief approvals that would qualify for the FAA's proposed version of grandfathering, to the joint process that will be used to resolve future requests for relief from launch safety requirements.

2. Range Approach to Implementing new Safety Requirements

At the Air Force's launch ranges, EWR 127–1 governs. The Air Force's range safety organizations periodically update these requirements, and determine the extent to which those updates will affect existing launch vehicles and systems. Commenting launch operators noted that "the existence of such new requirements does not necessarily make an existing system unsafe or expose the public to greater safety risks." JC Vol. I at 9. EWR 127–1 recognizes this, and grandfathers and maintains the approvals of previously approved systems unless the Chief of Safety or the launch operator determines one of the following:

a. Existing programs make major modifications or include the use of currently approved components, systems, or subsystems in new application (through tailoring if desire[d]) Exception: Previously approved existing components, systems, or sub-systems that do not increase the risks, do not degrade safety, or can survive new environments [that] are equivalent to or lower [less severe] than the originally approved qualification levels shall be honored and do not have to meet new requirements [do not have to be upgraded] as long as data and analyses show that the criteria have been met.

b. The Range User has determined that it is economically and technically feasible to incorporate new requirements into the system.

c. The system has been or will be modified to the extent safety approvals no longer apply. **Note:** Risk and hazard analyses developed jointly by Range Safety and the Range User shall be used to determine applicability of the safety approvals.

d. A previously unforeseen or newly discovered safety hazard exists that is deemed by either Range Safety or the Range User to be significant enough to warrant the change.

e. The system does not meet the requirements existing when the system was originally accepted. **Note:** This category includes systems that were previously approved, but when obtaining the approval, the noncompliances to the original requirement were not identified.

f. A system or procedure is modified and a new requirement reveals that a significant risk exists.

g. Accident and incident investigations and reports may dictate compliance with the document.

EWR 127–1, Appendix 1C, 1C.1.4, 1–35 (Dec. 31, 1999).

As review of the above range exceptions shows, a host of possibilities may trigger a requirement for a launch operator to change its launch vehicle or systems to conform to the latest safety requirements. These possibilities may be divided into two general conditions: where a launch operator is implementing other changes to its launch vehicle, and where the safety considerations are so overriding that a change is required. Accordingly, although grandfathering may be automatic under the range regime, grandfathering is not unlimited.

The issue of grandfathering highlights how the Air Force has successfully dealt with the issue of providing for appropriate public safety while taking into consideration the issues of cost, schedule, and mission assurance. The FAA recognizes that there are parallels that can be drawn between the Air Force's approach to ensuring public safety, including the use of grandfathering, and the FAA's regulatory focus on ensuring public safety without placing undue burden on the launch industry. Since publishing the NPRM, the FAA has considered further the Air Force's approach to grandfathering and how the Air Force has successfully implemented its grandfathering policies to ensure public safety without placing undue burden on the launch industry. Upon the urging of the commenters, the FAA proposes to adopt a similar approach to determining when non-compliance with a particular requirement may be permitted to continue.

3. Applicability of Proposed Requirements to Pre-Existing Range Meets Intent Certifications

Under this SNPRM, proposed section 417.1(b) would permit a launch operator not to have to demonstrate an equivalent level of safety to the FAA for certain range "meets intent" determinations if the launch operator was licensed by the FAA and launched from a federal range. In the NPRM the FAA, while proposing not to grandfather noncompliances with the proposed requirements, was silent with respect to how it would treat meets intent certifications. This meant that all launch operators would be required to satisfy all the FAA's proposed launch safety requirements once those requirements went into effect. To satisfy a requirement, a launch operator would have to meet the requirement as stated in the FAA's proposed regulations or demonstrate that an alternative approach provided an equivalent level of safety. For existing launch vehicles operating from federal ranges, the federal range safety organizations have granted "meets intent certifications" for substitutes preferred by the launch operators to some of the current range safety requirements. Because the current federal range safety requirements provide the basis for the FAA's proposed requirements, any grant by a federal launch range of a meets intent certification creates the possibility that the launch operator would not necessarily comply in a literal sense with a proposed FAA requirement.

The federal ranges have granted meets intent certifications when they found that a launch operator's proposed approach, although literally non-compliant with a requirement, complied with the overall intent of the requirement. To obtain meets intent approval from a federal range, a launch operator's proposed substitute has to maintain an equivalent level of safety despite not meeting the exact requirement. *EWR 127–1* at 1–vii (Dec. 31, 1999). For all intents and purposes, a range safety meets intent certification constitutes one form of the FAA's equivalent level of safety. Additionally, a federal range's tailoring of launch safety requirements for specific launch vehicle programs often includes meets intent certifications that apply to a launch vehicle program on a permanent basis.

The FAA now proposes through section 417.1(b) that a launch operator would not need to demonstrate an equivalent level of safety to the FAA for satisfying an FAA requirement for a licensed launch from a federal range, if two conditions were met. The first condition would be that the launch operator would have to have a license from the FAA to launch from the federal launch range and the license would have to be in effect as of the effective date of part 417. This is reasonable because, to date, through its baseline assessments, the FAA has relied on the federal range determinations that a particular substitute to a range requirement met the intent of that same requirement. In the context of meets intent certifications, the FAA sees no need to revisit or second-guess that past reliance. Under this SNPRM, the possessor of "meets intent certification" could continue to rely on the range's determination, where a future or different licensee could not. Additionally, even the same licensee would not be able to rely on a pre-existing meets intent certification for any other vehicle or application other than the one for which it was originally granted.

Thus, the second condition would be for the launch operator to have a written pre-existing "meets intent certification" for the requirement from the federal launch range from which the launch will take place, or a substitute that the same range approved during tailoring of the range safety requirements for that launch operator. This proposal is consistent with the ranges' own approach to "grandfathering." Under current practice, range grandfathering applies only at one launch site. *See* Appendix 1C, 1C.1.4 a (permitting grandfathering unless a currently approved component, system or subsystem is to be used in a "new application"). If a launch operator has launched a vehicle from one range and proposes to launch from a different range, the other range will review the substitution for acceptability.

Review due to a change in launch site is necessary because different conditions at different launch sites may dictate different decisions. If, for example, not performing an environmental test is acceptable at one range, different environments at a different launch site may require that the test be conducted. Environmental factors such as salt, fog and temperature may vary from site to site, as may the potential for extreme environments, such as earthquakes on the west coast and hurricanes on the east coast, thus changing the need for and requirements governing component testing. Similarly, with a change in trajectory profile brought about by launching from a different site, vibrations could occur at different times of flight. The ranges see a need to address and consider these changes and determine whether a substitution acceptable at one launch site is acceptable at another. The FAA agrees with this reasoning and proposes to maintain this practice.

Under this SNPRM, the "meets intent certification" would have to exist as of the effective date of part 417 and the duration of the "meets intent certification" would have to include the licensed launch in question. If a pre-existing meets intent certification did not apply to a future licensed launch, the launch operator would have to demonstrate an equivalent level of safety to the FAA. For example, the ranges have granted some launch operators meets intent certifications that allowed them to fly without a flight termination system on an upper stage of their launch vehicles. Such range approvals are highly dependent on launch specific conditions and do not necessarily apply outside of certain launch azimuths. The FAA recognizes, however, that even for a meets intent certification granted only for a specific launch there may be a possibility that

the reasons that merited grant of a meets intent certification will apply again and the FAA will be able to find an equivalent level of safety. However, just as the ranges reserve the right to make that determination for a different set of circumstances, so, too, will the FAA. For future FAA-licensed launches from federal ranges, launch specific decisions such as these will be handled through a coordinated FAA and federal range review process as discussed in section IV.C of this SNPRM.

4. Pre-existing Range Waivers and Non-Compliances That Satisfy Range Grandfathering Practices

Under proposed section 417.1(b)(1) of this SNPRM, the FAA would not apply a requirement of proposed part 417 to a licensed launch if the launch operator is currently licensed by the FAA to launch from a federal range, and if the range has either previously approved a waiver for the requirement or if the noncompliance is in accordance with federal range "grandfathering" practices. Unlike a meets intent certification where a launch operator satisfies a requirement through an alternative that provides an equivalent level of safety, a launch operator at a federal range might not satisfy a current range safety requirement and, therefore, would not satisfy one of the FAA's proposed launch safety requirements. A federal range may have approved such non-compliances as specific waivers or the non-compliance may have resulted from the launch vehicle program being initiated under an earlier version of the range safety requirements and being subject to Air Force grandfathering policies.

In the NPRM the FAA proposed not to grandfather non-compliances, but requested public comments on the issue. Upon consideration of input from industry and the federal range safety organizations, the FAA now believes that it would be appropriate to provide a form of grandfathering that is nearly identical to the Air Force's grandfathering policy. The FAA's version of grandfathering, namely, partially limiting the reach of its requirements, would apply to federal range waivers and other noncompliances that have been grandfathered by a federal range. Since the NPRM was published, the FAA has considered further how grandfathering is implemented in current practice at the federal ranges, including recognizing that there is a degree of safety assurance that can be derived from the demonstrated flight history of an existing vehicle.

The FAA now proposes to permit, with some exceptions, that a requirement of this part would not apply to a licensed launch from a federal range, if certain conditions were met. These conditions would be the same as those the FAA is proposing for pre-existing meets intent certifications, as discussed above. The first condition would be that the launch operator would have to have a license from the FAA to launch from the federal launch range and the license would have to be in effect as of the effective date of proposed part 417. A launch operator who had a launch license on the day that part 417 became effective would satisfy this condition. Although the possessor of the waiver will be able to rely on the range determination, a future or different licensee will not. Additionally, the same licensee would not be able to rely on a pre-existing waiver for any vehicle or application other than the one for which it was originally granted.

The second condition would be that the launch operator, as of the effective date of proposed part 417, had, for that requirement, a written waiver from the federal launch range, or a pre-existing noncompliance that satisfied the federal launch range grandfathering criteria. The FAA intends this provision to encompass noncompliances regardless of the avenue through which they arise. In the first instance, a range may grant a waiver. In the second, a range may have approved a launch vehicle or system under requirements in place some time previously. Although the range requirements may change, a launch operator is not always required to upgrade the launch vehicle or system as discussed above. This provision would apply to both forms of pre-existing non-compliance.

The condition that a range approval be in writing would apply to range waivers. *See EWR 127–1* at 1–38, Appendix IC, IC.2.4 (describing required range approvals). For a launch vehicle that has been grandfathered, the range maintains a version of the range safety requirements that apply to the vehicle. These are the requirements that are "tailored for that vehicle." For any new safety requirement that the range determines must apply to an existing launch vehicle, the range will update the tailored set of range safety requirements.

Just as with the FAA's proposed approach to pre-existing meets intent certifications, the FAA would condition not applying a requirement for a licensed launch on an existing non-compliance being already approved for the licensed launch in question. If the range approval of a pre-existing non-compliance did not apply to a future licensed launch, the launch operator would have to meet the requirement as written or demonstrate an equivalent level of safety to the FAA and the Air Force in the joint relief process discussed in section IV.C of this notice. Because waivers are granted for situations where an equivalent level of safety is not achieved, the FAA considers it even more important than with pre-existing meets intent certifications that the FAA review the acceptability of a waiver when there are differences from the circumstances that warranted grant of the waiver in the first place. As with the meets intent certification, the FAA recognizes that the reasons for a waiver may exist again. However, just as the ranges reserve the right to make that determination for a different set of circumstances, so, too, will the FAA.

5. Limits to Grandfathering

As discussed previously, range grandfathering is not necessarily guaranteed under current practice at the federal ranges. Depending on the criticality of an issue and, given time and opportunity, a federal launch range will strive to bring a launch operator's vehicle and operations into compliance with current safety requirements. Accordingly, the FAA proposes to codify that practice as well in proposed section 417.1(b)(2).

Like the ranges, even if the launch operator were to satisfy the conditions of proposed section 417.1(b)(1) for a specific requirement of proposed part 417, the FAA proposes that a launch operator must comply with proposed part 417, including by providing a demonstration of an equivalent level of safety, whenever the launch operator makes modifications that affect the launch vehicle's operation or safety characteristics. As with the Air Force's current practice, proposed § 417.1(b)(2) would require a launch operator to upgrade if the FAA or the launch operator determined that a previously unforeseen or newly discovered safety hazard existed that was a source of significant risk to public safety, or if a federal range previously accepted a component, system, or subsystem, but did not identify a noncompliance to an original federal range requirement. In the past, this meant that a launch operator making a major change to its launch vehicle had to upgrade the launch vehicle to satisfy current safety requirements. For example, modifications made to a launch vehicle to allow the use of strap-on solid rocket boosters where none were originally

approved would be considered major modifications that could affect the vehicle's operation and safety characteristics. As a result, many aspects of the original flight termination system would have to be upgraded to comply with the most current requirements. This change would have the effect of codifying the federal launch ranges' current practice.

The FAA also proposes, as under current practice, that a launch operator bring its launch vehicle or launch into compliance with a requirement when it uses the launch vehicle or a component, system, or subsystem in a new application. A new application may include launching the vehicle from a new launch site or using a safety component on a different stage of the vehicle other than the stage for which it was originally approved.

6. Grandfathering of a Launch Vehicle Program at an Air Force Range

The FAA recognizes that the Air Force and licensed launch operators at Air Force ranges often consider a launch vehicle program as a whole grandfathered. The FAA's proposed grandfathering provisions would govern the applicability of individual safety requirements. As is current practice in implementing the Air Force's requirements, the FAA's proposed requirements may be applied to a launch vehicle program such that all aspects of the existing program are grandfathered without the need to upgrade to satisfy the safety requirements of proposed part 417. The Air Force and the FAA are involved in an extensive effort to identify and maintain common launch safety requirements through an interagency group consisting of both Air Force and FAA personnel, called the Common Standards Working Group.[4] The Common Standards Working Group worked to ensure that the FAA's proposed requirements are consistent with the Air Force's grandfathering requirements and can be implemented without duplication of effort. A launch vehicle program that is fully compliant with the Air Force's grandfathering requirements could be fully compliant under the FAA's proposed requirements. This would be possible in the event that all the non-compliances or meets intent certifications for a particular launch vehicle satisfied the FAA's proposed criteria.

B. Risk Limit for Each Hazard

1. Changes to NPRM Proposal

In proposed section 417.107 of the NPRM, the FAA proposed to aggregate the risks attributable to all mission hazards and set a cap on the total mission risk of all hazards at an expected average casualty of 30×10^{-6}. The FAA received comments in opposition to this proposal from the public, and addressed the concerns with the other members of the Common Standards Working Group. The changes proposed here constitute the results of the consensus reached between the FAA and the U.S. Air Force through the Common Standards Working Group. In summary, the FAA, with the agreement of the U. S. Air Force, now proposes through this rulemaking to adopt the current practice at the 45th Space Wing and to set a cap on the risk presented by each hazard. Because of the differences in underlying assumptions and methodologies for assessing the risk of each hazard, the FAA will not require or consider a limit on the total mission risk created by all the hazards of launch. For any given launch, the risk attributable to the whole mission tends to arise out of one hazard. Accordingly, as a general matter, the FAA still expects the aggregated risk of most launches to remain near an E_c of 30×10^{-6}.

In the NPRM, the FAA proposed to require that an aggregate of the hazards created by a particular launch not exceed an E_c of 30×10^{-6}. *NPRM*, 65 FR 63921, 63981 (proposed section 417.107(b)). This meant that a launch operator would have had to account for all hazards, including, but not limited to, the risks associated with debris, toxic releases and far field blast overpressure. The FAA proposed this limit after consultations with Air Force safety personnel at the 30th and 45th Space Wings. Both wings were receptive to this approach because it supported a theoretical goal of launch risk management, which is to quantify all hazards in a single, normalized risk measure. As noted in the NPRM, the 30th Space Wing found that one hazard typically served as the source of the risk attributable to a mission. *NPRM*, 65 FR 63921, 63936. Conditions that are conducive to driving up the risk associated with one hazard usually make another hazard less significant. Accordingly, representatives of the 30th Space Wing advised that launch availability would not be jeopardized at Vandenberg Air Force Base with a total mission risk cap of 30×10^{-6}. Thus, although the 30th Space Wing advised that it did not, in practice, set a ceiling for aggregate risk at 30×10^{-6}, launches from Vandenberg could meet the standard.

As discussed in the NPRM, the experience of the 45th Space Wing differed. The current practice of the Eastern Range, as described in the NPRM, was to cap two hazards, debris and far field blast overpressure, at an E_c of less than or equal to 30×10^{-6}. *NPRM*, 65 FR 63921, 63936. Although the Eastern Range estimates that it accepts a risk at an E_c of 233×10^{-6} for the risk attributable to a launch's potential toxic releases, its analysis does not account for a variety of factors that may reduce risk but are difficult to quantify. A review of licensed launches between September 4, 1997, and August 23, 2000, shows that only two out of 39 licensed launches took place with an E_c for toxic releases in excess of 30×10^{-6}. *Eastern Range Aggregate Risk Study*, RTI Int'l (Oct. 2, 2001). One occurred on May 4, 1999, with an E_c for toxics of 57×10^{-6} for the launch of a Delta III. The other occurred on July 10, 1999, with an E_c for toxics of 114×10^{-6} for a Delta II launch vehicle. Because all indications pointed to the ability of Western Range launches to continue to satisfy an aggregated risk criteria, and because the Eastern Range stated that most of the higher toxic risk numbers applied only to federal government launches, such as the Shuttle and Titan vehicles[5], both ranges and the FAA agreed to propose the aggregated mission risk cap in the October 2000 NPRM.

The FAA received comments opposed to aggregating mission risk. Launch operators commenting on the October 2000 NPRM stated they expect the E_c values from downrange debris risk *alone* to be close to or surpass the 30×10^{-6} criteria with flight azimuths entailing African or European overflight. JC Vol. I at 8 (emphasis in original); *accord* Boeing Cost Impact at 2. The launch operators therefore believed that a single, collective E_c at the proposed level would restrict launch availability and cause launch delays, both of which increase launch costs.[6]

[4] The Common Standards Working Group consists of, in addition to FAA representatives, Air Force representatives from Air Force Space Command, the Air Force Space and Missile Center, Air Force Safety Center, safety personnel from both the Eastern and Western Ranges, and each of their contractors working in support of this joint effort.

[5] The Air Force advises the FAA that it will accommodate this discrepancy to the common standards through its own granfathering or waiver process.

[6] The FAA would like to clarify a misunderstanding on the part of the launch operators commenting about how risk is calculated. In the Joint Comments, the launch operators argue that "[t]he fact is, that the actual public risk can only be realized at one given point in the launch timeline. If a launch vehicle is terminated during

Continued

In light of the concerns raised by launch operators, the FAA again revisited current practice at the ranges through consultations with the Common Standards Working Group. The working group explored in detail the philosophies and limits behind current risk assessment approaches and what was proposed in the NPRM. Air Force current requirements permit different aggregation practices. *See* EWR 127–1, 1–41, Appendix 1D, 1D.1b ("The overall risk levels *may or may not* be an additive value that includes risks resulting from debris, toxic and blast overpressure exposures." (Emphasis added))(cited in *NPRM*, 65 FR at 63936). The current practices at each of the two ranges remain as described in the NPRM. Results of the study conducted in 2001 indicated that there were only a few commercial launches in the past five years that would not have satisfied the aggregation criteria. Having explored a number of alternatives, the FAA now proposes to codify a less restrictive practice of not aggregating risks as proposed by the Common Standards Working Group.

Although the Common Standards Working Group agrees that a risk assessment that determines the total risk due to all hazards associated with a single launch would be an ideal approach, the group also agrees that there are a number of reasons not to codify such an approach at this time. The Common Standards Working group proposes separate risk criteria for each hazard because it is current practice for the 45th Space Wing, the range from which the majority of commercial launches take place, and because it reflects the disparate approaches to and abilities in modeling the risks of each hazard. Currently, the differences between the hazards create differences in how to measure the risks attributable to each of those hazards. A risk measure accounts for a number of things, including the probability of the undesired event occurring (usually related to the launch vehicle's probability of failure), the characteristics of the hazard, and the characteristics of any exposed populations. At this most general level, both ranges assess risk to account for each of these factors. When it comes to addressing each hazard, however, differences arise. Although the models of the two Air Force ranges tend to account for similar factors, the input to those models differs at each coast.

Because the FAA and the Air Force intend for their methodologies to account for the same factors, such as serious injury, population and the like, the Common Standards Working Group had to review the current practice underlying the risk assessment for each hazard. That review demonstrates how difficult it is to normalize among hazards.

Population characteristics are, at the most abstract level, treated similarly in that the methodologies and models attempt to describe the location or other attributes of an exposed population in a reasonably conservative manner. But what constitutes a reasonably conservative estimate for one hazard may differ for another hazard, which makes assessing each hazard through a separate inquiry a reasonable exercise. For example, when assessing the risks posed by far field blast overpressure, the conservative approach, in the absence of data detailing true locations, would be to assume all the population is located inside buildings and thus exposed to the danger of flying glass. When assessing the risk posed by a release of toxic substances, on the other hand, the conservative approach would be to assume that at least a portion of the exposed population was outdoors, thus increasing the likelihood of harm from the release. The characteristics of a population relevant to an assessment will also vary depending on the hazard at issue. For example, age will play a role in whether a person is harmed by a toxic release: a toxic exposure that fails to injure a healthy adult may seriously injure an infant or the infirm. Age is a much less important parameter for penetration injuries due to flying glass shards. Accordingly, age characteristics may be necessary for one assessment but not another.

In analyzing how a particular hazard may cause an injury, the elements of the risk assessments also diverge. Each hazard causes a different kind and degree of serious injury, so that employing separate methodologies and models to address each is reasonable for purposes of analyzing what harms a person. For example, inert debris causes injuries of penetration, blunt trauma or crushing. Explosive debris may cause knockdown and blast injuries, including, for example, "blast lung," gastrointestinal blast injury, damage to the inner ear, and eardrum rupture. Air blast loading caused by far field blast overpressure may break windows and pose a threat of laceration to building occupants or those nearby. Toxic releases may result in damage to the respiratory system, skin, and eyes.

These different injuries are produced by different causes and the thresholds and measures for serious injury from each hazard will vary. For inert debris, risk assessments tend to account for such characteristics as the mass of the debris, the impact velocity of the debris, debris orientation or the projected area of the debris or a combination of any of these characteristics. The threat posed by a gaseous toxic release is generally characterized by the concentration levels, described in parts per million, and the duration of exposure. An assessment of the far field blast overpressure risk will account for a variety of window characteristics, including window types, fragment sizes, velocities, distances propelled, or impacts per unit area.

The result of this review is that it is reasonable to perform separate risk assessments and employ separate criteria because of the difficulty in normalizing risk across all the different hazards. The current models for estimating risk used at the Air Force ranges represent the state of the art. Nonetheless, current techniques still cannot aggregate the risk across all hazards in a consistent manner without introducing additional uncertainty. This is due to differences in how the hazards are modeled and the nature and quantification of the serious injuries that result from each hazard.

2. Alternatives Considered

The Common Standards Working Group explored a number of alternatives before settling on the proposal described above. Those alternatives and their benefits and drawbacks are discussed here. The Common Standards Working Group sought to identify risk assessment procedures that would best protect the general public and reflect current practice without unduly burdening the launch community. In doing so, the working group considered several options both individually and in combination. Chief among the concepts considered were various forms of risk aggregation and risk accumulation. Aggregation requires the risk assessment to combine and limit the total risk

up-range flight, there is no threat to the down-range public. Conversely, by the time down-range public is potentially endangered, the up-range public is clear of risk." JC Vol. I at 9. Risk calculations must assess the risk for the entire launch. When making risk calculations to determine whether the pubic risk criterion is satisfied for a launch, risk is not calculated during the launch but before the flight takes place and accumulated for all stages of flight. The risk calculation must account for all stages of flight if it is to be used to determine whether flight should be initiated, which is the intended use of the public risk criterion. The mutual exclusivity of failure scenarios has long been recognized and appropriately accounted for in the risk analyses performed at the Air Force ranges. When calculating risk, one of the important variables, namely, the probability of the launch vehicle's failure (Pf), is proportioned as a failure rate over each phase of flight so that there is some mathematical accounting for the fact that a launch vehicle can only fail once during flight.

associated with the three main hazard categories. Aggregation would ensure that a single risk measure capped the combined risk due to the three main hazard categories. Accumulation combines the risk in the launch area with risk incurred downrange. The group also considered options related to increasing the maximum allowable expected casualty level and imposing different expected casualty limits on new and mature vehicles.

In addition, the Common Standards Working Group considered a third option that would have required the same risk assessment as the original aggregation and accumulation option outlined in the NPRM. The only difference between the two proposals would have been an increase in the maximum allowable E_c value under this option. Aggregating and accumulating with an increased E_c limit could have prevented the risk assessment from becoming overly conservative by adjusting the acceptable risk criterion. However, the main difficulty with this option would have been that choosing a new expected casualty limit would have been difficult to justify in the absence of historical data on which to base it. This difficulty could be mitigated, however, through a focused scientific study dedicated to logically determining an expected casualty limit. In fact, the Department of Defense's Range Commander's Council has previously conducted a similar study that could be used as a baseline for any future research.

A fourth option would have required a launch operator to aggregate risks across the three main categories of hazards without accumulating the flight risks incurred in the launch area with those incurred downrange. The result would have been two separate casualty expectation values for each licensed mission. One value would have represented the aggregate risk in the launch area while the other would have represented the risk downrange. In a departure from the current practice as outlined in EWR 127–1, this option would have imposed individual caps on aggregate risk in both areas but would not have imposed a total hazard cap on any single launch. This option may have had less of an impact on launch operators than the NPRM proposal to aggregate, but would have recognized the different methods used to calculate launch area hazards compared to downrange hazards. These differences include variations in the nature of necessary data and the fidelity of the analyses. Such variations reflect the fact that the ranges typically are not concerned with toxic releases or distant focusing of blast overpressure downrange because most or all of the fuel on board the vehicle would have been consumed en route, or lost on reentry due to the break up and dispersion of liquid fuels. Also, data regarding meteorological conditions tends to be unavailable for most downrange far field blast overpressure concerns. As a result, downrange risk would consist almost entirely of the debris risk, whereas launch area risks would also include overpressures and toxic releases. However, the underlying premise of this option is flawed by the fact that separating launch area risks from downrange risks is contrary to pure risk assessment philosophy in that it considers a launch in discrete parts instead of as a single continuous event. For missions involving multiple distinct periods of population overflight, assessing the risk to each region of overflight separately could result in missions with a very high expected casualty even though the mission met the risk criteria for each overflight area. In other words, such an approach would mask the true risk of the whole mission. Another disadvantage is that, like with other proposals in favor of aggregation, it might be difficult to define and calculate a consistent methodology that normalized the effects of each of the hazards. This particular disadvantage arises from the fact that the same expected casualty value may reflect two different things when applied to two different hazard categories. For example, an E_c of 30×10^{-6} for toxic releases means something different than 30×10^{-6} for debris because, in most cases, more people would have to be exposed to a toxic release to inflict the same number of casualties as a debris impact. Similarly, the potential for fatalities is much higher for a launch with an E_c of 30×10^{-6} for debris than an E_c of 30×10^{-6} for a toxic release due to the nature of the two different hazards. In other words, with debris hazards, a higher percentage of the casualties are fatalities than with toxic hazards. The final and crucial shortcoming of this option is the difficulty in distinguishing between where the launch area ends and the downrange segment begins. This question might not be critical for a coastal range where the physical boundary between land and sea makes for a logical divider. However, no such physical partition exists for an inland launch site.

Under a fifth option, a launch operator would have been required to aggregate overall risks into a single maximum E_c while also capping the maximum allowable risk associated with any one hazard category. Since this option would not have required accumulation, a risk assessment would have required six separate E_c calculations for each licensed launch. Launch operators would have needed to calculate an E_c value for each of the three hazard categories for the launch area and an E_c value for each of the three hazard categories for the downrange portion of the launch resulting in a total of six E_c values. This plan would have required each of the six E_c values to meet the individual cap while requiring the sum of the six values to meet the total allowable aggregate E_c value. The major benefit of this option would have been the ability to recognize the differences between the three main hazard categories while still capping the maximum allowable overall risk level. Unfortunately, not accumulating risks could lead to problems in defining the point in flight where the launch area ends and the downrange segment begins as discussed under the previous option.

The risk assessment proposed under a sixth option would have been very similar to those outlined in the preceding paragraph in that it would have aggregated overall risks into a single maximum E_c, as well as capping the risk of each hazard separately; however, the cap on the maximum allowable risk associated with any one hazard category would have been on the accumulation of launch area and downrange risks for each hazard. This option would have effectively reduced the number of separate expected casualty values from six to three. This option would not have offered any significant benefit over the other options considered and involves the shortcomings associated with aggregation.

Under a seventh option, one set of risk criteria would have been developed for new vehicles while a separate set would have been developed for mature vehicles. This option would have allowed the FAA and the launch operators to recognize the role that operational experience with a particular launch system plays in reducing the level of uncertainty involved in calculating the risk associated with launching a particular vehicle. However, the differences between new and mature vehicles are already addressed under current practice by accounting for the demonstrated reliability of different launch vehicles. Currently, there are no accepted definitions for new and mature launch vehicles.

In summary, the FAA proposes to adopt the Common Standards Working Group determination that, for the reasons discussed above, risk should be limited by hazard. The FAA would limit the risk permitted for debris, far field blast overpressure and toxic release to an E_c of 30×10^{-6} for each hazard rather than an E_c of 30×10^{-6} for a total of all three hazards as proposed in the NPRM.

C. Debris Thresholds for Use in Flight Safety Analysis

Based on comments received, the FAA is proposing different thresholds for inert and explosive debris from those proposed in the October NPRM. The October 2000 NPRM would have required that certain probability analyses account for debris with a ballistic coefficient of three or greater. Under 417.107(c) of this SNPRM, the probability analyses would have to account for debris with a kinetic energy of 11 ft-lbs or greater at impact. For explosive debris, such as solid propellant fragments that will explode upon impact, the FAA is changing its proposal from 3.0 psi blast overpressure to blast overpressure of 1.0 psi or greater. The proposed debris thresholds would be applied when demonstrating that a launch satisfies the risk criteria for collective and individual risk of casualties to the public and the criteria for probability of impact for ships and aircraft.

In proposing requirements governing the calculations that are part of a launch operator's demonstration of compliance with the public risk criteria, the FAA's intent is to protect against casualties, the proposed definition in section 417.3 of the NPRM of which is "death or serious injury." Not all pieces of debris have the potential to be lethal or cause a person a serious injury. Accordingly, the FAA does not intend that a probability analysis account for all debris, only that which has the potential to cause serious injury or death.

In proposed sections 417.225 and 417.227 and appendices A and B of the NPRM, the FAA proposed a methodology for conducting a debris risk analysis and analyses for defining hazard areas used to ensure compliance with the individual risk and ship and aircraft impact criteria. *See NPRM,* 65 FR 64017, 14 CFR 417.225 and 227 and appendixes A and B (proposed). The NPRM proposed that these analyses account for debris with a ballistic coefficient of 3.0 or more, and the analysis would have had to account for a 3.0-psi blast overpressure radius and projected debris effects for all potentially explosive debris. At the time the NPRM was drafted, the FAA believed that these thresholds were consistent with the FAA's definition of casualty, but would not be as conservative as any such thresholds currently used at the federal ranges. However, Air Force members of the Common Standards Working Group raised the concern that any analysis that was limited to these thresholds would not account for significant potential casualties, particularly serious injuries that could result from launch vehicle debris. The FAA has come to agree with the Air Force's concern and has been working with the Air Force as part of the Common Standards Working Group and have identified appropriate thresholds for debris.

The Common Standards Working Group is continuing to explore what measures of concern are most appropriate for distinguishing casualty due to launch vehicle accidents. Improvements in modeling may provide room for better measures of what inert or explosive debris might cause a casualty. Recent models suggest that a change in the proposed measure for inert debris from ballistic coefficient to kinetic energy would be appropriate. Overpressure remains the most appropriate casualty measure for explosive debris; however, a change in the pressure level that presents a hazard would be appropriate. The FAA is proposing new thresholds that reflect the latest thresholds for inert and explosive debris that are being considered by the Common Standards Working Group. The FAA specifically requests comments on the debris thresholds proposed in this SNPRM, including any proposals for alternative approaches to estimating casualties.

The FAA is proposing that a launch operator's demonstration of compliance with the public risk criteria incorporate one of two approaches when applying the proposed thresholds for inert and explosive debris. The more sophisticated of the two approaches, and the one which would result in the more accurate casualty estimate, would require the use of probabilistic human vulnerability models. These models account for the probability of casualty to any person exposed to the threshold levels or greater for inert and explosive debris. The simpler of the two approaches would count all members of the public exposed to the threshold levels or greater as casualties. The simpler approach would result in a relatively conservative casualty estimation; which may be sufficient for a launch operator, depending on the specifics of a proposed launch. Any probabilistic casualty model used for a launch would have to be approved by the FAA during the licensing process or, if the launch is from a federal range, accepted as part of the FAA's baseline assessment of the federal launch range, as is current practice.

Probabilistic human vulnerability models estimate the likelihood of a casualty as a function of specific parameters that describe the contact with the hazard. The parameters may include kinetic energy, kinetic energy per unit area, overpressure, or toxic concentration. Probabilistic human vulnerability models possess greater fidelity than analysis approaches that employ simple conservative assumptions, such as counting every person exposed to the debris thresholds or greater as a casualty. These models possess greater fidelity because they typically account for the variability in how debris may harm different people such as infants, adults or the elderly to account for age, body weight and physical health. Probabilistic human vulnerability models also account for the variability associated with different injury mechanisms such as blunt trauma, crushing and penetration, as well as the variability of response associated with different parts of the body and body positions, such as whether a person is standing, sitting or supine. These models may account for the variability associated with fragment shape, weight and density and the inherent mathematical uncertainties associated with any probabilistic analysis. A human vulnerability model that reasonably accounts for these factors will produce more accurate casualty estimations than would the use of simple conservative assumptions. Accordingly, the use of a probabilistic human vulnerability model may prove to increase launch availability without jeopardizing public safety.

It must be noted that there are expenses associated with employing probabilistic human vulnerability models that can be avoided if the specifics of a proposed launch allow the use of a simple conservative approach. These models may possess significant development costs, including the highly specialized and knowledgeable personnel that would be involved. Such models would typically require more detailed input data. For example, in addition to knowing the number of people in a given area, the input to a probabilistic human vulnerability model could require statistics on the physical characteristics of the people and whether they are expected to be in the open or sheltered, and if sheltered, the characteristics of the shelters. A launch operator would have to weigh the costs associated with developing and using a

probabilistic human vulnerability model against the potential for increased launch availability.

Some of the probabilistic human vulnerability models currently used by the Air Force use the Abbreviated Injury Scale (AIS) of the Association for the Advancement of Automotive Medicine to define casualties, and to distinguish between serious injuries and those of lesser severity. The AIS is an anatomical scoring system that provides a means of ranking the severity of an injury and is widely used by emergency medical personnel. Within the AIS system, injuries are ranked on a scale of 1 to 6, with 1 being a minor injury, 2 moderate, 3 serious, 4 severe, 5 critical, and 6 a non-survivable injury. A scaling committee monitors the AIS evolution. A review of the current Air Force models found that they count an injury that qualifies as AIS Level 3, 4, 5, or 6 as a casualty. The Common Standards Working Group has recommended that any future casualty models used to satisfy Air Force and FAA requirements incorporate AIS Level 3 or greater as the standard for distinguishing casualties from injuries of lessor severity. When using the AIS for the purpose of casualty modeling, any injury that, due to its severity, qualifies as AIS Level 3, 4, 5, or 6 would be counted as a casualty. The FAA agrees that the use of AIS Level 3 or greater is appropriate for describing a medical condition sufficiently to allow modeling of casualties for purposes of determining whether a launch satisfies the public risk criteria.

The FAA recognizes that the 45th Space Wing conducts risk assessment of debris with a kinetic energy of less than 11 ft-lbs for blunt trauma on occasion, but the FAA does not currently plan to codify that practice. The circumstances surrounding that approach currently appear unique to the 45th Space Wing and constitute a response to the crowds of visitors that the Eastern Range must protect for launches. Numerous debris pieces with expected impact kinetic energies of less than 11 ft-lbs may significantly contribute to the risk of a launch when population density is sufficiently high. Also, the criterion of 11 ft-lbs of expected kinetic energy at impact does not ensure protection from serious injuries due to potential penetration wounds. For the time being, however, the FAA will not address this issue. The Common Standards Working Group considered a proposal for a threshold level near 40 ft-lb/in^2 to protect against serious penetration injuries from inert debris impacts. However, the Common Standards Working Group needs more time to evaluate an appropriate debris characteristic to protect against serious penetration injuries. The FAA invites public comments on this subject.

1. Inert debris

This SNPRM reflects two changes to the debris measure proposed in the NPRM: a change of the parameter measured to establish the probability of a casualty due to debris from ballistic coefficient to kinetic energy and a possible increase in conservatism, depending on the characteristics of a debris piece, of the threshold from a ballistic coefficient of three to a kinetic energy of 11 ft-lbs. The FAA proposed, throughout the NPRM, using ballistic coefficient as a metric for human vulnerability to estimate risk from inert debris impacts. Comments received from the Air Force and its contractor, ACTA Inc., as part of the Common Standards Working Group highlighted the pitfalls of relying on that metric. These comments have persuaded the FAA that defining hazardous debris as all pieces with a ballistic coefficient (often referred to as beta) of three or greater may fail to adequately protect the public in some cases. The FAA is now changing its proposal to use kinetic energy as the metric for estimating risk to the public from inert debris at a threshold level of 11 ft-lbs.

Specifying ballistic coefficient as a criterion ignores many important factors. The velocity of a debris piece at impact is an important factor in establishing whether an injury would result, but the terminal velocity of a debris piece at impact can vary significantly depending on the altitude at impact and its ballistic coefficient. Therefore, using ballistic coefficient as a casualty measure for inert debris would not indicate the velocity of impacting debris. Additionally, a debris fragment's ballistic coefficient does not indicate its mass, which is another important factor in establishing injury potential due to impact. A heavy fragment with a large area may be lethal, even though its ballistic coefficient is less than three. Similarly, a light fragment with a small area may be harmless even though its ballistic coefficient is greater than three. For example, consider a 30 pound debris piece, such as a rocket motor case fragment, that behaves like a tumbling plate, with an aerodynamic reference area of 11 square feet and a subsonic drag coefficient of 0.9. This piece has a ballistic coefficient of about three. The terminal velocity for this piece is about 50 feet per second, or 34 miles per hour. This piece would have a kinetic energy of about 1,164 ft-lbs at impact. The NPRM asserts that "a ballistic coefficient of three correlates approximately to a hazardous debris piece possessing 58 ft-lbs of kinetic energy." *NPRM*, 65 FR 63935. The above example shows, however, that the kinetic energy of debris with a beta of three can be significantly greater than 58 foot-pounds. Accordingly, it is appropriate to consider other factors for determining whether a fragment would produce a casualty.

Inert launch vehicle debris of concern to the FAA typically threatens humans primarily from blunt trauma due to nearly vertical impact. The debris piece's potential to cause a serious injury upon impact with a person depends primarily on the mass and shape of the debris and the velocity at which it impacts. Because kinetic energy on impact accounts for these three factors, the FAA believes it to be the appropriate metric for gauging the potential for blunt trauma.

Recently published human vulnerability model results examined by the Common Standards Working Group suggest that for the general public, a kinetic energy of 11 ft-lbs at impact would be a reasonable threshold level for any analysis intending to account for virtually all serious injuries from blunt trauma. When applied as a threshold, 11 ft-lbs would represent the kinetic energy level for debris that could, depending on the specifics of an impact with a person, cause a casualty. As an example, 11 ft-lbs at impact corresponds to a one-quarter inch thick square aluminum plate with an edge length of about two inches and a weight of about 1.5 ounces impacting at a velocity of approximately 60 mph.

One must note that not every impact of debris at 11 ft-lbs or greater will necessarily result in a casualty. The probability of casualty due to such an impact is further dependent on a number of other factors specific to the debris and the impact scenario. Probabilistic human vulnerability models are often used to account for these other factors, and an analysis that employs these models will produce a more realistic casualty estimate than a deterministic analysis that counts all expected impacts of 11 ft-lbs or greater as casualties.

The choice of 11 ft-lbs as a threshold also has practical benefits. The FAA realizes that there is no standard threshold currently in use, and the human vulnerability models used at the federal ranges today may vary depending on the launch vehicle and other factors. The Air Force members of the Common Standards Working Group have indicated that the models currently used at Air Force ranges satisfy the

proposed 11-ft-lb threshold. For example, the debris model used for a Atlas IIAS launch from Cape Canaveral Air Force Station accounts for inert debris with kinetic energy at impact greater than or equal to 7 ft-lbs. A standard threshold would facilitate the development and application of more standardized models with associated efficiencies. For these reasons, the FAA is proposing to use kinetic energy as the metric for estimating the risk of casualties due to blunt trauma from inert debris impacts at a threshold level of 11 ft-lbs.

This SNPRM would require any risk analysis for blunt trauma due to launch vehicle debris to account for all potential debris with 11 ft-lbs or greater of kinetic energy at impact. The analysis would apply the relatively sophisticated approach using probabilistic models to assess the probability of casualty due to any debris with kinetic energy at impact of 11 ft-lbs or greater, or it could apply a more simple approach where each expected impact of a person with kinetic energy of 11 ft-lbs or greater would be counted as a casualty.

2. Explosive Debris

In sections 417.225 and 417.227 of the October 2000 NPRM, the FAA proposed that a flight safety analysis, a flight hazard area analysis, and a debris risk analysis had to account for a 3.0-psi blast overpressure radius or greater and projected debris effects for all potentially explosive debris. Explosive debris is debris with the potential to explode upon surface impact. At the time the NPRM was drafted, the FAA believed that this threshold was consistent with the FAA's definition of casualty and would not be more conservative than any such thresholds currently used at the federal ranges. However, comments received from the Air Force and its contractor, ACTA Inc., as part of the Common Standards Working Group indicated that there is a significant potential for casualties at blast pressures below 3.0 psi. The FAA has reviewed this issue with the Common Standards Working Group and now proposes to reduce its threshold for explosive debris to 1.0 psi.

Many factors complicate the determination of threshold blast loads from explosive debris that could cause serious injury. These factors include the substantial difference in vulnerability of people in the open and people in buildings, the substantial variability of protection afforded by various building types, the complex nature of blast wave propagation through groups of buildings or hilly terrain, the potential for far field window breakage due to atmospheric focusing of a blast wave under special conditions, and the general lack of data on casualty-blast load relationships for occupants of various building types. In addition to the direct effect that blast overpressure can have on a person, blast may cause serious injury by breaking glass that may strike a person, by blowing people down, or by collapsing a structure with people in or near it.

People in the open are generally less vulnerable to serious injury from blast loads than occupants of typical buildings, particularly if ear damage is discounted as a serious injury. However, persons standing in the open can be seriously injured as a result of being blown-down by overpressure. Blow-down potential is a function of both blast overpressure and impulse. For an explosive yield of 10,000 pounds TNT, the threshold for serious injury due to blow-down for a 70-kg person is near 1.4 psi.

The FAA recognizes that blast thresholds used currently at federal ranges may vary depending on the analysis being performed and the specifics associated with the people and property being protected. The October 2000 NPRM's proposal to address the risk associated with 3.0-psi overpressure would have addressed risks only to someone standing outside in the open, a typical assumption for overflight risk analysis. The ranges pointed out that this failed to account for risks to persons in or near a building or other structures. Glass can break at 1.0 psi—or even less—which means that a person in a building is at risk from flying glass shards or other secondary hazards and may be more at risk than a person in the open. The current practice at the ranges accounts for such secondary hazards of explosive debris. The Department of Defense Explosive Safety Board (DDESB) approves the siting of buildings that may be subject to approximately 1 psi over pressure level in the event of an accident. Additionally, the Air Force launch ranges use 1.0 psi to determine a hit to ships for probability of impact calculations. Accordingly, the Common Standards Working Group has reviewed the casualty models and analysis processes used at the Air Force ranges and concluded that the use of 1.0 psi as a threshold for explosive debris would be consistent overall with current practice at those ranges and in the explosive safety community at large.

Although the FAA is proposing overpressure as a threshold parameter, blast effects on humans, especially building occupants, are generally sensitive to the positive phase impulse, as well as the peak overpressure, of a blast load. For example, an explosion with a 50,000-lb TNT equivalent from a launch accident would produce on the order of a 1% probability of serious injury for occupants of typical buildings in the United States located at the 1.0-psi overpressure radius from the source of the blast. However, a more typical explosion (1000-lb TNT equivalent) from a launch accident would produce less than a 0.01% probability of serious injury in the same circumstances. It is important to note that these estimates account for the probability of serious injury due to broken glass shards propelled by the blast and assumes the occupants are equally likely to be anywhere in the building. The difference in the probability of serious injury in the two examples is primarily due to the greater impulse of a large explosion compared to one with a lesser yield. However, the probability of serious injury in both cases at the 1.0-psi overpressure radius is relatively small. Most typical impacts of explosive launch vehicle debris would result in small yields, far below a 50,000-lb TNT equivalent; therefore using a 1.0-psi peak incident overpressure level as a threshold in a simple explosive overpressure vulnerability model would, the FAA believes, capture any overpressure which would cause serious injury while at the same time account for the role played by the impulse of the blast as well.

When applying the 1.0-psi threshold, any probability analysis would have to account for a 1.0-psi blast overpressure radius for all potentially explosive impacting debris. The analysis may apply a relatively sophisticated approach that uses probabilistic models to determine casualty due to any blast overpressures of 1.0-psi or greater or apply a simpler approach that counts all people within the 1.0-psi overpressure radius as a casualty. When using the simple approach, the peak incident overpressure would be computed with the Kingery-Bulmash relationship, without regard to sheltering, reflections, or atmospheric effects. For persons located in buildings, the peak incident overpressure would be computed at the shortest distance between the building and the blast source. A person would be considered a casualty when located anywhere in a building subjected to peak incident overpressure equal to or greater than 1.0 psi.

The FAA anticipates that launch operators launching smaller vehicles, such as Pegasus Taurus, will be able to take advantage of the simple approach. Launch operators conducting launches of larger vehicles would likely resort to use of probabilistic models. The FAA

requests comments on the proposed debris thresholds and their application, which allows for both simple and sophisticated analysis methods. Because the FAA considers the proposed debris thresholds and their application to be consistent with current practices at the federal ranges it does not anticipate cost impacts, but requests comments on this point.

IV. Issues of Concern to Commenters

A. Authority and Need for Rulemaking

Some commenters questioned the FAA's authority to conduct this rulemaking, and whether it was consistent with Congressional intent. They also questioned its necessity. The FAA has the authority to conduct this rulemaking,[7] and codification of the safety requirements is necessary. The statute and the legislative history support the proposed codification of launch safety requirements. The rulemaking is necessary to identify genuine and universal safety requirements, which includes identifying and codifying the intent behind existing range safety requirements. Currently, federal requirements consist of a mix of safety and mission requirements. Some are available readily to the public. Others are typically only in the possession of range analysts. This rulemaking identifies those requirements with which a launch operator must comply under current practice. The FAA intends that streamlined performance requirements offer the same high level of safety and the flexibility of current practice. Finally, the FAA is concerned that adopting the suggestion to only apply proposed part 417 to non-federal launch sites could result in confusion regarding safety requirements at the federal ranges. This discussion describes the reasons for the FAA's position that it has the authority to conduct this rulemaking, that the rulemaking is consistent with Congressional intent, and that it is necessary for public safety.

1. Authority for Rulemaking

The Joint Commenters assert that the FAA's regulation of launch safety is not statutorily mandated, and is inconsistent with the Act's "finding that private sector launch and associated services should be regulated only to the extent necessary to protect, among other things, the public health and safety." JC Vol. I at ii. In support of this argument, the commenters point to the FAA's authority to accept the assistance of other executive agencies in carrying out the Act, the Air Force's comprehensive safety requirements and the safety record achieved at the ranges. JC Vol. I at ii; Lockheed at 6. Lockheed Martin and other commenters suggest that the rulemaking is inconsistent with Congressional intent, as embodied in legislative history, to streamline the licensing process. JC Vol. I at iii; Lockheed at 6.

Congress found that the FAA should "only to the extent necessary, regulate * * * launches, reentries and services to ensure compliance with international obligations of the United States and to protect the public health and safety, safety of property, national security and foreign policy interests of the United States." 49 U.S.C. 70101(a)(7). This rulemaking would identify and codify regulations containing the standards that protect public safety. Congress also found that the provision of launch services would be "facilitated by stable, minimal, and appropriate regulatory guidelines that are fairly and expeditiously applied." 49 U.S.C. 70101(a)(6).

The commenters acknowledge that the FAA has the authority under 49 U.S.C. 70101–70121 (referred to as "Chapter 701" or "the Act") to issue safety regulations. JC Vol. I at iii; *accord* Lockheed at 2, 5. Accordingly, the commenters' position that the rulemaking fails to satisfy the Act appears to be based on the belief that the FAA's rulemaking may somehow be inconsistent with Congressional intent. As a preliminary matter, the FAA notes that intent becomes a matter of significance to statutory interpretation only when the statute itself is unclear. The Act is not unclear.

Chapter 701 authorizes the Department of Transportation and thus the FAA, through delegations, to oversee, license and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 49 U.S.C. 70103, 70104, 70105. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 49 U.S.C. 70105.

2. Congressional Intent

Despite the commenters' claims to the contrary, review of legislative history shows that the FAA's rulemaking would satisfy Congressional intent. Review of the commenters' proposed interpretation of Congressional intent shows that Congress did not attempt to foreclose this rulemaking. Instead, some of the comments take legislative history out of context and argue that observations offered for a different day apply to the current situation. The comments attempt to portray Congressional intent as opposing a rulemaking—such as this—that codifies safety requirements. As explained below, the FAA does not share this interpretation.

Even if intent were an issue, the best expression of Congressional intent is contained in the language of the Act itself. This meaning may be discerned by analyzing the design of the statute as a whole. The Act itself specifically created a civilian regulatory regime for safety. Congress in 1984 neither foresaw nor forbade the conduct of this rulemaking. Instead, Congress gave the FAA responsibility for safety and authority to conduct rulemakings. Where Congress intended to bar duplication of responsibilities in the Act, it did so explicitly. *See, e.g.*, 49 U.S.C. 70117(b); S. Rep. No. 98–656, 15 (1984)(explaining that because regulatory regimes for communications satellites and land remote sensing satellites already exist, a duplicative process would be unnecessary). The regulatory regime for launch safety is that of the FAA. Had Congress viewed the Air Force's safety oversight as sufficient to require no codification of safety standards, Congress could have done so as explicitly as it ensured against duplication of the roles of the Federal Communications Commission and the National Oceanic and Atmospheric Administration.[8] Moreover, Congress could have failed to vest safety responsibility in the FAA. Congress did neither of these things.

Lockheed Martin separately urges reliance on a Senate report that accompanied passage of the original Commercial Space Launch Act to support its claim that this rulemaking runs counter to Congressional intent. Lockheed at 6. The cited legislative history does not go as far as Lockheed recommends. Lockheed states, that "Congress stated unambiguously that the Act, and implementation of the Act, should reduce the regulatory burden for commercial launch operators and that the authority of * * * the

[7] *Accord* JC Vol. I at iii ("the FAA has the flexibility under the CSLA to develop and issue its own rules"), Lockheed at 2, 5.

[8] That the FAA may seek the assistance of the head of another executive agency does not accomplish nearly as much as the commenters suggest. Given the FAA's continued reliance on the federal launch ranges, now and for the foreseeable future, it is certainly a statutory provision of which the FAA is aware, but not one that stands in the way of the FAA identifying safety standards through rulemaking.

Secretary* * * to issue additional requirements and regulations must conform with the Congress' expressed desire to streamline the licensing process for commercial launch * * *." Lockheed at 6. The FAA first notes that what Lockheed cites in support of its assertion is not the language of the statute itself, but the regulatory impact statement of the Senate Report. S. Rep. No. 656, 98th Cong., 2d Sess., 5 (1984), *reprinted in* 1984 U.S.C.C.A.N. 5328, 5332. More significant, however, is the fact that Lockheed has added a word, the word "must," to the cited language, thereby changing the meaning of the statement from one of description to one of admonition. Accordingly, the Senate report does not have the meaning that Lockheed would ascribe to it. Instead, in discussing the new authority conferred upon the Secretary, the report notes that the Secretary's authority "to issue additional requirements and regulations conforms with the Committee's desire to streamline the commercial launch and launch operations process and to facilitate compliance with the required regulations." Sen. Rep. No. 656 at 5. A better interpretation is that the Committee thought that the new authority streamlined the existing situation.

Indeed, the situation at that time was a difficult one for a launch operator. Prior to passage of the Act, a launch operator, for example, had to obtain an export license under the International Traffic in Arms Regulations. Sen. Rep. No. 656 at 37. This was why the legislation gave the Secretary "exclusive licensing authority" for commercial launch. Sen. Rep. No. 656 at 5, 37. The FAA's interpretation is also more consistent than Lockheed's with the Committee's other statement to the effect that "the legislation would provide for a more stable regulatory environment than that which currently exists.* * *" Sen. Rep. No. 656 at 6. The regulatory environment that existed at the time would have required a launch operator to satisfy the requirements of numerous federal agencies.[9]

Likewise, although Lockheed does accurately describe Congressional encouragement to avoid duplicative and unnecessary regulation, (Lockheed at 6 (citing Sen. Rep. No. 656 at 3, 19)), the FAA's work with the Air Force in achieving common standards is designed to attain that very goal. In summary, the history at the time indicates, and the actual words used by the Committee demonstrate that Congress intended to streamline the existing regulatory process, not to argue against the possible future codification of safety requirements.

3. Necessity for This Rulemaking

Although some commenters assert that this rulemaking is not necessary to protect public safety, Chapter 701 directs the FAA to regulate to the extent necessary to protect public safety. The FAA believes that if a launch operator is to be expected to satisfy safety requirements, those requirements must be clear, open and published. In the October 2000 NPRM, the FAA announced that it considered the range safety requirements necessary because they were the requirements with which the ranges had achieved their level of safety. The FAA continues to find that the proposed requirements are necessary to achieving safety. The following discussion provides the reasons for the FAA's position.

Launch operators should achieve the same level of safety, regardless of whether they launch from a federal launch range or a non-federal launch site. Safety standards should be common between the FAA and the ranges. Most significantly, the FAA must identify the standards by which it judges safety; and, having identified those standards, the FAA must provide full disclosure that those standards apply at both federal launch ranges and at non-federal launch sites. Not only has the FAA identified its own proposed standards, in doing so, it has provided the additional benefit of identifying what the federal launch ranges themselves in fact require, and the standards they impose on launch operators through their own internal requirements.

a. Genuine and Universal Safety Requirements

Different federal launch ranges have implemented different approaches to achieving the same safety goals. The FAA proposes to codify the intent behind these different requirements where possible. In the interest of achieving universal applicability, namely, requirements that can apply regardless of differences in geography, mission, meteorological conditions and other factors, the FAA worked with the ranges to identify the underlying intent. Additionally, some of the range requirements documents require a launch operator to provide data that the range, in turn, subjects to standards contained in internal range documents. The internal standards are available upon request and provide greater insight into the intent behind particular information or safety requirements. This rulemaking would codify those as well.

Although, generally, Lockheed Martin maintains that the proposed requirements are new and different from EWR 127–1, Lockheed Martin stated that it would object as well to the proposed requirements, even if it thought that the FAA could succeed in codifying the Air Force requirements, on the grounds that those requirements are not the "real, ultimate requirements" of public safety, which the Air Force is able to accept through "tailoring." [10] Lockheed at 3. The FAA's intent, however, has been to determine what those "real, ultimate requirements" are, so that they may be shared and codified as performance standards.[11] For example, the standards governing the creation of impact limit lines are not contained in EWR 127–1, but may be found instead in a flight safety analysis handbook, *Flight Control and Analysis General Reference Handbook*, RTI Rep. No. RTI/6762/03–02F (Apr. 24, 1997). This rulemaking attempts to unveil those requirements. Indeed, the Administrative Procedure Act directs that an agency's requirements be public. 5 U.S.C. 552(a)(1)(D).

The FAA's requirements may appear different from EWR 127–1 because they attempt to capture both the written requirements of EWR 127–1 and how the ranges have implemented those requirements. The FAA, aware of the safety expertise resident at the federal launch ranges, consulted with the ranges and reviewed the ranges' own requirements, as embodied in the EWR 127–1 and in NASA's Range Safety Manual for Goddard Space Flight Center (GSFC)/Wallops Flight Facility (WFF), RSM–93. Range safety personnel advised the FAA that not all of their requirements were enforced in a standardized manner because the ranges

[9] Contemporaneous and historical accounts describe the regulatory environment with which a launch operator had to comply as consisting of 18 federal agencies and 22 federal statutes. Kay, W.D., "Space Policy Redefined: The Reagan Administration and the Commercialization of Space," *Business and Economic History*, 237 -247 (Fall 1998); "Industry Observer," *Av. Week & Space Technology*, 15 (Oct. 22, 1984).

[10] "Tailoring," as explained by EWR 127–1, permits the preparation of an individually "tailored" requirements document to ensure that only applicable or alternative equivalent requirements are levied upon a launch vehicle program." EWR 127–1, 1–21, 1.6.3 (Oct. 31, 1997).

[11] An unintended consequence of translating some of the details of EWR 127–1 into performance requirements has been to appear to create new requirements. *See, e.g.*, discussion of surveillance requirements, IV.B. Additionally, as described in the NPRM and elsewhere here, the FAA has proposed more detailed requirements to serve as a roadmap for what the FAA considers demonstrates satisfaction of those performance requirements, and against which alternatives might be measured.

had granted waivers, deviations and "meets intent certifications" to launch operators in response to the requests of the launch operators for relief. The ranges have also used "tailoring." Typically, this involves not imposing requirements that do not apply, and rewriting any requirement where the intent of the requirement is satisfied through other means. *EWR 127–1*, Appendix 1A, 1–23 (Dec. 31, 1997).

The FAA is building in similar flexibility by recognizing where the ranges have been willing to grant relief and incorporating those determinations into the requirements as proposed through this rulemaking so that particular non-compliances would no longer require waivers. For example, the lot acceptance and qualification test requirements for percussion activated device (PAD) primer charges used in a flight termination system that were proposed in the FAA's October 2000 NPRM (proposed 14 CFR E417.31) are relaxed in comparison to the Air Force's current version of EWR 127–1. The NPRM proposes to reduce the number of units to be tested and to reduce the types of tests to be conducted. These proposed changes from current Air Force requirements are based on lessons learned over the past few years and earlier decisions made by Air Force range safety to waive or tailor such requirements for existing launch vehicle systems. One launch operator that currently launches from Air Force ranges, having seen the proposed PAD requirements in the FAA NPRM has since approached the Air Force with a request to apply the FAA requirements to its launch vehicle. These improvements and others identified during the development of the October 2000 NPRM are now being incorporated into the Air Force's new Space Command manual that will replace 127–1. Thus, in many ways, particularly with respect to the particulars of the flight safety system requirements, the FAA believes that this rulemaking may provide a more comprehensive and streamlined version of the ranges' own requirements.

During the discussions between the ranges and the FAA regarding safety requirements for non-federal launch sites, the FAA attempted to identify the common underpinnings of the range requirements to achieve more universal applicability, particularly in the area of flight safety analysis. Flight safety analyses that the Air Force ranges apply on each coast are directed toward each coast's geography, meteorological conditions, and mission profiles. As the FAA worked to make the range requirements more general so that they might apply wherever a launch took place, the question arose as to why the safety requirements for licensed launch operators should differ from site to site. No good reason was evident. Moreover, with the goal of achieving universal applicability of as many of the requirements as possible by identifying the common intent underlying different approaches to similar safety questions, permitting different standards seemed unnecessary.

In the course of these discussions, the ranges and the FAA saw a number of benefits to having common standards. Common standards would provide launch operators certainty in planning. Common standards would permit a body of expertise to support those standards. In the unlikely event that the Air Force ever pulled back from its oversight of commercial activity, a step the Air Force has contemplated within past years, standards will already be in place for FAA licensed launches from a federal range. Also, it might be difficult to justify imposing different standards of safety on licensed launch operators based merely on whether the launch took place from a non-federal launch site or from a federal launch range.

In summary, the applicability of part 417 to all licensed launches, regardless of their launch location is necessary. Universality ensures a single standard of safety. Publication of the requirements currently in place permits a launch operator to know and plan for the requirements with which it must comply. The comments' suggestion that part 417 only apply to non-federal launch sites is based on a misperception that the FAA has proposed "significant changes," in the form of new, more conservative requirements, JC Vol. I at 8, 12, to a proven process, when, to the contrary, this rulemaking only identifies and proposes to codify the intent underlying existing requirements in a performance standard format.[12] This is not to say that there were no problems with the regulations proposed in the October 2000 NPRM. The commenters identified certain areas of the FAA's proposed regulatory text that might be interpreted as more conservative than current practice at the federal ranges. This was not the FAA's intent and the FAA is working to make the appropriate adjustments, some of which are presented in this SNPRM.

b. Identification of Standards and Resulting Application

Commenters' suggestion that the FAA refrain from applying part 417 to launch from a federal launch range does not address the need to identify safety standards, fails to recognize that this exercise has identified those standards, and falls prey to the law of unintended consequences. Having identified its standards, the FAA does not believe that it would be helpful to claim that they do not apply. The logic of how the FAA evaluates the acceptability of the federal launch ranges should alleviate concerns over any seeming duplication between the FAA and the Air Force. The Joint Commenters proposed that the FAA apply part 417 only to non-federal launch sites. For the FAA to agree that part 417 would only apply at non-federal launch sites would, however, be confusing at best and misleading at worst.

Part 417 would contain the standards by which the FAA would assess the adequacy of both a licensee and a federal launch range. The FAA assesses a launch operator through the licensing process and a federal launch range through a baseline assessment. Because the FAA obtained the standards in part 417 from the federal launch ranges own standards and practices, the FAA, of course, anticipates that the federal launch ranges will satisfy proposed part 417. Nonetheless, whether through changes in Air Force or NASA policy or because of the failure of a range safety system, it is conceivable that some element of range safety might not satisfy the ranges' own current requirements. In fact, the ranges advise that they may, from time to time, waive requirements for their own equipment, and a launch operator may remain unaware of this waiver.

Even if the FAA acquiesced in the commenters' proposal and declared that part 417 only applied at non-federal launch sites, it would still have to use some set of standards against which to measure the continued adequacy of the federal launch ranges whenever the FAA updated its baseline assessments. Those standards would be found in part 417. Accordingly, to say that part 417 did not "apply" at the federal launch ranges might confuse some into thinking that part 417 had no applicability whatsoever, even in the baseline assessment context. Others might believe that the FAA was misleading them regarding the applicability of part 417 at federal launch ranges given that the FAA would assess the adequacy of

[12] The presence of design requirements shows what the FAA proposes to find acceptable. Launch operators should note that the opportunity to provide a clear and convincing demonstration of an equivalent level of safety is embedded in each design oriented requirement. *See also* NPRM, 65 FR 63940–41 (discussing reasons for acceptability of Sea Launch's comparable flight safety system).

the ranges against part 417. The FAA does not consider it advisable to create such confusion. None of the points raised by the comments address this fundamental issue, and the FAA invites the public to take this additional opportunity to present alternatives that take this consideration into account. It is one that the FAA does not believe it can ignore, but recognizes that those with a different perspective may be able to offer insights currently unavailable to the FAA.

Because the range safety requirements are part of how the ranges have achieved their high level of safety, the FAA considers those requirements necessary for continuing to achieve that same level of safety for FAA-licensed launches at both non-federal launch sites and federal launch ranges. The FAA and the commenters take away different lessons from the past safety records. Although the Joint Commenters point to the safety record of the past as justification for not requiring further regulation, the FAA looks to the safety record of the past and attributes that successful record, in some measure, to the launch safety requirements themselves. Accordingly, when the FAA began its own attempt to codify requirements that would govern launch safety at non-federal launch sites, it looked first to the ranges' own requirements and the FAA has continually worked with the Air Force to ensure that in the future the two agencies' requirements are consistent and do not conflict.

c. Implementation

Other comments received in response to the NPRM include concerns about how the FAA would implement the proposed requirements at the federal launch ranges, whether the FAA would grant waivers as readily as the ranges, and whether FAA oversight would result in reduced flexibility, both in meeting the intent rather than the letter of the requirement and in terms of operational flexibility. Because the Act directs the FAA to encourage, facilitate and promote private sector launches, 49 U.S.C. 70103(b), the Joint Commenters indicate that the FAA should streamline its licensing and regulating regime by continuing to rely on the ranges for the implementation of launch safety requirements. JC Vol. I at ii.

One of the reasons the commenters argue that this rulemaking is not necessary is because they fear that the FAA's identification of the safety standards would constitute duplication of oversight. This is not so much a concern regarding the necessity of having safety standards as a concern with their implementation. The comments recommend that a single entity be responsible for the safety of licensed launches.

A review of what the FAA proposed in the NPRM should allay these concerns. Of first and foremost importance, the commenters should note that the FAA intends no duplication of oversight. The proposed standards themselves, which were derived from range requirements and practices, will apply to all licensed launches, regardless of the location of the launch site. Applicability of standards is different, however, from duplication of oversight. Oversight means inspection, monitoring and otherwise checking whether a licensee is in compliance with the requirements of the Act, the FAA's regulations and its license. As the FAA noted in the October 2000 NPRM, the FAA does not now and does not intend through this rulemaking to duplicate the work, evaluation, inspection and monitoring conducted by the federal launch ranges. NPRM, 65 FR 63924. The FAA relies on its baseline assessments of the ranges, and those baseline assessments have found the ranges safety requirements acceptable. NPRM, 65 FR 63924. Likewise, the FAA has found acceptable the ranges' implementation of those requirements. There are situations, however, where the ranges may, for reasons of their own, change their support for licensed launches. In such a case, the launch operator would likely have to perform its safety work itself. Also, as noted, if "a documented range safety service has changed significantly or has experienced a recent failure" the burden of demonstrating safety at a range shifts to the launch operator. NPRM, 65 FR 63924. The FAA sees little change from current practice in this regard.

The FAA does not agree that this rulemaking will result in loss of flexibility. The NPRM would allow for flexibility through the use of performance requirements, where appropriate. The FAA worked extensively with federal range safety personnel to develop common launch safety requirements that refine and adapt many of the current federal range standards into performance requirements.

For each specific safety issue, the NPRM may contain different levels of performance requirements as needed to respond to the complexity of space launch systems and the potential for negative consequences to public safety. For example, a flight termination system is one of the most critical systems on a launch vehicle for ensuring public safety. Hence, to ensure flight termination system reliability the NPRM contains comprehensive design and test performance requirements for the systems, components and piece parts. Also, the FAA does not attempt to mandate requirements related to achieving the success of the mission, and will permit the launch operator to accept its own risks on that score, where there is no impact on public safety. For example, where safety is ensured by the working of the flight safety system, the NPRM calls for a launch operator to provide for launch vehicle tracking without specifying detailed requirements to ensure reliable tracking. Aside from some general performance requirements, the reliability of the tracking system is left to the launch operator with the understanding that if all tracking data is lost during flight the flight termination system will be used to destroy the vehicle. For a licensed launch from a federal range, the launch operator typically relies on the range to provide reliable launch vehicle tracking. The FAA's proposed requirements do not dictate a change from such practices.

In addition to the use of performance requirements, the FAA proposes to allow flexibility by permitting a license or a license modification applicant to demonstrate an equivalent level of safety for a proposed alternative approach. Although the proposed regulations would provide the requirements with which a licensee must comply, the FAA anticipated that a launch operator might wish to employ alternative means of achieving an equivalent level of safety. In that case, if a launch operator clearly and convincingly demonstrated an equivalent level of safety, the FAA would accept the alternative. Once accepted, an alternative approach would become part of the terms of the license, and the FAA would consider making the substitute available for the benefit of others through the advisory circular process or some other means. The FAA has also demonstrated its flexibility with the licensing of launches such as those of Sea Launch, where there are a number of aspects that do not conform to current practice at U.S. launch ranges. Also, the FAA recognizes that the NPRM represents only a version of current practice: the safety methods used at the U.S. ranges often differ from one another. The FAA has worked with the federal range organizations to develop common launch safety requirements that present a more generalized description of the current practices at the ranges. Where there may

be differences between the methodologies defined in the NPRM and those used at a federal range, the current practices at the federal ranges typically do provide an equivalent level of safety to the NPRM.

The Joint Commenters expressed concern that if the NPRM were implemented as drafted, launch operators on federal ranges would have to demonstrate compliance with two sets of requirements overseen and administered by two separate and independent government agencies. The commenters believe that this would be cumbersome and inevitably would lead to costly and duplicative safety efforts with no appreciable increase in public safety. The FAA is continuing to work with the federal ranges to eliminate these concerns. Under current regulations, the FAA issues a license to an applicant proposing to launch from a federal launch range if the applicant satisfies the requirements of part 415, subpart C, of the licensing regulations and has contracted with the federal launch range for the provision of safety-related launch services and property, as long as the safety related launch services and proposed use of property are within the experience of the federal launch range. The NPRM does not propose to change this overall approach. The FAA does not duplicate analyses performed by the federal launch ranges or routinely review those analyses during the launch safety review. Instead, the FAA relies on its knowledge of the range processes as documented in the FAA's baseline assessments. The FAA's baseline assessments document each federal launch range's capabilities, safety program, standards and policies. The January 16, 2001 Memorandum of Agreement between the FAA and the U.S. Air Force explains the roles and responsibilities of the Air Force and the FAA for overseeing safety of commercial space launch and reentry.

The Joint Commenters expressed doubt that the Air Force and the FAA would be able to work together in an efficient way toward a common goal. The commenters indicated that if the FAA NPRM were implemented, it would result in competing safety requirements at the Air Force ranges. These concerns are unfounded. The Air Force and the FAA remain committed to the partnership outlined in the MOA and to ensuring that competing safety requirements do not exist. The MOA calls for developing common launch safety requirements and for coordinating the common requirements. The Common Standards Working Group is continuing to participate in developing the FAA's final rule and a revised Air Force range safety requirements document. The common standards will be contained in the Code of Federal Regulations and Air Force documents. FAA rules appear in the Code of Federal Regulations. The Air Force range safety requirements, which must address a broader range of issues, will encompass the same common launch safety requirements as well as other issues unrelated to launch safety. When the final Air Force and FAA documents are in place, a licensed launch operator at an Air Force range, in day-to-day practice would only need to work from the Air Force's range safety document so long as the FAA's launch safety requirements are contained there as well. This would be no different from the process in place for licensed launch operators today. The FAA and the Air Force are also working under the MOA to develop processes for implementing the common launch safety requirements together, including coordinated review and disposition of requests for relief from common requirements, as explained in section IV.C of this discussion. Although part 417 would contain the legal requirements with which a licensee must comply, when launching at a federal range, a licensed launch operator's primary day-to-day interface would continue to be the federal range. A unified launch safety community that includes FAA representatives will address any issues that may arise to ensure that all federal launch range and FAA licensing concerns are addressed.

B. Cost Impacts on Licensed Launches From Federal Launch Ranges

Comments in response to the October 2000 NPRM indicate that the launch industry has concerns about how the proposed rule would work, and how the FAA and the Air Force work together. The concerns have led to a perception that this rulemaking will result in significantly increased costs for the launch operators. To address some of these concerns, the FAA is proposing changes to the October 2000 NPRM in this SNPRM, as described earlier in this preamble. The FAA also hopes to clarify some of these issues. Some possible cost impacts identified by the commenters have led the FAA to revisit whether its proposed requirements actually captured current practice. The majority of the concerns underlying the costs the launch operators attribute to this rulemaking are, however, unfounded. The following discussion explains why.

1. Commenters believed some of the proposed requirements were new. Commenters may not be fully familiar with the precise nature of the safety services the ranges provide, and thus believe that some of the proposed requirements in the October 2000 NPRM are new, but, in fact, those requirements are already in place. Similarly, launch operators believe that a number of the more abstract expressions of different range requirements are new. Instead, a number of them are the FAA's proposed attempt to describe the common standards underlying different approaches taken at different federal launch ranges.

2. The launch operators believe that this rulemaking changes their legal responsibility for safety. They are, however, already responsible for safety under the statute and their licenses, and they would not be required to duplicate the work of the federal ranges as a result of this rulemaking.

3. Some of the commenters think that the more onerous requirements governing how to obtain a license apply to federal range launches. The licensing requirements proposed in this rulemaking, however, would apply to an applicant obtaining a license to launch from a non-federal launch site.

4. Commenters expressed concern over a loss of flexibility. These concerns should be allayed by the FAA's proposal to permit a demonstration of an equivalent level of safety, the grandfathering proposal and waiver coordination.

5. Although not a concern raised by the commenters, the FAA requests comment on the neighboring launch operator issue addressed below.

All this is not to say that the comments lack merit. There are a number of instances where the FAA wishes to make changes based upon the comments received. To determine whether it captures current practice, the FAA will revisit the issues raised by such comments. Some changes have already been proposed through this SNPRM, and the FAA requests views on whether the commenters still assign costs to these matters.[13] As one example, commenters attributed an array of costs to the FAA's original proposal not to grandfather. If the launch operators satisfy the FAA's proposed conditions, these same launch operators may be eligible for the FAA's

[13] *See* Boeing Costs at 2, 3, 4 (first and second comments), 9 (first comment), 11 (fifth comment), 12 (first and second comments), 22 (second comment), 23 (fourth comment), 24 (first and sixth comments), 25 (first and second comments), 27 (second comment), 28 (first comment), 29 (first and third comments), 33 (second and third comments), 37 (first and third comments), 40 (all comments); Lockheed Costs Estimates 2, 19 and 26; Orbital Cost Impact Assessment at 6 (item 2 regarding aggregation, items 4, 5 and 7); Sea Launch Costs at 23, 24 (second comment labeled a, b and c).

version of "grandfathering" and need no longer anticipate costs associated with making changes in their operations.

In addressing these cost issues, the FAA found several comments that it does not understand. Because this SNPRM provides an opportunity through its additional comment period to obtain clarity, the FAA urges those commenters who provided the cited comments to assist the FAA in better understanding their differences.[14]

1. "New" Requirements

Some launch operators attributed costs to their launches from federal launch ranges in the belief that the FAA proposed new requirements that the launch operators would not be able to satisfy. The confusion appears to stem from several sources, including the FAA's more generalized description of different range practices, and unfamiliar requirements contained in Air Force handbooks. For instance, in the NPRM, the FAA proposed a number of requirements that attempted to reconcile the different approaches of the Eastern and Western Ranges and thus restated the requirements in a more abstract or generalized fashion. Additionally, the comments appear to indicate a lack of familiarity with some of the particulars of the range's analyses requirements and existing FAA requirements. The last category of seemingly new requirements appears to consist, to the best of the FAA's ability to interpret them, of misreadings of the proposal.

Commenters attributed a number of costs to generalized expressions of different range practices. For example, in the NPRM, proposed sections 417.113(b)(2), 417.121(f), 417.225, and appendix C, 417.5(g), (h) and (i) would determine whether downrange surveillance was needed on the day of launch. To protect ship traffic down range of the launch area, the FAA proposed that a launch operator identify where its launch vehicle's stages or other planned ejected debris would impact, determine the corresponding hazard area or areas [15], use statistical ship density data to determine whether the launch operator needed to survey the downrange hazard areas for ships, and if downrange surveillance was necessary, determine whether risks at the time of flight required that the launch operator wait until any ships departed from downrange ship hazard areas before initiating flight. *See* 14 CFR 417.107(b)(3), 417.121, 417.225, and appendix C, C417.5(g) (proposed), 65 FR 63931 (discussion accompanying proposed regulations). A launch operator would be permitted to initiate flight only if the collective probability of impacting any ship in the downrange hazard areas with planned debris would be less than or equal to 1×10^{-5}. 65 FR 63931. If a launch operator demonstrated, using statistical ship density data and the formula provided in the NPRM, that the collective ship-hit probability in the downrange flight hazard areas was less than or equal to 1×10^{-5}, the launch operator would not have to survey the downrange hazard areas on the day of flight. *Id.* In their comments, launch operators expressed concern over this proposed standard.

Commenters claimed that the proposed requirement was new and would mean that launch operators would have to survey downrange impact areas for launches from the Eastern Range. JC Vol. II at 50, 83; *see* JC Vol. I at 8. The FAA does not agree with either of these assertions. When preparing the NPRM, the FAA consulted extensively with both the Eastern and Western Ranges to ensure that the FAA would capture current requirements. The FAA also considered its own experience with the launches of Sea Launch. As far as the FAA is aware, the overwhelming majority of licensed launches conducted from federal launch ranges today would satisfy the FAA's proposed requirements without having to survey downrange hazard areas located in broad ocean waters.

The Joint Commenters stated that if the FAA considers the surveillance efforts of the federal launch ranges sufficient, then the FAA should not change or add the requirements. JC Vol. II at 50. According to the commenters, surveillance of multiple downrange impact hazard areas for a single launch could require multiple aircraft. JC Vol. II at 50. Mechanical problems on the surveillance craft and weather could require a scrub of the launch with resulting cost impacts.

Currently, a range surveys its launch area (which correlates to the FAA's proposed flight hazard area) for the presence of ships and aircraft prior to launch. The ranges do not typically survey downrange stage impact areas located in broad ocean waters. This does not, however, mean that the proposed requirement is new or that the ranges would not currently survey downrange impact areas if it were determined necessary to protect the public.[16] To the contrary, both the Eastern and Western Ranges have advised the FAA that range analysts have addressed the issue. The ranges have not needed to survey downrange impact areas because of the low density of ship traffic and the nature of the traffic, in broad ocean waters, where spent stages currently land. For example, unlike the recreational craft closer to shore, much of the shipping downrange for a typical launch from Cape Canaveral is commercial in nature and the ranges anticipate that those ships monitor the notices to mariners that advise of the presence of hazard areas. However, if a stage impact area proved to be located near a greater density of ship traffic that did not monitor notices to mariners as closely as commercial shipping pilots do, a range could well require surveillance at that stage impact hazard area. Downrange hazard area surveillance is often performed for launches from Wallops Flight Facility. These launches typically involve small rockets with downrange stage impacts that are relatively close to shore where there are significant numbers of pleasure craft and fishing vessels. The FAA proposes to formalize the analysis process that the ranges have been implementing, and would establish a proposed formula and threshold for determining when surveillance of down range impact areas would be necessary. The FAA believes that typical orbital launches from the federal launch ranges meet the FAA's proposed criteria, and that downrange surveillance would continue not to be required for typical launches from those ranges. The comments to the NPRM indicate that the launch operators believe the contrary. Accordingly, the FAA requests that, through the comment period, the launch

[14] *See* Boeing at 10 (fifth comment); 23 (second, third and fourth comments); 24 (second comment); 27 (first comment); 28 (second comment); Orbital Cost Impact Assessment at 6 (items 3b, 9 and 13–16); Sea Launch Costs at 2 (first and second comments), 7, 10 (first comment), 11, 18–19, 22, 36.

[15] For both ships and aircraft, the FAA proposed in the NPRM and proposes in appendix A of this SNPRM section A417.23(k) and (l) that an impact hazard area for ships down range of the launch site would consist of an area centered on the planned impact point and defined by the larger of the three-sigma impact dispersion ellipse or an ellipse with the same semi-major and semi-minor axis ratio as the impact dispersion,w here, if a ship were located on the boundary of the ellipse, the probability of hitting the ship would be less than or equal to 1 $\times 10^{-5}$. Each aircraft hazard area downrange of the launch site would encompass an air space region, from an altitude of 60,000 feet to impact on the Earth's surface, that contains the larger of the three-sigma drag impact dispersion or an ellipse with the same semi-major and semi-minor axis ratio as the impact dispersion,w here, if an aircraft were located on the boundary of the ellipse the probability of hitting the aircraft would be less than or equal to 1×10^{-8}.

[16] The commenters' assertion, *see* JC Vol. II at 83, that the ranges do not conduct downrange surveillance for reasons of impracticality is not consistent with what the ranges have advised the FAA. The range do not, in most cases, conduct downrange surveillance because a safety analysis shows that it is not currently necessary.

operators share the reasoning underlying their conclusion.

After discussion with some of the launch operators, the FAA believes that the launch operators did not recognize that the FAA, to identify requirements that can be applied to the majority of licensed launch activity, wherever it might occur, was merely articulating a more generalized, abstract version of what the ranges are already doing in order to identify the underlying intent. Accordingly, where some of the commenters attributed costs to this requirement,[17] the FAA does not, either for launches from a federal launch range or from a non-federal launch site. The surveillance issue constitutes one example of the tendency to characterize as new what were, in fact, generalized expressions of different range requirements. The commenters attributed other costs on the basis of this misconception as well.[18]

Additionally, the comments appear to assume that many of the ranges' own internal requirements, when proposed in the NPRM, were new. A range conducts its own flight safety analyses based upon raw data provided by a launch operator. Because the launch operators may only be familiar with the data that they themselves provide the ranges, they worried that the standards that the FAA identified were new.[19] In fact, the federal ranges have been performing the analyses and satisfying these requirements on behalf of the launch operators under current practice.

The FAA has grouped remaining concerns regarding proposed requirements that are only seemingly new into two categories. The one category consists of comments that attribute costs to existing FAA requirements.[20] The other category consists of comments that attribute costs where the commenter misread the proposed requirement.[21]

[17] *See, e.g.*, LM Cost Impact Analysis at 3, 13, 23, 26 (proprietary).

[18] *See* Lockheed Cost Estimates 5 and 7; Orbital Cost Items 2, 3, 5 and 8; Sea Launch Costs at 15–16, 22.

[19] *See* Boeing Costs at 14 (first comment), 15, 16, 17 (first comment), 18, 38 (first comment); Lockheed Cost Estimates 11 and 13; Orbital Cost Impact Assessment at 6 (items 1 and 2a).

[20] *See* Boeing Costs at 6 (first, second and third comments), 12 (third comment), 30 (second comment); Lockheed Cost Estimate 6; Sea Launch Costs at 1 (first and second comment), 4–5 (comments labeled a, j, k, n) 7 (first comment), 8 (first, second and third comments), 10 (first comment), 13 (second comment), 17 (comment labeled a) and 20.

[21] *See* Boeing Costs at 19 (fourth comment), 29 (fourth comment), 34 (fifth comment), 37 (second comment) and 38 (second comment); Sea Launch Costs at 2 (second comment), 5 (comments labeled l and m), 7 (second comment), 9 (first comment), 21 (first full comment).

2. No Change in Responsibility

As a separate issue, commenting launch operators stated that this rulemaking would change their responsibility for safety, and thus increase their costs. This was not an issue that the FAA addressed in the NPRM because the FAA already considers a launch operator responsible for safety under the statute, the regulations and its launch license. *See* 14 CFR 415.71. The FAA recognizes, however, that this comment may arise from a belief that the launch operator must use its own employees, rather than continue to rely on the services provided by a federal launch range.[22] If that is the case, the FAA believes that it can set that concern to rest. Under existing 14 CFR 415.31, the FAA grants a safety approval to a launch operator proposing to launch from a federal launch range if the applicant satisfies the requirements of subpart C and has contracted with the range for the provision of safety related services. The Commercial Space Operations Support Agreement and its annex constitutes such a contract. The FAA is proposing to codify the safety requirements of the range and anticipates that the ranges will continue to satisfy those requirements. Nonetheless, to ensure that there is no remaining confusion on this score, the FAA is revising its current proposal to include a provision in proposed 14 CFR 417.203(d) that if a launch operator has contracted with a federal launch range for the provision of any flight safety analysis for a licensed launch, and the FAA has assessed the range and found that the range's analysis methods satisfy the requirements of this subpart, the FAA will treat the federal launch range's analysis as that of the launch operator. For any such analysis, the launch operator need not provide the FAA any further demonstration of compliance. The FAA hopes that this clarifies that licensed launch operators may continue their existing arrangements with the federal launch ranges, and that the primary interface for a launch operator launching from a federal launch range remains the range.

3. Operational or Licensing Changes

Commenting launch operators raised concerns grounded in the notion that the October 2000 NPRM would result in large changes for licensed launch operators operating at federal launch ranges. Specifically, they feared that the requirements for obtaining and maintaining a license would change. JC Vol. I at 3. The FAA requests that in light of the following discussion, the launch operators revisit whether they should ascribe costs to these perceived changes.

On the basis of information provided by the comments, it appears to the FAA that some commenters assigned costs to what they saw as proposed changes in maintaining license compliance if they launched from a federal launch range.[23] Many of these purported costs arise out of the belief that the proposed requirements would subject a launch operator at a range to dual administrative requirements. In the NPRM, however, the FAA proposed that the administrative requirements for submitting material to the FAA contained in part 417 applied in total to all licensed launches from a non-federal launch site. *NPRM*, 65 FR 63977 (proposed 14 CFR 417.1). Accordingly, unless a range changed its processes, the FAA does not anticipate that this rulemaking would require a launch operator launching from a federal range to demonstrate satisfaction of a part 417 requirement twice. Other costs in this category of concern appear to arise out of the launch operators' fear that the federal ranges will not obtain a satisfactory baseline assessment from the FAA for one requirement or another. Given that the FAA proposes these requirements in coordination with the Air Force through the Common Standards Working Group, the FAA has every reason to expect that the federal ranges will continue to satisfy the requirements.

Similarly, commenters assigned costs to a perceived change in the requirements for obtaining a license to launch from a federal launch range. Commenting launch operators, apparently referring to proposed 14 CFR part 415, subpart F, contended that the new requirements for obtaining a license would be unduly burdensome and unwieldy. JC Vol. I at 10–11. They believe they will be required to

[22] *See, e.g.*, Boeing Costs at 1, 20, 30 (first comment), 38 (first comment); Lockheed Martin Estimate 8 (attributing costs to requirement that launch operator conduct flight safety analyses now provided by the range); Orbital Cost Impact Assessment at 6 (Items 2 and 10: attributing costs to dual safety approval submittals and shif to FAA oversight).

[23] Boeing Costs at 1 (second comment), 5 (all comments), 7 (all comments), 8 (all comments), 9 (second, third and fourth comments), 10 (first, second and fourth comments), 11 (first and fourth comments), 12 (second comment), 13 (first, second, third and fourth comment), 14 (second comment), 15, 16, 17 (first second and third comments), 18, 19 (first, second and third comments), 21, 22, 23 (first comment), 26 (second and third comments) 27 (third comment), 28 (first and third comment), 30 (second comment), 31 (first and second comment) and 38 (first comment); Lockheed Cost Estimates 3, 4, 9, 10, 11, 12, 13, 14, 20, 23, 24, and 25(b).

demonstrate compliance with two sets of requirements when launching from a federal range. JC Vol. I at 3. The FAA can, however, reassure launch operators who launch from federal launch ranges that proposed subpart F would not apply to them. Existing part 415, subpart C (Safety Review and Approval for Launch from a Federal Launch Range), which governs safety reviews for launch license applications from a federal launch range, will continue to apply. Proposed subpart F, (Safety Review and Approval for Launch of an Expendable Launch Vehicle from a Non-Federal Launch Site), applies to license applications for launch from outside of a federal launch range. *See* NPRM, 65 FR 63944, 63965 (proposed section 415.101 and accompanying discussion). Indeed, as stated in the NPRM, not only would proposed subpart F not apply to a license governing a launch from a federal launch range, but "the proposed regulations for obtaining a license would not * * * apply to any launch from a non-federal launch site where a federal launch range performs the safety functions." *Id.* at 63922.

In the event that the Joint Commenters meant to warn that proposed subpart F would be unduly burdensome for obtaining a license for launch from a non-federal launch site, the FAA notes that, for such launches, it must require the same level of safety at non-federal launch sites as the ranges have achieved in the operation of their federal launch sites. Accordingly, information demonstrating that the current standards, as proposed in part 417, are satisfied is necessary.

4. Flexibility and Performance and Design Requirements

Commenters claimed costs on account of a perceived loss of flexibility.[24] The Joint Commenters stated that the October 2000 NPRM contained additional detailed design and testing requirements that will increase operating costs for all launch programs. Promulgating new requirements is not the FAA's intent, and should not be the effect of the FAA's final rule. Instead, the FAA's provision of a route for a launch operator to demonstrate an equivalent level of safety for a proposed alternative, willingness to grandfather and coordination on a waiver process should demonstrate that the FAA will be flexible.

The commenters believe that the regulatory language used in the NPRM would reduce flexibility in implementing the requirements and that the FAA has changed standards that are currently goals and presented them as hard requirements. The FAA recognized early in the development of the NPRM that it was not always possible to adopt the range safety standards as written in current federal range safety documents because regulations must contain only that which is actually required. *EWR 127–1* contains both guidance and requirements. Recommended FAA approaches may appear in guidance documents, such as FAA advisory circulars. Alternatives may be approved through the licensing process.

When faced with a current standard that was in the form of a goal or preferred approach, the FAA, in coordination with federal range personnel, often had to either rewrite the standard as a performance requirement that described the intent of the original goal or omit it from the NPRM if it was determined to be unnecessary. For example, the federal launch ranges have a reliability goal of a minimum of 0.999 at the 95% confidence level for the flight termination system onboard a launch vehicle. Such a goal does not directly translate into a regulatory requirement for which compliance must be demonstrated. A 0.999 reliability at a 95% confidence level can be demonstrated only through a large number of launches or tests of the complete system while exposed to flight environments. The FAA worked with the federal ranges to understand the intent of the goal and how it has actually been implemented. As a result, the FAA's proposed regulations would require each flight termination system and command control system to have a reliability *design* of 0.999 at a confidence level of 95% to be demonstrated through an analysis of the design. The FAA is not proposing that this reliability be demonstrated through testing because it is not always practical to require the thousands of system level tests necessary to demonstrate compliance with the confidence level. Instead, the FAA is proposing an approach that has been developed in close coordination with the federal launch ranges, and that incorporates performance oriented design requirements for components coupled with comprehensive qualification and acceptance testing of components and preflight confidence tests of the entire system. The design and test requirements together with the required reliability analysis should ensure the reliability of the flight termination system.

In their discussion on the highly detailed requirements of the NPRM, the Joint Commenters referenced the FAA's licensing of Sea Launch and stated their belief that if Sea Launch had sought FAA approval under a regulatory regime as set forth in the NPRM, the process would have been far slower and more expensive for the launch operator. JC Vol. I at 7. The FAA disagrees. In licensing Sea Launch, the FAA used the current range safety requirements as the basis for evaluating the safety of the proposed launch vehicle and operations: the same requirements used as the basis for the October 2000 NPRM. It was during the evaluation of Sea Launch that the FAA developed various approaches for allowing flexibility in implementing specific requirements, including demonstrating an equivalent level of safety. These requirements and provisions for flexibility were refined and included in the NPRM. The FAA's conclusion was that Sea Launch could satisfy the requirements in the NPRM with no greater effort than was expended during its initial licensing. In effect, Sea Launch was held to the FAA's current requirements. Published requirements, however, with an appropriate level of detail should provide for a consistent, open and fair licensing process for all launch operators.

5. Neighboring Launch Operators

The FAA has learned that each Air Force launch range treats a portion of the public differently. For a launch conducted by a licensed launch operator, the FAA considers other launch operators at a launch site members of "the public." Historically the Eastern Range and the Western Range did not consider anyone who operated at the range to be a member of the public. For approximately the past five years, however, the Eastern Range has been applying the FAA definition of the public when calculating the public risk associated with a licensed launch. At the Western Range other launch operators are not counted to ascertain their contribution to the collective risk to the general public. Some few personnel of other launch operators, at the request of those launch operators, are subjected to a higher level of risk than the rest of the public, which may include allowing them inside impact limit lines or hazard areas during the flight of a launch vehicle.

For the FAA, this approach has both safety and financial responsibility

[24] Boeing Costs at 25 (third comment), 26 (fourth comment), 29 (third and fourth comments), 34 (first comment), 35 (fourth and seventh comments); Lockheed Cost Estimate 21; Oribital Cost Impact Assessment at 6 (items 1, 2a, 5, 6, 11 and 12); Sea Launch Costs at 2 (first and second comments), 5 (comments labeled 1 and m), 8 (first and second comments), 16 (lightning), 22 (alternate flight safety system), 26–35, 38, 40–42.

implications. A launch operator may face issues surrounding launch availability and possible increases in insurance premiums. Although the FAA currently proposes no changes from its current practice, the FAA wishes to bring this issue to the attention of the public to obtain comments regarding the impact of the current approach and possible alternatives. The FAA notes that it is willing to entertain alternatives and implementation proposals. The issue is discussed in greater depth below.

In addition to placing the general public at risk, a launch operator's activities may place its neighbors at risk. Different launch operators are each others' neighbors at a single launch site. When, for example, launch operator A launches from one launch pad, adjacent launch operator B may be located within the impact limit lines or a hazard area created by launch operator A's launch. Nonetheless, for reasons of safety, security, or mission assurance, launch operator B may wish to keep some of its personnel working at the second launch point, even during the hazardous activities, including the flight of launch operator A's launch vehicle. Launch operator B's pressure vessels may require tending. Launch operator B may need to maintain the security of the site. Launch operator B may be interested in meeting a tight schedule. Typically, because the location exposes people to greater risk, the range will require the neighboring launch operator to train, shelter and otherwise attempt to protect its people from the increased risks.

The launch operators in this example are engaged in activities in support of separate launches and do not contract with each other for the launch that is about to take place. For these reasons, the FAA treats them as "the public" with respect to each other.[25] In existing 14 CFR part 420, which governs licensing and safety requirements for the operation of a launch site, the FAA defines the "public" as "people and property that are not involved in supporting a licensed launch, and includes those people and property that may be located within the boundary of a launch site, * * *, and any other launch operator and its personnel." 14 CFR 420.5. In the October 2000 NPRM at § 417.3, the FAA proposed a similar definition for "public safety" as the safety of other launch operators and their personnel.

Likewise, for determining financial responsibility under existing 14 CFR part 440, the FAA treats other launch operators and their personnel as third parties. A licensed launch operator does not sign cross waivers with neighboring launch operators, *see generally* 14 CFR 440.17, and the personnel of neighboring launch operators are treated as third parties in the maximum probable loss analysis that determines the amount of financial responsibility a licensee must shoulder. 14 CFR 440.3(15). The FAA, when calculating the maximum probable loss that may occur to members of the public, requires that a licensee demonstrate financial responsibility for those members of the public who have a chance of being harmed on the order of 1×10^{-7} or more. *See* 14 CFR 440.3(11)(i). This means that if any personnel of launch operator B are within the contours of an area where there is chance of an individual being harmed of 1×10^{-7} or more, the FAA will assess the contribution of those individuals to the final financial responsibility determination.

The 30th Space Wing takes a different approach. At the Western Range, the 30th Space Wing relies on the definitions in EWR 127–1 to treat certain identified personnel of neighboring launch operators as not being members of the public, or, in the parlance of EWR 127–1, as "Wing-essential." EWR 127–1 defines "mission-essential" and "non-essential" personnel, and, by implication, Wing-essential personnel. For the first two categories, different levels of risk, protection and exposure are available. In the portion relevant to this discussion, EWR 127–1 defines mission-essential personnel as "those persons necessary to successfully and safely complete a hazardous or launch operation and whose absence would jeopardize the completion of the operation." EWR 127–1 at 1–vii (Dec. 31, 1999). This category includes, among others, "persons specifically authorized by the Wing Commander to perform scheduled activities." *Id.* The ranges have a different mission than that of the FAA. Being military installations, they include within their mission not only the successful launch of a given launch vehicle, but the continued operations of other vehicles and programs deemed essential to the mission of the wing by the Wing Commander. These activities include, for example, support of commercial launches, launch of national need payloads, strategic weapons testing, warfighter support, payload processing and other activities that promote the function of the range as a whole.

"Non-essential" personnel, on the other hand, are persons who are not otherwise mission or Wing-essential, and include the general public, visitors, members of the media, and "any persons who can be excluded from Safety Clearance Zones with no effect on the operation or parallel operations." *EWR 127–1* at 1–viii. EWR 127–1 does not contain a definition for Wing-essential, but the 30th Space Wing interprets the mention of Wing-essential personnel in the two definitions to permit a category of persons to be treated as mission-essential for purposes of calculating risk and requiring sheltering. This category may include personnel of neighboring launch operators who are present to perform safety, security or other tasks necessary to continue that second launch operator's operations at the launch site, but does not include anyone performing routine administrative, maintenance, or janitorial functions. Under the interpretation of the 30th Space Wing, when an employee of launch operator B is present within the impact limit lines or, albeit very infrequently, a hazard area for launch operator A's launch, that employee must be sheltered, and is included in a higher risk threshold. *See EWR 127–1* at 1–12, 1.4d (Oct. 31, 1997). In contrast to the permissible E_c of 30×10^{-6} for the general public, the workers of the launch operator conducting the launch may be exposed to a higher risk of 300×10^{-6}. Based on information from the 30th Space Wing, there may be, for a given licensed launch at the Western Range, over 100 people who are members of the public under the FAA's definitions, but who the FAA has not identified as such in its financial responsibility determinations due to the differences in definitions.

At the Eastern Range, the 45th Space Wing treats other launch operators as members of the public when calculating public risk due to a licensed launch. The Eastern Range may permit the personnel of neighboring launch operators to remain within the impact limit lines or the flight hazard area in approved hardened structures for a launch. The Eastern Range, when assessing collective risk to the public, counts the neighboring launch operator's personnel as members of the public. In other words, the presence of too many of such people may produce an E_c in excess of 30×10^{-6}. Accordingly, their numbers are limited for that reason.

The FAA and the Air Force now confront the question of whether to

[25] Although the FAA does not regulate or oversee the safety of the workers of a licensee, the workers of a neighboring launch operator are members of the public and the FAA has always intended that they be protected as such.

continue the FAA and 45th Space Wing approach, or to adopt a variation on the approach of the 30th Space Wing. The Air Force intends to standardize these approaches at its ranges. The former is current practice for the bulk of licensed launches, but the latter was the practice at both ranges prior to the adoption by the 45th Space Wing of the FAA's definition of "the public," and may provide greater operational flexibility, both for the launch operator conducting the launch and for the neighboring launch operator who wants to continue operations during the hazardous activities of the first launch operator. Greater operational flexibility may come with a price, however. Although the FAA could, through rulemaking, permit some members of the public to be exposed to greater risk than others, especially if they are protected,[26] the FAA must point out that the launch operator conducting the launch would have to demonstrate sufficient financial responsibility under part 440 to protect financially against loss to those members of the public. In other words, where a neighboring launch operator's personnel are exposed to risk sufficient to trigger a requirement for financial responsibility coverage, the insurance premiums of the launch operator who is about to launch may increase. Conversely, that first launch operator may find the increased flexibility in its own operations worth the potential increase in premiums.[27]

The FAA and the Common Standards Working Group intend to explore this issue further so as to ensure a common approach. Before the FAA conducts any rulemaking on this issue, the FAA requests comments on the public's experience with the impacts of the two approaches that have been in practice to date. Are there cost impacts associated with either approach? Do the benefits of one outweigh the advantages of the other? Do concerns for worker safety of the neighboring launch operator suggest that no one other than the participants in that launch be allowed in the areas of greater risk? In other words, even with the benefits of increased operational flexibility, would launch operator B not want its employees exposed to greater risk than the general public? Additionally, implementation raises issues. Were the FAA and the ranges to adopt the Western Range's approach, the ranges could oversee and coordinate the presence of different launch operators and their personnel. At a launch site operated by a licensed launch site operator, the FAA already requires that a launch site operator schedule its customers. 14 CFR 420.55. However, the launch site operator does not assess risk under current requirements. The FAA requests comments on the advisability of imposing such a requirement on a launch site operator.

C. FAA and Air Force Process for Relief From Common Launch Safety Requirements

Launch operators commenting on the October 2000 NPRM expressed concern for problems they believe will arise if both the Air Force and the FAA oversee the safety of launches from Air Force ranges. JC Vol. I at 1; Lockheed at 3. In response, the Air Force and the FAA have established a permanent safety working group to develop common launch safety standards and implementation processes. This working group has drafted a process for coordinated review of requests for relief from launch safety requirements as well as tailoring of requirements for future programs. This process is outlined in a draft *Memorandum of Understanding (MOU) between Air Force Space Command and the FAA Office of the Associate Administrator for Commercial Space Transportation for Resolving Requests for Relief from Common Launch Safety Requirements.* The MOU will provide for Air Force and FAA coordination on issues that may arise for a specific launch. For day-to-day operations at an Air Force range, the Air Force will remain the primary point of contact for the launch operators. For a licensed launch, when a request for relief from a common requirement is made to either agency, each agency will ensure notification of the other, and the two agencies will coordinate activities with the launch operator to ensure an efficient and timely resolution.

The draft coordination process contains provisions to address issues "prior to day of launch," when there is time to coordinate and formally document the resolution of an issue before launch, and "day-of-launch" (flight minus 24 hours, often called "real-time") coordination on issues that arise, albeit infrequently, during a launch countdown prior to flight. The Air Force and the FAA will also jointly participate with launch operators in tailoring of common launch safety requirements during the development of launch vehicle systems to be used for licensed launches from Air Force ranges. The coordination process between the Air Force and the FAA will provide for sharing of data to avoid duplication of effort. This coordination will allow for joint resolution of issues regarding common launch safety requirements while ensuring that both agencies' requirements and concerns are addressed without placing undue burden on launch operators. A copy of the draft Air Force/FAA MOU is available on AST's Web site at *http://ast.faa.gov*.

The agencies will continue to administer their own waiver processes. In conjunction with the Air Force/FAA Common Standards Working Group, the two agencies addressed whether the FAA could baseline the Air Force's waiver process. The group determined that the FAA, once its requirements became final, could not baseline the Air Force's waiver process. The FAA cannot delegate its responsibility for safety. The FAA has the authority to waive its own requirements. 49 U.S.C. 70105(c)(3). As the January 2001 Safety MOA between the FAA and the Air Force recognized, neither agency may waive the requirements of the other. Although Chapter 701 allows another agency to assist the FAA, and the FAA plans to continue to accept the assistance of the Air Force, Chapter 701 does not permit the FAA to delegate its ultimate statutory responsibility for safety to another agency. Accordingly, although the FAA will continue to rely on the Air Force to ensure compliance with the codified standards so long as the baseline assessments show that the Air Force continues to maintain the common standards, the FAA will not be able to accept the Air Force "non-compliance" process through the FAA's baseline assessment. Non-compliances signify a break from the baseline assessment, and they require the appropriate amount of scrutiny from both agencies. Once the common standards are codified, they will be FAA requirements and require FAA approval of a waiver. The FAA's waiver requirements are contained in 14 CFR part 404.

On a practical level, the FAA and the Air Force perceive benefits in the FAA's involvement in the waiver process. The 45th Space Wing has over the course of

[26] The Eastern and Western Ranges advice that risk assessments account for any sheltering of the neighboring launch operator's personnel.

[27] The FAA notes that it has not been aware, in the course of conducting its maximum probable loss analyses in accordance with 14 CFR part 440, that some of the personnel identified as mission essential at the ranges were, in fact, what the FAA considers members of the public, and should therefore have been considered at the 10^{-7} threshold instead of the 10^{-5} threshold. Because of this possible confusion, the FAA may not have addressed third parties who should have been considered in financial responsibility determinations for licensed launches from both the Eastern and the Western Range. If the FAA determines that their presence requires an increase in the financial responsibility for which a licensee must prepare, that increase would be mandated by existing requirements and would be a decision that was independent of this rulemaking.

the past two years invited FAA participation in the range's waiver decisions. Members of the Common Standards Working Group have suggested that coordination between the agencies would be eased by an FAA presence at the ranges, both so that the FAA has greater familiarity with the different launch programs and so that the FAA will be accessible to range and launch operator personnel. The FAA is considering this option.

Legal considerations surrounding waivers and equivalent level of safety determinations result, in part, in the protection of the launch operator. For the FAA, approval of a request for relief may create precedent: for example, if one launch operator receives a waiver because it satisfies certain conditions, a similarly situated launch operator might also expect, absent relevant differences, to receive the same waiver. The FAA, whether through its log of decisions required by the Freedom of Information Act, 5 U.S.C. 552(a)(2), or through advisory circulars must allow access to its waiver decisions, and, in so doing, permit others interested in obtaining a decision to grant a request for relief to see how one might be obtained, taking into account proprietary considerations as appropriate. Although the FAA recognizes that the federal ranges make every effort to treat range users equally, the FAA, unlike the federal ranges, is required by the APA to treat similarly situated persons in a similar manner. The Air Force advises that it has generally found that circumstances surrounding every waiver are sufficiently different that a waiver applies only to the program requesting it. The FAA must have a rational basis for distinguishing between different waiver applicants requesting similar waivers. There are implications to this. The requirement for a rational basis creates an incentive for the FAA to carefully consider all possible implementations when developing a requirement so that the agency can identify exceptions where possible during the rulemaking process. Additionally, after a rule goes into effect, the FAA must fully scrutinize any waiver request so that granting one waiver does not result in the grant of so many others that the requirement is effectively nullified. This approach should also ensure fair treatment between launch operators. As discussed below, the FAA and the Air Force have developed plans to coordinate their determinations. Although that coordination is a matter internal to the workings of the government, both agencies designed the process to minimize disruption on the launch operator, and a description of it follows.

An area of particular concern to launch operators appears to be how the agencies would handle a request for relief from launch safety requirements. On January 16, 2001, the Department of the Air Force and the Federal Aviation Administration signed a Memorandum of Agreement (MOA) on Safety for Space Transportation and Range Activities. The MOA directs the Air Force and the FAA to work together to achieve common launch safety requirements and to establish a process for communication with respect to interpretations of the common safety requirements as they apply to U.S. Government and FAA-licensed launches. The MOA further directs the two agencies to coordinate on the resolution of requests for relief from any common launch safety requirement.

The FAA understands that the complex nature of launch vehicle system safety causes occasional situations where strict compliance with requirements may be difficult, impossible or impractical. In these situations, the launch operator may seek "relief" from the requirement. Relief from a launch safety requirement at an Air Force range typically takes the form of a waiver, or "meets-intent" certification. The Air Force may permit a waiver when the mission objectives of a launch operator cannot otherwise be achieved. The launch operator must obtain a waiver when proposing an activity that does not satisfy an Air Force requirement or when that activity results in greater risk. For the Wing Commander to make an informed decision, personnel responsible for range safety will typically attempt to describe any increase in risk either quantitatively using formal risk analysis techniques or qualitatively based on the specifics of the launch. In some cases the Air Force may waive the public risk criterion. Typically, this would require a significant effort to mitigate risk, such as by increasing reliability of the launch vehicle, and there would have to be a critical national need for the launch. A "meets intent" certification is used when it can be successfully shown that a launch operator's proposed approach, although non-compliant with a requirement in a literal sense, complies with the overall intent of the requirement. To obtain a "meets intent" certification, a launch operator's proposed approach must provide for an "equivalent level of safety." Tailoring of requirements is typically performed when it can be shown that a requirement is not applicable to a given launch vehicle program. Tailoring also typically includes meets intent approvals that apply to a program on a permanent basis. A "meets intent" certification may also be obtained outside of the tailoring process.

There are many similarities between the way the FAA approaches relief from safety requirements and the Air Force approach. FAA regulations permit waivers to safety requirements; however, the FAA's focus on the public safety aspects of licensed launches restricts consideration of mission objectives, including cost or schedule considerations, as justification for approval. The range safety organizations within the Air Force do this as well. Although cost, schedule, and mission assurance are range safety considerations, they are considered secondary to public safety. For government launches, the Air Force Wing Commander may grant a waiver based on national need. Typically, these decisions do not involve FAA-licensed launches. The FAA may grant a waiver if it decides that the waiver is in the public interest and will not jeopardize the public health and safety, safety of property, and national security and foreign policy interests of the United States. 49 U.S.C. § 70105(c)(3). Preferably, a launch operator subject to FAA regulations would demonstrate an equivalent level of safety to obtain relief from an FAA launch safety requirement. The October 2000 NPRM proposed in each part that a launch operator either meet the launch safety requirements as written or, for any proposed alternative, demonstrate an "equivalent level of safety." For all intents and purposes, a range safety "meets intent" certification constitutes one form of the FAA's equivalent level of safety. The Common Standards Working Group has agreed upon common terminology and definitions of these relief categories to minimize the overall impact on launch operators while maintaining the current flexibility.

Commenting launch operators expressed concern that the process of clearly and convincingly demonstrating to the FAA that an alternative approach provides an equivalent level of safety would prove unduly burdensome, and in some instances, unworkable, compared to the tailoring process with the federal ranges. JC Vol. I at 5. The FAA does not foresee an increase in the level of effort on the part of a launch operator to obtain an equivalent level of safety determination and believes that industry's concerns in this area have been addressed. The Common Standards Working Group does not anticipate that FAA involvement will increase the difficulty or lengthen the

tailoring process. The FAA has reviewed a sampling of meets intent certifications and tailoring granted by federal ranges in the past and finds that they would satisfy the FAA equivalent level of safety criterion. In addition, the FAA has demonstrated on numerous occasions its willingness and ability, within the context of its regulations and processes, to be flexible in the implementation of its requirements. The FAA has taken into account the unique aspects of the program of each current licensee as the FAA worked with that licensee to achieve its goals while meeting everyone's mutual public safety responsibilities. For launches from a non-federal launch site, the October 2000 NPRM proposes that the FAA and a launch license applicant use the license application process to identify requirements that are not applicable and to ensure that any alternative approach that provides an equivalent level of safety becomes part of the terms of the license. For future launch vehicle programs that will conduct licensed launches at a federal range, the launch operators will continue to follow the Air Force process with participation from the FAA. The FAA and the Air Force will work in a coordinated effort with the launch operator to tailor the common launch safety requirements and make equivalent level of safety decisions for the launch operator's systems.

V. Section-by-Section Analysis of the SNPRM

Part 415—Launch Licensee

Subpart F—Safety Review and Approval for Launch of an Expendable Launch Vehicle from a Non-Federal Launch Site

The only changes that this SNPRM proposes to make to subpart F of part 415 involve references made to sections of proposed subpart C of part 417. This SNPRM modifies and reorganizes proposed subpart C of part 417. As a result, a number of references in proposed subpart F of part 415 to sections in subpart C of part 417 must be changed.

Part 417—Launch Safety

This SNPRM would revise the table of contents for proposed subpart C of part 417 to reflect the modifications that this SNPRM makes to that subpart.

Subpart A—General

This SNPRM modifies § 417.1 of the October 2000 NPRM to include provisions for existing launch vehicle systems to which some of the safety requirements proposed in part 417 would not apply. These changes represent a form of grandfathering as discussed in section III.A of this SNPRM.

The title of § 417.1 has been changed to "scope and applicability." The NPRM's § 417.1, which provides the scope of part 417, is now paragraph § 417.1(a), General. This paragraph contains the same language as the October 2000 NPRM except for the second, fourth and fifth sentences. The second sentence now reads: "The safety requirements contained in this part apply to all licensed launches of expendable launch vehicles unless paragraph (b) of this section applies." The fourth and fifth sentences now read: "For a licensed launch from a federal launch range, the administrative requirements contained in this part do not apply if the FAA, through its baseline assessment of the range, finds that the range satisfies the requirements of part 417. For a licensed launch from a federal range where the range does not satisfy one or more or the requirements of part 417, the FAA will identify the administrative requirements that apply to the launch during the licensing process." The new proposed fourth and fifth sentences provide clarification for whether the proposed administrative requirements in part 417 would apply for a proposed launch from a federal range. As indicated in the new proposed second sentence, the SNPRM proposes to add paragraph § 417.1(b), which would contain provisions for determining whether a specific requirement would apply to a licensed launch operator at a federal range. Unless one or more of the conditions of paragraph (b)(2) of proposed section 417.1 occurs, if a launch operator has a license from the FAA to launch from a federal launch range as of the effective date of part 417 and, for a specific requirement of this part and launch, if the launch operator employs an alternative to the requirement for which the federal range has granted a written meets intent certification as of the effective date of part 417, the launch operator would not be required to demonstrate to the FAA that its alternative provided an equivalent level of safety. If the launch operator had, as of the effective date of part 417, a written waiver from the federal launch range or a pre-existing noncompliance that satisfied the federal launch range's grandfathering criteria, the requirement would not be applicable to the launch. A discussion on the issue of grandfathering and the FAA's reasons for proposing these changes from the October 2000 NPRM is provided in paragraph III.A of this SNPRM.

Paragraph § 417.1(b)(2) would contain criteria for when a requirement would be applicable to a launch operator even if the launch operator satisfied the provisions of § 417.1(b)(1). Even if a launch operator satisfied paragraph (b)(1) for a specific requirement of part 417, the launch operator would be required to bring its launch and launch vehicle, components, systems, and subsystems into compliance with the requirement, including any demonstration of equivalent level of safety, whenever one or more of the following conditions occurred: (i) The launch operator makes modifications that affect the launch vehicle's operation or safety characteristics; (ii) the launch operator uses the launch vehicle, component, system, or subsystem in a new application; (iii) the FAA or the launch operator determines that a previously unforeseen or newly discovered safety hazard exists that is a source of significant risk to public safety; or (iv) the federal range previously accepted a component, system, or subsystem, but, at that time, a noncompliance to an original federal range requirement was not identified. For all intents and purposes these are the same criteria currently used by the Air Force for determining when range safety grandfathering expires.

The Common Standards Working Group has developed a number of definitions to help ensure common interpretation and implementation of launch safety requirements. For any term with a common definition that the FAA uses in its launch safety regulations, the FAA proposes to include the common definition in § 417.3. The SNPRM proposes to replace or insert the definitions into § 417.3 in alphabetical order as follows:

Equivalent level of safety would mean an "approximately equal" level of safety. "Approximately equal" has mathematical meaning, and is clarified by the fact that an equivalent level of safety determination could involve a change to the level of expected risk that was not statistically or mathematically significant as determined by qualitative or quantitative risk analysis.

Explosive debris would mean solid propellant fragments or other pieces of a launch vehicle or payload that result from break up of the launch vehicle during flight and that explode upon impact with the Earth's surface and cause overpressure.

Meets intent certification would mean a decision by a federal launch range to accept a substitute means of satisfying a safety requirement where the substitute provides an equivalent level of safety to that of the original requirement.

Normal flight would mean the flight of a properly performing launch vehicle whose real-time instantaneous impact point does not deviate from the nominal instantaneous impact point by more than the sum of the wind effects and the three-sigma guidance and performance deviations in the uprange, downrange, left-crossrange, or right-crossrange directions.

Normal trajectory would mean a trajectory that describes normal flight.

Risk would mean a measure that accounts for both the probability of occurrence and the consequence of a hazard to persons or property.

Although the FAA proposed to include its definition of "serious injury" in proposed part 417, it is withdrawing that definition because it is better suited to the reporting requirements for which is was originally intended. *See* 14 CFR 415.41(b) (reporting requirements for an accident investigation plan). For purposes of determining whether exposure to a given quantity of a hazard could create a serious injury, the proposed definition was not adequate, and the FAA does intend to employ it in proposed part 417. The reporting definition was not adequate because it does not provide the information necessary for realistic modeling of casualties and is not always consistent with the models currently used to estimate potential casualties due to a proposed launch. The FAA notes that the Abbreviated Injury Scale discussed earlier in this SNPRM provides a useful means of distinguishing between serious injuries and those of lessor severity.

Waiver would mean a decision that allows a launch operator to continue with a launch despite not satisfying a specific safety requirement where the launch operator is not able to demonstrate an equivalent level of safety. A waiver may apply where a failure to satisfy a safety requirement involves a statistically or mathematically significant increase in expected risk as determined through quantitative or qualitative risk analysis, and where the activity may or may not exceed the public risk criteria.

Part 417 subpart B—Launch Safety Requirements

417.107 Flight safety.

This SNPRM modifies the FAA's proposed public risk criteria in paragraph § 417.107(b) of the original NPRM to reflect understandings reached in the Common Standards Working Group in consideration of public comments. The primary change being proposed in this SNPRM in the area of risk is that the FAA proposes to limit the risk attributable to each hazard rather than to limit an aggregate of the risk for all hazards as was proposed in the original NPRM. A detailed discussion on the modified public risk criteria proposal is contained in paragraph III.B of this SNPRM.

Paragraph § 417.107(b) of the October 2000 NPRM proposed that a launch operator would be required to conduct all launches in accordance with the proposed public risk criteria. This SNPRM changes the wording of paragraph § 417.107(b) to clarify that a launch operator's flight safety analysis must demonstrate that any proposed launch satisfies the public risk criteria. This modification is meant as a clarification and does not represent a change to the proposed requirements.

Paragraph § 417.107(b)(1) has been modified and would require that a launch operator initiate the flight of a launch vehicle only if the total risk associated with the flight to all members of the public, excluding those members of the public in waterborne vessels and aircraft, does not exceed an expected average number of 0.00003 casualties ($E_C \leq 30 \times 10^{-6}$) from hazards due to impacting inert and explosive debris, ($E_C \leq 30 \times 10^{-6}$ for toxic hazards, and $E_C \leq 30 \times 10^{-6}$ for far field blast overpressure hazards. The FAA proposes in this SNPRM that a launch operator may initiate flight only if the total risk associated with the flight satisfies the criteria. The FAA proposes to add the term "total" to clarify that the risk criteria applies to all phases of flight, including both the uprange and downrange portions. *See also* 14 CFR 415.35. The FAA proposes to identify both types of impacting debris with specificity because it wants to avoid confusion regarding what kinds of debris a debris risk assessment has always addressed. The FAA proposes to specify both because it is possible that either type of debris or a combination could exceed the expected casualty risk criteria, and the FAA wants to ensure that both are addressed. The FAA proposes here to change the name of the hazard from distant focus overpressure to far field blast overpressure to better reflect that a flight safety analysis must account for any potential source of overpressure due to explosions during launch vehicle flight that may cause window breakage, not just that caused by debris impacts, which is typically described as distant focus overpressure. The FAA proposes to determine whether to approve public risk due to any other hazard associated with the proposed flight of a launch vehicle on a case-by-case basis. The E_C criterion for each hazard would apply to each launch from lift-off through orbital insertion, including each planned impact, for an orbital launch, and through final impact for a suborbital launch.

Proposed § 417.107(b)(2) has been modified to change the individual risk criterion from probability of casualty (P_C) $P_C \leq 1 \times 10^{-6}$, to clarify that the criterion would be applied to each hazard, and would exclude persons in waterborne vessels and aircraft. This proposed change would delete all but the first sentence of § 417.107(b)(2) as proposed in the NPRM. Comments received from the Air Force indicated that the use of P_C as a risk criterion is not consistent with the definition of risk. The changes do not represent any new requirements. They are being proposed to improve clarity and to achieve consistent terminology with the ranges. The proposed addition of the flight safety analysis requirement at the beginning of § 417.107(b) eliminates the need to state anything further in § 417.107(b)(2).

The SNPRM changes the NPRM proposed paragraph § 417.107(b)(3) by deleting all but the first sentence. The addition of the flight safety analysis reference in § 417.107(b) eliminates the need to state anything further in § 417.107(b)(3). A launch operator would initiate flight only if, the probability of debris impact to all waterborne vessels (P_{iv}) that are not operated in direct support of the launch does not exceed 0.00001 ($P_{iv} \leq 1 \times 10^{-5}$) in each debris impact hazard area of § 417.223. To achieve commonality with the Air Force, the SNPRM eliminates the use of the term "collective risk" and states the proposed criterion in terms of probability of debris impact to all waterborne vessels to express the collective risk concept. For example, if there were five vessels in the vicinity of the launch, in order to initiate flight, a launch operator would have to demonstrate that if each vessel's individual probability of impact at the time of flight were calculated and those five probabilities were added together, the total would satisfy the criterion. The reference to the requirements for impact hazard areas has been changed to "each debris impact hazard area of § 417.223" to reflect organizational changes and the performance level flight hazard area analysis requirements proposed in the SNPRM.

Paragraph § 417.107(b)(4) in the SNPRM remains the same, minor editorial changes aside, as proposed in the NPRM. A launch operator would initiate flight only if the probability of debris impact to any individual aircraft (P_{ia}) not operated in direct support of the launch does not exceed 0.00000001

($P_{ia} \leq 1 \times 10^{-8}$ in each debris impact hazard area of § 417.223. The reference to the requirements for impact hazard areas has been changed to "each debris impact hazard area of § 417.223" to reflect organizational changes and the performance level flight hazard area analysis requirements proposed in the SNPRM.

The FAA is requesting public comment on an alternative requirement to protect individual aircraft not operated in direct support of the launch. The FAA and Air Force Common Standards Working Group is considering a change in the proposed requirements of paragraph § 417.107(b)(4) such that the probability of impact to any individual aircraft (P_{ia}) not operated in direct support of the launch does not exceed 0.0000001 ($P_{ia} \leq 1 \times 10^{-7}$ in each debris impact hazard area. This would relax the FAA's proposed aircraft probability of impact standard from 10^{-8} to 10^{-7}. Such a change would be consistent with the current Range Commander Council Standard 321–00 and the FAA's "Supplemental Application Guidance for Unguided Suborbital Launch Vehicles." Such a change would not affect the currently proposed § 417.107(c)(4) which would require that the aircraft impact analysis account for all debris with the potential to impact an aircraft with 11 ft-lbs of kinetic energy or greater and account for the aircraft velocity.

The SNPRM proposes new paragraph § 417.107(c) that would require a launch operator's flight safety analysis to account for any inert debris impact with a mean expected kinetic energy at impact greater than or equal to 11 ft-lbs and, except for the far field blast overpressure effects analysis of § 417.229, a peak incident overpressure greater than or equal to 1.0 psi due to any explosive debris. The 11 ft-lbs threshold for inert debris would apply when determining expected casualties due to blunt trauma. The 1.0 psi threshold for explosive debris would apply when determining expected casualties due to overpressure effects. The far field blast overpressure effects analysis of proposed § 417.229 would account for overpressure levels below 1.0 psi that could cause window breakage and related casualties due to falling or projected glass shards. The SNPRM also proposes that, when using the debris thresholds to determine potential casualties, a flight safety analysis would use either probabilistic models or a more simple and conservative approach. The FAA and Air Force Common Standards Working Group is considering these debris thresholds as proposed common launch safety requirements. The FAA is requesting public comment on the proposed use of these thresholds. A complete discussion on the proposed thresholds and their applicability is provided in section III.C of this SNPRM.

In addition, § 417.107(c) would clarify that a flight safety analysis would be required to apply the thresholds for inert and explosive debris to demonstrate whether a launch satisfied the probability of impact criterion for water-borne vessels of § 417.107(b)(3) and the probability of impact criterion for aircraft of § 417.107(b)(4). Proposed § 417.107(c)(4) would require the analysis to account for the aircraft velocity. Accounting for the aircraft velocity is important when determining the kinetic energy of a potential debris impact with the aircraft. Accounting for the aircraft's velocity is not a new proposal. It was included in appendix A of the NPRM and is being added to proposed § 417.107(c)(4) to clarify that it is an important part of the criterion.

The SNPRM proposes a new paragraph § 417.107(d), which would require that a probabilistic casualty model used by a launch operator must be based on accurate data and scientific principles and be statistically valid. A launch operator would be required to obtain FAA approval of any probabilistic casualty model that is used in the flight safety analysis. If the launch takes place from a federal launch range, the analysis would be allowed to employ any probabilistic casualty model that is accepted as part of the FAA's baseline assessment of the federal launch range's safety process. The proposed provisions for the use of probabilistic models as part of a launch operator's flight safety analysis are intended to provide greater flexibility in demonstrating that a proposed launch satisfies the public risk criteria and to provide greater consistency with the current practices at federal ranges. A complete discussion on the use of probabilistic models as part of flight safety analysis in provided in conjunction with the discussion on casualty thresholds in paragraph III.C of this SNPRM.

The SNPRM re-letters § 417.107(c), (d), (e) and (f) as proposed in the NPRM to (e), (f), (g), and (h) respectively. The title of proposed § 417.107(e) has been changed from "Conjunction on launch assessment" to "Collision avoidance." This change is being made to reflect common terminology used at the federal ranges. The references to subpart C and appendix A in the last sentence of proposed paragraph § 417.107(e) have been modified to be consistent with the other changes made by this SNPRM.

The second and third sentences of proposed paragraph § 417.107(f) have been replaced with a reference to § 417.203(d) that contains provisions for when a flight safety analysis performed by a federal range for a licensed launch may be treated as the licensed launch operator's analysis. This change is meant to clarify that at a federal range, licensed launch operators need not perform analysis ordinarily performed by the range. This is consistent with the FAA's current practice of accepting the federal range process through its baseline assessments. The public comments on the original NPRM indicated that there was significant misunderstanding with regard to this issue, and this change is intended to clear up that misunderstanding.

This SNPRM changes the title of proposed paragraph 417.121(c) from "Conjunction of launch" to "Collision avoidance" to reflect common terminology used at the federal ranges.

The remaining changes that this SNPRM proposes to make to subpart B of part 417 involve references made to sections of proposed subpart C of part 417. This SNPRM modifies and reorganizes proposed subpart C of part 417. As a result, a number of references made in proposed subpart B of part 417 to sections in subpart C of part 417 must be changed accordingly.

Subpart C—Flight Safety Analysis

Subpart C contains proposed requirements governing performance of flight safety analysis to demonstrate a launch operator's capability to manage risk to the public from normal and malfunctioning launches. As originally proposed, subpart C in the NPRM contained both performance level flight safety analysis requirements and additional detailed requirements regarding how to satisfy the performance standards. Comments received from the public as well as the Common Standards Working Group indicated that subpart C of the original NPRM contained detail beyond the performance level, and not all the detail described flight safety analysis methods used by the ranges. In addition, commenters were concerned that proposed subpart C rigidly mandated an approach to performing some of the flight safety analyses, even though more than one acceptable approach might exist. Accordingly, to reflect the Common Standards Working Group understandings regarding common flight safety analysis performance requirements, the FAA now proposes to separate the performance standards

from the more detailed methodology requirements, which are now proposed in appendix A. Although the NPRM provided that the FAA would accept alternate analyses if a launch operator provided a clear and convincing demonstration of an equivalent level of safety, 14 CFR § 417.203(f) (proposed in the October 2000 NPRM), the FAA made this organizational change to promote the understanding that it has the ability to accept alternate approaches. A launch operator who satisfied the subpart C requirements with an alternate analysis would not need to use appendix A. This is the FAA's intent for licensed launches that take place at a federal launch range where the FAA baseline safety assessment of the federal range will document the range's implementation of the subpart C requirements. Appendix A requirements would typically apply for licensed launches from non-federal launch sites. As part of the effort to develop common launch safety requirements, the FAA worked with the federal ranges to develop the performance level requirements for flight safety analysis presented in this SNPRM.

This SNPRM proposes a rewritten subpart C that only contains performance requirements for flight safety analysis developed by the Common Standards Working Group (CSWG). The intent is for each section of subpart C to contain common performance requirements agreed to by the Air Force and the FAA that apply to flight safety analysis, regardless of who performs the analysis, with the understanding that the methodologies implemented to satisfy the performance requirements may vary. The public comments on the original NPRM also indicated that there was significant misunderstanding with regard to the proposed administrative requirements associated with flight safety analysis. The revised subpart C in this SNPRM contains modifications to clarify when a launch operator would be required to perform analyses and submit analysis products to the FAA and when the launch operator would not, depending on whether a launch is from a federal range or a non-federal launch site.

There are criteria that apply to the methodologies used to perform flight safety analysis that are necessary to define the acceptable level of fidelity and, when satisfied, ensure consistent analysis results from one launch to the next. Where the federal ranges typically strive to ensure that their analysis methodologies are the state of the art, the FAA's regulations must include methodology requirements that ensure consistent analysis results for launches from non-federal launch sites. Therefore, the analysis methodology requirements that were in the original subpart C of the October 2000 NPRM have been streamlined and are now contained in appendix A with only a few material changes to better reflect current practice. In addition, the requirements for analysis products that would have to be submitted to the FAA, depending on whether the analysis was performed by a federal range or the launch operator and in accordance with any specific terms of the license, have been revised and moved to appendix A (see discussion on revised appendix A).

The title of § 417.201 is now proposed as "scope and applicability." Subpart C would contain performance requirements for a flight safety analysis to be performed as required by § 417.107(d). As was proposed in the original NPRM, the flight safety analysis requirements of § 417.233 would apply to the flight of any unguided suborbital launch vehicle that uses a wind weighting safety system. All other analyses required by subpart C would apply to the flight of any launch vehicle that is required to use a flight safety system in accordance with § 417.107(a). A major concern raised in the public comments to the original NPRM was that many of the analysis requirements in subpart C may not apply depending on the specifics of an alternative flight safety system. The last sentence of revised § 417.201 would clarify that for any alternative flight safety system approved by the FAA in accordance with 417.107(a)(3), the applicability of the analysis requirements in subpart C would be determined during the licensing process, which is current practice.

Section 417.203 now contains proposed requirements related to how a launch operator would demonstrate compliance with the flight safety analysis requirements. The requirements of § 417.203(a) and (b) were taken from § 417.203(a) of the original NPRM. A new sentence was added to the end of 417.203 (a) to clarify that a launch operator's flight safety analysis may rely on a previously accepted analysis for an identical or similar launch if the analysis still applies to the later launch. This change was made in response to comments expressing concern that a launch operator might be required to unnecessarily repeat analyses, which was not the intent of the FAA original proposal in the NPRM.

Proposed section 417.203(c) reflects the fact that the FAA anticipates that different launch operators will employ different methods for satisfying the requirements of proposed subpart C. In the course of the licensing process the FAA would approve an alternate flight safety analysis if a launch operator provided a clear and convincing demonstration that its proposed analysis provided an equivalent level of safety to that required by proposed subpart C. A launch operator would be required to demonstrate that an alternate flight safety analysis was based on accurate data and scientific principles and was statistically valid. The FAA would not find the launch operator's application for a license or license modification sufficiently complete to begin review until the FAA approved the alternate flight safety analysis. Accordingly, a launch operator may not change its methods for conducting a flight safety analysis without FAA approval. A launch operator would have to submit any change to its flight safety analysis methods to the FAA as a request for license modification prior to proceeding with the proposed launch. § 417.203(c) in the SNPRM was taken from § 417.203(f) of the October 2000 NPRM and provides for flexibility by allowing for alternate flight safety analysis methods.

Proposed § 417.203(d) has been added to address the issue of licensed launches that involve federal ranges. The FAA would accept an alternate flight safety analysis used by a federal launch range for a licensed launch, if the FAA documented and approved the alternate flight safety analysis in the FAA baseline safety assessment of that federal launch range. In this case the FAA would treat the federal launch range's analysis as that of the launch operator and the launch operator would not need to provide any further demonstration of compliance. Licensees are advised to remember that there are different procedures for complying with part 417, depending on whether a launch takes place from a federal launch range or from a non-federal launch site. For a licensee proposing to launch from a federal launch range where an FAA assessment shows that the safety services of that range are acceptable, the licensee would not need to provide the FAA any additional information to comply with subpart C. Only if one of the range safety analysis methods did not satisfy a subpart C requirement would a launch operator have to demonstrate satisfaction to the FAA. Additionally, if an FAA baseline assessment showed that a proposed licensed launch from a federal range was in some way outside the experience of the range, the licensee would also have to address any outstanding issues

with the FAA, which is current practice under the FAA's current regulations. Thus, although the part 417 requirements apply to a licensee proposing to launch from a federal launch range, this rulemaking does not require the licensee to change its practices at the range. Only changes in range practice would result in a change for the launch licensee. A licensee proposing to launch from a launch site for which no federal launch range provides safety services would, of course, have to demonstrate compliance with all applicable requirements to the FAA.

Proposed § 417.203(e) would now contain the timing requirements for submitting analysis products to the FAA as were proposed in the original NPRM. § 417.203(e) would further clarify that the requirements for submitting analysis products apply for licensed launches that do not qualify for the provisions of paragraph (d) of this section, that is, the requirements for submitting analysis products would apply to analyses that have not been performed by a federal range. The analysis products that were in the various sections of subpart C of the original NPRM have been streamlined and moved to appendix A as discussed below. The license application analysis submittal requirements in § 417.203(e)(1) are repeated without change from § 417.203(c)(1) of the original NPRM. The six-month submittal requirements of § 417.203(e)(2) are unchanged from § 417.203(c)(2) of the original NPRM; however, paragraph (iii) was added to clarify that if an analysis product has not changed since the launch operator's license application submittal, the launch operator's six-month submittal need not repeat the data. The thirty-day submittal requirements remain unchanged from § 417.203(c)(3) of the original NPRM; however the second sentence was added to clarify that if an analysis product has not changed since the six-month analysis submittal, the launch operator's thirty-day submittal need not repeat the data. Proposed § 417.203(e)(4) has been added to provide clarification on how a programmatic flight safety analysis would be treated. A launch operator would not be required to submit the 6-month analysis or 30-day analysis update for a launch if the launch operator submitted complete analysis products during the licensing process and demonstrated that all parts of the analysis applied to each launch to be conducted under the license and that the analysis did not need to be updated to account for launch specific factors.

Proposed § 417.205 would now contain general performance requirements that apply to all the various sub-analyses that make up a flight safety analysis. The first sentence of paragraph § 417.205(a) contains the same requirement for controlling risk to the public as the first sentence in § 417.203(a) of the original NPRM, except that the requirements are now placed on the flight safety analysis regardless of who performs the analysis. The FAA intends this editorial change to clarify that the analysis may be performed by the launch operator or a federal range. The remainder of § 417.205(a) of the SNPRM proposes new performance requirements for how an analysis demonstrates control of risk by employing risk assessment or hazard isolation or a combination of both. The ranges have historically preferred the use of hazard isolation over risk assessment as the safer approach to the extent practicable. The FAA does recognize that most launches from the ranges reflect a combination of hazard isolation and risk assessment. The FAA agrees that hazard isolation is preferable; however, because a regulation must identify the acceptable limit for purposes of safety, admonitions to use the safer of two acceptable options are not readily codified. The FAA does, however, expect hazard isolation to be the method of choice whenever practical while permitting a combination or choice of either approach. Hazard isolation not only offers the safer approach, it also tends to be analytically easier to demonstrate satisfaction of the requirements. Risk assessment may, however, while requiring more analysis to prove satisfaction of the requirements, also provide greater operational flexibility on the day of launch.

Proposed paragraph § 417.205(b) contains performance requirements for the input and output of dependent analyses to be compatible to ensure accuracy of the analysis products and is essentially the same as § 417.203(e) of the original NPRM.

Proposed section 417.207 of the SNPRM contains the performance requirements that would apply to any trajectory analysis. § 417.207 does not contain any new requirements as compared to the October 2000 NPRM. § 417.207 combines § 417.205(a) of the October 2000 NPRM with the general requirements that were in other paragraphs of § 417.205 of the NPRM and reflects input from the CSWG to better capture current practice at the Air Force ranges. The remaining trajectory analysis methodology requirements that were proposed by § 417.205 of the October 2000 NPRM have been streamlined and moved to A417.7 of appendix A of part 417. Many of the other analyses, such as those performed to establish flight safety limits and hazard areas, would use the products of the trajectory analysis as input. § 417.207 would require that a trajectory analysis determine, for any time after lift-off, the limits of a launch vehicle's normal flight. Normal flight is defined as proposed in section 417.103 the flight of a properly performing launch vehicle whose real-time instantaneous impact point does not deviate from the nominal instantaneous impact point by more than the sum of the wind effects and the three-sigma performance deviations in the uprange, downrange, left-crossrange, or right-crossrange directions. In § 417.205(f) of the October 2000 NPRM, the FAA proposed that a launch operator use a six-degree-of-freedom trajectory model to generate each required three-sigma trajectory. The FAA now proposes to require that only the final trajectory analysis must employ a six-degree of freedom trajectory model because the CSWG concluded that three-degree of freedom trajectory models may satisfy preliminary trajectory analysis requirements. The FAA proposes to delete the use of instantaneous impact point distance from its nominal location as a reference because specifying the reference might appear to rule out other acceptable alternatives. The FAA is making this change to allow for greater flexibility.

Proposed section 417.209 of the SNPRM contains the performance requirements that would apply to any malfunction turn analysis. Proposed section 417.209 combines § 417.207(a) of the October 2000 NPRM with the more general requirements that were in other paragraphs of § 417.207 of the NPRM and reflects input from the CSWG to better capture current practice at the Air Force ranges. The remaining malfunction turn analysis methodology requirements that were proposed in § 417.207 of the October 2000 NPRM have been streamlined and moved to A417.9 of appendix A of part 417. A malfunction turn analysis would be required to determine a launch vehicle's turning capability using sets of malfunction turn curves, consistent with current practice. The FAA has deleted "greatest turning capability" from the first sentence of § 417.207(a) of the October 2000 NPRM, which is now in § 417.209 of the SNPRM. This change is being made to clarify that the products of a malfunction turn analysis are not limited to just the greatest

turning capability. The greatest turning capability of the launch vehicle, which would be defined by the envelope of a set of turn curves, would be used for establishing flight safety limits.

The FAA is now proposing that a malfunction turn analysis account for the relative probability of occurrence of each malfunction turn. Although not proposed in the October 2000 NPRM, this performance requirement is consistent with current practice at the federal ranges and is necessary to facilitate use of risk analysis, which is an option that may provide a launch operator greater flexibility. Malfunction turns are typically described in terms of either their cause or effect. The FAA proposes that a malfunction turn analysis account for the cause in order for probabilities to be assigned, and the effects in order to assess debris impact probabilities. Typical causes of malfunction turns include thrust offset and burn through. Thrust offset may include failures in the gimbals or in the flow of thrust vector control fluid. A nozzle burn through may result in an imbalance in the thrust. If a nozzle breaks off, the loss may produce an imbalance in the thrust of the launch vehicle and consequent changes in its velocity vector. Launch vehicle systems such as the examples discussed above and others that could be the cause of a malfunction turn may fail in many ways. If a flight safety analysis is to make greater use of risk analysis the causes of possible malfunction turns need to be identified and their probabilities determined.

Proposed section 417.211 of the SNPRM contains the performance requirements that would apply to any debris analysis. § 417.211 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the NPRM have been reorganized, and modifications are proposed to better reflect current practice at the federal ranges. § 417.211 combines § 417.209(a) of the October 2000 NPRM with some general requirements from other paragraphs of § 417.209 of the NPRM. The remaining debris analysis methodology requirements that were in § 417.209 of the October 2000 NPRM have been streamlined and moved to A417.11 of appendix A to part 417.

Section 417.211 would require a debris analysis to identify the inert, explosive, and other hazardous launch vehicle debris that results from normal and malfunctioning launch vehicle flight. A debris model would consist of lists of the debris fragments that are planned as part of a launch or that result from breakup of the launch vehicle. The lists would account for and describe all debris fragments and their physical characteristics. These debris lists would be necessary as input to other flight safety analyses such as those performed to establish flight safety limits and hazard areas and to determine if the launch satisfies the public risk criteria.

Proposed section 417.213 of the SNPRM contains the performance requirements that would apply to flight safety limits analysis and would capture current practice at the federal ranges. § 417.213 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the NPRM have been reorganized. § 417.213 combines § 417.213(a) of the October 2000 NPRM with the performance requirements from other paragraphs of § 417.213 of the NPRM. The remaining flight safety limits analysis methodology requirements that were in § 417.213 of the NPRM have been streamlined and moved to A417.13 of appendix A to part 417. § 417.213 also combines specific flight control lines analysis requirements from § 417.211 of the October 2000 NPRM. The SNPRM would eliminate the requirement for a separate flight control line analysis. The flight control lines analysis was proposed in the NPRM to identify the protected areas and account for map and tracking errors. The FAA now proposes to include the identification of protected areas and accounting for map and tracking errors as part of the flight safety limits analysis.

Proposed section 417.213 would require a flight safety limits analysis to identify the location of populated or other protected areas and establish flight safety limits that define when a flight safety official must terminate a launch vehicle's flight to prevent the hazardous effects of the resulting debris impacts from reaching any populated or other protected area and ensure that the launch satisfies the public risk criteria of § 417.107(b). The public risk management requirements of proposed § 417.205(a), in general, allow a flight safety analysis to employ risk assessment or hazard isolation, or a combination of risk assessment and partial isolation of the hazards to demonstrate control of the risk to the public. Because flight safety limits are to be implemented for the specific situation when a malfunctioning launch vehicle is heading for a protected area, the FAA proposes that the flight safety limits should provide for a measure of isolation from impacting debris hazards. Were risk the sole measure used to establish flight safety limits, a low probability of launch vehicle failure might result in flight safety limits that would not represent the boundaries of safe flight in the event of a failure.

Although flight safety limits provide a form of hazard isolation, they must also reflect and support how a launch satisfies the public risk criterion for debris. Current practice provides a good example of how this approach works. At the Eastern Range, the 45th Space Wing establishes destruct lines, which constitute one kind of flight safety limit, to prevent debris with a ballistic coefficient of three [28] or more from reaching protected areas. Nonetheless, debris with a ballistic coefficient of less than three may still reach protected areas and may cause casualties, as discussed previously. A flight safety analysis would assess the "residual risk," risk due to any hazard not isolated from the public, to determine whether the public risk criterion is satisfied. The FAA proposes in this SNPRM to require that the debris risk assessment of proposed section 417.225 account for the risk due to debris with kinetic energy at impact of 11 ft-lbs. With this measure of what may cause a casualty, the risk assessment may show that flight safety limits designed to isolate debris with a ballistic coefficient of three still permit too much risk due to more wind sensitive debris pieces with ballistic coefficients of less than three. For example, a large number of small pieces of debris or large crowds at the edge of the flight safety limits might increase risk to unacceptable levels. In that case, the FAA's proposed requirements would mandate that the flight safety limits be adjusted to ensure that the launch satisfied the public risk criteria of proposed section 417.107(b). If the flight safety limits were designed to isolate debris with a kinetic energy of 11 ft-lbs at impact, there would be no need to assess the residual risk due to debris outside of the flight safety limits. Of course, a flight safety analysis would still need to assess the risk due to the potential for flight termination system failure.

Proposed section 417.215 of the SNPRM contains the performance requirements that would apply to any straight-up time analysis and captures current practice at the federal ranges. § 417.215 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. Proposed section 417.215 combines § 417.215(a) of the October 2000 NPRM with the top-level

[28] As proposed in Appendix A of part 417 of this SNPRM, the FAA proposes to rely on a ballistic coefficient of three to establish flight safety limits.

requirements that were in other paragraphs of § 417.215 of the October 2000 NPRM. The remaining straight-up time analysis methodology requirements that were in § 417.215 of the October 2000 NPRM have been streamlined and moved to A417.15 of appendix A to part 417. A straight-up time analysis would be required to establish the straight-up time as the latest time after liftoff, assuming a launch vehicle malfunctions and flies in a vertical or near vertical direction above the launch point, at which activation of the launch vehicle's flight termination system or breakup of the launch vehicle would not cause hazardous debris or critical overpressure to affect any populated or other protected area. Straight-up time is a special type of flight safety limit used to address this specific type of failure. In the event of such a failure, the flight safety official would terminate flight at the straight-up time to ensure that hazardous debris effects do not extend to populated or other protected areas.

Proposed section 417.217 of the SNPRM contains the performance requirements that would apply to any no longer terminate gate analysis and captures current practice at the federal ranges. § 417.217 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. Section 417.217 combines § 417.219(a) of the October 2000 NPRM with the performance requirements that were in other paragraphs of § 417.219 of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.219 of the October 2000 NPRM have been streamlined and moved to A417.17 of appendix A to part 417.

A no longer terminate gate analysis would be required to determine the portion, referred to as a gate, of a flight safety limit, through which a launch vehicle's tracking icon is allowed to proceed without a launch operator being required to terminate flight. A tracking icon is the representation of a launch vehicle's position in flight available on a flight safety official console during real-time tracking of the launch vehicle's flight. The products of a no longer terminate gate analysis are necessary for establishing flight termination rules for any planned launch vehicle flight over a populated or other protected area. Once a launch vehicle traversed a gate, flight would not be terminated while the vehicle's debris impact dispersion footprint was over the protected area.

Proposed section 417.219 of the SNPRM contains the performance requirements that would apply to any data loss flight time analysis and captures current practice at the federal ranges. § 417.219 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized and some modifications have been made to better reflect current practice at the federal ranges. § 417.219 combines § 417.221(a) of the October 2000 NPRM with the performance requirements that were in other paragraphs of § 417.221 of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.221 of the October 2000 NPRM have been streamlined and moved to A417.19 of appendix A to part 417.

Proposed section 417.219 would require a flight safety analysis to establish data loss flight times and a no longer terminate time for use in establishing flight termination rules that apply when launch vehicle tracking data is not available to the flight safety official. A data loss flight time would be the shortest elapsed thrusting time during which a launch vehicle could move from its normal trajectory to a condition where the launch vehicle's hazardous debris impact dispersion extended to any protected area. A flight safety official uses data loss flight times as the longest time he would wait before terminating flight when launch vehicle tracking data became unavailable. Current practice recognizes that loss of tracking data does not necessarily mean that a launch vehicle failure has occurred. The launch may continue in the absence of tracking data, but only for the period of time that the launch vehicle debris impact dispersion could not reach a protected area. The analysis would assume that a malfunction occurred when the tracking data was lost and that the launch vehicle headed for the nearest protected area. If tracking was not restored before the launch vehicle debris impact dispersion could reach the protected area, the flight would have to be terminated. Although the October 2000 NPRM proposed that the time describe the shortest elapsed time in which public endangerment could become possible, because current practice only accounts for debris as a hazard for purposes of determining flight safety limits, the FAA proposes to modify this provision to reflect the true nature of the concern: namely, debris impacts. Because the earliest destruct time is in fact the first data loss flight time, the SNPRM eliminates as redundant all references to the earliest destruct time. A flight safety analysis would also determine the no longer terminate time for a launch, which would replace the term "no longer endanger time." The CSWG recommended that the FAA propose this change in terminology because no longer endanger time has different uses at different ranges and in some cases may be somewhat of a misnomer. No longer terminate time is a more generally applicable term that better reflects its actual implementation. The SNPRM proposes to provide streamlined definitions and requirements for data loss flight times and the no longer terminate time that are consistent with current practice. The analysis for no longer terminate time would establish the time after liftoff that a launch vehicle's hazardous debris impact dispersion could no longer reach any protected area from that time forward to final impact or orbital insertion as the no longer terminate time for the launch. Different federal ranges use different terminology for data lose flight times and no longer terminate time. The FAA is proposing the use of generic terms and requirements that, for all intents and purposes, are consistent with current practice at the federal ranges.

The SNPRM contains a modification to better reflect current practice at the federal ranges for launches where a gate permits overflight of a protected area and where orbital insertion occurs after reaching the gate. In such cases, the no longer terminate time would be the time after liftoff when the time for the launch vehicle's instantaneous impact point to reach the gate is less than the time for the instantaneous impact point to reach any flight safety limit. Current practice embraces this approach for at least two reasons. If a launch vehicle performs normally until that point in its trajectory, it will almost certainly enter the gate. If flight were terminated after that time, there would be a greater likelihood of debris impacting the protected area than if the flight were allowed to continue.

Proposed section 417.221 of the SNPRM contains the performance requirements that would apply to any time delay analysis and captures current practice at the federal ranges. § 417.221, does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. § 417.221 combines § 417.223(a) of the October 2000 NPRM with the requirements that were in other paragraphs of § 417.223 of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.223 of the October 2000 NPRM

have been streamlined and moved to A417.21 of appendix A to part 417.

Proposed section 417.221 would require a time delay analysis to determine the mean elapsed time between the violation of a flight termination rule and the time when the flight safety system is capable of terminating flight so that flight termination would occur. A time delay analysis would have to account for all sources of time delay that could have an effect on identifying when a launch vehicle malfunction occurred and how quickly flight could be terminated once a malfunction was identified. Proposed § 417.221 would clarify that a time delay analysis would be required to account for the variance of time delays for each potential failure scenario, including but not limited to, the range of malfunction turn characteristics and the time of flight when the malfunction occurred.

Proposed section 417.223 of the SNPRM contains the performance requirements that would apply to any hazard area analysis and captures current practice at the federal ranges. § 417.223 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. § 417.223 contains the requirements that were in § 417.225(a) of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.225 of the October 2000 NPRM have been streamlined and moved to A417.23 of appendix A to part 417.

The FAA would require a flight hazard area analysis to identify any regions of land, sea, or air that must be monitored, publicized, controlled, or evacuated to control the risk to the public from debris impact hazards. The risk management requirements of § 417.205(a) would apply. Proposed section 417.225(a) of the October 2000 NPRM stated that hazard areas must be implemented to "ensure public safety." The requirements for satisfying the various public risk criteria were spread throughout other paragraphs in § 417.225 of the October 2000 NPRM. In keeping with the intent of defining the performance requirements, the new proposed section 417.223 now states that the risk management requirements of proposed § 417.205(a) would apply. Managing the risk to the public, which involves employing risk assessment or hazard isolation, or a combination of risk assessment and partial isolation of the hazards to demonstrate control of the risk to the public and that the public risk criteria are satisfied as required by proposed § 417.205(a), in effect, provides for the necessary assurance of public safety. Consistent with current practice at the federal ranges, the analysis would account for, but need not be limited to, regions of land potentially exposed to debris resulting from normal flight events and events resulting from any potential malfunction, regions of sea and air potentially exposed to debris from normal flight events, including planned impacts, and in the vicinity of the launch site, any waterborne vessels or aircraft exposed to debris from events resulting from any potential abnormal flight events, including launch vehicle malfunction.

For sea and air regions beyond the vicinity of the launch site, a typical flight hazard area analysis would only account for normal flight events, including planned impacts. Historically, the probability of impacts to aircraft and waterborne vessels due to potential launch vehicle malfunctions has been significant only during the initial stages of flight that take place in the vicinity of the launch site. Typically, once a launch vehicle is beyond the vicinity of the launch site the impact dispersions are large enough and the instantaneous impact point moves fast enough that the probability of impacts to aircraft and waterborne vessels due to potential launch vehicle malfunctions is negligible in comparison to those in the vicinity of the launch site. Furthermore, the probability of a launch vehicle malfunction is typically at its highest during the initial stages of flight, which generally includes the point where the vehicle experiences the maximum dynamic pressure. Once a launch vehicle has completed the initial stages of flight and is beyond the vicinity of the launch site, aerodynamic forces on the launch vehicle are generally small due to the reduced atmospheric density at high altitudes. However, proposed § 417.205(a) would require the analysis to identify any regions of land, sea, or air that must be monitored, publicized, controlled, or evacuated in order to control the risk to the public from debris hazards and would not limit where flight hazard areas may need to be established.

Proposed section 417.225 of the SNPRM contains the performance requirements that would apply to any debris risk analysis and includes requirements for the debris thresholds to be applied when calculating debris risk. The current practice for debris risk analysis may vary from launch site to launch site and from vehicle to vehicle. Proposed section 417.225 of this SNPRM contains proposed common performance requirements that would apply to all launches at federal ranges and non-federal launch sites. Proposed section 417.225 combines § 417.227(a) of the October 2000 NPRM with the requirements from other paragraphs of § 417.227 of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.227 of the October 2000 NPRM have been streamlined and moved to A417.25 of appendix A to part 417.

The FAA would require that a debris risk analysis would demonstrate that the risk to the public potentially exposed to inert and explosive debris hazards from any one flight of a launch vehicle satisfied the public risk criterion of proposed § 417.107(b)(1) for debris. A debris risk analysis would account for risk to populations on land, including regions under launch vehicle flight following passage through any gate in a flight safety limit established in accordance with § 417.217. A debris risk analysis would account for any potential casualties to the public in accordance with the debris thresholds and requirements of proposed § 417.107(c). The October 2000 NPRM provided that a debris risk analysis need not account for debris with a ballistic coefficient of less than three. The FAA realizes that ballistic coefficient may not be the best parameter to use as an indication of casualty. A casualty could result from debris with a ballistic coefficient of less than three. The reverse may also be true. An impact of debris with a ballistic coefficient just greater than three might not result in casualty. The FAA in coordination with the Air Force has reviewed the recent human vulnerability modeling results and believes that, for typical space launch vehicle debris masses and shapes, for the purposes of a debris risk analysis, it is reasonable to consider the potential for casualty due to blunt trauma when a human is subjected to any inert debris impact with a mean expected kinetic energy greater than or equal to 11 ft-lbs. Further discussion and results of the research on this issue are provided in paragraph III.C.1 of this notice. Proposed section 417.225 would now reference proposed § 417.107(c), which requires that an analysis account for inert debris impacts with mean expected kinetic energy at impact greater than or equal to 11 ft-lbs.

The October 2000 NPRM proposed that in a debris risk analysis, the effective casualty area of any explosive debris, such as solid propellant fragments that would result from break up of the launch vehicle during flight and that would explode upon impact with the Earth's surface, would account for a 3.0 psi blast overpressure radius.

This is typical of current practice for analysis of people in the open. However, using a 3.0-psi blast overpressure radius is generally inappropriate for analysis of people in typical buildings. The FAA in coordination with the Air Force has reviewed the recent human vulnerability modeling results and now proposes that a peak incident overpressure of 1.0 psi or greater due to any explosive debris impact as a practical threshold for explosive debris, excluding window breakage effects treated in the far field blast overpressure analysis. Further discussion and results of the research on this issue are provided in paragraph III.C.2 of this notice. Proposed section 417.225 would now reference proposed § 417.107(c), which requires that the analysis account for any public risk in populated areas potentially subject to peak incident overpressure of 1.0 psi or greater due to any explosive debris impact.

Proposed section 417.227 of the SNPRM contains performance requirements that would apply to any toxic release hazard analysis and captures current practice at the federal ranges. § 417.227 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. The requirements of § 417.227 were moved from § 417.229 of the October 2000 NPRM. The proposed analysis methodology requirements continue to be provided in appendix I to part 417, which remains unchanged from the October 2000 NPRM.

A toxic release analysis would be required to establish flight commit criteria that ensure compliance with the public risk criterion of § 417.107(b)(1). The analysis would account for any toxic release that would occur during normal or malfunctioning launch vehicle flight. The analysis would account for any operational constraints and emergency procedures that would provide protection from toxic release. The analysis would account for all members of the public on land and on any waterborne vessels and aircraft not operated in direct support of the launch.

Proposed section 417.229 of the SNPRM contains the performance requirements that would apply to any far-field overpressure blast effects analysis, which was referred to in the NPRM as distant focus overpressure blast effects analysis. Proposed section 417.229 combines § 417.231(a) of the October 2000 NPRM with the other performance requirements from other paragraphs of § 417.231 of the October 2000 NPRM. Section 417.229 of the SNPRM contains modified requirements with substantial streamlining and modifications made for clarity, to provide more flexibility, and to better capture current practice at the federal ranges. Section 417.229(a) combines paragraphs (a) and (c) from § 417.231 of the October 2000 NPRM. Section 417.229(a) now states that a flight safety analysis must establish flight commit criteria that ensure compliance with the public risk criterion. Thus, the SNPRM now proposes the option of performing a risk analysis to assess the potential for casualties due to window breakage consistent with the updated public risk criteria regarding blast risk. To provide greater consistency with current practice, paragraph (a) clarifies that a flight safety analysis must demonstrate that any potential source of far field blast overpressure due to explosions during launch vehicle flight, not just distant focus overpressure from debris impacts, will not cause window breakage. Alternatively, the analysis must demonstrate satisfaction of the risk criteria. The SNPRM emphasizes that the hazard of concern is "far field blast overpressure due to explosions during launch vehicle flight," which excludes consideration of potential sonic boom effects due to normal flight in this analysis. Potential sonic boom effects are typically considered in the environmental review process. Given the proposed 1.0 psi threshold for debris risk analysis, the FAA proposes that the far field blast overpressure analysis must account for any potential source of far field blast overpressure to ensure adequate public protection from potential window breakage hazards and remain consistent with current practice. Past experience at the Eastern and Western Ranges demonstrates that debris impacts are the overwhelmingly dominant source of public risk due to far field blast overpressure (peak incident overpressures below 1.0 psi). However, improperly designed flight termination systems may produce propellant explosions at altitude with the potential to break windows in protected areas.

Section 417.229(b) would provide performance requirements that apply to any far-field blast overpressure analyses, in lieu of the prescriptive requirements proposed in the October 2000 NPRM. Although proposed paragraph (b)(5) would require an analysis to account for the characteristics of potentially affected windows, including size, location, orientation, glazing material, and condition, the FAA does not intend this to require a physical survey of potentially affected public areas. Instead, reasonable assumptions based on the building construction and characteristics typical of the affected public areas may be applied to account for the characteristics of potentially affected windows. For example, as described in A417.29 of appendix A of this SNPRM, the FAA foresees that a launch operator could demonstrate that far field blast overpressure due to potential explosions during launch vehicle flight will not cause windows to break based on the equations and assumptions of the American National Standard "Estimating Air Blast Characteristics for Single Point Explosions in Air, with a Guide to Evaluation of Atmospheric Propagation and Effects," ANSI S2.20–1983. The remaining analysis methodology requirements of § 417.231 of the October 2000 NPRM have been streamlined and moved to A417.29 of appendix A to part 417.

Proposed section 417.231 of the SNPRM contains the performance requirements that would apply to collision avoidance analysis and captures current practice at federal ranges. Proposed section 417.231 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. Proposed section 417.231 contains the requirements that were in § 417.233(a) of the October 2000 NPRM. The title of § 417.233 in the NPRM was "Conjunction on launch assessment," which is a term used by United States Space Command. The SNPRM changes the title of the proposed section to "Collision avoidance analysis," to be more consistent with common terminology used at the federal ranges. The analysis methodology requirements that were in § 417.233 of the October 2000 NPRM have been moved to A417.31 of appendix A to part 417.

A federal launch range will typically perform a collision avoidance analysis for any launch from that range. If no federal range is involved in the launch, the launch operator would obtain a collision avoidance analysis from United States Space Command. A launch operator would implement any waits in the launch window, as identified by United States Space Command, during which flight must not be initiated in order to maintain a 200-kilometer separation from any habitable orbiting object.

Proposed section 417.233 of the SNPRM contains the performance requirements that would apply to the flight safety analysis for launch of an unguided suborbital rocket flown with a wind weighting safety system and

captures current practice at federal ranges. Proposed section 417.233 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. Proposed section 417.233 contains the requirements that were in § 417.235(a) of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.235 of the October 2000 NPRM have been moved to A417.33 of appendix A to part 417. The analysis would be required to establish the launch commit criteria and other launch safety rules to control the risk to the public due to potential adverse effects resulting from normal and malfunctioning flight and ensure satisfaction of the public risk criteria. The analysis would establish any wind constraints under which launch could occur and include a wind weighting analysis that established the launcher azimuth and elevation settings that corrected for the windcocking and wind-drift effects on the unguided suborbital rocket..

Appendix A—Flight Safety Analyses Methodologies and Products

The SNPRM combines requirements that were in the original appendix A to part 417 of the October 2000 NPRM with requirements moved from part 417, subpart C of the October 2000 NPRM to create a comprehensive flight safety analysis methodologies and products appendix. A417.1 would provide the scope of the appendix. Appendix A would contain requirements for the methods used in performing flight safety analysis as required by § 417.107(d) and subpart C of part 417. The methodologies contained in appendix A would represent acceptable means of satisfying the analysis performance requirements of subpart C and provide a standard against which any proposed alternative analysis approach would be measured. Appendix A would also identify the analysis products that a launch operator would be required to submit to the FAA in accordance with § 417.203(e).

Comments received regarding the October 2000 NPRM indicated that there was confusion as to who had to perform various flight safety analyses and regarding when the various analysis methodology requirements applied, in particular with regard to licensed launches from federal ranges. A417.3 would clarify that the requirements of appendix A would apply to a launch operator and the launch operator's flight safety analysis unless the launch operator demonstrated that an alternative approach provided an equivalent level of safety. If a federal launch range performed the launch operator's analysis, § 417.203(d) would apply. Proposed appendix A section A417.33 would apply to the flight of any unguided suborbital launch vehicle that used a wind weighting safety system. All other sections of appendix A would apply to the flight of any launch vehicle required to use a flight safety system in accordance with proposed § 417.107(a). For any alternative flight safety system approved by the FAA in accordance with 417.107(a)(3), the FAA would determine the applicability of appendix A during the licensing process.

Proposed section A417.5 references important requirements of the new proposed § 417.205 that a launch operator would need to know when satisfying the requirements of appendix A. These requirements are the general performance requirements for public risk management and the requirements for the compatibility of the input and output of dependent analyses.

The remaining sections of appendix A do not contain any new requirements as compared to the October 2000 NPRM and current practice; however, the provisions of the October 2000 NPRM have been reorganized and in a number of cases, the requirements have been significantly streamlined in response to comments received on the NPRM and to provide greater consistency with current practice. Comments will be addressed in the final rule. Requirements that were in subpart C of part 417 of the October 2000 NPRM were streamlined where possible and moved to appendix A. For example, paragraph A417.7(a) references the new top level performance requirement, now in section 417.207. The rest of the material in A417.7 comes from section 417.205 of the original NPRM. The other sections in appendix A now follow this same approach. For each new performance requirement section in the revised part 417 subpart C, there is a section in appendix A. As another example, performance malfunction turn analysis requirements would now appear in § 417.211. The methodology requirements for calculating malfunction turn data and the requirements for analysis products that would apply to a launch operator's demonstration of compliance would now appear in A417.11. The flight hazard area analysis requirements that were in the original appendix A, have now been combined with the flight hazard area requirements that were in § 417.225 of the October 2000 NPRM and the combined requirements are now in A417.23. The FAA's goal is to have a single, all inclusive flight safety analysis appendix that contains detailed requirements necessary to demonstrate compliance with the flight safety analysis performance requirements that are now in subpart C of part 417.

Proposed section A417.7 contains trajectory analysis methodology requirements that were in § 417.205 of the October 2000 NPRM with some significant modifications. The NPRM would have allowed the use of annual or monthly composite wind profiles in a launch operator's trajectory analysis. Proposed A417.7(b) changes the proposed requirement to composite wind profiles for the month that a proposed launch will take place or winds that are as severe or more severe than the winds for the month that a proposed launch will take place. Annual winds may or may not represent worst case conditions. Use of annual winds in some cases can result in significant launch restrictions and in other cases may result in unsafe analysis results. Use of monthly wind profiles is current practice at both Air Force ranges and does not represent any increase in analysis effort. A launch operator would still be allowed to use "worst case winds" in a trajectory analysis.

The October 2000 NPRM would have required that the three-sigma trajectories be determined assuming a normal bivariate Gaussian distribution. The SNPRM contains changes that recognize that the distribution may in fact be something else. Paragraph A417.7(d) now proposes only that the trajectory analysis describe the distribution. The original requirements for a Gaussian distribution in the following paragraphs have been deleted and the paragraphs have been reworded to reflect the possibility of different distributions. These changes provide for greater flexibility and broader applicability of the requirements.

The proposed requirements for a fuel-exhaustion trajectory in SNPRM paragraph A417.7(d)(3) have been streamlined as compared to § 417.205(d)(3) of the October 2000 NPRM. As indicated by comments received on the NPRM the subparagraphs under § 417.205(d)(3) of the NPRM were in some ways repetitive. The SNPRM contains no new fuel-exhaustion trajectory requirements. Proposed paragraph A417.7(d)(3) in the SNPRM has been reworded and the subparagraphs have been deleted to eliminate repetitiveness. The SNPRM clarifies that the requirements for a fuel-exhaustion trajectory only apply to launch vehicles with a last suborbital stage that will terminate thrust nominally without burning to fuel exhaustion.

Proposed A417.7(e) of the SNPRM contains requirements for a straight-up trajectory that remain unchanged from § 417.205(e) of the October 2000 NPRM.

Proposed A417.7(f) of the SNPRM contains significantly streamlined requirements from § 417.205(f) of the October 2000 NPRM. The NPRM would have directed the use of a root-sum-square analysis method or equivalent and provided some detailed requirements that would apply only to the root-sum-square method. The revised proposed requirements of A417.7(f) of the SNPRM provide a more performance oriented approach that recognizes that there is more than one acceptable analysis approach. A417.7(f) would still require the use of a six degree of freedom trajectory model; however, the paragraph would now contain performance requirements for how the model was used. The root-sum-square and Monte Carlo methods are now only referred to as examples of approaches that would satisfy the performance requirements. The detailed requirements proposed in the NPRM for performing a root-sum-square analysis have been deleted. Proposed section A417.7(e)(1) now requires that the analysis identify the distribution of each performance parameter rather than its standard deviation in recognition that the distribution may be other than normal.

A417.7(g) of the SNPRM contains requirements for trajectory analysis products from § 417.205(g) of the October 2000 NPRM with some streamlining and modifications to remain consistent with changes made to other paragraphs in section A417.7. Paragraph (g)(2) now requires a description of the distribution of each performance error as discussed earlier. Consistent with current practice, the proposed altitude intervals for the required wind profiles in paragraph (g)(3) have been changed from 1000 feet to 5000 feet, which results in fewer data points without any negative effect on the analysis. The last sentence in paragraph (g)(3) has been deleted in the SNPRM as redundant. Paragraph (g)(7) was modified in the SNPRM to combine the original paragraph § 417.205(g)(7) with paragraphs § 417.205 (g)(8) and (9) of the October 2000 NPRM. The SNPRM clarifies the proposed requirement for total thrust paragraph (g)(7)(xi) is total vacuum thrust. The requirements for dynamic pressure and Coriolis displacement proposed in paragraph § 417.205(g)(7)(xiii) and (xiv) of the NPRM have been deleted in the SNPRM as redundant because they can be determined from, or are incorporated into, other data that would be submitted.

Proposed A417.9 of the SNPRM contains requirements for malfunction turn analysis from § 417.207 of the October 2000 NPRM with some streamlining and modifications made for clarity, flexibility, and consistency with current practice. Paragraph (b)(1) now clarifies that malfunction turn data must be provided for a duration of no less than 12 seconds or the product of 1.2 times the three-sigma upper bound time delay determined in accordance with A417.21, whichever is greater. New text in paragraph (b)(1) clarifies that these duration limits apply regardless of whether or not the vehicle would break up before the prescribed duration for the turn data. New text in paragraph (b)(2) states that the analysis must produce malfunction turn data for malfunctions initiated at intervals of no more than four seconds over the flight, instead of every trajectory time as proposed previously. The new text in paragraph (b)(2) is consistent with current 127–1 requirements. The definitions of the different types of malfunction turns that were in paragraph (b)(3) have been moved to paragraph (d). This change is purely an organizational change made to improve readability. Paragraph (b)(4) is revised to clarify that the first malfunction turn start time must correspond to lift-off. Paragraph (b)(4) is also revised to clarify that subsequent malfunction turns must be initiated at regular nominal trajectory time intervals not to exceed the greater of the three-sigma lower bound delay time or four seconds. Consistent with current Air Force requirements in EWR127–1, paragraph (b)(7) is modified to prescribe that gravity effect must be omitted from all malfunction turn data.

Proposed (d)(7)(ii) would require that if flying a trim turn is not possible even for a period of only a few seconds, the malfunction turn analysis would need only establish tumble turns. Otherwise, the malfunction turn analysis would be required to establish a series of trim turns, including the maximum-rate trim turn, and the family of tumble turns. During the part of launch vehicle flight where the maximum trim angle of attack is small, tumble turns may result in the greatest malfunction turn angles. If the maximum trim angle of attack is large, trim turns may lead to higher malfunction turn angles than tumble turns.

In proposed (d)(7)(iii), where a launch operator would be required to establish the maximum turning capability of the launch vehicle, a launch operator would have to account for a launch vehicle that was unstable at low angles attack but stable at some higher angles of attack. If both large and small constant engine deflections of the launch vehicle resulted in tumbling, regardless of how small the deflection might be, the analysis would have to use the malfunction turn capabilities achieved at the stability angle of attack, assuming no upsetting thrust moment, in addition to the turns achieved by a tumbling vehicle. This situation arises because the stability at high angles of attack is insufficient to arrest the angular velocity, which is built up during the initial part of a tumble turn where the launch vehicle is unstable. Although the launch vehicle cannot arrive at this stability angle of attack as a result of the constant engine deflection, there is some deflection behavior, such as the nozzle's rate of deflection, that will produce this result. If a launch operator did not elect to employ such a deflection program, the launch operator could simplify the analysis by assuming that the launch vehicle instantaneously rotated to the trim angle of attack and stabilized at this point. In such a case, tumble turn angles could be used during that part of launch vehicle flight for which the tumble turn envelope curve maintained a positive slope throughout the duration of the computation.

The phrase, "if thrust augmenting rocket motors are used on a launch vehicle," is deleted from paragraph (e)(4)(iii) because the launch operator would be required to submit vehicle orientation data in all cases. This modification is consistent with current EWR 127–1 requirements and necessary because the potential for non-symmetric induced velocities exists irrespective of the presence of thrust augmenting rocket motors.

Proposed section A417.11 of the SNPRM contains requirements for debris analysis taken from § 417.227 of the October 2000 NPRM with some streamlining and modifications made for clarity, to provide more flexibility, and to remain consistent with current practice. This section streamlines the October 2000 NPRM in that the same debris analysis requirements now apply to both intentionally jettisoned debris and debris resulting from launch vehicle break-up. Paragraph (c)(1) clarifies that a debris model must provide debris fragment data for the number of temporal segments sufficient to meet the requirements for smooth and continuous contours used to define hazard areas as required by A417.23. Paragraph (c)(8) and sub-paragraphs to (c)(3) are now consistent with the current Air Force requirements of EWR 127–1. Debris analysis requirements proposed by the October 2000 NPRM in

paragraph (c)(9) were moved to the debris risk analysis section (A417.25) because computation of the effective casualty area for inert fragments depends on the path angle of the fragment trajectory at impact. Consistent with current Air Force requirements in EWR 127–1, paragraph (c)(10)(ii) now allows grouping of fragments with subsonic ballistic coefficients less than or equal to three within a class. Paragraph (c)(10)(iii) also proposes greater consistency with current Air Force requirements in EWR 127–1. Minor non-material changes were made to paragraph (d) and elsewhere to provide more clarity.

Section A417.13 of the SNPRM contains requirements for flight safety limits analysis from § 417.211 and § 417.213 of the October 2000 NPRM with some streamlining and modifications made for clarity, to provide more flexibility, and to remain consistent with current practice. As previously mentioned, the SNPRM eliminates the requirement for a separate flight control line analysis. The pertinent requirements to account for map and tracking errors that were part of the flight control lines analysis in the October 2000 NPRM are now included as part of the flight safety limits analysis. The October 2000 NPRM proposed that the flight safety limits "must ensure that the launch vehicle's debris impact dispersion does not extend beyond the flight control lines." In keeping with current practice at the federal ranges, paragraph (b) of the SNPRM expands and clarifies that for a flight termination at any time during launch vehicle flight, the flight safety limits would: (1) Represent, but need to be limited to, the extent of the debris impact dispersion for all debris fragments with ballistic coefficient greater than or equal to three; and (2) ensure that the debris impact area on the Earth's surface that is bounded by the debris impact dispersion in the uprange, downrange and crossrange directions; does not extend to any populated or other protected area. Using flight safety limits to protect the public from debris with ballistic coefficient greater than or equal to three is consistent with current practice at the federal ranges. Any risk due to more wind sensitive debris with ballistic coefficients less than three are typically addressed using risk assessment. Paragraph (c) of the SNPRM presents the risk management options of employing flight safety limits that provide hazard isolation or defining flight safety limits that generally contain hazardous debris together with debris risk assessment to ensure the public risk criteria are satisfied.

Section A417.15 of the SNPRM contains requirements for straight-up time analysis from § 417.215 of the October 2000 NPRM with some streamlining. The SNPRM references sources of debris impact dispersion of A417.13(b)(4)(ii) through (xiii) instead of re-listing those. In addition, the SNPRM eliminates the requirement for a sample set of straight-up time calculations because a description of the methodology used will suffice.

The SNPRM does not contain a section dedicated to wind analysis requirements such as § 417.217 of the October 2000 NPRM. Instead, wind analysis elements have been incorporated into those sections that involve wind analysis products.

Section A417.17 of the SNPRM contains requirements for a no-longer terminate gate analysis from § 417.219 of the October 2000 NPRM with some streamlining. Paragraph (b)(4) was modified to clarify that the width of the gate must restrict a launch vehicle's normal trajectory ground trace. Because a "normal trajectory" means a trajectory within three-sigma of nominal with wind effects, the remainder of the (b)(4) was eliminated as redundant. Similarly, the definition of tracking representation was eliminated from (c)(1) since the SNPRM provides this definition in § 417.217.

Section A417.19 of the SNPRM contains requirements for the data loss flight time and no-longer terminate time analyses taken from § 417.221 of the October 2000 NPRM, with some streamlining and modifications made for clarity and to remain consistent with current practice. Paragraph (b) of the October 2000 NPRM was eliminated as redundant because the earliest destruct time is, in fact, the first data loss flight time. Paragraph A417.19(b) of the SNPRM modifies paragraph (c) of the October 2000 NPRM to provide requirements for the no-longer terminate time that are consistent with current practice. The SNPRM effectively replaces the term the no-longer endanger time in proposed section A417.19 with the more generic term "no-longer terminate time" to be consistent with the performance requirements of proposed § 417.219. Proposed paragraph (b) adds the clarification that when determining the no-longer terminate time the analysis would account for a launch vehicle malfunction that would direct the vehicle toward the nearest flight safety limit or protected area following the same requirements proposed for determining the data loss flight times. Proposed paragraph (c) of the SNPRM modifies paragraph (d) of the October 2000 NPRM to provide the streamlined definition and requirements for data loss flight times that are consistent with current practice.

Section A417.21 of the SNPRM contains requirements for the time delay analysis from § 417.223 of the October 2000 NPRM with some streamlining and modifications made for clarity and to remain consistent with current practice.

Section A417.23 of the SNPRM contains requirements for flight hazard area analysis from § 417.225 of the October 2000 NPRM with streamlining and substantial modifications made to enhance clarity, to provide greater flexibility, and to remain consistent with current practice. The SNPRM eliminates the reference to "safety clear zones" in paragraph (b) because no definition or requirements for such existed in the October 2000 NPRM with regard to flight safety analysis. However, the term was used in the proposed ground safety requirements of subpart E of the NPRM. In keeping with current practice, paragraph (b) was modified to present the options of employing a launch site flight hazard area that encompasses the flight safety limits when the hazard isolation option is employed in accordance A417.13(c) or encompasses all hazard areas established in accordance with paragraphs (d) through (i).

Proposed paragraph (d) of section A417.23 would now require that a debris impact hazard area account for the effects of impacting debris resulting from normal and malfunctioning launch vehicle flight, excluding toxic effects, and accounts for potential impact locations of all debris fragments. The October 2000 NPRM had required the debris hazard area to account for any toxic effects of debris, which is not consistent with current practice at the Eastern Range or Western Range. Paragraph (d)(1) and its sub-paragraphs would provide requirements that are consistent with current practice at the Eastern Range and Western Range for determination of an individual casualty contour. Specifically, the SNPRM clarifies that a debris hazard area must be bounded by an individual casualty contour that defines where the risk to an individual would exceed an expected casualty (E_C) criterion of 1×10^{-6} if one person were assumed to be in the open and inside the contour during launch vehicle flight. The SNPRM clarifies that an individual casualty contour would be determined using the blunt trauma and overpressure effects thresholds common to the Air Force and the FAA. Elements of the sub-paragraphs to (d) in the

October 2000 NPRM are re-organized for greater clarity. Also, the sub-paragraphs to (d) are revised to provide greater flexibility by specifying performance level requirements. In sub-paragraph (d)(5), the SNPRM now requires only that the analysis must account for the type of vehicle breakup, either by the flight termination system or by aerodynamic forces, eliminating the excess conservatism associated with the phrase "whichever results in the greater debris dispersion" that appeared in sub-paragraph (d)(4) of the October 2000 NPRM. In sub-paragraph (d)(6), the SNPRM now requires that the analysis use a probability of occurrence equal to one for the planned debris fragments produced by normal separation events during flight, consistent with current practice. This correction to the October 2000 NPRM provides positive public protection from planned jettison debris regardless of the probability of mission success.

Proposed paragraph (e) in section A417.23 of the SNPRM contains modified requirements for the near-pad blast hazard area that are more consistent with current practice than those in the October 2000 NPRM. The paragraph (e) would require a hazard area analysis to define a blast overpressure hazard area as a circle centered at the launch point with a radius equal to the 1.0-psi overpressure distance produced by the equivalent TNT commensurate with the explosive capability of the vehicle, in lieu of the 3.0 psi overpressure level specified in the October 2000 NPRM. This modification is generally consistent with current practice, although overpressure levels used to define near-pad blast hazard areas for flight vary significantly between ranges. The Eastern Range uses an overpressure level that is more conservative than 1.0 psi. Also consistent with current practice, the paragraph would require the establishment of a minimum near-pad blast hazard area to provide protection from hazardous fragments potentially generated and propelled by an explosion. These modifications to paragraph (e) are not expected to produce more restrictive hazard areas because the overall flight hazard area must envelope the near-pad blast hazard area, the individual casualty contour, any ship-hit contours, and any aircraft-hit contour. Typically, a near-pad blast hazard area established to meet the proposed requirements would not extend beyond the individual casualty contour.

Proposed paragraph (g) in section A417.23 of the SNPRM contains modified requirements for the flight hazard area ship-hit contours that are more consistent with current practice and provide greater flexibility by specifying performance level requirements. Whereas the NPRM of October 2000 specified that the ship-hit contour need not account for debris with a ballistic coefficient less than three, the SNPRM requires that the ship hit use the blunt trauma and overpressure effects thresholds common to the Air Force and the FAA. As previously discussed, these thresholds provide a level of protection commensurate with current practice.

Proposed section A417.25 of the SNPRM contains requirements for debris risk requirements from § 417.227 of the October 2000 NPRM with some streamlining and modifications made for clarity, to provide more flexibility, and to remain consistent with current practice. Paragraph (b)(3) would be streamlined by replacing "planned launch vehicle events and breakup of a launch vehicle due to activation of a flight termination system or spontaneous breakup due to a launch vehicle failure during launch vehicle flight" with "normal and malfunctioning launch vehicle flight." Whereas the NPRM of October 2000 indicated that the debris risk analysis would not need to account for debris with a ballistic coefficient less than three, the SNPRM specifies that the debris risk analysis must use the blunt trauma and overpressure effects thresholds common to the Air Force and the FAA.

New text in paragraph (b)(4)(i) of section A417.25 clarifies the portion of trajectory time for which a debris risk analysis must account. The text, "planned flight events and from launch vehicle failure" is replaced with "normal and malfunctioning launch vehicle flight" in accordance with discussions with the Common Standards Working Group. Modifications in paragraph (b)(4)(ii) clarify that the factors accounted for in the dispersion for each debris class include the variance produced by break-up imparted velocities and the variance produced by aerodynamic properties for each debris class. Variance in the impact dispersion due to aerodynamic properties includes the effects of lift and drag, whereas the NPRM inadvertently omitted the influence of lift. Paragraph (b)(4)(iii) is streamlined to delete redundant text. The phrase, "performs a survivability analysis and" is deleted from the second sentence of this paragraph to allow an assumption of 100% survivability to substitute for a survivability analysis.

Paragraph (b)(8) of section A417.25 is modified to require the use the blunt trauma and overpressure effects thresholds common to the Air Force and the FAA. New text is added as (b)(8)(i) and (b)(8)(ii) to provide more flexibility in casualty area analysis for inert debris fragments. The SNPRM proposes a two-tier approach to the casualty area estimates that allows a simple and conservative estimate (that the effective casualty area equals seven times the maximum projected area of the fragment) to substitute for an analysis of the effective casualty area for each inert debris fragment that accounts for bounce, skip, slide, and splatter effects based on the path angle of the fragment trajectory at impact among other influences.

The first sentence of paragraph (b)(9) clarifies that "traditional" population growth rate equations are exponential in nature. The second sentence in this paragraph is deleted as unnecessarily prescriptive and inflexible. The population model requirements are streamlined and clarified to define population centers that are similar enough to be described and treated as a single average set of characteristics without degrading the accuracy of the debris risk estimate.

The second sentence in paragraph (b)(10)(iii) of section A417.25 is modified for clarity by deleting the word "census." Population density information may come from other sources. Paragraph (c)(3) was reorganized and modified for clarity to include subparagraphs (i), (ii), and (iii). Paragraph (c)(3)(i) states, "Flies within normal limits until some malfunction causes spontaneous breakup or results in a commanded flight termination." Paragraph (c)(3)(ii) is modified to read, "Experiences malfunction turns." This new failure scenario text is consistent with current EWR 127–1 requirements. Paragraph (c)(3)(iii) is added to read, "Flight safety system fails to function." The word "cell" in Paragraph (c)(4) is replaced with "center" to reflect current practice. New text is added to account for a population model containing a description of the shelter characteristics within the population center. The new text in paragraph (c)(4) identifies a population characteristic currently used in Range Safety population models.

The SNPRM proposes minor modifications to paragraph (c) form completeness, to enhance clarity, and to require that the debris risk analysis products are consistent with current practice as well as the proposed requirements. In sub-paragraph (7)(i), the SNPRM clarifies that the debris analysis products must describe the

propellant composition, instead of its ingredients. This correction indicates that the relevant information is the product of propellant formulation process. Whereas the October 2000 NPRM required simply that the debris analysis products must include a description of the "thrust profile," the SNPRM clarifies this requirement by specifying the "vacuum thrust profile" in sub-paragraph (7)(ii). Because the SNPRM specifies that the "vacuum thrust profile" is used to describe the "thrust profile," the FAA proposes to add sub-paragraph (7)(viii) to require description of the corresponding nozzle entrance and exit areas for completeness. Section A417.229 of the SNPRM contains modified requirements based on § 417.231 of the October 2000 NPRM with substantial streamlining and modifications made for clarity, to provide more flexibility, and to remain consistent with current practice. Paragraph (a) combines paragraphs (a) and (c) from § 417.231 of the October 2000 NPRM. Paragraph (a) now states that a flight safety analysis must account for distant focus overpressure and any overpressure enhancement to establish the potential for broken windows due to peak incident overpressures below 1.0 psi and related casualties due to falling or projected glass shards. Paragraph (a) also provides the option to perform a risk analysis to assess the potential for casualties due to window breakage consistent with the updated public risk criteria regarding blast risk. To provide greater consistency with current practice, paragraph (a) clarifies that a flight safety analysis must account for any potential source of far-field overpressure that may cause window breakage, not exclusively distant focus overpressure from debris impacts. Given the proposed 1.0 psi threshold for debris risk analysis, the FAA and Air Force concluded that the proposed far-field blast overpressure analysis must account for any potential source of far-field overpressure to ensure adequate public protection from potential window breakage hazards. Past experience at the ER and WR demonstrates that debris impacts are the overwhelmingly dominant source of public due risk due to far field overpressure (peak incident overpressures below 1.0 psi). Paragraph (b) now provides performance level requirements that apply to both hazard analysis and probabilistic far-field blast overpressure analyses, in lieu of the prescriptive requirements put forth in the October 2000 NPRM.

Section A417.31 of the SNPRM contains requirements for collision avoidance analysis taken from § 417.233 of the October 2000 NPRM with some streamlining and modifications made for clarity. The terms "licensee" and "license applicant" in A417.31 are now renamed "launch operator" to reflect similar terminology used throughout other sections. The second sentence in paragraph (b)(3) now states, "If an updated conjunction on launch assessment is needed due to a launch delay, a launch operator must submit the request to United States Space Command at least 12 hours prior to the beginning of the new launch window." This clarifies the agency responsible for receiving collision avoidance analysis requests and the lead-time for such requests. The launch assessment worksheet, figure A417.31 1., in paragraph (c) is no longer necessary. All data requirements are described in the following text. Removal of the figure streamlines this section and eliminates the requirement to revise this section when the assessment worksheet format changes. The second sentence in paragraph (c)(5) originally read, "The term 'vector at injection' is used to identify the position and velocity vectors after the thrust for a segment has ended." This is now changed to read, "The term 'vector at injection' is used to identify the position and velocity of all orbital or suborbital segments after the thrust for a segment has ended." This is more technically correct. Paragraph (c)(5) is streamlined by deleting the third sentence. This sentence is unnecessary since it provides a previous definition to a term that is no longer used. Position and velocity information in paragraph (c)(5)(ii) is modified for the purposes of clarity to read, "The position coordinates in the EFG coordinate system measured in kilometers and the EFG components measured in kilometers per second, of each launch vehicle stage or payload after any burnout, jettison, or deployment."

Appendixes B Through I of Part 417

The only changes that this SNPRM makes to appendixes B though I of part 417 involve references made to sections of proposed subpart C of part 417. This SNPRM modifies and reorganizes proposed subpart C of part 417. As a result a number of references made in proposed appendixes B through I of part 417 to sections in subpart C of part 417 must be changed accordingly. The necessary reference changes are identified in this SNPRM.

VI. Procedural Matters

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Federal Aviation Administration has reviewed the information collection requirements of this supplemental notice of proposed rulemaking. The FAA has determined that this supplemental notice of proposed rulemaking does not alter the information collection requirements of the notice of proposed rulemaking issued October 25, 2000. With that notice of proposed rulemaking, the FAA determined that there would be no additional burden to respondents over and above that which the Office of Management and Budget has already approved under the existing rule titled, "Commercial Space Transportation Licensing Regulations" (OMB control number 2120–0608). Under the existing rule, the FAA considers license applications to launch from non-federal sites on a case-by-case basis. In conducting a case-by-case review, the FAA gives due consideration to current practices in space transportation, generally involving launches from federal sites. Accordingly, the FAA believes that, under the proposals of the NPRM and this SNPRM, there would be no additional information collection not already included in the previously approved information collection activity. This rule would eliminate the case-by-case review, thereby streamlining the licensing process, and would not place any additional burden on the respondent.

Regulatory Evaluation Summary; Introduction

Proposed and final rule changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment

of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the Federal Aviation Administration (FAA) has determined that the Supplement to the Notice of Proposed Rulemaking (SNPRM): (1) Is "a significant regulatory action" as defined in the Executive Order, and is "significant" as defined in the Department of Transportation's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are available in the docket, and are summarized below.

Regulatory Background

The FAA's Associate Administrator for Commercial Space Transportation, on October 25, 2000, issued a Notice of Proposed Rulemaking (NPRM) that proposed to amend the commercial space transportation regulations by codifying the license application process for launches from non-federal launch-sites. The NPRM was also intended to codify the current safety requirements for launch operators regarding license requirements, criteria, and responsibilities in order to protect the public from hazards of launches from federal and non-federal sites. Comments received on the NPRM resulted in the development of the SNPRM, which offers clarifications and proposed changes to the NPRM based on certain comments to the NPRM. The SNPRM, together with the NPRM, would codify the Federal Aviation Administration's license application process for launch from non-federal launch sites, and would codify the safety requirements for licensed launch operators in order to protect the public from the hazards of launch from either a federal range or non-federal launch site.

Identification of Current Practice

Whether launching from a federal range, a launch site located on a federal range, or a non-federal launch site, a launch operator is responsible for ground and flight safety under its FAA license. At a federal launch range a launch operator is currently required to comply with the rules and procedures of the federal range. It is current practice for the FAA to accept federal range safety requirements for licensed launches from federal ranges, as current federal range procedures and practices satisfy the majority of the FAA's safety concerns. In the absence of federal launch range oversight, each launch operator would be required to demonstrate the adequacy of its ground and flight safety programs to the FAA in order to satisfy the FAA's statutory responsibility. Current practice for licensed launches from non-federal launch sites is for operators to achieve a level of safety equivalent to that at the federal ranges.

Regulatory Requirements

Two revisions to the NPRM—section 417.107(b), public risk criteria, and section 417.203, compliance—as presented in the SNPRM, would result in economic impacts. These two sections are the principal focus of this regulatory evaluation of the SNPRM. They contain the following regulatory proposals that have changed relative to the NPRM: (1) Applying the risk criteria of $E_c \leq 30 \times 10^{-6}$ to each hazard individually rather than aggregating the risk over all hazards as was proposed in the NPRM, and (2) requiring the FAA to perform more intensive and timely baseline assessments of federal range flight safety analyses in order to verify launch operator compliance with range safety.

Costs of the Supplement to the Notice of Proposed Rulemaking

The SNPRM would impose a total estimated cost of approximately $700,000 ($530,000 discounted), in 2001 dollars, on the commercial space transportation industry over the 5-year period from 2003 through 2007. The FAA would incur some costs to administer the SNPRM but there is insufficient information to quantify and develop an estimate at this time.

Commercial Space Transportation Industry Costs

Commercial space transportation launch operators would incur additional costs to comply with the requirements contained in Section 417.107(b) of the SNPRM only. This requirement proposes that the risk criteria be applied to each hazard individually, rather than aggregating the risk, as was proposed in the NPRM. The proposed limits and method of applying risk on a per hazard basis are less stringent than that of aggregating the risk for all hazards. Existing FAA regulations establish a risk criteria of $E_c \leq 30 \times 10^{-6}$ for the debris hazard. It is current practice for the FAA to accept the federal range requirements for launches from federal ranges, in accordance with an assessment performed by the FAA. The majority of licensed launches to date have taken place primarily from the Air Force's Eastern Range, which calculates risk and applies risk criteria on a per hazard basis without considering the aggregate risk. The Air Force's Western Range also calculates the risk due to each hazard; however, the Western Range does consider the aggregate risk in its decision-making process. Therefore, current practice could be either approach, depending on from which range the launch takes place.

The Eastern Range has allowed a launch when the toxic risk was 233×10^{-6} for expected casualty, which is less stringent than the 30×10^{-6} per hazard proposed in the SNPRM. While it is mainly government launches that rely on this risk ceiling for toxic hazards in excess of 30×10^{-6}, there have been few licensed launches that have exceeded this level. The regulatory evaluation associated with the NPRM did not address the probability that licensed launches from the Eastern Range would exceed 30×10^{-6} for toxic risk. Further evaluation and a better understanding of current range practice indicates that Eastern Range launches have proceeded with a significantly higher toxic risk criteria (i.e., up to 114×10^{-6} for a licensed launch) than that being proposed. Therefore, the FAA is now prepared to assume that there may be some future launches that would be delayed due to the proposed requirement.

There were 39 launches of commercial launch vehicles from the Eastern Range from the years 1997 to August 2001. Two of these 39 launches exceeded the toxic risk ceiling proposed by the SNPRM due to meteorological conditions, but were launched anyway because they fell within the acceptable range of the Eastern Range. If these precise meteorological launch conditions existed under the SNPRM, then the two launches, which took place under the current practice at the Eastern Range, would not have launched. Therefore, the proposed requirement, under the same meteorological launch conditions, would cause a commercial launch operator to delay a planned launch from the Eastern Range until more favorable weather prevailed. Launch delays from the Eastern Range would cause a launch operator to incur additional costs.

The FAA estimates that the average cost of a one-day delay to commercial space launch operators would be $380,000. Using the Air Force Eastern Range experience mentioned above—that two out of 39 launches might have to be delayed under the SNPRM—the

FAA estimates the probability of a launch delay in any given year during the 2003 to 2007 period would be five percent (calculated as 2÷39 = .051282). Accordingly, due to the proposed toxic risk ceiling requirement, as many as two of the 36 expected Eastern Range launches from 2003 through 2007 could be delayed (calculated as .051282 × 36 = 1.85). It is important to note that the estimate of two delays attributable to this proposed requirement over the five-year period may be an overstatement. The likelihood of launch delays resulting from toxicity limits is expected to decrease, as future launch vehicle toxicity is expected to be reduced significantly, and future launches are likely to be conducted from launch complexes that are farther away from populated areas. Collectively, these launch characteristics will result in E_c values significantly lower than that experienced historically as well as the proposed ceiling.

Because it is not possible to ascertain with certainty when during the 2003 through 2007 period there will be a launch delay at the Eastern Range as a result of the toxic standard in the SNPRM, the probability of a delay based on past experience is multiplied by all projected launches per annum, yielding the expected number of launch delays. The average cost to a commercial space launch operator of a one-day delay (i.e., $380,000) is multiplied by the expected number of launch delays over the five year period, resulting in a cost of approximately $700,000 ($530,000 discounted) to commercial space transportation industry launch operators to comply with the proposed requirement at the Eastern Range.

This proposed amendment would codify and standardize this requirement for all launches regardless of launch site, and would not differ from current practice for launch operators seeking licenses to perform launches from non-federal launch sites. Accordingly, commercial launch operators would not incur additional costs to comply with this requirement as it pertains to non-federal launch sites.

Federal Aviation Administration Costs

The FAA would incur additional costs to administer the requirements contained in Section 417.203 of the SNPRM. It is a current, customary, and standard operating practice of the FAA to perform baseline assessments of federal range flight safety analyses. However, this proposed requirement creates some urgency in the frequency with which these assessments are performed (i.e., it is imperative that the baseline assessments be updated so as to be consistent with current federal range flight safety analyses, thereby permitting application of this proposed requirement). Further, the FAA believes that more extensive reviews of federal range flight safety programs would be required in order to keep abreast of the increasing number, diversity, and complexity of commercial launches from federal ranges and associated flight safety analyses. As a result of this proposed amendment, the FAA would expend additional effort and incur associated incremental costs to perform more rigorous and timely baseline assessments. Although the FAA believes that these incremental costs would not be substantial, there is insufficient information currently available to provide a supportable estimate of these costs at this time.

Additionally, federal organizations other than the FAA, such as DOD and NASA (i.e., federal personnel that are range operators), may be required to expend additional effort and incur incremental costs preparing for more rigorous, extensive, and frequent baseline assessments and cooperating with the FAA during their conduct. Additionally, federal range operating contractors may also be similarly affected by these activities. The FAA solicits comments and detailed information to help better address this subject in this regulatory evaluation.

Total Cost Impact of Supplement to Notice of Proposed Rulemaking

The FAA estimates that the total costs of the SNPRM would be approximately $700,000; these would be incurred entirely by the commercial space transportation launch operators to comply with the proposed requirements contained in the SNPRM. The incremental costs to the FAA to administer the SNPRM would not be substantial and there is insufficient information currently available to develop a supportable estimate.

Safety Benefits From the Supplement to the Notice of Proposed Rulemaking

The SNPRM would result in some additional safety benefits associated with licensed commercial launches from the Eastern Range only. This is due to the proposed requirement associated with section 417.107(b), public risk criteria. The positive safety benefits would be the accident costs avoided (i.e., the dollar value of fatalities, injuries, and property damage) due to applying the toxic risk criteria of 30×10^{-6} (which is less than the 114×10^{-6} that was the highest toxic risk allowed for a licensed launch at the Eastern Range in the past five years). Although the FAA has not quantified the accident prevention or damage limiting effects the proposed requirement would have on Eastern Range launches, it does believe that section 417.107(b) would yield some incremental safety benefits.

Qualitative Benefits From the Supplement to the Notice of Proposed Rulemaking

The proposed SNPRM offers a variety of impacts that would benefit both the commercial space transportation industry and the FAA that are not readily quantified. Formalizing and identifying licensing responsibilities by establishing a specific regulation would emphasize commercial launch operator responsibilities and FAA expectations, and would enhance launch operators' understanding of such. Consequently, the proposed requirement may yield some operating efficiencies and associated cost savings that the FAA has not quantified or estimated.

Further, as the number of applications for launch licensing increases, formality (in the way of a regulation) would also help ensure consistency in implementing the licensing process. This could lead to cost savings to the FAA as a result of economies of scale from repetitive operations. These cost savings would spill over to commercial space transportation entities by reducing the turnaround time between application submittal and licensing approval. Additionally, consistent application of the licensing process would help commercial space transportation entities gain familiarity with its requirements, leading to proficiency in their ability to interact with the process and the FAA. This in turn would lead to industry cost savings, possibly due to less rework or paperwork avoided.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires agencies to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions. Agencies are required to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it will, then the agency must prepare a regulatory flexibility analysis. If an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial

number of small entities, then the head of the agency may so certify and a regulatory flexibility analysis is not required.

The FAA conducted the required review of the SNPRM and determined that it would not have a significant economic impact on a substantial number of small entities. To make this determination, the FAA has identified the commercial space transportation industry launch operators that would be affected by the SNPRM and found that only a small number of businesses that would be affected by the SNPRM could be considered a small entity. For manufacturers, a small entity is one with 1,500 or fewer employees.

The FAA has identified two companies, Astrotech Space Operations and Interorbital Systems, that have fewer than 1,500 employees. Astrotech Space Operations is a wholly owned subsidiary of Spacehab, which has average annual revenues of approximately $100 million. The total cost of the SNPRM to industry would be $700,000. This total cost for the industry is less than one percent of Spacehab's annual revenue. Hence, the cost of the SNPRM would not constitute a significant economic impact on a firm with revenues of this magnitude. The cost of a delayed launch might have a significant impact on Interorbital Systems. Even if delay costs are significant for this entity, one impacted entity is not considered a substantial number of small entities. Accordingly, on this basis and pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that the SNPRM would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments with regard to this certification and requests that supporting documentation be supplied.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from promulgating any standards or engaging in any related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute and policy, the FAA has assessed the potential effect of the SNPRM and has determined that it would impose the same costs on domestic and international entities, and thus has a neutral trade impact.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the states, on the relationship between the national U.S. Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. 104–4 on March 22, 1995, is intended among other things, to curb the practice of imposing unfunded federal mandates on state, local, and tribal governments.

Title II of the Act requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (adjusted annually for inflation) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

The SNPRM does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Assessment

The FAA has determined that the proposed amendments to the commercial space transportation licensing and safety rules are categorically excluded from environmental review under 102(2)(C) of the National Environmental Policy Act (NEPA). The proposed rules, which address obtaining and maintaining a license, are administrative and procedural in nature and are therefore categorically excluded under FAA Order 1050.1D, appendix 4, paragraph 4(i). In addition, part 415 already requires an applicant to submit sufficient environmental information for the FAA to comply with NEPA and other applicable environmental laws and regulations during the processing of each license application, thereby ensuring that any significant adverse environmental impacts from licensing commercial launches will be considered during the application process. Accordingly, the FAA has determined that this rule is categorically excluded because no significant impacts to the human environment will result from finalization or implementation of its administrative and procedural provisions for licensing commercial launches.

Energy Impact

The energy impact of the rulemaking action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR 415

Rockets, Space transportation and exploration.

14 CFR 417

Aviation safety, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 415 and 417 of Chapter III Title 14, Code of Federal Regulations (as proposed to be revised at 65 FR 63922, Oct. 25, 2000) as follows:

PART 415—LAUNCH LICENSEE

Subpart F—Safety Review and Approval for Launch of an Expendable Launch Vehicle from a Non-Federal Launch Site

1. In § 415.109(g) as proposed to be revised at 65 FR 63966, revise "§ 417.205" to read "§ 417.207".

2. In § 415.115(b) as proposed to be revised at 65 FR 63967, revise "§ 417.233" to read "§ 417.231".

3. In § 415.115(d)(5) as proposed to be revised at 65 FR 63967, revise "§ 417.225" to read "§ 417.223".

4. In § 415.115(f) as proposed to be revised at 65 FR 63967, revise "§ 417.235" to read "§ 417.233".

5. In § 415.115(f)(2) as proposed to be revised at 65 FR 63967, revise "§ 417.235" to read "§ 417.233".

6. In § 415.117(c)(2)(ii) as proposed to be revised at 65 FR 63969, revise "§ 417.229" to read "§ 417.227".

7. In § 415.119(h) as proposed to be revised at 65 FR 63970, revise "§ 417.225" to read "§ 417.223".

PART 417—LAUNCH SAFETY

8. Revise § 417.1 as proposed to be revised at 65 FR 63977 to read as follows:

Subpart A—General

§ 417.1 Scope and Applicability.

(a) *General.* This part prescribes the responsibilities of a launch operator conducting a licensed launch of an expendable launch vehicle and the requirements with which a licensed launch operator must comply to maintain a license and conduct a launch.

(1) The safety requirements of this part apply to all licensed launches of expendable launch vehicles, except for a launch from a federal launch site that meets one of the conditions of paragraph (b) of this section.

(2) All the administrative requirements of this part for submitting material to the FAA apply to all licensed launches from a non-federal launch site. For a licensed launch from a federal launch range, an administrative requirement of this part does not apply if the FAA, through its baseline assessment of the range, finds that the range satisfies the requirement. For a licensed launch from a federal range where the range does not satisfy one or more of the requirements of part 417, the FAA will identify, during the licensing process, the administrative requirements that the launch operator must meet.

(3) Requirements for preparing a license application to conduct a launch, including all related policy, safety and environmental reviews and payload determinations, are contained in parts 413 and 415.

(b) *Federal launch range meets intent certifications, waivers, and noncompliances due to grandfathering.*

(1) If a launch operator has a license from the FAA to launch from a federal launch range as of the effective date of this part and, for a specific requirement of this part and launch:

(i) If the launch operator employs an alternative to the requirement for which the federal range has granted a written meets intent certification on or before the [EFFECTIVE DATE OF] this part, the launch operator need not demonstrate to the FAA that its alternative provides an equivalent level of safety; or

(ii) If the launch operator has, on or before the [EFFECTIVE DATE OF] this part, a written waiver from the federal launch range or a noncompliance that satisfies the federal launch range's grandfathering criteria, the requirement of this part does not apply to the launch.

(2) Even if a launch operator satisfies paragraph (b)(1) of this section for a specific requirement of this part, the launch operator must bring its launch and launch vehicle, including components, systems, and subsystems, into compliance with the requirement, whenever one or more of the following conditions occurs:

(i) The launch operator makes modifications that affect the launch vehicle's operation or safety characteristics;

(ii) The launch operator uses the launch vehicle, component, system, or subsystem in a new application;

(iii) The FAA or the launch operator determines that a previously unforeseen or newly discovered safety hazard exists that is a source of significant risk to public safety; or

(iv) The federal range previously accepted a component, system, or subsystem, but, at that time, did not identify a noncompliance to a federal range requirement.

9. Amend proposed § 417.3 as proposed to be revised at 65 FR 63977 by removing the definition of *serious injury;* and adding the following definitions in alphabetical order:

§ 417.3 Definitions.

* * * * *

Equivalent level of safety means an "approximately equal" level of safety. An equivalent level of safety may involve a change to the level of expected risk that is not statistically or mathematically significant as determined by qualitative or quantitative risk analysis.

* * * * *

Explosive debris means solid propellant fragments or other pieces of a launch vehicle or payload that result from breakup of the launch vehicle during flight and that explode upon impact with the Earth's surface and cause overpressure.

* * * * *

Meets intent certification means a decision by a federal launch range to accept a substitute means of satisfying a safety requirement where the substitute provides an equivalent level of safety to that of the original requirement.

* * * * *

Normal flight means the flight of a properly performing launch vehicle whose real-time instantaneous impact point does not deviate from the nominal instantaneous impact point by more than the sum of the wind effects and the three-sigma guidance and performance deviations in the uprange, downrange, left-crossrange, or right-crossrange directions.

Normal trajectory means a trajectory that describes normal flight.

* * * * *

Risk means a measure that accounts for both the probability of occurrence of a hazardous event and the consequence of that event to persons or property.

* * * * *

Waiver means a decision that allows a launch operator to continue with a launch despite not satisfying a specific safety requirement and where the launch operator is not able to demonstrate an equivalent level of safety. A waiver may apply where a failure to satisfy a safety requirement involves a statistically or mathematically significant increase in expected risk as determined through qualitative or quantitative risk analysis, and where the activity may or may not exceed the public risk criteria.

10. Amend § 417.107 as proposed to be revised at 65 FR 63981 by revising paragraph (b); redesignating paragraphs (c) through (f) as paragraphs (e) through (h), respectively; adding new paragraphs (c) and (d); and revising newly redesignated paragraphs (e) and (f) to read as follows:

Subpart B—Launch Safety Requirements

§ 417.107 Flight safety.

* * * * *

(b) *Public risk criteria.* A launch operator may initiate the flight of a launch vehicle only if flight safety analysis performed under paragraph (f) of this section demonstrates that any risk to the public satisfies the following public risk criteria:

(1) A launch operator may initiate the flight of a launch vehicle only if the risk associated with the total flight to all members of the public, excluding persons in waterborne vessels and aircraft, does not exceed an expected average number of 0.00003 casualties ($E_C \leq 30 \times 10^{-6}$) from impacting inert and impacting explosive debris, $E_C \leq 30 \times 10^{-6}$ for toxic release, and $E_C \leq 30 \times 10^{-6}$ for far field blast overpressure. The FAA will determine whether to approve public risk due to any other hazard associated with the proposed flight of a launch vehicle on a case-by-case basis. The E_C criterion for each hazard applies to each launch from lift-off through orbital insertion, including each planned impact, for an orbital launch, and through final impact for a suborbital launch. $^{-6}$

(2) A launch operator may initiate flight only if the risk to any individual member of the public does not exceed a casualty expectation (E_C) of 0.000001 per launch ($E_C \leq 1 \times 10^{-6}$) for each hazard, excluding persons in waterborne vessels and aircraft.

(3) A launch operator may initiate flight only if the probability of debris impact to all water-borne vessels (P_{iv})

that are not operated in direct support of the launch does not exceed 0.00001 ($P_{iv} \leq \times 10^{-5}$) in each debris impact hazard area of § 417.223.

(4) A launch operator may initiate flight only if the probability of debris impact to any individual aircraft (P_{ia}) not operated in direct support of the launch does not exceed 0.00000001 ($P_{ia} \leq 1 \times 10^{-8}$) in each debris impact hazard area of § 417.223.

(c) *Debris thresholds.* A launch operator's flight safety analysis, performed as required by paragraph (f) of this section, must account for any inert debris impact with a mean expected kinetic energy at impact greater than or equal to 11 ft-lbs and, except for the far field blast overpressure effects analysis of § 417.229, a peak incident overpressure greater than or equal to 1.0 psi due to any explosive debris impact.

(1) When using the 11ft-lb threshold to determine potential casualties due to blunt trauma from inert debris impacts, the analysis must:

(i) Incorporate a probabilistic model that accounts for the probability of casualty due to any debris expected to impact with kinetic energy of 11 ft-lbs or greater and satisfies paragraph (d) of this section; or

(ii) Count each expected impact with kinetic energy of 11 ft-lbs or greater to a person as a casualty.

(2) When applying the 1.0-psi threshold to determine potential casualties due to overpressure effects, the analysis must:

(i) Incorporate a probabilistic model that accounts for the probability of casualty due to any blast overpressures of 1.0-psi or greater and satisfies paragraph (d) of this section; or

(ii) Count each person within the 1.0-psi overpressure radius of the source explosion as a casualty. When using this approach, the analysis must compute the peak incident overpressure using the Kingery-Bulmash relationship and may not take into account sheltering, reflections, or atmospheric effects. For persons located in buildings, the analysis must compute the peak incident overpressure for the shortest distance between the building and the blast source. The analysis must count each person located anywhere in a building subjected to peak incident overpressure equal to or greater than 1.0 psi as a casualty.

(3) The analysis must account for any inert debris impact with a mean expected kinetic energy at impact greater than or equal to 11 ft-lbs and a peak incident overpressure greater than or equal to 1.0 psi due to any explosive debris impact when demonstrating that a launch satisfies the probability of impact criterion for waterborne vessels of § 417.107(b)(3).

(4) The analysis must account for any inert or explosive debris impact with a mean expected kinetic energy at impact greater than or equal to 11 ft-lbs when demonstrating whether a launch satisfies the probability of impact criterion for aircraft of § 417.107(b)(4). The analysis must account for the aircraft velocity.

(d) *Casualty modeling.* A probabilistic casualty model must be based on accurate data and scientific principles and must be statistically valid. A launch operator must obtain FAA approval of any probabilistic casualty model that is used in the flight safety analysis. If the launch takes place from a federal launch range, the analysis may employ any probabilistic casualty model that is accepted as part of the FAA's baseline assessment of the federal launch range's safety process.

(e) *Collision avoidance.* (1) A launch operator must ensure that a launch vehicle, any jettisoned components, and its payload do not pass closer than 200 kilometers to a habitable orbital object:

(i) Throughout a sub-orbital launch; and

(ii) During ascent to initial orbital insertion through at least one complete orbit for an orbital launch.

(2) A launch operator must obtain a collision avoidance analysis for each launch from United States Space Command. United States Space Command also calls this analysis a conjunction on launch assessment. Sections 417.231 and A417.31 of appendix A of this part contain the requirements for obtaining a collision avoidance analysis. A launch operator must use the results of the collision avoidance analysis to develop flight commit criteria for collision avoidance as required by § 417.113(b).

(f) *Flight safety analysis.* A launch operator must perform and document a flight a safety analysis as required by subpart C of this part. A launch operator must not initiate flight unless the flight safety analysis demonstrates that any risk to the public satisfies the public risk criteria of paragraph (b) of this section. For a licensed launch that involves a federal launch range, the FAA may treat an analysis performed and documented by the federal range as that of the launch operator as provided in § 417.203(d) of subpart C. A launch operator must use the flight safety analysis products to develop flight safety rules that govern a launch. Section 417.113 contains the requirements for flight safety rules.

11. In § 417.113(b)(1) as proposed to be revised at 65 FR 63982, revise "§ 417.233" to read "§ 417.231".

12. In § 417.113(b)(2) as proposed to be revised at 65 FR 63982, revise "§ 417.225" to read "§ 417.223".

13. In § 417.113(c)(4) as proposed to be revised at 65 FR 63983, revise "§ 417.221" to read "§ 417.219".

14. In § 417.113(c)(5) as proposed to be revised at 65 FR 63983, revise "§ 417.219" to read "§ 417.217".

15. In § 417.117(h) as proposed to be revised at 65 FR 63984, revise the fourth sentence to read as follows: * * * * A post launch report must contain the results of any monitoring of flight environments and any measured wind profiles used for the launch. Section 417.307(b) contains requirements for monitoring flight environments.

* * * * *

16. Revise § 417.121(c) as proposed to be revised at 65 FR 63985 to read as follows:

§ 417.121 Safety critical preflight operations.

* * * * *

(c) *Collision avoidance.* A launch operator must coordinate with United States Space Command to obtain a collision avoidance analysis, also referred to as a conjunction on launch assessment. Sections 417.107(e), 417.231, and A417.31 of appendix A of this part contain requirements for collision avoidance analysis. A launch operator must develop and incorporate flight commit criteria for collision avoidance as required by § 417.113(b).

* * * * *

17. In § 417.121(e)(3) as proposed to be revised at 65 FR 63985, revise "§ 417.225" and "§ 417.235" to read "§ 417.223" and "§ 417.233" respectively.

18. In § 417.121(e)(4) as proposed to be revised at 65 FR 63985, revise "§ 417.225" and "§ 417.235" to read "§ 417.223" and "§ 417.233" respectively.

19. In § 417.121(f) as proposed to be revised at 65 FR 63985, revise "§ 417.225" and "§ 417.235" to read "§ 417.223" and "§ 417.233" respectively.

20. In § 417.121(i) as proposed to be revised at 65 FR 63985, revise "§ 417.235" to read "§ 417.233".

21. In § 417.125(c)(2) as proposed to be revised at 65 FR 63986, revise "§ 417.235" to read "§ 417.233".

22. In § 417.125(f) as proposed to be revised at 65 FR 63986, revise "§ 417.235" to read "§ 417.233".

23. In § 417.125(g)(2) as proposed to be revised at 65 FR 63986, revise "§ 417.235" to read "§ 417.233".

24. In § 417.323(c) as proposed to be revised at 65 FR 64030, revise "§ 417.221(c) with § 417.219(c).

25. In § 417.327(g)(10) as proposed to be revised at 65 FR 64033, revise "§ 417.221" to read "§ 417.219".

26. Revise subpart C of part 417 as proposed to be revised at 65 FR 63987 to read as follows:

Subpart C—Flight Safety Analysis

417.201 Scope and applicability.
417.203 Compliance.
417.205 General.
417.207 Trajectory analysis.
417.209 Malfunction turn analysis.
417.211 Debris analysis.
417.213 Flight safety limits analysis.
417.215 Straight-up time analysis.
417.217 No-longer-terminate gate analysis.
417.219 Data loss flight time and no longer terminate time analyses.
417.221 Time delay analysis.
417.223 Flight hazard area analysis.
417.225 Debris risk analysis.
417.227 Toxic release hazard analysis.
417.229 Far-Field overpressure blast effects analysis.
417.231 Collision avoidance analysis.
417.233 Analysis for launch of an unguided suborbital rocket flown with a wind weighting safety system.
417.234–417.300 [Reserved]

Subpart C—Flight Safety Analysis

§ 417.201 Scope and applicability.

(a) This subpart contains performance requirements for performing the flight safety analysis required by § 417.107(f).

(b) Except as permitted by paragraphs (c) and (d) of this section, the flight safety analysis requirements of this subpart apply to the flight of any launch vehicle that must use a flight safety system as required by § 417.107(a).

(c) The flight safety analysis requirements of § 417.233 apply to the flight of any unguided suborbital launch vehicle that uses a wind weighting safety system.

(d) For any alternative flight safety system approved by the FAA under § 417.107(a)(3), the FAA will determine during the licensing process which of the analyses required by this subpart apply.

§ 417.203 Compliance.

(a) *General.* A launch operator's flight safety analysis must satisfy the performance requirements of this subpart. The flight safety analysis must also meet the requirements for methods of analysis contained in appendices A and B for an orbital launch and appendices B and C for a suborbital launch except as otherwise permitted by this section. A flight safety analysis for a launch may rely on an earlier analysis from an identical or similar launch if the analysis still applies to the later launch.

(b) *Method of analysis.* For each launch, a launch operator's flight safety analysis must use methods approved during the licensing process by the FAA, as a license modification, or, if the launch takes place from a federal launch range, approved as part of the FAA's baseline assessment of the federal range's processes. Appendix A to this part contains requirements that apply to flight safety methods of analysis. A licensee must submit any change to the methods to the FAA as a request for license modification before the launch to which the proposed change would apply. Section 415.73 contains requirements governing a license modification.

(c) *Alternate analysis.* The FAA will approve an alternate flight safety analysis if a launch operator provides a clear and convincing demonstration that its proposed analysis provides an equivalent level of safety to that required by this subpart. A launch operator must demonstrate that an alternate flight safety analysis is based on accurate data and scientific principles and is statistically valid. The FAA will not find the launch operator's application for a license or license modification sufficiently complete to begin review under § 413.11 of this chapter until the FAA approves the alternate flight safety analysis.

(d) *Analyses performed by a federal range.* The FAA will accept a flight safety analysis used by a federal launch range for a licensed launch, if the launch operator has contracted with a federal launch range for the provision of flight safety analysis for a licensed launch, and the FAA has assessed the range and found that the range's analysis methods satisfy the requirements of this subpart. In this case, the FAA will treat the federal launch range's analysis as that of the launch operator and the launch operator need not provide any further demonstration of compliance.

(e) *Analysis products.* For a licensed launch that does not satisfy paragraph (d) of this section, the launch operator must demonstrate to the FAA compliance with the requirements of this subpart, and must include in its demonstration the analysis products required by appendices A, B, and C, depending on whether the launch vehicle uses a flight safety system or a wind weighting safety system. A launch operator must submit analysis products to the FAA as follows:

(1) *License application flight safety analysis.* At the time of license application, a launch operator must submit the required analysis products as part of the launch operator's safety review document in accordance with § 415.115. The FAA will evaluate the analysis to determine whether the methods of analysis for each launch comply with the requirements of this subpart.

(2) *Six-month analysis.* A launch operator must submit launch specific analysis products to the FAA no later than six months before each planned flight. The launch operator:

(i) Must account for vehicle and mission specific input data.

(ii) May reference previously submitted analysis products and data that are applicable to the launch or data that is applicable to a series of launches.

(iii) May state that an analysis product has not changed since the launch operator's license application submittal. In this case, the six-month submittal need not repeat the data.

(iv) Must identify any analysis product that may change as a flight date approaches and describe what needs to be done to finalize the product and when it will be finalized.

(v) Must submit the analysis products using the same format and organization used during the license application process.

(vi) Must, if requested by the FAA, present the six-month flight safety analysis products in a technical meeting at the FAA.

(3) *Thirty-day flight safety analysis update.* A launch operator must submit updated analysis products no later than 30 days before flight. If an analysis product has not changed since the six-month analysis submittal, the launch operator's thirty-day submittal need not repeat the data. The launch operator:

(i) Must account for potential variations in input data that may affect the analysis products within the final 30 days prior to flight.

(ii) May submit the analysis products using the same format and organization used in its license application.

(iii) May not change an analysis product within the final 30 days before flight unless the launch operator identified a process for making a change in that period as part of the launch operator's flight safety analysis process and the FAA approved the process through the licensing process.

(4) *Programmatic flight safety analysis.* A launch operator need not submit the 6-month or 30-day analysis if the launch operator:

(i) Submits complete analysis products during the licensing process;

(ii) Demonstrates that the analysis satisfies all the requirements of this subpart; and

(iii) Demonstrates the analysis does not need to be updated to account for launch specific factors.

§ 417.205 General.

(a) *Public risk management.* A flight safety analysis must demonstrate that the launch operator will, for each launch, control the risk to the public from hazards associated with normal and malfunctioning launch vehicle flight. The analysis must employ risk assessment or hazard isolation, or a combination of risk assessment and partial isolation of the hazards to demonstrate control of the risk to the public.

(1) *Risk assessment.* When demonstrating control of risk through risk assessment, the analysis must demonstrate that any risk to the public satisfies the public risk criteria of § 417.107(b) of this part. The analysis must account for, but need not be limited to, the variability associated with:

(i) Each source of a hazard during flight,

(ii) Normal flight and each failure response mode of the launch vehicle,

(iii) Each external and launch vehicle flight environment,

(iv) Populations potentially exposed to the flight, and

(v) The performance of any flight safety system, including time delays associated with the system.

(2) *Hazard isolation.* When demonstrating control of risk through hazard isolation, the analysis must establish the geographical areas from which the public must be excluded during flight and any operational controls needed to isolate all hazards from the public.

(3) *Combination of risk assessment and partial isolation of hazards.* When demonstrating control of risk through a combination of risk assessment and partial isolation of the hazards from the public, the analysis must demonstrate that the residual public risk due to any hazard not isolated from the public under paragraph (a)(2) of this section satisfies the public risk criteria.

(b) *Dependent analyses.* Because some analyses required by this subpart are inherently dependent on one another, the data output of any one analysis must be compatible in form and content with the data input requirements of any other analysis that depends on that output. Figure 417.203–1 illustrates the flight safety analyses that might be performed for a launch that uses a flight safety system and the typical dependencies that exist among the analyses.

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Data Source Analyses (These analyses provide data to the dependent analyses indicated with an X.)	Dependent Analyses (These analyses use data from the data source analyses indicated as input.)									
	Malfunction Turn	Flight Safety Limits	Straight Up Time	No-Longer Terminate Gate	Data Loss Flight Time	Flight Hazard Areas	Debris Risk Analysis	Toxic Release Hazard Analysis	Far Field Overpressure Blast Effects Analysis	Collision Avoidance Analysis
Trajectory Analysis	X	X	X	X	X	X	X	X	X	X
Malfunction Turn Analysis		X	X		X	X	X	X	X	
Debris Analysis		X	X	X	X	X	X	X	X	X
Flight Safety Limits			X	X	X	X	X	X	X	
Straight-Up Time								X	X	
No-Longer Terminate Gate					X		X	X	X	
Data Loss Flight Time	X									
Time-Delay Analysis	X	X	X	X	X	X	X	X	X	X

Figure 417.203-1, Illustration of dependent flight safety analyses that might performed for a launch that uses a flight safety system

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§ 417.207 Trajectory analysis.

(a) *General.* A flight safety analysis must include a trajectory analysis that establishes:

(1) For any time after lift-off, the limits of a launch vehicle's normal flight, as defined by the nominal trajectory and potential three-sigma trajectory dispersions about the nominal trajectory.

(2) A fuel exhaustion trajectory that produces instantaneous impact points with the greatest range for any given time-after-liftoff.

(3) A straight-up trajectory that would result if the launch vehicle malfunctioned and flew in a vertical or near vertical direction above the launch point.

(b) *Trajectory model.* A final trajectory analysis must use a six-degree of freedom trajectory model to satisfy the requirements of paragraph (a) of this section.

(c) *Wind effects.* A trajectory analysis must account for wind effects, including profiles of winds that are no less severe than the worst wind conditions under which flight might be attempted, and must account for uncertainty in the wind conditions.

§ 417.209 Malfunction turn analysis.

(a) *General.* A flight safety analysis must include a malfunction turn analysis that establishes the launch vehicle's turning capability in the event of a malfunction during flight. A malfunction turn analysis must account for each cause of a malfunction turn, such as thrust vector offsets or nozzle burn-through. For each cause, the analysis must establish the launch vehicle's turning capability using a set of turn curves. The analysis must account for:

(1) All trajectory times during the thrusting phases of flight.

(2) When a malfunction begins to cause each turn throughout the thrusting phases of flight. The analysis must use trajectory time intervals between malfunction turn start times that are short enough to establish

smooth and continuous flight safety limits and hazard areas.

(3) The relative probability of occurrence of each malfunction turn of which the launch vehicle is capable.

(4) When each malfunction turn will terminate expressed as a single value or a probability time distribution.

(5) What terminates each malfunction turn, such as, aerodynamic or inertial breakup.

(6) The launch vehicle's turning behavior from the time when a malfunction begins to cause a turn until aerodynamic breakup, inertial breakup, or ground impact. The analysis must use trajectory time intervals during the malfunction turn that are short enough to establish turn curves that are smooth and continuous.

(7) For each malfunction turn, the launch vehicle velocity vector turn angle as a function of time from the start of the turn and measured relative to the nominal launch vehicle velocity vector at the start of the turn.

(8) For each malfunction turn, the launch vehicle velocity turn magnitude as a function of time from the start of the turn and measured relative to the nominal velocity magnitude that corresponds to the velocity vector turn angle.

(9) For each malfunction turn, the orientation of the launch vehicle longitudinal axis as a function of time from the start of the turn and measured relative to the nominal launch vehicle velocity vector at the start of the turn.

(b) *Set of turn curves for each malfunction turn cause.* For each cause of a malfunction turn, the analysis must establish a set of turn curves that satisfies paragraph (a) of this section and must establish the associated envelope of the set of turn curves. Each set of turn curves must describe the variation in the malfunction turn characteristics for each cause of the turn. The envelope of each set of curves must define the limits of the launch vehicle's malfunction turn behavior for each cause of a malfunction turn. For each malfunction turn envelope, the analysis must establish the launch vehicle velocity vector turn angle deviation from the nominal launch vehicle velocity vector. For each malfunction turn envelope, the analysis must establish the vehicle velocity turn magnitude deviation from the nominal velocity magnitude that corresponds to the velocity vector turn angle envelope.

§ 417.211 Debris analysis.

(a) *General.* A flight safety analysis must include a debris analysis. For an orbital or suborbital launch, a debris analysis must identify the inert, explosive and other hazardous launch vehicle debris that results from normal and malfunctioning launch vehicle flight.

(b) *Launch vehicle breakup.* A debris analysis must account for each cause of launch vehicle breakup, such as:

(1) Any flight termination system activation,

(2) Launch vehicle explosion,

(3) Aerodynamic loads,

(4) Inertial loads,

(5) Atmospheric reentry heating, and

(6) Impact of intact vehicle.

(c) *Debris fragment lists.* A debris analysis must produce lists of debris fragments for each cause of breakup and any planned jettison of debris, launch vehicle components, or payload. The lists must account for all launch vehicle debris fragments, individually or in groupings of fragments whose characteristics are similar enough to be described by a single set of characteristics. The debris lists must describe the physical, aerodynamic, and harmful characteristics of each debris fragment, such as:

(1) Origin on the vehicle;

(2) Whether it is inert or explosive;

(3) Weight, dimensions, and shape;

(4) Lift and drag characteristics;

(5) Properties of the incremental velocity distribution imparted by breakup; and

(6) Axial, transverse, and tumbling area.

§ 417.213 Flight safety limits analysis.

(a) *General.* A flight safety analysis must identify the location of populated or other protected areas. The analysis must also establish flight safety limits that define when a flight safety official must terminate a launch vehicle's flight to prevent the hazardous effects of the resulting debris impacts from reaching any populated or other protected area and ensure that the launch satisfies the public risk criteria of § 417.107(b).

(b) *Flight safety limits.* The analysis must establish flight safety limits for use in establishing flight termination rules. Section 417.113(c) contains requirements for flight termination rules. The flight safety limits must account for the temporal and geometric extents on the Earth's surface of a launch vehicle's hazardous debris impact dispersion resulting from any planned or unplanned event for all times during flight. Flight safety limits must account for potential contributions to the debris impact dispersions, such as:

(1) Time delays, as established by the time delay analysis of § 417.221,

(2) Residual thrust remaining after flight termination implementation,

(3) Wind effects,

(4) Velocity imparted to vehicle fragments by breakup,

(5) Lift and drag forces on the malfunctioning vehicle and falling debris,

(6) Vehicle guidance and performance errors,

(7) Launch vehicle malfunction turn capabilities, and

(8) Any uncertainty due to map errors and launch vehicle tracking errors.

(c) *Gates.* If a launch involves flight over any populated or other protected area, the flight safety analysis must establish a gate through a flight safety limit. Section 417.217 contains requirements for establishing a gate.

§ 417.215 Straight-up time analysis.

A flight safety analysis must establish the straight-up time for a launch for use as a flight termination rule. Section 417.113(c) contains requirements for flight termination rules. The analysis must establish the straight-up time as the latest time after liftoff, assuming a launch vehicle malfunctioned and flew in a vertical or near vertical direction above the launch point, at which activation of the launch vehicle's flight termination system or breakup of the launch vehicle would not cause hazardous debris or critical overpressure to affect any populated or other protected area.

§ 417.217 No longer terminate gate analysis.

For a launch that involves flight over a populated or other protected area, the flight safety analysis must include a no longer terminate gate analysis. The analysis must establish the portion, referred to as a gate, of a flight safety limit through which a launch vehicle's tracking representation will be allowed to proceed without requiring the flight to be terminated. A tracking representation is a launch vehicle's present position, instantaneous impact point position, debris impact footprint, or other vehicle performance icon or symbol displayed on a flight safety official console during real-time tracking of the launch vehicle's flight. When establishing a gate in a flight safety limit, the analysis must demonstrate that the launch vehicle flight satisfies the public risk criteria of § 417.107(b).

§ 417.219 Data loss flight time and no longer terminate time analyses.

(a) *General.* For each launch, a flight safety analysis must establish data loss flight times, as identified in paragraph (b) of this section, and a no longer terminate time to establish flight

termination rules that apply when launch vehicle tracking data is not available to the flight safety official. Section 417.113(c) contains requirements for flight termination rules.

(b) *Data loss flight times.* A flight safety analysis must establish the shortest elapsed thrusting time during which a launch vehicle can move from normal flight to a condition where the launch vehicle's hazardous debris impact dispersion extends to any protected area as a data loss flight time. The analysis must establish a data loss flight time for all times along the nominal trajectory from liftoff through the no longer-terminate time established under paragraph (c) of this section.

(c) *No longer terminate time.* The analysis must establish a no-longer-terminate time as follows:

(1) For a suborbital launch, the analysis must establish the no longer terminate time as the time after liftoff that a launch vehicle's hazardous debris impact dispersion can no longer reach any protected area.

(2) For an orbital launch where the launch vehicle's instantaneous impact point does not overfly a protected area before reaching orbit, the analysis must establish the no-longer terminate time as the time after liftoff that the launch vehicle's hazardous debris impact dispersion can no longer reach any protected area or orbital insertion, whichever occurs first.

(3) For an orbital launch where a gate permits overflight of a protected area and where orbital insertion occurs after reaching the gate, the analysis must establish the no longer terminate time as the time after liftoff when the time for the launch vehicle's instantaneous impact point to reach the gate is less than the time for the instantaneous impact point to reach any flight safety limit.

§ 417.221 Time delay analysis.

(a) *General.* A flight safety analysis must include a time delay analysis that establishes the mean elapsed time between the violation of a flight termination rule and the time when a flight safety system is capable of terminating flight for use in establishing the flight safety limits of § 417.213.

(b) *Analysis constraints.* A time delay analysis must determine a time delay distribution that accounts for the following:

(1) The variance of time delays for each potential failure scenario, including but not limited to the range of malfunction turn characteristics and the time of flight when the malfunction occurs;

(2) A flight safety official's decision and reaction time, including variation in human response time, and

(3) Flight termination hardware and software delays including those delays inherent in:

(i) Tracking systems;

(ii) Data processing systems, including filter delays;

(iii) Display systems;

(iv) Command control systems; and

(v) Flight termination systems.

§ 417.223 Flight hazard area analysis.

(a) *General.* A flight safety analysis must include a flight hazard area analysis that identifies any regions of land, sea, or air that must be monitored, publicized, controlled, or evacuated in order to control the risk to the public from debris impact hazards. The risk management requirements of § 417.205(a) apply. The analysis must account for, but need not be limited to:

(1) Trajectory times from liftoff to the no longer terminate time of § 417.219(c).

(2) Regions of land potentially exposed to debris resulting from normal flight events and events resulting from any potential malfunction.

(3) Regions of sea and air potentially exposed to debris from normal flight events, including planned impacts.

(4) In the vicinity of the launch site, any waterborne vessels or aircraft exposed to debris from events resulting from any potential abnormal flight events, including launch vehicle malfunction.

(5) Any operational controls implemented to control risk to the public from debris hazards.

(6) Debris identified by the debris analysis of § 417.211.

(7) All launch vehicle trajectory dispersion effects in the surface impact domain.

(b) *Public notices.* A flight hazard areas analysis must establish the ship and aircraft hazard areas for notices to mariners and notices to airmen. Section 417.121(e) requires notices to mariners and airmen.

§ 417.225 Debris risk analysis.

A flight safety analysis must demonstrate that the risk to the public potentially exposed to inert and explosive debris hazards from any one flight of a launch vehicle satisfies the public risk criterion for debris of § 417.107(b)(1). A debris risk analysis must account for risk to populations on land, including regions of launch vehicle flight following passage through any gate in a flight safety limit established under § 417.217. A debris risk analysis must account for any potential casualties to the public using the debris thresholds and as required by § 417.107(c).

§ 417.227 Toxic release hazard analysis.

A flight safety analysis must establish flight commit criteria that ensure compliance with the public risk criterion for toxic release of § 417.107(b)(1). The analysis must account for any toxic release that will occur during the proposed flight of a launch vehicle or that would occur in the event of a flight mishap. The analysis must account for any operational constraints and emergency procedures that provide protection from toxic release. The analysis must account for all members of the public who may be exposed to the toxic release, including all members of the public on land and on any waterborne vessels and aircraft except those operated in direct support of the launch.

§ 417.229 Far-field blast overpressure effects analysis.

(a) *General.* A flight safety analysis must establish flight commit criteria that ensure compliance with the public risk criterion for far field blast overpressure of § 417.107(b)(1). The analysis must demonstrate that any far field blast overpressure due to potential explosions during launch vehicle flight will not cause windows to break or that any risk to the public due to potential far field overpressure complies with the public risk criteria.

(b) *Analysis constraints.* The analysis must account for:

(1) The potential for distant focus overpressure or overpressure enhancement given current meteorological conditions and terrain characteristics;

(2) The potential for broken windows due to peak incident overpressures below 1.0 psi and related casualties;

(3) The explosive capability of the launch vehicle at impact and at altitude and potential explosions resulting from debris impacts, including the potential for mixing of liquid propellants;

(4) Characteristics of the launch vehicle flight and the surroundings that would affect the population's susceptibility to injury, such as, shelter types and time of day of the proposed launch;

(5) Characteristics of the potentially affected windows, including their size, location, orientation, glazing material, and condition; and

(6) The hazard characteristics of the potential glass shards, such as falling from upper building stories or being propelled into or out of a shelter toward potentially occupied spaces.

§ 417.231 Collision avoidance analysis.

(a) *General.* A flight safety analysis must include a collision avoidance analysis that establishes any launch waits in a planned launch window during which a launch operator must not initiate flight, in order to maintain a 200-kilometer separation from any habitable orbiting object. The launch operator must apply any launch waits as flight commit criteria.

(b) *Orbital launch.* For an orbital launch, the analysis must establish any launch waits needed to ensure that the launch vehicle, any jettisoned components, and its payload do not pass closer than 200 kilometers to a habitable orbiting object during ascent to initial orbital insertion through at least one complete orbit.

(c) *Suborbital launch.* For a suborbital launch, the analysis must establish any launch waits needed to ensure that the launch vehicle, any jettisoned components, and any payload do not pass closer than 200 kilometers to a habitable orbital object throughout the flight.

§ 417.233 Analysis for an unguided suborbital rocket flown with a wind weighting safety system.

For launch of an unguided suborbital rocket flown with a wind weighting safety system, the flight safety analysis must establish the launch commit criteria and other launch safety rules that the launch operator must implement to control the risk to the public from potential adverse effects resulting from normal and malfunctioning flight. The risk management requirements of § 417.205(a) apply. The analysis must include a trajectory analysis, flight hazard area analysis, debris risk analysis, and collision avoidance analysis that satisfy § 417.207, § 417.223, § 417.225, and § 417.231, respectively. In addition, for each launch, the analysis must establish any wind constraints under which launch may occur and include a wind weighting analysis that establishes the launcher azimuth and elevation settings that correct for the windcocking and wind-drift effects on the unguided suborbital rocket.

27. Revise appendix A to part 417 as proposed to be revised at 65 FR 64041 to read as follows:

Appendix A to Part 417—Flight Safety Analysis Methodologies and Products

A417.1 Scope

This appendix contains requirements that apply to the methods for performing the flight safety analysis required by § 417.107(f) and subpart C of part 417. The methodologies contained in this appendix provide an acceptable means of satisfying the requirements of subpart C and provide a standard and a measure of fidelity against which the FAA will measure any proposed alternative analysis approach. This appendix also identifies the analysis products that a launch operator must submit to the FAA as required by § 417.203(e).

A417.3 Applicability.

The requirements contained in this appendix apply to a launch operator and the launch operator's flight safety analysis unless the launch operator clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety. If a federal launch range performs the launch operator's analysis, § 417.203(d) applies. Section A417.33 applies to the flight of any unguided suborbital launch vehicle that uses a wind weighting safety system. All other sections of this appendix apply to the flight of any launch vehicle required to use a flight safety system in accordance with § 417.107(a). For any alternative flight safety system approved by the FAA in accordance with § 417.107(a)(3), the FAA will determine the applicability of this appendix during the licensing process.

A417.5 General.

A launch operator's flight safety analysis must satisfy the requirements for public risk management and the requirements for the compatibility of the input and output of dependent analyses of § 417.205.

A417.7 Trajectory.

(a) *General.* A flight safety analysis must include a trajectory analysis that satisfies the requirements of § 417.207. The requirements of this section apply to the computation of the trajectories required by § 417.207 and to the trajectory analysis products that a launch operator must submit to the FAA as required by § 417.203(e).

(b) *Wind standards.* A trajectory analysis must incorporate wind data in accordance with the following:

(1) For each launch, a trajectory analysis must produce "with-wind" launch vehicle trajectories pursuant to paragraph (f)(6) of this section and do so using composite wind profiles for the month that the launch will take place or composite wind profiles that are as severe or more severe than the winds for the month that the launch will take place.

(2) A composite wind profile used for the trajectory analysis must have a cumulative percentile frequency that represents wind conditions that are at least as severe as the worst wind conditions under which flight would be attempted for purposes of achieving the launch operator's mission. These worst wind conditions must account for the launch vehicle's ability to operate normally in the presence of wind and accommodate any flight safety limit constraints.

(c) *Nominal trajectory.* A trajectory analysis must produce a nominal trajectory that describes a launch vehicle's flight path, position and velocity, where all vehicle aerodynamic parameters are as expected, all vehicle internal and external systems perform exactly as planned, and no external perturbing influences other than atmospheric drag and gravity affect the launch vehicle.

(d) *Dispersed trajectories.* A trajectory analysis must produce the following dispersed trajectories and describe the distribution of a launch vehicle's position and velocity as a function of winds and performance error parameters in the uprange, downrange, left-crossrange and right-crossrange directions.

(1) *Three-sigma maximum and minimum performance trajectories.* A trajectory analysis must produce a three-sigma maximum performance trajectory that provides the maximum downrange distance of the instantaneous impact point for any given time after lift-off. A trajectory analysis must produce a three-sigma minimum performance trajectory that provides the minimum downrange distance of the instantaneous impact point for any given time after lift-off. For any time after lift-off, the instantaneous impact point dispersion of a normally performing launch vehicle must lie between the extremes achieved at that time after lift-off by the three-sigma maximum and three-sigma minimum performance trajectories. The three-sigma maximum and minimum performance trajectories must account for wind and performance error parameter distributions in accordance with the following:

(i) For each three-sigma maximum and minimum performance trajectory, the analysis must use composite head wind and composite tail wind profiles that represent the worst wind conditions under which a launch would be attempted in accordance with paragraph (b) of this section.

(ii) Each three-sigma maximum and minimum performance trajectory must account for all launch vehicle performance error parameters identified in accordance with paragraph (f)(1) of this section that have an effect upon instantaneous impact point range.

(2) *Three-sigma left and right lateral trajectories.* A trajectory analysis must produce a three-sigma left lateral trajectory that provides the maximum left crossrange distance of the instantaneous impact point for any time after lift-off. A trajectory analysis must produce a three-sigma right lateral trajectory that provides the maximum right crossrange distance of the instantaneous impact point for any time after lift-off. For any time after lift-off, the instantaneous impact point dispersion of a normally performing launch vehicle must lie between the extremes achieved at that time after lift-off by the three-sigma left lateral and three-sigma right lateral performance trajectories. The three-sigma lateral performance trajectories must account for wind and performance error parameter distributions in accordance with the following:

(i) In producing each left and right lateral trajectory, the analysis must use composite left and composite right lateral-wind profiles that represent the worst wind conditions under which a launch would be attempted in accordance with paragraph (b) of this section.

(ii) The three-sigma left and right lateral trajectories must account for all launch vehicle performance error parameters identified in accordance with paragraph (f)(1)

of this section that have an effect on the lateral deviation of the instantaneous impact point.

(3) *Fuel-exhaustion trajectory.* A trajectory analysis must produce a fuel-exhaustion trajectory for the launch of any launch vehicle with a final suborbital stage that will terminate thrust nominally without burning to fuel exhaustion. The analysis must produce the trajectory that would occur if the planned thrust termination of the final suborbital stage did not occur. The analysis must produce a fuel-exhaustion trajectory that extends either the nominal trajectory taken through fuel exhaustion of the last suborbital stage or the three-sigma maximum trajectory taken through fuel exhaustion of the last suborbital stage, whichever produces instantaneous impact points with the greatest range for any time after liftoff.

(e) *Straight-up trajectory.* A trajectory analysis must produce a straight-up trajectory that begins at the planned time of ignition, and that simulates a malfunction that causes the launch vehicle to fly in a vertical or near vertical direction above the launch point. A straight-up trajectory must last no less than the sum of the straight-up time determined in accordance with A417.15 plus the duration of a potential malfunction turn determined in accordance with A417.9(b)(2).

(f) *Analysis process and computations.* A trajectory analysis must produce each three-sigma trajectory required by this appendix using a six-degree-of-freedom trajectory model and an analysis method, such as root-sum-square or Monte Carlo, that accounts for all individual launch vehicle performance error parameters that contribute to the dispersion of the launch vehicle's instantaneous impact point.

(1) A trajectory analysis must identify all launch vehicle performance error parameters and each parameter's distribution to account for all launch vehicle performance variations and any external forces that can cause offsets from the nominal trajectory during normal flight. A trajectory analysis must account for, but need not be limited to, the following performance error parameters:

(i) Thrust;
(ii) Thrust misalignment;
(iii) Specific impulse;
(iv) Weight;
(v) Variation in firing times of the stages;
(vi) Fuel flow rates;
(vii) Contributions from the guidance, navigation, and control systems;
(ix) Steering misalignment; and
(x) Winds.

(2) Each three-sigma trajectory must account for the effects of wind from liftoff through the point in flight where the launch vehicle attains an altitude where wind no longer affects the launch vehicle.

(g) *Trajectory analysis products.* The products of a trajectory analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include the following:

(1) *Assumptions and procedures.* A description of all assumptions, procedures and models, including the six-degrees-of-freedom model, used in deriving each trajectory.

(2) *Three-sigma launch vehicle performance error parameters.* A description of each three-sigma performance error parameter accounted for by the trajectory analysis and a description of each parameter's distribution determined in accordance with paragraph (f)(1) of this section.

(3) *Wind profile.* A graph and tabular listing of each wind profile used in performing the trajectory analysis as required by paragraph (b)(1) of this section and the worst case winds required by paragraph (b)(2) of this section. The graph and tabular wind data must provide wind magnitude and direction as a function of altitude for the air space regions from the Earth's surface to 100,000 feet in altitude for the area intersected by the launch vehicle trajectory. Altitude intervals must not exceed 5000 feet.

(4) *Launch azimuth.* The azimuthal direction of the trajectory's "X-axis" at liftoff measured clockwise in degrees from true north.

(5) *Launch point.* Identification and location of the proposed launch point, including its name, geodetic latitude (+N), longitude (+E), and geodetic height.

(6) *Reference ellipsoid.* The name of the reference ellipsoid used by the trajectory analysis to approximate the average curvature of the Earth and the following information about the model:

(i) Length of semi-major axis,
(ii) Length of semi-minor axis,
(iii) Flattening parameter,
(iv) Eccentricity,
(v) Gravitational parameter,
(vi) Angular velocity of the Earth at the equator, and
(vii) If the reference ellipsoid is not a WGS–84 ellipsoidal Earth model, the equations that convert the submitted ellipsoid information to the WGS–84 ellipsoid.

(7) *Temporal trajectory items.* A launch operator must provide the following temporal trajectory data for time intervals not in excess of one second and for the discrete time points that correspond to each jettison, ignition, burnout, and thrust termination of each stage. If any stage burn time lasts less than four seconds, the time intervals must not exceed 0.2 seconds. The launch operator must provide the temporal trajectory data from launch up to a point in flight when effective thrust of the final stage terminates, or to thrust termination of the stage or burn that places the vehicle in orbit. For an unguided sub-orbital launch vehicle flown with a flight safety system, the launch operator must provide these data for each nominal quadrant launcher elevation angle and payload weight. The launch operator must provide these data on paper in text format and electronically in ASCII text, space delimited format. The launch operator must provide an electronic "readme" file that identifies the data and their units of measure in the individual disk files.

(i) *Trajectory time-after-liftoff.* A launch operator must provide trajectory time-after-liftoff measured from first motion of the first thrusting stage of the launch vehicle. The tabulated data must identify the first motion time as T–0 and as the "0.0" time point on the trajectory.

(ii) *Launch vehicle direction cosines.* A launch operator must provide the direction cosines of the roll axis, pitch axis, and yaw axis of the launch vehicle. The roll axis is a line identical to the launch vehicle's longitudinal axis with its origin at the nominal center of gravity positive towards the vehicle nose. The roll plane is normal to the roll axis at the vehicle's nominal center of gravity. The yaw axis and the pitch axis are any two orthogonal axes lying in the roll plane. The launch operator must provide roll, pitch and yaw axes of right-handed systems so that, when looking along the roll axis toward the nose, a clockwise rotation around the roll axis will send the pitch axis toward the yaw axis. The right-handed system must be oriented so that the yaw axis is positive in the downrange direction while in the vertical position (roll axis upward from surface) or positive at an angle of 180 degrees to the downrange direction. The axis may be related to the vehicle's normal orientation with respect to the vehicle's trajectory but, once defined, remain fixed with respect to the vehicle's body. The launch operator must indicate the positive direction of the yaw axis chosen. The analysis products must present the direction cosines using the EFG reference system described in paragraph (g)(7)(iv) of this section.

(iii) *X, Y, Z, XD, YD, ZD trajectory coordinates.* A launch operator must provide the launch vehicle position coordinates (X, Y, Z) and velocity magnitudes (XD, YD, ZD) referenced to an orthogonal, Earth-fixed, right-handed coordinate system. The XY-plane must be tangent to the ellipsoidal Earth at the origin, which must coincide with the launch point. The positive X-axis must coincide with the launch azimuth. The positive Z-axis must be directed away from the ellipsoidal Earth. The Y-axis must be positive to the left looking downrange.

(iv) *E, F, G, ED, FD, GD trajectory coordinates.* A launch operator must provide the launch vehicle position coordinates (E, F, G) and velocity magnitudes (ED, FD, GD) referenced to an orthogonal, Earth fixed, Earth centered, right-handed coordinate system. The origin of the EFG system must be at the center of the reference ellipsoid. The E and F axes must lie in the plane of the equator and the G-axis coincides with the rotational axis of the Earth. The E-axis must be positive through 0° East longitude (Greenwich Meridian), the F-axis positive through 90° East longitude, and the G-axis positive through the North Pole. This system must be non-inertial and rotate with the Earth.

(v) *Resultant Earth-fixed velocity.* A launch operator must provide the square root of the sum of the squares of the XD, YD, and ZD components of the trajectory state vector.

(vi) *Path angle of velocity vector.* A launch operator must provide the angle between the local horizontal plane and the velocity vector measured positive upward from the local horizontal. The local horizontal must be a plane tangent to the ellipsoidal Earth at the sub-vehicle point.

(vii) *Sub-vehicle point.* A launch operator must provide sub-vehicle point coordinates that include present position geodetic latitude (+N) and present position longitude (+E). These coordinates must be at each trajectory time on the surface of the

ellipsoidal Earth model and located at the intersection of the line normal to the ellipsoid and passing through the launch vehicle center of gravity.

(viii) *Altitude.* A launch operator must provide the distance from the sub-vehicle point to the launch vehicle's center of gravity.

(ix) *Present position arc-range.* A launch operator must provide the distance measured along the surface of the reference ellipsoid, from the launch point to the sub-vehicle point.

(x) *Total weight.* A launch operator must provide the sum of the inert and propellant weights for each time point on the trajectory.

(xi) *Total vacuum thrust.* A launch operator must provide the total vacuum thrust for each time point on the trajectory.

(xii) *Instantaneous impact point data.* A launch operator must provide instantaneous impact point geodetic latitude (+N), instantaneous impact point longitude (+E), instantaneous impact point arc-range, and time to instantaneous impact. The instantaneous impact point arc-range must consist of the distance, measured along the surface of the reference ellipsoid, from the launch point to the instantaneous impact point. For each point on the trajectory, the time to instantaneous impact must consist of the vacuum flight time remaining until impact if all thrust were terminated at the time point on the trajectory.

(xiii) *Normal trajectory distribution.* A launch operator must provide a description of the distribution of the dispersed trajectories required under (d), such as the elements of covariance matrices for the launch vehicle position coordinates and velocity magnitudes.

A417.9 Malfunction turn.

(a) *General.* A flight safety analysis must include a malfunction turn analysis that satisfies the requirements of § 417.209. The requirements of this section apply to the computation of the malfunction turns and the production of turn data required by § 417.209 and to the malfunction turn analysis products that a launch operator must submit to the FAA as required by § 417.203(e).

(b) *Malfunction turn analysis constraints.* The following constraints apply to a malfunction turn analysis:

(1) The analysis must produce malfunction turns that start at a given malfunction start time. The turn must last no less than 12 seconds. These duration limits apply regardless of whether or not the vehicle would breakup or tumble before the prescribed duration of the turn.

(2) A malfunction turn analysis must account for the thrusting periods of flight along a nominal trajectory beginning at first motion until thrust termination of the final thrusting stage or until the launch vehicle achieves orbit, whichever occurs first.

(3) A malfunction turn must consist of a 90-degree turn or a turn in both the pitch and yaw planes that would produce the largest deviation from the nominal instantaneous impact point of which the launch vehicle is capable at any time during the malfunction turn in accordance with paragraph (d) of this section.

(4) The first malfunction turn must start at liftoff. The analysis must account for subsequent malfunction turns initiated at regular nominal trajectory time intervals not to exceed four seconds.

(5) A malfunction turn analysis must produce malfunction turn data for time intervals of no less than one second over the duration of each malfunction turn.

(6) The analysis must assume that the launch vehicle performance is nominal up to the point of the malfunction that produces the turn.

(7) A malfunction turn analysis must not account for the effects of gravity.

(8) A malfunction turn analysis must ensure the tumble turn envelope curve maintains a positive slope throughout the malfunction turn duration as illustrated in figure A417.9–1. When calculating tumble turns for an aerodynamically unstable launch vehicle, in the high aerodynamic region it often turns out that no matter how small the initial deflection of the rocket engine, the airframe tumbles through 180 degrees, or one-half cycle, in less time than the required turn duration period. In such a case, the analysis must use a 90-degree turn as the malfunction turn.

(c) *Failure modes.* A malfunction turn analysis must account for the significant failure modes that result in a thrust vector offset from the nominal state. If a malfunction turn at a malfunction start time can occur as a function of more than one failure mode, the analysis must account for the failure mode that causes the most rapid and largest launch vehicle instantaneous impact point deviation.

(d) *Type of malfunction turn.* A malfunction turn analysis must establish the maximum turning capability of a launch vehicle's velocity vector during each malfunction turn by accounting for a 90-degree turn to estimate the vehicle's turning capability or by accounting for trim turns and tumble turns in both the pitch and yaw planes to establish the vehicle's turning capability. When establishing the turning capability of a launch vehicle's velocity vector, the analysis must account for each turn in accordance with the following:

(1) *90-degree turn.* A 90-degree turn must constitute a turn produced at the malfunction start time by instantaneously re-directing and maintaining the vehicle's thrust at 90 degrees to the velocity vector, without regard for how this situation can be brought about.

(2) *Pitch turn.* A pitch turn must constitute the angle turned by the launch vehicle's total velocity vector in the pitch-plane. The velocity vector's pitch-plane must be the two dimensional surface that includes the launch vehicle's yaw-axis and the launch vehicle's roll-axis.

(3) *Yaw turn.* A yaw turn must constitute the angle turned by the launch vehicle's total velocity vector in the lateral plane. The velocity vector's lateral plane must be the two dimensional surface that includes the launch vehicle's pitch axis and the launch vehicle's total velocity.

(4) *Trim turn.* A trim turn must constitute a turn where a launch vehicle's thrust moment balances the aerodynamic moment while a constant rotation rate is imparted to the launch vehicle's longitudinal axis. The analysis must account for a maximum-rate trim turn made at or near the greatest angle of attack that can be maintained while the aerodynamic moment is balanced by the thrust moment, whether the vehicle is stable or unstable.

(5) *Tumble turn.* A tumble turn must constitute a turn that results if the launch vehicle's airframe rotates in an uncontrolled fashion, at an angular rate that is brought about by a thrust vector offset angle, and if the offset angle is held constant throughout the turn. The analysis must account for a series of tumble turns, each turn with a different thrust vector offset angle, that are plotted on the same graph for each malfunction start time.

(6) *Turn envelope.* A turn envelope must constitute a curve on a tumble turn graph that has tangent points to each individual tumble turn curve computed for each malfunction start time. The curve must envelope the actual tumble turn curves to predict tumble turn angles for each area between the calculated turn curves. Figure A417.9–1 depicts a series of tumble turn curves and the tumble turn envelope curve.

(7) *Malfunction turn capabilities.* When not using a 90-degree turn, a malfunction turn analysis must establish the launch vehicle maximum turning capability in accordance with the following malfunction turn constraints:

(i) *Launch vehicle stable at all angles of attack.* If a launch vehicle is so stable that the maximum thrust moment that the vehicle could experience cannot produce tumbling, but produces a maximum-rate trim turn at some angle of attack less than 90 degrees, the analysis must produce a series of trim turns, including the maximum-rate trim turn, by varying the initial thrust vector offset at the beginning of the turn. If the maximum thrust moment results in a maximum-rate trim turn at some angle of attack greater than 90 degrees, the analysis must produce a series of trim turns for angles of attack up to and including 90 degrees.

(ii) *Launch vehicle aerodynamically unstable at all angles of attack.* If flying a trim turn is not possible even for a period of only a few seconds, the malfunction turn analysis need only establish tumble turns. Otherwise, the malfunction turn analysis must establish a series of trim turns, including the maximum-rate trim turn, and the family of tumble turns.

(iii) *Launch vehicle unstable at low angles of attack but stable at some higher angles of attack.* If large engine deflections result in tumbling, and small engine deflections do not, the analysis must produce a series of trim and tumble turns as required by paragraph (d)(7)(ii) of this section for launch vehicles aerodynamically unstable at all angles of attack. If both large and small constant engine deflections result in tumbling, regardless of how small the deflection might be, the analysis must account for the malfunction turn capabilities achieved at the stability angle of attack, assuming no upsetting thrust moment, and must account for the turns achieved by a tumbling vehicle.

(e) *Malfunction turn analysis products.* The products of a malfunction turn analysis that

a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) A description of the assumptions, techniques, and equations used in deriving the malfunction turns.

(2) A set of sample calculations for at least one flight hazard area malfunction start time and one downrange malfunction start time. The sample computation for the downrange malfunction must start at a time at least 50 seconds after the flight hazard area malfunction start time or at the time of nominal thrust termination of the final stage minus the malfunction turn duration.

(3) A launch operator must submit malfunction turn data in electronic tabular and graphic formats. The graphs must use scale factors such that the plotting and reading accuracy do not degrade the accuracy of the data. For each malfunction turn start time, a graph must use the same time scales for the malfunction velocity vector turn angle and malfunction velocity magnitude plot pairs. A launch operator must provide tabular listings of the data used to generate the graphs in digital ASCII file format. A launch operator must submit the data items required in this paragraph for each malfunction start time and for time intervals that do not exceed one second for the duration of each malfunction turn.

(i) *Velocity turn angle graphs.* A launch operator must submit a velocity turn angle graph for each malfunction start time. For each velocity turn angle graph, the ordinate axis must represent the total angle turned by the velocity vector, and the abscissa axis must represent the time duration of the turn and must show increments not to exceed one second. The series of tumble turns must include the envelope of all tumble turn curves. The tumble turn envelope must represent the tumble turn capability for all possible constant thrust vector offset angles. Each tumble turn curve selected to define the envelope must appear on the same graph as the envelope. A launch operator must submit a series of trim turn curves for representative values of thrust vector offset. The series of trim turn curves must include the maximum-rate trim turn. Figure A417.9–1 depicts an example family of tumble turn curves and the tumble turn velocity vector envelope.

(ii) *Velocity magnitude graphs.* A launch operator must submit a velocity magnitude graph for each malfunction start time. For each malfunction velocity magnitude graph, the ordinate axis must represent the magnitude of the velocity vector and the abscissa axis must represent the time duration of the turn. Each graph must show the abscissa divided into increments not to exceed one second. Each graph must show the total velocity magnitude plotted as a function of time starting with the malfunction start time for each thrust vector offset used to define the corresponding velocity turn-angle curve. A launch operator must provide a corresponding velocity magnitude curve for each velocity tumble-turn angle curve and each velocity trim-turn angle curve. For each individual tumble turn curve selected to define the tumble turn envelope, the corresponding velocity magnitude graph must show the individual tumble turn curve's point of tangency to the envelope. The point of tangency must consist of the point where the tumble turn envelope is tangent to an individual tumble turn curve produced with a discrete thrust vector offset angle. A launch operator must transpose the points of tangency to the velocity magnitude curves by plotting a point on the velocity magnitude curve at the same time point where tangency occurs on the corresponding velocity tumble-turn angle curve. Figure A417.9–2 depicts an example tumble turn velocity magnitude curve.

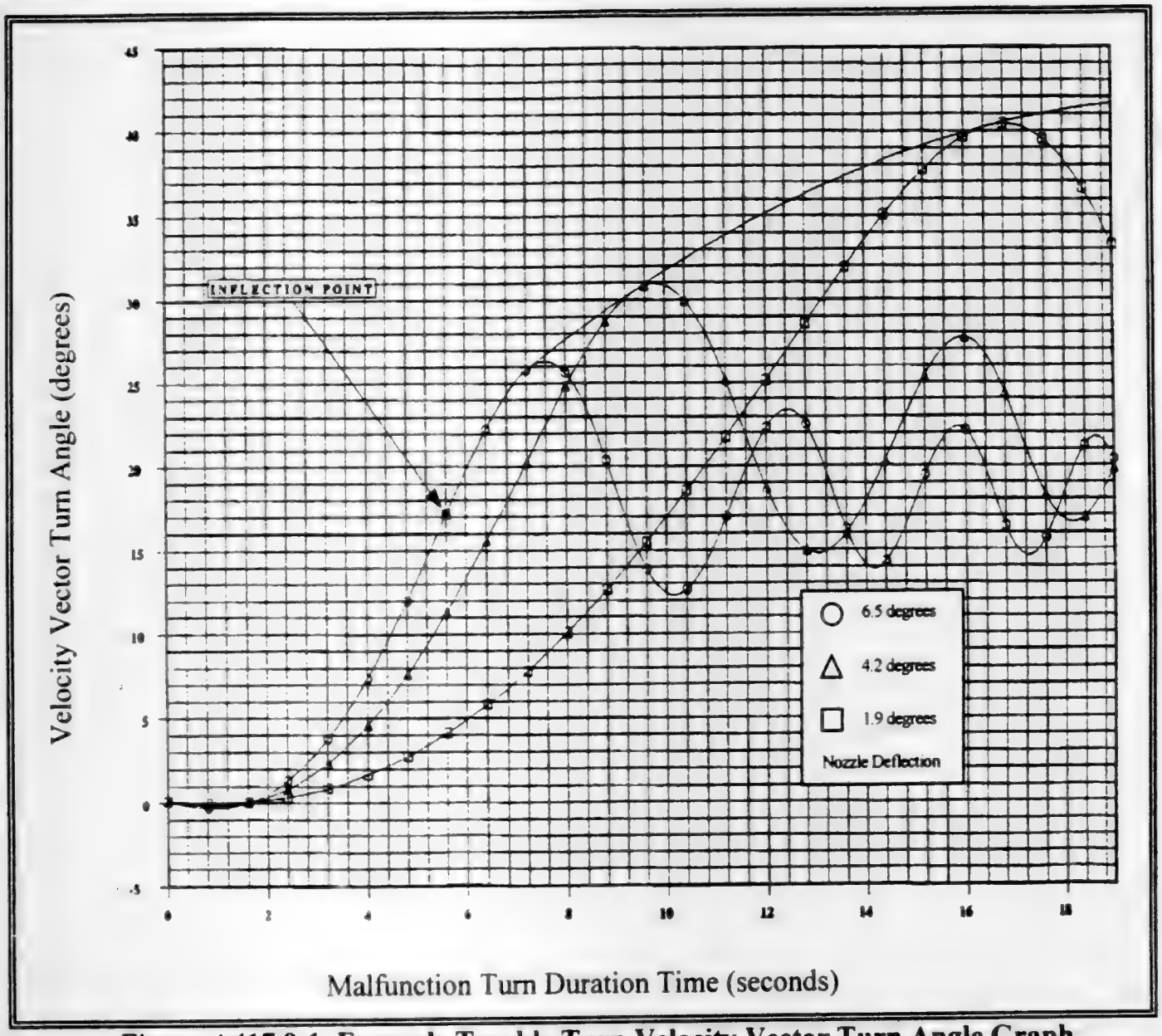

Figure A417.9-1, Example Tumble Turn Velocity Vector Turn Angle Graph.

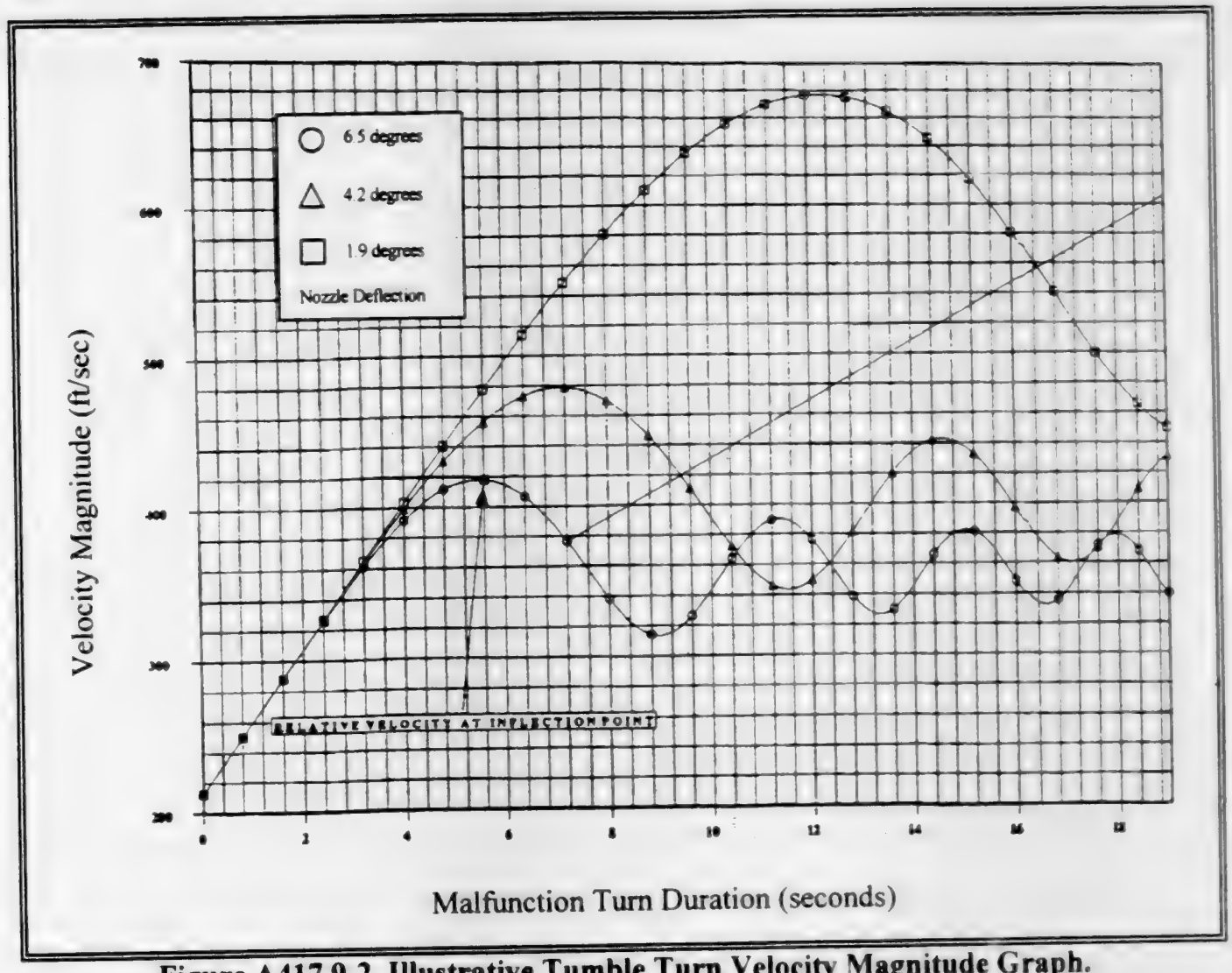

Figure A417.9-2, Illustrative Tumble Turn Velocity Magnitude Graph.

(iii) *Vehicle orientation.* The launch operator must submit tabular or graphical data for the vehicle orientation in the form of roll, pitch, and yaw angular orientation of the vehicle longitudinal axis as a function of time into the turn for each turn initiation time. Angular orientation of a launch vehicle's longitudinal axis is illustrated in figures A417.9–3 and A417.9–4.

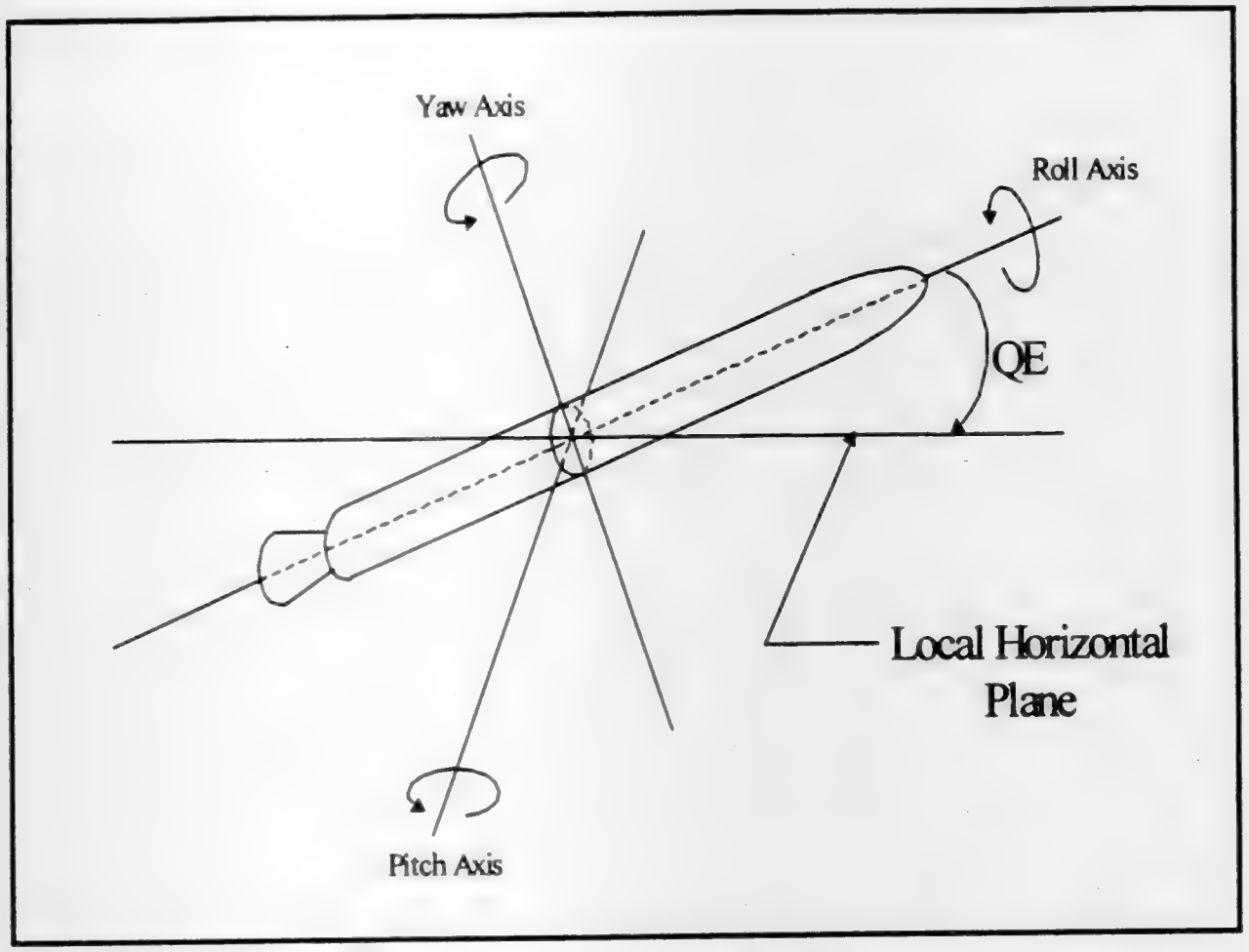

Figure A417.9-3, Illustrative Longitudinal Axis Quadrant Elevation (QE)

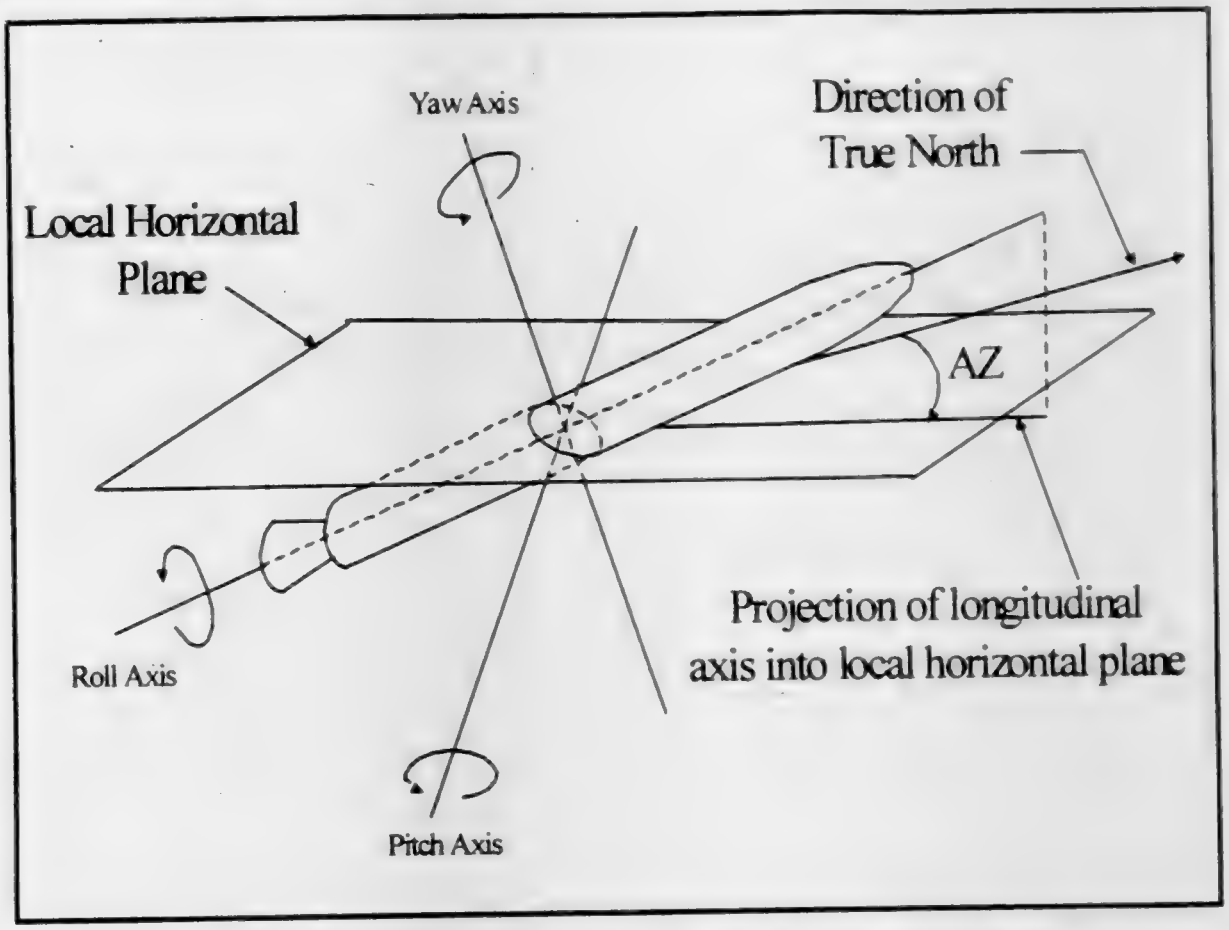

Figure A417.9-4, Illustrative Longitudinal Axis Azimuth (AZ)

(iv) *Onset conditions.* A launch operator must provide launch vehicle state information for each malfunction start time. This state data must include the launch vehicle thrust, weight, velocity magnitude and pad-centered topocentric X, Y, Z, XD, YD, ZD state vector.

(v) *Breakup information.* A launch operator must specify whether its launch vehicle will remain intact throughout each malfunction turn. If the launch vehicle will breakup during a turn, the launch operator must identify the time for launch vehicle breakup on each velocity magnitude graph. The launch operator must show the time into the turn at which vehicle breakup would occur as either a specific value or a probability distribution for time until breakup.

(vi) *Inflection point.* A launch operator must identify the inflection point on each tumble turn envelope curve and maximum rate trim turn curve for each malfunction start time as illustrated in figure A417.9–1. The inflection point marks the point in time during the turn where the slope of the curve stops increasing and begins to decrease or, in other words, the point were the concavity of the curve changes from concave up to concave down. The inflection point on a malfunction turn curve must identify the time in the malfunction turn that the launch vehicle body achieves a 90-degree rotation from the nominal position. On a tumble turn curve the inflection point must represent the start of the launch vehicle tumble.

A417.11 Debris.

(a) *General.* A flight safety analysis must include a debris analysis that satisfies the requirements of § 417.211. The requirements of this section apply to the debris data required by § 417.211 and the debris analysis products that a launch operator must submit to the FAA as required by § 417.203(e).

(b) *Debris analysis constraints.* A debris analysis must produce the debris model described in paragraph (c) of this section. The analysis must account for all launch vehicle debris fragments, individually or in groupings of fragments called classes. The characteristics of each debris fragment represented by a class must be similar enough to the characteristics of all the other debris fragments represented by that class that all the debris fragments of the class can be described by a single set of characteristics. Paragraph (c)(10) of this section applies when establishing a debris class. A debris model must describe the physical, aerodynamic, and harmful characteristics of each debris fragment either individually or as a member of a class. A debris model must consist of lists of individual debris or debris classes for each cause of breakup and any planned jettison of debris, launch vehicle components, or payload. A debris analysis must account for:

(1) Launch vehicle breakup caused by the activation of any flight termination system. The analysis must account for:

(i) The effects of debris produced when flight termination system activation destroys an intact malfunctioning vehicle.

(ii) Spontaneous breakup of the launch vehicle, if the breakup is assisted by the action of any inadvertent separation destruct system.

(iii) The effects of debris produced by the activation of any flight termination system after inadvertent breakup of the launch vehicle.

(2) Debris due to any malfunction where forces on the launch vehicle may exceed the launch vehicle's structural integrity limits.

(3) The immediate post-breakup or jettison environment of the launch vehicle debris, and any change in debris characteristics over time from launch vehicle breakup or jettison until debris impact.

(4) The impact overpressure, fragmentation, and secondary debris effects of any confined or unconfined solid propellant chunks and fueled components containing either liquid or solid propellants that could survive to impact, as a function of vehicle malfunction time.

(5) The effects of impact of the intact vehicle as a function of failure time. The intact impact debris analysis must identify the trinitrotoluene (TNT) yield of impact explosions, and the numbers of fragments projected from all such explosions, including non-launch vehicle ejecta and the blast overpressure radius. The analysis must use a model for TNT yield of impact explosion that accounts for the propellant weight at impact, the impact speed, the orientation of the propellant, and the impacted surface material.

(c) *Debris model.* A debris analysis must produce a model of the debris resulting from planned jettison and from unplanned breakup of a launch vehicle for use as input to other analyses, such as establishing flight safety limits and hazard areas and performing debris risk, toxic, and blast analyses. A launch operator's debris model must satisfy the following:

(1) *Debris fragments.* A debris model must provide the debris fragment data required by this section for the launch vehicle flight from the planned ignition time until the launch vehicle achieves orbital velocity for an orbital launch. For a sub-orbital launch, the debris model must provide the debris fragment data required by this section for the launch vehicle flight from the planned ignition time until thrust termination of the last thrusting stage. A debris model must provide debris fragment data for the number of time periods sufficient to meet the requirements for smooth and continuous contours used to define hazard areas as required by A417.23.

(2) *Inert fragments.* A debris model must identify all inert fragments that are not volatile and that do not burn or explode under normal and malfunction conditions. A debris model must identify inert fragments for each breakup time during flight corresponding to a critical event when the fragment catalog is significantly changed by the event. Critical events include staging, payload fairing jettison, and other normal hardware jettison activities.

(3) *Explosive and non-explosive propellant fragments.* A debris model must identify all propellant fragments that are explosive or non-explosive upon impact. The debris model must describe each propellant fragment as a function of time, from the time of breakup through ballistic free-fall to impact. The debris model must describe the characteristics of each fragment, including its origin on the launch vehicle, representative dimensions and weight at the time of breakup and at the time of impact. For those fragments identified as un-contained or contained propellant fragments, whether explosive or non-explosive, the debris model must identify whether or not burning occurs during free fall, and provide the consumption rate during free fall. The debris model must identify:

(i) Solid propellant that is exposed directly to the atmosphere and that burns but does not explode upon impact as "un-contained non-explosive solid propellant."

(ii) Solid or liquid propellant that is enclosed in a container, such as a motor case or pressure vessel, and that burns but does not explode upon impact as "contained non-explosive propellant."

(iii) Solid or liquid propellant that is enclosed in a container, such as a motor case or pressure vessel, and that explodes upon impact as "contained explosive propellant fragment."

(iv) Solid propellant that is exposed directly to the atmosphere and that explodes upon impact as "un-contained explosive solid propellant fragment."

(4) *Other non-inert debris fragments.* In addition to the explosive and flammable fragments required by paragraph (c)(3) of this section, a debris model must identify any other non-inert debris fragments, such as toxic or radioactive fragments, that present any other hazards to the public.

(5) *Fragment weight.* At each modeled breakup time, the individual fragment weights must approximately add up to the sum total weight of inert material in the vehicle and the weight of contained liquid propellants and solid propellants that are not consumed in the initial breakup or conflagration.

(6) *Fragment imparted velocity.* A debris model must identify the maximum velocity imparted to each fragment due to potential explosion or pressure rupture. When accounting for imparted velocity, a debris model must:

(i) Use a Maxwellian distribution with the specified maximum value equal to the 97th percentile; or

(ii) If a debris model does not use a Maxwellian velocity distribution, the analysis products must identify the distribution, and must state whether or not the specified maximum value is a fixed value with no uncertainty.

(7) *Fragment projected area.* A debris model must include the axial, transverse, and mean tumbling areas of each fragment. If the fragment may stabilize under normal or malfunction conditions, the debris model must also provide the projected area normal to the drag force.

(8) *Fragment ballistic coefficient.* A debris model must include the axial, transverse, and tumble orientation ballistic coefficient for each fragment's projected area as required by paragraph (c)(7) of this section.

(9) *Debris fragment count.* A debris model must include the total number of each type of fragment required by paragraphs (c)(2), (c)(3), and (c)(4) of this section and created by a malfunction.

(10) *Fragment classes.* A debris model must categorize malfunction debris fragments into classes where the characteristics of the mean fragment in each class conservatively represent every fragment in the class. The model must define fragment classes for fragments whose characteristics are similar enough to be described and treated by a single average set of characteristics. A debris class must categorize debris by each of the following characteristics, and may include any other useful characteristics:

(i) The type of fragment, defined by paragraphs (c)(2), (c)(3), and (c)(4) of this section. All fragments within a class must be the same type, such as inert or explosive.

(ii) Debris subsonic ballistic coefficient (β_{sub}). The difference between the smallest $\log_{10}(\beta_{sub})$ value and the largest $\log_{10}(\beta_{sub})$ value in a class must not exceed 0.5, except for fragments with β_{sub} less than or equal to three. Fragments with β_{sub} less than or equal to three may be grouped within a class.

(iii) Breakup-imparted velocity (ΔV). A debris model must categorize fragments as a function of the range of ΔV for the fragments within a class and the class's median subsonic ballistic coefficient. For each class, the debris model must keep the ratio of the maximum breakup-imparted velocity (ΔV_{max}) to minimum breakup-imparted velocity (ΔV_{min}) within the following bound:

$$\frac{\Delta V_{max}}{\Delta V_{min}} < \frac{5}{2 + \log_{10}(\beta'_{sub})}$$

Where: β'_{sub} is the median subsonic ballistic coefficient for the fragments in a class.

(d) *Debris analysis products.* The products of a debris analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) *Debris model.* The launch operator's debris model that satisfies the requirements of this section.

(2) *Fragment description.* A description of the fragments contained in the launch operator's debris model. The description must identify the fragment as a launch vehicle part or component, describe its shape, representative dimensions, and may include drawings of the fragment.

(3) *Intact impact TNT yield.* For an intact impact of a launch vehicle, for each failure time, a launch operator must identify the TNT yield of each impact explosion and blast overpressure hazard radius.

(4) *Fragment class data.* The class name, the range of values for each parameter used to categorize fragments within a fragment class, and the number of fragments in any fragment class established in accordance with paragraph (c)(10) of this section.

(5) *Ballistic coefficient.* The mean ballistic coefficient (β) and plus and minus three-sigma values of the β for each fragment class. A launch operator must provide graphs of the coefficient of drag (C_d) as a function of Mach number for the nominal and three-sigma β variations for each fragment shape. The launch operator must label each graph with the shape represented by the curve and reference area used to develop the curve. A launch operator must provide a C_d vs. Mach curve for any axial, transverse, and tumble orientations for any fragment that will not stabilize during free-fall conditions. For any fragment that may stabilize during free-fall, a launch operator must provide C_d vs. Mach curves for the stability angle of attack. If the angle of attack where the fragment stabilizes is other than zero degrees, a launch operator must provide both the coefficient of lift (C_L) vs. Mach number and the C_d vs. Mach number curves. The launch operator must provide the equations for each C_d vs. Mach curve.

(6) *Pre-flight propellant weight.* The initial preflight weight of solid and liquid propellant for each launch vehicle component that contains solid or liquid propellant.

(7) *Normal propellant consumption.* The nominal and plus and minus three-sigma solid and liquid propellant consumption rate, and pre-malfunction consumption rate for each component that contains solid or liquid propellant.

(8) *Fragment weight.* The mean and plus and minus three-sigma weight of each fragment or fragment class.

(9) *Projected area.* The mean and plus and minus three-sigma axial, transverse, and tumbling areas for each fragment or fragment class. This information is not required for those fragment classes classified as burning propellant classes under (e)(17) of this section.

(10) *Imparted velocities.* The maximum incremental velocity imparted to each fragment class created by flight termination system activation, or explosive or overpressure loads at breakup. The launch operator must identify the velocity distribution as Maxwellian or must define the distribution, including whether or not the specified maximum value is a fixed value with no uncertainty.

(11) *Fragment type.* The fragment type for each fragment established in accordance with paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(12) *Origin.* The part of the launch vehicle from which each fragment originated.

(13) *Burning propellant classes.* The propellant consumption rate for those fragments that burn during free-fall.

(14) *Contained propellant fragments, explosive or non-explosive.* For contained propellant fragments, whether explosive or non-explosive, a launch operator must provide the initial weight of contained propellant and the consumption rate during free-fall. The initial weight of the propellant in a contained propellant fragment is the weight of the propellant before any of the propellant is consumed by normal vehicle operation or failure of the launch vehicle.

(15) *Solid propellant fragment snuff-out pressure.* The ambient pressure and the pressure at the surface of a solid propellant fragment, in pounds per square inch, required to sustain a solid propellant fragment's combustion during free-fall.

(16) *Other non-inert debris fragments.* For each non-inert debris fragment identified in accordance with paragraph (c)(4) of this section, a launch operator must describe the diffusion, dispersion, deposition, radiation, or other hazard exposure characteristics used to determine the effective casualty area required by paragraph (c)(9) of this section.

(17) *Residual thrust dispersion.* For each thrusting or non-thrusting stage having residual thrust capability following a launch vehicle malfunction, a launch operator must provide either the total residual impulse imparted or the full-residual thrust in foot-pounds as a function of breakup time. For any stage not capable of thrust after a launch vehicle malfunction, a launch operator must provide the conditions under which the stage is no longer capable of thrust. For each stage that can be ignited as a result of a launch vehicle malfunction on a lower stage, a launch operator must identify the effects and duration of the potential thrust, and the maximum deviation of the instantaneous impact point which can be brought about by the thrust. A launch operator must provide the explosion effects of all remaining fuels, pressurized tanks, and remaining stages, particularly with respect to ignition or detonation of upper stages if the flight termination system is activated during the burning period of a lower stage.

A417.13 Flight Safety Limits

(a) *General.* A flight safety analysis must include a flight safety limits analysis that satisfies the requirements of § 417.213. The requirements of this section apply to the computation of the flight safety limits and identifying the location of populated or other protected areas as required by § 417.213 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e).

(b) *Flight safety limits constraints.* The analysis must establish flight safety limits in accordance with the following:

(1) Flight safety limits must account for potential malfunction of a launch vehicle during the time from launch vehicle first motion through flight until the no longer terminate time determined as required by A417.19.

(2) For a flight termination at any time during launch vehicle flight, the flight safety limits must:

(i) Represent no less than the extent of the debris impact dispersion for all debris fragments with a ballistic coefficient greater than or equal to three; and

(ii) Ensure that the debris impact area on the Earth's surface that is bounded by the debris impact dispersion in the uprange, downrange and crossrange directions does not extend to any populated or other protected area.

(3) Each debris impact area determined by a flight safety limits analysis must be offset in a direction away from populated or other protected areas. The size of the offset must account for all parameters that may contribute to the impact dispersion. The parameters must include:

(i) Launch vehicle malfunction turn capabilities.

(ii) Effective casualty area produced in accordance with A417.25(b)(8).

(iii) All delays in the identification of a launch vehicle malfunction.

(iv) Malfunction imparted velocities, including any velocity imparted to vehicle fragments by breakup.

(v) Wind effects on the malfunctioning vehicle and falling debris.

(vi) Residual thrust remaining after flight termination.

(vii) Launch vehicle guidance and performance errors.

(viii) Lift and drag forces on the malfunctioning vehicle and falling debris including variations in drag predictions of fragments and debris.

(ix) All hardware and software delays during implementation of flight termination.

(x) All debris impact location uncertainties caused by conditions prior to, and after, activation of the flight termination system.

(xi) Any other impact dispersion parameters peculiar to the launch vehicle.

(xii) All uncertainty due to map errors and launch vehicle tracking errors.

(c) *Risk management.* The requirements for public risk management of § 417.205(a) apply to a flight safety limits analysis. When employing risk assessment, the analysis must establish flight safety limits that satisfy paragraph (b) of this section, account for the products of the debris risk analysis performed in accordance with A417.25, and ensure that any risk to the public satisfies the public risk criteria of § 417.107(b) of this part. When employing hazard isolation, the analysis must establish flight safety limits in accordance with the following:

(1) The flight safety limits must account for the maximum deviation impact locations for the most wind sensitive debris fragment with a minimum of 11 ft-lbs of kinetic energy at impact.

(2) The maximum deviation impact location of the debris identified in (c)(1) of this section for each trajectory time must account for the three-sigma impact location for the maximum deviation flight, and the launch day wind conditions that produce the maximum ballistic wind for that debris.

(3) The maximum deviation flight must account for the instantaneous impact point, of the debris identified in (c)(1) at breakup, that is closest to a protected area and the maximum ballistic wind directed from the breakup point toward that protected area.

(d) *Flight safety limits analysis products.* The products of a flight safety limits analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) A description of each method used to develop and implement the flight safety limits. The description must include equations and example computations used in the flight safety limits analysis.

(2) A description of how each analysis method meets the analysis requirements and constraints of this section, including how the method produces a worst case scenario for each impact dispersion area.

(3) A description of how the results of the analysis are used to protect populated and other protected areas.

(4) A graphic depiction or series of depictions of the flight safety limits, the launch point, all launch site boundaries, surrounding geographic area, all protected area boundaries, and the nominal and three-sigma launch vehicle instantaneous impact point ground traces from liftoff to orbital insertion or the end of flight. Each depiction must have labeled geodetic latitude and longitude lines. Each depiction must show the flight safety limits at trajectory time intervals sufficient to depict the mission success margin between the flight safety limits and the protected areas. The launch vehicle trajectory instantaneous impact points must be plotted with sufficient frequency to provide a conformal representation of the launch vehicle's instantaneous impact point ground trace curvature.

(5) A tabular description of the flight safety limits, including the geodetic latitude and longitude for any flight safety limit. The table must contain quantitative values that define flight safety limits. The quantitative values must be rounded to the number of significant digits that can be determined from the uncertainty of the measurement device used to determine the flight safety limits and must be limited to a maximum of six decimal places.

(6) A map error table of direction and scale distortions as a function of distance from the point of tangency from a parallel of true scale and true direction or from a meridian of true scale and true direction. A launch operator must provide a table of tracking error as a function of downrange distance from the launch point for each tracking station used to make flight safety control decisions. A launch operator must submit a description of the method, showing equations and sample

calculations, used to determine the tracking error. The table must contain the map and tracking error data points within 100 nautical miles of the reference point at an interval of one data point every 10 nautical miles, including the reference point. The table must contain map and tracking error data points beyond 100 nautical miles from the reference point at an interval of one data point every 100 nautical miles out to a distance that includes all populated or other areas protected by the flight safety limits.

(7) A launch operator must provide the equations used for geodetic datum conversions and one sample calculation for converting the geodetic latitude and longitude coordinates between the datum ellipsoids used. A launch operator must provide any equations used for range and bearing computations between geodetic coordinates and one sample calculation.

A417.15 Straight-Up Time

(a) *General.* A flight safety analysis must include a straight-up time analysis that satisfies the requirements of § 417.215. The requirements of this section apply to the computation of straight-up time as required by § 417.215 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e). The analysis must establish a straight-up time as the latest time-after-liftoff, assuming a launch vehicle malfunctioned and flew in a vertical or near vertical direction above the launch point, at which activation of the launch vehicle's flight termination system or breakup of the launch vehicle would not cause hazardous debris or critical overpressure to affect any populated or other protected area.

(b) *Straight-up time constraints.* A straight-up-time analysis must account for the following:

(1) Launch vehicle trajectory. The analysis must use the straight-up trajectory determined in accordance with A417.7(e).

(2) Sources of debris impact dispersion of A417.13(b)(3)(iii) through (xii)

(b) *Straight-up time analysis products.* The products of a straight-up-time analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) The straight-up-time.

(2) A description of the methodology used to determine straight-up time.

A417.17 No-Longer Terminate Gate

(a) *General.* The flight safety analysis for a launch that involves flight over a populated or other protected area must include a no-longer terminate gate analysis that satisfies the requirements of § 417.217. The requirements of this section apply to determining a gate as required by § 417.217 and the analysis products that the launch operator must submit to the FAA as required by § 417.203(e). The analysis must determine the portion, referred to as a gate, of a flight safety limit, through which a launch vehicle's tracking representation will be allowed to proceed without flight termination.

(b) *No-longer-terminate gate analysis constraints.* The following analysis constraints apply to a gate analysis.

(1) For each gate in a flight safety limit, the criteria used for determining whether to allow passage through the gate or to terminate flight at the gate must use all the same launch vehicle flight status parameters as the criteria used for determining whether to terminate flight at a flight safety limit. For example, if the flight safety limits are a function of instantaneous impact point location, the criteria for determining whether to allow passage through a gate in the flight safety limit must also be a function of instantaneous impact point location. Likewise, if the flight safety limits are a function of drag impact point, the gate criteria must also be a function of drag impact point.

(2) When establishing a gate in a flight safety limit, the analysis must ensure that the launch vehicle flight satisfies the public risk criteria of § 417.107(b).

(3) For each established gate, the analysis must account for:

(i) All launch vehicle tracking and map errors.

(ii) All launch vehicle plus and minus three-sigma trajectory limits.

(iii) All debris impact dispersions.

(4) The width of a gate must restrict a launch vehicle's normal trajectory ground trace.

(c) *No-longer-terminate gate analysis products.* The products of a gate analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) A description of the methodology used to establish each gate.

(2) A description of the tracking representation.

(3) A tabular description of the input data.

(4) Example analysis computations performed to determine a gate. If a launch involves more than one gate and the same methodology is used to determine each gate, the launch operator need only submit the computations for one of the gates.

(5) A graphic depiction of each gate. A launch operator must provide a depiction or depictions showing flight safety limits, protected area outlines, nominal and 3-sigma left and right trajectory ground traces, protected area overflight regions, and predicted impact dispersion about the three-sigma trajectories within the gate. Each depiction must show latitude and longitude grid lines, gate latitude and longitude labels, and the map scale.

A417.19 Data Loss Flight Time and No Longer Terminate Time

(a) *General.* A flight safety analysis must include a data loss flight time analysis that satisfies the requirements of § 417.219. The requirements of this section apply to the computation of data loss flight times and the no longer terminate time required by § 417.219, and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e).

(b) *No longer terminate time.* The analysis must establish a no longer terminate time for a launch in accordance with the following:

(1) For a suborbital launch, the analysis must determine a no longer terminate time as the time after liftoff that a launch vehicle's hazardous debris impact dispersion can no longer reach any protected area.

(2) For an orbital launch where the launch vehicle's instantaneous impact point does not overfly a protected area prior to reaching orbit, the analysis must establish the no-longer terminate time as the time after liftoff that the launch vehicle's hazardous debris impact dispersion can no longer reach any protected area or orbital insertion, whichever occurs first.

(3) For an orbital launch where a gate permits overflight of a protected area and where orbital insertion occurs after reaching the gate, the analysis must determine the no longer terminate time as the time after liftoff when the time for the launch vehicle's instantaneous impact point to reach the gate is less than the time for the instantaneous impact point to reach any flight safety limit.

(4) The analysis must account for a malfunction that causes the launch vehicle to proceed from its position at the trajectory time being evaluated toward the closest flight safety limit and protected area.

(5) The analysis must account for the launch vehicle thrust vector that produces the highest instantaneous impact point range-rate that the vehicle is capable of producing at the trajectory time being evaluated.

(c) *Data loss flight times.* For each launch vehicle trajectory time, from the predicted earliest launch vehicle tracking acquisition time until the no longer terminate time, the analysis must determine the data loss flight time in accordance with the following:

(1) The analysis must determine each data loss flight time as the minimum thrusting time for a launch vehicle to move from a normal trajectory position to a position where a flight termination would cause the malfunction debris impact dispersion to reach any protected area.

(2) A data loss flight time analysis must account for a malfunction that causes the launch vehicle to proceed from its position at the trajectory time being evaluated toward the closest flight safety limit and protected area.

(3) The analysis must account for the launch vehicle thrust vector that produces the highest instantaneous impact point range-rate that the vehicle is capable of producing at the trajectory time being evaluated.

(4) Each data loss flight time must account for the system delays at the time of flight.

(5) The analysis must determine a data loss flight time for time increments that do not exceed one second along the launch vehicle nominal trajectory.

(d) *Products.* The products of a data loss flight time and no longer terminate time analysis that a launch operator must submit as required by § 417.203(e) must include:

(1) A launch operator must describe the methodology used in its analysis, and identify all assumptions, techniques, input data, and equations used. A launch operator must submit calculations performed for one data loss flight time in the launch area and one data loss flight time that is no less than 50 seconds later in the downrange area.

(2) A launch operator must submit a graphical description or depictions of the flight safety limits, the launch point, the launch site boundaries, the surrounding geographic area, any protected areas, the no longer terminate time within any applicable scale requirements, latitude and longitude grid lines, and launch vehicle nominal and

three-sigma instantaneous impact point ground traces from liftoff through orbital insertion for an orbital launch, and through final impact for a suborbital launch. Each graph must show any launch vehicle trajectory instantaneous impact points plotted with sufficient frequency to provide a conformal estimate of the launch vehicle's instantaneous impact point ground trace curvature. A launch operator must provide labeled latitude and longitude lines and the map scale on the depiction.

(3) A launch operator must provide a tabular description of each data loss flight time. The tabular description must include the malfunction start time and the geodetic latitude (positive north of the equator) and longitude (positive east of the Greenwich Meridian) coordinates of the intersection of the launch vehicle instantaneous impact point trajectory with the flight safety limit. The table must identify the first data lost flight time and no longer terminate time. The tabular description must include data loss flight times for trajectory time increments not to exceed one second.

A417.21 Time Delay

(a) *General.* A flight safety analysis must include a time delay analysis that satisfies the requirements of § 417.221. The requirements of this section apply to the computation of time delays associated with a flight safety system and other launch vehicle systems and operations as required by § 417.221 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e).

(b) *Time delay analysis constraints.* The analysis must account for all significant causes of time delay between the violation of a flight termination rule and the time when a flight safety system is capable of terminating flight in accordance with the following:

(1) The analysis must account for decision and reaction times, including variation in human response time, for flight safety official and other personnel that are part of a launch operator's flight safety system as defined by subpart D of this part.

(2) The analyses must determine the time delay inherent in any data, from any source, used by a flight safety official for making flight termination decisions.

(3) A time delay analysis must account for all significant causes of time delay, including data flow rates and reaction times, for hardware and software, including, but not limited to the following:

(i) *Tracking system.* A time delay analysis must account for time delays between the launch vehicle's current location and last known location and that are associated with the hardware and software that make up the launch vehicle tracking system, whether or not it is located on the launch vehicle, such as transmitters, receivers, decoders, encoders, modulators, circuitry and any encryption and decryption of data.

(ii) *Display systems.* A time delay analysis must account for delays associated with hardware and software that make up any display system used by a flight safety official to aid in making flight control decisions. A time delay analysis must also account for any manual operations requirements, tracking source selection, tracking data processing, flight safety limit computations, inherent display delays, meteorological data processing, automated or manual system configuration control, automated or manual process control, automated or manual mission discrete control, and automated or manual failover decision control.

(iii) *Flight termination system and command control system.* A time delay analysis must account for delays and response times associated with flight termination system and command control system hardware and software, such as transmitters, decoders, encoders, modulators, relays and shutdown, arming and destruct devices, circuitry and any encryption and decryption of data.

(iv) *Software specific time delays.* A delay analysis must account for delays associated with any correlation of data performed by software, such as timing and sequencing; data filtering delays such as error correction, smoothing, editing, or tracking source selection; data transformation delays; and computation cycle time.

(4) A time delay analysis must determine the time delay plus and minus three-sigma values relative to the mean time delay.

(5) For use in any risk analysis, a time delay analysis must determine time delay distributions that account for the variance of time delays for potential launch vehicle failures, including but not limited to, the range of malfunction turn characteristics and the time of flight when the malfunction occurs.

(c) *Time delay analysis products.* The products of a time delay analysis that ■ launch operator must submit as required by § 417.203(e) must include:

(1) A description of the methodology used to produce the time delay analysis.

(2) A schematic drawing that maps the flight safety official's data flow time delays from the start of a launch vehicle malfunction through the final commanded flight termination on the launch vehicle, including the flight safety official's decision and reaction time. The drawings must indicate major systems, subsystems, major software functions, and data routing.

(3) A tabular listing of each time delay source and its individual mean and plus and minus three-sigma contribution to the overall time delay. The table must provide all time delay values in milliseconds.

(4) The mean delay time and the plus and minus three-sigma values of the delay time relative to the mean value.

A417.23 Flight Hazard Areas

(a) *General.* A flight safety analysis must include a flight hazard area analysis that satisfies the requirements of § 417.223. The requirements of this section apply to the determination of flight hazard areas for orbital and ballistic launch vehicles that use a flight termination system to protect the public as required by § 417.223 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e). Requirements that apply to determining flight hazard areas for unguided suborbital rockets that use a wind weighting safety system are contained in appendix C of this part.

(b) *Launch site flight hazard area.* A flight hazard area analysis must establish a launch site flight hazard area that encompasses the launch point and:

(i) If the flight safety analysis employs hazard isolation to establish flight safety limits in accordance with A417.13(c), the launch site flight hazard area must encompass the flight safety limits.

(ii) If the flight safety analysis does not employ hazard isolation to establish the flight safety limits, the launch site flight hazard area must encompass all hazard areas established in accordance with paragraphs (d) through (j) of this section. Figure A417.23–1 illustrates a launch site flight hazard area for a coastal launch site. Figure A417.23–2 illustrates a launch site flight hazard area for an inland launch site.

(c) *Flight corridor.* For regions outside the flight hazard area, the analysis must define a flight corridor that extends downrange from a flight hazard area as illustrated by figure A417.23–3. The flight safety limits established in accordance with A417.13 must bound the flight corridor. The flight corridor must include any land overflight permitted by a gate established in accordance with A417.17. A five-sigma cross range trajectory dispersion about the nominal launch vehicle trajectory must bound any land overflight area. A flight corridor must extend for all downrange positions from the flight hazard area to the no longer terminate time determined in accordance with A417.19.

(d) *Debris impact hazard area.* The analysis must establish a debris impact hazard area that accounts for the effects of impacting debris resulting from normal and malfunctioning launch vehicle flight, except for toxic effects, and accounts for potential impact locations of all debris fragments. The analysis must establish a debris hazard area in accordance with the following:

(1) An individual casualty contour that defines where the risk to an individual would exceed an expected casualty (E_C) criteria of 1×10^{-6} if one person were assumed to be in the open and inside the contour during launch vehicle flight must bound a debris hazard area. The analysis must produce an individual casualty contour in accordance with the following:

(i) The analysis must account for the location of a hypothetical person, and must vary the location of the person to determine when the risk would exceed the E_c criteria of 1×10^{-6}. The analysis must count a person as a casualty when the person's location is subjected to any inert debris impact with a mean expected kinetic energy greater than or equal to 11 ft-lbs or a peak incident overpressure equal to or greater than one psi due to explosive debris impact. The analysis must determine the peak incident overpressure using the Kingery-Bulmash relationship, without regard to sheltering, reflections, or atmospheric effects.

(ii) The analysis must account for person locations that are no more than 1000 feet apart in the downrange direction and no more than 1000 feet apart in the crossrange direction to produce an individual casualty contour. For each person location, the

analysis must sum the probabilities of casualty over all flight times for all debris groups.

(iii) An individual casualty contour must consist of curves that are smooth and continuous. To accomplish this, the analysis must vary the time interval between the trajectory times assessed so that each location of a debris impact point is less than one-half sigma of the downrange dispersion distance.

(2) The input for determining a debris impact hazard area must account for the results of the trajectory analysis required by A417.7, the malfunction turn analysis required by A417.9, and the debris analysis required by A417.11 to define the impact locations of each class of debris established by the debris analysis, and the time delay analysis required by A417.21.

(3) The analysis must account for the extent of the impact debris dispersions for each debris class produced by normal and malfunctioning launch vehicle flight at each trajectory time. The analysis must also account for how the vehicle breaks up, either by the flight termination system or by aerodynamic forces, if the different breakup may result in a different probability of existence for each debris class. A debris impact hazard area must account for each impacting debris fragment classified in accordance with A417.11(c).

(4) The analysis must account for launch vehicle flight that exceeds a flight safety limit. The analysis must also account for trajectory conditions that maximize the mean debris impact distance during the flight safety system delay time determined in accordance with A417.21 and account for a debris model that is representative of a flight termination or aerodynamic breakup. For each launch vehicle breakup event, the analysis must account for trajectory and breakup dispersions, variations in debris class characteristics, and debris dispersion due to any wind condition under which a launch would be attempted.

(5) The analysis must account for the probability of failure of each launch vehicle stage and the probability of existence of each debris class. The analysis must account for the probability of occurrence of each type of launch vehicle failure. The analysis must account for vehicle failure probabilities that vary depending on the time of flight.

(6) In addition to failure debris, the analysis must account for nominal jettisoned body debris impacts and the corresponding debris impact dispersions. The analysis must use a probability of occurrence of 1.0 for the planned debris fragments produced by normal separation events during flight.

(e) *Near-launch-point blast hazard area.* A flight hazard area analysis must define a blast overpressure hazard area as a circle extending from the launch point with a radius equal to the 1.0-psi overpressure distance produced by the equivalent TNT weight of the explosive capability of the vehicle. In addition, the analysis must establish a minimum near-pad blast hazard area to provide protection from hazardous fragments potentially propelled by an explosion. The analysis must account for the maximum possible total solid and liquid propellant explosive potential of the launch vehicle and any payload. The analysis must define a blast overpressure hazard area using the following equations:

$R_{op} = 45 \cdot (NEW)^{1/3}$

Where:

R_{op} is the over pressure distance in feet.

$NEW = W_E \cdot C$ (pounds).

W_E is the weight of the explosive in pounds.

C is the TNT equivalency coefficient of the propellant being evaluated. A launch operator must identify the TNT equivalency of each propellant on its launch vehicle including any payload. TNT equivalency data for common liquid propellants is provided in tables A417–1. Table A417–2 provides factors for converting gallons of specified liquid propellants to pounds.

(f) *Other hazards.* A flight hazard area analysis must identify any additional hazards, such as radioactive material, that may exist on the launch vehicle or payload. For each such hazard, the analysis must determine a hazard area that encompasses any debris impact point and its dispersion and includes an additional hazard radius that accounts for potential casualty due to the additional hazard. Analysis requirements for toxic release and far field blast overpressure are provided in § 417.27 and A417.29, respectively.

(g) *Ship-hit contours.* A flight hazard area analysis must establish ship hazard areas, referred to as ship-hit contours, to ensure that the probability of hitting a ship satisfies the collective probability threshold of 1×10^{-5} required by § 417.107(b) and to determine the area that may need to be surveyed on the day of launch. The analysis must determine the need to survey the ship hazard areas in accordance with paragraph (h) of this section. When paragraph (h) requires surveillance, a launch operator must not initiate flight while the number of ships within any ship-hit contour is greater than or equal to the number of ships for which the contour was established. The flight hazard area must encompass all ship-hit contours. The analysis must establish the ship-hit contours in accordance with the following:

(1) A ship-hit contour must account for the size of the largest ship that could be located in the flight hazard area. The analysis must demonstrate that the ship size used represents the largest ship that could be present in the flight hazard area or, if the ship size is unknown, the analysis must use a ship size of 120,000 square feet. Additional contours may be established for smaller vessels if necessary to facilitate surveillance of the flight hazard area while ensuring that the 1×10^{-5} hit criteria is satisfied.

(2) The analysis must determine ship-hit contours for one to 10 ships in increments of one ship. For each given number of ships, the associated ship-hit contour must bound an area around the nominal instantaneous impact point trace where, if the given number of ships were located on the contour, the collective probability of impacting any ship would be less than or equal to the 1×10^{-5} ship-hit criteria.

(3) Each ship-hit contour must account for all debris as determined in accordance with A417.11. Each contour must account for each mean debris impact point and the extent of the impact dispersion for each simulated launch vehicle failure for increasing trajectory times, starting at liftoff. Each debris impact dispersion must account for the variance in winds, the aerodynamic properties of the debris and the variance in velocity of the debris resulting from vehicle breakup, the malfunction turn capabilities of the launch vehicle, and guidance and performance errors. The analysis must also account for the type of vehicle breakup, either by the flight termination system or by aerodynamic forces that may result in different debris characteristics.

(4) Each ship-hit contour must account for any inert debris impact with mean expected kinetic energy at impact greater than or equal to 11 ft-lbs and peak incident overpressure of greater than or equal to 1.0 psi due to any explosive debris impact. A ship-hit contour must consists of curves that are smooth and continuous. To accomplish this, the analysis must vary the time interval, between the trajectory times assessed such that the distance between each debris impact point location for each time assessed is less than one-half sigma of the downrange dispersion distance.

(5) Each ship-hit contour must account for each nominal staging event and potential launch vehicle failure that may result in vehicle breakup in the flight hazard area. Each contour must account for the probability of failure of each launch vehicle stage and the probability of existence of each debris class. The analysis must account for each launch vehicle failure as a function of probability of occurrence. The analysis must account for each launch vehicle failure probability as a function of flight time. The analysis must account for all potential debris created by flight termination and aerodynamic breakup and the probability of occurrence of each. Each contour must account for breakup through aerodynamic breakup or a flight termination action and the different debris that would result from each type of breakup. The analysis must account for any planned debris impact, such as a stage or payload fairing impact and a probability of existence equal to the probability of success for the planned debris impact.

(h) *Ship surveillance in the launch site flight hazard area.* The launch site flight hazard area need not be surveyed for ships during the launch countdown if the analysis demonstrates, using statistical ship density data, that the total probability of a ship impact occurring is less than or equal to 1×10^{-5}. The analysis must establish whether a launch operator must conduct ship surveillance in the launch site flight hazard area for a launch in accordance with the following:

(1) The analysis must determine ship density for the launch site flight hazard area based on accurate statistical data. The ship density for the launch site flight hazard area must account for factors that affect the ship density, such as time of day. The analysis must use statistical ship density for the launch site flight hazard area multiplied by a safety factor of 10 unless the analysis includes a clear and convincing demonstration of the accuracy of the ship

density data, and accounts for the associated ship density error in the collective ship-hit probability analysis.

(2) The analysis must establish the expected number of ships inside the 10-ship contour determined in accordance with paragraph (g) of this section, by determining the total water surface area within the 10-ship contour and multiplying this area by the ship density determined in accordance with paragraph (h)(1) of this section. If the resulting number of ships is less than 10, the launch operator need not perform ship surveillance in the flight hazard area. If the resulting number of ships is equal to or greater than 10, the launch operator must perform ship surveillance in the flight hazard area as required by § 417.121(f).

(i) *Ship hazard area for notice to mariners.* Regardless of whether ship surveillance is required in accordance with paragraph (h) of this section, the launch operator must provide the ship-hit contour for 10 ships determined in accordance with paragraph (e) of this section as a notice to mariners as required by § 417.121(e).

(j) *Launch site flight hazard area aircraft-hit contour.* A flight hazards area analysis must determine an aircraft-hit contour to be surveyed on the day of launch to ensure that the probability of hitting an aircraft satisfies the individual probability threshold of 1×10^{-8} as required by § 417.107(b) for the flight hazard area around the launch point. The launch site flight hazard area must contain an aircraft-hit contour that extends for altitudes from zero to 60,000 feet. The analysis must determine an aircraft-hit contour in accordance with the following:

(1) An aircraft-hit contour must bound an area around the nominal instantaneous impact point trace where, if an aircraft were located on the contour, the individual probability of impacting the aircraft would be less than or equal to 1×10^{-8}.

(2) The analysis must account for the dimension of the largest aircraft operated in the vicinity of the launch or, if unknown, the dimensions of a Boeing 747 aircraft.

(3) The analysis must account for all debris as determined under A417.11. An aircraft-hit contour must account for aircraft velocity and debris with kinetic energy relative to the aircraft greater than or equal to 11 ft-lbs.

(4) The analysis must account for each nominal staging event and potential vehicle failure that may result in vehicle breakup. The analysis must account for each vehicle failure as a function of probability of occurrence and as a function of time.

(5) The analysis must account for all debris for both flight termination and for aerodynamic breakup and the probability of occurrence of the debris. The analysis must account for each mean debris impact point and the extent of the debris impact dispersion.

(k) *Flight corridor ship hazard areas.* Within a flight corridor but outside of a launch site flight hazard area, the analysis must determine a ship hazard area for each planned debris impact for the issuance of notices to mariners. Each ship hazard area must consist of an area centered on a planned impact point and must be defined by the larger of the three-sigma impact dispersion ellipse or an ellipse with the same semi-major and semi-minor axis ratio as the impact dispersion, where, if a ship were located on the boundary of the ellipse, the probability of hitting the ship would be less than or equal to 1×10^{-5}. The analysis must establish each flight corridor ship hazard area in accordance with C417.5(h) and C417.5(i) of appendix C, which apply to both orbital and suborbital launch. The analysis must demonstrate whether surveillance of a ship hazard area must take place as required by C417.5(g) of appendix C of this part.

(l) *Flight corridor aircraft hazard areas.* Within a flight corridor but outside of a launch site flight hazard area, the analysis must establish an aircraft hazard area for each planned debris impact for the issuance of notices to airmen in accordance with § 417.121(e). Each aircraft hazard area must encompass an air space region, from an altitude of 60,000 feet to impact on the Earth's surface, that contains the larger of the three-sigma drag impact dispersion or an ellipse with the same semi-major and semi-minor axis ratio as the impact dispersion, where, if an aircraft were located on the boundary of the ellipse, the probability of hitting the aircraft would be less than or equal to 1×10^{-8}. The flight safety analysis must determine flight corridor aircraft hazard areas for both orbital and suborbital launch using the methodology contained in paragraph C417.5(f) of appendix C of this part.

(m) *Flight hazard area analysis products.* The products of a flight hazard area analysis that a launch operator must submit to the FAA in accordance with § 417.203(e) must include, but need not be limited to:

(1) A chart that depicts the launch site flight hazard area, including its size and location.

(2) A chart that depicts each hazard area required by this section.

(3) A description of each hazard for which analysis was performed; the methodology used to compute each hazard area; and the debris classes for aerodynamic breakup of the launch vehicle and for flight termination. For each debris class, the launch operator must identify the number of debris fragments, the variation in ballistic coefficient, and the standard deviation of the debris dispersion.

(4) A chart that depicts each of the ship-hit contours, the individual casualty contour, and the aircraft-hit contour.

(5) A chart that depicts the flight corridor, including any regions of land overflight.

(6) A description of the aircraft hazard area for each planned debris impact inside the flight corridor, the information to be published in a Notice to Airmen, and all information required as part of any agreement with the FAA ATC office having jurisdiction over the airspace through which flight will take place.

(7) A description of any ship hazard area for each planned debris impact inside the flight corridor and all information required in a Notice to Mariners.

(8) A description of the methodology used for determining each hazard area.

(9) A description of the hazard area operational controls and procedures to be implemented for flight.

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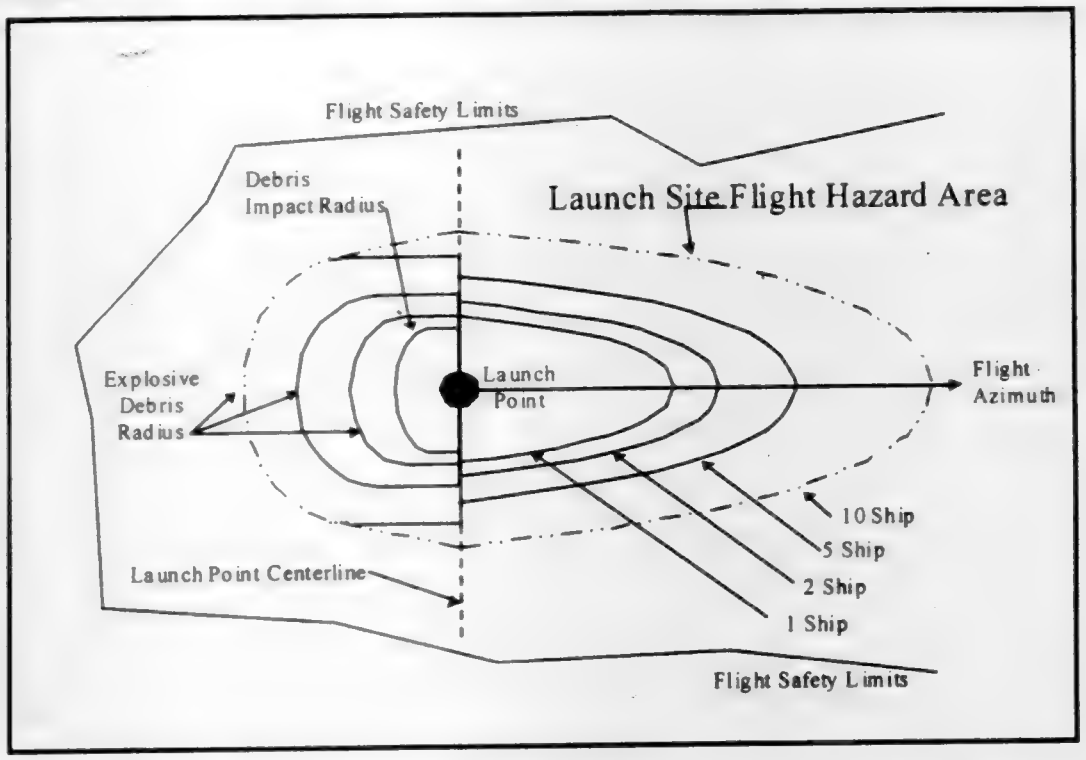

Figure A417.23- 1, Illustration of a Flight Hazard Area for a Coastal Launch Site

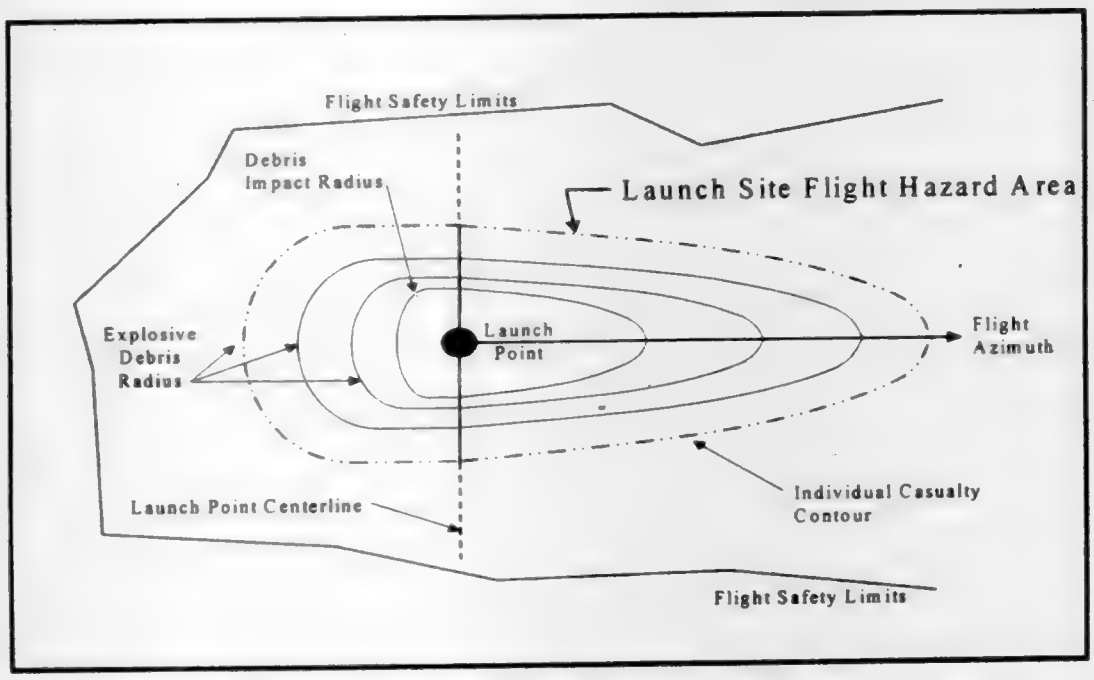

Figure A417.23- 2, Illustration of a Flight Hazard Area for an Inland Launch Site

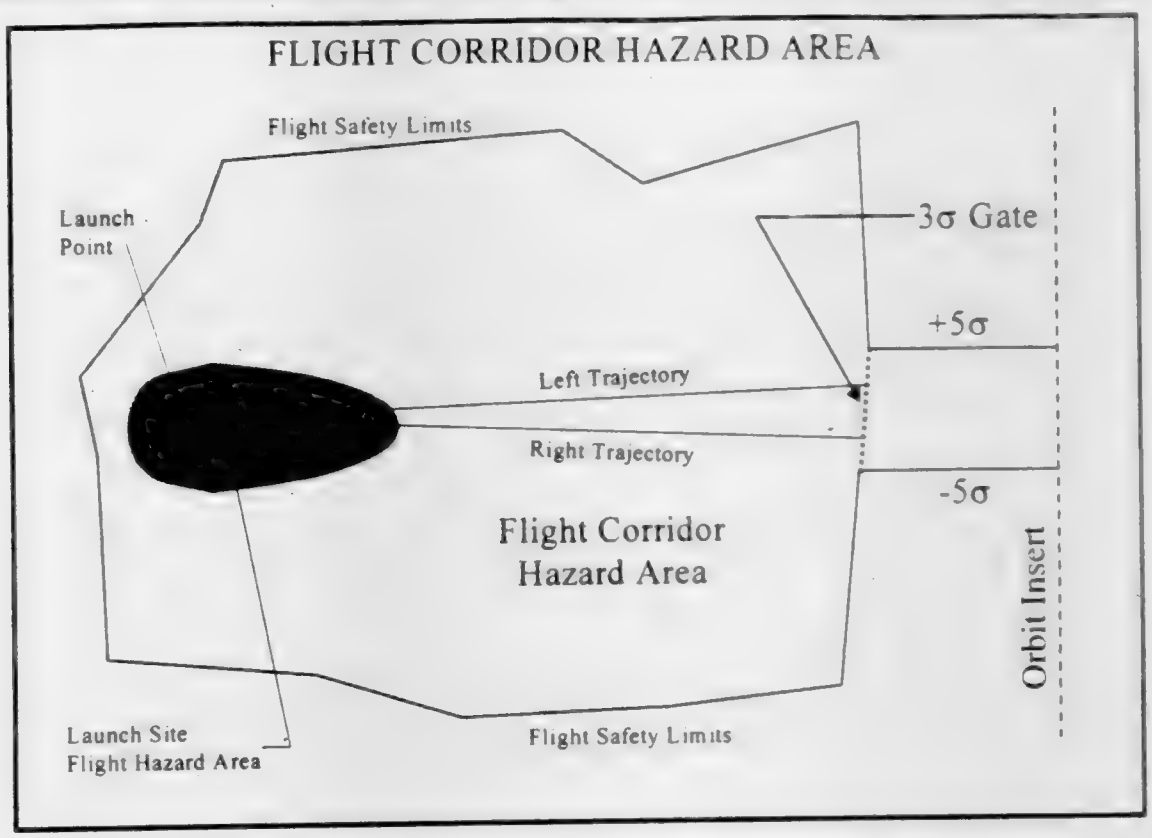

Figure A417.23- 3, Illustration of a Flight Corridor Hazard Area

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TABLE A417–1, LIQUID PROPELLANT EXPLOSIVE EQUIVALENTS

Propellant combinations	TNT equivalents
LO_2/LH_2	The larger of $8W^{2/3}$ or 14% of W. Where W is the weight of LO_2/LH_2.

TABLE A417–1, LIQUID PROPELLANT EXPLOSIVE EQUIVALENTS

Propellant combinations	TNT equivalents
LO_2/LH_2 + LO_2/RP–1.	Sum of (20% for LO_2/RP–1) the larger of $8W^{2/3}$ or 14% of W. Where W is the weight of LO_2/LH_2.
LO_2/RP–1	20% of W up to 500,000 pounds + 10% of W over 500,000 pounds.

TABLE A417–1, LIQUID PROPELLANT EXPLOSIVE EQUIVALENTS

Propellant combinations	TNT equivalents
	Where W is the weight of LO_2/RP–1.
N_2O_4/N_2H_4 (or UDMH or UDMH/N_2H_4 Mixture).	10% of W. Where W is the weight of the propellant.

TABLE A417–2, PROPELLANT HAZARD AND COMPATIBILITY GROUPINGS AND FACTORS TO BE USED WHEN CONVERTING GALLONS OF PROPELLANT INTO POUNDS

Propellant	Hazard group	Compatibility group	Pounds/gallon	F
Hydrogen Peroxide	II	A	11.6	68
Hydrazine	III	C	8.4	68
Liquid Hydrogen	III	C	0.59	–423
Liquid Oxygen	II	A	9.5	–297
Nitrogen Tetroxide	I	A	12.1	68
RP–1	I	C	6.8	68
UDMH	III	C	6.6	68
UDHM/Hydrazine	III	C	7.5	68

A417.25 Debris Risk

(a) *General.* A flight safety analysis must include a debris risk analysis that satisfies the requirements of § 417.225. The requirements of this section apply to the computation of the average number of casualties (EC) to the collective members of the public exposed to inert and explosive debris hazards from the proposed flight of a launch vehicle as required by § 417.225 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e).

(b) *Debris risk analysis constraints.* The following constraints apply to a debris risk analysis:

(1) A debris risk analysis must use the methodologies and equations of appendix B of this part.

(2) A debris risk analysis must account for the following populations:

(i) The overflight of populations located inside any flight safety limits.

(ii) All populations located within five-sigma left and right crossrange of a nominal trajectory instantaneous impact point ground trace and within five-sigma of each planned nominal debris impact.

(iii) Any planned overflight of the public within any gate overflight areas.

(iv) Any populations outside the flight safety limits identified in accordance with paragraph (b)(10) of this section.

(3) A debris risk analysis must account for both inert and explosive debris hazards produced from any impacting debris caused by normal and malfunctioning launch vehicle flight. The analysis must account for the debris classes determined by the debris analysis required by A417.11. A debris risk analysis must account for any inert debris impact with mean expected kinetic energy at impact greater than or equal to 11 ft-lb and peak incident overpressure of greater than or equal to 1.0 psi due to any explosive debris impact. The analysis must account for all debris hazards as a function of flight time.

(4) A debris risk analysis must account for debris impact points and dispersion for each class of debris in accordance with the following:

(i) A debris risk analysis must account for drag corrected impact points and dispersions for each class of impacting debris resulting from normal and malfunctioning launch vehicle flight as a function of trajectory time from lift-off through orbital insertion, including each planned impact, for an orbital launch, and through final impact for a suborbital launch.

(ii) The dispersion for each debris class must account for the position and velocity state vector dispersions at breakup, the variance produced by breakup imparted velocities, the variance produced by winds, the variance produced by aerodynamic properties for each debris class, and any other dispersion variances.

(iii) A debris risk analysis must account for the survivability of debris fragments that are subject to reentry aerodynamic forces or heating. A debris class may be eliminated from the debris risk analysis if the launch operator demonstrates that the debris will not survive to impact.

(5) A debris risk analysis must account for launch vehicle failure probability. The following constraints apply:

(i) For a launch vehicle with fewer than 15 flights, a launch operator must use a launch vehicle failure probability of 0.31.

(ii) For a launch vehicle with at least 15 flights, but fewer than 30 flights, a launch operator must use a launch vehicle failure probability of 0.10 or the empirical failure probability, whichever is greater.

(iii) For a launch vehicle with 30 or more flights, a launch operator must use the empirical failure probability determined from the actual flight history.

(iv) For a launch vehicle with a previously established failure probability that undergoes a modification to a stage, and the modification could affect the reliability of that stage, the launch operator must apply the previously established failure probability to all unmodified stages and the failure probability requirements of paragraphs (b)(5)(i) through (b)(5)(iii) of this section to the modified stage.

(6) A debris risk analysis must account for the dwell time of the instantaneous impact point ground trace over each populated or protected area being evaluated.

(7) A debris risk analysis must account for the three-sigma instantaneous impact point trajectory variations in left-crossrange, right-crossrange, uprange, and downrange as a function of trajectory time, due to launch vehicle performance variations as determined by the trajectory analysis performed in accordance with A417.7.

(8) A debris risk analysis must account for the effective casualty area as a function of launch vehicle flight time for all impacting debris generated from a catastrophic launch vehicle malfunction event or a planned impact event. The effective casualty area must account for both payload and vehicle systems and subsystems debris. The effective casualty area must account for all debris fragments determined as part of a launch operator's debris analysis in accordance with A417.11. The effective casualty area for each explosive debris fragment must account for a 1.0-psi blast overpressure radius and the projected debris effects for all potentially explosive debris. The effective casualty area for each inert debris fragment must:

(i) Account for bounce, skip, slide, and splatter effects; or

(ii) Equal seven times the maximum projected area of the fragment.

(9) A debris risk analysis must account for current population density data obtained from a current population database for the region being evaluated or by estimating the current population using exponential population growth rate equations applied to the most current historical data available. The population model must define population centers that are similar enough to be described and treated as a single average set of characteristics without degrading the accuracy of the debris risk estimate.

(10) For a launch vehicle that uses a flight safety system, a debris risk analysis must account for the collective risk to any populations outside the flight safety limits in the area surrounding the launch site during flight, including people who will be at any public launch viewing area during flight. For such populations, in addition to the constraints listed in paragraphs (b)(1) through (b)(9) of this section, a launch operator's debris risk analysis must account for the following:

(i) The probability of a launch vehicle failure that would result in debris impact in protected areas outside the flight safety limits.

(ii) The failure rate of the launch operator's flight safety system. A flight safety system failure rate of 0.002 may be used if the flight safety system complies with the flight safety system requirements of subpart D of this part. For an alternate flight safety system approved in accordance with § 417.107(a)(3), the launch operator must demonstrate the validity of the probability of failure through the licensing process.

(iii) Current population density data and population projections for the day and time of flight for the areas outside the flight safety limits.

(c) *Debris risk analysis products.* The products of a debris risk analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) A debris risk analysis report that provides the analysis input data, probabilistic risk determination methods, sample computations, and text or graphical charts that characterize the public risk to geographical areas for each launch.

(2) Geographic data showing:

(i) The launch vehicle nominal, five-sigma left-crossrange and five-sigma right-crossrange instantaneous impact point ground traces;

(ii) All exclusion zones relative to the instantaneous impact point ground traces; and

(iii) All populated areas included in the debris risk analysis.

(3) A discussion of each launch vehicle failure scenario accounted for in the analysis and the probability of occurrence, which may vary with flight time, for each failure scenario. This information must include failure scenarios where a launch vehicle:

(i) Flies within normal limits until some malfunction causes spontaneous breakup or results in a commanded flight termination;

(ii) Experiences malfunction turns; and

(iii) Flight safety system fails to function.

(4) A population model applicable to the launch overflight regions that contains the following: region identification, location of the center of each population center by geodetic latitude and longitude, total area, number of persons in each population center, and a description of the shelter characteristics within the population center.

(5) A description of the launch vehicle, including general information concerning the nature and purpose of the launch and an overview of the launch vehicle, including a scaled diagram of the general arrangement and dimensions of the vehicle. A launch operator's debris risk analysis products may reference other documentation submitted to the FAA containing this information. The launch operator must identify any changes in the launch vehicle description from that submitted during the licensing process in accordance with § 415.109(e). The description must include:

(i) Weights and dimensions of each stage.

(ii) Weights and dimensions of any booster motors attached.

(iii) The types of fuel used in each stage and booster.

(iv) Weights and dimensions of all interstage adapters and skirts.

(v) Payload dimensions, materials, construction, any payload fuel; payload fairing construction, materials, and dimensions; and any non-inert components or materials that add to the effective casualty area of the debris, such as radioactive or toxic materials or high-pressure vessels.

(6) A typical sequence of events showing times of ignition, cutoff, burnout, and jettison of each stage, firing of any ullage rockets, and starting and ending times of coast periods and control modes.

(7) The following information for each launch vehicle motor:

(i) Propellant type and composition;

(ii) Vacuum thrust profile;

(iii) Propellant weight and total motor weight as a function of time;

(iv) A description of each nozzle and steering mechanism;

(v) For solid rocket motors, internal pressure and average propellant thickness, or borehole radius, as a function of time;

(vi) Maximum impact point deviations as a function of failure time during destruct system delays. Burn rate as a function of ambient pressure;

(vii) A discussion of whether a commanded destruct could ignite a non-thrusting motor, and if so, under what conditions; and

(viii) Nozzle exit and entrance areas.

(8) The launch vehicle's launch and failure history, including a summary of past vehicle performance. For a new vehicle with little or no flight history, a launch operator must provide data on similar vehicles that include:

(i) Identification of the launches that have occurred;

(ii) Launch date, location, and direction of each launch;

(iii) The number of launches that performed normally;

(iv) Behavior and impact location of each abnormal experience;

(v) The time, altitude, and nature of each malfunction; and

(vi) Descriptions of corrective actions taken, including changes in vehicle design, flight termination, and guidance and control hardware and software.

(9) The values of probability of impact (P_I) and expected casualty (E_C) for each populated area.

A417.27 Toxic Release Hazard Analysis

A flight safety analysis must include a toxic release hazard analysis that satisfies the requirements of § 417.227. A launch operator's toxic release hazard analysis must satisfy the methodology requirements contained in appendix I of part 417. A launch operator must submit the analysis products identified in appendix I as required by § 417.203(e).

A417.29 Far Field Blast Overpressure Effects

(a) *General.* A flight safety analysis must include a far field blast overpressure effects hazard analysis that satisfies the requirements of § 417.229. The requirements of this section apply to the computation of far field blast overpressure effects from the proposed flight of a launch vehicle as required by § 417.229 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e). The analysis must account for distant focus overpressure and any overpressure enhancement to establish the potential for broken windows due to peak incident overpressures below 1.0 psi and related casualties due to falling or projected glass shards. The analysis must employ either paragraph (b) of this section or the risk analysis of paragraph (c) of this section.

(b) *Far field blast overpressure hazard analysis.* Unless an analysis satisfies the requirements of paragraph (c) of this section a far field blast overpressure hazard analysis must satisfy the following:

(1) *Explosive yield factors.* The analysis must use explosive yield factor curves for each type or class of solid or liquid propellant used by the launch vehicle. Each explosive yield factor curve must be based on the most accurate explosive yield data for the corresponding type or class of solid or liquid propellant based on empirical data or computational modeling.

(2) *Establish the maximum credible explosive yield.* The analysis must establish the maximum credible explosive yield resulting from normal and malfunctioning launch vehicle flight. The explosive yield must account for impact mass and velocity of impact on the Earth's surface. The analysis must account for explosive yield expressed as a TNT equivalent for peak overpressure.

(3) *Characterize the population exposed to the hazard.* The analysis must demonstrate whether any population centers are vulnerable to a distant focus overpressure hazard using the methodology provided by section 6.3.2.4 of the American National Standard Institute's ANSI S2.20–1983, "Estimating Air Blast Characteristics for Single Point Explosions in Air with a Guide to Evaluation of Atmospheric Propagation and Effects" and in accordance with the following:

(i) For the purposes of this analysis, a population center must include any area outside the launch site and not under the launch operator's control that contains an exposed site. An exposed site includes any structure that may be occupied by human beings, and that has at least one window, but does not include automobiles, airplanes, and waterborne vessels. The analysis must account for the most recent census information on each population center. The analysis must treat any exposed site for which no census information is available, or the census information indicates a population equal to or less than four persons, as a 'single residence.'

(ii) The analysis must identify the distance between the location of the maximum credible impact explosion and the location of each population center potentially exposed. Unless the location of the potential explosion site is limited to a defined region, the analysis must account for the distance between the potential explosion site and a population center as the minimum distance between any point within the region contained by the flight safety limits and the nearest exposed site within the population center.

(iii) The analysis must account for weather conditions optimized for a distant focus overpressure hazard and use an atmospheric blast "focus factor" (F) of 5.

(iv) The analysis must determine, using the methodology of section 6.3.2.4 of ANSI S2.20–1983, for each a population center, whether the maximum credible explosive yield of a launch meets, exceeds or is less than the "no damage yield limit," of the population center. If the maximum credible explosive yield is less than the "no damage yield limit" for all exposed sites, the remaining requirements of this section do not apply. If the maximum credible explosive yield meets or exceeds the "no damage yield limit" for a population center then that population center is vulnerable to far field blast overpressure from the launch and the requirements of paragraphs (b)(4) and (b)(5) of this section apply.

(4) *Estimate the quantity of broken windows.* The analysis must use a focus factor of 5 and the methods provided by ANSI S2.20–1983 to estimate the number of potential broken windows within each population center determined to be vulnerable to the distant focus overpressure hazard in accordance with paragraph (b)(3) of this section.

(5) *Determine and implement measures necessary to prevent distant focus overpressure from breaking windows.* For each population center that is vulnerable to far field blast overpressure from a launch, the analysis must identify mitigation measures to protect the public from serious injury from broken windows and the flight commit criteria of § 417.113(b) needed to enforce the mitigation measures. A launch operator's mitigation measures must include one or more of the following:

(i) Apply a minimum 4-millimeter thick anti-shatter film to all exposed sites where the maximum credible yield exceeds the "no damage yield limit."

(ii) Evacuate the exposed public to a location that is not vulnerable to the distant focus overpressure hazard at least two hours prior to the planned flight time.

(iii) If, in accordance with paragraph (b)(4) of this section, the analysis predicts that less than 20 windows will break, advise the public of the potential for glass breakage.

(c) *Far field blast overpressure risk analysis.* If a launch operator does not employ paragraph (b) of this section to perform a far field overpressure hazard analysis, the launch operator must conduct a risk analysis that demonstrates that the launch will be conducted in accordance with the public risk criteria of § 417.107(b).

(d) *Far field blast overpressure effect products.* The products of a far field blast overpressure analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) A description of the methodology used to produce the far field blast overpressure analysis results, a tabular description of the analysis input data, and a description of any far field blast overpressure mitigation measures implemented.

(2) For any far field blast overpressure risk analysis, an example set of the analysis computations.

(3) The values for the maximum credible explosive yield as a function of time of flight.

(4) The distance between the potential explosion location and any population center vulnerable to the far field blast overpressure hazard. For each population center, the launch operator must identify the exposed populations by location and number of people.

(5) Any mitigation measures established to protect the public from far field blast overpressure hazards and any flight commit criteria established to ensure the mitigation measures are enforced.

A417.31 Collision Avoidance

(a) *General.* A flight safety analysis must include a collision avoidance analysis that satisfies the requirements of § 417.231. The

requirements of this section apply to the process of obtaining a collision avoidance assessment from United States Space Command as required by § 417.231 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e). United States Space Command refers to a collision avoidance analysis for a space launch as a conjunction on launch assessment.

(b) *Analysis constraints.* A launch operator must satisfy the following when obtaining and implementing the results of a collision avoidance analysis:

(1) A launch operator must provide United States Space Command with the launch window and trajectory data needed to perform a conjunction on launch assessment for a launch as required by paragraph (c) of this section, at least 15 days before the first attempt at flight. The FAA will identify a launch operator to United States Space Command as part of issuing a license and provide a launch operator with current United States Space Command contact information.

(2) A launch operator must obtain a conjunction on launch assessment performed by United States Space Command 6 hours before the beginning of a launch window.

(3) A launch operator may use a conjunction on launch assessment for 12 hours from the time that United States Space Command determines the state vectors of the habitable orbiting objects. If a launch operator needs an updated conjunction on launch assessment due to a launch delay, the launch operator must submit the request to United States Space Command at least 12 hours prior to the beginning of the new launch window.

(4) For every 90 minutes, or portion of 90 minutes, that pass between the time United States Space Command last determined the state vectors of the orbiting objects, a launch operator must expand each wait in a launch window by subtracting 15 seconds from the start of the wait in the launch window and adding 15 seconds to the end of the wait in the launch window. A launch operator must incorporate all the resulting waits in the launch window into its flight commit criteria established as required by § 417.113.

(c) *Information required.* A launch operator must prepare a conjunction on launch assessment worksheet for each launch using a standardized format that contains the input data required by this paragraph. A launch operator must submit the input data to United States Space Command for the purposes of completing a conjunction on launch assessment. A launch operator must submit the input data to the FAA as part of the license application process in accordance with § 415.115.

(1) *Launch information.* A launch operator must submit the following launch information:

(i) *Mission name.* A mnemonic given to the launch vehicle/payload combination identifying the launch mission from all others.

(ii) *Segment number.* A segment is defined as a launch vehicle stage or payload after the thrusting portion of its flight has ended. This includes the jettison or deployment of any stage or payload. A launch operator must provide a separate worksheet for each segment. For each segment, a launch operator must determine the "vector at injection" as defined by paragraph (c)(5) of this section. The data must present each segment number as a sequence number relative to the total number of segments for a launch, such as "1 of 5."

(iii) *Launch window.* The launch window opening and closing times in Greenwich Mean Time (referred to as ZULU time) and the Julian dates for each scheduled launch attempt.

(2) *Point of contact.* The person or office within a launch operator's organization that collects, analyzes, and distributes conjunction on launch assessment results.

(3) *Conjunction on launch assessment analysis results transmission medium.* A launch operator must identify the transmission medium, such as voice, FAX, or e-mail, for receiving results from United States Space Command.

(4) *Requestor launch operator needs.* A launch operator must indicate the types of analysis output formats required for establishing flight commit criteria for a launch:

(i) *Waits.* All the times within the launch window during which flight must not be initiated.

(ii) *Windows.* All the times within an overall launch window during which flight may be initiated.

(5) *Vector at injection.* A launch operator must identify the vector at injection for each segment. "Vector at injection" identifies the position and velocity of all orbital or suborbital segments after the thrust for a segment has ended.

(i) *Epoch.* The epoch time, in Greenwich Mean Time (GMT), of the expected launch vehicle liftoff time.

(ii) *Position and velocity.* The position coordinates in the EFG coordinate system measured in kilometers and the EFG components measured in kilometers per second, of each launch vehicle stage or payload after any burnout, jettison, or deployment.

(6) *Time of powered flight.* The elapsed time in seconds, from liftoff to arrival at the launch vehicle vector at injection. The input data must include the time of powered flight for each stage or jettisoned component measured from liftoff.

(7) *Time span for launch window file (LWF).* A launch operator must provide the following information regarding its launch window:

(i) *Launch window.* The launch window measured in minutes from the initial proposed liftoff time.

(ii) *Time of powered flight.* The time provided in accordance with paragraph (c)(6) of this section measured in minutes rounded up to the nearest integer minute.

(iii) *Screen duration.* The time duration, after all thrusting periods of flight have ended, that a conjunction on launch assessment must screen for potential conjunctions with habitable orbital objects. Screen duration is measured in minutes and must be greater than or equal to 100 minutes for an orbital launch.

(iv) *Extra pad.* An additional period of time for conjunction on launch assessment screening to ensure the entire first orbit is screened for potential conjunctions with habitable orbital objects. This time must be 10 minutes unless otherwise specified by United States Space Command.

(v) *Total.* The summation total of the time spans provided in accordance with paragraphs (c)(7)(i) through (c)(7)(iv) expressed in minutes.

(8) *Screening.* A launch operator must select spherical or ellipsoidal screening as defined in this paragraph for determining any conjunction. The default must be the spherical screening method using an avoidance radius of 200 kilometers for habitable orbiting objects. If the launch operator requests screening for any uninhabitable objects, the default must be the spherical screening method using a miss-distance of 25 kilometers.

(i) *Spherical screening.* Spherical screening utilizes an impact exclusion sphere centered on each orbiting object's center-of-mass to determine any conjunction. A launch operator must specify the avoidance radius for habitable objects and for any uninhabitable objects if the launch operator elects to perform the analysis for uninhabitable objects.

(ii) *Ellipsoidal screening.* Ellipsoidal screening utilizes an impact exclusion ellipsoid of revolution centered on the orbiting object's center-of-mass to determine any conjunction. A launch operator must provide input in the UVW coordinate system in kilometers. The launch operator must provide delta-U measured in the radial-track direction, delta –V measured in the in-track direction, and delta –W measured in the cross-track direction.

(9) *Orbiting objects to evaluate.* A launch operator must identify the orbiting objects to be included in the analysis.

(10) *Deliverable schedule/need dates.* A launch operator must identify the times before flight, referred to as "L-times," for which the launch operator requests a conjunction on launch assessment.

(d) *Collision avoidance assessment products.* A launch operator must submit its conjunction on launch assessment products as required by § 417.203(e) and must include the input data required by paragraph (c) of this section. A launch operator must incorporate the result of the conjunction on launch assessment into its flight commit criteria established in accordance with § 417.113.

A417.33 Unguided Suborbital Rocket Flown With a Wind Weighting Safety System

For launch of an unguided suborbital rocket flown with a wind weighting safety system, the flight safety analysis must satisfy the requirements of § 417.233. The analysis for an unguided suborbital rocket flown with a wind weighting safety system must incorporate the methodologies for trajectory analysis, flight hazard area analysis, and wind weighting analysis contained in appendix C of this part. The analysis must also include a debris risk analysis performed in accordance with A417.25 and appendix B of this part and a collision avoidance analysis performed in accordance with A417.31.

28. In B417.1 as proposed to be revised at 65 FR 64050, revise "§ 417.227" to read "§ 417.225" each place it appears.

29. In B417.3 as proposed to be revised at 65 FR 64050, revise "§ 417.227(b)(5)" to read "§ 417.225".

30. In B417.5(b)(1) as proposed to be revised at 65 FR 64051, revise "§ 417.205" to read "§ 417.207 and A417.7".

31. In B417.5(b)(2) as proposed to be revised at 65 FR 64051, revise "§ 417.227(b)(6)" to read "A417.25".

32. In B417.5(b)(3) as proposed to be revised at 65 FR 64051, revise "§ 417.209" to read "§ 417.211 and A417.11".

33. In B417.5(c) as proposed to be revised at 65 FR 64051, revise "§ 417.205(c)" to read "§ 417.207 and A417.7".

34. In B417.7(a) as proposed to be revised at 65 FR 64052, revise "§ 417.227(b)(11)" to read "§ 417.225 and A417.25".

35. In B417.9(a) as proposed to be revised at 65 FR 64056, revise "§ 417.227" to read "A417.25".

36. In C417.1 as proposed to be revised at 65 FR 64057, revise "§ 417.235" to read "§ 7.233".

37. In C417.3(g) introductory text as proposed to be revised at 65 FR 64059, revise "§ 417.235(g)" to read "A417.203(e)".

38. In C417.5(a) as proposed to be revised at 65 FR 64059, revise "§ 417.235(c)" to read "§ 417.233".

39. In C417.5(j) as proposed to be revised at 65 FR 64062, revise "§ 417.235(c)" to read "§ 417.203(e)".

40. In C417.7(d) as proposed to be revised at 65 FR 64063, revise "§ 417.235(g)" to read "§ 417.203(e)".

41. In D417.13(b) as proposed to be revised at 65 FR 64067, revise "§ 417.223(b)(3)" to read "§ 417.221 and A417.21".

42. In D417.19(a) as proposed to be revised at 65 FR 64068, revise "§ 417.221(c)" to read "§ 417.219 and A417.19".

43. In I417.1 as proposed to be revised at 65 FR 64116, revise "§ 417.229"to read "§ 417.227".

44. In I417.5(e) introductory text as proposed to be revised at 65 FR 64119, revise "§ 417.203(c)" to read "§ 417.203(e)".

Issued in Washington, DC on July 15, 2002.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 02–18340 Filed 7–29–02; 8:45 am]

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Federal Register

Tuesday,
July 30, 2002

Part IV

Federal Retirement Thrift Investment Board

5 CFR Parts 1605, 1620, 1651, and 1655
Correction of Administrative Errors; Expanded and Continuing Eligibility; Death Benefits; Loan Program; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1605, 1620, 1651 and 1655

Correction of Administrative Errors; Expanded and Continuing Eligibility; Death Benefits; Loan Program

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is revising the Board's Uniformed Services Employment and Reemployment Rights Act (USERRA) regulations regarding Thrift Savings Plan (TSP) contributions and loan payments, and updating the definitions used in those regulations. The Executive Director is also amending the Board's death benefit regulations to allow the spouse of a deceased participant to transfer a TSP death benefit payment to an eligible retirement plan or to the spouse's existing TSP account. Finally, the Executive Director is amending the Board's loan regulations to explain that the Soldiers' and Sailors' Civil Relief Act of 1940 allows a participant returning to civilian service from active duty military service to reduce to 6 percent the interest rate owed on a TSP loan for the period of missed TSP loan payments due to military leave.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Merritt A. Willing or Patrick J. Forrest on (202) 942–1661. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

The Board published these regulations in proposed form in the **Federal Register** on May 17, 2002 (67 FR 35051). The Board received several comments on those regulations, which are discussed by section below.

Proposed § 1605.31(c) explains how a Federal Employees' Retirement System (FERS) employee who separates or enters nonpay status to perform military service will receive agency makeup TSP contributions to his or her civilian account when he or she is reemployed or returned to pay status in the civilian service. One commenter asked the Board to state expressly that the employee otherwise must be eligible to receive civilian agency contributions before being eligible to receive those agency makeup contributions. Final § 1605.31(c) contains that statement.

Proposed § 1620.42 pertains to contribution elections filed by TSP participants who are reemployed or restored to pay status in the civilian service under USERRA. One commenter asked the Board to state expressly that agencies must reinstate contribution elections that were on file when the participant separated or entered nonpay status to perform miliary service, unless a new election is filed. Agencies retain the records of employees who enter nonpay status; therefore, they must reinstate a contribution election if the participant returns to pay status from a nonpay status unless a new election is filed. However, agencies do not necessarily maintain the records of employees who separate; therefore, an agency is not required to reinstate a contribution election if the participant is reemployed. Final § 1620.42(b) informs participants and agencies of this distinction.

Proposed §§ 1651.2, 1651.5, and 1651.14 pertain to the payment of a TSP death benefit to the spouse of a participant. One commenter urged the Board to "work with Congress" to extend certain tax benefits now available for surviving spouses to surviving same sex partners. The commenter acknowledged that this would require a change in statute. The Board has a longstanding practice of taking no position on benefit levels and views them as matters for the Congress and the Administration to debate and conclude. The Board is neither chartered nor staffed to analyze, advocate, or oppose them.

The final comment concerns proposed § 1651.14, which explains that the spouse of a deceased participant may request the TSP to transfer all or a portion of a TSP death benefit to the spouse's TSP account if he or she already has one. The commenter asked if the TSP would apply this rule retroactively. The TSP applied this rule as early as permitted by statute. Before January 1, 2002, under the Internal Revenue Code (I.R.C.) a TSP death benefit could be transferred only to an individual retirement account. However, the I.R.C. was amended effective January 1, 2002, to allow a death benefit to be transferred to any eligible retirement plan, including the TSP. *See* 26 U.S.C. 402(c)(8), (c)(9). The Board decided to offer the death benefit transfer option to all qualified spouses at the earliest possible point permitted by statute, *i.e.*, in January 2002. Therefore, the TSP notified each qualified spouse who was to be paid a TSP death benefit in January 2002 that he or she could transfer that payment to his or her TSP account. The current rule merely codifies that practice.

After publication of the proposed rule, Board staff reconsidered the wording in two of its provisions and made minor changes. First, proposed § 1605.31(d) pertains to the payment of lost earnings and states that agencies will submit "lost earnings records." Those records will not exist when the new record keeping system is introduced; therefore, final § 1605.31(d) does not mention records. The rule continues to be, however, that agencies are required to make these payments. Second, the proposed definition of "retroactive period" at § 1620.41 discusses "retroactive agency contributions," which are more accurately described as "missed agency contributions" in the final definition.

Accordingly, the Board is publishing the proposed rule as a final rule, with the above-mentioned minor modifications.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller

General of the United States before publication of this rule in today's **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Part 1605

Claims, Employee benefit plans, Government employees, Military personnel, Pensions, Retirement.

5 CFR Part 1620

District of Columbia, Employee benefit plans, Government employees, Military personnel, Pensions, Retirement.

5 CFR Part 1651

Employee benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1655

Employee benefit plans, Government employees, Military personnel, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, 5 CFR chapter VI is amended as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

1. The authority citation for part 1605 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432a, and 8474(b)(5) and (c)(1).

Section 1605.14 also issued under Title II, Pub. L. 106–265, 114 Stat. 770.

Subpart D also issued under 5 U.S.C. 8432b(b)(4) and (i), 8440e.

Subpart D—Miscellaneous Provisions

2. Section 1605.31 is revised to read as follows:

§ 1605.31 Contributions missed as a result of military service.

(a) *Applicability.* This section applies to employees who meet the conditions specified at 5 CFR 1620.40 and who are eligible to make up employee contributions or to receive employing agency contributions missed as a result of military service.

(b) *Missed employee contributions.* An employee who separates or enters nonpay status to perform military service may be eligible to make up TSP contributions when he or she is reemployed or restored to pay status in the civilian service. Eligibility for making up missed employee contributions will be determined in accordance with the rules specified at 5 CFR part 1620, subpart E. Missed employee contributions must be made up in accordance with the rules set out in § 1605.11(c) and the following procedures:

(1) The employing agency will use the contribution election on file for the employee at the time he or she separated or was placed in nonpay status. If an employee terminated TSP contributions within two months before entry into military service, he or she may make a retroactive election to resume contributions for the first open season following the termination. The employee may also make retroactive contribution elections for any open season that occurred during the period of military service, as described at 5 CFR 1620.42.

(2) The pay used to determine the amount of contributions eligible for makeup is the pay the employee would have earned had he or she remained continuously employed in the position held immediately before the separation or placement in nonpay status.

(3) If the employee contributed to a uniformed services TSP account during the period of military service, the amount of employee contributions available for makeup will be reduced by the total amount of employee contributions made to the uniformed services TSP account. (This includes contributions from basic pay, incentive pay, and special pay, including bonus pay.)

(c) *Missed agency contributions.* This paragraph (c) applies only to an employee who would have been eligible to receive agency contributions had he or she remained in civilian service or pay status. A FERS employee who separates or enters nonpay status to perform military service is eligible to receive agency makeup contributions when he or she is reemployed or restored to pay status in the civilian service, as follows:

(1) The employee is entitled to receive the agency automatic (1%) contributions that he or she would have received had the employee remained in civilian service or pay status. Within 60 days of the employee's reemployment or restoration to pay status, the employing agency must calculate the agency automatic (1%) makeup contributions and report those contributions to the record keeper. After the contribution has been reported, the agency must submit lost earnings records for the contribution.

(2) An employee who contributed to a uniformed services TSP account during the period of military service is also immediately entitled to receive agency matching makeup contributions to his or her civilian account for the employee contributions to the uniformed services account that were deducted from his or her basic pay, subject to any reduction in matching contributions required by paragraph (c)(4) of this section. However, an employee is not entitled to receive agency matching makeup contributions on contributions that were deducted from his or her incentive pay or special pay, including bonus pay, while performing military service.

(3) An employee who makes up missed contributions is entitled to receive attributable agency matching makeup contributions (unless the employee has already received the maximum amount of matching contributions, as described in paragraphs (c)(2) and (c)(4) of this section).

(4) If the employee received uniformed services matching contributions, the agency matching makeup contributions will be reduced by the amount of the uniformed services matching contributions.

(d) *Lost earnings.* The employee is entitled to lost earnings on missed agency contributions made under paragraph (c) of this section. The employee will elect to have the lost earnings calculated using either the rates of return based on the contributions allocation(s) on file for the participant during the period of military service or using the rates of return for the G Fund; the participant must make this election at the same time his or her makeup schedule is established pursuant to § 1605.11(c).

PART 1620—EXPANDED AND CONTINUING ELIGIBILITY

3. The authority citation for part 1620 is revised to read as follows:

Authority: 5 U.S.C. 8474(b)(5) and (c)(1).

Subpart C also issued under 5 U.S.C. 8440a(b)(7), 8440b(b)(8), and 8440c(b)(8).

Subpart D also issued under sec. 1043(b), Pub. L. 104–106, 110 Stat. 186, 434–435; and sec. 7202(m)(2), Pub. L. 101–508, 104 Stat. 1388.

Subpart E also issued under 5 U.S.C. 8432b(i) and 8440e.

Subpart E—Uniformed Services Employment and Reemployment Rights Act (USERRA)—Covered Military Service

4. Section 1620.41 is revised to read as follows:

§ 1620.41 Definitions.

As used in this subpart:

Current contributions means contributions that must be made for the

current pay date which is reported on the journal voucher that accompanies the payroll submission.

Nonpay status means an employer-approved temporary absence from duty.

Reemployed or returned to pay status means reemployed in or returned to a pay status, pursuant to 38 U.S.C. chapter 43, to a position that is subject to 5 U.S.C. 8351 or chapter 84.

Retroactive period means the period for which an employee can make up missed employee contributions and receive missed agency contributions. It begins the day after the employee separates or enters nonpay status to perform military service and ends when the employee is reemployed or returned to pay status.

Separate from civilian service means to cease employment with the Federal Government, the U.S. Postal Service, or with any other employer from a position that is deemed to be civilian Government employment for purposes of participating in the TSP, for 31 or more full calendar days.

5. Section 1620.42 is revised to read as follows:

§ 1620.42 Processing TSP contribution elections.

(a) *Time for filing election.* Upon reemployment or return to pay status, an employee has 60 days to submit contribution elections to make current contributions and to make up missed contributions. An employee's right to make a retroactive TSP contribution election will expire if the election is not made within 60 days of the participant's reemployment or return to pay status. After the 60-day contribution election period expires, the employee must wait for an open season to submit a contribution election to make current contributions.

(b) *Current contributions.* If the employee entered nonpay status with a valid contribution election on file, the agency must immediately reinstate that election for current contributions when the employee returns to pay status, unless the employee files a new contribution election as described in paragraph (a) of this section. If the employee separated to perform military service, the agency is not required to reinstate a prior contribution election. An election to make current contributions will be effective as soon as administratively feasible, but no later than the first day of the first full pay period after it is received by the employing agency.

(c) *Makeup contributions.* An election to make up contributions will be processed as follows:

(1) If the employee had a valid contribution election on file when he or she separated or entered nonpay status to perform military service, that election form will be reinstated for purposes of makeup contributions, unless the employee submits new contribution elections effective for any missed open season.

(2) An employee who terminated contributions within two months of entering military service will be eligible to make a retroactive contribution election for the first open season that occurs after the effective date that the contributions were terminated. This election may be made even if the termination was made outside an open season.

6. Section 1620.44 is amended by revising the last sentence to read as follows:

§ 1620.44 Restoring forfeited agency automatic (1%) contributions.

* * * The employing agency will follow the procedure described in § 1620.46(e) to have those funds restored.

7. Section 1620.45 is revised to read as follows:

§ 1620.45 Suspending TSP loans, restoring post-employment withdrawals, and reversing taxable distributions.

(a) *Suspending TSP loans during nonpay status.* If the TSP is notified that an employee entered into a nonpay status to perform military service, any outstanding TSP loan from a civilian TSP account will be suspended, that is, it will not be declared a taxable distribution while the employee is performing military service.

(1) Interest will accrue on the loan balance during the period of suspension. When the employee returns to civilian pay status, the employing agency will resume the deduction of loan payments from the participant's basic pay and the TSP will reamortize the loan (which will include interest accrued during the period of military service). The loan repayment term will be extended by the employee's period of military service. Consequently, when the employee returns to pay status, the TSP record keeper must receive documentation to show the beginning and ending dates of military service.

(2) If the TSP does not receive documentation that the employee entered into nonpay status to perform military service and the period of missed loan repayments extends beyond one year, the loan will be closed and the outstanding loan balance (including accrued interest) will be declared a taxable distribution. However, the taxable distribution can be reversed in accordance with paragraph (c) of this section.

(b) *Restoring post-employment withdrawals.* An employee who separates from civilian service to perform military service and who receives an automatic cashout of his or her account may return to the TSP an amount equal to the amount of the payment. The employee must notify the TSP record keeper of his or her intent to return the withdrawn funds within 90 days of the date the employee returns to civilian service or pay status; if the employee is eligible to return a withdrawal, the TSP record keeper will then inform the employee of the actions that must be taken to return the funds.

(c) *Reversing taxable distributions.* An employee may request that a taxable loan distribution be reversed if the taxable distribution resulted from the employee's separation or placement in nonpay status to perform military service. The TSP will reverse the taxable distribution under the process described as follows:

(1) An employee who received a post-employment withdrawal when he or she separated to perform military service can have a taxable distribution reversed only if the withdrawn amount is returned as described in paragraph (b) of this section;

(2) A taxable loan distribution can be reversed either by reinstating the loan or by repaying it in full. The TSP loan can be reinstated only if the employee agrees to repay the loan within the original loan repayment term plus the length of military service, and if, after reinstatement of the loan, the employee will have no more than two outstanding loans, only one of which is a residential loan; and

(3) The employee must notify the TSP record keeper of his or her intent to reverse a taxable loan distribution within 90 days of the date the employee returns to civilian service or pay status; if the employee is eligible to reverse a taxable loan distribution, the TSP record keeper will then inform the employee of the actions that must be taken to reverse the distribution.

(d) *Earnings.* Employees will not receive retroactive earnings on amounts returned to their accounts under this section.

PART 1651—DEATH BENEFITS

8. The authority citation for part 1651 is revised to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

9. Section 1651.1 is amended by adding a new definition, in alphabetical order, to read as follows:

§ 1651.1 Definitions.

* * * * *

Eligible retirement plan means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)); an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract); a qualified trust; an annuity plan described in I.R.C. section 403(a) (26 U.S.C. 403(a)); an annuity contract described in I.R.C. section 403(b) (26 U.S.C. 403(b)); and an eligible deferred compensation plan described in I.R.C. section 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. section 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)).

* * * * *

10. Section 1651.2 is amended by revising paragraph (a)(2) to read as follows:

§ 1651.2 Entitlement to benefits.

(a) * * *

(2) If there is no designated beneficiary, to the spouse of the participant in accordance with § 1651.5;

* * * * *

11. Section 1651.5 is amended by revising the section heading and the first sentence to read as follows:

§ 1651.5 Spouse of the participant.

For purposes of payment under § 1651.2(a)(2), the spouse of the participant is the person to whom the participant was married on the date of death. * * *

12. Section 1651.14 is amended by revising paragraph (c) to read as follows:

§ 1651.14 How payment is made.

* * * * *

(c) *Payment to the participant's spouse.* The spouse of the participant may request that the TSP transfer all or a portion of the payment to an eligible retirement plan (including the spouse's TSP account, if he or she already has one). A transfer to a spouse's TSP account is permitted only if the spouse is not receiving monthly payments from the account. In order to request such a transfer, a spouse must file Form TSP–13–S, Spouse's Election to Transfer to IRA or Other Eligible Retirement Plan, with the TSP record keeper.

* * * * *

PART 1655—LOAN PROGRAM

13. The authority citation for part 1655 is revised to read as follows:

Authority: 5 U.S.C. 8433(g) and 8474; 50 U.S.C. App. 526.

14. Section 1655.7 is amended by revising paragraph (c) to read as follows:

§ 1655.7 Interest rate.

* * * * *

(c) The interest rate calculated under this section remains fixed until the loan is repaid, unless the participant informs the TSP record keeper that he or she entered into active duty military service and requests that the interest rate on a loan issued before entry into active duty military service be reduced to an annual rate of 6 percent for the period of such service. The participant must provide the record keeper with the beginning and ending dates of active duty military service.

[FR Doc. 02–19159 Filed 7–29–02; 8:45 am]

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Federal Register

Tuesday,
July 30, 2002

Part V

Environmental Protection Agency

Fiftieth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0026; FRL–7183–7]

Fiftieth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its 50th ITC Report to the Administrator of EPA on May 28, 2002. In the 50th ITC Report, which is included with this notice, the ITC is rescinding its request in the 48th ITC Report to EPA for the addition to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule of 12 of the 15 Degradation Effects Bioconcentration Information Testing Strategies (DEBITS) chemicals. However, the ITC is asking EPA to add 3 chemicals to the PAIR rule and 3 chemicals to the TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rule.

The ITC is adding 2 chemicals and removing 36 chemicals from the *Priority Testing List.*

The ITC is soliciting comments on its Voluntary Information Submissions Innovative Online Network (VISION) and Voluntary Information Submissions Policy (VISP).

DATES: Comments, identified by docket ID number OPPT–2002–0026, must be received on or before August 29, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPT–2002–0026 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John D. Walker, ITC Executive Director (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7526; fax: (202) 564–7528; e-mail address: walker.johnd@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may also access additional information about the ITC and the TSCA testing program through the web site for the Office of Prevention, Pesticides and Toxic Substances (OPPTS) at http://www.epa.gov/opptsfrs/home/opptsim.htm/, or go directly to the ITC home page at http://www.epa.gov/opptintr/itc/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPT–2002–0026. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPT–2002–0026 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPT–2002–0026. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the 50th ITC Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Offer alternatives for improvement.
6. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

A. The 50th ITC Report

The 50th ITC Report was transmitted to EPA's Administrator on May 28, 2002, and is included in this notice.

In the 50th ITC Report, the ITC:

1. Rescinds its request in the 48th ITC Report to EPA for the addition to the PAIR rule of 12 of the 15 DEBITS chemicals. The 12 DEBITS chemicals are 3 "chloroalkenes," 5 "chlorinated trihalomethyl pyridines," 1 "trihaloethylidene bisbenzene" (benzene, 1,1'-(2,2,2-trichloroethylidene)bis-, CAS No. 2971–22–4); and 3 "trichlorophenyldihydropyrazols" (benzamide, 3-amino-N-[4,5-dihydro-5-oxo-1-(2,4,6-trichlorophenyl)-1H-pyrazol-3-yl]-, CAS No. 40567–18–8); 3H-pyrazol-3-one, 5-((5-amino-2-chlorophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)-, CAS No. 53411–33–9; and benzamide, N-(4,5-dihydro-5-oxo-1-(2,4,6-trichlorophenyl)-1H-pyrazol-3-yl)-3-nitro-, CAS No. 63134–25–8. The ITC is not rescinding its request in the 48th ITC Report to add benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-, CAS No. 29091–20–1; 3H-pyrazol-3-one, 5-((2-chloro-5-nitrophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)-, CAS No. 30707–68–7; and phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis-, CAS No. 1478–61–1 to the PAIR rule.

2. Adds 3 chemicals to the PAIR rule: 1 DEBITS chemical (stannane, dimethylbis[(1-oxoneodecyl)oxy]-, CAS No. 68928–76–7) from the 49th Report; 1 DEBITS chemical (benzene, 1,3,5-tribromo-2-(2-propenyloxy)-, CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl-, CAS No. 136–35–6 from the 50th ITC Report.

3. Adds stannane, dimethylbis[(1-oxoneodecyl)oxy]-, CAS No. 68928–76–7; benzene, 1,3,5-tribromo-2-(2-propenyloxy)-, CAS No. 3278–89–5; and 1-triazene, 1,3-diphenyl-, CAS No. 136–35–6 to the TSCA section 8(d) HaSDR rule.

4. Solicits comments on its VISION and VISP.

B. Status of the Priority Testing List

The ITC is adding benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl- (CAS No. 136–35–6) to the *Priority Testing List*. The ITC is removing acetone, 9 "alkylphenols" and "alkylphenol ethoxylates" added in the 37th ITC Report, 7 "nonylphenol ethoxylates" added in the 39th ITC Report, 4 "alkylphenols" and "alkylphenol ethoxylates" added in the 41st ITC Report, 3 DEBITS chemicals added in the 46th ITC Report, 3 DEBITS chemicals (3 "chloroalkenes") added in the 47th ITC Report, and 9 DEBITS chemicals added in the 48th ITC Report from the *Priority Testing List*. The current TSCA 4(e) *Priority Testing List* as of May 2002 can be found in Table 1 of the 50th ITC Report which is included in this notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: July 22, 2002.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Fiftieth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

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4. Three DEBITS chemicals from the 47th ITC Report.
5. Nine DEBITS chemicals from the 48th ITC Report.
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SUMMARY

In this 50th ITC Report, the ITC is rescinding its request to the EPA to add 12 Degradation Effects Bioconcentration Information Testing Strategies (DEBITS) chemicals to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule (3 DEBITS chemicals from the 47th ITC Report and 9 DEBITS chemicals from the 48th ITC Report). However, the ITC is asking the EPA to add 6 chemicals to the PAIR rule, 3 DEBITS chemicals (3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-benzeneamine, 3H-pyrazol-3-one; 5-((2-chloro-5-nitrophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)-; and phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis-), from the 48th ITC Report, 1 DEBITS chemical (stannane, dimethylbis[(1-oxoneodecyl)oxy]-), from the 49th ITC Report, 1 DEBITS

chemical (benzene, 1,3,5-tribromo-2-(2-propenyloxy)-), and from the 50th ITC Report, 1-triazene, 1,3-diphenyl. The ITC is also asking the EPA to add stannane, dimethylbis[(1-oxoneodecyl)oxy]-; benzene, 1,3,5-tribromo-2-(2-propenyloxy)-; and 1-triazene, 1,3-diphenyl to the TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rule.

The ITC is adding benzene, 1,3,5-tribromo-2-(2-propenyloxy)- and 1-triazene, 1,3-diphenyl to the *Priority Testing List*. The ITC is removing acetone, 9 alkylphenols and alkylphenol ethoxylates from the 37th ITC Report, 7 nonylphenol ethoxylates from the 39th ITC Report, 4 alkylphenols and alkylphenol ethoxylates from the 41st ITC Report, 3 DEBITS chemicals from the 46th ITC Report, 3 DEBITS chemicals from the 47th ITC Report, and 9 DEBITS chemicals from the 48th ITC Report and from the *Priority Testing List*.

The ITC is soliciting comments on its Voluntary Information Submissions Innovative Online Network (VISION) and Voluntary Information Submissions Policy (VISP).

The revised TSCA section 4(e) *Priority Testing List* follows as Table 1 of this appendix.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (MAY 2002)

Report	Date	Chemical name/Group	Action
28	May 1991	Chemicals with Low Confidence Reference Dose (RfD) Thiophenol	Designated
31	January 1993	13 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	16 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	6 Alkylphenols and alkylphenol ethoxylates	Recommended
39	November 1996	1 Nonylphenol ethoxylate	Recommended
41	November 1997	3 Alkylphenols and alkylphenol ethoxylates	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole	Recommended
42	May 1998	Glycoluril	Recommended
46	May 2000	8 Nonylphenol polyethoxylate degradation products	Recommended
47	November 2000	37 Indium compounds	Recommended
47	November 2000	Pentachlorothiophenol	Recommended
48	May 2001	Phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis-	Recommended
48	May 2001	3-Chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-benzeneamine	Recommended
48	May 2001	3H-Pyrazol-3-one, 5-[(2-chloro-5-nitrophenyl)amino]-2,4-dihydro-2-(2,4,6-trichlorophenyl)	Recommended
49	November 2001	Stannane, dimethylbis[(1-oxoneodecyl)oxy]-	Recommended
50	May 2002	Benzene, 1,3,5-tribromo-2-(2-propenyloxy)-	Recommended
50	May 2002	1-Triazene, 1,3-diphenyl	Recommended

I. Background

The ITC was established by section 4(e) of TSCA "to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months ..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions" (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). Since its creation in 1976, the ITC has submitted 49 semi-annual (May and November) reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. ITC Reports are available from the ITC's web site (http://www.epa.gov/opptintr/itc) within a few days of submission to the Administrator and from http://www.epa.gov/fedrgstr after publication in the **Federal Register**. The ITC meets monthly and produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff, ITC members and their U.S. Government organizations, and contract support provided by EPA. ITC members and staff are listed at the end of this Report.

The 50th ITC Report marks a significant milestone for the ITC. Since its first meeting on February 5, 1977, the ITC has convened 425 meetings, screened thousands of chemicals, and reviewed more than 2,500 organic, organo-metallic, and inorganic chemicals to identify those with suspicions of toxicity, environmental release, and consumer or occupational exposures, but few, if any data (Ref. 14). In its 50 Reports, the ITC has added to the *Priority Testing List* and recommended testing or information reporting for 81 individual chemicals and 80 chemical groups (about 1,400 chemicals) for priority consideration by the EPA Administrator. In response, the EPA has published 200 **Federal Register** notices and reviewed hundreds of test protocols and data submissions and the U.S. chemical industry has developed over 1,000 tests and submitted more than 75,000 unpublished health and safety studies to the EPA.

As of 1992, testing was ongoing, proposed, under consideration, required or voluntarily conducted for 85% of the chemicals and chemical groups recommended by the ITC (Ref. 14). Many of the data developed as a result of ITC's recommendations have been incorporated into Material Safety Data Sheets, used by U.S. Government and industry organizations to develop hazard assessments and included in the Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) dossiers (e.g., 100% of the

chemicals in phase I of the OECD SIDS program were reviewed by the ITC prior to preparation of SIDS dossiers), (Ref. 14). Well-known examples of chemicals for which data have been developed as a result of ITC recommendations include alkyl phthalates, chlorinated paraffins and hexachlorobutadiene (Ref. 1), acrylamide, aryl phosphates, methylene chloride and trichloroethane (Ref. 2), chlorinated benzenes (Refs. 1 and 3), benzidine-, o-dianisidine- and o-toluidine-based dyes (Ref. 4), phenylenediamines (Ref. 5), alkyl tins and fluoroalkenes (Ref. 6), octylphenol (Ref. 7), bisphenol A (Ref. 8), tetrabromobisphenol A (Ref. 9), methyl tertiary butyl ether or MTBE (Ref. 10), and brominated flame retardants, including brominated diphenyl ethers (Ref. 11).

II. TSCA Section 8 Reporting

A. TSCA Section 8 Reporting Rules

Following receipt of the ITC's Report (and the revised *Priority Testing List*) by the EPA Administrator, the EPA's Office of Pollution Prevention and Toxics (OPPT) promulgates TSCA section 8(a) PAIR and TSCA section 8(d) HaSDR rules for chemicals added to the *Priority Testing List*. The PAIR rule requires producers and importers of Chemical Abstract Service (CAS)-numbered chemicals added to the *Priority Testing List* to submit production and exposure reports under TSCA section 8(a). The HaSDR rule requires producers, importers, and processors of all chemicals (including those with no CAS numbers) added to the *Priority Testing List* to submit unpublished health and safety studies under TSCA section 8(d) that must be in compliance with the revised HaSDR rule (63 FR 15765, April 1, 1998) (FRL–5750–4) codified at 40 CFR part 716. All submissions must be received by the EPA within 90 days of the reporting rules **Federal Register** publication date. The reporting rules are automatically promulgated by OPPT unless otherwise requested by the ITC. Under the ITC's VISION and VISP, promulgation of HaSDR rules for most chemicals that are added to the *Priority Testing List* has been delayed to allow voluntary submission of studies of specific interest (see section II.C. for further details on VISION and VISP).

B. ITC's Use of TSCA Section 8 and Other Information

The ITC reviews the TSCA section 8(a) PAIR rule reports, TSCA section 8(d) HaSDR rule studies and other information that becomes available after the ITC adds chemicals to the *Priority Testing List*. Other information includes TSCA section 4(a) and 4(d) studies; TSCA section 8(c) submissions; TSCA section 8(e) "substantial risk" notices; "For Your Information" (FYI) submissions; ITC voluntary submissions, unpublished data submitted to and from U.S. Government organizations represented on the ITC; published papers, as well as use, exposure, effects, and persistence data that are voluntarily submitted to the ITC by manufacturers, importers, processors, and users of chemicals recommended by the ITC. The ITC reviews this information and determines if data needs should be revised, if chemicals should be removed from the *Priority Testing List*, or if recommendations should be changed to designations.

C. Promoting More Efficient Use of Information Submission Resources

To promote more efficient use of information submission resources, the ITC developed the VISP and VISION. The VISP provides examples of data needed by ITC member U.S. Government organizations, examples of studies that should not be submitted, the milestones for submitting information, guidelines for using the TSCA Electronic HaSDR Form and instructions for electronically submitting full studies. The VISP is described in the ITC's 41st Report (63 FR 17658, April 9, 1998) (FRL–5773–5) and is accessible through the world wide web (http://www.epa.gov/opptintr/itc/visp.htm). To facilitate the implementation of the VISP, the ITC developed the VISION. The VISION is described in the ITC's 42nd ITC Report (63 FR 42554, August 7, 1998) (FRL–5797–8) and is also accessible through the world wide web (http://www.epa.gov/opptintr/itc/vision.htm). The VISION includes links to the TSCA Electronic HaSDR Form (http://www.epa.gov/opptintr/.er/hasd.htm) including revised section 3.2 of the TSCA Electronic HaSDR Form to provide more use and exposure information (for details see the 46th ITC Report; 65 FR 75552, December 1, 2000) (FRL–6594–7).

The ITC requests that chemical producers, importers, processors, and users provide information electronically via VISION on chemicals for which the ITC is soliciting voluntary information. If the ITC does not receive voluntary information submissions to meet its data needs according to the procedures in VISP, the ITC may then ask the EPA to add those chemicals to a TSCA section 8(d) HaSDR rule to determine if there are unpublished data to meet those needs (see section III.A. that requests comments on the need to continue VISION and VISP).

D. Coordinating Information Rrequests

To avoid duplicate reporting, the ITC carefully coordinates its information solicitations and reporting requirements with other national and international testing programs, (e.g., the National Toxicology Program, the OECD SIDS program and the EPA's High Production Volume (HPV) Challenge program). The ITC is currently focusing its efforts on persistent non-HPV chemicals that have bioconcentration and exposure potential, but few, if any, publicly available ecological or health effects data. The ITC is working with the EPA Persistent Bioaccumulative Toxics (PBT), Endocrine Disruption, and perfluoroctylsulfonate chemicals workgroups to identify potentially toxic chemicals with few data to complement the objectives of those programs.

E. Requests to Promulgate TSCA Section 8(a) PAIR and Section 8(d) HaSDR Rules

The ITC asked the EPA to add 3 chloroalkenes to the TSCA section 8(a) PAIR rule in its 48th ITC Report (66 FR 51276, October 5, 2001) (FRL–6786–7). In addition, the ITC asked the EPA to add 5 chlorinated trihalomethyl pyridines, 2 trihaloethylidene bisbenzenes, 4 trichlorophenyldihydropyrazols, and 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-benzeneamine to the TSCA section 8(a) PAIR rule in its 48th ITC Report (66 FR 51276, October 5, 2001).

At this time, the ITC is rescinding its request to add the 3 chloroalkenes; 5 chlorinated trihalomethyl pyridines; 1 of the trihaloethylidene bisbenzenes (benzene, 1,1'-(2,2,2-trichloroethylidene)bis-, CAS No. 2971–22–4); and 3 of the trichlorophenyldihydropyrazols (benzamide, 3-amino-N-[4,5-dihydro-5-oxo-1- (2,4,6-trichlorophenyl)-1H-pyrazol-3-yl, CAS No. 40567–18–8, 3H-pyrazol-3-one, 5-((5-amino-2-chlorophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)-, CAS No. 53411–33–9, and benzamide, N-(4,5-dihydro-5-oxo-1-(2,4,6-trichlorophenyl)-1H-pyrazol-3-yl)-3-nitro-, CAS No. 63134–25–8) to the TSCA section 8(a) PAIR rule, either because no production or importation data were submitted to the EPA in response to the 1998 Inventory Update Rule (IUR) or because the predicted bioconcentration factors (BCFs) were judged to be too low to warrant priority consideration at this time.

The ITC is not rescinding its request to add 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-benzeneamine (CAS No. 29091–20–1), 3H-pyrazol-3-one, 5-((2-chloro-5- nitrophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)- (CAS No. 30707–68–7), and phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis- (CAS No. 1478–61–1) to the TSCA section 8(a) PAIR rule.

At this time, the ITC is also asking the EPA to add stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7), benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl (CAS No.136–35–6) to the TSCA section 8(a) PAIR rule. Stannane, dimethylbis[(1-oxoneodecyl)oxy]- and benzene, 1,3,5-tribromo-2-(2-propenyloxy)- are being added to the TSCA section 8(a) PAIR rule, because they are estimated to persist and have predicted BCFs of 8,650 and 4,019, respectively, few toxicity data and a need for additional use and exposure data, beyond that provided by the manufacturers. 1-Triazene, 1,3-diphenyl is being added to the TSCA section 8(a) PAIR rule, because it is a predicted carcinogen based on its metabolism and because the ITC needs occupational exposure data.

At this time, the ITC is also asking the EPA to add stannane, dimethylbis[(1-oxoneodecyl)oxy]-, benzene, 1,3,5-tribromo-2-(2-propenyloxy)- and 1-triazene, 1,3-diphenyl to the TSCA section 8(d) HaSDR rule. Stannane, dimethylbis[(1-oxoneodecyl)oxy]- is being added to the TSCA section 8(d) HaSDR rule, because the ITC needs to know if there are other toxicity data in addition to that described in section IV.A.2. and 3. of the 49th Report (67 FR 10298, March 6, 2002) (FRL–6820–8). The ITC needs ecological effects and more health effects data; only studies where stannane, dimethylbis[(1-oxoneodecyl)oxy]- is ≥90% of the test substance by weight should be submitted.

Benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is being added to the TSCA section 8(d) HaSDR rule, because the ITC needs to know

if there are other toxicity data in addition to that described in section IV.A.1.iii. of this Report. The ITC needs ecological effects and more health effects data; only studies where benzene, 1,3,5- tribromo-2-(2-propenyloxy)- is ≥90% of the test substance by weight should be submitted.

1-Triazene, 1,3-diphenyl is being added to the TSCA section 8(d) HaSDR rule, because the ITC needs pharmacokinetics, genotoxicity, subchronic and chronic toxicity, reproductive, and developmental toxicity data. Only studies where diazoaminobenzene is ≥90% of the test substance by weight should be submitted.

III. ITC's Activities During this Reporting Period (November 2001 to April 2002)

A. VISION

The ITC is the only organization for which the EPA can promulgate direct TSCA section 8(d) HaSDR final rules. As such, when the EPA convened public meetings to discuss revisions to the TSCA section 8(d) HaSDR rule (63 FR 15765, April 1, 1998) (FRL–5750–4), the ITC was invited to provide and respond to comments on this rule. One of the most consistent comments by the chemical industry was that the ITC should offer more opportunities to provide voluntary information submissions (to avoid the mandatory requirements of submitting information in response to a TSCA section 8(d) HaSDR rule). In response to these chemical industry requests, the ITC developed VISP, VISION, and the TSCA Electronic HaSDR Form, and is currently evaluating their effectiveness.

The ITC developed VISP, VISION, and the TSCA Electronic HaSDR Form as tools to provide a more cost-effective method for chemical producers, importers, processors, and users of ITC-recommended chemicals to provide voluntary information. With the exception of 3 trade organizations, the Alkylphenols & Ethoxylates Research Council (APERC), the Color Pigment Manufacturers Association (CPMA), and the Ecological and Toxicological Association of Organic Dye Manufacturers (ETAD), and 4 manufacturers, 3M Specialty Materials, Ciba Speciality Chemicals, E. I. du Pont de Nemours and Company, and Rohm and Haas Company, these tools have not been used by chemical producers, importers, processors, and users of ITC-recommended chemicals. The ITC has received voluntary information submissions on <15% of the approximately 500 chemicals for which the ITC has solicited voluntary information since implementing the VISP and VISION, in effect delaying the ITC's ability to obtain the information it needs to make decisions and meet U.S. Government data needs.

The ITC recognizes that there are increasing demands on the chemical industry to provide information in response to voluntary initiatives, e.g., the OECD SIDS program, EPA HPV Challenge program and Voluntary Children's Chemical Evaluation Program (VCCEP). The ITC supports and coordinates its voluntary programs. However, as a statutory-mandated organization charged with screening and identifying potentially hazardous chemicals, the ITC also recognizes that the chemical industry has the responsibility under TSCA and under the principles of Responsible Care® and Chemical Right-to-Know, to promptly and voluntarily provide information on the ITC's recommended chemicals to be used in subsequent hazard, exposure, and risk assessments by the U.S. Government organizations represented on the ITC.

The ITC is considering whether to continue the use of the VISP, VISION, and the TSCA Electronic HaSDR Form for chemicals added to the *Priority Testing List*, as the lack of use of these tools has resulted in substantial delays in obtaining information that could be used to meet the ITC's data needs. The ITC requests comments on procedures that could be implemented to make these existing tools or other procedures for submitting voluntary information more effective. Comments in a word processing file attached to an e-mail to walker.johnd@epa.gov are preferred, but the ITC will also accept comments submitted to Dr. John D. Walker at the address listed at the end of this Report by September 30, 2002.

B. DEBITS

In its 45th through 49th ITC Reports, the ITC described its strategies to screen and evaluate chemicals with persistence and bioconcentration potential. These activities are referred to as DEBITS. DEBITS provides a means to prioritize chemicals for information reporting and testing based on degradation and bioconcentration potential and availability of effects data.

Prior to this reporting period the ITC made information reporting or testing deferral decisions on 206 DEBITS chemicals. During this reporting period, the ITC completed its review of the remaining 252 DEBITS chemicals, including the 9 chemicals discussed in this section:

1. Benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5),
2. 2,9-Dimethylquinacridone (CAS No. 980–26–7),
3. 1,2-Ethanediyl tetrakis (2-chloro-1-methylethyl) phosphate (CAS No. 34621–99–3),
4. Oxirane, 2,2',2''-(methylidynetris(phenyleneoxymethylene)) (tris- (CAS No. 66072–38–6),
5. *P*-cresol, 2,6-di-tert-butyl-alpha-(dimethylamino) (CAS No. 88–27–7),
6. Spiro isobenzofuran-1(3H),9'-9H xanthen-3-one, 3',6'-bis(ethylamino)-2',7'-dimethyl- (CAS No. 41382–37–0),
7. 1H-indole-2-carboxaldehyde, 2,3-dihydro-2-hydroxy-1,3,3-trimethyl-(4-methoxyphenyl) methylhydrazone (CAS No. 81241–99–8),
8. Phenoxazin-5-ium, 3,7-bis(diethylamino)-, (T-4)-tetrachlorozincate(2-) (2:1) (CAS No. 63589–47–9), and
9. Oxirane, 2-[2-(4-chlorophenyl)ethyl]-2-(1,1-dimethylethyl)- (CAS No. 80443–63–6).

The ITC is adding benzene, 1,3,5-tribromo-2-(2-propenyloxy)- to the *Priority Testing List* as discussed in section IV.A.1. The ITC deferred making a testing recommendation for 2,9-dimethylquinacridone because its absorption potential into mammalian tissues is expected to be low based on absorption data for the structurally related EPA HPV Challenge chemical, 5,12-dihydroquino(2,3-b)acridine-7,14-dione (CAS No. 1047–16–1). 1,2-Ethanediyl tetrakis (2-chloro-1-methylethyl) phosphate was previously removed from the *Priority Testing List* in the ITC's 36th ITC Report (60 FR 42982, August 17, 1995) (FRL–4965–6).

Oxirane, 2,2',2''-(methylidynetris (phenyleneoxymethylene))tris- was deferred for testing because its predicted hydrolysis half life was 3 days. The ITC deferred making testing recommendations for *p*-cresol, 2,6-di-tert-butyl-alpha-(dimethylamino); spiro isobenzofuran-1(3H),9'-9H xanthen-3-one, 3',6'-bis(ethylamino)-2',7'-dimethyl-; 1H-indole-2-carboxaldehyde, 2,3-dihydro-2-hydroxy-1,3,3-trimethyl-(4-methoxyphenyl) methylhydrazone; and phenoxazin-5-ium, 3,7-bis(diethylamino)-, (T-4)-tetrachlorozincate(2-) (2:1) because of their low-exposure potential. Oxirane, 2-[2-(4-chlorophenyl)ethyl]-2-(1,1-dimethylethyl)- was deferred for testing because it is likely to be tested under one of the voluntary HPV chemical testing programs.

The remaining 243 DEBITS chemicals deferred for testing include 7 DEBITS chemicals with predicted BCFs <1,000 (see Table 2 of this appendix), 28 EPA HPV Challenge program DEBITS chemicals (see Table 3 of this appendix), and 208 non-HPV DEBITS chemicals with predicted BCFs of 3–13 (see Table 4 of this appendix).

TABLE 2.—SEVEN DEBITS CHEMICALS WITH PREDICTED BCFS <1,000

CAS No.	Chemical name	Structural class	BCF
827–94–1	2,6-Dibromo-4-nitrobenzenamine	2,6-Dibromoanilines	64
90–93–7	Bis[4-(Dimethylamino)phenyl] methanone	4,4'-Substituted benzophenones	467
6408–72–6	9,10-Anthracenedione, 1,4-diamino-2,3-diphenoxy-	Diaminoanthraquinones	585

TABLE 2.—SEVEN DEBITS CHEMICALS WITH PREDICTED BCFS <1,000—Continued

CAS No.	Chemical name	Structural class	BCF
19014–53–0	9,10-Anthracenedione,1-amino-2-(4-((hexahydro-2-oxo-1H-azepin-1-yl)methyl)phenoxy)-4-hydroxy-	Hydroxyamino anthraquinones	336
596–03–2	Spiro isobenzofuran-1(3H),9'-9Hxanthen-3-one,4',5'-dibromo-3;,6'- dihydroxy-, disodium salt	Spiro[isobenzofuran-1(3H),9'-[9H]xanthen]-3-ones	709
2280–49–1	N-Phenyl-N-(trichloromethylsulfenyl)benzene sul fonamide		598
20941–65–5	Tetrakis(diethylcarbamodithioato-S,S')tellurium		478

TABLE 3.—TWENTY-EIGHT EPA HPV CHALLENGE PROGRAM DEBITS CHEMICALS

CAS No.	Chemical name
Structural Class—[(2-Hydroxy-1-naphthalenyl)azo]benzenesulfonate salts	
7023–61–2	2-Naphthalenecarboxylic acid, 4-((5-chloro-4-methyl-2-sulfophenyl)azo)-3-hydroxy-, calcium salt (1:1)
7585–41–3	2-Naphthalenecarboxylic acid, 4-((5-chloro-4-methyl-2-sulfophenyl)azo)-3-hydroxy-, barium salt (1:1)
Structural Class—[[4-[(Phenyl)azo]phenyl]azo] benzenesulfonic acid salts	
68555–86–2	Benzenesulfonic acid, 4-((5-methoxy-4-((4-methoxyphenyl)azo)-2-methylphenyl)azo)-, sodium salt
Structural Class— 4,4'-bis(Triazinylamino)stilbene-2,2'-disulfonic acid salts	
5182–81–9	2,2'-Stilbenedisulfonic acid, 4,4'-bis((4-anilino-6-morpholino-s-triazin-2-yl)amino)-, disodium salt
67786–25–8	Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis(5-((4-(bis(2-hydroxypropyl)amino)-6-((4-sulfophenyl) amino)-1,3,5-triazin-2-yl)amino)-, tetrasodium salt
Structural Class - 4-Amino-4'-nitroazobenzenes	
3618–72–2	Acetamide, -(5-(bis(2-(acetyloxy)ethyl)amino)-2-((2-bromo-4,6-dinitrophenyl)azo)-4-methoxyphenyl)-
Structural Class—Halogenated cycloalkenes	
77–47–4	1,3-Cyclopentadiene, 1,2,3,4,5,5-Hexachloro-
3734–48–3	4,7-Methanoindene, 4,5,6,7,8,8-hexachloro-delta(sup 1,5)-tetrahydro- (chlordene)
62111–47–1	Heptachlorocyclopentene
Structural Class—Halogenated propanes	
1070–78–6	1,1,1,3-Tetrachloropropane
16714–68–4	1,1,2,2,3-Pentachloropropane
Structural Class —Hexachlorobicyclo[2.2.1]hept-5-ene-2,3-dicarboxy compounds	
115–27–5	4,7-Methanoiosobenzofuran-1,3-dione, 4,5,6,7,8,8-hexachloro-3a,4,7,7a-tetrahydro
115–28–6	Chlorendic acid
Structural Class—Phosphoric acid, 2-chloroethyl esters	
13674–87–8	2-Propanol, 1,3-dichloro-, phosphate (3:1)
13204–14–8	2,2-Bis(chloromethyl)trimethylene bis(bis(2-chloroethyl)phosphate)
Structural Class —Sulfonaphthyl-substituted 4,1-diazophenyl compounds	
8003–69–8	2-Naphthalenesulfonic acid,6-((7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo)-3-((4-((4-amino-6(or 7)-sulfo-1-naphthalenyl)azo)phenyl)azo)-4-hydroxy-, trisodium salt
1670–62–6	Trisodium 6-((2,4-diaminophenyl)azo)-3-((4-((4-((7-((2,4- diaminophenyl)azo)-1-hydroxy-3-sulphonato-2-naphthyl)azo)phenyl)amino)-3-sulphonatophenyl)azo)-4-hydroxynaphthalene-2-sulphonate

TABLE 3.—TWENTY-EIGHT EPA HPV CHALLENGE PROGRAM DEBITS CHEMICALS—Continued

CAS No.	Chemical name
Structural Class— Tetrachlorobenzenes	
95–94–3	1,2,4,5-Tetrachlorobenzene
634–66–2	1,2,3,4-tetrachlorobenzene
Structural Class —Tris(aminoaryl)methanamimnium compounds	
2152–64–9	Benzenamine, -phenyl-4-((4-(phenylamino)phenyl)(4-(phenylimino)-2,5-cyclohexadien-1-ylidene)methyl)-, monohydrochloride
101–20–2	Urea, N-(4-Chlorophenyl)-N'-(3,4-dichlorophenyl)-
719–32–4	Terephthaloyl chloride, tetrachloro-
433–06–3	1,1,2,2-Tetrachloroethylsulfenyl chloride
1203–86–7	2,2-Dichloro-1-(2,4,5-trichlorophenyl)-ethanone
55954–19–3	1H-Azepine-1-carboxamide, N-(3-(((hexahydro-2-oxo-1H-azepin-1-yl)carbonyl)amino)methyl)- 3,5,5-trimethylcyclohexyl)hexahydro-2-oxo-
60825–27–6	Acetic acid, ((3,5,6-trichloro-2-pyridinyl)oxy)-, ethyl ester
64667–33–0	Hexanoic acid, 4,6,6,6-tetrachloro-3,3-dimethyl-, methyl ester
69806–40–2	Propanoic acid, 2-(4-((3-chloro-5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-, methyl ester

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13

CAS No.	Chemical name
Structual Class—(2-Thiazolylazo)benzenamines	
19745–44–9	Propionitrile, 3-[p-[(5-nitro-2-thiazolyl)azo]-N-phenethylanilino]-
68516–81–4	Ethanol, 2-[ethyl[3-methyl-4-[(5-nitro-2-thiazolyl)azo]phenyl]amino]-
70693–63–9	Benzenamine, N,N-diethyl-3-methyl-4-(2-thiazolylazo)-
Structual Class—[(2-Hydroxy-1-naphthalenyl)azo]benzenesulfonate salts	
12688–94–7	Manganese, (4-((5-chloro-4-methyl-2-sulfophenyl)azo)-3-hydroxy-2-naphthalenecarboxylato(2-))-
5070–41–8	2-Naphthalenecarboxylic acid, 4-((5-chloro-4-methyl-2-sulfophenyl)azo)-3-hydroxy-, strontium salt (1:1)
17852–99–2	Calcium 4-((4-chloro-5-methyl-2-sulphonatophenyl)azo)-3-hydroxy-2-naphthoate
20514–68–1	2-Naphthalenecarboxylic acid, 4-((4-chloro-5-ethyl-2-sulfophenyl)azo)-3-hydroxy-, calcium salt (1:1)
67801–01–8	Barium bis(5-chloro-4-ethyl-2-((2-hydroxy-1-naphthyl)azo)benzenesulphonate)
67828–72–2	2-Naphthalenecarboxylic acid, 4-((4-chloro-5-methyl-2-sulfophenyl)azo)-3-hydroxy-, strontium salt (1:1)
Structual Class—[(3,5-Dinitro-2-thienyl)azo]anilines	
14932–34–9	2,2'-(4-((3,5-Dinitro-2-thienyl)azo)-4,1-phenyleneimino)bisethanol, diacetate (ester)
58979–46–7	Acetamide, N-[5-(diethylamino)-2-[(3,5-dinitro-2-thienyl)azo]phenyl]-
Structual Class—[[3-[(Phenyl)azo]phenyl]azo]benzenes	
4482–25–1	1,3-Benzenediamine, 4,4'-(4-methyl-1,3-phenylene)bis(azo)bis 6-methyl-
5421–66–9	1,3-Benzenediamine, 4,4'-((4-methyl-1,3-phenylene)bis(azo))bis(6-methyl-, dihydrochloride
67874–26–4	Benzoic acid, 5-((4-((3-((3-((2,4-diaminophenyl)azo)-2-hydroxy-5-sulfophenyl)azo)-2,6-dihydroxyphenyl)azo)phenyl) azo)-2-hydroxy-, disodium salt
71799–74–1	2,7-Naphthalenedisulfonic acid, 4-((2,4-dihydroxy-5-((2-hydroxy-3,5-dinitrophenyl)azo)-3((4-nitrophenyl)azo)phenyl)azo)-5-hydroxy-

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
Structual Class—[[4-[(Phenyl)azo]phenyl]azo]benzenesulfonic acid salts	
51418–90–7	Benzenesulfonic acid, 3-((4-((4-(2-hydroxybutoxy)-3-methylphenyl)azo)-3-methoxyphenyl)azo)-, monosodium salt
61290–31–1	Benzenesulfonic acid, 3-((4-((4-(2-hydroxybutoxy)phenyl)azo)-5-methoxy-2-methylphenyl)azo)-, monolithium salt
63405–85–6	Benzenesulfonic acid, 3-[[3-methoxy-4-[(4-methoxyphenyl)azo]phenyl]azo]-, sodium
68400–34–0	Benzenesulfonic acid, 4-[[4-[(4-hydroxyphenyl)azo]-5-methoxy-2-methylphenyl]azo-, monosodium salt]
68959–01–3	Benzenesulfonic acid, 4-chloro-3-((4-((4-ethoxyphenyl)azo)phenyl)azo)-, sodium salt
Structual Class—[[4-[(Phenyl)azo]phenyl]azo] benzenesulfonic acids	
30282–44–1	Benzenesulfonic acid, p-[[2,4-dihyroxy-3-(xylylazo)phneyl]azo]-
Structual Class—[2-Methoxy-4-[(3-sulfophenyl)azo]phenyl]urea salts	
7248–45–5	Benzoic acid, 2-hydroxy-5-((4-((((2-methoxy-4-((3-sulfophenyl)azo)phenyl)amino) carbonyl)amino)phenyl)azo)-, disodium salt
10114–86–0	3,3'-(Carbonylbis(imino(3-methoxy-4,1-phenylene)azo))bis(benzenesulfonic acid), disodium salt
Structual Class—[2-Methoxy-4-[(3-sulfophenyl)azo]phenyl]ureas	
8697–36–6	Benzenesulfonic acid, 3,3'-(carbonylbis(imino(3-methoxy-4,1-phenylene)azo))bis-
Structual Class—1-[(Dinitrophenyl)azo]-2-naphthalenols	
4998–82–7	1-[(2-Hydroxy-3,5-dinitrophenyl)azo]-2-hydroxynaphthalene
Structual Class— 1H-Indole-5-sulfonic acid, 2-phenyl-3-[[2-(phenylsulfonyl)phenyl]azo]-1H-Indole-5- sulfonic acid salts	
90677–63–7	1H-Indole-5-sulfonic acid, 2-phenyl-3-[[2-(phenylsulfonyl)phenyl]azo]-, monosodium salt
Structual Class—1H-Indole-5-sulfonic acid, 2-phenyl-3-[[2-(phenylsulfonyl)phenyl]azo]-1H-Indole-5- sulfonic acids	
93972–88–4	1H-Indole-5-sulfonic acid, 2-phenyl-3-[[2-(phenylsulfonyl)phenyl]azo]-
Structual Class—2-(Phenylazo)-3-oxo-N-phenylbutanamides	
2512–29–0	Butanamide, 2-[(4-methyl-2-nitrophenyl)azo]-3-oxo-N-phenyl-
6486-21-1	Acetoacetanilide, 2-[(4-methoxy-2-nitrophenyl)azo]-
6486–23–3	Butanamide, 2[(4-chloro-2-nitrophenyl)azo]-N-(2-chlorophenyl)-3-oxo-
12225–18–2	Butanamide, N-(4-chloro-2,5-dimethoxyphenyl)-2-((2,5-dimethoxy-4-((phenylamino)sulfonyl)phenyl)azo)-3-oxo-
13515–40–7	o-Acetoacetanisidide, 2-[(4-chloro-2-nitrophenyl)azo]-
32432–45–4	o-Acetoacetotoluidide, 4'-chloro-2-[(4-chloro-2-nitrophenyl)azo]-
52320–66–8	2-((4-Chloro-2-nitrophenyl)azo)-N-(4-ethoxyphenyl)-3-oxobutyramide
Structual Class—2,4-bis[(Arylazo)arylamino]-6-amino-1,3,5-triazines	
104–03–8	2-Naphthalenesulfonic acid, 7,7'-((6-(4-morpholinyl)-1,3,5-triazine-2,4-diyl)diimino)bis(4-hydroxy-3-((4-methoxy-2-sulfophenyl)azo)-, tetrasodium salt
50925–42–3	1,5-Naphthalenedisulfonic acid, 3,3'-((6-((2-hydroxyethyl)amino)-1,3,5-triazine-2,4-diyl)bis(imino(2-methyl-4,1-phenylene)azo))bis-, tetrasodium salt
52953–36–3	Cuprate(4-),(4-hydroxy-7-((4-((2-hydroxyethyl)amino)-6-((5-hydroxy-6-((2-hydroxy-5-sulfophenyl)azo)-7-sulfo-2-naphthalenyl)amino)-1,3,5-triazin-2-yl)amino)-3-((4-methoxy-2-sulfophenyl)azo)-2-naphthalenesulfonato(6-))-, tetrasodium
Structual Class—2-[[6-[(1,3,5-Triazin-2-yl)amino]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-1,5-naphthalenedisulfonic acid salts	
70616–90–9	1,5-Naphthalenedisulfonic acid, 2-((6-((4,6-dichloro-1,3,5-triazin-2-yl)methylamino)-1-hydroxy-3-sulfo-2-naphthalenyl)azo)-, trisodium salt

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
89923–44–4	Trisodium 2-((6-((4-(ethylphenylamino-6-fluoro-1,3,5-triazin-2-yl)amino)-1-hydroxy-3-sulphonato-2-naphthyl)azo)naphthalene-1,5-disulphonate
Structual Class—2-Azo-N-(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)- 3-oxobutanamides	
12236–62–3	Butanamide, 2-((4-chloro-2-nitrophenyl)azo)-N-(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-oxo-
68134–22–5	Butanamide, -(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-oxo-2-((2-(trifluoromethyl)phenyl)azo)-
Structual Class—2-Halo-4-(phenylazo)-6- [(((sulfonaphthyl)azo)sulfophenyl)amino]-1,3,5-triazines	
68110–31–6	2,7-Naphthalenedisulfonic acid, 4-amino-3,6-bis((4-((4-chloro-6-((3-sulfophenyl)amino)-1,3,5-triazin-2-yl)amino)-2-sulfophenyl)azo)-5-hydroxy-, hexasodium salt
68133–24–4	2,7-Naphthalenedisulfonic acid, 4-amino-3,6-bis[[5-[[4-chloro-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl] amino]-2-sulfophenyl]azo]-5-hydroxy-, hexasodium salt
70528–89–1	2,7-Naphthalenedisulfonic acid, 4-amino-6-((5-((4-((3-chlorophenyl)amino)-6-fluoro-1,3,5-triazin 2-yl)amino)-2-sulfophenyl)azo)-5-hydroxy-3-((4-sulfophenyl)azo)-, tetrasodium salt
Structual Class—3-[[4-[(6-Nitro-2-benzothiazolyl)azo]phenyl]amino] propanenitriles	
13486–43–6	Ethanol, 2-ethyl-4-(6-methoxy-2-benzothiazolyl)azo phenyl amino-
16586–42–8	Propanenitrile, 3-ethyl-3-methyl-4-(6-nitro-2-benzothiazolyl)azo phenyl amino-
16588–67–3	Propionitrile, 3-N-ethyl-4-6-(methylsulfonyl)-2-benzothiazolyl azo-,m-toluidino-
25510–81–0	Propanenitrile,3-(ethyl(4-((6-nitro-2-benzothiazolyl)azo)phenyl)amino)-
41362–82–7	Propanenitrile, 3-4-(5,6-dichloro-2-benzothiazolyl)azo phenyl methylamino-
Structual Class—3-[[4-[(Phenyl)azo]-1-naphthalenyl]azo]benzenesulfonic acids, sodium salts	
67875–21–2	Benzenesulfonic acid, 3-[[4-[(2-hydroxy-5-methylphenyl)azo]-1-naphthalenyl]azo]-, monosodium salt
68959–00–2	Benzenesulfonic acid, 3-((4-((2-ethoxy-5-methylphenyl)azo)-1-naphthalenyl)azo)-, sodium salt
Structual Class—3-[[Phenyl]azo]-N-(phenyl)benzenecarboxamides	
12236–64–5	2-Naphthalenecarboxamide, -(4-(acetylamino)phenyl)-4-((5-(aminocarbonyl)- 2-chlorophenyl)azo)-3-hydroxy-
36968–27–1	2-Naphthalenecarboxamide, 4-[[4-(aminocarbonyl) pohenyl]azo]-3-hydroxy-N-(2-methoxyphenyl)-
19904–51–4	2-Naphthalenecarboxamide, 3-hydroxy-4-((2-methoxy-5-((phenylamino)carbonyl)phenyl)azo)-
Structual Class—4,4'-bis(Arylazo)stilbene-2,2'-disulfonic acid salts	
2870–32–8	2,2'-(1,2-Ethenediyl)bis(5-((4-ethoxyphenyl)azo) benzenesulfonic acid), disodium salt
53523–90–3	Benzoic acid, 3,3'-[1,2-ethenediylbis[(3-sulfo-4,1-phenylene)azo]]bis [6-hydroxy-5-methyl-, tetralithium salt
75701–34–7	2-Naphthalenesulfonic acid, 3,3'-[1,2-ethenediylbis[(3-sulfo-4,1-phenylene)azo]]bis[6-amino- 4-hydroxy-, cmpd with 2,2',2''-nitrilotris (ethanol) (1:4)
Structual Class—4,4'-bis(Arylazo)stilbene-2,2'-disulfonic acids	
91–34–9	Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis 5-(4-hydroxyphenyl)azo-
Structual Class—4,4'-bis(Triazinylamino)stilbene-2,2'-disulfonic acid salts	
37138–26–4	Benzenesulfonic acid,2,2'-(1,2-ethenediyl)bis[5-[[4-chloro-6-[(4-sulfophenyl)amino]- 1,3,5-triazin-2-yl]amino]-, tetrasodium salt
41098–56–0	1,4-Benzenedisulfonic acid,2,2'-(1,2-ethenediylbis((3-sulfo-4,1-phenylene)imino(6-(diethylamino)-1,3,5-triazine-4,2-diyl)imino))bis-, hexasodium salt
17506–54–5	Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis(5-((4-(bis(2-hydroxypropyl)amino)-6-((4-sulfophenyl)amino)-1,3,5-triazin-2-yl)amino)-, dipotassium disodium salt
68003–30–5	Benzenesulfonic acid,2,2'-(1,2-ethenediyl)bis(5-((4-(2-hydroxypropoxy)-6-(phenylamino)-1,3,5-triazin-2-yl)amino)-, disodium salt

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
68003–31–6	Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis[5-[[4-[2-(2-hydroxyethoxy)ethoxy]-6-[phenylamino]-1,3,5-triazin-2-yl]amino]-, disodium salt
68025–20–7	Benzenesulfonic acid,5-((4-(2-(2-hydroxyethoxy)ethoxy)- 6-(phenylamino)-1,3,5-triazin-2-yl)amino)-2-(2-(4-((4-(2-hydroxypropoxy)-6-(phenylamino)-1,3,5-triazin-2-yl)amino)-2-sulfophenyl)ethenyl)-, disodium salt
68155–68–0	Benzenesulfonic acid,2,2'-(1,2-ethenediyl)bis(5-((4-chloro-6-((4-sulfophenyl)amino)-1,3,5-triazin-2-yl)amino)-, dipotassium disodium salt
85187–74–2	Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis(5-((4-(methylamino)-6- (phenylamino)-1,3,5-triazin-2-yl)amino)-, sodium salt
Structual Class—4-Amino-4'-nitroazobenzenes	
101–52–0	2-Methoxy-4-[(4-nitrophenyl)azo]benzenamine
1533–76–2	Propanamide, -(5-(bis(2-(acetyloxy)ethyl)amino)-2-((4-nitrophenyl)azo)phenyl)-
1533–77–3	Acetanilide, 5'-(bis(2-hydroxyethyl)amino)-2'-((2-methoxy-4-nitrophenyl)azo)-, diacetate (ester)
1533–78–4	Acetamide, -(5-(bis(2-(acetyloxy)ethyl)amino)-2-((2-chloro-4-nitrophenyl)azo)phenyl)-
2872–52–8	2-(Ethyl(4-((4-nitrophenyl)azo)phenyl)amino)ethanol
3025–41–0	Ethanol, 2,2'-4-(2-chloro-4-nitrophenyl)azo phenyl imino bis-
3179–89–3	Ethanol, 2,2'-3-methyl-4-(4-nitrophenyl)azo phenyl imino bis-
3180–81–2	Ethanol, 2-,4-(2-chloro-4-nitrophenyl)azo phenyl ethylamino-
3618–73–3	Acetamide, -(5-(bis(2-(acetyloxy)ethyl)amino)-2-((2-chloro-4,6-dinitrophenyl)azo)-4-methoxyphenyl)-
4058–30–4	Propanenitrile,3,3'-((4-((2-chloro-4-nitrophenyl)azo)phenyl)imino)bis-
5261–31–4	Propanenitrile, 3-((2-(acetyloxy)ethyl)(4-((2,6-dichloro-4-nitrophenyl)azo)phenyl)amino)-
6021–61–0	Propionitrile, 3-[p-[(2-chloro-4-nitrophenyl)azo]-N-(2-hydroxyethyl)anilino]-,
6657–32–5	Propionitrile, 3-[N-(2-hydroxyethyl)-p-[(p-nitrophenyl)azo]anilino]-
13301–61–6	Propionitrile, 3-[p-[(2,6-dichloro-4-nitrophenyl)azo]-N-ethylanilino]-
16586–43–9	Propanenitrile, 3-[[4-[(2-chloro-4-nitrophenyl)azo]-3-methylphenyl]ethylamino]-
5474–89–3	Benzonitrile, 2-[[p-[(2-cyanoethyl)ethylamino]phenyl]azo]-5-nitro-
17464–91–4	Ethanol,2,2'-((4-((2-bromo-6-chloro-4-nitrophenyl)azo)-3-chlorophenyl)imino)bis-
17741–62–7	Thiomorpholine, 4-p-(2,6-dichloro-4-nitrophenyl)azo phenyl-,1,1-dioxide
22578–86–5	Acetamide, N-(2-((2-bromo-4,6-dinitrophenyl)azo)-5-((2-cyanoethyl)ethylamino)-4-methoxyphenyl)-
23355–64–8	Ethanol, 2,2'-[[3-chloro-4-[(2,6-dichloro-4-nitrophenyl)azo]phenyl]imino]di-
24170–60–3	Acetamide, N-2-(2-cyano-4,6-dinitrophenyl)azo-5-(diethylamino)phenyl-
29426–52–6	Ethanol, 2,2'-3-methyl-4-2-(methylsulfonyl)-4-nitrophenyl azo phenyl imino bis-, diacetate ester
29649–47–6	Acetamide,-(2-((2-chloro-4-nitrophenyl)azo)-5-((2-(2,5-dioxo-1-pyrrolidinyl)ethyl)ethylamino)phenyl)-
10177–47–6	Benzamide, N-5-bis 2-(acetyloxy)ethyl amino-2-(4-nitrophenyl)azo phenyl-
30124–94–8	Benzonitrile, 2-4-bis 2-(acetyloxy)ethyl amino phenyl azo-5-nitro-
31464–38–7	Propanenitrile, 3-methyl-4-(4-nitrophenyl)azo phenyl amino-
31482–56–1	Propanenitrile, 3-ethyl-4-(4-nitrophenyl)azo phenyl amino-
40690–89–9	Propanenitrile, 3-[[2-(benzoyloxy)ethyl][4-[(4-nitrophenyl)azo]phenyl]amino]-
40880–51–1	Propanenitrile, 3-4-(2-chloro-4-nitrophenyl)azo phenyl ethylamino-
41642–51–7	Acetamide, -2-(2,6-dicyano-4-nitrophenyl)azo-5-(diethylamino)phenyl-

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
43047–20–7	Ethanol, 2,2-chloro-4-(4-nitrophenyl)azo phenyl amino-
52697–38–8	Acetamide, -[2-[(2-bromo-4,6-dinitrophenyl)azo]-5-(diethylamino)phenyl]-
53950–33–7	Acetamide, -(2-((2-bromo-4,6-dinitrophenyl)azo)-5-((2-cyanoethyl)amino)-4-methoxyphenyl)-
56548–64–2	Acetamide, -[2-[(2-bromo-4,6-dinitrophenyl)azo]-5-(diethylamino)-4-methoxyphenyl)-
61355–92–8	.beta.-Alanine, - 3-(acetylamino)-4- (4-nitrophenyl)azo phenyl -N-(3-methoxy-3-oxopropyl)-, methyl ester
22487049	Ethanol, 2,2'-4-(2,6-dichloro-4-nitrophenyl) azo phenyl imino bis-
65916–12–3	Acetamide, -(2-((2,6-dicyano-4-nitrophenyl)azo)-5-((2-(2-ethoxyethoxy)ethyl)ethylamino)phenyl)-
66214–54–8	Ethanol, 2,2'-4-(4-nitrophenyl)azo phenyl imino bis-, diacetate (ester)
66882–16–4	Benzonitrile, 2-[[4-[bis[2-(acetyloxy)ethyl]amino]-2-methylphenyl]azo]-5-nitro-
67674–22–0	Acetamide, -2-(2-bromo-4,6-dinitrophenyl)azo-5-(ethylamino)-4-methoxyphenyl-
67846–62–2	Propanamide, -(2-((2-chloro-4,6-dinitrophenyl)azo)-5-(ethylamino)-4-(2-methoxyethoxy)phenyl)-
67874–57–1	Propanenitrile, 3-2-chloro-4-(2,6-dichloro-4-nitrophenyl)azo phenyl amino-
67923–43–7	Propanenitrile, 3,3'- 4- (2,6-dichloro-4-nitrophenyl) azo phenyl imino bis-
68391–42–4	Propanenitrile, 3-[[2-(acetyloxy)ethyl][4-[(4-nitrophenyl)azo]phenyl]amino]-
68391–47–9	Acetamide, N-5-bis-2-(acetyloxy)ethyl amino-2-(2,4-dinitrophenyl)azo phenyl-
68957–67–5	Acetamide, N-(2-((2-chloro-4,6-dinitrophenyl)azo)-5-(ethylamino)-4-(2-methoxyethoxy)phenyl)-
70210–10–5	Propanenitrile, 3-((2-(2-cyanoethoxy)ethyl)(4-((4-nitrophenyl)azo)phenyl)amino)-
71617–28–2	Acetamide,N-(4-chloro-2-((2-chloro-4-nitrophenyl)azo)-5-((2-hydroxypropyl)amino)phenyl)-
72968–78–6	2,4,10-Trioxa-7-azaundecan-11-oic acid, 7-(4-((2-cyano-4-nitrophenyl)azo)-3-methylphenyl)-3-oxo-, methyl ester
75150–11–7	Acetamide, -(2-((2-chloro-4-nitrophenyl)azo)-5-((2-cyanoethyl)-2-propenylamino) phenyl)-
Structual Class—5-(Phenylazo)-8-(phenylamino)-1- naphthalenesulfonic acid salts	
67875–18–7	1-Naphthalenesulfonic acid, 5-((2-chloro-4-nitrophenyl)azo)-8-phenylamino-, sodium salt
67875–11–0	1-Naphthalenesulfonic acid, 5-[(3-chlorophenyl)azo]-8-(phenylamino)-, monosodium
Structual Class—5,8-bis(phenylazo)-2-sulfonaphthalenes	
67875–14–3	2-Naphthalenesulfonic acid, 5-((4-(bis(2-hydroxyethyl)amino)phenyl)azo)-8-((2-methylphenyl)azo)-, monosodium salt
68039–07–6	2-Naphthalenesulfonic acid, 5(or 8)-((4-hydroxy-2-methylphenyl)azo)-8(or 5)-(phenylazo)-, monosodium salt
68039–08–7	2-Naphthalenesulfonic acid, 5(or 8)-((4-ethoxy-2-methylphenyl)azo)-8(or 5)-(phenylazo)-, sodium salt
Structual Class—5,8-bis[(naphthyl or phenyl)azo]-2-sulfonaphthalenes	
4399–55–7	1,5-Naphthalenedisulfonic acid, 3-((4-((4-((6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo)-6-sulfo-1-naphthalenyl)azo)-1-naphthalenyl)azo)-, tetrasodium salt
68227–72–5 •	1-Naphthalenesulfonic acid, 8-(phenylamino)-5-((4-(phenylazo)-6-sulfo-1-naphthalenyl)azo)-, disodium salt
70210–31–0	2-Naphthalenesulfonic acid,8-((4-((4-amino-3-sulfophenyl) azo)-6-sulfo-1-naphthalenyl)azo)-5-((6-(benzoylamino)-1-hydroxy-3-sulfo-2-naphthalenyl)azo)-, tetrasodium salt
Structual Class—5-[[4-[(3-Sulfophenyl)azo]-1-naphthalenyl]azo] naphthalene sulfonic acid salts	
530–08–7	1-Naphthalenesulfonic acid, 8-(phenylamino)-5-((4-((3-sulfophenyl)azo)-1-naphthalenyl)azo)-, disodium salt
1593–37–1	2-Naphthalenesulfonic acid, 6-hydroxy-5-((4-((4-(phenylamino)-3-sulfophenyl)azo)-1- naphthalenyl)azo)-,disodium salt

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
Structual Class—5-Azo-2,6-dialkylamino-4-methyl-3-pyridinecarbonitriles	
63833–78–3	3-Pyridinecarbonitrile, 5- (2-cyano-4-nitrophenyl)azo -6- (2-hydroxyethyl)amino
72968–71–9	2-Thiophenecarboxylic acid, 4-cyano-5-((5-cyano-2,6-bis((3-methoxypropyl)amino)-4-methyl-3-pyridinyl)azo)-3-methyl-, methyl ester
Structual Class—Azobis(4,1-phenyleneazo)bis(naphthalenesulfonates)	
52469–75–7	Trisodium 5-amino-3-((4-((4-((7-amino-1-hydroxy-3-sulphonato-2-naphthyl)azo)phenyl)azo)phenyl)azo)-4-, hydroxynaphthalene-2,7-disulphonate
72017–89–1	2,7-Naphthalenedisulfonic acid, 3,3'-(azobis(4,1-phenyleneazo))bis(5-amino-4-hydroxy-, tetrasodium salt
72017–91–5	2,7-Naphthalenedisulfonic acid, 5-amino-3-((4-((4-((8-amino-1-hydroxy-3,6-disulfo-2-naphthalenyl)azo)-3-methoxyphenyl)azo)phenyl)azo)-4-hydroxy-, tetrasodium salt
75173–68–1	Copper, (mu-((3,3'-(azoxybis((2-hydroxy-4,1-phenylene)azo))bis(4-hydroxy-2,7- naphthalenesulfonato))(8-)))di-, tetrasodium
93941–06–1	2,7-Naphthalenedisulfonic acid, 3,3'-(azoxybis((2-methoxy-4,1-phenylene)azo))bis(4,5-dihydroxy-
99869–36–0	2,7-Naphthalenedisulfonic acid, 3,3'-(azoxybis((2-methoxy-4,1-phenylene)azo))bis(4,5-dihydroxy-, lithium salt
99869–37–1	2,7-Naphthalenedisulfonic acid, 3,3'-(azoxybis((2-methoxy-4,1-phenylene)azo))bis(4,5-dihydroxy-, sodium salt
124605–82–9	2,7-Naphthalenedisulfonic acid, 5-amino-3-[[4-[[4-[(8-amino-1-hydroxy-3,6-disulfo-2-naphthalenyl)azo]-2-methylphenyl]azo]-4-hydroxy-, lithium sodium salt
Structual Class—Biphenylbis(azonaphthalenesulfonates)	
4198–19–0	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethoxy(1,1'-biphenyl)-4,4'-diyl)bis(azo))bis(4,5-dihydroxy-, tetrasodium salt
3770–03–3	Cuprate(4-), (mu-((4,4'-((3,3'-di(hydroxy-kappaO)(1,1'-biphenyl)-4,4'-diyl)bis(azo-kappaN1))bis(3-(hydroxy-kappaO)-2,7-naphthalenedisulfonato))(8-)))di-, tetrasodium
28407–37–6	2,7-Naphthalenedisulfonic acid, 3,3'((3,3'-dihydroxy(1,1'-biphenyl)-4,4'-diyl)bis(azo)bis(5-amino-4-hydroxy-, sodium salt, copper complex
66418–17–5	Cuprate(3-), [.mu.-[4-[[4'-[(6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-3,3'- dihydroxy(1,1'-biphenyl)-4-yl)azo]-3-hydroxy-2,7-naphthalene disulfonato(7-)]]di-, trisodium
67952–80–1	Cuprate(4-), (mu-(5-(acetylamino)-3-((4'-((8-amino-1-hydroxy-3,6-disulfo-2-naphthalenyl)azo)-3,3'-dihydroxy(1,1'-biphenyl)-4-yl)azo)-4-hydroxy-2,7-naphthalenedisulfonato(8-)))di-, tetrasodium
68133–82–4	Chromate(2-), bis(2-((6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo)benzoato(3-))-, dihydrogen
68259–04–1	Acetic acid, 2,2'-((4,4'-bis((6-((1-hydroxy-4-(((2-methoxyethoxy)carbaryl)amino)phenyl)amino)-3-sulfo-2-naphthalenyl)azo(1,1'-biphenyl)-3,3'-diyl)bis(oxy))bis-, disodium salt
71550–22–6	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethoxy(1,1'-biphenyl)-4,4'-diyl)bis(azo))bis(5-amino-4-hydroxy-, tetralithium salt
71873–63–7	Cuprate(4-), [.mu.-[7-[[3,3'-dihydroxy-4'-[(4-hydroxy-2-sulfobenzo[a]phenazin-3-yl)azo-kappaN1)(1,1'-biphenyl)-4-yl)azo-kappaN1)-8-(hydrozy-kappa0)-1,3,6-naphthalenetrisulfonato(8-)))di-, tetrasodium salt
Structual Class—Bis[1',2'-dihydro-6'-hydroxy-4'-methyl-2'-oxo-1,3'- bipyridiniums]	
71032–99–0	1,3'-Bipyridinium, 5',5'''-(1,2-ethanediylbis(4,1-phenyleneazo))bis(1',2'-dihydro-6'-hydroxy-4'-methyl-2'-oxo-, salt with 2-hydroxypropanoic acid (1:2)
75214–63–0	1,3'-Bipyridinium, 5'-[[4-[[4-[(1',2'-dihydro-6'-hydroxy-3,4'-dimethyl-2'-oxo[1,3'-bipyridinium)-5'-yl)azo)benzoyl)amino)phenyl)azo)-1',3'-dihydro-6'-hydroxy-3,4'-dimethyl-2'-oxo-, salt with 2-hydroxypropanoic acid (1:2)
Structual Class—Bis[2-(phenylazo)-3-oxo-N-phenylbutanamides]	
6505–28–8	Butanamide, 2,2'-((3,3'-dimethoxy(1,1'-biphenyl)-4,4'-diyl)bis(azo))bis(3-oxo-N-phenyl-
7147–42–4	Butanamide, 2,2'-((3,3'-dimethoxy(1,1'-biphenyl)-4,4'-diyl)bis(azo))bis(N-(2-methylphenyl)-3-oxo-

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
68155–71–5	Benzamide, 4-((1-(((2-methoxyphenyl)amino)carbonyl)-2-oxopropyl)azo)-N-(4-((1-(((2-methoxyphenyl)amino)carbonyl)-2-oxopropyl)azo)phenyl)-
68516–73–4	1,4-Benzenedicarboxylic acid, 2,2'-[1,4-phenylenebis[imino(1-acetyl-2-oxo-2,1-ethanediyl)azo))bis-, tetramethyl ester
77804–81–0	Butanamide, 2,2'-(1,2-ethanediylbis(oxy-2,1-phenyleneazo)) bis(N- (2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-oxo-
Structual Class—Diaminoanthraquinones	
4403–90–1	m-Toluenesulfonic acid, 6,6'-(1,4-anthraquinonylenediimino) di-, disodium salt
67827–60–5	2-Anthracenesulfonic acid, 1-amino-4-((3-((benzoylamino)methyl)-2,4,6-trimethylphenyl)amino)-9,10-dihydro-9,10-dioxo-, monosodium salt
67969–88–4	2-Anthracenesulfonic acid, 1-amino-4-((4-(((4-methylphenyl)sulfonyl]oxy]phenyl)amino)-9,10-dihydro-9,10-dioxo-, monosodium salt
67970–27–8	Benzenesulfonic acid, 2,2'-((9,10-dihydro-9,10-dioxo-1,4-anthracenediyl)diimino) bis(5-methyl-, diammonium salt
72391–24–3	Benzenesulfonic acid, [[(chloroacetyl)amino]methyl][4-[[4-(cyclohexylamino)-9,10-dioxo-1-anthracenyl)amino)phenoxy)methyl-, monosodium salt
Structual Class—N-(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-4- [[4-[(methylamino)sulfonyl]phenyl]azo]-3-hydroxy-2- naphthalenecarboxamides	
3771–33–9	2-Naphthalenecarboxamide, -(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-4-((2,5-dimethoxy-4-((methylamino)sulfonyl)phenyl)azo)-3-hydroxy-
Structual Class— -(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-4- [[4-[(methylamino)sulfonyl]phenyl]azo]-3-hydroxy-2- naphthalenecarboxamides	
18269–75–6	2-Naphthalenecarboxamide,-(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-hydroxy-4-((2-methoxy-5-methyl-4-((methylamino)sulfonyl)phenyl)azo)-
61951–98–2	N-(2,3-Dihydro-2-oxo-1H-benzimidazol-5-yl)-3-hydroxy-4-((5-methoxy-2-methyl-4-((methylamino)sulphonyl)phenyl)azo)naphthalene-2-carboxamide
Structual Class—N-(arylazo)phenyl (disulfonaphthyl)azobenzamides	
70900–28–6	2,7-Naphthalenedisulfonic acid, 4-amino-3-((4-(((4-((4-amino-2-hydroxyphenyl)azo) phenyl)amino)carbonyl)phenyl)azo)-5-hydroxy-6-((4-sulfophenyl)azo)-, trisodium salt
72245–55–7	2,7-Naphthalenedisulfonic acid, 4-amino-3-((4-((4-((7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo)phenyl)amino)carbonyl)phenyl)azo)-5-hydroxy-6-(phenylazo)-, sodium salt
72245–57–9	2,7-Naphthalenedisulfonic acid, 4-amino-3-((4-(((4-((2-amino-4-hydroxyphenyl)azo)phenyl)amino)carbonyl)phenyl)azo)-5-hydroxy-6-(phenylazo)-, sodium salt
Structual Class—N,N'-bis[(arylazo)sulfonaphthyl]urea salts	
3441–14–3	2-Naphthalenesulfonic acid, 3-((4-(acetylamino)phenyl)azo)-4-hydroxy-7-((((5-hydroxy-6-(phenylazo)-7-sulfo-2-naphthalenyl)amino)carbonyl)amino)-, disodium salt
3626–36–6	2-Naphthalenesulfonic acid, 7,7'-(carbonyldiimino)bis(4-hydroxy-3-(phenylazo)-, disodium salt
79255–95–1	2-Naphthalenesulfonic acid, 7,7'-(carbonyldiimino)bis(4-hydroxy-3-((2-methyl-4-sulfophenyl)azo)-, sodium salt, compd. with 2,2',2''-nitrilotris(ethanol)
Structual Class—N-[2-[(2,6-dicyano-4-methylphenyl)azo]-5-(dialkylamino) phenyl]methanesulfonamides	
68385–96–6	Methanesulfonamide, -[2-[(2,6-dicyano-4-methylphenyl)azo]-5-(diethylamino)phenyl]-
72968–82–2	Methanesulfonamide, N-2-(2,6-dicyano-4-methylphenyl)azo-5-(dipropylamino)phenyl
Structual Class—N-[5-(amino)-2-[[5-(ethylthio)-1,3,4-thiadiazol-2-yl]azo]phenyl]acetamides	
63134–15–6	Acetamide, -5-(dipropylamino)-2-5-(ethylthio)-1,3,4-thiadiazol-2-ylazo phenyl-
67338–62–9	Acetamide, -(5-(ethyl(phenylmethyl)amino)-2-((5-(ethylthio)-1,3,4-thiadiazol-2-yl)azo)phenyl)-

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
Structual Class—Sulfonaphthyl-substituted 4,1-diazophenyl compounds	
20025–74–5	1,3,5-Naphthalenetrisulfonic acid, 7-((4-((4-((2,5,6-trichloro-4-pyrimidinyl)amino)phenyl)azo)phenyl)azo)-, trisodium salt
68460–07–1	2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4-[(2-amino-4-hydroxyphenyl)azo]phenyl]azo]-5-hydroxy-6-(phenylazo)-, disodium salt
124649–82–7	2-Naphthalenesulfonic acid, 4-hydroxy-3-[[2-methoxy-5-methyl-4-[(4-sulfophenyl)azo]phenyl]azo]-7-(phenylamino)-, cmpd. with [nitrilotris(2,1-ethanediyloxy)]tris[propanol] (1:2)
Structual Class—Sulfonaphthyl-substituted diphenylamine-4,4'-diazo-2-sulfonic acid salts	
67969–92–0	2-Naphthalenesulfonic acid, 6-amino-3-[[4-[[4-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenenyl]azo]phenyl]amino]-3-sulfophenyl]azo]-4-hydroxy-, trisodium salt
Structual Class—Sulfonaphthyl-substituted diphenylamine-4,4'-diazo-2-sulfonic acids	
72066–88–7	2,7-Naphthalenedisulfonic acid,4-amino-3-((4-((4-((2-amino-4-hydroxyphenyl)azo) phenyl)amino)-3-sulfophenyl)azo)-5-hydroxy-6-(phenylazo)-
Structual Class—Sulfonaphthyl-substituted N,N'-bis(azophenyl) urea salts	
3214–47–9	1,5-Naphthalenedisulfonic acid,3,3'-(carbonylbis(imino(2-methyl-4,1-phenylene)azo))bis-, tetrasodium salt
28706–21–0	1,3-Naphthalenedisulfonic acid, 7,7'-(iminobis(carbonyl(2-methyl-4,1-phenylene)azo))bis-, tetrasodium salt
28706–22–1	1,5-Naphthalenedisulfonic acid, 3,3'-(carbonylbis(imino(3-methoxy-4,1-phenylene)azo))bis-, tetrasodium salt
67969–87–3	1,3-Naphthalenedisulfonic acid, 7-((4-((((2-methoxy-4-((3-sulfophenyl)azo)phenyl)amino)carbonyl)amino)-2-methylphenyl)azo)-, trisodium salt
71873–47–7	Benzoic acid,3-((1-hydroxy-6-((((4-((8-hydroxy- 3,6- disulfo-1-naphthalenyl)azo)-2-methoxy-5-methylphenyl)amino) carbonyl) amino)-3-sulfo-2-naphthalenyl)azo)-4-methoxy-, tetrasodium salt
Structual Class—Tris(aminoaryl)methanamimnium compounds	
2390–59–2	Ethanaminium, -(4-(bis(4-(diethylamino)phenyl)methylene)-2,5-cyclohexadien-1-ylidene)-N-ethyl-, chloride
2390–60–5	Ethanaminium, -(4-((4-(diethylamino)phenyl)(4-(ethylamino)-1-naphthalenyl)methylene)-2,5-cyclohexadien-1-ylidene)-N-ethyl-, chloride
2580–56–5	2-Methanaminium,N-(4-((4-(dimethylamino)phenyl)(4- (phenylamino)-1-naphthalenyl)methylene)-2,5-cyclohexadien-1-ylidene)-N-methyl-, chloride
1064–48–8	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-3-((4-nitrophenyl)azo)-6-(phenylazo)-, disodium salt
1580–44–1	2-Naphthalenesulfonic acid, 7-amino-4-hydroxy-3-((5-hydroxy-6-(phenylazo)-7-sulfo-2-naphthalenyl)azo)-, disodium salt
6527–70–4	2,9-Triphenodioxazinedisulfonic acid, 6,13-dichloro-3,10-bis(phenylamino)-, disodium salt
1789–01–9	Cuprate(2-), (mu-((7,7'-iminobis(3-((5-(aminosulfonyl)-2-(hydroxy- kappaO)phenyl)azo-kappaN1)-4-(hydroxy-kappaO)-2- naphthalenesulfonato))(6-)))di-, disodium
12239–34–8	Acetamide, -(5-(bis(2-(acetyloxy)ethyl)amino)-2-((2-bromo-4,6-dinitrophenyl)azo)-4-ethoxyphenyl)-
4232–06–2	Benzenemethanamine, N-ethyl-N- 4-(1H-1,2,4-triazol-3-ylazo)phenyl -
41680–76–6	1,4-Benzenedicarboxylic acid, 2,5-bis(4-chlorophenyl)amino-
18386–01–7	.beta.-Alanine, N-ethyl-N-[4-[(5-nitro-2,1-benzisothiazol-3-yl)azo]phenyl]-, methyl ester
58104–55–5	2-Naphthalenesulfonamide, 6-hydroxy-N-(2-hydroxyethyl)-N-methyl-5-((4-(phenylazo)phenyl)azo)-
64181–81–3	7-((4-Chloro-6-((3-sulfophenyl)amino)-1,3,5-triazin-2-yl)amino)-4-hydroxy-3-((4-methoxy-2-sulfophenyl)azo)-2-naphthalenesulfonic acid, trisodium salt
67800–97–9	Chromate(1-), bis(3-(4-((5-chloro-2-hydroxyphenyl)azo)-4,5-dihydro-3-methyl-5-oxo- 1H-pyrazol-1-yl)benzene sulfonamidato(2-)-, sodium
67905–39–9	Aluminum, tris(triacontyl)-

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
67907–13–5	Benzenesulfonic acid, 2-((4-((4-(((4-methylphenyl)sulfonyl)oxy)phenyl) azo)phenyl)amino)-5-nitro-, monosodium salt
68958–98–5	Benzenesulfonic acid, 3-((4-((4-hydroxyphenyl)azo)-1-naphthalenyl)azo)-, monosodium salt
70209–93–7	Benzoic acid, 2-((8-((4-chloro-6-((4-(6-methyl-7-sulfo-2-benzothiazolyl)phenyl)amino)-1,3,5-triazin-2-yl)amino)-1-hydroxy-3,6-disulfo-2-naphthalenyl)azo)-, tetrasodium salt
70209–98–2	Benzenesulfonic acid,2-((1-(2-chloro-6-methylphenyl)-4,5- dihydro-3-methyl-5-oxo-1H-pyrazol-4-yl)azo)-4-((4-chloro-6-(phenylamino)-1,3,5-triazin-2-yl)amino)-, monosodium salt
70528–90–4	3-Pyridinecarbonitrile, 5-((4-chloro-2-nitrophenyl)azo)-1-ethyl-1,2-dihydro-6-hydroxy-4-methyl-2-oxo-
71735–65–4	Tetrasodium(8-hydroxy-7-((2-hydroxy-7-sulpho-6-((4-((2,5,6-trichloro-4-pyrimidinyl)amino)phenyl)azo)-1-naphthyl)azo)naphthalene-1,3,6-trisulphonato(6-))cuprate(4-)
72252–58–5	Chromate(4-), (mu-(3-((2-(amino-kappaN)-5- (hydroxy-kappaO)- 6-((2-(hydroxy-kappaO)-5-nitro-3-sulfophenyl)azo-kappaN1)-7-sulfo-1-naphthalenyl)azo-kappaN1)-2-hydroxy-5-sulfobenzoato(8-)))di-, tetrasodium
72828–69–4	Benzenesulfonic acid, 2-((5-amino-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-5-yl)azo)-, 1,1'-((1-methylethylidene)di-4,1-phenylene) ester, disodium salt
73309–47–4	1-Naphthalenesulfonic acid, 4,4'-((4,6-dihydroxy-1,3-phenylene)bis(azo))bis-, disodium salt
78181–99–4	1-Propanaminium, 3-((2-cyano-3-(4-(diethylamino) phenyl)-1-oxo-2-propenyl)oxy)-N-(2-((2-cyano-3-(4-(diethylamino) phenyl)-1-oxo-2-propenyl)oxy)ethyl)-N,N-dimethyl-, chloride
85392–59–2	Iron, [.mu.-[3-[[5-[[2,4-dihydroxy-5-[(2-hydroxy-3-nitro-5-sulfophenyl) azo]phenyl)phenyl)methyl-2,4-dihydroxyphenyl) azo)-2-hydroxy- 5-nitrobenzenesulfonato(6-)))di-
112484–44–3	2,7-Naphthalenedisulfonic acid,4-amino-6-((4-(((4-((2,4-diaminophenyl)azo)phenyl) amino)sulfonyl) phenyl)azo)-5-hydroxy-3-((4-nitrophenyl)azo)-, potassium sodium salt
130201–55–7	Benzenesulfonic acid, 3,3'-[[6-(4-morpholinyl)-1,3,5-triazine-2,4-diyl]bis[imino[2-(acetylamino)-4,1-phenylene]azo]]bis-, disodium salt

IV. Revisions to the TSCA Section 4(e) Priority Testing List

A. Chemicals Added to the Priority Testing List

1. *Benzene, 1,3,5-tribromo-2-(2-propenyloxy)- —*i. *Recommendation.* Benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) is recommended to obtain unpublished exposure, environmental fate, health effects, and ecological effects data.

ii. *Rationale for recommendation.* Benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is predicted to persist and bioconcentrate. There are very few toxicity data. Depending on the exposure, environmental fate, health effects, and ecological effects data that are provided, the EPA may consider benzene, 1,3,5-tribromo-2-(2-propenyloxy)- for their PBT Initiative.

iii. *Supporting information.* Benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is produced in excess of 500,000 pounds per annum and used as a flame retardant for expanded polystyrene insulation board. The predicted BCF of benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is 4,019. The rat oral LD_{50} was 5 grams/kilograms (g/kg) and it was not mutagenic in an Ames assay. A TOXLINE search identified one report that benzene, 1,3,5-tribromo-2-(2-propenyloxy)- was detected in sewer slime (Ref. 13).

iv. *Information needs.* The ITC needs exposure, environmental fate, health effects, and ecological effects data. Only studies where benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is ≤ 90% of the test substance by weight should be submitted.

2. *1-Triazene, 1,3-diphenyl—*i. *Recommendation.* 1-Triazene, 1,3-diphenyl (diazoaminobenzene) (CAS No. 136–35–6) is being recommended to obtain annual production/importation volumes and trends, use, exposure, and health effects data.

ii. *Rationale for recommendation.* No occupational exposure limits have been established by the American Conference of Government Industrial Hygienists (ACGIH), the National Institute for Occupational Safety and Health (NIOSH), or the Occupational Safety and Health Administration (OSHA). Occupational exposures have not been characterized and there are no estimates of the number of workers exposed. The ITC needs occupational exposure data from the uses of diazoaminobenzene, e.g., to manufacture dyes and insecticides.

iii. *Supporting information.* A recent National Toxicology Program Report indicated that diazoaminobenzene is metabolized in rats and mice to the known carcinogens benzene and aniline (Ref. 12). Although not tested for carcinogenicity, diazoaminobenzene is a predicted carcinogen based on its metabolism and similarity in toxic effects to benzene and aniline. Diazoaminobenzene is used as an intermediate, complexing agent, and polymer additive. It is an impurity in certain color additives used in cosmetics, food products, and pharmaceuticals. It may also be used as a propellant for molding of rubbers and plastics and as a coupler to promote adhesion of natural rubber to steel tire cords. Since diazoaminobenzene has semiconducting properties it may have applications in the semi conductor industry.

Diazoaminobenzene may put workers at a heretofore unrecognized increased risk of cancer if they are exposed in the workplace. Importation, production, use, and exposure information will assist in determining if diazoaminobenzene may need further testing to adequately assess potential hazards associated with occupational exposures.

iv. *Information needs.*—a. Recent non-CBI estimates of annual production or importation volume data and trends.

b. Use information, including percentages of production or importation that are associated with different uses.

c. Estimates of the number of humans and concentrations of diazoaminobenzene compounds to which humans may be exposed from use, manufacturing, or processing.

d. Health effects data including pharmacokinetics, genotoxicity, subchronic

and chronic toxicity, reproductive, and developmental toxicity, and any human data from occupationally exposed workers: This information is needed in order to adequately access the extent and degree of exposure and potential hazard associated with diazoaminobenzene.

e. Only studies where diazoaminobenzene is ≥90% of the test substance by weight should be submitted.

B. Chemicals Removed From the Priority Testing List

1. *Acetone.* Acetone was designated in the ITC's 28th ITC Report for reproductive effects testing as a chemical with a low confidence reference dose or RfD (56 FR 41212, August 19, 1991) (FRL–3937–4). Acetone is being removed from the *Priority Testing List* because it was in the OECD SIDS program (see http://irptc.unep.ch/irptc/sids/sidspub.html volume 6) and because it is included in the EPA's VCCEP for reproductive effects and developmental toxicity testing (http://www.epa.gov/chemrtk/childhlt.htm). The EPA anticipates that under the VCCEP, tier 2 testing for prenatal developmental toxicity, reproductive and fertility effects testing will be conducted for acetone.

2. *Twenty alkylphenols and alkylphenol ethoxylates.* The ITC is continuing to review data on the alkylphenols and alkylphenol ethoxylates that were recommended in ITC's 37th ITC Report (61 FR 4188, February 2, 1996) (FRL–4991–6), 39th ITC Report (62 FR 8578, February 25, 1997) (FRL–5580–9), and 41st ITC Report (63 FR 17658 , April 9, 1998) (FRL–5773–5). At this time, the ITC is removing from the *Priority Testing List*, 9 alkylphenols and alkylphenol ethoxylates from the 37th ITC Report, 7 nonylphenol ethoxylates from the 39th ITC Report, and 4 alkylphenols and alkylphenol ethoxylates from the 41st ITC Report (see Table 5 of this appendix). The rationales for removing these alkylphenols and alkylphenol ethoxylates are provided as footnotes to Table 5 of this appendix.

TABLE 5.—ALKYLPHENOLS AND ALKYLPHENOL ETHOXYLATES BEING REMOVED FROM THE PRIORITY TESTING LIST

Report	CAS No.	Chemical name	Rationale
37	99–71–8	4-sec-Butylphenol	1
37	104–40–5	4-Nonylphenol	2
37	1638–22–8	4-n-Butylphenol	2
37	9002–93–1	Polyethylene glycol 4-(tert-octyl)phenyl ether	2
37	9036–19–5	Polyethylene glycol mono(octyl)phenyl ether	3
37	14938–35–3	4-Pentylphenol	2
37	27193–28–8	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	3
37	27193–86–8	Dodecylphenol (mixed isomers)	4
37	68987–90–6	Poly(oxy-1,2-ethanediyl), .alpha.-(octylphenyl)-.omega.-hydroxy-, branched	3
39	20427–84–3	2-[2-(4-Nonylphenoxy)ethoxy]ethanol	2
39	37205–87–1	Poly(oxy-1,2-ethanediyl), .alpha.-(isononylphenyl)-.omega.-hydroxy-	2
39	68412–54–4	Poly(oxy-1,2-ethanediyl), .alpha.-(nonylphenyl)-.omega.-hydroxy-, branched	2
39	98113–10–1	NP 9	2
39	127087–87–0	Poly(oxy-1,2-ethanediyl), .alpha.-(4-nonylphenyl)-.omega.-hydroxy-, branched	2
39	9016–45–9	Poly(oxy-1,2-ethanediyl), .alpha.-(nonylphenyl)-.omega.-hydroxy-	5
39	26027–38–3	Poly(oxy-1,2-ethanediyl), .alpha.-(4-nonylphenyl)-.omega.-hydroxy-	5
41	74499–35–7	Phenol, (tetrapropenyl) derivs.	4
41	68908–55–4	Phenol, polybutene derivs.	2
41	112375–88–9	Phenol, polyisobutylene derivs.	2
41	9014–92–0	Poly(oxy-1,2-ethanediyl), α-(dodecylphenyl)-ω-hydroxy-	2

Removal rationales:

1. Data developed from testing 4-tert-butylphenol (CAS No. 98–54–4) in response to the HPV Challenge program may be used to predict toxicity.

2. No domestic production or importation volumes were reported to the EPA in response to 1986, 1990, 1994, and 1998 IURs or no domestic production or importation volumes were reported to the EPA in response to the July 5, 2000 PAIR rule (65 FR 41371) (FRL–6589–1).

3. Data developed from testing phenol, 4-(1,1,3,3-tetramethylbutyl)- (CAS No. 140–66–9) in response to the HPV Challenge program may be used to predict toxicity.

4. Data developed from testing p-dodecylphenol (CAS No. 210555–94–5) in response to the HPV Challenge program may be used to predict toxicity.

5. Data developed from testing branched nonylphenol (CAS No.84852–15–3) in response to the HPV Challenge program may be used to predict toxicity.

There are 10 alkylphenols and alkylphenol ethoxylates remaining on the *Priority Testing List* (see Table 6 of this appendix).

TABLE 6.—ALKYLPHENOLS AND ALKYLPHENOL ETHOXYLATES REMAINING ON THE PRIORITY TESTING LIST

Report	CAS No.	Chemical name
37	80–46–6	4-tert-Pentylphenol
37	88–18–6	2-tert-Butylphenol
37	98–54–4	4-tert-Butylphenol
37	1806–26–4	4-Octylphenol
37	25154–52–3	Nonylphenol (mixed isomers)
37	84852–15–3	Branched nonylphenol (mixed isomers)
39	27986–36–3	2-(Nonylphenoxyl)ethanol
41	1987–50–4	Phenol, 4-heptyl-
41	72624–02–3	Phenol, heptyl derivs.
41	140–66–9	Phenol, 4-(1,1,3,3-tetramethylbutyl)-

3. *Three DEBITS chemicals from the 46th ITC Report.* In its 46th ITC Report, the ITC discussed 2 groups of DEBITS chemicals, polychlorophenols and polychlorobenzenethiols and chlorotrifluoromethylphenoxy benzenes (65 FR 75552, December 1, 2000) (FRL–6594–7). Two of the polychlorophenols and polychlorobenzenethiols (pentachlorothiophenol, CAS No. 133–49–3 and tetrachloropyrocatechol, CAS No. 1198–55–6) and two of the chlorotrifluoromethylphenoxy benzenes (p-toluidine, 5-chloro-.alpha.,.alpha.,.alpha.-trifluoro-2-nitro-N-phenyl, CAS No. 1806–24–2 and benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-, 2-ethoxy-1-methyl-2-oxo, CAS No. 88185–22–2) were subsequently added to the *Priority Testing List* in the ITC's 47th ITC Report. All 4 of these chemicals were added to the July 26, 2001 PAIR rule (66 FR 38955) (FRL–6783–6). All of these chemicals, except pentachlorothiophenol, are being removed from the *Priority Testing List* because no production or importation data were submitted to the EPA in response to the 1998 IUR (10,000 pound reporting threshold) or the July 26, 2001 PAIR rule (1,000 pound reporting threshold).

4. *Three DEBITS chemicals from the 47th ITC Report.* In its 47th ITC Report, the ITC added 3 chloroalkenes to the *Priority Testing List*: 1,3-butadiene, 1,1,2,3,4-pentachloro-4-(1-methylethoxy)- (CAS No. 68334–67–8); 3-butenoic acid, 2,2,3,4,4-pentachloro-butyl ester (CAS No. 75147–20–9); and 3-butenoic acid, 2,2,3,4,4-pentachloro- (CAS No. 85743–61–9). The ITC is removing these 3 chloroalkenes from the *Priority Testing List* because no production or importation data were submitted to the EPA in response to the 1998 IUR.

5. *Nine DEBITS chemicals from the 48th ITC Report.* In its 48th ITC Report, the ITC added 5 chlorinated trihalomethyl pyridines, 2 trihaloethylidene bisbenzenes, 4 trichlorophenyldihydropyrazols and 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl) -benzeneamine to the *Priority Testing List*. The ITC is removing the 5 chlorinated trihalomethyl pyridines, 1 of the trihaloethylidene bisbenzenes (benzene, 1,1'-(2,2,2-trichloroethylidene)bis-), and 3 of the trichlorophenyldihydropyrazols (benzamide, 3-amino-N-[4,5-dihydro-5-oxo-1-(2,4,6-trichlorophenyl)-1H-pyrazol-3-yl; 3H-pyrazol-3-one, 5-((5-amino-2-chlorophenyl)amino) -2,4-dihydro-2-(2,4,6-trichlorophenyl)-; and benzamide, N-(4,5-dihydro-5-oxo-1- (2,4,6-trichlorophenyl)-1H-pyrazol-3-yl)-3-nitro-) from the *Priority Testing List* because no production or importation data were submitted to the EPA in response to the 1998 IUR or because the predicted BCFs were judged to be too low to warrant priority consideration at this time.

V. References

1. ITC. 1977. Initial Report of the TSCA Interagency Testing Committee (October 1, 1977) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (42 FR 55026–55080, October 12, 1977).

2. ITC. 1978a. Second Report of the TSCA Interagency Testing Committee (April 10, 1978) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (43 FR 16684–16688, April 19, 1978).

3. ITC. 1978b. Third Report of the TSCA Interagency Testing Committee (October 2, 1978) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (43 FR 50630–50635, October 10, 1978).

4. ITC. 1979. Fifth Report of the TSCA Interagency Testing Committee (November 8, 1979) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (44 FR 70664–70674, December 7, 1979).

5. ITC. 1980a. Sixth Report of the TSCA Interagency Testing Committee (April 9, 1980) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (45 FR 35897–35910, May 28, 1980).

6. ITC. 1980b. Seventh Report of the TSCA Interagency Testing Committee (October 24, 1980) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (45 FR 78432–78446, November 25, 1980).

7. ITC. 1982. Eleventh Report of the TSCA Interagency Testing Committee (November 3, 1982) to the Administrator; Receipt of Report and Request for Comments Regarding *Priority Testing List* of Chemicals. **Federal Register** (47 FR 54625–54644, December 3, 1982).

8. ITC. 1984. Fourteenth Report of the TSCA Interagency Testing Committee (May 8, 1984) to the Administrator; Receipt of Report and Request for Comments Regarding *Priority Testing List* of Chemicals. **Federal Register** (49 FR 22389–22407, May 29, 1984).

9. ITC. 1985. Sixteenth Report of the TSCA Interagency Testing committee (May 2, 1985) to the Administrator; Receipt of Report and Request for Comments Regarding *Priority Testing List* of Chemicals. **Federal Register** (50 FR 20930–20939, May 21, 1985).

10. ITC. 1986. Nineteenth Report of the TSCA Interagency Testing Committee (October 31, 1986) to the Administrator; Receipt of Report and Request for Comments Regarding *Priority Testing List* of Chemicals. **Federal Register** (51 FR 41417–41432, November 14, 1986).

11. ITC. 1989. Twenty-fifth Report of the TSCA Interagency Testing Committee (November 1, 1989) to the Administrator; Receipt of Report and Request for Comments Regarding *Priority Testing List* of Chemicals. **Federal Register** (54 FR 51114–51130, December 12, 1989).

12. National Toxicology Program (NTP). 2002. Toxicity Report Series Number 73. NTP report on the metabolism, toxicity, and predicted carcinogenicity of diazoaminobenzene (CAS No. 136–35–6), U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health. NIH Publication No. 01–4412. Draft abstract available online at:http:/

/ntp-server.niehs.nih.gov/htdocs/ST-studies/tox073.html

13. Sauer J., Antusch E., and Ripp C. 1997. Monitoring of organic pollutants in sewer systems by sewer slime analysis. pp. 49–69. In Haberer K (ed.) *Water*. VCH Publishers, Inc., New York, NY. ISBN 3–527–28820–1.

14. Walker JD. 1993. The TSCA Interagency Testing Committee, 1977 to 1992: Creation, structure, functions and contributions. pp. 451–509. In J.W. Gorsuch, F.J. Dwyer, C.G. Ingersoll and T.W. La Pointe (eds.), *Environmental Toxicology and Risk Assessment*: Second Volume, ASTM STP 1216. ASTM, Philadelphia, PA.

VI. TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmental Quality
Vacant

Department of Commerce

National Institute of Standards and Technology
Robert Huie, Member
Barbara C. Levin, Alternate

National Oceanographic and Atmospheric Administration
Thomas P. O'Connor, Member
Teri Rowles, Alternate

Environmental Protection Agency
Paul Campanella, Member
David R. Williams, Alternate

National Cancer Institute
Alan Poland, Member
David Longfellow, Alternate

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Scott Masten, Member, Chair
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National Science Foundation
A. Frederick Thompson, Member
Marge Cavanaugh, Alternate

Occupational Safety and Health Administration
Val H. Schaeffer, Member
Lyn Penniman, Alternate

Liaison Organizations and Their Representatives

Agency for Toxic Substances and Disease Registry
William Cibulas, Member
Daphne Moffett, Alternate

Consumer Product Safety Commission
Jacqueline Ferrante, Member
Treye Thomas, Alternate

Department of Agriculture
Clifford P. Rice, Member
Laurau L. McConnell, Alternate

Department of Defense
Barbara Larcom, Member
Kenneth Still, Alternate
José Centeno, Alternate

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Barnett A. Rattner, Member

Food and Drug Administration
David Hatten, Alternate

National Library of Medicine
Vera W. Hudson, Member

National Toxicology Program
NIEHS, FDA, and NIOSH Members

Counsel
Scott Sherlock, OPPT, EPA

Technical Support Contractor
Syracuse Research Corporation

ITC Staff
John D. Walker, Executive Director
Norma S. L. Williams, Executive Assistant

TSCA Interagency Testing Committee, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7527; fax number: (202) 564–7528; e-mail address: williams.norma@epa.gov; url: http://www.epa.gov/opptintr/itc.

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Part VI

The President

Proclamation 7578—National Korean War Veterans Armistice Day, 2002

Federal Register
Vol. 67, No. 146
Tuesday, July 30, 2002

Presidential Documents

Title 3—

The President

Proclamation 7578 of July 26, 2002

National Korean War Veterans Armistice Day, 2002

By the President of the United States of America

A Proclamation

Fifty-two years ago, armed forces from North Korea shattered the peace as they crossed the 38th Parallel and invaded South Korea. A 22-country force assembled to face this Cold War challenge, and the majority of them were Americans. The brave men and women of this coalition fought courageously to defend a population facing tyranny and aggression, and they succeeded in defeating the invading forces.

During the Korean War, approximately 1.8 million members of the United States Armed Forces fought in places such as Pork Chop Hill, Pusan Perimeter, and the Chosin Reservoir. During the intense fighting, approximately 34,000 American lives were lost in combat; 92,000 were wounded; and more than 8,000 listed as missing in action or taken prisoner. Their distinguished service reminds us of the words engraved on the Korean War Veterans Memorial in Washington—"Freedom Is Not Free."

As we face the challenges of a new era and a new war, we look to America's Korean War veterans for their example of dedication and sacrifice in defending freedom. These men and women faced a formidable adversary and endured harsh and bitter conditions in upholding our Nation's heritage of valor, tenacity, and honor during this important stand against Communist aggression. For their gallantry in action, 131 servicemen earned our Nation's highest military award, the Medal of Honor. More than 90 of them received the award posthumously.

Forty-nine years ago, the Military Armistice Agreement ended the fighting and stopped the spread of Communism in Korea. In order to thank and honor veterans of the Korean War and their families, America will commemorate the 50th Anniversary of the Korean War through November 11, 2003. Today, as the Republic of Korea stands as a strong, democratic, and progressive nation, we thank our Korean War veterans for serving our Nation and the world with courage and distinction. These patriots advanced the principles and ideals upon which our Nation was founded, and they helped promote liberty, opportunity, and hope.

The Congress, by Public Law 104–19, as amended (36 U.S.C. 127), has designated July 27, 2002, as "National Korean War Veterans Armistice Day," and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim July 27, 2002, as National Korean War Veterans Armistice Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities that honor and give thanks to our distinguished Korean War veterans. I also ask Federal departments and agencies and interested groups, organizations, and individuals to fly the flag of the United States at half-staff on July 27, 2002, in memory of the Americans who died as a result of their service in Korea.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

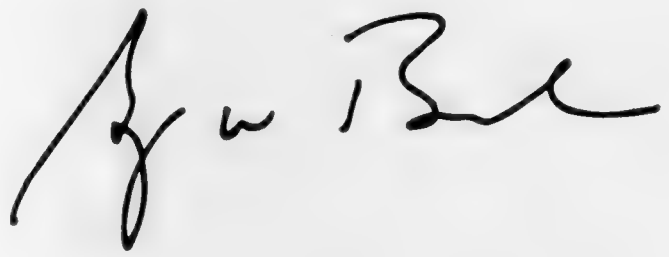

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Federal Register

Tuesday,
July 30, 2002

Part VII

The President

Proclamation 7579—Anniversary of the Americans with Disabilities Act, 2002

Federal Register
Vol. 67, No. 146
Tuesday, July 30, 2002

Presidential Documents

Title 3—

The President

Proclamation 7579 of July 26, 2002

Anniversary of the Americans with Disabilities Act, 2002

By the President of the United States of America

A Proclamation

The Americans with Disabilities Act of 1990 (ADA) is one of the most compassionate and successful civil rights laws in American history. In the 12 years since President George H. W. Bush signed the ADA into law, more people with disabilities are participating fully in our society than ever before. As we mark this important anniversary, we celebrate the positive effect this landmark legislation has had upon our Nation, and we recognize the important influence it has had in improving employment opportunities, government services, public accommodations, transportation, and telecommunications for those with disabilities.

Today, Americans with disabilities enjoy greatly improved access to countless facets of life; but more work needs to be done. We must continue to build on the important foundations established by the ADA. Too many Americans with disabilities remain isolated, dependent, and deprived of the tools they need to enjoy all that our Nation has to offer.

My Administration is committed to removing the barriers that prevent people with disabilities from realizing their full potential and achieving their dreams. The New Freedom Initiative, which I announced last year, builds on the hopeful path of the ADA. It provides Americans with disabilities increased access to assistive technologies, expands educational options, and increases opportunities for them to integrate into our workforce. We are committed to ensuring the delivery of vital services to disabled persons in an integrated, community-based setting.

My Administration will continue to enforce the Americans with Disabilities Act, and we will work with businesses and State and local governments to increase partnerships that promote the purposes of the ADA. Together, we are working for a day when all people with disabilities are able to live and work with dignity, freedom, and independence and realize their potential as fully integrated members of our society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 26, 2002, as a day in celebration of the 12th Anniversary of the Americans with Disabilities Act. I call upon public officials, business leaders, people with disabilities, and all Americans to pursue the ADA's full promise of equal opportunity and to celebrate the expanded freedom that the ADA has brought to American life.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

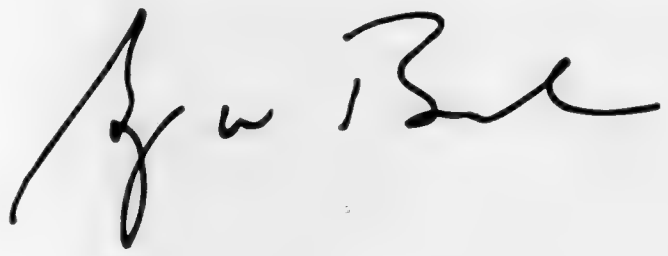

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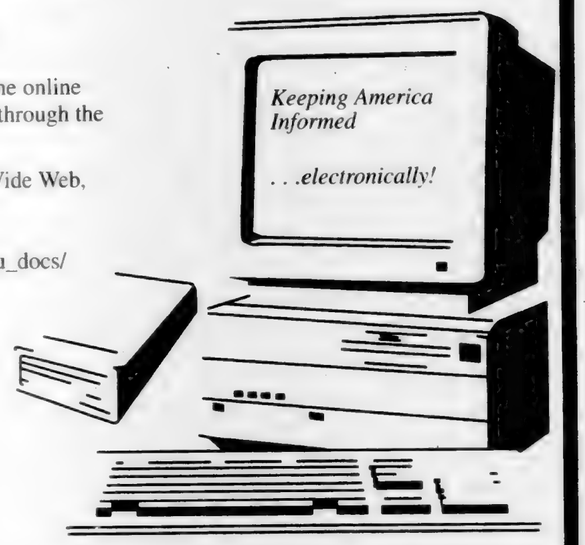

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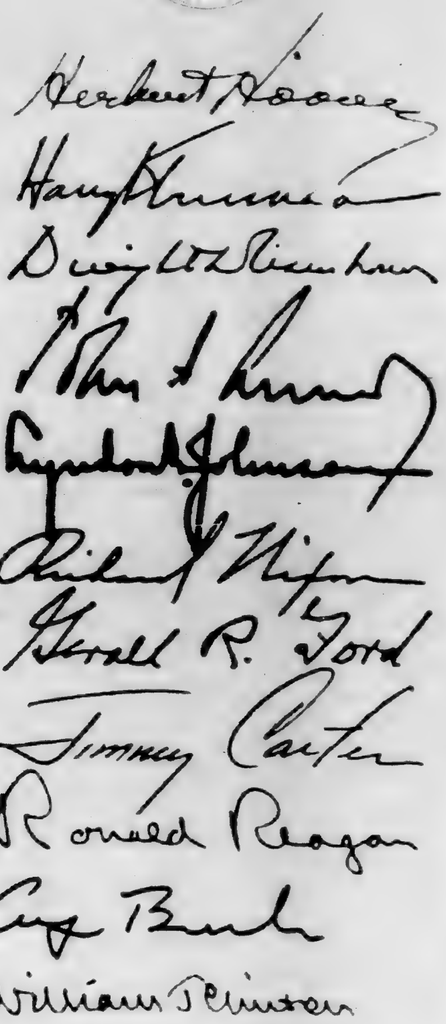

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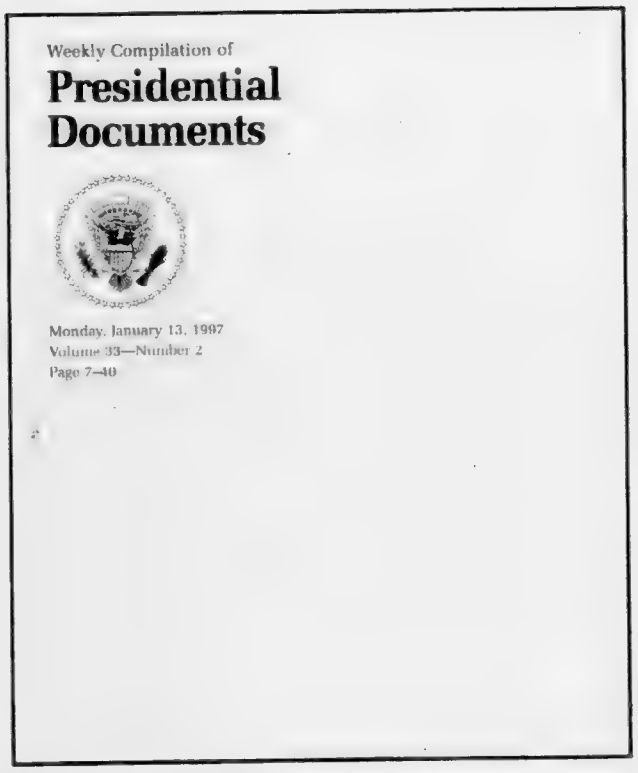

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Presidential Documents

Title 3—

The President

Proclamation 7580 of July 26, 2002

Parents' Day, 2002

By the President of the United States of America

A Proclamation

Parenthood is a profound blessing, bringing with it responsibilities that are both challenging and rewarding. The care, dedication, and attention of parents are critical to their children's success. As they teach, guide, and nurture, parents help their children to realize their potential and achieve their dreams. Parents also play a critical role in shaping their children's character by sharing important life-lessons and values and showing them how to love and care for others.

As we face the challenges of a new era, families remain the foundation of our civil society; and parents are the corner stone of strong families. This important responsibility often presents difficult problems and trying circumstances as parents balance competing demands such as making a living, raising their children, and participating in their communities.

Our Nation has made great progress in recognizing the importance of effective parenting, but there is still much to do. My Administration is committed to promoting a healthier society by helping parents build stronger families. Many studies have shown that children do better in two-parent households where the parents are married; and as part of our plan to promote the well-being of children, I have committed significant resources to programs that encourage healthy and stable marriages. While no law can ensure that people love one another, we can support initiatives that help couples learn how to build successful marriages and be good parents.

My Administration supports community-based efforts that help delinquent fathers improve their lives so they can become effective parents. With job training, employment, counseling, and career advancement education, we hope to make it easier for more fathers to have positive relationships with their sons and daughters. We have also taken important steps to empower and inform parents through the No Child Left Behind Act, ensuring that they will be vital partners in their children's education. Further, every child in America deserves to live in a safe, stable, and loving family; my Administration is committed to increasing public awareness about the importance of adoption and to encouraging Americans to consider adopting children. By pursuing these significant measures, we increase compassion in our society, and we make America a better place for all.

The nurturing and development of children require widespread investment, focus, and commitment. While Government plays an important role in this process, citizens, schools, and civic institutions must also assist parents by reaching out to help meet the needs of young people in their communities. By working together to provide for our children, we will show them the way to a brighter future.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States and consistent with Public Law 103–362, as amended, do hereby proclaim Sunday, July 28, 2002, as Parents' Day. I encourage all Americans to join me in honoring the millions of mothers and fathers, biological and adoptive, foster parents, and stepparents, whose

selfless love and determined efforts influence lives for the good of their children and our Nation. I also urge all Americans to express their love, respect, and appreciation to our parents, and I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

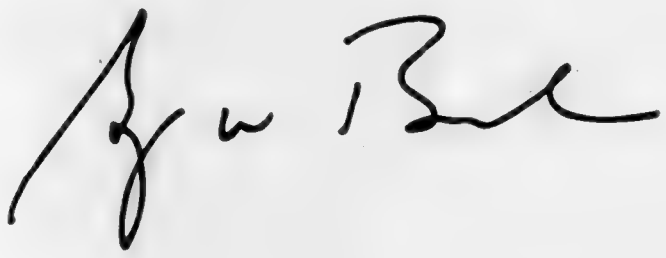

[FR Doc. 02–19484
Filed 7–30–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7581 of July 29, 2002

The Bicentennial of the United States Patent and Trademark Office, 2002

By the President of the United States of America

A Proclamation

For two centuries, the United States Patent Office has played a vital role in the scientific, technical, and economic development of our Nation by granting inventors patents for their inventions. As Abraham Lincoln once stated, patents "added the fuel of interest to the fire of genius."

The first Patent Act of the United States was signed into law by President George Washington on April 10, 1790. Under this legislation, patent applicants petitioned the Secretary of State for the grant of a patent. The Secretary, in consultation with the Secretary of War and the Attorney General, determined whether the invention or discovery was "sufficiently useful and important." At that time, both the President and the Secretary of State signed patents.

As the number of applications for patents grew, it became necessary to develop an organized review process to handle the increasing volume. In 1793, the law was changed to eliminate examinations, and the job of receiving and granting patents was given to clerks in the Department of State.

On June 1, 1802, the Secretary of State appointed Dr. William Thornton to serve as the first clerk at the Department of State. In that position, Dr. Thornton was solely responsible for receiving and recording patent applications and issuing patents, and his office effectively became the first patent office. From this simple beginning, the Patent Office has grown to become a modern institution of ideas and innovations.

For 200 years, millions of inventors have sought to protect their inventions through the American patent system. These patented inventions include Thomas Edison's electric lamp, Alexander Graham Bell's telegraphy, Orville and Wilbur Wright's flying machine, John Deere's steel plow, George Washington Carver's use of legume oils to produce cosmetics and paint, and Edwin Land's Polaroid camera.

In 1881, the functions of the Patent Office grew to also include the registration of trademarks. Today, the United States Patent and Trademark Office annually receives more than 326,000 patent applications and 232,000 trademark applications. Since the signing of the first Patent Act over two centuries ago, more than 6.3 million United States patents have been issued. The United States Patent and Trademark Office represents one of the largest repositories of scientific and technical knowledge in the world, and much of this information is available on the Internet. Similarly, 2 million current trademark registrations are also available online.

As the Patent Office enters its third century, we commend the important work of the United States Patent and Trademark Office that supports scientific, technological, and intellectual property developments; promotes growth in our economy; and encourages increased prosperity for our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the Bicentennial of

the United States Patent and Trademark Office. I call upon all Americans to recognize this anniversary with appropriate programs, ceremonies, and activities, thereby honoring the Office's many scientific, economic, and cultural contributions to our Nation and the world.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

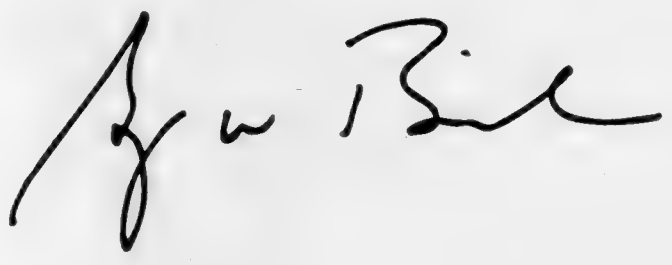

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Rules and Regulations

Federal Register
Vol. 67, No. 147
Wednesday, July 31, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 204, 245 and 299

[INS No. 2104–00]

RIN 1115–AGOO

Allowing In Certain Circumstances for the Filing of Form I–140 Visa Petition Concurrently With a Form I–485 Application

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The current Immigration and Naturalization Service (Service) regulations provide that an alien worker who wants to apply for permanent resident by filing the appropriate Form I–485, Application to Register Permanent Residence or Adjust Status, cannot do so until he or she obtains approval of the underlying petition, Form I–140, Immigrant Petition for Alien Worker. This procedure has resulted in an unnecessary delay for certain alien workers. This interim rule amends the Service's regulations by allowing the Form I–485 to be filed concurrently when a visa is immediately available, thereby improving the efficiency of the process as well as customer service. This interim rule also provides that, if an employment-based visa petition is pending on July 31, 2002, the alien beneficiary may obtain the benefits of concurrent filing, but only if the alien beneficiary files the Form I–485, together with the applicable fee and a copy of their Form I–797, Notice of Action, establishing previous receipt and acceptance by the Service of the underlying Form I–140 visa petition. Further, this interim rule will allow the alien worker to apply for employment authorization using Form I–765, Application for Employment Authorization, and for advance parole authorization using Form I–131, Application for Travel Document, while the Form I–485 is pending.

DATES: *Effective date:* This interim rule is effective July 31, 2002.

Comment date: Written comments must be submitted on or before September 30, 2002.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2104–00 on your correspondence. You may also submit comments electronically to the Service at insregs@usdoj.gov. When submitting comments electronically please include the INS No. 2104–00 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Morrie Berez, Assistant Director, Business and Trade Services Branch, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

Why Is the Service Issuing This Rule?

This interim rule is necessary to improve both efficiency and customer service, and to support the Service's long-established goals for filing of petitions and applications via direct mail. Current regulations at § 204.5(n), § 245.1(g) and § 245.2(a)(2) state that an alien can only submit Form I–485 after the alien has had his or her underlying visa petition, Form I–140, approved, and when an immigrant visa is immediately available. Due to these requirements there has been a delay from the time the Form I–140 is filed with the Service until the alien worker, for whom a visa is otherwise immediately available, can properly file Form I–485 with the Service.

The most practical and efficient way to eliminate this dalay is to permit concurrent filing of Form I–485 together with Form I–140 in cases in which a visa is immediately available. Concurrent filing eliminates the dalay that takes place between approval of Form I–140 and the subsequent filing of Form I–485. This interim rule provides for such concurrent filing.

Does This Interim Rule Change or Amend the Substantive Eligibility Requirements for the Visa Petition or Permanent Residence Applications?

No, this interim rule does not change the current substantive requirements governing eligibility for and adjudication of the Form I–140 nor for the Form I–485.

Who Is Eligible To File Forms I–140 and I–485 Concurrently?

Forms I–140 and I–485 may be filed concurrently only when an immigrant visa number is immediately available. This interim rule does not change the existing requirement that a visa number must be immediately available before an alien can apply for permanent resident status. This interim rule simply applies to aliens who are classifiable under sections 203(b)(1), (2), and (3), of the Immigration and Nationality Act, allowing them to file the Forms I–140 and I–485 at the same time, but only when a visa is immediately available.

If a Form I–140 Visa Petition Previously Filed for an Alien Worker Is Still Pending With the Service on or After the Date This Rule Is Published, and a Visa Number Is Immediately Available, Can the Alien File Form I–485?

Yes, upon issuance of this rule, an alien whose Form I–140 visa petition is pending with the Service may file Form I–485, together with associated forms and fees, with the Service office at which the visa petition was filed. When filing Form I–485, the alien will be required to attach a copy of the Form I–797, Notice of Action, establishing previous receipt and acceptance by the Service of the underlying Form I–140 visa petition. When an immigrant visa is immediately available, Form I–485 may be filed either concurrently with the Form I–140 or anytime thereafter.

If a Visa Number Was Not Immediately Available at the Time a Form I–140 Visa Petition Was Filed, and Then a Visa Number Becomes Available, Can the Alien File Form I–485?

Yes, upon issuance of this rule, if a visa number becomes immediately available since filing of the underlying Form I–140, the alien may tehn file

Form I–485, together with associated forms and appropriate fees, with the Service office at which the visa petition was filed. When filing Form I–485, the alien will be required to attach a copy of the Form I–797, Notice of Action, establishing previous receipt and acceptance by the Service of the underlying Form I–140 visa petition.

If the Alien Is in Deportation or Removal Proceedings, Does the Alien File the Form I–485 Under This Section With the Service or With the Immigration Court or Board of Immigration Appeals (Board)?

For aliens in deportation or removal proceedings, 8 CFR 245.2(a)(2) establishes "applications shall be made and considered only in those proceedings." If the alien is before the Immigration Court, the Form I–485, associated documents and proof of payment of the fees must be filed with the Immigration Court. If the alien has an appeal pending before the Board, the Form I–485, associated documents and proof of payment of the fees must be filed with the Board. The fees must first be paid to, and receipt obtained from, the Service.

If the Alien Files the Form I–485 and Associated Documents With the Immigration Court or the Board After Paying the Proper Fees to the Service, Does Such a Filing Stop or Stay Deportation or Removal Proceedings?

No. The filing of an adjustment action where the underlying visa petition is not current does not by itself stop or stay (suspend) the proceedings. The Board will only accept the filing of the Form I–485 for placement into the Record of Proceedings (ROP). This filing is not a motion to reopen, motion to reconsider, or any other motion beyond a request to include the adjustment application in the file. Furthermore, accepting the application and placing it in the ROP is not a reopening or reconsidering of the case, nor any other action pertaining to the case. If the underlying petition for the alien is approved and a visa is or becomes immediately available, the alien must affirmatively move the Immigration Court or the Board of Immigration Appeals to consider the application for adjudication, or remand the application to the Service for adjudication if the Service concurs in the remand.

Besides Eliminating the Delay for Filing Form I–485, How Else Will These Regulatory Amendments Benefit Aliens?

These amendments will allow the Service to issue Employment Authorization Documentation (EAD) and advance parole authorization (which allows the alien to travel outside of the United States temporarily while his or her Form I–485 is pending with the Service) to certain alien workers within substantially less time than at present. In being able to apply for employment authorization and advance parole, the alien may avoid the adverse consequences of accrual of unlawful presence. To achieve the desired efficiency improvement in the Service's processing, only aliens who have filed a Form I–140 for which a visa number is immediately available and Form I–485 will qualify for these benefits. Therefore, as a result of this interim rule, an eligible beneficiary of a Form I–140 visa petition for whom a visa is immediately available will no longer need to wait for approval of the underlying Form I–140 before eligible to apply for these benefits.

How Does This Interim Rule Affect the September 6, 2000, Interim Rule Relating to National Interest Job Offer Waivers for Physicians?

On September 6, 2000, the Service published in the **Federal Register** at 64 FR 53889 an interim rule relating to national interest job offer waivers for physicians. Under 8 CFR 245.18(f) of that interim rule, when a physician files for adjustment of status the Service is required to give a physician notice of specific requirements relating to the adjustment of the physician's status. This interim rule concerning concurrent filing of Forms I–140 and I–485 requires one conforming amendment to 8 CFR 245.18(f). If the physician filed the Form I–485 concurrently with the Form I–140, the Service will give the required notice upon approval of the Form I–140, rather than upon receipt of the Form I–485. If the physician waits to subsequently file the Form I–485 while the previously filed Form I–140 is still pending, then the Service will give the required notice upon approval of the Form I–140. If the physician files the Form I–485 after the Form I–140 is approved, then the Service will give the required notice upon receipt of the Form I–485.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and (d)(1). This rule relieves the current restriction that bars the filing of an application for permanent residence (Form I–485) until after the underlying visa petition (Form I–140) has been approved. This rule is intended to provide efficiency and fairness to applicants. It is therefore impractical, unnecessary, and contrary to the public interest to publish this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b).

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this interim rule and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is intended to expedite alien worker authorization while the alien's permanent status application (Form I–485) is pending. This rule affects individual aliens, not small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the

distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirement (Form I–140) contained in this rule has been approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB control number for this information collection is contain in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 204

Administrative practice and Procedures, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

2. Section 204.5 is amended by revising paragraph (n)(1) to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(n) * * *

(1) *Approval.* An approved employment-based petition will be forwarded to the National Visa Center of the Department of State if the beneficiary resides outside of the United States. If the Form I–140 petition indicates that the alien has filed or will file an application for adjustment to permanent residence in the United States (Form I–485) the approved visa petition (Form I–140), will be retained by the Service for consideration with the application for permanent residence (Form I–485). If a visa is available, and Form I–485 has not been filed, the alien will be instructed on the Form I–797, Notice of Action, (mailed out upon approval of the Form I–140 petition) to file the Form I–485.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902. Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

4. Section 245.1 is amended by revising the third sentence in paragraph (g)(1) to read as follows:

§ 245.1 Eligibility.

* * * * *

(g) * * *

(1) * * * An immigrant visa is considered available for accepting and processing the application Form I–485 is the preference category applicant has a priority date on the waiting list which is earlier than the date shown in the Bulletin (or the Bulletin shows that numbers for visa applicants in his or her category are current). * * *

* * * * *

5. Section 245.2 is amended by revising paragraph (a)(2)(i), to read as follows:

§ 245. Application.

(a) * * *

(2) * * *

(i) *Under section 245.* (A) An immigrant visa must be immediately available in order for an alien to properly file an adjustment application under section 245 of the Act See § 245.1(g)(1) to determine whether an immigrant visa is immediately available.

(B) If, at the time of filing, approval of a visa petition filed for classification under section 201(b)(2)(A)(i), section 203(a) or section 203(b)(1), (2) or (3) of the Act would make a visa immediately available to the alien beneficiary, the alien beneficiary's adjustment application will be considered properly filed whether submitted concurrently with or subsequent to the visa petition, provided that it meets the filing requirements contained in parts 103 and 245. For any other classification, the alien beneficiary may file the adjustment application only after the Service has approved the visa petition.

(C) A visa petition and an adjustment application are concurrently filed only if:

(*1*) The visa petitioner and adjustment applicant each file their respective form at the same time, bundled together within a single mailer or delivery packet, with the proper filing fees on the same day and at the same Service office, or;

(*2*) the visa petitioner filed the visa petition, for which a visa number has become immediately available, on, before or after July 31, 2002, and the adjustment applicant files the adjustment application, together with the proper filing fee and a copy of the Form I–797, Notice of Action, establishing the receipt and acceptance by the Service of the underlying Form I–140 visa petition, at the same Service office at which the visa petitioner filed the visa petition, or;

(*3*) The visa petitioner filed the visa petition, for which a visa number has become immediately available, on, before, or after July 31, 2002, and the adjustment applicant files the adjustment application, together with proof of payment of the filing fee with the Service and a copy of the Form I–797 Notice of Action establishing the receipt and acceptance by the Service of the underlying Form I–140 visa petition, with the Immigration Court or the Board of Immigration Appeals when jurisdiction lies under paragraph (a)(1) of this section.

* * * * *

6. Section 245.18 is amended by revising paragraph (f) introductory text to read as follows:

§ 245.18 How can physicians (with approved Forms I–140) that are serving in medically underserved areas or at a Veterans Affairs facility adjust status?

* * * * *

(f) *Will the Service provide information to the physician about evidence and supplemental filings?* The Service shall provide the physician with the information and the projected timetables for completing the adjustment process, as described in this paragraph. If the physician either files the Form I–485 concurrently with or waits to subsequently file the Form I–485 while the previously filed Form I–140 is still pending, then the Service will given this information upon approval of the Form I–140. If the physician does not file the adjustment application until after approval of the Form I–140 visa petition, the Service shall provide this information upon receipt of the Form I–485 adjustment application.

* * * * *

PART 299—IMMIGRATION FORMS

7. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

8. Section 299.1 is amended in the table by revising the entry for Form I–140, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
I–140	08–30–01	Immigrant Petition for Alien Worker.
*	*	*

Dated: July 5, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–19249 Filed 7–30–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 01–AGL–06]

Modification of Class D Airspace; Bloomington, IN; Modification of Class E Airspace; Bloomington, IN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects several errors contained in a Final Rule that was published in the **Federal Register** on Wednesday, May 8, 2002 (67 FR 30778). The Final Rule modified Class D and Class E airspace at Bloomington, IN.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 02–11495 published on Wednesday, May 8, 2002 (67 FR 30778), modified Class D and Class E Airspace at Bloomington, IN. The Docket incorrectly referred to Bloomington, IL rather than Bloomington, IN. This action corrects these errors, by replacing the State of IL with the State of IN throughout the document.

Accordingly, pursuant to the authority delegated to me, the errors for the Class D and Class E Airspace, Bloomington, IN, as published in the **Federal Register** Wednesday, May 8, 2002 (67 FR 30778), (FR Doc. 02–11495), are corrected as follows:

1. On page 30778, Columns 1 and 2, in the heading and preamble, correct "Bloomington, IL" to read "Bloomington, IN", each place it appears.

§ 71.1 [Corrected]

2. On page 30778, column 3, in the Class D airspace designation under Paragraph 5000, correct "Bloomington, IL" to read "Bloomington, IN".

3. On page 30779, column 1, in the Class E airspace designation under Paragraph 6005, correct "Bloomington, IL" to read "Bloomington, IN".

* * * * *

Issued in Des Plaines, Illinois, on July 18, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–19367 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–022; Order No. 587–Q]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued July 23, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: This order rules on requests for rehearing and clarification of the final rule issued on May 1, 2002 (67 FR 30788) that incorporated by reference Version 1.5 of the consensus natural gas industry standards adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB). In particular, the order addresses requests for clarification and rehearing related to the standards governing title transfer tracking.

EFFECTIVE DATE: The regulations became effective June 7, 2002.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507.

SUPPLEMENTARY INFORMATION:

Federal Energy Regulatory Commission Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–Q; Docket No. RM96–1–022; Order on Rehearing and Clarification.

Issued July 23, 2002.

1. In Order No. 587–O,[1] the Federal Energy Regulatory Commission (Commission) amended § 284.12 of its open access regulations to incorporate by reference Version 1.5 of the consensus industry standards for the natural gas industry promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB). These standards include requirements related to title transfer tracking (TTT) under which pipelines generally are responsible for accommodating title transfer tracking services at all pooling points.

2. On May 31, 2002, National Fuel Gas Supply Corporation (National Fuel) filed a request for clarification and rehearing relating to the adoption of the TTT standards. In particular, National Fuel contends that pipelines need only support TTT where the pipeline has a contractual relationship with a Title Transfer Tracking Service Provider or Third Party Account Administrator and that the only parties for whom pipelines need to accommodate TTT services are Title Transfer Tracking Service Providers or Third Party Account Administrators. As discussed below, the Commission provides clarification that a party requesting the processing of title transfers must have a contract with the pipeline, but denies National Fuel's request that pipelines be required to process title transfer nominations only from Title Transfer Tracking Service

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–O, 67 FR 30788 (May 8, 2002), III FERC Stats. & Regs. Regulations Preambles, ¶ 31,129 (May 1, 2002).

Providers and Third Party Account Administrators. This decision is in the public interest because it will ensure that pipelines will not limit the processing of title transfers to select parties, but will provide the same service, without undue discrimination, to all shippers.

Background

3. Title transfer is defined as "the change of title to gas between parties at a location." [2] Title Transfer Tracking (TTT) is defined as "the process of accounting for the progression of title changes from party to party that does not effect a physical transfer of the gas." [3] The two NAESB standards generally defining the pipelines' responsibility for processing title transfers are Standards 1.3.64 and 1.3.65.[4] Standard 1.3.64 provides:

> At a minimum, the Transportation Service Providers (TSP) should be responsible for accommodating Title Transfer Tracking (TTT) services at all points identified by the TSP as pooling points, where TTT services are requested. In absence of existing pooling points or in addition to existing pooling points where access to TTT activity is not reasonably accessible for supply receipt locations covered by an OBA, TSPs should be responsible for accommodating TTT at no less than one location.

Standard 1.3.65 states:

> The Title Transfer Tracking services should be supported by means of the nominations, quick responses and scheduled quantities processes. At the Transportation Service Provider's election, the confirmation process may also be utilized with Title Transfer Tracking Service Providers within the TSP's system.

4. In Order No. 587–O, the Commission interpreted these standards as requiring pipelines to permit and process, on a non-discriminatory basis, transportation nominations (along with required responsive scheduling information) effecting transfers of title at pooling points by any party including shippers, poolers, or third party account administrators.[5] The Commission provided the following example of the pipeline's obligations under the standards. In the example, Producer A aggregates 1000 Dth of gas from three receipt points at its pool at Pool 1, sells 1000 Dth to Marketer B at Marketer B's pool at Pool 1, and Marketer B sells 1000 Dth to Shipper C at the pooling point for transportation to Shipper C's delivery point under Shipper C's firm transportation contract. The Commission explained that, under the NAESB standards, the pipeline would have to process a transportation nomination from Producer A and the required scheduling responses to reflect the transfer of gas from Producer A's pool to Marketer B's pool. Other than processing the transportation nomination to reflect the in-place transfer of gas, the pipeline would be required to provide no other "accounting services" [6] respecting the transfer of title.

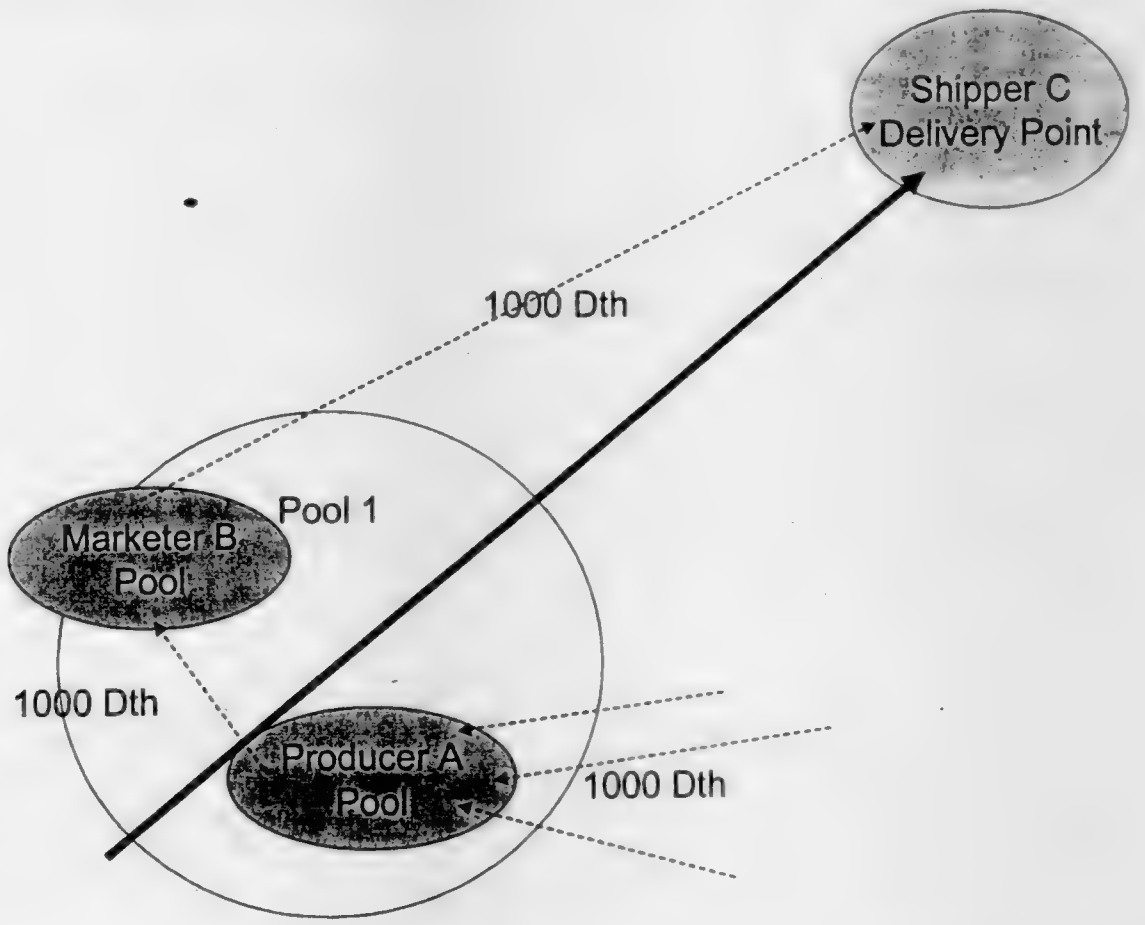

5. In its rehearing request, National Fuel maintains the Commission should clarify that pipelines need only support TTT where the pipeline has a contractual relationship with a Title Transfer Tracking Service Provider or

[2] 18 CFR 284.12(a)(1)(i), Standard 1.2.14 (Version 1.5).

[3] 18 CFR 284.12(a)(1)(i), Standard 1.2.15 (Version 1.5).

[4] 18 CFR 284.12(a)(1)(i), Standards 1.3.64 and 1.3.65 (Version 1.5).

[5] A Third Party Account Administrator is defined as a Title Transfer Tracking Service Provider other than the Transportation Service Provider. Standard 1.2.17 (Version 1.5).

[6] Standard 1.2.15 defines title transfer tracking as "the process of accounting for the progression of title changes from party to party that does not effect a physical transfer of the gas."

Providers and Third Party Account Administrators. This decision is in the public interest because it will ensure that pipelines will not limit the processing of title transfers to select parties, but will provide the same service, without undue discrimination, to all shippers.

Background

3. Title transfer is defined as "the change of title to gas between parties at a location." [2] Title Transfer Tracking (TTT) is defined as "the process of accounting for the progression of title changes from party to party that does not effect a physical transfer of the gas." [3] The two NAESB standards generally defining the pipelines' responsibility for processing title transfers are Standards 1.3.64 and 1.3.65.[4] Standard 1.3.64 provides:

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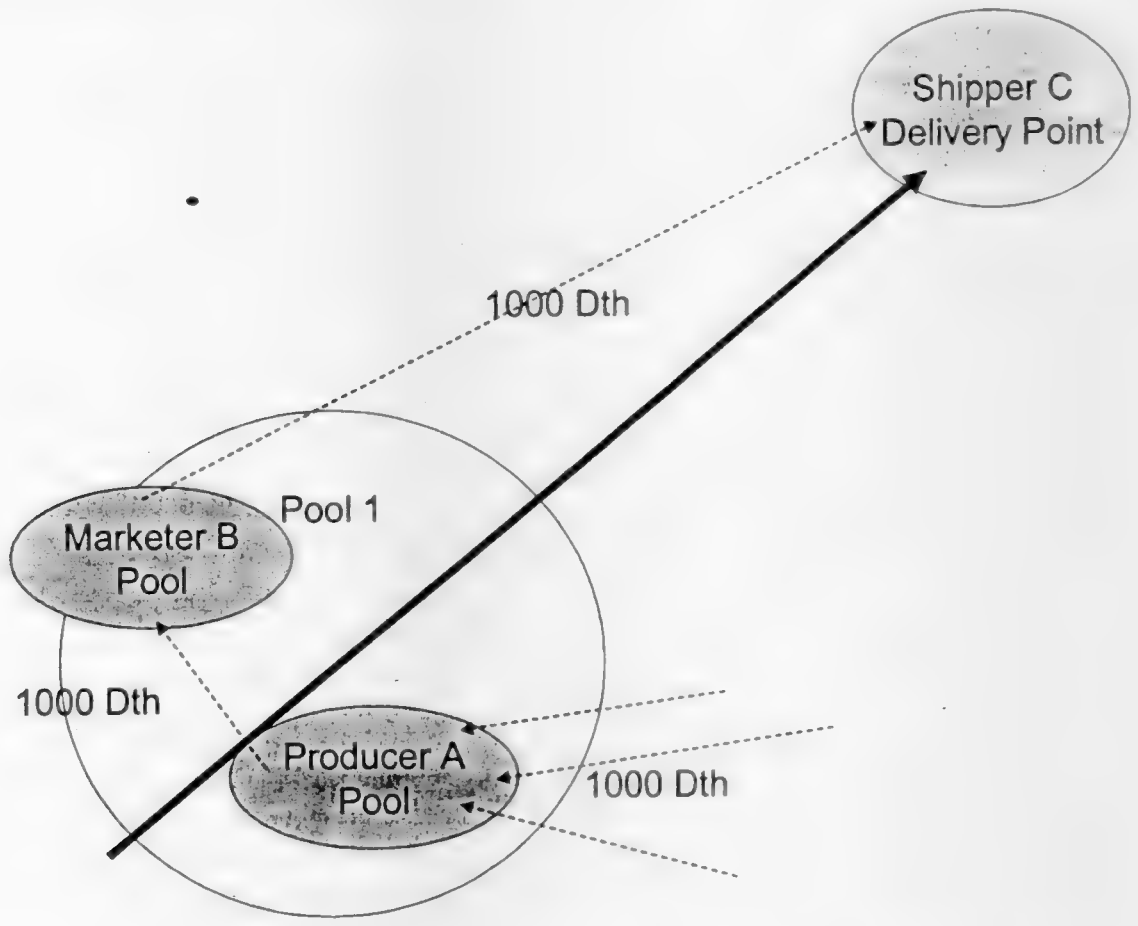

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[4] 18 CFR 284.12(a)(1)(i), Standards 1.3.64 and 1.3.65 (Version 1.5).

[5] A Third Party Account Administrator is defined as a Title Transfer Tracking Service Provider other than the Transportation Service Provider. Standard 1.2.17 (Version 1.5).

[6] Standard 1.2.15 defines title transfer tracking as "the process of accounting for the progression of title changes from party to party that does not effect a physical transfer of the gas."

Third Party Account Administrator. National Fuel further contends that the only parties for whom pipelines need to accommodate TTT services are Title Transfer Tracking Service Providers or Third Party Account Administrators.

6. On June 7, 2002, Dominion Resources, Inc. also filed a request for rehearing or reconsideration and clarification of Order No. 587–O. This rehearing request was filed late, and, accordingly, will not be addressed.[7]

Discussion

7. National Fuel maintains that the Commission's statement in Order No. 587–O (that pipelines must "effect[] transfers of title at pooling points by any party including shippers, poolers, or third party account administrators") can be read to require pipelines to process title transfers regardless of whether there is a contractual relationship between the party transferring title and the pipeline. National Fuel further argues that the Commission has incorrectly provided that pipelines must accommodate TTT services from other than Title Transfer Tracking Service Providers (and Third Party Account Administrators),[8] and it urges the Commission to clarify that the obligation of a pipeline to accommodate TTT services arises in the context of services requested to be performed by Title Transfer Tracking Service Providers and Third Party Account Administrators.

8. The Commission agrees with National Fuel that pipelines need only process title transfers from parties with contractual relationships with the pipeline. Pipelines need to be able to verify the parties with whom they deal. The obligation to process title transfer nominations, however, extends to any party with a contractual relationship with the pipeline, including, but not limited to, parties with transportation or storage contracts, pooling contracts or operational balancing agreements, Third Party Account Administrators, and agents of any of the foregoing.

9. The Commission does not agree with National Fuel's interpretation of the standards as providing that pipelines are required to accommodate title transfers *only with* Third Party Account Administrators, and denies the rehearing request. The Commission finds that, as discussed below, National Fuel's interpretation is not supported by the text of the standards. Moreover, adopting National Fuel's interpretation, which would limit the obligation of a pipeline to provide nomination services only for certain third parties, would lead to practical difficulties, and would be inconsistent with a pipeline's obligation to provide services in a not unduly discriminatory manner under the Natural Gas Act, and the Commission's regulations.

10. The two principal standards defining the pipelines' obligations to support title transfers are Standards 1.3.64 and 1.3.65. In relevant part, these standards provide that "at a minimum, the Transportation Service Providers (TSP) should be responsible for accommodating Title Transfer Tracking (TTT) services at all points identified by the TSP as pooling points, where TTT services are requested," and that "the Title Transfer Tracking services should be supported by means of the nominations, quick responses and scheduled quantities processes." These standards do not state that pipelines are to support title transfer tracking only with Title Transfer Tracking Service Providers or Third Party Account Administrators.[9] These standards impose a general obligation on pipelines to accommodate title transfer tracking at pooling points through the nominations, quick responses and scheduled quantities processes.[10] While other standards do require pipelines to accommodate title transfer tracking from Third Party Account Administrators, these standards do not provide that Third Party Account Administrators and Title Transfer Tracking Service Providers are the sole parties from whom pipelines are required to accommodate title transfer nominations. The ability to use Third Party Account Administrators is an additional option under the standards for obtaining title transfer tracking services; the standards do not make it the exclusive method of obtaining title transfer tracking services, nor do the standards specifically preclude shippers or others from undertaking the process of accounting for title transfers themselves.[11]

11. Moreover, the standards define a Third Party Account Administrator only as "a Title Transfer Tracking Service Provider other than the Transportation Service Provider."[12] This definition does not specifically define or limit who can be a Third Party Account Administrator, nor does it preclude a shipper, pooler, point operator, or other firm with a contract with the pipeline from acting as a Third Party Account Administrator only with respect to its own sales. National Fuel fails to provide citation to a specific definition of the characteristics necessary qualify as a Third Party Account Administrator, nor does it explain why under the standards any party, including a shipper, pooler, point operator, cannot qualify as a Third Party Account Administrator with respect only to its own transactions. The definition of Third Party Account Administrator, therefore, is sufficiently broad to include any party wanting to account for its own title transfers and supports the conclusion that pipelines are required to process nominations reflecting title transfers from any party with a contractual relationship with the pipeline.

12. National Fuel asserts that standard 1.2.19 (which provides that "[a] title transfer Nomination is a nomination line item requesting the service of Title Transfer Tracking and is sent by an Account Holder to a Title Transfer Tracking Service Provider") and standard 1.2.16 (which defines a Title Transfer Tracking Service Provider as a "party conducting the title transfer tracking activity") support its view that title transfer tracking nominations will be made only to the Title Transfer Tracking Service Provider, not the pipeline. But these standards only define the method by which shippers choosing to use a Third Party Account Administrator will communicate with the Third Party Account Administrator; the standards do not specifically state that pipelines are required to process title transfers only from Third Party Account Administrators or that pipelines can refuse to process title transfers from shippers or other parties.[13]

---

[7] Order No. 587–O was issued on May 1, 2002, and Dominion Resources rehearing request was not filed until June 7, 2002, more than 30 days from the date of issuance. Under the Natural Gas Act and the Commission regulations, rehearing requests must be filed "within thirty days after the issuance of such order." Natural Gas Act, § 19, 15 U.S.C. 7174 (a); 18 CFR 385.713 (rehearing requests must be filed no later than 30 days after issuance of final decision or final order); 18 CFR 385.2007 (issuance is defined as the earliest of posting or public notice).

[8] Under the standards, a "Title Transfer Tracking Service Provider is a party conducting the title transfer tracking activity," and a "Third Party Account Administrator is a Title Transfer Tracking Service Provider other than the Transportation Service Provider." Standards 1.2.16 and 1.2.17.

[9] The only relevant issue in National Fuel's rehearing request relates to Third Party Account Administrators, since the underlying assumption of National Fuel's rehearing is that the pipeline will not be establishing a Title Transfer Tracking Service Provider.

[10] In effect, the standards require pipelines to process a nomination that reflects the movement of gas from the pool of the party selling gas to the pool of the purchaser. In the prior example, at P 4, Producer A would be transporting gas from its Pool to Marketer B's pool.

[11] No pipeline or party other than National Fuel has contested the Commission's interpretation of the standards.

[12] Standard 1.2.17.

[13] Indeed, as pointed out above, the standards would not specifically preclude shippers, poolers, or point operators from qualifying as Third Party

13. National Fuel also asserts that an interpretation requiring pipelines to accept "nominations * * * effecting transfers of title" from all comers would inappropriately require pipelines to assume the role of a Title Transfer Tracking Service Provider. However, as the Commission stated in Order No. 587–O, under the standards, pipelines are required only to process, on a non-discriminatory basis, nominations to reflect the in-place transfer of gas; they are not required to provide the other "accounting" services that constitute title transfer tracking.[14] Under the standards, pipelines are required only to process in-place title transfers using the same nomination and confirmation procedures used to process other transportation nominations. National Fuel moreover has not shown that applying the same nomination processes to title transfers is unduly burdensome.

14. The Commission also rejects National Fuel's proposed interpretation of the standards because it would create practical difficulties for shippers. On some pipelines, the number of shippers that want to conduct title transfers or the overall number of such transactions may not be sufficient to economically support a third-party firm that offers accounting services for title transfers. Under National Fuel's interpretation, however, these shippers could be precluded from transferring title at pooling points even though they are willing to account for those transfers themselves.

15. In addition, National Fuel's interpretation of the standards ignores the requirement in the Natural Gas Act[15] and the Commission's regulations[16] that pipelines provide services connected with interstate transportation without undue discrimination. Under National Fuel's interpretation, pipelines would be discriminating in their handling of title transfer nominations by processing such nominations from Third Party Account Administrators or Title Transfer Tracking Service Providers, but refusing to provide the same service for other parties doing business on the pipelines. In implementing and interpreting NAESB's standards, the standards need to be interpreted in a way that is consistent with the Natural Gas Act and Commission regulations.[17] The Commission finds that requiring pipelines to process title transfer nominations on a non-discriminatory basis is more consonant with its statutory and regulatory obligations than National Fuel's interpretation.

16. National Fuel states that it anticipates that it will raise its requested clarifications with NAESB and suggests that the Commission defer addressing these issues until NAESB has an opportunity to interpret the standards. The Commission will not defer ruling on National Fuel's rehearing request. Since the NAESB standards do not compel or support National Fuel's reading, and National Fuel's interpretation raises issues regarding compliance with statutory and regulatory requirements, the Commission finds that the requirement in Order No. 587–O that pipelines process title transfer nominations with all parties is more consistent with those responsibilities.

The Commission orders: The request for clarification is granted and the request for rehearing is denied as discussed in the body of the order.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19277 Filed 7–30–02; 8:45 am]

BILLING CODE 6710–01–P

Account Administrators in order to process their own title transfers.

[14] Standard 1.2.15 defines title transfer tracking as the "process of *accounting for* the progression of title changes from party to party." (emphasis added).

[15] 15 U.S.C. 717c(b) ("no natural gas company shall * * * (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service").

[16] 18 CFR 284.7 & 284.9 ("An interstate pipeline or intrastate pipeline must provide such service without undue discrimination, or preference, including undue discrimination or preference in the quality of service provided, the duration of service, the categories, prices, or volumes of natural gas to be transported, customer classification, or undue discrimination or preference of any kind").

[17] *See United Distribution Cos.* v. *FERC*, 88 F.3d 1105, 1166 (D.C. Cir 1996), Independent Insurance Agents v. Hawke, 211 F.3d 638, 643 (D.C. Cir. 2000) (under the *Chevron* test, an agency's interpretation of a statute must be reasonable and consistent with the statute's purpose). *See also Concrete Pipe and Products* v. *Construction Laborers Pension Trust*, 508 U.S. 602, 629 (statutes are to be construed to avoid serious doubt of their constitutionality).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 00C–0929]

Listing of Color Additives Exempt From Certification; Sodium Copper Chlorophyllin; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of June 20, 2002, for the final rule that appeared in the **Federal Register** of May 20, 2002 (67 FR 35429). The final rule amended the color additive regulations to provide for the safe use of sodium copper chlorophyllin as a color additive in citrus-based dry beverage mixes.

DATES: Effective date confirmed: June 20, 2002.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3076.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 2002 (67 FR 35429), FDA amended the color additive regulations to add § 73.125 Sodium copper chlorophyllin (21 CFR 73.125) to provide for the safe use of sodium copper chlorophyllin as a color additive in citrus-based dry beverage mixes.

FDA gave interested persons until June 19, 2002, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of May 20, 2002, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the May 20, 2002, final rule. Accordingly, the amendments issued thereby became effective June 20, 2002.

Dated: July 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19300 Filed 7–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 226, 510, and 514

[Docket No. 88N–0038]

RIN 0910–AA02

Records and Reports Concerning Experience With Approved New Animal Drugs; Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; delay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is delaying the effective date of an interim final rule entitled "Records and Reports Concerning Experience With Approved New Animal Drugs," published in the **Federal Register** of February 4, 2002 (67 FR 5046). The interim final rule amended FDA's regulations for records and reports concerning experience with approved new animal drugs, with an effective date of August 5, 2002. FDA is delaying the effective date so it can submit and seek approval on the information collection provisions of the rule under the Paperwork Reduction Act of 1995 and address comments received on the interim final rule.

DATES: The effective date published at 67 FR 5046, February 4, 2002, is delayed indefinitely. FDA will announce in the **Federal Register** an effective date.

FOR FURTHER INFORMATION CONTACT: Glenn Peterson, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0224, or gpeterso@cvm.fda.gov.

Dated: July 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19299 Filed 7–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1310, 1313

[DEA–229F]

RIN 1117–AA65

Change of Address for Filing Chemical Import/Export Declarations (DEA Form 486), Reports for the Importation or Exportation of Tableting and Encapsulating Machines, and Other Related Reports

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: DEA is amending the Code of Federal Regulations (CFR) to change the address for filing certain required reports. These reports include: Import/Export Declarations, including international transactions, for listed chemicals (DEA Form 486); Reports for the importation or exportation of tableting and encapsulating machines (not a DEA Form-486); Quarterly reports on the importation or exportation of listed chemicals when the DEA Form 486 is waived; Reports for the return of exported listed chemicals or exported tableting and encapsulating machines; and Advance notices of importation for transshipment or transfer of listed chemicals. DEA is changing the address in the CFR because the U.S. Postal Service assigned DEA a new post office box when the post office was relocated.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Why Is DEA Changing the Address for Filing Certain Reports?

The U.S. Postal Service has assigned DEA a new post office box number that replaces the one listed in the Code of Federal Regulations for filing certain required reports. This occurred when the U.S. Postal Service relocated the post office. DEA does not have any discretion concerning this change.

What Is the New Address?

DEA is revising Title 21, Code of Federal Regulations, wherever it mentions: P.O. Box 28346, Washington, DC 20038.

The new address for filing the affected reports is: P.O. Box 27284, Washington, DC 20038.

With publication of this rule, all reports must be sent to the new address.

What Reports Are Affected?

Title 21 of the Code of Federal Regulations requires that certain reports for listed chemicals and tableting and encapsulating machines must currently be filed with the Drug Enforcement Administration at the old address (P.O. Box 28346). The reporting requirements are described in 21 CFR parts 1310 and 1313.

In 21 CFR part 1310, reports affected by the address change include those for the importation and exportation of tableting and encapsulating machines (21 CFR 1310.05(c)) and reports concerning the return of exported tableting or encapsulating machines (21 CFR 1310.06(g)).

In 21 CFR part 1313, the following reports are affected by the address change:

(1) DEA Form 486 for authorization to import listed chemicals (21 CFR 1313.12(b));

(2) Quarterly reports on importations of listed chemicals when the advance notification is waived and no DEA Form 486 is required (21 CFR 1313.12(e));

(3) DEA Form 486 for authorization to export listed chemicals (DEA 1313.21(b));

(4) Quarterly reports on exportation of listed chemicals when the advance notification is waived and no DEA Form 486 is required (21 CFR 1313.21(e));

(5) Reports concerning the return of exported listed chemicals (21 CFR 1313.22(e));

(6) Advance notices of importation for transshipment or transfer of listed chemicals (21 CFR 1313.31(b)); and

(7) DEA Form 486s from brokers or traders for authorization of international transactions of listed chemicals (21 CFR 1313.32(b)(1)).

Regulatory Certifications

Administrative Procedure Act (5 U.S.C. 553)

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. This rule pertains to agency management, organization and procedure. DEA has no discretion in the change of the post office box number and thus finds it unnecessary and impracticable to permit public notice and comment. Therefore, DEA is publishing this document as a final rule.

Further, as the change of address is imminent, and since a delay in the effective date of this regulation could impede the timely receipt of required reports by the regulated industry, DEA finds there is good cause to make this final rule effective immediately.

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This final rule merely changes an address, permitting industry to report to DEA in a timely manner.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Congressional Review Act

The Drug Enforcement Administration has determined that this action is a rule relating to agency procedure and practice that does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. Section 801 does not apply.

List of Subjects

21 CFR Part 1310

Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

21 CFR Part 1313

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR parts 1310 and 1313 are amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

§ 1310.05 [Amended]

2. Section 1310.05(c) is amended by removing the words "P.O. Box 28346" and adding, in their place, the words "P.O. Box 27284".

§ 1310.06 [Amended]

3. Section 1310.06(g) is amended by removing the words "P.O. Box 28346" and adding, in their place, the words "P.O. Box 27284".

PART 1313—[AMENDED]

4. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

§ 1313.12 [Amended]

5. Section 1313.12(b) and (e) introductory text are amended by removing the words "P.O. Box 28346" and adding, in their place, the words "P.O. Box 27284".

§ 1313.21 [Amended]

6. Section 1313.21(b) and (e) introductory text are amended by removing the words "P.O. Box 28346" and adding, in their place, the words "P.O. Box 27284".

§ 1313.22 [Amended]

7. Section 1313.22(e) is amended by removing the words "P.O. Box 28346" and adding, in their place, the words "P.O. Box 27284".

§ 1313.31 [Amended]

8. Section 1313.31(b) introductory text is amended by removing the words "P.O. Box 28346" and adding, in their place, the words "P.O. Box 27284".

§ 1313.32 [Amended]

9. Section 1313.32(b)(1) is amended by removing the words "P.O. Box 28346" and adding, in their place, the words "P.O. Box 27284".

Dated: July 16, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 02–19122 Filed 7–30–02; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–99–6190]

RIN 2125–AE67

Traffic Control Devices on Federal-Aid and Other Streets and Highways; Color Specifications for Retroreflective Sign and Pavement Marking Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising its color specifications for retroreflective signing materials. The current color specifications used in traffic control were developed in the late 1960's. The technological advances in the manufacturing of signing and markings materials and the measurement of color have required the FHWA to revise and expand the color specifications. This revision includes daytime and nighttime specifications for both assigned and unassigned colors found in the Manual on Uniform Traffic Control Devices (MUTCD). The FHWA is adding daytime and nighttime specifications for

retroreflective pavement marking materials. The materials are required to provide the specified colors under the identified measurement protocols throughout service life.

EFFECTIVE DATE: This final rule is effective August 30, 2002.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. Ernest Huckaby, Office of Transportation Operations (HOTO), (202) 366–9064. For legal information: Mr. Raymond Cuprill, Office of the Chief Counsel (HCC–40), (202) 366–1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document, the NPRM, and all comments received may be viewed online through the Document Management System (DMS) at: *http://dms.dot.gov*. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov*.

The current color specifications are on file at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408, and are available for inspection and copying at the FHWA, Office of Transportation Operations, Room 3408, 400 7th St., SW., Washington, DC 20590, as prescribed in 49 CFR part 7.

Background

This final rule is based on the FHWA's notice of proposed rulemaking (NPRM), Traffic Control Devices on Federal-Aid and Other Streets and Highways; Color Specifications for Retroreflective Sign and Pavement Marking Materials, published in the **Federal Register** on December 21, 1999, at 64 FR 71354. All comments received in response to the NPRM have been considered in adopting this final rule. These comments are discussed in the section entitled "Discussion of Comments."

The MUTCD is incorporated by reference in 23 CFR 655.601. The color specifications are found in the appendix to subpart F of part 655.

The current specifications for the color of retroreflective sign sheeting were determined on the basis of material available nearly 20 years ago. Since then, new microprismatic material has been commercially available and the original CIE [1] Illuminant C has been replaced with CIE Illuminant D_{65}. In addition, an extensive international effort is in progress to specify the nighttime appearance of retroreflective materials. Lastly, expanding the specifications to include fluorescent materials is also necessary at this time since these materials are used on several traffic signs. In addition to revising the daytime color specifications for retroreflective sign sheeting material used primarily for traffic signs, color specifications for pavement markings and markers are included in this revision.

Discussion of Comments

Interested persons were invited to participate in the development of this final rule by submitting written or electronic comments on the NPRM to FHWA Docket No. FHWA–99–6190 on or before June 21, 2000. The FHWA received 21 comments to the docket (6 from State and local DOTs; 7 from industry; 4 from associations; 3 from institutes/universities; and 1 Federal agency). The FHWA received significant comments that included concerns with the availability and cost of the laboratory equipment used, concerns with the use of illuminant D_{65} for evaluating the performance of luminescent for fluorescent materials, the use of luminescent luminance factor (Y_F) for fluorescent materials.

The FHWA believes the amount of information presented in the tables published in the NPRM may be overwhelming in content and confusing. The FHWA has placed the "luminance" values in a separate table (i.e., 1a, 3a, and 5a). It is important for users to know that these sub-tables should be read together in order to define the correct color requirement.

Commenters recommended that FHWA provide the appropriate references for types of sheeting material for retroreflective materials. A breakdown of sheeting type has been added as Table 1a.

Another concern identified through several comments was the lack of human factors research related to driver recognition of sign colors. The discussion of human factors research is beyond the scope of this rulemaking and will be addressed in the future. While laboratory studies have indicated that human observers require fairly small color regions to achieve a high degree of agreement (greater than 90 percent) for color naming, there have been no studies with forced choices. That is, when presented with a variety of samples spanning colors within a given color region, responses will vary. Additional studies are needed wherein the observer is forced to choose between specified color names to determine if samples taken from near the allowable color region boundaries might be mistaken for a neighboring color. Pending such studies, however, there are no indications that the existing color system should be modified. The color regions in the final rule are not significantly different from previously defined color regions and should not be changed without substantial indication of inadequacy.

Several commenters recommended that color specifications for the color "fluorescent red" be included in the specifications. Fluorescent red was not proposed in Tables 3 or 4 of the NPRM and it is beyond the scope of this rulemaking. However, this color will be addressed in future rulemaking, which will allow the public the opportunity to comment on the proposed specification.

The FHWA adopts, with some changes, the proposed Table 1 to Part 655, Subpart F, Daytime Color Specification Limits for Retroreflective Material with CIE 2 Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}. The American Society for Testing and Materials (ASTM) sets industry standards for defining daytime sign color. It also established a standard addressing color specifications. With few exceptions, Table 1 is the same as this standard.

The color specifications for "white" have been adjusted from table 1, proposed in the NPRM, which results in a slight enlargement of the color region in all directions. This slightly larger color region will not result in loss of color differentiation between white and other colors as long as differences in the daytime luminance factors are maintained.

The color specifications for "orange" have been adjusted from the proposed table by adjusting the red border which allows a slightly shorter wavelength hue line than that proposed in the NPRM. This results in a slightly greater separation between the red and orange color regions which will aid in daytime color recognition.

The "purple" color specifications have been modified to reflect the colors

[1] International Commission on Illumination.

actually in use. Several commenters pointed out that specifying precise color regions for unassigned colors may be premature. Accordingly, a revised color region, incorporating both the hues from the initial proposal in the NPRM and the existing commercial materials, are recommended. As use of the materials is further refined, the purple color box may be optimized or even separated into two distinct colors.

The "coral" and "yellow-green" color specifications have been removed from this table. Several commenters mentioned that there are no studies that indicate yellow-green or coral are effective signing colors. The FHWA has adopted the color "fluorescent yellow-green" for use with pedestrian, school, and bicycle crossing warning signs and has included color specifications in Table 3.

The color "fluorescent coral" is being proposed for use in incident management and is being considered under FHWA Docket No. FHWA–2001–11159, published at 67 FR 35850 on May 21, 2002.

In response to several docket comments, we have removed the color "black" from the table. Black sheeting used in traffic control signage is not a retroreflective product. Commercially available vinyl elastomeric films meet all the requirements for a high-contrast legend material.

We have added Table 1a to part 655, Subpart F, Daytime Luminance Factors (percent) for Retroreflective Material with CIE 2 Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}, in order to be consistent with the format found in ASTM Standard Specification D4956–01[2] which provides three separate tables of daytime luminance factors (Y) for retroreflective materials: One for ASTM Types I, II, III and VI sheeting; one for ASTM Types IV, VII, VIII, and IX; and the third for ASTM Type V sheeting. The different manufacturing techniques for the various ASTM types have resulted in varying luminance factors. ASTM Type V is metallized microprismatic retroreflecting material used primarily for delineators. This material is not the predominant daytime signal, but provides a nighttime signal for delineation.

The FHWA has adopted Table 2 to part 655, Subpart F, Nighttime Color Specification Limits for Retroreflective Material With CIE 2 Degree Standard Observer and Observation Angle of 0.33 Degrees, Entrance Angle of Plus 5 Degrees and CIE Standard Illuminant A, with very minor changes. The color specifications for the color "orange" have been reordered and the two missing coordinates for the color "red" have been added. The color "coral" has been removed from the table for reasons given in the preamble discussion for Table 1. At present there are no known instruments available for field measurement of nighttime color.

The FHWA has adopted Table 3 to Part 655, Subpart F, Daytime Color Specification Limits for Fluorescent Retroreflective Material With CIE 2 Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}. The contents of Tables 3 and 4 reflect the general comments received in response to the docket. The white boundaries for fluorescent colors have been shifted closer to the chromaticity diagram loci from those positions proposed in the NPRM in response to comments that color saturation is as important as luminance to achieve high conspicuity for colored materials.

The FHWA has added Table 3a to Part 655, Subpart F, Daytime Luminance Factors (Percent) for Fluorescent Retroreflective Material With CIE 2 Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}, which contains the luminance factors found in Table 3 proposed in the NPRM for easier recognition. Specifying the requirements for high-conspicuity (fluorescent) materials by using daytime luminance factors under CIE Standard Illuminants D_{65} and D_{150} (analogous to noontime and twilight) have been extensively discussed with the ASTM. There is disagreement over the use of the fluorescent luminance factor (Y_F) as a material requirement since Y_F cannot be measured in the field at this time. As an interim step, the FHWA is defining high-conspicuity materials using a value for the daytime luminance factor that roughly equals 70 percent of the MacAdam Limit[3] for a color near the centroid of the color region. The fluorescent luminance factor (Y_F) for high-conspicuity materials is provided as a provision for quality control by manufacturers, and is not recommended as a measurement of materials performance for acceptance or while in service.

Table 4 to part 655, Subpart F, Nighttime Color Specification Limits for Fluorescent Retroreflective Material With CIE 2 Degree Standard Observer and Observation Angle of 0.33 Degree, Entrance Angle of Plus 5 Degrees and CIE Standard Illuminant A, is adopted with only a slight re-ordering of the x,y coordinates for consistency. At present there are no known instruments available for field measurement of nighttime color.

Table 5 to part 655, Subpart F, Daytime Color Specification Limits for Retroreflective Pavement Marking Material With CIE 2 Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}, is adopted with only a slight re-ordering of the x,y coordinates for consistency.

Table 5a part 655, Subpart F, Daytime Luminance Factors (Percent) for Retroreflective Pavement Marking Material With CIE 2Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}, is added and, for easier recognition, contains the luminance factors found in the Table 5 proposed in the NPRM. The luminance factor (Y) for white and yellow pavement marking materials proposed in the NPRM were significantly higher than values typically measured on the National Transportation Product Evaluation Program test decks after a fairly short period of time. The FHWA deleted the column heading "Without Glass Beads" as the materials should be measured in the manner they are intended to be used, which includes the glass beads.

Table 6 to part 655, subpart F, Nighttime Color Specification Limits for Retroreflective Pavement Marking Material with CIE 2 Degree Standard Observer, Observation Angle of 1.05 Degrees, Entrance Angle of Plus 88.76 Degrees and CIE Standard Illuminant A, is adopted in the final rule with a modification to what was proposed in the NPRM to the yellow pavement marking materials. The proposed specifications did not provide sufficient separation between yellow and white, leading to the potential loss of color recognition at night. This specification corrects that problem.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and

[2] ASTM Standard D4956–01a, Standard Specification for Retroreflective Sheeting for Traffic Control. Copies of this standard may be obtained by contacting ASTM at ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 or through the ASTM website (www.astm.org).

[3] The MacAdam Limit is the theoretical maximum luminance factor achievable for a reflective color under a given illuminant. Values range from 100 percent, for ideal white, to 0 percent for ideal black.

procedures. The economic impact of this rulemaking will be minimal. Although the new specifications have been revised to incorporate the latest research, the basic criteria remain essentially the same. These changes will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated above, although the FHWA has amended this final rule to incorporate the latest research, the basic criteria remain essentially the same. For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 et seq).

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: July 23, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 655, as set forth below:

PART 655—[AMENDED]

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

2. Revise the appendix to subpart F to read as follows:

Appendix to Subpart F of Part 655—Alternate Method of Determining the Color of Retroreflective Sign Materials and Pavement Marking Materials

1. Although the FHWA Color Tolerance Charts depreciate the use of spectrophotometers or accurate tristimulus colorimeters for measuring the daytime color of retroreflective materials, recent testing has determined that 0/45 or 45/0 spectroradiometers and tristimulus colorimeters have proved that the measurements can be considered reliable and may be used.

2. The daytime color of non-fluorescent retroreflective materials may be measured in accordance with ASTM Test Method E1349, "Standard Test Method for Reflectance Factor and Color by Spectrophotometry Using Bidirectional Geometry" or ASTM Test Method E 1347 (Replaces E97), "Standard Test Method for Color and Color-Difference Measurement by Tristimulus (Filter)

Colorimetry." The latter test method specified bidirectional geometry for the measurement of retroreflective materials. The geometric conditions to be used in both test methods are 0/45 or 45/0 circumferential illumination or viewing. Uniplanar geometry is not recommended for material types IV or higher (designated microprismatic). The CIE standard illuminant used in computing the colorimetric coordinates shall be D_{65} and the 2 Degree Standard CIE observer shall be used.

3. For fluorescent retroreflective materials ASTM E991 may be used to determine the chromaticity provided that the D_{65} illumination meets the requirements of E 991. This practice, however, allows only the total luminous factor to be measured. The fluorescent luminous factor must be determined using bispectral fluorescent colorimetry. Commercial instruments are available which allow such determination. Some testing laboratories are also equipped to perform these measurements.

4. For nighttime measurements CIE Standard Illuminant A shall be used in computing the colorimetric coordinates and the 2 Degree Standard CIE Observer shall be used.

5. Average performance sheeting is identified as Types I and II sheeting and high performance sheeting is identified as Type III. Super-high intensity sheeting is identified as Types V, VI, and VII in ASTM D 4956.

6. The following nine tables depict the 1931 CIE Chromaticity Diagram x and y coordinates for the corner points defining the recommended color boxes in the diagram and the daytime luminance factors for those colors. Traffic control materials shall maintain the colors and luminance factors provided in the appropriate tables throughout service. Lines drawn between these corner points specify the limits of the chromaticity allowed in the 1931 Chromaticity Diagram. Color coordinates of samples that lie within these lines are acceptable. For blue and green colors the spectrum locus is the defining limit between the corner points located on the spectrum locus:

TABLE 1 TO APPENDIX TO PART 655, SUBPART F—DAYTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	y	x	x	y
White	0.303	0.300	0.368	0.366	0.340	0.393	0.274	0.329
Red	0.648	0.351	0.735	0.265	0.629	0.281	0.565	0.346
Orange	0.558	0.352	0.636	0.364	0.570	0.429	0.506	0.404
Brown	0.430	0.340	0.430	0.390	0.518	0.434	0.570	0.382
Yellow	0.498	0.412	0.557	0.442	0.479	0.520	0.438	0.472
Green	0.026	0.399	0.166	0.364	0.286	0.446	0.207	0.771
Blue	0.078	0.171	0.150	0.220	0.210	0.160	0.137	0.038
Light Blue	0.180	0.260	0.240	0.300	0.270	0.260	0.230	0.200
Purple	0.300	0.064	0.320	0.200	0.550	0.300	0.600	0.202

TABLE 1A TO APPENDIX TO PART 655, SUBPART F—DAYTIME LUMINANCE FACTORS (%) FOR RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Daytime Luminance Factor (Y %) by ASTM Type					
	Types I, II, III and VI		Types IV, VII, and VIII		Type V	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
White	27	.....	40	.....	15	.....
Red	2.5	12	3.0	15	2.5	11
Orange	14	30	12	30	7.0	25
Brown	4.0	9.0	1.0	6.0	1.0	9.0
Yellow	15	45	24	45	12	30
Green	3.0	9.0	3.0	12	2.5	11
Blue	1.0	10	1.0	10	1.0	10
Light Blue	12	40	18	40	8.0	25
Purple	2.0	10	2.0	10	2.0	10

TABLE 2 TO APPENDIX TO PART 655, SUBPART F—NIGHTTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE OF 0.33°, ENTRANCE ANGLE OF +5° AND CIE STANDARD ILLUMINANT A.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	*y*	*x*	*y*	*x*	*y*	*x*	*y*
White	0.475	0.452	0.360	0.415	0.392	0.370	0.515	0.409
Red	0.650	0.348	0.620	0.348	0.712	0.2550	0.735	0.265
Orange	0.595	0.405	0.565	0.405	0.613	0.355	0.643	0.355
Brown	0.595	0.405	0.540	0.405	0.570	0.365	0.643	0.355
Yellow	0.513	0.487	0.500	0.4700	0.545	0.425	0.572	0.425
Green	0.007	0.570	0.200	0.500	0.322	0.590	0.193	0.782
Blue	0.33	0.370	0.180	0.370	0.230	0.240	0.091	0.133
Light Blue	Chromaticity coordinates are yet to be determined.							

TABLE 2 TO APPENDIX TO PART 655, SUBPART F—NIGHTTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE OF 0.33°, ENTRANCE ANGLE OF +5° AND CIE STANDARD ILLUMINANT A.—Continued

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	*y*	*x*	*y*	*x*	*y*	*x*	*y*
Purple	Chromaticity coordinates are yet to be determined.							

Note: Materials used as High-Conspicuity, Retroreflective Traffic Signage Materials shall meet the requirements for Daytime Color Specification Limits, Daytime Luminance Factors and Nighttime Color Specification Limits for Fluorescent Retroreflective Material, as described in Tables 3, 3a, and 4, throughout the service life of the sign.

TABLE 3 TO APPENDIX TO PART 655, SUBPART F—DAYTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	x	y	x	y
Fluorescent Orange	0.583	0.416	0.535	0.400	0.595	0.351	0.645	0.355
Fluorescent Yellow	0.479	0.520	0.446	0.483	0.512	0.421	0.557	0.442
Fluorescent Yellow-Green	0.387	0.610	0.369	.546	.428	.496	0.460	0.540
Fluorescent Green	0.210	0.770	0.232	0.656	0.320	0.590	0.320	0.675

TABLE 3A TO APPENDIX TO PART 655, SUBPART F—DAYTIME LUMINANCE FACTORS (%) FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Luminance Factor Limits (Y)		
	Min	Max	Y_F*
Fluorescent Orange	25	None	15
Fluorescent Yellow	45	None	20
Fluorescent Yellow-Green	60	None	20
Fluorescent Green	20	.30	12

*Fluorescence luminance factors (YF) are typical values, and are provided for quality assurance purposes only. YF shall not be used as a measure of performance during service.

TABLE 4 TO APPENDIX TO PART 655, SUBPART F—NIGHTTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE OF 0.33°, ENTRANCE ANGLE OF +5° AND CIE STANDARD ILLUMINANT A.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	x	y	x	y
Fluorescent Orange	0.625	0.375	0.589	0.376	0.636	0.330	0.669	0.331
Fluorescent Yellow	0.554	0.445	0.526	0.437	0.569	0.394	0.610	0.390
Fluorescent Yellow-Green	0.480	0.520	0.473	0.490	0.523	0.440	0.550	0.449
Fluorescent Green	0.007	0.570	0.200	0.500	0.322	0.590	0.193	0.782

TABLE 5 TO APPENDIX TO PART 655, SUBPART F—DAYTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE PAVEMENT MARKING MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	x	y	x	y
White	0.355	0.355	0.305	0.305	0.285	0.325	0.335	0.375
Yellow	0.560	0.440	0.490	0.510	0.420	0.440	0.460	0.400

TABLE 5 TO APPENDIX TO PART 655, SUBPART F—DAYTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE PAVEMENT MARKING MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.—Continued

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	x	y	x	y
Red	0.480	0.300	0.690	0.315	0.620	0.380	0.480	0.360
Blue	0.105	0.100	0.220	0.180	0.200	0.260	0.060	0.220

TABLE 5A TO PART 655, SUBPART F—DAYTIME LUMINANCE FACTORS (%) FOR RETROREFLECTIVE PAVEMENT MARKING MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Luminance Factor (Y-%)	
	Minimum	Maximum
White	35	
Yellow	25	
Red	6	15
Blue	5	14

TABLE 6 TO APPENDIX TO PART 655, SUBPART F—NIGHTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE PAVEMENT MARKING MATERIAL WITH CIE 2° STANDARD OBSERVER, OBSERVATION ANGLE OF 1.05°, ENTRANCE ANGLE OF +88.76° AND CIE STANDARD ILLUMINANT A.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	x	y	x	y
White	0.480	0.410	0.430	0.380	0.405	0.405	0.455	0.435
Yellow	0.575	0.425	0.508	0.415	0.473	0.453	0.510	0.490

Note: Luminance factors for retroreflective pavement marking materials are for materials as they are intended to be used. For paint products, that means inclusion of glass beads and/or other retroreflective components.

[FR Doc. 02–19140 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–094]

Drawbridge Operation Regulations; Flagler Memorial, Atlantic Intracoastal Waterway, Palm Beach, Palm Beach County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a deviation from the regulations governing the operation of the new Flagler Memorial bridge across the Atlantic Intracoastal Waterway in Palm Beach, Florida. This deviation allows the drawbridge owner to only open one leaf of the bridge from 9:30 a.m. until 3:30 p.m., from July 29, 2002 until August 1, 2002 to complete emergency repairs to the bascule leaves.

DATES: This deviation is effective from 9:30 a.m. on, July 29, 2002 until 3:30 p.m. on August 1, 2002.

ADDRESSES: Material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket [CGD07–02–094] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Florida Department of Transportation requested on July 22, 2002, that the Coast Guard temporarily allow the Flagler Memorial bridge to only open a single leaf of the bridge from 9:30 a.m. until 3:30 p.m., from July 29, 2002 until August 1, 2002. This temporary deviation from the existing bridge regulations is necessary to effect emergency repairs to the bascule leaves. The Flagler Memorial bridge has a horizontal clearance of 40 feet between the fender and the single down span.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 to allow the owner to complete emergency repairs to the bascule leaves. Under this deviation, the Flagler Memorial bridge need only open a single leaf of the bridge from 9:30 a.m. until 3:30 p.m., from July 29, 2002 until August 1, 2002.

Dated: July 24, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–19356 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–091]

Drawbridge Operation Regulations: Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Dock Bridge, mile 5.0, across the Passaic River at Harrison, New Jersey. This temporary deviation will allow the bridge to remain closed to navigation from 9 p.m. on July 26, 2002 through 5 a.m. on July 29, 2002, and from 9 p.m. on August 2, 2002 through 5 a.m. on August 5, 2002. This temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This deviation is effective from 9 p.m. on July 26, 2002 through 5 a.m. on August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The bridge owner, National Passenger Railroad Corporation (Amtrak), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance, to install new miter rails, bridge blocks, and other general maintenance, at the bridge. The performance of these repairs require the bridge to remain in the closed position.

Although the bridge owner did not provide the required thirty days notice to the Coast Guard prior to the effective date of this temporary deviation, the Coast Guard has approved this deviation because this work must be performed with undue delay to insure continued safe reliable operation of the bridge.

Under this temporary deviation the Amtrak Dock Bridge may remain closed to vessel traffic from 9 p.m. on July 26, 2002 through 5 a.m. on July 29, 2002, and from 9 p.m. on August 2, 2002 through 5 a.m. on August 5, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: July 22, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–19358 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–007]

RIN 2115–AA97

Security Zones; Captain of the Port Milwaukee Zone, Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two permanent security zones on the navigable waters of Lake Michigan in the Captain of the Port Milwaukee Zone. These security zones are necessary to protect the nuclear power plants and water intake cribs from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. These zones are intended to restrict vessel traffic from a portion of Lake Michigan.

DATES: This rule is effective July 31, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207.

Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–007 and are available for inspection or copying at Marine Safety Office Milwaukee, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief David McClintock, U.S. Coast Guard Marine Safety Office Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 18, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Captain of the Port Milwaukee Zone, Lake Michigan" in the **Federal Register** (67 FR 19142). We received 14 letters and 2 petitions commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permanent security zones being established by this rulemaking are smaller in size than the temporary security zones currently in effect. By immediately implementing the smaller zone size, we will be relieving some of the burden placed on the public by a larger security zone.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, significant damage to the Pentagon, and tragic loss of life. National security and intelligence officials warn that future terrorists attacks are likely.

This regulation establishes two permanent security zones for the following facilities:

(1) Point Beach nuclear power plant, and

(2) Kewaunee nuclear power plant.

These security zones are necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Milwaukee, or his authorized representative, are prohibited from entering or moving within the zones. The Captain of the Port Milwaukee may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Milwaukee's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of these security zones, their exact locations, and the restrictions involved via Local Notice to Mariners and the Broadcast Notice to Mariners.

Discussion of Comments and Changes

During the public comment period, we received 14 letters. All expressed concern that the security zone would exclude fishermen from a good fishing area and that the security zone would do little to prevent acts of terrorism.

One letter was a form comment signed by 129 individuals stating that a no-fishing, no-boating zone, marked by buoys, will help to deter a terrorist attack. However, the ban will prevent fishermen from enjoying good fishing in that area. Another letter was a form comment signed by 145 individuals stating that the current level of security

is sufficient and that they would like to see the area open to fishermen.

The Captain of the Port Milwaukee has carefully weighed security concerns versus public access in the decision to establish security zones. The security zones create a clear area in which unauthorized persons are readily detectable. This area, coupled with regular Coast Guard patrols, the assistance of state, local, and the nuclear power plant security personnel, all help to create an area to detect and respond to unauthorized individuals.

Thirteen comments indicated that recreational boaters are being deprived of good fishing areas and a beach area for families and tourists to enjoy. Due to the events of September 11, 2001, both nuclear power plants have already taken steps that prohibit access to beach and park areas. These steps include prohibiting beach and park access, posting signs, and regular roaming patrols. Nuclear plants are critical infrastructure throughout the country, providing electricity to millions of homes and cities. In addition, the plants pose a significant radiological hazard should their structural integrity be compromised. The Captain of the Port Milwaukee has determined that the best practice to ensure the safety of these facilities is to provide a clear area in which no vessels or persons are allowed access without specific permission from the Captain of the Port Milwaukee.

One comment was from a local charter boat captain who was concerned about the impact the security zones would have on the local charter fleet. The Captain of the Port Milwaukee has taken every step possible to minimize the impact of the permanent security zones by decreasing the size from that of the temporary security zone. The permanent security zone sizes were carefully considered and balance the safety and security of the facility versus access to the area. The permanent zone size, while smaller than the temporary zone size, continues to provide a clear area in which to detect persons or vessels while providing for traditional use around the security zones.

The Captain of the Port Milwaukee feels that this action is currently necessary until there is domestic security intelligence to indicate otherwise. As circumstances allow, the Captain of the Port Milwaukee may take steps to relieve the burden imposed on the public by allowing general access, reducing the zone size, or deactivating the security zones. However, this final rule remains unchanged from the proposed rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Our rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone. In addition, in the event that is may be necessary, prior to transiting commercial vessels can request permission from the Captain of the Port Milwaukee to transit through the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No comments or questions were received from any small businesses.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§§ 165.T09–109 and 165T09–110 [Removed]

2. Remove §§ 165.T09–109 and 165.T09–110.

3. Add § 165.916 to read as follows:

§ 165.916 Security Zones; Captain of the Port Milwaukee Zone, Lake Michigan.

(a) *Location.* The following are security zones:

(1) *Kewaunee.* All navigable waters of Western Lake Michigan encompassed by a line commencing from a point on the shoreline at 44° 20.647 N, 087° 31.980 W, then easterly to 44° 20.647 N, 087° 31.886 W, then southerly to 44° 20.391 N, 087° 31.866 W, then westerly to 44° 20.391 N, 087° 32.067 W, then northerly following the shoreline back to the point of origin. All coordinates are based upon North American Datum 1983.

(2) *Point Beach.* All navigable waters of Western Lake Michigan encompassed by a line commencing from a point on the shoreline at 44° 17.06 N, 087° 32.15 W, then northeasterly to 44° 17.12 N, 087° 31.59 W, then southeasterly to 44° 16.48 N, 087° 31.42 W, then southwesterly to 44° 16.42 N, 087° 32.02 W, then northwesterly along the shoreline back to the point of origin. All coordinates are based upon North American Datum 1983.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Milwaukee. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (414) 747–7155 or on VHF–FM Channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: July 19, 2002.

M.R. Devries,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 02–19354 Filed 7–26–02; 4:02 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 02–008]

RIN 2115–AA97

Safety Zone; North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is revising the effective period of a temporary safety zone in the Gulf of the Farallones, North Pacific Ocean, surrounding the site of a sunken freight vessel, JACOB LUCKENBACH, from which the Coast Guard and other government agencies are removing oil trapped inside the wreck. The purpose of this safety zone is to protect persons and vessels from hazards associated with oil removal operations. Persons and vessels are prohibited from entering into or transiting through the safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: The amendment to § 165.T11–082(c) in this rule is effective July 25, 2002. Section 165.T11–082, added at 67 FR 39600, June 10, 2002, effective from 11:59 p.m. PDT on May 14, 2002 to 11:59 p.m. PDT July 31, 2002, as amended in this rule, is extended in effect to 11:59 p.m. PDT on September 30, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 02–008] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Francisco Bay, Building 14, Coast Guard Island, Alameda, California 94501–5100 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ross Sargent, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 10, 2002, we published a temporary final rule (TFR) titled "Safety Zone; North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA" in the **Federal Register** (67 FR 39598) under § 165.T11–082. It has been in effect since May 14, 2002 and is set to expire 11:59 p.m. PDT on July 31, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The original TFR was urgently required because once it was decided that oil removal was the most prudent means of protecting against future discharges from the sunken vessel, it was determined that publishing a NPRM and delaying the effective date of the safety zone would be contrary to the public interest. As of today, the need for this safety zone still exists because inclement weather has thwarted oil removal operations for several weeks and thus much of the oil has yet to be removed from the vessel. Accordingly, using the same rationale that was used for the original TFR, publishing a NPRM and delaying the effective date would be contrary to the public interest since the oil removal operations necessitating this safety zone would likely terminate before the rulemaking process was complete.

For the same reasons stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30

days after publication in the **Federal Register**.

Background and Purpose

In November of 2001, the Coast Guard and other cognizant government agencies began receiving reports of oiled birds washing ashore along the California coastline between Monterey and Sonoma counties. Weeks of searching for surface sheens yielded negative results and prompted responding government agencies to consider sunken vessels in the area as possible sources of the contaminating oil. By February 2002, responding agencies identified the sunken freight vessel JACOB LUCKENBACH as the most probable source and began deploying camera-equipped remotely operated vehicles (ROVs) in order to view the sunken vessel. During this period, the Coast Guard learned that recreational and commercial divers had been diving on or were planning to dive on the sunken vessel while responding agencies were conducting the on-scene investigation. In February 2002, the Coast Guard established a temporary safety zone in the navigable waters surrounding the JACOB LUCKENBACH in order to protect persons and vessels from hazards associated with the investigation operations. That temporary safety zone expired at the end of April 2002.

The Coast Guard and other government agencies have reviewed the results of the investigation and have determined that removal of the oil from within the JACOB LUCKENBACH is the most prudent means of protecting against future oil discharges. Removal of the oil will require several surface and submersible vessels and associated equipment, all of which present hazards, particularly collision dangers, to persons and vessels in the area. As of today, the need for this safety zone still exists because inclement weather has thwarted oil removal operations for several weeks and thus much of the oil has yet to be removed from the vessel. This temporary final rule will extend this safety zone that was set to expire July 31, 2002 for 2 months—from July 31, 2002, to September 30, 2002.

Discussion of Rule

In order to continue facilitating safe oil removal operations and to guard against the possibility of an accidental discharge of a large quantity of oil into the environment, the Coast Guard is extending the current temporary safety zone in the navigable waters surrounding the sunken vessel. The safety zone encompasses all waters from the surface of the ocean to the bottom within a one nautical mile radius centered at 37°40.38′ N, 122°47.59′ W, the approximate position of the JACOB LUCKENBACH. Entry into, transit through or anchoring in this zone by persons, vessels or ROVs is prohibited, unless authorized by the Captain of the Port, or his designated representative. The requirements of this safety zone do not apply to deep draft vessels transiting within the Offshore Traffic Separation Scheme.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). Due to the continued short duration and limited geographic scope of the safety zone, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. § 601–612), we must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000.

For these reasons and the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.T11–082 to read as follows:

§ 165.T11–082 Safety Zone: North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA.

* * * * *

(c) *Effective period.* This section is effective at 11:59 p.m. PDT on May 14, 2002 and will terminate at 11:59 p.m. PDT on September 30, 2002. If the need for the safety zone ends prior to the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners.

* * * * *

Dated: July 25, 2002.

L. L. Hereth,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 02–19355 Filed 7–26–02; 4:03 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–155]

RIN 2115–AA97

Safety Zone: Vessel Launches, Bath Iron Works, Kennebec River, Bath, Maine

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a 150-yard radius safety zone around the Bath Iron Works facility dry dock in Bath, Maine to be activated when the dry dock is deployed and positioned in its dredged basin hole near the center of the Kennebec River. This safety zone is needed to protect the maritime community from the possible hazards to navigation associated with positioning a 700-foot dry dock near the center of the river to launch and recover large vessels.

DATES: This rule is effective August 1, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–01–155 and are available for inspection or copying at Marine Safety Office Portland, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 26, 2001, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Vessel Launches, Bath Iron Works, Kennebec River, Bath, ME" in the **Federal Register** (66 FR 66380). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the establishment of this rule would be contrary to the public interest as this safety zone is necessary immediately to ensure the safety of the maritime community during vessel launches currently scheduled for the beginning of August. Bath Iron Works has informed the Coast Guard that they will be using the dry dock several times in the near future, beginning August 2, 2002, as they complete work on several large vessels. It is necessary to make this rule effective in less than 30 days after publication in order to protect the maritime community from the possible hazards to navigation associated with positioning a 700-foot dry dock near the center of the Kennebec River to launch and recover large vessels.

Background and Purpose

The Bath Iron Works facility in Bath, Maine acquired a 700-foot dry dock to aid in vessel launchings and repairs. This dry dock needs to be pulled away from shore and placed in a dredged basin near the center of the Kennebec River, approximately 0.5 nm south of the new Bath-Woolwich Bridge and just to the east of Trufant Ledge, in order to submerge and be able to launch and recover vessels. To accomplish this a series of permanent anchors and submerged chains in the river is used. It is necessary to restrict vessel movement in this area during deployment to protect mariners from this system and any associated vessels involved with the deployment.

This rule establishes a permanent moving safety zone around the dry dock

when it is being moved from its moored position at the Bath Iron Works facility to its deployed location in the dredged basin of the Kennebec River, and from its deployed location back to its mooring.

This rule also establishes a permanent safety zone around the dry dock while it is in its deployed position in the waters of the Kennebec River. This safety zone restricts entry into the waters of the Kennebec River within a 150-yard radius of the dry dock. This safety zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with positioning a 700-foot dry dock near the center of the Kennebec River to launch and recover large vessels.

Discussion of Comments and Changes

The Coast Guard received no comments for this rulemaking. Only one change has been made to the proposed rule in this final rulemaking. The NPRM for this rule proposed to redesignate 33 CFR § 165.103 as § 165.108 and designate this rule as § 165.103. The Coast Guard, in the interim, has revised § 165.103. Rather than moving and revising § 165.103 we will add a new section designated as § 165.104.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary for the following reasons: This safety zone would only be activated when the dry dock is relocated to its launch and recovery position, and during vessel launch and recovery; the safety zone only restricts movement in a portion of the Kennebec River allowing vessels to safely navigate around the zone without delay; the maritime community will be notified of the restrictions via broadcast notice to mariners; and there will be advanced coordination of vessel traffic around the safety zone to minimize the effect on commercial vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we have considered whether this proposal would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under Regulatory Evaluation above, the Coast

Guard expects the impact of this regulation to be minimal and certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165 REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.104 to read as follows:

§ 165.104 Safety Zone: Vessel Launches, Bath Iron Works, Kennebec River, Bath, Maine.

(a) *Location.* The following is a safety zone: all waters of the Kennebec River within a 150-yard radius of the Bath Iron Works dry dock while it is being moved to and from its moored position at the Bath Iron Works Facility in Bath, Maine to a deployed position in the Kennebec River, and while launching or recovering vessels.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U. S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state and federal law enforcement vessels.

(c) *Notifications.* The Captain of the Port will notify the maritime community of periods during which this safety zone will be in effect by providing advance notice via Marine Safety Information Radio Broadcasts.

Dated: July 25, 2002.

M.P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 02–19357 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–011]

RIN 2115–AA97

Security Zone: Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a security zone in the Valdez Narrows, Port Valdez, Alaska. The security zones are necessary to protect the Alyeska Marine Terminal and Vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: This rule is effective from 8 a.m. July 30, 2002 until December 31, 2002. Comments and related material must reach the Coast Guard September 30, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Prince William Sound 02–011 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lt. Chris Beadle, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7222.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In accordance with 5 U.S.C. 553 (b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. The Coast Guard is taking this action for the immediate protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001. Also, in accordance with 5 U.S.C. 553 (d)(3), the Coast Guard finds good cause to exist for making this regulation effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of the TAPS terminal and TAPS tank vessels.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these zones are—

§ 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,

§ 165.T17–004—Security zone; Port Valdez, and § 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace these security zones that expired June 1, 2002. That rule issued in June, which will expire July 30, 2002, created temporary § 165.T17–009, entitled "Port Valdez and Valdez Narrows, Valdez, Alaska". This temporary rule will replace the § 165.T17–009 temporary security zones are only effective until July 30, 2002.

Discussion of the Rule

This temporary final rule establishes three security zones. The Trans-Alaska Pipeline (TAPS) Valdez Marine Terminal Security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The Tanker Moving Security Zone encompasses the waters within 200 yards of a TAPS Tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows Security Zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point. This zone is active only when a TAPS Tanker is in the zone. This temporary final rule reflects the changes to 33 CFR part 1701 submitted for regulatory review and publication as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. The Coast Guard has worked closely with local and regional users of Port Valdez

and Valdez Narrows waterways to develop these security zones and the NPRM in order to mitigate the impact on commercial and recreational users. This temporary final rule establishes a uniform transition from the temporary operating zones while the NPRM is reviewed for publication.

Request for Comments

Although the Coast Guard has good cause in implementing this regulation without a notice of proposed rulemaking, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP Prince William Sound 02–011, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Economic impact is expected to be minimal because of the short duration of this rule and the season in which it is in effect.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because of the short duration of the rule. Since the time frame this rule is in effect may cover commercial harvests of fish in the area, the entities most likely affected are commercial and native subsistence fishermen. The Captain of the Port will consider applications for entry into the security zone on a case-by-case basis; therefore, it is likely that very few, if any, small entities will be impacted by this rule. Those interested may apply for a permit to enter the zone by contacting Marine Safety Office, Valdez at the above contact number.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and

concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16745.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Vessels, Waterways.

For the reasons set forth in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T17–013 is added to read as follows:

§ 165.T17–013 Port Valdez and Valdez Narrows, Valdez, Alaska—security zones.

(a) The following areas are security zones —

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* All enclosed waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°04′57″ N, 146°26′20″ W; thence northerly to 61°06′30″ N, 146°26′20″ W; thence east to 61°06′30″ N, 146°21′15″ W; thence south to 61°0′07″ N, 146°21′15″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point. This security zone encompasses all waters approximately 1 mile north, east and west of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(2) *Tank Vessel Moving Security Zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or is transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85(b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters within 200 yards of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′16.0″ N, 146°37′20.0″ W; thence south west to 61°04′00.0″ N, 146°39′52.0″ W; thence southerly to 61°02′33.5″ N, 146°41′28.0″ W; thence north west to 61°02′40.5″ N, 146°41′47.5″ W; thence north east to 61°04′06.0″ N, 146°40′14.5″ W; thence north east to 61°05′23.0″ N, 146°37′40.0″ W; thence south east back to the starting point at 61°05′16.0″ N, 146°37′20.0″.

(i) The Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05′23.0″ N, 146°37′22.5″ W; thence south westerly to 61°04′03.2″ N, 146°40′03.2″ W; thence southerly to 61°03′00″ N, 146°41′12″ W.

(ii) This security zone encompasses all waters approximately 200 yards either side of the Valdez Narrows Optimum Track line.

(b) *Effective dates.* This section is effective from 8 a.m. July 30, 2002 until December 31, 2002.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

(d) *Regulations.* (1) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(2) Tank vessels transiting directly to the TAPS terminal complex, engaged in the movement of oil from the terminal or fuel to the terminal, and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service may operate as necessary to ensure safe passage of tank vessels to and from the terminal.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: July 12, 2002.

M.A. Swanson,

Commander, Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 02–19359 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL21

Duty Periods; Inactive Duty for Training

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations regarding service connection for disabilities incurred or aggravated during inactive duty for training. This amendment is necessary to insure the regulations accurately reflect a statutory amendment.

DATES: *Effective Date:* July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Randy A. McKevitt, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7138.

SUPPLEMENTARY INFORMATION: VA is amending its adjudication regulations regarding service connection for disabilities incurred or aggravated during inactive duty for training. The regulation amending 38 CFR 3.6 to implement Public Law 106–419, November 1, 2000, Veterans Benefits and Health Care Improvement Act of 2000, used wording slightly different from the wording of the Act. We are amending the regulation to accurately reflect the wording of the Act.

Administrative Procedure Act

We are publishing this as a final rule because the amendment only restates the statute and makes no substantive changes in the regulation. (5 U.S.C. 553).

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: July 3, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.6 is amended by:

A. Removing paragraphs (a)(1) through (a)(3).

B. In paragraph (a), removing "a covered disease which occurred during such training. For purposes of this section, the term 'covered disease' is limited to-", and adding, in its place, "an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during such training."

C. Adding paragraph (e)(3) preceding the authority citation at the end of the section.

The addition reads as follows:

§ 3.6 Duty periods.

* * * * *

(e) * * *

(3) For purposes of this section, the term *covered disease* means any of the following:

(i) An acute myocardial infarction.

(ii) A cardiac arrest.

(iii) A cerebrovascular accident.

[FR Doc. 02–19329 Filed 7–30–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK67

Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of a monetary allowance for an individual with disability from one or more covered birth defects who is a child of a woman Vietnam veteran and to provide for the identification of covered birth defects, to implement recent legislation. In addition, this document amends the VA adjudication regulations affecting benefits for Vietnam veterans' children with spina bifida to reflect that legislation, to make conforming changes, and to remove unnecessary or obsolete provisions.

DATES: *Effective Date:* July 31, 2002.

Applicability Date: Benefits are payable in accordance with this rule retroactively to December 1, 2001, the effective date of the applicable statutory provisions.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on January 2, 2002 (67 FR 200), we proposed to amend the VA adjudication regulations to provide for payment of a monetary allowance for an individual with disability from one or more covered birth defects who is a child of a woman Vietnam veteran and to provide for the identification of covered birth defects, to implement provisions in recent legislation. In addition, we proposed to amend the VA adjudication regulations affecting benefits for Vietnam veterans' children with spina bifida to reflect that legislation, to make conforming changes, and to remove unnecessary or obsolete provisions. Companion proposed rule documents concerning the provision under that legislation of health care (RIN: 2900-AK88) (67 FR 209) and vocational training benefits (RIN: 2900-AK90) (67 FR 215) for eligible children of Vietnam veterans were also set forth in the January 2, 2002, issue of the **Federal Register**.

That legislation, section 401 of the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106–419, amended chapter 18 of title 38, United States Code, effective December 1, 2001, to authorize VA to provide certain benefits, including a monthly monetary allowance, for children with covered birth defects who are the natural children of women veterans who served in the Republic of Vietnam during the Vietnam era. We provided a thirty-day period for public comments, which ended on February 1, 2002. We received one comment, from an individual.

The commenter felt that the U.S. government is displaying a bias in favor of women veterans in this regulation and that the hidden effect of Agent Orange may also have remained dormant in men's systems and produced chromosomal disorders in their children. No changes are made based on this comment. Public Law 106–419, which was based on a comprehensive health study conducted by VA of 8,280 women Vietnam-era veterans (as discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule), provides benefits specifically for women Vietnam veterans' children with certain birth defects. We have no legal authority to award the new benefits to children of male Vietnam veterans.

VA appreciates the comment submitted in response to the proposed rule. Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change, except for nonsubstantive changes for purposes of clarity.

Administrative Procedure Act

Because this rule solely provides for new benefits and makes nonsubstantive changes, there is under 5 U.S.C. 553 no need for a 30-day delay of the effective date of this rule.

Applicability Date

Benefits are payable retroactively in accordance with this rule to December 1, 2001, the effective date of the new benefit programs enacted by section 401 of Public Law 106–419.

Paperwork Reduction Act of 1995

This rule removes the approved information collection provisions contained in 38 CFR 3.814 as unnecessary or obsolete. This rule contains no provisions constituting new collections of information under the Paperwork Reduction Act.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The

reason for this certification is that these amendments will not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers for benefits affected by this rule are 64.104, 64.109, 64.127, and 64.128.

There are no Catalog of Federal Domestic Assistance program numbers for other benefits affected by this rule. 2

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: May 13, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.27, paragraphs (c) and (d) are revised to read as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(c) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance rates under 38 U.S.C. chapter 18.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)

(d) *Publishing requirements.* Increases in pension rates, parents' dependency and indemnity compensation rates and income limitation, and the monthly allowance rates under 38 U.S.C. chapter 18 made under this section shall be published in the **Federal Register**.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312(c)(1))

3. In § 3.29, paragraph (c) is revised to read as follows:

§ 3.29 Rounding

* * * * *

(c) *Monthly rates under 38 U.S.C. chapter 18.* When increasing the monthly monetary allowance rates under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans, VA will round any resulting rate that is not an even dollar amount to the next higher dollar.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)

§ 3.31 [Amended]

4. Section 3.31 is amended by:

a. In the introductory text, removing "the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida" and adding, in its place, "a monetary allowance under 38 U.S.C. chapter 18 for an individual".

b. In paragraph (c)(4)(ii), removing "the monetary allowance for children suffering from spina bifida" and adding, in its place, "a monetary allowance under 38 U.S.C. chapter 18".

c. Revising the authority citation.

The revision reads as follows:

§ 3.31 Commencement of the period of payment.

* * * * * *

(Authority: 38 U.S.C. 1822, 5111)

5. In § 3.105, paragraph (g) is revised to read as follows:

§ 3.105 Revision of decisions.

* * * * *

(g) *Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Where a reduction or discontinuance of a monetary allowance currently being paid under 38 U.S.C. chapter 18 is considered warranted, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefor, and allow the beneficiary 60 days to present additional evidence to show that the monetary allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following 60 days from the date of notice to the beneficiary of the proposed reduction.

(Authority: 38 U.S.C. 1822, 5112(b)(6))

* * * * *

§ 3.114 [Amended]

6. Section 3.114 is amended by:

a. In the introductory text of paragraph (a), removing "the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida" each place it appears and adding, in its place, "a monetary allowance under 38 U.S.C. chapter 18 for an individual".

b. Revising the authority citation at the end of paragraph (a).

The revision reads as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

* * * * *

(Authority: 38 U.S.C. 1822, 5110(g))

* * * * *

§ 3.158 [Amended]

7. In § 3.158, paragraphs (a) and (c) are amended by removing "1805" and adding, in its place, "chapter 18".

§ 3.216 [Amended]

8. Section 3.216 is amended by:

a. Removing "or the monetary allowance for a child suffering from spina bifida who is a child of a Vietnam veteran under § 3.814 of this part" and adding, in its place, "a monetary allowance under 38 U.S.C. chapter 18".

b. Revising the authority citation.

The revision reads as follows:

§ 3.216 Mandatory disclosure of social security numbers.

* * * * *

(Authority: 38 U.S.C. 1822, 5101(c))

* * * * *

9. In § 3.261, paragraph (a)(40) is revised to read as follows:

§ 3.261 Character of income; exclusions and estates.

* * * * *

(a) * * *

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See—
* *	*	*	*	*	*
(40) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans (38 U.S.C. 1823(c)).	Excluded	Excluded	Excluded	Excluded	§ 3.262(y)

* * * * *

10. In § 3.262, paragraph (y) is revised to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(y) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

11. In § 3.263, paragraph (g) is revised to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(g) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

12. In § 3.272, paragraph (u) is revised to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(u) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

13. In § 3.275, paragraph (i) is revised to read as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(i) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

14. In § 3.403, paragraph (b) is revised and paragraph (c) is added, to read as follows:

§ 3.403 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for an individual suffering from spina bifida who is a child of a Vietnam veteran.* An award of the monetary allowance under 38 U.S.C. 1805 to or for an individual suffering from spina bifida who is a child of a Vietnam veteran will be effective either date of birth if claim is received within one year of that date, or date of claim, but not earlier than October 1, 1997.

(Authority: 38 U.S.C. 1822, 5110; sec. 422(c), Pub. L. 104–204, 110 Stat. 2926)

(c) *Monetary allowance under 38 U.S.C. 1815 for an individual with covered birth defects who is a child of a woman Vietnam veteran.* Except as provided in § 3.114(a) or § 3.815(i), an award of the monetary allowance under 38 U.S.C. 1815 to or for an individual with one or more covered birth defects who is a child of a woman Vietnam veteran will be effective as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is latest.

(Authority: 38 U.S.C. 1815, 1822, 1824, 5110)

15. In § 3.503, paragraph (b) is revised to read as follows:

§ 3.503 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* The effective date of discontinuance of the monthly allowance under 38 U.S.C. chapter 18 will be the last day of the month before the month in which the death of the individual occurred.

(Authority: 38 U.S.C. 1822, 5112(b))

16. Section 3.814 is amended by:

a. Revising the section heading.

b. Adding a heading to paragraph (a).

c. In paragraph (a), revising the first sentence and, in the second sentence, removing "other related individual" and adding, in its place, "related person".

d. Removing and reserving paragraph (b).

e. In paragraph (c)(1), removing "an individual" and adding, in its place, "a person" and removing "individual's" and adding, in its place, "person's".

f. In paragraph (c)(2), removing "§ .3.204(a)(1), VA shall" and adding, in its place, "§ 3.204(a)(1), VA will" and by removing "an individual's biological father or mother is or was" and adding, in its place, "a person is the biological son or daughter of".

g. Add a heading for paragraph (d).

h. Removing the authority citation at the end of paragraph (d).

i. In paragraph (e) introductory text, removing "children" and adding, in its place, "an individual".

j. Revising the authority citation at the end of the section.

k. Removing the information collection parenthetical at the end of the section.

The revisions and additions read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran.

(a) *Monthly monetary allowance.* VA will pay a monthly monetary allowance under subchapter I of 38 U.S.C. chapter 18, based upon the level of disability determined under the provisions of paragraph (d) of this section, to or for a person who VA has determined is an individual suffering from spina bifida whose biological mother or father is or was a Vietnam veteran. * * *

* * * * *

(d) *Disability evaluations.* (1) * * *

* * * * * *

(Authority: 38 U.S.C. 501, 1805, 1811, 1812, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)

17. Section 3.815 is added to read as follows:

§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.

(a) *Monthly monetary allowance.* (1) *General.* VA will pay a monthly monetary allowance under subchapter II of 38 U.S.C. chapter 18 to or for an individual whose biological mother is or was a Vietnam veteran and who VA has determined to have disability resulting from one or more covered birth defects. Except as provided in paragraph (a)(3) of this section, the amount of the monetary allowance paid will be based upon the level of such disability suffered by the individual, as determined in accordance with the provisions of paragraph (e) of this section.

(2) *Affirmative evidence of cause other than mother's service during Vietnam era.* No monetary allowance will be provided under this section based on a particular birth defect of an individual in any case where affirmative evidence establishes that the birth defect results from a cause other than the active military, naval, or air service of the individual's mother during the Vietnam era and, in determining the level of disability for an individual with more than one birth defect, the particular defect resulting from other causes will be excluded from consideration. This will not prevent VA from paying a monetary allowance under this section for other birth defects.

(3) *Nonduplication; spina bifida.* In the case of an individual whose only covered birth defect is spina bifida, a monetary allowance will be paid under § 3.814, and not under this section, nor will the individual be evaluated for disability under this section. In the case of an individual who has spina bifida and one or more additional covered birth defects, a monetary allowance will be paid under this section and the amount of the monetary allowance will be not less than the amount the individual would receive if his or her only covered birth defect were spina bifida. If, but for the individual's one or more additional covered birth defects, the monetary allowance payable to or for the individual would be based on an evaluation at Level I, II, or III, respectively, under § 3.814(d), the evaluation of the individual's level of disability under paragraph (e) of this section will be not less than Level II, III, or IV, respectively.

(b) *No effect on other VA benefits.* Receipt of a monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual, or the right of any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

(c) *Definitions.* (1) *Vietnam veteran.* For the purposes of this section, the term *Vietnam veteran* means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Individual.* For the purposes of this section, the term individual means a person, regardless of age or marital status, whose biological mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first entered the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975. Notwithstanding the provisions of § 3.204(a)(1), VA will require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish that a person is the biological son or daughter of a Vietnam veteran.

(3) *Covered birth defect.* For the purposes of this section, the term *covered birth defect* means any birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term *covered birth defect* does not include a condition due to a:

(i) Familial disorder;

(ii) Birth-related injury; or

(iii) Fetal or neonatal infirmity with well-established causes.

(d) *Identification of covered birth defects.* All birth defects that are not excluded under the provisions of this paragraph are covered birth defects.

(1) Covered birth defects include, but are not limited to, the following (however, if a birth defect is determined to be familial in a particular family, it will not be a covered birth defect):

(i) Achondroplasia;

(ii) Cleft lip and cleft palate;

(iii) Congenital heart disease;

(iv) Congenital talipes equinovarus (clubfoot);

(v) Esophageal and intestinal atresia;

(vi) Hallerman-Streiff syndrome;

(vii) Hip dysplasia;

(viii) Hirschprung's disease (congenital megacolon);

(ix) Hydrocephalus due to aqueductal stenosis;

(x) Hypospadias;

(xi) Imperforate anus;

(xii) Neural tube defects (including spina bifida, encephalocele, and anencephaly);

(xiii) Poland syndrome;

(xiv) Pyloric stenosis;

(xv) Syndactyly (fused digits);

(xvi) Tracheoesophageal fistula;

(xvii) Undescended testicle; and

(xviii) Williams syndrome.

(2) Birth defects that are familial disorders, including hereditary genetic conditions, are not covered birth defects. Familial disorders include, but are not limited to, the following, unless the birth defect is not familial in a particular family:

(i) Albinism;

(ii) Alpha-antitrypsin deficiency;

(iii) Crouzon syndrome;

(iv) Cystic fibrosis;

(v) Duchenne's muscular dystrophy;

(vi) Galactosemia;

(vii) Hemophilia;

(viii) Huntington's disease;

(ix) Hurler syndrome;

(x) Kartagener's syndrome (Primary Ciliary Dyskinesia);

(xi) Marfan syndrome;

(xii) Neurofibromatosis;

(xiii) Osteogenesis imperfecta;

(xiv) Pectus excavatum;

(xv) Phenylketonuria;

(xvi) Sickle cell disease;

(xvii) Tay-Sachs disease;

(xviii) Thalassemia; and

(xix) Wilson's disease.

(3) Conditions that are congenital malignant neoplasms are not covered birth defects. These include, but are not limited to, the following:

(i) Medulloblastoma;

(ii) Neuroblastoma;

(iii) Retinoblastoma;

(iv) Teratoma; and

(v) Wilm's tumor.

(4) Conditions that are chromosomal disorders are not covered birth defects. These include, but are not limited to, the following:

(i) Down syndrome and other Trisomies;

(ii) Fragile X syndrome;

(iii) Klinefelter's syndrome; and

(iv) Turner's syndrome.

(5) Conditions that are due to birth-related injury are not covered birth defects. These include, but are not limited to, the following:

(i) Brain damage due to anoxia during or around time of birth;

(ii) Cerebral palsy due to birth trauma,

(iii) Facial nerve palsy or other peripheral nerve injury;

(iv) Fractured clavicle; and

(v) Horner's syndrome due to forceful manipulation during birth.

(6) Conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. These include, but are not limited to, the following:

(i) Asthma and other allergies;

(ii) Effects of maternal infection during pregnancy, including but not limited to, maternal rubella, toxoplasmosis, or syphilis;

(iii) Fetal alcohol syndrome or fetal effects of maternal drug use;

(iv) Hyaline membrane disease;

(v) Maternal-infant blood incompatibility;

(vi) Neonatal infections;

(vii) Neonatal jaundice;

(viii) Post-infancy deafness/hearing impairment (onset after the age of one year);

(ix) Prematurity; and

(x) Refractive disorders of the eye.

(7) Conditions that are developmental disorders are not covered birth defects. These include, but are not limited to, the following:

(i) Attention deficit disorder;

(ii) Autism;

(iii) Epilepsy diagnosed after infancy (after the age of one year);

(iv) Learning disorders; and

(v) Mental retardation (unless part of a syndrome that is a covered birth defect).

(8) Conditions that do not result in permanent physical or mental disability are not covered birth defects. These include, but are not limited to:

(i) Conditions rendered non-disabling through treatment;

(ii) Congenital heart problems surgically corrected or resolved without disabling residuals;

(iii) Heart murmurs unassociated with a diagnosed cardiac abnormality;

(iv) Hemangiomas that have resolved with or without treatment; and

(v) Scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.

(e) *Disability evaluations.* Whenever VA determines, upon receipt of competent medical evidence, that an individual has one or more covered birth defects, VA will determine the level of disability currently resulting, in combination, from the covered birth defects and associated disabilities. No monetary allowance will be payable under this section if VA determines under this paragraph that an individual has no current disability resulting from the covered birth defects, unless VA determines that the provisions of paragraph (a)(3) of this section are for application. Except as otherwise provided in paragraph (a)(3) of this section, VA will determine the level of disability as follows:

(1) *Levels of disability.*

(i) *Level 0.* The individual has no current disability resulting from covered birth defects.

(ii) *Level I.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities; or

(B) The individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of any facial feature (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iii) *Level II.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent some daily activities, but the individual is able to work or attend school, carry out most household chores, travel, and provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene, and communication, behavior, social interaction, and intellectual functioning are appropriate for age; or

(B) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iv) *Level III.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent most daily activities, but the individual is able to provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual is unable to work or attend school, travel, or carry out household chores, or does so intermittently and with difficulty;

(C) The individual's communication, behavior, social interaction, and intellectual functioning are not entirely appropriate for age; or

(D) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of two facial features or two paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(v) *Level IV.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that prevent age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual's communication, behavior, social interaction, and intellectual functioning are grossly inappropriate for age; or

(C) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of three facial features or three paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(2) *Assessing limitation of daily activities.* Physical or mental effects on the following functions are to be considered in assessing limitation of daily activities:

(i) Mobility (ability to stand and walk, including balance and coordination);

(ii) Manual dexterity;

(iii) Stamina;

(iv) Speech;

(v) Hearing;

(vi) Vision (other than correctable refraction errors);

(vii) Memory;

(viii) Ability to concentrate;

(ix) Appropriateness of behavior; and

(x) Urinary and fecal continence.

(f) *Information for determining whether individuals have covered birth defects and rating disability levels.* (1) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purposes of determining whether an individual has a covered birth defect and for rating claims for covered birth defects. If they are adequate for such purposes, VA may make the determination and rating without further examination. In the absence of adequate information, VA may schedule examinations for the purpose of determining whether an individual has a covered birth defect and/or assessing the level of disability.

(2) Except in accordance with paragraph (a)(3) of this section, VA will not pay a monthly monetary allowance unless or until VA is able to obtain medical evidence adequate to determine that an individual has a covered birth defect and adequate to assess the level of disability due to covered birth defects.

(g) *Redeterminations.* VA will reassess a determination under this section whenever it receives evidence indicating that a change is warranted.

(h) *Referrals.* If a regional office is unclear in any case as to whether a condition is a covered birth defect, it may refer the issue to the Director of the Compensation and Pension Service for determination.

(i) *Effective dates.* Except as provided in § 3.114(a) or paragraph (i)(1) or (2) of this section, VA will award the monetary allowance under subchapter II of 38 U.S.C. chapter 18, for an individual with disability resulting from one or more covered birth defects, based on an original claim, a claim reopened after final disallowance, or a claim for increase, as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is latest. Subject to the condition that no benefits may be paid for any period prior to December 1, 2001:

(1) VA will increase benefits as of the earliest date the evidence establishes that the level of severity increased, but only if the beneficiary applies for an increase within one year of that date.

(2) If a claimant reopens a previously disallowed claim based on corrected military records, VA will award the benefit from the latest of the following dates: the date the veteran or beneficiary applied for a correction of the military records; the date the disallowed claim was filed; or, the date one year before the date of receipt of the reopened claim.

(j) *Reductions and discontinuances.* VA will generally reduce or discontinue awards under subchapter II of 38 U.S.C. chapter 18 according to the facts found except as provided in §§ 3.105 and 3.114(b).

(1) If benefits were paid erroneously because of beneficiary error, VA will reduce or discontinue benefits as of the effective date of the erroneous award.

(2) If benefits were paid erroneously because of administrative error, VA will reduce or discontinue benefits as of the date of last payment.

(**Authority:** 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AF00

Schedule for Rating Disabilities; the Skin

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the Skin. The intended effect of this action is to update the portion of the rating schedule that deals with skin to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

DATES: *Effective Date:* This amendment is effective August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: As part of a comprehensive review of the rating schedule, VA published a proposal to amend 38 CFR 4.118, which addresses disabilities of the skin, in the **Federal Register** of January 19, 1993 (58 FR 4969). Comments were received from the American Legion, Paralyzed Veterans of America, Veterans of Foreign Wars, Disabled American Veterans, and VA employees.

One commenter suggested that VA withdraw the proposed regulations and reissue them based on more objective standards, and also made specific suggestions for changes to many diagnostic codes.

We do not agree that the proposed regulations should be withdrawn.

We made the process of revision as open as possible. For example, prior to publication of the proposed amendment, we published an advance notice of proposed rulemaking in the **Federal Register** to receive public comments about the revision. We also contracted with an outside consultant, who convened a panel of non-VA physician specialists in skin diseases to make recommendations for revisions of this section of the rating schedule. We asked the Veterans Health Administration to review our proposed changes. We published the proposed revision only after reviewing all of these sources of information. We received several other comments on the proposed rule after it was published in the **Federal Register**, but none of the commenters suggested withdrawing the proposed revision. In response to comments, we have however, made further revisions to some of the criteria for the sake of clarity and more objectivity and have added definitions and explanatory notes under some conditions. These added changes are discussed in more detail below. The same commenter who suggested withdrawing the proposed revision also made specific suggestions for changes to many diagnostic codes. With the additional changes we have made in the final revision, we believe we have made the evaluation criteria for skin conditions reasonably clear and objective.

Under diagnostic code (DC) 7800, disfigurement of the head, face, or neck, the former rating schedule provided evaluation levels of 50, 30, 10, and zero percent based on whether there is repugnant deformity of one or both sides of the face, whether the disfigurement is "severe," producing a marked and unsightly deformity of eyelids, lips, or auricles, and on whether the disfigurement is "moderate" or "slight." Following these criteria was a note stating that each level could be increased to the next higher evaluation level on the basis of marked discoloration or color contrast and that the most repugnant, disfiguring conditions, including scars and diseases of the skin, could be submitted with photographs for central office rating. The proposed amendment added an 80-percent evaluation level and deleted the part of the note that provided authority to elevate evaluations in the presence of marked discoloration or color contrast based on the rationale that these criteria are subject to inconsistent interpretations. The proposed evaluation criteria were based at 80 percent on whether disfigurement is so disfiguring as to preclude occupational interaction with the public, at 50 percent on whether it is repugnant on casual inspection, at 30 percent on whether it is disagreeable on casual inspection, at 10 percent on whether it is noticeable on casual inspection, and at zero percent on whether it is noticeable, but only on close inspection.

One commenter felt that the deleted note should be retained. Another commenter, while offering no alternative language for us to consider, stated that the words "repugnant," disagreeable," and "noticeable," used to describe degrees of disfigurement, are too subjective to be useful and are not

based on medical criteria. In a similar vein, another commenter said that we should establish objective criteria for rating scars that should include evaluation of size, configuration, color, etc. One commenter felt that the difference between casual and close inspection, part of the criteria used to determine disfigurement, is a distinction that is difficult to understand.

In response to these comments, we have further revised the evaluation criteria for DC 7800 by basing them on the number of objective characteristics of disfigurement that are present and whether there is asymmetry or gross distortion of the features. We provided a new note following DC 7800 describing the eight specific characteristics of disfigurement, for purposes of evaluation under § 4.118: Scar 5 or more inches (13 or more cm.) in length; scar at least one-quarter inch (0.6 cm.) wide at widest part; surface contour of scar elevated or depressed on palpation; scar adherent to underlying tissue; skin hypo- or hyper-pigmented in an area exceeding six square inches (39 sq. cm.); skin texture abnormal (irregular, atrophic, shiny, scaly, etc.) in an area exceeding six square inches (39 sq. cm.); underlying soft tissue missing in an area exceeding six square inches (39 sq. cm.); and skin indurated and inflexible in an area exceeding six square inches (39 sq. cm.). For an 80-percent evaluation, there must be visible or palpable tissue loss and either gross distortion or asymmetry of three or more features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or six or more characteristics of disfigurement must be present. For a 50-percent evaluation, there must be visible or palpable tissue loss and either gross distortion or asymmetry of two features or paired sets of features, or four or more characteristics of disfigurement must be present. For a 30-percent evaluation, there must be visible or palpable tissue loss and either gross distortion or asymmetry of one feature or set of paired features, or two or three characteristics of disfigurement must be present. For a 10-percent evaluation, one characteristic of disfigurement must be present. In our judgment, these further revised criteria are sufficiently clear and objective to assure that evaluations take into account the most significant characteristics of disfigurement and will be consistent from veteran to veteran. We have provided two additional notes under DC 7800, one directing the rater to rate tissue loss of the auricle under DC 6207 (loss of auricle) and anatomical loss of the eye under DC 6061 (anatomical loss of both eyes) or DC 6063 (anatomical loss of one eye), as appropriate; and the second directing the rater to take into consideration unretouched color photographs.

The former rating schedule designated DC 7801 as "scars, burns, third degree," and DC 7802 as "scars, burns, second degree." We proposed to revise these codes so that they additionally addressed scars from causes other than burns and so that the conditions would be evaluated based on actual residual disability, i.e., the size of the area of underlying soft tissue damage or limitation of motion, rather than on the initial assessment of the severity of a burn. We proposed to redesignate DC 7801 as "scars, other than head, face, or neck, with underlying soft tissue damage causing deep contour defect or limited motion" and DC 7802 as "scars, other than head, face, or neck, that are superficial and that do not cause limited motion." We proposed that under DC 7801 scars with an area or areas exceeding 144 square inches (929 sq. cm.) receive a 40-percent evaluation; with area or areas exceeding 72 square inches (465 sq. cm.) a 30-percent evaluation; with area or areas exceeding 12 square inches (77 sq. cm.) a 20-percent evaluation; and with area or areas exceeding 6 square inches (39 sq. cm.) a 10-percent evaluation. We proposed that under DC 7802 scars with area or areas approximating 144 square inches (929 sq. cm.) receive a 10-percent evaluation. A commenter felt that historical precedent requires continuation of the wording "third degree" and "second degree" under DC's 7801 and 7802, formerly burn scars.

We disagree. One objective of the rating schedule revision is to incorporate medical advances and to delete obsolete concepts and conditions. Our consultants, a panel of non-VA physician specialists in skin diseases, as well as medical textbooks such as "Christopher's Textbook of Surgery" 140–41 (Loyal Davis, M.D., ed., 9th ed. 1968), indicate that the clinical estimation of the degree of a burn is not always accurate and does not necessarily relate to long-term disability. The severity of residual scarring from burns of all depths varies. Furthermore, burn scars that are not caused by thermal injury, but by chemical, electrical, or friction injury, as well as scars resulting from non-burn injuries that permanently alter the skin, can lead to comparable residuals. For these reasons, a determination of disability that is based on the extent of the scarring itself and its effects, rather than on the etiology of the scarring, is preferable because it will result in wider application of these criteria and afford consistency in the evaluation of comparable scarring, whatever the etiology. For more clarity and consistency of language, we have, however, modified the titles slightly, for better differentiation of superficial and deep scars, as discussed below.

We proposed that DC 7801 (formerly titled "scars, burns, third degree") be retitled "scars, other than head, face, or neck, with underlying soft tissue damage causing deep contour defect or limited motion." According to one commenter, the term "deep contour defect" is confusing. When there is soft tissue damage beneath the skin, in addition to scarring of the skin, the overlying scar shows a greater anatomical change in contour than when there is skin damage alone. The defect that appears in a scarred area when there is underlying soft tissue damage is known as a deep contour defect and could also be called a deep scar. The lesser change that results in a scarred area when there is skin damage alone, without soft tissue damage beneath the skin, is known as a superficial contour defect and could also be called a superficial scar. A superficial scar may have an irregular surface that is either raised or depressed, but the abnormal contour goes no deeper than the skin. To make the distinction between the scars to be evaluated under DC's 7801 and 7802 clearer, we have removed the term "deep contour defect" and have retitled DC 7801 "scars, other than head, face, or neck, that are deep or that cause limited motion" and retitled DC 7802 "scars, other than head, face, or neck, that are superficial and that do not cause limited motion." We have also added a definition of deep scar, as one associated with underlying soft tissue damage, in a note under DC 7801 and of superficial scar, as one not associated with underlying soft tissue damage, in a note under DC 7802.

We proposed to retitle DC 7803 (formerly titled "scars, superficial, poorly nourished, with repeated ulceration") "scars, superficial, unstable with frequent loss of epidermal covering." One commenter felt that the meaning of "unstable" under DC 7803 is unclear, and wondered whether this means that the wound is infected or unhealed.

The term "unstable" in the title of DC 7803 does not imply a specific etiology but only indicates that there is frequent loss of covering of the skin over the scar. An unstable scar may result from a

number of causes, including poor healing or infection. For further clarity, we have added a note under DC 7803 defining unstable scar as one where, for any reason, there is frequent loss of covering of skin over the scar. We have also removed the term "with frequent loss of epidermal covering" from the title and repeated the definition of superficial scar under this code.

One commenter suggested that we not repeat identical criteria when several different conditions are evaluated using the same criteria.

While it is feasible to use general rating formulas when related conditions are listed consecutively, we have repeated criteria under a number of diagnostic codes in this section for several reasons. First, conditions evaluated under identical criteria in this section are not consecutive diagnostic codes. The repetition of criteria will save time by eliminating the need to seek the appropriate evaluation criteria, lessen the chance of error by eliminating the need to search other pages of the rating schedule, and eliminate the "double references" that are present under some diagnostic codes (where the schedule says to see a certain diagnostic code and there is a reference under that diagnostic code to see yet another diagnostic code). Additionally, while rating specialists may readily locate the appropriate rating criteria, others who use the schedule may find it more difficult. While eliminating the repetition of criteria would save space, we believe that the advantages gained favor their repetition in this case. Where a general rating formula applies to several diagnostic codes that are listed consecutively, the proximity of the conditions and the rating formula eliminates most of the potential problems discussed above.

In the former schedule, DC 7806 (dermatitis or eczema) was evaluated at levels of 50, 30, 10, or zero percent. The criteria called for a 50-percent evaluation for ulceration or extensive exfoliation or crusting, with systemic or nervous manifestations, or being exceptionally repugnant; a 30-percent evaluation for constant exudation or itching, with extensive lesions, or with marked disfigurement; a 10-percent evaluation for exfoliation, exudation or itching, if involving an exposed surface or extensive area; and a zero-percent evaluation for slight, if any, exfoliation, exudation or itching, if on a nonexposed surface or small area. DC's 7809 (discoid lupus erythematosus), 7815 (bullous disorders), 7816 (psoriasis), and 7817 (exfoliative dermatitis) did not include specific evaluation criteria, but were ordinarily rated as analogous conditions, using the same criteria as for DC 7806. We proposed to evaluate all five of these conditions, plus four new conditions-cutaneous manifestations of collagen-vascular diseases not listed elsewhere (DC 7821), papulosquamous disorders not listed elsewhere (DC 7822), vitiligo (DC 7823), and diseases of keratinization (DC 7824)—under identical criteria, with evaluation levels of 100, 50, 30, 10, and zero percent. We proposed a 100-percent evaluation for generalized scaling, crusting, systemic manifestations, pruritus and for being so disfiguring as to preclude interaction with the public; a 50-percent evaluation for ulceration or extensive exfoliation or crusting, and systemic manifestations, or being so disfiguring as to be repugnant on casual inspection; a 30-percent evaluation for exudation or constant itching, or extensive lesions, or being so disfiguring as to be disagreeable on casual inspection; a 10-percent evaluation for exfoliation, exudation, or itching, if involving an exposed surface or extensive area; and a zero-percent evaluation for minimal exfoliation, exudation or itching, if on a nonexposed surface or small area. We proposed to evaluate a second group of skin disorders-disfigurement of the head, face, or neck (DC 7800), acne (DC 7828), chloracne (DC 7829), scarring alopecia (DC 7830), and alopecia areata (DC 7831)—solely on the basis of disfigurement, as described above under the discussion of DC 7800, and made 80 percent the maximum evaluation for this group based on disfigurement that precludes occupational interaction with the public. There were several comments regarding similarities between the proposed criteria for a 100-percent evaluation for the first group (DC 7806 and conditions rated under the same criteria) and the criterion for an 80-percent evaluation for the second group (DC 7800 and conditions rated under the same criteria).

One commenter objected to the fact that when interaction with the public is precluded, one group of skin conditions may be assigned an evaluation of 100 percent and another group may be assigned no more than 80 percent. Another commenter suggested that we add an intermediate evaluation level between 50 and 100 percent for the skin conditions for which we proposed evaluation levels of 100, 50, 30, 10, and zero percent. An evaluation of 60 percent or more for a single disability would allow a veteran to advance a claim under 38 CFR 4.16(a), which allows a claim for individual unemployability in cases where there is a service-connected disability rating that is less than total but which renders an individual unable to secure or follow a substantially gainful occupation.

In response to these comments, and because the more specific criteria we have provided for DC 7800 are not as readily applicable to other skin conditions as those we proposed, we have further revised the criteria for DC's 7806, 7809, 7815, 7816, 7817, 7821, 7822, 7823, and 7824. We have removed the proposed criteria, which were the same for all these conditions and have provided criteria that are more objective and more specific for each condition.

For dermatitis or eczema, DC 7806, instead of the proposed evaluation levels of 100, 50, 30, 10, and zero percent based on the presence of scaling, crusting, whether there are systemic manifestations, itching, exudation, exfoliation, etc., or, alternatively, on the extent of disfigurement, we have now provided evaluation levels of 60, 30, 10, and zero percent, as the commenter suggested. As part of the more condition-specific criteria we have provided, we have also removed the 100-percent evaluation level because dermatitis is rarely totally disabling. However, since a 60-percent evaluation level may now be assigned, a claim for individual unemployability, when appropriate, is feasible under 38 CFR 4.16 (a) for those individuals unable to secure or follow a substantially gainful occupation as a result of service-connected skin disease. The criteria are based on the extent (in percentage) to which the entire body or exposed areas are affected by the condition or on the treatment required. For a 60-percent evaluation for dermatitis, more than 40 percent of the entire body or more than 40 percent of exposed areas must be affected, or constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs is required. For a 30-percent evaluation, 20 to 40 percent of the entire body or 20 to 40 percent of exposed areas must be affected, or systemic therapy for a total duration of six weeks or more, but not constantly, during the past 12-month period is required. For a 10-percent evaluation, at least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas must be affected, or intermittent systemic therapy for a total duration of less than six weeks during the past 12-month period is required. For a zero-percent evaluation, less than 5 percent of the entire body or less than 5 percent of exposed areas must be affected, with no more than topical therapy required during the past 12-month period. We

also added an alternative direction to rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. This will provide an alternative means of evaluation in cases, for example, where the active disease has been controlled but there are significant residuals, such as scarring. These criteria are much more objective than the proposed criteria and will assure more consistent evaluations.

We had proposed criteria identical to those for DC 7806 for DC's 7815 (Bullous disorders (including pemphigus vulgaris, pemphigus foliaceous, bullous pemphigoid, dermatitis herpetiformis, epidermolysis bullosa acquisita, benign chronic familial pemphigus (Hailey-Hailey), and porphyria cutanea tarda)); 7816 (Psoriasis); 7821 (Cutaneous manifestations of collagen-vascular diseases not listed elsewhere (including scleroderma, calcinosis cutis, and dermatomyositis)); and 7822 (Papulosquamous disorders not listed elsewhere (including lichen planus, large or small plaque parapsoriasis, pityriasis lichenoides et varioliformis acuta (PLEVA), lymphomatoid papulosus, and pityriasis rubra pilaris (PRP))). The further revised evaluation criteria we have provided for DC 7806 remain appropriate for those four conditions, and we have provided identical criteria under each diagnostic code.

We also proposed to provide evaluation criteria identical to those for DC 7806 for the evaluation of DC's 7809 (Discoid lupus erythematosus or subacute cutaneous lupus erythematosus), 7817 (Exfoliative dermatitis (erythroderma)), 7823 (Vitiligo), and 7824 (Diseases of keratinization). However, the proposed criteria were not specific enough to these conditions to assure consistent evaluations, and the revised criteria for DC 7806 are also not appropriate for their evaluation. We have therefore provided more disease-specific evaluation criteria for these conditions, and also revised the evaluation levels in order to make them appropriate for the usual range of severity of each individual condition. The evaluation criteria for each of these conditions is discussed in more detail below.

Discoid lupus erythematosus (DC 7809) can present in a number of different ways (scaling, plaques, atrophy, erythema, scars, etc.), and we have therefore directed that it be rated as disfigurement (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.

Exfoliative dermatitis (DC 7817) is a disease that may be very severe, and its treatment is different from that of most other skin conditions. It may require the use of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy. It may also be associated with systemic manifestations, such as fever, weight loss, and hypoproteinemia (low level of protein in the blood, often associated with edema). We have provided evaluation levels of 100, 60, 30, 10, and zero percent for this condition, based on the extent of involvement of the skin, whether there are also systemic manifestations, and the type and duration of treatment. For a 100-percent evaluation, generalized involvement of the skin, plus systemic manifestations (such as fever, weight loss, and hypoproteinemia) must be present, and constant or near-constant systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy during the past 12-month period is required. For a 60-percent evaluation, generalized involvement of the skin without systemic manifestations must be present, and constant or near-constant systemic therapy during the past 12-month period is required. For a 30-percent evaluation, there can be any extent of involvement of the skin, and systemic therapy for a total duration of six weeks or more, but not constantly, during the past 12-month period is required. For a 10-percent evaluation, there can be any extent of involvement of the skin, and systemic therapy for a total duration of less than six weeks during the past 12-month period is required. For a zero-percent evaluation, there can be any extent of involvement of the skin with no more than topical therapy required during the past 12-month period. These criteria are specific to this condition and are more objective than the proposed criteria.

We proposed to evaluate vitiligo (DC 7823) under the same evaluation criteria as those we proposed for DC 7806 (dermatitis or eczema). Vitiligo is a condition in which the only abnormal finding is hypopigmented skin; the only treatment for it is cosmetic. The proposed criteria, however, included findings such as ulceration, itching, crusting, exfoliation, and systemic manifestations, none of which is specific to, or even occurs in, vitiligo. It is unlikely that an evaluation higher than zero percent could have been assigned for vitiligo using those criteria. Disfigurement was another of the proposed criteria under DC 7806. Of the characteristics of disfigurement described under DC 7800, only one—hypopigmentation—is present in vitiligo, and that is its only disabling effect. For one characteristic of disfigurement of the head, face, or neck under DC 7800, a 10-percent evaluation is assigned. We have therefore provided evaluation levels for vitiligo of ten and zero percent, providing ten percent if exposed areas are affected, and zero percent if they are not. These criteria will assure consistent evaluations for vitiligo, and they are internally consistent with the evaluations for disfigurement of the head, face, or neck, where the maximum evaluation based on the presence of hypopigmentation alone is 10 percent.

We also proposed to evaluate DC 7824, diseases of keratinization (including icthyoses, Darier's disease, and palmoplantar keratoderma) under the same evaluation criteria as those we proposed for DC 7806 (dermatitis or eczema). The further revised criteria for DC 7806 are not entirely appropriate for evaluating diseases of keratinization. We have therefore provided evaluation levels of 60, 30, 10, and zero percent for diseases of keratinization, based on requirements for therapy, the extent of cutaneous involvement, whether there are systemic manifestations, and whether the skin involvement is constant or episodic. A 60-percent evaluation requires either generalized cutaneous involvement or systemic manifestations and constant or near-constant systemic medication, such as immunosuppressive retinoids, during the past 12-month period. A 30-percent evaluation requires either generalized cutaneous involvement or systemic manifestations and intermittent systemic medication, such as immunosuppressive retinoids, for a total duration of six weeks or more, but not constantly, during the past 12-month period. A 10-percent evaluation requires localized or episodic cutaneous involvement and intermittent systemic medication, such as immunosuppressive retinoids, for a total duration of less than six weeks during the past 12-month period. A zero-percent evaluation is assigned if no more than topical therapy was required during the past 12-month period. These criteria are more appropriate for the evaluation of diseases of keratinization. In addition, we have added to the title some of the specific diseases that make

up the category of diseases of keratinization-icthyoses, Darier's disease, and palmoplantar keratoderma.

Under the former schedule, leishmaniasis, both American (DC 7807) and Old World (DC 7808), were ordinarily evaluated under the same criteria as DC 7806 (eczema). We proposed to evaluate leishmaniasis as disfigurement, scars, or dermatitis, depending upon the predominant disability. One commenter suggested that we include evaluation criteria for systemic manifestations of the disease under these codes. In our judgment, there is no need to include criteria for the systemic forms of leishmaniasis here, because evaluation criteria for visceral leishmaniasis are provided under DC 6301, in the section of the rating schedule on infectious diseases, immune disorders and nutritional deficiencies (38 CFR 4.88b). However, as a reminder to rating specialists, we have added a note under each of these codes directing that non-cutaneous (visceral) leishmaniasis be evaluated under DC 6301 (visceral leishmaniasis).

In the former schedule and in the proposed rule, DC 7811 (tuberculosis luposa (lupus vulgaris), active or inactive) was directed to be rated under §§ 4.88b or 4.89. Section 4.88b was redesignated § 4.88c in a separate rulemaking, so we have corrected the reference under DC 7811 to codes to be used for the evaluation of tuberculosis of the skin to §§ 4.88c and 4.89.

Malignant neoplasms of the skin (DC 7818) were evaluated on scars, disfigurement, etc., on the extent of constitutional symptoms, and on physical impairment, in the former schedule. We proposed to evaluate based on impairment of function, disfigurement, or scars. One commenter stated that these criteria are inadequate for malignant melanoma because the condition is potentially lethal.

On further consideration, we have added a separate diagnostic code, 7833, to the rating schedule for malignant melanoma of the skin because it is a common malignancy and often behaves differently, particularly more aggressively, than other skin malignancies. All residuals that might occur from any skin malignancy can be evaluated under the proposed criteria for malignant neoplasms of the skin because "impairment of function" covers virtually any disability that might result, and we propose to provide the same evaluation criteria for malignant melanoma as for other skin malignancies. However, malignant melanoma, and at times other malignancies of the skin, may require a level of antineoplastic treatment that is similar to that used for internal malignancies. We have therefore added a note under DC's 7818 and 7833 stating that if a skin malignancy requires therapy that is comparable to that used for internal malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the skin, or surgery more extensive than wide local excision, a 100-percent evaluation will be assigned from the date of onset of treatment, and will continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination subject to the provisions of 38 CFR 3.105(e). Those provisions require a 60-day notice before VA reduces an evaluation and an additional 60-day notice before the reduced evaluation takes effect. The revision requires a current examination to assure that all residuals are documented, and also offers the veteran more contemporaneous notice of any proposed action and expands the veteran's opportunity to present evidence showing that the proposed action should not be taken. If there has been no local recurrence or metastasis, evaluation will then be made on residuals. This will assure that the evaluation of these neoplasms, when they require treatment that is comparable to the treatment of internal malignancies, is commensurate with that type of treatment and is consistent with the method of evaluating malignancies in other systems. If treatment is confined to the skin, the provisions for a 100-percent evaluation do not apply. Since we have provided a separate diagnostic code for malignant melanoma, we added to the title of malignant skin neoplasms (DC 7818) for clarity, "other than malignant melanoma."

We proposed to add urticaria to the rating schedule as DC 7825, with evaluation levels of 40, 20, and zero percent. We proposed to call for a 40-percent evaluation if there is either a need for regular immunosuppressive therapy or the presence of uncontrollable episodes despite therapy; a 20-percent evaluation if there is a need for frequent immunosuppressive therapy; and a zero-percent evaluation if the condition is occasional or asymptomatic. We received two comments about these criteria. One commenter said that urticaria should be evaluated at 60 percent if it is uncontrollable despite any therapy, and at 50 percent if it requires frequent treatment. The other said that urticaria should be evaluated higher than 40 percent if it is uncontrolled by systemic immunosuppressive therapy and that we should replace the words "frequent," "regular," and "occasional" with more objective criteria.

We agree that a higher level of evaluation is warranted and have therefore added a 60-percent evaluation level for urticaria when there are at least four debilitating episodes during the past 12-month period despite continuous immunosuppressive therapy. In conjunction with this change, we made the next lower evaluation level 30 percent instead of 40 percent, and based it on debilitating episodes occurring at least four times during the past 12-month period but requiring only intermittent systemic immunosuppressive therapy for control, and made the level below that 10 percent instead of 20 percent, and based it on recurrent episodes occurring at least four times during the past 12-month period and that respond to treatment with antihistamines or sympathomimetics. These evaluation levels are consistent with the ranges for other skin diseases, and these criteria respond to the comments by providing a higher evaluation level for the most severe cases of urticaria, and by providing more objective criteria. The more objective criteria will assure more consistent evaluations.

We proposed to add primary cutaneous vasculitis as DC 7826, to be evaluated on the basis of disfigurement, scars, or urticaria, depending upon the predominant disability. Because the revised evaluation criteria for disfigurement (DC 7800) and urticaria (DC 7825) are more specific to those conditions than the proposed criteria were, they are less appropriate for the evaluation of primary cutaneous vasculitis, which is a chronic, but episodic, condition. We have therefore provided a separate set of more objective criteria with evaluation levels of 60, 30, and 10 percent for primary cutaneous vasculitis, based on the frequency of debilitating episodes and the type and frequency of treatment. A 60-percent evaluation calls for recurrent debilitating episodes occurring at least four times during the past 12-month period despite continuous immunosuppressive therapy; a 30-percent evaluation calls for recurrent debilitating episodes occurring at least four times during the past 12-month period and requiring intermittent systemic immunosuppressive therapy for control; and a ten-percent evaluation calls for recurrent episodes occurring one to three times during the past 12-month period and requiring intermittent systemic immunosuppressive therapy

for control. These criteria are more specific to this condition and will result in more consistent evaluations. We have also provided an alternative direction to rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. These are consistent with the criteria recommended by our consultants.

Similarly, we proposed to add erythema multiforme (toxic epidermal necrolysis) as DC 7827, with evaluation based on disfigurement, scars, or urticaria, depending upon the predominant disability. Because the revised evaluation criteria for disfigurement (DC 7800) and urticaria (DC 7825) are more specific to those conditions than the proposed criteria were, they are less appropriate for the evaluation of erythema multiforme. We have therefore provided a separate set of more objective criteria for erythema multiforme, which is an episodic condition, with levels of 60, 30, and 10 percent, based on the frequency of debilitating episodes and the type and frequency of treatment. A 60-percent evaluation calls for recurrent debilitating episodes at least four times during the past 12-month period despite ongoing immunosuppressive therapy; a 30-percent evaluation calls for recurrent debilitating episodes at least four times during the past 12-month period despite ongoing immunosuppressive therapy; and a ten-percent evaluation calls for recurrent episodes that respond to treatment with antihistamines or sympathomimetics. We also provided an alternative direction to rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. These criteria are identical to the criteria for DC 7826, since both conditions are episodic and require similar treatment, and they are consistent with the criteria recommended by our consultants.

We proposed that acne (DC 7828) and chloracne (DC 7829), which have similar manifestations, be evaluated under the same criteria as DC 7800 (disfigurement of the head, face, or neck). One commenter suggested that acne on nonexposed areas may warrant a compensable evaluation if there are extensive painful cysts. The proposed criteria did not provide for a compensable evaluation for such manifestations.

We agree that acne involving nonexposed areas may be disabling, more because of the inflammatory aspects than the disfiguring aspects. We have therefore established evaluation criteria for acne and chloracne that are based on the extent of involvement by acne, its location, and whether it is deep or superficial. We have provided a 30-percent evaluation for deep acne (meaning deep inflamed nodules and pus-filled cysts) affecting 40 percent or more of the face and neck; a 10-percent evaluation for deep acne affecting less than 40 percent of the face and neck, or deep acne other than on the face and neck; and a zero-percent evaluation for superficial acne (comedones, papules, pustules, superficial cysts) of any extent. We have provided an alternative direction to rate acne and chloracne as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. This change will allow more leeway in assessing which type of disability best represents the findings in a particular case of acne or chloracne.

We proposed to evaluate scarring alopecia (DC 7830) and alopecia areata (DC 7831) on the basis of disfigurement. One commenter suggested that the criteria for DC's 7830 and 7831 take into account the ability or inability to improve appearance with a hairpiece or wig. We have reconsidered the criteria for these types of alopecia in view of our changed disfigurement criteria, which are not appropriate for these conditions, and have provided evaluation criteria based instead on the extent of involvement by alopecia. We have provided evaluation levels of 20, 10, and zero percent for scarring alopecia and ten and zero percent for alopecia areata. These levels are commensurate with the range of disability these conditions produce, according to our contract consultant specialists, who reviewed the rating schedule and made recommendations for changes to help fulfill the goals of revising and updating the medical criteria. For scarring alopecia, which usually follows injury, infection, burns, etc., and shows tissue loss and scarring, we have provided a 20-percent evaluation if the condition affects more than 40 percent of the scalp; a 10-percent evaluation if it affects 20 to 40 percent of the scalp; and a zero-percent evaluation if it affects less than 20 percent of the scalp. For alopecia areata, where scarring and atrophic changes are not present, we have provided a 10-percent evaluation for generalized involvement of the body, and a zero-percent evaluation if the condition is limited to the scalp and face. These criteria are clear and objective and will assure consistency in evaluation. They do not take into account the potential improvement of appearance with a hairpiece or wig, which would require a subjective assessment, but are based instead on the objectively determinable effects of the condition and are consistent with the recommendations of our consultants.

We edited the language of the note regarding under painful superficial scars (DC 7804) for clarity, and the notes under DC's 7801 and 7802 regarding scars in widely separated areas for the same reason, but these are not substantive changes.

For more clarity and objectivity, we have revised the language in DC 7802 from "area or areas approximating 144 square inches (929 sq. cm.)" to "area or areas of 144 square inches (929 sq. cm.) or greater." We revised the title of DC 7813, Dermatophytosis, to include "(ringworm: of body, tinea corporis; of head, tinea capitis; of feet, tinea pedis; of beard area, tinea barbae; of nails, tinea unguium; of inguinal area (jock itch), tinea cruris)" to clarify what is included.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted with the amendments noted above.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management

and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: May 17, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

2. Section 4.118 is revised to read as follows:

§ 4.118 Schedule of ratings—skin.

	Rating
7800 Disfigurement of the head, face, or neck:	
With visible or palpable tissue loss and either gross distortion or asymmetry of three or more features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with six or more characteristics of disfigurement	80
With visible or palpable tissue loss and either gross distortion or asymmetry of two features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with four or five characteristics of disfigurement	50
With visible or palpable tissue loss and either gross distortion or asymmetry of one feature or paired set of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with two or three characteristics of disfigurement	30
With one characteristic of disfigurement	10
Note (1): The 8 characteristics of disfigurement, for purposes of evaluation under § 4.118, are: Scar 5 or more inches (13 or more cm.) in length. Scar at least one-quarter inch (0.6 cm.) wide at widest part. Surface contour of scar elevated or depressed on palpation. Scar adherent to underlying tissue. Skin hypo-or hyper-pigmented in an area exceeding six square inches (39 sq. cm.). Skin texture abnormal (irregular, atrophic, shiny, scaly, etc.) in an area exceeding six square inches (39 sq. cm.). Underlying soft tissue missing in an area exceeding six square inches (39 sq. cm.). Skin indurated and inflexible in an area exceeding six square inches (39 sq. cm.).	
Note (2): Rate tissue loss of the auricle under DC 6207 (loss of auricle) and anatomical loss of the eye under DC 6061 (anatomical loss of both eyes) or DC 6063 (anatomical loss of one eye), as appropriate.	
Note (3): Take into consideration unretouched color photographs when evaluating under these criteria.	
7801 Scars, other than head, face, or neck, that are deep or that cause limited motion:	
Area or areas exceeding 144 square inches (929 sq.cm.)	40
Area or areas exceeding 72 square inches (465 sq. cm.)	30
Area or areas exceeding 12 square inches (77 sq. cm.)	20
Area or areas exceeding 6 square inches (39 sq. cm.)	10
Note (1): Scars in widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated and combined in accordance with § 4.25 of this part.	
Note (2): A deep scar is one associated with underlying soft tissue damage.	
7802 Scars, other than head, face, or neck, that are superficial and that do not cause limited motion: Area or areas of 144 square inches (929 sq. cm.) or greater	10
Note (1): Scars in widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated and combined in accordance with § 4.25 of this part.	
Note (2): A superficial scar is one not associated with underlying soft tissue damage.	
7803 Scars, superficial, unstable	10
Note (1): An unstable scar is one where, for any reason, there is frequent loss of covering of skin over the scar.	
Note (2): A superficial scar is one not associated with underlying soft tissue damage.	
7804 Scars, superficial, painful on examination	10
Note (1): A superficial scar is one not associated with underlying soft tissue damage.	
Note (2): In this case, a 10-percent evaluation will be assigned for a scar on the tip of a finger or toe even though amputation of the part would not warrant a compensable evaluation.	
(See § 4.68 of this part on the amputation rule.)	
7805 Scars, other; Rate on limitation of function of affected part.	
7806 Dermatitis or eczema.	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or less than 5 percent of exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7807 American (New World) leishmaniasis (mucocutaneous, espundia): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	

	Rating
Note: Evaluate non-cutaneous (visceral) leishmaniasis under DC 6301 (visceral leishmaniasis).	
7808 Old World leishmaniasis (cutaneous, Oriental sore): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	
Note: Evaluate non-cutaneous (visceral) leishmaniasis under DC 6301 (visceral leishmaniasis).	
7809 Discoid lupus erythematosus or subacute cutaneous lupus erythematosus: Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability. Do not combine with ratings under DC 6350.	
7811 Tuberculosis luposa (lupus vulgaris), active or inactive: Rate under §§ 4.88c or 4.89, whichever is appropriate.	
7813 Dermatophytosis (ringworm: of body, tinea corporis; of head, tinea capitis; of feet, tinea pedis; of beard area, tinea barbae; of nails, tinea unguium; of inguinal area (jock itch), tinea cruris): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	
7815 Bullous disorders (including pemphigus vulgaris, pemphigus foliaceous, bullous pemphigoid, dermatitis herpetiformis, epidermolysis bullosa acquisita, benign chronic familial pemphigus (Hailey-Hailey), and porphyria cutanea tarda):	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7816 Psoriasis:	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7817 Exfoliative dermatitis (erythroderma):	
Generalized involvement of the skin, plus systemic manifestations (such as fever, weight loss, and hypoproteinemia), and; constant or near-constant systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required during the past 12-month period	100
Generalized involvement of the skin without systemic manifestations, and; constant or near-constant systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required during the past 12-month period	60
Any extent of involvement of the skin, and; systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
Any extent of involvement of the skin, and; systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required for a total duration of less than six weeks during the past 12-month period	10
Any extent of involvement of the skin, and; no more than topical therapy required during the past 12-month period	0
7818 Malignant skin neoplasms (other than malignant melanoma): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or impairment of function.	
Note: If a skin malignancy requires therapy that is comparable to that used for systemic malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the skin, or surgery more extensive than wide local excision, a 100-percent evaluation will be assigned from the date of onset of treatment, and will continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination will be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, evaluation will then be made on residuals. If treatment is confined to the skin, the provisions for a 100-percent evaluation do not apply.	
7819 Benign skin neoplasms: Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or impairment of function.	
7820 Infections of the skin not listed elsewhere (including bacterial, fungal, viral, treponemal and parasitic diseases): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	
7821 Cutaneous manifestations of collagen-vascular diseases not listed elsewhere (including scleroderma, calcinosis cutis, and dermatomyositis):	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30

	Rating
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7822 Papulosquamous disorders not listed elsewhere (including lichen planus, large or small plaque parapsoriasis, pityriasis lichenoides et varioliformis acuta (PLEVA), lymphomatoid papulosus, and pityriasis rubra pilaris (PRP)):	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, and; constant or near-constant systemic medications or intensive light therapy required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy or intensive light therapy required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; systemic therapy or intensive light therapy required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7823 Vitiligo:	
With exposed areas affected	10
With no exposed areas affected	0
7824 Diseases of keratinization (including icthyoses, Darier's disease, and palmoplantar keratoderma):	
With either generalized cutaneous involvement or systemic manifestations, and; constant or near-constant systemic medication, such as immunosuppressive retinoids, required during the past 12-month period	60
With either generalized cutaneous involvement or systemic manifestations, and; intermittent systemic medication, such as immunosuppressive retinoids, required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
With localized or episodic cutaneous involvement and intermittent systemic medication, such as immunosuppressive retinoids, required for a total duration of less than six weeks during the past 12-month period	10
No more than topical therapy required during the past 12-month period	0
7825 Urticaria:	
Recurrent debilitating episodes occurring at least four times during the past 12-month period despite continuous immunosuppressive therapy	60
Recurrent debilitating episodes occurring at least four times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy for control	30
Recurrent episodes occurring at least four times during the past 12-month period, and; responding to treatment with antihistamines or sympathomimetics	10
7826 Vasculitis, primary cutaneous:	
Recurrent debilitating episodes occurring at least four times during the past 12-month period despite continuous immunosuppressive therapy	60
Recurrent debilitating episodes occurring at least four times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy for control	30
Recurrent episodes occurring one to three times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy for control	10
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7827 Erythema multiforme; Toxic epidermal necrolysis:	
Recurrent debilitating episodes occurring at least four times during the past 12-month period despite ongoing immunosuppressive therapy	60
Recurrent episodes occurring at least four times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy	30
Recurrent episodes occurring during the past 12-month period that respond to treatment with antihistamines or sympathomimetics, or; one to three episodes occurring during the past 12-month period requiring intermittent systemic immunosuppressive therapy	10
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7828 Acne:	
Deep acne (deep inflamed nodules and pus-filled cysts) affecting 40 percent or more of the face and neck	30
Deep acne (deep inflamed nodules and pus-filled cysts) affecting less than 40 percent of the face and neck, or; deep acne other than on the face and neck	10
Superficial acne (comedones, papules, pustules, superficial cysts) of any extent	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7829 Chloracne:	
Deep acne (deep inflamed nodules and pus-filled cysts) affecting 40 percent or more of the face and neck	30
Deep acne (deep inflamed nodules and pus-filled cysts) affecting less than 40 percent of the face and neck, or; deep acne other than on the face and neck	10
Superficial acne (comedones, papules, pustules, superficial cysts) of any extent	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7830 Scarring alopecia:	
Affecting more than 40 percent of the scalp	20

	Rating
Affecting 20 to 40 percent of the scalp	10
Affecting less than 20 percent of the scalp	0
7831 Alopecia areata:	
With loss of all body hair	10
With loss of hair limited to scalp and face	0
7832 Hyperhidrosis:	
Unable to handle paper or tools because of moisture, and unresponsive to therapy	30
Able to handle paper or tools after therapy	0
7833 Malignant melanoma: Rate as scars (DC's 7801, 7802, 7803, 7804, or 7805), disfigurement of the head, face, or neck (DC 7800), or impairment of function (under the appropriate body system).	
Note: If a skin malignancy requires therapy that is comparable to that used for systemic malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the skin, or surgery more extensive than wide local excision, a 100-percent evaluation will be assigned from the date of onset of treatment, and will continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination will be subject to the provisions of § 3.105(e). If there has been no local recurrence or metastasis, evaluation will then be made on residuals. If treatment is confined to the skin, the provisions for a 100-percent evaluation do not apply.	

(Authority: 38 U.S.C. 1155)

[FR Doc. 02–19331 Filed 7–30–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AL25

Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters; Notice of Disagreement Requirement

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the regulations of the Department of Veterans Affairs (VA) relating to attorney fees. We are removing the requirement that, in order for an agent or attorney to charge a fee for services provided in a case, there must have been a notice of disagreement filed in the case on or after November 18, 1988. This change is required by a statute enacted in December 2001.

DATES: *Effective Date:* December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits. The Board's Rules of Practice (38 CFR part 20) contain VA's regulations relating to attorney-fee matters.

The issues of whether and how much an agent or attorney may charge for services provided in a case involving a claim for veterans' benefits have always been highly regulated by Congress. From 1864 until 1988, such fees were limited to $10.00. In 1988, Congress passed the "Veterans' Judicial Review Act" (VJRA), Pub. L. No. 100–687, Div. A, 102 Stat. 4105, which permitted agents and attorneys to charge a "reasonable fee" for services provided in a case when the following three conditions were met:

- The Board made its first final decision in the case;
- The Board's first final decision followed a "notice of disagreement" filed with VA on or after the enactment date of the VJRA, i.e., November 18, 1988; and
- The agent or attorney was retained with respect to such case within one year of the date of the Board s first final decision.

38 U.S.C. 5904(c)(1); Pub. L. No. 100–687, Div. A, § 403, 102 Stat. 4105, 4122, *reprinted in* 38 U.S.C.A. 5904 note (Applicability to Attorneys Fees) (notice of disagreement date).

In § 603(b) of the "Veterans Education and Benefits Expansion Act of 2001", Pub. L. No. 107–103, 115 Stat. 976, 999 (Dec. 27, 2001), Congress repealed the requirement that, in order for an agent or attorney to charge a fee for services provided in a case, the Board's first final decision must have followed a notice of disagreement filed on or after November 18, 1988. This document implements that change in VA's regulations.

This change does not affect the requirements that, in order for an agent or attorney to charge a fee for services provided in a case, (1) the Board must have made its first final decision in that case, and (2) the agent or attorney must have been retained with respect to such case within one year of the date of the Board's first final decision.

Administrative Procedure Act

Because this rule merely implements a change in the statute, notice and public comment are unnecessary. 5 U.S.C. 553(b)(B). Accordingly, we are publishing this amendment as a final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment will not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: July 3, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. In § 20.609, paragraph (c) is revised to read as follows:

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(c) *Circumstances under which fees may be charged.* (1) *General.* Except as noted in paragraph (d) of this section, attorneys-at-law and agents may charge claimants or appellants for their services only if both of the following conditions have been met:

(i) A final decision has been promulgated by the Board of Veterans' Appeals with respect to the issue, or issues, involved; and

(ii) The attorney-at-law or agent was retained not later than one year following the date that the decision by the Board of Veterans' Appeals with respect to the issue, or issues, involved was promulgated. (This condition will be considered to have been met with respect to all successor attorneys-at-law or agents acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(2) *Clear and unmistakable error cases.* For the purposes of this section, in the case of a motion under subpart O of this part (relating to requests for revision of prior Board decisions on the grounds of clear and unmistakable error), the "issue" referred to in this paragraph (c) shall have the same meaning as "issue" in Rule 1401(a) (§ 20.1401(a) of this part).

* * * * *

[FR Doc. 02–19330 Filed 7–30–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY–116; KY–119–200214(d); FRL–7252–8]

Approval and Promulgation of Implementation Plans Reinstatement of Redesignation of Area for Air Quality Planning Purposes; Kentucky Portion of the Cincinnati-Hamilton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing the reinstatement of the redesignation to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS) for the Kentucky portion of the Cincinnati-Hamilton area. This final rule addresses these comments made on EPA direct final rulemaking previously published for this action.

DATES: This final rule is effective August 30, 2002.

ADDRESSES: Copies of the Commonwealth of Kentucky's original redesignation request, the Court's ruling and other information are available for inspection during normal business hours at EPA Region 4, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303–8960; Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference file KY–116.

Copies of the Commonwealth of Kentucky's original redesignation request are also available at Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at the EPA Region 4 address listed above or 404–562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

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I. Today's Action

In this final rulemaking, EPA is responding to comments received regarding a direct final and proposed rule to reinstate the redesignation to attainment for the 1-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area.

II. Background

On June 19, 2000, EPA issued a final rule determining that the Cincinnati-Hamilton area had attained the one-hour ozone NAAQS, and redesignating both the Ohio and Kentucky portions of the area to attainment. 65 FR 37879. A petition for review resulted in the U.S. Court of Appeals for the Sixth Circuit vacating EPA's action in redesignating the area to attainment, and remanding to EPA for further proceedings consistent with the Court's opinion.

On February 12, 2002, the EPA published a proposed rule (67 FR 6459) and a direct final rule (67 FR 6411) to reinstate the attainment redesignation of the Kentucky portion of the Cincinnati-Hamilton moderate 1-hour ozone nonattainment area (Cincinnati-Hamilton area), which comprises the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. Further background is set forth in the direct final rulemaking. 67 FR 6411. The EPA withdrew the direct final rule on April 8, 2002 (67 FR 16646), because adverse comments were received. This final rule addresses the comments.

III. Comment and Response

What Comments Did We (EPA?) Receive and What Are Our Responses?

EPA received two sets of adverse comments, one submitted by David Baron on behalf of the Sierra Club, Brian Scott, Pasko, and Ron Colwell, and the other submitted by Hank Gaddy on behalf of the Cumberland, KY Chapter of the Sierra Club. A summary of the adverse comments and EPA's responses to them are provided below.

Comment 1: A commentor contends that section 107(d)(3)(E) of the Clean Air Act (the "Act") unambiguously prohibits redesignation of any portion of a nonattainment area to attainment unless all of the requirements set forth in section 107(d)(3)(E) are met for the entire nonattainment area. Since the Court in *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001) determined that there was a deficiency in the Ohio Reasonably Available Control Technology (RACT) rules that must be remedied before EPA could find that Ohio met the requirements for redesignation, then this also prevents EPA from reinstating the redesignation of the Kentucky portion which the Court had upheld in all respects.

Response 1: The *Wall* Court did not vacate EPA's approval of the maintenance plan for either portion of the area. Therefore the maintenance plan for the entire area is approved. The

Court also did not vacate EPA's determination of attainment for the entire area. Therefore the determination remains in effect. In addition, the area has continued to remain in attainment through July 31, 2002. Moreover, the *Wall* Court upheld EPA's action with respect to all aspects of the redesignation of the Kentucky portion of the Cincinnati area. For the reasons set forth more fully below, EPA believes that the Kentucky portion may be redesignated separately from the Ohio portion, and the deficiency in the Ohio RACT rule in no way prevents EPA from reinstating its redesignation of Kentucky, which the Court has validated in all respects. The Court's ruling on the Ohio RACT rules affects only the requirements relating to the Ohio State Implementation Plan (SIP), which are not relevant to whether Kentucky fulfilled all its requirements under the Clean Air Act regarding the area. 67 FR 6411–6413 (February 12, 2002) (*See also* responses to Comments 2, 3, and 4.)

Comment 2: In section 182(j) of the Act, Congress provided for relief from certain Clean Air Act sanctions for a state in a multi-state ozone nonattainment area, where continued nonattainment is due to the failure of one or more other states in which other portions of the area are located to commit to implementation of required measures. Significantly, Congress did not provide for any sort of similar relief from the Act's redesignation requirements for a state within a multi-state ozone nonattainment area.

Response 2: The language of section 107(d)(3)(E) itself provides that a portion of a nonattainment area can be redesignated if the requirements for redesignation are met: "The Administrator may not promulgate a redesignation of a nonattainment area (*or portion thereof*) to attainment unless * * *" Similarly, section 107(d)(3)(D) provides: "The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State * * *"

Other subparts of section 107(d)(3) also refer to redesignation of an area or portion thereof. See sections 107(d)(3)(A), (B), and (C).

Thus, the Act clearly contemplates the possibility of redesignating a portion of a nonattainment area. The remaining subparts must be read in the context of whether an area or a *portion* of an area is being redesignated. If it is a portion of a multi-state area that is being redesignated, then the word "area" as subsequently used in the subpart must refer to that portion of the multi-state area that is being redesignated. This interpretation is borne out by the express terms of the subparts of 107(d)(3)(E). (*See* response to Comment 3 below.) In general, EPA issues simultaneous redesignations for joint portions of multistate ozone areas. In a few instances, however, where separate portions of a multistate area have been unable to successfully coordinate their redesignation efforts and one state has met all the requirements for redesignation, EPA has applied section 107(d)(3)(E) to implement Congressional intent to allow redesignation of a portion of the multi-state area where that portion meets the statutory requirements and where the entire area is attaining the standard.

In section 182(j), Congress similarly expressed its intent to allow EPA to treat portions of multi-state areas separately so as not to penalize one portion of a multi-state nonattainment area simply because the state controlling the other portion had not fully discharged its regulatory responsibilities. In that section, even where the entire area remains nonattainment, Congress provided for separate recognition and treatment for the state that had fulfilled its statutory obligations. Similarly, in section 107(d), Congress expressly provided that a portion of a multi-state nonattainment area that met the requirements for redesignation should not be penalized by a failure of a state controlling an adjoining portion. In section 107, Congress distinguished between the air quality in the region and the control regime, and clearly intended that, where air quality met the standard in the area, the state with authority over a portion of the area that has met all the remaining requirements should not be penalized by having to remain labeled nonattainment. Thus under appropriate circumstances, EPA has implemented this intent by allowing redesignation of a portion of a multi-state area.

Comment 3: EPA's approach would undermine Congressional intent to ensure that nonattainment areas would completely comply with the Act's requirements prior to redesignation, and to not allow an area to evade adoption of required controls, be redesignated, and fall back into nonattainment.

Response 3: EPA's approach does not undermine Congressional intent. In fact, redesignating the Kentucky portion of Cincinnati implements the intent of Congress as expressed in the redesignation provisions of the statute. First, the entire area is attaining the one-hour ozone standard, and EPA's attainment determination remains in effect, and has never been challenged. Second, the maintenance plans for the entire area were approved by EPA, reviewed by the Sixth Circuit, and upheld. The Ohio and Kentucky maintenance plans remain in place, and were never vacated. Third, Kentucky has met *all* of the requirements for redesignation. In its June 2000 rulemaking, EPA reviewed and approved the redesignation based on its findings that Kentucky met these requirements, and the Sixth Circuit has reviewed and upheld EPA's actions in their entirety with respect to the Kentucky portion of the area. Fourth, all aspects of the Ohio portion of the Cincinnati area were reviewed and upheld by the Sixth Circuit, with the sole exception of some RACT rules which the Court agreed were not necessary for attainment or maintenance. Commitments to adopt these rules are already included as contingency measures in the approved maintenance plan for Ohio. Finally, Ohio is in the process of revising its RACT rules so that it can resubmit its redesignation request in accordance with the Court's decision in the *Wall* case, so that it is likely that processing of the redesignation of the Ohio portion of the area will take place in close proximity to the reinstatement of the redesignation, for the Kentucky portion. EPA believes that this type of coordination will further insure that the redesignation efforts will be kept in balance in both portions of the area.

There is thus no legal impediment to redesignation and no environmental benefit in favor of holding the Kentucky portion of the area hostage. To force Kentucky to reconstruct and resubmit work already reviewed and upheld, and to compel EPA to reevaluate rulemakings that this Court has already reviewed and approved, would result in a waste of state, EPA, and judicial resources, and to defeat the intent of Congress. This Court has upheld the principle that where EPA has already approved state rulemakings as meeting Clean Air Act requirements, it need not re-do this work for purposes of finding that requirements are met for a redesignation action. See Calcagni memo[1], which advises that "an EPA action on a redesignation request does not mean that earlier issues with regard to the SIP will be reopened", and *SPGA* v. *Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA*, 265 F.3d 426, 438 (6th Cir. 2001)

[1] Memorandum from John Calcagni, Director of the EPA Air Quality Management Division, dated September 4, 1992, entitled "Procedures for Processing Requests to Redesignate Area to Attainment."

In the case of Cincinnati, the entire area is attaining the one-hour ozone standard, the Kentucky portion has completely complied with the remainder of the Act's requirements prior to being redesignated, and the entire area, including both the Ohio and Kentucky portions, has approved maintenance plans in effect. There is fulfillment, and not evasion of Congressional intent. The introductory sentence in section 107(d)(3)(E) clearly and expressly provides the Administrator with the option of redesignating a *portion* of a nonattainment area. If a portion of a nonattainment area is the subject of the redesignation, the reference to "area" in the subsequent subparts of section 107(d)(3)(E), must be read to apply to the portion being redesignated. In fact, when one state's portion of a multi-state area is being redesignated, that is the only meaningful way to read subparts (ii) through (v) of section 107(d)(3)(E), since they refer to the control requirements and plans for the state that contains the portion of the area.

Where a portion of an area is requesting redesignation, subpart (i) requires the Administrator to determine its attainment status. Because ozone is an area pollutant, EPA has concluded that the determination of whether a portion of a multistate ozone area has attained includes consideration of the attainment status of the area as a whole. By contrast, subparts (ii) through (v) refer to implementation plan requirements for the area being redesignated, and each plan applies only to that portion over which the state requesting redesignation has authority. Subpart (ii) states that "the Administrator has fully approved the applicable implementation plan for the area under section 110(k)". Where only one state's portion of the area is the subject of the redesignation action, this subsection, written in the singular, applies to that state's plan for the area—that is, to its portion of the larger nonattainment area. Similarly, subpart (iii) requires the Administrator to determine that there are permanent and enforceable reductions in emissions "resulting from implementation of the applicable implementation plan * * *", which means, in the case of a portion of a multi-state area, the implementation plan applicable to that portion of the area being redesignated.

Subpart (iv) states that the Administrator must fully approve "a maintenance plan for the area as meeting the requirements of section 175A". Here again, the only maintenance plan for the area being redesignated is for that portion over which the state requesting redesignation has authority. No other maintenance plan is subject to approval. Section 175A itself reinforces this reading. It provides:

> Each state which submits a request under section 107(d) for redesignation of a nonattainment area for any air pollutant as an area which has attained the national primary ambient air quality standard for that air pollutant shall also submit a revision of the applicable State implementation plan to provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.

It is clear that the maintenance plan for "the area concerned" and for which the Commonwealth of Kentucky has submitted a request is for a portion of the Cincinnati nonattainment area, and that is the only part of the area for which it has power to make a request and to promulgate planning and control requirements. Moreover, section 175A clearly treats each state's maintenance plan responsibilities as discrete obligations of that state over the area within its jurisdiction. (*See also* responses to Comments 2 and 4 above.) Section 107(d)(3)(v) provides, as a prerequisite to redesignation, that: "The State containing such area has met all requirements applicable to the area under section 110 and part D." This section plainly shows that Congress meant for EPA to evaluate whether the State requesting redesignation of an area has met the applicable requirements for that area, and that this requirement applies in the context of the State containing the area whose redesignation is under consideration. In a multistate area, where only one state's portion of the area is being considered for redesignation, Congress did not intend to require that state to demonstrate, or EPA to evaluate, a separate and distinct set of a different state's requirements applicable to the portion not contained in the state submitting a redesignation request.

Comment 4: EPA's approach also undermines the Act's maintenance plan and contingency measure requirements. Section 107(d)(3)(E)(iv) requires that prior to redesignation, EPA must have fully approved a maintenance plan "for the area" under section 175A. The maintenance plan must contain contingency provisions that require implementation of any measures in the pre-redesignation SIP. The lack of adequate RACT measures in the SIP means that the entire area lacks an adequate continency plan as well. The RACT deficiency threatens the health of people throughout the nonattainment area –not just in Ohio.

Response 4: Pursuant to section 107(d)(3) and section 175A, the maintenance plan requirements are separate for each state's portion of the area to be redesignated. Section 107 provides that the Administrator must fully approve "a maintenance plan for the area as meeting the requirements of section 175A". The use of the singular "a maintenance plan for the area" indicates that this provision is applicable separately to each portion of a multi-state area. Moreover, section 175A, whose requirements are incorporated by 107(d)(3)(iv), reinforces this reading by providing that:

> Each State which submits a request under section 107(d) for redesignation of a nonattainment area * * * shall also submit a revision of the applicable State implementation plan to provide for the maintenance of the national primary ambient air quality standard for such pollutant in the area concerned for at least 10 years after the redesignation. The plan shall contain such additional measures, if any as may be necessary to ensure such maintenance.

Section 175A(d) provides that the maintenance plan must also include such enforcement provisions "as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area."

Thus each state separately submits a redesignation request for the area under its jurisdiction, and each state has authority only to adopt and submit for approval a maintenance plan and a revision of its state implementation plan that are applicable to its territory. Since each state's obligation under section 107(d) and 175A applies solely to each state's implementation plan and each state's separate portion of a multi-state nonattainment area, EPA's reading of section 107 is consistent with the text, plain meaning, and logic of the redesignation and maintenance provisions. In any event, even assuming, contrary to the language of the statute, that approval of one state's maintenance plan revisions were dependent on the approvability of another state's maintenance plan, in the case of Cincinnati both the Ohio and Kentucky maintenance plans have been approved by EPA, and those approvals have been upheld by the Sixth Circuit. The Sixth Circuit in *Wall* expressly stated: "We therefore uphold the EPA's approval of the two states' clean air maintenance plans for the Cincinnati metropolitan area." *Wall* v. *EPA*, 265 F.3d 426, 437, 438.

Any corrections to the Ohio RACT rules do not undermine the Kentucky maintenance plan, nor do they undermine the approvability of Ohio's plan. The RACT rules at issue were concededly never implemented and not necessary for attainment or maintenance, although a commitment to adopt them was contained in the contingency measures in the Ohio maintenance plan. Plainly no threat to the health of the people of Ohio or the rest of the region is posed by redesignation of the Kentucky portion of the Cincinnati area.

Comment 5: Even if EPA could redesignate just a portion of the nonattainment area, it cannot do so here, because the states have not shown maintenance of the standard for at least 10 years, as is required by section 107(d)(3)(E)(iv) and 175A of the Act. Although EPA's prior approval of a maintenance plan was upheld by the *Wall* court, that plan addressed only the 10-year period subsequent to the date of the prior redesignation. Because EPA is proposing a new redesignation, the states must demonstrate maintenance for at least 10 years from the date of approval of the new redesignation—something that they have not done here.

Response 5: EPA is not proposing a new redesignation, but rather reinstating the redesignation of the Kentucky portion of the Cincinnati nonattainment area, based on the Sixth Circuit having upheld all of EPA's actions with respect to that redesignation. Moreover, the Court upheld the maintenance plan that accompanied that redesignation. Given that no deficiencies were found after extensive review by the Sixth Circuit, EPA believes that the proper response on remand is reinstatement of the redesignation, rather than having the state and EPA re-do work as to which no defects were found. Commentors seek to have EPA and Kentucky go back to re-do actions that were upheld in their entirety by the Court. No legal or public policy purpose is served by such waste of resources.

Comment 6: New information that was not available at the time of public comment on EPA's previous redesignation shows that the maintenance plan does not in fact assure maintenance of the standard for at least 10 years. Modeling conducted by EPA in connection with the heavy-duty diesel vehicle and diesel fuel rule shows that the Cincinnati area will again violate the ozone standard by 2007, and that these violations will continue through 2030 even with emission reductions from the diesel rule. This modeling takes into account monitoring data through 1999. In its prior redesignation, EPA discounted the modeling results of the Agency's Tier 2 rulemaking on the ground that it did not consider 1999 monitoring data. Yet EPA's diesel rule does consider this data and predicts ozone violations that EPA should not ignore or discount. Although the diesel rule Regulatory Impact Analysis (RIA) asserts that "the risk of future exceedances occurring in the Cincinnati-Hamilton area is most prevalent after the end date of Cincinnati's proposed 10-year maintenance plan (i.e. after 2010)", the commentor sees nothing that supports this assertion, and asks EPA to explain it. The commentor further requests EPA to explain how prevalent the RIA shows the risk of exceedances to be in or before and after 2010, and before and after 2012, which the commentor contends is the end of the new maintenance period, and how EPA judges such risk. The commentor also argues that regardless of whether the risk is more prevalent in later years, the RIA still predicts violations prior to 2010.

Response 6: The information provided in the heavy-duty diesel rule discussed by the commentor does not show that the Cincinnati area will again violate the ozone standard by 2007. First, as with the Tier 2 rule, the focus of the heavy duty rule was not to evaluate the attainment or nonattainment of the Cincinnati metropolitan area, but rather to reduce emissions from heavy duty trucks nationally.

As the Court found in *Wall*, the heavy duty diesel rule, like the findings in the Tier 2 rulemaking proceeding, are not applicable here. The *Wall* Court observed that:

> The focus of the Tier 2 proceeding was not specifically to evaluate the attainment or nonattainment to the Cincinnati metropolitan area, but rather to develop a 'major program designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, vans, minivans, and sport-utility vehicles', vehicles whose emissions contribute heavily to the generation of ground-level ozone. 65 FR 6698 265 F.3d at 437.

Similarly, the focus of the heavy duty diesel rule was a national program to reduce emissions from heavy duty diesel trucks throughout the United States. EPA based its decision to regulate such sources on the national need for emission reductions, not on the need of any particular area. One of the pieces of information EPA used in its review of the need for these reductions was regional photochemical ozone modeling performed by EPA for the diesel rule. However, EPA also took into consideration other modeling studies developed for SIPs. EPA noted that:

> * * * [t]he ozone modeling in the SIP revisions has the advantage of using emission inventories that are more specific to the area being modeled, and of using meteorological conditions selected specifically for each area. Also, the SIP revisions included other evidence and analysis, such as analysis of air quality and emissions trends, observation-based models that make use of data on ozone precursors, alternative rollback analyses, and information on the responsiveness of the air quality model. For some areas we decided that the predictions of 1-hour ozone exceedences from our modeling were less reliable than conclusions that could be drawn from this additional evidence and analysis...Thus, these local analyses are considered to be more extensive than our own modeling for estimating whether there would be NAAQS nonattainment without further emission reductions, where interpreted by a weight of evidence method which meets our guidance for such modeling. 66 FR 5013.[2]

We reviewed 45 areas with some history of ozone nonattainment to determine whether there was a broad need for further emission reductions. Based on all of the evidence presented, we determined that there is a significant risk that an appreciable number of the 45 areas will violate the 1-hour ozone standard between 2007 and 2030. Id at 5015. We made no determination that any area would violate the ozone standard during that time.

We divided the areas into three sets of areas, based on time of attainment demonstration under the Act and recent history regarding exceedences. Cincinnati was in the third group, where available ozone modeling and other information was "less clear regarding the need for additional reductions." In particular, these areas did not have recent exceedences, but did have recent data indicating levels within 10 percent of the ozone NAAQS. Id. at 5015–16.

With regard to Cincinnati specifically, EPA stated in our RIA for the diesel rule:

> The Agency recently redesignated Cincinnati-Hamilton, OH–KY–IN to attainment on June 19, 2000. This determination is based on four years of clean air quality monitoring data from 1996 to 1999 (1999 data was not considered in the Tier 2 air quality analysis or the proposal for this

[2] As we noted in our previous approval for this nonattainment area, with respect to ozone modeling performed for the tier 2 rule "we used a regional ozone modeling system to predict ozone in many cities, as part of an interpretative process to characterize the risk of nonattainment in a large and geographically broad number of areas. While ozone predictions and the characterization of the risk of nonattainment in individual areas was a step toward reaching a conclusion about risks across the group of areas, that characterization was not an Agency finding of violations for any specific ares." 65 FR 37882.

rulemaking), and a downward emissions trend. In today's action, Cincinnati-Hamilton is considered to have some risk of registering exceedances of the 1-hour ozone standard during the time period when the HD vehicle standards would take effect. This determination is based on air quality monitoring analysis and 1999 data with concentrations within 10 percent of the standard. Given these circumstances, the risk of future exceedances occurring in the Cincinnati-Hamilton area is most prevalent in the time period beyond the end date of Cincinnati's proposed 10-year maintenance plan (i.e., after 2010). As discussed in more detail in the relevant portions of the response to comment document for the Cincinnati-Hamilton attainment determination, any emissions and ozone modeling system used to predict future ozone involves approximations and uncertainties, and are best treated as indicators of risk rather than absolute forecasts. Thus a determination made in this rule that there is some risk of future exceedances during the relevant time period is not inconsistent with EPA approval of Cincinnati's redesignation to attainment, and its approval of Cincinnati's 10-year maintenance plan (citing to Technical Memorandum to EPA Air Docket A–99–06, April 20, 2000, Cincinnati Redesignation in Attainment and Approval of 10-Year Maintenance Plan). Diesel Rule RIA at II–15.

As this information from the diesel rule shows, EPA believes that the modeling performed for the diesel rule was only one factor, and not necessarily the most important factor, in determining whether, and to what extent, Cincinnati was at risk of nonattainment. It is therefore not inconsistent with EPA's action in today's final rule.

Regarding the commentor's question on the prevalence of risk for future exceedences, as EPA's model used in the diesel rule broadly predicts a decrease in vehicle-based emissions until 2007, a relative leveling off between 2007 and 2020, and an increase after 2020, it presumes that without further reductions, emissions and resulting ozone concentrations would increase in later years compared to the years 2010 or 2012. Diesel Rule RIA at II–12 to 13.

Comment 7: A commentor contends that EPA has not proposed to find compliance with the other prerequisites for redesignation in section 107(d)(3)(E). It is not enough that EPA found compliance with these requirements in its July 2000 redesignation rulemaking. EPA itself has taken the position that redesignation is precluded if the area violates the NAAQS anytime prior to final action on a proposed redesignation. *Kentucky* v. *EPA*, No. 96–4274 (6th Cir. Sept. 2, 1998). Under the statute, EPA must make a determination that all of the statutory prerequisites are met at the time of final action on a proposed redesignation.

Response 7: EPA is not re-creating or reproposing a redesignation *ab initio*. EPA is simply reinstating on remand from the Court a rulemaking that the Court has upheld in all respects. In this rulemaking, EPA found, and the Court agreed, that the Commonwealth of Kentucky had met all the requirements for redesignation at the time of redesignation. In a separate and discrete rulemaking action accompanying the redesignation action, EPA found that the area had attained the standard, and issued a formal determination that the area had attained the one-hour ozone standard. This determination of attainment, which continues in effect to this date, has never been withdrawn or even challenged. EPA also approved, and this Court upheld, maintenance plans for both portions of the area, which plans continue in effect to this date. Under these circumstances, reinstatement of the rulemaking is the proper procedure on remand. All other requirements that EPA had previously found to satisfy the redesignation criteria also remain in effect. EPA is not required to make new findings to support EPA actions that have already been taken with respect to Kentucky and which the Court has upheld after judicial review.

Comment 8: Even if EPA could redesignate a portion of the nonattainment area, it has no authority to make that redesignation retroactive. Section 175A(c) expressly provides that the nonattainment area requirements continue to apply "[u]ntil" the area is redesignated to attainment and a maintenance plan is approved. Here, where the *Wall* court vacated the prior redesignation, that redesignation is a nullity. Any subsequent redesignation can be prospective only.

Response 8: EPA is not engaging in retroactive rulemaking. It is merely reinstating a rulemaking that the Sixth Circuit did not invalidate. While the Sixth Circuit did vacate the redesignation, it did so only because of a defect—the lack of implemented RACT rules—that applies solely to that portion of the Cincinnati ozone nonattainment area that lies within the State of Ohio. The court found no such defects in the portions of the area situated within Kentucky. Moreover, the Clean Air Act specifically provides that EPA may redesignate a portion of an area, such as the portion of the Cincinnati area that lies within Kentucky, when that portion qualifies for redesignation. 42 U.S.C. 7407(d)(3). Because the statute's authority extends to partial redesignations, because EPA previously found that the area (including the portion within Kentucky) qualifies for redesignation, and because the court did not find any defects in Kentucky's showing that it was entitled to redesignation, EPA does not believe that it is engaged in retroactive rulemaking in reinstating the redesignation of the Cincinnati ozone nonattainment area only insofar as it applies to the Kentucky portion.

Comment 9: Sierra Club asks for a public hearing on the proposal. They question whether EPA can lawfully finalize its proposal without a hearing, when no public hearing was held at the state level. Section 7410(a)(1),(2).

Response 9: Since EPA is merely reinstating its action after all state proceedings, Federal notice and comment requirements, and judicial review have taken place, it does not see any legal or policy reason to hold another hearing on requirements that have already been determined at all three levels to have been met.

Comment 10: EPA itself has taken the position that it cannot redesignate a portion of the Cincinnati area to attainment unless the requirements of section 107(d)(3)(E) have been met throughout the entire nonattainment area. In 1996 the Agency expressly rejected an argument that the Kentucky portion of the nonattainment area should be redesignated to attainment where the only violations of the standard being recorded were at monitors in the Ohio portion. EPA stated unequivocally that "a request to redesignate a portion of an area to attainment may not be approved if the entire area does not meet the redesignation requirements." 61 FR 50718, 50719

Response 10: When EPA in its prior rulemaking disapproved the redesignation request for the Cincinnati area, it was because the area was not attaining the standard. EPA has consistently required an ozone nonattainment area with a single airshed to attain the standard as a whole in order to be redesignated. The quoted statement was made in the context of that requirement. But EPA has also consistently allowed a portion of a multi-state area, where the entire area is attaining the standard, to be redesignated, provided the state with authority over that portion has met all the control regime requirements for that portion. Prior rulemakings applying this interpretation include:

CT portion of the CT-northern NJ-NY CMSA to attainment for carbon monoxide. 65 FR 12005–12015 (March 10, 1999) (Direct final rulemaking)

Huntington, WVA portion of Huntington-Ashland KY ozone nonattainment area. 59 FR 65719 (December 21, 1994)
Particulate matter redesignation of Ohio portion of the Steubenville area. 65 FR 77308 (December 11, 2000).

Comment 11: A commentor challenges the public policy and scientific basis for treating the Kentucky portion of the Cincinnati-Northern Kentucky area as a single airshed. EPA's attempt to bifurcate the Ohio and Kentucky portions of the area lacks any rational basis and does not comport with research on transport in the Ohio River Valley. EPA's action is an unwise departure from treating the area as a single airshed.

Response 11: EPA is not treating the Kentucky portion of Cincinnati as a separate airshed. To the contrary, EPA has determined that the entire Cincinnati area is attaining the one-hour ozone standard, and this is a *sine qua non* for redesignation. Moreover, the maintenance plans for both portions of the area have been approved and EPA's approvals upheld by the Sixth Circuit. EPA's action is also in keeping with its long-standing policy, once a multi-state area has attained the standard, to evaluate separately the control regime requirements for each state's portion of the area. See rulemakings listed above and response to Comment 10. EPA believes that both the law and public policy support its position that once one portion of the area has met all the requirements for redesignation, EPA should not hold that portion's redesignation hostage until a separate state fulfills the control regime requirements for its portion.

Comment 12: The area is not in compliance with the proposed eight-hour ozone standard. In May, 2001, the three Northern Kentucky counties at issue received a grade of F for their air quality, based on the number of days from 1997 to 1999 with ozone readings greater than .085 ppm. These data do not support the conclusion that the air quality in Northern Kentucky is improving.

Response 12: The area is being redesignated to attainment for the one-hour ozone standard, and therefore its status with regard to the 8-hour ozone standard is not relevant to this proceeding. EPA has determined that the area has met the one-hour ozone standard and that finding has not been challenged. The Cincinnati area has been in continuous attainment for the one-hour standard since 1998. Maintenance plans designed to maintain the one-hour ozone standard for both the Kentucky and Ohio portions have been approved by EPA, and those approvals have been upheld by the Sixth Circuit.

Comment 13: To justify redesignation, changes must be due to permanent and enforceable reductions in emissions. Kentucky's treatment of minor and synthetic minor sources for purposes of prevention of significant deterioration (PSD) and new source review means that there is no limit on these types of changes while the area is designated attainment.

Response 13: EPA is not proposing a new redesignation, but rather reinstating the redesignation of the Kentucky portion of the Cincinnati nonattainment area, based on the Sixth Circuit having upheld all of EPA's actions with respect to that redesignation. EPA's initial redesignation to attainment contained a determination that attainment was due to permanent and enforceable reductions in emissions. Kentucky's treatment of minor and synthetic minor sources for purposes of PSD and new source review is consistent with the PSD requirements for ozone areas. The Court upheld EPA's approval of the area's maintenance demonstration which was premised on PSD being in place.

Comment 14: Inadequate staffing at Kentucky's Department of Air Quality means that changes are not permanently enforceable.

Response 14: EPA doe not agree with the commentor that the Kentucky's Department of Air Quality has inadequate staffing. EPA has already determined that the changes in emissions and subsequent ambient air quality improvements are due to permanent and enforceable measures. The Sixth Circuit did uphold EPA's previous determination. The Court also upheld EPA's approval of Kentucky's and Ohio's resource and enforcement commitments. *Wall* v. *EPA*. 265 F.3d 438.

IV. Final Action

The EPA is reinstating the attainment redesignation of the one-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection

burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 19, 2002.

A. Stanley Meiburg,

Acting Regional, Administrator, Region 4.

[FR Doc. 02–19324 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0155; FRL–7191–4]

Acephate, Amitraz, Carbaryl, Chlorpyrifos, Cryolite, et al.; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes certain tolerances for residues of the pesticides acephate, amitraz, carbaryl, chlorpyrifos, cryolite, disulfoton, ethalfluralin, ethion, ethoprop, fenthion, fluvalinate, methamidophos, metribuzin, oxamyl, phorate, phosalone, phosmet, pirimiphos-methyl, profenofos, propiconazole, tetrachlorvinphos, thiram, and tribufos because these specific tolerances are either no longer needed or are associated with food uses that are no longer registered in the United States. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 140 tolerances. Because ten tolerances were previously reassessed, 130 tolerances would be counted as reassessed. Also, EPA is announcing that six goat and sheep tolerances at 0 ppm for amitraz are considered to be reassessed. Therefore, a total of 136 tolerance reassessments would be counted among tolerance/exemption reassessments made toward the August, 2002 review deadline.

DATES: This regulation is effective October 29, 2002; however, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings, identified by docket ID number OPP–2002–0155, must be received by EPA on or before September 30, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0155 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308-8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0155. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well

as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

This final rule revokes certain FFDCA tolerances for residues of the pesticides acephate, amitraz, carbaryl, chlorpyrifos, cryolite, disulfoton, ethalfluralin, ethion, ethoprop, fenthion, fluvalinate, methamidophos, metribuzin, oxamyl, phorate, phosalone, phosmet, pirimiphos-methyl, profenofos, propiconazole, tetrachlorvinphos, thiram, and tribufos in or on specified commodities listed in the regulatory text because the tolerances are no longer needed or because these pesticides are not registered under FIFRA for uses on those commodities within the United States. However, comments were received regarding a need for EPA to retain certain tolerances, including a comment that there was a need for EPA to retain certain methamidophos tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Today's final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above if, (1) prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained, (2) EPA independently verifies that the tolerance is no longer needed, or (3) the tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In the **Federal Register** of April 15, 2002 (67 FR 18150) (FRL–6834–1), EPA issued a proposed rule to revoke the tolerances listed in this final rule. Also, the April 15, 2002 proposal provided a 60-day comment period in which public comment was invited for consideration and for support of tolerance retention under FFDCA standards.

In response to the document published in the **Federal Register** of April 15, 2002, EPA received comments on ethion, fenthion, methamidophos, pirimiphos-methyl, and profenofos, as follows:

1. *Ethion*—i. *Comment by Private Citizen.* A comment was received from a private citizen who inquired whether the ethion tolerances for cattle, fat; cattle, meat byproducts; cattle, meat (fat basis); citrus pulp, dehydrated; and citrus fruits, which were each proposed for revocation with an expiration date were also modified.

Agency Response. EPA is revoking the ethion tolerances for citrus, dried pulp and fruit, citrus in 40 CFR 180.173 with no further modification at this time. Additionally, EPA is taking no action on the ethion milk and cattle tolerances in 40 CFR 180.173 at this time.

EPA is revoking the tolerances for citrus, dried pulp and fruit, citrus in 40 CFR 180.173 with an expiration/revocation date of October 1, 2008. In the ethion RED, EPA recommended that the citrus tolerances should be revoked, but also be raised during the period before they expire (from 10.0 to 25.0 ppm for dehydrated pulp and from 2.0 to 5.0 ppm for citrus fruits) based on the available citrus field trial and processing data. However, while the citrus tolerances were proposed to be revoked and raised in the codification section of the April 15, 2002 rule (67 FR 18150), the preamble for ethion stated only that the tolerances were proposed to be revoked and did not mention raising these tolerances in the interim period. Therefore, in a future publication in the **Federal Register**, EPA will propose to raise the tolerances for citrus, dried pulp and fruit, citrus during the period before they expire to 25.0 and 5.0 ppm, respectively.

EPA is not taking action on the milk and cattle tolerances at this time in order to verify whether a cancellation order for one cattle ear tag product was completed. In addition, while the cattle tolerances were proposed to be revoked and lowered in the codification section of the April 15, 2002 rule (67 FR 18150), in the preamble for ethion, the rule had stated only that the tolerances were proposed to be revoked. Therefore, in a future publication in the **Federal Register**, EPA will propose to revoke and lower the cattle tolerances during the period before they expire on October 1, 2008 to 0.2 ppm and propose to revoke the milk tolerance on October 1, 2008.

ii. *Comments from Cheminova, Inc., Florida Citrus Mutual (FCM) and Florida Fruit and Vegetable Association (FFVA).* Comments were received from Cheminova, FCM and FFVA who each requested that the revocation of the tolerance for ethion on citrus and animal products be set no earlier than October 1, 2008 to allow treated citrus fruit to travel through juice processing and channels of trade, as well as to allow animal commodities (from animals fed treated dehydrated citrus pulp) through channels of trade. Cheminova and FFVA noted that fruit in a citrus grove legally treated with ethion in December 2004 could remain on the tree and not be picked until May or June 2005. Cheminova and FCM noted that the bulk (90% to 95%) of Florida citrus products are made into processed juice products. Cheminova also noted that because so much of the citrus crop in Florida is grown for juice, citrus legally treated with ethion may remain in the channels of trade for several years. Both FCM and FFVA specifically stated that fruit processed for frozen concentrated orange juice could conceivably be stored for up to 24 months before being moved into the channels of trade and could take an additional 12 months before reaching the consumer.

Agency Response. EPA agrees that citrus and animal feed (citrus, dried pulp) with legal residues of ethion can take several years to clear channels of trade. With a last legal use date of December 31, 2004, the Agency agrees with the commenters that the expiration date of October 1, 2008 for the citrus and animal tolerances is reasonable. Therefore, EPA is revoking the tolerances in 40 CFR 180.173 for residues of ethion including its oxygen analog (S-[[diethoxyphosphinothioyl)thio]methyl] O,O-diethyl phosphorothioate) in or on goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; sheep, fat; sheep, mbyp; and sheep, meat with an expiration/revocation date of October 1, 2008.

In addition, EPA is revoking the tolerance for raisins and tea, dried in 180.173 with an effective date that is 90

days after publication of this final rule in the **Federal Register**. On January 14, 1998 (63 FR 2163)(FRL–5755–9), EPA consolidated certain food and feed additive tolerance regulations in 40 CFR parts 185 and 186 to part 180, including the raisins and tea, dried tolerances for ethion from 185.2750 into 180.173. On February 5, 1998 (63 FR 5907)(FRL–5743–9), the Agency proposed to revoke the tolerances for raisins and tea, dried in 40 CFR 180.173. The Agency did not receive any comment on the proposed revocation of these two tolerances. However, on October 26, 1998, EPA published a final rule in the **Federal Register** (63 FR 57067) (FRL–6035–6) which inadvertently did not remove the raisins and tea, dried tolerances from the table of entries found in 40 CFR 180.173. Now, EPA is finalizing that action.

2. *Fenthion—Comment by Bayer Corporation.* A comment was received from Bayer Corporation in which Bayer stated that it is not appropriate to revoke the fenthion milk and animal tolerances (fat, meat, and meat byproducts for cattle and hogs) in 40 CFR 180.214 with the proposed expiration date of April 1, 2003 because these tolerances are also necessary for use of fenthion drug products, insecticides for cattle use, one of which is a pour-on. Bayer stated that while it stopped manufacturing these animal drug products on September 28, 2000, one product can be used on livestock until it expires on September 28, 2004. Also, Bayer noted that treated commodities would take an additional 18 months to move through trade channels and requested an expiration date of April 1, 2006 as more appropriate.

Agency Response. To address Bayer's concern, the Agency is revoking the tolerances in 40 CFR 180.214 for residues of fenthion and its cholinesterase-inhibiting metabolites in or on cattle, fat; cattle, meat; and cattle (mbyp) with an expiration/revocation date of April 1, 2006 to allow sufficient time for treated commodities to pass through channels of trade. In a follow-up communication, Bayer stated that (1) no swine uses were associated with the two fenthion animal drug products and (2) the two fenthion animal drug products were for use on non-lactating dairy cattle. For these reasons, Bayer noted that there is no need to extend the milk or hog tolerances. Therefore, EPA is revoking the tolerances in 40 CFR 180.214 for hogs, fat; hogs, meat; hogs (mbyp); and milk with an expiration/revocation date of April 1, 2003, which allows sufficient time for treated commodities to pass through channels of trade.

Also, EPA is revising commodity terminology in 40 CFR 180.214 to conform to current Agency practice as follows: "cattle (mbyp)" to "cattle, meat byproducts;" "hogs, fat" to "hog, fat;" "hogs, meat" to "hog, meat;" and "hogs, mbyp" to "hog, meat byproducts."

3. *Methamidophos—*i. *Comment by Canadian Horticultural Council (CHC).* A comment was received from the CHC, who requested the retention of methamidophos (trade name Monitor) tolerances for broccoli, Brussels sprouts, cabbage, cauliflower, and lettuce to allow importation of those methamidophos-treated food commodities.

Agency Response. Because a comment was received which expressed a need for the retention of specific tolerances for import purposes, EPA will not revoke the tolerances in 40 CFR 180.315 for broccoli, Brussels sprouts, cabbage, cauliflower, and lettuce at this time. EPA will follow-up to see that data requirements are met. When the submitted data have been reviewed, EPA will re-evaluate these tolerances under FFDCA.

ii. *Comment by Private Citizen.* A comment was received from a private citizen who asked that the Agency comment on Brussels sprouts, cauliflower, and lettuce codified in 40 CFR 180.108 under acephate with regard to the metabolite methamidophos in light of the proposed revocations in 40 CFR 180.315 for those tolerances.

Agency Response. There are active registrations for acephate, which degrades to methamidophos residues, on Brussels sprouts, cauliflower, and lettuce head. These tolerances are codified at 40 CFR 180.108 for residues of methamidophos (O,S-dimethyl phosphoramidothioate) as no more than 0.5 ppm, 0.5 ppm, and 1.0 ppm, respectively. However, while there are no active registrations for use of methamidophos on Brussels sprouts, cauliflower, and lettuce, there are tolerances for those commodities codified at 40 CFR 180.315 for residues of methamidophos at 1.0 ppm. To achieve compatibility with CODEX (0.5 ppm for cauliflower and 1.0 ppm for lettuce head) and to remove duplicate tolerances, EPA proposed to revoke the cauliflower (1.0 ppm) and lettuce (1.0 ppm) tolerances for methamidophos in § 180.315. Methamidophos residues from the use of acephate on Brussels sprouts, cauliflower, and lettuce head would have remained covered under 40 CFR 180.108. In a future publication in the **Federal Register**, EPA will propose to revise the acephate tolerances in 40 CFR 180.108 by consolidating that portion concerning residues of methamidophos from acephate use to be recodified with other methamidophos tolerances under § 180.315.

EPA is revoking the tolerances in 40 CFR 180.315(a) for residues of methamidophos in or on beets, sugar, roots; and beets, sugar, tops. On July 2, 1997, EPA published a notice in the **Federal Register** (62 FR 35812) (FRL–5724–7) under section 6(f)(1) of FIFRA announcing its receipt of requests from the registrants to terminate the use of methamidophos on all crops except cotton and potatoes, and to cancel all methamidophos 24(c) food-use registrations not labeled for use on tomatoes only, and provided a period for public comment. On December 23, 1997 (62 FR 67071) (FRL–5764–2), EPA published a notice in which the Agency responded to comments received and approved those terminations and cancellations, effective December 31, 1997. The Agency determined that after December 31, 1997 only persons other than the registrants were allowed to sell and distribute existing stocks, which EPA believed to be relatively small. More than four years has passed, which the Agency believes to be sufficient time for exhaustion of those stocks and for treated commodities to have cleared channels of trade.

Because a petition submitted by the registrant to the Agency for use on peppers regarding a FIFRA section 24(c) registration is pending and because of the possibility that existing labels for section 24(c) registrations may not yet have been amended regarding deletion of cucumbers, eggplant, and melons, the Agency will not address cucumbers, eggplant, melons, and peppers at this time. However, EPA is revising commodity terminology in 40 CFR 180.315 to conform to current Agency practice as follows: "cottonseed" to "cotton, undelinted seed;" "cucumbers" to "cucumber;" "melons" to "melon;" "peppers" to "pepper;" "potatoes" to "potato" and "tomatoes" to "tomato." EPA is also removing the "(N)" designation from the "cotton, undelinted seed" and "potato" entries to conform to current Agency administrative practice ("N" designation means negligible residues).

4. *Pirimiphos-methyl—Comment by Schering-Plough Animal Health Corporation.* A comment was received from Schering-Plough, who requested that the current pirimiphos-methyl tolerances for cattle be retained. Schering-Plough stated that the insecticide is currently used in ear tag products as part of an integrated pest management program to control horn flies and face flies on beef and non-lactating dairy cattle and calves. Also,

Schering-Plough noted that a 1996 magnitude of residue study from dermal application for a pour-on product was submitted to EPA, but was returned pending completion of the organophosphate cumulative risk assessment process. In addition, Schering-Plough asked that the Agency provide a consistent and level playing field to all sponsors; i.e., EPA should not include one sponsor's proposed use for pre-treatment of grain storage bins (Product and Chemistry Chapter of June 1, 1998), while at the same time exclude or delay approval of another proposed use such as for a cattle-pour-on product in their assessment. Finally, Schering-Plough noted that EPA actions to revoke or lower cattle tolerances would be an inefficient use of resources because Schering-Plough expects to submit an application for registration of a pirimiphos-methyl pour-on product for cattle, including a completed dermal magnitude of residue study.

Agency Response. In the proposal of April 15, 2002, EPA concluded that the current tolerance on "cattle meat" was no longer needed because the Agency has a reasonable expectation that no detectable pirimiphos-methyl residues of concern would be found in cattle meat as a result of cattle exposure via existing uses of pirimiphos-methyl. (Results from ruminant and poultry feeding studies, and residue trials conducted on stored grains, indicated that residues in certain livestock commodities could be classified under 40 CFR 180.6(a)(3); i.e., there is no reasonable expectation of finite residues). Schering-Plough noted that the proposal to revoke the cattle meat tolerance was based on the Agency's review of livestock feeding studies, not from a magnitude of residue study from dermal application. Schering-Plough requested retention of the cattle meat tolerance and stated it would submit a registration application for a new use (pour-on product formulation) for cattle, including a dermal metabolism study for pirimiphos-methyl. EPA maintains that a cumulative risk assessment for all organophosphate active ingredients must be completed before the acceptance of new registrations can occur for pirimiphos-methyl. Whether dermal exposure results for pirimiphos-methyl would have the same metabolic pattern as oral dosing is not known. At this time, EPA will not take action on the tolerance for "cattle, meat" in 40 CFR 180.409. EPA will continue to deliberate the issue, but may finalize the revocation of the cattle meat tolerance in a future publication in the **Federal Register**.

Because the tolerances are no longer needed, EPA is revoking the tolerances in 40 CFR 180.409(a)(1) for combined residues of pirimiphos-methyl, O-[2-diethylamino-6-methyl-4- pyrimidinyl) O,O-dimethyl phosphorothioate, the metabolite O-[2-ethylamino-6-methyl-pyrimidin-4-yl) O,O-dimethyl phosphorothioate and, in free and conjugated form, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol), 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on eggs; goats, meat; hogs, meat; horses, meat; milk, fat (0.1 ppm (N) in whole milk; poultry, mbyp; poultry, meat; and sheep, meat.

According to the pirimiphos-methyl Interim Reregistration Eligibility Decision (IRED), residues in sorghum milling fractions are no longer included in Table 1, "Raw Agricultural and Processed Commodities and Livestock Feeds Derived From Field Crops," of OPPTS 860.1000 (EPA 712–C–96–169, Residue Chemistry Test Guidelines, August 1996); i.e., sorghum milling fractions are no longer considered a significant feed item, and the tolerance is no longer needed. Therefore, EPA is revoking the tolerance in § 180.409(a)(2) for sorghum milling fractions (except flour). For reassessment counting purposes, the tolerance for sorghum milling fractions will count as two to reflect the two tolerances (in 40 CFR 185.4950 and 186.4950) that had existed on August 3, 1996, when FQPA was enacted.

EPA is removing the tolerances in § 180.409(a)(2) for corn milling fractions (except flour); and corn oil. In the IRED, the Agency concluded that based on processing studies pirimiphos-methyl residues did not concentrate in these processed commodities and therefore these tolerances are no longer needed. Because the use of pirimiphos-methyl on corn remains, any residues in or on these processed corn commodities will remain covered by the existing tolerance for corn. For reassessment counting purposes, the Agency will not count removal of the tolerances for corn oil and corn milling fractions (except flour) as reassessments in this final rule.

In addition, EPA is revising commodity terminology in 40 CFR 180.409 to conform to current Agency practice as follows: "cattle, mbyp" to "cattle, meat byproducts;" "goats, fat" to "goat, fat;" "goats, mbyp" to "goat, meat byproducts;" "hogs, fat" to "hog, fat;" "hogs, mbyp" to "hog, meat byproducts;" "horses, fat" to "horse, fat;" "horses, mbyp" to "horse, meat byproducts;" "sheep, mbyp" to "sheep, meat byproducts;" and "sorghum, grain" to "sorghum, grain, grain." Also in § 180.409, EPA is revising "cattle, kidney and liver" to "cattle, kidney" and "cattle, liver;" "goats, kidney and liver" to "goat, kidney" and "goat, liver;" "hogs, kidney and liver" to "hog, kidney" and "hog, liver;" "horses, kidney and liver" to "horse, kidney" and "horse, liver;" and "sheep, kidney and liver" to "sheep, kidney" and "sheep, liver."

5. *Profenofos—Comment by Private Citizen.* A comment was received from a private citizen who inquired whether the proposal of April 15, 2002 revised the tolerance expression in 40 CFR 180.404. The commenter noted that a change in tolerance expression to profenofos *per se* was recommended in the profenofos IRED of August, 2000 because profenofos is considered a residue of toxicological concern.

Agency Response. EPA did not propose to revise the tolerance expression in 40 CFR 180.404 at this time. The change in the tolerance expression as recommended in the IRED for profenofos will be proposed in the near future.

EPA is revoking the tolerances in 40 CFR 180.404 for hogs, fat; hogs, mbyp; and hogs, meat. The Agency concluded that there is no reasonable expectation of finite residues for hog commodities (meat, fat, and meat byproducts) for profenofos based on feeding studies and the tolerances are no longer needed according to 40 CFR 180.6(a)(3).

Also, EPA is revoking the tolerance in § 180.404 for cottonseed hulls because the tolerance is no longer needed. Based on a cottonseed processing study, EPA determined that the current and interim cottonseed tolerances are each adequate to cover cottonseed hulls.

No comments were received by the Agency concerning the following.

6. *Acephate.* EPA is revoking the tolerances in 40 CFR 180.108 for combined residues of acephate and its cholinesterase-inhibiting metabolite O,S-dimethylphosphura-midothioate in or on grass (pasture and range) and grass hay because no active registrations exist which cover those commodities. On April 17, 1998 (63 FR 19254)(FRL–5782–6), July 8, 1998 (63 FR 36897)(FRL–5797–1), July 22, 1998 (63 FR 39287)(FRL–5799–9), and January 27, 1999 (64 FR 4099)(FRL–6051–8), EPA had published notices in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests from registrants to cancel or amend certain product registrations and delete certain acephate uses, including the grass pasture and rangeland use for acephate. EPA approved the registrants' requests for voluntary cancellation of those specific product registrations and

deletion of certain uses, including the use for grass (pasture and rangeland), and allowed a period of 18 months (in the 1998 notices) and 12 months (in the 1999 notice) for registrants to sell and distribute those specific existing stocks affected. The Agency believes that end users have had sufficient time (at least 18 months beyond the endpoint for sale and distribution by registrants) to exhaust those existing stocks and for treated commodities to have cleared the channels of trade.

7. *Amitraz.* Apple and horse commodity tolerances are currently codified in 40 CFR 180.287 at 0 ppm; i.e., no finite tolerance is established for apple and horse commodities for amitraz. Also, there is currently no registered use of amitraz on apples or horse commodities. Because the tolerances are no longer needed, the Agency is revoking the tolerances in 40 CFR 180.287 for residues of amitraz and its metabolites in or on apples; horses, fat; horses, mbyp; and horses, meat. The EPA believes that sufficient time has passed for the possibility of any stocks to have been exhausted and for the possibility of any treated commodities to have cleared channels of trade.

Also, there is a pending petition to establish tolerances for the dermal use of amitraz. Currently, there are six tolerances in 40 CFR 180.287 for goats, fat; goats, mbyp; goats, meat; sheep, fat; sheep, mbyp; and sheep, meat at 0 ppm. EPA has been able to identify no past or current registrations of amitraz for use on goat or sheep commodities. However, due to the pending petition, EPA is not taking final action on those six tolerances at this time. EPA believes that there is no risk of exposure to amitraz under these tolerances because the tolerance permits no detectable amount of the pesticide chemical to remain on the raw agricultural commodity when it is offered for shipment and therefore the tolerances present a reasonable certainty of no harm to human health. In accordance with FQPA, the Agency considers those six goat and sheep tolerances at 0 ppm to be reassessed.

In addition, the Agency is revising commodity terminology in 40 CFR 180.287 to conform to current Agency practice as follows: "beeswax" to "honeycomb." On June 21, 2002 (67 FR 42391)(FRL–7180–1), EPA published a final rule in the **Federal Register** concerning tolerance nomenclature, which revised the terminology of certain commodity terms listed under 40 CFR part 180, subpart C in order to establish a uniform listing, including the entry for "hop, dried cone" to "hop, dried cones."

8. *Carbaryl.* In the U.S., there are no current uses of the insecticide carbaryl in or on cotton, forage; barley; oats; or rye. The Agency approved the registrant's requests for voluntary amendment of various carbaryl product labels to delete use on oats and rye in 1996, barley in 1997, and cotton forage in 1999. Therefore, EPA is revoking the tolerances in 40 CFR 180.169 for residues of carbaryl, including its hydrolysis product 1-naphthol, calculated as 1-naphthyl N-methylcarbamate in or on barley, grain; barley, green fodder; barley, straw; cotton, forage; oat, fodder, green; oat, grain; oat, straw; rye, fodder, green; rye, grain; and rye, straw. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade.

9. *Chlorpyrifos.* Because beans, lima, forage; beans, snap, forage; sorghum milling fractions (sorghum flour is used exclusively in the U.S. as a component for drywall, not as either a human or animal feed item); bean, forage; and pea forage; are no longer considered to be significant feed items, the tolerances are no longer needed. Therefore, EPA is revoking the tolerances in 40 CFR 180.342(a)(1) for beans, lima, forage; beans, snap, forage; and sorghum milling fractions and in § 180.342(a)(2) for bean, forage and pea forage.

Because there are currently no current registered uses for combined residues of chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol on dates, mushrooms, and seed and pod vegetables; and for residues of chlorpyrifos on caneberries and sugarcane, EPA is revoking the tolerances for mushrooms and seed and pod vegetables in 40 CFR 180.342(a)(1), caneberries and sugarcane in § 180.342(a)(2), and dates in § 180.342(c)(1). EPA believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade.

In addition, the Agency is revising commodity terminology to conform to current Agency practice as follows: In 40 CFR 180.342(a)(1) "beans, snap" to "bean, snap, succulent;" in 40 CFR 180.342(a)(2) "sweet potato" to "sweet potato, roots;" and in 40 CFR 180.342(c)(1) "grapes" to "grape" and "leeks" to "leek."

On June 21, 2002 (67 FR 42391)(FRL–7180–1), EPA published a final rule in the **Federal Register** concerning tolerance nomenclature, which revised the terminology of certain commodity terms listed under 40 CFR part 180, subpart C in order to establish a uniform listing, including the entries for "sorghum, fodder" to "sorghum, grain, stover"; and "sorghum, grain" to "sorghum, grain, grain."

10. *Cryolite.* EPA is revoking tolerances in 40 CFR 180.145 for residues of fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on beets, roots; radish, roots; rutabaga, roots; and turnip, roots. The registrant(s) of cryolite requested voluntary cancellation for use on beets, radishes, rutabagas, and turnips. Rutabagas were removed from cryolite labels prior to 1988. Beets were removed from cryolite labels in 1988. On September 25, 1996 a FIFRA section 6(f)(1) notice of receipt of a request to voluntarily delete radish and turnip uses from cryolite registrations was published in the **Federal Register** (61 FR 50294) (FRL–5394–2), with a use deletion date of December 24, 1996. EPA believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade.

11. *Disulfoton.* On June 4, 1997, EPA published a notice in the **Federal Register** (62 FR 30578) (FRL–5715–8) under section 6(f)(1) of FIFRA announcing its receipt of requests for amendments to delete disulfoton uses for pineapples, rice, and sugar beets. EPA approved the request, effective December 1, 1997, and allowed the registrants to sell or distribute products under the previously approved labeling for 18 months (June 1, 1999). More than two and one-half years has passed, which the Agency believes to be sufficient time for exhaustion of those stocks and for treated commodities to have cleared channels of trade. Because no active registrations exist for use of disulfoton in or on those commodities, the EPA is revoking the tolerances in 40 CFR 180.183(a)(1) for residues of disulfoton and its cholinesterase-inhibiting metabolites in or on beets, sugar, roots; beets, sugar, tops; pineapples; rice; and rice, straw; and the tolerances in § 180.183(a)(2) for residues of disulfoton, calculated as demeton, in dehydrated sugar beet pulp and in pineapple bran.

The commodity "bean, vines" is no longer considered to be a significant animal feed item and the tolerance is no longer needed. Therefore, EPA is revoking the tolerance for bean, vines in 40 CFR 180.183.

On February 7, 2001, EPA published a notice in the **Federal Register** (66 FR 9317)(FRL–6765–9) under section 6(f)(1) of FIFRA announcing its receipt of requests for amendments to delete disulfoton uses for corn, oats, and

pecans. EPA approved the request, effective March 9, 2001, and allowed the registrants to sell or distribute product under the previously approved labeling for 18 months (ending September 9, 2002). EPA believes that those stocks should be exhausted within 12 months of that date (September 9, 2003). Because no active registrations exist for the use of disulfoton in or on those commodities, EPA is revoking the tolerances in 40 CFR 180.183(a)(1) for the combined residues of disulfoton and its cholinesterase-inhibiting metabolites, calculated as demeton, in or on corn, field, fodder; corn, field, forage; corn, grain; corn, pop; corn, pop, fodder; corn, pop, forage; corn, sweet, fodder; corn, sweet, forage; corn, sweet, grain (K+CWHR); oats, fodder, green; oats, grain; oats, straw; and pecans with an expiration, revocation date of December 9, 2003. The Agency believes that this revocation date permits users to exhaust stocks and allows sufficient time for passage of treated commodities through the channels of trade.

In addition, EPA is revising commodity terminology in 40 CFR 180.183(a) to conform to current Agency practice as follows: "beans, dry" to "bean, dry, seed;" "beans, lima" to "bean, lima;" "coffee beans" to "coffee, bean;" "corn, field, fodder" to "corn, field, stover;" "corn, pop, fodder" to "corn, pop, stover;" "corn, sweet, fodder" to "corn, sweet, stover;" "cottonseed" to "cotton, undelinted seed;" "hops" to "hop, dried cones;" "oats, grain" to "oat, grain;" "oats, straw" to "oat, straw;" "peas" to "pea;" "peas, vines" to "pea, field, vines;" "pecans" to "pecan;" "peppers" to "pepper;" "potatoes" to "potato;" "sorghum, fodder" to "sorghum, grain, stover;" "soybeans, forage" to "soybean, forage;" "soybeans, hay" to "soybean, hay;" "tomatoes" to "tomato;" and "wheat, fodder, green" to "wheat, hay." Also in 180.183, EPA is revising "corn, grain" to "corn, field, grain;" "corn, pop" to "corn, pop, grain;" "corn, sweet, grain (K+CWHR)" to "corn, sweet, kernel plus cob with husks removed;" "oats, fodder, green" to "oat, hay;" and "sugarcane" to "sugarcane, cane."

On June 21, 2002 (67 FR 42391)(FRL–7180–1), EPA published a final rule in the **Federal Register** concerning tolerance nomenclature, which revised the terminology of certain commodity terms listed under 40 CFR part 180, subpart C in order to establish a uniform listing, including the entries for "peanuts" to "peanut;" "sorghum, grain" to "sorghum, grain, grain;" and "soybeans" to "soybean."

12. *Ethalfluralin*. When EPA establishes tolerances for residues in or on raw agricultural commodities, consideration must be given to the possible residues of those pesticides in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticide residues (40 CFR 180.6). When considering this possibility, the EPA can conclude that (1) finite residues will exist in meat, milk, poultry, and/or eggs; (2) there is a reasonable expectation that finite residues will exist; or (3) there is a reasonable expectation that finite residues will not exist. In 1994, the ethalfluralin RED recommended revocation for egg, milk, fat, meat, and meat byproduct tolerances based on animal metabolism data (submitted since the time that the tolerances were originally established) from which EPA concluded that there is no reasonable expectation of finite residues for meat, fat, and meat byproduct commodities and the associated tolerances are not required according to 40 CFR 180.6(a)(3). Those feeding studies used exaggerated amounts of the pesticide and did not show measurable residues in animal tissues. Therefore, the Agency is revoking the tolerances in 40 CFR 180.416 for residues of ethalfluralin in or on goats, fat; goats, meat; and goats, mbyp.

13. *Ethoprop*. EPA is revoking the tolerance for okra in 40 CFR 180.262(c). There is currently no registered use of ethoprop on okra. EPA has not been able to identify a past registration of ethoprop for use on okra since an regional tolerance was established in 1987 and believes that the use was canceled years ago. Therefore, the Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade.

14. *Fluvalinate*. With the exception of honey, which is linked to the active registration for use in/on beehives, there are no active food-use registrations for the insecticide fluvalinate. The use of fluvalinate on cotton was voluntarily canceled in 1991. Cotton had been the only animal feed use for fluvalinate; therefore, the animal commodity tolerances are no longer needed. EPA believes that sufficient time has passed for exhaustion of those stocks and for treated commodities to have cleared channels of trade. Therefore, EPA is revoking the tolerances in 40 CFR 180.427(a) for residues of fluvalinate in or on cattle, fat; cattle, mbyp; cattle, meat; cottonseed; cottonseed hulls; cottonseed oil (crude and refined); eggs; goat, fat; goat, mbyp; goat, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; milk; poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; and sheep, meat.

Also, a tolerance for coffee was established in 1989 based on a FIFRA section 24(c) registration and use of fluvalinate on coffee was restricted to Hawaii. In May 1990, the registration was canceled. Therefore, the Agency is revoking the tolerance in 40 CFR 180.427(c) for residues of fluvalinate in or on coffee.

15. *Metribuzin*. The Agency is revoking the tolerance in 40 CFR 180.332 for residues of metribuzin and its triazinone metabolites in or on potato waste, processed (dried). Because potato waste, processed (dried) is no longer considered a significant feed item, the tolerance is no longer needed. The EPA had issued a RED for metribuzin, approved on May 20, 1997, but the potato waste, processed (dried) tolerance was since identified not to be a significant feed item.

16. *Oxamyl*. Because peanut, forage; pineapples, forage; and soybean straw commodities are no longer considered to be significant feed items, the associated tolerances are no longer needed. Therefore, EPA is revoking the tolerances in 40 CFR 180.303 for the sum of the residues of the insecticide oxamyl (methylN-N-dimethyl-N-[(methylcarbamoyl)-oxy]-1-thiooxamimidate) and its oxime metabolite N,N-dimethyl-N-hydroxy-1-thiooxamimidate calculated as oxamyl in or on peanut, forage; pineapple, forage; and soybean straw.

17. *Phorate*. Because these commodities are no longer considered significant livestock feed items and therefore the associated tolerances are no longer needed, EPA is revoking the tolerances in 40 CFR 180.206 for combined residues of phorate and its cholinesterase-inhibiting metabolites in or on bean, vines and peanut, vines.

Because current product labels do not allow feeding livestock with peanut hay treated with phorate, the tolerance is no longer needed. Therefore, the Agency is revoking the tolerance in 40 CFR 180.206 for peanuts, hay. In addition, sufficient sugar beet processing data are available that indicate phorate residues of concern do not concentrate in dried sugar beet pulp. Therefore, that tolerance is no longer needed and EPA is revoking the tolerance in 40 CFR 180.206 for beet, sugar, dried pulp.

18. *Phosalone*. EPA is revoking the tolerance in 40 CFR 180.263 for residues of phosalone in or on almond, hulls because that tolerance is no longer needed. In 1986, 1987, and 1991,

registrations for phosalone use on almonds were canceled. There are no U.S. registrations. While a tolerance for almonds exists for importation purposes only, the tolerance for "almond, hulls" is not needed for import purposes. Almond hulls are a livestock feed item and are not imported, nor do countries with registered uses for phosalone on almonds export significant quantities of livestock commodities to the U.S.

19. *Phosmet.* EPA is revoking the tolerances in 40 CFR 180.261 for the sum of the residues for N-(mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog N-(mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorothioate) in or on corn, fresh (inc. sweet K+CWHR); corn, fodder; corn, forage; and corn, grain because no active registrations exist which cover those commodities. Previously, on April 17, 1996 (61 FR 16779)(FRL-5360-5), EPA had published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests from the registrant to delete certain product label uses, including the corn use for phosmet. EPA approved the registrant's request for an amendment to delete the corn use from its label effective July 16, 1996, and allowed the registrant to sell and distribute affected existing stocks for 18 months; i.e., until January 16, 1998. EPA believes that end users have now had sufficient time (more than 4 years) to exhaust those stocks and for treated commodities to have cleared channels of trade.

20. *Propiconazole.* EPA is revoking the tolerance in 40 CFR 180.434 for grass, seed screenings because that commodity is no longer considered a significant feed item and therefore the tolerance is no longer needed. Also, because a tolerance for stonefruit group at 1.0 ppm already exists for the combined residues of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid (expressed as parent compound) in 40 CFR 180.434, the EPA believes that each of the individual tolerances in § 180.434 at 1.0 ppm for apricots, nectarines, peaches, plums, and prunes, fresh are unnecessary duplicates and therefore is removing them. The use of propiconazole on those commodities will be covered by the remaining group tolerance. For reassessment counting purposes, the Agency will not count removal of those fruit tolerances as reassessments because the use will remain covered by the existing "stonefruit group" tolerance. In addition, the EPA is revising the commodity terminology for in 40 CFR 180.434 to conform to current Agency practice as follows: "grass, hay (straw)" to "grass, hay" and "grass, straw;".

21. *Tetrachlorvinphos.* EPA is revoking tolerances in 40 CFR 180.252(a) for residues of tetrachlorvinphos in or on alfalfa and sheep, fat. All registered uses of tetrachlorvinphos on food or feed plant commodities, including alfalfa, were canceled in 1987. In June 1995, EPA had issued a RED for tetrachlorvinphos which recommended revoking the tolerances for "alfalfa" and "sheep, fat" because there were no registered uses associated with those commodities. On August 27, 1997 (62 FR 45416) (FRL–5737–4), the EPA published the registrant's request for voluntary cancellation for the remaining tetrachlorvinphos product that could have had the sheep use. EPA believes that end users have now had sufficient time to exhaust those stocks and for treated commodities to have cleared channels of trade.

22. *Thiram.* EPA is revoking the tolerances in 40 CFR 180.132 for celery, onions (dry bulb), tomatoes, and "bananas (from preharvest and postharvest application) of which not more than 1 part per million shall be in the pulp after peel is removed and discarded." On November 6, 1996, the EPA published a notice in the **Federal Register** (61 FR 57419)(FRL–5570–5) under section 6(f)(1) of FIFRA announcing its receipt of requests for amendments to delete certain uses, including bananas, celery, onions (dry bulb), and tomatoes from the thiram technical label, effective February 4, 1997. The Agency allowed a period of 18 months for the registrant to sell or distribute product under previously approved labeling. The Agency believes that end users have had sufficient time to exhaust product under the previously approved labeling and for treated commodities to have cleared channels of trade. For tolerance reassessment counting purposes, the EPA will count bananas as 2 tolerances (banana, with peel, pre- and post-harvest at 7.0 ppm and banana, pulp at 1.0 ppm). In addition, the EPA is revising commodity terminology in 40 CFR 180.132 to conform to current Agency practice as follows: "apples" to "apple," "peaches" to "peach," and "strawberries" to "strawberry."

23. *Tribufos.* EPA is revoking the tolerance in 40 CFR 180.272 for residues of tribufos (S,S,S-tributyl phosphorotrithioate) in or on cottonseed hulls because the tolerance is no longer needed, based on a cottonseed processing study, which showed that while residues of tribufos in cottonseed had been present, no concentration of tribufos residues occurred during normal processing procedures in cottonseed meal, hulls, crude and refined oils.

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

EPA is revoking certain tolerances for disulfoton with an expiration/revocation date of December 9, 2003. The Agency is revoking most ethion tolerances with an expiration/revocation date of October 1, 2008. The Agency is also revoking fenthion tolerances for cattle with an expiration/revocation date of April 1, 2006 and fenthion tolerances for hogs and milk with an expiration/revocation date of April 1, 2003.

However, other actions (including any commodity terminology revisions concerning tolerances for disulfoton, ethion, or fenthion, as well as revocations and commodity terminology revisions concerning tolerances for other pesticides mentioned in this final rule) become effective 90 days following publication of this final rule in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, for these other actions, the effective date is October 29, 2002. For this final rule, tolerances that were revoked because registered uses did not exist concern uses which have been canceled for many years. Therefore, commodities containing these pesticide residues should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August, 2006. As of July 17, 2002, EPA has reassessed over 5,680 tolerances. This final rule revokes 140 tolerances, four of which were previously counted as reassessed for cryolite during a registration decision action on December 5, 1997 (62 FR 64294) (FRL–5756–5), three of which were previously counted as reassessed for ethalfluralin during a registration decision action on January 17, 2002 (67 FR 2333) (FRL–6818–6), one of which was previously reassessed in the metribuzin RED of 1997, and two tolerances were previously counted as reassessed for disulfoton in a notice published on May 22, 2002 (67 FR 35991)(FRL–7178–9). Of the 140 tolerance revocations, 130 tolerances are considered reassessed in this final rule. Additionally, EPA considered six goat and sheep tolerances at 0 ppm for amitraz to be reassessed. Therefore, a total of 136 tolerance reassessments count toward the August, 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996. However, the Agency does not consider the removal of 5 propiconazole and 2 pirimiphos-methyl tolerances as reassessments and they are not counted as such in this final rule.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Comfnission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

IV. Objections and Hearing Requests

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0155 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 30, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Objection/hearing fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0155, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of

the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 22, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.108 [Amended]

2. Section 180.108 is amended by removing the entries for "Grass (pasture and range)" and "Grass hay" from the table in paragraph (a)(1).

3. Section 180.132 is revised to read as follows:

§ 180.132 Thiram; tolerances for residues.

(a) *General.* Tolerances for residues of the fungicide thiram (tetramethyl thiuram disulfide) in or on raw agricultural commodities are established as follows:

Commodity	Parts per million
Apple	7.0
Peach	7.0
Strawberry	7.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.145 [Amended]

4. Section 180.145 is amended by removing the entries for "Beet, roots"; "Radish, roots"; "Rutabaga, roots"; and "Turnip, roots" from the table in paragraph (a)(1).

§ 180.169 [Amended]

5. Section 180.169 is amended by removing the entries for "Barley, grain"; "Barley, green fodder"; "Barley, straw"; "Cotton, forage"; "Oat, fodder, green"; "Oat, grain"; "Oat, straw"; "Rye, fodder, green"; "Rye, grain"; and "Rye, straw" from the table in paragraph (a)(1).

6. Section 180.173 is amended by revising the table in paragraph (a) to read as follows:

§ 180.173 Ethion; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million	Expiration/Revocation Date
Cattle, fat	2.5	None
Cattle, meat (fat basis)	2.5	None
Cattle, meat byproducts	1.0	None
Citrus, dried pulp	10.0	10/1/08
Fruit, citrus	2.0	10/1/08
Goat, fat	0.2	10/1/08
Goat, meat	0.2	10/1/08
Goat, meat byproducts	0.2	10/1/08
Hog, fat	0.2	10/1/08
Hog, meat	0.2	10/1/08
Hog, meat byproducts	0.2	10/1/08
Horse, fat	0.2	10/1/08
Horse, meat	0.2	10/1/08
Horse, meat byproducts]	0.5	None
Milk fat (reflecting (N) residues in milk)	0.2	10/1/08
Sheep, fat	0.2	10/1/08
Sheep, meat	0.2	10/1/08
Sheep, meat byproducts	0.2	10/1/08

* * * * *

7. Section 180.183 is amended by revising paragraph (a) to read as follows:

§ 180.183 [O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide O,O-diethyl S-[2-(ethylthio)ethyl] phosphorodithioate and its cholinesterase-inhibiting metabolites, calculated as demeton, in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/Revocation Date
Barley, grain	0.75	None
Barley, straw	5.0	None
Bean, dry, seed	0.75	None
Bean, lima	0.75	None
Bean, snap	0.75	None
Broccoli	0.75	None
Brussels sprouts	0.75	None
Cabbage	0.75	None
Cauliflower	0.75	None
Coffee, bean	0.3	None
Corn, field, forage	5.0	12/9/03
Corn, field, grain	0.3	12/9/03
Corn, field, stover	5.0	12/9/03
Corn, pop, forage	5.0	12/9/03
Corn, pop, grain	0.3	12/9/03
Corn, pop, stover	5.0	12/9/03
Corn, sweet, forage	5.0	12/9/03
Corn, sweet, kernel plus cob with husks removed	0.3	12/9/03

Commodity	Parts per million	Expiration/Revocation Date
Corn, sweet, stover	5.0	12/9/03
Cotton, undelinted seed	0.75	None
Hop, dried cones	0.5	None
Lettuce	0.75	None
Oat, grain	0.75	12/9/03
Oat, hay	5.0	12/9/03
Oat, straw	5.0	12/9/03
Peanut	0.75	None
Pea	0.75	None
Pea, field, vines	5.0	None
Pecan	0.75	12/9/03
Pepper	0.1	None
Potato	0.75	None
Sorghum, forage	5.0	None
Sorghum, grain, grain	0.75	None
Sorghum, grain, stover	5.0	None
Soybean	0.1	None
Soybean, forage	0.25	None
Soybean, hay	0.25	None
Spinach	0.75	None
Sugarcane, cane	0.3	None
Tomato	0.75	None
Wheat, hay	5.0	None
Wheat, grain	0.3	None
Wheat, straw	5.0	None

* * * * *

§ 180.206 [Amended]

8. Section 180.206 is amended by removing the entries for "Bean, vines"; "Beet, sugar, dried pulp"; "Peanut, hay"; and "Peanut, vines"; from the table in paragraph (a).

9. Section 180.214 is amended by revising the table in paragraph (a) to read as follows:

§ 180.214 Fenthion; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million	Expiration/Revocation Date
Cattle, fat	0.1	4/1/06
Cattle, meat	0.1	4/1/06
Cattle, meat byproducts	0.1	4/1/06
Hog, fat	0.1	4/1/03
Hog, meat	0.1	4/1/03
Hog, meat byproducts	0.1	4/1/03
Milk	0.01	4/1/03

* * * * *

§ 180.252 [Amended]

10. Section 180.252 is amended by removing from the table in paragraph (a)(1) the entries for "Alfalfa" and "Sheep, fat."

§ 180.261 [Amended]

11. Section 180.261 is amended by removing from the table in paragraph (a) the entries for "Corn, fresh (inc. sweet K+CWHR)"; "Corn, fodder"; "Corn, forage"; and "Corn, grain."

12. Section 180.262 is amended by removing the text of paragraph (c) and reserving paragraph (c) with a heading, to read as follows:

§ 180.262 Ethoprop; tolerances for residues.

* * * * *

(c) *Tolerances with regional registrations.* [Reserved]

* * * * *

§ 180.263 [Amended]

13. Section 180.263 is amended by removing the entry for "Almond, hulls" from the table.

§ 180.272 [Amended]

14. Section 180.272 is amended by removing from the table in paragraph (a) the entry for "Cotton, hulls."

15. Section 180.287 is amended as follows:

i. By redesignating the existing text as paragraph (a) and adding a heading.

ii. By removing the entries from table in newly designated paragraph (a) for "Apple"; "Beeswax"; "Hop, dried cone"; "Horse, fat"; "Horse, meat byproducts"; and "Horse, meat."

iii. By alphabetically adding entries for "Honeycomb" and "Hop, dried cones" to the table in newly designated paragraph (a).

iv. By adding and reserving with headings paragraphs (b), (c), and (d).

§ 180.287 Amitraz; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * *	*
Honeycomb	6.0
Hop, dried cones	60.0
* * * *	*

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.303 [Amended]

16. Section 180.303 is amended by removing from the table in paragraph (a)(1) the entries for "Peanut, forage"; "Pineapple, forage"; and "Soybean straw."

17. Section 180.315 is amended by revising the table in paragraph (a) to read as follows:

§ 180.315 Methamidophos; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Broccoli	1.0
Brussels sprouts	1.0
Cabbage	1.0
Cauliflower	1.0
Cotton, undelinted seed	0.1
Cucumber	1.0
Eggplant	1.0
Lettuce	1.0
Melon	0.5
Pepper	1.0
Potato	0.1
Tomato	1.0

* * * * *

§ 180.332 [Amended]

18. Section 180.332 is amended by removing from the table in paragraph (a) the entry for "Potato waste, processed (dried)."

19. Section 180.342 is amended as follows:

i. By removing the entries for "Bean, lima, forage"; "Bean, snap, forage"; "Mushroom"; "Seed and pod vegetables" and "Sorghum milling fractions" from the table in paragraph (a)(1).

ii. By changing "Bean, snap" to "Bean, snap, succulent"; "Sorghum, fodder" to "Sorghum, grain, stover"; and "Sorghum, grain" to "Sorghum, grain, grain"; in the table in paragraph (a)(1).

iii. By removing the entries for "Bean, forage"; "Caneberries"; "Pea forage"; and "Sugarcane" from the table in paragraph (a)(2).

iv. By changing "Sweet potato" to "Sweet potato, roots" in the table in paragraph (a)(2).

v. By revising paragraph (c)(1).

The section, as amended, reads as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(c) *Tolerances with regional registrations.* (1) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol in or on the following food commodities:

Commodity	Parts per million
Asparagus	5.0
Grape	0.5
Leek (of which no more than 0.2 ppm is chlorpyrifos)	0.5

* * * * *

§ 180.404 [Amended]

20. Section 180.404 is amended by removing the entries for "Cotton, hulls"; "Hog, fat"; "Hog, meat byproducts"; and "Hog, meat" from the table in paragraph (a).

21. Section 180.409 is amended by revising the table in paragraph (a)(1); removing paragraph (a)(2); and redesignating paragraph (a)(3) as paragraph (a)(2) to read as follows:

§ 180.409 Pirimiphos-methyl; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Cattle, fat	0.2
Cattle, kidney	2.0
Cattle, liver	2.0
Cattle, meat	0.2
Cattle, meat byproducts	0.2
Corn	8.0
Goat, fat	0.2
Goat, kidney	2.0
Goat, liver	2.0
Goat, meat byproducts	0.2
Hog, fat	0.2
Hog, kidney	2.0
Hog, liver	2.0
Hog, meat byproducts	0.2
Horse, fat	0.2
Horse, kidney	2.0
Horse, liver	2.0
Horse, meat byproducts	0.2
Kiwifruit	5.0
Poultry, fat	0.2
Sheep, fat	0.2
Sheep, kidney	2.0
Sheep, liver	2.0
Sheep, meat byproducts	0.2
Sorghum, grain, grain	8.0

* * * * *

§ 180.416 [Amended]

22. Section 180.416 is amended by removing the entries for "Goat, fat"; "Goat, meat"; and "Goat, meat byproducts" from the table in paragraph (a).

23. Section 180.427 is amended by revising the table in paragraph (a); removing the text in paragraph (c); and reserving paragraph (c) with a heading to read as follows:

§ 180.427 Fluvalinate; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Honey	0.05

* * * * *

(c) *Tolerances with regional registrations.* [Reserved]

* * * * *

§ 180.434 [Amended]

24. Section 180.434 is amended by revising the table in paragraph (a) as follows:

i. By removing the entries for "Apricot," "Grass, seed screenings," "Nectarine," "Peach," "Plum," and "Plum, prune, fresh."

ii. By changing "Grass, hay (straw)" to "Grass, hay" and "Grass, straw;".

[FR Doc. 02–19104 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7252–4]

Michigan: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting Michigan final authorization of revisions to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). EPA published a proposed rule on February 28, 2002 at 67 *FR* 9225 and provided for public comment. The public comment period ended on April 15, 2002. We received comments from two commenters, addressed below. No further opportunity for comment will be provided. EPA has determined that Michigan's revisions satisfy all requirements for final authorization.

EFFECTIVE DATE: Final authorization for the revisions to Michigan's hazardous

waste management program will become effective on July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division (DM–7J), 77 W. Jackson Blvd., Chicago, Illinois 60604, phone number: (312) 886–4179; or Ms. Kimberly Tyson, Michigan Department of Environmental Quality, 608 W. Allegan, Hannah Building, Lansing, Michigan, phone number: (517) 373–2487.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Were the Comments and Responses to EPA's Proposal?

On February 28, 2002 (67 *FR* 9225), EPA published a proposed rule announcing the availability for public comment of Michigan's application for revisions to its authorized hazardous waste management program. EPA also announced that it had reviewed the application and determined that these revisions satisfy all requirements needed to qualify for final authorization. EPA received written comments from two commenters during the public comment period. The significant issues raised by the commenters and EPA's responses are summarized below.

I. Comments From the Michigan Department of Environmental Quality

Comment #1: The Michigan Department of Environmental Quality (MDEQ) submitted a comment objecting to EPA's determination that Michigan is not authorized to carry out its hazardous waste program in Indian country within the state, as defined in 18 U.S.C. 1151. MDEQ notes that the original application for the RCRA base program included a statement from Michigan's Office of Attorney General that the Michigan "does not, at this time, seek any federal authorization over "Indian lands" within Michigan." MDEQ does not agree that the term "Indian country" means the same as "Indian lands." It interprets the term "Indian lands" to mean either land held in trust by the federal government for the benefit of a federally recognized Indian tribe or Indian-owned lands within Indian reservations.

Response: EPA disagrees with the interpretation that there is a difference between the terms "Indian lands" and "Indian country" for purposes of implementing EPA programs. In the context of RCRA, EPA's interpretation that the two terms are synonymous has been specifically approved by the Ninth Circuit Court of Appeals in *Washington Dep't of Ecology* v. *U.S. EPA*, 752 F.2d 1465, 1467, n.1 (9th Cir.1985). The Court stated:

> In the course of this litigation, EPA has regarded [the term "Indian lands"] as synonymous with "Indian country," which is defined at 18 U.S.C.1151 to include all lands (including fee lands) within Indian reservations, dependent Indian communities and Indian allotments to which Indians hold title. We accept this definition as a reasonable marker of the geographic boundary between state and federal authority.

EPA has consistently interpreted "Indian country" to be the same as "Indian lands." For example, EPA's regulations implementing RCRA Subtitle D define "Indian lands" to be the same as "Indian country." 40 CFR 258.2. *See also* 40 CFR 144.3 (regulations under the Safe Drinking Water Act define "Indian lands" to be the same as "Indian country"). In addition, it is clear that EPA has used the terms "Indian country" and "Indian lands" interchangeably when addressing authorization of state programs under RCRA Subtitle C. For some examples of this practice, *see* 65 *FR* 46606, 610 (July 31, 2000) (Virginia); 65 *FR* 33774, 776 (May 25, 2000) (Minnesota); 65 *FR* 29973, 978 (May 10, 2000) (West Virginia); 65 *FR* 26755 (May 9, 2000) (South Dakota); 64 *FR* 49673, 674, 680 (September 14, 1999) (Texas); 58 *FR* 8232 (Feb. 12, 1993) (Utah); 51 *FR* 3782 (January 30, 1986) (Washington).

Outside of the environmental context, the term "Indian lands" has frequently been used to refer to more than lands held in trust or Indian-owned land. For example, Congress has defined "Indian lands" to include "Indian country" in the Indian Tribal Regulatory Reform and Business Development Act of 2000 (25 U.S.C. 4302(4)) and in the Indian Tribal Justice Technical and Legal Assistance Act of 2000 (25 U.S.C. 3653(2), and it defined "Indian lands" to include all lands within the limits of any Indian reservation in the Indian Gaming Regulatory Act (25 U.S.C. 2703(4). Other agencies have adopted similar definitions of the term Indian lands. *See* 30 CFR 700.5 (adopted by the Department of Interior under the Surface Mining Control and Reclamation Act, "Indian lands" includes all lands within the exterior boundaries of any federal Indian Reservation) and 25 CFR 502.12 (adopted by the Indian Gaming Commission under the Indian Gaming Regulatory Act, "Indian lands" include "land within the limits of an Indian Reservation").

Comment #2: MDEQ also stated that EPA, relying upon its position on "Indian lands," has asserted that the state lacks implementing authority over non-Indian facilities on non-Indian lands. In some cases, these assertions have even encompassed facilities over which the EPA has explicitly delegated authority to the state.

Response: EPA takes the position that an EPA-approved state program does not apply in Indian country (including any non-Indian facilities in Indian country) unless the state has expressly demonstrated authority and EPA has expressly approved the state to administer the EPA program there. EPA has not expressly authorized the State of Michigan under the federal environmental laws in Indian country.

Comment #3: MDEQ comments that EPA's interpretation of what lands constitute a reservation appears to be typically based solely on claims of tribes, even where those claims are clearly contrary to applicable laws and treaties, as well as all available historical evidence, and have never been established in a court of law.

Response: Under RCRA, EPA determines which lands constitute a reservation (and hence are within Indian country) on a case-by-case basis. EPA does not rely solely on the claims of tribes in making this determination. EPA generally consults with the Department of Interior in making this determination and takes into account all applicable information, including treaties and other laws.

Comment #4: MDEQ commented that the term "Indian country" appears in a criminal statute which predates RCRA. MDEQ also commented that EPA's interpretation diminishes the scope of Michigan's base RCRA program.

Response: The use of the term "Indian country" rather than the term "Indian lands" would not diminish Michigan's base program, since EPA treats those two terms as synonymous. The statutory

definition of "Indian country" in 18 U.S.C. 1151, includes, *inter alia*, all lands within the limits of any Indian reservation, including non-member fee lands. EPA notes that, although the definition of Indian country appears in a criminal code, it generally applies to civil judicial and regulatory jurisdiction. *Alaska* v. *Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 527 (1998); *Decoteau* v. *District County Court*, 420 U.S. 425, 427 n.2 (1975). EPA also notes that its interpretation of the two terms has been held consistently even before Michigan received authorization for the base RCRA program in October of 1986. See *Washington Dep't of Ecology* v. *U.S. EPA*, 752 F. 2d 1465, 1467, n.1 (9th Cir. 1985).

II. Comments From a Second Commenter

Comment #5: The commenter asserts that EPA should have hosted a public hearing.

Response: Michigan received final authorization for its RCRA program on October 30, 1986, and is applying for a revision to its authorized program to reflect analogous modifications to the federal RCRA Subtitle C program. The regulations governing review of program revisions at 40 CFR part 271 do not require a hearing for authorization of revisions. On March 4, 1986, EPA promulgated amendments to 40 CFR 271.21 that eliminated public hearing requirements for revisions. The Agency discussed this elimination in the preamble to that rule:

> As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of state programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. * * *

51 *FR* 7540 at 7541 (March 4, 1986).

Comment #6: The commenter asserts that Michigan's statutes in Public Act 451 Part 111 and 115 do not appear to provide authority for the land application of hazardous waste found in R 299.9801, Mich. Adm. Code.

Response: R 299.9801, Mich. Adm. Code, was adopted by the State of Michigan effective on December 28, 1985. The Attorney General of the State of Michigan submitted a statement, signed September 7, 1988, that certified that "the laws of the State of Michigan provide adequate authority to carry out the revised program set forth in the revised "Program Description" submitted by the Michigan Department of Natural Resources." (The agency was later renamed the Department of Environmental Quality.) Page 3 of that statement, paragraph II.A, reads, "State statutes and regulations define hazardous waste and impose management standards so as to control all the hazardous waste controlled under 40 CFR 261, 264, 265 and 266 as amended August 20, 1985 [50 *FR* 33541–43]* * *" The statement further cites to the following statutory and regulatory authority, among others:

- 1979 Act 64, section 4(3); MCL 299.504(3); MSA 13.30(4)(3) (currently 1994 Act 451, section 11103(3); MCL 324.11103(3); MSA 13a.11103(3)).
- 1979 Act 64, section 26; MCL 299.526; MSA 13.30(26) (currently 1994 Act 451, section 11127; MCL 324.11127; MSA 13a.11127)).
- Mich. Admin. Code 1985 AACS, R 299.9101 *et seq.*

EPA reviewed the statement and the citations of authority and found them satisfactory, and authorization of the state program revisions became effective on April 24, 1989.

Comment #7: The commenter asserts that R 299.9801, Mich. Adm. Code, allows for the unregulated disposal of hazardous waste as a fertilizer "product," whereas R 299.4111, Mich. Adm. Code, which pertains to plans to manage solid wastes as non-detrimental material managed for agricultural or silvicultural use, would heavily regulate non-hazardous waste.

Response: For the reasons discussed below, this authorization action is not the appropriate forum for these comments. As in the federal regulations at 40 CFR 266.20, R 299.9801, Mich. Admin. Code, exempts products that contain "recyclable materials used in a manner constituting disposal" (except K061 derived fertilizers [1]) from regulation only if they comply with applicable land disposal restriction (LDR) treatment standards or, where no treatment standards have been established, if they comply with the applicable prohibition levels or with section 3004(d) of RCRA, for each recyclable material that the products contain. EPA promulgated 40 CFR 266.20 on January 4, 1985 (*see* 50 *FR* 614) and revised this regulation on August 17, 1988 (*see* 53 *FR* 31138); September 6, 1989 (54 *FR* 36967); and August 24, 1994 (59 *FR* 8583). Michigan R 299.9801 is equivalent to the federal requirements and was previously authorized by EPA effective on October 30, 1986 (51 *FR* 36804, October 16, 1986) and on April 8, 1996 (61 *FR* 4742, February 2, 1996). The program revisions EPA is authorizing today do not affect the equivalency of R 299.9801.

Moreover, this comment is not relevant to this action because R 299.4111, Mich. Adm.Code, is not part of and has no effect upon this action or Michigan's authorized hazardous waste program. R 299.4111, which regulates plans for managing solid wastes as non-detrimental material managed for agricultural or silvicultural use, is not applicable to hazardous wastes because R 299.4110 exempts hazardous wastes from regulation as solid waste. R 299.4110 reads as follows:

> As provided by section 11506 of the act, the following wastes are "other wastes regulated by statute" and are exempt from regulation as solid wastes under part 115 of the act: (a) hazardous waste regulated under part 111 of the act.

By its terms, R 299.4111, Mich. Adm. Code, applies to solid wastes:

> (1) A person shall not apply sludges, ashes, or other *solid waste* to the land without having obtained a license under the act, unless the director has approved a plan for managing the wastes as nondetrimental materials that are appropriate for agricultural or silvicultural use or has otherwise authorized the application under part 31 of the act. *(Emphasis added)*

While both solid waste and its subset hazardous waste are regulated under the umbrella of RCRA, that statute contains different subchapters for governing the content, criteria and administration of hazardous waste programs (Subchapter III) and solid waste plans (Subchapter IV). EPA's authority to "authorize" a state to administer and enforce a "hazardous waste program" under Subchapter III of RCRA (*see* 3006 of RCRA, 42 U.S.C. 6926) does not constitute "approval" of either a state solid waste plan (*see* section 4007(a) of RCRA, 42 U.S.C. 6947(a), or a solid waste management facility permit program (*see* section 4005(c) of RCRA, 42 U.S.C. 6945(c)), under Subchapter IV of RCRA. The criteria for authorization of a state hazardous waste program are set part in section 3006 of RCRA. In reviewing an application under section 3006, EPA considers whether the state program (1) is equivalent to the federal program under Subchapter III, which governs hazardous waste; (2) is consistent with federal or "state programs applicable in other states"; and (3) provides adequate enforcement of compliance with the requirements of

[1] EPA has proposed to remove the regulatory provision which currently exempts fertilizer made from K061 from having to meet applicable LDR standards in EPA's proposed rule "Requirements for Zinc Fertilizers Made from Recycled Hazardous Secondary Materials," dated November 28, 2000, 65 *FR* 70985.

Subchapter III of RCRA. As part of this review, EPA considers whether the state is imposing requirements less stringent than those authorized under Subchapter III respecting the same matter as governed by such regulation. (*See* sections 3006 and 3009 of RCRA, 42 U.S.C. 6926 and 6929.) The commenter's request for EPA to review R 299.9801 for consistency with R 299.4111, which explicitly does not apply to hazardous waste, falls outside the scope of this action.

For the reasons set forth above, the comments on R 299.4111, Mich. Admin. Code, are not relevant to today's action.

C. What Decisions Have We Made in This Rule?

We conclude that Michigan's revisions to its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Michigan final authorization to operate its hazardous waste program with the revisions described in the authorization application. Michigan now has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before the states are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Michigan, including issuing permits, until the state is granted authorization to do so.

D. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Michigan subject to RCRA will now have to comply with the authorized state requirements in lieu of the corresponding federal requirements in order to comply with RCRA. Additionally, such persons will now have to comply with any applicable federally-issued requirements, such as HSWA regulations issued by EPA for which the state has not received authorization, and RCRA requirements that are not supplanted by authorized state-issued requirements. Michigan continues to have enforcement responsibilities under its state hazardous waste management program for violations of its hazardous waste management program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the state has taken its own actions.

This action to approve these revisions does not impose additional requirements on the regulated community because the regulations for which Michigan is being authorized by today's action are already effective, and are not changed by today's action.

E. What Has Michigan Previously Been Authorized for?

Michigan initially received final authorization on October 16, 1986, effective October 30, 1986 (51 *FR* 36804–36805) to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program effective January 23, 1990 (54 *FR* 48608, November 24, 1989); effective June 24, 1991 (56 *FR* 18517, January 24, 1991); effective November 30, 1993 (58 *FR* 51244, October 1, 1993); effective January 13, 1995 (60 *FR* 3095, January 13, 1995); effective April 8, 1996 (61 *FR* 4742, February 8, 1996); effective November 14, 1997 (62 *FR* 61775, November 14, 1997); and effective June 1, 1999 (64 *FR* 10111, March 2, 1999).

F. What Changes Are We Authorizing With Today's Action?

On March 3, 2000, and April 3, 2001, Michigan submitted complete program revision applications seeking authorization of its changes in accordance with 40 CFR 271.21. We now make a final decision that Michigan's hazardous waste management program, as revised, satisfies all requirements under RCRA necessary to qualify for final authorization. Therefore, we grant Michigan final authorization for the program revisions described in the February 28, 2002 proposed rule (67 *FR* 9225). For further details, see the February 28, 2002 proposed rule.

G. Who Handles Permits After the Authorization Takes Effect?

Michigan will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization, until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions for which Michigan is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized.

H. What Is Codification and Is EPA Codifying Michigan's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart X, for this authorization of Michigan's program changes until a later date.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian country within the state, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Michigan;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian country.

Therefore, today's action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in Indian country. It is EPA's long-standing position that the term "Indian lands" used in past Michigan hazardous waste approvals is synonymous with the term "Indian country." *Washington Dep't of Ecology v. U.S. EPA*, 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). *See* 40 CFR 144.3 and 258.2.

J. Administrative Requirements

The Office of Management and Budget has exempted RCRA authorizations from the requirements of Executive Order 12866 (58 *FR* 51735, October 4, 1993), and therefore this action is not subject to review by OMB. Furthermore, this action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 *FR* 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action authorizes state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. This authorization will effectively suspend

the applicability of certain federal regulations in favor of Michigan's program, thereby eliminating duplicate requirements for handlers of hazardous waste in the state. Authorization will not impose any new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This action does not have tribal implications within the meaning of Executive Order 13175 (65 *FR* 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 *FR* 43255, August 10, 1999), because it merely authorizes state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 *FR* 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action does not include environmental justice related issues that require consideration under Executive Order 12898 (59 *FR* 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 *FR* 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 *FR* 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1994 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States, prior to publication of this rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 23, 2002.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 02–19226 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 072202B]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustment to the 2002 Scup Winter II Commercial Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scup Winter II commercial quota adjustment for 2002.

SUMMARY: NMFS (NOAA Fisheries) adjusts the 2002 Winter II commercial scup quota. This action complies with a provision of the commercial quota management program established by the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). Scup landings in excess of the quota allocated for the prior year's Winter II quota period (November and December) must be deducted from the Winter II scup quota for the following year. The intent of this action is to continue the rebuilding program described in the FMP's objectives, by taking into account 2001 overages of the scup Winter II quota.

DATES: Effective July 31, 2002, through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fisheries Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION:

Background

NOAA Fisheries published a final rule in the **Federal Register** on December 26, 2001 (66 FR 66348), announcing specifications and adjustments to the 2002 summer flounder, scup, and black sea bass commercial quotas. On February 14, 2002, NOAA Fisheries published a final rule in the **Federal Register** (67 FR 6877) revising the method by which the commercial quotas for these species are to be adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). The FMP originally required that any landings in excess of a commercial quota allocation for a state or period in one year would be deducted from that state's or period's annual quota allocation for the following year. This was problematic because complete landings data for the

year were often not available until much later in the next fishing year. As a result, it was frequently necessary for NMFS to publish several subsequent quota adjustments during the next fishing year, as landings information became available. These adjustments complicated the resource management efforts of state marine fisheries agencies, and hampered planning by commercial fishers. The regulatory amendment corrected these deficiencies by establishing a cut-off date of October 31 for landings data to be used in calculating quota overages and making the resultant adjustments to the quotas when developing the specifications for the upcoming fishing year. The regulatory amendment also specified that, by June 30 of the following year, all available landings data for the previous year's Winter II scup quota period (November - December) and the Quarter 4 black sea bass quota period (October - December) would be compiled and compared to the quota allocations for those periods. Any resultant overages would be deducted from the quotas for the current fishing year in July, through notification in the **Federal Register**. Any further overages identified as a result of late data submitted for any given year's quota periods would be applied to the quota allocations for the next fishing year. Accordingly, this notice is being published to inform the public of overages of the 2001 Winter II scup quota period and to adjust the 2002 Winter II scup quota to account for those overages. There was not an overage of the 2001 Quarter 4 black sea bass quota so an adjustment of the 2002 Quarter 4 quota is not necessary.

The adjustment in this notification is final. Additional data, including late landings reported from either federally permitted dealers or state statistical agencies reporting landings by non-federally permitted dealers, that are received will be added onto available 2002 landings and then used to determine any adjustments to the 2003 quotas during the specification-setting process for the 2003 fishing year.

Scup

The 2001 Winter II scup quota, available 2001 Winter II scup landings, and the resulting overage of the 2001 Winter II scup quota are presented in Table 1. The resulting adjusted 2002 Winter II scup commercial quota is presented in Table 2.

TABLE 1. SCUP WINTER II 2001 LANDINGS AND OVERAGE

Period	2001 Quota		2001 Landings		2001 Overage	
	Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
Winter II	708,469	321,356	777,790	352,800	69,321	31,444

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

TABLE 2. SCUP WINTER II ADJUSTED 2002 QUOTA

Period	2002 Initial Quota		2002 Adjusted Quota	
	Lb	Kg[1]	Lb	Kg[1]
Winter II	1,248,823	566,456	1,179,502	535,013

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19363 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 147
Wednesday, July 31, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN No. 3150–AH03

Cost Recovery for Contested Hearings Involving U.S. National Security Initiatives

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to allow the agency to recover its costs associated with contested hearings involving U. S. Government national security-related proceedings through licensing or other regulatory service fees assessed to the affected applicant or licensee. This proposed amendment would be a special exception to the Commission's longstanding policy of not charging this type of fee for contested hearings and instead recovering the costs through the annual fees assessed to licensees within the affected class.

DATES: The comment period expires August 30, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–415–1678). Comments may be faxed to (301) 415–1101.

Comments may also be submitted via the NRC's interactive rulemaking Website (http://ruleforum.llnl.gov). This site provides the ability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*.

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Carlson, telephone 301–415–8165, or Glenda Jackson, telephone 301–415–6057, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action
III. Plain Language
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis

I. Background

The NRC has a longstanding policy of charging the affected applicant part 170 fees to recover the agency's costs for any uncontested hearings that the NRC holds on applications to construct a power reactor or enrichment facility. These hearings are mandated by statute. However, the NRC's costs for all contested hearings [1] have been recovered through part 171 annual fees assessed to the members of the particular class of licensee to which the applicant belongs.

The NRC published the final rule establishing the part 170 and part 171 fees for FY 2002 on June 24, 2002 (67 FR 42612). The NRC had received a comment on the proposed rule from a nuclear industry group concerning the assessment of annual fees to the fuel facility class of licensees for recovery of the costs involving a contested hearing related to the application for a mixed oxide (MOX) fuel fabrication facility. The industry group commented that assessing the MOX contested hearing costs to the fuel facility fee class was unfair, and that it was a violation of the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, to charge licensees for an agency activity or program from which the licensees receive no benefit. The commenter asserted that fuel facility licensees should not be responsible for bearing the costs of contested hearings associated with MOX fabrication because this process has no relation to the NRC's regulatory services from which fuel facility licensees obtain a benefit.[2] The commenter added that the beneficiaries of the MOX program are the Federal government and the Nation's citizenry because it will aid in the reduction of weapons-grade plutonium. The commenter contended that commercial fuel facility licensees should not have to subsidize the Federal government's efforts to ensure national security, and that such costs should be appropriated through the General Fund and removed from the NRC fee base.

The NRC responded that it must recover its hearing costs through either part 170 fees for services or through part 171 annual fees in order to recover most of its budgeted costs (less the amounts appropriated from the Nuclear Waste Fund) through fees as required by OBRA–90, as amended. The Commission's longstanding policy of recovering contested hearing costs through part 171 annual fees assessed to the affected class of licensee has been confirmed repeatedly in the course of many past fee rulemakings, in court pleadings, and in an NRC report to Congress on fees.

In this case, however, the Commission has stated in the FY 2002 final fee rule that there is merit in the commenter's concern about the assessment of annual fees targeted to the fuel facility class for

[1] A contested proceeding is defined in 10 CFR 2.4 as (1) a proceeding in which there is a controversy between the staff of the Commission and the applicant for a license concerning the issuance of the license or any of the terms or conditions thereof or (2) a proceeding in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission.

[2] The MOX program is a Federal government initiative to ensure national security through the disposition of plutonium from dismantled nuclear weapons.

the MOX contested hearing costs, because the NRC licensing action that is the subject of the hearing involves a U.S. Government national security initiative to dispose of plutonium stockpiles. Accordingly, the FY 2002 final fee rule provided that FY 2002 budgeted costs for the MOX contested hearing be recovered through part 171 annual fees assessed to all classes of licensees. The final rule also stated that it was the Commission's intent to issue a proposed rule for public comment that would, beginning in FY 2003, recover the costs for contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee.

Accordingly, the NRC is seeking public comment on its proposal to recover the agency's costs for contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC, through part 170 fees assessed to the affected applicant or licensee. This proposed change would be a special exception to the Commission's policy of not recovering contested hearing costs through part 170 fees assessed to the affected applicant or licensee. The proposed change would only apply to contested hearings on licensing actions directly associated with U.S. Government national security initiatives, such as Presidentially directed national security programs. The affected applicant or licensee would be responsible for the payment of the part 170 fees assessed for these types of contested hearings under the proposed approach. However, because part 170 fees would only be assessed for contested hearings on licensing actions directly involving U.S. Government national security initiatives, the Commission expects that generally the costs would ultimately be borne by the Federal government, rather than the applicant.

In addition to the contested hearing on the MOX fuel fabrication facility application, any potential contested hearing on the TVA license amendments to produce tritium at the Watts Bar and Sequoyah reactors for the Nation's nuclear weapons program would be another example of a contested hearing on a licensing action directly involving a U.S. Government national security initiative for which part 170 fees would be assessed under this proposed rule. Examples of contested hearings on licensing actions that do not involve a U.S. Government national security initiative include the contested hearing on the application for a uranium recovery license filed by Hydro Resources Inc., and the contested hearing on the independent spent fuel storage installation application filed by Private Fuel Storage L.L.C. Furthermore, the proposed rule would leave intact the existing policy of not assessing part 170 fees for contested hearings associated with applications or licenses that are used to provide routine services to U.S. Government agencies.

It should be noted that the Independent Offices Appropriation Act (IOAA) prohibits the NRC from assessing part 170 fees to Federal agencies, except in limited circumstances, such as licensing and inspection of TVA power reactors. Therefore, the proposed change would not apply to most contested hearings on licensing actions involving U.S. Government national security initiatives where a Federal agency is the applicant or licensee.

In the future, the Commission plans to consider a similar approach for recovering NRC's costs for other activities involving U.S. Government national security-related programs, such as allegations and 10 CFR 2.206 petitions, through part 170 fees assessed to the applicant or licensee.

II. Proposed Action

The NRC is proposing to amend 10 CFR part 170 to establish a provision for assessing part 170 fees to the affected applicant or licensee to recover the NRC's full costs of contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC. To implement this special exception to the Commission's longstanding policy of not assessing part 170 fees for contested hearing costs, the NRC is proposing to add a fee exemption to § 170.11 for contested hearings, and to specifically exclude contested hearings on licensing actions directly related to U.S. Government national security initiatives, as determined by the NRC, from the fee exemption. The NRC is proposing to revise the definition of *Special Projects* to include contested hearings on licensing actions related to U.S. Government national security initiatives, and to make corresponding changes to the section related to the payment of special project fees and to fee category J. of § 170.21 and fee category 12. of § 170.31. Only those contested hearings on licensing actions directly associated with a U.S. Government national security initiative, such as those specifically related to Presidentially directed national security programs, would be subject to cost recovery under part 170. The NRC would continue to recover its costs for those contested hearings that are exempted from part 170 fees through part 171 annual fees assessed to the particular class of licensees.

The final rule will not be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC anticipates that the final rule would become effective 30 days after publication in the **Federal Register**. It is the agency's intent to publish the final rule no later than the first quarter of FY 2003.

As a matter of courtesy, the NRC is mailing this proposed rule to all licensees. The NRC will not routinely mail the final rule to all licensees; however the final rule will be mailed to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at *fees@nrc.gov*. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the **ADDRESSES** heading.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is amending part 170 to recover costs from applicants or licensees in contested hearings involving Commission-specified U.S. Government national security-related initiatives. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed regulation.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

This proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the *U.S. Court of Appeals for the Fifth Circuit in Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980).

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would impose a fee on a very limited number of applicants or licensees to recover the costs of contested hearings involving Commission-specified U.S. Government national security-related initiatives, and it is unlikely that these few organizations would fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

IX. Backfit Analysis

The NRC has determined that its backfit rules do not apply to this proposed rule and therefore, that a backfit analysis is not required for this proposed rule, because these proposed amendments do not impose any provisions that would impose backfits as defined in 10 CFR Chapter 1.

List of Subjects in 10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 170.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.3 is amended by revising the definition of *Special Projects* to read as follows:

§ 170.3 Definitions.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter and contested hearings on licensing actions directly related to U.S. Government national security initiatives, as determined by the NRC. Examples of special projects include, but are not limited to, contested hearings on licensing actions directly related to Presidentially directed national security programs, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports.

* * * * *

3. In § 170.11, paragraph (a)(2) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(2) A contested hearing conducted by the NRC on a specific application or the authorizations and conditions of a specific NRC license, certificate, or other authorization. This exemption does not apply to a contested hearing on a licensing action that the NRC determines directly involves a U.S. Government national security-related initiative, including those specifically associated with Presidentially directed national security programs.

* * * * *

4. In § 170.12, paragraph (d) is revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(d) *Special Project Fees.* (1) Fees for special projects are based on the full cost of the review or contested hearing. Special projects include activities such as —

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports;

(v) 10 CFR 50.71 final safety analysis reports; and

(vi) Contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the review or contested hearing is completed. Each bill will identify the documents submitted for review or the specific contested hearing and the costs related to each. The fees are payable upon notification by the Commission.

* * * * *

5. In § 170.21, the introductory text is presented for the convenience of the user and Category J is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, re-qualification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1,2]
* * * * * * *	
J. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections[3]	Full Cost.
Contested hearings on licensing actions directly related to U.S. Government national security initiatives	Full Cost.
* * * * * * *	

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

6. In § 170.31, the introductory text is presented for the convenience of the user and Category 12 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
* * * * * * *	
12. Special projects:	
Approvals and preapplication/licensing activities.	Full Cost.
Inspections	Full Cost.
Contested hearings on licensing actions directly related to U.S. Government national security initiatives	Full Cost.
* * * * * * *	

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

Dated at Rockville, Maryland, this 24th day of July, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 02–19198 Filed 7–30–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–14–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This proposed AD would require you to repetitively inspect the horizontal and vertical stabilizer attachment fittings and associated hardware for corrosion and wear (damage). If damage is found, this proposed AD would also require you to repair or replace the damaged parts. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect and correct damage on the horizontal and vertical stabilizer attachment fittings and associated hardware, which could result in failure of the attachment fittings. Such failure could lead to fluttering and subsequent structural failure of the empennage.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 30, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–14–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–14–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. The CAA reports that, during regular scheduled maintenance, an operator discovered fretting corrosion on the horizontal and vertical stabilizer attachment bolts on an in service Jetstream Series 4100 airplane. The Jetstream Series 4100 airplane has a similar structural layout in the affected area to those affected by this proposed action. The corrosion is occurring on the eye bolt shanks and the horizontal and vertical stabilizer forward and rear attachment fitting lugs on the contact faces. There have been 10 reported cases of corrosion found on Jetstream Series 3101 and Jetstream Model 3201 airplanes.

What Are the Consequences If the Condition Is Not Corrected?

This condition, if not detected and corrected, could result in failure of the horizontal and vertical stabilizer attachment fittings. Such failure could lead to fluttering and subsequent structural failure of the empennage.

Is There Service Information That Applies to This Subject?

British Aerospace has issued Jetstream Service Bulletin 55–JA010941, Original issue: January 25, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Repetitively inspecting the forward and rear horizontal and vertical stabilizer attachment fittings and associated hardware for corrosion and wear (damage); and

—Replacing or repairing any damaged parts found during any inspection.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United Kingdom as the FAA issuing an AD in the United States.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 250 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
40 workhours × $60 = $2,400	No parts required to perform the inspection	$2,400	$2,400 × 250 = $600,000.

The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage would vary on each airplane.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "upon accumulating 8 calendar years on the airframe or within the next 6 months after the effective date of this AD, whichever occurs later."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The unsafe condition specified by this proposed AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this

proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours time-in-service (TIS). This will allow the owners/operators to work the proposed inspection into regularly scheduled maintenance.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 2002–CE–14–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101; and Jetstream Model 3201 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion and/or wear on the horizontal and vertical stabilizer attachment fittings and associated hardware, which could result in failure of the attachment fittings. Such failure could lead to fluttering and subsequent structural failure of the empennage.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Visually inspect the forward and rear horizontal stabilizer attachment bolts and associated hardware for corrosion (i.e., pitting or a change of color in the surface) and wear (damage)	Initially inspect upon accumulating 8 years on the airframe or within the next 6 calendar months after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 8 years	In accordance with British Aerospace Jetstream Service Bulletin 55–JA010941, Original Issue: January 25, 2002.
(2) If corrosion or wear is found during any inspection required in paragraph (d)(1) of this AD, replace or repair any damaged part in accordance with the procedures specified in the manufacturer's service bulletin.	Prior to further flight after the inspection in which the damage was found	In accordance with British Aerospace Jetstream Service Bulletin 55–JA010941, Original Issue: January 25, 2002.
(3) Visually inspect the forward and rear horizontal and vertical stabilizer attachment fittings and the forward eye bolts of the vertical stabilizer for corrosion or damage at the lug faces.	Initially inspect upon accumulating 8 years on the airframe or within the next 6 calendar months after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 8 years	In accordance with British Aerospace Jetstream Service Bulletin 55–JA010941, Original Issue: January 25, 2002.
(4) If corrosion or damage is found during any inspection required in paragraph (d)(3) of this AD: (i) replace or repair any damaged part in accordance with the procedures specified in the manufacturer's service bulletin; or (ii) if damage exceeds the limits defined in the manufacturer's service bulletin, obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; and (iii) incorporate this repair scheme	Prior to further flight after the inspection in which the damage was found	Repair in accordance the scheme obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.

Note 1: Although not required by this AD, FAA highly recommends you accomplish Section 2, Part B, *Highly Recommended Corrosion Prevention Tasks*, of the manufacturer's service bulletin.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified,

altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British Aerospace Jetstream Service Bulletin 55–JA010941, Original Issue: January 25, 2002. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

Issued in Kansas City, Missouri, on July 23, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–19255 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–12261; Notice No. 02–09]

RIN 2120–AH68

Reduced Vertical Separation Minimum in Domestic United States Airspace; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to the notice of proposed rulemaking, published in the **Federal Register** on May 10, 2002 (67 FR 31920). That document proposed to permit Reduced Vertical Separation Minimum (RVSM) flights in the airspace over the contiguous 48 States of the United States and Alaska and that portion of the Gulf of Mexico where the FAA provides air traffic services. The RVSM program would allow the use of reduced vertical separation between aircraft at certain altitudes.

FOR FURTHER INFORMATION CONTACT: Roy Grimes, (202) 267–3734.

Correction of Publication

In the notice FR Doc. 02–11704, beginning on page 31920 in the **Federal Register** issue of May 10, 2002, make the following correction:

1. On page 31920, in column 1, in the heading section, beginning on line 6, correct "RIN 2120–AH63" to read "RIN 2120–AH68".

Issued in Washington, DC on July 25, 2002.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 02–19365 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

17 CFR Part 420

RIN 1505–AA88

Government Securities Act Regulations: Large Position Rules

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury ("Treasury," "We," or "Us") is publishing for comment proposed amendments to the reporting requirements pertaining to very large positions in certain Treasury securities. The regulations are issued under the Government Securities Act Amendments of 1993 ("GSAA"). The purpose of the rules is to provide Treasury with information to better understand the causes of market shortages in certain Treasury securities. We are proposing changes to improve the information available to Treasury. Specifically, we are proposing to modify the report to require separate reporting of certain components of the "net trading position" and the "gross financing position." We are also proposing to revise the current "memorandum" item to require that the par amount of securities delivered through repurchase agreements be separated by maturity classification. In addition, we are proposing to add a new memorandum item to the large position report that would report the gross par amount of "fails to deliver." Finally, we are proposing to modify the definition of "gross financing position" to eliminate the optional exclusion in the calculation of the amount of securities received through certain financing transactions.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: You may send hard copy comments to: Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street N.W., Room 315, Washington, D.C. 20239–0001. You may also send us comments by e-mail at *govsecreg@bpd.treas.gov*. When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. You may download this proposed rule, and review the comments we receive, from the Bureau of the Public Debt's website at *www.publicdebt.treas.gov*. The proposed rule and comments will also be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director), Lee Grandy (Associate Director), or Nadir Isfahani (Government Securities Advisor), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632 or e-mail us at *govsecreg@bpd.treas.gov*.

SUPPLEMENTARY INFORMATION: Treasury published final rules [1] in 1996 that established Part 420 providing recordkeeping and reporting requirements related to very large positions in certain Treasury securities.[2] We are re-examining the "large position rules" and proposing modifications to improve the information available to better understand the causes of market shortages in certain Treasury securities. In this notice, we first provide background on the rules and then describe the proposed changes.

[1] 61 FR 48338 (September 12, 1996).

[2] 17 CFR Part 420.

I. Background

A. Statutory Authority

In response to short squeezes in two-year Treasury notes that occurred in the government securities market in 1990–1991, Congress included in the GSAA [3] a provision granting Treasury new authority to prescribe rules requiring any person or entity holding, maintaining, or controlling large positions in to-be-issued or recently-issued Treasury securities to keep records and, when requested by Treasury, to file reports of such large positions. The provision was intended to improve the information available to Treasury, the Federal Reserve Bank of New York (as Treasury's agent), and the Securities and Exchange Commission (referred to as "regulators" in this notice) regarding very large positions in Treasury securities held by market participants and to ensure that regulators have the tools necessary to understand unusual conditions in the Treasury securities market.

B. Reporting and Recordkeeping Requirements

1. On-Demand Reporting System

The rules provide for an "on-demand" reporting system rather than a regular, ongoing system of reporting.[4] This approach achieves the intent described above, satisfies the requirement that the rules take into account any impact on the efficiency and liquidity of the Treasury securities market and the cost to taxpayers of funding the federal debt,[5] and also minimizes the costs and burdens to those entities affected by the rules.

2. Notice Requesting Large Position Reports

Large position reports must be filed with the Federal Reserve Bank of New York ("FRBNY") in response to a notice from us requesting large position information on a specific issue of a Treasury security by entities with positions that equal or exceed the reporting threshold specified in the notice (currently not less than $2 billion).[6] The reports must be received by the FRBNY before noon Eastern time on the fourth business day after the issuance of the Treasury press release calling for large position information.

3. Components of a Position

A "reportable position" is the sum of the net trading position, the gross financing position and the net fails position in a specified issue of a Treasury security collectively controlled by a reporting entity.[7] Specific components of these positions are identified at § 420.2. All positions are required to be reported at par value on a trade date basis.

4. Recordkeeping

The recordkeeping requirements provide that any person or entity controlling at least a $2 billion position in a specific Treasury security must maintain and preserve certain records that enable the entity to compile, aggregate and report large position information.[8]

C. Who Is Subject to the Rules

Treasury's large position recordkeeping and reporting rules apply to all persons and entities, foreign and domestic, that control a reportable position in a Treasury security, such as: government securities brokers and dealers; registered investment companies; registered investment advisers; custodians, including depository institutions, that exercise investment discretion; hedge funds; pension funds; insurance companies; and foreign affiliates of U.S. entities. The broad application of the rule to include both foreign and domestic entities is consistent with the statutory purpose of the GSAA.[9]

The rules provide a total exemption for foreign central banks, foreign governments and international monetary authorities (e.g., the World Bank) (collectively, foreign official organizations).[10] This exemption is consistent with the position expressed by the Senate and House during consideration of the legislation.[11] Federal Reserve Banks are also exempt for the portion of any reportable position they control for their own account.

Consistent with our policy view as expressed when the rules were adopted, we would like to reiterate that large positions are not inherently harmful, and that there is no presumption of manipulative or illegal intent on the part of the controlling entity merely because its position is large enough to be subject to Treasury's rules.

D. Test Calls

Since the rules became effective in 1997, we have conducted annual calls for reports to test the accuracy and reliability of large position reporting systems. These tests have given us valuable experience and insight as we consider how to improve the information provided to regulators. This experience, in addition to our ongoing need to take into account the liquidity and efficiency of the Treasury securities market, has caused us to re-examine the rules and propose certain modifications. The proposed changes reflect our continuing need for the ability to obtain useful information, while minimizing the costs and burdens on market participants. We believe these changes are consistent with the findings of Congress that (among other things) "(1) the liquid and efficient operation of the government securities market is essential to facilitate government borrowing at the lowest possible cost to taxpayers; and (2) the fair and honest treatment of investors will strengthen the integrity and liquidity of the government securities market." [12]

II. Analysis

A. Changes to the Large Position Calculation and Report

We are proposing changes to:

1. Section 420.3(c)(1) and (c)(3), and Appendix B, to require each of the five components in § 420.2(f)(1)–(5) that, together, comprise the "net trading position," to be reported separately. Since entities already are collecting this information to calculate their total net trading position, we believe that the separation of these components should not prove to be burdensome.

2. Section 420.3(c)(1) and (c)(3), and Appendix B to revise the reporting of the "gross financing position" to require entities to separate the reverse repurchase agreement components by maturity classification (i.e., break out reverse repurchase agreements as either "overnight and open" or "term"). Similarly, we are proposing to revise the current memorandum item to require that the total gross par amounts of securities delivered through repurchase agreements be reported by maturity classification. The separate reporting of these individual components in the

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[3] Pub. L. 103–202, 107 Stat. 2344 (1993) [15 U.S.C. 78*o*–5(f)].

[4] The rules were issued on September 12, 1996, and were effective on March 31, 1997. They established a new Part 420 of the regulation issued by Treasury in 17 CFR, Chapter IV, Subchapter A.

[5] See *supra* note 3.

[6] The notice is in the form of a press release we issue and subsequently publish in the **Federal Register**. We also provide the press release to major news and financial publications and wire services for dissemination. An electronic mailing list is also available at www.publicdebt.treas.gov.

[7] 17 CFR 420.2(h).

[8] 17 CFR 420.4.

[9] H.R. Rep. 103–255, September 23, 1993.

[10] This exemption does not extend to an entity that engages primarily in commercial transactions and that is owned in whole or in part by a foreign official organization. See 17 CFR 420.1(b).

[11] 139 Cong. Rec. H–10967 (daily ed. November 22, 1993) Statement of Chairman Dingell on S. 422.

[12] See *supra* note 3.

large position formula, as well as the separation of reverse repurchase agreements and repurchase agreements by maturity classification, would help us to better understand the reporting entity's degree of control and economic interest in the particular security. The separate reporting of components would not affect whether a reporting entity ultimately has to file a report in response to a particular call since it would result in the same total reportable position as under the current formula.

3. Section 420.3(c)(2) and Appendix B to add a second memorandum item to the large position information for the gross par amount of "fails to deliver." This would help us to better understand a reporting entity's fails situation without increasing the burden on reporting entities since fails to deliver are already factored into the "net fails position" component.

Although no changes are being proposed to the recordkeeping requirements at § 420.4, reporting entities are reminded that they will need to ensure that they maintain records of all of the items that may be reported.

B. Voluntary Optional Exclusion

Finally, we are proposing to amend the definition of "gross financing position" at § 420.2(c) to eliminate the optional exclusion for certain securities received through financing transactions. A conforming change would also be made to item #2 "Gross Financing Position" in Appendix B to Part 420 (Sample Large Position Report) to reflect the elimination of the optional exclusion.

The current rules allow a reporting entity to elect to reduce its gross financing position by the par amount of the securities received in transactions: In which the counterparty retains the right to substitute securities; that are subject to third party custodial relationships; or that are hold-in-custody agreements. Our proposed change would eliminate the exclusion in its entirety. We believe this change could enhance the usefulness of the large position reports to regulators. In the preamble to the initial proposed large position regulations,[13] we stated that the rules provided the optional exclusion because of a presumption that the "receiving organization" does not have effective control of the securities received in these particular transactions. We now believe that this information could facilitate a better understanding of the causes of a market shortage of a particular security, and that the benefits of including this information are likely to outweigh any potential burden to market participants. Also, it would ensure consistent treatment of overnight reverse repurchase transactions and term reverse repurchase agreements where the counterparty has a right of substitution. We specifically invite comments from market participants concerning any potential obstacles, burdens or other factors related to this proposed change.

In re-examining the current voluntary optional exclusion, we are particularly concerned that in certain situations a market participant might be relying on the "right to substitute" provision of the optional exclusion in cases where the counterparty may not have a remaining, immediate, exercisable, explicitly documented right to substitute securities with respect to the particular transaction. For example, if a counterparty's right to substitute securities could not be exercised until 10 days after the "as of" large position reporting date, then at the time of the large position report such a right of substitution does not meaningfully limit the control over the securities in question by the party that has received them. Therefore, it may not be appropriate for the rules to permit that party to elect the voluntary exclusion when filing its large position report. Commenters are specifically invited to address whether contract terms such as the "right to substitute securities," or tri-party relationships or hold-in-custody agreements should still be given special consideration. Would clarification of the "right to substitute" provision of the optional exclusion, while retaining the exclusion for securities that are subject to tri-party relationships or hold-in-custody agreements, be an alternative that should be given further consideration? Commenters are also invited to address a third alternative, which is to retain the optional exclusion only for reverse repurchase agreements held in tri-party or hold-in-custody arrangements.

We welcome comments on all of these proposed changes, in particular: (1) Whether the changes would accomplish the goal of providing Treasury with more useful information regarding concentrations of control; (2) the effect, if any, the proposed changes would have on market participants; and (3) whether, based on the proposed changes, the current three and a half day reporting timeframe would be sufficient to allow reporting entities to complete the revised large position report.

[13] 60 FR 65219 (December 18, 1995).

III. Special Analysis

The proposed amendments reflect Treasury's continuing interest in meeting regulators' informational needs while minimizing the costs and burdens on market participants. The proposed amendments retain the on-demand reporting system, adopted in 1996, which costs market participants less than a regular reporting system would. Based on the very limited impact of the proposed amendments, it is our view that the proposed regulations are not a "significant regulatory action" for the purposes of Executive Order 12866.

In addition, we certify under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that the proposed amendments to the current regulations, if adopted, would not have a significant economic impact on a substantial number of small entities. We continue to believe that small entities will not control positions of $2 billion or greater in any particular Treasury security. The inapplicability of the proposed amendments to small entities indicates there is no significant impact. As a result, a regulatory flexibility analysis is not required.

The Paperwork Reduction Act of 1995 requires that collections of information prescribed in the proposed amendments be submitted to the Office of Management and Budget for review and approval.[14] In accordance with that requirement, the Department has submitted the collection of information contained in this notice of proposed rulemaking for review. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the collection of information may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, D.C., 20503; and to the Government Securities Regulations Staff, Bureau of the Public Debt, at the address specified at the beginning of this document.

The collection of information in the proposed amendments is contained in proposed § 420.3. The rules at § 420.3 continue to require a reporting entity whose position equals or exceeds the announced large position threshold for a specific issue of a Treasury security to report the information to FRBNY. Although we cannot be certain of the number of market participants that would be required to report their positions as a result of a call for such

[14] 44 U.S.C. 3507(d).

reports, we believe few reporting entities would actually have to file reports because the minimum reporting threshold ($2 billion) remains high. In fact, the actual reporting threshold in a specific call for large position reports may exceed $2 billion. Moreover, we expect that our requests for information will be infrequent. We plan to continue testing the reporting and recordkeeping systems of market participants by requesting large position reports at least annually. The threshold limit will be determined based on market conditions at the time of the call.

We do not believe that market participants would find the additional "fails to deliver" memorandum item burdensome since they already determine this figure when calculating their "net fails position" on line 3 of the existing large position report. The proposed "fails to deliver" memorandum item would simply be a place for reporting entities to record a previously derived number.

We also do not anticipate that the proposed elimination of the voluntary optional exclusion within the "gross financing position" would be a significant inconvenience for market participants. It is unlikely that removing this exclusion from the large position calculation would increase the time burden that entities face when calculating their positions, although it might result in more entities filing large position reports. We are not certain how many potential respondents rely on this exclusion, and to what extent, however, this number would still be a subset of the small number of entities with positions large enough to be subject to the rules. We invite comments from market participants on the effect of this proposed change, including any operational or system modifications that may be needed.

We believe the separate reporting of the "net trading position" components would not be very burdensome for market participants since they must already collect this information to calculate their net trading position. We also believe market participants would not find it very burdensome to separate their reporting of reverse repurchase agreements and repurchase agreements by maturity classification. Since the changes that are proposed would require more detailed information to be provided by reporting entities that file reports in response to a call for reports by Treasury, we are increasing the annual reporting burden in our submission to OMB by 40 hours, representing an increase from four to eight hours per large position report submitter.

The collection of information is intended to enable the Treasury and other regulators to better understand the possible causes of market shortages in certain Treasury securities. This information would help ensure that the Treasury securities market remains liquid and efficient.

Treasury invites further comments on: (1) Whether the proposed collection of information is necessary for the proper performance of functions of the Treasury, including whether the information has practical utility; (2) the accuracy of the Treasury's estimate of the burden; (3) enhancement of the quality, utility, and clarity of information to be collected; and (4) minimizing the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Estimated total annual reporting burden: 40 hours.

Estimated annual number of respondents: 10.

Estimated annual frequency of response: On occasion.

List of Subjects in 17 CFR Part 420

Foreign investments in U.S., Government securities, Investments, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 17 CFR Part 420 is proposed to be amended as follows:

PART 420—LARGE POSITION REPORTING

1. The authority citation for Part 420 continues to read as follows:

Authority: 15 U.S.C. 78*o*–5(f).

2. Section 420.2 is amended by revising paragraph (c) to read as follows:

§ 420.2 Definitions.

* * * * *

(c) "Gross financing position" is the sum of the gross par amounts of a security issue received from financing transactions, including reverse repurchase agreement transactions, bonds borrowed, and as collateral for financial derivatives and other securities transactions (e.g., margin loans). In calculating the gross financing position, a reporting entity may not net its positions against repurchase agreement transactions, securities loaned, or securities pledged as collateral for financial derivatives and other securities transactions.

* * * * *

3. Section 420.3 is amended by revising paragraphs (c)(1), (c)(2) and (c)(3) to read as follows:

§ 420.3 Reporting.

* * * * *

(c)(1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity with a reportable position that equals or exceeds the specified large position threshold stated in the notice shall compile and report the amounts of the reporting entity's reportable position in the order specified, as follows:

(i) Net trading position, and each of the following items that together comprise the net trading position:

(A) Cash/immediate net settled positions,

(B) Net when-issued positions for to-be-issued and reopened issues,

(C) Net forward settling positions, including next-day settling,

(D) Net positions in futures contracts requiring delivery of the specific security, and

(E) Net holdings of STRIPS principal components of the specific security;

(ii) Gross financing position and each of the following items that comprise the gross financing position:

(A) Securities received through reverse repurchase agreements by maturity classification:

(*1*) Overnight and open, and

(*2*) Term, and

(B) Securities received through bonds borrowed, and as collateral for financial derivatives and other financial transactions.

(iii) Net fails position; and

(iv) Total reportable position.

(2) The large position report must include the following two additional memorandum items:

(i) The total gross par amounts of securities delivered through:

(A) Repurchase agreements by maturity classification:

(*1*) Overnight and open, and

(*2*) Term, and

(B) Securities loaned, and as collateral for financial derivatives and other securities transactions.

(ii) The gross par amount of "fails to deliver" in the security. This total must also be included in Net Fails Position, Line 3.

(3) An illustration of a sample report is contained in Appendix B. Each of the net trading position components shall be netted and reported as a positive number (long position), a negative number (short position), which should be shown in parenthesis, or zero (flat position). The total net trading position shall also be reported as the applicable positive or negative number (or zero). Each of the components of the gross financing position shall be reported. The total gross financing position.

which is the sum of the gross financing position components, shall also be reported. The net fails position should be reported as a single entry. If the amount of the net fails position is zero or less, report zero. The total reportable position, which is the sum of the net trading position, gross financing position, and net fails position, must be reported. Each component of Memorandum 1 shall be reported. The total of Memorandum 1, which is the sum of its components, shall also be reported. Memorandum 2, which is the gross par amount of fails to deliver, shall also be reported. All of these positions should be reported in the order specified above. All position amounts should be reported on a trade date basis and at par in millions of dollars.

* * * * *

4. Appendix B to Part 420 Sample Large Position Report, "Formula for Determining a Reportable Position," is revised to read as follows:

Appendix B to Part 420—Sample Large Position Report Formula for Determining a Reportable Position

[$ Amounts in millions at par value as of trade date]

Security Being Reported	_____
Date For Which Information is Being Reported	_____
1. Net Trading Position:	
Cash/Immediate Net Settled Positions	$_____
Net When-Issued Positions for To-Be-Issued and Reopened Issues	$_____
Net Forward Settling Positions Including Next-Day Settling	$_____
Net Positions in Futures Contracts Requiring Delivery of the Specific Security	$_____
Net Holdings of STRIPS Principal Components of the Specific Security	$_____
Total Net Trading Position	$_____
2. Gross Financing Position:	
Total of securities received through Reverse Repurchase Agreements:	
Overnight and Open	$_____
Term	$_____
Bonds borrowed, and as collateral for financial derivatives and other financial transactions	$_____
Total Gross Financing Position	+$_____
3. Net Fails Position	+$_____
(Fails to receive less fails to deliver. If equal to or less than zero, report 0.)	
4. Total Reportable Position	=$_____
Memorandum 1	
Report the total gross par amounts of securities delivered through Repurchase Agreements:	
Overnight and Open	$_____
Term	$_____
Securities loaned, and as collateral for financial derivatives and other securities transactions	$_____
Total Memorandum 1	$_____
Memorandum 2	
Report the gross par amount of fails to deliver. Included in the calculation of line item 3 (Net Fails Position).	$_____

Dated: July 24, 2002.

Brian C. Roseboro,

Assistant Secretary for Financial Markets.

[FR Doc. 02–19238 Filed 7–30–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112306–00]

RIN 1545–AY17

Electing Mark to Market for Marketable Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains procedures for certain United States persons holding marketable stock in a passive foreign investment company (PFIC) to elect mark to market treatment for that stock under section 1296 and related provisions of sections 1291 and 1295. These proposed regulations affect United States persons owning marketable stock in a PFIC. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for November 6, 2002, at 10 a.m., must be received by October 16, 2002.

ADDRESSES: Send submissions to: CC: IT&A:RU (REG–112306–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC: IT&A:RU (REG–112306–00), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW. , Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at: *http://www.irs.gov/regs*. The public hearing will be held in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER !NFORMATION CONTACT: Concerning the regulations, Mark Pollard at (202) 622–3850, concerning submissions and the hearing, Ms. Lanita Vandyke (202) 622–7180 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

Since the enactment of the Tax Reform Act of 1986, United States persons that own PFIC stock have been subject to two alternative tax regimes: the interest charge rules under section 1291 of the Internal Revenue Code (Code) and the qualified electing fund (QEF) rules under section 1293. Congress recognized that the interest charge rules are a substantial source of complexity for PFIC shareholders and that some shareholders would prefer the current inclusion method afforded by the QEF regime, but are unable to obtain the necessary information from the PFIC. *See* H.R. Rep. No. 105–148, at 533 (1997); S. Rep. No. 105–33 at 94 (1997). Accordingly, Congress enacted new section 1296 in the Taxpayer Relief Act of 1997 to provide shareholders with an

alternative method to include income currently with respect to their interest in a PFIC by allowing them to elect to mark to market their PFIC stock provided the stock is marketable. In 1998, Congress enacted certain technical corrections to section 1296 and related provisions, including rules to address the overlap between the PFIC and other mark to market provisions in the Code. IRS Restructuring and Reform Act of 1998, section 6011(c).

Proposed § 1.1291–8 (INTL–656–87) had been published on April 1, 1992 (57 FR 11024). This proposed regulation would have provided an election for certain regulated investment companies (RICs) to use a mark to market method for their PFIC stock. Although § 1.1291–8 was originally proposed to be effective prospectively, the IRS subsequently notified taxpayers that the proposed regulations, when finalized, would permit this limited mark to market election to be made only for taxable years ending after March 31, 1992, and before April 1, 1993. Notice 92–53 (1992–2 C.B. 384). As a result of the enactment of section 1296, proposed § 1.1291–8 was withdrawn (64 FR 5015); *see* also Notice 99–14 (1999–11 I.R.B. 7).

On January 25, 2000, final regulations were published under section 1296(e) (2000 final regulations). TD 8867 (65 FR 3817), The 2000 final regulations provide guidance regarding the definition of marketable stock for purposes of section 1296.

In General

United States persons who own marketable stock (as defined in section 1296(e)) in a PFIC may elect to mark to market that stock annually pursuant to section 1296 (section 1296 election). United States persons making a section 1296 election with respect to PFIC stock (section 1296 stock) are not subject to the generally applicable interest charge regime of section 1291. The section 1296 election is available to United States persons and controlled foreign corporations (CFCs) that own, or are treated as owning, marketable stock in a PFIC.

Explanation of Provisions

A. Changes to Proposed § 1.1291–1(c): Coordination of PFIC Rules and Other Mark to Market Provisions

Except for the coordination rules discussed herein, section 1291(d)(1) provides that the interest charge regime does not apply in the case of PFIC stock that is marked to market under (i) section 1296, or (ii) section 475 or any other provision of chapter 1 of the Code. This regulation revises § 1.1291–1(c), 57 FR 11024, proposed April 1, 1992, to incorporate this coordination rule and to clarify that the interest charge regime does not apply to a United States person that marks to market its PFIC stock under any provision of chapter 1 of the Code, without regard to whether such regime is mandatory or elective. Proposed § 1.1295–1(i)(3) and proposed § 1.1296–1(h)(3)(i) further clarify that, with respect to taxation under a mark to market provision other than under section 1296, this coordination rule applies without regard to whether the taxpayer also has made a section 1296 election or a QEF election with respect to such stock, by providing that either election is automatically terminated immediately following the close of the taxpayer's taxable year preceding the first taxable year for which the stock of the PFIC is subject to the mark to market regime under another provision of chapter 1 of the Code.

The proposed regulations also provide a special rule for situations where a taxpayer owns PFIC stock that becomes subject to a mark to market regime other than section 1296 after the first taxable year of the taxpayer's holding period. In such instances, the taxpayer must apply the coordination rules of § 1.1291–1(c)(3)(ii) for the first taxable year that such other mark to market regime applies. Thereafter, the general rule above, overriding the application of the section 1291, QEF and PFIC mark to market regimes, applies for all subsequent taxable years provided that the PFIC stock continues to be marked to market under another provision of chapter 1 of the Code.

B. Changes to § 1.1295–1

1. Revocation of QEF Election

The proposed regulations also provide guidance on the coordination of the mark to market provisions under section 1296 with the existing rules for QEFs. In general, the Service considered the circumstances in which a taxpayer would be permitted to switch from one regime to another in light of the relative administrative burdens imposed under each set of rules, and the stated intent of Congress that one of the purposes for enacting section 1296 was to provide another alternative to the interest charge rules of section 1291 that would be available in instances where taxpayers cannot obtain sufficient information to make a QEF election. See H.R. Rep. No. 105–148, at 533 (1997); S. Rep. No. 105–33 at 94 (1997). Accordingly, the proposed regulations are structured to facilitate an election for mark to market treatment by permitting a taxpayer with an existing QEF election to make a section 1296 election and terminate the existing QEF election without requiring consent of the Commissioner. In instances where a taxpayer has an existing section 1296 election, it is permitted to make a QEF election only if the section 1296 election is terminated as provided by section 1296 and the regulations thereunder (e.g., if the PFIC stock ceases to be marketable) or is revoked with consent of the Commissioner.

2. Re-Election of QEF Regime

The proposed regulations further provide that if the section 1296 election is subsequently terminated or revoked, other than because the taxpayer marks to market under another provision of the Code, (e.g., because the stock is no longer marketable), the shareholder will be subject to tax under section 1291, unless a new QEF election is made. Section 1.1295–1(i)(4) currently provides that without the Commissioner's consent, a shareholder whose QEF election was invalidated, terminated, or revoked may not make a new QEF election with respect to the PFIC before the sixth taxable year ending after the taxable year in which the invalidation, termination, or revocation became effective. The regulations propose to amend § 1.1295–1(i) to provide an exception for situations where a United States person's QEF election was terminated because it elected to mark to market such stock under section 1296, and the 1296 election was subsequently terminated because the stock ceased to be marketable. A similar exception is provided for situations where a United States person's QEF election is terminated because its PFIC stock is marked to market under another provision of chapter 1 of the Code, and such provision subsequently ceases to apply. In either circumstance, consent of the Commissioner will not be required for the United States person to re-elect QEF status prior to the sixth taxable year ending after the taxable year that its QEF election was terminated. In situations where a QEF election is terminated because a United States person makes a section 1296 election, and then this election terminates for some reason other than the stock ceasing to be marketable (e.g., pursuant to the consent of the Commissioner under proposed § 1.1296–1(h)(3)(A)), a taxpayer may request consent under § 1.1295–1(i) to make a new QEF election prior to such sixth taxable year.

Special issues arise in situations where a taxpayer makes a QEF election with respect to stock that was

previously marked to market under section 1296 (or where a taxpayer re-elects QEF treatment after a termination of mark-to-market treatment). In such situations, the taxpayer shifts from annual inclusions under the mark to market rules that are based on the amount of unrealized gain (or loss) in the stock of the PFIC, to annual inclusions of a pro rata share of the ordinary earnings and long-term capital gain of a PFIC under the QEF rules. For example, unrealized items that were reflected in annual mark to market inclusions could be taken into account subsequently under the QEF rules when realized. These issues presently are addressed through the respective basis adjustments provided for under the QEF and mark to market rules. See sections 1293(d) and 1296(b). Comments are requested on possible alternative approaches for addressing this situation with a view toward ensuring administrability and avoiding additional complexity.

C. Addition of § 1.1296–1

1. Effect of Election

The proposed regulations provide that, on the last day of a taxable year to which a section 1296 election applies, the United States person recognizes gain to the extent that the fair market value of section 1296 stock exceeds its adjusted basis. Any such gain shall be treated as ordinary income. To the extent that the adjusted basis of section 1296 stock exceeds its fair market value, the United States person may take a deduction equal to the lesser of the amount of such excess or the unreversed inclusions with respect to such stock. Any such deduction will be treated as an ordinary loss.

Under former proposed § 1.1291–8, certain RICs were permitted to mark to market PFIC stock. For RICs that elect to mark to market their PFIC stock under section 1296, the unreversed inclusions include amounts that were included in gross income under former proposed § 1.1291–8 with respect to that stock for prior taxable years. See Notice 92–53 (1992–2 C.B. 384).

The proposed regulations also address the application of section 1296 in taxable years in which the foreign corporation has ceased to be a PFIC under section 1297(a), and is not treated as a PFIC under section 1298(b)(1) (the once a PFIC, always a PFIC rule). The proposed regulations clarify that there will be no mark to market inclusions or deductions for taxable years in which the foreign corporation is not a PFIC. The suspension of mark to market treatment while the foreign corporation is not a PFIC is consistent with § 1.1295–1(c)(2)(ii), which provides that a shareholder that has made a QEF election with respect to stock of a foreign corporation is not required to include its pro rata share of ordinary income and capital gains under section 1293 for years in which the foreign corporation is not a PFIC.

In order to accomplish this suspension of mark to market treatment, the proposed regulations start a new holding period, for all purposes of the PFIC rules, in stock that is marked to market under section 1296 beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 applied. Accordingly, prior periods during which the foreign corporation was a PFIC, but for which the shareholder had a section 1296 election in effect, are not included in such shareholder's holding period for purposes of applying section 1298(b)(1).

Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1296 election (although a shareholder may request consent of the Commissioner to revoke the election in such instance, as discussed below). Thus, if the foreign corporation once again becomes a PFIC in any taxable year after a year in which it is not treated as a PFIC, the shareholder's original section 1296 election continues to apply and the shareholder must mark to market the PFIC stock for such year.

2. Adjustment to Basis

The proposed regulations provide that a United States person will increase the adjusted basis of its section 1296 stock by the amount of mark to market gain recognized. Conversely, if the United States person is entitled to a deduction under this section, the adjusted basis of its section 1296 stock is decreased by the amount of such deduction.

If a United States person owns section 1296 stock through a foreign partnership, foreign trust, or foreign estate, the basis rules apply to both the United States person and the entity or entities through which the United States person is considered to own the stock. The increase or decrease in the adjusted basis of the stock in the hands of the foreign partnership, foreign trust, or foreign estate will be solely attributable to the electing United States person (in a manner similar to an adjustment under section 743(b)), and will apply only for purposes of determining the subsequent U.S. income tax treatment of the United States person with respect to such stock. The IRS considered imposing reporting and record keeping requirements on the foreign entities to track the adjustments to the adjusted basis of any section 1296 stock they held directly or indirectly. The IRS decided not to adopt this approach in the proposed regulations because one of the motivations for the enactment of section 1296 was to provide an alternative tax regime to section 1291 for taxpayers that could not obtain sufficient information from a PFIC to make a QEF election. Comments are requested about other approaches for satisfying the compliance obligations of U.S. persons making a section 1296 election and the intervening entity or entities through which such stock is owned.

The taxpayer and the entity through which the taxpayer owns section 1296 stock may have different taxable years. Consistent with the general approach of sections 706(a), 652(c), and 662(c), a United States person who owns stock in a PFIC through any foreign partnership, foreign trust, or foreign estate determines the mark to market gain or mark to market loss with reference to the last day of the taxable year of the foreign partnership, foreign trust or foreign estate and then includes that gain or loss in the taxable year of such United States person that includes the last day of the taxable year of the entity.

Finally, if PFIC stock is acquired from a decedent by bequest, devise, or inheritance (or by the decedent's estate) and a mark to market election was in effect on the decedent's date of death, the adjusted basis of such stock in the hands of the recipient will be equal to the lesser of the basis determined under section 1014 or the adjusted basis of the stock in the hands of the decedent immediately prior to his or her death.

3. Rule for Individuals That Become Subject to United States Income Taxation

The proposed regulations provide that if any individual becomes a United States person in a taxable year beginning after December 31, 1997, the adjusted basis (before any adjustments resulting from the mark to market election are made) of any stock in a PFIC owned by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value on such first day or its adjusted basis on such first day. This special rule for determining the taxpayer's adjusted basis will apply only for purposes of section 1296 and the regulations thereunder. Accordingly, any gain or loss recognized on the disposition of section 1296 stock that is attributable to the period before the individual became a United States

person will be subject to the general rules of the Code, including any limitation on the deductibility of a loss, for example, under section 1211.

4. Indirect Ownership of PFIC Stock

Except as discussed below in the case of eligible RICs, the proposed regulations apply the specific attribution rules of section 1296(g) in determining whether PFIC stock is considered owned by a taxpayer for purposes of section 1296 and, therefore, with respect to which the taxpayer is permitted to make a section 1296 election. Thus, a United States person will be permitted to make a section 1296 election with respect to stock owned through a foreign partnership, foreign trust, or foreign estate. In general, stock owned by or for such entities will be considered as being owned proportionately by its partners or beneficiaries. For purposes of this rule, stock owned, directly or indirectly, by or for a foreign trust described in sections 671 through 679, shall be considered as being owned proportionately by its grantors or other persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock.

The section 1296(g) attribution rules do not attribute ownership through foreign corporations. Accordingly, a United States person will not be permitted to make a section 1296 election with respect to stock owned indirectly through a foreign corporation. However, as discussed below, in instances where the foreign corporation is a CFC, the foreign corporation is permitted to make a section 1296 election directly.

Special attribution rules for eligible RICs are provided in § 1.1296(e)–1(f). There is a different attribution rule for RICs because section 1296(e)(2), which provides a special rule for RICs, states that stock owned, directly or indirectly, by the RIC, without reference to the ownership attribution rules in section 1296(g), shall be treated as marketable stock. This approach is consistent with former proposed § 1.1291–8, which permitted certain RICs to mark to market PFIC stock that it owned directly or indirectly.

An issue not addressed in these proposed regulations is the treatment of certain situations involving multiple tiers of PFICs. For example, assume a United States person owns marketable stock in a PFIC, that itself owns stock in a second PFIC, the ownership of which is attributable to the United States person under section 1298(a)(2). If the United States person makes a section 1296 election with respect to stock of the upper-tier PFIC, the annual mark to market inclusions of income under section 1296 will be based on the fair market value of the upper-tier PFIC stock, whose value should reflect the value of the lower-tier PFIC, as such stock is an asset of the upper-tier PFIC. However, under current law, the United States person continues to be subject to taxation with respect to its indirect ownership of the lower-tier PFIC under section 1291 on any excess distributions from the lower-tier PFIC or gain from an indirect disposition of the lower-tier PFIC stock (although the consequences from the tiered ownership may be ameliorated by adjustments to the basis of the upper-tier PFIC stock). *See* proposed §§ 1.1291–2(f), and 1.1291–3(e). Similar issues arise if the United States person makes a QEF election with respect to the lower-tier PFIC. Comments are requested regarding coordination rules or other adjustments that may be appropriate to address this situation and similar structures involving a United States person that owns stock directly and indirectly in tiers of PFICs.

5. Treatment of CFCs as United States Persons

A CFC that owns PFIC stock is treated as a United States person for purposes of section 1296 and, as noted above, is permitted to make a section 1296 election directly. If a section 1296 election is made with respect to PFIC stock owned by a CFC directly, or treated as owned by a CFC applying the section 1296(g) attribution rules, then any mark to market gains are included in the gross income of the CFC as foreign personal holding company income under section 954(c)(1)(A) and any mark to market losses are treated as deductions allocable to such foreign personal holding company income for purposes of computing net foreign base company income under § 1.954–1(c).

Under the proposed regulations, if a section 1296 election is made for a CFC with respect to its PFIC stock, the PFIC rules do not also apply separately to any United States shareholder, as defined in section 951(b), with respect to its pro rata share of the PFIC stock held by the CFC. Instead, the United States shareholder generally will recognize the mark to market gain as an inclusion of income under section 951(a). Thus, United States shareholders of CFCs are appropriately excluded from the application of section 1291 if a section 1296 election is made by the CFC. This rule, however, does not apply to United States persons who own stock of the CFC but are not United States shareholders within the meaning of section 951(b). Those United States persons continue to be subject to the PFIC provisions with respect to the stock of such foreign corporation, and may avail themselves of a QEF election. This rule is consistent with the CFC/PFIC overlap rule in section 1297(e), which eliminates the application of the PFIC provisions solely for United States shareholders of the entity that is both a PFIC and a CFC. Finally, comments are requested about whether similar rules should apply to United States persons that are United States shareholders of a CFC solely by application of section 953(c)(1)(A).

6. Elections

The proposed regulations provide that a United States person may make a section 1296 election for a taxable year beginning after December 31, 1997, by the due date (including extensions) of the United States person's federal income tax return. The proposed regulations further provide that a section 1296 election of a CFC is made by its controlling United States shareholders by the due date (including extensions) of their federal income tax returns in accordance with the general rules for elections by a CFC under § 1.964–1(c)(5).

The proposed regulations provide that a section 1296 election applies to the year for which made and to each succeeding year unless the election is terminated or revoked. A section 1296 election automatically terminates when (i) the PFIC stock ceases to be marketable, or (ii) when the PFIC stock is marked to market under another provision of chapter 1 of the Code. A section 1296 election also may be revoked with the consent of the Commissioner. Such consent will only be granted, however, upon a showing of a substantial change in circumstances. Similar rules apply in the case of the revocation of a QEF election.

7. Coordination Rules for First Year of Election

Finally, the proposed regulations provide coordination rules that apply to the first taxable year to which section 1296 applies. A United States person (other than a RIC) whose holding period includes a period when the foreign corporation was a PFIC and for which a QEF election had not been made generally will be subject to section 1291 in the year of the election and subject to section 1296 in subsequent years. Special rules also apply to RICs for the first year in which a section 1296 election applies.

D. Changes to § 1.1296(e)–1(b)

As discussed above, a section 1296 election is only available for marketable stock of a PFIC. Section 1296(e) defines marketable stock to include any stock which is regularly traded on certain securities exchanges or other markets. The 2000 final regulations provide guidance regarding the definition of marketable stock for purposes of section 1296. In particular, the 2000 final regulations define regularly traded for these purposes to require that a class of stock be traded on at least 15 days during each calendar quarter for any calendar year. Taxpayers have noted that this rule would exclude stock issued as a result of an initial public offering (IPO) from qualifying as marketable stock for the year of issuance in many instances (e.g., stock issued through a public offering occurring other than during the first quarter of the year). Therefore, these regulations propose modifying the current rule in such instances.

The proposed regulations provide that the stock issued in a public offering will qualify as regularly traded if the stock is traded on one or more qualified exchanges or other markets, other than in de minimis quantities, on 1/6 of the days remaining in the quarter in which the offering occurs, and on at least 15 days during each remaining quarter of the calendar year. If the public offering occurs in the fourth quarter of the calendar year, the stock will qualify as regularly traded if it is traded on such exchanges or markets, other than in de minimis quantities, on the greater of 1/6 of the days remaining in the quarter in which the offering occurs, or 5 days. The proposed regulations also modify the anti-abuse rule in § 1.1296(e)–1(b)(2) to apply to these changes to the definition of regularly traded.

E. Amendment of § 1.6031(a)–1

In general, a foreign partnership that has U.S. source income is required to file a U.S. Federal income tax return pursuant to § 1.6031(a)–1(b)(1). An issue arises whether a filing obligation is created on behalf of a foreign partnership where a U.S. partner of the foreign partnership makes a section 1296 election with respect to the U.S. partner's share of the PFIC stock held by the partnership. The income of the partner arising as a result of the section 1296 election generally will be U.S. source. See sections 1296(c)(2) and 865(a), (i)(5). The proposed regulations resolve this issue by modifying § 1.6031(a)–1(b)(1) such that a foreign partnership will not be required to file a partnership return if the only reason for filing a return, but for this special rule, would be U.S. source income resulting from a direct or indirect partner's section 1296 election.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely (in a manner described in the "ADDRESSES" portion of this preamble) to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing is scheduled for November 6, 2002, beginning at 10:00 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 16, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of this regulation are Mark Pollard and Laurie Hatten-Boyd, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.1296–1 also issued under 26 U.S.C. 1296(g) and 26 U.S.C. 1298(f). * * *

Par. 2. Section 1.1291–1, as proposed on April 1, 1992, at 57 FR 11024, is further proposed to be amended by:

1. Revising the headings to paragraphs (c) and (c)(1).
2. Redesignating the text of paragraphs (c)(1) and (c)(2) as (c)(1)(i) and (c)(1)(ii), respectively.
3. Adding new paragraphs (c)(2) and (c)(3).
4. Revising paragraph (j)(1).
5. Removing paragraph (j)(3).

The revisions and addition read as follows:

§ 1.1291–1 Taxation of U.S. persons that are shareholders of section 1291 funds.

* * * * *

(c) *Coordination with other PFIC rules*—(1) *Coordination with QEF rules.* * * *

(2) *Coordination with section 1296: distributions and dispositions.* If PFIC stock is marked to market under section 1296 for any taxable year, then, except as provided in § 1.1296–1(i), section 1291 and the regulations thereunder shall not apply to any distribution with respect to section 1296 stock (as defined in § 1.1296–1(a)(2)), or to any disposition of such stock, for such taxable year.

(3) *Coordination with mark to market rules under chapter 1 of the Internal Revenue Code other than section 1296*—(i) *In general.* If PFIC stock is marked to market for any taxable year under

section 475 or any other provision of chapter 1 of the Internal Revenue Code, other than section 1296, regardless of whether the application of such provision is mandatory or results from an election by the taxpayer or another person, then, except as provided in paragraph (c)(3)(ii) of this section, section 1291 and the regulations thereunder shall not apply to any distribution with respect to such PFIC stock or to any disposition of such PFIC stock for such taxable year. *See* §§ 1.1295–1(i)(3) and 1.1296–1(h)(3)(i) for rules regarding the automatic termination of an existing election under section 1295 or section 1296 when a taxpayer marks to market PFIC stock under section 475 or any other provision of chapter 1 of the Internal Revenue Code.

(ii) *Coordination rule*—(A) Notwithstanding any provision in this section to the contrary, the rule of paragraph (c)(3)(ii)(B) of this section shall apply to the first taxable year in which a United States person marks to market its PFIC stock under a provision of chapter 1 of the Internal Revenue Code, other than section 1296, if such foreign corporation was a PFIC for any taxable year, prior to such first taxable year, during the United States person's holding period (as defined in section 1291(a)(3)(A) and § 1.1296–1(f)) in such stock, and for which such corporation was not treated as a QEF with respect to such United States person.

(B) For the first taxable year of a United States person that marks to market its PFIC stock under any provision of chapter 1 of the Internal Revenue Code, other than section 1296, such United States person shall, in lieu of the rules under which the United States person marks to market, apply the rules of § 1.1296–1(i)(2) and (3) as if the United States person had made an election under section 1296 for such first taxable year.

* * * * *

(j) *Effective date*—(1) *In general.* Except as otherwise provided in this paragraph (j), §§ 1.1291–1 through 1.1291–7 apply on April 11, 1992. Section 1.1291–1(c)(2) and (3) apply as of the date final regulations are published in the **Federal Register**. Shareholders of 1291 funds, in determining their liability under sections 1291 through 1297 beginning after December 31, 1986, and before the effective date of these regulations, must apply reasonable interpretations of the statute and legislative history and employ reasonable methods to apply the interest charge.

* * * * *

Par. 3. Section 1.1295–1 is amended by:

1. Redesignating paragraphs (i)(3) and (i)(4) as paragraphs (i)(4) and (i)(5), respectively.
2. Adding a new paragraph (i)(3).
3. Revising newly designated paragraph (i)(5).
4. Revising paragraph (k).

The revisions and addition read as follows:

§ 1.1295–1 Qualified electing funds

* * * * *

(i)* * *

(3) *Automatic termination.* If a United States person, or the United States shareholder on behalf of a controlled foreign corporation, makes an election pursuant to section 1296 and the regulations thereunder with respect to PFIC stock for which a QEF election is in effect, or marks to market such stock under another provision of chapter 1 of the Internal Revenue Code, the QEF election is automatically terminated with respect to such stock that is marked to market under section 1296 or another provision of Chapter 1 of the Internal Revenue Code. Such termination shall be effective on the last day of the shareholder's taxable year preceding the first taxable year for which the section 1296 election is in effect or such stock is marked to market under another provision of chapter 1 of the Internal Revenue Code.

Example. A, a U.S. corporation, owns directly 100 shares of marketable stock in foreign corporation X, a PFIC. A also owns a 50 percent interest in Y, a foreign partnership that owns 200 shares of X. Accordingly, under section 1298(a)(3) and § 1.1296–1(e)(1), A is treated as indirectly owning 100 shares of X. A also owns 100 percent of the stock of Z, a foreign corporation that is not a PFIC. Z owns 100 shares of X, and therefore under section 1298(a)(2)(A), A is treated as owning the 100 shares of X owned by Z. For taxable year 2003, A has a QEF election in effect with respect to X that applies to all 300 shares of X stock owned directly or indirectly by A. See generally § 1.1295–1(c)(1). For taxable year 2004, A makes a timely election pursuant to section 1296 and the regulations thereunder. For purposes of section 1296, A is treated as owning stock held indirectly through a partnership, but not through a foreign corporation. Section 1296(g); § 1.1296–1(e)(1). Accordingly, A's section 1296 election covers the 100 shares it owns directly and the 100 shares it owns indirectly through Y, but not the 100 shares owned by Z. With respect to the first 200 shares, A's QEF election is automatically terminated effective December 31, 2003. With respect to the 100 shares A owns through foreign corporation Z, A's QEF election remains in effect unless invalidated, terminated, or revoked pursuant to this paragraph (i).

* * * * *

(5) *Effect after invalidation, termination, or revocation*— (i) *In general.* Without the Commissioner's consent, a shareholder whose section 1295 election was invalidated, terminated, or revoked under this paragraph (i) may not make the section 1295 election with respect to the PFIC before the sixth taxable year in which the invalidation, termination, or revocation became effective.

(ii) *Special rule.* Notwithstanding paragraph (i)(5)(i) of this section, a shareholder whose section 1295 election was terminated pursuant to paragraph (i)(3) of this section, and either whose section 1296 election has subsequently been terminated because its PFIC stock ceased to be marketable or who no longer marks to market such stock under another provision of chapter 1 of the Internal Revenue Code, may make a section 1295 election with respect to its PFIC stock before the sixth taxable year in which its prior section 1295 election was terminated.

* * * * *

(k) *Effective dates.* Except as otherwise provided, paragraphs (b)(2)(iii), (b)(3), (b)(4), and (c) through (j) of this section are applicable to taxable years of shareholders beginning after December 31, 1997. However, taxpayers may apply the rules under paragraphs (b)(4), (f) and (g) of this section to a taxable year beginning before January 1, 1998, provided the statute of limitations on the assessment of tax has not expired as of April 27, 1998, and, in the case of paragraph (b)(4) of this section, the taxpayers who filed the joint return have consistently applied the rules of that section to all taxable years following the year the election was made. Paragraph (b)(3)(v) of this section is applicable as of February 7, 2000, however, a taxpayer may apply the rules to a taxable year prior to the applicable date provided the statute of limitations on the assessment of tax for that taxable year has not expired. Paragraphs (i)(3) and (i)(5)(ii) of this section are applicable as of the date final regulations are published in the **Federal Register**.

Par. 4. Section 1.1296–1 is added to read as follows:

§ 1.1296–1 Mark to market election for marketable stock.

(a) *Definitions*—(1) *Eligible RIC.* An eligible RIC is a regulated investment company that offers for sale, or has outstanding, any stock of which it is the issuer and which is redeemable at net asset value, or that publishes net asset valuations at least annually.

(2) *Section 1296 stock.* The term *section 1296 stock* means marketable

stock in a passive foreign investment company (PFIC), including any PFIC stock owned directly or indirectly by an eligible RIC, for which there is a valid section 1296 election. Section 1296 stock does not include stock of a foreign corporation that previously had been a PFIC, and for which a section 1296 election remains in effect.

(3) *Unreversed inclusions*—(i) *General rule.* The term *unreversed inclusions* means with respect to any section 1296 stock, the excess, if any, of—

(A) The amount of mark to market gain included in gross income of the United States person under paragraph (c)(1) of this section with respect to such stock for prior taxable years; over

(B) The amount allowed as a deduction to the United States person under paragraph (c)(3) of this section with respect to such stock for prior taxable years.

(ii) *Section 1291 adjustment.* The amount referred to in paragraph (a)(3)(i)(A) of this section shall include any amount subject to section 1291 under the coordination rule of paragraph (i)(2)(ii) of this section.

(iii) *Example.* An example of the computation of unreversed inclusions is as follows:

Example. A, a United States person, acquired stock in D, a foreign corporation, on January 1, 2003 for $150. At such time and at all times thereafter, D was a PFIC and A's stock in D was marketable. For taxable years 2003 and 2004, D was a nonqualified fund subject to taxation under section 1291. A made a timely section 1296 election with respect to the D stock, effective for tax year 2005. The fair market value of the D stock was $200 as of December 31, 2004, and $240 as of December 31, 2005. Additionally, D made no distribution with respect to its stock for the taxable years at issue. In 2005, pursuant to paragraph (i)(2)(ii) of this section, A must include the $90 gain in the D stock in accordance with the rules of section 1291 for purposes of determining the deferred tax amount and any applicable interest. Nonetheless, for purposes of determining the amount of the unreversed inclusions pursuant to paragraph (a)(3)(ii) of this section, A will include the $90 of gain that was taxed under section 1291 and not the interest thereon.

(iv) *Special rule for regulated investment companies.* In the case of a regulated investment company which had elected to mark to market the PFIC stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company makes a section 1296 election, the amount referred to in paragraph (a)(3)(i)(A) of this section shall include amounts previously included in gross income by the company pursuant to such mark to market election with respect to such stock for prior taxable years. See Notice 92–53 (1992–2 C.B. 384).

(b) *Application of section 1296 election*—(1) *In general.* Any United States person and any controlled foreign corporation (CFC) that owns directly, or is treated as owning under this section, marketable stock, as defined in § 1.1296(e)-1, in a PFIC may make an election to mark to market such stock in accordance with the provisions of section 1296 and this section.

(2) *Election applicable to specific United States person.* A section 1296 election applies only to the United States person (or CFC that is treated as a U.S. person under paragraph (g)(2) of this section) that makes the election. Accordingly, a United States person's section 1296 election will not apply to a transferee of section 1296 stock.

(3) *Election applicable to specific corporation only.* A section 1296 election is made with respect to a single foreign corporation, and thus a separate section 1296 election must be made for each foreign corporation that otherwise meets the requirements of this section. A United States person's section 1296 election with respect to stock in a foreign corporation applies to all marketable stock of the corporation that the person owns directly, or is treated as owning under paragraph (e) of this section, at the time of the election or that is subsequently acquired.

(c) *Effect of election*—(1) *Recognition of gain.* If the fair market value of section 1296 stock on the last day of the United States person's taxable year exceeds its adjusted basis, the United States person shall include in gross income for its taxable year the excess of the fair market value of such stock over its adjusted basis (mark to market gain).

(2) *Character of gain.* (i) Mark to market gain, and any gain on the sale or other disposition of section 1296 stock, shall be treated as ordinary income.

(ii) *Example.* The following example illustrates this paragraph (c)(2):

Example. A, a United States person, purchases stock in C, a foreign corporation that is not a PFIC, in 1990 for $1000. On January 1, 2003, when the fair market value of the C stock is $1,100, foreign corporation C becomes a PFIC. A makes a timely section 1296 election for year 2003. On December 31, 2003, the fair market value of the C stock is $1,200. For taxable year 2003, A includes $200 of mark to market gain (the excess of the fair market value of C stock ($1,200) over A's adjusted basis ($1,000)) in gross income as ordinary income.

(3) *Recognition of loss.* If the adjusted basis of section 1296 stock exceeds its fair market value on the last day of the United States person's taxable year, such person shall be allowed a deduction for such taxable year equal to the lesser of the amount of such excess or the unreversed inclusions with respect to such stock (mark to market loss).

(4) *Character of loss*—(i) *Losses not in excess of unreversed inclusions.* Any mark to market loss allowed as a deduction under paragraph (c)(3) of this section, and any loss on the sale or other disposition of section 1296 stock, to the extent that such loss does not exceed the unreversed inclusions attributable to such stock, shall be treated as an ordinary loss, deductible in computing adjusted gross income.

(ii) *Losses in excess of unreversed inclusions.* (A) Any loss recognized on the sale or other disposition of section 1296 stock in excess of any prior unreversed inclusions will be subject to the rules generally applicable to losses provided elsewhere in the Internal Revenue Code and the regulations thereunder.

(B) The following example illustrates the treatment of losses in excess of unreversed inclusions:

Example. A, a United States person and a calendar year taxpayer, purchased marketable stock in FC, a foreign corporation that was a PFIC, for $1000 on January 31, 2003. A made a section 1296 election with respect to the stock of FC for 2003. At the close of 2003, the fair market value of A's stock in FC was $1,200. Under paragraph (c)(1) and (2) of this section, A included $200 of mark to market gain as ordinary income for 2003, and pursuant to paragraph (d)(1) of this section, increased his basis in the stock by that amount. On June 15, 2004, A sold his stock in FC for $900. At that time, A's unreversed inclusions with respect to the stock in FC were $200. Accordingly, A may deduct the amount equal to his unreversed inclusions, $200, as an ordinary loss. The $100 loss in excess of A's unreversed inclusions will be treated as a long term capital loss because A has held the FC stock for more than one year.

(5) *Application of election to separate lots of stock.* (i) In the case in which a United States person purchased or acquired shares of stock in a PFIC at different prices, the rules of this section shall be applied in a manner consistent with the rules of § 1.1012–1.

(ii) *Example.* The following example illustrates this paragraph (c)(5):

Example. On January 1, 2003, United States corporation A purchased 100 shares (first lot) of stock in foreign corporation X, a PFIC, for $500 ($5 per share). On June 1, 2003, A purchased 100 shares (second lot) of stock in X for $1,000 ($10 per share). A made a timely section 1296 election with respect to its stock in X for taxable year 2003. On December 31, 2003, the fair market value of X stock was $8 per share. For taxable year 2003, A recognizes $300 of gross income

under paragraph (c)(1) of this section with respect to the first lot, and adjusts its basis in that lot to $800 pursuant to paragraph (d)(1) of this section. With respect to the second lot, A is not permitted to recognize a loss under paragraph (c)(3) of this section for taxable year 2003. Although A's adjusted basis in that stock exceeds its fair market value by $200, A has no unreversed inclusions with respect to that particular lot of stock. On July 1, 2004, A sells 100 shares of X stock for $900. Assuming that A adequately identifies (in accordance with the rules of § 1.1012–1(c)) the shares of X corporation stock sold as being from the second lot, A recognizes $100 of long term capital loss pursuant to paragraph (c)(4)(ii) of this section.

(6) *Source rules.* The source of any amount included in gross income under paragraph (c)(1) of this section, or the allocation and apportionment of any amount allowed as a deduction under paragraph (c)(3) of this section, shall be determined in the same manner as if such amounts were gain or loss (as the case may be) from the sale of stock in the PFIC.

(d) *Adjustment to basis*—(1) *Stock held directly.* The adjusted basis of the section 1296 stock shall be increased by the amount included in the gross income of the United States person under paragraph (c)(1) of this section with respect to such stock, and decreased by the amount allowed as a deduction to the United States person under paragraph (c)(3) of this section with respect to such stock.

(2) *Stock owned through certain foreign entities.* (i) In the case of section 1296 stock that a United States person is treated as owning through certain foreign entities pursuant to paragraph (e) of this section, the basis adjustments under paragraph (d)(1) of this section shall apply to such stock in the hands of the foreign entity actually holding such stock, but only for purposes of determining the subsequent treatment under chapter 1 of the Internal Revenue Code of the United States person with respect to such stock. Such increase or decrease in the adjusted basis of the section 1296 stock shall constitute an adjustment to the basis of partnership property only with respect to the partner making the section 1296 election. Corresponding adjustments shall be made to the adjusted basis of the United States person's interest in the foreign entity and in any intermediary entity described in paragraph (e) of this section through which the United States person holds the PFIC stock.

(ii) *Example.* The following example illustrates this paragraph (d)(2):

Example. FP is a foreign partnership. A, a U.S. corporation, owns a 20% interest in FP. B, a U.S. corporation, owns a 30% interest in FP. C, a foreign corporation, with no direct or indirect shareholders that are U.S. persons, owns a 50% interest in FP. A,B,C, and FP are all calendar year taxpayers. In 2002, FP purchases stock in a PFIC for $1,000. A makes a timely section 1296 election for taxable year 2003. On December 31, 2003, the fair market value of the PFIC stock is $1,100. A includes $20 of ordinary income in 2003 under paragraphs (c)(1) and (2) of this section. A increases its basis in its FP partnership interest by $20. FP increases its basis in the stock to $1,020 solely for purposes of determining the subsequent treatment of A, under chapter 1 of the Internal Revenue Code, with respect to such stock. In 2004, FP sells the stock for $1,200. For purposes of determining the amount of gain of A, FP will be treated as having $180 in gain of which $20 is allocated to A. A's $20 of gain will be treated as ordinary income under paragraph (c)(2) of this section. For purposes of determining the amount of gain attributable to B, FP will be treated as having $200 gain, $60 of which will be allocated to B.

(3) *Stock owned indirectly by an eligible RIC.* Paragraph (d)(2) of this section shall also apply to an eligible RIC which is an indirect shareholder under § 1.1296(e)–1(f) of stock in a PFIC and has a valid section 1296 election in effect.

(4) *Stock acquired from a decedent.* In the case of stock of a PFIC which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which a section 1296 election was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this paragraph).

(5) *Transition rule for individuals becoming subject to United States income taxation*—(i) *In general.* If any individual becomes a United States person in a taxable year beginning after December 31, 1997, solely for purposes of this section, the adjusted basis, before adjustments under this paragraph (d), of any section 1296 stock owned by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value or its adjusted basis on such first day.

(ii) An example of the transition rule for individuals becoming subject to United States income taxation is as follows:

Example. X, a nonresident alien individual, purchases marketable stock in a PFIC for $50 in 1995. On January 1, 2003, X becomes a United States person and makes a timely section 1296 election with respect to the stock in accordance with paragraph (h) of this section. The fair market value of the stock on January 1, 2003, is $100. The fair market value of the stock on December 31, 2003, is $110. Under paragraph (d)(5)(i) of this section, X computes the amount of mark to market gain or loss in 2003 by reference to an adjusted basis of $100, and therefore X includes $10 in gross income as mark to market gain under paragraph (c)(1) of this section. Additionally, under paragraph (d)(1) of this section, X's adjusted basis in the stock for purposes of this section is increased to $110 (or to $60 for all other tax purposes). X sells the stock in 2004 for $120. For purposes of applying section 1001, X must use its original basis of $50, with any adjustments under paragraph (d)(1) of this section, $10 in this case, and therefore X recognizes $60 of gain. Under paragraph (c)(2) of this section (which is applied using an adjusted basis of $110), $10 of such gain is treated as ordinary income. The remaining $50 of gain from the sale of the stock is long-term capital gain because X held such stock for more than one year.

(e) *Stock owned through certain foreign entities*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the following rules shall apply in determining stock ownership for purposes of this section. PFIC stock owned, directly or indirectly, by or for a foreign partnership, foreign trust (other than a foreign trust described in sections 671 through 679), or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. PFIC stock owned, directly or indirectly, by or for a foreign trust described in sections 671 through 679 shall be considered as being owned proportionately by its grantors or other persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock. The determination of a person's proportionate interest in a foreign partnership, foreign trust or foreign estate will be made on the basis of all the facts and circumstances. Stock considered owned by reason of this paragraph shall, for purposes of applying the rules of this section, be treated as actually owned by such person.

(2) *Stock owned indirectly by eligible RICs.* The rules for attributing ownership of stock contained in § 1.1296(e)–1(f) will apply to determine the indirect ownership of PFIC stock by an eligible RIC.

(f) *Holding period.* Solely for purposes of sections 1291 through 1298, if section 1296 applied to stock with respect to the taxpayer for any prior taxable year, the taxpayer's holding period in such stock shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 so applied.

(g) *Special rules*—(1) *Certain dispositions of stock.* To the extent a United States person is treated as actually owning stock in a PFIC under paragraph (e) of this section, any disposition which results in the United States person being treated as no longer owning such stock, and any disposition by the person owning such stock, shall be treated as a disposition by the United States person of the stock in the PFIC.

(2) *Treatment of CFC as a United States person.* In the case of a CFC that owns, or is treated as owning under paragraph (e) of this section, section 1296 stock:

(i) Other than with respect to the sourcing rules in paragraph (c)(6) of this section, this section shall apply to the CFC in the same manner as if such corporation were a United States person. The CFC will be treated as a foreign person for purposes of applying the source rules of paragraph (c)(6).

(ii) For purposes of subpart F of part III of subchapter N of the Internal Revenue Code—

(A) Amounts included in the CFC's gross income under paragraph (c)(1) or (i)(2)(ii) of this section shall be treated as foreign personal holding company income under section 954(c)(1)(A); and

(B) Amounts allowed as a deduction under paragraph (c)(3) of this section shall be treated as a deduction allocable to foreign personal holding company income for purposes of computing net foreign base company income under § 1.954–1(c).

(iii) A United States shareholder, as defined in section 951(b), of the CFC shall not be subject to section 1291 with respect to any stock of the PFIC for the period during which the section 1296 election is in effect for that stock, and the holding period rule of paragraph (f) of this section shall apply to such United States shareholder.

(iv) The rules of this paragraph (g)(2) shall not apply to a United States person that is a shareholder of the PFIC for purposes of section 1291, but is not a United States shareholder under section 951(b) with respect to the CFC making a section 1296 election.

(3) *Timing of inclusions for stock owned through certain foreign entities.* In the case of section 1296 stock that a United States person is treated as owning through certain foreign entities pursuant to paragraph (e) of this section, the mark to market gain or mark to market loss is determined in accordance with paragraphs (c) and (i)(2)(ii) of this section as of the last day of the taxable year of the foreign partnership, foreign trust or foreign estate and then included in the taxable year of such United States person that includes the last day of the taxable year of the entity.

(h) *Elections*—(1) *Timing and manner for making a section 1296 election*—(i) *United States persons.* A United States person that owns marketable stock in a PFIC, or is treated as owning marketable stock under paragraph (e) of this section, on the last day of the taxable year of such person, and that wants to make a section 1296 election, must make a section 1296 election for such taxable year on or before the due date (including extensions) of the United States person's income tax return for that year. The section 1296 election must be made on the Form 8621, "Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund", included with the original tax return of the United States person for that year, or on an amended return, provided that the amended return is filed on or before the election due date.

(ii) *Controlled foreign corporations.* A section 1296 election by a CFC shall be made by its controlling United States shareholders, as defined in § 1.964–1(c)(5), and shall be included with the Form 5471, "Information Return of U.S. Persons With Respect To Certain Foreign Corporations", for that CFC by the due date (including extensions) of the original income tax returns of the controlling United States shareholders for that year. A section 1296 election by a CFC shall be binding on all United States shareholders of the CFC.

(iii) *Retroactive elections for PFIC stock held in prior years.* A late section 1296 election may be permitted only in accordance with § 301.9100 of this chapter.

(2) *Effect of section 1296 election*—(i) *In general.* A section 1296 election will apply to the taxable year for which such election is made and remain in effect for each succeeding taxable year unless such election is revoked or terminated pursuant to paragraph (h)(3) of this section.

(ii) *Cessation of a foreign corporation as a PFIC.* A United States person will not include mark to market gain or loss pursuant to paragraph (c) of this section with respect to any stock of a foreign corporation for any taxable year that such foreign corporation is not a PFIC under section 1297 or treated as a PFIC under section 1298(b)(1) (taking into account the holding period rule of paragraph (f) of this section). Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1296 election. Thus, if a foreign corporation is a PFIC in a taxable year after a year in which it is not treated as a PFIC, the United States person's original election (unless revoked or terminated in accordance with paragraph (h)(3) of this section) continues to apply and the shareholder must include any mark to market gain or loss in such year.

(3) *Revocation or termination of election*—(i) *In general.* A United States person's section 1296 election is terminated if the section 1296 stock ceases to be marketable; if the United States person elects, or is required, to mark to market the section 1296 stock under another provision of chapter 1 of the Internal Revenue Code; or if the Commissioner, in the Commissioner's discretion, consents to the United States person's request to revoke its section 1296 election upon a finding of a substantial change in circumstances. A substantial change in circumstances for this purpose may include a foreign corporation ceasing to be a PFIC.

(ii) *Timing of termination or revocation.* Where a section 1296 election is terminated automatically (e.g., the stock ceases to be marketable), section 1296 will cease to apply beginning with the taxable year in which such termination occurs. Where a section 1296 election is revoked with the consent of the Commissioner, section 1296 will cease to apply beginning with the first taxable year of the United States person after the revocation is granted unless otherwise provided by the Commissioner.

(4) *Examples.* The operation of the rules of this paragraph (h) are illustrated by the following examples:

Example 1. X, a United States person, owns stock in a PFIC. X makes a QEF election in 1996 with respect to such stock. For taxable year 1999, X makes a timely section 1296 election with respect to its stock, and thus its QEF election is automatically terminated pursuant to § 1.1295–1(i)(3). In 2000, X's stock ceases to be marketable, and therefore its section 1296 election is automatically terminated under paragraph (h)(3) of this section. Beginning with taxable year 2000, X is subject to the rules of section 1291 with respect to its stock in the PFIC unless it makes a new QEF election. See § 1.1295–1(i)(5).

Example 2. The facts are the same as in *Example 1*, except that X's stock in the PFIC becomes marketable again in 2001. X may make a new section 1296 election with respect to such stock for its tax year 2001, or thereafter. X will be subject to the coordination rules under paragraph (i) of this section unless it made a new QEF election in 2000.

(i) *Coordination rules for first year of election*—(1) *In general.* Notwithstanding any provision in this section to the contrary, the rules of this paragraph (i) shall apply to the first taxable year in which a section 1296

election is effective with respect to marketable stock of a PFIC if such foreign corporation was a PFIC for any taxable year, prior to such first taxable year, during the United States person's holding period (as defined in paragraph (f) of this section) in such stock, and for which such corporation was not treated as a QEF with respect to such United States person.

(2) *Shareholders other than regulated investment companies.* For the first taxable year of a United States person (other than a regulated investment company) for which a section 1296 election is in effect with respect to the stock of a PFIC, such United States person shall, in lieu of the rules of paragraphs (c) and (d) of this section—

(i) Apply the rules of section 1291 to any distributions with respect to, or disposition of, section 1296 stock;

(ii) Apply section 1291 to the amount of the excess, if any, of the fair market value of such section 1296 stock on the last day of the United States person's taxable year over its adjusted basis, as if such amount were gain recognized from the disposition of stock on the last day of the taxpayer's taxable year; and

(iii) Increase its adjusted basis in the section 1296 stock by the amount of excess, if any, subject to section 1291 under paragraph (i)(2)(ii) of this section.

(3) *Shareholders that are regulated investment companies.* For the first taxable year of a regulated investment company for which a section 1296 election is in effect with respect to the stock of a PFIC, such regulated investment company shall increase its tax under section 852 by the amount of interest that would have been imposed under section 1291(c)(3) for such taxable year if such regulated investment company were subject to the rules of paragraph (i)(2) of this section, and not this paragraph (i)(3). No deduction or increase in basis shall be allowed for the increase in tax imposed under this paragraph (i)(3).

(4) The operation of the rules of this paragraph (i) is illustrated by the following examples.

Example 1. A, a United States person and a calendar year taxpayer, owns marketable stock in a PFIC that it acquired on January 1, 1995. At all times, A's PFIC stock was a nonqualified fund subject to taxation under section 1291. A made a timely section 1296 election effective for taxable year 2003. At the close of taxable year 2003, the fair market value of A's PFIC stock exceeded its adjusted basis by $10. Pursuant to paragraph (i)(2)(ii) of this section, A must treat the $10 gain under section 1291 as if the stock were disposed of on December 31, 2003. Further, A will increase its adjusted basis in the PFIC stock by the $10 in accordance with paragraph (i)(2)(iii) of this section.

Example 2. Assume the same facts as in *Example 1*, except that A is a RIC. In taxable year 2003, A would include $10 of ordinary income under paragraph (c)(1) of this section, and such amount will not be subject to section 1291. A also must increase its tax imposed under section 852 by the amount of interest that would have been determined under section 1291(c)(3), and no deduction will be permitted for such amount. Finally, under paragraph (d)(1) of this section, A will increase its adjusted basis in the PFIC stock by $10.

(j) *Effective Date.* The provisions is this section are applicable as of the date final regulations are published in the **Federal Register**.

* * * * *

Par. 5. Section 1.1296(e)–1 is amended by:

1. Revising paragraph (b)(2).
2. Adding paragraph (b)(3).
3. Revising both references to "sections 958(a)(1) and (2)" in paragraph (f)(1) to read "section 1298(a)".

The revision and addition reads as follows:

§ 1.1296(e)–1 Definition of marketable stock.

* * * * *

(b) * * *

(2) *Special rule for year of initial public offering.* For the calendar year in which a corporation initiates a public offering of a class of stock for trading on one or more qualified exchanges or other markets, as defined in paragraph (c) of this section, such class of stock meets the requirements of paragraph (b)(1) of this section for such year if the stock is regularly traded on such exchanges or markets, other than in *de minimis* quantities, on 1/6 of the days remaining in the quarter in which the offering occurs, and on at least 15 days during each remaining quarter of the taxpayer's calendar year. In cases where a corporation initiates a public offering of a class of stock in the fourth quarter of the calendar year, such class of stock meets the requirements of paragraph (b)(1) of this section in the calendar year of the offering if the stock is regularly traded on such exchanges or markets, other than in *de minimis* quantities, on the greater of 1/6 of the days remaining in the quarter in which the offering occurs, or 5 days.

(3) *Anti-abuse rule.* Trades that have as one of their principal purposes the meeting of the trading requirements of paragraph (b)(1) or (2) of this section shall be disregarded. Further, a class of stock shall not be treated as meeting the trading requirement of paragraph (b)(1) or (2) of this section if there is a pattern of trades conducted to meet the requirement of paragraph (b)(1) or (2) of this section. Similarly, paragraph (b)(2) of this section shall not apply to a public offering of stock that has as one of its principal purposes to avail itself of the reduced trading requirements under the special rule for the calendar year of an initial public offering. For purposes of applying the immediately preceding sentence, consideration will be given to whether the trading requirements of paragraph (b)(1) of this section are satisfied in the subsequent calendar year.

* * * * *

Par. 6. Section 1.6031(a)–1 is amended by:

1. Redesignating the text of paragraph (b)(1) as (b)(1)(i).
2. Adding a heading to newly designated paragraph (b)(1)(i).
3. Adding paragraph (b)(1)(ii).

The additions read as follows:

§ 1.6031(a)–1 Return of Partnership income.

* * * * *

(b) * * * (1) * * * (i) *Filing requirement.* * * *

(ii) *Special rule.* For purposes of this paragraph (b)(1) and paragraph (b)(3)(iii) of this section, a foreign partnership will not be considered to have derived income from sources within the United States solely because a U.S. partner marks to market his pro rata share of PFIC stock held by the foreign partnership pursuant to an election under section 1296.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–19124 Filed 7–30–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–092]

RIN 2115–AA97

Security Zone; Seabrook Nuclear Power Plant, Seabrook, NH

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone around the Seabrook Nuclear Power Plant in Seabrook, New Hampshire. This security zone will close off public access to all land and waters within 250-yards of the waterside property boundary of the plant. This action is

necessary to ensure public safety and prevent sabotage or terrorist acts. Entry into this security zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

DATES: Comments and related material must reach the Coast Guard on or before September 30, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Portland, 103 Commercial Street, Portland, ME 04101. Marine Safety Office Portland maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Portland between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Port Operations Department, Marine Safety Office Portland at (207) 780–3092.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–092), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Portland at the address listed under **ADDRESSES** explaining why one may be beneficial. If we determine that one would aid in this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

In light of terrorist attacks on New York City and Washington, D.C. on September 11, 2001 a permanent security zone is being proposed to safeguard the Seabrook Nuclear Power Plant, persons at the facility, the public and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. The Seabrook Nuclear Power Plant presents a possible target of terrorist attack due to the potential catastrophic impact nuclear radiation would have on the surrounding area, its large destructive potential if struck, and its proximity to a population center. This proposed security zone prohibits entry into or movement within the specified area.

This proposed rulemaking will establish a security zone encompassing all land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant identified as follows: Beginning at position 42°53′58″ N, 070°51′06″ W; then running along the property boundaries of Seabrook Nuclear Power Plant to position 42°53′46″ N, 070°51′06″ W.

We propose to establish a permanent security zone identical to one we created in a temporary final rule entitled "Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire" that was published December 31, 2001 in the **Federal Register** (66 FR 67487). That temporary rule originally was effective until June 15, 2002. Its effective period was extended until August 15, 2002 by a temporary final rule with the same title published May 8, 2002 (67 FR 30807). Another extension will be published in the future to accommodate the time necessary for notice and comment rulemaking on this proposed rule. This proposed rulemaking is necessary to provide permanent protection of the waterfront areas of the Seabrook Nuclear Power Plant.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port or designated Coast Guard representative on-scene. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

Any violation of the security zone proposed herein is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this proposed regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zone, notifications will be made to the local maritime community, and signs will be posted informing the public of the boundaries of the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the reasons enumerated in the Regulatory Evaluation section above, we feel this security zone will not have a significant economic impact on a substantial number of small entities. If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Publ. L. 104–121], we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (Junior Grade) R. F. Pigeon, Marine Safety Office Portland, at (207) 780–3092. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph(34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.106 to read as follows:

§ 165.106 Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire.

(a) *Location.* The following area is a security zone: All land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant identified as follows: beginning at position 42°53′58″N, 70°51′06″W; then running along the property boundaries of Seabrook Nuclear Power Plant to position 42°53′46″N, 70°51′06″W. All coordinates reference 1983 North American Datum (NAD 83)

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine (COTP).

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Portland, Maine or designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state and federal law enforcement vessels.

(3) No person may swim upon or below the surface of the water within the boundaries of this security zone.

(c) *Authority:* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1223, 1225 and 1226.

Dated: July 23, 2002.

M.P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 02–19360 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK24

Testimony Certified or Under Oath

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulation that requires written and oral testimony to be certified or given under oath or affirmation in most cases. VA believes that the global requirements in this regulation are no longer necessary to establish the credibility of most testimony offered in support of a claim for benefits. Removal of this regulation will help to streamline the claims process without affecting program integrity.

DATES: Comments must be received on or before September 30, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC, 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK24". All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC, 20420, telephone (202) 273–7228. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The current regulation on testimony is found at 38 CFR 3.200. It provides that all oral testimony be given under oath or affirmation and that all written testimony submitted in support of a claim for service connection of a disability or death be certified or given under oath or affirmation. Oddly, the regulation does not require that written testimony submitted in connection with a claim for disability or death pension be certified or given under oath or affirmation. The need for this regulation is now being called into question because of recent changes in the claims process which streamline the acceptance of evidence and require an assessment of credibility in all cases.

The current regulation was created at a time when VA required all evidence and testimony to be in writing or presented orally at a personal hearing. It has changed very little in the last 40 years. But the Veterans Benefits Administration (VBA) is now accepting evidence by fax, e-mail and telephone in addition to written and oral testimony in an effort to streamline the claims process. Any attempt to require formal certification in such cases would only delay the decision making process.

When deciding a claim for disability or death benefits, VBA decision makers routinely make assessments of credibility with respect to evidence presented in support of the claim. This is true regardless of whether any written or oral testimony was certified or given under oath or affirmation. Since these credibility assessments are routinely made, it is unnecessary to require certification or the swearing of oaths or affirmations in all cases. This does not mean that claimants cannot submit certified written testimony or swear oaths or affirmations in connection with oral testimony. Indeed, a claimant may believe that such certification or swearing increases the degree of credibility that may be assigned by a decision maker. For this reason VBA will not prohibit swearing or certification. It will just no longer require it in all cases.

Although the global requirement is being removed, there are other regulations in part 3 which require sworn testimony or certification of evidence in specific instances (see for example § 3.103(c)(2) concerning sworn testimony at personal hearings). The regulations covering those specific instances are not being removed or amended by this proposed action and will remain in effect.

VBA believes that the burden imposed upon claimants for benefits, as well as the administrative burden imposed upon VA itself, entailed by a requirement that claimants swear to oral evidence, or that they certify all written statements, in support of an entitlement to benefits, is too great to justify its retention-especially where evidence is transmitted over the telephone or fax machine. In light of the fact that VA will still retain the ability to discover and deal with fraudulently given statements, the burden of administration outweighs the benefit of retention in this case. In contrast, the burden of administering an oath at an already-convened Regional Office (RO) hearing is minimal, in comparison with the benefit achieved through formally impressing on the witness the need for truthfulness.

This rulemaking reflects VA's goal of making government more responsive, accessible, and comprehensible to the public. The Plain Language Regulations Project was developed as a long-term comprehensive project to reorganize and rewrite in plain language the adjudication regulations in part 3 of title 38, Code of Federal Regulations. This proposed removal is part of a series of proposed revisions to those regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act, Public Law 104–4, March 22, 1995, requires (in section 202) agencies to assess anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposal would have no consequential effect on state, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary certifies that the adoption of this proposal would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposal does not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The catalog of Federal Domestic Assistance program numbers for this proposal are 64.100, 64.101, 64.104, 64.105, 64.109, 64.100, and 64.127.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: June 26, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.200 [Removed]

2. Section 3.200 is removed.

[FR Doc. 02–19327 Filed 7–30–02; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–63–1–7563; FRL–7253–2]

Approval and Promulgation of Implementation Plans; Louisiana; Control of Emission of Nitrogen Oxides from Lean Burn Engines Within the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The EPA is proposing approval of rules into the Louisiana State Implementation Plan (SIP). In this rulemaking we are proposing to approve, by parallel processing, revisions proposed on April 8, 2002, by the State of Louisiana to the Nitrogen Oxides (NO_X) rules for stationary internal combustion engines/lean burn engines (lean burn engines), within the Baton Rouge (BR) ozone nonattainment area (the April 8, 2002, SIP revision). The State of Louisiana proposed the April 8, 2002, SIP revision to regulate NO_X emissions from lean burn engines within the BR ozone nonattainment area. Section one of this document explains more about this approval. The April 8, 2002, SIP revision will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the BR area.

The EPA is proposing approval of these SIP revisions to regulate emissions of NO_X as meeting the requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before August 30, 2002.

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691, and shar.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

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7. What is a State Implementation Plan?
8. What is the Federal approval process for a SIP?
9. What does Federal approval of a SIP mean to me?
10. What areas in Louisiana will the proposed SIP revision for lean burn engines affect?

Throughout this document "we," "us," and "our" means EPA.

1. What Are We Proposing To Approve?

On February 27, 2002, the Governor of Louisiana, submitted rule revisions to LAC 33:III, Chapter 22, "Control of Emissions of Nitrogen Oxides," (AQ215), as a revision to the Louisiana SIP for point sources of NO_X in the BR area and its Region of Influence. We published our proposal to approve the February 27, 2002 SIP revision in a separate **Federal Register** (67 FR 48095, July 23, 2002).

On April 8, 2002, the Governor of Louisiana submitted rule revisions to LAC:33:III, Chapter 22, "Control of Emissions of Nitrogen Oxides," (AQ224), as a revision to the Louisiana SIP for lean burn engines in the BR ozone nonattainment area. The BR area constitutes the 5 ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge (40 CFR 81.319). This SIP revision concerns Reasonably Available Control Technology (RACT) for lean burn engines in these 5 parishes. RACT is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979.

On April 8, 2002, the Governor of Louisiana submitted a letter to us requesting that we propose approval of their rule revision concerning RACT for lean burn engines through "parallel processing." *See* 40 CFR part 51, Appendix V for more information on "parallel processing." The State of Louisiana submitted this revision to us as a part of the NO_X reductions needed for the BR area to attain the 1-hour ozone standard. These NO_X reductions will assist the BR area to attain the 1-hour ozone standard.

We are proposing to process and approve the April 8, 2002, SIP revision at the same time as the State is accepting comments and finalizing this rule revision. We refer to this method of simultaneously processing and approving a State's proposed rule revision as "parallel processing." We have based our proposed parallel approval on the State's proposal dated April 8, 2002. If the State's final rule revision is significantly different from its April 8, 2002, revision we will re-propose our rulemaking on the revision.

We are proposing approval of this rule revision under Part D, and section 182(c) of the Act because Louisiana is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard in the BR 1-hour ozone nonattainment area.

2. What Is the Current Applicability Size Limit for Lean Burn Engines Within the BR Area?

The current applicability size limit for lean burn engines in the BR ozone nonattainment area, is set at 1500 horse power (Hp) or more. The NO_X emission specification for lean burn engines operating in the BR ozone nonattainment area is 4 grams per Hp-hour. For more information on how the emission specification is derived, please see the docket for this proposed action.

3. What Does the Proposed SIP Revision for Lean Burn Engines in the BR Area Say?

The State's proposed SIP revision will lower the applicability size limit for lean burn engines operating within the BR ozone nonattainment area (5 parishes) from 1500 Hp or more to 320 Hp or more. However, the NO_X emission specification for lean burn engines operating within the BR ozone nonattainment area will remain unchanged at 4 grams per Hp-hour. *See*

Chapter 22, section D of Louisiana's rule revisions.

We believe that lowering the applicability size limit for lean burn engines within the BR ozone nonattainment area will bring the major source threshold limit for such engines into agreement with the definition of major source found in section 182(c) of the Act. We also believe that the resulting NO_X emission reductions, due to the lower applicability size limit for lean burn engines within the BR area, will contribute to the attainment of the 1-hr ozone standard in the BR area.

For NO_X regulatory purposes, the LAC 33:III, Chapter 22 requires a source to operate at RACT or more stringent levels during the May 1 through September 30 (ozone season) time frame. The May 1 through September 30 time frame is consistent with the time frame adopted for the ozone transport assessment group rules. *See* 62 FR 60344 published on November 7, 1997. The NO_X emission control methods may vary from one source to another. Due to the fact that NO_X emission control methods differ from one source to another, some sources will need to operate their NO_X control device beyond the above-mentioned ozone season. The State provided us with more information about the seasonality of the NO_X control in Chapter 22, in a letter dated May 3, 2002. We have included State's May 3, 2002, letter in the docket for this rulemaking.

We are proposing approval of these rules revisions under Part D of the Act because Louisiana is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard in the BR ozone nonattainment area. We will be proposing action on Louisiana's attainment demonstration in a separate FR publication.

4. What Are NO_X?

Nitrogen oxides belong to the group of criteria air pollutants. The NO_X result from burning fuels, including natural gas, gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

5. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time. *See* section 1 of this document for a listing of the Louisiana parishes that are nonattainment for ozone.

6. What Is Definition of a Major Source for NO_X?

The BR area was designated a serious ozone nonattainment area (40 CFR 81.319). According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that emits, when uncontrolled, 50 tpy or more of NO_X. Therefore, the major source size for point sources within the BR area is 50 tpy or more, when uncontrolled.

7. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

8. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the CFR at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations that we approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

9. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

10. What Areas in Louisiana Will the Proposed SIP Revision for Lean Burn Engines Affect?

The following table contains a list of parishes affected by the proposed rule revision that we are proposing to approve. If you are in one of these Louisiana parishes, you should refer to the Louisiana NO_X rules to determine if and how today's action will affect you.

TABLE I.—RULE LOG NUMBER AND AFFECTED AREAS FOR LOUISIANA NO_X SIP

Rule log number	Affected areas
LAC 33:III:2201 (AQ224) provisions	Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge parishes.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 23, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–19320 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7252–7]

Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste and a Determination of Equivalent Treatment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA, also, "the Agency" or "we" in this preamble) is proposing to grant two petitions submitted by the University of California—E.O. Lawrence Berkeley National Laboratory (LBNL). The first petition is to exclude (or "delist") certain hazardous wastes from the lists of hazardous wastes. Today's proposed rule proposes to grant LBNL's petition to delist its F002, F003, and F005 waste, and requests public comment on the proposed decision. EPA reviewed all of the waste-specific information provided by LBNL and determined that the petitioned waste is nonhazardous with respect to the original listing criteria.

The Agency is also proposing to grant LBNL's second petition, which is for a determination of equivalent treatment (DET) for the catalytic chemical oxidation (CCO) technology that LBNL used to treat the original mixed waste.

EPA reviewed all of the specific CCO treatment information provided by LBNL and determined that the CCO treatment is equivalent to combustion. Today's proposed rule proposes to grant LBNL's DET petition for the CCO technology, and requests public comment on the proposed decision. If the proposed DET becomes final, the treatment residues generated from LBNL's use of the CCO technology will have met the applicable LDR technology standard for D001 waste. If the proposed delisting and DET become final, then the petitioned waste can be disposed at an authorized low-level radioactive waste facility.

DATES: Comments on this proposed rule will be accepted until September 16, 2002. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating final decisions.

Any person may request a hearing on this proposed rule by filing a written request by August 15, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send two copies of your comments to Rich Vaille, Associate Director, Waste Management Division (WST–1), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

Any person may request a hearing on these proposed decisions by filing a written request with Jeff Scott, Director, Waste Management Division (WST–1) U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency Records Center, 75 Hawthorne Street, San Francisco, CA 94105, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted

by the petitioner, and all information used by EPA to evaluate the petition. Call the EPA Region 9 RCRA Record Center at (415) 947–4596 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346. For technical information on specific aspects of these petitions, contact Cheryl Nelson at the address above or at 415–972–3291, e-mail address: nelson.cheryl@epa.gov.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Overview Information
A. What Actions is EPA proposing to approve?
B. How Will LBNL Manage the Waste if these Petitions are Approved?
C. When would EPA finalize these proposed actions?
II. Background
A. What laws and regulations give EPA the authority to delist wastes?
B. What is a Determination of equivalent treatment?
C. How would these actions affect states?
III. EPA's Evaluation of the Petitions
A. What waste did LBNL describe in their petitions to EPA?
B. What information and Analyses did LBNL submit to support their petitions?
C. How is the petitioned waste generated?
D. How did LBNL sample and analyze the waste for the petitions?
E. What were the results of LBNL's analysis?
F. How did EPA evaluate the risk of delisting the petitioned waste?
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H. What did EPA conclude about LBNL's analysis?
I. What is EPA's final evaluation of these petitions?
IV. Conditions for Exclusion
A. What conditions are associated with this exclusion?
B. What Happens if LBNL fails to meet the conditions of the exclusion?
V. Effect on State Authorizations
VI. Effective Date
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I. Overview Information

A. What Actions Is EPA Proposing To Approve?

First, EPA is proposing to grant LBNL's petition to have approximately 200 US gallons of residues from treatment of low-level mixed waste from the National Tritium Labeling Facility (NTLF), a research facility located within LBNL, excluded (delisted) from the definition of a hazardous waste. LBNL is a multi-program laboratory operated by University of California under contract with the Department of Energy (DOE). The petitioned wastes are treatment residues generated through treatment of mixed waste. Mixed waste is defined as waste that contains hazardous waste subject to the requirements of the Resource Conservation and Recovery Act (RCRA) and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA). See 42 U.S.C. 6903 (41), added by the Federal Facility Compliance Act of 1992. LBNL's petitioned waste contains tritium, a radioactive hydrogen isotope (^3H) manufactured for use as a tracer in biomedical research.

The petitioned wastes meet the definition of listed F002, F003, and F005 RCRA hazardous wastes because they are derived from treatment of mixed wastes that are listed for these waste codes. LBNL petitioned EPA to grant a one-time, generator-specific delisting for the treatment residues, because LBNL believes that its wastes do not meet the criteria for which these types of wastes were listed. The petition is for a one-time delisting because all of the petitioned waste has been generated, and will not be generated again.

Based on our review, the petitioned waste is essentially tritiated water with no detectable organic chemical constituents, and therefore we agree with the petitioner that the petitioned waste is nonhazardous with respect to the original listing criteria. Furthermore, EPA finds no additional constituents or factors which would cause the petitioned waste to be hazardous under RCRA. Our proposed decision to delist the waste is based upon our evaluation of the process which generates the waste, our first-hand observations of the process used to treat the waste, and our review of the analytical data submitted to support the petition.

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See 222 of Pub. L. 98–616 (HSWA), 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4). We compared and evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (3).

We also evaluated the waste for other factors or criteria which could cause the petitioned waste to be hazardous under RCRA. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentrations of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

If our review had found that the petitioned waste remained hazardous based on the factors for which we originally listed the waste, we would have proposed to deny the petition. If this decision becomes final, the DOE would still retain authority over this waste because of the tritium, a low-level radioactive constituent.

Secondly, LBNL has petitioned EPA under 40 CFR 268.42(b) for a determination that the CCO technology used to perform the treatment of the original mixed waste is equivalent to combustion as defined in EPA's Land Disposal Restriction (LDR) Program for treatment of high-total organic carbon (TOC) subcategory D001 ignitable wastes. Because LBNL's original mixed waste is also a D001 ignitable waste, it must be treated via a combustion technology prior to disposal to meet the LDR treatment standard.

We are proposing to grant the DET because LBNL has adequately demonstrated that the CCO technology is equivalent to combustion for the treatment of organic wastes. This demonstration is based primarily on the following key factors: (1) The CCO achieves a destruction and removal efficiency of more than 99.999% at a temperature near or above 500°C; (2) the CCO system does not emit Hydrogen Chloride Vapor (HCl) or particulate matter; and (3) the CCO was operated in compliance with Federal, State and local hazardous waste and air emission regulations.

If the proposed DET becomes final, the treatment residues generated from LBNL's use of the CCO technology will have met the applicable LDR technology standard for DOO1 waste. The LDR treatment standards for F002, F003, and F005 wastes are numeric standards. The CCO technology treated the original mixed wastes to below these numeric standards.

B. How Will LBNL Manage the Waste if These Petitions are Approved?

If EPA's proposed decisions are made final, the petitioned waste will no longer be subject to regulation as a hazardous waste under Subtitle C of RCRA thereby allowing LBNL the option to dispose this low-level radioactive waste at a Nuclear Regulatory Commission (NRC), licensed or a DOE-authorized low-level radioactive waste disposal facility. Without these approvals, the petitioned waste would remain a mixed waste

subject to both RCRA regulations and DOE orders. Available treatment facilities for high activity tritium-containing mixed wastes are extremely limited and are not designed to capture the tritium during treatment. There are no available mixed waste disposal facilities for high-activity tritium-containing mixed wastes. LBNL and numerous other research facilities nationally are currently storing this type of mixed waste onsite pending more cost effective and environmentally acceptable treatment and disposal options.

C. When Would EPA Finalize These Proposed Actions?

HSWA specifically requires the EPA to provide notice and an opportunity for public comment before granting or denying a final exclusion. Thus, EPA will not make a final decision to grant an exclusion until it has addressed all timely public comments (including any at public hearings) on today's proposal.

While not required, EPA encourages public involvement in our decision making and is therefore also seeking comments on our proposed DET decision. Additionally, to clearly describe the regulatory approvals needed for LBNL to dispose the petitioned waste offsite, it is necessary to describe both the delisting and the DET petitions.

Since this proposed rule would reduce the existing requirements for a person generating hazardous wastes, the regulated community does not need a six-month period to achieve compliance in accordance with section 3010 of RCRA as amended by HSWA. Therefore, the exclusion and the DET would become effective immediately upon finalization.

II. Background

A. What Laws and Regulations Give EPA the Authority to Delist Wastes?

On January 16, 1981, as part of its regulations implementing section 3001 of RCRA, EPA published a list of hazardous wastes from non-specific and specific sources. EPA has amended this list several times. See 40 CFR 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) they exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

"Listed" wastes are often from specific industrial processes. Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a listed waste is generally hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility [1] should not be regulated as a hazardous waste. Section 260.20 establishes general procedures for rulemaking petitions, and § 260.22 establishes the specific requirements for a petition to exclude a waste at a particular facility from the list of hazardous wastes in Part 261.

To have their wastes excluded, petitioners must first show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a)(1) and the background documents for the listed wastes. Second, the EPA Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner must also demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous concentrations.

See 40 CFR 260.22(a)(2) and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on hazardous waste characteristics (i.e., not exhibiting hazardous waste characteristics, including any promulgated subsequent to a delisting decision.)

In addition, mixtures containing listed hazardous wastes and residues from the treatment, storage, or disposal of listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3(a)(2)(iii) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion but remain hazardous wastes unless and until they are excluded.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority under 40 CFR 260.20 and 260.22 to approve or deny petitions submitted by generators within their Regions (National Delegation of Authority 8–19) in States not yet authorized to administer a delisting program in lieu of the Federal program. California is not authorized to administer the delisting program and therefore EPA Region 9 has the authority to approve or deny delisting petitions in California.

B. What Is a Determination of Equivalent Treatment?

Under Section 3004(m) of RCRA, EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized". EPA implements section 3004(m) by establishing land disposal restriction treatment standards based on the performance of best demonstrated available technology (BDAT). We have generally established two types of treatment standards: (1) a numerical, concentration-based treatment limit for each constituent of concern, or (2) a method of treatment that must be used to treat a particular constituent or constituent(s). In either case, the treatment standard is based on the BDAT.

Under the second approach where a technology is specified as the treatment standard, EPA allows facilities to submit petitions (or applications) demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achievable by the EPA-specified method. This demonstration of equivalency, known as a determination of equivalent treatment if approved, is typically both waste-specific and site-specific. Such approvals are based on: (1) Demonstrations of equivalence for an alternative method of treatment based on a statistical comparison of technologies, including a comparison of specific design and operating parameters; (2) the development of a concentration-based standard that utilizes a surrogate or indicator compound that guarantees effective treatment of the hazardous constituents; and (3) the development of a new

[1] Many industrial processes result in the production of hazardous waste, as well as useful products and services. A "generating facility" is a facility in which hazardous waste is produced, and a "generator" is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. See 40 CFR 260.10 for regulatory definitions of "generator," "facility," "person," and other terms related to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

analytical method for quantifying the hazardous constituents.[2]

Thus, in determining whether a technology is equivalent to the specified technology, EPA carefully evaluates the treatment process, including examining the characteristics of the residuals that are generated, and compares the performance of this alternative treatment process to the specified method of treatment. We also look at any other potential adverse environmental impacts, including releases of hazardous constituents to air and water. See Chemical Waste Management v. EPA, 976 F.2d 2, 17 (D.C. Cir. 1992), explaining the relevance of assessing releases to media other than land in determining whether treatment is minimizing threats, as required by RCRA section 3004 (m).

The original mixed wastes generated by NTLF are regulated under RCRA as F002, F003, F005 and high-TOC D001 category wastes. The applicable LDR treatment standards for F002, F003, and F005 are numeric standards. LBNL treated NTLF mixed wastes with its CCO technology. The treatment residues do not contain any detectable chemical constituents above their respective LDR treatment standards.

The LDR treatment standard for high-TOC ignitable liquid (D001) is a technology standard based upon combustion (40 CFR 268.40). The combustion standard is defined as "high temperature destruction technologies, such as combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements. * * *" (40 CFR 268.42). While NTLF mixed wastes could be treated via incineration or boiling for energy recovery, the available incinerators or boilers that could treat these wastes would result in release of nearly all of the tritium in the mixed waste to the environment. LBNL developed an alternative technology, the CCO technology, that includes engineering controls designed to capture and retain tritium, so that the mixed waste can be managed in a manner that minimizes releases to the environment. EPA has determined that this CCO technology is equivalent to combustion. If the proposed DET becomes final, the treatment residues generated from LBNL's use of the CCO technology will have met the applicable LDR technology standard for D001 waste.

[2] See 40 CFR 268.42(b) and the preamble for the Third Scheduled Wastes; Final Rule (55 FR 22536, June 1, 1990) for more information

C. How Would These Actions Affect States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting and demonstration of equivalent treatment programs. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in a state. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting and/or demonstration of equivalent treatment program in lieu of the Federal program, i.e., to make their own decisions. Therefore, these proposed actions, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, LBNL must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

III. EPA's Evaluation of the Petitions

A. What Waste Did LBNL Describe in Their Petitions to EPA?

On June 30, 1999, LBNL petitioned EPA to exclude from the list of hazardous wastes at 40 CFR 261.31, an initial volume of approximately 105 US gallons and an approximate annual volume of 65 US gallons of CCO treatment residues generated at the NTLF and designated as F002, F003, and F005 listed mixed wastes. F002, F003, and F005 wastes are spent halogenated and non-halogenated solvent mixtures from non-specific sources. LBNL also included in this submittal a demonstration of equivalent treatment petition for this same waste as this waste is also high-TOC subcategory D001 ignitable wastes.

Since submitting the petitions, the NTLF has generated an additional approximately 95 gallons of treatment residues. There will be no additional treatment residues from the CCO process. Therefore, the total amount of waste LBNL has petitioned to delist and for which it has sought demonstration of equivalent treatment approval is a total fixed amount of 200 US gallons.

The EPA reviews a petitioner's estimated volume and, on occasion, has requested a petitioner to re-evaluate the estimated waste generation rate. EPA accepts LBNL's estimate of the fixed volume of waste.

B. What Information and Analyses Did LBNL Submit To Support Their Petitions?

To support its delisting petition under 40 CFR 260.20(b) and 260.22(i), LBNL submitted: (1) a detailed description, including Material Safety Data Sheets, of the chemicals and processes used to generate and treat the wastes, (2) descriptions and schematic diagrams of the treatment system, (3) analyses for total constituent analyses for all organic compounds listed in Appendix VIII of 40 CFR Part 261 using an in-house Gas Chromatograph (GC) equipped with both a Flame Ionization Detector (FID) and a Mass Spectrometer (MS), and (4) total constituent analyses of surrogate nonradioactive samples by an independent commercial laboratory for industrial solvents, volatile organic compounds, and semi-volatile organic compounds using EPA Test Methods 8015 (Modified), 8260, and 8270, respectively.

In addition to the above, to support its DET petition under 40 CFR 268.42(b), LBNL submitted: (1) calculations demonstrating the destruction and removal efficiency for its CCO technology, (2) detailed information on the monitoring and inspection procedures for the CCO technology, and (3) information demonstrating compliance with local and state environmental regulations.

C. How Is the Petitioned Waste Generated?

The petitioned waste is the treatment residues from CCO (treatment) of the original mixed wastes. The original mixed waste was generated by NTLF, a noncommercial research organization designated by the DOE and the National Institutes of Health to conduct tritium labeling research and development. (NTLF began operating in 1982 and was managed by the University of California at LBNL. NTLF ceased conducting National Institutes of Health-funded research on December 31, 2001 and is now undergoing closure.) Treatment options for mixed waste are extremely limited and prohibitively expensive. The only approved treatment option under RCRA for NTLF's tritium-containing mixed waste is incineration or boiling for energy recovery, which result in the release of the tritium to the environment. LBNL and numerous other research facilities nationally are currently storing their tritium-containing mixed waste onsite pending more cost effective and environmentally

acceptable treatment and disposal options.

In 1996, LBNL began a study to evaluate the effectiveness of treating tritiated mixed waste using CCO technology. The concept of CCO is to destroy the hazardous portion of the mixed waste while capturing the radioactive portion for future recycling or proper disposal. As part of this study, LBNL constructed two CCO units at the NTLF (one for surrogate non-radioactive wastes and one for mixed wastes) and conducted a treatability study by treating both surrogate and mixed waste samples. The treatability study was conducted in accordance with the California State treatability study exclusion in Title 22 of the California Code of Regulations (CCR) Section 66261.4 (e) and (f).

The CCO technology involves high-temperature decomposition of organic chemicals in the presence of a catalyst. Treatment by the CCO generates mainly carbon dioxide gas and tritiated water. Many of the mixed waste samples prior to treatment contained low concentrations of acetonitrile and some contained low concentrations of chloroform. After treatment the tritiated water did not contain detectable concentrations of acetonitrile and chloroform. The tritiated water was generally acidic with a pH range from 2 to 3 but LBNL staff measured the pH of each batch of tritiated water and neutralized it to a pH of between 5 and 9. The tritiated water is considered RCRA hazardous waste F002, F003, and F005 because it is derived from a mixed waste (due to the "derived-from" rule discussed above).

The CCO process also generates bubbler water, which is water that is used in the process to ensure efficient capture of tritiated water from the gas after treatment. Following treatment, the bubbler water is stabilized to prevent release of tritium by mixing it with the silica gel, an inert substance, through which it was vented during the CCO process.

The wastes proposed for delisting are the tritiated water and the bubbler water mixed with CCO-process silica gel.

D. How Did LBNL Sample and Analyze the Waste for the Petitions?

LBNL developed the sampling and analysis plan for the petitioned wastes in consultation with EPA Region 9. LBNL operated two CCO units during the treatability study; one for mixed waste and one for non-radioactive waste surrogate samples [3] that were identical in chemical composition to the mixed waste samples.

Because there are no commercially available analytical laboratories with the ability to analyze high activity mixed wastes from NTLF (due to the level of radioactivity), all analytical testing for these mixed wastes was conducted in-house by LBNL and NTLF staff. As a quality control measure, non-radioactive surrogate waste samples were sent for analysis to an offsite commercial laboratory and results were compared to the in-house data.

The two CCO units were operated using a batch process. Prior to each batch, the mixed waste sample was analyzed in-house to identify each organic chemical constituent and its relative concentration. In many cases, these data were used to create an identical surrogate sample which was also then analyzed in-house prior to treatment. After treatment, the radioactive treatment residue was analyzed in-house to identify any remaining organic chemical constituents. LBNL analyzed the surrogate treatment residues (non-radioactive) in-house and sent splits of the same surrogate residues offsite to a commercial laboratory for analysis. LBNL treated and then analyzed a total of approximately 71 batches of mixed waste samples and 15 batches of surrogate samples. These samples represent 100% of all wastes treated by LBNL during the treatability study. Additionally, LBNL analyzed two bubbler water samples from two different batches of surrogate sample treatment in-house.

As part of the delisting petition, LBNL submitted seven sets of analytical data from mixed waste samples, six sets of data from surrogate waste samples, and two sets of data from the bubbler water. LBNL chose these sets of data as representative of the total data set. LBNL also made available to EPA all of the remaining analytical data from the treatability study. For the in-house testing data, LBNL provided the experimental data documentation from the operation of the CCO, and the test results (GC chromatograms).

LBNL's in-house testing method used direct liquid injection gas chromatography to minimize the volume of the sample. The LBNL method used two detectors, an MS and an FID. Together, these detectors can detect all organic compounds in 40 CFR Part 261, Appendix VIII including those that were present in the original mixed waste and surrogate samples prior to treatment. LBNL also tested all samples for pH in-house using pH strips. LBNL did not test for inorganic or metal compounds because, based upon the processes and chemicals that LBNL used to produce these wastes, these compounds were not present in the original mixed waste or surrogate samples.

The surrogate samples that were sent to an off-site commercial analytical laboratory were analyzed by EPA Test Methods 8015 (modified) for Industrial Solvents and Method 8260 for Volatile Organic Compounds. Several samples were also tested by Method 8270 for Base Neutral and Acid Extractable Organic Compounds (semivolatile compounds).

E. What Were the Results of LBNL's Analysis?

There were no organic compounds above LBNL's quantitation limits in any of the treatment residues or in the bubbler water from the treatment of the original mixed wastes. LBNL's in-house testing procedures were able to achieve a quantitation limit in the range of 0.1 to 0.5 parts per million (ppm).

With the exception of chloroform in very low concentrations (up to 0.011 ppm) in a few samples, detectable organic compounds were not detected in any of the surrogate (non-radioactive) treatment residues. Because chloroform was not present in the original surrogate samples prior to treatment, the chloroform is a laboratory contaminant introduced by the offsite commercial laboratory.

On the basis of generator knowledge, LBNL did not test for inorganic constituents as no inorganic constituents were used in the processes that produced the original mixed waste.

All of the analytical results indicate that the treatment residues are water (with tritium in the radioactive samples) and therefore do not exhibit the hazardous waste characteristics of toxicity; reactivity; or ignitability. As discussed previously, LBNL measured the pH on all treatment residues. The pH ranged from 5 to 9 and therefore none of the residues exhibited the hazardous waste characteristic of corrosivity.

EPA does not generally validate submitted test data before proposing delisting decisions. The sworn affidavit

[3] Joint EPA/NRC mixed waste testing guidance offers two strategies for helping to maintain radiation exposures As Low As is Reasonably Achievable (ALARA) if testing is required for mixed waste. These strategies are the use of a sample size of less than 100 grams, as long as the resulting test is sufficiently sensitive to measure the constituents of interest at the regulatory levels, and the use of surrogate materials, as long as they are chemically identical to the mixed waste and faithfully represent the hazardous constituents in the waste mixture. (Joint NRC/EPA Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste. 62 FR 62080 (November 20, 1997)).

submitted with the petition binds the petitioner to present truthful and accurate results under penalty of perjury. LBNL submitted a signed Certification of Accuracy and Responsibility statement required by 40 CFR 260.22(i)(12).

F. How Did EPA Evaluate the Risk of Delisting the Petitioned Waste?

In order for EPA to delist a particular waste, the petitioner must demonstrate: (1) The waste does not meet any of the criteria under which the waste was listed, (2) the waste does not exhibit any of the hazardous waste characteristics defined in 40 CFR 261.21 through 261.24, and (3) there are no additional constituents in the waste other than those for which it was listed, that would cause the waste to be a hazardous waste (40 CFR 260.22(a)). For petitioned wastes that contain detectable chemical constituents, EPA generally makes this determination by gathering information to identify plausible routes of human or environmental exposure (i.e., groundwater, surface water, air) and using fate and transport models to predict the release of hazardous constituents from the petitioned waste once it is disposed. The transport model predicts potential exposures and impacts of the petitioned waste on human health and the environment. The model that EPA uses is a Windows-based software tool, the Delisting Risk Assessment Software (DRAS) Program. The DRAS program estimates the potential releases of waste constituents and predicts the risk associated with those releases using several EPA models including the EPACMTP (EPA's Composite Model for leachate migration with Transformation Products) fate and transport model for groundwater releases. For a detailed description of the DRAS program and the EPACMTP model, see 65 FR 58015, September 27, 2000.

For this petition, EPA believes that LBNL has met the three criteria listed in 40 CFR 260.22(a). For our review, it was not necessary to use the DRAS model because this waste does not contain any detectable concentrations of chemical constituents other than water and tritium (which is not an EPA RCRA regulated waste constituent subject to delisting).

G. What Other Factors Did EPA Consider in Its Evaluation of These Petitions?

We considered other agencies' regulatory controls that would apply to the petitioned waste. The waste proposed for delisting is tritiated water which is a low-level radioactive waste. The waste was generated at a DOE facility and therefore is subject to DOE regulation. If delisted, the waste must be disposed in an NRC-licensed or DOE authorized low-level radioactive waste disposal facility. Because NRC/DOE low-level radioactive waste disposal facilities cannot accept RCRA hazardous waste, the waste must be delisted from RCRA before it can be disposed. If the waste is not delisted, then LBNL must continue to store the waste in their RCRA permitted storage facility (onsite) until such time as a viable disposal alternative is available for the waste.

We also considered the regulatory controls over the operation of the CCO unit. The waste proposed for delisting is treatment residues from catalytic chemical oxidation of mixed waste. LBNL operated the CCO unit under a California State RCRA treatability study exclusion (22 CCR 66261.4(e) and (f)) that provides a conditional exclusion from the hazardous waste regulations. This exclusion is designed to allow small volume studies of new technologies for treatment of hazardous wastes. Once a volume limit has been reached, facilities must obtain a RCRA hazardous waste treatment permit to continue using the treatment technology. The State of California Department of Toxic Substances Control (DTSC), who is the authorized RCRA regulatory authority with jurisdiction over this facility, conducted an extensive investigation of the CCO process and concluded that it was operated in compliance with the treatability study exclusion. LBNL has concluded its treatability study of the CCO process and is no longer using this technology, therefore, there will be no need to seek a permit in the future.

H. What Did EPA Conclude About LBNL's Analysis?

After reviewing LBNL's petition, EPA concludes that: (1) No RCRA hazardous constituents are likely to be present above detection limits in the treatment residues or the bubbler water on silica gel generated by catalytic chemical oxidation treatment of the original mixed waste at LBNL, and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. *See* 40 CFR 261.21, 261.22, 261.23, and 261.24, respectively.

We conclude that the waste is delistable because the exposure threat to RCRA hazardous constituents is not existent, therefore achieving a de minimus risk level. Further, even though they are no longer subject to EPA regulatory control, the treatment residues maintain their low-level radioactive waste status and must still be managed in accordance with DOE orders and NRC regulations. By removing EPA regulatory control over this waste, LBNL has the option to dispose the waste offsite at a DOE authorized or an NRC licensed disposal facility.

We also conclude that LBNL has adequately demonstrated that the CCO process is equivalent to combustion for the treatment of organic wastes. This demonstration is based primarily on the following key factors: (1) The CCO achieves a destruction and removal efficiency of more than 99.999% at a temperature near or above 500°C, (2) the CCO system does not emit HCl or particulate matter, and (3) the CCO was operated in compliance with Federal, State and local hazardous waste and air emission regulations.

I. What Is EPA's Final Evaluation of These Petitions?

We have reviewed the sampling procedures used by LBNL and have determined they satisfy EPA criteria for collecting representative samples of the petitioned waste. The descriptions of the treatment process and the analytical data, together with the NRC/DOE requirements that the petitioned waste be managed as low-level radioactive waste, provide a reasonable basis for EPA to grant both the delisting and the DET petitions. We believe the data submitted in support of the petitions show that the waste will not pose a threat when managed as a non-hazardous low-level radioactive waste and disposed of in an NRC-licensed or DOE-authorized low level radioactive waste disposal facility. We therefore propose to grant LBNL an exclusion and a DET for the waste generated by CCO treatment at LBNL.

If we finalize these proposed petitions, the Agency will no longer regulate the petitioned waste under 40 CFR parts 262 through 268 and the permitting standards of part 270.

IV. Conditions for Exclusion

The petitioner, LBNL, must comply with the requirements in 40 CFR part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements.

A. What Conditions Are Associated With This Exclusion?

If the proposed exclusion is made final, it will apply only to 200 US gallons of petitioned waste at LBNL. This is a one-time exclusion for this waste. We would require LBNL to file a new delisting petition if it generates more than 200 US gallons of waste.

LBNL must manage waste volumes greater than 200 US gallons as mixed waste unless and until we grant a new exclusion. If this exclusion becomes final, LBNL's management of the wastes covered by this petition would no longer be within RCRA Subtitle C jurisdiction.

If delisted, the treatment residues would still be low-level radioactive waste subject to NRC regulations and DOE orders. DOE orders require that the petitioned waste be solidified to help prevent mobilization of the tritium. NRC regulations and DOE orders also require that the waste be transported to, and disposed by, NRC-licensed or DOE-authorized facilities. While EPA has no regulatory authority over disposal of radioactive-only wastes, we do have authority to prescribe that the delisted waste be managed and disposed in a manner consistent with our analysis of the acceptable risk for this waste. Our risk analysis is based upon the assumption that the waste, once delisted, remains a low-level radioactive waste subject to DOE Orders and NRC regulations. We therefore propose to condition the delisting upon LBNL properly managing and disposing the waste in accordance with applicable NRC regulations or DOE orders as applicable.

If LBNL discovers that a condition or assumption related to the characterization of this waste that was used in the evaluation of this petition is not as reported in the petition, they will be required to report any information relevant to that condition or assumption in writing to the Regional Administrator within 10 calendar days of discovering that condition.

The purpose of this condition is to require LBNL to disclose new or different information that may be pertinent to the delisting. This provision will allow us to reevaluate the exclusion based on this new information in order to determine if our original decision was correct.

If we discover such information from any source, we will act on it as appropriate. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* to reopen the delisting under the conditions described above.

In order to adequately track wastes that have been delisted, we will require that LBNL provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal. LBNL will be required to provide this notification at least 60 calendar days prior to commencing these activities. Failure to provide such notification will be a violation of the delisting, and may be grounds for revocation of the exclusion or enforcement.

B. What Happens if LBNL Fails to Meet the Conditions of the Exclusion?

If LBNL violates the terms and conditions established in the exclusion, the Agency may start procedures to suspend or revoke the exclusion, and/or initiate enforcement actions.

V. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, LBNL must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

VI. Effective Date

EPA is today proposing to grant LBNL's petition. This proposed rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility generating hazardous wastes. EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the APA, 5 U.S.C. 553(d).

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 11, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. In Table 1, of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
*	*	* * * * * *
Lawrence Berkeley National Laboratory.	Berkeley, California	Treated ignitable and spent halogenated and non-halogenated solvent mixed waste (D001, F002, F003, and F005), and bubbler water on silica gel generated during treatment at the National Tritium Labeling Facility (NTLF) of the Lawrence Berkeley National Laboratory (LBNL). This is a one-time exclusion for 200 US gallons of treatment residues that will be disposed of in a Nuclear Regulatory Commission (NRC) licensed or Department of Energy (DOE) approved low-level radioactive waste disposal facility, after [publication date of the final rule in the FEDERAL REGISTER]. (1) Waste Management: The treated waste residue and bubbler water on silica gel must be managed in accordance with DOE or NRC requirements prior to and during disposal. (2) Reopener Language: (A) If, anytime after disposal of the delisted waste, LBNL possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any organic constituent from the waste is detected in the leachate or the groundwater, then LBNL must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (2)(A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify LBNL NTLF in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing LBNL with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. LBNL shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days LBNL presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. (3) Notification Requirements: LBNL must do the following before transporting the delisted waste off-site: (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if LBNL ships the delisted waste to a different disposal facility. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion.
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[FR Doc. 02–19325 Filed 7–30–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–12391]

NHTSA Vehicle Safety Rulemaking Priorities: 2002–2005

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments; correction.

SUMMARY: This document corrects the docket number for a request for comments on NHTSA's vehicle safety rulemaking priorities published on Thursday, July 25, 2002 (67 FR 48599).

FOR FURTHER INFORMATION CONTACT: Lawrence L. Hershman, Office of Safety Performance Standards, NPS–33, National Highway Traffic Safety Administration, Room 5104, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4929. Email: *lhershman@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: The notice that is the subject of this correction was published to announce the availability for review and comment of a planning document that describes NHTSA's proposed vehicle safety rulemaking priorities through 2005. The plan includes those rulemaking actions of highest priority for the period 2002 to 2005, based primarily on the greatest potential protection of lives and prevention of injury that fall within the immediate four-year time frame. The plan was posted on NHTSA's website on July 25, 2002. Comments will be evaluated and incorporated, as appropriate, into planned agency activities. The agency intends to update the plan periodically. Comments that cannot be accommodated in the current plan will be reviewed and considered in the context of future updates.

As published, the notice contained an incorrect docket number. The correct docket number is NHTSA–2002–12391. Comments should be addressed to that docket number.

Correction of Publication

Accordingly, the publication on July 25, 2002 (67 FR 48599) is corrected as follows:

On page 48599, in the heading, the docket number is corrected to NHTSA–2002–12391.

On page 48600, in the second sentence in the second paragraph of the **ADDRESS** section, the docket number is corrected to NHTSA–2002–12391.

On page 48600, in the second sentence of the first paragraph of the How Do I Prepare and Submit Comments? section, the docket number is corrected to NHTSA–2002–12391.

On page 48601, in item number 3. in the How Can I Read the Comments Submitted By Other People? section, the docket number is corrected to NHTSA–2002–12391.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 25, 2002.

Roger A. Saul,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 02–19368 Filed 7–26–02; 4:30 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI 11

Endangered and Threatened Wildlife and Plants; Listing the Beluga Sturgeon (*Huso huso*) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: In this proposed rule, we, the U.S. Fish and Wildlife Service (Service), propose to list the beluga sturgeon (*Huso huso*) as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). The beluga sturgeon inhabits the Caspian and Black Seas, and spawns in the rivers that constitute the drainage basins of these seas. Loss of habitat throughout historic spawning areas due to dam construction and river-modification projects, over-harvest, widespread poaching and illegal trade, and pollution imperil the continued existence of this species. Due to the threat of over-harvest, this species was listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1998, when all previously unlisted Acipenseriformes were listed, to conserve all sturgeon and paddlefish species in international trade. Despite the CITES listing, beluga sturgeon populations have continued to decline, and the population structure is increasingly skewed towards sub-adult fish, with a critical lack of spawning-age adult female fish. This proposal, if made final, would extend the Act's protection to this species. The Service seeks data and comments from the public on this proposal.

DATES: We must receive comments and information from all interested parties by October 29, 2002. Public hearing requests must be received by September 16, 2002.

ADDRESSES: Submit any comments, information, and questions by mail to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203, or by fax, 703–358–2276, or by e-mail, *Scientificauthority@fws.gov*. Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Marie Maltese at the above address, or by phone, 703–358–1708; fax, 703–358–2276; or e-mail, *Scientificauthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The beluga sturgeon (*Huso huso*, Linnaeus, 1758), is a member of the genus *Huso*, family Acipenseridae, order Acipenseriformes, class Osteichthyes, phylum Chordata, and kingdom Animalia (Pirogovskii *et al.*, 1989). The family Acipenseriformes encompasses all species of sturgeon and paddlefish, the caviar-producing fishes considered the most economically valuable fish in the world. Sturgeon have been prized for their roe and flesh since ancient times (Bacalbasa-Dobrovici, 1997). The historic range of the beluga sturgeon included the Caspian Sea, Black Sea, Adriatic Sea, Sea of Azov, and all rivers within their watersheds (Khodorevskaya *et al.*, 2000). Range countries include Azerbaijan, Bulgaria, Croatia, the Czech Republic, Georgia, Hungary, the Islamic Republic of Iran, Kazakhstan, the Republic of Moldova, Romania, the Russian Federation, Turkey, Turkmenistan, Ukraine, and Yugoslavia. The Adriatic Sea population is considered extirpated, and the last record of a wild-caught specimen in the Sea of Azov occurred during the mid-1980s (TRAFFIC/Europe, 1999).

Birstein (1997) notes that any remnant beluga sturgeon population found within the Sea of Azov is maintained solely through stocking with hatchery-reared fish. The current range of the beluga sturgeon is limited to the Caspian and Black Seas, where until the 1990s, an estimated 80–90 percent of the world's sturgeon harvest were harvested from the Caspian Sea and lower reaches of the Volga River (Khodorevskaya *et al.*, 2000). Records compiled during the 19th Century indicated that the Black Sea *H. huso* population over-wintered and spawned as far north as the Austrian and Bavarian portions of the Danube River.

Beluga sturgeon are extremely vulnerable to depletion due to their unique life-history characteristics. The species is remarkably long-lived and slow to mature. The oldest recorded harvested sturgeon was found to be 118 years of age (DeMeulenaer and Raymakers, 1996), and 100-year-old beluga sturgeon were commonly taken in the northern Caspian Sea during the early 20th Century (Khodorevskaya *et al.*, 2000). However, current estimates indicate that the oldest fish harvested are 50–55 years of age, with the average age less than 35 years old (Khodorevskaya *et al.*, 2000).

Reproductive maturity is reached between 11 and 17 years (Khodorevskaya *et al.*, 1997). Male beluga sturgeon generally spawn once every 4–7 years, whereas females reproduce once every 4–8 years (Raspopov, 1993). Fecundity in adult females increases with age; an individual fish generally produces a greater number of eggs during each subsequent spawning run. Adult females are capable of producing up to 12 percent of their body weight in roe (DeMeulenaer and Raymakers, 1996). Reproductively mature females are targeted in the fishery. Therefore, continuous removal of the older segment of the population has skewed the current population structure towards younger-sub-adults, and removed egg-bearing individuals from the population during the life stage that ensures the survival of the species (Khodorevskaya *et al.*, 1997). Many female beluga sturgeon will never reach a size or age that yields peak egg production, and may have only spawned once prior to harvest. Moreover, increased poaching and by-catch indiscriminately harvest juvenile sturgeon, which represent a significant loss to future breeding populations.

The Caspian Sea Population

Khodorevskaya *et al.* (2000) noted that the number of beluga sturgeon in

the Caspian Sea was "considerably lower than those of other acipenserids." In 1978, the total population was estimated at 12.1 million individuals, with a decrease to 8.9 million individuals by 1994. Data from a CITES-sponsored status survey conducted in 2001 yielded an estimate of 9.3 million individuals in the northern and central Caspian Sea (Moiseev, 2002). This figure was submitted to the CITES Secretariat by the Management Authority for Sturgeon of the Russian Federation. However, several U.S. fisheries scientists believe the current calculation of the northern and central Caspian Sea beluga sturgeon population may be an over-estimate, because of questions raised about the methodology and data interpretation employed in the survey report. Based on Soviet and Russian Federation fisheries reports, the absolute number of *H. huso* in the wild has decreased dramatically over the past 30 years and continues to decline at an alarming rate.

The population structure of beluga sturgeon in the Caspian Sea has also shifted over the past 30 years, adding to concerns regarding declines in abundance. The efficiency of natural spawning has decreased due to a smaller mean juvenile sturgeon size in the Volga River system (Khodorevskaya *et al.*, 1997), younger mean adult age (Khodorevskaya *et al.*, 2000), a shift in the predominant age of spawning fish from greater than 26 years to 11–17 years, and most notably, the overall lack of available spawning-age fish (Khodorevskaya *et al.*, 2000). During the early 1970s, an estimated 25,000 Caspian Sea beluga sturgeon migrated up the Volga River to spawn. However, by the early 1990s, this estimate had dropped to 7,000 spawning fish (Khodorevskaya *et al.*, 2000). Additionally, the relative percentage of older fish dropped from 16.9 percent during the period 1966–1970, to 3.7 percent during 1991–1995 (Khodorevskaya *et al.*, 2000).

Replacement and augmentation of beluga sturgeon populations with hatchery-produced fish has resulted in an *H. huso* population in the Volga River complex that is believed to consist of 96.3 percent hatchery-reared fish (Khodorevskaya *et al.*, 1997). At the present time, it is believed that the Caspian Sea population is no longer naturally reproducing (Birstein, 1997; Khodorevskaya *et al.*, 1997; Khodorevskaya *et al.*, 2000). Intensive hatchery production has been used as a method of supplementing and maintaining wild stocks since the mid-1950s (Birstein, 1997; Secor *et al.*, 2000). However, stocking programs for Caspian Sea sturgeon decreased during the late 1980s, continued to decline during the upheaval resulting from the dissolution of the Soviet Union in 1991, and persists to the present time. The deterioration of sturgeon stocking programs is attributed to (a) differing priorities of former Soviet nations that are struggling to develop independent economies; (b) an aging hatchery infrastructure throughout the region, and (c) the inability to procure sufficient wild broodstock for beluga sturgeon culture and stocking programs. In 1995, the number of female beluga sturgeon taken in the Volga River delta was considered to be insufficient to support hatchery production efforts (Birstein *et al.*, 1997). This trend continues, as Russian fisheries officials recently observed that there were few, if any, large spawning-age females available to provide hatchery broodstock (TRAFFIC/Europe, 1999).

The World Conservation Union (IUCN) classifies the Caspian Sea *Huso huso* population as endangered (IUCN, 2000). Furthermore, this species is designated as one whose natural reproduction is limited and requires stocking of artificially bred juveniles to maintain the population. Although hatchery releases have helped to augment wild populations during the past 50 years, there is concern throughout the scientific community that stocking programs are only a short-term solution (Birstein, 1997). Artificial hatchery production is only one of many strategies required to protect and increase levels of natural reproduction of sturgeon stocks worldwide. The primary goal is to implement a comprehensive long-term inter-jurisdictional fisheries management plan that includes hatchery production and allocates a shared resource in a sustainable manner.

The Black Sea Population

Beluga sturgeon have been commercially harvested in the Black Sea for more than 2,000 years (Bacalbasa-Dobrovici, 1997b). By the mid-19th Century, harvest of beluga sturgeon declined rapidly, particularly in the Danube River watershed, the traditional spawning grounds for the Black Sea population. Only 16 individuals were taken from 1857 to 1957, in the middle and upper reaches of the Danube River (Hensel and Holcik, 1997). The Iron Gates I (Djerdap I) and Iron Gates II (Djerdap II) dams, constructed late in the 20th Century, blocked spawning migrations, which further reduced the remnant populations of the middle and upper Danube River (Hensel and Holcik, 1997).

By 1835, the beluga sturgeon population in the lower Danube River was also in decline. Commercial landings at the beginning of the 20th Century continued to decrease at a rapid rate. Harvest in the lower Danube River ebbed to 220 tons per year by the 1960s, and by 1994, the fishery was reduced to an average annual harvest of 12.7 tons (Bacalbasa-Dobrovici, 1997b). Beluga sturgeon are listed by IUCN as "extirpated" from the upper reaches of the Danube River, "critically endangered" in the middle reaches, and "vulnerable" in the lower Danube River (Hensel and Holcik, 1997; IUCN, 2000).

Summary of Factors Affecting the Beluga Sturgeon

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to beluga sturgeon (*Huso huso*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Beluga Sturgeon Habitat or Range

Current data suggest that beluga sturgeon populations are highly depleted and natural reproduction is limited to a small, highly compromised portion of the species' historic spawning habitat. Approximately 85 percent (Secor *et al.*, 2000) to 90 percent (Barannikova *et al.*, 1995) of all spawning grounds previously utilized by the Caspian Sea beluga sturgeon population have been destroyed or are no longer accessible for spawning runs because of dam construction and other river modifications. Messier (1998) noted that the surface area of the Caspian Sea is some 169,000 square miles, yet all sturgeon species that spawn in the Volga River utilize an area no larger than 1,000 acres (405 hectares) near the mouth of the river. Secor *et al.* (2000) observed that greater than 90 percent of the current Caspian Sea beluga sturgeon population is believed to be hatchery-reared progeny. Beluga sturgeon no longer spawn in Azerbaijan, and spawning is limited in the Russian Federation, Turkey, the Ukraine, and several rivers in Iran (DeMeulenaer and Raymakers, 1996).

Dams, river channelization, and other man-made changes to flow regimes significantly reduced the amount of available spawning habitat throughout

sturgeon range countries. The Volga, Ural, Kura, Terek, and Sulak Rivers are all segments of the species' former historic spawning range. Today, the Ural River is the only river system within the Caspian Sea region that is not dammed and continues to allow adequate passage to historic spawning areas (Khodorevskaya *et al.*, 1997). Recent information suggests that poaching may have destroyed the Ural River beluga sturgeon spawning stock (DeMeulenaer and Raymakers, 1996).

During the 1950s, all remaining northern and western Caspian Sea tributaries were dammed for hydroelectric power generation (DeMeulenaer and Raymakers, 1996). It is believed that the Volga River may sustain 6,000–8,000 beluga sturgeon of spawning age. Of this figure, approximately 2,000 are believed to be mature females (Khodorevskaya *et al.*, 1997). However, construction of the Volgograd Dam from 1958 to 1960 reduced traditional spawning grounds by 88 percent (Levin, 1995). An estimated 208,000 hectares in additional river systems throughout the Russian Federation have been lost as potential spawning grounds for beluga sturgeon due to river modifications. The spawning grounds of the Don and Kuban Rivers in the Russian Federation are no longer accessible to spawning sturgeon. The Terek and Sulak Rivers, and the Sea of Azov are likewise compromised by pollution and damming. These areas can no longer sustain spawning runs of beluga sturgeon (Khodorevskaya *et al.*, 1997).

In Iran, the Mangil Dam on the Sefidrud River is another barrier to traditional spawning runs. Additionally, Hensel and Holcik (1997) suggested that the Sefidrud River sturgeon spawning migration is also unproductive because traditional spawning areas have been destroyed by heavy industrial pollution and water extraction.

Approximately 85 percent of the Black Sea's Danube River delta has been diked, producing over 300 reservoirs throughout the river basin. Substantial losses of sturgeon spawning habitat in the area have been attributed to dam and reservoir construction, other man-made river modifications, and increased sand and gravel dredging (Bacalbasa-Dobrovici, 1997b). Beluga sturgeon were once abundant in the Danube River. Harvest rates during the mid-1970s averaged 23 metric tons annually. However, after the construction of the Djerdap Dams I and II during the mid-1980s, harvest rates continued to drop (Hensel and Holcik, 1997). By 1994, annual estimates of beluga sturgeon harvest declined to12.7 tons, indicative of the dams' effect on spawning sturgeon populations (Bacalbasa-Dobrovici, 1997b). The *H. huso* population in the lower reaches of the Danube River is considered non-self-sustaining by international fisheries scientists. In the late 1980s, Turkish authorities located only five or six mature females in the Coruh River, and an additional 20 mature females in the Kizikirnak River during a quest to collect broodfish for hatchery programs (Edwards and Doroshov, 1989).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is the most significant factor in the rapid decline of the beluga sturgeon. The expansion of legal sturgeon fisheries in former Soviet range nations after the dissolution of the Soviet Union, and consequent disregard of the former Soviet moratorium on harvest of open sea sturgeons (Secor *et al.*, 2000) have resulted in intensified fishing effort and over-exploitation that have further reduced populations already in decline for decades. The effects of legal harvest are further compounded by the ever-increasing illegal harvest of the species. DeMeulenaer and Raymakers (1996) estimated the illegal harvest at 6–10 times larger than the legal market, although more recent assessments put that estimate at 11 times greater than the legal market (Volkov, 2001). Illegal harvest and trade rapidly escalated during the 1990s, and continue as the price of beluga sturgeon caviar rapidly spirals upward.

The international demand for caviar is the primary factor driving over-exploitation of the beluga sturgeon. In 1995, the retail price for one pound of beluga caviar in the United States was $1,000.00 (DeMeulenaer and Raymakers, 1996); today beluga caviar sells for $1,500.00 per pound on the U.S. retail market (Petrossian, 2002).

Sturgeon are killed to collect their roe, thereby removing spawning-age adults from the population prior to spawning. In this fishery, male fish are also killed because the sexes are morphometrically similar and it is nearly impossible to visually distinguish a male from a female sturgeon. Furthermore, harvesting the younger segment of a population removes fish that may have spawned only once, if at all. Therefore, these fish never reach the age of maximum egg production, when an individual's contribution to the survival of the species is greatest.

The caviar market is highly lucrative and involves a product that is readily poached, in great demand, generates maximum prices, and is packaged in small containers that are relatively easy to smuggle. Although the caviar trade has been a highly profitable economic staple in the region for centuries, it was formerly conducted under a strictly controlled monopoly in Tsarist Russia and the Soviet Union. The sturgeon fishery was closely monitored, substantially restricted, and highly regulated. Program highlights included specific harvest regulations, a moratorium on open-sea harvest, and a stocking program that has been in effect continually from the late 1950s, albeit in much-reduced circumstances since the late 1980s (Secor *et al.*, 2000).

The northern Caspian Sea sturgeon fishery declined rapidly after the dissolution of the Soviet Union in 1991. The loss of centralized control resulted in resumption of open-sea sturgeon fisheries, rapidly escalating illegal harvest, a lack of effective enforcement measures, and reduced availability of wild broodstock, which sharply curtails hatchery production and re-stocking programs.

During the 1950s, sturgeon harvest effort was reduced due to technological advancements ascribed to the use of plastic nets in the fishery. However, this improvement for fishers proved disastrous for sturgeon because the new nets profoundly increased the number of juvenile sturgeon taken incidentally to targeted harvest of other Caspian Sea species. In 1957, 1.8 million juvenile sturgeon, of a total 2.6 million sturgeon harvested in the Caspian Sea, were taken as by-catch. By-catch of pre-spawning-age sturgeon increased to an estimated 2–3 million fish by 1959–1961 (Khodorevskaya *et al.*, 1997). In 1967, the Soviet Union instituted a ban in the Caspian Sea on open-sea harvest of all anadromous fish species, to eliminate by-catch mortality of juvenile sturgeon (Secor *et al.*, 2000). However, with the loss of the Soviet state sturgeon monopoly, by-catch of juvenile and adult beluga sturgeon is once again common in open-sea Caspian Sea fisheries, particularly the anchovy fishery (TRAFFIC/Europe, 1999). The effect of by-catch on beluga sturgeon populations has not been recently quantified. However, the resumption of open-sea fisheries harvest in the Caspian Sea increases the risk of injury and mortality to all juvenile and adult sturgeon, adding to the decline in populations, potential changes to already skewed population structures, and a significant impact on future stock recruitment.

In 1970, the Caspian Sea beluga sturgeon harvest was estimated at 2,800 tons, but by 1994, less that 300 tons

were legally taken (Khodorevskaya *et al.*, 1997). The most recent estimates of yield, based on 1970s fishery data, indicate that 7 kg of caviar are retrieved for every 100 kg of total harvest (males and females; Doroshov and Binkowski, 1985, *cited in* Williot and Bourguignon, 1991). Excepting Iran, the countries that participate in the Caspian Sea sturgeon fishery are still developing an effective regional sturgeon management program.

C. Disease or Predation

Disease and reproductive abnormalities associated with pollution have been observed in beluga sturgeon throughout their range. The World Bank estimates that one million cubic meters of untreated industrial wastewater are discharged annually into the Caspian Sea (U.S. Dept. of Energy, 2000). Contamination byproducts from fossil fuel exploration, production, and refining, untreated sewage, agricultural runoff, and other industrial effluents exacerbate the problem. These toxins have been associated with reproductive abnormalities, tumors, and large fish kills in the Caspian Sea (U.S. Dept. of Energy, 2000).

Large-scale muscle degeneration has also been observed in all sturgeon species inhabiting the Caspian Sea. It has been suggested that muscular atrophy is caused by toxicosis resulting from increasing pollution levels throughout the region. Bio-accumulation of heavy metals and toxins associated with pesticides in the muscle and organ tissue of this long-lived species is of grave concern. Likewise, bio-accumulation of hazardous wastes may be having an effect on the reproductive health of the species. Sampling conducted during 1990 yielded abnormalities in 100% of the sturgeon eggs collected in the Volga River (all species were sampled), and even more alarming, 100% of the embryos studied were non-viable (Khodorevskaya *et al.*, 1997). Hatchery-reared sturgeon are not immune to disease problems. Anecdotal information indicates that many of the stocked hatchery-reared fish are blind, due to an eye parasite (R. St. Pierre, personal communication).

The ctenophore, American comb jellyfish (*Mnemiopsis leidyi*), was introduced into the Black Sea in 1982, from dumping of ship ballast water. Given that there are no known Black Sea predators of the comb jellyfish, its growth has been explosive. Within 7 years, the biomass of *M. leidyi* in the Black Sea had grown to 800 million metric tons (Bacalbasa-Dobrovici, N.,1997a). Comb jellyfish feed on prey that are utilized by small marine fishes, such as anchovies, and include zooplankton, pelagic fish eggs, embryos, and larvae. These fish are in turn preyed upon by the piscivorous beluga sturgeon. To characterize this concern, the feeding habits of the comb jellyfish resulted in the complete collapse of the Sea of Azov anchovy fishery in 1989. The changes in invertebrate distribution and faunal structure caused by *M. leidyi* has had a profound influence on Black Sea sturgeon populations by altering their prey base (Kovalev *et al.*, 1994, as cited in Bacalbasa-Dobrovici, 1997a).

D. The Inadequacy of Existing Regulatory Mechanisms

Currently, harvest of beluga sturgeon is prohibited in Moldova and the Ukraine. It remains a commercially harvested species in all other range countries. *Huso huso* was listed in the Red Data Book of the Ukraine in 1992, so there has been no commercial harvest in the Ukraine since that time. Most range states require a commercial fishing license, although Azerbaijan did not establish this requirement until 2000. Annual catch quotas are set by Azerbaijan, Bulgaria, the Czech Republic, Iran, Kazakhstan, Romania, the Russian Federation, and Yugoslavia. Iran and Turkmenistan prohibit all private sturgeon fisheries; the fishery is a state-controlled monopoly in these countries. In 1996, the Caspian Sea range countries signed an agreement that would prohibit open-sea fishing, thereby protecting immature sturgeon stocks. However, the agreement has been difficult to enforce and large-scale organized poaching continues.

Despite the quotas, the agreement banning open-sea fishing, and other conservation measures taken by range countries, the sturgeon fishery continues to be exploited by each range country without adequate fishery management programs that would utilize the fishery as a shared resource. We hope that the regional management program that is currently being prepared for submission to the CITES Secretariat in June 2002 will address the importance of inter-jurisdictional management of all sturgeon species, including beluga sturgeon. Khodorevskaya (2000) and TRAFFIC Europe-Russia (1999) noted that many scientists and regulators believe that the failure of regulatory oversight in the Caspian Sea region is an important factor contributing to the rapid decline of beluga sturgeon populations.

Although Iran continues to implement a successful annual stocking program, as well as strict management and enforcement measures to conserve beluga sturgeon, the remaining harvesting nations of the Caspian Sea have yet to implement effective inter-jurisdictional sturgeon management programs. Many stocking programs initiated during the 1950s to replenish sturgeon stocks have been seriously curtailed due to the lack of state support, plant closures, an aging hatchery infrastructure with inadequate funding for maintenance, and severely reduced production (Birstein *et al.*, 1997; Secor *et al.*, 2000). Compounding the deterioration of formerly successful hatchery and re-introduction programs in the northern and central Caspian Sea area, there is an absence of available wild mature broodstock to augment wild populations and improve the genetic variability of those fish currently held in hatcheries for culture purposes (Birstein *et al.*, 1997; Secor *et al.*, 2000).

Beluga sturgeon was first listed as endangered by the IUCN in 1996 (IUCN, 2000). In an assessment by TRAFFIC (1999), the state of all Russian sturgeon populations was considered "catastrophic." International conservation measures were taken in 1998 to address escalating concerns regarding the status of Caspian Sea sturgeon. At that time, all previously unlisted Acipenseriformes species were included in Appendix II of CITES. An Appendix-II listing requires that all specimens of listed species, including parts and products, must be accompanied by an export permit issued by a designated Management Authority in the country of origin. An export permit may only be issued after two findings are made: the Management Authority must find that the specimen(s) were legally acquired, and the designated Scientific Authority must determine that allowing the export will not be detrimental to the survival of the species.

In 2001, the results of the CITES "Review of Significant Trade" (Resolution Conf. 8.9 (Rev.)) prompted the CITES Standing Committee to recommend, with the full agreement of the Caspian Sea nations, a plan of action to ensure control over the trade in sturgeon products, improve law enforcement efforts, and facilitate the development of regional cooperative management plans for all Caspian Sea sturgeon species. These recommendations also included a 90 percent reduction of the 2001 sturgeon harvest quotas, and closure of the fall 2001 harvest season. In June 2001, the CITES "Paris Agreement," developed at the 45th meeting of the CITES Standing Committee, required the Russian Federation, Azerbaijan, and Kazakhstan to develop a regional management and monitoring plan for beluga and other

sturgeon species at risk. Turkmenistan, although not a signatory to CITES at that time, planned to assist in the development of this inter-jurisdictional management program. The Paris Agreement requires submission of the draft management plan to CITES authorities no later than June 30, 2002. The details of the plan's provisions to reduce or halt stock declines, decrease poaching levels, curb illegal trade, and rebuild spawning populations are unknown at this time. Finally, the Caspian Sea nations were directed to conduct a comprehensive survey of Caspian Sea sturgeon populations before December 31, 2001. Preliminary reports indicate that only 28 beluga sturgeon were located during the survey, and over 75 percent of those specimens were immature fish. The final report, including an analysis of data from the completed survey, contains sturgeon population abundance estimates and has been posted on the web site of the CITES Secretariat.

Earlier this year, the Management Authority for Sturgeon of the Russian Federation, representing the four former Soviet range states (Azerbaijan, Kazakhstan, Russian Federation, and Turkmenistan), submitted a document to the CITES Secretariat entitled: "Total allowable catch (TAC) estimation for sturgeon species in the Caspian Sea." This document discussed the methodology used to derive total allowable catch (TAC) limits for the Caspian Sea sturgeon fishing stock, and supports the nations' declaration of Caspian Sea sturgeon harvest quotas established for the 2002 fishing season. The TAC report was based on the results of sampling conducted in the northern and central Caspian Sea from August 9 through September 25, 2001. Sampling was undertaken as the result of a three-stage, 12-month plan of action that was produced during the 45th meeting of the CITES Standing Committee. This plan was developed to assist the Caspian Sea nations in the creation of a science-based management system for the long-term conservation and sustainable use of sturgeon (CITES Secretariat, 2001). The goal of the survey was to estimate the abundance of each sturgeon species, the number of reproductively mature individuals of each species, and the potential size of the entire sturgeon spawning stock by species (Moiseev, 2002). However, after review of the TAC report, several U.S. fisheries experts (P. Bettoli Ph.D., Professor of Biology, Certified Fisheries Scientist, and Assistant Unit Leader, Tennessee Cooperative Fishery Research Unit of the U.S. Geological Survey-Biological Resources Division; M. Parsley, Research Fishery Biologist, Columbia River Research Laboratory, U.S. Geological Survey Western Fisheries Research Center; R. St. Pierre, Fishery Management Biologist, U.S. Fish and Wildlife Service, who serves on the Sturgeon Specialists Group (SSG) of The World Conservation Union (IUCN); D. Secor, Ph.D., Associate Professor, Chesapeake Biological Laboratory; personal communications) found the document to be lacking important data necessary in the formation of fishery stock estimations.

These data include sampling effort, spatial and temporal distribution of sampling effort, number of fish taken per trawl in each specified area, and size and age distribution of sturgeon taken. Several reviewers questioned the derivation of the value of the fishing efficiency co-efficient of 0.04 that was used for beluga sturgeon. This information is an important construct used to estimate stock abundance and total allowable catch. Calculations based on an incorrect fishing efficiency coefficient have a large impact on the total stock estimate (Bettoli, personal communication). Each reviewer noted that, although we are given the total size of the area sampled, and the approximate area sampled by the trawls, the TAC report does not list the total number of sampling trawls made, an important variable used to calculate fishing effort, and consequently, to determine population size. Furthermore, although the number of sturgeon captured was tabulated in the report, it is impossible to interpret these data without information about the size or age of the individuals. The total number of trawl samples that failed to capture beluga sturgeon was unavailable, as well as any indication that might explain the way in which data were utilized when calculating *N*, the population size.

A basic assumption used in calculating abundance is that fish are not evenly distributed across all habitats in large water bodies. It is highly likely that, of the numerous sample trawls made during the survey, many did not contain beluga sturgeon. Catch variation was probably great, because some hauls may have comprised several or even many fish, whereas others were empty. One reviewer noted that the *N* statistic should have been calculated considering the range in variance; he observed that the actual population estimate for Caspian Sea beluga sturgeon is very likely much lower than the 9.3 million fish presented (R. St. Pierre, personal communication). Another reviewer independently confirmed the problem of determining *N* without accounting for trawls that failed to capture fish. He noted that a considerable number of tows must have failed to capture sturgeons. Excluding these tows from the data analysis would result in a "gross over-estimation of *N*." Consequently, an erroneous calculation of *N* renders all other calculations incorrect if they are based on *N* (M. Parsley, personal communication). Furthermore, another variable, the distribution area (*S*), was not clearly defined. Although the report listed several different estimates of area, it was unclear which was used as *S*. It is impossible to confirm the estimate of *N* without a clear definition of *S*, which ultimately leads to the estimate of TAC.

The methodology used to determine a TAC of 9–17 percent of the stock was also of concern, since the TAC report disclosed the quotas for the 2002 harvest season, but did not adequately explain how TAC was derived. The natural mortality rate of the stock was used as a biological reference point (BRP) for determining abundance; however, this estimate likely may be inflated. The TAC report assumed a natural mortality rate of 13–14 percent for beluga sturgeon, but Bettoli noted that a species with a maximum lifespan of 50–70 years would normally be expected to have a natural mortality rate closer to 6–8 percent. Using an incorrect natural mortality rate could also lead to additional faulty conclusions. Bettoli also noted that natural mortality should not be used as a BRP, because it cannot be manipulated.

The TAC report included no discussion of the methodology used to calculate gear efficiency, an important consideration when estimating abundance. A lower gear efficiency for the 9-meter trawl for beluga, compared to that for other species, suggests that the trawl was selective for sturgeon size. Beluga sturgeon are much larger in size and weight than the other species sampled; a 9-meter trawl would probably sample only smaller, non-reproductive-age sturgeon. Gear efficiency is a meaningful variable, considering that an average gear efficiency for beluga sturgeon would probably, as noted above, over-estimate abundance for small juveniles, as this size range would be captured most frequently. An average gear efficiency would also capture few, if any, reproductive-age beluga sturgeon, thereby under-estimating abundance for this segment of the population. Secor noted that the trawl survey should be used only as a method to determine abundance of juvenile and sub-adult beluga sturgeon. If this sampling method were used for adult beluga

sturgeon, the results would likely be distorted.

Beluga sturgeon are known for skewed and variable size and age distributions. Population structure analyses indicate that the juvenile proportion of the species is the largest proportion of the stock, and it is commonly held that hatchery stocking maintains this segment of the population. Therefore, many scientists believe that, without continued stocking with hatchery-reared progeny, the species might conceivably be extirpated throughout its range. However, the assumption that Caspian Sea beluga sturgeon populations are maintained solely through hatchery contributions has not been satisfactorily verified. A wealth of fisheries data has been collected over the decades for the Volga, Danube, and Ural River systems. However, there is a need to assess the potential contributions to the stock from populations living within the smaller tributaries of the Caspian and Black Seas. At the present time, this data is limited, and it is crucial that studies of these populations are developed and funded. This data is vital for management purposes, as well as plans for future stock enhancement. These population studies must be conducted to prevent the possibility of losing entire, and at this time relatively unknown, population segments that may have a larger impact on overall stocks than previously suspected.

Harvest of beluga sturgeon in the currently permitted open-sea fishery of the northern and central Caspian Sea, rather than abiding by the former laws limiting harvest to the tributaries, raises the concern of impacts to mixed-stock populations that occupy these open waters. If this fishery is allowed to continue, it could lead to extirpation of local stocks, as it is impossible to determine from which specific population individual fish are harvested. Additionally, harvest could disproportionately affect a population that is already vulnerable to over-exploitation (D. Secor, personal communication).

One of the most serious concerns, noted by all of the reviewers, was the absence of uncertainty, or estimate variance, that should have been built into the data analysis presented in the TAC report. The reviewers also noted that the quotas allocated for 2002, particularly the quota for beluga sturgeon, are probably too liberal.

The current minimum-size limits for all Russian sturgeons does not effectively protect the most vulnerable life-stage, mature females, and it is unclear how these limits were derived. The minimum-size limit for beluga sturgeon is less than the average size of a mature adult fish. This permits take of sub-adult fish that have not previously spawned, and renders the species particularly vulnerable to recruitment over-fishing. Beluga sturgeon are the most sensitive of all the Caspian Sea sturgeon species to over-exploitation, due to late maturation and infrequent spawning.

The reviewers commended the Russian Federation for their hatchery and stocking programs for beluga sturgeon. However, they were concerned about the efficacy of stocking due to the lack of assessment and monitoring of the program. The number of fish stocked per unit area is modest, and values such as the yield-to-fishery coefficient (percent survival), which might yield a greater understanding of the results of the program, were not included in the TAC report. Hatchery fish are not tagged, and there is no evidence of mark-recapture studies to validate the effort.

Finally, the reviewers were unable to re-create the estimates of TAC based on the limited information and methodology provided (M. Parsley and P. Bettoli, personal communication). Moreover, there was concern that the TAC report failed to factor in estimates of illegal harvest and its impacts on population abundance and structure. The approach used in preparing the TAC report appeared to be lacking in requisite data, and many assumptions were made without providing supporting data that would allow others to independently verify the methods used to construct these assumptions. The omission of variance statistics was of special concern to the reviewers; the lack of these statistics is one of the many indications that the monitoring program should currently be characterized as experimental and in need of further verification and modification before it can be considered a fully effective assessment tool. Continuing to utilize the approach used to estimate TAC, as detailed in this report, would not provide for sustainable future harvest unless factors that influence catch per unit effort (CPUE), such as increasing fishing efficiency, are considered. This approach could conceivably result in collapse of the fishery (M. Parsley, personal communication).

The illegal trade in beluga sturgeon is conducted outside the confines of CITES regulations. As noted previously, it is believed to be 6–10 times that of the legal trade (DeMeulenaer and Raymakers, 1996). The use of falsified documents, caviar mislabeling, mixing of species in processed and packaged caviar, and export from countries that are not beluga sturgeon range countries is widespread. Smuggling is relatively easy, because caviar is packaged in small, lightweight containers, and large amounts can be easily transported.

Poaching and smuggling have been intensively reported in the media of range nations and importing countries (Evtouchenko, 1997; McDonald, 2000; Snyder, 2000). Confiscations have occurred regularly in the United States. In the Black Sea region, Turkey and Georgia are among the countries that report illegal harvest in their waters. In short, there exists a lack of sufficient enforcement capability and ensuing penalties for wildlife crimes.

E. Other Natural or Man-Made Factors Affecting the Continued Existence of Beluga Sturgeon

Cyclic changes in sea level within the Caspian Sea have been common throughout geologic time (Ivanov, 2000). A drop in sea level from 1970 through 1977 adversely affected sturgeon populations due to changes in biochemical regimes and the subsequent changes in faunal communities (Ivanov, 2000; DeMeulenaer and Raymakers, 1996). Although a rise in water level between 1978 and 1989 may have had a positive effect on other sturgeon species, the average weight of beluga sturgeon continued to decrease from 110 kg in 1970, to 57 kg in 1991 (Khodorevskaya *et al.*, 1997).

Genetic alteration and hybridization of sturgeon stocks is also a serious concern. It is postulated that the Volga-Don Canal, linking the Black Sea and the Caspian Sea, allowed for an "avalanche" of genetic alteration and hybridization between these sturgeon populations (DeMeulenaer and Raymakers, 1996). Although hybridization occurs naturally when artificial connections are made between previously isolated water bodies, the rapidity with which hybridization occurs is accelerated. This process can impact the homogeneity of populations and further hamper recovery efforts.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by beluga sturgeon in determining to propose this rule. Based on this evaluation, the preferred action is to list Huso huso as endangered. If no action were to be taken, import of beluga caviar into the United States (the third-largest beluga caviar importing nation in the world) would continue. As a result, fishing effort would increase to meet market demand, and absolute numbers of

available adult female fish would continue to decline. The scarcity, popularity, and demand for beluga sturgeon caviar is driving a market that cannot be satisfied by current supply, and prices during the last decade have escalated ten-fold to reflect the demand. Presently, a pound of beluga sturgeon caviar retails for about $1,500.00. The significant profit margin resulting from this scarce commodity further fuels the trade. Illegal harvest and trade is particularly attractive to fishermen in developing former Soviet nations that can make hundreds of dollars per fish and traders that realize much larger profits. It is quite likely that continued trade will increase the rapidity of beluga sturgeon stock declines. Current hypotheses indicate that natural reproduction can no longer sustain wild beluga sturgeon populations. Indeed, some scientists suggest that wild stocks are now sustained only through inadequate hatchery production and stocking programs. It is quite possible that we are rapidly approaching the critical point were the species will no longer be recoverable.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. However, given that beluga sturgeon are not native to the United States, no critical habitat is being proposed for designation with this proposed rule.

With respect to the beluga sturgeon, no Federal activities, other than the issuance of CITES import and export permits, are currently required. Because the beluga sturgeon is listed in Appendix II of CITES, a finding of non-detriment must be issued by the Service's Division of Scientific Authority (DSA), and the Service's Division of Management Authority (DMA) must make a legal acquisition finding, before a CITES export permit can be issued for beluga sturgeon. However, listing of beluga sturgeon as endangered under the Act would require the issuance of Endangered Species Act import and export permits by DMA, and consequently a consultation with DSA prior to the issuance of the permit.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that generally apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), within U.S. territory or on the high seas, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees or agents of the Service, and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR part 17.22 and 17.23. Such permits are available for scientific research purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to: Division of Scientific Authority, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203, (telephone: (703) 358–1708; facsimile: (703) 358–2276).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Commenters may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public comment in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of the publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to: Chief, Division of Scientific Authority, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended.

This rule contains no information collection requirements. An agency may not conduct or sponsor, and a person is not required to respond to a collection

of information unless it displays a currently valid OMB Control Number.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

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The primary author of this proposed rule is Marie T. Maltese, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203; telephone, (703–358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17— [AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section § 17.11(h) is amended by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
Sturgeon, beluga	*Huso huso*	Azerbaijan, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Islamic Republic of Iran, Kazakhstan, Republic of Moldova, Romania, Russian Federation, Turkey, Turkmenistan, Ukraine, Yugoslavia (Caspian Sea, Black Sea, Adriatic Sea, Sea of Azov and all rivers in their watersheds).	Entire	E	.....	NA	NA

Dated: July 9, 2002.

Marshall P. Jones, Jr.,

Acting, Director, Fish and Wildlife Service.

[FR Doc. 02–19250 Filed 7–30–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 071602C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico; Secretarial Amendment 2; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to receive comments on the Council's proposed Secretarial Amendment 2 to the Reef Fish Fishery Management Plan (Secretarial Amendment 2) to set greater amberjack Sustainable Fisheries Act (SFA) targets and thresholds and to set a rebuilding plan.

DATES: The public hearings will be held in August. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to and copies of the scoping document are available from the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619, telephone: (813) 228–2815.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Hood, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The public hearings will be convened on Secretarial Amendment 2 to set greater amberjack SFA targets and thresholds and to set a rebuilding plan. The greater amberjack resource in the Gulf of Mexico was declared overfished by NMFS on February 9, 2001, and was based on the 2000 greater amberjack stock assessment. The results of several analyses indicated that the stock biomass was below the level needed to sustain harvest at maximum sustainable yield (MSY), with the best estimate indicating that the stock biomass was at less than half the biomass needed to sustain MSY, below the minimum level allowed under the 1998 NMFS National Standard Guidelines. However, NMFS concluded that overfishing is not currently occurring due to the recent implementation of management measures that were not reflected in the stock assessment. These measures included: (1) a reduction in the greater amberjack recreational bag limit from 3 to 1 fish (implemented 1997); (2) a commercial closed season during March, April and May (implemented 1998); and (3) partial protection of misidentified juvenile greater amberjack by establishment of a slot limit on lesser amberjack/banded rudderfish of 14 and 22 inches (35.6 and 55.9 cm) fork length plus an aggregate 5-fish recreational bag limit. As a result of this finding, additional measures to end overfishing are not needed, but a plan to rebuild the stock is needed.

Because NMFS has declared the stock overfished, the Council is required to rebuild the stock to a level where it is no longer considered overfished. Before a plan can be put into effect, management targets and thresholds that the stock needs to achieve must be defined. These are: definitions for MSY, optimum yield (OY), the minimum stock size threshold (MSST) below which a stock is considered to be overfished, the maximum fishing mortality threshold (MFMT) above which a stock is considered to be undergoing overfishing. The proposed amendment also provides alternative rebuilding plans that will rebuild the stock within 10 years or less and are based on various rebuilding strategies.

The public hearings will be held from 7 p.m. to 10 p.m. at the following locations and dates.

1. *Tuesday, August 6, 2002:* Texas A&M University, CLB Building Room 114, 200 Seawolf Parkway, Galveston, TX; telephone: 409–740–4736; and

2. *Wednesday, August 7, 2002:* City Hall Auditorium, 300 Municipal Drive, Madeira Beach, FL; telephone: 727–391–9951.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 30, 2002.

Dated: July 24, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19362 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 147
Wednesday, July 31, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

2001 Crop Assistance for Losses in the State of Idaho Due to the Herbicide Oust

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice to inform all interested parties of the 2001 Idaho Oust Program (Oust Program). The program is to compensate farmers whose crops were damaged by the Bureau of Land Management's use of a herbicide near their farm.

DATES: All interested parties must file applications at the address specified below by such date as determined by the Idaho State Executive Director.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, Telephone (202) 720–3463.

SUPPLEMENTARY INFORMATION: Section 757 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2002 (Public Law 107–76) provided that the Secretary of Agriculture may use not more than $5,000,000 of funds of the Commodity Credit Corporation to pay claims of crop damage, upon consultation with the Secretary of the Interior, that resulted from the Bureau of Land Management's use of herbicides during the 2001 calendar year in the State of Idaho. Section 757 provided further that if the amount provided was not sufficient to pay all approved claims then the claims would be reduced on a pro rata basis related to the degree of loss in production. And, Section 757 specified that nothing in it would be construed to constitute an admission of liability by the United States arising from the use by the Bureau of Land Management of the herbicide Oust. Also, it was provided that the issuance of regulations promulgated pursuant to Section 757 would be made without regard to: (1) The notice and comment provisions of section 553 of title 5, United States Code; (2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and (3) chapter 35 of title 44, United States Code (commonly known as the "Paperwork Reduction Act"). Also, the Secretary was directed to use the authority provided under section 808 of title 5, United States Code which excepts certain rules from certain statutory provisions relating to Congressional oversight. This notice is to inform affected parties that they may be eligible for 2001 Oust benefits under the terms of this notice and to set forth the terms and conditions of the Oust Program.

Producers who seek benefits under this notice must file an application, CCC–559, 2001 Idaho Oust Program Application, for benefits in the county Farm Service Agency (FSA) office serving the county where the producer's farm is located for administrative purposes. The Secretary of Agriculture will spend $5 million of CCC funds to pay claims of crop damage under the Oust Program. Because funding for the program is limited to $5 million, national factors for reducing payments may be determined after the end of sign up, if necessary, to ensure that the total outlays do not exceed the amount of funds made available under this program. In the event that the $5 million is insufficient to pay all approved claims, the Secretary of Agriculture will reduce all approvable and timely claims on a pro rata basis related to the degree of loss in production. Total Oust benefits are not subject to a payment limitation per "person" as defined in 7 CFR part 1400, or the gross revenue provisions.

Any payment or portion thereof to any producer shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor. Eligible producers for Oust benefits are producers in the State of Idaho who have suffered 2001 crop year production losses in excess of 25 percent of a field's expected production as a result of BLM's use of the herbicide Oust. The 25 percent limit is not set out in the statute. However, the program is discretionary and claims above that amount are expected to exceed the $5 million allowed to be spent. The 25 percent restriction is intended to help direct the funds to those with the greatest loss and the greatest needed. Although the statute speaks generally, initially, of a herbicide loss, without specifying a particular herbicide, the statute makes it clear that it is directed at the herbicide Oust. By statute, the program is limited to Idaho. As specified in this statute, nothing in the administration of the program is designed to suggest or constitute, or can be taken to suggest or constitute, and admission of liability by the United States or anyone arising from the use of the herbicide Oust or any other herbicide. As a condition to receive Oust benefits, a producer must have been in compliance with the Highly Erodible Land and Wetland Conservation provisions of 7 CFR part 12 for the 2001 crop year.

No person shall receive Oust benefits in an amount that exceeds the value of the expected production for the field for the 2001 crop year as determined by CCC.

To receive Oust benefits, the county FSA committee must determine that because of BLM's use of Oust, the producer sustained a loss of the expected production of a crop on a farm field. Ineligible causes of loss are those that are not a direct result from BLM's use of Oust. Calculation of benefits under this notice shall not include ineligible causes of loss, such as losses that are the result of adverse weather conditions, poor management decisions or poor farming practices.

Each eligible producer's share of an Oust payment shall be based on the producer's share of the crop or crop proceeds, or, if no crop was produced, the share the producer would have received if the crop had been produced.

Oust payments will be calculated using payment rates and yields established under the 2000 Crop Disaster Program (CDP) as provided in 7 CFR part 1480.

Eligible acreage shall be calculated using the number of acres shown to have been planted to a crop in a farm field, excluding acreage enrolled in the 2001 Sugar Payment-In-Kind Diversion Program. Such land was land for which

no crop was to be harvested in return for sugar from CCC's inventory. Accordingly, it would not be proper to consider such acres to have suffered a loss of the crop for purposes due to the application of this herbicide. Subject to the availability of funds, Oust benefits under this notice for losses to crops shall be made in an amount determined by multiplying the determined eligible loss of production in excess of 25 percent of the expected production for the field by the applicable payment rate.

Production shall include all harvested production, unharvested production and assigned production for the field. The county committee shall assign production when the county committee determines: (1) An acceptable appraisal or record of harvested production does not exist; (2) acreage was destroyed and no appraisal exists; (3) yields are diminished or losses are increased due to an ineligible cause of loss.

The county committee shall establish production factors for ineligible causes of loss. Production factors will apply when assigning production for ineligible causes of loss.

Producers are responsible for providing verifiable or reliable production records available for the crop and field and summarizing all the production evidence. If the eligible crop was sold or otherwise disposed of through commercial channels, production records include: commercial receipts; settlement sheets; warehouse ledger sheets; or load summaries; appraisal information from a loss adjuster acceptable to CCC. If the eligible crop was farm-stored, sold, fed to livestock or disposed of by means other than commercial channels, production records for these purposes include: truck scale tickets; appraisal information from a loss adjuster acceptable to CCC; contemporaneous diaries; or other documentary evidence, such as contemporaneous measurements.

Producers must provide all records for any production of a crop that is grown with an arrangement, or contract for guaranteed payment. The failure to report the existence of any guaranteed contract or similar arrangement or agreement shall be considered as providing false information to CCC and will render producers ineligible for Oust benefits, and may lead to other civil or criminal sanctions.

To receive Oust benefits, the county committee must determine that because of the herbicide Oust, the producer, with respect to the 2001 crop year, sustained a loss in production of a crop.

To determine if eligible acreage was damaged by Oust, the producer must supply one of the following types of documentation: (1) Field inspection form compiled by a licensed crop consultant; (2) documentation from an independent crop consultant that indicates Oust damage; (3) positive soil test results that show the presence of Oust in the sample; or (4) documentation from a University of Idaho Specialist that the acreage showed Oust damage.

To apply for benefits, producers must submit: (1) Form CCC–559, and include supporting documentation described in this notice; (2) Form AD–1026, Highly Erodible Land and Wetland Conservation Compliance; and (3) FSA–578, Report of Acreage.

Unless extended by CCC, the final date for accepting applications for the Oust Program shall be no less than 15 calendar days after the date this notice is published in the **Federal Register**. It has been determined that the notice and comment provisions of section 553 of title 5, United States Code, the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking, and chapters 35 of title 44, United States Code (the "Paperwork Reduction Act") are not applicable to the Oust Program. Also delay for Congressional review under 5 U.S.C. 808 *et seq.*, to the extent if any, that it would otherwise apply, would be contrary to the public interest and contrary to the provisions of section 757 of Public Law 107–76 which specifies that in carrying out that section the Secretary shall use the authority of 5 U.S.C. 808 exempting agency actions from such review. Applications may be obtained and filed in the county FSA office where the producer's farm is located for administrative purposes. All late and incomplete applications may be rejected.

The Oust Program shall be under the supervision of the Farm Service Agency, Deputy Administrator for Farm Programs, who shall have the authority to modify terms and conditions of the Oust Program in order to achieve the purposes of the Oust Program. Additional conditions may be added by the program application as needed. No claims will be paid except upon the making of a proper application during the sign-up period for this program. The final terms and conditions shall be those set out in the program application, CCC–559, which all participants must sign. A copy of this form is available at any FSA office.

For additional information, affected producers should contact the Farm Service Agency Service Center in the county in which their farm is located for administrative purposes. Eligibility determinations will be made upon receipt of all of the necessary data.

Signed at Washington, DC, on July 25, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–19260 Filed 7–30–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Flathead County Resource Advisory Committee will meet in Kalispell, Montana August 5 and August 20. The purpose of the meeting is to discuss potential Title II projects for fiscal year 2003 funded by the Secure Rural Schools and Community Self Determination Act.

DATES: The meetings will be held August 5 from 7 pm to 9:30 pm and August 20, 7 pm to 9:30 pm.

ADDRESSES: The meeting will be held at the Flathead National Forest Supervisors Office, Conference Rooms A & B, 1935 third Ave East, Kalispell, Montana, 59901.

FOR FURTHER INFORMATION CONTACT: Allen Rowley, Flathead National Forest Public Affairs Specialist, (406) 758–5252.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Time will be available for public input on potential projects the committee may be discussing.

Allen Rowley,

Public Affairs Specialist.

[FR Doc. 02–19286 Filed 7–30–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Payments Table Related to Secure Rural Schools and Community Self-Determination Act of 2000 and Opportunity for Counties To Change Payment Election Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Secure Rural Schools and Community Self-Determination Act of 2000 provides counties that receive payments under the 25 percent fund with the option of receiving their share of the State's full payment amount (as defined by the act), in lieu of the 25 percent fund payments. In 2000, the Forest Service provided a table displaying the dollar amounts for revenues distributed to each State by year and county. Counties used this table in making their election decisions for payments. As directed by the Agriculture Appropriations Act for Fiscal Year 2002, the Forest Service has revised this table, which incorrectly accounted for certain mineral revenues for some States. The agency submitted the revised table to Congress along with a report explaining the issues and the revision process. This notice provides information regarding the availability of the revised table and report, and notifies counties of the 90-day period during which they may change their payment elections.

DATES: Changes to county election decisions must be received in writing on or before October 29, 2002.

ADDRESSES: Counties wishing to change their payment election decisions should do so in writing to Michael Morton, USDA Forest Service, Financial Management Staff (Mail Stop 1139), 1400 Independence Avenue, SW., Washington, DC 20250–1139 (e-mail: *mpmorton@fs.fed.us;* facsimile: 703–605–5264). The revised payments table and accompanying report are available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/payments.* Single paper copies of the revised payments table and report also are available by contacting Tom Quinn, USDA Forest Service, Policy Analysis Staff (Mail Stop 1131), 1400 Independence Avenue, SW., Washington, DC 20250–1131 (e-mail: *tquinn01@fs.fed.us*).

FOR FURTHER INFORMATION CONTACT: Tom Quinn (202–205–0846) or Maitland Sharpe (202–205–0932), Policy Analysis Staff, or Michael Morton (703–605–4724), Financial Management Staff.

SUPPLEMENTARY INFORMATION: The Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) provides counties that received payments under the 25 Percent Fund Act of 1908 (16 U.S.C. 500) with the option of receiving their share of the State's full payment amount (as defined by the act), in lieu of the 25 percent fund payments. The Forest Service provided a table displaying each State's full payment amount and an associated county distribution in 2000 to Congress and affected counties. The table also was made available electronically on the agency's World Wide Web/Internet web site and other web sites. The counties used this table in making their election decisions regarding the option to receive their share of the State's full payment amount (as defined by the act) in lieu of the 25 percent fund payment.

Subsequently, it was determined that certain mineral revenues for some States were incorrectly accounted for in the table. Therefore, as directed by the Agriculture Appropriations Act for Fiscal Year 2002, the Forest Service has revised the payments table and prepared a report outlining the process used to revise the table consistent with the Congressional direction. The agency has submitted the revised payments table and accompanying report to Congress and has made the documents available electronically as set out in the **ADDRESSES** section of this notice.

Congress specified that if the revised table results in a reduced full payment amount share for an eligible county that elected to receive its share of the state's full payment amount, the eligible county shall have a 90-day period, beginning on the date the revised table is first made available to the public, during which to reconsider and change its election.

As directed by the Congress, the Forest Service has worked with the U.S. Department of the Interior, Minerals Management Service (MMS) to use the best available information to revise the payments table. The analysis resulted in changes in the payments table for 16 States: Alabama, Arkansas, Florida, Illinois, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New Mexico, Ohio, Oklahoma, Texas, Virginia, and West Virginia. Although each of these 16 States is affected to varying degrees, the effects of the revisions are most evident on a state-wide basis for Arkansas, Kentucky, Louisiana, Ohio, Oklahoma, and Missouri; the latter being the only State with a large increase in the full payment amount. By far the largest decline in the full payment amount is for Arkansas, with a potential reduction of $1.003 million if all counties choose the full payment amount. For the first two years of Public Law 106–393 implementation, 14 of the 29 eligible counties in Arkansas elected the full payment amount; therefore the actual reduction for this period would be $651,600.

It is possible that States with substantial hard-rock revenues (such as Missouri) would no longer receive payments for these minerals from the MMS for the counties choosing the full payment amount, which could result in large reductions in the total payments received by these States. In the case of Missouri, if all counties choose the full payment amount, MMS payments could drop by upwards of $1 million annually. The decision on whether payments for hard-rock minerals will continue rests with the MMS and the Department of the Interior.

The revised table redistributes each State's full payment amount based on the National Forest location of the relevant minerals and the counties within those forests. In some States (for example, Michigan), this redistribution can result in significant effects on individual counties' payments even while the State's total full payment amount remains essentially unchanged.

Dated: July 24, 2002.

Sally D. Collins,

Associate Chief.

[FR Doc. 02–19281 Filed 7–30–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review and Intent to Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review and Intent to Rescind in Part.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers Jinan Yipin Corporation, Ltd., and Shandong Heze International Trade and Developing Company. The period of review is November 1, 2000, through October 31, 2001.

We have preliminarily determined that Jinan Yipin Corporation, Ltd., has made sales in the United States at prices below normal value. With respect to Shandong Heze International Trade and Developing Company, we intend to rescind the antidumping duty new shipper review. We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Brian Ellman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–5047 and (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 2001).

Background

On January 7, 2002, the Department of Commerce (the Department) published in the **Federal Register** the *Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic From the People's Republic of China* (67 FR 715). The Department issued antidumping questionnaires to Jinan Yipin Corporation, Ltd. (Jinan Yipin), and Shandong Heze International Trade and Developing Company (Shandong Heze).[1]

During the period March through July 2002, the Department received responses to sections A, C, and D of the Department's original and supplemental questionnaires from Jinan Yipin and Shandong Heze.

On May 16, 2002, we requested publicly available information for valuing the factors of production and comments on surrogate-country selection. We received comments from the petitioners and Jinan Yipin on May 30, 2002. On July 15, 2002, and July 16, 2002, we completed a verification at Jinan Yipin's U.S. sales office. We intend to verify the factors-of-production information upon which we will rely in completing our final results of review.

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Separate Rates

In proceedings involving non-market-economy (NME) countries, the Department begins with a presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to its exports. In these reviews, both Jinan Yipin and Shandong Heze have requested separate company-specific rates.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586 - 22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See, *e.g.*, *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997), *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997), and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

Jinan Yipin and Shandong Heze provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether these exporters are independent from government control (see *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Jinan Yipin has placed on the record a number of documents to demonstrate absence of *de jure* control, including the "Foreign Trade Law of the People's Republic of China" and the "Company Law of the People's Republic of China." The Department has analyzed these laws and found that they establish an absence of *de jure* control. See, *e.g.*, *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). We have no information in this proceeding

[1] A new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China was also initiated for Huaiyang Hongda Dehydrated Vegetable Company. We rescinded this new shipper review, however, for the November 1, 2000, through October 31, 2001, period of review and initiated a review for the period from November 1, 2001, through April 30, 2002 (see *Notice of Rescission of New Shipper Antidumping Duty Review and Initiation of Antidumping Duty New Shipper Review*, 67 FR 44594 (July 3, 2002)).

which would cause us to reconsider this determination.

Shandong Heze placed only one document on the record relevant to our analysis of *de jure* control, a copy of the "Foreign Trade Law of the People's Republic of China." Also, Shandong Heze did not provide the Department with information to substantiate its business license, such as the regulated-commodities listings, as evidence of the lack of *de jure* government control. See *Shandong Heze International Trade and Developing Company-Separate Rates Analysis and Deficient Submissions Memorandum*, dated July 22, 2002. Therefore, we find that Shandong Heze did not demonstrate the absence of *de jure* control in this case.

2. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the People's Republic of China (PRC) central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide* at 22586 - 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

According to Jinan Yipin, it is a private limited-liability company owned by a group of private investors. Jinan Yipin has also asserted the following: (1) There is no government participation in setting export prices; (2) its managers have authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection; and (4) there are no restrictions on the use of its export revenue and it is responsible for financing its own losses. Furthermore, our analysis of Jinan Yipin's questionnaire responses reveals no other information indicating the existence of government control. Consequently, we preliminarily determine that Jinan Yipin has met the criteria for the application of a separate rate.

Although Shandong Heze has made statements that it no longer has a relationship with any level of the government in the PRC, Shandong Heze has not provided an adequate explanation to support its independence from government control. Therefore, we preliminarily determine that Shandong Heze has not met the criteria for the application of a separate rate.

Intent to Rescind in Part

The PRC is an NME, and in NME cases we presume that all entities are subject to government control for purposes of the antidumping law unless those entities prove affirmatively that they are free from *de jure* and *de facto* government control of their export activities. See *Sparklers* and *Silicon Carbide*. Without adequate documentation of this independence, we find that Shandong Heze is not entitled to a separate rate. Consequently, Shandong Heze's belated acknowledgement of its recent government ownership and its failure to document its independence from the government adequately does not support its contention that it is a new shipper and that it is not part of the PRC-wide entity. As such, we intend to rescind the review of Shandong Heze.

Fair Value Comparisons

To determine whether sales of fresh garlic to the United States by Jinan Yipin were made at less than fair value, we compared constructed export price to normal value, as described in the "Constructed Export Price" and "Normal Value" sections of this notice below.

Constructed Export Price

In accordance with section 772(b) of the Act, we used constructed export price (CEP) methodology because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated CEP based on prices from Jinan Yipin's U.S. subsidiary to unaffiliated customers. We made deductions, where appropriate, from the gross unit price to account for foreign inland freight, international freight, customs duties, and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight, were provided by NME companies, we valued those charges based on surrogate rates from India. See the *Factors Valuation for the Preliminary Results of the New Shipper Review Memorandum*, dated July 24, 2002 (*FOP Memorandum*).

Normal Value

1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV), in most circumstances, on the NME producer's factors of production valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall use, to the extent practicable, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. See Memorandum from Jeffrey May to Laurie Parkhill dated February 28, 2002. In addition to being among the countries comparable to the PRC in economic development, India is a significant producer of the subject merchandise. We used India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the PRC producer's factors of production, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. See Memorandum from Jason Carver to Mark Ross regarding Selection of a Surrogate Country, dated July 24, 2002. In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of a new shipper review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of these preliminary results of new shipper review.

2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of NV using home-market prices, third- country prices, or constructed value under section 773(a)

of the Act. Factors of production include the following elements: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used factors of production reported by the respondent for materials, energy, labor, and packing. We valued all the input factors using publicly available information, as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice. In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market-economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. See also *Lasko Metal Products v. United States*, 437 F.3d 1442, 1445–1446 (CAFC 1994). Therefore, where Jinan Yipin had market-economy inputs and paid for these inputs in a market-economy currency, we used the actual prices paid for those inputs in our calculations.

3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the respondent for the period of review (POR). To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. For a detailed description of all surrogate values used for respondents. See the *FOP Memorandum*.

We added to Indian import surrogate values a surrogate freight cost using the reported distance from the domestic supplier to the factory. This adjustment is in accordance with the decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (CAFC 1997).

For those Indian rupee values not contemporaneous with the POR, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics* for India. For those U.S. dollar-denominated values not contemporaneous with the POR, we adjusted for inflation using producer price indices published on the Federal Reserve Bank website (*www.dallasfed.org/htm/data/data/wsop03sa.tab.htm*).

Except as noted below, we valued raw-material inputs using the weighted-average unit import values derived from the *Monthly Trade Statistics of Foreign Trade of India*--Volume II--Imports (Indian Import Statistics) for the time period April 2001 through September 2001. Where POR-specific Indian Import Statistics were not available, we used Indian Import Statistics from an earlier period (*i.e.*, April 2001 through June 2001). Surrogate-value data or sources to obtain such data were obtained from the respondent, the petitioners, and Department research.

Furthermore, we valued water based on data from the Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (published in 1997). We valued electricity based on data from the *International Energy Agency: Energy Prices & Taxes: 2000 1st Quarter*. We valued diesel fuel using data from the International Energy Agency for the time period January 2000 through April 2000.

The inputs Jinan Yipin reported for packing were mesh bags, cartons, and packing belts. We used Indian Import Statistics data for the April 2001 through September 2001 period to value these inputs.

To value truck rates, we used freight costs from the February 14, 2000, publication of.

To value factory overhead, selling, general and administrative expenses, and profit, we used rates based on financial information from the 1999–2000 annual reports of Himalaya International Ltd., Flex Foods, and Agro Dutch, Indian producers of preserved mushrooms. We based the value of the garlic sprouts on the building depreciation in the aforementioned financial information.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate at the Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2000 (see http://ia.ita.doc.gov/wages). The source of the wage-rate data on the Import Administration's web site is the 1999 *Yearbook of Labour Statistics*, International Labor Organization (Geneva: 1999), Chapter 5B: Wages in Manufacturing.

Preliminary Results of the Review

We preliminarily determine that the following dumping margin exists for the period November 1, 2000, through October 31, 2001:

Manufacturer and Exporter	Weighted-average percentage margin
Jinan Yipin Corporation, Limited	15.26

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs regarding our intent to rescind the review of Shandong Heze must be submitted within 15 days of the date of publication of this notice. Case briefs regarding Jinan Yipin must be submitted no later than seven days after the issuance of the last verification report. Rebuttal briefs, limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument with an electronic version included, and 3) a table of authorities.

Pursuant to 19 CFR 351.310 of the Department's regulations, any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 37 days after the publication of this notice or the first workday thereafter. In accordance with 19 CFR 351.309(c)(ii), issues raised in hearings will be limited to those raised in the case and rebuttal briefs.

The Department will publish the final results of this new shipper review, including the results of its analysis of issues raised in any such written briefs, within 90 days of publication of these preliminary results. See 19 CFR 351.214(i)(1) of the Department's regulations.

Assessment Rates

Upon completion of this new shipper review, the Department will determine, and the Customs Service will assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews. To calculate the amount of duties to be assessed with respect to CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. If these preliminary results are adopted in our final results of this new shipper review, we will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject

merchandise on each of the importer's/customer's entries during the review period.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for subject merchandise manufactured and exported by Jinan Yipin, the cash-deposit will be that established in the final results of this review except if the rate is less than .50 percent and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash-deposit rate will be zero; (2) for all other PRC exporters, including Shandong Heze, the rate will continue to be the PRC country-wide rate, which is 376.67 percent; and (3) for all other non-PRC exporters of subject merchandise from the PRC, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July, 24, 2002

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–19342 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–833]

Stainless Steel Bar From Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from a domestic interested party, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from Japan for the period February 1, 2001, through January 31, 2002. This review covers one producer/exporter of subject merchandise, Aichi Steel Works, Ltd.

We have preliminarily determined a dumping margin in this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on any entries of subject merchandise manufactured or exported by Aichi Steel Works, Ltd.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Ellman, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4852.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 2001).

Background

On February 1, 2002, the Department published a notice of "Opportunity to Request Administrative Review" (67 FR 4945) with respect to the antidumping duty order on stainless steel bar from Japan. The petitioners, Carpenter Technology, Crucible Specialty, Electralloy, and Slater Steels, requested a review of Aichi Steel Works, Ltd. (Aichi) on February 27, 2002. In response to the petitioners' request, the Department published a notice of initiation of an administrative review on March 27, 2002 (67 FR 14696), in accordance with 19 CFR 351.213(b).

Scope of Order

The merchandise covered by this review is stainless steel bar. For purposes of this review, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross-section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross-section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this review is currently classifiable under subheadings 7222.11.00, 7222.19.00, 7222.20.00 and 7222.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Period of Review

The period of review is February 1, 2001, to January 31, 2002.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party 1) withholds information that has been requested by the Department, 2) fails to provide such

information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, 3) significantly impedes a determination under the antidumping statute, or 4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the Department shall, subject to section 782(d) of the Act, use facts otherwise available in determining dumping margins.

The Department sent Aichi a questionnaire on April 4, 2002, with a due date of May 13, 2002, seeking information necessary to conduct a review of any shipments that the firm may have made to the United States during the period of review. Aichi did not respond to our original questionnaire, nor did it make any effort to inform the Department of its intention not to respond. On May 15, 2002, two days after the deadline for responding to the Department's questionnaire, the Department contacted counsel for Aichi, and received a return phone message five days later, on May 20, 2002, in which counsel for Aichi indicated that the company would not be responding to the Department's questionnaire in this segment of the proceeding. *See* Memorandum regarding Notification of Respondent's Decision Not to Respond to Department's Questionnaire: Stainless Steel Bar from Japan (May 21, 2002). The company did not notify the Department of any difficulties in complying with the request for information, nor did it seek an opportunity to submit information in alternative forms with an appropriate explanation. Therefore, Aichi failed to comply with the provisions of section 782(c) of the Act. Because Aichi has withheld information that was requested by the Department, and has failed to provide any information whatsoever, the statute directs that we determine Aichi's dumping margin using facts otherwise available, pursuant to sections 776(a)(2)(A) and (B) of the Act. Because Aichi has provided no information whatsoever, sections 782(d) and (e) of the Act are inapplicable.

In selecting from the facts otherwise available, section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. The section also provides that an adverse inference may include reliance on information derived from the petition, the final determination in the investigation segment, a previous review under section 751 of the Act or a determination under section 753 of the Act, or any other information placed on the record. *See* sections 776(b)(1)-(4) of the Act. In addition, the Statement of Administrative Action accompanying the URAA, H.Doc.103–316, vol.1 (1994) (SAA), establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." SAA at 870. As noted above, Aichi not only failed to respond to the Department's questionnaire, it took no affirmative steps to inform the Department of its intention not to participate until the Department contacted its counsel. Moreover, Aichi did not inform the Department of any difficulties in meeting requirements, nor did it seek to submit data in alternative forms with an appropriate explanation. On these grounds, the Department finds that Aichi failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, and accordingly, pursuant to section 776(b), we are employing an adverse inference in selecting from the facts available.

The Department's practice when selecting an adverse rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value*, 63 FR 8932 (February 23, 1998). In employing adverse inferences, the Department is instructed to consider "the extent to which a party may benefit from its own lack of cooperation." SAA at 870.

In order to ensure that the rate is sufficiently adverse so as to induce Aichi's cooperation, we have assigned this company as adverse facts available a rate of 61.47 percent, which is the margin calculated in the original less-than fair-value (LTFV) investigation using information provided in the petition. *See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Bar From Japan*, 59 FR 66930 (December 28, 1994). The rate was selected as the best information available in the final determination of the investigation, and has been applied as the "all-others" rate in every subsequent review. Although two other rates have been calculated for Aichi in prior segments of this proceeding, those rates were calculated based on Aichi's cooperation. To apply one of those rates as the adverse facts available rate would unduly reward Aichi's lack of cooperation in the current review. Therefore, pursuant to section 776(b)(1), the Department finds that the rate of 61.47 percent is an appropriate basis for adverse inference.

Section 776(c) of the Act provides that the Department when using secondary information shall, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Information from a prior segment of the proceeding, such as that used here, constitutes secondary information. *See* SAA at 870. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

To assess the reliability of the petition margin, in accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the calculations of export price and normal value upon which the petitioners based their margins for the petition. The U.S. prices in the petition were based on quotes to U.S. customers, most of which were obtained through market research. *See Petition for the Imposition of Antidumping Duties*, December 30, 1993. We were able to corroborate the U.S. prices in the petition by comparing these prices to publicly available information based on IM–145 import statistics covering sales from Japan which were contemporaneous with the period of this administrative review. See Memorandum from Brian Ellman, Case Analyst to the File, Corroboration of Petition Rate for Use as Facts Available, July 8, 2002.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an

appropriate margin. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996) (the Department disregarded the highest dumping margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). There is no evidence of circumstances indicating that the margin used as facts available in this review is not appropriate.

Throughout the history of this proceeding, all producers/exporters of subject merchandise except Aichi have been subject to the rate of 61.47 percent for several years. Aichi was also subject to this rate as a result of the investigation. As this rate has never before been challenged, except by Aichi in previous segments, nor has any information been presented in the current review that calls into question the reliability or the relevance of the information contained in the petition, the Department finds that the information is reliable. The implementing regulation for section 776 of the Act, codified at 19 CFR 351.308(d), states, "{t}he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." Additionally, the SAA at 870 states specifically that "{t}he fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference." The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information. Therefore, based on our efforts, described above, to corroborate information contained in the petition and in accordance with 776(c) of the Act, which discusses facts available and corroboration, we consider the margins in the petition to be corroborated to the extent practicable for purposes of this preliminary determination (*see Certain Forged Stainless Steel Flanges From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 10358, 10360 (March 7, 2002)). Therefore, the requirements of section 776(c) of the Act are satisfied.

Preliminary Results of the Review

As a result of this review, the Department preliminarily determines that a margin of 61.47 percent exists for Aichi for the period February 1, 2001, to January 31, 2002.

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The rate will be assessed uniformly on all entries of Aichi merchandise made during the period of review. The Department will issue appraisement instructions for Aichi merchandise directly to the Customs Service.

Furthermore, the following deposit rates will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Aichi will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 61.47 percent, the "all others" rate established in the LTFV investigation (59 FR 66930, December 28, 1994). This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 23, 2002.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–19341 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Riverside; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–021. *Applicant:* University of California, Riverside, Riverside, CA 92521. *Instrument:* Two (2) Confocal Microscopes, Models TCS SP2/UV and TCS SPS RS–2P. *Manufacturer:* Leica Microsystems, Germany. *Intended Use:* See notice at 67 FR 44424, July 2, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) A confocal microscope with spectral detection, (2) a pinhole design for registration of all fluorescence colors and (3) fast scan speed. The National Institutes of Health advises in its memorandum of June 12, 2002 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–19340 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Federative Republic of Brazil

July 24, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 363 is being increased for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 57426, published on November 15, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 24, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 31, 2002, you are directed to increase the current limit for Category 363 to 45,048,558 numbers [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

[FR Doc. 02–19297 Filed 7–30–02; 8:45 a.m.

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Macau

July 25, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryover, and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63028, published on December 4, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 25, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 31, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
225	7,187,336 square meters.
317	4,810,939 square meters.
333/334/335	487,250 dozen of which not more than 240,235 dozen shall be in Categories 333/335.
336	113,096 dozen.
338	598,612 dozen.
339	2,404,993 dozen.
340	624,831 dozen.
341	403,003 dozen.
342	165,319 dozen.
345	99,321 dozen.
347/348	1,394,617 dozen.
351	132,182 dozen.
359–C/659–C [2]	729,271 kilograms.
359–V [3]	243,092 kilograms.
625/626/627/628/629	7,637,880 square meters.
633/634/635	1,085,898 dozen.
638/639	3,356,306 dozen.
640	240,429 dozen.
641	288,892 dozen.
642	235,661 dozen.
645/646	530,156 dozen.
647/648	1,050,852 dozen.
659–S [4]	243,092 kilograms.

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

Category	Adjusted twelve-month limit [1]
Group II	
400–414, 433–438, 440–448, 459pt.[5] and 469pt.[6], as a group	1,749,056 square meters equivalent.
Sublevel in Group II	
445/446	97,938 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, and 6211.12.1020.

[5] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–19298 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man–Made Fiber Textiles and Textile Products Produced or Manufactured in the United Arab Emirates

July 24, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63038, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 24, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textiles and textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 31, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
219	2,038,019 square meters.
226/313	3,485,061 square meters.
317	55,428,669 square meters.
326	3,467,736 square meters.
334/634	415,342 dozen.
338/339	991,950 dozen of which not more than 583,961 dozen shall be in Categories 338–S/339–S [2].
340/640	636,859 dozen.
347/348	733,200 dozen of which not more than 384,999 dozen shall be in Categories 347–T/348–T [3].
363	10,092,561 numbers.
369–O [4]	133,984 kilograms.
369–S [5]	152,653 kilograms.
638/639	394,925 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S), 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–19296 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 30, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 24, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–85 DAPE

SYSTEM NAME:

Alcohol and Drug Abuse Rehabilitation Files (January 27, 1999, 64 FR 4075).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Army Substance Abuse Program'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Active Army, Army National Guard of the U.S., Army National Guard, U.S. Army Reserve, Army civilian employees, military and civilian employee family members and military retirees who are screened and/or enrolled in the Army Substance Abuse Program.'

* * * * *

RETENTION AND DISPOSAL:

Add to entry 'Personnel Reliability Program (PRP) records are maintained no longer than 6 years after individual is separated from PRP, then destroyed.'

* * * * *

A0600–85 DAPE

SYSTEM NAME:

Army Substance Abuse Program.

SYSTEM LOCATION:

PRIMARY LOCATION:

Army Substance Abuse Program (ASAP) rehabilitation/counseling facilities (e.g., Community Counseling Center/ASAP Counseling Facilities) at Army installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

SECONDARY LOCATION:

Army Center for Substance Abuse Program, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Army, Army National Guard of the U.S., Army National Guard, U.S. Army Reserve, Army civilian employees, military and civilian employee family members and military retirees who are screened and/or enrolled in the Army Substance Abuse Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

PRIMARY LOCATION:

Copies of patient intake records, progress reports, psychosocial histories, counselor observations and impressions of patient's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, Patient Intake/Screening record-PIR (DA Form 4465–R); Patient Progress Report-PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document-Drug Testing (DD Form 2624), and similar or related documents.

SECONDARY LOCATION:

Copies of Patient Intake/Screening record-PIR (DA Form 4465–R); Patient Progress Report-PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document-Drug Testing (DD Form 2624), and demographic composites thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 290dd–2; Federal Drug Free Workplace Act of 1988; Army Regulation 600–85, Army Substance Abuse Program; and E.O. 9397 (SSN).

PURPOSE(S):

To identify alcohol and drug abusers within the Army; to treat, counsel, and rehabilitate individuals who participate in the Army Substance Abuse Program; to judge the magnitude of drug and alcohol abuse in the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to this system.

The Patient Administration Division at the medical treatment facility with jurisdiction is responsible for the release of medical information to malpractice insurers in the event of malpractice litigation or prospect thereof.

INFORMATION IS DISCLOSED ONLY TO THE FOLLOWING PERSONS/AGENCIES:

To health care components of the Department of Veterans Affairs furnishing health care to veterans.

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel conducting scientific research, audits, or program evaluations, provided that a patient may not be identified in such reports, or his or her identity further disclosed by such personnel.

In response to a court order based on the showing of good cause in which the need for disclosure and the public's interest is shown to exceed the potential harm that would be incurred by the patient, the physician-patient relationship, and the Army's treatment program. Except as authorized by a court order, no record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked metal containers; computer database; computer magnetic discs/tapes.

RETRIEVABILITY:

By patient's surname, Social Security Number or other individually identifying characteristics.

SAFEGUARDS:

Records are maintained in storage areas in locked file cabinets where access is restricted to authorized persons having an official need-to-know.

RETENTION AND DISPOSAL:

PRIMARY LOCATION:

Records are destroyed 5 years after termination of the patient's treatment, unless the Army Medical Department Activity/Facility commander authorizes retention for an additional 6 months.

SECONDARY LOCATION:

Manual records are retained up to 18 months or until information taken there from and entered into computer records is transferred to the 'history' file, whichever is sooner. Disposal of manual records is by burning or shredding. Computer records are retained permanently for historical and/or research purposes.

Personnel Reliability Program (PRP) records are maintained no longer than 6 years after individual is separated from PRP, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20320–3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Denial to amend records in this system can be made only by the Deputy Chief of Staff for Personnel in coordination with The Surgeon General.

RECORD SOURCE CATEGORIES:

From the individual by interviews and history statement; abstracts or copies of pertinent medical records; abstracts from personnel records; results of tests; physicians' notes, observations of client's behavior; related notes, papers, and forms from counselor, clinical director, and/or commander.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351 HSC–AHS

SYSTEM NAME:

U.S. Army Medical Department School and Academy of Health Sciences Academic Records (February 15, 2002, 67 FR 7140).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with A0351 DASG'.

* * * * *

A0351 DASG

SYSTEM NAME:

U.S. Army Medical Department School and Academy of Health Sciences Academic Records.

SYSTEM LOCATION:

U.S. Army Medical Department Center and School, Academy of Health Sciences, Department of Academic Support, 2250 Stanley Road, Fort Sam Houston, TX 78234–6100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resident and correspondence students enrolled in courses at the Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student's name, Social Security Number, grade/rank, academic qualifications, progress reports, academic grades, ratings attained, aptitudes and personal qualities, including corporate fitness results; faculty board records pertaining to class standing/rating/classification/proficiency of students; class academic records maintained by instructors indicating attendance and progress of class members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 351–3, Professional Education and Training Programs of the Army Medical Department; and E.O. 9397 (SSN).

PURPOSE(S):

To determine eligibility for enrollment/attendance, monitor student progress, record accomplishments, and serve as record of courses which may be prerequisite for other formal courses of

instruction, licensure, certification, and employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

IN ADDITION TO THOSE DISCLOSURES GENERALLY PERMITTED UNDER 5 U.S.C. 552A(B) OF THE PRIVACY ACT, THESE RECORDS OR INFORMATION CONTAINED THEREIN MAY SPECIFICALLY BE DISCLOSED OUTSIDE THE DOD AS A ROUTINE USE PURSUANT TO 5 U.S.C. 552A(B)(3) AS FOLLOWS:

Information may be disclosed to civilian medical institutions for the purpose of accrediting the individual's training and instruction.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microfiche, cards, magnetic tape and/or disc, and computer printouts.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals whose official duties dictate the need therefore.

RETENTION AND DISPOSAL:

Academic records are maintained 40 years at the Academy of Health Sciences. Except for the master file, automated data are erased after the fourth updating cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and Academy of Health Sciences' staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–19256 Filed 7–30–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 30, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Guidance to SEAs Seeking to Use an Alternative Method to Distribute Title I Funds to LEAs with Fewer Than 20,000 Total Residents.

Frequency: Guidance issued on as needed basis.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 25.

Burden Hours: 200.

Abstract: Guidance for State educational agencies (SEAs) seeking to use an alternative method to distribute Title I Basic and Concentration Grants to local educational agencies (LEAs).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2118. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19336 Filed 7–30–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 30, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Guidance to SEAs on Procedures for Adjusting ED-determined Title I Allocations to Local Educational Agencies (LEAs).

Frequency: Guidance issued on as needed basis.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 2,080.

Abstract: Guidance for State educational agencies (SEAs) on procedures for adjusting ED-determined Title I Basic and Concentration Grants allocations to local educational agencies (LEAs) to account for newly created LEAs and LEA boundary changes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2119. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19337 Filed 7–30–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 30, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: National College Alcohol, Drug and Violence Survey.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 50,000.
Burden Hours: 30,000.
Abstract: The National College Alcohol, Drug and Violence Survey is being conducted as a national probability sample in order for the Department to obtain national statistics on alcohol and other drug use and violence among students at institutions of higher education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2088. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19338 Filed 7–30–02; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–407–000]

Gulf South Pipeline Company, LP; Notice of Application

July 25, 2002.

Take notice that on July 16, 2002, Gulf South Pipeline Company, LP (Gulf South), 20 East Greenway Plaza, Houston, Texas, 77046, filed an application for a certificate of public convenience and necessity and related authorizations pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations thereunder. Gulf South requests authorization to increase the maximum operating pressure in the Mobile Bay Lateral, located in Mobile County, Alabama. Copies of this application are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (please call (202) 208–2222 for assistance).

Any questions regarding Gulf South's application should be directed to J. Kyle Stevens, Esq., Director of Certificates, Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas, 77046 at (713) 544–7309 or by fax (713) 544–4818 or Michael E. McMahon, Esq., Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas, 77046 at (713) 544–4796 or by fax (713) 544–7336 or J. Curtis Moffat, Esq., Van Ness Feldman, P.C., 1050 Thomas Jefferson Street, Washington, DC, 20007 at (202) 298–1885 or by fax (202) 338–2416.

Gulf South requests authorization to increase the maximum operating pressure from 892 to 976 psig in the 30-in Mobile Bay Lateral, beginning at the Tailgate of ExxonMobil Company's Mary Anne processing plant and extending north to Gulf South's Lirette-Mobile pipeline. Gulf South states that this increase in operating pressure would result in an increase to the capacity of this pipeline by 236 MMcf/day without the expenditure of capital or the disruption of the environment as there is no construction. Gulf Stream also states that this increase in pressure will give them added flexibility while allowing them to meet the needs of current and new customers without the cost of constructing new facilities.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 15, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–19304 Filed 7–30–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–109–000]

Sacramento Municipal Utility District, Complainant v. Duke Energy Trading and Marketing, LLC, Respondent; Notice of Complaint

July 25, 2002.

Take notice that on July 24, 2002, Sacramento Municipal Utility District (SMUD) tendered for filing a Complaint Seeking Rate Relief Pursuant to Section 206 of the Federal Power Act (Complaint) against Duke Energy Trading and Marketing, LLC (DETM). The Complaint alleges that the prices charged by DETM under certain intermediate and long-term power contracts with SMUD are unjust and unreasonable and contrary to the public interest.

SMUD requests that the Commission set a refund effective date of 60 days from the date of filing of their complaint.

Copies of the filing were served upon DETM and the California Public Utilities Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before August 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before August 13, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19305 Filed 7–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–95–000, et al.]

Astoria Generating Company, L.P., et al.; Electric Rate and Corporate Regulation Filings

July 25, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Astoria Generating Company, L.P.; Carr Street Generating Station, L.P.; Erie Boulevard Hydropower, L.P.; Orion Power MidWest, L.P.; Twelvepole Creek, LLC

[Docket No. EC02–95–000]

Take notice that on July 19, 2002, Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., and Twelvepole Creek, LLC (collectively, the Applicants), submitted an application pursuant to Section 203 of the Federal Power Act, seeking authorization for a proposed internal corporate reorganization that would result in the transfer of indirect control of Applicants and their jurisdictional facilities, and requesting expedited consideration of their Application and certain waivers.

The Applicants state that, as a result of a restructured financing arrangement of one of Applicants' parent companies, there will be a transfer of indirect control of Applicants' jurisdictional facilities. The Applicants further state that the proposed transaction will have no effect on competition, rates or regulation and is in the public interest.

Comment Date: August 16, 2002.

2. Ameren Services Company, on behalf of the Public Utility Company Subsidiaries of Ameren Corporation, Central Illinois Light Company, and Medina Valley Cogen, L.L.C.

[Docket No. EC02–96–000]

Take notice that on July 19, 2002 Ameren Services Company on behalf of the public utilities owned wholly or partially by Ameren Corporation (Ameren Corp.), Central Illinois Light Company (CILCO), an unaffiliated public utility, and AES Medina Valley Cogen, L.L.C. (Medina), an exempt wholesale generator affiliated with CILCO, tendered for filing with the Federal Energy Regulatory Commission (Commission), a joint application pursuant to section 203 of the Federal Power Act (Act), 16 U.S.C. 824b (2000), and part 33 of the Commission's regulations, 18 CFR part 33, to request the Commission to authorize Ameren Corporation to acquire CILCO and Medina (collectively, Applicants). Ameren will acquire from AES all of the issued and outstanding shares of common stock of CILCORP, the parent company of CILCO and all of the issued and outstanding units of the membership interest in AES Medina Valley Cogen (No. 4), L.L.C., which is the parent company of Medina Valley Cogen (No. 2), L.L.C. and which, in turn, is the parent company of AES Medina Valley Cogen, L.L.C. AES Medina Valley Cogen (No. 4), L.L.C. is also the parent company of AES Medina Valley Operations, L.L.C. After the Transaction closes, all of these entities will continue to exist as separate companies.

Applicants state that they have served the application on all required parties.

Comment Date: September 17, 2002.

3. San Diego Gas & Electric Company

[Docket No. ER02–1557–000]

Take notice that on July 22, 2002 San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission), Amendment No. 1 to Service Agreement No. 3 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6.

The Amendment No. 1, incorporates a change to the rate of the Operating & Maintenance (O&M) charges to be paid by RAMCO Chula Vista to SDG&E. The change in O&M rate was approved by the Commission in a letter order dated June 11, 2002.

SDG&E states in its filing that copies of the Amendment No. 1 have been served on RAMCO, Inc.

Comment Date: August 12, 2002.

4. Central Power and Light Company

[Docket No. ER02–2346–000]

Take notice that on July 22, 2002, Central Power and Light Company (CPL) submitted for filing the Interconnection Agreement, dated February 1, 2002, between CPL and Pedernales Electric Cooperative, Inc. (Pedernales) amended to include two new points of interconnection to be established between the parties at Pedernales' Rocksprings Substation.

CPL seeks an effective date of November 1, 2002 for the Interconnection Agreement.

CPL served copies of the filing on Pedernales and the Public Utility Commission of Texas.

Comment Date: August 12, 2002.

5. American Electric Power Service Corporation

[Docket No. ER02–2347–000]

Take notice that on July 22, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement between Ohio Power Company and Biomass Energy, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of September 17, 2002.

A copy of the filing was served upon Biomass Energy, LLC and the Public Utilities Commission of Ohio.

Comment Date: August 12, 2002.

6. Cleco Power LLC

[Docket No. ER02–2348–000]

Take notice that on July 22, 2002, Cleco Power LLC, tendered for filing a revised market-based rates tariff under Cleco Power LLC, FERC Electric Tariff, First Revised Volume No. 2,

Superceding Cleco Power LLC, FERC Electric Tariff, Original Volume No. 2.

Comment Date: August 12, 2002.

7. Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–2349–000]

Take notice that on July 22, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), filed an Interconnection Agreement (Agreement) with Backbone Mountain Windpower, LLC as Service Agreement No. 394 under Allegheny Power's Open Access Transmission Tariff.

Allegheny Power requests an effective date for the Agreement of September 20, 2002.

Comment Date: August 12, 2002.

8. NorthWestern Energy

[Docket No. ER02–2350–000]

Take notice that on July 22, 2002, NorthWestern Energy (NWE, formally The Montana Power Company) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR 35.13, an executed Firm and Non-Firm Point-To-Point Transmission Service Agreement with Morgan Stanley Capital Group, Inc. (Morgan Stanley) under NWE's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Morgan Stanley.

Comment Date: August 12, 2002.

9. Westar Energy, Inc.

[Docket EP02–2351–000]

Take notice that on July 22, 2002, Westar Energy (WE) (formerly known as Kansas Gas & Electric Company) submitted for filing a Notice of Cancellation for Service Agreement No. 149, effective under WE's FERC Rate Schedule between WE and the City of Coffeyville, Kansas.

WE requests an effective date of October 1, 2002 for the cancellation of Service Agreement No. 149.

Copies of this filing were served on City of Coffeyville, Kansas and the Kansas Corporation Commission.

Comment Date: August 12, 2002.

10. Consumers Energy Company

[Docket No. ER02–2352–000]

Take notice that on July 22, 2002, Consumers Energy Company (Consumers) tendered for filing an executed service agreement for unbundled wholesale power service with UtiliCorp Power Services (now known as Aquila, Inc. d/b/a Aquila Networks) pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

Copies of the filing have been served on the Michigan Public Service Commission and the customers under the service agreement.

Comment Date: August 12, 2002.

11. Consumers Energy Company

[Docket No. ER02–2353–000]

Take notice that on July 22, 2002, Consumers Energy Company (Consumers) tendered for filing an executed service agreement for unbundled wholesale power service with TransAlta Energy Marketing (U.S.) Inc. pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

Copies of the filing have been served on the Michigan Public Service Commission and the customers under the service agreement.

Comment Date: August 12, 2002.

12. Southern California Edison Company

[Docket No. ER02–2354–000]

Take notice that on July 22, 2002, Southern California Edison Company (SCE) tenders for filing revised rate sheets (Revised Sheets) to the Service Agreement and Interconnection Facilities Agreement between SCE and the City of Colton, under the Wholesale Distribution Access Tariff, FERC Electric Tariff, Original Volume No. 5. The Revised Sheets reflect the one-year extension of the services agreed to.

SCE respectfully requests the Commission to assign an effective date of July 23, 2002 to the Agreements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Colton.

Comment Date: August 12, 2002.

13. SES Ltd. Co.

[Docket No. ER02–2356–000]

Take notice that on July 22, 2002, SES Ltd. Co. (SES) tendered a filing with the Federal Energy Regulatory Commission (Commission) a petition for acceptance of SES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

SES intends to engage in wholesale electric power and energy purchases and sales as a marketer. SES is not in the business of generating or transmitting electric power. SES is a minority owned LLC whose principles have numerous years of energy experience including power marketing, natural gas origination and derivative trading.

Comment Date: August 12, 2002.

14. Central Power and Light Company; West Texas Utilities Company

[Docket No. ER02–2357–000]

Take notice that on July 22, 2002, American Electric Power Service Corporation (AEPSC), acting as agent for Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) submitted for filing an Interconnection Agreement, dated July 5, 2002, between CPL and Comisión Federal de Electricidad (CFE) and an Interconnection Agreement, dated July 5, 2002 between WTU and CFE.

CPL and WTU seek an effective date of July 5, 2002 for these interconnection agreements.

Comment Date: August 12, 2002.

15. Visteon Systems, LLC

[Docket No. ER02–2358–000]

Take notice that on July 22, 2002, Visteon Systems, LLC has tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application for Order Granting Market-Based Rate Authority and FERC Electric Service Tariff, Visteon Systems, LLC FERC Electric Rate Schedule No. 1. Visteon Systems, LLC owns 10 MW of generating capacity for which it proposes to make sales at market-based rates of energy capacity and ancillary services.

Comment Date: August 12, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the

instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19308 Filed 7–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2905–001, et al.]

Xcel Energy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 24, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Xcel Energy Services, Inc.

[Docket No. ER01–2905–001]

Take notice that on July 15, 2002, Xcel Energy Services, Inc. (Xcel) tendered for filing with the Federal Energy Regulatory Commission (Commission), a response to the letter issued by the Commission in the captioned docket on June 14, 2002.

Comment Date: August 5, 2002.

2. PECO Energy Company

[Docket No. ER02–2341–000]

Take notice that on July 18, 2002 PECO Energy Company (PECO) submitted for filing an Interconnection Agreement by and between PECO and Visteon Corporation (Visteon) for Generation Interconnection and Parallel Operation, designated as Service Agreement No. 703 under PJM Interconnection, L.L.C.'s FERC Electric Tariff, Fourth Revised Volume No. 1, to be effective on July 1, 2002. Copies of this filing were served on Visteon and PJM.

Comment Date: August 8, 2002.

3. PPL Montana, LLC

[Docket No. ER02–2342–000]

Take notice that on July 19, 2002, PPL Montana, LLC (PPL Montana) filed notices of termination of the Colstrip Unit Number 3 Wholesale Transition Service Agreement between PPL Montana and The Montana Power Company (now NorthWestern Energy, L.L.C.), designated as Rate Schedule FERC No. 1, and the Non Colstrip Unit Number 3 Wholesale Transition Service Agreement between PPL Montana and The Montana Power Company (now NorthWestern Energy, L.L.C.), designated as Rate Schedule FERC No. 2. Both rate schedules terminated by their own terms.

Notices of the termination have been served upon NorthWestern Energy, L.L.C.

Comment Date: August 9, 2002.

4. California Independent System Operator Corporation

[Docket No. ER02–2343–000]

Take notice that on July 19, 2002, the California Independent System Operator Corporation (ISO), tendered for filing a notice of termination of the Restated Interim Agreement (RIA) among the ISO, Sacramento Municipal Utility District (SMUD), and Pacific Gas and Electric Company (PG&E), for acceptance by the Federal Energy Regulatory Commission (Commission). The ISO requests that the termination of the RIA be made effective as of June 13, 2002, the date SMUD became a Control Area operator, as specified in Section 2.1(2) of the RIA.

The ISO states that this filing has been served on SMUD, PG&E, the Public Utilities Commission of the State of California, and the persons listed on the service list for Docket No. ER00–3278–000.

Comment Date: August 9, 2002.

5. Southern California Edison Company

[Docket No. ER02–2344–000]

Take notice that on July 19, 2002, Southern California Edison Company (SCE) tendered for filing revised sheets, and a letter agreement as added sheets to the Amended & Restated Eldorado System Operating Agreement (Agreement) between SCE and Nevada Power Company (NPC), Salt River Project Agricultural Improvement and Power District (SRP), and the Department of Water and Power of the City of Los Angeles (LADWP).

The purpose of the revised sheets is to correct a minor typographical error. The purpose of the letter agreement is to supplement the terms relating to Capital Improvements as set forth in Section 17 of the Agreement, under which 500 kV circuit breakers in the Eldorado Substation will be either replaced or upgraded. Further, the letter agreement provides the terms for either replacing or upgrading SCE's 500 kV series capacitors at the Eldorado Substation. Copies of this filing were served upon the Public Utilities Commission of the State of California, NPC, SRP, and LADWP.

Comment Date: August 9, 2002.

6. PJM Interconnection, L.L.C.

[Docket No. ER02–2345–000]

Take notice that on July 19, 2002, PJM Interconnection, L.L.C. (PJM), submitted amendments to Schedule 2 of the PJM Open Access Transmission Tariff to include the annual and monthly revenue requirements for Reactive Supply and Voltage Control from Generation Sources Service for Bethlehem Steel Corporation (Bethlehem) approved by the Commission in Docket No. ER02–1894.

Consistent with the effective date of the Federal Energy Regulatory Commission's approval of Bethlehem's revenue requirements in Docket No. ER02–1894, PJM requests an effective date of July 1, 2002 for the revisions.

Copies of this filing have been served on all persons on the service list in Docket No. ER02–1326–000, all PJM members, and the state electric utility commissions in the PJM region.

Comment Date: August 9, 2002.

7. Louis Dreyfus Electric Power Inc.

[Docket No. ER02–2355–000]

Take notice that on July 17, 2002, Louis Dreyfus Electric Power Inc. (LDEP), tendered for filing a notice of cancellation of its Rate Schedule FERC No. 1.

Comment Date: August 7, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19307 Filed 7–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

July 25, 2002.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 2155.

c. *Date filed:* July 12, 2002.

d. *Submitted By:* Pacific Gas and Electric Company.

e. *Name of Project:* Chili Bar Project.

f. *Location:* Project is located on the South Fork of the American River in El Dorado County, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from Pacific Gas and Electric Company, Hydro Generation-License Compliance, Mail Code N11C, P.O. Box 770000, San Francisco, CA, 94105. Contact Mr. Richard Doble at (415) 973–4480.

I. *FERC Contact:* James Fargo, 202–219–2848. James.Fargo@Ferc.Gov.

j. *Expiration Date of Current License:* July 31, 2007.

k. *Project Description:* The Chili Bar project has one powerhouse with one generator with a rated capacity of 7,000 kilowatts.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2155. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2005.

A copy of the Notice of Intent is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link— select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in the item above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19306 Filed 7–30–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7253–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emissions Standards for Hazardous Air Pollutant Emissions for Polyether Polyol Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Polyether Polyols Production, OMB Control Number 2060–0415, expiration date July 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 30, 2002.

ADDRESSES: Send comments, referencing EPA ICR Number 1811.03 and OMB Control Number 2060–0415, to the following addresses: Susan Auby, United States Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR Number.1811.03. For technical questions about the ICR, contact Sandra Jones at EPA, Office of Compliance at 202–564–7038, by E-Mail at *jones.sandra@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: National Emissions Standards for Hazardous Air Pollutant Emissions for Polyether Polyol Production, OMB Control Number 2060–0415, EPA ICR Number 1811.03, expiration date July 31, 2002.

Abstract: The National Emissions Standards for Hazardous Air Pollutants for Polyether Polyols production, (40 CFR part 63 subpart PPP) was proposed on June 1, 1999 and published January 30, 2002. These regulations apply to new and existing facilities that engage in the manufacture of polyether polyols (which also include polyether mono-ols) and emit hazardous air pollutants (GAP). Owners or operators of polyester polyols production facilities to which this regulation is applicable must choose one of the compliance options described in the rule or install and monitor a specific control system that reduces HAP emissions to the compliance level. The respondents are also subject to sections of Subpart A relating to NESHAP.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 30, 2002. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 248 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Polyester Polyol Plants.

Estimated Number of Respondents: 82.

Frequency of Response: Semi-annually, Annually, and Initially.

Estimated Total Annual Hour Burden: 88,680.

Estimated Total Annualized Capital, O&M Cost Burden: $513,051.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 1811.03 and OMB Control Number 2060–0415 in any correspondence.

Dated: July 23, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–19322 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–7253–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), this document announces that EPA has forwarded the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Regional Haze Regulations, ICR number 1813.02., and OMB Control Number 2060–0421, expiration date: September 30, 2002. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before August 30, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1813.02, and OMB Control No. 2060–0421, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at *farmer.sandy@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1813.02. For technical questions about the ICR, contact Thomas Driscoll by phone at (919) 541-5135, by e-mail at *driscoll.tom@epa.gov*, or by mail at Integrated Policy and Standards Group (C504–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION: *Title:* Regional Haze Regulations, ICR number 1813.02., and OMB Control Number 2060–0421, expiration date: September 30, 2002. This is a request for reinstatement, with change, of a previously approved collection for which approval is expiring.

Abstract: Section 169A of the Clean Air Act (CAA) establishes a national goal for protecting visibility in 156 scenic areas. These 156 "Class I" areas are federally protected areas. The national visibility goal is to remedy existing impairment in these Class I areas, consistent with the requirements of section 169A and 169B of the CAA. Entities that are affected by these rulemakings (subject to best available retrofit technology (BART) Guidelines) would be those facilities built between 1962 and 1977, are major sources (emit greater than 250 tons per year) of any of the visibility impairing pollutants, and are one of 26 source categories which include electricity generating utilities, facilities with industrial boilers, and petrochemical facilities. The regional haze rule sets forth requirements for State Implementation Plans (SIPs) under this program. The rule requires SIPs to include visibility progress goals for each Class I area, as well as emissions reductions strategies and other measures needed to meet these goals. The rule also provides an optional approach, the proposed Western Regional Air Partnership (WRAP) Annex rule, that may be followed by nine Western States and eligible Indian Tribes and contains a number of recommended strategies designed to improve visibility at the 16 Class I areas on the Colorado Plateau.

All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of EPA, including whether the information will have practical utility;

(ii) evaluate the accuracy of EPA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previous applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The total burden is computed from the time and effort needed to complete the primary activities in the Regional Haze Rule. These activities include the committal Federal Implementation Plan as required in 40 CFR 51.308; the requirement to begin the analysis process for BART determinations, progress goals, and control strategies in 40 CFR 51.308; and the initial implementation plan submission required in 40 CFR 51.309.

These burden hour and costs estimates are incremental to the activities and accomplishments of the States, Tribes, and potentially regulated facilities associated with the grants to the Regional Planning Organizations.

The estimated incremental burden hours for States, Tribes, and potentially regulated entities are 78,000, 29,000, and 28,000 respectively for the 3-year ICR renewal period (October 1, 2002 through September 30, 2005). The estimated corresponding incremental cost is $3.1 million, $1.2 million, and

$1.3 million respectively in present value terms using 2001 year dollars.

The estimated incremental burden for the Federal government is 10,500 hours with 4,000 of these hours for Federal Land Manager activities and the remainder for EPA activities. The estimated incremental cost in present value (2001 year dollars) is $363,000 with $121,000 of that for Federal Land Manager activities and the rest for EPA activities.

The burden estimates for the first ICR renewal period cover different task elements than those for the original ICR. These differences reflect the requirements of the 1999 Regional Haze Rule with respect to the scheduled events and activities in the implementation process.

Dated: July 12, 2002.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 02–19326 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0147; FRL–7189–5]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (FIFRA SAP) to consider and review a methodology to assess children's exposure and dose to wood preservatives from treated playsets and residential decks using EPA's Stochastic Human Exposure and Dose Simulation (SHEDS) Probabilistic Model.

DATES: The meeting will be held on August 30, 2002, from 8:30 a.m. to approximately 5 p.m.

For dates on requests to present oral comments, submission of written comments, or requests for special seating arrangements, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at Sheraton Crystal City Hotel, 1800 Jefferson Davis Hwy., Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486–1111.

Requests to present oral comments, submission of written comments, or requests for special seating arrangements may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2002–0147 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Designated Federal Official (DFO), Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: odiott.olga@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and Food Quality Protection Act (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A meeting agenda, EPA's position paper, questions to FIFRA SAP, and FIFRA SAP composition (i.e., members and consultants) will be available no later than August 15, 2002. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap.

2. *In person.* The Agency has established an official record for this meeting under docket ID number OPP–2002–0147. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How May I Participate in this Meeting?

You may submit requests to present oral comments, written comments, or requests for special seating arrangements through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0147 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments.

Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, August 21, 2002, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, and chalkboard). Oral comments before

FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of the oral comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments.* Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted no later than noon, eastern standard time, August 14, 2002, to provide the FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by the FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Submission of requests and written comments*—a. *By mail.* Submit your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Pennsylvania Ave., NW., Washington, DC 20460.

b. *In person or by courier.* Deliver your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

c. *Electronically.* You may submit your request or written comments electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0/9.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket ID number OPP–2002–0147. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

The FIFRA SAP will meet to consider and review the proposed methodology for conducting a probabilistic children's exposure and dose assessment to wood preservatives from treated playsets and residential decks using EPA's SHEDS model. The FIFRA SAP will be asked to discuss the appropriateness of the model algorithms, the selection of model input distributions for non-chemical specific parameters (e.g., activity-related factors, exposure factors), and the statistical methods used to quantify variability and uncertainty of model inputs and outputs. To assist the FIFRA SAP in their evaluation of the SHEDS model, each FIFRA SAP member will be provided CD(s) containing a technical manual, SHEDS software, user manual, and annotated code. The FIFRA SAP will also be provided with a case study for a hypothetical low-exposure chemical and a hypothetical high-exposure chemical that will demonstrate the model interface, algorithms, inputs, and outputs.

B. The FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of the **SUPPLEMENTARY INFORMATION**.

List of Subjects

Environmental protection, Pesticides,probabilistic assessment children exposures.

Dated: July 24, 2002.

Sherell A. Sterling,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 02–19229 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0156; FRL–7188–5]

Butylate Tolerances are Considered to be Reassessed by EPA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA is considering as reassessed all tolerances for residues of the herbicide butylate. The Agency has determined that no common mechanism exists among butylate and the thiocarbamates. Therefore, the Agency is not amending its previous notice which constituted EPA's report on the Food Quality Protection Act (FQPA) of 1996 tolerance reassessment progress and interim risk management decision for butylate. By itself, butylate poses no risk concerns within the limits of the existing tolerances, which will remain in effect at 0.1 part per million (ppm) for all registered commodities; however, the Agency intends to revise the commodity definitions in accordance with current Agency administrative practice. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the reassessment of seven tolerances which are counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access the butylate TRED (Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision) and butylate TRED support documents electronically, go directly to http://www.epa.gov/pesticides/reregistration/butylate/. You can also go to the EPA Office of Pesticide Programs website for Tolerance Reassessment and Reregistration, at http://www.epa.gov/pesticides/reregistration/status.htm for additional information on butylate.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0156. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

This notice announces to the general public that EPA has determined that seven tolerances for residues of butylate are considered to be reassessed. EPA evaluated existing pesticide tolerances under the FQPA of 1996. The butylate tolerances included in this notice have been found to meet the FQPA safety standard.

On September 11, 2001 (66 FR 47219) (FRL–6796–3), EPA published a notice in the **Federal Register**, entitled "Butylate; Notice of Pesticide Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision." That notice constituted the Agency's report on the FQPA tolerance reassessment progress and interim risk management decision for butylate. At that time, the Agency had not made a full reassessment because the cumulative risk from thiocarbamates, such as butylate, had not been evaluated. The September 11, 2001, notice provided a 30–day comment period and invited public comment for consideration. No comments were received by the Agency. Since then, the Agency has made a determination on whether two subgroups of the pesticides, thiocarbamates and dithiocarbamates, belong to a larger group of chemicals known as carbamates and share a common mechanism of toxicity. The Agency considered whether they cause a common effect that is attributable to a common mechanism. A total of four common effects were considered, including acetylcholinesterase inhibition. The Agency, guided by several relevant science policies, summarized its position on December 19, 2001, with respect to the grouping of the thiocarbamate pesticides based on a common mechanism of toxicity and the results of a screening level cumulative risk assessment. That December memorandum is entitled "Thiocarbamates: A Determination of the Existence of a Common Mechanism of Toxicity and a Screening Level Cumulative Food Risk Assessment." In that memorandum, EPA announced its determinations that:

1. Some thiocarbamates (EPTC, molinate, pebulate, and cycloate) share a common mechanism of toxicity for acetylcholinesterase inhibition.

2. There is insufficient evidence for grouping the thiocarbamate pesticides based on a common mechanism for toxicity for effects other than acetylcholinesterase inhibition.

Although, structural and metabolic similarities exist among the thiocarbamates and there is evidence that the thiocarbamates may produce a common effect (neuropathology), this evidence is insufficient to warrant a determination of common mechanism.

Also, EPA conducted a preliminary screening level cumulative food risk assessment for thiocarbamates which incorporated very conservative assumptions; i.e., assumptions which overstate significantly the actual level of potential risk. While a common mechanism of toxicity could not be established for neuropathology, the effect was selected as the endpoint for use in a screening level cumulative risk assessment to assure that risks would not be underestimated. In part, the Agency concluded that given the high dose required to provide evidence of neuropathological potential and the questionable significance of the solitary finding in a single study conducted with butylate, it is unlikely that butylate would contribute to any cumulative dietary risk that might result from dietary exposure to two or more thiocarbamates. Because the "No Observed Adverse Effect Level" (NOAEL) for neuropathological effects of butylate is substantially higher (120–times greater) than the NOAEL used to establish a reference dose (RfD) for butylate, and because neuropathology was observed at a limit dose (2,000 milligrams/kilograms/day (mg/kg/day), it is unlikely that butylate would contribute to potential cumulative risks of the thiocarbamates.

EPA placed the December 19, 2001 memorandum, entitled "A Common Mechanism of Toxicity Determination for Thiocarbamate Pesticides." in a docket with its attachments. Also, the memorandum is available on the Agency's website at http://www.epa.gov/pesticides/cumulative/thiocar.htm. EPA notified its stakeholders of its determination using the Pesticide Program Update Messaging System and announced the availability of these documents to the media. Further, EPA invited the public to submit comments on these determinations during a 60–day period, until February 22, 2002. No significant comments were received regarding butylate during the provided 60–day period. Therefore, chronic cumulative dietary risks for butylate are not of concern to the Agency, and all tolerances for butylate in 40 CFR 180.232 for corn, field, grain; corn, pop, grain; corn, sweet (kernels, plus cob with husk removed); corn, field, stover; corn, field, forage; corn, pop, forage; and corn, sweet, forage are now considered fully reassessed according to FQPA because aggregate risks were previously assessed (66 FR 47219) and cumulative risk does not apply. These commodity tolerances are each maintained at 0.1 ppm.

In addition, to conform to current Agency practice, EPA will revise specific commodity tolerance definitions in 40 CFR 180.232, according to its prior notice of September 11, 2001 (66 FR 47219), in a future action that will be published in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

The legal authority for tolerance reassessment falls under FFDCA, as amended in 1996. Section 408(q) of FFDCA directs that "the Administrator shall review tolerances and exemptions for pesticide chemical residues in effect on the day before the date of the enactment of the FQPA of 1996, as expeditiously as practicable, assuring that—66 percent of such tolerances and exemptions are reviewed within 6 years (i.e., by August 3, 2002), of the date of enactment of such Act (i.e., on August 3, 1996), and—shall determine whether the tolerance or exemption meets the requirements of sections 408(b)(2) or (c)(2) and shall, by the deadline for the review of the tolerance or exemption, issue a regulation under section 408 (d)(4) or (e)(1) to modify or revoke the tolerance or exemption if the tolerance or exemption does not meet such requirements." Under section 408 of the FFDCA, a tolerance may only be maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In section 408(b)(2) of the FFDCA, "the term 'safe,' with respect to a tolerance for a pesticide chemical residue, means that the Administrator has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information."

List of Subjects

Environmental protection. Chemicals, Pesticides and pests, thiocarbamate(s).

Dated: July 19, 2002.

Lois Ann Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–19105 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7252–5]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Glen Dale TCE Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Glen Dale TCE Site, Glen Dale, Marshall County, West Virginia. The administrative settlement was signed by the Regional Administrator of the Environmental Protection Agency (EPA), Region III, on July 22, 2002, and is subject to review by the public pursuant to this document.

The Environmental Protection Agency is proposing to enter into a settlement pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(h). The proposed settlement resolves EPA's claim for past response costs under section 107 of CERCLA, 42 U.S.C. 9607 against Rembar LLC for response costs incurred at the Glen Dale TCE Superfund Site, Glen Dale, Marshall County, West Virginia. The proposed settlement requires Rembar LLC to pay $15,000 to the EPA Hazardous Substance Fund.

Rembar LLC, as the Settling Party, has executed binding certifications of its consent to participate in this settlement. Rembar LLC, has agreed to pay $15,000 subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this notice.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before August 30, 2002.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and should reference the Glen Dale TCE Site, Glen Dale, West Virginia, U.S. EPA Docket No. CERCLA 03–2002–0192–DC. The proposed settlement agreement is available for public inspection at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. A copy of the proposed settlement agreement can be obtained from Joan Johnson, Acting Regional Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, telephone number (215) 814–2651.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Parent, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Office of Regional Counsel (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103, telephone number (215) 814–2630.

Dated: July 22, 2002.

Donald S. Welsh,

Regional Administrator, U.S. EPA, Region III.

[FR Doc. 02–19321 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Emergency notice of public advisory committee meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

Dates and Place: August 5, 2002, at 1 pm. This meeting will take place via a telephone conference call. In light of the short notice of this meeting, OSTP will undertake to make this meeting available to the public through the following call-in number: 1–800–260–0712, access code: 647402. Any interested member of the public may call this number and listen to the meeting. To ensure the agency secures an appropriate number of lines, however, such persons are asked to register with OSTP by calling Cynthia Chase at (202) 456–6010 by 4 pm on Friday, August 2, 2002.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is tentatively scheduled to meet in open session on Monday, August 5, 2002, at approximately 1 pm, to discuss (and, pending the discussion, approve) a draft report to the President on maximizing the contribution of science and

technology within the new Department of Homeland Security (DHS). This session will end at approximately 1:30 pm.

Public Comments: Written public comments are welcome at any time prior to the meeting. Please fax your comments to (202) 456–6021. In light of the compressed notice period for this meeting, public comments are also welcome for an additional three days after the meeting (i.e., up to close of business Thursday, August 8, 2002). Please fax such comments to the same fax number noted above. The transcript of the meeting will be posted on the PCAST web site as soon as possible following the meeting. Moreover, any person may listen to a recording of the meeting on Tuesday, August 6, 2002, from 8 am to 5 pm, by calling 1–800–475–6701, access code: 647402.

Reason for Emergency Notice: Pursuant to 41 CFR Part 102–3.150(b), less than 15 days notice is being given for this meeting because of the exigencies involved in providing timely and relevant advice to the President on the matters to be discussed. Legislation to establish the DHS is moving extremely swiftly through Congress, and negotiations between Congress and the Administration on the structure of the new Department (including the DHS research and development enterprise) have already begun. In light of these exceptional circumstances, regular notice and meeting procedures would prevent PCAST from rendering advice pertinent to these current events in a timely fashion.

FOR FURTHER INFORMATION: Information on this meeting will be published on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.* The draft report to be discussed during the call will be posted on this web site at the earliest possible opportunity. Any updates on the scheduling of the conference call will also be posted. For additional information, please call Cynthia Chase at (202) 456–6010.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 02–19445 Filed 7–30–02; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 15, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 30, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0315.

Title: Section 76.1615, Sponsorship Identification.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 700.

Estimated Time per Response: 30 minutes.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 350 hours.

Total Annual Costs: $1,400.

Needs and Uses: 47 CFR 76.1615 (formerly Section 76.221(a)(c)) states that when a cable operator engaged in origination cablecasting presents any matter for which valuable consideration is paid, the operator must announce the sponsorship of such matter if the sponsor has not already done so. Section 1615(f) also states that sponsorship announcements are waived with respect to the broadcast of "want ads" sponsored by an individual but the licensee shall maintain a list to be made available for public inspection showing the name, address and telephone number of each advertiser.

OMB Control Number: 3060–0311.

Title: Section 76.54, Significantly viewed signals; method for special showing.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 12.

Estimated Time per Response: 15 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 180 hours.

Total Annual Costs: $0.

Needs and Uses: 47 CFR 76.54 requires that notice of an audience survey that is conducted by an organization for significantly viewed signal purposes is to be served on all licensees or permittees of television broadcast stations within whose predicted Grade B contour the cable community or communities are located, and all other system community units, franchisees, franchise applicants in the cable community or communities, and the franchise authority. This notification shall be made at least 30 days prior to the initial survey period and include the name of the survey organization and

describe the survey's procedures. The notifications provide an opportunity for interested parties to file objections to the survey's methodology.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19294 Filed 7–30–02; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 24, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 30, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0674.

Title: Section 76.1618, Basic Tier Availability.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10,400.

Estimated Time Per Response: 2.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 23,400 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 76.1618 states that a cable operator shall provide written notification to subscribers of the availability of basic tier service to new subscribers at the time of installation. This notification shall include the following information: (a) That basic tier service is available; (b) the cost per month for basic tier service; (c) a list of all services included in the basic service tier. The requirements are to ensure that subscribers are made aware of the availability of basic cable service at the time of installation.

OMB Control No.: 3060–0645.

Title: Section 17.4, Antenna Registration.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, state, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents: 25,600.

Estimated Time Per Response: .25–1.2 hours (average).

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, third party disclosure requirement.

Total Annual Burden: 40,329 hours.

Total Annual Cost: $3,200,000.

Needs and Uses: The owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) must register the structure with the Commission. This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. Structure owners are required to provide specific information under Part 17. The data is used by FCC during investigations related to air safety or radio frequency interference.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19295 Filed 7–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011733–007.

Title: Common Ocean Carrier Platform Agreement.

Parties: Alianca Navegacao e Logistica Ltda., A.P. Moller-Maersk Sealand, CMA CGM, S.A., CP Ships Limited, Hamburg Sud, Hapag-Lloyd Container Linie GmbH, Mediterranean Shipping Company, S.A., Nippon Yusen Kaisha, P&O Nedlloyd Limited, Safmarine Container Lines N.V., United Arab Shipping Company (S.A.G.).

Synopsis: The proposed amendment would permit shippers to use the INTTRA portal to assemble service contract proposals by arranging data and disseminating tenders to the party or parties of the shipper's choice.

Agreement No.: 011811.

Title: CMA/Contship Slot Charter Agreement.

Parties: CMA CGM, S.A., Contship Containerlines.

Synopsis: Under the proposed agreement, CMA would charter space to Contship in the trade generally between U.S. West Coast ports and ports in the Far East and the Indian Subcontinent.

Agreement No.: 201138.

Title: San Francisco/Star Shipping Marine Terminal Agreement.

Parties: San Francisco Port Commission, Star Shipping, AS.

Synopsis: The agreement provides for the non-exclusive right to use the port's marine terminal at Pier 80. The agreement runs through July 17, 2007.

By Order of the Federal Maritime Commission.

Dated: July 26, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–19293 Filed 7–30–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Colletion; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) is seeking public comments on its proposal to extend through December 31, 2005 the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in its regulations under the Fair Packaging Labeling Act ("regulations"). That clearance expires on December 31, 2002.

DATES: Comments must be filed by September 30, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "FPLA Regulations: Paperwork Comment," as appropriate. Comments in electronic form should be sent to: *FPLA pprwk@ftc.gov* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Stephen Ecklund, Investigator, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2841.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *FPLA pprwk@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii).

The FPLA was enacted to eliminate consumer deception concerning product size representations and package content information. The regulations that implement the FPLA, 16 C.F.R. Parts 500–503, establish requirements for the manner and form of labeling applicable to manufacturers, packagers, and distributors of "consumer commodities." [1] Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) A statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of a company that is responsible for the product.

Estimated annual hours burden: 8,095,000 total burden hours (solely relating to disclosure [2]).

Staff conservatively estimates that approximately 809,500 manufacturers, packagers, distributors, and retailers of consumer commodities make disclosures at an average burden of ten hours per entity, for a total disclosure of 8,095,000 hours.

Estimated annual cost burden: $135,187,000, rounded (solely relating to labor costs).

The estimated annual labor cost burden associated with the FPLA disclosure requirements consists of an estimated hour of managerial and/or professional time per covered entity (at an estimated average hourly rate of $50) and nine hours of clerical time per covered entity (at an estimated average hourly rate of $13), for a total of $135,186,500 ($167 per covered entity × 809,500 entities).

Total capital and start-up costs are de minimis. For many years, the packaging and labeling activities that require capital and start-up costs have been performed by covered entities in the ordinary course of business independent of the FPLA and implementing regulations. Similarly, firms provide in the ordinary course of business the information that the statute and regulations require be placed on packages and labels.

John D. Graubert,

Acting General Counsel.

[FR Doc. 02–19280 Filed 7–30–02; 8:45 am]

BILLING CODE 6750–01–M

[1] "Consumer commodity" means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. 16 CFR 500.2(c). For the precise scope of the term's coverage see 16 CFR 500.2(c); 503.2; 503.5. See also *http://www.ftc.gov/os/statutes/fpla/outline.html.*

[2] To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate "cents off," "introductory offer," and/or "economy size" claims, staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates.

OFFICE OF GOVERNMENT ETHICS

Draft OGE Information Quality Guidelines

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics announces that its draft Information Quality Guidelines have been posted on the OGE Web site. The Office of Government Ethics invites public comments on its draft guidelines and will consider the comments received in developing its final guidelines.

DATES: Comments are due on or before August 30, 2002.

ADDRESSES: Comments should be sent to: Mary T. Donovan, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at *usoge@oge.gov* (for E-mail

messages, the subject line should include the following reference—"Draft OGE Information Quality Guidelines Comment").

FOR FURTHER INFORMATION CONTACT: Mary T. Donovan at the Office of Government Ethics; telephone: (202) 208–8000, ext. 1185; TDD 202–208–8025; FAX: 202–208–8037. A copy of the draft guidelines may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury & General Government Appropriations Act for FY 2001 (Public Law No. 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information it disseminates to the public. Agency guidelines must be based on government-wide guidelines issued by the Office of Management and Budget (OMB). In compliance with this statutory requirement and OMB instructions, OGE has posted its draft Information Quality Guidelines on the OGE Internet Web site (*http://www.usoge.gov* under "What's New!"). The draft guidelines describe the Agency's proposed procedures for ensuring the quality of information that it disseminates to the public and the proposed procedures by which an affected person could obtain correction of information disseminated by OGE that did not comply with the guidelines. The Office of Government Ethics invites public comments on its draft guidelines and will consider the comments received in developing its proposed final guidelines, which must be submitted to OMB for review.

Persons who cannot access the draft guidelines through the Internet may request a paper or electronic copy by contacting Ms. Donovan at the address, phone number, E-mail address, or FAX number listed above.

Approved: July 25, 2002.

James V. Parle,

Deputy Chief Information Officer, Office of Government Ethics.

[FR Doc. 02–19273 Filed 7–30–02; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–40–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

National Survey for Laboratory Containment of Wild Polioviruses—New—National Vaccine Program Office (NVPO), Centers for Disease Control and Prevention (CDC). Global polio eradication is anticipated within the next few years. The only sources of wild poliovirus will be in biomedical laboratories. Prevention of inadvertent transmission of polioviruses from the laboratory to the community is crucial.

The first step toward laboratory containment is a national survey of all biomedical laboratories. The survey will alert laboratories to the impending eradication of polio, encourage the disposition of all unneeded wild poliovirus infectious and potential infectious materials, and establish a national inventory of laboratories retaining such materials. Laboratories on the inventory will be kept informed of polio eradication progress and notified, when necessary, to implement biosafety requirements appropriate for the risk of working with such materials.

In June 2001, the Secretary for Health and Human Services, Tommy Thompson, declared in a letter to the Regional Director of the Pan American Health Organization that:

> The United States is fully committed to PAHO's Executive Committee Resolution CE126.R4 urging Member States "to initiate activities related to the containment of any laboratory material that may harbor specimens of wild poliovirus."

The Department of Health and Human Services proposes a national survey of all biomedical laboratories that may possess wild poliovirus infectious or potential infectious materials. An estimated 15,000 biomedical laboratories, in six categories of institutions: academic, federal government, hospital, industry, private, and state and local government facilities, will be included in the national survey.

The national survey instruments and logistics will be tested during the OMB approved Pilot Survey (OMB Number: 0920–0545), scheduled to begin May 2002. The survey instruments ask laboratories to indicate whether or not they possess wild poliovirus infectious and/or potential infectious materials. If such materials are present, respondents are asked to indicate the types of materials and estimated numbers retained. Survey instruments will be available on the NVPO Web page, and institutions will be encouraged to submit completed survey forms electronically. The annual burden for this data collection is 6,969 hours.

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)
Laboratories	9,292	1	45/60

Dated: July 24, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–19252 Filed 7–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02122]

Cooperative Agreement for the Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA) Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA) Program. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

The purpose of the program is to stimulate the development and implementation of activities to prevent domestic violence that can be integrated into coordinated community responses (CCRs) or similar community-based collaborations at the state and local level. Specifically, the DELTA program seeks to add a significant prevention focus to the existing CCR model by funding state domestic violence coalitions who will act as intermediary organizations in providing prevention-focused technical assistance, training, and funding to local communities. For the purposes of this announcement, activities to prevent domestic violence are defined as population-based and/or environmental/system level services, policies and actions that prevent domestic violence from initially occurring and require a community level process to identify and implement. These activities to prevent domestic violence will be referred to as 'prevention enhancements' throughout the remainder of this announcement.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Reduce violence against women.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2), 318 and 391–394 of the Public Health Service Act, (42 U.S.C. 241(a), 247b(k)(2), and 280b–280b–2), as amended. The Catalog of Federal Domestic Assistance number is 93.136.

C. Eligible Applicants

Assistance will be provided only to state domestic violence coalitions (as designated by the Administration on Children and Families of the U.S. Department of Health and Human Services) that qualify as private nonprofit organizations. Competition is being limited to state domestic violence coalitions that qualify as private nonprofit organizations due to the legislative language. Where appropriate, state domestic violence coalitions are encouraged to partner with other state-level organizations (i.e. state level advisory councils) that also have significant responsibility for the domestic violence prevention and intervention services or policy at the state level. Only one application per state will be awarded.

Public Law 104–65 states than an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, contract, loan, or any other form.

D. Availability of Funds

Approximately $2.6 million is available in FY 2002 to fund approximately ten awards. There will be approximately three awards for states with populations of more than ten million as determined by the 2000 Census. These three awards are expected to average $400,000, ranging from $350,000 to $500,000. There will be approximately seven awards for states with populations less than ten million people as determined by the 2000 Census. These seven awards are expected to average $200,000, ranging from $150,000 to $300,000. Applicants can access the web address *http://quickfacts.census.gov*, to determine if their state has a population of more than or less than ten million people. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Matching funds are not required for this program.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

1. Use of Funds

Throughout the project period (Years one, two, & three), recipients may annually retain up to 25 percent of the DELTA program award for staff and administrative expenses required to support cooperative agreement tasks including the purchase of computer hardware and software. Applicants may enter into contractual agreements to purchase goods and services, or to support cooperative agreement activities, but the applicant must retain proper stewardship over funds and responsibility for tasks associated with the project. DELTA Program cooperative agreement funds may not be used to supplant current applicant expenditures. Budgets for the first year should include travel costs for two cooperative agreement staff to attend one two-day and two three-day planning meetings in Atlanta with CDC staff, other cooperative agreement recipients, and the evaluation contractor. The first planning meeting will take place within 45 days of the award and will focus on the development of core components for the needs assessment, inventory, and sub-award application. The second meeting will take place approximately six months after the award and will focus on reports from state domestic violence coalitions regarding the results of the completed needs assessment, inventory, and sub-award process and development of the cross-site evaluation. Therefore, it will be extremely important that the state domestic violence coalitions who are awarded funding from this cooperative agreement are able to complete these tasks in the allotted time frame. The third planning meeting will take place in the 12th month of the award. Planning meetings will also provide an opportunity for state domestic violence coalitions to share their expertise, for CDC to provide technical support, and for collaboration on the cross-site evaluation of the DELTA Program.

The remaining 75 percent of annual DELTA Program funds should be awarded to private non-profit organizations working to develop or maintain coordinated community responses to domestic violence in local communities. These local community recipients may use DELTA Program funds to establish prevention enhancements to the CCR model in their local communities. In granting sub-awards, strong consideration should be given by cooperative agreement recipients to geographical (rural vs.

urban) diversity within the state, ethnic diversity within the state, and diversity of developmental stages of the local CCRs.

The use of DELTA program funds for the development and production of new educational materials, media campaigns or curricula is prohibited without explicit approval. If requested, approvals will be contingent upon a demonstration of specific community need, identification of the intended community impact and a demonstration of an exhaustive exploration of the available national, state, and local materials and resources.

The first budget period (Year one) will serve as a planning period during which the state domestic violence coalitions will collaborate with the CDC staff from both NCIPC and the Office of Program Planning and Evaluation (OPPE), as well as the CDC-selected evaluation contractor on conducting an environmental scan of coordinated community responses in each state, the development of the DELTA Program's prevention enhancements, the cross-site evaluation of the DELTA Program, and the schedule of activities for the remaining DELTA Program project period.

Development and implementation of the prevention enhancements are expected to be primary activities throughout the project period. Planning and coordination of activities with other DELTA Program cooperative agreement recipients and the CDC is expected throughout the three-year project period.

2. Funding Preferences

The authorizing statute, 42 U.S.C. 10418, requires that funding shall be awarded to organizations that are geographically dispersed throughout the country. Therefore, an important consideration for funding under this announcement is a national geographic balance among the awards.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities. Applicants are encouraged to consult the Program Guidance greater clarification of these activities.

1. Recipient Activities

a. Collaborate, which includes establishing mutually-agreed upon goals and objectives, with other cooperative agreement recipients, the CDC and a CDC-selected evaluation contractor on the development of the environmental scan and the DELTA Program prevention enhancements to the CCR model, implementation and dissemination of these projects and a cross-site evaluation of the DELTA Program.

b. Implement DELTA program prevention enhancements by providing technical assistance, training, and funding opportunities to local communities. Local communities do not have to receive funding from the DELTA Program to receive DELTA Program training and technical assistance services.

c. Conduct a needs assessment and inventory of local communities, based on core components developed collaboratively with other cooperative agreement recipients, the CDC and the CDC-selected evaluation contractor, regarding CCR development and maintenance, including status of current prevention activities, especially those that are innovative in nature.

d. Expand the content, capacity, and accomplishments of CCR-related technical assistance and training provided to local communities based on information garnered from the completed needs assessment and inventory and the developed DELTA Program prevention enhancements.

e. Partner with other state-level organizations (i.e. state level domestic violence advisory councils) that also have significant responsibility for domestic violence prevention and intervention services or policy at the state level.

f. Develop and disseminate domestic violence prevention and intervention state protocols to local communities.

g. Monitor progress of local communities receiving DELTA program sub-award funding for prevention enhancement.

h. Attend and participate in technical assistance and planning meetings coordinated by the CDC for all cooperative agreement recipients.

i. Compile and disseminate project results. Potential audiences for dissemination include local community agencies, state domestic violence coalitions, state sexual assault coalitions, and funding agencies.

j. Submit required reports to CDC on time.

2. CDC Activities

a. Provide technical assistance and consultation in the development, implementation, and evaluation of the DELTA Program.

b. Collaborate with the cooperative agreement grant recipients in the development, implementation, and evaluation of the DELTA program.

c. Contract with a third-party to conduct a cross-site evaluation.

d. Arrange for information sharing among the various projects and facilitate exchange of information and expertise among the different sites.

e. Analyze evaluation/research information for presentation and publication.

F. Content

Application

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with 1-inch margins, and unreduced font.

The narrative should consist of at a minimum:

1. Abstract (one-page summary of the application that includes the amount of funding requested and a description of applicant's plan for participating in this cooperative agreement)
2. Applicant Organization History and Description
3. Applicant's Experience in Developing Coordinated Community Responses
4. Applicant's Management and Staffing
5. Plans for Developing and Implementing the DELTA Program
6. Collaboration
7. Measures of Effectiveness
8. Proposed Budget Justification

G. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

They may also be obtained by contacting the Grants Management Specialist listed in this announcement. Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form

Indirect Cost Rate Agreement Narrative

Applications may not be submitted electronically.

The application must be received by 5 p.m. Eastern Time August 30, 2002. Submit the application to: Technical Information Management—PA02122, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria, will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually by an independent review group appointed by CDC against the following criteria:

1. Applicant's Experience in Developing Coordinated Community Responses (30 Points)

a. The extent to which the applicant has provided evidence of being able to support the development of CCRs within its state. The applicant has included, as Attachment B, a listing of the names, contact information years in operation for each CCR operating within the state and geographic areas or communities currently lacking a CCR of any sort. The applicant has included, as Attachment C, letters of support from three local CCRs regarding their satisfaction with the applicant's CCR development services, and evidence of the applicant's history of influence on CCR development within the state.

b. The extent to which the applicant's experience in supporting CCR development demonstrates its capacity to participate effectively in this cooperative agreement.

c. The extent to which the applicant's recent CCR-related technical assistance/training accomplishments and content areas demonstrate the ability to participate effectively in this cooperative agreement.

d. The extent to which the applicant demonstrates experience in providing technical assistance and training to local communities to establish and maintain CCRs to domestic violence in the service of priority populations. These priority populations could include communities that represent racial or ethnic groups, immigrants, disabled, underserved and low socio-economic status communities.

e. The extent to which the applicant's successes and lessons learned in developing the CCR model within its state demonstrates innovation or creativity, flexibility and responsiveness to local needs, and improvement in the efficiency and effectiveness of services.

2. Plans for Developing and Implementing the DELTA Program (25 Points)

a. The extent to which the applicant demonstrates a willingness and ability to involve state health agencies and other appropriate state agencies in supporting the purposes of this cooperative agreement.

b. The extent to which the applicant's process to prioritize areas and local communities within the state to receive funding, technical assistance, and training supported by this cooperative agreement reflects a commitment to seeking input from diverse sectors of the community, to use data from the needs assessment and inventory, and other pertinent data.

c. The extent to which the applicant's plan for monitoring the progress of local communities that receive CCR sub-awards is feasible and will not be an undue burden to the local communities or the applicant.

3. Collaboration (20 Points)

a. The extent to which the applicant demonstrates a successful history of collaborating effectively with other organizations at the national, state, and local levels.

b. The extent to which the applicant demonstrates an understanding of the impediments and facilitators of effective collaboration between organizations.

c. The extent to which the applicant demonstrates a willingness to collaborate with the other cooperative agreement recipients funded under this announcement, the CDC and the CDC evaluation contractor on all phases of the project (e.g., needs assessment core components, sub-award application core components, development of the Environmental Scan and prevention-focused CCR model, reporting requirements, and evaluation core components).

d. The extent to which the applicant demonstrates a willingness to attend and participate in technical assistance and planning meetings coordinated by the CDC for all cooperative agreement recipients.

4. Applicant's Management and Staffing (15 Points)

a. The extent to which management operation, structure and/or organization demonstrate an ability to effectively carry out the required activities in this cooperative agreement.

b. The extent to which the applicant's proposed staffing for the project, noting existing staff as well as additional staffing needs, demonstrates an ability to participate effectively in this cooperative agreement.

c. The extent to which the applicant's description of the responsibilities of individual staff members, including the level of effort and allocation of time for each project activity by staff position, demonstrates an ability to effectively manage and implement the activities of this cooperative agreement.

d. The extent to which the applicant plans to train and support staff, and of the availability of staff and facilities to carry out the program plan. Additionally, the applicant's description of a continuation plan that would provide a smooth integration of new staff into the project, and insure that resources will be available when needed for this project.

e. The extent to which the applicant demonstrates an ability to compile and disseminate project results and submit required reports on time.

5. Applicant Organization History and Description (10 Points)

a. The extent to which the applicant has demonstrated a leadership function in collaborating with diverse sectors of the state to oppose domestic violence, including serving priority populations.

b. The extent to which the applicant has demonstrated a community action component to improve and expand domestic violence intervention and prevention services throughout the state.

c. The extent to which the applicant has demonstrated an ability to plan and implement outreach and public education campaigns regarding domestic violence.

d. The extent to which the applicant has cooperated in or spearheaded the development of state protocols regarding domestic violence. Applicants should include examples of such protocols as Attachment A.

e. The extent to which the applicant has experience in funding and monitoring sub-awards.

f. The extent to which the applicant has demonstrated experience in providing training and technical assistance to local domestic violence programs whether through conferences or other training/technical assistance mechanisms.

g. The extent to which the applicant participated in the development of and/or referenced any state-level violence against women prevention plan.

6. Measures of Effectiveness (Not Scored)

The extent to which the applicant provided objective/quantifiable measures regarding the DELTA program's intended outcomes that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Applicants are encouraged to consult the Program Guidance (See Attachment 3 in the application kit) for further clarification.

7. Budget (Not Scored)

The applicant should provide a detailed budget with complete line-item justification of all proposed costs consistent with the stated activities in this program announcement. Applicants should be precise about the purpose of each budget item and must provide itemized calculations of proposed costs. These funds should not be used to supplant existing efforts.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports will be submitted as part of the grantee's continuation application. The progress report will include a data requirement that demonstrates measures of effectiveness. Specific guidance will be provided by NCIPC for the content of progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the application kit.

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For business management technical assistance, contact: Van A. King, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2751, e-mail address: *VKing@cdc.gov*.

For program technical assistance, contact: Janet Saul, PhD, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Hwy, NW, Mailstop K–60, Atlanta, GA 30341–1125, Telephone number (770) 488–4733, e-mail address: *JSaul@cdc.gov*.

Dated: July 25, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office Centers for Disease Control and Prevention.

[FR Doc. 02–19284 Filed 7–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: A Community-Based Intervention With Opinion Leaders to Achieve Syphilis Elimination, Program Announcement 02044

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): A Community-Based Intervention with Opinion Leaders to Achieve Syphilis Elimination, PA# 02044.

Times and Dates: 9 a.m.–9:30 a.m., August, 15, 2002 (Open), 9:30 a.m.–4:30 p.m., August 15, 2002 (Closed).

Place: Centers for Disease Control and Prevention 12 Corporate Square Boulevard—Room 1307 Atlanta, GA 30329

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02044.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road NE MS E–07, Atlanta, Georgia 30333, 404–639–8025.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Joe E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–19402 Filed 7–29–02; 12:22 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Times and Dates: 12:30 p.m.–5:30 p.m., August 14, 2002. 8 a.m.–5 p.m., August 15, 2002.

Place: Hyatt Regency Cincinnati, 151 West Fifth Street, Cincinnati, Ohio 45202, telephone 513/579–1234, fax 513/352–0245.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS, advice on methods of dose reconstruction which have been promulgated as an interim final rule, evaluation of the validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and in November 2001 the President completed the appointment of an initial roster of 10 Board members. In April 2002 the President appointed an additional member to ensure more balanced representation on the Board. The initial tasks of the Board will be to review and provide advice on the proposed and interim rules of HHS.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: Agenda for this meeting will include presentations for the Board's information on the adjudication of claims for atomic veterans, dose reconstruction for atomic veterans, and probability of causation determination for atomic veterans. The Board's agenda also includes development of comments on the Special Exposure Cohort Petitioning Process Guidelines (NPRM), dose reconstruction workgroup discussion and issues, and Board discussion of Board responsibilities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 25, 2002.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19283 Filed 7–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0315]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices: Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for humanitarian use devices.

DATES: Submit written and electronic comments on the collection of information by September 30, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices: Humanitarian Use Devices—21 CFR Part 814—Subpart H (OMB Control Number 0910–0332)—Extension

This collection implements the humanitarian use device (HUD) provision under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(m)) and 21 CFR part 814, subpart H. Under section 520(m) of the act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnosis a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnosis the disease or condition; and (3) the device will not expose patients to an unreasonable or significant risk of illness or injury, and the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collection will allow FDA to determine whether to: (1) Grant HUD designation of a medical device, (2) exempt a HUD from the effectiveness requirements in sections 514 and 515 of the act provided that the device meets requirements set forth in section 520(m) of the act, and (3) grants marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making those determinations. Also, this information enables FDA to determine whether the holder of a humanitarian device exemption (HDE) is in compliance with the HDE requirements.

Description of respondents: Businesses or others for-profit.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.102	20	1	20	40	800
814.104	15	1	15	320	4,800
814.106	15	4	60	50	3,000
814.108	12	1	12	80	960
814.116(e)(3)	1	1	1	1	1
814.124(a)	5	1	5	1	5
814.124(b)	1	1	1	2	2
814.126(b)(1)	15	1	15	120	1,800
Total					11,368

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.126(b)(2)	15	1	15	2	30
Total					30

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Generally, the information requested from the respondents represents an accounting of information already in the possession of the applicant.

In the final rule for HUDs, published in the **Federal Register** of June 26, 1996 (61 FR 33232), FDA based its estimates on comments received to the proposed rule, industry contact, and internal FDA benchmark factors (such as the number of premarket approval applications (PMAs) processed). The numbers generated in the current estimate as shown in tables 1 and 2 of this document and described in the following paragraphs are based upon those prior estimates. This is still a relatively new program, and the data acquired from the past several years has remained fairly stable and consistent.

Dated: July 24, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19243 Filed 7–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: National Health Service Corps (NHSC) Waiver Request Worksheets (OMB No. 0915–0234)—Revision

The National Health Service Corps (NHSC) of the HRSA's Bureau of Health Professions (BHPr), is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The NHSC Site Bill is sent to all sites where NHSC members have been assigned for all or part of the calendar year. The sites are billed for the full amount of the calculated costs associated with the assignee(s). The Public Health Service Act, Section 334 contains provisions which permit a waiver of the reimbursement requirement for entities which are assigned Corps members. The Waiver Request Worksheets are used by the NHSC to collect the necessary information from sites which are requesting a waiver to determine if such a waiver is justified.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Billing Form	1200	1	1200	.25	300
Budget Form	1200	1	1200	.75	900
Total	1200	1	2400	1.00	1200

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–19302 Filed 7–30–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institues of Health

[CHIS–CAM]

Submission for OMB Review; Comment Request California Health Interview Survey—Complementary and Alternative Medicine [CHIS–CAM]

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 22, 2002, pages 2892–2893 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: California Health Interview Survey—Complementary and Alternative Medicine (CHIS–CAM). *Type of Information Collection Request:* New. *Need and Use of Information Collection.* The NCI has sponsored a Cancer Control Topical Module (CCTM) to the California Health Interview Survey (CHIS), administered in 2001. The CHIS is a telephone survey designed to provide population-based, standardized health-related data. Initiated by the USLA Center for Health Policy Research, California Department of Health Services, and the Public Health Institute, the survey was funded by a number of public and private sources.

The 2001 CHIS CCTM was similar in content to the 2000 National Health Interview Survey (NHIS) CCTM and was administered to one sample adult in more than 54,000 households. NCI anticipates comparing the CHIS and NHIS data in order to conduct comparative and pooled analyses that will enable better estimates of health-related behaviors and cancer risk factors for smaller racial/ethnic minority populations.

The CHIS–CAM is a cross-sectional telephone survey nested in the CHIS study population of all adult respondents who agreed to be re-contacted. Complementary and Alternative Medicine (CAM) is a rapidly growing component of prevention and treatment of chronic illness in the United States. Yet the study of cancer has been largely excluded from the existing population-based surveys on CAM due to sample size restrictions, and little reliable information exists on how CAM utilization varies among different ethnic groups and among those with chronic illnesses.

The CHIS–CAM survey will be administered to approximately 2,000 cancer survivors and 6,000 non-cancer adults. It will enable NCI to collect extensive information on CAM, cancer and other chronic illnesses, and link it with the breadth of basic data already collected from the large, racially and ethnically diverse sample of CHIS respondents.

Comprehensive and detailed collection of information on CAM will enable NCI to increase its understanding of how, why, and to what effect CAM is used. The CHIS–CAM survey data will allow NCI to compare individuals who report various types of cancer and other chronic conditions and to determine: (1) The major categories of CAM procedures being used, as well as the specific therapies targeted toward cancer prevention and treatment, (2) how various subgroups in the population (defined by race/ethnicity, gender, age, health status, etc.) compare with regards to CAM procedures being used; (3) to what extent persons with cancer used specific types of CAM before or after diagnoses with cancer, and whether cancer patients used CAM in place of, or in addition to, conventional medical care; (4) whether systematic CAM treatments for cancer might lead to harm or interact with conventional treatments for cancer; and (5) what expenditures people are paying out-of-pocket for CAM procedures. *Frequency of Response.* One-time. *Affected public:* Individuals. *Type of Respondents:* U.S. adults. The annual reporting burden is as follows:

TABLE A.—ANNUALIZED BURDEN ESTIMATES FOR CHIS–CAM DATA COLLECTION

Type of respondents	Estimated number of respondents	Estimated No. of responses per respondent	Average burden hours per response	Estimated total annual burden hour requested
U.S. Adults	8,000	1	.35	2,800

There is no annualized cost to respondents. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in the notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anita Boulevard, Bethesda Maryland 20892–7344, or call non-toll free number (301) 451–8500 or email your request, including your address to *ambsa@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days from the date of this publication.

Dated: July 24, 2002.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–19272 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the President's Cancer Panel, July 29, 2002, 9 a.m. to July 30, 2002,[1] 4 p.m., Cultural Center, Yakama Indian Nation, Yakima, WA which was published in the **Federal Register** on July 10, 2002, 67 FR 45747.

The meeting is amended to change the meeting location to Eagle Seelatsee Auditorium, 401 Fort Road, Toppenish, WA. The meeting is open to the public.

Dated: July 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19265 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personnel privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Fast Track: Phase I Cancer Communication & Interactive Media Technology.

Date: July 31, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Conference Room J, 6130 Executive Plaza, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: C. Michael Kerwin, PhD, Scientific Review Administrator, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, Msc 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

This Notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne J. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19271 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclose of which

[1] Editorial Note: This document was received at the Office of the Federal Register on July 25, 2002.

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, Project EXPORT.

Date: July 30–31, 2002.[1]

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Teresa Chapa, PhD, Chief, Division of Extramural Activities, National Center on Minority Health and, Health Disparities, National Institutes of Health, Bethesda, MD 20852, 301/402–1366, *chapat@od.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19267 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Cerebrovascular Disease SEP.

Date: August 5, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW., Chevy Chase, MD 20015.

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529; Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19262 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Program Project.

Date: August 20, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and, Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19263 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Using Basic Science to Develop New Directions in Drug Abuse Prevention.

Date: July 26, 2002.[1]

Time: 1 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

[1] Editorial Note: This document was received at the Office of the Federal Register on July 25, 2002.

[1] Editorial Note: This document was received at the Office of the Federal Register on July 25, 2002.

Dated: July 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19266 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, To Study the Safety, Immunogenicity and Dosage of VI-rEPA Congufate Vaccine.

Date: September 6, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd 5th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19268 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. UTI in Women and Diabetes.

Date: August 23, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 750, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHD)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19270 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., a amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diabetes Complications.

Date: August 1, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Apoptosis and Carcinogenesis.

Date: August 2, 2002.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Pulfer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ET–2 (05) HPV.

Date: August 5, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due

to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunologic Mechanisms of PDT Therapy.

Date: August 5, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Pulfer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GRM 08.

Date: August 6, 2002.

Time: 9:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Experimental Therapeutics.

Date: August 6, 2002.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharon K. Pulfer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Placebo Effect RFA.

Date: August 7, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: J. Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19264 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, F05 Fellowship.

Date: July 25, 2002.[1]

Time: 7 a.m. to 8 a.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Randolph Addison, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025, *addison@csr.nih.gov.*

[1] Editorial Note: This document was received at the Office of the Federal Register on July 25, 2002.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurotechnology Development Special Emphasis Panel.

Date: July 26, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19269 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences; National Toxicology Program; Availability of the Report, Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Evaluation of EPISKIN™, EpiDerm™ (EPI–200), and the Rat Skin Transcutaneous Electrical Resistance (TER) Assay: *In Vitro* Test Methods for Assessing the Dermal Corrosivity Potential of Chemicals

Summary

The National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces the availability of the report entitled, "ICCVAM Evaluation of EPISKIN™, EpiDerm™ (EPI–200), and the Rat Skin Transcutaneous Electrical Resistance (TER) Assay: *In Vitro* Test Methods for Assessing the Dermal Corrosivity Potential of Chemicals," NIH Publication 02–4502. The report contains test method summary reports,

protocols, and the ICCVAM's final recommendations on the three methods.

Availability of Report

The report is available electronically (PDF and HTML) on the NICEATM/ICCVAM Web site at *http://iccvam.niehs.nih.gov*. A limited number of printed reports are available. To receive a printed report, please contact the NICEATM at P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, phone: 919–541–2384, fax: 919–541–0947, or *niceatm@niehs.nih.gov*.

Background

ICCVAM initiated evaluation of the validation status of three in vitro test methods for assessing the dermal corrosivity potential of chemicals and chemical mixtures in 2001. The test methods are EPISKIN™ (EPISKIN SNC, Lyon, France), EpiDerm™ (EPI–200) (MatTek, Ashland, MA), and the Rat Skin TER assay. The European Centre for the Validation of Alternative Methods (ECVAM) conducted validation studies on the three test methods. The ECVAM Scientific Advisory Committee and the European Commission's Scientific Committee for Cosmetic Products and Non-food Products subsequently reviewed and recommended the methods for regulatory acceptance. The NICEATM prepared a background review document (BRD) summarizing available data and prior reviews for the three corrosivity test methods. ICCVAM considered this compendium of information and concluded that further evaluation by an independent scientific peer review panel was not necessary. The BRD and proposed ICCVAM recommendations on the test methods were made available for public comment in a **Federal Register** notice (Vol. 66, No. 189, pp. 49685–49686; Sept. 28, 2001). All public comments received were posted on the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*) and considered by ICCVAM prior to finalizing its test recommendations.

Based on an evaluation of the ECVAM validation studies and all other available data, the ICCVAM recommends that EPISKIN™, EpiDerm™ (EPI–200), and the Rat Skin TER assay can be used to assess the dermal corrosivity potential of chemicals and chemical mixtures in a weight-of-evidence approach using an integrated testing scheme for dermal irritation/corrosion. In this approach, positive *in vitro* corrosivity responses will not generally require further testing and the results can be used for classification and labeling without the need for animal testing. Accordingly, these methods provide for the replacement of animal use when positive results are obtained.

In accordance with Public Law 106–545, the ICCVAM test recommendations will be forwarded to Federal agencies for their consideration and appropriate action. Agency responses to ICCVAM test recommendations will be made available on the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*). Inquiries or comments about the report should be addressed to: Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709; e-mail: *niceatm@niehs.nih.gov*; fax: 919–541–0947; tel. 919–541–2384.

Dated: July 22, 2002.

Samuel Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 02–19261 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–33]

Notice of Proposed Information Collection: Comment Request; Section 202 Supportive Housing for the Elderly

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 30, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 202 Supportive Housing for the Elderly.

OMB Control Number, if applicable: 2502–0267.

Description of the need for the information and proposed use: This information is required in connection with the application submission requirements for the Section 202 Supportive Housing Program for the elderly. The information is necessary to assist HUD in determining applicant eligibility and capacity to develop housing for the elderly within statutory and program criteria.

Agency form numers, if applicable: HUD–92015–CA, HUD–92041, HUD–92042, HUD–50070, HUD–50071, HUD–2880, HUD–2990, HUD–2991, HUD–2992, SF–424, SF–LLL.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 15,960, the number of respondents is 400 generating approximately 400 annual responses, the frequency of response is on occasion, and the estimated time needed to prepare the response varies from 20 minutes to 22 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1955, 44 U.S.C., Chapter 35, as amended.

Dated: July 23, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–19246 Filed 7–30–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Notice of Renewal of the Wild Horse and Burro Advisory Charter

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (5 U.S.C. App.). Pursuant to section 7 of the Wild Free-Roaming Horse and Burro Act (Public Law 92–195), notice is hereby given that the Secretary of the Interior and the Secretary of Agriculture are renewing the existing Wild Horse and Burro Advisory Board for August 26, 2002, through June 30, 2004.

ADDRESSES: Wild Horse and Burro Group, WO–260, Bureau of Land Management, Department of the Interior, 1849 C St., NW. MS: 204LS, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The purpose of the Wild Horse and Burro Advisory Board is to provide advice concerning management, protection, and control of wild free-roaming horses and burros on the public lands administered by the Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service.

The Board will meet no less than two times annually. Additional meetings may be called by the Director, Bureau of Land Management, in connection with special needs for advice.

FOR FURTHER INFORMATION CONTACT: John E. Fend, Group Manager, Wild Horse and Burro Program at (202) 452–0379.

Dated: July 26, 2002.

Sharon L. Kipping,

Acting Group Manager, Wild Horse and Burro Group.

[FR Doc. 02–19351 Filed 7–30–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–02–1120–PG–24–1A]

Notice of Resource Advisory Council Subgroup Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting.

SUMMARY: The purpose of this notice is to announce a Resource Advisory Council Subgroup Meeting scheduled for August 14, 2002, Provo, Utah.

The objective of this meeting will be to evaluate the product of the technical team relative to a best management practice standard for raptor management and consider that in the context of potential development of land use alternatives for land use planning.

The meeting will be held at the Provo Marriott Hotel, 101 West 100 North, Provo, Utah from 9 a.m. until 4 p.m. From 3:30 p.m.–4 p.m., a public comment period is scheduled where members of the public may address the Subgroup. Written comments may be mailed to the Bureau of Land Management at the address listed below.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, 84111; phone (801) 539–4195.

Dated: July 24, 2002.

Robert A. Bennett,

Associate State Director.

[FR Doc. 02–19285 Filed 7–30–02; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–02–1120–PG–24–1A]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) Meeting.

SUMMARY: The purpose of this notice is to announce a Resource Advisory Council Meeting scheduled for August 27, 2002, Provo, Utah.

Primary agenda item for this meeting will be a report from the Resource Advisory Council subgroup to the RAC on the status of the Raptor Science Team's report.

The meeting will be held at the Provo Marriott Hotel (Maple Room), 101 West 100 North, Provo, Utah from 9 until 3. From 2:30 p.m.–3 p.m. a public comment period is scheduled where members of the public may address the Council. Written comments may be mailed to the Bureau of Land Management at the address listed below. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, UT 84111; phone (801) 539–4195.

Dated: July 24, 2002.

Robert A. Bennett,

Associate State Director.

[FR Doc. 02–19288 Filed 7–30–02; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet Monday, August 26, 2002 from 8 a.m. to 5 p.m. local time, and on Tuesday, August 27, 2002 from 8 a.m. to Noon local time.

ADDRESSES: The Advisory Board will meet at the Marriott Denver Tech Center, 4900 South Syracuse, Denver, CO, 80237.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business August 16, 2002. See

SUPPLEMENTARY INFORMATION section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Nordin, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. Nordin* at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, August 26, 2002 (8 a.m.–5 p.m.)

8:00 Call to Order & Introductions

Co-chairs Comments & Housekeeping
Robin Lohnes/Gary Zakotnik
Welcoming Remarks
Ron Wenker/John Fend

8:30 Old Business:

Approval of March 2002 Minutes
Robin Lohnes
BLM Action on March 2002 Recommendations
John Fend
Charter Renewal & 2003 Nominations Update
John Fend
Annual WH&B Specialist Meeting Overview
Tom Pogacnik

Break (10:00 a.m.–10:15 a.m.)

10:15 Ad-Hoc Committee Report on Budget Initiative
Discussion of Proposed Alternatives
Hilleary Bogley, Wayne Burkhardt/Larry Johnson/Gary Zakotnik

12:00 Lunch

1:30 Old Business (continued):

Update on Pending Litigation
John Fend
Discussion on AML High/Low Numbers
John Fend/Tom Pogacnik

Break (2:30 p.m.—2:45 p.m.)

2:45 Old Business (continued)

Update on Immunocontraception Field Applicability
Linda Coates-Markle, National WH&B Research Coordinator
Update on National WH&B Research Strategy
Fertility Control Field Trial Plan

4:00 Public Comments
Robin Lohnes/Janet Nordin
4:45 Recap/Summary
Robin Lohnes
5–6:00 Adjourn
All

Tuesday, August 27, 2002 (8:00 a.m.—12:00 p.m.)

8:00 New Business:

Sonora Desert Proposal (Tentative)
Merle Edsall

Break (9:00 a.m.—9:15 a.m.)

9:15 Board Recommendations
Robin Lohnes
Report to Congress
Robin Lohnes/Gary Zakotnik
Next Meeting/Date/Site

12:00 Adjourn

Robin Lohnes

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations [41 CFR 101-6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on August 26, 2002, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4:00 p.m. local time. Persons wishing to make statements should register with the BLM by noon August 26, 2002, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. BLM will honor your request to the extent allowed by law. BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Nordin@blm.gov*. Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: July 26, 2002.

Sharon L. Kipping,

Acting Group Manager, Wild Horse and Burro Group.

[FR Doc. 02–19350 Filed 7–30–02; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–022]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 8, 2002 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1012 (Preliminary) (Certain Frozen Fish Fillets from Vietnam)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before August 12, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 19, 2002.).
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 26, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–19424 Filed 7–29–02; 11:57 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Emergency Notice of Information Collection Under Review: New. Needs Assessment for Service Providers of Trafficking Victims Telephone Survey.

The Department of Justice (DOJ), Office of Justice Programs, National Institute of Justice has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by August 2, 2002. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestion, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Tracey Henke, Office of the Assistant Attorney General, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20531, or call (202) 307-5933.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Needs Assessment for Service Providers of Trafficking Victims Telephone Survey.

(3) Agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number: OJP Form Number 1121. National Institute of Justice, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Affected public includes agencies and/or organizations who work with victims of trafficking in persons or advocate on their behalf. This collection will gather information related to assessing the needs of service providers who provide assistance to victims of trafficking in persons. The data will then be used to advise the Office of Justice Programs, other federal agencies and their grantees in the development of data-drive programs to serve trafficking victims and ensure that these programs are both responsive and effective in meeting the needs of trafficking victims. Additionally, the information will inform the development of training and technical assistance programs that best meet the identified needs of the field.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 200 respondents will each complete a 1-hour telephone survey.

(6) An estimate of the total public burden (in hours) associated with the collection: An estimate of the total hour burden to conduct this survey is 200 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 23, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–19279 Filed 7–30–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

ETA 203, Characteristics of the Insured Unemployed; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of the collection of the ETA 203, Characteristics of the Insured Unemployed. A copy of the proposed information collection request (ICR) can

be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 30, 2002.

ADDRESSES: Thomas Stengle, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Ave. NW., Washington, DC 20210. Phone number: 202–693–2991. Fax: 202–693–3229. (These are not toll free numbers.) E-mail: *tstengle@doleta.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 203, Characteristics of the Insured Unemployed, is a once a month snapshot of the demographic composition of the claimant population. It is based on those who file a claim in the week containing the 19th of the month which reflects unemployment during the week containing the 12th. This corresponds with the BLS total unemployment sample week. This report serves a variety of socio-economic needs because it provides aggregate data reflecting unemployment insurance claimants' sex, race/ethnic group, age, industry, and occupation.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) for continuing an existing collection of information previously approved and assigned OMB Control No. 1205–0009.

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Characteristics of the Insured Unemployed.
OMB Number: 1205–0009.
Agency Number: ETA 203.
Affected Public: State Government.
Cite/Reference/Form/etc: ETA 203.
Total Respondents: 53.
Frequency: Monthly.
Total Responses: 636.
Average Time per Response: .33 hours.
Estimated Total Burden Hours: 212 hours per year.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 24, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–19344 Filed 7–30–02; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL MEDIATION BOARD

Notice of Proposed Information Collection Requests

AGENCY: National Mediation Board.

SUMMARY: The Chief Information Officer, Finance and Administration Department, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 26, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Chief Information Officer, Finance and Administration Department, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, *e.g.* new, revision extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or record keeping burden. OMB invites public comment.

Currently, the National Mediation Board is soliciting comments concerning the new collection of information in the form of Request for Arbitration Panel for Airline System Boards of Adjustment, Request for Public Law Board Member, Arbitration Services—Pay Voucher for Personal Services, Arbitration Services—Official Travel/Referee Compensation Authorization, Neutral's Report of Activity Arbitration Services—Personal Data Sheet and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 2002.

June D.W. King,

Chief Information Officer, Finance and Administration Department, National Mediation Board.

A. Request for Arbitration Panel for Airline System Boards of Adjustment

Type of Review: New Collection.
Title: Request for Arbitration Panel for Airlines System Boards of Adjustment.
Frequency: On occasion.
Affected Public: Airline Carrier and Union Officials.
Reporting and Recordkeeping Hour Burden:
Responses: Estimate about 80 annually.
Burden Hours: 20.
Abstract: Section 183 of the Railway Labor Act, 45 U.S.C., 183, provides that the parties to the labor-management disputes in the airline industry must have a procedure for the resolution of disputes involving the interpretation or application of provisions of the collective bargaining agreement. The Railway Labor Act mentions system board of adjustment or arbitration

boards as the mechanism for resolution and is silent as to how the neutral arbitrator is to be selected if the parties are unable to agree on an individual. The National Mediation Board provides panels of arbitrators to help the parties in their selection of an arbitrator.

This form is necessary to assist the parties in this process. The parties invoke the process through the submission of this form. The brief information is necessary for the NMB to perform this important function.

B. Request for Public Law Board Member

Type of Review: New Collection.

Title: Request for Public Law Board Member.

Frequency: On occasion.

Affected Public: Carrier and Union Officials of railroads.

Reporting and Recordkeeping Hour Burden:

Responses: Estimate 15 annually.

Burden Hours: 3.75.

Abstract: Section 153, Second, of the Railway Labor Act, 45 U.S.C. 153, Second, governs procedures to be followed by carriers and representatives of employees in the establishment and functioning of special adjustment boards. These special adjustment boards are referred to as public law boards (board). The statute provides that within thirty (30) days from the date a written request is made by an employee representative or carrier official for the establishment of a board, an agreement establishing such board shall be made. If, however, one party fails to designate a member of the board, the party making the request may ask the NMB to designate a member on behalf of the other party. The NMB must designate the representative who, together with the other party constitute the public board. It will be the task of these two individuals to decide on the terms of the agreement. If these individuals are unable to decide upon the terms, the Railway Labor Act provides that one of these parties may request that the NMB designate a neutral to resolve the remaining matters which are procedural issues. Pursuant to 29 CFR 1207.2, requests for the NMB to appoint either representatives or neutrals must be made on printed forms which may be secured from the NMB.

This form is necessary for the NMB to fulfill its statutory responsibilities. Without this information, the NMB would not be able to assist the railroad labor and management representatives in resolving disputes, which is contrary to the intent of the Railway Labor Act.

C. Arbitration Services—Official Travel/Referee Compensation Authorization

Type of Review: New Collection.

Title: Arbitration Services—Official Travel/Referee Compensation Authorization.

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: Approximately 624 annually.

Burden Hours: 156.

Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the NMB shall compensate arbitrators who resolve the resolves under these sections of the Act. The arbitrator must submit a written request, in advance, for authorization to be compensated for work to be performed. The arbitrator must obtain authorization before performing work. This form is the request and is necessary for the NMB to fulfill its financial responsibilities.

D. Arbitration Services—Pay Voucher for Personal Services

Type of Review: New Collection.

Title: Arbitration Services—Pay Voucher for Personal Services.

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: Approximately 624 annually.

Burden Hours: 156.

Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the parties may use an arbitrator to resolve their disputes concerning the application or interpretation of the provisions of a collective bargaining agreement. The NMB must record the decisions rendered by the arbitrators selected by the parties and compensated by the NMB. This form is used to gather that information. This brief information is necessary for the NMB to fulfill its responsibilities under the Railway Labor Act.

E. Neutral's Report of Activity

Type of Review: New Collection.

Title: Neutral's Report of Activity.

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: Approximately 624 annually.

Burden Hours: 156.

Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the NMB shall compensate arbitrators who resolve the resolves under these sections of the Act. After the work is performed, the arbitrator must submit a written request for compensation. This form is the vehicle used to request compensation and is necessary for the NMB to fulfill its financial responsibilities.

F. Arbitration Services—Personal Data Sheet

Type of Review: New Collection.

Title: Arbitration Services—Personal Data Sheet.

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: 25 annually.

Burden Hours: 25.

Abstract: Sections 183 and 153 of the Railway Labor Act, 45 U.S.C., 153 and 183, provide for the use of arbitrators in the resolution of disputes concerning the application or interpretation of provisions of a collective bargaining agreement in the airline and railroad industries. The NMB maintains a roster of arbitrators for this purpose. The NMB must have a means for interested individuals to apply for inclusion on this roster. This form is the application for inclusion on the NMB roster. The brief information that the NMB solicits is necessary to perform this responsibility under the Railway Labor Act.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Roland Watkins, Director of Arbitration Services NMB, 1301 K Street NW, Suite 250 E, Washington, DC 20572 or addressed to the e-mail address *arb@nmb.gov* or faxed to 202–692–5086. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D.W. King at 202–692–5010 or via Internet address *king@nmb.gov*. Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19244 Filed 7–30–02; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend a License To Export Highly-Enriched Uranium

Pursuant to 10 CFR 110.70(b)(2) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request to amend an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the request to amend a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this amendment request follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application/date received, application number, docket number	Description of material		End use	Country of destination
	Material type	Total qty		
Transnuclear, Inc. July 12, 2002 July 12, 2002 XSNM03171/03 11005236	Highly-Enriched Uranium (93.30%).	Additional 15.0 kg Uranium (13.99 kg U–235).	To fabricate targets for irradiation in the NRU Reactor to produce medical radioisotopes and to extend expiration date to 12/31/03.	Canada.

For the Nuclear Regulatory Commission.

Dated this 24th day of July, 2002, at Rockville, Maryland.

Edward T. Baker,

Deputy Director, Office of International Programs.

[FR Doc. 02–19334 Filed 7–30–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council will meet at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations or pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under section 5304 of title 5, United States Code. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

At this meeting, the Council will receive a briefing on progress made in improving salary surveys conducted for the locality pay program and consider requests for new locality pay areas or proposals to change the boundaries of existing areas. The Council will meet again later this fall to formulate its recommendations for locality pay areas, methodology, and rates for 2004. The meeting is open to the public.

DATES: August 15, 2002, at 10 a.m.

LOCATION: Office of Personnel Management, 1900 E Street NW., Room 5303 (Pendleton Room), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, Assistant Director for Compensation Administration, Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; FAX (202) 606–0824; or email at *payleave@opm.gov*.

For the President's Pay Agent:

Kay Coles James,

Director.

[FR Doc. 02–19446 Filed 7–29–02; 2:52 pm]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request: Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Regulation S–T; OMB Control No. 3235–0424; SEC File No. 270–375.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation S–T sets forth the general rules and regulations for electronic filings. Registrants who have to file electronically are the likely respondents. Regulation S–T is only assigned one burden hour for administrative convenience because it does not directly impose any information collection requirements. The electronic filing requirement is mandatory for all companies required to file electronically. All information provided to the Commission is available to the public for review.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202 Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell,

Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 23, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19317 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c2–5; SEC File No. 270–195; OMB Control No. 3235–0198; Rule 15Ba2–5 SEC File No. 270–91; OMB Control No. 3235–0088.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 15c2–5 (17 CFR 240.15c2–5) prohibits a broker-dealer from arranging or extending a loan to customers, not subject to Regulation T (12 CFR 220), in connection with the offer or sale of securities unless, before entering the transaction, the broker-dealer: (1) Delivers to the customer a written statement containing specific information concerning the terms, obligations, risks and charges of the loan; (2) obtains from the customer sufficient financial information to determine that the entire transaction is suitable for the customer; and (3) retains on file and makes available to the customer a written statement setting forth the broker-dealer's basis for determining that the transaction was suitable. The collection of information required by the rule is necessary to execute the Commission's mandate under the Securities Exchange Act of 1934 ("Exchange Act") to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

There are approximately 50 respondents that require an aggregate total of 600 hours to comply with the rule. Each of these approximately 50 registered broker-dealers makes an estimated 6 annual responses, for an aggregate total of 300 responses per year. Each response takes approximately 2 hours to complete. Thus, the total compliance burden per year is 600 burden hours. The approximate cost per hour is $24.00 (based on an annual salary of $32,050 for clerical labor plus an additional 35% to account for overhead costs, totaling $43,268), resulting in a total compliance cost of $14,400 (600 hours @ $24.00 per hour).

Although Rule 15c2–5 does not specify a retention period or record keeping requirement under the rule, nevertheless broker-dealers are required to preserve the records for a period no less than six years pursuant to Rule 17a–4(c). The information required under Rule 15c2–5 is necessary for broker-dealers to engage in the lending activities prescribed in the rule. Rule 15c2–5 does not assure confidentiality for the information retained under the rule.[1]

On July 7, 1975, effective July 16, 1975 (*see* 41 FR 28948, July 14, 1975), the Commission adopted Rule 15Ba2–5 (17 CFR 240.15Ba2–5) under the Exchange Act to permit a duly-appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without the rule, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under the rule, the registration of a municipal securities dealer is deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that such fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth as to such fiduciary substantially the same information required by Form MSD or Form BD. The statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

There is approximately 1 respondent per year that requires an aggregate total of 4 hours to comply with this rule. This respondent makes an estimated 1 annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondent of approximately $80 (*i.e.*, 4 hours x $20).

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 23, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19318 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[1] The records required by Rule 15c2–5 would be available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–22; SEC File No. 270–202; OMB Control No. 3235–0196.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 17a–22 Supplemental Material of Registered Clearing Agencies

Rule 17a–22 under the Securities Exchange Act of 1934 ("Exchange

Act")[1] requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship. The filings with the Commission must be made within ten days after the materials are issued, and when the Commission is not the appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency. The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aides the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Exchange Act.

The respondents to Rule 17a–22 generally are registered clearing agencies.[2] The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies, but on average there are approximately 200 filings per year per clearing agency. Because the filings consist of materials that have been prepared for widespread distribution, the additional cost to the clearing agencies associated with submitting copies to the Commission is relatively small. The Commission staff estimates that the cost of compliance with Rule 17a–22 to all registered clearing agencies is approximately $5,220. This represents one dollar per filing in postage, or a total of $3,600. The remaining $1,620 (or approximately 31% of the total cost of compliance) is the estimated cost of additional printing, envelopes, and other administrative expenses. (The estimated total cost per response is $1.45 per page representing $1.00 per page in postage plus $0.45 for printing, envelopes, and other administrative expenses.)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General Comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 24, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19319 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78a *et seq.*

[2] Respondents include temporarily registered clearing agencies. Respondents also may include clearing agencies granted exemptions from the registration requirements of Section 17A, conditioned upon compliance with Rule 17a–22.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46258; File No. SR–Amex–2002–52]

Self-Regulatory Organizations; the American Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change To Establish Anti-Money Laundering Compliance Programs

July 25, 2002.

On June 3, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposed rule change would require members and member organizations to establish anti-money laundering compliance programs meeting specific minimum standards. Notice of the proposed rule change was published in the **Federal Register** on June 20, 2002.[3] The Commission received no comments on the proposal.

The Commission has reviewed carefully the Amex's proposed rule change, and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5)[4] of the Act. Section 6(b)(5) requires the rules of a registered national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the Amex's proposal accurately, reasonably, and efficiently implements the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 as it applies to the Amex's members. The Commission also recognizes that anti-money laundering compliance programs will evolve over time, and that improvements to these programs are inevitable as members find new ways to combat money laundering and to detect suspicious activities.

For these reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–Amex–2002–52) be, and hereby is, approved.[6]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19311 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46075 (June 13, 2002), 67 FR 42086.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(2).

[6] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46252; File No. SR–Amex–2001–35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 thereto by the American Stock Exchange LLC Relating to Seven Series of the iShares Trust Based on a Specified U.S. Treasury or Corporate Bond Index

July 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2001, the American Stock Exchange LLC (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 28, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.[3] On July 23, 2002, Amex submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend Amex Rule 1000A ("Index Fund Shares") to accommodate listing of Index Fund Shares based on indexes of fixed income securities. The proposed rule change will accommodate listing on the Exchange of the following series of the iShares Trust: iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, iShares Treasury Index Fund, iShares Government/Credit Index Fund, iShares Lehman Corporate Bond Fund, and iShares Goldman Sachs Corporate Bond Fund. The text of the proposed rule change is as follows. New text is italicized.

Index Fund Shares

Rule 1000A

(a) No change.

Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified: (1) Index Fund Share. The term "Index Fund Share" means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks *or fixed income securities* that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index *or fixed income securities index;* (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, *or a specified portfolio of fixed income securities and/or a cash amount,* with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash *or fixed income securities and/or cash,* with a value equal to the next determined net asset value.

II. Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Purpose

Amex Rule 1000A provides standards for listing Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for Exchange trading. These securities are registered under the Investment Company Act of 1940 ("1940 Act") as well as the Securities Act of 1933 ("Securities Act") and the Exchange Act. The Exchange currently trades over 80 different index funds under Rule 1000A based on various stock indexes, including more than 50 series of the iShares Trust ("Trust"), which is registered with the Commission as an open-end management investment company.

Index Fund Shares are defined in Rule 1000A as securities based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index. The Exchange is proposing to amend this definition to permit listing of index-based fixed income investment products that are not based in any way on a stock index, but instead are based on an index of fixed income securities, which would encompass U.S. government securities and corporate and non-corporate (other than U.S. government) debt securities. As amended, Rule 1000A would accommodate listing of U.S. government debt securities (*e.g.,* securities issued or guaranteed by the U.S. Treasury, an agency or instrumentality of the U.S. government, or by a government-sponsored entity). Other 1940 Act investment products that could be listed under Rule 1000A, as amended, would include Index Fund Shares based on an index of corporate and/or non-corporate debt securities, or an index consisting of U.S. government, corporate and non-corporate debt securities.[5]

The Exchange therefore, proposes to amend Rule 1000A(b) to specify that Index Fund Shares may be: (1) Based on a portfolio of fixed income securities, (2) issued by an investment company in return for a specified portfolio of fixed income securities and/or cash, and (3) redeemed at a holder's request by the investment company, which will pay the redeeming holder fixed income securities and/or cash.

The Exchange proposes to list under Rule 1000A as proposed to be amended the following seven additional series of the Trust, each a "New Fund": iShares 1–3 Year Treasury Index Fund; iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, iShares Treasury Index Fund, iShares Government/Credit Index Fund, iShares Lehman Corporate Bond Fund, and iShares Goldman Sachs Corporate Bond Fund.

Each New Fund will hold certain fixed income securities selected to correspond generally to the price and yield performance of a specified U.S. Treasury, Government/Credit, or Corporate Bond (each, an "Underlying Index") maintained either by Lehman Brothers, or, for the Goldman Sachs Corporate Bond Fund, by Goldman Sachs and Co.[6]

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[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This notice, representing Amendment No. 1, replaces the original Rule 19b–4 filing in its entirety.

[4] *See* letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (Amendment No. 2). In Amendment No. 2, the Exchange provided additional information regarding the availability of quote and pricing information relating to U.S. government, corporate and non-corporate (other than U.S. government) debt securities underlying the iShares Trust series that are the subject of this proposal.

[5] Index Fund Shares based on a fixed income securities index are not eligible for listing under the Amex's generic listing criteria (Rule 1000A, Commentary .02). Therefore, the Exchange will file proposed rule changes prior to listing additional series of such Index Fund Shares pursuant to Rule 19b–4 under the Exchange Act.

[6] On June 18, 2002, Goldman, Sachs & Co. announced changes to the Goldman Sachs Index, which underlies the iShares Goldman Sachs Corporate Bond Fund. As of July 1, 2002, the composition of the index will be expanded from 30 to 100 investment grade bonds and the index will be permitted to include more than one bond per

Barclays Global Fund Advisors (the "Advisor" or "BGFA") is the investment adviser to each New Fund. The Advisor is registered under the Investment Advisers Act of 1940. The Advisor is a wholly owned subsidiary of Barclays Global Investors, N.A. ("BGI"). BGI is a wholly owned indirect subsidiary of Barclays Bank PLC of the United Kingdom.

SEI Investments Distribution Co. (the "Distributor"), a Pennsylvania corporation and broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Unit Aggregations (as defined below) of iShares. The Distributor is not affiliated with the Exchange or the Advisor.

a. *Operation of the New Funds*

1. *Investment Objectives.* The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of its Underlying Index. In seeking to achieve its respective investment objective, each New Fund will utilize "passive" indexing investment strategies. Each New Fund may fully replicate its Underlying Index, but currently intends to use a "representative sampling" strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities ("Component Securities") of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index (as compared to a Fund that uses a replication strategy which invests in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index).[7]

When using a representative sampling strategy, the Advisor attempts to match the risk and return characteristics of a New Fund's portfolio to the risk and return characteristics of the Underlying Index. As part of this process, the Advisor subdivides each Underlying Index into smaller, more homogeneous pieces. These subdivisions are sometimes referred to as "cells." A cell will contain securities with similar characteristics. For fixed income indices, the Advisor generally divides the index according to the five parameters that determine a bond's risk and expected return: (1) Duration, (2) sector, (3) credit rating, (4) coupon, and (5) the presence of embedded options. When completed, all bonds in the index will have been assigned a cell. The Advisor then begins to construct the portfolio by selecting representative bonds from these cells. The representative sample of bonds chosen from each cell is designed to closely correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of each cell. The characteristics of each cell when combined are, in turn, designed to closely correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of the Underlying Index as a whole. The Advisor may exclude less liquid bonds in order to create a more tradable portfolio and improve arbitrage opportunities.[8]

According to the Application, the representative sampling techniques used by the Advisor to manage fixed income funds do not materially differ from the representative sampling techniques it uses to manage equity funds. Due to the differences between bonds and equities, the Advisor analyzes different information—such as dividend payments instead of coupon rates, for example.

According to the Application, the New Funds' use of the representative sampling strategy is beneficial for a number of reasons. First, the Advisor can avoid bonds that are "expensive names" (*i.e.*, bonds that trade at perceived higher prices or lower yields because they are in short supply) but have the same essential risk, value, duration and other characteristics as less expensive names. Second, the use of representative sampling techniques permits the Advisor to exclude bonds that it believes will soon be deleted from the Underlying Index. Third, the Advisor can avoid holding bonds it deems less liquid than other bonds with similar characteristics. Fourth, the Advisor can develop a basket that is easier to construct and cheaper to trade, thereby potentially improving arbitrage opportunities.

From time to time, adjustments may be made in the portfolio of each New Fund in accordance with changes in the composition of the Underlying Index or to maintain compliance with requirements applicable to a regulated investment company ("RIC") under the Internal Revenue Code. For example, if at the end of a calendar quarter a New Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status. The Exchange notes, however, that the Advisor does not anticipate that the New Funds would need to make such adjustments, particularly since these New Funds (other than the iShares Lehman Corporate Bond Fund and the iShares Goldman Sachs Corporate Bond Fund) invest a very large percentage of their assets in U.S. Treasury securities.

The Exchange represents that the Advisor expects that each New Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than five percent (5%). Each New Fund's investment objectives, policies and investment strategies will be fully disclosed in its prospectus ("Prospectus") and statement of additional information ("SAI"). At least 90% of each of the iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, iShares Treasury Index Fund, and iShares Government/Credit Index Fund's assets will be invested in Component Securities of its respective Underlying Index. Each of these New Funds may also invest up to 10% of its assets in bonds not included in its Underlying Index, but which the Advisor believes will help the New Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents. For example, these New Funds may invest in securities not included in the relevant Underlying Index in order to reflect prospective changes in the relevant Underlying Index (such as future corporate actions and index reconstitutions, additions and deletions). Each of the iShares Lehman Corporate Bond Fund and the iShares Goldman Sachs Corporate Bond Fund

issuer. *See* Business Wire, June 18, 2002, "Goldman Sachs Expands Corporate Bond Index to Enhance Market Representation." A description of the revised index is publicly available in the Commission's Public Reference Room.

[7] The Commission approved an "Application" by The Trust, Advisor and Distributor ("Applicants") for an Order under Sections 6(c) and 17(b) of the 1940 Act for the purpose of exempting the New Funds of the Trust from various provisions of the 1940 Act with the Commission. *See* Investment Company Act Release No. 25622 (June 25, 2002) (approving File No. 812–12390). The information provided in this Rule 19b–4 filing relating to the New Funds is based on information included in the Application and Order which include additional information regarding the Trust and the New Funds.

[8] As stated in the Application, the Goldman Sachs Index excludes bonds with embedded options. Although the Lehman Indices may include bonds with embedded options, according to the Application the bonds in each Lehman Index (and the respective Deposit Securities and Fund Securities, as defined below) should be liquid and easily tradable because each Lehman Index consists of U.S. Treasury and agency securities and/or liquid corporate and non-corporate bonds. To the extent a particular bond is less liquid than another bond with similar characteristics, the Advisor's representative sampling techniques should permit the Advisor to replace the less liquid bond with a more liquid one. For these reasons, the Advisor does not believe the presence of bonds with embedded options in an Underlying Index, the Deposit Securities, or Fund Securities would have any material impact on the creation/redemption process and the efficiency of the arbitrage mechanism for each New Fund.

generally will invest at least 90% of its assets in Component Securities of its respective Underlying Index. However, each of the iShares Lehman Corporate Bond Fund and the iShares Goldman Sachs Corporate Bond Fund may at times invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents as well as in bonds not included in its Underlying Index, but which the Advisor believes will help the New Fund track its Underlying Index and which are either (i) included in the broader index upon which such Underlying Index is based (*i.e.*, the Lehman Credit Index for the Lehman Credit VLI Index or the Goldman Sachs Investment Grade Index for the Goldman Sachs InvesTop Index); or (ii) new issues entering or about to enter the Underlying Index or the broader index upon which such Underlying Index is based.

b. *Issuance of Creation Unit Aggregations*

1. *In General.* Shares of each New Fund (the "iShares") will be issued on a continuous offering basis in groups of 50,000 or more. These "groups" of shares are called "Creation Unit Aggregations." The New Funds will issue and redeem iShares only in Creation Unit Aggregations.[9] As with other open-end investment companies, iShares will be issued at the net asset value ("NAV") per share next determined after an order in proper form is received. The anticipated price at which the iShares will initially trade is approximately $100.

The NAV per share of each New Fund is determined as of the close of the regular trading session on the Amex on each day that the Amex is open. The Trust sells Creation Unit Aggregations of each New Fund only on business days at the next determined NAV of each New Fund.

Creation Unit Aggregations will be issued by each New Fund in exchange for the in-kind deposit of a portfolio securities designated by the Advisor to correspond generally to the price and yield performance of the New Fund's Underlying Index (the "Deposit Securities"). Purchasers will generally be required to deposit a specified cash payment in the manner more fully described in the Application. Creation Unit Aggregations will be redeemed by each New Fund in exchange for portfolio securities of the New Fund ("Fund Securities") and a specified cash payment in the manner more fully described herein. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

The Distributor will act on an agency basis and will be the Trust's principal underwriter for the iShares in Creation Unit Aggregations of each New Fund. All orders to purchase iShares in Creation Unit Aggregations must be placed with the Distributor by or through an authorized participant ("Authorized Participant"). Authorized Participants, which are required to be Depository Trust Company ("DTC") participants, must enter into a participant agreement with the Distributor. The Distributor will transmit such orders to the applicable New Fund and furnish to those placing orders confirmation that the orders have been accepted. The Distributor may reject any order that is not submitted in proper form. The Distributor will be responsible for delivering the prospectus to those persons creating iShares in Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of iShares.

2. *In-Kind Deposit of Portfolio Securities.* Payment for Creation Unit Aggregations placed through the Distributor will be made by the purchasers generally by an in-kind deposit with the New Fund of the Deposit Securities together with an amount of cash (the "Balancing Amount") specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the New Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the "Deposit Amount"). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a "Portfolio Deposit."

The Advisor will make available to the market through the National Securities Clearing Corporation (the "NSCC") on each Business Day, prior to the opening of trading on the Amex (currently 9:30 a.m. Eastern Time), the list of the names and the required number of shares of each Deposit Security included in the current Portfolio Deposit (based on information at the end of the previous Business Day) for the relevant New Fund. The Portfolio Deposit will be applicable to a New Fund (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the New Fund until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Portfolio Deposit for each New Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities in the relevant Underlying Index. These adjustments will reflect changes, known to the Advisor to be in effect by the time of determination of the Deposit Securities, in the composition of the Underlying Index being tracked by the relevant New Fund, or resulting from rebalance or additions or deletions to the relevant Underlying Index. In addition, the Trust reserves the right with respect to each New Fund to permit or require the substitution of an amount of cash (*i.e.*, a "cash in lieu" amount) to be added to the Balancing Amount to replace any Deposit Security: (1) that may be unavailable or not available in sufficient quantity for delivery to the Trust upon the purchase of iShares in Creation Unit Aggregations, or (2) that may not be eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

c. *Availability of Information Regarding iShares and Underlying Indices*

On each Business Day the list of names and amount of each treasury security, government security or corporate bond constituting the current Deposit Securities of the Portfolio Deposit and the Balancing Amount effective as of the previous Business Day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per iShare basis (the Intra-day Optimized Portfolio Value" or "IOPV") will be calculated by Bloomberg L.P. ("Bloomberg") every 15 seconds during the Amex's regular trading hours and disseminated every 15 seconds by Bloomberg and by Amex on Consolidated Tape B. Bloomberg will use Bloomberg Generic Prices ("BGN

[9] Each Creation Unit Aggregation will consist of 50,000 or more iShares and the estimated initial value per Creation Unit Aggregation will be approximately $5 million.

Prices") to reflect changing bond prices and update the IOPV throughout the day. BGN Prices are current prices on individual bonds as determined by Bloomberg using an automated pricing program that analyzes multiple bond prices contributed to Bloomberg by third-party price contributors (such as broker-dealers). BGN Prices are updated throughout the day based on an ongoing analysis of the bid/ask prices submitted by the third-party price contributors. When Bloomberg receives bid/ask prices from a price contributor, the prices are filtered and screened according to pre-determined criteria and set parameters in order to maximize the accuracy of the pricing data. The net result of this process is an individual bond "price" based on an analysis of multiple pricing sources. BGN Prices are available on Bloomberg systems, and Applicants expect that the pricing of the Deposit Securities will be transparent to anyone with access to Bloomberg systems.

Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG. GovPX,[10] for example, is a consortium of leading government securities dealers and subscribers that provides market data from leading government securities dealers and interdealer brokers to market data vendors and subscribers. TradeWeb, another example, is a consortium of 18 primary dealers that, in addition to providing a trading platform, also provides market data direct to subscribers or to other market data vendors.[11]

Pricing information for corporate and non-corporate securities is also available. For instance, real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

[10] *See www.govpx.com.*

[11] *See www.tradeweb.com.*

Retail investors do have access to free intra-day bellwether quotes.[12] The Bond Market Association provides links to price and other bond information sources on its investor web site at *http://www.investinginbonds.com*. In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial websites. Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman Sachs.

The Lehman Indices and the Goldman Sachs Index will not be calculated or disseminated intra-day. The value and return of each Lehman Index is updated on a daily basis by Lehman Brothers. The value and return of the Goldman Sachs Index is updated on a daily basis by Goldman Sachs.

Each New Fund will make available through NSCC on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the Balancing Amount. The NAV for each New Fund will be calculated and disseminated daily. The Amex also intends to disseminate a variety of data with respect to each New Fund on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Amex. The closing prices of the New Funds' Deposit Securities are readily available from published or other public sources, or on-line information services provided by Merrill Lynch, IDC, Bridge, Bloomberg, Lehman Brothers and other pricing services commonly used by bond mutual funds. In addition, the website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each New Fund: (a) the prior Business Day's NAV and the mid-point of the bid-ask price at the time of calculation of such NAV ("Bid/Ask Price"),[13] and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

[12] Corporate prices are available at 20 minute intervals from Capital Management Services at *www.bondvu.com/quotmenu.htm*.

[13] The Bid-Ask Price of a New Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of each New Fund's NAV.

d. *Redemption of iShares*

Creation Unit Aggregations of each New Fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of each New Fund will be redeemed principally in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of each New Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of such New Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the New Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of any New Fund generally will be redeemable on any Business Day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund (the "Creation List") and which a redeemer will receive from the New Fund (the "Redemption List"). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Portfolio Deposit.

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the New Fund, the Trust will also deliver to the redeeming Beneficial Owner in cash the "Cash Redemption Payment." The Cash Redemption Payment on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming Beneficial Owner to the New Fund. The Trust may also make redemptions in cash in lieu of transferring one or more

Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities, on a redeeming investment banking firm's restricted list.

e. *Clearance and Settlement*

The Deposit Securities and Fund Securities of each New Fund will settle via free delivery through the Federal Reserve system for U.S. government securities and the DTC for corporate securities and non-corporate (other than U.S. government securities). The iShares will settle through the DTC. The Custodian will monitor the movement of the Deposit Securities and will instruct the movement of the iShares only upon validation that the Deposit Securities have settled correctly or that required collateral is in place.

As with the settlement of domestic ETF transactions outside of the NSCC Continuous Net Settlement System (the "CNS System"), (i) iShares of the New Funds and corporate and non-corporate securities (other than U.S. government securities) will clear and settle through DTC, and (ii) U.S. government securities and cash will clear and settle through the Federal Reserve system. More specifically, creation transactions will settle as follows. On settlement date (T + 3) an Authorized Participant will transfer Deposit Securities that are corporate and non-corporate bonds (other than U.S. government securities) through DTC to a DTC account maintained by the New Funds' Custodian, and Deposit Securities that are U.S. government securities, together with any Balancing Amount, to the Custodian through the Federal Reserve system. Once the Custodian has verified the receipt of all of the Deposit Securities (or in the case of failed delivery of one or more bonds, collateral in the amount of 105% or more of the missing Deposit Securities) and the receipt of any Balancing Amount, the Custodian will notify the Distributor and the Advisor. The Fund will issue Creation Unit Aggregations of iShares and the Custodian will deliver the iShares to the Authorized Participant through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process described above. After the Trust has received a redemption request in proper form and the Authorized Participant transfers Creation Unit Aggregations of iShares to the New Funds' Custodian through DTC, the Trust will cause the Custodian to initiate procedures to transfer the requisite Fund Securities and any Cash Redemption Payment. On T + 3, assuming the Custodian has verified receipt of the Creation Unit Aggregations, the Custodian will transfer Fund Securities that are corporate and non-corporate bonds to the Authorized Participant through DTC and Fund Securities that are U.S. government securities, together with any Cash Redemption Payment, through the Federal Reserve system.

iShares of the New Funds will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants. With respect to domestic equity-based ETFs using the CNS System, Creation Unit Aggregations of iShares are deposited or charged to the Authorized Participants' DTC accounts through the CNS System. Since creation/redemption transactions for iShares of the New Funds will not clear and settle through the CNS System, the failed delivery of one or more Deposit Securities (on a create) or one or more Fund Securities (on a redemption) will not be facilitated by the CNS System. Therefore, Authorized Participants will be required to provide collateral to cover the failed delivery of Deposit Securities in connection with an "in-kind" creation of iShares. In case of a failed delivery of one or more Deposit Securities, the New Funds will hold the collateral until the delivery of such Deposit Security. The New Funds will be protected from failure to receive the Deposit Securities because the Custodian will not effect the Fund's side of the transaction (the issuance of iShares) until the Custodian has received confirmation of receipt of the Authorized Participant's incoming Deposit Securities (or collateral for failed Deposit Securities) and Balancing Amount. In the case of redemption transactions, the New Funds will be protected from failure to receive Creation Unit Aggregations of iShares because the Custodian will not new effect the New Fund's side of the transaction (the delivery of Fund Securities and the Cash Redemption Payment) until the Transfer Agent has received confirmation of receipt of the Authorized Participant's incoming Creation Unit Aggregations. In order to simplify the transfer agency process and align the settlement of iShares of the New Funds with the settlement of the Deposit Securities and Fund Securities, Applicants plan to settle transactions in U.S. government securities, corporate bonds, non-corporate bonds (other than U.S. Government securities) and iShares on the same T + 3 settlement cycle. Amex represents that according to the Application, the clearance and settlement process will not affect the arbitrage of iShares in the New Fund.[14]

f. *Dividends and Distributions*

Dividends from net investment income will be declared and paid to Beneficial Owners of record at least annually by each New Fund. Certain of the New Funds may pay dividends, if any, on a quarterly or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but each New Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Internal Revenue Code and consistent with the 1940 Act.

Dividends and other distributions on iShares of each New Fund will be distributed on a pro rata basis to Beneficial Owners of such iShares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with amounts received from each New Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the "Service") available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

g. *Other Issues*

1. Criteria for Initial and Continued Listing

iShares are subject to the criteria for initial and continued listing of Index

[14] Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, and Michael Milone, Attorney, Division, Commission, on July 17, 2002.

Fund Shares in Rule 1002A. It is anticipated that a minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading. This minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Index.

2. Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the New Funds is $5,000 for each Fund. In addition, the annual listing fee applicable to the Funds under Section 141 of the *Amex Company Guide* will be based upon the year-end aggregate number of outstanding iShares in all funds of the Trust listed on the Exchange.

3. Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i-v). The Exchange has designated Index Fund Shares, including iShares, as eligible for this treatment. *See* Release No. 34–29063, note 9, (SR–Amex–90–31) regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

4. Rule 190

Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including iShares. Commentary .04 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

5. Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or Product Description delivery requirements applicable to iShares. The Applicants have filed with the Commission's Division of Investment Management a separate request for an exemptive order granting relief from certain prospectus delivery requirements under Section 24(d) of the 1940 Act.[15] Any product description used in reliance on a Section 24(d) exemptive order will comply with all representations made therein and all conditions thereto.

6. Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including iShares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in securities underlying the index, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[16] In addition, trading in iShares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

7. Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the Funds and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

8. Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that iShares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

9. Surveillance

Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other Index Fund Shares currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the New Funds. If the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining), or calculating the underlying Index, it would be required to erect and maintain a "Fire Wall" in a form satisfactory to the Exchange to prevent the flow of information regarding the underlying index from the index production personnel and index calculation personnel to the sales and trading personnel. The Exchange will implement surveillance procedures to monitor and prevent the misuse of material, non-public information in connection with the indices.

10. Hours of Trading/Minimum Price Variation

The New Funds will trade on the Amex until 4:15 p.m. (Eastern time). The minimum price variation for quoting will be $0.01.

Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act in general and furthers the objectives of Section 6(b) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with

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[15] *See* Investment Company Act Release No. 25595 (May 29, 2002), 67 FR 38684 (June 5, 2002) (Notice of Application for iShares, Inc., the Advisor, the Distributor, and the Trust). The Commission has granted such prospectus relief. *See* Investment Company Act Release No. 25623 (June 25, 2002).

[16] *See* Amex Rule 918C.

the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–35 and should be submitted by August 21, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of Section 6 of the Exchange Act [17] and the rules and regulations thereunder applicable to a national securities exchange.[18] Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Exchange Act.[19] The Commission believes that the Exchange's proposal to list and trade fixed income ETFs will provide investors with a convenient way of participating in the U.S. government, corporate and non-corporate (other than U.S. government) fixed income markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell securities at negotiated prices throughout the business day that replicate the performance of several portfolios of stocks. The Commission believes that the availability of the New Funds will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying U.S. Treasury, Government/Credit, or Corporate Bond Index. The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[20]

iShares Trust and iShares, Inc. are each registered in the 1940 Act as an open-ended management investment company with multiple series. iShares Trust has created (or identified for creation) 66 separate series, while iShares, Inc. has created (or identified for creation) 35 separate series. All of these series operate (or will operate) as ETFs pursuant to six prior exemptive orders from the 1940 Act, and each of the ETFs seeks to match the return of an equity securities index. Additionally, the Commission has granted the New Funds appropriate relief under various sections of the 1940 Act, including sections 6(c) and 17(b), so that each New Fund may register under the 1940 Act as an open-end fund and issue shares that are redeemable in Creation Units, shares of New Funds may trade in the secondary market at negotiated prices, and certain persons affiliated with a New Fund by reason of owning 5% or more, and in some cases more than 25%, of its outstanding securities may do in-kind purchases and redemptions of Creation Units.[21]

Barclays is registered as an investment adviser under the 1940 Act and serves as the investment adviser to the series of iShares Trust and iShares, Inc. Distributor acts as the principal underwriter and distributor for iShares Trust and iShares, Inc.

IShares Trust will create seven new series each of which operates as an ETF seeking to match the performance of a fixed income securities index. The seven indices are the following:

- Lehman Brothers 1–3 Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of between 1 and 3 years);
- Lehman Brothers 7–10 Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of between 7 and 10 years);
- Lehman 20+ Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of more than 20 years);
- Lehman U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of more than 1 year);
- Lehman Government/Credit Index (containing certain investment grade government and credit securities with maturities of more than 1 year);
- Lehman Credit VLI Index (containing the largest issues of investment grade credit securities with remaining maturities of more than 1 year); and
- Goldman Sachs InvesTop Index (containing the 100 most liquid and representative bonds in the U.S. investment grade corporate market with remaining maturities of at least 3 years).[22]

The Commission notes that this is the first ETF based on an underlying index of fixed income securities ("Fixed Income ETFs"). The New Funds will operate in substantially the same manner as Equity ETFs. Like many other ETFs, each New Fund will use a representative sampling strategy to track its index. With a sampling strategy, a New Fund will seek to match the return of its index by holding some, but not all, of the fixed income securities contained in its underlying index. In constructing the portfolio for a New Fund, Barclays will select a sample of bonds that will correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of the underlying index as a whole. Barclays may also exclude less liquid bonds in order to create a more tradable portfolio to enhance arbitrage efficiency. As with its Equity ETFs, Barclays represents that the New Funds will have a tracking error relative to the performance of their respective underlying indices of no more than 5%.

Shares of the New Funds will be issued and redeemed in Creation Units priced at NAV in exchange for Portfolio Deposits and Redemption Baskets consisting of Bonds selected and announced by Barclays at the beginning of each business day.

The Commission finds that the New Funds will provide benefits to investors in allowing investors to trade baskets of bonds in a single transaction at a cost comparable to that of trading existing

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[21] Investment Company Act Release No. 25622 (June 25, 2002).

[22] As of July 1, 2002, the composition of the Goldman Sachs Index, which underlies the iShares Goldman Sachs Corporate Bond Fund, will be expanded from 30 to 100 investment grade bonds, and the index will be permitted to include more than one bond per issuer.

equity securities and will allow investors to trade baskets of bonds throughout the day and thereby permit them to take advantage of (or protect themselves against) intra-day market movements. The New Funds may make it easier for individual investors to diversify their portfolios across a broader range of assets and will provide institutional and other large investors with an alternative to futures for various hedging and other investment strategies that involve fixed income securities. Finally, the New Funds will provide investors with a fund product that discloses its portfolio on a daily basis rather than semi-annually.

While the New Funds will be operated in a manner that closely parallels the manner in which Equity ETFs are operated, one key potential difference may be the efficiency of the arbitrage process. The arbitrage mechanism for Equity ETFs generally has caused the market price of ETF shares to track closely the NAV of the ETF shares. With respect to liquidity of the debt securities likely to be in the ETF portfolios, to the extent these debt securities could not be readily purchased and sold, the arbitrage process would be less efficient. However, the Commission notes that the New Funds will invest in some of the most liquid debt securities, including U.S. Government securities and investment grade corporate and non-corporate bonds.[23] In addition, Barclays will employ a sampling method of portfolio management that would allow the New Funds to exclude any bonds contained in an underlying index that may not have sufficient liquidity for easy trading. As a result, the Commission believes that the New Funds have addressed the liquidity issues that might hamper arbitrage.

In addition, differences in the degree of price transparency in the debt and equity markets could lead to larger discounts and premiums for the New Funds than have been experienced by Equity ETFs. Specifically, because the pricing of debt securities can be less transparent than the pricing of equity securities, arbitrageurs might account for pricing uncertainty by waiting for greater premiums or discounts to develop in the market price of the ETF shares before engaging in arbitrage transactions.

The Commission finds that because of the nature of the particular debt securities to be included in the portfolios of the New Funds (*i.e.*, U.S. Government securities and investment grade corporate and non-corporate bonds), the pricing information should be available. The Exchange has indicated that real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The Exchange has also represented that retail investors would have access to free intra-day bellwether quotes.[24] For instance, the Bond Market Association provides links to price and other bond information sources on its investor web site at *http://www.investinginbonds.com*. In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial websites. Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman Sachs & Co.

The Commission also believes that pricing information for the Treasury securities should also be available. Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG.

Amex represents that it will disseminate every 15 seconds a price calculated by Bloomberg reflecting the current value of the Portfolio Deposit on a per ETF share basis for the New Funds. To calculate this intra-day value, Bloomberg intends to use Bloomberg Generic Prices, which are current prices for individual bonds as determined by Bloomberg using an automated pricing program that analyzed multiple bond prices contributed by third-part price contributors such as broker-dealers.[25] According, Amex believes that the pricing of the bonds included in the Portfolio Deposit (and in the Redemption basket) will be transparent to anyone with access to Bloomberg systems. Because the arbitrageurs of ETF shares are generally large institutional investors, including broker-dealers, the Commission believes that these investors likely will have access to Bloomberg systems, as well as other bond pricing information sources that should permit efficient arbitrage to occur. While the Commission believes that differences in the liquidity and pricing transparency of the underlying fixed income markets, as compared to the equity markets, may result in the New Funds trading at slightly higher discounts and premiums, the Commission does not believe that this effect is likely to be so substantial as to undermine the benefits that New Funds will provide to the markets and to investors. The Commission expects the Exchange to review the discounts or premiums for these products and to respond appropriately if there is in fact a significant pricing disparity.

The Commission has also granted the issuer, Barclays, exemptive relief from Section 24(d) of the 1940 Act so that dealers may effect secondary market transaction in Barclays ETF shares without delivery a prospectus to the purchaser. Instead, under the exemption and under Amex's listing standards, sales in the secondary market must be accompanied by a "product description," describing the ETF and its shares.[26] The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which

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[23] The Lehman Government/Credit Index, Lehman Credit VLI Index, and Goldman Sachs InvesTop Index may include investment grade corporate and non-corporate bonds issued by non-U.S. issuers (sovereign, supra-national, foreign agency, and foreign local government). In Barclays' 1940 Act Application, it stated that these bonds will be dollar denominated, registered for sale in the U.S., and traded on U.S. markets at negotiated and readily available prices. Barclays does not believe that these bonds present any unique pricing or liquidity issues and does not expect the bonds to negatively affect arbitrage efficiency. The Commission notes that if any of these major characteristics of these fixed income indices (*e.g.*, investment grade, face amount issued, maturity classification) were to materially change, the Commission would expect Amex to amend these listing standards accordingly.

[24] Corporate prices are available at 20 minute intervals from Capital Management Services at *http://www.bondvu.com/quotmenu.htm*.

[25] The Lehman Indices and the Goldman Sachs Index will not be calculated or disseminated intra-day. The value and return of each Lehman Index is updated on a daily basis by Lehman Brothers. The value and return of the Goldman Sachs Index is updated on a daily basis by Goldman Sachs.

[26] Recently approved Nasdaq listing standards for ETFs clarify that NASD members trading equity ETFs through electronic communication networks ("ECNs") would be subject to NASD Rules 4420(i)(2) and 4420(j)(2) requiring the delivery of product descriptions in connection with sales of ETF shares. *See* Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002). The Commission expects NASD members to observe the same standards for the secondary market trading of New Funds.

the ETF shares trade in the secondary market, but also highlights the differences of the New Fund from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any ETF under Amex Rule 1000A the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, Fixed Income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the New Funds, in addition to details on the composition of the fixed income indices upon which they are based and how each New Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 411 ("know your customer rule") regarding transactions in such Fixed Income ETFs. Exchange Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[27] The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in New Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the New Funds is consistent with Section 6(b)(5) of the Exchange Act.[28]

The Commission also notes that the Exchange's rules and procedures should address the special concerns attendant to the trading of new derivative products. In particular, by imposing the Index Fund Share listing standards in Amex Rule 1000A, and addressing the suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the derivative nature of the New Funds.

In particular, the Commission finds that adequate rules and procedures exist to govern the trading of Index Fund Shares, including New Funds. New Funds will be deemed equity securities subject to Amex rules governing the trading of equity securities. These rules include: General and Floor Rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to Rule 117, members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, and handling of orders and reports;[29] Office Rules, such as conduct of accounts, margin rules, and advertising; [30] and Contracts in Securities, such as duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans.[31] The Amex also will consider halting trading in any series of Index Funds Shares under certain other circumstances including those set forth in Amex Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. The Commission believes that the application of these rules should strengthen the integrity of the New Funds.

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman or Goldman, is involved in the development, maintenance, and calculation of an index upon which an ETF is based.

Goldman and Lehman have represented that each have procedures in place to prevent the misuse of material, non-public information relating to the index.[32] The Commission believes that these provisions should help to address concerns raised by Goldman and Lehman's involvement in the management of the indices. The Commission believes that this should act to further minimize the possibility of manipulation.

The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the New Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

Amex has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because the 1940 Act Application relating to the New Funds has been reviewed by the Division of Investment Management and notice of the Application has been published in the **Federal Register**.[33] The Application disclosed the characteristics and risks associated with New Funds. No comments were submitted and the Commission granted the relief requested in the Application.[34] The New Funds will trade on the Exchange in the same manner as Index Fund Shares previously approved by the Commission. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[35] that the proposed rule change, (File No. SR–Amex 2001–35), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19314 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[27] Amex Rule 411.

[28] 15 U.S.C. 78f(b)(f).

[29] Amex Rules 1–236.

[30] Amex Rules 300–590.

[31] Amex Rules 700–891.

[32] The Commission expects that the procedures implemented by Goldman and Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

[33] Investment Company Act Release No. 25594 (May 29, 2002), 67 FR 38681 (June 5, 2002).

[34] Investment Company Act Release No. 25622 (June 25, 2002).

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.3–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46251; File No. SR–Amex–2002–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Trading of Trust Issued Receipts and "Other Securities"

July 24, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 8, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 3, 2002 ("Amendment No. 1"). Amendment No. 1 deleted a proposed technical change to Amex Rule 958.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 958, Commentary .10 relating to trading by regular members in securities listed pursuant to Section 107 of the Amex Company Guide (*Other Securities*) and Rule 1200 (*Rules of General Applicability*; Trust Issued Receipts). The text of the proposed rule change follows. Proposed new language is in italics; proposed deletions are in brackets.

Rule 958

* * * *

Commentary

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.10 Transactions on the Floor in index warrants [and], currency warrants, *securities listed pursuant to Section 107 of the Company Guide ("Other Securities"), and Trust Issued Receipts listed pursuant to Rules 1200 et seq. which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule, and shall only be effected* by Registered Traders who are regular members. [, and] [t]*T*ransactions by Registered Traders on the Floor in derivative products (as defined in Article I, Section 3(d) of the Exchange Constitution) which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule. In addition, Rule 111, Commentary .01 shall not apply to such transactions. (See Rule 111, Commentary .12 and Rule 114, Commentary .14.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1992, the Commission approved Rule 958, Commentary .10 relating to trading on the Floor in "derivative products," index warrants and currency warrants.[4] Commentary .10 requires that these securities be traded by Registered Traders under Rule 958, which relates to trading by Registered Options Traders ("ROTs"). Commentary .10 also states that index warrants and currency warrants may be traded by ROTs who are regular members. Options Principal Members ("OPMs") and Limited Trading Permit Holders ("LTPs") are permitted to trade derivative products under Rule 958, but are not permitted to trade index or currency warrants. All of these securities must be traded under Rule 958 only and cannot be traded by Registered Equity Traders ("RETs") or Registered Equity Market Makers ("REMMs") under Rules 111 or 114.[5] "Derivative Products" traded by Registered Traders under Rule 958 include all exchange-traded funds listed under Amex Rules 1000 and 1000A, including, for example, Nasdaq 100 Index Tracking Stock™, SPDRs®, DIAMONDS®, iShares™, and Select Sector SPDRs®.

Pursuant to Rule 958, Commentary .10, regular members trading derivative products, index warrants and currency warrants as ROTs are subject to continuous market making obligations. As such, ROTs receive market maker margin. OPMs and LTPs are permitted to trade derivative products pursuant to Article I, Section 3 and Article IV, Section 1(h), respectively, of the Exchange Constitution, and, because their trading under Rule 958 also requires ongoing market making obligations, OPMs and LTPs also receive market maker margin.[6]

When the Exchange first authorized trading in derivative products by OPMs and LTPs in 1990, the Exchange specifically intended to encourage trading crowds and competitive market making to develop in such products as SuperTrust securities (which represented interests in actual portfolios of securities such as the S&P 500 Index) and SPDRS®, which were then under development by the Exchange. In the Exchange's Rule 19b–4 filing with the Commission to authorize such OPM and LTP trading, the Exchange stated that the definition of derivative products was not intended to include products that OPMs and LTPs are not entitled to trade currently, including currency warrants, index warrants, or closed end mutual funds.[7]

The Exchange proposes to amend Rule 958, Commentary .10 to clarify that "structured products" and Trust Issued Receipts (HOLDRS℠) traded under Amex equity trading rules must be traded under Rule 958 and only by registered traders who are regular members. Structured products include all securities listed under Section 107 of the Amex Company Guide (*e.g.*, Index-Linked Notes (MITTS®, BOXES℠, TIERS℠); Equity-Linked Term Notes (*e.g.*, GOALS, ELKS℠, SPARQS℠, STRIDES℠) and Trust Preferred Securities (*e.g.*, TOPrS)). Trust Issued Receipts include HOLDRS℠ and are listed under Rules 1200 *et seq.* Therefore, these securities would not be eligible to be traded by OPMs or LTPs, or by RETs or REMMs under Rules 111 and 114. The Exchange believes that permitting regular member ROTs to trade structured products and HOLDRS℠ under Rule 958 will promote additional market depth and liquidity. These securities do not fall within the definition of "derivative products" as contemplated by the Exchange in authorizing OPMs and LTPs to trade derivative products, and, therefore, OPMs and LTPs are not permitted to trade these securities listed under Section 107 of the Company Guide or Rule 1200. The Exchange is therefore amending Rule 958, Commentary .10 to clarify this position.[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[9] in general and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect

[4] Securities Exchange Act Release No. 30768 (June 2, 1992), 57 FR 24277 (June 8, 1992) (File No. SR–Amex–92–06).

[5] The term "derivative products" is defined in Article I, Section 3(d) of the Exchange Constitution to include "standardized options and other securities issued by the Options Clearing Corporation or another limited purpose entity or trust, and which are based solely on the performance of an index or portfolio of other publicly traded securities." The definition explicitly excludes warrants of any type and closed end funds.

[6] OPMs also can trade stock options and index options. LTPs can trade index options but not stock options. As previously mentioned, OPMs and LTPs also may trade derivative products, but are not permitted to trade index or currency warrants. Derivative products cannot be traded by persons registered as RETs or REMMs under Rules 111 or 114. REMMs are not subject to Rule 958 type continuous market making obligations and do not receive "good faith" market maker margin, but instead are subject to full customer margin requirements.

[7] *See* Securities Exchange Act Release No. 28612 (November 14, 1990), 55 FR 48308 (November 20, 1990) (File No. SR–Amex–90–17).

[8] Amendment No. 1. The exchange also originally proposed a technical change to Amex Rule 958. The change is unnecessary because it was previously proposed by the Amex and approved by the Commission. (*See* Securities Exchange Act Release No. 45320 (January 18, 2002), 67 FR 3921 (January 28, 2002) (File No. SR–Amex–2001–79).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the amended proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of the proposed rule change and Amendment No. 1 will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–50 and should be submitted by August 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19315 Filed 7–30–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46255; File No. SR–CHX–2002–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

July 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (the "Schedule") to include a new tape credit for lead market makers in cabinet securities. The text of the proposed rule change follows. Proposed new language is in italic.

Membership Dues and Fees

A.–L. No change to text.

M. Credits

1. Specialist Credits

No change to text.

2. Floor Broker Credits

No change to text.

3. Credits for Qualified Market Makers Registered in Cabinet Securities

Effective July 1, 2002, total monthly fees owed by a market maker registered in a cabinet security will be reduced (and qualified market makers will be paid each month for any unused credits) by a Transaction Credit. "Transaction Credit" when used in connection with a credit for a Qualified Market Maker registered in a cabinet security means 18% of the monthly CHX tape revenue from the Consolidated Tape Association generated by the security in which the market maker is registered. To the extent that CHX tape revenue is subject to a year-end adjustment, market maker credits may be adjusted accordingly. "Qualified Market Maker" means a lead market maker who is registered as such in 100 or more cabinet securities.

N. No change to text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Schedule to include a new tape credit for lead market makers in cabinet securities. Under Article XXXIV of the Exchange's Rules, a market maker can be appointed to disseminate continuous two-sided quotations in issues that are not assigned to a specialist firm.[3] The first market maker to assume that role in a particular issue is considered the "lead" or "primary" market marker.[4] Issues in which a lead market maker disseminates a continuous two-sided market are often traded by the Exchange's floor brokers, but are not traded through the Exchange's MAX® system, its automated order routing and execution system.

The Exchange has proposed this rule change to reward lead market makers who undertake that role for a significant number of cabinet securities by implementing an 18% tape credit with respect to those issues.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Article XXXIV, Rule 3, Interpretation .02.

[4] Article XXXIV, Rule 3, Interpretation .02(6).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, in that it provides for equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to the File No. SR–CHX–2002–21 and should be submitted by August 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19313 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46248; File No. SR–NASD–2002–95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend the Manning Pilot on the OTCBB

July 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. On July 19, 2002, the NASD submitted Amendment No. 1 to the proposal.[4] The Commission is publishing this amended notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* letter from Jeffrey S. Davis, Nasdaq, to Nancy Sanow, Division of Market Regulation, Commission, dated July 19, 2002 ("Amendment No. 1"). In Amendment No. 1, the NASD made certain technical corrections to the narrative description of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This is a proposal to extend through December 15, 2002, two pilot programs contained in NASD Rule 6541, which prohibits member firms from trading ahead of customer limit orders in designated OTC Bulletin Board ("OTCBB") securities. NASD Rule 6541 was established on a pilot basis through February 8, 2002. Portions of NASD Rule 6541 were separately amended for a pilot period that originally ran for a three-month period from August 1, 2001, to November 1, 2001. This pilot period was extended through January 14, 2002, and again until July 15, 2002. Nasdaq is proposing no changes to the language of NASD Rule 6541.

Pursuant to Rule 19b–4(f) under the Act, Nasdaq has designated this proposal as non-controversial and has provided the Commission with the 5-day notice required by Rule 19b–4(f)(6)(iii). Nasdaq has requested that the Commission waive the 30-day pre-operative requirement contained in Rule 19b–4(f)(6)(iii). If such waiver is granted by the Commission, the two pilots programs would continue in effect until December 15, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 8, 2001, the Commission approved new NASD Rule 6541 which, on a pilot basis, extended the basic customer limit order protection principles—that presently apply to Nasdaq securities—to designated securities traded on the OTCBB.[5] NASD Rule 6541(a), in general, prohibits member firms that accept customer limit orders in these securities from "trading

[5] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (approving SR–NASD–00–22).

ahead" of their customers for their own account at prices equal or superior to the limit orders, without executing them at the limit price. NASD Rule 6541(b) requires member firms to provide a minimum level of price improvement to incoming orders in OTCBB securities if the firm chooses to trade as principal with those incoming orders while holding customer limit orders. If a member firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders.

The limit order protection embodied in NASD Rule 6541 is an investor protection tool based on NASD IM–2110–2 (commonly known as the "Manning Rule"). In the *Manning* case, the NASD found and the Commission affirmed that a member firm that accepts a customer limit order has a fiduciary duty not to trade for its own account at prices more favorable than the customer order.[6] NASD Rule 6541 expands to the trading of OTCBB the protections that NASD IM–2110–2 provides to the trading of Nasdaq National Market and SmallCap securities.

On March 2, 2001, and April 6, 2001, the Commission approved modifications to NASD IM–2110–2.[7] In general, these modifications narrowed the amount of price improvement required to avoid the obligation to fill a customer limit order, in recognition of the introduction of decimal pricing of Nasdaq securities. On July 26, 2001, Nasdaq filed and implemented an amendment to NASD Rule 6541(b) (SR–NASD–2001–39) that likewise narrowed the amount of required price improvement for trading of OTCBB securities.[8] As originally drafted, NASD Rule 6541(b) required price improvement of at least the lesser of $0.05 or one-half of the current inside spread. Under SR–NASD–2001–39, the price improvement requirement was narrowed to $0.01 or one-half the inside spread (whichever is less) for a market maker wishing to trade in front of a held customer limit order that is priced at or inside the current inside spread for an OTCBB security. For a customer limit order priced less than $0.01 outside the inside spread, however, SR–NASD–2001–39 required a market maker seeking to trade in front of such limit order to execute its trades at a price at least equal to the inside bid (with respect to a held customer limit order to buy) or inside offer (for a held order to sell). Moreover, SR–NASD–2001–39 provided that limit order protection would not apply to a customer limit order that was priced more than $0.01 outside the current inside spread. The amendment to NASD Rule 6541(b) adopted by SR–NASD–2001–39 was effective for a three-month pilot period that ended on November 1, 2001.

At the expiration of that period, Nasdaq amended Rule 6541(b) to eliminate the minimum price improvement requirement for limit orders outside the inside spread.[9] Accordingly, any degree of price improvement would relieve a market maker from the obligation to fill a limit order that is outside of the inside spread. At the same time, Nasdaq eliminated the provision of the pilot that provided no limit order protection to customer limit orders that are priced more than $0.01 outside the current inside spread. Thus, the basic prohibition on trading ahead of a customer limit order at a price equal or superior to the limit order, without filling the limit order, applies to all limit orders in OTCBB securities covered by NASD Rule 6541. The amount of required price improvement for limit orders priced inside the current inside spread remained the lesser of $0.01 or one-half of the current inside spread.

Nasdaq believes that a six-month extension of both existing pilot programs is necessary to allow Nasdaq to complete its analysis of the impact of NASD Rule 6541 on trading in this market. Currently, it is Nasdaq's intent to implement limit order protection on a permanent basis at or before the end of this pilot extension.[10]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act[11] in general, and Section 15A(b)(6) of the Act[12] in particular, in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) maintain the current rule language without a lapse, in keeping with the public interest and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by Nasdaq as a non-controversial rule change pursuant to Rule 19b–4(f)(6) under the Act. Nasdaq represents that the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; therefore, it has become immediately effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

Nasdaq has requested that the Commission waive the 30-day pre-operative period required by Rule 19b–4(f)(6), which would allow the proposal to become operative immediately. The Commission believes that continuing the two pilot programs will further the aim of protecting investors and the

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[6] *See In re E.F. Hutton & Co.*, Securities Exchange Act Release No. 25887 (July 6, 1988) ("Manning").

[7] *See* Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001) (approving SR–NASD–2001–09); Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (approving SR–NASD–2001–27). *See also* Securities Exchange Act Release No. 44529 (July 9, 2001), 66 FR 37082 (July 16, 2001) (SR–NASD–2001–43).

[8] *See* Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001).

[9] *See* Securities Exchange Act Release No. 45011 (November 1, 2001), 66 FR 56587 (November 8, 2001) (SR–NASD–2001–78).

[10] The Commission notes that permanent approval of limit order protection for OTCBB securities would require the NASD to submit a proposed rule change to this effect under Section 19(b) of the Act, 15, U.S.C. 78s(b).

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C 78s(b)(3)(A).

[14] Because the NASD amended the proposed rule change, the 60-day abrogation period runs from the date of filing of the amendment (July 19, 2002) rather than the date of filing of the original submission (July 16, 2002).

public interest.[15] Accordingly, the Commission hereby grants Nasdaq's request.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–95 and should be submitted by August 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19316 Filed 7–30–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46257; File No. SR–OCC–2002–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Providing Clearing Services to Options Exchanges That Are Not Stockholders

July 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 25, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on July 9, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's by-laws and rules in order that OCC could provide clearing services to new options exchanges without having those exchanges become stockholders of OCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to allow OCC to provide clearing services to new options exchanges without issuing new equity to such exchanges. Under OCC's existing by-laws, any new options market desiring to clear options transactions through OCC is required to purchase common stock in OCC and to execute the Stockholders Agreement to which the existing stockholder exchanges are parties. Management of OCC has concluded that the practice of issuing new equity to each market for which it provides clearing services is no longer either necessary or appropriate. Indeed, the practice has already been abandoned with respect to providing clearing services to markets trading only security futures or commodity futures.[3] The present rule change would permit OCC to clear options transactions for additional exchanges on a similar basis. OCC believes that there is no more reason to permit or require new options exchanges to become OCC stockholders than to permit or require those other markets to do so.

Exchange ownership of clearing organizations is not required under Section 17A of the Act or of any other provision of the federal securities laws. State law at one time made such ownership necessary. Article VIII of the Uniform Commercial Code ("UCC"), as in effect in Illinois prior to the 1973 amendment, defined a "clearing corporation" as "a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934."[4] The UCC as now in effect in all U.S. jurisdictions no longer defines "clearing organization" in terms of ownership, and therefore, the UCC is no longer a constraint in determining the ownership of OCC.

Not only is there no continuing need to have new markets seeking clearing services become stockholders, there are a number of reasons not to do so. First, increasing the number of Class A and Class B stockholders could adversely affect OCC's ability to pursue new business opportunities.[5] Stock ownership gives the existing participant exchanges the right to a representative on OCC's board of directors and veto rights over certain significant transactions (*e.g.*, a merger) or amendments to certain provisions of the constituent documents (*e.g.*, Article VII of the by-laws regarding exchange qualifications). The participant exchanges have divergent and sometimes conflicting interests, and this will only become more prevalent as the number and types of options exchanges proliferates. Expanding the number of stockholders with veto rights increases the likelihood that a single stockholder might block action that is in the best interests of OCC and its other stockholders. Second, continuing to add

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[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Article XII of the by-laws permits OCC to clear "security futures exchanges" without issuing equity to such exchanges and permits OCC to provide clearing services for other futures products on the same basis (Securities Exchange Act Release Nos. 44434 (June 15, 2001), 66 FR 33283 [File No. SR–OCC–2001–05] and 45946 (May 16, 2002), 67 FR 36056 [File No. SR–OCC–2001–16]).

[4] The 1973 amendment identified certain other entities that could be owners of a clearing corporation while retaining securities exchanges or associations among the permitted owners.

[5] Holders of OCC Class A common stock have the right, by majority vote, to elect member directors of OCC. Holders of Class B common stock vote on the election of the management director and exchange directors of OCC. In addition, the votes of Class II common stock holders are required to amend OCC's certificate of incorporation, to adopt an agreement of merger or consolidation of OCC with or into any other corporation, to authorize or consent to the sale, lease, or exchange of all or substantially all of the property and assets of OCC, to authorize or consent to the dissolution of OCC, to receive dividends, to receive assets upon partial or final liquidation or dissolution of OCC.

Class A and B stockholders could soon result in substantial increases in the size of the OCC board. After the number of exchange directors reaches seven, each addition of an exchange director would require the addition of another member director in order to maintain the allocation between member directors and exchange directors called for under OCC's constituent documents. Ultimately, the OCC board could reach an unwieldy size. Finally, issuing additional Class A and Class B common stock for each new market would continually dilute the interests of the existing participant exchanges.

OCC proposes instead to create a new category of "non-equity exchange" to which markets that desire options clearing services from OCC would be admitted. In lieu of purchasing common stock of OCC, new participant exchanges would be required to enter into a Noteholders Agreement and to purchase a promissory note from OCC in the principal amount of $1 million, which is the amount currently specified in Article VII, Section 2 of the by-laws as the maximum purchase price for additional equity currently required to be purchased by a new equity exchange. Instead of the equity interest received by such equity exchanges, non-equity exchanges would receive promissory notes bearing an interest rate return on their investments as described below.

Non-equity exchanges will be subject to admission requirements identical to those imposed on the current participant exchanges that hold equity. Among other things, new participant exchanges must be registered under the Act and must be in compliance with the rules promulgated thereunder by the Commission and must furnish information to OCC concerning such things as the exchange's operations, management, rules, and membership.

OCC will provide clearing services to non-equity exchanges on the same basis that it provides services to the equity exchanges. Non-equity exchanges would become parties to the existing Restated Participant Exchange Agreement in the same way that new participant exchanges have done in the past. No modification to the agreement is necessary because it does not address matters relating to an exchange's role as stockholder, which are confined to the Stockholders Agreement.

The rights of the existing participant exchanges as stockholders, including their rights to representation on OCC's board and their veto rights, have been preserved in Article VIIA relating to equity exchanges. Although non-equity exchanges will not have representation on OCC's board, their members that are clearing members of OCC would be "participants" in OCC within the meaning of Section 17A(b)(3)(C) of the Act and would be entitled under that provision to "fair representation . . . in the selection of [OCC's] directors and administration of its affairs." Fair representation would be assured because participants that are members of non-equity exchanges would participate in the selection of OCC's member directors on the same basis as members of the equity exchanges.[6]

The Noteholders Agreement proposed in this rule filing contains restrictions on the transfer of promissory notes issued to non-equity exchanges and provides for the repurchase of the notes by OCC under certain circumstances parallel to the provisions applicable to the repurchase of Class A and Class B stock.[7] These provisions are designed to ensure that the promissory notes remain in the hands of participant exchanges of OCC and to give withdrawing exchanges the right to "put" the notes back to OCC. The promissory notes will bear interest at a rate determined by reference to provisions of the Internal Revenue Code.[8] The interest rate will be reset annually. Interest will be payable annually in arrears on the promissory note's anniversary date. If a promissory note is repurchased by OCC in less than six years from the date of the initial sale of the note, the purchase price of the note will be the principal amount plus any accrued and unpaid interest less a reduction based on the length of time since initial sale.[9] After six years, there would be no reduction, and the promissory notes would be redeemable at their aggregate principal amount plus any accrued and unpaid interest. Under the terms of Section VIII of the Noteholders Agreement, OCC's obligations to a noteholder are subordinated to the claims of all other creditors of OCC except that the obligation to repurchase a note from any noteholder ranks *pari passu* with OCC's obligations to repurchase notes from any other noteholders and to repurchase Class A or Class B common stock from any stockholder. The provisions of the Noteholders Agreement are generally parallel to corresponding provisions of the Stockholders Agreement.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act because it facilitates the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities and ensures fair representation of participants and stockholders of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent

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[6] OCC has represented to the Commission that OCC management will (1) provide non-equity exchanges with the opportunity to make presentations to the OCC board or the appropriate board committee upon request and (2) will promptly pass on to non-equity exchanges any information that management considers to be of competitive significance to such exchanges disclosed to exchange directors at or in connection with any meeting or action of the OCC board or any board committee. Letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, OCC (July 8, 2002).

[7] The Noteholders Agreement is attached as Exhibit I to OCC's filing.

[8] The interest rate for the promissory notes will be equal to the short-term applicable federal rate for purposes of Section 1274(d) of the Internal Revenue Code of 1986.

[9] The amount of the reduction, which is set forth in the Noteholders Agreement, would be $300,000 if the note is purchased by OCC within two years of its original sell date, $240,000 if more than two years but less than three years, $180,000 if more than three years but less than four years, $120,000 if more than four years but less than five years, and $60,000 if more than five years but less than six years.

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–02 and should be submitted by August 21, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19312 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 30, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Randy Christopherson, Director, Denver Finance Center, Small Business Administration, 721 19th Street, Denver, CO. 80202.

FOR FURTHER INFORMATION CONTACT: Randy Christopherson, Director, (313) 844–0054 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Transaction Report Loans Serviced by Lenders.

Form No: 172.

Description of Respondents: Small Business Administration Participating Lenders.

Annual Responses: 25,284.

Annual Burden: 3,865.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–19290 Filed 7–30–02; 8:45 am]

BILLING CODE 8025–01–P

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 30, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Linda Waters, Program Analyst, Office Government Contracting, Small Business Administration, 409 3rd Street, SW., Suite 8800, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Linda Waters, Program Analyst, (202) 205–7315 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Small Business Administration, Application for Certificate of Competency.

Form No: 1531.

Description of Respondents: Small Business Owners.

Annual Responses: 300.

Annual Burden: 2,400.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–19291 Filed 7–30–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3414]

State of New York (Amendment #2)

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 14, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is February 17, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 25, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–19289 Filed 7–30–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4076]

Culturally Significant Objects Imported for Exhibition; *Determinations:* "Art Through the Ages: Masterpieces of Painting from Titian to Picasso"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Art Through the Ages: Masterpieces of Painting from Titian to Picasso," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Hermitage Museum, Las Vegas, Nevada, from on or about August 30, 2002, to on or about March 2, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: July 25, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–19343 Filed 7–30–02; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Market Access in the Free Trade Area of the Americas Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning market access and other issues in the Free Trade Area of the Americas negotiations.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seeks public comment on the effects of the elimination of tariffs and nontariff barriers to trade and other market liberalization among Free Trade Area of the Americas (FTAA) participating countries and on any other matter relevant to the FTAA agreement.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by August 21, 2002. A hearing will be held in Washington, DC, beginning on September 9, 2002, and will continue as necessary on subsequent days. Written comments are due by noon, September 23, 2002.

ADDRESSES: Submissions by electronic mail:

FR0023@ustr.gov (notice of intent to testify and written testimony);
FR0024@ustr.gov (written comments).
Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at 202/395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, (202) 395–3475. All other questions should be directed to Karen Lezny, Deputy Assistant United States Trade Representative for the Free Trade Area of the Americas, (202) 395–5190, or William Busis, Associate General Counsel, (202) 395–3150.

SUPPLEMENTARY INFORMATION:

1. Background

On December 11, 1994, the 34 democratically-elected leaders in the Western Hemisphere met in Miami, Florida for the first Summit of the Americas. They agreed to conclude negotiations on the Free Trade Area of the Americas by the year 2005, and to achieve concrete progress toward that objective by the end of the 20th century. Since that time, the 34 Western Hemisphere ministers responsible for trade have met on several occasions.

At a meeting in San Jose, Costa Rica in March of 1998, the trade ministers recommended that the Western Hemisphere leaders initiate the negotiations and provided them recommendations on the structure, objectives, principles, and venues of the negotiations. A month later the 34 leaders initiated the Free Trade Area of the Americas negotiations at the Summit of the Americas meeting in Santiago, Chile. The leaders agreed to the general framework proposed by the 34 trade ministers, which included the establishment initially of nine negotiating groups to be guided by general principles and objectives and specific objectives as agreed by the ministers in March 1998.

The work of the negotiating groups began in September 1998. In anticipation of that activity, the TPSC published a notice in the **Federal Register** requesting public comments (63 FR 128, July 6, 1998) on what should be the U.S. positions and objectives with respect to each of the negotiating groups. This notice also stated that USTR would seek additional public comment separately on other issues related to the FTAA, including the economic effects of the elimination of tariffs and nontariff barriers to trade among FTAA participating countries.

In April 2001, the 34 trade ministers met in Buenos Aires, Argentina and mandated that the market access negotiations be initiated no later than May 15, 2002. The ministers also decided to make public the FTAA preliminary draft consolidated text, which has been posted on the FTAA website at *http://www.ftaa-alca.org*. The TPSC subsequently issued a notice inviting public comments on the draft text (66 FR 36,614, July 12, 2001).

On April 22, 2001, the 34 leaders at the Summit of the Americas meeting in Quebec City, Quebec confirmed that the negotiation of the FTAA Agreement would conclude no later than January of 2005.

In May of 2002 the Vice-Ministers Responsible for Trade in the FTAA countries established methods and modalities for the market access negotiations. Additional details can be found at *http://www.ftaa-alca.org/tn20e.doc*. Initial offers on the elimination of tariff, services, investment and government procurement barriers to trade and investment among FTAA participating countries will be presented between December 15, 2002 and February 15, 2003. Requests for improvements to offers will be presented between February 16 and June 15, 2003. The process for exchanging revised offers will be initiated on July 15, 2003. In addition, the parties are in the process of negotiating commitments concerning intellectual property rights.

2. Public Comments and Testimony

As provided in the regulations of the Trade Policy Staff Committee (15 CFR part 2003), the Chairman of the TPSC invites written comments and/or oral testimony of interested parties at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of an FTAA country, any concession which should be sought by the United States, or any other matter relevant to the FTAA. The TPSC invites comments and testimony on all of these matters, and in light of the schedule for presenting market access offers, in particular seeks comments and testimony addressed to:

(a) Economic benefits and costs to U.S. producers and consumers of the elimination of tariffs on trade between the United States and the 33 other FTAA countries, and in the case of articles for which immediate elimination of tariffs is not recommended, the recommended staging schedule for such elimination.

(b) Existing nontariff barriers to trade in goods between United States and the 33 other FTAA countries and the economic benefits and costs of removing those barriers.

(c) Existing barriers to trade in services and government procurement between the United States and the 33 other FTAA countries and the economic benefits and costs of removing such barriers.

(d) Economic benefits and costs to U.S. producers and consumers of strengthening the protection and enforcement of intellectual property rights (IPR) in FTAA countries and improving market access for products subject to IPR protection.

(e) Existing restrictions on investment flows between United States and the 33

other FTAA countries and the economic benefits and costs of eliminating any such restrictions.

Persons who submitted comments pursuant to a previous request for public comments concerning the FTAA should not resubmit those comments in response to this notice.

A hearing will be held on September 9, 2002, in Rooms 1 and 2, 1724 F Street, NW, Washington, DC 20508. If necessary, the hearing will continue on subsequent days.

Persons wishing to testify at the hearing must provide written notification of their intention by August 21, 2002. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact Gloria Blue.

Interested persons, including persons who participate in the hearing, may submit written comments by noon, September 23, 2002. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter including, as applicable, the product(s) (with HTSUS numbers) or service sector(s).

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "Free Trade Area of the Americas" followed by (as appropriate) "Notice of Intent to Testify", "Testimony", or "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet server *(http://www.ustr.gov)*.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–19372 Filed 7–26–02; 4:30 pm]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–243]

WTO Dispute Settlement Proceeding Regarding United States—Rules of Origin for Textiles and Apparel Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on June 24, 2002, a dispute settlement panel was established at the request of the Government of India under the Marrakesh Agreement Establishing the World Trade Organization ("WTO") to examine Section 334 of the Uruguay Round Agreements Act ("URAA"), its implementing legislation, and Section 405 of the Trade and Development Act of 2000. India alleges that these U.S. statutes are inconsistent with the obligations of the United States under the Agreement on Rules of Origin ("ARO"). USTR invites written comment from the public concerning the issues raised in this dispute. Bangladesh, China, the European Communities ("EC"), Pakistan and the Philippines have notified the WTO of their intention to participate as third parties.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 26, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0015@usstr.gov*, Attn: "US-India Textile ROO Dispute" in the subject line, or (ii) by mail, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: India Textile ROO Dispute, with a confirmation copy sent electronically or by fax to 202–395–3640.

FOR FURTHER INFORMATION CONTACT: Mélida N. Hodgson, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (202) 395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that on June 24, 2002, a WTO dispute settlement panel was established at the

request of India. The Panel, which would hold its meetings in Geneva, Switzerland, is expected to issue a report on its findings and recommendations within six to nine months after its establishment.

Major Issues Raised and Legal Basis of the Complaint

India alleges that Section 334 (1996), and its modification Section 405 (2000), are inconsistent with certain obligations of the United States under the ARO. Section 334 established certain rules of origin applicable to textile and apparel products to harmonize U.S. practice with that of our trading partners. Section 405 amended Section 334 to resolve certain claims raised by the EC in dispute settlement proceedings challenging our textile rules of origin implementing the URAA.

Specifically, India alleges that Section 334 and Section 405 wrongly differentiated between textile and apparel products and industrial products in order to protect the US industry. India further alleges that Sections 334 and 405 are inconsistent with Article 2(b)–(e) of ARO, because, inter alia: their rules are complex and disrupt and restrict trade; they impose prerequisite conditions not related to manufacturing or processing; discriminate between domestic and WTO Member goods, as well between Member goods; and are not administered in a consistent, impartial manner.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR0015@ustr.gov*, with "India Textile ROO Dispute" in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to 202–395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 3, First Floor, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–243, US-India Textile ROO Dispute) may be made by calling the Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Bruce R. Hirsh,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–19282 Filed 7–30–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–12690]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0139, 2115–0035, 2115–0598, 2115–0556, and 2115–0111

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of five Information Collection Requests (ICRs). The ICRs comprise (1) Ships' Stores Certification for Hazardous Materials Aboard Ships; (2) Report of Defect or Noncompliance and Report of Campaign Update; (3) Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters; (4) (a) Reports of MARPOL 73/78 Oil, Noxious Liquid Substances (NLSs) and Garbage Discharge, (b) Application for Equivalents, Exemptions, and Alternatives, and (c) Voluntary Reports of Pollution Sightings; and (5) Course Approvals for Merchant Marine Training Schools. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before September 30, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–12690] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents

mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. DOT, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document by docket number [USCG 2002–12670], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Ships' Stores Certification for Hazardous Materials Aboard Ships.

OMB Control Number: 2115–0139.

Summary: The information is needed to ensure that personnel aboard ships become aware of the proper usage and stowage for certain hazardous materials. The form provides for waivers of products in special classes of DOT hazards.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to prescribe regulations for the transportation, stowage, and use of ships' stores and supplies of a dangerous nature. 46 CFR part 147 prescribes the regulations for hazardous ships' stores.

Respondents: Suppliers and manufacturers of hazardous products used on ships.

Frequency: On occasion.

Burden Estimate: The estimated burden is 6 hours a year.

2. *Title:* Report of Defect or Noncompliance and Report of Campaign Update.

OMB Control Number: 2115–0035.

Summary: The information in this report is needed to ensure manufacturers' compliance with requirements for notifying consumers of defects in recreational boats, inboard engines, outboard motors, and sterndrive units.

Need: 46 U.S.C. 4310 requires manufacturers of boats and engines to notify consumers, both of failures to comply with applicable standards of the Coast Guard for safety and of defects that create a substantial risk of personal injury to the public. 46 U.S.C. 4310 and 33 CFR part 179 prescribe requirements for certain reports to the Coast Guard concerning potential impacts on recreational boating safety, how problems will be corrected, and progress in notifying owners and repairing affected units.

Respondents: Manufacturers of recreational boats, inboard engines, outboard motors, and sterndrive units.

Frequency: Quarterly.

Burden Estimate: The estimated burden is 328 hours a year.

3. *Title:* Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters.

OMB Control Number: 2115–0598.

Summary: The information is needed to carry out the reporting requirements of 16 U.S.C. 4711 regarding the management of ballast water, to prevent the introduction and spread of aquatic-nuisance species into U.S. waters.

Need: The information is needed to ensure compliance with the requirements in 33 CFR Part 151, subparts C and D. It is also needed for research and periodic reporting to Congress.

Respondents: Owners and operators of certain vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 33,500 hours a year.

4. *Title:* (a) Reports of MARPOL 73/78 Oil, Noxious Liquid Substances (NLS) and Garbage Discharge; (b) Application for Equivalents, Exemptions, and Alternatives; and (c) Voluntary Reports of Pollution Sightings.

OMB Control Number: 2115–0556.

Summary: The information is needed by the Coast Guard to ensure compliance with pollution-prevention standards and to respond to and investigate pollution incidents.

Need: 33 U.S.C. 1321 and 1903 authorize the Coast Guard to establish regulations to promote the protection of the environment. 33 CFR subchapter O (parts 151 to 159) sets forth these regulations.

Respondents: Owners and operators of vessels for (a) and (b), and the public for (c).

Frequency: On occasion.

Burden Estimate: The estimated burden is 10 hours a year.

5. *Title:* Course Approvals for Merchant Marine Training Schools.

OMB Control Number: 2115–0111.

Summary: The information is needed to ensure that merchant marine training schools meet minimal statutory requirements. The information is used to approve the curricula, facilities, and faculties for these schools.

Need: 46 U.S.C. 7315 authorizes an applicant for a license or document applicant to substitute the completion of an approved course for a portion of the required sea service. 46 CFR 10.302 prescribes the Coast Guard regulations for course approval.

Respondents: Merchant marine training schools.

Frequency: Five years for reporting; one year for recordkeeping.

Burden Estimate: The estimated burden is 16,988 hours a year.

Dated: July 5, 2002.

N.S. Heiner,

Acting, Director of Information and Technology.

[FR Doc. 02–19361 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Updated Noise Exposure Maps for San Francisco International Airport, San Francisco, CA

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Updated Noise Exposure Maps submitted by the city and county of San Francisco for the San Francisco International Airport, San Francisco, California under the provisions of Title 1 of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and Title 14, Code of Federal Regulations (CFR), Part 150, are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the Updated Noise Exposure Maps for the San Francisco International Airport, San Francisco, California is July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, Supervisory.

Planning and Programming Section, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Brulingame, California 94010. Telephone: (415) 876–2805. Documents reflecting this FAA action may be review at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Updated Noise Exposure Maps submitted for the San Francisco International Airport, San Francisco, California are in compliance with applicable requirements of Federal Aviation Regulation (FAR) part 150, effective July 17, 2002.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act", an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title 1 of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes of the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the Updated Noise Exposure Maps and supporting documentation submitted by the city and county of San Francisco. The specific maps under consideration are Figure 5 "2001 Noise Exposure Map" and Exhibit 2, "2006 Noise Exposure Map" in the submission. The FAA has determined that these maps for the San Francisco International Airport are in compliance with applicable requirements. This determination is effective on July 17, 2002. FAA's acceptance of an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix (A) of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map, submitted under Section 103 of the Act, it should be noted that the FAA is not involved in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of the Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying on the surface requests exclusively with the airport operator, which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the updated Noise Exposure Maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Boulevard, Hawthorne, CA 90261.

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010.

City and County of San Francisco, San Francisco International Airport, San Francisco, California 94128.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on July 17, 2002.

Ellsworth Chan,

Manager, Safety and Standards Branch, AWP–620, Western-Pacific Region.

[FR Doc. 02–19364 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Offices Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Offices Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental Offices PRB. The purposes of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions.

COMPOSITION OF DEPARTMENTAL PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of PRB members are as follows:

Tony Brown, Director, Community Development & Financial Institutions
Art Cameron, Deputy Assistant Secretary, Appropriations Management, Legislative Affairs
Marie E. Canales, Acting Deputy Assistant Secretary, Information Systems & CIO
J. Patrick Cave, Deputy Assistant Secretary, Financial Institutions & GSE Policy
Mary Chaves, Director, Office of International Trade
Richard Clarida, Assistant Secretary, Economic Policy
Marcia H. Coates, Director, Office of Equal Opportunity Program
Edward J. DeMarco, Director, Office of Government Sponsored Enterprises Policy
Kay Frances Dolan, Deputy Assistant Secretary (Human Resources)
John Duncan, Assistant Secretary, Legislative Affairs
Joseph Englehard, Deputy Assistant Secretary (Trade & Investment Policy)
James Fall, III, Deputy Assistant Secretary (Technical Assistance Policy)
Ronald A. Glaser, Director, Office of Personnel Policy
Donald Hammond, Fiscal Assistant Secretary
Barry K. Hudson, Director, Office of Financial Management
Roger E. Kodat, Deputy Assistant Secretary, Government Financial Policy
Donald W. Kiefer, Director, Office of Tax Analysis
Jeffrey Kupfer, Executive Secretary
Kenneth Lawson, Assistant Secretary, Enforcement
David Lebryk, Deputy Assistant Secretary (Fiscal Operations and Policy)
April Lehman, White House Liaison
Randal Quarles, Assistant Secretary, International Affairs

James R. Lingebach, Director, Office of Accounting and Internal Control
David Loevinger, Director, East Asian Nations
William C. Murden, Director, Office of International Banking and Securities Markets
Julie Myers, Deputy Assistant Secretary, Financial Crimes
Pamela Olson, Deputy Assistant Secretary, Tax Policy
Joel D. Platt, Director, Revenue Estimating
Steven C. Radelet, Deputy Assistant Secretary (Asia, the America and Africa)
Teresa Mullett Ressel, Deputy Assistant Secretary, Management & Budget
Corey Rindner, Director, Office of Procurement
Brian Roseboro, Assistant Secretary, Financial Markets
Gay H. Sills, Director, Office of International Investment
Kent Smetters, Deputy Assistant Secretary (Policy Coordination)
Mark D. Sobel, Deputy Assistant Secretary (International Money & Financial Policy)
Erin Solomon, Deputy Assistant Secretary (Regulatory Affairs)
Mark Warshawsky, Deputy Assistant Secretary (Microeconomic Analysis)
Willie E. Wright, Jr., Chief, Management & Administrative Programs
Juan Zarate, Deputy Assistant Secretary, Terrorism & Violent Crimes

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Barbara Borg, Department of the Treasury, Director, Office of Personnel Resources, Metropolitan Square Building, Room 6109, 15th and Pennsylvania Ave., NW., Washington, DC 20220, Telephone: (202) 622–2209.

This notice does not meet the Department's criteria for significant regulations.

Barbara Borg,

Director, Office of Personnel Resources.

[FR Doc. 02–19332 Filed 7–30–02; 8:45 am]

BILLING CODE 4811–20–M

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(C)(4), this notice announces the appointment of members of the Department PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

COMPOSITION OF DEPARTMENTAL PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Edward R. KIngman, Assistant Secretary for Management and CFO—Chairperson
Kay Frances Dolan, DAS for Human Resources
David A. Lebryk, Deputy Assistant Secretary for Fiscal Operations and Policy
Donald V. Hammond, Fiscal Assistant Secretary
Timothy D. Adams, Chief of Staff
Jeffrey F. Kupfer, Executive Secretary
Michelle A. Davis, Assistant Secretary (Public Affairs)
Kenneth E. Lawson, Assistant Secretary (Enforcement)
Brian C. Roseboro, Assistant Secretary (Financial Markets)
Juan C. Zarate, Deputy Assistant Secretary (Terrorism and Violent Crimes)
Teresa Mullet Ressel, Deputy Assistant Secretary (Management and Budget)
Willie E. Wright, Jr., Chief, Management and Administrative Programs
Bradley A. Buckles, Director, Bureau of Alcohol, Tobacco and Firearms
Mark Logan, Assistant Director (Liaison and Public Information), Bureau of Alcohol, Tobacco and Firearms
Candace E. Moberly, Deputy Assistant Director (Management), Bureau of Alcohol, Tobacco and Firearms
Robert C. Bonner, Commissioner, U.S. Customs Service
Douglas M. Browning, Deputy Commissioner, U.S. Customs Service
Marjorie L. Budd, Assistant Commissioner (Training and Development), U.S. Customs Service
Brian L. Stafford, Director, U.S. Secret Service
Carlton D. Spriggs, Deputy Director, U.S. Secret Service
Henrietta H. Fore, Director U.S. Mint
Jay M. Weinstein, Associate Director (Policy & Management)/CFO, U.S. Mint
Richard L. Gregg, Commissioner, Financial Management Service
Kenneth R. Papaj, Deputy Commissioner, Financial Management Service
Thomas A. Ferguson, Director, Bureau of Engraving and Printing
Carla F. Kidwell, Associate Director (Technology), Bureau of Engraving and Printing
John M. Dalrymple, Commissioner, Wage and Investment Division, Internal Revenue Service
David A. Mader, Assistant Deputy Commissioner Operations, Internal Revenue Service
Deborah M. Nolan, Deputy Commissioner, Large and Mid-Sized Business Division, Internal Revenue Service
Evelyn A. Petschek, Commissioner, Tax Exempt and Government Entities Division, Internal Revenue Service
Toni L. Zimmerman, Deputy CIO (Operations), Internal Revenue Service
Henry O. Lamar, Deputy National Taxpayer Advocate, Internal Revenue Service
Helen Bolton, Director, HR Policy and Programs, Information Systems, Internal Revenue Service
Frederick Van Zeck, Commissioner, Bureau of the Public Debt
Anne M. Meister, Deputy Commissioner, Bureau of the Public Debt
George B. Wolfe, Deputy General Counsel
Roberta K. McInerney, Assistant General Counsel (Banking & Finance)
Kenneth R. Schmalzbach, Assistant General Counsel (General Law & Ethics)
John C. Dooher, Senior Associate Director (Washington Office), Federal Law Enforcement Training Center

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Ronald A. Glaser, Department of the Treasury, Director, Office of Personnel Policy, Metropolitan Square Building, Room 6075, 15th and Pennsylvania Ave., NW., Washington, DC 20220. Telephone: (202) 622–1890.

This notice does not meet the Department's criteria for significant regulations.

Ronald A. Glaser,

Director Office of Personnel Policy.

[FR Doc. 02–19333 Filed 7–30–02; 8:45 am]

BILLING CODE 4811–20–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 950]

The Gang Resistance Education And Training Program: Availability of Financial Assistance, Criteria and Application Procedures

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of availability of funds for the Gang Resistance Education and Training Program.

SUMMARY: Subject to the availability of appropriations, the Bureau of Alcohol, Tobacco And Firearms (ATF) intends to enter into cooperative agreements with State and local law enforcement agencies to assist them in providing the Gang Resistance Education And Training (G.R.E.A.T.) Program to school students. This notice also sets forth the intended funding priorities and criteria, as well as the application procedures that ATF will use to select, and award Federal funds to, State and local law enforcement agencies to deliver the G.R.E.A.T. Program.

DATES: Applications must be received on or before September 30, 2002.

ADDRESSES: Send applications to Nicole Long, G.R.E.A.T. Branch; Bureau of Alcohol, Tobacco and Firearms; Cooperative Agreement Section; 800 K Street, NW., Suite 735; Washington, DC 20001; *Attn: Notice No. 950.*

FOR FURTHER INFORMATION CONTACT: Nicole Long, The G.R.E.A.T. Branch; Bureau of Alcohol, Tobacco and Firearms; 800 K Street, NW., Suite 735; Washington, DC 20001; telephone toll-free 1–800–726–7070, extension 7–3120. Or, send electronic mail (e-mail) to: *NMLong@atfhq.atf.treas.gov*, or visit the G.R.E.A.T. Web site at *www.atf.treas.gov/great/index.htm.*

SUPPLEMENTARY INFORMATION:

Background

G.R.E.A.T. is a life-skills competency program designed to provide students with the skills they need to avoid gang pressure and youth violence. G.R.E.A.T.'s violence prevention curriculum helps students develop values and practice behaviors that will help them avoid destructive activities. G.R.E.A.T. functions as a cooperative program utilizing the skills of ATF, Federal, State, and local law enforcement personnel, as well as individuals from community and civic groups.

The G.R.E.A.T. Program trains law enforcement officers in a school-based curriculum in which the officers provide instruction to school-aged children in life skill competencies, gang awareness, and anti-violence techniques. Training will be provided to any State or local law enforcement agency to the extent allocated funds allow. G.R.E.A.T. consists of three major phases:

- Phase I—School-Based Education,
- Phase II—After School/Summer Education/Booster Classes, and
- Phase III—Family Component.

Other Pertinent Information

All funded agencies shall be subject to an audit of program expenditures and curriculum adherence. ATF will use the audit findings to alter funding levels if deemed necessary by ATF.

Applicants who receive over $100,000, and have been teaching the G.R.E.A.T. Program for over a year, will be required to develop programs tailored to their respective communities for phases II and III. Failure to develop and provide phases II and III by July 1st will result in a reduction in funding of up to 25% for the remainder of the year. Mid-year funded agencies will be reviewed to ensure that funding requirements are being met. Agencies not meeting their funding obligations will have their monies reduced.

Agencies awarded $50,000 or more will be required to provide an officer (or officers) on a part-time basis to assist the G.R.E.A.T. Program as a National Training Team (NTT) member. NTT members serve as instructors for G.R.E.A.T. officer training sessions during the award period at the rate of two weeks per $50,000 dollars of the award amount. Agencies in their first year of Federal funding are exempt from this requirement. However, the funded agency will be required to designate an officer to complete the NTT G.R.E.A.T. Management Training course.

Application Procedures

Application for financial assistance must be made on ATF Form 6410.1 (Gang Resistance Education And Training Funding Application). Application forms may be obtained by contacting Nicole Long or the Cooperative Agreement Section, G.R.E.A.T. Branch; Bureau of Alcohol, Tobacco and Firearms; 800 K Street, NW., Suite 735; Washington, DC 20001; telephone toll-free 1–800–726–7070, extension 7–3120. E-mail address: *NMLong@atfhq.atf.treas.gov* or visit the G.R.E.A.T. Web site at *www.atf.treas.gov/great/index.htm.*

If your agency was funded during the last award period (1/15/2002 to 1/14/2003), you can have application forms sent or questions answered by your current G.R.E.A.T. Program Branch cooperative agreement point of contact.

Funding Categories and Funding Distributions

In order to provide funding to a range of community sizes and locations, applicants will be divided into five categories based on population. The population categories are: (a) 1,000,000 and over; (b) 999,999–500,000; (c) 499,999–100,000; (d) 99,999–25,000; and (e) 24,999 or less. Each applicant is required to report its population figures using the Bureau of Census 2000 Population Report for its entire service area. Population figures may be obtained from the Bureau's Web site at: *www.census.gov/population/www/estimates,* or by contacting the Census Bureau at 301–457–4608.

Criteria and Points

Each application will be evaluated and scored on the basis of the following criteria:

(1) Juvenile crime statistics (25%);

(2) Percentage of eligible 6th, 7th, and 8th grade students the applicant proposes to teach, and the percentage of eligible students previously taught the G.R.E.A.T. core curriculum (35%);

(3) Presence of curriculum reinforcement programs (25%) (Such as Elementary, After School/Summer Education/Booster Classes, and Family Component/Parent Involvement programs); and

(4) Support of National G.R.E.A.T. Program Training (15%).

Criterion 1. This criterion measures the magnitude of an applicant's youth crime problem using the number of Part I and II offenses reported in the Uniform Crime Reports (UCR) published annually by the Federal Bureau of Investigation (FBI). Part I and II offenses are defined and listed in Appendix II of the UCR. Please note that the most current UCR is usually two years in arrears. ATF will obtain the required juvenile crime figures directly from the FBI. Applicants must indicate which service area (i.e. city, county, etc.) that ATF should use to obtain their most recent UCR juvenile crime figures.

In the event that an applicant does not provide annual data to the FBI for the UCR, the applicant should contact the G.R.E.A.T. Branch to determine how it can best submit information to measure its youth crime statistics.

Criterion 2. This criterion will measure middle school participation and consists of two sections:

- *Section A.* An applicant will receive points based on the percentage of middle school students proposed to

be taught G.R.E.A.T. compared to the total population of middle school students in the jurisdiction.

• *Section B.* An applicant will receive points based on the percentage of middle school students who were taught G.R.E.A.T. during the last school year compared to last year's total population of eligible middle school students that could have been taught.

Criterion 3. This criterion is used to identify applicants who currently have life skills programs in place that reinforce the effectiveness of the G.R.E.A.T. middle school core curriculum. Life skill programs are those programs that instruct students in skills such as communication, active listening, empathy, avoiding peer pressure, conflict resolution, decision making, responsibility, citizenship, goal setting, cultural sensitivity, and behavior/anger management. Applicants will be asked to identify elementary, middle, and high school programs, as well as other summer, parent/family, and after school programs, in their service area. Applicants must include a narrative statement describing each such program and identify which G.R.E.A.T. life skills, or any of the skills listed above, the program reinforces.

Criterion 4. The G.R.E.A.T. Program depends on G.R.E.A.T. Officers to act as National Training Team (NTT) instructors at our G.R.E.A.T. Officer Trainings sessions. Without this support, the program could not function. This criterion will recognize and reward applicants who provide NTT members for G.R.E.A.T. Officer training as delineated in the cooperative agreement.

Other Considerations

ATF will consider past year awardees previous spending of G.R.E.A.T. funds when determining their future funding levels. Unless sufficient documentation and support is supplied, applicants will not be funded at higher levels if past year spending indicates funds were underutilized. In order to assure that G.R.E.A.T. funds are spent in a fiscally responsible manner, ATF will also consider the cost per child for an applicant to conduct the program when awarding funds. ATF defines an agency's cost-per-child as the number of children to be taught divided by the eligible awarded funds.

Catalog of Federal Domestic Assistance (CFDA)

For the purpose of tracking Federal funds used in grants and cooperative agreements, the G.R.E.A.T. Program has been assigned CFDA number 21.053.

Paperwork Reduction Act

The collection of information contained in this notice has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1512–0548. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Authority and Issuance

This notice is issued pursuant to Office of Management and Budget Circular No. A–102 (Grants and Cooperative Agreements with State and Local Governments).

Approved: July 23, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–19239 Filed 7–30–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–5; OTS Nos. H–3858 and 02859]

Monarch Community Bancorp, Inc., Clodwater, Michigan; Approval of Conversion Application

Notice is hereby given that on July 17, 2002, the Director, Examination Policy, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Branch County Savings & Loan Association of Coldwater, Coldwater, Michigan, to convert to the stock form or organization and to change its name to Monarch Community Bank. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW, Washington, DC 20552, and the OTS Southeast Regional Office, 1475 Peachtree Street, N.E., Atlanta, GA 30309.

By the Office of Thrift Supervisions.

Dated: July 25, 2002.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–19242 Filed 7–30–02; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Wednesday,
July 31, 2002

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 350, et al.
Commercial Driver's License Standards, Requirements and Penalties; Commercial Driver's License Program Improvements and Noncommercial Motor Vehicle Violations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 383, 384 and 390

[Docket Nos. FMCSA–2001–9709 and FMCSA–00–7382]

RIN 2126–AA60 and RIN 2126–AA55

Commercial Driver's License Standards, Requirements and Penalties; Commercial Driver's License Program Improvements and Noncommercial Motor Vehicle Violations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA revises its Commercial Driver's License (CDL) Program. The Motor Carrier Safety Improvement Act of 1999 (MCSIA) mandates these revisions. They are designed to enhance the safety of commercial motor vehicle (CMV) operations on our nation's highways by ensuring that only safe drivers operate CMVs.

EFFECTIVE DATE: September 30, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, (202) 366–5014, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION

Regulatory Information

The FMCSA published two Notices of Proposed Rulemaking (NPRMs) [66 FR 22499 on May 4, 2001 and 66 FR 39248 on July 27, 2001] to amend various provisions of parts 350, 383, 384 and 390 of Title 49 Code of Federal Regulations (CFR) to implement congressionally mandated changes. Nearly 200 comments were received in response to these two NPRMs. Both NPRMs are being finalized in this action.

This rule uses plain language so that individuals unfamiliar with FMCSA regulations will find it easier to follow. We are making the text clearer, standardizing terms, changing to the active voice, reorganizing material for added clarity, inserting or revising headings to reflect content accurately, and correcting typographical, punctuation, and grammatical errors. The FMCSA is also revising the disqualification sanctions found in§ 383.51 by organizing them into an if-then table format that we believe is easier to understand than the current regulatory text.

Background

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) [Public Law 99–570, Title XII, 100 Stat. 3207–170, 49 U.S.C. chapter 313] established the Commercial Driver's License (CDL) Program and the Commercial Driver's License Information System (CDLIS) to serve as a clearinghouse and repository of commercial driver licensing and conviction data. The CMVSA also requires States to ensure that drivers convicted of certain serious traffic violations be prohibited from operating a CMV. The Secretary of Transportation was directed to monitor the States' compliance with the standards established under the CMVSA. The goal of the CMVSA is to improve highway safety by ensuring that drivers of large trucks and buses are qualified to operate those vehicles and to remove unsafe and unqualified drivers from the highways.

In 1994, the agency initiated a study to evaluate the effectiveness of the CDL program. The final report, submitted to Congress in 1999, documented vulnerabilities within the CDL program and provided recommendations to correct them.

Responding in part to the findings of this report, Congress passed the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Public Law 106–159,113 Stat. 1748]. The MCSIA amended numerous provisions of title 49 of the United States Code relating to the licensing and sanctioning of CMV drivers required to hold a CDL, and directed the Department of Transportation (DOT) to amend its regulations to correct specific weaknesses in the CDL program.

This rule also clarifies the FMCSA relationship to the Commercial Driver's License Information System (CDLIS). Section 12007 of the CMVSA, codified as 49 U.S.C. 31309, requires the Secretary of Transportation to establish or designate an information system to serve as the clearinghouse and depository of information about any person who operates CMVs, including his/her identification, licensing history, and disqualification history. This system, known as CDLIS, also includes information about a person required to have a CDL who has been convicted of any of the disqualifying offenses listed in 49 CFR 383.51.

In 1988, the Federal Highway Administration (FHWA) entered into an agreement pursuant to 49 U.S.C. 31309 with the American Association of Motor Vehicle Administrators and its former affiliate AAMVAnet, Inc.[1] (AAMVAnet), to establish a communications network to implement the CDLIS. The agreement designated AAMVAnet the CDLIS operator. Section 106(b) of MCSIA, transferred the agreement from the FHWA to the FMCSA where it remains in effect until the FMCSA modifies or terminates it. A copy of the 1988 agreement is in the public docket.

Because States regularly utilize AAMVAnet to access the CDLIS to obtain and transmit information on CDL drivers, the AAMVAnet agreement and CDLIS operational procedures are being incorporated by reference into this rulemaking.

The following commentary will analyze the content of the regulations and address significant issues raised in comments received in response to the NPRMs.

Section-by-Section Discussion of Comments with FMCSA Response

Section 350.217—What Are the Consequences for a State With a CDL Program Not in Substantial Compliance With 49 CFR Part 384, Subpart B?

Section 103(e) of the MCSIA requires the FMCSA to withhold all Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under Section 103(b)(1) of MCSIA from States not in substantial compliance with 49 CFR part 384, subpart B. This new sanction is added to the one currently contained in 49 CFR part 384, subpart D requiring the agency to withhold five percent of some of a State's Federal-aid highway funds following the first year of noncompliance and 10 percent of such funds following the second and subsequent years of noncompliance.

Fifteen States and State affiliated associations commenting on this provision oppose the withholding of MCSAP funds from States not in substantial compliance with the Federal Motor Carrier Safety Regulations (FMCSRs). Of particular concern was the fact that the agencies facing the potential loss of MCSAP funds, primarily law enforcement agencies, have no direct control over compliance by other State agencies, particularly the courts. Compliance with the proposed 10-day conviction reporting requirement of 49 CFR 384.209 is the issue which raises the greatest concerns. One agency also proposes that the withholding of MCSAP funding requirement be

[1] On May 31, 2002, AAMVAnet, Inc. was merged into AAMVA. AAMVAnet, Inc. no longer exists as a separate corporation.

amended to adopt the same formula used to withhold highway funding from States in substantial noncompliance.

The FMCSA understands these concerns, but is bound by statutory language of the MCSIA requiring the withholding of MCSAP funds from those States found to be in substantial noncompliance with 49 CFR part 384, subpart B. The FMCSA urges each State's chief executive to coordinate the efforts of all State agencies—including the judiciary—to ensure their compliance with these requirements.

Section 383.5—Definitions.

Section 383.5 will add four new definitions and change four existing definitions of terms used in 49 CFR parts 383 and 384 to implement provisions of the MCSIA. The new definitions include "fatality," "imminent hazard," "non-CMV," and "school bus." The revised definitions include "disqualification," "driving a commercial motor vehicle while under the influence of alcohol," "nonresident CDL," and "serious traffic violation." The term "serious traffic violation" is being amended to add three new offenses to the existing list of offenses warranting disqualification of a CDL holder.

The FMCSA has added a new definition for the term "non-CMV" to identify the vehicles types in which—if a driver is convicted of committing a serious traffic offense other than those specifically limited to commercial vehicles—he/she is subject to disqualification.

One commenter suggested that the definition of "fatality" be revised to be consistent with current Federal definitions, without providing an example of the preferred definition(s). FMCSA notes that the 49 CFR 390.5 fatality definition—" * * * any injury which results in the death of a person at the time of the motor vehicle accident *or within 30 days of the accident*" (emphasis added)—is primarily used within the context of fatality reporting. Because the new 49 CFR part 383 definition is to be used within the context of driver sanctions, FMCSA has deleted the reference to a 30-day time period. Otherwise a driver involved in an accident which results in a death more than 30 days after the accident could possibly avoid sanctions. Such an effect is both inconsistent with the objective of CDL sanctioning requirements and contrary to general principles of common law under which any death occurring within one year of the event may be charged criminally. FMCSA recognizes, of course that a death which occurs long after an accident may have a proximate cause or causes other than the injuries sustained in the accident. Therefore, the deletion of the "30-day" reference is in no way intended to weaken the causal link necessary to qualify as a fatality.

Seven commenters proposed revisions to the definition of "school bus." Three proposed that the FMCSA use the National Highway Traffic Safety Administration (NHTSA) definition or that the term only include vehicles that transport 16 or more passengers including the driver; while two proposed that the passenger capacity be lowered to 10 or more passengers. Two other commenters objected to the proposed definition, but offered less specific comments. The FMCSA has reviewed the NHTSA definition and believes that the proposed definition is consistent with it, except for using the term CMV. The term CMV was included in the "school bus" definition because only vehicles meeting the CMV definition are subject to the CDL licensing requirements of 49 CFR part 383, including the new school bus endorsement. As with other CDL requirements in 49 CFR part 383, the school bus definition is intended to establish a minimum standard. A State is free to establish more stringent standards for CDL drivers. Allowable variations to the school bus definition include lowering the vehicle passenger capacity threshold for which a school bus endorsement is required. For these reasons, the FMCSA has included the "school bus" definition proposed in the NPRM to this final rule.

The commentary to § 383.23 discusses comments concerning the definition of "nonresident CDL."

One commenter questioned the different terminology proposed in the NPRM for one of the serious traffic violations described in Sec. 201(c) of MCSIA. New 49 U.S.C. 31301(12)(F) reads:

> "(F) Driving a commercial motor vehicle when the individual has not met the minimum testing standards—
>
> (i) Under section 31305(a)(3) for the specific class of vehicle the individual is operating; or
>
> (ii) Under section 31305(a)(5) for the type of cargo the vehicle is carrying; and."

Paragraph (h) under the § 383.5 definition for "serious traffic violation" reads "Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported." The FMCSA believes that the revised language more clearly conveys congressional intent that only those drivers who are fully qualified to operate a specific vehicle be allowed to operate it. The evidence that a driver has met the minimum CDL testing standards is that he/she has been issued a CDL and all required endorsements for the class and specific type of CMV he/she intends to operate.

Section 383.7—Validity of CDL Issued by Decertified State.

Sec. 383.7 is a new provision to clarify that a CDL issued by a State subsequently prohibited from issuing CDLs under 49 CFR 384.405 remains valid until expiration. Based upon the fact that FMCSA received no opposing comments and a single supporting comment on this provision, it is included in the final rule as proposed.

Section 383.23—Commercial Driver's License.

Section 383.23 has been amended to allow a driver who is domiciled in a State that has been prohibited (under the decertification provisions found in § 384.405) from issuing CDLs, to apply for a nonresident CDL from any other State that is both in compliance with such decertification provisions and elects to issue nonresident CDLs. References to the date "April 1, 1992" have also been deleted from this section because the date referred to a compliance deadline which is no longer relevant.

Six States expressed concern that the proposed new language in this section would require them to issue nonresident CDLs to drivers living in States that had been decertified. The intent of this new language *was to authorize, but not require* States to issue nonresident CDLs to such drivers. The FMCSA has added language to the final rule to clarify this issue.

A State objected that allowing States to issue nonresident CDLs to drivers domiciled in other States would result in confusion over State-specific endorsements. Because the agency anticipates that the sanction under § 384.405 will rarely be invoked, the FMCSA believes that State-specific endorsements will not pose a significant problem to States issuing nonresident CDLs or States taking enforcement action against drivers possessing nonresident CDLs.

Section 383.51—Disqualification of Drivers.

Section 383.51 has been revised to incorporate requirements of Section 201 of the MCSIA. These revisions include: imposing a disqualification on CDL drivers who have been convicted of traffic offenses while operating a non-CMV which result in their license being

canceled, revoked or suspended; or of committing drug or alcohol related offenses while driving a non-CMV; and adding two new disqualifying offenses: driving a CMV after the driver's CDL was revoked, suspended or canceled for violations while operating a CMV and causing a fatality through the negligent or criminal operation of a CMV. As discussed in the commentary to § 383.5, three new offenses are being added to the serious traffic violations for which a driver can be disqualified if convicted two or more times within a three-year period. These three new offenses are: (1) Driving a CMV when the driver has not obtained a CDL, (2) driving a CMV without a CDL in the driver's possession, and (3) driving a CMV without having met the minimum testing standards for the specific class of CMV being operated or for the type of cargo being transported on the vehicle. This section is also being amended to specify the disqualification period for first-time and subsequent offenders.

The CMVSA originally required the disqualification of drivers only for offenses committed while operating a CMV (49 U.S.C. 31310). The MCSIA made additional offenses disqualifying, even if they were committed while operating a non-CMV. For these offenses, the Secretary of Transportation is required to specify the disqualification periods to be imposed by the States.

In addition, the FMCSA is clarifying that any person who operates a CMV must first obtain a CDL and that these drivers are subject to the same disqualification period as a CDL holder. While the MCSIA addresses the type of offenses that must result in a disqualification if committed in a non-CMV, it is silent regarding the length of the CMV disqualification, requiring only that the disqualification period be no longer than the disqualification period for the same or similar offenses committed while operating a CMV. Based on this language, the FMCSA has added language to this section clarifying that CDL holders convicted of serious traffic violations and other offenses in either a non-CMV or a CMV serve the same period of disqualification.

The revised § 383.51 lists both the CMV convictions of CDL holders for the original offenses under the CMVSA and the non-CMV convictions for other offenses added in subsequent statutory amendments. A clarification is also provided in § 383.51(a)(4) that both CMV and non-CMV convictions for disqualifying offenses will be used in determining first and subsequent violations. The entire section is being revised to incorporate an easy to understand "if-then" table format.

Five commenters expressed their view that the if-then table format was confusing or did not clearly indicate the circumstances that triggered the stated disqualification period for offenses listed in the various headings and columns. Based on these comments, the FMCSA has reviewed the tables and has made a few minor changes to clarify their intended meaning. The agency believes that after users become familiar with the new format, they will find it easier to locate the appropriate disqualification period for all of the disqualifying offenses.

The FMCSA received a total of 96 comments on the May 4, 2001 NPRM concerning "Noncommercial Motor Vehicle Violations." While most comments expressed general support for the concept of CDL holders being held accountable for offenses committed in both CMVs and non-CMVs, many comments offered suggestions for revisions to the final rule. Some comments specifically mentioned that the tables listing the offenses and the period for which a driver is disqualified were a great improvement over narrative explanations of these disqualifying offenses. Other comments suggested that changes to other areas of the rule may need to be made. The following discussion addresses these comments.

Ten comments indicated that no other profession prevents a person from making a living based on driving convictions that occurred while operating a private automobile or other noncommercial vehicle. CDL holders are, unlike most licensed passenger car drivers, professional drivers. They earn their living by operating large, heavy vehicles and/or transporting passengers. Given their status as professionals, CDL holders are held to a higher standard. CDL holders should not engage in risky, unsafe behavior while pursuing their profession—driving. The Congress has chosen, in the interest of safety, not to distinguish between risk-taking behavior in a passenger car or a CMV. Section 201(b) of the MCSIA specifically directed the Secretary of Transportation to issue regulations requiring the disqualification of CDL holders convicted of serious offense while operating a non-CMV.

Twenty commenters fully support the concept of CDL drivers being held to a higher standard by being accountable for both CMV and non-CMV convictions, while seven other commenters supported this concept in regard to alcohol and drug related offenses, but do not believe that convictions for serious traffic violations in a non-CMV for excessive speed and following too closely should be included. Seven comments oppose holding CDL drivers accountable for non-CMV convictions and describe it as an unnecessary burden and a double standard. The FMCSA believes that all serious traffic violations by a CDL holder should be counted when operating a non-CMV because these types of violations have consistently contributed to crashes and fatalities.

Ten comments suggest that if CDL holders are going to be held to higher standards and penalties when operating a non-CMV than drivers with an automobile license, then everyone who drives a vehicle should be liable for these higher penalties when operating their private automobiles. This suggestion falls outside the scope of this rulemaking and the authority of the agency. The FMCSA does not have authority to set standards and penalties for drivers licensed to operate only non-CMVs.

Fourteen comments recommended that penalties for a conviction in a non-CMV should be less than in a CMV, at a higher threshold as far as the number of convictions that would cause the driver to be disqualified or that the FMCSA should let each State decide the length of the penalties. These comments argue that if Congress wanted the same penalties for both types of offenses, it would have been specifically addressed in Federal law. The FMCSA has the authority to set the same penalties for both types of offenses; Congress simply said that penalties in a non-CMV may not be greater than the penalties for the same offense in a CMV. The FMCSA believes that by setting the minimum penalties for all offenses rather than leaving non-CMV penalties to the States, there will be greater national uniformity and consistency in the administration of the CDL program.

Ten comments object to railroad-highway grade crossing offenses being included in non-CMV offenses, either as currently worded because these types of offenses do not apply to non-CMVs, or because the inclusion of these offenses goes beyond the intent of Congress. The FMCSA agrees that the wording of these types of offenses specifically addresses actions that only apply to CDL holders while operating a CMV. Therefore the non-CMV railroad-highway grade crossing offenses have been eliminated from the final rule.

Five comments request a clarification of the relationship between alcohol related "convictions," "administrative per se suspensions" and "refusal to be tested" in Table 1 to § 383.51. They express confusion over what action is to

be taken against a driver's CDL under these three actions, particularly for non-CMV offenses. The FMCSA has modified Table 1 to § 383.51 to clarify what actions must be taken for alcohol related "convictions" and "refusal to be tested." The relationship between "convictions" and "administrative per se suspensions" is discussed in current regulatory text under § 383.51(f) and is being moved to § 384.203 to make it more visible.

Concerning the relationship between "convictions" and "administrative per se suspensions," the FMCSA offers the following background information. The CMVSA required that CDL drivers convicted of operating a CMV with an alcohol concentration of 0.04 or greater be subject to being disqualified from operating a CMV for a period of one to three years for a first conviction, depending on the cargo being transported. This sanction does not apply to CDL drivers operating a non-CMV at this alcohol concentration. Table 1 to § 383.51 has been revised to clarify this fact. The § 383.5 definition of "conviction" includes guilty findings by "an authorized administrative tribunal." This definition was intended to encompass any type of administrative determination of guilt including State administrative per se DWI laws. Accordingly, a CDL driver found guilty of operating a CMV with an alcohol concentration of 0.04 or greater or of violating a State's DWI laws as a result of an administrative hearing, while operating a CMV or non-CMV, would be subject to being disqualified under the requirements of § 383.51.

One comment asks whether the definition of "non-CMV" includes recreational vehicles used in an off road environment (e.g. snowmobiles, watercraft, all terrain vehicles, etc.). The regulations define the term "motor vehicle" in § 383.5 as a vehicle " * * * used on highway * * *" It does not include recreational vehicles designed for off road use.

Four comments ask whether conviction in a non-CMV prior to applying for a CDL will prevent the issuance of the CDL. The Act clearly states that penalties for offenses committed by a CDL holder in a non-CMV shall be counted. Therefore, only non-CMV convictions for offenses committed after a person obtains a CDL can be counted against his or her driving record.

Seven comments ask if a State must include non-CMV convictions that occurred prior to enactment of MCSIA. The FMCSA can only take action on offenses that occur after the effective date of the final rule and a State only has to take action upon the effective date of its State law or regulation.

Three comments state that the new disqualification requirements are complex and difficult to understand in the tables. While the FMCSA developed these tables in keeping with guidelines for using plain language and if/then tables for Federal regulations, we have made some revisions to help clarify the intent of the new requirements. There were also several comments that indicate that the tables make it easier to understand the requirements.

Eight comments indicate that 49 U.S.C. 31310(g) refers to operators of CMVs who are convicted of drug or alcohol related offenses in a non-CMV, and that only convictions for serious offenses in a non-CMV which result in State revocation, suspension or cancellation of a driver's non-CMV privileges shall result in the disqualification from operating a CMV. The comments argue that by naming specific offenses and penalty periods the FMCSA has exceeded its authority. The language of Section 31310(g), enacted by Sec. 201 of MCSIA gives the FMCSA ample authority to specify what constitutes a "serious offense," although the violation will not be disqualifying unless the State also finds that the circumstances of the offense warrant "revocation, cancellation, or suspension of the individual's license." Section 31310(g)(2) specifically authorizes the FMCSA to "establish the minimum periods for which the disqualification shall be in effect * * *" That is exactly what the agency has done in § 383.51 in order to promote safety and uniformity among the States. The FMCSA further believes that Congress, in using the term "serious offense" in Section 31310(g)(1)(A), was referring to the "serious traffic violations" already specified in §§ 383.5 and 383.51(c). Violations are not listed as disqualifying in § 383.51 unless they are demonstrably significant, i.e., contribute to crashes and fatalities.

Three comments state that the FMCSA should not give the States the option of using .04-alcohol concentration as a disqualifying offense for a non-CMV conviction. The FMCSA only has the authority to establish a minimum alcohol concentration disqualification standard for CDL drivers. As with other minimum standards, however, individual States are free to impose more stringent standards, including establishing a lower alcohol concentration, for both CDL and non-CDL drivers licensed by their State.

One comment proposed revisions to permit a driver to operate while a CMV conviction is under judicial appeal. The FMCSA defers to State law and procedure to determine this issue. If, as is the case in many jurisdictions, a trial court judgment does not become a final conviction for a certain period of time to allow a defendant to appeal the verdict, the driver may continue to operate until that time or if an appeal is filed, until the appellate court renders judgment. However, if a conviction is entered as final, the penalty provisions of this regulation apply.

One comment recommends that the rule require States to record the number of miles per hour by which the driver of a non-CMV exceeds the posted speed limits. The only disqualifying offense for speeding in a CMV or non-CMV is excessive speeding, i.e., 15 miles per hour or more over the posted speed limit. A code already exists in the CDLIS for this offense when it is committed in a CMV. The code will be revised to include CMV and non-CMV.

Three comments suggest that both the May 4 and July 27 NPRMs be given the same effective date because many provisions are tied together. The FMCSA agrees. We decided to merge both MCSIA proposals into one final rule with a single effective date for all provisions.

Three comments ask if the State of licensure can disqualify CMV drivers for failure to pay child support. Each State has the authority to set additional disqualification requirements for drivers licensed in their State, including failure to pay child support. This rule only sets the minimum disqualification requirements for a State to remain in substantial compliance with the Federal requirements.

One comment questions whether the costs of the rule on non-CMV violations constitute an unfunded mandate under the Federal regulations when considered with other CDL-related MCSIA requirements. Based on the agency's economic analysis of this issue discussed in the Rulemaking Analyses and Notices section of this rulemaking, the FMCSA does not believe that this requirement imposes an unfunded mandate on the States.

One comment requested clarification of the use of a non-CMV in the commission of a felony involving a controlled substance. The FMCSA believes that this is self-explanatory. If the vehicle is used in the manufacturing, distributing, or dispensing of a "controlled substance" as defined in 49 CFR 383.5, it is a CDL felony offense.

One comment suggests that the FMCSA also provide a narrative text describing the offenses and

disqualification penalty in Tables 1 through 4 to § 383.51. Such a narrative would defeat the purpose of the tables: to provide a more easily understandable description of the offenses and penalties. Each State is, however, free to use a narrative form of the tables in its own legislation or regulations. A narrative form can be easily developed from the tables.

One comment asks why hazardous materials drivers are being penalized differently from other CDL drivers for violations that occur in a non-CMV that is not carrying hazardous materials. The commenter appears to have misread the § 383.51 table, which only requires that enhanced penalties be imposed against drivers who are actually carrying hazardous materials in a CMV at the time of the offense.

One comment states that proposed §§ 383.51, 384.218 and 384.219 are drafted in a style completely different from § 384.224. The commenter suggests either that all sections cross-reference § 383.51 or that each section require disqualification for particular offenses. All the sections mentioned by the comment relate to compliance with § 383.51. The styles in which they are written are different because there are separate State substantial compliance requirements for second and third serious traffic violations while there is only one specific requirement for non-CMV violations.

Two comments request the FMCSA to develop a definition of the term "authorized agents." The FMCSA believes that this term is sufficiently defined under individual State statute, regulation or case law, and need not be included in this rulemaking.

One comment asks why the NPRM does not address how the new regulations on non-CMV violations of a CDL holder will apply to Mexican, Canadian and other foreign drivers. Mexican and Canadian CDL drivers may operate in the U.S. on a license issued by their home jurisdiction in accordance with reciprocity agreements between the U. S. and Canada and Mexico as noted in the footnote to 49 CFR 383.23(b). These drivers are subject to all of the U.S. CDL requirements while operating in the U.S., including disqualification for convictions while operating a non-CMV in the U.S. The Department will initiate discussions with Mexico and Canada on the issue of non-CMV offenses by these drivers while operating in their home country. All other foreign CDL drivers must obtain a nonresident CDL to legally operate in the U.S. The issuance of the nonresident CDL subjects these drivers to the same requirements as other CDL holders while operating in the U.S.

Thirteen comments challenge the accuracy of our cost data analysis. This issue is being addressed in the economic analysis area of this rulemaking.

One commenter requests that the rule explicitly state that the disqualification action must be based on a conviction of the listed offenses. FMCSA has amended Table 1, 2, 3 and 4 to § 383.51 to clarify this issue.

One commenter asks if the two new disqualifying offenses being added to Table 1 to § 383.51 are subject to the 10-year reinstatement provision of § 383.51(a)(5). The answer is yes, and the text of this section has been amended to reflect this fact.

A few additional comments point out typographical errors in the Tables. These errors have been corrected in the final rule.

Four commenters noted that the FMCSA omitted certain qualifying language enacted by Sec. 201(a) of the MCSIA. Specifically, 49 U.S.C. 31310(b)(1)(D) and (c)(1)(D) require a 1-year disqualification the first time a driver is convicted of driving a CMV when his/her CDL is revoked, suspended, or canceled, or when he/she is disqualified from driving a CMV, *providing* the revocation, suspension, cancellation or disqualification was "based on the individual's operation of a commercial motor vehicle". In other words, the 1-year disqualification is not required if the driver's CDL was revoked, suspended, or canceled, or he/she was disqualified, for violations that occurred in a non-CMV. The commenters are correct. Also, in the situation where more than one conviction is required to be disqualified, all convictions must have occurred while operating a CMV. The FMCSA has added this qualifying language to the final rule.

One commenter proposed that the FMCSA establish standards for notifying drivers that their CDL had been suspended or revoked or that they had been disqualified from operating a CMV. The FMCSA believes that each State has laws or procedures addressing this issue. Establishing such standards for States to provide notice of the loss of a driving privilege is beyond the scope of this rulemaking.

Thirteen comments raise issues related to the language in the NPRM used to describe the new disqualifying offense of causing a fatality through the negligent or criminal operation of a CMV. To address concerns raised in these comments, the FMCSA has added language to the final rule to clarify the type of offense of which a driver must be convicted to be subject to this disqualification.

One of the proposed serious traffic violation disqualifications that received several comments was "driving a CMV without a CDL in the driver's possession." Ten commenters expressed concern that a driver could be disqualified for not having a CDL with them on a particular day because they may have lost it or had their wallet stolen. The MCSIA addresses this situation in 49 U.S.C. 31301(12)(E): "Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense." Although this language was included in the 49 CFR 383.5 definition of this new serious traffic violation, it was inadvertently omitted from Table 2 to § 383.51. To clarify this issue, the FMCSA has added this language in a footnote to Table 2 to § 383.51.

Section 383.52—Disqualification of Drivers Determined To Constitute an Imminent Hazard.

Section 383.52 establishes FMCSA authority for imposing an emergency disqualification of CDL drivers posing an imminent hazard required by Section 201(b) of the MCSIA (49 U.S.C. 31310(f)).

Seven commenters raised questions concerning proposed procedures for imposing an emergency disqualification, many requesting the agency to provide greater detail on how the disqualification determination would be made and asking that various procedural safeguards be included in the rule. The FMCSA believes that the statutory mandate, as reflected in this regulation, together with existing agency administrative procedures, provide sufficient guidance for the agency to make this determination in accordance with accepted due process standards.

Eight comments questioned the proposed criteria to be used by the FMCSA in making a determination of whether or not an emergency disqualification should be imposed on a driver. Based on a review of the comments, the FMCSA has decided not to include in the final rule the six factors proposed in the NPRM to be considered by the agency in making its determination of whether a driver constitutes an imminent hazard. The agency believes that the definition of "imminent hazard" which the MCSIA requires the Department to use in making this determination provides

sufficient guidance for making this decision.

Although no comments were received on the issue, the agency has decided to delegate the authority for making the imminent hazard determination to the Assistant Administrator, who is also the Chief Safety Officer, rather than the Associate Administrator for Enforcement. This delegation is consistent with current practice, since the authority to impose civil penalties, hear ratings appeals, and make other similar decisions is already delegated to that officer.

One commenter noted that the MCSIA requires the disqualification of a driver determined to constitute an imminent hazard. The FMCSA agrees with this statement, and has accordingly amended the final rule to state that a driver must be disqualified where the Assistant Administrator finds the driver's continued operation of a CMV poses an imminent hazard.

Nine comments focus on the question of who should be notified that a driver has received an emergency disqualification. The statute does not require the FMCSA to notify a driver's State of licensure of an emergency disqualification, and one State objects to being required to maintain this information on a driver's record. Nonetheless, the FMCSA believes requiring a notification to the State of licensure of a driver's emergency disqualification and requiring such information to become a part of the driver's permanent record is a logical extension of imposing the emergency disqualification.

Three commenters requested the FMCSA to specifically describe how this information will be transmitted to the driver's home State. The FMCSA does not believe such details should be included in this rulemaking. The agency is working closely with AAMVAnet to develop a new code to identify a Federal CDL disqualification. Once such a code has been developed, it should facilitate the electronic transmission of this information to the State where the disqualified driver is licensed, and make this information readily available to State law enforcement and licensing agencies checking the CDLIS on a CDL driver's status.

Section 383.71—Driver Application Procedures.

Section 383.71 is being amended to require applicants for an initial CDL, and those transferring or renewing a CDL to provide the State with the name of all States where they have previously been licensed to drive any type of motor vehicle so that the State may obtain the applicant's complete driving record in accordance with Section 202(a) of the MCSIA (49 U.S.C. 31311(a)(6)). Section 383.71(a)(6) is also being amended to clarify that the term "disqualification" applies only to sanctions under § 383.51 and that the other licensing sanctions are based on actions taken under State law. The comments received addressing this new requirement, which falls mainly on the States, will be discussed in the commentary to the next section and § 384.206.

Section 383.73—State Procedures.

Section 383.73 is being amended to require the State to request the complete driving record of applicants for an initial license, renewal or transfer of a CDL from all States where the applicant has previously been licensed to drive any type of motor vehicle. Eight comments strongly support the expanded driver records check, while an additional 11 point out potential problems and propose a few changes. Comments on the time period that driver records must be retained by a State are discussed in the commentary for § 384.206.

One commenter asked why the new driver license check of all States in which a driver held any type of driver's license had to be performed on drivers who had already received a CDL. The FMCSA believes that Congress expanded the record check to all CDL drivers, both those already licensed as well as new CDL applicants, to be sure that the issuing State obtains a complete driving record for every CDL driver it licenses. In analyzing the comments received in response to this provision, the FMCSA agrees that once this record check of all States where a driver held any type of driver's license has been conducted for every CDL driver, and in light of the fact that the Federal regulations require all future convictions to be forwarded to and recorded on the driver record of the State where a CDL driver is licensed, requiring the States to conduct this expanded State record check after the initial CDL renewal would serve no useful purpose. Accordingly, the FMCSA is amending § 383.73(a)(3)(iv) of the final rule to limit this record check to CDL drivers renewing their license for the first time after the effective date of this rulemaking, provided that a notation is made on the driver's record that this expanded driver record check has been made and the date it was done.

Section 383.93—Endorsements.

Section 383.93 is being amended to add a new paragraph for the school bus endorsement mandated by Section 214 of the MCSIA and specifying that applicants must pass both a knowledge and a skills test to obtain this endorsement. Comments related to the proposed school bus endorsement are discussed in the next section.

Section 383.123—Requirements for a School Bus Endorsement.

Section 214 of the MCSIA requires the FMCSA to create a new endorsement that CDL holders must obtain to operate a school bus. To implement this new endorsement, the FMCSA has added definitions of "school bus" and "fatality" to 49 CFR 383.5; amended other provisions of part 383 to recognize the new school bus endorsement; added a license code for the endorsement; and specified that applicants must pass both a knowledge and a skills test to obtain the endorsement. This section establishes the minimum knowledge and skills test requirements for this new endorsement.

Seven of the comments support, while two oppose, the new school bus endorsement. An issue raised by three commenters is whether States such as California, which already have a comprehensive school bus licensing or certification program in place, need to comply with the requirements of this rulemaking. As with other CDL requirements found in 49 CFR part 383, the new school bus testing standards are intended to establish a minimum standard. States are free to establish more stringent standards for CDL drivers they license. States with a school bus licensing program that meets or exceeds the FMCSA requirements in 49 CFR 383.123(a) may, therefore, continue to license school bus drivers in accordance with that program. For the sake of national uniformity and consistency, they must, however, comply with the school bus endorsement requirements of 49 CFR 383.153(a)(9)(vi).

Nine commenters, primarily those representing school transportation agencies and affiliated associations, expressed their belief that the school bus endorsement should be a stand-alone endorsement, encompassing all current requirements of a passenger vehicle endorsement. The practical effect of adopting this recommendation would be to restrict those drivers who obtain a school bus endorsement from operating any other type of passenger-carrying CMV without taking additional knowledge and skills tests. The argument in support of this proposition is that companies and government entities hiring school bus drivers often pay the cost of training drivers, only to have them leave for other employment

after receiving this training and obtaining their passenger endorsement. While this may be a practical economic issue, the FMCSA believes that Congress established the school bus endorsement to promote the safe operation of school buses, not to restrict a driver's future employment opportunities. Issues related to restricting the future employment of such drivers should be addressed through agreements between the parties. Based upon this analysis, the FMCSA declines to incorporate the passenger endorsement requirements into the school bus endorsement.

In the July 22 NPRM, the FMCSA proposed including a provision in § 383.123 giving States the option of not requiring applicants for the school bus endorsement to take the skills test where the applicant had past experience driving a school bus and met the safety criteria established in that section. The agency believes that such a "grandfather clause," which proved successful during the implementation of the CMVSA, incorporates appropriate experience and safety requirements to accomplish the objective of the MCSIA without imposing an undue burden on the States.

Thirteen comments received expressed strong support for grandfathering experienced drivers, although there were a few suggestions for changes to these proposed requirements. Based on the comments, the FMCSA has amended the text to clarify these criteria in the final rule.

Section 383.153—Information on the Document and Application.

Section 383.153 adds a license code for the proposed school bus endorsement. One State and the American Association of Motor Vehicle Administrators express concern that some States already use an "S" endorsement and asked the FMCSA to select another designation for the new school bus endorsement. Based on the fact that only two commenters raised this issue, the FMCSA does not believe adopting an "S" endorsement will impose an undue burden on those few States that may already use it for some other purpose. Since States use a wide variety of letters for various other non-Federal endorsements or purposes, there is also a likelihood that any alternative letter designation proposed by the FMCSA for the school bus endorsement would already be used by one or more States. For these reasons, the FMCSA will include the "S" endorsement for school bus drivers in the final rule.

Section 384.107—Matter Incorporated by Reference.

The FMCSA is incorporating by reference the AAMVAnet publication *CDLIS State Procedures Manual* cited in 49 CFR 384.231(d) Recordkeeping requirements. A discussion of the analysis for this action, a complete description of the document, and the reasons for its incorporation can be found in the commentary to § 384.231.

One comment seeks clarification on whether the reference to CDLIS in the May 4 NPRM preamble discussion of the "Number of CDL citations" means the central site or the overall system. The reference to CDLIS in the NPRM is to the overall system.

Another comment asks whether the FMCSA would consider comments on the AAMVAnet State Procedures Manual, which is being incorporated by reference into the Code of Federal Regulations. The FMCSA received no comments on the Manual, but would not have considered comments on this document because no changes to it were being proposed.

Section 384.203—Driving While Under the Influence.

The FMCSA has removed a provision titled "Substantial Compliance by States," from 49 CFR 383.51(f) and added it to this section, where it more appropriately belongs. It is designated 49 CFR 384.203(b) and (c).

Section 384.206—State Record Checks.

As previously discussed in the commentary to 49 CFR 383.73, Section 202(a) of the MCSIA requires States to request the applicant's driving record from each State that issued him or her any kind of driver's license [49 U.S.C. 31311(a)(6)] before issuing or renewing a CDL. The FMCSA is amending §§ 383.71, 383.73 and 384.206 to incorporate these new requirements.

Five commenters asked how far back this record check should extend. After reviewing the issue and noting that National Driver Register (NDR) guidelines require numerous offenses to remain on a driver's record for a period of 10 years, the FMCSA has amended § 384.206 to limit this expanded record check to the 10 years preceding the date of the driver's license application.

Section 384.208—Notification of Disqualification.

Section 384.208 has been amended to comply with Section 202(b) of the MCSIA, which amended 49 U.S.C. 31311(a)(8) to require that States include and record the violation that resulted in the driver's disqualification, or the revocation, suspension or cancellation of his or her CDL, as part of the notification they were previously required to make under this statutory provision. This notification must be made no later than 10 days after the driver is disqualified.

Because the only comment addressing this issue was favorable, the FMCSA is incorporating it into the final rule as proposed.

Section 384.209—Notification of Traffic Violations.

Section 202(c) of the MCSIA clarifies a State's responsibility for notifying the State where an out-of-state CDL driver is licensed whenever such a driver is convicted of violating any State or local law relating to motor vehicle traffic control (other than a parking violation), even if the driver was operating a non-CMV when the offense was committed [49 U.S.C. 31311(a)(9)]. The MCSIA also requires the State where the offense was committed to notify the State where the driver is licensed if the offense was committed in a CMV, even if the driver did not have a CDL at the time. The MCSIA further requires that this notification be made no later than ten days after the driver's conviction. This section implements these requirements.

Eighteen commenters expressed their views on this provision, with industry and safety groups generally supporting the proposed 10-day conviction reporting period and States raising numerous concerns associated with implementing this requirement. Much of the States' concerns focused on the fact that driver licensing and law enforcement agencies are held accountable for actions of the State courts to meet the 10-day conviction-reporting requirement.

The FMCSA first notes that this 10-day reporting requirement is not new. Its origins are rooted in the CMVSA itself. In the final rule establishing the standards States must meet to be in compliance with that Act, published in the **Federal Register** on May 18, 1994 at 59 FR 26029, the FHWA recognized that it would be difficult for many States to meet this 10-day reporting standard, and accordingly delayed implementation of the requirement. The agency cautioned in that rulemaking, however, that this important issue would be the subject of future rulemaking.

Three other commenters object to the proposed extended implementation period for States to comply with the conviction reporting requirements of this section. As the agency stated in the July 27 NPRM, based on its current knowledge of State capabilities to obtain and transmit driver conviction information, the FMCSA believes that to

immediately impose a ten-day time period would place an unreasonable burden on the States. Accordingly, the NPRM proposed that this 10-day time limitation be phased in over six years according to the following time schedule. Within three years of the effective date of the final rule, notification would be required within 30 days of the conviction. Within six years, notification would be required within ten days. States are encouraged to move as quickly as possible to meet the 10-day requirement and should seek to do so wherever possible. After considering the comments, the FMCSA has decided to adopt the phase-in proposal.

In light of the importance of States obtaining timely conviction information on CDL drivers who are convicted of offenses while driving in other States, it is critical that States make every effort to meet the compliance schedule established in this rulemaking. The FMCSA urges all State agencies to work together to accomplish this objective.

One commenter also asked whether the 10-day notification period began when the verdict was rendered or at the time the conviction became final. The FMCSA defers to State law and procedure to determine this issue. If, as is the case in many jurisdictions, a trial court verdict does not become a final conviction for a stated period after the verdict to allow a defendant time to appeal, the conviction information must be transmitted 10 days after the appeal window closes, or if an appeal is filed, after the conviction is upheld.

Section 384.210—Limitation on Licensing-Prohibition on State Issuing Hardship Licenses.

Section 384.210 is being amended in accordance with provisions of Section 202(d) of the MCSIA (49 U.S.C. 31311(a)(10)(B)) to prohibit a State from issuing a special commercial driver's license or permit (including a provisional or temporary license) to any CDL driver who is disqualified or who has his or her non-commercial driver's license or driving privilege revoked, suspended or canceled.

Of the ten comments addressing this issue, a few State licensing and law enforcement agencies point out the difficulty of getting any legislation passed and the fact that they do not control court actions in issuing such licenses. While cognizant of the need for coordination between judicial, executive, and legislative branches that implementing and complying with this provision may impose on the States, the FMCSA notes that this action is required by the MCSIA and urges all States to take appropriate action to bring their laws, regulations and ajudicatory procedures into compliance with this new requirement for identifying and removing drivers whose violations warrant such action. The statute anticipates and FMCSA believes that the branches of government can work cooperatively to address this public safety issue.

Section 384.225—Record of Violations.

Section 202(f) of the MCSIA requires the States to maintain a driver history record for CDL drivers of all convictions of State or local motor vehicle traffic control laws while operating any type of motor vehicle [49 U.S.C. 31311(a)(18)]. It also specifies that this information must be made available to authorized CDLIS users including the Secretary of Transportation, States, drivers, employing motor carrier and prospective employing motor carriers, as part of normal operating practices. While the MCSIA does not specify a retention period for information on these convictions and other licensing actions, a minimum retention period of three years is included in this rule to promote uniformity among the States. Although Section 31311(a)(18) requires a driver history record only for CDL drivers, Section 31311(a)(9) goes beyond that. When an out-of-State driver commits a violation, paragraph (a)(9) requires the State where the violation occurred to notify the State that issued his/her driver's license. This rule applies both to CDL holders and to drivers operating a CMV (illegally) without a CDL. Because a State could not provide notification of a violation by a CMV driver who did not have a CDL without first entering the conviction in the driver information system, the FMCSA has concluded that this requirement is implicit in paragraph (a)(9) despite the fact that no such requirement is included in paragraph (a)(18). Stated alternatively, § 384.225(a) ("CDL holders") is based on 49 U.S.C. 31311(a)(18), while § 384.225(b) ("Non-CDL holders") is based on 49 U.S.C. 31311(a)(9).

Seven comments support the requirement for States to enter all traffic convictions on driver records; however, three States questioned which driving records should be maintained and proposed alternative retention periods. Paragraph (d) of § 384.231 requires States to maintain driver records for CDL drivers on the CDLIS for the time periods the FMCSA finds necessary to enforce the disqualifications called for in §§ 384.215 through 384.219 and §§ 384.221 through 384.224. These time periods range from a minimum of 3 years for serious traffic violations and railroad-highway grade crossing violations to life for major alcohol, drug and felony offenses. Since the minimum retention period for a disqualifying offense is currently set at 3 years, the FMCSA believes that a minimum record retention period of 3 years for all other offenses in a CMV and non-CMV is reasonable. It is a good balance between allowing authorized users to see the current driving record of a CDL driver without placing an undue burden on the States to carry convictions on a driving record that will not affect any future driver disqualification action. The more serious the offense, the longer the conviction will remain on the driving record for review by authorized users of CDLIS. Based upon the fact that the CDLIS driver record retention standards are well known and adhered to by all States, the FMCSA does not believe any additional record retention period needs to be included in this rulemaking.

Another issue raised in four of the comments was that the authorized agents of people and entities designated in the MCSIA as having access to driver record information should also be allowed to obtain this information. The FMCSA agrees that the MCSIA permits access to these records by agents, and has amended the final rule to reflect this fact.

One State asked whether they will be allowed to charge motor carriers for providing driver history information. The FMCSA believes this is a decision for each State to make consistent with the object of this rulemaking. Accordingly, it has not been addressed in this rulemaking.

Section 384.226—Prohibition on Masking Convictions.

Section 202(g) of the MCSIA prohibits the practice of masking convictions required to be maintained by or transmitted to the State where the driver is licensed [49 U.S.C. 31311(a)(19)]. A Joint Explanatory Statement issued by Congress in conjunction with the MCSIA (145 Cong. Rec. H12870–12874 (daily ed. Nov. 18, 1999; 145 Cong. Rec. S15207–15211 (daily ed. Nov. 19, 1999)) makes clear that this new provision is intended to prohibit States not only from masking convictions, but also from using diversion programs or any other disposition that would defer the listing of a guilty verdict on a CDL driver's record. This provision also requires that records of such conviction information be made available to all authorized parties and government entities. The FMCSA urges State Executive Branch agencies to work with the State Judicial Branch to eliminate the practice of

masking. This practice allows unsafe drivers to continue to pose a risk to other motorists by allowing their continued operation on the nation's highways.

Section 384.231—Satisfaction of State Disqualification Requirements.

All paragraphs are amended to replace the word "shall" with the word "must."

The FMCSA is amending paragraph (a) to include cross references to the disqualifications resulting from railroad-highway grade crossing violations added as 49 CFR 384.223 by a final rule published on September 2, 1999 (64 FR 48104), and new §§ 384.222 and 384.224 promulgated by this final rule.

Paragraph (b)(2) is being amended to remove the May 18, 1997, compliance date from the heading of the paragraph because that date has passed and the rule now applies to all non-CDL holders. The FMCSA is also replacing the undefined term "non-CDL holder" with "a person required to have a CDL" within the heading and body of paragraph (b)(2) because the term "non-CDL holder" could include a person who is not even required to have a CDL. The intent of this paragraph is to require each State to disqualify any person required to have a CDL who was convicted of a disqualifying offense in a CMV under § 383.51.

Paragraph (d) is being amended to incorporate by reference the current version of the AAMVAnet State Procedures Manual. Each State-licensing agency has a copy of the most recent version of the CDLIS State Procedures Manual. A copy of this CDLIS State Procedures Manual is also in the public docket.

Section 384.401—Withholding of Funds Based on Noncompliance.

In order to avoid the withholding of certain Federal aid highway funds, States must be in substantial compliance, as defined in 49 CFR 384.301, with the standards set forth in Subpart B of part 384. Section 103(e) of the MCSIA also requires the FMCSA to withhold Motor Carrier Safety Assistance Program (MCSAP) funds from States that fail to be in substantial compliance with these standards. This section incorporates this new sanctioning requirement. A discussion of the comments on this requirement can be found in the commentary to § 350.217.

Section 384.405—Decertification of State CDL Program.

Section 203 of the MCSIA requires the FMCSA to prohibit a State from issuing, renewing, transferring, or upgrading CDLs if the agency has determined that the State is in substantial noncompliance with the requirements of Section 31311 of title 49 U.S.C. (49 CFR part 384, subpart B). Because of the severity of this new sanction and the potential effect on drivers and motor carriers located in States found to be in noncompliance, it is envisioned that this penalty will be used only after other attempts to bring the State into substantial compliance with CDL requirements have failed. As noted in the commentary to § 383.23, the FMCSA envisions this sanction being invoked only in rare situations.

To mitigate the impact on drivers and motor carriers in States that have been decertified, the MCSIA is adding a provision to 49 CFR 383.7 and 384.405(h) allowing drivers licensed before a State was decertified to continue to operate CMVs, as long as their licenses remain valid. The FMCSA has also included language in 49 CFR 383.23(b)(2) authorizing States that are in substantial compliance to issue nonresident CDLs to drivers living in States that have been decertified.

In response to one comment raised concerning how other States will know that a State has been decertified, the FMCSA will notify all States whenever a State has been decertified or recertified.

Section 384.407—Emergency CDL Grants.

Section 384.407 implements Section 103(d) of the MCSIA (49 U.S.C. 31107(c)) by authorizing the FMCSA to provide emergency CDL grants to assist States whose CDL programs may fail to meet the compliance requirements of 49 U.S.C. 31311(a) [49 CFR part 384, subpart B]. These grants of up to $1,000,000 per State are subject to the annual appropriation of funds by Congress for information system grants.

Two comments to the NPRM addressed this issue. One proposed that only States making a good faith effort to comply with the CDL requirements be eligible to receive these grant funds and the other proposed that the traditional 20% State grant-matching requirement be waived. The FMCSA agrees with the first of these suggestions and has added language to the final rule clarifying that only States making a good faith effort to comply with the CDL requirements are eligible to receive these grants. As for the second comment, these discretionary grants do not require a State matching contribution and § 384.407 includes no such implication.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, and is not significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It has not been reviewed by the Office of Management and Budget. Nonetheless, the FMCSA prepared a regulatory evaluation of this rule. This section summarizes the regulatory evaluation. A copy of the complete regulatory evaluation is available in the docket described above under **ADDRESSES.**

The regulatory evaluation addresses seven of the provisions contained in this rule, primarily those provisions that FMCSA expected would have economic costs to State government agencies and the motor carrier industry. These provisions include:

- *Section 201(a) of MCSIA—Disqualification for Driving While Suspended, Disqualified and Causing a Fatality.* This provision creates two new Federal disqualifying offenses: (1) Driving a CMV while revoked, suspended, or cancelled, or while the driver is disqualified based upon the driver's operation of a CMV; and (2) causing a fatality through the negligent or criminal operation of a CMV. *
- *Section 201(b) of MCSIA—Emergency Disqualification of Drivers Posing an Imminent Hazard.*
- *Sections 201(b) and 202(h) of MCSIA—Disqualification for Violations Committed while Driving a Non-CMV.*
- *Section 201(c) of MCSIA—Expanded Definition of Serious Traffic Violations.*
- *Section 202(a) of MCSIA—Expanded State Driver Record Check.*
- *Section 202(c) of MCSIA—New Notification Requirements.* This section requires States to notify CDLIS and the State that issued the CDL no later than 10 days after disqualifying a CDL holder from operating a CMV (or revoking, suspending, or canceling a CDL) for at least 60 days and the reason for the action.
- *Section 202(g) of MCSIA—Masking Prohibition.* This section of MCSIA prohibits the practice of masking convictions and thereby requires the record to be maintained or transmitted to the State where the driver is licensed.

As stated, the regulatory evaluation addresses seven "major" provisions of the rule. Although the remaining nine provisions were initially examined,

FMCSA determined through a preliminary evaluation that these nine would not impose significant economic costs on State government agencies or the motor carrier industry.

FMCSA derived benefits estimates for this rule by examining the number of truck-related crashes, using average costs for various types (e.g. fatal, injury, and property-damage-only) that must be avoided during the analysis period (2003–2011) for this rule to be cost effective. Note that no crash reduction is assumed to occur during the first year of implementation (2002). Results of this analysis are contained in Table 1 below.

TABLE 1.—SUMMARY OF FINAL RULE COSTS AND OTHER RELEVANT FACTORS

Net Present Value of Costs, 2002–2011	$373 million	
Net Present Value of Benefits if 700 Truck-Related Crashes are Avoided Annually between 2003–2011	$404 million	
Type of truck-related crash	Average cost per crash[1]	Annual Reduction Required[2]
Fatal Crashes involving 7 "Large Trucks"	$3,419,202	7
Injury-Related "Large Truck" Crashes	217,000	147
Property-Damage-Only "Large Truck" Crashes	11,300	546

[1] From "Cost of Large-Truck and Bus-Involved Crashes, Final Report for the Federal Motor Carrier Safety Administration, Zaloshnja, Miller, & Spicer, 2000.

[2] For discounted benefits of the rule to exceed discounted costs, a total of 700 truck-related crashes (e.g., fatal, injury, & PDO combined) must be avoided annually during the last nine years of the analysis period (2003–2011). This reduction represents about 0.15 percent of the total number of reported truck-related crashes annually. The reductions are proportional to the frequencies found by "Trends in Motor Vehicle Crashes" (FMCSA, December 2000).

Costs

The total discounted costs from each provision's implementation are included in Table 2 below.

TABLE 2.—TOTAL DISCOUNTED COSTS, BY MCSIA SECTION AND TITLE

MCSIA section	Final rule section title	Total discounted costs (millions of discounted dollars)
201(a)	"* * * Driving While Suspended * * *"	$89.1
201(b)	"* * * Imminent Hazard"	8.3
201(b) & 202(h)	"Disqualifications for non-CMV Offenses"	169.7
201(c)	"Expanded Definition of Serious Traffic Violations"	43.3
202(a)	"Expanded Driver Record Check"	42.5
202(c)	"New Notification Requirements"	3.8
202(g)	"Masking Prohibition"	16.3
Total	All Seven Provisions	373

While the costs associated with each provision are somewhat unique, the types of costs generally fall into one of two categories: start-up costs (Table 3) or ongoing costs (Table 4).

TABLE 3.—TOTAL "FIRST-YEAR" COSTS OF FINAL RULE PROVISIONS, BY MCSIA SECTION

MCSIA section	Final rule section title	Total first-year costs (millions of discounted dollars)
201(a)	"* * *Driving While Suspended* * *"	$1.61
201(b)	"* * *Imminent Hazard"	2.15
201(b) & 202(h)	"Disqualifications for non-CMV Offenses"	1.73
201(c)	"Expanded Definition of Serious Traffic Violations"	1.41
202(a)	"Expanded Driver Record Check"	1.46[1]
202(c)	"New Notification Requirements"	0.58[1]
202(g)	"Masking Prohibition"	2.42
Total		11.4

[1] Information system implementation costs were spread over three calendar years.

TABLE 4.—TOTAL "LATER-YEAR" COSTS OF FINAL RULE, BY MCSIA SECTION

MCSIA section	Final rule section title	Total later-year costs (millions of discounted dollars)
201(a)	"* * *Driving While Suspended * * *"	$87.5
201(b)	"* * *Imminent Hazard"	6.2

TABLE 4.—TOTAL "LATER-YEAR" COSTS OF FINAL RULE, BY MCSIA SECTION—Continued

MCSIA section	Final rule section title	Total later-year costs (millions of discounted dollars)
201(b) & 202(h)	"Disqualifications for non-CMV Offenses"	168.0
201(c)	"Expanded Definition of Serious Traffic Violations"	41.9
202(a)	"Expanded Driver Record Check"	41.0
202(c)	"New Notification Requirements"	3.2
202(g)	"Masking Prohibition"	13.9
Total		361.7

Each of the seven major provisions examined is analyzed separately here, since many of the annual or ongoing costs of the provisions are somewhat unique (e.g., effects on driver suspensions and disqualifications).

Section 201(a) of MCSIA—Disqualification for Driving While Suspended, Disqualified and Causing a Fatality—creates two new disqualifying offenses under the FMCSRs. They are: (1) Driving a CMV while revoked, suspended, or cancelled, or while the driver is disqualified based upon the driver's operation of a CMV; and (2) causing a fatality through the negligent or criminal operation of a CMV. First-year information system development and implementation costs average $36,234 per State. Extrapolating to all fifty States and the District of Columbia results in total system development and implementation costs of $1.61 million when discounted to the year 2002. Annual costs thereafter include additional data entry by State government staff and new driver disqualifications resulting from new FMCSR offenses. The FMCSA assumes 10 percent of CDL drivers with suspended licenses (or 3,864) will violate the new provision and will subsequently receive disqualifications of one year on average (or 2,080 working hours) and that these drivers will secure alternative employment at a 10 percent wage reduction.

We expect 4,296 new CDL drivers to be disqualified annually either for being convicted of driving while suspended or for causing a fatality through negligent or criminal operation of a CMV, for an average of one year each, and that each accepts alternative employment at a 10 percent wage reduction. Additionally, the FMCSA included the costs for data entry and for each CDL driver's record to be checked by a patrolman, costing about $450,000 (undiscounted, combined) annually for the period 2005 through 2011. The present value of total costs for this section is $89.1 million.

Section 201(b) of MCSIA—Emergency Disqualification of Drivers Posing an Imminent Hazard—authorizes the Secretary to impose an emergency disqualification on drivers whose continued operation of a CMV the Secretary determines would constitute an imminent hazard. In cases where the Secretary proposes emergency disqualification beyond 30 days, the driver must be notified of the proposed action and provided the opportunity for a hearing. We assume that all such drivers would request a hearing and include: (a) Costs to review CDL drivers' records for IH designation; (b) costs to hold hearings for each driver when an IH designation is assigned to a CDL driver; (c) costs to CDL drivers who are given the IH designation; and (d) data entry costs for State employees where the IH designation is applied. These discounted "later year" costs (using OMB-prescribed seven percent discount rate) total $6.2 million, for the period 2004 through 2011. Therefore, with the $2.15 million set-up costs, the present value of costs of Section 201(b) of MCSIA total $8.3 million.

Sections 201(b) and 202(h) of MCSIA—Disqualification for non-CMV Violations'prohibits the holder of a CDL from operating a CMV if the CDL holder commits certain offenses while operating a non-CMV. First-year costs for this rule should total approximately $1.73 million (present value); most of these are for information system developments and modifications by State agencies. Annual costs are estimated at $168.7 million (present value) and include wages lost by an average of 9,661 CDL holders who would be suspended or disqualified because of this rule. FMCSA estimates that those CDL holders who would be disqualified because of this rule would find alternative work at a 10 percent reduction in hourly wages, for an average of 317 days, over the 10-year analysis period. The total cost of this provision is approximately $170.4 million (present value) over the ten-year analysis period for 2004 through 2013, using a discount rate of 7 percent.

Section 201(c) of MCSIA—Expanded Definition of Serious Traffic Violations—adds three new offenses to the FMCSR definition of serious traffic violations. These new violations include: (1) Driving a CMV when the driver has not obtained a CDL; (2) driving a CMV without a CDL in the driver's possession; and (3) driving a CMV without the driver having met the minimum testing standards for the specific class of CMV being operated, or for the type of cargo being transported in the vehicle. This increases the total number of serious traffic violations, as defined in Part 383 of the FMCSRs, from five to eight. System development and implementation costs include hardware, software, and personnel costs to implement this provision and average $29,643 per State. Extrapolating these results to all fifty States and the District of Columbia results in a discounted cost of $1.41 million. Annual, or ongoing, costs for this provision include: (a) Costs to patrolmen to write the convictions for 3 new serious traffic violation offenses; (b) costs to input the new conviction data into CDL drivers' records and report disqualifying information to CDLIS; and (c) costs to CDL drivers who will be disqualified as a result of the 3 new serious traffic violations. The present value of these annual costs is $41.9 million. That brings the total cost for this section to $43.3 million.

Section 202(a) of MCSIA—Expanded Driver Record Check—first-year costs equal approximately $1.46 million (present value) for all fifty States and Washington, DC. Discounted "later year" costs total $41.0 million for the period 2004 through 2011. Therefore, present values costs of Section 202(a) of MCSIA total $42.5 million.

Section 202(c) of MCSIA—New Notification Requirements—requires States to notify CDLIS and the State that issued the CDL no later than 10 days after disqualifying a CDL holder from operating a CMV (or revoking, suspending, or canceling a CDL) for at least 60 days. Information system

development and implementation costs include hardware, software, and personnel costs and average $34,339 per State. Extrapolating these results to all fifty States and the District of Columbia results in total system development and implementation costs of Section 202(c) of MCSIA of $1.75 million. This regulation allows these costs to be spread over three years, so the first-year costs are just less than $0.6 million. Annual, or ongoing, costs begin in 2005 and include the on-going costs to State government agencies to ensure that CDL convictions are consistently transferred within the 10-day window and for States to transmit specific conviction information with each driver disqualification record. FMCSA assumes that this provision would not result in any new disqualifications, since it primarily addresses the amount of CDL holder information transmitted. Discounted later year costs total $3.2 million for the remaining two years of the implementation and the period 2005 through 2011 combined. Therefore, present value costs for Section 202(b) of MCSIA total $3.8 million.

Section 202(g) of MCSIA—Masking Prohibition—prohibits the practice of masking convictions and thereby requires the CDL record to be maintained or transmitted to the State where the driver is licensed and be made available to all authorized parties and government entities. Information system development and implementation costs include hardware, software, and personnel costs and average $47,393 per State. Extrapolating these results to all fifty States and the District of Columbia results in total system development and implementation costs of $2.42 million. Annual, or ongoing, costs begin in 2002 and are primarily comprised of wage reduction costs to those CDL holders who will be disqualified because conviction information is being transmitted to their home State licensing agency. Assuming that States that mask convictions are similar to States that do not mask, and that States mask all convictions if they mask at all, the maximum number of FMCSR-required withdrawal convictions that could be unmasked would be 5,173 as a result of this provision's implementation. That would result in wage reductions of approximately $4.3 million annually. Since it is unrealistic to assume that all convictions are masked or that no convictions are masked, we assume that half are masked. The present value of costs from the "Masking Prohibition" total $16.3.

Benefits: Crashes Avoided for the Final Rule To Be Cost Effective

The primary societal benefits expected from this rule are the truck-related crashes that one would expect to be avoided due to the additional CMV operators (mainly CDL holders) who will be suspended or disqualified for violations of the new disqualifying offenses and serious traffic violations. It was not possible to estimate the specific number of truck-related crashes that would be avoided from implementing each provision of this rule, given that FMCSA has no data directly linking these specific FMCSR-defined offenses and truck-related crashes. However, FMCSA did use cost data on truck-related crashes from Zaloshnja, Miller, and Spicer ("The Costs of Large Truck- and Bus-Involved Crashes," 2000) to derive an estimate of the total number of truck-related crashes that would have to be avoided per year (during the analysis period) for this rule to be cost effective (i.e. for discounted benefits to equal/exceed discounted costs). Those benefits are found in Tables 1 through 4 above.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. We do not believe that these proposals meet the threshold values for requiring an RFA analysis, since the anticipated impact is fairly small. Nonetheless, because of the public interest in these proposals, the FMCSA has prepared this RFA analysis.

(1) *A description of the reasons why action by the agency is being considered.* The CDL program has been in operation since 1986. Since that time, potential process improvements to enhance car safety have been identified. This rule implements some of those changes.

(2) *A succinct statement of the objectives of, and the legal basis for, the proposed rule.* In 1999, Congress passed the Motor Carrier Safety Improvement Act (MCSIA). Sections of that Act direct changes in the CDL program. The changes in procedures are a direct response to this legislation. FMCSA hopes that these changes will make the CDL program more effective in preventing dangerous drivers from continuing to drive and will result in improved safety by improving the performance of drivers and removing unsafe drivers from the road.

(3) *A description and, where feasible, an estimate of the number of small entities to which the rule will apply.* In the trucking industry, there are a few large firms with many employees and many very small firms with only a handful of employees. To the extent which the rule imposes costs on firms, these small firms will endure the largest portion of that burden. The incidence of driver disqualification is not likely to be different among firms, however large firms are better able to spread the risk of having a driver disqualified.

(4) *A description of the proposed reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.* Although these small entities will have to keep records on all of their employees' status regarding the CDL, there is no additional administrative cost borne by them because they already have to maintain those records under the current system. The avenue through which these small businesses might be adversely affected is a reduction in the number of available drivers who can qualify under the stricter rules. If that number is significantly reduced, employers may find that they have to pay drivers a premium wage in order to continue to provide their level of service.

(5) *Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.* The FMCSA is not aware of any other rules or procedures that duplicate or conflict with this rule.

(6) *Significant Alternatives Available.* Allowing differences in compliance or reporting for small entities would be contrary to the intent of Congress in issuing this mandate. The purpose of MCSIA is to strengthen and standardize the CDL program. Another key component of the CDL program is national uniformity and consistency in its administration. This promotes effective enforcement.

We certify that the rule will not have a significant impact on a substantial number of small entities.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation,

eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under E.O. 13045, "Protection of Children from Environmental Health Risks and Safety Risks." This rule is not economically significant and does not involve an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does not have substantial direct Federalism implications that would limit the policymaking discretion of the States. This action will not have a significant effect on the States' ability to execute traditional State governmental functions, and any additional administrative cost borne by the States should be negligible.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. An analysis of this rule has been made by the FMCSA, and it has been determined that it will affect the information collection burden associated with the currently-approved information collection covered by OMB Control No. 2126–0011, titled "Commercial Driver Licensing and Test Standards." The OMB approved the most recent update of this information collection on October 3, 2001, at 620,802 burden hours. The approval period runs through October 31, 2004.

The implementation of this final rule will require the State DMVs to enter additional information into CDLIS—whether the CDL holder committed the violation in a CMV or a non-CMV. We estimate the time required to complete this additional information in CDLIS to be approximately 2 seconds per applicant. The currently-approved estimate for completing a CDLIS entry is 2 minutes. We believe the 2 additional seconds can be folded into the 2 minutes and that the 2-minute estimate is still accurate. Therefore, there is no increase in burden hours from this provision.

The currently-approved estimate of the number of violations is 1 violation every 3 years for the 10,000,000 CDL holders. We estimate that with the additional violations, approximately one-quarter of the 10,000,000 CDL holders (2,500,000) will receive an additional violation over the 3-year period. This would be 833,333 additional violations. The currently-approved estimate of staff time to input the new violations into State systems and transfer to CDLIS is 2 minutes. Therefore, the additional burden created by this final rule is 27,778 burden hours [833,333 x 2 minutes/60 minutes].

Start-up costs include information system, or computer, costs incurred by State government agencies to implement the new CDL program provisions under MCSIA. Specific examples include costs required to establish or modify computer systems within each State to log, review, and transfer the new serious traffic violations identified under MCSIA. Additionally, these costs include information systems costs to implement the new notification requirements for States under MCSIA. Such costs include hardware, software, and personnel costs to establish or modify computer systems within each State. Estimates of the combined start-up, or first-year, costs for the 50 States and the District of Columbia are shown below.

Final rule section title	Total first-year costs (in millions)
"* * * Driving While Suspended * * *"	$1.61
"* * * Imminent Hazard"	$2.15
"Disqualifications for non-CMV Offenses"	1.73
"Expanded Definition of Serious Traffic Violations"	1.41
"Expanded Driver Record Check"	1.46
"New Notification Requirements"	0.58
"Masking Prohibition"	2.42
Total	11.4

At NPRM stage, we requested comments on the information collection aspects of this rule. No comments regarding the information collection burden hours were received. You may submit any additional comments on the *information collection burden* addressed by this final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by August 30, 2002. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The Federal Motor Carrier Safety Administration is a new administration within the Department of Transportation. We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this rule under the NEPA and DOT Order 5610.1C. We believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, the Administrator of the Office of Information and Regulatory Affairs has not designated this rule as a

significant energy action. For these reasons, a Statement of Energy Effects under Executive Order 13211 is not required.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*)

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Incorporation by reference, Intergovernmental relations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, Chapter III, parts 350, 383, 384, and 390 as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

1. Revise the authority citation for part 350 to read as follows:

Authority: 49 U.S.C. 31100–31104, 31108, 31136, 31140–31141, 31161, 31310–31312, 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1753; and 49 CFR 1.73.

2. Add § 350.217 to subpart B to read as follows:

§ 350.217 What are the consequences for a State with a CDL program not in substantial compliance with 49 CFR part 384, subpart B?

(a) A State with a CDL program not in substantial compliance with 49 CFR part 384, subpart B, as required by 49 CFR part 384, subpart C, is subject to the loss of all Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under sec. 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106–159, 113 Stat. 1748] and loss of certain Federal-aid highway funds, as specified in 49 CFR part 384, subpart D.

(b) Withheld MCSAP grant funds will be restored to the State if the State meets the conditions of § 384.403(b) of this subchapter.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

3. Revise the authority citation for part 383 to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; Sec. 214 of Pub. L. 106–159, 113 Stat. 1766; and 49 CFR 1.73.

4. Revise § 383.3(f)(3)(i)(C) to read as follows:

§ 383.3 Applicability

* * * * *

(f) * * *

(3) * * *

(i) * * *

(C) Has not had *any* conviction for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

* * * * *

5. Amend § 383.5 to revise the definitions of the terms "disqualification," "driving a commercial motor vehicle while under the influence of alcohol," "non-resident CDL" and "serious traffic violation" and to add the definitions of the terms "fatality," "imminent hazard," "non-CMV," and "school bus" in alphabetical order to read as follows:

§ 383.5 Definitions.

* * * * *

Disqualification means any of the following three actions:

(a) The suspension, revocation, or cancellation of a CDL by the State or jurisdiction of issuance.

(b) Any withdrawal of a person's privileges to drive a CMV by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

(c) A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under part 391 of this chapter.

* * * * *

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV—

(a) Driving a CMV while the person's alcohol concentration is 0.04 or more;

(b) Driving under the influence of alcohol, as prescribed by State law; or

(c) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b) or § 392.5(a)(2) of this subchapter.

* * * * *

Fatality means the death of a person as a result of a motor vehicle accident.

* * * * *

Imminent hazard means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

* * * * *

Nonresident CDL means a CDL issued by a State under either of the following two conditions:

(a) To an individual domiciled in a foreign country meeting the requirements of § 383.23(b)(1).

(b) To an individual domiciled in another State meeting the requirements of § 383.23(b)(2).

* * * * *

Non-CMV means a motor vehicle or combination of motor vehicles not defined by the term "commercial motor vehicle (CMV)" in this section.

* * * * *

School bus means a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

Serious traffic violation means conviction of any of the following offenses when operating a CMV, except weight, defect and parking violations:

(a) Excessive speeding, involving any single offense for any speed of 15 miles per hour or more above the posted speed limit;

(b) Reckless driving, as defined by State or local law or regulation, including but not limited to offenses of driving a CMV in willful or wanton disregard for the safety of persons or property;

(c) Improper or erratic traffic lane changes;

(d) Following the vehicle ahead too closely;

(e) A violation, arising in connection with a fatal accident, of State or local law relating to motor vehicle traffic control;

(f) Driving a CMV without obtaining a CDL;

(g) Driving a CMV without a CDL in the driver's possession. Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense; or

(h) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

* * * * *

6. Add § 383.7 to subpart A to read as follows:

§ 383.7 Validity of CDL issued by decertified State.

A CDL issued by a State prior to the date the State is notified by the Administrator, in accordance with the provisions of § 384.405 of this subchapter, that the State is prohibited from issuing CDLs, will remain valid until its stated expiration date.

7. Amend § 383.23 to revise paragraphs (a)(2) and (b) to read as follows:

§ 383.23 Commercial driver's license.

(a) * * *

(2) Except as provided in paragraph (b) of this section, no person may legally operate a CMV unless such person possesses a CDL which meets the standards contained in subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) *Exception.* (1) If a CMV operator is not domiciled in a foreign jurisdiction which the Administrator has determined tests drivers and issues CDLs in accordance with, or under standards similar to, the standards contained in subparts F, G, and H of this part, the person may obtain a Nonresident CDL from a State which does comply with the testing and licensing standards contained in such subparts F, G, and H of this part.[1]

(2) If an individual is domiciled in a State while that State is prohibited from issuing CDLs in accordance with § 384.405 of this subchapter, that individual is eligible to obtain a Nonresident CDL from any State that elects to issue a Nonresident CDL and which complies with the testing and licensing standards contained in subparts F, G, and H of this part.

* * * * *

8. Revise § 383.51 to read as follows:

§ 383.51 Disqualification of drivers.

(a) *General.* (1) A driver or holder of a CDL who is disqualified must not drive a CMV.

(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(3) A driver is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder of a CDL drives a CMV or non-CMV and is convicted of the violations.

(4) Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(5) Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) after 10 years if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) must not be reinstated.

(b) *Disqualification for major offenses.* Table 1 to § 383.51 contains a list of the offenses and periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 1 TO § 383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .
(1) Being under the influence of alcohol as prescribed by State law * * *.	1 year	1 year	3 years	Life	Life.
(2) Being under the influence of a controlled substance * * *.	1 year	1 year	3 years	Life	Life.

[1] Effective December 29, 1988, the Administrator determined that commercial drivers' licensees issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are in accordance with the standards of this part. Effective November 21, 1991, the Administrator determined that the new Licencias Federales de Conductor issued by the United Mexican States are in accordance with the standards of this part. Therefore, under the single license provision of § 383.21, a driver holding a commercial driver's license issued under the Canadian National Safety Code or a new Licencia Federal de Conductor issued by Mexico is prohibited from obtaining nonresident CDL, or any other type of driver's license, from a State or other jurisdiction in the United States.

TABLE 1 TO § 383.51—Continued

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV * * *.	1 year	Not applicable	3 years	Life	Not applicable.
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in § 383.72 of this part * * *.	1 year	1 year	3 years	Life	Life.
(5) Leaving the scene of an accident * * *	1 year	1 year	3 years	Life	Life.
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this table * * *.	1 year	1 year	3 years	Life	Life.
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.	1 year	Not applicable	3 years	Life	Not applicable.
(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.	1 year	Not applicable	3 years	Life	Not applicable.
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance * * *.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement

(c) *Disqualification for serious traffic violations.* Table 2 to § 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 2 TO § 383.51

If the driver operates a motor and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit * * *.	60 days	60 days	120 days	120 days.

TABLE 2 TO § 383.51—Continued

If the driver operates a motor and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...
(2) Driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property * * *.	60 days	60 days	120 days	120 days.
(3) Making improper or erratic traffic lane changes * * *.	60 days	60 days	120 days	120 days.
(4) Following the vehicle ahead too closely * * *.	60 days	60 days	120 days	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident * * *.	60 days	60 days	120 days	120 days.
(6) Driving a CMV without obtaining a CDL	60 days	Not applicable	120 days	Not applicable.
(7) Driving a CMV without a CDL in the driver's possession [1].	60 days	Not applicable	120 days	Not applicable.
(8) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.	60 days	Not applicable	120 days	Not applicable.

[1] Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.

(d) *Disqualification for railroad-highway grade crossing offenses.* Table 3 to § 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, when the driver is operating a CMV at the time of the violation, as follows:

TABLE 3 TO § 383.51

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because . . .	For a first conviction a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(3) The driver is always required to stop, but fails to stop before driving onto the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(4) The driver fails to have sufficient space to drive completely through the crossing without stopping * * *.	No less than 60 days	No less than 120 days	No less than 1 year.

TABLE 3 TO § 383.51—Continued

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because . . .	For a first conviction a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance * * *.	No less than 60 days	No less than 120 days	No less than 1 year.

(e) *Disqualification for violating out-of-service orders.* Table 4 to § 383.51 contains a list of the offenses and periods for which a driver must be disqualified when the driver is operating a CMV at the time of the violation, as follows:

TABLE 4 TO § 383.51

If the driver operates a CMV and is convicted of . . .	For a first conviction while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials . . .	No less than 90 days or more than 1 year.	No less than 1 year or more than 5 years.	No less than 3 years or more than 5 years.
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title, or while operating a vehicle designed to transport 16 or more passengers, including the driver . . .	No less than 180 days or more than 2 years.	No less than 3 years or more than 5 years.	No less than 3 years or more than 5 years.

9. Add § 383.52 to read as follows:

§ 383.52 Disqualification of drivers determined to constitute an imminent hazard.

(a) The Assistant Administrator or his/her designee must disqualify from operating a CMV any driver whose driving is determined to constitute an imminent hazard, as defined in § 383.5.

(b) The period of the disqualification may not exceed 30 days unless the FMCSA complies with the provisions of paragraph (c) of this section.

(c) The Assistant Administrator or his/her delegate may provide the driver an opportunity for a hearing after issuing a disqualification for a period of 30 days or less. The Assistant Administrator or his/her delegate must provide the driver notice of a proposed disqualification period of more than 30 days and an opportunity for a hearing to present a defense to the proposed disqualification. A disqualification imposed under this paragraph may not exceed one year in duration. The driver, or a representative on his/her behalf, may file an appeal of the disqualification issued by the Assistant Administrator's delegate with the Assistant Administrator, Adjudications Counsel, Federal Motor Carrier Safety Administration (Room 8217), 400 Seventh Street, SW., Washington, DC 20590.

(d) Any disqualification imposed in accordance with the provisions of this section must be transmitted by the FMCSA to the jurisdiction where the driver is licensed and must become a part of the driver's record maintained by that jurisdiction.

(e) A driver who is simultaneously disqualified under this section and under other provisions of this subpart, or under State law or regulation, shall serve those disqualification periods concurrently.

10. Revise § 383.53(b)(1) to read as follows:

§ 383.53 Penalties.

* * * * *

(b) *Special penalties pertaining to violation of out-of-service orders*—(1) *Driver violations.* A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than $1,100 nor more than $2,750, in addition to disqualification under § 383.51(e).

* * * * *

11. Amend § 383.71 to revise paragraphs (a)(6), (a)(7), (b)(3), (b)(4), and (c)(3); and to add new paragraphs (a)(8), (b)(5), and (c)(4) to read as follows:

§ 383.71 Driver application procedures.

(a) * * *

(6) Certify that he/she is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that he/she does not have a driver's license from more than one State or jurisdiction;

(7) Surrender the applicant's non-CDL driver's licenses to the State; and

(8) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(b) * * *

(3) If the applicant wishes to retain a hazardous materials endorsement, comply with State requirements as specified in § 383.73(b)(4);

(4) Surrender the CDL from the old State of domicile to the new State of domicile; and

(5) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(c) * * *

(3) If a person wishes to retain a hazardous materials endorsement, pass the test for such endorsement as specified in § 383.121; and

(4) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

* * * * *

12. Revise § 383.73(a)(3) to read as follows:

§ 383.73 State procedures.

(a) * * *

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that the person does not have a driver's license from more than one State or jurisdiction. The record check must include, but is not limited to, the following:

(i) A check of the applicant's driving record as maintained by his/her current State of licensure, if any;

(ii) A check with the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a commercial motor vehicle;

(iii) A check with the National Driver Register (NDR) to determine whether the driver applicant has:

(A) Been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) Had a license (other than CDL) suspended, revoked, or canceled for cause in the 3-year period ending on the date of application; or

(C) Been convicted of any offenses contained in section 205(a)(3) of the National Driver Register Act of 1982 (23 U.S.C. 401 note); and

(iv) A request for the applicant's complete driving record from all States where the applicant was previously licensed over the last 10 years to drive any type of motor vehicle. *Exception:* A State is only required to make the driving record check specified in this paragraph (a)(3) for drivers renewing a CDL for the first time after September 30, 2002, provided a notation is made on the driver's record confirming that the driver record check required by this paragraph (a)(3) has been made and noting the date it was done; and

* * * * *

13. Revise § 383.77(a)(3) to read follows:

§ 383.77 Substitute for driving skills tests.

* * * * *

(a) * * *

(3) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

* * * * *

14. Amend § 383.93 to revise paragraphs (b)(3), (b)(4), (c)(3), and (c)(4); and to add new paragraphs (b)(5) and (c)(5) to read as follows:

§ 383.93 Endorsements.

* * * * *

(b) * * *

(3) Tank vehicles;

(4) Required to be placarded for hazardous materials; or

(5) School buses.

(c) * * *

(3) *Tank vehicle*—a knowledge test;

(4) *Hazardous Materials*—a knowledge test; and

(5) *School bus*—a knowledge and a skills test.

15. Add § 383.123 to subpart G to read as follows:

§ 383.123 Requirements for a school bus endorsement.

(a) An applicant for a school bus endorsement must satisfy the following three requirements:

(1) Qualify for passenger vehicle endorsement. Pass the knowledge and skills test for obtaining a passenger vehicle endorsement.

(2) Knowledge test. Must have knowledge covering at least the following three topics:

(i) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights and other warning and passenger safety devices required for school buses by State or Federal law or regulation.

(ii) Emergency exits and procedures for safely evacuating passengers in an emergency.

(iii) State and Federal laws and regulations related to safely traversing highway rail grade crossings.

(3) Skills test. Must take a driving skills test in a school bus of the same vehicle group (see § 383.91(a)) as the school bus applicant will drive.

(b) *Substitute for driving skills test.* (1) At the discretion of a State, the driving skills test required in paragraph (a)(3) of this section may be waived for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the conditions set forth in paragraph (b)(2) of this section.

(2) An applicant must certify and the State must verify that, during the two-year period immediately prior to applying for the school bus endorsement, the applicant:

(i) Held a valid CDL with a passenger vehicle endorsement to operate a school bus representative of the group he or she will be driving;

(ii) Has not had his or her driver's license or CDL suspended, revoked or canceled or been disqualified from operating a CMV;

(iii) Has not been convicted of any of the disqualifying offenses in § 383.51(b) while operating a CMV or of any offense in a non-CMV that would be disqualifying under § 383.51(b) if committed in a CMV;

(iv) Has not had more than one conviction of any of the serious traffic violations defined in § 383.5, while operating any type motor vehicle;

(v) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident;

(vi) Has not been convicted of any motor vehicle traffic violation that resulted in an accident; and

(vii) Has been regularly employed as a school bus driver, has operated a school bus representative of the group the applicant seeks to drive, and provides evidence of such employment.

(3) After September 30, 2005 the provisions in paragraph (b) of this section do not apply.

16. Amend § 383.153 to revise paragraph (a)(9)(v), redesignate paragraph (a)(9)(vi) as paragraph (a)(9)(vii) and add new paragraph (a)(9)(vi) to read as follows:

§ 383.153 Information on the document and application.

(a) * * *

(9) * * *

(v) X for a combination of tank vehicle and hazardous materials endorsements;

(vi) S for school bus; and

(vii) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

17. Revise the authority citation for part 384 to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1753; and 49 CFR 1.73.

18. Add § 384.107 to subpart A to read as follows:

§ 384.107 Matter incorporated by reference.

(a) *Incorporation by reference.* This part includes references to certain matter or materials. The text of the materials is not included in the regulations contained in this part. The materials are hereby made a part of the regulations in this part. The Director of the Office of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Office of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(b) *Materials incorporated.* The AAMVAnet, Inc.'s "Commercial Driver License Information System (CDLIS) State Procedures," Version 2.0, October 1998, IBR approved for §384.231(d).

(c) *Addresses.* (1) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 400 Seventh Street, SW, Washington, DC 20590 in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7.

(ii) The Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(2) Information and copies of all of the materials incorporated by reference may be obtained by writing to: American Association of Motor Vehicle Administrators, Inc., 4301 Wilson Blvd, Suite 400, Arlington, VA 22203.

19. Revise § 384.203 to read as follows:

§ 384.203 Driving while under the influence.

(a) The State must have in effect and enforce through licensing sanctions the disqualifications prescribed in § 383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration.

(b) Nothing in this section shall be construed to require a State to apply its criminal or other sanctions for driving under the influence to a person found to have operated a CMV with an alcohol concentration of 0.04, except licensing sanctions including suspension, revocation, or cancellation.

(c) A State that enacts and enforces through licensing sanctions the disqualifications prescribed in § 383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration and gives full faith and credit to the disqualification of CMV drivers by other States shall be deemed in substantial compliance with section 12009(a)(3) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)(3)).

20. Amend § 384.206 to revise paragraph (a)(2) to read as follows:

§ 384.206 State record checks.

(a) * * *

(2) *Other States' records.* Before the initial or transfer issuance of a CDL to a person, and before renewing a CDL held by any person, the issuing State must:

(i) Require the applicant to provide the names of all States where the applicant has previously been licensed to operate any type of motor vehicle.

(ii) Within the time period specified in § 384.232, request the complete driving record from all States where the applicant was licensed within the previous 10 years to operate any type of motor vehicle.

(iii) States receiving a request for the driving record of a person currently or previously licensed by the State must provide the information within 30 days.

* * * * *

21. Add § 384.208 to read as follows:

§ 384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CDL holder licensed by another State, or revoking, suspending, or canceling an out-of-State CDL holder's privilege to operate a commercial motor vehicle for at least 60 days, the State must notify the State that issued the license of the disqualification, revocation, suspension, or cancellation.

(b) The notification must include both the disqualification and the violation that resulted in the disqualification, revocation, suspension, or cancellation. The notification and the information it provides must be recorded on the driver's record.

22. Revise § 384.209 to read as follows:

§ 384.209 Notification of traffic violations.

(a) *Required notification with respect to CDL holders.* Whenever a person who holds a CDL from another State is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than a parking violation), in any type of vehicle, the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(b) *Required notification with respect to non-CDL holders.* Whenever a person who does not hold a CDL, but who is licensed to drive by another State, is convicted of a violation in a CMV of any State or local law relating to motor vehicle traffic control (other than a parking violation), the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(c) *Time period for notification of traffic violations.* (1) Beginning on September 30, 2005, the notification must be made within 30 days of the conviction.

(2) Beginning on September 30, 2008, the notification must be made within 10 days of the conviction.

23. Revise § 384.210 to read as follows:

§ 384.210 Limitation on licensing.

A State must not knowingly issue a CDL or a commercial special license or permit (including a provisional or temporary license) permitting a person to drive a CMV during a period in which:

(a) A person is disqualified from operating a CMV, as disqualification is defined by § 383.5 of this subchapter, or under the provisions of § 383.73(g) or § 384.231(b)(2) of this subchapter;

(b) The CDL holder's noncommercial driving privilege has been revoked, suspended, or canceled; or

(c) Any type of driver's license held by such person is suspended, revoked, or canceled by the State where the driver is licensed for any State or local law related to motor vehicle traffic control (other than parking violations).

24. Revise § 384.213 to read as follows:

§ 384.213 State penalties for drivers of CMVs.

The State must impose on drivers of CMVs appropriate civil and criminal penalties that are consistent with the

penalties prescribed under part 383, subpart D, of this subchapter.

25. Revise § 384.215(a) to read as follows:

§ 384.215 First offenses.

(a) *General rule.* The State must disqualify from operating a CMV each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction, of a disqualifying offense specified in items (1) through (8) of Table 1 to § 383.51 of this subchapter, for no less than one year.

* * * * *

26. Revise § 384.216 to read as follows:

§ 384.216 Second offenses.

(a) *General rule.* The State must disqualify for life from operating a CMV each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction, of a subsequent offense as described in Table 1 to § 383.51 of this subchapter.

(b) *Special rule for certain lifetime disqualifications.* A driver disqualified for life under Table 1 to § 383.51 may be reinstated after 10 years by the driver's State of residence if the requirements of § 383.51(a)(5) have been met.

27. Revise § 384.217 to read as follows:

§ 384.217 Drug offenses.

The State must disqualify from operating a CMV for life each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction of a first offense, of using a CMV in the commission of a felony described in item (9) of Table 1 to § 383.51 of this subchapter. The State shall not apply the special rule in § 384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in item (9) of Table 1 to § 383.51 of this subchapter.

28. Revise § 384.218 to read as follows:

§ 384.218 Second serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 60 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this subchapter, in any State(s) or jurisdiction(s), of two serious traffic violations as specified in Table 2 to § 383.51.

29. Revise § 384.219 to read as follows:

§ 384.219 Third serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 120 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this subchapter, in any State(s) or jurisdiction(s), of three serious traffic violations as specified in Table 2 to § 383.51. This disqualification period must be in addition to any other previous period of disqualification.

30. Add § 384.222 to read as follows:

§ 384.222 Violation of out-of-service orders.

The State must have and enforce laws and/or regulations applicable to drivers of CMVs and their employers, as defined in § 383.5 of this subchapter, which meet the minimum requirements of §§ 383.37(c), Table 4 to 383.51, and 383.53(b) of this subchapter.

31. Revise § 384.223 to read as follows:

§ 384.223 Railroad-highway grade crossing violation.

The State must have and enforce laws and/or regulations applicable to CMV drivers and their employers, as defined in § 383.5 of this subchapter, which meet the minimum requirements of §§ 383.37(d), Table 3 to 383.51, and 383.53(c) of this subchapter.

32. Add § 384.224 to read as follows:

§ 384.224 Noncommercial motor vehicle violations.

The State must have and enforce laws and/or regulations applicable to drivers of non-CMVs, as defined in § 383.5 of this subchapter, which meet the minimum requirements of Tables 1 and 2 to § 383.51 of this subchapter.

33. Add § 384.225 to read as follows:

§ 384.225 Record of violations.

The State must:

(a) *CDL holders.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed in any type of vehicle.

(b) *A person required to have a CDL.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed while the driver was operating a CMV.

(c) Make driver history information required by this section available to the users designated in paragraph (e) of this section, or to their authorized agent, within 10 days of:

(1) Receiving the conviction or disqualification information from another State; or

(2) The date of the conviction, if it occurred in the same State.

(d) Retain on the driver history record all convictions, disqualifications and other licensing actions for violations for at least 3 years or longer as required under § 384.231(d).

(e) Only the following users or their authorized agents may receive the designated information:

(1) *States*—All information on all driver records.

(2) *Secretary of Transportation*—All information on all driver records.

(3) *Driver*—Only information related to that driver's record.

(4) *Motor Carrier or Prospective Motor Carrier*—After notification to a driver, all information related to that driver's, or prospective driver's, record.

34. Add § 384.226 to read as follows:

§ 384.226 Prohibition on masking convictions.

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

35. Revise § 384.231 to read as follows:

§ 384.231 Satisfaction of State disqualification requirement.

(a) *Applicability.* The provisions of §§ 384.203, 384.206(b), 384.210, 384.213, 384.215 through 384.219, 384.221 through 384.224, and 384.231 of this part apply to the State of licensure of the person affected by the provision. The provisions of § 384.210 of this part also apply to any State to which a person makes application for a transfer CDL.

(b) *Required action.* (1) *CDL holders.* A State must satisfy the requirement of this part that the State disqualify a person who holds a CDL by, at a minimum, suspending, revoking, or canceling the person's CDL for the applicable period of disqualification.

(2) *A person required to have a CDL.* A State must satisfy the requirement of this subpart that the State disqualify a person required to have a CDL who is convicted of an offense or offenses necessitating disqualification under § 383.51 of this subchapter. At a minimum, the State must implement the

limitation on licensing provisions of § 384.210 and the timing and recordkeeping requirements of paragraphs (c) and (d) of this section so as to prevent such a person from legally obtaining a CDL from any State during the applicable disqualification period(s) specified in this subpart.

(c) *Required timing.* The State must disqualify a driver as expeditiously as possible.

(d) Recordkeeping requirements. The State must conform to the requirements of the October 1998 edition of the AAMVAnet, Inc.'s "Commercial Driver License Information System (CDLIS) State Procedures," Version 2.0. (Incorporated by reference, see § 384.107.) These requirements include the maintenance of such driver records and driver identification data on the CDLIS as the FMCSA finds are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219, and 384.221 through 384.224 of this part.

36. Revise § 384.301 to read as follows:

§ 384.301 Substantial compliance-general requirements

(a) To be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

(b) A State shall come into substantial compliance with the requirements of subpart B of this part in effect as of September 30, 2002 as soon as practical, but, unless otherwise specifically provided in this part, not later than three years after September 30, 2002.

37. Revise § 384.307 to read as follows:

§ 384.307 FMCSA program reviews of State compliance.

(a) FMCSA Program Reviews. Each State's CDL program will be subject to review to determine whether or not the State meets the general requirement for substantial compliance in § 384.301. The State must cooperate with the review and provide any information requested by the FMCSA.

(b) *Preliminary FMCSA determination and State response.* If, after review, a preliminary determination is made either that the State has not submitted the required annual self-certification or that the State does not meet one or more of the minimum standards for substantial compliance under subpart B of this part, the State will be informed accordingly.

(c) *Reply.* The State will have up to 30 calendar days to respond to the preliminary determination. The State's reply must explain what corrective action it either has implemented or intends to implement to correct the deficiencies cited in the notice or, alternatively, why the FMCSA preliminary determination is incorrect. The State must provide documentation of corrective action as required by the agency. Corrective action must be adequate to correct the deficiencies noted in the program review and be implemented on a schedule mutually agreed upon by the agency and the State. Upon request by the State, an informal conference will be provided during this time.

(d) *Final FMCSA determination.* If, after reviewing a timely response by the State to the preliminary determination, a final determination is made that the State is not in compliance with the affected standard, the State will be notified of the final determination. In making its final determination, the FMCSA will take into consideration the corrective action either implemented or planned to be implemented in accordance with the mutually agreed upon schedule.

(e) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

38. Revise § 384.401 to read as follows:

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following the first year of noncompliance.* A State is subject to both of the following sanctions:

(1) An amount equal to five percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's first year of noncompliance under this part.

(2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1754) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State was not in substantial compliance with subpart B of this part.

(b) *Following second and subsequent year(s) of noncompliance.* A State is subject to both of the following sanctions:

(1) An amount equal to ten percent of the Federal-aid funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

(2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1753) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State had not returned to substantial compliance with subpart B of this part.

39. Revise § 384.403 to read as follows.

§ 384.403 Availability of funds withheld for noncompliance.

(a) Federal-aid highway funds withheld from a State under § 384.401(a)(1) or (b)(1) shall not thereafter be available for apportionment to the State.

(b) MCSAP funds withheld from a State under § 384.401(a)(2) or (b)(2) remain available until June 30 of the fiscal year in which they were withheld. If before June 30 the State submits a document signed by the Governor or his or her delegate certifying, and the FMCSA determines, that the State is now in substantial compliance with the standards of subpart B of this part, the withheld funds shall be restored to the State. After June 30, unrestored funds shall lapse and be allocated in accordance with § 350.313 of this subchapter to all States currently in substantial compliance with subpart B of this part.

40. Add § 384.405 to read as follows:

§ 384.405 Decertification of State CDL program.

(a) *Prohibition on CDL licensing activities.* The Administrator may prohibit a State found to be in substantial noncompliance from performing any of the following four licensing transactions:

(1) Issuance of initial CDLs.

(2) Renewal of CDLs.

(3) Transfer of out-of-State CDLs to the State.

(4) Upgrade of CDLs.

(b) *Conditions considered in making decertification determination.* The Administrator will consider, but is not limited to, the following five conditions in determining whether the CDL

program of a State in substantial noncompliance should be decertified:

(1) The State computer system does not check the Commercial Driver's License Information System (CDLIS) and/or National Driver Register (NDR) as required by § 383.73 of this subchapter when processing CDL applicants, drivers transferring a CDL issued by another State, CDL renewals and/or upgrades.

(2) The State does not disqualify drivers convicted of disqualifying offenses in commercial motor vehicles.

(3) The State does not transmit convictions for out of State drivers to the State where the driver is licensed.

(4) The State does not properly administer knowledge and/or skills tests to CDL applicants or drivers.

(5) The State fails to submit a corrective action plan for a substantial compliance deficiency or fails to implement a corrective action plan within the agreed upon time frame.

(c) *Standard for considering deficiencies.* The deficiencies described in paragraph (b) of this section must affect a substantial number of either CDL applicants or drivers.

(d) *Decertification: preliminary determination.* If the Administrator finds that a State is in substantial noncompliance with subpart B of this part, as indicated by the factors specified in § 384.405(b), among other things, the FMCSA will inform the State that it has made a preliminary determination of noncompliance and that the State's CDL program may therefore be decertified. Any response from the State, including factual or legal arguments or a plan to correct the noncompliance, must be submitted within 30 calendar days after receipt of the preliminary determination.

(e) *Decertification: final determination.* If, after considering all material submitted by the State in response to the FMCSA preliminary determination, the Administrator decides that substantial noncompliance exists which warrants decertification of the CDL program, he or she will issue a decertification order prohibiting the State from issuing CDLs until such time as the Administrator determines that the condition(s) causing the decertification has (have) been corrected.

(f) *Recertification of a State.* The Governor of the decertified State or his or her designated representative must submit a certification and documentation that the condition causing the decertification has been corrected. If the FMCSA determines that the condition causing the decertification has been satisfactorily corrected, the Administrator will issue a recertification order, including any conditions that must be met in order to begin issuing CDLs in the State.

(g) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

(h) *Validity of previously issued CDLs.* A CDL issued by a State prior to the date the State is prohibited from issuing CDLs in accordance with provisions of paragraph (a) of this section, will remain valid until its stated expiration date.

41. Add § 384.407 to read as follows:

§ 384.407 Emergency CDL grants.

The FMCSA may provide grants of up to $1,000,000 per State from funds made available under 49 U.S.C. 31107(a), to assist States whose CDL programs may fail to meet the compliance requirements of subpart B of this part, but which are determined by the FMCSA to be making a good faith effort to comply with these requirements.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

42. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

43. Amend § 390.5 to revise the definition for "Driving a commercial motor vehicle while under the influence of alcohol" to read as follows:

§ 390.5 Definitions.

* * * * *

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV: Driving a CMV while the person's alcohol concentration is 0.04 or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Table 1 to § 383.51 or § 392.5(a)(2) of this subchapter.

* * * * *

Issued on: June 30, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–18457 Filed 7–30–02; 8:45 am]

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Wednesday,
July 31, 2002

Part III

Department of Housing and Urban Development

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants; Fiscal Year 2002; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4768–N–01]

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants; Fiscal Year 2002

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the availability of approximately $492.5 million in FY 2002 funds for the HOPE VI Revitalization Program.

I. Program Overview

(A) Purpose of the Program

In accordance with section 24(a) of the United States Housing Act of 1937 (1937 Act), the purpose of HOPE VI Revitalization grants is to assist public housing agencies (PHAs) to:

(1) Improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);

(2) Revitalize sites (including remaining public housing dwelling units) on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood;

(3) Provide housing that will avoid or decrease the concentration of very low-income families; and

(4) Build sustainable communities.

(B) Available Funds

Approximately $492.5 million, in accordance with Section II below.

(C) Eligible Applicants

Public Housing Authorities that have severely distressed housing in their inventory and are otherwise in conformance with the threshold requirements provided in Section III of this NOFA. PHAs that only administer Section 8 and Tribal PHAs are not eligible to apply.

(D) Application Deadline

Revitalization grant applications are due on November 29, 2002, as described in Section IV(B) of this NOFA.

(E) Authority

(1) The funding authority for HOPE VI Revitalization grants under this HOPE VI NOFA is provided by the Fiscal Year 2002 Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2002 (Pub.L. 107–73, approved on November 26, 2001) (FY 2002 HUD Appropriations Act) under the heading "Revitalization of Severely Distressed Public Housing (HOPE VI)."

(2) The program authority for the HOPE VI Program is section 24 of the 1937 Act (42 U.S.C. 1437v), as added by section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998).

II. Allocation of HOPE VI Funds

Type of assistance	Allocation of funds (Approximate)	Funds Available for award in this HOPE VI revitalization NOFA (Approximate)
Revitalization Grants	492,485,000	492,485,000
Demolition Grants	40,000,000	
Neighborhood Networks	5,000,000	
TechnicalAssistance	6,250,000	
Section 8 Assistance	30,000,000	
TOTAL	$573,735,000	$492,485,000

(A) Revitalization Grants. Approximately $492.5 million of the FY 2002 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants and will be awarded in accordance with this HOPE VI Revitalization grant NOFA.

(B) Demolition Grants. Approximately $40 million of the FY 2002 HOPE VI appropriation has been allocated to fund HOPE VI Demolition grants and will be awarded in accordance with a separate HOPE VI Demolition grant NOFA.

(C) Neighborhood Networks. The FY 2002 appropriation for HOPE VI allocated $5 million for a Neighborhood Networks initiative for activities authorized in Section 24(d)(1)(G) of the Act, which provides for the establishment and operation of computer centers in public housing for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources. The availability of these funds will be announced in a separate NOFA, and, in accordance with the appropriation, they will be awarded to PHAs on a competitive basis. In addition, PHAs that receive grant funds under this NOFA are required to establish Neighborhood Networks and may use funds awarded under this NOFA for this purpose.

(D) Technical Assistance. The FY 2002 appropriation for HOPE VI allocated $6.25 million to provide technical assistance and contract expertise in the HOPE VI program, to be provided directly or indirectly by grants, contracts, or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of HUD and of PHAs, and to residents. Technical assistance funds will be administered by the Office of Public Housing Investments.

(E) Section 8. The cost of Section 8 tenant-based assistance that will be provided to FY 2002 HOPE VI Revitalization and Demolition grantees will come from the FY 2002 HOPE VI appropriation. Approximately $30 million will be allocated for such assistance. If this amount is more than the amount necessary, the remaining funds will be used for eligible activities under Section 24 of the Act, and made available for obligation before September 30, 2003.

(1) If you anticipate that you will need Section 8 assistance in order to carry out necessary relocation in conjunction with proposed revitalization during FY 2003, your application must include the number of vouchers you will need, both in total and in FY 2003, and a Section 8 application.

(2) If you will need Section 8 assistance in fiscal years beyond FY 2003 for revitalization or demolition that is being carried out in phases, or if

you have unused Section 8 vouchers that are available to be used for HOPE VI-related relocation in FY 2003 but will need more for subsequent years, you must request additional vouchers only as needed during the appropriate fiscal years.

(3) Section 8 assistance cannot be awarded or used to relocate residents from units that are to be demolished until those units have been approved by HUD for demolition.

(4) If you have previously received Section 8 assistance to relocate residents from the targeted severely distressed units, you may still apply for a HOPE VI Revitalization grant to physically replace those same units, or a HOPE VI Demolition Grant to demolish the units without replacement.

(5) You may request Section 8 assistance for the relocation of families who intend to move back to the site upon completion of the demolition and revitalization of the severely distressed project. Such families are not required to move back to the site if they prefer to keep the Section 8 assistance after revitalization activities are completed.

(6) You may request Section 8 assistance for all units covered under a HOPE VI Revitalization or Demolition application to relocate residents from units that will not be replaced with hard units.

(7) Section 8 vouchers are available as replacement units for all units that will be demolished, sold, or otherwise disposed of at the severely distressed project(s), minus the number of HOPE VI-eligible replacement units otherwise to be provided under Section 24(d)(1)(J) in connection with said project.

(8) In accordance with Section VI(D)(8) of this NOFA, to the extent that you need Section 8 vouchers for relocation purposes in connection with HOPE VI grant funds under this NOFA, in an amount that exceeds the number of units to be demolished, sold, or otherwise disposed of at the severely distressed project, you should apply for Section 8 vouchers in accordance with the separate funding notices to be issued by HUD. If the Department receives more requests for Section 8 vouchers than can be funded from FY 2002 funds, some applications may receive priority funding in 2003.

(9) You must have a 97 percent lease-up rate or budget authority utilization rate for your current voucher program in order not to have your requested number of relocation/replacement vouchers reduced by HUD.

(10) For more information regarding the Section 8 Program, see Notice PIH 2001–20 (HA), which is available through HUDCLIPS at *www.hudclips.org*.

(F) Notwithstanding Section III(E)(4) of the General Section of the FY 2001 SuperNOFA regarding funding of unsuccessful applicants, HUD will not use any funds from this HOPE VI NOFA to fund any nonselected HOPE VI Revitalization applications submitted in previous years. Only applications submitted under this FY 2002 HOPE VI NOFA will be considered for funding.

III. Summary of Threshold Requirements

(A) The following are threshold requirements that must be met in order for a HOPE VI Revitalization application to be considered for funding. If the application fails to meet any one of these thresholds, HUD will not rate or rank the application, in accordance with Section XVII(B)(5) of this NOFA.

(B) Unless specifically stated that an item is curable, the threshold items in this Section III(B) are not subject to Section XVII(B)(3) of this NOFA regarding the correction of deficiencies.

(1) The applicant must qualify as an eligible applicant, as defined in Section VII(A)(1) of this NOFA.

(2) The application must be received by HUD by the deadline date and time, in accordance with Section IV(B) of this NOFA.

(3) Standard certifications must be submitted in accordance with Section XVI(A)(4) of this NOFA. Deficiencies for this item are curable, in accordance with Section XVII(B)(3) of this NOFA.

(4) The application must disclose all prior HUD public housing assistance for physical revitalization at the targeted project, in accordance with Section VI(B)(2) of this NOFA. This item is curable.

(5) The application must include a certification by a third party professional that the proposed costs meet the requirements of Section VI(C) of this NOFA. This item is curable.

(6) In accordance with Section VI(D)(1) of this NOFA, each applicant may submit only one HOPE VI Revitalization application.

(7) If an application proposes to revitalize more than one severely distressed public housing project, those projects must meet the requirements of Section VI(D)(3) of this NOFA.

(8) If an application proposes to revitalize a severely distressed scattered site project, the project must meet the requirements of Section VI(D)(4) of this NOFA.

(9) An application may not request HOPE VI Revitalization grant funds to revitalize units that were funded by an existing HOPE VI Revitalization grant, in accordance with Section VI(D)(6) of this NOFA.

(10) If an application proposes to use HOPE VI Revitalization funds to develop market rate units or affordable units which do not qualify as replacement units in accordance with Section VI(D)(7) of this NOFA, the entire application will be disqualified.

(11) If applicable the application must meet the requirements of separability, as described in Section VI(D)(11) of this NOFA.

(12) If an applicant has been designated as troubled, it must meet the requirements of Section VII(A)(1) of this NOFA.

(13) An applicant must have obligated at least 90 percent of its FY 1998–1999 Capital Funds in accordance with Section VII(A)(2) of this NOFA.

(14) An applicant which has one or more existing HOPE VI Revitalization grants will be disqualified if it has an open Inspector General (IG) or the General Accounting Office (GAO) audit finding related to the HOPE VI or Capital Fund Programs as of the application due date, in accordance with Section VII(A)(3)(a) of this NOFA.

(15) An applicant which has one or more existing HOPE VI Revitalization grants will be disqualified if one or more of those grants fails to meet the performance requirements described in Section VII(A)(3)(b) of this NOFA.

(16) An applicant must provide a certification that it has either procured a developer by the application deadline date or that it will act as its own developer, in accordance with Section VII(A)(5) of this NOFA.

(17) An application must include an Administrative and Compliance Checkpoints Report, as provided in the HOPE VI Revitalization Application Kit, that, at a minimum, reflects the timeliness of construction requirements of Section XIX(B) of this NOFA.

(18) An application must include a signed certification that the applicant or its procured property manager will implement the operation and management principles and policies in accordance with Section VII(A)(6) of this NOFA. This item is curable.

(19) An application must include a certification signed by an engineer or architect that the targeted public housing project meets the definition of severe physical distress in accordance with Section VIII(A)(1)(a) of this NOFA. This item is curable.

(20) An application must include commitments of resources in an amount that meets the match requirements of Section IX(A) of this NOFA.

(21) An application must include a certification by the applicant that a

resident training session and public meetings were held in accordance with Section X(A) of this NOFA. This item is curable.

(22) An application must include a certification that the applicant has completed a HOPE VI Revitalization Relocation Plan and that the Relocation Plan is in compliance with the Uniform Relocation Act, as described in Section XII(C) of this NOFA.

(23) An applicant must be in compliance with Fair Housing and Civil Rights Laws, in accordance with Section XIII(C)(1) of this NOFA.

(24) An applicant must be in compliance with any desegregation or other court order related to Fair Housing, in accordance with Section XIII(C)(2) of this NOFA.

(25) If an application includes a proposal to develop off-site replacement housing, the application must include evidence of site control of the proposed off-site locations, in accordance with Section XIV(B)(4) of this NOFA.

(26) If an application includes a proposal to develop market rate housing, it must include a preliminary market assessment letter, in accordance with Section XIV(C) of this NOFA. This item is curable.

(27) An application must include a certification that all necessary zoning approvals have been secured or scheduled, in accordance with Section XIV(E) of this NOFA.

(28) An application must include a demonstration of the appropriateness of the proposal, in accordance with Section XV(A) of this NOFA.

IV. Application Submission Information

(A) Application Kit

(1) The HOPE VI Application Kit provides explicit, specific instructions as to the format of your HOPE VI Revitalization application. Your application must conform to the requirements of this NOFA and follow the format described in the Kit. The Application Kit is designed to guide you through the application process and ensure that your application addresses all of the requirements of this NOFA. Please note that if there is a discrepancy between information provided in the Application Kit and the information provided in the NOFA, the information in the NOFA prevails.

(2) HUD will mail an Application Kit to every eligible PHA. In addition, you may obtain an Application Kit from the HOPE VI Information Clearinghouse at 1–866–242-HOPE (1–866–242-HOPE is a toll free number). Persons with hearing- or speech-impairments may call the Clearinghouse's TTY number at 1–800-HUD–2209. When requesting an Application Kit, please refer to HOPE VI Revitalization and provide your name, address (including zip code), and telephone number (including area code). The Application Kit also will be available on the HOPE VI Home Page at *www.hud.gov/hopevi* and the HUD Home Page at *www.hud.gov/grants*.

(B) Application Due Date

Revitalization grant applications are due at HUD Headquarters on or before 5:15 pm, Eastern Time, on November 29, 2002. This application deadline is firm. In contrast to previous years, your application must ARRIVE at HUD by 5:15 pm ON the due date. If you mail or give your application to an overnight carrier on the due date and it does not arrive by 5:15 pm ON THE DUE DATE, your application will not be considered. Submit your application early to avoid missing the deadline and being disqualified by unanticipated delays or other related problems.

(C) Application Delivery

(1) Send the original and one copy of your completed application to Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4130, Washington, DC 20410. Please make sure that you note the room number. The correct room number is very important to ensure that your application is not misdirected.

(2) Applications Sent by Overnight Delivery. It is strongly recommended that you send your application by an overnight carrier, at least two days before the application due date. You may use only DHL, Falcon Carrier, FedEx, United Parcel Service (UPS), or the U.S. Postal Service (USPS), as they are the only carriers accepted into the HUD building without an escort. Delivery by these services must be made during HUD's Headquarters business hours, between 8:45 AM and 5:15 PM, Eastern Time, Monday to Friday. If your area is not served by these companies, you must submit your application via USPS.

(3) Hand Carried Applications. Due to new security measures, HUD will no longer accept hand carried applications.

(4) You must send one copy of your application to your HUD Field Office. The application sent to Headquarters will be the one that must meet the deadline. If an application is received by the Field Office on time, but not by Headquarters, it will not be considered.

(5) HUD will not accept for review and evaluation any applications sent by facsimile (fax). Also do not submit resumes or videos.

(D) Technical Assistance

(1) Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance. HUD staff, however, are not permitted to assist in preparing your application. If you have a question or need a clarification, you may call, fax, or write Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4130, Washington, DC 20410; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll free numbers). Persons with hearing-or speech-impairments may call via TTY by calling the Federal Information Relay Service at (800) 877–8339.

(2) Frequently asked questions, clarifications, and any technical corrections will be posted to the HUD Home Page at *www.hud.gov*. In addition, all materials related to this NOFA, including the HOPE VI Revitalization Application Kit, will be posted to the HOPE VI website at *www.hud.gov/hopevi*. Any technical corrections will also be published in the **Federal Register**. Applicants are responsible for monitoring these sites during the application preparation period.

V. Eligible Revitalization Activities

HOPE VI Revitalization grants may be used for activities to carry out revitalization programs for severely distressed public housing in accordance with Section 24(d) of the U.S. Housing Act of 1937 Act (1937 Act). Revitalization activities approved by HUD must be conducted in accordance with the requirements of this NOFA.

(A) Relocation, including reasonable moving expenses, for residents displaced as a result of the revitalization of the project. See Section XII(C) of this NOFA for relocation requirements.

(B) Demolition of dwelling units and nondwelling facilities, in whole or in part.

(1) Demolition is not a required element of a HOPE VI Revitalization Plan.

(2) You may not carry out, nor permit others to carry out the demolition of the Project or any portion of the Project until HUD approves, in writing, one of the following:

(a) Information in your HOPE VI Revitalization Application, along with Supplemental Submissions requested by HUD after the award of the grant and a Request for Release of Funds submitted in accordance with 24 CFR part 58. Section 24(g) of the 1937 Act provides

that severely distressed public housing demolished pursuant to a Revitalization Plan is not required to be approved by a demolition application under Section 18 of the 1937 Act or regulations at 24 CFR part 970. If you do not receive a HOPE VI Revitalization grant, the information in your application will not be used to process a request for demolition;

(b) A demolition application under Section 18 of the 1937 Act. While a Section 18 approval is not required by HOPE VI demolition, you will not have to wait for demolition approval through your Supplemental Submissions, as described in Section (a) above; or

(c) A Section 202 Mandatory Conversion Plan, in compliance with regulations at 24 CFR part 971 and other applicable HUD requirements, if the project is subject to Mandatory Conversion (Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 Pub. L. 104–134, approved on April 26 1996). A Mandatory Conversion Plan concerns the removal of a public housing project from a PHA's inventory.

(C) Disposition of a severely distressed public housing site, by sale or lease, in whole or in part, in accordance with Section 18 of the 1937 Act and implementing regulations at 24 CFR part 970. A lease of one year or more that is not incident to the normal operation of a Project is considered to be a disposition that is subject to Section 18 of the 1937 Act.

(D) Rehabilitation and physical improvement of public housing and/or community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the Project and residents of off-site replacement housing, in accordance with 24 CFR 968.112(b), (d), (e), and (g)–(o) and 24 CFR 968.130 and 968.135(b) and (d) or successor regulations, as applicable.

(E) Development

(1) For any standard (non-mixed finance) public housing development activity, (whether on-site reconstruction or off-site development), you must obtain HUD approval of a standard development proposal submitted under 24 CFR part 941 (or successor part).

(2) For mixed-finance housing development, you must obtain HUD approval of a Mixed Finance Proposal, submitted under 24 CFR part 941, subpart F (or successor part and subpart).

(3) For new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the Project and residents of off-site replacement housing, you must comply with 24 CFR part 941 (or successor part). Information required for this activity must be included in either a Standard or Mixed Finance Development Proposal, as applicable.

(F) Homeownership Activities

(1) For homeownership replacement units developed under a Revitalization Plan, you must obtain HUD approval of a homeownership proposal. The homeownership proposal must be consistent with the 80 percent of Area Median Income (AMI) limitations and any other applicable provisions under the 1937 Act. (HUD publishes AMI tables for each family size in each locality annually. The income limit tables can be found at *www.huduser.org/datasets/il/fmr01/index.html).* See Section XIV(D) of this NOFA (mixed-income communities) for more information about homeownership housing. Your homeownership proposal must conform to either:

(a) Section 24(a)(1)(J) of the 1937Act; or

(b) Section 32 of the 1937 Act, provided that HUD has issued final implementing regulations by the application due date; or

(c) 24 CFR part 906 if HUD has not issued final regulations to implement Section 32 of the 1937 Act by the application due date.

(2) Assistance may include:

(a) Downpayment or closing cost assistance;

(b) Provision of second mortgages; and/or

(c) Construction or permanent financing for new construction, acquisition, or rehabilitation costs related to homeownership replacement units.

(G) Acquisition

(1) Rental Units. For acquisition of rental units in existing or new apartment buildings, single family subdivisions, etc., with or without rehabilitation, for use as public housing replacement units, you must submit a Development Proposal in accordance with CFR part 941.304 (conventional development) or 24 CFR 941.606 (mixed finance development).

(2) Land for Off-Site Replacement Units. For acquisition of land for public housing or homeownership development, you must comply with 24 CFR part 941 or successor part.

(3) Land for Economic Development-Related Activities.

(a) You may use HOPE VI grant funds to acquire land for economic development-related activities if those activities specifically promote the economic self-sufficiency of residents.

(b) With HUD approval, you may also use HOPE VI grant funds for limited infrastructure and site improvements associated with developing retail, commercial, or office facilities, such as rough grading and bringing utilities to (but not on) the site.

(c) You may not use HOPE VI grant funds to pay hard construction costs or to buy equipment for retail, commercial, or non-public housing office facilities.

(4) Acquisition Proposal. Before you may undertake acquisition activities with HOPE VI or other public housing funds, you must submit an acquisition proposal to HUD that meets the requirements of 24 CFR 941.303.

(H) Necessary management improvements, including transitional security activities.

(I) Reasonable costs for administration, planning, technical assistance, and fees and costs, as established by HUD guidance and policies regarding cost controls. These costs are limited to the costs of implementing the Revitalization Plan, as specifically approved by HUD, such as fees for architectural and engineering work, program management (if any), and reasonable legal fees. See Section VII(C)(3) for soft development costs guidelines.

(J) Community and Supportive Services (CSS). The CSS Component of the HOPE VI Program encompasses all activities that are designed to promote upward mobility, self-sufficiency, and improved quality of life for the residents of the public housing project involved. The CSS Component is described in Section XI of this NOFA.

(K) Leveraging other resources, including additional housing resources, supportive services, job creation, and other economic development uses on or near the project that will benefit future residents of the site.

VI. Revitalization Grant Limitations

(A) Grant Amount Limitations

(1) The total amount you may request in your Revitalization application is limited to $20 million or the sum of the amounts in Section IV(A)(2), whichever is lower.

(2) Total Development Cost (TDC). The "TDC Limit" refers to the maximum amount of HUD funding that HUD will approve for development of specific public housing units in a given location. The TDC limit applies only to the costs of development of public housing that are paid directly with HUD public housing funds. a PHA may exceed the TDC limit using non-public housing

funds such as CDBG, HOME, low-income housing tax credit equity, etc. The HUD TDC Cost Tables are issued for each calendar year for the building type and bedroom distribution for the public housing replacement units. Use the TDCs in effect at the time this HOPE VI NOFA is published when making your TDC calculations.

(a) The total cost of development, including relocation costs, is limited to the sum of:

(i) HUD's TDCs up to 100 percent of HUD's published TDC limits for the costs of demolition and new construction, multiplied by the number of HOPE VI public housing replacement units; and/or

(ii) 90 percent of the TDC limits, multiplied by the number of public housing units after substantial rehabilitation and reconfiguration.

(b) The TDC limit for a project is made up of the following components:

(i) Housing Cost Cap (HCC): HUD's published limit on the use of public housing funds for the cost of constructing the public housing units, which includes unit hard costs, builder's overhead and profit, utilities from the street, finish landscaping, and a hard cost contingency. Estimates should take into consideration the Davis-Bacon wage rate requirements as described in Section XIX(F)(1)(a) of this NOFA.

(ii) Community Renewal (CR): The balance of funds remaining within the project's TDC limit after the housing construction costs described in (i) above are subtracted from the TDC limit. This is the amount of public housing funds available to pay for PHA administration, planning, infrastructure and other site improvements, community and economic development facilities, acquisition, relocation, demolition, and remediation of units to be replaced on site, and all other development costs.

(3) CSS. You may request an amount up to 15 percent of the total HOPE VI grant to pay the costs of CSS activities, as described in Section XI(B) of this NOFA. These costs are in addition to (i.e., excluded from) the TDC calculation in Section (2) above.

(4) Demolition and Site Remediation Costs of Unreplaced On-site Units. You may request an amount necessary for demolition and site remediation costs of units that will not be replaced on-site. This cost is in addition to (i.e., excluded from) the TDC calculation in Section (2) above.

(5) Extraordinary Site Costs.

(a) You may request a reasonable amount to pay extraordinary site costs, which are construction costs related to unusual pre-existing site conditions that are incurred, or anticipated to be incurred. If such costs are significantly greater than those typically required for similar construction, are verified by an independent, certified engineer or architect, and are approved by HUD, they may be excluded from the TDC calculation Section (2) above. Extraordinary site costs may be incurred in the remediation and demolition of existing property, as well as in the development of new and rehabilitated units. Examples of such costs include, but are not limited to: Abatement of extraordinary environmental site hazards; removal or replacement of extensive underground utility systems; extensive rock and/or soil removal and replacement; removal of hazardous underground tanks; work to address unusual site conditions such as slopes, terraces, water catchments, lakes, etc.; and work to address flood plain and other environmental remediation issues. Costs to abate asbestos and lead-based paint from structures are normal demolition costs. Extraordinary measures to remove lead-based paint that has leached into the soil would constitute an extraordinary site cost.

(b) Extraordinary site costs must be justified and verified by a licensed engineer or architect who is not an employee of the housing authority or the city. The engineer or architect must provide his or her license number and state of registration. An Extraordinary Site Costs Certification is included in the HOPE VI Application Kit. If this certification is not included in the application after the cure period described in Section XVII(B)(3) of this NOFA, extraordinary site costs will not be allowed.

(B) Other Application Limitations

(1) You may not use HOPE VI Revitalization Grant funds to pay for any revitalization activities carried out on or before the date of the letter announcing the award of the HOPE VI Grant.

(2) *Threshold:* Your application must disclose all prior HUD public housing assistance received for the project(s) you have targeted for the physical revitalization related to the proposed revitalization activities.

(C) Hard and Soft Development Costs Guidelines.

(1) Your projected hard development costs must be realistic, developed through the use of technically competent methodologies, including cost estimating services, and comparable to industry standards for the kind of construction to be performed in the proposed geographic area.

(2) Your cost estimates must represent an economically viable preliminary plan for designing, planning and carrying out your proposed activities in accordance with local costs of labor, materials, and services.

(3) Your projected soft costs must be reasonable and comparable to industry standards. Upon award, soft costs will be subject to HUD's "Safe Harbor" cost control standards, which can be found at *http://www.hud.gov/offices/pih/programs/ph/hope6/grants/admin/safeharbor.pdf.* These safe harbors provide specific limitations on such costs as developer's fees (between 9 and 12 percent), PHA administration/consultant cost (no more than 3 to 6 percent of the total project budget), contractor's fee (6 percent), overhead (2 percent), and general conditions (6 percent). HUD's Cost Control and Safe Harbor Standards can be found on the Grant Administration page of the HOPE VI website at *www.hud.gov/hopevi.*

(4) *Threshold:* Your cost estimates must be certified to meet the standards of Sections (1) through (3) above by an independent cost estimator, architect, engineer, contractor, or other qualified third party professional.

(5) If you are eligible for funding, HUD will delete any unallowable items from your budget and may reduce your grant accordingly, except as provided in Section VI(D)(7) of this NOFA.

(D) Site and Unit Requirements.

(1) *Threshold:* One application. Each applicant may submit only one HOPE VI Revitalization application as described in this NOFA. If more than one application is submitted by a single applicant, all applications will be disqualified.

(2) *Threshold:* One Project. Except as provided in Sections (VI)(D)(3) and (4) below, each application must target one severely distressed public housing project (i.e., with one project number).

(3) *Threshold:* Contiguous Projects. Each application may request funds for more than one project if those projects are immediately adjacent to one another or within a quarter-mile of each other. If you include more than one project in your application, you must provide a map that clearly indicates that the projects are within a quarter-mile of each other. If HUD determines that they are not, your application will be ineligible for funding.

(4) *Threshold:* Scattered Site Projects. Your application may request funds to revitalize a scattered site public housing project. The sites targeted in an application proposing to revitalize scattered sites (regardless of whether the scattered sites are under multiple project numbers) must fall within a one

square mile area, except that you may identify a larger site if you can show that all of the targeted scattered site units are located within the hard edges (e.g., major highways, railroad tracks, lakeshore, etc.) of a neighborhood. If you propose to revitalize a project that extends beyond a one square mile radius or is otherwise beyond the hard edges of a neighborhood, your application will be ineligible for funding.

(5) Number of Units. You may request funds for as few or as many units as you wish in your application. HUD will review requests to revitalize projects with small numbers of units on an equal basis with those with large numbers of units.

(6) *Threshold:* Previously-funded Sites. You may submit a Revitalization application that targets a project that is being revitalized or replaced under an existing HOPE VI Revitalization grant or source of HUD public housing funds. However, you may not apply for new HOPE VI Revitalization funds for units in that project that were funded by the existing HOPE VI Revitalization grant or other HUD funds, even if those funds are inadequate to pay the costs to revitalize or replace all of the targeted units. For example, if a project has 700 units and you were awarded a HOPE VI Revitalization grant or other HUD public housing funds to address 300 of those units, you may submit an FY 2002 HOPE VI Revitalization application to revitalize the remaining 400 units. You may not apply for supplemental funds to supplement work on the original 300 units. If you request funds to revitalize units or buildings that have been funded by an existing HOPE VI Grant or other HUD funds, your application will be ineligible for funding.

(7) *Threshold:* HOPE VI funds may not be used to develop market rate units or affordable housing units which do not qualify as public housing or homeownership replacement units.

(8) Replacement Units. Under this HOPE VI NOFA, a HOPE VI Replacement unit shall be deemed to be any combination of public housing rental units, eligible homeownership units under Section 24(d)(1)(J) of the 1937 Act, and Section 8 vouchers that does not exceed the number of units demolished and/or disposed of at the targeted severely distressed public housing project.

(9) Access to Services. For both on-site and any off-site units, your overall Revitalization Plan must result in increased access to municipal services, jobs, mentoring opportunities, transportation, and educational facilities; i.e., the physical plan and self-sufficiency strategy must be well integrated and strong linkages must be established with the appropriate Federal and state and local agencies, non-profits, and the private sector to achieve such access.

(10) Universal Design. HUD encourages you to incorporate the principles of universal design in the construction or rehabilitation of housing, retail establishments, and community facilities, or when communicating with community residents at public meetings or events. Universal design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal design benefits people of all ages and abilities. Examples include designing wider doorways, installing levers instead of doorknobs, and putting bathtub/shower grab bars in all units. Computers and telephones can also be set up in ways that enable as many residents as possible to use them.

(11) *Threshold.* Separability. In accordance with Section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only a portion of a project for revitalization, you must:

(a) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for revitalization, and

(b) Demonstrate that the site plan and building designs of the revitalized portion will provide defensible space for the occupants of the revitalized building(s) and that the properties that remain will not have a negative influence on the revitalized buildings(s), either physically or socially. Separations may include a road, berm, catch basin, or other recognized neighborhood distinction.

VII. Capacity

(A) Thresholds

(1) Troubled Status. If HUD has designated your housing authority as troubled pursuant to Section 6(j)(2) of the 1937 Act, HUD's Troubled Agency Recovery Centers will use documents and information available to it to determine whether you qualify as an eligible applicant. In accordance with Section 24(j) of the 1937 Act, the term "applicant" means:

(a) Any PHA that is not designated as "troubled" pursuant to Section 6(j)(2) of the 1937 Act;

(b) Any PHA for which a private housing management agent has been selected, or a receiver has been appointed, pursuant to Section 6(j)(3) of the 1937 Act; and

(c) Any PHA that is designated as "troubled" pursuant to Section 6(j)(2) of the 1937 Act and that:

(i) Is designated as troubled principally for reasons that will not affect its capacity to carry out a revitalization program;

(ii) Is making substantial progress toward eliminating the deficiencies of the agency that resulted in its troubled status; or

(iii) Is otherwise determined by HUD to be capable of carrying out a revitalization program.

(2) Obligation of Capital Funds. In order to be considered for funding, you must have obligated Capital Fund amounts (including the Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP)) in a timely manner. HUD will not consider any application from an applicant that has obligated less than 90 percent of its FY 1998–1999 Capital Funds, as required by the Quality Housing and Work Responsibility Act of 1998, by September 30, 2001, unless an extension has been approved by the Deputy Secretary. HUD will use the LOCCS disbursement system to determine the obligation rate as of September 30, 2001. Some PHAs have executed Moving To Work (MTW) Agreements that exempt the PHA from the statutory Capital Fund obligation and expenditure deadlines. Accordingly, those PHAs will not be subject to this provision.

(3) Performance of Existing HOPE VI Grantees. If an applicant has one or more existing HOPE VI Revitalization grants, the Department will disqualify such an applicant if:

(a) The applicant has an open IG or GAO audit finding related to the HOPE VI or Capital Fund Programs as of the date the application is due to HUD, or

(b) The applicant has failed to meet its performance requirements as required in the applicable HOPE VI Revitalization Grant Agreement by the application due date.

(4) Conducting Business in Accordance With HUD Core Values and Ethical Standards. You must develop and maintain a written code of conduct (see Sections 84.42 and 85.36(b)(3)) that reflects HUD's Core Values. This code of conduct must prohibit real and apparent conflicts of interest that may arise among your employees, officers or

agents; prohibit the solicitation and acceptance of gifts or gratuities by employees, officers, and agents for their personal benefit in excess of minimal value, and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct.

(5) Selection of Developer. In a departure from previous years, in order to be selected for funding, you must provide a certification that:

(a) You have procured a developer for your first phase of construction by the application due date, in accordance with 24 CFR 85.36 and 24 CFR 941.602(d) (as applicable). A developer is an entity contracted to develop (and possibly operate) a mixed finance development that includes public housing units, pursuant to 24 CFR part 941 subpart F, and contingent on a satisfactory environmental review under 24 CFR part 58 or part 50, under the terms of a HUD-approved proposal. A developer most often has an ownership interest in the entity that is established to own and operate the replacement units (e.g. as the General Partner of a Limited Partnership). If you change developers after you are selected for funding, HUD reserves the right to rescind the grant; or

(b) You will act as your own developer for the proposed project. If you change your plan and procure an outside developer after you are selected for funding, HUD reserves the right to rescind the grant.

(6) Operation and Management Principles and Policies.

(a) Authority. Any HOPE VI-funded activities at public housing projects are subject to statutory requirements applicable to public housing projects under the 1937 Act, other statutes, and the Annual Contributions Contract (ACC). Within such restrictions, HUD seeks innovative solutions to the long-standing problems of severely distressed public housing projects. You may request, for the revitalized project, a waiver of HUD regulations, subject to statutory limitations and a finding of good cause under 24 CFR 5.110 if the waiver will permit you to undertake measures that enhance the long-term viability of a project revitalized under this program. HUD will assess each request to determine whether good cause is established to grant the waiver.

(b) Requirements. HOPE VI Revitalization Grantees will be required to develop Management Agreements that describe their operation and management principles and policies for their public housing units. In your application, you must provide a certification that you will ensure that you and/or your procured property manager have complied (to the extent required) with the provisions of 24 CFR 966.3 in planning for the implementation of the operation and management principles and policies described below.

(i) Rewarding work and promoting family stability by promoting positive incentives such as income disregards and ceiling rents;

(ii) Instituting a system of local preferences adopted in response to local housing needs and priorities, e.g., preferences for victims of domestic violence, residency preferences, disaster victims;

(iii) Encouraging self-sufficiency by including lease requirements that promote involvement in the resident association, performance of community service, participation in self-sufficiency activities, and transitioning from public housing;

(iv) Implementing site-based waiting lists for the redeveloped public housing and/or following project-based management principles;

(v) Instituting strict applicant screening requirements such as credit checks, references, home visits, and criminal records checks;

(vi) Strictly enforcing lease and eviction provisions;

(vii) Improving the safety and security of residents through the implementation of defensible space principles and the installation of physical security systems such as surveillance equipment, control engineering systems, etc;

(viii) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with Federal, state, and local crime prevention programs and entities such as:

(*A*) Local law enforcement agencies;

(*B*) Your local United States Attorney;

(*C*) The Weed and Seed Program, if the targeted project is located in a designated Weed and Seed area. Operation Weed and Seed is a multi-agency strategy that "weeds out" violent crime, gang activity, drug use, and drug trafficking in targeted neighborhoods and then "seeds" the target area by restoring these neighborhoods through social and economic revitalization. Law enforcement activities constitute the "weed" portion of the program. Revitalization, which includes prevention, intervention, and treatment services as well as neighborhood restoration, constitutes the "seed" element. HUD has provided the Department of Justice with $10 million to fund Weed and Seed Strategies that fight crime and drugs in public, Indian, and Federally-assisted housing. For more information, see the Community and Safety and Conservation website at *www.hud.gov/offices/pih/divisions/cscd/*.

(B) Rating Factor: Capacity—21 Points Total.

The term "your Team" includes your HOPE VI Coordinator (an individual designated by the PHA who may be a staff member or contractor), PHA staff who will be involved in HOPE VI grant administration, and developer partners, program managers, property managers, subcontractors, consultants, attorneys, financial consultants, and other entities or individuals identified and/or proposed to carry out program activities.

(1) Development Capacity.

(a) Capacity of Developer—6 Points

(i) You will receive 6 Points if:

(*A*) Your Developer or other Team members have extensive, recent, and successful experience in planning, implementing, and managing physical development, financing, leveraging, and partnership activities that are comparable in character, scale, and complexity to your proposed revitalization activities;

(*B*) You propose development using low-income tax credits, and you, your Developer, or other Team members have relevant tax credit experience; and

(*C*) Homeownership, rent-to-own, cooperative ownership, or other major development components are proposed, you, your Developer, or other Team members have relevant, successful experience in development, sales, and/or conversion activities.

(ii) You will receive 4 Points if your Developer or other Team members have some but not extensive experience in the factors described above.

(iii) You will receive 0 Points if your Developer or other Team members do not have the experience described and the application does not demonstrate that it has the capacity to carry out your Revitalization Plan. You will also receive 0 Points if there is inadequate information in your application to rate this factor.

(b) Development Capacity of Applicant—6 Points.

(i) You will receive 6 Points if:

(*A*) You have identified potential gaps in your current staffing in relation to development activities, and you have plans to fill such gaps, internally or externally, in a timely manner in order

to successfully implement your Revitalization Plan;

(*B*) You have demonstrated that physical development activities will proceed as promptly as possible following grant award, and you will be able to begin significant construction within 23 months of the award of the grant.

(*C*) Your Administrative and Compliance Checkpoints Report, as provided in the HOPE VI Revitalization Application Kit, provides a feasible plan to meet the schedule requirements of Section XIX(B) of this NOFA, with no impediments such as litigation that would prevent timely startup. Those schedules that indicate the soonest startup will be rated the highest.

Threshold: Submission of the Administrative and Compliance Checkpoints Report that conforms to the timeliness requirements of Section XIX(B) of this NOFA is a threshold requirement and not subject to Section XVII(B)(3) with regard to curing deficiencies;

(*D*) Your management experience and previous experience with development activities demonstrates that you have experience in overseeing large scale development, whether it be in-house or implemented by a private entity. In your application, you will describe the dollar amount and timeframe for completion of the project(s); and

(*E*) As of the HOPE VI Revitalization application due date, you do not have any outstanding Comprehensive Grant, Comprehensive Improvement Assistance Program, or Capital Fund Program audit findings. If you have such a finding, you cannot receive 6 Points.

(ii) You will receive 4 Points if you have had experience in managing large scale development in accordance with the factors above, but your experience has not been extensive and/or your project(s) were not completed within the timeframe originally established for the project. You will also receive 4 Points if you have extensive experience, but have an outstanding Capital Fund Program audit finding as described in Section (VII)(A)(3)(a) above.

(iii) You will receive 1 Point if your application indicates that you have had little experience in managing large-scale development projects.

(iv) You will receive 0 Points if you do not demonstrate any experience in managing development activities, or if there is inadequate information in your application to rate this factor.

(2) Capacity of Existing HOPE VI Revitalization Grantees.

This Section applies only to applicants that have received HOPE VI Revitalization grants in the past, excluding those awarded in FY 2001. If an applicant has more than one HOPE VI Revitalization grant, each will be rated separately, and the highest deduction will be made. Applicants with only FY 2001 HOPE VI Revitalization grants or no existing HOPE VI Revitalization grants are not subject to this section.

(a) Grant Progress—5 Points.

5 Points will be deducted if you have not carried out the following activities within the timeframes established in your first schedule entered into the HOPE VI Quarterly Report system. Although HUD may have approved an extension(s), this factor will be measured against the original due dates. HUD will determine this factor based on internal information on existing grants.

(i) Supplemental Submissions submitted;

(ii) CSS Workplan submitted;

(iii) Program Manager procured;

(iv) Master Development Agreement executed.

(b) Obligation Rate.

Up to 5 Points will be deducted if a Grantee has obligated its grant funds as follows. Obligation rates will be determined from LOCCS reports generated as of March 31, 2002, *Except in the case of some moving to work applicants, which are not required to enter obligations into LOCCS in accordance with their MTW agreements. Those PHAS must provide a certification of their obligation rate in their applications in order to receive any points for this rating factor.*

Percent obligated	Points deducted
Grants Awarded in FY 1996 or prior	
100 Percent	0 Points
90–99 Percent	1 Point
80–89 Percent	2 Points
70–79 Percent	3 Points
60–69 Percent	4 Points
less than 60 Percent	5 Points
Grants Awarded in FY 1997	
95–100 Percent	0 Points
85–94 Percent	1 Point
75–84 Percent	2 Points
65–74 Percent	3 Points
55–64 Percent	4 Points
less than 55 Percent	5 Points
Grants Awarded in FY 1998	
85–100 Percent	0 Points
75–84 Percent	1 Point
65–74 Percent	2 Points
55–64 Percent	3 Points
45–54 Percent	4 Points
less than 45 Percent	5 Points
Grants Awarded in FY 1999	
80–100 Percent	0 Points
70–79 Percent	1 Point
60–69 Percent	2 Points
50–59 Percent	3 Points
40–49 Percent	4 Points
less than 40 Percent	5 Points
Grants Awarded in FY 2000	
75–100 Percent	0 Points
65–74 Percent	1 Point
55–64 Percent	2 Points
45–54 Percent	3 Points
35–44 Percent	4 Points
less than 35 Percent	5 Points

(3) CSS Program Capacity—3 Points.

You will receive 1 Point for each of the following criteria that you demonstrate in your application. See Section XI(B) of this NOFA for detailed information on CSS activities.

(a) You will receive 2 Points:

(i) If you propose to carry out your CSS Plan in-house and you have recent, successful experience in planning, implementing, and managing the types of CSS activities proposed in your application, or

(ii) You propose that CSS activities be carried out by members of your Team, you have procured a member(s) of your Team who has the qualifications and experience to plan, implement, manage, and coordinate the types of activities proposed, and/or you have a plan for promptly hiring staff or procuring a Team member to do so.

(b) If you have an existing HOPE VI grant, you will receive 1 Point if you demonstrated that your proposed CSS Team will be adequate to implement a new program without weakening your existing Team. If you do not have an existing HOPE VI Revitalization grant, you will automatically receive this Point.

(4) Property Management Capacity—4 Points.

(a) Property management activities may be the responsibility of the PHA or another member of the Team, which may include a separate entity that you have procured or will procure to carry out property management activities. In your application you will describe the number of units and the condition of the units currently managed by you or your property manager, your annual budget for those activities, and any awards or recognition that you or your property manager have received.

(b) Past Property Management Experience—3 Points.

(i) You will receive 3 Points if:

(*A*) You or your property manager currently has recent, successful experience in property management of the housing types included in your revitalization plan. This may include market rate rental housing, public housing, and/or other affordable housing, including rental units developed with low-income housing tax credit assistance. If your Revitalization Plan includes cooperatively-owned housing, rent-to-own units, or other types of managed housing, you must demonstrate recent, successful experience in the management of such housing by the relevant member(s) of your Team, and

(*B*) You or your property manager has excellent knowledge and recent, successful experience in property management of market rate, affordable and/or public housing.

(ii) You will receive 1 Point if your application demonstrates that you or your property manager has some but not extensive experience of the kind required for your Revitalization Plan.

(iii) You will receive 0 Points if your application does not demonstrate that you or your property manager has the capacity to manage your proposed plan, or if there is inadequate information in your application to rate this factor.

(c) Property Management Plan—1 Point.

(i) You will receive 1 Point if your application provides a detailed description of the goals and plans of you or your property manager to administer the following elements:

Property maintenance
Rent collection
MTCS reporting
Site-based management experience
Tenant grievances
Evictions
Occupancy rate
Unit turnaround
Preventive maintenance
Work order completion
Project-based budgeting
Management of Homeownership and rent-to-own programs
Energy Audits

(ii) You will receive 0 Points if there is insufficient information in your application to rate this factor.

(5) PHA Plan—2 Points.

(a) You will receive 2 Points if you have incorporated the revitalization plan described in your application into your PHA Plan, and your PHA Plan has been approved by your local HUD Field Office.

(b) You will receive 1 Point if:

(i) You have incorporated the revitalization plan described in your application into your PHA Plan, but your PHA plan has not been approved by your local HUD Field Office, or

(ii) The Field Office has approved your PHA Plan, but the revitalization plan described in your application has not been incorporated into the PHA Plan.

(c) You will receive 0 Points if you have not incorporated the revitalization plan described in your application into your PHA Plan, or if there is insufficient information in your application to rate this factor.

VIII. Need

(A) Threshold: Severe Distress.

(1) The targeted public housing project or building in a project must be severely distressed. In accordance with Section 24(j)(2) of the 1937 Act, the term "severely distressed public housing" means a public housing project (or building in a project):

(a) That:

(i) Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plant of the project;

(ii) Is a significant contributing factor to the physical decline of, and disinvestment by public and private entities in, the surrounding neighborhood;

(iii) (*A*) Is occupied predominantly by families who are very low-income families with children, are unemployed, and dependent on various forms of public assistance; or

(*B*) Has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area;

(iv) Cannot be revitalized through assistance under other programs, such as the Capital and Operating Funds Programs for public housing under the Act, or the programs under Sections 9 and 14 of the 1937 Act (as in effect before the effective date under Section 503(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998, referred to as the Public Housing Reform Act), because of cost constraints and inadequacy of available amounts; and

(v) In the case of individual buildings, is sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for revitalization; or

(b) That was a project described in Section VIII(A)(1)(a) that has been legally vacated or demolished, but for which HUD has not yet provided replacement housing assistance (other than tenant-based assistance).

(2) A severely distressed project that has been legally vacated or demolished (but for which HUD has not yet provided replacement housing assistance, other than tenant-based assistance) must have met the definition of physical distress as of the day the demolition application approval letter was dated by HUD.

(3) To meet the severe distress requirement, you must certify that the public housing project or building in a project targeted in your HOPE VI application meets the definition of severe distress provided in Section VIII(A)(1). You will make this certification by signing the HOPE VI Revitalization Grant Applicant Certifications. The certification form is included in the HOPE VI Application Kit, and the text of the certification is included as Appendix A to this HOPE VI NOFA.

(4) In order to certify to the severe physical distress described in Section VIII(A)(1)(a) of this NOFA, your application must include a certification that is signed by an engineer or architect licensed by a state licensing board. The license does not need to have been issued in the same state as the severely distressed project. The engineer or architect must include his or her license number and state of registration on the certification. The engineer or architect may not be an employee of the housing authority or the city.

(B) Rating Factor: Need—26 Points Total.

(1) Need for Revitalization: Severe Physical Distress—10 Points

HUD will evaluate the extent of the severe physical distress of the targeted public housing project. If the targeted units have already been demolished, HUD will evaluate your description of the extent of the severe physical distress of the site as of the day the demolition application was approved by HUD. You will receive Points for the following separate subfactors, as indicated.

(a) You will receive 2 Points if you demonstrate that there are major deficiencies in the project's infrastructure, roofs, electrical, plumbing, heating and cooling, mechanical systems, settlement, and/or other deficiencies in Housing Quality Standards.

(b) You will receive 2 Points if you demonstrate that there are poor soil conditions, inadequate drainage, deteriorated laterals and sewers, and/or inappropriate topography.

(c) You will receive 3 Points if you demonstrate that the project has major design deficiencies, including:

(i) Inappropriately high population density, room, and/or unit size and configurations;

(ii) Isolation;

(iii) Indefensible space;

(iv) Significant utility expenses caused by energy conservation deficiencies that may be documented by an energy audit; and/or

(v) Inaccessibility for persons with disabilities with regard to individual units, entrance ways, and/or common areas.

(d) You will receive 3 Points if you demonstrate that there are extreme levels of unmitigated lead-based paint, PCBs, mold, and/or asbestos that make the site or a portion of the site and its housing structures unsuitable for residential use.

(2) Need for Revitalization: Impact of the Severely Distressed Site on the Surrounding Neighborhood—5 Points

HUD will evaluate the extent to which the severely distressed public housing project is a significant contributing factor to the physical decline of, and disinvestment by, public and private entities in the surrounding neighborhood. In making this determination, HUD will evaluate your description of your narrative, crime statistics, photographs or renderings, socio-economic data, trends in property values, evidence of property deterioration and abandonment, evidence of underutilization of surrounding properties, and indications of neighborhood disinvestment.

(a) You will receive 5 Points if your narrative adequately demonstrates that the project has an enormous impact on the surrounding neighborhood, as documented by each item listed above.

(b) You will receive 3 Points if your narrative demonstrates that the project has a moderate impact on the neighborhood, and/or only some of the items listed above are adequately documented.

(c) You will receive 0 Points if your narrative does not demonstrate that the project has an impact on the surrounding neighborhood, or there is inadequate information in your application to rate this factor.

(3) Need for Funding: Obligation of Capital Funds—8 Points

HUD will evaluate the extent to which you could undertake the proposed revitalization activities without a HOPE VI grant. Large amounts of available Capital Funds indicate that the revitalization could be carried out without a HOPE VI grant.

HUD will use data from the latest quarterly obligation report available at the time of the grant application deadline date to determine the amount of unobligated FY 1999–2001 Capital Grant (including CIAP and CGP) funds currently available that could be used to carry out the proposed revitalization activities. Applicants must ensure that their obligation and expenditure information was updated in LOCCS prior to March 31, 2002, unless an extension has been approved by the Deputy Secretary. Information provided in the application will not be considered, except in the case of some moving to work applicants, which are not required to enter obligations into LOCCS in accordance with their MTW agreements. Those PHAS must provide a certification of their obligation rate in their applications in order to receive any points for this rating factor.

(a) You will receive 8 Points if your unobligated Capital Funds balance is up to 20 percent of the amount of HOPE VI funds requested.

(b) You will receive 6 Points if your unobligated balance is 21–45 percent of the amount of HOPE VI funds requested.

(c) You will receive 4 Points if your unobligated balance is 46–70 percent of the amount of HOPE VI funds requested.

(d) You will receive 2 Points if your unobligated balance is 71 to 90 percent of the amount of HOPE VI funds requested.

(e) You will receive 0 Points if your unobligated balance is more than 90 percent of the amount of HOPE VI funds requested.

(4) Need for Affordable Housing in the Community—3 Points

There must be a need for affordable housing in the community, measured by the supply of other housing available and affordable to families receiving tenant-based assistance under Section 8.

Affordable housing is measured by the supply of housing units available in your community with rents that would qualify for Section 8 assistance. To make this calculation, use the most recently published FMR for a 3 bedroom apartment. For the same community (the jurisdiction covered by the FMR), examine the apartment listings in a newspaper of general circulation that serves the majority of that community. Determine the number of low-income units with rents at or below the FMR for your community, over a period of any 30 days during the application review period. In your application you will document information about your analysis.

(a) You will receive 3 Points if the average market rental costs are over 130 percent of Section 8 fair market rents.

(b) You will receive 2 Points if the average market rental costs are over 120 percent of Section 8 fair market rents.

(c) You will receive 1 Point if the average market rental costs are over 110 percent of Section 8 fair market rents.

(d) You will receive 0 Points if the average market rental costs are 110 percent or less or if there is inadequate information to rate this factor.

IX. Match and Leveraging

(A) Match Requirements.

(1) Overall Match. In accordance with Section 24(c) of the 1937 Act, if you are selected for funding, you must supplement your HOPE VI Revitalization grant with funds from other sources greater than or equal to 5 percent of the HOPE VI funds provided.

(2) Additional Community and Supportive Services (CSS) Match. In addition to supplemental amounts provided in accordance with Section (1) above, if you are selected for funding and propose to use more than 5 percent of your HOPE VI grant for CSS activities (you may use up to 15 percent of your grant for such activities), you must provide supplemental funds from sources other than HOPE VI, dollar for dollar, for the amount over 5 percent of the grant that you will use for CSS activities.

(3) Matching funds must be directly applicable to the revitalization of the site and the transformation of the lives of residents.

(4) Grantees must provide matching funds which, combined with HOPE VI funds, will enable them to carry out revitalization activities, including CSS activities. Applicants must show firm commitments in the amounts required for match in their applications in order to be funded. Grantees will be required to show evidence that matching resources were actually received and used for their intended purposes through quarterly reports as the project proceeds. Sources of matching funds may be substituted after grant award, as long as the dollar requirement is met.

(5) Grantees must pursue and enforce any commitment (including commitments for services) obtained from any public or private entity for any contribution or commitment to the project or surrounding area that was used for leverage in their HOPE VI applications.

(6) *Threshold:* You must provide evidence that you have met your match requirement in the application. This means that the amount of match accepted by HUD must be at least 5 percent of total grant. You must also meet CSS match requirement of one for one for every dollar used for CSS over

five percent of the grant. (i.e., a request for 15 percent of the grant for CSS would require a dollar for dollar match of the amount requested for CSS over that first 5 percent.)

(B) Leverage. Although related to match, leverage is strictly a rating factor. Leverage consists of firm commitments of funds and other resources that are over and above the amount documented as match. HUD will rate your application based on the amount of funds and other resources that will be leveraged by the HOPE VI grant as a percentage of the amount of HOPE VI funds requested.

(C) Resource Documentation. In your application, you will enter basic information about each resource on the appropriate resource summary form: name of the organization providing the resource, the dollar value of the resource, and its proposed use.

(1) For each resource you list, you must provide a commitment document, such as a letter, memorandum of understanding, agreement to participate, city council resolution, or other evidence of the resource to be committed. The commitment cannot be conditioned on anything other than the receipt of the HOPE VI grant. The commitment document must be signed by an official of the organization legally authorized to make commitments on behalf of the organization.

(2) Each commitment document must include the dollar value of the commitment, and that dollar value must be consistent with the amount entered on the Resource Summary Form. On the form you will also enter the page number of your application where the commitment document is located.

(3) Endorsements or general letters of support from organizations or vendors alone will not count as resources and should not be included in the application or on a Resources Summary Form.

(4) Each resource may be used for only one category: Development, CSS, Anticipatory, or Collateral, as described below. Any resource listed in more than one category will be disqualified from all categories.

(5) For CSS purposes, include only funds that will be newly generated for HOPE VI activities. HUD will not count any funds that have been provided routinely, such as TANF payments or funds that support ongoing CSS-type activities.

(6) Even though an in-kind CSS contribution may count as a resource, it may not be appropriate to include on the sources and uses attachment. Each source on the sources and uses attachment must be matched by a specific and appropriate use. For example, donations of staff time may not be used to offset costs for infrastructure.

(D) Types of Development Resources. HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other physical development funds, particularly from private sources, that will result in revitalized public housing, other types of assisted and market rate housing, and private retail and economic development. Types of resources that may be counted include:

(1) Private mortgage-secured loans and other debt. Note the term maturity expected and sources of repayment of all loans.

(a) Where there is both a construction loan and a permanent take-out loan, you must provide documentation of both, but only the value of the permanent loan will be counted as leverage.

(b) For privately-financed homeownership construction loans, acceptable documentation of construction loans will be considered as leverage. Documentation of permanent financing is not required.

(c) If you have obtained a construction loan but not a permanent loan, the value of the acceptably documented construction loan will be counted as leverage.

(2) Insured loans.

(3) Donations and contributions.

(4) Housing trust funds.

(5) Net sales proceeds from a homeownership project.

(6) Funds committed to build private sector housing in direct connection with the HOPE VI Revitalization Plan.

(7) Tax Increment Funding (TIF).

(8) Tax Exempt Bonds. Describe use and term.

(9) Other Federal Funds. Other Federal sources may include funds provided by the Capital Fund or other HUD-provided public housing funds (except for HOPE VI funds), including funds derived from program income.

(10) Low Income Housing Tax Credits (LIHTC). Low Income Tax Credits are authorized by Section 42 of the IRS Code which allows investors to receive a credit against Federal tax owed in return for providing funds to developers to help build or renovate housing that will be rented only to lower-income households for a minimum period of years. There are two types of credits, both of which are available over a 10-year period: a 9 percent credit on construction/rehab costs, and a 4 percent credit on acquisition costs and all development costs financed partially with below-market Federal loans (e.g. tax exempt bonds). Tax credits are generally allocated annually through State Housing Finance Agencies, a directory of which can be found at *http://www.ncsha.org/ncsha/public/statehfadirectory/index.htm.*

(a) If you propose to include LIHTC equity as a development resource for your first phase of development, your application must include a LIHTC allocation letter from your State or local Housing Finance Agency. This letter must constitute a firm commitment, and can only be conditioned on the receipt of the HOPE VI grant.

(b) If you propose to include LIHTC equity as a development resource for phases of development other than your first phase, your application must include a commitment letter from your State or local Housing Finance Agency that provides information from the allocation plan, including:

(i) The total amount and type (4 percent vs. 9 percent) of tax credits available,

(ii) The dollar amount expected from the sale of equity. If this information is not provided, HUD will count 80 percent of the total tax credit amount;

(iii) Any setasides available for PHAs;

(iv) Any per-project funding limits;

(v) The schedule of funding rounds;

(vi) Verification that your project meets eligibility criteria; and

(vii) A plan and/or schedule for obtaining future tax credits for any later phases that have not yet been obtained.

(E) Sources of Development Resources. You must actively enlist other stakeholders who are vested in and can provide significant financial assistance to your revitalization effort. Sources of resources that can be used for leveraging may include:

(1) Public, private, and non-profit entities, including LIHTC purchasers;

(2) State and local Housing Finance Agencies;

(3) Local governments.

(4) The city's housing and/or redevelopment agency or other comparable agency. HUD will consider this to be a separate entity with which you are partnering if your PHA is also a redevelopment agency or otherwise has citywide responsibilities.

(a) You are strongly urged to seek a pledge of Community Development Block Grant (CDBG) funds for improvements to public infrastructure such as streets, water mains, etc. related to the revitalization effort. CDBG funds are awarded by HUD by formula to units of general local government and to states, which may then award a grant or loan to a PHA, a partnership, a non-profit organization, or other entity for revitalization activities, including loans to a project's for-profit partnership.

More information about the CDBG Program can be found at *www.hud.gov/offices/cpd/index.cfm*.

(b) The city, county or state may provide HOME funds to be used in conjunction with HOPE VI funds. The Home Investment Partnership Program provides housing funds that are distributed from HUD to units of general local governments and states. Funds may be used for new construction, rehabilitation, acquisition of standard housing, assistance to homebuyers, and tenant-based rental assistance. Current legislation allows HOME funds to be used in conjunction with HOPE VI funds, but they may not be used in conjunction with Public Housing Capital Funds under Section 9(d) of the 1937 Act. Information about the HOME Program can be found at: *www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm*.

(5) Foundations.

(6) Government Sponsored Enterprises such as the Federal Home Loan Bank, Fannie Mae, and Freddie Mac.

(7) HUD and other Federal agencies.

(8) Financial institutions, banks or insurers.

(9) Other private funders.

(F) CSS Resources. In order to achieve quantifiable self-sufficiency results, you must form partnerships with organizations that are skilled in the delivery of services to residents of public housing and that can provide commitments of resources to support those services. Leveraging scarce HOPE VI CSS funds with other funds and services is critical to the sustainability of CSS activities so that they will continue after the HOPE VI funds have been expended.

(1) Types of CSS Resources.

The dollar value of in-kind contributions related to the provision of CSS activities that will contribute to the successful transformation of the lives of residents include:

(a) Materials;

(b) A building;

(c) A lease on a building;

(d) Other infrastructure;

(e) Time and services contributed by volunteers;

(f) Staff salaries and benefits; and

(g) Supplies.

Note that wages projected to be paid to residents through jobs provided by CSS Partners will not be counted as leverage.

(2) Sources of CSS Resources. See Section XI(C) for a list of the kinds of organization, agencies, and other possible resource providers.

(G) Rating Factor: Leveraging—17 Points Total.

(1) Development Leveraging—7 Points.

For each commitment document, HUD will evaluate the strength of commitment and add the amounts that are acceptably documented. HUD will then calculate the ratio of the amount of HUD funds requested to the amount of funds that HUD deems acceptably documented. HUD will round figures to two decimal points, using standard rounding rules.

(a) You will receive 7 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the dollar value of documented, committed development resources from other sources is 1:3 or higher.

(b) You will receive 6 Points if the ratio is between 1:2.50 and 1:2.99.

(c) You will receive 5 Points if the ratio is between 1:20 and 1:2.49.

(d) You will receive 4 Points if the ratio is between 1:1.50 and 1:1.99.

(e) You will receive 3 Points if the ratio is between 1:1. 0 and 1:1.49.

(f) You will receive 2 Points if the ratio is between 1:0.50 and 1:0.99.

(g) You will receive 1 Point if the ratio is between 1:0.25 to 1:0.50.

(h) You will receive 0 Points if the ratio is less than 1:0.25 or there is inadequate information in your application to rate this factor.

(2) CSS Leveraging.

(a) Amount of CSS Leveraged Resources—5 Points.

(i) You will receive 5 Points if the ratio of the amount of HOPE VI funds requested for CSS activities to the dollar value of documented, committed CSS resources leveraged from other sources is 1:4 or higher. If no HOPE VI funds are requested for CSS activities because all CSS funds will come from outside sources, all adequately-documented funds from such outside sources will be counted and you will receive 5 Points.

(ii) You will receive 4 Points if the ratio is between 1:3.5 and 1:4.

(iii) You will receive 3 Points if the ratio is between 1:3 and 1:3.5.

(iv) You will receive 2 Points if the ratio is between 1:2.5 and 1:3.

(v) You will receive 1 Point if the ratio is between 1:2 and 1:2.5.

(vi) You will receive 0 Points if the ratio is less than or equal to 1:2, or there is inadequate information in your application to rate this factor.

(b) Variety of CSS Leveraged Resources—1 Point.

You will receive 1 Point if you have obtained eligible leveraging funds from a variety of sources, including 3 or more kinds of entities listed below:

(i) State and local governments;

(ii) Private service providers;

(iii) Nonprofits/faith based organizations;

(iv) Financing entities;

(v) Developers.

(3) Anticipatory Resources Leveraging—2 Points.

In many cases, PHAs, cities, or other entities may have carried out revitalization activities (including demolition) in previous years in anticipation of your receipt of a HOPE VI Revitalization grant. These expenditures, if documented, may be counted as leveraged anticipatory resources. They cannot duplicate any other type of resource, and cannot be counted towards match.

(a) You will receive 2 Points if the ratio of your documented anticipatory resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) is 1:1.0 or higher.

(b) You will receive 0 Points if the ratio of your documented anticipatory resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) resources is less than 1:.1.

(4) Collateral Investment Leveraging—2 Points.

Collateral Investment includes physical redevelopment activities underway or projected to be completed before October 2007 that will enhance the new HOPE VI community, but will occur whether or not the public housing project is revitalized. This includes' economic or other kinds of development activities that would have occurred with or without the anticipation of HOPE VI-funds. These resources cannot duplicate any other type of resource, and cannot be counted as match. The resources are subject to the same restrictions regarding and documentation. Collateral investment resources are counted as leverage only and cannot be counted towards match. Examples of Collateral Investments include schools, libraries, subway or light rail stations, improved roads, day care facilities, and local medical facilities.

(a) You will receive 2 Points if the ratio of your documented collateral resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) is 1:1.0 or higher.

(b) You will receive 0 Points if the ratio of your documented collateral resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) is less than 1:.1.

X. Resident and Community Involvement

(A) Requirements and Thresholds.

(1) General. You are required to involve residents and the broader community in the planning, proposed implementation, and management of your Revitalization Plan. HUD will evaluate the nature, extent, and quality of the resident and community outreach and involvement you have achieved by the time your application is submitted, as well as your plans for continued and/or additional outreach and involvement.

(2) Resident Training Session. You must conduct at least one training session for residents of the severely distressed project on the HOPE VI development process. HUD does not prescribe the content of this meeting.

(3) Public Meetings.

(a) You must conduct at least three public meetings with residents and the broader community, in order to involve them in a meaningful way in the process of developing the Revitalization Plan and preparing the application.

(b) During the course of the three meetings, you must address the following issues listed below (i.e., all issues need not be addressed at each meeting):

(i) The HOPE VI planning and implementation process;

(ii) The proposed physical plan, including site and unit design;

(iii) The extent of proposed demolition;

(iv) Planned community and supportive service activities;

(v) Other proposed revitalization activities;

(vi) Relocation issues, including relocation planning, mobility counseling, and maintaining the HOPE VI community planning process during the demolition and reconstruction phases where temporary relocation is involved;

(vii) Reoccupancy plans and policies, including site-based waiting lists; and

(viii) Section 3 and employment opportunities to be created as a result of redevelopment activities.

(4) All training sessions and meetings must be held in facilities that are accessible to persons with disabilities, provide services such as day care, transportation, and sign language interpreters as appropriate, and as practical and applicable, be conducted in English and the language(s) most appropriate for the community.

(5) The training session and each of the public meetings must be held after the publication date of this NOFA.

Threshold: In your application you must provide a signed certification that the above resident training session and public meetings were held and that the topics listed above were covered. The certification must include the dates of the training session and meetings. If, after the deficiency cure period, this certification is not included in your application, the application will be ineligible for funding.

(B) Resident and Community Involvement Rating—3 Points.

You will receive 1 Point for each of the following criteria met in your application, which are over and above the threshold requirements listed in Section (A) above.

(1) You demonstrate that you have communicated regularly and significantly with affected residents and members of the surrounding community about the development of your Revitalization Plan by giving residents and community members information about your actions regarding the Revitalization Plan and providing a forum where residents and community members can contribute recommendations and opinions with regard to the development and implementation of the Revitalization Plan.

(2) You describe your efforts, past and proposed, to make appropriate HUD communications about HOPE VI available (i.e., a copy of the NOFA, computer access to the HUD website, etc.).

(3) You describe your plans to provide affected residents with reasonable training on the general principles of development, technical assistance, and capacity building so that they may participate meaningfully in the development and implementation process.

XI. Community and Supportive Services

(A) CSS Program Requirements.

(1) Your CSS Team and Partners.

(a) The term "CSS Team" refers to PHA staff members and/or any consultants who will have the responsibility to design, implement, and manage your CSS Program.

(b) The term "CSS Partners" refers to the agencies and organizations that you will work with to provide supportive services for residents. A Partner could be a local service organization such as a Boys or Girls Club that donates its building and staff to the program, or an agency such as the local TANF agency that works with you to ensure that their services are coordinated and comprehensive.

(2) Maximum CSS grant amount. Consistent with Section 24(j)(3) of the 1937 Act, you may use an amount up to 15 percent of the total HOPE VI Grant to pay the costs of CSS activities. You may spend additional sums on CSS activities using donations, other HUD funds made available for that purpose, or other PHA funds. See Section IX(A)(2) of this NOFA for CSS grant matching requirements.

(3) CSS Endowment Trust. Consistent with Section 24(d)(2) of the Act, you may deposit up to 15 percent of your HOPE VI grant (the maximum amount of the award allowable for CSS activities) into an Endowment Trust to provide CSS activities. In order to establish an Endowment Trust, you must first execute with HUD a HOPE VI Endowment Trust Addendum to the Grant Agreement. When reviewing your request to set up an Endowment Trust, HUD will take into consideration your ability to pay for current CSS activities with HOPE VI or other funds and the projected long-term sustainability of the Endowment Trust to carry out those activities.

(4) Subgrant Agreements. You may enter into subgrant agreements with non-profit or State or local governments for the performance of CSS activities in accordance with your approved CSS work plan.

(5) Neighborhood Networks. All Revitalization grantees will be required to establish Neighborhood Networks Centers. This program provides residents with on-site access to computer and training resources. HUD will make technical assistance available to each PHA where needed. Grantees may use HOPE VI funds to establish Neighborhood Networks. In addition, $5 million will be made available for Neighborhood Networks in accordance with Section II(C) of this NOFA. More information on the requirements of the Neighborhood Networks Center Program is available on the Neighborhood Networks website at *www.hud.gov/nnw/nnwindex.html*.

(6) CSS activities must be consistent with State and local welfare reform requirements and goals.

(7) The objectives of your CSS Program must be results-oriented, with quantifiable goals and outcomes that can be used to measure progress and make changes in activities as necessary.

(8) CSS activities must be of an appropriate scale, type, and variety to meet the needs of all residents (including adults, youth ages 16 to 21, and children) of the severely distressed project, including residents remaining on-site, residents who will relocate permanently to other PHA units or Section 8 housing, residents who will relocate temporarily during the

construction phase, and new residents of the revitalized units.

(9) Non-public housing residents may also participate in CSS activities, as long as the primary participants in the activities are residents as described in Section (8) above.

(10) Your CSS activities must be coordinated with the efforts of other service providers in your locality, including non-profit organizations, educational institutions, and state and local programs.

(11) CSS activities must be well integrated with the physical development process, both in terms of timing and the provision of facilities to house on-site service and educational activities.

(12) CSS Programs must be carefully planned so that they will be sustainable after the HOPE VI grant period ends.

(B) CSS activities may include, but are not limited to:

(1) Educational activities that promote learning and serve as the foundation for young people from infancy through high school graduation, helping them to succeed in academia and the professional world. Such activities, which include after school programs, mentoring, and tutoring, must be created with strong partnerships with public and private educational institutions.

(2) Adult educational activities, including remedial education, literacy training, tutoring for completion of secondary or post-secondary education, assistance in the attainment of certificates of high school equivalency, and English as a Second Language courses, as needed.

(3) Job readiness and retention activities, which frequently are key to securing private sector commitments to the provision of jobs.

(4) Employment training activities that include results-based job training, preparation, counseling, development, placement, and follow-up assistance after job placement.

(5) Programs that provide entry-level, registered apprenticeships in construction, construction-related, maintenance, or other related activities. A registered apprenticeship program is a program which has been registered with either a State Apprenticeship Agency recognized by the Department of Labor's (DOL) Office of Apprenticeship Training, Employer and Labor Services (OATELS) or, if there is no recognized State agency, by OATELS. See also DOL regulations at 29 CFR part 29.

(6) Life skills training on topics such as parenting, consumer education, and family budgeting.

(7) Creation and operation of credit unions to serve residents, including capitalization and technical assistance to foster new credit unions on-site and to encourage existing community credit unions to expand their coverage to include on-site coverage.

(8) Homeownership counseling that is scheduled to begin promptly after grant award so that, to the maximum extent possible, qualified residents will be ready to purchase new homeownership units when they are completed. The Family Self-Sufficiency Program can also be used to promote homeownership, providing assistance with escrow accounts and counseling.

(9) Coordinating with health care services providers or providing on-site space for a health clinic, doctors, a wellness center, dentists, etc. that will primarily serve the public housing residents. HOPE VI funds may not be used to provide direct medical care to residents.

(10) Substance/alcohol abuse treatment and counseling.

(11) Activities that address domestic violence treatment and prevention.

(12) Child care services that provide sufficient hours of operation to facilitate parental access to education and job opportunities, serve appropriate age groups, and stimulate children to learn.

(13) Transportation, as necessary, to enable all family members to participate in available CSS activities and/or to commute to their places of employment.

(14) Entrepreneurship training and mentoring, with the goal of establishing resident-owned businesses.

(C) CSS Partnerships and Resources. The following are the kinds of organizations and agencies that can provide you with in-kind, financial, and other types of resources necessary to carry out and sustain your CSS activities.

(1) Local Boards of Education, public libraries, local community colleges, institutions of higher learning, non-profit or for-profit educational institutions, and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of young people in the revitalized development, from birth through higher education.

(2) TANF agencies/welfare departments.

(3) Job development organizations that link private sector or non-profit employers with low-income prospective employees.

(4) Workforce Development Agencies.

(5) Organizations that provide residents with job readiness and retention training and support.

(6) Economic development agencies such as the Small Business Administration, which provide entrepreneurial training and small business development centers.

(7) National corporations, local businesses, and other large institutions such as hospitals that can commit to provide entry-level jobs. Employers may agree to train residents or commit to hire residents after they complete jobs preparedness or training programs that are provided by you, other partners, or the employer itself.

(8) Programs that integrate employment training, education, and counseling, and where creative partnerships with local boards of education, state charter schools, TANF, foundations, and private funding sources have been or could be established, such as:

(a) Youthbuild. HUD's Youthbuild Program provides grants to organizations that provide education and job training to young adults ages 16 to 24 who have dropped out of school. Participants spend half their time rehabilitating low-income housing and the other half in educational programs. Youthbuild provides a vehicle for achieving compliance with the objective of Section 3, as described in Section XIII(D)(2)(a) of this NOFA. More information on HUD's Youthbuild Program can be found at *www.hud.gov/progdesc/youthb.cfm*.

(b) Step-Up, an apprenticeship-based employment and training program that provides career potential for low-income persons by enabling them to work on construction projects that have certain prevailing wage requirements. Step-Up encourages work by offering apprenticeships through which low-income participants earn wages while learning skills on the job, supplemented by classroom-related instruction. Step-Up can also contribute to a PHA's effort to meet the requirements of Section 3. More information can be found at *www.hud.gov/progdesc/stepup.cfm*.

(9) Sources of capital such as foundations, banks, credit unions, and charitable, fraternal, and business organizations.

(10) Non-profit organizations such as the Girl Scouts and the Urban League, both of which have Memoranda of Agreement (MOA) with HUD. Copies of these MOAs can be found on the HOPE VI Home Page at *www.hud.gov/hopevi*.

(11) Civil rights organizations.

(12) Local area agencies on aging.

(13) Local agencies and organizations serving persons with disabilities.

(14) Faith-based and Other Community-based Organizations. HUD encourages you to partner or subgrant

with grassroots faith-based and other community-based organizations to provide CSS activities. Such organizations have a strong history of providing vital community services such as job training, childcare, relocation supportive services, youth programs, technology training, transportation, substance abuse programs, crime prevention, and health services. They also provide counseling for individuals and families on fair housing rights, and homeownership and rental housing opportunities in the neighborhood of their choice. HUD believes that grassroots organizations, e.g. civic organizations, congregations, national and local self-help homeownership organizations, faith-based and other community-based organizations should be more effectively used, and has placed a high priority on expanding opportunities for grassroots organizations to participate in developing solutions for their own neighborhoods. See HUD's Center for Faith-Based and Community Initiatives website at *www.hud.gov/offices/fbci/index.cfm*.

(a) HUD will consider an organization a "grassroots" organization if it is headquartered in the local community to which it provides services; and

(i) Has an annual social services budget of no more than $300,000. This cap includes only the portion of the organization's budget allocated to providing social services. It does not include other portions of the budget such as salaries and expenses; or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered "grassroots." (D) Rating Factor: CSS Program—6 Points Total. In your application you will describe your CSS plan, including any plans to implement a CSS Endowment Trust. Each of the following subfactors will be rated separately.

(1) You will receive 2 Points if you demonstrate that you will be able to provide case management within 30 days from the date of grant award execution so that residents who will be relocated have time to participate and benefit from CSS activities before leaving the site.

(2) You will receive 1 Point if you have proposed a high quality, results-oriented CSS plan that includes strong components of the basic elements of education, job training, and services that will enable all affected residents to transform their lives.

(3) You will receive 1 Point if you provide letters from a variety of experienced organizations and service providers that represent strong relationships and commitments to participate in your CSS activities and accomplish your CSS goals of the program.

(4) You will receive 1 Point if your CSS Program has been developed in response to a rigorous resident needs identification process and directly responds to the identified needs.

(5) You will receive 1 Point if your CSS Program includes a case management system that provides services to individual residents.

XII. Relocation

(A) Definition. You must provide suitable, decent, safe, and sanitary housing for each family required to relocate as a result of revitalization activities under your Revitalization Plan. Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity, is covered by Federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), and the implementing government-wide regulation at 49 CFR part 24. The relocation requirements of the URA and the government-wide regulations cover any person who moves permanently from real property or moves personal property from real property directly because of acquisition, rehabilitation, or demolition for an activity undertaken with HUD assistance.

(B) Relocation Guidelines.

(1) The HOPE VI Relocation Plan is intended to ensure that PHAs adhere to the URA and that all residents who have been or will be temporarily or permanently relocated from the site are provided with CSS activities such as mobility counseling and direct assistance in locating housing.

(2) You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, non-profit and/or other organizations, and/or individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood. HUD will view favorably innovative programs such as community mentors, support groups, and the like.

(3) If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area.

(C) Standard Relocation Requirements. You must carry out relocation activities in compliance with a relocation plan that conforms with the following statutory and regulatory requirements, as applicable:

(1) Relocation or temporary relocation carried out as a result of rehabilitation under an approved Revitalization Plan is subject to the URA, the URA regulations at 24 CFR part 24, and regulations at 24 CFR 968.108 or successor part.

(2) Relocation carried out as a result of acquisition under an approved Revitalization Plan is subject to the URA and regulations at 24 CFR 941.207 or successor part.

(3) Relocation carried out as a result of disposition under an approved Revitalization Plan is subject to Section 18 of the 1937 Act, as amended.

(4) Relocation carried out as a result of demolition under an approved Revitalization plan is subject to the URA.

(D) *Threshold:* The HOPE VI Revitalization Relocation Plan. Each applicant must complete a HOPE VI Relocation Plan. In your application, you must submit a certification that the HOPE VI Relocation Plan has been completed, and that it conforms to the URA requirements as described in Section XII(C) above.

(E) Rating Factor: Relocation—5 Points Total.

(1) You will receive 5 Points if you provide a certification that all of the residents of the targeted severely distressed public housing project have been relocated as of the HOPE VI Revitalization application due date. If you qualify for these 5 Points, you are not eligible for any additional Points described below.

(2) You will receive 4 Points if you describe in your application:

(a) An effective plan to track residents who have been or will be relocated from the targeted project; and

(b) A comprehensive plan that will provide mobility counseling and direct assistance in locating housing to residents who choose Section 8 assistance that will help them to fully understand the full range of housing opportunities available to them in neighborhoods throughout the jurisdiction and to find housing in non-poverty areas.

(3) You will receive 2 Points if you meet only one of the factors described in Section (1) above.

(4) You will receive 0 Points if your application does not meet either of the factors described in Section (2) above, or if there is inadequate information in the application to rate this factor.

XIII. Fair Housing and Equal Opportunity

(A) Housing and Services for Persons with Disabilities.

(1) Accessibility Requirements. HOPE VI developments are subject to the accessibility requirements contained in several Federal laws. All applicable laws must be read together and followed. PIH Notice 2002–1, available at *http://www.hud.gov/offices/pih/publications/notices/02/pih2002-1.pdf*, provides an overview of all pertinent laws and implementing regulations pertaining to HOPE VI. Also see HUD's Fair Housing website at *www.hud.gov/groups/fairhousing.cfm*. Under the Fair Housing Act of 1988, all new construction of covered multifamily buildings must include certain features of accessible and adaptable design. Units covered are all those in buildings with four or more units and one or more elevators, and all ground floor units with living area located entirely on the ground floor in buildings without elevators. The accessible design requirements are provided on HUD's FHEO website at *http://www.hud.gov/fhe/fhefha5.html#sect3*.

(2) Specific Fair Housing requirements are:

(a) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100.

(b) The prohibitions against discrimination on the basis of disability, including requirements units that, in certain multifamily housing, meet the Uniform Federal Accessibility Standards and that you make reasonable accommodations to individuals with disabilities under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8.

(c) Title II of the Americans with Disabilities Act (42 U.S.C 12101 *et seq.*) and its implementing regulations at 28 CFR part 36.

(d) The Architectural Barriers Act of 1968 (42 U.S.C. 4151) and the regulations at 24 CFR part 40.

(B) Rating Factor: FHEO 7 Points Total.

(1) Accessibility—2 Points.

(a) Over and above the accessibility requirements listed above, you will receive 2 Points if you describe a plan to:

(i) Provide accessibility in homeownership units;

(ii) Provide one-bedroom accessible rental units for single individuals with disabilities;

(iii) Provide for accessibility modifications, where necessary, to Section 8 units of residents who relocate from the targeted project due to revitalization activities;

(iv) Where playgrounds are planned, propose ways to make them accessible to children with disabilities, over and above statutory and regulatory requirements; and

(v) Where possible, design units with accessible front entrances.

(b) You will receive 1 Point if your application does not propose to implement all of the accessibility priorities stated above, but provides a detailed explanation as to why you cannot implement all of the priorities.

(c) You will receive 0 Points if you fail to provide a description that meets the specifications above, or if there is inadequate information in your application to rate this factor.

(2) Adaptability—1 Point.

(a) You will receive 1 Point if you specifically describe a plan to meet the adaptability standards adopted by HUD at 24 CFR 8.3 that apply to those units not otherwise covered by the accessibility requirements. Adaptability is the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed so that the unit can be made ready for occupancy by a hearing-impaired person. For information on adaptability, see *www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf*.

(b) You will receive 0 Points if your application does not adequately describe a plan as specified above, or if there is inadequate information in your application to rate this factor.

(3) Visitability—1 Point.

(a) You will receive 1 Point if you specifically describe a plan to meet the visitability standards adopted by HUD that apply to units not otherwise covered by the accessibility requirements. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. See *www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf* for information on visitability. The two standards of visitability are:

(i) At least one entrance at grade (no steps), approached by a sidewalk; and

(ii) The entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space.

(b) You will receive 0 Points if your application does not adequately describe a visitability plan as specified above, or if there is inadequate information in your application to rate this factor.

(C) Fair Housing.

(1) *Threshold:* Compliance with Fair Housing and Civil Rights Laws. All applicants and their subrecipients must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a).

HUD will not rate your application for funding under this NOFA if, as of the HOPE VI application due date, you:

(a) Have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination;

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(c) Have received a letter of non-compliance findings under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974.

HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been resolved to the satisfaction of the Department as of the application due date will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. A charge, lawsuit, or letter of findings issued after the application due date will not affect an applicant's eligibility under this threshold. Examples of such actions which must happen before the application due date include, but are not limited to:

(i) A voluntary compliance agreement signed by all parties in response to the letter of findings;

(ii) A HUD-approved conciliation agreement signed by all parties; or

(iii) An out-of-court settlement of a Department of Justice lawsuit under the Fair Housing Act.

(2) *Threshold:* Desegregation Orders. You must be in full compliance with any desegregation or other court order

related to Fair Housing (e.g., Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973) that affects your public housing program and that is in effect on the application due date.

(3) Site and Neighborhood Standards for Replacement Housing. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and regulations thereunder. In determining the location of any replacement housing, you must comply with either the site and neighborhood standards regulations at 24 CFR 941.202 (b–d) or with the standards outlined below.

(a) Goals of the HOPE VI Program. The HOPE VI Program provides resources to address the needs of severely distressed public housing projects within an administrative framework of less intrusive Federal oversight and increased reliance on informed local decision making. HOPE VI Grants are made so that Grantees can develop and implement comprehensive strategies that address not only the physical and management needs of the projects, but also the social and economic needs of the residents and the surrounding community. You are expected to ensure that your revitalization plan will expand assisted housing opportunities in non-poor and non-minority neighborhoods and/or will accomplish substantial revitalization in the Project and its surrounding neighborhood. You are also expected to ensure that eligible households of all races and ethnic groups will have equal and meaningful access to the housing.

(b) Objectives in Selecting HUD-Assisted Sites. The fundamental goal of HUD's fair housing policy is to make full and free housing choice a reality. Housing choice requires that households of all races can freely decide the type of neighborhood where they wish to reside, that minority neighborhoods are no longer deprived of essential public and private resources, and that stable, racially-mixed neighborhoods are available as a meaningful choice for all. To make full and free housing choice a reality, sites for HUD-assisted housing investment should be selected so as to advance two complementary goals:

(i) Expand assisted housing opportunities in non-minority neighborhoods, opening up choices throughout the metropolitan area for all assisted households; and

(ii) Reinvest in minority neighborhoods, improving the quality and affordability of housing there to represent a real choice for assisted households.

(c) Compliance with Fair Housing Act and Title VI of the Civil Rights Act of 1964. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and implementing regulations, in determining the location of any replacement housing.

(d) Grantee's Election of Requirements. You may, at your election, separately with regard to each site you propose, comply with the development regulations regarding Site and Neighborhood Standards (24 CFR 941.202 (b)–(d)), or with the Site and Neighborhood Standards contained in this Section.

(e) Replacement housing located on site or in the surrounding neighborhood. Replacement housing under HOPE VI that is located on the site of the existing project or in its surrounding neighborhood will not require independent approval under Site and Neighborhood Standards, since HUD will consider the scope and impact of the proposed revitalization to alleviate severely distressed conditions at the public housing project and its surrounding neighborhood in assessing the application to be funded under this NOFA.

(f) Off-Site Replacement Housing Located Outside of the Surrounding Neighborhood. Unless you demonstrate that there are already significant opportunities in the metropolitan area for assisted households to choose non-minority neighborhoods (or these opportunities are under development), HOPE VI replacement housing not covered by Section (e) above may not be located in an area of minority concentration (as defined in paragraph (g) below) without the prior approval of HUD. Such approval may be granted if you demonstrate to the satisfaction of HUD that:

(i) You have made determined and good faith efforts, and found it impossible with the resources available, to acquire an appropriate site(s) in an area not of minority concentration, or

(ii) The replacement housing, taking into consideration both the CSS activities or other revitalizing activities included in the Revitalization Plan, and any other revitalization activities in operation or firmly planned, will contribute to the stabilization or improvement of the neighborhood in which it is located, by addressing any serious deficits in services, safety, economic opportunity, educational opportunity, and housing stock.

(g) Area of Minority Concentration. The term "area of minority concentration" is any neighborhood in which:

(i) The percentage of households in a particular racial or ethnic minority group is at least 20 Points higher than the percentage for the housing market area; i.e., the Metropolitan Statistical Area (MSA) in which the proposed housing is to be located, or

(ii) The neighborhood's total percentage minority is at least 20 Points higher than the percentage for MSA.

(4) Additional Nondiscrimination Requirements. In addition to compliance with the civil rights requirements listed at 24 CFR 5.105(a), you and your subrecipients must comply with:

(a) The nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*);

(b) The Equal Pay Act (29 U.S.C. 206(d);

(c) Title IX of the Education Amendments Act of 1972; and

(d) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(5) Affirmatively Furthering Fair Housing. Section 808(e)(5) of the Fair Housing Act requires HUD to affirmatively further fair housing. HUD requires the same of its grant recipients. If you are a successful applicant, you will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes are:

(a) Race;
(b) Color;
(c) National origin;
(d) Religion;
(e) Sex;
(f) Disability; and
(g) Familial status.

(6) Ensuring the Participation of Disadvantaged Firms. The Department is committed to ensuring that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on Federal contracts. HUD regulations at 24 CFR 85.36(e) require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that these disadvantaged firms are used when possible. Affirmative steps include:

(a) Placing disadvantaged firms on solicitation lists;

(b) Assuring that disadvantaged firms are solicited whenever they are potential sources;

(c) Dividing total requirements, when economically feasible, into smaller tasks

or quantities to permit maximum participation by disadvantaged firms;

(d) Establishing delivery schedules, where the requirement permits, which encourage participation by disadvantaged firms;

(e) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in Sections (a) through (e) above.

(D) Rating Factor: Fair Housing—3 Points Total.

(1) Fair Housing—2 Points.

(a) You will receive 2 Points if your application specifically describes:

(i) Your efforts to attract families with a broad spectrum of incomes to the revitalized site through intensive affirmative marketing efforts and how these efforts contribute to the deconcentration of low-income neighborhoods;

(ii) Your efforts to target your marketing and outreach activities to all segments of the population on a non-discriminatory basis, promote housing choice and opportunity throughout your jurisdiction and contribute to the deconcentration of both minority and low-income neighborhoods. In your application, you must describe how your outreach and marketing efforts will reach out to persons of different races and ethnic groups, families with or without children, persons with disabilities and able-bodied persons, and the elderly; and

(iii) The specific steps you plan to take through your proposed activities to affirmatively further fair housing. These steps can include, but are not limited to:

(*A*) Addressing impediments to fair housing choice relating to your operations;

(*B*) Working with local jurisdictions to implement their initiatives to affirmatively further fair housing;

(*C*) Implementing, in accordance with Departmental guidance, relocation plans that result in increased housing choice and opportunity for residents affected by HOPE VI revitalization activities funded under this NOFA:

(*D*) Implementing admissions and occupancy policies that are nondiscriminatory and help reduce racial and national origin concentrations; and

(*E*) Initiating other steps to remedy discrimination in housing and promote fair housing rights and fair housing choice.

(b) You will receive 1 Point if you address all of the above issues in a general way.

(c) You will receive 0 Points if you do not address all of the above issues, or if there is insufficient information to rate this factor.

(2) Economic Opportunities for Low and Very Low-Income Persons (Section 3)—1 Point.

(a) HOPE VI grantees must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very Low-Income Persons in Connection with assisted Projects) and its implementing regulations at 24 CFR part 135. Information about Section 3 can be found at HUD's Section 3 website at *www.hud.gov/fhe/sec3over.html*.

(b) You will receive 1 Point if you describe a feasible plan to implement Section 3 that not only meets the minimum requirements described in Section (a) above but also exceeds those requirements. Your plan must include your goals by age group, types of jobs and other opportunities to be provided, and plans for tracking and evaluation. Section 3 firms must be in place quickly so that residents are trained in time to take advantage of employment opportunities such as jobs and other contractual opportunities in the pre-development, demolition, and construction phases of the revitalization. Your Section 3 plan must demonstrate that you will, to the greatest extent feasible, direct training, employment and other economic opportunities to:

(i) Low- and very low-income persons, particularly those who are recipients of government assistance for housing, and

(ii) Business concerns which provide economic opportunities to low- and very low-income persons.

(c) You will receive 0 Points if your plan to implement Section 3 does not meet the standards listed in Section (b) above, or if there is inadequate information in your application to rate this factor.

XIV. Mixed Income Communities—6 Points Total

(A) On-Site Housing—3 Points.

Your proposed unit mix must be designed to achieve a mixed-income, well functioning community on the revitalized site. Reducing concentration in this context does not necessarily mean reducing density of housing units; a well-run, mixed-income housing community may actually have a higher density given the site's market conditions.

(1) You will receive 3 Points if your application describes a unit mix of more than 35 percent public housing units.

(2) You will receive 2 Points if your application describes a unit mix that is between 25 and 34 percent public housing units.

(3) You will receive 1 Point if your application describes a unit mix of between 15 and 24 percent public housing units.

(4) You will receive 0 Points if your application describes a unit mix that is less than 14 percent, or if there is inadequate information in your application to rate this factor.

(B) Off-Site Housing—1 Point.

(1) Although not required, you are encouraged to consider development of replacement housing in locations other than the original severely distressed site (i.e., off-site housing). Locating off-site housing in neighborhoods with low levels of poverty and/or low concentrations of minorities will provide maximized housing alternatives for low-income residents who are currently on-site and assist the goal of creating desegregated, mixed-income communities. The effect on-site will be to assist in the deconcentration of low-income residents and increase the number of replacement units.

(2) Although it is acknowledged that off-site housing is not appropriate in some communities, if you do not propose to include off-site housing in your Revitalization Plan, you are not eligible to receive this Point.

(3) If you propose an off-site housing component in your application, you must be sure to include that component when you discuss other components (e.g. on-site housing, homeownership housing, etc.) Throughout your application, your unit counts and other numerical data must take into account the off-site component.

(4) *Threshold:* If you propose to develop off-site housing, you MUST provide evidence in your application that you (not your developer) have site control of the property. Evidence may include an option to purchase the property, contingent solely on the receipt in the HOPE VI grant, satisfactory compliance with the environmental review requirements of accordance with Section XX of this NOFA, and the site and neighborhood standards in Section XIII(C)(3) of this NOFA. If you demonstrate site control through an option to purchase, the option must extend for at least 180 days after the application due date. *If you propose to develop off-site housing and you do not provide acceptable site control, your entire application will be ineligible for funding.*

(5) Rating: You will receive 1 Point if you propose to develop an off-site housing component and document that you have:

(a) Acquired the site; and

(b) The site meets all environmental, and site and neighborhood standards.

(C) *Threshold:* Market Rate Housing. If you include market rate housing in your Revitalization Plan, you must demonstrate that there is a demand for the housing units of the type, number, and size proposed in the location you have chosen. In your application you must provide a preliminary market assessment letter prepared by an independent, third party, credentialed market research firm or professional that describes its assessment of the demand and associated pricing structure for the proposed residential units and any community facilities, economic development, and retail structures, based on the market and economic conditions of the project area. If, after the cure period, this letter is not included in your application, it will be ineligible for funding.

(D) Homeownership Housing—2 Points.

The Department has placed the highest priority on increasing homeownership opportunities for low- and moderate-income persons, persons with disabilities, the elderly, minorities, and families where English may be a second language. Too often these individuals and families are shut out of the housing market through no fault of their own. HUD encourages applicants to work aggressively to open up the realm of homeownership.

(1) Your application will receive 2 Points if you propose and describe a feasible, well-defined plan for homeownership. In your application, you will describe:

(a) The purpose of your homeownership program;

(b) The number of units planned and their location(s);

(c) A description and justification of the families that will be targeted for the program;

(d) The proposed source of your construction and permanent financing of the units; and

(e) A description of the homeownership counseling you will provide to prospective families.

(2) You will receive 0 Points for this factor if you do not propose to include homeownership units in your Revitalization Plan, your proposed program is not feasible and/or well defined, or there is inadequate information in your application to rate this factor.

(E) *Threshold:* Zoning Approval. Your application must include a certification from the appropriate local official documenting that all required zoning approvals have been secured, both for on-site and off-site housing and other proposed uses, or that the request for such approval(s) are on the agenda for the next meeting of the appropriate zoning authority.

XV. Overall Quality of Plan

(A) *Threshold:* Appropriateness of Proposal. In accordance with Section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal in the context of the local housing market relative to other alternatives. You must briefly discuss other possible alternatives to your proposal, and explain why your plan is more appropriate. This is a statutory requirement and an application threshold. Any deficiencies in your narrative may not be corrected after the application is submitted.

Examples of alternative proposals may include:

(1) Rebuilding or rehabilitating an existing project or units at an off-site location that is in an isolated, non-residential, or otherwise inappropriate area;

(2) Proposing a range of incomes, housing types (rental, homeownership, market rate, public housing, townhouse, detached house, etc.), or costs which cannot be supported by a market analysis; and/or

(3) Proposing to use the land in a manner which is contrary to the goals of your agency.

(B) Rating Factor: Overall Quality of Plan—23 Points Total.

(1) Overall Quality of the Application—5 Points.

The information and strategies described in your application must be coherent and internally consistent. Numbers and statistics in your narratives must be consistent with the information provided in the attachments. Also, the physical and CSS aspects of the application must be compatible and coordinated with each other. Pay particular attention to the data provided for:

(a) Types and numbers of units;

(b) Budgets;

(c) Other financial estimates, including sources and uses; and

(d) Numbers of residents affected.

(2) Likelihood of Success—5 Points.

(a) You will receive 5 Points if your Revitalization Plan, including plans for retail, office, and other economic development activities, as appropriate, will:

(i) Result in a revitalized site that will enhance the neighborhood in which the project is located;

(ii) Spur outside investment into the surrounding community;

(iii) Enhance economic opportunities for residents; and

(iv) Remove an impediment to continued redevelopment or start a community-wide revitalization process.

(b) You will receive 3 Points if your application demonstrates that your Revitalization Plan will have only a moderate effect on activities in the surrounding community.

(c) You will receive 0 Points if your application does not demonstrate that your Revitalization Plan will have an effect on the surrounding community, or if there is inadequate information in your application to rate this factor.

(3) Project Readiness—7 Points.

HUD places top priority on projects that will be able to commence immediately after grant award. You will receive the following points for each applicable subfactor certified in your application.

(a) You will receive 2 Points if the targeted severely distressed public housing project is completely vacant.

(b) You will receive 2 Points if the site is cleared.

(c) You will receive 1 Point if a Master Development Agreement has been developed and is ready to submit to HUD.

(d) You will receive 1 Point if your preliminary site design is complete.

(e) You will receive 1 Point if you have held 5 or more public planning sessions leading to resident acceptance of the Plan.

(4) Design—3 Points.

HUD is seeking excellence in design. We urge you to carefully select your architects and/or planners, and to enlist local affiliates of national architectural and planning organizations such as the American Institute of Architects, the American Society of Landscape Architects, the American Planning Association, the Congress for the New Urbanism, and/or the department of architecture at a local college or university to assist you in assessing qualifications of design professionals and/or participating on a selection panel that results in the procurement of excellent design services.

HUD encourages you to select a design team that is committed to a process in which residents, including young people and seniors, the broader community, and other stakeholders participate in designing the new community.

Your proposed site plan, new units, and other buildings must be designed to

be compatible with and enrich the surrounding neighborhood. Local architecture and design elements and amenities should be incorporated into the new or rehabilitated homes so that the revitalized sites and structures will blend into the broader community and appeal to the market segments for which they are intended. Housing, community facilities, and economic development space must be well integrated. You must select members of your Team who have the ability to meet these requirements.

(a) You will receive 3 Points if your proposed site plan, new dwelling units, and buildings demonstrate that:

(i) You have proposed a site plan that is compact, pedestrian-friendly, with an interconnected network of streets and public open space;

(ii) Your proposed housing, community facilities, and economic development facilities are thoroughly integrated into the community through the use of local architectural tradition, building scale, grouping of buildings, and design elements; and

(iii) Your plan proposes appropriate enhancements of the natural environment.

(b) You will receive 1 Point if your proposed site plan, new dwelling units, and buildings demonstrate design that adequately addresses the elements above.

(c) You will receive 0 Points if your proposed design is perfunctory or otherwise does not address the above elements. You will also receive 0 Points if there is inadequate information in the application to rate this factor.

(5) Evaluation—3 Points.

You are encouraged to work with your local university(ies), other institutions of learning, foundations, and/or others to evaluate the performance and impact of their HOPE VI Revitalization Plan over the life of the grant. The proposed methodology must measure success against goals you set at the outset of your revitalization activities. Evaluators must establish baselines and provide ongoing interim reports that will allow you to make changes as necessary as your project proceeds. Where possible, you are encouraged to form partnerships with Historically Black Colleges and Universities (HBCUs); Hispanic-Serving Institutions (HBIs); Community Outreach Partnership Centers (COPCs); the Alaskan Native/Native Hawaiian Institution Assisting Communities Program (as appropriate); and others in HUD's University Partnerships Program.

(a) You will receive 3 Points if your application includes a letter(s) from an institution(s) of higher learning that provides a commitment to work with you to evaluate your program and describes its proposed approach to carry out the evaluation if your application is selected for funding. The letter must provide the extent of the commitment and involvement, the extent to which you and the local institution of higher learning will cooperate, and the proposed approach. The commitment letter must address the following areas for evaluation:

(i) The impact of your HOPE VI effort on the lives of the residents;

(ii) The nature and extent of economic development generated in the community;

(iii) The effect of the revitalization effort on the surrounding community, including spillover revitalization activities, property values, etc.; and

(iv) Your success at integrating the physical and CSS aspects of your strategy.

(b) You will receive 0 Points if your application does not include a commitment letter that conforms to the specifications in paragraph (b) above.

XVI. Application Requirements

(A) Application Components.

(1) Narrative Exhibits.

(a) The first part of your application will be comprised of narrative exhibits. Your narratives will respond to each rating factor in the NOFA, and will also respond to threshold requirements. Among other things, your narratives must describe your overall planning activities, including but not limited to relocation, community and supportive services, and development issues.

(b) Each HOPE VI Revitalization application must contain no more than 125 pages of narrative exhibits. Any pages after the first 125 pages of narrative exhibits will not be reviewed. Although submitting pages in excess of the page limitations will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure of a threshold. Text submitted at the request of HUD to correct a technical deficiency will not be counted in the 125 page limit.

(2) Attachments.

(a) The second part of your application will be comprised of Attachments. These documents will also respond to the rating factors in the NOFA, as well as threshold requirements. They will include documents such as maps, photographs, letters of commitment, application data forms, and various certifications unique to HOPE VI Revitalization.

(b) Each HOPE VI Revitalization application must contain no more than 150 pages of attachments. Any pages after the first 150 pages of attachments will not be considered. Although submitting pages in excess of the page limit will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.

(3) Exceptions to Page Limits. The documents listed below constitute the only exceptions and are not counted in the page limits listed in Sections (1)(b) and (2)(b) above:

(a) Additional pages submitted at the request of HUD in response to a technical deficiency.

(b) Attachments that provide documentation of commitments from resource providers or CSS providers.

(c) Narratives and Attachments required to be submitted only by existing HOPE VI Revitalization Grantees in accordance with Sections VII(A)(3), VII(B)(2), and VII(B)(3)(c) of this NOFA (Capacity).

(d) Information required of MTW applicants only.

(4) Standard Certifications. The last part of your application will be comprised of standard certifications common to many HUD programs. Hard copies of the forms are included in the HOPE VI Application Kit, and electronic versions of these forms also can be found on the websites listed in Section IV(D)(2) of this NOFA. If you are requesting Section 8 assistance as described in Section II(E) of this NOFA, it must be placed in this Standard Certifications Section of your HOPE VI application. These forms must be placed at the back of the application, except for the Application for Federal Assistance (SF–424), which is the first page of your application.

(B) Application Format. To speed the processing of your application, you are asked to follow these instructions when preparing your application:

(1) Double space your narrative pages. Single spaced pages will be counted as two pages.

(2) Use 8½ x 11 inch paper, one side only. Only the City map may be submitted on an 8½ by 14 sheet of paper. Larger pages will be counted as two pages.

(3) All margins should be 1 inch, but no smaller than ½ inch.

(4) Use at least an 11 Point font.

(5) Any pages marked with numbers and letters (e.g., 75A, 75B, 75C) will be treated as separate pages.

(6) If a Section is not applicable, omit it; do not insert a page marked n/a.

(7) Mark each Exhibit and Attachment with an appropriate tab. No material on the tab will be considered for review purposes, although pictures are allowed.

(8) No more than one page of text may be placed on one sheet of paper; i.e., you may not shrink pages to get two or more on a page.

(9) Do not format your narrative in columns. Pages with text in columns will be counted as two pages.

(C) Signatures. Unless otherwise indicated, each form or certification, whether part of an Attachment or a Standard Certification, must be signed by the Executive Director of the applicant PHA, or his or her designate. Signatures need not be original.

XVII. Revitalization Application Selection Process

(A) Revitalization Grant Application Evaluation.

(1) HUD's selection process is designed to ensure that HOPE VI Revitalization grants are awarded to eligible PHAs with the most meritorious applications.

(2) In a departure from recent years, HUD will only rate HOPE VI Revitalization applications that have met the thresholds described in this HOPE VI NOFA.

(B) Threshold and Completeness Review.

(1) Application Screening. HUD will screen each application to determine if it meets the threshold criteria listed in Section III of this NOFA.

(2) HUD will consider the information you submit by the application due date. After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that you or any third party may want to provide.

(3) In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application on a uniform basis for all applicants. After your application has been screened, HUD may contact you to clarify an item in your application or to give you an opportunity to correct a technical deficiency. HUD may not seek clarification of items or responses that would improve the substantive quality of your response to any rating factor. Examples of curable technical deficiencies include your failure to include a required certification or sign a document. If HUD identifies a technical deficiency, it will notify you by fax of the clarification or deficiency. You must submit information to cure the deficiency to HUD within 14 calendar days from the date of HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the following business day.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

(4) In order to evaluate thresholds, HUD may also use internal information sources that will provide information regarding audit findings, the status of existing HOPE VI Revitalization grants, and other pertinent information. HUD will not consider external sources such as newspaper articles and letters to evaluate applications unless they are submitted in your application.

(5) Applications that do not meet every threshold will be deemed ineligible for funding and will not be rated.

(C) Preliminary Rating and Ranking.

(1) Rating.

(a) HUD will preliminarily rate each eligible application, SOLELY on the basis of the rating factors described in this HOPE VI NOFA.

(b) When rating applications, HUD reviewers will not use any information included in any HOPE VI application submitted in a prior year.

(c) HUD will assign a preliminary score for each rating factor and a preliminary total score for each eligible application.

(d) The maximum number of Points for each Revitalization application is 114.

(2) Ranking.

(a) After preliminary review, applications will be ranked in score order.

(b) Applications will be deemed "competitive" if they have a preliminary score of 90 or above.

(c) Applications that do not have a preliminary score of at least 90 will not receive a final score and will not be eligible for funding.

(D) Final Panel Review.

(1) A Final Review Panel made up of HUD staff will:

(a) Assess each competitive application, as defined in Section XVII(C) above;

(b) Assign the final score; and

(c) Recommend for selection the most highly-rated competitive applications, subject to the amount of available funding, in accordance with the allocation of funds described in Section II of this NOFA.

(2) HUD reserves the right to make reductions in funding to delete ineligible items, with the exception of the prohibition to request funds for units that do not meet the requirements of replacement housing, in accordance with Section VI(D)(8) of this NOFA.

(3) In accordance with the FY 2002 HOPE VI appropriation, HUD may not use HOPE VI funds to grant competitive advantage in awards to settle litigation or pay judgments.

(E) Tie Scores. If two or more applications have the same score and there are insufficient funds to select all of them, HUD will select for funding the application(s) with the highest score for Rating Factor XV, Overall Quality of the Plan. If a tie still remains, HUD will select for funding the application(s) with the highest score for Capacity. HUD will select further tied applications with the highest score for Need.

(F) Transfer to Demolition Grants. If funds remain after all eligible HOPE VI Revitalization grant applications are funded and the amount remaining is inadequate to feasibly fund the next eligible Revitalization application, HUD reserves the right to:

(1) Reallocate unused funds to fund or supplement the next eligible HOPE VI Demolition grant application(s);

(2) Reallocate unused funds to the amount available for Section 8 assistance, if necessary; and/or

(3) Carry over unused funds to the next fiscal year.

XVIII. Post Award Activities

(A) Notification of Funding Decisions. The HUD Reform Act prohibits HUD from notifying you as to whether or not you have been selected to receive a Revitalization grant until it has announced all HOPE VI Revitalization grant recipients. If your Revitalization application has been found to be ineligible or if it did not receive enough Points to be funded, you will not be notified until the successful applicants have been notified. HUD will provide written notification to all HOPE VI applicants, whether or not they have been selected for funding.

(B) Environmental Review. HUD notification that you have been selected to receive a HOPE VI grant constitutes only preliminary approval. Grant funds may not be released until the responsible entity completes an environmental review and you submit and obtain HUD approval of a request for release of funds and the responsible entity's environmental certification in accordance with Section XX of this NOFA.

(C) Revitalization Grant Agreement. When you are selected to receive a Revitalization grant, HUD will send you a HOPE VI Revitalization Grant Agreement, which constitutes the contract between you and HUD to carry out and fund public housing revitalization activities. Both you and HUD will sign the cover sheet of the Grant Agreement. It is effective on the date of HUD's signature. The Grant

Agreement differs from year to year. The FY 2001 Revitalization Grant Agreement can be found on the HOPE VI website at *www.hud.gov/hopevi*.

(D) HOPE VI Endowment Trust Addendum to the Grant Agreement. This document must be executed between the Grantee and HUD in order for the Grantee to use CSS funds in accordance with Section XI(A)(3) of this NOFA.

(E) Revitalization Plan. After HUD conducts a post-award review of your application and makes a visit to the site, you will be required to submit components of your Revitalization Plan to HUD, as provided in the HOPE VI Revitalization Grant Agreement. These components include, but are not limited to:

(1) Supplemental Submissions, including a HOPE VI Program Budget;

(2) A Community and Supportive Services work plan, in accordance with guidance provided by HUD;

(3) A standard or mixed-finance development proposal, as applicable;

(4) A demolition and/or disposition application, as applicable; and

(5) A homeownership proposal, as applicable.

XIX. Post Award Requirements

(A) Quarterly Report. If you are selected for funding, you must submit a Quarterly Report to HUD.

(1) HUD will provide training and technical assistance on the filing and submitting of Quarterly Reports.

(2) Filing of Quarterly Reports is mandatory for all Grantees, and failure to do so within the required time frame will result in suspension of grant funds until the report is filed and approved by HUD.

(3) Grantees will be held to the milestones that are reported on the Quarterly Report Administrative and Compliance CheckPoints Report, as approved by HUD.

(4) Grantees must also report obligations and expenditures in LOCCS on a quarterly basis.

(B) Timeliness of Construction. Grantees must proceed within a reasonable time frame, as indicated below. In determining reasonableness of such time frame, HUD will take into consideration those delays caused by factors beyond your control.

(1) Grantees must submit Supplemental Submissions within 90 days from the date of HUD's written request.

(2) Grantees must submit CSS work plans within 90 days from the execution of the Grant Agreement.

(3) All other required components of the Revitalization Plan and any other submissions not mentioned above must be submitted in accordance with the Quarterly Report Administrative and Compliance CheckPoints Report, as approved by HUD.

(4) Grantees must start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the Grant Agreement is executed.

(5) Grantees must submit the development proposal for the first phase of construction within 12 months of grant award.

(6) The closing of the first phase must take place within 15 months of grant award.

(7) Grantees must complete construction within 48 months from the date of HUD's approval of your Supplemental Submissions. This time period for completion may not exceed 54 months from the date the Grant Agreement is executed.

(8) In accordance with Section 24(i) of the 1937 Act, if a Grantee does not proceed within a reasonable time frame, as described in Sections (B)(1) through (7) above, HUD shall withdraw any unobligated grant amounts. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the Revitalization Plan of the original Grantee.

(C) Conflict of Interest.

(1) Prohibition. In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of a Grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under a HOPE VI Grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(2) HUD-Approved Exception.

(a) Standard. HUD may grant an exception to the prohibition in Section (1) above on a case-by-case basis when it determines that such an exception will serve to further the purposes of HOPE VI and its effective and efficient administration.

(b) Procedure. HUD will consider granting an exception only after the Grantee has provided a disclosure of the nature of the conflict, accompanied by:

(i) An assurance that there has been public disclosure of the conflict;

(ii) A description of how the public disclosure was made; and

(iii) An opinion of the Grantee's attorney that the interest for which the exception is sought does not violate State or local laws.

(c) Consideration of Relevant Factors. In determining whether to grant a requested exception under Section (b) above, HUD will consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Revitalization Plan that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class intended to be the beneficiaries of the Revitalization Plan and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in Section (iii) above;

(vi) Whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(D) OMB Circulars and Administrative Requirements. You must comply with the following administrative requirements related to the expenditure of Federal funds. OMB Circulars can be found at *www.whitehouse.gov/omb/circulars/index.html*. The Code of Federal Regulations can be found at *www.access.gpo.gov/nara/cfr/index.html*.

(1) Administrative requirements applicable to PHAs are:

(a) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating

to the procurement of partners in mixed finance developments.

(b) OMB Circular A–87 (Cost Principles for State, Local and Indian Tribal Governments);

(c) 24 CFR 85.26 (audit requirements).

(2) Administrative requirements applicable to non-profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) OMB Circular A–122 (Cost Principles for Non-Profit Organizations):

(c) 24 CFR 84.26 (audit requirements).

(3) Administrative requirements applicable to for profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) 48 CFR part 31 (contract cost principles and procedures);

(c) 24 CFR 84.26 (audit requirements).

(E) Building Standards.

(1) Building Codes. All activities that include construction, rehabilitation, lead-based paint removal, and related activities must meet or exceed local building codes. You are encouraged to read the policy statement and Final Report of the HUD Review of Model Building Codes that identifies the variances between the design and construction requirements of the Fair Housing Act and several model building codes. That report can be found on the HUD website at *www.hud.gov/fhe/modelcodes.*

(2) Deconstruction. HUD encourages you to design programs that incorporate sustainable construction and demolition practices, such as the dismantling or "deconstruction" of public housing units, recycling demolition debris, and reusing salvage materials in new construction. "A Guide to Deconstruction" can be found at *www.hud.gov/deconstr.pdf.*

(3) PATH. HUD encourages you to use PATH technologies in the construction and delivery of replacement housing. PATH (Partnership for Advancing Technology in Housing) is a voluntary initiative that seeks to accelerate the creation and widespread use of advanced technologies to radically improve the quality, durability, environmental performance, energy efficiency, and affordability of our Nation's housing.

(a) PATH's goal is to achieve dramatic improvement in the quality of American housing by the year 2010. PATH encourages leaders from the home building, product manufacturing, insurance and financial industries, and representatives from federal agencies dealing with housing issues to work together to spur housing design and construction innovations. PATH will provide technical support in design and cost analysis of advanced technologies to be incorporated in project construction.

(b) Applicants are encouraged to employ PATH technologies to exceed prevailing national building practices by:

(i) Reducing costs;

(ii) Improving durability;

(iii) Increasing energy efficiency;

(iv) Improving disaster resistance; and

(v) Reducing environmental impact.

(c) More information, the list of technologies, latest PATH Newsletter, results from field demonstrations and PATH projects can be found at *www.pathnet.org.*

(4) Energy Efficiency.

(a) New construction must comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

(b) HUD encourages you to set higher standards for energy and water efficiency in HOPE VI new construction, which can achieve utility savings of 30 to 50 percent with minimal extra cost.

(c) You are encouraged to negotiate with your local utility company to obtain a lower rate. Utility rates and tax laws vary widely throughout the country. In some areas, PHAs are exempt or partially exempt from utility rate taxes. Some PHAs have paid unnecessarily high utility rates because they were billed at an incorrect rate classification.

(d) Local utility companies may be able to provide grant funds to assist in energy efficiency activities. States may also have programs that will assist in energy efficient building techniques.

(e) You must use new technologies that will conserve energy and decrease operating costs where cost effective. Examples of such technologies include:

(i) Geothermal heating and cooling;

(ii) Placement of buildings and size of eaves that take advantage of the directions of the sun throughout the year;

(iii) Photovoltaics (technologies that convert light into electrical power);

(iv) Extra insulation;

(v) Smart windows; and

(vi) Energy Star appliances.

(f) HUD's Energy website is located at *http://www.hudstage.hud.gov/offices/cpd/energyenviron/energy/index.cfm.*

(5) Lead-Based Paint. You must comply with lead-based paint testing and abatement requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You must also comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for testing and abatement activities. The National Lead Information Hotline is 1–800–424–5323.

(F) Labor Standards.

(1) Revitalization Grant Labor Standards.

(a) Davis-Bacon wage rates apply to development of any public housing rental units or homeownership units developed with HOPE VI grant funds and to demolition followed by construction on the site. Davis-Bacon rates are "prevailing" minimum wage rates set by the Secretary of Labor that all laborers and mechanics employed in the development, including rehabilitation other than nonroutine maintenance of a public housing project must be paid, as set forth in a wage determination that must be obtained by the PHA prior to bidding on each construction contract. The wage determination and provisions requiring payment of these wage rates must be included in the construction contract.

(b) HUD-determined wage rates apply to:

(i) Operation (including nonroutine maintenance) of revitalized housing, and

(ii) Demolition followed only by filling in the site and establishing a lawn.

(2) Exclusions. Under Section 12(b) of the 1937 Act, wage rate requirements do not apply to individuals who:

(a) Perform services for which they volunteered;

(b) Do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and

(c) Are not otherwise employed in the work involved (24 CFR part 70).

(3) If other Federal programs are used in connection with your HOPE VI activities, labor standards requirements apply to the extent required by the other Federal programs on portions of the project that are not subject to Davis-Bacon rates under the 1937 Act.

(G) Accessible Technology. The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a grantee for transmitting, receiving, using, or storing information to carry out the responsibilities of any Federal grant awarded. It includes, but is not limited to, computers (hardware, software, word processing, email and web pages) facsimile machines, copiers and telephones. When developing, procuring, maintaining or using EIT,

grantees must ensure that the EIT allows:

(1) Employees with disabilities to have access to and use information and data that is comparable to the access and use of data by employees who do not have disabilities; and

(2) Members of the public with disabilities seeking information or service from a grantee must have access to and use of information and data and comparable to the access and use of data by members of the public who do not have disabilities.

If these standards impose on a grantee, they may provide an alternative means to allow the individual to use the information and data. No grantee will be required to provide information services to a person with disabilities at any location other than the location at which the information services are generally provided.

XX. Environmental Requirements

(A) Environmental Review.

(1) If you are selected for funding and an environmental review has not been conducted on the targeted site, the responsible entity, as defined in 24 CFR 58.2(a)(7), must assume the environmental review responsibilities for projects being funded by HOPE VI. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. You must provide any documentation to the responsible entity (or HUD, where applicable) that is needed to perform the environmental review.

(2) If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the American Society for Testing and Material (ASTM) Standards E 1527–97, as amended, for each affected site. A Phase I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

(3) You may not undertake any actions with respect to the project, or with respect to any off-site replacement public housing, that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA, and you may not commit or expend HUD or local funds for these activities, until HUD has approved a Request for Release of Funds (RROF) following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50.

(4) If the environmental review is completed before HUD approval of the HOPE VI Supplemental Submissions and you have submitted your RROF, the Supplemental Submissions approval letter shall state any conditions, modifications, prohibitions, etc. as a result of the environmental review, including the need for any further environmental review. You must carry out any mitigating/remedial measures required by HUD, or select an alternate eligible property, if permitted by HUD. If the remediation plan is not approved by HUD and a fully-funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(5) If the environmental review is not completed and/or you have not submitted the RROF before HUD approval of the Supplemental Submissions, the letter approving the Supplemental Submissions will instruct you to refrain from undertaking, obligating or expending funds on physical activities or other choice-limiting actions, until HUD approves your RROF and the related certification of the responsible entity (or HUD has completed the environmental review). The Supplemental Submissions approval letter also will advise you that the approved Supplemental Submissions may be modified on the basis of the results of the environmental review.

(6) The costs of environmental reviews and hazard remediation are eligible costs under the HOPE VI Program.

(7) HUD's Environmental website is located at *http://hudstage.hud.gov/offices/cpd/energyenviron/environment/index.cfm*.

(B) There must not be any environmental or public policy factors such as sewer moratoriums that would preclude development in the requested locality. Applicants will certify to this when signing the HOPE VI Revitalization Grant Application Certifications.

(C) Flood Insurance. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), your application may not propose to provide financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

(D) Coastal Barrier Resources Act. In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), your application may not target properties in the Coastal Barrier Resources System.

XXI. Findings and Certifications

(A) *The Catalog of Federal Assistance* (CFDA) Number for HOPE VI is 14.866. The CFDA is a government-wide compendium of Federal programs, projects, services, and activities that provide assistance or benefits to the public.

(B) *Environmental Impact*. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

(C) *Federalism*. Executive Order 13132 prohibits, to the extent practicable and permitted by law, an

agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of Section 6 of the Executive Order are met. This NOFA does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

(D) *Intergovernmental Review of Federal Programs.* Executive Order 12372 was issued to foster intergovernmental partnership and strengthen Federalism by relying on State and local processes for the coordination and review of Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform a State review function. The official listing of State Points of Contact (SPOC) for this review process can be found at: *www.whitehouse.gov/omb/grants/spoc.html.* States that are not listed on the website have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of those States, you may send applications directly to HUD. If your State has a SPOC, you should contact them to see if they are interested in reviewing your application prior to submission to HUD. Please make sure that you allow ample time for this review process when developing and submitting your application.

(E) *Prohibition Against Lobbying Activities.* You are subject to the provisions of Section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL, "Disclosure of Lobbying Activities" (SF LLL) any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. SF LLL is included in the HOPE VI Revitalization Application Kit and the websites listed in Section (IV)(D)(2) of this NOFA. The Lobbying Disclosure Act of 1995 (Pub. L. 104–65), approved December 19, 1995, repealed Section 112 of the HUD Reform Act, and requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(F) *Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available for public inspection all HOPE VI grant applications for five years beginning not less than 30 days following the grant award. Applications will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to Section 102(a) of the HUD Reform Act, and/or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(G) *Section 103 HUD Reform Act.* HUD's regulations implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition +should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or HUD employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(H) *Paperwork Reduction Act Statement.* The information collection requirements contained in this notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and assigned OMB control number 2577–0208. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: July 24, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

Appendix A—HOPE VI Revitalization Grant Applicant Certifications

Acting on behalf of the Board of Commissioners of the Housing Authority listed below, as its Chairman, I approve the submission of the HOPE VI Revitalization application of which this document is a part and make the following certifications to and agreements with the Department of Housing and Urban Development (HUD) in connection with the application and implementation thereof:

1. The public housing project or building in a project targeted in this HOPE VI Revitalization grant application meets the definition of severe distress in accordance with Section 24(j)(2) of the United States Housing Act of 1937 ("1937Act").

2. The PHA has not received assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities for which funding is requested in the HOPE VI Revitalization application.

3. The PHA does not have any litigation pending which would preclude timely startup of activities.

4. The PHA is in full compliance with any desegregation or other court order related to Fair Housing (e.g., Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973) that affects the PHA's public housing program and that is in effect on the date of application submission.

5. The PHA has returned any excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), or that HUD has approved a pay-back plan.

6. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

7. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), the property targeted for acquisition or construction (including rehabilitation) is not located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

8. The application does not target properties in the Coastal Barrier Resources System, in accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501). If selected for HOPE VI Revitalization funding:

9. The PHA will comply with all policies, procedures, and requirements prescribed by HUD for the HOPE VI Program, including the implementation of HOPE VI revitalization activities, in a timely, efficient, and economical manner.

10. The PHA will not receive assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities funded by the HOPE VI Revitalization grant. The PHA has established controls to ensure that any activity funded by the HOPE VI Revitalization grant is not also funded by any other HUD program, thereby preventing duplicate funding of any activity.

11. The PHA will not provide to any development more assistance under the HOPE VI Revitalization grant than is necessary to provide affordable housing after taking into account other governmental assistance provided.

12. The PHA will supplement the aggregate amount of the HOPE VI Revitalization grant with funds from sources other than HOPE VI in an amount not less than 5 percent of the amount of HOPE VI grant.

13. In addition to supplemental amounts provided in accordance with Certification 12 above, if the PHA uses more than 5 percent of the HOPE VI grant for the community and supportive services component, it will provide supplemental funds from sources other than HOPE VI, dollar for dollar, for the amount over 5 percent of the grant used for the community and supportive services component.

14. Disposition activity under the grant will be conducted in accordance with Section 18 of the 1937 Act.

15. The PHA will carry out acquisition of land, or acquisition of off-site units with or without rehabilitation to be used as public housing, in accordance with 24 CFR part 941, or successor part.

16. The PHA will carry out major rehabilitation and other physical improvements of housing and non-dwelling facilities in accordance with 24 CFR 968.112(b), (d), (e), and (g)–(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d) or successor part.

17. The PHA will carry out construction of public housing rental replacement housing, both on-site and off-site, and community facilities, in accordance with 24 CFR part 941 or successor part, including mixed-finance development in accordance with subpart F.

18. The PHA will carry out replacement homeownership activities in conformance with the requirements of section 24(d)(1)(J), which may include a homeownership proposal under Section 32 of the 1937 Act, the income limitations, and other applicable homeownership requirements of the 1937 Act.

19. The PHA will administer and operate public housing rental units in accordance with all requirements applicable to public housing, including the 1937 Act, HUD's implementing regulations thereunder, the ACC, the Mixed-Finance ACC Amendment (if applicable), and all other applicable Federal statutory, Executive Order, and regulatory requirements as such requirements may be amended from time to time.

20. The PHA will comply with:

(a) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100;

(b) The prohibitions against discrimination on the basis of disability under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8);

(c) Title II of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and its implementing regulations at 28 CFR part 36;

(d) The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and regulations at 24 CFR part 40).

21. The PHA will comply with regulations at 24 CFR 85.36(e) which require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms are used when possible.

22. The PHA will comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulation at 24 CFR part 135, including the reporting requirements of subpart E.

23. The PHA will comply with Davis-Bacon or HUD-determined prevailing wage rate requirements to the extent required under Section 12 of the 1937 Act.

24. As applicable, the PHA will comply with the relocation assistance and real property acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24; relocation regulations at 24 CFR 968.108 or successor regulation (rehabilitation, temporary relocation); 24 CFR 941.207 or successor regulation (acquisition); and Section 18 of the 1937 Act as amended (disposition).

25. The PHA will comply with all HOPE VI requirements for reporting and providing access to records.

26. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and is subject to 24 CFR part 35 and 24 CFR 965.701, as they may be amended from time to time, and Section 968.110(k) or successor regulation.

27. The PHA will comply with the policies, guidelines, and requirements of OMB Circular A–87 (Cost Principles Applicable to Grants, Contracts, and Other Agreements with State and Local Governments).

28. The PHA will comply with 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

29. The PHA will keep records in accordance with 24 CFR 85.20 that facilitate an effective audit to determine compliance with program requirements, and comply with the audit requirements of 24 CFR 85.26.

30. The PHA will start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the Grant Agreement is executed.

31. The PHA will submit the development proposal for the first phase of construction within 12 months of grant award.

32. The PHA will complete construction within 48 months from the date of HUD's approval of the Supplemental Submissions. This time period for completion may not exceed 54 months from the date the Grant Agreement is executed.

33. All activities that include construction, rehabilitation, lead-based paint removal, and related activities will meet or exceed local building codes. New construction will comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

[FR Doc. 02–19276 Filed 7–30–02; 8:45 am]

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Federal Register

Wednesday,
July 31, 2002

Part IV

Department of Housing and Urban Development

24 CFR Part 3280

Manufactured Home Construction and Safety Standards: Smoke Alarms; Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR–4552–C–03]

RIN 2502–AH48

Manufactured Home Construction and Safety Standards: Smoke Alarms; Amendments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; amendments.

SUMMARY: This document makes certain amendments to the final rule that was recently published in the **Federal Register** that revised the Federal Manufactured Home Construction and Safety Standards requirements for the location and placement of smoke alarms. The amendments are made to correct certain technical errors and to include an omission, referenced in the preamble, but not included in the regulatory text.

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–6401 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On March 19, 2002, the Department published a final rule in the **Federal Register** (67 FR 12812) to amend the Federal Manufactured Home Construction and Safety Standards to revise the requirements for location and placement of smoke alarms. The final rule stated that "The amendments will improve the effectiveness and performance of smoke alarms in early warning detection of manufactured home fires and, as a result, reduce the rate of fire fatalities in new manufactured housing." (67 FR 12812). Since publication of the final rule, HUD has discovered the following errors and omission in the regulations that this document remedies:

In §§ 3280.208(c)(1), (c)(2), and (c)(3), language was omitted that described the minimum slope of sloping ceilings. This document remedies that omission, along with making other corrections to paragraphs (c)(2) and (c)(3). The corrected paragraphs are set forth below.

—Paragraph (c)(1) now reads as follows:

(c) Mounting requirements. (1) Except in rooms with peaked sloping or shed sloping ceilings with a slope of more than 1.5/12 or as permitted pursuant to paragraph (e) of this section, smoke alarms must be mounted either: * * *

—In § 3280.208(c)(2), the second reference to a horizontal measurement is incorrect; the reference should be to a vertical measurement. This is consistent with the method for determining the comparable measurement set out for non-sloped ceilings. As corrected, paragraph (c)(2) now reads as follows:

(2) Except as permitted pursuant to paragraph (e) of this section, in rooms with peaked sloping ceilings with a slope of more than 1.5/12, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, from the peak of the ceiling; at least 4 inches, measured vertically, below the peak of the ceiling; and at least 4 inches from any projecting structural element.

In § 3280.208(c)(3), the phrase "on the ceiling" and the method of measurement were inadvertently omitted. The preamble of the final rule indicated that specification of locations for smoke alarms on peaked sloping or shed sloping ceilings is important for proper operation of the alarms. (See 67 FR 12813 and 12815.) Additionally, the preambles of both the proposed and final rules stated that the Department's rule was largely based on the provisions of the National Fire Protection Association 501 Standard. (See, respectively 65 FR 31778 and 67 FR 12813 and 12815.) With the inclusion of this language, which is consistent with the proposed rule, paragraph (c)(3) now reads as follows:

(3) Except as permitted pursuant to paragraph (e) of this section, in rooms with shed sloping ceilings with a slope of more than 1.5/12, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, of the high side of the ceiling, and not closer than 4 inches from any adjoining wall surface and from any projecting structural element.

Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary or contrary to the public interest."

The Department finds that good cause exists to publish this rule for effect without soliciting public comment in that prior public procedure is contrary to the public interest. This final rule corrects technical errors and includes language discussed in the preamble of the proposed rule but inadvertently omitted from the regulatory text.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is limited to addressing technical errors and omissions.

Environmental Impact

This rule does not involve a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under HUD's regulations in 24 CFR part 50, this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 3280 as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for 24 CFR part 3280 continues as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

2. Section 3280.208 is amended by revising paragraphs (c)(1) introductory text, (c)(2) and (c)(3) to read as follows:

§ 3280.208 Smoke alarm requirements.

* * * * *

(c) *Mounting requirements.* (1) Except in rooms with peaked sloping or shed sloping ceilings with a slope of more than 1.5/12 or as permitted pursuant to paragraph (e) of this section, smoke alarms must be mounted either:

* * * * *

(2) Except as permitted pursuant to paragraph (e) of this section, in rooms with peaked sloping ceilings with a slope of more than 1.5/12, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, from the peak of the ceiling; at least 4 inches, measured vertically, below the peak of the ceiling; and at least 4 inches from any projecting structural element.

(3) Except as permitted pursuant to paragraph (e) of this section, in rooms with shed sloping ceilings with a slope of more than 1.5/12, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, of the high side of the ceiling, and not closer than 4 inches from any adjoining wall surface and from any projecting structural element.

* * * * *

Dated: July 24, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–19247 Filed 7–30–02; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday,
July 31, 2002

Part V

Department of Health and Human Services

Centers for Medicare and Medicaid Services

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1202–N]

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Notice

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2003, as required by statute. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (the BBRA), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA), relating to Medicare payments and consolidated billing for SNFs.

EFFECTIVE DATE: This notice is effective on October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Dana Burley, (410) 786–4547 (for information related to the case-mix classification methodology).

John Davis, (410) 786–0008 (for information related to the Wage Index).

Sheila Lambowitz, (410) 786–7605 (for information related to swing-bed providers).

Bill Ullman, (410) 786–5667 (for information related to level of care determinations, consolidated billing, and general information).

SUPPLEMENTARY INFORMATION: Because of the many terms to which we refer by abbreviation in this notice, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL—Activity of Daily Living
AHE—Average Hourly Earnings
ARD—Assessment Reference Date
BBA—Balanced Budget Act of 1997, Pub.L. 105–33
BBRA—Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, Pub.L. 106–113
BEA—(U.S.) Bureau of Economic Analysis
BIPA—Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub.L. 106–554
CAH—Critical Access Hospital
CFR—Code of Federal Regulations
CMS—Centers for Medicare & Medicaid Services
CPT—(Physicians') Current Procedural Terminology
DRG—Diagnosis Related Group
FI—Fiscal Intermediary
FR—Federal Register
FY—Fiscal Year
GAO—General Accounting Office
HCPCS—Healthcare Common Procedure Coding System
ICD–9–CM—International Classification of Diseases, Ninth Edition, Clinical Modification
IFC—Interim Final Rule with Comment Period
MDS—Minimum Data Set
MEDPAR—Medicare Provider Analysis and Review File
MIP—Medicare Integrity Program
MSA—Metropolitan Statistical Area
NECMA—New England County Metropolitan Area
OIG—Office of the Inspector General
OMRA—Other Medicare Required Assessment
PCE—Personal Care Expenditures
PPI—Producer Price Index
PPS—Prospective Payment System
PRM—Provider Reimbursement Manual
RAI—Resident Assessment Instrument
RAP—Resident Assessment Protocol
RAVEN—Resident Assessment Validation Entry
RFA—Regulatory Flexibility Act, Pub.L. 96–354
RIA—Regulatory Impact Analysis
RUG—Resource Utilization Groups
SCHIP—State Children's Health Insurance Program
SNF—Skilled Nursing Facility
STM—Staff Time Measure
UMRA—Unfunded Mandates Reform Act, Pub.L. 104–4

I. Background

On July 31, 2001, we published in the **Federal Register** (66 FR 39562) a final rule that set forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2002. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to Medicare payments and consolidated billing for SNFs.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital-related) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. In this notice, we are updating the per diem payment rates for SNFs, for FY 2003. Major elements of the SNF PPS include:

- *Rates.* Per diem Federal rates were established for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. The rates were adjusted annually using a SNF market basket index. Rates were case-mix adjusted using a classification system (Resource Utilization Groups, version III (RUG-III)) based on beneficiary assessments (using the Minimum Data Set (MDS) 2.0). The rates were also adjusted by the hospital wage index to account for geographic variation in wages. (In section II.C of this notice, we discuss the wage index adjustment in detail.) A correction notice was published on March 22, 2002 (67 FR 13278) that announced corrections to several of the wage factors. Additionally, as noted in the July 31, 2001 final rule (66 FR 39562), section 101 of the BBRA and sections 311, 312, and 314 of the BIPA also affect the payment rate.
- *Transition.* The SNF PPS included an initial 3-year, phased transition that blended a facility-specific payment rate with the Federal case-mix adjusted rate. For each cost reporting period after a facility migrated to the new system, the facility-specific portion of the blend decreased and the Federal portion increased in 25 percentage point increments. For most facilities, the facility-specific rate was based on allowable costs from FY 1995; however, since the last year of the transition was FY 2001, all facilities were paid at the full Federal rate by the following fiscal year (FY 2002). Therefore, we are no longer including adjustment factors related to facility-specific rates for the coming fiscal year.
- *Coverage.* The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage; however, because RUG-III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the outputs of beneficiary assessment and RUG–III classifying activities. We discuss this coordination in greater detail in section II.E of this notice.
- *Consolidated Billing.* The SNF PPS includes a consolidated billing provision (described in greater detail in

section IV of this notice) that requires a SNF to submit consolidated Medicare bills for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, this provision places with the SNF the Medicare billing responsibility for physical, occupational, and speech-language therapy that the resident receives during a noncovered stay. The statute excludes a small list of services from the consolidated billing provision (primarily those of physicians and certain other types of practitioners).

• *Application of the SNF PPS to SNF services furnished by swing-bed hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. Part A currently pays for SNF services furnished by swing-bed hospitals on a cost-related basis. Section 1888(e)(7) of the Act requires the SNF PPS to encompass these services no earlier than cost reporting periods beginning on July 1, 1999, and no later than the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. A more detailed discussion of this provision appears in section V of this notice.

B. Requirements of the Balanced Budget Act of 1997 (BBA) for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register:**

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.

2. The case-mix classification system to be applied with respect to these services during the FY.

3. The factors to be applied in making the area wage adjustment with respect to these services.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the RUG–III classification structure (see section II.E of this notice).

This notice provides the annual updates to the Federal rates as mandated by the Act.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA)

There were several provisions in the BBRA that resulted in adjustments to the SNF PPS. These provisions were described in detail in the final rule that we published in the **Federal Register** on July 31, 2000 (65 FR 46770). In particular, section 101(a) of the BBRA provided for a temporary, 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups (SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC, and RMB). Under the statute, this temporary increase remains in effect until the later of October 1, 2000, or the implementation of case-mix refinements in the PPS. Section 101(d) included a 4 percent across-the-board increase in the adjusted Federal per diem payment rates each year for FYs 2001 and 2002, exclusive of the 20 percent increase.

We included further information on all of the provisions of the BBRA that affect the SNF PPS in Program Memorandums A–99–53 and A–99–61 (December 1999), and Program Memorandum AB–00–18 (March 2000). In addition, for swing-bed hospitals with more than 49 (but less than 100) beds, section 408 of the BBRA provided for the repeal of certain statutory restrictions on length of stay and aggregate payment for patient days, effective with the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the July 31, 2001 final rule (66 FR 39562), we made conforming changes to the regulations at § 413.114(d), effective for services furnished in cost reporting periods beginning on or after July 1, 2002.

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

The BIPA also included several provisions that resulted in adjustments to the PPS for SNFs. These provisions were described in detail in the final rule that we published in the **Federal Register** on July 31, 2001 (66 FR 39562), as follows:

• Section 203 of the BIPA exempted critical access hospital (CAH) swing-beds from the SNF PPS; we included further information on this provision in Program Memorandum A–01–09 (January 16, 2001).

• Section 311 of the BIPA eliminated the one percentage point reduction in the SNF market basket that the statutory update formula had previously specified for FY 2001, changed the one percentage point reduction specified for FY 2002 to a 0.5 percentage point reduction, and established an update factor for FY 2003 of market basket minus 0.5 percentage point. This section also required us to conduct a study of alternative case-mix classification systems for the SNF PPS, and to submit a report to the Congress by January 1, 2005.

• Section 312 of the BIPA provided for a temporary 16.66 percent increase in the nursing component of the case-mix adjusted Federal rate for services furnished on or after April 1, 2001, and before October 1, 2002. This section also required the General Accounting Office (GAO) to conduct an audit of SNF nursing staff ratios and submit a report to the Congress on whether the temporary increase in the nursing component should be continued.

• Section 313 of the BIPA repealed the consolidated billing requirement for services (other than physical, occupational, and speech-language therapy) furnished to SNF residents during noncovered stays, effective January 1, 2001.

• Section 314 of the BIPA adjusted the payment rates for all of the rehabilitation RUGs to correct an anomaly under which the existing payment rates for the RHC, RMC, and RMB rehabilitation groups were higher than the rates for some other, more intensive rehabilitation RUGs.

• Section 315 of the BIPA authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes.

We included further information on several of these provisions in Program Memorandum A–01–08 (January 16, 2001).

E. Skilled Nursing Facility Prospective Payment—General Overview

The Medicare SNF PPS was implemented for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are paid through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include post-hospital services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a covered Part A stay. A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We

developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of PPS (15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for the costs of facility differences in case-mix and for geographic variations in wages. Providers that received new provider exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates, as well as costs related to payments for exceptions to the routine cost limits. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. This classification system, Resource Utilization Groups, version III (RUG–III), uses beneficiary assessment data from the Minimum Data Set (MDS) completed by SNFs to assign beneficiaries to one of 44 RUG III groups. The May 12, 1998 interim final rule (63 FR 26252) included a complete and detailed description of the RUG–III classification system.

The Federal rates in this notice reflect an update to the rates that we published in the July 31, 2001 **Federal Register** (66 FR 39562) equal to the SNF market basket index minus 0.5 percentage point, as well as the expiration of the temporary 16.66 percent adjustment to the nursing component of the rates enacted in section 312 of the BIPA. According to section 311 of the BIPA, for FY 2003, we are updating the rate by adjusting the current rates by the SNF market basket index minus 0.5 percentage point.

2. Payment Provisions—Initial Transition Period

The SNF PPS included an initial, phased transition from a facility-specific rate (which reflected the individual facility's historical cost experience) to the Federal case-mix adjusted rate. The transition extended through the facility's first three cost reporting periods under the PPS, up to and including the one that began in FY 2001. Accordingly, starting with cost reporting periods beginning in FY 2002, we base payments entirely on the Federal rates and, as mentioned previously in this notice, we no longer include adjustment factors related to facility-specific rates for the coming fiscal year.

F. Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered SNF services. The SNF market basket index is used to update the Federal rates on an annual basis. As mentioned previously in this notice, the final rule published on July 31, 2001 (66 FR 39562) revised and rebased the market basket to reflect 1997 total cost data.

II. Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

A. Federal Prospective Payment System

This notice sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2002. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

1. Costs and Services Covered by the Federal Rates

The Federal rates apply to all costs (routine, ancillary, and capital-related costs) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295–97)).

2. Methodology Used for the Calculation of the Federal Rates

The FY 2003 rates reflect an update using the latest market basket index minus 0.5 percentage point. The FY 2003 market basket increase factor is 3.1 percentage points, and subtracting 0.5 percentage point yields an update increase of 2.6 percentage points. For a complete description of the multi-step process, see the May 12, 1998 interim final rule (63 FR 26252). We note that, in accordance with the statute, the 4 percent across-the-board increase in the adjusted Federal per diem payment rates that section 101(d) of the BBRA provided for FYs 2001 and 2002 will expire at the end of FY 2002. Similarly, section 312 of the BIPA provides that the temporary 16.66 percent increase in the nursing component of the case-mix adjusted Federal rate will end effective with services furnished on or after October 1, 2002. Further, several other provisions of the BIPA affect the payment rates for SNFs, as described in the previous section.

We used the SNF market basket index (minus 0.5 percentage point) to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal fiscal year beginning October 1, 2001, and ending September 30, 2002, and the midpoint of the Federal fiscal year beginning October 1, 2002, and ending September 30, 2003, to which the payment rates apply. The rates are further adjusted by a wage index budget neutrality factor, described later in this section. Tables 1 and 2 reflect the updated components of the unadjusted Federal rates.

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per diem amount	$121.59	$91.58	$12.06	$62.05

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per diem amount	$116.17	$105.61	$12.88	$63.20

B. Case-Mix Refinements

Under the BBA, we must publish the SNF PPS case-mix classification methodology applicable for the next Federal FY before August 1 of each year. For the reasons discussed below, in this notice we continue to utilize the existing case-mix classification methodology that employs the 44-group RUG–III classification system.

As discussed previously in this preamble, section 101(a) of the BBRA provided for a temporary, 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups. This legislation specified that the 20 percent increase would be effective for SNF services furnished on or after April 1, 2000, and would continue until the later of: (1) October 1, 2000, or (2) implementation of a refined case-mix classification system under section 1888(e)(4)(G)(i) of the Act that would better account for medically complex patients.

In the SNF PPS proposed rule for FY 2001 (65 FR 19190, April 10, 2000), we proposed making an extensive, comprehensive set of refinements to the existing case-mix classification system that collectively would have significantly expanded the existing 44-group structure. However, when our subsequent validation analyses indicated that the refinements would afford only a limited degree of improvement in explaining resource utilization relative to the significant increase in complexity that they would entail, we decided not to implement them at that time (see the FY 2001 final rule, 65 FR 46773, July 31, 2000). Nevertheless, since the BBRA provision had demonstrated a Congressional interest in securing refinements to reimburse nursing homes more fairly and accurately for the care of medically complex patients, we continued to conduct research in this area.

The Congress subsequently enacted section 311(e) of the BIPA, which directed us to conduct a study of the different systems for categorizing patients in Medicare SNFs in a manner that accounts for the relative resource utilization of different patient types, and to issue a report with any appropriate recommendations to the Congress by January 1, 2005. The lengthy timeframe for conducting the study, and its broad mandate to consider various classification systems and the full range of patient types, stood in sharp contrast to the BBRA language regarding more incremental refinements to the existing case-mix classification system under section 1888(e)(4)(G)(i) of the Act, and made clear that implementing the latter type of refinements to the existing system in order to better account for medically complex patients need not await the completion of the more comprehensive changes envisioned in the BIPA. Accordingly, we considered the possibility of including such refinements as part of this year's annual update of the SNF payment rates.

However, we determined that while the research gives a sound basis for developing improvements to the SNF PPS, we need additional time to review and analyze the implications. Therefore, we have decided not to implement any case-mix refinements for FY 2003. Our decision to defer implementing any case-mix refinements for the present leaves the current classification system in place. Under the provisions of section 101(a) of the BBRA, this will result in SNFs continuing to receive an estimated $1 billion in temporary add-on payments during FY 2003.

Accordingly, the payment rates set forth in this final rule reflect the continued use of the 44-group RUG–III classification system discussed in the May 12, 1998 interim final rule (63 FR 26252). Consequently, we will also maintain the add-ons to the Federal rates for the specified RUG–III groups required by section 101(a) of the BBRA and subsequently modified by section 314 of the BIPA. The case-mix adjusted payment rates are listed separately for urban and rural SNFs in Tables 3 and 4, with the corresponding case-mix values. These tables do not reflect the add-ons to the specified RUG–III groups provided for in the BBRA, which are applied only after all other adjustments (wage and case-mix) have been made.

Meanwhile, we will continue to explore both short-term and longer-range revisions to our case-mix classification methodology. In July 2001, we awarded a contract to the Urban Institute for performance of research to aid us in making incremental refinements to the case-mix classification system under section 1888(e)(4)(G)(i) of the Act and starting the case-mix study mandated by section 311(e) of the BIPA. The results of the research in which we are currently engaged will be included in the report to the Congress that section 311(e) of the BIPA requires us to submit by January 1, 2005. As we noted in the May 10, 2001 proposed rule (66 FR 23990), this research may also support a longer term goal of developing more integrated approaches for the payment and delivery system for Medicare post acute services generally. This broader, ongoing research project will pursue several avenues in studying various case-mix classification systems. We have encouraging preliminary results from incorporating comorbidities and complications into the classification strategy, and will thoroughly explore and evaluate this and other approaches in our ongoing work.

BILLING CODE 4120–01–P

Table 3
Case-Mix Adjusted Federal Rates and Associated Indexes
Urban

RUG-III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case-mix therapy comp.	Non-case-mix component	Total rate
RUC	1.30	2.25	158.07	206.06		62.05	426.18
RUB	0.95	2.25	115.51	206.06		62.05	383.62
RUA	0.78	2.25	94.84	206.06		62.05	362.95
RVC	1.13	1.41	137.40	129.13		62.05	328.58
RVB	1.04	1.41	126.45	129.13		62.05	317.63
RVA	0.81	1.41	98.49	129.13		62.05	289.67
RHC	1.26	0.94	153.20	86.09		62.05	301.34
RHB	1.06	0.94	128.89	86.09		62.05	277.03
RHA	0.87	0.94	105.78	86.09		62.05	253.92
RMC	1.35	0.77	164.15	70.52		62.05	296.72
RMB	1.09	0.77	132.53	70.52		62.05	265.10
RMA	0.96	0.77	116.73	70.52		62.05	249.30
RLB	1.11	0.43	134.96	39.38		62.05	236.39
RLA	0.80	0.43	97.27	39.38		62.05	198.70
SE3	1.70		206.70		12.06	62.05	280.81
SE2	1.39		169.01		12.06	62.05	243.12
SE1	1.17		142.26		12.06	62.05	216.37
SSC	1.13		137.40		12.06	62.05	211.51
SSB	1.05		127.67		12.06	62.05	201.78
SSA	1.01		122.81		12.06	62.05	196.92
CC2	1.12		136.18		12.06	62.05	210.29
CC1	0.99		120.37		12.06	62.05	194.48
CB2	0.91		110.65		12.06	62.05	184.76
CB1	0.84		102.14		12.06	62.05	176.25
CA2	0.83		100.92		12.06	62.05	175.03
CA1	0.75		91.19		12.06	62.05	165.30
IB2	0.69		83.90		12.06	62.05	158.01
IB1	0.67		81.47		12.06	62.05	155.58
IA2	0.57		69.31		12.06	62.05	143.42
IA1	0.53		64.44		12.06	62.05	138.55
BB2	0.68		82.68		12.06	62.05	156.79
BB1	0.65		79.03		12.06	62.05	153.14
BA2	0.56		68.09		12.06	62.05	142.20
BA1	0.48		58.36		12.06	62.05	132.47
PE2	0.79		96.06		12.06	62.05	170.17
PE1	0.77		93.62		12.06	62.05	167.73
PD2	0.72		87.54		12.06	62.05	161.65
PD1	0.70		85.11		12.06	62.05	159.22
PC2	0.65		79.03		12.06	62.05	153.14
PC1	0.64		77.82		12.06	62.05	151.93
PB2	0.51		62.01		12.06	62.05	136.12
PB1	0.50		60.80		12.06	62.05	134.91
PA2	0.49		59.58		12.06	62.05	133.69
PA1	0.46		55.93		12.06	62.05	130.04

Table 4
Case-Mix Adjusted Federal Rates and Associated Indexes
Rural

RUG-III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case-mix therapy comp.	Non-case-mix component	Total rate
RUC	1.30	2.25	151.02	237.62		63.20	451.84
RUB	0.95	2.25	110.36	237.62		63.20	411.18
RUA	0.78	2.25	90.61	237.62		63.20	391.43
RVC	1.13	1.41	131.27	148.91		63.20	343.38
RVB	1.04	1.41	120.82	148.91		63.20	332.93
RVA	0.81	1.41	94.10	148.91		63.20	306.21
RHC	1.26	0.94	146.37	99.27		63.20	308.84
RHB	1.06	0.94	123.14	99.27		63.20	285.61
RHA	0.87	0.94	101.07	99.27		63.20	263.54
RMC	1.35	0.77	156.83	81.32		63.20	301.35
RMB	1.09	0.77	126.63	81.32		63.20	271.15
RMA	0.96	0.77	111.52	81.32		63.20	256.04
RLB	1.11	0.43	128.95	45.41		63.20	237.56
RLA	0.80	0.43	92.94	45.41		63.20	201.55
SE3	1.70		197.49		12.88	63.20	273.57
SE2	1.39		161.48		12.88	63.20	237.56
SE1	1.17		135.92		12.88	63.20	212.00
SSC	1.13		131.27		12.88	63.20	207.35
SSB	1.05		121.98		12.88	63.20	198.06
SSA	1.01		117.33		12.88	63.20	193.41
CC2	1.12		130.11		12.88	63.20	206.19
CC1	0.99		115.01		12.88	63.20	191.09
CB2	0.91		105.71		12.88	63.20	181.79
CB1	0.84		97.58		12.88	63.20	173.66
CA2	0.83		96.42		12.88	63.20	172.50
CA1	0.75		87.13		12.88	63.20	163.21
IB2	0.69		80.16		12.88	63.20	156.24
IB1	0.67		77.83		12.88	63.20	153.91
IA2	0.57		66.22		12.88	63.20	142.30
IA1	0.53		61.57		12.88	63.20	137.65
BB2	0.68		79.00		12.88	63.20	155.08
BB1	0.65		75.51		12.88	63.20	151.59
BA2	0.56		65.06		12.88	63.20	141.14
BA1	0.48		55.76		12.88	63.20	131.84
PE2	0.79		91.77		12.88	63.20	167.85
PE1	0.77		89.45		12.88	63.20	165.53
PD2	0.72		83.64		12.88	63.20	159.72
PD1	0.70		81.32		12.88	63.20	157.40
PC2	0.65		75.51		12.88	63.20	151.59
PC1	0.64		74.35		12.88	63.20	150.43
PB2	0.51		59.25		12.88	63.20	135.33
PB1	0.50		58.09		12.88	63.20	134.17
PA2	0.49		56.92		12.88	63.20	133.00
PA1	0.46		53.44		12.88	63.20	129.52

C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of a PPS for SNFs, we have used hospital wage data in developing a wage index to be applied to SNFs. We are continuing that practice for FY 2003.

The wage index adjustment is applied to the labor-related portion of the Federal rate, which is 76.128 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2003. The labor-related relative importance is calculated from the SNF market basket, and approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2003. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2003 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2003 in four steps. First, we compute the FY 2003 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2003 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2003 relative importance for each cost category by multiplying this ratio by the base year (FY 1997) weight. Finally, we sum the FY 2003 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, nonmedical professional fees, labor-intensive services, and capital-related expenses) to produce the FY 2003 labor-related relative importance. Tables 5 and 6 show the Federal rates by labor-related and non-labor-related components.

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Table 5
Case-Mix Adjusted Federal Rates for Urban SNFs
By Labor and Non-Labor Component

RUG-III category	Total rate	Labor portion	Non-labor portion
RUC	426.18	324.44	101.74
RUB	383.62	292.04	91.58
RUA	362.95	276.31	86.64
RVC	328.58	250.14	78.44
RVB	317.63	241.81	75.82
RVA	289.67	220.52	69.15
RHC	301.34	229.40	71.94
RHB	277.03	210.90	66.13
RHA	253.92	193.30	60.62
RMC	296.72	225.89	70.83
RMB	265.10	201.82	63.28
RMA	249.30	189.79	59.51
RLB	236.39	179.96	56.43
RLA	198.70	151.27	47.43
SE3	280.81	213.78	67.03
SE2	243.12	185.08	58.04
SE1	216.37	164.72	51.65
SSC	211.51	161.02	50.49
SSB	201.78	153.61	48.17
SSA	196.92	149.91	47.01
CC2	210.29	160.09	50.20
CC1	194.48	148.05	46.43
CB2	184.76	140.65	44.11
CB1	176.25	134.18	42.07
CA2	175.03	133.25	41.78
CA1	165.30	125.84	39.46
IB2	158.01	120.29	37.72
IB1	155.58	118.44	37.14
IA2	143.42	109.18	34.24
IA1	138.55	105.48	33.07
BB2	156.79	119.36	37.43
BB1	153.14	116.58	36.56
BA2	142.20	108.25	33.95
BA1	132.47	100.85	31.62
PE2	170.17	129.55	40.62
PE1	167.73	127.69	40.04
PD2	161.65	123.06	38.59
PD1	159.22	121.21	38.01
PC2	153.14	116.58	36.56
PC1	151.93	115.66	36.27
PB2	136.12	103.63	32.49
PB1	134.91	102.70	32.21
PA2	133.69	101.78	31.91
PA1	130.04	99.00	31.04

Table 6
Case-Mix Adjusted Federal Rates for Rural SNFs by Labor and Non-Labor Component

RUG-III category	Total rate	Labor portion	Non-labor portion
RUC	451.84	343.98	107.86
RUB	411.18	313.02	98.16
RUA	391.43	297.99	93.44
RVC	343.38	261.41	81.97
RVB	332.93	253.45	79.48
RVA	306.21	233.11	73.10
RHC	308.84	235.11	73.73
RHB	285.61	217.43	68.18
RHA	263.54	200.63	62.91
RMC	301.35	229.41	71.94
RMB	271.15	206.42	64.73
RMA	256.04	194.92	61.12
RLB	237.56	180.85	56.71
RLA	201.55	153.44	48.11
SE3	273.57	208.26	65.31
SE2	237.56	180.85	56.71
SE1	212.00	161.39	50.61
SSC	207.35	157.85	49.50
SSB	198.06	150.78	47.28
SSA	193.41	147.24	46.17
CC2	206.19	156.97	49.22
CC1	191.09	145.47	45.62
CB2	181.79	138.39	43.40
CB1	173.66	132.20	41.46
CA2	172.50	131.32	41.18
CA1	163.21	124.25	38.96
IB2	156.24	118.94	37.30
IB1	153.91	117.17	36.74
IA2	142.30	108.33	33.97
IA1	137.65	104.79	32.86
BB2	155.08	118.06	37.02
BB1	151.59	115.40	36.19
BA2	141.14	107.45	33.69
BA1	131.84	100.37	31.47
PE2	167.85	127.78	40.07
PE1	165.53	126.01	39.52
PD2	159.72	121.59	38.13
PD1	157.40	119.83	37.57
PC2	151.59	115.40	36.19
PC1	150.43	114.52	35.91
PB2	135.33	103.02	32.31
PB1	134.17	102.14	32.03
PA2	133.00	101.25	31.75
PA1	129.52	98.60	30.92

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Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments that are greater or

lesser than would otherwise be made in the absence of the wage adjustment. In this fifth PPS year (Federal rates effective October 1, 2002), we are applying the most recent wage index using the hospital wage data, and applying an adjustment to fulfill the budget neutrality requirement. This requirement will be met by multiplying each of the components of the unadjusted Federal rates by a factor equal to the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the FY beginning October 1, 2002. The same volume weights are used in both the numerator and denominator and will be derived from 1997 Medicare Provider Analysis and Review File (MEDPAR) data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share. The budget neutrality factor for this year is 0.9997.

The wage index applicable to FY 2003 can be found in Table 7 and Table 8 of this notice.

TABLE 7.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.7792
Taylor, TX	
0060 Aguadilla, PR	0.4587
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9600
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0594
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8384
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9315
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7859
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9735
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9225
Blair, PA	
0320 Amarillo, TX	0.9034
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2358
Anchorage, AK	
0440 Ann Arbor, MI	1.1103
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8044
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8997
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	.0.4337
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9876
Buncombe, NC	
Madison, NC	
0500 Athens, GA	1.0211
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	0.9991
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1017
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8325
Lee, AL	
0600 Augusta-Aiken, GA–SC	1.0264
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9637
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9877
Kern, CA	
0720 Baltimore, MD	0.9929
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9664
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3202
Barnstable, MA	
0760 Baton Rouge, LA	0.8294
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8324
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.2282
Whatcom, WA	
0870 Benton Harbor, MI	0.8965
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2150
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9022
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8757
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8341
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9222
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7972
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8907
Monroe, IN	
1040 Bloomington-Normal, IL	0.9109
McLean, IL	
1080 Boise City, ID	0.9310
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1229
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9689
Boulder, CO	
1145 Brazoria, TX	0.8535
Brazoria, TX	
1150 Bremerton, WA	1.0944
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8880

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Cameron, TX	
1260 Bryan-College Station, TX	0.8821
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9365
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0052
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4371
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8932
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9690
Natrona, WY	
1360 Cedar Rapids, IA	0.9056
Linn, IA	
1400 Champaign-Urbana, IL	1.0635
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9235
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8898
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9875
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0438
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.8976
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8628
Laramie, WY	
1600 Chicago, IL	1.1044
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9745
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9381
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8406
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9670
Ashtabula, OH	
Geauga, OH	
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9916
El Paso, CO	
1740 Columbia, MO	0.8496
Boone, MO	
1760 Columbia, SC	0.9307
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8374
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9751
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8729
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1453
Benton, OR	
1900 Cumberland, MD–WV	0.7847
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9998
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8859
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA–IL	0.8835
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9282
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9071
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8973
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8055
Macon, IL	
2080 Denver, CO	1.0601
Adams, CO	
Arapahoe, CO	
Broomfield, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8791
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0448
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.8137
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9356
Kent, DE	
2200 Dubuque, IA	0.8795
Dubuque, IA	
2240 Duluth-Superior, MN–WI	1.0368
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0684
Dutchess, NY	
2290 Eau Claire, WI	0.8952
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9265
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9722
Elkhart, IN	
2335 Elmira, NY	0.8416
Chemung, NY	
2340 Enid, OK	0.8376
Garfield, OK	
2360 Erie, PA	0.8925
Erie, PA	
2400 Eugene-Springfield, OR	1.0944
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8177
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.9684
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8889
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8100
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	1.0682
Coconino, AZ	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Kane, UT	
2640 Flint, MI	1.1135
Genesee, MI	
2650 Florence, AL	0.7792
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8780
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0066
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0297
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9680
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9823
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.7895
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9693
Okaloosa, FL	
2760 Fort Wayne, IN	0.9457
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9446
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0169
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8505
Etowah, AL	
2900 Gainesville, FL	0.9871
Alachua, FL	
2920 Galveston-Texas City, TX	0.9465
Galveston, TX	
2960 Gary, IN	0.9584
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8281
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8892
Wayne, NC	
2985 Grand Forks, ND–MN	0.8897
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9456
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	0.9525
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8950
Cascade, MT	
3060 Greeley, CO	0.9237
Weld, CO	
3080 Green Bay, WI	0.9502
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9282
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9100
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9122
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9268
Washington, MD	
3200 Hamilton-Middletown, OH	0.9418
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9223
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1549
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7659
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9028
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1457
Honolulu, HI	
3350 Houma, LA	0.8317
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9892
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9636
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8903
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9717
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9587
Johnson, IA	
3520 Jackson, MI	0.9532
Jackson, MI	
3560 Jackson, MS	0.8607
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.9275
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.9381
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.8239
Onslow, NC	
3610 Jamestown, NY	0.7976
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.9849
Rock, WI	
3640 Jersey City, NJ	1.1190
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8268
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8329
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7749
Craighead, AR	
3710 Joplin, MO	0.8613
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battle Creek, MI	1.0595
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.8122
Kankakee, IL	
3760 Kansas City, KS–MO	0.9736
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9686
Kenosha, WI	
3810 Killeen-Temple, TX	0.9570

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Coryell, TX	
3840 Knoxville, TN	0.8970
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8971
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.9400
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8452
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9278
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7965
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9357
Polk, FL	
4000 Lancaster, PA	0.9078
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9726
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8472
Webb, TX	
4100 Las Cruces, NM	0.8745
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.1521
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8323
Douglas, KS	
4200 Lawton, OK	0.8315
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9179
Androscoggin, ME	
4280 Lexington, KY	0.8581
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9483
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9892
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.9097
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8629
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2001
Los Angeles, CA	
4520 Louisville, KY–IN	0.9276
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.9646
Lubbock, TX	
4640 Lynchburg, VA	0.9219
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9204
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0467
Dane, WI	
4800 Mansfield, OH	0.8900
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4914
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	1.0498
Hidalgo, TX	
4890 Medford-Ashland, OR	0.8428
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	1.0253
Brevard, Fl	
4920 Memphis, TN–AR–MS	0.8920
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9742
Merced, CA	
5000 Miami, FL	0.9802
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1213
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9893
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St Paul, MN-WI	1.0903
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9157
Missoula, MT	
5160 Mobile, AL	0.8108
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0498
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0674
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8137
Ouachita, LA	
5240 Montgomery, AL	0.7734
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9284
Delaware, IN	
5330 Myrtle Beach, SC	0.8976
Horry, SC	
5345 Naples, FL	0.9754
Collier, FL	
5360 Nashville, TN	0.9578
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3357
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2408
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.1767
New London, CT	
5560 New Orleans, LA	0.9046
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4414
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1381
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Warren, NJ	
5660 Newburgh, NY–PA	1.1387
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8574
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5072
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9402
Marion, FL	
5800 Odessa-Midland, TX	0.9397
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8900
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0960
Thurston, WA	
5920 Omaha, NE–IA	0.9978
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1474
Orange, CA	
5960 Orlando, FL	0.9640
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8344
Daviess, KY	
6015 Panama City, FL	0.8865
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8127
Washington, QH	
Wood, WV	
6080 Pensacola, FL	0.8610
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8739
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.0713
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9820
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7962
Jefferson, AR	
6280 Pittsburgh, PA	0.9365
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0235
Berkshire, MA	
6340 Pocatello, ID	0.9372
Bannock, ID	
6360 Ponce, PR	0.5169
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9794
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.0667
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0854
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9984
Utah, UT	
6560 Pueblo, CO	0.8820
Pueblo, CO	
6580 Punta Gorda, FL	0.9218
Charlotte, FL	
6600 Racine, WI	0.9334
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9990
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8846
Pennington, SD	
6680 Reading, PA	0.9295
Berks, PA	
6690 Redding, CA	1.1135
Shasta, CA	
6720 Reno, NV	1.0648

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1491
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9477
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1365
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8614
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.2139
Olmsted, MN	
6840 Rochester, NY	0.9194
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9625
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9228
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1500
El Dorado, CA	
Placer, CA	
Sacramento, CA	
A6960 Saginaw-Bay City-Midland, MI	0.9650
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9700
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9544
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO–IL	0.8855
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
St. Louis City, MO	
Warren, MO	
Sullivan City, MO	
7080 Salem, OR	1.0500
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4623
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9945
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8374
Tom Green, TX	
7240 San Antonio, TX	0.8753
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1131
San Diego, CA	
7360 San Francisco, CA	1.4142
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4145
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4741
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1271
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0481
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3646
Santa Cruz, CA	
7490 Santa Fe, NM	1.0712
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.3046
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9425
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9376
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton-Wilkes-Barre—Hazleton, PA	0.8599
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1474
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.7869
Mercer, PA	
7620 Sheboygan, WI	0.8697
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9255
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.8987
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.9046
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9257
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9802
St. Joseph, IN	
7840 Spokane, WA	1.0852
Spokane, WA	
7880 Springfield, IL	0.8659
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8424
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0927
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.8941
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8804
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0506
San Joaquin, CA	
8140 Sumter, SC	0.8273
Sumter, SC	
8160 Syracuse, NY	0.9714
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.0940
Pierce, WA	
8240 Tallahassee, FL	0.8504
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9065
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8599
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana,AR-Texarkana, TX	0.8088
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9810
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9199
Shawnee, KS	
8480 Trenton, NJ	1.0432
Mercer, NJ	
8520 Tucson, AZ	0.8911
Pima, AZ	
8560 Tulsa, OK	0.8332
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8130
Tuscaloosa, AL	
8640 Tyler, TX	0.9521
Smith, TX	
8680 Utica-Rome, NY	0.8465
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3354
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1096
Ventura, CA	
8750 Victoria, TX	0.8756
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0031
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9418
Tulare, CA	
8800 Waco, TX	0.8073
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.0851

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8069
Black Hawk, IA	
8940 Wausau, WI	0.9782
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9939
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7670
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9520
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8498
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8544
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1173
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9640
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0569
Yakima, WA	
9270 Yolo, CA	0.9434
Yolo, CA	
9280 York, PA	0.9026
York, PA	
9320 Youngstown-Warren, OH	0.9358
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0276
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8589
Yuma, AZ	

TABLE 8.—WAGE INDEX FOR RURAL AREAS

Rural area	Wage index
Alabama	0.7660
Alaska	1.2293
Arizona	0.8493
Arkansas	0.7666
California	0.9899
Colorado	0.9015
Connecticut	1.2394
Delaware	0.9128
Florida	0.8827
Georgia	0.8230
Guam	0.9611
Hawaii	1.0255
Idaho	0.8747
Illinois	0.8204
Indiana	0.8755
Iowa	0.8315
Kansas	0.7900
Kentucky	0.8079
Louisiana	0.7580
Maine	0.8874
Maryland	0.8946
Massachusetts	1.1288
Michigan	0.9009
Minnesota	0.9151
Mississippi	0.7680
Missouri	0.7881
Montana	0.8481
Nebraska	0.8204
Nevada	0.9577
New Hampshire	0.9839
New Jersey*	
New Mexico	0.8872
New York	0.8542
North Carolina	0.8669
North Dakota	0.7788
Ohio	0.8613
Oklahoma	0.7590
Oregon	1.0259
Pennsylvania	0.8462
Puerto Rico	0.4356
Rhode Island*	
South Carolina	0.8607
South Dakota	0.7815
Tennessee	0.7877
Texas	0.7821
Utah	0.9312
Vermont	0.9345
Virginia	0.8504
Virgin Islands	0.7845
Washington	1.0179
West Virginia	0.7975
Wisconsin	0.9162
Wyoming	0.9007

* All counties within the State are classified urban.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act and section 311 of the BIPA, the payment rates listed here reflect an update equal to the SNF market basket minus 0.5 percentage points, which equals 2.6 percentage points. We will continue to publish the rates, wage index, and case-mix classification methodology in the **Federal Register** before August 1 preceding the start of each succeeding fiscal year.

E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. This designation reflects an administrative presumption under the current 44-group RUG–III classification system that beneficiaries who are correctly assigned to one of the upper 26 RUG–III groups in the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to that point.

Those beneficiaries assigned to any of the lower 18 groups are not automatically classified as either meeting or not meeting the definition, but instead receive an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 26 groups during the immediate post-hospital period require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups.

In this notice, we are continuing the existing designation of the upper 26 RUG–III groups for purposes of this administrative presumption, consisting of the following RUG–III classifications: all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

F. Initial Three-Year Transition Period

As noted previously, the rates that we are announcing in this notice are for the fifth year of the SNF PPS. As a result, the PPS is no longer operating under the initial three-year transition period from facility-specific to Federal rates and, therefore, payment now equals 100 percent of the adjusted Federal per diem rate.

G. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the XYZ SNF described in Table 9, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment. XYZ's 12-month cost reporting period begins October 1, 2002. XYZ's total PPS payment would equal $19,460. The Labor and Non-labor columns are derived from Table 5. The 4 percent adjustment to the Federal rates enacted in section 101(d) of the BBRA and the 16.66 percent adjustment to the nursing component of the Federal rates enacted in section 312 of the BIPA are no longer in effect for FY 2003, and, thus, are not reflected in the table. However, the adjustments for certain specified RUG–III groups enacted in section 101(a) of the BBRA (as amended by section 314 of the BIPA) remain in effect, and are reflected in the table.

TABLE 9.—SNF XYZ: LOCATED IN STATE COLLEGE, PA

[Wage Index: 0.8941]

RUG group	Labor	Wage index	Adj. labor	Non-labor	Adj. rate	Percent adjustment	Medicare days	Payment
RVC	$250.14	0.8941	$223.65	$78.44	$302.09	[1] $322.33	14	$4,513
RHA	193.30	0.8941	172.83	60.62	233.45	[1] 249.09	16	3,985
SSC	161.02	0.8941	143.97	50.49	194.46	[2] 233.35	30	7,001
IA2	109.18	0.8941	97.62	34.24	131.86	131.86	30	3,956
Total							90	19,460

[1] Reflects a 6.7 percent adjustment from section 314 of the BIPA.
[2] Reflects a 20 percent adjustment from section 101(a) of the BBRA.

III. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. This notice incorporates the latest available projections of the SNF market basket index. We have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the July 31, 2001 **Federal Register** (66 FR 39562), we included a complete discussion on the rebasing of the SNF market basket to FY 1997. There are 21 separate cost categories and respective price proxies. These cost categories were illustrated in Tables 10.A, 10.B, and Appendix A, along with other relevant information, in the July 31, 2001 **Federal Register**.

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 10 summarizes the updated labor-related share for FY 2003. The forecasted rates of growth used to compute the SNF market basket percentage described in section II.D of this notice are shown in Table 11.

TABLE 10.—FY 2003 LABOR-RELATED SHARE

Cost category	Relative importance	
	FY 2003	FY 2002
Wages and salaries	54.796	54.185
Employee benefits	11.232	10.988
Nonmedical professional fees	2.652	2.667
Labor-intensive services	4.124	4.107
Capital-related	3.324	3.432
Total	76.128	75.379

TABLE 11.—SNF TOTAL COST MARKET BASKET CHANGE FY 1998 THROUGH FY 2004

Fiscal years beginning October 1	Total [1]
Fiscal year:	
1998	2.8
1999	3.0
2000	4.0
2001	4.9
2002	3.6
2003	3.1
2004	3.0

[1] Skilled Nursing Facility Total Cost market Basket.

Source: (Table 10) Standard & Poor's DRI HCC, 2nd QTR.

Source: (Table 11) Global Insights Inc., DRI–WEFA, 2nd Qtr, 2002.

@USAMACRO/MODTREND@CISSIM/TL0502.SIM.

Released by CMS, OACT, National Health Statistics Group.

A. Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, as described in the previous section, from the average of the prior fiscal year to the average of the current fiscal year. For the Federal rates established in this notice, the percentage increase in the SNF market basket index is used to compute the update factor occurring between FY 2002 and FY 2003. We used the 2nd quarter 2002 forecasted percentage increases of the FY 1997 rebased SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factors. Finally, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates, because the three-year transition period from facility-specific to full Federal rates that started with cost reporting periods beginning in July of 1998 has expired.

B. Federal Rate Update Factor

Section 1888(e)(4)(E)(ii)(III) of the Act requires that the update factor used to establish the FY 2003 Federal rates be at a level equal to the market basket percentage change minus 0.5 percentage point. Accordingly, to establish the update factor, we determined the total growth from the average market basket level for the period of October 1, 2001 through September 30, 2002 to the average market basket level for the period of October 1, 2002 through September 30, 2003. Using this process, the update factor for FY 2003 SNF Federal rates is 2.6 percentage points (3.1 percentage points minus 0.5 percentage point).

We used this revised update factor to compute the Federal portion of the SNF PPS rate shown in Tables 1 and 2.

IV. Consolidated Billing

As established by section 4432(b) of the BBA, the consolidated billing requirement places with the SNF the Medicare billing responsibility for virtually all of the services that the SNF's residents receive, except for a small number of services that the statute specifically identifies as being excluded from this provision. Section 103 of the BBRA amended this provision by further excluding a number of individual services, identified by Healthcare Common Procedure Coding System (HCPCS) code, within several broader categories that otherwise remained subject to the provision. Section 313 of the BIPA further amended this provision by repealing its Part B aspect; that is, its applicability to services furnished to a resident during a SNF stay that Medicare does not cover. (However, physical, occupational, and speech-language therapy remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay.) In the final rule that we published in the July 31, 2001 **Federal Register** (66 FR 39562), we revised the consolidated billing regulations to reflect the most recent (the BIPA) amendments. To date, the Congress has enacted no further legislation affecting this provision. Accordingly, we do not include any revisions to the consolidated billing regulations in this notice.

V. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

In the July 31, 2001 final rule (66 FR 39562), we announced the conversion of swing-bed hospitals to the SNF PPS, effective with the start of the provider's first cost reporting period beginning on or after July 1, 2002. We selected this date consistent with the statutory provision to integrate swing-bed hospitals into the SNF PPS by the end of the SNF transition period, June 30, 2002.

We note that the necessary training materials and support structures were developed to assist swing-bed hospitals affected by this change. The new 2-page customized Minimum Data Set (MDS) for Swing-Bed Hospitals (SB–MDS) has been approved for use by OMB, and is posted on our web site at *http://www.cms.hhs.gov/providers/snfpps/snfpps_swing-bed.asp*. The MDS data collection and transmission software, RAVEN–SB, was customized to reflect the use of the new 2-page form and is now in use.

Swing-bed hospitals must submit MDS assessments on the same schedule as SNFs (the 5th, 14th, 30th, 60th, and 90th covered day of the admission). Since the average swing-bed length of stay is only 9 days, most swing-bed hospitals will, on the average, only need to complete and transmit one MDS record per stay. The transmission requirements are similar to those used by SNFs, and swing-bed hospitals have been notified of the program requirements for establishing dial-in capability to transmit the SB–MDS records. The swing-bed transmission system was customized to permit direct transmission to the swing-bed data repository, and swing-bed hospitals have a dedicated Help Desk to assist them with transmission and technical support issues.

As part of the implementation effort, we have evaluated MDS policies and procedures applicable to SNFs to ensure their applicability to swing-bed hospitals. In most cases, swing-bed hospitals and SNFs follow the same procedures. However, whenever possible, we streamlined those procedures to reflect the operational needs of the swing-bed hospitals. For example, SNFs are required to transmit their MDS records within 31 days of completion, which allows for completion of Resident Assessment Protocols (RAPs), data editing, and care planning. The system edits developed for the SB–MDS reflect the shorter lengths of stay and the inapplicability of the MDS RAPs and care planning components to swing-bed hospitals, and require transmission within 14 days of completion. Finally, we developed and distributed detailed training materials on MDS preparation, transmission, and claims processing. These materials are posted on our web site and updated regularly as new information becomes available. Swing-bed hospitals may check the SNF PPS web site at *http://www.cms.hhs.gov/providers/snfpps/snfpps_swing-bed.asp* and *http://www.cms.hhs.gov/medlearn/sbmds.asp* to receive the latest information.

VI. Collection of Information Requirements

The current Medicare assessment requirements are based on section 4432(a) of the Balanced Budget Act of 1997 (BBA), which amended section 1888(e) of the Social Security Act (the Act) to mandate implementation of a Medicare prospective payment system for SNFs. This section of the Act requires annual adjustments to the PPS rates based on geographic variation and SNF case-mix, and prescribes the methodology for updating the rates in future years.

The PPS case-mix adjustments are derived from the clinical information collected by providers about Medicare Part A covered beneficiaries during their SNF stays, using the minimum data set (MDS). As a result of a mandate contained in the nursing home reform legislation in the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), a uniform MDS was required as a part of the comprehensive resident assessment for all certified long-term care facilities. The provisions of OBRA '87 require that certified long-term care facilities collect information concerning all residents to support care planning activities. Comprehensive assessments, using the MDS, are required at admission (no later than 14 days following admission), annually, and upon a significant change in a resident's condition. In addition, quarterly reviews of each resident are required. A shorter version of the MDS has been developed for these quarterly assessments.

With implementation of the SNF PPS, providers were required to perform MDS assessments of all beneficiaries in Medicare Part A covered stays on days 5, 14, 30, 60, and 90 of their Medicare covered stays. The assessments required for the SNF PPS are in addition to those required by the OBRA '87, although there is often overlap in the timing of the required assessments so that one assessment may be used to satisfy both the OBRA '87 and SNF PPS requirements. The time required to complete the full version of the MDS is estimated to be 90 minutes. Beginning July 1, 2002, a shorter version of the MDS, the Medicare PPS Assessment Form (MPAF), became available for use to satisfy Medicare assessment requirements. We announced the option of using this shorter version in the **Federal Register** (67 FR 38128, May 31, 2002). Performance of this version of the assessment is estimated to require only 45 minutes of staff time.

When a Medicare SNF PPS assessment is due at the same time as an OBRA-required assessment (for example, a 14-day Medicare SNF PPS assessment combined with an initial admission assessment) providers must meet the more stringent of the two sets of requirements. Thus, the provider must perform an MDS that includes all of the MPAF items plus any additional items required by the clinical assessment, in order to meet both sets of standards. If the OBRA (or State) requirements call for a full MDS, the full MDS may be submitted to satisfy the Medicare SNF PPS requirements. When a full MDS assessment is required to

fulfill the dual requirements of a Medicare SNF PPS and OBRA, completion time is estimated to be 90 minutes.

The total burden of the full MDS, which includes all administrative time, as well as the time actually required by the assessment process, is estimated to be 5,696,218 hours annually. The extent to which the MPAF will be utilized is not known, so time saving associated with its use is not factored into this estimate.

Swing-beds began transitioning into the Medicare SNF PPS on July 1, 2002 and are required to complete a modified version of the MDS, the MDS–SB, which collects only the information needed to calculate the RUG–III classifications for case-mix adjustment. The MDS–SB is the only version of the MDS that is acceptable for use in Medicare SNF PPS swing-bed facilities. There are no OBRA '87 requirements for swing-bed providers. Completion of each MDS–SB assessment is estimated to require 30 minutes. The total burden, including the amount of time required for the actual assessment process as well as administrative time, is estimated to be 132,360 hours per year across all swing-bed providers.

These information collection requirements are currently approved by OMB through December 31, 2002 under OMB numbers 0938–0739 for SNFs and 0938–0872 for swing-bed facilities. We are not proposing any changes to these requirements in this notice.

VII. Regulatory Impact Analysis

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, (the Act) the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This notice is major, as defined in Title 5, United States Code, section 804(2), because we estimate the impact of the update will be to increase payments to SNFs by approximately $400 million. The update set forth in this notice applies to payments in FY 2003. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure in any year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This notice will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this notice falls below these thresholds as well. Because this notice does not impose unfunded mandates, as defined by section 202 of UMRA, we have not prepared an assessment.

Executive Order 13132 (effective November 2, 1999) establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct compliance costs on State and local governments, preempt State law, or otherwise have Federalism implications. As stated above, this notice will have no consequential effect on State and local governments.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most SNFs and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by having revenues of $11.5 million or less annually. For purposes of the RFA, all States and tribal governments are not considered to be small entities, nor are intermediaries or carriers. Individuals and States are not included in the definition of a small entity.

This notice updates the SNF PPS rates and wage index published in the July 31, 2001 final rule (66 FR 39562), thereby increasing aggregate payments by an estimated $400 million. Although, as illustrated in Table 12, the simultaneous expiration of several temporary payment increases established under recent legislation results in a net decrease in aggregate Medicare payments in FY 2003, these decreases are not a result of this notice, but rather, are specifically mandated in the legislation. Because Medicare is a relatively minor payer for nursing home care (approximately 9 percent of patient days compared to 65 percent for Medicaid), we do not expect that the 2.6 percent rate increase and wage index update will have a significant impact upon small entities overall. We note that some individual providers may experience larger increases (or even decreases) in payments than others due to changes in payments that result from updating the wage index. However, we do not expect these changes to affect small entities disproportionately. Accordingly, we certify that this notice will not have a significant impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because the payment rates set forth in this notice also affect rural hospital swing-bed services, we believe that this notice will have an impact on small rural hospitals (this impact is discussed later in this section). However, because this incremental increase in payments for Medicare swing-bed services is relatively minor in comparison to overall rural hospital revenues, this notice will not have a significant impact on the overall operations of these small rural hospitals.

A. Background

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section specifies that the base year cost data to be used for computing the RUG–III payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates.

This notice sets forth updates of the SNF PPS rates contained in the July 31, 2001 final rule (66 FR 39562). Table 12 presents the projected effects of the changes in the SNF PPS from FY 2002 to FY 2003, as well as statutory changes effective for FY 2002 and FY 2003. In so doing, we estimate the effects of each change by estimating payments while holding all other payment variables constant. We use the best data available,

but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit, based on the latest available Medicare claims data and MDS 2.0 assessment data from 1999. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, or new statutory provisions. Although these changes may not be specific to SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

B. Impact of the Notice

The purpose of this notice is not to initiate significant policy changes with regard to the SNF PPS; rather, it is to provide an update to the rates for FY 2003. As mentioned previously, we have decided not to implement any case-mix refinements for FY 2003. Our decision to defer implementing any case-mix refinements for the present leaves the current classification system in place. Under the provisions of section 101(a) of the BBRA, this will result in SNFs continuing to receive an estimated $1 billion in temporary add-on payments during FY 2003.

In updating the rates for FY 2003, we made a number of standard annual revisions and clarifications mentioned elsewhere in this notice (for example, the update to the wage and market basket indexes used for adjusting the Federal rates). These revisions will increase payments to SNFs by approximately $400 million.

In addition to the update, section 101(d)(1) of the BBRA and section 312 of the BIPA, providing for temporary adjustments to the SNF PPS payment rates, will expire by statute, on October 1, 2002. These temporary adjustments together account for an estimated $1.4 billion dollars per year in payments to the nursing home industry. The expiration of these temporary add-ons results in a net decrease in payments for SNFs in FY 2003.

The aggregate decrease in payments associated with this notice is estimated to be $1 billion. There are three areas of change that produce this net decrease in payment for facilities:

- Section 312 of the BIPA temporarily increases the nursing component of the Federal rates payments by 16.66 percent. This provision results in $900 million in payments per year. The provision expires by statute on October 1, 2002.
- Section 101(d)(1) of the BBRA temporarily increases payments for all RUG–III groups by 4 percent, and prohibits the increases from being built into the base Federal rates. This provision results in $500 million in payments per year. The provision expires by statute on October 1, 2002.
- The annual update in payments from FY 2002 levels to FY 2003 levels, resulting in a $400 million increase in payments per year. The total change in Federal payments includes all of the previously noted changes in addition to the effect of the annual update to the rates and is illustrated in Table 12.

Table 12 only illustrates the impact of the changes on SNFs; it does not apply to swing-bed hospital units. A discussion of the impact on those providers follows.

In developing the impact analysis, we were able to increase significantly the number of facilities included in the data. With the end of the transition period, there is no longer a need to calculate facility-specific rates using 1995 cost report information to estimate current SNF payments. This has allowed us to expand the data base to all SNFs submitting claims in FY 2001 (the latest available data) in estimating the impact of annual updates.

The impacts are shown in Table 12. The breakdown of the various categories of data in the table is as follows:

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, and census region.

The first row of figures in the first column describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The next twenty rows show the effects on urban versus rural status by census region. The final four rows show the effects on facilities by ownership type.

The second column in the table shows the number of facilities in the impact database.

The third column shows the projected effect of eliminating the 16.66 percent add-on to the nursing portion of the Federal rate mandated by the BIPA. As expected, this results in a decrease in payments for all facilities; however, as seen in the table, the varying effect results in a distributional impact. In addition, since this increase only applies to the nursing portion of the payment rate, the effect on total expenditures is less than 16.66 percent.

The fourth column of the table shows the effect of the annual update to the wage index. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fifth column of the table shows the effect of all of the changes on the FY 2003 payments. Section 101(d) of the BBRA increases payments for all RUG–III groups by 4 percent and is the same for all types of facilities. This temporary add-on expires October 1, 2002, and is reflected in the total column. This includes all of the previous changes, the expiration of the 4 percent add-on to the Federal rates, and the increase to this year's payment rates by the market basket rate less 0.5 percentage point, or 2.6 percentage points. The market basket increase of 2.6 percentage points is also constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will decrease by 9.1 percent in total, assuming facilities do not change their care delivery and billing practices in response.

As can be seen from this table, the combined effects of all of the changes vary by specific types of providers and by location. For example, freestanding facilities experience payment decreases, while the decrease for hospital-based and rural providers is less significant.

TABLE 12.—PROJECTED IMPACT OF FY 2003 UPDATE TO THE SNF PPS

	Number of facilities	Eliminate add-on to nursing rates (Percent)	Wage index change (Percent)	Total FY 2003 change* (Percent)
Total	13,944	−7.4	0.0	−8.8
Urban	9,485	−7.5	−0.1	−9.0
Rural	4,459	−7.2	0.5	−8.1
Hospital-based urban	1,049	−7.8	−0.1	−9.3
Freestanding urban	7,885	−7.4	−0.1	−8.9
Hospital-based rural	660	−7.6	0.5	−8.5
Freestanding rural	3,500	−7.1	0.5	−8.0
Urban by region:				
New England	911	−7.6	−0.2	−9.2
Middle Atlantic	1,469	−7.8	−0.8	−9.9
South Atlantic	1,522	−7.3	0.2	−8.5
East North Central	1,823	−7.3	0.0	−8.7
East South Central	410	−7.4	−0.3	−9.1
West North Central	662	−7.5	0.3	−8.6
West South Central	847	−7.4	0.6	−8.2
Mountain	413	−7.2	0.7	−8.0
Pacific	1,422	−7.5	0.0	−8.9
Rural by region:				
New England	129	−7.1	0.4	−8.1
Middle Atlantic	238	−7.4	−0.9	−9.6
South Atlantic	627	−7.1	0.5	−8.0
East North Central	845	−7.1	0.3	−8.2
East South Central	479	−7.2	1.0	−7.7
West North Central	1,045	−7.4	0.8	−8.1
West South Central	605	−7.1	0.8	−7.8
Mountain	303	−7.0	0.5	−7.9
Pacific	188	−6.9	0.4	−7.9
Ownership:				
Government	701	−7.8	−0.1	−9.3
Proprietary	8,839	−7.4	0.0	−8.8
Voluntary	3,514	−7.6	−0.1	−9.1

*Column 5 includes the effects of reducing payments by 4 percent across all providers (resulting from the expiration of section 101(d) of the BBRA, effective October 1, 2002) and shows the effect of the market basket update that increases payment by 2.6 percent across all providers.

D. Impact on Swing-Bed Providers

In the July 31, 2001 final rule (66 FR 39562), we projected payments for swing-bed providers under the SNF PPS by first using the MEDPAR analog to assign 1999 claims records to a RUGIII group, then applying FY 2002 payment rates to calculate annual estimated payments.

For the purpose of this notice, we have used the MEDPAR analog classification, and estimated current SNF PPS reimbursement as if the swing-bed providers were fully phased into the SNF PPS in FY 2002. Then, using the same MEDPAR analog classifications, we applied the FY 2003 changes for a fully phased-in swing-bed population. We estimate that the overall impact on swing-bed facilities will be a decrease in payments of approximately 9 percent, or $22 million.

We anticipate that the actual overall impact of the elimination of the rate add-ons will be approximately equal to the 8.5 percent rate decrease projected for rural hospital-based SNFs.

E. Other Options Considered

As discussed in section II.B of this notice, we determined that while the research on case-mix refinements gives a sound basis for developing case-mix refinements in the SNF PPS, we need additional time to review and analyze the implications. Therefore, we have decided not to implement any case-mix refinements for FY 2003. We are proceeding with our research to evaluate both incremental and long-range comprehensive changes in the case-mix classification system.

Finally, in accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

VIII. Federalism

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and we have determined that it does not significantly affect the rights, roles, and responsibilities of States.

IX. Waiver of Proposed Rulemaking

We ordinarily publish a proposed notice in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment period procedure is impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice issued.

We believe it is unnecessary to undertake a proposed notice with comment period as the statute requires annual updates to the SNF PPS rates, the methodologies used to update the rates have been previously subject to public comment, and this notice reflects the application of previously established methodologies. Therefore, for good cause, we waive prior notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program).

Dated: June 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 11, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–19373 Filed 7–26–02; 3:54 pm]

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Federal Register

Wednesday,
July 31, 2002

Part VI

Securities and Exchange Commission

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval on a Pilot Basis to a Proposed Rule Change by the National Assocation of Securities Dealers, Inc., Relating to the Operation of the Alternative Display Facility for Quoting and Trading in Securities of the Nasdaq Stock Market, Inc.; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46249; File No. SR–NASD–2002–97]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval on a Pilot Basis to a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Operation of the Alternative Display Facility for Quoting and Trading in Securities of The Nasdaq Stock Market, Inc.

July 24, 2002.

The Commission is approving the National Association of Securities Dealers, Inc.'s ("NASD's" or "Association's") Alternative Display Facility ("ADF") for Nasdaq stocks for a nine-month pilot period. This proposal for a pilot was filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on July 22, 2002, by the NASD. In this proposal, as described by the NASD in Items I, II, and III below, the NASD proposes to establish, implement, and operate the ADF on a pilot basis ("ADF Pilot"). As discussed below, the Commission is granting accelerated approval of the proposed rule change for a pilot period to expire at the close of daily operation of the ADF Pilot on April 24, 2003. The rules related to the establishment, implementation, and operation of the Pilot ADF are substantially similar to the proposed permanent rules contained in the original ADF proposal related to the establishment, implementation, and operation of the permanent ADF.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 45156 (December 14, 2002), 67 FR 388 (January 3, 2002) (Notice of filing of SR–NASD–2001–90); 45278 (January 14, 2002), 67 FR 3252 (January 23, 2002) (Extending the public comment period for SR–NASD–2001–90); 45501 (March 4, 2002), 67 FR 10942 (March 11, 2002) (Notice of filing of SR–NASD–2002–28 relating to ADF fees); 45991 (May 28, 2002), 67 FR 39476 (June 7, 2002) (Notice of filing of Amendment No. 2 to SR–NASD–2001–90) (collectively, "ADF Proposal"). The Commission intends to approve simultaneously and set an identical effective date for SR–NASD–2001–90 and SR–NASD–2002–28. The Commission notes that the ADF Proposal contains additional proposed rules not contained in the ADF Pilot. For instance, the ADF Proposal contains rules related to the separation of the NASD and the Nasdaq Stock Market, Inc. ("Nasdaq") corporate entities. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to establish, implement, and operate, on a pilot basis, the ADF. For purposes of this ADF Pilot, NASD members will be able to quote and trade only Nasdaq securities on or through the Pilot ADF. The text of the proposed rule change is below. Additions are in *italics*, and deletions are in brackets.

IM–2110–5. Anti-Intimidation/Coordination

The Board of Governors is issuing this interpretation to codify a longstanding policy. It is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to coordinate the prices (including quotations), trades, or trade reports of such member with any other member or person associated with a member; to direct or request another member to alter a price (including a quotation); or to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or quotation, whether displayed on any [automated system] *facility* operated by *NASD* [The Nasdaq Stock Market, Inc. (Nasdaq),] or otherwise, or refusals to trade or other conduct that retaliates against or discourages the competitive activities of another market maker or market participant. Nothing in this interpretation respecting coordination of quotes, trades, or trade reports shall be deemed to limit, constrain, or otherwise inhibit the freedom of a member or person associated with a member to:

(1) set unilaterally its own bid [and] *or* ask in any [Nasdaq] security, the prices at which it is willing to buy or sell any [Nasdaq] security, and the quantity of shares of any [Nasdaq] security that it is willing to buy or sell;

(2) set unilaterally its own dealer spread, quote increment, or quantity of shares for its quotations (or set any relationship between or among its dealer spread, inside spread, or the size of any quote increment) in any [Nasdaq] security;

(3) communicate its own bid or ask, or the prices at or the quantity of shares in which it is willing to buy or sell any [Nasdaq] security to any person, for the purpose of exploring the possibility of a purchase or sale of that security, and to negotiate for or agree to such purchase or sale;

(4) communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any [Nasdaq] security, to any person for the purpose of retaining such person as an agent or subagent for the member or for a customer of the member (or for the purpose of seeking to be retained as an agent or subagent), and to negotiate for or agree to such purchase or sale;

(5) through (7) No Change.

* * * * *

2700. SECURITIES DISTRIBUTIONS

* * * * *

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(a) No Change.

(b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

(1) through (3) No Change.

(4) Bona fide independent market maker—a market maker [which] *that:*

(A) is registered as a Nasdaq *or ADF* market maker in the security to be distributed pursuant to this Rule;

(B) through (C) No Change.

(5) through (18) No Change.

(c) through (p) No Change.

* * * * *

3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect. *If ADF closes trading in Nasdaq securities pursuant to its authority under Rule 4120A(a)(2), members would not be prohibited from trading through other markets for which trading is not halted.*

3350. Short Sale Rule

(a) No member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current *national* best (inside) bid when the current *national* best (inside) bid [as displayed by The Nasdaq Stock Market] is below the preceding *national* best (inside) bid in the security.

(b) No Change.

(c) The provisions of paragraph (a) shall not apply to:

(1) Sales by a qualified market maker *or an ADF market maker* registered in the security in connection with bona fide market making activity. For purposes of this paragraph, transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered bona fide market-making activity.

(2) through (8) No Change.

(d) through (e) No Change.

(f) A member that is not currently registered as a Nasdaq *or ADF* market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) through (h) No Change.

(i)(1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of a warrant market maker that would otherwise be in contravention of this Rule, if:

(A) the warrant market maker is a registered Nasdaq *or ADF* market maker for the warrant; and

(B) No Change.

(j) through (l) No Change.

* * * * *

IM–3350. Short Sale Rule

(a) (1) In developing a Short Sale Rule for Nasdaq National Market securities, [the Association] *NASD* adopted an exemption to the Rule for certain market making activity. This exemption was deemed an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq National Market securities. Rule 3350(c)(1) states that short selling prohibitions shall not apply to sales by qualified Nasdaq market makers *or registered ADF market makers* in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: one must be a "qualified" Nasdaq market maker *or a registered ADF market maker* and one must engage in "bona fide" market making activity to take advantage of this exemption. With this interpretation, [the Association] *NASD* wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.

(2) through (3) No Change.

(b) [(1)] Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current *national* best (inside) bid when the current *national* best (inside) bid [as displayed by The Nasdaq Stock Market] is below the preceding *national* best (inside) bid in the security. [The Association] *NASD* has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least $0.01 above the current inside bid when the current inside spread is $0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.

(c) (1) No Change.

(2) For example, in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an "up bid" for the purpose of facilitating a short sale, [the Association] *NASD* would consider such activity to be a manipulative act and a violation of [the Association's] *NASD's* Short Sale Rule. *NASD* [The Association] also would consider it a manipulative act and a violation of the Rule if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a "down bid" for the purpose of precluding market participants from selling short. In addition, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in The Nasdaq Stock Market *or in the ADF* in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of Rule 3350. Similarly, a market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

(3) No Change.

* * * * *

3370. Prompt Receipt and Delivery of Securities

(a) No Change.

(b) (1) No Change.

(2) "Short Sales"

(A) No Change.

(B) Proprietary short sales.

No member shall effect a "short" sale for its own account in any security unless the member or person associated with a member makes an affirmative determination that the member can borrow the securities or otherwise provide for delivery of the securities by the settlement date. This requirement will not apply to transactions in corporate debt securities, to bona fide market making transactions by a member in securities in which it is registered as a Nasdaq *or ADF* market maker, to bona fide market maker transactions in non-Nasdaq securities in which the market maker publishes a two-sided quotation in an independent quotation medium, or to transactions [which] *that* result in a fully hedged or arbitraged position.

(C) No Change.

(3) through (5) No Change.

* * * * *

4000. THE NASDAQ STOCK MARKET

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a) A market maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact Nasdaq Market Operations to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. *If a Registered Reporting Nasdaq market maker also is a Registered Reporting ADF Market Maker as defined in Rule 5420, it must obtain excused withdrawal status in both facilities for the same time period.* Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq Market Operations only upon satisfying one of the conditions specified in this Rule.

* * * * *

4600. NASDAQ MARKET MAKER REQUIREMENTS

This Rule 4600 Series applies to quotation and trading activities by Nasdaq market makers, ATS or ECNs in The Nasdaq Stock Market, Inc. operated on behalf of NASD by the Nasdaq Stock Market, Inc.

* * * * *

4630. Reporting Transactions in Nasdaq National Market Securities

This Rule 4630 Series applies to the reporting by [all] members of transactions in Nasdaq National Market securities ("designated securities") through the Automated Confirmation Transaction Reporting Service (ACT). [These securities have been designated pursuant to the "National Market System Securities Designation Plan with Respect to Nasdaq Securities" ("Plan") which has been approved by the Commission pursuant to SEC Rule 11Aa2–1.]

4631. Definitions

[(a)] Terms used in this Rule 4630 Series shall have the meaning as defined in [the Association's] *NASD's* By-Laws and Rules, SEC Rule 11Aa2–1 and the *Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis* [Plan], unless otherwise defined herein.

Paragraphs (b) through (d) are renumbered as paragraphs (b) through (d) of proposed Rule 5420.

4632. Transaction Reporting

Paragraphs (a) and (b) are renumbered as paragraphs (a) and (b) of proposed Rule 5430.

(a) When and How Transactions Are Reported

Members shall comply with Rule 5430(a) for determining when and how transactions are reported.

(b) Which Party Reports Transaction

Members shall comply with Rule 5430(b) for determining which party reports a transaction.

(c) No Change.

(d) Procedures for Reporting Price and Volume

Members [which] *that* are required, *or have the option,* to report *transactions using ACT,* pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

(1) For agency transactions, report the number of shares and the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50;

REPORT 100 shares at 40.

(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50;

BUY as agent 100 shares at 40 plus a commission of $12.50;

REPORT 100 shares at 40.

(3) (A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions which are executed at a price which includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

Example:

BUY as principal 100 shares from another member at 40 (no mark-down included);

REPORT 100 shares at 40.

[Example:

BUY as principal 100 shares from a customer at 39⅞ which includes a ⅛ mark-down from prevailing market at 40;

REPORT 100 shares at 40.]

Example:

BUY as principal 100 shares from a customer at 39.90 which includes a $0.10 mark-down from prevailing market at 40;

REPORT 100 shares at 40.

[Example:

SELL as principal 100 shares to a customer at 40⅛, which includes a ⅛ mark-up from the prevailing market of 40;

REPORT 100 shares at 40.]

Example:

SELL as principal 100 shares to a customer at 40.10, which includes a $0.10 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

[Example:

BUY as principal 10,000 shares from a customer at 39¾, which includes a ¼ mark-down or service charge from the prevailing market of 40;

REPORT 10,000 shares at 40.]

Example:

BUY as principal 10,000 shares from a customer at 39.75, which includes a $0.25 mark-down or service charge from the prevailing market of 40;

REPORT 10,000 shares at 40.

(B) Exception: A "riskless" principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee.

Example:

SELL as a principal 100 shares to another member at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40 minus a mark-down of $12.50;

REPORT 100 shares at 40.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) transactions executed through [the Computer Assisted Execution System (CAES),] the Nasdaq National Market Execution System ("NNMS"), *the Primex Auction System,* or the SelectNet service;

(2) through (6) No Change.

(f) No Change.

* * * * *

4640. Reporting Transactions in Nasdaq SmallCap Market Securities

This Rule 4640 Series sets forth the [applicable reporting] requirements for *reporting* transactions in Nasdaq SmallCap Market securities ("designated securities") *utilizing* [. Members shall utilize] the Automated Confirmation Transaction Service (ACT)[for transaction reporting].

4641. Definitions

[(a)]Terms used in this Rule 4640 Series shall have the same meaning as those defined in [the Association's] *NASD's* By-Laws and Rules, *SEC Rule 11Aa2–1 and Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis,* unless otherwise specified herein.

Paragraphs (b) through (d) are renumbered as paragraphs (b) through (d) of Rule 5420.

4642. Transaction Reporting

Paragraphs (a) and (b) are renumbered as paragraphs (a) and (b) of proposed Rule 5430.

(a) When and How Transactions are Reported

Members shall comply with Rule 5430(a) for determining when and how transactions are reported.

(b) Which Party Reports Transaction

Members shall comply with Rule 5430(b) for determining which party reports a transaction.

(c) No Change.

(d) Procedures for Reporting Price and Volume

Members [which] *that* are required, *or have the option,* to report *transactions using ACT,* pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

(1) through (3) No Change.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) transactions executed through [the Computer Assisted Execution System (CAES),] the *SmallCap* Small Order Execution System (SOES), *the Primex Auction System,* or the SelectNet service.

(2) through (5) No Change.

(f) No Change.

* * * * *

4650. Reporting Transactions in Nasdaq Convertible Debt Securities

This Rule 4650 Series sets forth the applicable reporting requirements for transactions in convertible bonds that are listed on Nasdaq (designated securities). [Members shall utilize] *and reported utilizing* the Automated Confirmation Transaction Service (ACT) [for transaction reporting].

4651. Definitions

[(a)] Terms used in this Rule 4650 Series shall have the same meaning as those defined in [the Association's] *NASD's* By-Laws and Rules, unless otherwise specified herein.

Paragraphs (b) through (d) are renumbered as paragraphs (b) through (d) of Rule 5420.

4652. Transaction Reporting

Paragraphs (a) and (b) are renumbered as paragraphs (a) and (b) of Rule 5430.

(a) When and How Transactions are Reported

Members shall comply with Rule 5430(a) for determining when and how transactions are reported.

(b) Which Party Reports Transaction

Members shall comply with Rule 5430(b) for determining which party reports a transaction.

(c) No Change.

(d) Procedures for Reporting Price and Volume

Members that are required, *or have the option,* to report *transactions using ACT,* pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

(1) through (3) No Change.

(e) and (f) No Change.

4000A. NASD Alternative Display Facility

4100A. General

NASD Alternative Display Facility ("ADF") is the facility to be operated by NASD on a nine-month pilot basis for members that choose to quote or effect trades in Nasdaq securities ("ADF-eligible securities") otherwise than on Nasdaq or on an exchange. The ADF will collect and disseminate quotations, compare trades, and collect and disseminate trade reports. Those NASD members that utilize ADF systems for quotation or trading activities must comply with the Rule 4000A, Rule 5400 and Rule 6000A Series, as well as all other applicable NASD Rules. The ADF pilot will expire on [insert nine months from SEC approval date]. 4110A. Use of NASD Alternative Display Facility Data Systems.

NASD may at any time authorize the use of NASD's Alternative Display Facility data systems on a test basis for whatever studies it considers necessary and appropriate.

4120A. Trading Halts

(a) Authority to Initiate Halts In Trading on the Alternative Display Facility

NASD, pursuant to the procedures set forth in paragraph (b):

(1) shall halt trading otherwise than on an exchange in the Alternative Display Facility in an ADF-eligible security whenever any market eligible to trade that security imposes a trading halt, or suspends the listing, to:

(A) permit dissemination of material news;

(B) obtain information from the issuer relating to material news;

(C) obtain information relating to the issuer's ability to meet listing qualification requirements; or

(D) obtain any other information that is necessary to protect investors and the public interest.

(2) shall close NASD Alternative Display Facility to quotation activity whenever NASD's Alternative Display Facility is unable to transmit real-time quotation or trade reporting information to the applicable Securities Information Processor. If ADF closes trading pursuant to this subparagraph (2), members would not be prohibited from trading through other markets for which trading is not halted.

Members shall promptly notify NASD whenever they have knowledge of any matter related to a security or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.

(b) Commencement and Termination of a Trading Halt

(1) In the event NASD determines that a basis exists under Rule 4120A(a) to initiate a trading halt, the commencement of the trading halt will be effective simultaneously with appropriate notice via an administrative message.

(2) Trading in a halted security shall resume upon notice via an administrative message that a trading halt is no longer in effect.

4200A. DEFINITIONS

(a) Unless the context requires otherwise, the terms used in the Rule 4000A and Rule 6000A Series shall have the meanings below. Terms not specifically defined below shall have the meaning in NASD's By-Laws and Rules and SEC Rule 11Aa3–1.

(1) "Act" means the Securities Exchange Act of 1934.

(2) "ADF-eligible security" means a Nasdaq National Market, Nasdaq SmallCap Market security and Nasdaq Convertible Debt securities.

(3) "Nasdaq" means the facilities operated by The Nasdaq Stock Market, Inc.

(4) "Nasdaq market maker" shall have the meaning as defined in Rule 4200.

(5) "Nasdaq National Market" or "NNM" is a distinct tier of the Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market Security.

(6) "Nasdaq security" means a security that is listed on Nasdaq.

(7) "Nasdaq SmallCap Market" or "SCM" is a distinct tier of The Nasdaq Stock Market compromised of securities that meet the requirements of and are authorized as a Nasdaq SmallCap Security.

(8) "Normal unit of trading" means 100 shares of a security unless, with respect to a particular security, the market where the security is listed determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the issuer's symbol.

(9) "Registered Reporting ADF ECN" means a member of NASD that is an electronic communications network ("ECN") that elects to display orders in NASD's Alternative Display Facility. A member is a Registered Reporting ADF ECN in only those designated securities for which it is registered with NASD. A member shall cease being a Registered Reporting ADF ECN in a designated security when it has withdrawn or voluntarily terminated its quotations in that security on the ADF or when its quotations have been suspended or terminated by action of NASD. This term also shall include an NASD member that is an alternative trading system ("ATS") that displays orders in NASD's Alternative Display Facility.

(10) "Registered Reporting ADF Market Maker" means a member of NASD that is registered as an NASD market maker in a particular designated security and, with respect to that security, holds itself out (by entering quotations in NASD's Alternative Display Facility) as being willing to buy and sell such security for its own account on a regular and continuous basis. A member is a Registered Reporting ADF Market Maker in only those designated securities for which it is registered as an ADF market maker. A member shall cease being a Registered Reporting ADF Market Maker in a designated security when it has withdrawn or voluntarily terminated its quotations in that security on the ADF or when its quotations have been suspended or terminated by action of NASD.

(11) "SEC Rule 100," "SEC Rule 101," "SEC Rule 103," and "SEC Rule 104" mean the rules adopted by the Commission under Regulation M, and any amendments thereto.

(12) "Stabilizing bid" means the terms "stabilizing" or to "stabilize" as defined in SEC Rule 100.

(13) "Underwriting Activity Report" is a report provided by the Market Regulation Department of NASD in connection with a distribution of securities subject to SEC Rule 101 pursuant to NASD Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614A, 4619A, and 4623A.

(b) For purposes of Rules 4619A, and 4623A, the following terms shall have the meanings as defined in SEC Rule 100: "affiliated purchaser," "distribution," "distribution participant," "independent bid," "net purchases," "passive market maker," "penalty bid," "reference security," "restricted period," "subject security," and "syndicate covering transaction."

4300A. Quote and Order Access Requirements

(a) To ensure that NASD Market Participants comply with their quote and order access obligations as defined below, for each security in which they elect to display a bid and offer (for Registered Reporting ADF Market Makers), or a bid and/or offer (for Registered Reporting ADF ECNs), in the Alternative Display Facility, NASD Market Participants must:

(1) Provide other NASD Market Participants direct electronic access, as defined below; and

(2) Provide NASD member broker-dealers that are not NASD Market Participants direct electronic access, if requesied, and allow for indirect electronic access, as defined below. In any event, an NASD Market Participant is prohibited from (A) in any way directly or indirectly influencing or prescribing the prices that their customer broker-dealer may choose to impose for providing indirect access; and (B) precluding or discouraging indirect electronic access, including through the imposition of discriminatory pricing or quality of service with regard to a broker-dealer that is providing indirect electronic access.

(3) Market Participants shall share equally the costs of providing to each other the direct electronic access required pursuant to paragraph (a)(1), unless those Market Participants agree upon another cost-sharing arrangement.

(b) Subject to the terms and conditions contained herein, all NASD Market Participants that display quotations in NASD's Alternative Display Facility must record each item of information described in paragraphs (b)(1) and (2) of this Rule for all orders they receive from another broker-dealer via direct or indirect electronic access, and report this information to NASD as specified below.

(1) NASD Market Participants must record the following information for every order they receive from another broker-dealer via direct or indirect electronic access during the trading day:

(A) Unique Order Identifier
(B) Order Entry Firm (OEID)
(C) Order Side (Buy/Sell)
(D) Order Quantity
(E) Issue Identifier
(F) Order Price
(G) Order Negotiable Flag
(H) Time In Force (i.e. regular hours, entire day, other)
(I) Order Date
(J) Order Time (including seconds)
(K) Minimal Acceptable Quantity (i.e. ANY, all or none (AON), volume)
(L) Market Making Firm (MMID)
(M) Trade-or-Move Flag

The information described in paragraphs (A) through (M) must be reported to NASD within 10 seconds of receipt of the order.

(2) In addition to the information previously provided pursuant to paragraph (b)(1), NASD Market Participants must record the following information, as applicable, for every order received via direct or indirect access from another broker-dealer that has been acted upon or responded to:

(A) Unique Order Identifier (as provided in paragraph (b)(1)(A))
(B) Order Response (i.e. E=Execute, D=Decline, X=Cancel, T=timed out, P=partial, I=Price improvement)
(C) Order Response Time (including seconds)
(D) Quantity
(E) Price

The information described in paragraphs (A) through (E) must be reported to NASD within 10 seconds of any response to or action taken regarding an order. In the event that a member receives and executes an order within 10 seconds, the member may submit a single report that contains the information required in (b)(1) and (b)(2).

(3) Maintaining and Preserving Records

(A) In addition to submitting the information described herein to NASD, each member shall maintain and preserve records of the information

required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a–4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a–4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a–4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a–4(f) and may be maintained and preserved for the required time in that form.

(4) Orders Not Required To Be Recorded

The recording and reporting requirements contained in paragraphs (a) and (b) of this Rule shall not apply to orders received via ITS or any system operated by a national securities exchange or national securities association.

(5) Method of Transmitting Data

Members shall transmit this information in such form as prescribed by NASD.

(6) Reporting Agent Agreements

(A) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule.

(B) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

(C) All written documents evidencing an agreement described in paragraph (6)(B) shall be maintained by each party to the agreement.

(D) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph.

(7) Withdrawal of Quotations

If an NASD Market Participant knows or has reason to believe that it or its Reporting Agent is not complying with the requirements of this Rule, the member must withdraw its quotations from NASD's Alternative Display Facility until such time that the member is satisfied that its order information is being properly recorded and reported.

(c) NASD Market Participants are required to specify as part of their NASD Alternative Display Facility Workstation Subscriber Agreement the method and terms by which they will comply with the requirements of this Rule. NASD staff will not approve a Market Participant's Subscriber Agreement unless the method and terms provided by the Market Participant are in compliance with this Rule.

(d) Definitions

(1) "Customer broker-dealer" is any broker-dealer that has, or seeks to have, an ongoing relationship with a Market Participant, including an ECN subscriber, for the purposes of executing securities transactions.

(2) "Direct electronic access" means the ability to deliver an order for execution directly against an individual NASD Market Participant's best bid and offer subject to quote and order access obligations, as defined herein, without the need for voice communication, with the equivalent speed, reliability, availability, and cost (as permissible under the federal securities laws, the rules and regulations thereunder, and the NASD Rules), as are made available to NASD Market Participant's own customer broker-dealers or other active customers or subscribers.

(3) "Indirect electronic access" means the ability to route an order through customer broker-dealers of an NASD Market Participant that are not affiliates of NASD Market Participant, for execution against NASD Market Participant's best bid and offer subject to quote and order access obligations, without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to the Market Participant's customer broker-dealer providing the indirect access or other active customers or subscribers. NASD Market Participant's customer broker-dealers providing indirect electronic access shall remain responsible for all orders routed through them as though the orders were the firms' own orders.

(4) "NASD Market Participant" means (a) an NASD ADF Registered Reporting Market Maker, (b) an ATS, (c) or an NASD ADF Registered ECN.

(5) "Best bid and offer" for purposes of this Rule includes the best-priced buy and sell orders of an NASD Market Participant.

(6) "Quote and Order Access Obligations" include the requirements under this Rule, the firm quote obligations under Rule 11Ac1–1 under the Act, and for ADF Registered ECNs, the standards under Rule 11Ac1–1(c)(5)(ii)(A)(2) under the Act, Sections 301(b)(3) through (5) of Regulation ATS and other order access-related regulatory requirements for ATSs, ECNs and market makers. Obligations under this Rule include providing the ability to send or receive Trade-or-Move messages, identifiable as such, as required by Rule 4613A(d) and providing access to any reserved size orders as required by Rule 4623A(c).

(e) Minimum Performance Standards

(1) Direct electronic access provided by a Market Participant must allow the Market Participant the technological ability to respond to an order in two seconds or less. The two-second standard shall be measured from the time an order is received from the broker-dealer sending the order to the time an execution report or notice to decline the order is sent from the Market Participant to the broker-dealer that sent the order. With respect to orders received from other Market Participants, Market Participants must have in place a system that can accomplish turnaround of an order in three or fewer seconds, measured from the time an order is released by a Market Participant until the time an execution report is received by the Market Participant that placed the order. As a precondition to becoming a registered member of NASD Alternative Display Facility, Market Participants must certify to NASD their compliance with this paragraph based on reasonable forecasts of peak volume activity.

(2) In the event that a Market Participant experiences three (3) unexcused system outages during a period of five (5) business days, the Market Participant shall be suspended from quoting in NASD's Alternative Display Facility in all issues for a period of twenty (20) business days. For the purposes of this paragraph, a "system outage" shall mean an inability to post quotations in NASD's Alternative Display Facility or an inability to respond to orders.

(3) Officers of NASD or its subsidiaries designated by the Chief Executive Officer of NASD shall, pursuant to the procedures set forth in paragraph (f) below, have the authority to review any system outage to determine whether the system outage should be excused. An officer may deem a system outage excused upon proof by the Market Participant that the system outage resulted from circumstances not within the control of the Market Participant. The burden shall rest with the Market Participant to demonstrate that a system outage should be excused.

(4) A Market Participant may contact NASD Alternative Display Facility Operations and request that a system outage be deemed excused, whether or not the system outage resulted from

circumstances within the control of the Market Participant; however, if NASD Alternative Display Facility Operations becomes aware of the system outage prior to the Market Participant's request for an excused system outage, NASD Alternative Display Facility Operations may, at its own discretion, deem the system outage to be unexcused, based on the specific facts and circumstances surrounding the outage. In any event, a Market Participant shall be granted no more than five (5) excused system outages within 30 calendar days.

(f) Procedures for Reviewing System Outages

(1) Any Market Participant that seeks to have a system outage reviewed pursuant to paragraph (e)(3) hereof, shall submit a written request, via facsimile or otherwise, to NASD Alternative Display Facility Operations by close of the business day on which the system outage occurs, or the following business day if the system outage occurs outside of normal market hours.

(2) A Market Participant that seeks review of a system outage shall supply any supporting information for a determination under paragraph (e)(3) to NASD staff by the close of business on the day following the system outage.

(3) A Market Participant that seeks review of a system outage shall supply NASD staff with any information requested to make a determination pursuant to paragraph (e)(3).

(4) An officer shall, in accordance with paragraph (e)(3), make a determination whether a system outage is excused by the close of business on the day following the receipt of information supplied pursuant to paragraphs (f)(2) and (f)(3).

(5) A Market Participant may appeal a determination made under paragraph (e)(3) to NASD's Alternative Display Facility Market Operations Review Committee in writing, via facsimile or otherwise, by the close of business on the day a determination is rendered pursuant to paragraph (e)(3). An appeal to the Committee shall operate as a stay of the determination made pursuant to paragraph (e)(3). Once a written appeal has been received, the Market Participant may submit any additional supporting written documentation, via facsimile or otherwise, up until the time the appeal is considered by the Committee. The Committee shall render a determination by the close of business following the day a notice of appeal is received. The Committee's determination shall be final and binding.

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4600A. TRADING IN NASDAQ SECURITIES

4610A. Registration and Other Requirements

4611A. Registration as an ADF Market Maker

(a) Quotations and quotation sizes in Nasdaq securities may be entered into NASD's Alternative Display Facility only by a Registered Reporting ADF Market Maker or other entity approved by NASD to function in a market-making capacity.

(b) An NASD member seeking registration as a market maker in the ADF shall file an application with NASD. The application shall certify the member's good standing with NASD and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. It shall be sufficient to obtain registration as a market maker for a member to demonstrate proof that it is a registered Nasdaq market maker in good standing. A member's registration as an ADF market maker shall become effective upon receipt by the member of notice of approval of registration from NASD.

(c) A registered reporting ADF market maker may become registered in an issue by entering a registration request via an NASD terminal or other NASD approved electronic interface with NASD's systems or by contacting NASD Alternative Display Facility Operations. If the requirements of paragraph (b) above are satisfied, registration shall become effective on the day the registration request is entered. It shall be sufficient to obtain registration in an issue for a member to demonstrate proof that it is currently registered in that issue as a Registered Reporting Nasdaq market maker and is in good standing.

(d) A market maker's registration in an issue shall be terminated if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

4612A. Reserved

4613A. Character of Quotations

(a) Two-Sided Quotations

(1) For each Nasdaq security for which a member is a Registered Reporting ADF Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations through NASD's Alternative Display Facility, subject to the procedures for excused withdrawal set forth in Rule 4619A.

(A) A Registered Reporting ADF Market Maker in a security listed on Nasdaq must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a Registered Reporting ADF Market Maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

(B) Minimum Price Variation for Decimal-based Quotations

The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets shall be $0.01. Quotations failing to meet this standard shall be rejected.

(b) Firm Quotations

(1) A Registered Reporting ADF Market Maker that receives an offer to buy or sell from another NASD member shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through NASD's Alternative Display Facility at the time of receipt of any such offer. If a Registered Reporting ADF Market Maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another NASD member, execute a transaction at least at the size displayed.

(2) If a Registered Reporting ADF Market Maker, upon receipt of an offer to buy or sell from another NASD member in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated through NASD's Alternative Display Facility at the time of receipt of any such offer, executes a transaction in an amount of shares less than the size of the offer, then such Registered Reporting ADF Market Maker shall, immediately after such execution, display a revised quotation at a price that is inferior to its previous published quotation. The failure of a Registered Reporting ADF Market Maker to execute the offer in an amount greater than its published quotation size shall not constitute a violation of subparagraph (b)(1) of this rule.

(c) Quotations Reasonably Related to the Market

A Registered Reporting ADF Market Maker shall enter and maintain quotations that are reasonably related to the prevailing market. In the event it appears that a Registered Reporting ADF Market Maker's quotations are no longer reasonably related to the prevailing market, NASD may require

the market maker to re-enter its quotations. If a Registered Reporting ADF Market Maker whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, NASD may suspend the market maker's quotations in one or all securities.

(1) In the event that a Registered Reporting ADF Market Maker's ability to enter or update quotations is impaired, the Registered Reporting ADF Market Maker shall immediately contact NASD Alternative Display Facility Operations to request the withdrawal of its quotations.

(2) In the event that a Registered Reporting ADF Market Maker's ability to enter or update quotations is impaired and the Registered Reporting ADF Market Maker elects to continue to participate through NASD's Alternative Display Facility, the Registered Reporting ADF Market Maker shall execute an offer to buy or sell received from another NASD member at its quotations as disseminated through NASD's Alternative Display Facility.

(d) Locked and Crossed Markets

(1) A Registered Reporting ADF Market Maker shall not, except under extraordinary circumstances, enter or maintain quotations through NASD's Alternative Display Facility during normal business hours if:

(A) the bid quotation entered is equal to ("lock") or greater than ("cross") the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to ("lock") or less than ("cross") the bid quotation of another market maker entering quotations in the same security.

(2) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening

(A) Locked/Crossed Market Prior to 9:20 a.m.—For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a Registered Reporting ADF Market Maker that is a party to a lock/cross because the Registered Reporting ADF Market Maker either has entered a bid (ask) quotation that locks/crosses another market maker's quotation(s) or has had its quotation(s) locked/crossed by another market maker ("party to a lock/cross") may, beginning at 9:20 a.m. Eastern Time, send a message, making use of direct electronic access in accordance with Rule 4300, of any size, that is at the receiving market maker's quoted price ("Trade-or-Move Message"). Any Registered Reporting ADF Market Maker that receives a Trade-or-Move Message at or after 9:20 a.m. Eastern Time, and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.

(B) Locked/Crossed Market Between 9:20 and 9:29:59 a.m.

(i) Before a Registered Reporting ADF ECN enters a quote that would lock or cross the market between 9:20 and 9:29:29 a.m. Eastern Time, the ECN must first send, making use of direct electronic access in accordance with Rule 4300, to the market maker or ECN whose quote it would lock or cross a Trade-or-Move Message that is at or superior to the receiving market maker's or ECN's quoted price. An ECN that sends a Trade-or-Move Message during these periods must then wait at least 10 seconds before entering a quote that would lock or cross the market

(ii) If a Registered Reporting ADF Market Maker locks or crosses the market between 9:20 and 9:29:29 a.m. Eastern Time, the Registered Market Maker must then immediately send, making use of direct electronic access in accordance with Rule 4300, to the market maker whose quotes it is locking or crossing a Trade-or-Move message that is at the receiving market maker's or ECNs quoted price.

(iii) Market participants shall be prohibited from entering a quote that would lock or cross the market between 9:29:30 and 9:29:59.

(C)(i) In the case of securities included in the Nasdaq 100 Index or the S&P 400 Index, a Trade-or-Move Message must be for at least 10,000 shares (in instances where there are multiple market makers to a lock/cross, the locking/crossing market maker must send a message to each party to the lock/cross and the aggregate size of all such messages must be at least 10,000 shares); provided, however, that if a market participant is representing an agency order, the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 10,000 shares.

(ii) In the case of all other securities, a Trade-or-Move Message must be for at least 5,000 shares (if multiple market makers would be locked/crossed, each one must receive a Trade-or-Move Message and the aggregate size of all such messages must be at least 5,000 shares); provided, however, that if a market participant is representing an agency order, the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 5,000 shares.

(D) A market maker that receives a Trade-or-Move Message must, within 10 seconds of receiving such message, either fill the incoming Trade-or-Move Message for the full size of the message, or move its bid down (offer up) by a quotation increment that restores or maintains an unlocked/uncrossed market.

(E) A Registered Reporting ADF Market Maker that sends a Trade-or-Move Message pursuant to this rule must append to the message a symbol indicating that it is a Trade-or-Move Message.

(F) For the purposes of this rule "agency order" shall mean an order(s) that is for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer, or for the benefit of an "institutional account" as defined in NASD Rule 3110. An agency order shall not include an order(s) that is for the benefit of a market maker in the security at issue, but shall include an order(s) that is for the benefit of a broker/dealer that is not a market maker in the security at issue.

(3) Obligations Regarding Locked/Crossed Market Conditions During Market Hours

A Registered Reporting ADF Market Maker, prior to entering a quotation that locks or crosses another quotation, must make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Reasonable efforts shall include making use of direct electronic access in accordance with Rule 4300A. Pursuant to the provisions of paragraph (b) of this Rule, a Registered Reporting ADF Market Maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through NASD's Alternative Display Facility at the time of receipt of any order.

(4) Except as indicated in subsection (2)(B), for purposes of this Rule 4613A(d), the term "Registered Reporting ADF Market Maker" shall include:

(A) any NASD member that enters into an ECN, as that term is defined in SEC Rule 11Ac1–1(a)(8), an order that is displayed through NASD's Alternative Display Facility;

(B) any NASD member that operates the ECN when the order being displayed has been entered by a person or entity that is not an NASD member;

(C) any NASD member that enters into an ATS, as that term is defined in SEC Regulation ATS, a priced order that is displayed through NASD's Alternative Display Facility; and

(D) any NASD member that operates the ATS when the priced order being displayed has been entered by a person or entity that is not an NASD member.

(e) Other Quotation Obligations

(1) Members that display priced quotations on a real-time basis for Nasdaq securities in two or more market centers that permit quotation updates on a real-time basis must display the same priced quotations for the security in each market center.

(2) A member that is registered as a market maker in a Nasdaq security shall be obligated to have available in close proximity to NASD's Alternative Display Facility terminal at which it makes a market in a Nasdaq security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of other market makers trading and quoting that Nasdaq security.

IM–4613A. Autoquote Policy

(a) General Prohibition—NASD bans the automated update of quotations by market makers through NASD's Alternative Display Facility. Except as provided below, this policy prohibits systems known as "autoquote" systems from effecting automated quote updates or tracking of inside quotations through NASD's Alternative Display Facility. This ban is necessary to offset the negative impact on the capacity and operation of NASD's Alternative Display Facility that may be caused by certain autoquote techniques that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market.

(b) Exceptions to the General Prohibition—Automated updating of quotations is permitted when: (1) the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size), and is in compliance with Rule 4613A(b)(2); (2) it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); or (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order.

4614A. Reserved

4615A. Reserved

4616A. Reserved

4617A. Normal Business Hours

A Registered Reporting ADF Market Maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. A Registered Reporting ADF Market Maker may remain open for business on a voluntary basis for any period of time between 4:00 p.m. Eastern time and 6:30 p.m. Eastern Time. Registered Reporting ADF Market Makers whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of NASD, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.

4618A. Clearance and Settlement

(a) A market maker shall clear and settle transactions effected on the ADF in Nasdaq securities that are eligible for net settlement through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

(b) Notwithstanding paragraph (a), transactions in Nasdaq securities may be settled "ex-clearing" provided that both parties to the transaction agree.

4619A. Withdrawal of Quotations and Passive Market Making

(a) A Registered Reporting ADF Market Maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact NASD Alternative Display Facility Operations to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. If a Registered Reporting ADF Market Maker also is a Registered Reporting Nasdaq Market Maker, it must obtain excused withdrawal status in both facilities for the same time period. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by NASD Alternative Display Facility Operations only upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by NASD Alternative Display Facility Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if notice is received by NASD one business day in advance and is approved by NASD. Excused withdrawal status based on vacation may be granted only if:

(1) the request for withdrawal is received by NASD one business day in advance, and is approved by NASD; and

(2) the request includes a list of the securities for which withdrawal is requested.

(c) Excused withdrawal status may be granted to a Registered Reporting ADF Market Maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611A, above, provided the Registered Reporting ADF Market Maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(d) Excused withdrawal status may be granted to a member that experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system).

(e) Excused withdrawal status may be granted to a Registered Reporting ADF Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, thereby terminating its registration as a Registered Reporting ADF Market Maker; provided however, that if NASD finds that the Registered Reporting ADF Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620A.

(f) Excused withdrawal status or passive market maker status may be

granted to a Registered Reporting ADF Market Maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rules 101, 103, or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to NASD Alternative Display Facility Operations and the Market Regulation Department of NASD no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by subparagraph (f)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each market maker that is a distribution participant or an affiliated purchaser to withdraw the market maker's quotations, or that includes a request on behalf of each market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) that its quotations be identified as those of a passive market maker and includes the contemplated date and time of the commencement of the restricted period.

(B) The managing underwriter shall advise each Registered Reporting ADF Market Maker that it has been identified as a distribution participant or an affiliated purchaser to NASD Alternative Display Facility Operations and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies NASD Alternative Display Facility Operations as required by subparagraph (f)(2), below.

(2) A Registered Reporting ADF Market Maker that has been identified to NASD Alternative Display Facility Operations as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify NASD Alternative Display Facility Operations and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having its quotations withdrawn or identified as the quotations of a passive market maker.

(3) If a Registered Reporting ADF Market Maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies NASD Alternative Display Facility Operations of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit NASD from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact NASD Alternative Display Facility Operations to obtain an excused withdrawal as required by subparagraph (a) of this Rule.

(4) The quotations of a passive market maker shall be identified on NASD Alternative Display Facility Data Systems as those of a passive market maker.

(5) A member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (f)(1) of this Rule shall submit a request to NASD Alternative Display Facility Operations and the Market Regulation Department of NASD to rescind the excused withdrawal status or passive market making status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request referenced in this subparagraph may be submitted on the Underwriting Activity Report.

(g) NASD's Alternative Display Facility Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of a denial of an excused withdrawal pursuant to this Rule, or the conditions imposed on their reentry.

4620A. Voluntary Termination of Registration

A Registered Reporting ADF Market Maker may voluntarily terminate its registration in a security by (1) withdrawing its quotations from NASD's Alternative Display Facility and not re-entering its quotations for five (5) minutes, or (2) failing to re-enter quotations within thirty (30) minutes of the end of a trading halt. A Registered Reporting ADF Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days, absent an excused withdrawal specified in Rule 4619A.

Withdrawal from participation as a Registered Reporting ADF Market Maker in NASD's Alternative Display Facility shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a Registered Reporting ADF Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and thereby terminates its registration as a market maker in Nasdaq securities may register as a market maker at any time after a clearing arrangement has been reestablished.

4621A. Suspension and Termination of Quotations by NASD Action

NASD may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Registered Reporting ADF Market Maker's authority to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.

4622A. Termination of NASD Alternative Display Facility Data System Service

NASD may, upon notice, terminate NASD Alternative Display Facility Data System service in the event that a Registered Reporting ADF Market Maker fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by NASD.

4623A. Alternative Trading Systems

(a) NASD may provide a means to permit alternative trading systems ("ATSs"), as such term is defined in Regulation ATS, and electronic communications networks ("ECNs"), as such term is defined in SEC Rule 11Ac1–1(a)(8), to comply with the display requirements of SEC Rule 301(b)(3) and the terms of the ECN display alternative provided for in SEC Rule 11Ac1–1(c)(5)(ii)(A) and (B) ("ECN display alternatives"). NASD will not facilitate compliance with access requirements, which are the responsibility of Market Participants under Rule 4300A.

(b) An ATS or ECN that seeks to use NASD-provided means to comply with SEC Rule 301(b)(3) and/or the ECN display alternatives shall:

(1) demonstrate to NASD that it is in compliance with Regulation ATS or that it qualifies as an ECN meeting the definition in the SEC Rule;

(2) be registered as an NASD member;

(3) enter into and comply with the terms of an NASD Alternative Display

Facility Workstation Subscriber Agreement, as amended for ATSs and ECNs;

(4) agree to provide for NASD's dissemination in the quotation data made available to quotation vendors the prices and sizes of NASD Registered Market Maker orders (and orders from other subscribers of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in NASD's Alternative Display Facility), at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ATS or ECN; and prior to entering such prices and sizes, register with NASD Alternative Display Facility Operations as an ATS or ECN; and

(5) comply with Rule 4300A.

(c) When an NASD member attempts to access electronically an ATS or ECN-displayed order by sending an order that is larger than the ATS' or ECN's Nasdaq-displayed size and the ATS or ECN is displaying the order on a reserved size basis, the NASD member that operates the ATS or ECN shall execute such delivered order:

(1) up to the size of the delivered order, if the ATS or ECN order (including the reserved size and displayed portions) is the same size or larger than the delivered order; or

(2) up to the size of the ATS or ECN order (including the reserved size and displayed portions), if the delivered order is the same size or larger than the ATS or ECN order (including the reserved size and displayed portions).

No ATS or ECN operating through NASD's Alternative Display Facility pursuant to this Rule is permitted to provide a reserved-size function unless the size of the order displayed through NASD's Alternative Display Facility is 100 shares or greater. For purposes of this Rule, the term "reserved size" shall mean that a customer entering an order into an ATS or ECN has authorized the ATS or ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

4624A. Reserved

4625A. Reserved

4630A. Reporting Transactions in Nasdaq Securities

This Rule 4630A Series governs the reporting by members of ADF-eligible securities through NASD's Trade Reporting and Comparison Service ("TRACS"). The Rule 5400 Series provides the rules for determining which member must report a trade and whether a trade must be reported to TRACS pursuant to this Rule 4630A Series. Participation in the trade reporting function of TRACS is mandatory for all members that have a trade reporting obligation through TRACS under the Rule 5400 Series or that choose to report transactions through TRACS. Participation in the trade reporting function of TRACS is conditioned upon (a) execution of, and continuing compliance with, a TRACS trade reporting Participant Application Agreement and (b) maintenance of the physical security of the equipment on the premises of the member to prevent unauthorized entry of information into the trade reporting function of TRACS.

4631A. Reserved

4632A. Transactions Reported by Members

(a) When and How Transactions are Reported

Members shall comply with Rule 5430(a) for determining when and how transactions are reported.

(b) Which Party Reports Transaction

Members shall comply with Rule 5430(b) for determining which party reports a transaction.

(c) Information To Be Reported—Two Party Trade Reports

(1) A two party trade report is a last sale report that denotes a trade between one Reporting NASD member and one Non-Reporting Member. The Reporting NASD Member is denoted as the ("MMID") side of the trade report and the Non-Reporting Member is denoted as the ("OEID") side of the report.

(2) Each two party last sale report submitted by a reporting nasd member should contain:

(A) Security identification symbol (SECID);

(B) Number of shares or bonds;

(C) Price of the transaction as required by paragraph (h) below;

(D) A designated symbol denoting whether the transaction, from the Reporting NASD Member's perspective, is a buy, sell, sell short, sell short exempt, or cross;

(E) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a buy, sell, sell short, or sell short exempt;

(F) A designated symbol denoting whether the transaction, from the perspective of the Reporting Member, is a principal, riskless principal, or agent;

(G) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a principal, riskless principal, or agent;

(H) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include:

(i) an order identifier, meeting such parameters as may be prescribed by NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1));

(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report.

(I) Execution time for any transaction not reported within 90 seconds of execution;

(J) The market participant identifier of the Reporting Member and the Non-Reporting Member;

(K) Reporting Member clearing broker;

(L) Reporting Member Executing Broker in case of a "give up;"

(M) Non-Reporting Member Executing Broker;

(N) Non-Reporting Member introducing broker in case of a "give up;"

(O) Non-Reporting Member clearing broker;

(P) A designated symbol denoting whether the trade report should be published;

(Q) A designated symbol denoting whether the trade report should be compared in TRACS;

(R) If the contra side to the trade report is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(S) If the contra side to the trade report is a Non-NASD member, the Reporting Member shall indicate with the designated symbol that the contra side is a non-member.

(T) For two party trade reports submitted pursuant to an Automated Give Up ("AGU") arrangement or a Qualified Service Representative ("QSR") Agreement, disclosure of the information set forth in subparagraphs (e)(2)(E) and (G) is mandatory.

(3)(A) In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (e)(2)(D), (E), (F), (G), or (H)(i) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:

(i) Short sale indicator;

(ii) Volume related to short sale indicator change;

(iii) Capacity Indicator;
(iv) Volume related to capacity change; or
(v) Branch Sequence Number
(B) The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.
(C) Each trade report addendum must contain the following information:
(i) Reference number for the original trade report that is being amended or modified;
(ii) OEID side or MMID side flag; and
(iii) MPID.

(d) Information To Be Reported—Three Party Trade Reports

(1) A three party trade report is a single last sale trade report that denotes one Reporting Member and two contra parties. The Reporting Member is denoted as the MMID side of the trade report and the two non-reporting sides are denoted as the OEID side of the trade report. In a three party report, the Reporting Member is the buyer to one OEID and the seller to the other OEID. Registered ECNs may submit three party trade reports. Riskless principal trades also may be submitted by reporting members as three party trade reports.
(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:

Transaction Information

(A) Security Identification Symbol (SECID);
(B) Number of shares or bonds;
(C) Price of the transaction as required by paragraph (h) below;
(D) Execution time for any transaction not reported within 90 seconds of execution;
(E) The market participant identifier of the Reporting Member and the two Non-Reporting Members;
(F) A designated symbol denoting whether the trade should be published;
(G) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include:
(i) an order identifier, meeting such parameters as may be prescribed by NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)). This order number must associate both the buy side and sell side OATS Execution Reports to the TRACS report;
(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report.

MMID Side

(H) All three party trade reports from ECNs must be marked as agency cross transactions;
(I) All three party trade reports from Non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol denoting whether the trade between the non-ECN and the buy-side OEID is a sell, sell short, or sell short exempt transaction;
(J) Reporting Member clearing broker;
(K) Reporting Member Executing Broker in the case of a "give up"; Buy Side OEID
(L) Buy Side OEID executing broker;
(M) Buy Side OEID introducing broker in case of a "give up";
(N) Buy Side OEID clearing broker;
(O) If known, a designated symbol denoting whether the trade, from the Buy Side OEID's perspective, is as principal, riskless principal, or agent;
(P) If the Buy Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;
(Q) If the Buy Side OEID is a non-NASD member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;
(R) A designated symbol denoting whether the trade between the MMID and the Buy Side OEID shall be compared in TRACS;

Sell Side OEID

(S) Sell Side OEID executing broker;
(T) Sell Side OEID introducing broker in case of a "give up";
(U) Sell Side OEID clearing broker;
(V) If known, a designated symbol denoting whether the trade, from the Sell Side OEID's perspective, is as principal, riskless principal, or agent;
(W) If known, a symbol denoting whether the trade, from the Sell Side OEID's perspective, is a sell, sell short, or sell short exempt transaction;
(X) If the Sell Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;
(Y) If the Sell Side OEID is a non-NASD Member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;
(Z) A designated symbol denoting whether the trade between the MMID and the Sell Side OEID shall be compared in TRACS;
(AA) If the transaction between the Buy Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in subparagraph (f)(2)(O) is mandatory; and
(BB) If the transaction between the Sell Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in subparagraphs (f)(2)(V) and (W) is mandatory.
(3)(A) In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (f)(2)(G)(i), (I), (O), (V), or (W) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:
(i) Short sale indicator;
(ii) Volume related to short sale indicator change;
(iii) Capacity Indicator;
(iv) Volume related to capacity change; or
(v) Branch Sequence Number
(B) The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.
(C) Each trade report addendum must contain the following information:
(i) Reference number for the original trade report that is being amended or modified;
(ii) OEID side or MMID side flag; and
(iii) MPID.
(e) Procedures for Reporting Price and Volume
(1) Members that are required, or have the option, to report transactions pursuant to paragraph (d) above shall transmit last sale reports in the following manner:
(A) For agency transactions, report the number of shares (or bonds) and the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50;
REPORT 100 shares at 40.
(B) For dual agency transactions, report the number of shares (or bonds) only once, and report the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50;
BUY as agent 100 shares at 40 plus a commission of $12.50;
REPORT 100 shares at 40.
(C)(i) For principal transactions, except as provided below, report each

purchase and sale transaction separately and report the number of shares (or bonds) and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares (or bonds) involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

Example:

BUY as principal 100 shares from another member at 40 (no mark-down included);

REPORT 100 shares at 40.

Example:

BUY as principal 100 shares from a customer at 39.85 which includes a .15 mark-down from prevailing market at 40;

REPORT 100 shares at 40.

Example:

SELL as principal 100 shares to a customer at 40.15, which includes a .15 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

Example:

BUY as principal 10,000 shares from a customer at 39.75, which includes a .25 mark-down or service charge from the prevailing market of 40;

REPORT 10,000 shares at 40.

(ii) Exception: A "riskless" principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one three party transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s) to NASD:

a. The member with the obligation to report the transaction pursuant to paragraph (d) above must submit a last sale report for the initial leg of the transaction.

b. Regardless of whether a member has a reporting obligation pursuant to paragraph (d) above, the firm must submit, for the offsetting, "riskless" portion of the transaction, either:

1. a clearing-only report with a capacity indicator of "riskless principal," if a clearing report is necessary to clear the transaction; or

2. a non-tape, non-clearing report with a capacity indicator of "riskless principal," if a clearing report is not necessary to clear the transaction.

Example:

SELL as a principal 100 shares to another member at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40 minus a mark-down of $12.50;

REPORT 100 shares at 40 by submitting to NASD either a single trade report marked with a "riskless principal" capacity indicator or by submitting the following reports:

3. where required by this Rule, a tape report marked with a "principal" capacity indicator; and

4. either a non-tape, non-clearing report or a clearing-only report marked with a "riskless principal" capacity indicator.

(D) For transactions that are executed at a price different from the current market when the execution is based on a prior reference point in time, members shall append to the transaction report a trade report modifier designated by NASD and shall include in the transaction report the prior reference time.

Example:

At 9:45 a.m., a member discovers that a customer's order to BUY 100 shares at the opening price has not been executed.

The member executes the customer's order at 9:45 a.m. at the opening price (40). Current market is 41.

REPORT 100 shares at 40 and append the .PRP modifier with the time 9:30.

(f) Aggregation of Transaction Reports

(1) Under the following conditions, individual executions of orders in a security at the same price may be aggregated, for transaction reporting purposes, into a single transaction report. Individual transactions in convertible debt securities cannot be aggregated pursuant to this paragraph.

(A) Orders received prior to the opening of the reporting member's market in the security and simultaneously executed at the opening. Also, orders received during a trading or quotation halt in the security and executed simultaneously when trading or quotations resume. In no event shall a member delay its opening or resumption of quotations for the purpose of aggregating transactions.

Example:

A firm receives, prior to its market opening, several market orders to sell which total 10,000 shares. All such orders are simultaneously executed at the opening at a reported price of 40.

REPORT 10,000 shares at 40.

(B) Simultaneous executions by the member of customer transactions at the same price, e.g., a number of limit orders being executed at the same time when a limit price has been reached.

Example:

A firm has several customer limit orders to sell which total 10,000 shares at a limit price of 40. That price is reached and all such orders are executed simultaneously.

REPORT 10,000 shares at 40.

(C) Orders relayed to the trading department of the reporting member for simultaneous execution at the same price.

Example:

A firm purchases a block of 50,000 shares from an institution at a reported price of 40.

REPORT 50,000 at 40.

Subsequently, one of the firm's branch offices transmits to the firm's trading department for execution customer buy orders in the security totaling 12,500 shares at a reported price of 40.

REPORT 12,500 at 40.

Subsequently, another branch office transmits to the firm's trading department for execution customer buy orders totaling 15,000 shares in the security at a reported price of 40.

REPORT 15,000 at 40.

Example:

Due to a major change in market conditions, a firm's trading department receives from a branch office for execution customer market orders to sell totaling 10,000 shares. All are executed at a reported price of 40.

REPORT 10,000 at 40.

(D) Orders received or initiated by the reporting member that are impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual order of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in

anticipation of aggregating the transaction with other transactions. The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.

Examples:

A reporting member receives and executes the following orders at the following times and desires to aggregate reports to the maximum extent permitted under this Rule.

First Example

11:01:00 500 shares at 40
11:01:05 500 shares at 40
11:01:10 9,000 shares at 40
11:01:15 500 shares at 40
REPORT 10,500 shares at 40 within ninety seconds of 11:01.

Second Example

11:01:00 100 shares at 40
11:01:10 11,000 shares at 40
11:01:30 300 shares at 40
REPORT 400 shares within ninety seconds of 11:01 and 11,000 shares within ninety seconds of 11:01:10 (individual transactions of 10,000 shares or more must be reported separately).

Third Example

11:01:00 100 shares at 40
11:01:15 500 shares at 40
11:01:30 200 shares at 40
11:02:30 400 shares at 40
REPORT 800 shares at 40 within ninety seconds of 11:01 and 400 shares at 40 within ninety seconds of 11:02:30 (the last trade is not within sixty seconds of the first and must, therefore, be reported separately).

(2) The reporting member shall identify aggregated transaction reports and order tickets of aggregated trades in a manner directed by NASD.

(g) Reporting Transactions on Form T

All Reporting NASD Members required (or that elect) to report transactions to NASD's Alternative Display Facility shall report, as soon as practicable to NASD's Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to NASD's Alternative Display Facility is not possible (e.g., the ticker symbol for the security is no longer available, a market participant identifier is no longer active, or NASD will not accept the date of execution because NASD's Alternative Display Facility was closed on that date). Transactions that can be reported to NASD, whether on trade date or on a subsequent date on an "as of" basis (T+N), shall not be reported on Form T.

(h) Trade Tickets

All trade tickets for transactions in Nasdaq securities shall be time-stamped at the time of execution.

(i) Special Trade Indicator

A Reporting Member shall append the designated symbol for special trades, step out trades, reversals, and as-of trades.

(j) Clearing Indicators

A Reporting Member shall use a designated symbol to denote whether the trade is to be: (i) compared in TRACS; (ii) not compared in TRACS; (iii) compared in TRACS pursuant to an Automatic Give Up Agreement ("AGU"); or (iv) not compared in TRACS, but locked in pursuant to a Qualified Service Representation Agreement ("QSR").

(k) Transactions Not To Be Reported To NASD

The following types of transactions effected by NASD members shall not be reported to TRACS for publication purposes:

(1) odd-lot transactions;

(2) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than "shelf distributions") or of an unregistered secondary distribution;

(3) transactions made in reliance on Section 4(2) of the Securities Act of 1933;

(4) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security (e.g., to enable the seller to make a gift);

(5) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

(l) Dissemination of Transaction Reports in Convertible Debt Securities

For surveillance purposes, NASD will collect and process trade reports for all transactions in convertible debt securities listed on Nasdaq and effected through NASD's Alternative Display Facility. On a real-time basis, NASD will disseminate to members and the public through NASD, and through securities information processors, transactions in convertible debt securities reported to it equaling 99 bonds or less.

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5400. Nasdaq Stock Market and Alternative Display Facility Trade Reporting

5410. Applicability

(a) For a period of time, NASD will operate two facilities for collecting trade reports for executions in Nasdaq National Market, Nasdaq SmallCap Market, and Nasdaq Convertible Debt securities ("designated securities"): The Nasdaq Stock Market and the Alternative Display Facility ("ADF"). Nasdaq will continue to operate the Automated Confirmation Transaction Service ("ACT"), and NASD, through the ADF, will operate Trade Reporting and Comparison Service ("TRACS"). This Rule 5400 Series establishes the rules for determining which member must report a trade and whether a trade must be reported to ACT, pursuant to the Rule 4630, 4640, 4650 and 6100 Series or TRACS, pursuant to the Rule 4630A and 6100A Series.

(b) The requirements of this Rule 5400 Series are in addition to the trade reporting requirements contained in Rule Series 4630, 4640, 4650, 6100, 4630A and 6100A Series.

5420. Definitions

(a) Terms used in this Rule 5400 Series shall have the meaning as defined in the NASD's By-Laws and Rules, SEC Rule 11Aa3–1, and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, unless otherwise defined herein.

(b) "Automated Confirmation Transactions Service" or "ACT" is the service that, among other things, accommodates reporting and dissemination of last sale reports in designated securities.

(c) "Registered Reporting *Nasdaq* Market Maker" means a member of [the Association which] *NASD that* is registered as a Nasdaq market maker in a particular designated security. A member is a Registered Reporting *Nasdaq* Market Maker in only those designated securities for which it is registered as a *Nasdaq* market maker. A member shall cease being a Registered Reporting *Nasdaq* Market Maker in a designated security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of *NASD* [the Association].

(d) "Non-Registered Reporting Member" means a member of [the Association which] *NASD that* is not a

Registered Reporting *Nasdaq* Market Maker *nor a Registered Reporting ADF Market Maker.*

(e) "Registered Reporting ADF Market Maker" means a member of NASD that is registered as an Alternative Display Facility ("ADF") market maker in a particular designated security. A member is a Registered Reporting ADF Market Maker in only those designated securities for which it is registered as an ADF market maker. A member shall cease being a Registered Reporting ADF Market Maker in a designated security when it has withdrawn or voluntarily terminated its quotations in that security on the ADF or when its quotations have been suspended or terminated by action of NASD.

(f) "Trade Reporting and Comparison Service" or "TRACS" is the service offered to those members that participate in the ADF that accommodates last sale reporting and dissemination and trade comparison of transactions in designated securities.

5430. Transaction Reporting

(a) When and How Transactions are Reported.

(1) Registered Reporting *Nasdaq* Market Makers *and Registered Reporting ADF Market Makers* shall, within 90 seconds after execution, transmit [through ACT] last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(2) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit through ACT *or TRACS, as applicable,* or if ACT *or TRACS* is unavailable due to system or transmission failure, by telephone to Market Operations Department, last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(3) Non-Registered Reporting Members shall report weekly to the Market Operations Department, on a form designated by the Board of Governors, last sale reports of transactions in designated securities which are not required to be reported under subparagraph (2) or (4).

(4) Transaction Reporting Outside Normal Market Hours

(A) Last sale reports of transactions in designated securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be *reported* [transmitted through ACT] within 90 seconds after execution and shall be designated as ".T" trades to denote their execution outside normal market hours. Additionally, last sale reports of transactions in designated securities executed between the hours of 4:00 p.m. and 6:30 p.m. Eastern Time shall be *reported* [transmitted through ACT] within 90 seconds after execution; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds must include the time of execution on the trade report.

(B) Last sale reports of transactions in designated securities executed outside the hours of 8:00 a.m. and 6:30 p.m. Eastern Time shall be reported as follows:

(i) Last sale reports of transactions executed between midnight and 8:00 a.m. Eastern Time shall be *reported* [transmitted through ACT] between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date, be designated as ".T" trades to denote their execution outside normal market hours, and be accompanied by the time of execution. The party responsible for reporting on trade date, the information to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below;

(ii) Last sale reports of transactions executed between 6:30 p.m. and midnight Eastern Time shall be *reported* [transmitted through ACT] on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time, be designated "as/of" trades to denote their execution on a prior day, and be accompanied by the time of execution. [The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below.]

(5) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission into ACT *or TRACS* is not possible (*e.g.*, the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported into ACT *or TRACS*, whether on trade date or on a subsequent date on an "as of" basis (T+N), shall not be reported on Form T.

(6) All members shall report transactions occurring at prices based on average-weighting, or other special pricing formulae, [to Nasdaq] using a special indicator[, as] designated by *NASD* [the Association] and set out in the Symbol Directory.

(7) All trade tickets for transactions in eligible securities shall be time-stamped at the time of execution.

(8) Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2110.

(9) All members shall append a trade report modifier as designated by *NASD* [the Association] to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) Which Party Reports Transaction *and to Which Facility*

(1) In transactions between two Registered Reporting *Nasdaq* Market Makers, [only] the member representing the sell side shall report *the trade using ACT.*

(2) In transactions between a Registered Reporting *Nasdaq* Market Maker and a Non-Registered Reporting Member, [only] the Registered Reporting *Nasdaq* Market Maker shall report *the trade using ACT.*

(3) In transactions between two Non-Registered Reporting Members, [only] the member representing the sell side shall report *the trade using ACT or TRACS.*

(4) In transactions between a member and a customer, the member shall report[.] *as follows:*

(A) A Registered Reporting Nasdaq Market Maker shall report the trade using ACT;

(B) A Registered Reporting ADF Market Maker shall report the trade using TRACS; and

(C) A Non-Registered Reporting Member shall report the trade using ACT or TRACS.

(5) In transactions between two Registered Reporting ADF Market Makers, the member representing the sell side shall report the trade using TRACS.

(6) In transactions between a Registered Reporting ADF Market Maker and a Non-Registered Reporting Member, the Registered Reporting ADF Market Maker shall report the trade using TRACS.

(7) In transactions between a Registered Reporting Nasdaq Market Maker and a Registered Reporting ADF

Market Maker, the member representing the sell side shall report as follows:

(A) A Registered Reporting Nasdaq Market Maker shall report the trade using ACT; and

(B) A Registered Reporting ADF Market Maker shall report the trade using TRACS.

(8) If a member simultaneously is a Registered Reporting Nasdaq Market Maker and a Registered Reporting ADF Market Maker, and has the trade reporting obligation pursuant to paragraphs (1), (2), (4), (5), (6), or (7), the member can report the trade using either ACT or TRACS, unless the trade is executed using ACES; the Nasdaq National Market Execution System ("NNMS"); the SelectNet Service; the SmallCap Small Order Execution System ("SOES"); or the Primex Auction System ("Primex"). A trade executed using ACES must be reported using ACT, and trades executed using NNMS, SelectNet, SOES, or Primex will be reported to ACT automatically.

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6000. NASD SYSTEMS AND PROGRAMS

6100. AUTOMATED CONFIRMATION TRANSACTION SERVICE (ACT)

6110. Definitions

(a) through (l) No Change.

(m) The term "Reportable ACT Transaction" shall mean [all] inter-dealer transactions, including those for less than one round lot, in an ACT eligible security, and shall also include [all] transactions that are required *or eligible* to be submitted *utilizing ACT* [to the Association for trade reporting purposes] pursuant to the Rule 4630, 4640, 4650, *5400, 6400,* 6600, and 6900 Series.

(n) through (p) No Change.

6120. Participation in ACT

(a) Mandatory Participation for Clearing Agency Members

(1)(*A*) *Participation in ACT is mandatory for all members that execute transactions using the Nasdaq National Market Execution System, the SelectNet Service, the Primex Auction System, the SmallCap Small Order Execution System; ACES; the Computer Assisted Execution System, and the Intermarket Trading System/Computer Assisted Execution System.*

(*B*) [Pursuant to Article VII, Section 1(a)(vi) and (vii) of the By-Laws,] *P*[p]articipation in ACT is mandatory for [all brokers that are] members *that are participants* of a clearing agency registered with the Commission pursuant to Section 17A of the Act, and for [all brokers] *members* that have a clearing arrangement with such a broker, *unless a member subscribes to TRACS.* Such participation *in ACT* shall include the reconciliation of all over the counter clearing agency eligible transactions.

(2) through (6) No Change.

(b) No Change.

* * * * *

6130. Trade Report Input

(a) Reportable ACT Transactions

Members shall utilize ACT to report [All] transactions [in eligible securities] *that are required to be* [shall be] reported to [ACT] *Nasdaq pursuant to the Rule Series 4630, 4640, 4650, 5430, 6400, 6500 and 6600 Series,* including executions of less than one round lot if those executions are to be compared and locked-in. *Members may utilize ACT to report transactions that are eligible to be reported to Nasdaq pursuant to Rule 5430, including executions of less than one round lot if those executions are to be compared and locked-in.* All trades that are reportable transactions will be processed through the National Trade Reporting System; however, only those trades that are subject to regular way settlement and are not already locked-in trades will be compared and locked-in through ACT. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared in ACT or reported to NSCC. All transactions in Direct Participation Program securities shall be reported to ACT pursuant to the Rule 6900 Series as set forth therein.

(b) When and How Trade Reports are Submitted to ACT

ACT Participants shall transmit trade reports to *ACT* [the system] for transactions in Nasdaq securities within 90 seconds after execution, or shall utilize the Browse function in ACT to accept or decline trades within twenty (20) minutes after execution, according to the requirements of paragraph (c) of this Rule.

(c) Which Party Inputs Trade Reports to ACT

ACT Participants [Both parties executing a transaction] shall, subject to the input requirements below, either input trade reports into the ACT system or utilize the Browse feature to accept or decline a trade within the applicable time-frames as specified in paragraph (b) of this Rule. Trade data input obligations are as follows:

(1) through (13) No Change.

(e) No Change.

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6000A. NASD ADF SYSTEMS AND PROGRAMS

6100A. TRACS TRADE COMPARISON SERVICE

6110A. Definitions

(a) The term "Browse" shall mean the function of TRACS that permits a Participant to review (or query) for trades in the system identifying the Participant as a party to the transaction, subject to the specific uses contained in the TRACS Users Guide.

(b) The term "Clearing Broker/Dealer" or "Clearing Broker" shall mean the member firm that has been identified in the TRACS system as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.

(c) The term "Correspondent Executing Broker/Dealer" or "Correspondent Executing Broker" shall mean the member firm that has been identified in the TRACS system as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.

(d) The term "Introducing Broker/Dealer" or "introducing broker" shall mean the member firm that has been identified in the TRACS system as a party to the transaction, but does not execute or clear trades.

(e) The term "Participant" shall mean any member of NASD in good standing that uses the TRACS system as an NASD ADF Registered Reporting Market Maker according to the requirements of Rule 4611A , an ECN registered in accordance with Rule 4623A, an Order Entry Firm, or a clearing broker/dealer, correspondent executing broker/dealer, or introducing broker/dealer.

(f) The terms "Participant," "TRACS Order Entry Firm," "correspondent executing broker/dealer," "correspondent executing broker," "introducing broker/dealer," "introducing broker," "clearing broker/dealer," and "clearing broker" shall also include, where appropriate, the Non-Member Clearing Organizations listed in Rule 6120A(a)(5) below and their qualifying members.

(g) The term "Parties to the Transaction" shall mean the executing brokers, introducing brokers and clearing brokers, if any.

(h) The term "Reportable TRACS Transaction" shall mean those transactions in a TRACS eligible security that are required, or are eligible, to be submitted utilizing TRACS pursuant to the Rule 4630A, 5400 and 6400A Series. The term also shall include transactions in TRACS eligible

securities that are for less than one round lot, and those transactions that are to be compared and locked-in for settlement.

(i) The term "Reporting Party" shall mean the TRACS Participant that is required to input the trade information, according to the requirements in NASD Rule 4630A Series.

(j) The term "Trade Reporting and Comparison Service" or "TRACS" shall mean the automated system owned and operated by NASD as part of the Alternative Display Facility that reports trades and compares trade information entered by TRACS participants and submits "locked-in" trades to Depository Trust Clearing Corporation (DTCC) for clearance and settlement; transmits reports of the transactions automatically to the Securities Information Processor, if required, for dissemination to the public and the industry; and provides participants with monitoring capabilities to facilitate participation in a "locked-in" trading environment.

(k) The term "TRACS ECN" shall mean a member of NASD that is an electronic communications network ("ECN") that elects to display orders in NASD's Alternative Display Facility pursuant to Rule 4623A and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member. This term shall also include an NASD member that is an alternative trading system ("ATS") that displays orders in NASD's Alternative Display Facility pursuant to Rule 4623A and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(l) The term "TRACS Eligible Security" shall mean Nasdaq National Market, Nasdaq SmallCap Market security and Nasdaq Convertible Debt securities.

(m) The term "TRACS Market Maker" shall mean a member of NASD that is registered as an NASD ADF Market Maker and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(n) The term "TRACS Order Entry Firm" shall mean a member of NASD that is a firm that executes orders but does not act as a market maker in the instant transaction and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

6120A. Participation in TRACS Trade Comparison Feature by Participants in the Alternative Display Facility

The following Rules 6120A through 6190A apply to members that effect transactions in ADF-eligible securities through the Alternative Display Facility.

(a) Mandatory Participation for Clearing Agency Members

(1) Participation in TRACS trade comparison feature is mandatory for any NASD member that effects transactions in ADF-eligible securities through the Alternative Display Facility, which are not locked-in and sent directly to Deposit Trust Clearing Corporation ("DTCC") by that member. All members, whether or not they must participate in the TRACS trade comparison feature, must comply with the trade reporting requirements described in the Rule 4630A Series.

(2) Participation in the TRACS trade comparison feature as a Market Maker shall be conditioned upon the TRACS Market Maker's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;

(C) registration as an NASD ADF Market Maker or ECN for Nasdaq securities pursuant to Rule 4611A , if applicable, and compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the TRACS Market Maker to prevent unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Market Maker, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.

(3) Participation in the TRACS trade comparison feature as an Order Entry Firm shall be conditioned upon the Order Entry Firm's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the TRACS Order Entry Firm to prevent the unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Order Entry Firm, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.

(4) Participation in the TRACS trade comparison feature as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the TRACS Clearing Broker to prevent the unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.

(5) Participation in the TRACS trade comparison feature as an ECN shall be conditioned upon the ECN's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in, or maintenance of an effective clearing arrangement with a member of, a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the ECN to prevent the unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS ECN, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.

(6) Each TRACS trade comparison Participant shall be obligated to inform NASD of non-compliance with any of the participation requirements set forth above.

(b) Participant Obligations in TRACS

(1) Access to TRACS

Upon execution and receipt by NASD of the TRACS trade comparison Participant Application Agreement, a TRACS trade comparison Participant may commence input and validation of trade information in TRACS eligible securities. TRACS trade comparison Participants may access the service via NASD terminals or Workstations or through computer interface during the hours of operation specified in the TRACS Users Guide. Prior to such input, all TRACS comparison Participants, including those that have trade report information submitted to NASD by any third party, must obtain from NASD a unique identifying Market Participant Symbol ("MMID" or "MPID"), and use that identifier for trade reporting and audit trail purposes.

(2) Market Maker Obligations

(A) TRACS Market Makers shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for TRACS eligible securities.

(B) A TRACS Market Maker that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by that Market Maker.

(C) A TRACS Market Maker that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison participant and notify the TRACS Operation Center if its clearing broker is to be changed; this will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS Market Maker fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature, and be precluded from participation as a Market Maker in ADF until such time as a clearing arrangement is reestablished and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD. If, however, NASD finds that the TRACS Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4619A.

(3) Order Entry Firm Obligations

(A) TRACS Order Entry Firms shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for TRACS eligible securities.

(B) A TRACS Order Entry Firm that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the Order Entry Firm.

(C) A TRACS Order Entry Firm that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS Order Entry Firm fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD.

(4) Clearing Broker Obligation

TRACS clearing brokers shall be obligated to accept and clear as a party to the transaction each trade that the system identifies as having been effected by itself or any of its correspondent executing brokers. Clearing brokers may cease to act as principal for a correspondent executing broker at any time provided that notification has been given to, received and acknowledged by the TRACS Operations Center and affirmative action has been completed by the Center to remove the clearing broker from the TRACS trade comparison feature for that correspondent executing broker. The clearing broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (4).

(5) ECN Obligations

(A) TRACS ECNs shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operations Center to verify authorization for submitting trade data to the TRACS trade comparison feature for TRACS eligible securities.

(B) A TRACS ECN that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the ECN.

(C) A TRACS ECN that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes ■ TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS ECN fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD.

6130A. Trade Report Input

(a) Reportable TRACS Transactions

Members shall utilize TRACS to report transactions that are required to be reported to NASD through the ADF pursuant to the Rule 4630A and 5430 Series, including executions of less than one round lot if those executions are to be compared and locked-in. Members may utilize TRACS to report transactions that are eligible to be reported to NASD pursuant to Rule 5430, including executions of less than one round lot if those executions are to be compared and locked-in. TRACS also will process trades that are submitted on an automatic locked-in basis for transmission to NSCC. All trades that are reportable transactions pursuant to NASD Rule 4630A Series will be transmitted to the applicable securities information processor; however, only those trades that are subject to regular way settlement and are not already

locked-in trades will be compared and locked-in through TRACS. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared in TRACS or reported to DTCC.

(b) When and How Trade Reports are Submitted to TRACS

(1) TRACS trade comparison Participants who are Reporting Members that choose to submit a trade for comparison shall transmit to TRACS the information required by Rule 4630A Series, as applicable, within 90 seconds of execution.

(2) A TRACS trade comparison Participant who is a Non-Reporting Member to a transaction shall, within twenty (20) minutes after execution accept (or decline, if applicable) a transaction submitted by the Reporting Member for comparison through TRACS. A Non-Reporting Member has an obligation to ensure that the information that it transmits or accepts in TRACS is timely, accurate and complete. Therefore, if a Non-Reporting Member accepts a transaction in TRACS transmitted by the Reporting Member for comparison through TRACS, then the Non-Reporting Member shall be deemed to have adopted all of the data elements required by Rule 4632(c) or (d), as applicable, concerning the Non-Reporting Member's side of the transaction, absent any subsequent modification of the trade through TRACS.

(3) Trades not required to be reported for public dissemination may still be compared and locked-in through TRACS.

(4) Reporting NASD Members may conduct the following functions in TRACS pursuant to TRACS specifications established by NASD: (i) MMID Trade Entry; (ii) Trade Cancellation; and (iii) Trade Break.

(5) Non-Reporting NASD Members may conduct the following functions in TRACS pursuant to TRACS specifications established by NASD: (i) Trade Accept; (ii) Trade Decline; and (iii) Trade Break.

(6) A party entering a trade report into the TRACS trade comparison feature shall use a designated symbol to denote whether the party is submitting the trade report as the Reporting Member or the Non-Reporting Member.

6140A. TRACS Processing

Locked-in trades may be determined through the TRACS trade comparison feature through one of the following methods:

(a) Trade Acceptance

The reporting party enters its version of the trade into the system and the contra party reviews the trade report and accepts or declines the trade. An acceptance results in a locked-in trade; a declined trade report is purged from the TRACS system at the end of trade date processing;

(b) T+N Trade Processing

T+N entries may be submitted until 6:30 p.m. each business day. At the end of daily matching, all declined trade entries will be purged from the TRACS system. TRACS will not purge any open trade (i.e. unmatched or unaccepted) at the end of its entry day, but will carry-over such trades to the next business day for continued comparison and reconciliation. TRACS will automatically lock in and submit to NSCC as such any carried-over T to T+21 (calendar day) trade if it remains open as of 2:30 p.m. on the next business day. TRACS will not automatically lock in T+22 (calendar day) or older open "as-of" trades that were carried-over from the previous business day; these trades will be purged by TRACS at the end of the carry-over day if such trades remain open. Members may re-submit these T+22 or older "as-of" trades into TRACS on the next business day for continued comparison and reconciliation for up to one calendar year.

6150A. Reserved

6160A. Obligation to Honor Trades

If a TRACS trade comparison Participant is reported by TRACS as a party to a trade that has been treated as locked-in and sent to DTCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.

6170A. Audit Trail Requirements

The data elements specified in the Rule 4600A Series are critical to NASD's compilation of a transaction audit trail for regulatory purposes. As such, all member firms using the TRACS Service have an ongoing obligation to input such information accurately and completely.

6180A. Reserved

6190A. Termination of TRACS Service

NASD may, upon notice, terminate TRACS service as to a Participant in the event that a TRACS Participant fails to abide by any of the rules or operating procedures of the TRACS service or NASD, or fails to honor contractual agreements entered into with NASD or its subsidiaries, or fails to pay promptly for services rendered by the TRACS Service.

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6950. ORDER AUDIT TRAIL SYSTEM

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6954. Recording of Order Information

(a) through (c) No Change.

(d) Order Modifications, Cancellations, and Executions

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

(1) through (2) No Change.

(3) When a Reporting Member executes an order, in whole or in part, the Reporting Member shall record:

(A) the order identifier assigned to the order by the Reporting Member,

(B) the market participant symbol assigned by [the Association] *NASD* to the Reporting Member,

(C) the date the order was first originated or received by the Reporting Member,

(D) the Reporting Member's number assigned for purposes of identifying transaction data in ACT,

(E) the designation of the order as fully or partially executed,

(F) the number of shares to which a partial execution applies and the number of unexecuted shares remaining,

(G) the identification number of the terminal where the order was executed, [and]

(H) the date and time of execution[.] *and*

(I) the national securities exchange or facility operated by a registered securities association where the trade was reported.

7000A. CHARGES FOR ADF SERVICES AND EQUIPMENT

7010A. System Services

(a) Trade Comparison and Reporting Service

The following charges shall be paid by ADF participants for use of the Trade Comparison and Reporting Service (TRACS):

Transaction Related Charges:

Comparison—$0.014/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Automated Give-Up—$0.029/side
Late Report—T+N—$0.30/side
Browse/query—$0.28/query*

*Each TRACS query incurs the $0.28 fee; however, the first accept or decline processed for

Trade Reporting—$.029/side (applicable only to reportable transaction not subject to trade comparison through TRACS)**

Corrective Transaction Charge—$0.25/Break, Decline transaction, paid by each party

(b) Quotation Updates

A member will be charged $0.01 per quotation update in the ADF quotation montage on those quotation updates that exceed three times the number of transactions reported to the ADF by the member. A "quotation update" includes any change to the price or size of a displayed quotation. This charge will be determined on a monthly basis.

(c) Volume Discounts on Transaction and Quotation Fees

During the initial six months of operation of the ADF, except as provided in paragraph (d) below, transaction fees incurred pursuant to paragraph (a) above, except the browse/query fee, and quotation update fees incurred pursuant to paragraph (b) above will be discounted on the following incremental basis:

Trades per month	Chargeable quotation updates per month	Discount (Percent)
Up to 2,000	Up to 8,000	0
2,001 to 4,000	8,001 to 15,000	10
4,001 to 6,000	15,001 to 25,000	25
6,001 to 8,000	25,001 to 35,000	35
8,001 or greater	35,001 or greater	50

(d) Limited Period Without Transaction and Quotation Charges

During the initial six months of operation of the ADF, members will not be charged for transaction fees incurred pursuant to paragraph (a) above and the quotation fees incurred pursuant to paragraph (b) above for up to a three-month period. The three-month "no transaction" fee period begins on the first day on which a member has incurred charges under paragraph (a) or paragraph (b) above, and will continue until the earlier of three months or the end of the six-month period.

7020A. Equipment Related Charges

The charge for using ADF terminal software shall be $275 per month for each terminal and $550 per month for each server.

7030A. Reserved

7040A. Installation, Removal, Relocation or Maintenance

ADF subscribers shall pay a minimum charge of $5,000 for installation costs associated with connecting to the ADF. Upon installation, removal, relocation or maintenance of terminal and related equipment, or combination thereof, the subscriber shall pay charges incurred by NASD or its subsidiaries above the $5,000 minimum, on behalf of the subscriber for the work being performed by the maintenance organization retained by NASD or its subsidiaries. Upon payment of $5,000 under this provision, members will receive a credit of up to $5,000 to be used toward their trade reporting and comparison charges imposed under Rule 7010A(a).

7050A. Other Services

(a) Daily Reports to Newspapers

Reports for regular public release, such as a list of closing quotations or market summary information for newspaper publication, shall be produced in a format acceptable to most publishers without charge. Should such information be transmitted to another location at the request of any firm, a charge may be imposed for such services by NASD or a subsidiary.

(b) Other Requests for Data

NASD or a subsidiary may impose and collect compensatory charges for data supplied upon request, where there is no provision elsewhere in this Rule 7000A Series for charges for such service or sale.

(c) Testing Services

(1) Subscribers that conduct tests of their computer-to-computer (CTCI) or digital interface (DIS/CHIPS) with the central processing facilities of Alternative Display Facility shall pay the following charges:

$285/hour—For CTCI/DIS/CHIPS testing between 9:00 a.m. and 5:00 p.m. Eastern Time on business days;

$333/hour—For testing at all other times on business days, or on weekends and holidays.

(2) The foregoing fees shall not apply to testing occasioned by:

(A) new or enhanced services and/or software provided by ADF or

(B) modifications to software and/or services initiated by ADF in response to a contingency.

7060A. Partial Month Charges

The charges for the month of commencement or termination of service will be prorated based on the number of trade days in that month.

7070A. Reserved

7080A. Late Fees

(a) All charges imposed by NASD that are past due 45 days or more will be subject to a late fee computed by taking the summation of one and one-half percent (1½%) of the amount past due for the first month plus one and one-half percent (1½%) of the amount past due for any month thereafter, compounded by late fees assessed for previous months.

(b) To illustrate how late fees are assessed, if an account is past due $1,000 for 45 days, the late fee would be $30.22. This charge reflects a charge of $15 for the first month past due ($1,000 × 1½%) and $15.22 for the second month past due ($1,015 × 1½%).

7100A. Minor Modifications in Charges

(a) To compensate for minor variations in annual net income, the Board of Governors of NASD may increase or decrease the total charges in this Schedule by 10% from the base charges as adopted on [insert adoption date] upon filing such change with the Commission pursuant to Section 19(b)(3) of the Act.

(b) To facilitate the development of new information services and uses under appropriate terms and conditions, arrangements of limited duration, geography and/or scope may be entered into with Broker/Dealers.

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a transaction is free, to insure that no more than $0.28 is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the $0.28 query charge.

**The trade reporting service charge is applicable to those trades input into TRACS for reporting purposes only, such as NSCC Qualified Special Representative reports and reports of internalized transactions.

Vendors and other persons which may modify or dispense with some or all of the charges contained in this Rule or the terms and conditions contained in standard agreements. The arrangements contemplated will permit the testing and pilot operation of proposed new information services and uses to evaluate their impact on and to develop the technical, cost and market research information necessary to formulate permanent charges, terms and conditions for filing with and approval by the Commission.

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9000. Code of Procedure

9100. Application and Purpose

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9120. Definitions

(a) through (r) No Change.

(s) "Market Regulation Committee"

The term "Market Regulation Committee" means the committee of NASD [Regulation] designated to consider the federal securities laws and the rules and regulations adopted thereunder and various *NASD* Rules [of the Association] and policies relating to:

(1) through (3) No Change.

(4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), the Nasdaq Stock Market Rules, (Rule 4000 Series), *NASD Alternative Display Facility Rules (Rule 4000A Series)* other Nasdaq and NASD Market Rules (Rule 5000 Series), NASD Systems and Programs Rules (Rule 6000 *and 6000A* Series), and Charges for Services and Equipment Rules (Rule 7000 *and 7000A* Series).

(t) through (cc) No Change.

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9700. Procedures on Grievances Concerning the Automated Systems

9710. Purpose

The purpose of this Rule 9700 Series is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by *NASD* [the Association], or any subsidiary thereof, and approved by the Commission, not otherwise provided for by the Code of Procedure as set forth in the Rule 9000 Series the Uniform Practice Code as set forth in the Rule 11000 Series or the Procedures for Review of Nasdaq Listing Determinations as set forth in the Rule 4800 Series.

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9720. Form of Application

All applications shall be in writing, and shall specify in reasonable detail the nature of and basis for the redress requested. If the application consists of several allegations, each allegation shall be stated separately. All applications must be signed and shall be directed to Nasdaq *relating to automated quotation, execution or communications system owned or operated by Nasdaq and to NASD for any such system owned and operated by NASD.*

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9730. Request for Hearing

Upon request, the applicant shall be granted a hearing after reasonable notice. In the absence of such request for a hearing, *NASD or* Nasdaq, *as applicable,* may, in its discretion, have any application set down for hearing or consider the matter on the basis of the application and supporting documents.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. NASD is proposing to operate the ADF on a pilot basis for nine months, pending the anticipated approval of the ADF Proposal and the anticipated approval of Nasdaq as a national securities exchange[4] and its resultant separation from NASD. As described in detail in the ADF Proposal, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's approval order for Nasdaq's Order Collector and Display Facility ("SuperMontage")[5] and in conjunction with Nasdaq's anticipated registration as a national securities exchange.

The ADF Pilot will provide ADF Pilot market participants[6] the ability to post quotations in Nasdaq securities and will provide all NASD members that participate in the ADF Pilot the ability to view quotations and report transactions in Nasdaq securities to the appropriate Securities Information Processor ("SIP")[7] for consolidation and dissemination of data to vendors and ADF Pilot Market Participants. The facility also will provide for trade comparison through the Trade Comparison and Reporting Service ("TRACS"), which is described in detail below. The facility further will provide for real-time data delivery to NASD for regulatory purposes, including enforcement of firm quote and related rules.

As proposed in the ADF Proposal, the ADF would provide Market Participants the ability to quote and trade Nasdaq and exchange-listed securities. However, several regulatory issues relating to the trading of exchange-listed securities on the ADF have not been resolved. Because these open issues do not relate to trading Nasdaq securities, NASD is proposing to operate the ADF Pilot with respect to Nasdaq National Market and Nasdaq SmallCap Market securities (collectively, "Nasdaq Securities") only. The ADF Pilot would operate on a pilot basis until the close of daily operation of the ADF Pilot on April 24, 2003.

During the ADF Pilot, the NASD will own and operate both Nasdaq and the ADF Pilot. Accordingly, the proposed rules for the ADF Pilot relating to specific quotation and trading requirements for activities through the ADF Pilot are separate from the quotation and trading rules relating to Nasdaq. Further, certain Nasdaq rules have been amended to reflect the fact that members that choose to participate in both Nasdaq and the ADF Pilot may elect to trade report to either facility, except for those transactions that are executed or facilitated by a Nasdaq system.[8]

The proposed ADF Pilot trade reporting rules are consistent with current requirements applicable to

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[4] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131).

[5] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR–NASD–99–53).

[6] Proposed ADF Pilot Rule 4300A defines "Market Participants" as either an NASD registered Market Maker or an NASD Registered electronic communication network ("ECN").

[7] Nasdaq initially will be the designated SIP for all transactions in Nasdaq securities. It is anticipated that during the ADF Pilot, the SIP will distribute a best bid and offer for both NASD and Nasdaq. *See* note 24, *infra* for further discussion on this issue.

[8] *See* proposed ADF Pilot Rule 4630, Rule 5430, and Rule 6100.

Nasdaq market participants and are not intended to require new or different trade reporting responsibilities for parties to transactions. As described in more detail herein, the proposed Rule 5400 Series details which party to a transaction has the trade reporting responsibility and where the party with the trade reporting responsibility is required, or has the choice, to trade report to TRACS or ACT.

Market Maker and ECN Registration. As required by existing rules applicable to Nasdaq market makers, ADF Pilot Market Participants would be required to register as market makers or electronic communications networks ("ECNs") for each security in which they make a market or display orders. Market makers would receive approval for registration upon demonstration that they are members in good standing and comply with the net capital and other financial responsibility requirements of the Act. To ease the administrative burden on NASD members, the ADF Pilot rules initially would allow registration as a market maker in the ADF Pilot upon proof that a firm is a registered Nasdaq market maker. Additionally, the proposed rule change tracks Nasdaq requirements that market makers maintain continuous two-sided, firm quotations and prescribes market maker obligations when a bid or offer locks or crosses the market. ECNs, however, may post one-sided quotes. If a Registered ADF Pilot market maker that also is a Registered Nasdaq market maker is seeking excused withdrawal status, it must obtain such excused withdrawal status in both facilities for the same time period.

Order Access Rule. The ADF Pilot rules differ from current rules applicable to trading in Nasdaq securities most significantly with respect to participants' ability to reach quotes for Nasdaq securities displayed in the ADF Pilot. NASD will not provide Market Participants in the ADF Pilot an order routing capability.[9] To provide a means to enforce compliance with firm quote obligations, locked and crossed quotation obligations,[10] and to provide other market participants within the ADF Pilot and in other markets the ability to provide best execution, in the absence of an NASD-provided router, the proposed rule change contains new Rule 4300A.

Direct and Indirect Access. Generally, proposed Rule 4300A requires NASD Market Participants to provide direct electronic access to other Market Participants and to provide to all other NASD members direct electronic access and allow for indirect electronic access to the individual Market Participant's quote. As discussed above, the rule defines Market Participants as either an NASD Registered Market Maker or an NASD Registered ECN. In other words, Market Participants are those members that post quotations in the ADF Pilot.

The rule requires Market Participants to provide other Market Participants with direct electronic access to their quotes. "Direct electronic access" is defined in the rule as the ability to deliver an order for execution directly against an individual NASD Market Participant's best bid or offer without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to NASD Market Participant's own customers. Therefore, while the linkage must be electronic—telephone access is insufficient—the proposed rule allows Market Participants flexibility to determine the type and method of linkage. For example, the proposed rule would permit Market Participants to link directly among themselves bilaterally using their own technology or to use a provider with multilateral order routing facilities to satisfy the linkage requirements. The rule requires that a Market Participant be equally accessible to all other Market Participants via this electronic link.

The quote access requirements of proposed Rule 4300A would not extend to intermarket access for trading Nasdaq securities. Unlike for CQS securities, the Commission has not mandated an intermarket linkage like ITS for Nasdaq securities. Accordingly, the NASD does not believe it appropriate for it to unilaterally impose such an intermarket linkage obligation. Rather, the NASD would propose that members of another market that desire to access a Market Participant's quotes in the ADF Pilot in Nasdaq securities establish an execution arrangement with that ADF Pilot Market Participant or, alternatively, become a member of the NASD.

The proposal also would require Market Participants to provide all other NASD broker-dealer members (*i.e.*, those members that do not quote in ADF Pilot but want to access ADF Pilot quotes) with direct electronic access and allow for indirect electronic access through their customer broker-dealers. Indirect electronic access is defined in the proposal as the ability to route an order through a Market Participant's customer broker-dealer for execution against the Market Participant's best bid and offer, without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to the Market Participant's customer broker-dealer providing access to the Market Participant's quotes.

The proposed rule change requires a Market Participant to offer both direct and indirect access to member broker-dealers. Market Participants must make themselves accessible to those member broker-dealers that wish to link with them directly and also must permit access indirectly through their customer broker-dealers. Similarly, the requirement to allow for indirect access does not permit Market Participants to refuse direct access to member broker-dealers that would prefer direct connectivity; rather, it creates an additional means for non-Market Participant broker-dealers to access Market Participants' quotes.

Rule 4300A prohibits Market Participants from in any way discouraging or discriminating against NASD members that wish to reach their quotes. NASD believes this approach is the most appropriate means to ensure equal and universal access by its members to the quotations displayed in the ADF Pilot. A Market Participant may deny access only in the limited circumstances where a broker-dealer fails to pay contractually obligated costs for access to a Market Participant's quotes; otherwise, Market Participants must provide access to their quotes displayed in the ADF Pilot to all NASD member broker-dealers seeking such access.

The order access rule would apply only to a Market Participant's top of book, *i.e.*, the best bid and offer that is displayed in the ADF Pilot. Therefore, Market Participants retain substantial flexibility to negotiate the terms of many other services, such as full book access, placing orders, and use of reserve sizes. ECNs are permitted under the proposed rule to charge more for "hit or take" access only " purely a liquidity taking function—than for full subscriber services, provided that the fee is

[9] The NASD will not provide an order routing capability for Nasdaq securities because the NASD believes this will allow it to better perform its core investor protection mission by focusing on regulation rather than market operations. The NASD also believes that market participants already do, and can continue to, establish and run order linkage facilities that are as or more efficient and innovative than a facility NASD could provide. The NASD believes that this approach comports with the requirements of the Act and is consistent with the NASD's obligation to promulgate rules that are designed generally to facilitate the orderly collection, distribution, and publication of quotations in securities traded otherwise than on a national securities exchange. *See* Section 15A(b)(11) of the Act, 15 U.S.C. 78o–3(b)(11).

[10] This proposed Rule 4300A would be the basis for satisfying, among other things, locked and crossed quotation obligations.

reasonable, based on objective criteria, and not imposed discriminatorily.

Cost Allocation. Under the proposed rule change, Market Participants must share equally the costs of providing to each other the direct electronic access required by rule, unless those Market Participants agree upon another cost-sharing arrangement. For example, assume the ADF Pilot consisted of five Market Participants and a sixth broker-dealer then registered as an ADF Pilot Market Participant. Under this scenario, each of the five existing Market Participants would be required to split with the new Market Participant the costs to establish their respective bilateral links with the new Market Participant, unless the parties agreed upon a different cost allocation.

Market Participants also must pay the costs to enable direct electronic access, as defined in the proposed rule, to their quotes. Thus, a Market Participant must bear the costs to build, upgrade or otherwise reconfigure its technology to allow other broker-dealers to connect to it, including the costs to accommodate additional volume resulting from indirect electronic access order flow through customer broker-dealers. NASD believes that these costs are part and parcel of choosing to operate in the ADF Pilot as a Market Participant and therefore must be borne by the Market Participant. Similarly, those non-Market Participant broker-dealers seeking access to a Market Participant's quote must bear the line or other costs necessary to connect with a Market Participant's network to send and receive orders.

Access Fees. A customer broker-dealer may charge its customers a fee to provide indirect access to a Market Participant's quotes. Under the rule proposal, a Market Participant may not influence or prescribe what a customer broker-dealer may charge its customers for indirect access to the Market Participant.[11] Nor may the Market Participant preclude or discourage a specific customer broker-dealer from providing indirect access, either through discriminatory pricing or by degrading its quality of service to its customer broker-dealer. A Market Participant may, however, offer to provide direct electronic access at a competitive price as part of the services it provides to customers.

Connectivity costs should be distinguished from fees for various other services provided by Market Participants. NASD recognizes that Market Participants have a variety of existing business relationships with broker-dealers for which they charge fees for services rendered, *e.g.*, the handling of limit orders, price improvement opportunities, and liquidity enhancement. Market Participants may continue to assess fees for these types of services, as permissible under current rules and regulations.

While ECNs may charge to execute against their best bid and offer, the fee must be based on reasonable and objective criteria. And while ECNs are permitted under the proposal to charge more for hit-or-take access than for full service access, they may not impose hit-or-take fees in a way that discriminates against a particular broker-dealer or class of broker-dealers. Thus, in setting its fee schedule, an ECN may not look through its order flow to identify and discriminate against the source of the order flow, *e.g.*, a competitor or a broker-dealer that is accessing the quote indirectly. Rather, an ECN may set a reasonable fee for order flow that takes liquidity—a fee that may be higher than for order flow that provides liquidity—and apply that fee to all such order flow, irrespective of its origin. Similarly, an ECN that offers a volume discount must offer the same terms to all broker-dealers accessing its quote, without regard to the identity of the broker-dealer or the source of its order flow. NASD believes that this rule is necessary to ensure fair and equitable access to ECN quotes displayed in the ADF Pilot.

Performance Standards. Because the ADF Pilot will not be providing an order router or automatic execution system, NASD believes that a minimum performance standard is appropriate to ensure that quotes in the ADF Pilot are reliable and accessible. Specifically, the proposed rule change would impose a technological requirement on Market Participants, mandating that their order linkage system provide them the capability to respond to an order—*i.e.*, accept or decline it—from another Market Participant or customer broker-dealer, within two seconds of receipt. Additionally, Market Participants would be required to have in place a system that can accomplish a "round trip" of an order from another Market Participant in three or fewer seconds, measured from the time an order is released by a Market Participant until the time notification of action taken on the order is received back by the Market Participant from whom the order originated. In short, there are two relevant time standards to ensure a minimum performance capability: Three-second turnaround for communications between Market Participants and two seconds for execution of orders received by Market Participants from other Market Participants, as well as customer broker-dealers.

Market participants will be required to certify that their systems can meet these standards at peak capacity, based on reasonable forecasts, before they are authorized to post quotes on the ADF Pilot. On an ongoing basis, Market Participants will be required to re-certify that they can meet these performance standards when volumes exceed those on which the initial certification was based. NASD will review test data to confirm the accuracy of such certifications.

The proposed performance standards are independent of existing firm quote requirements in Rule 11Ac1–1 under the Act,[12] NASD Rule 3320 and proposed NASD Rule 4613A(b), which require immediate execution of an order up to the quotation size displayed by the Market Participant upon receipt of an order to buy or sell. The performance standards ensure that all Market Participants have adequate technology that will not degrade the overall accessibility of quotes in the ADF Pilot. By comparison, the firm quote rule addresses a Market Participant's obligation to honor their quotes when they receive an order and prohibits backing away. Accordingly, the proposal would not require market makers to fill orders in two seconds. However, due to their structure, broker-dealers whose business models rely primarily upon electronic execution systems, for example ECNs, would be expected to fill orders in less than two seconds.

System Outages. In addition, to further ensure the reliability of linkages and the integrity of the ADF Pilot, the NASD is proposing to suspend from quoting for 20 business days any Market Participant that experiences three unexcused, confirmed system outages during any period of five business days.

NASD proposes to define system outages as (1) an inability to quote or (2) an inability to respond to orders. The proposal provides for a review and appeal process, where the burden will rest with the Market Participant to establish that a confirmed system outage was attributable to another party. The proposal also would give NASD discretion to excuse certain outages where the Market Participant voluntarily brings the matter to the

[11] The fact that a Market Participant has an ownership interest in a customer broker-dealer or multilateral linkage provider does not, in and of itself, constitute influence for the purposes of this proposed rule.

[12] 17 CFR 240.11Ac1–1.

attention of NASD. Finally, NASD will investigate complaints related to failure to provide direct or indirect access.

Trading Rules Compliance. To allow NASD to monitor compliance with certain trading rules, such as the firm quote rule and "trade or move" rules, the proposed rule change also requires that all NASD Market Participants that display quotations or orders in the ADF Pilot record specified items of information pertaining to orders they receive from broker-dealers via direct or indirect electronic access, and report this information to NASD on a real-time basis. The proposed rule requires this information be provided to NASD within 10 seconds of the receipt of an order and, if applicable, when an order is acted upon or responded to. As part of the subscriber agreement approval process, Market Participants would be required to provide the terms and methods by which they will comply with these rules. The NASD would review these terms prior to approving a subscriber agreement.

Trade Reporting and Trade Comparison Service. As noted above, the NASD intends to operate trade reporting and comparison services as part of the ADF Pilot. The trade reporting service would collect trade reports for NASD Market Participants, as well as any NASD member that chooses to or is required to report transactions through the ADF Pilot. The service would transmit the reports automatically to the respective SIP, if required, for dissemination to the public and the industry.

This service would operate similarly to the trade reporting functions of Nasdaq's Automated Confirmation Transaction ("ACT") Service,[13] but would contain one notable distinguishing feature. The ADF Pilot will support a "three party trade report" that will make it easier for ECNs to submit trade reports involving their subscribers and for market makers to submit riskless principal trade reports. A three party trade report will be a single last sale trade report that would denote one reporting member—*i.e.*, the party with the trade reporting responsibility as defined in Rule 4633A—and two contra parties. The ADF will be designed to split the three party trade report into two separate reports that will then be processed independently in accordance with existing trade reporting rules. Each of these reports will contain its own identifier and a reference to the original three party trade report, so that the separate reports can be mapped to the same transaction. Therefore, the ADF Pilot trade reporting system would streamline the reporting process by reducing from three or two to one the number of trade reports for most ECN and riskless principal transactions.

The NASD also will operate a trade comparison service as part of TRACS that would (1) compare trade information entered by TRACS participants and submit "locked-in" trades to the Depository Trust Clearing Corporation ("DTCC") for clearance and settlement; (2) transmit reports of the transactions automatically to the respective SIP, if required, for dissemination to the public and the industry; and (3) provide participants with monitoring capabilities to facilitate participation in a "locked-in" trading environment. The proposed trade comparison rules are found in proposed Rule 6100A.

The NASD expects that a significant volume of trades will be locked-in and submitted directly to DTCC by way of agreements between Market Participants and Qualified Service Representatives ("QSRs"). As a result, NASD expects the volume of trades requiring comparison sent through TRACS to be relatively low.[14] For those trades where one party is a TRACS subscriber and the other party is an ACT subscriber, both TRACS and ACT will accept one-sided trade reports and submit those trades to NSCC. In such cases, NSCC will compare the trade.

Transaction Reporting. The proposed rule change adopts the current Nasdaq approach to trade reporting for Nasdaq securities whether the member is reporting through TRACS or ACT. Proposed Rule 5430(b) designates which party to a transaction has the trade reporting responsibility and where the party with the trade reporting responsibility is required, or has the choice, to trade report to TRACS or ACT. Specifically, proposed Rule 5430(b) requires that the seller report trades between two market makers or two non-market makers, the market maker report trades between it and a customer, and an NASD member report trades between it and a customer.

The proposed rule change also provides NASD members that are market makers in both the ADF Pilot and Nasdaq and have a trade reporting obligation under Rule 5430(b), the choice to trade report to the ADF Pilot or Nasdaq, except for those transactions that are executed or facilitated by a Nasdaq system. If a member is a market maker in either Nasdaq or the ADF Pilot, but not the other facility, the member must report to the facility of which it is a market maker. For example, if a member is an ADF Pilot market maker, but not a Nasdaq market maker in a security, the member, if it has a trade reporting obligation, must report the transaction in that security to TRACS, unless the trade is executed using ACES, the Nasdaq National Market Execution System ("NNMS"), the SelectNet Service, the SmallCap Small Order Execution System ("SOES"), or the Primex Auction System ("Primex"). A trade executed using ACES must be reported using ACT, and trades executed using NNMS, SelectNet, SOES, or Primex will be reported to ACT automatically. A member that is not a market maker in either facility but is a participant in both facilities and has a trade reporting obligation, may trade report to either facility, unless the trade is executed using ACES, NNMS, SelectNet, SOES, or Primex. Trades executed using ACES must be reported to ACT, and trades executed using these other systems will be reported to ACT automatically.

With respect to trade reporting by ECNs, ECNs that currently display quotes in Nasdaq have developed different methods of reporting trades. ECNs may continue to report to Nasdaq and/or the ADF in this same manner.

Short Sale Rule. The proposed rule change would amend the short sale rule and its accompanying interpretation such that the current Nasdaq short sale rule should apply to trading in Nasdaq Securities on the ADF Pilot with the exception described below. The proposed rule change, however, would establish a different bid on which to base the applicability of the short sale rule for purposes of trading on the ADF Pilot. Specifically, the proposed amendment would require members trading on the ADF Pilot to comply with the short sale rule based on the national best bid rather than the Nasdaq best bid. Although a best bid will be calculated for the ADF Pilot, NASD believes that for the purposes of the short sale rule, the national best bid will be more reflective of market-wide trading in a security and therefore will better further the purposes of the rule. Aside from the changes noted above, the ADF Pilot short sale rule would mirror Nasdaq's short sale rule, including the current exemption for registered market makers engaged in bona fide market making activity.

[13] The NASD service would not perform risk management services that are provided by Nasdaq's ACT service.

[14] DTCC has agreed to continue its existing trade comparison service for over-the-counter equity securities to provide comparison services between an ADF Pilot Market Participant and a Nasdaq market participant.

Trading Halts. Proposed Rule 4120A would provide the NASD with authority to halt trading through the ADF Pilot in Nasdaq Securities. For ADF Pilot-eligible securities, the proposed rule would mandate a trade halt when another market halts trading in a security for regulatory reasons and would give the NASD discretionary authority to halt trading when another market halts trading for operational reasons. Similar discretionary authority would extend to circumstances where a security traded through the ADF Pilot is a derivative or component of a security that has been halted. In addition, the NASD would have authority to close the ADF Pilot to quotation activity when the ADF Pilot is unable to transmit real-time quotation and trade reporting data to the SIP. In the event that the NASD chooses not to halt trading under the aforementioned discretionary circumstances, market participants could continue to trade through the ADF Pilot and would be required to meet all applicable trade reporting requirements.

Any trading halt initiated by the NASD would become effective simultaneously with notification via an administrative message sent through the ADF Pilot terminal or interface. Trading similarly would resume after an administrative notice has been issued.

Withdrawal of Quotations. The proposed rule change eliminates for ADF market makers one of the conditions in existing Rule 4619(b)(3) for a market maker seeking excused withdrawal status based on vacation. Under the current rule, excused withdrawal status may only be granted to a market maker that has three or fewer Nasdaq Level 3 terminals. Proposed Rule 4619A(b)(3) does not replicate that requirement for ADF Pilot market makers because the ADF Pilot will not operate as a primary market. As such, the absence of a market maker with more than three ADF Pilot terminals would not have a significant impact on the liquidity in those securities in which it makes a market.

Obligations When Quoting in Multiple Market Centers. Existing Rule 2320(g)(2) requires members that display quotations for non-Nasdaq securities in two or more quotation mediums to post the same priced quotations in each medium. The proposed rule change adds a similar obligation under proposed Rule 4613A(e)(1) for members that display quotations for Nasdaq Securities in two or more market centers, including the ADF Pilot. The proposed rule, however, does not prohibit displaying different size quotations in two or more mediums or market centers, provided that the price displayed is the same.

Obligation to Have Quotations From Other Market Centers in Close Proximity. Proposed Rule 4613A(e)(2) would require a registered NASD market maker to have in close proximity to the ADF Pilot terminal or interface at which it makes a market in a Nasdaq security a quotation service that disseminates quotations in that security. A similar rule, Rule 6330(c), currently exists with respect to CQS market makers. As with the CQS rule, it is the NASD's intention for the quotations displayed in the ADF Pilot terminals or interfaces to function as a verification mechanism whereby Market Participants in the ADF can monitor their current ADF Pilot quotations and ensure that the NASD is timely updating and disseminating their quotations. NASD will not disseminate to Market Participants in the ADF Pilot any consolidated quotation or trade data in a security from securities exchanges and market centers. To ensure that ADF Pilot Market Participants have the data necessary to make proper order routing decisions and to satisfy the Vendor Display Rule,[15] NASD will require Market Participants in the ADF Pilot to obtain from vendors dynamic quotations and last-sale information on the securities they trade through the ADF Pilot, and to display this data in close proximity to the ADF Pilot data displayed on their terminals, just as is currently required of CQS market makers in Rule 6330(c).

Voluntary Termination of Registration. The proposal contains a new provision related to voluntary termination as an NASD market maker. Proposed Rule 4620A provides that registration as a Registered ADF market maker in a security is voluntarily terminated where the market maker (1) withdraws its quotations from the ADF Pilot and does not re-enter quotations in the security for five minutes or (2) fails to re-enter quotations within 30 minutes of the end of a trading halt. In either circumstance, a market maker would be prohibited from re-registering as an ADF Pilot market maker in that security for twenty (20) business days, unless the market maker meets the conditions for excused withdrawal specified in Rule 4619A.

OATS Requirements. For NASD members, the Order Audit Trail System ("OATS") requirements will remain substantially the same as current requirements. NASD, however, is proposing to require that members complete an additional field on the OATS execution report indicating where the trade was reported. This requirement will enable the NASD to clearly identify which execution reports are associated with ADF Pilot trade reports and which are associated with Nasdaq trade reports and, thereby, keep this data separate and confidential, as necessary.

All NASD members must continue to record in electronic form and report to the NASD on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed ("reportable events") by NASD members relating to equity securities traded on Nasdaq. When the ADF Pilot and Nasdaq are both operating, NASD members, in many cases, will have at least two options as to where they may choose to report their transactions in Nasdaq Securities. As such, NASD will be required to "match" OATS execution reports to either TRACS data or ACT data (or neither) depending upon where the transaction was reported. By having a field in the OATS execution report indicating where the trade was reported, NASD systems will be able to more efficiently compare the execution report to the appropriate trade report.

Fees and Assessments. The proposed rule change includes proposed fees and assessments in the proposed Rule 7000A Series applicable to the ADF Pilot. These proposed fees are substantially similar to those fees proposed in the ADF Proposal, except in two ways that are described below. The following are fees that will be charged relating to transactions on the ADF Pilot: Comparison—$0.014/side per 100 shares (minimum 400 shares; maximum 7,500 shares); Automated Give-Up—$0.029/side; Late Report—T+N—$0.30/side; Browse/query—$0.28/query; Trade Reporting—$.029/side (applicable only to reportable transaction not subject to trade comparison through TRACS); and Corrective Transaction Charge—$0.25.

The NASD will charge an ADF Pilot workstation fee of $275 per month for each ADF Pilot terminal software license and $550 per month for each ADF Pilot server license. The NASD also will charge members a minimum of $5,000 for installation costs associated with connecting to the ADF Pilot, and will require reimbursement from members for charges incurred by the NASD above $5,000 due to the installation, removal, relocation or maintenance of terminal and related equipment. However, the NASD will provide market participants with a credit of up to $5,000 toward their trade reporting and comparison charges.

[15] Securities Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

The proposed rule change also provides for several administrative provisions, including partial month charges and late charges for all fees that are past due 45 days or more. The proposed rule change also permits the NASD to increase or decrease the total charges described in the Rule 7000A series by 10% upon filing such changes with the SEC. Similar to existing NASD Rule 7100(b), the proposed rule change also permits the NASD to enter into agreements with certain broker/dealers, vendors and other persons, which may modify or dispense with some or all of the charges described in the 7000A Series.

NASD also is proposing to charge a quotation update fee of $.01 per quotation update in the ADF Pilot quotation montage. This quotation update fee, however, will apply only to those quotation updates by the member in the ADF Pilot that exceed three times the number of transactions reported by the member through the ADF Pilot. This quotation update fee will be determined on a monthly basis. By imposing this fee only where the quotation updates significantly exceed the number of transactions reported, this fee structure will fairly impose costs on those members whose quotation activity creates system capacity demands, and therefore costs that are not covered by a trade reporting fee.

As noted above, the proposed ADF Pilot fees differ with respect to the ADF fees proposed in the ADF Proposal in two ways. First, NASD is proposing to waive transaction and quotation update fees (proposed Rules 7010A(a) and (b), respectively) for a period of up to three months during the initial six months of operation of the ADF Pilot. As a result, during this six-month period, for up to three months starting from the initial transaction by an ADF Pilot participant, the participant would not be charged transaction or quotation fees. However, the time period for which the three months of "no charges" is available concludes at the end of the six-month period, irrespective of whether the member has participated in the ADF Pilot for three months. For example, if the ADF Pilot has been operational for four months and a market participant begins trading at that time, it only would be eligible for "no charges" for two months.

Second, for the initial six month period of the ADF Pilot's operation, NASD is proposing to adjust its fees imposed on trade reporting and quotation activities through the ADF Pilot to provide for volume discounts subsequent to the three month "no charges" period. NASD believes that this approach will make the overall cost of trade reporting and quoting through the ADF Pilot more attractive to higher volume users during the first six months of ADF Pilot's operation. Specifically, the proposed fee structure would provide discounted fees for those members that have greater than 2,000 trades per month or for those members that have greater than 8,000 chargeable quotes per month. The proposed volume discounts would apply to all transaction fees incurred under proposed Rule 7010A(a), except the browse/query fee, and all quotation update fees incurred under proposed Rule 7010A(b). The discounts would apply in the following increments:

Trades per month	Chargeable quote updates per month	Discount (percent)
Up to 2,000	Up to 8,000	0
2,001 to 4,000	8,001 to 15,000	10
4,001 to 6,000	15,001 to 25,000	25
6,001 to 8,000	25,001 to 35,000	35
8,001 or greater	35,001 or greater	50

For example, if a member had 5,000 trades and 16,000 quotation updates during a month, the proposed fee structure would apply as follows: no discount would apply to the first 2,000 trades; the fees imposed on trades 2,001 through 4,000 would be discounted by 10%; and the fees imposed on trades 4,001 through 5,000 would be discounted by 25%. The quotation update charge on 1,000 quotations (those quotations that exceed three times the number of trades) would not be discounted because it is less than 8,001.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act [16] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination among persons engaged in regulating, clearing, settling, processing information and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the NASD believes that this rule proposal is consistent with section 15A(b)(6) of the Act [17] because it does not permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by members, or to regulate matters not related to the purposes of the Act or the administration of the Association.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were solicited in response to the ADF Proposal. As noted above, the proposed rule changes of the ADF Pilot are substantially similar to those rule changes proposed in the ADF Proposal that are related to the establishment, implementation, and operation of the ADF. The NASD has responded to the comments received in response to the ADF Proposal. Specifically, the NASD responded to the comments received in response to SR–NASD–2001–90 in its Amendment No. 2 to that filing submitted to the SEC on May 24, 2002.[18] The NASD responded to the comments received in response to SR–NASD–2002–28 in its Amendment

[16] 15 U.S.C. 78o–3(b)(6).

[17] 15 U.S.C. 78o–3(b)(6).

[18] *See* Securities Exchange Act Release No. 45991 (May 28, 2002), 67 FR 39476 (June 7, 2002).

No. 1 to that filing submitted to the SEC on May 14, 2002.[19]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act,[20] because the proposed rule change proposes implementing ADF rules substantially similar to those previously proposed and noticed for comment in the ADF Proposal. The NASD requests that the Commission accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–97 and should be submitted by August 21, 2002.

[19] Amendment No. 1 is available for inspection and copying in the Commission's Public Reference Room and at the principal office of the NASD.

[20] 15 U.S.C. 78s(b)(2).

V. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[21] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(11) of the Act.[22]

Pursuant to section 15A(b)(11) of the Act,[23] the rules of a registered securities association must be designed generally to facilitate the orderly collection, distribution, and publication of quotations. Moreover, these rules must be designed to produce fair and informative quotations and to prevent fictitious or misleading quotations. As the NASD has proposed to sever its corporate relationship with Nasdaq, it is critical that the ADF (in pilot or permanent form) be established, implemented and operating prior to Nasdaq being registered as a national securities exchange. Therefore, the Commission believes that launching the ADF Pilot furthers the public interest by ensuring that continuity in the over-the-counter market is maintained and that the NASD satisfies its statutory obligation to regulate the over-the-counter market.[24]

In addition, in the SuperMontage approval order,[25] the Commission required the NASD to create a facility that "permits NASD members to comply with their obligations under Commission and NASD rules (including Exchange Act Rule 11Ac1–1(c)(5) and Regulation ATS) without participating in the Nasdaq execution facility. The facility will identify through the central processor the identity of the NASD member that is the source of each quote, as is required by Exchange Act Rule 11Ac1–1(b)(1)(ii)." Furthermore, the Commission stated that "[t]he facility will provide a market neutral linkage to the Nasdaq and other marketplaces, but not an execution service."

Thus, approval of the ADF Pilot furthers the obligations of the NASD under the Act and as specified by the Commission in the SuperMontage Approval Order.[26] In particular, the ADF Pilot will provide the Commission with an opportunity to gauge whether the ADF in practice fulfills the NASD's statutory obligations. The Commission emphasizes, however, that approval of this ADF Pilot is not a determination that the conditions of the SuperMontage Approval Order described above have been satisfied.

The Commission finds good cause for granting the NASD's request for approval of the proposed rule change on a pilot basis prior to the thirtieth day after the date of publication in the **Federal Register**. The Commission notes that the substance of the proposal has previously been published for notice and comment as part of the ADF Proposal. The Commission has received 30 comment letters on the ADF Proposal.[27]

[21] In granting accelerated approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78o–3(b)(11).

[23] 15 U.S.C. 78o–3(b)(11).

[24] The Commission notes that the launch of the ADF Pilot will result in a new data feed, the Over-the-Counter Montage Data Feed ("OMDF"), being disseminated by the Nasdaq SIP. While the NASD ADF Pilot and Nasdaq operate as the same SRO, the submission of multiple best bid and offers ("BBOs") by the NASD to the Nasdaq SIP is inconsistent with the OTC–UTP Plan. The Commission has addressed this issue in the 13th Amendment to the OTC–UTP Plan. *See* Securities Exchange Act Release No. 46139 (June 28, 2002), 67 FR 44888 (July 5, 2002). Moreover, the display by market data vendors of either the OMDF or the Nasdaq Quotation Dissemination Service ("NQDS") without the other is inconsistent with the Vendor Display Rule, SEC Rule 11Ac1–2, 17 CFR 240.11Ac1–2. The Commission has addressed this issue in an interpretive guidance letter. *See* letter to Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, dated July 23, 2002.

[25] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR–NASD–99–53) ("SuperMontage Approval Order").

[26] Specifically, the Commission conditioned the SuperMontage Approval Order upon the following, which must be implemented prior to or at the same time as the SuperMontage: "(1) That the NASD will offer a quote and trade reporting alternative that satisfies the Order Handling Rules, Regulation ATS, and other regulatory requirements for ATSs, ECNs, and market makers; (2) that NASD quotes disseminated through the exclusive SIP will identify the ATS, ECN, or market maker source of the quote; and (3) that participation in SuperMontage will be entirely voluntary, because NASD quotes will be included in the Nasdaq quotation management system while Nasdaq is the exclusive SIP, but only for display purposes, and the NASD will provide access to its quotes on a market-neutral basis." *Id.* at 8054.

[27] The Commission received 26 comment letters on SR–NASD–2001–90. *See* Letter from Sol Reicher, Co-Chairman, Amex Specialists Associations; John Hawkey, Chairman, Amex Floor Brokers Association; and James Hyde, Chairman, Amex Options Market Maker Association, writing on behalf of The Member Associations of the American Stock Exchange, dated January 29, 2002 ("Member Associations of the American Stock Exchange Letter"); Letter from Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, Inc., dated January 24, 2002 ("PHLX Letter #1"); Letter from Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, Inc., dated February 25, 2002 ("PHLX Letter #2"); Letter from Marc E. Lackritz, President, Securities Industry Association, dated July 24, 2001 ("SIA Letter"); Letter from Michael A. Bird, Chairman, and John C. Giesea, President and CEO, Security Traders Association, dated July 1, 2002 ("STA Letter"); Letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange,

Generally, commenters expressed concern with, among other things, (1) the lack of centralized linkage among market participants and an order routing and execution facility; [28] (2) the lack of information regarding technological requirements; [29] (3) whether ITS participation for trading in listed stocks should be mandatory or voluntary; [30] (4) the timing of the launch of the ADF, especially with respect to Nasdaq's pending registration as an exchange and the launch of SuperMontage (several commenters recommended some sort of "test" period before the launch of SuperMontage); [31] and (5) the proposed fees, including the lack of market data revenue rebates.[32]

A number of commenters criticized the ADF for not providing a central linkage facility operated and funded by the NASD. They argued that the lack of a core ADF linkage would impede access to the quotes displayed in ADF, discouraging ADF participation, and would impose access costs on order routing firms. Other commenters, however, stated that the approach to access relied upon by the NASD—linkages developed by private access providers—encouraged the development of efficient, technologically innovative access services.

After considering the comments, the Commission believes that the NASD's rule-based access solution has the potential to provide effective market-neutral linkages among ADF market participants and between the ADF and other markets. The sharp reduction in communication line costs in recent years and the advent of competing access providers in the equity markets offer the potential for multiple competitive means of access widely available to participants in the market for Nasdaq securities. This approach has been advocated in other market contexts, and the Commission has previously discussed favorably the potential for a private linkage approach.[33]

Moreover, the NASD rules require direct connectivity between ADF participants to be in place before the participants begin quoting, and the NASD plans to review with each ADF participant the extent that other NASD members have connectivity to their quotes Moreover, the pilot program will give the Commission and the NASD the opportunity to review the practical operation of this access approach and to make changes where necessary to improve access capabilities.

The commenters also raised concerns about the lack of information regarding the requirements for the system. Some of these comments were in fact criticisms of the communications protocols used by the ADF system.

The Commission notes that the NASD made its technical specifications for the ADF available as early as March, 2002. Although these specifications were known in March, few market participants have familiarized themselves with these requirements. Some commenters criticized the ADF for not employing a FIX protocol. It should be noted that the FIX protocol is not commonly used by other markets at this time. (The NASD has indicated its willingness to develop a FIX interface to the ADF if justified by interest from market participants.)

Commenters also wrote at length about the NASD's proposal to allow ADF quoting participants in listed stocks to choose whether to participate in the Intermarket Trading System. Because the NASD's pilot program is limited to Nasdaq securities, these comments are not germane to the current filing.

Several commenters expressed concern about the commencement of ADF and the need for potential market participants to program and test with the ADF before quoting and trade reporting through the system. The Commission recognizes that, as with any other new system, potential ADF participants must code to the ADF and test their systems before they can begin using the ADF. The Commission notes that the approval of the ADF pilot program is not in itself a determination that the conditions precedent contained in the SuperMontage approval order have been satisfied.

A number of commenters also criticized the ADF as not offering a competitive alternative to Nasdaq because the NASD's fee levels were deemed excessive and because the NASD does not share market data revenues as do Nasdaq and certain other markets. In response, the NASD has proposed a set of fee waivers and discounts to make the ADF more attractive financially, and it intends to review its fees on an ongoing basis as it gains experience with the costs and revenues from operating the ADF. Although the NASD does not intend to share market data revenues, it does not believe that it need do so to offer a useful alternative quoting and trading venue.

The Commission believes that the concerns raised by commenters have been preliminarily addressed, and that the approval of the ADF Pilot will help the Commission evaluate these concerns more fully after practical experience with the ADF. Accordingly, the Commission finds that good cause exists, consistent with sections 15A(b)(11) of the Act,[34] and section 19(b)(2) of the Act [35] to accelerate approval of the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

Inc., dated February 15, 2002 ("NYSE Letter #1"); Letter from Robert G. Britz, President and Co-Chief Operating Officer, New York Stock Exchange, Inc., dated May 21, 2002 ("NYSE Letter #2"); Letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc., dated July 15, 2002 ("NYSE Letter #3"); Letter from Kevin M. Foley, Bloomberg Tradebook LLC, dated February 7, 2002 ("Bloomberg Letter #1"); Letter from Kevin M. Foley, Bloomberg Tradebook LLC, dated June 28, 2002 ("Bloomberg Letter #2"); Letter from Michael T. Dorsey, Senior Vice President, General Counsel, and Secretary, Knight Trading Group, Inc., dated February 6, 2002 ("Knight Letter"); Letter from William O'Brien, Senior Vice President & General Counsel, Brut, LLC, dated February 13, 2002 ("Brut Letter #1"); Letter from William O'Brien, Senior Vice President & General Counsel, Brut, LLC, dated March 20, 2002 ("Brut Letter #2"); Letter from Douglas M. Atkin, President and Chief Executive Officer, Instinet, dated February 13, 2002 ("Instinet Letter #1"); Letter from Jon Kroeper, First Vice President and Regulatory Policy/Strategy, Instinet, dated July 1, 2002 ("Instinet Letter #2"); Letter from Mark P. Barracca, Corporate Counsel, NexTrade, Inc., dated January 18, 2002 ("NexTrade Letter #1"); Letter from John M. Schaible, President, NexTrade, Inc., dated April 8, 2002 ("NexTrade Letter #2"); Letter from John M. Schaible, President, NexTrade, Inc., dated June 9, 2002 ("NexTrade Letter #3"); Letter from K. Richard B. Niehoff, Chairman, President, and CEO, WEBIXTRADER.COM, dated June 27, 2002 ("Webix Letter"); Letter from Amy Montague, dated June 21, 2002 ("Montague Letter"); Letter from William Joseph, dated June 25, 2002 ("Joseph Letter"); Letter from Jim Hendricks, dated February 21, 2002 ("Hendricks Letter"); Letter from Jim Ryan, dated June 20, 2002 ("Ryan Letter"); Letter from George A. Robles, dated June 15, 2002 ("Robles Letter"); Letter from Ira Rosenbloom, dated June 10, 2002 ("Rosenbloom Letter"); and Letter from John Tarleton, dated June 20, 2002 ("Tarleton Letter"). The Commission received four comment letters on SR–NASD–2002–28. *See* Letter from William O'Brien, Senior Vice President and General Counsel, Brut LLC, dated March 20, 2002 ("Brut Fee Letter"); Letter from Douglas M. Atkin, President, Chief Executive Officer, Instinet, dated April 1, 2002 ("Instinet Fee Letter"); Letter from Mark P. Barracca, Corporate Counsel, NexTrade, dated April 1, 2002 ("NexTrade Fee Letter"); and Letter from Kevin M. Foley, Bloomberg Tradebook LLC, dated April 2, 2002 ("Bloomberg Fee Letter").

[28] *See e.g.* NexTrade Letters #1, 2, and 3; SIA Letter; Phlx Letter #2. The Commission also notes that some commenters were not very concerned with the lack of a linkage or execution facility. *See e.g.* Bloomberg Letter #1; BRUT Letter #1.

[29] *See e.g.* BRUT Letter #2; NexTrade Letters #1, 2, and 3; Bloomberg Letter #2; Instinet Letter #2.

[30] *See e.g.* NYSE Letters #1 and 2; Instinet Letter #1; Members Association of the American Stock Exchange Letter; Bloomberg Letter #2.

[31] *See e.g.* Instinet Letter; SIA Letter; Bloomberg Letter #2; Instinet Letter #2.

[32] *See e.g.* Brut Fee Letter; Instinet Fee Letter; NexTrade Fee Letter; Bloomberg Fee Letter.

[33] *See* Securities Exchange Act Release No. 43084 (July 28, 2000), 65 FR 48406 (August 8, 2000) (File No. S7–16–00) (proposing rules regarding disclosure of order routing and execution practices).

[34] 15 U.S.C. 78o–3(b)(11).

[35] 15 U.S.C. 78s(b)(2).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change (File No. SR–NASD–2002–97) is approved on a pilot basis to expire at the close of daily operation of the ADF Pilot on April 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19274 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

Federal Register

Wednesday,
July 31, 2002

Part VII

Department of Education

Career Resource Network State Grants; Notice

DEPARTMENT OF EDUCATION

Career Resource Network State Grants

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of extension of project period and waiver, and reopening of competition for American Samoa.

SUMMARY: We waive the requirement in 34 CFR 75.261(c)(2) as it applies to projects funded under the Career Resource Network State Grants Program (CRN) in fiscal year (FY) 2000. We waive this requirement in order to be able to extend the project periods for 58 current grants awarded under the FY 2000 CRN competition.

We will also reopen the FY 2000 competition for the limited purpose of allowing American Samoa to submit an application for funding under the CRN.

DATES: This notice is effective July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon A. Jones, U.S. Department of Education, 400 Maryland Avenue, SW., room 4515, Mary E. Switzer Building, Washington, DC 20202–7242. Telephone (202) 205–9870.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this extension and waiver in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

On May 29, 2002 we published in the **Federal Register** (67 FR 37408) a notice proposing an extension of project period and waiver, and reopening of competition for American Samoa, in order to give early notice of—

(1) The possibility that additional years of funding may be available for current grantees through continuation awards; and

(2) Our intent to reopen the competition for American Samoa.

Public Comment

In the May 29th notice the Assistant Secretary invited comments on these proposals. We did not receive any comments.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule shall be published at least 30 days before its effective date, except as otherwise provided for good cause (20 U.S.C. 553(d)(3)). During the 30-day public comment period on this notice, no comments or objections were received on the proposed extension, waiver and limited reopening of the FY 2000 competition. For this reason, and in order to make timely continuation grants to the entities affected, the Secretary has determined that a delayed effective date is not required.

Background

On May 12, 2000 (65 FR 30798), we issued a notice inviting applications for new awards under the CRN for FY 2000. Among other things, the notice (a) explained that CRN grants are intended to provide support for the implementation of Statewide, systemic strategies for providing young people and adults with the critical career information resources and the skills they need to make effective educational and career decisions throughout their lives, (b) created a two-year project period, (c) established the deadline for the receipt of applications, and (d) clearly identified the eligible applicants, which include any of the 50 States, the Virgin Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Marianna Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

In the May 12th notice, we indicated that the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau are not eligible for funding under the CRN after FY 2001 and, therefore, would not be eligible to receive funding under the CRN beyond FY 2001. However, following publication of the notice, Congress enacted H.R. 2436, the Guam Omnibus Opportunities Act, in which it extended the eligibility of these three entities beyond 2001, and until such time as they have fully completed the negotiations of their compacts of free association. Accordingly, since these three entities have not yet completed the negotiations process, they would continue to be eligible for funding under the CRN program in FY 2002, and perhaps beyond.

As also indicated in the May 12th notice, we expected to receive applications from each of the 59 eligible applicants. With the exception of American Samoa, every eligible State and outlying area applied for and received funding under the FY 2000 competition. American Samoa missed the deadline, but has indicated that it is interested in submitting an application and receiving funding in FY 2002. Based on the statute as written and the important services to be provided under the authority of section 118 of the Perkins Act, we believe that Congress intended for us to provide assistance under the CRN program to all eligible entities. We are, therefore, reopening the FY 2000 competition in order that American Samoa may apply for funding under the CRN.

If we held a new competition for FY 2002 and every current grantee, as well as American Samoa, applied for and received funding, all eligible applicants would be receiving support under the CRN in FY 2002. We believe, therefore, that it is in the best interest of the CRN for us to extend currently funded projects, allow American Samoa to apply for a grant, and review requests for continuation awards from the 58 current FY 2000 grantees, rather than hold a new competition in FY 2002. We believe that holding a new competition would create an unnecessary burden for current grantees since the 58 current grantees would have to undertake the effort and cost of submitting new applications for funding in FY 2002. A new competition would be likely only to cause existing grantees to expend valuable time and resources applying for program funding under the existing authority, while requesting continuation awards would be a more appropriate and effective means for current CRNs already under way to continue their projects under this program. In addition, pursuing a continuation grant process would also result in a more effective use of Federal funds.

Moreover, the Perkins Act, which includes authorization for the CRN, expires at the end of FY 2003. With the uncertainties presented by the absence of authorizing legislation for the CRN beyond FY 2003, it does not appear to be appropriate to hold a competition in FY 2003 for projects that would operate in FY 2004. We are generally reluctant to announce a competition in which eligible entities would be expected to prepare and submit applications while they are lacking critical information about the future of the program, and we do not think that it would be in the public interest to do so in this case.

Since we will have a limited purpose reopening of the FY 2000 competition so as to allow American Samoa to apply for CRN funding, the continuation of grants in lieu of a FY 2002 competition will not prevent the support of this last, and as yet unfunded, eligible entity under the CRN.

EDGAR Requirement

In order to provide for continuation awards, we waive the requirement in 34 CFR 75.261(c)(2), which establishes the conditions for extending a project

period, including prohibiting the extension of a grantee's project period if it involves the obligation of additional Federal funds.

This extension and waiver will allow us to make continuation grants at least in FY 2002 and FY 2003 and perhaps beyond FY 2003 if Congress continues to appropriate funds for the CRN program under the current statutory authority. However, in accordance with 34 CFR 75.250, we do not hereby intend to make continuation grants beyond FY 2005.

A waiver will mean that: (1) Current CRN grants may be continued at least through FY 2004 (depending on the availability of appropriations for CRN in subsequent years under the current statutory authority), instead of ending in FY 2002, and (2) we will not announce a new competition or make new awards in FY 2002, as previously planned.

Continuation of the Current Grantees

With this extension and waiver of § 75.261(c)(2) of EDGAR, we extend the project periods of the 58 States and outlying areas that received grants under the FY 2000 competition for two years and for additional years for which Congress appropriates funds under the current statutory authority.

Decisions regarding annual continuation awards will be based on the program narratives, budgets and budget narratives, and Grant Performance Reports submitted by grantees, and on the regulations at 34 CFR 75.253. Consistent with 34 CFR 75.253, we will award continuation grants if we determine, among other things, and based on information provided by each grantee, that each grantee is making substantial progress performing grant activities. Under this extension and waiver, (1) the project period for grantees could be extended to July 19, 2004, and (2) additional continuation awards could be made for any additional fiscal year or years for which Congress appropriates funds under existing statutory authority.

We do not interpret this waiver as exempting current grantees from the account closing provisions of Pub. L. 101–510, or as extending the availability of FY 2001 funds awarded to current grantees. As a result of Pub. L. 101–510, appropriations available for a limited period may be used for payments of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose.

Instructions for Requesting a Continuation Award

Under the applicable EDGAR provisions, each grantee wishing to receive an annual continuation grant shall submit a program narrative that describes the activities it intends to carry out during each of the two years (FYs 2002 and 2003), and during any additional years for which Congress appropriates funds under the current statutory authority, of a continuation award. The activities must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's approved application. (34 CFR 75.261(c)(3)). A grantee shall also submit a budget and budget narrative for each year it requests a continuation award. (34 CFR 75.118 and 75.253(c)(2)(i)). We suggest that states and outlying areas request their continuation awards at least three weeks before their current grants expire.

Amount of New Awards Under Continuation Grant

The actual amount of each continuation award depends on factors such as (1) the grantee's written statement describing how the funds made available under the continuation award will be used, (2) a cost analysis of the grantee's budget by the Department, and (3) whether any unobligated funds remaining from previous grant awards are needed to complete activities that are planned for completion in the prior budget period. (34 CFR 75.232 and 75.253(c)(2)(ii) and (3)).

The CRN has received an increase in its appropriation from FY 2001, which could result in States and outlying areas receiving a percentage increase in their awards. As a result of the increase in the appropriation, it is expected that States and outlying areas will receive a 4.39 percent increase in the amount of their current grants.

Although grantees must submit program narratives and budgets describing the activities they plan to carry out during each period of continuation, which could include some increase in funding, we strongly encourage all grantees to consider the 4.39 percent increase when deciding the amount of funds to request to support their continuation of projects.

American Samoa

American Samoa missed the deadline for the FY 2000 competition, but is interested in receiving funding in FY 2002. In order to provide an opportunity for American Samoa to submit an application under the CRN, we (1) reopen the competition and application notice published on May 12, 2000 (65 FR 30798) for this limited purpose, and (2) establish a new deadline date by which American Samoa will be required to submit its application. To be considered for funding, American Samoa must submit an application that meets the requirements established by the statute and the May 12, 2000 notice and is determined by the Department to have merit based on the criteria described in the May 12th notice. However, American Samoa is not required to follow the May 12th notice with regard to the *Deadline for Transmittal of Applications, Deadline for Intergovernmental Review, Estimated Average Size of Awards,* and *Project Period.* Instead *American Samoa* should note the following:

Deadline for Transmittal of Application: August 30, 2002.

Deadline for Intergovernmental Review: October 29, 2002.

Estimated Range of Award: As with other awards under the FY 2000 competition, the size of American Samoa's award will depend on factors such as the scope and quality of the application and will be determined during pre-award clarification discussions with us. However, we strongly encourage American Samoa to consider the $85,732 estimated grant amount determined for American Samoa and published in the May 12th notice and the 4.39 percent increase in this notice, in determining the amount it requests for FY 2002.

Project Period: American Samoa's project period will be for FYs 2003 and 2004, and possibly for additional years for which Congress appropriates funds under the current statutory authority. Decisions regarding any continuation awards for American Samoa will be made in the same manner as decisions will be made for other CRN grantees under this notice.

Note: The Department is not bound by any estimates in this notice.

If You Have Questions About The Percentage Increase Your State Or Outlying Area May Receive Or About The Information You Must Submit In Order , To Request A Continuation Award, Or New Award In The Case Of American Samoa, Contact: Burt Carlson, U.S. Department of Education, 400 Maryland Avenue, SW., room 4331, Mary E. Switzer Building, Washington, DC 20202-7241. Telephone (202) 401–6225.

Paperwork Reduction Act of 1995

This extension and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed extension and waiver we requested comments on whether the proposed extension and waiver would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the notice of proposed extension and waiver and our own review, we have determined that this final notice of extension and waiver does not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.346 Career Resource Network State Grants)

Program Authority: 20 U.S.C. 2328.

Dated: July 24, 2002.

Hans Meeder,

Acting Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 02–19352 Filed 7–30–02; 8:45 am]

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WASHINGTON, DC

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ60

Prevailing Rate Systems; Change in the Survey Cycle for the Portland, Oregon, Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to change the timing of local wage surveys in the Portland, Oregon, appropriated fund Federal Wage System wage area. This change will help the Department of Defense (DOD) balance its wage survey workload. DOD will conduct full-scale wage surveys in the Portland wage area in August of each even-numbered fiscal year, beginning in August 2002.

EFFECTIVE DATE: This regulation is effective on September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter at (202) 606–2838; by FAX at (202) 606–4264; or by e-mail at *cicarpen@opm.gov*.

SUPPLEMENTARY INFORMATION: On April 24, 2002, the Office of Personnel Management (OPM) published an interim rule (67 FR 20009) to change the timing of local wage surveys in the Portland, Oregon, appropriated fund Federal Wage System (FWS) wage area. The interim rule had a 30-day public comment period, during which we received no comments. Full-scale wage surveys currently begin in August of each odd-numbered fiscal year. Full-scale wage surveys will begin in the future in August of each even-numbered fiscal year. Under 5 CFR 532.207, the scheduling of wage surveys takes into consideration the best timing in relation to wage adjustments in the principal local private enterprise establishments, a reasonable distribution of the workload of the lead agency, the timing of surveys for nearby wage areas, and scheduling relationships with other pay surveys.

The Department of Defense (DOD) asked OPM to change the starting time for local wage surveys in the Portland, Oregon, wage area to August of even-numbered fiscal years to balance the overall workload of its survey office. DOD conducted a full-scale survey in Portland in August of 2001 and will conduct another full-scale wage survey in Portland in August 2002.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we change the full-scale survey cycle for the Portland wage area from August of each odd-numbered fiscal year to August of each even-numbered fiscal year.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (67 FR 20009) amending 5 CFR part 532 published on April 24, 2002, is adopted as final with no changes.

[FR Doc. 02–19459 Filed 7–31–02; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ35

Prevailing Rate Systems; Definition of San Joaquin County, California, as a Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule that establishes San Joaquin County, California, as a new nonappropriated fund Federal Wage System (FWS) wage area. This change is necessary because the Army and Air Force Exchange Service built a new distribution facility in the county, which now employs many FWS workers.

EFFECTIVE DATE: This regulation is effective on September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter, (202) 606–2848, FAX: (202) 606–4264, or e-mail *cicarpen@opm.gov*.

SUPPLEMENTARY INFORMATION: On January 23, 2002, the Office of Personnel Management (OPM) published an interim rule (67 FR 3035) that defined San Joaquin County, California, as a new nanappropriated fund (NAF) Federal Wage System (FWS) wage area. The interim rule had a 30-day public comment period, during which OPM did not receive any comments. San Joaquin County was defined as an area of application to the Sacramento, CA, NAF FWS wage area. San Joaquin County will be defined as a separate wage area because the Army and Air Force Exchange Service built a new distribution facility, with about 450 NAF FWS employees, in the county. Under 5 U.S.C 5343(a), NAF FWS wage area boundaries may not extend beyond the immediate locality where NAF employees work. OPM may establish a NAF wage area under 5 CFR 532.219 when there is a minimum of 26 NAF wage employees in a survey area and there is sufficient private employment within the survey area to provide adequate data for establishing an NAF wage schedule.

San Joaquin County meets the regulatory criteria to be a separate NAF wage area. Under 5 CFR 532.219, there

must be a minimum of 1,800 private enterprise employees in establishments within the scope of a NAF survey for a separate wage area to be established. San Joaquin County has more than 139,000 private enterprise employees in surveyable establishments.

The Department of Defense conducted the first full-scale wage survey in the San Joaquin wage area in February 2002. NAF FWS employees in San Joaquin County were placed on the new San Joaquin wage schedule on the first day of the first applicable pay period beginning on or after April 13, 2002, the effective date of the first new wage schedule for the wage area. The Federal Prevailing Rate Advisory Committee, the national labor-management committee that advises OPM on FWS pay matters, recommended these changes by consensus.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C 5343, the interim rule (67 FR 3035) amending 5 CFR part 532 published on January 23, 2002, is adopted as final with no changes.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–19462 Filed 7–31–02; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Technical Amendments to Regulations Governing Filing Extensions and Late Filing Fee Waivers

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is issuing a final rule to amend the executive branchwide regulations that describe procedures for granting filing extensions and late filing fee waivers under the public financial disclosure system to delegate certain authority to employing departments and agencies. These amendments will expedite both processes and free up OGE resources.

EFFECTIVE DATE: September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Donald A. Williams, Senior Desk Officer, Program Services Division, Office of Government Ethics; Telephone: 202–208–8000, extension 1151; TDD: 202–208–8025; FAX: 202–208–8039.

SUPPLEMENTARY INFORMATION: In this rulemaking, OGE is making technical amendments to subparts B and G of its executive branchwide financial disclosure regulation codified at 5 CFR part 2634. Section 2634.201(f) of subpart B sets forth procedures for granting public financial disclosure report filers extensions of time for filing which shall not exceed a total of 90 days, including the existing maximum 45 days that can be granted by the agency reviewing official and the additional not-to-exceed 45 days that can be granted by the Director of the Office of Government Ethics. The Office of Government Ethics is revising this provision to provide the agency reviewing official the authority to grant public filers the additional extensions of time currently granted by the OGE Director, which shall not exceed 45 days.

Section 2634.704 of subpart G sets forth procedures governing requests for, and the granting of, late filing fee waivers for public filers who submit their reports more than 30 days after the due date. Under section 2634.704(b), the OGE Director may waive the late filing fee if she determines that the delay in filing was caused by extraordinary circumstances that made the delay reasonably necessary. The Office of Government Ethics is revising this provision to provide the designated agency ethics official the authority to waive the late filing fee. The revision expands the definition of extraordinary circumstances to include administrative oversight culminating in the failure to notify a new entrant, first-time annual, or termination public filer of the filing requirement.

The Office of Government Ethics believes that the delegations of authority and other changes embodied in these technical amendments are consistent with its oversight responsibilities pursuant to the Ethics in Government Act of 1978, 5 U.S.C appendix, as well as the applicable provisions (sections 101(g) and 104(d) dealing with filing extensions and late filing fee waivers, respectively) of the Act. Furthermore, these changes will expedite both processes, grant agencies additional authority to make determinations affecting their employees, and free up OGE resources to pursue other important Government ethics responsibilities.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking and the opportunity for public comment as to these revisions. The notice and comment are being waived because these technical amendments concern matters of agency organization, practice and procedure. Moreover, it is in the public interest that these technical revisions which grant additional authority to the agencies take effect promptly.

Executive Order 12866

In promulgating these technical amendments, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under the Executive order since they are not deemed "significant" thereunder.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it only affects executive branch public financial disclosure report filers and the administration of the reporting system within executive branch agencies.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these final rule technical amendments do not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has submitted a report thereon to the United States Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: July 25, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2634 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart B—Persons Required To File Public Financial Disclosure Reports

2. Section 2634.201 is amended by revising paragraph (f) to read as follows:

§ 2634.201 General requirements, filing dates, and extensions.

* * * * *

(f) *Extensions.* The reviewing official may, for good cause shown, grant to any public filer or class thereof an extension of time for filing which shall not exceed 45 days. The reviewing official may, for good cause shown, grant an additional extension of time which shall not exceed 45 days. The employee shall set forth in writing specific reasons why such additional extension of time is necessary. The reviewing official must approve or deny such requests in writing. Such records shall be maintained as part of the official report file. (For extensions on confidential financial disclosure reports, see § 2634.903(d).)

Subpart G—Penalties

3. Section 2634.704 is amended by revising paragraph (b) to read as follows:

§ 2634.704 Late filing fee.

* * * * *

(b) *Exceptions.* (1) The designated agency ethics official may waive the late filing fee if he determines that the delay in filing was caused by extraordinary circumstances, including the agency's failure to notify a new entrant, first-time annual filer, or termination filer of the requirement to file the public financial disclosure report, which made the delay reasonably necessary.

(2) Employees requesting a waiver of the late filing fee from the designated agency ethics official must request the waiver in writing with supporting documentation. The designated agency ethics official's determination must be made in writing to the employee with a copy placed in the employee's public financial disclosure report file. The designated agency ethics official may consult with the Office of Government Ethics prior to approving any waiver of the late filing fee.

* * * * *

[FR Doc. 02–19369 Filed 7–31–02; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[Doc.# DA–02–02]

Fluid Milk Promotion Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Fluid Milk Promotion Order (Order) by revising certain provisions in conformance with the Farm Security and Rural Investment Act of 2002. The amendments modify the definition of *fluid milk product* to be consistent with that term as it is defined under the Federal milk marketing orders. The definition of *fluid milk processor* is also revised to increase the exemption standard from 500,000 pounds to 3,000,000 pounds.

EFFECTIVE DATE: August 1, 2002.

FOR FURTHER INFORMATION CONTACT: David R. Jamison, Chief, USDA/AMS/Dairy Programs, Promotion and Research Branch, Stop 0233, Room 2958 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0233, (202) 720–6909, e-mail address *David.Jamison2@usda.gov.*

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those processors employing not more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. Currently, there are approximately 225 fluid milk processors subject to the provisions of the Fluid Milk Promotion Order. The implementation of this rule will reduce the number of fluid milk processors subject to the Fluid Milk Promotion Order by 60. Most of these processors are considered small entities.

The Fluid Milk Promotion Order (7 CFR Part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 U.S.C. 6401 *et seq.*). The final rule amends certain order provisions in conformance with Section 1506 of the Farm Security and Rural Investment Act of 2002, Public Law 107–171d (2002 Farm Bill). The amendments modify the definition of *fluid milk product* to be consistent with the term as defined under Federal milk marketing orders (*i.e.*, Section 1000.15 of Title 7 CFR). The definition of *fluid milk processor* also is revised to increase the exemption standard from 500,000 pounds to 3,000,000 pounds of fluid milk products that are processed and marketed commercially in consumer-type packages in the 48 contiguous United States and the District of Columbia, excluding fluid milk products that are delivered directly to the residence of a consumer.

The amendments to the Order will not add any burden to regulated parties because they relate to provisions that define which fluid milk processors and fluid milk products will be assessed

under the Order. The changes will not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this rule.

Accordingly, pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. In fact, this rule will reduce the small entities affected by 60.

Executive Order 12866 and 12988

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Fluid Milk Promotion Act of 1990, as amended, authorizes the Fluid Milk Promotion Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a Fluid Milk Promotion Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and request a modification of the Order or to be exempted from the Order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Statement of Consideration

This document amends certain provisions of the Fluid Milk Promotion Order to conform with legislative changes of the recently enacted Farm Security and Rural Investment Act of 2002. Section 1506 of the Act amends sections 1999C, 1999C(4), and 1999O of the Fluid Milk Promotion Act of 1990, as amended, thereby necessitating revisions to certain provisions of the Fluid Milk Promotion Order. The 2002 Farm Bill also removed from the Fluid Milk Promotion Act the order termination date provision. The provision provided that the Order be terminated on December 31, 2002. This amendment does not require a change to the Order. The following order provisions are revised:

1. In § 1160.107, the term *fluid milk product* is redefined in conformance with the Act to provide the same definition that is specified in Federal milk marketing orders (7CRF 1000.15); and

2. In § 1160.108, the definition of *fluid milk processor* is modified to increase the exemption standard from 500,000 pounds to 3,000,000 pounds of fluid milk products processed and marketed commercially in consumer-type packages in the 48 contiguous States and the District of Columbia, excluding fluid milk products delivered to the residence of consumers. Accordingly, those fluid milk processors who process and market commercially more than 3,000,000 pounds of such fluid milk products per month shall pay the mandatory 20-cent per hundredweight assessment on all fluid milk products marketed.

This action is necessary to conform the Order to provisions in the Farm Security and Rural Investment Act of 2002. The amendments are made final in this action as provided in Section 1601 of the Act, and for the same reason, good cause exists for making this rule effective on August 1, 2002. To do otherwise would be impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 7 CFR Part 1160

Fluid milk, Milk, Promotion.

For the reasons set forth in the preamble, 7 CFR part 1160 is amended as follows:

PART 1160—FLUID MILK PROMOTION PROGRAM

1. The authority citation for 7 CFR Part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417.

2. Section 1160.107 is revised to read as follows:

§ 1160.107 Fluid milk product.

Fluid milk product means any product that meets the definition provided in § 1000.15 for milk marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601–674.

3. In § 1160.108, paragraphs (b) and (c), the number "500,000" is revised to read "3,000,000" and paragraph (a) is revised to read as follows:

§ 1160.108 Fluid milk processor.

(a) *Fluid milk processor* means any person who processes and markets commercially fluid milk products in consumer-type packages in the United States (excluding fluid milk products delivered directly to the place of residence of a consumer), except that the term fluid milk processor shall not include in each of the respective fiscal periods those persons who process and market not more than 3,000,000 pounds of such fluid milk products during the representative month, which shall be the first month of the fiscal period.

* * * * *

Dated: July 29, 2002.

A.J. Yates,

Administrator.

[FR Doc. 02–19469 Filed 7–31–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2000–8460; Amdt. No. 39–9474]

RIN 2120–AH17

Airworthiness Directives; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule, published in the **Federal Register** on July 22, 2002 (67 FR 47998). That final rule incorporates several standard provisions previously included in most airworthiness directives into the Code of Federal Regulations. FAA will no longer include these provisions in individual airworthiness directives. FAA is taking this action to standardize the way we write airworthiness directives. This action will enhance aviation safety by making it easier for users to focus on specific safety concerns addressed in airworthiness directives.

DATES EFFECTIVE: August 21, 2002.

FOR FURTHER INFORMATION CONTACT: Donald Byrne, (202) 267–3073.

Correction of Publication

In the final rule FR Doc. 02–17743, beginning on page 47998 in the **Federal Register** issue of July 23, 2002, make the following corrections:

1. On page 47998, in column 1, in the heading section, beginning on line 6, correct "RIN 2120–AH64" to read "RIN 2120–AH17".

Dated: Issued in Washington, DC on July 25, 2002.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 02–19366 Filed 7–31–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–23–AD; Amendment 39–12833; AD 2002–15–05]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Makila 1 A, 1 A1, and 1 A2 Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Turbomeca Makila 1 A, 1 A1, and 1 A2 turboshaft engines. This action requires replacing certain digital electronic control units (DECU's) and electronic control units (ECU's) with modified DECU's and ECU's. This amendment is prompted by a report of an uncontained engine turbine wheel failure and the subsequent loss of control of the helicopter. The actions specified in this AD are intended to prevent an engine overspeed condition resulting from the failure of two or more NTL channels.

DATES: Effective August 16, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 16, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 30, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–23–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00; fax (33) 05 59 74 45 15. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca Makila 1 A, 1 A1, and 1 A2 turboshaft engines. The DGAC advises that there has been an accident in which the helicopter experienced an engine overspeed, which resulted in an uncontained power turbine burst and the failure of both engines. Investigation has determined that the power turbine overspeed was caused by a failure of an engine-to-main gearbox (MGB) connection. One of the two failed NTL channels could be selected by the ECU and used to set the gas generator (Ng) demand, which in turn could cause an overspeed condition. Modification TU 203 to the ECU's that are used on the Makila 1 A and 1 A1 turboshaft engines improves failure detection of the ECU and simulates a fixed power turbine speed (Npt) if two of the three channels fail. Modification TU 215 to the ECU's used on the Makila 1A and 1A1 turboshaft engines changes the ceramic case timer to a metal case timer, which improves the unit's mechanical resistance. The simulated fixed Npt causes the gas generator to decelerate to a safe level. Modification TU 205C to the DECU's used on the Makila 1 A2 turboshaft engines upgrades the DECU software from version 6.01 to version 7.01. That upgrade improves the failure detection of the DECU and simulates a revised fixed Npt when both channels fail. The revised simulated fixed Npt value drives the gas generator to decelerate to 65% instead of the 85% value before modification. The 85% value before modification may not have been enough to avoid Npt overspeed.

The compliance times required by this AD were determined as a function of the manufacturing rate of the required parts and the maximum availability of the repairing centers.

Manufacturer's Service Information

Turbomeca has issued the following service bulletins (SB's):

- SB No. 298 73 0149, dated January 13, 2000, that specifies procedures for incorporating modification TU 205C on DECU's used on Makila 1 A2 turboshaft engines.
- SB No. 298 73 0166, dated October 5, 2001, that specifies procedures for incorporating modification TU 215 on ECU's used on Makila 1 A and 1 A1 turboshaft engines.

The DGAC classified these service bulletins as mandatory and issued AD's 2000–068(A), dated February 9, 2000, and 2001–546(A), dated November 14, 2001, in order to assure the airworthiness of these Turbomeca engines in France.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca Makila 1 A, 1 A1, and 1 A2 turboshaft engines of the same type design, this AD is being issued to prevent an engine overspeed condition resulting from the failure of two or more NTL channels. This AD requires replacing the Makila 1 A and 1 A1 ECU's, P/N's 0 177 69 810 0, 0 177 69 811 0, 0 177 69 812 0, 0 177 69 813 0, 0 177 69 814 0, 0 177 69 815 0, 0 177 69 816 0, 0 177 69 817 0, 0 177 69 818 0, 0 177 69 819 0, 0 177 69 820 0, and 0 177 69 824 0, 0 177 69 825 0, 0 177 69 826 0, 0 177 69 827 0, 0 177 69 828 0, and 0 177 69 829 0; with ECU's that have been modified to modification standard TU 215. This AD also requires replacing Makila 1 A2 DECU's, P/N 70CMB01040, with modified DECU's, P/N 70CMB01050.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment

hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–23–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–15–05 Turbomeca: Amendment 39–12833. Docket No. 2001–NE–23–AD.

Applicability

This airworthiness directive (AD) is applicable to Turbomeca Makila 1 A, 1 A1, and 1 A2 turboshaft engines with digital electronic control units (DECU's) and electronic control units (ECU's) that have a part number (P/N) listed in the following Table 1:

TABLE 1.—ECU AND DECU P/N'S

ECU or DECU P/N	Used on
0 177 69 810 0, 0 177 69 811 0, 0 177 69 812 0, 0 177 69 813 0, 0 177 69 814 0, 0 177 69 815 0, 0 177 69 816 0, 0 177 69 817 0, 0 177 69 818 0, 0 177 69 819 0, 0 177 69 820 0, 0 177 69 824 0, 0 177 69 825 0, 0 177 69 826 0, 0 177 69 827 0, 0 177 69 828 0, and 0 177 69 829 0.	Makila 1 A and 1 A1 engines.
70CMB01040	Makila 1 A2 engines.

These engines are installed on, but not limited to Eurocopter France model AS 332C, AS 332L, AS 332L1 and AS 332L2, helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required within 45 days after the effective date of this AD, unless already done.

To prevent an engine overspeed condition resulting from the failure of two or more NTL channels, do the following:

(a) For Makila 1 A and 1 A1 engines do either of the following:

(1) Replace ECU's that have a P/N listed in Table 1 of this AD, with ECU's that have been modified to modification standard TU 215, or

(2) Replace the comparator / selector circuit board in accordance with Turbomeca service bulletin (SB) 298 73 0166, dated October 5, 2001.

(b) For Makila 1 A2 engines, replace DECU, P/N 70CMB01040, with modified DECU, P/N 70CMB01050. Information on the modified DECU may be found in Turbomeca service bulletin (SB) 298 73 0149, dated January 13, 2000.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(e) The inspection must be done in accordance with Turbomeca Service Bulletin No. 298 73 0166, dated October 5, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, 40220 Tarnos, France. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in DGAC airworthiness directives 2000–068(A), dated February 9, 2000, and 2001–546(A), dated November 14, 2001.

Effective Date

(f) This amendment becomes effective on August 16, 2002.

Issued in Burlington, Massachusetts, on July 23, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–19164 Filed 7–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–76–AD; Amendment 39–12834; AD 2002–15–06]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–802 and AT–802A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Air Tractor, Inc. (Air Tractor) Models AT–802 and AT-802A airplanes. This AD requires you to replace the rudder control cables and fairleads with parts of improved design. This AD is the result of a report that a rudder control cable broke because of wear at the aft fairlead. The actions specified by this AD are intended to prevent the rudder control cable from breaking because of the rudder control cables wearing in the fairlead area. Broken rudder control cables could result in loss of rudder control.

DATES: This AD becomes effective on September 13, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 13, 2002.

ADDRESSES: You may get the service information referenced in this AD from Air Tractor, Inc., PO Box 485, Olney, Texas 76374. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE–76-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Garry D. Sills, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5154; facsimile: (817) 222-5960.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA received reports of the rudder control cables wearing at the aft fairlead area on Air Tractor Models AT-802 and AT–802A airplanes. In one instance, the rudder cable broke on a Model AT–802 airplane.

Air Tractor has designed a new cable that incorporates a stainless steel sleeve that is crimped to the cable in the fairlead area. The stainless steel sleeve is intended to prevent wear of the new cable in that area.

What Is the Potential Impact if FAA Took No Action?

If this condition is not corrected, rudder control cables may wear and break at the fairlead area. Broken rudder control cables could result in loss of rudder control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor Models AT–802 and AT–802A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 20, 2002 (67 FR 12914). The NPRM proposed to replace the rudder control cables and fairleads with parts of improved design.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 81 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × 60 per hour=$120	$300	$420	$34,020

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–15–06 Air Tractor, Inc.: Amendment 39–12834; Docket No. 2000–CE–76–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models AT–802 and AT–802A airplanes, serial numbers 802–0001 through 802–0081, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the rudder control cable from breaking because of the rudder control cables wearing in the fairlead area. Broken rudder control cables could result in loss of rudder control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace the rudder control cables and fairlead with part numbers 70524–10–500 or 70524–6–500, and 70122–1, as specified in the service letter.	Within the next 500 hours time-in-service (TIS) after September 13, 2002 (the effective date of this AD), unless already accomplished.	Accomplish the replacements in accordance with Snow Engineering Company Service Letter #199, dated May 30, 2000, and the applicable drawing number 70523 of the replacement kit, as specified in the service letter.
(2) Do not install any rudder control cable that does not have a stainless steel sleeve crimped to the cable in the fairlead area.	As of September 13, 2002 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Fort Worth Airplane Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Garry D. Sills, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5154; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Snow Engineering Company Service Letter # 199, dated May 30, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Air Tractor, Inc., PO Box 485, Olney, Texas 76374. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on September 13, 2002.

Issued in Kansas City, Missouri, on July 24, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–19257 Filed 7–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9012]

RIN 1545–AX75

Clarification of Entity Classification Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations under section 7701 that address the Federal tax classification of a business entity wholly owned by a

foreign government and that also provide that a nonbank entity wholly owned by a foreign bank cannot be disregarded as an entity separate from its owner (disregarded entity) for purposes of applying the special rules applicable to banks under the Internal Revenue Code. This document also contains final regulations providing that a partnership can be a controlled commercial entity for purposes of section 892(a)(2)(B) and reissues certain section 892 temporary regulations with references to the final regulations.

DATES: *Effective Date:* These regulations are effective August 1, 2002.

Applicability Dates: The regulations that address the Federal tax classification of business entities wholly owned by a foreign government under § 301.7701–2 apply on or after January 14, 2002, to such business entities regardless of any prior entity classification, and the regulations that address the definition of the term entity for purposes of section 892(a)(2)(B) apply on or after January 14, 2002. The regulations relating to a nonbank entity that is wholly owned by a foreign bank apply to taxable years beginning after January 12, 2001.

FOR FURTHER INFORMATION CONTACT: Camille B. Evans at (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR parts 1 and 301. On January 12, 2001, the IRS and the Treasury Department issued a notice of proposed rulemaking (REG–101739–00), published in the **Federal Register** (66 FR 2854), to amend the existing elective business entity classification regime under section 7701 known as the check-the-box regulations, and to amend the existing temporary rules providing for the income of entities owned by foreign governments as described under section 892. No public hearing was requested or held. Written comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation and Summary of Comments

On December 18, 1996, the IRS and Treasury published the elective Federal tax classification regime under section 7701 known as the check-the-box regulations, 61 FR 66584. On January 12, 2001, the IRS and Treasury issued a notice of proposed rulemaking (REG–101739–00) that proposed to amend the Procedure and Administration Regulations (26 CFR Part 301) to address the Federal tax classification of an entity wholly owned by a foreign government (as defined in § 1.892–2T) and to address the Federal tax treatment to a foreign bank of income and assets and liabilities of an otherwise disregarded nonbank entity that it owns. As noted in the preamble to the notice of proposed rulemaking, the purpose of the proposed regulations was to ensure parity between the treatment of entities wholly owned by State governments and entities wholly owned by foreign governments, as well as to ensure parity between the treatment of nonbank subsidiaries owned by U.S. banks and the treatment of nonbank subsidiaries owned by foreign banks engaged in a U.S. banking business. The January 12, 2001, notice of proposed rulemaking also proposed to provide that a partnership can be a controlled commercial entity under section 892.

A. § 301.7701–2(b)(6)

A commentator suggested that the rule in the proposed regulations that a business entity wholly owned by a foreign government (as defined in § 1.892–2T) is a per se corporation should be limited to those entities directly owned by the foreign government. As indicated above, the proposed regulations were issued because the IRS and Treasury believe that it is appropriate to treat controlled entities owned by foreign governments similarly to controlled entities owned by State governments. The per se rule relating to controlled entities owned by State governments is not limited to those entities directly owned by a State government. Thus, except for minor changes to language, the final regulations retain the proposed rule that a business entity wholly owned by a foreign government, like a business entity wholly owned by a State government, will be treated as a per se corporation.

B. § 301.7701–2(c)(2)(ii)

Two comments were received on the proposed regulation that provides that foreign banks, like domestic banks, would be precluded from treating their wholly owned nonbank subsidiaries as disregarded entities for purposes of the special rules of the Internal Revenue Code (Code) applicable to banks. Both comments asked for guidance on the phrase "special rules of the Internal Revenue Code applicable to banks" and the circumstances under which the regulation would apply to entities owned by foreign banks.

As noted above, the regulations are intended to ensure parity of treatment between domestic banks and foreign banks engaged in a U.S. trade or business by providing that neither domestic banks as defined in section 581 nor foreign banks as defined in section 585(a)(2)(B) (without regard to the second sentence thereof) may apply the special rules applicable to banks to their nonbank subsidiaries. A foreign bank is described in section 585(a)(2)(B) only when it is engaged in a U.S. trade or business that meets the requirements of section 581 but for the fact the bank is a foreign corporation. Accordingly, a foreign bank will be subject to the provisions of these final regulations only if the foreign bank is engaged in a U.S. trade or business that meets the requirements of section 581 but for the fact that the bank is a foreign corporation. The reference to "special rules applicable to banks" includes not only provisions of the Code but also regulations and other published guidance under the Code.

One of these comments specifically requested clarification on how § 301.7701–2(c)(2)(ii) would affect a foreign bank's treatment of its disregarded entity for purposes of applying the fixed ratio election in the interest allocation rules under § 1.882–5(c)(4). Because under § 1.882–5 a foreign bank that meets the definition of section 585(a)(2)(B) does not distinguish between its banking and nonbanking activities for purposes of taking assets, liabilities and interest expense into account in the interest allocation formula, the IRS and Treasury do not believe the regulations under § 1.882–5 are appropriately considered "special rules applicable to banks" for purposes of the § 301.7701–2(c)(2)(ii) regulations. Accordingly, the final regulations clarify that a foreign bank that is defined in section 585(a)(2)(B) is entitled to use the 93 percent fixed ratio under § 1.882–5 for the assets, liabilities and interest expense of a nonbank subsidiary that otherwise is treated as a disregarded entity for federal income tax purposes. Similarly, in calculating the amount of excess interest that may be treated as interest expense paid or accrued on deposits under § 1.884–4(a)(2)(iii), a foreign bank defined in section 585(a)(2)(B) is entitled to take into account its combined banking and nonbanking U.S. assets (as defined in § 1.884–1(d)), including the assets of a nonbank subsidiary that is otherwise treated as a disregarded entity for federal income tax purposes.

A similar analysis applies to the rules under §§ 1.864–4(c)(5), 1.864–5, and 1.864–6, which relate to the

determination of the effectively connected income of a banking, financing or similar business. Because those rules apply to both section 585(a)(2)(B) banks and to foreign corporations that are not regulated as banks but otherwise engage in financial services activities (See *Inverworld v. Commissioner*, T.C. Memo. 1996–301, supplemented by T.C. Memo 1997–226), the final regulations clarify that these rules are not considered "special rules applicable to banks."

Effective Dates

The regulations that address the Federal tax classification of business entities wholly owned by a foreign government under § 301.7701–2 apply on or after January 14, 2002, to such business entities regardless of any prior entity classification, and the regulations that address the definition of the term entity for purposes of section 892(a)(2)(B) apply on or after January 14, 2002. The regulations relating to a nonbank entity that is wholly owned by a foreign bank apply to taxable years beginning after January 12, 2001.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Camille B. Evans of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift Taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by removing the entry for "Sections 1.892–1T through 1.892–7T" and adding the following entries in numerical order:

Authority: 26 U.S.C. 7805 * * *

Section 1.892–1T also issued under 26 U.S.C. 892(c).

Section 1.892–2T also issued under 26 U.S.C. 892(c).

Section 1.892–3T also issued under 26 U.S.C. 892(c).

Section 1.892–4T also issued under 26 U.S.C. 892(c).

Section 1.892–5 also issued under 26 U.S.C. 892(c).

Section 1.892–5T also issued under 26 U.S.C. 892(c).

Section 1.892–6T also issued under 26 U.S.C. 892(c).

Section 1.892–7T also issued under 26 U.S.C. 892(c). * * *

2. Section 1.892–5 is added to read as follows:

§ 1.892–5 Controlled commercial entity.

(a) through (a)(2) [Reserved]. For further information, see § 1.892–5T(a) through (a)(2).

(3) For purposes of section 892(a)(2)(B), the term *entity* means and includes a corporation, a partnership, a trust (including a pension trust described in § 1.892–2T(c)) and an estate.

(4) *Effective date.* This section applies on or after January 14, 2002. See § 1.892–5T(a) for the rules that apply before January 14, 2002.

(b) through (d) [Reserved]. For further information, see §§ 1.892–5T(b) through (d).

3. Section 1.892–5T is amended by:

1. Removing the concluding text immediately following paragraph (a)(2).

2. Adding paragraph (a)(3).

The addition reads as follows:

§ 1.892–5T Controlled commercial entity (temporary regulations).

(a) * * *

(3) [Reserved]. For further information, see § 1.892–5(a)(3).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

5. Section 301.7701–2 is amended by:

1. Revising paragraphs (b)(6) and (c)(2)(ii).

2. Revising the first sentence of paragraph (e).

The revisions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(b) * * *

(6) A business entity wholly owned by a State or any political subdivision thereof, or a business entity wholly owned by a foreign government or any other entity described in § 1.892–2T;

* * * * *

(c) * * *

(2) * * *

(ii) *Special rule for certain business entities.* If the single owner of a business entity is a bank (as defined in section 581, or, in the case of a foreign bank, as defined in section 585(a)(2)(B) without regard to the second sentence thereof), then the special rules applicable to banks under the Internal Revenue Code will continue to apply to the single owner as if the wholly owned entity were a separate entity. For this purpose, the special rules applicable to banks under the Internal Revenue Code do not include the rules under sections 864(c), 882(c), and 884.

* * * * *

(e) *Effective date.* Except as otherwise provided in this paragraph (e), the rules of this section apply as of January 1, 1997, except that paragraph (b)(6) applies on or after January 14, 2002, to a business entity wholly owned by a foreign government regardless of any prior entity classification, and paragraph (c)(2)(ii) of this section applies to taxable years beginning after January 12, 2001. * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 25, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–19349 Filed 7–31–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–7232–3]

New York: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses the regulations entitled "Approved State Hazardous Waste Management Programs" to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State regulations that will be subject to EPA's inspection and enforcement. Today's rule does not incorporate by reference the New York hazardous waste statutes. The rule codifies in the regulations the prior approval of New York's hazardous waste management program and incorporates by reference authorized provisions of the State's regulations.

DATES: This regulation is effective September 30, 2002, unless EPA receives adverse written comment on the codification of the New York authorized RCRA program by the close of business September 3, 2002. If EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** informing the public that this rule will not take effect. The incorporation by reference of authorized provisions in the New York regulations contained in this rule is approved by the Director of the Federal Register as of September 30, 2002 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Send written comments to Michael Infurna, Division of Environmental Planning and Protection, EPA Region 2, 290 Broadway, 22nd Floor, New York, NY 10007, Phone number: (212) 637–4177. You can inspect the records related to this codification effort in the EPA Region 2 Library, 290 Broadway, 16th Floor, New York, NY 10007, Phone number: (212) 637–3185. The public is advised to call in advance to verify the business hours.

FOR FURTHER INFORMATION CONTACT: Michael Infurna, Division of Environmental Planning and Protection, EPA Region 2, 290 Broadway, 22nd Floor, New York, NY 10007, Phone number: (212) 637–4177.

SUPPLEMENTARY INFORMATION:

A. What Is Codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State regulations that EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

B. What Has New York Previously Been Authorized for?

New York initially received Final authorization effective on May 29, 1986 (51 FR 17737, May 15, 1986) to implement its base hazardous waste management program. New York received authorization for revisions to its program effective July 3, 1989 (54 FR 19184, May 4, 1989), May 7, 1990 (55 FR 7896, March 6, 1990), October 29, 1991 (56 FR 42944, August 30, 1991), May 22, 1992 (57 FR 9978, March 23, 1992), August 28, 1995 (60 FR 33753, June 29, 1995), October 14, 1997 (62 FR 43111, August 12, 1997) and January 15, 2002 (66 FR 57679, November 16, 2001).

C. What Codification Decisions Have We Made in This Rule?

The purpose of today's **Federal Register** document is to codify New York's base hazardous waste management program and its seven revisions to that program. EPA provided notices and opportunity for comments on the Agency's decisions to authorize the New York program, and EPA is not now reopening the decisions, nor requesting comments, on the New York authorizations as published in the **Federal Register** notices specified in Section B of this document.

This document incorporates by reference New York's hazardous waste regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying New York's authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of Federally approved requirements of the New York hazardous waste management program.

To codify EPA's approval of New York's hazardous waste management program, EPA is adding Subpart HH to 40 CFR part 272. Section 272.1651 incorporates by reference New York's authorized hazardous waste regulations. Section 272.1651 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What Is the Effect of New York's Codification on Enforcement?

The Agency retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved New York procedural and enforcement authorities. Section 272.1651(b)(2) of 40 CFR lists the statutory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

E. What State Provisions Are Not Part of the Codification?

The public needs to be aware that some provisions of New York's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (*see* 40 CFR 271.1(i));

(2) Unauthorized amendments to authorized State provisions; and

(3) New unauthorized State requirements.

State provisions that are "broader in scope" than the Federal program are not part of the RCRA authorized program and EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For

reference and clarity, 40 CFR 272.1651(b)(3) lists the New York statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being codified. "Broader in scope" provisions cannot be enforced by EPA; the State, however, may enforce such provisions under State law.

Additionally, New York's hazardous waste regulations include amendments which have not been authorized by EPA. Since EPA cannot enforce a State's requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to be precise in delineating the scope of a State's authorized hazardous waste program. Regulatory provisions that have not been authorized by EPA include amendments to previously authorized State regulations as well as new State requirements.

In those instances where New York has made unauthorized amendments to previously authorized sections of State code, EPA is identifying in 40 CFR 272.1651(b)(4) any regulations which, while adopted by the State and incorporated by reference, include language not authorized by EPA. Those unauthorized portions of the State regulations are not Federally enforceable. Thus, notwithstanding the language in the New York hazardous waste regulations incorporated by reference at 40 CFR 272.1651(b)(1), EPA will only enforce those portions of the State regulations that are actually authorized by EPA. For the convenience of the regulated community, the actual State regulatory text authorized by EPA for the citations listed at 272.1651(b)(4) (*i.e.*, without the unauthorized amendments) is compiled as a separate document, Addendum to the EPA Approved New York Regulatory Requirements Applicable to the Hazardous Waste Management Program, January 2002. This document is available from EPA Region 2, EPA Region 2 Library, 290 Broadway, 16th Floor, New York, New York 10007. Phone number: (212) 637–3185.

State regulations that are not incorporated by reference in today's rule at 40 CFR 272.1651(b)(1), or that are not listed in 40 CFR 272.1651(b)(3) ("broader in scope") or 40 CFR 272.1651(b)(4) ("unauthorized amendments to authorized State provisions"), are considered new unauthorized State requirements. These requirements are not Federally enforceable.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What Will Be the Effect of Federal HSWA Requirements on the Codification?

The Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985). EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by EPA. However, until EPA authorizes those State requirements, EPA can only enforce the HSWA requirements and not the State analogs. EPA will not codify those State requirements until the State receives authorization for those requirements.

G. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This rule incorporates by reference New York's authorized hazardous waste management regulations and does not impose new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of New York's voluntary participation in EPA's State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for

affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "'Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "'major rule'" as defined by 5 U.S.C. 804(2). This action will be effective September 30, 2002.

List of Subjects in 40 CFR Part 272

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 30, 2002.

William J. Muszynski,

Deputy Regional Administrator, EPA Region 2.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart HH is amended by adding § 272.1651 to read as follows:

§ 272.1651 New York State-Administered Program: final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), New York has final authorization for the following elements as submitted to EPA in New York's base program application for final authorization which was approved by EPA effective on May 29, 1986. Subsequent program revision applications were approved effective on July 3, 1989, May 7, 1990, October 29, 1991, May 22, 1992, August 28, 1995, October 14, 1997, and January 15, 2002.

(b) *State Statutes and Regulations.* (1) The New York regulations cited in paragraph (b)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the New York regulations that are incorporated by reference in this paragraph are available from West Group, 610 Opperman Drive, Eagan, MN 55123, ATTENTION: D3–10 (Phone #: 1–800–328–9352).

(i) The Binder entitled "EPA Approved New York Regulatory Requirements Applicable to the Hazardous Waste Management Program", dated January 2002.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Environmental Conservation Laws (ECL), 1997 Replacement Volume, as revised by the 1999 Cumulative Pocket Part: sections 1–0303(18), 3–0301(1) (introductory paragraph); 3–0301(1)(a) and (b); 3–0301(1)(m); 3–0301(1)(o); 3–0301(1)(w); 3–0301(1)(x); 3–0301(1)(cc); 3–0301(2)(a), (b), (d)–(j), (l), (m) and (q); 3–0301(4); 19–0301(1) (except 19–0301(c), (e) and (f)); 19–0303(1)–(3); 19–0304; 27–0105; 27–0701; 27–0703; 27–0705; 27–0707 (except 27–0707(2–c)); 27–0711; 27–0900 through 27–0908; 27–0909 (except 27–0909(5)); 27–0910 through 27–0922; 70–0101; 70–0103; 70–0105 (except 70–0105(3) and 70–0105(6)); 70–0107(1) and (2); 70–0107(3) (except 70–0107(3)(a)–(k), (m) and (n)); 70–0109; 70–0113; 70–0115 (except (2)(c) and (d)); 70–0117; 70–0119; 70–0121; 71–0301; 71–1719; 71–2705; 71–2707; 71–2709 through 71–2715; 71–2717; 71–2720; and 71–2727.

(ii) McKinney's Consolidated Laws of New York, Book 46, Public Officers Law (POL), as amended through 1999: sections 87 and 89.

(iii) McKinney's Consolidated Laws of New York, Book 7B, Civil Practice Law and Rules (CPLR), as amended through 1999: sections 6301; 6311; and 6313.

(iv) Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A–2A, Hazardous Waste Management System, as initially published on January 1, 1999 and amended through March 15, 1999: sections 372.1(f); 373–1.1(f) and (g); 373–1.4(b); 373–1.4(d)–(f); 373–1.6(c)(1)–(3); 373–1.9 (except (a)(2)(iii); (iv) and (vi)); 621.1 through 621.4; 621.5 (except (d)(5), (d)(6)(i), (d)(7)(i)(a), (d)(7)(i)(c) and (d)(9)); 621.6 (except (b), (d)(4) and (d)(5)); 621.7; 621.8; 621.9 (except (a)(5), (c)(2) and (e)(2)); 621.10; 621.11 (except (d)); 621.12 through 621.15; and 621.16 (except (b), (d) and (e)).

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Environmental Conservation Laws (ECL), 1997 Replacement Volume: sections 27–0301; 27–0303; 27–0305; 27–0307; 27–0909(5); 27–0923; and 27–0925.

(ii) Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A–2A, Hazardous Waste Management System, as initially published on January 1, 1999 and amended through March 15, 1999: Section 371.4(e); 372.3(a)(1); 372.3(a)(4); 372.3(b)(6)(iv); 372.3(d)(3); 373–1.1(d)(1)(x); 373–1.4(c); and 373–2.15(a)(2).

(iii) Throughout New York's hazardous waste regulations, the State cross-references Part 364, which sets forth additional transporter requirements including permit and liability requirements (for examples, see 6 NYCRR §§ 372.2(b)(8), 373–1.7(h)(3), 374–3.3(i)(1) and (2), 374–3.4(a) and 374–3.6(a)(1)). The transporter permit and liability requirements are broader in scope than the Federal program.

(4) *Unauthorized State Amendments.* (i) The authorized provisions at sections 370.2(b)(72), 370.2(b)(184), 371.1(c)(7), 373–1.3(d)(3), 373–2.8(a)(3), 373–2.27(e)(4)(i)(c) and (e)(6), 373–2.28(n)(4)(ii), 373–3.27(e)(4)(i)(c) and (e)(6), 373–3.28(n)(4)(ii) and 374–1.8(h) of 6 NYCRR, as initially published on January 1, 1999, and amended through March 15, 1999, include amendments that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and

are, therefore, not Federally enforceable. Thus, notwithstanding the language in the New York hazardous waste regulations incorporated by reference at paragraph (b)(1)(i) of this section, EPA will enforce the State regulations that are actually authorized by EPA. The effective dates of the State's authorized provisions are listed in the following Table:

TITLE 6, NEW YORK CODES, RULES AND REGULATIONS (6 NYCRR)

State citation	Description	Effective date
370.2(b)(72) [Authorized provision previously at 370.2(b)(54)]	Definition of "Federal agency"	7/14/85
370.2(b)(184) [Authorized provision previously at 370.2(b)(137)]	Definition of "Thermal treatment"	7/14/85
371.1(c)(7)	Definition of "Solid Waste". Documentation of claims for exemption.	7/1/86
373–1.3(d)(3)	Submission of applications	7/14/85
373–2.8(a)(3)	Financial Requirements. States and Federal government are exempt from the requirements of this section.	7/14/85
373–2.27(e)(4)(i)(c)	Test Methods and Procedures	1/14/95
373–2.27(e)(6)	Test Methods and Procedures	1/14/95
373–2.28(n)(4)(ii)	Test Methods and Procedures	1/14/95
373–3.27(e)(4)(i)(c)	Test Methods and Procedures	1/14/95
373–3.27(e)(6)	Test Methods and Procedures	1/14/95
373–3.28(n)(4)(ii)	Test Methods and Procedures	1/14/95
374–1.8(h)	Standards to control hydrogen chloride (HCl) and chlorine gas "(Cl_2)" emissions.	1/14/95

(ii) The actual State regulatory text authorized by EPA (i.e., without the unauthorized amendments) is available as a separate document, Addendum to the EPA Approved New York Regulatory Requirements Applicable to the Hazardous Waste Management Program, January 2002. This document is available from EPA Region 2, EPA Region 2 Library, 290 Broadway, 16th Floor, New York, New York 10007, Phone number: (212) 637–3185.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 2 and the State of New York, signed by the Commissioner of the State of New York Department of Environmental Conservation on July 20, 2001, and by the EPA Regional Administrator on January 16, 2002, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of New York in 1985 and revisions, supplements and addenda to that Statement dated August 18, 1988, July 26, 1989, August 15, 1991, October 11, 1991, July 28, 1994, May 30, 1997, and February 5, 2001, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 is amended by adding in alphabetical order, "New York" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

New York

The regulatory provisions include:

Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A–2A, Hazardous Waste Management System, as initially published on January 1, 1999, and amended through March 15, 1999

Please note the following:

(1) For a few regulations New York State made minor changes to its regulations after March 15, 1999 and EPA authorized these changes. These regulatory changes are found in official "Supplements" dated, November 15, 1999 and January 31, 2000, filed with the New York Secretary of State. Authorized regulations that include these later changes are noted below by inclusion in parentheses of November 15, 1999 or January 31, 2000 after the regulatory citation.

(2) For a few other regulations, the authorized regulation is an earlier version of the New York State regulation. For these regulations, EPA authorized the version of the regulations that appear in the Official Compilation of Code, Rules and Regulations dated January 31, 1992 or January 14, 1995. New York State made later changes to these regulations but these changes have not been authorized by EPA. The regulations where the authorized regulation is an earlier version of the regulation are noted below by inclusion in parentheses of January 31, 1992 or January 14, 1995 after the regulatory citations.

Part 370—Hazardous Waste Management System—General: Sections 370.1(a) (except (a)(3)); 370.1(b)-(d); 370.1(e) (except (e)(1)(xv), (e)(1)(xvi) and (e)(6)(ii)-(iii)); 370.2(a); 370.2(b)(1); 370.2(b)(2) (January 31, 2000); 370.2(b)(3)-(b)(14), 370.2(b)(15) "battery"; 370.2(b)(15) "bedrock" (January 31, 1992); 370.2(b)(17)-(b)(31); 370.2(b)(32) (January 31, 2000); 370.2(b)(33)-(b)(54); 370.2(b)(56)-(b)(63); 370.2(b)(64) (November 15, 1999); 370.2(b)(65)-(b)(74); 370.2(b)(75) (January 31, 2000); 370.2(b)(76)-(b)(91); 370.2(b)(94)-(b)(104); 370.2(b)(106)-(b)(123); 370.2(b)(125)-(b)(163); 370.2(b)(164) (January 31, 2000); 370.2(b)(165)-(b)(179); 370.2(b)(180) (January 31, 2000); 370.2(b)(181)-(b)(208); 370.2(b)(210); 370.2(b)(211); 370.2(b)(212) (except the last sentence); 370.2(b)(213)-(b)(216); 370.3 (except 370.3(c)); 370.4 (except introductory paragraphs at (a)(1) and (b)(1)); introductory paragraphs at 370.4(a)(1) and (b)(1) (January 31, 1992); and 370.5 (except (b)).

Part 371—Identification and Listing of Hazardous Waste: Sections 371.1(a)-(c); 371.1(d) (except (d)(1)(ii)(e)); 371.1(e) (except (e)(1)(iv)); 371.1(e)(1)(iv) (January 31, 2000); 371.1(f)(1)-(7); 371.1(f)(8) (except the phrase "or such mixing occurs at a facility regulated under Subpart 373–4 or permitted under Part 373 of this Title"); 371.1(f)(9) and (f)(10); 371.1(g)(1)(i); 371.1(g)(1)(ii) (except (g)(1)(ii)(c)); 371.1(g)(1)(iii) (except the phrase "as defined in section 372.5 of this Title, and provide a copy of" in (g)(1)(iii)(a); 371.1(g)(2)-(4); 371.1(h)-(j); 371.2; 371.3 (except (d)(1)(v); 371.3(d)(1)(v) (January 31, 2000); and 371.4 (except (e)).

Part 372—Hazardous Waste Manifest System and Related Standards for Generators, Transporters and Facilities: Sections 372.1(a)-(d); 372.1(e)(2)(ii)(c) (January 31, 1992); 372.1(e)(2)(iii)(c) (January 31, 1992); 372.1(e)(3)-(e)(8); 372.1(g) and (h); 372.2 (except (a)(8)(vi)); 372.3 (except (a)(1), (a)(4), (a)(8), (b)(1)(ii), (b)(5)(ii), (b)(6)(iv), (c)(4) and (d)(3)); 372.5 (except (h) and (i)); 372.6; 372.7(a) and (b); 372.7(c) (except (c)(4)) (November 15, 1999); 372.7(c)(4); and 372.7(d) (except (d)(4)); 372.7(d)(4) (January 31, 1992).

Part 373, Subpart 373–1—Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements: Sections 373–

1.1(a)-(c); 373–1.1(d) (except (d)(1)(iii)(b), (d)(1)(iii)(c)(6), (d)(1)(iii)(d), (d)(1)(iv)(a) and (b), (d)(1)(x), (d)(1)(xvi) and (xviii)); 373–1.1(e); 373–1.1(h) and (i); 373–1.2; 373–1.3; 373–1.4(a); 373–1.4(g) and (h); 373–1.5(a)(1) (November 15, 1999); 373–1.5(a)(2) (except (a)(2)(iii), (a)(2)(xiii), (a)(2)(xviii) and (xix)); 373–1.5(a)(2)(iii), (a)(2)(xiii), (a)(2)(xix) (January 31, 2000); 373–1.5(a)(3) and (4); 373–1.5(b) and (c); 373–1.5(d) (except (d)(3) and (d)(11)); 373–1.5(d)(11); (January 31, 2000); 373–1.5(e)-(p) (except reserved paragraphs); 373–1.6 (except (c)(1)-(4)); 373–1.7; 373–1.8; 373–1.9 (except (a)(2)(iii), (iv) and (vi)); 373–1.9(a)(2)(iii), (iv) and (vi) (January 31, 2000); and 373–1.10.

Part 373, Subpart 373–2—Final Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Sections 373–2.1 through 373–2.4; 373–2.5(a); 373–2.5(b) (except the last sentence in (b)(1)(i)(b) and the entire provision at (b)(1)(vii)); 373–2.5(c) (except (c)(2)(iv), (xi) and (xiii)); 373–2.5(c)(2)(iv) (November 15, 1999); 373–2.5(c)(2)(xi) and (xiii) (January 31, 2000); 373–2.5(d)-(g); 373–2.6; 373–2.7 (except 373–2.7(c)(2)(iv) and (c)(3)(iii)); 373–2.7(c)(2)(iv) (November 15, 1999); 373–2.7(c)(3)(iii) (January 31, 2000); 373–2.8(a)-(e); 373–2.8(f) (except (f)(1)(iii)(b)); 373–2.8(f)(1)(iii)(b) (November 15, 1999); 373–2.8(g); 373–2.8(h)(1) introductory paragraph (January 31, 2000); 373–2.8(h)(1)(i)-(vii); 373–2.8(h)(2) introductory paragraph (January 31, 2000); 373–2.8(h)(2)(i)-(vii); 373–2.8(h)(3)-(6); 373–2.8(h)(7) (except (h)(7)(i) introductory paragraph); 373–2.8(h)(7)(i) introductory paragraph (January 31, 2000); 373–2.8(h)(8)-(10); 373–2.8(i); 373–2.8(j) (except (j)(2), (j)(6)(ii) and (j)(11)-(13); 373–2.8(j)(2) (January 14, 1995), 373–2.8(j)(6)(ii) (January 14, 1995); and 373–2.8(j)(11)-(13) (January 14, 1995); 373–2.9; 373–2.10 (except last sentence in (g)(4)(i)); 373–2.11; 373–2.12 (except 373–2.12(a)(1), (b)(1)(i)(a), (d), (g)(2)) and (h)(1)); 373–2.12(a)(1) (January 31, 1992); 373–2.12(b)(1)(i)(a) (January 31, 2000); 373–2.12(g)(2) (January 31, 1992); 373–2.12(h)(1) (January 31, 2000); 373–2.13; 373–2.14 (except (c)(1)(i)); 373–2.14(c)(1)(i) (January 31, 1992); 373–2.15 (except (a)(2)); 373–2.19; 373–2.23; 373–2.24; and 373–2.27 through 373–2.31.

Part 373, Subpart 373–3—Interim Status Standards Regulations for Owners and Operators of Hazardous Waste Facilities: Sections 373–3.1 (except the phrase "or Subpart 374–2 of this Title" in 373–3.1(a)(6)); 373–3.2 through 373–3.4; 373–3.5 (except last sentence in 373–3.5(b)(1)(i)(b) and (b)(1)(vii)); 373–3.6; 373–3.7 (except (c)(3)(iv)); 373–3.7(c)(3)(iv) (November 15, 1999); 373–3.8 (except (h)(3)); 373–3.8(h)(3) (November 15, 1999); 373–3.9; 373–3.10 (except last sentence in (g)(4)(i)); 373–3.11 through 373–3.13; 373–3.14 (except (i)(5)); 373–3.14(i)(5) (November 15, 1999); 373–3.15 (except (a)(2)); 373–3.16 through 373–3.18; 373–3.23; and 373–3.27 through 373–3.31.

Part 374, Subpart 374–1—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities: Sections 374–1.1; 374–1.3; 374–1.6 (except (a)(2)(iii)); 374–1.7; 374–1.8(a)(1); 374–1.8(a)(2) (except the second sentence "Such used oil * * * of this Title" in (a)(2)(i)); 374–1.8(a)(3); 374–1.8(b)-(d); 374–1.8(e) (except (e)(5)(i)); 374–1.8(e)(5)(i) (January 14, 1995); 374–1.8(f); 374–1.8(g) (except (g)(7)); 374–1.8(g)(7) (January 14, 1995); 374–1.8(h)-(m); and 374–1.13.

Part 374, Subpart 374–3—Standards for Universal Waste: Sections 374–3.1; 374–3.2; 374–3.3; 373–3.4 (except (a)(2)); 373–3.5; 373–3.6; and 374–3.7.

Part 376—Land Disposal Restrictions: Sections 376.1 (except (a)(5), (a)(9), (b)(1)(xi), (e), (f) and (g)(2)(v)); 376.2; 376.3 (except (b), (c) and (d)(2)); 376.4 (except (c)(2) and (e)(1)-(7)); and 376.5.

Appendices: Appendices 19 through 25; Appendices 27 through 30; Appendix 33 (January 31, 1992); Appendix 38; Appendices 40 through 48, Appendix 49 (January 14, 1995) and Appendices 51 through 55.

Copies of the New York regulations that are incorporated by reference are available from West Group, 610 Opperman Drive, Eagan, MN 55123, ATTENTION: D3–10 (Phone #: 1–800–328–9352).

* * * * *

[FR Doc. 02–18990 Filed 7–31–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 020326071–2166–02; I.D. 061402E]

RIN 0648-AP83

Taking and Importing Marine Mammals; Taking Bottlenose Dolphins and Spotted Dolphins Incidental to Oil and Gas Structure Removal Activities in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations authorizing and governing the taking of bottlenose and spotted dolphins incidental to the removal of oil and gas drilling and production structures in state waters and on the Outer Continental Shelf (OCS) in the Gulf of Mexico for a period not to exceed 18 months. The incidental taking of small numbers of marine mammals is authorized by the Marine Mammal Protection Act (MMPA), if certain findings are made and regulations are issued that include requirements for monitoring and reporting. These regulations do not authorize the removal of the structures as such authorization is provided by the Minerals Management Service (MMS) and is not within the jurisdiction of NMFS. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and their habitat.

DATES: Effective August 1, 2002 through February 2, 2004.

ADDRESSES: Copies of the Environmental Assessment (EA), proposed rule, and application may be obtained by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910–3282 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this final rule should be sent to the Chief of the Office of Protected Resources, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Section 101 of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations governing the taking are issued. Effective January 26, 1996, by Department Delegation Order 10–15, the Secretary delegated authority to perform the functions vested in the Secretary as prescribed by the MMPA to the Administrator of the National Oceanic and Atmospheric Administration (NOAA). On December 17, 1990, under NOAA Administrative Order 205–11, 7.01, the Under Secretary for Oceans and Atmosphere delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Permission for a take shall be granted if the Secretary finds, after notice and opportunity for public comment, that the taking will involve only small

numbers of marine mammals, will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. If such findings are warranted, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

On October 12, 1995 (60 FR 53145), NMFS issued regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in state waters and on the OCS in the Gulf of Mexico (50 CFR 216.141-148). Under these regulations, operators who removed oil and gas drilling and production structures and related facilities in state and Federal waters of the Gulf of Mexico adjacent to the coasts of Texas, Louisiana, Mississippi, Alabama, and Florida applied for Letters of Authorization (LOAs) to incidentally take bottlenose and spotted dolphins in the course of structure removal activities. On November 13, 2000, these regulations expired and NMFS could no longer issue LOAs for structure removal activities in the Gulf of Mexico.

Summary of Action

On February 12, 2002, the American Petroleum Institute (API) submitted a request to NMFS requesting an interim policy statement to provide the oil and gas industry with protection from incidental take liability under the MMPA during the 2002 structure decommissioning and removal season. In response, NMFS has elected to promulgate these 18–month regulations.

On April 19, 2002 (67 FR 19373), NMFS proposed new regulations governing the incidental take of bottlenose dolphins (*Tursiops truncatus*) and spotted dolphins (*Stenella frontalis* and *S. attenuata*) in water depths equal to or less than 200 meters (m) (656 feet, ft). With finalization of these new regulations, operators who remove oil and gas drilling and production structures and related facilities in state and Federal waters of the Gulf of Mexico adjacent to the coasts of Texas, Louisiana, Mississippi, Alabama, and Florida must apply for LOAs to incidentally take bottlenose and spotted dolphins in the course of structure removal activities in water depths equal to or less than 200 m (656 ft).

NMFS received a request from the API for regulations similar to those requested originally on October 30, 1989. In that request, API estimated that 670 structures would be removed in the Gulf of Mexico over a 5–year authorization period. While most of the structures were in water less than 30.5 m (100 ft) deep, a few may be in deeper water. A longer range plan estimated that about 5,500 structures will be removed in a 35–year period. The most frequently used procedure of removal is to wash the soil from inside the piling, lower an explosive charge to 15 ft (4.6 m) below the mudline, and detonate the charge, which cuts the piling. The effects of explosives used for removal of oil and gas structures on species listed under the Endangered Species Act (ESA) that are under NMFS' purview were analyzed in a previous biological opinion. That opinion concluded that the use of explosives to remove oil and gas structures, accompanied by the use of an observer program and other take minimization measures laid out in the accompanying incidental take statement, was not likely to jeopardize the continued existence of endangered and threatened sea turtles. The conclusions of the previous biological opinion apply to this regulation to authorize incidental takes of marine mammals because the underlying action (including the use of NMFS observers and take minimization measures) is the same. No ESA-listed marine mammals are implicated in this action.

Similar to the case for sea turtles, impacts to bottlenose and spotted dolphins would come primarily from exposure to sound and pressure waves associated with detonating the explosives. The 1995 EA states that the most likely form of incidental take as a result of structure removals is harassment from low-level sound and pressure waves. However, animals close enough to the detonation could be injured or killed as a result of tissue destruction. In recognition of this, removal operators employed the mitigation measures for sea turtles to also protect dolphins prior to API's 1989 request to NMFS, during the effectiveness period of the regulations, and since the time regulations governing the taking of small numbers of bottlenose and spotted dolphins expired in November 2000.

Comments and Responses on the Proposed Rule

On April 19, 2002 (67 FR 19373), NMFS published for public review and comment the proposed rule to authorize and govern the taking of bottlenose and spotted dolphins incidental to the removal of oil and gas drilling and production structures in state waters and on the OCS in the Gulf of Mexico. During the 15–day comment period, NMFS received 5 letters commenting on the proposed rule. Comments contained in those letters are addressed here.

Process Concerns

Comment 1: The **Federal Register** notice was published April 19, 2002, with only a 17–day comment period. This is hardly adequate time to obtain a copy of, fully analyze the accompanying EA, and research regulations of this complexity. In addition, the prior regulations governing these activities expired November 13, 2000, but API submitted its request for an interim policy statement on February 12, 2002. Considering that the oil and gas industry had already operated for 15 months without regulation, why did NOAA feel compelled to issue the regulations so rapidly? Does the need for these interim regulations really outweigh the public's right to participate fully and fairly in the regulatory process?

Response: For this action, NMFS balanced the needs of the requestor (i.e., the API) and their legal obligations under the Outer Continental Shelf Lands Act, the low likelihood that the activities may result in adverse impacts to marine mammals and the fact that this is only a short-term action with the requirement to provide an opportunity for public review and comment. In this case, in over 5 years of monitoring structure removals in the Gulf of Mexico, there has been no evidence of a taking, as defined under the MMPA, of a bottlenose or spotted dolphin. Therefore, NMFS is confident that the impact of structure removals in the Gulf of Mexico on bottlenose and spotted dolphin populations to date has been negligible. Since information on impacts to other species is lacking and monitoring results from deeper Gulf waters do not exist, NMFS decided to implement a regulation that is similar to the previous 5-year regulation (i.e., only authorize the take of bottlenose and spotted dolphins and explosive charges no greater than 50 lbs (22.7 kg)). In order to ensure that this regulation did not go beyond the scope of the current EA, NMFS has added a prohibition on taking marine mammals in water depths of 200 m (656 ft) or greater and additional monitoring requirements in water depths greater than 46 m (150 ft).

Marine Mammal Impact Concerns

Comment 2: There are at least 30 species of marine mammals reported in the Gulf of Mexico that could be present, at least occasionally, in areas where they could be affected by structure removal. Therefore, it is unclear why the rule would authorize the possible incidental taking of only bottlenose dolphins and spotted dolphins. It was recommended that either the rule be changed to authorize the incidental taking of small numbers of any marine mammal that reasonably can be expected to occur in the northern Gulf of Mexico or specifically limiting the incidental take to the two species, noting that taking of any other marine mammal species would constitute a violation of the MMPA.

Response: The API in its revised 1991 application requested the incidental take of only bottlenose and spotted dolphins because these two species were the only marine mammal species recorded by NMFS observers during 1983–91 aerial and vessel surveys in the Gulf of Mexico. These surveys, carried out by the NMFS Southeast Fisheries Science Center, indicated that the bottlenose dolphin is the most common marine mammal in these waters, accounting for more than 95 percent of the sightings. The sightings also showed that spotted dolphins were common in the Gulf of Mexico. At that time, NMFS scientists indicated that the probability of marine mammals other than these species being incidentally taken was remote. Therefore, in its issuance of regulations governing the same activity in 1995, NMFS did not consider it necessary to require the applicant to request an authorization for additional species. Moreover, due to aerial surveys just prior to detonation, 48–hr pre-detonation vessel observer coverage and the relatively shallow water depth, it is highly unlikely that any marine mammal of any species would not be observed prior to detonation and that detonation suspended.

Since 1995, NMFS, MMS, and other organizations and universities have conducted additional marine mammal surveys and discovered that the sperm whale (*Physeter macrocephalus*), listed as endangered under the ESA, is a common inhabitant in areas of the northern Gulf of Mexico with water depths greater than 200 m (656 ft). Therefore, to avoid the take of this species or any other marine mammal species, this rule does not authorize the take of any marine mammal in water depths equal to or exceeding 200 m (656 ft). NMFS cannot issue authorizations for the take of sperm whales or any other marine mammal species, besides bottlenose and spotted dolphins, until industry provides additional information on the impact explosive removals may have on marine mammals inhabiting water depths of 200 m (656 ft) or more and until industry develops a proposal for mitigating and monitoring such impacts. Under this final rule, the incidental take of any marine mammal species in water depths of 200 m (656 ft) or more will be in violation of the MMPA, the regulations, and any LOA issued as a result of this rulemaking.

Comment 3: Information needed to complete 5-year regulations for the removal of oil and gas structures in the Gulf of Mexico at all water depths should be collected as soon as possible. Such information needs include scientific studies assessing the habitat requirements, behaviors, fecundity, and species diversity of deep-water marine mammal stocks. If this information is not provided to NMFS as quickly as possible, new 5-year regulations may not be developed before the proposed 1–year rule expires.

Response: It is NMFS' understanding that MMS and industry representatives are working together to address all information needs in order to complete NEPA documentation and to request promulgation of MMPA regulations in a timely manner.

Effective Dates Concerns

Comment 4: Expand the time frame of the rule's effective dates to more than 1 year.

Response: To encourage the timely submission of new documentation under the National Environmental Policy Act (NEPA) and a new petition for regulations, NMFS originally proposed that this rule only be effective for 1 year. NMFS has been informed by MMS (on behalf of the oil industry) that the assessments and analyses are presently underway but that a new application under section 101(a)(5)(A) of the MMPA, along with supporting NEPA documentation, can not be submitted earlier than the spring of 2003. In order to avoid another lapse in the regulation's period of effectiveness and to ensure maximum public review and comment during the regulatory review process (the NMFS regulatory process normally takes 8 to 12 months with a minimum of 75 days for public review), an expiration date in 12 months from the date of this rules effectiveness does not allow enough time for the next rule-making process to be completed before this current rule expires, unless the rule-making process is expedited. As input from the environmental science and advocacy communities will play a large role in developing these new, comprehensive 5-year regulations, NMFS does not want to undertake expedited rulemaking since that would preclude adequate public review.

Activity Concerns

Comment 5: In the proposed rule, the Supplementary Information section titled "Description of Removal Activities" states that "explosive charges confined in structure pilings below the mudline produce shock waves of lower pressure (at a given distance from the explosion) than free-water explosions." While this statement may be true in many instances, it may not be so for all structure removals. For example, an exploratory well can have a well casing that opens near the sea floor. An explosive bulk charge set off within the tubular would have the shock wave and acoustic energy directed upward since it is the path of least resistance, unlike setting off an explosive charge within a piling that goes to the sea surface.

Response: As discussed in NMFS' 1995 EA on issuance of regulations on the taking of bottlenose and spotted dolphins by the explosive removal of offshore structures, Connor (1990) indicated that peak shock overpressures from explosives detonated within the jacket were significantly lower than occurred in free field. His results can be summarized as follows: (1) detonation below the mud line with the pile top below the water surface provides approximately a 50 percent reduction in peak pressure compared to an open field detonation of the same size; (2) detonation below the mud line with the pile top above the water surface provides approximately a 75 percent reduction in peak pressure compared to an open field detonation of the same size; and (3) explosive pressures generally were difficult to detect at the 300′ gauge station, indicating the radius of lethal pressures is limited where explosives are contained within a piling.

Monitoring, Mitigation, and Reporting

Comment 6: Change the rule to prohibit detonation of explosives when, for any reason, adequate monitoring cannot be done to ensure, with a high degree of certainty, that there are no marine mammals within the area where tissue damage or hearing damage could occur.

Response: The regulations prohibit detonations whenever the pre-detonation aerial survey monitoring requirements cannot be conducted within the time

frame specified in the regulations, to limit detonations to a daylight time period, and to delay any detonations when monitoring activities are not possible.

Comment 7: Section 216.143 (Permissible Methods of Taking; mitigation) of the proposed rule does not specify that explosives must be set off within a tubular or below the mudline. Are the regulations intended to permit the use of explosives outside a tubular or above the mudline or are they intended to defer to MMS regulations governing structure removals?

Response: The designated 3,000–ft (910–m) marine mammal safety zone for this final rule reflects a "worst-case" explosion outside a tubular and above the mudline. In addition, this safety zone for marine mammals reflects the safety range determined to be appropriate for sea turtles in a biological opinion under section 7 of the ESA. Therefore, since NMFS has adopted this precautionary approach to handle all explosion scenarios for 50–lb (22.7–kg) explosive charges, the expectation is that oil and gas companies and their respective demolition contractors must follow MMS regulations governing placement of explosives during structure removals throughout the effective dates of this regulation.

*Comment 8:*Section 216.145(e)(Requirements for Monitoring and Reporting) specifies using 328 ft (100 m) or greater as the water depth for use of passive acoustic detection. It would be useful to have a supporting explanation of the criteria.

Response: Passive acoustic detection is recognized by NMFS as a potentially valuable tool in monitoring the presence or absence of marine mammals prior to removal activities and is, therefore, being required when operationally practicable. The water depth chosen is based on discussions with MMS officials and is intended for deeper waters where divers cannot be deployed and remotely operated vehicles (ROVs) are also being used. This added monitoring requirement should help authorization holders better detect the presence of marine mammal species other than bottlenose and spotted dolphins in deeper waters, and thus ensure that they are not in violation of the MMPA. If ROVs are being used simultaneously this may also allow for verification of species identity and/or estimates of the number of animals present.

Comment 9: Section 216.145(b)(3) (Requirements for Monitoring and Reporting) makes reference to a required, 48-hour pre-detonation period. Although this 48-hour period has been a standard part of the platform-removal monitoring protocol in the past, it is not described anywhere else in the section.

Response: The observers required by this rulemaking are the same observers required under the Section 7 Biological Opinion's Incidental Take Statement (ITS). That ITS requires observations be conducted no less than 48 hours prior to detonation. This rulemaking therefore ensures consistency with that Opinion.

Environmental Concerns

Comment 10: Hazardous substances may be deposited and accumulate in sediments around production structures. If disturbed and resuspended in the water column, these mate rials may enter the marine food web and be biomagnified in dolphins and other top carnivores.

Response: Impacts resulting from resuspension of bottom sediments include increased water turbidity and mobilization of sediments containing hydrocarbon extraction waste (drill mud, cuttings, etc.) in the water column. The magnitude and extent of any turbidity increases would depend upon the hydrographic parameters of the area, nature and duration of the activity, and size and composition of the bottom material (MMS, 1987). Resuspension of bottom sediments, and solid, liquid, and gaseous discharges would be generated by removal and transportation operations.

Increased turbidity would temporarily impact photic processes at the removal site and reduce primary productivity. The potential effects of mobilizing sediments with the drilling and production wastes could also impact the localized marine environment, depending on the quantities of sediment disturbed, the remaining constituents from the drilling and development operations, local, hydrographic effects, and the biota of the immediate area (MMS, 1984 in MMS, 1987). Several sources indicate that the overall impacts to water quality from resuspension of hydrocarbon extraction wastes is expected to be temporary and limited in scope to the immediate, localized structure-removal sites. Also, because of the temporary nature of resuspension, impacts to marine mammals or their habitat are unlikely in an 18–month period.

Changes from the Proposed Rule

The following modifications have been made to the proposed rule:

1. The effective dates of the regulations have been changed to be effective for 18 months.

2. Since divers are ineffective at depths exceeding 150 ft (46 m), the requirement for monitoring with ROVs is changed from a water depth of 492 ft (150 m) to 150 ft (46 m) or greater.

3. Based on several comments, references to "rigs" or "platforms" have been changed to "structures" to clarify that there are a variety of offshore structures that may be removed using explosives that need to be included under this regulation.

4. In section 216.145(e), marine mammals are "detected" by the passive acoustic device, not "sighted."

5. Section 216.147 (Renewal of LOAs) is deleted since the regulations will be in effect for 18 months thereby eliminating the requirement for annual renewal.

Summary of Rule

This final rule authorizes the incidental taking of bottlenose dolphins and spotted dolphins by U.S. citizens engaged in removing oil and gas drilling and production structures in state and Federal water depths equal to or less than 200 m (656 ft) in depth in the Gulf of Mexico adjacent to the coasts of Texas, Louisiana, Mississippi, Alabama, and Florida for a period not to exceed 18 months. This final rule requires that all activities be conducted in a manner that minimizes adverse effects on bottlenose and spotted dolphins and their habitat. Mitigation, monitoring, and reporting requirements would be consistent with those in place at the time of this proposal for the incidental take of endangered and threatened sea turtles authorized for the same activities under the ESA.

Description of Removal Activities

The technology most commonly used in the dismantling of structures includes: bulk explosives, shaped explosive charges, mechanical and abrasive cutters, and underwater arc cutters. The use of bulk explosives has become the industry's standard procedure for severing pilings, well conductors and related supporting structures. When using bulk charges, the inside of the structure's piles are washed out to at least 15 ft (4.6 m) below the sediment floor to allow placement of explosives inside of the structure. Such placement results in a decrease in the impulse and pressure forces released into the water column upon detonation. The sizes of the explosive charges are most commonly 50 lb (22.7 kg) or less, but they can be as much as 200 lb (90.8 kg) when necessary. This final rule and the implementing standard Biological Opinion however, only authorize the use of 50 lb (22.7 kg) or less explosive charges. The use of high velocity shaped

charges is reported to have some advantages over bulk explosives and has been used in combination with smaller bulk charges. The cutting action obtained by a shaped charge is accomplished by focusing the explosive energy with a conical metallic liner. A major advantage associated with use of high velocity shaped charges is that a smaller amount of explosive charge is required to sever the structure, which also results in reductions in the impulse and pressure forces released into the water column. However, not all explosive charges confined in structure pilings below the mudline produce shock waves of lower pressure (at a given distance from the explosion) than free-water explosions. For example, an exploratory well can have a well casing that opens near the sea floor. An explosive bulk charge set off within the tubular would have the shock wave and acoustic energy directed upward since it is the path of least resistance, unlike setting off an explosive charge within a piling that goes to the sea surface.

Use of mechanical cutters and underwater arc cutters can be successful in some circumstances, and because they do not produce the impulse and pressure forces associated with detonation of explosives, such use does not involve the incidental taking of marine mammals. According to MMS, these methods are, in most instances, more time-consuming, costly and hazardous to divers. Furthermore, if the use of mechanical or arc cutters were to fail before the structure was completely severed, a larger charge may be necessary to remove the structure.

Description of Habitat and Marine Mammals Affected by Oil and Gas Structure Removals

A description of the Gulf of Mexico continental shelf area and the biology and abundance of bottlenose and spotted dolphins in the Gulf of Mexico that are anticipated to be taken by this activity can be found in the EA prepared for previous rulemaking. This information can also be found in the previous proposed rule for regulations (58 FR 33425, June 17, 1993). To avoid the incidental take of other marine mammal species, NMFS will not authorize the incidental taking of marine mammals in water depths greater than 200 m (656 ft) or the use of explosive charges greater than 50 lb (22.7 kg). Copies of the EA and API's 1989 and revised 1991 application are available upon request (see **ADDRESSES**).

Potential Impact of Removal Activities on Bottlenose and Spotted Dolphins

The potential for injury to marine mammals in the vicinity of underwater explosions is associated with gas-containing internal organs, such as the lungs and intestines. The extent of potential injury decreases as: (1) distance of the marine mammal from the explosion increases; (2) size of the marine mammal increases; (3) depth of the explosion and the affected marine mammal decreases; and, (4) size of the explosive charge decreases. In addition, explosive charges confined in structure pilings below the mudline generally produce shock waves of lower pressure (at a given distance from the explosion) than free-water explosions.

A computer model, developed to predict the distances from which marine mammals would suffer only slight injury from underwater explosions, estimated that a bottlenose dolphin calf would receive only slight injury about 4,000 ft (1,200 m) from a 1,200–lb (544–kg) charge detonated in open water at a depth of 125 ft (38 m). According to API, most structures scheduled for removal in 2002 are located in water less than 100 ft (38 m) deep. In most cases, charges are no greater than 50 lb (22.7 kg) and are confined within the structure piles about 15 ft (4.6 m) below the mudline. Therefore, as explained in detail in the EA, it may be assumed that marine mammals more than 3,000 ft (910 m) from structures to be removed would avoid injury caused by the explosions.

An increase in strandings of bottlenose dolphins in the northwestern Gulf of Mexico occurred in March and April 1986 following the use of explosives to remove oil and gas structures in the area. However, there is no evidence linking the strandings to the removal of the structures. Furthermore, observers at removals of more than 525 structures in the Gulf of Mexico reported no indication of injury or death to bottlenose or spotted dolphins, or any other marine mammal related to these structure removals. According to observer reports required by NMFS during the 5–year duration of the previous regulations' effectiveness, there were no marine mammal takes associated with removal activities.

The best scientific information available indicates that dolphins cannot hear well in the frequencies emitted by explosive detonations (Richardson *et al.*, 1991), and additional evidence indicates that they may not be able to hear the pulse generated from open-water underwater detonations of explosive charges because of their short duration (ca. 0.05 sec) (Lento, 1992). However, for purposes of this final rule, bottlenose and spotted dolphins are considered to be taken by harassment as a result of a non-injurious physiological response to the explosion-generated shockwave and potential behavioral impacts. For example, Turl (1993) has suggested that Atlantic bottlenose dolphins may be able to detect low frequency sound by some mechanism other then conventional hearing. In addition, there may be harassment due to tactile stings from the shockwave accompanying detonations. This type of taking has been inferred from studies on humans and seems plausible given studies on dolphin skin sensitivity where researchers (Ridgway, S.H. and D.A. Carter. 1993; 1990) concluded that the most sensitive areas of the dolphin skin (mouth, eyes, snout, melon and blowhole) are about as sensitive as the skin of human lips and fingers. Therefore, even if dolphins are not capable of hearing the acoustic signature of the explosion, physiological or behavioral responses to those detonations may still result.

Conclusion

For the reasons discussed above and in an EA prepared for previous similar rulemaking, NMFS believes that this activity will likely result in the taking of only small numbers of bottlenose and spotted dolphins by harassment; the total of such taking during an 18-month period will likely have only a negligible impact on these species; and the takings will not have an unmitigable adverse impact on the availability of bottlenose and spotted dolphins for subsistence uses.

Classification

This action is not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, when the original rule was proposed (58 FR 33425, June 17, 1993), that, if adopted, the rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. In 1994, approximately 10 small businesses were active in removing oil and gas structures in the Gulf of Mexico. These small businesses work under contract to major petroleum companies, which bear the costs of mitigation measures. This action imposes the same requirements and thus does not alter those conclusions. Therefore, the Chief

Counsel for Regulation is again certifying that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. These requirements are identical to those approved during previous rulemaking on the same activity by the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act issued under OMB control number 0648–0151. Public reporting burden for this collection of information was estimated to average 27.5 hours per response, including the time to review instructions, search existing data sources, gather and maintain the data needed and complete and review the collection of information. Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement, including suggestions for reducing the burden to NMFS and OMB (see **ADDRESSES**) contained in this final rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, D.C. 20503.

Section 553(d) of Title 5 of the U.S.C. requires that the publication of a substantive rule shall be made not less than 30 days before its effective date unless the rule grants or recognizes an exemption or relieves a restriction. Until these regulations are effective, the oil and gas industry can not be issued LOAs authorizing takings incidental to their operations. This places the operators in a position of potentially violating the MMPA should their activities result in a take of a marine mammal. Therefore, the Assistant Administrator for Fisheries, NOAA finds that the waiver of the 30-day delayed effectiveness date relieves a restriction pursuant to 5 U.S.C. 553(d)(1).

This final rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

NEPA

In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has determined that this action is categorically excluded from further environmental review. This determination is based on the 1995 EA for the 5–year small take regulations for the same activities, which resulted in a Finding of No Significant Impact, and the absence of any marine mammal takes during the reporting period for those regulations.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and record keeping requirements, Seafood, Transportation.

Dated: July 26, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is amended to read as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.* unless otherwise noted.

2. Subpart M is added to read as follows:

Subpart M—Taking of Bottlenose Dolphins and Spotted Dolphins Incidental to Oil and Gas Structure Removal Activities

Sec.

216.141 Specified activity and specified geographical region.
216.142 Effective dates.
216.143 Permissible methods of taking; mitigation.
216.144 Prohibitions.
216.145 Requirements for monitoring and reporting.
216.146 Letters of Authorization.
216.147 Modifications to Letters of Authorization.

Subpart M--Taking of Bottlenose Dolphins and Spotted Dolphins Incidental to Oil and Gas Structure Removal Activities

§ 216.141 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals by U.S. citizens engaged in removing oil and gas drilling and production structures in state waters and on the Outer Continental Shelf in the Gulf of Mexico adjacent to the coasts of Texas, Louisiana, Alabama, Mississippi, and Florida. The incidental, but not intentional, taking of marine mammals by U.S. citizens holding a Letter of Authorization is permitted during the course of severing pilings, well conductors, and related supporting structures, and other activities related to the removal of the oil well structure.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited annually to a total of 200 takings by harassment of bottlenose dolphins (Tursiops truncatus) and spotted dolphins (*Stenella frontalis* and *S. attenuata*).

§ 216.142 Effective dates.

Effective August 1, 2002 through February 2, 2004.

§ 216.143 Permissible methods of taking; mitigation.

(a) The use of the following means in conducting the activities identified in § 216.141 are permissible: Bulk explosives, shaped explosive charges, mechanical or abrasive cutters, and underwater arc cutters.

(b) All activities identified in § 216.141 must be conducted in a manner that minimizes, to the greatest extent practicable, adverse effects on bottlenose dolphins, spotted dolphins, and their habitat. When using explosives, the following mitigation measures must be utilized:

(1)(i) If bottlenose or spotted dolphins are observed within 3,000 ft (910 m) of the structure prior to detonating charges, detonation must be delayed until either the marine mammal(s) are more than 3,000 ft (910 m) from the structure or actions (e.g., operating a vessel in the vicinity of the dolphins to stimulate bow riding, then steering the vessel away from the structure to be removed) are successful in removing them at least 3,000 ft (910 m) from the detonation site;

(ii) Whenever the conditions described in paragraph (b)(1)(i) of this section occur, the aerial survey required under § 216.145(b)(1) must be repeated prior to detonation of charges.

(2) Detonation of explosives must occur no earlier than 1hour after sunrise and no later than 1 hour before sunset;

(3) If weather or sea conditions preclude adequate aerial, shipboard or subsurface surveillance, detonations must be delayed until conditions improve sufficiently for surveillance to be undertaken; and

(4) Detonations must be staggered by a minimum of 0.9 seconds for each group of charges.

§ 216.144 Prohibitions.

Notwithstanding takings authorized by § 216.141 or by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional, except that the intentional passive herding of dolphins from the vicinity of the structure may be authorized under section 109(h) of the Act as described in a Letter of Authorization;

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued or renewed under § 216.106 or § 216.146;

(c) The incidental taking of any marine mammal of a species either not specified in this subpart or whenever the taking authorization for authorized species has been reached;

(d) The use of single explosive charges having an impulse and pressure greater than that generated by a 50–lb (22.7 kg) explosive charge detonated outside the structure piling; and

(e) The taking of a marine mammal in water depths greater than 656 ft (200 m).

§ 216.145 Requirements for monitoring and reporting.

(a) Observer(s) approved by the National Marine Fisheries Service in advance of the detonation must be used to monitor the area around the site prior to, during, and after detonation of charges.

(b)(1) Both before and after each detonation episode, a 30-minute or more aerial survey by NMFS-approved observers must be conducted within 1 hour of the detonation episode. To ensure that no marine mammals are within the designated 3,000 ft (941 m) safety zone nor are likely to enter the designated safety zone prior to or at the time of detonation, the pre-detonation survey must encompass all waters within one nautical mile of the structure.

(2) A second post-detonation aerial or vessel survey of the detonation site must be conducted no earlier than 48 hours and no later than 1 week after the oil and gas structure is removed, unless a systematic underwater marine mammal survey, either by divers or remotely operated vehicles that are dedicated to marine mammals and sea turtles, of the site has been successfully conducted with 24 hours of the detonation event. The aerial or vessel survey must concentrate down-current from the structure.

(3) The NMFS-approved observer may waive post-detonation monitoring described in paragraph (b)(2) of this section provided no marine mammals were sighted during either the aerial surveys before detonation or during the 48 hour pre-detonation observer monitoring period.

(c) During all diving operations (working dives as required in the course of the removals), divers must be instructed to scan the subsurface areas surrounding the structure (detonation) sites for bottlenose or spotted dolphins and if marine mammals are sighted to inform either the NMFS-approved observer or the agent of the holder of the Letter of Authorization immediately upon surfacing.

(d) In water depths of 150 ft (46 m) or greater, or in cases where divers are not deployed in the course of normal removal operations, a remotely operated vehicle (ROV) must be deployed prior to detonation to scan areas below structures. If marine mammals are sighted, the ROV operator must inform either the NMFS-approved observer or the agent of the holder of the Letter of Authorization immediately.

(e) In water depths of 328 ft (100 m) or greater, passive acoustic detection must be employed prior to detonation. If marine mammals are detected by the acoustic device, the operator must inform either the U.S. government observer or the agent of the holder of the Letter of Authorization immediately.

(f)(1) A report summarizing the results of structure removal activities, mitigation measures, monitoring efforts, and other information as required by a Letter of Authorization, must be submitted to the Regional Administrator, NMFS, Southeast Region, 9721 Executive Center Drive N, St. Petersburg, FL 33702 within 30 calendar days of completion of the removal of the structure.

(2) NMFS will accept the NMFS-approved observer report as the activity report if all requirements for reporting contained in the Letter of Authorization are provided to that observer before the observer's report is complete.

§ 216.146 Letters of Authorization.

(a) To incidentally take bottlenose and spotted dolphins pursuant to this subpart, each company operating or that operated an oil or gas structure in the geographical area described in § 216.141, and that is responsible for abandonment or removal of the structure, must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of bottlenose and spotted dolphins.

§ 216.147 Modifications to Letters of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.141(b), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

[FR Doc. 02–19432 Filed 7–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 072402D]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 4 - Adjustment of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR, was modified to reopen on July 12 and close at midnight, July 22, 2002, with a vessel limit of 400 chinook salmon for the 11-day open period. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that these management measures should

be implemented to allow fishers to fully access the chinook and coho quotas without exceeding the quotas. This action was necessary to conform to the 2002 management goals.

DATES: Adjustment in the area from the U.S.-Canada Border to Cape Falcon, OR, effective 0001 hours local time (l.t.), July 12, 2002, through 2359 hours l.t. July 22, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through August 16, 2002.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, to reopen on July 12 and close at midnight, July 22, 2002, with a vessel limit of 400 chinook salmon for the 11–day open period. Information provided on July 11 regarding the available catch and effort data indicated that these management measures should be implemented to allow fishers to fully access the chinook and coho quotas. Modification of fishing seasons are authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR would open July 1 and run through the earlier of September 8 or a 32,500–chinook quota, except for a selective fishery for marked coho scheduled at the end of the season with a 5000–marked coho quota.

The fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified by an inseason action to close at midnight, July 8, 2002, with the provision that no vessel may possess, land, or deliver more than 250 chinook for the entire 8–day open period (67 FR 47334, July 18, 2002). The modification to the fishing season was adopted to avoid closing the fishery early due to reaching the chinook quota, thus precluding the opportunity to catch available marked hatchery coho salmon later in the season.

On July 11, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached prematurely unless adequately controlled, potentially foreclosing opportunity of fishers to conduct the selective fishery for marked coho later in the season. As a result, the states of Washington and Oregon recommended, and the Regional Administrator concurred, that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, would reopen on July 12 and close at midnight, July 22, 2002, with the provision that no vessel may possess, land, or deliver more than 400 chinook for the entire 11-day open period. All other restrictions that apply to this fishery remain in effect as announced in the 2002 annual management measures. The State of Oregon added a landing restriction for this fishery in their regulations requiring that fishers fishing north of Cape Falcon, and intending to land salmon south of Cape Falcon, notify the ODFW before they leave the area at the following phone number (541) 867-0300, Ext. 252. In addition, the parties agreed to reevaluate the fishery on July 25, and assess the possibility of further openings for the rest of 2002.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries and the time the limits to which the fishery must be adjusted to reduce the tempo of the fishery must be in place. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

Moreover, the AA finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2002.

Valerie L. Chambers,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19429 Filed 7–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 072902C]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/"Other Flatfish" Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 29, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 halibut bycatch allowance specified for the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, which is defined at § 679.21(e)(3)(iv)(B)(2), is 779 metric tons (67 FR 956, January 8, 2002).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the halibut bycatch allowance for rock sole/flathead sole/"other flatfish" fishery category constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). These procedures are unnecessary and contrary to the public interest because the need to implement these measures in a timely fashion to avoid exceeding the halibut bycatch allowance for rock sole/flathead sole/"other flatfish" fishery category constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 2002.

Valerie Chambers,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19447 Filed 7–29–02; 3:34 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 148
Thursday, August 1, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ64

Prevailing Rate Systems; Redefinition of the Scranton-Wilkes-Barre, PA, Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is issuing a proposed rule to redefine Tioga County, Pennsylvania, from the Scranton-Wilkes-Barre, PA, appropriated fund Federal Wage System (FWS) wage area to the Rochester, New York, FWS wage area. This redefinition would reflect economic trends in the area that indicate a linkage exists between Tioga County and the Rochester wage area and would more accurately conform to the regulatory criteria we use to define FWS wage areas.

DATES: We must receive comments by September 3, 2002.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter at (202) 606–2838; FAX at (202) 606–4264; or e-mail at *cicarpen@opm.gov*.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is proposing to redefine Tioga County, Pennsylvania, from the Scranton-Wilkes-Barre, PA, Federal Wage System (FWS) wage area to the Rochester, NY, FWS wage area. Tioga County is currently an area of application in the Scranton-Wilkes-Barre wage area. This change is necessary because economic trends indicate more linkage between Tioga County and the Rochester survey area than to the Scranton-Wilkes-Barre survey area.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Based on our analysis of the regulatory criteria for defining appropriated fund FWS wage areas, we find that Tioga County would be more appropriately defined as part of the Rochester wage area. The distance criterion favors the Rochester wage area more than the Scranton-Wilkes-Barre wage area. The commuting patterns criterion favors the Rochester wage area. An additional factor we considered is that Tioga County is adjacent to the Rochester survey area, but not to the Scranton-Wilkes-Barre survey area. This change would affect about 10 employees in the Department of the Army and 1 employee in the Department of the Interior. These employees would be placed on the wage schedule for the Rochester wage area on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and concurred by consensus with this change. Based on its review of the regulatory criteria for defining FWS wage areas, FPRAC recommended no other changes in the geographic definitions of the Rochester or Scranton-Wilkes-Barre FWS wage areas.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix C to subpart B, the wage area listing for the State of New York is amended by revising the listing for Rochester; and for the State of Pennsylvania, by revising the listing for Scranton-Wilkes-Barre, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

NEW YORK

* * * * *

ROCHESTER

Survey Area

New York:
- Livingston
- Monroe
- Ontario
- Orleans
- Steuben
- Wayne

Area of Application. Survey area plus:

New York:
- Allegany
- Chemung
- Genesee
- Schuyler
- Seneca
- Wyoming
- Yates

Pennsylvania:
- Tioga

* * * * *

PENNSYLVANIA

* * * * *

SCRANTON-WILKES-BARRE

Survey Area

Pennsylvania:
- Lackawanna
- Luzerne
- Monroe

Area of Application. Survey area plus:

Pennsylvania:

Bradford
Carbon
Lycoming (Excluding Allenwood Federal Prison Camp)
Pike
Sullivan
Susquehanna
Wayne
Wyoming

* * * * *

[FR Doc. 02–19460 Filed 7–31–02; 8:45 am]
BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ63

Prevailing Rate Systems; Change in Federal Wage System Survey Job

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing a proposed rule that would permit the Department of Defense to survey the Maintenance Mechanic job on an optional basis rather than having to seek OPM's permission when it wants to add that job to appropriated fund wage surveys. Currently, OPM's regulations contain required and optional survey jobs. If a particular job does not appear on either list, but is needed for a survey, an agency must request OPM's written approval. The Federal Prevailing Rate Advisory Committee (FPRAC) established a Survey Job Work Group to review wage survey job descriptions in general, and it recommended making the Maintenance Mechanic job an optional job. The FPRAC agreed with the Work Group's recommendation, which will save time and facilitate the survey process.

DATES: Comments must be received on or before September 3, 2002.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of 1 Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter, (202) 606–2848, FAX: (202) 606–0824, or e-mail *cicarpen@opm.gov*.

SUPPLEMENTARY INFORMATION: The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising the Office of Personnel Management (OPM) on matters concerning the pay of Federal Wage System (FWS) employees, established a Survey Job Work Group (SJWG) to review the survey job descriptions used by Federal agencies during FWS local wage surveys to determine prevailing rates of pay for FWS employees. The SJWG reviewed many FWS jobs and found that the Maintenance Mechanic survey job description should be changed, to better reflect the industry standard wording for the job. The SJWG also decided that it would be beneficial to add the Maintenance Mechanic survey job to the list of optional survey jobs. The SJWG recommended these changes to FPRAC because adding the Maintenance Mechanic survey job to the list of optional jobs would allow the Department of Defense (DOD) the opportunity to survey the job at its discretion, without having to ask OPM for prior approval. This change would allow DOD more planning time when conducting surveys, and the changed job description, when surveyed, may provide DOD with more job matches. FPRAC agreed with the Work Group's recommendations.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.217 [Amended]

2. In § 532.217, paragraph (c) is amended by adding the job "Maintenance Mechanic" and grade "10" after Television Station Mechanic.

[FR Doc. 02–19463 Filed 7–31–02; 8:45 am]
BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 701

RIN 0560–AG26

Emergency Conservation Program

AGENCY: Farm Service Agency, USDA

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations for the Agricultural Conservation Program (ACP), the Forestry Incentives Program (FIP) and the regulations for the Emergency Conservation Program (ECP). Existing ACP contracts would continue, however, to be subject to the previously published regulations. The ECP revisions are those needed to reflect the reorganization of this part. In addition, the ECP regulation is proposed to be updated regarding current policies.

DATES: Comments must be received on or before September 30, 2002 to be assured of consideration.

ADDRESSES: Comments should be directed to Robert Stephenson, Director, Conservation and Environmental Programs Division, USDA, FSA, CEPD, STOP 0513, 1400 Independence Avenue, S.W., Washington, DC 20250–0513, telephone 202–720–6221; facsimile (202) 720–4619; or e-mail at ecprule@wdc.usda.gov.

FOR FURTHER INFORMATION CONTACT: Robert Stephenson, (202) 720–6221.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866 and has been determined to be significant. It has been reviewed by the Office of Management and Budget.

Federal Assistance Program

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Agricultural Conservation Program (ACP)—10.063; Emergency Conservation Program (ECP)—10.054, and Forestry Incentives Program (FIP)—10.064.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action may have the potential to significantly impact on the quality of the human environment. Therefore, FSA has prepared an Environmental Impact Statement (EIS). A copy of the draft EIS will be available for public comment and a notice of its availability for comment will be published in the **Federal Register**.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule are not retroactive and preempt State laws to the extent they are not consistent with the provisions of this proposed rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Unfunded Mandates Reform Act of 1995

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule and because the rule does not contain any unfunded mandates.

Paperwork Reduction Act

Title: 7 CFR 701, Conservation and Environmental Programs.

OMB Control Number: 0560–0082.

Expiration Date: March 31, 2002.

Type of Request: Request for extension of previously approved information collection.

Abstract: USDA will collect information from owners, operators, and other agricultural producers who voluntarily request cost-share assistance under the, FIP and ECP. Cost-share assistance is provided to perform practices on forest lands, and to rehabilitate farmlands damaged by natural disaster and carrying out emergency water conservation measures during periods of severe drought. The information is collected under Office of Management and Budget (OMB) Control Number 0560–0082.

Estimate of Burden: The estimated average public reporting burden for information collection requirements for this regulation is estimated to average 15 minutes per respondent.

Respondents: Owners, operators, and other eligible agricultural producers on eligible farmland.

Estimated Number of Respondents: 250,000.

Estimated Number of Responses per respondent: 1.

Estimated Total Annual Burden Hours on Respondents: 187,667.

In addition to commenting on the substance of the regulation, the public is invited to comment on the information collection. Proposed topics include the following: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Robert Stephenson, Director, Conservation and Environmental Programs Division, FSA, USDA, STOP 0513, 1400 Independence Ave. SW, Washington, DC 20250–0513. Comments will be summarized and included in the request for OMB approval of the information collection. All comments will become a matter of public record.

Background

For many years, regulations in 7 CFR part 701 contained regulations for three conservation programs administered by the Farm Service Agency (FSA) of the Department of Agriculture (USDA): (1) The Agricultural Conservation Program (ACP) which was authorized by the Soil Conservation and Domestic Allotment Act of 1935, 16 U.S.C. 590a *et seq;* (2) the Forestry Incentives Program (FIP) authorized by the Cooperative Forestry Assistance Act of 1978, 16 U.S.C. 2101 *et seq.*; and (3) the Emergency Conservation Program (ECP) authorized by the Agricultural Credit Act of 1978, 16 U.S.C. 2201 *et seq.*

Under the ACP, certain cost-share agreements, some of which were long-term agreements, were executed between the Government and private individuals to accomplish certain conservation measures in situations in which, unlike with the ECP, there need not be a natural disaster involved. Among other things, ACP agreements provided financing, in the form of cost-shares, for animal waste management projects. However, the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act), Public Law 104–127, repealed the ACP authority and accordingly, except for certain interim measures, the making of further ACP agreements. Rather, the 1996 Act, which became law on April 4, 1996, authorized, by amendment to the Food Security Act of 1985 (16 U.S.C. 3839aa *et seq.*) (1985 Act), the Environmental Quality Incentives Program (EQIP). That program is administered within USDA by the Commodity Credit Corporation through the Natural Resources Conservation Service (NRCS) under rules at 7 CFR part 1466.

In addition, the 1996 Act, as an amendment to the 1985 Act, authorized an interim EQIP program as a transition from ACP to EQIP. For the transition period, which ended September 30, 1996, the 1996 Act provided that technical assistance, cost-share payments, and incentive payments could continue to be made in certain cases using new agreements utilizing the terms and conditions of the ACP. The transition period is now over and, because of the replacement of the ACP by EQIP, there will be no new ACP agreements. For that reason, it is proposed that the ACP regulations be removed from 7 CFR part 701 with a provision specifying (as would be implicit in any event) that the existing rules in 7 CFR part 701, as previously published, would continue to govern existing ACP agreements, including those executed during the interim EQIP period.

This rule, further, would remove the FIP regulations because that program was reassigned from FSA to NRCS

under provisions of the Department of Agriculture Reorganization Act of 1994, 7 U.S.C. 6912. The NRCS is considering the development of changes to the existing regulations for the implementation of the FIP. Until such time as those changes are promulgated, the NRCS will continue to administer the FIP pursuant to the regulations relating to FIP in 7 CFR part 701 as they are in effect immediately prior to the effective date of any rule issued following this notice.

This rule would, in addition, modify and reorganize the remaining regulations in 7 CFR part 701, for the ECP, which are continuing, and which allow for payments of cost-shares in emergency situations to deal with extraordinary damage that might not otherwise be corrected because of the extent of the damage and the expense involved. More specifically, as is set out in the proposed rule, the ECP is designed to provide cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters, and for carrying out emergency water conservation measures during periods of severe drought. The authorizing legislation for the ECP specifies, in Section 401 of the Agricultural Credit Act of 1978, Pub. L. 95–334, as amended (the 1978 Act), that for the loss to qualify, the natural disaster must create new conservation problems which, if not treated, would: (1) Impair or endanger the land; (2) materially affect the productive capacity of the land; (3) represent unusual damage which, except for wind erosion, is not of the type to recur frequently in the same area; and (4) be determined to be so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use. Conservation problems existing prior to the disaster are not eligible for cost-share assistance. Section 402 of the 1978 Act also allows for payments, during a drought, for emergency water conservation or water enhancing measures. Further, Section 403 authorizes the purchase of easements and other measures to safeguard life and property from flood, drought, and the products of erosion on any watershed whenever a fire, flood, or other natural occurrence is causing or has caused a sudden impairment of that watershed.

Program Changes

This rule, if adopted, would revise 7 CFR part 701 to remove the FIP and ACP regulations. Also, the ECP regulations would be clarified and expanded to reflect current policy. For example, provisions will be added to 7 CFR part 701, consistent with FSA's practice since 1990, specifying that in certain instances ECP funding can be made available for certain drought measures dealing with confined livestock. This proposed regulation provides assistance to confined livestock operations only in times of severe drought. FSA has considered expanding the ECP to allow for cost-share assistance for confined livestock operations for natural disasters other than drought. Assistance for confined livestock operations cannot be for replacing or repairing buildings but could be used to help with cleanup efforts on those buildings. USDA will finalize ECP policy concerning confined livestock operations after reviewing comments to the proposed regulation.

Other technical and clarifying changes have been made and provisions have been added regarding schemes and devices and debt avoidance to assure that the ECP is operated in a manner that is most beneficial for farmers and the public. In addition, provisions have been added to assure that special consideration may be given to limited resource producers in order that the most beneficial use of limited ECP funds may be obtained.

In a change from current practice, this rule also would change how the maximum cost-share level is computed. Under the current regulations, the maximum rate of cost-share is calculated according to a sliding scale, with a higher cost-share percentage being allowed for the first part of the costs of the practice up to a certain limit, and a lower percentage being allowed for additional costs (if there are any). To eliminate confusion, without compromising the achievement of the program's goal, this rule would provide, instead, for a standard maximum percentage to be used for all costs associated with the practice for which the cost-share is to be received. This change would make the program easier to administer without significant additional costs. Payments however, will continue to be limited by a number of other criteria and by the provision that in no case may the reimbursement exceed $200,000 per "person" per disaster using the customary USDA standards of determining who is a separate "person" for payment limitation purposes. In this rule, the local county FSA committee would be allowed to permit reimbursements of up to 75 percent for all reimbursable costs, subject to the same per "person" limitations that now exist in the regulations. In addition, we are considering providing certain additional allowances for limited resource producers. The Farm Security and Rural Investment Act of 2002 permits reimbursements of up to 90 percent for limited resources producers for certain other programs. FSA is interested in receiving comment on providing similar ECP reimbursements of up to 90 percent, or any other percentage, for limited resource producers.

The 75 percent rate, like the sliding rate contained in current regulations, goes to determining the maximum total amount that can be paid to all participants, together, that are involved with all practices applied for that particular disaster. By contrast the $200,000 limit is, and would remain under this rule, a separate and distinct limit which would limit how much an individual "person", as defined in customary USDA rules, could receive for a particular disaster. Thus, for example, for a $500,000 practice, the cost-share, at 75 percent, would work out to be $375,000; one "person" operation could receive only $200,000 as a cost-share because of the $200,000 per "person" limit, whereas, on the other hand, a two "person" operation with two equal partners could receive the full $375,000 ($187,500 per "person"). If the 75 percent limit had produced a $175,000 maximum then a one "person" operation could receive the full amount ($175,000) because the $200,000 limit would not be reached.

The per "person" limitations have been, to date, in appropriations bills rather than in the basic program statute found at 16 U.S.C. 2201 *et seq*. Here, the proposed rule would adopt such a limit utilizing the discretion afforded under the ECP statute which by its terms provides for a discretionary program. The limit will allow for a better distribution of program funds to farmers in need.

List of Subjects in 7 CFR Part 701

Disaster assistance, Forest and forest products, Grant programs-agriculture, Grant programs-natural resources, Reporting and record keeping requirements, Rural areas, Soil conservation, Water resources, Wildlife.

For the reasons set forth in the preamble, 7 CFR part 701 is proposed to be revised to read as follows:

PART 701—EMERGENCY CONSERVATION PROGRAM AND CERTAIN RELATED PROGRAMS PREVIOUSLY ADMINISTERED UNDER THIS PART

Sec.

701.1 Administration.
701.2 Definitions.

701.3 General description.
701.4 Program Implementation.
701.5 Producer eligibility.
701.6 Land eligibility.
701.7 Qualifying minimum cost of restoration and waiver.
701.8 Prohibition on duplicate payments.
701.9–701.19 [Reserved]
701.20 Eligible ECP practices.
701.21 Onsite inspections.
701.22–701.30 [Reserved]
701.31 Filing requests.
701.32 Starting practices before cost-share request is filed.
701.33 Practice approval.
701.34 Approving requests.
701.35 Practices involving the establishment or improvement of vegetative cover.
701.36–701.39 [Reserved]
701.40 Completion of practices; agreements.
701.41 Time of filing payment application.
701.42–701.49 [Reserved]
701.50 Eligibility to file for payment of cost-share assistance.
701.51 Eligible costs.
701.52–701.59 [Reserved]
701.60 Division of cost-share assistance.
701.61 Payments for uncompleted practices.
701.62 Maximum potential cost-share for practices.
701.63 Practices carried out with aid from ineligible persons.
701.64 Maximum payment limitation.
701.65 Limits on county committee and State committee approval authority.
701.66–701.69 [Reserved]
701.70 Maintenance and proper use of practice.
701.71 Failure to meet minimum requirements or failure to fully comply with program provisions.
701.72–701.79 [Reserved]
701.80 Not an entitlement program.
701.81 Death, incompetency, or disappearance.
701.82 Appeals.
701.83 Performance based on advice or action of USDA employee.
701.84 Compliance with regulatory measures.
701.85 Schemes and devices and claims avoidances.
701.86 Loss of control of property during the practice lifespan.
701.87 Cost-share assistance not subject to claims.
701.88 Assignments.
701.89 [Reserved]
701.90 Environmental considerations.
701.91 Information collection requirements.
701.92 Agricultural Conservation Program (ACP) contracts.
701.93 Forestry Incentives Program (FIP) contracts.

Authority: Pub. L. 95–334, 92 Stat. 420, 16 U.S.C. 2201 *et. seq.*

§ 701.1 Administration.

(a) Subject to the availability of funds, except as otherwise specified, the regulations in this part will be administered under the general supervision of the Administrator, Farm Service Agency (FSA), through the Deputy Administrator. Locally, the regulations in this part will be administered by the State and county FSA committees ("State committees" and "county committees," respectively). This part shall apply only to the Emergency Conservation Program (ECP) provided for in 16 U.S.C. 2201–2205, *et seq.*

(b) State and county committees, and State and county executive directors do not have the authority to modify or waive any of the provisions of this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which the county committee has not taken, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with the regulations of this part, or

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No delegation in this part to a State or county committee shall preclude the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee or from modifying non-statutory deadlines or other non-statutory requirements provided for in this part, when to do so would serve the purposes of the program or accomplish greater fairness in the operation of the program, as determined by the Deputy Administrator.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(f) FSA may consult with the Natural Resources Conservation Service (NRCS), Forest Service (FS), Cooperative State Research, Education, and Extension Service (CSREES), or others, for such assistance as is determined by FSA to be necessary to implement the ECP. FSA, however, is responsible for the technical aspects of ECP but may, as determined appropriate by the Deputy Administrator, enter into a Memorandum of Agreement with another party for the provision of technical assistance. No more than 10 percent of the amount of ECP funds obligated within a county may be utilized for technical assistance unless the Deputy Administrator approves otherwise.

§ 701.2 Definitions.

(a) The terms defined in part 718 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall apply to this part:

Agricultural producer means an owner, operator, or tenant of a farm or ranch used to produce, for food or fiber, crops (including but not limited to, grain or row crops; seed crops; vegetables or fruits; hay forage or pasture; orchards or vineyards; flowers or bulbs; or field grown ornamentals) or livestock (including but not limited to, dairy or beef cattle; poultry; swine; sheep or goats; fish or other animals raised by aquaculture; other livestock or fowl), for commercial production, as determined by the Deputy Administrator. Producers of animals raised for recreational uses only are not considered agricultural producers.

Annual agricultural production means production of crops for food or fiber in a commercial operation which occurs on an annual basis under normal conditions, as determined by the Deputy Administrator.

Applicant means a person who has submitted to FSA a request to participate in the ECP.

Cost-share payment means the payment made by FSA to assist a program participant under this part in establishing the practices required to address qualifying damage suffered in connection with a qualifying disaster.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or designee.

Farmland means land devoted to agricultural production, including land used for aquacultural purposes, as determined by the Deputy Administrator.

Program year means the applicable Federal fiscal year.

§ 701.3 General description.

(a) Under the ECP, FSA will provide cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters, and to carry out emergency water conservation measures during periods of severe drought. The natural disaster must have created new conservation problems which, if not treated, would:

(1) Impair or endanger the land;

(2) Materially affect the productive capacity of the land;

(3) Represent unusual damage that, except for wind erosion, is not the type likely to recur frequently in the same area; and

(4) Be so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use. Conservation problems existing prior to the disaster are not eligible for cost-share assistance.

(b) The objective of the ECP is to make, consistent with this part and the authorizing legislation, cost-share assistance available to eligible participants on eligible land for certain practices to rehabilitate farmland damaged by floods, hurricanes, wind erosion, or other natural disasters, and for the installation of water conservation measures during periods of severe drought.

(c) Payments may also be made under this part, in addition, for:

(1) Emergency water conservation or water enhancement measures (including measures to assist confined livestock) during periods of severe drought; and

(2) Floodplain easements for runoff and other emergency measures, as determined by the Deputy Administrator, to safeguard life and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or other natural occurrence is causing or has caused, a sudden impairment of the watershed.

(d) In addition to other requirements as may apply, payments under this part are subject to the availability of funds and to any limitations that may otherwise be provided for by Congress in laws appropriating such funds.

(e) Total cost-share payments, from all sources, shall not exceed the cost of the practice to the applicant, as determined by the Deputy Administrator.

§ 701.4 Program implementation.

Subject to the availability of funds and as determined by the Deputy Administrator, the county committee may implement the ECP and accept ECP applications according to this part when new conservation problems resulting from a natural disaster have been created on farmland as provided in § 701.3(a), provided that the approval of the Deputy Administrator shall be needed to carry out emergency water conservation and water enhancement measures during periods of severe drought and for authorization of other special practices as referenced in § 701.3(c)

§ 701.5 Producer eligibility.

(a) In order to be eligible to participate in the ECP under § 701.3(a) and (c)(1), a person must be an agricultural producer with an interest in the land, as determined by the Deputy Administrator, affected by the natural disaster and must be liable for the expense which is the subject of the cost-share. Under § 701.3(c)(2) the payee must be a landowner or/and user in the area where the qualifying event has occurred and must be a party who will incur the expense which is the subject of the cost-share.

(b) Federal agencies and States, including all agencies and political subdivisions of a State, are ineligible to participate in the ECP.

§ 701.6 Land eligibility.

(a) In order for a producer to be eligible for ECP benefits under § 701.3(a) the land which is the subject of the cost-share must, as determined by the Deputy Administrator:

(1) Have new conservation problems caused as a result of a natural disaster that, if not treated, would:

(i) Impair or endanger the land;

(ii) Materially affect the productive capacity of the land;

(iii) Represent unusual damage that, except for wind erosion, is not of the type likely to recur frequently in the same area; and

(iv) Be so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use. Conservation problems existing prior to the disaster are not eligible for cost-share assistance;

(2) Be physically located in a county in which the ECP has been implemented; and

(3) Be one of the following:

(i) Expected to have annual agricultural production, as determined by the Deputy Administrator; or

(ii) A field windbreak or a farmstead shelterbelt on which the ECP practice to be implemented involves removing debris that interferes with normal farming operations on the farm and correcting damage caused by the disaster; or

(iii) A farm access road on which debris interfering with the normal farming operation needs to be removed.

(b) Land meeting the qualifying requirements of paragraph (a) of this section that is protected by a levee or dike shall be eligible to be the subject of a cost-share only if, as determined by the Deputy Administrator, such levee or dike was effectively and properly functioning prior to the disaster.

(c) Notwithstanding paragraphs (a) and (b) of this section, land shall be considered ineligible to be the subject of a cost-share of the kind referenced in § 701.3(a), if, as determined by the Deputy Administrator, such land is:

(1) Owned or controlled by the United States;

(2) Owned or controlled by States, including State agencies or other political subdivisions of a State;

(3) Protected by a levee or dike that was not effectively and properly functioning prior to the disaster, or is protected, or intended to be protected, by a levee or dike not built to U.S. Army Corps of Engineers, NRCS, or comparable standards, as determined by the Deputy Administrator;

(4) Adjacent to water impoundment reservoirs that are subject to inundation when the reservoir is filled to capacity;

(5) Land on which levees or dikes are located;

(6) Subject to frequent damage or susceptible to severe damage according to paragraph (d) of this section;

(7) Subject to flowage or flood easements and inundation when water is released in normal operations;

(8) Between any levee or dike and a stream, river, or body of water, including land between two or more levees or dikes;

(9) Located in an old or new channel of a stream, creek, river or other similar body of water, except that land located within or on the banks of an irrigation canal may be approved by the Deputy Administrator if the canal is not a channel subject to flooding;

(10) In greenhouses or other confined areas, including but not limited to, land in corrals, milking parlors, barn lots, or feeding areas;

(11) Land on which poor farming practices, such as failure to farm on the contour, have materially contributed to damaging the land;

(12) Unless otherwise provided for, not considered to be in annual agricultural production, as determined by the Deputy Administrator, such as land devoted to stream banks, channels, levees, dikes, native woodland areas, roads, and recreational uses; or

(13) Devoted to trees for timber production, including, but not limited to, the production of Christmas trees.

(d) For purposes of making determinations of the likely frequency of damage and of the susceptibility of the land to severe damage under paragraph (c)(6) of this section, the Deputy Administrator will base such determinations on consideration of all factors deemed relevant, which may include, but need not be limited to, the location of the land, the history of damage to the land, and whether the land was or could have been protected by a functioning levee or dike built to U. S. Army Corps of Engineers, NRCS, or comparable standards. Further, in making such determinations information may be obtained and used from the Federal Emergency Management Agency (FEMA) or any other Federal, State (including State agencies or political subdivisions), or

other entity or individual providing, for example, flood susceptibility for the land, soil surveys, aerial photographs, or flood plain data.

(e) For ECP payments under § 701.3(c), the provisions of paragraphs (a) through (d) of this section shall be applied as determined applicable and appropriate by the Deputy Administrator consistent with the overall goals of the program.

§ 701.7 Qualifying minimum cost of restoration and waiver.

(a) In order to qualify for assistance under § 701.3(a), farmland must have suffered significant eligible damage that is so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use, as provided in § 701.6(a)(1). A qualifying minimum level of the cost of restoration may be established as determined by the Deputy Administrator. The Deputy Administrator may allow:

(1) A State Committee to establish a higher minimum qualifying level of the cost of restoration; and

(2) Waivers to the qualifying minimum level of the cost of restoration on a case-by-case basis where appropriate.

(b) An agricultural producer may, pursuant to paragraph (a)(2) of this section, request a waiver of the qualifying minimum level of the cost of restoration. A waiver request shall contain sufficient documentation, as determined necessary by the Deputy Administrator, to demonstrate that Federal assistance, with the waiver, is required to accomplish the goals of the program.

(c) For payments under § 701.3(c), the standards in paragraphs (a) and (b) of this section shall be applied as determined appropriate by the Deputy Administrator and subject to such other limitations as may also be determined appropriate.

§ 701.8 Prohibition on duplicate payments.

(a) Participants are not eligible to receive funding under the ECP for land on which the participant has or will receive funding under:

(1) The Wetland Reserve Program (WRP) provided for in 7 CFR part 1467;

(2) The Emergency Wetland Reserve Program (EWRP) provided for in 7 CFR part 623;

(3) The Emergency Watershed Protection Program (EWP) provided for in 7 CFR part 624;

(4) Any FSA or CCC emergency loan program or other government program to cover the same or similar expenses so as to create duplicate payments, or, in effect, a higher rate of cost-share than is allowed under this part;

(5) Any other program, function, or activity as designated by the Deputy Administrator.

(b) Participants who are determined to have received any funds, payments, or other benefits covered by the limitation in paragraph (a) of this section shall be required to refund ECP payments as determined by the Deputy Administrator.

§§ 701.9–701.19 [Reserved]

§ 701.20 Eligible ECP practices.

(a) With respect to relief under § 701.3(a), cost-share assistance may be offered for emergency conservation practices only to replace or restore farmland, fences, or conservation structures to a condition similar to that existing before the natural disaster. No relief under any provision of this part shall be offered or allowed for the solution of conservation problems existing before the disaster.

(b) The practice or practices made available when the ECP is implemented shall be only those practices authorized by the Deputy Administrator for which cost-share assistance is essential to permit accomplishment of the program goals.

(c) In order that the program may be operated in the most cost-effective manner possible, practice specifications, as determined by the Deputy Administrator, shall represent the minimum levels of performance needed to address the ECP need. Any costs above these minimum levels shall be considered ineligible costs for purposes of cost share calculations.

§ 701.21 Onsite inspections.

As determined by the Deputy Administrator, an onsite inspection must be made prior to approval of any request for ECP assistance.

§§ 701.22–701.30 [Reserved]

§ 701.31 Filing requests.

(a) The Deputy Administrator shall provide for an enrollment period for filing ECP cost-share requests.

(b) Enrollment periods shall be at least 30 calendar days in length but not more than 60 calendar days in length, unless otherwise approved by the Deputy Administrator.

(c) Late-filed requests may be accepted, as determined by the Deputy Administrator.

§ 701.32 Starting practices before cost-share request is filed.

(a) Except as provided in paragraph (b) and (c) of this section, costs will not be shared for practices or components of practices that are started before a request for cost-share under this part is filed with the applicable county FSA office.

(b) Costs may be shared for non-drought ECP practices or components of practices that are started before a request is filed with the county FSA office, as determined by the Deputy Administrator, only if:

(1) Approved on a case-by-case basis;

(2) It is determined that the disaster, which is the basis of a claim for cost-share assistance, created a situation that required the producer to take immediate action to prevent further losses; and,

(3) The request for assistance was filed within a reasonable amount of time after the start of the enrollment period, as determined by the Deputy Administrator.

(c) Costs may be shared for drought ECP practices or components of practices that are started before a request is filed with the county FSA office, as determined by the Deputy Administrator only if the provisions in paragraphs (b)(1), (2) and (3) of this section are met and the practice was started after ECP drought designation was requested by the applicable County office.

§ 701.33 Practice approval.

(a) All requests shall be prioritized before approval. Prioritization shall be based on such factors as are deemed appropriate by the Deputy Administrator.

(b)The factors that may be taken into account in setting priorities under paragraph (a) of this section may include, but are not limited to:

(1) Type and degree of damage;

(2) Type of practices needed to address the problem;

(3) Availability of funds;

(4) Availability of technical assistance;

(5) Environmental concerns;

(6) Safety factors; or

(7) Welfare of eligible livestock.

§ 701.34 Approving requests.

Requests for cost-share assistance may be approved, as determined by the Deputy Administrator, only if:

(a) Funds are available;

(b) An onsite inspection has been performed; and

(c) The requested practice has been determined to be eligible for cost-share assistance.

§ 701.35 Practices involving the establishment or improvement of vegetative cover.

Cost-share assistance may be provided for permanent vegetative cover,

including re-establishment of the cover where needed, only in conjunction with eligible structures or installations where such assistance is needed to prevent erosion and/or siltation, as determined by the Deputy Administrator, or if needed to accomplish some other ECP purpose in accord with the provisions of this part.

§§ 701.36–701.39 [Reserved]

§ 701.40 Completion of practices; agreements.

Payment of cost-share assistance for the practices as authorized in this part is conditioned upon the performance of the practice in compliance with all applicable specifications and program provisions, as determined by the Deputy Administrator. Participants will be required to sign an ECP agreement in which they acknowledge their ECP obligations.

§ 701.41 Time of filing payment application.

After completion of the approved practice, the participant must certify completion and request payment in a manner as determined by the Deputy Administrator. Participants shall submit to FSA at the local county office the information needed to establish the extent of the performance of approved practices and compliance with applicable program provisions. The time limits for submission of such information shall be as determined by the Deputy Administrator. Such time limits shall be designed to afford a full and fair opportunity to those eligible to submit the information within the period prescribed. Exceptions to the time limits may be made in cases where a failure to submit required forms and information within the applicable time limits is due to reasons beyond the control of the participant.

§§ 701.42–701.49 [Reserved]

§ 701.50 Eligibility to file for payment of cost-share assistance.

Any eligible participant as defined in § 701.5 who bore a part of the cost of an approved practice, may file an application for cost-share payment.

§ 701.51 Eligible costs.

(a) Subject to paragraphs (b) and (c) of this section and other limitations provided for in this part, cost-share assistance may be authorized for all reasonable costs incurred in the completion of the practice, as determined by the Deputy Administrator, up to the maximum amounts allowed in § 701.62 and § 701.63.

(b) As determined by the Deputy Administrator:

(1) Eligible costs for use of personal equipment shall be limited to costs incurred which are beyond costs that are part or could be part of the normal farming operation of the farm or ranch.

(2) Eligible costs for personal labor shall be limited to personal labor not normally required in the operation of the farm or ranch.

(3) Allowable eligible costs for the use of eligible personal equipment and labor must be less than that charged by commercial contractors who are regularly employed in such pursuits.

(4) Eligible costs shall not exceed that needed to achieve the minimum level of performance necessary to resolve the need that creates the application for cost-share assistance. Any costs above those levels shall not be considered to be eligible costs for purposes of calculations made under this part.

(c) Any costs above the practice specifications as provided in § 701.20(c) shall be considered ineligible costs for purposes of cost-share calculations made under this part.

(d) Eligible costs for purposes of computing the gross amount on which the cost-share eligibility may be computed will not include any costs that were reimbursed by a third party such as, but not limited to, those costs that have been or will be reimbursed through an insurance indemnity payment.

§§ 701.52–701.59 [Reserved]

§ 701.60 Division of cost-share assistance.

(a) For purposes of qualifying for cost-share assistance under this part, the cost shall be credited to the eligible participant who personally performed the practice or who paid to have the practice performed by a third party. In the case where a payment or credit has been made by one eligible participant to another potentially eligible participant, the provisions of paragraph (c) of this section shall apply.

(b) If more than one eligible participant contributed to the performance of the practice, the cost-share assistance for the practice shall be divided among those eligible participants in the proportion they contributed to the performance of the practice, as determined by the Deputy Administrator. In making this determination, the Deputy Administrator may consider the value of the labor, equipment, or material contributed by each participant and any other factors deemed relevant toward performance.

(c) The allowance by an eligible participant of a credit to another eligible participant in the form of an adjustment in rent, or as an exchange of cash or other consideration, shall not be considered as a contribution to the performance of any practice by the party making the credit available, unless the county committee is satisfied that such credit is directly related to the cost of the practice. In the event that an applicant was fully reimbursed through an adjustment of rent, an exchange of cash, or other consideration, the applicant shall not be considered as having contributed to the practice performance.

§ 701.61 Payments for uncompleted practices.

Cost-share assistance approved under these programs shall not be considered earned until all components of the approved practice are completed, as determined by the Deputy Administrator. Cost-share assistance for completed components of an approved practice may be paid only on the condition that the eligible participant will complete the remaining components of the practice within the time prescribed, unless they are prevented from doing so because of reasons beyond their control, as determined by the Deputy Administrator.

§ 701.62 Maximum potential cost-share for practices.

(a) Subject to § 701.66 and other applicable restrictions, as determined by the Deputy Administrator, FSA shall not pay more than 75 percent of the maximum allowable cost as defined in paragraph (b) of this section subject to a maximum limitation of $200,000 per person as defined in § 701.65.

(b) The maximum allowable cost prior to the application of the 100 percent factor is an amount that is equal to the lesser of:

(1) the average cost for performing the practice in the county; or

(2) the actual cost to perform the practice.

(c) Notwithstanding paragraphs (a) and (b) of this section, in no case shall the ECP payment exceed 50 percent of the agricultural market value of the affected land, as determined by the Deputy Administrator.

§ 701.63 Practices carried out with aid from ineligible persons.

Financial assistance that is made available, or that will be made available, to a participant from a third party who is ineligible to receive ECP cost-share assistance, including assistance from a State or Federal agency other than ECP cost-share assistance made available under this part, shall be deducted from

the participant's total costs incurred for the practice for purposes of determining the eligible reimbursable costs under this part, as determined by the Deputy Administrator. If unusual conditions exist, the Deputy Administrator may waive deduction of such contributions.

§ 701.64 Maximum payment limitation.

In addition to other limits as may apply, a participant is limited to a maximum cost share of $200,000 per "person" per disaster. The regulations at part 1400 of this title shall be applicable in making "person" determinations as they apply to payment limitations under this part.

§ 701.65 Limits on county committee and State committee approval authority.

Regardless of the amount payable to the participant, the Deputy Administrator may limit the authority of the county and State committees to approve cost-share payments in excess of specified amounts.

§§ 701.66–701.69 [Reserved]

§ 701.70 Maintenance and proper use of practices.

(a) Each participant receiving cost-share assistance is responsible for the required maintenance and proper use of the practice. Some practices have an established lifespan or minimum period of time during which they are expected to function as a conservation practice with proper maintenance. Cost-share assistance shall not be authorized for normal upkeep or maintenance of any practice except where such relief is approved by the Deputy Administrator.

(b) If, as determined by the Deputy Administrator, a practice has not been properly maintained for the established lifespan, the participant receiving the cost-share assistance may be required to refund all or any part of such cost-share assistance, as determined appropriate by the Deputy Administrator.

§ 701.71 Failure to meet minimum requirements or failure to fully comply with program provisions.

(a) Costs may be shared for performance actually rendered even though the minimum requirements for a practice have not been satisfied, if it is determined by the Deputy Administrator that a reasonable effort was made to satisfy the minimum requirements and that the practice as performed will adequately address the need for the practice.

(b) The Deputy Administrator may, within statutory limits and utilizing the standards that are provided for certain price support matters in part 718 of this chapter, authorize relief when a participant acting in good faith has failed to fully comply with the program provisions and where it is determined by the Deputy Administrator that waiving non-statutory requirements would serve the purposes of this part.

§ 701.72–701.79 [Reserved]

§ 701.80 Not an entitlement program.

The provisions in this part shall not be read to create an entitlement in any person to any ECP cost-share or claim or any particular notice or form or procedure. Matters committed to the discretion of the Deputy Administrator shall be considered in all cases to be permissive powers and no person shall, under any circumstances, be considered to be entitled to an exercise of such power in their favor.

§ 701.81 Death, incompetency, or disappearance.

In case of death, incompetency, or disappearance of any participant, any cost-shares payment due shall be paid to the successor, determined in accordance with provisions of the regulations in part 707 of this chapter.

§ 701.82 Appeals.

Any participant may obtain reconsideration and review of determinations affecting participation in these programs, in accordance with parts 11 and 780 of this chapter.

§ 701.83 Performance based on advice or action of USDA employee.

Cases involving performance rendered in good faith in reliance upon action or advice of an authorized representative of USDA shall be considered in accordance with standards provided for price support in part 718 of this chapter and in accordance with the provisions of § 701.71.

§ 701.84 Compliance with regulatory measures.

Participants who perform practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices according to applicable laws and regulations. The participant(s) with whom the cost of the practice is shared shall be wholly responsible for any actions taken with respect to the project and shall in addition be responsible for returning and refunding any ECP cost-shares made where the purpose of the project cannot be accomplished because of the participant's lack of clearances or other problems. The participant shall also be responsible for reimbursing the United States and its instrumentalities for any losses sustained as a result of any project and for indemnifying the United States and its instrumentalities for any claims made against the United States and its instrumentalities with respect to the project and for the costs incurred by the United States and its instrumentalities with respect to such claims. Nothing in this section, however, shall be read or understood as establishing, or tending to establish, that any such claims against the United States, its instrumentalities or agents is permissible or proper.

§ 701.85 Schemes and devices and claims avoidances.

(a) If the Deputy Administrator determines that a participant has taken any action that is designed to defeat, or has the effect of defeating, the purposes of this program, the participant shall be required to refund all or part of any of the program payments otherwise due or paid to that participant or related person for that particular disaster. These actions include, but are not limited to, failure to properly maintain or deliberately destroying a practice, and providing false or misleading information related to practices, costs, or arrangements between entities or individuals which would have an effect on "person" determinations made under this part.

(b) All or any part of cost-share assistance that otherwise would be due any participant may be withheld, or required to be refunded, if the participant has adopted, or participated in, any scheme or device designed to evade the maximum cost-share limitation that applies to the ECP or to evade any other requirement or provision of the program or this part.

(c) If the Deputy Administrator determines that any participant has employed any scheme or device to deprive any other person of cost-share assistance, or has engaged in any actions to receive payments under this part which also were designed to avoid claims of the United States or its instrumentalities or agents against that party or related parties, or third parties, the participant shall be required to refund all or part of any of those program payments otherwise due or paid to that participant during the program year or for the project.

(d) For purposes of this section, a scheme or device can include, but is not limited to, instances of coercion, fraud, or misrepresentation regarding the claim for ECP assistance and the facts and circumstances surrounding such claim.

(e) If the Deputy Administrator determines that any participant has knowingly supplied false information or filed a false claim, that participant shall

be considered ineligible for cost-share assistance of any kind for any project related to the disaster for which the false information was filed for the remaining program year and for any such longer period as the Deputy Administrator deems to be appropriate. False information or a false claim includes, but is not limited to, a request for payment for a practice not carried out, a false billing, or a billing for practices which do not meet the required specifications.

§ 701.86 Loss of control of the property during the practice lifespan.

If, during the practice lifespan, there is voluntary loss of control of the land by the participant receiving the cost-share assistance and the person acquiring control of such land elects not to become a successor-in-interest to the agreement and the practice is not maintained, then each participant who received cost-share assistance for the practice may be jointly and severally liable for refunding any ECP cost-share assistance that has been received with respect to the practice, as determined by the Deputy Administrator. The practice lifespan for purposes of this section shall include any maintenance period that is essential to the success of the practice.

§ 701.87 Cost-share assistance not subject to claims.

Any cost-share assistance or portion thereof due any participant under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against any crop or property, or proceeds thereof, except liens and other claims of the United States or its instrumentalities. The regulations governing offsets and withholdings at part 792 and 1403 of this title shall be applicable to this program, and the provisions most favorable to a collection of the debt shall control.

§ 701.88 Assignments.

Any participant who may be entitled to any cost-share assistance under this program may assign the right thereto, in whole or in part, according to the regulations governing the assignment of payments at part 1404 of this title.

§ 701.89 [Reserved]

§ 701.90 Environmental considerations.

The provisions at part 799 of this chapter shall apply as applicable.

§ 701.91 Information collection requirements.

Information collection requirements contained in this part [are in the process of being reapproved by the Office of Management and Budget under the provisions at 44 U.S.C. Chapter 35 and] have been assigned OMB Number 0560–0082.

§ 701.92 Agricultural Conservation Program (ACP) contracts.

Contracts for the ACP which are, or were, administered under this part or similar contracts executed in connection with the Interim Environmental Quality Incentives Program, operated under provisions of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, shall, unless the Deputy Administrator determines otherwise, be administered under, and be subject to, the regulations for ACP contracts and the ACP program that were contained in the 7 CFR, parts 700 to 899, edition revised as of January 1, 1998, and under the terms of the agreements that were entered into with participants.

§ 701.93 Forestry Incentives Program (FIP) contracts.

The regulations governing the FIP as of July 31, 2002, and contained in the 7 CFR, parts 700 to 899, edition revised as of January 1, 2002, shall continue to be applicable to FIP contracts in effect as of that date.

Signed at Washington, DC, on July 25, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–19259 Filed 7–31–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1001

[Docket Nos. AO–14–A70; DA–02–01]

Milk in the Northeast Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals that would amend certain pooling and related provisions of the Northeast order. Proposals include establishing marketwide service payments to offset the costs of balancing the market's Class I needs and modifying the pooling standards of the order. Pooling proposals include establishing year-round shipping standards for supply plant pool qualification, adding a "touch-base" provision that would establish a standard that at least two-days' milk production of a dairy farmer be physically received at a pool plant in order to be eligible for diversion, establishing limits on the amount of milk that a pool plant may divert, eliminating the "split plant" provision, and revising certain reporting and payment date provisions. Testimony will be taken to determine if any of the proposals should be handled on an emergency basis.

DATES: The hearing will convene at 8:30 a.m. on Tuesday, September 10, 2002.

ADDRESSES: The hearing will be held at the Embassy Suites Hotel Alexandria, 1900 Diagonal Road, Alexandria, VA 22314 Telephone: 703–236–5900.

Persons requiring a sign language interpreter or other special accommodations should contact Erik F. Rasmussen, Market Administrator, at 617–542–8966; e-mail: *maboston@fedmilk1.com* prior to the hearing.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Stop 0231—Room 2968, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202)690–1366, e-mail *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Embassy Suites Hotel Alexandria, beginning at 8:30 a.m., on September 10, 2002, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Northeast marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the order.

Evidence also will be taken to determine whether emergency

marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to Proposals No. 1 through 13.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing a petition with the Department stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1001

Milk marketing orders.

PART 1001—[Amended]

The authority citation for 7 CFR Part 1001 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Department.

Submitted by New York State Dairy Foods, Inc.:

Proposal No. 1:

1. Amend § 1001.30 by revising introductory text to read as follows:

§ 1001.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 10th day after the end of the month, in the detail and on prescribed forms, as follows:

* * * * *

2. Amend § 1001.62 by revising the reference to the "13th day" in the introductory text to the "14th day" and by adding a new paragraph (h) to read as follows:

§ 1001.62 Announcement of producer prices.

* * * * *

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional days to announce the producer price differential and the statistical uniform price.

3. Amend § 1001.71 by revising the introductory text to read as follows:

§ 1001.71 Payments to the producer settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than two days after the announcement of the producer price differential and the statistical uniform price pursuant to § 1001.62 (except as provided for in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

* * * * *

4. Amend § 1001.73 by revising paragraphs (a)(1) and (a)(2) introductory text to read as follows:

§ 1001.73 Payments to producers and to cooperative associations.

* * * * *

(a) * * *

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 30th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so it is received by each producer no later than the day after the required date of payment by the market administrator the following month, pursuant to § 1001.72, in an amount computed as follows:

* * * * *

Proposal No. 2:

1. Amend § 1001.7 by removing paragraph (h)(7) and revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 1001.7 Pool plant.

* * * * *

(1) In each of the months of August and December, such shipments must equal not less than 15 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(2) In each of the months of September through November, such shipments must equal not less than 25 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

* * * * *

Proposal No. 3:

1. Amend § 1001.13 by adding new paragraphs (d)(3) through (d)(6) to read as follows:

§ 1001.13 Producer Milk.

* * * * *

(d) * * *

(3) The equivalent of at least two days' milk production of a dairy farmer is caused by the handler to be physically received at a pool plant in each of the months of August through December;

(4) Of the total quantity of producer receipts during the month (including diversions), the handler diverts to non-pool plants not more than 60 percent of such receipts in each of the months August through December and not more than 75 percent in each of the months January through July;

(5) Any milk diverted in excess of the limits set forth in paragraph (d)(4) of this section shall not be producer milk. The diverting handler shall designate

the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(6) The delivery requirements and the diversion percentages in paragraphs (d)(3) and (d)(4) of this section may be increased or decreased by the market administrator if the administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is to be effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

Submitted by the Market Administrator, New York State Dairy Foods, Inc.,and Association of Dairy Cooperatives in the Northeast (ADCNE):

Proposal No. 4:

1. Revise § 1001.72 to read as follows:

§ 1001.72 Payments from the producer-settlement fund.

No later than the day after the due date required for payment to the Market Administrator pursuant to § 1001.71 (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1001.71(b) exceeds the amount computed pursuant to § 1001.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

Submitted by Association of Dairy Cooperatives in the Northeast (ADCNE):

Proposal No. 5:

1. Amend § 1001.7 by revising paragraphs (c)(1) and (g), removing paragraphs (c)(3) and (h)(7), and redesignating paragraphs (c)(4) and (c)(5) as paragraphs (c)(3) and (c)(4) to read as follows:

§ 1001.7 Pool plant.

* * * * *

(c) * * *

(1) In each of the months of January through August and December, such shipments must equal not less than 10 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

* * * * *

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is to be effective. If the investigation shows that an adjustment of shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views, and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date. The market administrator may limit the applicability of any revisions hereunder to handlers receiving marketwide service payments pursuant to § 1001.74.

* * * * *

Proposal No. 6:

1. Amend § 1001.13 by revising paragraph (d)(1), redesignating paragraph (d)(2) as paragraph (d)(3), and adding new paragraphs (d)(2), (d)(4), (d)(5) and (e) to read as follows:

§ 1001.13 Producer milk.

* * * * *

(d) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion unless milk of such dairy farmer was physically received as producer milk at a pool plant during the month and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion unless milk of the dairy farmer has been physically received as producer milk at a pool plant during this month;

(2) Of the total quantity of producer milk received during the month (including diversion but excluding the quantity of producer milk received from a handler described in § 1000.9(c) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 80 percent during the months of September through November and 90 percent during the months of January through August and December;

(3) * * *

(4) Any milk diverted in excess of the limits set forth in paragraph (d)(2) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(5) The diversion percentages in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is to be effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date. The market administrator may limit the applicability of any revision hereunder to handlers receiving marketwide service payments pursuant to § 1001.74.

(e) Milk that is pooled under a state marketing order that has classified pricing and marketwide pooling provisions, other than provisions pertaining to marketwide pooling of premiums, is ineligible to be pooled under the Order unless such milk is physically received at a distributing plant under this order.

Proposal No. 7:

1. Establish a marketwide service payment to provide compensation from a marketwide pool to those who perform a service in balancing the Class I market by adding a new § 1001.74 to read as follows:

§ 1001.74 Marketwide service payments.

Payments shall be made to qualifying handlers as set forth hereafter for their performance of marketwide services which benefit all producers:

(a) *Qualification for payments.* Each handler shall qualify for marketwide service payments if during the month the handler:

(1) Pools a quantity of milk equal to 3 percent of the total volume of milk pooled on the order for the month or pools 1,000,000 pounds of milk per day and either operates a plant which manufactures Class III or Class IV products which is located in the states of the marketing area or operates a pool distributing plant as defined in § 1001.7(a); and

(2) Transfers or diverts to pool distributing plants (as defined in § 1001.7(a)) not more than 65 percent of the total quantity of producer milk which such handler pools. In determining whether the handler has met this percentage requirement, the market administrator shall make the percentage calculations after applying the following procedures:

(i) Deduct from transfers or diversions any quantities of shipments received by the handler from the operator of a distributing plant to which qualifying deliveries have been made; and

(ii) If the handler is the operator of a distributing plant, all milk pooled by the handler shall be assumed to have been delivered to the handler's distributing plant, up to the quantity of such plant's full receipts.

(b) *Additional performance required.* In making any adjustments upward in the shipping requirements pursuant to § 1001.7(g), the market administrator may impose such additional shipping requirements only upon handlers qualified for and receiving marketwide service payments pursuant to this Section.

(c) *Rate and timing of payments.* The market administrator, on the same date as payments from the producer settlement fund are due, shall make payment out of the producer settlement fund, or issue equivalent credit therefore, to each handler that qualifies for the month. Such payment or credit shall be at the rate of 6 cents per hundredweight of producer milk pooled by the handler, except that there shall be no payments made to cooperative associations with respect to milk of producers who are not members of any qualified cooperative association and no payment made to non-cooperative handlers with respect to milk of any producer who is a member of a qualified cooperative association.

(d) *Reports.* The handler shall make such reports to the market administrator as may be reasonably requested for the administration of the provisions of this section.

Submitted by Friendship Dairies:

Proposal 8:

1. Amend § 1001.7 by revising paragraphs (c)(1) through (c)(3) to read as follows:

§ 1001.7 Pool plant.

* * * * *

(c) * * *

(1) In each of the months of August and December, such shipments must equal not less than 10 percent of the total quantity of milk that is received at the plant from dairy farmers (except dairy farmers described in § 1001.12(b) and handlers described in § 1000.9(c)), including milk diverted pursuant to § 1001.13 during the month;

(2) In each of the months of September through November, such shipments must equal not less than 20 percent of the total quantity of milk that is received at the plant from dairy farmers (except dairy farmers described in § 1001.12(b) and handlers described in § 1000.9(c)), including milk diverted pursuant to § 1001.13 during the month;

(3) A plant which meets the shipping requirements of this paragraph in each of the months of August through December shall be a pool plant in each of the following months of January through July unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (f) of this section, or the plant operator requests nonpool status for the plant. The shipping requirement for any plant which has not met the requirements of paragraphs (c)(1) and (c)(2) of this section must equal not less than 10 percent of the total quantity of milk that is received at the plant from dairy farmers (except dairy farmers described in § 1001.12(b) and handlers described in § 1000.9(c)), including milk diverted pursuant to § 1001.13, in each of the months of January through July in order for the plant to be a pool plant in each of these months;

* * * * *

Proposal No. 9:

1. Amend § 1001.7 by revising paragraphs (c)(1) through (c)(3) to read as follows:

§ 1001.7 Pool plant.

* * * * *

(c) * * *

(1) In each of the months of August and December, such shipments, plus the amount of route distribution from the plant pursuant to § 1000.3 and transfers in the form of packaged fluid milk products to distributing plants, must equal not less than 10 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(2) In each of the months of September through November, such shipments, plus the amount of route distribution from the plant pursuant to § 1000.3 and transfers in the form of packaged fluid milk products to distributing plants, must equal not less than 20 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(3) A plant which meets the shipping requirements of this paragraph in each of the months of August through December shall be a pool plant in each of the following months of January through July unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (f) of this section, or the plant operator requests nonpool status for the plant. The shipping requirement, plus the amount of route distribution from the plant pursuant § 1000.3 and transfers in the form of packaged fluid milk products to distributing plants, for any plant which has not met the requirements of paragraphs (c)(1) and (c)(2) of this section, must equal not less than 10 percent of the total quantity of milk that is received at the plant during the month, or diverted from it pursuant to § 1001.13 during each of the months of January through July, in order for the plant to be a pool plant in each of these months;

* * * * *

Proposal No. 10:

1. Amend § 1001.7 by revising paragraphs (c)(1) through (c)(3) to read as follows:

§ 1001.7 Pool plant.

* * * * *

(c) * * *

(1) In each of the months of August and December, such shipments must equal not less than 5 percent of the total quantity of milk that is received at the plant during the month or diverted from it pursuant to § 1001.13;

(2) In each of the months of September through November, such shipments must equal not less than 10 percent of the total quantity of milk that is received at the plant during the month or diverted from it pursuant to § 1001.13;

(3) A plant which meets the shipping requirements of this paragraph in each of the months of August through December shall be a pool plant in each of the following months of January through July unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (f) of this section, or the plant operator requests nonpool status for the plant. The shipping requirements for any plant which has not met the requirements of paragraphs (c)(1) and (c)(2) of this section must equal not less than 5 percent of the total quantity of milk that is received at the plant during the month or diverted from it pursuant to § 1001.13;

* * * * *

Proposal No. 11:

1. Amend § 1001.12 by revising paragraphs (b)(5) and (b)(6) to read as follows:

§ 1001.12 Producer.

* * * * *

(b) * * *

(5) For any month of January through July, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under this order or any other Federal milk order, during the same month or during any of the preceding months of August through December; and

(6) For any month of August through December, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk under this order or any other Federal milk order during the same month.

Proposed by Northeast Market Administrator:

Proposal No. 12:

1. Amend § 1001.73 by revising the introductory text of paragraph (e) to read as follows:

§ 1001.73 Payments to producers and cooperative associations.

* * * * *

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except for a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c)), a supporting statement in such form that it may be retained by the recipient which shall show:

* * * * *

Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 13:

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator for the Northeast Marketing Area, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Programs, Agricultural Marketing Service (Washington office) and the Office of the Northeast Market Administrator.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: July 26, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–19390 Filed 7–31–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 112 and 113

[Docket No. 93–129–2]

Viruses, Serums, Toxins, and Analogous Products; Equine Influenza Vaccine, Killed Virus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for a proposed rule to amend the Virus-Serum-Toxin Act regulations concerning Standard Requirements for veterinary biologics by adding a Standard Requirement for Equine Influenza Vaccine, Killed Virus. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before August 15, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 93–129–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 93–129–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 93–129–1" on the subject line.

You may read any comments that we receive on Docket No. 93–129–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy Development, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 2002, we published in the **Federal Register** (67 FR 34630–34633, Docket No. 93–129–1) a proposed rule to amend the Virus-Serum-Toxin Act regulations concerning Standard Requirements for veterinary biologics by adding a Standard Requirement for Equine Influenza Vaccine, Killed Virus. In that document, we proposed to require that such vaccines be shown to protect vaccinates for at least 60 days based on a vaccination-challenge study conducted in horses. In addition, we proposed to establish a serum hemagglutination inhibition test in guinea pigs as the serial release potency test for the vaccine; establish procedures for adding and removing strains of virus based on evidence of changes in the antigenic character of the equine influenza viruses in current circulation; and add labeling requirements to the regulations.

Comments on the proposed rule were required to be received or postmarked by July 15, 2002. Based on a request received during the comment period, we are reopening and extending the comment period for the proposed rule until August 15, 2002. This action will allow interested persons additional time to prepare and submit comments.

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 23rd day of July, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–19422 Filed 7–31–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106879–00]

RIN 1545–AY27

Dual Consolidated Loss Recapture Events

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rule making and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 1503(d) regarding the events that require the recapture of dual consolidated losses. These regulations are issued to facilitate compliance by taxpayers with the dual consolidated loss provisions. The proposed regulations generally provide that certain events will not trigger recapture of a dual consolidated loss or payment of the associated interest charge. The proposed regulations provide for the reporting of certain information in such cases. This document also proposes conforming changes to the current regulations and provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by October 30, 2002. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for, December 3, 2002, at 10 a.m. must be received by, November 12, 2002.

ADDRESSES: Send submissions to CC:IT:A:RU (REG–106879–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–108679–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Kenneth D. Allison or Kathryn T. Holman, (202) 622–3860 (not a toll-free number); concerning submissions and the hearing, Sonya M. Cruse, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collection of information should be received by September 30, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (*see* below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §§ 1.1503–2(g)(2)(iv)(A)(*4*) and (*5*). This information is required to ensure the proper performance of the function of the IRS because it notifies the IRS that a future triggering event may require the recapture of specified dual consolidated losses by the new consolidated group. This information will be used to identify the acquisition of an unaffiliated dual resident corporation, an unaffiliated domestic owner of a dual resident corporation, or a consolidated group that includes a dual resident corporation or a domestic owner. The identification of such an acquisition pursuant to these regulations may allow taxpayers to avoid or defer recapture of a dual consolidated loss and the payment of an interest charge. The collection of information is mandatory. The likely respondents will be corporations acquiring overseas business operations.

Estimated total annual reporting and/or recordkeeping burden: 60 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 30.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On September 8, 1989, proposed and temporary regulations implementing section 1503(d) were published in the **Federal Register** at 54 FR 37314. Written comments were received in response to the proposed regulations, and a public hearing was held on March 2, 1990. After consideration of all the comments, the proposed regulations were amended and adopted as final regulations by, TD 8434 on, September 9, 1992, and published in the **Federal Register** at 57 FR 41079.

Explanation of Provisions

Section 1503(d) generally provides that a "dual consolidated loss" of a domestic corporation cannot offset the taxable income of any other member of the corporation's consolidated group. The statute, however, authorizes the issuance of regulations permitting the use of a dual consolidated loss to offset the income of a domestic affiliate if the loss does not offset the income of a foreign corporation under foreign law.

Section 1.1503–2(g)(2) of the final regulations permits a taxpayer to elect to use a dual consolidated loss of a dual resident corporation or separate unit to offset the income of a domestic affiliate by entering into an agreement under which the taxpayer certifies that the dual consolidated loss has not been, and will not be, used to offset the income of another person under the laws of a foreign country. Section 1.1503–2(g)(2)(iii) of the final regulations provides that, in the year of a so-called "triggering event," the taxpayer must recapture and report as gross income the amount of a dual consolidated loss subject to this agreement, as well as pay an interest charge.

Two such triggering events are (1) an unaffiliated dual resident corporation that filed the agreement or an unaffiliated domestic owner of a separate unit that filed the agreement becomes a member of a consolidated group, consisting of itself and a formerly unaffiliated domestic corporation or an existing consolidated group; and (2) a consolidated group that filed the agreement and that includes a dual resident corporation or domestic owner of a separate unit is acquired by an unaffiliated domestic corporation or a consolidated group, resulting in a new consolidated group. Section 1.1503–2(g)(2)(iv)(B) of the final regulations, however, provides that these events are not considered to be triggering events under certain conditions.

One such condition is that the parties to the transaction enter into a closing agreement with the IRS, as provided in section 7121 of the Code. Thus, in the first case described above, the unaffiliated dual resident corporation or unaffiliated domestic owner that filed the agreement and the unaffiliated domestic corporation or consolidated group must enter into a closing agreement; or, in the second case described above, the acquired consolidated group and the acquiring unaffiliated domestic corporation or consolidated group must enter into a closing agreement. The closing agreement must provide that the unaffiliated dual resident corporation, unaffiliated domestic owner, or consolidated group and the unaffiliated domestic corporation or existing consolidated group will be jointly and severally liable for the total amount of the recapture of the dual consolidated loss and the interest charge if there is a subsequent triggering event.

The IRS and Treasury believe that this requirement, that the parties to the transaction enter into a closing agreement with the IRS, imposes an unnecessary administrative burden in cases where liability for the dual consolidated loss recapture amount and interest charge would be imposed by § 1.1502–6. Section 1.1502–6 generally provides that the common parent corporation and each member of a consolidated group are severally liable for the tax computed on their consolidated U.S. income tax return for the taxable year. In certain circumstances, the several liability imposed by § 1.1502–6 provides for liability comparable to that provided by a closing agreement under § 1.1503–2(g)(2)(iv)(B)(2) and section 7121 of the Code.

Accordingly, the proposed regulations amend the final regulations by providing that a triggering event generally does not occur when an unaffiliated dual resident corporation or unaffiliated domestic owner becomes a member of a consolidated group. Under § 1.1502–6, the dual resident corporation or domestic owner, as well as the other members of the consolidated group of which it becomes a member, are liable for the recapture amount and the interest charge in the event of a subsequent triggering event. The proposed regulations would remove § 1.1503–2(g)(2)(iv)(B)(*1*)(*ii*) of the final regulations, which addresses this particular set of circumstances only.

The proposed regulations similarly would amend the final regulations by providing that a triggering event generally does not occur when a dual resident corporation or domestic owner that is a member of a consolidated group that filed an agreement under § 1.1503–2(g)(2) becomes a member of another consolidated group in an acquisition, so long as each member of the acquired group that is an includible corporation under § 1504(b) is included immediately after the acquisition in a consolidated U.S. income tax return filed by the acquiring group. Under § 1.1502–6, each member of the new consolidated group, including each member of the former group that included the dual resident corporation or domestic owner, is liable for the recapture amount and the interest charge upon the occurrence of a subsequent triggering event.

In both cases described in the proposed regulations, a statement must be attached to the first consolidated return of the new consolidated group that includes the dual resident corporation or domestic owner. The statement must reference these proposed regulations and must set forth the information required in § 1.1503–2(g)(2)(i)(B), the amount of each dual consolidated loss, and the year incurred. The proposed regulations further require the continued reporting of certain information, when applicable, by the new consolidated group on its subsequently filed consolidated U.S. income tax returns, as provided in § 1.1503–2(g)(2)(vi).

Proposed Effective Date

These regulations amending the dual consolidated loss rules under § 1.1503–2 are proposed to apply to transactions otherwise constituting triggering events occurring on or after [**DATE THE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER**].

Special Analyses

It has been determined that this notice of proposed rule making is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that also have a foreign affiliate, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. It also has been

determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

A public hearing has been scheduled for, December 3, 2002, at 10 a.m., room 4718, in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors must enter at the main entrance, located at 1111 Constitution Avenue, NW. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topic to be discussed and time to be devoted to each topic (preferably a signed original and eight (8) copies) by, November 12, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Kenneth D. Allison and Kathryn T. Holman of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.1503–2 also issued under 26 U.S.C. 1502 * * *

2. In § 1.1503–2, paragraphs (g)(2)(iv)(A)(*4*), (*5*) and (D) are added; paragraph (g)(2)(iv)(B)(*1*)(*ii*) is removed and paragraphs (g)(2)(iv)(B)(*1*)(*iii*) and (*iv*) are redesignated as paragraphs (g)(2)(iv)(B)(1)(*ii*) and (*iii*), respectively; and a sentence is added to paragraph (h)(1) to read as follows:

§ 1.1503–2 Dual consolidated loss.

* * * * *

(g) * * *

(2) * * *

(iv) * * *

(A) Acquisition by a member of the consolidated group.

* * * * *

(*4*) An unaffiliated dual resident corporation or unaffiliated domestic owner that filed an agreement under paragraph (g)(2)(i) of this section becomes a member of a consolidated group. A statement referencing this paragraph (g)(2)(iv)(A)(*4*) must be attached to the timely filed (including extensions) consolidated income tax return of the consolidated group, setting forth the information required in paragraph (g)(2)(i)(B) of this section, the amount of each dual consolidated loss, and the year incurred. The consolidated group also must continue to comply in subsequent years with the reporting requirements in paragraph (g)(2)(vi) of this section for each dual consolidated loss.

(*5*) A dual resident corporation, or domestic owner, that is a member of a consolidated group that filed an agreement under paragraph (g)(2)(i) of this section (the acquired group) becomes a member of another consolidated group (the acquiring group), provided that each member of the acquired group that is an includible corporation (within the meaning of section 1504(b)) in the new consolidated group must be included immediately after the acquisition in a consolidated income tax return filed by the acquiring group. A statement referencing this paragraph (g)(2)(iv)(A)(*5*) must be attached to the timely filed (including extensions) consolidated income tax return of the acquiring group, setting forth the information required in paragraph (g)(2)(i)(B) of this section, the amount of each dual consolidated loss, and the year incurred. The acquiring group also must continue to comply in subsequent years with the reporting requirements in paragraph (g)(2)(vi) of this section for each dual consolidated loss.

* * * * *

(D) Example. The following example illustrates the operation of paragraph (g)(2)(iv)(A)(*5*) of this section.

Example. (i) Facts. C is the common parent of a consolidated group (the "C Group") that includes DRC, a domestic corporation. DRC is a dual resident corporation and incurs a dual consolidated loss in its taxable year ending December 31, Year 1. The C Group complies with paragraph (g)(2)(i) of this section and its associated requirements with respect to the Year 1 dual consolidated loss. The C Group does not incur a dual consolidated loss in Year 2. On December 31, Year 2, stock constituting section 1504(a)(2) ownership of C is acquired by D, an unaffiliated domestic corporation. Immediately after and as a result of the acquisition, the C Group ceases to exist, and all the C Group members, including DRC, become includible members of ■ consolidated group of which D is the common parent (the "D Group").

(ii) Acquisition not a triggering event. Under paragraph (g)(2)(iv)(A)(*5*) of this section, the acquisition by D of the C Group is not an event requiring the recapture of the Year 1 dual consolidated loss of DRC, or the payment of an interest charge, as described in paragraph (g)(2)(vii) of this section, provided that the D Group files the statement described in paragraph (g)(2)(iv)(A)(*5*) of this section and continues to comply with the reporting requirements of paragraph (g)(2)(vi) of this section.

(iii) Subsequent event. A triggering event occurs on December 31, Year 3, that requires recapture by DRC of the dual consolidated loss it incurred for Year 1 and any dual consolidated loss incurred in Year 3, as well as the payment of an interest charge, as provided in paragraph (g)(2)(vii) of this section. Each member of the D Group, including DRC and the other former members of the C Group, is severally liable under § 1.1502–6 for the additional tax (and the interest charge) due upon the recapture of the dual consolidated loss of DRC.

* * * * *

(h) * * *

(1) * * * Paragraphs (g)(2)(iv)(A)(*4*) and (*5*) of this section, and paragraphs (g)(2)(iv)(B)(*1*)(*ii*) and (*iii*) of this section, shall apply with respect to transactions otherwise constituting triggering events occurring on or after **[DATE THE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–19237 Filed 7–31–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–126–1–7477; FRL–7254–4]

Finding of Failure to Implement a State Implementation Plan; Texas, Houston/Galveston Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to find that the approved severe area ozone State Implementation Plan for the Houston/Galveston area is not being implemented according to its terms. If EPA makes final this proposed non-implementation finding, Texas will have to correct the identified deficiencies within 18 months or the first set of sanctions will begin pursuant to sections 179(a) and (b) of the Clean Air Act (Act).

DATES: Written comments must be received on or before September 3, 2002.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park Circle, Austin, Texas 78753.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Guy R. Donaldson, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone Number (214) 665–7242, E-mail Address: *Donaldson.Guy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means EPA.

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I. Summary

A. What Portion of the Approved State Implementation Plan Are we Finding Texas Is not Fully Implementing?

We are proposing to find that Texas is not fully implementing the Texas Emission Reduction Program. Section 110(a)(2)(E) of the Act requires a SIP to have adequate funding. The TERP program was passed as part of Senate Bill 5 during the 77th Texas Legislative Session in 2001. This measure was submitted to EPA as part of a SIP revision in a letter from the Governor of Texas dated October 4, 2001. We approved this revision to the SIP on November 14, 2001 (66 FR 57159) through parallel processing. This legislation included, (1) a grant program designed to accelerate the early introduction and use of lower emitting diesel technologies in the nonattainment and near nonattainment areas of Texas, (2) a grant program to fund improved energy efficiency in public buildings, (3) purchase and lease incentives to encourage the introduction of clean light duty cars into the Texas fleet and, (4) funding for research into new air pollution reducing technologies.

The bill provided funding mechanisms for the program and the State anticipated that about $133 million in new fees would be collected to fund the emission controls contemplated. Unfortunately, the major funding source, a tax on out-of-state vehicle registrations was found to be in violation of the commerce clause of the Fourteenth Amendment of United States Constitution and Article I. Section 3 of the Texas Constitution. *See H.M. Dodd Motor Co. Inc. and Autoplex Automotive, LP.* v. *Texas Department of Public Safety, et al.*, Cause No GNID2585(200th Judicial District Court, Travis County, February 21, 2002). Without sufficient funding TNRCC will not be able to achieve all of the emission reductions projected for the TERP in the State Implementation Plan.

B. Why Is it Important That Texas Fully Implement This Program?

The TERP program is a vital portion of the State Implementation Plan. At the time the Legislature enacted SB 5, it mandated the removal of two control measures the State was relying on in its attainment plan: a ban on construction activities during the morning hours and a requirement that owners and operators of diesel non-road equipment of 50 Horsepower or greater accelerate the purchase of engines meeting Tier 2 and 3 emission standards. For more information on Tier 2 and Tier 3 Standards, see 40 CFR 89.112. The state anticipated that approximately 19 tons per day of the TERP reductions would be needed to compensate for the loss of emission reductions from the two control measures. The EPA estimated that, with the previously anticipated funding level, the TERP program could achieve 27–36 tons per day of emission reductions in the HG area.

It was expected that the remaining reductions in excess of 19 tons per day would contribute significantly to reducing the emission reduction shortfall in the HG SIP. The State has estimated that an additional 56 tons per day of emission reductions need to be adopted in the HG area to meet the National Ambient Air Quality Standard. The State has committed to adopt, by May 2004, rules to address this shortfall. Texas committed to submit adopted controls to meet 25% of the shortfall by December 2002 and the State anticipated that the remaining TERP reductions could be used to meet all or part of that commitment.

The remaining TERP reductions provide, among other things, incentives for the owners and operators of heavy duty diesel equipment to upgrade their equipment with new engines or with retrofit devices to reduce emissions. Diesel engines have been targeted because of their relatively high NO_x emissions and because their long operating life makes the widespread introduction of new cleaner engines into the fleet through normal turnover a lengthy process. With the current level of funding, Texas will not be able to accelerate the introduction of a sufficient number of cleaner diesel engines into the fleet to achieve the emission reductions necessary to demonstrate attainment by November 15, 2007.

C. What Are the Consequences if We Make Final This Proposed Finding of Failure To Implement?

Under the authority of section 179(a)(4) of the Act, if we make a finding that a provision of an approved plan is not being implemented, then the deficiency identified in the finding must be corrected within 18 months or sanctions will begin to apply. There are two types of sanctions: Highway

Sanctions (section 179(b)(1)) and Offset Sanctions (section 179(b)(2)).

In accordance with our regulations implementing the sanction provisions of the Act, if the State has not corrected the deficiencies in the TERP program within 18 months of the effective date of a final finding, the 2 to 1 offset sanction in CAA section 179(b) will apply in the HG area (40 CFR 52.31(d)(1)). This sanction requires a company that is constructing a new or modifying an existing facility over a certain size to reduce emissions in the area by two tons for every one ton of VOC or NO_X the new/modified facility will emit. The current offset ratio in the HG area is 1.3 to 1.

If Texas has not corrected the deficiencies within six months after the offset sanction is imposed, then the highway sanction will apply in the HG nonattainment area (40 CFR 52.31(d)(1)). This sanction prohibits the U.S. Department of Transportation from approving or funding all but a few specific types of transportation projects.

The order of sanctions, offset sanctions first then highway sanctions, is set in EPA's regulations at 40 CFR 52.31. If sanctions have been imposed, they will be lifted when we determine, after the opportunity for public comment, that the implementation deficiencies have been corrected. The imposition of sanctions may be stayed or deferred based on a proposed determination that the State will correct the implementation deficiencies (40 CFR 52.31(d)(4)).

D. How Can Texas Correct This Deficiency?

The State has an opportunity in the 2003 78th Legislative Session to develop funding mechanisms that would provide sufficient funds for the TERP measure included in the currently approved SIP, which again accounts for approximately 19 tons per day of emission reductions. Alternatively, the State can revise the State Implementation Plan by either adopting new measures to replace the TERP in its entirety, or by adopting new measures sufficient to account for any loss in emission reductions associated with that portion of the TERP that is unfunded. Because the HG SIP already includes stringent controls on virtually every source category, finding additional measures will be very difficult. New measures could include implementing fuels measures, implementing stricter transportation controls, such as "no drive" days, and /or reducing the industrial cap in the HG area.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not establish any new requirement with which the State must comply nor does it alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Rather, consistent with the Clean Air Act requirements, this action proposes that the State is not complying with provisions already approved in the SIP. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000). Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP findings of failure to implement under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply find failure to implement requirements that already apply under the approved SIP. Therefore, because

the Federal SIP finding of failure to implement does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the finding of failure to implement action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to find failure to implement pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 25, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–19439 Filed 7–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–140–1–7540; FRL–7254–5]

Proposed Approval, or in the Alternative, Disapproval of State Implementation Plan; Texas; Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to take one of two alternative actions regarding the Dallas/Fort Worth (DFW) State Implementation Plan (SIP). First, the EPA proposes to approve the Texas Emission Reduction Program (TERP) submission if the State provides a funding mechanism that will ensure funding at or above the level contemplated in the State's SIP submission. Second, in the alterative, EPA proposes to disapprove the SIP submission of the TERP because the state does not have adequate funding as required by the Clean Air Act. Because the TERP is necessary to achieve emission reductions relied on in the attainment demonstration for the DFW area, EPA also proposes to disapprove the DFW attainment demonstration SIP if funding at or above the level contemplated in the attainment demonstration is not reinstated or other equivalent emission reduction measures are enacted. If EPA makes final these proposed disapprovals, Texas will have to correct the identified deficiencies within 18 months or the first set of sanctions will begin pursuant to sections 179(a)and(b)of the Clean Air Act (Act)and conformity will lapse.

DATES: Written comments must be received on or before September 3, 2002.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Herbert R. Sherrow, Jr., Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–7237. e-mail: sherrow.herb@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refers to EPA.

What Is the Background for This Action?

The DFW attainment demonstration SIP was submitted on April 25, 2000.

On April 30, 2000, the Governor of Texas submitted to us two SIP rule revisions. The rules established non-road construction equipment operating limitations and accelerated purchase and operation of non-road compression-ignition fleet equipment in the DFW area.

The accelerated purchase rule required those in the DFW ozone nonattainment area who own or operate non-road equipment powered by compression-ignition engines 50 hp and up to meet certain requirements regarding Tier 2 and Tier 3 emission standards. For more information on the Tier 2 and Tier 3 emission standards, see 40 CFR 89.112, "Oxides of nitrogen, carbon monoxide, hydrocarbon, and particulate matter exhaust emission standards."

The rule phased-in Tier 2,3 engines on a schedule earlier than the federal schedule, depending on horsepower. The rule would have the effect of accelerating the turnover rate of compression-ignition engine, non-road equipment. Generally, the rule affected diesel equipment 50 hp and larger used in construction, general industrial, lawn and garden, utility, and material handling applications.

The purpose of the construction ban rule was to establish a restriction on the use of construction equipment (non-road, heavy-duty diesel equipment rated at 50 hp and greater) as an air pollution control strategy until after 10 o'clock a.m. As a result, production of ozone precursors would be stalled until later in the day when optimum ozone formation conditions no longer existed, ultimately reducing the peak level of ozone. The restrictions were to apply from June 1 through October 31.

The rule allowed operators to submit an alternate emissions reduction plan by

May 31, 2002. The alternate plan would allow operation during the restricted hours, provided the plan achieved reductions of NO_X that would result in ozone benefits equivalent to the underlying regulation.

The DFW attainment demonstration showed that emission reductions of 16 tons per day from these two rules were necessary for the area to reach attainment. Thus, the DFW attainment demonstration relied on these two rules. Please refer to our proposed approval of the rules for more information (66 FR 16432, March 26, 2001).

In May, 2001, the 77th Legislature of the State of Texas passed Senate Bill 5 (SB 5) entitled "The Texas Emission Reduction Program" (TERP). Section 18 of SB 5 required the Texas Natural Resource Conservation Commission to submit a SIP revision to us deleting the requirements of the two rules requiring a ban on construction activities during the morning hours and accelerated purchase of Tier 2,3 diesel engines for the DFW ozone nonattainment area from the SIP no later than October 1, 2001. Repeal of the rules was adopted on August 22, 2001, and submitted to us as a SIP revision on September 7, 2001. The rule repeals were submitted concurrently with the SIP revision as part of the implementation of SB 5. The rules were contained in Chapter 114 relating to Control of Air Pollution from Motor Vehicles.

The TERP legislation included a grant program designed to accelerate the early introduction and use of lower emitting diesel technologies in the nonattainment and near nonattainment areas of Texas; a grant program to fund improved energy efficiency in public buildings; purchase and lease incentives to encourage the introduction of clean light duty cars into the Texas fleet; and funding for research into new air pollution reducing technologies.

The bill provided funding mechanisms for the program and the State anticipated that about $133 million in new fees would be collected to fund the emission controls contemplated. Unfortunately, the major funding source, a tax on out-of-state vehicle registrations was found to be in violation of the commerce clause of the Fourteenth Amendment of United States Constitution and Article I. § 3 of the Texas Constitution. *See H.M. Dodd Motor Co. Inc. and Autoplex Automotive, LP.* v. *Texas Department of Public Safety, et al.*, Cause No GNID2585(200th Judicial District Court, Travis County, February 21, 2002). Without sufficient funding the State will not be able to achieve all of the emission reductions projected for the TERP in the State Implementation Plan.

What Is the Effect of the Withdrawn Rules on the DFW Attainment Demonstration SIP?

These rules supported the DFW Attainment Demonstration SIP. The emission reductions from the rules are necessary for the SIP to show attainment of the National Ambient Air Quality Standard. We cannot take final action to approve the attainment demonstration SIP since one of the measures relied upon for purposes of attainment is not adequately funded.

How Does SB 5 Replace the Withdrawn Rules?

SB 5 contains a Diesel Emissions Reduction Incentive Program to achieve emission reductions. Under this program, grant funds are provided to offset the incremental costs of projects that reduce NO_X emissions from heavy-duty diesel trucks and construction equipment in nonattainment areas. This program is expected to achieve 16 tons per day of reductions for the DFW area, out of an expected range of 40–50 tons per day. These reductions will be an alternative, but equivalent, mechanism to replace the emission reductions that would have been achieved by the two withdrawn rules.

Why Are We Proposing Approval of the TERP and Disapproval as an Alternative?

If the State secures funding at or above the level specified in the submitted SIP, we will approve the TERP submittal. If instead, the State submits alternative measures to achieve the emission reductions attributed to the TERP, we would take further rulemaking on the alternative measures before approving an attainment demonstration that relied on those measures.

Section 110(a)(2)(E) of the Act requires a SIP to have adequate funding to be approvable. A State court determined that a significant portion of the funding mechanism for the TERP violates the Constitution, thus, the State cannot collect a significant portion of the money that was intended to fund the incentives. Thus, the full amount of reductions needed for the DFW area to attain the standard, in accordance with the submitted attainment demonstration SIP, will not be achieved unless, (1) The State develops additional sources of funding for the TERP or, (2) the State adopts replacement measures that achieve equivalent reductions. Thus, in the absence of adequate funding for the TERP or an alternate program, we would need to disapprove the TERP and the associated DFW attainment demonstration.

Why Are We Proposing Disapproval of the Attainment Demonstration SIP?

If the State is unable to fund the TERP consistent with the level in the submitted SIP; or, if alternatively, to adopt and submit substitute measures to achieve any emission reductions that cannot be achieved due to a lack of funding, we will have to disapprove the attainment demonstration SIP. The TERP submission is an underlying portion of the attainment demonstration. Without implementation of the TERP or of alternative controls to reduce an equivalent amount of emissions, attainment cannot be achieved under the current attainment demonstration SIP.

What Are the Consequences of Disapproval of the TERP Submission and Disapproval of the Attainment Demonstration SIP?

If the attainment demonstration SIP is disapproved, then sanctions under section 179 of the Clean Air Act will apply. Under the authority of section 179(a) of the Act and 40 CFR 52.31, if we disapprove a SIP element or a SIP, then the deficiency identified must be corrected within 18 months or sanctions will begin to apply. There are two types of sanctions: Highway Sanctions (section 179(b)(1)) and Offset Sanctions (section 179 (b) (2)).

In accordance with our regulations implementing the sanction provisions of the Act, if the State has not corrected the deficiencies in the TERP program within 18 months of the effective date of the final disapproval, the 2 to 1 offset sanction of section 179(b) will apply in the DFW nonattainment area. The current offset ratio in the DFW area is 1.2 to 1. This sanction requires a company that is constructing a new facility or modifying an existing facility over a certain size to reduce emissions in the area by two tons for every one ton the new/modified facility will emit.

If the State has still not corrected the deficiencies within six months after the offset sanction is imposed, then the highway sanction will apply in the nonattainment area. This sanction prohibits the U.S. Department of Transportation from approving or funding all but a few specific types of transportation projects.

The order of sanctions; offsets sanctions first, then highway sanctions, is documented in our regulations at 40 CFR 52.31. If sanctions have been imposed, they will be lifted when we determine, after the opportunity for

public comment, that the deficiencies have been corrected. The imposition of sanctions may be stayed or deferred based on a proposed determination that the State will correct the implementation deficiencies (40 CFR 52.31(d)(4)).

Also, under the authority of section 93.120 of the Conformity Rule (62 FR 43813, August 15, 1997), if we finalize the disapproval of the attainment demonstration SIP, a conformity freeze will be in place as of the effective date of the disapproval without a protective finding of the budget. This means that no transportation plan, Transportation Improvement Plan (TIP), or project not in the first three years of the currently conforming plan and TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate. In addition, if the highway funding sanction is implemented, the conformity status of the plan and TIP will lapse on the date of implementation. No project level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

How Can Texas Correct This Deficiency?

The State has an opportunity in the 2003 78th Legislative Session to develop funding mechanisms that would provide sufficient funds for the TERP measures included in the currently approved SIP, which again account for approximately 16 tons per day of emission reductions. Alternatively, the State can revise the State Implementation Plan by either adopting new measures to replace the TERP in its entirety, or by adopting new measures sufficient to account for any loss in emission reductions associated with that portion of the TERP that is unfunded. Finding additional measures for the DFW area will be difficult because of the stringency of the existing plan. Such measures could include implementing fuels measures, or implementing stricter transportation controls, such as "no drive" days.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not mitigate environmental health or safety risks.

Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely ensures that a State rule properly implements a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Executive Order 13175

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000). Thus, Executive Order 13175 does not apply to this rule.

Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP actions under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because Federal SIP actions do not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such

grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to take action on a State rule submitted to comply with a statutory requirement. It does not establish any Federal mandate with which the State must comply.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly affect small governments.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Motor vehicle pollution, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 25, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–19438 Filed 7–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–7232–5]

New York: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to codify in the regulations entitled "Approved State Hazardous Waste Management Programs", New York's authorized hazardous waste program. EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that EPA will enforce under the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conversation and Recovery Act (RCRA). In the "Rules and Regulations" section of this **Federal Register**, the EPA is codifying and incorporating by reference the State's hazardous waste program as an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this codification and incorporation by reference in the preamble to the immediate final rule. Unless we get written comments which oppose this incorporation by reference during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send written comments by September 3, 2002.

ADDRESSES: Send written comments to Michael Infurna, Division of Environmental Planning and Protection, EPA Region 2, 290 Broadway, 22nd Floor, New York, NY 10007.

FOR FURTHER INFORMATION CONTACT: Michael Infurna at (212) 637–4177 and at the address listed in **ADDRESSES.**

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: May 30, 2002.

William J. Muszynski,

Acting Regional Administrator, EPA Region 2.

[FR Doc. 02–18991 Filed 7–31–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 67, No. 148

Thursday, August 1, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: FNS Computer System Access Request Form, FNS–674

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection for granting computer access to State agencies and Trust Territories.

DATES: Written comments must be submitted on or before September 30, 2002.

ADDRESSES: Comments may be sent to John Rankin, Deputy Director, Information Technology Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to John Rankin, (703) 605–4433.

SUPPLEMENTARY INFORMATION:

Title: FNS Computer System Access Request.

OMB Number: Not yet assigned.

Expiration: None.

Type of Request: New information collection.

Abstract: The FNS Computer System Access Request Form, FNS–674, is designed for use in all situations where access to an FNS computer system is required, where current access is required to be modified, or where access is no longer required and must be deleted. Users who access FNS systems are: State agencies, other Federal agencies, and FNS Regional, Field Office, and Compliance Office users.

In State agencies, the State Information Systems Security Officer (SISSO) acts as a liaison between the State agency and the Deputy Regional Information Systems Security Offices (DRISSOs) and the FNS Headquarters Information Systems Security Office. The SISSO is responsible for ensuring State users and entities comply with FNS Information Systems Security Policy and Procedures' Handbook 701 and 702 developed for State systems and that they maintain proper controls over FNS security features used by State clients. The SISSO will over see completion of the FNS–674 forms and forward completed forms to the DRISSO.

The DRISSOs act on behalf of FNS Headquarters Information Systems Security Office to ensure that Regional, Field Office, and Compliance Office users comply with FNS handbook security policies developed for the regional environment. DRISSOs will forward completed FNS–674 forms to the FNS Headquarters Information Systems Security Office.

The Office of Management and Budget Circular No A–130, Appendix III (A) (3) Revised, dated February 8, 1996, requires that the information be collected.

Respondents: State agencies, other Federal agencies, FNS Regional, Field Office and Compliance Office users, and Trust Territories.

Estimated Number of Respondents: 5,000 (includes the 50 State and Trust Territories).

Estimate of Burden:

Number of responses per respondent: One.

Estimated total annual responses: 5000.

Hours per response: .16666.

Number of record keepers: 5000.

Estimated annual hours per record keeper: .03333.

Total annual record keeping hours: 166.65.

Total annual reporting hours: 833.3.

Total annual reporting and record keeping hours: 999.95.

Dated: May 16, 2002.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 02–19421 Filed 7–31–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of the Land and Resource Management Plan for the Medicine Bow National Forest, Albany County, Carbon County, Converse County, Natrona County, Platte County, WY

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to Prepare an Environmental Impact Statement in conjunction with revision of the Land and Resource Management Plan for the Medicine Bow National Forest.

SUMMARY: The Forest Service will prepare an environmental impact statement in conjunction with the revision of the Land and Resource Management Plan (hereafter referred to as the Forest Plan or Plan) for the Medicine National Forest.

DATES: Comments concerning the issues, concerns and scope of the analysis with regard to the proposed action were requested to be received in writing by November 15, 1999. The Forest Service expects to file a Draft Environmental Impact Statement with the Environmental Protection Agency (EPA) and make it available for public comment in December 2002. The agency expects to file the Final Environmental Impact Statement in December 2003.

ADDRESSES: Send written comments to: Mary Peterson, Forest Supervisor, Medicine Bow-Routt National Forests,

2468 Jackson Street, Laramie, Wyoming 82070.

FOR FURTHER INFORMATION CONTACT: Dave Harris, Planning Team Leader, (307) 745–2403.

RESPONSIBLE OFFICIAL: Rick D. Cables, Rocky Mountain Regional Forester at P.O. Box 25127, Lakewood, CO 80225–0127.

COOPERATING AGENCIES: State of Wyoming, through the Office of Federal Land Policy; Bureau of Land Management; and Conservation Districts.

SUPPLEMENTARY INFORMATION: This is a revised Notice of Intent for the prior notice promulgated in the **Federal Register**, Vol. 64, No. 194, on October 7, 1999 page 54609. The Notice of Intent is being revised for the following reasons:

(1) The draft EIS has been delayed two years. The original expected release date was October 2000; the new expected date is December 2002. The final EIS is expected to be published December 2003.

(2) Two cooperating agencies have been added. The Bureau of Land Management in Wyoming (USDI–BLM) will cooperate on the preparation of the EIS and decisions regarding mineral leasing. Seven Wyoming Conservation Districts (Little Snake River, Saratoga-Encampment-Rawlins, Medicine Bow, Converse County, Laramie County, and Laramine Rivers Conservation Districts and the Platte County Resource District, hereinafter referred to as County Conservation Districts) will cooperate in water quality monitoring, planning for impaired watersheds, socio-economic analysis, and public involvement.

(3) The responsible official has changed. Rick D. Cables is the current Regional Forester for the Rocky Mountain Region and responsible official for the Medicine Bow Forest Plan Revision.

Pursuant to Part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Forester for the Rocky Mountain Region gives notice of the agency's intent to prepare an environmental impact statement for the revision effort described above. According to 36 CFR 219.10(g), land and resource management plans are ordinarily revised on a 10- to 15-year cycle. The existing Forest Plan was approved November 20, 1985.

The Forest Service is the lead agency in this revision effort. The State of Wyoming, by and through the Office of Federal Land Policy; USDI–BLM; and County Conservation Districts are cooperating agencies by virtue of special expertise and jurisdiction. The State of Wyoming was listed as a cooperating agency in the 1999 Notice of Intent.

Forest Plans describe the intended management of National Forests. Agency decisions in the Plan will do the following:

- Establish multiple-use goals and objectives (36 CFR 219.1 1);
- Establish forestwide management requirements (standards and guidelines) to fulfill the requirements of 16 USC 1604 applying to future activities (resource integration requirements, 36 CFR 219.13 to 219.27);
- Establish management areas and management area direction (management area prescriptions) applying to future activities in that management area (resource integration and minimum specific management requirements) 36 CFR 219.11 (c);
- Establish monitoring and evaluation requirements (36 CFR 219.11 (d));
- Determine suitability and potential capability of lands for producing forage for grazing animals and for providing habitat for management indicator species (36 CFR 219.20), designate lands not suited for timber production, and, where applicable, establish allowable timber sale quantity (36 CFR 219.14, 219.15, and 219.21);
- Where applicable to oil and gas resources, determine the planning area leasing decision (lands administratively available for leasing) and the leasing decision for specific lands [36 CFR 228.102(4)(d)&(e)]. Where applicable, BLM will issue a decision document on leasing for federal minerals, both under Forest Service administered surface and under private surface.
- Where applicable, recommend Wild and Scenic River designations, in cooperation with the National Park Service, in accordance with 16 USC 1274; and
- Where applicable, recommend non-Wilderness allocations or Wilderness recommendations for roadless areas (36 CFR 219.17)

The authorization of project level activities within the planning area occurs through project decision-making, the second stage of forest and grassland planning. Project-level decisions must comply with National Environmental Policy Act (NEPA) procedures and must include a determination that the project is consistent with the Management Plan, or the Plan must be amended according to the National Forest Management Act (NFMA).

Release and Review of the EIS: The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by December 2002. At that time, the EPA will publish a notice of availability for the DEIS in the Federal Register. The comment period on the DEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**.

Reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Com.* v. *NRDC.* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the three-month comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in December 2003. The responsible officials will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding these revisions. The responsible official will document his decision and reasons for the decisions in a Record of Decision for the revised Management Plan. The decision will be subject to appeal in accordance with 36 CFR 217.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909–15, section 21.2)

Dated: July 26, 2002.

Richard P. Salazar,

Deputy Regional Forester, Rocky Mountain Region.

[FR Doc. 02–19404 Filed 7–31–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Counties Payments Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Counties Payments Committee will meet in Rhinelander, WI, on August 23, 2002. The purpose of the meeting is to receive comments from elected officials and the general public on the recommendations the committee must make to Congress as specified in Section 320 of the Fiscal Year 2001 Interior and Related Agencies Appropriations Act. The meeting will consist of a public input session from 1 p.m. until 5 p.m.

DATES: The Rhinelander, WI, meeting will be held on August 23, 2002. Persons who are interested in providing comments to the committee have until August 31, 2002, to submit their written comments. Comments received after this date will be considered to the extent possible.

ADDRESSES: The August 23 meeting will be held at the Rhinelander High School Auditorium, 665 Coolidge Avenue, Rhinelander, Wisconsin. Those who cannot be present may submit written responses to the questions listed in **SUPPLEMENTARY INFORMATION** in this notice to Randle G. Phillips, Executive Director, Forest Counties Payments Committee, P.O. Box 34718, Washington, DC 20043–4713, or electronically on the committee's website at *http://countypayments.gov/comments.html*.

FOR FURTHER INFORMATION CONTACT: Randle G. Phillips, Executive Director, Forest Counties Payments Committee, (202) 208–6574 or via e-mail at *rphillips01@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Section 320 of the 2001 Interior and Related Agencies Appropriations Act (Pub. L. 106–291) created the Forest Counties Payments Committee to make recommendations to Congress on a long term solution for making Federal payments to eligible States and counties in which Federal lands are situated. To formulate its recommendations to Congress, the committee will consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occurring on Federal lands which are Federal responsibilities; and monitor payments and implementation of the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393).

Questions for Comment

The Forest Counties Payments Committee asks that elected officials and others who wish to comment, either by mail or in person at the Rhinelander, WI, meeting, provide information in response to the following questions:

1. Do counties receive their fair share of Federal revenue sharing payments made to eligible States?
2. What difficulties exist in complying with and managing all of the Federal revenue sharing payments programs? Are some more difficult than others?
3. What economic, social, and environmental costs do counties incur as a result of the presence of public lands within their boundaries?
4. What economic, social, and environmental benefits do counties realize as a result of public lands within their boundaries?
5. What are the economic and social effects from changes in revenues generated from public lands over the past 15 years as a result of changes in management on public lands in your State or county?
6. What actions has your State or county taken to mitigate any impacts associated with declining economic conditions or revenue sharing payments?
7. What effects, both positive and negative, have taken place with education and highway programs that are attributable to the management of public lands within your State or county?
8. What relationship, if any, should exist between Federal revenue sharing programs, and management activities on public lands?
9. What alternatives exist to provide equitable revenue sharing to States and counties and to promote "sustainable forestry?"
10. What has been your experience regarding implementation of Public Law 106–393, the Secure Rural Schools and Community Self-Determination Act?
11. What changes in law, policies and procedures, and the management of public land have contributed to changes in revenue derived from the multiple use management of these lands?
12. What changes in law, policies and procedures, and the management of public land are needed in order to restore the revenues derived from the multiple use management of these lands?

Dated: July 25, 2002.

Elizabeth Estill,

Deputy Chief, Programs and Legislation.

[FR Doc. 02–19467 Filed 7–31–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

[I.D. 072902A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska License Limitation Program for Groundfish, Crab, and Scallops.

Form Number(s): None.

OMB Approval Number: 0648–0334.

Type of Request: Regular submission.

Burden Hours: 544.

Number of Respondents: 244.

Average Hours Per Response: 1 hour for a transfer application; 4 hours for an appeal.

Needs and Uses: NOAA is seeking renewed Paperwork Reduction Act clearance for requirements currently cleared under OMB Numbers 0648–0420 (scallops) and 0648–0334 (groundfish and crab), but proposes to merge these requirements under the latter number. This collection now supports License Limitation Permit transfer activities for crab, scallops, and groundfish, and any appeals resulting from denied actions. The information is submitted to respond to requirements set forth in regulations at 50 CFR part 679.4. Paper applications are required from participants, and methods of submittal include facsimile transmission or mailing of paper forms.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork

Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 25, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–19426 Filed 7–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 072902D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal and Estuarine Land Conservation, Planning, Protection, or Restoration.

Form Number(s): None

OMB Approval Number: None

Type of Request: Emergency.

Burden Hours: 1,520.

Number of Respondents: 50.

Average Hours Per Response: 30 hours for the development of a Coastal and Estuarine Conservation Program Plan; 10 hours for a project application and checklist.

Needs and Uses: The FY 2002 Commerce, Justice, State Appropriations Act directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program (CELCP) to protect important areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion, and to issue guidelines for this program delineating the criteria for grant awards. The guidelines establish procedures for eligible applicants, who choose to participate in the program, to use when developing state conservation plans, proposing or soliciting projects under this program, applying for funds and carrying out projects under this program in a manner that is consistent with the purposes of the program. NOAA also has, or is given, authority under the Coastal Zone Management Act, annual appropriations or other authorities, to issue funds to coastal states and localities for planning, conservation, acquisition, protection, restoration, or construction projects. This information collection will enable NOAA to implement the CELCP, under its current or future authorization, and facilitate the review of similar projects under different, but related authorities.

Affected Public: State, local, or tribal government; not-for-profit institutions.

Frequency: One-time.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by August 9, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 25, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–19464 Filed 7–31–02; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Six Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearance prior to appointment. These clearances are necessary so that members can be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the Committees will not be compensated for their services. The six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics—semiconductor section), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: the Export Administration Regulations (EAR) and procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Categories 3 (electronics—instrumentation section) and 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine technology), and 9 (propulsion systems, space vehicles, and related equipment).

To respond to this recruitment notice, please send a copy of your resume. Please use the e-mail address below.

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583. Resumes may be e-mailed to her at *Lcarpent@bis.doc.gov*.

Dated: July 23, 2002.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 02–19371 Filed 7–31–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072902B]

Proposed Information Collection; Comment Request; Reporting of Sea Turtle Incidental Take in Virginia Chesapeake Bay Pound Net Operations

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 30, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mary Colligan, Assistant Regional Administrator for Protected Resources, National Marine Fisheries Service (NMFS), One Blackburn Drive, Gloucester, MA 01930 (ph. 978–281–9116, fax 978–281–9394).

SUPPLEMENTARY INFORMATION:

I. Abstract

This proposed reporting measure would require all Virginia Chesapeake Bay pound net fishermen to report interactions with endangered and threatened sea turtles, found both live and dead, in their pound net operations. When a live or dead sea turtle is discovered during a pound net trip, the Virginia pound net fisherman would be required to report the incidental take to NMFS and, if necessary, the appropriate rehabilitation and stranding network. This information will be used to monitor the level of incidental take in the state-managed Virginia pound net fishery and ensure that the seasonal pound net leader restriction (50 CFR 223.206(d)(2)(v)) is adequately protecting listed sea turtles.

II. Method of Collection

At any time during the year, if a sea turtle is taken live and uninjured in any portion of the pound net operation, in the pound, heart, or leader, the operator of the vessel would be required to report the incident to the NMFS Northeast Regional Office within 24 hours of returning from the trip in which the incidental take was discovered. At any time during the year, if a sea turtle is taken in a pound net operation, and is determined to be injured, or if a sea turtle is captured dead, the operator of the vessel would be required to immediately notify the NMFS Northeast Regional Office and the appropriate rehabilitation or stranding network, as determined by the NMFS Northeast Regional Office.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households (specifically, Virginia pound net fishermen).

Estimated Number of Respondents: 80.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 74.

Estimated Total Annual Cost to Public: $1,323.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 25, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of Chief Information Officer.

[FR Doc. 02–19427 Filed 7–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072502A]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION:

SUMMARY: The Makah Indian Tribe, and the Washington Department of Fish and Wildlife as the co-managing fisheries resource manager, have submitted a joint Resource Management Plan (RMP) pursuant to the protective regulations promulgated for the Ozette Lake Sockeye Salmon Evolutionary Significant Unit (ESU) under the Endangered Species Act (ESA). The RMP specifies artificial propagation, research, and monitoring and evaluation measures potentially affecting listed Ozette Lake sockeye salmon. This document serves to notify the public of the availability for comment of the proposed evaluation of the Secretary of Commerce (Secretary) as to how the RMP addresses the criteria in the ESA. NMFS also announces the availability of a draft Environmental Assessment (EA) for the pending determination.

DATES: Written comments on the Secretary's evaluation must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on September 3, 2002.

ADDRESSES: Written comments and requests for copies of the proposed evaluation and draft environmental assessment should be addressed to Tim Tynan, Sustainable Fisheries Division, National Marine Fisheries Service, 510 Desmond Drive, Suite 103, Olympia, WA 98503. Comments may also be sent via fax to 360/753-9517. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*, Sustainable Fisheries Division site. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Tim Tynan at phone number: 360/753–9579, or e-mail: *Tim.Tynan@noaa.gov* regarding the RMP.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Ozette Lake sockeye salmon (*Oncorhynchus nerka*) ESU.

Background

The Makah Indian Tribe, and the Washington Department of Fish and Wildlife as the co-managing resource management agency under the *United States* v. *Washington* fisheries management framework, have provided a joint RMP in the form of a Hatchery and Genetic Management Plan (HGMP) for Ozette Lake sockeye salmon. The RMP encompasses artificial propagation, research, and monitoring and evaluation activities within the range of the Ozette Lake sockeye salmon ESU. The range of the ESU is the Ozette River, Ozette Lake, and Ozette Lake tributaries accessible to anadromous salmon. Performance objectives specified in the RMP include establishment of self-sustaining tributary-spawning sockeye aggregations to increase natural spawning fish abundance levels in the Ozette Lake Basin. The RMP also includes research and monitoring and evaluation actions designed to identify life history characteristics of the listed beach spawning sockeye salmon population, and factors limiting the productivity of the listed sockeye salmon ESU. Monitoring and evaluation programs are also used to insure that the proposed artificial propagation measures are consistent with listed sockeye salmon conservation objectives.

As required by Section 223.203 (b)(6) of the ESA 4(d) Rule, the Secretary must determine pursuant to 50 CFR 223.203 and pursuant to the government-to-government processes therein whether the RMP for Ozette Lake sockeye salmon would appreciably reduce the likelihood of survival and recovery of the Ozette Lake sockeye salmon and other affected threatened ESUs. The Secretary must take comments on how the RMP addresses the criteria in 223.203(b)(5) in making that determination. The final National Environmental Policy Act and RMP determinations will not be completed until after the end of the 30–day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Authority

Under section 4 of the ESA, NMFS, by delegated authority from the Secretary of Commerce, is required to adopt such regulations as he deems necessary and advisable for the conservation of the species listed as threatened. The ESA salmon and steelhead 4(d) Rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a RMP developed jointly by the Tribes and the State of Washington (joint plan) and determined by the Secretary to be in accordance with the salmon and steelhead 4(d) Rule (65 FR 42422, July 10, 2000).

Dated: July 26, 2002.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19428 Filed 7–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072402A]

Receipt of Two Applications for Direct Take Permits (1395 and 1396)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS has received applications for direct take permits (Permits) from the Washington Department of Fish and Wildlife (WDFW) and U.S. Fish and Wildlife Service (USFWS) pursuant to the Endangered Species Act of 1973, as amended (ESA) (permit numbers 1395 and 1396, respectively). Chelan County Public Utilities District (PUD) and Douglas County PUD are co-applicants with WDFW for permit 1395 as agreed to in the Habitat Conservation Plans (HCPs) developed for the operation of Rock Island, Rocky Reach and Wells hydro electric projects; the USFWS is the applicant for permit 1396. As required by the ESA, the WDFW, Chelan PUD, Douglas PUD and USFWS have prepared conservation plans (Plans) designed to minimize and mitigate any such take of endangered or threatened species. The Permit applications are for the direct and incidental take of ESA-listed adult and juvenile salmonids associated with carrying out hatchery programs for endangered Upper Columbia River steelhead in the upper Columbia River and its tributaries in the state of Washington. The duration of the proposed Plans and Permits is 5 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments from interested parties on the Permit applications and Plans must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight time on September 3, 2002.

ADDRESSES: Written comments on the applications and Plans should be sent to Kristine Petersen, Sustainable Fisheries Division, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232. Comments may also be sent via fax to 503/872-2737. Comments will not be accepted if submitted via e-mail or the Internet. Requests for copies of the permit applications and Conservation Plans should be directed to the Sustainable Fisheries Division, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments received will also be available for public inspection, by appointment, during normal business hours by calling 503/230–5409.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, OR (ph: 503/230–5409, fax: 503/872–2737, e-mail: *Kristine.Petersen@noaa.gov*).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species for scientific purposes or to enhance the propagation or survival of the species under section 10(a)(1)(A) of the ESA. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following evolutionarily significant units (ESUs) are included in the Plan and Permit application:

Steelhead (*Oncorhynchus mykiss*): endangered, naturally produced and artificially propagated Upper Columbia River (UCR).

Chinook salmon (*O. tshawytscha*): endangered, naturally produced and artificially propagated, UCR spring-run.

Applications Received

Two section 10(a)(1)(A) permits for artificial propagation and release of endangered Upper Columbia River Basin ESU steelhead will expire on May 31, 2003. In anticipation of this expiration date, the WDFW and USFWS are applying for new permits covering similar actions. Upper Columbia River Basin ESU steelhead were listed as endangered on August 18, 1997 (62 FR 43937). Included in the listing decision was the determination that the Wells Hatchery stock was part of the ESU and essential for recovery efforts.

On June 12, 2002, WDFW submitted an application to NMFS for an ESA section 10(a)(1)(A) permit for the take of ESA-listed anadromous fish species associated with operation of hatchery programs producing hatchery steelhead for release into the Columbia River at Ringold Springs Rearing facility and upstream of Rock Island Dam from the Wenatchee River to the Okanogan River Basin from 2002 to 2007. Incidental take would include endangered spring chinook salmon in the Upper Columbia River ESU. The proposed programs produce steelhead of native stock to enhance local naturally spawning salmon populations.

On June 11, 2002, USFWS submitted an application to NMFS for an ESA section 10(a)(1)(A) permit for the direct take of ESA-listed anadromous fish species associated with operation of hatchery programs producing endangered steelhead for release into the Methow River from 2002 to 2007. Incidental take would include endangered spring chinook salmon in the Upper Columbia River ESU. The proposed programs produce steelhead of native stock to enhance local naturally spawning salmon populations.

Conservation Plans

The Conservation Plans prepared by WDFW and USFWS describe measures designed to monitor, minimize, and mitigate the take of ESA-listed anadromous steelhead and the incidental takes of ESA-listed salmon associated with the following steelhead hatchery programs that are proposed to be implemented from 2002 through 2007:

Eastbank Fish Hatchery Steelhead Program

The hatchery began operation in 1989 to mitigate for steelhead and salmon smolt losses resulting from the operation of Rock Island Dam. The hatchery is used for incubation and rearing of anadromous fish. Eastbank Fish Hatchery is located on the east side of the Columbia River near Rocky Reach Dam at river mile 475, 7 miles north of Wenatchee, Washington. Artificial propagation of steelhead is intended to recover and enhance the natural steelhead population in the Wenatchee River Basin. Up to 208 adult steelhead are collected for broodstock at Tumwater and Dryden dams on the Wenatchee River. Holding and spawning of broodstock is conducted at Eastbank or Wells hatcheries. There are no on-station releases of fish at Eastbank Hatchery. Fish reared at Eastbank Hatchery and transferred to other locations for acclimation/release or scatter planted using tank trucks. The proposed steelhead program goal is 200,000 smolts released into the Wenatchee River basin in April or May.

Turtle Rock Fish Hatchery Steelhead Program

The Turtle Rock Hatchery is located immediately downstream of Rocky Reach Dam on the Columbia River. The steelhead rearing ponds are located on Turtle Rock Island at river mile 475 in the Rocky Reach Dam pool on the Columbia River. The hatchery is operated as a mitigation facility for fishery impacts caused by the construction and operation of Rocky Reach Dam. Artificial propagation of steelhead at this facility are intended to enhance the natural steelhead population in the Wenatchee River Basin. Broodstock are not collected at Turtle Rock Hatchery. Currently, broodstock for the program is provided annually through the Eastbank Hatchery steelhead program. Rearing occurs on Columbia River water which provides the juvenile steelhead natural water temperature regimes and may increase smolt to adult survival and increase the hatchery reared steelhead's ability to reproduce in the wild. The annual hatchery production goals are 200,000 juvenile steelhead for release in the Wenatchee River Basin in April and May.

Wells Fish Hatchery Steelhead Program

Wells Hatchery is located on the mainstem Columbia River just below Wells Dam at river mile 515. The hatchery operates as a mitigation facility for anadromous fish impacts caused by Wells Dam. The artificial propagation program is intended to enhance and assist in the recovery of natural populations in the Methow and Okanogan River Basins. Steelhead adults collected as broodstock for the enhancement program are trapped each year in July through November at Wells Dam fish ladders or as volunteers to the hatchery trap. Progeny of spawners trapped at Wells Hatchery are incubated on-station and reared on-station or transferred as eyed eggs to other WDFW facilities with final rearing and release at Ringold Springs facility, or transferred as eyed eggs to Winthrop National Fish Hatchery for rearing and release. The annual Wells Fish Hatchery release goal is 450,000 juvenile steelhead. Juvenile steelhead are released at various locations throughout the Methow and Okanogan basins.

Winthrop National Fish Hatchery Steelhead Program

Winthrop National Fish Hatchery (NFH) is operated by USFWS and located on the Methow River at river mile 50, near the town of Winthrop. The hatchery operates as a mitigation facility for anadromous fish impacts caused by the Grand Coulee Fish Maintenance Project. Artificially produced steelhead are intended to enhance and recover natural steelhead populations in the Methow River. This program receives 125,000 eyed eggs from WDFW Wells Fish Hatchery steelhead program for rearing and release. The annual program release goal is 100,000 juvenile steelhead. Juvenile hatchery steelhead are released from Winthrop NFH into the Methow River.

Ringold Steelhead Program

The program's purpose is to provide a genetic reserve of UCR ESU steelhead. Approximately 240,000 eyed eggs from Wells Fish Hatchery will be transferred to other WDFW facilities for incubation and early rearing. Final rearing and release will occur at Ringold Springs Rearing Pond. The program goal is the release of 180,000 steelhead smolts in April or May.

Mortalities of ESA-listed fish associated with the steelhead hatchery programs are requested at levels specified in the Permit applications and in the Conservation Plans. The WDFW is proposing to limit broodstock collection and juvenile fish production and release methods applied at the hatcheries such that the direct impacts on ESA-listed salmonids will be minimized.

Broodstock Management Techniques

It is possible that in some years returns to the hatchery may exceed the number of returns necessary to produce the number of offspring considered advisable for release into this ESU. Therefore, this surplus may by definition not be essential for

recovery efforts. Measures to manage hatchery adult returns include collection at specific sites for transplantation into landlocked lakes and limited harvest.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(A) of the ESA. If it is determined that the requirements are met, permits will be issued to WDFW and USFWS for the steelhead enhancement programs in the Upper Columbia River. NMFS will publish a record of its final action in the **Federal Register**.

Dated: July 26, 2002.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19431 Filed 7–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062502C]

Marine Mammals; File No. 881–1443

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center, P.O. Box 1329, Seward, AK 99664 has been issued an amendment to scientific research Permit No. 881–1443.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13730, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan, 301/713–2289.

SUPPLEMENTARY INFORMATION: On September 19, 2001, notice was published in the **Federal Register** (66 FR 48663) that an amendment of Permit No. 881–1443, issued March 27, 1998 (63 FR 14905), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

The amendment authorizes modifications to existing research protocols as well as new research projects. Modifications to existing protocols include: (1) increasing frequency of blubber biopsies taken from Steller sea lions from 3 to 6 times per year for fatty acid and organochlorine testing; (2) increasing mass of blubber biopsies taken from harbor seals from 50 to 500 mg for organochlorine testing; (3) collecting saliva from Steller sea lions and harbor seals for deuterium, steroid, and hormone analyses; (4) analyzing vaginal and preputial swabs for cell cytology in Steller sea lions and harbor seals; and (5) administering stable isotopes to Steller sea lions for nutritional studies.

New projects include: (1) hormone stimulation studies and collection of feces for assessment of stress or well-being in relation to diet in Steller sea lions; (2) bioenergetic studies of Steller sea lions involving determination of metabolic rates using flow respirometry and metabolic chambers, and dietary marker administration and dry holding for collection of urine and feces; (3) collection of skin and mucosal swabs from harbor seals and Steller sea lions for development of cell lines and microbiological analyses; (4) administration of deuterium labeled vitamin E and a vitamin A analog and increased frequency of blood sampling to determine metabolic requirements of these vitamins; and (5)photographic studies to determine pelage pattern consistency of harbor seals.

Dated: July 25, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 02–19430 Filed 7–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2002–P–004]

Grant of Interim Extension of the Term of U.S. Patent No. 4,229,449; Roboxetine Mesylate

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a fourth one-year interim extension of the term of U.S. Patent No. 4,229,449.

FOR FURTHER INFORMATION CONTACT: Karin Ferriter by telephone at (703) 306–3159; by mail marked to her attention and addressed to the Commissioner for Patents, Box Patent Ext., Washington, DC, 20231; by fax marked to her attention at (703) 872–9411, or by e-mail to *Karin.Ferriter@uspto.gov*.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On November 20, 2001, patent owner Pharmacia & Upjohn, S.p.A., timely filed an application under 35 U.S.C. 156(d)(5) for a third subsequent interim extension of the term of U.S. Patent No. 4,229,449. The patent claims the active ingredient roboxetine mesylate (Vestra(TM)). The application indicates that a New Drug Application for the human drug product roboxetine mesylate (Vestra(TM)) has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that except for permission to market or use the product commercially, the

subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for an additional year as required by 35 U.S.C. 156(d)(5)(B). Since it is apparent that the regulatory review period has continued beyond the extended expiration date of the patent (January 9, 2002), the term of the patent is extended under 35 U.S.C. 156(d)(5) for an additional term of one year, *i.e.*, until January 9, 2003.

Dated: July 24, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–19453 Filed 7–31–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement and Draft Clean Air Act Conformity Determination for Introduction of F/A–18 E/F Super Hornet Aircraft to the East Coast of the United States

AGENCY: Department of the Navy, DOD.

ACTION: Announcement of public hearing.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and the Clean Air Act, General Conformity Rule (40 CFR Part 93), the Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) and Draft Clean Air Act (CAA) Conformity Determination to evaluate the introduction of F/A–18 E/F Super Hornet aircraft to the east coast of the United States. In accordance with these laws and regulations, this notice announces the dates and locations of public hearings.

DATES AND ADDRESSES: An open information session will precede the scheduled public hearing at each of the locations listed below and will allow individuals to review the data presented in the DEIS. Navy representatives will be available during the information session to clarify information related to the DEIS. Unless noted, the open information session of the hearing is scheduled from 4:30 p.m. to 6:30 p.m., followed by the public hearing from 7 p.m. to 9:30 p.m. Public hearings have been scheduled at the following dates, locations, and times:

—Tuesday, August 20, 2002, Tucker Creek Middle School, 200 Sermons Blvd, Havelock, NC.
—Wednesday, August 21, 2002, Craven Community College, Orringer Hall, 800 College Court, New Bern, NC.
—Thursday, August 22, 2002, Pamlico County Primary School, 323 Neal Creek Rd, Bayboro, NC.
—Monday, August 26, 2002, North Carolina Aquarium and Marine Center, Airport Rd, Manteo, NC. (information session begins at 5:30 p.m.)
—Tuesday, August 27, 2002, Mattamuskeet School, 60 Juniper Bay Rd, Swan Quarter, NC.
—Wednesday, August 28, 2002, Bertie High School, 715 US 13 North, Windsor, NC.
—Thursday, August 29, 2002, Vernon G. James Center, 207 Research Station Rd, Plymouth, NC.
—Tuesday, September 3, 2002, Perquimans County High School, 305 Edenton Road St, Hertford, NC.
—Wednesday, September 4, 2002, Pavilion Convention Center, 1000 19th St, VA Beach, VA.
—Thursday, September 5, 2002, Great Bridge High School, 301 W. Hanbury Rd, Chesapeake, VA.
—Tuesday, September 10, 2002, Battery Creek High School, 1 Blue Dolphin Dr, Beaufort, SC.
—Wednesday, September 11, 2002, Eulonia Community Senior Center, GA. Highway 57, Eulonia, GA.
—Thursday, September 12, 2002, Burke County Office Park Auditorium, 715 W. 6th St, Waynesboro, GA.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Pierson, NEPA Section, Atlantic Division, Naval Facilities Engineering Command Norfolk, (757) 322–4935; Mr. Ray Firenze, Community Planning Liaison Office, Naval Air Station (NAS) Oceana, (757) 433–3158; Ms. Pam Breuer, Community Planning Liaison Office, Marine Corps Air Station (MCAS) Cherry Point, (252) 466–4196; or LtCol St. George, Executive Officer, MCAS Beaufort, (843) 228–7158, Ext.7305.

SUPPLEMENTARY INFORMATION: The proposed action is to provide facilities and functions to support the homebasing and operation of 10 Super Hornet fleet squadrons (130 aircraft) and one Fleet Replacement Squadron (FRS) (32 aircraft) to replace the F–14 Tomcat (150 aircraft) and earlier model F/A–18 C/D Hornet (37 aircraft). The introduction of the Super Hornet would meet the need of Naval aviation for upgraded aircraft with increased range and endurance, the ability to carry heavier payloads, features that enhance survivability, and the flexibility to incorporate future systems and technologies to meet emerging threats. The Navy is lead agency for the proposed action with the Federal Aviation Administration (FAA) and the Department of the Air Force (Air Force) serving as cooperating agencies.

The DEIS considers eight homebasing alternatives and identifies two of those as preferred alternatives. East coast installations that meet operational criteria and are considered as possible receiving homebase sites for the F/A–18 E/F aircraft include NAS Oceana, VA; MCAS Beaufort, SC; and MCAS Cherry Point, NC. One preferred alternative would homebase six Super Hornet fleet squadrons and the FRS at NAS Oceana and four Super Hornet fleet squadrons at MCAS Cherry Point, and also construct a new Outlying Landing Field (OLF) between the two sites. The other preferred alternative would homebase eight Super Hornet squadrons and the FRS at NAS Oceana and two fleet squadrons at MCAS Cherry Point, and also construct a new OLF between the two sites. Both alternatives would homebase the majority of fleet squadrons at NAS Oceana, optimizing readiness and efficiency of operations through economies of scale in support, training and personnel requirements. These alternatives provide opportunities for mitigating noise, population encroachment, and air quality issues at NAS Oceana. The construction of an OLF provides the opportunity to further mitigate projected impacts of Super Hornet homebasing. The DEIS identifies six sites as potential locations for an OLF in the following counties:

—Perquimans County, NC. (approximately 5.5 miles north of Winfall, NC.); Bertie County, NC. (approximately 7 miles northeast of Windsor, NC.); Washington County, NC. (approximately 9 miles southeast of Plymouth, NC.); Craven County, NC. (approximately 5 miles east of Vanceboro, NC.); Hyde County, NC. (approximately 4 miles northwest of Engelhard, NC.); and Burke County, GA. (approximately 4 miles north of Sardia, GA.). The preferred OLF locations, under either homebasing alternative, are Site C in Washington County, NC. and Site E in Craven County, NC.. Each homebase and OLF alternative is assessed in the DEIS with regard to its effects on the natural and built environments.

The DEIS has been distributed to various Federal, state and local agencies, as well as other interested

individuals and organizations. In addition, copies of the DEIS have been distributed to the following libraries for public review:

—VA Beach Central Library, 4100 VA Beach Blvd, VA Beach, VA.
—Bayside Area Library, 936 Independence Blvd, VA Beach, VA.—Great Neck Area Library, 1251 Bayne Dr, VA Beach, VA.
—Kempsville Area Library, 832 Kempsville Rd, VA Beach, VA.
—Oceanfront Area Library, 1811 Arctic Ave, VA Beach, VA.
—Pungo-Blackwater Library, 916 Princess Anne Rd, VA Beach, VA.
—South Rosemont Youth Library, 1503 Competitor Ct, VA Beach, VA.
—Windsor Woods Area Library, 3612 South Plaza Trail, VA Beach, VA.
—Municipal Reference Library, Municipal Center Bldg 17, VA Beach, VA.
—Wahab Public Law Library, Judicial Center Bldg 10B, 2425, Nimmo Parkway, VA Beach, VA.
—VA Beach Bookmobile, VA Beach, VA.
—Chesapeake Central Library, 298 Cedar Rd, Chesapeake, VA.
—Greenbrier Library, 1214 Volvo Parkway, Chesapeake, VA.
—Havelock-Craven County Library, 300 Miller Blvd, Havelock, NC.
—Beaufort County Library, 311 Scott St, Beaufort, SC.
—Pamlico County Library, 603 Main St, Bayboro, NC.
—Manteo-Dare County Libraries, 700 North US 64/264, Manteo, NC.
—Ida Hilton Public Library, 1105 North Way, Darien, GA.
—Perquimans County Library, 110 West Academy, Hertford, NC.
—Lawrence Memorial Library, 204 E. Dundee St, Windsor, NC.
—Washington Cty Library, 201 East Third St, Plymouth, NC.
—Mattamuskeet Public School Library, 20418 US Route 264, Swan Quarter, NC.
—Craven-Pamlico-Carteret Regional Library, 400 Johnson St, New Bern, NC.
—Burke County Library, 412 4th St, Waynesboro, GA.
—Sardis Library, 905 Charles Perry Ave, Sardis, GA.

An electronic copy of the DEIS is also available for public viewing at *http://www.efaircraft.ene.com*. A limited number of single copies of the DEIS, Executive Summary, and Draft CAA Conformity Determination are available upon request by contacting Mr. Fred Pierson at (757) 322–4935.

Federal, state, and local agencies, as well as interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the DEIS and Draft CAA Conformity Determination and will be responded to in the Final Environmental Impact Statement (FEIS). Equal weight will be given to both oral and written statements.

In the interest of available time and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing or mailed or faxed to: Commander, Atlantic Division, Naval Facilities Engineering Command, Attn: Mr. Fred Pierson (Code BD32FP), 1510 Gilbert Street, Norfolk, VA 23511–2699, Fax (757) 322–4894. All written comments postmarked by October 2, 2002, will become a part of the official public record and will be responded to in the FEIS.

Dated: July 26, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–19423 Filed 7–31–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–161–027]

Columbia Gas Transmission Corporation; Notice of Refund Filing

July 26, 2002.

Take notice that on July 19, 2002, Columbia Gas Transmission Corporation (Columbia Gas) filed to report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia Gas' Docket No. RP91–161 settlement period.

Columbia Gas states that it allocated such recoveries among customers based on their fixed cost responsibility for services on the Columbia Gas system during the period December 1, 1991 through January 31, 1996, the period of the Docket No. RP91–161 settlement.

Columbia Gas states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 2, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19413 Filed 7–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–393–000]

Columbia Gas Transmission Corporation; Notice of Refund Filing

July 26, 2002.

Take notice that on July 19, 2002, Columbia Gas Transmission Corporation (Columbia Gas) filed to report on the flow-back to customers of refunds received from Panhandle Eastern Pipe Line (Panhandle) under the settlement in Panhandle's Docket No. RP98–40, et al. At issue in Panhandle's docket were Kansas Ad Valorem taxes that were improperly added to the Maximum Lawful prices under the NGPA. The refund is applicable to the period October 1983 through June 1988 and is based on Columbia's purchased gas commodity volumes under Panhandle's Rate Schedules SG–1 and LS–1 for that period.

Based on the Stipulation and Agreement in Columbia's Docket No. TA82–1–21, et al, Columbia is obligated to flow-through to its customers approximately $9,000.00 of the refund received from Panhandle. This amount

includes interest calculated using the FERC interest rate in accordance with the Code of Federal Regulations, Subpart F, Section 154.501(d). This amount is to be flowed-through to Columbia's former Rate Schedule CDS/WS and SGS (former wholesale customers). Columbia has allocated the refund to the applicable customers based on the allocation methodology approved pursuant to Columbia's Account 191 Close-Out filing in Docket No. RP94–158, *et al.*

Columbia Gas states that copies of its filing have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before August 2, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19418 Filed 7–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–160–027]

Columbia Gulf Transmission Company; Notice of Refund Filing

July 26, 2002.

Take notice that on July 19, 2002, Columbia Gulf Transmission Company (Columbia Gulf) filed to report on the flow-back to customers of funds received from insurance carriers for environmental costs pursuant to Article I(A)(2)(d) of its Docket No. RP91–160 settlement.

Columbia Gulf states that it allocated such recoveries among customers based on their fixed cost responsibility for services rendered on the Columbia Gulf system during the period December 1, 1991 through October 31, 1994, the period of the Docket No. RP91–160 settlement). Columbia Gulf states further that it provided a copy of the June 20, 2002 report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Columbia Gulf states that copies of its filing is being sent to all customers recipients of the environmental insurance recoveries and all state commissions whose jurisdiction the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 2, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19412 Filed 7–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–059]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

July 26, 2002.

Take notice that on July 19, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction: FTS–1 Service Agreement No. 73134 between Columbia Gulf Transmission Company and Aquila Merchant Services, dated July 1, 2002.

Transportation service is to commence July 1, 2002 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19414 Filed 7–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–060]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

July 26, 2002.

Take notice that on July 19, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction under its Rate Schedule FTS–1: Service Agreement No. 73187 between Columbia Gulf Transmission Company

and TotalFinaElf Gas & Power North America, Inc., dated July 17, 2002.

Transportation service is to commence November 1, 2002 and end March 31, 2003 under the agreement.

Columbia Gulf states that copies of the filing has been served to all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19415 Filed 7–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–31–000]

Dominion Transmission, Inc.; Notice of Report of Overrun/Penalty Revenue Distribution

July 26, 2002.

Take notice that on July 22, 2002, Dominion Transmission, Inc. (DTI) filed its report of overrun/penalty revenue distribution. Section 41 of the General Terms and Conditions of DTI's FERC Gas Tariff, Crediting of Unauthorized Overrun Charge and Penalty Revenues, requires distribution of such charges and revenues to non-offending customers on June 30 of each year, and filing of the related report within 30 days of the distribution.

DTI states that copies of the transmittal letter and summary workpapers are being mailed to DTI's customers and to all interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 2, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19407 Filed 7–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–392–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 26, 2002.

Take notice that on July 22, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, to be effective September 1, 2002.

Kern River states that the purpose of this filing is to comply with ordering paragraph (F) of the Commission's "Order Issuing Certificate" in Docket No. CP01–405, by submitting tariff sheets to implement new Rate Schedules KRF–L1 and KRI–L1, to establish recourse rates related to those rate schedules, and to implement other conforming tariff changes.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19417 Filed 7–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–391–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

July 26, 2002.

Take notice that on July 22, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the tariff sheets listed in Appendix A to the filing which replaces First Revised Volume No.1–A.

GTN states these tariff sheets are being submitted to clean-up the fragmented pagination within the tariff and reflect minor changes on the title page. GTN requests that these tariff sheets become effective on August 22, 2002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested

state regulatory agencies. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19416 Filed 7–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–407, North Carolina]

Duke Energy Corporation; Notice of Availability of Environmental Assessment

July 26, 2002.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental impacts of Duke Energy Corporation's (Duke) application to grant a non-project use of project land to Charlotte-Mecklenburg Utilities Department (CMUD) to increase its raw water withdrawal, in Mountain Island Lake, a reservoir for the Catawba-Wateree Hydroelectric Project. Duke's proposed grant would also allow York to withdrawal up to 330 million gallons of water per day. The Catawba-Wateree Project is on the Catawba River in Lancaster, York, and Fairfield Counties, South Carolina, and Gaston, Lincoln, and Burke Counties, North Carolina.

The EA was prepared by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. In the EA, Commission staff conclude that approving Duke's application to grant the use would not constitute a major federal action significantly affecting the quality of the human environment. The EA may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Copies are also available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 208–1371.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19408 Filed 7–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–116–000 and CP02–117–000]

Tennessee Gas Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed South Texas Expansion Project

July 26, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Tennessee Gas Pipeline Company (Tennessee) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the South Texas Expansion Project including:

- About 9.28 miles of a 30-inch-diameter lateral in Hidalgo County, Texas;
- A new meter station near the terminus of the new lateral in Hidalgo, Texas;
- About 7.58 miles of a 24-inch-diameter loop of Tennessee's existing Donna Line in Hidalgo County, Texas;
- A new 9,470 horsepower compressor station in Hidalgo County, Texas; and
- Minor modifications of Tennessee's existing Compressor Station 1 located in Nueces County, Texas, and existing Compressor Station 9 located in Victoria County, Texas.

Tennessee's proposed project also includes a border crossing facility at the International Boundary between the United States in Hidalgo County, Texas and Mexico in the State of Tamaulipas, which would consist of a 1,800-foot-long segment of 30-inch-diameter pipeline. The primary purpose of the South Texas Expansion Project is to provide up to 320,000 Decatherms per day of natural gas to a developing power generation complex located in the Northern Mexico Municipalities of Rio Bravo and Valle Hermoso, Tamaulipas.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ11.1.
- Reference Docket Nos. CP02–116–000 and CP02–117–000; and
- Mail your comments so that they will be received in Washington, DC on or before August 26, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be

created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (*www.ferc.gov*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19405 Filed 7–31–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000]

Electricity Market Design and Structure; Notice of Intent To Prepare an Environmental Assessment and Request for Comments on the Scope of Issues to be Addressed for the Proposed Rulemaking on Electricity Market Design and Structure

July 26, 2002.

1. The staff of the Federal Energy Regulatory Commission ("FERC" or "Commission") will prepare an environmental assessment to address the environmental impacts of the Commission's Proposed Rulemaking on Electric Market Design and Structure.

2. The Commission anticipates issuing the proposed rulemaking on July 31, 2002. This represents the third of a series of initiatives undertaken by the Commission to harness the benefits of competitive markets for the nation's electric energy customers, in order to meet its statutory responsibility to assure adequate and reliable supplies of electric energy at a just and reasonable price. The Commission's objectives in this third rulemaking initiative are to establish a standardized transmission service and wholesale electric market design that will provide a non-discriminatory level playing field for all entities that seek to participate in wholesale electric markets.

The Commission proposes to provide new choices through a flexible transmission service, promote efficient grid operations, establish a market design that minimizes the opportunities for market manipulation and gaming, mitigate market power and provide the right pricing signals for investment in transmission and generation facilities, as well as investment in demand reduction.

3. *The EA Process:* The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from the issuance of a rulemaking. NEPA also requires the Commission to discover and address concerns the public may have about proposed federal actions. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. The EA will discuss impacts that could occur as a result of implementation of the proposed rulemaking.

4. We will also evaluate possible alternatives to the proposal or portions of the proposal, and make recommendations on how to lessen or avoid environmental impacts. Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected industry representatives, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

5. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

6. *Currently Identified Environmental Issues:* We have already examined the likely environmental effects of establishing competitive wholesale markets for electric power in an Environmental Impact Statement for Order No. 888 (Docket Nos. RM95–8–000 and RM94–7–001) and an Environmental Assessment for Order No. 2000 (Docket No. RM99–2–000). We intend to focus this assessment on any relevant changes that may have arisen since those other two studies, effects that particular aspects of Standard Market Design may have, and environmental effects not contemplated earlier.

7. *Public Participation:* You can provide us with specific comments or concerns about the proposal. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded.

8. Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory

Commission, 888 First St., NE, Room 1A, Washington, DC 20426.

9. Label one copy of the comments for the attention of Office of Market Oversight and Investigation.

10. Reference Docket No. RM01–12–000.

11. Mail your comments so that they will be received in Washington, DC on or before September 3, 2002.

12. Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this proposal. However, the Commission encourages electronic filing of any comments to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

13. *Scoping Meeting:* A public Scoping Meeting will be held at 2:00 PM, August 12, 2002, at FERC Headquarters; 888 First Street, NE., Washington, DC 20426. All those wishing to present oral comments at the scoping meeting are encouraged to contact Lonnie Lister, at (202) 208–2191, to have their name placed on the Speakers List. Further opportunity will be provided for anyone to present their comments at the meeting after the pre-registered speakers have made their statements. A court reporter will transcribe the meeting, and copies of the transcript will be available from the reporting service. A formal copy of the transcript will be placed in the public record in Docket No. RM01–12–000 approximately ten days after the meeting.

14. *Environmental Mailing List:* This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed rulemaking.

15. *Additional Information:* Additional information about the proposed rulemaking is available from the Commission's Office of External Affairs, call toll-free at 1–866–208–FERC, or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC website (*www.ferc.gov*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

16. Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19411 Filed 7–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

July 26, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

Docket No.	Date filed	Presenter or Requester
CP01–415–000	7–23–02	Medha Kochhar.
CP01–361–000	7–25–02	Nancy and Dave Morris.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–19410 Filed 7–31–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12067–001]

BAE Energy; Notice of Surrender of Preliminary Permit

July 26, 2002.

Take notice that BAE Energy, permittee for the proposed Leishman Drop Project, has requested that its preliminary permit be terminated. The permit was issued on October 22, 2001, and would have expired on September 30, 2004. The project would have been located on the Saint Mary Canal System in Glacier County, Montana.

The permittee filed the request on June 24, 2002, and the preliminary permit for Project No. 12067 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–19409 Filed 7–31–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7253–3]

State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State of Arizona has submitted a request for approval of the Arizona Pollutant Discharge Elimination System (AZPDES) program pursuant to section 402(b) of the Clean Water Act (CWA or "the Act"). With this request, the Arizona Department of Environmental Quality (ADEQ) seeks approval to administer a partial program for discharges of pollutants into waters of the United States under its jurisdiction. Today, EPA Region 9 is providing public notice of Arizona's request for AZPDES program approval and of both a public hearing and public comment period on the State's program approval submission. EPA will either approve or disapprove the State's request after considering all comments it receives.

DATES: *Comments* The public comment period on the State's request for approval to administer the proposed AZPDES program will be from the date of publication until September 16, 2002. Comments must be received or post-marked by no later than midnight on September 16, 2002. *Public Hearing.* A public hearing will be held on September 4, 2002.

ADDRESSES: *Comments* Send all paper copy comments to: Mr. Matthew Mitchell (WTR–5), Water Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA , 94105. Comments may also be submitted electronically to the following e-mail address: *mitchell.matthew@epa.gov.*

Electronic comments should be identified by the docket number. EPA requests that electronic comments also include the commentor's postal mailing address. No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 8.0 format or ASCII file format.

A copy of each comment should be submitted to: Mr. Chris Varga, Federal Permits Unit, Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ 85007.

Public comments may be in either paper or electronic format. If submitting comments in paper format, please submit the original and three copies of your comments and enclosures (including references). To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that comments be typed or legibly written and that commentors cite the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commentors who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope.

Public Hearing. The public hearing will be held at the Best Western Executive Park Hotel, 1100 N. Central Ave., Phoenix, Arizona, beginning at 1 p.m. on September 4. The public hearing will be conducted in accordance with 40 CFR 124.12, and will provide interested parties with the opportunity to provide written and/or oral comments for the official record.

Viewing/Obtaining Copies of Documents Copies of Arizona's AZPDES program approval submission (referred to throughout this notice as Arizona's "application") and all other documents in the official record are available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at EPA Region 9, 12th floor Water Division, 75 Hawthorne St., San Francisco, CA 94105.

A copy of Arizona's AZPDES application is also available for inspection from 8 am to 5 pm, Monday through Friday, excluding State holidays, at the Arizona Department of Environmental Quality, Records Management Center, 1110 W. Washington St. , Phoenix, AZ 85007. Please call (602) 771–4378 to set up an appointment.

Copies of the entire State AZPDES program submission are available in paper format. Part or all of the State's application may be copied at the ADEQ office in Phoenix, or the EPA's office in San Francisco, at a minimal cost per page.

Copies of the documents available in electronic format are accessible on the Internet at the ADEQ web page at *http://www.adeq.state.az.us/environ/water/permits/federal.html*

Every effort has been made to include each document relevant to EPA's decision on this matter in the official record. EPA invites input from the public on any document that the public feels should have been included in the official record, but has not been.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Mitchell at the EPA address listed above or by calling (415) 972–3508, e-mail: *mitchell.matthew@epa.gov* or Mr. Chris Varga at the ADEQ address listed above or by calling (602) 771–4665, e-mail: *varga.chris@ev.state.az.us.*

SUPPLEMENTARY INFORMATION: Section 402 of the CWA created the NPDES program under which EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402(b) requires EPA to authorize a State to administer an equivalent state program, upon the Governor's request, provided the State has appropriate legal authority and a program sufficient to meet the Act's requirements.

The regulatory requirements for state program approval are set forth in 40 CFR part 123. 40 CFR 123.21 lists the basic elements of an approvable application. EPA Region 9 considers the documents submitted by the State of Arizona administratively complete at

the time of this document. EPA will not make a final decision on AZPDES program approval until after: (1) Considering all public comments provided during the public comment period or at the public hearing; (2) completion of the ongoing consultations with the U.S. Fish and Wildlife Service on effects program approval may have on endangered or threatened species and their designated critical habitat; and (3) completion of ongoing consultations with the State Historic Preservation Officer on effects program approval may have on historic properties or sites listed or eligible for listing in the National Register of Historic Places.

By letter dated December 20, 2001, the Governor of Arizona requested NPDES program approval and submitted a program description (including funding, personnel requirements and organization, and enforcement procedures), an Attorney General's statement, copies of applicable State statutes and regulations, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator of EPA Region 9 and the Director of ADEQ. EPA received this package of materials on January 14, 2002. EPA Region 9 determined that Arizona's approval request did not constitute a complete package under 40 CFR 123.21, and notified the Director of the Water Quality Division of ADEQ in writing on February 15, 2002. By letter of June 5, 2002, the Governor of Arizona requested NPDES partial program approval and submitted an amended program description, amended Attorney General's Statement, amended Arizona statute and rules, and an MOA. EPA received this package of materials on June 11, 2002. EPA Region 9 determined that the approval request received on June 11, 2002, along with supplements received on July 8 and July 10 constituted a complete package under 40 CFR 123.21, and a letter of completeness was sent to the Director of ADEQ on July 11, 2002.

EPA is required to approve the submitted program within 90 days of submission of the complete information unless it does not meet the requirements of section 402(b) of the Act and EPA regulations, or EPA and ADEQ jointly agree to extend this deadline. (See 40 CFR 123.21(d)). To obtain such approval, the State must show, among other things, that it has authority to issue permits which comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed permit. After close of the comment period and completion of the required consultations with other federal agencies, the Regional Administrator for EPA Region 9 will make a decision to approve or disapprove the AZPDES program for implementation by the State.

EPA's final decision to approve or disapprove the AZPDES program will be based on the requirements of section 402 of the CWA and 40 CFR part 123. EPA is also required by the Endangered Species Act (ESA) and the National Historic Preservation Act to consult with other federal agencies before making a final decision in this matter. For example, the ESA requires federal agencies to consult with the U.S. Fish and Wildlife Service on the effects of federal actions on endangered species. EPA has determined that its action on the AZPDES program application constitutes a federal action that is subject to section 7 of the ESA. Section 7(a)(2) of the ESA places a statutory requirement (separate and distinct from CWA section 402(b)) for EPA to "* * * insure that any action authorized, funded or carried out [by EPA]* * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat * * * determined to be critical * * *." EPA Region 9 initiated formal consultation under section 7 of the ESA on June 21, 2002. EPA's responsibilities under ESA, as well as under the National Historic Preservation Act are discussed in more detail later in this notice. Under federal law, EPA may not make a final decision on AZPDES program approval until consultation under these acts are completed; therefore, it may be necessary to seek ADEQ's agreement on an extension of the 90 day approval deadline.

If EPA approves the Arizona partial program, the Regional Administrator will so notify the State and will sign the proposed MOA. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will transfer to the ADEQ NPDES permitting authority and primary enforcement responsibility for those discharges subject to the AZPDES program, with certain exceptions, which are discussed below under Scope, Transfer of NPDES Authority, and Summary of the AZPDES Permitting Program. If EPA's Regional Administrator disapproves the AZPDES program, the ADEQ will be notified of the reasons for disapproval and of any revisions or modifications to the program which are necessary to obtain approval.

Public Hearing Procedures

The following procedures will be used at the public hearing:

1. The Presiding Officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer may inform attendees of any time limits during the opening statement of the hearing.

2. Any person may submit written statements or documents for the record.

3. The Presiding Officer may, in his discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve or require revision of the submitted State program.

4. The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator.

5. The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of this Notice to allow any person time to submit additional written statement or to present views or evidence tending to rebut testimony presented at the public hearing.

6. Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for use of the Hearing Panel and other interested persons. Persons wishing to make oral testimony supporting their written comments are encouraged to summarize their points rather than reading lengthy written comments verbatim into the record. All comments received by EPA Region 9 by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on the Arizona request for NPDES program approval.

Scope, Transfer of NPDES Authority, and Summary of the AZPDES Permitting Program

A. Scope of the Partial Program

The proposed AZPDES program is a partial program which conforms to the requirements of section 402(n)(3) of the CWA. ADEQ's application for program approval applies to all discharges covered by the authority of that agency. This includes most discharges of pollutants subject to the federal NPDES program (e.g., municipal wastewater and storm water point source discharges, pretreatment, industrial wastewater and storm water point source discharges, and point source discharges from federal facilities).

The ADEQ has authority to regulate discharges from industrial facilities covered by all Standard Industrial Classification (SIC) codes. The ADEQ has authority to regulate discharges of storm water associated with industrial activity and discharges of storm water from municipal separate storm sewer systems. The ADEQ has primary responsibility for implementing a Pretreatment Program. The ADEQ has authority to regulate discharges from publicly owned and privately owned treatment works and for discharges from concentrated animal feeding operations (CAFOs) within the ADEQ's jurisdiction.

ADEQ is not seeking the authority to regulate the disposal of sewage sludge (in accordance with section 405 of the Act and 40 CFR part 503). EPA will retain NPDES permitting authority and primary enforcement responsibility over the sewage sludge program. ADEQ is planning to apply for this authority in the future.

ADEQ does not have, and is not seeking, the authority to regulate discharges in Indian Country (as defined in 18 U.S.C. 1151). EPA will retain NPDES permitting authority and primary enforcement responsibility in Indian Country in Arizona.

B. Transfer of NPDES Authority and Pending Actions

Upon approval of the AZPDES program, authority for all NPDES permitting activities, as well as primary responsibility for NPDES enforcement activities, within the scope of ADEQ's jurisdiction, would be transferred to the State, with some exceptions. These exceptions would be agreed to by EPA and the State under the MOA that would be signed upon program approval, and are explained below. In addition to the exceptions listed below, EPA would retain on a permanent basis its authority under section 402(d) of the CWA to object to AZPDES permits proposed by ADEQ, and if the objections are not resolved, to issue federal NPDES permits for those discharges. EPA would also retain on a permanent basis its authority under sections 309 and 504 of the CWA to file federal enforcement actions.

1. Permits Already Issued by EPA

40 CFR 123.1(d)(1) provides that EPA retains jurisdiction over any permit that it has issued unless the State and EPA have reached agreement in the MOA for the State to assume responsibility for that permit. The proposed MOA between EPA and the ADEQ provides that the ADEQ would assume at the time of program approval permitting authority and primary enforcement responsibility over all NPDES permits issued by EPA prior to program approval, with the following exceptions:

a. Jurisdiction over those discharges covered by permits already issued by EPA, but for which evidentiary hearings have been requested or an appeal taken prior to AZPDES program approval. Jurisdiction over these discharges, including primary enforcement responsibility (except as provided by paragraph 3 below-Active Federal Enforcement Cases), would be transferred to the State once the evidentiary hearing request or appeal has been resolved.

2. Permits Pending With EPA at Time of AZPDES Program Approval

If the permittee requests, EPA may continue to process a NPDES permit application that is pending with EPA at the time of the AZPDES program approval. ADEQ will be responsible for final issuance for all permits after the program approval date. For permits for which an evidentiary hearing has been requested or an appeal taken at the time of program authorization, EPA will retain full jurisdiction until the matter has been resolved. Upon resolution of the administrative challenge, ADEQ will convert the NPDES permit to an AZPDES permit as specified in State rule.

3. Active Federal Enforcement Cases

For active Federal enforcement cases (administrative orders or formal referrals to the Department of Justice) at the time of program authorization, EPA will complete the enforcement action unless otherwise agreed to by EPA and ADEQ. As each EPA enforcement action is resolved, EPA will notify ADEQ and transfer any additional permit file material at that time. Resolution of an enforcement action may be accomplished by the permittee complying with the requirements of a compliance order, consent agreement or court order resulting from EPA enforcement action, withdrawal of the action by EPA, a court decision dismissing the action (in whole or in part) or, if agreed to by EPA, the imposition of an equivalent enforceable compliance schedule by ADEQ.

C. Summary of the Application Documents

The AZPDES program is fully described in documents the State has submitted in accordance with 40 CFR 123.21, which includes the following: a letter from the Governor requesting program approval; a Memorandum of Agreement (MOA) for execution by ADEQ and EPA; a Program Description, including an Enforcement Management System, outlining the procedures, personnel and protocols that would be relied on to run the State's permitting and enforcement programs; and a Statement signed by the Attorney General that describes the legal authority which the State has to administer a program equivalent to the federal NPDES program. The State's AZPDES application consists of a letter from the Governor of Arizona, enclosing four sections and associated appendices. The content of those documents is summarized below.

1. A Letter from the Governor

Arizona' application for program approval includes a letter dated June 5, 2002, from Governor Jane Dee Hull, officially requesting NPDES program approval.

2. The EPA/ADEQ MOA

The requirements for MOAs are found in 40 CFR 123.24. A Memorandum of Agreement is a document signed by each agency, committing them to specific responsibilities relevant to the administration and enforcement of the State's regulatory program. A MOA specifies these responsibilities and provides structure for the State's program management and EPA's program oversight.

The MOA submitted by the State of Arizona has been signed by Jacqueline E. Schafer, Director of the Arizona Department of Environmental Quality. The Regional Administrator of U.S. EPA Region 9 would sign the document only if the program has been determined approvable after all comments received during the comment period (including comments received at the public hearing) have been considered. The MOA submitted by ADEQ includes the following items:

Section I—General: This section contains general statements describing the purpose of the MOA.

Section II—Scope of Authorization: This section contains the statement of the scope of the NPDES program ADEQ would be administering.

Section III—Program Responsibilities: Lists the responsibilities of ADEQ and EPA in maintaining an effective program. Also outlines the procedures for transfer of authority over discharges over which EPA would be temporarily retaining authority and gives timing for the transition.

Section IV—Permit Review and Issuance: describes all agreements on the review and issuance of AZPDES permits. It covers ADEQ's responsibilities to issue permits, the

transfer of EPA files to the State, and the State's application review and permit development process. Included are such things as procedures for permit modification or reissuance, and EPA's review of AZPDES drafted individual and general permits. This section includes the State's commitment for responding to public concerns and providing public participation in connection with public hearings, evidentiary hearings, and administrative and judicial enforcement actions.

Section V—Compliance and Enforcement: Describes summary agreements between EPA and ADEQ regarding EPA oversight of the AZPDES enforcement program. These include those commitments on ADEQ's compliance monitoring, reviews, pretreatment audits, and inspections.

Section VI—Pretreatment: Describes summary agreements between EPA and ADEQ regarding EPA oversight of AZPDES's implementation of the industrial pretreatment program regulating industrial users of municipal wastewater treatment plants.

Section VII—Sewage Sludge/Biosolids Management Program: Describes summary agreements between EPA and ADEQ regarding EPA oversight of AZPDES's regulation of the disposal of biosolids (sewage sludge) generated by wastewater treatment systems. (In the July 8 addendum to the MOA, ADEQ clarifies that it is not seeking EPA review of the Sewage Sludge/Biosolids Management Program at this time.)

Section VIII—Reporting and Transmittal of Information on AZPDES Regulated Facilities: This section describes how reports and requests for information would be handled; and how information is transferred between the two agencies.

Section IX—Program Review: Explains how EPA would periodically review the AZPDES program for implementation and continued consistency with Clean Water Act requirements.

Section X—Computation of Time: This section describes procedures to compute any periods of time prescribed within the MOA.

Section XI—Approval and Effective Date: This section states that the MOA would become effective on the date of program approval.

3. Program Description

A program description submitted by a State seeking program approval must meet the minimum requirements of 40 CFR 123.22. It must provide a narrative description of the scope, structure, coverage and processes of the State program; a description of the organization, staffing and position descriptions for the lead State agency; and itemized costs and funding sources for the program for the first two years after program approval. It must describe all applicable State procedures (including administrative procedures for the issuance of permits and administrative or judicial procedures for their review) and include copies of forms used in the program. It must further contain a complete description of the State's compliance and enforcement tracking program. The program description submitted by ADEQ includes the following:

I. Introduction
II. Scope of the Program
III. Organization and Structure
IV. Resources and Funding
V. Description of State Procedures

4. Attorney General's Statement

An Attorney General's Statement is required and described in regulations found at 40 CFR 123.23. The State Attorney General must certify that the State has lawfully adopted statutes and regulations which provide the State agency with the legal authority to administer a permitting program in compliance with 40 CFR part 123. The Arizona Attorney General's Statement describes and cites State legal authority it believes adequate to administer the AZPDES program; and certifies that the State has the legal authority to administer the AZPDES program in accordance with the regulations in 40 CFR part 123. The "Statements of the Attorney General" which was submitted by Arizona Attorney General Janet Neapolitan on June 10, 2002, supplemented on July 10, and formally resubmitted on July 12, constitutes the Attorney General's Statement required by section 402(b) of the CWA and 40 CFR 123.23 for the Purposes of the State's AZPDES application.

5. Arizona Statutes and Rules

This section contains a list of Arizona statutes and administrative regulations relevant to implementation and enforcement of the AZPDES program.

Public Comment on the Described Program

The program submitted by the State of Arizona has been determined by EPA to be complete in accordance with the regulations found at 40 CFR part 123. EPA and ADEQ want the citizens of Arizona to understand the proposed AZPDES program and encourage public participation in the decision making process. Therefore, EPA requests that the public review the program that ADEQ has submitted and provide any comments they feel are appropriate. EPA will consider all comments on the AZPDES program and/or its approval in its decision.

Other Federal Statutes

A. National Historic Preservation Act

Section 106 of the National Historic Preservation Act requires that all federal agencies consult with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation on all federal undertakings which may affect historic properties or sites listed or eligible for listing in the National Register of Historic Places. Regulations outlining the requirements of a section 106 consultation on a federal undertaking are found at 36 CFR part 800. The EPA is currently in discussions with the SHPO regarding its determination that approval of the State permitting program itself would have no effect on the preservation of historic properties within the State of Arizona.

B. Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA) requires that all federal agencies, in consultation with the U.S. Fish and Wildlife Service, insure that any actions they authorize, fund, or carry out are unlikely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Regulations controlling consultation under ESA section 7 are codified at 50 CFR part 402. The approval of the State permitting program under section 402 of the Clean Water Act is a federal action subject to this requirement, but the State's subsequent AZPDES permit actions are not. EPA Region 9 initiated formal consultation with the U.S. Fish and Wildlife Service on June 21, 2002.

C. Regulatory Flexibility Act

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an "approval", within the meaning of the APA, constitutes a "license," which, in turn, is the product of an "adjudication". For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq*. Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the Administrative Procedure Act (APA), after being required by that section or any other law

to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule.

Even if the NPDES program approval were a rule subject to the RFA, the Agency would certify that approval of the State's proposed AZPDES program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of State law; it would, therefore, impose no additional obligations upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program, even if a rule, would not have a significant economic impact on a substantial number of small entities.

I hereby provide public notice of the application by the State of Arizona for approval to administer, in accordance with 40 CFR part 123, the AZPDES program.

Dated: July 23, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–19323 Filed 7–31–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; one new Privacy Act system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4), the FCC proposes to add a new system of records, FCC/WTB–7, "Remedy Action Response System " ("RARS"). The FCC's Wireless Telecommunications Bureau (WTB) will use the records contained in FCC/WTB–7 to record and process requests from individuals, groups, and other entities who request technical help, *i.e.*, technical questions and password requests, using the WTB's Internet-based computer applications—licensing and auction systems. Records in this system will be made available upon request for public inspection after redaction of information, which could identify the correspondent, *i.e.*, name, telephone number, TIN, and e-mail address.

DATES: Any interested person may submit written comments concerning the routine uses of this system on or before September 3, 2002. Pursuant to Appendix I(4)(e) to OMB Circular A–130, the FCC is asking the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, to grant a waiver of the 40 day review period by OMB, the House of Representatives, and the Senate for this system of records. This waiver will allow the FCC to begin using the RARS database system as quickly as possible to process requests from individuals, groups, and other entities for technical help using WTB's Internet-based computer applications—licensing and auction systems. The new System of Records shall be effective on September 3, 2002, unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and Appendix I(4)(c) to OMB Circular A–130, the FCC will submit the report of this System of Records to the Chair of the Committee on Government Reform and Oversight of the House of Representatives, to the Chair of the Committee on Government Affairs of the Senate, and to the Office of Management and Budget.

ADDRESSES: Address comments to Les Smith, Performance Evaluation and Record Management (PERM), Room 1–A804, Federal Communications Commission (FCC), 445 12th Street, SW, Washington, DC 20554, or via the Internet at *lesmith@fcc.gov*; or to Kim A. Johnson, Policy Analyst, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Docket Library, Room 10236, New Executive Office Building (NEOB), 725 17th Street, NW, Washington, DC 20503, or via the Internet at *Kim_A._Johnson@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Les Smith, Performance Evaluation and Records Management (PERM), Room 1–A804, Federal Communications Commission (FCC), 445 12th Street, SW, Washington, DC 20554, (202) 418–0217, or via the Internet at *lesmith@fcc.gov*; or Dorothy Conway , Wireless Telecommunications Bureau (WTB), Room 3–C306, Federal Communications Commission, (FCC), 445 12th Street, SW, Washington, DC 20554, (202) 202–418–7349, or via the Internet at *dconway@fcc.gov*.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4), this document sets forth notice of the proposed new System of Records maintained by the FCC. This notice is a summary of more detailed information which may be viewed at the location given in the **ADDRESSES** section above. The purpose of the new FCC/WTB–7, "Remedy Action Request System" ("RARS"), is to enable the Wireless Telecommunications Bureau (WTB) to record and process requests from individuals, groups, or other entities for technical help, *i.e.*, technical questions and password requests, using WTB's Internet-based computer applications—licensing and auction systems . Records in this system are available for public inspection after redaction of information, which could identify the correspondent, *i.e.*, name, telephone number, TIN, and e-mail address. Records in this system will be made available upon request for public inspection after redaction of information, which could identify the correspondent, *i.e.*, name, telephone number, TIN, and e-mail address. This notice meets the requirement documenting the proposed new System of Records that is to be added to the Systems of Records that the FCC maintains, and provides the public, Congress, and OMB an opportunity to comment.

FCC/WTB–7

SYSTEM NAME:

Remedy Action Request System (RARS).

SECURITY CLASSIFICATION:

This material has not received a security classification.

SYSTEM LOCATION:

Wireless Telecommunications Bureau (WTB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, groups, or other entities who are requesting help using the Universal Licensing System (ULS), Automated Auctions System (AAS), Antenna Registration System (ARS), Commission Registration System (CORES), and other subsystems included in, or as part of, these systems. These requests for help include, but are not limited to, paper, telephone, e-mail, and electronic submissions.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the RARS system include information contained in a computer database and paper copies of inquiries and related supporting information, made by individuals or groups pertaining to the Wireless Telecommunications Bureau's (WTB) licensing and Auctions software.

The categories include:

1. Individuals who require technical and/or password help using the ULS, ARS, CORES, and related systems and subsystems. These records include the following: First name, last name, telephone number and extension, alternative telephone number and extension, fax number, e-mail address, operating system, web browser, FRN, and/or TIN.

2. Representatives of licensed entities who requiring technical and/or password help using the ULS, ARS, CORES, and related systems and subsystems. These records include the information: First name, last name, telephone number and extension, alternative telephone number and extension, fax number, e-mail address, employer/company/individual represented, operating system, web browser, FRN, and/or TIN.

3. Paper records include faxes of information from individuals and company representatives who are verifying information relative to their identity when requesting a password or reset of a password. This information includes first name, last name, contact telephone number, and FRN and/or TIN.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 151, 154, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507; sec. 504 and 508 of the Rehabilitation Act, 29 U.S.C. 794; and 47 CFR 1.711 *et seq.*, 6.15 *et seq.*, 7.15 *et seq.*, and 64.604.

PURPOSE(S):

The WTB staff use the records in this system of records to record and process requests from individuals or groups for technical help, *i.e.*, technical questions, password requests, etc., using WTB's Internet-based computer applications—licensing and auctions systems. This software is used internally by the WTB to ensure good customer service and problem resolution. Records in this system will be made available upon request for public inspection after redaction of information that could identify the correspondent, *i.e.*, name, telephone number, TIN, and e-mail address.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records may be disclosed:

1. Where there is an indication of a violation of a potential statute, regulation, rule, or order, records in this system may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation, or order.

2. A record in this system may be disclosed to a request for information from a Federal, state, or local agency maintaining civil, criminal, or other relevant information or other pertinent information necessary to obtain information relevant to an investigation.

3. A record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office.

4. A record from this system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

These records will not be disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper copies of records in this system of records are maintained in file folders and electronic files are located in computer databases on the FCC internal secured network.

RETRIEVABILITY:

A primary purpose of the system is to provide easy access to the information for internal FCC personnel and contractors. This also allows the development teams of the WTB software products to identify trends in user issues and problems. Records may be retrieved by searching electronically using a variety of parameters including: name, entity name, licensee, applicant or unlicensed individual, call sign, file number, problem type, FCC Registration Number (FRN), TIN, e-mail address, or subject matter. However, any personal information contained in these records, which is afforded confidentiality under 5 U.S.C. 552(b)(6), including an individual's name, address, e-mail address, telephone number, TIN, etc. will be redacted prior to the record's disclosure. Individual records may only be retrieved by authorized FCC personnel and contractors with a user account and password maintained in the Remedy system.

SAFEGUARDS:

1. A designated user ID and password and the FCC's internal network security structure control access to computer records. Computer systems are stored within secure areas.

2. Records are stored in locked cabinets, which are secured in the office at the close of the business day.

3. Records may be released to the public after redaction of any information that may be considered confidential under 5 U.S.C. 552(b)(6), including, but not limited to name, telephone number, e-mail address, or TIN.

4. Limited public access to certain records may be available via the Internet. This information includes the status of request, request ID number, and the agent's number who took the call or electronic request for support. Public users who have contacted WTB personnel via telephone, e-mail, or electronic submission may access the system to retrieve a status on the ticket assigned to their request. They will be given this ticket/request number generated by the Remedy Action Request System upon submission of a request. This number may be entered into the appropriate field on the FCC web site to check the status of the ticket. Only the status of that ticket will be released to the public by entering the ticket number—no personal or confidential information is available to the public.

5. Access to other records will only be available using the client application or web browser on the Commission wide area network utilizing a secured login ID and password.

6. The ability to enter and change individual records will be protected by passwords issued to WTB staff and contractors. Records will be protected from unauthorized changes by passwords and other computer security measures within the agency.

7. TINs reported to the agency as requested on appropriate systemic forms will not be available to the public. TINs will only be used when referencing contact information and to verify the caller's identity when requesting

support or confidential password related requests.

8. Each caller (or e-mail request) will be given a unique ticket number generated by the RARS after calling or e-mailing the Technical Support Center. These identifiers will be used within the agency and by the public to obtain information on the status of the problem, issue, or request.

9. Within the agency, the collection of TINs is minimized and access to TINs will be available only to those persons whose jobs require such access (*e.g.*, FCC staff and contractors responsible for password resets in the CORES system and/or requiring the information for licensing related issues). Whenever possible, the FRN will be used in place of the TIN when collecting information on the caller or e-mail requestor.

10. Data resident on network servers are backed-up daily to magnetic media. One week's worth of back-up tapes is stored on-site in fireproof safes. Each week, the previous week's backup tapes are sent to an off-site storage location. These tapes are kept for a minimum of eleven (11) years.

RETENTION AND DISPOSAL:

1. Records will be actively maintained as long as an individual utilizes the system or the records are purged and archived using date specific parameters.

2. Audits of inactive users in the system will occur regularly and, if no activity is shown for the contact person within eleven (11) years, the record will be purged and archived following FCC standard electronic record archiving procedures.

3. Paper records will be archived after being keyed or scanned into the system. The records are retained at the FCC and then destroyed in accordance with the appropriate records retention schedule.

4. Electronic records will be backed up on tape weekly and stored indefinitely at an off-site storage location.

SYSTEMS MANAGER(S) AND ADDRESS:

Chief, Wireless Telecommunications Bureau (WTB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager. To identify a specific record please indicate first name and last name in addition to a unique identifier maintained in system, including, but not limited to telephone number, e-mail address, FRN and/or TIN for their record(s) to be located and identified. An individual requesting access must also follow FCC Privacy Act regulations regarding verification of identify and access records. *See* 47 CFR 0.554–0.555.

CONTESTING RECORD PROCEDURES:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Only approved FCC personnel and/or contractors may access the records maintained in the system. Individuals who request access to records about themselves should contact the system manager, as indicated above. Individuals must furnish their first and last name in addition to a unique identifier maintained in system, including, but not limited to telephone number, e-mail address, FRN and/or TIN for their record(s) to be located and identified. An individual requesting access must also follow FCC Privacy Act regulations regarding verification of identify and access records. *See* 47 CFR 0.554–0.555.

RECORD SOURCE CATEGORIES:

WTB customers and their representatives requesting assistance with the WTB's Internet based computer licensing, auctions, and related systems and subsystems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–19470 Filed 7–31–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee Schedule for Processing Requests for Map Changes, for Flood Insurance Study Backup Data, and for National Flood Insurance Map and Insurance Products

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice contains the revised fee schedules for processing certain types of requests for changes to National Flood Insurance Program (NFIP) maps, for processing requests for Flood Insurance Study (FIS) technical and administrative support data, and for processing requests for particular NFIP map and insurance products. The changes in the fee schedules will allow FEMA to reduce further the expenses to the NFIP by recovering more fully the costs associated with processing conditional and final map change requests; retrieving, reproducing, and distributing technical and administrative support data related to FIS analyses and mapping; and producing, retrieving, and distributing particular NFIP map and insurance products.

DATES: The revised fee schedules are effective for all requests dated September 1, 2002, or later.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472; by telephone at (202) 646–3461 or by facsimile at (202) 646–4596 (not toll-free calls); or by email at *matthew.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: This notice contains the revised fee schedules for processing certain types of requests for changes to NFIP maps, requests for FIS technical and administrative support data, and requests for particular NFIP map and insurance products.

Effective Dates. The revised fee schedule for map changes is effective for all requests dated September 1, 2002, or later. The revised fee schedule supersedes the current fee schedule, which was established on June 1, 2000.

The revised fee schedule for requests for FIS backup data also is effective for all requests dated September 1, 2002, or later. The revised fee schedule supersedes the current fee schedule, which was established on June 1, 2000.

The revised fee schedule for requests for particular NFIP map and insurance products, which are available through the FEMA Map Service Center (MSC), is effective for all written requests, on-line Internet requests made through the FEMA Flood Map Store, and all telephone requests received on or after September 1, 2002. The revised fee schedule supersedes the current fee schedule, which was established on May 1, 2002.

Evaluations Performed. To develop the revised fee schedule for conditional and final map change requests, FEMA evaluated the actual costs of reviewing and processing requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Conditional Letters of Map Revision (CLOMRs), Letters of Map Revision Based on Fill (LOMR–Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions (PMRs).

To develop the revised fee schedule requests for FIS technical and administrative support data, FEMA

evaluated the actual costs of retrieving, reproducing, and distributing archived data in seven categories. These categories are discussed in more detail below.

To develop the revised fee schedule for requests for particular NFIP map and insurance products, FEMA (1) evaluated the actual costs incurred at the MSC for producing, retrieving, and distributing those products; (2) analyzed historical sales, cost data, and product unit cost for unusual trends or anomalies; and (3) analyzed the effect of program changes, new products, technology investments, and other factors on future sales and product costs. The products covered by this notice are discussed in detail below.

Periodic Evaluations of Fees. A primary component of the fees is the prevailing private-sector rates charged to FEMA for labor and materials. Because these rates and the actual review and processing costs may vary from year to year, FEMA will evaluate the fees periodically and publish revised fee schedules, when needed, as notices in the **Federal Register**.

Fee Schedule for Requests for Conditional Letters of Map Amendment and Conditional and Final Letters of Map Revision Based on Fill

Based on a review of actual cost data for Fiscal Year 2000 and Fiscal Year 2001, FEMA established the following review and processing fees, which are to be submitted with all requests that are not otherwise exempted under 44 CFR 72.5:

Request for single-lot/single-structure CLOMA and CLOMR–F	$500
Request for single-lot/single-structure LOMR–F	425
Request for single-lot/single-structure LOMR–F based on as-built information (CLOMR–F previously issued by FEMA)	325
Request for multiple-lot/multiple-structure CLOMA	700
Request for multiple-lot/multiple-structure CLOMR–F and LOMR–F	800
Request for multiple-lot/multiple-structure LOMR–F based on as-built information (CLOMR–F previously issued by FEMA)	700

Fee Schedule for Requests for Conditional Map Revisions

Based on a review of actual cost data for Fiscal Year 2000 and Fiscal Year 2001, FEMA established the following review and processing fees, which are to be submitted with all requests that are not otherwise exempted under 44 CFR 72.5:

Request based on new hydrology, bridge, culvert, channel, or combination thereof	$4,000
Request based on levee, berm, or other structural measure	4,500

Fee Schedule for Requests for Map Revisions

Based on a review of actual cost data for Fiscal Year 2000 and Fiscal Year 2001, FEMA established the following review and processing fees, which are to be submitted with all requests. Unless the request is otherwise exempted under 44 CFR 72.5, requesters must submit the review and processing fees shown below with requests for LOMRs and PMRs dated September 1, 2002, or later, that are not based on structural measures on alluvial fans.

Request based on bridge, culvert, channel, or combination thereof	$4,200
Request based on levee, berm, or other structural measure	6,000
Request based on as-built information submitted as followup to CLOMR	3,800

Fees for Conditional and Final Map Revisions Based on Structural Measures on Alluvial Fans

FEMA has maintained $5,000 as the initial fee for requests for LOMRs and CLOMRs based on structural measures on alluvial fans. FEMA also will continue to recover the remainder of the review and processing costs by invoicing the requester before issuing a determination letter, consistent with current practice. The prevailing private-sector labor rate charged to FEMA ($50 per hour) will continue to be used to calculate the total reimbursable fees.

Fee Schedule for Requests for Flood Insurance Study Backup Data

Non-exempt requesters of FIS technical and administrative support data must submit fees shown below with requests dated September 1, 2002, or later. These fees are based on the complete recovery costs to FEMA for retrieving, reproducing, and distributing the data, as well as maintaining the library archives, and for collecting and depositing fees. FEMA maintains the current fee schedule, as indicated in the **Federal Register** notice published on May 3, 2000, at 65 FR 25726—25728.

All entities except the following will be charged for requests for FIS technical and administrative support data:

- Private architectural-engineering firms under contract to FEMA to perform or evaluate studies and restudies;
- Federal agencies involved in performing studies and restudies for FEMA (i.e., U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, and Tennessee Valley Authority);
- Communities that have supplied the Digital Line Graph base to FEMA and request the Digital Line Graph data (Category 6 below);
- Communities that request data during the statutory 90-day appeal period for an initial or revised FIS for that community;
- Mapped participating communities that request data at any time other than during the statutory 90-day appeal period, provided the data are requested for use by the community and not a third-party user; and
- State NFIP Coordinators, provided the data requested are for use by the State NFIP Coordinators and not a third-party user.

FEMA has established seven categories into which requests for FIS backup data are separated. These categories are:

Category 1—Paper copies, microfiche, or diskettes of hydrologic and hydraulic backup data for current or historical FISs;

Category 2—Paper or mylar copies of topographic mapping developed during FIS process;

Category 3—Paper copies or microfiche of survey notes developed during FIS process;

Category 4—Paper copies of individual Letters of Map Change (LOMCs);

Category 5—Paper copies of Preliminary Flood Insurance Rate Map or Flood Boundary and Floodway Map panels;

Category 6—Computer tapes or CD-ROMs of Digital Line Graph files; and

Category 7—Computer diskettes and user's manuals for FEMA computer programs.

Under the current fee schedule, a non-refundable fee of $120 is charged to initiate a request under Categories 1, 2, and 3 above. This fee covers the preliminary costs of research and retrieval. If the data requested are available and the request is not cancelled, the final fee is calculated as a sum of a standard per-product charge plus a per-case surcharge of $93, designed to recover the cost of library maintenance and archiving. The total costs of processing requests under Categories 1, 2, and 3 will vary, based on the complexity of the research involved in retrieving the data and the volume and medium of data to be reproduced and distributed. The initial fee will be applied against the total costs to process the request, and FEMA will invoice the requester for the balance before the data are provided. No data will be provided to a requester until all required fees have been paid.

No initial fee is required to initiate a request for data under Categories 4 through 7. Requesters will be notified by telephone about the availability of the data and the fees associated with requested data.

As with requests for data under Categories 1, 2, and 3, no data will be provided to requesters until all required fees are paid. A flat user fee for each of these categories of requests, shown below, will continue to be required.

Request Under Category 4 (First Letter)	$40
Request Under Category 4 (Each additional letter)	10
Request Under Category 5 (First panel)	35
Request Under Category 5 (Each additional panel)	2
Request Under Category 6 (per county)	150
Request Under Category 7 (per copy)	25

Fee Schedule for Requests for Map and Insurance Products

The MSC distributes a variety of NFIP map and insurance products to a broad range of customers, including Federal, State, and local government officials; real estate professionals; insurance providers; appraisers; builders; land developers; design engineers; surveyors; lenders; homeowners; and other private citizens. As established in the current fee schedule, made effective on May 1, 2002, the MSC distributes the following products:

- Paper (printed) copies of Flood Hazard Boundary Maps (FHBMs);
- Paper (printed) copies of Flood Insurance Rate Maps (FIRMs);
- Paper (printed) copies of Digital Flood Insurance Rate Maps (DFIRMs);
- Paper (printed) copies of Flood Insurance Studies (FISs), including the narrative report, tables, Flood Profiles, and other graphics;
- Paper (printed) copies of Flood Boundary and Floodway Maps (FBFMs), when they are included as an exhibit in the FIS;
- Digital Q3 Flood Data files on CD-ROM, which FEMA developed by scanning the published FIRM and vectorizing a thematic overlay of flood risks;
- Digital Q3 Flood Data files on CD-ROM for Coastal Barrier Resource Areas (CBRA Q3 Flood Data files);
- Community Status Book, which is a report generated by FEMA's Community Information System database that provides pertinent map status information for all identified communities;
- Flood Map Status Information Service (FMSIS), through which FEMA provides status information for effective NFIP maps on CD-ROM;
- Letter of Map Change (LOMC) Subscription Service, through which FEMA makes certain types of LOMCs available biweekly on CD-ROM;
- NFIP Insurance Manual (Full Manual), which provides vital NFIP information for insurance agents nationwide;
- NFIP Insurance Manual (Producer's Edition), which is used for reference and training purposes;
- Digital copies of Flood maps available on CD-ROM and downloadable from the web; which can be purchased by panel or in community, county or state kits;
- Digital copies of FISs, including the narrative report, tables, Flood Profiles, and other graphics, on CD-ROM and downloadable from the web;
- F-MIT Basic Version 1.0, which is a view tool for map images, on CD-ROM;
- F-MIT Basic Version 1.0, which is a view tool for map images, downloadable from the web; and
- FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners* on CD-ROM.

For more information on the map and insurance products available from the MSC, interested parties are invited to visit the MSC Web site at *http://www.fema.gov/msc*.

There are no changes in the processing fees or shipping costs for any of the other products that the MSC distributes. Federal, State, and local governments continue to be exempt from paying fees for the map products. The fee schedule for the current and new products are shown in the table below.

Product or service	Fee	Shipping
Paper copies of FHBM, FIRM, DFIRM, or FBFM panels.	$2.00 per map panel	$0.37 per panel for the first 10 panels plus $0.03 for each additional panel.
Paper copies of FIS (not including FBFM panels that are included as exhibit).	$5.00 per FIS volume plus $2.00 per floodway map.	$4.00 for the first study volume plus $0.40 for each additional study.
On-line Flood maps downloaded from the FEMA web site.	$1.50 per map panel	None.
On-line FIS downloaded from the FEMA web site.	$4.00 per study plus $1.50 per floodway map	None.
F-MIT Basic Version 1.0 (view tool for map images) on the web.	Free	Not Applicable.
Flood maps available on CD-ROM	$1.50 per map panel	$3.65 for the first 4 CD-ROMs plus $0.10 for each additional CD-ROM.
FIS available on CD-ROM	$4.00 per FIS volume plus $1.50 per floodway map.	$3.65 for the first 4 CD-ROMs plus $0.10 for each additional CD-ROM.

Product or service	Fee	Shipping
Priority Handling Charge—added to regular charge.	$33.00 per order	Not Applicable.
F–MIT Basic Version 1.0 on CD–ROM (view tool for map images).	Free	$3.65.
Q3 Flood Data Files	$50.00 per CD–ROM	$3.65 for the first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order.
CBRA Q3 Flood Data Files	$50.00 per CD–ROM or $200.00 for all 5 Q3 CDs.	$3.65 for the first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order.
Community Status Book (Individual Orders)	$2.50 per state $20.50 for entire U.S	$1.00 per state $4.26 for entire U.S.
Community Status Book (Annual Subscription)	$50.00 per state $250.00 for entire U.S	Not applicable.
FMSIS (Individual Orders)	$13 per state $38 for entire U.S	$3.65 for the first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order.
FMSIS (Annual Subscription)	$148 per state $419 for entire U.S	Not applicable.
LOMC Subscription Service (Individual Orders)	$85 per issue	$3.65 for the first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order.
LOMC Subscription Service (Annual Subscription).	$2,000	Not applicable.
NFIP Insurance Manual (Full Manual)	$25.00 per subscription for complete manual	Not applicable.
NFIP Insurance Manual (Producer's Edition)	$15.00 per subscription	Not applicable.
FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners* on CD–ROM.	$2.60	$3.65.

Payment Submission Requirements

Fee payments for non-exempt requests must be made in advance of services being rendered. These payments shall be made in the form of a check or money order or by credit card payment. Checks and money orders must be made payable, in U.S. funds, to the National Flood Insurance Program.

FEMA will deposit all fees collected to the National Flood Insurance Fund, which is the source of funding for providing these services.

Dated: July 25, 2002.

Howard Leikin,

Deputy Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–19450 Filed 7–31–02; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Assessing Impacts of HRSA Health Disparities Collaboratives Cooperative Agreement (U01) Grant Awards are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Assessing Impacts of HRSA Health Disparities Collaboratives Cooperative Agreement Grant Projects.

Date: August 26, 2002 (Open on August 26, from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852. Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 24, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–19394 Filed 7–31–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02101]

Support for Epidemiology, Mathematical Modeling, and Tools for Monitoring the Impact of the Local Response to the HIV/AIDS Epidemic in Zimbabwe; Amendment I

A notice announcing the availability of Fiscal Year (FY) 2002 funds for cooperative agreements for Support for Epidemiology, Mathematical Modeling, and Tools for Monitoring the Impact of the Local Response to the HIV/AIDS Epidemic in Zimbabwe was published on June 21, 2002, (67 FR 42265–42268). The notice is amended as follows:

Page 42266, Column 3, Paragraph "E. Program Requirements, 1. Recipient Activities", change and replace with the following:

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities

under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities. Applicants need not address all listed Recipient activities, but should address at least three, including (c):

1. Recipient Activities

a. Train and support local staff of Ministry of Health and Child Welfare (MOHCW), National AIDS Council (NAC), ZNFPC, CDC-Zimbabwe, University of Zimbabwe School of Medicine, and other groups in epidemiology, surveillance, mathematical modeling, and related subjects that relate current epidemiologic status and indicators to long-term implications in terms of morbidity, mortality, and demographic and economic impact.

b. Support and contribute to analyses of epidemiologic and surveillance data (such as, antenatal HIV surveillance and the Young Adult Survey (YAS+) as required to help contribute to a clear informed profile of HIV in Zimbabwe. Such analyses may be hosted either by CDC Zimbabwe or by the MOHCW or NAC of Zimbabwe, or potentially other partners.

c. Develop a dynamic mathematical model of the HIV/AIDS epidemic at a national level in Zimbabwe, incorporating available data on HIV prevalence, incidence, mortality, and related variables, that yields a predictive model of the future of the epidemic.

d. Develop or adapt a mathematical model for the national epidemic in a fashion so as to be able to yield insights about the HIV epidemic at the District level in Zimbabwe, especially to allow characterization of local conditions and assessment of the potential impact of different local interventions.

e. Conduct research in Zimbabwe, especially among rural populations, of behavioral and other interventions, including, but not limited to: (1) the CDC Modeling and Reinforcement to Combat HIV (MARCH) strategy for behavior change; (2) the District Response Initiative of the NAC of Zimbabwe, and other efforts to organize or stimulate a broader response to HIV/AIDS in Zimbabwe; and (3) development and evaluation of tools for monitoring the response to HIV/AIDS at the local level, especially at the district level.

f. Assist in identifying opportunities and developing proposals for long-term training for Zimbabwean scientists, students, and public health officers in any or all of the above areas, to build national capacity for these areas of expertise.

Page 42267, Column 2, Paragraph "G. Submission and Deadline, Application", change and replace with the following:

From August 5, 2002, to August 9, 2002.

Dated: July 26, 2002.

Edward J. Schultz,

Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19403 Filed 7–31–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry and the Centers for Disease Control and Prevention

[ATSDR–184]

Clarification of Program Announcements Related to Environmental Health Tracking

AGENCIES: Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) are jointly publishing this notice to inform potential applicants of their initiatives to build a National Environmental Public Health Tracking Network and plans for future collaboration and coordination between the two Agencies on the Network.

SUPPLEMENTARY INFORMATION:

ATSDR Programs

On June 20, 2002, the Agency for Toxic Substances and Disease Registry (ATSDR) published in the **Federal Register** Program Announcement 02155, (Vol. 67, No. 119, p. 42001) a request for proposals from states entitled, "Linking Chronic Disease and Environmental Data Sources." ATSDR intends to fund two to three projects under this program. The purpose of these projects is to conduct research on the potential impact of environmental exposures on chronic disease outcomes. ATSDR's announcement is posted on CDC's Web site at <*http://www.cdc.gov/funding.htm*> listed under Grants and Cooperative Agreements and then ATSDR.

CDC Programs

On July 18, 2002, the Centers for Disease Control and Prevention (CDC) published Program Announcement 02179, "National Environmental Public Health Tracking Program" in the **Federal Register** (Vol. 67, No. 138, p. 47371). CDC is making available funds for up to 15 state or local pilot projects to (1) build environmental public health capacity, (2) increase collaboration between governmental, environmental and health agencies, (3) identify and evaluate existing data systems, (4) build partnerships with non-governmental organizations and communities, (5) develop model systems that link data and can be generalized to other states/localities, and (6) demonstrate the utility of these model systems in planning public health actions. This Request For Proposal is posted on CDC's Web site at <*http://www.cdc.gov/funding.htm*> listed under Grants and Cooperative Agreements and then Environmental Health.

Future Announcement(s)

CDC and ATSDR have been collaborating on these announcements and will continue to coordinate these activities at the federal level. In future years, the intention is to combine CDC's Program Announcement 02179 ("National Environmental Public Health Tracking Program") and ATSDR's Program Announcement 02155 ("Linking Chronic Disease and Environmental Data Sources") under one announcement. Therefore, applicants should be aware of the criteria in both announcements.

FOR FURTHER INFORMATION CONTACT: Judith R. Qualters, Ph.D., Acting Chief, Environmental Health Tracking Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention, Mailstop E39, Atlanta, Georgia, 30333, telephone 404–498–1815.

Dated: July 26, 2002.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 02–19400 Filed 7–31–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Safety and Health Research, Collaborative Program for the Identification and Prevention of Work-related Musculoskeletal Disorders, Request for Application OH–02–010

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Safety and Health Research, Collaborative Program for the Identification and Prevention of Work-related Musculoskeletal Disorders, RFA OH–02–010.

Times and Dates: 8 a.m.–8:30 a.m., August 20, 2002 (Open) 8:30 p.m.–5 p.m., August 20, 2002 (Closed)

Place: Harbor Court Hotel, 550 Light Street, Baltimore, MD 21202, 410/234–0550

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–010.

Contact Person for More Information: Laurie Piacitelli, Scientific Review Administrator, Office of Extramural Programs, Office of the Director, National Institute for Occupational Safety and Health, CDC, Cincinnati, OH, 513/841–4567.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 25, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–19399 Filed 7–31–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Medicare & Medicaid Services

Notice of Hearing; Reconsideration of Disapproval of Connecticut Medicaid State Plan Amendment (SPA) 01–011B

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on August 30, 2002, at 10 a.m., at the JFK Federal Building: Room 2250, Boston, Massachusetts 02203–0003, to reconsider our decision to disapprove Connecticut SPA 01–011B.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, C1–09–13, 7500 Security Boulevard, Baltimore, Maryland 21244, Telephone: (410)–786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Connecticut SPA 01–011B.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Centers for Medicare & Medicaid (CMS) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The issue is whether SPA 01–011B complies with requirements for publication of public notice and the effective date. Connecticut submitted SPA 01–011B on September 21, 2001. The amendment would provide an update factor for inpatient hospital rates as of July 1, 2001. The State indicated in its response dated February 22, 2002, that it published a public notice on September 26, 2001. Under section 1902(a)(13)(A) of the Act, payment rates for hospital services must be established through a public process which includes notice and a reasonable opportunity for review and comment. Federal regulations at 42 CFR 447.205 state that the public notice must be published before the proposed effective date of any significant change in payment rates. The CMS interprets this advance public notice requirement to mean the notice must be published at least one calendar day prior to the proposed effective date.

Therefore, the earliest approvable effective date for this amendment is September 27, 2001. Because the State requested an effective date of July 1, 2001, CMS was unable to approve the requested amendment.

The notice to Connecticut announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Michael P. Starkowski, Deputy Commissioner, State of Connecticut, Department of Social Services, 25 Sigourney Street, Hartford, CT 06106–5033.

Dear Mr. Starkowski: I am responding to your request for reconsideration of the decision to disapprove Connecticut State Plan Amendment (SPA) 01–011B.

The issue involves publication of public notice and effective date. Connecticut submitted SPA 01–011B on September 21, 2001. The amendment would provide an update factor for inpatient hospital rates as of July 1, 2001. For the reasons stated below, the Centers for Medicare & Medicaid Services (CMS) was unable to approve this amendment.

The issue is whether SPA 01–011B complies with requirements for publication of public notice and the effective date. Connecticut submitted SPA 01–011B on September 21, 2001. The amendment would provide an update factor for inpatient hospital rates as of July 1, 2001. The State indicated in its response dated February 22, 2002, that it published a public notice on September 26, 2001. Under section 1902(a)(13)(A), payment rates for hospital services must be established through a public process which includes notice and a reasonable opportunity for review and comment. Federal regulations at 42 CFR 447.205 state that the public notice must be published before the proposed effective date of any significant change in payment rates. The CMS interprets this advance public notice requirement to mean the notice must be published at least one calendar day prior to the proposed effective date. Therefore, the earliest approvable effective date for this amendment is September 27, 2001. Because

the State requested an effective date of July 1, 2001, CMS was unable to approve the requested amendment.

I am scheduling a hearing on your request for reconsideration to be held on August 30, 2002, at 10 a.m., at the JFK Federal Building, Room 2250, Boston, Massachusetts 02203–0003, to reconsider our decision to disapprove Connecticut SPA 01–011B.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the 2 presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,
Thomas A. Scully.

(Sec. 1116 of the Social Security Act (42 U.S.C. sec. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: July 3, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–19021 Filed 7–31–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1205–N]

RIN 0938–AL22

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for FY 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice updates prospective payment rates for inpatient rehabilitation facilities for Federal fiscal year (FY) 2003 as authorized under section 1886(j)(3)(C) of the Social Security Act (the Act). Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register** on or before August 1 before each fiscal year, the classifications and weighting factors for the inpatient rehabilitation facility (IRF) case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

DATES: Effective Date: The updated IRF prospective payment rates are effective for discharges occurring on or after October 1, 2002 and on or before September 30, 2003 (FY 2003).

FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (410) 786–4597, Nora Hoban, (410) 786–0675.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Requirements of the Statute for Updating the Prospective Payment System (PPS) for Inpatient Rehabilitation Facilities (IRFs)

On August 7, 2001, we published a final rule entitled "Medicare Program: Prospective Payment System for Inpatient Rehabilitation Facilities (CMS–1069–F)" in the **Federal Register** (66 FR 41316), that established a prospective payment system (PPS) for inpatient rehabilitation facilities (IRFs) as authorized under section 1886(j) of the Social Security Act (the Act) and codified at subpart P of part 412 of the Medicare regulations. In the August 7, 2001 final rule, we set forth per discharge Federal rates for FY 2002 that provided payment for inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IRF PPS.

Covered rehabilitation services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) of the Medicare program. Annual updates to the IRF PPS rates are required by section 1886(j)(3)(C) of the Act.

In this notice, we set forth the prospective payment rates applicable for IRFs for discharges occurring during FY 2003 as mandated by the Act. In establishing these payment rates, we update the IRF per discharge payment rates that were published in the August 7, 2001 final rule.

Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register**, on or before August 1 of the preceding fiscal year, the classifications and weighting factors for the IRF case-mix groups (CMGs) and a description of the methodology and data used in computing the prospective payment rates for the upcoming fiscal year. In this notice, we are using the same classifications and weighting factors for the IRF CMGs that were set forth in the August 7, 2001 final rule. Although the statute permits the Secretary to adjust the classification and weighting factors for IRF CMGs from time to time, we are not making any adjustments at this time because the data are not available as discussed in section I.C of this notice. Further, the case and facility level adjustments described in the August 7,

2001 final rule will apply to the FY 2003 IRF PPS payment rates described in this notice.

Accordingly, the CMGs, comorbidity tiers, and the corresponding relative weights presented in the August 7, 2001 final rule will be used as the basis for developing the FY 2003 IRF PPS rates set forth in this notice.

Specifically, we multiply an increase factor, described in section I.D of this notice, by the FY 2002 IRF standardized payment amount (also referred to as the budget neutral conversion factor in the August 7, 2001 final rule (66 FR 41364 through 41367) to develop the FY 2003 standardized payment amount. Then we multiply the FY 2003 budget neutral conversion factor by the relative weights presented in the August 7, 2001 final rule and in Table 1 of this notice to develop the FY 2003 Federal unadjusted IRF PPS payment rates.

B. IRF Prospective Payment—General Overview

Section 4421 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), as amended by section 125 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), provides for the implementation of a per discharge PPS, through new section 1886(j) of the Act, for IRFs—inpatient rehabilitation hospitals and rehabilitation units. Although a complete discussion of the IRF PPS provisions appears in the August 7, 2001 final rule (66 FR 41316), we provide below a general description of the IRF PPS.

The IRF PPS uses information from a patient assessment instrument, the Inpatient Rehabilitation—Patient Assessment Instrument (IRF–PAI), to classify patients into distinct case-mix groups (CMGs) based on clinical characteristics and expected resource needs. The CMGs were constructed using rehabilitation impairment categories, functional status (both motor and cognitive), age, comorbidities, and other factors that we deemed appropriate to improve the explanatory power of the groups.

Payment for services furnished to a Medicare patient consists of a predetermined, per-discharge amount for each CMG with applicable case and facility level adjustments. Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services, (that is, routine, ancillary and capital costs) but not costs of approved educational activities, bad debts, and other services or items outside the scope of the IRF PPS.

The IRF PPS uses Federal prospective payment rates across 100 distinct CMGs. In addition, the existence of a specific comorbidity may affect the calculation of the Federal prospective payment rate. In general, however, the FY 2002 Federal prospective payment rates were established using a standardized payment amount. A set of relative payment weights (which account for the relative difference in resource use across CMGs) are applied to the budget neutral conversion factor, and finally, a number of facility level and case level adjustments may apply. The facility level adjustments include those that account for geographic variations in wages (wage index), the percentage of low-income patients (LIPs), and location in a rural area. Case level adjustments include those that apply for transfers, short-stays, interrupted stays, outliers and cases in which the beneficiary expires.

For cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002, section 1886(j)(1) of the Act and § 412.626 of the regulations provide that IRFs transition into the PPS receiving a "blended payment." For cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002, these blended payments consist of 66⅔ percent of the Federal IRF PPS rate and 33⅓ percent of the payment the IRF would have been paid had the IRF PPS not been implemented. However, during the transition period, an IRF with a cost reporting period beginning on or after January 1, 2002 and before October 1, 2002 may elect to bypass this blended payment and be paid 100 percent of the Federal IRF PPS rate. For cost reporting periods beginning on or after October 1, 2002 (FY 2003), however, payments for all IRFs will consist of 100 percent of the Federal IRF PPS rate.

C. Classification System for the IRF PPS

As previously stated, in this notice we are using the same case-mix classification system that was set forth in the August 7, 2001 final rule. It is our intention to pursue the development of refinements to the case-mix classification system that will improve the ability of the PPS to more accurately pay IRFs. We have awarded a contract to the Rand Corporation (RAND) to conduct additional research that will, in the initial(1), P. 9 of the signature package version, stages, provide us with the data necessary to address the feasibility of developing and implementing refinements. When the study has been completed, we plan to review various approaches so that we can propose an appropriate methodology to develop and apply refinements. Any specific refinement proposal resulting from this research will be published in the **Federal Register** for public review and comment.

Table 1, Relative Weights for Case-Mix Groups (CMGs), presents the CMGs, comorbidity tiers, and the corresponding Federal relative weights. We also present the average length of stay for each CMG. As we discussed in the August 7, 2001 final rule, the average length of stay for each CMG is used to determine when an IRF discharge meets the definition of a transfer, which results in a per diem case level adjustment. Because these data elements are not changing as a result of this notice, Table 1 shown below is identical to Table 1 that was published in the August 7, 2001 final rule (66 FR 41394 through 41396). The relative weights reflect the inclusion of cases with an interruption of stay (patient returns on day of discharge or either of the next 2 days). The methodology we used to construct the data elements in Table 1 are described in detail in the August 7, 2001 final rule (66 FR 41350 through 41353).

TABLE 1.—RELATIVE WEIGHTS FOR CASE-MIX GROUPS (CMGS)

CMG	CMG description (M = motor, C = cognitive, A = age)	Relative weights				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0101	Stroke M=69–84 and C=23–35	0.4778	0.4279	0.4078	0.3859	10	9	6	8
0102	Stroke M=59–68 and C=23–35	0.6506	0.5827	0.5553	0.5255	11	12	10	10
0103	Stroke M=59–84 and C=5–22	0.8296	0.7430	0.7080	0.6700	14	12	12	12
0104	Stroke M=53–58	0.9007	0.8067	0.7687	0.7275	17	13	12	13
0105	Stroke M=47–52	1.1339	1.0155	0.9677	0.9158	16	17	15	15

TABLE 1.—RELATIVE WEIGHTS FOR CASE-MIX GROUPS (CMGS)—Continued

CMG	CMG description (M = motor, C = cognitive, A = age)	Relative weights				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0106	Stroke M=42–46	1.3951	1.2494	1.1905	1.1267	18	18	18	18
0107	Stroke M=39–41	1.6159	1.4472	1.3790	1.3050	17	20	21	21
0108	Stroke M=34–38 and A>=83	1.7477	1.5653	1.4915	1.4115	25	27	22	23
0109	Stroke M=34–38 and A<=82	1.8901	1.6928	1.6130	1.5265	24	24	22	24
0110	Stroke M=12–33 and A>=89	2.0275	1.8159	1.7303	1.6375	29	25	27	26
0111	Stroke M=27–33 and A=82–88	2.0889	1.8709	1.7827	1.6871	29	26	24	27
0112	Stroke M=12–26 and A=82–88	2.4782	2.2195	2.1149	2.0015	40	33	30	31
0113	Stroke M=27–33 and A<=81	2.2375	2.0040	1.9095	1.8071	30	27	27	28
0114	Stroke M=12–26 and A<=81	2.7302	2.4452	2.3300	2.2050	37	34	32	33
0201	Traumatic brain injury M=52–84 and C=24–35	0.7689	0.7276	0.6724	0.6170	13	14	14	11
0202	Traumatic brain injury M=40–51 and C=24–35	1.1181	1.0581	0.9778	0.8973	18	16	17	16
0203	Traumatic brain injury M=40–84 and C=5–23	1.3077	1.2375	1.1436	1.0495	19	20	19	18
0204	Traumatic brain injury M=30–39	1.6534	1.5646	1.4459	1.3269	24	23	22	22
0205	Traumatic brain injury M=12–29	2.5100	2.3752	2.1949	2.0143	44	36	35	31
0301	Non-traumatic brain injury M=51–84	0.9655	0.8239	0.7895	0.7195	14	14	12	13
0302	Non-traumatic brain injury M=41–50	1.3678	1.1672	1.1184	1.0194	19	17	17	16
0303	Non-traumatic brain injury M=25–40	1.8752	1.6002	1.5334	1.3976	23	23	22	22
0304	Non-traumatic brain injury M=12–24	2.7911	2.3817	2.2824	2.0801	44	32	34	31
0401	Traumatic spinal cord injury M=50–84	0.9282	0.8716	0.8222	0.6908	15	15	16	14
0402	Traumatic spinal cord injury M=36–49	1.4211	1.3344	1.2588	1.0576	21	18	22	19
0403	Traumatic spinal cord injury M=19–35	2.3485	2.2052	2.0802	1.7478	32	32	31	30
0404	Traumatic spinal cord injury M=12–18	3.5227	3.3078	3.1203	2.6216	46	43	62	40
0501	Non-traumatic spinal cord injury M=51–84 and C=30–35.	0.7590	0.6975	0.6230	0.5363	12	13	10	10
0502	Non-traumatic spinal cord injury M=51–84 and C=5–29.	0.9458	0.8691	0.7763	0.6683	15	17	10	12
0503	Non-traumatic spinal cord injury M=41–50	1.1613	1.0672	0.9533	0.8206	17	17	15	14
0504	Non-traumatic spinal cord injury M=34–40	1.6759	1.5400	1.3757	1.1842	23	21	21	19
0505	Non-traumatic spinal cord injury M=12–33	2.5314	2.3261	2.0778	1.7887	31	31	29	28
0601	Neurological M=56–84	0.8794	0.6750	0.6609	0.5949	14	13	12	12
0602	Neurological M=47–55	1.1979	0.9195	0.9003	0.8105	15	15	14	15
0603	Neurological M=36–46	1.5368	1.1796	1.1550	1.0397	21	18	18	18
0604	Neurological M=12–35	2.0045	1.5386	1.5065	1.3561	31	24	25	23
0701	Fracture of lower extremity M=52–84	0.7015	0.7006	0.6710	0.5960	13	13	12	11
0702	Fracture of lower extremity M=46–51	0.9264	0.9251	0.8861	0.7870	15	15	16	14
0703	Fracture of lower extremity M=42–45	1.0977	1.0962	1.0500	0.9326	18	17	17	16
0704	Fracture of lower extremity M=38–41	1.2488	1.2471	1.1945	1.0609	14	20	19	18
0705	Fracture of lower extremity M=12–37	1.4760	1.4740	1.4119	1.2540	20	22	22	21
0801	Replacement of lower extremity joint M=58–84	0.4909	0.4696	0.4518	0.3890	9	9	8	8
0802	Replacement of lower extremity joint M=55–57	0.5667	0.5421	0.5216	0.4490	10	10	9	9
0803	Replacement of lower extremity joint M=47–54	0.6956	0.6654	0.6402	0.5511	9	11	11	10
0804	Replacement of lower extremity joint M=12–46 and C=32–35.	0.9284	0.8881	0.8545	0.7356	15	14	14	12
0805	Replacement of lower extremity joint M=40–46 and C=5–31.	1.0027	0.9593	0.9229	0.7945	16	16	14	14
0806	Replacement of lower extremity joint M=12–39 and C=5–31.	1.3681	1.3088	1.2592	1.0840	21	20	19	18
0901	Other orthopedic M=54–84	0.6988	0.6390	0.6025	0.5213	12	11	11	11
0902	Other orthopedic M=47–53	0.9496	0.8684	0.8187	0.7084	15	15	14	13
0903	Other orthopedic M=38–46	1.1987	1.0961	1.0334	0.8942	18	18	17	16
0904	Other orthopedic M=12–37	1.6272	1.4880	1.4029	1.2138	23	23	23	21
1001	Amputation, lower extremity M=61–84	0.7821	0.7821	0.7153	0.6523	13	13	12	13
1002	Amputation, lower extremity M=52–60	0.9998	0.9998	0.9144	0.8339	15	15	14	15
1003	Amputation, lower extremity M=46–51	1.2229	1.2229	1.1185	1.0200	18	17	17	18
1004	Amputation, lower extremity M=39–45	1.4264	1.4264	1.3046	1.1897	20	20	19	19
1005	Amputation, lower extremity M=12–38	1.7588	1.7588	1.6086	1.4670	21	25	23	23
1101	Amputation, non-lower extremity M=52–84	1.2621	0.7683	0.7149	0.6631	18	11	13	12
1102	Amputation, non-lower extremity M=38–51	1.9534	1.1892	1.1064	1.0263	25	18	17	18
1103	Amputation, non-lower extremity M=12–37	2.6543	1.6159	1.5034	1.3945	33	23	22	25
1201	Osteoarthritis M=55–84 and C=34–35	0.7219	0.5429	0.5103	0.4596	13	10	11	9
1202	Osteoarthritis M=55–84 and C=5–33	0.9284	0.6983	0.6563	0.5911	16	11	13	13
1203	Osteoarthritis M=48–54	1.0771	0.8101	0.7614	0.6858	18	15	14	13
1204	Osteoarthritis M=39–47	1.3950	1.0492	0.9861	0.8882	22	19	16	17
1205	Osteoarthritis M=12–38	1.7874	1.3443	1.2634	1.1380	27	21	21	20
1301	Rheumatoid, other arthritis M=54–84	0.7719	0.6522	0.6434	0.5566	13	14	13	11
1302	Rheumatoid, other arthritis M=47–53	0.9882	0.8349	0.8237	0.7126	16	14	14	14
1303	Rheumatoid, other arthritis M=36–46	1.3132	1.1095	1.0945	0.9469	20	18	16	17
1304	Rheumatoid, other arthritis M=12–35	1.8662	1.5768	1.5555	1.3457	25	25	29	22
1401	Cardiac M=56–84	0.7190	0.6433	0.5722	0.5156	15	12	11	11
1402	Cardiac M=48–55	0.9902	0.8858	0.7880	0.7101	13	15	13	13

TABLE 1.—RELATIVE WEIGHTS FOR CASE-MIX GROUPS (CMGS)—Continued

CMG	CMG description (M = motor, C = cognitive, A = age)	Relative weights				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
1403	Cardiac M=38–47	1.2975	1.1608	1.0325	0.9305	21	19	16	16
1404	Cardiac M=12–37	1.8013	1.6115	1.4335	1.2918	30	24	21	20
1501	Pulmonary M=61–84	0.8032	0.7633	0.6926	0.6615	15	13	13	13
1502	Pulmonary M=48–60	1.0268	0.9758	0.8855	0.8457	17	17	14	15
1503	Pulmonary M=36–47	1.3242	1.2584	1.1419	1.0906	21	20	18	18
1504	Pulmonary M=12–35	2.0598	1.9575	1.7763	1.6965	30	28	30	26
1601	Pain syndrome M=45–84	0.8707	0.8327	0.7886	0.6603	15	14	13	13
1602	Pain syndrome M=12–44	1.3320	1.2739	1.2066	1.0103	21	20	20	18
1701	Major multiple trauma without brain or spinal cord injury M=46–84.	0.9996	0.9022	0.8138	0.7205	16	14	11	13
1702	Major multiple trauma without brain or spinal cord injury M=33–45.	1.4755	1.3317	1.2011	1.0634	21	21	20	18
1703	Major multiple trauma without brain or spinal cord injury M=12–32.	2.1370	1.9288	1.7396	1.5402	33	28	27	24
1801	Major multiple trauma with brain or spinal cord injury M=45–84 and C=33–35.	0.7445	0.7445	0.6862	0.6282	12	12	12	10
1802	Major multiple trauma with brain or spinal cord injury M=45–84 and C=5–32.	1.0674	1.0674	0.9838	0.9007	16	16	16	16
1803	Major multiple trauma with brain or spinal cord injury M=26–44.	1.6350	1.6350	1.5069	1.3797	22	25	20	22
1804	Major multiple trauma with brain or spinal cord injury M=12–25.	2.9140	2.9140	2.6858	2.4589	41	29	40	40
1901	Guillian Barre M=47–84	1.1585	1.0002	0.9781	0.8876	15	15	16	15
1902	Guillian Barre M=31–46	2.1542	1.8598	1.8188	1.6505	27	27	27	24
1903	Guillian Barre M=12–30	3.1339	2.7056	2.6459	2.4011	41	35	30	40
2001	Miscellaneous M=54–84	0.8371	0.7195	0.6705	0.6029	12	13	11	12
2002	Miscellaneous M=45–53	1.1056	0.9502	0.8855	0.7962	15	15	14	14
2003	Miscellaneous M=33–44	1.4639	1.2581	1.1725	1.0543	20	18	18	18
2004	Miscellaneous M=12–32 and A>=82	1.7472	1.5017	1.3994	1.2583	30	22	21	22
2005	Miscellaneous M=12–32 and A<=81	2.0799	1.7876	1.6659	1.4979	33	25	24	24
2101	Burns M=46–84	1.0357	0.9425	0.8387	0.8387	18	18	15	16
2102	Burns M=12–45	2.2508	2.0482	1.8226	1.8226	31	26	26	29
5001	Short-stay cases, length of stay is 3 days or fewer				0.1651				3
5101	Expired, orthopedic, length of stay is 13 days or fewer.				0.4279				8
5102	Expired, orthopedic, length of stay is 14 days or more.				1.2390				23
5103	Expired, not orthopedic, length of stay is 15 days or fewer.				0.5436				9
5104	Expired, not orthopedic, length of stay is 16 days or more.				1.7100				28

D. IRF Market Basket Index

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services, which is referred to as a market basket index. Accordingly, in updating the FY 2003 payment rates set forth in this notice, we apply an appropriate increase factor to the FY 2002 IRF PPS payment rates that is equal to the IRF market basket. In constructing the IRF market basket, we use the methodology set forth in Appendix D of the August 7, 2001 final rule. For this notice, the projected FY 2003 IRF market basket increase factor is 3 percent.

E. Update of Payment Rates Under the PPS for IRFs for FY 2003

Once we calculate the increase factor, we can determine the updated Federal prospective payments for FY 2003. In accordance with § 412.624(c)(3)(ii), we apply the increase factor (3 percent) to the budget neutral conversion factor for FY 2002 ($11,838). This results in an updated standardized payment amount for FY 2003 of $12,193. The FY 2003 standardized payment amount is applied to each CMG weight shown in Table 1 to compute the unadjusted IRF prospective payment rates for FY 2003.

Table 2, Federal Prospective Payments for Case-Mix Groups (CMGs) for FY 2003, displays the CMGs, the comorbidity tiers, and the corresponding unadjusted IRF prospective payment rates for FY 2003.

TABLE 2.—FEDERAL PROSPECTIVE PAYMENTS FOR CASE-MIX GROUPS (CMGS) FOR FY 2003

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidities
0101	5825.82	5217.38	4972.31	4705.28
0102	7932.77	7104.86	6770.77	6407.42
0103	10115.31	9059.40	8632.64	8169.31
0104	10982.24	9836.09	9372.76	8870.41

TABLE 2.—FEDERAL PROSPECTIVE PAYMENTS FOR CASE-MIX GROUPS (CMGS) FOR FY 2003—Continued

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidities
0105	13825.64	12381.99	11799.17	11166.35
0106	17010.45	15233.93	14515.77	13737.85
0107	19702.67	17645.71	16814.15	15911.87
0108	21309.71	19085.70	18185.86	17210.42
0109	23045.99	20640.31	19667.31	18612.61
0110	24721.31	22141.27	21097.55	19966.04
0111	25469.96	22811.88	21736.46	20570.81
0112	30216.69	27062.36	25786.98	24404.29
0113	27281.84	24434.77	23282.53	22033.97
0114	33289.33	29814.32	28409.69	26885.57
0201	9375.20	8871.63	8198.57	7523.08
0202	13632.99	12901.41	11922.32	10940.78
0203	15944.79	15088.84	13943.91	12796.55
0204	20159.91	19077.17	17629.86	16178.89
0205	30604.43	28960.81	26762.42	24560.36
0301	11772.34	10045.81	9626.37	8772.86
0302	16677.59	14231.67	13636.65	12429.54
0303	22864.31	19511.24	18696.75	17040.94
0304	34031.88	29040.07	27829.30	25362.66
0401	11317.54	10627.42	10025.08	8422.92
0402	17327.47	16270.34	15348.55	12895.32
0403	28635.26	26888.00	25363.88	21310.93
0404	42952.28	40332.01	38045.82	31965.17
0501	9254.49	8504.62	7596.24	6539.11
0502	11532.14	10596.94	9465.43	8148.58
0503	14159.73	13012.37	11623.59	10005.58
0504	20434.25	18777.22	16773.91	14438.95
0505	30865.36	28362.14	25334.62	21809.62
0601	10722.52	8230.28	8058.35	7253.62
0602	14605.99	11211.46	10977.36	9882.43
0603	18738.20	14382.86	14082.92	12677.06
0604	24440.87	18760.15	18368.75	16534.93
0701	8553.39	8542.42	8181.50	7267.03
0702	11295.60	11279.74	10804.22	9595.89
0703	13384.26	13365.97	12802.65	11371.19
0704	15226.62	15205.89	14564.54	12935.55
0705	17996.87	17972.48	17215.30	15290.02
0801	5985.54	5725.83	5508.80	4743.08
0802	6909.77	6609.83	6359.87	5474.66
0803	8481.45	8113.22	7805.96	6719.56
0804	11319.98	10828.60	10418.92	8969.17
0805	12225.92	11696.74	11252.92	9687.34
0806	16681.24	15958.20	15353.43	13217.21
0901	8520.47	7791.33	7346.28	6356.21
0902	11578.47	10588.40	9982.41	8637.52
0903	14615.75	13364.75	12600.25	10902.98
0904	19840.45	18143.18	17105.56	14799.86
1001	9536.15	9536.15	8721.65	7953.49
1002	12190.56	12190.56	11149.28	10167.74
1003	14910.82	14910.82	13637.87	12436.86
1004	17392.10	17392.10	15906.99	14506.01
1005	21445.05	21445.05	19613.66	17887.13
1101	15388.79	9367.88	8716.78	8085.18
1102	23817.81	14499.92	13490.34	12513.68
1103	32363.88	19702.67	18330.96	17003.14
1201	8802.13	6619.58	6222.09	5603.90
1202	11319.98	8514.37	8002.27	7207.28
1203	13133.08	9877.55	9283.75	8361.96
1204	17009.24	12792.90	12023.52	10829.82
1205	21793.77	16391.05	15404.64	13875.63
1301	9411.78	7952.27	7844.98	6786.62
1302	12049.12	10179.94	10043.37	8688.73
1303	16011.85	13528.13	13345.24	11545.55
1304	22754.58	19225.92	18966.21	16408.12
1401	8766.77	7843.76	6976.83	6286.71
1402	12073.51	10800.56	9608.08	8658.25
1403	15820.42	14153.63	12589.27	11345.59
1404	21963.25	19649.02	17478.67	15750.92
1501	9793.42	9306.92	8444.87	8065.67
1502	12519.77	11897.93	10796.90	10311.62
1503	16145.97	15343.67	13923.19	13297.69

TABLE 2.—FEDERAL PROSPECTIVE PAYMENTS FOR CASE-MIX GROUPS (CMGS) FOR FY 2003—Continued

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidities
1504	25115.14	23867.80	21658.43	20685.42
1601	10616.45	10153.11	9615.40	8051.04
1602	16241.08	15532.66	14712.07	12318.59
1701	12188.12	11000.52	9922.66	8785.06
1702	17990.77	16237.42	14645.01	12966.04
1703	26056.44	23517.86	21210.94	18779.66
1801	9077.69	9077.69	8366.84	7659.64
1802	13014.81	13014.81	11995.47	10982.24
1803	19935.56	19935.56	18373.63	16822.68
1804	35530.40	35530.40	32747.96	29981.37
1901	14125.59	12195.44	11925.97	10822.51
1902	26266.16	22676.54	22176.63	20124.55
1903	38211.64	32989.38	32261.46	29276.61
2001	10206.76	8772.86	8175.41	7351.16
2002	13480.58	11585.79	10796.90	9708.07
2003	17849.33	15340.01	14296.29	12855.08
2004	21303.61	18310.23	17062.88	15342.45
2005	25360.22	21796.21	20312.32	18263.89
2101	12628.29	11491.90	10226.27	10226.27
2102	27444.00	24973.70	22222.96	22222.96
5001				2013.06
5101				5217.38
5102				15107.13
5103				6628.11
5104				20850.03

F. Area Wage Adjustment

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs that are attributable to wages and wage-related costs for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. Not later than October 1, 2001 and at least every 36 months thereafter, the Secretary is required to update the factor under the preceding sentence on the basis of information available to the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services. Any adjustments or updates made under section 1886(j)(6) of the Act shall be made in a budget neutral manner.

For the FY 2003 IRF PPS payment rates set forth in this notice, we are applying the same wage adjustment as used for the FY 2002 IRF PPS rates. This includes both the labor-related share and wage indices as specified in the August 7, 2001 final rule. In the August 7, 2001 final rule, we established a wage index based on FY 1997 acute care hospital wages to adjust the FY 2002 IRF payment rates. Although the statute permits the Secretary to adjust the labor-related share and wage index from time to time, we are not adjusting these figures at this time. It is our intention to update the annual wage index and the labor-related share as soon as feasible. However, we must first develop a methodology to incorporate a budget neutrality adjustment for calculating these figures in order to be consistent with the statute. Once we have developed a proposed methodology, we plan to discuss it in a future proposed rule allowing the public an opportunity to comment on its design and application. We believe that continuing to apply the wage index and labor-related share used in FY 2002, provides an appropriate adjustment to account for geographic variation in wage levels, consistent with the statute.

To calculate the wage-adjusted facility payments for the payment rates set forth in this notice, the Federal prospective payment is multiplied by the labor-related percentage (72.395) to determine the labor-related portion of the Federal prospective payments. This labor-related portion is then multiplied by the applicable IRF wage index shown in Table 3A for urban areas and Table 3B for rural areas. These tables shown below are identical to Table 3A and 3B that were published in the August 7, 2001 final rule (66 FR 41397 through 41404).

TABLE 3A.—WAGE INDEX FOR URBAN AREAS

MSA and urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.8240
Taylor, TX	
0060 Aguadilla, PR	0.4391
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9541
Portage, OH	
Summit, OH	
0120 Albany, GA	0.9893
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8480
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9146
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8121
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9839
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9317
Blair, PA	
0320 Amarillo, TX	0.8673
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2775

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA and urban area (constituent counties or county equivalents)	Wage index
Anchorage, AK	
0440 Ann Arbor, MI	1.1093
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston,AL	0.8284
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9052
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4525
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9479
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9739
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0097
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1167
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8079
Lee, AL	
0600 Augusta-Aiken, GA–SC	0.9127
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9540
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9684
Kern, CA	
0720 Baltimore, MD	0.9223
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9550
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3801
Barnstable, MA	
0760 Baton Rouge, LA	0.8796
Ascension, LA	
East Baton Rouge	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8734
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1439
Whatcom, WA	
0870 Benton Harbor, MI	0.8671
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1818
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9604
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8236
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8600
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.8360
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7625
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8733
Monroe, IN	
1040 Bloomington-Normal, IL	0.9095
McLean, IL	
1080 Boise City, ID	0.9006
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1086
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9731
Boulder, CO	
1145 Brazoria, TX	0.8658
Brazoria, TX	
1150 Bremerton, WA	1.0975
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8714
Cameron, TX	
1260 Bryan-College Station, TX	0.8237
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9455
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0840
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4548
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8480
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.8724
Natrona, WY	
1360 Cedar Rapids, IA	0.8716
Linn, IA	
1400 Champaign-Urbana, IL	0.9189
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9029
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9235
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9321
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0581
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.9790
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8308
Laramie, WY	
1600 Chicago, IL	1.1092
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9918
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9349
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA and urban area (constituent counties or county equivalents)	Wage index
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.8173
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9528
Ashtabula, OH	
Geauga, OH	
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9698
El Paso, CO	
1740 Columbia MO	0.8920
Boone, MO	
1760 Columbia, SC	0.9557
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8531
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9573
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8746
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1326
Benton, OR	
1900 Cumberland, MD–WV	0.8369
Allegany MD	
Mineral WV	
1920 Dallas, TX	0.9792
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8589
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA–IL	0.8897
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9384
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9165
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8534
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8095
Macon, IL	
2080 Denver, CO	1.0120
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.9073
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0364
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7943
Dale, AL	
Houston, AL	
2190 Dover, DE	1.0078
Kent, DE	
2200 Dubuque, IA	0.8746
Dubuque, IA	
2240 Duluth-Superior, MN–WI	1.0032
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0187
Dutchess, NY	
2290 Eau Claire, WI	0.8761
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9332
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9145
Elkhart, IN	
2335 Elmira, NY	0.8546
Chemung, NY	
2340 Enid, OK	0.8610
Garfield, OK	
2360 Erie, PA	0.8892
Erie, PA	
2400 Eugene-Springfield, OR	1.0960
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8137
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.8750
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8655
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7910
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	1.0681
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1153
Genesee, MI	
2650 Florence, AL	0.7616
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8737
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0620
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0118
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9247
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9538
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.8052
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9607
Okaloosa, FL	
2760 Fort Wayne, IN	0.8647
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9392
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0057
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8423
Etowah, AL	
2900 Gainesville, FL	0.9741
Alachua, FL	
2920 Galveston-Texas City, TX	0.9796
Galveston, TX	
2960 Gary, IN	0.9451
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8361
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8423
Wayne, NC	
2985 Grand Forks, ND–MN	0.8774
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.8947
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	1.0070
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.9065
Cascade, MT	
3060 Greeley, CO	0.9664
Weld, CO	
3080 Green Bay, WI	0.9207
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9068
Alamance, NC	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA and urban area (constituent counties or county equivalents)	Wage index
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9402
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.8894
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9409
Washington, MD	
3200 Hamilton-Middletown, OH	0.9061
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9338
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1236
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7490
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9008
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1865
Honolulu, HI	
3350 Houma, LA	0.8100
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9663
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9876
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8932
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9747
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9537
Johnson, IA	
3520 Jackson, MI	0.9134
Jackson, MI	
3560 Jackson, MS	0.8749
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8796
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.9186
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.7777
Onslow, NC	
3610 Jamestown, NY	0.7818
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.9587
Rock, WI	
3640 Jersey City, NJ	1.1440
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8272
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8767
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7831
Craighead, AR	
3710 Joplin, MO	0.8148
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0440
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9902
Kankakee, IL	
3760 Kansas City, KS–MO	0.9458
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9611
Kenosha, WI	
3810 Killeen-Temple, TX	1.0164
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8221
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9518
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.9197
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8390
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8834
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7399
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9239
Polk, FL	
4000 Lancaster, PA	0.9247
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9880
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8168
Webb, TX	
4100 Las Cruces, NM	0.8639
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.0796
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8190
Douglas, KS	
4200 Lawton, OK	0.8996
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9003
Androscoggin, ME	
4280 Lexington, KY	0.8774
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9320
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9619
Lancaster, NE	
4400 Little Rock-North Little, AR	0.8908
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8922
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.1984
Los Angeles, CA	
4520 Louisville, KY–IN	0.9261
Clark, IN	
Floyd, IN	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA and urban area (constituent counties or county equivalents)	Wage index
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8848
Lubbock, TX	
4640 Lynchburg, VA	0.8851
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8848
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0316
Dane, WI	
4800 Mansfield, OH	0.8690
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4577
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8566
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0344
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9688
Brevard, FL	
4920 Memphis, TN–AR–MS	0.8688
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9559
Merced, CA	
5000 Miami, FL	1.0110
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.0987
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9664
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN–WI	1.0971
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9274
Missoula, MT	
5160 Mobile, AL	0.8006
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0401
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.1293
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8316
Ouachita, LA	
5240 Montgomery, AL	0.7642
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	1.0683
Delaware, IN	
5330 Myrtle Beach, SC	0.8440
Horry, SC	
5345 Naples, FL	0.9661
Collier, FL	
5360 Nashville, TN	0.9327
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3784
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2192
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2061
New London, CT	
5560 New Orleans, LA	0.9235
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4483
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1828
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.0847
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8374
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City,VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5029
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9243
Marion, FL	
5800 Odessa-Midland, TX	0.9206
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8774
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0689
Thurston, WA	
5920 Omaha, NE–IA	0.9470
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1453
Orange, CA	
5960 Orlando, FL	0.9550
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8159
Daviess, KY	
6015 Panama City, FL	0.9010
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8258
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8176
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8494
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.0753
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA and urban area (constituent counties or county equivalents)	Wage index
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9628
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7771
Jefferson, AR	
6280 Pittsburgh, PA	0.9570
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0130
Berkshire, MA	
6340 Pocatello, ID	0.9076
Bannock, ID	
6360 Ponce, PR	0.4993
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9687
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.0913
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0771
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	1.0014
Utah, UT	
6560 Pueblo, CO	0.8783
Pueblo, CO	
6580 Punta Gorda, FL	0.9602
Charlotte, FL	
6600 Racine, WI	0.9231
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9583
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8779
Pennington, SD	
6680 Reading, PA	0.9105
Berks, PA	
6690 Redding, CA	1.1641
Shasta, CA	
6720 Reno, NV	1.0550
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1460
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9618
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1229
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8663
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1334
Olmsted, MN	
6840 Rochester, NY	0.8991
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.8819
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.8849
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1932
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9557
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9994
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9071
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO–IL	0.8947
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
Sullivan City, MO	
7080 Salem, OR	1.0189
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4518
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9782
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8083
Tom Green, TX	
7240 San Antonio, TX	0.8540
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1784
San Diego, CA	
7360 San Francisco, CA	1.4250
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.3759
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4651
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.0673
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0580
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.4040
Santa Cruz, CA	
7490 Santa Fe, NM	1.0538
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2649
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9809

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA and urban area (constituent counties or county equivalents)	Wage index
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9601
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton-Wilkes-Barre-Hazleton, PA	0.8401
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.0985
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.7900
Mercer, PA	
7620 Sheboygan, WI	0.8379
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8694
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.8705
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8471
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8790
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9848
St. Joseph, IN	
7840 Spokane, WA	1.0496
Spokane, WA	
7880 Springfield, IL	0.8656
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8484
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0485
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9022
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8548
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0606
San Joaquin, CA	
8140 Sumter, SC	0.8271
Sumter, SC	
8160 Syracuse, NY	0.9378
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1553
Pierce, WA	
8240 Tallahassee, FL	0.8482
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.8960
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8268
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8341
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9742
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9051
Shawnee, KS	
8480 Trenton, NJ	1.0113
Mercer, NJ	
8520 Tucson, AZ	0.8785
Pima, AZ	
8560 Tulsa, OK	0.8480
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8064
Tuscaloosa, AL	
8640 Tyler, TX	0.9340
Smith, TX	
8680 Utica-Rome, NY	0.8547
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.2849
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1040
Ventura, CA	
8750 Victoria, TX	0.8154
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0501
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9551
Tulare, CA	
8800 Waco, TX	0.8253
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.0711
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8404
Black Hawk, IA	
8940 Wausau, WI	0.9418
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9699
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7665
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9502
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7647
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8332
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.0826
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9394
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	0.9876
Yakima, WA	
9270 Yolo, CA	1.0199
Yolo, CA	
9280 York, PA	0.9196
York, PA	
9320 Youngstown-Warren, OH	0.9477
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0706
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9529
Yuma, AZ	

TABLE 3B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7483
Alaska	1.2380
Arizona	0.8309
Arkansas	0.7444
California	0.9857
Colorado	0.8967
Connecticut	1.1715
Delaware	0.9058
Florida	0.8918
Georgia	0.8326
Guam	
Hawaii	1.1053
Idaho	0.8650
Illinois	0.8152
Indiana	0.8602
Iowa	0.8000

TABLE 3B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Kansas	0.7574
Kentucky	0.7921
Louisiana	0.7655
Maine	0.8736
Maryland	0.8651
Massachusetts	1.1205
Michigan	0.8969
Minnesota	0.8864
Mississippi	0.7481
Missouri	0.7693
Montana	0.8679
Nebraska	0.8055
Nevada	0.9228
New Hampshire	0.9741
New Jersey [1]	.....
New Mexico	0.8495
New York	0.8472
North Carolina	0.8437
North Dakota	0.7676
Ohio	0.8663
Oklahoma	0.7484
Oregon	1.0124
Pennsylvania	0.8535
Puerto Rico	0.4264
Rhode Island [1]	.....
South Carolina	0.8369
South Dakota	0.7550
Tennessee	0.7836
Texas	0.7490
Utah	0.9029
Vermont	0.9266
Virginia	0.8181
Virgin Islands	.....
Washington	1.0422
West Virginia	0.8206
Wisconsin	0.8865
Wyoming	0.8805

[1] All counties within the State are classified urban.

The resulting wage-adjusted labor-related portion is added to the nonlabor-related portion, resulting in a wage-adjusted payment. The following example illustrates how a Medicare fiscal intermediary would calculate the wage-adjusted Federal prospective payment for IRF services with a hypothetical Federal prospective payment of $10,000 for services provided in the rehabilitation facility located in Heartland, USA. The IRF wage index value for facilities located in Heartland, USA is 1.0234. The labor-related portion (72.395 percent) of the Federal prospective payment is $7,239.50 = ($10,000*72.395 percent), and the nonlabor related portion (27.605 percent) of the Federal prospective payment is $2,760.50 = ($10,000*27.605 percent). Therefore, the wage-adjusted payment calculation is as follows: $10,169.40 = ($7,239.50*1.0234) + $2,760.50.

G. Examples of Computing the Total Adjusted IRF Prospective Payments

We will adjust the Federal prospective payments, described above, to account for geographic wage variation, low-income patients and, if applicable, facilities located in rural areas.

To illustrate the methodology that we will use for adjusting the Federal prospective payments, we provide the following example. One beneficiary is in rehabilitation facility A and another beneficiary is in rehabilitation facility B.

Rehabilitation facility A's disproportionate share hospital (DSH) adjustment is 5 percent, with a low-income patient (LIP) adjustment of 1.0239 and a wage index of 0.987, and the facility is located in a rural area.

Rehabilitation facility B's DSH is 15 percent, with a LIP adjustment of 1.0700 and a wage index of 1.234, and the facility is located in an urban area. Both Medicare beneficiaries are classified to CMG 0111 (without comorbidities). This CMG represents a stroke with motor scores in the 27 to 33 range and the patient is between 82 and 88 years old. To calculate each IRF's total adjusted Federal prospective payment, we compute the wage-adjusted Federal prospective payment and multiply the result by the appropriate DSH adjustment and the rural adjustment (if applicable). The following table illustrates the components of the adjusted payment calculation.

TABLE 4.—EXAMPLES OF COMPUTING AN IRF'S FEDERAL PROSPECTIVE PAYMENT

	Facility A	Facility B
Federal Prospective Payment	$20,570.81	$20,570.81
Labor Share	× .72395	× .72395
Labor Portion of Federal Payment	= $14,892.24	= $14,892.24
Wage Index	× 0.987	× 1.234
Wage-Adjusted Amount	= $14,698.64	= $18,377.02
Non-Labor Amount	+ $5,678.57	+ $5,678.57
Wage-Adjusted Federal Payment	$20,377.21	$24,055.59
Rural Adjustment	× 1.1914	× 1.0000
Subtotal	= $24,277.41	= $24,055.59
DSH Adjustment	× 1.0239	× 1.0700
Total Adjusted Federal Prospective Payment	= $24,857.64	= $25,739.48

Thus, the adjusted payment for facility A will be $24,857.64, and the adjusted payment for facility B will be $25,739.48.

Computing Total Payments Under the IRF PPS for the Transition Period

Section 1886(j)(1) of the Act and § 412.626 describe how to compute a facility's payment during a transition period. Under the transition period, the prospective payment amount consists of a portion of the amount the facility would have been paid if the PPS had not been implemented (the facility-specific payment) and a portion of the adjusted Federal prospective payment. Under § 412.626, for cost reporting periods beginning on or after January 1,

2002 and before October 1, 2002, payment would consist of 33⅓ percent of the amount of the facility-specific payment and 66⅔ percent of the IRF adjusted Federal prospective payment. For cost reporting periods beginning on or after October 1, 2002, payment would be 100 percent of the adjusted Federal prospective payment.

Section 305(b)(1)(C) of the BIPA added section 1886(j)(1)(F) to the Act, which allows an IRF to elect to be paid 100 percent of the adjusted Federal prospective payment for each cost reporting period to which the blended payment methodology would otherwise apply. This provision of the BIPA is effective as though it were included upon enactment of the BBA.

The FY 2003 IRF PPS rates set forth in this notice will apply to all discharges on or after October 1, 2002 and before October 1, 2003. Payment for IRFs with cost reporting periods under the transition methodology will consist of 66⅔ percent of the FY 2003 Federal prospective payment and 33⅓ percent of the facility-specific payment. Payment for IRFs that elected not to be paid under the transition methodology will consist of 100 percent of the FY 2003 Federal prospective payment. Payment for IRFs with cost reporting periods beginning on or after October 1, 2002 and before October 1, 2003 will consist of 100 percent of the FY 2003 Federal prospective payment.

Based on the information used to develop the impact analysis for the August 7, 2001 final rule, we estimate that 48 percent of the IRFs have elected not to be paid under the transition payment methodology. Since the implementation of the IRF PPS, the number of these facilities has increased. Currently, there are approximately 1,181 Medicare certified IRFs. Using the above percentage, we estimate that 567 IRFs have elected not to be paid under the transition payment methodology.

II. Future Updates

Medicare payments to IRFs are based on a predetermined national payment rate per discharge. Annual updates to these payment rates are required by section 1886(j)(3)(C) of the Act. These updates are based on increases to the IRF market basket amount. For FY 2003, the update is established at the market basket amount. The IRF market basket, or input price index, developed by our Office of the Actuary (OACT), is just one component in determining a change to the IRF cost per discharge amount. It captures only the pure price change of inputs (labor, materials, and capital) used by an IRF to produce a constant quantity and quality of care. Other factors also contribute to the change in costs per discharge, which include changes in case-mix, intensity, and productivity.

An update framework, used in combination with the market basket, seeks to enhance the system for updating payments by addressing factors beyond changes in pure input price. Such a framework has been used under the inpatient hospital PPS for years by both CMS and the Medicare Payment Advisory Commission (MedPAC).

In general, an update framework in the context of the IRF PPS would provide a tool for measuring and understanding changes in cost per discharge. This has the potential to support the continued accuracy of IRF payments and ensure that the IRF PPS keeps pace with changing economic and health care market trends. Accordingly, we are examining the potential for developing and using an update framework under the IRF PPS. It has the potential to provide information useful to policy makers in determining the magnitude of the annual updates.

III. Collection of Information Requirements

The current Medicare patient assessment requirements under the IRF PPS are based on section 1886 (j)(2)(D) of the Act and subpart P of section 412 of the regulations. We published the requirements of the IRF patient assessment instrument (PAI) in the August 7, 2001 final rule. Subsequent to the publication of the final rule OMB approved the use of the IRF PAI with modifications that reduced the number of required items to be completed. These requirements will remain in effect for FY 2003 and are not being changed by the updates set forth in this notice.

Section 412.604(c) of the regulations requires an IRF to complete the IRF PAI for each Medicare fee-for-service patient who is admitted to or discharged (or who stopped receiving Medicare Part A inpatient rehabilitation services) from the IRF on or after January 1, 2002. Section 412.606(c) requires that an IRF clinician perform a comprehensive, accurate, standardized, and reproducible assessment of each Medicare fee-for-service patient using the CMS IRF patient assessment instrument as part of his or her assessment. The assessment must include direct patient observation and communication with the patient, and, when appropriate and to the extent feasible, patient data from the patient's physician(s), family, someone personally knowledgeable about the patient's clinical condition or capabilities, the patient's clinical record, and other sources. Section 412.610(c) of the regulations provides for an assessment upon admission, an assessment upon discharge, and, if the patient is not discharged but stops receiving Medicare Part A covered inpatient rehabilitation services, an assessment at the time he or she stops receiving these services. Section 412.614 of the regulations requires an IRF to encode and transmit the IRF PAI patient data electronically to CMS. The total time necessary to complete and administer all required items of the IRF PAI is estimated to be 269,250 hours. These information collection requirements associated with the Inpatient Rehabilitation Facility Prospective Payment System are currently approved by OMB through July 31, 2005 under OMB number 0938–0842. As we previously stated in this section, we are not proposing any changes to these requirements in this notice.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a proposed notice in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice issued. We find it is unnecessary to undertake notice and comment rulemaking as the statute requires annual updates, and this notice does not make any substantive changes in policy, but merely reflects the application of previously established methodologies. Therefore, under 5 U.S.C. 553(b)(B), for good cause, we waive notice and comment procedures.

V. Regulatory Impact Analysis

A. Introduction

The August 7, 2001 final rule established the IRF PPS for the payment of Medicare services for cost reporting periods beginning on or after January 1, 2002. We incorporated a number of elements into the IRF PPS, such as case-level adjustments, a wage adjustment, an adjustment for the percentage of low-income patients, a rural adjustment, and outlier payments. This notice sets forth updates of the IRF PPS rates contained in the August 7, 2001 final rule.

The purpose of this notice is not to initiate policy changes with regard to the IRF PPS; rather, it is to provide an update to the IRF payment rates for discharges during FY 2003. While the

updates set forth in this notice will have a positive effect upon all IRFs, some providers may experience decreases in payments. Specifically, a decrease in an IRF's FY 2003 payments compared to its FY 2002 payments is the result of the effects of eliminating, as required by section 1886(j)(1) of the BBA, the blended payments and transitioning to the full Federal PPS rates, and not the result of the update to the payment rates set forth in this notice.

In constructing these impacts, we do not attempt to predict behavioral responses, and we do not make adjustments for future changes in such variables as discharges or case-mix. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to IRFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, or new statutory provisions. Although these changes may not be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory lexibility Act (RFA) and Impact on Small Hospitals (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

We estimate that the cost to the Medicare program for IRF services in FY 2003 will increase by $15 million over FY 2002 levels. This increase is due to the combined effect of the changes to the IRF payment rates from FY 2002 to FY 2003, including an increase in overall payments of $150 million (attributed to the 3 percent increase), and a decrease in overall payments of $135 million due to the transition to 100 percent of the IRF Federal payment rates. Because the cost to the Medicare program is less than $100 million, this notice is not considered a major rule as defined above.

2. Regulatory Flexibility Act (RFA) and Impact on Small Hospitals

The RFA requires agencies to analyze the economic impact of our regulations on small entities. If we determine that the regulation will impose a significant burden on a substantial number of small entities, we must examine options for reducing the burden. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals are considered small entities, either by nonprofit status or by having receipts of $6 million to $29 million in any 1 year. (For details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs. Therefore, we assume that all IRFs are considered small entities for the purpose of the analysis that follows. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

This notice establishes a 3 percent increase to the Federal PPS rates. Although, as illustrated in Table 5, the combined effects of this update and the elimination of blended payments under the transition to the full Federal PPS rates results in a net decrease in aggregate Medicare payments to IRFs in FY 2003, the decreases associated with the transition's expiration are not a result of this notice, but rather, are specifically mandated in existing legislation. In addition, we do not expect an incremental increase of 3 percent to the Medicare Federal rates to have a significant effect on the overall revenues of IRFs. Most IRFs are units of hospitals that provide many different types of services (for example, acute care, outpatient services) and the rehabilitation component of their business is relatively minor in comparison. In addition, IRFs provide services to (and generate revenues from) patients other than Medicare beneficiaries. Accordingly, we certify that this notice will not have a significant impact on small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any notice that will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds.

This notice will not have a significant impact on the operations of small rural hospitals. As indicated above, this notice establishes a 3 percent increase to the Federal PPS rates. While the combined effects of this update and the elimination of blended payments under the transition to the full Federal PPS rates results in a net decrease in aggregate Medicare payments in FY 2003, the decreases associated with the transition's expiration are not a result of this notice, but again, are specifically mandated in existing legislation. In addition, we do not expect an incremental increase of 3 percent to the Federal rates to have a significant effect on overall revenues or operations since most rural hospitals provide many different types of services (for example, acute care, outpatient services) and the rehabilitation component of their business is relatively minor in comparison. Accordingly, we certify that this notice will not have a significant impact on the operations small rural hospitals.

3. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of at least $110 million. This notice will not have an effect on the governments mentioned nor will it affect private sector costs.

4. Executive Order 13132

We examined this notice in accordance with Executive Order 13132 and determined that it will not have any negative impact on the rights, roles, or responsibilities of State, local, or tribal governments.

5. Overall Impact

For the reasons stated above, we have prepared an analysis under the RFA and section 1102(b) of the Act because we have determined that this notice will not have a significant impact on small

entities or the operations of small rural hospitals.

B. Anticipated Effects of the Notice

We discuss below the impacts of this notice on the Federal budget and on IRFs.

1. Budgetary Impact

Section 1886(j)(3)(C) of the Act requires annual updates to the IRF PPS payment rates. We project that updating the IRF PPS for discharges occurring on or after October 1, 2002 and before October 1, 2003 will cost the Medicare program $15 million. The budgetary impact is the result of the combined effects associated with the payment updates and the effect of IRFs transitioning from the phase-in of the implementation payment rates to the full Federal IRF PPS payment rates.

2. Impact on Providers

For the impact analyses shown in the August 7, 2001 final rule, we simulate payments for 1,024 facilities. To construct the impact analyses set forth in this notice, we use the latest available data. These data are the same data that were used in constructing the impact analyses displayed in the August 7, 2001 final rule. Table 5, Projected Impact of FY 2003 Update to the IRF PPS, which appears in section V.B.4 of this notice, reflects the estimated monetary changes among the various classifications of IRFs for discharges occurring on or after October 1, 2002 and before October 1, 2003.

3. Calculation of the Estimated FY 2002 IRF Prospective Payments

To estimate payments under the IRF PPS for FY 2002, we multiplied each facility's case-mix index by the facility's number of Medicare discharges, the budget neutral conversion factor, the applicable wage index, a low-income patient adjustment, and a rural adjustment (if applicable). The adjustments include the following:

- The wage adjustment, calculated as follows: (.27605 + (.72395 × Wage Index)).
- The disproportionate share adjustment, calculated as follows: (1 + Disproportionate Share Percentage) raised to the power of .4838).
- The rural adjustment, if applicable, calculated by multiplying payments by 1.1914.

After calculating the Federal rate payments for each facility, we blended together the appropriate percentages of the current payments (see discussion in August 7, 2001 final rule (66 FR 41368 through 41369)) and the new Federal rate payments to determine the appropriate amount for the first year of implementation of the IRF PPS. Specifically, to calculate payments for an IRF with a cost reporting period beginning on or after January 1, 2002 and before October 1, 2002, we combine 33⅓ percent of the facility's historical payment amount with 66⅔ percent of the new Federal rate payment amount. However, for those providers that would have received higher payments under 100 percent of the IRF PPS than they would have if the system had not been in effect, we simulated their payments as though they chose not to be paid under the transition payment methodology. (We estimated that 48 percent of the IRFs have elected not to be paid under the transition payment methodology.)

4. Calculation of the Estimated FY 2003 IRF Prospective Payments

To calculate FY 2003 payments, we use the payment rates described in this notice that reflect the 3 percent market basket increase factor. Further, we use the same facility level adjustments described above. The impacts also reflect the transition to the fully phased-in IRF prospective payments.

Table 5 illustrates the aggregate impact of the estimated FY 2003 updated payments among the various classifications of facilities compared to the estimated IRF PPS payment rates applicable for FY 2002.

The first column, Facility Classifications, identifies the type of facility. The second column identifies the number of facilities for each classification type, and the third column lists the number of cases. The fourth column reflects the effect of IRFs transitioning from the phase-in of the implementation payment rates to the full Federal IRF PPS payment rates, and the last column reflects the combined changes including the update to the FY 2002 payment rates by 3 percent.

TABLE 5.—PROJECTED IMPACT OF FY 2003 UPDATE TO THE IRF PPS

Facility classifications	Number of facilities	Number of cases	Transition (percent)	Total change (percent)
Total	1,024	347,809	−2.6	0.3
Urban unit	725	206,926	−2.5	0.5
Rural unit	131	26,507	−2.2	0.7
Urban freestanding hospital	156	109,691	−2.8	0.1
Rural freestanding hospital	12	4,685	−5.3	−2.5
Total urban	881	316,617	−2.6	0.4
Total rural	143	31,192	−2.8	0.2
Urban By Region				
New England	32	15,039	−2.1	0.8
Middle Atlantic	133	64,042	−2.3	0.7
South Atlantic	112	52,980	−2.2	0.8
East North Central	171	55,071	−2.6	0.3
East South Central	41	23,434	−1.7	1.2
West North Central	70	18,087	−2.2	0.7
West South Central	154	52,346	−4.2	−1.3
Mountain	56	14,655	−2.2	0.8
Pacific	112	20,963	−2.2	0.7
Rural By Region				
New England	4	829	−3.9	−1.1
Middle Atlantic	10	2,424	−1.0	1.9
South Atlantic	20	6,192	−1.1	1.9
East North Central	29	5,152	−2.8	0.1

TABLE 5.—PROJECTED IMPACT OF FY 2003 UPDATE TO THE IRF PPS—Continued

Facility classifications	Number of facilities	Number of cases	Transition (percent)	Total change (percent)
East South Central	10	3,590	−4.6	−1.8
West North Central	22	3,820	−1.8	1.1
West South Central	32	7,317	−4.3	−1.4
Mountain	9	1,042	−0.9	2.1
Pacific	7	826	−3.4	−0.5

As Table 5 illustrates, all IRFs will benefit from the 3 percent market basket increase that is applied to FY 2002 IRF PPS payment rates to develop the FY 2003 rates. However, the overall increase in payments to IRFs is diminished to 0.3 percent due to the effect of IRFs transitioning from the phased-in implementation payment rates to the full Federal IRF PPS payment rates.

The estimated negative impacts displayed in this notice are due to the effect of section 1886(j)(1) of the Act that requires the elimination of the blended payments and transition to the full Federal PPS rate. The fourth column in Table 5 shows this change in estimated payments has an overall negative impact of 2.6 percent. This negative impact is due to the assumption used to develop the impact analyses. We assume that IRFs that would profit more under a fully Federal IRF PPS payment rate than under the blend methodology would have already opted to be paid 100 percent of the FY 2002 IRF PPS payment. Therefore, we presume that those IRFs that did not elect to be paid the full Federal IRF PPS payment rates did so because they would receive more payment under the blended method. Consequently, we believe the remaining IRFs that are transitioning from the blended payment to the full FY 2003 IRF PPS payment, are estimated to profit less than they would have if they were not paid under 100 percent of the Federal rate. This estimated effect is not due to the changes set forth in this notice, rather the impact is the result of the statutory requirements of section 1886(j)(1) of the Act that stipulates payment for IRFs with cost reporting periods beginning on or after October 1, 2002 will consist of 100 percent of the IRF PPS Federal prospective payment.

The estimated impact changes displayed in Table 5 need to be viewed in light of the limitations of the data we are able to present. Specifically, these impacts are based on historical data that do not reflect any changes resulting from the implementation of the IRF PPS. In general, the IRF PPS creates incentives for IRFs to reduce costs. As a result, IRF costs per case should be less than they would have been before the implementation of the IRF PPS. Because of this, we believe impacts would be more favorable to IRFs if we were able to compare estimated FY 2003 IRF costs to FY 2003 IRF payments rather than estimated FY 2002 IRF payments to FY 2003 payments.

In the August 7, 2001 final rule (66 FR 41359) we set forth the methodology for adjusting payments for IRFs located in rural areas. For these facilities, the IRF PPS payment rates are increased by 19.14 percent. This adjustment will remain in effect and continue to protect these facilities from being unduly harmed. Therefore, the impacts shown reflect the rural adjustment that is designed to minimize or eliminate the negative impact that the IRF PPS may otherwise have on rural facilities.

To summarize, all facilities will receive a favorable 3 percent increase in their unadjusted IRF PPS payments. The estimated negative impact among some of the classes of IRFs reflected in Table 5 are due to the effect of the existing statutory provision (to transition from the blended payment to the full Federal IRF PPS payment rate) rather than the updates set forth in this notice.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget (OMB).

Authority: Section 1886(j) of the Social Security Act (42 U.S.C. 1395ww(j)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: July 11, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 19, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–19468 Filed 7–31–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees; Veterinary Medicine Advisory Committee; Extension of Nomination Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of nomination period.

SUMMARY: The Food and Drug Administration (FDA) is extending the nomination period for voting members to serve on the Veterinary Medicine Advisory Committee. The current vacancies include the specialty areas of Pharmacology, Minor Species/Minor Use Veterinary Medicine, Pathology, and chairperson. Nominations for the specialty areas of Animal Science, Veterinary Toxicology, and Veterinary Microbiology are also solicited. This request for nominations was announced in the **Federal Register** of May 13, 2002 (67 FR 32055) and June 17, 2002 (67 FR 41250). FDA is extending the nominations period to allow additional time for the submission of nominations.

DATES: Nominations should be received by August 30, 2002.

ADDRESSES: All nominations for representatives should be sent to Aleta Sindelar (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Aleta Sindelar, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4515, e-mail: asindela@cvm.fda.gov.

Dated: July 25, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–19376 Filed 7–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 25, 26, and 27, 2002, from 8 a.m. to 5 p.m.

Location: Hilton, The Ballroom, 8727 Colesville Rd., Silver Spring, MD.

Contact Person: Kathleen Reedy or LaNise Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, or e-mail: reedyk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 25, 2002, the committee will discuss appropriate designs for clinical trials of new osteoporosis treatments. On September 26, 2002, the committee will discuss the safety and efficacy of biologic licensing application BL 103979, FABRAZYME (agalsidase beta, Genzyme Corp.) for the treatment of Fabry's disease. On September 27, 2002, the committee will discuss the safety and efficacy of biologic licensing application BL 103977, REPLAGAL (agalsidase alfa, Transkaryotic Therapies) for the treatment of Fabry's disease.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 17, 2002. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 17, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact LaNise Giles at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 22, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–19375 Filed 7–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dental Products Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Dental Products Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 22, 2002, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Pamela D. Scott, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12518. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a total temporomandibular joint prosthesis for reconstruction of the temporomandibular joint.

Background information, including the agenda and questions for the committee, will be available to the public one business day before the meeting, on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the August 22, 2002, meeting will be posted on August 21, 2002.

Procedure: On August 22, 2002, from 8 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 5, 2002. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m. Near the end of the committee deliberations, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 19, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On August 22, 2002, from 5 p.m. to 6 p.m., the meeting will be closed to permit FDA staff to present to the committee trade secret and/or confidential commercial information regarding dental device issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 25, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–19374 Filed 7–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Young Drivers Intervention Study

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 5, 2002, pages 16407–16408, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Young Drivers Intervention Study, OMB No. 0925–0467. *Type of Information Collection Request:* Revision. *Need and Use of Information Collection:* This study will assess the effectiveness of a parent-based education program to increase parental restrictions on newly licensed teens' early driving and to decrease young driver risk. The primary objectives of the study are to determine if parents can be persuaded to increase restrictions on teens' driving under high-risk conditions (e.g., at night and with teen passengers) and to use a parent-teen driving agreement, and to determine if doing so decreases adolescent citations and crashes. The findings will provide valuable information concerning: (1) Whether parental actions to monitor and control the driving behavior of their teenage children reduce the number of motor vehicle crashes and citations; (2) the effectiveness of the use of educational persuasive communications and a parent-teen driving agreement in promoting parental restrictions of adolescents' driving behavior; and (3) the effectiveness of this intervention in reducing motor vehicle crashes among teens. *Frequency of Response:* 4 or 5 times over two years (*i.e.*, when teens get a learner's permit, when teens get a driver's license, and 3 months, 6 months, and 12 months postlicensure). *Affected Public:* Teenagers under age 16 years 9 months who get a learner's permit at any of the sites of the Connecticut Department of Motor Vehicles and one of their parents. *Type of Respondents:* Teenagers and Parents. The annual reporting burden is as follows: *Estimated Number of Respondents:* 9519; *Estimated Number of Responses per Respondents:* 1.6522; *Average Burden Hours Per Response:* .5; and *Estimated Total Annual Burden Hours Requested:* 7,864. The annualized cost to respondents is estimated at: $78,640 (based on $10 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Teenagers and Parents	9519	1.6522	.50	7864

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Office for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Bruce Simons-Morton, Chief, Prevention Research Branch, DESPR, NICHD, NIH, 6100 Executive Blvd., Rm 7B05, MSC 7510, Bethesda, MD 20892–7510; (301) 493–5674; email: *mortonb@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: July 26, 2002.

Kathleen Wilburn,

Project Clearance Liaison, NICHD, National Institutes of Health.

[FR Doc. 02–14397 Filed 7–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent

applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

ABCA8 Nucleic Acids and Proteins, and Uses Thereof

Michael C. Dean *et al.* (NCI)

DHHS Reference No. E–030–00/0 filed 19 Oct 2001.

Licensing Contact: Catherine Joyce; 301/496–7735 ext. 258; e-mail: *joycec@od.nih.gov*.

This technology pertains to the identification of a novel gene in the ABC (*A*TP-*b*inding *c*assette transporter) gene superfamily, the ABCA8 gene. The ABC proteins are involved in extra- and intracellular membrane transport of various substrates such as ions, amino acids, peptides, sugars, vitamins, or steroid hormones. At least 14 members of the ABC gene superfamily have been described as associated with human disease.

The ABCA8 gene is one of a group of several ABCA genes that is organized in a single large cluster on chromosome 17q24, in a head to tail fashion, and conserved in the mouse genome. The ABCA8 gene is believed to be involved in the reverse transport of cholesterol, as well as in the membrane transport of other lipophilic molecules such as inflammation mediating substances such as prostaglandins and prostacyclins.

The above-mentioned invention is available for licensing on an exclusive or non-exclusive basis.

Dated: July 25, 2002.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–19398 Filed 7–31–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Alternative Therapies for Benign Prostate Symptoms.

Date: August 18–19, 2002.

Time: 7:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 748, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, MTOPS Prostate Samples Analysis Consortium (MPSA).

Date: August 26–27, 2002.

Time: 7:30 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 748, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19465 Filed 7–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Heritable Disorders of Connective Tissues.

Date: August 12, 2002.

Time: 8:30 a.m. to 5 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Tracy A. Shahan, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19466 Filed 7–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center; Statement of Organization, Functions, and Delegations of Authority

Part P, Program Support Center (PSC) Statement of Organization, Functions and Delegations of authority for the Department of Health and Human Services (HHS) (66 FR 31240–41, October 2, 1995, and as last amended 66 FR 58740–41, November 23, 2001) is being amended to reflect a change in the reporting relationship of the head of the

Program Support Center, within HHS. The changes are as follows:

I. Under Chapter P, Paragraph P.10 Organization, replace with the following:

P.10 Organization. The Program Support Center (PSC) is a component within HHS to provide a wide range of support and administrative services to HHS components and other Federal agencies. The head of the PSC shall report to the Assistant Secretary for Administration and Management (AJ).

II. Under Paragraph P.20 Functions, paragraph A. "Office of the Director," replace with the following:

A. *Immediate Office of the PSC (PA).* The Office functions include (1) providing leadership for the implementation of the PSC responsibilities in accomplishing its mission; (2) providing staff support to the head of the PSC; (3) developing customer service strategic and marketing plans; and (4) coordinating publication of reports to HHS management, customers and employees.

Dated: July 23, 2002.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 02–19389 Filed 7–31–02; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at the following Web sites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443-3031.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 716–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.).

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115, (Formerly: Hartford Hospital Toxicology Laboratory).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093, (Formerly: Cox Medical Centers).

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200 / 800–735–5416,

Doctors Laboratory, Inc., PO Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468.

DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497 / 334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.).

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672 / 800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., PO Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702 / 800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–728–4064, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288 / 800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem

Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272. (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042 / 800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 /800–331–3734.

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.).

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250 / 800–350–3515.

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, PO Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/800–541–7891x8991.

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130.

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176.

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Sure-test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, 901–474–6028.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, Fort Meade, Building 2490, Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–7085.

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*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 FR, June 9, 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–19287 Filed 7–31–02; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–34]

Notice of Proposed Information Collection: Comment Request; Insurance for Home Equity Conversion Mortgages, Residential Loan Application for Reverse Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 30, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork

Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Insurance for Home Equity Conversion Mortgages (HECM), Residential Loan Application for Reverse Mortgages.

OMB Control Number, if applicable: 2502–0524.

Description of the need for the information and proposed use: HUD's collection of this information permits lenders to use this streamlined application as an optional form to gather borrower data to determine eligibility for the HECM program. The Department will gather the data for reports to Congress regarding the program.

Agency form numbers, if applicable: HUD–92900–A, HUD–92900–B, & Fannie Mae Form 1003.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 5,000, frequency of response is on occasion, the estimated time needed to prepare the response is one hour, the total annual responses are 5,000, and the estimated annual burden hours requested is 5,000.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 24, 2002

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 02–19377 Filed 7–31–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

National Park Service

Oil and Gas Management Plan, Final Environmental Impact Statement, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, Texas

AGENCY: National Park Service, Interior.

ACTION: Availability of Final Environmental Impact Statement and Oil and Gas Management Plan for Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument.

SUMMARY: Pursuant to section 102(2)(C) the National Environmental Policy Act of 1969, the National Park Service announces the availability of a final Environmental Impact Statement and Oil and Gas Management Plan (FEIS/O&GMP) for Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, Texas.

DATES: The DEIS/O&GMP was on public review from June 15 through August 14, 2001. Responses to public comment are addressed in the FEIS/O&GMP. A 30-day no-action period will follow the Environmental Protection Agency's Notice of Availability of the FEIS/O&GMP.

ADDRESSES: Copies of the FEIS/O&GMP are available from the Superintendent, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, Texas 79036–1460. Public reading copies of the FEIS/O&GMP will be available for review at the following locations:

Office of the Superintendent, Lake Meredith National Recreation Area, Alibates Flint Quarries National Monument, 419 E. Broadway, Fritch, TX 79036, Telephone: 806–857–3151.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2851.

Office of Minerals/Oil and Gas Support, Intermountain Support Office—Santa Fe, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, NM 87505, Telephone: 505–988–6095.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: When the two units of the National Park System were created, surface ownership within the two areas was acquired by the U.S. Government. Private entities or the State of Texas retained the subsurface mineral interests on these lands. Thus, the federal government does not own any of the subsurface oil and gas rights in the units. The National Park Service is required by its laws, policies and regulations to protect these units from actions that may impair park resources and values. Oil and gas operations within all park units are subject to regulations promulgated at 36 CFR Part 9B under the general authority of the Park Service Organic Act.

The FEIS/O&GMP analyzes three alternatives that could be implemented over the next 15–20 years for managing existing and anticipated oil and gas operations associated with the exercise of nonfederal oil and gas interests underlying the parks, and existing transpark oil and gas pipelines and activities in their associated rights-of-way. This planning effort will assist the park staff protect park resources, visitor use and experience, and human health and safety, and prevent impairment to park resources and values, while still recognizing property rights associated with outstanding nonfederal oil and gas interests.

Alternative A, No Action/Current Management, is required by the National Environmental Policy Act and describes the continued management of oil and gas operations in the parks under current legal and policy requirements. Alternative B emphasizes the development of a programmatic oil and gas management plan that would guide nonfederal oil and gas operations in the parks. Special Management Areas (SMAs) would be formally designated in the parks where resources and values would be particularly susceptible to adverse impacts from oil and gas operations, and operating stipulations specific to each SMA would be applied. Alternative B is the preferred alternative. Alternative C emphasizes avoiding new surface disturbance and its associated impacts throughout the parks and is the environmentally preferred alternative. New drilling and production operations would be confined to the original footprint of 121 current production sites and could not be located in SMAs where the No Surface Use operating stipulation would apply.

Impacts are analyzed on the following topics: nonfederal oil and gas development, adjacent landowners and uses, air quality, geologic resources, paleontological resources, floodplains and water resources, vegetation, wetlands, fish and wildlife, threatened and endangered species, cultural resources, and visitor use and experience.

FOR FURTHER INFORMATION CONTACT: Superintendent, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, at the above address and telephone number.

Dated: May 15, 2002.

R. Everhart,

Director, Intermountain Region, National Park Service.

[FR Doc. 02–19245 Filed 7–31–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy and 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree with the City of Anderson, Indiana ("Anderson") in the case captioned *United States and the State of indiana* v. *City of Anderson, Indiana*, Civil Action No. IP 02–1103 C M/S (S.D. Ind.) was lodged with the United States District Court for the Southern District of Indiana on July 18, 2002. The compliant filed in the case by the United States and the State of Indiana (the "Plaintiffs") seeks civil penalties and injunctive relief from Anderson for alleged violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and comparable state law.

The proposed consent decree sets forth the terms of a proposed settlement between the Plaintiffs and Anderson. Under the settlement, Anderson would: (1) pay a $250,000 civil penalty; and (2) implement specified compliance measures concerning operation and improvement of Anderson's sewer system and wastewater treatment plant.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to *United States and the State of Indiana* v. *City of Anderson, Indiana*, Civil Action No. IP 02–1103 C M/S (S.D. Ind.), and DOJ Reference Number 90–5–2–1–07043/2. A copy of the proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Southern District of Indiana, 10 West Market Street—Suite 2100, Indianapolis, Indiana 46204 (contact Thomas Kieper (317–226–6333); and (2) the U.S. Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604 (contact Stephen Mendoza (312–886–6852)). Copies of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting copies, please refer to the above-referenced case name and DOJ Reference Number, and enclose a check made payable to the Consent Decree Library for $33.00 (132 pages at 25 cents per page reproduction cost).

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–19387 Filed 7–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act 33 U.S.C. 1251 to 1387

Notice is hereby given that on July 18, 2002, a proposed Consent Decree in *United States* v. *Asarco Incorporated*, Civil Action No. 98–49–H–CCL was lodged with the United States District Court for the District of Montana, Helena Division.

In this action the United States alleges under section 309(b) and (d) of the Clean Water Act (the "Act"), 33 U.S.C. 1319(b) and (d), that Asarco violated certain conditions of the Act's categorical pretreatment program which regulates industrial users who discharge to publicly owned treatment works ("POTWs"). Specifically, the United States alleged that from May 1991 to December 1997, Asarco discharged plant process wastewater from its smelting facility to the East Helena, Montana POTW in excess of monthly average effluent limits for lead and zinc applicable to primary lead processing plants under 40 CFR 421.75. The Complaint also alleged that beginning in November 1991 and continuing through November 1994 Asarco violated the Act's reporting requirements by failing to include in Asarco's semi-annual Periodic Reports on Continuing Compliance data describing the nature and concentration of pollutants in Asarco's discharge to the POTW as required under 40 CFR 403.12. The proposed Consent Decree resolves all allegations raised in the United States Complaint against Asarco in exchange for a civil penalty of $100,000.00 paid over two years, the performance of several Supplemental Environmental Projects ("SEPs") estimated to be worth in total $169,852.00, and other consideration worth $15,480.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Asarco, Inc.*, D.J. Ref. 90–5–1–1–4323/1.

The proposed consent decree may be examined at U.S. EPA Region 8, 999 18th Street, Suite 500, Denver Colorado, 80202 and through the Project Coordinator, United States Environmental Protection Agency, Region 8, Federal Office Bldg. 10 West 15th Street, Suite 3200 Helena, Montana 59626. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. The check should refer to *United States* v. *Asarco Incorporated.*, Civil Action No. 98–49–H–CCL, (D. Mont.).

Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–19383 Filed 7–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 22, 2002, a proposed consent decree in *United States* v. *Axel Johnson Inc. et al.*, Civil Action No. 7:00–CV–252–F(1), was lodged with the United States District Court for the Eastern District of North Carolina.

In this action the United States sought under section 107(a) of CERCLA, 42 U.S.C. 9607(a), the recovery of past response costs with respect to the Potter Septic Tank Service Pits Superfund Site, located in the Town of Sandy Creek,

Brunswick County, North Carolina. The defendants in the action are Axel Johnson Inc. and Sprague Energy Corp. The consent decree resolves claims for past and future response costs at the Site against both defendants. Under the consent decree, defendants have agreed to pay $5,700,000 to the Superfund toward EPA's past and future response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Axel Johnson Inc. et al.*, DJ # 90–11–3–06749.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of North Carolina, 310 New Bern Avenue, Suite 800, Federal Building, Raleigh, NC 27601, and at the Region 4 office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. The check should refer to *United States* v. *Axel Johnson Inc. et al.*, DJ # 90–11–3–06749.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–19384 Filed 7–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with the Department Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *H.K. Porter Company, Inc., Economy Industrial Properties, Thomas R. Allen, Jr., Morton J. Greene, Carol M. Allen, and Anne S. Greene*, Civil Action No. 96–579, was lodged with the United States District Court for the Western District of Pennsylvania on July 16, 2002. This Consent Decree resolves claims of the United States' against Economy Industrial Properties, Thomas R. Allen, Jr., Morton J. Greene, Carol M. Allen, and Anne S. Greene ("Settling Defendants") under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for response costs incurred at the Bollinger Steel Superfund Site in Ambridge, Pennsylvania. The Consent Decree also resolves the United States' claims for civil penalties against Thomas R. Allen and Morton J. Greene under section 104(e) of CERCLA. The Consent Decree requires the Settling Defendants to pay a total of $200,000 in past response costs and requires Thomas R. Allen and Morton J. Green to pay a total of $50,000 in civil penalties to section 104(e) of CERCLA, 42 U.S.C. 9604(e). The Consent Decree also requires the Settling Defendants to take certain steps to sell the Site property and pay the proceeds to the United States in reimbursement of response costs.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, PO Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *H.K. Porter Company, Inc., et al.*, DOJ #90–11–2–738C.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 United States Post Office & Court House, 7th Avenue & Grant Street, Pittsburgh, PA 15219, and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. A copy of the proposed Consent Decree may be obtained by mail from the U.S. Department of Justice, Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "U.S. Treasury" in the amount of $7.00 and please reference *United States* v. *H.K. Porter Company, Inc., et al.*, DOJ No. 90–11–2–738C.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–19386 Filed 7–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on July 11, 2002, a proposed settlement agreement in *In re: Metal Management, Inc., et al.*, Case No. 00–4303, was lodged with the United States Bankruptcy Court for the District of Delaware.

In this action the United States sought recovery of (1) past and future response costs under CERCLA at the Consolidated Iron & Metal Superfund Site in Newburgh, New York, at which Metal Management Connecticut, Inc. and Metal Management Northeast, Inc. allegedly arranged for the disposal of hazardous substances; and (2) past and future response costs and injunctive relief under CERCLA at the Jack's Creek Superfund Site in Mifflin County, Pennsylvania, at which Metal Management Connecticut, Inc. and Metal Management Pittsburgh, Inc. allegedly disposed of hazardous substances.

Pursuant to the proposed settlement agreement, Metal Management will consent to an Allowed General Unsecured Claim in the amount of $397,000 with regard to the Consolidated Iron & Metal Superfund Site. The liability of Metal Management Connecticut, Inc.'s predecessor in interest relating to the Jack's Creek Superfund Site has been resolved in a separate settlement in *United States* v. *American Scrap Co.*, Civil Action No. 1:99–CV–2047 (M.D. Penn.). The injunctive relief sought against Metal Management Pittsburgh, Inc. is now moot due to the separate settlement between Metal Management and the Jack's Creek PRP Group in the bankruptcy action.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the settlement agreement. Comment should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re: Metal Management, Inc., et al.* (Bankr. D. Del.), D.J. Ref. 90–5–2–1–07207/1.

The settlement agreement may be examined at the Office of the United States Attorney, 1201 Market Street, Suite 1100, Wilmington, Delaware, and at U.S. EPA Region II, 290 Broadway, New York, New York. A copy of the settlement agreement may also be

obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–19385 Filed 7–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

Notice is hereby given that a proposed Consent Decree between the State of California and the United States Section of the International Boundary and Water Commission ("USIBWC") was lodged with the United States District Court for the Southern District of California on July 12, 2002. The proposed Consent Decree concerns alleged violations of section 402 of the Clean Water Act, 33 U.S.C. 1342, at the South Bay International Wastewater Treatment Plant, located at 2415 Dairy Mart Road, San Diego County, San Diego, California. The proposed Consent Decree would require the USIBWC to provide or contract for secondary treatment services for the Plant or to otherwise cease violations of certain effluent standards and limitations applicable to the Plant's discharges.

The United States Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to S. Randall Humm, Trial Attorney, United States Department of Justice, Environmental Defense Section, PO Box 23986, Washington, DC 20026–3986, with copies provided to Mario Lewis, International Boundary and Water Commission, Office of the Staff Counsel, 4171 No. Mesa Street; Suite C–310, El Paso, TX 79902; and Carol A. Squire, Deputy Attorney General, Department of Justice, State of California, 110 West A Street, Suite 1100, PO Box 85266, San Diego, 92186–5266, and should reference *California* v. *Ramirez*, No. 01–CV–0270–BTM–JFS (S.D. Cal.); consolidated with *Surfrider Foundation* v. *Ramirez*, No. 99–CV–2441–BTM–JFS (S.D. Cal.).

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of California, 4290 Edward J. Schwartz Federal Building, 880 Front Street, San Diego, California.

Stephen Samuels,

Assistant Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 02–19388 Filed 7–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

[SGA 02–06]

Women's Bureau; Women in Apprenticeship and Nontraditional Occupations Act (WANTO) of 1992 FY–2002 Budget, Training and Employment Services (TES) 1601 77174

AGENCY: Women's Bureau, Department of Labor.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Women's Bureau, U.S. Department of Labor (DOL), announces the 2002 Solicitation for Grant Applications (SGA) authorized under the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992. The purpose of this program is to assist employers and labor unions in the placement and retention of women in apprenticeship and nontraditional occupations. To that end, WANTO grant funds are disbursed to eligible community-based organizations, which, in turn, provide employers and labor unions with technical assistance geared towards the successful placement and retention of women in apprenticeship and nontraditional occupations.

DATES: One signed original, complete grant application plus two copies of the Technical Proposal and two copies of the Cost Proposal must be submitted. (To aid with the review of applications, USDOL also encourages Applicants to submit three additional copies of the technical proposal [six in total]. Applicants who do not provide additional copies will not be penalized.) The original and copies must be submitted by 5 p.m. EST, September 3, 2002. Hand-delivered applications must be received by that time. An application received after September 3, 2002, will not be considered unless:

1. It was sent by registered or certified mail not later than August 26, 2002;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address listed under **ADDRESSES**; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. EST on August 29, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the specified time and date will be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the wrapper or envelope.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in the preceding paragraph. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Procurement Services on the application wrapper or other documentary evidence of receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 02–06, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into

consideration when preparing to meet the application deadline. You assume the risk for ensuring a timely submission; that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give it proper consideration, even if it was timely mailed, the Department is not required to consider the application. Therefore, it is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Application announcements or forms will not be mailed. The Federal Register may be obtained from your nearest government office or library. In addition, a copy of this notice and the application requirements may be downloaded from the Women's Bureau's Website at *http://www.dol.gov/wb*.

SUPPLEMENTARY INFORMATION: This notice contains all of the information needed to apply for grant funding. Grant proposals that are not completed as directed will be judged non-responsive and will not be evaluated.

Part I. Background

A. Authority and Funding.

The Women in Apprenticeship and Nontraditional Occupations Act of 1992 (WANTO) (29 U.S.C. § 2501 *et seq.*) authorizes the Department of Labor (DOL) to disburse technical assistance grants. The WANTO grants for Fiscal Year (FY) 2002 are funded by DOL FY 2002 Budget: Training and Employment Services (TES) 1610174. The Women's Bureau (WB) co-administers the WANTO program with the DOL Office of Apprenticeship Training, Employer and Labor Services (ATELS). WB has responsibility for implementing the grant process.

B. Purpose

This grant program is designed to assist employers and labor unions (E/LU) in the placement and retention of women in specific sections of the workforce. It is envisioned that the program will promote increased participation by women in apprenticeship and nontraditional occupations (A/NTO). Therefore, WANTO grant funds are distributed to community-based organizations (CBO), which provide technical assistance to E/LU with the goal of placing and retaining women in these occupations. DOL has found that placement and retention of women in A/NTO pose significant challenges. Those challenges are especially acute in fields requiring high technology skills, such as those related to computer-based information technology, for example, telecommunications, utilities, manufacturing, transportation, and general services.

C. Grant Awards

The WB is soliciting proposals on a competitive basis for the WANTO program. WB anticipates that each grantee will receive between $50,000 and $100,000 in funds to conduct innovative projects that comply with the goals set forth in WANTO and in this SGA. The period of performance begins September 30, 2002, and ends on September 29, 2003. The initial performance period may be extended once, for up to three months, at no additional cost to DOL, so that a grantee can finish its final reports. Each application shall clearly state the applicant's intention to begin performance no later than October 1, 2002.

D. Definitions

The following terms are defined for the convenience of prospective applicants:

Nontraditional Occupations (NTO) are those where women account for less than 25 percent of all persons employed in a single occupational group.

Pre-Apprenticeship Programs are those programs that prepare individuals for occupational skills training or entry-level employment in NTO. The curriculum includes pre-vocational instruction in identification and use of tools, blueprint reading, basic shop skills, and safety procedures, as well as math skills and physical conditioning.

Apprenticeship is a formal employment relationship designed to promote skill training and learning on the job. "Hands on" learning takes place in conjunction with related theoretical instruction (often in a classroom setting). An apprentice who successfully completes an ATELS-registered program, which usually requires 3 to 5 years, is awarded a certificate of completion. Employers, or groups of employers, and unions design, organize, manage, and finance apprenticeship programs under the standards developed and registered with ATELS or ATELS-recognized State Apprenticeship Agencies. They also select apprentices who are trained to meet certain pre-determined occupational standards.

Community-Based Organizations (CBO) are private non-profit organizations, which may be faith-based, which are representative of communities or significant segments of communities and which have demonstrated experience administering programs that train women for A/NTO.

Part II. Eligible Applicants—Community-Based Organizations

DOL will award grants through a competitive process, which identifies the best Community-Based Organizations (CBO) applicants. Applicants shall provide evidence, where available, demonstrating their ability to connect women to apprenticeship and nontraditional occupations. Applicants shall also document any experience in enabling women and/or businesses to contact ATELS field offices for assistance and/or for information pertaining to apprenticeship training/placement. A CBO must not be classified under the IRS Tax Code as a 501(c)(4) entity nor be a public body such as a governmental body, public school, college, or hospital. All proposals must document that these eligibility requirements have been, and will continue to be, satisfied.

A consortium of CBOs may apply for a grant provided they include a copy of the consortium agreement and identify the entity/entities that will administer the grant.

Part III. Application Contents

Applications that fail to meet the application requirements or that are missing any of the required information will be deemed non-responsive and will not be evaluated.

A. Technical Proposal

To be considered for a WANTO grant, an application must include all of the information listed in this notice. The technical proposal text is limited to twenty (20) single-sided, double-spaced, 10 to 12 pitch, numbered "8½ x 11" typed pages (not including attachments). Applicants must submit one (1) original and five (5) copies of the technical proposal.

The Following Information is Required:

1. A Table of Contents, listing the application sections.

2. A 2-page abstract, summarizing the proposed project.

3. Documentation of eligibility, as described in Part II of this notice.

4. A Statement of Work, which clearly describes the proposed project and addresses the evaluation criteria in Part IV, Section A 3, of this notice.

5. Documentation of the established relationships with 10 or more employers or labor unions, as described in Part IV, Section A 2, of this notice.

6. Documentation of prior experiences providing technical assistance to employers and labor unions for the purposes of hiring, training and retaining women, as described in Part IV, Section A 1, of this notice.

7. The number of women expected to be placed in training programs, pre-apprenticeships, apprenticeships and non-traditional occupations, as stated in Part IV, Section A 3, of this notice.

8. A support services plan for women when the technical assistance results in women being placed in pre-apprenticeships, apprenticeships and non-traditional occupations, as described in Part IV, Section A 3, of this notice.

9. A description of any leveraging or co-funding anticipated for the accomplishment of the proposed project.

10. A management plan and organizational chart, as described in Part IV, Section A 1, of this notice.

11. A list of all items for which grant funds will be expended. Do not include any cost information, only expenditure items.

12. Two copies of the CBO's budget and major funding sources for the past three (3) years, including foundation and government funds, as well as other types of funding.

B. Cost Proposal

The Cost Proposal is a physically separate document and must not be included within the twenty-page limit of the technical proposal. The Cost Proposal must include the following:

1. A Standard Form (SF) 424, "Application for Federal Assistance." All copies of the SF 424 must have original signatures of the legal entity applying for grant funding. Applicants must indicate on the SF 424 the organizations IRS status. The Catalogue of Federal Domestic Assistance (CFDA) number for this program is 17.700, which should be entered on the SF 424, block 10.

2. A certification prepared within the last six (6) months, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The certification should be obtained as follows:

a. For incorporated organizations, a certification from a Certified Public Accountant or

b. For other applicants, their employers' identification number (EIN) issued by the IRS;

3. Budget Information Form 424A, with a narrative of description of each line item.

4. A copy of the most current Indirect Cost Rate Agreement issued by the cognizant federal agency, if applicable.

5. Applications from a consortium of organizations also must include a copy of the consortium agreement and must identify the consortium that will act as the administrative entity for the project. No member of a consortium shall make a separate application under his grant program. In addition, the agreement must specify the consortium's arrangements for handling the administrative and financial responsibilities for the program.

6. The applicants must include the Assurances and Certifications Signature Page. Potential applicants who do not have the current version of the standard grant forms listed can download them from the following OMB Website address: *http://www.whitehouse.gov/OMB/grants/forms.html.*

Part IV. Evaluation Criteria and Selection Process

Technical proposals will be carefully reviewed by a panel using the following criteria. Up to 115 points may be awarded to an application based on the 100 points for the required information and up to 15 extra points for special program emphasis. Applications that are missing any of the required information will be deemed non-responsive and will not be evaluated. The ranked scores of the proposals will serve as the primary basis for selection of applications for a potential award. Prior performance of previous WANTO grantees will be considered in the final selection of grant awards.

A. Technical Evaluation Criteria/ Points

1. Organizational Overview

Applicants must demonstrate their experience, capability and qualifications for administrating a grant project to provide technical assistance to employers and labor unions. Information submitted should highlight the qualifications of the key staff and the organizational structure that would ensure the success of the project. Applicants should indicate if trades women or women in non-traditional occupations serve as active members of the organization, as either employed staff or as board members. Documentation must include the CBO's organizational chart, the names and full resumes of all primary staff managing the grant project and, where applicable, a narrative differentiating among the CBO, any proposed consultants or sub-contractor's. Job descriptions must identify all key tasks, the hours required for the completion of such tasks, the person's responsible for completing each task, including sub-contractors and consultants. The proposal must include documentation of the organization's experience in recruiting, training or placing women in apprenticeships or non-traditional occupations. Applications must furnish a description of the organization's leadership in providing assistance to employers and labor unions for the purpose of recruiting, training and placement of women and must document any experience serving as a mentor to other community based organizations that provide similar technical assistance. Similar information must be provided for any partners or contractors associated with this grant. (Up to 10 points awarded)

2. Established Employer and Labor Union Linkages

Applications must include documentation of commitments (in the form of agreements or letters) from 10 or more employers and labor unions to receive technical assistance and to place women in apprenticeship or non-traditional occupations. Applications must include the names of those employers and labor unions, as well as letters or agreements indicating their commitment to receive technical assistance for the purpose of hiring and retaining women. Such documentation may be in the form of agreements, support letters or other correspondence showing the request and acceptance of assistance. Applications must show evidence of the employer's and labor union's experiences in recruiting, training or placing women in apprenticeships or non-traditional occupations. Such documentation can include descriptions of previous outreach and orientation provided to women, mentoring programs, support groups, networks, workplace consultation, employee and supervisory workshops, and other workplace-specific strategic planning to increase the participation of women in apprenticeship and non-traditional occupations. Applicants must describe how their grant program will build upon existing and new working relationships with employers and labor unions to increase the number of women placed in apprenticeships and non-traditional jobs. Proposals must indicate the activities and types of assistance that will be provided to meet the goal of increasing the number of women hired and retained. (Up to 20 points awarded)

3. Scope of WANTO Project and Projected Outputs and Outcomes

Applicants must document all forms of technical assistance to be provided to employers and labor unions, including their strategies for upgrading the skills of women in non-traditional occupations and for promoting changes in the workplace culture and in work practices that lead to increased numbers of women in apprenticeships and non-traditional occupations. Such documentation should include the applicant's support services plan; the numbers of women to be placed and retained in pre-apprenticeship training, other training programs, apprenticeship positions and non-traditional jobs and other long-term project outcomes. Support services plans should include collaborative employer and labor union programs available at the worksite, as well as community-based services. Applicants must describe how they will use grant funds to provide technical assistance to employers and labor unions for the purpose of recruiting, training and hiring women in apprenticeship and non-traditional occupations. Grant funds may be used to provide a broad range of technical assistance to employers and labor unions to include: developing or executing workplace assessments, building strategic plans for changes in work practices and establishing linkages to pre-apprenticeship programs for employers or union that pledge employment or apprenticeships for women. Show how grant funds are to be used to support linkages with employers and labor unions and to encourage those entities to be engaged in the processes of recruitment, training and hiring of women. Also provide a description of any activities that would encourage and promote the continuation or expansion of grant activities beyond the grant period. (Up to 70 points awarded)

4. Bonus Points

Bonus points will be awarded, as follows, for projects that demonstrate their experience or indicate their plans to:

a. Provide opportunities for women to be placed and retained into apprenticeships and non-traditional occupations in high technology. (Up to 5 points)

b. Provide services for disabled women to be placed into apprenticeships and non-traditional occupations. (Up to 5 points)

c. Provide mentoring services for at least one other CBO that is providing technical assistance to employers and/or labor unions. (Up to 5 points)

B. Cost Evaluation Criteria

Evaluated proposals will be ranked, based on their costs, in relation to other proposals submitted in response to this SGA.

C. Total Score

The review panel's recommendations are advisory in nature and not binding on the Grant Officer. Final awards will be made based on the best interest of the Government, including, but not limited to, such factors as technical quality, geographic balance, occupational and/or industrial impact and past grant performance. The submission of a previous proposal for a WANTO grant from any prior year does not guarantee an award under this solicitation.

Although the Government reserves the right to award on the basis of the applicant's initial submissions, the Government may establish a competitive range or technically acceptable range based upon proposal evaluation for the purpose of selecting qualified applicants. The Government reserves the right to ask for clarification or hold discussion, but is not obligated to do so. The Grant Officer's determination for award under this SGA is the final agency action.

Part V. Deliverables

This section is provided so that applicants may more accurately estimate the staffing budgetary requirements when preparing their proposal. Applicants are to exclude from their cost proposal the cost of any requested travel to Washington, DC.

A. Post Grant Award Conference

No later than eight (8) weeks after an award, the grantees and partners shall meet with the WB and the ATELS at the Post-Award Conference to discuss the project, related components and TA; time-lines; technical assistance outcomes; assessment for comment; and final approval. The grantees and partners and the Department will discuss and make decisions on the following program activities:

1. The proposed TA commitments for employment, registered apprenticeship, and related skilled nontraditional occupation activities and responsibilities; the number of targeted partnerships with employers and labor unions; and the number of women who will be served.

2. The methodology the proposed partnership will use to support/change management and employee attitudes to promote female workers in A/NTO.

3. The types of systemic change anticipated by the TA strategies that will be incorporated into ongoing employer recruitment, hiring, training, and promotion of women in A/NTO.

4. The occupational, industrial, and geographical impact anticipated.

5. The supportive services to be provided to employers and women after successful placement into A/NTO.

The WB and ATELS will provide further input orally or in writing, if necessary, within ten (10) working days after the Post-Award Conference.

B. Grant Plan of Action

No later than ten (10) weeks after an award, the grantees and the WB will confirm the "plan of action" and detailed time-line for program implementation.

C. Grant Implementation

No later than twelve (12) weeks after an award, the grantee(s) shall have begun providing E/LU with TA to recruit, select, train, place, retain, and otherwise prepare women for A/NTO, with progress to be measured in terms of employment growth and rising earnings.

D. Quarterly Reports

1. No later than sixteen (16) weeks after an award, the first quarterly progress report of work done under this grant must be submitted. Thereafter, quarterly reports will be due twenty (20) working days after the end of each of the remaining quarters.

2. Quarterly progress reports must describe:

a. The overall progress achieved during the reporting period, as measured by the number of E/LU provided with TA, as well as by the number of women trained (on and off the workplace) and placed in A/NTO;

b. An explanation of any quarterly goals that were not met, including steps to be taken in the next quarter to complete the tasks;

c. Any placements in pre-apprenticeship programs or linkages with sponsored apprenticeship programs, giving the name and address of each workplace/company involved, the person(s) responsible for the programs, as well as the number of women affected by or participating in the programs;

c. The number of E/LU receiving TA, giving the E/LU name, address, number of employees at the workplace (including the percentage of women employees), as well as the nature of TA provided;

d. Any problems that may impede the performance of the grant and the proposed corrective action.

e. Any changes in the proposed work to be performed during the next reporting period.

3. In addition, between scheduled reporting dates, the grantee(s) shall immediately inform the Washington Office Grant Officer's Technical Representative of significant developments affecting the ability to accomplish the work.

E. Final Report

1. No later than sixty (60) weeks after an award, the grantee(s) shall submit two (2) copies of the draft Final Report, an integrated draft analysis of the process, and results of the technical assistance activities during the year. The WB and the ATELS will provide written comments on the draft Report within twenty (20) working days, if substantive problems are identified. The grantee's response to these comments shall be incorporated into the Final Report.

2. The Final Report shall cover findings, final performance data, outcome results, an assessment of the grant project and any employer or labor organization plans for follow-up of participants.

3. No later than sixty-four (64) weeks after an award, the grantee(s) shall submit:

a. Two (2) copies of the camera-ready Final Report, bound in a professional manner, and not a collection of loose leaf sheets, and

b. An Executive Summary of the findings and recommendations must be included in the Final Report, separately or combined with the Final Report. These materials must be paid for with grant funds.

Part VII. Grant Requirements

A. Administrative Standards and Provisions

Except as specifically provided, DOL acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must require that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

The grant awarded under this SGA shall be subject to the following administrative standards and provisions:

29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements.

29 CFR Part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.

B. Allowable Costs

The WB shall determine what constitutes allowable costs in accordance with the following applicable Federal cost principles:

a. State and Local Government—OMB Circular A–87

b. Educational Institutions—OMB Circular A–21

c. Nonprofit Organizations—OMB Circular A–122

d. Profit-making Commercial Firms—48 CFR Part 31

Part VIII. Paperwork Reduction Act Notice (Pub. L. 104–13)

This collection of information is approved under the Office of Management and Budget (OMB) control number 1225–0080, which expires 10/31/02. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated to average six (6) to twelve (12) hours to complete the grant application; two (2) to five (5) hours for quarterly reports; and four (4) to ten (10) hours for the final report. These estimates include the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Women's Bureau, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, to the attention of Diane Faulkner. Please reference OMB control number 1225–0080.

Signed at Washington, DC, this 24th day of July, 2002.

Lawrence J. Kuss,

Grant Officer.

Appendix

1. Standard Form 424: Application for Federal Assistance
2. Standard Form 424A: Budget Information—Non-Construction Programs
3. Standard Form 424B: Assurances—Non-Construction Programs

BILLING CODE 4510–23–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** If "Yes," attach an explanation. ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6ă-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges
23. Remarks:	

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

[FR Doc. 02–19345 Filed 7–31–02; 8:45 am]
BILLING CODE 4510–23–C

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. True Line, Inc.

[Docket No. M–2002–051–C]

True Line, Inc., P.O. Box 85, Thorpe, West Virginia 24888 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Mine No. 1 (I.D. No. 46–08048) located in McDowell County, West Virginia. The petitioner requests a modification of the standard to permit travel to examine its No. 1 entry of the return air course, except for 180 feet, due to deteriorating roof conditions. The petitioner asserts that traveling the affected area would be unsafe. The petitioner states that the affected area would be dangered off and breaker posts would be set to prohibit travel, a monitoring point would be established at the inby and outby end of the untraveled area and a date board installed, and air quality and quantity would be examined at each monitoring point on a weekly basis and the results recorded in the appropriate book. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Titan Mining, Inc.

[Docket No. M–2002–052–C]

Titan Mining, Inc., P.O. Box 276, Eskdale, West Virginia 25075–0276 has filed a petition to modify the application of 30 CFR 75.1103 (Automatic fire warning devices) to its Laurel Fork Deep Mine (I.D. No. 46–08836) located in Kanawha County, West Virginia. The petitioner requests a modification of the existing standard to permit a carbon monoxide detection system to be installed in belt entries to identify a sensor location in lieu of identifying each belt flight. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries. The petitioner has outlined specific procedures in this petition that would be used when implementing this proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Perry County Coal Corp.

[Docket No. M–2002–053–C]

Perry County Coal Corp., 1845 S. KY Hwy 15, Hazard, Kentucky 41701 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its HZ4–1 Mine (I.D. No. 15–02085) located in Perry County, Kentucky. The petitioner proposes to relocate approved checks points 9A and 9B in the intake of the Southeast Mains one break outby the No. 9 entry of the Roll Mains, and establish one new check point (examination point) 10A in the return of the Southeast Mains in the No. 1 Entry located at the 44 Seals, six breaks inby the No. 1 Head Drive. The petitioner states that air measurement stations will be established at locations that would allow effective evaluation of ventilation in the affected areas and that these stations would be checked on a weekly basis by a certified person. The petitioner states that roof and rib conditions in the affected areas of the mine have deteriorated and expose mine personnel to hazardous conditions. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Titan Mining, Inc.

[Docket No. M–2002–054–C]

Titan Mining, Inc., P.O. Box 276, Eskdale, West Virginia 25075–0276 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Laurel Fork Deep Mine (I.D. No. 46–08836) located in Kanawha County, West Virginia. The petitioner proposes to use a threaded ring and a spring-loaded device instead of a padlock on battery plug connectors to prevent the plug connector from accidently disengaging while under load. The petitioner states that a warning tag that states "Do Not Disengage Under Load", will be installed on all battery plug connectors and that instructions on the safe practices and provisions will be provided to all persons who operate or maintain the battery-powered machines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Lone Mountain Processing, Inc.

[Docket No. M–2002–055–C]

Lone Mountain Processing, Inc., Drawer C, St. Charles, Virginia 24282 has filed a petition to modify the application of 30 CFR 75.701 (Grounding metallic frames, casings, and other enclosures of electric equipment) to its Darby Fork Mine (I.D. No. 15–02263) and Huff Creek Mine (I.D. No. 15–17234) located in Harlan County, Kentucky. The petitioner proposes to use a 480-volt, three-phase, 300KW/375KVA diesel powered generator (DPG) set to supply power to a three-phase wye connected 300 KVA autotransformer and three-phase 480-volt and 995-volt power circuits. The petitioner states that the diesel powered generator with an approved diesel drive engine would only be used to move equipment in, out, and around the mine and to perform miner activities in the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Highland Mining Company

[Docket No. M–2002–056–C]

Highland Mining Company, P.O. Box 569, Morganfield, Kentucky 42437 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its Highland 9 Mine (I.D. No. 15–02709) located in Union County, Kentucky. The petitioner requests a modification of the standard to permit the use of air from the belt haulage entries to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Highland Mining Company

[Docket No. M–2002–057–C]

Highland Mining Company, P.O. Box 569, Morganfield, Kentucky has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its Highland 11 Mine (I.D. No. 15–18480) located in Union County, Kentucky. The petitioner requests a modification of the standard to permit the use of air from the belt haulage entries to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed

alternative method would provide at least the same measure of protection as the existing standard.

8. AEP Kentucky Coal

[Docket No. M–2002–058–C]

AEP Kentucky Coal, LLC, BB & T Square, 300 Summers Street, Suite 1380, P.O. Box 2549, Charleston, West Virginia 25329–2549 has filed a petition to modify the application of 30 CFR 77.1607(u) (Loading and haulage equipment; operation) to its Three Mile Mine (I.D. No.15–17659), Road Creek Mine (I.D. No. 15–17008), Rob Fork Processing (I.D. No. 15–14468), Millard Processing (I.D. No. 15–06733), Elkhorn Loading Facility (I.D. No. 15–16270), Schoolhouse #1 (I.D. No. 15–18528) all located in Pike County, Kentucky; Beverly Ann Tipple (I.D. No. 15–11870) located in Floyd County, Kentucky; Pettys Fork Mine #1 (I.D. No.15–17742) located in Pike County, Kentucky; and Big Branch Mine (I.D. No. 15–17834) located in Magoffin County, Kentucky. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Consol of Kentucky, Inc.

[Docket No. M–2002–059–C]

Consol of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 (Water sprinkler systems; arrangement of sprinklers) to its Beaver Gap E–3 Mine (I.D. No. 15–18505) located in Knott County, Kentucky. The petitioner proposes to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, located to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt, with actuation temperatures between 200 and 230 degrees Farenheit, and with water pressure equal to or greater than 10 psi. The petitioner states that the automatic sprinklers will be located not more than 10 feet apart, so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. Highland Mining Company

[Docket No. M–2002–060–C]

Highland Mining Company, 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (Weekly examination) to its Highland 9 Mine (I.D. No. 15–02709) located in Union County, Kentucky. Due to hazardous roof conditions of the seals at the mouth of the 3rd Panel West of the 1st Submain North of the intake air course entries, the petitioner proposes to establish evaluation points to monitor methane and oxygen concentrations. The petitioner states that a certified person will examine the affected area on a weekly basis and record the results of the examinations in a record book maintained on the surface of the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "*comments@msha.gov*," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before September 3, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 23rd day of July 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–19396 Filed 7–31–02; 8:45 am]

BILLING CODE 4510–43–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of an Expiring Information Collection: Establishment Information Form, Wage Data Collection Form, Wage Data Collection Continuation Form DD 1918, DD 1919, AND DD 1919C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted to the Office of Management and Budget a request for clearance of an information collection. The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are wage survey forms developed by OPM for use by the Department of Defense to establish prevailing wage rates for Federal Wage System employees. OPM issued a proposed collection notice for public comment on May 6, 2002 (FR 30404). We received one comment from an employee organization that was supportive of the need to continue this information collection.

The Department of Defense contacts approximately 21,200 businesses annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and the Federal Government. Each survey collection requires 1–4 hours of respondent burden, resulting in a total yearly burden of approximately 75,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251, or e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal must be received within 30 calendar days after the date of this publication.

ADDRESSES: Send or deliver written comments to:

Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–8200

and

Stuart Shapiro, OPM Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mark A. Allen, Salary and Wage Systems Division, Office of Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, (202) 606–2848.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–19457 Filed 7–31–02; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised and Expiring Information Collection: OPM–1386B

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised and expiring information collection. OPM–1386B, Applicant Race and National Origin Questionnaire, is used to gather information concerning the race and national origin of applicants for employment under the Outstanding Scholar provision of the *Luevano* Consent Decree, 93 F.R.D. 68 (1981).

During the sixty-day comment period, OPM did not receive any comments.

Approximately 100,000 OPM–1386B forms are completed annually. The 60-day **Federal Register** Notice reported an incorrect response time of 8 minutes. The correct estimated response time is 5 minutes with an annual public burden of 8,333 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey at FAX 202-418–3251, or E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Suzy M. Barker, Director, Examining & Qualifications Policy Division, Employment Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 6500, Washington, DC 20415,

and

Stuart Shapiro, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–19461 Filed 7–31–02; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Request for Comments on Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Disseminated Information

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In conformance with the Office of Management and Budget (OMB) guidelines (*Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies* **Federal Register** Volume 66, No.189 at 49718, updated in Volume 67, No. 36 at 8452), the Office of Personnel Management (OPM) is seeking comments on OPM's draft Information Quality Guidelines. These draft guidelines are published on OPM's website at *http://www.opm.gov*. These draft Information Quality Guidelines describe OPM's pre-dissemination information quality control procedures and an administrative mechanism for requests for correction of information publicly disseminated by OPM.

DATES: Comments are due on or before August 21, 2002.

ADDRESSES: Submit comments in writing to: Chief Information Officer, 1900 E Street, NW., Washington, DC, 20415–7900. Comments may also be sent by fax at (202–418–3251) or may be e-mailed to "*informationquality@opm.gov*."

FOR FURTHER INFORMATION CONTACT: Robert Huley, Assistant Chief Information Officer, 1900 E Street, NW., Washington, DC 20415–7900. Telephone 202–606–2150 or by e-mail to *rmhuley@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM's guidelines are drafted in accordance with *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies* (hereafter, Governmentwide Guidelines) published by OMB in the **Federal Register** in Volume 66, No. 189 at 49718 on Friday, September 28, 2001, updated in Volume 67, No. 2 at 369 on Thursday, January 3, 2002, and corrected in Volume 67, No. 36 at 8452 on February 22, 2002. The OMB guidelines were issued pursuant to Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554), which directed OMB to issue Governmentwide guidelines providing guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information, including statistical information, disseminated by Federal agencies. In accordance with these provisions, each Federal agency is obligated to:

1. Issue its own information quality guidelines ensuring and maximizing the quality, objectivity, utility and integrity of information, including statistical information, disseminated by the agency no later than October 1, 2002;

2. Establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the agency or OMB guidelines; and

3. Report annually to the Director, OMB, beginning January 1, 2004, the number and nature of complaints received by the agency regarding agency compliance with the OMB guidelines concerning the quality, objectivity, utility and integrity of information and how such complaints were resolved.

Consistent with the Governmentwide Guidelines, OPM's draft guidelines rely on its existing practices, to the extent they are consistent with the recently published guidelines, while adopting a new administrative mechanism to satisfy the new procedural requirements. OPM's guidelines reflect its internal procedures for reviewing and substantiating information to maximize quality, including the objectivity, utility and integrity of information, before it is disseminated. The administrative mechanism allows affected persons to seek and obtain, where appropriate, correction of information disseminated by OPM that does not comply with the OPM guidelines or with the Governmentwide Guidelines. OPM's draft guidelines are available for review on OPM's web site at *http://www.opm.gov*.

OPM now seeks public comments on the draft guidelines covering pre-dissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by OPM. The comments received by OPM will become a matter of public record. Revised OPM guidelines will be available on OPM's website. Notice of the availability of the final guidelines will be published in the **Federal Register** on or before October 1, 2002. OPM's guidelines may be revised periodically to address the needs of OPM and concerns expressed by the public.

Office of Personnel Management.
Kay Coles James,
Director.
[FR Doc. 02–19458 Filed 7–31–02; 8:45 am]
BILLING CODE 6325–47–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25685]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 26, 2002.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July, 2002. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 20, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Freedom Mutual Fund [File No. 811–3126]

Freedom Group of Tax Exempt Funds [File No. 811–3519]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On March 8, 2002, each applicant transferred its assets to corresponding series of Great Hall Investment Funds, Inc. and/or Money Market Obligations Trust, based on net asset value. Expenses of approximately $88,223 and $52,276, respectively, incurred in connection with the reorganizations were paid by Voyageur Asset Management, Inc., investment adviser to the acquired funds and the acquiring funds.

Filing Dates: The applications were filed on June 4, 2002, and amended on July 19, 2002.

Applicants' Address: One Beacon St., Boston, MA 02108.

Pioneer Global Consumers Fund [File No. 811–10457]

Pioneer Global Industrials Fund [File No. 811–10459]

Pioneer Global Energy & Utilities Fund [File No. 811–10461]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On June 17, 2002, each applicant made a liquidating distribution to Pioneer Funds Distributor, Inc., each applicant's sole shareholder, based on net asset value. Expenses of $1,000 were incurred in connection with each of the liquidations and were paid by Pioneer Investment Management, Inc., investment adviser to each applicant.

Filing Date: The applications were filed on July 2, 2002.

Applicants' Address: 60 State St., Boston, MA 02109.

Midas Investors Ltd. [File No. 811–835]

Midas U.S. and Overseas Fund Ltd. [File No. 811–4741]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On November 16, 2001, applicants transferred their assets to Midas Fund, Inc. and Midas Special Equities Fund, Inc., respectively, based on net asset value. Expenses of $35,090 and $25,818, respectively, incurred in connection with the reorganizations were paid by each applicant.

Filing Dates: The applications were filed on April 9, 2002, and amended on July 10, 2002.

Applicants' Address: 11 Hanover Sq., New York, NY 10005.

Dow Jones Islamic Market Index Portfolio [File No. 811–9569]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On June 28, 2002, applicant made a liquidating distribution to its remaining feeder fund based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on June 7, 2002, and amended on July 10, 2002.

Applicant's Address: 63 Wall St., New York, NY 10005.

BBH Global Equity Portfolio [File No. 811–9991]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 16, 2002, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on June 7, 2002, and amended on July 10, 2002.

Applicant's Address: 63 Wall St., New York, NY 10005.

Merrill Lynch High Income Municipal Bond Fund, Inc. [File No. 811–6156]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 19, 2001, applicant transferred its assets to MuniAssets Fund, Inc., based on net asset value. Expenses of $176,078 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Dates: The application was filed on June 17, 2002, and amended on July 2, 2002.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–19391 Filed 7–31–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46266; File No. SR–CBOE–2002–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees

July 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 24, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make certain changes to its fee schedule and to Exchange Rule 2.22, entitled "Other Fees or Charges."

The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to make certain fee additions and changes, as well as to renew and amend the Exchange's Prospective Fee Reduction Program. The CBOE represents that the proposed changes are the product of the Exchange's annual budget review. The CBOE also represents that the fee changes were approved by the Exchange Board of Directors pursuant to CBOE Rule 2.22 and will take effect on July 1, 2002.

The Exchange is amending the following fees. (1) The annual and transfer Registration fees for Registered Representatives, Registered Options Principals, and Financial/Operations Principals will be increased from $50 to $55. A new $30 fee for terminations of the registrations of such individuals will also be instituted. The Exchange represents that this fee is comparable to one already imposed by the American Stock Exchange LLC ("Amex").[4] The Exchange proposes to amend Rule 2.22(b) to reflect the changes in these fees, which will help offset the cost of increased regulatory efforts by the Exchange. (2) Monthly member dues will increase from $208.33 to $250, to help fairly distribute the Exchange's increased costs across all members. (3) The current Index Customer Large Trade Discount Program will be eliminated. (4) The Floor Brokerage Fee will increase from $0.03 to $0.04 per contract. The Exchange represents that this fee has not been changed since its inception in 1974, and the current waiver of this fee for customer transactions in equity and QQQ options will continue. (5) The Firm Facilitation Transaction Fee, which is applied to orders in which a firm accommodates its customer by taking the other side of an options transaction, will increase from $0.10 to $0.15 per contract. The Exchange represents that the increased fee will still be $0.04 less per contract than the regular firm transaction rate. (6) The transaction fee for Broker-Dealer transactions in equities and QQQ options will increase from $0.19 to $0.20 per contract. (7) The DPM Facilities Fee, which the Exchange charges its Designated Primary Market-Makers ("DPMs") each month for use of Exchange floor trading stations, will increase from $300 to $500 for a standard station, from $600 to $1,000 for a super station, and from $900 to $1,500 for a giant station. The Exchange represents that these fees help offset the Exchange's costs to provide a physical location and technology to the DPMs.

The CBOE represents that the various fee changes contained in this filing are structured to fairly allocate the costs of operating the Exchange.

The Exchange also proposes to amend and renew its Prospective Fee Reduction Program ("Program"). Under the amended Program, if at the end of the second or third quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-to-date basis exceeds one of certain predetermined volume thresholds, the Exchange's market-maker transaction fees will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. The CBOE proposes that the Program begin on January 1, 2003, at the beginning of the Exchange's third fiscal quarter, and continue through the end of the Exchange's 2003 fiscal year, terminating June 30, 2003. The program's potential applicability is being limited to only the third and fourth quarters of the Exchange's fiscal year.

The Exchange represents that the changes to the Program are structured to fairly allocate the costs of operating the Exchange in the event that the Exchange experiences higher volume. In addition, although the proposed rule change provides that the Program will terminate at the end of the Exchange's 2003 fiscal year, the Exchange intends to evaluate the Program prior to the beginning of the 2004 fiscal year and may renew the Program in the same or modified form for the 2004 fiscal year.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with section 6(b) of the Act[5] in general, and furthers the objectives of section 6(b)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change it if appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[3] *See* Letter from Nancy L. Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 23, 2002 ("Amendment No. 1"). In Amendment No. 1, the CBOE deleted the proposed increased transaction fees for non-member market maker transactions for equity, QQQ, and index options.

[4] *See* Securities Exchange Act Release No. 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (File No. SR–Amex–2001–22).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

or in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–37 and should be submitted by August 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19454 Filed 7–31–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46270; File No. SR–NASD–2002–78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Clarifying That Failure to Provide Information to Nasdaq or Making Misrepresentations to Nasdaq May Result in Delisting From Nasdaq

July 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 11, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq submitted Amendment No. 1 to the proposed rule change on July 12, 2002.[3] Nasdaq filed the proposed rule change, as amended, pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(1) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend Nasdaq Rule 4330(c) to clarify that issuers may be delisted for failing to provide information to Nasdaq or for making material misrepresentations to Nasdaq. The text of the proposed rule change is below; proposed new language is italicized:

* * * * *

Rule 4330. Suspension or Termination of Inclusion of a Security and Exceptions to Inclusion Criteria.

(a)–(b) No change

(c) Nasdaq may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial or continued inclusion, including, but not limited to, any material provided to or received from the Commission or other appropriate regulatory authority. Information requested pursuant to this subparagraph shall be submitted within a reasonable period. *An issuer may be delisted if it fails to provide such information. An issuer may also be delisted if any communication to Nasdaq contains a material misrepresentation or omits material information necessary to make the communication to Nasdaq not misleading.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As a result of recent events, Nasdaq has focused on ways to improve the corporate governance of listed companies. After considering these issues, Nasdaq identified several rule changes that could be instituted in the short term and identified these changes in an April 11, 2002, letter to Commission Chairman Harvey Pitt. While not specifically referenced in the letter to Chairman Pitt, Nasdaq also proposes certain other changes to strengthen corporate governance standards. Specifically, Nasdaq proposes to clarify that an issuer can be delisted for misrepresenting material information to Nasdaq. NASD rules do not explicitly state that an issuer that makes a material misrepresentation to Nasdaq, omits necessary material information in a communication with Nasdaq, or otherwise fails to provide requested material information, may be delisted. While Nasdaq believes that existing rules allow for delisting in these situations, Nasdaq proposes to modify the rules to clarify this.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b) of the Act,[6] in general, and furthers the objectives of section 15A(b)(6),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market

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[9] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on July 24, 2002, the date the Exchange filed Amendment No. 1.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This notice, representing Amendment No. 1, replaces the original filing in its entirety. In Amendment No. 1, the Exchange designated the proposed rule change as one that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule pursuant to Rule 19b–4(f)(1) under the Act. 17 CFR 240.19b–4(f)(1). *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 11, 2002 ("Amendment No. 1").

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(1).

[6] 15 U.S.C. 78*o*–3(b).

[7] 15 U.S.C. 78*o*–3(b)(6).

and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, the rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[8] and Rule 19b–4(f)(1) thereunder.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments; all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–78 should be submitted by August 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19455 Filed 7–31–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

[10] The proposed rule change became effective on July 12, 2002, the date on which Amendment No. 1 was filed and, therefore, the 60 day abrogation period began on July 12, 2002.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46260; File No. SR–NASD–2002–67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to the Elimination of References to the Term "Agency Quote" From the Rules of the Nasdaq National Market Execution System and the Nasdaq Order Display Facility

July 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 12, 2002, Nasdaq filed Amendment No. 1 to the proposal.[3] On July 24, 2002, Nasdaq filed Amendment No. 2 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to eliminate all references to the term "agency quote" that are contained in the Nasdaq National Market Execution System and Nasdaq Order Display Facility (collectively "SuperMontage"). The text of the proposed rule change, as amended, is available at the Office of the Secretary, Nasdaq, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to eliminate all references to the term "agency quote" that are contained in the SuperMontage. On February 3, 1999, Nasdaq filed SR–NASD–99–09, in which Nasdaq proposed to implement a system to allow market makers to display customer limit orders under a separate market participant identifier.[5] Colloquially known as the Agency Quote proposal, the Commission published the proposal for comment on March 2, 1999.

Separately, on October 1, 1999, Nasdaq filed to amend the Nasdaq National Market Execution System rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 11, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made corrections to its proposed rule text which replaced the rule text in the original filing entirely and added a footnote in its discussion to clarify that this filing would remove language from Nasdaq rules referring to the "agency quote" concept that contemplated allowing market participants to represent agency trading interest via a quotation separate from that used for their proprietary trading. The rules retain, where appropriate, references to the term "agency" when used as a description of the capacity in which a market participant is acting on behalf of a customer order.

[4] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated July 24, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq made corrections to its proposed rule text in NASD Rule 4701 and 4710. For purposes of calculating the 60-day abrogation period and the 30-day operative date, the Commission considers the period to have commenced on July 24, 2002, the date Nasdaq filed Amendment No. 2.

[5] *See* Securities Exchange Act Release No. 41128 (March 2, 1999), 64 FR 12198 (March 11, 1999).

to establish the SuperMontage.[6] The proposed SuperMontage rules contained reference to the concept of Agency Quote, as rule filing SR–NASD–99–09 was pending before the Commission at the time Nasdaq filed the SuperMontage proposal. Among other things, the SuperMontage proposed to establish a mechanism for market participants to display customer limit orders under a separate Nasdaq market maker ID ("MMID"). On January 19, 2001, the Commission approved the SuperMontage proposal, and the related rules that contained references to the still-pending Agency Quote proposal.[7] On December 31, 2001, Nasdaq withdrew the Agency Quote proposal as the SuperMontage provided equivalent functionality as an Agency Quote.[8] The purpose of this rule filing is to eliminate all references to the concept of "Agency Quote" in the approved SuperMontage rules.

2. Statutory Basis

Nasdaq believes the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act[9] in general, and with Section 15A(b)(6) of the Act[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received any written comments with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The proposed rule change, as amended, has therefore become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of this proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–67 and should be submitted by August 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19456 Filed 7–31–02; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Securities Exchange Act Release No. 42166 (November 22, 1999), 64 FR 68125 (December 6, 1999).

[7] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[8] Nasdaq allows for market makers to submit multiple quotes/orders and, therefore, a separate agency quote is unnecessary. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Cyndi Nguyen, Attorney, Division, Commission, on July 19, 2002

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). Nasdaq has requested and the Commission has waived the usual five-day pre-filing notice requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46265; File No. SR–OCC–2002–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Fixing Settlement Prices in the Event of Market Disruptions

July 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 17, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Article XII, Section 5 (relating to futures which include security futures) and Article XVII, Section 4 of OCC's by-laws (relating to index options) to provide OCC with the ability in the event of market disruptions to conform settlement prices for OCC-cleared security futures and index options to settlement prices that are used for related products (*e.g.*, futures on the same index) not cleared by OCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of the proposed rule change is to ensure that OCC will have the ability in case of market disruptions to conform settlement prices for OCC-cleared security futures and index options, where appropriate, to settlement prices that are used for related products such as other futures on the same security or index traded in other markets and not cleared by OCC. The proposed rule change would primarily affect the fixing of exercise settlement amounts for expiring options as well as final settlement prices for maturing futures contracts.[3] OCC does not anticipate any substantive change in its present policy with respect to fixing settlement prices for index options that are exercised prior to expiration.[4]

In the event of an interruption in the markets for an underlying security or one or more component securities in an underlying index, OCC needs to have discretion to act to set final settlement values in a manner that avoids inconsistencies between the futures and options markets and among futures markets.[5] Investors may employ hedging and other trading strategies that involve holding positions on the same underlying security or index in different contracts. These strategies are based on the expectation that the values of different derivative contracts on the same underlying interest will have a predictable relationship to one another. This expectation may not be met when trading halts or other disruptions in markets for the underlying interests require the derivatives markets to fix settlement prices using prices or values other than those that would normally be used. In such cases, discrepancies in settlement prices can occur unless prices for derivative products traded in different markets are fixed using a common method. Unless such coordination occurs, investors with positions in options and futures that were intended to hedge one another may find that the positions do not produce the anticipated offset.

In the spring of 2000, OCC attempted to solve the problem of a potential disconnect between the options and futures markets in setting final index contract settlement prices by conforming its rules more closely to the rules of the Chicago Mercantile Exchange ("CME") as then in effect.[6] OCC's rule change, SR–OCC–00–01, broadened the circumstances under which OCC could fix a settlement price for expiring index options to include situations where market disruptions affected one or more securities in an index (as opposed to "securities representing a substantial portion of the value of an index") and added a paragraph relating solely to expiring options specifically permitting OCC to fix settlement prices based on the next opening prices for one or more component stocks.[7]

Effective December 1, 2001, CME changed its rules governing its method of fixing final settlement prices for each of its index futures products under certain circumstances. CME's newly amended rules provide that if the primary market for a component stock opens for trading on the day scheduled for determination of a final settlement price but the component stock does not trade while the market is open, the price of the component stock for purposes of calculating the final settlement price will be based on the last sale price of the stock unless CME's president or his delegate determines that there is a reasonable likelihood that trading in the component stock will occur shortly. In that case, for purposes of determining the final settlement price, the price of the component stock may be based on the opening price of the component stock on the next day the component stock is traded on its primary market.[8]

OCC's rules do not authorize OCC to fix a settlement price based on a stock's next opening price in situations where the stock's primary market is open but the stock does not open or remain open for trading. SR–OCC–00–01 authorized the use of opening values only in cases where a stock's primary market did not open or remain open for trading at or before the time when the exercise settlement amount would ordinarily be determined. As a result, OCC is again faced with a potential disconnect between its rules and CME's rules.

The most fundamental aspect of SR–OCC–00–01 is that for the first time OCC was allowed to fix a settlement value based on prices that occurred after an expiration and to treat options that were in the money based upon that subsequently determined price as having been exercised on the expiration date. The proposed rule change would make more explicit the scope of OCC's ability to invoke that authority and the discretion that the extent to which OCC or an adjustment panel (in the case of options) can fix final settlement prices and exercise settlement amounts.[9] The proposed rule change would make clear that OCC may follow CME's current rule and may use either the latest closing prices for individual stocks that fail to trade or use opening prices for the next day on which the stock trades.

The authority to fix final settlement prices for futures and exercise settlement amounts for options in unusual market conditions should be sufficiently broad to ensure that the authority will exist to conform such settlement values to the settlement values established for related products traded in other markets whenever that result is deemed on balance to be in the

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[2] The Commission has modified parts of these statements.

[3] These would include single stock futures and narrow-based index futures as well as broad-based index futures subject to the exclusive jurisdiction of the Commodity Futures Trading Commission.

[4] That general policy would be restated in proposed Interpretation .02 to Section 4 of Article XVII of OCC's by-laws.

[5] This rule change would affect the fixing of final settlement prices for futures contracts and exercise settlement amounts for options. However, in the case of options exercised other than at expiration, coordination with other markets is ordinarily not a significant factor because either there is no concurrent final settlement in related futures markets or in any case an investor need not exercise the option.

[6] For example, CME Rule 2003. A, which governs the method for determining the final settlement price for Standard & Poor's 500 Stock Index Futures, provided (at that time) as follows;

If the primary market for a component stock in the index does not open on the day scheduled for determination of the Final Settlement Price, then the price of that stock shall be determined, for the purposes of calculating the Final Settlement Price, based on the opening price of that stock on the next day that its primary market is open for trading.

If a component stock in the index does not trade on the day scheduled for determination of the Final Settlement Price while the primary market for that stock is open for trading, the price of that stock shall be determined, for the purposes of calculating the Final Settlement Price, based on the last sale price of that stock.

[7] Securities Exchzange Act Release No. 42769 (May 9, 2000), 65 FR 31036 (May 15, 2000) [SR–OCC–00–01]

[8] CME added the following underlined language to CME Rule 2003.A:

If a component stock in the index does not trade on the day scheduled for determination of the Final Settlement Price while the primary market for that stock is open for trading, the price of that stock shall be determined, for the purposes of calculating the Final Settlement Price, based on the last sale price of that stock. *However, if the President of the Exchange or his delegate determines that there is a reasonable likelihood that trading in the stock shall occur shortly, the President or his delegate may instruct that the price of stock shall be based, for the purposes of calculating the Final Settlement Price, on the opening price of the stock on the next day that it is traded on its primary market. Factors to be considered in determining whether trading in the stock is likely to occur shortly shall include the nature of the event and recent liquidity levels in the affected stock.*

[9] A supplement to the Options Disclosure Document that describes the substance of the by-law changes proposed herein has been prepared. It will be filed with the Commission once the options exchanges have reviewed it.

best interests of investors. Experience has shown that this authority must be stated somewhat broadly so that if in the future CME or other related markets amend the circumstances in which they can fix settlement values or the means by which they use to fix those values, OCC would not need to amend its rules further to conform. Because CME and other markets often do not coordinate with OCC when they change their rules governing the fixing of settlement values, OCC may not be able to conform its rules to amendments made by other markets quickly enough to avoid a disconnect between the futures and options markets. The proposed change would provide OCC with discretion both as to the circumstances in which authority would exist to fix a settlement value and the method by which the settlement value would be fixed.[10]

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five-days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–09 and should be submitted by August 22, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19392 Filed 7–31–02; 8:45 am]

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[10] If OCC decides to fix the exercise settlement amount for an expiring index option, the settlement amount shall be fixed by a panel consisting of two designated representatives of each exchange on which the affected option is open for trading and the Chairman of OCC. The panel shall fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of options of the affected options, the maintenance of a fair and orderly market in such options, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. OCC notes that the coordination of final settlement values is not the only factor that OCC or an adjustment panel could consider in deciding whether and how to fix settlement values. Accordingly, there could be circumstances where settlement values for OCC-cleared products would not be conformed to prices used in other markets, even though the authority would exist to do so.

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4072]

Culturally Significant Objects Imported for Exhibition Determinations: "Against the Modern: Dagnon-Bouveret and the Transformation of the Academic Tradition"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Against the Modern: Dagnon-Bouveret and the Transformation of the Academic Tradition," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Academy of Design Museum, New York, New York, from on or about September 10, 2002, to on or about December 7, 2002, at the Society of the Four Arts, Palm Beach, Florida, from on or about January 3, 2003, to on or about February 9, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: July 19, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–19448 Filed 7–31–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12957]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CATNAP.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 3, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12957. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: CATNAP. Owner: Electronic Commerce Systems Inc.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Gross ton: 22, Net ton: 18, Length 36.4, Beam: 18.2."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Captained charters on a sailing Catamaran for trips anywhere from Maine through Florida Keys, Also training couples with sailing navigation, safety and charters skills. Daytime and evening excursions from calling ports from Maine through Florida."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1998. Place of construction: Whitby Ontario, Comoro Islands, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "My closest neighbor commercial passenger vessels, Allison Rose, and the Sterling, in Port Washington, NY, my current area, take up to 200 guests for large events, such as Weddings, Corporate Parties etc. They do not train couples in sailing and chartering skills, and they do not take passengers for weekly vacations. They are almost no catamarans north of the Chesapeake Bay."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Although not built in the USA, all repairs, replacement equipment and, new add-ons, on CATNAP are made strictly in the USA. Also I purchased this boat used in 2000, in the USA, and there are just a handful of US catamaran builders, and reasonable used models are impossible to find. By introducing more couples to catamaran chartering, I will fuel a larger market for US catamaran builders."

Dated: July 26, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19378 Filed 7–31–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12956]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DOLPHIN.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 3, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12956. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An

electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: DOLPHIN. Owner: Adventures in Paradise, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: "70.4 ft., 79 Gross Tons, 59 Net Tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Planned operation of the vessel is as a luxury charter boat in Florida and the Caribbean in the winter, and New England from New York to Maine in the summer. As a member of the American Sail Training Association, it is expected that the boat will also be used for sail training programs for young adults and daysailing trips for disabled people, the blind and cancer patients through the Atlantic Challenger Foundation and the Maritime Challenge Foundation, both based in Rockland, Maine."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction and Place of construction: "Built at the German Naval Shipyards in Swinemunde, Germany in 1943. Rebuilt in England in 1962 and currently undergoing an extensive rebuild in Norwalk, Connecticut."

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "There are very few operators of vessels even remotely similar which are large historic wooden schooners fitted out for luxury charters. Most other boats in this type of service are new and either fiberglass, aluminum or steel. Most of the luxury charter business is on modern powerboats and the portion which are on sailboats are on large steel or aluminum hulls which sail almost exclusively in the Mediterranean and Caribbean. Most of the very few historic old wooden sailing vessels are used exclusively for sail training and education and/or for day cruises out of one harbor."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "U.S. Shipyards are not building wooden boats of this type. Even modern steel or aluminum sailing vessels of this size are being built exclusively in other countries. The restoration, rebuilding, refit, repair and maintenance of this vessel will provide substantial work for U.S. Shipyards for many years."

Dated: July 26, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19379 Filed 7–31–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12952]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel KU'U KAUNU.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 3, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12952. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 10 –383 provides authority to the Secreta of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: KU'U KAUNU. Owner: Steven D. Renz.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Length: 49', breath: 13.2, depth: 9'. The tonnage are 21 gross and 19 net."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "This vessel will operate for short periods of time with captain, crew, and 12 or less passengers on for gourmet charters out of the Santa Barbara Harbor. The cruises will range from 2-hour harbor/coastal cruises with appetizers to weeklong adventure trips to the Channel Islands with three freshly prepared gourmet meal per day. There will be occasional trips Pt. Conception and San Diego and out to Catalina Island."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1983. Place of construction: Ta Chaio Boatyard in Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The impact will be negligible as we will address the charter needs of smaller groups than most of the vessels in our area. Most of the commercial passenger vessels have capacities of 50 to 500 passengers."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "There is no negative impact on our U.S. shipyards and we anticipate that all of the repair work to this vessel will be done in U.S. shipyards. A majority of the components, including engines, generators, navigation equipment, propellers, running gear, etc. are all U.S. built."

Dated: July 26, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19382 Filed 7–31–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12953]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LOLA.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 3, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12953. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: LOLA. Owner: Lola Marine Ltd.

(2) Size, capacity and tonnage of vessel. According to the applicant: "LOA: 87, LOD: 78, W: 18.4, Tonnage: Gross-74, Net-68, Passenger Capacity-6/7, Crew-3/4."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "This vessel is for the personal use of my family and friends, and limited charter, and has typically cruised the entire East coast of the U.S., From Maine to the Gulf of Mexico."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1984, rebuild: 1997, 1999. Place of construction: Kaohsiung, Taiwan; Portsmouth, RI.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I anticipate negligible impact on other commercial passenger operations as LOLA is already engaged in limited charter on a demise basis, and generally caters to a small client base, almost all of who are repeat customers."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "As was indicated in the construction section, LOLA has already had extensive initial construction and rebuild work completed at U.S. shipyards. I have no doubt that the expenditures at U.S. shipyards have greatly exceeded the cost of the original hull construction in Taiwan. In the event that the granting of this waiver did increase the charter utilization, it could only increase the value of work to be performed at U.S. shipyards due to increased wear and tear."

Dated: July 26,2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19381 Filed 7–31–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12955]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel NETWORKER.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 3, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12955. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: NETWORKER. Owner: Steven R. Stanfield/Janet S. Valenty.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Gross Tonnage: 37, Net Tonnage: 30, Length 44.3 ft, Breadth: 15.8 ft, Depth: 8.0 ft."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The vessel will be used for sportfishing charters carrying no more than 6 (six) passengers. It will be operated on a full-time basis out of DANA Wharf Sportfishing in Dana Point, California. The intended geographic region of operation is within 100 nautical miles of the coast from Point Conception, CA to the US/ Mexico border."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1997. Place of construction: Tao Yuan Taiwan, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "To the best of my knowledge there are over 100 six-pak sportfishing charter boats operating in this geographic region. (The term "Six-pak" describes uninspected vessels carrying six or less passengers.) They carry passengers to various near shore locations for rod and reel fishing of bass, barracuda, rockfish, shark and other coastal species. Some take sport fishermen out to various offshore locations for tuna, billfish, and other offshore species. The majority of these boats operate on a part-time basis doing little or no advertising and very limited numbers of charters. Of these there are 22 boats which are operated full-time and advertised in the South Coast Sportfishing Charter Boat Directory. Of these 22, most are independent owner/operators of only one vessel, however two operators own two vessels each. I believe the granting of this waiver will have very little or no impact on the existing operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "I believe the granting of this waiver will have no impact of U.S. shipyards."

Dated: July 26, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19380 Filed 7–31–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34133]

S.D. Warren Company d/b/a Sappi Fine Paper North America—Acquisition and Operation Exemption—Maine Central Railroad Company and the Springfield Terminal Railway Company

On July 3, 2002, the S.D. Warren Company d.b.a. Sappi Fine Papers North America (Sappi), a non-carrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Maine Central Railroad Company and the Springfield Terminal Railway Company (collectively, Guilford) certain joint operating rights over a portion of the Guildford main line of railroad between milepost 8.55 and milepost 9.80 (line) in Skowhegan, ME, a distance of approximately 1.25 miles.

In its verified notice, Sappi states that its use of the line will be limited to movement of its own traffic and that its agreement with Guilford does not give it the right or the obligation to conduct common carrier operations on the line. Sappi has therefore filed a motion to dismiss the notice. The motion will be addressed by the Board in a subsequent decision.

Sappi also states that, while it has already executed an agreement with Guilford, it will not consummate this transaction until this notice becomes effective or is dismissed.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34133, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Briana K. O'Regan, Sappi Fine Paper North America, 225 Franklin Street, Boston, MA 02110.

Decided: July 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–19309 Filed 7–31–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 26, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 3, 2002, to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0071.

Form Number: Customs Form 26.

Type of Review: Extension.

Title: Report of Diversion.

Description: Customs uses the Customs Form 26 to track vessels traveling coastwise from U.S. ports to other U.S. ports when a change occurs in scheduled itineraries. This is required for the continuity of vessel manifest information.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 1,400.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 233 hours.

OMB Number: 1515–0076.

Form Number: Customs Forms 3124 and 3124E.

Type of Review: Revision.

Title: Customhouse Broker's License/ Permit.

Description: The license permit application is used by individuals, corporations, partnerships or associations applying for initial licensing in one Customs district, or in applying for a permit in an additional Customs district, or applying for a National Permit after receiving prior licensing.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 3,800.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,800 hours.

OMB Number: 1515–0138.

Form Number: None.

Type of Review: Extension.

Title: Permit to Transfer Containers to a Container Station.

Description: This collection is needed in order for a container station operator to receive a permit to transfer a container or containers to a container station, he/she must furnish a list of names, addresses, etc., or the persons employed by them upon demand by Customs.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 350.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 466 hours.

OMB Number: 1515–0218.

Form Number: None.

Type of Review: Extension.

Title: Automated Clearinghouse Credit.

Description: The information is to be used by Customs to send information to the company (such as revised format requirements) and to contact participating companies if there is a payment problem.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 65.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 232 hours.

Clearance Officer: Tracey Denning, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, DC 20229, (202) 927–1429.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–19444 Filed 7–31–02; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Thursday,
August 1, 2002

Part II

Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Part 405, et al.

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2003 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412, 413, and 485

[CMS–1203–F]

RIN 0938–AL23

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2003 Rates

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare acute care hospital inpatient prospective payment systems for operating and capital costs to implement changes arising from our continuing experience with these systems. In addition, in the Addendum to this final rule, we describe the changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes are applicable to discharges occurring on or after October 1, 2002. We also are setting forth rate-of-increase limits as well as policy changes for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment systems.

In addition, we are setting forth changes to other hospital payment policies, which include policies governing: Payments to hospitals for the direct and indirect costs of graduate medical education; pass-through payments for the services of nonphysician anesthetists in some rural hospitals; clinical requirements for swing-bed services in critical access hospitals (CAHs); and requirements and responsibilities related to provider-based entities.

DATES: The provisions of this final rule are effective on October 1, 2002. This rule is a major rule as defined in 5 U.S.C. 804(2). Pursuant to 5 U.S.C. 801(a)(1)(A), we are submitting a report to Congress on this rule on August 1, 2002.

FOR FURTHER INFORMATION CONTACT:

Stephen Phillips, (410) 786–4548, Operating Prospective Payments, Diagnosis-Related Groups (DRGs), Wage Index, New Medical Services and Technology, Hospital Geographic Reclassifications, and Postacute Transfer Issues.

Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals, Graduate Medical Education, Provider-Based Entities, Critical Access Hospital (CAH).

Stephen Heffler, (410) 786–1211, Hospital Market Basket Rebasing.

Jeannie Miller, (410) 786–3164, Clinical Standards for CAHs.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

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I. Background

A. Summary

1. Acute Care Hospital Inpatient Prospective Payment System

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

The base payment rate is comprised of an average standardized amount that is divided into a labor-related share and a nonlabor-related share. The labor-related share is adjusted by the wage index applicable to the area where the hospital is located; and if the hospital is located in Alaska or Hawaii, the nonlabor share is adjusted by a cost-of-living adjustment factor. This base payment rate is multiplied by the DRG relative weight.

If the hospital is recognized as serving a disproportionate share of low-income patients, it receives a percentage add-on payment for each case paid through the acute care hospital inpatient prospective payment system. This percentage varies, depending on several factors which include the percentage of low-income patients served. It is applied to the DRG-adjusted base payment rate, plus any outlier payments received.

If the hospital is an approved teaching hospital, it receives a percentage add-on payment for each case paid through the acute care hospital inpatient prospective payment system. This percentage varies, depending on the ratio of residents to beds.

Additional payments may be made for cases that involve new technologies that have been approved for special add-on payments. To qualify, the technologies must be shown to be a substantial clinical improvement over technologies otherwise available and that they would be inadequately paid otherwise (absent the add-on payments) under the regular DRG payment.

The costs incurred by the hospital for a case are evaluated to determine whether the hospital is eligible for an additional payment as an outlier case. This additional payment is designed to protect the hospital from large financial losses due to unusually expensive cases. Any outlier payment due is added to the DRG-adjusted base payment rate.

Although payments to most hospitals under the acute care hospital inpatient prospective payment system are made on the basis of the standardized amounts, some categories of hospitals are paid the higher of a hospital-specific rate based on their costs in a base year (the higher of Federal fiscal year (FY) 1982, FY 1987, or FY 1996) or the prospective payment system rate based on the standardized amount. For example, sole community hospitals (SCHs) are the sole source of care in their areas, and Medicare-dependent, small rural hospitals (MDHs) are a major

source of care for Medicare beneficiaries in their areas. Both of these categories of hospitals are afforded this special payment protection in order to maintain access to services for beneficiaries (although MDHs receive only 50 percent of the difference between the prospective payment system rate and their hospital-specific rates, if the hospital-specific rate is higher than the prospective payment system rate).

The existing regulations governing payments to hospitals under the acute care hospital inpatient prospective payment system are located in 42 CFR Part 412, Subparts A through M.

2. Hospitals and Hospital Units Excluded from the Acute Care Hospital Inpatient Prospective Payment System

Under section 1886(d)(1)(B) of the Act, as amended, certain specialty hospitals and hospital units are excluded from the acute care hospital inpatient prospective payment system. These hospitals and units are: psychiatric hospitals and units; rehabilitation hospitals and units; long-term care hospitals; children's hospitals; and cancer hospitals. Various sections of the Balanced Budget Act of 1997 (Pub. L. 105–33), the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Pub. L. 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554) provide for the implementation of prospective payment systems for rehabilitation hospitals and units, psychiatric hospitals and units, and long-term care hospitals, as discussed below. Children's hospitals and cancer hospitals will continue to be paid on a cost-based reimbursement basis.

The existing regulations governing payments to excluded hospitals and hospital units are located in 42 CFR Parts 412 and 413.

Under section 1886(j) of the Act, as amended, rehabilitation hospitals and units are being transitioned from a blend of reasonable cost-based reimbursement subject to a hospital-specific annual limit under section 1886(b) of the Act and Federal prospective payments for cost reporting periods beginning January 1, 2002 through September 30, 2002, to payment on a fully Federal prospective rate effective for cost reporting periods beginning on or after October 1, 2002 (66 FR 41316, August 7, 2001). The statute also provides that, for cost reporting periods beginning in FY 2003, inpatient rehabilitation facilities that are subject to the blend methodology may elect to receive the full prospective payment instead of a blended payment. The existing regulations governing payment under the inpatient rehabilitation facility prospective payment system (for rehabilitation hospitals and units) are located in 42 CFR Part 412, Subpart P.

Under the broad authority conferred to the Secretary by section 123 of Public Law 106–113 and section 307(b) of Public Law 106–554, we are proposing to transition long-term care hospitals from payments based on reasonable cost-based reimbursement under section 1886(b) of the Act to fully Federal prospective rates during a 5-year period. For cost reporting periods beginning on or after October 1, 2006, we are proposing to pay long-term care hospitals under the fully Federal prospective payment rate. (See the proposed rule issued in the **Federal Register** on March 22, 2002 (67 FR 13416).) Under the proposed rule, during the transition, long-term care hospitals subject to the blend methodology would also be permitted to elect to be paid based on full Federal prospective rates. The final regulations governing payments under the long-term care hospital prospective payment system are under development and will be located in 42 CFR Part 412, Subpart O.

Sections 124(a) and (c) of Public Law 106–113 provide for the development of a per diem prospective payment system for payment for inpatient hospital services furnished by psychiatric hospitals and units under the Medicare program, effective for cost reporting periods beginning on or after October 1, 2002. This system must include an adequate patient classification system that reflects the differences in patient resource use and costs among these hospitals and must maintain budget neutrality. We are in the process of developing a proposed rule, to be followed by a final rule, to implement the prospective payment system for psychiatric hospitals and units.

3. Critical Access Hospitals

Under sections 1814, 1820, and 1834(g) of the Act, payments are made to critical access hospitals (CAHs) (that is, rural hospitals or facilities that meet certain statutory requirements) for inpatient and outpatient services on a reasonable cost basis. Reasonable cost is determined under the provisions of section 1861(v)(1)(A) of the Act and existing regulations under 42 CFR Parts 413 and 415.

4. Payments for Graduate Medical Education

Under section 1886(a)(4) of the Act, costs of approved educational activities are excluded from the operating costs of inpatient hospital services. Hospitals with approved graduate medical education (GME) programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the hospital's number of residents in that period and the hospital's costs per resident in a base year.

The existing regulations governing GME payments are located in 42 CFR Part 413.

B. Summary of the Provisions of the May 9, 2002 Proposed Rule

On May 9, 2002, we published a proposed rule in the **Federal Register** (67 FR 31404) that set forth proposed changes to the Medicare hospital inpatient prospective payment systems for operating costs and for capital-related costs in FY 2003. We also set forth proposed changes relating to payments for GME costs; payments to excluded hospitals and units; policies implementing the Emergency Medical Treatment and Active Labor Act (EMTALA); clinical requirements for swing beds in CAHs; and other hospital payment policy changes. These proposed changes would be effective for discharges occurring on or after October 1, 2002.

The following is a summary of the major changes that we proposed and the issues we addressed in the May 9, 2002 proposed rule:

1. Changes to the DRG Reclassifications and Recalibrations of Relative Weights

As required by section 1886(d)(4)(C) of the Act, we proposed annual adjustments to the DRG classifications and relative weights. Based on analyses of Medicare claims data, we proposed to establish a number of new DRGs and to make changes to the designation of diagnosis and procedure codes under other existing DRGs.

Among the proposed changes discussed were:

- Revisions of DRG 1 (Craniotomy Age >17 Except for Trauma) and DRG 2 (Craniotomy for Trauma Age >17) to reflect the current assignment of cases involving head trauma patients with other significant injuries to major diagnostic category (MDC) 24.
- Reconfiguration and retitling of existing DRG 14 (Specific Cerebrovascular Disorders Except Transient Ischemic Attack) and DRG 15

(Transient Ischemic Attack and Precerebral Occlusions) and creation of a new DRG 524 (Transient Ischemia).

- Creation of a new DRG 525 (Heart Assist System Implant) for heart assist devices.
- Reassignment of the diagnosis code for rheumatic heart failure with cardiac catheterization.
- Assignment of new, and reassignment of existing, cystic fibrosis principal diagnosis codes.
- Redesignation of a code for insertion of totally implantable vascular access device (VAD) as an operating room procedure.
- Changes in the DRG assignment for the bladder reconstruction procedure code.
- Changes in DRG and MDC assignments for numerous newborn and neonate diagnosis codes. (We note that, based on public comments received on the proposed rule, we are not making these changes in this final rule, as discussed in section II.B.6. of this preamble.)
- Changes in DRG assignment for cases of tracheostomy and continuous mechanical ventilation greater than 96 hours.
- We also discussed other DRG classification issues for which we did not propose changes. One of those was the new drug-eluting stent technology. We received many public comments suggesting higher payments would be needed in order to adequately compensate hospitals for the higher costs of this technology. Therefore, in this final rule, we are creating new DRG 525 (Percutaneous Cardiovascular Procedure with, Drug-Eluting Stent with AMI) and new DRG 527 (Percutaneous Cardioascular Procedure with Drug-Eluting Stent without AMI).

We also presented our analysis of applicants for add-on payments for high-cost new medical technologies. We have approved one new technology, the drug drotrecogin alfa (activated), trade name Xigris™, as a new technology eligible for add-on payments. Xigris™ is used to treat patients with severe sepsis.

2. Changes to the Hospital Wage Index

We proposed revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section included the following:

- The FY 2003 wage index update, using FY 1999 wage data.
- Exclusion from the wage index of Part A physician wage costs that are teaching-related, as well as resident and Part A certified registered nurse anesthetist (CRNA) costs.
- Collection of data for contracted administrative and general, housekeeping, and dietary services.
- Revisions to the wage index based on hospital redesignations and reclassifications by the Medicare Geographic Classification Review Board (MGCRB).
- Requests for wage data corrections, including clarification of our policies on mid-year corrections.

3. Revision and Rebasing of the Hospital Market Basket

We proposed rebasing and revising the hospital market basket to be used in developing the FY 2003 update factor for the operating prospective payment rates and the excluded hospital rate-of-increase limits. We also set forth the data sources used to determine the revised market basket relative weights and choice of price proxies.

In the proposed rule, we also reestimated the labor-related share of the average standardized amount that is adjusted by the wage index. In response to public comments received recommending further evaluation of the methodology used to estimate the labor-related share, we are not proceeding with that reestimation in this final rule.

4. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating and Graduate Medical Education Costs

We discussed several provisions of the regulations in 42 CFR Parts 412 and 413 and set forth certain proposed changes concerning the following:

- Options for expanding the postacute care transfer policy. Based on public comments received, we are not expanding the policy at this time.
- Clarification of the application of the statutory provisions on the calculation of hospital-specific rates for SCHs.
- Exclusion of certain limited-service specialty hospitals from the like hospital definition for purposes of granting SCH status. We proposed to set the threshold for determining a specialty hospital is not a like hospital at 3 percent service overlap between the SCH and the specialty hospital. In this final rule, in response to public comments, we are establishing that threshold at 8 percent.
- Technical change regarding additional payments for outlier cases.
- Proposed case-mix index values for FY 2003 for rural referral centers.
- Changes relating to the IME adjustment, including resident-to-bed ratio caps and counting beds. (We note that because of the need for a future comprehensive analysis on bed and patient day counting policies, and our limited timeframe for preparing the FY 2003 final rule for the acute care hospital inpatient prospective payment systems for publication by the statutory deadline of August 1, 2002, we have decided to postpone finalizing the proposed changes and will address the comments in a separate document.)
- Clarification and codification of classification requirements for MDHs and intermediary evaluations of cost reports for these hospitals.
- Changes to policies on pass-through payments for the costs of nonphysician anesthetists in some rural hospitals.
- Clarification of policies relating to implementing 3-year reclassifications of hospitals and other policies related to hospital reclassification decisions made by the MGCRB.
- Changes relating to payment for the direct costs of GME.
- Changes relating to emergency medical conditions in hospital emergency departments under the EMTALA provisions. (We note that because of the number and nature of the public comments we received on these proposed changes and our limited timeframe for preparing the FY 2003 final rule for the acute care hospital inpatient prospective payment systems for publication by the statutory deadline of August 1, we have decided to postpone finalizing the proposed changes and will address the comments in a separate document.)
- Criteria for, and responsibilities related to, payments for provider-based entities.
- CMS-directed reopening of intermediary determinations and hearing decisions on provider reimbursements.

We proposed to revise our methodology used to determine the fixed-loss cost threshold for outlier cases based on a 3-year average of the rates of change in hospitals' costs. We received many public comments opposing this change. In this proposed rule, we are using a 2-year average of the rate of change in charges to establish the threshold.

5. Prospective Payment System for Capital-Related Costs

We proposed payment requirements for capital-related costs effective October 1, 2002, which included:

- Capital-related costs for new hospitals.
- Additional payments for extraordinary circumstances.
- Restoration of the 2.1 percent reduction to the standard Federal capital prospective payment system rate.

- Clarification of the special exceptions payment policy.

6. Changes for Hospitals and Hospital Units Excluded From the Prospective Payment Systems

We discussed the following proposals concerning excluded hospitals and hospital units and CAHs:

- Payments for existing excluded hospitals and hospital units for FY 2003.
- Updated caps for new excluded hospitals and hospital units.
- Revision of criteria for exclusion of satellite facilities from the acute care hospital inpatient prospective payment system.
- The prospective payment systems for inpatient rehabilitation hospitals and units and long-term care hospitals.
- Changes in the advance notification period for CAHs electing the optional payment methodology.
- Removal of the requirement on CAHs to use a State resident assessment instrument (RAI) for patient assessments for swing-bed patients.

7. Determining Prospective Payment Operating and Capital Rates and Rate-of-Increase Limits

In the Addendum to the May 9, 2002 proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 2003 prospective payment rates for operating costs and capital-related costs. We also proposed threshold amounts for outlier cases. In addition, we proposed update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 2003 for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system.

8. Impact Analysis

In Appendix A of the proposed rule, we set forth an analysis of the impact that the proposed changes would have on affected entities.

9. Report to Congress on the Update Factor for Hospitals Under the Prospective Payment System and Hospitals and Units Excluded From the Prospective Payment System

In Appendix B of the proposed rule, as required by section 1886(e)(3) of the Act, we set forth our report to Congress on our initial estimate of a recommended update factor for FY 2003 for payments to hospitals included in the acute care hospital inpatient prospective payment system, and hospitals excluded from this prospective payment system.

10. Recommendation of Update Factor for Hospital Inpatient Operating Costs

In Appendix C of the proposed rule, as required by sections 1886(e)(4) and (e)(5) of the Act, we included our recommendation of the appropriate percentage change for FY 2003 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to SCHs and MDHs) for hospital inpatient services paid under the prospective payment system for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system.

11. Discussion of Medicare Payment Advisory Commission Recommendations

Under section 1805(b) of the Act, the Medicare Payment Advisory Commission (MedPAC) is required to submit a report to Congress, not later than March 1 of each year, that reviews and makes recommendations on Medicare payment policies. This annual report makes recommendations concerning hospital inpatient payment policies. In the proposed rule, we discussed the MedPAC recommendations concerning hospital inpatient payment policies and presented our response to those recommendations. For further information relating specifically to the MedPAC March 1 report or to obtain a copy of the report, contact MedPAC at (202) 653–7220 or visit MedPAC's Web site at: *www.medpac.gov.*

C. Public Comments Received in Response to the May 9, 2002 Proposed Rule

We received approximately 1,196 timely items of correspondence containing multiple comments on the May 9, 2002 proposed rule. Summaries of the public comments and our responses to those comments are set forth below under the appropriate heading.

II. Changes to DRG Classifications and Relative Weights

A. Background

Under the acute care hospital inpatient prospective payment system, we pay for inpatient hospital services on a rate per discharge basis that varies according to the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case multiplies an individual hospital's payment rate per case by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGS.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights at least annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. Changes to the DRG classification system and the recalibration of the DRG weights for discharges occurring on or after October 1, 2002 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the acute care hospital inpatient prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM).

For FY 2003, cases are assigned to one of 510 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body. For example, MDC 6 is Diseases and Disorders of the Digestive System. However, some MDCs are not constructed on this basis because they involve multiple organ systems (for example, MDC 22 (Burns)).

In general, cases are assigned to an MDC based on the patients' principal diagnosis before assignment to a DRG. However, for FY 2003, there are eight DRGs to which cases are directly assigned on the basis of ICD–9–CM procedure codes. These are the DRGs for heart, liver, bone marrow, lung transplants, simultaneous pancreas/kidney, and pancreas transplants (DRGs 103, 480, 481, 495, 512, and 513, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Surgical DRGs are based on a

hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures, by resource intensity. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (CC).

Generally, nonsurgical procedures and minor surgical procedures not usually performed in an operating room are not treated as O.R. procedures. However, there are a few non-O.R. procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

Patients' diagnosis, procedure, discharge status, and demographic information is fed into the Medicare claims processing systems and subjected to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG.

After screening through the MCE and any further development of the claims, cases are classified into the appropriate DRG by the Medicare GROUPER software program. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and, for a limited number of DRGs, demographic information (that is, sex, age, and discharge status). The GROUPER is used both to classify current cases for purposes of determining payment and to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights.

The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights. However, in the July 30, 1999 final rule (64 FR 41500), we discussed a process for considering non-MedPAR data in the recalibration process. In order for the use of particular data to be feasible, we must have sufficient time to evaluate and test the data. The time necessary to do so depends upon the nature and quality of the data submitted. Generally, however, a significant sample of the data should be submitted by mid-October, so that we can test the data and make a preliminary assessment as to the feasibility of using the data. Subsequently, a complete database should be submitted no later than December 1 for consideration in conjunction with next year's proposed rule.

We proposed numerous changes to the DRG classification system for FY 2003. The proposed changes, the public comments we received concerning them, and the final DRG changes and the methodology used to recalibrate the DRG weights are set forth below. Unless otherwise noted, the changes we are implementing will be effective in the revised GROUPER software (Version 20.0) to be implemented for discharges on or after October 1, 2002. Also, unless otherwise noted, we are relying on the DRG data analysis in the proposed rule for the changes discussed below.

2. MDC 1 (Diseases and Disorders of the Nervous System)

a. Revisions of DRGs 1 and 2

Currently, adult craniotomy patients are assigned to either DRG 1 (Craniotomy Age >17 Except for Trauma) or DRG 2 (Craniotomy for Trauma Age >17). The trauma distinction recognizes that head trauma patients requiring a craniotomy often have multiple injuries affecting other body parts. However, we note that the structure of these DRGs predates the creation in FY 1991 of MDC 24 (Multiple Significant Trauma). The creation of MDC 24 resulted in head trauma patients with other significant injuries being assigned to MDC 24 and removed from DRG 2. In FY 1990, there was a 16-percent difference in the DRG weights for DRG 1 and DRG 2. In FY 1992, after the creation of MDC 24, the percentage difference in the DRG weights for DRG 1 and DRG 2 had declined to 1.2 percent. The FY 2002 payment weight for DRG 1 is 3.2713 and for DRG 2 is 3.3874, a 3.5 percent difference.

For FY 2003, we reevaluated the GROUPER logic for DRGs 1 and 2 by combining the patients assigned to these DRGs and examining the impact of other patient attributes on patient charges. The presence or absence of a CC was found to have a substantial impact on patient charges.

Cases in DRGs 1 and 2	Number of patients	Average charges
With CC	19,012	$49,659
Without CC	9,618	26,824

Thus, there is an 85.1 percent difference in average charges for the groups with and without CC for the combined DRGs 1 and 2. On this basis, we proposed to redefine and retitle DRGs 1 and 2 as follows: DRG 1 (Craniotomy Age >17 with CC); and DRG 2 (Craniotomy Age >17 without CC).

Comment: Nine commenters addressed this proposal. Three of the commenters supported the proposal. One commenter was concerned about the significant redefinition of DRGs to the extent that longitudinal DRG data analysis would be seriously comprised. This commenter recommended that we consider creating new DRGs when significant changes to the structure of existing DRGs are necessary in order to preserve the core definition of the existing DRGs for data analysis purposes. The commenter believed that this proposed revision would significantly alter the definition of these DRGs.

Response: We appreciate the support of the commenters for our position on this issue. In response to the commenter's concern that this revision would significantly alter the definition of these DRGs, thus affecting longitudinal DRG data analysis, our practice in the past has been to alter current DRGs to account for better clinical coherence as well as similar patterns of resource intensity. For example, last year we removed defibrillator cases from DRGs 104 and 105 to make these DRGs and the new DRGs 514 and 515 that were created for defibrillators, more homogenous in terms of patient characteristics and resource consumption.

Currently, the DRGs are generally ordered by MDC, which gives the DRGs a logical structure. Adding new DRGs sequentially at the end of the existing DRGs disturbs that order. However, because there is not a perfect solution to this problem, we will take the commenter's concerns into consideration as we proceed with future DRG revisions.

Longitudinal data analysis can be performed by mapping prior year's data with the current Medicare GROUPER. A conversion table is available for this purpose through the National Center for Health Statistics' website: *http://www.cdc.gov/nchs/icd9.htm* or may be purchased from the American Hospital Association (1–800–261–6246).

Comment: A commenter from a manufacturer of an implantable intracranial neurostimulator device used in the treatment of Parkinson's disease and essential tremor recommended that we revise the proposed revisions to DRGs 1 and 2 so that all deep brain stimulation procedures, such as intracranial neurostimulators for Parkinson's disease, are paid under proposed DRG 1. The commenter stated that, based on its review of FY 2000 MedPAR data,

approximately 75 percent of these cases would be assigned to proposed DRG 2 (and subject to an approximate 40-percent payment reduction under the proposed rule).

Response: Our proposed modification was based on FY 2001 MedPAR data. DRGs 1 and 2 included many different procedures with a range of costs associated with these procedures. Our analysis indicated a substantial cost differential between patients with CCs and patients without CCs, and the current DRGs 1 and 2 do not reflect this difference. We believe that the revision we proposed will improve the payment accuracy for cases in these DRGs. The prospective payment system is an average-based payment methodology under which losses that may be incurred for specific procedures or classes of patients are offset by payment gains from other procedures or classes of patients.

In our analysis, we found 847 cases in which an implantation of intracranial neurostimulator procedures was reported. The majority of these cases were being assigned to DRG 2 with average standardized charges of approximately $37,546. These charges are higher than the overall average standardized charges for all cases within DRG 2. However, this group of cases represents a small subset of all of the cases that are assigned to DRG 2. As noted above, we believe our proposed changes represent an overall improvement in payment accuracy for the over 40,000 cases assigned to these two DRGs.

Comment: Three commenters expressed concern with the proposed restructuring of DRGs 1 and 2 as it pertains to the open or endovascular treatment of ruptured or nonruptured aneurysms and arteriovenous malformation.

One commenter submitted data showing the average charges for ruptured aneurysm cases at $34,794 (and in some cases, $52,568), which are more than the average charges for DRG 1, and lengths of stay that are significantly higher than those for the proposed DRG 1. Another commenter assumed that treatment for ruptured aneurysms will remain in the revised DRG 1, and stated that our proposal to reduce the cost variance of these DRGs is a good beginning. However, according to the commenter, this proposed change does not go far enough because it will continue to underpay these extremely resource intensive cases. The commenter recommended that these cases be assigned to a different DRG (DRG 484 (Craniotomy for Multiple Significant Trauma) was suggested) or that a new DRG be created for these cases.

With respect to the treatment of nonruptured aneurysms, the commenters noted that we did not specify whether these cases would be assigned to DRG 1 or 2 and urged that these cases be assigned to DRG 1. The commenter noted that nonruptured interventional aneurysm cases are complex, and patients spend an average of 4.2 days in intensive care.

Response: In these cases, the patients' principal diagnosis would probably be the aneurysm. It is the secondary diagnosis or secondary condition that may be classified as a CC. Under the proposed changes, cases would be assigned to DRG 1 on the basis of a complication that occurred during the hospital stay or a comorbidity that existed at the time of admission or developed during the course of hospitalization. We found in our analysis that the majority of ruptured aneurysm cases and over half of craniotomy procedures in nonruptured aneurysm cases were being assigned to DRG 1, where charges for these cases were similar to the average for all cases in this DRG. The remaining nonruptured aneurysm cases were assigned to DRG 2 ($33,144 compared to $52,254). Our analysis did show the average standardized charges for the ruptured aneurysm to be $109,698, which is higher than the overall average charges of all cases within DRG 1. However, we point out, as noted by the commenter, these cases actually do receive higher payments under the changes we proposed.

Currently, DRG 484 includes complex, multiple significant trauma cases; that is, patients with a principal diagnosis of trauma and at least two significant trauma diagnosis codes (either as principal or secondaries) from different body site categories. While the intensity of treatment for aneurysms and arteriovenous malformations is significant, we do not believe aneurysm and arteriovenous malformation cases are clinically similar to other cases currently assigned to DRG 484.

Comment: One commenter stated that procedures involving implantation of a chemotherapeutic agent into the brain will be underpaid, causing hospitals to further limit use of this technology. The commenter provided data based on 24 patients being treated with this procedure and concluded that the hospital claims data did not reflect the true hospital cost for this product. The commenter stated that the average cost for this procedure is approximately $26,113. The commenter believed that these cases would be assigned to DRG 2 with an estimated payment of approximately $13,225.

Response: Procedure code 00.10 (Implantation of a chemotherapeutic agent) will be effective October 1, 2002, that will enable specific identification of these procedures. At this point, there are limited data available to assess the payment implications of our proposed change on this procedure. As noted above, cases that remain in DRG 1 would receive higher payments as a result of this change. Further, we would expect hospitals to generally be able to offset payment losses associated with a procedure that is used only rarely with payment gains associated with the higher payments for higher volume cases in DRG 1. Also, a low markup associated with one device or procedure is often offset by relatively higher markups associated with another device or procedure, leading to higher relative weights, and thus higher payments, for the latter device or procedure.

We believe that our proposal is appropriate according to currently available data. Therefore, we are adopting as final our proposal to redefine and retitle DRGs 1 and 2 as follows: DRG 1 (Craniotomy Age >17 with CC); and DRG 2 (Craniotomy Age >17 without CC).

b. Revisions of DRGs 14 and 15

To assess the appropriate classification of patients with stroke symptoms, we evaluated the assignment of cases to DRG 14 (Specific Cerebrovascular Disorders Except Transient Ischemic Attack (TIA) and DRG 15 (Transient Ischemic Attack and Precerebral Occlusions). Our data review indicated that the cases in DRGs 14 and 15 fell into three discrete groups. The first group included cases in which the patients were very sick, with severe intracranial lesions or subarachnoid hemorrhage and severe consequences. The second group included cases in which patients had not suffered a debilitating stroke but instead may have experienced a transient ischemic attack. The patients in the second group had one half of the average length of stay in the hospital as the first group. The third group of cases included patients who appeared to suffer strokes with minor consequences, as well as those having occluded vessels without having a full-blown stroke.

We found that patients who have intracranial hemorrhage and patients who have infarction are similar in severity. We proposed to continue to group patients with intracranial hemorrhage and infarction together. These types of cases are different from patients with, for example, an occlusive

carotid artery without infarction. In this latter group of cases, patients are not as severely ill because they typically have lesser degrees of functional status deficits.

Our analysis indicates that we can improve the clinical and resource cohesiveness of DRGs 14 and 15 by reassigning several specific ICD–9–CM codes. For example, code 436 (Acute, but ill-defined, cerebrovascular disease) is a non-specific code and contains patients with a wide range of deficits and anatomic problems. Our data show that these cases consume fewer resources and have shorter lengths of stay than other cases in DRG 14. Therefore, we proposed to remove code 436 from DRG 14 and reassign it to DRG 15, We also proposed to create a third new DRG that would help further differentiate cases currently assigned to DRGs 14 and 15. The proposed revised and new DRG titles were as follows: DRG 14 (Intracranial Hemorrhage and Stroke with Infarction); DRG 15 (Nonspecific Cerebrovascular Accident and Precerebral Occlusion without Infarction) (a corrected title from the one in the proposed rule); and DRG 524 (Transient Ischemia).

The following table represents a reconfiguration of DRGs 14 and 15 and the creation of a new DRG 524 reflecting these three categorizations (based on more recent data than that used in the proposed rule):

DRG and Title	Number of cases	Average length of stay (days)	Average charge
Revised DRG 14 (Intracranial Hemorrhage and Stroke with Infarction)	236,067	6.1	$15,643
Revised DRG 15 (Nonspecific Cerebrovascular Accident and Precerebral Occlusion without Infarction)	101,726	4.9	11,595
New DRG 524 (Transient Ischemia)	136,857	3.4	8,633

The reconfiguration of DRGs 14 and 15 results in the following codes being designated as principal diagnosis codes in revised DRG 14:

- 430, Subarachnoid hemorrhage.
- 431, Intracerebral hemorrhage.
- 432.0, Nontraumatic extradural hemorrhage.
- 432.1, Subdural hemorrhage.
- 432.9, Unspecified intracranial hemorrhage.
- 433.01, Occlusion and stenosis of basilar artery, with cerebral infarction.
- 433.11, Occlusion and stenosis of carotid artery, with cerebral infarction.
- 433.21, Occlusion and stenosis of vertebral artery, with cerebral infarction.
- 433.31, Occlusion and stenosis of multiple and bilateral arteries, with cerebral infarction.
- 433.81, Occlusion and stenosis of other specified precerebral artery, with cerebral infarction.
- 433.91, Occlusion and stenosis of unspecified precerebral artery, with cerebral infarction.
- 434.01, Cerebral thrombosis with cerebral infarction.
- 434.11, Cerebral embolism with cerebral infarction.
- 434.91, Cerebral artery occlusion, unspecified, with cerebral infarction.

We proposed that the following two codes be moved from DRG 14 to DRG 34 (Other Disorders of Nervous System with CC) and DRG 35 (Other Disorders of Nervous System without CC): Code 437.3 (Cerebral aneurysm, nonruptured) and Code 784.3 (Aphasia). These codes do not represent acute conditions. Aphasia, for example, could result from a cerebral infarction, but if it does, the infarction should be correctly coded as the principal diagnosis.

We proposed redefining DRG 15 so that it contains the following principal diagnosis codes:

- 433.00, Occlusion and stenosis of basilar artery, without mention of cerebral infarction.
- 433.10, Occlusion and stenosis of carotid artery, without mention of cerebral infarction.
- 433.20, Occlusion and stenosis of vertebral artery, without mention of cerebral infarction.
- 433.30, Occlusion and stenosis of multiple and bilateral arteries, without mention of cerebral infarction.
- 433.80, Occlusion and stenosis of other specified precerebral artery, without mention of cerebral infarction.
- 433.90, Occlusion and stenosis of unspecified precerebral artery, without mention of cerebral infarction.
- 434.00, Cerebral thrombosis without mention of cerebral infarction.
- 434.10, Cerebral embolism without mention of cerebral infarction.
- 434.90, Cerebral artery occlusion, unspecified, without mention of cerebral infarction.
- 436, Acute, but ill-defined, cerebrovascular disease.

We proposed to remove the following codes from the existing DRG 15 and place them in the proposed newly created DRG 524:

- 435.0, Basilar artery syndrome.
- 435.1, Vertebral artery syndrome.
- 435.2, Subclavian steal syndrome.
- 435.3, Vertebrobasilar artery syndrome.
- 435.8, Other specified transient cerebral ischemias.
- 435.9, Unspecified transient cerebral ischemia.

We proposed to move code 437.1 (Other generalized ischemic cerebrovascular disease) from DRG 16 (Nonspecific Cerebrovascular Disorders with CC) and DRG 17 (Nonspecific Cerebrovascular Disorders without CC) and add it to the proposed new DRG 524. This proposed change represented a modification to improve clinical coherence and seems to be a logical change for the construction of the proposed new DRG 524.

Comment: Several commenters opposed the movement of code 436 from DRG 14 into DRG 15. One commenter stated that the change is not supported in either the ICD–9–CM coding manual or the *Coding Clinic* for ICD–9–CM. The commenter noted that an inclusion note under code 436 identified this code as a diagnosis code for a stroke patient with cerebral infarctions. In addition, the commenter cited the *Coding Clinic,* Fourth Quarter, 1993 (pages 38 and 39), as including the term "cerebral infarction" following the term "stroke", which indicated to the commenter that these terms are synonymous. The commenter recommended that, prior to making any changes, CMS work with the ICD–9–CM Coordination and Maintenance Committee to revise the ICD–9–CM tabular section to correct this inconsistency.

Response: We agree with the commenter that the ICD–9–CM code 436 does, in fact, describe a stroke. However, the code is nonspecific as to the nature of a stroke. In addition, data on cases containing code 436 that were reported in our MedPAR file indicated that these types of cases have a shorter length of stay and lower hospital charges associated with them. Our revised title of DRG 15 reflects our recognition of code 436 as describing a stroke; that is, we are changing the title of DRG 15 to "Nonspecific Cerebrovascular Accident and Precerebral Occlusion without Infarction." With regard to the revision

of the ICD–9–CM diagnosis tabular section describing code 436, we understand that the National Center for Health Statistics (NCHS) plans to address this issue at the December 4th and 5th, 2003 meeting of the ICD–9–CM Coordination and Maintenance Committee. While we agree with NCHS' plan to examine this issue, we are not delaying these DRG changes while waiting for modifications to this section of the coding manual.

Comment: Two commenters opposed any changes in DRGs 14 and 15 until better data become available. One of these commenters noted that moving approximately 80,000 cases from a higher paying DRG to a lower paying DRG will significantly impact many hospital's financial status.

Both commenters opposed moving code 436 from DRG 14 into DRG 15, noting that code 436 is a common code for stroke or cerebrovascular accident when the physician does not specify whether the stroke is an intracranial hemorrhage or cerebral infarction. The commenters noted that performance of diagnostic imaging may add specificity to determine which artery was involved, thus allowing more specific coding to occur. However, it may not change the course of treatment for the stroke. In addition, the commenters stated that, in some cases, it is ill-advised to subject the patient to further testing to make this determination. Further, in some cases, the tests may be inconclusive but in most cases the course of treatment would not be changed.

One commenter indicated that there is probably inconsistency among coders in the use of the more specific 5-digit codes for "with cerebral infarction" for categories 433 (Occlusion and stenosis of precerebral arteries) and 434 (Occlusion of cerebral arteries) due to variable interpretations of coding instructions. The commenter noted that there are currently efforts to provide clarification regarding the proper use of these 5-digit codes.

Response: We recognize that some of the diagnostic codes in section 430 through 437 of ICD–9–CM may be more specific than the diagnostic documentation in the medical record, which may make it difficult to precisely code cerebrovascular disease. We also recognize that code 436 may be a catchall code when more specific information on the patient's condition is not available in the record. Further, it is possible that other less severe cases are being labeled "stroke," absent more thorough testing or workup. However, our proposed changes to DRGs 14 and 15 were based on actual MedPAR data from FY 2001. As demonstrated above, there is a clear demarcation between average charges and lengths of stay across the two revised DRGs and one new DRG. Further, payment for many cases is higher after these changes than it was previously. For FY 2003, the DRG relative weights for DRGs 14 and 15 were 1.1655 and 0.7349, respectively. The proposed FY 2003 relative weights for DRGs 14, 15 and 524 were 1.2742, 0.9844, and 0.7236. Therefore, cases remaining in DRG 14 would receive higher payments as a result of moving less expensive cases into DRG 15 or 524. Similarly, cases remaining in DRG 15 would receive much higher payments than they had previously.

We believe these changes improve the clinical and resource cohesiveness of the DRGs for these cases. We acknowledge the concerns expressed by the commenters that code 436 may frequently be used in lieu of more specific codes that require further tests even though the cases are as severely ill as those with more specific diagnosis indicated on the bill. However, this is not borne out by the data.

To the prospect of more available data in the future, we note that changes to codes in the related section of the ICD–9–CM coding book have been in place since 1993. We believe that 9 years is sufficient time to clarify the coding issues and to adequately train both the coding and medical staffs regarding documentation of cerebrovascular disease.

Comment: One commenter opposed the movement of code 437.1 to new DRG 524, noting that conditions classified to this code are generally chronic or long term in nature, not transient.

Response: The titles of DRGs are not intended to uniquely identify each case within the DRG, but to logically group cases that globally have similar characteristics in terms of clinical requirements and resources utilized. We proposed the movement of code 437.1 from DRGs 16 and 17 in order to improve the clinical coherence of DRGs 16 and 17, and the new DRG 524; we believe this change accomplishes that. Therefore, we are adopting the proposed change as final.

Comment: One commenter supported the movement of codes 437.3 and 784.3 from DRG 14 to DRGs 34 and 35.

Response: We appreciate the commenter's support. Accordingly, we are adopting the proposed change to move codes 437.3 and 784.3 to DRGs 34 and 35, as final.

We are adopting as final the proposed changes to DRGs 14 and 15 and the creation of new DRG 524 without modifications. We will continue to monitor these DRGs for shifts in resource consumption and validity of DRG assignment and will specifically monitor code 436 for appropriate placement in DRG 15. We support the concept of clarification of the coding guidelines in this section of ICD–9–CM and will also monitor these DRGs when the guidelines are updated.

3. MDC 5 (Diseases and Disorders of the Circulatory System)

a. Heart Assist Systems

Heart failure is typically caused by persistent high blood pressure (hypertension), heart attack, valve disease, other forms of heart disease, or birth defects. It is a chronic condition in which the lower chambers of the heart (ventricles) cannot pump sufficient amounts of blood to the body. This causes the organs of the body to progressively fail, resulting in numerous medical complications and frequently death. DRG 127 (Heart Failure and Shock), to which heart failure cases are assigned, is the single most common DRG in the Medicare population, and represents the medical, not surgical, treatment options for this group of patients.

In many cases, heart transplantation would be the treatment of choice. However, the low number of donor hearts limits this treatment option. Circulatory support devices, also known as heart assist systems or left ventricular assist devices (LVADs), offer a surgical alternative for end-stage heart failure patients. This type of device is often implanted near a patient's native heart and assumes the pumping function of the weakened heart's left ventricle. Studies are currently underway to evaluate LVADs as permanent support for end-stage heart failure patients.

We have reviewed the payment and DRG assignment of this type of device in the past. Originally, these cases were assigned to DRG 110 (Major Cardiovascular Procedures with CC) and DRG 111 (Major Cardiovascular Procedures without CC) in the September 1, 1994 final rule (59 FR 45345). A more specific procedure code, 37.66 (Implant of an implantable, pulsatile heart assist system) was made effective for use with hospital discharges occurring on or after October 1, 1995. In the August 29, 1997 final rule (62 FR 45973), we reassigned these cases to DRG 108 (Other Cardiothoracic Procedures), because it was the most clinically similar DRG with the best match in resource consumption according to our data. In the July 31, 1998 final rule (63 FR 40956), we again reviewed our data and discovered that

the charges for implantation of an LVAD were increasing at a greater rate than the average charges for DRG 108. The length of stay for cases with code 37.66 was approximately 32 days, or three times as long as all other DRG 108 cases. Therefore, we decided to move LVAD cases from DRG 108 to DRG 104 (Cardiac Valve and Other Major Cardiothoracic Procedures with Cardiac Catheterization) and DRG 105 (Cardiac Valve and Other Major Cardiothoracic Procedures without Cardiac Catheterization). We continued to review our data and discuss this topic in the FY 1999 and FY 2000 annual final rules: July 30, 1999 (64 FR 41498) and August 1, 2000 (65 FR 47058).

In the August 1, 2001 final rule (66 FR 39838), we remodeled MDC 5 to add five new DRGs. We also added procedure codes 37.62 (Implant of other heart assist system), 37.63 (Replacement and repair of heart assist system), and 37.65 (Implant of an external, pulsatile heart assist system) to DRGs 104 and 105. We removed defibrillator cases from DRGs 104 and 105 and assigned them to DRG 514 (Cardiac Defibrillator Implant with Cardiac Catheterization) and DRG 515 (Cardiac Defibrillator Implant without Cardiac Catheterization) to make these DRGs more clinically coherent. This also increased the relative weights for DRGs 104 and 105, as the defibrillator cases had lower average charges than other cases in those two DRGs.

In the FY 2001 MedPAR data file, we found 185 LVAD cases in DRG 104 and 90 cases in DRG 105, for a total of 275 cases. These cases represent 1.3 percent of the total cases in DRG 104, and approximately 0.5 percent of the total cases in DRG 105. However, the average charges for these cases are approximately $36,000 and $85,000 higher than the average charges for cases in DRGs 104 and 105, respectively.

This situation presents a dilemma, in that the technology has been available since 1995 and is gradually increasing in utilization, while LVAD cases remain a small part of the total cases in these two DRGs. In fact, removing LVAD cases from the calculation of the average charge changes the average by only −0.4 percent and −0.5 percent for DRGs 104 and 105, respectively. Therefore, despite the dramatically higher average charges for LVADs compared to the DRG averages, the relative volume is insufficient to affect the DRG average charges to any great degree.

Therefore, we proposed to create a new DRG 525 (Heart Assist System Implant), which would contain these cases. The FY 2003 relative weight for the new DRG 525 is 11.6479.

As discussed below, the comments we received supported this change. Therefore, we are creating new DRG 525, which consists of any principal diagnosis in MDC 5, plus one of the following surgical procedures:

- 37.62, Implant of other heart assist system
- 37.63, Replacement and repair of heart assist system
- 37.65, Implant of an external, pulsatile heart assist system
- 37.66, Implant of an implantable, pulsatile heart assist system

Cases in which a subsequent heart transplant occurs during the hospitalization episode will continue to be assigned to DRG 103 (Heart Transplant) because cases involving procedure codes 336 (Combined heart/lung transplant) and 375 (Heart transplant) are assigned to DRG 103, regardless of other codes included on the bill.

We reiterate a discussion we included in the August 1, 2000 final rule (65 FR 47058) regarding placement of code 37.66 in the MCE screening software as a noncovered procedure. The default designation for that code will continue to be "noncovered" because of the stringent conditions that must be met by hospitals in order to receive payment for implantation of the device.

Section 65–15 of the Medicare Coverage Issues Manual (Artificial Hearts and Relative Devices) provides the national coverage determination regarding Medicare coverage of these devices. This section may be accessed online at *www.hcfa.gov/pubforms/06_cim/ci00.htm*.

Comment: Several commenters supported the proposed creation of a new DRG 525 for patients receiving implanted heart assist systems. One commenter stated that the creation of a new DRG 525 would be more sensitive to the patient population, more accurate in statistical analysis and data reports, and more responsive to changes in LVAD charges and utilization patterns.

Other commenters suggested that the payment amount still understates the reasonable cost of LVAD implantation. One commenter provided analysis that purported to show that the net payment effect of this change is insignificant due to the increase in the outlier threshold as discussed in the proposed rule (and in the Addendum to this final rule). Another commenter stated that this new DRG results in payment that does not even compensate for the costs to the hospital of the device itself. The commenter noted that current payment levels for LVADs do not take into account the equipment required for discharge, that is, both disposable and durable medical equipment.

Some of the commenters recommended that we consider allowing LVADs to qualify for a new technology add-on payment in addition to establishing a new DRG specific to this technology.

Response: Regarding the commenter's analysis of the net payment effect of the proposed new DRG 525, the increase in the outlier threshold is not related to the creation of the new DRG 525. As discussed in detail in the Addendum, the FY 2002 outlier threshold was set at a point that resulted in excessive outlier payments. The commenter's analysis compared payments if these cases remained in DRGs 104 and 105 and received outlier payments in accordance with the lower FY 2002 outlier threshold to payments under the new DRG 525 using the proposed outlier threshold. Therefore, the commenter's analysis does not accurately represent payments under the DRGs. The correct analysis is to compare payments under DRGs 104 and 105 with payments under the new DRG 525, absent outlier payments, which results in an increase in payments of over 40 percent per case. Since cases qualify for outlier payments on the basis of a constant fixed-dollar loss threshold and receive payments equal to 80 percent of costs above the threshold, the 40-percent differential in payments is not affected by outlier payments.

With regard to the commenters' indication that the payment under the new DRG 525 is insufficient, we note that the DRG relative weights are based on charge data for actual LVAD cases in the Medicare discharge database, using the most recent information available (the FY 2001 MedPAR file). (Section II.C. of this final rule contains a complete discussion of this methodology.)

With regard to the commenter's suggestion that LVADs be eligible for add-on payments for new technology, we point out that our criteria require that the mean charges of the cases involving a new technology exceed a threshold of one standard deviation beyond the mean charge for all cases in the DRG. Since DRG 525 is specific to heart assist systems, the mean charge of the cases involving the new technology is the same as the mean charge for all cases in the DRG. Also, this technology does not meet our criteria to be considered new (see discussion at section II.D. below).

Finally, with regard to the concept that the DRG payment for LVAD should take into account disposable and

durable medical equipment after discharge, we point out that the Medicare Part A inpatient hospital payment is distinct from the Medicare Part B outpatient payments.

Comment: One commenter stated if LVAD implantation is approved for patients who are not heart transplant patients, the payment is likely to still be too low, as it is anticipated that these patients comprise a generally sicker population. The commenter suggested that we direct hospitals to bill uniformly for LVAD devices via the designated ICD–9–CM procedure codes that will classify into DRG 525.

Response: As we noted in the proposed rule, we understand that studies are currently underway to evaluate LVADs as permanent support for end-stage heart failure patients. However, at this time, these applications are only on a trial basis. Further, in the absence of specific data demonstrating additional costs associated with expanded uses of LVADs beyond bridge-to-transplant patients, we do not take anticipated higher costs into account in the DRG relative weight calculation. However, we will continue to monitor new DRG 525 as new developments occur in the approved uses of LVAD technology to ensure appropriate classification and payment of these cases.

With respect to the comment that we should provide further guidance on the correct ICD–9–CM coding procedures for LVADs, as explained above and in the proposed rule, cases with any principal diagnosis in MDC 5 reporting code 37.62, 37.63, 37.65, or 37.66 will be assigned to DRG 525 (in the absence of a transplant). Further information regarding the use of these codes may be obtained by referring to a relevant article from the *Coding Clinic*, Fourth Quarter, 1995 (pages 68 and 69).

Comment: One commenter, while approving the movement of codes 37.63, 37.65, and 37.66 to DRG 525, did not believe that cases with code 37.62 belong in this DRG. The commenter stated that code 37.62 includes centrifugal pumps, heart assist systems that are not specified as pulsatile, and the insertion of not otherwise specified heart assist systems, and urged CMS to reconsider inclusion of this code in the new DRG. The commenter stated that centrifugal pumps are more similar to cardiac bypass procedures than to ventricular assist systems, and inclusion of this code would likely reduce the relative weight of DRG 525 due to the lower cost of this type of technology. The commenter recommended that code 37.62 remain in DRG 104 and 105. The commenter was also concerned that the change would create a potential incentive for these technologies to be used for purposes not yet approved by the FDA.

Response: Our analysis indicates that these four codes represent the most expensive cases in MDC 5, aside from heart transplantation in DRG 103, which is the reason we moved them out of DRGs 104 and 105. However, we will continue to evaluate the appropriate assignment of cases into this new DRG, particularly if new uses for heart assist systems are approved by the FDA, and will take the commenter's recommendation into account when we conduct our annual MedPAR review next year.

Comment: One commenter suggested that we develop a new heart transplant DRG entitled "Heart Transplant with LVAD," because the costs of the LVADs have not been incorporated into the heart transplant DRG. The commenter stated that, since a great number of LVAD cases remain inpatients until heart transplant occurs, there is a disparity in costs between heart transplant patients who receive LVADs during the stay, and those who do not remain inpatients.

Response: As we pointed out above, cases in which a subsequent heart transplant occurs during the hospitalization episodes are currently assigned to DRG 103 (Heart Transplant) because cases involving procedure codes 33.6 (Combined heart/lung transplant) and 37.5 (Heart transplant) are assigned to DRG 103, regardless of other codes included on the bill. We believe these cases are appropriately compensated in these DRGs, but we will continue to monitor this issue in the future.

Comment: One commenter requested that we review our data to determine if there is an incorrect mix of devices being included in the calculation of the DRG weight. The commenter suggested that perhaps that there is some inappropriate mixing of data, and that there are temporary assist devices used in the intensive care unit (ICU) that are quite distinct from those used for longer term bridge-to-transplant. This commenter noted that these ICU devices are much less expensive.

Response: As noted in the proposed rule, average length of stay and charge data were calculated for all cases including codes 37.62, 37.63, 37.65, and 37.66. These codes describe the implantation of heart assist systems, which is the construct of the new DRG 525. Therefore, we believe we have appropriately accounted for these cases in our analysis.

Comment: One commenter expressed concern that we did not separate payment for LVADs used in the acute care setting from LVADs used as chronic care devices, and pointed out that the short-term indication uses only a fraction of the resources required for a chronic or long-term LVAD. The commenter asked us to consider two DRGs, one for acute care devices and one for long-term care devices, that better reflect the resource consumption of each indication.

Response: The LVAD is currently being studied as a device that would support end-stage heart failure patients in the absence of a heart transplant. This use is not out of the clinical trial phase and, more importantly, has not been recognized as a Medicare covered service. It would be premature to establish a DRG based on the possibility that the LVAD may some day be approved for this indication is premature.

b. Moving Diagnosis Code 398.91 (Rheumatic Heart Failure) From DRG 125 to DRG 124

DRG 124 (Circulatory Disorders Except Acute Myocardial Infarction (AMI), with Cardiac Catheterization and Complex Diagnosis) and DRG 125 (Circulatory Disorders Except Acute Myocardial Infarction (AMI) with Cardiac Catheterization without Complex Diagnosis) have a somewhat complex DRG logic. In order to be assigned to DRG 124 or 125, the patient must first have a circulatory disorder, which would be one of the diagnoses included in MDC 5. However, these DRGs exclude acute myocardial infarctions. Therefore, these DRGs are comprised of cases with a diagnosis from MDC 5, excluding acute myocardial infarction, but also with a cardiac catheterization during the stay.

DRGs 124 and 125 are then further defined by whether or not the patient had a complex diagnosis. If the patient has a complex diagnosis, the case is assigned to DRG 124. If the patient does not have a complex diagnosis, the case is assigned to DRG 125. A list of diagnoses that comprise complex diagnoses is identified within DRG 124. These diagnoses can be listed as either a principal or secondary diagnosis.

We have received correspondence regarding the current assignment of diagnosis code 398.91 (Rheumatic heart failure). The correspondent pointed out that, while other forms of heart failure are listed as complex diagnoses under DRG 124, rheumatic heart failure is not included as a complex diagnosis within that DRG. Currently, if a patient with rheumatic heart failure receives a

cardiac catheterization, the case is assigned to DRG 125.

The correspondent had conducted a study and found that patients with rheumatic heart failure who receive a cardiac catheterization have lengths of stay that are significantly longer than patients with other forms of heart failure who receive a cardiac catheterization and who are assigned to DRG 125. The correspondent found that these patients have lengths of stay more similar to those cases assigned to DRG 124 (which have other forms of heart failure), and recommended that diagnosis code 398.91 be added to the list of complex diagnoses within DRG 124.

Within our claims data, we found 439 cases of patients in DRG 125 with rheumatic heart failure that received a cardiac catheterization. The average charges for these rheumatic heart failure cases were almost twice as much as for other cardiac patients in DRG 125 who received a cardiac catheterization and who did not have a diagnosis of rheumatic heart failure. We also conferred with our medical consultants and they agree that rheumatic heart failure with cardiac catheterization is a complex diagnosis and should be assigned to DRG 124 along with the other complex forms of heart failure cases involving cardiac catheterization.

We proposed to add code 398.91 to DRG 124 as a complex diagnosis. As a result, catheterization cases with rheumatic heart disease would no longer be assigned to DRG 125.

Several commenters representing hospitals and medical coders supported our proposal to classify code 398.91 as a complex diagnosis within DRG 124, which moves these cases from DRG 125. Accordingly, we are adopting as final the proposed change.

c. Radioactive Element Implant

In the August 1, 2001 final rule, we created DRG 517 (Percutaneous Cardiovascular Procedure without Acute Myocardial Infarction (AMI) with Coronary Artery Stent Implant) as a result of the overall DRG splits based on the presence of AMI (66 FR 39839). We assigned code 92.27 (Implantation or insertion of radioactive elements) to DRG 517 because we believed that code 92.27 would always accompany cases involving a percutaneous cardiovascular procedure and intravascular radiation treatment.

We have since determined that code 92.27 can also be present as a stand-alone code in other types of cases. When cases with an MDC principal diagnosis and code 92.27 do not meet the criteria for assignment to DRG 517 because there is no indication of a percutaneous cardiovascular procedure, they are currently assigned to DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis). Because DRG 468 is reserved for cases in which the O.R. procedure is unrelated to the principal diagnosis, we proposed to assign cases with code 92.27 that do not meet the criteria for assignment to DRG 517, but that would otherwise be assigned to MDC 5, to DRG 120 (Other Circulatory System O.R. Procedures).

Comment: One commenter supported the proposal. Another commenter was unclear why code 92.27 is designated as an operating room procedure and would be assigned to DRG 120 (Other Circulatory System O.R. Procedures) if reported as a stand-alone procedure. This commenter stated that it is not aware of instances when it is appropriate to report this code without a concomitant cardiovascular procedure, and believed that another procedure, such as angioplasty, is needed in order to insert the radioactive implants. The commenter believed that cases in which code 92.27 was reported by itself for treatment of a cardiovascular disorder may represent incorrect coding.

Response: We proposed this modification to MDC 5 (Diseases and Disorders of the Circulatory System), concerning the assignment of code 92.27 (when reported as the only procedure) to DRG 120 in part, as a result of a telephone call from a member of the general public. The inquirer questioned the assignment of code 92.27 without angioplasty and with a principal diagnosis in MDC 5 to DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis). When we created DRG 517 in the FY 2002 final rule, we also did not consider that a radioactive implant would be inserted without angioplasty as a delivery technique. We were advised by our medical advisors that it could occur, but it was unlikely. Code 92.27 has not yet been reported in our MedPAR data in MDC 5 as a stand-alone procedure. However, to address the possibility that it might be reported alone, we are taking this opportunity to assign code 92.27 to DRG 120 in MDC 5, consistent with the principal diagnosis, instead of a (higher-weighted) DRG in which the principal diagnosis and the procedure do not match (DRG 468).

With regard to the commenter's question about the designation of code 92.27 as an operating room procedure, we note that code 92.27 has always been considered by the Medicare GROUPER to be a procedure code affecting DRG assignment. It can be found in 12 MDCs and 20 DRGs in GROUPER version 19.0.

Comment: One commenter commended us for responding to its previously submitted comments concerning inadequate DRG payment for GP IIb–IIIa platelet inhibitors, but noted that its request from last year was not mentioned in our proposed rule in our review of several cardiovascular DRGs for both interventional and medical cases that receive GP IIb–IIIa inhibitors. The commenter stated that without a review of the presence of code 99.20 (Injection or infusion of platelet inhibitor) in DRGs 124 (Circulatory Disorders Except AMI, with Cardiac Catheterization and Complex Diagnosis) and 140 (Angina Pectoris), CMS cannot be certain that a significant number of cases are not significantly underpaid.

Response: We regret this omission in the proposed rule. We did, in fact review both DRGs 124 and 140 for the presence of code 99.20. In DRG 124, there were a total of 95,452 cases without code 99.20. These cases had an average length of stay of 4.4 days and average charges of $17,594. There were 1,120 cases in DRG 124 with code 99.20.

These cases had an average length of stay of 3.5 days, and average charges of $17,256. In DRG 140, there were a total of 45,886 cases without code 99.20, with an average length of stay of 2.5 days and average charges of $6,204. There were 126 cases in DRG 140 with code 99.20, with an average length of stay of 2.3 days, and average charges of $8,675.

The data do not demonstrate a level of disparity in days and charges that would warrant an adjustment to these DRGs based on the presence of code 99.20. Therefore, we are not making any changes concerning the status of code 99.20 in these DRGs for FY 2003.

4. MDC 10 (Endocrine, Nutritional, and Metabolic Diseases and Disorders)

Currently, when ICD–9–CM code 277.00 (Cystic Fibrosis without mention of meconium ileus) is reported as the principal diagnosis, it is assigned to the following DRG series in MDC 10: DRG 296 (Nutritional and Metabolic Disease, Age >17 with CC); DRG 297 (Nutritional and Metabolic Disease, Age >17 without CC); and DRG 298 (Nutritional and Metabolic Disease, Age 0–17).

As part of our annual review of DRG assignments and based on correspondence that we have received, we examined cases involving code 277.00 as a principal diagnosis in DRGs 296, 297, and 298. Our analysis of the average charges for these cases indicates that resource utilization for these cases is quite different from resource utilization for other cases in these three DRGs. We believe that this difference in resource utilization is due to the fact it

is not uncommon for cystic fibrosis patients to be admitted with pulmonary complications. Our findings on the number of cases and the average charges in the three DRGs when code 277.00 is assigned as the principal diagnosis, and our findings for all cases in the three DRGs, are indicated in the charts below.

CASES IN DRG, 296, 297, AND 298 WITH CODE 277.00 AS THE PRINCIPAL DIAGNOSIS

DRG and description	Number of cases	Average charges
DRG 296 (Nutritional & Metabolic Disease Age >17 with CC)	271	$34,111
DRG 297 (Nutritional & Metabolic Disease Age >17 without CC)	133	21,998
DRG 298 (Nutritional & Metabolic Disease Age 0–17)	0	.....

ALL CASES IN DRG 296, 297, 298

DRG 298 description	Number of cases	Average charges
DRG 296 (Nutritional & Metabolic Disease Age >17 with CC)	169,768	$10,480
DRG 297 (Nutritional & Metabolic Disease Age >17 without CC)	31,560	6,190
DRG 298 (Nutritional & Metabolic Disease Age 0–;17)	17	8,603

Based on the results of our analysis, we proposed that three new cystic fibrosis principal diagnosis codes be assigned to specific DRGs and MDCs, and that other changes be made to DRG and MDC assignments of existing cystic fibrosis codes, as discussed below.

We proposed to use the following three new principal diagnosis codes to further inform DRG assignment of these patients:

- 277.02 (Cystic fibrosis with pulmonary manifestations)
- 277.03 (Cystic fibrosis with gastrointestinal manifestations)
- 277.09 (Cystic fibrosis with other manifestations)

We proposed that existing code 277.01 (Cystic fibrosis with mention of meconium ileus) would continue to be assigned to DRG 387 (Prematurity with Major Problems) and DRG 389 (Full Term Neonate with Major Problems) in MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period), since it is a newborn diagnosis code.

Because the new code 277.02 would identify those patients with cystic fibrosis who have pulmonary manifestations, we proposed to assign cases in which this is the principal diagnosis to DRG 79 (Respiratory Infection and Inflammations Age >17 with CC), DRG 80 (Respiratory Infections and Inflammations Age >17 without CC), or DRG 81 (Respiratory Infections and Inflammations Age 0–17) in MDC 4 (Diseases and Disorders of the Respiratory System).

We proposed that the new code 277.03 would be assigned to DRG 188 (Other Digestive System Diagnoses Age >17 with CC), DRG 189 (Other Digestive System Diagnoses Age >17 without CC), and DRG 190 (Other Digestive System Diagnoses Age 0–17) in MDC 6 (Diseases and Disorders of the Digestive System), because of its specific relationship to the digestive system.

Since the new code 277.09 could involve a number of manifestations (excluding pulmonary and gastrointestinal), we proposed to assign this new code to DRGs 296, 297, and 298 in MDC 10, where we are retaining the current assignment of existing code 277.00.

The following chart summarizes our proposed DRG and MDC assignments for new and existing cystic fibrosis principal diagnosis codes:

Principal diagnosis code and description	MDC assignment	DRG assignments
Existing 277.00 (Cystic fibrosis without mention of meconium ileus)	10	296, 297, 298
Existing 277.01 (Cystic fibrosis with mention of meconium ileus)	15	387, 389
New 277.02 (Cystic fibrosis with pulmonary manifestations)	4	79, 80, 81
New 277.03 (Cystic fibrosis with gastrointestinal manifestations)	6	188, 189, 190
New 277.09 (Cystic fibrosis with other manifestations)	10	296, 297, 298

Several commenters representing hospitals, medical coders, and specialty groups supported the proposed DRG assignments relating to cystic fibrosis discussed above. Therefore, we are adopting the proposed DRG assignments as final, effective for discharges occurring on or after October 1, 2002.

5. MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract)

a. Insertion of Totally Implantable Vascular Access Device (VAD)

In the August 1, 2001 final rule (66 FR 39844), we discussed our review of the DRG assignment of code 86.07 (Insertion of totally implantable vascular access device (VAD)). Code 86.07 is considered a nonoperative procedure when it occurs in MDC 11. In other words, the Medicare GROUPER software program does not recognize code 86.07 as a procedure code when reported with any principal diagnosis in this MDC. Therefore, patients in renal (kidney) failure requiring implantation of this device for dialysis are grouped to medical DRG 316 (Renal Failure). We examined whether implantation of this device should be removed from DRG 316 and placed into surgical DRG 315 (Other Kidney and Urinary Tract O.R. Procedures).

Implantation of a VAD into the chest wall and blood vessels of a patient's upper body allows access to a patient's vessels via an implanted valve and cannula. Two devices are implanted during one operative session. One system is implanted arterially (the "draw"), while the other is implanted venous (the "return"). Typically, the VAD allows access to the patient's blood for hemodialysis purposes when other sites in the body have been exhausted. The device is usually inserted in the outpatient setting. Operative time is approximately 1 to 1.5 hours.

In the FY 2002 final rule (66 FR 39844–39845), we pointed out that cases where the VAD was inserted as an inpatient procedure often involved complications, leading to higher average charges and longer lengths of stay for those cases. Therefore, we indicated that we would not assign code 86.07 to DRG 315 at that time, but we would consider other alternative adjustments to DRGs 315 and 316.

For FY 2003, we explored whether DRG 315 should be divided based on the presence or absence of CCs. However, during our consideration of this alternative, we discovered that DRG 315 does not lend itself to a CC split due to the high occurrence of cases in this DRG that already have complications identified on the CC list. Therefore, we

reexamined cases in DRGs 315 and 316 in the FY 2001 MedPAR file. The results are reflected in the chart below:

	With code 86.07	Without code 86.07
DRG 315 (Surgical):		
Number of Cases	354	21,089
Average Length of Stay.	12.6 days.	6.7 days
Average Charges	$47,251	$25,622
DRG 316 (Medical):		
Number of Cases	887	76,676
Average Length of Stay.	10.3	6.6 days
Average Charges	$31,904	$16,934

These results are similar to the findings included in the FY 2002 final rule that were based on data from the FY 2000 MedPAR file (66 FR 39845).

We found that the average length of stay in DRG 315 for patients not receiving the VAD is 6.7 days, while those patients who received the VAD had an average length of stay of 12.6 days. We found the average charges in DRG 315 for patients not receiving the VAD were approximately $25,622, while the average charges for those patients who received the VAD were $47,251.

We found that the cases receiving the VAD as an inpatient procedure are significantly more costly than other cases in DRG 316. Therefore, we proposed to designate code 86.07 as an O.R. procedure under MDC 11.

Specifically, code 86.07 will be recognized as an O.R. procedure code in MDC 11 and assigned to DRG 315 when combined with the following principal diagnosis codes from DRG 316:

- 403.01, Malignant hypertensive renal disease with renal failure
- 403.11, Benign hypertensive renal disease with renal failure
- 403.91, Unspecified hypertensive renal disease with renal failure
- 404.02, Malignant hypertensive heart and renal disease with renal failure
- 404.12, Malignant hypertensive heart and renal disease with renal failure
- 404.92, Unspecified hypertensive heart and renal disease with renal failure
- 584.5, Acute renal failure with lesion of tubular necrosis
- 584.6, Acute renal failure with lesion of renal cortical necrosis
- 584.7, Acute renal failure with lesion of renal medullary (papillary) necrosis
- 584.8, Acute renal failure with other specified pathological lesion in kidney
- 584.9, Acute renal failure, unspecified
- 585, Chronic renal failure
- 586, Renal failure, unspecified
- 788.5, Oliguria and anuria
- 958.5, Traumatic anuria

We received two comments in support of this proposal. Therefore, we are adopting as final the proposed redesignation of code 87.06 as an O.R. procedure under MDC 11 and its assignment to DRG 315 when combined with the principal diagnosis codes from DRG 316 listed above.

b. Bladder Reconstruction

We received correspondence regarding the current classification of procedure code 57.87 (Reconstruction of urinary bladder) as a minor bladder procedure and the assignment of the code under DRG 308 (Minor Bladder Procedures with CC) and DRG 309 (Minor Bladder Procedures without CC). The correspondent believed that bladder reconstruction is not a minor procedure, submitted individual hospital charges to support this contention, and recommended that the code be classified as a major procedure and assigned to a higher weighted DRG.

Our clinical advisors indicated that reconstruction of the bladder is a more extensive procedure than the other minor bladder procedures in DRGs 308 and 309. They agree that the bladder reconstruction procedure is as complex as the procedures under code 57.79 (Total cystectomy) and the other major bladder procedures in DRGs 303 through 305.

As indicated in the chart below, we found that the average charges for bladder reconstruction are significantly higher than the average charges for other minor procedures within DRGs 308 and 309:

	With code 57.87	Without code 57.87
DRG 308 (Minor Bladder Procedure with CC):		
Number of Cases	64	5,066
Average Charges	$36,560	$19,923
DRG 309 (Minor Bladder Procedures without CC):		
Number of Cases	25	3,021
Average Charges	$23,390	$11,200

We found that procedure code 57.87 may be more appropriately placed in DRG 303 (Kidney, Ureter and Major Bladder Procedures for Neoplasm), 304 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm with CC), and DRG 305 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm without CC), based on average charges for procedures in these three DRGS as indicated in the following chart:

DRG	Number of cases	Average charges
303 (Kidney, Ureter and Major Bladder Procedures for Neoplasm)	14,116	$30,691
304 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm with CC)	8,060	30,577
305 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm without CC)	2,029	15,492

Based on the results of our analysis and the advice of our medical consultants discussed above, we proposed to classify code 57.87 as a major bladder procedure and to assign it to DRGs 303, 304, and 305.

We received several comments from associations representing hospitals and medical coders in support of the proposed reclassification of bladder reconstruction surgery from a minor bladder to a major bladder procedure. Accordingly, we are adopting as final the proposed reclassification, effective for discharges occurring on or after October 1, 2002.

6. MDC 15 (Newborns and Other Neonates With Conditions Originating in the Perinatal Period)

The primary focus of updates to the Medicare DRG classification system is for changes relating to the Medicare patient population, not the pediatric or neonatal patient populations. However, the Medicare DRGs are sometimes used to classify other patient populations. Over the years, we have received comments about aspects of the Medicare newborn DRGs that appear problematic, and we have responded to these on an individual basis. Some correspondents have requested that we take a closer overall look at the DRGs within MDC 15.

Because of our limited data and experience with newborn cases under Medicare, we contacted the National Association of Children's Hospitals and Related Institutions (NACHRI), along with our own medical advisors, to obtain proposals for possible revisions of the existing DRG categories in MDC 15. The focus of the requested proposals was to refine category definitions within the framework of the existing seven broadly defined neonatal DRGs. The proposals also were to take advantage of the new, more specific neonatal

diagnosis codes to be adopted, effective October 1, 2002, to assist with refinements to the existing DRG category definitions.

In the May 9, 2002 proposed rule, we proposed to make extensive changes to multiple DRG categories in MDC 15. A complete description of these proposed changes appears in the May 9, 2002 **Federal Register** at 67 FR 31412 through 31414. In summary, the proposed changes involved removing a number of congenital anomalies from MDC 15 and assigning them to other MDCs. NACHRI advised us that these congenital anomalies would be better classified in the MDC for the body system affected. We also proposed revising DRG 386 (Extreme Immaturity or Respiratory Distress Syndrome, Neonate), to refine the assignment of newborn cases diagnosed with extreme immaturity. We proposed major revisions for DRG 387 (Prematurity With Major Problems) to redefine the codes for prematurity and the codes that define a "major problem". We proposed modifications of DRG 388 (Prematurity Without Problems), which involved changes in the classification of prematurity for newborns. We proposed revising the definition of a "major problem" for DRG 389 (Full Term Neonate With Major Problem) as well. By changing the definition of "major problem" in the other DRGs, our proposal would have increased the number of cases being assigned to DRG 390. Finally, we proposed to expand the number of minor problem newborn diagnoses included in DRG 391 (Normal Newborn). All of these extensive changes would have greatly shifted the DRG assignments for newborns, involving hundreds of ICD–9–CM codes.

Comment: One commenter, a national hospital association, opposed at this time the reassignment of a large number of diagnosis codes from the "major problems" list in DRGs 387 and 389 to DRG 391. The commenter agreed that refinements to MDC 15 would be beneficial to allow more accurate grouping of neonatal admissions but recommended that, prior to making extensive changes, CMS work with NACHRI, the commenter, and other interested parties to develop a separate DRG that would group neonates with minor problems that are not otherwise recognized currently or under the proposed changes.

Other commenters, representing hospitals, medical groups, and medical coders, offered a similar comment. One commenter stated that since NACHRI represents specialty hospitals, NACHRI's data may not fully represent the entire newborn population. Other commenters recommended that the proposed revisions to DRGs 387 through 391 not be implemented until input is obtained from representatives of general community hospitals that treat newborns. The commenters stated that newborn DRG data from general community hospitals may vary significantly from NACHRI's data and should be taken into consideration prior to implementing the proposed revisions to DRGs 387 through 391.

One commenter also stated that, while it supported the proposed removal of the listed codes for congenital anomalies, periventricular leukomalacia, and nonspecific abnormal findings on chromosomal analysis from MDC 15, the commenter was confused as to the rationale for the proposed DRG assignments for the codes for congenital anomalies. (We proposed that code 759.4, Conjoined twins, be classified to DRGs 188, 189, and 190.) In addition, several commenters stated that these DRGs are for digestive system diagnoses and conjoined twins may or may not have medical conditions involving the digestive system. The commenters stated that the rationale for the selection of these DRGs was not described in the proposed rule.

One commenter stated that additional study of newborn DRG classifications was needed. This commenter recommended that when cardiac surgery procedures are performed on neonates born in the hospital, the case be assigned to the applicable cardiac surgery DRG instead of one of the neonatal DRGs. The commenter pointed out that when a baby is born in a hospital and surgery is performed on a congenital heart condition during the same stay, the newborn is assigned to DRG 389 where the relative weight is approximately one-half the weight of the applicable cardiac surgery DRG. When the newborn is delivered at another facility and then transferred for surgery, the newborn is assigned to the appropriate cardiac surgery DRG. The commenter recommended that this issue be considered when MDC 15 is revised.

Response: The commenters raised a number of important issues. We solicited the assistance of NACHRI to develop refinements to MDC 15 because, while MDC 15 is part of the Medicare DRG system, the types of patients in classified to DRGs in MDC 15 are not a significant part of the Medicare program. It was our goal to develop refinements that could be useful for non-Medicare purposes. Given the extensive nature of the proposed revisions, we concur that additional study is necessary. Therefore, we are not implementing as final any of the proposed revisions to MDC 15. We are maintaining the existing structure of DRGs 385 through 390 within MDC 15 (Version 19.0) for FY 2003. Nonetheless we believe that changes in this area may be worthwhile, and we would be interested in considering a set of appropriate changes that might be broadly acceptable to the affected community. If we receive such suggested changes by December 1, 2002, we would consider it as part of our annual review and updates to the DRG system for FY 2004. Any proposals could be included in the notice of proposed rulemaking for FY 2004, which is scheduled to be published in early Spring 2003. In the meantime, as stated earlier, we are not making any of the proposed changes to MDC 15 for FY 2003.

Comment: One commenter supported the creation of the new ICD–9–CM codes that differentiate between extreme immaturity or gestational age, or both.

Response: As explained in the proposed rule, we are adding the new ICD–9–CM codes for newborns that were approved in 2002 for use by acute care hospitals in FY 2003. These codes are listed in Table 6A of this final rule. The codes are assigned to the existing DRGs as indicated in Table 6A under the column "DRG" (codes 747.83 through 779.89). Tables 6A through 6F in this final rule also reflect the assignment of these new codes.

Comment: One commenter pointed out several typographical errors and omissions in the proposed changes for MDC 15 in the proposed rule.

Response: The commenter is correct that there were typographical errors in the proposed rule. However, since we are not finalizing the proposed changes, we are not addressing the errors specifically in this final rule. We will provide clarifications of these errors to those interested parties who participating in future efforts to refine MDC 15.

7. MDC 23 (Factors Influencing Health Status and Other Contacts With Health Services)

In the August 1, 2001 final rule, we included in Table 6A-New Diagnosis Codes (66 FR 40064) code V10.53 (History of malignancy, renal pelvis), which was approved by the ICD–9–CM Coordination and Maintenance Committee as a new code effective October 1, 2001. We assigned the code to DRG 411 (History of Malignancy without Endoscopy) and DRG 412 (History of Malignancy with Endoscopy).

We received correspondence that suggested that we should have also

assigned code V10.53 to DRG 465 (Aftercare with History of Malignancy as Secondary Diagnosis). The correspondent pointed out that all other codes for a history of malignancy are included in DRG 465.

We agree that code V10.53 should be included in the list of the history of malignancy codes within DRG 465.

We received several comments in support of this change. Accordingly, in this final rule we are adding code V10.53 to the list of secondary diagnosis in DRG 465, effective for discharges occurring on or after October 1, 2002.

8. Pre-MDC: Tracheostomy

DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses) is used to classify patients who require long-term mechanical ventilation. Mechanical ventilation can be administered through an endotracheal tube for a limited period of time. When an endotracheal tube is used for an extended period of time (beyond 7 to 10 days), the patient runs a high risk of permanent damage to the trachea. In order to maintain a patient on mechanical ventilation for a longer period of time, the endotracheal tube is removed and a tracheostomy is performed. The mechanical ventilation is then administered through the tracheostomy.

A tracheostomy also may be performed on patients for therapeutic purposes unrelated to the administration of mechanical ventilation. Patients with certain face, mouth, and neck disease may have a tracheostomy performed as part of the treatment for the face, mouth, or neck disease. These patients are assigned to DRG 482 (Tracheostomy for Face, Mouth and Neck Diagnoses).

Therefore, patients assigned to DRGs 482 and 483 are differentiated based on the principal diagnosis of the patient. At certain times, selecting the appropriate principal diagnosis for the patients receiving tracheostomies for assignment to a DRG can be difficult. The overall number of tracheostomy patients increased by 13 percent between 1994 and 1999. During the same period, the percent of tracheostomy patients in DRG 483 (patients without certain face, mouth, or neck diseases) versus DRG 482 increased from 83.6 percent to 87.6 percent.

The payment weight for DRG 483 is more than four times greater than the DRG 482 payment weight, and this has led to concerns about coding compliance. Specifically, the fact that cases are assigned to DRG 483 based on the absence of a code indicating face, mouth, or neck diagnosis creates an incentive to omit codes indicating these diagnoses.

To address issues of possible coding noncompliance, we proposed to modify DRGs 482 and 483 to differentiate the assignment to either DRG based on the presence or absence of continuous mechanical ventilation that lasts more than 96 hours (code 96.72). This modification would ensure that the patients assigned to DRG 483 are patients who had the tracheostomy for long-term mechanical ventilation. Based on an examination of claims data from the FY 2001 MedPAR file, we found that many patients assigned to DRG 483 do not have the code 96.72 for continuous mechanical ventilation for 96 consecutive hours or more recorded. In part, this is the result of the limited number of procedure codes (six) that can be submitted on the current uniform hospital claim form, and the fact that code 96.72 does not currently affect the DRG assignment.

We proposed to change the definition of DRG 483 so that patients who have a tracheostomy and continuous mechanical ventilation greater than 96 hours (code 96.72) would be assigned to DRG 483. We would continue to assign to DRG 483 those patients who have a principal diagnosis unrelated to disease of the face, mouth, or neck and a tracheostomy. We proposed to retitle DRG 483 "Tracheostomy/Mechanical Ventilation 96+ Hours Except Face, Mouth, and Neck Diagnosis."

In the proposed rule, we indicated that we would give future consideration to modifying DRGs 482 and DRG 483 based on the presence of code 96.72, and specifically invited comments on this area.

Comment: Several commenters representing hospital associations and medical groups supported the proposed modification to DRG 483. Some commenters strongly supported using code 96.72 as a determining factor for assigning ventilator patients to DRG 483. Another commenter indicated that the proposal was a more accurate means of identifying high-cost ventilator patients.

One commenter representing medical coders opposed the proposed modification. The commenter expressed concern that there were no supporting data to justify the revision. The commenter pointed out that it was not clear to which DRG tracheostomy patients with mechanical ventilation of less than 96 hours and with out a face, neck, or mouth diagnosis would be classified, since no modification to DRG 482 was proposed. The commenter did note that CMS was encouraging the reporting of code 96.72, but believed that this might be a problem when a number of other significant operative procedures are performed, given the limited spaces available on the claim form to report ICD–9–CM procedure codes.

Response: The proposed change was a first attempt to refine DRGs 482 and 483 so that those patients who receive long-term (> 96 hours) mechanical ventilation are separated from those patients who receive mechanical ventilation of less than 96 hours. The proposed change to DRG 483 was partially in response to concern that hospitals could omit diagnosis codes indicating face, mouth, or neck diagnosis in order to have cases assigned to DRG 483 rather than the much lower paying DRG 482. It also was an attempt to improve the classification of patients on mechanical ventilation by identifying those who receive long-term use of a ventilator. By making the GROUPER recognize long-term mechanical ventilation and assigning those patients to the higher weighted DRG 483, we hoped that hospitals would be more aware of the importance of reporting code 96.72 when, in fact, patients had been on the ventilator for greater than 96 hours. Therefore, hospitals would appropriately increase the reporting of this code. This reporting would allow us to continue to refine DRGs 482 and 483 to better reflect the resource utilization of these cases.

We agree with the commenter that hospitals frequently are faced with cases where more than six procedures are performed during the inpatient stay and that there are limited spaces available on the claims form for reporting procedure codes. The proposed change encourages hospitals to begin to report code 96.72, since it will effect DRG assignment.

The commenter was correct; we were not completely clear in the proposed rule about the effect that the addition of code 96.72 would have on DRG 482. The change will have an impact on DRG 482. All cases involving a tracheostomy and a diagnosis of face, mouth, and neck diagnosis that also have been on continuous mechanical ventilation for greater than 96 hours (code 96.72) will be moved out of DRG 482 and into DRG 483. The effect is that the expensive, long-term mechanical ventilation cases will be moved out of DRG 482 and into the higher-weighted DRG 483. As mentioned earlier, we did not propose any DRG modification involving patients who receive a tracheostomy, have mechanical ventilation of less than 96 hours, and do not have a face, neck, or mouth diagnosis. These cases will continue to be assigned to DRG 483.

Should future data indicate a need for further refinement of DRGs 482 and 483, we would propose these changes at that time. The public would be given an opportunity to comment on these proposals through the normal notice-and-comment rulemaking process.

In this final rule, we are adopting as final the proposed change in the definition of DRG 483 and the proposed change to add code 96.72 to DRG 483. To further clarify this change, we are changing the title of DRG 483 to "Tracheostomy with Mechanical Ventilation 96 + Hours or Principal Diagnosis Except Face, Mouth, and Neck."

9. Medicare Code Editor (MCE) Change

As explained under section II.B.1. of this preamble, the MCE is a software program that detects and reports errors in the coding of Medicare claims data.

The MCE includes an edit for "nonspecific principal diagnosis" that identifies a group of codes that are valid according to the ICD–9–CM coding scheme, but are not as specific as the coding scheme permits. The fiscal intermediaries use cases identified in this edit for educational purposes for hospitals only. That is, when a hospital reaches a specific threshold of cases (usually 25) in this edit, the fiscal intermediary will contact the hospital and educate it on how to code diagnoses using more specific codes in the ICD–9–CM coding scheme.

Code 436 (Acute, but ill-defined, cerebrovascular disease) is one of the codes included in the groups of codes identified in the nonspecific principal diagnosis edit, and is widely used in smaller hospitals where testing mechanisms are not available or have not been utilized to more specifically identify the location and condition of cerebral and precerebral vessels. Because of the frequent use of code 436 among smaller hospitals, we proposed to remove the code from the nonspecific principal diagnosis edit in the MCE. We address the use of code 436 in section II.B.3. of this final rule under the discussion of MDC 5 changes with regard to the remodeling of DRGs 14 and 15.

We received two comments in support of this proposal. However, one of the commenters noted that code 436 is not just limited to use in smaller hospitals, as we stated in the proposed rule. We acknowledge the commenters remarks that code 436 is widely used in hospitals of all sizes and is not exclusively used in smaller hospitals. However, our rationale for removing code 436 from the MCE because it is frequently used, still holds. Accordingly, we are adopting as final the proposed removal of code 436 from the MCE "nonspecific principal diagnisis" edit, effective with discharges occurring on or after October 1, 2002.

10. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. Therefore, it is necessary to have a decision rule within the GROUPER by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most resource-intensive to least resource-intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibrations, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications and recalibrations, to determine if the ordering of classes coincides with the intensity of resource utilization.

A surgical class can be composed of one or more DRGs. For example, in MDC 11, the surgical class "kidney transplant" consists of a single DRG (DRG 302) and the class "kidney, ureter and major bladder procedures" consists of three DRGs (DRGs 303, 304, and 305). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting the average resources for each DRG by frequency to determine the weighted average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG in the class by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other O.R. procedures" as discussed below.

This methodology may occasionally result in assignment of a case involving multiple procedures to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average charge is ordered above a surgical class with a higher average charge. For example, the "other O.R. procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the average charge for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other O.R. procedures" class is a group of procedures that are only infrequently related to the diagnoses in the MDC but are still occasionally performed on patients in the MDC with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average charges for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, as a result of the hierarchy change, the average charges are likely to shift such that the higher-ordered surgical class has a lower average charge than the class ordered below it.

In the May 9, 2002, we proposed to revise the surgical hierarchy for the pre-MDC DRGs and for MDC 5 (Diseases and Disorders of the Circulatory System) as follows:

- In the pre-MDC DRGs, we proposed to reorder DRG 495 (Lung Transplant) above DRG 512 (Simultaneous Pancreas/Kidney Transplant).
- In MDC 5, we proposed to reorder DRG 525 (Heart Assist System Implant) above DRGs 104 and 105 (Cardiac Valve and Other Major Cardiothoracic Procedures with and without Cardiac Catheterization, respectively).

In the proposed rule, we were unable to test the effects of the proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights because the revised GROUPER software was unavailable at the time the proposed rule was completed. Rather, we simulated most major classification changes to

approximate the placement of cases under the proposed reclassification, and then determined the average charge for each DRG. These average charges served as our best estimate of relative resources used for each surgical class. We have now tested the proposed surgical hierarchy changes after the revised GROUPER was received and are reflecting the final changes in the DRG relative weights in this final rule. Further, as discussed in section II.C. of this preamble, the final recalibrated weights are somewhat different from the proposed weights because they were based on more complete data.

Based on a test of the proposed revisions using the April 2002 update of the FY 2001 MedPAR file and the revised GROUPER software, we have found that the revisions are still supported by the data, and no additional changes are indicated except those discussed below pertaining to the implementation of two new cardiac drug-eluting stent DRGs. (For a complete description of this change, see the discussion under "Other Issues" in section II.B.14. of this preamble.) Due to the implementation of two new DRGs pertaining to cardiac drug-eluting stents, DRGs 526 (Percutaneous Cardiovascular Procedure with Drug-Eluting Stent with AMI) and 527 (Percutaneous Cardiovascular Procedure with Drug-Eluting Stent without AMI), we also are reordering the following DRGs in MDC 5: DRGs 115 (Permanent Cardiac Pacemaker Implant with AMI, Heart Failure or Stroke, or AICD Lead or and Generator Procedure) and 116 (Other Permanent Cardiac Pacemaker Implant) above DRG 526; DRG 526 above DRG 516 (Percutaneous Cardiovascular Procedures with Acute Myocardial Infarction (AMI)); DRG 516 above DRG 527; DRG 527 above DRG 517 (Percutaneous Cardiovascular Procedure without AMI, with Coronary Artery Stent Implant); DRG 517 above DRG 518 (Percutaneous Cardiovascular Procedures without AMI, without Coronary Artery Stent Implant); and DRG 518 above DRGs 478 (Other Vascular Procedures with CC) and 479 (Other Vascular Procedures without CC).

11. Refinement of Complications and Comorbidities (CC) List

In the September 1, 1987 final notice (52 FR 33143) concerning changes to the DRG classification system, we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered valid CCs in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes for the following reasons: (1) To preclude coding of CCs for closely related conditions; (2) to preclude duplicative coding or inconsistent coding from being treated as CCs; and (3) to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair. We developed this standard list of diagnoses using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. In the May 9, 2002 proposed rule, we did not propose to delete any of the diagnosis codes on the CC list.

In the May 19, 1987 proposed notice (52 FR 18877) concerning changes to the DRG classification system, we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for the same condition should not be considered CCs for one another.
- Codes for the same condition that cannot coexist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- Codes for the same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended only as a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered CCs of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. (See the September 30, 1988 final rule (53 FR 38485) for the revision made for the discharges occurring in FY 1989; the September 1, 1989 final rule (54 FR 36552) for the FY 1990 revision; the September 4, 1990 final rule (55 FR 36126) for the FY 1991 revision; the August 30, 1991 final rule (56 FR 43209) for the FY 1992 revision; the September 1, 1992 final rule (57 FR 39753) for the FY 1993 revision; the September 1, 1993 final rule (58 FR 46278) for the FY 1994 revisions; the September 1, 1994 final rule (59 FR 45334) for the FY 1995 revisions; the September 1, 1995 final rule (60 FR 45782) for the FY 1996 revisions; the August 30, 1996 final rule (61 FR 46171) for the FY 1997 revisions; the August 29, 1997 final rule (62 FR 45966) for the FY 1998 revisions; the July 31, 1998 final rule (63 FR 40954) for the FY 1999 revisions, the August 1, 2000 final rule (65 FR 47064) for the FY 2001 revisions; and the August 1, 2001 final rule (66 FR 39851) for the FY 2002 revisions. In the July 30, 1999 final rule (64 FR 41490), we did not modify the CC Exclusions List for FY 2000 because we did not make any changes to the ICD–9–CM codes for FY 2000.

In this final rule, we are making limited revisions of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 2002. (See section II.B.13. of this preamble for a discussion of ICD–9–CM changes.) These changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6G and 6H in the Addendum to this final rule contain the revisions to the CC Exclusions List that will be effective for discharges occurring on or after October 1, 2002. Each table shows the principal diagnoses with changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk, and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6G—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 2002, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6H—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 2002, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical

Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $133.00 plus shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number (PB) 88–133970) should be made to the following address: National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; or by calling (800) 553–6847.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, and 2002) and those in Tables 6F and 6G of this FY 2003 final rule must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 2002. (Note: There was no CC Exclusions List in FY 2001 because we did not make changes to the ICD–9–CM codes for FY 2001.)

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with CMS, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 19.0, is available for $225.00, which includes $15.00 for shipping and handling. Version 20.0 of this manual, which includes the final FY 2002 DRG changes, is available for $225.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road, Wallingford, CT 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

We received no comments on our proposed changes to the CC list, and we are adopting the changes as final.

12. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic O.R. Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive O.R. Procedure Unrelated to Principal Diagnosis) to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the O.R. procedures performed are related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining O.R. procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990 (55 FR 36135), August 30, 1991 (56 FR 43212), September 1, 1992 (57 FR 23625), September 1, 1993 (58 FR 46279), September 1, 1994 (59 FR 45336), September 1, 1995 (60 FR 45783), August 30, 1996 (61 FR 46173), and August 29, 1997 (62 FR 45981), we moved several other procedures from DRG 468 to 477, and some procedures from DRG 477 to 468. No procedures were moved in FY 1999, as noted in the July 31, 1998 final rule (63 FR 40962); in FY 2000, as noted in the July 30, 1999 final rule (64 FR 41496); in FY 2001, as noted in the August 1, 2000 final rule (65 FR 47064); or in FY 2002, as noted in the August 1, 2001 final rule (66 FR 39852).

a. Moving Procedure Codes From DRGs 468 or 477 to MDCs

We annually conduct a review of procedures producing assignment to DRG 468 or DRG 477 on the basis of volume, by procedure, to see if it would be appropriate to move procedure codes out of these DRGs into one of the surgical DRGs for the MDC into which the principal diagnosis falls. The data are arrayed two ways for comparison purposes. We look at a frequency count of each major operative procedure code. We also compare procedures across MDCs by volume of procedure codes within each MDC.

We identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. Based on this year's review, we did not identify any necessary changes in procedures under DRG 477. Therefore, we did not propose to move any procedures from DRG 477 to one of the surgical DRGs. However, we have identified a number of procedure codes that should be removed from DRG 468 and put into more clinically coherent DRGs. The assignments of these codes are specified in the charts below.

MOVEMENT OF PROCEDURE CODES FROM DRG 468

Procedure code	Description	Included in DRG	Description
MDC 6.—Diseases and Disorders of the Digestive System			
387	Interruption vena cava	170	Other Digestive System O.R. Procedures with CC
387	Interruption vena cava	171	Other Digestive System O.R. Procedures without CC
3950	Angioplasty or atherectomy of noncoronary vessel	170	Other Digestive System O.R. Procedures with CC
3950	Angioplasty or atherectomy of noncoronary vessel	171	Other Digestive System O.R. Procedures without CC
MDC 7—Diseases and Disorders of the Hepatobiliary System and Pancreas			
387	Interruption vena cava	201	Other Hepatobiliary & Pancreas Procedures

MOVEMENT OF PROCEDURE CODES FROM DRG 468—Continued

Procedure code	Description	Included in DRG	Description
3949	Other revision of vascular procedure	201	Other Hepatobiliary & Pancreas Procedures.
3950	Angioplasty or atherectomy of noncoronary vessel	201	Other Hepatobiliary & Pancreas Procedures.
	MDC 8—Diseases and Disorders of the Musculoskeletal System and Connective Tissue		
387	Interruption vena cava	233	Other Musculoskeletal System & Connective Tissue O.R. Procedures with CC.
387	Interruption vena cava	234	Other Musculoskeletal System & Connective Tissue O.R. Procedures without CC.
3950	Angioplasty or atherectomy of noncoronary vessel	233	Other Musculoskeletal System & Connective Tissue O.R. Procedures with CC.
3950	Angioplasty or atherectomy of noncoronary vessel	234	Other Musculoskeletal System & Connective Tissue O.R. Procedures without CC.
	MDC 9—Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast		
8344	Other fasciectomy	269	Other Skin, Subcutaneous Tissue & Breast Procedures with CC.
8344	Other fasciectomy	270	Other Skin, Subcutaneous Tissue & Breast Procedures without CC.
8345	Other myectomy	269	Other Skin, Subcutaneous Tissue & Breast Procedures with CC.
8345	Other myectomy	270	Other Skin, Subcutaneous Tissue & Breast Procedures without CC.
8382	Muscle or fascia graft	269	Other Skin, Subcutaneous Tissue & Breast Procedures with CC.
8382	Muscle or fascia graft	270	Other Skin, Subcutaneous Tissue & Breast Procedures without CC.
	MDC 10—Endocrine, Nutritional and Metabolic Diseases and Disorders		
387	Interruption vena cava	292	Other Endocrine, Nutritional, & Metabolic O.R. Procedures with CC.
387	Interruption vena cava	293	Other Endocrine, Nutritional, & Metabolic O.R. Procedures without CC.
5459	Other Lysis of Peritoneal adhesions	292	Other Endocrine, Nutritional, & Metabolic O.R. Procedures with CC.
5459	Other Lysis of Peritoneal adhesions	293	Other Endocrine, Nutritional, & Metabolic O.R. Procedures without CC.
	MDC 11—Diseases and Disorders of the Kidney and Urinary Tract		
0492	Implantation or replacement of peripheral neuro-stimulator.	315	Other Kidney & Urinary Tract O.R. Procedures.
3821	Blood vessel biopsy	315	Other Kidney & Urinary Tract O.R. Procedures.
387	Interruption vena cava	315	Other Kidney & Urinary Tract O.R. Procedures.
3949	Other revision of vascular procedure	315	Other Kidney & Urinary Tract O.R. Procedures.
	MDC 12—Diseases and Disorders Male Reproductive System		
387	Interruption vena cava	344	Other Male Reproductive System O.R. Procedures for Malignancy.
387	Interruption vena cava	345	Other Male Reproductive System O.R. Procedures Except for Malignancy.
8622	Excisional debridement of wound, infection, or burn	344	Other Male Reproductive System O.R. Procedures for Malignancy.
8622	Excisional debridement of wound, infection, or burn	345	Other Male Reproductive System O.R. Procedures Except for Malignancy.
	MDC 13—Diseases and Disorders of the Female Reproductive System		
387	Interruption vena cava	365	Other Female Reproductive System O.R. Procedures.
	MDC 16—Diseases and Disorders of the Blood, Blood Forming Organs, Immunological Disorders		
387	Interruption vena cava	394	Other O.R. Procedures of the Blood & Blood Forming Organs.

We did not receive any comments on the proposed movement of procedures codes from DRG 468. Accordingly, we are adopting, as final, the movement of the codes as outlined above.

b. Reassignment of Procedures Among DRGs 468, 476, and 477

We also annually review the list of ICD–9–CM procedures that, when in combination with their principal diagnosis code, result in assignment to DRGs 468, 476, and 477, to ascertain if any of those procedures should be reassigned from one of these DRGs to another of these DRGs based on average charges and length of stay. We look at the data for trends such as shifts in treatment practice or reporting practice that would make the resulting DRG assignment illogical. If we find these shifts, we would move cases to keep the DRGs clinically similar or to provide payment for the cases in a similar manner. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we are not moving any procedures from DRG 468 to DRGs 476 or 477, from DRG 476 to DRGs 468 or 477, or from DRG 477 to DRGs 468 or 476.

c. Adding Diagnosis Codes to MDCs

Based on our review this year, we are not adding any diagnosis codes to MDCs.

13. Changes to the ICD–9–CM Coding System

As described in section II.B.1. of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, charged with maintaining and updating the ICD–9–CM system. The Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The ICD–9–CM Manual contains the list of valid diagnosis and procedure codes. (The ICD–9–CM Manual is available from the Government Printing Office on CD–ROM for $22.00 by calling (202) 512–1800.) The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the *Tabular List* and *Alphabetic Index for Diseases*, while CMS has lead responsibility for the ICD–9–CM procedure codes included in the *Tabular List* and *Alphabetic Index for Procedures of the Manual*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public, to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes for implementation in FY 2003 at public meetings held on May 17 and 18, 2001, and November 1 and 2, 2001, and finalized the coding changes after consideration of comments received at the meetings and in writing by January 8, 2002.

We described our plans to expedite the implementation of coding changes in the September 7, 2001 **Federal Register**, including moving the dates of the ICD–9–CM Coordination and Maintenance Committee to December and April of each year. We also established the possibility of implementing procedure codes discussed in the April meeting as part of the October update in the same year. This reduces the time for activating a new code from a minimum of 11 months to a minimum of 6 months.

Because the changes would not be included in the proposed rule published in the spring, the public would be given less opportunity to consider the merits of the proposals. Decisions from the spring meeting must be finalized by early June in order to be included in changes in the GROUPER software and be effective October 1. The addenda must also be published on the homepage and distributed to publishers so that both paper versions of the ICD–9–CM code book and software applications can be ready in time for use by health care providers. Only those issues from the April meeting that could be quickly resolved and that received support from the public would be able to be included in the October addendum. Those that could not be quickly resolved would continue to be addressed as part of the addendum for October 1 of the next year.

The ICD–9–CM Coordination and Maintenance Committee met on April 18 and 19, 2002. Two code title issues discussed during that meeting were approved in time to be included in the Addendum of this final rule, to be effective October 1, 2002. These codes are new code 89.60 (Continuous intra-arterial blood gas monitoring) which is shown in Table 6B in the Addendum of this final rule, and revised code title 02.41 (Irrigation and exploration of ventricular shunt) which is shown in Table 6F in the Addendum of this final rule.

For a report of procedure topics discussed at the April 2002 meeting, see the Summary Report at: *http://www.cms.hhs.gov/medicare/icd9cm.asp*. This site also includes the Final Addendum for ICD–9–CM Procedures, which will be effective October 1, 2002.

Copies of the Coordination and Maintenance Committee minutes of the 2001 meetings can be obtained from the CMS home page at: *http://www.cms.gov/medicare/icd9cm.asp*. Paper copies of these minutes are no longer available and the mailing list has been discontinued. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 1100; 6525 Belcrest Road; Hyattsville, MD 20782. Comments may be sent by E-mail to: *dfp4@cdc.gov*.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; CMS, Center for Medicare Management, Purchasing Policy Group, Division of Acute Care; C4–08–06; 7500 Security Boulevard; Baltimore, MD 21244–1850. Comments may be sent by E-mail to: *pbrooks@cms.hhs.gov*.

The ICD–9–CM code changes that have been approved will become effective October 1, 2002. The new ICD–9–CM codes are listed, along with their DRG classifications, in Tables 6A and 6B (New Diagnosis Codes and New Procedure Codes, respectively) in the

Addendum to this final rule. As we stated above, the code numbers and their titles were presented for public comment at the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. In the proposed rule, we only solicited comments on the proposed DRG classification of these new codes.

For codes that have been replaced by new or expanded codes, the corresponding new or expanded diagnosis codes are included in Table 6A (New Diagnosis Codes) in the Addendum of this final rule. New procedure codes are shown in Table 6B. Diagnosis codes that have been replaced by expanded codes or other codes or have been deleted are in Table 6C (Invalid Diagnosis Codes). These invalid diagnosis codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 2002. Table 6C contains invalid diagnosis codes. There are no invalid procedure codes for FY 2002 (Table 6D). Revisions to diagnosis code titles are in Table 6E (Revised Diagnosis Code Titles), which also includes the DRG assignments for these revised codes. Revisions to procedure code titles are in Table 6F (Revised Procedure Codes Titles).

Comment: One commenter expressed concern about making procedure code changes discussed at the April ICD–9–CM Coordination and Maintenance Committee effective the following October. The commenter had concerns with the fact that these coding changes would not be discussed in the proposed rule, but would appear in the final rule. The commenter indicated that hospitals need time to comment on all proposed changes to the DRGS and to analyze changes for budgeting, train staff on coding changes, and implement software changes. The commenter also endorsed movements toward replacing ICD–9–CM with ICD–10–PCS and believed this would improve coded data. In addition, the commenter suggested that consideration be given to using Alpha-numeric HCPCS codes to report the use of drugs, supplies, and devices used for inpatients, instead of trying to make ICD–9–CM serve this purpose.

Response: We discussed the issue of consideration of coding changes at the April meeting of the Committee in the final rule on Payment for New Medical Services and New Technologies Under the Acute Care Hospital Inpatient Prospective Payment System published in the **Federal Register** on September 7, 2001 (66 FR 46902). We were responding to section 533 of Public Law 106–554, which provided for expediting the incorporation of new services into the coding system. While we recognize the commenter's concern, we also are responding to repeated requests to expedite our process of updating codes. We will carefully evaluate requests for new codes that are discussed at the April ICD–9–CM Coordination and Maintenance Committee to determine which codes can and should be included in the addendum on ICD–9–CM effective October of each year. We encourage the commenter to continue to participate in the process by attending these public meetings and offering its opinions.

On the issue of the movement to ICD–10–PCS and the possibility of using HCPCS codes for inpatient reporting, we note this issue is currently under review by the National Committee on Vital and Health Statistics (NCVHS). This committee advises the Secretary on coding standards issues under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The committee is currently conducting public meetings on the issues raised by this commenter. We will defer issues involving changes to the HIPAA standards to the NCVHS. For more information on this committee, please see its web site at: *http://www.ncvhs.hhs.gov/.*

14. Other Issues

In addition to the specific topics discussed in section II.B.1. through 13. of this final rule, we addressed a number of other DRG-related issues in the May 9, 2002 proposed rule. In the proposed rule, we did not propose any changes to the DRGs relating to the issues. Below is a summary of the issues that were addressed, any public comments we received, and our responses to those comments.

a. Intestinal Transplantation

We examined our data to determine whether it is appropriate to add a new intestinal transplant DRG. Our data revealed that nine intestinal transplantation cases were reported by two facilities. Of the nine cases, two cases involved a liver transplant during the same admission and, therefore, would be assigned to DRG 480 (Liver Transplant). As we stated in the proposed rule, we do not believe that the remaining seven cases provide a sufficient number to warrant the creation of a new intestinal transplant DRG.

Comment: Commenters supported the proposal not to create a separate new DRG for intestinal transplants and pointed out that this procedure is not being widely performed.

Response: We will continue to monitor intestinal transplantation cases to determine whether it may be appropriate in the future to establish a new DRG for the intestinal transplant procedure.

b. Myasthenia Gravis

Myasthenia Gravis is an autoimmune disease manifested by a syndrome of fatigue and exhaustion of the muscles that is aggravated by activity and relieved by rest. The weakness of the muscles can range from very mild to life-threatening.

This disease is classified to ICD–9–CM diagnosis code 358.0 and is assigned to DRG 12 (Degenerative Nervous System Disorders). Myasthenia Gravis in crisis patients is being treated with extensive plasmapheresis. We received a request to analyze the charges associated with Myasthenia Gravis in crisis patients receiving plasmapheresis to determine whether DRG 12 is an equitable DRG assignment for these cases. We are currently unable to differentiate between the mild and severe forms of this disease because all types are classified to code 358.0. Therefore, we requested the NCHS to create a new diagnosis code for Myasthenia Gravis in crisis so that we can uniquely identify these cases to ensure the DRG assignment is appropriate.

Comment: Commenters supported the creation of a new diagnosis code so that Myasthenia Gravis in crisis patients can be uniquely identified and the mild and severe forms of the disease is distinguished.

Response: This topic was addressed at the April 18, 2002 ICM–9–CM Coordination and Maintenance Committee meeting. NCHS proposed two new codes to capture Myasthenia Gravis not in crisis and Myasthenia Gravis in crisis. If the Committee approves these two codes, they would not become effective until October 1, 2003. At that point, we would be able to assess the charges associated with Myasthenia Gravis in crisis patients receiving plasmapheresis.

c. Cardiac Mapping and Ablation

In the August 1, 2001 final rule (66 FR 39840), in response to a comment received, we agreed to continue to evaluate DRGs 516 (Percutaneous Cardiovascular Procedure with Acute Myocardial Infarction (AMI)), 517 (Percutaneous Cardiovascular Procedure with Coronary Artery Stent without AMI), and 518 (Percutaneous Cardiovascular Procedure without

Coronary Artery Stent or AMI) in MDC 5. For the proposed rule, we reviewed code 37.26 (Cardiac electrophysiologic stimulation and recording studies), code 37.27 (Cardiac mapping), and code 37.34 (Catheter ablation of lesion or tissues of heart). The commenter had recommended that CMS either create a separate DRG for cardiac mapping and ablation procedures, or assign codes 37.27 and 37.34 to DRG 516 after retitling the DRG. We have reviewed FY 2001 MedPAR data on these specific codes. Over 97 percent of cases with these codes were assigned to DRG 518 and had average charges of $1,741 below the average for all cases in the DRG. Therefore, the data do not support making any DRG changes for these procedure codes.

We received one comment in support of our proposal not to make DRG changes to the cardiac mapping and ablation codes. Accordingly, in this final rule, we will not make any changes relating to the DRG assignment of codes 37.20, 37.26, and 37.34

d. Aortic Endograft

In the August 1, 2001 final rule (66 FR 39841), we responded to a comment concerning the placement of aortic endografts in DRG 110 (Major Cardiovascular Procedures with CC) and DRG 111 (Major Cardiovascular Procedures without CC). The commenter noted that the cost of the device alone is greater than the entire payment for DRG 111 and recommended that these cases be assigned specifically to DRG 110. Our response at that time was that DRGs 110 and 111 are paired DRGs, differing only in the presence or absence of a CC.

We reviewed the MedPAR data again for FY 2001 using the following criteria: All cases were either in DRG 110 or 111, had a principal diagnosis of 441.4 (Abdominal aneurysm without mention of rupture), and included procedure code 39.71 (Endovascular implantation of graft in abdominal aorta). Our conclusion is that the majority of aneurysm cases are already grouped to DRG 110, where they are appropriately compensated. Therefore, we did not propose to assign cases without CCs from DRG 111 to DRG 110. We reiterate that hospitals are responsible for coding their records completely and for recording and submitting all relevant diagnosis and procedure codes that have a bearing on the current admission (in particular, any secondary or additional diagnosis codes that may be recognized by the GROUPER software as codes describing complications or comorbidities associated with a case).

Comment: One commenter recommended a new DRG due to the significant costs associated with the device.

Response: The commenter submitted no data that would cause us to question our findings described above. Therefore, in this final rule, we are not changing the current DRG assignment of procedure code 39.71. e. Platelet Inhibitors.

In the August 1, 2001 final rule (66 FR 39840), we addressed a commenter's concern that modifications to MDC 5 involving percutaneous cardiovascular procedures would fail to account for the use of GP IIB–IIIA platelet inhibiting drugs for cases with acute coronary syndromes. GROUPER does not recognize procedure code 99.20 (Injection or infusion of platelet inhibitor) as a procedure. Therefore, its presence on a claim does not affect DRG assignment. We agreed to continue to evaluate this issue.

For the May 9, 2002 proposed rule, we reviewed cases in the FY 2001 MedPAR file for DRG 121 (Circulatory Disorders with AMI and Major Complication, Discharged Alive), DRG 122 (Circulatory Disorders with AMI without Major Complication, Discharged Alive) and DRGs 516, 517, and 518. We looked at all cases in these DRGs containing procedure code 99.20 by total number of procedures and by average charges. There were a total of 73,480 cases where platelet inhibitors were administered, with 70,216 of these cases in DRGs 516, 517, and 518. The average charges for platelet inhibitor cases in these three DRGs are actually slightly below the average for all cases in the respective DRGs. Therefore, we believe these cases are appropriately placed in the current DRGs, and we did not propose any changes to the assignment of the procedure code 99.20.

We received one comment in support of maintaining the current DRG assignments of code 99.20. Therefore, in this final rule, we are not making any changes to the DRG assignments of code 99.20.

f. Drug-Eluting Stents

The drug-eluting stent technology has been developed to combat the problem of restenosis of blood vessels previously treated for stenosis. The drug is coated on a stent with a special polymer, and after the stent is placed in the vessel, the drug is slowly released into the vessel wall tissue over a period of 30 to 45 days. The drug coating on the stent is intended to prevent the build-up of scar tissue that can narrow the reopened artery.

In Table 6B of the Addendum to this final rule, we list a new procedure code 36.07 (Insertion of drug-eluting coronary artery stents(s)) that will be effective for use October 1, 2002. We also are adding code 00.55 (Insertion of drug-eluting noncoronary artery stent).

A manufacturer of this technology asserted that this technology is significantly more costly than other technologies currently assigned to DRG 517 (Percutaneous Cardiovascular Procedure with Coronary Artery Stent without AMI) (average charges of $29,189 compared to average charges of $22,998). The manufacturer requested that code 36.07 be assigned to DRG 516 (Percutaneous Cardiovascular Procedure with Acute Myocardial Infarction (AMI)) even without the presence of AMI.

In addition, the manufacturer argued that this technology should be given preferential treatment because it will fundamentally change the treatment of multivessel disease. Specifically, the manufacturer stated that due to the absence of restenosis in patients treated with the drug-eluting stents based on the preliminary trial results, bypass surgery may no longer be the preferred treatment for many patients.[1] The manufacturer believes lower payments due to the decline in Medicare bypass surgeries will offset the higher payments associated with assigning all cases receiving the drug-eluting stent to DRG 516.

The FDA has not yet approved this technology for use. In the May 9, 2002 proposed rule, we specifically solicited comments on our proposal to treat the new codes cited above consistent with the current DRG assignment for coronary artery stents. We also stated that if the technology is approved by the FDA and further evidence is presented to us regarding the clinical efficacy and the impact that this technology has on the treatment of multivessel disease, we may reassign this code to another DRG or reassess the construct of all affected DRGs.

Comment: Several commenters supported the development of new ICD–9–CM codes 36.07 and 00.55 for drug-eluting stents, citing the need for identification of this new technology. Several commenters supported the creation of new ICD–9–CM codes in order to ensure this technology would receive payment under Medicare.

Response: We created two new ICD–9–CM codes for use with cases

[1] "Comparison of Coronary-Artery Bypass Surgery and Stenting for the Treatment of Multivessel Disease," Serruys, P.W., Unger, F., et al., *The New England Journal of Medicine*, April 12, 2001, Vol. 344, No. 15, p. 1117.

involving discharges occurring on or after October 1, 2002. These codes can be found in Table 6B. "New Procedure Codes" in the Addendum of this final rule. However, we emphasize that it is not necessary to assign new technologies a new ICD–9–CM code in order for Medicare payment to commence. In the absence of a new code, technologies are assigned to the nearest similar existing code and, consequently, to the relevant DRG for payment.

Comment: Numerous comments opposed our proposed DRG assignment of code 36.07 to DRG 517. One commenter noted that, while this technology is not yet approved, it has shown promise to significantly advance the treatment of coronary artery disease, and encouraged CMS to consider the available data to determine the most appropriate paying DRG. This commenter supported the reassignment of code 36.07 to another DRG or, if necessary, the modification of all affected DRGs, once verifiable data on the costs associated with drug-eluting stents become available.

Many of the commenters who supported higher payment for this technology were clinical practitioners and hospitals who expressed great anticipation for the potential benefits of this technology. In addition, commenters referred to the likelihood that, once these new drug-eluting stents are approved, patients would demand to have them inserted. This demand would put tremendous financial strain on hospitals.

Commenters also argued there should be long-term cost savings to the Medicare program and the health system generally from this technology after approval by the FDA. Specifically, if dramatically fewer patients require restenting, savings will result from fewer repeat angioplasty procedures. Also, to the extent bypass surgeries are also reduced (as suggested by the article footnoted above), savings will result from that outcome as well.

Response: We note that, at this point, the FDA has not approved this technology for general use. However, we also note that public presentation of the results from recent clinical trials have found virtually no in-stent restenosis in patients treated with the drug-eluting stent. Therefore, we recognize the potentially significant impact this technology may conceivably have on the treatment of coronary artery blockages.

As we have previously stated, new technology is generally assigned to the same DRG as the predecessor technologies. In this way, hospitals can receive payment immediately for the new technology. As use of the new technology diffuses among hospitals, we have gradually and largely automatically recalibrated DRG payment rates based on hospital claims data to reflect increasing or decreasing costs of cases assigned to the DRG. Generally, it takes 2 years for claims data to be reflected in the DRG weights.

Section 533 of Public Law 106–554 added sections 1886(d)(5)(K) and (d)(5)(L) to the Act (as implemented by §§ 412.87 and 412.88) to reduce the time needed for the DRG system to recognize the higher costs of new technologies that meet certain criteria (see section II.D. of this final rule). However, drug-eluting stents did not meet the cost threshold criterion. Therefore, we proposed to assign cases involving code 36.07 to DRG 517. Although this DRG assignment would be consistent with our prior practice of assigning new technology to the same DRGs to which its predecessor technologies were assigned, further consideration of this issue persuades us that a different approach is needed, given the extraordinary circumstances in this particular instance.

We are concerned that, if the FDA does approve this technology and the predictions of its rapid, widespread use are accurate, this action will result in a significant strain on hospital financial resources. In particular, we are concerned that the higher costs of this technology would create undue financial hardships for hospitals due to the high volume of stent cases and the fact that a large proportion of these cases could involve the new technology soon after FDA approval. Therefore, in this final rule we are creating two new DRGs that parallel existing DRGs 516 and 517, to reflect cases involving the insertion of a drug-eluting coronary artery stent as signified by the presence of code 36.07: DRG 526 (Percutaneous Cardiovascular Procedure with Drug-Eluting Stent with AMI); and DRG 527 (Percutaneous Cardiovascular Procedure with Drug-Eluting Stent without AMI). We understand the earliest date that a decision from the FDA is anticipated is late 2002. To further ensure that payments for the new DRGs 526 and 527 will not be made prior to FDA approval, we will activate these DRGs effective for discharges occurring on or after April 1, 2003. If the FDA approves the use of drug-eluting stents prior to April 1, 2003, cases coded with procedure code 36.07 will be paid using the DRG relative weights for DRG 517. New DRGs 526 and 527 will be temporary DRGs. By creating separate new DRGs, we are able to ensure that higher payments will only be made after a positive decision by the FDA. We expect that when claims data are available that reflect the use of these stents, we will combine drug-eluting stent cases with other cases in DRGs 516 and 517.

Although one manufacturer of this technology submitted data to us that included charges, hospital provider numbers, and admission and discharge dates on the Medicare patients for whom hospital bills were collected under the trial in order to demonstrate the higher average charges of cases included in the trial, much of the data submitted to us included only estimated charges for the new technology. Therefore, it was necessary to undertake several calculations to establish the DRG relative weights for these two new DRGs. First, based on prices in countries where drug-eluting stents are currently being used, and the average price of currently available stents, we calculated a price differential of approximately $1,200. Assuming average hospital charge markups for this technology (based on weighted average cost-to-charge ratios), the anticipated charge differential between old and new stents would be approximately $2,664 per stent. However, we recognize that some cases involve more than one stent. Using an average of 1.5 stents per procedure, the net estimated incremental charge for cases that would receive a drug-eluting stents is $3,996.

In order to accurately determine the DRG relative weights for these two new DRGs relative to all other DRGs, we must also estimate the volume of cases likely to occur in them among discharges occurring on or after April 1, 2003 and by September 30, 2003. To approximate the number of cases that would likely receive the drug-eluting stent between April 1, 2003 and September 30, 2003 (and thus would be assigned to new DRGs 526 and 527), we first identified cases in DRGs 516 and 517 with procedure code 36.06 (Insertion of non-drug-eluting coronary artery stent). Of these cases, we estimated what percentage would be likely to receive the drug-eluting stent after April 1, 2003. The manufacturer estimated that as many as 43 percent of current stent patients will receive drug-eluting stents during FY 2003. However, this estimate assumes 9 months of sales of the new stents during FY 2003, from January to September. Because these two new DRGs will only be valid for 6 months during FY 2003, from April through September, we estimated that 21.5 percent of all stent cases will be assigned to new DRGs 526 and 527 (43 percent of stent cases for 6 months instead of 9 months).

In determining the DRG relative weights, we assumed that 21.5 percent of coronary stent cases (those with code 36.06) from DRGs 516 and 517 would be reassigned to new DRGs 526 and 527 (with code 36.07), and the charges of these cases would be increased $3,996 per case, to approximate the higher charges associated with the drug-eluting stents in DRGs 526 and 527. The relative weights for DRGs 516 and 517 are calculated based on the charges of the cases estimated to remain in these two DRGs.

We note that this unprecedented approach is in response to the unique circumstances surrounding the potential breakthrough nature of this technology. We anticipate that the vast majority of new technologies in the future will continue to be routinely incorporated into the existing DRGs.

New DRG 526 (Percutaneous Cardiovascular Procedure With Drug-Eluting Stent With AMI) will have the following principal diagnoses:

- 410.01, Acute myocardial infarction, anterolateral wall, initial episode of care.
- 410.11, Acute myocardial infarction, other anterior wall, initial episode of care.
- 410.21, Acute myocardial infarction, inferolateral wall, initial episode of care.
- 410.31, Acute myocardial infarction, inferoposterior wall, initial episode of care.
- 410.41, Acute myocardial infarction, inferior wall, initial episode of care.
- 410.51, Acute myocardial infarction, other lateral wall, initial episode of care.
- 410.61, True posterior wall infarction, initial episode of care.
- 410.71, Subendocardial infarction, initial episode of care.
- 410.81, Acute myocardial infarction of other specified sites, initial episode of care.
- 410.91, Acute myocardial infarction, unspecified site, initial episode of care.

And operating room procedures:

- 35.96, Percutaneous valvuloplasty.
- 36.01, Single vessel percutaneous transluminal coronary angioplasty [PTCA] or coronary atherectomy without mention of thrombolytic agent.
- 36.02, Single vessel percutaneous transluminal coronary angioplasty [PTCA] or coronary atherectomy with mention of thrombolytic agent.
- 36.05, Multiple vessel percutaneous transluminal coronary angioplasty [PTCA] or coronary atherectomy performed during the same operation, with or without mention of thrombolytic agent.
- 36.09, Other removal of coronary artery obstruction.
- 37.34, Catheter ablation of lesion or tissues of heart.

Or nonoperating room procedures:

- 37.26, Cardiac electrophysiologic stimulation and recording studies.
- 37.27, Cardiac mapping.

And nonoperating room procedure:

- 36.07, Insertion of drug-eluting coronary artery stent(s).

The principal diagnosis will consist of any principal diagnosis in MDC 5 except AMI:

- 410.01, Acute myocardial infarction, anterolateral wall, initial episode of care.
- 410.11, Acute myocardial infarction, other anterior wall, initial episode of care.
- 410.21, Acute myocardial infarction, inferolateral wall, initial episode of care.
- 410.31, Acute myocardial infarction, inferoposterior wall, initial episode of care.
- 410.41, Acute myocardial infarction, inferior wall, initial episode of care.
- 410.51, Acute myocardial infarction, other lateral wall, initial episode of care.
- 410.61, True posterior wall infarction, initial episode of care.
- 410.71, Subendocardial infarction, initial episode of care.
- 410.81, Acute myocardial infarction of other specified sites, initial episode of care.
- 410.91, Acute myocardial infarction, unspecified site, initial episode of care.
- And operating room procedures:
- 35.96, Percutaneous valvuloplasty.
- 36.01, Single vessel percutaneous transluminal coronary angioplasty [PTCA] or coronary atherectomy without mention of thrombolytic agent.
- 36.02, Single vessel percutaneous transluminal coronary angioplasty [PTCA] or coronary atherectomy with mention of thrombolytic agent
- 36.05, Multiple vessel percutaneous transluminal coronary angioplasty [PTCA] or coronary atherectomy performed during the same operation, with or without mention of thrombolytic agent
- 36.09, Other removal of coronary artery obstruction
- 37.34, Catheter ablation of lesion or tissues of heart

Or nonoperating room procedures:

- 37.26, Cardiac electrophysiologic stimulation and recording studies
- 37.27, Cardiac mapping

And nonoperating room procedure:

- 36.07, Insertion of drug-eluting coronary artery stent(s).

Comment: One commenter expressed concern that this technology will be used to treat lesions that are not clinically indicated. This commenter suggested that there should be clear language stating that drug-eluting stents should only be used in patients who are symptomatic from coronary artery disease as documented by noninvasive stress tests and imaging to locate the ischemia.

Response: We appreciate the commenter's concern that this new technology be used only where it is clinically indicated. We note that our treatment of this technology should in no way be construed to circumvent the ongoing FDA review. We expect that the technology, if approved, would be used in accordance with any labeling guidelines issued by the FDA, and we reserve the right to evaluate the need for Medicare coverage limitations or restrictions in the future.

Comment: One commenter applauded our recognition of the potential advance in peripheral vascular care by creating a code for noncoronary artery stents, code 00.55 (Insertion of drug-eluting noncoronary artery stent(s)). However, the commenter indicated it could not discern from Table 6B (67 FR 31630) the DRG to which code 00.55 was assigned.

Response: Our usual practice is to assign a new code to the DRG to which the predecessor code had been assigned. For example, in 1995, when we added additional fourth digits to 60.2 (Transurethral prostatectomy) and created 60.21 (Transurethral (ultrasound) guided laser induced prostatectomy (TULIP)) and 60.29 (Other Transurethral prostatectomy), we assigned the two new codes to the DRGs in which 60.2 had been located. (In version 12.0 of the GROUPER, those DRGs were 306 and 307 and DRG 336 and 337; the two newer codes continue to be assigned to the same DRGs today.) We have followed this precedent with code 00.55, which is patterned after code 39.90 (Insertion of non-coronary artery stent or stents). Code 39.90 is not a code recognized by the GROUPER software as a procedure code that causes DRG assignment, and therefore it is not assigned to a DRG or DRGs by itself. The GROUPER will recognize the main procedure in which a stent is inserted in order to make the DRG assignment for that case. We recognize that insertion of stents in noncoronary vessels has the potential to occur in many MDCs and DRGs. We will monitor the new stent code in noncoronary vessels in our MedPAR data to determine if the DRG placement in which it is reported is appropriate.

g. Cardiac Resynchronization Therapy

Cardiac resynchronization therapy for heart failure provides strategic electrical stimulation to the right atrium, right ventricle, and left ventricle, in order to coordinate ventricular contractions and improve cardiac output. This therapy includes cardiac resynchronization therapy pacemakers (CRT–P) and cardiac resynchronization therapy defibrillators (CRT–D). While similar to conventional pacemakers and internal cardioverter-defibrillators, cardiac resynchronization therapy is different because it requires the implantation of a special electrode within the coronary vein, so that it can be attached to the exterior wall of the left ventricle.

We received a recommendation that we assign implantation of CRT–D (code 00.51, effective October 1, 2002) to either DRG 104 (Cardiac Valve and Other Major Cardiothoracic Procedure with Cardiac Catheterization) or DRG 514 (Cardiac Defibrillator Implant With Cardiac Catheterization). Currently, defibrillator cases are assigned to either DRG 514 (Cardiac Defibrillator Implant With Cardiac Catheterization) or DRG 515 (Cardiac Defibrillator Implant Without Cardiac Catheterization). DRG 514 has a higher relative weight than DRG 515. The manufacturer argued that the change should be made because the current DRG structure for cardioverter-defibrillator implants does not recognize the significant amount of additional surgical resources required for cases involving patients with heart failure.

The recommendation also supported assigning new code 00.50 (Implantation of cardiac resynchronization pacemaker without mention of defibrillation, total system [CRT–P]) to DRG 115 (Permanent Cardiac Pacemaker Implantation With AMI, Heart Failure, or Shock, or AICD Lead or Generator Procedure). Currently, pacemaker implantation procedures are assigned to either DRG 115 or DRG 116 (Other Permanent Cardiac Pacemaker Implant). DRG 115 has the higher relative weight. Because DRG 115 recognizes patients with heart failure, the manufacturer believed CRT–P cases would be appropriately classified to DRG 115.

We proposed to assign code 00.51 to DRG 514 or 515 and to assign code 00.50 to DRG 115 and 116. However, we solicited comments on these proposed DRG assignments and indicated that we would carefully consider any relevant evidence about the clinical efficacy and costs of this technology.

Comment: Numerous commenters responded to our statement that we would further consider evidence on the costs and clinical efficacy of the cardiac resynchronization technology. Commenters noted that, on average, patients with moderate to severe heart failure (New York Heart Class III/IV), for whom the CRT is indicated, are more physically compromised and need the support of additional personnel such as physical assistants and clinical heart failure coordinators. Data were submitted showing that heart failure cases have significantly longer average lengths of stay than average stays for other cases. These cases also have higher average charges (approximately $11,000 to $13,000 higher, according to one commenter). The commenters acknowledged that DRG 115 does specifically account for heart failure cases, but noted that DRGs 514 and 515 do not.

Commenters also argued there are additional costs associated with the additional surgical supplies required to perform these procedures (as well as the price differential of the new technology itself). Examples of supplies include a special left ventricular coronary sinus lead, a special pulse generator device, and a special electrical lead. One manufacturer estimated the incremental difference in the charges of the device and the additional surgical supplies to be $23,500.

Commenters further noted the additional surgical procedure time associated with CRTs. They noted that the implant procedure itself is much more complex than a conventional pacemaker or implanted cardioverter defibrillator, and generally requires additional staff, anesthesia, and other specialized services and supplies. The insertion of the left ventricular lead is estimated to require an additional 2 hours beyond a conventional procedure. Commenters pointed out that typically a venogram is required to navigate the coronary venous system. The additional time and resources were estimated to increase costs to the hospitals by $7,500.

Finally, commenters also cited data and anecdotal evidence to demonstrate the clinical benefits of this technology. The commenters noted that FDA approved CRT–D on May 2, 2002, which provides further evidence of the clinical efficacy of this technology. One commenter provided information to show that CRT–D improves peak oxygen uptake, translating to an increased ability to perform activities of daily living. Another commenter noted that pacing therapy offers the potential to increase blood pressure and heart rate.

On the basis of these higher costs and clinical improvements, these commenters generally recommended that CRT–Ds should be assigned to DRG 104. This DRG has a higher relative payment weight than either DRGs 514 or 515 (7.9615, compared to 6.3288 and 5.0380, respectively, based on the FY 2003 proposed DRG weights). One commenter suggested that if CRT–D cases are not assigned to DRG 104, they should only be assigned to DRG 514, not DRG 515. Several commenters suggested that CRT–Ps be assigned only to DRG 115, and not to DRG 116, since DRG 115 is the higher paying DRG. Other commenters suggested that all DRT–Ps be assigned to DRG 515 since DRG 515 pays more.

One commenter suggested that CRT–Ds are more clinically coherent to cases now assigned to DRG 104 based on: (1) The similarity of the diagnosis (for example, congestive heart failure); and (2) the similarities in clinical procedures used to implant a left ventricular lead and other cardiac catheterizations included in DRG 104. The commenter also suggested that the operating room preparation and procedure time for CRT–D cases was similar to that for other major cardiovascular procedures included in DRG 104, which supports the commenter's contention that CRT–Ds are more clinically consistent with DRG 104 than DRG 514 and 515.

Several commenters, including a national and a State hospital association, supported the assignment of new code 00.51 to DRG 514 or 515. Some commenters also supported the assignment of new code 00.50 to DRG 115 and DRG 116. The commenters added that cardiac resynchronization therapy is a new technology that recently received FDA approval and is still not widely used in hospitals in the United States. The commenters indicated that even though there is limited information at this time with regard to the clinical efficacy and costs of these devices, the technology seems to be similar to pacemakers and defibrillators, so the proposed DRG grouping is logical.

Response: We have carefully evaluated the information provided to us by the commenters. With respect to the cost data provided, we note that it is our previously stated preference to review actual data reflecting the total costs per case from patients treated with a particular new technology. Because the DRG payment is intended to cover all of the care provided during the course of an inpatient hospitalization, it is necessary to evaluate the impact a new technology may have on other aspects of patients' hospitalization. For example, many new technologies allow patients to be discharged sooner, actually reducing the total costs of the stay. While there is no indication that

this is the case with the CRT–D technology, we are unable to make an assessment based on the segregated data that were provided.

With respect to the suggestion that CRT–D cases should be assigned to DRG 104, we note that the DRG system groups cases that are similar clinically and in terms of costs. DRG 104 includes procedures performed on cardiac valves such as valve replacement and repair. Our clinical advisors disagree with the suggestion that the implantation of a CRT with or without defibrillation is clinically related or similar to procedures such as valve repair or replacement, which are assigned to DRG 104. We believe that, based on the nature and function of the devices, they are more appropriately classified as either pacemakers for the CRT–P or implantable cardioverter-defibrillators (ICDs) for the CRT–D devices. The additional lead is not, in our view, sufficient justification for classifying the CRT–Ds differently from all other debibrillators.

Furthermore, although chronic heart failure, for which these CRTs are used, is a common diagnosis, the etiology of the heart failure may vary significantly. Heart failure due to a faulty valve may be treated with valvuloplasty or valve replacement, and would be classified to DRG 104. On the other hand, heart failure due to ischemic events, such as a myocardial infarction, usually requires a completely different therapeutic approach involving other DRG assignments. Therefore, we do not believe it would be appropriate to classify cases receiving CRT–Ds to DRG 104.

With respect to the fall-back recommendation of the commenter that, if CRT–D cases are not assigned to DRG 104, they should all be assigned to DRG 514, we considered and rejected this suggestion. We note that a fundamental assumption underlying the DRGs is that the hospital has the responsibility for deciding what technology and process to employ in treating a particular type of patient. As hospitals in the aggregate make treatment decisions, these decisions are reflected in the DRG payment weights. This allows the payment rates to evolve in response to changing practice patterns.

The decision to treat CRT–D technology similarly to existing defibrillator technology is affected by our opinion that substantial improvement in health outcome benefits of adding the cardioverter-defibrillator component have not been fully established through clinical research. There are no published articles that have shown an improvement in survival from CRT. Although we appreciate the information provided by the commenters in this regard, we note there is not a significant body of evidence that CRT–D technology will supplant existing treatments for large numbers of patients. Because the DRG payment system is an average-based system wherein hospitals are expected to offset the higher costs of some cases with below-average costs in others, we anticipate that hospitals will be able to adequately finance this new technology as it is utilized. To the extent hospitals move to adopt this technology more widely over time, appropriate adjustments will be reflected in the DRG weights.

With respect to the recommendation that all CRT–P cases be assigned to DRG 115, CRT–Ps are inserted into patients with congestive heart failure. Therefore, when the code for CRT–P is reported in a patient with congestive heart failure, the case will be assigned to DRG 115. Only if the CRT–P were inserted in a patient who does not have congestive heart failure would the case be assigned to DRG 116. Since all the commenters agree that only patients with congestive heart failure would be candidates for the CRT–P, the end result will be that all of these cases would be assigned to DRG 115 as the commenters recommended. With respect to the recommendation that all CRT–Ps be assigned to DRG 515, our response is the same as for rejecting the assignment of DRT–Ds to DRG 515. Assignment of CRT–Ps to DRG 515 is not clinically appropriate.

Accordingly, we are adopting as final our proposed classification of code 00.50 to DRGs 115 and 116, and code 00.51 to DRGs 514 and 515. These changes will be effective for discharges occurring on or after October 1, 2002.

Comment: Many commenters mentioned that when the CRT–Ds are inserted, a coronary sinus venogram is often performed. The commenters stated that a venogram is a procedure that is similar to an arteriogram, which is classified as a non-O.R. procedure that affects the DRG assignment in some cases. The commenters stated that the additional time and resources of the venogram for a CRT–D should be accounted for by assignment of these cases to DRG 104.

Response: Coronary arteriograms and angiocardiograms do effect the DRG assignment in some cases. Arteriograms and angiograms of other sites that are not of the heart do not affect the DRG assignment. Venograms are not currently on the list of non-O.R. procedures that affect the DRG assignment. While the commenters are not suggesting that we add venograms to the list of non-O.R. procedures that affect the DRG assignment, they are recommending that the comparison of venograms to angiocardiograms be used as a justification for assigning CRT–Ds to DRG 104. Our medical consultants advise us that venograms are not as difficult to perform as are the coronary arterigrams and angiocardiograms. Venograms also have fewer associated risks than coronary arterigrams and angiocardiograms. Therefore, we would not reclassify venograms and make them affect the DRG assignment. In short, we do not believe that the performance of a venogram is justification for moving CRT–Ds to DRG 104.

h. Hip and Knee Revisions

We received a request to consider assigning hip and knee revisions (codes 81.53 and 81.55) out of DRG 209 (Major Joint and Limb Reattachment Procedures of Lower Extremity) because these revisions are significantly more resource intensive and costly than initial insertions of these joints.

We examined claims data and concluded that, while the charges for the hip and knee revision cases were somewhat higher than other cases within DRG 209, they do not support the establishment of a separate DRG.

Comment: Two commenters addressed this issue. One commenter stated that additional data review was needed to determine the variation in charges and length of stay to determine if this recommendation should be pursued. Another commenter stated that using charge data is incorrect. Hospitals are under increased pressure and scrutiny to keep their charges low and would not increase the charges of the revision prosthetic because it does not influence the amount of payment received. The commenter suggested that revisions of the hip and knee procedures should have their own DRG.

Response: Hospital charges have been the basis for recalibration of the DRG weights since FY 1986. Therefore, it is in the hospitals' best interest to submit accurate billing data. We utilize charge data in our analysis of the DRGs to ensure that each DRG contains patients with a similar pattern of resource intensity. To the extent that the markup of charges over cost varies from one particular device or procedure to another, the relative weights will be impacted. However, due to the relativity of the DRG weights, a low markup associated with one device or procedure will be offset by relatively higher markups associated with another device or procedure, leading to higher relative weights, and thus higher payments, for the latter device or procedure.

i. Multiple Level Spinal Fusions

We received correspondence suggesting that we create new spinal fusion DRGs that differentiate by the number of discs that are fused in a spinal fusion. The correspondents indicated that the existing ICD–9–CM codes do not identify the number of discs that are fused. Codes were modified for FY 2002 to clearly differentiate between fusions and refusions, and new codes were created for the insertion of interbody spinal fusion device (84.51), 360 degree spinal fusion, single incision approach (81.61), and the insertion of recombinant bone morphogenetic protein (84.52) (66 FR 39841 through 39844).

ICD–9–CM codes have not historically been used to differentiate among cases by the number of repairs or manipulations performed in the course of a single procedure. However, we explored the possibility of creating codes to differentiate cases by the number of discs fused during a spinal fusion procedure at the April 18 and 19, 2002 meetings of the ICD–9–CM Coordination and Maintenance Committee. Because the topic proved to be quite challenging and will require additional discussion, the Committee will consider it further at its scheduled December 5 and 6, 2002 meeting.

We also note that DRGs generally do not segregate cases based on the number of repairs or devices that occur in the course of a single procedure. For instance, DRGs are not split based on the number of vessels bypassed in cardiac surgery, nor are they split based on the number of cardiac valves repaired. Therefore, we did not propose DRG changes for multiple level spinal fusions in the May 9, 2002 proposed rule.

Comment: Commenters representing national and state hospital associations supported the proposal to not make DRG changes for multiple level spinal fusions at this time. The commenters agreed that ICD–9–CM historically has not been used to differentiate among cases by the number of repairs or manipulations performed during a single procedure. Also, the commenters wrote that developing a coding methodology for multiple level spinal fusions will require careful consideration because it will be introducing a new concept into ICD–9–CM coding. The commenters offered to work with CMS to examine whether such a methodology could be developed in the future.

One commenter urged CMS to carefully examine the issue of providing separate codes and payment for multiple level spinal procedures. The commenter stated that increased costs were incurred in this type of surgery and may warrant recognition within the DRGs.

Response: We appreciate the comments on what has evolved as a challenging coding issue. We look forward to working with the commenter and other groups as we attempt to develop an efficient way to capture multilevel spinal fusions. The topic will be discussed at the next meeting of the ICD–9–CM Coordination and Maintenance Committee, which will be held on December 5 and 6, 2002. The agenda for this meeting will be posted in November 2002 at: *www.cms.hhs.gov/medicare/icd9cm.asp*. Once new codes are developed, we will evaluate the DRG assignments.

j. Open Wound of the Hand

We received a recommendation that we move code 882.0 (Open Wound of Hand Except Finger(s) Alone Without Mention of Complication) from its current location in MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast) under DRGs 280 through 282 (Trauma to the Skin, Subcutaneous Tissue and Breast Age >17 with CC, Age >17 without CC, and Age 0–17, respectively) into MDC 21 (Injuries, Poisonings and Toxic Effects of Drugs) under DRGs 444 through 446 (Traumatic Injury Age >17 with CC, Age >17 without CC, and Age 0–17, respectively).

In examining our data, we found relatively few cases with code 882.0. These cases had charges that were less than the average charges for DRGs to which they are currently assigned. The data do not support a DRG change. Our medical consultants also believe that the cases are appropriately assigned to DRGs 280 through 282.

We received comments in support on our proposed decision that the current DRG assignments for code 882.0 are appropriate. Accordingly, in this final rule we are not making any modifications of the DRG assignments for cases with code 882.0 at this time.

k. Cavernous Nerve Stimulation

As discussed in the August 1, 2001 final rule (66 FR 39845), we reviewed data in MDC 12 (Diseases and Disorders of the Male Reproductive System) to look specifically for code 89.58 (Plethysmogram) in DRG 334 (Major Male Pelvic Procedures with CC) and DRG 335 (Major Male Pelvic Procedures without CC).

Our data show that very few (six) of these procedures were reported on FY 2001 claims. It is not clear whether the small number reflects the fact that the procedure is not being performed, the ICD–9–CM code is not recorded, or the code is recorded but it is not in the top six procedures being performed. However, in all six cases where this procedure was performed, it occurred in conjunction with radical prostatectomy, so we are confident that these cases are consistent with the DRGs to which they have been assigned. Therefore, we did not propose any DRG assignment changes to procedures code 89.58 or any changes to DRGs 334 and 335.

We received one comment in support of our proposal not to change the DRG assignment of code 89.58 or DRGs 334 and 335. Accordingly, in the final rule we are making no changes to DRGs 334 and 335 with regard to procedure code 88.58. We anticipate that procedure code 89.58 will be performed in conjunction with radical prostastectomy, which is an operative code(s) describing the major surgical procedure.

1. Additional Issues Raised by Comments

We received a number of comments on additional specific DRG assignment issues that were not raised in the proposed rule. We are not responding to them individually here because they were not raised in the proposed rule. We will be considering each issue raised for consideration in the FY 2004 DRG reclassifications. We also note that we previously described a process for submission of non-MedPAR data for consideration in evaluating the DRG assignment issue (64 FR 41499).

C. Recalibration of DRG Weights

We are using the same basic methodology for the FY 2003 recalibration as we did for FY 2002 (August 1, 2001 final rule (66 FR 39828)). That is, we recalibrate the weights based on charge data for Medicare discharges. For the proposed rule, we used the most current charge information available, the FY 2001 MedPAR file. (For the FY 2002 recalibration, we used the FY 2000 MedPAR file.) The MedPAR file is based on fully coded diagnostic and procedure data for all Medicare inpatient hospital bills.

The final recalibrated DRG relative weights are constructed from the FY 2001 MedPAR data, which include discharges occurring between October 1, 2000 and September 30, 2001, based on bills received by CMS through March 31, 2002, from all hospitals subject to the acute care hospital inpatient prospective payment system and short-term acute care hospitals in waiver

States. The FY 2001 MedPAR file includes data for approximately 11,483,663 Medicare discharges. The data include hospitals that subsequently became CAHs, although no data are included for hospitals after the point they are certified as CAHs.

The methodology used to calculate the DRG relative weights from the FY 2001 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the DRG classification revisions discussed in section II.B. of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education and disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG. A transfer case is counted as a fraction of a case based on the ratio of its transfer payment under the per diem payment methodology to the full DRG payment for nontransfer cases. That is, transfer cases paid under the transfer methodology equal to half of what the case would receive as a nontransfer would be counted as 0.5 of a total case.
- We then eliminated statistical outliers, using the same criteria used in computing the current weights. That is, all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG are eliminated.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. (See section II.B.14.f. of this preamble for a discussion of the special adjustment used in calculating the FY 2003 DRG relative weights for DRGs 526 and 527.)
- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1999 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from CMS as transplant centers.)
- Acquisition costs for kidney, heart, heart-lung, liver, lung, and pancreas transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs: DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); DRG 480 (Liver Transplant); DRG 495 (Lung Transplant); and DRGs 512 (Simultaneous Pancreas/Kidney Transplant) and 513 (Pancreas Transplant). Because these acquisition costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to exclude them from the relative weights for these DRGs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We used that same case threshold in recalibrating the DRG weights for FY 2003. Using the FY 2001 MedPAR data set, there are 41 DRGs that contain fewer than 10 cases. We computed the weights for these 41 low-volume DRGs by adjusting the FY 2002 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The new weights are normalized by an adjustment factor (1.43889) so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

We did not receive any comments on DRG recalibration.

Section 1886(d)(4)(C)(iii) of the Act requires that, beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payments to hospitals are affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.a. of the Addendum to this final rule, we make a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

D. Add-On Payments for New Services and Technologies

1. Background

Section 533(b) of Public Law 106–554 amended section 1886(d)(5) of the Act to add subparagraphs (K) and (L) to establish a process of identifying and ensuring adequate payment for new medical services and technologies under Medicare. Section 1886(d)(5)(K)(ii)(I) of the Act specifies that the process must apply to a new medical service or technology if, "based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges * * * is inadequate." Section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered "new" if it meets criteria established by the Secretary (after notice and opportunity for public comment).

In the September 7, 2001 final rule (66 FR 46902), we established that a new technology would be an appropriate candidate for an additional payment when it represents an advance in medical technology that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries (§ 412.87(b)(1)).

We also established that new technologies meeting this clinical definition must be demonstrated to be inadequately paid otherwise under the DRG system to receive special payment treatment (§ 412.87(b)(3)). To assess whether technologies would be inadequately paid under the DRGs, we established this threshold at one standard deviation beyond the geometric mean standardized charge for all cases in the DRGs to which the new technology is assigned (or the case-weighted average of all relevant DRGs, if the new technology occurs in many different DRGs) (§ 412.87(b)(3)).

Table 10 in the Addendum of this final rule lists the qualifying criteria by DRG based on the discharge data that we are using to calculate the FY 2003 DRG weights. These thresholds will be used to evaluate applicants for new technology add-on payments during FY 2004 (beginning October 1, 2003). Similar to the timetable for applying for new technology add-on payments during FY 2003, we are requiring applicants for FY 2004 to submit a significant sample of the data no later than early October 2002. The complete request also must include a full

description of the clinical applications of the technology and the results of any clinical evaluations demonstrating that the new technology represents a substantial clinical improvement. Subsequently, we are requiring that a complete database be submitted no later than mid-December 2002.

Applications for consideration under this provision for FY 2004 should be sent to the following address: Centers for Medicare & Medicaid Services, c/o Inpatient New Technology Applications, Mail Stop C4–08–06, 7500 Security Boulevard, Baltimore, MD 21244.

In addition to the clinical and cost criteria, we established that, in order to qualify for the special payment treatment, a specific technology must be "new" under the requirements of § 412.87(b)(2) of our regulations. The statutory provision contemplated the special payment treatment for new technologies until such time as data are available to reflect the cost of the technology in the DRG weights through recalibration (no less than 2 years and no more than 3 years). There is a lag of 2 to 3 years from the point a new technology is first introduced on the market and when data reflecting the use of the technology are used to calculate the DRG weights. For example, data from discharges occurring during FY 2001 are used to calculate the FY 2003 DRG weights in this final rule.

Technology may be considered "new" for purposes of this provision within 2 or 3 years after the point at which data begin to become available reflecting the ICD–9–CM code assigned to the technology. After CMS has recalibrated the DRGs to reflect the costs of an otherwise new technology, the special add-on payment for new technology will cease (§ 412.87(b)(2)). For example, an approved new technology that received Food and Drug Administration (FDA) approval in October 2001 would be eligible to receive add-on payments as a new technology until FY 2004 (discharges occurring before October 1, 2003), when data reflecting the costs of the technology would be used to recalibrate the DRG weights. Because the FY 2004 DRG weights will be calculated using FY 2002 MedPAR data, the costs of such a new technology would be reflected in the FY 2004 DRG weights.

In the September 7, 2001 final rule, we established that Medicare would provide higher payments for cases with higher costs involving identified new technologies, while preserving some of the incentives under the average-based payment system. The payment mechanism is based on the cost to hospitals for the new technology. Under § 412.88, Medicare would pay a marginal cost factor of 50 percent for the costs of the new technology in excess of the full DRG payment. If the actual costs of a new technology case exceed the DRG payment by more than the estimated costs of the new technology, Medicare payment would be limited to the DRG payment plus 50 percent of the estimated costs of the new technology.

The report language accompanying section 533 of Public Law 106–554 indicated Congressional intent that the Secretary implement the new mechanism on a budget neutral basis (H.R. Conf. Rept. No. 106–1033, 106th Cong., 2d Sess. at 897 (2000)). Section 1886(d)(4)(C)(iii) of the Act requires that the adjustments to annual DRG classifications and relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. Therefore, we account for projected payments under the new technology provision during the upcoming fiscal year at the same time we estimate the payment effect of changes to the DRG classifications and recalibration. The impact of additional payments under this provision would then be included in the budget neutrality factor, which is applied to the standardized amounts and the hospital-specific amounts.

Because any additional payments directed toward new technology under this provision must be offset to ensure budget neutrality, it is important to consider carefully the extent of this provision and ensure that only technologies representing substantial advances are recognized for additional payments. In that regard, we indicated that we will discuss in the annual proposed and final rules those technologies that were considered under this provision; our determination as to whether a particular new technology meets our criteria for a new technology; whether it is determined further that cases involving the new technology would be inadequately paid under the existing DRG payment; and any assumptions that went into the budget neutrality calculations related to additional payments for that new technology, including the expected number, distribution, and costs of these cases.

To balance appropriately Congress' intent to increase Medicare's payments for eligible new technologies with concern that the total size of those payments not result in significantly reduced payments for other cases, we set a target limit for estimated special payments for new technology under the provisions of section 533(b) of Public Law 106–554 at 1.0 percent of estimated total operating prospective payments.

If the target limit is exceeded, we would reduce the level of payments for approved technologies across the board, to ensure estimated payments do not exceed the limit. Using this approach, all cases involving approved new technologies that would otherwise receive additional payments would still receive special payments, albeit at a reduced amount. Although the marginal payment rate for individual technologies would be reduced, this would be offset by large overall payments to hospitals for new technologies under this provision.

Comment: Numerous commenters expressed concern that the method by which payments are made—in a budget neutral manner—reduces the amount of DRG payments for other cases. The commenters noted that shifting money around within the prospective payment system leaves hospitals without the additional money they need to ensure beneficiaries have access to the newest medical tests and treatments. Many of the commenters believed that reducing payments for other services in order to increase payments for new technology is inappropriate, as the costs associated with all other inpatient procedures are not declining. The commenters noted that they will continue to urge Congress to adopt an appropriate adjustment to hospital payments without redistributing payments from elsewhere in the system.

Some commenters also wrote that the new technologies listed in the proposed rule are worthy of additional funding, but, since budget neutrality would reduce payments for all other inpatient procedures, even though costs for these procedures are not declining, the applications should not be approved. However, if the applications are approved, the commenters stressed the need to maintain the requirement that no more than 1 percent of total acute inpatient prospective payments may be used for new technology payments. Furthermore, if actual total add-on payments were less than estimated in calculating the budget neutrality adjustment, the commenters argued that unspent funds should be restored to the standardized amount.

Response: As stated above, the Congressional Report language accompanying section 533 of Public Law 106–554 clearly indicated Congress' intent that this provision is to be implemented in a budget neutral manner. Therefore, the commenters are correct that Congress is the appropriate body to consider concerns about the budget neutrality of this provision. We

also agree with the commenters about the need to limit the total payments made under this provision. In the September 7, 2001 final rule, we established a target limit of 1 percent of total acute inpatient prospective payment system payments for new technology. This target is intended to limit the redistributional impact of these higher payments for new technology relative to payments for other services.

Although our estimates are influenced by past experience, it has been our longstanding practice not to adjust our budget neutrality calculations retroactively on the basis of actual payments. We note that hospitals may either benefit or lose in any given year, depending on whether we underestimate or overestimate the budget neutrality factor. We would note that, in years when hospitals benefited from an underestimate of the budget neutrality factor, we did not recoup any payments resulting from the underestimate.

Comment: Some commenters criticized our implementation of the add-on payment provision for new technology. They claimed that the criteria we set make it impossible for technologies to qualify for add-on payments and suggest that many companies did not apply for new technology add-on payments because the threshold and other criteria were set so high. As proof, the commenters pointed to the small number of applications we received for new technology add-on payments for FY 2003, and to the apparent denial of all applicants. The commenters argued that our criteria operate to nullify the effect of the provision and, therefore, go against Congress' intent.

Response: Unlike the commenters, we believe the limited number of applications lends support to the appropriateness of the criteria. It was our intention to implement this provision without fundamentally disrupting the prospective payment system. A substantial number of cases receiving extra cost-based payments, (or substantial disaggregation of the DRGs into smaller units of payment) would undermine the efficiency incentives of the DRG payment system. This system, is founded on the theory that, by paying for patients with similar clinical characteristics based on the average resources needed to treat those patients, the system creates an incentive for physicians and hospitals to evaluate the most appropriate treatment approach for an individual patient, knowing that the payment to the hospital will, on average, reflect the average resources utilized across all patients in the DRG. Add-on payments for specific new technologies influence the financial incentives faced by the physician and the hospital, and, because these payments are implemented in a budget neutral manner, they impact the average payments for all DRGs.

While we recognize Congress' intent that Medicare beneficiaries have faster access to new technologies that may be introduced more slowly otherwise due to payment concerns, we believe Congress also did not intend to fundamentally disrupt the incentives of the prospective payment system. We will continue to carefully evaluate whether our criteria appropriately balance these two objectives.

Comment: Many commenters repeated objections to policies proposed in the May 4, 2001 proposed rule (66 FR 22646). These comments are listed here.

Several commenters argued that the one standard deviation threshold was too high for most new technologies to qualify. Commenters also wrote that the substantial clinical improvement criterion should be removed, and that the 50-percent pass-through payment does not adequately reimburse hospitals for the cost of new technologies. Many commenters suggested that we use the 80-percent standard that we use for outlier thresholds.

One commenter objected to our requirement of a "significant sample" of "verifiable" external data. This commenter wrote that any economic data required should be reasonably derived from the clinical trials conducted in conjunction with submissions to the FDA. In addition, our data requirements should not be overly burdensome and should recognize the difficulties faced by hospitals, such as compliance with patient confidentiality regulations.

Some commenters suggested that we incorporate new technologies directly into the DRG system and adjust the weights to reflect the increased costs of the item(s) as data become available. They argued that this method would be more consistent with the fundamental structure of the acute care hospital inpatient prospective payment system and would avoid the complexity of coding and billing for new technology cases.

Some commenters suggested that the ICD–9–CM Coding System cannot continue to be expanded to create new codes to identify new technologies in the long term, and the ICD–10–Procedure Coding System (ICD–10–PCS) would be an appropriate long-term solution. One commenter, a national hospital association, referred to ICD–10–PCS as "the system of choice with appropriate attention given to implementation, education and system related issues." This commenter recommended that the approval process be revised to include a requirement that the applicant must barcode each item for ease of hospital reporting and billing, based on Universal Product Numbers.

Response: We discussed our positions on each of these issues in detail in the September 7, 2001 final rule (66 FR 46905). We appreciate the interest of the many stakeholders in ensuring that Medicare beneficiaries have full access to improvements in medical technology. Our rationales for these policies have not changed since we discussed them in that final rule, and we did not propose changes to these policies in the May 9, 2002 proposed rule. Therefore, readers are referred to the September 7, 2001 final rule for our responses to these comments. However, we will continue to assess each of these policies as we gain more experience with this provision, and would appreciate the commenters' continued input.

Comment: MedPAC agreed with the approach that we have taken in implementing this provision. MedPAC stated that our approach is "a reasonable compromise between the need to provide quick access to important new technologies for Medicare beneficiaries and not spending more than necessary."

Response: We appreciate the supportive comments submitted by MedPAC.

Comment: In conjunction with concern regarding overall payment decreases as a result of the requirement that add-on payments for new technology be budget neutral, several other commenters indicated that they agreed with our proposed denial of all of the new technology applications.

Response: We want to clarify the misunderstanding expressed by some new technology applicants that we proposed to deny all of the applications. In the May 9, 2002 proposed rule, we stated that, for two of the applicants, Xigris™ and the InFUSE ™ Bone Graft/LT-CAGE ™ Lumbar Tapered Fusion Device, we were withholding a final determination on whether these technologies represented a substantial clinical improvement or met the cost threshold until the final rule. We did propose to deny the other two applicants, Zyvox™ and Renew™ Radio Frequency Spinal Cord Stimulation Therapy.

Comment: One commenter believed that the cost threshold for a new technology to qualify for add-on payments is too high, but also expressed

concern that recent proposed legislation, which would establish that the cost of new technology must exceed the lesser of the current threshold or 50 percent above the standardized amount (about $2,100), was too low. This commenter urged us to amend our regulations to continue to allow the threshold to vary by DRG (currently, the threshold is based on the DRG's geometric mean charge plus the DRG's standard deviation of charges), but at a lower level than at present.

However, another commenter argued in favor of the alternative lower threshold. This commenter wrote that the current cost threshold was the primary reason that many technology manufacturers determined that submission of an application for an add-on payment would be fruitless.

Response: We agree with the commenter that the alternative threshold proposed in the legislation is too low. Reducing the threshold to such an extent would lead to many more technologies qualifying for add-on payments, which would be contrary to the bundling theory of the DRG system and would be inflationary. Under these lower thresholds, technology sponsors would have a strong incentive to establish prices for otherwise low-cost technologies at marginally higher levels that would meet this minimal threshold. In contrast, market forces prevent otherwise low-cost technologies being priced at a level sufficient to meet our present, higher threshold. Even though the add-on payments are budget neutral, this price inflation would eventually be reflected in the market basket. On the other hand, the current thresholds greatly limit inflationary pressures by targeting technologies that have extraordinarily high costs. However, we will continue to assess the adequacy of our current criteria as we continue to gain experience implementing the provision for add-on payments for new technologies.

Comment: One commenter argued that the evaluation of an application for the substantial clinical improvement criteria should focus on the potential for the new technology to result in a substantial improvement over currently covered therapies. The commenter noted that very few medical devices are approved by the FDA on the basis of clinical trials that directly compare the new technology to other Medicare-covered alternatives. Data demonstrating a clear advantage in clinical outcomes are often not available until several years after FDA approval.

The commenter believed this approach would be beneficial to CMS, noting that the current process suggests a coverage-type analysis, potentially limiting CMS' ability to undertake any later coverage review after a substantial improvement determination is made. The commenter added that denying a request on the basis that a technology does not represent a substantial improvement could lead local Medicare contractors to restrict coverage based upon such a denial.

Response: We disagree that data needed to evaluate whether new devices are a substantial improvement over current therapies are unavailable until years after the technology is introduced. Our experience evaluating the applications discussed below, as well as under the outpatient prospective payment system pass-through policy, demonstrates that the sponsors of new technologies generally do collect data that can be used to assess whether a new technology is a substantial improvement over previously available technologies. Further, we believe it would be difficult, if not infeasible, to assess objectively the validity of an unsupported claim about potential outcomes. Rather, we believe it is appropriate and reasonable to expect applicants to present verifiable data demonstrating a substantial improvement of any applicant new technology relative to available alternatives.

We also do not believe that denial of an application on the grounds that the new technology is not a substantial improvement over existing technologies would lead to Medicare's contractors denying coverage. The criteria for substantial improvement determinations are quite different from coverage determinations, and we do not believe our contractors are likely to confuse the two.

Comment: One commenter wrote that it would be inappropriate to apply the budget neutrality adjustment to the hospital-specific payments to sole community hospitals (SCHs) and Medicare-dependent hospitals (MDHs). The commenter's argument appears to be based on the presumption that the add-on payments would not be available to hospitals paid using the hospital-specific rates.

Response: The commenter has correctly pointed out that we did not address whether add-on payments would be made to SCHs or MDHs paid on the basis of their hospital-specific amount in accordance with § 412.92(d) and § 412.108(c), respectively. We believe these additional payments for new technologies should be available to SCHs and MDHs paid on the basis of their hospital-specific amounts. These hospitals' payments under the hospital-specific amount methodology are adjusted by the DRG weight for each discharge. Because the costs of new technology would not be reflected in the base years used to calculate the applicable hospital-specific amounts, it is appropriate to provide for these hospitals to receive the add-on payments under this provision. Therefore, we are amending § 412.88(a)(1) to reflect this oversight.

Because SCHs and MDHs will be eligible to receive add-on payments in addition to their hospital-specific amounts, it is also appropriate to apply the applicable budget neutrality adjustments to the hospital-specific amounts.

Comment: Some commenters requested a payment calculation, showing that the add-on payment is made before the outlier adjustment. The commenters also were confused about the add-on payments in transfer situations. They wanted clarification on whether the transferring hospital would get the full add-on payment or if it would receive a prorated payment, and requested an example.

In addition, one commenter asked whether payments for indirect medical education (IME) or the disproportionate share hospital (DSH) adjustment are included in the "DRG payment amount" that is compared against costs to determine whether an individual case qualifies for the add-on payment. The commenter argued that if the add-on payment amount is calculated before outlier payments, it would logically follow that they would also be calculated before IME and DSH payments.

Response: The commenters are correct that the add-on payment is made prior to calculating whether the case qualifies for outlier payments (see § 412.80(a)(3)). In response to the request for a payment example, consider a new technology estimated to cost $3,000, in a DRG that pays $20,000. A hospital submits three claims for cases involving this new technology. After applying the hospital's cost-to-charge ratio, it is determined that the costs of these three cases are $19,000, $22,000, and $25,000. Under the proposed approach, Medicare would pay $20,000 (the DRG payment, including any IME or DSH payments) for the first claim. For the second claim, Medicare would pay one half of the amount by which the costs of the case exceed the DRG payment, up to the estimated cost of the new technology, or $21,000 ($20,000 plus one half of the amount by which costs of the case exceed the standard DRG payment). For the third claim, Medicare would pay $21,500 ($20,000 plus one half of the

total estimated costs of the new technology). In the event the hospital had a fourth case with extraordinarily high costs, the fixed-loss outlier threshold would be applied to the total DRG payment plus the add-on payment for new technology ($21,500), for comparison with the actual costs to determine whether the case would qualify for outlier payments.

With respect to the comment requesting clarification regarding the amount of the add-on payment made to a transferring hospital where the new technology eligible for add-on payments is provided prior to the transfer, the amount of the new technology add-on payment is not adjusted, but is paid up to 50 percent of the full cost of the new technology. This is appropriate because the hospital is likely to incur the full cost of the new technology when it is used. We are amending § 412.88(a)(1) to reflect this clarification.

With respect to whether IME and DSH payments are excluded from the comparison between the full DRG payment for the case and the costs for purposes of computing the add-on payment, § 412.88(a)(1) states that the full DRG payment "includes indirect medical education and disproportionate share." This amount is then compared to the costs of the discharge to compute the amount of the add-on payment § 412.88(a).

Comment: One commenter, representing a national hospital association, recommended against approving new technologies with very limited utilization because these technologies should already be receiving additional funds as outlier cases, and the added administrative burden of including these items negates any benefit. This commenter also suggested that we limit the number of applications that can be approved by setting a minimum of $30 million in projected payments for each new technology.

This commenter argued that this limitation would reflect the added burden and administrative expense for hospitals associated with each additional new technology item that is approved. The commenter stated that training and operational and behavioral changes in response to specific coding requirements were examples of such additional costs.

Response: We believe the incremental costs to hospitals associated with this provision should be minimal. Specifically, the additional payments are triggered by the presence of an ICD–9–CM code on the bill, information already required to process the claim for normal DRG payment. Accordingly, there should be little need for training or other operational changes in response to the approval of a new technology for add-on payments.

Comment: Commenters requested further guidance for future applications.

Response: We are developing more detailed instructions for applicants, based on our experience in processing the FY 2003 applications. In the meantime, individuals interested in obtaining more information about the application process should call the Division of Acute Care at (410) 786–4548.

2. Applicants for FY 2003

We received five applications for new technologies to be designated eligible for inpatient add-on payments for new technology. One of these applications was subsequently withdrawn. In the proposed rule, we proposed that two of the applicants, Zyvox™ and Renew™ Radio Frequency Spinal Cord Stimulation Therapy, did not meet our criteria. We withheld a final determination on two other applicants, Xigris™ and the InFUSE™ Bone Graft/LT-CAGE™ Lumbar Tapered Fusion Device, pending further review to determine whether they met the substantial clinical improvement criteria.

Comment: A few commenters noted that, according to the final rule last year (66 FR 46914), we indicated we would propose our determination regarding new technology applications in the proposed rule. The public would then have the opportunity to comment on the proposed determinations. Because the FY 2003 proposed rule did not include specific proposed determinations for two technologies, the commenters argued that we did not give the public and the provider community an appropriate notice and comment period before the decisions take effect on October 1, 2002. These commenters urged us to allow for additional public comments on our final decisions announced in this final rule.

Response: We presented the results of our analysis of the available data in the May 9, 2002 proposed rule, including the budget neutrality implications, to provide an opportunity for those interested to submit specific comments on the applications. In fact, we did receive comments on specific aspects of the applications, as noted below. In addition, we clearly indicated in the proposed rule we were continuing to evaluate Xigris™ and the InFUSE™ Bone Graft/LT-CAGE™ Lumbar Tapered Fusion Device for possible approval in the final rule (67 FR 31428 and 31429). Therefore, we believe interested parties had sufficient information to evaluate our proposed decisions and to provide informed comments. For these reasons, we are not extending the period for providing public comment on the decisions on applicants announced below.

We also noted in the May 9 proposed rule that, due to the very limited timeframe between enactment of this provision, its implementation through the final rule, and the deadlines to submit applications for consideration for FY 2003, it was necessary to be more flexible this first year in working with the applicants to ensure that they were given every opportunity to demonstrate that their new technology qualified for add-on payments. Insofar as possible, we intend in the future to announce our proposed determinations in the annual proposed rule updating the acute care hospital inpatient prospective payment system.

a. Drotrecogin Alfa (Activated)—Xigris™

Eli Lilly and Company (Lilly) developed drotrecogin alfa (activated), trade name Xigris™, as a new technology and submitted an application to us for consideration under the new technology add-on provision. Xigris™ is used to treat patients with severe sepsis.

According to the application—

"Approximately 750,000 cases of sepsis associated with acute organ dysfunction (severe sepsis) occur annually in the United States. The mortality rates associated with severe sepsis in the United States range from 28 percent to 50 percent and have remained essentially unchanged for several decades. Each year, 215,000 deaths are associated with severe sepsis; deaths after acute myocardial infarction occur at approximately an equal rate."

Xigris™ is a biotechnology product that is a recombinant version of naturally occurring Activated Protein C (APC). APC is needed to ensure the control of inflammation and clotting in the blood vessels. In patients with severe sepsis, Protein C cannot be converted in sufficient quantities to the activated form. It appears that Xigris™ has the ability to bring blood clotting and inflammation back into balance and restore blood flow to the organs.

In support of its application, Lilly submitted data from the Phase III Protein C Worldwide Evaluation in Severe Sepsis (PROWESS) trial. According to Lilly, this was "an international, multicenter, randomized, double-blind, placebo-controlled trial in which 1,690 patients with severe sepsis received either placebo (n = 840) or

drotrecogin alfa (activated) (n = 850)." The results of the trial were published in an article in the March 8, 2001 edition of *The New England Journal of Medicine* (Bernard, G. R., Vincent, J. L., et. al., "Efficacy and Safety of Recombinant Human Activated Protein C for Severe Sepsis," Vol. 344, No. 10, p. 699).

Xigris™ was approved by the FDA in November 2001. In its approval letter, the FDA wrote that this biologic "is indicated for the reduction of mortality in adult patients with severe sepsis (sepsis associated with acute organ dysfunction) who have a high risk of death (for example, as determined by APACHE II [acute physiology and chronic health evaluation])." In the May 9, 2002, proposed rule, however, we indicated that we were unable to conclude, based on the published data, that Xigris™ represents an advance that substantially improves, relative to technology previously available, treatment for Medicare beneficiaries. Specifically, because the reduction in mortality in the published data was the result of a treatment effect in a relatively small number of patients and mortality was examined for only 28 days after treatment, we indicated that we planned to review unpublished data on all-cause mortality at the time of hospital discharge for all patients enrolled in the study.

Subsequent to the publication of the proposed rule, Lilly submitted additional data in response to our request. The major endpoint of the PROWESS study was a reported reduction in 28-day all-cause mortality of 6.1 percent. At the time the study ended, many of the participants were still hospitalized and whether they would ultimately recover was unknown. We requested data about those hospitalized patients to determine if the reported advantage in mortality from Xigris™ use persisted for all study participants. These data are now available and show an overall decrease in mortality for all patients, including patients over 65 years of age.

Therefore, we have concluded that, when used in accordance with the following FDA-listed indications and contraindications, Xigris™ meets the substantial improvement criteria for additional payment for new medical services and technologies under § 412.87(b)(1):

- Active internal bleeding;
- Recent (within 3 months) hemorrhagic stroke;
- Recent (within 2 months) intracranial or intraspinal surgery or severe head trauma;
- Trauma with an increased risk of like-threatening bleeding;
- Presence of an epidural catheter;
- Intracranial neoplasm or mass lesion or evidence of cerebral herniation.

Detailed bills were available for 604 of 705 patients in the United States in the PROWESS clinical trial (303 placebo patients and 301 treatment patients). In all, 83 hospitals submitted detailed bills. Of the 604 cases with detailed billing data, 274 were patients age 65 or older. The average total charge for these 274 cases, including the average standardized charge for the biological, was $86,184 (adjusted for inflation using the applicable hospital market baskets, as patients were enrolled in the trial from July 1998 through June 2000). The inflated average standardized charge of the biological only for these cases was $15,562.

Lilly also submitted detailed ICD–9–CM diagnosis and procedure codes for a subset of 157 of the 604 U.S. patients with billing data from the PROWESS trial. These data were not requested as part of the trial, but were sent in separately. Of these 157 patients, 82 were over 65 years of age. These 82 patients grouped into 23 DRGs. Approximately 75 percent of these 82 cases were in 5 DRGs: 29 percent were in DRG 475 (Respiratory System Diagnosis with Ventilator Support); 17 percent were in DRG 483 (Tracheostomy Except for Face, Mouth, and Neck Diagnoses); 15 percent were in DRG 416 (Septicemia Age>17); 7 percent were in DRG 415 (OR Procedure for Infectious and Parasitic Diseases); and 5 percent were in DRG 148 (Major Small and Large Bowel Procedures With CC).

Using the methodology described in the September 7, 2001 final rule (66 FR 46918), we calculated a case-weighted threshold based on the distribution of these 82 cases across 23 DRGs. In order to qualify for new technology payments based on these DRGs, the threshold would be $82,882 (compared to the average standardized charge of $86,184 noted above).

In the September 7, 2001 final rule, we stated that the data submitted must be of a sufficient sample size to demonstrate a significant likelihood that the sample mean approximates the true mean across all cases likely to receive the new technology. Using a standard statistical methodology for determining the needed (random) sample size based on the standard deviations of the DRGs identified in the trial as likely to include cases receiving Xigris™, we have determined that a random sample of 274 cases can be reasonably expected to produce an estimate within $3,500 of the true mean.[2] Of course, the data submitted do not represent a random sample of all cases in these DRGs across all hospitals.

The 274 case sample was for all U.S. patients over age 65 included in the PROWESS trial. In the September 7, 2001 final rule, we indicated our preference for using Medicare cases identifiable in our MedPAR database, although data from a trial without matching MedPAR data could be considered. We also indicated our intention to independently verify the data submitted.

We noted in the May 9, 2002 proposed rule (67 FR 31429) that, due to the passage of Public Law 106–554 in December 2000, and the publication of the final rule in September 2001, it was understandable that the data requirements that were included in the final rule in order to ensure that we would receive the information necessary to analyze applicants for new technology add-on payments were not accommodated in the design of the PROWESS trial. Therefore, in this case, it was necessary for CMS to work with Lilly to verify independently the data in order to determine whether Xigris™ represents a substantial clinical improvement.

After publication of the proposed rule, we analyzed our MedPAR data to develop a cohort group of patients in order to assess the validity of the charges reported for the patients in the PROWESS trial. Using the same methodology as Lilly, we were able to identify a cohort group of cases in the MedPAR data with similar criteria as the patients who were screened for the PROWESS trial and were discharged from the hospitals included in the trial. We calculated that the average total charges for these cases closely approximated the total charges that Lilly sent with its analysis. Based on this analysis, we have determined that the average standardized charges of $86,184 described above exceeds the cost threshold criteria of $82,882 for the DRGs involved. Therefore, we are approving Xigris™ for add-on payments under § 412.88, to be effective for FY 2003 and FY 2004.

Cases where Xigris™ is administered will be identified by use of the new ICD–9–CM procedure code 00.11 (Infusion of drotrecogin alfa (activated)). According to Lilly, "(t)he net wholesale

[2] The formula is $n = 4\sigma^2/B^2$, where σ is the standard deviation of the population, and B is the bound on the error of the estimate (the range within which the sample means can reliably predict the population mean). See Statistics for Management and Economics, Fifth Edition, by Mendenhall, W., Reinmuth, J., Beaver, R., and Duhan, D.

price for drotrecogin alfa (activated) is $210 for a 5-milligram vial and $840 for a 20-milligram vial. The average cost for a one-time 96-hour course of therapy for an average adult patient is $6,800 (24µg/kg/hr for 96 hours for a 70kg person)." Therefore, cases involving the administration of Xigris™ as identified by the presence of code 00.11 are eligible for additional payments of up to $3,400 (50 percent of the average cost of the drug).

For purposes of budget neutrality, we have estimated the additional payments that would be made under this provision during FY 2003. Lilly had estimated that, initially, 25,000 Medicare patients would receive Xigris™. However, Lilly's estimate does not fully reflect severe sepsis patients who may not have multiple organ failure, but for whom Xigris™ is indicated nonetheless due to APACHE II scores in the third and fourth quartiles. Therefore, for purposes of our budget neutrality estimates, we are projecting 50,000 Medicare patients will receive Xigris™ during FY 2003. We believe this projection reflects modest growth in FY 2003 from $35 million in sales reported by Lilly through February 2002 (since the drug was approved in November 2001). (At $6,800 per patient, $35 million in sales equates to just over 5,000 cases for the first 4 months since FDA approval.) We note that some analysts project sales of Xigris™ as high as approximately 100,000 cases annually. We believe our estimate reflects the potential for growth beyond the current usage since FDA approval in November 2001, and for the use of Xigris™ in treating patients without multiple organ failure for whom the drug is indicated but who were not included in Lilly's estimate.

If the maximum $3,400 add-on payment is made for all 50,000 of these patients, the total amount that would be paid for these cases would be an additional $170 million. However, comparing the total standardized charges for the 274 patients age 65 or older, we calculated that 56 percent had average standardized charges below the weighted average standardized charges for the 23 DRGs into which these cases were categorized. Therefore, assuming the costs for these cases would be below the payment received, these 56 percent of cases would not receive any additional payment. Therefore, for purposes of budget neutrality, we estimate the total payments likely to be made under this provision during FY 2003 for cases involving the administration of Xigris™ would be $74.8 million (44 percent of $170 million).

Comment: Numerous commenters recommended that we approve Xigris™. Many of the commenters described Xigris™ as a major advance in the treatment of patients with severe sepsis. However, some commenters indicated that its use has substantially increased the costs of caring for these patients. One commenter reported rationing of this drug at some institutions due to cost considerations. Another commenter submitted an article from a pharmaceutical newsletter recommending the "best method for patient selection is to use the criteria for enrollment in the PROWESS trial."

Response: We are pleased to approve Xigris™ for add-on payments under this provision. As described above, we believe this drug represents a substantial improvement over currently available therapies for the treatment of severe sepsis in patients who have a high risk of death. We note that our finding that Xigris™ represents a substantial clinical improvement is limited to the indications and contraindications listed in the approved FDA labeling guidelines.

Comment: Some commenters, including the applicant, objected to CMS' request for additional data and endpoints beyond those requested by the FDA for its approval of Xigris™. The commenters argued that the FDA has the regulatory responsibility to monitor safety and efficacy of drugs and medical devices and provides rigorous review and oversight to the approval of drugs. They further contended that the placement of drugs under FDA "priority review" process for approval should be given weight when determining whether a drug meets the CMS "substantial improvement" criteria.

According to the commenters, by asking manufacturers for additional data to determine if an applicant meets our substantial clinical improvement criteria, CMS has inappropriately substituted its judgment for that of the FDA. The commenters suggested that we implement policies to ensure that these "improprieties" will not be repeated. One commenter argued that, if we plan to ask for unpublished data from future sponsors, we should amend our rulemaking to specify the conditions under which unpublished data may be required.

Response: Although we are affiliated with the FDA and we do not question the FDA's regulatory responsibility for decisions to approve drugs, we are not using FDA guidelines to determine what drugs, devices, or technologies qualify for new technology add-on payments under Medicare. Our criteria do not depend on the standard of safety and efficacy that the FDA sets for general use, but on a demonstration of substantial clinical improvement in the Medicare population (particularly patients over age 65).

To clarify this distinction, we offer the following example. The FDA approves a drug for general use to control the effects of seasonal allergies. This drug works well and has minimal side effects, but it makes some people feel nauseous if they take it without food. Two years later, another company creates a new allergy medicine that does not cause nausea. This drug also gets approval from the FDA. This does not necessarily mean that the new drug represents a substantial clinical improvement over the existing drug. The new drug may be better for some patients to take, but it is only an equivalent treatment, or another option, to the first drug. Therefore, the new drug would not meet the CMS substantial clinical improvement criteria.

We also disagree with the suggestion that the FDA priority review process should be the standard by which CMS should approve new technologies for add-on pass-through payments. We do not want to accept a priority review determination by the FDA as a *de facto* substantial improvement determination by us because: (1) The FDA decision is made prior to reviewing all the clinical data about the product (the decision to review the marketing application as a priority review is made at the beginning of the review process); (2) if the FDA changes its criteria for priority review, it would change the criteria for substantial improvement; (3) the current criteria used by the FDA for priority review are not the same across product types; (4) the criteria for priority review are not exactly the same as CMS substantial improvement in all instances; and (5) it would mean that the FDA would be making a *de facto* reasonable and necessary determination, since a product that offers a substantial improvement is certainly reasonable and necessary.

With respect to the comments regarding the request for submission of unpublished data, we note that the September 7, 2001 final rule indicated that we would require applicants to submit evidence that the technology does provide a substantial clinical improvement over existing technologies (66 FR 46914). Therefore, we disagree with the commenter that it is necessary to amend our regulatory process in this regard.

Comment: The applicant commenter made several additional points in addition to the previous comment. The

applicant objected to the suggestion in the proposed rule that payment would likely be limited to patients meeting the FDA labeling guidelines. The applicant also objected to the statement in the proposed rule that the charge data submitted did not represent a random sample. The applicant reiterated its estimate that 25,000 Medicare beneficiaries would receive Xigris™ in FY 2003.

Response: We are approving Xigris™ for add-on payments on the basis that it represents a substantial clinical improvement over other treatments for patients consistent with the FDA-listed indications. We do not have an administrable mechanism to identify patients who may receive this drug without having the FDA-listed indications. We will review potential options to enable us to more precisely make such distinctions in the future. We reserve the right to reexamine the issue of limiting the types of patients for which add-on payments are made for FY 2004.

In determining whether a new technology is eligible for add-on payments, we compare the average standardized charges of cases involving the applicant technology to the weighted threshold of the relevant DRGs, which reflects the charges of all cases in those DRGs that are discharged from all hospitals (weighted by the number of cases in each DRG). Thus, our statement that the data submitted did not represent a random sample was made in the context of measuring whether the average standardized charge of the PROWESS trial data was statistically significantly higher than the threshold. In order for such a significance test to be truly valid, the trial cases would have to have been drawn randomly from all cases and all hospitals with cases in the relevant DRGs. Clearly, the PROWESS trial was not designed in this manner, nor would we expect it to be. Thus, we were attempting to approximate a standard using a methodology that requires certain assumptions that were not met by the data at hand, and we were merely acknowledging it was only an approximation.

As stated above, we believe the applicant's estimate of 25,000 Medicare patients receiving Xigris™ during FY 2003 does not reflect cases without multiple organ failures but with APACHE II scores in the third and fourth quartiles.

Comment: Some commenters noted that ICD–9–CM codes do not distinguish between dosage amounts for drugs. They recommended (at least until ICD–10–PCS becomes available) relying on ICD–9–CM for identifying new procedures such as a new pancreas implant or a minimally invasive hip replacement; and incorporating the HCPCS Level II codes. (HCPCS stands for Health Care Financing Administration [recently renamed the Centers for Medicare & Medicaid Services] Common Procedure Coding System) for new drugs or supplies.

One commenter indicated that ICD–9–CM codes appear to be sufficient at this time, but, as new technologies proliferate, they will become overwhelming. However, the commenter did request guidance from us about using "nontraditional" ICD–9–CM codes, as well as information about reporting these codes in instances where more than six procedure codes (the maximum spaces provided on the bill) are involved.

Response: We appreciate the insight provided by this commenter regarding future coding options and will take it into consideration as we look to future refinements to this policy. However, for the reasons addressed at length in the September 7, 2001 final rule, we are using the ICD–9–CM codes at this time to identify cases eligible for the new technology add-on (66 FR 46909–10). However, because of limited space available for new ICD–9–CM codes, we are unable at this time to differentiate the volume of drugs that are administered. Therefore, as described above, we will pay on the basis of an average dose per patient.

As stated above, add-on payments for Xigris™ will be calculated for cases identified by use of the ICD–9–CM code 00.11 (when other conditions are met). In relation to guidance on the use of this code, we believe the documentation requirements are straightforward: consistent with the definition of the code, the medical record must indicate infusion of drotrecogin alfa (activated). With respect to situations where more than six procedure codes may be involved, hospitals should follow normal coding guidelines for selecting which codes to include.

b. Bone Morphogenetic Proteins (BMPs) for Spinal Fusions

BMPs have been isolated and shown to have the capacity to induce new bone formation. Using recombinant techniques, some BMPs (referred to as rhBMPs) can be produced in large quantities. This has cleared the way for their potential use in a variety of clinical applications such as in delayed unions and nonunions of fractured bones and spinal fusions. One such product, rhBMP–2, is developed for use instead of a bone graft with spinal fusions.

An application was submitted by Medtronic Sofamor Danek for the InFUSE™ Bone Graft/LT–CAGE™ Lumbar Tapered Fusion Device for approval as a new technology eligible for add-on payments. The product is applied through use of an absorbable collagen sponge and an interbody fusion device, which is then implanted at the fusion site. The patient undergoes a spinal fusion, and the product is placed at the fusion site to promote bone growth. This is done in place of the more traditional use of autogenous iliac crest bone graft.

In 1997, in a pilot study conducted under a FDA approved device exemption, 14 patients were enrolled at 4 investigational sites. Eleven patients received rhBMP–2, with 3 control patients. Radiographs and computed tomography scans at 6, 12, and 24 months after surgery showed that all 11 patients who received rhBMP–2 had solid fusions, whereas only 2 of the 3 patients who received autogeneous bone graft had solid fusions. Scores from the Oswestry Low Back Pain Disability Questionnaire showed that 6 of 11 patients treated with rhBMP–2 had a successful outcome at 3 months after surgery, compared with 0 of 3 control patients. After 6 months, the results had changed to 7 of 11 rhBMP–2 patients and 2 control patients with successful treatments; and at 12 months, 10 rhBMP–2 patients and 2 control patients were judged successful. The results were unchanged at 24 months. The trial results were presented in an article in the February 1, 2000 edition of SPINE (Bone, S., Zdeblick, T., et al., "The Use of rhBMP–2 in Interbody Fusion Cages—Definitive Evidence of Osteoinduction in Humans: A Preliminary Report"), Vol. 25, No. 3, p. 376.

The above study was then expanded to involve 281 patients at 16 sites, with 143 patients in the rhBMP–2 group and 138 patients in the autogenous iliac crest bone graft group. In the rhBMP–2 group, 76.9 percent of the patients showed an improvement of at least 15 points in their disability scores at 12 months postoperatively. This compared favorably to 75 percent of patients in the control group. At 6 months following surgery, 97 percent of patients in the rhBMP–2 group showed evidence of interbody fusion, as compared to 95.8 percent in the control group. At 12 months, 96.9 percent of patients in the rhBMP–2 group were fused as compared to 92.5 percent in the control group. At this time, the results of this study are unpublished.

Cost data were submitted for 88 patients participating in the follow-up study described above. This trial was a single-level, anterior lumbar interbody fusion clinical study. Of the 88 bills with cost data, the applicant calculated an average standardized charge for these single-level fusion cases of $33,757. According to the applicant, "it is anticipated that a large number, if not the majority, of cases using BMP technology will, in practice, be multi-level fusions." The applicant reported the estimated hospital charges (based on general charging practices) to be $17,780 for each level. In order to account for the use of this technology in multilevel spinal fusions, the applicant assumed 47 percent of spinal fusions were multilevel (based on analysis of Medicare spinal fusion cases). Increasing the average standardized charge for the cases in the trial by $17,780, the applicant calculated a weighted average standardized charge (53 percent single-level and 47 percent multilevel) of $45,556.

Of these 88 cases, 11 were assigned to DRG 497 (Spinal Fusion Except Cervical With CC) and 77 were assigned to DRG 498 (Spinal Fusion Except Cervical Without CC). In order to qualify for new technology payments based on these DRGs, the threshold would be $37,815.

At the time of the proposed rule, this technology was not approved for general use by the FDA. Therefore, we indicated that if the FDA approved the product for general use prior to our issuance of the final rule, we would issue a determination whether this technology represents a substantial clinical improvement under the criteria outlined in the September 7, 2001 final rule.

On July 2, 2002, the FDA approved this technology. The approval was for spinal fusion procedures in skeletally mature patients with degenerative disc disease at one level from L4–S1. Therefore, based on the FDA's approval, multilevel usages of this technology would be off-label. As noted above, this technology would meet the cost threshold only if the added costs of multilevel fusions are taken into account. Because the FDA has not approved this technology for multilevel fusions, and the applicant has not submitted data to demonstrate this technology is a substantial clinical improvement for multilevel fusions (as described above, the clinical trial upon which the application was based was a single-level fusion trial), we cannot issue a substantial clinical improvement determination for multilevel fusions. Therefore, because the average charges for this new technology, when used for single-level spinal fusions, does not exceed the threshold of $37,815 noted above, we are denying this application for add-on payments during FY 2003. Because the new technology did not qualify on the basis of charges above the thresholds, we did not make a substantial improvement determination.

Comment: A few commenters were very supportive of approving Medtronic Sofamor Danek's InFUSE™ Bone Graft technology. These commenters note that this rhBMP–2 technology is a substantial clinical improvement as it obviates the need for a second surgical procedure to harvest autogenous iliac crest bone. The commenters noted that this substantial improvement focuses mostly on relief of pain in patients because many patients who undergo bone harvesting have pain at the donor site up to 10 years after the surgery.

Several other commenters, however, recommend that we not approve this application for add-on payments. These commenters stated that "the clinical trial results solidly counter the claim of significant improvement." Commenters also objected to the data that the manufacturer provided, stating that in order for the threshold to be met, the manufacturer provided estimates for procedures that would involve multilevel fusions. At the time of the proposed rule, the FDA had not approved the treatment, and commenters noted that the FDA could not approve the treatment for multilevel surgeries because it had been given no clinical evidence for these procedures. The commenters pointed out that FDA's approval (which came on July 2, 2002) could (and does) only indicate approval for use of the product for single-level fusions. Therefore, the commenters strongly opposed the approval of the BMP applicant because it does not meet our financial threshold. The commenters also were concerned that, if approved for new technology payments, the technology may be used inappropriately off label and for indications that have not been approved by the FDA.

Response: We stated in the September 7, 2001 final rule that we believe the technologies approved for add-on payments should be limited to those new technologies that have been demonstrated to represent a substantial improvement in caring for Medicare beneficiaries, such that there is a clear advantage to creating a payment incentive for physicians and hospitals to utilize the new technology (66 FR 46913). Further, we stated that we believe it is in the best interest of Medicare beneficiaries to proceed very carefully with respect to the incentives created to quickly adopt new technology.

As noted above, we are denying this application for add-on payments during FY 2003 because it does not meet our cost threshold when used for single-level spinal fusions, and there is no available evidence upon which to determine whether it represents a substantial improvement for multilevel uses.

c. Zyvox™

Zyvox™ is the first antibiotic in the oxazolidinone class and is widely used by hospitals in the United States and other countries against the medically significant gram-positive bacteria, including those that are resistant to other therapies. Gram-positive bacterial infections have become increasingly prevalent in recent years, most commonly implicated in infections in the lower respiratory tract, skin and soft tissue, bone and bloodstream, and in meningitis. Significant morbidity and mortality trends are associated with such pathogens. Epinomics Research, Inc., submitted the application on behalf of Pharmacia Corporation (Pharmacia), which markets the drug.

The FDA approved Zyvox™ on April 18, 2000, for the treatment of serious infections caused by antibiotic-resistant bacteria. The applicant contends that this qualifies Zyvox™ for approval within the 2-year to 3-year period referenced at § 412.87(b)(2). Furthermore, the applicant notes that the approval of the new ICD–9–CM code 00.14 (Injection or infusion of oxazolidinone class of antibiotics) effective October 1, 2002, will permit a more precise identification of these cases. However, as noted previously, technology will no longer be considered new after the costs of the technology are reflected in the DRG weights. Because the costs of Zyvox™ are currently reflected in the DRG weights, Zyvox™ does not meet our criterion that a medical service or technology be "new". The FY 2001 MedPAR data used to calculate the proposed DRG weights for FY 2003 include cases where Zyvox™ was administered. The application itself noted that the use of Zyvox™ is widespread. Therefore, even though the existing code, 99.21 (Injection of antibiotic) is a general code used for the administration of various antibiotics including Zyvox™, and does not separately identify the administration of Zyvox™ as will be possible with the new code 00.14, the charges associated with these cases are reflected in the proposed FY 2003 DRG weights.

As stated above, we note that the applicant itself points out that Zyvox™

is widely used currently by hospitals. In its 4th quarter 2001 earnings report, Pharmacia reports total sales in the United States of $97 million, which is an increase of 105 percent over the previous year. This would indicate expanding access to the drug.

We would point out that, in response to a comment that technologies should qualify as "new" beginning with the assignment of an appropriate tracking code, we clarified in the September 7, 2001 final rule that we would not consider technologies that have been on the market for more than 2 or 3 years to be "new" on the basis that a more precise ICD–9–CM procedure code has been created (66 FR 46914). However, although such technologies would not qualify for add-on payments under this provision, we did indicate that we would evaluate whether the existing DRG assignments of the technology are appropriate.

For example, currently the administration of Zyvox™ does not affect the DRG to which a case is assigned. In its application for add-on payments, Epinomics provided CMS data that included clinical trials as well as data from a sample that spanned MedPAR files from FY 2000 through FY 2002. For its sample study, Epinomics obtained patient records from 70 hospitals that used Zyvox™ treatment on 832 Medicare patients. The cases were distributed across 151 DRGs. Epinomics calculated that the mean standardized charge for these 485 cases was $74,174. The case-weighted mean standardized charge for all cases in these DRGs would be $33,740 (based on the distribution of Zyvox™ cases across the 151 DRGs).

The unit price for the drug varies from approximately $30 for a 100 milliliter bag (200 milligram linezolid) to approximately $1,350 for 600 milligram tablets (unit doses of 30 tablets). Nevertheless, it appears the high average charges associated with patients receiving the drug are not directly attributable to the administration of Zyvox™. Therefore, in the May 9, 2002 proposed rule, we did not propose any changes to the DRG assignment of these cases. We indicated that to the extent these cases are more expensive due to the severity of illness of the patients being treated, the current outlier policy will offset any extraordinarily high costs incurred.

Comment: Several commenters, including the applicant, strongly objected to our denial of Zyvox™ for new technology payments. They criticized our decision not to approve it on the grounds that payments for this expensive drug are already incorporated into the DRG recalibration for FY 2003. The commenters argued that, based on the recent assignment of an ICD–9–CM code, the drug still qualifies for add-on payments under the Congressional intent of the law.

The commenters referenced the language of section 1886(d)(5)(K)(ii)(II) of the Act in support of their claim that this technology qualifies as new. They believed the 2-year to 3-year period "beginning on the date on which an inpatient hospital code is issued with respect to the service or technology" applicable to Zyvox™ should begin October 1, 2002, when new code 00.14 becomes effective. They argued that this new code will allow data to be accumulated to track the costs of these cases.

Response: Again, we do not believe it would be appropriate to consider technologies that have been on the market for 2 or 3 years for approval under this provision on the basis that a new, more precise, procedure code is subsequently issued. Allowing technologies that have already been in use to attain higher payments as a result of the assignment of a new, more specific ICD–9–CM code would open the door for the sponsors of any medical device or technology to consider whether they might qualify their product for add-on payments by requesting and receiving a new code from the ICD–9–CM Coordination and Maintenance Committee. We do not believe it was Congress' intent that this provision should be interpreted that way.

Therefore, it is necessary to establish a point after which previously existing technologies are not eligible to qualify for add-on payments under this new provision. We believe it is reasonable to establish the cutoff point such that those technologies with data available in the FY 2001 MedPAR to be included in the calculation of the FY 2003 DRG weights will not be eligible for new technology payments. We note that this process of incorporating new technologies into existing DRGs, where they eventually affect the weights depending on their utilization, was how all new technologies have been introduced since 1984. While we recognize Congress' intent to revise this process to expedite the introduction of new technologies, there was no indication in the legislation that the new policy was to apply to technologies whose costs were already reflected in the DRG weights.

Comment: The applicant criticized CMS for delaying the implementation of the provision. The commenter noted that the provision was to be implemented, "[n]ot later than October 1, 2001" and stated that CMS failed to implement the law by October 1, 2001. They argued that, by delaying the implementation, CMS effectively prevented Zyvox™ from ever meeting the "new" criteria, even though the drug got approval only 8 months before the provision was passed.

Response: We disagree that we delayed implementation of this provision. In the September 7, 2001 final rule, we stated that, although we did not approve any new technologies for add-on payments effective October 1, 2001, we did carefully evaluate all technologies that were brought to our attention, either as a result of our internal analysis or by the public, including those submitted for consideration during the public comment period on the May 4, 2001 proposed rule. Zyvox™ was not among the technologies submitted for consideration at that time.

Comment: Commenters argued that, although Zyvox™ was available and used during FY 2001, and therefore would be reflected in hospitals' charges used to set the FY 2003 DRG relative weights, due to the high cost of the drug, it is far from clear that hospitals prescribed the product for the majority of Medicare patients for whom it would be most appropriate. Therefore, the impact of the costs of the drug on the DRG weights is understated.

Response: We cannot assess whether the utilization of Zyvox™ was hampered by Medicare payments during FY 2001. However, we would note that Zyvox™ was treated in the same manner as other new technologies have been over the years. Further, we will continue to evaluate the appropriateness of payment for these patients as we do all other technologies and patient categories.

Comment: One commenter objected to the reference to Zyvox™ sales figures as evidence of expanding general access to the drug. The commenter stated that we provided no evidence to indicate this sale growth is the result of expanding use in the treatment of Medicare beneficiaries. The commenter went on to argue that "sales reports and other company financial data must be considered outside the scope of the review process."

Response: We disagree that we should ignore sales reports related to a product seeking additional payments to promote its expansion into the medical market. This market analysis was certainly not the basis for our decision not to approve this applicant, as described above. The sales reports were simply a portion of data we considered in our evaluation of the effects of our decision. We also note

that we received no evidence during the comment period to document that the sales growth referenced above did not pertain to Medicare beneficiaries.

Comment: The applicant expressed concern that, during discussions and meetings with CMS, no mention was made that there might be an issue related to the application meeting the "new" criterion.

Response: The criteria to qualify for add-on payments were specified clearly in the September 7, 2001 final rule. Clearly, the applicant believed it met the criteria, as evidenced by the fact that it applied and its subsequent comments on our proposed decision. The facts regarding the point at which Zyvox™ was approved by the FDA and when it became available for use are agreed upon. The difference of opinion centers on the criteria for "new". The commenter has described its interpretation, with which we disagree, as discussed above. The public comment process is part of the review and approval process. We believe the public comment process is the most appropriate avenue to consider the interpretation of legislative and regulatory criterion. As discussed above, we do not believe that it would be appropriate to allow technologies that have already been in use to attain higher payments as a result of the assignment of a new, more specific, ICD–9–CM code.

d. Renew™ Radio Frequency Spinal Cord Stimulation Therapy

An application was submitted by Advanced Neuromodulation Systems (ANS) for the Renew™ Spinal Cord Stimulation Therapy for approval as a new technology eligible for add-on payments. ANS is a medical device company that deals with management of chronic pain that is severe, persistent, and unresponsive to drugs or surgery. Spinal cord stimulation (SCS) offers a treatment alternative to expensive ongoing comprehensive care. Renew™ SCS was introduced in July 1999 as a device for the treatment of chronic intractable pain of the trunk and limbs.

According to the applicant:

"SCS is a reversible method of pain control that works well for certain types of chronic intractable pain. SCS requires a surgical procedure to implant a receiver and leads. These implanted devices generate electrical stimulation that interrupts pain signals to the brain. SCS is considered to be a treatment of last resort, and is usually undertaken only when first and second-line therapies for chronic pain fail to provide adequate relief. SCS uses low-intensity electrical impulses to trigger nerve fibers selectively along the spinal cord. The stimulation of these nerve fibers diminishes or blocks the intensity of the pain message being transmitted to the brain. SCS replaces areas of intense pain with a more pleasant sensation * * *," masking the pain that is normally present.

Prior to Renew™, SCS systems offered few technical capabilities for treating complex chronic pain patients who suffered with pain that spanned noncontiguous areas (multi-focal) or that varied in intensity over the painful area. The Renew™ system features a multiplex output mode that controls separate stimulation programs to allow outputs of varying frequencies to be used at the same time. According to ANS, "The significance of this technology is that it is now possible to multiplex (link and cycle) up to 8 programs to provide pain relieving paresthesia overlap of anatomical regions that are not contiguous or that cannot be captured by a single program."

The Renew™ technology also allows the concomitant use of separate programs for patients who require different power settings for different areas that have pain. With this technology, separate programs can be programmed from the same unit, with electrical output parameters customized for each painful region. ANS contends that the clinical significance of this technology is that patients who find satisfactory pain relief will require fewer alternative treatments to treat unrelieved pain.

The ANS application specifically requests add-on payments for the costs of the Radio Frequency System (RF System). This system only requires one surgical placement and does not require additional surgeries to replace batteries as do other internal SCS systems. ANS estimates that there are 2,900 RF Systems implanted annually; only 10 percent are in the inpatient setting. ANS is the only company that offers a 16-channel/electrode system.

ANS provided the 2001 hospital acquisition cost for ANS Renew™ 8 and 16 Channel/Electrode RF SCS Systems as follows:

	ANS 2001 list price
8 Channel/Electrode System:	
One Lead (8 Electrode)	$2,750.00
One Extension (8 Electrode)	695.00
Receiver (8 Channel)	4,995.00
Transmitter (8 Channel)	4,995.00
Total System	13,435.00
16 Channel/Electrode System:	
Two Leads (16 electrode)	5,550.00
Two Extensions (16 electrode)	1,390.00
Receiver (16 Channel)	7,295.00
Transmitter (16 Channel)	7,295.00
Total System	21,480.00

Currently, implanting the ANS 8 or 16 Channel/Electrode SCS System falls into DRG 4 (Spinal Procedures) under ICD–9–CM procedure code, 03.93 (Insertion or replacement, spinal neurostimulation). According to the September 7, 2001 **Federal Register**, the threshold to qualify for additional new technology payments for services classified to DRG 4 would be $38,242 (based on adding the geometric mean and the standard deviation of standardized charges) (66 FR 46922).

Relative to hospital invoice information, ANS provided the following estimates:

" * * * 90% of the U.S. hospital cost-to-charge ratios fall between .24 and .69, and 75% fall between .29 and .58. The median is .41. This median costs-to-charge ratio equates to an average hospital markup of 144%. If you apply the average hospital markup of 144% to the device acquisition cost plus the estimated facility cost, the result is an estimated hospital invoice for the SCS implant procedure of $40,101.00, for the 8 Channel/Electrode System and $59,731.00 for the 16 Channel/Electrode System."

In support of its application, ANS provided detailed bills for 12 patients. Of the 12 cases with detailed billing data, 3 patients were age 65 or older. The average total charge for these 3 cases, including the average standardized charge for operating room costs, was $42,820.

As noted previously, technology will no longer be considered new after the costs of the technology are reflected in the DRG weights. Because the Renew™ RF System was introduced in July 1999, the FY 2001 MedPAR data used to calculate the DRG weights for FY 2003 includes any Medicare cases that involved the implantation of the Renew™ RF System. The charges associated with these cases are reflected in the FY 2003 DRG weights. Therefore, the Renew™ RF System is not considered "new" under our criteria. However, we will continue to monitor these cases in DRG 4 to determine whether this is the most appropriate DRG assignment.

Comment: Several commenters objected to our proposed decision to not approve this application because the technology does not meet our criterion for "new" designation.

Response: We continue to believe that this technology does not meet the criterion for the reasons given in the proposed rule, as elaborated on in our response to comments discussed above in relation to Zyvox™.

III. Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprising two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA. For purposes of the wage index, we combine all of the rural counties in a State to calculate a rural wage index for that State.

We note that, effective April 1, 1990, the term Metropolitan Area (MA) replaced the term MSA (which had been used since June 30, 1983) to describe the set of metropolitan areas consisting of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the prospective payment system, we will continue to refer to these areas as MSAs.

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification from a rural area to a MSA, one rural area to another rural area, or from one MSA to another MSA, for purposes of payment under the acute care hospital inpatient prospective payment system.

In a December 27, 2000 notice published in the **Federal Register** (65 FR 82228), OMB issued its revised standards for defining MSAs. In that notice, OMB indicated that it plans to announce in calendar year 2003 definitions of MSAs based on the new standards and the Census 2000 data. We will evaluate the new area designations and their possible effects on the Medicare wage index, as well as other provider payment implications. Although the final construct of the redefined MSAs will not be known until 2003, we intend to work closely with OMB to begin to assess the potential ramifications of these changes.

Beginning October 1, 1993, section 1886(d)(3)(E) of the Act requires that we update the wage index annually. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. As discussed below in section III.F. of this preamble, we also take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act when calculating the wage index.

Section 304(c) of Public Law 106–554 amended section 1886(d)(3)(E) of the Act to provide for the collection of data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index. The initial collection of these data must be completed by September 30, 2003, for application beginning October 1, 2004 (the FY 2005 wage index).

In the May 4, 2001 proposed rule (66 FR 22674), we suggested possible occupational categories from the Occupational Employment Statistics (OES) survey conducted by the Bureau of Labor Statistics. In response to comments on the proposed rule, we agreed to work with the health care industry to develop a workable data collection tool. After we develop a method that appropriately balances the need to collect accurate and reliable data with the need to collect data that hospitals can be reasonably expected to have available, we will issue instructions as to the type of data to be collected, in advance of actually requiring hospitals to begin providing the data.

Comment: Commenters strongly encouraged us to take the time needed to develop the most appropriate survey instrument for collecting occupational mix data and to provide adequate time for hospitals to have available the required information. One commenter wrote that neither CMS nor the hospital industry is ready to implement an occupational mix adjustment. The commenter believed that, when the law was passed requiring occupational mix data to be collected by the end of September 2003, Congress did not understand the burden and complexity of collecting and using the information. The commenter noted that, over 10 years, CMS encountered many problems when it first tried to collect occupational mix data and believed that, today, hospitals are in no better position to provide the necessary information.

A commenter also requested that we publish a rule for comment that delineates our proposed occupational mix methodology and illustrates how the index mix would be calculated and used to adjust the overall wage index. The commenter expressed interest in continuing to work with us on this effort.

MedPAC has recommended that CMS collect the occupational mix data as part of the Medicare cost report, just as the wage data are currently collected. MedPAC notes that a separate survey usually has a lower initial response rate, and incorporating the survey as part of the cost report should minimize reporting burden on hospitals, enhance data accuracy, and help to achieve a 100-percent response rate. MedPAC recommended that we modify the cost report form and instructions as soon as possible to enable the collection of this data during the second round of data collection. MedPAC also recommended that we provide detailed information as soon as possible to hospitals regarding the specific occupational mix data they will be required to report in order to allow hospitals time to modify their information systems to collect the necessary wage and hours data. Although, MedPAC acknowledges it may not be possible to collect accurate data for FY 2002, it believes that it still may be feasible to collect the data for FY 2003 and meet the Congressional mandate to implement an occupational

mix adjustment for the FY 2005 wage index.

A few commenters expressed concern that an occupational mix adjustment would only recognize geographical differences in the price hospitals pay for a particular employee category and would not reflect that a hospital, such as a teaching hospital, may have higher labor costs because its patient population requires a larger number of highly skilled, highly priced employees. The commenters noted that a previous MedPAC study showed that an occupational mix adjustment would lower the wage index values for many areas where teaching hospitals are located. The commenters also expressed concern that Medicare's current DRG payment system does not adequately recognize patient severity and the higher resource costs that are associated with treating complex patients. The commenters believed that the current wage index methodology more appropriately reflects a higher employee skill mix, as reflected in higher wage indices where teaching hospitals are located, allowing teaching hospitals to recoup some of the losses they incur under the current DRG system. The commenters suggested that, if we include an occupational mix adjustment in the wage index, we should also refine the DRG system to ensure that more complex cases are adequately reimbursed.

Response: We appreciate all the comments we received and the continued support and assistance of hospitals in developing the occupational mix adjustment. Before implementing the adjustment, we will publish the details of the occupational mix methodology in the **Federal Register** and provide for public comment.

B. FY 2003 Wage Index Update

The FY 2003 wage index values in section V. of the Addendum to this final rule (effective for hospital discharges occurring on or after October 1, 2002 and before October 1, 2003) are based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1999 (the FY 2002 wage index was based on FY 1998 wage data).

The final FY 2003 wage index includes the following categories of data associated with costs paid under the hospital inpatient prospective payment system (as well as outpatient costs), which were also included in the FY 2002 wage index:

- Salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Certain contract labor costs and hours.
- Wage-related costs.

Consistent with the wage index methodology for FY 2002, the wage index for FY 2003 also continues to exclude the direct and overhead salaries and hours for services such as skilled nursing facility (SNF) services, home health services, and other subprovider components that are not paid under the hospital inpatient prospective payment system.

We calculate a separate Puerto Rico-specific wage index and apply it to the Puerto Rico standardized amount. (See 62 FR 45984 and 46041.) This wage index is based solely on Puerto Rico's data. Finally, section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State.

C. FY 2003 Wage Index

1. Removal of Wage Costs and Hours Related to Graduate Medical Education (GME) and Certified Registered Nurse Anesthetists (CRNAs)

Because the hospital wage index is used to adjust payments to hospitals under the acute care hospital inpatient prospective payment system, the wage index should, to the extent possible, reflect the wage costs associated with those cost centers and units paid under the hospital inpatient prospective payment system. Costs related to graduate medical education (GME) (teaching physicians and residents) and certified registered nurse anesthetists (CRNAs) are paid by Medicare separately from the hospital inpatient prospective payment system. In 1998, the AHA convened a workgroup to develop a consensus recommendation on this issue. The workgroup, which consisted of representatives from national and State hospital associations, recommended that costs related to GME and CRNAs be phased out of the wage index calculation over a 5-year period. Based upon our analysis of hospitals' FY 1996 wage data, and consistent with the AHA workgroup's recommendation, we specified in the July 30, 1999 final rule (64 FR 41505) that we would phase out these costs from the calculation of the wage index over a 5-year period, beginning in FY 2000.

FY 2003 would be the fourth year of the phaseout. Therefore, the wage index calculation for FY 2003 would blend 20 percent of a wage index with GME and CRNA costs included and 80 percent of a wage index with GME and CRNA costs removed. FY 2004 would begin the calculation with 100 percent of the GME and CRNA costs removed. However, in the May 9, 2002 proposed rule, we proposed to remove 100 percent of GME and CRNA costs from the FY 2003 wage index.

We have analyzed the FY 2003 wage index both with 100 percent of GME and CRNA costs removed and with 80 percent of these costs removed used the final wage index file. We found that the majority of labor market areas, both rural and urban, would benefit by the removal of all of these costs (304 out of 373). Only one rural labor market area would be negatively impacted by this change (New Hampshire by -0.09 percent). We note that, as part of its Report to the Congress on Medicare in Rural America (June 2001), MedPAC recommended fully implementing this phaseout during FY 2002. Similar to our findings, MedPAC found the effect of completely eliminating GME and CRNA costs "might not be negligible for some areas, but it would not be large in any case" (page 76). Of the urban labor market areas that would be negatively affected the decreases range from .01 to 1.0 percent.

Because we believe removing GME and CRNA costs from the wage index calculation is appropriate, and the impact is generally positive and relatively small, we proposed to remove 100 percent of GME and CRNA costs beginning with FY 2003 wage index.

Comment: Several commenters stated that, although the early elimination of GME and CRNA costs from the wage index calculation is not as significant as some other payment reductions, the proposed policy represents a net reduction in payments for some hospitals compared to payments using a wage index with 80 percent of GME and CRNA costs removed. Based on CMS' analysis presented in the proposed rule, the commenters noted that excluding 100 percent of these costs from the FY 2003 wage index would negatively affect hospitals in more than 20 percent of the labor market areas. Commenters also noted that the affected areas are primarily urban, where large teaching hospitals are more likely to be located. In addition, the commenters noted that urban hospitals have to absorb increased indigent care costs.

The commenters believed that our current 5-year phaseout policy was the result of a good-faith agreement negotiated with a hospital industry workgroup. They further believed that adoption of the proposed accelerated phaseout for the FY 2003 wage index would establish an unfortunate

precedent that questions the rationale for hospital associations to enter into any future negotiations with CMS. The commenters request us to adhere to our original 5-year phaseout schedule.

One commenter supported our proposal to remove 100 percent of GME and CRNA costs from the FY 2003 wage index.

Response: We implemented changes to the FY 1995 cost report (used to calculate the FY 1999 wage index) in order to separately identify the wage data associated with GME and CRNAs. However, due to data reporting problems, we were unable to remove these costs until the FY 2000 wage index. In the meantime, the hospital industry established a workgroup that developed a compromise agreement on the removal of these data from the wage index, including a 5-year phaseout to alleviate the negative impact this change would have on some areas. The recommendations of the workgroup were presented to CMS, and most (but not all) of them were accepted (see the July 30, 1999 final rule, 64 FR 41505). However, we note that CMS was not a party to the industry workgroup that developed the compromise agreement.

As noted above, Medicare pays hospitals for GME and CRNA costs separately from the acute care hospital inpatient prospective payment system. CMS is responsible for ensuring the accuracy and fairness of the wage index and it is our assessment at this time that, due to the small impact as described above, of removing GME and CRNA costs from the wage index, and because hospitals that are negatively impacted by this change are in areas that have benefited from the inclusion of these costs over the years, it is in the interest of improving the overall fairness of the wage index to accelerate the phaseout. Therefore, we are proceeding with removing 100 percent of GME and CRNA costs beginning with the FY 2003 wage index.

Comment: One commenter representing CRNAs requested that we continue to include in the wage index the costs of contract CRNAs who are used by hospitals to address staffing shortages. The commenters noted that our proposal recognizes the fact that hospitals are increasingly reliant upon contract labor for providing direct and indirect patient care. The commenter believed that hospitals should not be penalized for having to use contract CRNAs to meet staffing needs.

Response: As explained above, we believe the wage index should, to the extent possible, reflect those costs for which hospitals receive payment under the acute care hospital inpatient prospective payment system. Because hospitals are not paid under this system for CRNAs' services, we continue to believe that CRNA costs are appropriately excluded from the wage index.

2. Contract Labor for Indirect Patient Care Services

Our policy concerning the inclusion of contract labor costs for purposes of calculating the wage index has evolved with the increasing role of contract labor in meeting special personnel needs of many hospitals. In addition, improvements in the wage data have allowed us to more accurately identify contract labor costs and hours. As a result, effective with the FY 1994 wage index, we included the costs for direct patient care contract services in the wage index calculation, and with the FY 1999 wage index, we included the costs for certain management contract services. (The August 30, 1996 final rule (61 FR 46181) provided an in-depth discussion of the issues related to the inclusion of contract labor costs in the wage index calculation.) Further, the FY 1999 wage index included the costs for contract physician Part A services, and the FY 2002 wage index included the costs for contract pharmacy and laboratory services.

We continue to consider whether to expand our contract labor definition to include more types of contract services in the wage index. In particular, we have examined whether to include the costs for acquired dietary and housekeeping services, as many hospitals now provide these services through contracts. Costs for these services tend to be below the average wages for all hospital employees. Therefore, excluding the costs and hours for these services if they are provided under contract, while including them if the services are provided directly by the hospital, creates an incentive for hospitals to contract for these services in order to increase their average hourly wage for wage index purposes.

It has also been suggested that we expand our definition to include all contract services, including both direct and indirect patient care services, in order to more appropriately calculate relative hospital wage costs. Our goal is to ensure that our wage index policy continues to be responsive to the changing need for contract labor and allow those hospitals that must depend on contract labor to supply needed services to reflect those costs in their wage data. At the same time, we are concerned about hospitals' ability to provide documentation that sufficiently details contract costs and hours. The added overhead, supplies, and miscellaneous costs typically associated with contract labor may result in higher costs for contract labor compared to salaried labor. If these costs are not separately identifiable and removed, they may cause distortions in the wage index.

We agree that it may be appropriate to include indirect patient care contract labor costs in the wage index. However, in light of concerns about hospitals' ability to accurately document and report these costs, we believe the best approach is to assess and include these costs incrementally. Through incremental changes, we can better determine the impact that specific costs have on area wage index values. Also, by including these costs incrementally, hospitals and fiscal intermediaries are able to adjust to the additional documentation and review requirements associated with reporting the additional contract costs and hours.

In the May 9, 2002 proposed rule, we proposed to begin collecting contract labor costs and hours for management services and the following overhead services: administrative and general, housekeeping, and dietary. We selected these three overhead services because they are provided at all hospitals, either directly or through contracts, and together they comprise about 60 percent of a hospital's overhead hours. In addition, consistent with our consideration of administrative and general services, we proposed to collect costs and hours associated with contract management services that are not currently included on Worksheet S–3, Part II, Line 9 (that is, management services other than those of the chief executive officer, chief financial officer, chief operating officer, and nurse administrator).

Comment: Several commenters supported our continuing efforts to examine contract labor costs for inclusion in the wage index and to ensure that the wage index is not manipulated to distort an area's wage level. MedPAC commented that "excluding contract labor costs may affect the accuracy of the wage index and introduces undesirable incentives that may affect hospital employment decisions." However, some commenters cautioned that it will be challenging for hospitals to provide the required detailed data and documentation for the appropriate costs and hours and to exclude nonlabor expenses, such as equipment and supplies, from total contract expenses. The commenters believed that, for most housekeeping and dietary services contracts,

meaningful data regarding hours are nonexistent. For management contracts, some commenters believed that the collection of cost and hours data may be more feasible. However, the contract itself may not provide enough detail to be a sufficient source of documentation. One commenter disagreed with the inclusion of contract labor costs in the administrative and general cost center because the commenter believed that the types of costs reported in that center vary too widely across hospitals to be comparable.

The commenters advised that it is important for us to ensure consistency among fiscal intermediaries in their auditing of supporting documentation for contract labor. Further, some commenters supported a delay in including the additional contract labor costs until we develop clear definitions and acceptable methods for tracking the costs and hours. A delay would also allow hospitals more time to assure the appropriate and accurate collection of the required data. One commenter also requested that CMS make the new data regarding contract labor costs available for review, analysis, and comment prior to including these costs in the wage index.

Response: Due to, among other things, the general support we received for our proposal to include costs for contract indirect patient care services in the wage index, we are proceeding as proposed. We will revise the cost report form and instructions, as early as it is feasible to do so. We also will monitor the hospital industry for information regarding hospitals' ability to provide the data. Further, we will work with hospitals and intermediaries to develop acceptable methods for tracking the costs and hours. Finally, before including these additional costs in the wage index, we will provide a detailed analysis of the impact of including these additional costs in the wage index values in the **Federal Register** and provide for public comment. Our final decision on whether to include contract indirect patient care labor costs in our calculation of the wage index will depend on the outcome of our analyses and public comments.

Comment: One commenter believed that, in order to be a true measure of labor market differences, the wage index should reflect only those jobs and employment practices that are the same in every geographic area. In addressing the disparity in the current wage index policy that excludes the costs for contracted low paying jobs from the wage index, while the costs for the same services under direct hire are included, the commenter suggested that we consider excluding from the wage index all labor costs that are obtained under different methods across hospitals.

Response: The use of contract labor is widespread among hospitals, and the practice of hiring under contract exists to some degree in virtually every service a hospital provides. Under the commenter's proposal, the resulting wage index would reflect too few categories of services to be representative of hospitals' labor force. Therefore, we believe it would not be feasible to exclude from the wage index all services that are obtained by hospitals using different employment methods.

D. Verification of Wage Data From the Medicare Cost Report

The data for the FY 2003 wage index were obtained from Worksheet S–3, Parts II and III of the FY 1999 Medicare cost reports. The data file used to construct the wage index includes FY 1999 data submitted to us as of July 2002. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

We asked our fiscal intermediaries to revise or verify data elements that resulted in specific edit failures. The unresolved data elements that were included in the calculation of the proposed FY 2003 wage index have been resolved and are reflected in calculation of the final FY 2003 wage index.

The final rule we removed data for 36 hospitals that failed edits. For 14 of these hospitals, we were unable to obtain sufficient documentation to verify or revise the data because the hospitals are no longer participating in the Medicare program, are under new ownership, or are in bankruptcy status, and supporting documentation is no longer available. We identified 22 hospitals with incomplete or inaccurate data resulting in zero or negative, or otherwise aberrant, average hourly wages. Therefore, the hospitals were removed from the calculation. As a result, the final FY 2003 wage index is calculated based on FY 1999 wage data for 4,797 hospitals.

Comment: One commenter requested that we remove the data from the FY 2003 wage index calculation for a specific hospital that closed in 2001. According to the commenter, the hospital had a major accounting and recordkeeping problem dating back several years.

Response: We have always maintained, subject to limited expectations, that any hospital that is in operation during the data collection period used to calculate the wage index should be included in the database, since the hospital's data reflect conditions occurring in that labor market area during the period surveyed (59 FR 45353). While we also believe it is appropriate to eliminate data for terminated hospitals when there is reason to believe that the data are incorrect, and the data cannot be verified due to the hospital's closure, if the wage data for a terminated hospital does not fail any of our edits for reasonableness, the hospital's data are included in the calculation of the area's wage index.

During FY 1999, the period used to calculate the FY 2003 wage index, the hospital in question was the second largest hospital in its MSA. We find the hospital's FY 1999 Worksheet S–3 wage data to be consistent with hospitals of similar size in the MSA. Therefore, we will retain the wage data for the closed hospital in the FY 2003 wage index. We also note that removing the hospital's data from the wage index calculation would actually lower the MSA's wage index value.

Comment: One commenter representing a national hospital association requested that CMS add a fatal edit to the cost reporting systems to eliminate obvious errors that are difficult or impossible to correct 4 years later when we use the data for the wage index. Examples of such errors are negative average hourly wages or a line item that includes salaries but no associated hours. Currently, we delete the problematic data elements, but the commenter believed that this does not necessarily make the reported data better, nor does it make the data consistent with data reported by other hospitals. The commenter recommended that we include a fatal edit that will not allow the cost report to be filed by the hospital until all required wage data have been entered.

Response: We agree with the commenter that these obvious errors should be corrected by the hospital before the cost report is filed. The cost reporting system currently has an edit that prevents the reporting of negative adjusted salaries. Therefore, no line item should have a negative average hourly wage. However, due to the complexities of the cost report software, a hospital is unable to simply adjust Worksheet S–3, Part II salaries to zero, if hours are missing or inaccurate, without also triggering a necessary adjustment to the trial balance (Worksheet A), as most salary items reported on Worksheet S–3, Part II are directly transferred from Worksheet A. Because Worksheet S–3, Part II wage

data are only used for wage index purposes, we believe it is preferable for both CMS and hospitals not to have the entire cost report rejected, and risk an untimely submission of the cost report, because the hours on Worksheet S–3, Part II are problematic.

We are working on revising the intermediaries' software to improve their edits and give them more flexibility to make adjustments directly to Worksheet S–3, Part II when the adjustments are necessary for wage index purposes only. We acknowledge that this revision would not help hospitals to detect obvious errors as early as possible, that is, before they file their cost reports with their intermediaries. However, improved intermediary edits would allow the errors to be identified and corrected before the data are submitted to us to be used in developing the wage index.

E. Computation of the FY 2003 Wage Index

The method used to compute the final FY 2003 wage index follows.

Step 1—As noted above, we based the FY 2003 wage index on wage data reported on the FY 1999 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S–3, Parts II and III of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1998 and before October 1, 1999. In addition, we included data from some hospitals that had cost reporting periods beginning before October 1998 and reported a cost reporting period covering all of FY 1999. These data were included because no other data from these hospitals would be available for the cost reporting period described above, and because particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1999 data. We note that, if a hospital had more than one cost reporting period beginning during FY 1999 (for example, a hospital had two short cost reporting periods beginning on or after October 1, 1998 and before October 1, 1999), we included wage data from only one of the cost reporting periods, the longest, in the wage index calculation. If there was more than one cost reporting period and the periods were equal in length, we included the wage data from the latest period in the wage index calculation.

Step 2—Salaries—Beginning with the FY 2003 wage index, the method used to compute a hospital's average hourly wage excludes all GME and CRNA costs.

In calculating a hospital's average salaries plus wage-related costs, we subtracted from Line 1 (total salaries) the GME and CRNA costs reported on lines 2, 4.01, and 6, the Part B salaries reported on Lines 3 and 5, home office salaries reported on Line 7, and excluded salaries reported on Lines 8 and 8.01 (that is, direct salaries attributable to SNF services, home health services, and other subprovider components not subject to the acute care hospital inpatient prospective payment system). We also subtracted from Line 1 the salaries for which no hours were reported on Line 4. To determine total salaries plus wage-related costs, we added to the net hospital salaries the costs of contract labor for direct patient care, certain top management, pharmacy, laboratory, and nonteaching physician Part A services (Lines 9, 9.01, 9.02, and 10), home office salaries and wage-related costs reported by the hospital on Lines 11 and 12, and nonexcluded area wage-related costs (Lines 13, 14, and 18).

We note that contract labor and home office salaries for which no corresponding hours are reported were not included. In addition, wage-related costs for nonteaching physician Part A employees (Line 18) are excluded if no corresponding salaries are reported for those employees on Line 4.

Step 3—Hours—With the exception of wage-related costs, for which there are no associated hours, we computed total hours using the same methods as described for salaries in Step 2.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs to areas of the hospital excluded from the wage index calculation. First, we determined the ratio of excluded area hours (sum of Lines 8 and 8.01 of Worksheet S–3, Part II) to revised total hours (Line 1 minus the sum of Part II, Lines 2, 3, 4.01, 5, 6, 7, and Part III, Line 13 of Worksheet S–3). We then computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 13 of Worksheet S–3, Part III. Next, we computed the amounts of overhead wage-related costs to be allocated to excluded areas using three steps: (1) We determined the ratio of overhead hours (Part III, Line 13) to revised hours (Line 1 minus the sum of Lines 2, 3, 4.01, 5, 6, and 7); (2) we computed overhead wage-related costs by multiplying the overhead hours ratio by wage-related costs reported on Part II, Lines 13, 14, and 18; and (3) we multiplied the computed overhead wage-related costs by the above excluded area hours ratio. Finally, we subtracted the computed overhead salaries, wage-related costs, and hours associated with excluded areas from the total salaries (plus wage-related costs) and hours derived in Steps 2 and 3.

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage adjustment, we estimated the percentage change in the employment cost index (ECI) for compensation for each 30-day increment from October 14, 1998 through April 15, 2000 for private industry hospital workers from the Bureau of Labor Statistics' *Compensation and Working Conditions*. We use the ECI because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries. In addition, the ECI includes managers as well as other hospital workers. This methodology to compute the monthly update factors uses actual quarterly ECI data and assures that the update factors match the actual quarterly and annual percent changes. The factors used to adjust the hospital's data were based on the midpoint of the cost reporting period, as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/98	11/15/98	1.04550
11/14/98	12/15/98	1.04325
12/14/98	01/15/99	1.04111
01/14/99	02/15/99	1.03880
02/14/99	03/15/99	1.03632
03/14/99	04/15/99	1.03369
04/14/99	05/15/99	1.03092
05/14/99	06/15/99	1.02801
06/14/99	07/15/99	1.02509
07/14/99	08/15/99	1.02230
08/14/99	09/15/99	1.01962
09/14/99	10/15/99	1.01687
10/14/99	11/15/99	1.01385
11/14/99	12/15/99	1.01056
12/14/99	01/15/00	1.00710
01/14/00	02/15/00	1.00358
02/14/00	03/15/00	1.00000
03/14/00	04/15/00	0.99638

For example, the midpoint of a cost reporting period beginning January 1, 1999 and ending December 31, 1999 is June 30, 1999. An adjustment factor of 1.02509 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1999 and covered a period of less than 360 days or more than 370 days, we annualized the data to reflect a 1-year

cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area before any reclassifications under section 1886(d)(8)(B) or section 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained under both methods in Step 6 by the sum of the corresponding total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $23.2295.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. (The national Puerto Rico standardized amount is adjusted by a wage index calculated for all Puerto Rico labor market areas based on the national average hourly wage as described above.) We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of $11.0086 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the Puerto Rico-specific wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is located in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to ensure that aggregate prospective payment system payments are not greater or less than those that would have been made in the year if this section did not apply. For FY 2003, this change affects 180 hospitals in 39 MSAs. The MSAs affected by this provision are identified by a footnote in Table 4A in the Addendum of this final rule.

Comment: Two commenters opposed our use of 3-year-old data for developing the wage index. The commenters believed that the FY 2003 wage index does not reflect current market conditions for nurses. For example, one commenter stated that, due to the current nursing shortage, her facility's average hourly wage has increased 10 percent over the past 18 months. However, the wage index does not adequately reflect the increased wage costs. The commenter noted that rural hospitals have been severely impacted by the nursing shortage. Since rural hospitals are reliant upon Medicare reimbursement, the commenter suggested that we revise the wage index methodology to allow the wage index to reflect labor cost increases sooner.

Response: The wage index is a relative measure, which compares area average hourly wages to the national average hourly wage. The nursing shortage and increased nursing wages are a national phenomenon. We believe the wage index is minimally impacted by inflationary effects of increased nursing costs. Increases in hospital wages overall would be reflected in the market basket.

In computing the wage index, we use data from cost reports beginning during the most recent Federal fiscal year for which we have a complete year's worth of data. For the FY 2003 wage index, that is cost reports that began during FY 1999. Because hospitals' cost reports may end as late as August or even September of the following year, it would not be feasible for us to use cost reports that began during FY 2000 (many of which would not close until the latter part of 2001). Due to the time period allowed for: (1) Hospitals to complete and submit their cost reports to their intermediaries; (2) intermediaries to perform a separate, detailed review of all hospitals' wage data and submit the results to CMS; and (3) CMS to compile a complete set of all hospitals' wage data from a given Federal fiscal year, it would not be possible to use FY 2000 cost report data to calculate the FY 2003 wage index. As described in the proposed rule (67 FR 31434) and section III.E. of this final rule, we adjust the wage index to a common period that reflects the latest cost reporting period for the filing year. For the FY 2003 wage index, this period is September 1, 1999 to August 31, 2000.

Comment: One commenter recommended that, to reflect the labor markets in which rural hospitals compete more accurately, the wage index value for a rural area should be the average of the three lowest MSA rates in the geographic area.

Response: We note that the statute requires that we apply wage indexes that reflect "the relative hospital wage level in the geographic area of the hospital" (section 1886(d)(3)(E) of the Act). Furthermore, in some States, there are some MSAs for which the calculated wage index value is actually lower than the rural area of the state. As we discussed in the proposed rule (67 FR 31435) and in section III.E. of this final rule, for those urban areas, we assign the statewide rural wage index value. We are uncertain as to whether the commenter considered this policy in its recommendation. While the commenter did not provide details of its rationale for the recommended change, we appreciate the commenter's suggestion and welcome a more detailed discussion and analysis.

Comment: One commenter wrote that CMS' instructions for developing wage-related costs using Generally Accepted Accounting Principles (GAAP) are inconsistently communicated by CMS staff and inconsistently applied by the fiscal intermediaries. The commenter urged us to ensure the credibility of the wage index by requiring that our staff and contractors understand and consistently apply our wage index policies to eliminate variations in interpretation and application of the wage data.

Response: In an effort to clarify our instructions and to promote consistency in hospitals' reporting and CMS' and the intermediary's handling of wage-related costs that are developed using GAAP, we have revised the cost report instructions (in Transmittals 8 and, soon to be released, 9) and the intermediary's desk review program. Because of the wide variation in GAAP methodologies, we continue to emphasize that it is the responsibility of the hospitals to be able to provide adequate support for the GAAP methodologies they apply. In addition, if a hospital believes that an intermediary may be incorrectly handling a particular issue, the hospital is encouraged to bring it to our attention. We will continue our efforts to ensure uniform reporting of the wage data.

Comment: One commenter, representing the District of Columbia,

indicated that the Washington, DC–MD–VA–WV MSA includes 16 Virginia hospitals, 13 Maryland hospitals, 12 District of Columbia hospitals, and 2 West Virginia hospitals. The commenter was concerned about the negative impact of the West Virginia and Maryland hospitals on the Washington, DC–MD–VA–WV MSA wage index (although the commenter did not specify a particular issue with the West Virginia hospitals). Unlike hospitals in all other States and the District of Columbia, Maryland hospitals, which are under a waiver from the acute inpatient prospective payment system, do not rely on the wage index adjustment factor to adjust their inpatient Medicare payments. Therefore, the commenter wrote, Maryland hospitals have no incentive to accurately report their wage costs on the Medicare cost report or to review and request corrections to CMS' wage index public use files. The commenter requested us to carefully review the impact of Maryland's all-payor system on hospitals within the same MSA.

Response: As the commenter notes, Maryland hospitals are paid under a program waiver (section 1814(b)(3) of the Act), in which the State establishes hospital inpatient and outpatient payment rates for Medicare, Medicaid, and private payors. The Medicare wage index is not a factor in the State's ratesetting methodology. However, in recent years the wage index has been applied to the Medicare payment rates for other providers that are not under the State's waiver, such as SNFs, hospices, and home health agencies. Many Maryland hospitals own, or are members of systems that own, facilities or entities that are now directly impacted by the quality of the hospitals' reported data.

As with all hospitals in the wage index, we edited the FY 1999 wage data for the Maryland and West Virginia hospitals. We found no significant problems in their wage data. We believe that the Maryland hospitals' wage data are reasonable for the State and the MSA. The lower average hourly wages for the West Virginia hospitals are comparable to other hospitals in that State. Furthermore, under OMB's definition of the Washington, DC–MD–VA–WV MSA, these Maryland and West Virginia hospitals are part of that MSA. Therefore, the wage data for these hospitals will continued to be used in the calculation of the area wage index for the Washington DC–MD–VA–WV MSA.

F. Revisions to the Wage Index Based on Hospital Redesignation

1. General

Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. Hospitals can elect to reclassify for the wage index or the standardized amount, or both, and as individual hospitals or as rural groups. Generally, hospitals must be proximate to the labor market area to which they are seeking reclassification and must demonstrate characteristics similar to hospitals located in that area. Hospitals must apply for reclassification to the MGCRB, which issues its decisions by the end of February for reclassification to become effective for the following fiscal year (beginning October 1). The regulations applicable to reclassifications by the MGCRB are in §§ 412.230 through 412.280.

Section 1886(d)(10)(D)(v) of the Act provides that, beginning with FY 2001, a MGCRB decision on a hospital reclassification for purposes of the wage index is effective for 3 fiscal years, unless the hospital elects to terminate the reclassification. Section 1886(d)(10)(D)(vi) of the Act provides that the MGCRB must use the 3 most recent years' average hourly wage data in evaluating a hospital's reclassification application for FY 2003 and any succeeding fiscal year.

Section 304(b) of Public Law 106–554 provides that, by October 1, 2001, the Secretary must establish a mechanism under which a statewide entity may apply to have all of the geographic areas in the State treated as a single geographic area for purposes of computing and applying a single wage index, for reclassifications beginning in FY 2003.

Beginning October 1, 1988, section 1886(d)(8)(B) of the Act permits a hospital located in a rural county adjacent to one or more urban areas to be designated as being located in the MSA to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an urban area under the standards published in the **Federal Register** on January 3, 1980 (45 FR 956) for designating MSAs (and for designating NECMAs), and if the commuting rates used in determining outlying counties (or, for New England, similar recognized area) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous MSAs (or NECMAs). Hospitals that met the criteria using the January 3, 1980 version of these OMB standards were deemed urban for purposes of the standardized amounts and for purposes of assigning the wage index.

Section 402 of Public Law 106–113 provided that, for FYs 2001 and 2002, hospitals could elect whether to apply standards developed by OMB in 1980 or 1990 in order to qualify for redesignation under section 1886(d)(8)(B) of the Act. In accordance with section 1886(d)(8)(B)(ii)(II) of the Act, in the May 9, 2002 proposed rule, we proposed that, beginning with FY 2003, redesignation under section 1886(d)(8)(B) of the Act will be based on the standards published in the **Federal Register** by the Director of OMB based on the most recent decennial census.

2. Effects of Reclassification

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the area wage index determined inclusive of the wage data for the redesignated hospitals (the combined wage index value) applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals increases the wage index value for the area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value.

- The wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.
- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred.
- Rural areas whose wage index values increase as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage index values calculated exclusive of the wage data of the redesignated hospitals.
- The wage data for a reclassified urban hospital is included in both the wage index calculation of the area to which the hospital is reclassified (subject to the rules described above) and the wage index calculation of the urban area where the hospital is physically located.

The wage index values for FY 2003 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this final rule. Hospitals that are redesignated should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.

Tables 3A and 3B in the Addendum of this final rule list the 3-year average hourly wage for each labor market area before the redesignation of hospitals, based on FYs 1997, 1998, and 1999 wage data. Table 3A lists these data for urban areas and Table 3B lists these data for rural areas. In addition, Table 2 in the Addendum to this final rule includes the adjusted average hourly wage for each hospital from the FY 1997 and FY 1998 cost reporting periods, as well as the FY 1999 period used to calculate the FY 2003 wage index. The 3-year averages are calculated by dividing the sum of the dollars (adjusted to a common reporting period using the method described previously) across all 3 years, by the sum of the hours. If a hospital is missing data for any of the previous years, its average hourly wage for the 3-year period is calculated based on the data available during that period.

We indicated in the proposed rule that, at the time the proposed wage index was constructed, that the MGCRB had completed its review of FY 2003 reclassification requests. Table 9 of this final rule shows hospitals that have been reclassified under either section 1886(d)(8)(B) or section 1886(d)(10)(D) of the Act. This table includes hospitals reclassified for FY 2003 by the MGCRB, as well as hospitals that were reclassified for the wage index in either FY 2001 or FY 2002 and are, therefore, in either the third or second year of their 3-year reclassification. This table also includes hospitals reclassified for purposes of the standardized amount and hospitals located in urban areas that have been designated rural in accordance with section 1886(d)(8)(E) of the Act. There are 54 hospitals reclassified for the wage index beginning during FY 2003. In addition, 367 hospitals are reclassified for FY 2003 based on their 3-year reclassification that became effective during FY 2001, and 181 hospitals are reclassified for FY 2003 based on their 3-year reclassification that became effective during FY 2002. There are 24 hospitals included in the 3-year reclassification from FY 2001 that were reclassified in accordance with section 152(b) of Public Law 106–113. In addition, there are 34 rural hospitals redesignated to an urban area under section 1886(d)(8)(B) of the Act, and 14 urban hospitals that have been designated rural in accordance with section 1886(d)(8)(E) of the Act. Finally, there are 59 hospitals reclassified by the MGCRB for the standardized amount for FY 2003 (including one hospital that is also redesignated under section 1886(d)(8)(B) of the Act to a different MSA). The final FY 2003 wage index values incorporate all of these hospitals. Since publication of the May 9 proposed rule, the number of reclassifications has changed because some MGCRB decisions were still under review by the Administrator and because some hospitals decided to withdraw their requests for reclassification.

Applications for FY 2004 reclassifications are due to the MGCRB by September 3, 2002. We note this is also the deadline for canceling a previous wage index reclassification withdrawal or termination under § 412.273(d) (as added by this final rule). At the time of publication the May 9, 2002 proposed rule, the internet site for reclassification (*http://www.hcfa.gov/regs/mgcinfo.htm*) was not operational. To obtain an application for MGCRB reclassification, call the MGCRB at (410) 786–1174. The mailing address of the MGCRB is: 2520 Lord Baltimore Drive, Suite L, Baltimore, MD 21244–2670.

Changes to the wage index that resulted from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process have been incorporated into the wage index values published in this final rule. The changes may affect not only the wage index value for specific geographic areas, but also the wage index value redesignated hospitals receive; that is, whether they receive the wage index value for the area to which they are redesignated, or a wage index value that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

In the May 9, 2002 proposed rule, we proposed limited changes and clarifications to the policies related to withdrawals, terminations, and cancellations of the 3-year wage index reclassifications. These are discussed in section V. of this preamble, including any comments received and our responses to those comments.

We receive several comments pertaining to the FY 2003 or FY 2004 MGCRB reclassification process. These are addressed below.

Comment: One commenter expressed concern that the methodology used for wage index reclassification for FY 2003 reclassification applications does not include a process by which corrections to 1996 and 1997 cost reporting data may be submitted. The commenter suggested that we allow for the correction of inaccurate data from prior years as part of a hospital's bid for geographic reclassification, and that not to allow corrections to the data results in inequities in the calculation in the average hourly wage for purposes of reclassification.

Response: Effective with reclassifications for FY 2003, section 1886(d)(10)(D)(vi)(II) of the Act provides that the MGCRB must use the average of the 3 most recent years of hourly wage data for the hospital when evaluating a hospital's request for reclassification. To evaluate applications for wage index reclassifications for FY 2003, the MGCRB used the 3-year average hourly wages published in Table 2 of the August 1, 2001 **Federal Register**. These average hourly wages are taken from data used to calculate the wage indexes for FY 2000, FY 2001, and FY 2002, based on cost reporting periods beginning during FY 1996, FY 1997, and FY 1998, respectively.

In the August 1, 2001 **Federal Register**, we revised the Medicare regulations at § 412.230(e)(2)(ii)(A) to specify that hospitals seeking reclassification must provide a 3-year average hourly wage using data from the hospital wage survey used to construct the wage index in effect for prospective payment purposes (66 FR 39934).

Hospitals have ample opportunity to verify the accuracy of the wage data used to calculate their wage index and to request revisions, but must do so within the prescribed timelines. We consistently instruct hospitals that they are responsible for reviewing their data and availing themselves to the opportunity to correct their wage data within the prescribed timeframes. Once the data are finalized and the wage indexes published in the final rule, they may not be revised, except through the mid-year correction process set forth in the regulations at § 412.63(x)(2). Accordingly, it has been our consistent policy that if a hospital does not request corrections within the prescribed timeframes for the development of the wage index, the hospital may not later seek to revise its data in an attempt to qualify for MGCRB reclassification.

Allowing hospitals the opportunity to revise their data beyond the timelines required to finalize the data used to calculate the wage index each year would lessen the importance of complying with those deadlines. The likely result would be that the data used to compute the wage index would not be as carefully scrutinized because hospitals would know they may change it later, leading to inaccuracy in the data and less stability in the wage indexes from year to year.

Comment: Several commenters requested that we clarify whether we intend to utilize OMB's new MSA standards and, if so, how we intend to incorporate the changes into the Medicare program. Relatedly, one commenter requested that we specify in the text of the final rule whether or not a hospital that was treated as a rural referral center (RRC) as of October 1, 2000, will continue to qualify for the RRC exception if their physical location becomes urban as a result of subsequent updates to metropolitan areas issued by the OMB. The commenter is concerned that the absence of a clear statement in the regulations text indicating that the grandfathered status of RRCs will continue into subsequent years could possibly result in a loss of their special status. The commenter referenced the instance when many RRCs located in areas that were redesignated as urban by OMB lost their RRC status. (See the August 29, 1997 final rule (62 FR 45999) for a more detailed explanation.)

Response: At this time, it is our understanding that OMB is not expected to announce changes to the new MSA standards until after we have published the proposed rule for FY 2004. Even if the new standards are announced in advance of the publication of our FY 2004 proposed rule, we would need time to assess their implications for payment purposes (for example, how will the new Micropolitan Areas designated by OMB, which will encompass counties currently considered rural, interact with other statutory and regulatory requirements for special hospital designation, such as an RRC).

Therefore, we intend at this time to continue to use the current MSA standards for FY 2004 acute inpatient prospective payment system payments. Hospitals applying for MGCRB reclassification for FY 2004 must apply based on the existing MSA definitions. With respect to the commenter's concern regarding the implications of the revised MSA definitions on RRCs, we are not prepared at this time to address this issue. We intend to evaluate this and other issues related to the new MSA definitions when they become available next year.

Comment: One commenter requested clarification as to whether Table 9, Hospital Reclassifications and Redesignations by Individual Hospital, is an official list and whether the wage index calculation is affected by errors in omission. The commenter indicated that the list in the proposed rule includes hospitals that have withdrawn their FY 2002 reclassifications and subsequently cancelled the withdrawal for FY 2003 and FY 2004, as well as omits hospitals that have received approval letters from the MGCRB reinstating the remaining years of the 3-year appeal.

Response: We indicated in the proposed rule that, while Table 9 shows hospitals that have been reclassified under either section 1886(d)(8)(B) or section 1886(d)(10)(D) of the Act, it may not reflect all withdrawals from reclassifications approved by the MGCRB or decisions of the CMS Administrator if those withdrawals were made subsequent to the preparation of the proposed rule. Similar to the other provisions and tables included in the proposed rule, publication of Table 9 in the proposed rule provided an opportunity for affected hospitals to review and verify the accuracy of the data. In situations such as those described by the commenter, we encourage affected providers to furnish us with specific feedback regarding the information contained in the proposed rule. Any changes that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process are incorporated into the wage index values and Table 9 published in the final rule.

Comment: Several commenters requested that the wage data for urban hospitals redesignated as rural under section 1886(d)(8)(E) of the Act, be included both in the MSA where the hospital is physically located and the rural area to which they are redesignated for purposes of the wage index. Commenters cited section 1886(d)(8) of the Act and section 152(b) of the Balanced Budget Refinement Act of 1999 (Pub. L. 106–113) in support of their request. The commenters asserted that section 1886(d)(8) of the Act protects nonreclassified hospitals from being negatively impacted by reclassifications. They also pointed out that in implementing the statutory reclassifications required by section 152(b) of Public Law 106–113, CMS calculated the wage index values of the MSAs that contain the counties specified in section 152(b) by "including the wages of hospitals that were reclassified out of the MSA by section 152(b)." The commenters stated that the exclusion of hospitals redesignated under section 1886(d)(8)(E) of the Act in calculating the wage index is contrary to the expectations of the hospitals prior to the enactment of this provision (by section 401 of Public Law 106–113).

Response: Section 1886(d)(8)(E) of the Act permits an urban hospital to apply to the Secretary to be treated as being located in the rural area of the State in which the hospital is located. A hospital granted redesignation under section 1886(d)(8)(E) of the Act is therefore treated as a rural hospital for all purposes of payment under the Medicare acute inpatient prospective payment system, including standardized amount, wage index, and disproportionate share calculations, as of the effective date of the redesignation. Therefore, for purposes of calculating the wage index as a result of the redesignation to a rural area, the wage index data of the redesignated hospital is treated as though the hospital were located in the rural area of the State. That is, its data are excluded from the wage index calculation for the urban area where the hospital is geographically located and included in the wage index calculation for the rural area to which the hospital is designated. This is consistent with the statutory language requiring that a hospital be treated as though it is located in a rural area.

In the case of section 1886(d)(8) of the Act, Congress specifically acted to provide special protection for rural hospitals negatively impacted by reclassifications. Section 1886(d)(8)(C) of the Act provides that rural areas are held harmless for decisions resulting from the application of section

1886(d)(8)(B) of the Act, or of decisions of the MGCRB or the Secretary. Redesignations under section 1886(d)(8)(E) of the Act are not covered under this provision.

In the case of section 152(b) of Public Law 106–113, Congress specifically directed the Secretary to treat these statutorily mandated reclassifications as decisions by the MGCRB. Section 1886(d)(8)(E) of the Act directs the Secretary to treat the redesignated hospitals as being located in the rural area of the State in which the hospital is located. We did not exclude the wages of the hospitals reclassified under section 152(b) in calculating the FY 2001 wage index for the affected areas because we believed that this approach appropriately reflected the expectations of the hospitals that had applied to reclassify into the areas affected by this provision prior to enactment of this provision. Because section 1886(d)(8)(E) of the Act has been in place for well over a year, hospitals applying for reclassification for FY 2003 could not reasonably have expected, in light of the language of that section, that they would benefit from the inclusion of the wage data of the redesignated hospitals in two different areas.

We note that the commenters' suggestion would not uniformly benefit hospitals remaining in or reclassified into the urban area from which the now rural hospital was reclassified. Our analysis indicates several such areas would be negatively impacted. The greatest positive impact would occur in the area of concern to the commenter.

3. OMB Standards for Hospitals to Qualify for Redesignation

In the August 1, 2001 final rule, we implemented section 402 of Public Law 106–113. Section 402 provided that hospitals could elect whether to apply standards developed by OMB in 1980 or 1990 in order to qualify for redesignation under section 1886(d)(8)(B) of the Act. However, section 402 also states that, beginning with FY 2003, hospitals will be required to use the standards published in the **Federal Register** by the Director of OMB based on the most recent decennial census.

At this time, the 1990 standards are the most recent available. Although OMB is working to develop updated standards based on the 2000 census, that work is not yet completed. For purposes of redesignation for FY 2003 under section 1886(d)(8)(B) of the Act, qualifying hospitals must be located in counties meeting the 1990 standards.

In the August 1, 2001 final rule, we determined that three counties that qualified for redesignation under the 1980 standards qualified for redesignation to a different MSA using the 1990 standards (66 FR 39869). These counties, which will be redesignated to the MSA to which they qualify based on the 1990 standards, are as follows:

Rural county	1980 MSA designation	1990 MSA designation
Ionia, MI	Lansing-East Lansing, MI	Grand Rapids-Muskegon-Holland, MI
Caswell, NC	Danville, VA	Greensboro-Winston Salem-High Point, NC
Harnett, NC	Fayetteville, NC	Raleigh-Durham-Chapel Hill, NC

Section 402 of Public Law 106–113 amended section 1886(d)(8)(B) of the Act by adding clause (ii). This clause allowed hospitals to elect to use either the January 3, 1980 standards or March 30, 1990 standards for payments during FY 2001 and FY 2002. Several hospitals in counties that did not qualify for redesignation under the January 3, 1980 standards elected to use those older standards so they would not receive the urban designation accorded to them under section 402 because they would lose their special rural designation (that is, an RRC, a sole community hospital (SCH), or a Medicare-dependent hospital (MDH)). Under section 1886(d)(8)(B)(ii) of the Act, the option to make such an election was available only for FY 2001 and FY 2002. Effective for FY 2003, as we proposed, we are providing that hospitals located in counties qualifying for redesignation under section 1886(d)(8)(B) of the Act based on the 1990 standards will be redesignated under this provision.

We also noted in the August 1, 2001 final rule that five rural counties no longer meet the qualifying criteria when we apply the 1990 OMB standards (66 FR 39870). These rural counties are as follows: Indian River, FL; Mason, IL; Owen, IN; Morrow, OH; and Lincoln, WV. Therefore, beginning FY 2003, hospitals in these counties will not be eligible for redesignation under section 1886(d)(8)(B) of the Act unless the counties again qualify when the standards based on the 2000 census data are available.

Comment: One commenter expressed concern that the reclassification based on 1990 standards disadvantages hospitals classified as RRCs, SCHs, or MDHs by taking away their special status classification because they are no longer considered rural. The commenter was concerned that the provision is not in keeping with Congressional intent. As an alternative, the commenter suggested that an affected hospital should be allowed to request reclassification as a rural hospital under § 412.103(a)(3), which allows hospitals to be treated as rural if they qualify as either a rural referral center or a SCH.

Response: Because the law does not provide for an election on the part of the hospital for FY 2003, while specifying such an election for FYs 2001 and 2002, hospitals in affected counties are reclassified as urban. Therefore, consistent with our longstanding policy that hospitals reclassified as urban for purposes of the standardized amount are considered urban and lose their eligibility for special rural hospital status, the commenter is correct that a hospital becoming urban under section 1886(d)(8)(B)(ii)(II) of the Act would lose its special status as a result. With respect to the commenter's request that, in the event an affected hospital is not permitted the option to decline reclassification to an urban area that it may apply to be redesignated rural under § 412.103, we agree with the commenter that a reclassified hospital may seek rural redesignation under § 412.103. We will then determine whether the hospital meets the criteria for reclassification under this regulation. However, any such reclassification would be subject to the limitations on reclassification at § 412.230(a)(5)(iv), which prohibit a hospital that has been granted redesignation as a rural hospital under § 412.103 from receiving an additional reclassification by the MGCRB.

We also note that it has been brought to our attention that the reclassifications applicable under section 1886(d)(8)(B)(ii) of the Act are applicable for cost reporting periods beginning in the relevant Federal fiscal year. Therefore, in applying such reclassifications for FY 2003, they are effective as of the beginning of the hospital's cost reporting period beginning during FY 2003. This effective date has no impact on hospitals that are reclassified to the same MSA under this provision as they were reclassified into for FY 2002. Such

hospitals will be paid in accordance with the FY 2003 wage index value of the area to which they are reclassified effective with discharges on or after October 1, 2002. However, hospitals whose reclassification changes as a result of applying the 1990 standards for FY 2003 will be paid in accordance with the wage index applicable to the area to which they would otherwise have been classified were it not for section 1886(d)(8)(B)(ii) of the Act at the start of FY 2003. Then, for discharges occurring on or after the date of the start of their cost reporting period beginning during FY 2003, they will be paid in accordance with the wage index applicable to the area they are reclassified into under section 1886(d)(8)(B)(ii).

G. Requests for Wage Data Corrections

In the May 9, 2002 proposed rule, we stated that, to allow hospitals time to construct the proposed FY 2003 hospital wage index, in May 2002 we would make available a final public data file containing the FY 1999 hospital wage data.

The final wage data file was released on May 10, 2002. As noted above in section III.D. of this preamble, this file included hospitals' cost report data obtained from Worksheet S–3, Parts II and III of their FHY 1999 Medicare cost reports. In addition, Table 2 in the Addendum to this final rule contains each hospital's adjusted average hourly wage used to construct the wage index values for the past 3 years, including the FY 1999 data used to construct the final FY 2003 wage index.

In a memorandum dated December 19, 2001, we instructed all Medicare intermediaries to inform the prospective payment hospitals they service of the availability of the wage data file and the process and timeframe for requesting revisions. The wage data file was made available on January 12, 2002, through the Internet at CMS's home page (http://www.hcfa.gov). We also instructed the intermediaries to advise hospitals of the availability of these data either through their representative hospital organizations or directly from CMS. Additional details on ordering this data file were discussed in section IX.A. of the preamble of the May 9, 2002 proposed rule, "Requests for Data from the Public."

In addition, Table 2 in the Addendum to the proposed rule contained each hospital's adjusted average hourly wage used to construct the proposed wage index values for the past 3 years, including the FY 1999 data used to construct the proposed FY 2003 wage index. We noted that the hospital average hourly wages shown in Table 2 only reflected changes made to a hospital's data and transmitted to CMS prior to February 15, 2002. Changes approved by a hospital's fiscal intermediary and forwarded to CMS by April 5, 2002, were reflected in the final public use wage data file made available on May 10, 2002.

We believe hospitals had sufficient time to ensure the accuracy of their FY 1999 wage data. Moreover, the ultimate responsibility for accurately completing the cost report rests with the hospital, which must attest to the accuracy of the data at the time the cost report is filed. Hospitals should know what wage data were submitted on their cost reports. In addition, they were notified of any changes to their data as a result of their fiscal intermediary's review. However, if a hospital believed that its FY 1999 wage data were incorrectly reported, the hospital was provided an opportunity to submit corrections along with complete, detailed supporting documentation to its intermediary by February 8, 2002.

After reviewing requested changes submitted by hospitals, fiscal intermediaries transmitted any revised cost reports to CMS and forwarded a copy of the revised Worksheet S–3, Parts II and III to the hospitals. In addition, fiscal intermediaries notified hospitals of the changes or the reasons that changes were not accepted. This procedure ensures that hospitals have every opportunity to verify the data that will be used to construct their wage index values. We believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. However, if a hospital disagrees with the fiscal intermediary's resolution of a policy issue (whether a general category of cost is allowable in the wage data), the hospital may contact CMS in an effort to resolve policy disputes. We noted that the April 5, 2002 deadline also applied to these requested changes. During this review, we did not consider issues such as the adequacy of a hospital's supporting documentation, as these types of issues should have been resolved earlier in the process.

These deadlines were necessary to allow sufficient time to review and process the data so that the final wage index calculation could be completed for development of the final FY 2003 prospective payment rates published in this final rule.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 2003 payment rates. Accordingly, hospitals that did not meet the procedural deadlines set forth above were not afforded a later opportunity to submit wage data corrections or to dispute the intermediary's decision with respect to requested changes. Specifically, our policy is that hospitals that do not meet the procedural deadlines set forth above are not permitted to challenge later, before the Provider Reimbursement Review Board, CMS's failure to make a requested data revision (See *W. A. Foote Memorial Hospital* v. *Shalala*, No. 99–CV–75202–DT (E.D. Mich. 2001)).

As stated above, the final wage data public use file was released on May 10, 2002. Hospitals had an opportunity to examine both Table 2 of the proposed rule and the May 2002 final public use wage data file (which reflected revisions to the data used to calculate the values in Table 2) to verify the data CMS used to calculate the wage index.

As with the file made available in January 2002, CMS made the final wage data file released in May 2002 available to hospital associations and the public on the Internet. However, the May 2002 public use file was made available solely for the limited purpose of identifying any potential errors made by CMS or the fiscal intermediary in the entry of the final wage data that result from the correction process described above (with the February 8 deadline). Hospitals were encouraged to review their hospital wage data promptly after the release of the May 2002 file. Data presented at that time could not be used by hospitals to initiate new wage data correction requests.

If, after reviewing the May 2002 final file, a hospital believed that its wage data were incorrect due to a fiscal intermediary or CMS error in the entry or tabulation of the final wage data, it was provided an opportunity to send a letter to both its fiscal intermediary and CMS, outlining why the hospital believed an error existed and providing all supporting information, including relevant dates (for example, when it first became aware of the error). These requests had to be *received* by CMS and the fiscal intermediaries no later than June 7, 2002.

Changes to the hospital wage data were only made in those very limited situations involving an error by the intermediary or CMS that the hospital could not have known about before its review of the final wage data file. Specifically, at this stage of the process, neither the intermediary nor CMS accepted the following types of requests:

- Requests for wage data corrections that were submitted too late to be

included in the data transmitted to CMS by fiscal intermediaries on or before April 5, 2002.

- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the January 2002 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or CMS during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 7, 2002) are incorporated into the final wage index in this final rule, to be effective October 1, 2002.

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the fiscal intermediaries' attention. Moreover, because hospitals had access to the final wage data by early May 2002, they have had the opportunity to detect any data entry or tabulation errors made by the fiscal intermediary or CMS before the development and publication of the FY 2003 wage index in this final rule, and the implementation of the FY 2003 wage index on October 1, 2002. If hospitals availed themselves of this opportunity, the wage index implemented on October 1 should be accurate. Nevertheless, in the event that errors are identified after publication in the final rule, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(x)(2) of our existing regulations, we make midyear corrections to the wage index only in those limited circumstances in which a hospital can show (1) that the intermediary or CMS made an error in tabulating its data; and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 2003 (that is, by the June 7, 2002 deadline). As indicated earlier, since a hospital had the opportunity to verify its data, and the fiscal intermediary notified the hospital of any changes, we do not expect that midyear corrections would be necessary. However, if the correction of a data error changes the wage index value for an area, the revised wage index value will be effective prospectively from the date the correction is approved.

This policy for applying prospective corrections to the wage index was originally set forth in the preamble to the January 3, 1984 final rule (49 FR 258) implementing the hospital inpatient prospective payment system. It has been our longstanding policy to make midyear corrections to the hospital wage data and adjust the wage index for the affected areas on a prospective basis.

Section 412.63(x)(3) states that revisions to the wage index resulting from midyear corrections to the wage index values are incorporated in the wage index values for other areas at the beginning of the next Federal fiscal year. Prior to October 1, 1993, the wage index was based on a wage data survey submitted by all hospitals (prior to that, the data came from the Bureau of Labor Statistics' hospital wage and employment data file). Beginning October 1, 1993, as required by section 1886(d)(3)(E) of the Act, we began updating the wage index data on an annual basis. Because the wage index has been updated annually since FY 1994, § 412.63(x)(3) is no longer necessary, and in the May 9, 2002 proposed rule we proposed to delete it. Similarly, § 412.63(x)(4) provides that the effect on program payments of midyear corrections to the wage index values is taken into account in establishing the standardized amounts for the following year. Again, the wage data are now updated annually. Therefore, § 412.63(x)(4) is no longer necessary, and in the May 9, 2002 proposed rule we proposed to delete it as well.

Finally, we proposed to revise § 412.63(x)(2) to clarify that CMS will make a midyear correction to the wage index for an area only if a hospital can show that the intermediary or CMS made an error in tabulating the hospital's own data. That is, this provision is not available to a hospital seeking to revise another hospital's data that may be affecting the requesting hospital's wage index. As described above, the requesting hospital must show that it could not have known about the error, or that it did not have the opportunity to correct the error, before the beginning of the Federal fiscal year.

Comment: One commenter disagreed with the proposed revision to clarify § 412.63(x)(2). The commenter stated that the clarification that CMS will make a midyear correction to the wage index for an area only if a hospital can show that the intermediary or CMS made an error in tabulating the hospital's own data is illogical. The commenter believed that we should allow all potentially affected hospitals to report what they believe to be errors that they failed to correct before the beginning of the Federal fiscal year.

Response: We frequently instruct hospitals that they are responsible for reviewing their data and notifying the intermediary if there is an error or omission.

The proposed revision is consistent with the current rules in that it reinforces for hospitals the responsibility they have for assuring the accuracy of the wage data they submit.

The wage index is recalculated each year based on wage data from acute care hospitals nationwide. Since this calculation must be carried out on a nationwide basis, it is critical that we have the necessary data from all hospitals in a timely fashion so that the wage index values can be calculated prior to the beginning of the upcoming fiscal year. Accordingly, we set out well in advance a detailed timetable for reviewing and revising the data that hospitals, fiscal intermediaries, and CMS must follow. In this way, all hospitals are given an equal opportunity to review and correct their data within the established process. To further assist in the wage data review process, we require that fiscal intermediaries notify state hospital associations when a hospital fails to respond to issues raised during the wage data review process. The purpose of the notification is to inform the hospital association that its member hospital's failure to respond to matters raised by the fiscal intermediary can result in data being disallowed, thereby possibly lowering an area's wage index value. Consistent with out efforts to finalize the data used to construct the wage index prior to publication of the final rule, we make mid-year data revisions in only very limited circumstances, so that the disruptive effects of such changes can be avoided to the greatest extent possible. In turn, consistent with that principle, we think it is appropriate to limit such mid-year revisions to those pertaining only to the data of the requesting hospital. We do not believe this revision will unduly restrict the ability of hospitals to bring to our attention the need for revisions in a neighboring hospital's data; under our wage data revision process, hospitals have an ample opportunity to do this prior to the publication of the rule. Therefore, we disagree with the commenter that it is necessary or advisable to allow other hospitals an opportunity to request changes to a hospital's wage data after the final rule is published, and we are adopting our proposed changes as final.

Comment: One commenter representing Medicare fiscal intermediaries recommended that we revise the wage index development process to provide an incentive for hospitals to submit accurate wage data with their as-filed cost reports. The

commenter noted that, in the August 1, 2001 **Federal Register** (66 FR 39871), we implemented procedural changes that allow the intermediaries additional time to review hospital's wage data. In that rule, we indicated that wage data were revised between the publication of the proposed and final rules for 30 percent of the hospitals. To reduce this percentage, and the number of "second" desk reviews that intermediaries must perform when hospitals revise their wage data, the commenter recommended the following changes:

- CMS should publish an initial wage index public use file in September based on provider as-filed wage data.
- Hospitals should be allowed 4 weeks to review and submit to their intermediaries requests for corrections to the initial wage index public use file.
- After the hospitals 4-week review and correction request period, intermediaries should perform a single desk review of each hospital s wage data and make the appropriate requested corrections.
- After CMS publishes the reviewed final wage index file, hospitals should submit only corrections due to CMS' or the fiscal intermediary's mishandling of the wage data.

Response: We appreciate the commenter's recommendation, and we agree that revisions to the current wage index process should be considered to reduce duplicative review efforts. We will carefully explore options and their associated risks before making further refinements to the wage index development process.

IV. Rebasing and Revision of the Hospital Market Baskets

A. Operating Costs

1. Background

Effective for cost reporting periods beginning on or after July 1, 1979, we developed and adopted a hospital input price index (that is, the hospital "market basket") for operating costs. Although "market basket" technically describes the mix of goods and services used to produce hospital care, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies combined) derived from that market basket. Accordingly, the term "market basket" as used in this document refers to the hospital input price index.

The percentage change in the market basket reflects the average change in the price of goods and services hospitals purchased in order to furnish inpatient care. We first used the market basket to adjust hospital cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish hospital inpatient care. This approach linked the increase in the cost limits to the efficient utilization of resources.

With the inception of the acute care hospital inpatient prospective payment system, the projected change in the hospital market basket has been the integral component of the update factor by which the prospective payment rates are updated every year. A detailed explanation of the hospital market basket used to develop the prospective payment rates was published in the **Federal Register** on September 3, 1986 (51 FR 31461). We also refer the reader to the August 29, 1997 **Federal Register** (62 FR 45966) in which we discussed the previous rebasing of the hospital input price index. For FY 2003, payment rates will be updated by the projected increase in the hospital market basket minus 0.55 percentage points.

The hospital market basket is a fixed-weight, Laspeyres-type price index that is constructed in three steps. First, a base period is selected and total base period expenditures are estimated for a set of mutually exclusive and exhaustive spending categories based upon type of expenditure. Then, the proportion of total operating costs that each category represents is determined. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price or wage variable, referred to as a price proxy. These price proxies are price levels derived from publicly available statistical series that are published on a consistent schedule, preferably at least on a quarterly basis.

Finally, the expenditure weight for each category is multiplied by the level of the respective price proxy. The sum of these products (that is, the expenditure weights multiplied by the price levels) for all cost categories yields the composite index level of the market basket in a given year. Repeating this step for other years produces a series of market basket index levels over time. Dividing one index level by an earlier index level produces rates of growth in the input price index over that time.

The market basket is described as a fixed-weight index because it answers the question of how much it would cost, at another time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services (intensity) purchased subsequent to the base period are not measured. For example, shifting a traditionally inpatient type of care to an outpatient setting might affect the volume of inpatient goods and services purchased by the hospital for use in providing inpatient care, but would not be factored into the price change measured by a fixed weight hospital market basket. In this manner, the index measures only the pure price change. Only rebasing (changing the base year) the index would capture these quantity and intensity effects in the market basket. Therefore, we rebase the market basket periodically so the cost weights reflect changes in the mix of goods and services that hospitals purchase (hospital inputs) in furnishing inpatient care. We last rebased the hospital market basket cost weights in 1997, effective for FY 1998 (62 FR 45993). This market basket, used through FY 2002, reflects base year data from FY 1992 in the construction of the cost weights.

We note that there are separate market baskets for acute care hospital inpatient prospective payment system hospitals and excluded hospitals and hospital units. In addition, we are in the process of conducting the necessary research to determine if separate market baskets for the inpatient rehabilitation, long-term care, and psychiatric hospital prospective payment systems can be developed. However, for the purpose of this preamble, we are only discussing the market basket based on all excluded hospitals combined.

2. Rebasing and Revising the Hospital Market Basket

The terms rebasing and revising, while often used interchangeably, actually denote different activities. Rebasing means moving the base year for the structure of costs of an input price index (for example, the base year cost structure for the prospective payment system hospital index shifts from FY 1992 to FY 1997). Revising means changing data sources, cost categories, or price proxies used in the input price index.

We used a rebased and revised hospital market basket in developing the FY 2003 update factor for the prospective payment rates. The rebased and revised market basket reflects FY 1997, rather than FY 1992, cost data. The 1997-based market baskets use data for hospitals from Medicare cost reports for cost reporting periods beginning on or after October 1, 1996, and before October 1, 1997. Fiscal year 1997 was selected as the new base year because 1997 is the most recent year for which relatively complete data are available. These include data from FY 1997 Medicare cost reports as well as 1997 data from two U.S. Department of

Commerce publications: the Bureau of the Census' Business Expenditure Survey (BES) and the Bureau of Economic Analysis' Annual Input-Output Tables. In addition, analysis of FYs 1998 and 1999 Medicare cost report data showed little difference in comparable cost shares from FY 1997 data.

In developing the rebased and revised market baskets set forth in the May 9, 2002 proposed rule (67 FR 31438) and adopted in this final rule, we used hospital operating expenditure data in determining the market basket cost weights. We relied primarily on Medicare hospital cost report data for the rebasing. We prefer to use cost report data wherever possible because these are the cost data supplied directly from hospitals. Other data sources such as the BES and the input-output tables serve as secondary sources used to fill in where cost report data are not available or appear to be incomplete. We are providing the following detailed discussion of the process for calculating cost share weights.

Cost category weights for the FY 1997-based market baskets were developed in several stages. First, base weights for several of the operating cost categories (Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, and Blood and Blood Products) were derived from the FY 1997 Medicare cost reports. The expenditures for these categories were calculated as a percentage of total operating costs from those hospitals covered under the inpatient hospital prospective payment system. These data were then edited to remove outliers and ensure that the hospital participated in the Medicare program and had Medicare costs. However, we were unable to measure only those operating costs attributable to the inpatient portion of the hospital because many of the hospitals' cost centers are utilized for both inpatient and outpatient care. Health Economics Research (HER), under contract with CMS, just recently completed a feasibility study on the construction of a separate outpatient market basket for our outpatient hospital prospective payment system. While this research provided some insight about ways to separate inpatient and outpatient costs, HER also found that substantially more data would need to be collected from hospitals in order to accomplish this. Furthermore, we excluded hospital-based subprovider cost centers (for example, skilled nursing, nursing, hospice, psychiatric, rehabilitation, intermediate care/mental retardation, and other long-term care) as well as the portion of overhead and ancillary costs incurred by these subproviders.

Second, the weight for professional liability insurance was calculated using data from a survey conducted by ANASYS under contract to CMS. This survey, called the National Hospital Malpractice Insurance Survey (NHMIS), was conducted to estimate hospital malpractice insurance costs over time at the national level. A more detailed description of this survey is found later in this preamble.

Third, data from the 1997 Business Expenditure Survey (BES) was used to develop a weight for the utilities and telephone services categories. Like most other data sources, the BES includes data for all hospitals and does not break out data by payor. However, we believe the overall data from the BES does not produce results that are inconsistent with the prospective payment system hospitals, particularly at the detailed cost category level with which we are working.

Fourth, the sum of the weights for wages and salaries, employee benefits, contract labor, professional liability insurance, utilities, pharmaceuticals, blood and blood products, and telephone services was subtracted from operating expenses to obtain a portion for all other expenses.

Finally, the weight for all other expenses was divided into subcategories using relative cost shares from the 1997 Annual Input-Output Table for the hospital industry, produced by the Bureau of Economic Analysis, U.S. Department of Commerce. The 1997 Benchmark Input-Output data will be available, at the earliest, in late 2002, so we are unable to incorporate these data in this final rule.

Comment: Several commenters mentioned the need for an improved market basket, where the composition of the market basket is a more contemporary reflection of the cost pressures hospitals are facing. They suggest that we rebase more frequently than the current interval of approximately every 5 years.

Response: As explained in the May 9, 2002 proposed rule (67 FR 31439), FY 1997 was selected as the base year for the revised and rebased hospital market basket because it is the most recent year for which relatively complete data are available.

It is important to realize that the Medicare cost reports were used as the primary source of data because these data were supplied directly from hospitals. The independent secondary sources such as the BES and the input-output table fill in where cost report data were not available or appeared to be incomplete. While the major cost categories are available for a more recent year from the cost reports, the additional detail derived from the input-output tables and the BES was not, as the Bureau of the Census only publishes these data for 5-year intervals. In addition, the major cost category weights determined using the FY 1997 Medicare cost reports were compared to weights calculated using FY 1998 and FY 1999 Medicare cost reports. These results were then compared to the weights calculated from the 1997 Medicare cost reports. The results were very similar to those calculated using FY 1997 Medicare cost report data. Thus, 1997 data are the most recent, complete, and consistent data readily available for our rebasing work this year, and using more recent data woud not produce dissimilar results.

Below, we further describe the sources of the six main category weights and their subcategories in the FY 1997-based market basket while noting the differences between the methodologies used to develop the FY 1992-based and the FY 1997-based market baskets.

- *Wages and Salaries:* The cost weight for the wages and salaries category was derived using Worksheet S–3 from the FY 1997 Medicare cost reports. Contract labor, which is also derived from the FY 1997 Medicare cost reports, is split between the wages and salaries and employee benefits cost categories, using the relationship for employed workers. An example of contract labor is registered nurses who are employed and paid by firms that contract for their work with the hospital. The wages and salaries category in the FY 1992-based market basket was developed from the FY 1992 Medicare cost reports. In addition, we used the 1992 Current Population Survey to break out more detailed occupational subcategories. These subcategories were not broken out for the FY 1997-based market basket.
- *Employee Benefits:* The cost weight for the employee benefits category was derived from Worksheet S–3 of the FY 1997 Medicare cost reports. The employee benefits category in the FY 1992-based market basket was developed from FY 1992 Medicare cost reports and we used the 1992 Current Population Survey to break out various occupational subcategories. These subcategories were not broken out for the FY 1997-based market basket.
- *Nonmedical Professional Fees:* This category refers to various types of nonmedical professional fees such as legal, accounting, engineering, and management and consulting fees. Management and consulting and legal

fees make up the majority of professional fees in the hospital sector. The cost weight for the nonmedical professional fees category was derived from the Bureau of Economic Analysis Input-Output data for 1997. The FY 1992-based index used a combination of data from the American Hospital Association (AHA) and the Medicare cost reports to arrive at a weight. However, because the AHA survey data for professional fees are no longer published, we were unable to duplicate this method. Had we used the FY 1997-based methodology to calculate the FY 1992 nonmedical professional fees component, the proportion would have been similar to the FY 1997 share.

• *Professional Liability Insurance:* The FY 1997-based market basket uses a weight for professional liability insurance derived from a survey conducted by ANASYS under contract to CMS (Contract Number 500–98–005). This survey attempted to estimate hospital malpractice insurance costs over time at the national level for years 1996 and 1997. The population universe of the survey was defined as all non-Federal, short-term, acute care prospective payment system hospitals. A statistical sample of hospitals was drawn from this universe and data collected from those hospitals. This sample of hospitals was then matched to the appropriate cost report data so that a malpractice cost weight could be calculated. The questions used in the survey were based on a 1986 General Accounting Office (GAO) malpractice survey questionnaire that was modified so data could be collected to calculate a malpractice cost weight and the rate of change for a constant level of malpractice coverage at the national level. The 1997 proportion as calculated by ANASYS was compared to limited data for FYs 1998 and 1999 contained in the Medicare Cost Reports System. The percentages are relatively comparable. However, since this field was virtually incomplete in the FY 1997 cost report file, we were unable to use this cost report data.

In contrast, the FY 1992-based market basket professional liability insurance weight was determined using the cost report data for PPS–6 (cost reporting periods beginning in FY 1989), the last year these costs had to be treated separately from all other administrative and general costs, trended forward to FY 1992 based on the relative importance of malpractice costs found in the previous market basket.

Comment: A few commenters indicated that the explanation provided for the derivation of the professional liability insurance weight does not convey a full understanding of the methodology and data used; they would like additional information. They also questioned the appropriateness of assuming a constant level of malpractice coverage at a national level across time when updating this weight.

Response: We believe the method for calculating the weight for professional liability insurance in the hospital market basket is reasonable given the alternatives we examined. The weight for professional liability insurance was derived from a survey conducted by ANASYS for CMS called the National Hospital Malpractice Insurance Survey (NHMIS). This survey was designed to collect hospital malpractice insurance costs of primary and excess coverage as well as deductible and other costs for 1996 and 1997. The survey collected malpractice information directly from a representative sample of hospitals derived from a universe defined as all non-Federal short-term acute care prospective payment system hospitals. The hospitals were sent a questionnaire derived from a 1986 General Accounting Office Survey. Follow-up phone calls were made where necessary resulting in a total response rate to the survey was 67 percent. After the data were collected, several edits were run to test the validity and reasonableness of the data. The total malpractice cost was derived by adding the adjusted primary and excess premiums, deductible costs, and other costs. The survey hospitals were then matched to the corresponding Medicare cost reports to derive a total hospital cost using the malpractice insurance policy year and hospital fiscal year as matching variables. The total professional liability insurance cost for each hospital calculated from the survey was then divided by the total hospital costs calculated from the Medicare cost reports to arrive at a weight for professional liability insurance for the hospital. The mean cost weight of all of the hospital weights was then used as the professional liability insurance weight.

Other methods, such as using the Medicare cost reports or trending 1992 data forward, presented significant data limitations. We were unable to use the Medicare cost report data in the development of a weight because 1997 data were incomplete, with very few hospitals submitting information on professional liability insurance. We compared weights derived from 1998 and 1999 cost report data, which were much more complete than 1997 data, and found that they produced results very similar to the weight calculated in the ANASYS report. We were also unable to use the prior method of calculating a professional liability insurance weight by trending 1992 data forward. This method would only capture the effect of price changes over time and would not reflect increases or decreases in the quantities of professional liability insurance purchased that should be reflected in the cost category weight. In the development of the 1992-based market basket, the method used was the only available option. Therefore, given the data available from ANASYS and the limitations of other methods we considered, we believe that the method of calculating a weight chosen was reasonable.

To address the commenters' second point, we feel that it is appropriate to assume a constant level of malpractice coverage at a national level. By doing so, we are able to capture only the 'pure' price change in professional liability premiums and not the additional effect of increasing or decreasing liability coverage. This method is consistent with the methods used by Bureau of Labor Statistics (BLS) in constructing its Producer Price Indexes (PPIs).

Comment: Several commenters believe that we should explicitly account for other insurance categories such as property and general liability insurance in the market basket and not just professional liability insurance because of large premium increases in those categories. In addition, the commenters believe that we should adjust the weight given to insurance, blood products, and other items that experience extraordinary price increases.

Response: The market basket implicitly accounts for increases in other insurance categories under the All Other-Labor Intensive Services category. We are unable to separate out other detailed insurance categories in the market basket due to data limitations. A publicly available data source that meets our criteria for developing weights for these other insurance categories does not exist at this time. In addition, data for price proxies such as the BLS PPI for property and casualty insurance show similar price movements to those of the All Other-Labor Intensive category in the market basket.

In addition, we cannot inflate the weights of some categories and not others. This would violate the general principles of price index construction. We have compiled data for all of the cost categories in addition to total costs for a common base year and developed a set of weights that are consistent with respect to the principles of price index construction. Attempting to reflect more

recent trends in some categories and not in others would not accurately capture the entire cost structure that hospitals face at a given time. In addition, while expenditures for a category may be increasing, this may not necessarily lead to a greater weight for that category in the market basket. For example, property insurance expenditures could be increasing, but other categories could be increasing faster, so that the weight for property insurance in the market basket would be declining. Thus, it is necessary that all of the weights are reflective of a consistent base year.

- *Utilities:* For the FY 1997-based market baskets, the cost weight for utilities is derived from the Bureau of the Census' Business Expenditures Survey. For the FY 1992-based market baskets, the cost weight for utilities was derived from the Bureau of the Census' Asset and Expenditures Survey. Even though the Business Expenditure Survey replaced the Asset and Expenditure Survey, the categories and results are still similar.
- *All Other Products and Services:* The all other products and services category includes the remainder of products and services that hospitals purchase in providing care. Products found in this category include: direct service food, contract service food, pharmaceuticals, blood and blood products, chemicals, medical instruments, photographic supplies, rubber and plastics, paper products, apparel, machinery and equipment, and miscellaneous products. Services found in this category include: telephone, postage, other labor-intensive services, and other nonlabor-intensive services. Labor-intensive services include those services for which local labor markets would likely influence prices.

The shares for pharmaceuticals and blood and blood products are derived from the FY 1997 Medicare cost reports, while the share for telephone services was derived from the BES. Relative shares for the other subcategories are derived from the 1997 Bureau of Economic Analysis Annual Input-Output Table for the hospital industry. The calculation of these subcategories involved calculating a residual from the Input-Output Table using categories similar to those not yet accounted for in the market basket. Subcategory weights were then calculated as a proportion of this residual and applied to the similar residual in the market basket.

- *Blood and blood products:* When the market basket was last revised and rebased to FY 1992, the component for blood services was discontinued because of the lack of appropriate data to determine a weight. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) required that we consider the prices of blood and blood products purchased by hospitals and determine whether those prices are adequately reflected in the market basket. In accordance with this requirement, we have done considerable research to determine if a component for blood and blood products should be added to the market basket and, if so, how the weight should be determined. We studied four alternative data sources to possibly determine a weight for blood in the market basket. If none of these data sources were deemed acceptable, we could conclude that a component for blood should not be reintroduced in the hospital market basket. In its December 2001 report entitled "Blood Safety in Hospitals and Medicare Inpatient Payment," MedPAC recommended that the market basket should explicitly account for the cost of blood and blood products by reintroducing a separate component for their prices.

The first alternative data source studied was using data from the Medicare cost reports. The cost reports have two cost centers where the costs of blood can be recorded: (1) Whole blood and packed red blood cells (nonsalary); and (2) blood storing, processing, and transfusion (nonsalary). Although all prospective payment system hospitals submit a cost report, less than half of these hospitals reported data in either of the two blood cost centers. However, if we can determine that the hospitals reporting blood are representative of all prospective payment system hospitals, then a cost share can be computed using the cost reports.

The second alternative involves constructing weights from the Input-Output Table from the BEA, Department of Commerce. These data were used to construct the weight when the market basket was revised before FY 1992. Unfortunately, BEA stopped reporting blood separately in their Input-Output Table in 1987. One possible use of these data would be to calculate a weight by updating the prior weight by the relative price change for blood between the last data point available and 1997. However, by using this method, only the escalation in prices, not the changes in quantity or intensity of use of blood products, would be captured.

The third alternative was using data from the MedPAR files. This option was discussed in MedPAC's December 2001 report, and involves using claims data or data on hospital charges. In order to construct a weight for the market basket, the underlying costs of blood must be calculated from the claims data. An analysis of cost-to-charge ratios of hospitals can determine if this is feasible.

The final alternative data source is the Bureau of the Census' quinquennial Business Expenditure Survey and the Economic Census. A weight can be obtained indirectly by taking the ratio of receipts of nonprofit blood collectors to total operating expenses of hospitals. Some adjustments would be needed in order for the weight calculated in this way to be completely valid. In addition, this method assumes that all blood used by hospitals comes from nonprofit sources. However, in 1999, hospitals collected 7 percent of the donated units.

After a thorough analysis, we have determined that the Medicare cost reports, after minor adjustments, are the best option. The data from the Input-Output Table are not optimal because they are not current and would have to be aged using only price data, which do not reflect quantity and intensity changes over this period. Although the MedPAR data could be adjusted to compute a cost share, using claims data is not the preferred alternative. Census data would be an attractive option if the cost reports were not available.

The main weakness of the Medicare cost reports is the inconsistent reporting of hospitals in the two blood cost centers. In 1997, only 48.0 percent of all hospitals reported blood in one or both cost centers. However, these hospitals accounted for 62.2 percent of the operating costs of all hospitals. In order for the calculation of the blood cost share weight to be acceptable, the hospitals that reported blood would need to be adjusted to be representative of all hospitals, including those that did not report blood on the cost reports.

Because of the similarity of data in the two blood cost centers, the assumption was made that if a hospital reported blood in only one of the two cost centers, all of its blood costs were reported in that cost center. In the FY 1997 cost reports, of the hospitals that reported blood, 41.3 percent reported only in the blood cells cost center, 58.2 percent reported only in the blood storing cost center, and only 0.5 percent reported in both blood cost centers. To calculate a weight, the numerator was the summation of the data in both blood cost centers. The denominator was the summation of the operating costs of each hospital that reported blood in each cost center minus the operating costs of the few hospitals that reported blood in both cost centers to avoid double counting.

The blood cost share calculated from these data was then adjusted so that the hospitals reporting blood had the same

characteristics of all other hospitals. Adjustments were necessary because the hospitals that reported blood were more likely to be urban and teaching hospitals than those hospitals that did not report blood. The adjustments made less than a 0.1 percent difference in the cost share.

The weight produced using the FY 1997 cost reports was 0.875 percent. We also looked at cost report data from FYs 1996 and 1998. The weights calculated in these years were similar to the FY 1997 weight. The calculation of the blood cost share using the alternative data sources cited above was similar to the results using the cost reports. In this final rule, we use the Medicare cost reports to determine a weight for blood and blood products in the hospital market basket given the consistency with these other sources, the representativeness of our estimate, and the stability of the cost share.

Overall, our work resulted in the identification of 23 separate cost categories in the rebased and revised hospital market basket. There is one more category than was included in the FY 1992-based market basket (FY 1992-based had 22 categories). The differences between the weights of the major categories determined from the Medicare cost reports for the FY 1997-based index and the previous FY 1992-based index are summarized in Table 1.

TABLE 1.—FY 1992-BASED AND FY 1997-BASED PROSPECTIVE PAYMENT SYSTEM HOSPITAL OPERATING MAJOR COST CATEGORIES AND WEIGHTS AS DETERMINED FROM THE MEDICARE COST REPORTS

Expense categories	Rebased FY 1997-based hospital market basket	FY 1992-Based hospital market basket
Wages and Salaries	50.686	50.244
Employee Benefits	10.970	11.146
Pharmaceuticals	5.416	4.162
Blood and Blood Products	0.875	.....
All Other	32.053	34.448
Total	100.000	100.000

Table 2 sets forth all of the market basket cost categories and weights. For comparison purposes, the 1992-based cost categories and weights are included in the table.

TABLE 2.—FY 1992-BASED AND FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES AND WEIGHTS

Expense categories	Rebased FY 1997-based hospital market basket weights	FY 1992-based hospital market basket weights
1. Compensation	61.656	61.390
A. Wages and Salaries	50.686	50.244
B. Employee Benefits	10.970	11.146
2. Professional Fees	5.401	2.127
3. Utilities	1.353	1.542
A. Fuel, Oil, and Gasoline	0.284	0.369
B. Electricity	0.833	0.927
C. Water and Sewerage	0.236	0.246
4. Professional Liability Insurance	0.840	1.189
5. All Other	30.749	33.752
A. All Other Products	19.537	24.825
(1.) Pharmaceuticals	5.416	4.162
(2.) Direct Purchase Food	1.370	2.314
(3.) Contract Service Food	1.274	1.072
(4.) Chemicals	2.604	3.666
(5.) Blood and Blood Products	0.875	.....
(6.) Medical Instruments	2.192	3.080
(7.) Photographic Supplies	0.204	0.391
(8.) Rubber and Plastics	1.668	4.750
(9.) Paper Products	1.355	2.078
(10.) Apparel	0.583	0.869
(11.) Machinery and Equipment	1.040	0.207
(12.) Miscellaneous Products	0.956	2.236
B. All Other Services	11.212	8.927
(1.) Telephone Services	0.398	0.581
(2.) Postage	0.857	0.272
(3.) All Other: Labor Intensive	5.438	7.277
(4.) All Other: Non-Labor Intensive	4.519	0.796
Total	100.000	100.000

Note: Due to rounding, weights may not sum to total.

3. Selection of Price Proxies

After computing the FY 1997 cost weights for the rebased and revised hospital market basket, it was necessary to select appropriate wage and price proxies for each expenditure category. Most of the indicators are based on BLS data and are grouped into one of the following BLS categories:

• Producer Price Indexes—Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. PPIs are preferable price proxies for goods that hospitals purchase as inputs in producing their outputs because a PPI would better reflect the prices faced by hospitals. For example, we used the PPI for ethical (prescription) drugs, rather than the Consumer Price Index (CPI) for prescription drugs, because hospitals generally purchase drugs directly from the wholesaler. The PPIs that we use measure price changes at the final stage of production.

• Consumer Price Indexes—Consumer Price Indexes (CPIs) measure price changes of final goods and services bought by the typical consumer. Because they may not represent the price faced by a producer, the consumer price indexes were used only if an appropriate PPI was not available or if the expenditure was more similar to that of retail consumers in general rather than wholesale purchasers. For example, the CPI for food purchased away from home was used as a proxy for contracted food services.

• Employment Cost Indexes—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are appropriately not affected by shifts in skill mix.

Table 3 sets forth the complete hospital market basket including cost categories, weights, and price proxies. For comparison purposes, we also list the respective FY 1992-based market basket price proxies. A summary outlining the choice of the various proxies follows the table.

TABLE 3.—FY 1997-BASED PROSPECTIVE PAYMENT SYSTEM HOSPITAL OPERATING COST CATEGORIES AND WEIGHTS, AND FY 1992-BASED AND FY 1997-BASED PRICE PROXIES

Expense categories	Rebased FY 1997 hospital market basket weights	Rebased FY 1997 hospital market basket price proxy	FY 1992 hospital market basket price proxy
1. Compensation	61.656		
Wages and Salaries	50.686	ECI-Wages and Salaries, Civilian Hospital Workers.	CMS Occupational Wage Proxy
Employee benefits	10.970	ECI-Benefits, Civilian Hospital Workers	CMS Occupational Benefit Proxy
2. Professional Fees	5.401	ECI-Compensation for Professional, Specialty & Technical.	ECI-Compensation for Professional, Specialty & Technical
3. Utilities	1.353		
A. Fuel, Oil, And Gasoline	0.284	PPI Commercial Natural Gas	PPI Commercial Natural Gas
B. Electricity	0.833	PPI Commercial Electric Power	PPI Commercial Electric Power
C. Water and Sewerage	0.236	CPI–U Water & Sewerage Maintenance.	CPI–U Water & Sewerage Maintenance
4. Professional Liability Insurance	0.840	CMS Professional Liability Insurance Premium Index.	CMS Professional Liability Insurance Premium Index
5. All Other	30.749		
All Other Products	19.537		
(1.) Pharmaceuticals	5.416	PPI Ethical (Prescription) Drugs	PPI Ethical (Prescription) Drugs
(2.) Direct Purchase Food	1.370	PPI Processed Foods & Feeds	PPI Processed Foods & Feeds
(3.) Contract Service Food	1.274	CPI–U Food Away From Home	CPI–U Food Away From Home
(4.) Chemicals	2.604	PPI Industrial Chemicals	PPI Industrial Chemicals
(5.) Blood and Blood Products	0.875	PPI Blood and Blood Derivatives, Human Use.	N/A
(6.) Medical Instruments	2.192	PPI Medical Instruments & Equipment	PPI Medical Instruments & Equipment
(7.) Photographic Supplies	0.204	PPI Photographic Supplies	PPI Photographic Supplies
(8.) Rubber and Plastics	1.668	PPI Rubber & Plastic Products	PPI Rubber & Plastic Products
(9.) Paper Products	1.355	PPI Converted Paper & Paperboard Products.	PPI Converted Paper & Paperboard Products
(10.) Apparel	0.583	PPI Apparel	PPI Apparel
(11.) Machinery and Equipment.	1.040	PPI Machinery & Equipment	PPI Machinery & Equipment
(12.) Miscellaneous Products	0.956	PPI Finished Goods less Food and Energy.	PPI Finished Goods
B. All Other Services	11.212		
(1.) Telephone Services	0.398	CPI–U Telephone Services	CPI–U Telephone Services
(2.) Postage	0.857	CPI–U Postage	CPI–U Postage
(3.) All Other: Labor Intensive	5.438	ECI-Compensation for Private Service Occupations.	ECI-Compensation for Private Service Occupations
(4.) All Other: Non-Labor Intensive.	4.519	CPI–U All Items	CPI–U All Items
Total	100.000		

Note: Totals may not sum to 100 due to rounding.

a. Wages and Salaries

For measuring the price growth of wages in the FY 1997-based market basket, we use the ECI for civilian hospitals. This differs from the proxy used in the FY 1992-based index in which a blended occupational wage index was used. The blended occupational wage proxy used in the FY 1992-based index and the ECI for wages and salaries for hospitals both reflect a fixed distribution of occupations within the hospital. The major difference between the two proxies is in the treatment of professional and technical wages. In the blended occupational wage proxy, the professional and technical category was blended evenly between the ECI for wages and salaries for hospitals and the ECI for wages and salaries for professional and technical occupations in the overall economy, instead of hospital-specific occupations as reflected in the ECI for hospitals. This blend was done to create a normative price index that did not reflect the market imperfections in the hospital labor markets that existed for much of the 1980s and early 1990s.

Between 1987 (the first year the ECI for hospitals was available, although the pattern existed before then using other measures of hospital wages) and 1994, the ECI for wages and salaries for hospital workers grew faster than the blended occupational wage proxy. During the period from 1995 through 2000, this trend reversed; each year the ECI grew slower than the blended occupational wage proxy. This is the apparent result of the shift of private insurance enrollees from fee-for-service plans to managed care plans and the tighter controls these plans exhibited over hospital utilization and incentives to shift care out of the inpatient hospital setting. More recently, the ECI for wages and salaries for hospital workers has again grown faster than the blended occupational wage proxy, raising the question of whether the relationship between hospital wages and the occupational wage blend from 1994 through 2000 was the signaling of a new era in the competitiveness of the hospital labor market, or simply the temporary reversal of the long-term pattern of labor market imperfections in hospitals.

In order to answer this question, we researched the historical determinants of this relationship and estimated what the future market conditions are likely to be. Our analysis indicated that the driving force behind the long-term differential between hospital wages and the blended occupational wage proxy was the increased demand for hospital services and the subsequent increase in hospital utilization, particularly in outpatient settings. However, during the 1994 through 2000 period, the major force behind the reversal of the differential was the shift of enrollees to managed care plans that had tighter restrictions on hospital utilization and encouraged the shift of care out of the hospital setting. To a lesser extent, the robust economic growth and tight economy-wide labor markets that accompanied this period helped to reverse the differential as well. Over the last few years, there has been a move back towards less restrictive plans, and a subsequent increase in the utilization of hospital services. This recent surge appears to reflect the true underlying effect of rising health care demand.

This concept is reinforced by the similar patterns being observed for nursing homes and other health sectors as well. This is an important development, specifically when compared to the ECI for wages and salaries for nursing homes, which reflect less skilled occupations, yet still experienced a similar acceleration in wage growth. Thus, we would expect that this recent surge in hospital wages is reflective of competitive labor market conditions, and would likely persist only as long as the underlying demand for health care was accelerating.

While the shift to managed care plans had a noticeable one-time effect, our analysis has indicated that the hospital labor market is more competitive than before this period and that the expected shift towards more restrictive insurance plans over the coming decade will act to create a wage differential that reflects the underlying increases in demand for hospital services. For FY 2003, the hospital market basket is forecast to increase 0.2 percentage points faster (3.5 versus 3.3) than it would have if the occupational blend had been used. Based on this, we use the ECI for wages and salaries for hospitals as the proxy in the hospital market basket for wages. The ECI met our criteria of relevance, reliability, availability, and timeliness. Relevance means that the proxy is applicable and representative of the cost category that it proxies. Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Availability means that the proxy is publicly available. Timeliness implies that the proxy is published regularly, at least quarterly.

b. Employee Benefits

The FY 1997-based hospital market basket uses the ECI for employee benefits for civilian hospitals. This differs from the FY 1992-based index in which a blended occupational index was used. Our conclusions were based on an analysis similar to that done for the wages and salaries proxy described above.

c. Nonmedical Professional Fees

The ECI for compensation for professional and technical workers in private industry is applied to this category since it includes occupations such as management and consulting, legal, accounting, and engineering services. The same price measure was used in the FY 1992-based market basket.

d. Fuel, Oil, and Gasoline

The percentage change in the price of gas fuels as measured by the PPI (Commodity Code #0552) is applied to this component. The same price measure was used in the FY 1992-based market basket.

e. Electricity

The percentage change in the price of commercial electric power as measured by the PPI (Commodity Code #0542) is applied to this component. The same price measure was used in the FY 1992-based market basket.

f. Water and Sewerage

The percentage change in the price of water and sewerage maintenance as measured by the Consumer Price Index (CPI) for all urban consumers (CPI Code #CUUR0000SEHG01) is applied to this component. The same price measure was used in the FY 1992-based market basket.

g. Professional Liability Insurance

The percentage change in the hospital professional liability insurance price as estimated by the CMS Hospital Malpractice Index is applied. In the FY 1992-based market basket, the same proxy was used.

We are currently conducting research into improving our proxy for professional liability insurance. This research includes subcontracting with ANASYS through a contract with DRI–WEFA to extend the results of its NHMIS survey to set up a sample of hospitals from which malpractice insurance premium data will be directly collected. This new information, which would include liability estimates for hospitals that self-insure, would be combined with our current proxy data to obtain a more accurate price measure. In addition, we continue to monitor a BLS PPI for medical malpractice premiums that in the future could be used as a proxy for this cost category.

Comment: Several commenters indicated that hospital malpractice costs are increasing much faster than the professional liability portion of the market basket and we should consider other alternatives.

Response: We believe that our price proxy for professional liability insurance adequately measures the increases in professional liability insurance costs facing hospitals. While anecdotal evidence suggests that malpractice costs are increasing at double-digit rates, actual data as measured by the CMS hospital professional liability insurance survey as well as data on insurance from the BLS Producer Price Index through 2001 do not reflect this. Since the FY 2003 market basket increase is based on a forecast from DRI–WEFA, the expected trends in hospital professional liability insurance premiums are indeed reflected. As is the case with all of our indexes, we regularly review all of the proxies in the index to verify that they are representative of current industry trends. In addition, as mentioned in the May 9, 2002 proposed rule (67 FR 31444), we are currently exploring alternatives to our price proxy for hospital professional liability insurance including possibly using the BLS Producer Price Index for medical malpractice. We are also working with our contractor to explore possible methods of improving our hospital professional liability proxy, though this research is not yet complete.

h. Pharmaceuticals

The percentage change in the price of prescription drugs as measured by the PPI (Commodity Code #PPI283D#RX) is applied to this variable. This is a special index produced by BLS. The previous price proxy used in the FY 1992-based index (Commodity Code #0635) was discontinued after BLS revised its indexes.

i. Food, Direct Purchases

The percentage change in the price of processed foods as measured by the PPI (Commodity Code #02) is applied to this component. The same price measure was used in the FY 1992-based market basket.

j. Food, Contract Services

The percentage change in the price of food purchased away from home as measured by the CPI for all urban consumers (CPI Code #CUUR0000SEFV) is applied to this component. The same price measure was used in the FY 1992-based market basket.

k. Chemicals

The percentage change in the price of industrial chemical products as measured by the PPI (Commodity Code #061) is applied to this component. While the chemicals hospitals use include industrial as well as other types of chemicals, the industrial chemicals component constitutes the largest proportion by far. Thus, Commodity Code #061 is the appropriate proxy. The same price measure was used in the FY 1992-based market basket.

l. Blood and Blood Products

The percentage change in the price of blood and derivatives for human use as measured by the PPI (Commodity Code #063711) is applied to this component. As discussed earlier in this preamble, a comparable cost category was not available in the FY 1992-based market basket.

We use the PPI for blood and blood derivatives as the price proxy for the blood and blood products cost category. This proxy is relevant, reliable, available, and timely. We considered placing the blood weight in the Chemicals or Pharmaceuticals cost category, but found this made only minor changes to the total index. We also considered constructing an index based on blood cost data received from the American Red Cross, America's Blood Centers, and Zeman and Company. However, these data are collected annually and are not widely available. The PPI for blood and blood derivatives was the only index we found that met all of our criteria.

Comment: Several commenters supported the separate expense category for blood and blood products in the market basket and the use of the PPI for blood and blood derivatives for human use as the price proxy for monitoring the rate of change in blood costs. However, the commenters indicated that it is important to ensure that the PPI for blood and blood derivatives is appropriately and timely updated by the BLS so that it adequately tracks changing blood technologies and safety initiatives. The commenters added that ensuring the safety of the nation's blood supply requires constant attention to developing disease states and testing technologies and creates changing costs that must be captured by the blood PPI to ensure adequate reflection in the prospective payment system market basket.

Response: We agree that the PPI for blood and blood derivatives should appropriately reflect the price of blood and blood products. We will continue to monitor the PPI to ensure that this is the case. We are supportive of efforts by the BLS to collect the necessary information on the price of blood and blood products so they are accurately reflected in the PPI for blood and blood derivatives. Organizations that represent blood providers are also encouraged to work with BLS to accomplish this goal.

Comment: One commenter suggested that we use data from the Red Cross, America's Blood Centers or Zeman and Company in developing a price proxy that reflects recent cost increases for blood products.

Response: We require that all price indexes used in our market baskets to be relevant, reliable, available, and timely. The BLS PPI for blood and blood derivatives is an independent estimate of prices for these products that are published on a regular schedule (monthly). It is based on sound statistical methods and meets our criteria listed above. The possible sources of data mentioned by the commenter are not available frequently enough and on a regular basis and, therefore, do not meet the criterion of timeliness. Also, it has not been determined if indexes based on these data would be relevant or reliable enough for use in the CMS market baskets. Furthermore, because of their method of construction, the BLS indexes that we use as price proxies in the market baskets reflect only the effect of price changes and not the effects of quantity or quality changes. Our market baskets are designed to measure only the price change effects on increases in costs and not the quantity or quality effects. It has not been demonstrated whether indexes from these other data sources would capture only price effects or whether they mix price and quantity/quality effects.

m. Surgical and Medical Equipment

The percentage change in the price of medical and surgical instruments as measured by the PPI (Commodity Code #1562) is applied to this component. The same price measure was used in the FY 1992-based market basket.

n. Photographic Supplies

The percentage change in the price of photographic supplies as measured by the PPI (Commodity Code #1542) is applied to this component. The same price measure was used in the FY 1992-based market basket.

o. Rubber and Plastics

The percentage change in the price of rubber and plastic products as measured by the PPI (Commodity Code #07) is applied to this component. The same

price measure was used in the FY 1992-based market basket.

p. Paper Products

The percentage change in the price of converted paper and paperboard products as measured by the PPI (Commodity Code #0915) is used. The same price measure was used in the FY 1992-based market basket.

q. Apparel

The percentage change in the price of apparel as measured by the PPI (Commodity Code #381) is applied to this component. The same price measure was used in the FY 1992-based market basket.

r. Machinery and Equipment

The percentage change in the price of machinery and equipment as measured by the PPI (Commodity Code #11) is applied to this component. The same price measure was used in the FY 1992-based market basket.

s. Miscellaneous Products

The percentage change in the price of all finished goods less food and energy as measured by the PPI (Commodity Code #SOP3500) is applied to this component. The percentage change in the price of all finished goods was used in the FY 1992-based market basket. This change was made to remove the effect of food and energy prices, which are already captured elsewhere in the market basket.

t. Telephone

The percentage change in the price of telephone services as measured by the CPI for all urban consumers (CPI Code #CUUR0000SEED) is applied to this component. The same price measure was used in the FY 1992-based market basket.

u. Postage

The percentage change in the price of postage as measured by the CPI for all urban consumers (CPI Code #CUUR0000SEEC01) is applied to this component. The same price measure was used in the FY 1992-based market basket.

v. All Other Services, Labor Intensive

The percentage change in the ECI for compensation paid to service workers employed in private industry is applied to this component. The same price measure was used in the FY 1992-based market basket.

w. All Other Services, Nonlabor Intensive

The percentage change in the all-items component of the CPI for all urban consumers (CPI Code #CUUR0000SA0) is applied to this component. The same price measure was used in the FY 1992-based market basket.

For further discussion of the rationale for choosing many of the specific price proxies, we reference the August 30, 1996 final rule (61 FR 46326). Table 4 shows the historical and forecasted updates under both the FY 1997-based and the FY 1992-based market baskets.

TABLE 4.—FY 1992-BASED AND FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING INDEX PERCENT CHANGE, 1995–2004

Fiscal year (FY)	Rebased 1997-based hospital market basket	FY 1992-based market basket
Historical Data:		
FY 1995	2.8	3.1
FY 1996	2.3	2.4
FY 1997	1.6	2.1
FY 1998	2.7	2.9
FY 1999	2.7	2.5
FY 2000	3.3	3.6
FY 2001	4.3	4.1
Average FYs 1995–2001	2.8	3.0
Forecast:		
FY 2002	3.9	3.0
FY 2003	3.5	3.2
FY 2004	3.1	3.2
Average FYs 2002–2004	3.5	3.1

Source: Global Insights, Inc, DRI–WEFA, 2nd Qtr. 2002; @USMACRO/MODTREND @CISSIM/TL0502.SIM

As indicated by Table 5, switching the proxy for wages and benefits to the ECI for Civilian Hospitals has a minimal effect over time. While the FY 2003 update is 0.2 percentage points higher than using the previous blended occupational wage proxy, we believe that it is a more appropriate measure of price change in hospital wages and benefit prices given the current labor market conditions facing hospitals.

TABLE 5.—1997-BASED PROSPECTIVE PAYMENT SYSTEM HOSPITAL OPERATING INDEX PERCENT CHANGE, USING DIFFERENT WAGE AND BENEFIT PROXIES, 1995–2004

Fiscal year (FY)	Rebased 1997 hospital market basket using ECIs for wages and benefits	Rebased 1997 market basket using occupational wage and benefit proxies
Historical Data:		

TABLE 5.—1997-BASED PROSPECTIVE PAYMENT SYSTEM HOSPITAL OPERATING INDEX PERCENT CHANGE, USING DIFFERENT WAGE AND BENEFIT PROXIES, 1995–2004—Continued

Fiscal year (FY)	Rebased 1997 hospital market basket using ECIs for wages and benefits	Rebased 1997 market basket using occupational wage and benefit proxies
FY 1995	2.8	3.0
FY 1996	2.3	2.5
FY 1997	1.6	2.2
FY 1998	2.7	3.2
FY 1999	2.7	3.0
FY 2000	3.3	3.4
FY 2001	4.3	4.1
Average FYs 1995–2001	2.8	3.1
Forecast:		
FY 2002	3.9	3.3
FY 2003	3.5	3.3
FY 2004	3.1	3.3
Average FYs 2002–2004	3.5	3.3

Source: Global Insights, Inc, DRI–WEFA, 2nd Qtr. 2002; @USMACRO/MODTREND @CISSIM/TL0502.SIM

4. Labor-Related Share

Sections 1886(d)(2)(H) and (d)(3)(E) of the Act direct the Secretary to estimate from time to time the proportion of payments that are labor-related: "The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs of the DRG prospective payment rates * * *." The labor-related share is used to determine the proportion of the national prospective payment system base payment rate to which the area wage index is applied. In the past, we have defined the labor-related share for prospective payment system acute care hospitals as the national average proportion of operating costs that are related to, influenced by, or vary with the local labor market. The labor-related share for the acute care hospital inpatient prospective payment system market basket has been the sum of the weights for wages and salaries, fringe benefits, professional fees, contract labor, postage, business services, and labor-intensive services.

In its June 2001 Report to Congress, MedPAC recommended that "To ensure accurate input-price adjustments in Medicare's prospective payment systems, the Secretary should reevaluate current assumptions about the proportions of providers' costs that reflect resources purchased in local and national markets." (Report to the Congress: Medicare in Rural America, p. 80, Recommendation 4D.) MedPAC believes that the labor-related share is an estimate of the national average proportion of providers' costs associated with inputs that are only affected by local market wage levels. MedPAC recommended the labor-related share include the weights for wages and salaries, fringe benefits, contract labor, and other labor-related costs for locally purchased inputs only. By changing the methodology, and thereby lowering the labor-related share, funds would be transferred from urban to rural hospitals, which generally have wage index values less than 1.0.

Our proposed methodology was consistent with that used in the past to determine the labor-related share, which is the summation of the cost categories from the market basket deemed to vary with the local labor market. However, we noted that, while we did not propose to change the methodology for calculating the labor-related share in the proposed rule, we have begun the research necessary to reevaluate the current assumptions used in determining this share. This reevaluation is consistent with MedPAC's recommendation in their June 2001 report. Our research involves analyzing the compensation share separately for urban and rural hospitals, using regression analysis to determine the proportion of costs influenced by the area wage index, and exploring alternative methodologies to determine whether all or just a portion of professional fees and nonlabor intensive services should be considered labor-related.

We also noted our concern that the result of our methodology (increasing the labor-related share from 71.066 percent to 72.495 percent) could have negative impacts that would fall predominantly on rural hospitals. In addition, we noted that we planned to conduct further research and would make the appropriate changes in the final rule if another methodology was found to be superior to our current methodology.

Comment: Commenters generally supported our expressed willingness to review this methodology, and emphasized the need for a full and careful study of any changes before adopting major changes. Comments on behalf of some national and State hospital associations recommended that we not make any change to the labor-related share calculation, while proceeding with market basket rebasing, until completing a more thorough examination of the proportion of labor costs influenced by the local labor market, noting that we included in our methodology costs related to, influenced by, or that vary with the local labor market, even if these services may be purchased at the national level.

MedPAC commented that it believes that certain expenditures identified in our methodology as locally purchased are in fact purchased, in whole or in part, in national markets. The Commission gave examples such as computing, legal, and accounting services. The Commission noted it has worked with us in the past to discuss these issues, and commented that continued use of our proposed approach is appropriate in the absence of a superior method. Several commenters referred to the difference between MedPAC's and CMS's methodologies and suggested that we should adopt MedPAC's methodology.

Other commenters argued the labor-related share must be decreased, noting that increasing the percentage will only exacerbate current flaws in the payment system. Some commenters referred to the fact that the outpatient prospective payment system labor-related share is only 60 percent. Another commenter suggested the labor-related share should be changed to a State-specific share.

Still other commenters, some of whom represent national and State hospital associations, supported the proposed methodology, and expressed their belief that any revised methodology from the one discussed in the proposed rule would need to be separately proposed with an opportunity for specific public comment. It was also noted that it has been our standard practice to empirically estimate the labor share in accordance with changes in the market basket, and it was recommended that we continue to follow our empirical estimate. Another commenter stated that our proposed methodology is consistent with both our past practice and statutory mandate.

Response: We have decided not to proceed with reestimating the labor-related share at this time. We will conduct further analysis to determine the most appropriate methodology before proceeding. Therefore, for FY 2003, the labor-related share applicable to the standardized amounts will remain at 71.066 percent. Any future revisions to the labor-related share or the methodology will be proposed and subject to public comment.

We appreciate the input from commenters on this issue, and look forward to continuing to work with MedPAC and the hospital industry on future refinements to the labor-related share methodology.

Comment: One commenter offered several specific refinements to the proposed methodology. The commenter agreed with our proposal to remove postage costs from the methodology and recommended that insurance costs and certain other wage-related costs also be removed.

Another commenter noted that we are adjusting the labor portion of the standardized amount using data that is not measured through the existing hospital wage index. The commenter reports estimating a labor share of 61.656 percent by excluding contract labor costs not included in the wage index.

Response: As noted above, we are not revising our estimate of the labor-related share at this time. We will take these comments into consideration in our future analysis.

5. Separate Market Basket for Hospitals and Hospital Units Excluded From the Acute Care Hospital Inpatient Prospective Payment System

In its March 1, 1990 report, ProPAC recommended that we establish a separate market basket for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system. Effective with FY 1991, we adopted ProPAC's recommendation to implement separate market baskets. (See the September 4, 1990 final rule (55 FR 36049).) Prospective payment system hospitals and excluded hospitals and units tend to have different case mixes, practice patterns, and composition of inputs. The fact that excluded hospitals are not included under the acute care hospital inpatient prospective payment system in part reflects these differences. Studies completed by HCFA (now CMS), ProPAC, and the hospital industry have documented different weights for excluded hospitals and units and prospective payment system hospitals.

The excluded hospital market basket is a composite set of weights for Medicare-participating psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, children's hospitals, and cancer hospitals. We use cost report data for excluded freestanding hospitals whose Medicare average length of stay is within 15 percent (that is, 15 percent higher or lower) of the total facility average length of stay for excluded hospitals, except psychiatric hospitals. A tighter measure of Medicare length of stay within 8 percent (that is, 8 percent higher or lower) of the total facility average length of stay is used for freestanding psychiatric hospitals. This is done because psychiatric hospitals have a relatively small proportion of costs from Medicare and a relatively small share of Medicare psychiatric cases. While the 15-percent length of stay edit was used for the FY 1992-based index, the tighter 8-percent edit for psychiatric hospitals was not. We believe that limiting our sample to hospitals with a Medicare average length of stay within a comparable range to the total facility average length of stay provides a more accurate reflection of the structure of costs for treating Medicare patients.

Table 6 compares major weights in the rebased FY 1997 market basket for excluded hospitals with weights in the rebased FY 1997 market basket for acute care prospective payment system hospitals. Wages and salaries are 51.998 percent of total operating costs for excluded hospitals compared to 50.686 percent for acute care prospective payment hospitals. Employee benefits are 11.253 percent for excluded hospitals compared to 10.970 percent for acute care prospective payment hospitals. As a result, compensation costs (wages and salaries plus employee benefits) for excluded hospitals are 63.251 percent of costs compared to 61.656 percent for acute care prospective payment hospitals, reflecting the more labor-intensive services conducted in excluded hospitals.

A significant difference in the category weights also occurs in pharmaceuticals. Pharmaceuticals represent 5.416 percent of costs for acute care prospective payment hospitals and 6.940 percent for excluded hospitals. The weight for the excluded hospital market basket was derived using the same data sources and methods as for the acute care prospective payment market basket which were outlined previously. Differences in weights between the excluded hospital and acute care prospective payment hospital market baskets do not necessarily lead to significant differences in the rate of price growth for the two market baskets. If individual wages and prices move at approximately the same annual rate, both market baskets may have about the same overall price growth, even though the weights may differ substantially, because both market baskets use the same wage and price proxies. Also, offsetting price increases for various cost components can result in similar composite price growth in both market baskets.

TABLE 6.—FY 1997-BASED EXCLUDED HOSPITAL AND PROSPECTIVE PAYMENT SYSTEM HOSPITAL MARKET BASKETS, COMPARISON OF SIGNIFICANT WEIGHTS

Category	Rebased FY 1997-based excluded hospital market basket	Rebased FY 1997-based prospective payment system hospital market basket
Wages and Salaries	1.998	50.686
Employee Benefits	11.253	10.970
Professional Fees	4.859	5.401
Pharmaceuticals	6.940	5.416
All Other	24.950	25.527
Total	100.000	100.000

Table 7 lists the cost categories, weights, and proxies for the FY 1997-based excluded hospital market basket. For comparison, the FY 1992-based cost category weights are included. The proxies are the same as those used in the FY 1997-based acute care hospital inpatient prospective payment system market basket.

TABLE 7.—FY 1992-BASED AND FY 1997-BASED EXCLUDED HOSPITAL OPERATING COST CATEGORIES, WEIGHTS AND PRICE PROXIES

Expense categories	Rebased FY 1997-based excluded hospital market basket weights	FY 1992-based excluded hospital market weights	FY 1997-based price proxy
1. Compensation	63.251	63.721	
A. Wages and Salaries	51.998	52.152	ECI-Wages and Salaries, Civilian Hospital Workers
B. Employee Benefits	11.253	11.569	ECI-Benefits, Civilian Hospital Workers
2. Professional Fees	4.859	2.098	ECI-Compensation for Professional, Specialty & Technical
3. Utilities	1.296	1.675	
A. Fuel, Oil, and Gasoline	0.272	0.401	PPI Commercial Natural Gas
B. Electricity	0.798	1.007	PPI Commercial Electric Power
C. Water and Sewerage	0.226	0.267	CPI–U Water & Sewerage Maintenance
4. Professional Liability Insurance	0.805	1.081	CMS Professional Liability Insurance Premiums Index
5. All Other	29.790	31.425	
A. All Other Products	19.680	24.227	
(1.) Pharmaceuticals	6.940	3.070	PPI Ethical (Prescription) Drugs
(2.) Direct Purchase Food	1.233	2.370	PPI Processed Foods and Feeds
(3.) Contract Service Food	1.146	1.098	CPI–U Food Away From Home
(4.) Chemicals	2.343	3.754	PPI Industrial Chemicals
(5.) Blood and Blood Products	0.821	N/A	PPI Blood and Blood Derivatives, Human Use
(6.) Medical Instruments	1.972	3.154	PPI Medical Instruments & Equipment
(7.) Photographic Supplies	0.184	0.400	PPI Photographic Supplies
(8.) Rubber and Plastics	1.501	4.865	PPI Rubber & Plastic Products
(9.) Paper Products	1.219	2.182	PPI Converted Paper & Paperboard Products
(10.) Apparel	0.525	0.890	PPI Apparel
(11.) Machinery and Equipment	0.936	0.212	PPI Machinery & Equipment
(12.) Miscellaneous Products	0.860	2.232	PPI Finished Goods less Food and Energy
B. All Other Services	10.110	7.198	
(1.) Telephone Services	0.382	0.631	CPI–U Telephone Services
(2.) Postage	0.771	0.295	CPI–U Postage
(3.) All Other: Labor Intensive	4.892	5.439	ECI-Compensation for Private Service Occupations
(4.) All Other: Non-Labor Intensive.	4.065	0.833	CPI–U All Items
Total	100.000	100.000	

Note: Due to rounding, weights may not sum to total.

Table 8 shows the historical and forecasted updates under both the FY 1997-based and the FY 1992-based excluded hospital market baskets.

TABLE 8.—FY 1992-BASED AND FY 1997-BASED EXCLUDED HOSPITAL OPERATING INDEX PERCENT CHANGE, 1995–2004

Fiscal year (FY)	Rebased FY 1997-based excluded hospital market basket	FY 1992-based excluded hospital market basket
Historical Data:		
FY 1995	2.7	3.2
FY 1996	2.4	2.5
FY 1997	1.7	2.0
FY 1998	3.0	2.7
FY 1999	2.9	2.4
FY 2000	3.3	3.6
FY 2001	4.3	4.1
Average FYs 1995–2001	2.9	2.9
Forecast:		
FY 2002	4.0	3.0
FY 2003	3.5	3.2
FY 2004	3.1	3.2
Average FYs 2002–2004	3.5	3.1

Source: Global Insights, Inc, DRI–WEFA, 2nd Qtr. 2002; @USMACRO/MODTREND @CISSIM/TLO502.SIM.

A comparison of the FY 1997-based index incorporating the new wage and benefits proxies (ECIs) and updated occupational wage proxies is included in Table 9. Like the FY 1997-based prospective payment hospital index showed, there is little difference in the index over time when different compensation proxies are used.

TABLE 9.—FY 1997-BASED EXCLUDED HOSPITAL OPERATING INDEX PERCENT CHANGE, USING DIFFERENT WAGE AND BENEFIT PROXIES, 1995–2004

Fiscal year (FY)	Rebased FY 1997-based excluded hospital market basket	
	Using ECIs for hospital wage and benefit	Using occupational wages and Benefits proxies
Historical Data:		
FY 1995	2.7	2.9
FY 1996	2.4	2.5
FY 1997	1.7	2.2
FY 1998	3.0	3.5
FY 1999	2.9	3.0
FY 2000	3.3	3.5
FY 2001	4.3	4.1
Average FYs 1995–2001	2.9	3.1
Forecast:		
FY 2002	4.0	3.4
FY 2003	3.5	3.3
FY 2004	3.1	3.3
Average FYs 2002–2004	3.5	3.3

Source: Global Insights, Inc, DRI–WEFA, 2nd Qtr. 2002; @USMACRO/MODTREND @CISSIM/TL0502.SIM

B. Capital Input Price Index

The Capital Input Price Index (CIPI) was originally detailed in the September 1, 1992 **Federal Register** (57 FR 40016). There have been subsequent discussions of the CIPI presented in the May 26, 1993 (58 FR 30448), September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876), September 1, 1994 (59 FR 45517), June 2, 1995 (60 FR 29229), September 1, 1995 (60 FR 45815), May 31, 1996 (61 FR 27466), and August 30, 1996 (61 FR 46196) rules in the **Federal Register**. The August 30, 1996 rule discussed the most recent revision and rebasing of the CIPI to a FY 1992 base year, which reflects the capital cost structure facing hospitals in that year.

We are revising and rebasing the CIPI to a FY 1997 base year to reflect a more recent structure of capital costs. To do this, we reviewed hospital expenditure data for the capital cost categories of depreciation, interest, and other capital expenses. As with the FY 1992-based index, we have developed two sets of weights in order to calculate the FY 1997-based CIPI. The first set of weights identifies the proportion of hospital capital expenditures attributable to each capital expenditure category, while the second is a set of relative vintage weights for depreciation and interest. The set of vintage weights is used to identify the proportion of capital expenditures within a cost category that

is attributable to each year over the useful life of capital assets in that category. A more thorough discussion of vintage weights is provided later in this section.

Both sets of weights are developed using the best data sources available. In reviewing source data, we determined that the Medicare cost reports provided accurate data for all capital expenditure cost categories. We are using the FY 1997 Medicare cost reports for acute care prospective payment system hospitals, excluding expenses from hospital-based subproviders, to determine weights for all three cost categories: Depreciation, interest, and other capital expenses. We compared the weights determined from the Medicare cost reports to other data sources for 1997, specifically the Bureau of the Census' BES and the AHA Annual Survey, and found the weights to be consistent with those data sources.

Lease expenses are not a separate cost category in the CIPI, but are distributed among the cost categories of depreciation, interest, and other, reflecting the assumption that the underlying cost structure of leases is similar to capital costs in general. We assumed 10 percent of lease expenses are overhead and assigned them to the other capital expenses cost category as overhead, as was done in previous capital market baskets. The remaining 90 percent of lease expenses were distributed to the three cost categories based on the weights of depreciation, interest, and other capital expenses not including lease expenses.

Depreciation contains two subcategories: Building and fixed equipment and movable equipment. The split between building and fixed equipment and movable equipment was determined using the Medicare cost reports. This methodology was also used to compute the FY 1992-based index.

Table 10 presents a comparison of the rebased FY 1997 capital cost weights and the FY 1992 capital cost weights.

TABLE 10.—COMPARISON OF FY 1992 AND REBASED FY 1997 COST CATEGORY WEIGHTS

Expense categories	FY 1992 weights	Rebased FY 1997 weights	Price proxy
Total	1.0000	1.0000	
Total depreciation	0.6484	0.7135	
Building and Fixed Equipment Depreciation	0.3009	0.3422	Boeckh Institutional Construction Index—vintage weighted (23 years)
Movable Equipment Depreciation	0.3475	0.3713	PPI for machinery and equipment—vintage weighted (11 years)
Total interest	0.3184	0.2346	
Government/Nonprofit Interest	0.2706	0.1994	Average yield on domestic municipal bonds (Bond Buyer 20 bonds)—vintage weighted (23 years)
For-profit Interest	0.0478	0.0352	Average yield on Moody's Aaa bonds—vintage weighted (23 years)
Other	0.0332	0.0519	CPI—Residential Rent

Because capital is acquired and paid for over time, capital expenses in any given year are determined by past and present purchases of physical and financial capital. The vintage-weighted CIPI is intended to capture the long-term consumption of capital, using vintage weights for depreciation (physical capital) and interest (financial capital). These vintage weights reflect the purchase patterns of building and fixed equipment and movable equipment over time. Because depreciation and interest expenses are determined by the amount of past and current capital purchases, we used the vintage weights to compute vintage-weighted price changes associated with depreciation and interest expense.

Vintage weights are an integral part of the CIPI. Capital costs are inherently complicated and are determined by complex capital purchasing decisions over time, based on such factors as interest rates and debt financing. Capital is depreciated over time instead of being consumed in the same period it is purchased. The CIPI accurately reflects the annual price changes associated with capital costs, and is a useful simplification of the actual capital accumulation process. By accounting for the vintage nature of capital, we are able to provide an accurate, stable annual measure of price changes. Annual nonvintage price changes for capital are unstable due to the volatility of interest rate changes. These unstable annual price changes do not reflect the actual annual price changes for Medicare capital-related costs. CMS's CIPI reflects the underlying stability of the capital acquisition process and provides hospitals with the ability to plan for changes in capital payments.

To calculate the vintage weights for depreciation and interest expenses, we used a time series of capital purchases for building and fixed equipment and movable equipment. We found no single source that provides the best time series of capital purchases by hospitals for all of the above components of capital purchases. The early Medicare cost reports did not have sufficient capital data to meet this need. While the AHA Panel Survey provided a consistent database back to 1963, it did not provide annual capital purchases. The AHA Panel Survey did provide time series of depreciation and interest expenses that could be used to infer capital purchases over time. Although the AHA Panel Survey was discontinued after September 1997, we were able to use all of the available historical data from this survey since our base year is FY 1997.

In order to estimate capital purchases from AHA data for depreciation and interest expenses, the expected life for each cost category (building and fixed equipment, movable equipment, debt instruments) is needed. The expected life is used in the calculation of vintage weights. We used FY 1997 Medicare cost reports to determine the expected life of building and fixed equipment and movable equipment. The expected life of any piece of equipment can be determined by dividing the value of the fixed asset (excluding fully-depreciated assets) by its current year depreciation amount. This calculation yields the estimated useful life of an asset if depreciation were to continue at current year levels, assuming straight-line depreciation. From the FY 1997 cost reports, we determined the expected life of building and fixed equipment to be 23 years, and the expected life of movable equipment to be 11 years. By comparison, the FY 1992-based index showed that the expected life for

building and fixed equipment was 22 years, while that for movable equipment was 10 years. Our analysis of data for FYs 1996, 1998, and 1999 indicates very little change in these measures over time.

We used the fixed and movable weights derived from the FY 1997 Medicare cost reports to separate the AHA Panel Survey depreciation expenses into annual amounts of building and fixed equipment depreciation and movable equipment depreciation. By multiplying the annual depreciation amounts by the expected life calculations from the FY 1997 Medicare cost reports, we determined year-end asset costs for building and fixed equipment and movable equipment. We subtracted the previous year asset costs from the current year asset costs and estimated annual purchases of building and fixed equipment and movable equipment back to 1963. From this capital purchase time series, we were able to calculate the vintage weights for building and fixed equipment, movable equipment, and debt instruments. Each of these sets of vintage weights is explained in detail below.

For building and fixed equipment vintage weights, we used the real annual capital purchase amounts for building and fixed equipment derived from the AHA Panel Survey. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of the effect of price inflation. This real annual purchase amount for building and fixed equipment was produced by deflating the nominal annual purchase amount by the building and fixed equipment price proxy, the Boeckh institutional construction index. Because building and fixed equipment has an expected life of 23 years, the vintage weights for building and fixed equipment are deemed to represent the average purchase pattern of building and fixed equipment over 23-year periods.

Vintage weights for each 23-year period are calculated by dividing the real building and fixed capital purchase amount in any given year by the total amount of purchases in the 23-year period. This calculation is done for each year in the 23-year period, and for each of the twelve 23-year periods from 1963 to 1997. The average of the twelve 23-year periods is used to determine the 1997 average building and fixed equipment vintage weights.

For movable equipment vintage weights, we used the real annual capital purchase amounts for movable equipment derived from the AHA Panel Survey. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of price inflation. This real annual purchase amount for movable equipment was calculated by deflating the nominal annual purchase amount by the movable equipment price proxy, the PPI for machinery and equipment. Because movable equipment has an expected life of 11 years, the vintage weights for movable equipment are deemed to represent the average purchase pattern of movable equipment over 11-year periods.

Vintage weights for each 11-year period are calculated by dividing the real movable capital purchase amount for any given year by the total amount of purchases in the 11-year period. This calculation is done for each year in the 11-year period, and for each of the twenty-four 11-year periods from 1963 to 1997. The average of the twenty-four 11-year periods is used to determine the FY 1997 average movable equipment vintage weights.

For interest vintage weights, we used the nominal annual capital purchase amounts for total equipment (building and fixed, and movable) derived from the AHA Panel Survey. Nominal annual purchase amounts were used to capture the value of the debt instrument. Because debt instruments have an expected life of 23 years, the vintage weights for interest are deemed to represent the average purchase pattern of total equipment over 23-year periods.

Vintage weights for each 23-year period are calculated by dividing the nominal total capital purchase amount for any given year by the total amount of purchases in the 23-year period. This calculation is done for each year in the 23-year period and for each of the twelve 23-year periods from 1963 to 1997. The average of the twelve 23-year periods is used to determine the FY 1997 average interest vintage weights. The vintage weights for the FY 1992 CIPI and the FY 1997 CIPI are presented in Table 11.

TABLE 11.—1992-BASED AND 1997-BASED VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Year (From farthest to most recent)	Building and fixed equipment		Movable equipment		Interest	
	FY 1992 22 years	FY 1997 23 years	FY 1992 10 years	FY 1997 11 years	FY 1992 22 years	FY 1997 23 years
1	0.019	0.018	0.069	0.063	0.007	0.007
2	0.020	0.021	0.075	0.068	0.008	0.009
3	0.023	0.023	0.083	0.074	0.010	0.011
4	0.026	0.025	0.091	0.080	0.012	0.012
5	0.028	0.026	0.097	0.085	0.014	0.014
6	0.030	0.028	0.103	0.091	0.016	0.016
7	0.031	0.030	0.109	0.096	0.018	0.019
8	0.032	0.032	0.115	0.101	0.021	0.022
9	0.036	0.035	0.124	0.108	0.024	0.026
10	0.039	0.039	0.133	0.114	0.029	0.030
11	0.043	0.042	—	0.119	0.035	0.035
12	0.047	0.044	—	—	0.041	0.039
13	0.050	0.047	—	—	0.047	0.045
14	0.052	0.049	—	—	0.052	0.049
15	0.055	0.051	—	—	0.059	0.053
16	0.059	0.053	—	—	0.067	0.059
17	0.062	0.057	—	—	0.074	0.065
18	0.065	0.060	—	—	0.081	0.072
19	0.067	0.062	—	—	0.088	0.077
20	0.069	0.063	—	—	0.093	0.081
21	0.072	0.065	—	—	0.099	0.085
22	0.073	0.064	—	—	0.103	0.087

TABLE 11.—1992-BASED AND 1997-BASED VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES—Continued

Year (From farthest to most recent)	Building and fixed equipment		Movable equipment		Interest	
	FY 1992 22 years	FY 1997 23 years	FY 1992 10 years	FY 1997 11 years	FY 1992 22 years	FY 1997 23 years
23	.....	0.065	—	.....	—	0.090
Total	1.000	1.000	1.000	1.000	1.000	1.000

After the capital cost category weights were computed, it was necessary to select appropriate price proxies to reflect the rate of increase for each expenditure category. Our price proxies for the FY 1997-based CIPI are the same as those for the FY 1992-based CIPI. We still believe these are the most appropriate proxies for hospital capital costs that meet our selection criteria of relevance, timeliness, availability, and reliability. We ran the FY 1997-based index using the Moody's Aaa bonds average yield and using the Moody's Baa bonds average yield as proxy for the for-profit interest cost category. There was no difference in the two sets of index percent changes either historically or forecasted. A more detailed explanation of our rationale for selecting the price proxies is in the August 30, 1996 final rule (61 FR 46196). The proxies are presented in Table 10.

Global Insights, Inc., DRIWEFA forecasts a 0.7 percent increase in the rebased FY 1997 CIPI for FY 2003, as shown in Table 12.

TABLE 12.—FY 1992 AND FY 1997-BASED CAPITAL INPUT PRICE INDEX, PERCENT CHANGE, 1995–2004

Federal fiscal year	CIPI, FY 1992-based	CIPI, FY 1997-based
1995	1.2	1.5
1996	1.0	1.3
1997	0.9	1.2
1998	0.7	0.9
1999	0.7	0.9
2000	0.9	1.1
2001	0.6	0.9
Average: FYs 1995–2001	0.9	1.1
Forecast:		
2002	0.6	0.8
2003	0.5	0.7
2004	0.6	0.8

TABLE 12.—FY 1992 AND FY 1997-BASED CAPITAL INPUT PRICE INDEX, PERCENT CHANGE, 1995–2004—Continued

Federal fiscal year	CIPI, FY 1992-based	CIPI, FY 1997-based
Average: FYs 2002–2004	0.6	0.8

Source: Global Insights, Inc, DRI–WEFA, 2nd[1] Qtr. 2002; @USMACRO/MODTREND @CISSIM/TL0502.SIM.

This 0.7 percent increase is the result of a 1.3 percent increase in projected vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 3.0 percent increase in other capital expense prices, partially offset by a 2.3 percent decrease in vintage-weighted interest rates in FY 2003, as indicated in Table 13.

TABLE 13.—CMS CAPITAL INPUT PRICE INDEX PERCENT CHANGES, TOTAL AND COMPONENTS, FISCAL YEARS 1995–2005

Fiscal Year	Total	Total depreciation	Depreciation, building and fixed equipment	Depreciation, movable equipment	Interest	Other
Weights FY 1997	1.000	0.7135	0.3422	0.3713	0.2346	0.0519
Vintage-Weighted Price Changes						
1995	1.5	2.7	4.0	1.6	−1.8	2.5
1996	1.3	2.5	3.8	1.4	−2.3	2.6
1997	1.2	2.3	3.6	1.2	−2.4	2.8
1998	0.9	2.1	3.3	0.9	−3.0	3.2
1999	0.9	1.9	3.2	0.7	−2.8	3.2
2000	1.1	1.7	3.1	0.4	−1.6	3.4
2001	0.9	1.5	2.9	0.1	−2.2	4.3
Forecast						
2002	0.8	1.4	2.8	0.0	−2.2	4.3
2003	0.7	1.3	2.7	−0.1	−2.3	3.0
2004	0.8	1.3	2.6	−0.1	−2.0	2.8
2005	0.7	1.3	2.4	−0.1	−2.1	2.8

Source: Global Insights, Inc, DRI–WEFA, 2nd Qtr. 2002; @USMACRO/MODTREND @CISSIM/TL0502.SIM.

Rebasing the CIPI from FY 1992 to FY 1997 increased the percentage change in the FY 2003 forecast by 0.2 percentage points, from 0.5 to 0.7 as shown in Table 12. The difference is caused mostly by changes in cost category weights, particularly the smaller weight for interest and larger weight for depreciation. Because the interest component has a negative price change associated with it for FY 2003, the smaller share it accounts for in the FY 1997-based index means it has less of an impact than in the FY 1992-based index. The changes in the expected life and

vintage weights have only a minor impact on the overall percent change in the index. We did not receive any public comments on the rebasing and revising of the capital input price index.

V. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating Costs and Graduate Medical Education Costs

A. Transfer Payment Policy

1. Expanding the Postacute Care Transfer Policy to Additional DRGs (§ 412.4)

Existing regulations at § 412.4(a) define discharges under the acute care hospital inpatient prospective payment system as situations in which a patient is formally released from an acute care hospital or dies in the hospital. Section 412.4(b) defines transfers from one acute care hospital to another, and § 412.4(c) defines transfers to certain postacute care providers. Our policy provides that, in transfer situations, full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

Under section 1886(d)(5)(J) of the Act, which was added by section 4407 of Public Law 105–33, a "qualified discharge" from one of 10 DRGs selected by the Secretary, to a postacute care provider is treated as a transfer case beginning with discharges on or after October 1, 1998. This section requires the Secretary to define and pay as transfers all cases assigned to one of 10 DRGs selected by the Secretary, if the individuals are discharged to one of the following postacute care settings:

- A hospital or hospital unit that is not a subsection 1886(d) hospital. (Section 1886(d)(1)(B) of the Act identifies the hospitals and hospital units that are excluded from the term "subsection (d) hospital" as psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals.)
- A skilled nursing facility (as defined at section 1819(a) of the Act).
- Home health services provided by a home health agency, if the services relate to the condition or diagnosis for which the individual received inpatient hospital services, and if the home health services are provided within an appropriate period (as determined by the Secretary).

In the July 31, 1998 final rule (63 FR 40975 through 40976), we specified the appropriate time period during which we would consider a discharge to postacute home health services to constitute a transfer as within 3 days after the date of discharge. Also, in the July 31, 1998 final rule, we did not include in the definition of postacute care transfer cases patients transferred to a swing-bed for skilled nursing care (63 FR 40977).

The Conference Agreement that accompanied Public Law 105–33 noted that "(t)he Conferees are concerned that Medicare may in some cases be overpaying hospitals for patients who are transferred to a postacute care setting after a very short acute care hospital stay. The conferees believe that Medicare's payment system should continue to provide hospitals with strong incentives to treat patients in the most effective and efficient manner, while at the same time, adjust PPS [prospective payment system] payments in a manner that accounts for reduced hospital lengths of stay because of a discharge to another setting." (H.R. Report No. 105–217, 105th Cong., 1st Sess., 740 (1997).)

In the July 31, 1998 final rule (63 FR 40975), we implemented section 1886(d)(5)(J) of the Act, which directed the Secretary to select 10 DRGs based upon a high volume of discharges to postacute care and a disproportionate use of postacute care services. As discussed in the July 31, 1998 final rule, these 10 DRGs were selected in 1998 based on the MedPAR data from FY 1996. Using that information, we identified and selected the first 20 DRGs that had the largest proportion of discharges to postacute care (and at least 14,000 such transfer cases). In order to select 10 DRGs from the 20 DRGs on our list, we considered the volume and percentage of discharges to postacute care that occurred before the mean length of stay and whether the discharges occurring early in the stay were more likely to receive postacute care. We identified the following DRGs to be subject to the special 10 DRG transfer rule:

- DRG 14 (Specific Cerebrovascular Disorders Except Transient Ischemic Attack);
- DRG 113 (Amputation for Circulatory System Disorders Except Upper Limb and Toe);
- DRG 209 (Major Joint Limb Reattachment Procedures of Lower Extremity);
- DRG 210 (Hip and Femur Procedures Except Major Joint Procedures Age >17 with CC);
- DRG 211 (Hip and Femur Procedures Except Major Joint Procedures Age >17 without CC);
- DRG 236 (Fractures of Hip and Pelvis);
- DRG 263 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis with CC);
- DRG 264 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC);
- DRG 429 (Organic Disturbances and Mental Retardation); and
- DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses).

Similar to our existing policy for transfers between two acute care hospitals, the transferring hospital in a postacute care transfer for 7 of the 10 DRGs receives twice the per diem rate the first day and the per diem rate for each following day of the stay prior to the transfer, up to the full DRG payment. However, 3 of the 10 DRGs exhibit a disproportionate share of costs very early in the hospital stay in postacute care transfer situations. For these 3 DRGs, hospitals receive 50 percent of the full DRG payment plus the per diem for the first day of the stay and 50 percent of the per diem for the remaining days of the stay, up to the full DRG payment. This is consistent with section 1886(d)(5)(J)(i) of the Act, which recognizes that in some cases "a substantial portion of the costs of care are incurred in the early days of the inpatient stay."

The statute provides that, after FY 2000, the Secretary is authorized to expand this policy to additional DRGs. In July 1999, the previous Administration committed to not expanding the number of DRGs included in the policy until FY 2003. Therefore, CMS did not propose any change to the postacute care settings or the 10 DRGs in FY 2001 or FY 2002.

Under contract with CMS (Contract No. 500–95–0006), Health Economics Research, Inc. (HER) conducted an analysis of the impact on hospitals and hospital payments of the current postacute care transfer provision. We included in the August 1, 2000 final rule (65 FR 47079) a summary of that analysis. Among other issues, the analysis sought to evaluate the reasonableness of expanding the transfer payment policy beyond the current 10 selected DRGs.

The analysis supported the initial 10 DRGs selected as being consistent with the nature of the Congressional mandate. According to HER, "[t]he top 10 DRGs chosen initially by HCFA exhibit very large PAC [postacute care] levels and PAC discharge rates (except for DRG 264, Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC, which was paired with DRG 263). All 10 appear to be excellent

choices based on the other criteria as well. Most have fairly high short-stay PAC rates (except possibly for Strokes, DRG 14, and Mental Retardation, DRG 429)."

The HER report discussed the issues related to potential expansion of the postacute care transfer policy to all DRGs. In favor of this expansion, HER pointed to the following benefits:

- A simple, uniform, formula-driven policy;
- The same policy rationale exists for all DRGs;
- DRGs with little utilization of short-stay postacute care would not be harmed by the policy;
- Less confusion in discharge destination coding; and
- Eliminate disparities between hospitals that happen to be disproportionately treating the current 10 DRGs and hospitals with an aggressive, short-stay, postacute care transfer policy for other DRGs.

The complete HER report may be obtained at: *http://www.cms.hhs.gov/medicare/ippsmain.asp.*

In the May 9, 2002 proposed rule, we stated that, consistent with HER's findings, we believed expanding the postacute care transfer policy to all DRGs might be the most equitable approach, since a policy that is limited to certain DRGs may result in disparate payment treatment across hospitals, depending on the types of cases treated. For example, a hospital specializing in some of the types of cases included in the current 10 DRG transfer policy would receive reduced payments for those cases transferred for postacute care after a brief acute inpatient stay, while a hospital specializing in cases not included in the current 10 DRGs could be just as aggressive in transferring its patients for postacute care, but it would receive full payment for those cases.

Another aspect of the issue is that some hospitals have fewer postacute care options available for their patients. In its June 2001 Report to Congress: Medicare in Rural America, MedPAC wrote: "[a] shortage of ambulatory and post-acute care resources may prevent rural hospitals from discharging patients as early in the episode of care as urban hospitals would" (page 68). MedPAC went on to note that the decline in length of stay for urban hospitals since 1989 was greater for hospitals than for rural hospitals (34 percent compared with 25 percent through 1999), presumably due to earlier discharges to postacute care settings. Although the MedPAC report contemplated returning money saved by expanding the policy to the base payment rate, thereby increasing payments for nontransfer cases, currently section 1886(d)(5)(I)(ii) of the Act provides that any expansion to the postacute care transfer policy would not be budget neutral. (Budget neutrality refers to adjusting the base payment rates to ensure total aggregate payments are the same after implementing a policy change as they were prior to the change.) Nevertheless, over the long run, reducing Medicare Trust Fund expenditures for patients who are transferred to a postacute care setting after a very short acute care hospital stay would improve the program's overall financial stability.

As noted in the proposed rule, we believe that the current policy may create payment inequities among patients and among hospitals. By expanding the postacute care transfer policy, we would expect to reduce or eliminate these possible inequities. Therefore, in the May 9, 2002 proposed rule, we announced two options that we might use to expand the postacute care transfer provision and solicited comments and additional methodologies from commenters. The first method we proposed was to expand the postacute care transfer provision to all DRGs. The second proposal was to expand the provision to an additional 13 DRGs (We selected 10 DRGs using the same methodology we used in the July 31, 1998 final rule. Three of these 10 additional DRGs were paired, making the total 13.). However, expanding the postacute care transfer policy in this limited manner would retain many of the potential inequities of the current system.

As discussed further in the specific comments and responses that follow, we are not expanding the discharge to postacute care provision to additional DRGs for FY 2003. We believe the commenters have raised many issues regarding the impact of expanding this policy that we need to consider carefully before proceeding. In particular, due to the limited time between the close of the comment period and the required publication date of August 1, we were unable to completely analyze and respond to all of the points that were raised. However, we will continue to conduct research to assess whether further expansion of this policy may be warranted for FY 2004 or subsequent years and, if so, how to design any such refinements.

Comment: Many commenters argued that, in a system based on averages, expansion of the postacute care transfer policy negatively influences, and in fact penalizes, hospitals for efficient care. They claimed that this policy indiscriminately penalizes hospitals for efficient treatment and for ensuring that patients receive the right care at the right time in the right place. They believed that the postacute care transfer provision creates a perverse incentive for hospitals to keep patients longer.

Commenters also stated their concern that the expansion of the transfer provision violates the fundamental principle of the Medicare DRG payment system. The system is based on payments that will, on average, be adequate. These commenters argued that expansion of the transfer policy would give the system a per-diem focus and would mean that hospitals would be paid less for shorter than average lengths of stay, although they would not be paid more for the cases that are longer than average (except for outlier cases). One commenter suggested that if we expand the transfer rule, we should adopt a policy to pay more for long-stay cases.

Response: The Conference Agreement accompanying Public Law 105–33 states that "Medicare's payment system should continue to provide hospitals with strong incentives to treat patients in the most effective and efficient manner, while at the same time, adjust [prospective payment system] payments in a manner that accounts for reduced hospital lengths of stay because of a discharge to another setting." The current postacute care transfer policy adjusts payments to hospitals to reflect the reduced length of stay arising from the shift of patient care from the acute care setting to the postacute care setting. In addition, because Medicare also often pays for the postacute care portion of beneficiaries' care, the transfer policy appropriately adjusts hospitals' payments to avoid duplicate payments for the care provided during a patient's episode of care.

However, we are not expanding the postacute care transfer policy in this final rule because we are not able to completely respond to all of the points raised by commenters prior to publication of the final rule. Specifically, we intend to undertake a more comprehensive analysis of the impact on the averaging aspects of the prospective payment system if this policy were to be expanded. We agree with the commenters that the transfer policy should not hamper the provision of effective patient care, and any future expansion will consider both the need to reduce payments to reflect cost-shifting due to reductions in length of stay attributable to early postacute care transfers and the need to ensure that payments, on average, remain adequate to ensure effective patient care.

Comment: Commenters believed that the proposal to expand the postacute care transfer policy would place an additional administrative burden on hospitals and would expand the liability of hospitals for decisions that are not in their control, particularly after the patient has gone home. In cases where an acute care hospital is unaware that a patient has been sent to a postacute care facility or is receiving home health care, the commenters argued that it should not be the burden of the hospital to obtain that information.

Response: As stated previously, we are not expanding the postacute care transfer policy at this time. In response to the point raised by the commenter, with respect to our current policy, in those cases where the hospital discharges a beneficiary to home and the beneficiary subsequently receives postacute care, without the hospital's knowledge, the incorrect discharge code will not be considered fraudulent. However, if the hospital has knowledge of the beneficiary receiving postacute care after discharge, the hospital is responsible for submitting the claim as a transfer or submitting an adjustment bill.

Comment: Some commenters noted that, although the statute clearly states that the Secretary is authorized to expand the postacute care transfer policy to additional DRGs, the Secretary is not required to do so. These commenters pointed to the policy decisions made in FY 2001 and FY 2002 not to expand the policy and encouraged CMS to make the same policy decision for this and all subsequent years, calling the proposed expansion unjustified and unreasonable.

Several commenters argued that, although the Secretary does have authority to expand the postacute care transfer provision, the Secretary was not given the authority to expand the provision to all DRGs. Section 1886(d)(5)(J)(iv) of the Act provides that the Secretary may extend the policy to additional DRGs with high volumes of discharges to postacute care settings. Commenters noted that not all DRGs meet this criteria.

Response: We agree that we are not required by section 1886(d)(5)(J)(iv) of the Act to expand the transfer provision beyond the 10 DRGs currently covered under the policy. However, the statute clearly indicates that the policy may be expanded further, as appropriate. Whether the policy should be expanded to all DRGs or a few will be considered in future analysis.

Comment: Several commenters believed that the impact of the expansion of the postacute care transfer needs to be considered more thoroughly and noted that the impact of such an expansion was not included in the proposed rule impact tables. These commenters were concerned that the overall effect of implementing either of the two proposed expansions would result in an overall decrease in per case payments in FY 2003. Commenters believed this expansion would disproportionately harm teaching hospitals that treat the most costly and complex cases within each DRG. They further charged that this policy would interfere with good clinical decisionmaking.

Response: We did not analyze the postacute care transfer policy in the impact tables in the proposed rule because we did not propose a specific policy expansion. We did include overall savings estimates attributable to the provision in the preamble discussion. The full impact of any proposed expansion of this policy, including the impacts on specific categories of hospitals, would be considered fully before proceeding to expand the policy in the future.

Comment: Many commenters strongly opposed the proposal to expand the postacute care transfer policy to all DRGs. Several commenters suggested that we repeal the original 10 DRG postacute care transfer policy provision, on the grounds that, through experience, hospitals have learned to operate more efficiently and seek best practices in patient care management. Therefore, the prospective payment system has met its objectives and lengths of stay have been reduced. In addition, the commenters noted that the lower length of stay achieved is better for patients due to lower risk of acquiring a nosocomial infection and better recovery rates at home. Therefore, the commenters argued, hospitals that have shortened the length of stay across all DRGs should not be punished by a reduction in payment amounts to per diem rates. As such, the commenters argued that premature discharges should be identified through the Quality Improvement Organization review process and not by the prospective payment system.

Response: We agree that shorter lengths of stay are better for patients in general and that more efficient hospitals should not be penalized for greater than average efficiency. In the July 31, 1998 final rule implementing the policy for the current 10 DRGs, we included analysis showing that, across virtually all lengths of stay for each of the 10 DRGs, Medicare paid in excess of costs even after the implementation of this provision. We also note that we do not believe the intent of this policy was to require a change in physician clinical decisionmaking, nor in the manner in which physicians and hospitals practice medicine. Rather, it simply addresses the appropriate level of payments once those decisions have been made, so the intent of the policy was to avoid overpayments. We agree with the commenter that an appropriate mechanism to identify premature discharges is the quality review process. As we have noted above, we will consider fully all of the financial implications on hospitals before proceeding to expand the policy in the future.

Comment: Some commenters stated that there is no longer any justification to expand the postacute care policy, particularly to all DRGs. Commenters argued that expansion is unjustified because at the time the original policy was implemented, data showed that lengths of stay were dropping and that use of postacute care was increasing. The commenters indicated that, since that time, inpatient length of stay has stabilized and Medicare spending on postacute care has slowed. In addition, any incentive hospitals may have had to discharge patients early to a postacute care facility has been removed now that Medicare also pays these facilities under prospective payment systems.

In addition, commenters stated that neither CMS nor its contractor, HER, has provided data to support the assumption that hospitals are benefiting financially from short-stay postacute care transfer cases. In fact, commenters noted that the HER report included one table that suggests the opposite is true. As described by the commenters, Table 4–8 in the HER report shows the average cost of short-stay cases in the 10 DRGs currently subject to the payment reduction. As shown by this table, short-stay postacute transfer cases are 7.4 percent more costly than short-stay nonpostacute care transfer cases. As a result, the commenters asserted that postacute care transfer cases are significantly less profitable than the non-postacute care transfer cases.

Response: While it is true that postacute care providers such as skilled nursing facilities, home health agencies, and rehabilitation hospitals are now paid under prospective payment systems rather than cost-based payment systems, the acute hospital still has an incentive to discharge patients as soon as possible. The impact of expanding prospective payments to other settings is that it changes the incentives for those providers in terms of their willingness to continue to accept patients needing a more acute level of

care, because sicker patients are more likely to have above average costs. There is no impact on the incentives of acute care hospitals.

We point out that the analysis prepared by HER was undertaken as an evaluation of the original policy, conducted in 2000 based on partial FY 1999 data. With respect to HER's finding that patients transferred for postacute care are more expensive than cases discharged home, one would expect cases receiving followup care to be sicker and require more resources. In fact, the postacute care transfer policy was implemented out of concern that these patients were being transferred out of the acute care setting much earlier in the course of their treatment than had previously been the case, and that some of the acute care portion of the patients' hospitalization was being provided by the postacute care facility. Because the acute care hospital was receiving the full DRG payment and the postacute care facility was receiving higher cost-based reimbursement, the Medicare program was paying, in essence, two facilities for the acute care of the patient.

Comment: Commenters noted that in the proposed rule CMS quoted five points from the HER report that supported an expansion of the provision, but did not include the section of the HER report that lists the arguments against expansion. The commenters included this list of HER's arguments against expansion:

- Expansion to all DRGs would require multiple per-diem payment policies. The current ten DRGs require two distinct payment methodologies to ensure equitable reimbursement. A policy covering all DRGs might require many more methodologies.
- The policy would be irrelevant for many DRGs. Many DRGs have few or no cases that are discharged to postacute care.
- Expansion to all DRGs would have relatively high costs compared to the benefits. There is little benefit to extending the policy to the many DRGs with low postacute care volume. The cost of requiring that fiscal intermediaries implement and audit compliance with the policy for these DRGs would dilute the overall benefit to the program.
- It would be difficult to identify unrelated postacute care cases prior to admission. If a patient is under postacute care before admission and then returns to that care after an unrelated admission, the transfer policy does not apply. With many more DRGs, CMS and hospitals would have more work sorting out the unrelated admissions.
- Many DRGs are "inhomogeneous." HER cautioned that payment under the postacute care transfer policy would be inequitable for "inhomogeneous DRGs" that contain two or more distinct types of cases with disparate lengths of stay.

Response: The negative points raised above were included in our report of HER's analysis in the August 1, 2000 final rule (65 FR 47081). We note that in the final rule we also referred readers to where they could obtain a copy of the complete report.

Comment: Commenters analyzed the 13 DRGs identified in the proposed rule for possible partial expansion of the postacute care transfer policy using information derived from the FY 2000 MedPAR data. The commenters reported that many of the DRGs are inhomogeneous, including a wide variety of cases, some of which may be susceptible to early transfer and some of which may not.

Response: We are not adopting either of the methodologies for expanding the postacute care transfer policy at this time. However, if in the future we should consider expanding the policy, we will consider the effect of inhomogeneity in any DRGs we select.

Comment: Some commenters believed that the current system is inequitable. However, they argued that targeting 13 additional DRGs would only worsen the problem, and extending the policy to all DRGs is not an acceptable response. Commenters urged us to work to have the policy repealed altogether or at least to revise the policy to make it more equitable. For example, commenters noted that DRG 483 (Tracheostomy except for face, mouth and neck diagnoses), which is included under the current policy, has an average length of stay of 35 days. Commenters noted that the variation around the average is quite high, and that patients requiring this procedure and level of care almost always require postacute care. Therefore, commenters contended, because the variation around the average is so large, and the per diem cost for this DRG is well above average, the postacute care transfer policy has a very significant impact on payment that is unrelated to the use of postacute care services. These commenters urged us to reconsider the current policy because they believed that the logic of applying the standard per diem methodology to this DRG is flawed. They urged us either toreplace this DRG with another one on its high-volume postacute care transfer list or change the payment method to one that addressed the length of stay volatility.

Response: We believe the current policy remains an appropriate response to reductions in length of stay resulting from shifting care out of the acute hospital setting. However, as noted above, we do have concerns about limiting it to 10 specific DRGs. We will continue to closely monitor the data to assess whether future expansions or refinements are needed. With respect to the inclusion of DRG 483 in the current 10 DRGs covered by the postacute care transfer policy, in the July 31, 1998 final rule we responded to a similar comment (63 FR 40981). Our analysis showed this DRG was appropriate to include under the policy. Over 45 percent of discharges from this DRG were to postacute care, and it was ranked ninth in terms of volume of cases receiving postacute care. These factors qualify it for inclusion in the postacute care transfer policy under section 1886(d)(5)(J) of the Act.

Comment: One commenter contended that expanding the postacute care transfer provision would distort the meaning of a transfer case. According to the commenter, a transfer is a case that has been admitted to one hospital and is stabilized there, but which is then sent to another acute care hospital for treatment that the first hospital was not equipped to provide. The commenter further explained that patients discharged to postacute care, in contrast, have completed the acute care phase of their treatment and need postacute care either to assist their convalescence or to manage a chronic illness. The commenter contended that these are very different concepts.

Response: Under the acute inpatient prospective payment system, payments to the transferring hospital are reduced to reflect the fact that the patient is transferred prior to receiving the full course of treatment from the acute hospital. When Congress established the postacute care transfer policy, it did so in recognition of the fact that hospitals were transferring patients who still had acute symptoms into the postacute care setting for the remainder of their care. Therefore, the principle that the transferring hospital did not provide the full course of treatment is consistent under both the preexisting policy and the postacute care transfer policy.

Comment: One commenter claimed that the special payment formula for a transfer from DRG 209, 210 and 211 often results in less payment than the flat per diem method. The commenters provided an example assuming that a DRG with a payment of $10,000 and an average length of stay of 5 days received a per diem rate of $2,000. For a transfer case with a stay of 4 days under the

standard per diem transfer payment, the payment rate would be $10,000 ($4,000 for the first day and $2,000 for each of the next 3 days). The commenter argued that, under the special transfer payment policy, the payment rate would be only $8,000 ($5,000 for the first day and $1,000 for each of the next 3 days). The commenter recommended that we increase the percentage of the per diem paid on days after the first day to 75 percent of the per diem under the special payment method.

Response: Under § 412.4(f)(2), payment for a postacute care transfer case from DRGs 209, 210, or 211 is equal to 50 percent of the appropriate prospective payment rate for the first day of the stay, and 50 percent of the amount the hospital would receive under the standard transfer payment methodology. Thus, the example provided by the commenter is not correct. The payment would be the full $10,000 if the patient was transferred on the fourth day. Rather than receiving $5,000 for the first day, the hospital in the example would receive $7,000 (50 percent of the full DRG payment equals $5,000, plus 50 percent of the standard transfer payment equals $2,000, because the standard transfer payment is double the per diem for the first day of a transfer stay). The hospital would receive $1,000 for each of the next 3 days, resulting in total payments under this special transfer payment rule equal to $10,000 on day 4.

This example also demonstrates that, if the patient stay is one day shorter than average, the hospital receives the full DRG rate. Using both postacute care transfer payment methodologies, the hospital would receive the full DRG amount if the patient stay is one day shorter than the national average.

Comment: One commenter suggested that we determine if the administrative resources we are using to recalculate a hospital's payment under this policy are actually saving the Medicare program money or if a greater amount of administrative resources are spent to recover the payment differential for the transferred beneficiary. The commenter stated that we should not expand a "cost-savings" policy that fails to result in true savings.

Response: Currently, the transfer payment calculation is made at the time a claim is processed based on the discharge status code assigned by the hospital to the patient at the time of discharge. Therefore, there is no recalculation, and thus the administrative costs associated with this policy are marginal, as long as hospitals appropriately code the patient's discharge status.

Comment: Another commenter recommended that the postacute care transfer issue be addressed from a total system perspective, centered on meeting the patients' needs and include referral dynamics from the new postacute care prospective payment systems. The commenter also suggested that there should be an analysis of the medical versus payment dynamics of the 3-day prior hospitalization requirement for postacute care coverage.

One commenter suggested that we expand the postacute care transfer policy to include swing beds. The commenter pointed to the ease with which hospitals may move these swing beds from one care setting to another, suggesting that it would be easy for hospitals with swing beds to get around the existing transfer policy.

Response: We will take these suggestions into consideration as we continue to monitor the transfer policy. With respect to expanding the policy to include transfers to swing beds, we indicated in the July 31, 1998 final rule that we elected not to include swing beds under this policy because of the potential adverse impact on small rural hospitals. At this time, we are not changing this policy, although we will continue to evaluate whether it is appropriate to exclude transfers to swing beds from the postacute care transfer policy.

Comment: One commenter recommended waiting at least 3 years before expanding the transfer policy to provide for sufficient time for the entire continuum of care to reach equilibrium. In addition, the commenter indicated that when independent groups analyzed internal data on the 10 DRGs initially identified in the existing postacute care transfer policy, they found only 3 where there were significant numbers of transfers to postacute care. The commenter recommended reanalyzing the current policy to determine whether volume and disposition of the DRGs still require the policy. Some commenters stated that the perceived "gaming" hypothesis does not exist, meaning that hospitals are not cutting short patient care in order to make more money. Another commenter suggested that we monitor the recalibration of DRG weights, noting that if patients are being discharged too soon, these premature discharges would be reflected in frequent readmissions to the hospital, would increase the acuity of postacute care providers, and would lower the charges for acute stays. Earlier discharges will ultimately result in lower weights for associated DRGs. The commenter indicated that we could then easily monitor readmissions and acuity of postacute care treatment to target problem providers.

Response: We will examine these and other issues in future analysis of this issue. With respect to the treatment of transfers in DRG recalibration, we note that a transfer case is counted as only a fraction of a case toward DRG recalibration based on the ratio of its transfer payment to the full DRG payment for nontransfer cases. This ensures the DRG weight calculation is consistent with the payment policy for these cases.

2. Technical Correction

When we revised our regulations on payments for discharges and transfers under § 412.4 in the July 31, 1998 final rule (63 FR 41003), we inadvertently excluded discharges from one hospital area or unit to another inpatient area or unit of the hospital that is paid under the acute care hospital inpatient prospective payment system (§ 412.4(b)(2)) in the types of cases paid under the general rule for transfer cases. In the May 9, 2002 proposed rule, we proposed to correct the regulation text to reflect our policy (as reflected in prior preamble language) that transfers from one area or unit within a hospital to another are not paid as transfers (except as described under the special 10 DRG rule at § 412.4(c)). We proposed to correct this error by revising § 412.4(f)(1) to provide that only the circumstances described in paragraphs (b)(1) and (c) of § 412.4 are paid as transfers under the general transfer rule.

We did not receive any public comments on this proposal. Therefore, we are adopting the proposed revisions of the regulations text as final. This correction reflects the fact that transfers under § 412.4(b)(2) are to be paid as discharges and not transfers.

B. Sole Community Hospitals (SCHs) (§§ 412.77 and 412.92)

1. Phase-In of FY 1996 Hospital-Specific Rates

Under the acute care hospital inpatient prospective payment system, special payment protections are provided to a sole community hospital (SCH). Section 1886(d)(5)(D)(iii) of the Act defines an SCH as a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, absence of other like hospitals (as determined by the Secretary), or historical designation by the Secretary as an essential access community hospital, is the sole source of inpatient hospital services reasonably available to Medicare beneficiaries. The regulations that set forth the criteria that

a hospital must meet to be classified as an SCH are located in § 412.92.

To be classified as an SCH, a hospital either must have been designated as an SCH prior to the beginning of the hospital inpatient prospective payment system on October 1, 1983, or must be located more than 35 miles from other like hospitals, or the hospital must be located in a rural area and meet one of the following requirements:

- It is located between 25 and 35 miles from other like hospitals, and it—
  —Serves at least 75 percent of all inpatients, or at least 75 percent of Medicare beneficiary inpatients, within a 35-mile radius or, if larger, within its service area; or
  —Has fewer than 50 beds and would qualify on the basis of serving at least 75 percent of its area s inpatients except that some patients seek specialized care unavailable at the hospital.
- It is located between 15 and 35 miles from other like hospitals, and because of local topography or extreme weather conditions, the other like hospitals are inaccessible for at least 30 days in each of 2 out of 3 years.
- The travel time between the hospital and the nearest like hospital is at least 45 minutes because of distance, posted speed limits, and predictable weather conditions.

Effective with hospital cost reporting periods beginning on or after April 1, 1990, section 1886(d)(5)(D)(i) of the Act, as amended by section 6003(e) of Public Law 101–239, provides that SCHs are paid based on whichever of the following rates yields the greatest aggregate payment to the hospital for the cost reporting period:

- The Federal rate applicable to the hospital;
- The updated hospital-specific rate based on FY 1982 costs per discharge; or
- The updated hospital-specific rate based on FY 1987 costs per discharge.

Section 405 of Public Law 106–113 added section 1886(b)(3)(I) to the Act, and section 213 of Public Law 106–554 made further amendments to that section of the Act extending to all SCHs the ability to rebase their hospital-specific rates using their FY 1996 operating costs, effective for cost reporting periods beginning on or after October 1, 2000. The provisions of section 1886(b)(3)(I) of the Act were addressed in the June 13, 2001 interim final rule with comment period (66 FR 32177) and were finalized in the August 1, 2001 final rule (66 FR 39872).

In the June 13, 2001 interim final rule, we correctly described the provisions of section 1886(b)(3)(I) of the Act, as amended, and their implementation. However, in the August 1, 2001 final rule, in summarizing the numerous legislative provisions that had affected payments to SCHs, we incorrectly described the application of the statutory provisions in the background section of the preamble on SCHs (66 FR 39872). (We wish to point out that the Addendum to the August 1, 2001 final rule accurately describes the calculation of the hospital-specific rate (66 FR 39944).) Specifically, the payment options that we described in the August 1, 2001 preamble language regarding SCHs were incorrect in that we did not include the Federal rate in the blends. Therefore, we are providing below a correct description of the provisions of section 1886(b)(3)(I) of the Act and clarifying their application in determining which payment options will yield the highest rate of payment for an SCH.

For purposes of payment to SCHs for which the FY 1996 hospital-specific rate yields the greatest aggregate payment, the Federal rate is included in the blend, as set forth below:

- For discharges during FY 2001, 75 percent of the greater of the Federal amount or the updated FY 1982 or FY 1987 hospital-specific rates (identified in the statute as the subsection (d)(5)(D)(i) amount), plus 25 percent of the updated FY 1996 hospital-specific rate (identified in the statute as the "rebased target amount").
- For discharges during FY 2002, 50 percent of the greater of the Federal amount or the updated FY 1982 or FY 1987 hospital-specific rates, plus 50 percent of the updated FY 1996 hospital-specific rate.
- For discharges during FY 2003, 25 percent of the greater of the Federal amount or the updated FY 1982 or FY 1987 hospital-specific rates, plus 75 percent of the updated FY 1996 hospital-specific rate.
- For discharges during FY 2004 and subsequent fiscal years, the hospital-specific rate would be determined based on 100 percent of the updated FY 1996 hospital-specific rate.

For each cost reporting period, the fiscal intermediary determines which of the payment options will yield the highest rate of payment. Payments are automatically made at the highest rate using the best data available at the time the fiscal intermediary makes the determination. However, it may not be possible for the fiscal intermediary to determine in advance precisely which of the rates will yield the highest payment by year's end. In many instances, it is not possible to forecast the outlier payments, the amount of the disproportionate share hospital (DSH) adjustment, or the indirect medical education (IME) adjustment, all of which are applicable only to payments based on the Federal rate. The fiscal intermediary makes a final adjustment at the close of the cost reporting period to determine precisely which of the payment rates would yield the highest payment to the hospital.

If a hospital disagrees with the fiscal intermediary's determination regarding the final amount of program payment to which it is entitled, it has the right to appeal the fiscal intermediary's decision in accordance with the procedures set forth in Subpart R of Part 405, which concern provider payment determinations and appeals.

The regulation text of § 412.77 and § 412.92(d) that was revised to incorporate the provisions of section 1886(b)(3)(I) of the Act, as amended, and published in the June 13, 2001 interim final rule with comment period (66 FR 32192 through 32193) and finalized in the August 1, 2001 final rule (66 FR 39932), is accurate.

We did not receive any comments on this clarification.

2. SCH Like Hospitals

Section 1886(d)(5)(D)(iii) of the Act provides that, to qualify as an SCH, a hospital must be more than 35 road miles from another hospital. In addition, there are several other conditions under which a hospital may qualify as an SCH, including if it is the "* * * sole source of inpatient hospital services reasonably available to individuals in a geographic area * * *" because of factors such as the "* * * absence of other like hospitals * * *" We have defined a "like hospital" in regulations as a hospital furnishing short-term, acute care (§ 412.92(c)(2)). Like hospitals refers to hospitals paid under the acute care hospital inpatient prospective payment system.

We have become aware that, in some cases, new specialty hospitals that offer a very limited range of services have opened within the service area of an SCH and may be threatening the special status of the SCH. For example, a hospital that offers only a select type of surgery on an inpatient basis would qualify under our existing rules as an SCH "like hospital" if it met the hospital conditions of participation and was otherwise eligible for payment under the acute care hospital inpatient prospective payment system. Under our existing regulations, an SCH could lose its special status due to the opening of such a specialty hospital, even though there is little, if any, overlap in the types

of services offered by the SCH and the specialty hospital.

We believe that limiting eligibility for SCH status to hospitals without SCH like hospitals in their service area is a way to identify those hospitals that truly are the sole source of short-term acute-care inpatient services in the community. A limited-service, specialty hospital, by definition, would not offer an alternate source of care in the community for most inpatient services and therefore, we believe, should not be considered a "like" hospital with the effect of negating SCH status of a hospital that is the sole source of short-term acute care inpatient services in the community. Therefore, in the May 9, 2002 proposed rule, we proposed to amend the definition of SCH like hospitals under § 412.92(c)(2), effective with cost reporting periods beginning on or after October 1, 2002, to exclude any hospital that provides no more than a very small percent of the services furnished by the SCH. We believe the percentage of overlapping services between the SCH and the limited service facility should be sufficiently small so that we can ensure that only hospitals that truly are the sole source of short-term acute care in their community qualify for SCH status. Therefore, we proposed that this percentage be set at 3 percent.

In the May 9, 2002 proposed rule, we solicited public comments on alternate appropriate levels of service overlap, as well as on the overall proposed change to the definition of like hospitals.

In response to comments as discussed below, we are adopting inpatient days as the unit of measurement for determining whether a hospital applying for SCH status can exclude from consideration as a like hospital another hospital within its service area (rather than services, as discussed in the proposed rule). The threshold would be set so that a hospital with total inpatient days of 8 percent or less compared to an SCH (or SCH applicant) would not be considered a like hospital for purposes of SCH designation.

We believe that Medicare inpatient days are a good proxy for service overlap. However, we will assess the impact of the overall change to the definition of like hospital and the service overlap proxy on SCHs and the prospective payment system. This assessment will determine whether refinements to this policy may be necessary in future years.

Comment: Many organizations commented on this proposal. Most supported it, but to varying degrees, because there is additional information they believe they need in order to better evaluate the proposal. The commenters noted definitions are needed for terms such as "services", "overlap", and "provided services". They also indicated that the data source (such as hospital cost reports or actual claims experience) and the methodology for measuring the services need to be defined and requested clarification of these issues in the final rule.

For example, commenters asked how CMS will measure overlap of services between the specialty hospital and the SCH (or SCH applicant). Would there be a weighting for volume or the volume capacity of the limited service specialty hospital? Would it be 3 percent of service lines (for example, obstetrics, cancer care, or cardiac services), or discharges, or DRGs reported?

Response: We appreciate the many helpful comments we received on this proposal. We proposed a 3-percent threshold of service overlap in an attempt to strike a balance between the need to ensure that SCHs do not lose their special status due to specialty hospitals opening nearby and the need to ensure that only hospitals that are the sole source of short-term acute hospital services for their community qualify as SCHs. We were concerned not to set the threshold too high because we wanted to ensure that only hospitals that truly are the sole source of care for their community continue to qualify as SCHs. Based on the comments we received, we are adopting alternative criteria, as described below. Adoption of this alternative criteria, comparing inpatient days, renders moot many of the questions raised by the commenters discussed above.

Comment: Some commenters pointed out that specialty hospitals take away profitable services that subsidizes other critical services such as emergency room service, intensive care unit services, skilled nursing care, and home health and hospice care furnished by the hospitals that typically qualify as SCHs.

These commenters believed SCH status was instituted to allow these types of providers the ability to provide access to a full range of services for Medicare patients, and that, as a result, these SCHs need to be protected.

One commenter requested that we require a hospital, to be considered a like hospital for purposes of SCH determinations, to provide, on an ongoing basis, all of the services typically furnished by an SCH, such as 24-hour emergency service and surgery and obstetrics services.

Some commenters recommended that the services provided by a limited-service specialty hospital should be defined so that, if the hospital had the capability of providing a service such as emergency service but was not staffed for 24-hour emergency service, was staffed only to the extent of referring its emergency patients to the SCH, or provided only its specialty-related emergency service, the hospital would not be considered to be furnishing emergency services, and, as a result, the hospital would not be considered a like hospital.

Other commenters did not believe that percentages of specific DRGs or a similar calculation of limited services would be a fair and equitable method of determining SCH status, particularly when considering whether a hospital with SCH status should be permitted to retain such status.

One commenter supported the proposal to amend the definition of SCH like hospitals to exclude any hospital that offers a very limited range of services. However, the commenter did not support the percent-of-services methodology. The commenter stated that the administrative burden associated with making this determination would be too great for both providers and intermediaries.

Response: Our proposal was intended to measure the extent of overlapping services because this would seem to be a useful indicator to determine whether another hospital in the community offers a plausible alternative to the SCH for residents in the area seeking inpatient acute care. For example, the existing regulations contemplate situations where hospitals with fewer than 50 beds may become eligible for SCH status despite the location of an otherwise like hospital within 35 miles, if the community hospital would admit at least 75 percent of the area residents who become inpatients were it not for the fact that some beneficiaries or residents were forced to seek care outside the service area due to the unavailability of necessary specialty services at the community hospital (§ 412.92(a)(1)(ii)).

Section 2810.B.3.d. of the Provider Reimbursement Manual contains instructions for excluding services not offered by the SCH applicant from the determination of whether the applicant admits at least 75 percent of the area residents who become inpatients. Under this process, the hospital obtains information as to the diagnoses of and services furnished to those residents or Medicare beneficiaries who obtained care outside the SCH applicant hospital's service area during the survey period.

In connection with the policy we proposed in the May 9, 2002 proposed

rule, we contemplated using a similar process to determine whether a limited-service specialty hospital should be excluded from the definition of like hospitals. However, we recognize that this process would be labor and data intensive. As a result, we were interested in evaluating the recommendations submitted by commenters.

Comment: Several commenters suggested using Medicare inpatient days in hospital units subject to the acute care hospital inpatient prospective payment system to identify whether a limited-service specialty hospital is likely to offer many of the services also offered by the SCH. Thus, for example, a specialty hospital that only provides orthopedic surgery with a 1-day recovery period would have its service weighted to reflect the limited intensity of such services.

Commenters believe that using Medicare inpatient days would allow easy administration by both CMS and its fiscal intermediaries, because these data are readily available in hospital cost reports. They believed that by considering only inpatient days in units subject to the acute care hospital inpatient prospective payment system, the focus would be limited only to those services germane to the general acute care needs of the Medicare community. Other commenters suggested using actual gross payments for Part A services to Medicare beneficiaries as the unit of measurement for services provided.

Response: We agree with the commenters who proposed using inpatient days as the comparative statistic to determine whether a limited-service specialty hospital may be excluded from the like hospital definition. Although DRGs provide a comparison that more closely reflects service overlap, we believe that we will attain a similar outcome, with less administrative complexity, by comparing inpatient days. Accordingly, we are adopting patient days attributable to units that provide a level of care characteristic of the level of care payable under the acute care hospital inpatient prospective payment system as the unit of measurement for determining whether a hospital applying for SCH status can exclude from consideration as a like hospital another hospital within its service area. The number of inpatient days is readily available from all participating hospitals because it is already captured on the cost report.

We believe that Medicare inpatient days are a good proxy for service overlap. However, we will assess the impact of the overall change to the definition of like hospital and the service overlap proxy on SCHs and the prospective payment system. This assessment will determine whether refinements to this policy may be necessary in future years.

Comment: The commenters were in agreement that the overlapping services threshold of 3 percent was too low and would not accomplish our intent of distinguishing specialty hospitals from full-service acute care hospitals. Alternative suggestions included overlapping services thresholds of 5 percent, 10 to 15 percent, and setting the threshold after evaluating actual data. One commenter stated that adopting less than a 10-percent overlap threshold would not protect existing SCHs from losing their special status as a result of a limited-service specialty hospital opening in their community.

Commenters offered the example where a heart hospital or other niche provider may perform inpatient services that represent closer to 10 or 15 percent of the services performed by SCHs. In this situation the SCH continues to remain the sole source of the full range of acute care services in the community, including essential emergency services, and thus deserves to retain SCH status. However, if the specialty hospital is considered a like hospital, it would jeopardize the special status of the SCH.

One commenter referred to the regulations, where, to qualify for SCH status, a hospital with another like hospital within 25 to 35 miles cannot have more than 25 percent of the admissions of residents within its service area admitted to other hospitals (§ 412.92(a)(1)(i)). The commenter suggested that, where the focus is on specialty hospitals that are not like hospitals, a threshold on the order of one-third of that 25-percent threshold would seem appropriate. The commenter suggests that a specialty hospital with only 8 percent service overlap with the community hospital would not be able to service the community's acute care needs.

Response: As stated above, based on our evaluation of the public comments and the situations, of which we are aware, where an existing SCH's special status is being threatened by a nearby limited-service specialty hospital, we believe the best approach would be to revise our proposed definition of like hospital for SCH purposes to exclude any hospital where the inpatient services overlap compared to the SCH (or the SCH applicant) is less than 8 percent, as measured by inpatient days.

The inpatient services would be measured by total inpatient days as reported on the hospitals' cost report, and should include all days attributable to units that provide a level of care characteristic of the level of care payable under the acute care hospital inpatient prospective payment system. We believe setting the threshold at 8 percent would distinguish the specialty hospitals, which have very limited inpatient use and, therefore, limited inpatient days, from general, acute care hospitals typical of SCHs. Therefore, we are revising proposed § 412.92 (c)(2) to reflect this change.

To determine whether a hospital qualifies as an SCH, the fiscal intermediary would make a determination whether a nearby hospital paid under the acute care hospital inpatient prospective payment system is a like hospital by comparing the total acute inpatient days of the SCH applicant hospital with the total acute inpatient days of the nearby hospital. If the total acute inpatient days of the nearby hospital is greater than 8 percent of the total inpatient days reported by the SCH applicant hospital, the hospital is considered a like hospital for purposes of evaluating the application for SCH status. If the total acute inpatient days of the nearby hospital is 8 percent or less of the total acute inpatient days of the applicant hospital, the nearby hospital is not considered a like hospital for purposes of evaluating the application for SCH status under § 412.92.

Comment: Some commenters questioned the effective date of the proposal because they see the definition revision as a clarification of existing legislation that should be treated as such, applying to all open matters, not prospectively only.

Response: This change is a revision to our current policy for defining like hospitals. Therefore, it is being implemented prospectively, starting with cost reporting periods that begin on or after October 1, 2002.

Current regulations establish that an approved SCH classification remains in effect without need for reapproval unless there is a change in the circumstances under which the classification was approved (§ 412.92(b)(3)). It will be necessary, therefore, in situations where a SCH's eligibility is contingent on a nearby hospital being excluded from the like hospital comparison under this provision, for the fiscal intermediary to reevaluate periodically whether the exclusion is still appropriate, based on the most current inpatient days data.

In the event that a new, limited-service specialty hospital opens within the service area of an existing SCH, the

fiscal intermediary will monitor the number of patient days at the two hospitals to ensure that the specialty hospital does not exceed the 8 percent threshold.

Comment: Some commenters stated that, without understanding how the test actually would be conducted, what data would be used, and why a 3 percent threshold was selected, interested parties could not provide us with thoughtful, helpful comments. Accordingly, they recommended that we not finalize our proposal at this time. Instead, we should clarify our proposal and resolicit comments. In the interim, these commenters believed that we should grandfather SCH status for all existing SCHs while it further developing this policy. Similarly, several commenters suggested we further evaluate and develop this proposal and present it for public review and comment before finalizing the proposal.

One commenter stated that we should also consider adopting an altogether different approach. Rather than implement an objective, one-size-fits-all approach, we should instead develop review guidelines for our Regional Offices, and allow these Regional Offices to make case-by-case, fact-specific determinations using the guidelines. Such guidelines could, for example, utilize a quantitative evaluation, similar to what we proposed. In addition, Regional Offices could be directed to examine whether area beneficiaries have a choice in the area for general-acute care hospital services.

Response: We believe that, based on our understanding of the situations of which we are aware involving an SCH whose special status is being jeopardized by the opening of a limited-service specialty hospital in its service area, and similar situations described in the comments we received, an 8-percent threshold for the comparison of inpatient days as described above is appropriate. We are concerned that a case-by-case approach would result in inappropriate disparities across geographic areas in terms of how applications are reviewed.

C. Outlier Payments: Technical Change (§ 412.80)

Sections 1886(d)(5)(A) and (d)(5)(K) of the Act provide for payments, in addition to the basic prospective payments, for "outlier" cases; that is, cases involving extraordinarily high costs. Cases qualify for outlier payments by demonstrating costs that exceed a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG plus any IME (§ 412.105) and DSH (§ 412.106) payments for the case and, for discharges on or after October 1, 2001, additional payments for new technologies or services.

Implementing regulations for outlier payments are located in subpart F of Part 412. Paragraph (a) of § 412.80 specifies the basic rules for making the additional outlier payments, broken down into three applicable effective periods. We have become aware that in paragraph (a)(2), which relates to outlier payments for discharges occurring on or after October 1, 1997, and before October 1, 2001, we did not include language to specify that the additional costs of outlier cases must exceed the standard DRG payment and any additional payment the hospital would receive for IME and for DSH, plus a fixed loss dollar threshold. Therefore, in the May 9, 2002 proposed rule, we proposed to make a technical change by revising § 412.80(a)(2), applicable for discharges occurring during the period between October 1, 1997 and October 1, 2001, to include the appropriate language regarding additional payments for IME and payments for DSH. (We note that when we amended § 412.80 to incorporate the provisions on the additional payments for new technology under paragraph (a)(3) (66 FR 46924, September 7, 2001), effective October 1, 2001, we did include this language.)

We did not receive any comments on this technical change.

D. Rural Referral Centers § 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, the regulations at § 412.96 set forth the criteria that a hospital must meet in order to qualify under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban amount rather than the rural standardized amount. Although the other urban and rural standardized amounts were the same for discharges beginning with that date, rural referral centers continue to receive special treatment under both the DSH payment adjustment and the criteria for geographic reclassification.

As discussed in Federal Register documents at 62 FR 45999 and 63 FR 26317, under section 4202 of Public Law 105–33, a hospital that was classified as a rural referral center for FY 1991 is to be considered as a rural referral center for FY 1998 and later years so long as that hospital continues to be located in a rural area and does not voluntarily terminate its rural referral center status. Otherwise, a hospital seeking rural referral center status must satisfy applicable criteria.

Also, effective October 1, 2000, if a hospital located in what is now an urban area was ever a rural referral center, it was reinstated to rural referral center status (65 FR 47089).

One of the criteria under which a hospital may qualify as a rural referral center is to have 275 or more beds available for use (§ 412.96(b)(ii)). A rural hospital that does not meet the bed size requirement can qualify as a rural referral center if the hospital meets two mandatory prerequisites (a minimum case-mix index and a minimum number of discharges) and at least one of three optional criteria (relating to specialty composition of medical staff, source of inpatients, or referral volume) (§ 412.96(c)(1) through (c)(5)). With respect to the two mandatory prerequisites, a hospital may be classified as a rural referral center if—

- The hospital's case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- The hospital's number of discharges is at least 5,000 per year, or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that CMS will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. The methodology we use to determine the proposed national and regional case-mix index values is set forth in regulations at § 412.96(c)(1)(ii). The proposed national mean case-mix index value for FY 2003 in the May 9, 2002 proposed rule included all urban hospitals nationwide, and the proposed regional values for FY 2003 were the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105). These values were based on discharges occurring during FY 2001 (October 1, 2000 through September 30, 2001) and include bills posted to CMS's records through December 2001.

In the May 9, 2002 proposed rule, we proposed that, in addition to meeting

other criteria, hospitals with fewer than 275 beds, if they are to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2002, must have a case-mix index value for FY 2001 that is at least—

- 1.3229; or
- The median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by CMS for the census region in which the hospital is located. (See the table set forth in the May 9, 2002 proposed rule at 67 FR 31460).

Based on the latest data available (FY 2001 bills received through March 31, 2002), in addition to meeting other criteria, hospitals with fewer than 275 beds, if they are to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2002, must have a case-mix index value for FY 2002 that is at least—

- 1.3225; or
- The median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by CMS for the census region in which the hospital is located. The final median case-mix index values by region are set forth in the following table:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2044
2. Middle Atlantic (PA, NJ, NY)	1.2247
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3014
4. East North Central (IL, IN, MI, OH, WI)	1.2345
5. East South Central (AL, KY, MS, TN)	1.2418
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.1621
7. West South Central (AR, LA, OK, TX)	1.2595
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3162
9. Pacific (AK, CA, HI, OR, WA)	1.2785

Hospitals seeking to qualify as rural referral centers or those wishing to know how their case-mix index value compares to the criteria should obtain hospital-specific case-mix index values from their fiscal intermediaries. Data are available on the Provider Statistical and Reimbursement (PS&R) System. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that CMS will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. We are proposing to update the regional standards based on discharges for urban hospitals' cost reporting periods that began during FY 2001 (that is, October 1, 2000 through September 30, 2001). FY 2001 is the latest year for which we have complete discharge data available.

Therefore, in the May 9, 2002 proposed rule, we proposed that, in addition to meeting other criteria, a hospital, if it is to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2002, must have as the number of discharges for its cost reporting period that began during FY 2001 a figure that is at least _

- 5,000; or
- The median number of discharges for urban hospitals in the census region in which the hospital is located. (See the table set forth in the May 9, 2002 proposed rule at 67 FR 31460.)

Based on the latest discharge data available for FY 2001, the final median number of discharges for urban hospitals by census region areas are as follows:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6,905
2. Middle Atlantic (PA, NJ, NY)	8,644
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	8,893
4. East North Central (IL, IN, MI, OH, WI)	7,890
5. East South Central (AL, KY, MS, TN)	6,953
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5,696
7. West South Central (AR, LA, OK, TX)	6,226
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	9,167
9. Pacific (AK, CA, HI, OR, WA)	7,053

We note that the median number of discharges for hospitals in each census region is greater than the national standard of 5,000 discharges. Therefore, 5,000 discharges is the minimum criterion for all hospitals.

We reiterate that if an osteopathic hospital is to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 2002, the hospital must have at least 3,000 discharges for its cost reporting period that began during FY 2001.

We did not receive any comments on the criteria for rural referral centers.

E. Indirect Medical Education (IME) Adjustment (§ 412.105)

1. Background

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved graduate medical education (GME) program receive an additional payment for a Medicare discharge to reflect the higher indirect operating costs of teaching hospitals relative to nonteaching hospitals. The existing regulations regarding the calculation of this additional payment, known as the indirect medical education (IME) adjustment, are located at § 412.105. The additional payment is based on the

IME adjustment factor. The IME adjustment factor is calculated using a hospital's ratio of residents to beds, which is represented as *r*, and a multiplier, which is represented as *c*, in the following equation: $c \times [(1 + r)^{.405} - 1]$. The formula is traditionally described in terms of a certain percentage increase in payment for every 10-percent increase in the resident-to-bed ratio. Section 1886(d)(5)(B)(ii)(VII) of the Act provides that, for discharges occurring during FY 2003 and thereafter, the "c" variable, or formula multiplier, is 1.35. The formula multiplier of 1.35 represents a 5.5-percent increase in IME payment for every 10-percent increase in the resident-to-bed ratio.

2. Temporary Adjustments to the FTE Cap To Reflect Residents Affected by Residency Program Closure: Resident-to-Bed Ratio for Displaced Residents (§§ 412.105(a) and (f)(1)(ix))

In the August 1, 2001 hospital inpatient prospective payment system final rule (66 FR 39899), we expanded the policy at existing § 413.86(g)(8) (to be redesignated as § 413.86(g)(9)) which allows a temporary adjustment to a hospital's FTE cap when a hospital trains additional residents because of another hospital's closure, to also allow a temporary adjustment when a hospital trains residents displaced by the closure of another hospital's residency program (but the hospital itself remains open). We revised regulations at existing § 413.86(g)(8) to state that, if a hospital that closes a residency training program agrees to temporarily reduce its FTE cap, another hospital(s) may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of the former hospital's residency training program. We defined "closure of a hospital residency training program" as when the hospital ceases to offer training for residents in a particular approved medical residency training program. The methodology for adjusting the caps for the "receiving" hospital and the "hospital that closed its program" as they apply to the IME adjustment and direct GME payments is set forth in the regulations at existing §§ 412.105(f)(1)(ix) and 413.86(g)(8)(iii), respectively.

In the final notice published in the **Federal Register** on August 1, 2001 rule, we noted a commenter who requested that CMS further revise the regulations to grant temporary relief to hospitals in calculating the IME adjustment with regard to application of the resident-to-bed ratio cap (66 FR 39900). The commenter believed that while the regulations provide for the cap on the number of residents to be temporarily adjusted, if the receiving hospital is not allowed to also adjust its resident-to-bed ratio in the prior year, the lower resident-to-bed ratio from the prior year could act to reduce the IME payments to the receiving hospital. The commenter suggested that, similar to the exception for residents in hospitals that begin new programs under § 412.105(a)(1), an adjustment should be made to the prior year's number of FTE residents, equal to the increase in the current year's FTEs that is attributable to the transferred residents. In response to the commenter, we stated that we had decided not to allow the exclusion of these displaced residents in applying the resident-to-bed ratio cap. We explained that, while we believed that the receiving hospital may be held to a lower cap in the first year of training the displaced residents, the receiving hospital would benefit from the higher cap in the subsequent years as the displaced residents complete their training and leave that hospital. However, we indicated that we would consider suggestions for possible future changes to this policy.

In the proposed regulation, we revisited this policy and explained that our rationale for not allowing the adjustment for displaced residents to the resident-to-bed ratio cap may have been faulty. We initially believed that, in the year following the last year in which displaced residents trained at the receiving hospital, the receiving hospital would benefit from the higher resident-to-bed ratio cap. However, we have determined that, while it is correct that the hospital will have a higher resident-to-bed ratio cap because of the higher number of displaced residents in the prior year, the receiving hospital's actual FTE count decreases as the displaced residents finish their training. Therefore, the receiving hospital would not need a higher resident-to-bed ratio in the prior year to accommodate the remaining FTEs. Consequently, the higher resident-to-bed ratio cap in fact would not benefit the receiving hospital. Thus, in the May 9, 2002 proposed rule, we proposed to allow the exclusion of residents displaced by either the closure of another hospital's program or another hospital's closure in applying the resident-to-bed ratio cap. Specifically, assuming a hospital is eligible to receive a temporary adjustment to its FTE cap as described in existing § 413.86(g)(8), we proposed that, solely for purposes of applying the resident-to-bed ratio cap in the *first* year in which the receiving hospital is training the displaced residents, the receiving hospital may adjust the numerator of the prior year's resident-to-bed ratio by the number of FTE residents that has caused the receiving hospital to exceed its FTE cap. (We note that, as we explain below in response to a comment, in this final rule we are revising the proposed language of § 412.105(a)(1)(iii) to state that the exception to the resident-to-bed ratio cap for closed hospitals and closed programs applies only through the end of the first 12-month cost reporting period in which the receiving hospital trains the displaced FTE residents. We further note that this adjustment to the resident-to-bed ratio cap does not apply to changes in bed size.) In the years subsequent to the first year in which the receiving hospital takes in the displaced residents, we believe an adjustment to the numerator of the prior year's resident-to-bed ratio is unnecessary because the receiving hospital's actual FTE count in those years would either stay the same or, as the displaced residents complete their training or leave that hospital, decrease each year. If all other variables remain constant, an increase in the current year's resident-to-bed ratio will establish a higher cap for the following year. In the second and subsequent years of training the displaced residents, the receiving hospital's resident-to-bed ratio for the current year would not be higher than the prior year's ratio and thus would not be limited by the resident-to-bed ratio cap.

In the cost reporting period following the departure of the last displaced residents, when the temporary FTE cap adjustment is no longer applicable, we proposed that, solely for purposes of applying the resident-to-bed ratio cap, the resident-to-bed ratio be calculated as if the displaced residents had not trained at the receiving hospital in the prior year. In other words, in the year that the hospital is no longer training displaced residents, the attendant FTEs should be removed from the numerator of the resident-to-bed ratio from the prior year (that is, the resident-to-bed ratio cap). We explained that because we proposed to allow the adjustment to the resident-to-bed ratio cap in the first year in which the receiving hospital trains displaced residents, it is equitable to remove those FTEs when calculating the resident-to-bed ratio cap after all the displaced residents have completed their training at the receiving hospital.

The following is an example of how the receiving hospital's IME resident-to-bed ratio cap would be adjusted for displaced residents coming from either a closed hospital or a closed program:

Example: Hospital A has a family practice program with 3 residents. On

June 30, 2002, Hospital A closes. Hospital B, which also has a family practice program, agrees to continue the training of Hospital A's residents beginning July 1, 2002. Its fiscal year end is June 30. As of July 1, 2002, the 3 residents displaced by the closure of Hospital A include 1 PGY1 resident, 1 PGY2 resident, and 1 PGY3 resident. In addition, Hospital B has 5 of its own residents, an IME FTE resident cap of 5, and 100 beds. Subject to the criteria under existing § 413.86(g)(8), Hospital B's FTE cap is temporarily increased to 8 FTEs. According to the proposed policy stated above, Hospital B's resident-to-bed ratio and resident-to-bed ratio cap would be determined as follows:

July 1, 2002 through June 30, 2003

• Resident-to-bed ratio: 5 FTEs + 3 displaced FTEs / 100 beds = .08 (line 3.18 of Worksheet E, Part A of the Medicare cost report, Form CMS 2552–96).

Note: For purposes of applying the rolling average calculation at § 412.105(f)(1)(v) to this example, it is assumed that Hospital B had 5 FTE residents in both the prior and the penultimate cost reporting periods. Therefore, 5 FTEs are used in the numerator of the resident-to-bed ratio. Under § 412.105(f)(1)(v), displaced residents are added to the receiving hospital's rolling average FTE count in each year that the displaced residents are training at the receiving hospital.)

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2002) + *3 displaced FTEs (from fiscal year end June 30, 2003)* / 100 beds = .08 (line 3.19 of Worksheet E, Part A of Form CMS 2552–96).

• The lower of the resident-to-bed ratio from the current year (.08) or the resident-to-bed ratio cap from the prior year (.08) is used to calculate the IME adjustment. Therefore, Hospital B would use a resident-to-bed ratio of .08 (line 3.20 of Worksheet E, Part A of Form CMS 2552–96).

July 1, 2003 through June 30, 2004

The PGY3 displaced resident has completed his or her family practice training on June 30, 2003 and has left Hospital B. Hospital B continues to train a displaced (now) PGY2 resident, and a displaced (now) PGY3 resident.

• Resident-to-bed ratio: 5 FTEs + 2 displaced FTEs / 100 beds = .07 (line 3.18 of Worksheet E, Part A of Form CMS 2552–96).

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2003) + 3 displaced FTEs (from fiscal year end June 30, 2003) / 100 beds = .08 (line 3.19 of Worksheet E, Part A of Form CMS 2552–96).

• The lower of the resident-to-bed ratio from the current year (.07) or the resident-to-bed ratio cap from the prior year (.08) is used to calculate the IME adjustment. Hospital B would use a resident-to-bed ratio of .07 (line 3.20 of Worksheet E, Part A of Form CMS 2552–96).

July 1, 2004 through June 30, 2005

Another of the remaining displaced residents has completed his or her family practice training on June 30, 2004 and has left Hospital B. Hospital B continues to train one displaced (now) PGY3 resident.

• Resident-to-bed ratio: 5 FTEs + 1 displaced FTE / 100 beds = .06 (line 3.18 of Worksheet E, Part A of Form CMS 2552–96).

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2004) + 2 displaced FTEs (from fiscal year end June 30, 2004) / 100 beds = .07 (line 3.19 of Worksheet E, Part A of Form CMS 2552–96).

• The lower of the resident-to-bed ratio from the current year (.06) or the resident-to-bed ratio cap from the prior year (.07) is used to calculate the IME adjustment. Hospital B would use a resident-to-bed ratio of .06 (line 3.20 of Worksheet E, Part A of Form CMS 2552–96).

July 1, 2005 through June 30, 2006

The last displaced resident has completed his or her family practice training on June 30, 2005 and has left Hospital B. Hospital B no longer trains any displaced residents, and, therefore, the last displaced resident is *removed* from the numerator of the resident-to-bed ratio cap.

• Resident-to-bed ratio: 5 FTEs + 0 displaced FTEs / 100 beds = .05

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2005) + *0 displaced FTEs (subtract 1 displaced FTE from FYE June 30, 2005)* / 100 beds = .05

• The lower of the resident-to-bed ratio from the current year (.05) or the resident-to-bed ratio cap from the prior year (.05) is used to calculate the IME adjustment. Hospital B would use a resident-to-bed ratio of .05.

We proposed that this exception to the resident-to-bed ratio cap for residents coming from a closed hospital or a closed program would be effective for cost reporting periods beginning on or after October 1, 2002, which was reflected in proposed revised § 412.105(a)(1).

Comment: Numerous commenters expressed support for our proposal to allow an adjustment to the resident-to-bed ratio cap for residents displaced by the closure of another teaching hospital or another hospital's GME program. One commenter added that, although the proposed adjustment to the resident-to-bed ratio in the first year would equitably reimburse hospitals who commence training the displaced residents at the beginning of their respective fiscal year, this adjustment would result in the receiving hospital being under-reimbursed in the first full year of residency training when a hospital or program closes toward the end of the receiving hospital's fiscal year. The commenter requested that CMS correct this inequity by extending the resident-to-bed ratio cap adjustment to include both the first partial and the first full year of training displaced residents at the receiving hospital.

Response: We agree with the commenter that our proposal to limit the adjustment to the resident-to-bed ratio cap to the first (cost reporting) year in which the receiving hospital is training the displaced residents may result in reduced payments to the receiving hospital if the receiving hospital begins training those residents at some point other than the beginning of a full fiscal year. Therefore, in this final rule, we are revising the language proposed under § 412.105(a)(1)(iii) to state that the exception to the resident-to-bed ratio cap for closed hospitals and closed programs applies through the end of the first 12-month cost reporting period in which the receiving hospital trains the displaced FTE residents. We note that the effective date of this revised policy is for cost reporting periods beginning on or after October 1, 2002.

For example, if receiving Hospital A has a fiscal year end (FYE) of December 31, 2003, and it begins training 3 displaced residents on November 1, 2003, for purposes of applying the resident-to-bed ratio cap, receiving Hospital A may add a 2 months' proportion of the 3 FTEs to the numerator of the resident-to-bed ratio cap from the prior cost reporting period (FYE December 31, 2002). Receiving Hospital A may also add the FTEs that continue training at the hospital during its cost reporting period ending December 31, 2004 to the numerator of the resident-to-bed ratio cap from the FY 2003 cost reporting period. However, no adjustment may be made for purposes of applying the resident-to-bed ratio cap for subsequent years. Other than the allowance for applying the resident-to-bed ratio cap adjustment through the end of the first 12-month cost reporting period in which the receiving hospital trains the displaced

residents, the policy is the same as that in the proposed rule.

Comment: One commenter commended CMS for realizing that it would be appropriate to allow eligible hospitals to receive a temporary adjustment to the application of the IME resident-to-bed ratio cap. However, the commenter believed that in lieu of the rationale that CMS utilized in drafting the regulation published on August 1, 2001 and to avoid penalizing eligible hospitals, CMS should apply a retroactive effective date of October 1, 2001 to this policy.

Response: We understand the commenter's concerns, and in proposing this policy, we acknowledged the need to allow for the temporary adjustment to the resident-to-bed ratio cap. However, because we do not have explicit statutory authority to do so, we are unable to apply this policy retroactively. Therefore, the effective date of this policy will be prospective; that is, for cost reporting periods beginning on or after October 1, 2002.

Comment: Some commenters asserted that the proposal requiring that the resident-to-bed ratio cap be calculated in the cost reporting period following the departure of the last displaced residents as if the displaced residents had not trained at the receiving hospital in the prior year, adds more complexity to an already burdensome IME calculation. The commenters stated that the number of residents likely to be involved with this provision is minimal, and accordingly, CMS should not finalize this provision.

Response: As we have explained in the proposed rule, we believe that in light of the addition of FTEs to the resident-to-bed ratio cap in the first full cost reporting period, it is equitable to remove those FTEs when calculating the resident-to-bed ratio cap in the year following the departure of the displaced residents. We disagree that requiring that the resident-to-bed ratio cap be calculated in the cost reporting period following the departure of the last displaced residents as if the displaced residents had not trained at the receiving hospital in the prior year is overly burdensome. It requires only a simple subtraction of FTEs from the numerator of the prior year ratio, and in the next issuance of the Medicare cost report instructions, we will be making a revision to the instructions for line 3.19 of Worksheet E, Part A of the cost report to reflect this policy.

Comment: One commenter was concerned about our proposal to adjust "the numerator of the prior year's resident-to-bed ratio *by the number of FTE residents that has caused the receiving hospitals to exceed its FTE cap*" (emphasis added) (67 FR 31461, May 9, 2002). The commenter stated that, by describing the increase in the numerator in relation to the hospital's FTE cap, the intent of the provision will not be fulfilled unless the hospital is already at its FTE cap. The commenter explained that if, for example, Hospital A has 4 residents in both cost reporting years 2002 and 2003, has a FTE cap of 5 FTEs, and accepts 3 displaced residents in 2003, it exceeds the FTE cap by only 2 residents. Therefore, as proposed, the adjustment to the prior year resident-to-bed ratio would result in a ratio cap of 0.06 ((4+2)/100). The current year resident-to-bed ratio would be 0.07 ((4+3)/100). Since this exceeds the hospital's prior year resident-to-bed ratio, the resident-to-bed ratio for Hospital A will be held to 0.06. The commenter concluded that since our intent is not to penalize hospitals that accept displaced residents, the adjustment to the prior year resident-to-bed ratio must not rely on the FTE cap for a reference point, but rather, must equal the number of displaced residents.

Response: The original regulations concerning temporary adjustments for hospital closure were written in response to requests from hospitals for an exception to the FTE cap, to allow the additional residents coming from a closed hospital to be counted by the receiving hospital (63 FR 26329 and 26329, May 12, 1998). Similarly, in the July 30, 1999 final rule (64 FR 41522), we explained that we adopted this provision because hospitals had indicated a reluctance to accept additional residents from a closed hospital without a temporary adjustment to their FTE caps. Accordingly, the existing regulations discussing hospital and program closure at § 413.86(g)(8) (§ 412.105(f)(1)(ix) for IME) state that "a hospital may receive a temporary adjustment to its FTE cap to reflect residents added" because of the closure of another hospital or another hospital's program. Furthermore, existing §§ 413.86(g)(8)(ii)(B) and (g)(8)(iii)(A)(*2*) require that, in order for a hospital to receive this temporary FTE cap adjustment, the hospital must document "that it is eligible for this temporary adjustment by identifying the residents who have * * * *caused the hospital to exceed its cap.* * * *" (emphasis added). These regulations are only applicable in instances where the training of displaced residents causes a hospital to exceed its FTE cap; if a hospital has room under its FTE cap to train these residents, no FTE cap adjustment is needed. Thus, in order for a hospital to qualify for an adjustment to its resident-to-bed ratio cap (or 3-year rolling average count), the hospital must first qualify for a temporary adjustment to its FTE cap. To qualify for a temporary FTE cap adjustment, the hospital must demonstrate that accepting some number of displaced residents has caused the hospital to exceed its FTE cap. Therefore, the proposed resident-to-bed ratio cap adjustment is necessarily linked to "the number of FTE residents that has caused the hospital to exceed its FTE cap." Accordingly, we are not accepting the commenter's request at this time. However, we may consider in the future proposing to allow hospitals that are below their FTE caps and train displaced residents to also receive an adjustment for those displaced residents that are under the cap for purposes of applying the resident-to-bed ratio cap and the 3-year rolling average. As a final note, we would like to point out an error in the example that the commenter provided. In the example, a hospital that has 4 FTEs and an FTE cap of 5, accepts 3 displaced FTE residents. The commenter stated that the current year resident-to-bed ratio would be 0.07 ((4+3)/100). This is incorrect. Since, as explained above, the regulations prescribe that the receiving hospital's FTE count is only adjusted for those FTEs that have caused the receiving hospital to exceed its FTE cap, the current year numerator (as well as the prior year numerator) would be 6 (4+2), because only 2 of the 3 FTEs have caused the hospital to exceed its FTE cap of 5 FTEs.

Comment: One commenter requested CMS to allow hospitals that train displaced residents to receive permanent, not temporary, adjustments to their FTE caps.

Response: We are not addressing this comment in this final rule because it is outside the scope of what was specifically addressed in the proposed rule.

3. Counting Beds for the IME and DSH Adjustments (§ 412.105(b) and § 412.106(a)(1)(i))

In the May 9, 2002 proposed rule, we discussed the regulations located at § 412.105(b) for determining the number of beds to be used in calculating the resident-to-bed ratio for the IME adjustment. Those regulations also are used to determine the number of beds for other purposes, including calculating the DSH adjustment at § 412.106(a)(1)(i). Section 412.105(b) specifies that the number of beds in a hospital is determined by counting the number of available bed days during the

cost reporting period and dividing that number by the number of days in the cost reporting period. The number of available bed days does not include beds or bassinets in the healthy newborn nursery, custodial care beds, or beds in excluded distinct part hospital units.

We also discussed section 2405.3G of Part I of the Medicare Provider Reimbursement Manual (PRM), which further defines an "available" bed as a bed that is permanently maintained and is available for use to lodge inpatients.

These discussions were background for our proposal to clarify some of the uncertainty that had arisen concerning the application of the definition of "available." For example, a question has arisen as to whether beds in rooms or entire units that are unoccupied for extended periods of time should continue to be counted on the basis that, if there would ever be a need, they could be put into use.

Counting the number of beds in a hospital is intended to measure the size of a hospital's routine acute care inpatient operations. While hospitals necessarily maintain some excess capacity, we believe there is a point where excess capacity may distort the bed count. Therefore, we proposed to revise our policy concerning the determination of a hospital's bed size to exclude beds that represent an excessive level of unused capacity. We stated that the proposed refinement of our bed counting policy would better capture the size of a hospital's inpatient operations as described above.

We analyzed Medicare hospital data and found that, among hospitals that have between 100 and 130 beds, hospitals receiving DSH payments have lower occupancy rates than similar hospitals not receiving DSH payments. Because DSH payments are higher for urban hospitals with more than 100 beds, there may be an incentive for these hospitals to maintain excess capacity in order to qualify for those higher payments. Among 189 urban hospitals in this bed-size range that did not receive DSH payments during FY 1999, the average occupancy rate was 55 percent. However, among 294 urban hospitals in this bed-size range that did receive DSH payments during FY 1999, the average occupancy rate was 47 percent. Twenty-five percent of this group of hospitals (those receiving DSH payments) had occupancy rates below 35 percent. Among the hospitals not receiving DSH payments, 25 percent had occupancy rates below 43 percent. We believe this is indicative of a tendency among some small urban hospitals to maintain excess capacity in order to qualify for higher DSH payments. Therefore, we proposed that if a hospital's reported bed count results in an occupancy rate (average daily census of patients divided by number of beds) below 35 percent, the applicable bed count, for purposes of establishing the number of available beds for that hospital, would exclude beds that would result in an average annual occupancy rate below 35 percent (proposed § 412.105(b)(3)).

For example, if a hospital reports 105 beds for a cost reporting period, but has an average daily census of 26 patients for that same cost reporting period, its occupancy rate equals 24.8 percent (that is, 26/105). Because its occupancy rate is below the proposed minimum threshold of 35 percent, its maximum available bed count would be 74, which is the number of beds that would result in an occupancy rate of 35 percent, given an average daily census of 26 patients(that is, 26/.35).

We proposed to otherwise continue to determine a hospital's bed size using existing regulations and program manual instructions, including the application of the available bed policy.

We believe that the policy in the May 9, 2002 proposed rule more accurately indicates the size of a hospital's operations. We proposed to specify under § 412.105(b)(3) that if a hospital's reported bed count results in an occupancy rate below 35 percent, the applicable bed count for that hospital would be the number of beds that would result in an occupancy rate of 35 percent. We proposed to make the proposed policy effective for discharges occurring on or after October 1, 2002.

Comment: Numerous commenters questioned why we were interested in applying an occupancy adjustment to counting beds for IME and DSH purposes. The commenters strongly opposed the proposed policy, which they indicated would serve to increase a hospital's IME payment but would limit a hospital's bed size for DSH payment purposes, if the hospital's occupancy is below 35 percent. In addition, the commenters believed that there are other reasons why a hospital may have excess capacity that may include patients utilizing the outpatient services instead of inpatient services, and that, due to cost, patients may be moved sooner from acute care settings to the next level of care.

The commenters contended that this proposal is contrary to the statutory language and congressional intent. The commenters further contended that the proposed policy would cause financial hardship to small urban hospitals that treat a disproportionate number of low-income patients.

MedPAC indicated that it believed that we are recognizing a real problem in maintaining integrity in the DSH payment procedures. However, MedPAC believed that the proposed policy illustrates the difficulties that arise when qualifying for DSH payments depends in part on the number of beds a hospital keeps in service. MedPAC recommended that a single formula apply to all hospitals regardless of location (urban/rural) or bed size. In addition, MedPAC recommended that the low-income shares used to determine each hospital's DSH adjustment reflect all low-income patients, which include patients receiving uncompensated care. MedPAC stated that a new DSH distribution formula will be needed when the uncompensated care data are complete, and that would be an opportune time to eliminate the use of a bed standard. Based on this information, MedPAC questioned whether it is worth changing the bed counting methodology now since a more fundamental change may occur in the next year or two.

Response: We believe our proposed policy represents a reasonable approach to addressing situations where hospitals appear to be maintaining excess capacity in order to qualify for higher DSH payments. With respect to our authority to implement such a change, we point out that we have broad authority under the statute in establishing the methodology for determining the number of available beds.

However, at this time, we have decided not to proceed with the proposed change. Instead, we will consider this issue as part of a future comprehensive analysis of our bed and patient day counting policies. That is, we believe there are other aspects of counting beds that need to be addressed as well and, upon further consideration, we have decided to proceed in a more comprehensive manner. We acknowledge MedPAC's comments as well and will take into account the potential that bed counting issues for DSH purposes may become less significant.

Accordingly, in this final rule, we are not adopting the proposed change of § 412.105(b)(3).

Technical Correction

Section 211(b) of Public Law 106–554 amended section 1886(d)(5)(F)(iv)(III) of the Act to revise the calculation of the DSH payment adjustment for hospitals affected by the revised thresholds as specified in section 211(a) of Public Law

106–554. These changes were effective for discharges on or after April 1, 2001, and no changes were made by section 211(b) for discharges prior to April 1, 2001. When we issued the June 13, 2001 interim final rule with comment period (66 FR 32172) to update the regulations to incorporate the changes made by section 211, we inadvertently changed the adjustment factor for rural hospitals with fewer than 100 beds from 4 percent to 5 percent under § 412.106(d)(2)(iv)(A) for discharges occurring before April 1, 2001. We are correcting this error in this final rule by revising § 412.106(d)(2)(iv)(A) to specify that, for discharges before April 1, 2001, the applicable DSH adjustment factor for rural hospitals with fewer than 100 beds was 4 percent.

This correction was not included in the May 9, 2002 proposed rule, as we were only made aware of it after publication of that proposed rule. The Administrative Procedure Act generally requires that agency rules be published in the **Federal Register** as a notice of proposed rulemaking with a period for public comment (5 U.S.C. 533(b)). This notice-and-comment procedure can be waived, however, if an agency finds good cause that the procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. Since this change is being made to correct a technical error, we find that the notice-and-comment procedure is unnecessary, and, therefore, find good cause to waive the notice of proposed rulemaking and issue the correction in this final rule.

F. Medicare-Dependent, Small Rural Hospitals: Ongoing Review of Eligibility Criteria (§ 412.108(b))

Section 6003(f) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added section 1886(d)(5)(G) to the Act and created the category of Medicare-dependent, small rural hospitals (MDHs). MDHs are eligible for a special payment adjustment under the acute care hospital inpatient prospective payment system. Initially, in order to be classified as an MDH, a hospital must have met all of the following criteria:

- The hospital is located in a rural area (as defined in § 412.63(b);
- The hospital has 100 or fewer beds (as defined at § 412.105(b)) during the cost reporting period;
- The hospital is not classified as an SCH (as defined at § 412.92); and
- The hospital has no less than 60 percent of its inpatient days or discharges attributable to inpatients receiving Medicare Part A benefits during its cost reporting period beginning in FY 1987.

MDHs were eligible for a special payment adjustment under the acute care hospital inpatient prospective payment system, effective for cost reporting periods beginning on or after April 1, 1990, and ending on or before March 31, 1993. Hospitals classified as MDHs were paid using the same methodology applicable to SCHs, that is, based on whichever of the following rates yielded the greatest aggregate payment for the cost reporting period:

- The national Federal rate applicable to the hospital.

The updated hospital-specific rate based on FY 1982 costs per discharge.

The updated hospital-specific rate based on FY 1987 costs per discharge.

Section 13501(e)(1) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66) extended the MDH provision through FY 1994 and provided that, after the hospital's first three 12-month cost reporting periods beginning on or after April 1, 1990, the additional payment to an MDH whose applicable hospital-specific rate exceeded the Federal rate was limited to 50 percent of the amount by which the hospital-specific rate exceeded the Federal rate. The MDH provision expired effective with cost reporting periods beginning on or after October 1, 1994.

Section 4204(a)(3) of Public Law 105–33 reinstated the MDH special payment for discharges occurring on or after October 1, 1997 and before October 1, 2001, but did not revise the qualifying criteria for these hospitals or the payment methodology.

Section 404(a) of Public Law 106–113 extended the MDH provision to discharges occurring before October 1, 2006.

As specified in the June 13, 2001 interim final rule with comment period (66 FR 32172) and finalized in the August 1, 2001 final rule (66 FR 39883), section 212 of Public Law 106–554 provided that, effective with cost reporting periods beginning on or after April 1, 2001, a hospital has the option to base MDH eligibility on two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report, rather than on the cost reporting period that began during FY 1987 (section 1886(d)(5)(G)(iv)(IV) of the Act). According to section 1886(d)(5)(G)(iv)(IV) of the Act, the criteria for at least 60 percent Medicare utilization will be met if, in at least "2 of the 3 most recently audited cost reporting periods for which the Secretary has a settled cost report", at least 60 percent of the hospital's inpatient days or discharges were attributable to individuals receiving Medicare Part A benefits.

We would like to point out that cost reports undergo different levels of review. For example, some cost reports are settled with a desk review; others, through a full field audit. We believe the intention of the law is to provide hospitals the ability to qualify for MDH status based on their most recent settled cost reporting periods, each of which undergoes a level of audit in its settlement.

Hospitals that qualify under section 1886(d)(5)(G)(iv)(IV) of the Act are subject to the other provisions already in place for MDHs. That is, all MDHs are paid using the payment methodology as defined in § 412.108(c) and may be eligible for the volume decrease provision as defined in § 412.108(d).

Under existing classification procedures at § 412.108(b), a hospital must submit a written request to its fiscal intermediary to be considered for MDH status based on at least two of its three most recently audited cost reporting periods for which the Secretary has a settled cost report (as specified in § 412.108(a)(1)(iii)(c)). The fiscal intermediary will make its determination and notify the hospital within 90 days from the date it receives the hospital's request and all of the required documentation. The intermediary's determination is subject to review under 42 CFR part 405, Subpart R. MDH status is effective 30 days after the date of written notification of approval.

In the May 9, 2002 proposed rule, we proposed to clarify and to codify in the regulations (proposed § 412.108(b)(4)) that an approved classification as an MDH remains in effect unless there is a change in the circumstances under which the classification was approved. That is, in order to maintain its eligibility for MDH status, a hospital must continue to be a small (100 or fewer beds), rural hospital, with no less than 60 percent Medicare inpatient days or discharges during either its cost reporting period beginning in FY 1987 or during at least two of its three most recently settled cost reporting periods.

We also proposed to clarify and to codify in the regulations (proposed § 412.108(b)(5)) that the fiscal intermediary will evaluate on an ongoing basis whether or not a hospital continues to qualify for MDH status. This proposed clarification included evaluating whether or not a hospital that qualified for MDH status under section 1886(d)(5)(G)(iv)(IV) of the Act continues to qualify for MDH status

based on at least two of its three most recently settled cost reporting periods.

In addition, we proposed (proposed § 412.108(b)(6)) that if a hospital loses its MDH status, that change in status would become effective 30 days after the fiscal intermediary provides written notification to the hospital that it no longer meets the MDH criteria. If the hospital would like to be considered for MDH status after another cost reporting period has been audited and settled, we proposed to require that the hospital must reapply by submitting a written request to its fiscal intermediary (proposed § 412.108(b)(7)). An MDH that continues to meet the criteria would not have to reapply.

Comment: Three commenters addressed our proposal to conduct ongoing reviews of hospitals to determine whether or not they continue to meet the MDH criteria. The first commenter opposed the proposal for ongoing reviews of MDHs because this type of review is not specified in the law, but is an interpretation by CMS. The commenter supported its position by pointing out that a hospital qualifying based on the original criterion (that is, 1987 data) is allowed to retain this status despite any changes in subsequent years. The commenter also stated this may cause instability in individual hospital payments from year-to-year, which will be disruptive for a hospital whose revenue depends heavily on Medicare. The commenter suggested that, if the proposed reviews are found to be consistent with Congressional intent, CMS adopt a policy that does not penalize hospitals for small changes in patient mix and provides stability in the payment system from year to year. Moreover, the commenter suggested granting MDH status for a 3-year period before requiring requalification, similar to wage index reclassifications, or setting the level for requalification at a slightly lower level (perhaps 55 percent) so that a slight change in volume does not cause a loss of MDH status.

The second commenter supported the proposal but recommended that the requirement that hospitals apply for MDH status be removed, since the fiscal intermediaries will be conducting annual reviews.

The third commenter focused on the loss of MDH status effective 30 days after the intermediary provides written notification to the hospital that it no longer qualifies for MDH status. The commenter stated that mid-year MDH status changes provide a number of claims processing and cost report settlement problems. The commenter recommended that the effective date for the change in MDH status should be the first day of the cost reporting period following the intermediary's notification of the hospital.

Response: We agree that hospitals that qualify based on the original criteria were not required to requalify based on more recent data, since the original criteria, as dictated by law, was based on a specified period, here the 1987 data. However, the law was amended and specifies the new, additional criterion: "two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report." We believe this language supports an interpretation that a hospital is to qualify as an MDH based on its most recent data, not based on a one-time qualification, as is the case with the original criteria (which was based on data from a set period of time, the hospital's FY 1987 cost reporting period).

With respect to the suggestion that the proposed ongoing reviews of hospitals MDH status should provide that, once approved, retention of a hospital's MDH status for a 3-year period, or that the level for requalification should be at a slightly lower percentage of inpatient days or discharges attributable to Medicare than 60 percent, the statute (section 1886(d)(5)(G)(iv)(IV) of the Act) does not provide such flexibility. Allowing hospitals to qualify using cost report data from other than two of the three most recently available cost reporting periods, or using a percentage less than 60 percent, would be inconsistent with the statutory language.

Regarding the effective date of a status change, the effective date of 30 days after the date of the notice from the fiscal intermediary is consistent with current policy for approval of both MDH and SCH status as well as notices that the hospital no longer meets such eligibility criteria. Concerning the commenter's request to not require hospitals to reapply for MDHs status since the intermediaries would already be reviewing that status on an annual basis, we wish to clarify that the ongoing reviews would be of hospitals with existing MDHs status only. Therefore, hospitals that had lost their MDH status would not be included in an automatic annual review to determine whether or not the hospitals continue to meet the eligibility criteria for MDH status. Instead, such hospitals must reapply for MDH status based on two of their three most recently audited cost reports.

Accordingly, we are adopting as final the proposed revised changes to the MDH policy under § 412.108(b).

G. Eligibility Criteria for Reasonable Cost Payments to Rural Hospitals for Nonphysician Anesthetists (§ 412.113(c))

Currently, a rural hospital can qualify and be paid on a reasonable cost basis for qualified nonphysician anesthetists (certified registered nurse anesthetists (CRNAs) and anesthesiologist assistants) services for a calendar year beyond 1990 and subsequent years as long as it can establish before January 1 of that year that it did not provide more than 500 surgical procedures requiring anesthesia services, both inpatient and outpatient.

In the September 1, 1983 interim final rule with comment period that implemented the acute care hospital inpatient prospective payment system, we established the general policy to include, under that prospective payment system, inpatient hospital services furnished incident to a physician's service, with a time-limited exception for the inpatient hospital services of anesthetists (48 FR 39794). The purpose of this exception, which originally was for cost reporting periods beginning before October 1, 1986, was that the practice of physician-employer and anesthetist-employee was so widespread that we believed "it would be disruptive of medical practice and adverse to the quality of patient care to require all such contracts to be renegotiated in the limited time available before the implementation of the prospective payment system."

Section 2312 of Public Law 98–369 provided for reimbursement to hospitals on a reasonable cost basis as a pass-through for the costs that hospitals incur in connection with the services of CRNAs.[1] Section 2312(c) provided that the amendment was effective for cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987.

Section 9320 of Public Law 99–509 (which established a fee schedule for the services of nurse anesthetists) amended section 2312(c) of Public Law 98–369 by extending the pass-through provision for cost reporting periods beginning before January 1, 1989. Section 608 of Public Law 100–485 limited the pass-through provision effective during 1989, 1990, and 1991, to hospitals meeting the following criteria:

[1] We noted in the August 31, 1984 final rule that section 2312 and the Conference Report used the term "CRNA" throughout. However, we believed it was Congressional intent to apply this pass-through payment amount to the services of all qualified hospital-employed nonphysician anesthetists (49 FR 34748).

- As of January 1, 1988, the hospital employed or contracted with a certified nonphysician anesthetist;
- In 1987, the hospital had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that did not exceed 250 (or such higher number as the Secretary determines to be appropriate); and
- Each certified nonphysician anesthetist employed by, or under contract with, the hospital has agreed not to bill under Part B of Medicare for professional services furnished by the anesthetist at the hospital.

Subsequently, section 6132 of Public Law 101–239 amended section 608 of Public Law 100–458 by raising the established 250-procedure threshold to 500 procedures (effective for anesthesia services furnished on or after January 1, 1990), and extended the cost pass-through indefinitely. However, section 6132 of Public Law 101–239 left intact the requirement that the hospital must have not exceeded a maximum number of surgical procedures (effectively raised to 500), both inpatient and outpatient, requiring anesthesia services during 1987. Also, the statutory authority for the Secretary to adopt such other appropriate maximum threshold volume of procedures as determined appropriate was not affected by section 6132.

In light of the age of this provision, we undertook to reexamine the appropriateness of the current 500-procedure threshold. Nonphysician anesthetists who are not employed by or have a contractual relationship with a hospital paid under this provision may receive payments under a fee schedule. Payments under the fee schedule are generally somewhat lower than those made on a reasonable cost basis. Therefore, hospitals that exceed 500 procedures may have difficulty retaining access to nonphysician anesthetists' services because cost reimbursement is unavailable. According to data from the American Association of Nurse Anesthetists (AANA), the average salary for a CRNA in rural areas in calendar year 2000 was $111,000, with a total annual compensation of $141,000. The AANA estimates that, based on payments under the Medicare fee schedule, a CRNA would have to provide at least 800 anesthesia procedures to reach this average level of compensation.

The statute provides the Secretary with the authority to determine the appropriateness of the volume threshold, in part, so that changes necessary to meet the needs of rural hospitals can be made. As we have found that hospitals that exceed the 500 surgical procedures may have difficulty in retaining access to nonphysician anesthetists' services, we believe that the appropriate maximum threshold for surgical procedures should be raised in order for the payment exception to apply to those hospitals most in need of this payment treatment. Based upon the data available to us concerning the best estimates of average total compensation to a CRNA, we believe that the maximum volume threshold for surgical procedures requiring anesthesia services should be raised to 800. Therefore, to ensure continued access to nonphysician anesthetists' services in rural hospitals, in the May 9, 2002 proposed rule, we proposed to revise §§ 412.113(c)(2)(ii) and (c)(2)(iii) to raise the 500-procedure threshold to 800 procedures.

Comment: Several commenters supported our proposed changes and indicated that, without the proposed change in the regulations, rural hospitals will experience serious disruptions in their delivery of anesthesia services. CRNAs are the sole anesthesia providers in a number of rural hospitals. The commenters added that, without CRNAs, these rural hospitals will have difficulty in continuing to meet their patient's surgical and trauma stabilization services. Patients will be forced to travel outside of their communities, which could mean great distance.

One commenter suggested that the threshold should be reviewed every 3 years to ensure it continues to appropriately reflect market conditions for rural hospitals trying to maintain anesthetists services.

Response: We agree that the existing regulation providing for 500 procedures per year as a threshold could hinder the ability of some rural hospitals to sustain access to surgical procedures, which is the reason for our proposed change. We will continue to monitor this issue to determine whether future adjustments to the procedure threshold are warranted.

Comment: Several commenters raised an issue concerning the fact that some Medicare fiscal intermediaries include nonanesthesia ancillary services provided by the CRNAs when counting the total number of surgical procedures. They indicated that many rural hospitals are not able to qualify for the reasonable cost payment for their CRNAs as a result.

The commenters suggested a specific definition of surgical procedures that include cutting, abrading, suturing, and lasering of otherwise physically changing body tissues and organs. The commenters indicated that this suggested definition would clarify and eliminate the confusion in regulatory interpretation across fiscal intermediaries. One commenter indicated that anesthetists may provide therapeutic services for pain management unassociated with a surgical procedure.

Response: In view of the comments on this issue, we believe that certain steps are needed to improve consistency in the counting of surgical procedures. We appreciate the commenter's recommended definition of surgical procedures, and will consider whether such instructions would reduce inconsistency in counting of procedures, while still being consistent with the legislative and regulatory intent of this provision. We also will review all aspects of the counting of procedures to consider what further actions may be necessary to improve consistency. Our goal is to facilitate greater consistency in the manner and criteria used by all intermediaries.

Comment: Several commenters expressed concern that the existing regulations only allow hospitals in existence as of 1987 to qualify for reasonable cost pass-through and requested us to review this issue. The commenters indicated that this threatens new rural hospitals' ability to continue to provide surgical and anesthesia services to patients.

Response: To enable rural hospitals to secure anesthesia services for their patients, these regulations include a rural hospital's option for reasonable cost pass-through for the services of one full-time equivalent CRNA, as long as the hospital qualifies for "pass-through" treatment. The statute specifies the criteria and the regulation tracks the statutory language. Therefore, we believe we do not have the authority to extend this provision to hospitals that do not otherwise meet the criteria as described by the statute.

Comment: Some commenters sought clarification as to whether this provision is available to SCHs.

Response: SCHs that otherwise meet the statutory criteria are eligible to receive this pass-through payment. We are not aware that there has been any confusion in the past on this issue, but we are clarifying the point here in response to the comment.

Comment: Several commenters recommended that we eliminate the threshold altogether, or raise it even higher. One commenter stated that the need for the pass-through demonstrates that fee schedule payments for nonphysician anesthetists are inadequate to defray the costs associated with this service.

Another commenter suggested that CAHs should be exempt from the qualifying criteria to receive these pass-through payments. The commenter suggested that removing this requirement for CAHs would eliminate the unnecessary paperwork required for these hospitals to demonstrate they continue to meet the minimum thresholds.

A third commenter argued that the cost pass-through provision should permit rural hospitals to qualify on the basis of employing anesthesiologists as well. This commenter referred to survey data that purported to show a serious shortage of anesthesia providers in support of this argument.

Response: As described above, we believe the statute is specific as to the threshold requirements to qualify for the CRNA pass-through payments. Accordingly, a hospital or CAH that wishes to qualify for CRNA pass-through payments must meet the statutory criteria, including the threshold requirement. We also believe the statute does not provide authority to expand this policy to pay pass-through costs to hospitals for anesthesiologists' services. We believe the change we are making, increase the threshold from 500 to 800 procedures per year, is appropriate and note that it is generally supported by the commenters.

Comment: The AANA requested a technical correction to the reference in the proposed rule that, according to data from AANA, the average total annual compensation for CRNA in 2001 is approximately $155,000. According to the AANA, the most recent data for calendar year 2000 reflect an average salary in rural areas of $111,000, with a total annual compensation of $141,000.

Response: In the preamble of this final rule, we have revised the prior reference accordingly to avoid any potential confusion.

Comment: One commenter questioned whether anesthesiologists assistants are recognized as qualified providers under this provision.

Response: As we noted in the proposed rule and in the discussion above, our understanding of Congressional intent was that this pass-through payment applied to the services of all qualified hospital-employed nonphysician anesthetists (67 FR 31464). Therefore, a hospital otherwise meeting the criteria for this pass-through payment by employing an anesthesiologists assistant would be eligible for pass-though payments.

Comment: One commenter requested clarification of whether the requirement at § 412.113(c)(2)(i)(D) that "each qualified nonphysician anesthetist employed by or under contract with the hospital or CAH has agreed in writing not to bill on a reasonable charge basis for his or her patient care in that hospital or CAH" applies only to Medicare beneficiaries or to all patients.

Response: This requirement is to ensure that the nonphysician anesthetist is not also billing Medicare for Part B services under the fee schedule. Therefore, the requirement only pertains to services provided to Medicare beneficiaries. In this final rule, we are adding a revision to § 412.113(c)(2)(i)(D) to reflect the limited applicability of this requirement.

Accordingly, we are adopting as final the proposed changes to § 412.113(c)(2)(ii) and (c)(2)(iii), with one change. We are revising § 412.113(c)(2)(i)(D) to specify that each qualified nonphysician anesthetist employed by or under contract with the hospital or CAH has agreed in writing not to bill on a reasonable charge basis for his or her patient care to Medicare beneficiaries in that hospital or CAH.

H. Medicare Geographic Classification Review Board (MGCRB) Reclassification Process (§§ 412.230, 412.232, and 412.273)

With the creation of the MGCRB, beginning in FY 1991, under section 1886(d)(10) of the Act, hospitals could request reclassification from one geographic location to another for the purpose of using the other area's standardized amount for inpatient operating costs or the wage index value, or both (September 6, 1990 interim final rule with comment period (55 FR 36754), June 4, 1991 final rule with comment period (56 FR 25458), and June 4, 1992 proposed rule (57 FR 23631)). Implementing regulations in Subpart L of Part 412 (§§ 412.230 *et seq.*) set forth criteria and conditions for redesignations from rural to urban, rural to rural, or from an urban area to another urban area, with special rules for SCHs and rural referral centers.

1. Withdrawals, Terminations, and Cancellations

Under § 412.273(a) of our regulations, a hospital or hospital group may withdraw its application for reclassification at any time before the MGCRB issues its decision or, if after the MGCRB issues its decision, within 45 days after publication of our annual notice of proposed rulemaking concerning changes to the acute care hospital inpatient prospective payment system for the upcoming fiscal year (for example, the May 9, 2002 proposed rule for FY 2003). In the August 1, 2001 final rule, we specified that, for purposes of implementing section 304 of Public Law 106–554, the withdrawal procedures and the applicable timeframes in the existing regulations would apply to hospitals that receive 3-year reclassification for wage index purposes (66 FR 39886). Once effective, a withdrawal means that the hospital would not be reclassified for purposes of the wage index for FY 2003 (and would not receive continued reclassification for FYs 2004 and 2005), unless the hospital subsequently cancels its withdrawal. The procedure for canceling a withdrawal or termination is discussed in detail below.

Consistent with section 1886(d)(10)(D)(v) of the Act, a hospital may terminate its approved 3-year reclassification during the second or third years (§ 412.273(b)). This is a separate action from a reclassification withdrawal that occurs in accordance with the timeframes described above. Currently, in order to terminate an approved 3-year reclassification, we require the hospital to notify the MGCRB in writing within 45 days after the publication date of the annual proposed rule for changes to the hospital inpatient prospective payment system (§ 412.273(b)(1)(i)). A termination, unless subsequently cancelled, is effective for the full fiscal years remaining in the 3-year period.

We also provided that a hospital may apply for reclassification to a different area for the year corresponding to the second or third year of the reclassification (that is, an area different from the one to which it was originally reclassified) and, if successful, the reclassification would be for 3 years. Since the publication of the August 1, 2001 (FY 2002) final rule, we received an inquiry regarding a situation where a hospital with an existing 3-year wage index reclassification successfully reclassifies to a different area, then withdraws from that second reclassification within the allowable timeframe for withdrawals. This scenario raises several issues not specifically covered in the August 1, 2001 final rule, which we are addressing in this final rule.

For example, the question arises, at what point does a hospital's termination of a 3-year reclassification become effective when a hospital applies for reclassification to another area? As noted above, the August 1, 2001 final rule specified that a hospital must file a written request with the MGCRB within 45 days after publication of the annual proposed rule to terminate the reclassification. However, the rules do not specify at what point a previous 3-year reclassification is terminated when

a hospital applies for reclassification to another area in subsequent years. One might conclude that an application for a wage index reclassification to another area constitutes a written notification of a hospital's intent to terminate an existing 3-year reclassification. Under this scenario, however, if the application to the second area were denied, it would then be necessary for the hospital to formally cancel the termination of its reclassification to the first area to avoid a lapse in reclassification status the following year. Therefore, in the May 9, 2002 proposed rule, we proposed to clarify, in new paragraph (iii) of § 412.273(b)(2), that, in a situation where a hospital with an existing 3-year wage index reclassification applies to be reclassified to another area, its existing 3-year reclassification will be terminated when a second 3-year wage index reclassification goes into effect for payments for discharges on or after the following October 1. In such a case, it will not be necessary for the hospital to submit a separate written notice of its intent to terminate its existing 3-year reclassification. Of course, a hospital also may still terminate an existing 3-year reclassification through written notice to the MGCRB, regardless of whether it successfully reclassifies to a different area.

The scenario of a hospital with an existing 3-year reclassification seeking reclassification to a second area raises another issue. If the hospital's request is approved by the MGCRB, but the hospital withdraws from that successful reclassification and "falls back" to its original 3-year reclassification, does the hospital retain the right to cancel that withdrawal the next year? In this way, a hospital could accumulate multiple reclassification options from which it could choose in any given year through canceling prior withdrawals or terminations to one area and withdrawing or terminating reclassifications to other areas.

We do not believe section 304 of Public Law 106–554 was intended to be used in such a manner. Therefore, in the May 9, 2002 proposed rule, we proposed to clarify existing policy that a previous 3-year reclassification may not be reinstated after a subsequent 3-year reclassification to another area takes effect. This means that a hospital that is reclassified to an area for purposes of the wage index may have only one active 3-year reclassification at a time. Once a 3-year reclassification to a second area becomes effective, a previously terminated 3-year reclassification may not be reinstated by terminating or withdrawing the reclassification to the second area and then canceling the termination or withdrawal of the reclassification to the first area.

As we stated in the August 1, 2001 final rule, we believe the 3-year wage index reclassification policy was intended to provide consistency and predictability in hospital reclassifications and the wage index. Allowing hospitals multiple reclassification options to choose from would create a situation where many hospitals move in unpredictable ways between the proposed and final rules based on their calculation of which of several areas would yield the highest wage index. This would reduce the predictability of the system, hampering the ability of the majority of hospitals to adequately project their future revenues. Therefore, in the May 9, 2002 proposed rule, we proposed to amend § 412.273(b)(2)(ii) to provide that, once a 3-year reclassification becomes effective, a hospital may no longer cancel a withdrawal or termination of another 3-year reclassification, even within 3 years from the date of such withdrawal or termination. We also proposed a technical correction to § 412.273(b)(2)(i) to correct the terminology regarding canceling (rather than terminating) a withdrawal.

Finally, the August 1, 2001 final rule did not specifically describe the process to cancel a withdrawal or termination. Therefore, in the May 9, 2002 proposed rule, we proposed to add a new § 412.273(d) (existing paragraph (d) would be redesignated as paragraph (e)) to describe the process whereby a hospital may cancel a previous withdrawal or termination of a 3-year wage index reclassification. Specifically, a hospital may cancel a previous withdrawal or termination by submitting written notice of its intent to the MGCRB no later than the deadline for submitting reclassification applications for reclassifications effective at the start of the following fiscal year (§ 412.256(a)(2)).

We did not receive any comments on these proposed changes. Therefore, in this final rule we are adopting the proposed changes as final.

2. Effect of Change of Ownership on Hospital Reclassifications

Sections 412.230(e)(2)(ii) and 412.232(d)(2)(ii) provide that, for reclassifications effective beginning FY 2003, a hospital must provide a weighted 3-year average of its average hourly wages using data from the CMS hospital wage survey used to construct the wage index in effect for prospective payment purposes.

As discussed in the August 1, 2001 final rule, we received a comment suggesting that, for purposes of calculating the 3-year average hourly wages, we permit a hospital that has changed ownership the option of excluding prior years' wage data submitted by a previous owner in order for the new hospital to qualify for reclassification. Although we responded to the comment in the August 1, 2001 final rule (66 FR 39890), we have now determined that there is a need to clarify further our policy regarding change of ownership and hospitals that do not accept assignment of the previous owner's provider agreement.

In our response to the comment, we stated that, where a hospital has changed ownership and the new owners have acquired the financial assets and liabilities of the previous owners, all of the applicable wage data associated with that hospital are included in the calculation of its 3-year average hourly wage. Where the new hospital does not claim the financial assets or assume the liabilities of a predecessor hospital, the wage data associated with the previous hospital's provider number would not be used in calculating the new hospital's 3-year average hourly wage.

Section 489.18(c) provides that, when there is a change of ownership, the existing provider agreement will automatically be assigned to the new owner when the parties agree to accept assignment of the provider agreement. Our regulations at § 412.230(e)(2) do not specifically address the situation of new hospitals seeking to reclassify for wage index purposes, in light of the requirement that reclassification is based on a 3-year average hourly wage. Therefore, as we proposed in the May 9, 2002 proposed rule, in this final rule we are revising § 412.230(e)(2), by adding a new paragraph (e)(2)(iii), to clarify our existing policy to specify that, in situations where a hospital does not accept assignment of the existing hospital's provider agreement under § 489.18, the hospital will be treated as a new hospital with a new provider number. In that case, the wage data associated with the previous hospital's provider number will not be used in calculating the new hospital's 3-year average hourly wage. As we stated in the August 1, 2001 final rule, we believe this policy clarification is consistent with how we treat hospitals whose ownership has changed for other Medicare payment purposes. Thus, we are revising § 412.230 to clarify, under new paragraph (e)(2)(iii), that once a new hospital has accumulated at least 1 year of wage data using survey data from the CMS hospital wage survey

used to determine the wage index, it is eligible to apply for reclassification on the basis of those data.

Comment: One commenter indicated that our efforts to clarify our policy regarding change of ownership create a financial incentive for new owners to go through the "onerous and costly" process of obtaining new provider numbers in order to obtain geographic reclassification. The commenter believed that any valid change in ownership under § 489.19 should allow a hospital the opportunity to request reclassification and that we should clarify that all payment areas impacted by the assignment of a new provider number should be consistently applied.

Response: This clarification establishes clear, predictable guidelines as to how hospitals' data will be treated for reclassification purposes. The rule was not adopted to govern provider behavior, since we cannot predict hospitals' behavior in situations where they may perceive it to be to their financial advantage to change their ownership arrangements. Rather, given the guidelines established by CMS, hospitals are free to act in their best interests.

I. Payment for Direct Costs of Graduate Medical Education (§ 413.86)

1. Background

Under section 1886(h) of the Act, Medicare pays hospitals for the direct costs of graduate medical education (GME). The payments are based in part on the number of residents trained by the hospital. Section 1886(h) of the Act caps the number of residents that hospitals may count for direct GME.

Section 1886(h)(2) of the Act, as amended by section 9202 of the Consolidated Omnibus Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272), and implemented in regulations at § 413.86(e), establishes a methodology for determining payments to hospitals for the costs of approved GME programs. Section 1886(h)(2) of the Act, as amended by COBRA, sets forth a payment methodology for the determination of a hospital-specific, base-period per resident amount (PRA) that is calculated by dividing a hospital's allowable costs of GME for a base period by its number of residents in the base period. The base period is, for most hospitals, the hospital's cost reporting period beginning in FY 1984 (that is, the period of October 1, 1983 through September 30, 1984). The PRA is multiplied by the weighted number of full-time equivalent (FTE) residents working in all areas of the hospital complex (or nonhospital sites, when applicable), and the hospital's Medicare share of total inpatient days to determine Medicare's direct GME payments. In addition, as specified in section 1886(h)(2)(D)(ii) of the Act, for cost reporting periods beginning on or after October 1, 1993, through September 30, 1995, each hospital's PRA for the previous cost reporting period is not updated for inflation for any FTE residents who are not either a primary care or an obstetrics and gynecology resident. As a result, hospitals with both primary care and obstetrics and gynecology residents and nonprimary care residents in FY 1994 or FY 1995 have two separate PRAs: one for primary care and obstetrics and gynecology and one for nonprimary care.

Section 1886(h)(2) of the Act was further amended by section 311 of Public Law 106–113 to establish a methodology for the use of a national average PRA in computing direct GME payments for cost reporting periods beginning on or after October 1, 2000, and on or before September 30, 2005. Generally, section 1886(h)(2)(D) of the Act establishes a "floor" and a "ceiling" based on a locality-adjusted, updated, weighted average PRA. Each hospital's PRA is compared to the floor and ceiling to determine whether its PRA should be revised.For cost reporting periods beginning on or after October 1, 2000, and before October 1, 2001, the floor PRA is 70 percent of the locality-adjusted, updated, weighted average PRA. For cost reporting periods beginning on or after October 1, 2001, and before October 1, 2002, section 511 of Public Law 106–554 amended the floor PRA to equal 85 percent of the locality-adjusted, updated, weighted average PRA. PRAs that are below the applicable floor PRA for a particular cost reporting period would be adjusted to equal the floor PRA. PRAs that exceed the ceiling, that is, 140 percent of the locality-adjusted, updated, weighted average PRA, would, depending on the fiscal year, either be frozen and not increased for inflation, or be increased by a reduced inflation factor. Existing regulations at § 413.86(e)(4) specify the methodology for calculating each hospital's weighted average PRA and the steps for determining whether a hospital's PRA will be revised.

2. Determining the Weighted Average PRAs for Newly Participating Hospitals (§ 413.86(e)(5))

As stated earlier, under section 1886(h) of the Act and implementing regulations, in most cases Medicare pays hospitals for the direct costs of GME on the basis of per resident costs in a 1984 base year. However, under existing § 413.86(e)(5), if a hospital did not have residents in an approved residency training program, or did not participate in Medicare during the base period, the hospital's base period for its PRA is its first cost reporting period during which the hospital participates in Medicare and the residents are on duty during the first month of that period. There must be at least three existing teaching hospitals with PRAs in the MSA for this calculation.

If there are at least three existing teaching hospitals with PRAs in the same geographic wage area (MSA), as that term is used in 42 CFR Part 412, the fiscal intermediary will calculate a PRA based on the lower of the new teaching hospital's actual cost per resident in its base period or a weighted average of all the PRAs of existing teaching hospitals in the same MSA. If there are less than three existing teaching hospitals with PRAs within the new teaching hospital's MSA, effective for cost reporting periods beginning on or after October 1, 1997, the fiscal intermediary uses the updated regional weighted average PRA (determined for each of the nine census regions established by the Bureau of Census for statistical and reporting purposes) for the new teaching hospital's MSA (see 62 FR 46004, August 29, 1997). A new teaching hospital is assigned a PRA equal to the lower of its actual allowable direct GME costs per resident or the weighted average PRA as calculated by the fiscal intermediary. Using a methodology based on a weighted average ensures that a new teaching hospital receives a PRA that is representative of the costs of training residents within its specific geographic wage area.

Under existing policy, to calculate the weighted average PRA of teaching hospitals within a particular MSA, the fiscal intermediary begins by determining the base year PRA and the base year FTE count of each respective teaching hospital within that MSA. The weighted average PRA is (a) the sum of the products of each existing teaching hospital's base year PRA in the MSA and its base year FTEs, (b) divided by the sum of the base year FTEs from each of those hospitals. While a methodology using base year PRAs and FTEs was appropriate and workable in the years closely following the implementation of hospital—specific PRAs, it has become administratively burdensome for both CMS and the fiscal intermediaries to recreate base year information in calculating a weighted average. The methodology is particularly problematic in instances where there are large

numbers of teaching hospitals in an MSA.

In addition, as discussed in section V.I.1. of this final rule, hospitals that were training nonprimary care residents during FYs 1994 and 1995 have a distinct nonprimary care PRA, because there was no update in the inflation factor for these years (§ 413.86(e)(3)(ii)). Thus, most teaching hospitals currently have two PRAs: one for primary care and obstetrics and gynecology; and one for all other residents. (Hospitals that first train residents after FY 1995 only have a single PRA, regardless of whether they train primary care or other residents.) However, since the current methodology for calculating weighted average PRAs is based on data from FY 1984, which was prior to the years during which the PRAs were not adjusted for inflation to reflect nonprimary care residents, the methodology does not account for all PRAs (both primary care and obstetrics and gynecology and nonprimary care) within an MSA.

Accordingly, in the May 9, 2002 proposed rule, we proposed to simplify and revise the weighted average PRA methodology under § 413.86(e)(5)(i)(B) to reflect the average of all PRAs in an MSA, both primary care and obstetrics and gynecology, and nonprimary care. We proposed to continue to calculate a weighted average PRA. However, rather than using 1984 base year data, we proposed to use PRAs (both primary care and obstetrics and gynecology and nonprimary care) and FTE data from the most recently settled cost reports of teaching hospitals in an MSA. We proposed that the intermediary would calculate the weighted average PRA using the following steps:

Step 1: Identify all teaching hospitals (including those serviced by another intermediary(ies)) in the same MSA as the new teaching hospital.

Step 2: Identify the respective primary care and obstetrics and gynecology FTE counts, the nonprimary care FTE counts, or the total FTE count (for hospitals with a single PRA) of each teaching hospital in step 1 from the most recently settled cost reports. (Use the FTE counts from line 3.07, line 3.08, and line 3.11 of the Medicare cost report, CMS–2552–96,Worksheet E–3, Part IV.)

(We note that, under step 2, we have added "line 3.11" of the cost report to capture dental and podiatry FTE counts as part of the nonprimary care FTE counts. We made this addition in response to a comment received, as discussed below under the comment and response section for this area.)

Step 3: Identify the PRAs (either a hospital's primary care and obstetrics and gynecology PRA and nonprimary care PRA, or a hospital's single PRA) from the most recently settled cost reports of the hospitals in step 1, and update the PRAs using the CPI–U inflation factor to coincide with the fiscal year end of the new teaching hospital's base year cost reporting period. For example, if the base year fiscal year end of a new teaching hospital is December 31, 2003, and the most recently settled cost reports of the teaching hospitals within the MSA are from the fiscal years ending June 30, 2000, September 30, 2000, or December 31, 2000, the PRAs from these cost reports would be updated for inflation to December 31, 2003.

Step 4: Calculate the weighted average PRA using the PRAs and FTE counts from steps 2 and 3. For each hospital in the calculation:

(a) Multiply the primary care PRA by the primary care and obstetrics and gynecology FTEs.

(b) Multiply the nonprimary care PRA by the nonprimary care FTEs.

(c) For hospitals with a single PRA, multiply the single PRA by the hospital's total number of FTEs.

(d) Add the products from steps (a), (b), and (c) for all hospitals.

(e) Add the FTEs from step 3 for all hospitals.

(f) Divide the sum from step (d) by the sum from step (e). The result is the weighted average PRA for hospitals within an MSA.

The following is an example of how to calculate a weighted average PRA under this revised methodology:

Example

Assume that new Hospital A has a June 30 fiscal year end and begins training residents for the first time on July 1, 2003. Thus, new Hospital A's base year for purposes of establishing a PRA is the fiscal year ending June 30, 2004. New Hospital A is located in MSA 1234, in which three other teaching hospitals exist, Hospital B, Hospital C, and Hospital D. These three hospitals also have a fiscal year end of June 30 and their most recently settled cost reports are for the fiscal year ending June 30, 2000. For fiscal year ending June 30, 2000, Hospital B has 200 primary care and obstetrics and gynecology FTEs, 150 nonprimary care FTEs, and 150 nonprimary care FTEs. Hospital C has 50 primary care and obstetrics and gynecology FTEs and 60 nonprimary care FTEs. Hospital D has 25 FTEs. After updating the PRAs for inflation by the CPI–U to June 30, 2004, Hospital B has a primary care and obstetrics and gynecology PRA of $120,000 and a nonprimary care PRA of $115,000, Hospital C has a primary care and obstetrics and gynecology PRA of $100,000 and a nonprimary care PRA of $97,000, and Hospital D has a single PRA of $90,000.

(a) Primary care:
  Hospital B: $120,000 × 200 FTEs = $24,000,000
  Hospital C: $100,000 × 50 FTEs = $5,000,000
(b) Nonprimary care:
  Hospital B: $115,000 × 150 FTEs = $17,250,000
  Hospital C: $97,000 × 60 FTEs = $5,820,000
(c) Single PRA:
  Hospital D: $90,000 x 25 FTEs =$2,250,000
(d) $24,000,000 + 5,000,000 + $17,250,000 + $5,820,000 + $2,250,000 = $54,320,000.
(e) 200 + 50 + 150 + 60 + 25 = 485 total FTEs.
(f) $54,320,000/485FTEs = $112,000, the weighted average PRA for MSA 1234 for fiscal year ending June 30,2004.

New Hospital A's PRA would be the lower of $112,000 or its actual base year GME costs per resident.

In the May 9, 2002 proposed rule, we proposed that the new weighted average calculation would be effective for hospitals with direct GME base years that begin on or after October 1, 2002.

In addition, we are taking the opportunity to clarify the language under existing § 413.86(e)(5)(i)(B), which relates to calculating the weighted average under existing policy. Specifically, existing § 413.86(e)(5)(i)(B) states: "The weighted mean value of per resident amounts of all hospitals located in the same geographic wage area, as that term is used in the prospective payment system under part 412 of this chapter, *for cost reporting periods beginning in the same fiscal years* [emphasis added]." We believe this language could be misinterpreted to imply that only those PRAs of hospitals in the same geographic wage area (MSA) *that have the same fiscal year end as the new teaching hospital* should be used in the weighted average calculation. However, the PRAs of *all* hospitals within the MSA of the new teaching hospital should be used, not just the PRAs of hospitals with the same fiscal year end as the new teaching hospital. We proposed a revision under a proposed new § 413.86(e)(5)(i)(C).

Comment: One commenter expressed concern about our proposed changes to the calculation of weighted average PRAs for new teaching hospitals. The

commenter believed that our proposed methodology is as administratively burdensome as the existing methodology, because the servicing intermediary would be required to solicit most recently settled cost report data from all other intermediaries servicing providers in the defined territory every time a new PRA needs to be calculated. As an alternative to using most recently settled cost report data, the commenter suggested that we specify a cost reporting period from which all future data can be updated (that is, cost reporting periods ending between October 1, 1998 and September 30, 1999). The commenter indicated that it would be helpful if we would provide all intermediaries with a nationwide listing of all teaching hospitals (extracted from the HCRIS and compiled in a database/spreadsheet format), including provider number, MSA number, county, PRAs, and primary and nonprimary care FTE counts from the specified cost reporting period.

Response: We understand the commenter's concerns, but we believe that using data from most recently settled cost reports results in a weighted average PRA that more appropriately reflects the pertinent dynamics of residency training in a specific geographical area. We note that the requirement to use data from all hospitals in an MSA, regardless of whether they are serviced by different intermediaries, exists even under current regulations. In addition, generally, hospitals in the same MSA either use the same fiscal intermediary or one of two fiscal intermediaries and, therefore, we do not believe that it is unreasonably difficult to obtain information from another intermediary. Furthermore, as we have done in the past, we will continue to provide assistance to the intermediaries involved in the process of calculating the weighted average PRAs. Finally, we will consider the commenter's suggestion concerning the compilation of a nationwide database.

Comment: One commenter asked whether, considering that dental and podiatry residents are also nonprimary care, the FTE count of dental and podiatry residents from line 3.11 of worksheet E–3 Part IV should be included in determining the FTE counts in step 2 of the calculation in the proposed rule (67 FR 31467).

Response: Step 2 of the proposed calculation states, "Identify the respective primary care and obstetrics and gynecology FTE counts, the nonprimary care FTE counts, or the total FTE count (for hospitals with a single PRA) of each teaching hospital in step 1 from the most recently settled cost reports. (Use the FTE counts from line 3.07 and line 3.08 of the Medicare cost report, CMS–2552–96, Worksheet E–3, Part IV)." We agree with the commenter that the dental and podiatry FTE counts should also be included, and, therefore, we are revising step 2 in the example in this final rule to state that intermediaries should use the FTE counts from line 3.07, line 3.08, and line 3.11 of the Medicare cost report.

Accordingly, in this final rule, we are adopting as final the proposed revised §413.86(e)(5)(i)(B) and the proposed new § 413.86(e)(5)(i)(C) without modification.

3. Aggregate FTE Limit for Affiliated Groups (§§ 413.86(b) and (g)(7))

Section 1886(h)(4)(H)(ii) of the Act permits, but does not require, the Secretary to prescribe rules that allow institutions that are members of the same affiliated group (as defined by the Secretary) to elect to apply the FTE resident limit on an aggregate basis. This provision allows the Secretary to permit hospitals flexibility in structuring rotations within a combined cap when they share residents' time. Consistent with the broad authority conferred by the statute, we established criteria for defining an "affiliated group" and an "affiliation agreement" in both the August 29, 1997 final rule (62 FR 45965) and the May 12, 1998 final rule (63 FR 26317). Because we had received many inquiries from the hospital industry on this policy, we proposed in the May 9, 2002 proposed rule to clarify in regulations the requirements for participating in an affiliated group. Most of these requirements are explicitly derived from the policy explained in the August 29, 1997 and May 12, 1998 final rules.

Specifically, we proposed to add under § 413.86(b) a new definition of "Affiliation agreement." Under this new definition, we proposed to specify that an affiliation agreement is a written, signed, and dated agreement by responsible representatives of each respective hospital in an affiliated group (as defined in § 413.86(b)), that specifies—

- The term of the agreement, which, at a minimum must be one year, beginning on July 1 of a year.
- Each participating hospital's direct and indirect FTE cap.
- The annual adjustment to each hospital's FTE caps, for both direct GME and IME. This adjustment must reflect the fact that any positive adjustment to one hospital's direct and indirect FTE caps must be offset by a negative adjustment to the other hospital's (or hospitals') direct and indirect FTE caps of at least the same amount.
- The names of the participating hospitals and their Medicare provider numbers.

In addition, we proposed to add a new § 413.86(g)(5)(iv) and a new § 413.86(g)(7) to clarify the requirements for a hospital to receive a temporary adjustment to its FTE cap through an affiliation agreement. (Existing § 413.86(g)(5)(iv) through (vi) were proposed to be redesignated as § 413.86(g)(5)(v) through (vii), respectively; and existing §§ 413.86(g)(7) through (g)(12) were proposed to be redesignated as §§ 413.86(g)(8) through (g)(13), respectively, to accommodate these additions.) Specifically, we proposed that a hospital may receive a temporary adjustment to its FTE cap, which is subject to the averaging rules, to reflect residents added or subtracted because the hospital is participating in an affiliated group (as that term is defined under § 413.86(b)). Under the proposed provision—

- Each hospital in the affiliated group must submit the affiliation agreement (as that term is proposed to be defined under § 413.86(b)), to the CMS fiscal intermediary servicing the hospital and send a copy to CMS's Central Office no later than July 1 of the residency program year during which the affiliation agreement will be in effect.
- There must be a rotation of a resident(s) among the hospitals participating in the affiliated group during the term of the affiliation agreement, such that more than one of the hospitals counts the proportionate amount of the time spent by the resident(s) in their FTE resident counts. (However, no resident may be counted in the aggregate as more than one FTE.) This requirement is intended to ensure that the participating hospitals maintain a "cross-training" relationship during the term of the affiliation agreement.
- The net effect of the adjustments (positive or negative) on the affiliated hospitals' aggregate FTE cap for each affiliation agreement must not exceed zero.
- If the affiliation agreement terminates for any reason, the FTE cap for each hospital in the affiliated group will revert to the individual hospital's pre-affiliation FTE cap.

Except for the proposed new § 413.86(g)(7)(iv) regarding the treatment of FTE caps after termination of the affiliation agreement, each provision of proposed new § 413.86(g)(7) was explicitly derived from policy stated in the May 12, 1998 final rule (63 FR 26336). We proposed

to incorporate in regulations policy that was previously established under the formal rulemaking process.

We proposed a change in policy concerning what happens to each participating affiliated hospital's FTE cap when an affiliation agreement terminates (proposed new § 413.86(g)(7)(iv)). In the preamble of the May 12, 1998 final rule (63 FR 26339), we stated: "Each agreement must also specify the adjustment to each respective hospital cap in the event the agreement terminates, dissolves, or, if the agreement is for a specified time period, for residency training years and cost reporting periods subsequent to the period of the agreement for purposes of applying the FTE cap on an aggregate basis. In the absence of an agreement on the FTE caps for each respective institution following the end of the agreement, each hospital's FTE cap will be the indirect and direct medical education FTE count from each hospital's cost reporting period ending in 1996 and the cap will not be applied on an aggregate basis." Our purpose for allowing hospitals to redistribute their FTE caps (within the limits of the aggregate FTE caps) upon the termination of an affiliation was to enable hospitals by agreement to more closely reflect the realities of the residency rotational arrangement. However, in practice, very few hospitals have altered their FTE caps following termination of affiliation agreements. Rather, in virtually every agreement, hospitals opted to revert to their respective 1996 FTE caps upon the termination of an affiliation. In addition, we have found that our existing policy is susceptible to abusive practices that do not comport with our original purpose for allowing redistribution of FTE caps among hospitals following termination of an affiliation agreement. We have learned of a number of instances in which one hospital (Hospital A) affiliated with another hospital (Hospital B) in anticipation of Hospital B's closure at some point during the residency program year. In these instances, the affiliation agreement was made solely for the purpose of obtaining a permanent adjustment to Hospital A's FTE cap through the terms of the termination clause. As we explained in the preamble to the May 9, 2002 proposed rule, we do not believe these permanent FTE cap adjustments that result from hospital closures (or any other circumstances) were intended when Congress passed the provision on affiliation agreements. As stated above, we believe affiliations were meant to provide flexibility for hospitals in the rotations of residents where, in the normal course of an affiliation between two or more hospitals, the actual number of residents training at each hospital may vary somewhat from year to year. Affiliations were not intended to be used as a vehicle for circumventing the statutory hospital-specific FTE cap on the number of residents. In addition, we have separately addressed issues that arise when residents are displaced because of a hospital closure. We have in place a policy at existing § 413.86(g)(8) (which was proposed to be redesignated as § 413.86(g)(9) in the May 9, 2002 proposed rule) that permits temporary FTE cap adjustments for hospitals that take on the training of residents displaced by the closure of another hospital.

Therefore, in the May 9, 2002 proposed rule, we proposed that, effective October 1, 2002, for hospitals with affiliation agreements that terminate (for any reason) on or after that date, the direct and indirect FTE caps for each hospital in the affiliated group will revert back to each individual hospital's original FTE cap prior to the affiliation (proposed new § 413.86(g)(7)(iv)). This policy would not preclude the participating hospitals from entering into additional affiliation agreements for later residency years.

Since the proposed policy would be effective for agreements that terminate on or after October 1, 2002, hospitals that have already received a permanent FTE cap adjustment from their fiscal intermediaries through the existing termination clause policy would retain those cap adjustments.

We also proposed to make a conforming clarification at § 412.105(f)(1)(vi) for purposes of IME payments.

Definition of "Affiliation Agreement" and the Requirements at Revised § 413.86(g)(7)

Comment: Several commenters were concerned about our requirement at proposed § 413.86(b) in the definition of "affiliation agreement" that the agreement specify FTE cap adjustments based on a 12-month period that begins July 1 and ends June 30. Many commenters believed that the requirement should be changed so that hospitals may execute affiliation agreements at any time during the year. One commenter believed that since, regardless of the date it is executed, the resident count set forth in the agreement must be reconciled with the hospital's cost reporting period, permitting hospitals to execute agreements throughout the year would reduce the hospital's administrative burdens without imposing much, if any, additional hardship on Medicare program administration. Another commenter suggested that CMS could delay the filing date for affiliations from July 1 until either the first day of a hospital's next cost reporting period beginning after commencement of the July 1 residency period, or October 1, whichever time period is longer.

Response: We set a July 1 deadline for submission of affiliation agreements (proposed § 413.86(g)(7)(i)), as well as specifications of FTE cap adjustments in the affiliation agreements, based on the July 1 residency training year because we believed that choosing one date was administratively less burdensome to our fiscal intermediaries for purposes of audit of the participating hospitals' Medicare cost reports. In addition, we chose July 1 because we believe that date is the start date of virtually all residency training programs across all specialties. We would be more sympathetic to the commenters' request for changes in the execution date if we had heard of residency training programs that begin on dates other than July 1. Until we hear of specific programs that begin on other than July 1, we continue to believe that it is appropriate and consistent with efficient administration of the Medicare program to maintain the existing policy based on the July 1 residency training program year. We believe that it is not only less burdensome for our fiscal intermediaries (as well as CMS) to receive affiliation agreements at one point in the year alone, but we also believe it is less burdensome to participating hospitals. We believe that the vast majority of participating hospitals will know prior to July 1 how many residents will be training at the hospital in any given residency program year and how many residents would be rotating in from other hospitals.

Comment: One hospital commenter described a situation in which its existing affiliation agreement with another hospital, which was submitted to the fiscal intermediary with a copy to CMS (at that time HCFA) Central Office on July 1, 1998, states that the affiliation agreement "shall continue in effect on an indefinite basis until terminated by the agreement of all Hospitals * * * of the affiliated group." The commenter asked us whether this term language meets the requirements in the proposed rule.

The same commenter mentioned that its affiliation agreement from 1998 does not specify each participating hospital's direct and indirect FTE cap, "as this was not required in the August 29, 1997,

and May 12, 1998 final rules." In addition, the commenter asked whether changes in a hospital's FTE caps can be accounted for under the proposed rule. Finally, the commenter asked whether documents other than the affiliation agreement, such as attachments to the affiliation agreement, can be used to identify a hospital's direct and indirect FTE caps.

Response: As we proposed at § 413.86(b), each affiliation agreement should specify the term of the agreement "which at a minimum is one year," beginning on July 1 of a year. We stated similarly in the May 12, 1998 final rule on affiliation agreements (63 FR 26341) that "each agreement must be for a minimum of one year." However, there is nothing to prohibit affiliation agreements from being automatically renewable each year or from being for terms greater than one year in length. Therefore, the language that the commenter apparently used in its affiliation agreement would meet existing Medicare policy on affiliation agreements and their effectiveness. As long as the affiliation agreements cover a period of time of at least one year beginning July 1 of a year, the affiliation agreements meet the term requirement at § 413.86(b).

To address the commenter's statement that it did not report the direct and indirect GME FTE caps for the participating hospitals in its affiliation agreement because it was not previously required to do so, we stated clearly in the May 12, 1998 interim final rule that hospitals must specify the "planned changes to individual hospital counts under an aggregate FTE cap" (63 FR 26341). Although, under existing policy, hospitals might have reported "planned changes" to FTE caps in a number of ways, there is no question that they were required to do so. The revised requirements at § 413.86(b) specify that the hospital must include in the affiliation agreement each participating hospital's direct and indirect GME FTE caps in effect prior to the affiliation. The reason for requiring that affiliation agreements specify the direct and indirect FTE caps for participating hospitals is so that all hospitals will report the "planned changes" in the same way, allowing for ease of administration for CMS and fiscal intermediaries.

We also understand that some hospitals qualify for other FTE cap adjustments, such as those for new programs under § 413.86(g)(6)(ii). Hospitals would report their most current FTE caps in effect in the period immediately prior to the effective date of the affiliation for both direct GME and indirect medical education, so that the caps are reflective of the other FTE cap adjustments.

To respond to the commenter's question about whether attached documents to the affiliation agreement will suffice to identify direct and indirect GME FTE caps, we believe attached documents would be adequate, so long as they are considered part of the overall package of the affiliation agreement. We have stated repeatedly to the provider community that affiliation agreements need *not* be lengthy documents. In the past, we have received affiliation agreements that range in length from 2 pages to 30 pages. Each type of agreement (short or long) would be adequate as long as the affiliation agreement meets the provisions under proposed § 413.86(b).

Comment: One commenter asked how the proposed rule contemplates handling changes in the hospital's FTE adjustments if actual rotations in a given residency year turn out differently than what was stated in the affiliation agreement at the start of the residency year on July 1.

Response: We stated in the May 12, 1998 final rule (63 FR 26339) that the hospitals in the affiliated group may submit modifications to the initially reported distribution of the aggregate FTE count by June 30 of the current residency training year, if actual FTE counts for the program year are different than projected in the original agreement. While modifications to the original distribution of the aggregate FTE cap are permitted in order to allow for some fluctuations based on the actual placement of those residents within the affiliated hospitals, the overall affiliation agreement cannot be modified (for example, by adding other hospitals to increase the original aggregate cap). In most cases, we expect that the modifications to the affiliation agreements, which should be signed by all participating hospitals and submitted to the fiscal intermediary, will reflect the realities of what actually occurred as far as the number of residents that rotated in and out of each hospital during the program year. Accordingly, we would be skeptical of modifications that deviate significantly from the original affiliation agreement.

Comment: One commenter that suggested a technical change in the terminology for affiliation agreements to "resident limit aggregation agreements" or "aggregation agreements." The commenter believed that "affiliation agreement" historically is a term of art in the academic community and generally relates to agreements made between hospitals and medical schools or among sponsors of medical residency education programs.

Response: We are aware that there has been some confusion at times among members of the provider community when using the term "affiliation agreement," and we recognize that the term is utilized in contexts other than in the Medicare usage of the term for GME payment. However, we believe the Medicare use of the term is an appropriate one, rather than "aggregation agreement" or "resident limit aggregation agreement." We note that section 1886(h)(4)(H)(ii) of the Act uses the term "affiliated group" and contemplates that the Secretary will define that term. Further, as we stated above, the point of the policy is that there are "affiliations" among the participating hospitals; that is, rotations of residents among the hospitals for purposes of applying the Medicare FTE caps. Therefore, we are not adopting the commenter's suggested technical change.

Cross-Training Requirement

Comment: Numerous commenters inquired about or addressed our proposal at § 413.86(g)(7)(ii) to clarify in regulations the requirement of a rotation of residents among the hospitals participating in every affiliated group. One commenter agreed that this requirement is appropriate in regard to nonrelated hospitals that join together in an affiliation agreement, since the cross-training is the only basis for the affiliation. However, the commenter believed it should not be applied to affiliation agreements involving only commonly owned or related hospitals because commonly owned hospitals in an affiliated group are already held to the aggregate resident cap. The commenter believed it is unnecessary and burdensome to add a further requirement that each hospital participate in a rotation to other hospitals in order to be included as part of the affiliated group.

Another commenter disagreed that this provision on cross-training between all hospitals in an affiliated group joined by common ownership is a clarification instead of a new rule. Consequently, this commenter believed the implementation of the cross-training provision should be prospective and deferred to become effective with affiliations beginning July 1, 2003. The commenter stated that if its proposal is not accepted, hospitals not in compliance should be given an opportunity to file a new affiliation agreement rather than forfeit the ability to affiliate altogether for the 2002–2003 period.

Response: We disagree with the commenter's statement that commonly owned hospitals in an affiliated group are "already" held to the aggregate resident cap. Hospitals are only held to an aggregate resident cap through the act of entering into a Medicare affiliation agreement, and a Medicare affiliation is not valid without the existence of a cross-training relationship. Our proposal to add an explicit cross-training requirement at § 413.86(g)(7)(ii) resulted from our belief that all hospitals that affiliate, regardless of the criteria under which they qualify to affiliate, should meet the cross-training requirement. The intent of affiliated groups is to provide flexibility within the FTE caps to hospitals that have a rotational relationship; affiliated groups are not meant to serve as a mechanism for circumventing the FTE caps. However, we acknowledge that the existing definition of "affiliated group" at § 413.86(b) is silent with respect to whether the cross-training requirement applies to hospitals that affiliated based on the common ownership criterion.

Nevertheless, we emphasize that the proposed cross-training requirement is derived from a broad-based cross-training policy expressed in previous final rules applying to all affiliated groups, including hospitals affiliated under common ownership. Specifically, in the May 12, 1998 final rule (63 FR 26336) we state, "The criteria we established to determine whether two or more hospitals qualify to be an affiliated group were designed to identify hospitals that have relationships for training residents and to allow those hospitals to continue to have the flexibility to rotate residents under an aggregate FTE cap." Further, we initially amended the definition of an affiliated group at § 413.86(b) (63 FR 26337) to include hospitals under common ownership in response to a commenter's statement that hospitals under a single health care system "* * * functionally operate coordinated and centrally controlled GME programs and often *rotate their residents among their various facilities* depending on training needs and other considerations" (emphasis added). Finally, we state, "A hospital will be permitted to engage in multiple agreements with different hospitals, as illustrated below. For example, hospital A can have an agreement with hospital B for an internal medicine program and another agreement with hospital C for emergency medicine. Although hospitals B and C do not have an agreement for any program, the affiliated group is A, B, and C; that is, the FTE resident counts at hospitals A, B, and C cannot exceed the sum of the combined caps for the three hospitals" (63 FR 26338–26339).

Therefore, to be consistent with the cross-training requirement we proposed at § 413.86(g)(7)(ii), we are adding a reference to the cross-training requirement in paragraph (3) of the definition of "affiliated group" under § 413.86(b). However, because our existing definition of affiliated group did not explicitly state the cross-training requirement for hospitals that affiliate based on common ownership, we recognize that our policy may have been subject to misinterpretation. Therefore, we are making this cross-training requirement for hospitals under common ownership effective for affiliation agreements beginning July 1, 2003, the date of the first training year beginning after publication of the final regulation. Accordingly, hospitals that have affiliated under the common ownership criterion but have not met, or currently are not meeting, the rotational requirement are not required to meet the cross-training requirement until July 1, 2003.

We also address the application of the cross-training requirement at § 413.86(g)(7)(ii) to the other bases for affiliation listed in the definition of "affiliated group" at existing regulations at § 413.86(b). Concerning hospitals located in the same urban or rural area or in contiguous areas, we believe that application of the cross-training requirement is explicit in existing policy and not a change. We believe that the existing regulations clearly express the cross-training requirement that residents must rotate among hospitals within the affiliated group during the course of the program. Paragraph (1) of the existing definition states that hospitals may qualify as an affiliated group if the hospitals are in the same urban or rural area or in contiguous areas, and "if individual residents work at each of the hospitals during the course of the program." However, to maintain consistency, we are revising the language under paragraph (1) of the definition of an "affiliated group" to reference the new cross-training language at § 413.86(g)(7)(ii).

The language in paragraph (2) of the existing definition of "affiliated group" comes from the May 12, 1998 final rule (63 FR 26358). When we issued this language at existing paragraph (2) regarding affiliations of hospitals that are jointly listed as the sponsor of a program, we did not explicitly restate the cross-training requirement because it was assumed that these hospitals, by virtue of joint sponsorship, already meet the cross-training requirement. However, to be consistent, and to further emphasize that the cross-training requirement applies to *all* affiliating hospitals, we are also adding an explicit cross-training requirement at paragraph (2) in the definition of "affiliated group" under § 413.86(b) by referencing § 413.86(g)(7)(ii).

Comment: One commenter stated that our requirement concerning the cross-training of residents within an affiliated group is unwarranted due to the establishment of a single FTE cap for each hospital, rather than program-specific FTE caps for each hospital. The commenter contended that hospitals that agree to affiliate should be allowed to manage training of residents in a manner that ensures the most appropriate training is received, even if this means that there is no cross-training of residents. The commenter included the following example:

AB Health system operates a pediatrics program and a geriatrics program in two hospitals, A and B. Individual hospital 1996 FTE caps were established at 10 FTEs for Hospital A and 10 FTEs for Hospital B. Historically, residents in both programs rotated between both hospitals. In 2002, the programs were reorganized so that Hospital A now specializes in pediatrics and Hospital B now specializes in geriatrics, and as a result, the hospitals no longer cross-train residents. Hospital A currently trains 12 pediatric FTEs and Hospital B currently trains 8 geriatric FTEs.

The commenter explained that the cross-training requirement would effectively reduce the number of residents Medicare will recognize AB Health System in 2002 by 2 FTEs less than the number in 1996. The commenter asserted that, accordingly, the cross-training requirement is inconsistent with our establishment of one overall FTE cap per hospital.

Response: As we stated above, the provision for affiliated groups was included by Congress to accommodate hospitals that have an existing rotational relationship. It was understood that because of the movement of residents between hospitals, the number of residents at each hospital could vary each year. Therefore, because of these existing rotational arrangements, Congress intended to allow hospitals to aggregate and modify the FTE caps on a temporary basis. We do not believe it is appropriate to allow hospitals that do not have a rotational relationship to aggregate their FTE caps simply as a means of maximizing their Medicare reimbursement. However, we note, as we have stated above, hospitals that

affiliate under the common ownership criteria do not have to meet the cross-training requirement until July 1, 2003.

We emphasize again that the cross-training requirement for affiliations is not a new concept in policy regarding Medicare affiliated groups. Indeed, the May 12, 1998 final rule repeatedly stated the idea that the policy was established in order to "allow those hospitals to continue to have the flexibility to rotate residents under an aggregate FTE cap" (63 FR 26336). However, because much confusion or concern has been expressed in numerous inquiries and among several commenters about the proposed clarification of the cross-training requirement, particularly when it relates to the common ownership scenario, we are amending our regulations to further specify how the cross-training requirement will be applied in each of the scenarios for affiliated groups, including common ownership. Specifically, we are revising § 413.86(g)(7)(ii) to read as follows:

> Each hospital in the affiliated group must have a shared rotational arrangement, as defined in § 413.86(b), with at least one other hospital within the affiliated group, and all the hospitals within the affiliated group must be connected by a series of such shared rotational arrangements.

We are specifying here and also at § 413.86(b) that "shared rotational arrangement" means a residency training program under which a resident(s) participates in training at two or more hospitals in that program. If residents rotate from one hospital to another at some point during the period of years required to complete training in a particular program, those hospitals have a "shared rotational arrangement." In addition, all the hospitals within the affiliated group must be connected by a series of shared rotational arrangements. In other words, in order for the cross-training requirement to be met, there must be, at a minimum, a "chain" of rotations occurring from one hospital to the next within the affiliated group. For example, assume Hospitals A, B, C, and D form an affiliated group. Hospital A and Hospital B both train residents in an internal medicine program. In addition, Hospital B trains surgery residents, who also spend time training at Hospital C. Hospital C and Hospital D both operate an anesthesiology program and anesthesiology residents train in both Hospital C and Hospital D. Thus, Hospitals A and B, Hospitals B and C, and Hospitals C and D are connected by a series of shared rotational arrangements. This arrangement meets the cross-training requirement. All hospitals do not have to cross-train residents; this means that Hospital A does not have to send residents to Hospital B, Hospital C, and Hospital D, nor does Hospital B have to send residents to Hospital A, Hospital C, and Hospital D, nor does Hospital C have to send residents to Hospital A, Hospital B, and Hospital D, etc. A continuous linear chain is sufficient.

In another example of a "shared rotational arrangement," Hospital A and Hospital B affiliate and they both offer training in family practice. If, at some point during the 3 years required to complete the family practice program, residents rotate from either Hospital A to Hospital B, Hospital B to Hospital A, or back and forth between Hospital A and Hospital B, then Hospital A and Hospital B have a "shared rotational arrangement." Hospitals A and B may meet the definition of a "shared rotational arrangement" by rotating residents for a portion of a particular program year (PGY), or by rotating residents for an entire program year, so long as the family practice residents spend time at both hospitals to complete their training in family practice. For example, family practice residents may spend 3 months of their PGY1 at Hospital A and 9 months at Hospital B, or, the residents may spend their entire PGY1 training at Hospital A, and spend their entire PGY2 and PGY3 training at Hospital B. In either case, Hospital A and Hospital B have a shared rotational arrangement because they rotate residents over the course of a common training program.

Following are some examples of arrangements that do not meet the cross-training requirement:

- Hospitals A and B train residents at their respective hospitals but do not rotate residents between the 2 hospitals.
- Hospitals A, B, and C attest that they are aggregating their FTE caps, but only Hospitals A and B actually rotate residents between them, while Hospital C does not rotate residents to either Hospital A or Hospital B. In this scenario, Hospitals A and B may qualify as an affiliated group, but Hospital C may not be included for purposes of aggregating its FTE cap with Hospitals A and B, because Hospital C does not rotate residents with either Hospital A or Hospital B. Thus, Hospital C breaks the "chain": Hospital C is not connected to the other hospitals by a series of shared rotational arrangements.
- Hospitals A, B, C, and D attempt to aggregate their FTE caps. Hospitals A and B rotate residents between them, and Hospitals C and D rotate residents between them. In this scenario, Hospitals A and B may qualify as an affiliated group, and Hospitals C and D may qualify as a second affiliated group, but Hospitals A, B, C, and D may not qualify as a single affiliated group because the "chain" is broken by the lack of a series of shared rotational arrangements between Hospitals A or B and Hospitals C or D.

Finally, we believe that our regulations would be more consistent if we also amended the proposed definition of "affiliation agreement" at § 413.86(b) to require participating hospitals to specify the adjustment to each hospital's FTE counts resulting from the FTE resident's (or residents') participation in the shared rotational arrangement(s) at each hospital participating in the affiliated group for each year the affiliation agreement is in effect. We are also stating under this section that this adjustment to each participating hospital's FTE count is reflected in the total adjustments to each hospital's FTE caps under paragraph (3) of the definition for "affiliation agreement" at § 413.86(b). We believe this additional information will assist the fiscal intermediaries in tracking the FTE residents and ensuring that cross-training occurs in at least one program at each of the hospitals participating in the affiliated group, in accordance with the rotation requirement under revised proposed § 413.86(g)(7)(ii).

Example: Assume Hospital A has a direct GME FTE cap of 30 FTEs and an IME FTE cap of 29 FTEs. In the 2003–2004 residency year, Hospital A has an internal medicine residency program with 6 FTE residents training at Hospital A in each program year (a total of 18 FTEs). Hospital A also has a surgery residency program with 3 FTE residents training at Hospital A in each program year (a total of 9 FTEs). Note that Hospital A is not at its FTE cap for direct GME (there are 3 empty FTE slots) or IME (there are 2 empty FTE slots) in this fiscal year. Hospital A decides to rotate some of its residents over to Hospital B, which has an FTE cap of 5 FTEs for both direct GME and IME. Hospital B also rotates residents in a pediatric program to Hospital C. Hospital C has a direct GME cap of 9.5, and an IME cap of 10. The three hospitals affiliate to form an aggregate cap of 44.5 FTEs for direct GME and an aggregate cap of 44 FTEs for IME. Hospital A rotates 3 internal medicine FTEs and 1.5 surgery FTEs to Hospital B, for both direct GME and IME (for Hospitals A and B, this would be "the adjustment to each participating hospital's FTE counts resulting from the FTE resident's (or residents') participation in the shared rotational arrangement(s) at each hospital

participating in the affiliated group"). In addition, Hospital A also moves more of its FTE cap to Hospital B: an additional 3 FTEs for direct GME and 2 FTEs for IME (as noted above, these FTEs were available in Hospital A's caps), because Hospital B would like to train more residents in other specialties than can be accommodated under its own cap of 5 FTEs. Hospital B sends 0.5 FTE for GME and 1 FTE for IME to Hospital C. These produce a net decrease to Hospital A's direct GME cap of 7.5 FTEs (to equal an adjusted cap of 22.5 for direct GME) and a net decrease to its IME cap of 6.5 FTEs (to equal an adjusted cap of 22.5 for IME). The net increase to Hospital B's direct GME cap is 7.0 (to equal an adjusted cap of 12.0 FTEs for direct GME) and a net increase to its IME cap of 5.5 FTEs (to equal an adjusted cap of 10.5 FTEs for IME). The net increase to Hospital C's direct GME cap is 0.5 (to equal an adjusted cap of 10 FTEs for direct GME and the net increase to its IME cap is 1.0 FTEs (to equal an adjusted cap of 11 FTEs for IME).

Accordingly, the requirements as specified under paragraphs (2), (3), and (4) of the definition of "affiliation agreement" at § 413.86(b) may be met if affiliation agreements give the following information (although it may be stated in narrative form, as above), using the information for Hospitals A and B and C above:

DIRECT GRADUATE MEDICAL EDUCATION

[FTE caps]

	FTE cap	Total cap adjustment	Revised caps
Hospital A	30	-7.5	22.5
Hospital B	5	7	12
Hospital C	9.5	0.5	10
Aggregate Cap	44.5		44.5

SHARED ROTATIONAL ARRANGEMENT

	Minus	Plus
Hospital A	-4.5	
Hospital B	-0.5	4.5
Hospital C		0.5

INDIRECT MEDICAL EDUCATION

[FTE caps]

	FTE cap	Total cap adjustment	Revised caps
Hospital A	29	-6.5	22.5
Hospital B	5	5.5	10.5
Hospital C	10	1	11
Aggregate Cap	44		44

SHARED ROTATIONAL ARRANGEMENT

	Minus	Plus
Hospital A	-4.5	
Hospital B	-1	4.5
Hospital C		1

Thus, while the respective hospitals aggregate their FTE caps as a whole, and list the upward and downward adjustments to the participating hospitals' direct and indirect FTE caps, under revised paragraph (3) of the definition of "affiliation agreement" under § 413.86(b), the affiliation agreement must now separately list the positive and negative adjustment to each participating hospital's FTE counts resulting from the FTE resident's (or residents') participation in the shared rotational arrangement(s) at each hospital participating in the affiliated group for each year the affiliation agreement is in effect (this may be different than the total effect of the affiliation on the hospital's cap).

In this final rule, we also are modifying § 413.86(g)(7) to add a new paragraph (iii) to state that, in accordance with proposed § 413.86(g)(7)(ii), during the shared rotational arrangements in the affiliation, more than one of the hospitals in the affiliated group must count the proportionate amount of the time spent by the resident(s) in their FTE resident counts, and that no resident may be counted in the aggregate as more than one FTE.

The Termination Clause

We received numerous comments concerning our proposed policy change on the effect of an affiliation termination on each participating hospital's FTE cap. We proposed that, upon termination of an affiliation, each affiliated hospital will revert back to its original FTE caps for both direct GME and IME prior to the affiliation. Many commenters urged us to reconsider the proposal and to keep the existing policy allowing for FTE cap redistribution upon affiliation termination.

Comment: Several commenters noted the Conference Report accompanying the Balanced Budget Act of 1997 (BBA) which stated that while CMS was given flexibility in implementing the resident limits, the flexibility is "limited by the conference agreement that the aggregate number of FTE residents should not increase over current levels." (H.R. Conference Report, Rept. No. 105–217, 105th Cong., 1st Sess., 1997, pp. 821–822). One commenter stated that they believe the Conference Report makes clear that the conferees understood that "a sizeable number of hospitals elect to initiate 'as well as terminate' medical education programs over a period of time," and that the Conferees were "concerned that within the principles of the cap * * * there is proper flexibility to respond to such changing needs * * *." These commenters believe that our policy change would therefore be contrary to Congress' wishes.

Response: As we explain above, and also in the proposed rule, existing policy allows affiliated hospitals to redistribute their FTE caps (within the limits of the aggregate FTE caps) upon the termination of the affiliation agreement in order to enable hospitals by agreement to more closely reflect the realities of the residency rotational arrangement. However, we proposed to change this policy because we believed it was susceptible to abusive practices such as the formation of affiliation agreements solely for the purpose of obtaining permanent adjustments to FTE caps. In fact, the commenters who advocated retaining the existing policy argued that this provision is needed to allow hospitals to increase their caps, when another hospital closes.

To address the commenters' belief that our proposed change is contrary to Congressional wishes, we note that the language quoted above from the Conference Agreement accompanying the BBA that the commenters use to support that assertion was actually intended to address Congress' newly enacted policy in the BBA on new residency program adjustments (see section 1886(h)(4)(H) of the Act for the statutory provision on this adjustment), rather than affiliated groups. In fact, the cited paragraph in the Conference Report starts out by stating: "Among the specific issues that concerned the Conferees was application of a limit to new facilities, that is, hospitals or other entities which established programs after January 1, 1995." (Conference Report at 821). A separate provision on affiliations appears later in the Conference Report. The Report states: "Another issue was the treatment of institutions which are members of an affiliated group. In some circumstances, the Conferees believe that the intent of this provision would best be met by providing an aggregate limit for such affiliates." Therefore, we believe that the language cited by the commenters was not meant to be applied to affiliated groups.

In addition, section 1886(h)(4)(H)(ii) of the Act specifies that "The Secretary may prescribe rules which allow institutions which are members of the same affiliated group (as defined by the Secretary)" to elect to apply the FTE cap on an aggregate basis (emphasis added). Thus, the statute granted the Secretary the discretion to promulgate regulations that specify what defines an affiliated group and when the FTE caps can be aggregated. Based on our analysis of the Conference Report language, as well as the statutory language, we believe the purpose of the affiliations provision is to provide temporary flexibility in the rotation of residents within the confines of the hospital-specific cap on the number of FTE residents. We do not believe the provision was meant to provide a vehicle for a hospital to circumvent the statutory FTE cap on the number of residents through permanent cap adjustments due to hospital closures.

Comment: Several commenters believed that the existing termination clause policy allowing for permanent cap adjustment "is currently the only option available to retain" resident slots due to hospitals or program closure. One commenter stated that the permanent transfer of residents through the use of affiliation agreement termination provisions allows the programs to continue to benefit the community indefinitely. Several of the commenters suggested that our existing policies specified at § 413.86(g)(8) that allow for temporary FTE cap adjustments to address hospital and residency program closure are "short-lived" and inadequate to address community needs.

Response: We understand that medical needs within a particular community may go unfulfilled whenever a hospital closes its doors, or even, in some communities, when a residency program closes. Our temporary FTE cap adjustments at § 413.86(g)(8) for hospital closures and also program closures are meant to address the situation of the residents who become "displaced" in either of the scenarios; they are not intended to address community medical needs (although, we know that in many cases, the temporary adjustments produce an incidental beneficial result to the community).

If Congress intended to provide permanent cap adjustments to address community needs because of hospital or program closures, we believe there would be such a provision in the Act. Until the law is amended to provide for such an explicit permanent adjustment to a hospital's FTE caps, we believe that our proposal for reverting back to pre-affiliation FTE caps upon affiliation termination is the proper policy.

Comment: Several commenters stated that the fact that a few hospitals abused the policy should not be a reason to make this policy change that affects all hospitals. One commenter believed that other appropriate safeguards can and should be put in place to avoid abuse. This commenter believed that abuse could be limited by requiring a hospital to have been part of the affiliated group for at least a full year prior to the termination of the agreement and not be part of temporary adjustment provided for at § 413.86(g)(8).

Response: In proposing the policy change requiring that when a Medicare affiliation agreement terminates, the hospitals' FTE caps revert to their original levels, we did not intend to target all hospitals due to the actions of, what the commenter has labeled, a few "abusive hospitals." Rather, our intent was to clarify that we believe that any attempt to use affiliations to provide for a permanent increase in the FTE caps is not consistent with either the statute or Congressional intent.

As we noted in the preamble to the proposed regulations, in reviewing affiliation agreements that hospitals have submitted, we found that very few hospitals have altered their FTE caps following the termination of their affiliation agreements. Instead, they opt to revert to their 1996 base year caps. In fact, it is typically only where a hospital is about to close and there is the possibility that the hospital's FTE cap will be "lost," that a termination clause is created to be used to transfer those slots to another hospital.

As stated above, section 1886(h)(4)(H)(ii) of the Act specifies that "The Secretary may prescribe rules which allow institutions which are members of the same affiliated group (as defined by the Secretary)" to elect to apply the FTE cap on an aggregate basis. We believe the basis of the policy on affiliations is to provide flexibility in the rotation of residents within the confines of the aggregate cap on the number of FTE residents. We do not believe this statutory provision was meant to provide a vehicle for a hospital to circumvent the statutory FTE cap on the number of residents through permanent cap adjustments due to

hospital closures. If Congress intended to provide for permanent cap adjustments to address situations where a hospital closes, we believe there would be a specific provision in the law to provide for such an adjustment.

Comment: We stated in the proposed rule (67 FR 31469), and also above, that the policy was proposed to be effective October 1, 2002, for hospitals with affiliation agreements that would terminate (for any reason) on or after that date. One commenter believed that the change should become effective with affiliations beginning, not terminating after October 1, 2002. Several other commenters agreed; they suggested that "under no circumstances should a change be made that would retroactively affect an existing lawful agreement." Finally, one commenter suggested the change should apply only to agreements that were executed after the publication of the proposed rule so that, "at least, it applies only to agreements in which the parties had notice of the anticipated change in policy."

Response: We disagree with the commenters' suggestions. As we have stated above, we believe that the permanent FTE cap adjustment policy allows for the circumvention of the statutory caps. As such, we believe that the policy change should be applicable as soon as possible; that is, beginning with any terminations of affiliations that occur beginning with the effective date of this final rule.

We also disagree with the commenters that our policy change is "retroactive". If a hospital that is part of an already existing affiliated group decides for whatever reason to terminate the affiliation agreement, that termination would not retroactively affect the movement of the FTE caps back to their hospitals of origin. Rather, the reversion back to the pre-affiliation FTE caps occurs on a prospective basis after the termination has taken place.

Finally, to address the comment suggesting that the change in termination policy be effective with affiliation agreements executed after the publication of the proposed rule (which was on May 9, 2002), since the policy depends upon the action of a hospital terminating the affiliation agreement rather than executing the agreement, we believe it is more appropriate to maintain our proposed effective date. And, as we stated above, we believe the provider community is receiving adequate notice of this change in policy on terminations of affiliations through the notice and comment rulemaking process. Thus, we are adopting our proposal to require that the FTE caps for each hospital in the affiliated group will revert back to each hospital's FTE cap prior to entering into the affiliation upon termination of the affiliation.

Comment: Two commenters noted that the proposed rule stated that the FTE caps of hospitals in the affiliated group would revert back to their pre-affiliation levels upon termination. The commenters requested that, in cases where multiple hospitals enter into an affiliation agreement, but for whatever reason, one or more of the original affiliating hospitals wished to withdraw from the agreement, the remaining hospitals should be able to continue the affiliation agreement. One commenter stated that allowing affiliated groups to shrink from their original size to include only those hospitals that are interested in continuing their participation will ensure success of the affiliated group, while allowing CMS to reimburse hospitals subject to the limit of an aggregate cap. The commenter provided the following example: Hospitals A, B, and C enter into an affiliation agreement for the academic year beginning July 1, 2003. Each hospital has 1996 FTE caps of 8, respectively, which combine to equal an aggregate cap of 24. During this academic year, Hospital C decides to terminate its participation in the affiliated group. Hospital C takes back its 8 FTEs, its original FTE cap. Hospital A and Hospital B wish to continue affiliating, and Hospital A's FTE cap increases by 4 to equal 12, and Hospital B's FTE cap decreases by 4 to equal 4, for an aggregate cap of 16 FTEs.

Response: We believe the commenters may be confusing our proposal to require FTE caps of hospitals in the affiliated group to revert back to their pre-affiliation levels upon termination, with our policy with respect to hospitals that continue to affiliate. Our proposal would only preclude hospitals from using termination agreements as a means of permanently adjusting FTE caps. However, our proposal does not preclude hospitals from terminating their participation in an affiliation agreement, as long as each formerly participating hospital's respective original FTE caps are not changed as a result of the termination. Therefore, no modification to our regulations is necessary to adopt the commenters' request to allow affiliated groups to be reduced from their original size. The scenario described by the commenters is permissible under existing regulations. When a hospital withdraws from the affiliation, the equivalent amount of its pre-affiliation FTE cap is subtracted from the original aggregate cap, and reverts back to that hospital. The hospitals that wish to continue participating in the affiliation must submit a modified agreement to their respective intermediaries by June 30 of that academic year indicating the revised aggregate FTE cap, and adjustments to each hospital's caps, based only on the FTE caps of the hospitals that continue to affiliate.

Other Issues on Affiliated Groups

Comment: Two commenters requested that we remove our geographical restriction for hospitals to participate in an affiliated group; one commenter specifically requested that participants in an Osteopathic Postdoctoral Training Institution (OPTI) be permitted to participate in affiliated group without regard to geography. Two commenters requested that we change our policy at § 413.86(g)(6)(i)(D) concerning the prohibition of new teaching hospitals from participating in affiliated groups once the new residency program has been established. Another commenter asked that we define "displaced residents" for purposes of our policies at § 413.86(g)(8) on closed hospital and closed programs.

Response: Since these comments do not address issues that were specifically proposed in the May 9, 2002 notice of proposed rulemaking, we are not responding to these comments in this regulation.

Technical Corrections

We are making a technical change to the language under the definition of "affiliated group" under § 413.86(b) under paragraph (2). Paragraph (2) refers to hospitals that are jointly listed as the sponsor, primary clinical site, or major participating institution for one or more of the programs as these terms are used in the "*Graduate Medical Education Directory, 1997–1998.*" We note that the usage of the referenced terms has not changed in more recent publications of the Directory and is not expected to change in the future. Therefore, in this final rule, as part of our revision to the definition of "affiliated group" to incorporate the cross-training requirement for hospitals in an affiliation agreement, we are changing the reference to reflect use of the most current publication of that Directory.

When we issued the May 9, 2002 proposed rule, due to a typographical error, we inadvertently indicated that we proposed to make changes to § 413.86(g)(5)(iv) instead of § 413.86(g)(4)(iv) to incorporate revised provisions relating to determining the weighted number of FTE residents for hospitals that are part of the same affiliated group. As a result, we erroneously stated that we proposed to add a new paragraph under

§ 413.86(g)(5)(iv) and to redesignate paragraphs (g)(5)(iv), (g)(5)(v), and (g)(5)(vi) as paragraphs (g)(5)(v), (g)(5)(vi), and (g)(5)(vii) respectively to accommodate the new paragraph. We are correcting these errors in this final rule. We are changing the reference from § 413.86(g)(5)(iv) to § 413.86(g)(4)(iv). In addition, since we are revising § 413.86(g)(4)(iv) rather than inserting a new paragraph, there is no need to redesignate any paragraphs under § 413.86(g)(4).

4. Rotating Residents to Other Hospitals

At existing § 413.86(f), we state, in part, that a hospital may count residents training in all areas of the hospital complex; no individual may be counted as more than one FTE; and, if a resident spends time in more than one hospital or in a nonprovider setting, the resident counts as a partial FTE based on the proportion of *time worked at the hospital* to the total time worked (emphasis added). A similar policy exists at §§ 412.105(f)(1)(ii) and (iii) for purposes of counting resident FTEs for IME payment. Although these policies concerning the counting of the number of FTE residents for IME and direct GME payment purposes have been in effect since October 1985, we continue to receive questions about whether residents can be counted by a hospital for the time during which the resident is rotated to other hospitals.

In the May 9, 2002 notice, we proposed clarifying that it is longstanding Medicare policy, based on language in both the regulations and the statute, to prohibit one hospital from claiming the FTEs training at another hospital for IME and direct GME payment. This policy applies even when the hospital that proposes to count the FTE resident(s) actually incurs the costs of training the residents(s) (such as salary and other training costs) at another hospital.

First, section 1886(h)(4)(B) of the Act states that the rules governing the direct GME count of the number of FTE residents "shall take into account individuals who serve as residents for only a portion of a period with a hospital or simultaneously with more than one hospital." In the September 4, 1990 **Federal Register** (55 FR 36064), we stated that "* * * regardless of which teaching hospital employs a resident who rotates among hospitals, each hospital would count the resident in proportion to the amount of time spent at its facility." Therefore, another hospital *cannot* count the time spent by residents training at another hospital. Only the hospital where the residents are actually training can count those FTEs for that portion of time. For example, if, during a cost reporting year, a resident spends 3 months training at Hospital A and 9 months training at Hospital B, Hospital A can only claim .25 FTE and Hospital B can only claim .75 FTE. Over the course of the entire cost reporting year, the resident would add up to 1.0 FTE.

We have been made aware of some instances where an urban hospital may incur all the training costs of residents while those residents train at a rural hospital, because the rural hospital may not have the resources or infrastructure to claim those costs and FTEs on a Medicare cost report. However, even in this scenario, the urban hospital is precluded from claiming any FTEs for the proportion of time spent in training at that rural hospital, or at any other hospital.

We note, however, that, consistent with the statutory provisions of section 1886(d)(5)(B)(iv) of the Act for IME payment and section 1886(h)(4)(E) of the Act for direct GME payment, a hospital may count the time residents spend training in a *nonhospital* setting if the hospital complies with the regulatory criteria at § 413.86(f)(4).

Comment: One commenter agreed that our clarification on the prohibition against a hospital counting residents training at other hospitals is one that is "longstanding Medicare policy, based on language in both the regulations and the statute." As such, this commenter recommended that we amend our regulations to include this clarification as part of § 413.86(f)(2), "rather than remain as a footnote to longstanding Medicare policy."

Response: As we clarified in the proposed rule and also above, existing § 413.86(f) states, in part, that a hospital may count residents in all areas of the hospital complex; no individual may be counted as more than one FTE; and, if a resident spends time in more than one hospital or in a nonprovider setting, the resident counts as a partial FTE based on the proportion of *time worked at the hospital* to the total time worked (emphasis added). A similar policy exists at §§ 412.105(f)(1)(ii) and (iii) for purposes of counting resident FTEs for IME payment. Thus, we believe our existing regulations are already very clear that hospitals cannot count resident rotations at other hospitals; indeed, the hospital can only count residents working "at the hospital". However, because we continue to receive many questions on this policy, even though it is a longstanding one, in this final rule we are revising §§ 413.86(f) and 412.105(f) to explicitly prohibit the counting of residents at other hospitals.

As we stated above, and also in the proposed rule, we are aware of some scenarios where one hospital incurs the residency training costs of residents training at other hospitals. However, even in this scenario, the hospital incurring the costs of the residents at the other hospitals is precluded from claiming any FTEs for the proportion of time spent in training at the other hospitals.

Comment: One commenter stated that CMS should consider allowing hospitals to enter into agreements that would permit one hospital to claim the resident FTE time worked at another hospital as long as the hospital claiming the resident time is incurring "all or substantially all" of the training costs at the other hospitals, similar to the regulations specified at existing § 413.86(f)(4) for nonhospital sites.

Another commenter stated that it disagrees with our clarification concerning the situation where a teaching hospital cannot count resident rotations to nonteaching hospitals, even when the teaching hospital incurs "all or substantially all" of the costs and the rotation is part of the accredited program. One commenter requested that it be allowed to count the "round time" at another hospital. One commenter requested clarification on whether our policy that prohibits a hospital from counting residents rotating to other hospitals applies to the situation where residents rotate to hospitals not participating in Medicare, such as State-operated psychiatric facilities and hospitals located in foreign countries.

Response: We do not believe that it is consistent with the requirements at sections 1886(d)(5)(B)(iv) and 1886(h)(4)(E) of the Act to expand the policy at § 413.86(f)(4) concerning counting residents in nonhospital settings to allow hospitals to count residents training at other hospitals even if the hospitals seeking to count the residents incur "all or substantially all" of the costs. In fact, it is only because the statute has specifically provided for counting residents training at nonhospital sites that it is appropriate to include any resident not training at the hospital in the hospital's FTE count.

In addition, section 1886(h)(4)(A) of the Act requires the Secretary to establish rules for the computation of FTE residents in an approved medical residency training program. Furthermore, at paragraph (B) of that section, the statute requires that the regulations take into account individuals who serve as residents simultaneously with more than one

hospital. Therefore, we believe that the Secretary has the authority to allow a hospital to count only those residents actually training in that hospital. Even where the residents are training at other hospitals or foreign hospitals, it is not appropriate for the hospital to include those residents in its FTE count. Further, although the commenter refers to rotations occurring at "nonteaching" hospitals, we note that by virtue of the fact that residents are rotating and training at a hospital, the hospital is, by definition, a teaching hospital. In fact, each Medicare-participating hospital at which the residents are rotating over the course of the program year should be completing the direct GME and IME (if applicable) worksheets of the Medicare cost report in order to claim and receive Medicare payment for their respective portions of the FTE training time, regardless of whether the hospital incurs any costs for training those residents. Accordingly, we are not adopting the policy change suggested in these comments.

J. Responsibilities of Medicare-Participating Hospitals in Emergency Cases (EMTALA)

In the May 9, 2002 proposed rule, we presented certain proposed policies to clarify areas of the regulations under § 489.24 that implemented sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Act and solicited comments from hospitals, physicians, patients, and beneficiary groups. These sections of the Act impose specific obligations on Medicare-participating hospitals that have an emergency department. These obligations concern individuals who come to a hospital emergency department and request examination or treatment for medical conditions, and apply to all of these individuals, regardless of whether or not they are beneficiaries of any program under the Act. These provisions of the Act, taken together, are frequently referred to as the Emergency Medical Treatment and Labor Act (EMTALA), also known as the antidumping statute.

In response to our proposals, we received approximately 600 pieces of correspondence, most of which contained multiple comments. A large number of the comments were received on the last day of the comment period for the proposed rule (July 8, 2002). Because of the number and nature of the public comments we received on our proposed clarifications and our limited timeframe for developing the final acute care hospital inpatient prospective payment system regulations for publication by the statutory deadline of August 1, we have decided, with one exception, to address the public comments and finalize the proposals in a separate document. The one proposal being finalized in this document is our proposed revision to the second sentence of § 413.65(g)(1) to clarify the application of EMTALA to provider-based entities. That proposal, and the action we are taking with respect to it, are described more fully in section V.L.2.g. (Clarification of Obligations of Hospital Outpatient Departments and Hospital-Based Entities) of this preamble.

K. Provider-Based Entities

1. Background

a. The April 7, 2000 Final Rule

Since the beginning of the Medicare program, some providers, which we refer to as "main providers," have functioned as a single entity while owning and operating multiple provider-based departments, locations, and facilities that were treated as part of the main provider for Medicare purposes. Having clear criteria for provider-based status is important because this designation can result in additional Medicare payments for services furnished at the provider-based facility, and may also increase the coinsurance liability of Medicare beneficiaries for those services.

In the April 7, 2000 **Federal Register** (65 FR 18504), we published a final rule specifying the criteria that must be met for a determination regarding provider-based status. The regulations at § 413.65(a)(2) define provider-based status as "the relationship between a main provider and a provider-based entity or a department of a provider, remote location of a hospital, or satellite facility, that complies with the provisions of this section." The regulations at existing § 413.65(b)(2) state that before a main provider may bill for services of a facility as if the facility is provider-based, or before it includes costs of those services on its cost report, the facility must meet the criteria listed in the regulations at § 413.65(d). Among these criteria are the requirements that the main provider and the facility must have common licensure (when appropriate), the facility must operate under the ownership and control of the main provider, and the facility must be located in the immediate vicinity of the main provider.

The effective date of these regulations was originally October 10, 2000, but was subsequently delayed. Except where superseded by new legislation, § 413.65 is now in effect for new facilities or organizations for cost reporting periods beginning on or after January 10, 2001, as explained further below. Program instructions on provider-based status issued before that date, found in Section 2446 of the Provider Reimbursement Manual, Part 1 (PRM–1), Section 2004 of the Medicare State Operations Manual (SOM), and CMS Program Memorandum (PM) A–99–24, will apply to any facility for periods before the new regulations become applicable to it. (Some of these instructions will not be applied because they have been superseded by specific legislation on provider-based status, as described in section V.L.3. of this preamble).

b. Frequently Asked Questions Regarding Provider-Based Issues

Following publication of the April 7, 2000 final rule, we received many requests for clarification of policies on specific issues related to provider-based status. In response, we published a list of "Frequently Asked Questions" and the answers to them on the CMS website at *www.hcfa.gov/medlearn/provqa.htm*. (This document can also be obtained by contacting any of the CMS Regional Offices.) These questions and answers did not revise the regulatory criteria, but do provide subregulatory guidance for their implementation.

c. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554)

On December 21, 2000, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 (Public Law 106–554) was enacted. Section 404 of BIPA contains provisions that significantly affect the provider-based regulations at § 413.65. Section 404 includes a grandfathering provision for facilities treated as provider-based on October 1, 2000; alternative criteria for meeting the geographic location requirement; and criteria for temporary treatment as provider-based.

(1) Two-Year "Grandfathering"

Under section 404(a) of BIPA, any facilities or organizations that were "treated" as provider-based in relation to any hospital or CAH on October 1, 2000, will continue to be treated as such until October 1, 2002. For the purpose of this provision, we interpret "treated as provider-based" to include those facilities with formal CMS determinations, as well as those facilities without formal CMS determinations that were being paid as provider-based as of October 1, 2000. As a result, existing provider-based facilities and organizations may retain that status without meeting the criteria

in the existing regulations under §§ 413.65(d), (e), (f), and (h) until October 1, 2002. These provisions concern provider-based status requirements, joint ventures, management contracts, and services under arrangement. Thus, the provider-based facilities and organizations affected under section 404(a) of BIPA are not required to submit an application for or obtain a provider-based status determination in order to continue receiving reimbursement as provider-based during this period.

These provider-based facilities and organizations are not exempt from the EMTALA responsibilities of provider-based facilities and organizations set forth at § 489.24 or from the other obligations of hospital outpatient departments and hospital-based entities in existing § 413.65(g), such as the responsibility of off-campus facilities to provide written notices to Medicare beneficiaries of coinsurance liability. These rules are not preempted by the grandfathering provisions of section 404 of BIPA because they do not set forth criteria that must be met for provider-based status as a department of a hospital, but instead identify responsibilities that flow from that status. These responsibilities become effective for hospitals on the first day of the hospital's cost reporting period beginning on or after January 10, 2001.

(2) Geographic Location Criteria

Section 404(b) of BIPA provides that those facilities or organizations that are not included in the grandfathering provision at section 404(a) are deemed to comply with the "immediate vicinity" requirements of the existing regulations under § 413.65(d)(7) if they are located not more than 35 miles from the main campus of the hospital or CAH. Therefore, those facilities located within 35 miles of the main provider satisfy the immediate vicinity requirement as an alternative to meeting the "75/75 test" under existing § 413.65(d)(7).

In addition, BIPA provides that certain facilities or organizations are deemed to comply with the requirements for geographic proximity (either the "75/75 test" or the "35-mile test") if they are owned and operated by a main provider that is a hospital with a disproportionate share adjustment percentage greater than 11.75 percent and is (1) owned or operated by a unit of State or local government, (2) a public or private nonprofit corporation that is formally granted governmental powers by a unit of State or local government, or (3) a private hospital that has a contract with a State or local government that includes the operation of clinics of the hospital to ensure access in a well-defined service area to health care services for low-income individuals who are not entitled to benefits under Medicare or Medicaid.

These geographic location criteria will continue indefinitely. While those facilities or organizations treated as provider-based on October 1, 2000 are covered by the 2-year grandfathering provision noted above, the geographic location criteria at section 404(b) of BIPA and the existing regulations at § 413.65(d)(7) will apply to facilities or organizations not treated as provider-based as of that date, effective with the hospital's cost reporting period beginning on or after January 10, 2001. On October 1, 2002, the statutory moratorium on application of these criteria to the grandfathered facilities will expire. However, as we discussed in the May 9, 2002 proposed rule, we are providing for a further delay, as discussed below.

(3) Criteria for Temporary Treatment as Provider-Based

Section 404(c) of BIPA provides that a facility or organization that seeks a determination of provider-based status on or after October 1, 2000, and before October 1, 2002, shall be treated as having provider-based status for any period before a determination is made. Thus, recovery for overpayments will not be made retroactively once a request for a determination during that time period has been made. A request for provider-based status should be submitted to the appropriate CMS Regional Office. Until a uniform application is available, at a minimum, the request should include the identity of the main provider and the facility or organization for which provider-based status is being sought and supporting documentation for purposes of applying the provider-based status criteria in effect at the time the application is submitted. Once such a request has been submitted on or after October 1, 2000, and before October 1, 2002, CMS will treat the facility or organization as being provider-based from the date it began operating as provider-based until the effective date of a CMS determination that the facility or organization is not provider-based.

The provision concerning temporary treatment as provider-based in section 404(c) of BIPA is effective only for requests filed before October 1, 2002. As explained further below, the procedures in new § 413.65(b)(3) will be followed in making any determinations of provider-based status in response to attestations submitted on or after October 1, 2002.

d. The August 24, 2001 and November 30, 2001 Published Regulations

In August 24, 2001 **Federal Register** (66 FR 44672), we proposed to revise the provider-based regulations to reflect the changes mandated by section 404 of BIPA and to make other technical and clarifying changes in those regulations. In the November 30, 2001 **Federal Register** (66 FR 59856), following consideration of public comments received on the August 24, 2001 proposal, we published a final rule that revised the provider-based regulations. However, the only substantive changes in the provider-based regulations were those required by the BIPA legislation.

2. Proposed Changes in the May 9, 2002 Proposed Rule

In the preamble to the proposed rule published on August 24, 2001 (66 FR 44709), we stated our intent to reexamine the EMTALA regulations and, in particular, to reconsider the appropriateness of applying EMTALA to off-campus locations. We announced that we planned to review these regulations with a view toward ensuring that these locations are treated in ways that are appropriate to the responsibility for EMTALA compliance of the hospital as a whole. We also pointed out that, at the same time, we want to ensure that those departments that Medicare pays as hospital-based departments are appropriately integrated with the hospital as a whole.

In addition, since the statutory grandfathering provision in the BIPA legislation remains in effect only until October 1, 2002, many hospital representatives have contacted CMS to request more guidance because they are concerned that their facilities are not in compliance with existing regulations and would not be able to continue billing as provider-based once the grandfathering provision expires. These hospital representatives are also concerned that the organizational and contractual changes needed to meet current provider-based requirements could take several months to complete. Moreover, resolution of some of the issues surrounding the provider-based regulations is needed in order to allow development of a uniform application form to enable the CMS Regional Offices to efficiently process the multitudes of requests for provider-based determinations that we expected as the grandfathering period expires.

To address the provider-based issues raised by the hospital industry and to allow for an orderly and uniform implementation strategy once grandfathering ends, in the May 9, 2002

proposed rule, we proposed the following regulatory changes:

a. Scope of Provider-Based Requirements (§ 413.65(a))

Since publication of the April 2000 final rule, we have received many questions about which specific facilities or organizations are subject to the provider-based requirements. In the "Frequently Asked Questions" posted on the CMS website, we identified a number of facility types for which provider-based determinations would not be made, since such determinations would not affect either Medicare payment or Medicare beneficiary liability or scope of benefits. The regulations at § 413.65(a) were further revised to incorporate the exclusion of these facility types from review under the provider-based criteria. We proposed to further revise § 413.65(a)(1)(ii) to state that provider-based determinations will not be made with respect to independent diagnostic testing facilities that furnish only services paid under a fee schedule, such as facilities that furnish only screening mammography services, as defined in section 1861(jj) of the Act, facilities that furnish only clinical diagnostic laboratory tests, or facilities that furnish only some combination of these services. A provider-based determination is not necessary to resolve payment issues for a facility that furnishes only screening mammography because of a change made by section 104 of BIPA. That legislation, which amended section 1848(j)(3) of the Act, mandates that all payment for screening mammography services furnished on or after January 1, 2000, be made under the Medicare Physician Fee Schedule (MPFS). Under the MPFS methodology, Medicare payment for the service, regardless of the setting in which it is furnished, is set at the lesser of the fee schedule amount or the actual charge; and no Part B deductible applies. Regardless of the setting, Part B coinsurance is assessed at 20 percent of the lesser of the fee schedule amount or the actual charge. Because the status of a facility as provider-based or freestanding would not affect the amount of Medicare or Medicaid payment, the beneficiary's scope of benefits, or the beneficiary's liability for coinsurance or deductible amounts, it is not necessary to make a provider-based determination regarding facilities that furnish only screening mammography. We also proposed to revise § 413.65(a)(1)(ii) by adding a new paragraph (J) to state that we will not make provider-based determinations with respect to departments of providers (for example, laundry or medical records departments) that do not furnish types of health care services for which separate payment could be claimed under Medicare or Medicaid. (Such services frequently are referred to as "billable" services.) As explained more fully below, we would not make determinations with respect to these departments because their status (that is, whether they are provider-based or not) would have no impact on Medicare or Medicaid payment or on the scope of benefits or beneficiary liability under either program.

Despite the previous clarifications described above, providers, associations, and their representatives have continued to state that they are confused as to which facilities or organizations will be the subject of provider-based determinations.

In the May 9, 2002 proposed document, we proposed to further clarify the types of facilities that are subject to the provider-based rules, by making several changes to the definitions of key terms in § 413.65(a)(2). First, we proposed to revise the definition of "department of a provider" to remove the reference to a physician office as being a department of a provider. While a hospital outpatient department, in fact, may furnish services that are clinically indistinguishable from those of physician offices, physician offices and provider departments are paid through separate methods under Medicare and beneficiaries may be liable for different coinsurance amounts. Thus, it is essential to distinguish between these facility types, and we believe avoiding confusion on this issue requires us to remove the reference to a hospital department as a physician office.

We also proposed to revise § 413.65(a)(2) to state that a "department of a provider", "provider-based entity", or "remote location of a hospital" comprises both the specific physical facility that serves as the site of services of a type for which separate payment could be claimed under the Medicare or Medicaid programs, and the personnel and equipment needed to deliver the services at that facility. We proposed this change because we believed it would help to clarify that we would make determinations with respect to entities considered in their role as sources of health care services and not simply as physical locations. We also clarified that we do not intend to make provider-based determinations with respect to various organizational components or units of providers that may be designated as "departments" or "organizations" but do not themselves furnish types of services for which separate payment could be claimed under Medicare or Medicaid. Examples of components for which we would not make provider-based determinations include the medical records, housekeeping, and security departments of a hospital. Such departments do perform functions that are essential to the provision of inpatient and outpatient hospital services, but the departments do not provide health care services for which Medicare or Medicaid benefits are provided under title XVIII or title XIX of the Act, and for which separate payment therefore could be claimed, assuming certification and other applicable requirements were met, to one or both programs. Therefore, neither Medicare or Medicaid program liability nor beneficiary liability or scope of benefits would be affected by the ability or inability of these departments to qualify as "provider-based."

By contrast, Medicare or Medicaid payment (or both) to hospital departments that provide diagnostic or therapeutic radiology services to outpatients, or primary care, ophthalmology, or other specialty services to outpatients are affected by provider-based status, as would beneficiary liability for Medicare coinsurance amounts. Therefore, we would make provider-based determinations for these departments.

Similarly, if two acute care hospitals that have approved graduate medical education (GME) programs were to merge to form a single, multicampus hospital consisting of the main hospital campus and a remote location, it would be appropriate to make a determination as to whether the remote location is provider-based with respect to the main hospital campus. Such a determination would be needed because each hospital with an approved residency training program has its own hospital-specific cap on the number of residents (or FTE cap), its own PRA, and its own Medicare utilization used for purposes of receiving Medicare GME payments. A merger of the two hospitals would aggregate the two hospitals' individual FTE caps into a merged FTE cap under the main hospital's provider number, and would require recalculation of the hospital's PRA and a merging of these entities' respective Medicare utilization, resulting in a level of Medicare GME payment to the merged hospital that could exceed the sum of the payments that would be made to each hospital as separate entities. Thus, a provider-based determination would be appropriate and necessary in such a case, even though payment for services by both facilities,

even if they are not provider-based, would be made under the Medicare acute care hospital inpatient prospective payment system.

In deciding whether to make a provider-based determination with respect to a particular facility, it would not be significant that the facility might have a low rate of Medicare utilization, might be utilized by only Medicare or only Medicaid patients, or might not have admitted any Medicare or Medicaid patients in a particular period. The fact that the facility furnishes types of services that are billable under Medicare or Medicaid, or both, would be sufficient to make a determination appropriate.

We proposed to retain the rules that a department of a provider or a remote location of a hospital (such as, for example, one campus of a multicampus hospital) may not by itself be qualified to participate in Medicare as a provider under the regulations on provider agreements in § 489.2, and the Medicare conditions of participation do not apply to a department as an independent entity. However, we proposed to delete the requirement at § 413.65(a)(2) that such a department may not be licensed to provide services in its own right. Some States require separate licensing of facilities that Medicare would treat as a department of a hospital or other provider. In these States, we would not require a common license. We proposed to retain the provision that, for purposes of Part 413, the term "department of a provider" does not include an RHC or, except as specified in § 413.65(m), an FQHC. (As explained below, existing § 413.65(m) is being redesignated as § 413.65(n) in this final rule.)

Questions have arisen regarding whether the provider-based criteria in § 413.65 are applicable in determining payment for ambulance services. Medicare is converting payment for ambulance services to a fee schedule, as described in a final rule published on February 27, 2002 (67 FR 9100). The ambulance fee schedule is effective April 1, 2001, and involves a transition period. During this transition period, the status of an ambulance supplier as provider-based could influence the amount of Medicare payment. However, the specific provider-based criteria in § 413.65 were not developed for ambulance suppliers, and we believe that many of these criteria could not reasonably be applied to them. Therefore, we did not propose to apply the criteria at § 413.65 to ambulance services.

We note that, in the May 9, 2002 proposed rule, we inadvertently did not make a conforming change to the regulations at § 413.65(a) to state that the provider-based rules do not apply to ambulances. Therefore, we are making this conforming change in this final rule.

Comment: One commenter recommended that all inpatient departments be exempt from the provider-based rules, regardless of whether they are on campus or off campus, since, due to their "very status as inpatient departments, they are necessarily integrated into the operations of the main provider. * * *" Several other commenters recommended that ancillary or other departments located within a hospital (that is, on campus) be deemed to be provider-based and thus not be required to show actual compliance with provider-based criteria.

Response: We do not agree that facilities that treat a patient population made up primarily or entirely of inpatients should necessarily be considered, on that basis alone, to be a fully subordinate and integral component of the main provider. There are instances where a Medicare payment differential exists between a hospital-based inpatient service and a freestanding service. For example, if an institution that primarily provides inpatient care is able to participate in Medicare as a part of a hospital, Medicare payment to the hospital will be made for the full range of inpatient hospital services defined in section 1861(b) of the Act. If the facility is not considered a part of a Medicare-participating hospital, Medicare payment would be made only for a much narrower range of services, such as physical and other therapies, which can be paid in ambulatory care settings. Compliance with the provider-based criteria is also needed to ensure that Medicare payment is made appropriately in merger situations, where the crucial issue is whether a facility is integral and subordinate to another that participates as a hospital. For example, under the TEFRA payment system applicable to psychiatric, children's and cancer hospitals, Medicare payment to the hospital for inpatient services usually is directly affected by the hospital-specific TEFRA target rate. If a particular hospital chooses to reorganize to include a new site that otherwise could participate in Medicare only as a separate hospital or as a remote location or satellite of still another hospital, the amount of payment would be affected. Similarly, for the reasons explained in detail in the May 9, 2002 proposed rule (67 FR 31482), a merger of two hospitals can significantly affect the payments made to them for their GME programs, even when each hospital is paid under the acute inpatient hospital prospective payment system. Under these circumstances, compliance with the provider-based criteria is also needed to warrant the higher payment level that would result.

We also do not agree that location on the main campus of a hospital should be the sole determinant of provider-based status, since hospitals can and frequently do lease space on their campuses to physicians and other providers or suppliers of health services, and these providers or suppliers may have no more connection to or integration into the hospital's operations than the lease agreement and physical proximity. For example, a hospital may lease some of its space to an independent diagnostic testing facility (IDTF) that furnishes radiology services, which are frequently considered by hospitals to be among their ancillary services. Such a facility could be paid significantly more as a provider-based department than as a freestanding facility. Because of this payment difference, we believe it is important that the facility meet standards that establish that it is an integral and subordinate part of the main provider hospital, and thus that the higher payment level associated with provider-based status is warranted. Therefore, we are not revising this final rule to permit on-campus facilities to qualify as provider-based solely because of location.

Comment: One commenter suggested that consolidations of facilities on separate campuses should not be subject to the provider-based requirements, but should be regulated only by the requirements on State licensure, Medicare certification, and Medicare enrollment.

Response: For the reasons explained in the response to the preceding comment, consolidation of facilities under a single provider number frequently has significant implications for Medicare payment levels. In many cases, the amount paid for services of a consolidated facility can be significantly more than the sum of what would be paid to two or more separate facilities for the provision of identical services. Current State licensure and Medicare certification requirements are focused on the protection of patient health and safety, and the determination of whether a facility is part of the main provider is not central to that concern. On the contrary, licensure and certification requirements may be easily manipulated by providers seeking to maximize payment under Medicare or Medicaid

without improving either the quantity or the quality of care furnished. Thus, it is crucial that we establish criteria to ensure that consolidated facilities are truly integral and subordinate to a single main provider.

Comment: Some commenters wrote on behalf of multicampus hospitals that operate under a single provider number and agreement, but include several campuses that are separately licensed by the State. The commenters stated that they have been structured in this way since before the inception of the Medicare program and thus did not adopt their current structures in an effort to maximize GME or DSH payments. The commenters explained that if multicampus hospitals are not exempted from the provider-based requirements, the hospitals would have to either designate one campus as the main campus and rearrange the clinical, financial, and other arrangements between the hospitals in order to comply with the provider-based requirements, or obtain a separate Medicare provider agreement and number for each campus. If the second course were chosen, total Medicare payment to the separate hospitals would be considerably less than what is currently being paid to them as multicampus organizations. Because the hospitals are unwilling to pursue either of the options outlined above, the commenter requested that either all multicampus hospitals be exempted from the provider-based requirements, or that an exemption be created for any such hospitals that have been structured as multicampus hospitals since the beginning of the Medicare program.

Response: We understand the commenter's concern, but for the reasons cited earlier in this preamble believe that it is important to apply the provider-based criteria to multicampus hospitals in which each campus is separately licensed, as well as to those in which all components operate under a single State license. In particular, such an exemption could lead to increased levels of Medicare GME and DSH payments, relative to the amounts payable if the provider-based criteria were applied. In fact, the commenter admitted that Medicare payment to the separate hospitals would be considerably less than what is paid to them as a single but multicampus hospital. We continue to believe it is important to pay for services of hospital facilities as part of a single hospital only when they meet the provider-based criteria we have established. Therefore, we are not adopting this comment.

Comment: One commenter requested more clarification of how the provider-based criteria apply to multicampus hospitals, and to multihospital systems (that is, chain organizations that include two or more hospitals, each of which participates separately in Medicare). The commenter was particularly interested in learning what would be the main campus of a multihospital system, and whether a facility or organization at one location of a multihospital system could be provider-based with respect to another hospital in that system.

Response: If a hospital comprises several sites at which both inpatient and outpatient care are furnished, it will normally be necessary for the hospital to designate one site as its "main" campus for purposes of the provider-based rules. Each of the other sites (referred to in our regulations as "remote locations") would then be expected to meet the provider-based requirements with respect to that main campus. Thus, any facility not located on a hospital's main campus would be considered to be an "off-campus" facility. Hospitals would normally be given considerable discretion in selecting which site is to be the "main" campus for provider-based purposes. In such a case, any outpatient facility also providing services at a "remote location" that are to be billed as services of the hospital would be considered as a potential hospital department for purposes of provider-based status and would be expected to meet the provider-based criteria with respect to the location designated by the hospital as its main campus. However, it is important to note that the provider-based criteria apply to individual hospitals, not to multihospital systems (for example, systems owned and operated by chain organizations). Where such a system exists, its hospitals will participate separately in Medicare, and the provider-based criteria will apply separately to each hospital in the chain. If a facility or organization located on the campus of one hospital in the chain wishes to be treated as part of another, separately participating hospital in the chain, the facility or organization would have to meet the provider-based criteria with respect to that hospital, on the same basis as if the two hospitals were not part of the same chain organization.

Comment: Several commenters stated that, in some areas, it is common for children's hospitals to set up and staff neonatal intensive care units (NICUs) in community hospitals, in order to extend these services into rural areas where they might not otherwise be available. The commenter noted that these units frequently cannot meet the location requirement for provider-based status in § 413.65(e)(3) of the proposed regulations, and asked that the final rule be revised to create a special exception to this requirement, to allow these units to continue to be treated as provider-based once the grandfathering period ends and to permit the creation of new units of the same type.

Response: We understand these commenters' concerns, but note that these units raise serious questions about the appropriate treatment of facilities located at long distances from the main children's hospital that nevertheless claim to be a part of that hospital. While these facilities may have very limited Medicare utilization, they frequently receive substantial amounts of payment under Medicaid, thus making it important to ensure that they are classified and paid appropriately. After considering these issues, we have concluded that it would not be appropriate to waive the location requirement for provider-based status, or make some other ad hoc exception to the provider-based criteria, for these facilities. However, we have explained in the FAQs the inability of units in certain locations to qualify for provider-based status does not preclude States from adopting revisions to their Medicaid plans to provide more generous payment to such units. While we are not making a special exception for NICUs, we recognize the importance of further emphasizing that when a payment difference exists, compliance with the provider-based rules is needed to justify payment for services in a facility as provider-based. Therefore, in this final rule, we are clarifying the regulations at § 413.65(a) to state that the determinations of provider-based status are made for payment purposes.

Comment: Some commenters requested clarification of how the provider-based criteria apply to multicampus hospitals that participate in Medicare under a single provider number but comprise two or more campuses that are physically separate from one another. The commenters were particularly concerned about which campus is to be identified as the main campus and about whether clinics or other facilities located on one campus of a hospital may be considered provider-based with respect to another campus.

Response: We agree that multicampus hospitals present special implementation issues. However, the following general principles will be applied. First, when hospital facilities are dispersed among two or more geographically separate campuses, it will be necessary for one of the campuses to be designated by the hospital as the main campus. Facilities at the other campus(es) would be

considered provider-based only if they meet the provider-based criteria in relation to the main campus. We would normally accept the provider's own selection of a main campus, unless the regional office concludes, in a particular case situation, that the campus selected by the provider clearly does not actually function as the main campus. The location requirements for a facility at a campus other than the main campus would be applied based on the distance between the facility and the main campus. Hospital chain organizations, which include a number of separately certified hospitals, would not be considered multicampus hospitals.

Comment: One commenter stated that the provider-based criteria are being applied under Medicaid only because the same certification standards apply under Medicaid as under Medicare. The commenter also pointed out that States are not required to follow Medicare payment system rules in making payment under their Medicaid programs. The commenter then argued that this State flexibility to determine Medicaid payment means that CMS should prohibit States from applying the provider-based criteria in determining payment under Medicaid.

Response: The commenter is correct in noting that the Medicaid regulations at 42 CFR 440.10 and 440.12 define inpatient and outpatient hospital services, for Medicaid purposes, as services furnished in or by an institution that meets the requirements for participation in Medicare as a hospital. Medicare participation by an institution as a hospital is contingent on the institution's compliance with many participation requirements, not merely the health and safety rules set forth in 42 CFR Part 482. The institution is also required under section 1866 of the Act and regulations at 42 CFR Part 489 to comply with various other statutory and regulatory provisions relating to (among other areas) charges to beneficiaries, maintenance of billing and other records, and the screening and stabilization, or appropriate transfer, of emergency cases. To the extent the hospital is required to comply with the provider-based criteria in Medicare regulations as part of its Medicare hospital participation obligations, the definitions of services in § 440.10 and 440.12 also require that it comply with these requirements for Medicaid purposes.

Regarding the commenter's remarks on State flexibility, we recognize that States are authorized to adopt, through their State plans, payment definitions and methods that differ from those used under Medicare. Thus, the commenter is correct in noting that a State may adopt payment methods that do not differentiate between facilities that meet the provider-based requirement and those that do not. To the extent that States amend their State plans to contain such payment methods, we do not object to these actions. However, we do not believe it would be consistent with State flexibility to prohibit States that wish to apply provider-based criteria in making their payment decisions from doing so. Such a prohibition would not benefit either States or their Medicaid recipients and, on the contrary, could increase State and Federal Medicaid spending unnecessarily. Therefore, we are not making any change in this final rule based on this comment.

Comment: Several commenters noted that Indian Health Service (IHS) and tribal clinics and other facilities meeting the criteria in § 413.65(l) (redesignated as § 413.65(m) in this final rule) are in effect excluded from the scope of the provider-based criteria by the grandfathering provision included in that section. The commenters further noted that under Public Law 93–638, the Indian Self-Determination Act, as amended, tribes have the right to contract for the management of all or a portion of the IHS programs that provide services in their communities. The commenters pointed out that tribal and IHS facilities remain the primary source of health care in many remote rural communities. However, because of the unique IHS and tribal administrative systems, many clinics and other facilities that might lose their grandfathered status under § 413.65(l) (redesignated as § 413.65(m) in this final rule) are not able to meet provider-based criteria. To avoid disrupting the operation of these vital sources of care in remote rural areas, and consistent with the objectives of the Indian Self-Determination Act, the commenters recommended that all clinics and other facilities operated by IHS or tribes should be exempted from the provider-based regulations.

Response: We understand the concern about the need to preserve access to health care by patients using IHS facilities in rural communities. However, we note that existing § 413.65(l) provides grandfathering protection for the facilities in operation when the existing provider-based rules were published, and that section 432 of BIPA amended the Medicare statute to permit payment for physician services in IHS clinics, thus providing an alternate funding source for facilities that become freestanding. Therefore, we do not believe a further change of the kind recommended by the commenter is needed.

Comment: One commenter noted that excluding facilities providing only physical, occupational, or speech therapy to ambulatory patients from the provider-based requirements does not meet CMS' own stated criteria for such exclusions, in cases where those facilities are operated by CAHs. A payment difference based on provider-based or freestanding status would exist in such cases. If such facilities were operated as freestanding they would be paid on a fee schedule basis. However, if they were operated as integral and subordinate parts of CAHs, they would be paid on the same reasonable cost basis as other components of the CAH. The commenter recommended that the exclusion language in § 413.65(a)(1)(ii)(H) be revised to state that the exclusion applies to such facilities other than those which are operated as part of a CAH.

Response: We agree and are revising this final rule to reflect this comment.

Accordingly, we are adopting as final the proposed revision to § 413.65(a)(1)(ii)(G), the addition of § 413.65(a)(1)(ii)(J), and the revisions of the definitions of "Department of a provider," "Provider-based entity" and "Remote location of a hospital under § 413.65(a)(2). In addition, in response to public comments, we are revising existing § 413.65(a)(1)(ii)(H) to clarify that the exclusion of facilities providing only physical, occupational, or speech therapy to ambulatory patients applies to these facilities only if they are not operated as part of a CAH.

b. Further Delay in Effective Date of Provider-Based Rules

As noted earlier, § 413.65(b) was recently revised to reflect the "grandfathering" provision in section 404(a)(1) of BIPA. Under that provision, if a facility was treated as provider-based in relation to a hospital or CAH on October 1, 2000, it will continue to be considered provider-based in relation to that hospital or CAH until October 1, 2002.

To allow hospitals and other facilities the time they need to make contractual and organizational changes to comply with the new rules, and to ensure that CMS Regional Offices and contractors are able to provide for an orderly transition to the new provider-based rules, we believed an additional delay in the effective date of the provider-based criteria is needed. Therefore, in the May 9, 2002 proposed rule we proposed to revise § 413.65(b)(2) to state that if a facility was treated as provider-based in relation to a hospital or CAH

on October 1, 2000, it will continue to be considered provider-based in relation to that hospital or CAH until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. We proposed to further provide that the requirements, limitations, and exclusions specified in § 413.65(d) through (j) (as proposed to be redesignated) will not apply to that hospital or CAH for that facility until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. For purposes of paragraph (b)(2), a facility would be considered as having been provider-based on October 1, 2000, if on that date it either had a written determination from CMS that it was provider-based, or was billing and being paid as a provider-based department or entity of the hospital. We proposed to make the new requirements effective on October 1, 2002, with respect to provider-based status for facilities not qualifying for the grandfathering provision.

Comment: One commenter requested clarification of how the proposed delay in effective date for the facilities grandfathered under section 404(a) of BIPA will be applied. Specifically, the commenter asked whether facilities benefiting from the grandfathering would be able to take advantage of any additional flexibility provided under the final rules before the hospital's first cost reporting period beginning on or after July 1, 2003.

Response: As explained in the preamble to the proposed rule, the purpose of the delayed effective date for grandfathered facilities is to allow more time for any necessary contractual or organizational changes that hospitals or their grandfathered facilities might need to undertake to achieve actual compliance with the provider-based criteria. Under our proposal, this would be accomplished by simply extending the BIPA mandated grandfathering provision until the hospital's first cost reporting period beginning on or after July 1, 2003. To clarify the effect of the delay, we are revising the final rule to specify that the grandfathering provision applies to the requirements, limitations, and exclusions specified in paragraphs (d), (e), (f), (h), and (i) of § 413.65 of this final rule. To the extent a particular grandfathered hospital might benefit from any other changes in paragraphs of § 413.65 other than those listed in the immediately preceding sentence, it would be able to receive that benefit as of October 1, 2002, which is the effective date of any revisions to the other paragraphs.

Comment: Several commenters requested that the grandfathering of facilities treated as provider-based on October 1, 2000 should continue indefinitely, not just until the start of the first cost reporting period on or after July 1, 2003, as we had proposed.

Response: We are providing an extension in the effective date of the provider-based rules for grandfathered facilities until cost reporting periods beginning on or after July 1, 2003, to allow these facilities sufficient time to make any contractual and organizational changes needed to comply with the new rules. However, we do not believe it is appropriate to allow the facilities that were treated as provider-based in the past to continue to be treated that way permanently, without ever having to meet the same requirements as newer facilities. To do so would create a permanent double standard under which some older facilities would continue indefinitely to be rewarded for their previous inappropriate billing. We note that even the statutory provision under section 404(a) of BIPA was set for a limited 2-year time period.

Comment: One commenter suggested that grandfathering be provided for all hospital facilities for which affirmative determinations of provider-based status had been made by CMS (previously, HCFA) before October 1, 2000, or that such facilities be presumed to meet the provider-based criteria in the revised regulations without having to attest to compliance with those criteria, so that any future determination that a facility is not provider-based would be applied on a prospective basis only.

Response: For the reasons noted above, we do not believe a general grandfathering of facilities is appropriate. In addition, the criteria in the program memorandum and instructions in effect before October 1, 2000, differ from the new proposed rules to be effective on October 1, 2002. Therefore, we do not believe it is appropriate to assume that facilities that received a provider-based determination under a prior set of criteria meet the new set of provider-based criteria in this final rule. Regarding the recommendation that any revised determination be made effective on a prospective-only basis, we note that, under § 413.65(c)(2), providers that have received affirmative determinations of provider-based status with respect to facilities or organizations are required to report material changes in the relationships between themselves and any provider-based facility or organization. A provider having a determination of provider-based status will need to comply with this rule and, in particular, as stated in revised § 413.65(l)(1), will need to report any aspect of its ownership or operation of the facility that it reasonably believes might not meet applicable provider-based requirements, to ensure that any redeterminations are made effective only prospectively.

Accordingly, we are adopting as final the proposed revision to § 413.65(b)(2), with a further clarification in response to a comment that the grandfathering provision applies to the requirements, limitations, and exclusions of § 413.65 (d), (e), (f), (h), and (i) only.

c. Revision of Application Requirement

Existing regulations at § 413.65(b)(2) establish an explicit application requirement for all facilities seeking provider-based status, except for grandfathered facilities and those treated as provider-based pending a determination on an application filed on or after October 1, 2000, and before October 1, 2002. Under existing § 413.65(b)(3), a main provider or a facility must contact CMS, and the facility must be determined by CMS to be provider-based, before the main provider bills for services of the facility as if the facility were provider-based, or before it includes costs of those services on its cost report. Many providers and provider representatives have expressed concern that the requirement to file an application will increase paperwork burden for hospitals unnecessarily. In response to these concerns, in the May 9, 2002 proposed rule, we proposed to revise the application requirements as follows:

First, we proposed to delete the existing application requirement under § 413.65(b)(3). We proposed to revise this section to state that except where payment is required to be made under BIPA, as specified in proposed revised § 413.65(b)(2) and (b)(5), if a potential main provider seeks an advance determination of provider-based status for a facility that is located on the main campus of the potential main provider, the provider would be required to submit an attestation stating that its facility meets the criteria in § 413.65(d) and, if it is a hospital, also attest that its facility will fulfill the obligations of hospital outpatient departments and hospital-based entities, as described in proposed § 413.65(g). We also proposed to require the provider to maintain documentation of the basis for its attestations and to make that documentation available to CMS upon request. We noted that, under this proposal, there would no longer be an explicit requirement that a provider-based approval be obtained before a facility is treated as provider-based for billing or cost reporting purposes. It

could benefit the provider to obtain a determination because, under the proposed § 413.65(l)(1) treatment of a facility as provider-based would cease only with the date that CMS determines that the facility no longer qualifies for provider-based status, if the reason the provider-based criteria are not met is a material change in the provider-facility relationship that was properly reported to CMS. By contrast, a provider which did not seek such a determination or obtained a determination but failed to report a material change in its relationship with the facility, could face a partial recovery of past payments. Also, under proposed § 413.65(j) (Inappropriate treatment of a facility or organization as provider-based) a provider that does not seek a provider-based determination and incorrectly bills as such could be subject to the partial recovery of payments for all cost reporting periods subject to reopening in accordance with §§ 405.1885 and 405.1889. We further proposed that if the facility is not located on the main campus of the potential main provider, the provider that wishes to obtain an advance determination of provider-based status would be required to submit an attestation stating that its facility meets the criteria in proposed revised §§ 413.65(d) and (e) and, if the facility is operated as a joint venture or under a management contract, the requirements in proposed §§ 413.65(f) and (h), as applicable. If the potential main provider is a hospital, the hospital also would be required to attest that it will fulfill the obligations of hospital outpatient departments and hospital-based entities described in proposed revised § 413.65(g). The provider seeking such an advance determination would be required to supply documentation of the basis for its attestations to CMS at the time it submits its attestations. We believe the use of an attestation process would strike an appropriate balance between the legitimate interests of hospitals in reducing paperwork and reporting, and the equally legitimate need of CMS to ensure proper accountability for compliance with the qualification requirements for a status that typically leads to a higher level of Medicare or Medicaid payment.

We noted that, under the proposed revisions to the application procedures at § 413.65(b), a hospital would not be explicitly required to submit an application and receive a provider-based determination for a facility before the time at which the hospital may bill for services at that facility as provider-based. However, we indicated that, alternatively, we would consider retaining the existing regulations at § 413.65(b)(2) which state that, except where payment is required to be made under BIPA as specified in proposed revised §§ 413.65(b)(2) and (b)(5), hospitals are explicitly required to submit provider-based applications, and to withhold billing as provider-based until CMS determines that a facility meets the provider-based rules. In the May 9, 2002 proposed rule, we specifically solicited comments on the appropriateness of this or other alternative application procedures.

Comment: Some commenters stated that although it appears that the mandatory application requirement under the existing regulations has been replaced with the voluntary attestation process, the preamble of the May 9, 2002 proposed rule made several references to procedures for applying for provider-based status. The commenters stated that if such references to an application in the final rule must be maintained in order to deal with applications submitted prior to the creation of the attestation process, such references should be clarified accordingly.

Response: While we have proposed to replace the mandatory requirement for provider-based determinations under existing § 413.65(b) with a voluntary attestation process, we note that providers still have the option of obtaining a determination of provider-based status for their facilities, which we encourage. The proposed method for doing so is through the attestation process. Under § 413.65(b)(3), the provider may obtain a determination of provider-based status by submitting an attestation stating that the facility meets the relevant provider-based requirements (depending on whether the facility is located on campus or off campus).

As we stated in the May 9, 2002 proposed rule (67 FR 31481), "Until a uniform application is available, at a minimum, the request should include the identity of the main provider and the facility or organization for which provider-based status is being sought and supporting documentation for purposes of applying the provider-based status criteria in effect at the time the application is submitted." For purposes of this final rule, we are clarifying that, effective October 1, 2002, an attestation of provider-based status has the same effect as a request for provider-based status, in that approval of an attestation would result in a determination that a facility or organization is provider-based. Prior to October 1, 2002, the effective date of the final rule (or, in the case of grandfathered facilities, prior to the start of the provider's first cost reporting period beginning on or after July 1, 2003), the provider would submit a request for provider-based determination (as opposed to an attestation). (Until the effective date of these regulations on October 1, 2002, providers should contact their CMS Regional Offices for information regarding application procedures). For providers wishing to obtain a provider-based determination after October 1, 2002, the providers would submit an attestation to CMS. Accordingly, until a uniform request or attestation form is available, at a minimum, the provider should include the identity of the main provider and the facility or organization for which provider-based status is being sought and supporting documentation for purposes of applying the provider-based status criteria in effect at the time the request or attestation is submitted. The provider must also enumerate each facility and state its exact location (that is, its street address and whether it is on campus or off campus) and the date on which the facility became provider-based to the main provider. Documentation in support of the attestation of provider-based status must be submitted with the attestation for facilities located off campus. Main providers that submitted a request for a provider-based determination after October 1, 2000, but prior to the publication of this final rule, would be protected under section 404(c) of BIPA from recovery of overpayments in periods prior to the date on which CMS determines a facility is not provider-based.

We note that even though we proposed to remove the current general requirement that a determination of provider-based status be obtained, we did not propose to revise paragraph (n) of § 413.65 (redesignated in this final rule as paragraph (o)). That paragraph states that provider-based status cannot be effective before the earliest date on which a request for provider-based status has been made and all requirements of 42 CFR Part 413 have been met. To avoid creating confusion for providers and contractors and to allow the regulations to be implemented properly, we are making a conforming change to paragraph (o) to eliminate any reference to a mandatory application or determination, with one exception. As explained later in this preamble, we also state in § 413.65(o) that if a facility or organization is found by CMS to have been inappropriately treated as provider-based under paragraph (j) for certain time periods, or previously was

determined by CMS to be provider-based but no longer qualifies as provider-based because of a material change occurring during those periods that was not reported to CMS, CMS will not treat the facility or organization as provider-based for payment until CMS has determined, based on documentation submitted by the provider, that the facility or organization meets all requirements for provider-based status under Part 413.

Comment: One commenter stated that the proposed rules do not appear to provide hospitals that submit an attestation with any benefit with respect to recoupment of overpayments. For example, the commenter stated that, under the proposed rule, a provider could submit an attestation and begin providing and billing for provider-based services for years before receiving a determination from CMS that it is not provider-based and consequently be subject to the recovery of payments if CMS later determines that the facility is not provider-based. The commenter requested that a provider that submits a complete attestation not be liable for recovery of overpayments, but rather it should only be improper to bill as provider-based subsequent to a determination by CMS that a facility is not provider-based. Another commenter expressed concerns about possible long delays by CMS in reaching decisions on attestations and recommended that CMS require its regional offices to approve or disapprove provider-based status for each facility within 60 days after having received the attestation regarding that facility. Another commenter stated that it would like a written response to the attestations and accompanying documentation from CMS for the providers to keep on file.

Response: We do not agree that it would be appropriate to allow a provider that has attested inaccurately to being provider-based to retain payments made to the provider as if the facility were in full compliance with provider-based criteria. However, CMS would not recover all past payments for periods subject to reopening, but instead would recover only the difference between the amount of payment that actually was made since the date the complete request for a provider-based determination was submitted and the amount of payments that CMS estimates should have been made in the absence of compliance with the provider-based requirements. At the time that CMS determines that a facility that submitted a complete attestation is actually not provider-based, payment would continue for up to 6 months but only at a reduced rate as described at § 413.65(j)(5).

Regarding the timeliness of action on attestations, we agree that providers should not be subject to long delays before action is taken. In response to this and other comments requesting further information on the procedures CMS will follow when an attestation is received, we are revising § 413.65(b)(3) by adding new paragraphs (iii) and (iv). In new paragraph (b)(3)(iii), we are clarifying that whenever a provider submits an attestation of provider-based status for an on-campus facility or organization, CMS will send the provider written acknowledgement of receipt of the attestation, review the attestation for completeness, consistency with the criteria in § 413.65, and consistency with information in the possession of CMS at the time the attestation is received, and make a determination as to whether the facility is provider-based. In new paragraph (b)(3)(iv), we are clarifying that whenever a provider submits an attestation of provider-based status for an off-campus facility or organization, CMS will send the provider written acknowledgement of receipt of the attestation, review the attestation for completeness, consistency with the criteria in § 413.65, consistency with the documentation submitted with the attestation, and consistency with information in the possession of CMS at the time the attestation is received, and make a determination as to whether the facility is provider-based.

We also will work with our regional offices and intermediaries as necessary to ensure that providers that submit attestations receive a prompt response. However, because of workload considerations and uncertainty about the volume of attestations that may be received, we have not yet specified a timeframe for completion of action on an attestation.

Comment: One commenter recommended that if CMS finds an attestation to be incomplete, the provider be given an additional 30 days to submit supplementary information in support of the attestation.

Response: We agree that providers who inadvertently omit needed information from an attestation should be given a reasonable opportunity to supplement that information. However, at the same time, we agree with the commenters who pointed out the importance to the provider of receiving a timely decision on whether a particular facility qualifies for provider-based status. If CMS were to delay a decision for a provider that repeatedly submitted incomplete attestations, this would prevent a timely response and could defeat the purpose of the attestation procedure. We intend to develop further implementing instructions and procedures that will strike a reasonable balance between the need for additional information and the need for a timely decision.

Comment: One commenter requested that we reiterate that, since providers are no longer required under the proposed revised regulations to submit an attestation or an application for provider-based status as a precondition to billing for provider-based services, CMS would only consider a provider to be billing inappropriately if the provider was wrong in its conclusion that it meets the provider-based requirements. The commenter also asked that we clarify that facilities grandfathered under BIPA also need not submit an attestation, even at the expiration of the grandfathering period. Facilities grandfathered by BIPA will be treated the same as all other facilities on the date that their grandfathering period expires, which is the start of the cost reporting periods that begin on or after July 1, 2003.

Response: The commenter is correct in the view that providers, regardless of whether they are grandfathered under BIPA, are not obligated to submit attestations or applications for provider-based status before they begin billing as provider-based, and that a provider would only be considered to be billing inappropriately if the facility actually did not meet the relevant provider-based rules. However, we note that if a provider does not submit a complete attestation of provider-based status, and CMS subsequently determines that the provider is billing inappropriately, the provider would be subject to recovery of overpayments under § 413.65(j)(ii) for services at that facility(ies) for all prior cost reporting periods subject to reopening in accordance with §§ 405.1885 and 405.1889.

Comment: One commenter noted that all hospitals, even those previously subject to grandfathering, will be subject to the new regulations as of their first cost reporting periods starting on or after July 1, 2003. In view of this obligation, the commenter believed that it is unnecessary for attestations to be submitted for any facilities that are located on the campus of the hospital that claims them as provider-based. The commenter also recommended that if CMS later determines that the facility does not meet the provider-based criteria, CMS should not recover any past payments attributable to improper billing, but apply its determination only prospectively.

Response: As explained more fully earlier in this preamble, under these final rules, while the provider-based criteria must be met, no provider is required to submit an attestation for any facility as a precondition to billing for its services as a provider-based facility. This is the case even where the facility is located on the main campus of a hospital. However, we believe an attestation has value, in that a provider that makes such an attestation presumably does so after having reviewed the provider-based criteria and assessed a particular facility's structure and operations in relation to them. Moreover, the attestation relates to compliance with only a minimal level of integration, and does not require any supporting documentation. Therefore, we do not believe that providing an attestation will require an unreasonable level of effort from the provider.

Comment: One commenter recommended that off-campus facilities be required to submit attestations of compliance with the provider-based criteria before the date on which the revised regulations become effective for them. (For grandfathered facilities, §§ 413.65(d), (e), (f), (h), and (i) of the revised regulations would become effective for the hospital's first cost reporting period starting on or after July 1, 2003.) The commenter also recommended that if these facilities are later found not to have met the provider-based requirements, any determination that they are not provider-based should be applied only prospectively.

Response: As explained in response to a previous comment, we cannot agree that a provider should be allowed to retain payments made as if a facility were provider-based after a determination has been made that the provider-based criteria were not met. Therefore, this final rule provides for recovery of past payments to the extent necessary to make those payments relate more closely to what would have been paid if the facility's services had been billed on a freestanding basis.

Comment: One commenter expressed approval of our proposal under which supporting documentation would not have to be submitted with the attestation for on-campus facilities. The commenter suggested that the paperwork burden for providers could be further reduced if the regulations were revised to eliminate the need for supporting documentation for attestations regarding off-campus facilities or organizations as well. Another commenter stated that hospital-licensed community health centers frequently are located within a few miles of the main provider-campus and are closely integrated with it. The commenter believed these facilities should not be required to submit supporting documentation.

Response: We understand and share the commenters' interest in reducing the paperwork burden on providers. However, this important objective must be balanced against the equally important need to ensure proper accountability by providers for the status of the facilities or organizations for which they are claiming provider-based status. Determining whether an off-campus facility is truly integrated with a main provider is more difficult than for a facility located on the main campus of a provider, and this is why there are additional requirements for off-campus facilities to demonstrate provider-based status. In view of this, we believe it is reasonable to require that an attestation regarding an off-campus facility, including hospital-licensed community health centers, be accompanied by supporting documentation that clearly shows the basis for the attestation.

Comment: One commenter noted that proposed § 413.65(b)(3)(i) requires a provider that makes a provider-based attestation with regard to an on-campus facility to make documentation supporting that attestation available to CMS upon request. The commenter recommended that the regulation be revised to require that the supporting documentation also be made available to CMS contractors (fiscal intermediaries and carriers) upon request. *Response:* We agree, and are revising the final rule accordingly.

Comment: One commenter asked CMS to provide guidance as to the type of documentation that is required to be submitted with an attestation for an off-campus facility. Another commenter suggested that before a uniform application is available, providers should be required to submit information regarding physical location, a contact person, and the date the facility became provider-based to the main provider.

Response: As stated above, until a uniform attestation form is available, at a minimum, the attestation should include the identity of the main provider and the facility(ies) or organization(s) for which provider-based status is being sought and supporting documentation for purposes of applying the provider-based status criteria in effect at the time the application is submitted. The provider must also enumerate each facility and state its exact location (that is, its street address and whether it is on campus or off campus) and the date on which the facility became provider-based to the provider. We plan on issuing further guidance in program instructions after publication of this final rule.

Comment: One commenter noted CMS' authority to terminate payment prospectively if a provider fails to provide all necessary information as part of the continuation of payment provisions under § 413.65(j)(5). Given this authority, and because the commenter believed it will be difficult for providers to know what constitutes a complete attestation, the commenter recommended that CMS provide the opportunity for providers to supplement their original submissions with additional information within 30 days of receipt of notice from CMS that the submission is incomplete.

Response: Under § 413.65(b)(3), a complete request (or attestation) is one that includes all information needed to permit CMS to make a determination. We have stated above that we plan to issue further guidance as to what information should be included in an attestation. However, we note that, under § 413.65(j)(5), a provider must notify CMS in writing within 30 days of the date that CMS issues its denial of provider-based status, of whether the provider intends to seek a determination of provider-based status for the facility or whether the practitioners will be seeking to enroll to bill Medicare or Medicaid for services at that location as a freestanding facility. If the provider notifies CMS of its intentions within 30 days, the provider has up to 6 months to take whatever steps are necessary to comply with the relevant rules, whether that means providing CMS with supplemental documentation or making changes to meet the regulatory requirements (for example, a provider is renegotiating its management contracts). Therefore, we believe it is unnecessary to add an additional 30 days to the interim period in which payment continues at a reduced rate.

Comment: One commenter asserted that if CMS has concerns about the status of on-campus facilities, it should be incumbent on CMS to initiate an investigation and to provide notice to the provider and opportunity for the facilities to fix any discrepancies prior to losing provider-based status. The commenters added that it is still unclear whether every service on the hospital's campus would need to submit an attestation, or if one attestation is sufficient to cover all on-campus facilities. Some commenters also asked whether, and in what timeframe, these sites will receive a written response from CMS.

Response: We do not agree with this commenter's suggestion that providers that have been inappropriately treating certain facilities as provider-based and have not attempted to obtain a provider-based determination should be protected from recovery of past overpayments. However, we note that § 413.65(j)(5) of this final rule would allow such a provider up to 6 months of continued payment, at an adjusted rate, to meet applicable billing requirements.

In regard to the commenter's request for clarification concerning whether every service on the hospital's campus would need to submit an attestation, or if one attestation is sufficient to cover all on-campus facilities, we emphasize that the provider-based rules do not apply to specific services; rather, these rules apply to facilities as a whole. That is, the facility in its entirety must be a subordinate and integrated part of the main provider. For example, a provider may have several outpatient facilities, some located on campus and some located off campus, yet each facility as a whole must meet the applicable rules for provider-based status. However, a main provider would not need to submit a separate application for each one of its facilities for which a provider-based determination is sought. A provider may attest in a single application package that each one of its facilities in which it intends to bill for services as if the facility is provider-based meets the applicable provider-based rules under § 413.65. For those facilities that are located on campus, no documentation is required to be submitted with the attestation. Documentation must be submitted for those facilities located off campus. However, we are requiring that as part of its attestation, the main provider enumerate each facility and state its exact location (that is, its street address and whether it is on campus or off campus).

As noted earlier, the commenters also asked whether, and in what timeframe, a provider that submits an attestation will receive a written response from CMS. While we are making revisions in these final rules to provide more information about the actions CMS will take in response to such an attestation, at this time, due to the uncertainty of the volume of requests that will be submitted by providers, we cannot state an exact timeframe in which the provider-based determinations will be made for on-campus or off-campus facilities. Each attestation will be received and processed by the appropriate CMS Regional Office (or fiscal intermediary) and will be reviewed as soon as possible.

Comment: One commenter asked if a "re-attestation" is required after a certain period of time.

Response: Just as providers are no longer explicitly required to submit an initial attestation, there is also no explicit requirement for hospitals to re-attest that their facilities continue to meet the provider-based requirements. However, we note that, under proposed § 413.65(k) (revised as § 413.65(l) in this final rule), if CMS determines that a facility that had previously been determined to be provider-based no longer qualifies for provider-based status, and the failure to qualify for provider-based status results from a material change in the relationship between the main provider and the facility that the main provider *did* report to CMS, treatment of the facility as provider-based would cease with the date that CMS determines that facility no longer qualifies for provider-based status. Conversely, if a main provider *did not* report a material change to CMS, the main provider will be subject to recovery of overpayments as described under § 413.65(j)(1)(ii).

Comment: One commenter stated that the use of the term "advance determination" is confusing because the rule does not provide for an advance determination of provider-based status.

Response: We agree with the commenter and are removing all references to "advance" used in connection to provider-based determinations from this final rule. We note that, under proposed § 413.65(k) (revised as § 413.65(l) in this final rule), a provider that submits a complete attestation of compliance with the provider-based status requirements for a facility that has not previously been found by CMS to have been inappropriately treated as provider-based, may bill and be paid for services of the facility as provider-based from the date of its attestation of provider-based status until the date that CMS determines that the facility is not provider-based.

Accordingly, we are adopting as final the proposed changes to § 413.65(b)(3) with the following modifications: We are revising § 413.65 by adding new paragraphs (b)(3)(iii) and (iv) to include further information on procedures for submitting and processing attestations; removing references to the term "advance" in connection with determinations in paragraphs (b)(3)(i) and (ii); and adding language under paragraph (b)(3)(i) regarding the availability of documentation to contractors.

d. Requirements Applicable to All Facilities or Organizations

Under existing § 413.65, all facilities seeking provider-based status with respect to a hospital or other main provider must meet a common set of requirements. These include requirements relating to common licensure (paragraph (d)(1)), operation under the ownership and control of the main provider (paragraph (d)(2)), administration and supervision (paragraph (d)(3)), integration of clinical services (d)(4)), financial integration (paragraph (d)(5)), public awareness (paragraph (d)(6)), and location in the immediate vicinity of the main provider (paragraph (d)(7)). (In addition, as described more fully below, specific rules applicable to all facilities rule out provider-based status for facilities operated as joint ventures by two or more providers (paragraph (e)) and limit the types of management contracts that facilities seeking provider-based status may operate under (paragraph (f)).)

Since publication in final of the existing provider-based rules in April 2000, hospitals and other providers have expressed concern that the requirements outlined above are overly restrictive and do not allow them enough flexibility to enter into appropriate business arrangements with other facilities. We understand these concerns, and agree that Medicare rules should not restrict legitimate business arrangements that do not lead to abusive practices or disadvantage Medicare beneficiaries. At the same time, we believe our existing rules provide a high level of assurance that a facility complying with them is, in fact, an integral and subordinate part of the facility with which it is based, and do not accord provider-based status to facilities that are not integral and subordinate to a main provider, but in fact have only a nominal relationship with that provider.

After considering all comments received on these issues, we believe that further changes in the provider-based rules would be appropriate. In particular, we agree with those who argue that a facility's or organization's location relative to the main campus of the provider is relevant to the integration that is likely to exist between the facility or organization and the main provider. For example, if a facility or organization is located on the main campus of a provider, is operated under the main provider's State license, is medically and financially integrated with that provider, and is held out to the public and other payers as a part of that provider, we believe the necessary

degree of integration of the facility or organization into the main provider can be assumed to exist. We also are concerned that further prescribing the types of management contracts or other business arrangements that may exist between the main provider and the facility or organization would unnecessarily restrict its flexibility to establish cost-effective agreements without significantly enhancing the integration of the facility or organization into the main provider. Therefore, in the May 9, 2002 proposed rule, we proposed to simplify the requirements applicable to facilities or organizations located on the campus of the main provider (as campus is defined in existing regulations at § 413.65(a)(2)). Under our proposal, all facilities seeking provider-based status, including both on-campus and off-campus facilities, would be required to comply with the existing requirements regarding licensure, clinical services integration, financial integration, and public awareness. (These requirements are currently codified at §§ 413.65(d)(1), (d)(4), (d)(5), and (d)(6) and were proposed to be redesignated as paragraphs (d)(1) through (d)(4), respectively, of § 413.65.)

With respect to financial integration, existing regulations at § 413.65(d)(5) require that the financial operations of the facility or organization be fully integrated within the financial system of the main provider, as evidenced by shared income and expenses between the main provider and the facility or organization. The regulations also require that costs of a provider-based facility or organization be reported in a cost center of the provider, and that the financial status of any provider-based facility or organization be incorporated and readily identified in the main provider's trial balance.

Some hospital representatives have questioned the appropriateness of requiring that the costs of a remote location of a hospital be reported in a single cost center, noting that such costs ordinarily would appear in multiple cost centers of the main provider, with (for example) employee health and welfare costs of the remote location being included in the corresponding cost center of the main provider. In recognition of this concern, in the May 9, 2002 proposed rule, we proposed to revise the requirement to state that the costs of a facility or organization that is a hospital department must be reported in a cost center of the provider, and that costs of a provider-based facility or organization other than a hospital department must be reported in the appropriate cost center or cost centers of the main provider.

Paragraph (d) of § 413.65 was proposed to be retitled "Requirements applicable to all facilities or organizations" and, as indicated by its revised title, would set forth those core requirements that any facility or organization would have to meet to qualify for provider-based status.

We proposed to delete from this paragraph (d) the requirements in existing paragraphs (d)(2) and (d)(3) relating to operation under the ownership and control of the main provider and administration and supervision because we proposed to no longer apply these requirements to on-campus facilities or organizations. These requirements would be moved to paragraph (e) as described below to reflect the proposed limitation of their applicability to off-campus departments. The core requirements for all facilities or organizations, including facilities located on campus, also would not include the requirement regarding location in the immediate vicinity of the main provider (existing § 413.65(d)(7)). Because any facilities or organizations located on the campus of the main provider automatically meet the requirement regarding location in the immediate vicinity (existing § 413.65(d)(7)), the requirement is only of relevance to off-campus facilities or organizations. For clarity, we proposed to relocate the requirement to paragraph (e) as described below.

We also proposed to require, in paragraph (d)(5) of § 413.65, all hospital outpatient departments and hospital-based entities, including those located on campus and those located off the campus of the main provider hospital, to fulfill the obligations currently codified and proposed to be retained at § 413.65(g) in order to qualify for provider-based status. (Fulfillment of these obligations is currently required under § 413.65(g).) As explained further below, we also proposed other changes to paragraph (g).

We did not receive any comments on these proposed changes. Therefore, in this final rule, we are adopting the proposed changes as final.

e. Additional Requirements Applicable to Off-Campus Facilities or Organizations

We recognize that facilities or organizations located off the main provider campus may also be sufficiently integrated with the main provider to justify provider-based designation. However, the off-campus location of the facilities or organizations may make such integration harder to achieve than for on-campus facilities or organizations, and such integration should not simply be presumed to exist. Therefore, to ensure that off-campus facilities or organizations seeking provider-based status are appropriately integrated, in the May 9, 2002 proposed rule, we proposed to retain certain requirements to demonstrate integration that we proposed to remove for on-campus facilities or organizations. These requirements were set forth in proposed new § 413.65(e). The requirements set forth in proposed paragraphs (e)(1), (e)(2), and (e)(3) included the requirements on operation under the ownership and control of the main provider (existing § 413.65(d)(2)), administration and supervision (existing § 413.65(d)(3)), and location (existing § 413.65(d)(7)).

We did not receive any comments on these proposed changes. Therefore, in this final rule, we are adopting the proposed changes as final.

f. Joint Ventures

Consistent with our views as expressed earlier in this preamble regarding the assumption that a higher degree of integration can be presumed for on-campus facilities or organizations and in recognition of the need to promote reasonable cooperation among providers and avoid costly duplication of specialty services, in the May 9, 2002 proposed rule, we proposed to revise the regulations on joint ventures (currently set forth under § 413.65(e)) to limit their scope to facilities or organizations not located on the campus of any potential main provider. Specifically, we proposed to redesignate § 413.65(e) as § 413.65(f) and revise it to state that a facility or organization that is not located on the campus of the potential main provider cannot be considered provider-based if the facility or organization is owned by two or more providers engaged in a joint venture. We also proposed to make minor changes to the second sentence of the redesignated paragraph (f) to clarify its meaning.

Comment: One commenter noted that proposed § 413.65(f) states that facilities or organizations operated by two or more providers engaged in a joint venture cannot be considered provider-based if they are not located on the campus of the potential main provider. The commenter believed that the rule would be more easily understood if paragraph (f) were revised to state that a facility or organization owned by two or more providers engaged in a joint venture cannot be considered provider-based unless it is located on the campus of at least one of the providers engaged in the joint venture.

Response: We agree that clarification of the joint venture requirements is needed. Therefore, in this final rule we are revising § 413.65(f) to clearly state that, in order for a facility or organization operated as a joint venture to be considered provider-based, it must (1) be partially owned by at least one provider; (2) be located on the campus of a provider who is a partial owner; (3) be provider-based to that one provider whose campus on which the facility or organization is located; and (4) meet all of the requirements applicable to all provider-based facilities and organizations in § 413.65(d). Therefore, to be treated as provider-based, the facility operated as a joint venture must be provider-based to the provider whose campus on which the facility is located, regardless of whether that provider is the majority owner.

For example, if Hospital A owns 60 percent of Facility C and Hospital B owns 40 percent of Facility C, but Facility C is located on the campus of Hospital B, Facility C may only be provider-based to Hospital B.

Comment: One commenter asked if the provider where the service is located has to be the billing provider of the joint venture. The commenter also had questions about the rules concerning public awareness and other criteria as they relate to a joint venture service. The commenter asked whether the facility had to advertise as a joint venture, as a service of the provider where the site is located, or as a service of the billing provider.

Response: As we explained in the response to the previous comment, the facility owned by a joint venture must be provider-based to the provider whose campus on which the facility is located, regardless of whether that provider is the majority owner. The main provider does not have to advertise as a joint venture, but as a facility that is provider-based to the main provider. Accordingly, the services in the facility would be billed using the provider number of the provider whose campus on which the facility is located. (The facility cannot, of course, be provider-based with respect to both hospitals.) In addition, the facility owned by a joint venture must also meet all the requirements applicable to all provider-based facilities in § 413.65(d).

Comment: Some commenters requested that CMS allow facilities owned by a joint venture but not located on a hospital's campus to be considered provider-based. The commenters stated that joint ventures among and between hospitals in rural areas greatly help to improve access to care.

Response: While it is not our intent to limit access to care, we continue to believe that facilities owned by joint ventures that are not located on a main provider's campus do not qualify as provider-based. Thus, we are not adopting the commenter's request.

Accordingly, we are adopting as final the proposed § 413.65(f), with clarifying changes to the criteria for being determined a joint venture as discussed under the responses to comments.

g. Clarification of Obligations of Hospital Outpatient Departments and Hospital-Based Entities

Existing regulations impose specific obligations for hospital outpatient departments and hospital-based entities, but do not specify the sanction that applies if the facility or organization does not fulfill its obligations. To clarify policy on this issue and emphasize the importance of compliance with the requirements in this area, in the May 9, 2002 proposed rule, we proposed to revise existing § 413.65(g) to state that to qualify for provider-based status in relation to a hospital, a facility or organization must comply with these requirements. In regard to these obligations, we proposed to make three changes in existing § 413.65(g). First, we proposed to revise paragraph (g)(1) by deleting the second sentence of that paragraph. In paragraph (g)(2), we proposed to delete the reference to site-of-service reductions and instead refer to more accurately determined physician payment amounts, in order to more accurately describe how payment under the physician fee schedule is determined. In addition, we proposed to revise the first sentence of paragraph (g)(7) to clarify that the notice requirements in it do not apply where a beneficiary is examined or treated for a medical condition in compliance with the antidumping rules in § 489.24. We believed that this clarification was needed because we believe it would be a violation of the antidumping requirements if examination or treatment required under § 489.24 was delayed in order to permit notification of the beneficiary or the beneficiary's authorized representative. Further, we proposed to revise § 413.65(g)(7) to state that notice is required once the beneficiary has been appropriately screened and the existence of an emergency has been ruled out or the emergency condition has been stabilized.

We did not receive any comments on these proposed changes to § 413.65(g)(2) and (g)(7). Therefore, in this final rule, we are adopting the proposed changes as final

With regard to the proposed changes to § 413.65(g)(1), although we stated above that we are planning to finalize EMTALA policy proposed on May 9, 2002 in a separate document to be published shortly, we are adopting as final the proposed change concerning the applicability of EMTALA to provider-based entities located on the hospital main campus. Currently, under § 413.65(g)(1), if any individual comes to any hospital-based entity (including an RHC) located on the hospital main campus and a request is made on the individual's behalf for examination or treatment of a medical condition, the entity must comply with the antidumping rules at § 489.24. We stated in the proposed rule (67 FR 31477) that, since provider-based entities, as defined in § 413.65(b), are not under the certification and provider number of the main provider hospital, this language, read literally, would appear to impose EMTALA obligations on providers other than hospitals, a result that would not be consistent with section 1867 of the Act, which restricts EMTALA applicability to hospitals. To avoid confusion on this point and the extension of EMTALA requirements to other nonhospital providers, we are clarifying at § 413.65(g)(1) that EMTALA applies in this scenario to only those departments on the hospital's main campus that are provider-based. Accordingly, EMTALA does not apply to provider-based entities (such as RHCs) that are either on or off the hospital campus.

Because we received no public comments on this proposed clarification on the applicability of EMTALA to provider-based entitles, we are adopting as final this one change at § 413.65(g)(1) by deleting the second sentence at existing § 413.65(g)(1) that addresses this policy. However, we note again that in this final rule we are not adopting other clarifications in the proposed rule concerning application of EMTALA to provider-based departments, on or off the campus, or any other proposals concerning EMTALA. We received over 600 pieces of correspondence on these subjects. In order to give proper consideration to these comments, we plan to issue a final policy on the EMTALA proposals in a separate document.

h. Management Contracts

Under existing regulations, facilities or organizations operated under management contracts may be considered provider-based only if they meet specific requirements in § 413.65(f) (proposed in the May 2002 proposed rule to be redesignated as § 413.65(h)).

In particular, staff of the facility or organization, other than management staff, may not be employed by the management company but must be employed either by the provider or by another organization, other than the main provider, which also employs the staff of the main provider. Under existing regulations, these requirements apply equally to on-campus and off-campus facilities or organizations.

Consistent with our intent to simplify provider-based requirements for on-campus facilities or organizations, we proposed to restrict the applicability of proposed redesignated paragraph (h) to off-campus facilities or organizations. In addition, we proposed two additional changes that we believe are needed to respond to questions that are raised frequently about the regulation. First, we proposed to specify that a facility or organization operated under a management contract may be considered provider-based only if the main provider (or an organization that also employs the staff of the main provider and that is not the management company) employs the staff of the facility or organization who are directly involved in the delivery of patient care, except for management staff and staff who furnish patient care services of a type that would be paid for by Medicare under a fee schedule established by regulations at 42 CFR Part 414. We did not propose to specify who may employ other support staff, such as maintenance or security personnel, and who are not directly involved in providing patient care, nor did we propose to require licensed professional caregivers such as physicians, physician assistants, or certified registered nurse anesthetists to become provider employees. We also proposed to revise the regulations to clarify at § 413.65(h)(2) that so-called "leased" employees (that is personnel who are actually employed by the management company but provide services for the provider under a staff leasing arrangement) are not considered to be employees of the provider for purposes of this provision.

Comment: One commenter supported the proposal eliminating restrictions on management contracts and joint ventures for on-campus facilities. The commenter also supported the modification to the management contract rules applicable to off-campus facilities that requires the main provider to employ only those staff who are directly involved in the delivery of patient care, other than staff who may be paid under the Medicare fee schedule, management staff, and other support staff. Another commenter recommended that CMS limit the management contract restrictions for off campus facilities by allowing the management company to employ at least some of the patient care staff at the facility, as long as the facility remains integrated with, and under the control of, the main provider.

Response: We agree with the commenter who stated that it is appropriate to require the main provider to employ only those staff who are directly involved in the delivery of patient care, other than staff who may be paid under the Medicare fee schedule, management staff, and other support staff. We considered the comment suggesting that the regulations be further changed to allow at least some of these staff to be provided under a management contract. However, we are not adopting this change. We note that the revisions in the proposed rule would have significantly relaxed the requirements relating to management contracts by restricting the scope of those provisions to off-campus facilities and by expanding the range of services that may be furnished under management contracts in those facilities. Under our proposal, even if only the services described in this comment would have to be furnished by the provider, the provider would be permitted to bill as if it delivered the services itself. If we were to further weaken the management contract requirements, this would remove any effective control on such contracts, thereby allowing the provider to claim provider-based payment for a facility with which it has only a contractual relationship. We believe such a tenuous connection between the provider and the facility does not warrant payment for the facility's services as services of an "integral and subordinate" part of the provider. Therefore, we are not adopting this comment.

Comment: One commenter recommended that inpatient facilities be exempted from the management contract requirements in proposed § 413.65(h).

Response: We note that our proposed rule accomplished much of what the commenter recommended, in that it would exempt on-campus facilities, including those facilities that treat a patient population made up largely or entirely of inpatients, from the management contract requirements in § 413.65(h). We are adopting this proposal without change in the final rule. However, for the reasons discussed earlier in responding to comments on the scope of the provider-based requirements, we do not believe it would be appropriate to exclude off-campus facilities and organizations from the management contract requirements.

Comment: One commenter recommended that CMS regional offices be authorized to exempt facilities or organizations from the management contract requirements on a case-by-case basis, depending on the circumstance in each case.

Response: We agree that regional offices need to exercise judgment in application of the criteria, but do not agree that the exercise of that judgment should include discretion to entirely waive applicability of a requirement. This could lead to wide variations in the applicability of the provider-based criteria in different areas of the country. Therefore, we are not making any change in the final rule based on this suggestion.

Comment: Some commenters requested clarification of the relationship between provision of services under management contracts and under arrangements of the kind described in section 1861(w)(1) of the Act. The commenters further recommended that proposed § 413.65(i), which states that a facility or organization cannot qualify for provider-based status if all services at the facility are furnished under arrangements, be revised so that it does not apply to on-campus facilities. The commenters expressed concern that if that change is not made, management contracts for on-campus facilities or organizations that are permitted under proposed §§ 413.65(d) and (h) would nevertheless be prohibited by § 413.65(i).

Response: Generally, we believe there is a substantial difference between the use of management contracts to obtain some or all input services needed to operate a health care facility, including not only management but professional and other staffing, security, maintenance, other support services, and the use of section 1861(w)(1) arrangements by a provider to obtain specialized health care services that it does not itself offer, and that are needed to supplement the range of services that the provider does offer its patients. In the first situation, it is possible that all or virtually all services needed to operate a facility could be obtained under contract, resulting in nothing more than a nominal connection between the facility and the provider that claims it as an integral and subordinate part. To prevent a facility operated in this way from inappropriately claiming to be part of a provider, reasonable controls on management contracts are needed. In the latter case, a provider may

legitimately obtain limited specific services under arrangements without sacrificing its ability to function independently as a provider and directly furnish care to its patients.

In this context, we would agree with the commenter that a provider that operates a facility that qualifies legitimately as provider-based may choose to obtain some specialized services for its patients under arrangements without needing to meet the management contract requirements of § 413.65(h) with respect to each individual service. As noted above, these requirements apply to facilities, not to individual services. However, we continue to believe it would be inappropriate for a facility, whether located on or off campus, to evade the provider-based requirements by claiming to provide all of its services under arrangements. Therefore, we are not making further changes to § 413.65(i).

Comment: One commenter stated that CMS' intentions were unclear in the proposed regulations at § 413.65(h)(1) that state, "Leased employees (that is, personnel who are actually employed by the management company but provide services for the provider under a staff leasing or similar agreement) are not considered to be employees of the provider for purposes of this paragraph." The commenter added that it is unclear if this provision prohibits arrangements under which a management company employs clinical staff paid under a fee schedule that are subsequently leased to the main provider to provide services in the provider-based facility. The commenter suggested that we clarify this language and, in the final rule, state that the exception to the main provider employment requirement for patient care staff that furnish services paid for under a fee schedule also applies to leased employees from a management company.

Response: In the proposed rule, we stated that the main provider is required to employ only those staff who are directly involved in the delivery of patient care other than staff who may be paid under the Medicare fee schedule, management staff, and other support staff. Therefore, the main provider may not use "leased" employees if those employees are directly involved in delivering patient care and cannot be paid under the Medicare fee schedule. However, this provision would *not* prohibit arrangements under which a management company employs clinical staff who may be paid under a fee schedule that are leased to the main provider to provide services in the provider-based facility. The management company may otherwise employ and provide the staff who furnishes patient care services that may be paid for by Medicare under a fee schedule. Accordingly, as the commenter recommended, we are clarifying the regulations text to state that, other than staff that may be paid under a Medicare fee schedule, the main provider may not utilize the services of leased employees who are directly involved in patient care in off-campus facilities.

Comment: One commenter stated that the proposed regulation that would require the main provider to employ all staff who "are directly involved in the delivery of patient care, except for management staff * * *" is confusing, because in many instances, managers are involved both in management activities and in furnishing direct patient care.

Response: If these managers are also medical professionals who may receive payment for their patient care services under a Medicare fee schedule, they do not need to be employed directly by the main provider.

Comment: Some commenters stated that the prohibition of off-campus management contracts will have harmful consequences, particularly in areas where private hospitals have partnerships with local government to operate off-campus psychiatric facilities in remote, underserved areas. The commenter explained that the county government manages an off-campus psychiatric facility as an inpatient psychiatric unit of a private hospital, and that county employees provide all patient care services in the unit. Although the facility is currently grandfathered under section 404(a) of BIPA, the facility will be unable to qualify for provider-based status when the grandfathering period expires, resulting in a loss of essential mental health services to the surrounding communities. The commenters requested that counties that have partnerships with private entities in order to ensure access to care and meet all other provider-based criteria be exempted from the management contract prohibition.

Response: While we are sympathetic to the needs of the medically underserved, we do not believe the management contract requirements to be overly restrictive. Rather, we believe the employment of the staff of an off-campus facility is a significant factor in determining the degree to which a facility or department is integrated (that is, provider-based) with its parent hospital. This is particularly important in a facility operated under a management contract. Because such a facility already receives management (and typically, many other services and supplies) from the management company, employment of the caregivers by the provider provides a strong link to the provider's other operations and demonstrates that the facility continues, despite the purchase of management services under contract, to be an integral and subordinate part of the provider. As such, we do not believe that it is appropriate to exempt any off-campus facilities from the management contract requirement.

Accordingly, we are adopting as final the proposed § 413.65(h) with one change to paragraph (h)(1) to clarify use of leased employees by a provider as discussed in the response to comments.

i. Inappropriate Treatment of a Facility or Organization as Provider-Based

Below we describe the steps that we would take if we discover that a facility is billing as provider-based without having requested a determination or having submitted a complete attestation regarding provider-based status as described earlier, or if the facility received a provider-based determination but the main provider did not inform CMS of a subsequent material change that affected the provider-based status of its facility.

(1) Inappropriate billing

The existing regulations at § 413.65(i) state that if we discover that a provider is billing inappropriately, we will recover the difference between the amount of payments that actually were made and the amount of payments that CMS estimates should have been made in the absence of a determination of provider-based status. Existing § 413.65(j)(2) states that we would adjust future payments to estimate the amounts that would be paid, in the absence of a provider-based determination, if all other requirements for billing are met. In addition, existing § 413.65(j)(5) describes a procedure under which CMS would continue payments to a provider for services of a facility or organization that had been found not to be provider-based, at an adjusted rate calculated as described in existing paragraph (j)(2), for up to 6 months in order to permit the facility or organization adequate time to meet applicable enrollment and other billing requirements. While CMS is not legally obligated to continue payments in this matter, we believe it would be appropriate to do so, on a time-limited basis, to allow for an orderly transition to either provider-based or freestanding

status for the facility and to avoid disruption in the delivery of services to patients, particularly Medicare patients, who may be relying on the facility for their medical care.

In the May 9, 2002 proposed rule, we proposed to adopt a policy concerning recoupment and continuation of payment that closely parallels the policy stated in existing regulations at § 413.65(j). Under proposed § 413.65(j)(1), if CMS learns that a provider has treated a facility or organization as provider-based and the provider did not request an advance determination of provider-based status from CMS under proposed § 413.65(b)(3), and CMS determines that the facility or organization did not meet the requirements for provider-based status under proposed § 413.65(d) through (i), as applicable (or, in any period before the effective date of these regulations, the provider-based requirements in effect under Medicare program regulations or instructions), CMS would take several actions. First, we proposed to issue notice to the provider, in accordance with proposed paragraph (j)(3), that payments for past cost reporting periods may be reviewed and recovered as described in proposed paragraph (j)(2)(ii), that future payments for services in or at the facility or organization will be adjusted as described in proposed paragraph (j)(4), and that continued payments to the provider for services of the facility or organization will be made only in accordance with proposed paragraph (j)(5). In addition, we proposed (proposed § 413.65(j)(1)(ii)) that CMS would, except for providers protected under section 404(a) or (c) of BIPA (implemented at § 413.65(b)(2) and (b)(5)) or the exception for good faith effort at existing § 413.65(i)(2) and (i)(3)), recover the difference between the amount of payments that actually was made to that provider for services at the facility or organization and an estimate of the payments that CMS would have made to that provider for services at the facility or organization in the absence of compliance with the requirements for provider-based status. We proposed to make recovery for all cost reporting periods subject to reopening in accordance with §§ 405.1885 and 405.1889. Also, we proposed to adjust future payments to estimate the amounts that would be paid for the same services furnished by a freestanding facility.

Recovery of past payments would be limited in certain circumstances. If a provider did not request a provider-based determination for a facility by October 1, 2002, but is included in the grandfathering period under § 413.65(b)(2), we proposed to recoup all payments subject to the reopening rules at §§ 405.1885 and 405.1889, but not for any period before the provider's cost reporting period beginning on or after July 1, 2003.

Comment: One commenter stated that, under current policies, teaching hospitals may claim the time residents spend training at freestanding facilities (known as "nonhospital sites") only when there is a written agreement between the hospital and the nonhospital site. No written agreement is needed if the site is provider-based. The commenter asked that if CMS determines that a facility does not meet the provider-based rules, the indirect medical education (IME) payments that were received by the teaching hospital should not be affected.

Response: If CMS determines that a provider, whether teaching or nonteaching, is inappropriately receiving payment in a facility since the facility is determined not to be provider-based, CMS would take several actions, including, as described under § 413.65(j)(3), reviewing payments for past cost reporting periods in order to recover the difference between the amount of payment that was made to the provider and an estimate of payments that CMS would have made had the facility not been provider-based. It is conceivable that overpayments may have been made, not only for IME but also for direct GME, to a teaching hospital that incorrectly treated a facility as provider-based, and, as such, we would recover an amount of payment for both IME and direct GME that would otherwise not have been received by the hospital had the facility been freestanding.

(2) Good Faith Effort

We proposed to retain the existing exception for good faith effort (proposed redesignated § 413.65(j)(2)). Under this exception, we specified that we would not recover any payments for any period before the beginning of the hospital's first cost reporting period beginning on or after January 10, 2001 (the effective date of the existing provider-based regulations for providers not grandfathered under § 413.65(b)(2)) if during all of that period—

- The requirements regarding licensure and public awareness at § 413.65(d)(1) and proposed redesignated (d)(4) were met;
- All facility services were billed as if they had been furnished by a department of a provider, a remote location of a hospital, a satellite facility, or a provider-based entity of the main provider; and
- All professional services of physicians and other practitioners were billed with the correct site-of-service indicator, as described at § 413.65(g)(2).

Under § 413.65(j)(5), we proposed that CMS would continue payment to a provider for services of a facility or organization for a limited period of time, in order to allow the facility or organization or its practitioners to meet necessary enrollment and other requirements for billing on a freestanding basis. Specifically, the notice of denial of provider-based status sent to the provider would ask the provider to notify CMS in writing, within 30 days of the date the notice is issued, as to whether the provider intends to seek an advance determination of provider-based status for the facility or organization, or whether the facility or organization (or, where applicable, the practitioners who staff the facility or organization) will be seeking to enroll and meet other requirements to bill for services as a freestanding facility.

If the provider indicates that it will not be seeking an advance determination or that the facility or organization or its practitioners will not be seeking to enroll, or if CMS does not receive a response within 30 days of the date the notice was issued, all payments under proposed paragraph (j)(5) would end as of the 30th day after the date of notice. If the provider indicates that it will be seeking an advance determination, or that the facility or organization or its practitioners will be seeking to meet enrollment and other requirements for billing for services in a freestanding facility, payment for services of the facility or organization would continue, at the adjusted amount described in proposed paragraph (j)(4) for as long as is required for all billing requirements to be met (but not longer than 6 months).

Continued payment would be allowed only if the provider or the facility or organization or its practitioners submits, as applicable, a complete request for an advance provider-based determination or a complete enrollment application and provide all other required information within 90 days after the date of notice; and the facility or organization or its practitioners furnishes all other information needed by CMS to process the request for provider-based status or, as applicable, the enrollment application and verify that other billing requirements are met. If the necessary applications or information are not provided, CMS would terminate all payment to the

provider, facility, or organization as of the date CMS issues notice that necessary applications or information have not been submitted.

As clarified in § 413.65(o) of this final rule, we would not resume provider-based payment to such a facility or organization based on an attestation of compliance. On the contrary, if a facility or organization is found by CMS to have been inappropriately treated as provider-based under paragraph (j) for any period on or after October 1, 2002 (or, in the case of facilities or organizations described in § 413.65(b)(2), for cost reporting periods starting on or after July 1, 2003), CMS will not treat the facility or organization as provider-based for payment until CMS has determined, based on documentation submitted by the provider, that the facility or organization meets all requirements for provider-based status under Part 413.

Comment: One commenter suggested that, given the complexities surrounding the provider-based rules and the delays in implementing the regulations and establishing a uniform process, the final rule should provide that any provider that complies with the good faith exception under § 413.65(j)(2) should also not be subject to any retroactive recoupment of payments under proposed paragraphs (j) and (k).

Response: The regulations at § 413.65(j)(2) state that recovery of overpayments will not be made for any period before the beginning of the hospital's first cost reporting period beginning on or after January 10, 2001, if the provider made a good faith effort to treat its facilities as provider-based during all that period. This good faith exception was originally included in the April 7, 2000 regulations (originally applicable to periods before October 10, 2000, the original effective date of the provider-based regulations, but subsequently delayed to January 10, 2001).

We believe a good faith exception is appropriate for cost reporting periods beginning before January 10, 2001, when the provider-based regulations first became effective, since it would protect providers that were unaware of the new regulations, yet operated facilities that met a minimal threshold for integration. However, CMS has now published two proposed rules and one final rule on provider-based status, has published "Qs and As" on its website, and has consulted extensively with the hospital industry through teleconferences and meetings. Given the publicity that the provider-based regulations have received and the latest delayed effective date of these rules, we do not believe it is appropriate to extend the scope of the good faith exception.

Accordingly, we are adopting the proposals discussed above as final. In addition, we are revising section 413.65(j)(2)(ii) to refer to "billed with the correct site-of-service" rather than "site-of-service indicator", for consistency with the revision to § 413.65(g)(2) described above.

j. Temporary Treatment as Provider-Based and Correction of Errors

Under proposed revised § 413.65(k), we proposed to specify the procedures for payment for the period between the time a request is submitted until a provider-based determination is made, and the steps we would take if we discover that a facility for which a provider previously received a provider-based determination no longer meets the requirements for provider-based status.

First, we proposed that, if a provider submits a complete request for a provider-based determination for a facility that has not previously been found by CMS to have been inappropriately treated as provider-based under proposed revised § 413.65(j), the provider may bill and be paid for services at the facility as provider-based from the date of the application until the date that we determine that the facility or organization does not meet the provider-based rules under § 413.65. If CMS determines that the requirements for provider-based status are not met, CMS will recover the difference between the amount of payments that actually was made since the date the complete request for a provider-based determination was submitted and the amount of payments that CMS estimates should have been made in the absence of compliance with the provider-based requirements. We indicated that we would consider a request "complete" only if it included all information we need to make an advance determination of provider-based status under § 413.65(b)(3).

Second, similar to what we specify in existing § 413.65(k), if we determine that a facility or organization that previously received a provider-based determination no longer qualifies for provider-based status, and the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider reported to CMS under § 413.65(c), treatment of the facility or organization as provider-based ceases with the date that CMS determines that the facility or organization no longer qualifies for provider-based status.

Third, if we determine that a facility or organization that had previously received a provider-based determination no longer qualifies for provider-based status, and if the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider did not report to CMS, as required under § 413.65(c), we proposed to take the actions with respect to notice to the provider, adjustment of payments, and continuation of payment described in proposed paragraphs (j)(3), (j)(4), and (j)(5). In short, we would treat such cases in the same way as if the provider had never obtained an advance determination. However, with respect to recovery of past payments for providers included in the grandfathering provision at proposed revised § 413.65(b)(2), we proposed not to recover payments for any period before the provider's first cost reporting period beginning on or after July 1, 2003.

Also, we proposed that, as under regulations currently in effect, the exception for good faith concerning recovery of overpayments under proposed revised §§ 413.65(j)(2) described above would only apply to any period before the beginning of the hospital's first cost reporting period beginning on or after January 10, 2001.

Comment: One commenter requested that provider-based payment for services of a facility be allowed to continue while the facility is challenging any determination that it is not provider-based.

Response: As we explain in the proposed revised regulations at § 413.65(k), provider-based payment for services at a facility will continue until the date that CMS determines that the facility does not meet the provider-based rules. Once a determination concluding that a facility does not meet the provider-based rules is made, we believe it is inappropriate to continue paying for services at that facility as provider-based. Then, depending upon a number of factors, including whether the facility had previously been determined by CMS to be provider-based and whether the loss of provider-based status resulted from a material change that was or was not reported to CMS, CMS will take actions with respect to recovery of overpayments and continuation of payments at the appropriate nonprovider-based reduced rate, as described in the proposed revised § 413.65(j).

Comment: One commenter noted that proposed paragraph (k) contains some rules applicable to facilities for which there has not been a previous

determination of provider-based status (paragraph (k)(1)) and others that apply to facilities for which such a determination has been made (paragraphs (k)(2) and (k)(3)). The commenter believed these rules would be more clearly understood if the rules for each situation were stated in separate paragraphs.

Response: We agree with the commenter. In this final rule, we are placing the text of proposed paragraph (k)(1) concerning facilities for which there has been no previous determination in new paragraph (k), and the text of proposed paragraphs (k)(2) and (k)(3) concerning facilities for which previous determinations have been made in paragraph (l). Proposed sections (l) through (n) are being redesignated as paragraphs (m) through (o).

In addition, as noted earlier in this preamble, we state in § 413.85(o) of this final rule that, effective for any period on or after October 1, 2002 (or, in the case of facilities or organizations described in § 413.85(b)(2), for cost reporting periods starting on or after July 1, 2003), if a facility or organization previously was determined by CMS to be provider-based but no longer qualifies as provider-based because of a material change occurring during those periods that was not reported to CMS, CMS will not treat the facility or organization as provider-based for payment until CMS has determined, based on documentation submitted by the provider, that the facility or organization meets all requirements for provider-based status under Part 413.

Comment: Regarding the references in paragraphs (k)(1) and (k)(2) of proposed § 413.65 (to be redesignated as (l)(2) and (l)(3), as explained above) to reporting of material changes in the relationship between a provider and a facility or organization that had been found to be provider based, one commenter recommended that the term "material change" be defined more specifically, to give providers more direction as to what events to report. The commenter believed a material change should be defined as including only "a change of ownership, adoption of a new management contract for an off-campus department of a provider or a provider-based entity, change to an off-campus location, or a change in licensure status."

Response: We share the commenter's belief that the events listed would be considered material changes. However, we do not agree that the term "material change" should include only these events. On the contrary, other types of occurrences, such as formation of a separate medical staff for the facility or organization or discontinuation of a service on the main provider's campus that would prevent referral of patients from the facility organization to the main provider would also represent material changes. Because we believe limiting the definition of the term "material change" as suggested by the commenter would inappropriately restrict the range of events to be reported, we are not adopting this comment.

Comment: One commenter recommended that reporting of material changes not be required for on-campus facilities. The commenter believed this reporting is unnecessary because adequate safeguards are already built into the provider enrollment requirements.

Response: Several of the kinds of changes noted in response to the preceding comment, relating to the integration of clinical services of the facility or organization with those of the main provider, are not subject to any mandatory reporting under the provider enrollment process but could affect provider-based status. Therefore, we are not making any change in the final rule based on this comment.

Comment: One commenter noted that, in the preamble to the proposed rule, CMS states that there would be " * * * a delay in the effective date for any facility that is found not to meet the provider-based criteria following a previous advance determination, if the reason the provider-based criteria are not met is a material change in the provider-facility relationship that was properly reported to CMS. The removal of provider-based status would be effective following notification of the redetermination, but not less than 6 months after the date of notification" (67 FR 31483). The commenter pointed out that this minimum 6-month compliance period is not included in the proposed § 413.65(k)(2). Rather, this regulation states that under these circumstances, provider-based status "ceases with the date that CMS determines that the facility or organization no longer qualifies for provider-based status." The commenter requested that CMS revise § 413.65(k)(2) to reflect the minimum 6-month compliance period.

Response: We agree that the language quoted by the commenter from page 31483 of the preamble to the proposed rule is inconsistent with the language in the proposed regulations text. While this language is consistent with the current policy as stated in existing § 413.65(k), the inclusion of the language on page 31483 of the proposed rule was inadvertent on our part. We note that the correct proposed policy, which correctly *mirrors* the proposed regulation text at § 413.65(k)(2), is stated on page 31487 of the proposed rule. Specifically, we state that "if we determine that a facility of organization that had previously received a provider-based determination no longer qualifies for provider-based status, and if the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider reported to CMS under § 413.65(c), treatment of the facility or organization as provider-based ceases with the date that CMS determines that the facility or organization no longer qualifies for provider-based status." We did not intend to propose to allow a 6-month grace period before a facility's status as provider-based would be revoked.

While we regret the confusion caused, we are not adopting the commenter's request regarding a 6-month grace period prior to removal of a provider-based status designation, since we do not believe it would be appropriate to provide for payment to the provider as provider-based for a period for which the provider was clearly not provider-based. While we do not plan to recover overpayments from a facility or organization that no longer qualifies as provider-based if the provider reported a material change in the relationship between the provider and the facility or organization, CMS retains the authority to recoup overpayments and apply civil monetary penalties if a provider is in violation of section 1128A or 1128B of the Act.

Accordingly, we are adopting our proposals as final with the following changes: We are reorganizing the text of proposed § 413.65(k) into new paragraphs (k) and (l), without substantive change, to distinguish the rules applicable to facilities for which there has been no previous determination from those that apply to facilities for which a previous determination has been made. Proposed sections (l) through (n) are being redesignated as paragraphs (m) through (o).

k. Technical Amendments

We proposed to correct a typographical error in the heading of paragraph (m) of § 413.65 (redesignated as paragraph (n) in this final rule) so that it reads "FQHCs and "look alikes' ".

In paragraph (n) of § 413.65 (redesignated as paragraph (o) in this final rule), we proposed to add a cross-reference to the requirements for

provider-based status described in paragraph (b), for purposes of specifying the effective date of provider-based status.

We did not receive any public comments on these technical amendments and are adopting them as final without change except for the redesignation of paragraph codes indicated above.

L. CMS Authority Over Reopening of Intermediary Determinations and Intermediary Hearing Decisions on Provider Reimbursement

Our existing regulations provide various means for the reopening and revision of an intermediary determination or an intermediary hearing decision on provider reimbursement by the fiscal intermediary or the intermediary hearing officer(s) responsible for the determination or the hearing decision, respectively. (In this discussion, we will use the term "intermediary" to refer to, as applicable, the intermediary responsible for an intermediary determination (see §§ 405.1801(a) and 405.1803) or the intermediary hearing officer or panel of intermediary hearing officers responsible for an intermediary hearing decision (see §§ 405.1817 and 405.1831.)) Section 405.1885(a) provides that an intermediary "may" reopen an intermediary determination or an intermediary hearing decision, on its own initiative or at the request of a provider, within 3 years of the date of the notice of the intermediary determination or intermediary hearing decision. However, while § 405.1885(a) provides the intermediary with some discretion about whether to reopen an intermediary determination or an intermediary hearing decision, we have always considered the intermediary's discretion to be limited by any directives that we may issue. Thus, although § 405.1885(a) provides that the intermediary "may" reopen, that provision neither states nor implies that the Secretary lacks authority to direct the intermediary to reopen or not reopen a specific matter. Furthermore, we have prescribed, in Medicare Provider Reimbursement Manual, Part I ("PRM"), section 2931.2, criteria that guide the intermediary's reopening actions under § 405.1885(a) in the absence of a particular CMS directive. Also, given that the intermediaries are our (CMS') contractors, we have always believed that, under basic principles of agency law, we have inherent authority to direct the actions of our own agents with respect to reopening matters under § 405.1885(a), just as for any other aspect of program administration. (See also 42 U.S.C. 1395h and 1395kk(a); and 42 CFR 421.1(c), 421.5(b), 421.100(f), 421.124(a), and 421.126(b).)

Under § 405.1885(b), an intermediary determination or an intermediary hearing decision "must be reopened and revised by the intermediary if, within the aforementioned 3-year period, the Centers for Medicare & Medicaid Services notifies the intermediary that such determination or decision is inconsistent with the applicable law, regulations, or general instructions issued by the Centers for Medicare & Medicaid Services." We have always considered our notice, which is a precondition of mandatory intermediary reopening under § 405.1885(b), to be one in which we explicitly direct the intermediary to reopen. We have never considered a notice or other document from us that only states or implies that an intermediary determination or an intermediary hearing decision is inconsistent with law, regulations, CMS ruling, or CMS general instructions, sufficient to require intermediary reopening under § 405.1885(b). Moreover, our understanding has always been that the phrase "law, regulations, or general instructions" in § 405.1885(b) refers to the legal provisions in effect, as we understood such legal provisions at the time the intermediary rendered the determination or hearing decision. Conversely, we have never considered changes in, or judicial explications of, "law, regulations, or general instructions," that occur after the intermediary rendered the determination or hearing decision, sufficient to require intermediary reopening under § 405.1885(b). Also, § 405.1885(b) refers to the Secretary's agreement with an intermediary; we believe such agreement requires the intermediary to apply the law, regulations, CMS rulings, and CMS general instructions in effect, as we understood such legal provisions when the intermediary determination or hearing decision was rendered. Accordingly, we have not instructed intermediaries to reopen and recover reimbursement, or to reopen and award additional reimbursement, due to a subsequent change in law or policy, whether the subsequent change is made in response to judicial precedent or otherwise.

Section 405.1885(c) provides: "Jurisdiction for reopening a determination or decision rests exclusively with that administrative body that rendered the last determination or decision." We have always interpreted § 405.1885(c) to provide that authority to reopen an intermediary determination or an intermediary hearing decision is vested exclusively with the responsible intermediary, as distinct from the Provider Reimbursement Review Board (PRRB) and the CMS Administrator (in the context of reviewing PRRB decisions (see § 405.1875)) which may not reopen an intermediary determination or hearing decision and may not review an intermediary's denial of reopening. However, we have never considered the intermediary's authority to reopen an intermediary determination or hearing decision, which is exclusive under § 405.1885(c) only as to the PRRB and the CMS Administrator (in the context of reviewing PRRB decisions), to limit our authority to direct the actions of our agents with respect to reopening matters. (*See Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U.S. 449, 452–53 (1999)(§ 405.1885(c) divests the PRRB of "appellate jurisdiction to review the intermediary's refusal" to reopen, but does not limit the Secretary's authority to direct an intermediary's "original jurisdiction" in the reopening area).) As discussed previously, the regulations do not constrain our authority to direct the intermediary to reopen or not reopen a specific matter; instead, we have placed generally applicable limits on the intermediary's discretion through the reopening criteria prescribed in section 2931.2 of the PRM. In addition, we have always believed that, under basic principles of agency law, the intermediary's discretion over a particular reopening matter is no less circumscribed by any CMS directives that may be issued than would be the case for any other aspect of program administration.

Two recent court decisions conflict with our longstanding interpretation of the forgoing provisions of the reopening regulations. In *Monmouth Medical Center* v. *Thompson*, 257 F.3d 807 (D.C. Cir. 2001), the court found that a statement in a CMS ruling, changing CMS' interpretation of the statute in response to circuit court precedent, constituted a directive to the intermediary under § 405.1885(b) to reopen, notwithstanding an explicit directive in the CMS ruling that the change in interpretation was to be applied only prospectively. The court ordered the intermediary to reopen over the Secretary's objection. We disagree with the court's decision, which we believe does not comport with our settled interpretation (discussed above) of § 405.1885(b). Therefore, in the May 9, 2002 proposed rule, we proposed to revise § 405.1885(b) to make clear that,

in order to trigger the intermediary's obligation to reopen, our notice to the intermediary must explicitly direct the intermediary to reopen based on a finding that an intermediary determination or an intermediary hearing decision is inconsistent with the law, regulations, CMS ruling, or CMS general instructions in effect, and as we understood those legal provisions, at the time the determination or decision was rendered. We also proposed to clarify § 405.1885 to reflect our longstanding interpretation (discussed above) that a change of legal interpretation or policy through regulation, CMS ruling, or CMS general instruction, whether made in response to judicial precedent or otherwise, is not a basis for reopening an intermediary determination or an intermediary hearing decision under this section.

The *Monmouth Medical Center* decision was followed in *Bartlett Memorial Medical Center* v. *Thompson*, 171 F. Supp. 2d 1215 (W.D. Okla. 2001). In a subsequent order in the *Bartlett Memorial Medical Center* case, the court concluded that a CMS ruling, which prohibited intermediary reopening on a particular reimbursement issue, improperly interfered with the intermediary's discretion under § 405.1885(c) over provider requests for reopening under § 405.1885(a). Accordingly, the court ordered the intermediary to act on the provider reopening requests without regard to the CMS ruling or any other involvement of the Secretary. We disagree with the court's decision, which we believe is contrary to our settled interpretation (discussed above) of §§ 405.1885(a) and (c). We believe the court's decision is also inconsistent with our inherent authority to direct the activities of our contractor-agents, the fiscal intermediaries, with respect to particular reopening matters, just as with any other aspect of program administration. Therefore, we proposed, in a new paragraph (e) of § 405.1885 (the existing paragraph was proposed to be redesignated as paragraph (f)), to clarify that, notwithstanding an intermediary's discretion to reopen or not reopen under paragraphs (a) and (c) of § 405.1885, we may direct an intermediary to reopen, or not to reopen, an intermediary determination or an intermediary hearing decision in accordance with paragraphs (a) and (c) of this section.

We received a number of comments regarding the proposed revisions to the reopening rules. The commenters largely opposed the our proposed revisions to § 405.1885. Their comments and our responses are as follows.

Comment: A fiscal intermediary asked if CMS was implicitly proposing to make all reopening decisions. According to another commenter, the proposed rule would enhance CMS' control over the reopening process by displacing the intermediary's role as the evaluator of the merits of reopening matters.

Response: The revisions to the reopening regulations are not intended to change the usual allocation of responsibilities between CMS and the fiscal intermediaries, which leaves most reopening decisions to the intermediaries. We are simply clarifying the regulations to reflect our longstanding interpretations, not revamping settled reopening policies and procedures.

As the courts have recognized, the reopening regulations are based on the Secretary's general rulemaking authority. (See *HCA Health Servs. of Oklahoma, Inc.* v. *Shalala*, 27 F.3d 614, 618 (D.C. Cir. 1994).) In the past, our main role has been to provide general guidance regarding the reopening regulations, such as the instructions included in Chapter 29 of the Medicare Provider Reimbursement Manual, Part 1 ("PRM"). The intermediaries have typically decided, without consulting with us, whether to reopen specific intermediary determinations or hearing decisions in accordance with §§ 405.1885(a) and (c) and the PRM. Of course, our authority to require intermediary reopening has been recognized specifically in § 405.1885(b). In certain instances, we have directed the intermediaries' reopening actions on a recurring reimbursement issue, such as the "disproportionate share" issue addressed in HCFA Ruling 97–2 (February 27, 1997). On occasion, we have instructed an intermediary to reopen a specific matter, such as in implementing the settlement of an administrative appeal or a lawsuit.

The foregoing allocation of responsibilities is not altered by the revisions to the reopening regulations. Rather, we are clarifying the regulations to comport with our longstanding interpretation that the intermediary's duty to reopen a determination or decision under § 405.1885(b) arises only if we specifically direct it to reopen in order to ensure consistency with a legal provision, as we understood such provision when the determination or decision was issued. Moreover, revised § 405.1885(e) simply clarifies our interpretation that the intermediary's discretion whether to reopen under §§ 405.1885(a) and (c) is subject to CMS' authority to direct the "original jurisdiction" of its own contractor over reopening matters, as with any other area of program administration. Thus, while the intermediaries will continue to decide most reopening matters without consulting with CMS, § 405.1885(e) reflects our authority to direct the intermediaries as we deem necessary and appropriate.

Comment: Two commenters stated that the reopening process has been the province of the intermediary. According to the commenters, the proposed changes to § 405.1885(e) would give CMS the sole authority to decide reopening matters that were formerly the intermediary's responsibility, which would eliminate the discretionary character of intermediary reopening decisions. Thus, the commenters concluded, intermediary reopening denials would be subject to PRRB and judicial review despite the Supreme Court's decision in *Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U.S. 449 (1999).

Response: We disagree with the commenters' assertion that the proposed revisions to the reopening regulations would affect the reviewability of intermediary reopening denials. As discussed above, although the intermediaries have typically decided, without consulting with CMS, whether to reopen specific intermediary determinations or hearing decisions, the contractors' reopening actions have always been subject to the general guidance and any particular directives issued by CMS. Again, the respective roles of CMS and the intermediaries are simply not changed by the revisions to the reopening regulations. Since the intermediaries will continue to decide most reopening matters without consulting with CMS, reopening decisions will typically reflect the usual exercise of the intermediary's unreviewable discretion.

Although the revisions to the reopening regulations pertain to different issues than those resolved by the Supreme Court's *Your Home Visiting Nurse* decision, we believe that the revised regulations are consistent with the Court's decision and related precedent. The Supreme Court held that an intermediary's rejection of a provider's reopening request is not reviewable by the PRRB or the Federal courts. *Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U.S. at 452–58. The revisions to the reopening regulations do not address or affect the reviewability of intermediary reopening denials. Rather, the revisions clarify our settled policies regarding the intermediary's original jurisdiction over the reopening question. *Id.* at 453. Specifically, the revisions to

§ 405.1885(b) clarify our longstanding view that intermediary reopening is required only if we specifically mandate reopening in order to ensure consistency with a legal provision, as we understood such provision when the intermediary determination or decision was issued. Furthermore, as proposed, revised § 405.1885(e) clarifies our understanding that the intermediary's discretion whether to reopen under §§ 405.1885(a) and (c) is subject to our authority to direct the original jurisdiction of our contractor over reopening matters, as with any other area of program administration.

We recognize that the Supreme Court, in rejecting mandamus relief in *Your Home Visiting Nurse* for lack of a "clear nondiscretionary duty," reasoned that § 405.1885(a) and PRM section 2931.2 permit but do not require reopening. *Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U.S. at 456–57. (However, we note that intermediary discretion did not figure in the Court's rejection of PRRB and Federal question jurisdiction over intermediary reopening denials. *Id.* at 452–56.) Given that the intermediaries will decide most reopening matters without consulting us, as in the past, such decisions will still be based on the discretionary provisions of § 405.1885(a) and PRM section 2931.2 and thus *Your Home Visiting Nurse* will be squarely on point.

We believe that a reopening denial is no less discretionary—and unreviewable under Your *Home Visiting Nurse* and related precedent—when we mandate the intermediary's action. Notably, in both *Monmouth Medical Center* and *Bartlett Memorial Medical Center*, the courts rejected PRRB and federal question jurisdiction over the prohibition of intermediary reopening included in HCFA Ruling 97–2. *Monmouth Medical Center* v. *Thompson*, 257 F.3d at 810–13; *Bartlett Memorial Medical Center*. v. *Thompson*, 171 F. Supp. 2d at 1220–22. Mandamus relief was ordered in both cases, based on the courts' finding that the Ruling engendered a clear nondiscretionary duty to reopen under § 405.1885(b). However, the Supreme Court has consistently held that reopening denials are "committed to agency discretion by law' within the meaning of the Administrative Procedure Act, and hence unreviewable." *Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U.S. at 457 (following *ICC* v. *Locomotive Engineers*, 482 U.S. 270, 282 (1987)). We believe that, under basic principles of agency law, it would be incongruous to suppose that reopening denials required by the principal, CMS, are somehow less discretionary than denials based on the judgment of our agents, the fiscal intermediaries. (See *ICC* v. *Locomotive Engineers*, 482 U.S. at 277B84 (despite statutory authorization of reopening for material error, Interstate Commerce Commission's refusal to reopen is committed to the agency's unreviewable discretion by law).)

Comment: A commenter stated that CMS should not restrict intermediaries' ability to reopen cost reports when they find it fair and appropriate to do so. The commenter explained that, in dealing with thousands of providers throughout the country, the intermediaries encounter numerous factual scenarios that different contractors might treat through varying means. The commenter concluded that, if a statute or regulation is ambiguous and CMS has not issued a policy statement on an issue, the intermediaries should be free to decide whether to reopen the matter and make revisions deemed suitable.

Response: In the absence of a CMS directive, intermediary reopening decisions have been guided by the criteria of "new and material evidence," "clear and obvious error," and consistency with a legal provision. (See PRM section 2931.2.) The revisions to the reopening regulations do not change the PRM guidelines. Instead, revised § 405.1885(e) clarifies our settled view that we have full authority to direct an intermediary to reopen, or not to reopen, under §§ 405.1885(a) and (c) based on the PRM reopening criteria.

However, as explained above, the intermediaries will continue to decide most reopening matters without consulting with CMS. In cases where we have not interpreted a statute or regulation or issued a policy statement on a reimbursement issue, the intermediaries will typically be free to decide whether to reopen the matter. Although the different intermediaries will be guided by the reopening guidelines in the PRM, different contractors may reach varying decisions on whether to reopen, or how to revise, a determination or decision. The traditional flexibility and variability of intermediary reopening decisions will not change as a result of the revisions to the reopening regulations.

Comment: A commenter stated that if CMS publishes a policy statement clarifying a particular Medicare issue, the intermediaries should have the ability to reopen cost reports to ensure that all providers are treated uniformly. Another commenter stated that it is not reasonable to expect intermediaries to apply rulings retroactively in some instances.

Response: We believe that an important component of a new reimbursement policy is the policy's scope of applicability. Given that Medicare is a uniform nationwide program, we typically do not leave to the discretion of the intermediaries questions about the scope of applicability of our reimbursement policy or policy clarification. Instead, a CMS regulation or policy guideline on a reimbursement issue usually includes an effective date. New reimbursement policies normally apply on a prospective-only basis. (See *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204, 208–16 (1988) (Medicare statute does not permit retroactive rulemaking).) The alternative suggested by the commenter, of letting the intermediaries determine through reopening the scope of applicability of a new CMS reimbursement policy, would undermine the interests of nationally uniform program administration. Also, if the intermediaries were to reopen and apply a reimbursement policy that was not in place when payment was determined originally, such reopenings might involve impermissible retroactive rulemaking.

Comment: A commenter asserted that the proposed revisions to § 405.1885(b) would inappropriately expand CMS' authority by permitting the agency to order an intermediary to disregard a judicial decision holding a policy void *ab initio*, on the theory that CMS understood the disputed legal provision differently when the intermediary determination was rendered. Thus, the commenter concluded, the proposal violates fundamental principles of separation of powers.

Response: The revisions to § 405.1885(b) do not expand our reopening authority. Rather, revised paragraph (b)(1) clarifies our settled interpretation that an intermediary's duty to reopen a determination or decision under § 405.1885(b) arises only if we specifically direct it to reopen in order to ensure consistency with a legal provision, as we understood such provision when the determination or decision was issued.

We did not propose paragraph (b)(1) as a means of sidestepping a judicial decision holding a reimbursement policy void *ab initio*, on the theory that we understood the disputed legal provision differently when the intermediary determination at issue in the lawsuit was rendered. If a provider secures a final, nonappealable judgment rejecting a reimbursement policy, we would certainly comply with such a court judgment for the provider's fiscal

period at issue in the lawsuit— even if we had a different understanding of the law when the intermediary determination at issue in the case was rendered. Given our compliance with the final, nonappealable judicial decision, there clearly would be no separation of powers problem.

The commenter may be assuming that reopening is necessary for the implementation of a final, nonappealable judgment. That would be a debatable assumption for a number of reasons. For example, we would be required to redetermine reimbursement in accordance with a final, nonappealable court judgment for the fiscal period at issue in the lawsuit, even if the 3-year period for reopening the intermediary determination at issue in the case had expired long ago. Also, we often implement final adverse judgments and lawsuit settlement agreements outside the reopening process. Instead of reopening the reimbursement matter and issuing a revised notice of program reimbursement (see §§ 405.1801(a), 405.1803, and 405.1889), we may simply recalculate reimbursement in accordance with the final court decision or settlement agreement, and issue an implementation notice detailing the reimbursement effect of the court judgment or settlement agreement.

However, the comment does indicate that the proposed rule was susceptible to the interpretation that CMS would be precluded from requiring the reopening of a particular intermediary determination or decision in order to implement a specific final agency decision (see §§ 405.1833, 405.1871(b), 405.1875, and 405.1877(a)); a particular final, nonappealable court judgment; or a specific agreement to settle an administrative appeal or a lawsuit. In order to allay the commenter's concern and make explicit our authority to use reopening procedures in such circumstances, as we deem appropriate, we have added a new paragraph (b)(3) to proposed § 405.1885(b). Paragraph (b)(3) states that notwithstanding paragraph (b)(1)(i) of this section, CMS may direct the intermediary to reopen a particular intermediary determination or intermediary hearing decision in order to implement, for the same intermediary determination or intermediary decision— (1) a final agency decision under §§ 405.1833, 405.1871(b), 405.1875, or 405.1877(a); (2) a final nonappealable court judgment; or (3) an agreement to settle an administrative appeal or a lawsuit.

Comment: According to one commenter, the inclusion of the condition "as CMS understood those legal provisions, at the time the [intermediary] determination or decision was rendered," in the provisions of § 405.1885(b) for mandatory intermediary reopening would give CMS unlimited and standardless discretion whether or not to reopen.

Response: Paragraph (b)(1)(i) does include a guideline for CMS' decision whether to require intermediary reopening under § 405.1885(b). If an intermediary determination or decision is inconsistent with the applicable law, regulations, CMS Ruling, or CMS general instructions in effect, as CMS understood such legal provisions when the intermediary rendered the determination or decision, then CMS may decide to direct the intermediary to reopen and revise the determination or decision. However, we are not required to mandate intermediary reopening in such cases. Thus, given the Supreme Court's decisions in *Your Home Visiting Nurse* and *ICC* v. *Locomotive Engineers*, if CMS directs the intermediary to not reopen, our instruction and the intermediary reopening denial are committed to the agency s unreviewable discretion under the Administrative Procedure Act, 5 U.S.C. 701(a)(2).

Moreover, we believe that our longstanding practice of looking to the law in effect, as we understood the law, when the intermediary determination or decision was rendered, is supported by analogous principles followed by the courts. For example, it is settled that "'the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place.'" *Landgraf* v. *USI Film Products*, 511 U.S. 244, 265 (1994) (citation omitted). Also, the courts consistently hold that past judicial decisions, even if subsequently deemed erroneous, are *res judicata* and should not be resurrected and redecided. (See, *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394, 398 (1981).) Of course, this principle works both ways: if a disposition benefiting a claimant becomes final before a contrary decision on the same issue in another case, the claimant is not required to surrender the benefit despite the intervening change in decisional law. (See, *Aaron* v. *Kansas*, 115 F.3d 813, 814 n.1 (10th Cir. 1997).)

Comment: One commenter asserted that when the courts find a CMS policy unlawful, and the agency revises its policy to comport with the courts' decisions, providers should be entitled to reopening and application of the new policy within applicable time limits. According to a hospital system, foreclosing reopening of a matter that was settled inconsistently with decisional law would lead to inconsistent decisions regarding different providers, and have the agency persist in conduct held unlawful by the courts.

Response: We disagree. As proposed, paragraph (b)(2) clarifies our longstanding view that a change of legal interpretation or policy by CMS, whether made in response to judicial precedent or otherwise, is not a basis for reopening an intermediary determination or decision under § 405.1885.

The prospect of widespread reopening for application of a new legal interpretation or policy, whether in response to judicial precedent or otherwise, might involve impermissible retroactive rulemaking. (See *Bowen* v. *Georgetown University Hospital*, 488 U.S. at 208–16.) If we were to allow systemic reopening for application of a legal interpretation or policy adopted in response to judicial precedent, our fiduciary responsibilities for the Medicare trust funds would arguably call for similarly widespread reopening when a new legal interpretation or policy is not favored by providers. The result might be a spate of litigation involving alleged retroactive rulemaking and other complex legal issues.

Furthermore, we have not viewed the reopening process as a ready alternative to the mechanism for administrative appeals and judicial review established by the Medicare statute and regulations. Under the statute (section 1878(a) of the Act) and the regulations (§§ 405.1801(a), 405.1803, and 405.1807), an "intermediary determination" is, by definition, a "final determination" of program reimbursement. We believe that, if a provider does not file a timely appeal of a final determination on a reimbursement issue, there is no right to reopening of that issue in light of judicial decisions in other cases on the same issue. Put simply, reopening is not designed for the revival of stale claims, *Albert Einstein Medical Center*, v. *Sullivan*, 830 F. Supp. 846, 850 (E.D. Pa. 1992), aff'd, 6 F.3d 778 (3d Cir. 1993), or the addition of new claims. *Saint Mary of Nazareth Hospital Center*, v. *Schweiker*, 741 F.2d 1447, 1449 (D.C. Cir. 1984).

In addition, we believe that our longstanding policy of not reopening for application of a new legal interpretation or policy, whether in response to judicial precedent or otherwise, comports with analogous judicial practice. When the Supreme Court decides a legal issue, the Court's "controlling interpretation of federal law" applies to "all cases still open on

direct review." *Harper* v. *Virginia Department of Taxation*, 509 U.S. 86, 97 (1993), but "[n]ew legal principles * * * do not apply to cases already closed." *Reynoldsville Casket Co.* v. *Hyde*, 514 U.S. 749, 758 (1995). Thus, while a provider that files a timely appeal may, if it ultimately prevails, be reimbursed differently for an item than providers that do not appeal timely, we do not believe that the decision in the prevailing provider's case should apply to other providers' cost reports that were closed and not appealed timely.

Our settled reopening policy, clarified in § 405.1885(b)(2), also furthers the interests of administrative finality in a program of extraordinary magnitude. For example, there were only 37 fiscal intermediaries in 1997 as compared to approximately 38,000 participating providers. Of course, each provider submits an annual cost report containing thousands of cost items, any one of which may give rise to a reimbursement issue. (See *Athens City Hospital, Inc.* v. *Schweiker*, 743 F.2d 1, 3 (D.C. Cir. 1984) (detailing cost report contents).) We believe it would be unworkable to reopen thousands of final, unappealed cost reports each time a judicial decision calls into question one of our many reimbursement policies. Indeed, the Supreme Court concluded that, "given the administrative realities we would not be shocked by a system in which underpayments could never be the basis for reopening" since the "few dozen fiscal intermediaries often need three years * * * to discover overpayments in the tens of thousands of NPRs that they issue, while each * * * sophisticated Medicare-provider * * * is generally capable of identifying an underpayment in its own NPR within the 180-day time period specified in 42 U.S.C. 139500(a)(3)" for an appeal to the PRRB. *Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U.S. at 455–56. Thus, instead of the "persistent" unlawful conduct suggested by the commenter, we believe that our policy of not reopening closed cost reports in response to decisions in other cases is essential for maintaining administrative finality in a program of extraordinary magnitude that is administered with limited resources.

Comment: A group of health law attorneys recommended that CMS propose more elaborate revisions to the reopening regulations. The commenter saw the need for an orderly process for the correction of factual errors and erroneous interpretations of Medicare law. Also, the commenter recommended that § 405.1885(b) be amended so that CMS must require intermediary reopening for all providers located in the jurisdiction of a court that declares a Medicare policy unlawful. The commenter stated that, in light of the Supreme Court's *Your Home Visiting Nurse* decision, § 405.1885(a) should be revised to require intermediaries to grant provider requests for reopening to correct factual errors and improper application of policy rather than leaving the reopening decision to the intermediaries' discretion. According to the same commenter, the regulations should also detail the circumstances, if any, in which the intermediary may reopen in light of a judicial decision or other change in law. In the same vein, a different commenter stated that some level of materiality should be established so that providers are not confronted with several sets of adjustments for various cost reporting years.

Response: We proposed revisions to the reopening regulations in response to the *Monmouth Medical Center* and *Bartlett Memorial Medical Center* decisions. Our limited purpose was to clarify longstanding interpretations of the reopening regulations, which we believe were misapprehended by the courts.

More elaborate revisions to the reopening regulations are beyond the scope of the proposed rule. In any event, we believe the reopening regulations and related provisions of the PRM provide an orderly process for the correction of factual errors and erroneous interpretations of the law in effect, as we understood the law, when the intermediary determination or decision was rendered. We also believe that the reopening criteria prescribed in PRM section 2931.2 provide the intermediaries with sufficient guidance regarding the materiality of a potential reopening and revision to program reimbursement.

In lieu of the commenter's suggestion that we allow reopening for application of a judicial decision in another case or for some other change in law, we have revised § 405.1885(b) to reflect our longstanding practice of not reopening for application of a new legal interpretation or policy, whether in response to judicial precedent or otherwise. As explained above, we believe this reopening policy avoids retroactive rulemaking problems; comports with analogous judicial practice and the limited nature of the reopening process; and furthers the goals of administrative finality in a program of extraordinary magnitude that is administered with limited resources.

We also do not believe that the Supreme Court's *Your Home Visiting Nurse* decision requires any revision to § 405.1885(a) or any other reopening provision. As discussed above, the Court's rejection of PRRB and Federal court review of intermediary reopening denials continues the "tradition of nonreviewability * * * [of] refusals to reconsider * * * by agencies as by lower courts; * * * another tradition that [the Administrative Procedure Act,] 5 U.S.C. 701(a)(2) was meant to preserve." *ICC* v. *Locomotive Engineers*, 482 U.S. at 282. Thus, we believe *Your Home Visiting Nurse* and related precedent apply equally to intermediary reopening denials directed by CMS and to denials by the intermediary acting alone.

For the reasons discussed above and although the commenters largely opposed our proposed revisions to the reopening provisions, we are finalizing these provisions as proposed with a technical change to § 405.1885(b)(3).

VI. Changes to the Prospective Payment System for Capital-Related Costs

A. Background

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a prospective payment system established by the Secretary." Under the statute, the Secretary has broad authority in establishing and implementing the capital prospective payment system. We initially implemented the capital prospective payment system in the August 30, 1991 final rule (56 FR 43358), in which we established a 10-year transition period to change the payment methodology for Medicare hospital inpatient capital-related costs from a reasonable cost-based methodology to a prospective methodology (based fully on the Federal rate).

Federal fiscal year (FY) 2001 was the last year of the 10-year transition period established to phase in the prospective payment system for hospital inpatient capital-related costs. Beginning in FY 2002, capital prospective payment system payments were based solely on the Federal rate for the vast majority of hospitals. The basic methodology for determining capital prospective payments based on the Federal rate is set forth in § 412.312. For the purpose of calculating payments for each discharge, the standard Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG Weight) × (Geographic Adjustment Factor (GAF)) × (Large Urban Add-on, if applicable) × (COLA Adjustment for hospitals located in

Alaska and Hawaii) × (1 + DSH Adjustment Factor + IME Adjustment Factor, if applicable)

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year that are specified in § 412.312(c) of existing regulations. (Refer to the August 1, 2001 final rule (66 FR 39910) for a summary of the statutory basis for the system, the development and evolution of the system, the methodology used to determine capital-related payments to hospitals both during and after the transition period, and the policy for providing special exceptions.)

B. New Hospitals

Under the prospective payment system for capital-related costs, at § 412.300(b), a new hospital is defined as a hospital that is newly participating in the Medicare program (under current or previous ownership) for less than 2 years (see 56 FR 43418, August 30, 1991). During the 10-year transition period, under § 412.324(b), a new hospital was exempt from the capital prospective payment system for its first 2 years of operation and was paid 85 percent of its reasonable costs during that period. Effective with its third cost reporting period, a new hospital was paid under the appropriate transition methodology (either hold-harmless or fully prospective) for the remainder of the transition period. (If the hold-harmless methodology were applicable, hold-harmless payments would be made for 8 years, even if they extend beyond the 10-year transition period, which ended beginning with cost reporting periods beginning during FY 2002.)

This payment provision was implemented to provide special protection to new hospitals during the transition period in response to concerns that prospective payments under a DRG system may not be adequate initially to cover the capital costs of newly built hospitals. These hospitals may not have sufficient occupancy in those initial 2 years and may have incurred significant capital startup costs, so that capital prospective payment system payments may not be sufficient. For instance, hospitals newly participating in the Medicare program may not initially have adequate Medicare utilization. Because capital prospective payment system payments are made on a per discharge basis, a hospital only receives payments for its capital-related costs upon discharge of its Medicare patients. In addition, these hospitals did not have an opportunity to reserve previous years' capital prospective payment system payments to finance capital projects.

While the regulations provided for payments based on a percentage of costs for new hospitals for the first 2 years during the 10-year transition period, no provision was made for new hospitals once the 10-year transition was completed. However, we believe that the rationale for the policy applies equally to new hospitals even after the completion of the 10-year transition period. Accordingly, in the May 9, 2002 proposed rule (67 FR 31488), we proposed, under § 412.304(c)(2), to provide special payment to new hospitals for cost reporting periods beginning on or after October 1, 2002. That is, we proposed to pay new hospitals, as defined under § 412.300(b), 85 percent of their reasonable costs for their first 2 years of operation. Effective with their third year of operation, a new hospital would be paid based on the Federal rate (that is, the same methodology used to pay all other hospitals subject to the capital prospective payment system). We stated that we believe this amendment will provide for more appropriate payments to new hospitals for their capital-related costs since initial capital expenditures may reasonably exceed the capital prospective payment system per discharge payment based on the Federal rate. The capital prospective payment Federal rate is based on industry-wide average capital costs rather than the experience of a new hospital. We believe this policy will allow new hospitals to provide efficiency in the delivery of services and still make reasonable payments for their capital expenditures.

As was the case during the 10-year transition period, the new hospital exemption will only be available to those hospitals that have not received reasonable cost-based payments under the Medicare program in the past, and would need special protection during their initial period of operation. This exemption from the capital prospective payment system for the first 2 years of operation will not apply to a hospital that is "new" as an acute care hospital but that has operated in the past (under current or previous ownership) and has an historical Medicare asset base. Furthermore, a hospital that replaces its entire facility (regardless of a change of ownership) will not qualify for the new hospital exemption even though it may experience a significant change in its asset base. Thus, in accordance with § 412.300(b), a new hospital exemption will not apply in the following situations:

- A hospital that builds new or replacement facilities at the same or a new location, even if a change of ownership or a new leasing arrangement is involved;
- A hospital that closes and then reopens under the same or different ownership;
- A hospital that has been in operation for more than 2 years but has been participating in the Medicare program for less than 2 years; or
- A hospital that changes status from a prospective payment system-excluded hospital (paid under the TEFRA methodology) or another hospital prospective payment system (such as the inpatient rehabilitation facility prospective payment system) to a hospital that is subject to the capital prospective payment system for acute care hospitals.

Comment: Three commenters addressed our proposed policy for new hospitals after the 10-year transition period for cost reporting periods beginning on or after October 1, 2002. One commenter asked whether new providers would have the option of electing payment at 100 percent of the Federal rate for their first 2 years of operation rather than the special payment provision of 85 percent of their reasonable costs. Another commenter expressed concern about the negative impact the proposed policy would have on its facility if the policy were applied retroactively, while still another commenter requested that the policy be effective for new hospitals with cost reporting periods beginning on or after October 1, 2001 rather than October 1, 2002.

Response: We agree with the commenter's suggestion that new hospitals (as defined in § 412.300(b)) should have the option of electing payment for their first 2 years of operation through either the special payment provision for new hospitals at 85 percent of their reasonable costs, or beginning immediately to receive payments based on 100 percent of the Federal rate. However, the payment method that the new hospital selects would remain in effect through the hospital's first 2 years of operation; the hospital would not be allowed to revert to the alternate payment method. If 100 percent of the Federal rate is the payment method selected, the new hospital must make the request to the fiscal intermediary in writing by the later of December 1, 2002, or within 60 days of the start of the provider's cost reporting period. We are revising the regulations at § 412.304(c)(2) to reflect this change.

While we are making this change effective for cost reporting periods beginning on or after October 1, 2002, we are not making this change effective for any periods prior to that date because doing so would constitute retroactive rulemaking.

Accordingly, in this final rule, we are adopting as final the proposed regulation change at § 412.304(c), with modifications. In § 412.304(c)(2)(i), we are specifying that a new hospital is paid (1) 85 percent of its allowable Medicare inpatient hospital capital-related costs through its cost report ending at least 2 years after the hospital accepts its first patient; or (2) if the new hospital elects, 100 percent of the Federal rate under the capital prospective payment system. If the new hospital elects to be paid 100 percent of the Federal rate, it must make the request to the fiscal intermediary in writing by the later of December 1, 2002, or within 60 days of the start of the provider's cost reporting period. We are specifying that once a new hospital elects to be paid based on 100 percent of the Federal capital prospective payment rate, it may not revert to payment at 85 percent of its allowable Medicare inpatient hospital capital-related costs.

C. Extraordinary Circumstances

When we implemented the capital prospective payment system in FY 1992, a number of commenters requested that we provide for a separate exceptions payment to account for extraordinary circumstances beyond a hospital's control that would require the hospital to make unanticipated major capital expenditures (56 FR 43411, August 30, 1991). In response to the commenters' request, we provided in the regulations at § 412.348(f) that a hospital may request an additional payment if the hospital incurs unanticipated capital expenditures in excess of $5 million due to extraordinary circumstances beyond the hospital's control. Extraordinary circumstances include, but are not limited to, a flood, a fire, or an earthquake. For more detailed information regarding this policy, refer to the August 30, 1991 **Federal Register** (56 FR 43411).

To clarify that this policy regarding additional payments for extraordinary circumstances also applies to periods beginning on or after October 1, 2001, in the May 9, 2002 proposed rule (67 FR 31489), we proposed to revise § 412.312 by adding a new paragraph (e) to specify that payment is made for extraordinary circumstances as provided for in § 412.348(f) for cost reporting periods after the transition period, that is, beginning on or after October 1, 2001.

We did not receive any comments on this proposal. Accordingly, we are adopting as final the proposed new § 412.312(e).

D. Restoration of the 2.1 Percent Reduction to the Standard Federal Capital Prospective Payment System Payment Rate

Section 1886(g)(1)(A) of the Act, as amended by section 4402 of Public Law 105–33, requires the Secretary to reduce the unadjusted standard Federal capital prospective payment system payment rate (and the unadjusted hospital-specific rate) by 2.1 percent for discharges on or after October 1, 1997, and through September 30, 2002, in addition to applying the budget neutrality factor used to determine the Federal capital prospective payment system payment rate in effect on September 30, 1995. The budget neutrality factor effective for September 30, 1995, was 0.8432 (59 FR 45416). Therefore, application of the budget neutrality factor (as specified under section 1886(g)(1)(A) of the Act) was equivalent to a 15.68 percent reduction to the unadjusted standard Federal capital prospective payment system payment rate and the unadjusted hospital-specific rate in effect on September 30, 1997. The additional 2.1 reduction to the rates in effect on September 30, 1997 resulted in a total reduction of 17.78 percent.

Accordingly, under the statute, the additional 2.1 percent reduction no longer applies to discharges occurring after September 30, 2002 (§ 412.308(b)(5)). Therefore, in the May 9, 2002 proposed rule (67 FR 31489), we proposed to revise § 412.308(b) to add a new paragraph (b)(6) to restore the 2.1 percent reduction to the unadjusted standard Federal capital prospective payment system payment rate (as provided under § 412.308(c)) for discharges occurring on or after October 1, 2002, to the level that it would have been without the reduction. (Since FY 2001 was the final year of the 10-year transition period, we no longer update the hospital-specific rate and, therefore, we also no longer restore the 2.1 percent reduction to that rate as provided under § 412.328(e)(1).)

As described in the August 29, 1997 final rule (62 FR 46012), we determined the reduction factor for FY 1998 by deducting both the FY 1995 budget neutrality factor (0.1568) and the 2.1 percent reduction (0.021) from 1 (1 − 0.1568 − 0.021 = 0.8222). We then applied the 0.8222 to the unadjusted standard Federal rate. Therefore, to determine the adjustment factor needed to restore the 2.1 percent reduction, we would divide the amount of the adjustment without the 2.1 percent reduction (1 − 0.1568 = 0.8432) by the amount of the adjustment with the 2.1 percent reduction (0.8222). Accordingly, we proposed to restore the 2.1 percent reduction for discharges occurring on or after October 1, 2002, under proposed § 412.308(b)(6), by applying a factor of 1.02554 (0.8432/0.8222) to the unadjusted standard Federal capital prospective payment system payment rate under § 412.308(c), that was in effect on September 30, 2002.

We did not receive any comments on this proposal and are, therefore, adopting as final the proposed new § 412.308(b)(6).

E. Clarification of Special Exceptions Policy

Under the special exceptions provisions at § 412.348(g), an additional payment may be made through the 10th year beyond the end of the capital prospective payment system transition period for eligible hospitals that meet (1) a project need requirement as described at § 412.348(g)(2), which, in the case of certain urban hospitals, includes an excess capacity test described at § 412.348(g)(4); and (2) a project size requirement as described at § 412.348(g)(5). In accordance with § 412.348(g)(7), hospitals are eligible to receive special exceptions payments for the 10 years after the cost reporting year in which they complete their project, which can be no later than the hospital's cost reporting period beginning before October 1, 2001.

During the 10-year capital prospective payment system transition period, regular exceptions under §§ 412.348(b) through (e) are paid the same as or more (between 70 percent and 90 percent of costs, depending on the type of hospital) than the special exceptions provision under § 412.348(g) (70 percent for all eligible hospitals). Therefore, it was not until cost reporting periods beginning on or after October 1, 2001 (the end of the transition period) that eligible hospitals could actually begin receiving additional payments under the special exceptions provision. As we stated in the July 30, 1999 final rule (64 FR 41528), we believe that, since any substantive changes to this policy could have a significant impact, the appropriate forum for addressing the special exceptions policy is through the legislative process in Congress rather than the regulations process. Since hospitals are beginning to receive additional payments under this provision, we have received several

questions regarding the current policy at § 412.348(g). Therefore, in the May 9, 2002 proposed rule (67 FR 31490), we did not propose any changes to the special exceptions policy. However, we did provide the following clarifications to the existing regulations.

Under § 412.348(g)(1), to be eligible for special exception payments, a hospital must be either a sole community hospital (SCH), an urban hospital with at least 100 beds that has a disproportionate share (DSH) percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), or a hospital with a combined Medicare and Medicaid inpatient utilization of at least 70 percent. Because a hospital's SCH status, DSH patient percentage, and combined utilization may fluctuate from one cost reporting year to the next, the special exceptions eligibility criteria are applied for each cost reporting period throughout the 10-year special exceptions period. A hospital receives special exceptions payments only for those years in the 10-year period in which it meets the eligibility requirements in § 412.348(g)(1). Therefore, a hospital might be eligible for a special exception payment in one year, not be eligible the next year, and then subsequently qualify during the 10-year special exceptions period.

The project need criteria in § 412.348(g)(2) also state that a hospital must obtain any required approval from a State or local planning authority. However, in States where a certificate of need or approval is not required by the State or local planning authority, the hospital must provide the fiscal intermediary with appropriate documentation (such as project plans from the hospital's board of directors) that demonstrates that the requirements of § 412.348(g)(3) concerning the age of assets test and § 412.348(g)(4) concerning the excess capacity test for urban hospitals are met. We understand that a State planning authority and a hospital may define a project differently. Accordingly, we will allow the hospital to use either the definition provided by the project within the certificate of need (in States where a certificate of need is required), or other appropriate documentation provided from the hospital's project plans (such as project plans as specified in the minutes of the meetings of the hospital's board of directors).

In determining a hospital's special exceptions payment amount, as described in § 412.348(g)(8), for each cost reporting period, the cumulative payments made to the hospital under the capital prospective payment system are compared to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to the capital prospective payment system. This comparison is offset by any amount by which the hospital's current year Medicare inpatient operating and capital prospective payment system payments (excluding 75 percent of its operating DSH payments) exceed its Medicare inpatient operating and capital costs (or its Medicare inpatient margin). The minimum payment level is 70 percent for all hospitals, regardless of class, as set forth in § 412.348(g)(6), for the duration of the special exceptions provision.

In order to assist our fiscal intermediaries in determining the end of the 10-year period in which an eligible hospital will no longer be entitled to receive special exception payments, § 412.348(g)(9) requires that hospitals eligible for special exception payments submit documentation to the intermediary indicating the completion date of their project (the date the project was put in use for patient care) that meets the project need and project size requirements outlined in §§ 412.348(g)(2) through (g)(5). In order for an eligible hospital to receive special exception payments, this documentation had to be submitted in writing to the intermediary by the later of October 1, 2001, or within 3 months of the end of the hospital's last cost reporting period beginning before October 1, 2001, during which a qualifying project was completed.

We did not receive any comments on this clarification.

VII. Changes for Hospitals and Hospital Units Excluded From the Acute Care Hospital Inpatient Prospective Payment System

A. Payments to Excluded Hospitals and Hospital Units (§§ 413.40(c), (d), and (f))

1. Payments to Existing Excluded Hospitals and Hospital Units

Section 1886(b)(3)(H) of the Act (as amended by section 4414 of Public Law 105–33) established caps on the target amounts for certain existing hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. For this period, the caps on the target amounts apply to the following three classes of excluded hospitals or units: psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

In accordance with section 1886(b)(3)(H)(i) of the Act and effective for cost reporting periods beginning on or after October 1, 2002, payments to these classes of existing excluded hospitals or hospital units are no longer subject to caps on the target amounts. In accordance with existing §§ 413.40(c)(4)(ii) and (d)(1)(i) and (ii), where applicable, these excluded hospitals and hospital units continue to be paid on a reasonable cost basis, and payments are based on their Medicare inpatient operating costs, not to exceed the ceiling. The ceiling will be computed using the hospital's or unit's target amount from the previous cost reporting period updated by the rate-of-increase specified in § 413.40(c)(3)(viii) of the regulations and then multiplying this figure by the number of Medicare discharges. Effective for cost reporting periods beginning on or after October 1, 2002, rehabilitation hospitals and units are no longer paid on a reasonable cost basis but will be paid under the inpatient rehabilitation facility prospective payment system. Moreover, we have proposed the establishment of a DRG-based prospective payment system for long-term care hospitals (LTCHs) (67 FR 13415). As part of this process, we proposed a 5-year transition period from reasonable cost-based reimbursement to a fully Federal prospective payment system. However, a LTCH, subject to the blend methodology, may elect to be paid based on a 100 percent of the Federal prospective rate. (See sections VII.A.3. and 4. for a more detailed discussion.)

Comment: One commenter requested clarification as to whether payment to excluded hospitals and units are subject to the TEFRA bonus and penalty provisions and continuous improvement bonuses.

Response: Certain providers that are excluded from the acute care hospital inpatient prospective payment system will continue to receive bonus/relief payments as well as continuous improvement bonus payments, when appropriate, as provided for in § 413.40(d).

Comment: With regard to the expiration of the caps on target amounts for excluded hospitals and units, a commenter requested clarification as to how the FY 2003 target rate is to be determined.

Response: Our regulations at § 413.40(c)(4)(ii) state that "the target amount equals the hospital's target amount for the previous cost reporting period, increased by the update factor for the subject cost reporting period * * *." Thus, for cost reporting periods beginning in FY 2003, the hospital or

unit should use its previous year's target amount, updated by the appropriate rate-of-increase percentage.

2. Updated Caps for New Excluded Hospitals and Units

Section 1886(b)(7) of the Act establishes a payment limitation for new psychiatric hospitals and units, new rehabilitation hospitals and units, and new long-term care hospitals. A discussion of how the payment limitation was calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46019); the May 12, 1998 final rule (63 FR 26344); the July 31, 1998 final rule (63 FR 41000); and the July 30, 1999 final rule (64 FR 41529). Under the statute, a "new" hospital or unit is a hospital or unit that falls within one of the three classes of hospitals or units (psychiatric, rehabilitation or long-term care) that first receives payment as a hospital or unit excluded from the acute care hospital inpatient prospective payment system on or after October 1, 1997. The amount of payment for a "new" hospital or unit will be determined as follows:

- Under existing § 413.40(f)(2)(ii), for the first two 12-month cost reporting periods, the amount of payment is the lesser of: (1) The operating costs per case; or (2) 110 percent of the national median (as estimated by the Secretary) of the target amounts for the same class of hospital or unit for cost reporting periods ending during FY 1996, updated by the hospital market basket increase percentage to the fiscal year in which the hospital or unit first receives payments under section 1886 of the Act, as adjusted for differences in area wage levels.
- Under existing § 413.40(c)(4)(iii)(B)(4)(v), for cost reporting periods following the hospital's or unit's first two 12-month cost reporting periods, the target amount is equal to the amount determined under section 1886(b)(7)(A)(i) of the Act for the third period, updated by the applicable hospital market basket increase percentage.

The amounts included in the following table reflect the updated 110 percent of the national median target amounts for each class of new excluded hospitals and hospital units for cost reporting periods beginning during FY 2003. These figures are updated with the most recent data available to reflect the market basket increase percentage of 3.5 percent. This percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient hospital services (as projected by CMS's Office of the Actuary based on its historical experience with the hospital inpatient prospective payment system). For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index, without regard to prospective payment system reclassifications, and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Class of excluded hospital or unit	FY 2003 labor-related share	FY 2003 nonlabor-related share
Psychiatric	$ 7,054	$ 2,804
Long-Term Care	17,286	6,872

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new rehabilitation hospitals and units since they will be paid under the inpatient rehabilitation facility prospective payment system.

3. Establishment of a Prospective Payment System for Inpatient Rehabilitation Hospitals and Units

Section 1886(j) of the Act, as added by section 4421(a) of Public Law 105–33, provided the phase-in of a case-mix adjusted prospective payment system for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation hospital unit (referred to in the statute as rehabilitation facilities) for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2002, with a fully implemented prospective payment system for cost reporting periods beginning on or after October 1, 2002. Section 1886(j) of the Act was amended by section 125 of Public Law 106–113 to require the Secretary to use a discharge as the payment unit under the prospective payment system for inpatient hospital services furnished by rehabilitation facilities and to establish classes of patient discharges by functional-related groups. Section 305 of Public Law 106–554 further amended section 1886(j) of the Act to allow rehabilitation facilities, subject to the blend methodology, to elect to be paid the full Federal prospective payment rather than the transitional period payments specified in the Act.

On August 7, 2001, we issued a final rule in the **Federal Register** (66 FR 41316) establishing the prospective payment system for inpatient rehabilitation facilities, effective for cost reporting periods beginning on or after January 1, 2002. Under the inpatient rehabilitation prospective payment system, for cost reporting periods beginning on or after January 1, 2002, and before October 1, 2002, payment will consist of 33⅓ percent of the facility-specific payment amount (based on the reasonable cost-based reimbursement methodology) and 66⅔ percent of the adjusted Federal prospective payment. For cost reporting periods beginning on or after October 1, 2002, payment will be based entirely on the Federal prospective payment rate determined under the inpatient rehabilitation facility prospective payment system.

4. Implementation of a Prospective Payment System for Long-Term Care Hospitals

In accordance with the requirements of section 123 of Public Law 106–113, as modified by section 307(b) of Public Law 106–554, we proposed (as published in the March 22, 2002 proposed rule (67 FR 13415)) the establishment of a per discharge, DRG-based prospective payment system for long-term care hospitals as described in section 1886(d)(1)(B)(iv) of the Act for cost reporting periods beginning on or after October 1, 2002. As part of the implementation process, we proposed a 5-year transition period from reasonable cost-based reimbursement to the fully Federal prospective rate. We also proposed that certain long-term care hospitals may elect to be paid based on 100 percent of the Federal prospective rate. Under the March 22, 2002 proposed rule, a blend of the reasonable cost-based reimbursement percentage and the prospective payment Federal rate percentage would be used to determine a long-term care hospital's total payment under the prospective payment system during the transition period. We would expect long-term care hospitals to be paid under the full Federal prospective rate for cost reporting periods beginning on or after October 1, 2006. We are in the process of developing a final rule for the long-term care prospective payment system.

5. Changes in the Types of Patients Served or Inpatient Care Services That Distort the Comparability of the Cost Reporting Period to the Base Year are Grounds for Requesting an Adjustment Payment in Accordance with Section 1886(b)(4) of the Act

Section 4419(b) of Public Law 105–33 requires the Secretary to publish annually in the **Federal Register** a report describing the total amount of adjustment (exception) payments made to excluded hospitals and units, by reason of section 1886(b)(4) of the Act, during the previous fiscal year.

However, the data on adjustment payments made during the previous fiscal year are not available in time to publish a report describing the total amount of adjustment payments made to all excluded hospitals and units.

The process of requesting, adjudicating, and awarding an adjustment payment for a given cost reporting period is likely to occur over a 2-year period or longer. First, an excluded hospital or unit must file its cost report for a fiscal year with its intermediary within 5 months after the close of the fiscal year. The fiscal intermediary then reviews the cost report and issues a Notice of Program Reimbursement (NPR) in approximately 2 months after the filing of the cost report. If the hospital's operating costs are in excess of the ceiling, the hospital may file a request for an adjustment payment within 6 months from the date of the NPR. The intermediary, or CMS, depending on the type of adjustment requested, then reviews the request and determines if an adjustment payment is warranted. This determination is often not made until more than 6 months after the date the request is filed. Therefore, it is not possible to provide data in this final rule on adjustments granted for cost reports ending in the previous Federal fiscal year (that is, FY 2002), since those adjustments may not have been requested by the publication date of this final rule. However, in an attempt to provide interested parties with data on the most recent adjustments for which we do have data, we are publishing data on adjustments that were processed by the fiscal intermediaries or CMS during FY 2001.

The table below includes the most recent data available from the fiscal intermediaries and CMS on adjustment payments that were adjudicated during FY 2001. As indicated above, the adjustments made during FY 2001 only pertain to cost reporting periods ending in years prior to FY 2000. Total adjustment payments awarded to excluded hospitals and units during FY 2001 are $23,148,456. The table depicts for each class of hospital, in the aggregate, the number of adjustment requests adjudicated, the excess operating cost over the ceiling, and the amount of the adjustment payment.

Class of Hospital	Number	Excess cost over ceiling	Adjustment payment
Psychiatric	38	$23,211,026	$11,724,665
Rehabilitation	16	8,761,312	3,860,336
Long-Term Care	3	5,665,211	4,868,889
Children	3	2,696,518	1,043,565
Cancer	2	2,846,386	1,651,001

6. Technical Correction

On June 13, 2001, we published in the **Federal Register** an interim final rule (66 FR 32172) implementing section 307(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554). Section 307(a) provided for a 25-percent increase in TEFRA target amounts for long-term care hospitals "For cost reporting periods beginning during FY 2001 * * *." When we addressed this provision in the interim final rule, we stated the effective date correctly in the preamble language. However, in the regulation text, we inadvertently used an incorrect effective date. We are making the conforming change to reflect the correct date in this final rule.

B. Criteria for Exclusion of Satellite Facilities From the Hospital Inpatient Prospective Payment System

Existing regulations at 42 CFR 412.22(e) define a hospital-within-a-hospital as a hospital that occupies space in the same building as another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Section 412.22(h), relating to satellites of hospitals excluded from the acute care hospital inpatient prospective payment system, defines a satellite facility as a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Section 412.25(e), relating to satellites of excluded hospital units, defines a satellite facility as a part of a hospital unit that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Because of the similarities between the definitions of the two types of satellite facilities and the definition of a hospital-within-a-hospital, questions have been raised as to whether satellite facilities must meet the "hospital-within-a-hospital" criteria in § 412.22(e) regarding having a governing body, chief medical officer, medical staff, and chief executive officer that are separate from those of the hospital with which space is shared.

Although the separateness of satellite facilities of excluded hospitals and satellite facilities of excluded units of hospitals is not explicitly required under existing regulations, we believe these two types of satellite facilities are similar enough to hospitals-within-hospitals to warrant application of more closely related criteria to all of them. Specifically, satellite facilities are like hospitals-within-hospitals in that the satellites are physically located in acute care hospitals that are paid for their inpatient services under the acute care hospital inpatient prospective payment system. Moreover, both satellite facilities and hospitals-within-hospitals provide inpatient hospital care that is paid for at higher rates than would apply if the facility were treated by Medicare as a part of the acute care hospital.

In view of these facts, it is important that we establish clear criteria for ensuring that these facilities are not merely units of the acute care hospitals in which they are located, but are, in fact, organizationally and functionally separate from those hospitals. Therefore, in the May 9, 2002 proposed rule, we proposed to revise § 412.22(h)(2) to specify that, effective for cost reporting periods beginning on or after October 1, 2002, a hospital having a satellite facility would qualify for exclusion from the acute care hospital inpatient prospective payment system only if that satellite facility is: (1) Not under the authority or control of the governing body or chief executive officer of the hospital in which it is located; and (2) it furnishes inpatient care through the use of medical personnel who are not under the authority or control of the medical staff or chief medical officer of the hospital in which it is located. We also proposed to revise § 412.25(e)(2)(iii) to state that, effective for cost reporting periods beginning on or after October 1, 2002, a hospital unit having a satellite facility would qualify for exclusion from the acute care hospital inpatient prospective payment system only if the satellite facility is not under the

authority or control of the governing body or chief executive officer of the hospital in which it is located, and it furnishes inpatient care through the use of medical personnel who are not under the authority or control of the medical staff or chief medical officer of the hospital in which it is located.

Comment: One commenter stated that the use of the word "authority" in the criteria under § 412.25(e) of the proposed rule is ambiguous and unnecessary. The commenter expressed concern that the term could be construed in a manner that would undercut the ability of hospitals to provide necessary services. Therefore, the commenter believed that the word "authority" should be omitted from the final regulations. In addition, the commenter recommended that the most practical way to apply hospitalswithinhospitals criteria effectively to satellite facilities would be to amend § 412.22(e) to make it apply to both types of facilities or to incorporate those criteria by reference in proposed § 412.22(h)(2). The commenter believed that these revisions would be in keeping with CMS' intent and would result in a proper policy of treating hospitals-within-hospitals and satellite facilities equitably.

Response: After a review of the pertinent regulations, we agree with the commenter that the word "authority" should not be referenced in the regulations. We believe that deleting the reference allows for consistency between those criteria set forth for satellite facilities and those for hospitals-within-hospitals. Accordingly, in this final rule, we are revising §§ 412.22(h)(2)(iii)(A) and 412.25(e)(2)(iii)(A) to delete the word "authority" from the criteria.

However, we do not believe that revising § 412.22(e) to apply to both satellite facilities and hospitals-within-hospitals would be appropriate. A number of the criteria that apply to hospitals-within-hospitals would not be applicable to satellite facilities. One example is the requirement that the cost of services that the hospital-within-a-hospital receives from the "host" hospital is not more than 15 percent of the hospital's inpatient operating costs would not be an appropriate criterion. This criterion would not be appropriate for satellite facilities because the test would not only look at the costs incurred by the satellite facility but also at the costs incurred by the entire hospital, including both the satellite facility and the main hospital. For example, a main hospital has 100 beds and its satellite facility has 5 beds located in an acute care hospital. Since costs of the entire excluded hospital (at both the main hospital and the satellite facility) are reported on one cost report, by only looking at the costs that are shared between the satellite facility and the acute care hospital, the costs of services that the satellite facility receives from its "host" hospital will invariably be less than 15 percent of the costs of the entire hospital, even if all the costs of the satellite facility were incurred by the "host" hospital.

Comment: One commenter stated that given that long-term care hospitals and rehabilitation hospitals and units are now, or will be shortly, paid on prospective basis, the rule limiting the number of beds in a satellite facility may no longer be necessary. The commenter believed that the rules on hospitals-within-hospitals should be adequate to address CMS' concerns about payment advantage. Hence, the commenter recommended that the satellite facility rules be eliminated because they are no longer necessary and are burdensome.

Response: We have solicited comments regarding the bed limit for satellite facilities in the March 22, 2002 proposed rule to implement the long-term care hospital prospective payment system (67 FR 13464–13465). We will address the commenter's concerns along with any other comments received when we issue the final rule for the long-term care hospital prospective payment system.

C. Critical Access Hospitals (CAHs)

1. Background

Section 1820 provides for a nationwide Medicare Rural Hospital Flexibility Program (MRHF). (MRHF replaced the 7-State Essential Access Community Hospital/Rural Primary Care Hospital (EACH/RPCH) program.) Under section 1820 of the Act, as amended, certain rural providers may be designated as critical access hospitals (CAHs) under the MRHF program if they meet qualifying criteria and the conditions for designation specified in the statute. Implementing regulations for section 1820 of the Act are located at 42 CFR Part 485, Subpart F.

2. Election of Optional Payment Method

Under existing regulations at 42 CFR 413.70(b), CAHs may elect to be paid for services to their outpatients under an optional method. Facilities making this election are paid an amount for each outpatient visit that is the sum of the reasonable costs of facility services, as determined under applicable regulations, and, for professional services otherwise payable to the physician or other practitioner, 115 percent of the amounts that otherwise would be paid for the services if the CAH had not elected payment under the optional method. To enable intermediaries to make these payments accurately and to avoid possible delays in or duplications of payment, we specify in § 413.70(b)(3) that each CAH electing payment under the optional method must inform the intermediary in writing of that election annually, at least 60 days before the start of the affected cost reporting period (65 FR 47100, August 1, 2000, and 66 FR 31272, June 13, 2001).

Since the publication of this regulation, some CAHs have expressed concern that requiring a 60-day advance notice of the election of the optional payment method limits their flexibility, and have suggested that a shorter advance notice period would be appropriate. We have contacted our fiscal intermediaries to obtain feedback on the feasibility of changing the period of advance notification, since the fiscal intermediaries would need to make appropriate bill processing changes to allow any shorter time for notification of election of the optional method. Some fiscal intermediaries stated that requiring less than 60 days' advance notice is impractical, while others believed that needed changes could be made with as little as 2 weeks' advance notice. Given the diversity of feedback on this issue and our desire to allow CAHs as much flexibility as possible, in the May 9 proposed rule, we proposed to revise § 412.30(b)(3) to allow the required advance notice period to be determined by each individual fiscal intermediary for the CAHs it services, as long as the required advance notice is not less than 14 days or more than 60 days before the start of each affected cost reporting period.

Comment: Several commenters recommended that the advanced notice period for CAHs to elect the all-inclusive billing option be set firmly at 30 days rather than allowing the fiscal intermediaries to choose a timeframe ranging from 15 days to 60 days. One commenter recommended retaining the 60-day notice to fiscal intermediaries. Another commenter stated that the implementation of such flexibility could pose problems and requested that intermediaries be required to communicate due dates effectively to CAHs. The commenters expressed concern that, by allowing each intermediary to set the period for advance notice confusion could arise, as well as result in different policies could be created across the country.

Response: We have reviewed the commenters' concerns with regard to our proposal to allow the fiscal intermediaries to set the timeframe for election of the optional payment method for CAHs. We agree that, by allowing this type of flexibility, there exists the possibility of confusion between the fiscal intermediaries and the CAHs. In addition, we recognize that various policies might be established across the country, instead of one national policy. Therefore, we believe that to help provide some stability and uniformity to this policy, it would be in the best interest of all concerned if a definite period of time is set for the CAHs to notify their intermediaries of their decision to elect the optional payment method. Accordingly, in light of the commenters concerns and input from the intermediaries, we believe that a sufficient amount of time for CAHs to notify their fiscal intermediaries of an election of the optional payment method is 30 days before the beginning of the affected cost reporting period. We believe this will give the fiscal intermediaries enough time so that payments can be made accurately, avoiding possible delays in, or duplication of, payment.

Accordingly, in this final rule, we are revising § 413.70(b)(3)(i) to state that the CAH's election of the optional payment method must be made to the fiscal intermediary 30 days prior to the start of the affected cost reporting period.

3. Use of the Resident Assessment Instrument (RAI) by CAHs

Among the existing regulations implementing section 1820 of the Act are specific conditions that a hospital must meet to be designated as a CAH. To help protect the health and safety of Medicare patients who are being furnished post-hospital skilled nursing facility (SNF) level of care in a CAH, our regulations require CAHs to comply with some, but not all, of the Medicare SNF conditions of participation at 42 CFR Part 483, Subpart B. Specifically, the regulations at § 485.645(d) provide that in order for a CAH to use its beds to provide post-hospital SNF care, the CAH must be in substantial compliance with nine of the SNF requirements contained in Part 483, Subpart B. Included among the nine requirements are requirements for comprehensive assessments, comprehensive care plans, and discharge planning as specified in § 483.20(b), (k), and (l). (We note that the existing § 485.645(d)(6) incorrectly cites these regulation cross-references as "§ 483.20(b), (d), and (e)." When we revised § 483.20 on December 23, 1997 (63 FR 53307), we inadvertently did not make conforming cross-reference changes in § 485.645(d)(6). In the May 9, 2002 proposed rule, we proposed to make these conforming cross-reference changes.) Section 483.20(b) provides that a facility must make a comprehensive assessment of a resident's needs using the resident assessment instrument (RAI), specified by the State, on all its swing-bed patients.

We have received inquiries regarding the need for CAHs to use the RAI for patient assessment and care planning. The inquirers consider the RAI a lengthy and burdensome instrument and pointed out that CMS currently does not require CAHs to report data from the RAI for quality or payment purposes.

We required former RPCHs to use the RAI for the assessment of swing-bed patients to avoid the possibility of negative outcomes that might extend the length of stays in these hospitals, which provided limited services. In addition, we believed that the use of the RAI would help to ensure that patient needs are met when patients are in the facility for an extended period of time. In addition, swing-bed hospitals were not required to use any patient assessment instrument because we believed that the hospital conditions of participation included requirements that were appropriate safeguards to protect the health and safety of Medicare patients. Currently, the regulations at § 483.20(f) require all long-term care facilities to collect and submit assessment data from the RAI to the State for quality and payment purposes. There are no such collection and submission requirements for CAHs.

We have gathered information from the provider community, State surveyors, and staff involved in the development of quality indicators and prospective payment system rates for SNFs to determine the feasibility of continuing to require CAHs to comply with the requirement for use of the RAI for patient assessments. Based on the information received, we can identify no specific patient benefits involved in requiring CAHs to use the RAI for patient assessment purposes.

In the interest of reducing burden, where possible, and based on our analysis of the current significance of the requirement for use of the RAI for patient assessments in CAHs, we proposed in the May 9, 2002 proposed rule to eliminate the requirement for CAHs to complete an RAI believing it to be appropriate and would not jeopardize patient health and safety. A CAH would still be required to capture assessment data for its SNF patients but would have the flexibility to document the assessment data in the medical record in a manner appropriate for its facility. We believe there are sufficient additional safeguards in the CAH regulations to ensure the health and safety of each SNF patient in a CAH. The facility would still be required to develop a comprehensive care plan for each SNF patient that includes measurable objectives and a timetable to meet a patient's medical, nursing, and psychosocial needs that are identified in an assessment. Also, a post-discharge plan of care would address post-hospital care needs of the patient. All of this information (assessment, plan of care, and discharge plans) must be maintained in the patient's medical record.

We proposed to revise § 485.645 to specify that CAHs are required to complete a comprehensive assessment, comprehensive care plan, and discharge plan in accordance with the requirements of § 483.20(b), (k), and (l), except that the CAH is not required to use the RAI specified by the State, and is not required to comply with the requirements for frequency, scope, and number of assessments prescribed in § 413.343(b).

Comment: Fifteen commenters fully supported the elimination of the requirement that CAHs complete a lengthy patient assessment form for swing-bed patients, stating that the completion of the 400 plus question comprehensive assessment was an onerous and administrative burden, considering the RAI is not used for payment or quality purposes.

Response: We appreciate the commenters' support. As we stated in the proposed rule, we believe there are sufficient safeguards in the CAH regulations to ensure the health and safety of each swing-bed patient in a CAH. The facility would still be required to develop a comprehensive care plan for each swing-bed patient that includes measurable objectives and a timetable to meet a patient's medical, nursing, and psychosocial needs that are identified in an assessment.

Comment: One commenter disagreed with the elimination of the requirement. The commenter stated that CMS' failure to provide the basis for its decision to eliminate the RAI for CAHs violates the Administrative Procedure Act (APA). Further, the commenter stated that removing the RAI requirement would jeopardize quality of care for swing-bed patients in CAHs.

Response: In order to promulgate a substantive rule, the APA requires the agency to observe notice-and-comment rulemaking procedures, which we have

done. We believe that in the May 9, 2002 proposed rule, we clearly stated the issue and provided rationale for proposing the change.

Currently, all long-term care facilities are required to collect and submit assessment data to the State from the RAI for quality and payment purposes. There are no such collection and submission requirements for CAHs in the existing Medicare conditions of participation. On average, patients stay 10 days in a CAH swing bed. However, patients in SNFs have an average length of stay of approximately 25 days and patients in a nursing facility stay, on average, 230 days in a calendar year. The Medicare RAI assessment schedule for SNFs requires that the initial assessment be performed during days 1 through 5 of a patient's stay, but may be performed as late as days 6 through 8, termed "grace days", which gives staff additional flexibility in conducting the assessments. The initial assessment is used to assign patients to a resource utilization group (RUG), the case-mix group classification grouping that is used in establishing payments for the first 14 days of care. Subsequently, periodic assessments through the patient's stay at a SNF are performed to determine the RUG assignment and payment rate.

We believe that the commenter's concern that the removal of the RAI requirement for CAH's would jeopardize quality of care is unfounded. At this time, we believe that the quality of care interest in a CAH is better served by eliminating a requirement in which a very limited staff resource is required to complete a document with 400 plus questions for each swing-bed patient and from which data are not submitted to CMS, or compared with other facilities. Also, the existing requirement for a post-discharge plan of care would address post-hospital care needs of the patient.

We emphasize that the focus of the proposed rule was not to make major revisions to swing-bed requirements for CAHs. The proposal was to only eliminate the use of a specific form, the RAI tool. CAHs would still be required to complete comprehensive assessments on their swing-bed patients.

Comment: One commenter stated that quality of care measurements for swing-beds should be consistent and compatible to the measurement system used by nursing homes. The commenter suggested that a quality indicators program should be implemented in all facilities with swing beds.

Response: Quality measures currently are not calculated for CAHs because there are no data submitted to CMS to calculate. Further, even if data were available, the calculation of quality measures requires assessments to be conducted on days 5 and 14. The average length of stay in a CAH, which is 10 days, is inconsistent with this process.

CMS plans to develop an assessment tool in the future that will have a "modular format" whereby a provider with shorter patient stays would be able to collect a smaller set of data. In the future, we may consider whether or not it is appropriate and feasible to require CAHs to use and submit data from this specific format.

Comment: One commenter stated that there is no monitoring of compliance with conditions of participation in any swing beds. The commenter stated that surveys are infrequently conducted and when they are conducted, they are announced. The commenter also suggested that CMS apply the current long-term care transfer rule to all swing beds.

Response: We acknowledge that the monitoring and survey issues addressed by the commenters are important issues. However, the issues are outside the purview of this rule. The commenter's concerns will be shared with our survey and certification group.

VIII. MedPAC Recommendations

We have reviewed the March 1, 2002 report submitted by MedPAC to Congress and have given it careful consideration in conjunction with the policies set forth in this document. MedPAC's recommendations for payments for Medicare inpatient hospital services in its March 2002 report focused mainly on accounting for changes in input prices for the hospital market basket (Recommendation 2A) and on increases in the base rate for inpatient hospital services by applying the annual update factors (Recommendations 2B–1 and 2B–2).

In Recommendation 2A, MedPAC recommended that the Secretary should use wage and benefit proxies that most closely match the training and skill requirements of health care occupations in all input price indexes used for updating payments. MedPAC further indicated that, in determining index weights, measures specific to the health sector and to occupation categories in which health care plays a major role should be emphasized. Our decision to rebase and revise the hospital market basket, including cost category weights and price proxies, that is used in determining the update factors for payments for inpatient hospital services is presented in section IV of this final rule.

Recommendations 2B–1 and 2B–2 concerning the update factor for inpatient hospital operating costs and for hospitals and hospital distinct-part units excluded from the acute care hospital inpatient prospective payment system are discussed in Appendix B to this final rule.

IX. Other Required Information

A. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have established a process under which commenters can gain access to raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at *http://www.hcfa.gov/stats/pufiles.htm*. In our May 9, 2002 proposed rule, we published a list of data files that are available for purchase (67 FR 31493 through 31495).

B. Information Collection Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to evaluate fairly whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The majority of the information collection requirements contained in this final rule are currently approved. Section IX.B.1. below lists the OMB approval numbers and the current expiration dates for the information collection requirements, referenced by specific Parts under Title 42 of the Code of Federal Regulations, in this final rule that are currently approved.

In the May 9, 2002 proposed rule, we solicited public comments on each of the information collection requirements referenced in the proposed rule that are described in section IX.B.2. of this final rule, as required under the PRA of 1995.

1. Currently Approved Requirements

Regulation references in 42 CFR	OMB approval number	Current expiration date
Part 412	0938–0691	September 30, 2002.
	0938–0050	May 31, 2004.
	0938–0573	September 30, 2002.
		October 31, 2003.
		September 30, 2002.
Part 413	0938–0050	May 31, 2004.
	0938–0667	October 31, 2002.
	0938–0477	July 31, 2005.

2. Requirements for Which Public Comment Were Sought in the May 9, 2002 Proposed Rule

Section 412.230 Criteria for an Individual Hospital Seeking Redesignation to Another Rural Area or an Urban Area

Appropriate Wage Data

As specified in § 412.230, a new hospital must accumulate and provide at least 1 year of wage data to CMS for the purposes of applying for reclassification. While this collection requirement is subject to the PRA, we believe that due to the fact that hospital's maintain this data for other business purposes or state reporting requirement, or both the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2) and (b)(3) or both.

In addition, while this regulatory requirement is being added, the wage data collection requirement associated with this proposed regulatory requirement is currently approved under OMB collection 0938–0573 (Medicare Geographic Reclassification Review Criteria), with a current expiration date of September 30, 2002.

Section 413.65 Requirements for a determination that a facility or an organization had provider-based status

Responsibility for Obtaining Provider-Based Determinations

Under § 413.65, a potential main provider seeking an advance determination of provider-based status for a facility that is located on the main campus of the potential main provider will be required to submit an attestation stating that the facility meets the criteria in paragraph (d) of this section and, if it is a hospital, also attest that it will fulfill the obligations of hospital outpatient departments and hospital-based entities described in paragraph (g) of this section. In addition, the provider seeking such an advance determination will be required to maintain documentation of the basis for its attestations and to make that documentation available to CMS upon request.

We estimate that the burden associated with these requirements is an average of 1.5 hours per provider, for approximately 3,000 providers per year, for an annual burden of 4,500 hours. This estimate is based on the fact that the providers currently maintain the necessary data and that minimal effort would be required to locate and review the appropriate data.

Clinical Services

The clinical services of the facility or organization seeking provider-based status and the main provider will be required to maintain an unified retrieval system (or cross reference) of the main provider for all patient medical records for those patients treated in the facility or organization.

While this collection requirement is subject to the PRA, we believe that due to the fact that hospitals maintain this data for other business purposes or state reporting requirements or both, the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2) and (b)(3) or both.

We did not receive any public comments on the proposed information collection and recordkeeping requirements. The total burden associated with the new and revised requirements referenced in this section are 4,500 annual hours.

3. New Requirement in This Final Rule

Section 412.304(c)(2)(i)(A) Implementation of the Capital Prospective Payment System: Election by New Hospitals To Be Paid Based on 100 Percent of the Federal Rate

This section specifies that if a new hospital elects to be paid under the capital prospective payment system based on 100 percent of the Federal rate, instead of 85 percent of its allowable Medicare inpatient hospital capital-related costs, through its cost report ending at least 2 years after the hospital accepts its first patient, the new hospital must submit a written request to the fiscal intermediary. This request must be submitted by the later of December 1, 2002, or 60 days before the beginning of its cost reporting period.

We estimate that the burden associated with these requirements is an average of 1 hour per provider, for approximately 100 providers per year, for an annual burden of 100 hours.

The new information collection and recordkeeping requirements in this final rule will be submitted to the Office of Management and Budget (OMB) for review under the authority of the PRA. These requirements will not be effective until they have been approved by OMB.

If you have any comments on the information collection and recordkeeping requirements under § 412.304(c)(2)(i)(A), please mail the copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: John Burke, Attn.: CMS–1203–F, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Brenda Aguilar, CMS Desk Officer, Attn.: CMS–1203–F.

X. Waiver of Proposed Rulemaking

The Administrative Procedure Act generally requires that agency rules be published in the **Federal Register** as a notice of proposed rulemaking with a period for public comment (5 U.S.C. 533(b)). This notice-and-comment procedure can be waived, however, if an agency finds good cause that the procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

A. Technical Correction to Regulations Relating to DSH Adjustment Factor

On June 13, 2001, we Issued in the **Federal Register** an interim final with comment period (66 FR 32172) to

update the regulations to incorporate the changes made by section 211(b) of Public Law 106–554. Section 211(b) of Public Law 106–554 amended section 1886(d)(5)(F)(iv)(III) of the Act to revise the calculation of the DSH payment adjustment for hospitals affected by the revised thresholds as specified in section 211(a) of Public Law 106–554. These changes were effective for discharges on or after April 1, 2001, and no changes were made by section 211(b) for discharges prior to April 1, 2001. In the June 13, 2001 interim final rule with comment period, we inadvertently changed the adjustment factor for rural hospitals with fewer than 100 beds from 4 percent to 5 percent under § 412.106(d)(2)(iv)(A) for discharges occurring before April 1, 2001. As indicated in section V.E.3 of this final rule, we are correcting this error

Since this change is being made to correct a technical error, we find that the notice-and-comment procedure is unnecessary, and, therefore, find good cause to waive the notice of proposed rulemaking and issue the correction as final.

B. Technical Correction to Regulations Relating to TEFRA Target Amount for Long-Term Care Hospitals

Also, in the June 13, 2001 interim final rule with comment period (66 FR 32172), we implemented section 307(a) of Public Law 106–554. Section 307(a) provided for a 25-percent increase in TEFRA target amounts for long-term care hospitals "For cost reporting periods beginning during FY 2001 * * *." As indicated in section VII.A.6. of this preamble, in the June 2001 interim final rule with comment period, we stated the effective date correctly in the preamble language, but in the regulation text, we inadvertently used an incorrect effective date. We are making the conforming change to reflect the correct date in this final rule.

We find it unnecessary to undertake notice-and-comment rulemaking with regard to this change because our change merely conforms the regulation text to existing policy and provides technical correction to the regulations. It does not make any substantive changes to policy. Therefore, for good cause, we are waiving the notice-and-comment procedure with regard to this change.

C. Technical Corrections Relating to Affiliated Groups

As discussed in section V.I.3. of this preamble, we are making a technical change to the language under the definition of "affiliated group" under § 413.86(b) under paragraph (2) to reference the use of the more recent publications of the Graduate Medical Education Directory. Since this change updates a technical reference to an annual publication, we find the notice-and comment procedure is unnecessary, and therefore find good cause to waive the notice of proposed rulemaking and issue the correction as final.

When we issued the May 9, 2002 proposed rule, due to a typographical error, we inadvertently indicated that we proposed to make changes to § 413.86(g)(5)(iv) instead of § 413.86(g)(4)(iv) to incorporate revised provisions relating to determining the weighted number of FTE residents for hospitals that are part of the same affiliated group. As a result, we erroneously stated that we proposed to add a new paragraph under § 413.86(g)(5)(iv) and to redesignate paragraphs (g)(5)(iv), (g)(5)(v), and (g)(5)(vi) and paragraphs (g)(5)(v), (g)(5)(vi), and (g)(5)(vii), respectively, to accommodate the new paragraph. As discussed in section V.I.3. of this preamble, we are correcting these errors in this final rule. Since we are making these changes to correct a technical error, we find that the notice-and-comment procedure is unnecessary and therefore find good cause to waive the notice of proposed rulemaking and issue the correction in this final rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons stated in the preamble of this final rule, 42 CFR Chapter IV is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405 is amended as follows:

1. The authority citation for Part 405, Subpart R continues to read as follows:

Authority: Secs. 205, 1102, 1814(b), 1815(a), 1833, 1861(v), 1871, 1872, 1878, and 1886 of the Social Security Act (42 U.S.C. 405, 1302, 1395f(b), 1395g(a), 1395l, 1395x(v), 1395hh, 1395ii, 1395oo, and 1395ww).

2. Section 405.1885 is amended by revising paragraph (b), redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e), to read as follows:

§ 405.1885 Reopening a determination or decision.

* * * * *

(b)(1) An intermediary determination or an intermediary hearing decision must be reopened and revised by the intermediary if, within the 3-year period specified in paragraph (a) of this section, CMS—

(i) Provides notice to the intermediary that the intermediary determination or the intermediary hearing decision is inconsistent with the applicable law, regulations, CMS ruling, or CMS general instructions in effect, and as CMS understood those legal provisions, at the time the determination or decision was rendered by the intermediary; and

(ii) Explicitly directs the intermediary to reopen and revise the intermediary determination or the intermediary hearing decision.

(2) A change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, whether made in response to judicial precedent or otherwise, is not a basis for reopening an intermediary determination or an intermediary hearing decision under this section.

(3) Notwithstanding paragraph (b)(1)(i) of this section, CMS may direct the intermediary to reopen a particular intermediary determination or intermediary hearing decision in order to implement, for the same intermediary determination or intermediary decision—

(i) A final agency decision under §§ 405.1833, 405.1871(b), 405.1875, or 405.1877(a) of this part;

(ii) A final nonappealable court judgment; or

(iii) An agreement to settle an administrative appeal or a lawsuit.

* * * * *

(e) Notwithstanding an intermediary's discretion to reopen or not reopen an intermediary determination or an intermediary hearing decision under paragraphs (a) and (c) of this section, CMS may direct an intermediary to reopen, or not to reopen, an intermediary determination or an

intermediary hearing decision in accordance with paragraphs (a) and (c) of this section.

* * * * *

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

B. Part 412 is amended as follows:

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 412.4 [Amended]

2. In § 412.4(f)(1),the reference "paragraph (b) or (c)" is removed and "paragraph (b)(1) or (c)" is added in its place.

3. Section 412.22 is amended by—

a. Revising the introductory text of paragraph (h)(2).

b. Republishing the introductory text of paragraph (h)(2)(iii).

c. Redesignating paragraphs (h)(2)(iii)(A) through (F) as paragraphs (h)(2)(iii)(B) through (G), respectively.

d. Adding new paragraph (h)(2)(iii)(A).

The revision, republication, and addition read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(h) Satellite facilities. * * *

(2) Except as provided in paragraph (h)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the acute care hospital inpatient prospective payment systems for any period:

* * * * *

(iii) The satellite facility meets all of the following requirements:

(A) Effective for cost reporting periods beginning on or after October 1, 2002, it is not under the control of the governing body or chief executive officer of the hospital in which it is located, and it furnishes inpatient care through the use of medical personnel who are not under the control of the medical staff or chief medical officer of the hospital in which it is located.

* * * * *

4. Section 412.25 is amended by—

a. Revising the introductory text of paragraph (e)(2).

b. Republishing the introductory text of paragraph (e)(2)(iii).

c. Redesignating paragraphs (e)(2)(iii)(A) through (F) as paragraphs (e)(2)(iii)(B) through (G), respectively.

d. Adding new paragraph (e)(2)(iii)(A).

The revision, republication, and addition read as follows:

§ 412.25 Excluded hospitals units: Common requirements.

* * * * *

(e) *Satellite facilities.* * * *

(2) Except as provided in paragraph (e)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the acute care hospital inpatient prospective payment systems for any period:

* * * * *

(iii) The satellite facility meets all of the following requirements:

(A) Effective for cost reporting periods beginning on or after October 1, 2002, it is not under the control of the governing body or chief executive officer of the hospital in which it is located, and it furnishes inpatient care through the use of medical personnel who are not under the control of the medical staff or chief medical officer of the hospital in which it is located.

* * * * *

§ 412.63 [Amended]

5. Section 412.63 is amended by—

a. In paragraph (x)(2)(i)(A), removing the phrase "tabulating the hospital's data" and adding in its place "tabulating its data".

b. Removing paragraphs (x)(3) and (x)(4).

c. Redesignating paragraph (x)(5) as paragraph (x)(3).

6. Section 412.80 is amended by revising paragraph (a)(2) to read as follows:

§ 412.80 Outlier cases: General provisions.

(a) *Basic rule.* * * *

(2) *Discharges occurring on or after October 1, 1997 and before October 1, 2001.* For discharges occurring on or after October 1, 1997 and before October 1, 2001, except as provided in paragraph (b) of this section concerning transfers, CMS provides for additional payment, beyond standard DRG payments, to a hospital for covered inpatient hospital services furnished to a Medicare beneficiary if the hospital's charges for covered services, adjusted to operating costs and capital costs by applying cost-to-charge ratios, as described in § 412.84(h), exceed the DRG payment for the case, payments for indirect costs of graduate medical education (§ 412.105), and payments for serving disproportionate share of low-income patients (§ 412.106), plus a fixed dollar amount (adjusted for geographic variation in costs) as specified by CMS.

* * * * *

7. Section 412.88 is amended by republishing the introductory text of paragraph (a) and revising paragraph (a)(1) to read as follows:

§ 412.88 Additional payment for new medical service or technology.

(a) For discharges involving new medical services or technologies that meet the criteria specified in § 412.87, Medicare payment will be:

(1) One of the following:

(i) The full DRG payment (including adjustments for indirect medical education and disproportionate share but excluding outlier payments);

(ii) The payment determined under § 412.4(f) for transfer cases;

(iii) The payment determined under § 412.92(d) for sole community hospitals; or

(iv) The payment determined under § 412.108(c) for Medicare-dependent hospitals; plus

* * * * *

8. Section 412.92 is amended by revising paragraph (c)(2), to read as follows: § 412.92

Special treatment: Sole community hospitals.

* * * * *

(c) *Terminology.* * * *

(2) The term *like hospital* means a hospital furnishing short-term, acute care. Effective with cost reporting periods beginning on or after October 1, 2002, for purposes of a hospital seeking sole community hospital designation, CMS will not consider the nearby hospital to be a like hospital if the total inpatient days attributable to units of the nearby hospital that provides a level of care characteristic of the level of care payable under the acute care hospital inpatient prospective payment system are less than or equal to 8 percent of the similarly calculated total inpatient days of the hospital seeking sole community hospital designation.

* * * * *

9. Section 412.105 is amended by—

A. Republishing the introductory text of paragraph (a).

B. Revising paragraph (a)(1).

C. Revising paragraph (f)(1)(iii)(A).

D. Revising paragraph (f)(1)(vi).

E. Amending the following cross-references in paragraph (f)(1):

i. In paragraph (f)(1)(vii), the reference "§ 413.86(g)(12)" is removed and "§ 413.86(g)(13)" is added in its place.

ii. In paragraph (f)(1)(viii), the reference "§ 413.86 (g)(7)" is removed and "§ 413.86(g)(8)" is added in its place.

iii. In paragraph (f)(1)(ix), the reference "§ 413.86(g)(8)(i) and (g)(8)(ii) of the subchapter" is removed and "§ 413.86(g)(9)(i) and (g)(9)(ii) of the subchapter" is added in its place; the reference "§ 413.86(g)(8)(i) and (g)(8)(iii)(B) of this subchapter" is removed and "§ 413.86(g)(9)(i) and (g)(9)(iii)(B) of this subchapter" is added in its place; and the reference "§ 413.86(g)(8)(i) and (g)(8)(iii)(A) of the subchapter" is removed and "§ 413.86(g)(9)(i) and (g)(9)(iii)(A)" is added it its place.

iv. In paragraph (f)(1)(x), the reference "§ 413.86(g)(12)" is removed and "§ 413.86(g)(13)" is added in its place; and the reference "§ 413.86(g)(11)" is removed and "§ 413.86(g)(12)" is added in its place.

v. In paragraph (f)(1)(xi), the reference "§ 413.86(g)(9)" is removed and "§ 413.86(g)(10)" is added in its place.

vi. In paragraph (f)(1)(xii), the reference "§ 413.86(g)(10)" is removed and "§ 413.86(g)(11)" is added in its place.

The revisions read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(a) *Basic data.* CMS determines the following for each hospital:

(1) The hospital's ratio of full-time equivalent residents (except as limited under paragraph (f) of this section) to the number of beds (as determined under paragraph (b) of this section).

(i) Except for the special circumstances for affiliated groups and new programs described in paragraphs (f)(1)(vi) and (f)(1)(vii) of this section for cost reporting periods beginning on or after October 1, 1997, and for the special circumstances for closed hospitals or closed programs described in paragraph (f)(1)(ix) of this section for cost reporting periods beginning on or after October 1, 2002, this ratio may not exceed the ratio for the hospital's most recent prior cost reporting period after accounting for the cap on the number of allopathic and osteopathic full-time equivalent residents as described in paragraph (f)(1)(iv) of this section, and adding to the capped numerator any dental and podiatric full-time equivalent residents.

(ii) The exception for new programs described in paragraph (f)(1)(vii) of this section applies to each new program individually for which the full-time equivalent cap may be adjusted based on the period of years equal to the minimum accredited length of each new program.

(iii) The exception for closed hospitals and closed programs described in paragraph (f)(1)(ix) of this section applies only through the end of the first 12-month cost reporting period in which the receiving hospital trains the displaced full-time equivalent residents.

(iv) In the cost reporting period following the last year the receiving hospital's full-time equivalent cap is adjusted for the displaced resident(s), the resident-to-bed ratio cap in paragraph (a)(1) of this section is calculated as if the displaced full-time equivalent residents had not trained at the receiving hospital in the prior year.

* * * * *

(f) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.* (1) * * *

(iii)(A) Full-time equivalent status is based on the total time necessary to fill a residency slot. No individual may be counted as more than one full-time equivalent. If a resident is assigned to more than one hospital, the resident counts as a partial full-time equivalent based on the proportion of time worked in any areas of the hospital listed in paragraph (f)(1)(ii) of this section to the total time worked by the resident. A hospital cannot claim the time spent by residents training at another hospital. A part-time resident or one working in an area of the hospital other than those listed under paragraph (f)(1)(ii) of this section (such as a freestanding family practice center or an excluded hospital unit) would be counted as a partial full-time equivalent based on the proportion of time assigned to an area of the hospital listed in paragraph (f)(1)(ii) of this section, compared to the total time necessary to fill a full-time residency slot.

* * * * *

(vi) Hospitals that are part of the same affiliated group (as defined in § 413.86(b) of this subchapter) may elect to apply the limit at paragraph (f)(1)(iv) of this section on an aggregate basis, as specified in § 413.86(g)(7) of this chapter.

* * * * *

§ 412.106 [Amended]

10. In § 412.106(d)(2)(iv)(A), the phrase "5 percent" is removed and the phase "4 percent" is added in its place.

* * * * *

11. Section 412.108 is amended by revising paragraph (b) to read as follows:

§ 412.108 Special treatment: Medicare-dependent, small rural hospitals.

* * * * *

(b) *Classification procedures.* (1) The fiscal intermediary determines whether a hospital meets the criteria specified in paragraph (a) of this section.

(2) A hospital must submit a written request along with qualifying documentation to its fiscal intermediary to be considered for MDH status based on the criterion under paragraph (a)(1)(iii)(C) of this section.

(3) The fiscal intermediary will make its determination and notify the hospital within 90 days from the date that it receives the hospital's request and all of the required documentation.

(4) A determination of MDH status made by the fiscal intermediary is effective 30 days after the date the fiscal intermediary provides written notification to the hospital. An approved MDH status determination remains in effect unless there is a change in the circumstances under which the status was approved.

(5) The fiscal intermediary will evaluate on an ongoing basis, whether or not a hospital continues to qualify for MDH status. This evaluation includes an ongoing review to ensure that the hospital continues to meet all of the criteria specified in paragraph (a) of this section.

(6) If the fiscal intermediary determines that a hospital no longer qualifies for MDH status, the change in status will become effective 30 days after the date the fiscal intermediary provides written notification to the hospital.

(7) A hospital may reapply for MDH status following its disqualification only after it has completed another cost reporting period that has been audited and settled. The hospital must reapply for MDH status in writing to its fiscal intermediary and submit the required documentation.

(8) If a hospital disagrees with an intermediary's determination regarding the hospital's initial or ongoing MDH status, the hospital may notify its fiscal intermediary and submit other documentable evidence to support its claim that it meets the MDH qualifying criteria.

(9) The fiscal intermediary's initial and ongoing determination is subject to review under subpart R of Part 405 of this chapter. The time required by the fiscal intermediary to review the request is considered good cause for granting an extension of the time limit for the hospital to apply for that review.

* * * * *

12. Section 412.113 is amended by revising paragraphs (c)(2)(i)(D), (c)(2)(ii), and (c)(2)(iii) to read as follows:

§ 412.113 Other payments.

* * * * *

(c) *Anesthesia services furnished by hospital employed nonphysician anesthetists or obtained under arrangements.*

* * * * *

(2)(i) * * *

(D) Each qualified nonphysician anesthetist employed by or under contract with the hospital or CAH has agreed in writing not to bill on a reasonable charge basis for his or her patient care to Medicare beneficiaries in that hospital or CAH.

(ii) To maintain its eligibility for reasonable cost payment under paragraph (c)(2)(i) of this section in calendar years after 1989, a qualified hospital or CAH must demonstrate prior to January 1 of each respective year that for the prior year its volume of surgical procedures requiring anesthesia service did not exceed 500 procedures; or, effective October 1, 2002, did not exceed 800 procedures.

(iii) A hospital or CAH that did not qualify for reasonable cost payment for nonphysician anesthetist services furnished in calendar year 1989 can qualify in subsequent years if it meets the criteria in paragraphs (c)(2)(i)(A), (B), and (D) of this section, and demonstrates to its intermediary prior to the start of the calendar year that it met these criteria. The hospital or CAH must provide data for its entire patient population to demonstrate that, during calendar year 1987 and the year immediately preceding its election of reasonable cost payment, its volume of surgical procedures (inpatient and outpatient) requiring anesthesia services did not exceed 500 procedures, or, effective October 1, 2002, did not exceed 800 procedures.

* * * * *

13. Section 412.230 is amended by adding a new paragraph (e)(2)(iii) to read as follows:

§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.

* * * * *

(e) *Use of urban or other rural area's wage index.* * * *

(2) *Appropriate wage data.* * * *

(iii) For purposes of this paragraph (e)(2), if a new owner does not accept assignment of the existing hospital's provider agreement in accordance with § 489.18 of this chapter, the hospital will be treated as a new provider with a new provider number. In this case, the wage data associated with the previous hospital's provider number cannot be used in calculating the new hospital's 3-year average hourly wage. Once a new hospital has accumulated at least 1 year of wage data, it is eligible to apply for reclassification on the basis of those data.

* * * * *

14. Section 412.273 is amended by—

A. Revising the section heading.

B. Revising paragraphs (b)(2)(i) and (b)(2)(ii).

C. Adding a new paragraph (b)(2)(iii).

D. Redesignating paragraph (d) as paragraph (e).

E. Adding a new paragraph (d).

The revisions and additions read as follows:

§ 412.273 Withdrawing an application, terminating an approved 3-year reclassification, or canceling a previous withdrawal or termination.

* * * * *

(b) *Request for termination of approved 3-year wage index reclassifications.* * * *

(2) *Reapplication within the approved 3-year period.*

(i) If a hospital elects to withdraw its wage index application after the MGCRB has issued its decision, it may cancel its withdrawal in a subsequent year and request the MGCRB to reinstate its wage index reclassification for the remaining fiscal year(s) of the 3-year period.

(ii) A hospital may apply for reclassification for purposes of the wage index to a different area (that is, an area different from the one to which it was originally reclassified for the 3-year period). If the application is approved, the reclassification will be effective for 3 years. Once a 3-year reclassification becomes effective, a hospital may no longer cancel a withdrawal or termination of another 3-year reclassification, regardless of whether the withdrawal or termination request is made within 3 years from the date of the withdrawal or termination.

(iii) In a case in which a hospital with an existing 3-year wage index reclassification applies to be reclassified to another area, its existing 3-year reclassification will be terminated when a second 3-year wage index reclassification goes into effect for payments for discharges on or after the following October 1.

* * * * *

(d) *Process for canceling a previous withdrawal or termination.* A hospital may cancel a previous withdrawal or termination by submitting written notice of its intent to the MGCRB no later than the deadline for submitting reclassification applications for the following fiscal year, as specified in § 412.256(a)(2).

* * * * *

15. Section 412.304 is amended by revising paragraph (c) to read as follows:

§ 412.304 Implementation of the capital prospective payment system.

* * * * *

(c) *Cost reporting periods beginning on or after October 1, 2001.*— (1) *General.* Except as provided in paragraph (c)(2) of this section, for cost reporting periods beginning on or after October 1, 2001, the capital payment amount is based solely on the Federal rate determined under §§ 412.308(a) and (b) and updated under § 412.308(c).

(2) *Payment to new hospitals.* For cost reporting periods beginning on or after October 1, 2002—

(i) A new hospital, as defined under § 412.300(b), is paid 85 percent of its allowable Medicare inpatient hospital capital-related costs through its cost report ending at least 2 years after the hospital accepts its first patient, unless the new hospital elects to be paid under the capital prospective payment system based on 100 percent of the Federal rate.

(A) If the new hospital elects to be paid based on 100 percent of the Federal rate, the new hospital must submit a written request to the fiscal intermediary by the later of December 1, 2002 or 60 days before the beginning of its cost reporting period.

(B) Once a new hospital elects to be paid based on 100 percent of the Federal rate, it may not revert to payment at 85 percent of its allowable Medicare inpatient hospital capital-related costs.

(ii) For the third year and subsequent years, the hospital is paid based on the Federal rate as described under § 412.312.

* * * * *

16. Section 412.308 is amending by adding a new paragraph (b)(6) to read as follows:

§ 412.308 Determining and updating the Federal rate.

* * * * *

(b) *Standard Federal rate.* * * *

(6) For discharges occurring on or after October 1, 2002, the 2.1 percent reduction provided for under paragraph (b)(5) of this section is eliminated from the unadjusted standard Federal rate in effect on September 30, 2002, used to determine the Federal rate each year under paragraph (c) of this section.

* * * * *

17. Section 412.312 is amended by adding a new paragraph (e) to read as follows:

§ 412.312 Payment based on the Federal rate.

* * * * *

(e) *Payment for extraordinary circumstances.* Payment for extraordinary circumstances is made as provided for in § 412.348(f) for cost reporting periods beginning on or after October 1, 2001.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

C. Part 413 is amended as follows:

1. The authority citation for Part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Section 413.40 is amended by revising paragraph (c)(4)(iii)(A)(*2*) to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

* * * * *

(c) * * *
(4) * * *
(iii) * * *
(A) * * *

(*2*) In the case of long-term care hospitals, for cost reporting periods beginning on or after October 1, 2000, the hospital-specific target amount is the net allowable costs in a base period increased by the applicable update factors multiplied by 1.25.

* * * * *

3. Section 413.65 is amended by—

A. Revising paragraphs (a)(1)(ii), (a)(1)(ii)(G), and (a)(1)(ii)(H).

B. Adding new paragraphs (a)(1)(ii)(J) and (a)(1)(ii)(K).

C. Revising the definition of "Department of a provider", "Provider-based entity", and "Remote location of a hospital" under paragraph (a)(2).

D. Revising paragraphs (b)(2), (b)(3), (c) and (d).

E. Removing paragraph (j).

F. Redesignating paragraphs (h) and (i) as paragraphs (i) and (j), respectively.

G. Redesignating paragraph (f) as paragraph (h).

H. Redesignating paragraph (e) as paragraph (f).

I. Adding a new paragraph (e).

J. Revising redesignated paragraph (f).

K. Revising the introductory text of paragraph (g) and paragraphs (g)(1), (g)(2), and (g)(7).

L. Revising redesignated paragraphs (h), (i), and (j).

M. Revising paragraph (k).

N. Redesignating paragraphs (l), (m), and (n) as paragraphs (m), (n), and (o), respectively.

O. Adding a new paragraph (l).

P. Revising the heading of redesignated paragraph (n).

Q. Revising redesignated paragraph (o).

The revisions and addition read as follows:

§ 413.65 Requirements for a determination that a facility or an organization had provider-based status.

(a) *Scope and definitions.*—(1) *Scope.*

* * *

(ii) The determinations of provider-based status for payment purposes described in this section are not made as to whether the following facilities are provider-based:

* * * * *

(G) Independent diagnostic testing facilities furnishing only services paid under a fee schedule, such as facilities that furnish only screening mammography services (as defined in section 1861(jj) of the Act), facilities that furnish only clinical diagnostic laboratory tests, or facilities that furnish only some combination of these services.

(H) Facilities, other than those operating as parts of CAHs, furnishing only physical, occupational, or speech therapy to ambulatory patients, for as long as the $1,500 annual cap on coverage of physical, occupational, or speech therapy, as described in section 1833(g)(2) of the Act, remains suspended by the action of subsequent legislation.

* * * * *

(J) Departments of providers that perform functions necessary for the successful operation of the providers but do not furnish services of a type for which separate payment could be claimed under Medicare or Medicaid (for example, laundry or medical records departments).

(K) Ambulances.

(2) *Definitions.* * * *

Department of a provider means a facility or organization that is either created by, or acquired by, a main provider for the purpose of furnishing health care services of the same type as those furnished by the main provider under the name, ownership, and financial and administrative control of the main provider, in accordance with the provisions of this section. A department of a provider comprises both the specific physical facility that serves as the site of services of a type for which payment could be claimed under the Medicare or Medicaid program, and the personnel and equipment needed to deliver the services at that facility. A department of a provider may not by itself be qualified to participate in Medicare as a provider under § 489.2 of this chapter, and the Medicare conditions of participation do not apply to a department as an independent entity. For purposes of this part, the term "department of a provider" does not include an RHC or, except as specified in paragraph (n) of this section, an FQHC.

* * * * *

Provider-based entity means a provider of health care services, or an RHC as defined in § 405.2401(b) of this chapter, that is either created by, or acquired by, a main provider for the purpose of furnishing health care services of a different type from those of the main provider under the name, ownership, and administrative and financial control of the main provider, in accordance with the provisions of this section. A provider-based entity comprises both the specific physical facility that serves as the site of services of a type for which payment could be claimed under the Medicare or Medicaid program, and the personnel and equipment needed to deliver the services at that facility. A provider-based entity may, by itself, be qualified to participate in Medicare as a provider under § 489.2 of this chapter, and the Medicare conditions of participation do apply to a provider-based entity as an independent entity.

* * * * *

Remote location of a hospital means a facility or an organization that is either created by, or acquired by, a hospital that is a main provider for the purpose of furnishing inpatient hospital services under the name, ownership, and financial and administrative control of the main provider, in accordance with the provisions of this section. A remote location of a hospital comprises both the specific physical facility that serves as the site of services for which separate payment could be claimed under the Medicare or Medicaid program, and the personnel and equipment needed to deliver the services at that facility. The Medicare conditions of participation do not apply to a remote location of a hospital as an independent entity. For purposes of this part, the term "remote location of a hospital" does not include a satellite facility as defined in § 412.22(h)(1) and § 412.25(e)(1) of this chapter.

(b) *Procedure for obtaining provider-based determinations.* * * *

(2) If a facility was treated as provider-based in relation to a hospital

or CAH on October 1, 2000, it will continue to be considered provider-based in relation to that hospital or CAH until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. The requirements, limitations, and exclusions specified in paragraphs (d), (e), (f), (h), and (i) of this section will not apply to that hospital or CAH until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. For purposes of this paragraph (b)(2), a facility is considered as provider-based on October 1, 2000 if, on that date, it either had a written determination from CMS that it was provider-based, or was billing and being paid as a provider-based department or entity of the hospital.

(3)(i) Except as specified in paragraphs (b)(2) and (b)(5) of this section, if a potential main provider seeks a determination of provider-based status for a facility that is located on the campus of the potential main provider, the provider would be required to submit an attestation stating that the facility meets the criteria in paragraph (d) of this section and if it is a hospital, also attest that it will fulfill the obligations of hospital outpatient departments and hospital-based entities described in paragraph (g) of this section. The provider seeking such a determination would also be required to maintain documentation of the basis for its attestations and to make that documentation available to CMS and to CMS contractors upon request.

(ii) If the facility is not located on the campus of the potential main provider, the provider seeking a determination would be required to submit an attestation stating that the facility meets the criteria in paragraphs (d) and (e) of this section, and if the facility is operated as a joint venture or under a management contract, the requirements of paragraph (f) or paragraph (h) of this section, as applicable. If the potential main provider is a hospital, the hospital also would be required to attest that it will fulfill the obligations of hospital outpatient departments and hospital-based entities described in paragraph (g) of this section. The provider would be required to supply documentation of the basis for its attestations to CMS at the time it submits its attestations.

(iii) Whenever a provider submits an attestation of provider-based status for an on-campus facility or organization, as described in paragraph (b)(3)(i) of this section, CMS will send the provider written acknowledgment of receipt of the attestation, review the attestation for completeness, consistency with the criteria in this section, and consistency with information in the possession of CMS at the time the attestation is received, and make a determination as to whether the facility or organization is provider-based.

(iv) Whenever a provider submits an attestation of provider-based status for an off-campus facility or organization, as described in paragraph (b)(3)(ii) of this section, CMS will send the provider written acknowledgment of receipt of the attestation, review the attestation for completeness, consistency with the criteria in this section, consistency with the documentation submitted with the attestation and consistency with information in the possession of CMS at the time the attestation is received, and make a determination as to whether the facility or organization is provider-based.

* * * * *

(c) *Reporting of material changes in relationships.* A main provider that has had one or more facilities or organizations considered provider-based also may report to CMS any material change in the relationship between it and any provider-based facility or organization, such as a change in ownership of the facility or organization or entry into a new or different management contract that would affect the provider-based status of the facility or organization.

(d) *Requirements applicable to all facilities or organizations.* Any facility or organization for which provider-based status is sought, whether located on or off the campus of a potential main provider, must meet all of the following requirements to be determined by CMS to have provider-based status:

(1) *Licensure.* The department of the provider, the remote location of a hospital, or the satellite facility and the main provider are operated under the same license, except in areas where the State requires a separate license for the department of the provider, the remote location of a hospital, or the satellite facility, or in States where State law does not permit licensure of the provider and the prospective department of the provider, the remote location of a hospital, or the satellite facility under a single license. If a State health facilities' cost review commission or other agency that has authority to regulate the rates charged by hospitals or other providers in a State finds that a particular facility or organization is not part of a provider, CMS will determine that the facility or organization does not have provider-based status.

(2) *Clinical services.* The clinical services of the facility or organization seeking provider-based status and the main provider are integrated as evidenced by the following:

(i) Professional staff of the facility or organization have clinical privileges at the main provider.

(ii) The main provider maintains the same monitoring and oversight of the facility or organization as it does for any other department of the provider.

(iii) The medical director of the facility or organization seeking provider-based status maintains a reporting relationship with the chief medical officer or other similar official of the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the medical director of a department of the main provider and the chief medical officer or other similar official of the main provider, and is under the same type of supervision and accountability as any other director, medical or otherwise, of the main provider.

(iv) Medical staff committees or other professional committees at the main provider are responsible for medical activities in the facility or organization, including quality assurance, utilization review, and the coordination and integration of services, to the extent practicable, between the facility or organization seeking provider-based status and the main provider.

(v) Medical records for patients treated in the facility or organization are integrated into a unified retrieval system (or cross reference) of the main provider.

(vi) Inpatient and outpatient services of the facility or organization and the main provider are integrated, and patients treated at the facility or organization who require further care have full access to all services of the main provider and are referred where appropriate to the corresponding inpatient or outpatient department or service of the main provider.

(3) *Financial integration.* The financial operations of the facility or organization are fully integrated within the financial system of the main provider, as evidenced by shared income and expenses between the main provider and the facility or organization. The costs of a facility or organization that is a hospital department are reported in a cost center of the provider, costs of a provider-based facility or organization other than a hospital department are reported in the appropriate cost center or cost centers of the main provider, and the financial status of any provider-based facility or organization is incorporated and readily identified in the main provider's trial balance.

(4) *Public awareness.* The facility or organization seeking status as a department of a provider, a remote location of a hospital, or a satellite facility is held out to the public and other payers as part of the main provider. When patients enter the provider-based facility or organization, they are aware that they are entering the main provider and are billed accordingly.

(5) *Obligations of hospital outpatient departments and hospital-based entities.* In the case of a hospital outpatient department or a hospital-based entity, the facility or organization must fulfill the obligations of hospital outpatient departments and hospital-based entities described in paragraph (g) of this section.

(e) *Additional requirements applicable to off-campus facilities or organizations.* Except as described in paragraphs (b)(2) and (b)(5) of this section, any facility or organization for which provider-based status is sought that is not located on the campus of a potential main provider must meet both the requirements in paragraph (d) of this section and all of the following additional requirements, in order to be determined by CMS to have provider-based status.

(1) *Operation under the ownership and control of the main provider.* The facility or organization seeking provider-based status is operated under the ownership and control of the main provider, as evidenced by the following:

(i) The business enterprise that constitutes the facility or organization is 100 percent owned by the provider.

(ii) The main provider and the facility or organization seeking status as a department of the provider, a remote location of a hospital, or a satellite facility have the same governing body.

(iii) The facility or organization is operated under the same organizational documents as the main provider. For example, the facility or organization seeking provider-based status must be subject to common bylaws and operating decisions of the governing body of the provider where it is based.

(iv) The main provider has final responsibility for administrative decisions, final approval for contracts with outside parties, final approval for personnel actions, final responsibility for personnel policies (such as fringe benefits or code of conduct), and final approval for medical staff appointments in the facility or organization.

(2) *Administration and supervision.* The reporting relationship between the facility or organization seeking provider-based status and the main provider must have the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and one of its existing departments, as evidenced by compliance with all of the following requirements:

(i) The facility or organization is under the direct supervision of the main provider.

(ii) The facility or organization is operated under the same monitoring and oversight by the provider as any other department of the provider, and is operated just as any other department of the provider with regard to supervision and accountability. The facility or organization director or individual responsible for daily operations at the entity—

(A) Maintains a reporting relationship with a manager at the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and its existing departments; and

(B) Is accountable to the governing body of the main provider, in the same manner as any department head of the provider.

(iii) The following administrative functions of the facility or organization are integrated with those of the provider where the facility or organization is based: billing services, records, human resources, payroll, employee benefit package, salary structure, and purchasing services. Either the same employees or group of employees handle these administrative functions for the facility or organization and the main provider, or the administrative functions for both the facility or organization and the entity are—

(A) Contracted out under the same contract agreement; or

(B) Handled under different contract agreements, with the contract of the facility or organization being managed by the main provider.

(3) *Location.* The facility or organization is located within a 35-mile radius of the campus of the hospital or CAH that is the potential main provider, except when the requirements in paragraph (e)(3)(i), (e)(3)(ii), or (e)(3)(iii) of this section are met:

(i) The facility or organization is owned and operated by a hospital or CAH that has a disproportionate share adjustment (as determined under § 412.106 of this chapter) greater than 11.75 percent or is described in § 412.106(c)(2) of this chapter implementing section 1886(e)(5)(F)(i)(II) of the Act and is—

(A) Owned or operated by a unit of State or local government;

(B) A public or nonprofit corporation that is formally granted governmental powers by a unit of State or local government; or

(C) A private hospital that has a contract with a State or local government that includes the operation of clinics located off the main campus of the hospital to assure access in a well-defined service area to health care services for low-income individuals who are not entitled to benefits under Medicare (or medical assistance under a Medicaid State plan).

(ii) The facility or organization demonstrates a high level of integration with the main provider by showing that it meets all of the other provider-based criteria and demonstrates that it serves the same patient population as the main provider, by submitting records showing that, during the 12-month period immediately preceding the first day of the month in which the application for provider-based status is filed with CMS, and for each subsequent 12-month period—

(A) At least 75 percent of the patients served by the facility or organization reside in the same zip code areas as at least 75 percent of the patients served by the main provider;

(B) At least 75 percent of the patients served by the facility or organization who required the type of care furnished by the main provider received that care from that provider (for example, at least 75 percent of the patients of an RHC seeking provider-based status received inpatient hospital services from the hospital that is the main provider); or

(C) If the facility or organization is unable to meet the criteria in paragraph (e)(3)(ii)(A) or paragraph (e)(3)(ii)(B) of this section because it was not in operation during all of the 12-month period described in paragraph (e)(3)(ii) of this section, the facility or organization is located in a zip code area included among those that, during all of the 12-month period described in paragraph (e)(3)(ii) of this section, accounted for at least 75 percent of the patients served by the main provider.

(iv) A facility or organization may qualify for provider-based status under this section only if the facility or organization and the main provider are located in the same State or, when consistent with the laws of both States, in adjacent States.

(v) An RHC that is otherwise qualified as a provider-based entity of a hospital that is located in a rural area, as defined in § 412.62(f)(1)(iii) of this chapter, and has fewer than 50 beds, as determined under § 412.105(b) of this chapter, is not subject to the criteria in paragraphs (e)(3)(i) through (e)(3)(iii) of this section.

(f) *Provider-based status for joint ventures.* In order for a facility or organization operated as a joint venture to be considered provider-based, the facility or organization must—

(1) Be partially owned by at least one provider'

(2) Be located on the main campus of a provider who is a partial owner;

(3) Be provider-based to that one provider whose campus on which the facility or organization is located; and

(4) Also meet all the requirements applicable to all provider-based facilities and organizations in paragraph (d) of this section. For example, where a provider has jointly purchased or jointly created a facility under joint venture arrangements with one or more other providers, and the facility is not located on the campus of the provider or the campus of any other provider engaged in the joint venture arrangement, no party to the joint venture arrangement can claim the facility as provider-based.

(g) *Obligations of hospital outpatient departments and hospital-based entities.*

(1) Hospital outpatient departments located either on or off the campus of the hospital that is the main provider must comply with the antidumping rules in §§ 489.20 (l), (m), (q), and (r) and § 489.24 of this chapter.

(2) Physician services furnished in hospital outpatient departments or hospital-based entities (other than RHCs) must be billed with the correct site-of-service so that appropriate physician and practitioner payment amounts can be determined under the rules of Part 414 of this chapter.

* * * * *

(7) When a Medicare beneficiary is treated in a hospital outpatient department or hospital-based entity (other than an RHC) that is not located on the main provider's campus, and the treatment is not required to be provided by the antidumping rules in § 489.24 of this chapter, the hospital must provide written notice to the beneficiary, before the delivery of services, of the amount of the beneficiary's potential financial liability (that is, that the beneficiary will incur a coinsurance liability for an outpatient visit to the hospital as well as for the physician service, and of the amount of that liability).

(i) The notice must be one that the beneficiary can read and understand.

(ii) If the exact type and extent of care needed is not known, the hospital may furnish a written notice to the patient that explains that the beneficiary will incur a coinsurance liability to the hospital that he or she would not incur if the facility were not provider-based.

(iii) The hospital may furnish an estimate based on typical or average charges for visits to the facility, while stating that the patient's actual liability will depend upon the actual services furnished by the hospital.

(iv) If the beneficiary is unconscious, under great duress, or for any other reason unable to read a written notice and understand and act on his or her own rights, the notice must be provided, before the delivery of services, to the beneficiary's authorized representative.

(v) In cases where a hospital outpatient department provides examination or treatment that is required to be provided by the antidumping rules of § 489.24 of this chapter, notice, as described in this paragraph (g)(7), must be given as soon as possible after the existence of an emergency has been ruled out or the emergency condition has been stabilized.

* * * * *

(h) *Management contracts.* A facility or organization that is not located on the campus of the potential main provider and otherwise meets the requirements of paragraphs (d) and (e) of this section, but is operated under management contracts, must also meet all of the following criteria:

(1) The main provider (or an organization that also employs the staff of the main provider and that is not the management company) employs the staff of the facility or organization who are directly involved in the delivery of patient care, except for management staff and staff who furnish patient care services of a type that would be paid for by Medicare under a fee schedule established by regulations at part 414 of this chapter. Other than staff that may be paid under such a Medicare fee schedule, the main provider may not utilize the services of "leased" employees (that is, personnel who are actually employed by the management company but provide services for the provider under a staff leasing or similar agreement) that are directly involved in the delivery of patient care.

(2) The administrative functions of the facility or organization are integrated with those of the main provider, as determined under criteria in paragraph (e)(2)(iii) of this section.

(3) The main provider has significant control over the operations of the facility or organization as determined under criteria in paragraph (e)(2)(ii) of this section.

(4) The management contract is held by the main provider itself, not by a parent organization that has control over both the main provider and the facility or organization.

(i) *Furnishing all services under arrangement.* A facility or organization may not qualify for provider-based status if all patient care services furnished at the facility or organization are furnished under arrangements.

(j) *Inappropriate treatment of a facility or organization as provider-based.—(1) Determination and review.* If CMS learns that a provider has treated a facility or organization as provider-based and the provider did not request a determination of provider-based status from CMS under paragraph (b)(3) of this section and CMS determines that the facility or organization did not meet the requirements for provider-based status under paragraphs (d) through (i) of this section, as applicable (or, in any period before the effective date of these regulations, the provider-based requirements in effect under Medicare program regulations or instructions), CMS will—

(i) Issue notice to the provider in accordance with paragraph (j)(3) of this section, adjust the amount of future payments to the provider for services of the facility or organization in accordance with paragraph (j)(4) of this section, and continue payments to the provider for services of the facility or organization only in accordance with paragraph (j)(5) of this section; and

(ii) Except as otherwise provided in paragraphs (b)(2), (b)(5), or (j)(2) of this section, recover the difference between the amount of payments that actually was made and the amount of payments that CMS estimates should have been made, in the absence of compliance with the provider-based requirements, to that provider for services at the facility or organization for all cost reporting periods subject to reopening in accordance with §§ 405.1885 and 405.1889 of this chapter.

(2) *Exception for good faith effort.* CMS will not recover any payments for any period before the beginning of the hospital's first cost reporting period beginning on or after January 10, 2001, if, during all of that period—

(i) The requirements regarding licensure and public awareness in paragraphs (d)(1) and (d)(4) of this section were met;

(ii) All facility services were billed as if they had been furnished by a department of a provider, a remote location of a hospital, a satellite facility, or a provider-based entity of the main provider; and

(iii) All professional services of physicians and other practitioners were billed with the correct site-of-service indicator, as described in paragraph (g)(2) of this section.

(3) *Notice to provider.* If CMS determines that a facility or organization was inappropriately treated as provider-based, CMS will issue written notice to the provider that payments for past cost reporting periods may be reviewed and recovered as described in paragraph (j)(1)(ii) of this section, and that future payments for services in or of the facility or organization will be adjusted as described in paragraph (j)(4) of this section.

(4) *Adjustment of payments.* If CMS determines that a facility or organization was inappropriately treated as provider-based, CMS will adjust future payments to the provider or the facility or organization, or both, to estimate the amounts that would be paid for the same services furnished by a freestanding facility.

(5) *Continuation of payment.* (i) The notice of denial of provider-based status sent to the provider will ask the provider to notify CMS in writing, within 30 days of the date the notice is issued, of whether the provider intends to seek a determination of provider-based status for the facility or organization under this section or whether the facility or organization (or, where applicable, the practitioners who staff the facility or organization) will be seeking to enroll and meet other requirements to bill for services in a freestanding facility.

(ii) If the provider indicates that it will not be seeking a determination for the facility or organization under this section or that the facility or organization or its practitioners will not be seeking to enroll, or if CMS does not receive a response within 30 days of the date the notice was issued, all payment under this paragraph (j)(5) will end as of the 30th day after the date of notice.

(iii) If the provider indicates that it will be seeking a determination for the facility or organization under this section or that the facility or organization or its practitioners will be seeking to meet enrollment and other requirements for billing for services in a freestanding facility, payment for services of the facility or organization will continue, at the adjusted amounts described in paragraph (j)(4) of this section, for as long as is required for all billing requirements to be met (but not longer than 6 months) if the provider or the facility or organization or its practitioners—

(A) Submits, as applicable, a complete request for a determination of provider-based status or a complete enrollment application and provide all other required information within 90 days after the date of notice; and

(B) Furnishes all other information needed by CMS to make a determination regarding provider-based status or process the enrollment application, as applicable, and verifies that other billing requirements are met.

(v) If the necessary applications or information are not provided, CMS will terminate all payment to the provider, facility, or organization as of the date CMS issues notice that necessary applications or information have not been submitted.

(k) *Temporary treatment as provider-based.* If a provider submits a complete attestation of compliance with the requirements for provider-based status for a facility or organization that has not previously been found by CMS to have been inappropriately treated as provider-based under paragraph (j) of this section, the provider may bill and be paid for services of the facility or organization as provider-based from the date it submits the attestation and any required supporting documentation until the date that CMS determines that the facility or organization does not meet the provider-based rules. If CMS subsequently determines that the requirements for provider-based status are not met, CMS will recover the difference between the amount of payments that actually was made since the date the complete attestation of compliance with provider-based requirements was submitted and the amount of payments that CMS estimates should have been made in the absence of compliance with the provider-based requirements. For purposes of this paragraph (k), a complete attestation of compliance with provider-based requirements is one that includes all information needed to permit CMS to make a determination under paragraph (b)(3) of this section.

(l) *Correction of errors.* (1) If CMS determines that a facility or organization that had previously been determined to be provider-based under this section no longer qualifies for provider-based status, and the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider did report to CMS under paragraph (c) of this section, treatment of the facility or organization as provider-based ceases with the date that CMS determines that the facility or organization no longer qualifies for provider-based status.

(2) If CMS determines that a facility or organization that had previously been determined to be provider-based under this section no longer qualifies for provider-based status, and if the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider did not report to CMS under paragraph (c) of this section, CMS will take the actions with respect to notice to the provider, adjustment of payments, and continuation of payment described in paragraphs (j)(3), (j)(4), and (j)(5) of this section, and will recover past payments to the provider to the extent described in paragraph (j)(1)(ii) of this section.

(m) *Status of Indian Health Service and Tribal facilities and organizations.*

* * * * *

(n) *FQHCs and "look alikes."* * * *

(o) *Effective date of provider-based status.*—(1) *General rule.* Provider-based status for a facility or organization is effective on the earliest date all of the requirements of this part have been met.

(2) *Inappropriate treatment as provider-based or not reporting material change.* Effective for any period on or after October 1, 2002 (or, in the case of facilities or organizations described in paragraph (b)(2) of this section, for cost reporting periods starting on or after July 1, 2003), if a facility or organization is found by CMS to have been inappropriately treated as provider-based under paragraph (j) of this section for those periods, or previously was determined by CMS to be provider-based but no longer qualifies as provider-based because of a material change occurring during those periods that was not reported to CMS under paragraph (c) of this section, CMS will not treat the facility or organization as provider-based for payment purposes until CMS has determined, based on documentation submitted by the provider, that the facility or organization meets all requirements for provider-based status under this part.

4. Section 413.70 is amended by revising paragraph (b)(3)(i) to read as follows:

§ 413.70 Payment for services of a CAH.

* * * * *

(b) *Payment for outpatient services furnished by CAH.* * * *

(3) *Election to be paid reasonable costs for facility services plus fee schedule for professional services.* (i) A CAH may elect to be paid for outpatient services in any cost reporting period under the method described in paragraphs (b)(3)(ii) and (b)(3)(iii) of this section. This election must be made in writing, made on an annual basis, and delivered to the fiscal intermediary servicing the CAH at least 30 days before the start of each affected cost reporting period. An election of this

payment method, once made for a cost reporting period, remains in effect for all of that period and applies to all services furnished to outpatients during that period.

* * * * *

5. Section 413.86 is amended by—

A. Revising the definition of "Affiliated group" under paragraph (b).

B. Adding definitions of "Affiliation agreement" and "Shared rotational arrangement" in alphabetical order under paragraph (b).

C. Revising the last sentence of paragraph (e)(5)(i), introductory text.

D. Revising paragraph (e)(5)(i)(B).

E. Adding a new paragraph (e)(5)(i)(C).

F. Revising paragraph (f)(2).

G. Republishing the introductory text of paragraph (g)(4) and revising paragraph (g)(4)(iv).

H. Redesignating paragraphs (g)(7) through (g)(12) as paragraphs (g)(8) through (g)(13), respectively.

I. Adding a new paragraph (g)(7).

J. Amending the following cross-references:

i. In paragraph (g)(5)(vi), "paragraph (g)(8)" is removed and "paragraph (g)(9)" is added in its place.

ii. In paragraph (g)(6), "paragraph (g)(12)" is removed and "paragraph (g)(13)" is added in its place.

iii. In redesignated paragraphs (g)(8)(iv) and (g)(8)(v), "paragraph (g)(7)" is removed and "paragraph (g)(8)" is added in its place.

iv. In redesignated paragraph (g)(9)(i), "paragraph (g)(8)" is removed and "paragraph (g)(9)" is added in its place.

v. In the introductory text of redesignated paragraph (g)(9)(iii), "paragraph (g)(8)(iii)(B)" is removed and "paragraph (g)(9)(iii)(B)" is added in its place; and "paragraph (g)(8)(iii)(A)" is removed and "paragraph (g)(9)(iii)(A)" is added in its place.

vi. In redesignated paragraph (g)(9)(iii)(A)(*2*), "paragraph (g)(8)(iii)(B)(*2*)" is removed and "paragraph (g)(9)(iii)(B)(*2*)" is added in its place.

vii. In the introductory text of redesignated paragraph (g)(12), "paragraph (g)(11)(i) through (g)(11)(vi)" is removed and "paragraph (g)(12)(i) through (g)(12)(vi)" is added in its place.

The additions and revisions read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) *Definitions.* * * *

Affiliated group means—

(1) Two or more hospitals that are located in the same urban or rural area (as those terms are defined in § 412.62(f) of this subchapter) or in contiguous area and meet the rotation requirement in paragraph (g)(7)(ii) of this section.

(2) Two or more hospitals that are not located in the same or in a contiguous urban or rural area, but meet the rotation requirement in paragraph (g)(7)(ii) of this section, and are jointly listed—

(i) As the sponsor, primary clinical site or major participating institution for one or more programs as these terms are used in the most current publication of the *Graduate Medical Education Directory;* or

(ii) As the sponsor or is listed under "affiliations and outside rotations" for one or more programs in operation in *Opportunities, Directory of Osteopathic Postdoctoral Education Programs.*

(3) Two or more hospitals that are under common ownership and, effective for all affiliation agreements beginning July 1, 2003, meet the rotation requirement in paragraph (g)(7)(ii) of this section.

Affiliation agreement means a written, signed, and dated agreement by responsible representatives of each respective hospital in an affiliated group, as defined in this section, that specifies—

(1) The term of the agreement (which, at a minimum is one year), beginning on July 1 of a year;

(2) Each participating hospital's direct and indirect GME FTE caps in effect prior to the affiliation;

(3) The total adjustment to each hospital's FTE caps in each year that the affiliation agreement is in effect, for both direct GME and IME, that reflects a positive adjustment to one hospital's direct and indirect FTE caps that is offset by a negative adjustment to the other hospital's (or hospitals') direct and indirect FTE caps of at least the same amount;

(4) The adjustment to each participating hospitals' FTE counts resulting from the FTE resident's (or residents') participation in a shared rotational arrangement at each hospital participating in the affiliated group for each year the affiliation agreement is in effect. This adjustment to each participating hospital's FTE count is also reflected in the total adjustment to each hospital's FTE caps (in accordance with paragraph (3) of this definition); and

(5) The names of the participating hospitals and their Medicare provider numbers.

* * * * *

Shared rotational arrangement means a residency training program under which a resident(s) participates in training at two or more hospitals in that program.

(e) *Determining per resident amounts for the base period.*

(5) Exceptions—(i) *Base period for certain hospitals.* * * * The per resident amount is based on the lower of the amount specified in paragraph (e)(5)(i)(A) or in paragraph (e)(5)(i)(B) of this section, subject to the provisions of paragraph (e)(5)(i)(C) of this section.

(B) Except as specified in paragraph (e)(5)(i)(C) of this section—

(*1*) For base periods that begin before October 1, 2002, the updated weighted mean value of per resident amounts of all hospitals located in the same geographic wage area, as that term is used in the prospective payment system under part 412 of this chapter.

(*2*) For base periods beginning on or after October 1, 2002, the updated weighted mean value of per resident amounts of all hospitals located in the same geographic wage area is calculated using all per resident amounts (including primary care and obstetrics and gynecology and nonprimary care) and FTE resident counts from the most recently settled cost reports of those teaching hospitals.

(C) If, under paragraph (e)(5)(i)(B)(*1*) or (e)(5)(i)(B)(*2*) of this section, there are fewer than three existing teaching hospitals with per resident amounts that can be used to calculate the weighted mean value per resident amount, for base periods beginning on or after October 1, 1997, the per resident amount equals the updated weighted mean value of per resident amounts of all hospitals located in the same census region as that term is used in § 412.62(f)(1)(i) of this chapter.

* * * * *

(f) *Determining the weighted number of FTE residents.* * * *

(2) No individual may be counted as more than one FTE. A hospital cannot claim the time spent by residents training at another hospital. Except as provided in paragraphs (f)(3) and (f)(4) of this section, if a resident spends time in more than one hospital or in a nonprovider setting, the resident counts as partial FTE based on the proportion of time worked at the hospital to the total time worked. A part-time resident counts as a partial FTE based on the proportion of allowable time worked compared to the total time necessary to fill a full-time internship or residency slot.

* * * * *

(g) *Determining the weighted number of FTE residents.* * * *

(4) For purposes of determining direct graduate medical education payment—

* * * * *

(iv) Hospitals that are part of the same affiliated group (as described under paragraph (b) of this section) may elect to apply the limit on an aggregate basis as described under paragraph (g)(7) of this section.

* * * * *

(7) A hospital may receive a temporary adjustment to its FTE cap, which is subject to the averaging rules under paragraph (g)(5)(iii) of this section, to reflect residents added or subtracted because the hospital is participating in an affiliated group (as defined under paragraph (b) of this section). Under this provision—

(i) Each hospital in the affiliated group must submit the affiliation agreement, as defined under paragraph (b) of this section, to the CMS fiscal intermediary servicing the hospital and send a copy to CMS's Central Office no later than July 1 of the residency program year during which the affiliation agreement will be in effect.

(ii) Each hospital in the affiliated group must have a shared rotational arrangement, as defined in paragraph (b) of this section, with at least one other hospital within the affiliated group, and all of the hospitals within the affiliated group must be connected by a series of such shared rotational arrangements.

(iii) During the shared rotational arrangements under an affiliation agreement, as defined in paragraph (b) of this section, more than one of the hospitals in the affiliated group must count the proportionate amount of the time spent by the resident(s) in its FTE resident counts. No resident may be counted in the aggregate as more than one FTE.

(iv) The net effect of the adjustments (positive or negative) on the affiliated hospitals' aggregate FTE cap for each affiliation agreement must not exceed zero.

(v) If the affiliation agreement terminates for any reason, the FTE cap of each hospital in the affiliated group will revert to the individual hospital's pre-affiliation FTE cap that is determined under the provisions of paragraph (g)(4) of this section.

* * * * *

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

D. Part 485 is amended as follows:

1. The authority citation for Part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Act (42 U.S.C. 1302 and 1396hh).

2. In § 485.645, the introductory text of paragraph (d) is republished and paragraph (d)(6) is revised, to read as follows.

§ 485.645 Special requirements for CAH providers of long-term care services ("swing-beds").

* * * * *

(d) *SNF services.* The CAH is substantially in compliance with following SNF requirements contained in Subpart B of Part 483 of this chapter.

* * * * *

(6) Comprehensive assessment, comprehensive care plan, and discharge planning (§ 483.20(b), (k), and (l) of this chapter, except that the CAH is not required to use the resident assessment instrument (RAI) specified by the State that is required under § 483.20(b), or to comply with the requirements for frequency, scope, and number of assessments prescribed in § 413.343(b) of this chapter).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare— Hospital Insurance)

Dated: July 24, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 24, 2002.

Tommy G. Thompson,

Secretary.

[**Editorial Note:** The following Addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Schedule of Standardized Amounts Effective With Discharges Occurring On or After October 1, 2002 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 2002

I. Summary and Background

In this Addendum, we are setting forth the amounts and factors for determining prospective payment rates for Medicare hospital inpatient operating costs and Medicare hospital inpatient capital-related costs. We are also setting forth rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system.

For discharges occurring on or after October 1, 2002, except for SCHs, MDHs, and hospitals located in Puerto Rico, each hospital's payment per discharge under the acute care hospital inpatient prospective payment system will be based on 100 percent of the Federal national rate.

SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate; the updated hospital-specific rate based on FY 1982 costs per discharge; the updated hospital-specific rate based on FY 1987 costs per discharge; or 75 percent of the updated hospital-specific rate based on FY 1996 costs per discharge, plus the greater of 25 percent of the updated FY 1982 or FY 1987 hospital-specific rate or 50 percent of the Federal DRG payment rate. Section 213 of Public Law 106–554 amended section 1886(b)(3) of the Act to allow all SCHs to rebase their hospital-specific rate based on their FY 1996 costs per discharge.

Under section 1886(d)(5)(G) of the Act, MDHs are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 costs per discharge, whichever is higher. MDHs do not have the option to use their FY 1996 hospital-specific rate.

For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate and 50 percent of a Federal national rate. (See section II.D.3. of this Addendum for a complete description.)

As discussed below in section II. of this Addendum, we are making changes in the determination of the prospective payment rates for Medicare inpatient operating costs for FY 2003. The changes, to be applied prospectively effective with discharges occurring on or after October 1, 2002, affect the calculation of the Federal rates. In section III. of this Addendum, we discuss our changes for determining the prospective payment rates for Medicare inpatient capital-related costs for FY 2003. Section IV. of this Addendum sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system for FY 2003. The tables to which we refer in the preamble to this final rule are presented in section V. of this Addendum.

II. Changes to Prospective Payment Rates for Hospital Inpatient Operating Costs for FY 2003

The basic methodology for determining prospective payment rates for hospital inpatient operating costs is set forth at § 412.63. The basic methodology for determining the prospective payment rates for hospital inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the factors used for determining the prospective payment rates.

In summary, the standardized amounts set forth in Tables 1A and 1C of section V. of this Addendum reflect—

- Updates of 2.95 percent for all areas (that is, the market basket percentage increase of 3.5 percent minus 0.55 percentage points);
- An adjustment to ensure the DRG recalibration and wage index update and changes are budget neutral, as provided for under sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act, by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure the effects of geographic reclassification are budget neutral, as provided for in section 1886(d)(8)(D) of the Act, by removing the FY

2002 budget neutrality factor and applying a revised factor;

- An adjustment to apply the new outlier offset by removing the FY 2002 outlier offsets and applying a new offset; and
- An adjustment in the Puerto Rico standardized amounts to reflect the application of a Puerto Rico-specific wage index.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contained a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the acute care hospital inpatient prospective payment system.

Section 1886(d)(9)(B)(i) of the Act required us to determine the Medicare target amounts for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule (52 FR 33043, 33066) contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates.

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(B) and (d)(2)(C) of the Act require us to update base-year per discharge costs for FY 1984 and then standardize the cost data in order to remove the effects of certain sources of cost variations among hospitals. These effects include case-mix, differences in area wage levels, cost-of-living adjustments for Alaska and Hawaii, indirect medical education costs, and costs to hospitals serving a disproportionate share of low-income patients.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the acute care hospital inpatient prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1997, when the market basket was last revised, we have considered 71.1 percent of costs to be labor-related for purposes of the acute care hospital inpatient prospective payment system. As discussed in section IV. of the preamble to this final rule, we are not revising the labor share of the standardized amount (the proportion adjusted by the wage index). The average labor share in Puerto Rico is 71.3 percent. We are revising the discharge-weighted national standardized amount for Puerto Rico to reflect the proportion of discharges in large urban and other areas from the FY 2001 MedPAR file.

2. Computing Large Urban and Other Area Average Standardized Amounts

Sections 1886(d)(2)(D) and (d)(3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (d)(9)(C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in large urban and other areas in Puerto Rico. In accordance with section 1886(b)(3)(B)(i) of the Act, the large urban average standardized amount is 1.6 percent higher than the other area average standardized amount.

Section 1886(d)(2)(D) of the Act defines "urban area" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1 million. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on the latest available population estimates published by the Bureau of the Census, 63 areas meet the criteria to be defined as large urban areas for FY 2003. These areas are identified in Table 4A.

3. Updating the Average Standardized Amounts

Under section 1886(d)(3)(A) of the Act, we update the average standardized amounts each year. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the large urban areas' and the other areas' average standardized amounts for FY 2003 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XVIII) of the Act specifies that the update factor for the standardized amounts for FY 2003 is equal to the market basket percentage increase minus 0.55 percentage points for hospitals in all areas.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the hospital market basket increase for FY 2003 is 3.5 percent. Thus, for FY 2003, the update to the average standardized amounts equals 2.95 percent for hospitals in all areas.

As in the past, we are adjusting the FY 2002 standardized amounts to remove the effects of the FY 2002 geographic reclassifications and outlier payments before applying the FY 2003 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. We then apply the new offsets to the standardized amounts for outliers and geographic reclassifications for FY 2003.

We do not remove the prior budget neutrality adjustment because, in accordance with section 1886(d)(4)(C)(iii) of the Act, estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

Although the update factors for FY 2003 are set by law, we are required by section 1886(e)(3) of the Act to report to the Congress our initial recommendation of update factors for FY 2003 for both prospective payment hospitals and hospitals excluded from the prospective payment system. We have included our final recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act) in Appendix B to this final rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment

Section 1886(d)(4)(C)(iii) of the Act specifies that, beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II. of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration. However, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payments to hospitals are affected by factors other than average case weight. Therefore, as we have done in past years, we are making a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

Section 1886(d)(3)(E) of the Act requires us to update the hospital wage index on an annual basis beginning October 1, 1993. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

Section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. This provision is required by section 4410(b) of Public Law 105–33 to be budget neutral.

In addition, we are required to ensure that any add-on payments for new technology under section 1886(d)(5)(K) of the Act are budget neutral. As discussed in section II.D. of this final rule, we are approving one new technology for add-on payments in FY 2003. We estimate that the total add-on payments for this new technology will be $74.8 million.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG

reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we used FY 2001 discharge data to simulate payments and compared aggregate payments using the FY 2002 relative weights and wage index to aggregate payments using the FY 2003 relative weights and wage index, plus the additional add-on payments for the new technology. The same methodology was used for the FY 2002 budget neutrality adjustment, except for the new technology add-on budget neutrality adjustment. Based on this comparison, we computed a budget neutrality adjustment factor equal to 0.993209. We also adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 0.994027. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 2002 budget neutrality adjustments.

In addition, we will apply these same adjustment factors to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 2002. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

Comment: One commenter questioned this budget neutrality calculation in the proposed rule and pointed out that the total numbers of cases in Table 7A, showing FY 2001 MedPAR records assigned to version 19 GROUPER DRGs, was different than the total number of cases in Table 7B, which shows FY 2001 MedPAR records assigned to version 20 GROUPER DRGs. The commenter noted that a similar discrepancy occurred in the FY 2002 final rule, yet there has been no discrepancy in the past. Based on the discrepancy in total cases, the commenter was concerned that the budget neutrality calculation may be incorrect.

Response: The commenter correctly points out a discrepancy in the source files used to produce Tables 7A and 7B for the FY 2002 final rule and the FY 2003 proposed rule. We have corrected this discrepancy in this final rule. The source of the discrepancy was the removal of statistical outliers for DRG recalibration. Statistical outliers are defined as cases with charges per case and charges per day beyond 3 standard deviations from the DRG mean. In the proposed rule, Table 7A had statistical outliers removed based on the GROUPER version 19 DRG assignment, and Table 7B had statistical outliers removed based on the GROUPER version 20 DRG assignment. In this final rule, we have removed only statistical outliers based on version 20 DRG assignment from both Table 7A and Table 7B.

This discrepancy did not affect the budget neutrality calculation, however. This calculation uses only cases remaining after trimming statistical outliers based on GROUPER version 20 DRG assignment. Payments for these remaining cases are then compared using first their version 19 GROUPER DRG assignment, then their version 20 DRG assignment.

b. Reclassified Hospitals—Budget Neutrality Adjustment

Section 1886(d)(8)(B) of the Act provides that, effective with discharges occurring on or after October 1, 1988, certain rural hospitals are deemed urban. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the MGCRB. Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that aggregate payments under the acute care hospital inpatient prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used FY 2001 discharge data to simulate payments, and compared total prospective payments (including IME and DSH payments) prior to any reclassifications to total prospective payments after reclassifications. Based on these simulations, we are applying an adjustment factor of 0.991095 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 2002 budget neutrality adjustment factor. We note that the FY 2003 adjustment reflects FY 2003 wage index and standardized amount reclassifications approved by the MGCRB or the Administrator, and the effects of section 1886(d)(10)(D)(v) of the Act to extend wage index reclassifications for 3 years.

c. Outliers

Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for "outlier" cases, cases involving extraordinarily high costs. To qualify for outlier payments, a case must have costs above a fixed loss cost threshold amount. To determine whether the costs of a case exceed the fixed loss threshold, a hospital's cost-to-charge ratio is applied to the total covered charges for the case to convert the charges to costs. Payments for eligible cases are then made based on a marginal cost factor, which is a percentage of the costs above the threshold.

Under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total operating DRG payments plus outlier payments. Section 1886(d)(3)(B) of the Act requires the Secretary to reduce the average standardized amounts by a factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to reduce the average standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases.

i. FY 2003 outlier fixed loss cost thresholds. For FY 2002, the threshold is equal to the prospective payment rate for the DRG, plus any IME and DSH payments plus $21,025. The marginal cost factor (the percent of costs paid after costs for the case exceed the threshold) is 80 percent.

For FY 2003, we proposed to establish a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG plus any IME and DSH payments, and any add-on payments for new technology, plus $33,450. This single threshold would be applicable for cases to qualify for both operating and capital outlier payments. We proposed to maintain the marginal cost factor at 80 percent.

To calculate the FY 2003 outlier thresholds, we simulated payments by applying FY 2003 rates and policies to the March 2002 update of the FY 2001 MedPAR file and the March 2002 update of the Provider-Specific File. Therefore, it was necessary to inflate the charges on the MedPAR claims by 2 years, from FY 2001 to FY 2003, in order to determine the appropriate FY 2003 thresholds.

Previously, inflation factors have been calculated by measuring the percent change in costs using the two most recent available cost report files. For example, the FY 2002 threshold was determined using the rate of cost increase measured using costs from hospitals' FY 1998 and FY 1999 cost reports. However, at the time of the proposed rule, the FY 2000 cost reports were not available to produce an updated cost inflation factor due to processing delays associated with implementing the hospital outpatient prospective payment system.

As discussed in the May 9, 2002 proposed rule, rather than use the rate of cost increase from hospitals' FY 1998 and FY 1999 cost reports to project the rate of increase from FY 2001 to FY 2003, we proposed to use a 3-year moving average of the rate of change in costs for prior years to estimate the annual rates of inflation from FY 2001 to FY 2003. The calculation was discussed thoroughly in the proposed rule (67 FR 31510).

Based on this methodology, we proposed a 2-year cost inflation factor of 15.0 percent to inflate FY 2001 charges to FY 2003, determined by multiplying the annual projected inflation factors for FYs 2002 and 2003 of 1.0655 and 1.0793.

We pointed out that, using actual FY 2001 cases, our analysis indicated that this 3-year moving average methodology would have resulted in FY 2002 outlier payments very close to 5.1 percent of total operating DRG payments and outlier payments.

Comment: Several commenters stated that the proposed 59 percent increase in the outlier threshold is an enormous increase based on old data and a new methodology, and as a result, puts hospitals at even greater risk for high-cost cases. One commenter wrote that this type of unpredictability makes sound management difficult.

The commenters also believed that the proposed outlier policy, if implemented in a budget neutral manner, has the effect of reducing hospital payments by 1.87 percent, nearly wiping out any inflationary increase paid through the market basket increase.The commenters stated that, without more recent data and better rationale, the outlier threshold should remain unchanged at the FY 2002 level of $21,025.

Response: Our objective in setting the outlier threshold is to set it at a level that is projected to result in outlier payments during the upcoming Federal fiscal year that are equal to 5.1 percent of operating DRG payments. In accordance with section 1886(d)(3)(B) of the Act, we reduce the standardized amounts by 5.1 percent to account for the projected 5.1 percent paid to outliers. This adjustment is intended to ensure that outlier payments are budget neutral: Total payments after making outlier payments are equal to what total payments would have been without making any outlier payments. Therefore, if our projections of outlier payments are perfectly accurate, there is no net change in total hospital payments related to outlier policy.

We believe the reference to reducing hospital payments by 1.87 percent relates to the fact that, for FY 2002, outlier payments will be greater than 5.1 percent of total DRG payments, and if outlier payments are projected to equal 5.1 percent of total DRG payments in FY 2003, hospitals will not receive the additional payments they otherwise would if outlier payments exceeded 5.1 percent. The statute requires that the outlier offset to the average standardized amounts equal the projected proportion of outlier payments relative to total operating DRG payments. Therefore, if we offset the average standardized amounts by 5.1 percent to account for outlier payments, we must set the outlier threshold at a level we project will result in outlier payments equal to 5.1 percent of total operating DRG payments.

Moreover, we believe that in order to maintain the fiscal integrity of the Medicare Trust Fund, we must set the FY 2003 outlier threshold so that, based on our best estimate, the proportion of FY 2003 outlier payments relative to total DRG payments is projected to equal the offset of the average standardized amounts.

As discussed in further detail below, we now estimate FY 2002 outlier payments to be 6.9 percent of total DRG payments, using the FY 2002 threshold of $21,025. Therefore, we estimate that we will be paying approximately $1.5 billion more in outlier payments during FY 2002 than we would have if our outlier projections had been perfectly accurate (outlier payments 1.9 percentage points higher relative to total DRG payments of approximately $76 billion). The table below demonstrates that actual outlier payments since 1997 have exceeded the 5.1 percent offset by an aggregate of 11.2 percentage points, equating with approximately $8.5 billion in higher than anticipated payments. However, analysis over a longer time period demonstrates that years in which CMS has paid more than projected in outlier payments are offset by years in which CMS has paid less than projected.

Year	Payments in excess of 5.1 percent (percentage points)
1997	0.4
1998	1.4
1999	2.5
2000	2.5
2001	2.6
2002	1.8

Based on available information (which was not available at the time we set the FY 2003 outlier thresholds), we now estimate that an outlier threshold of $30,525 would have resulted in outlier payments equal to 5.1 percent of total DRG payments for FY 2002. Therefore, barring any drastic reductions in hospital charges per case, maintaining the FY 2003 fixed loss outlier threshold at $21,025, while offsetting the standardized amount by only 5.1 percent, would almost certainly guarantee that FY 2003 total payments after outlier payments and the offset would exceed what total payments would have been without making any outlier payments or offset.

Comment: Numerous commenters added that the proposed methodology for determining the estimate of cost inflation is flawed and, as a result, the new threshold is too high. The commenters expressed concern that increasing the threshold too fast will seriously undermine hospitals' ability to continue to care for high-cost frail and elderly patients.

The commenters stated that the proposed 2-year cost inflation factor of 15.0 percent from FY 2001 to FY 2003 is more than triple the rate of change of cost inflation in FY 1999. The commenters also stated that this increase is also markedly different and significantly higher than all other government projections of cost inflation. For instance, they pointed out that, in its March 2002 report, MedPAC measured hospital cost inflation at 4.8 percent for the time period FY 2001 to FY 2003; the Office of Management and Budget has projected cost inflation for the overall economy at a rate of 2.2 percent for FY 2003; and CMS' market basket for that time period is a 6.6 percent increase.

Several commenters focused on the fact that, rather than proposing to calculate the inflation factor based on an annual rate of change, we proposed to calculate it using the difference in the annual rate of change (second derivative). The commenters submitted analysis indicating this proposed methodology was more volatile in its estimates than alternative approaches. In addition, the commenters stated that our data were outdated and therefore unreliable.

The commenters proposed using one of three alternatives:

- Three-year moving average of annual rates of change in costs rather than a 3-year average of the differences in the annual rates of change in costs (as proposed). The projected increase in hospital cost inflation from FY 2001 to FY 2003 using this method would be 4.1 percent.
- CMS' usual method in predicting cost inflation, but substituting a 4-year lag in data rather than the typical 3-year lag due to the lack of FY 2000 cost reports. The projected increase in hospital cost inflation from FY 2001 to FY 2003 would be 4.8 percent.
- Changes as measured in the hospital market basket index. The projected increase in hospital cost inflation from FY 2001 to FY 2003 would be 7.1 percent.

The commenters stated that the alternative that most closely approximates CMS' usual method is the 4-year lag approach. The commenters also recognized that the simulations of the market basket index approach they submitted tracks most closely with actual cost increases. The commenters stated that this method would result in a new outlier threshold between $26,254 and $27,810, which the commenters believe is a much more realistic increase.

One commenter noted that determining the outlier threshold is dependent not only on changes in costs per case, but is also dependent on hospital charges and cost-to-charge ratios.

Response: Our proposed methodology took into account that the most recent cost data we had available was approximately 3 years old by including a factor to measure the rate of growth in the annual change in costs per case. Using data from hospitals' cost reports, we calculated average annual rates of change to project cost growth from FYs 1999 through 2003. We believe this approach was preferable to a simple average rate of change when projecting over a 4-year time span because, by including a factor to measure the rate of change we account for the observed trend in cost growth over recent periods. We do not dispute that this methodology results in inflation factors higher than other estimates, including the market basket used to update the acute inpatient prospective payment system. However, we point out that our analysis in the proposed rule showed that, if this methodology had been used to estimate the threshold for FY 2002, it would have resulted in FY 2002 outlier payments much closer to 5.1 percent of total DRG payments than we are currently estimating (67 FR 31510).

Nevertheless, we understand the commenters' concerns that our methodology to estimate cost inflation for purposes of setting the outlier threshold is much higher than other, more established methodologies and we considered the alternatives suggested by the commenters. Each of the three alternative are based on projecting cost increases.

As noted above, commenters indicated they believe a FY 2003 threshold between $26,254 and $27,810 would be realistic. However, we believe, based on our analysis of MedPAR data, that this threshold would be significantly inaccurate. To illustrate, we used actual MedPAR data for the past 2.5 years to determine what thresholds would have resulted in a 5.1 percent outlier payout for FYs 2000, 2001 and 2002.

Fiscal year	Threshold actually applied	Threshold that would have paid out 5.1 percent	Actual payout percentage
2000	$14,050	$21,825	7.6
2001	17,550	26,200	7.7
2002 *	21,025	30,525 *	6.9

*Using March 2002 Update of Fiscal Year 2002 MedPAR Cases.

This table shows that, had we set the threshold each of the last 3 fiscal years at a level that would have paid out 5.1 percent based on data now available, the FY 2002 threshold would have actually been $30,525. Based on this analysis, we believe a threshold of no more than $27,810, as suggested by the commenters, would be likely to result in payments in excess of 5.1 percent.

Outlier payments are determined by multiple variables that change at different rates over time. As described above, to determine whether a case qualifies as an outlier, the hospital's cost-to-charge ratio is applied to the covered charges (which are adjusted for the area wage index applicable to the area where the hospital is located) of a case to estimate the costs. The estimated costs for the case are then compared to the outlier threshold to determine whether the case qualifies for outlier payments.

Based on our analysis above, we believe that, due to current trends in hospital charging practices, using inflation factors based on annual cost growth results in underestimating the percentage of outlier payments. That is, if charges are growing at a faster rate than costs, inflating FY 2001 charges by the observed rate of change in costs will underestimate FY 2003 charges, thereby resulting in outlier payments greater than 5.1 percent. Therefore, we analyzed the rate of change in covered charges per case over the past 3 years. Because charge data are available from claims data in the MedPAR file, they are more up-to-date than cost data taken from the cost reports.

FY	Covered charge/case	Percentage change in charge/case
1999	$15,215	
2000	16,376	7.63
2001	18,015	10.00

This table illustrates the substantial increase recently in the growth of charges, indicating that charges have indeed been increasing faster than costs. Because charges serve as the basis to estimate costs for purposes of identifying outlier cases, higher than expected increases in charges would lead to more cases qualifying for outlier payments than expected (and more of the costs of qualifying cases in excess of the threshold).

Over time, cost-to-charge ratios will reflect the differential increase in charges. However, due to the delay in processing the FY 2000 cost reports, combined with the dramatically different rates of change in charges and costs, we believe it is appropriate, at least as far as determining the outlier thresholds for FY 2003, to change from our past methodology of basing the inflation factor on the rate of change in costs, and instead rely on the rate of change in charges. Therefore, we are not adopting our proposed methodology.

Instead, we have determined that, for purposes of setting a FY 2003 outlier threshold that we project will result in outlier payments of 5.1 percent of total DRG payments, the most appropriate methodology to use is to inflate charges using a 2-year average annual rate of change in charges per case. The 2-year average annual rate of change in charges per case from FY 1999 to FY 2000, and from FY 2000 to FY 2001, is 8.8199 percent annually, or 17.6398 percent over 2 years. Applying this charge inflation factor to FY 2001 cases results in a fixed loss outlier threshold of $33,560.

We believe inflating charges by the 2-year average annual rate of change in charges per case is an appropriate revision to our prior inflation methodology used to set the threshold. That is, our analysis described above indicates that a 2-year average annual rate of change based on charges results in a threshold that is more consistent with what our analysis indicates recent thresholds would have resulted in actual outlier payments approximating 5.1 percent of actual total operating DRG payments. In addition, our analysis above demonstrates that charges have been growing at a much faster rate than recent estimates of cost growth, indicating that the average rate of change in charges will produce a more appropriate inflation factor at this time. We have selected a 2-year average rate of change in charges (from FY 1999 to FY 2000 and from FY 2000 to FY 2001) rather than simply a 1-year rate of change in order to account for the greater variability of charges (due to the fact that hospitals have greater latitude in setting their charges than they do over their costs). We would point out that this analysis is based on recent data and does not reflect upon previous analysis used to support the use of cost inflation factors used in the Medicare cost reports.

Using this revised methodology for setting the charge inflation factors for FY 2003, we are establishing a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG, plus any IME and DSH payments, and any add-on payments for new technology, plus $33,560. This single threshold would be applicable to qualify for both operating and capital outlier payments. We are also maintaining the marginal cost factor for cost outliers at 80 percent.

Comment: Two commenters recommended that we increase the FY 2002 threshold by the market basket inflation factor, then develop a new threshold using our previous cost inflation methodology when FY 2000 cost reports come available later this year.

Response: Based on our analysis of where prior years' thresholds would have been set if we knew at the time we set the thresholds what we know now, and our analysis showing the higher rate of change in charges than in costs, we are revising our methodology to establish the FY 2003 outlier thresholds to reflect the rate of change in charges. We believe this will establish the thresholds at an appropriate level using more recent data. Therefore, we are not accepting the commenters' recommendation.

Comment: Some commenters predicted that, as a result of the large increase in the threshold from FY 2002, outlier payments would fall well below 5.1 percent.

Response: We have taken the commenters' concerns and our further analysis into account in our methodology to set the FY 2003 threshold. Based on our analysis as described above, we disagree with the commenters' prediction.

Comment: One commenter attributed the high percentage of outlier payments relative to DRG payments to the increasing costs of medical technology, for which the commenter argued that there is no effective payment solution.

Response: Our analysis indicates the higher than estimated outlier payments are attributable to charges rising faster than our inflation estimates. This may be associated with increasing costs and utilization of medical technology, as the commenter suggested. This effect would eventually be reflected in the DRG weights and the market basket estimate.

However, we would point out that our analysis above indicates that charges are rising much faster than costs. This would indicate that costs estimated by applying cost-to-charge ratios from past periods to charges from current periods would result in estimated costs in excess of actual costs. Therefore, we disagree that rising costs due to new technology is the reason outlier payments have been higher than projected.

Comment: Some commenters argued that the delay in processing cost reports is interrupting the gradually declining trend in cost-to-charge ratios, leading to higher cost estimates than anticipated.

Response: Our analysis shows that, despite the delay in processing cost reports alluded to above, the average cost-to-charge ratios have continued to decline. We note there is always a lag between the timeframe from which the cost-to-charge ratios are taken and the period to which they are applied to charges. We do not have any evidence that the higher than expected outlier payments result from any extra lag in updating cost-to-

charge ratios due to the delay in processing the cost reports.

Comment: Some commenters referenced a joint letter from CMS' Center for Medicare Management, Office of Financial Management, issued April 22, 2002, on the issue of the correct calculation of hospital cost-to-charge ratios, as indicative of potential erroneous cost-to-charge ratios influencing the calculation of the outlier threshold.

Response: The joint letter clarified instructions to all fiscal intermediaries on calculating the cost-to-charge ratios in response to isolated instances where we were made aware they had been calculated incorrectly. We have examined the cost-to-charge ratios and do not believe the issue addressed in the joint letter is systemic, and therefore, it should not materially affect our outlier threshold calculations.

Comment: One commenter recommended increasing the estimated outlier payment percentage from 5.1 percent to 6.0 percent, the upper bound permissible under the statute. The commenter believed the proposed outlier change would cause an inequitable redistribution and that increasing the outlier target would address this inequity.

Response: Although reducing the outlier threshold would result in a higher outlier payout, and we have authority under section 1886(d)(5)(A)(iv) of the Act to set an outlier target of up to 6.0 percent, we do not believe this approach would be appropriate. As noted previously, section 1886(d)(3)(B) of the Act requires the Secretary to reduce the average standardized amounts by the projected proportion of total DRG payments made to outlier cases. Therefore, adopting this suggestion would result in lower standardized amounts for all cases, reducing payments for hospitals that do not generally receive as high a proportion of outlier payments as other hospitals as a result of the lower standardized amount. These low-outlier hospitals would be negatively impacted by reducing the standardized amount without the benefit of continued high outlier payments.

Comment: Commenters also suggested reducing the marginal cost factor below 80 percent. One commenter suggested raising the marginal cost factor from 80 percent to 90 percent. This commenter stated such a change would redistribute the negative impact of increasing the threshold in a more equitable manner.

Response: Reducing the marginal cost factor would result in a lower outlier threshold (so more cases would qualify for outlier payments) but would also result in lower outlier payments per outlier case. While we considered this approach to alleviate the impact of the proposed increase in the outlier threshold, we decided not to adopt it without further analysis (the commenter presented no assessment of the impacts of such a change, for example). We note that the current 80 percent marginal cost factor was established for FY 1994 (from 75 percent) to further focus Medicare's cost outlier payments on the costliest cases (59 FR 45367). This change was consistent with a recommendation by the Prospective Payment Assessment Commission (MedPAC's predecessor) based on its analysis of outlier policy. We believe it would be necessary to conduct further analysis of the impacts of changing the marginal cost factor before making such a change in the marginal cost factor. Conversely, increasing the marginal cost factor would result in either raising the outlier threshold (which means fewer cases would qualify for outlier payments) or raising the offset to the standardized amount, or both. We believe that an 80 percent marginal cost factor and 5.1 percent outlier target appropriately target payments to extremely high cost cases and, at the same time, provide adequate compensation to nonoutlier cases.

ii. Other changes concerning outliers. In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated outlier thresholds so that outlier payments are projected to equal 5.1 percent of total operating DRG payments plus outlier payments. In accordance with section 1886(d)(3)(B), we reduced the FY 2003 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both hospital inpatient operating costs and hospital inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the thresholds for FY 2003 will result in outlier payments equal to 5.1 percent of operating DRG payments and 5.4 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors to be applied to the standardized amounts for FY 2003 were as follows:

	Operating standardized amounts	Capital federal rate
National	0.949004	0.945957
Puerto Rico	0.982910	0.980994

Based on simulations of payments using updated data, the final outlier adjustment factors applied to the standardized amounts for FY 2003 are as follows:

	Operating standardized amounts	Capital federal rate
National	0.948999	0.946924
Puerto Rico	0.981651	0.979669

As in the proposed rule, we apply the outlier adjustment factors after removing the effects of the FY 2002 outlier adjustment factors on the standardized amounts.

To determine whether a case qualifies for outlier payments, we apply hospital-specific cost-to-charge ratios to the total covered charges for the case. Operating and capital costs for the case are calculated separately by applying separate operating and capital cost-to-charge ratios, then these costs are combined to compare with the fixed-loss outlier threshold.

For those hospitals for which the fiscal intermediary computes operating cost-to-charge ratios lower than 0.194 or greater than 1.258, or capital cost-to-charge ratios lower than 0.012 or greater than 0.163, statewide average ratios would be used to calculate costs to determine whether a hospital qualifies for outlier payments.[1] Table 8A in section V. of this Addendum contains the updated statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals for which the fiscal intermediary is unable to compute a hospital-specific cost-to-charge ratio within the above range. These statewide average ratios replace the ratios published in the August 1, 2001 final rule (66 FR 40083). Table 8B contains comparable statewide average capital cost-to-charge ratios. We note that the cost-to-charge ratios in Tables 8A and 8B will be used during FY 2003 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or are outside the ranges noted above.

iii. FY 2001 and FY 2002 outlier payments. In the August 1, 2001 final rule (66 FR 39942), we stated that, based on available data, we estimated that actual FY 2001 outlier payments would be approximately 6.2 percent of actual total DRG payments. This was computed based on simulations using the March 2001 update of the Provider-Specific File and the March 2001 update of the FY 2000 MedPAR file (discharge data for FY 2000 bills). That is, the estimate of actual outlier payments did not reflect actual FY 2001 bills but instead reflected the application of FY 2001 rates and policies to available FY 2000 bills.

Our current estimate, using available FY 2001 bills, is that actual outlier payments for FY 2001 were approximately 7.7 percent of actual total DRG payments. Thus, the data indicate that, for FY 2001, the percentage of actual outlier payments relative to actual total payments is higher than we projected before FY 2001 (and thus exceeds the percentage by which we reduced the standardized amounts for FY 2001). Nevertheless, consistent with the policy and statutory interpretation we have maintained since the inception of the acute care hospital inpatient prospective payment system, we do not plan to recoup money and make retroactive adjustments to outlier payments for FY 2001.

We currently estimate that actual outlier payments for FY 2002 will be approximately 6.9 percent of actual total DRG payments, 1.8 percentage points higher than the 5.1 percent we projected in setting outlier policies for FY 2002. This estimate is based on simulations using the March 2001 update of the Provider-Specific File and the March 2001 update of the FY 2001 MedPAR file (discharge data for FY 2001 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 2002 by applying FY 2002 rates and policies to available FY 2001 bills.

5. FY 2003 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions.

[1] This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals.

Table 1A contains the two national standardized amounts that are applicable to all hospitals, except hospitals in Puerto Rico. As described in section II.A.1. of this Addendum, we are not revising the labor share of the national standardized amount from 71.1 percent.

Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C. This table also includes the Puerto Rico standardized amounts. The labor share applied to the Puerto Rico standardized amount is 71.3 percent.

B. Adjustments for Area Wage Levels and Cost of Living

Tables 1A and 1C, as set forth in this Addendum, contain the labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this Addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that we make an adjustment to the labor-related portion of the national and Puerto Rico prospective payment rates, respectively, to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III. of this preamble, we discuss the data and methodology for the FY 2003 wage index. The wage index is set forth in Tables 4A, 4B, 4C, and 4F of this Addendum.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 2003, we are adjusting the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.25
County of Hawaii	1.165
County of Kauai	1.2325
County of Maui	1.2375
County of Kalawao	1.2375

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II. of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section V. of this Addendum contains the relative weights that we will use for discharges occurring in FY 2003. These factors have been recalibrated as explained in section II. of the preamble.

D. Calculation of Prospective Payment Rates for FY 2003

General Formula for Calculation of Prospective Payment Rates for FY 2003

The operating prospective payment rate for all hospitals paid under the acute-care, short-term inpatient prospective payment system located outside of Puerto Rico, except SCHs and MDHs, equals the Federal rate based on the amounts in Table 1A.

The prospective payment rate for SCHs and MDHs equals the higher of the applicable Federal rate from Table 1A or the hospital-specific rate as described below. The prospective payment rate for Puerto Rico equals 50 percent of the Puerto Rico rate plus 50 percent of the national rate from Table 1C.

1. Federal Rate

For discharges occurring on or after October 1, 2002 and before October 1, 2003, except for SCHs, MDHs, and hospitals in Puerto Rico, payment under the acute-care inpatient prospective payment system is based exclusively on the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate average standardized amount considering the location of the hospital (large urban or other) (see Table 1A in section V. of this Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located or the area to which the hospital is reclassified (see Tables 4A, 4B, and 4C of section V. of this Addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted, if appropriate, under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section V. of this Addendum).

2. Hospital-Specific Rate (Applicable Only to SCHs and MDHs)

a. Calculation of Hospital-Specific Rate

Section 1886(b)(3)(C) of the Act provides that SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: The Federal rate; the updated hospital-specific rate based on FY 1982 costs per discharge; the updated hospital-specific rate based on FY 1987 costs per discharge; or, for FY 2003, 75 percent of the updated hospital-specific rate based on FY 1996 costs per discharge, plus the greater of 25 percent of the updated FY 1982 or FY 1987 hospital-specific rate or 25 percent of the Federal DRG payment rate.

Section 1886(d)(5)(G) of the Act provides that MDHs are paid based on whichever of the following rates yields the greatest aggregate payment: The Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rate based on FY 1982 and FY 1987 cost per discharge. MDHs do not have the option to use their FY 1996 hospital-specific rate.

Hospital-specific rates have been determined for each of these hospitals based on either the FY 1982 cost per discharge, the FY 1987 cost per discharge or, for SCHs, the FY 1996 cost per discharge. For a more detailed discussion of the calculation of the hospital-specific rates, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); the September 4, 1990 final rule (55 FR 35994); and the August 1, 2000 final rule (65 FR 47082). In addition, for both SCHs and MDHs, the hospital-specific rate is adjusted by the budget neutrality adjustment factor (that is, by 0.994027) as discussed in section II.A.4.a. of this Addendum. The resulting rate is used in determining the payment rate an SCH or MDH would be paid for its discharges beginning on or after October 1, 2002.

b. Updating the FY 1982, FY 1987, and FY 1996 Hospital-Specific Rates for FY 2003

We are increasing the hospital-specific rates by 2.95 percent (the hospital market basket percentage increase minus 0.55 percentage points) for SCHs and MDHs for FY 2003. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for SCHs equal the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for SCHs in FY 2003, is the market basket rate of increase minus 0.55 percentage points. Section 1886(b)(3)(D) of the Act provides that the update factor applicable to the hospital-specific rates for MDHs equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2003, is the market basket rate of increase minus 0.55 percentage points.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 2002 and Before October 1, 2003

a. Puerto Rico Rate

The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C of section V. of the Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section VI. of the Addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section V. of the Addendum).

b. National Rate

The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C of section V. of the Addendum) by the appropriate national wage index (see Tables 4A and 4B of section VI. of the Addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section V. of the Addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Changes to Payment Rates for Acute Care Hospital Inpatient Capital-Related Costs for FY 2003

The prospective payment system for acute care hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, acute care hospital inpatient capital-related costs were paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth in regulations at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the capital Federal rate for FY 2003, which will be effective for discharges occurring on or after October 1, 2002. The 10-year transition period ended with hospital cost reporting periods beginning on or after October 1, 2001 (FY 2002). Therefore, for cost reporting periods beginning in FY 2002, all hospitals (except "new" hospitals under § 412.324(b) and under § 412.304(c)(2)) are paid based on 100 percent of the capital Federal rate.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992, we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. In addition, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for (regular and special) exceptions under § 412.348. Furthermore, § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FYs 1992 through 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the rate that was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of the revised policy of paying for transfers. In the FY 1998 final rule with comment period (62 FR 45966), we implemented section 4402 of Public Law 105–33, which requires that, for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard Federal rate is reduced by 17.78 percent. As we explained in section VI.D. of the preamble of this final rule, a small part of that reduction will be restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the regular exceptions payment adjustment during the 10-year transition period, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projected changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the capital cost model was only used to estimate the regular exceptions payment adjustment and other factors. As we explained in the August 1, 2001 final rule (66 FR 39911), beginning in FY 2003 an adjustment for regular exceptions is no longer necessary because regular exception payments were only made for cost reporting periods beginning on or after October 1, 1991, and before October 1, 2001 (see § 412.348(b)). Since payments are no longer being made under the regular exceptions policy in FY 2003, we are no longer using the capital cost model. The capital cost model and its application during the transition period are described in Appendix B of the August 1, 2001 final rule (66 FR 40099).

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for acute care hospital inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1997, as a result of section 4406 of Public Law 105–33, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate.

Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for acute care hospital inpatient capital-related costs. Accordingly, for capital-related costs, we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

A. Determination of Federal Hospital Inpatient Capital-Related Prospective Payment Rate Update

In the final rule published in the **Federal Register** on August 1, 2001 (66 FR 39947), we established a Federal rate of $390.74 for FY 2002. As a result of the changes to the factors used to establish the Federal rate that are explained in this addendum, the FY 2003 Federal rate is $407.01.

In the discussion that follows, we explain the factors that were used to determine the FY 2003 Federal rate. In particular, we explain why the FY 2003 Federal rate has increased 4.2 percent compared to the FY 2002 Federal rate. We also estimate aggregate capital payments will increase by 5.81 percent during this same period. This increase is primarily due to the increase in the number of hospital admissions and the increase in case-mix. This increase in capital payments is slightly more than last year (4.27 percent) mostly due to the restoration of the 2.1 percent reduction to the capital Federal rate (see section VI.D. of the preamble of this final rule).

Total payments to hospitals under the prospective payment system are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment system are estimated to increase in FY 2003 compared to FY 2002.

1. Standard Federal Rate Update

a. Description of the Update Framework

Under § 412.308(c)(1), the standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index (CIPI) and other factors. The update framework consists of a CIPI and several policy adjustment factors.

Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index-related changes, for intensity, and for errors in previous CIPI forecasts. The proposed rule reflected an update factor for FY 2003 under that framework of 1.1 percent, based on data available at that time. Under the update framework, the final update factor for FY 2003 is 1.1 percent. This update factor is based on a projected 0.7 percent increase in the CIPI, a 1.0 percent adjustment for intensity, a 0.0 percent adjustment for case-mix, a −0.3 percent adjustment for the FY 2001 DRG reclassification and recalibration, and a forecast error correction of −0.3 percent. We explain the basis for the FY 2003 CIPI projection in section III.C. of this Addendum. Below we describe the policy adjustments that have been applied.

The case-mix index is the measure of the average DRG weight for cases paid under the acute care hospital inpatient prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and
- The annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect").

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior year changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we adjusted for the effects of the FY 2001 DRG reclassification and recalibration as part of our update for FY 2003.) We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 2003, we are projecting a 1.0 percent total increase in the case-mix index. We estimate that real case-mix increase will equal 1.0 percent in FY 2003. Therefore, the net adjustment for case-mix change in FY 2003 is 0.0 percentage points.

We estimate that FY 2001 DRG reclassification and recalibration will result in a 0.3 percent change in the case-mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. Therefore, we are making a −0.3 percent adjustment for DRG reclassification and recalibration in the update for FY 2003 to maintain budget neutrality.

The capital update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year, there may be unanticipated price fluctuations that may result in differences between the actual increase in prices and the forecast used in calculating the update factors. In setting a prospective payment rate under the framework, we make an adjustment for forecast error only if our estimate of the change in the capital input price index for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. A forecast error of −0.3 percentage points was calculated for the FY 2001 update. That is, current historical data indicate that the forecasted FY 2001 CIPI used in calculating the FY 2001 update factor (0.9 percent) overstated the actual realized price increases (0.6 percent) by 0.3 percentage points. This over-prediction was due to prices from municipal bond yields declining faster than originally expected. Therefore, we are making a −0.3 percent adjustment for forecast error in the update for FY 2003.

Under the capital prospective payment system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. The use of total charges in the calculation of the intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. Therefore, we have incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 2003, we have developed a Medicare-specific intensity measure based on a 5-year average, using FY 1997 through 2001 data. In determining case-mix constant intensity, we found that observed case-mix increase was 0.3 percent in FY 1997, −0.4 percent in FY 1998, −0.3 percent in FY 1999, −0.7 in FY 2000, and −0.3 percent in FY 2001. Past studies of case-mix change by the RAND Corporation ("Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G. M. Carter, J. P. Newhouse, and D. A. Relles, R–4098–HCFA/ProPAC (1991)) suggest that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.4 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1997 through FY 2001. Since we did not find an increase in case-mix outside of the range of 1.0 to 1.4 percent, we believe that all of the observed case-mix increase for FYs 1997 through 2001 is real. Therefore, there was no need to employ the upper bound of 1.0 and 1.4 supported by the RAND study as we have done in the past since we did not find an increase in case-mix that was in excess of our estimate of real case-mix increase.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. We estimate that case-mix constant intensity increased by an average of 1.0 percent during FYs 1997 through 2001, for a cumulative increase of 5.2 percent, given estimates of real case-mix of 0.3 percent for FY 1997, −0.4 percent for FY 1998, −0.3 percent for FY 1999, −0.7 percent for FY 2000, and −0.3 percent for FY 2001. Since we estimate that intensity has increased during that period, the intensity adjustment for FY 2003 is 1.0 percent.

Above we described the basis of the components used to develop the 1.1 percent final capital update factor for FY 2003 as shown in Table 1 below.

TABLE 1.—CMS'S FY 2003 UPDATE FACTOR TO THE CAPITAL FEDERAL RATE

Capital Input Price Index	0.7
Intensity:	1.0
Case-Mix Adjustment Factors:	
Projected Case-Mix Change	−1.0
Real Across DRG Change	1.0
Subtotal	0.0
Effect of FY 2001 Reclassification and Recalibration	−0.3
Forecast Error Correction	−0.3
Total Update	1.1

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and

inpatient capital-related payments. Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of capital-related outlier payments to total inpatient capital-related prospective payment system payments. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments.

In the August 1, 2001 final rule, we estimated that outlier payments for capital in FY 2002 would equal 5.76 percent of inpatient capital-related payments based on the Federal rate (66 FR 39948). Accordingly, we applied an outlier adjustment factor of 0.9424 to the Federal rate. Based on the thresholds as set forth in section II.A.4.c. of this Addendum, we estimate that outlier payments for capital will equal 5.31 percent of inpatient capital-related payments based on the Federal rate in FY 2003. Therefore, we are establishing an outlier adjustment factor of 0.9469 to the Federal rate. Thus, the projected percentage of capital outlier payments to total capital standard payments for FY 2003 is lower than the percentage for FY 2002.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the net change in the outlier adjustment to the Federal rate for FY 2003 is 1.0048 (0.9469/0.9424). The outlier adjustment increases the FY 2003 Federal rate by 0.48 percent compared with the FY 2002 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the geographic adjustment factor (GAF) are projected to equal aggregate payments that would have been made on the basis of the Federal rate without such changes.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we apply separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 and earlier since the geographic adjustment factor for Puerto Rico was implemented in FY 1998.

In the past, we used the actuarial capital cost model (described in Appendix B of the August 1, 2001 final rule (66 FR 40099)) to estimate the aggregate payments that would have been made on the basis of the Federal rate with and without changes in the DRG classifications and weights and in the GAF to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF. During the transition period, the capital cost model was also used to estimate the regular exceptions payment adjustment factor. As we explain in section III.A.4. of this Addendum, beginning in FY 2003 an adjustment for regular exceptions is no longer necessary. Therefore, we are no longer using the capital cost model. Instead, we are using historical data based on hospitals' actual cost experiences to determine the exceptions adjustment factor for special exception payments.

To determine the factors for FY 2003, we compared (separately for the national rate and the Puerto Rico rate) estimated aggregate Federal rate payments based on the FY 2002 DRG relative weights and the FY 2002 GAF to estimated aggregate Federal rate payments based on the FY 2003 relative weights and the FY 2003 GAF. For FY 2002, the budget neutrality adjustment factors were 0.9927 for the national rate and 0.9916 for the Puerto Rico rate (see the August 1, 2001 final rule (66 FR 40101)). In making the comparison, we set the regular and special exceptions reduction factors to 1.00.

To achieve budget neutrality for the changes in the national GAF, based on calculations using updated data, we are applying an incremental budget neutrality adjustment of 0.9991 for FY 2003 to the previous cumulative FY 2002 adjustment of (0.9927), yielding a cumulative adjustment of 0.9918 through FY 2003. For the Puerto Rico GAF, we are applying an incremental budget neutrality adjustment of 1.0081 for FY 2003 to the previous cumulative FY 2002 adjustment (0.9916), yielding a cumulative adjustment of 0.9997 through FY 2003.

We then compared estimated aggregate Federal rate payments based on the FY 2002 DRG relative weights and the FY 2002 GAF to estimated aggregate Federal rate payments based on the FY 2003 DRG relative weights and the FY 2003 GAF. The incremental adjustment for DRG classifications and changes in relative weights is 0.9966 both nationally and for Puerto Rico. The cumulative adjustments for DRG classifications and changes in relative weights and for changes in the GAF through FY 2003 are 0.9885 nationally and 0.9963 for Puerto Rico. The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RECALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTORS

Fiscal year	National				Puerto Rico			
	Incremental adjustment			Cumulative	Incremental adjustment			Cumulative
	Geographic adjustment factor	DRG Reclassifications and recalibration	Combined		Geographic adjustment factor	DRG Reclassifications and recalibration	Combined	
1992				1.00000				
1993			0.99800	0.99800				
1994			1.00531	1.00330				
1995			0.99980	1.00310				
1996			0.99940	1.00250				
1997			0.99873	1.00123				
1998			0.99892	1.00015				1.00000
1999	0.99944	1.00335	1.00279	1.00294	0.99898	1.00335	1.00233	1.00233
2000	0.99857	0.99991	0.99848	1.00142	0.99910	0.99991	0.99901	1.00134
2001 [1]	0.99782	1.00009	0.99791	0.99933	1.00365	1.00009	1.00374	1.00508
2001 [2]	[3] 0.99771	[3] 1.00009	[3] 0.99780	0.99922	[3] 1.00365	[3] 1.00009	[3] 1.00374	1.00508
2002	[4] 0.99666	[4] 0.99668	[4] 0.99335	0.99268	[4] 0.98991	[4] 0.99668	[4] 0.99662	0.99164
2003	0.99915	0.99662	0.99577	0.98848	1.00809	0.99662	1.00468	0.99628

[1] Factors effective for the first half of FY 2001 (October 2000 through March 2001).
[2] Factors effective for the second half of FY 2001 (April 2001 through September 2001).
[3] Incremental factors are applied to FY 2000 cumulative factors.
[4] Incremental factors are applied to the cumulative factors for the first half of FY 2001.

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor for FY 2003 is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating

costs. One difference is that, under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor (the national rate and the Puerto Rico rate are determined separately) for changes in the GAF (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients, indirect medical education payments, or the large urban add-on payments.

For FY 2002, we calculated a GAF/DRG budget neutrality factor of 0.9934. In the proposed rule, we proposed a GAF/DRG budget neutrality factor of 1.0024. For this final rule, based on updated data, we are establishing a GAF/DRG budget neutrality factor of 0.9957 for FY 2003. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more or less than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The incremental change in the adjustment from FY 2002 to FY 2003 is 0.9957. The cumulative change in the rate due to this adjustment is 0.9885 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, FY 1998, FY 1999, FY 2000, FY 2001, FY 2002, and FY 2003: 0.9980 × 1.0053 × 0.9998 × 0.9994 × 0.9987 × 0.9989 × 1.0028 × 0.9985 × 0.9979 × 0.9934 × 0.9957 = 0.9885).

This factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 2003 geographic reclassification decisions made by the MGCRB compared to FY 2002 decisions. However, it does not account for changes in payments due to changes in the DSH and IME adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard capital Federal rate be reduced by an adjustment factor equal to the estimated proportion of additional payments for both regular exceptions and special exceptions under § 412.348 relative to total capital prospective payment system payments. In estimating the proportion of regular exceptions payments to total capital prospective payment system payments during the transition period, we used the actuarial capital cost model originally developed for determining budget neutrality (described in Appendix B of the August 1, 2001 final rule (66 FR 40099)) to determine the exception adjustment factor, which was applied to both the Federal and hospital-specific rates.

An adjustment for regular exceptions is no longer necessary in determining the FY 2003 capital Federal rate because, in accordance with § 412.348(b), regular exception payments were only made for cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001. Accordingly, as we explained in the August 1, 2001 final rule (66 FR 39949), in FY 2003 and subsequent fiscal years, no payments will be made under the regular exceptions provision. However, in accordance with § 412.308(c), we still need to compute a budget neutrality adjustment for special exception payments under § 412.348(g). We describe our methodology for determining the special exceptions adjustment used in establishing the FY 2003 capital Federal rate below.

Under the special exceptions provision specified at § 412.348(g)(1), eligible hospitals include SCHs, urban hospitals with at least 100 beds that have a disproportionate share percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), and hospitals with a combined Medicare and Medicaid inpatient utilization of at least 70 percent. An eligible hospital may receive special exception payments if it meet (1) a project need requirement as described at § 412.348(g)(2), which, in the case of certain urban hospitals, includes an excess capacity test as described at § 412.348(g)(4); (2) an age of assets test as described at § 412.348(g)(3); and (3) a project size requirement as described at § 412.348(g)(5).

As we explained in the August 1, 2001 final rule (66 FR 39912–39914), in order to determine the estimated proportion of special exceptions payments to total capital payments, we attempted to identify the universe of eligible hospitals that may potentially qualify for special exception payments. First, we identified hospitals that met the eligibility requirements at § 412.348(g)(1). Then we determined each hospital's average fixed asset age in the earliest available cost report starting in FY 1992 and subsequent fiscal years. For each of those hospitals, we calculated the average fixed asset age by dividing the accumulated depreciation by the current year's depreciation. In accordance with § 412.348(g)(3), a hospital must have an average age of buildings and fixed assets above the 75th percentile of all hospitals in the first year of the capital prospective payment system. In the September 1, 1994 final rule (59 FR 45385), we stated that, based on the June 1994 update of the cost report files in HCRIS, the 75th percentile for buildings and fixed assets for FY 1992 was 16.4 years. However, we noted that we would make a final determination of that value on the basis of more complete cost report information at a later date. In the August 29, 1997 final rule (62 FR 46012), based on the December 1996 update of HCRIS and the removal of outliers, we finalized the 75th percentile for buildings and fixed assets for FY 1992 as 15.4 years. Thus, we eliminated any hospitals from the potential universe of hospitals that may qualify for special exception payments if its average age of fixed assets did not exceed 15.4 years.

For the hospitals remaining in the potential universe, we estimated project-size by using the fixed capital acquisitions shown on Worksheet A7 from the following HCRIS cost reports updated through June 2002.

PPS year	Cost reporting periods beginning in . . .
IX	FY 1992
X	FY 1993
XI	FY 1994
XII	FY 1995
XIII	FY 1996
XIV	FY 1997
XV	FY 1998
XVI	FY 1999
XVII	FY 2000

Because the project phase-in may overlap 2 cost reporting years, we added together the fixed acquisitions from sequential pairs of cost reports to determine project size. Under § 412.348(g)(5), the hospital's project cost must be at least $200 million or 100 percent of its operating cost during the first 12-month cost reporting period beginning on or after October 1, 1991. We calculated the operating costs from the earliest available cost report starting in FY 1992 and later by subtracting inpatient capital costs from inpatient costs (for all payers). We did not subtract the direct medical education costs as those costs are not available on every update of the HCRIS minimum data set. If the hospital met the project size requirement, we assumed that it also met the project need requirements at § 412.348(g)(2) and the excess capacity test for urban hospitals at § 412.348(g)(4).

Because we estimate that so few hospitals will qualify for special exceptions, projecting costs, payments, and margins would result in high statistical variance. Consequently, we decided to model the effects of special exceptions using historical data based on hospitals' actual cost experiences. If we determined that a hospital may qualify for special exceptions, we modeled special exceptions payments from the project start date through the last available cost report (FY 1999). (Although some FY 2000 cost reports are available in HCRIS, only a few hospitals have submitted FY 2000 costs. Consequently, too few cost reports are available to reliably model FY 2000 special exceptions payments.) For purposes of modeling we used the cost and payment data on the cost reports from HCRIS assuming that special exceptions would begin at the start of the qualifying project. In other words, when modeling costs and payment data, we ignored any regular exception payments that these hospitals may otherwise have received as if there had not been regular exceptions during the transition period. In projecting an eligible hospital's special exception payment, we applied the 70-percent minimum payment level, the cumulative comparison of current year capital prospective payment system payments and costs, and the cumulative operating margin offset (excluding 75 percent of operating DSH payments).

Our modeling of special exception payments for FY 2003 produced the following results:

Cost report	Number of hospitals eligible for special exceptions	Special exceptions as a fraction of capital payments to all hospitals
PPS IX	—	—
PPS X	—	—
PPS XI	2	—
PPS XII	5	0.0001
PPS XIII	7	0.0001
PPS XIV	14	0.0002
PPS XV	18	0.0009
PPS XVI	27	0.0018
PPS XVII	N/A	N/A

We note that hospitals still have two more cost reporting periods (PPS XVII and PPS XVIII) to complete their projects in order to be eligible for special exceptions, and, therefore, we estimate that about 20 additional hospitals could qualify for special exceptions. Thus, we project that special exception payments as a fraction of capital payments to all hospitals to be approximately 0.0030.

Because special exceptions are budget neutral, in the May 9, 2002 proposed rule (67 FR 31516), we proposed to offset the Federal capital rate by 0.40 percent for special exceptions for FY 2003. Therefore, we proposed the exceptions adjustment factor for special exception payments to equal 0.9960 (1–0.0040) to account for special exception payments in FY 2003. For this final rule, based on updated data, we are offsetting the Federal capital rate by a factor of 0.9970 (1–0.0030) to account for special exceptions payments in FY 2003.

For FY 2002, we estimated that total (regular and special) exceptions payments would equal 0.71 percent of aggregate payments based on the Federal rate. Therefore, we applied an exceptions reduction factor of 0.9929 (1–0.0071) in determining the Federal rate. As we stated, we estimate that exceptions payments for FY 2003 will equal 0.30 percent of aggregate payments based on the Federal rate. Therefore, we are applying an exceptions payment reduction factor of 0.9970 (1–0.0030) to the Federal rate for FY 2003. The exceptions adjustment factor for FY 2003 is 0.41 percent higher than the factor for FY 2002 published in the August 1, 2001 final rule. This increase is primarily due to the expiration of the regular exceptions provision and the narrowly defined nature of the special exceptions policy.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the net change in the exceptions adjustment to the FY 2003 Federal rate is 0.9970/0.9929, or 1.0041.

5. Special Adjustment to Restore the 2.1 Percent Reduction to the Standard Federal Capital Prospective Payment System Payment Rate

As we explained in section VI.D. of the preamble of this final rule, section 1886(g)(1)(A) of the Act, as amended by section 4402 of Public Law 105–33, requires the Secretary to reduce the unadjusted standard Federal capital prospective payment system payment rate by 2.1 percent for discharges on or after October 1, 1997, and through September 30, 2002. Therefore, under the statute the additional 2.1 percent reduction no longer applies to discharges occurring after September 30, 2002. Accordingly, we are revising § 412.308(b) to restore the 2.1 percent reduction to the unadjusted standard Federal capital prospective payment system payment rate for discharges occurring on or after October 1, 2002 to the level that it would have been without the reduction.

As we state in section VI.D. of the preamble of this final rule and in the August 29, 1997 final rule (62 FR 46012), we applied a factor of 0.8222 in FY 1998 to account for both the reduction equal to the FY 1995 budget neutrality factor (0.1568) and the 2.1 percent reduction (0.021) provided for under section 4402 of Public Law 105–33. In order to determine the adjustment factor needed to restore the 2.1 percent reduction, we divide the amount of the adjustment without the 2.1 percent reduction (1–0.1568 = 0.8432) by the amount of the adjustment with the 2.1 percent reduction (0.8222). Therefore, we are applying a factor of 1.02554 (0.8432/0.8222) to the unadjusted FY 2002 standard Federal capital prospective payment system payment rate to restore the 2.1 percent reduction for discharges occurring on or after October 1, 2002.

6. Standard Capital Federal Rate for FY 2003

For FY 2002, the capital Federal rate was $390.74. In this final rule, we are establishing a capital Federal rate of $407.01 for FY 2003. The Federal rate for FY 2003 was calculated as follows:

- The FY 2003 update factor is 1.0110; that is, the update is 1.10 percent.
- The FY 2003 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the GAF is 0.9957.
- The FY 2003 outlier adjustment factor is 0.9469.
- The FY 2003 (special) exceptions payments adjustment factor is 0.9970.
- The special adjustment factor for FY 2003 to restore the 2.1 percent reduction to the standard Federal rate is 1.0255.

Since the Federal rate has already been adjusted for differences in case-mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we have made no additional adjustments in the standard Federal rate for these factors, other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the factors and adjustments for FY 2003 affected the computation of the FY 2003 Federal rate in comparison to the FY 2002 Federal rate. The FY 2003 update factor has the effect of increasing the Federal rate by 1.10 percent compared to the FY 2002 Federal rate, while the geographic and DRG budget neutrality factor has the effect of decreasing the Federal rate by 0.43 percent. The FY 2003 outlier adjustment factor has the effect of increasing the Federal rate by 0.48 percent compared to the FY 2002 Federal rate. The FY 2003 exceptions reduction factor has the effect of increasing the Federal rate by 0.41 percent compared to the exceptions reduction for FY 2002. The special adjustment factor for FY 2003 to restore the 2.1 percent reduction to the standard Federal rate has the effect of increasing the Federal rate by 2.55 percent compared to the FY 2002 Federal rate. The combined effect of all the changes is to increase the Federal rate by 4.16 percent compared to the FY 2002 Federal rate.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2002 FEDERAL RATE AND FY 2003 FEDERAL RATE

	FY 2002	FY 2003	Change	Percent change
Update factor [1]	1.0130	1.0110	1.0110	1.10
GAF/DRG Adjustment Factor [1]	0.9934	0.9957	0.9957	– 0.43
Outlier Adjustment Factor [2]	0.9424	0.9469	1.0048	0.48
Exceptions Adjustment Factor [2]	0.9929	0.9970	1.0041	0.41
Special Adjustment [3]	N/A	1.0255	1.0255	2.55
Federal Rate	$390.74	$407.01	1.0416	4.16

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 2002 to FY 2003 resulting from the application of the 0.9957 GAF/DRG budget neutrality factor for FY 2003 is 0.9957.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 2003 outlier reduction factor is 0.9469/0.9424, or 1.0048.

[3] Section 1886(g)(1)(A) of the Act requires, for discharges on or after October 1, 1997, and through September 30, 2002, the Secretary to reduce the unadjusted standard Federal capital prospective payment system payment rate by 2.1 percent. Thus, the 2.1 percent reduction no longer applies to discharges occurring after September 30, 2002, and we are proposing to restore the 2.1 percent reduction by applying a factor of 1.0255 (see section VI.D. of the preamble of this final rule).

We are also providing a chart that shows how the final FY 2003 capital Federal rate differs from the proposed FY 2003 capital Federal rate.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2003 PROPOSED FEDERAL RATE AND FY 2003 FINAL FEDERAL RATE

	Proposed FY 2003	Final FY 2003	Change	Percent change
Update factor	1.0110	1.0110	1.0000	0.00
GAF/DRG Adjustment Factor	1.0024	0.9957	0.9933	−0.67
Outlier Adjustment Factor	0.9460	0.9469	1.0010	0.10
Exceptions Adjustment Factor	0.9960	0.9970	1.0010	0.10
Special Adjustment	1.0255	1.0255	1.0000	0.00
Federal Rate	$408.90	407.01	0.9954	−0.46

7. Special Rate for Puerto Rico Hospitals

As explained at the beginning of section II.D. of this Addendum, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the Federal rate is derived from the costs of all acute care hospitals participating in the prospective payment system (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a GAF to both portions of the blended rate. The GAF is calculated using the operating prospective payment system wage index and varies, depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital-blended rate and the national wage index to determine the GAF for the national part of the blended rate.

Because we implemented a separate GAF for Puerto Rico in FY 1998, we also apply separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. However, we apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. As we stated in section III.A.4. of this Addendum, for Puerto Rico the proposed GAF budget neutrality factor was 1.0080, while the proposed DRG adjustment was 1.0034, for a proposed combined cumulative adjustment of 1.0115. For this final rule, based on updated data, the FY 2003 GAF budget neutrality factor is 1.0081, while the DRG adjustment is 0.9966, for a combined cumulative adjustment for Puerto Rico of 1.0047.

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate (50 percent) is multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the rate (50 percent) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico rate as a result of Public Law 105–33.

For FY 2002, before application of the GAF, the special rate for Puerto Rico hospitals was $187.73. With the changes we proposed to the factors used to determine the rate, the proposed FY 2003 special rate for Puerto Rico was $199.70. For this final rule, based on the final factors, the FY 2003 capital rate for Puerto Rico is $198.29.

B. Calculation of Inpatient Capital-Related Prospective Payments for FY 2003

With the end of the capital prospective payment system transition period in FY 2001, all hospitals (except "new" hospitals under § 412.324(b) and under § 412.304(c)(2)) are paid based on 100 percent of the Federal rate in FY 2003. The applicable Federal rate was determined by making adjustments as follows:

- For outliers, by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and
- For the payment adjustments applicable to the hospital, by multiplying the hospital's GAF, disproportionate share adjustment factor, and IME adjustment factor, when appropriate.

For purposes of calculating payments for each discharge during FY 2003, the standard Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG weight) × (GAF) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable). The result is the adjusted Federal rate.

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. The outlier thresholds for FY 2003 are in section II.A.4.c. of this Addendum. For FY 2003, a case qualifies as a cost outlier if the cost for the case plus the IME and DSH payments is greater than the prospective payment rate for the DRG plus $33,560.

An eligible hospital may also qualify for a special exception payment under § 412.348(g) for up through the 10th year beyond the end of the capital transition period if it meets: (1) A project need requirement described at § 412.348(g)(2), which in the case of certain urban hospitals includes an excess capacity test as described at § 412.348(g)(4); and (2) a project size requirement as described at § 412.348(g)(5). Eligible hospitals include sole community hospitals, urban hospitals with at least 100 beds that have a DSH patient percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), and hospitals that have a combined Medicare and Medicaid inpatient utilization of at least 70 percent. Under § 412.348(g)(8), the amount of a special exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment level. This amount is offset by: (1) Any amount by which a hospital's cumulative capital payments exceed its cumulative minimum payment levels applicable under the regular exceptions process for cost reporting periods beginning during which the hospital has been subject to the capital prospective payment system; and (2) any amount by which a hospital's current year operating and capital payments (excluding 75 percent of operating DSH payments) exceed its operating and capital costs. Under § 412.348(g)(6), the minimum payment level is 70 percent for all eligible hospitals.

During the transition period, new hospitals (as defined under § 412.300) were exempt from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. Effective with the third year of operation through the remainder of the transition period, under § 412.324(b) we paid the hospital under the appropriate transition methodology. If the hold-harmless methodology was applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period. As discussed in section VI.B. of the preamble of this final rule, under § 412.304(c)(2), we will pay a new hospital 85 percent of their reasonable costs during the first 2 years of operation unless it elects to receive payment based on 100 percent of the Federal rate. Effective with

the third year of operation through the remainder of the transition period, we will pay the hospital based on 100 percent of the capital Federal (that is, the same methodology used to pay all other hospitals subject to capital prospective payment system).

C. Capital Input Price Index

1. Background

Like the operating input price index, the capital input price index (CIPI) is a fixed-weight price index that measures the price changes associated with costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. The CIPI was last rebased to FY 1992 in the August 30, 1996 final rule (61 FR 46196). In this final rule, we are revising and rebasing the CIPI to a FY 1997 base year to reflect the more recent structure of capital costs. For further details on the rebasing and revision of the CIPI, see section IV.B. of this final rule.

2. Forecast of the CIPI for Federal Fiscal Year 2003

We are forecasting the CIPI to increase 0.7 percent for FY 2003. This reflects a projected 1.3 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 3.0 percent increase in other capital expense prices in FY 2003, partially offset by a 2.3 percent decline in vintage-weighted interest rates in FY 2003. The weighted average of these three factors produces the 0.7 percent increase for the CIPI as a whole.

IV. Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

The inpatient operating costs of hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in regulations at § 413.40. Under these limits, ■ hospital-specific target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors).

Under existing § 413.40(c)(4)(iii)(B), for cost reporting periods beginning and during FYs 1998 and through 2002, in the case of ■ a psychiatric hospital or hospital unit, ■ a rehabilitation hospital or hospital unit, or ■ long-term care hospital, the target amount may not exceed the updated figure for the 75th percentile of target amounts adjusted to take into account the differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospitals for hospitals and hospital units in the same class (psychiatric, rehabilitation, and long-term care) for cost reporting periods ending during FY 1996. The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Each hospital-specific target amount is adjusted annually, at the beginning of each hospital's cost reporting period, by an applicable update factor. Under existing §§ 413.40(c)(4)(ii) and (d)(1)(i) and (ii), effective for cost reporting periods beginning during FY 2003, payments to existing excluded hospitals and hospital units will no longer be subject to a 75th percentile cap. These excluded hospitals and hospital units will be paid based on their aggregate Medicare inpatient operating costs, which may not exceed their ceiling. The ceiling on a hospital's or hospital unit's aggregate Medicare inpatient operating costs would be computed using the hospital's or hospital unit's target amount from the previous cost reporting period updated using the rate-of-increase percentage specified in § 413.40(c)(3)(viii) and multiplied by the total number of Medicare discharges.

Section 1886(b)(3)(B) of the Act, as implemented in regulations at § 413.40(c)(3)(viii), provides that, for cost reporting periods beginning on or after October 1, 2002, the update factor for a hospital or hospital unit is the percentage increase projected by the hospital market basket index. The most recent projected forecast of the market basket percentage increase for FY 2003 for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system is 3.5 percent. This percentage change is estimated by CMS' Office of the Actuary and reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient hospital care. Therefore, we are providing that the update to a hospital's target amount for its cost reporting period beginning in FY 2003 is 3.5 percent.

As discussed in section VII. of the preamble of this final rule, we are making an adjustment to the updated cap on the target amounts per discharge for each class of new excluded hospitals and hospital units for cost reporting periods beginning during FY 2003, using the prospective payment system wage index without taking into account the reclassifications under sections 1886(d)(8)(B) and (d)(10) of the Act. For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index, without regard to prospective payment system reclassifications, and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Regulations at § 413.40(f)(2)(ii) specify the payment methodology for new hospitals and hospital units, effective October 1, 1997.

For cost reporting periods beginning in FY 2003, in the May 9, 2002 proposed rule, we included the following proposed caps:

Class of excluded hospital or unit	FY 2003 proposed labor-related share	FY 2003 proposed nonlabor-related share
Psychiatric	$ 7,047	$2,801
Long-Term Care	17,269	6,866

In this final rule, using updated data, we have recalculated the proposed caps for cost reporting periods beginning in FY 2003. The final FY 2002 caps are listed below:

Class of excluded hospital or unit	FY 2003 labor-related share	FY 2003 nonlabor-related share
Psychiatric	$7,054	$2,804
Long-Term Care	17,286	6,872

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new rehabilitation hospitals and units since they will be paid under the inpatient rehabilitation facility prospective payment system.

Regulations at § 413.40(d) specify the formulas for determining bonus and relief payments for excluded hospitals and specify established criteria for an additional bonus payment for continuous improvement.

V. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this Addendum. For purposes of this final rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 2, 3A, 3B, 4A, 4B, 4C, 4F, 4G, 4H, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 7A, 7B, 8A, 8B, 9, and 10 are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1D—Capital Standard Federal Payment Rate
Table 2—Hospital Average Hourly Wage for Federal Fiscal Years 2001 (1997 Wage Data), 2002 (1998 Wage Data), and 2003 (1999 Wage Data) Wage Indexes and 3–Year Average of Hospital Average Hourly Wages
Table 3A—3–Year Average Hourly Wage for Urban Areas
Table 3B—3–Year Average Hourly Wage for Rural Areas
Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)
Table 4G—Pre-Reclassified Wage Index for Urban Areas
Table 4H—Pre-Reclassified Wage Index for Rural Areas
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric and Arithmetic Mean Length of Stay
Table 6A—New Diagnosis Codes
Table 6B—New Procedure Codes
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Table 6E—Revised Diagnosis Code Titles
Table 6F—Revised Procedure Code Titles
Table 6G—Additions to the CC Exclusions List
Table 6H—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2001 MedPAR Update March 2002 GROUPER V19.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2001 MedPAR Update March 2002 GROUPER V20.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) July 2002
Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) July 2002
Table 9—Hospital Reclassifications and Redesignations by Individual Hospital—FY 2003
Table 10—Mean and Standard Deviations by Diagnosis-Related Groups (DRGs)—FY 2003

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$3,022.60	$1,228.60	$2,974.75	$1,209.15

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban area		Other Areas	
	Labor	Nonlabor	Labor	Nonlabor
National	$2,996.76	$1,218.10	$2,996.76	$1,218.10
Puerto Rico	1,464.13	589.35	1,440.95	580.02

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$407.01
Puerto Rico	$198.29

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
010001	16.4088	17.4467	17.9841	17.2930
010004	17.9732	19.0010	20.1613	19.0027
010005	17.5985	18.6554	19.9733	18.7567
010006	16.7480	17.6115	18.3931	17.6130
010007	15.4798	15.6788	16.0781	15.7477
010008	14.7443	17.4728	19.0182	17.0908
010009	18.7731	18.4979	19.7272	18.9866
010010	16.4468	16.4664	17.7348	16.9045
010011	20.7972	22.4292	24.8922	22.5886
010012	17.7171	15.8686	20.3376	17.8002
010015	15.4510	19.1178	19.8205	18.1040
010016	17.2473	20.2198	20.3175	19.2142
010018	17.6449	18.9388	19.5519	18.7214
010019	16.3493	17.0856	17.6414	17.0165
010021	16.2919	15.1241	25.3335	17.8534
010022	18.5879	17.6435	22.1250	19.2162
010023	16.1025	16.3209	18.4567	16.9929
010024	16.2900	15.9034	17.3746	16.5229
010025	15.1356	15.1548	17.4702	15.9257
010027	11.7900	16.8595	16.5157	14.5941
010029	17.6461	18.3605	19.3393	18.4481
010031	18.7835	18.6402	19.2612	18.9043
010032	12.5995	15.3590	16.3967	14.8530
010033	20.3923	21.2986	21.9828	21.2187
010034	15.0959	15.3639	14.9379	15.1325
010035	20.1853	15.9439	20.7808	18.7551
010036	17.8140	17.7166	18.7158	18.0757
010038	18.2671	19.6098	19.6887	19.2225
010039	20.1045	20.3406	21.3550	20.6323
010040	18.9376	20.0983	20.4486	19.7782
010043	30.7489	18.6640	17.3567	20.8449
010044	22.0091	24.0265	23.4575	23.1128
010045	15.2200	17.0417	18.7569	16.8822
010046	17.3970	18.9737	18.8741	18.4218
010047	13.3521	15.4190	13.4130	14.0833
010049	14.7590	15.5246	16.3349	15.5762
010050	18.5163	17.9830	20.3028	18.9035
010051	11.9275	11.8108	12.3280	12.0151
010052	16.5486	18.0653	19.8289	18.3581
010053	14.6267	15.5649	15.4156	15.2353
010054	18.5103	19.4955	20.9656	19.7134
010055	18.9526	18.8590	19.5667	19.1301
010056	19.2175	19.6577	20.5645	19.7867
010058	16.1702	16.9715	16.1265	16.4288
010059	19.1286	18.8020	19.1270	19.0199
010061	14.9547	14.5003	18.5320	15.9823
010062	14.7732	12.3259	16.9721	14.6098
010064	20.4139	19.5256	20.5650	20.1572
010065	16.4049	16.8752	17.0557	16.7998
010066	15.4317	13.1559	14.8904	14.4355
010068	12.0525	18.6925	23.4322	17.0157
010069	13.8636	14.7211	15.4497	14.6885
010072	14.9526	16.2339	16.5652	15.9117
010073	13.8601	14.1273	13.5594	13.8482
010078	17.9202	18.1363	18.5127	18.1930
010079	16.4421	17.0648	17.1612	16.8948
010081	18.9474	17.2996 *	18.1637	
010083	16.8933	18.0312	18.4282	17.8382
010084	18.4965	18.7769	19.8773	19.0316
010085	18.4744	19.9023	21.5860	19.9817
010086	16.6694	16.5711	16.8886	16.7103
010087	19.0033	18.0567	18.7915	18.6490
010089	16.8042	17.7800	19.5241	18.0099
010090	18.3866	18.9445	19.5635	18.9671
010091	13.9405	17.0799	17.1775	15.9756
010092	16.9900	17.8144	18.5478	17.8124

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
010095	12.4525	12.2597	12.3064	12.3323
010097	13.0413	12.7286	14.2675	13.3206
010098	15.9165	14.0300	15.5763	15.1201
010099	15.9874	15.5619	15.9232	15.8146
010100	17.2011	17.9430	18.3755	17.8826
010101	15.3859	14.4625	18.9525	16.0723
010102	13.7933	13.8136	15.7777	14.4205
010103	17.9358	17.7242	22.0802	19.0882
010104	17.7126	16.8457	21.9457	18.6228
010108	17.9017	19.4617	19.1596	18.8606
010109	15.3107	14.6752	15.9627	15.2873
010110	15.6317	15.8283	15.5817	15.6824
010112	15.1401	16.8271	15.6041	15.8270
010113	16.9683	16.8936	18.2774	17.3728
010114	15.2454	17.0760	19.3772	17.2041
010115	14.6268	14.2261	15.3510	14.7053
010118	18.8477	17.0834	17.4620	17.7157
010119	18.8024	19.3942	19.5163	19.3327
010120	17.2336	18.2567	18.9975	18.1726
010121	14.6444	14.5262	15.2345	14.7784
010123	16.7344	19.2140	*	17.9083
010124	16.2846	16.7465	*	16.5122
010125	15.5304	16.0136	16.5117	16.0174
010126	19.5710	19.1065	19.5933	19.4288
010127	19.5190	18.2786	*	18.9233
010128	14.5056	14.4322	16.6899	15.2189
010129	14.7286	16.1733	16.7609	15.8741
010130	16.6809	19.5573	17.4614	17.7942
010131	17.8260	20.1883	19.0492	18.9966
010134	18.8835	19.9856	18.5179	19.1797
010137	12.1217	20.5828	21.3573	17.6481
010138	12.8675	14.5254	14.1369	13.8739
010139	19.0001	20.4331	20.5708	19.9541
010143	16.7911	17.6212	18.9084	17.7778
010144	17.1320	18.2040	18.8272	18.0453
010145	20.8434	20.5895	20.8157	20.7476
010146	18.5198	19.1415	18.3666	18.6687
010148	12.2214	15.8349	18.4591	15.1664
010149	18.6333	18.0156	19.0199	18.5806
010150	17.8951	18.9359	19.4819	18.7907
010152	17.8306	18.7677	19.8990	18.8539
010155	9.0300	15.0689	13.6136	11.6435
010157	*	*	17.7372	17.7373
010158	17.3227	18.3957	18.6052	18.1306
010159	*	*	19.3950	19.3950
020001	28.1747	28.0394	28.6530	28.2947
020002	24.5815	25.1987	28.2759	25.9928
020004	30.5667	25.4679	29.2351	28.4867
020005	30.2920	29.2378	35.0860	31.4575
020006	31.2404	28.1417	33.0843	30.7594
020007	27.8319	32.3852	27.7269	28.9902
020008	29.4146	30.8691	31.8878	30.7354
020009	20.1930	18.4660	18.5594	19.0476
020010	23.6727	22.7559	23.7275	23.3859
020011	30.4727	28.0658	27.5062	28.6155
020012	24.8543	25.5320	26.7586	25.6982
020013	23.8847	28.1557	29.5646	26.9336
020014	27.3823	24.5875	27.7870	26.6146
020017	26.8319	28.0572	28.8752	27.9519
020024	24.0872	25.3205	25.5933	25.0276
020025	21.7557	20.2583	29.4375	23.2312
030001	20.3673	21.7869	22.8996	21.6709
030002	21.5977	21.8375	23.1450	22.2070
030003	23.4833	22.6804	23.9849	23.3723
030004	14.0711	15.5478	13.8452	14.3965
030006	18.2668	20.0273	20.5019	19.5831

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
030007	19.6708	21.5169	22.2473	21.1843
030008	22.2758	22.2190	*	22.2524
030009	18.1794	18.7557	19.1258	18.6629
030010	19.0907	19.5123	19.8496	19.4665
030011	19.2973	19.4310	19.8141	19.5088
030012	18.9918	20.6585	21.1099	20.2847
030013	20.7458	20.0535	19.9517	20.2223
030014	19.9315	19.7966	20.3017	20.0154
030016	19.3967	19.4785	22.2526	20.4395
030017	22.8765	21.7938	23.1702	22.6064
030018	20.2032	20.8980	21.8067	20.9825
030019	21.7005	21.2540	22.0341	21.6682
030022	19.2966	19.5794	22.3351	20.3379
030023	23.6697	24.1678	25.4626	24.5066
030024	22.2541	23.6009	23.7663	23.2450
030025	12.7254	11.9894	20.2690	14.6291
030027	15.7554	17.6555	18.5500	17.3221
030030	20.8303	21.6932	23.1280	21.8856
030033	20.0044	20.2820	20.3034	20.1983
030034	16.8241	20.8689	19.5578	19.0205
030035	19.2781	20.0226	20.5339	19.9127
030036	20.7567	21.6371	22.2690	21.5890
030037	22.8266	23.7615	23.7325	23.4266
030038	22.6776	22.9822	23.4477	23.0337
030040	18.5456	19.7636	19.3706	19.2127
030041	15.8921	18.8717	18.4750	17.5529
030043	20.9341	20.5598	20.5653	20.6716
030044	16.8649	17.6575	18.6781	17.7554
030047	22.6401	21.4412	22.7385	22.2630
030049	19.0881	19.3580	19.7315	19.3525
030054	15.3338	15.0657	15.7973	15.4130
030055	16.3613	20.2991	20.8373	19.1429
030059	24.0465	22.6279	27.3929	24.5505
030060	19.2461	18.6313	19.5021	19.1145
030061	18.9063	19.9047	21.1013	19.9959
030062	17.6738	18.7172	19.2670	18.6035
030064	19.5673	20.3837	21.6435	20.5204
030065	20.5130	20.7838	22.2846	21.2496
030067	14.4446	17.2778	17.6414	16.3935
030068	17.3614	17.7208	18.9718	18.0528
030069	19.0961	21.0936	23.4902	21.1503
030080	20.5144	20.6581	21.2299	20.8174
030083	23.3355	23.5229	23.5049	23.4608
030085	21.0954	20.8690	21.6542	21.2320
030086	19.5436	*	*	19.5436
030087	21.4084	21.9465	23.1339	22.1276
030088	19.8682	20.5340	21.4491	20.6552
030089	20.4019	20.9516	22.0850	21.2122
030092	20.6986	21.8308	19.6625	20.5481
030093	19.7262	20.4314	21.7195	20.6797
030094	21.6218	22.8123	21.8049	22.0984
030095	13.7293	13.7664	20.5222	15.2252
030099	16.1541	18.2263	19.8092	18.2768
030100	*	23.7609	23.5868	23.6643
030101	*	19.2547	21.1029	20.2450
030102	*	18.2413	21.5405	19.8425
030103	*	*	28.9308	28.9308
030104	*	*	32.8668	32.8669
040001	15.1624	16.9178	16.3882	16.1463
040002	13.0592	15.1107	16.1353	14.6990
040003	14.2089	15.5740	15.5186	15.0890
040004	17.8476	17.9034	19.0105	18.2433
040005	13.2597	11.1318	16.5465	13.4890
040007	21.9583	18.6998	22.5319	20.8769
040008	15.3040	14.7985	20.2121	16.6104
040010	18.6023	19.4913	19.8251	19.3459

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
040011	14.5319	16.0995	17.1337	15.8295
040014	17.6340	18.1434	19.3996	18.3693
040015	16.5891	15.5207	17.9602	16.7200
040016	19.0295	20.2321	19.8087	19.7068
040017	13.5098	15.4736	16.5648	15.1885
040018	17.6027	18.7463	18.8203	18.3807
040019	22.6769	23.4163	21.0465	22.2688
040020	16.4827	18.9844	17.6056	17.6157
040021	17.6398	19.6835	21.3321	19.4636
040022	17.0397	20.8281	19.2393	18.9742
040024	14.4541	17.6607	17.1507	16.4393
040025	11.5079	13.4705	14.8071	13.1413
040026	19.5563	19.7924	21.0143	20.1201
040027	16.0975	17.4431	17.7161	17.1113
040028	14.6584	13.9946	15.2850	14.6612
040029	17.8787	21.1370	22.5094	20.5216
040030	13.5428	11.2402	16.5488	13.3388
040032	13.7030	13.2872	13.8013	13.5932
040035	12.8300	10.9569	11.0611	11.5521
040036	18.9757	20.2012	21.1066	20.1370
040037	14.6559	14.0941	15.4984	14.7015
040039	14.3576	14.7177	15.2811	14.8024
040040	18.0895	19.1984	19.6704	18.9937
040041	15.9896	16.4624	17.7783	16.7177
040042	15.2142	15.2057	16.6875	15.6976
040044	12.6275	13.3501	17.1869	14.3743
040045	14.9429	16.2469	16.6648	15.9379
040047	16.8654	17.5336	18.6295	17.6726
040050	13.3818	14.0036	14.2087	13.8730
040051	15.8627	16.6039	18.2152	16.8577
040053	16.3610	15.0219	14.1508	15.1659
040054	15.3219	14.2577	16.5217	15.3669
040055	17.1269	18.0414	17.4236	17.5299
040058	17.6766	16.4278	19.3124	17.6534
040060	12.8148	17.9805	15.4220	15.0376
040062	18.2048	17.8902	19.4255	18.5267
040064	10.7255	11.5029	13.3479	11.7813
040066	18.3377	19.7144	19.5619	19.1774
040067	14.6014	14.4741	15.0081	14.6924
040069	17.5052	17.0026	18.9754	17.8560
040070	16.9027	16.9700	18.6066	17.5468
040071	16.9610	17.6144	18.4956	17.6590
040072	16.0895	17.4960	21.3320	18.2060
040074	18.3224	18.7542	20.8465	19.2921
040075	13.3623	14.0975	14.6681	14.0257
040076	19.0732	20.5840	21.8010	20.4612
040077	12.9211	13.9114	14.7230	13.8164
040078	18.7600	18.5821	19.6363	18.9943
040080	19.2461	19.3707	22.8153	20.3838
040081	11.3169	11.1332	12.4796	11.6373
040082	16.2152	15.1331	16.4840	15.9329
040084	17.2613	17.7295	18.3410	17.7584
040085	16.8957	16.5216	14.1782	15.7843
040088	17.9636	17.1624	18.3159	17.8055
040090	17.8282	19.0824	16.6619	17.8476
040091	19.8700	20.1378	20.2904	20.1018
040093	12.3537	13.9741	14.7132	13.5635
040100	14.7587	15.6833	17.0271	15.9393
040105	15.3319	14.3896	14.8936	14.8814
040106	15.6545	18.1341	19.0936	17.8001
040107	18.8120	17.8628	20.6852	19.1446
040109	14.6266	16.6278	16.2496	15.8538
040114	18.8743	21.1231	21.3826	20.4184
040116	20.2716	*	*	20.2716
040118	19.3720	18.2123	19.6248	19.0444
040119	15.5338	16.9407	18.6028	17.0376

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
040124	19.1349	19.2889	*	19.2100
040126	12.5368	11.6517	16.3391	13.4177
040132	17.5179	10.3875	24.6941	15.4438
040134	18.0787	19.0185	22.1291	19.8434
040135	22.6761	23.0084	*	22.8797
040136	*	*	21.4139	21.4138
050002	37.8295	36.9630	30.2629	34.5243
050006	19.5594	18.2061	22.4890	20.0298
050007	30.7126	30.8676	31.6270	31.0595
050008	26.2458	26.3682	28.2021	26.8667
050009	26.8159	28.4734	28.3021	27.8816
050013	23.2201	28.0569	27.2552	25.9477
050014	22.8478	23.6745	25.1664	23.9039
050015	26.2481	27.7731	28.2204	27.4404
050016	20.5566	21.2045	22.7014	21.5040
050017	23.9625	25.6178	25.7403	25.1023
050018	15.4721	15.2903	16.5909	15.8441
050021	25.8966	*	*	25.8966
050022	24.0318	24.5254	26.2574	24.9836
050024	21.3989	22.4274	21.5230	21.7688
050025	23.3896	24.8245	26.0161	24.7262
050026	27.8736	23.1904	23.4651	24.6800
050028	16.4671	17.6138	17.9421	17.3234
050029	25.1259	24.6839	26.6783	25.4673
050030	20.9812	21.5621	21.8639	21.4881
050032	25.2010	24.3598	24.4176	24.6502
050033	24.9328	32.0179	31.1768	29.1633
050036	21.2420	21.8239	24.8017	22.6740
050038	28.6528	29.9698	32.1757	30.1303
050039	22.7117	22.8288	23.8478	23.1402
050040	32.1287	30.2607	30.1153	30.8697
050042	24.8067	24.5260	25.4903	24.9502
050043	32.9958	33.8255	38.8988	35.0749
050045	19.8831	21.1474	21.0356	20.7131
050046	25.3185	25.2005	25.3067	25.2745
050047	29.9255	29.9580	31.6959	30.5375
050051	17.8945	18.7809	17.9266	18.1624
050054	20.7212	22.0982	19.2395	20.6257
050055	29.3984	29.2730	32.0923	30.2190
050056	27.4321	23.8396	24.7994	25.2478
050057	21.1554	20.7420	22.2584	21.3963
050058	23.1641	23.3009	24.8366	23.7800
050060	20.7747	20.5450	21.9971	21.2660
050061	23.5454	24.5488	23.9906	24.0316
050063	24.8851	25.7593	25.5798	25.3924
050065	24.0420	24.6290	27.6677	25.3130
050066	16.5725	16.1649	26.3920	18.5257
050067	23.1966	25.8857	22.1250	23.5170
050068	20.6851	19.3615	19.2325	19.8460
050069	25.9420	24.6153	25.8560	25.4593
050070	32.5166	34.0721	36.4136	34.4086
050071	33.1850	34.4367	36.4834	34.7318
050072	33.2858	39.7321	36.1146	36.2550
050073	33.3922	32.8555	36.1054	34.1118
050075	33.9095	33.7160	37.8104	35.1272
050076	27.7797	33.9752	37.0415	32.6495
050077	24.1019	24.1404	25.3481	24.5518
050078	23.0736	24.3150	23.0613	23.4423
050079	33.2432	30.0167	36.5455	33.0896
050082	22.1009	23.7617	23.7718	23.2042
050084	23.5866	25.4517	25.1155	24.6796
050088	20.8406	24.9641	25.2282	23.4877
050089	20.9117	22.8450	23.4120	22.3589
050090	23.4097	24.6070	25.4545	24.4799
050091	25.2792	23.7713	26.6463	25.1713
050092	16.7969	17.1211	17.1883	17.0299

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
050093	25.2130	25.6647	27.2048	26.0447
050095	33.6718	30.4847	29.2226	31.0314
050096	20.0487	22.7394	22.5034	21.6293
050097	16.7054	22.5991	24.2548	20.5747
050099	24.8091	25.3722	26.2363	25.4947
050100	29.8758	25.2031	23.9877	26.2195
050101	31.0264	31.8957	33.1232	32.0303
050102	22.2937	24.0014	22.6741	22.9916
050103	24.7932	25.4133	23.5946	24.5653
050104	25.5797	26.9726	27.3260	26.6171
050107	21.2690	22.2019	22.2746	21.9397
050108	23.5564	25.1758	25.6983	24.8127
050110	20.1870	19.9589	21.3399	20.4921
050111	21.5487	20.7897	21.0813	21.1480
050112	25.3015	26.8182	29.1268	27.0733
050113	28.8420	28.5224	32.4493	30.0540
050114	24.7286	26.6757	27.6486	26.3583
050115	21.3291	23.0182	24.3748	22.9340
050116	25.2130	24.9196	27.0331	25.6442
050117	23.3612	22.2123	23.0697	22.8657
050118	23.7698	23.7129	24.9094	24.1342
050121	19.5252	18.7272	18.8430	19.0230
050122	26.3172	26.9546	26.9048	26.7269
050124	22.7736	24.5069	23.9379	23.7017
050125	29.6147	32.0230	33.3290	31.6254
050126	23.9247	24.6752	26.9718	25.2082
050127	22.1937	20.9027	20.5928	21.0815
050128	25.7240	26.6132	26.2519	26.1998
050129	26.5030	24.0108	23.7432	24.6166
050131	31.0732	32.5462	33.0980	32.2202
050132	24.0834	24.0173	24.1583	24.0881
050133	24.9746	23.2093	23.9479	23.9946
050135	23.2361	24.7157	23.2750	23.7026
050136	24.7921	24.7280	28.0754	25.7753
050137	32.6507	32.9192	33.7489	33.1070
050138	37.3286	38.1584	40.8912	38.7884
050139	32.9351	31.4984	35.1492	33.0424
050140	34.1499	32.7609	36.7096	34.4570
050144	27.8751	27.4069	29.8983	28.3985
050145	32.3857	34.5185	37.5003	34.7881
050148	21.9211	20.0971	21.1622	21.0247
050149	24.6078	26.8674	25.8880	25.7652
050150	24.9073	24.6596	25.9494	25.1761
050152	34.0766	33.3305	34.5096	33.9668
050153	30.5714	32.3389	33.3333	32.1183
050155	21.0257	25.3354	23.2118	23.0854
050158	27.5623	28.6071	28.9764	28.3557
050159	23.2912	22.5313	26.6139	23.7086
050167	21.9128	21.8796	21.9596	21.9174
050168	23.3511	25.1937	27.1971	25.2088
050169	22.3888	24.8407	24.7737	23.9439
050170	23.9574	24.3654	27.7693	25.2103
050172	20.1841	19.6120	22.0400	20.6111
050173	24.5545	24.8694	*	24.7049
050174	30.2140	30.2775	31.6888	30.7398
050175	27.2806	24.7548	26.0146	25.8419
050177	21.7943	21.1396	22.5039	21.8034
050179	21.7175	23.8868	22.8941	22.7755
050180	31.8947	33.3257	34.0900	33.1860
050183	20.3638	*	*	20.3638
050186	22.4155	23.6288	25.0791	23.7560
050188	28.0918	28.2364	30.6007	29.0015
050189	22.8687	27.4071	28.3295	26.4046
050191	20.8321	25.3516	29.4162	25.1452
050192	18.6701	14.1996	19.0400	17.0362
050193	22.6316	24.9444	25.5294	24.3542

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
050194	29.7371	29.5678	28.5389	29.2648
050195	35.5621	36.9068	39.1617	37.2637
050196	18.5180	18.2411	19.4304	18.7370
050197	35.7449	32.4030	34.6878	34.1675
050204	23.6105	22.7099	23.0192	23.1063
050205	23.6831	24.1691	24.1275	23.9917
050207	21.6214	22.9941	23.7774	22.8095
050211	31.6084	31.7280	33.2481	32.1766
050213	21.4806	21.4951	*	21.4880
050214	21.7335	24.0276	21.1480	22.2422
050215	29.8563	35.0459	31.6895	32.1029
050217	19.6010	20.2042	21.3026	20.3986
050219	21.7444	21.2458	21.7637	21.5978
050222	27.4809	23.3563	23.0670	24.3640
050224	23.5316	23.5101	24.8431	23.9839
050225	23.3480	21.6820	22.0981	22.3835
050226	27.7315	24.4443	26.1959	26.0496
050228	34.0711	34.2596	36.0632	34.7751
050230	27.7357	26.6291	26.7963	27.0820
050231	26.1508	26.7321	27.4697	26.8010
050232	24.3072	24.5245	25.8640	24.8981
050234	25.7035	24.6126	25.0104	25.0823
050235	25.2527	27.0922	26.0323	26.1239
050236	26.9803	25.9458	27.7406	26.8805
050238	24.2922	24.5823	25.1796	24.6748
050239	22.6625	23.2711	24.9469	23.6287
050240	26.3657	26.7620	28.8910	27.3259
050241	26.3740	29.8345	*	27.9992
050242	31.1576	32.0829	33.5646	32.2627
050243	28.9635	26.4627	26.0256	27.1221
050245	23.8124	23.2716	24.6092	23.8921
050248	26.2015	27.6457	28.4413	27.4692
050251	21.6574	23.6360	27.9531	24.2057
050253	16.0701	16.7540	21.0399	17.6028
050254	19.3126	20.1176	22.3414	20.6227
050256	23.6887	23.4835	25.1104	24.1533
050257	15.2306	17.2596	15.6379	16.0441
050260	23.2421	27.4234	30.1623	26.5840
050261	20.0552	20.1040	19.4649	19.8596
050262	28.8785	29.5550	30.8866	29.7520
050264	32.1312	36.0331	33.2270	33.7253
050267	26.2264	26.0401	27.8393	26.6370
050270	24.0439	25.3757	26.4092	25.2781
050272	22.4247	23.0587	23.3443	22.9405
050274	20.0422	*	*	20.0422
050276	29.8624	33.3302	34.0633	32.3736
050277	20.0520	26.0822	23.6065	23.0165
050278	24.7787	23.9289	24.9699	24.5628
050279	20.8444	21.8949	22.2776	21.6332
050280	25.2149	25.6651	26.3392	25.7541
050281	19.6888	24.2251	25.2699	22.9927
050282	28.8261	25.4428	26.4698	26.9213
050283	29.7734	31.7669	32.3270	31.3481
050286	16.5708	19.4241	20.6191	18.4349
050289	34.1393	30.4750	32.2125	32.1522
050290	28.6231	29.6796	31.5000	29.9312
050291	30.2748	29.4029	30.9334	30.2109
050292	21.6243	20.8410	21.4357	21.2903
050293	22.2963	24.1875	17.1935	20.7533
050295	21.2892	21.7883	25.4405	22.8697
050296	27.2948	28.3906	30.0984	28.6215
050298	24.4477	23.2006	22.4000	23.3022
050299	26.4543	25.5035	24.6751	25.5099
050300	23.5116	25.9228	26.0298	25.2222
050301	22.5201	21.1403	24.7987	22.7770
050305	34.5185	36.7908	36.6981	36.0318

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
050307	17.2147	*	*	17.2147
050308	29.3803	28.9284	30.3887	29.5604
050309	23.7884	25.3515	25.5221	24.8819
050312	26.7617	26.0015	26.0172	26.2525
050313	21.7577	25.6827	28.9126	25.5297
050315	24.7086	22.7359	22.5906	23.3600
050317	21.6937	*	*	21.6937
050320	30.4101	32.4809	31.6571	31.4911
050324	26.6049	25.3694	26.8313	26.2820
050325	24.4862	23.6327	22.6353	23.5919
050327	23.9484	25.6450	31.1527	26.6180
050329	19.7455	21.6984	24.2134	21.8073
050331	22.2536	25.0230	25.2110	24.0855
050333	19.4589	19.1449	14.1808	17.2305
050334	34.2330	34.2557	34.3956	34.2968
050335	23.0258	22.9926	22.9335	22.9822
050336	20.7979	21.3402	22.0203	21.3892
050342	20.1841	20.8255	22.4510	21.1447
050343	17.2085	*	*	17.2084
050348	23.8779	25.1085	29.3364	26.0263
050349	14.9754	15.0667	15.4536	15.1663
050350	24.8340	26.4161	27.2368	26.1456
050351	25.4791	24.8121	25.2436	25.1768
050352	26.1380	26.4262	27.7489	26.7934
050353	23.0564	23.2699	24.1009	23.4992
050355	17.2778	21.0969	41.4710	21.8695
050357	22.6545	24.5345	24.3540	23.9188
050359	17.7907	21.7548	19.7653	19.6431
050360	31.3526	31.7583	33.3592	32.1693
050366	23.7528	19.6823	22.0442	21.7233
050367	28.2805	30.7328	31.7487	30.2799
050369	27.0548	26.2234	26.6627	26.6233
050373	26.9776	27.8275	29.9749	28.1900
050376	26.5840	28.0990	28.4026	27.6603
050377	17.1764	17.0012	11.6463	16.0071
050378	25.9810	26.9101	27.8389	26.9067
050379	15.2022	18.4278	24.2408	18.3635
050380	31.4343	31.9578	31.5962	31.6646
050382	26.1398	25.9244	26.3968	26.1598
050385	24.6083	*	27.1692	25.6464
050388	19.1512	22.0122	17.6762	19.5684
050390	25.0426	24.2700	25.8556	25.0345
050391	18.9266	20.0615	19.0832	19.3414
050392	21.6729	22.9430	24.9003	23.1073
050393	25.6964	24.1981	25.4028	25.0965
050394	23.0604	23.1526	23.1641	23.1275
050396	24.0636	25.3729	25.7580	25.0612
050397	20.2601	20.6397	23.3212	21.1533
050401	20.7473	18.4593	*	19.5658
050404	17.3396	15.9839	16.4845	16.6030
050406	17.3016	17.8596	21.5282	18.7226
050407	29.9642	30.8346	32.0753	30.9310
050410	17.6769	19.8508	17.1718	18.1805
050411	34.8899	33.1943	33.1718	33.7076
050414	24.2060	25.9723	24.5471	24.8993
050417	21.5739	23.3005	23.3862	22.7800
050419	23.7584	23.4936	25.1449	24.1188
050420	22.3166	23.5438	26.4201	24.1207
050423	17.3771	21.3552	24.8113	20.9574
050424	22.8350	24.0727	25.9378	24.3139
050425	32.8364	35.3712	33.7276	33.9997
050426	25.2453	29.0120	26.7941	26.9305
050427	20.1674	16.4330	31.4154	22.4396
050430	23.8788	21.2275	25.2322	23.4217
050432	24.4133	24.5630	26.0686	25.0170
050433	17.4643	18.9021	17.7980	18.0325

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
050434	19.7591	*	24.0017	21.7788
050435	25.6676	23.3426	22.5428	23.8194
050436	14.8121	*	*	14.8121
050438	25.0138	23.2583	25.3763	24.5467
050440	23.5167	22.5400	25.4767	23.8254
050441	28.9804	31.8774	33.4696	31.2892
050443	19.9020	17.2875	16.8897	17.9266
050444	21.4533	22.4530	22.6469	22.1781
050446	20.4908	22.3422	20.3611	21.0344
050447	17.9751	18.9851	24.4339	20.7186
050448	19.7046	21.7718	22.6612	21.3755
050449	23.8001	23.4614	*	23.6286
050454	28.7432	30.0792	30.3063	29.7856
050455	20.1643	19.8577	20.5575	20.1952
050456	20.1254	18.1585	17.5846	18.4965
050457	34.4949	32.1910	34.2116	33.6080
050464	25.3292	25.7710	25.8092	25.6421
050468	23.3050	22.2926	22.9771	22.8607
050469	23.8759	24.5205	*	24.1896
050470	16.0292	16.0805	15.7765	15.9567
050471	25.6172	27.1597	29.4705	27.3360
050476	22.4754	24.0253	25.9458	24.2592
050477	27.9595	27.5819	30.8781	28.6932
050478	24.5401	26.3306	28.1829	26.3141
050481	28.9722	27.7973	28.5320	28.4396
050482	18.1217	16.0114	21.6091	18.2297
050483	22.7182	*	*	22.7182
050485	24.1983	24.6906	25.2723	24.7165
050488	34.6939	31.7481	33.8291	33.4344
050491	26.8703	27.4600	27.7412	27.3548
050492	19.5457	20.5030	23.4977	21.2468
050494	29.2621	29.1296	30.2875	29.5621
050496	32.5168	34.9704	32.7474	33.3456
050497	13.8110	15.4115	*	14.5264
050498	24.9677	26.1716	27.6099	26.2387
050502	22.3788	25.3701	27.2724	24.9510
050503	24.4069	23.3745	25.7668	24.5458
050506	25.0845	25.0333	27.1555	25.7636
050510	33.3774	33.7481	36.2548	34.4910
050512	35.3581	34.4368	36.0785	35.2923
050515	35.3419	33.7321	37.3440	35.4231
050516	24.7992	26.1969	25.3450	25.4513
050517	20.9550	22.0985	23.6067	22.1150
050522	35.3784	36.2127	37.0295	36.1638
050523	27.0544	31.2522	32.1272	30.1439
050526	23.8099	26.4014	26.8814	25.6479
050528	19.0611	18.9155	21.1741	19.7510
050531	22.7308	21.3948	*	22.0804
050534	24.0700	24.0001	24.4038	24.1576
050535	25.4215	26.8511	27.7626	26.6201
050537	22.2256	24.0354	26.2342	24.2063
050539	20.7129	23.3846	23.7778	22.7078
050541	34.4573	36.6149	37.0551	36.1147
050542	16.0892	17.7737	21.8129	18.4625
050543	22.3994	21.6795	22.4134	22.1708
050545	26.3304	31.7280	33.6302	29.6054
050546	26.1949	38.8087	39.4266	31.5013
050547	26.8305	37.7681	37.7633	31.6990
050548	28.8083	29.8516	30.3336	29.5564
050549	27.2765	28.9615	30.0948	28.8364
050550	24.8048	25.6588	26.5515	25.6491
050551	25.4652	24.8084	26.1042	25.4556
050552	21.5216	20.3239	20.6068	20.8970
050557	21.1243	22.2562	23.8340	22.4197
050559	23.5759	24.7866	26.3799	24.8811
050561	34.5791	33.4423	34.2065	34.0632

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
050564	23.5922	24.2091	*	23.9025
050565	23.7829	20.8349	*	22.1110
050566	17.4423	22.3448	21.7712	20.6000
050567	24.6454	25.0787	26.2588	25.3566
050568	19.5816	20.5376	21.9313	20.7038
050569	26.5479	27.3429	27.3294	27.0680
050570	25.2294	25.8619	26.8965	26.0357
050571	26.2039	24.0154	26.2226	25.4641
050573	24.9644	25.6589	25.9380	25.5333
050575	19.5611	20.7090	27.8579	22.3375
050577	25.1549	23.5487	25.2861	24.6231
050578	28.5379	28.9009	32.0554	29.7756
050579	30.4952	29.9348	32.0245	30.8151
050580	25.9004	24.6962	22.7522	24.4365
050581	23.8584	24.9807	26.0580	24.9311
050583	24.3987	25.8800	26.2664	25.5050
050584	21.2366	19.5805	24.5294	21.6929
050585	25.9426	24.2824	26.4446	25.5528
050586	23.4079	23.1850	*	23.3000
050588	25.3094	24.5472	27.0506	25.7065
050589	24.8698	23.8880	23.7918	24.1317
050590	22.4480	24.4797	25.1100	23.9970
050591	23.9412	25.0209	26.7662	25.1993
050592	21.1745	22.1174	23.8267	22.4222
050594	27.1584	27.7002	28.7415	27.8366
050597	22.8523	23.3280	23.1209	23.0979
050598	24.3597	23.9202	25.1622	24.5206
050599	29.1221	26.0892	26.3782	27.1542
050601	31.8670	29.7417	29.7734	30.4482
050603	23.3390	21.7031	24.9032	23.2638
050604	34.0461	35.4034	36.4669	35.3805
050608	18.0947	18.1664	20.9171	18.9982
050609	34.9935	33.5028	34.8949	34.4263
050613	23.3835	30.2413	34.9768	28.8604
050615	23.8815	27.5682	25.8698	25.6901
050616	22.7437	24.9843	25.0016	24.2299
050618	21.6509	21.4895	22.3548	21.8584
050623	29.1806	27.5832	28.6475	28.4545
050624	22.7148	26.4659	22.4030	23.6850
050625	26.4849	27.5816	29.3665	27.8711
050630	23.9159	24.2120	25.2915	24.5153
050633	23.1918	25.4283	27.8165	25.4720
050636	21.2618	23.5257	25.0214	23.2191
050638	18.2859	18.2159	15.6375	17.1599
050641	21.8315	17.1258	17.9379	18.6266
050644	22.3456	22.1489	*	22.2474
050661	19.6780	*	*	19.6781
050662	26.9606	35.0989	38.9592	31.5421
050663	30.6591	24.9110	22.7770	25.2271
050667	24.9979	27.5045	26.9236	26.1684
050668	42.0974	61.7751	57.8627	51.0207
050670	20.0152	24.6101	24.1626	22.6855
050674	34.7380	32.4807	33.7845	33.5929
050675	15.6794	*	*	15.6794
050676	18.6672	20.2087	16.3948	18.3663
050677	35.6503	33.6070	34.0936	34.4139
050678	26.8741	22.7756	25.2143	24.8560
050680	28.0584	31.4839	31.9166	30.4823
050682	26.2882	17.3566	19.8107	20.5443
050684	22.3398	23.3697	24.2792	23.3071
050685	31.1725	35.1307	30.4194	32.1391
050686	35.2631	33.4420	34.8278	34.4753
050688	30.6635	31.0648	34.9936	32.8691
050689	30.7295	30.9399	34.0571	31.9763
050690	32.8204	34.8112	36.7516	34.8707
050693	26.8265	25.5662	29.1213	27.1699

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
050694	23.2293	23.5572	25.1964	23.9614
050695	21.1377	24.4301	26.2838	24.0169
050696	28.0015	28.3291	29.6685	28.6563
050697	21.1566	18.2338	24.1116	21.0055
050698	*	*	24.9559	24.9559
050699	25.7843	17.5296	23.4611	21.9391
050701	22.6959	24.3055	26.4901	24.3588
050704	22.8716	22.7618	25.6565	23.8031
050707	26.2732	27.8958	28.2637	27.6356
050708	22.7821	24.8647	24.5606	24.0910
050709	21.9598	19.4977	21.8770	21.0737
050710	26.9060	27.5828	30.5918	28.4895
050713	17.7259	16.8538	18.2822	17.6031
050714	28.9314	30.1925	30.3290	29.7818
050717	25.9534	28.7973	31.5021	28.6924
050718	17.6062	18.0940	22.5989	19.6750
050719	25.5508	23.0833	*	23.8495
050720	*	25.8677	*	25.8677
050723	*	*	32.0291	32.0291
060001	21.3659	21.1819	21.4562	21.3343
060003	19.8023	20.4682	21.9043	20.7102
060004	22.8750	21.4496	22.9265	22.4496
060006	19.3651	20.0213	21.0003	20.1579
060007	17.4682	18.2977	19.3071	18.3452
060008	18.0333	18.4590	18.7097	18.3997
060009	21.4312	22.7164	23.9272	22.7121
060010	24.0872	23.6827	24.2735	24.0195
060011	23.4366	22.3458	22.2058	22.6927
060012	20.1442	19.4932	21.2980	20.3114
060013	22.7346	19.1256	23.5248	21.7755
060014	24.2459	24.3210	25.7701	24.7918
060015	20.9773	23.2469	23.6015	22.5801
060016	16.4707	20.2408	20.2361	18.8056
060018	20.3183	21.5083	21.8478	21.1863
060020	18.3099	18.8985	19.7348	18.9920
060022	21.0558	21.0830	22.8059	21.6916
060023	19.2373	21.5475	22.4731	21.0953
060024	21.9955	22.9185	24.3658	23.1396
060027	20.9846	22.0713	22.1717	21.7670
060028	23.2065	23.1792	24.2985	23.5665
060029	20.8585	18.2938	19.8498	19.6763
060030	20.5002	20.3452	21.2612	20.7131
060031	21.1649	22.5067	23.3995	22.3074
060032	23.4162	22.8123	24.7678	23.6728
060033	15.9085	16.0760	17.8514	16.5805
060034	22.4791	23.2816	24.3652	23.3995
060036	15.0698	18.5988	18.6521	17.3368
060037	15.5611	15.4513	15.7495	15.5902
060038	14.0791	14.3249	16.6525	15.2260
060041	14.8934	19.1263	19.5872	17.5256
060042	19.1892	20.8597	19.3967	19.6496
060043	13.6717	13.4443	15.4073	14.1048
060044	19.7039	20.8673	21.3102	20.6215
060046	19.4567	22.2699	22.6819	21.4974
060047	15.8770	17.1534	17.9173	16.9143
060049	21.7797	23.0613	25.9592	23.6523
060050	18.2238	19.0832	*	18.6522
060052	13.4210	14.8729	16.0543	14.6462
060053	15.9806	18.0232	19.4746	17.7396
060054	22.8985	20.4160	19.7753	20.9273
060056	18.2831	18.1263	21.9586	19.5606
060057	26.4046	25.4185	24.6599	25.4808
060058	15.4856	13.8539	16.4504	15.2822
060060	15.6469	15.6018	19.4418	16.7387
060062	17.2991	16.8640	17.1032	17.1033
060064	21.2207	22.7797	28.8746	24.1014

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
060065	21.6305	24.5572	24.4554	23.5808
060066	16.3485	17.2537	17.5556	16.9855
060070	17.3184	18.8960	19.2220	18.4993
060071	17.5987	17.4068	17.6452	17.5489
060073	15.7860	17.0846	18.4971	17.0767
060075	24.1550	23.8724	25.0552	24.3665
060076	24.8732	20.3265	22.9426	22.6703
060085	13.6277	14.3409	10.9724	12.8943
060088	25.2786	13.7174	20.7211	18.6295
060090	22.2974	16.3760	16.5321	18.2600
060096	21.9623	20.8937	21.9951	21.6204
060100	23.5986	23.9305	24.8116	24.1151
060103	24.8151	23.5083	24.4962	24.2301
060104	22.2295	21.1820	24.4248	22.5603
060107	14.2698	21.9221	*	16.3130
060108	*	*	19.1327	19.1327
060109	*	*	27.3180	27.3180
070001	26.0878	26.3596	27.7441	26.7515
070002	26.2801	26.1768	26.6881	26.3761
070003	25.6949	27.5200	28.1721	27.1059
070004	22.4871	24.2567	25.4310	24.0188
070005	26.6483	26.9151	27.6733	27.0706
070006	27.5674	28.6413	33.6291	30.1330
070007	26.9505	26.3313	28.0875	27.1381
070008	23.0227	24.2971	25.1362	24.0979
070009	24.6201	24.1871	24.9408	24.5838
070010	26.2354	29.2194	28.3168	27.8716
070011	23.3638	23.0883	24.8206	23.7802
070012	23.0321	28.8067	37.5917	28.5860
070015	23.8240	28.1204	29.2693	27.0233
070016	24.9148	24.4633	28.4833	25.9349
070017	26.2923	26.0424	27.5515	26.5441
070018	28.0689	30.6864	32.6301	30.4394
070019	25.7283	24.9249	26.2348	25.6326
070020	23.9987	25.9964	26.6203	25.5573
070021	25.2978	26.3043	29.4596	26.9916
070022	26.5691	26.9111	27.2423	26.9019
070024	25.2983	24.8948	26.3544	25.5382
070025	25.1315	25.4345	27.3592	25.9673
070027	23.6412	26.8450	25.9279	25.4322
070028	24.6788	25.7492	26.7286	25.7052
070029	22.0080	23.9682	23.8427	23.2454
070030	28.9117	22.1578	*	25.8929
070031	23.4419	24.1198	25.6347	24.3735
070033	30.4214	31.4736	34.1591	31.9816
070034	28.9200	29.4916	30.0744	29.4693
070035	23.0869	24.1423	24.5996	23.9254
070036	28.8400	29.9470	31.2961	29.9831
070038	*	*	26.3126	26.3126
070039	22.9032	22.3356	*	22.7640
080001	25.4836	24.8833	26.8887	25.7287
080002	19.6011	20.1965	20.9385	20.3062
080003	22.1856	23.1275	24.8200	23.2380
080004	21.9391	22.9706	21.7344	22.1849
080006	20.0792	22.6671	20.9399	21.1768
080007	19.6213	21.3746	21.5415	20.9038
090001	21.7526	21.5751	23.0365	22.1027
090002	19.4191	21.5726	20.6550	20.5048
090003	22.1090	23.1268	27.1087	23.8330
090004	24.3367	25.5054	25.9717	25.2072
090005	23.8620	26.3074	26.8690	25.6346
090006	20.8675	22.0957	22.9658	21.9607
090007	22.1973	29.2840	24.6668	25.6566
090008	20.2166	25.2708	*	22.7566
090010	24.1287	23.6616	25.9373	24.5182
090011	27.4781	26.6349	27.6038	27.2394

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
100001	19.5796	20.2157	22.0101	20.5122
100002	20.7136	21.0222	21.5772	21.1199
100004	14.6283	15.4149	16.1638	15.4361
100006	20.1133	21.2293	21.6922	21.0708
100007	21.7242	22.1590	22.5317	22.1527
100008	20.4980	20.8381	21.6416	21.0118
100009	22.6419	22.1741	22.6370	22.4873
100010	21.9078	23.0637	23.9582	22.9492
100012	19.6177	20.4659	22.0244	20.7239
100014	19.8023	19.5770	21.9875	20.4440
100015	18.4779	18.0654	18.9383	18.4860
100017	19.0608	19.8655	20.1417	19.7084
100018	21.0332	21.6388	22.6587	21.7978
100019	22.6152	23.5462	25.8297	24.0395
100020	21.3848	20.7816	21.7421	21.3134
100022	26.4094	26.5695	27.4235	26.7855
100023	19.9739	19.1787	20.2034	19.7906
100024	21.8791	22.1332	22.9872	22.3458
100025	18.7774	19.4529	20.1360	19.4381
100026	20.5641	20.9461	21.3742	20.9788
100027	19.1481	14.7916	20.5889	17.6926
100028	19.3757	19.3371	20.3751	19.7063
100029	20.8745	20.8950	22.2553	21.3244
100030	22.8204	20.5952	19.5604	20.7196
100032	19.8127	19.7451	20.6543	20.0503
100034	17.8743	19.5282	20.0099	19.0752
100035	20.1540	23.8117	21.3519	21.7961
100038	23.3578	24.5864	24.9548	24.3305
100039	21.5297	21.7861	23.3111	22.2259
100040	19.0449	18.6321	19.5154	19.0650
100043	18.7993	18.8206	20.7688	19.4486
100044	21.4764	22.7236	22.9474	22.4012
100045	20.9216	21.0228	22.8096	21.6136
100046	21.6207	21.3028	23.2027	22.0159
100047	20.0114	20.6068	21.4971	20.7134
100048	15.0584	15.7790	17.3663	16.1388
100049	18.8535	19.1025	20.9490	19.6376
100050	17.2377	17.9039	17.8960	17.6845
100051	23.1273	17.9453	19.3258	19.7301
100052	17.9537	18.1780	19.6620	18.5844
100053	20.1724	19.6800	21.6634	20.4905
100054	23.5491	21.1518	20.9612	21.8945
100055	18.0547	18.8760	19.1324	18.6804
100056	25.7863	21.8506	23.1737	23.6729
100057	19.9712	19.5319	22.3406	20.5479
100060	23.2561	23.5997	*	23.4313
100061	22.1133	22.9176	24.5277	23.1393
100062	19.4370	21.4424	21.9054	21.0072
100063	19.2629	18.4642	19.2510	19.0090
100067	18.0877	18.4851	19.2168	18.5203
100068	19.9305	19.8308	19.9648	19.9094
100069	16.8271	17.3666	18.5789	17.6344
100070	18.7408	20.0381	20.9592	19.7991
100071	17.5451	17.7234	20.7461	18.6293
100072	21.0225	20.5968	22.0317	21.2423
100073	21.1898	22.2812	22.2425	21.9197
100075	18.3688	19.4480	20.4604	19.4085
100076	17.8733	17.8612	18.4815	18.0825
100077	22.3438	19.0640	20.9482	20.7726
100078	18.4499	19.2891	16.6003	18.0834
100080	22.1966	22.7153	22.9720	22.6367
100081	14.8313	15.4253	16.5149	15.5681
100082	18.8998	*	*	18.8998
100084	22.3674	22.7009	24.5682	23.2945
100085	22.1231	*	*	22.1231
100086	21.6997	23.3718	24.3067	23.1462

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
100087	23.6090	23.6562	22.1764	23.1720
100088	20.3693	20.5566	20.6667	20.5318
100090	19.1479	19.7695	21.0431	20.0438
100092	17.9216	20.1760	21.4601	19.8695
100093	16.5128	16.8422	18.7153	17.3704
100098	19.2427	20.8315	21.1723	20.4066
100099	15.7823	15.7591	16.5271	16.0129
100102	18.9701	19.7673	19.0193	19.2459
100103	17.2364	18.7844	19.1222	18.3910
100105	21.6604	21.8268	22.7793	22.1049
100106	17.2527	17.4958	21.4342	18.9189
100107	20.1281	20.0719	21.7553	20.6632
100108	19.9593	20.1125	18.4127	19.5107
100109	20.8440	20.8370	20.6007	20.7572
100110	20.8995	20.1853	22.8127	21.3407
100112	25.2570	15.2128	16.2109	17.7240
100113	23.2020	21.3489	23.3380	22.5455
100114	21.6262	22.8178	22.5326	22.3196
100117	20.7624	20.6962	21.3085	20.9272
100118	22.8702	20.7323	21.7067	21.7370
100121	*	18.5842	19.9033	19.2306
100122	19.8783	19.2643	24.9765	21.2147
100124	17.0713	20.4022	20.0867	19.1730
100125	18.9535	19.6097	20.3232	19.6414
100126	19.5413	19.3103	21.4349	20.0428
100127	19.9860	19.2122	20.5153	19.9091
100128	20.1536	22.8826	23.5835	22.0798
100129	19.1936	*	*	19.1936
100130	18.6751	20.0947	21.0023	19.9341
100131	23.4373	23.1622	24.6184	23.7719
100132	18.1167	18.7863	19.5259	18.7919
100134	15.1764	15.9733	16.9302	15.9832
100135	18.8253	19.1865	19.7675	19.2758
100137	18.6955	19.5562	20.9015	19.8112
100138	17.1373	14.9539	14.9760	15.5324
100139	15.6514	15.2532	15.7378	15.5541
100140	17.1389	19.0584	20.2288	18.8297
100142	19.6815	18.4113	17.7250	18.5714
100144	12.2877	*	*	12.2877
100146	18.1267	21.3359	20.8381	20.1028
100147	14.6616	15.2348	17.1566	15.6835
100150	21.2807	21.5057	25.4269	22.5635
100151	21.6087	23.8489	26.6143	24.0945
100154	20.0015	20.4068	21.6715	20.7094
100156	19.4980	18.4779	20.0348	19.3485
100157	22.6744	22.6195	24.2188	23.1792
100159	10.2793	10.7818	15.0633	11.7916
100160	20.5581	23.3121	22.6942	22.2030
100161	22.2994	22.3053	23.3612	22.6650
100162	20.1411	20.3110	24.2950	21.5951
100165	19.0388	22.6622	*	21.0526
100166	20.0250	21.2309	22.2419	21.1141
100167	23.4075	23.2969	25.7676	24.1390
100168	20.1994	20.3167	23.0121	21.2144
100169	20.9506	20.3017	21.6397	20.9720
100170	18.5088	19.3005	21.2469	19.5894
100172	14.3446	14.8826	15.7827	14.9994
100173	18.5662	17.1337	18.3828	18.0289
100174	26.1826	21.9807	*	24.0224
100175	18.1692	20.5442	21.2532	20.0936
100176	22.8604	24.3089	24.6595	23.9677
100177	24.4296	24.4284	25.1037	24.6852
100179	22.3015	23.0849	23.9633	23.1372
100180	20.2130	21.5388	22.7781	21.4816
100181	23.0800	18.9510	17.9048	19.7877
100183	24.6121	23.0654	22.2063	23.2470

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
100187	20.2533	20.8535	21.4988	20.8818
100189	21.3147	26.5962	27.1295	24.9742
100191	19.9879	21.0647	22.0526	21.0151
100199	21.7193	*	*	21.7193
100200	22.4579	23.8729	24.8878	23.7939
100204	20.8995	20.2193	21.1922	20.7717
100206	19.5710	20.1171	20.3436	20.0192
100208	21.2117	20.7029	20.4678	20.8077
100209	22.4577	23.3903	22.8236	22.8823
100210	21.3575	21.8545	23.0431	22.0260
100211	20.6427	20.7516	21.6367	21.0021
100212	21.1187	21.1263	21.7239	21.3228
100213	20.6558	21.1818	22.0176	21.2986
100217	20.5909	22.7335	22.7116	21.9737
100220	21.2796	21.8246	24.6233	22.4044
100221	17.3965	21.2321	23.2263	20.3743
100223	20.6302	20.2233	21.8962	20.9551
100224	20.0251	21.8628	22.3567	21.3927
100225	20.6802	21.5059	22.4619	21.5424
100226	20.6858	21.8808	22.7301	21.8197
100228	21.3168	20.8810	24.9691	22.4542
100229	19.6908	18.2350	19.7259	19.2271
100230	20.5051	22.5650	23.4169	22.2637
100231	17.9226	18.7526	21.5712	19.2641
100232	19.3491	19.8002	20.1459	19.7694
100234	20.9104	21.6360	24.3355	22.1730
100235	17.1622	*	*	17.1622
100236	20.3766	20.6942	21.7886	20.9395
100237	22.0865	23.2408	23.2712	22.8481
100238	19.6367	20.8252	23.3747	21.2439
100239	21.3193	19.4481	23.2242	21.2389
100240	20.4340	21.0606	21.3495	20.9700
100241	14.7224	17.1063	14.1059	15.3322
100242	17.9260	18.6938	19.1097	18.5870
100243	21.2644	20.8041	22.4495	21.5381
100244	18.6227	20.5352	21.4386	20.2806
100246	19.6376	21.9247	23.5614	21.5790
100248	20.7007	21.2988	22.1553	21.4214
100249	19.2808	18.1397	18.4932	18.6366
100252	17.7778	19.8079	22.0976	19.8858
100253	21.3232	22.4778	22.6517	22.1611
100254	19.6598	19.5523	20.4410	19.8924
100255	25.2119	21.0284	20.7228	22.1421
100256	20.9356	21.2786	22.4844	21.5612
100258	21.3501	20.0300	22.0790	21.1494
100259	20.3815	21.1160	21.4991	21.0228
100260	21.0506	24.9183	21.2413	22.2814
100262	20.0433	21.0927	22.7137	21.2022
100264	19.1556	19.9491	21.7410	20.2633
100265	18.8301	18.2291	20.2664	19.1601
100266	18.2993	19.3623	20.2821	19.3534
100267	20.1141	21.7430	22.8054	21.5751
100268	23.9249	24.0538	23.5414	23.8302
100269	21.6724	22.5114	26.0271	23.4143
100270	15.1462	16.7148	20.8217	17.5380
100271	20.4824	20.8695	21.9823	21.1576
100275	20.9188	21.4904	23.2920	21.8964
100276	22.3646	24.1022	24.8251	23.8061
100277	16.6255	19.7241	14.9157	16.6327
100279	22.9095	22.5879	23.1776	22.8857
100280	17.3676	18.1972	19.0157	18.2076
100281	22.4392	23.0142	23.4729	23.0255
100282	19.1978	18.4884	20.9256	19.5516
100284	*	18.9448	18.5716	18.7499
110001	19.1971	20.1150	22.4535	20.5583
110002	17.1406	19.5158	20.2149	18.9927

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
110003	18.1168	17.1450	18.2792	17.8514
110004	19.5591	19.7733	20.6096	19.9776
110005	17.7348	22.4568	21.8105	20.9768
110006	20.7820	21.0601	22.0325	21.3092
110007	21.9505	25.2523	25.9135	24.3734
110008	22.0081	18.5265	20.4972	20.3338
110009	16.3069	17.4306	16.6452	16.8052
110010	23.3213	23.9104	25.1930	24.1454
110011	18.6144	18.9823	20.4028	19.3209
110013	16.2811	18.9160	16.7833	17.3444
110014	16.0658	18.1787	18.4463	17.4976
110015	21.2146	20.9926	21.2600	21.1563
110016	22.5321	14.2398	14.7571	16.4041
110017	13.1960	22.2537	21.2970	19.1377
110018	19.6064	22.1480	23.0577	21.6355
110020	18.3147	19.4617	20.9687	19.5535
110023	21.1994	22.0546	21.6512	21.6299
110024	20.7297	20.7345	21.3945	20.9529
110025	19.5749	20.4232	20.2493	20.0573
110026	17.2977	16.2484	16.9161	16.8269
110027	16.0642	14.7081	19.8976	16.6619
110028	20.1547	29.1670	28.1695	25.3235
110029	20.2906	21.2150	21.3694	20.9629
110030	18.8105	19.6412	20.4656	19.6568
110031	19.9482	20.0553	20.9219	20.3082
110032	15.7349	18.2014	19.2685	17.6324
110033	22.1879	25.6335	23.1939	23.6010
110034	19.6055	19.5554	23.0724	20.6505
110035	19.3795	22.7950	21.8646	21.4160
110036	22.2498	24.9234	22.5481	23.1534
110038	17.7060	17.7396	18.4508	17.9715
110039	20.6011	20.4998	18.9817	19.9578
110040	17.0743	16.8083	17.7798	17.2164
110041	18.8035	20.2755	20.1398	19.7378
110042	24.0153	25.2331	25.0535	24.7832
110043	20.1016	20.6150	21.2714	20.6367
110044	16.3624	17.2087	17.5905	17.0642
110045	20.2498	21.3049	22.2424	21.1738
110046	19.7377	21.4905	22.8820	21.3991
110048	16.3148	15.6113	18.8751	16.8775
110049	16.1817	16.8639	17.1396	16.7155
110050	20.7619	19.2291	18.9048	19.6044
110051	17.0070	17.2292	17.2050	17.1503
110054	*	20.0549	20.7825	20.4374
110056	15.6202	17.7959	17.9037	17.2909
110059	16.6678	16.7990	17.8076	17.0958
110061	15.0367	16.3557	17.4601	16.2796
110062	18.8019	17.0053	17.9421	17.8940
110063	16.9612	18.5071	18.0256	17.8146
110064	18.9515	19.1203	18.8742	18.9828
110065	15.6771	16.3546	16.9829	16.3529
110066	21.0207	22.4189	23.4554	22.2503
110069	19.3109	20.9575	21.1513	20.4832
110070	21.0227	17.3438	19.6361	19.3058
110071	14.5984	18.8321	21.5042	17.7757
110072	12.7877	12.7625	13.6626	13.0734
110073	15.4261	16.4658	17.9372	16.5696
110074	21.3945	22.3769	24.4924	22.7969
110075	18.5199	20.1757	20.1604	19.6679
110076	21.2867	21.9798	23.6127	22.2999
110078	22.3718	24.0893	25.7416	24.0644
110079	21.0593	22.1070	22.3641	21.8325
110080	18.4768	19.1839	19.4635	19.0419
110082	23.8768	24.3140	22.7015	23.5986
110083	23.1219	23.1463	22.2609	22.8147
110086	18.2815	16.6374	19.0164	17.9653

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
110087	21.7773	22.7069	24.0994	22.9041
110089	18.5587	19.3855	19.0453	18.9917
110091	19.5114	21.5328	23.7110	21.5509
110092	17.3479	16.9725	15.9178	16.7054
110093	*	16.9827	*	16.9827
110094	14.5641	16.9503	16.8890	16.0918
110095	16.4670	17.1195	18.9904	17.5350
110096	16.8541	17.4157	18.0418	17.4444
110097	15.5811	17.4558	17.8454	16.7969
110098	16.3532	16.0597	16.7800	16.4135
110100	18.6978	19.0764	18.6822	18.8175
110101	10.8187	18.8491	13.8787	13.5799
110103	13.6842	21.1837	21.5683	17.7316
110104	15.7781	15.9431	16.6322	16.1150
110105	16.8909	16.7775	18.1306	17.2936
110107	19.3609	19.3897	21.2267	19.9924
110108	19.7938	25.2161	20.1140	21.3451
110109	15.9359	16.4031	16.5977	16.3157
110111	18.5108	18.3951	18.4274	18.4433
110112	19.0619	19.8986	18.9574	19.2821
110113	16.8179	15.9532	16.0942	16.2556
110114	14.6888	16.4812	16.8297	16.0087
110115	43.9427	22.5049	26.5759	28.7027
110118	20.5368	19.7509	17.5714	19.1118
110120	15.2589	17.7452	18.4738	17.1958
110121	16.2711	19.3643	18.8744	18.1723
110122	21.1385	21.1469	20.6070	20.9564
110124	17.5732	18.3366	19.4093	18.3953
110125	19.1311	18.0090	19.5666	18.8882
110127	14.6143	20.3765	16.1107	17.0392
110128	18.1845	18.0835	20.3046	18.8711
110129	18.9388	19.0001	20.9442	19.6354
110130	16.0580	14.6011	16.6915	15.7591
110132	16.0419	16.3943	17.1820	16.5355
110134	12.5723	19.8639	19.0305	17.6901
110135	17.4380	17.3504	15.6668	16.7018
110136	18.0639	16.9629	20.7827	18.4333
110140	17.8870	17.7915	*	17.8447
110141	13.2501	14.4935	13.2710	13.6692
110142	14.6144	13.9525	14.1203	14.2070
110143	20.1603	22.5926	22.4254	21.8082
110144	16.8685	17.5112	17.5678	17.2876
110146	16.1316	17.1835	17.8499	17.1022
110149	17.7535	32.1975	25.2525	24.0956
110150	20.2644	21.2909	22.8322	21.4768
110152	15.3996	15.1324	16.3837	15.6496
110153	19.2744	20.5068	20.6972	20.1497
110154	14.9636	17.3761	16.5286	16.2471
110155	15.5306	16.5146	16.4756	16.1555
110156	14.7477	16.3876	16.0759	15.7007
110161	21.7153	22.2861	24.5776	22.9656
110163	20.4202	18.6637	20.1183	19.7095
110164	20.2074	21.2160	22.6605	21.3867
110165	21.2577	20.8030	22.5604	21.5831
110166	20.5882	20.5049	22.3822	21.1111
110168	20.6646	21.8058	22.3181	21.6516
110169	20.6385	22.6648	23.3750	21.9474
110171	23.7893	25.5296	24.5313	24.5760
110172	23.3730	23.6803	24.7005	23.9332
110174	13.7339	14.6199	*	14.1346
110177	20.7187	21.2796	22.7831	21.6138
110178	18.8306	*	*	18.8306
110179	22.7841	22.0767	24.3673	23.0370
110181	14.0941	12.9798	13.9591	13.6986
110183	23.3826	22.5148	24.2899	23.3905
110184	22.1970	22.1920	22.2761	22.2235

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
110185	16.7246	17.7925	17.3330	17.2705
110186	17.4287	18.3178	19.7172	18.4775
110187	20.1154	19.8419	22.8248	20.9454
110188	24.8376	23.7032	22.0258	23.3741
110189	22.2715	20.8786	19.8454	20.8993
110190	18.5728	18.3649	20.7292	19.1518
110191	20.2033	21.4033	21.3404	21.0040
110192	21.4951	21.0486	22.9684	21.8761
110193	20.6380	20.7867	22.1477	21.1908
110194	15.1480	14.8115	15.8129	15.2645
110195	13.9135	12.7261	10.9444	12.3540
110198	24.1999	24.8646	24.8275	24.6410
110200	18.1862	17.7744	17.9631	17.9701
110201	20.4699	20.9497	21.9313	21.1039
110203	26.8148	22.7453	24.2062	24.5686
110204	19.7317	30.7342	35.3699	24.8432
110205	21.1435	21.3617	20.1405	20.8862
110207	12.9727	14.7154	14.6045	14.1130
110208	15.1742	15.6161	15.0350	15.2676
110209	17.9190	18.6404	20.0629	18.7585
110211	20.9372	26.9151	20.1024	22.3126
110212	11.8545	14.3790	15.8420	13.8932
110213	14.3651	*	*	14.3651
110215	20.1928	18.1539	21.0263	19.7770
110216	*	27.1878	*	27.1877
120001	27.9213	29.0427	29.4126	28.7754
120002	25.0744	25.2021	23.5667	24.5781
120003	25.9059	23.9115	24.6238	24.8142
120004	23.9208	24.8632	26.1398	24.8838
120005	23.3975	24.1662	22.3213	23.2601
120006	25.0895	25.8943	26.6302	25.8359
120007	22.7200	22.8772	22.7179	22.7718
120009	17.4693	16.4485	16.7630	16.8820
120010	25.1480	24.1923	24.9089	24.7414
120011	35.0582	37.2759	35.2051	35.8314
120012	23.1144	21.8507	22.0371	22.3824
120014	22.8866	24.1208	25.3557	24.0761
120015	32.9906	42.6465	*	37.0469
120016	27.9127	45.1899	43.5083	34.2774
120018	24.5031	31.1879	*	26.7466
120019	22.9341	25.5659	23.8535	24.0876
120021	23.4508	23.1839	36.8286	25.9002
120022	21.7868	19.2614	22.2781	21.0242
120024	29.4808	32.2514	21.9657	28.3802
120025	20.1065	50.6376	40.1332	25.3493
120026	26.0787	25.1314	25.7023	25.6323
120027	24.7255	24.4535	23.1434	24.0841
120028	27.5023	27.0897	27.5365	27.3898
130001	18.8471	17.6306	19.6328	18.7161
130002	16.6620	16.9867	18.5746	17.4270
130003	21.7313	22.3430	23.0994	22.4005
130005	20.7169	21.2386	22.6364	21.5043
130006	19.3392	20.4614	21.4640	20.4603
130007	20.8338	21.8107	22.0894	21.5806
130008	12.5506	13.6018	19.3392	14.7112
130009	19.1837	15.9701	20.8748	18.5462
130010	17.6795	17.5119	17.7826	17.6635
130011	20.5031	20.1147	22.1125	20.9248
130012	22.9813	24.9976	24.2451	24.1243
130013	17.4038	15.1129	22.6624	18.2887
130014	18.9769	19.2107	19.8240	19.3628
130015	15.7233	18.5913	16.4136	16.7965
130016	17.3942	19.0516	20.1220	18.8309
130017	17.1710	19.6875	19.9511	18.7336
130018	19.7368	19.8425	20.0563	19.8848
130019	18.6648	19.1711	19.5147	19.0953

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
130021	12.8588	15.6155	14.4430	14.2958
130022	16.5270	18.9127	19.7814	18.3410
130024	19.3634	19.0703	19.9934	19.4905
130025	17.5213	16.4627	17.5989	17.2009
130026	21.5934	21.8106	23.2093	22.2042
130027	21.4279	20.5344	20.6641	20.8743
130028	19.1093	20.9674	21.2217	20.4234
130029	18.4263	18.7694	22.9243	19.6491
130030	17.8440	17.5759	18.5827	17.9732
130031	16.2397	16.7766	20.4146	17.4242
130034	16.9873	18.9483	20.5802	18.9102
130035	19.3478	20.7770	17.2864	19.2295
130036	13.7933	13.6362	15.1590	14.2304
130037	18.8071	18.6856	19.2108	18.9127
130043	16.5102	16.7904	17.6920	16.9853
130044	17.8160	13.4513	18.7067	16.5045
130045	16.0990	19.0208	17.5152	17.4280
130048	16.0899	16.7900	*	16.4201
130049	20.3129	22.4440	22.0520	21.6192
130054	17.2729	17.7085	16.4675	17.1120
130056	14.6862	20.9476	28.8008	19.9051
130060	21.8662	22.7399	23.2512	22.6187
130061	15.4006	14.7394	*	15.1267
130062	16.5672	19.8157	19.8264	18.8380
130063	15.9441	18.8024	18.4797	18.1425
140001	16.3372	17.7990	18.1511	17.3657
140002	19.0248	19.9284	20.9959	19.9709
140003	21.2886	17.8595	18.0163	18.9220
140004	15.7042	17.4574	18.9713	17.4061
140005	11.6127	12.3002	12.4144	12.1009
140007	22.9799	23.8585	24.9847	23.9721
140008	21.6548	22.1111	24.2634	22.6646
140010	31.8207	28.5635	28.0863	29.4098
140011	17.8676	18.6164	18.4052	18.3022
140012	23.0653	21.4374	22.5885	22.3529
140013	18.3060	19.6722	20.3147	19.4284
140014	22.4737	21.4042	22.2944	22.0537
140015	16.6735	17.6805	20.3540	18.1726
140016	13.1278	14.4938	15.4454	14.3266
140018	22.3070	22.4132	23.4062	22.7146
140019	16.6548	16.4254	16.1180	16.3909
140024	16.8271	15.3782	16.1032	16.1040
140025	16.9462	18.5135	21.7775	18.9319
140026	16.6612	18.3220	19.7839	18.2263
140027	18.7553	19.2149	20.5980	19.5140
140029	22.8322	26.0833	28.5670	25.8242
140030	21.9475	23.1760	25.3715	23.5785
140031	19.5731	17.6067	16.9650	17.9987
140032	18.1058	19.0383	19.8033	18.9961
140033	24.1722	25.1639	22.8705	24.0049
140034	19.5278	19.8792	19.7711	19.7256
140035	15.2649	15.5040	17.4514	16.0631
140036	18.5771	19.1076	21.2366	19.6677
140037	13.0764	14.1083	14.3082	13.8255
140038	18.3035	18.4948	19.8197	18.8624
140040	19.9267	16.7450	18.0342	18.2044
140041	17.6582	18.5952	18.8042	18.3411
140042	15.4095	15.8892	16.1157	15.8051
140043	19.4683	20.1176	21.7356	20.4389
140045	15.5807	17.7799	17.4261	16.8835
140046	18.9763	18.6371	20.0859	19.2505
140047	17.1539	13.3610	16.6672	15.5612
140048	24.0913	23.9545	23.8652	23.9681
140049	28.4958	26.9483	26.7160	27.4301
140051	23.8264	24.0796	24.7180	24.2214
140052	19.6409	17.9571	21.0450	19.4727

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
140053	19.1892	19.9620	20.9768	20.0131
140054	22.1921	23.1576	23.9459	23.0869
140055	16.3404	14.3603	15.8756	15.4931
140058	17.4927	18.6861	19.1199	18.4367
140059	15.0195	*	18.2593	16.6820
140061	17.3012	18.2039	18.4264	17.9767
140062	28.0877	28.5304	28.6390	28.4255
140063	25.3641	29.1453	29.6998	27.8767
140064	19.1023	18.9379	19.6954	19.2477
140065	24.1128	25.3336	25.5939	25.0012
140066	17.3902	13.6491	15.4818	15.3710
140067	19.3267	19.5292	20.7511	19.8509
140068	19.9691	21.6188	22.3622	21.2834
140069	16.7544	17.3879	17.7785	17.3221
140070	22.9678	22.7153	25.2646	23.5870
140074	19.3504	21.6052	22.2563	20.9569
140075	21.6313	21.6434	21.8472	21.6925
140077	17.5305	17.3647	17.3236	17.4081
140079	23.3020	23.6928	22.7046	23.2149
140080	21.0739	22.1968	22.0682	21.7613
140081	16.2247	16.9808	18.1746	17.0842
140082	23.8960	29.7262	26.5960	26.4591
140083	19.3145	21.0330	20.7704	20.3580
140084	20.9709	22.3467	23.0263	22.0990
140086	18.3803	19.1613	19.1815	18.9175
140087	16.1009	17.1147	21.4593	18.0959
140088	25.2369	25.4176	26.5258	25.7146
140089	17.6366	18.3157	19.3230	18.4019
140090	26.4325	26.9364	28.0530	26.9854
140091	20.9018	21.9322	23.5559	22.1482
140093	18.2899	20.1528	20.7564	19.6330
140094	21.4709	21.9383	22.8892	22.0901
140095	24.0549	24.2859	25.5716	24.6269
140097	17.5081	21.1719	21.8418	20.1374
140100	21.3581	23.1399	23.8226	22.7460
140101	21.5473	21.4211	23.1418	22.0459
140102	17.1500	17.5729	18.6328	17.7567
140103	19.2783	18.1303	19.1834	18.8678
140105	22.6573	22.8944	23.8258	23.1227
140107	13.7533	11.8383	11.5827	12.2495
140108	25.4742	26.9971	27.9140	26.8421
140109	15.7465	14.5498	15.9178	15.3965
140110	19.1822	19.2888	20.9631	19.8004
140112	17.6856	17.6974	18.1119	17.8311
140113	19.0592	19.5584	26.2393	21.3762
140114	21.1639	21.0976	23.0383	21.7813
140115	21.1926	21.0433	20.4587	20.8982
140116	23.1177	23.8993	25.5980	24.2533
140117	21.5671	21.4876	22.0889	21.7249
140118	23.5952	24.3260	25.3249	24.4123
140119	29.1419	27.9145	30.6468	29.2072
140120	18.0743	17.9716	17.7667	17.9340
140121	16.0397	16.6993	16.2607	16.3273
140122	24.6470	26.1270	26.7882	25.8138
140124	27.1906	27.9813	30.6820	28.5176
140125	17.6759	16.9516	17.8190	17.4826
140127	19.8973	20.0489	20.8397	20.2623
140128	19.4955	23.1327	23.5481	22.1101
140129	18.2639	20.2868	21.6252	19.9926
140130	22.2285	23.4298	26.0464	23.9518
140132	23.5475	23.3054	23.7046	23.5171
140133	21.4090	21.4166	20.1740	21.0117
140135	17.8100	17.3985	18.2479	17.8298
140137	16.8969	18.6330	20.4807	18.6235
140138	16.7420	17.1968	14.5771	16.0861
140139	14.0619	11.0397	*	12.4249

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
140140	17.8243	17.6845	18.8185	18.1076
140141	17.5204	19.1097	20.2606	18.9480
140143	19.1862	19.0810	19.9885	19.4222
140144	21.3245	22.2864	24.8854	22.7447
140145	17.5471	18.1788	19.4509	18.3977
140146	21.9573	19.9704	19.4272	20.3714
140147	16.1336	18.8049	17.1013	17.2344
140148	18.6598	18.7730	19.7630	19.0696
140150	27.3378	24.7976	28.9853	26.8988
140151	21.3896	20.0310	20.8820	20.7518
140152	24.6333	25.6011	28.3946	26.1493
140155	19.9738	20.2778	13.0438	17.2026
140158	22.7639	22.7988	23.7428	23.1140
140160	17.7691	17.7921	19.8825	18.5234
140161	20.0948	20.3799	21.2045	20.5610
140162	19.6464	20.3452	21.6901	20.5431
140164	18.7806	18.6589	19.8246	19.1100
140165	14.9156	14.7223	16.3700	15.3419
140166	17.5496	18.3833	19.3672	18.4196
140167	17.1479	17.6525	18.8532	17.9029
140168	16.6770	17.7453	18.2896	17.5820
140170	16.1621	16.4107	17.6901	16.7412
140171	14.1637	15.0237	15.2617	14.8002
140172	23.8431	23.6262	24.8587	24.0563
140173	15.1487	16.3924	16.0030	15.8459
140174	20.5339	35.9320	22.0418	24.0179
140176	23.2866	24.5338	26.3468	24.7221
140177	18.2648	15.0827	20.3142	17.5964
140179	21.1948	21.9859	22.7345	21.9641
140180	22.4548	22.7996	22.7508	22.6646
140181	20.8709	21.9864	22.6643	21.8357
140182	22.0170	28.9515	25.1302	24.9068
140184	17.8155	17.2401	17.9169	17.6582
140185	17.6514	18.2867	18.8573	18.2635
140186	22.7890	23.5034	25.6807	23.9584
140187	17.9201	18.3331	19.4049	18.5535
140188	15.2479	16.1907	*	15.6443
140189	21.0616	20.6627	21.1515	20.9599
140190	16.3366	17.5263	16.6673	16.8245
140191	25.8835	25.2628	27.4166	26.1852
140193	15.8022	17.4057	18.5651	17.2695
140197	18.6394	19.3774	19.9406	19.3426
140199	18.3507	18.0450	18.5409	18.3150
140200	21.5220	21.7680	22.4626	21.9362
140202	22.1939	23.7955	25.2777	23.7942
140203	19.9194	21.0848	24.8870	21.9324
140205	17.4751	20.0784	*	18.5139
140206	21.3295	22.5109	22.8223	22.2246
140207	21.9779	22.3905	25.4539	23.1447
140208	25.9900	26.2527	28.3112	26.8566
140209	18.1206	20.1557	20.2433	19.4720
140210	15.6899	14.8248	15.5345	15.3479
140211	21.8891	22.6265	22.8852	22.4887
140213	27.0645	24.9892	25.6839	25.9086
140215	15.9949	15.2893	18.5502	16.5949
140217	24.8229	25.7329	25.9030	25.4763
140218	14.9459	14.9851	17.4171	15.7345
140220	17.6370	17.8450	19.3915	18.3036
140223	24.9249	24.9017	26.2168	25.3383
140224	25.8668	32.8292	25.6766	27.8908
140228	19.6988	20.1688	21.8627	20.5743
140230	18.0918	18.2983	12.3494	15.7704
140231	23.9176	24.5019	26.0208	24.9246
140233	19.4542	21.2333	24.4419	21.6980
140234	18.9945	*	19.7266	19.3554
140236	*	12.9253	*	12.9252

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
140239	18.8127	20.3745	21.6074	20.3069
140240	23.6860	24.6949	25.1418	24.5193
140242	24.5428	25.2317	26.1850	25.3655
140245	13.4839	14.2481	15.1320	14.2800
140246	13.4639	11.6267	15.0650	13.2908
140250	25.0876	23.6449	25.3410	24.6985
140251	21.4385	21.9435	23.5128	22.3081
140252	25.2246	25.0220	26.4715	25.5870
140253	18.5511	19.5858	18.4567	18.8447
140258	23.2973	25.3622	25.0743	24.5818
140271	15.5079	12.0079	16.0350	14.2915
140275	20.1699	23.8171	22.9656	22.2969
140276	26.6777	25.3134	26.1713	26.0267
140280	20.2360	18.8300	20.0763	19.6936
140281	24.0192	25.2719	26.5197	25.2957
140285	18.1181	18.5916	15.7435	17.3779
140286	20.3735	26.1290	24.0368	23.4605
140288	25.2327	24.4331	25.8717	25.1876
140289	17.1388	18.1747	17.7886	17.7207
140290	21.1784	22.8590	26.5055	23.5505
140291	25.0911	24.9537	26.8628	25.6578
140292	20.8560	21.9950	26.8610	23.2005
140294	17.7226	17.7301	19.4218	18.2830
140300	25.3662	27.8436	28.9830	27.4142
150001	22.8109	24.0620	22.6875	23.1822
150002	19.3401	20.7651	20.7353	20.3004
150003	19.7661	20.8636	21.4649	20.6945
150004	20.3685	21.2449	22.8060	21.4609
150005	20.6260	21.6806	22.8149	21.7447
150006	20.8158	20.6523	21.8435	21.1085
150007	20.1826	20.6635	21.2811	20.6934
150008	21.4545	21.8457	23.0208	22.1136
150009	18.7073	19.0030	19.5869	19.1023
150010	21.7125	20.5570	21.2466	21.1746
150011	18.3742	18.3275	19.9096	18.8524
150012	22.4751	22.1402	21.7903	22.1209
150013	17.0352	16.9327	17.5531	17.1857
150014	22.0143	21.5168	22.8402	22.1055
150015	22.5409	21.9037	24.2370	22.8616
150017	18.7664	19.5339	20.6758	19.6741
150018	20.4947	21.0496	22.8922	21.5205
150019	16.6327	17.8585	19.8341	18.0075
150020	15.1120	16.6600	15.9405	15.8686
150021	19.5096	21.5944	23.3800	21.5139
150022	19.1555	17.9222	18.7751	18.6044
150023	18.3598	19.3412	20.3015	19.3319
150024	18.4140	19.2295	19.8368	19.1528
150025	17.7007	20.2750	*	18.8948
150026	18.8417	22.4978	21.9448	21.0269
150027	17.3284	18.0335	19.4238	18.2383
150029	23.0546	23.2454	24.8939	23.7166
150030	17.9992	19.2406	20.7256	19.3281
150031	17.2429	18.3463	21.3494	18.9577
150033	21.8768	22.6741	23.0756	22.5535
150034	22.1317	23.1533	23.3718	22.8966
150035	20.4477	21.2374	22.3779	21.3734
150036	20.8692	21.4567	22.1464	21.5046
150037	21.7109	24.4611	22.3699	22.8076
150038	21.2193	22.0572	20.3454	21.1795
150039	18.4729	19.6215	16.0227	17.8696
150042	18.1632	20.2221	18.0185	18.7252
150043	19.0120	20.1741	20.6301	19.8897
150044	18.4381	19.1309	19.8951	19.1600
150045	16.8121	18.1670	20.6406	18.4832
150046	17.6342	18.2543	19.4146	18.4518
150047	19.7441	22.0145	21.9824	21.1814

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
150048	19.3329	19.1648	21.1441	19.9048
150049	17.0141	18.6451	21.6309	18.9803
150050	16.8354	17.7354	18.0411	17.5369
150051	19.0130	19.7257	20.6895	19.8190
150052	15.8590	17.3750	18.8345	17.3836
150053	19.1421	18.8632	18.3493	18.7874
150054	17.3825	18.3916	19.3424	18.3843
150056	22.4087	21.5774	23.0603	22.3391
150057	16.5882	16.9736	17.4044	16.9907
150058	20.8178	22.1409	23.0273	22.0105
150059	21.2535	22.7360	23.1398	22.3623
150060	17.0743	18.6159	19.5011	18.4069
150061	17.3887	19.7968	19.4014	18.8242
150062	20.5415	20.8274	21.2608	20.9059
150063	22.0925	22.6525	24.8587	23.1574
150064	18.1400	20.3865	20.6232	19.7087
150065	19.8913	21.2153	21.4572	20.8676
150066	15.3373	19.5313	19.6845	18.2239
150067	18.2926	18.8862	20.5000	19.2693
150069	21.5310	23.3969	23.5510	22.9021
150070	17.9260	18.0827	18.9332	18.3136
150071	13.4760	13.5111	16.4179	14.3733
150072	16.2054	15.0765	18.5813	16.5238
150073	22.2968	*	19.8034	21.0773
150074	20.4175	20.2305	21.3500	20.6570
150075	15.5603	16.7532	17.2267	16.4858
150076	22.9382	22.6424	23.3724	22.9988
150078	19.2718	19.9668	20.2068	19.8183
150079	17.2436	18.2051	18.3668	17.9396
150082	17.5265	17.8381	19.6881	18.3251
150084	23.2506	24.3107	24.9529	24.2038
150086	18.9735	18.3838	19.7763	19.0552
150088	18.9869	20.3366	22.3055	20.5100
150089	23.8791	22.1725	21.5664	22.4947
150090	20.7726	21.0945	21.9803	21.2765
150091	20.4053	22.4640	26.5235	23.0637
150092	16.7434	16.9179	18.2592	17.3164
150094	16.5788	17.5244	16.8351	16.9693
150095	17.1324	19.2749	22.3214	19.5343
150096	23.2764	20.8204	*	21.9551
150097	19.3802	19.7751	21.1462	20.1553
150098	15.0943	15.2829	16.4763	15.6011
150099	22.4229	*	*	22.4229
150100	18.4148	19.8066	18.7289	18.9950
150101	16.4604	20.6209	21.2025	19.3973
150102	19.7426	23.7180	20.8818	21.3162
150103	18.4781	18.7036	19.3653	18.9170
150104	17.6981	20.0765	21.3141	19.7260
150105	20.0431	22.4412	21.6975	21.3454
150106	16.1510	16.8714	18.7088	17.2750
150109	18.8077	19.9066	21.7870	20.1411
150110	18.6627	21.9336	*	20.0654
150111	18.4556	19.2355	24.1559	20.4298
150112	20.4109	20.5253	22.1939	21.0672
150113	20.3780	19.6603	20.5871	20.2207
150114	19.5183	17.9877	18.3097	18.6233
150115	17.4315	18.4844	18.1308	18.0117
150122	18.7139	17.7867	20.7540	19.0652
150123	14.1105	14.0508	16.2898	14.8865
150124	14.6245	15.9487	16.2104	15.6060
150125	20.6735	21.3311	22.0299	21.3571
150126	21.3697	20.6857	24.0000	22.0092
150127	17.1994	17.0052	18.0532	17.4224
150128	18.5100	19.5576	20.4742	19.4866
150129	24.7711	28.6211	29.9888	27.3320
150130	18.1971	18.4846	18.3852	18.3505

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
150132	20.1684	20.9443	21.2747	20.8045
150133	17.3966	18.4250	20.0320	18.5328
150134	19.2526	19.3632	20.2764	19.6091
150136	20.1245	21.8097	22.9091	21.6195
150145	16.6851	*	*	16.6851
150146	*	19.0204	*	19.0204
160001	18.6035	19.0085	20.1699	19.2573
160002	15.9534	16.6003	17.6600	16.7287
160003	16.0862	16.2208	17.5429	16.6099
160005	17.6153	17.9405	19.3348	18.3156
160007	13.2101	15.1738	14.9137	14.4341
160008	15.9742	16.6193	16.7863	16.4539
160009	16.8391	17.9886	19.0664	17.9375
160012	16.4827	16.7112	17.9236	17.0145
160013	18.3996	18.6304	20.3023	19.1017
160014	15.9086	16.7146	18.7253	17.0747
160016	19.6322	19.9747	21.6050	20.4119
160018	14.5946	15.6141	16.0793	15.4308
160020	15.4712	15.5384	15.7960	15.6015
160021	16.5049	16.7617	16.7920	16.6812
160023	15.0665	15.0099	15.3854	15.1530
160024	19.7050	19.4764	20.5622	19.9066
160026	18.8379	19.5260	20.4567	19.6047
160027	16.3477	16.9417	18.2081	17.1431
160028	19.9595	21.0000	22.9000	21.2124
160029	20.4678	21.3457	22.2106	21.3395
160030	19.9508	19.6182	21.6899	20.4018
160031	15.2448	16.1267	16.8957	16.0812
160032	17.3202	18.3168	19.2464	18.2782
160033	18.8673	18.8859	20.1916	19.3159
160034	15.0019	16.5957	17.3644	16.3397
160035	15.2211	16.3991	17.0165	16.0816
160036	17.8849	17.4558	20.2598	18.5977
160037	19.0532	19.5045	19.5067	19.3582
160039	17.4758	17.8647	19.1998	18.1868
160040	18.1949	18.0667	19.6339	18.6033
160041	16.7850	17.4435	18.7943	17.7638
160043	15.6909	14.8564	16.7841	15.7684
160044	16.7439	17.8323	19.5552	18.0882
160045	20.1236	20.0611	21.4757	20.5590
160046	14.5655	16.2737	16.8665	15.8592
160047	18.3593	19.0787	20.4259	19.2869
160048	14.6144	15.6856	17.2709	15.7797
160049	14.5457	15.5673	15.3233	15.1526
160050	17.4912	17.7878	21.1184	18.6885
160051	14.6400	16.4261	15.8213	15.6207
160052	18.0941	21.7647	22.1933	20.7461
160054	16.1753	16.1981	16.5258	16.3024
160055	14.7600	15.1674	17.6177	15.8187
160056	16.1575	17.0172	17.9534	17.0042
160057	18.1776	19.1378	19.6802	19.0270
160058	21.1159	22.1061	22.2812	21.8210
160060	16.0436	17.2825	17.7489	16.9862
160061	17.3215	17.0938	17.2064	17.2123
160062	17.8086	17.4388	18.8163	18.0222
160063	16.8834	16.3583	17.3771	16.8779
160064	20.5496	22.2131	25.2962	22.5781
160065	16.9373	17.1043	17.0609	17.0424
160066	17.1875	17.9971	19.3202	18.1697
160067	17.8514	16.7833	17.6602	17.4022
160068	17.9892	19.0572	20.5995	19.2056
160069	19.7280	19.1640	20.5989	19.8301
160070	16.7017	18.4588	17.7855	17.6458
160072	14.9536	14.4141	15.3384	14.9054
160073	11.8261	11.4997	15.5946	12.7126
160074	19.5092	17.9513	18.4624	18.6658

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
160075	19.4948	18.4613	20.7842	19.5335
160076	17.9381	17.8824	19.1590	18.2977
160077	12.8826	13.6658	15.0468	13.8624
160079	17.6187	18.6333	20.5010	18.9292
160080	18.6687	19.4925	19.6680	19.2860
160081	17.0052	17.4466	19.1442	17.8781
160082	19.6499	19.5322	20.7306	19.9632
160083	20.6189	19.7542	21.3221	20.5512
160085	18.0063	21.2557	19.1929	19.4359
160086	17.3271	17.5308	19.0477	17.9338
160088	20.2331	22.3655	23.8098	22.1152
160089	16.9538	17.3449	18.3526	17.5556
160090	17.1090	17.9614	18.4210	17.8146
160091	12.8516	14.2573	14.8904	13.9759
160092	15.5011	17.0633	17.9251	16.7839
160093	17.7457	18.5675	19.5732	18.6194
160094	18.7653	17.6094	18.7835	18.3744
160095	15.1895	15.2722	16.4927	15.6525
160097	15.9263	16.6790	17.7860	16.8002
160098	16.3135	16.8670	16.8997	16.6946
160099	13.9053	15.0880	16.0710	15.0169
160101	18.3705	18.9788	19.6314	18.9647
160102	18.8765	20.1161	14.4837	17.6011
160103	17.0973	18.2741	19.6168	18.2567
160104	18.8301	17.4829	21.0060	19.1043
160106	16.9639	17.3474	19.4385	17.8892
160107	18.0634	18.0097	18.8936	18.3269
160108	16.0529	16.7779	17.7577	16.8631
160109	16.5593	17.9873	18.2938	17.5854
160110	19.1420	20.6215	20.9959	20.2817
160111	14.1644	14.9965	15.1104	14.7432
160112	16.8332	17.2450	19.6950	17.9037
160113	14.7097	15.4834	14.9449	15.0474
160114	16.1423	16.5006	18.0532	16.8768
160115	15.8995	16.5654	16.9991	16.4863
160116	16.9534	16.6993	18.4261	17.3468
160117	17.9410	18.7615	20.1682	18.9384
160118	17.2523	19.4472	17.1480	17.8721
160120	10.5992	15.6789	15.0577	13.1432
160122	18.9252	18.1469	18.8469	18.6451
160124	18.0908	19.1600	19.9144	19.0634
160126	17.8142	19.4903	17.8643	18.3076
160129	16.7131	17.2112	18.0113	17.3098
160130	16.0528	15.6666	16.2628	15.9955
160131	15.4898	16.0424	16.5397	16.0265
160134	13.4743	15.3012	14.6396	14.4558
160135	18.2682	18.7711	18.3973	18.4829
160138	16.8699	17.1491	18.3957	17.4264
160140	18.4007	18.5630	19.6155	18.8655
160142	16.2875	18.1467	17.2792	17.2139
160143	16.6154	17.4497	18.1287	17.4014
160145	13.9152	16.9092	17.8887	16.1391
160146	16.6024	17.7010	19.0576	17.7319
160147	17.4880	19.4041	21.6062	19.3700
160151	16.8257	17.2177	18.3398	17.4331
160152	15.6170	15.9500	17.0750	16.1956
160153	20.2316	21.2085	22.7004	21.3705
170001	17.9304	17.9218	18.5120	18.1317
170004	15.0636	16.1442	17.2262	16.1274
170006	17.2192	17.5982	19.1982	18.0168
170008	14.9124	16.8412	17.7061	16.4380
170009	20.7795	23.1349	25.0508	23.0721
170010	18.7384	19.4584	19.5990	19.2633
170012	17.8719	18.4432	20.2412	18.8687
170013	18.6454	19.4667	20.1852	19.4537
170014	17.9349	18.4931	19.6044	18.6936

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
170015	16.5750	17.1302	17.2443	16.9768
170016	19.2130	20.0675	22.1023	20.4287
170017	17.7958	19.5994	19.7908	19.0428
170018	15.2984	15.3237	14.8794	15.1619
170019	15.2094	16.9362	17.4699	16.5180
170020	17.3400	18.1325	19.1418	18.2290
170022	18.5309	19.1888	20.3269	19.3395
170023	19.1351	19.2441	19.6533	19.3514
170024	13.6803	14.3604	15.0081	14.3388
170025	17.8667	18.7182	19.1720	18.5412
170026	15.0470	14.8974	16.9094	15.6079
170027	17.3604	17.8690	18.4466	17.8805
170030	14.6530	15.9282	12.9413	14.4010
170031	13.9601	14.2151	16.4660	14.7972
170032	15.6093	16.3449	15.2207	15.7224
170033	16.4059	19.1952	20.4533	18.7304
170034	15.8202	16.9586	17.8239	16.8326
170035	18.5885	17.0945	19.8334	18.5082
170038	14.7776	13.8582	15.2505	14.6401
170039	15.8635	17.0774	18.5780	17.1811
170040	21.6440	21.0617	23.1014	21.8449
170041	11.7566	12.4488	9.9263	11.2790
170044	15.3011	17.3254	*	16.3356
170045	14.0875	25.8331	20.5454	19.8078
170049	19.9415	20.7921	21.2917	20.7035
170051	15.0889	16.4851	16.9003	16.1546
170052	15.0108	15.2283	16.0948	15.4803
170053	16.5102	14.6133	14.3628	15.2080
170054	14.4353	14.6354	15.2814	14.7841
170055	16.9800	18.2607	18.1783	17.7932
170056	17.0442	18.3550	19.7369	18.3732
170057	13.0007	*	*	13.0007
170058	18.6983	19.5415	20.1090	19.4664
170060	17.3482	18.9853	17.5290	17.8991
170061	15.6527	15.0258	15.6412	15.4439
170063	12.8082	14.1185	13.7611	13.4911
170066	15.5322	16.2891	16.8009	16.1505
170067	14.7492	14.9921	20.7945	16.7328
170068	15.1790	17.0022	19.2629	17.0101
170070	14.2445	14.0627	14.8348	14.3652
170072	12.6329	12.7709	*	12.7037
170073	17.5368	17.7056	17.7586	17.6632
170074	17.5537	17.3699	17.6543	17.5273
170075	12.4212	13.6816	14.4939	13.5832
170076	14.5866	14.6109	14.9392	14.7111
170077	13.5235	13.9104	14.1376	13.8508
170079	13.5261	11.5902	16.7227	13.6766
170080	12.6014	14.8293	13.6794	13.6471
170081	13.8077	14.6823	15.0840	14.5566
170082	12.8563	13.7462	14.8154	13.7610
170084	12.5410	13.0519	13.6517	13.0693
170085	15.4518	17.5422	21.8907	18.4877
170086	20.4068	19.7182	20.7298	20.2879
170088	13.4542	13.4860	*	13.4703
170089	18.8136	15.4860	20.2263	18.3293
170090	11.9147	10.9444	23.6837	13.5581
170093	13.5490	14.0276	14.7803	14.0852
170094	20.1985	21.2035	21.2484	20.8944
170095	15.5463	15.3532	16.1078	15.6715
170097	16.4608	17.7540	18.6023	17.6032
170098	15.5259	16.6210	17.3480	16.4881
170099	13.6033	14.3370	16.5247	14.7568
170101	14.5629	18.0143	17.3381	16.4637
170102	13.6321	14.2447	14.4499	14.1084
170103	17.2844	17.9530	18.6172	17.9709
170104	20.6182	21.0049	22.0671	21.2397

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
170105	16.5408	16.7403	18.2788	17.1877
170106	18.5479	17.7467	*	18.0680
170109	17.2629	16.9782	18.3483	17.5682
170110	16.9823	18.5731	21.0637	18.8359
170112	14.3855	15.4049	15.8097	15.1873
170113	13.9038	14.6486	16.4938	15.0142
170114	14.4545	16.2645	13.9726	14.8012
170115	12.6997	12.9216	13.0253	12.8848
170116	16.8714	18.1830	19.4278	18.1442
170117	15.7875	16.8237	16.8301	16.4481
170119	15.1990	15.2708	15.1982	15.2222
170120	17.6748	17.4917	18.2832	17.8028
170122	20.0615	21.1769	21.4588	20.8791
170123	23.1697	23.6534	25.2122	23.9595
170124	11.1249	15.0596	16.3925	13.8286
170126	12.8096	13.5736	14.5527	13.6140
170128	14.8891	14.1676	17.6259	15.4144
170131	10.1000	*	*	10.1000
170133	18.0243	18.8119	19.9778	18.9214
170134	14.1085	14.6799	15.1932	14.6538
170137	17.8290	19.3118	19.3344	18.8395
170139	14.1967	14.3001	14.8157	14.4193
170142	*	17.7134	19.0547	18.3947
170143	15.6509	16.0415	16.3258	16.0049
170144	19.0929	20.4392	20.8488	20.0997
170145	17.1837	19.0142	20.1494	18.7616
170146	20.9075	21.7919	25.2520	22.7252
170147	22.3017	17.6717	18.4634	19.3887
170148	16.9183	19.1942	24.4828	19.5145
170150	15.5651	15.9072	14.9718	15.4692
170151	13.8934	14.3668	14.5002	14.2317
170152	14.9139	15.6423	16.0930	15.5503
170160	13.7108	14.4732	17.0629	15.0179
170164	16.6542	17.4072	17.0791	17.0445
170166	27.5567	12.7507	16.5113	18.0323
170171	12.5200	13.1792	14.7051	13.3708
170175	19.0232	20.1907	20.8671	20.0207
170176	21.3400	23.5043	23.5743	22.8029
170180	16.6921	8.6352	*	11.8552
170182	22.2164	21.3454	21.9797	21.8339
170183	20.3505	19.5182	16.6577	18.5979
170185	*	*	26.8136	26.8136
170186	*	*	33.2457	33.2457
180001	17.9906	20.4885	20.8169	19.8393
180002	17.9669	17.5798	19.8195	18.4259
180004	17.2581	17.7149	18.0494	17.6734
180005	21.1390	22.4634	23.4941	22.1458
180006	11.4398	10.3400	11.2872	11.0389
180007	17.6776	17.9491	18.6823	18.0973
180009	21.4730	21.0608	21.7746	21.4458
180010	19.1100	19.6311	19.4210	19.3847
180011	17.1050	19.0526	22.6798	19.8513
180012	18.7223	19.0646	19.6614	19.1485
180013	18.2354	19.7418	20.0950	19.3760
180014	21.4856	21.3361	23.0067	21.8859
180016	19.8892	21.1458	19.7242	20.2686
180017	15.4140	15.6583	16.7649	15.9422
180018	17.1692	15.4892	18.1529	16.9235
180019	17.3970	17.8285	19.5953	18.2719
180020	17.7288	18.0111	19.4391	18.3612
180021	15.4580	17.0618	16.5376	16.3552
180023	15.8803	17.4717	19.0574	17.4610
180024	16.1731	16.5040	19.6313	17.2961
180025	14.1841	15.4180	17.1875	15.5888
180026	14.6804	15.0118	13.9959	14.5545
180027	16.4116	17.5286	19.6928	17.8399

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
180028	19.5276	15.7005	26.2220	19.5655
180029	17.7729	17.7248	20.0841	18.4982
180030	17.3430	17.9543	17.5043	17.5959
180031	13.9844	13.1848	17.1003	14.4541
180032	16.8318	17.2784	17.2362	17.1383
180033	17.7344	15.4131	17.0498	16.6984
180034	15.3369	16.3991	17.0349	16.2188
180035	20.1305	21.3666	22.4651	21.2939
180036	19.8398	20.1860	20.6951	20.2522
180037	19.9737	21.2184	21.0177	20.7450
180038	17.7626	18.5923	19.3837	18.5916
180040	19.5337	21.2229	22.2270	20.9835
180041	15.0785	16.3699	17.5950	16.3724
180042	16.7691	17.1519	15.5660	16.4438
180043	16.8027	14.6526	17.2414	16.1261
180044	18.5571	19.4984	21.1057	19.7654
180045	17.7130	20.8455	20.7498	19.9529
180046	19.2523	21.2080	21.6955	20.6999
180047	16.2304	18.6938	17.8625	17.5927
180048	18.3442	17.7816	18.3151	18.1431
180049	16.4319	16.5459	17.8418	16.9262
180050	17.8540	17.1493	19.4992	18.1665
180051	16.3960	17.5441	18.3028	17.4095
180053	15.9284	15.8994	17.3167	16.3733
180054	19.4858	20.0946	17.4354	19.0288
180055	15.2663	15.8422	16.6072	15.8890
180056	17.0056	17.5881	18.7038	17.7559
180058	15.9685	14.5355	14.8840	15.0687
180059	13.3955	14.7032	17.2542	14.9522
180063	13.1036	12.4448	14.7338	13.4418
180064	15.2424	15.5066	16.3894	15.6781
180065	12.0629	11.1934	11.0966	11.4164
180066	19.2981	19.8956	20.7907	19.9622
180067	20.6322	20.1712	20.2762	20.3589
180069	17.7911	16.2916	19.0836	17.6936
180070	13.1923	15.9362	15.4643	14.7849
180072	16.9021	17.2347	17.0576	17.0759
180078	21.1170	21.7116	23.7765	22.2300
180079	15.1636	15.9048	18.1683	16.3817
180080	16.4989	16.6428	17.6735	16.9434
180087	14.9167	15.6089	16.2378	15.5798
180088	22.0374	22.1774	22.8908	22.3519
180092	18.2405	18.3597	18.8964	18.5113
180093	17.0132	17.8492	17.7592	17.5305
180094	13.5490	13.6233	14.3306	13.8326
180095	13.8021	13.9050	15.4478	14.3114
180099	13.3631	13.2991	14.0464	13.5559
180101	18.4883	*	21.0704	19.8124
180102	17.9618	18.5240	18.8169	18.4200
180103	19.8965	20.3490	20.9598	20.3951
180104	18.9281	19.3922	20.2731	19.5382
180105	15.2394	16.6997	18.2976	16.6579
180106	14.3505	15.2895	15.5278	15.0462
180108	14.8187	14.4740	14.8720	14.7266
180115	16.7003	16.9096	18.0951	17.2235
180116	18.0392	18.6077	19.2389	18.6152
180117	17.7857	23.0192	20.7961	20.3977
180118	15.8597	16.9250	17.9017	16.8657
180120	16.1591	15.3115	16.4226	15.9318
180121	15.0983	20.0494	16.9570	17.2427
180122	18.5094	18.1930	18.7549	18.4922
180123	21.0613	21.1067	21.5962	21.2566
180124	17.4994	18.8487	19.7138	18.6761
180125	19.6416	14.9314	22.6609	18.1936
180126	12.9228	14.3551	14.8501	14.0804
180127	19.2581	17.6365	18.0498	18.2667

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
180128	17.6385	18.2817	18.7194	18.2299
180129	16.8378	22.3536	15.6637	17.9690
180130	19.8192	20.6450	21.9413	20.8049
180132	17.7744	19.5884	19.8393	19.0473
180133	21.6794	21.7800	23.2679	22.2101
180134	13.1935	14.5387	16.5901	14.7149
180136	17.3542	*	*	17.3542
180138	19.3692	20.2102	19.8524	19.8198
180139	18.7198	20.5350	20.3816	19.9038
180140	16.8152	15.2719	14.6466	15.5892
180141	20.9820	23.8930	20.3404	21.5800
180142	*	20.7510	*	20.7510
180143	*	*	21.3197	21.3196
190001	17.6832	18.1514	18.8583	18.2414
190002	19.1924	19.8834	20.6057	19.8935
190003	19.7749	19.9121	19.5115	19.7281
190004	17.7710	18.3620	19.6755	18.6227
190005	17.2422	17.5161	19.0994	17.9657
190006	17.8036	17.5911	17.7333	17.7115
190007	13.8189	14.4720	16.3633	14.9284
190008	18.6664	19.2456	22.4797	20.0804
190009	15.3555	15.9731	16.0395	15.7936
190010	16.2805	16.5020	17.7616	16.8604
190011	15.9534	15.6351	15.7319	15.7701
190013	16.8181	15.5019	16.7770	16.3476
190014	17.0959	17.8015	18.6929	17.8513
190015	18.6266	18.9896	19.7673	19.1223
190017	16.2393	17.5381	19.8449	17.8836
190018	15.0668	11.1898	13.1355	13.0348
190019	18.5257	18.3788	18.7344	18.5489
190020	17.5256	17.6840	18.7252	17.9732
190025	18.6369	16.8686	18.1892	17.9111
190026	18.1622	18.5015	19.0130	18.5687
190027	17.0827	17.4761	18.4070	17.6430
190029	16.5239	19.1967	18.7344	18.0923
190034	16.8503	18.0754	19.2007	18.0146
190036	20.1780	20.0300	21.2960	20.4842
190037	17.6945	19.9878	14.1323	17.4581
190039	19.4713	19.0376	18.7625	19.0694
190040	21.4634	21.7376	23.1819	22.1190
190041	17.6646	17.9535	19.5511	18.4761
190043	15.5580	15.5618	15.5645	15.5614
190044	17.2892	17.4471	17.6788	17.4765
190045	21.6107	21.2853	22.0065	21.6574
190046	19.7964	20.4458	20.2414	20.1666
190048	16.6683	16.8136	16.6848	16.7218
190049	17.2280	17.7417	18.5902	17.8611
190050	16.1980	16.2854	16.9053	16.4718
190053	13.2159	13.0080	13.4768	13.2412
190054	19.1738	18.9059	17.7269	18.6351
190059	15.6942	15.8373	17.8651	16.5018
190060	14.7186	17.8443	19.9121	17.2297
190064	20.4482	18.2466	19.7215	19.4539
190065	20.9927	18.3091	18.3280	19.0851
190071	14.4827	16.4138	16.3822	15.7772
190077	15.7805	16.5536	16.8829	16.4072
190078	14.8826	16.9383	19.5879	16.9873
190079	17.7120	17.9403	18.8187	18.1527
190081	15.3198	14.9707	14.7919	15.0273
190083	18.8895	18.4951	16.2970	17.9487
190086	15.8694	16.5074	17.6237	16.6689
190088	20.5531	19.9362	20.4725	20.3095
190089	13.0503	15.0395	15.2055	14.4221
190090	16.6664	16.2351	19.8201	17.5803
190095	16.2287	17.3258	17.3637	16.9543
190098	20.4897	21.0847	21.4328	20.9915

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
190099	19.9018	19.0635	19.0545	19.3385
190102	20.0300	20.7870	21.1614	20.6813
190103	12.1389	14.4158	15.6415	14.0050
190106	18.5813	18.5908	19.9117	19.0267
190109	15.5767	15.8187	16.3641	15.9327
190110	15.8052	15.7313	15.2652	15.5956
190111	19.7514	20.6508	21.3622	20.6278
190112	21.0232	22.0741	24.2806	22.3499
190113	12.5777	*	19.0411	16.0667
190114	12.6366	13.9209	13.5044	13.3578
190115	20.2473	22.7583	24.0098	22.2695
190116	15.5481	17.3757	18.3223	17.0452
190118	14.7876	16.3776	17.8543	16.2736
190120	13.9591	17.2309	17.6708	16.2867
190122	15.4793	15.3742	16.7189	15.8764
190124	20.6222	20.1206	22.8245	21.2142
190125	20.4517	19.8298	20.1401	20.1511
190128	20.4688	20.8770	21.5869	21.0028
190130	15.1467	14.0379	14.5586	14.5812
190131	20.7565	18.8958	19.7483	19.8133
190133	13.5383	15.1393	15.7834	14.7342
190134	12.1749	12.4507	*	12.3182
190135	21.6875	21.3454	23.0213	22.0078
190136	12.4091	15.1662	15.6286	14.4513
190140	14.2256	14.6829	14.8738	14.5954
190142	15.4861	16.2280	19.0464	16.8845
190144	16.2068	18.4405	18.3513	17.6419
190145	15.2345	16.2505	16.4402	15.9754
190146	21.2825	21.9607	20.9312	21.3917
190147	14.4345	14.7202	15.2732	14.8106
190148	16.6337	15.5338	19.4518	17.1031
190149	17.5997	16.4722	16.5153	16.8165
190151	14.7333	15.5210	16.2783	15.5127
190152	22.2070	22.0319	22.7142	22.3160
190156	15.7478	16.0442	17.6573	16.4812
190158	20.4637	20.4078	21.6307	20.8104
190160	17.1003	18.4662	19.3139	18.3349
190161	15.5737	15.9280	15.7807	15.7581
190162	20.6143	20.1962	20.9645	20.5966
190164	15.1783	18.2379	19.0473	17.3930
190167	16.6681	17.7611	15.5795	16.5709
190170	14.1750	14.5222	16.2045	15.0173
190173	23.6398	23.0934	*	23.4298
190175	19.3625	20.4580	23.0144	20.9805
190176	24.0574	22.2316	21.7051	22.5987
190177	18.6715	19.7794	20.3679	19.5997
190178	11.0657	12.0372	*	11.5413
190182	20.2855	20.7102	23.1997	21.3232
190183	16.7671	16.0752	16.7402	16.5275
190184	17.2044	19.8436	18.6583	18.5582
190185	20.1444	20.5852	20.7351	20.4997
190186	18.7568	17.4078	16.7272	17.7093
190190	17.4642	15.8985	13.7951	15.8564
190191	20.4975	19.6911	19.7218	19.9785
190196	17.9225	18.6138	19.1961	18.6202
190197	19.5569	20.2082	20.9871	20.3042
190199	16.0637	15.3522	17.8288	16.5088
190200	22.0391	21.6852	22.3510	22.0311
190201	18.7079	19.7421	21.7185	20.0957
190202	*	*	22.4701	22.4701
190203	21.7350	21.7931	23.0636	22.1708
190204	21.4624	20.5784	22.9134	21.6176
190205	19.6587	19.3737	18.8750	19.3122
190206	21.7012	21.3307	21.7867	21.6067
190207	20.5082	19.0216	20.7024	20.0851
190208	20.0065	16.9641	17.6834	18.1192

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
190218	19.7518	19.2992	20.7290	19.9128
190231	15.8287	17.7247	*	16.7208
190236	19.3395	21.1982	22.5796	21.1124
190238	*	20.6799	*	20.6799
190239	*	19.7601	*	19.7601
190240	*	14.3579	16.0658	15.2775
200001	18.0527	18.2513	19.7903	18.7081
200002	19.3629	22.3035	22.3145	21.3548
200003	16.9566	18.4141	18.5779	17.9947
200006	17.6586	21.0922	18.9818	19.2222
200007	18.7992	18.1681	19.0387	18.6537
200008	21.7489	21.5556	23.2883	22.2282
200009	22.2280	21.4763	23.3090	22.3517
200012	18.3484	19.1047	20.5141	19.3396
200013	18.0566	17.9378	20.3793	18.8704
200016	18.0866	17.1187	16.2939	17.1580
200017	17.2930	*	*	17.2930
200018	18.5397	17.8675	19.8848	18.7682
200019	19.2348	19.9245	21.1893	20.1239
200020	22.4526	22.3355	24.7433	23.2161
200021	19.9133	20.7361	22.0144	20.8877
200023	16.1707	20.2063	*	18.0379
200024	19.4329	20.8336	21.0633	20.4533
200025	20.2259	20.4165	21.4247	20.7140
200026	18.1194	17.9021	18.1459	18.0573
200027	18.5659	19.4220	20.2100	19.4300
200028	19.5708	18.8763	19.8886	19.4531
200031	16.2217	16.1641	17.7875	16.7057
200032	18.9315	19.4613	20.9148	19.7712
200033	21.8634	22.4685	23.6298	22.6316
200034	20.1519	20.4941	21.8266	20.8418
200037	18.6713	20.3015	19.5004	19.5071
200038	23.3851	21.2632	22.9220	22.5107
200039	19.8589	20.1508	21.5695	20.5351
200040	19.5503	18.9580	20.7744	19.7656
200041	19.3563	18.8131	20.2986	19.5168
200043	16.7224	19.4295	20.0280	18.6069
200050	20.1214	20.2014	23.0314	21.0760
200051	22.1525	22.0712	*	22.1031
200052	17.2099	17.6271	18.9290	17.9376
200055	18.8422	18.5983	19.4998	18.9700
200062	17.2273	18.4279	18.0949	17.9025
200063	19.9331	21.2121	22.5265	21.2349
200066	17.0289	17.0570	18.4281	17.5199
210001	20.4841	18.6617	21.5280	20.1745
210002	19.9219	23.5132	26.5907	23.2386
210003	20.3446	26.0447	22.3090	22.6337
210004	24.2909	24.9760	27.2278	25.4898
210005	21.4929	21.3829	22.5304	21.8195
210006	18.9436	19.3682	20.8607	19.7283
210007	23.1007	23.8840	23.4582	23.4837
210008	21.1768	21.2895	21.0767	21.1826
210009	20.5447	20.7479	20.8476	20.7179
210010	18.7197	19.5908	20.4097	19.6002
210011	21.4862	21.4043	20.4017	21.0852
210012	20.7203	21.3977	24.8430	22.2484
210013	19.7288	19.4505	23.1649	20.7921
210015	16.1912	18.7448	23.9651	19.4078
210016	23.8739	26.5193	24.7441	25.0180
210017	18.8928	18.5079	18.2963	18.5724
210018	22.2135	22.8553	23.6442	22.8975
210019	19.3046	20.6025	21.5429	20.4724
210022	22.6389	24.5744	25.6728	24.3137
210023	23.1950	22.9989	24.4815	23.5799
210024	20.6011	24.4280	24.7858	23.2181
210025	19.5876	21.2769	21.4910	20.6428

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
210026	12.1348	13.8668	20.7986	14.8993
210027	17.6855	17.1060	16.2219	17.0429
210028	19.6408	19.4157	20.4027	19.8293
210029	21.2167	25.4939	24.7605	23.8903
210030	21.7403	20.9574	21.9547	21.5644
210031	16.2299	*	*	16.2299
210032	17.7228	20.1955	20.0825	19.3625
210033	20.8053	23.7588	22.8303	22.4103
210034	15.7322	19.4144	22.6812	19.1023
210035	20.2731	20.8317	21.6662	20.9231
210037	18.3072	20.5528	21.1659	20.0571
210038	23.4971	24.9762	25.9701	24.7755
210039	19.9901	21.3559	23.3583	21.5884
210040	21.5014	23.4252	23.7067	22.8761
210043	19.6474	22.4000	22.9504	21.5561
210044	22.5781	23.0917	22.9540	22.8695
210045	11.6086	12.1467	13.5654	12.4021
210048	23.0537	24.6921	24.9381	24.2387
210049	19.0821	19.3022	21.1056	19.8459
210051	22.4335	23.6476	24.8949	23.6510
210054	22.3559	23.2730	25.1694	23.5831
210055	29.2539	26.5272	23.8025	26.3168
210056	19.2662	22.9593	22.6958	21.6241
210057	23.8289	26.0076	25.6142	25.1342
210058	22.0753	16.3191	17.4250	18.5418
210059	22.6766	25.6052	*	23.8855
210060	*	26.5846	26.4566	26.5245
210061	17.2240	16.1931	20.8975	18.1853
220001	21.9369	22.9064	23.4091	22.7509
220002	24.1285	24.5840	25.4158	24.6800
220003	16.9246	17.9319	17.6069	17.4814
220006	22.3085	22.6337	23.8920	22.9367
220008	24.4691	22.0796	24.2393	23.5663
220010	21.8582	22.0067	23.4009	22.4195
220011	26.1827	29.5290	20.6390	24.9566
220012	32.0829	31.2303	31.1041	31.4572
220015	22.5773	23.1893	24.1348	23.2890
220016	23.3750	23.0951	24.6149	23.6876
220017	22.4605	25.1568	25.9000	24.3877
220019	19.5613	19.8551	19.9268	19.7870
220020	21.4152	22.4295	22.5375	22.1352
220023	16.1885	*	*	16.1885
220024	21.5363	21.9316	23.8620	22.4506
220025	20.7882	22.8593	22.0003	21.8657
220028	22.8036	21.0630	24.1251	22.5899
220029	23.1509	25.6560	25.7660	24.8229
220030	18.5441	18.7429	18.9012	18.7275
220031	30.2430	29.3091	28.3832	29.0231
220033	20.0695	20.3609	21.8156	20.7051
220035	21.6396	23.1892	25.7456	23.4375
220036	24.6470	24.4091	25.5771	24.8579
220038	22.6518	22.3162	22.9821	22.6455
220041	23.4720	27.5034	28.6790	26.4083
220042	25.0779	26.0473	28.4675	26.3871
220046	22.7068	23.3149	24.1931	23.3833
220049	26.0025	27.2689	25.4358	26.2086
220050	22.0144	22.5265	23.3330	22.6222
220051	21.1033	21.7357	22.4826	21.7398
220052	23.7650	23.5225	25.4091	24.2083
220053	19.1280	*	*	19.1280
220055	21.3743	*	*	21.3743
220057	25.3902	25.8064	26.2945	25.8083
220058	19.9369	26.8345	21.6814	22.7654
220060	28.0843	28.0794	28.3950	28.1907
220062	20.4685	20.2254	22.5567	21.0855
220063	20.3951	20.8079	21.8365	21.0404

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
220064	22.3260	22.7497	24.0982	22.9997
220065	20.1364	20.1424	21.5657	20.6303
220066	20.7826	23.4477	24.5463	22.8901
220067	26.4443	27.5405	28.2685	27.3486
220070	19.7528	20.9128	23.9850	21.5896
220071	25.6184	27.4151	27.7679	26.9213
220073	25.6025	26.1328	27.4778	26.3977
220074	25.6390	24.3057	25.3331	25.0103
220075	22.8057	22.5329	24.6982	23.3522
220076	22.6668	23.2795	24.1224	23.3492
220077	25.2646	26.1545	27.1503	26.1736
220079	22.6256	22.0769	25.7305	22.9418
220080	21.5238	22.1971	22.9911	22.2508
220081	29.1726	29.6682	31.1326	30.0117
220082	21.6726	22.1453	23.2818	22.3672
220083	23.9156	22.5815	27.2605	24.4264
220084	23.6641	25.3761	26.0395	25.0431
220086	23.8705	26.7778	28.7324	26.2982
220088	22.9067	23.4258	25.0671	23.8081
220089	23.0965	25.4106	25.3521	24.5662
220090	22.0041	23.3049	26.0265	23.7769
220092	18.5239	24.7905	29.4173	22.0343
220095	21.4831	21.7851	22.6828	21.9956
220098	21.5906	23.1547	24.7180	23.1447
220100	25.7077	27.5841	26.8001	26.6854
220101	25.9204	27.0711	28.0856	27.0037
220104	28.0021	28.7258	*	28.3658
220105	21.4129	21.9185	25.5692	23.0562
220106	25.6577	25.9277	27.6812	26.4594
220108	21.9115	23.4975	24.5939	23.3257
220110	28.7071	29.1648	30.6173	29.5024
220111	23.8066	24.7510	26.7573	25.1031
220116	26.1662	32.0049	28.5716	28.7434
220119	23.3216	23.8785	24.6344	23.9280
220123	25.8994	32.4678	29.6084	29.3682
220126	22.5218	23.6045	23.8123	23.3172
220133	25.4596	29.3911	29.8366	28.1948
220135	25.6522	28.3648	29.6837	27.9677
220153	22.9592	*	*	22.9592
220154	22.4770	21.1563	23.3590	22.3695
220163	29.1143	29.2299	29.3552	29.2328
220171	24.5553	24.9261	27.3487	25.7067
230001	19.8020	20.0438	23.3051	20.9963
230002	22.7991	23.0439	24.3115	23.3442
230003	19.8420	21.2215	21.6493	20.9088
230004	23.1036	20.5005	22.4538	21.9617
230005	18.5644	17.0943	20.5596	18.6769
230006	19.1041	20.4978	20.6985	20.0828
230007	15.5538	*	*	15.5538
230012	15.0803	*	*	15.0803
230013	20.8018	22.2211	20.0954	21.0266
230015	20.1104	20.6464	21.9499	20.8811
230017	22.2822	22.9755	25.7900	23.6501
230019	22.2622	23.6674	23.8779	23.3381
230020	22.1280	21.8526	28.8869	23.8899
230021	18.9636	19.8256	20.9145	19.9553
230022	18.8006	21.9129	21.8808	20.8639
230024	23.7326	24.9664	26.2155	24.8592
230027	14.6950	19.6393	22.5114	18.5396
230029	19.4911	22.1782	24.9754	22.1623
230030	18.3916	18.6406	19.2441	18.7650
230031	19.3162	19.9465	19.4676	19.5690
230032	21.8845	24.8930	22.8436	23.1984
230034	19.0473	19.4366	17.9276	18.7511
230035	17.5109	17.7490	20.5906	18.5317
230036	23.2119	23.8398	25.1507	24.0919

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
230037	20.4747	23.2751	22.7382	22.1469
230038	23.5251	21.9692	20.9389	22.1189
230040	21.4393	20.7841	20.2451	20.8039
230041	20.3131	21.7364	23.2870	21.7251
230042	22.1043	21.3870	20.7745	21.4261
230046	25.5696	25.3206	26.1787	25.6837
230047	21.5381	22.3595	23.7178	22.5293
230053	25.4968	26.8917	23.5702	25.3801
230054	20.6963	20.8014	22.2105	21.1829
230055	20.7932	20.8492	20.8930	20.8452
230056	16.0766	17.8091	17.3516	17.0331
230058	20.4165	21.0303	21.6619	21.0335
230059	19.9240	20.7092	20.6540	20.4211
230060	19.8021	19.8987	20.5120	20.0740
230062	17.1540	18.8039	18.2283	18.0500
230063	20.4171	*	*	20.4171
230065	22.3459	22.7416	23.3414	22.8607
230066	22.1768	23.0475	23.2790	22.8376
230069	23.2076	24.2470	25.0212	24.1384
230070	20.2505	21.5666	21.2476	21.1404
230071	22.9052	23.1337	23.6398	23.2244
230072	20.6944	20.4456	22.6533	21.2484
230075	20.0545	22.5866	22.3632	21.5991
230076	24.4547	24.7010	26.9662	25.2705
230077	21.0178	20.2823	22.6781	21.3201
230078	17.5577	17.9868	19.1638	18.2565
230080	19.7687	20.2104	19.1810	19.7086
230081	19.0345	19.0199	20.0464	19.3283
230082	18.2992	19.0419	18.2165	18.5095
230085	20.2096	23.4996	24.5765	22.7898
230086	18.9420	20.1730	20.1461	19.7538
230087	18.9034	19.9700	20.6619	19.7714
230089	23.9100	22.6994	23.1023	23.1968
230092	20.0145	20.7738	22.3437	21.0873
230093	20.4655	20.6314	21.0274	20.7091
230095	17.3313	17.6444	18.0582	17.6864
230096	22.8410	22.7785	24.3004	23.2947
230097	21.2854	21.1254	22.5006	21.6504
230099	21.1933	21.7513	22.3422	21.7796
230100	17.1336	17.3842	18.2477	17.5807
230101	20.0932	20.5315	22.5159	20.9964
230103	22.7696	11.3429	18.5254	17.4039
230104	23.1457	24.1238	25.5606	24.3812
230105	21.5210	22.6098	23.0086	22.4180
230106	20.7997	21.6825	22.9909	21.8109
230107	16.5966	17.1386	18.9985	17.6147
230108	18.8631	20.3437	21.4592	20.2385
230110	18.9825	19.7262	21.0925	19.9233
230113	14.9411	*	*	14.9410
230115	18.4050	19.6281	21.0361	19.6522
230116	16.5419	14.5692	15.6064	15.5368
230117	25.9318	25.6797	25.5154	25.7018
230118	21.3028	20.6797	20.2770	20.7229
230119	21.1918	22.6555	23.9898	22.6112
230120	18.5264	20.3306	20.6105	19.6370
230121	20.3158	21.3342	21.4615	21.0465
230122	20.9078	*	*	20.9078
230124	20.3608	18.9981	20.9641	20.0945
230128	24.9081	24.0724	24.4952	24.4850
230130	23.5170	22.1775	23.5123	23.0660
230132	26.6386	26.1946	27.3637	26.7267
230133	17.6894	17.1058	19.0770	17.9441
230135	22.5258	20.5637	18.4193	20.8744
230137	19.1813	*	*	19.1813
230141	22.1299	22.4570	24.4560	22.9910
230142	22.2940	23.5621	25.0282	23.5411

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
230143	16.3043	16.7948	18.2700	17.1074
230144	22.1108	23.4237	23.3295	22.9371
230145	20.2542	19.2638	17.9811	19.0315
230146	20.5044	21.2260	22.3838	21.3821
230147	21.8496	23.2755	26.5260	23.6730
230149	20.7691	18.8005	19.9577	19.8029
230151	22.1713	23.3967	24.3705	23.2857
230153	19.5633	18.7403	20.0098	19.4472
230154	15.4456	15.4362	16.7152	15.8739
230155	17.2076	20.5409	20.7546	19.4417
230156	24.7587	25.6228	27.2254	25.8423
230157	20.3667	17.3571	*	18.9586
230159	20.0749	*	*	20.0749
230162	21.4636	21.7148	22.7984	21.9769
230165	23.0106	23.8881	24.7959	23.8782
230167	21.5048	22.9745	24.1344	22.8771
230169	23.0652	24.3874	28.1039	25.0117
230171	13.3863	17.1282	16.1129	15.4610
230172	20.6417	21.4675	22.1709	21.4477
230174	23.0272	22.7304	23.5025	23.0851
230175	16.8909	*	14.4932	15.4643
230176	22.7772	23.8204	24.9032	23.8211
230178	16.9156	17.3030	17.3428	17.1968
230180	15.8769	18.5744	19.6062	17.9856
230184	19.0604	19.7717	20.6406	19.8113
230186	19.5337	15.7837	19.1289	18.1131
230188	15.7112	16.2975	16.8687	16.3031
230189	16.6838	17.9218	19.1990	17.9352
230190	26.8196	26.4687	24.4643	25.9234
230191	19.0013	18.4861	20.6633	19.3446
230193	19.7066	19.8287	21.5358	20.3443
230195	21.7775	22.9228	23.4647	22.7456
230197	24.0184	24.0854	25.5312	24.5187
230199	19.4451	20.6580	22.4592	20.8791
230201	17.2141	18.0787	18.2486	17.8664
230204	25.4181	23.4966	24.5127	24.4525
230205	14.3788	15.9314	18.1551	16.1081
230207	20.6375	21.2483	20.9059	20.9181
230208	16.0733	16.7454	17.8118	16.8684
230211	18.6744	21.8581	21.1245	20.4277
230212	23.3021	24.2611	24.6420	24.0563
230213	15.1908	15.5469	17.1062	15.9226
230216	20.3359	21.0710	22.2137	21.1969
230217	21.2707	22.2698	24.1455	22.5496
230219	19.1549	20.0442	18.1277	19.1400
230222	22.1785	21.9711	23.2545	22.4802
230223	21.1528	22.6887	25.2666	22.9884
230227	23.7259	22.3155	25.8826	23.9496
230230	22.2385	22.3097	22.1703	22.2333
230235	16.8684	17.7197	17.5940	17.3919
230236	24.3835	25.9676	25.3251	25.2517
230239	18.0942	17.8168	18.9790	18.2974
230241	19.1000	20.7297	21.8472	20.5923
230244	21.7413	22.2697	23.1175	22.3742
230253	20.5945	21.0433	22.7706	21.4304
230254	21.9402	22.6335	23.3714	22.6370
230257	19.6982	21.3880	23.1794	21.3083
230259	22.2393	22.3969	23.1768	22.6077
230264	17.1319	17.4864	18.6598	17.7284
230269	23.3105	24.0992	24.3772	23.9435
230270	22.6187	22.5985	25.2665	23.4475
230273	22.9199	22.8715	24.1278	23.2898
230275	17.7487	20.8985	32.0037	21.0819
230276	21.3722	25.8709	22.3313	22.8959
230277	23.1456	23.9771	24.3351	23.8587
230278	18.2110	*	*	18.2110

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
230279	17.6973	17.8074	18.3256	17.9471
230280	15.6654	18.3497	*	16.7057
230283	27.9480	22.5082	*	24.9202
230286	*	*	47.5925	47.5929
230287	*	*	22.5420	22.5420
240001	24.6207	25.6936	26.6372	25.6759
240002	22.7981	23.2307	24.2214	23.4301
240004	25.1908	24.4030	25.6238	25.0604
240005	17.9563	20.3193	20.2389	19.4808
240006	25.1602	23.0715	25.7288	24.6342
240007	17.7625	19.0850	20.7189	19.1593
240008	20.2158	23.3783	22.7437	21.9832
240009	16.8965	17.1187	17.4518	17.1699
240010	23.6477	25.4752	28.3796	25.8852
240011	20.5192	21.5875	22.5188	21.5240
240013	20.3282	21.7544	25.1560	22.2201
240014	23.0025	24.2610	25.2306	24.1808
240016	20.4017	22.2011	23.3772	21.9959
240017	18.3585	18.9272	19.3431	18.8677
240018	20.8501	18.4268	23.6092	20.7339
240019	22.1501	23.1477	24.0613	23.1411
240020	21.1937	20.8849	20.6819	20.9116
240021	18.7515	20.1457	19.0469	19.2586
240022	21.7889	21.3234	23.0394	22.0529
240023	21.5087	22.8224	22.3002	22.1691
240025	18.8345	20.0308	20.7672	19.8809
240027	19.1017	16.7758	18.3837	18.0732
240028	19.7918	25.1934	*	22.5025
240029	21.1329	20.0164	23.0440	21.3549
240030	18.8547	20.1653	20.9799	20.0254
240031	18.1566	19.3983	21.7620	19.6652
240036	22.2460	22.1721	22.5436	22.3299
240037	19.2345	20.1195	21.4275	20.2550
240038	25.3061	24.3957	26.4513	25.4092
240040	20.4813	23.1352	22.8191	22.1112
240041	19.2864	21.8655	21.9054	20.9373
240043	17.7335	16.9859	18.0186	17.5712
240044	18.8411	20.3339	22.5750	20.4995
240045	21.1396	24.1557	24.2936	23.2125
240047	22.6152	23.8098	25.3233	23.8993
240050	25.2983	21.6499	23.1109	22.6766
240051	19.9195	22.5855	23.2612	21.9129
240052	20.7749	*	22.3485	21.5706
240053	22.9611	23.8693	24.4191	23.8099
240056	23.4226	23.7139	24.8549	24.0398
240057	24.2159	24.8686	25.3984	24.8617
240058	14.9697	18.4009	19.0506	17.2677
240059	23.6215	23.7808	25.3847	24.2488
240061	27.2603	25.9951	27.9151	27.0571
240063	23.7866	24.4031	25.8594	24.6824
240064	23.2860	22.8578	24.6785	23.6296
240065	12.7867	14.8734	14.4623	14.0357
240066	23.0698	24.1143	25.5163	24.2946
240069	19.8282	21.7991	23.3373	21.6146
240071	20.2101	21.2463	22.6332	21.3841
240072	21.1824	20.9529	21.5455	21.2291
240073	16.0840	17.3559	17.9013	17.1144
240075	21.2654	21.3357	21.9160	21.5185
240076	21.8795	22.3280	23.6159	22.6457
240077	15.3794	20.3445	22.1509	19.1544
240078	23.9150	25.1082	26.2576	25.1181
240079	18.4338	18.8345	18.2929	18.5204
240080	24.3399	25.5619	26.3071	25.3922
240082	18.3555	18.7995	20.2018	19.1212
240083	19.7637	21.0317	22.3484	20.9968
240084	19.4739	21.7421	23.1951	21.4482

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
240085	22.5736	20.9778	20.7535	21.3852
240086	16.9392	18.1401	18.1497	17.7863
240087	18.8352	21.3323	21.2116	20.4135
240088	21.6858	23.1056	24.6260	23.0939
240089	20.7239	21.1989	21.3949	21.1104
240090	19.2968	19.2166	21.0856	19.8725
240093	18.7092	20.2400	20.7138	19.9194
240094	20.9446	22.0247	22.5923	21.8995
240096	20.1644	21.0417	20.2992	20.4825
240097	24.2662	27.9496	29.7597	27.1621
240098	21.3467	24.2296	23.9626	23.2314
240099	14.4649	15.4964	18.8139	15.9924
240100	20.8302	20.8325	24.1875	21.9081
240101	19.2120	19.9837	22.1329	20.4409
240102	14.6067	16.3659	15.5114	15.4871
240103	19.1540	18.7510	21.0182	19.5968
240104	23.2178	23.5351	25.1139	23.9642
240105	14.3965	*	*	14.3966
240106	23.5148	23.5005	23.9677	23.6780
240107	20.3983	20.9004	21.2163	20.8360
240108	15.3547	18.2427	17.6500	16.9347
240109	13.5537	16.3216	15.1369	14.9110
240110	19.4828	21.0277	21.7340	20.7301
240111	17.2100	17.8617	19.9712	18.3046
240112	15.8350	16.6244	17.2437	16.5628
240114	16.2505	17.3682	18.3415	17.5274
240115	23.7765	23.8675	24.6529	24.0991
240116	16.6731	18.3520	17.3460	17.3960
240117	18.0636	17.9941	18.6677	18.2608
240119	20.6126	21.8289	23.0230	21.7338
240121	23.4018	22.2266	22.4858	22.6970
240122	19.1811	21.2876	20.7795	20.4095
240123	16.5098	18.3941	18.9494	17.8731
240124	19.4400	20.4728	21.2023	20.3644
240125	12.3627	14.9708	17.3846	15.0136
240127	15.8966	17.9724	16.4294	16.7198
240128	17.2513	16.3608	17.5611	17.0478
240129	14.4212	16.5209	17.7242	16.1756
240130	14.9399	16.4271	17.7634	16.3549
240132	23.0669	23.1452	24.5633	23.6102
240133	19.2126	19.5293	20.8958	19.9049
240135	14.3069	15.7015	15.6298	15.1560
240137	20.3750	21.5073	21.6644	21.1797
240138	15.2062	16.7332	19.1676	16.8305
240139	20.8053	20.5496	21.0163	20.7883
240141	23.8066	23.1009	23.6498	23.5064
240142	25.2770	29.2238	24.0719	25.9878
240143	16.6172	20.4266	20.7307	19.0810
240144	18.2604	21.4469	23.1661	20.7059
240145	17.2778	19.0689	17.6747	18.0668
240146	16.0652	16.5412	17.3275	16.6788
240148	18.8779	19.5204	19.5372	19.2785
240150	13.8786	20.8331	23.3857	18.4647
240152	21.1678	22.4744	24.1818	22.6586
240153	16.5412	19.3336	18.6556	18.0746
240154	17.5769	21.5052	21.5859	20.1583
240155	19.8762	20.9385	23.6944	21.5112
240157	17.4168	13.7309	20.0571	17.0514
240160	15.9492	15.9014	16.4990	16.1163
240161	15.7996	16.8809	18.0542	16.8888
240162	16.6292	19.1542	19.3296	18.3301
240163	18.8320	20.4760	22.2009	20.3835
240166	17.3233	19.4131	19.4496	18.7799
240169	16.6725	16.3958	*	16.5195
240170	18.8762	20.3779	21.5994	20.2122
240171	17.2886	18.5172	19.6732	18.5083

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
240172	18.2852	20.8606	20.3699	19.7027
240173	17.2655	18.5187	18.3183	18.0300
240179	17.5116	20.4004	17.7557	18.4699
240184	15.3793	16.8917	17.6979	16.5493
240187	19.9230	21.2736	23.2471	21.4869
240193	17.8226	18.4664	26.6381	21.1834
240196	24.3472	25.3479	26.2793	25.3808
240200	14.3415	14.9076	18.7517	15.8336
240207	24.1127	25.2814	26.0927	25.2080
240210	24.2218	24.5664	25.6060	24.8336
240211	19.7399	30.6260	34.7849	25.7741
250001	18.4233	19.2756	20.2019	19.2920
250002	17.2501	18.6938	19.6081	18.5060
250003	17.6539	16.7570	18.7331	17.7215
250004	17.8868	18.3860	19.2913	18.5189
250005	12.5993	12.5834	13.7341	13.0041
250006	16.9048	17.5192	19.4531	17.9224
250007	19.2913	19.7562	20.9757	19.9959
250008	14.1760	15.8506	15.8096	15.2607
250009	18.5610	17.7283	18.0463	18.1158
250010	13.3905	14.6101	16.0233	14.5948
250012	14.1623	16.7579	17.4032	16.1420
250015	13.5274	11.7249	16.6522	13.7345
250017	17.9410	20.5976	18.8850	19.0991
250018	11.9311	13.1687	14.7291	13.0932
250019	16.7425	18.0956	19.9070	18.3382
250020	13.4476	16.2698	19.6575	16.1595
250021	9.4318	10.5844	12.7242	10.6438
250023	13.9116	12.3434	13.8210	13.3756
250024	12.7127	12.9899	14.8394	13.4135
250025	19.0390	20.3625	21.9075	20.5374
250027	14.9519	14.5445	15.1790	14.8945
250029	16.4834	16.0682	14.8216	15.7783
250030	17.3636	26.6173	25.5089	23.0726
250031	17.9715	18.3825	19.8779	19.1622
250032	17.1339	17.5957	*	17.3669
250033	17.8257	15.0941	16.9132	16.6524
250034	16.6988	17.0399	18.8231	17.5333
250035	15.2353	16.8349	18.3861	16.7093
250036	15.8445	16.1913	17.6247	16.6012
250037	15.4325	12.7156	14.3994	14.0734
250038	16.8454	17.7019	18.8434	17.7665
250039	14.1556	15.1409	16.4502	15.2329
250040	17.3430	18.3364	19.6513	18.4442
250042	16.3867	17.6531	18.3858	17.4884
250043	16.0729	16.6500	18.4025	16.9554
250044	16.1218	16.7321	19.0321	17.2885
250045	22.0839	21.8988	22.7225	22.2606
250047	13.3706	14.7461	16.0109	14.4887
250048	16.8932	17.6649	19.4976	18.0474
250049	11.6715	12.1635	12.8275	12.2266
250050	14.3949	15.1159	16.0234	15.1991
250051	9.3464	10.4900	10.1212	9.9666
250057	15.9237	16.1838	16.6316	16.2556
250058	15.5327	15.7197	16.2623	15.8399
250059	16.2845	16.6494	17.9507	16.9440
250060	13.0301	16.1804	12.6893	13.8440
250061	11.0308	11.5108	12.0186	11.5214
250063	13.2540	13.3092	15.0894	13.8432
250065	12.8853	13.6904	15.0507	13.8065
250066	15.6760	16.1742	17.2711	16.3375
250067	16.4120	16.8522	18.3773	17.2393
250068	13.6768	13.4127	13.2644	13.4415
250069	17.8960	16.8980	18.5782	17.7677
250071	14.3781	12.3488	13.1934	13.2742
250072	18.2218	18.9487	21.0602	19.2655

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
250076	10.5098	*	*	10.5097
250077	12.2564	13.7404	13.9479	13.2870
250078	15.6336	15.9739	17.4118	16.3692
250079	16.2712	16.5835	16.1483	16.3337
250081	17.3325	19.0358	18.1848	18.1653
250082	16.0975	17.1427	17.3096	16.8599
250083	14.2634	16.6065	16.3054	15.6454
250084	17.0189	20.6429	21.0870	19.3827
250085	14.3797	15.4477	16.7377	15.5314
250088	17.8674	18.2736	19.3976	18.4880
250089	13.4238	14.3027	15.0238	14.2301
250093	15.2044	16.1506	16.8647	16.0778
250094	18.0852	18.5063	18.9681	18.5063
250095	17.0039	17.4217	18.4944	17.6334
250096	19.0688	19.0584	19.3630	19.1609
250097	16.9905	15.5741	16.3328	16.3172
250098	13.1341	18.3874	18.8163	16.4425
250099	14.8528	15.1265	15.9867	15.3437
250100	17.1682	17.8688	19.7559	18.3193
250101	18.4685	17.7194	17.6704	17.9924
250102	23.9329	18.9348	19.8487	20.8096
250104	18.2502	18.7651	19.0165	18.6823
250105	14.5401	15.5133	16.1480	15.4020
250107	15.1496	15.0737	16.5635	15.5581
250109	22.1551	21.3867	24.5760	22.6981
250112	15.5610	16.3640	16.6447	16.1593
250117	16.1225	16.9787	15.9335	16.3432
250119	15.2199	16.1218	16.5700	15.9756
250120	15.3433	16.7182	18.1428	16.6322
250122	18.9417	19.2990	19.8033	19.3541
250123	18.8690	18.7863	22.1376	19.9106
250124	13.1823	13.2490	14.4008	13.6109
250125	20.8895	21.2660	21.9366	21.3768
250126	18.2355	21.9101	19.0168	19.6297
250128	14.0048	16.1418	15.9958	15.4423
250131	12.6056	12.4557	11.2470	12.0464
250134	17.0671	18.5142	21.4489	18.9054
250136	18.9689	21.3497	20.0333	20.0576
250138	18.4028	20.4550	19.3446	19.3211
250141	19.0113	19.6692	21.6835	20.2708
250145	10.2507	11.2120	11.2021	10.8489
250146	14.4924	14.7781	15.4061	14.8913
250148	18.0980	19.4233	23.1459	20.1203
250149	12.9569	15.2318	15.7537	14.6277
250150	*	21.8599	*	21.8600
260001	18.0971	20.1560	20.9620	19.7027
260002	22.1183	21.6597	23.4259	22.4118
260003	14.6553	15.4482	16.2023	15.4433
260004	13.0133	13.7035	15.2735	13.9164
260005	19.5554	23.9681	22.5860	22.0140
260006	19.7467	20.0994	22.1692	20.6408
260008	13.8495	16.8893	18.2114	15.8498
260009	18.5080	18.2863	19.0654	18.6237
260011	19.1027	19.5059	20.3279	19.6368
260012	14.3645	17.1662	17.3810	16.3363
260013	15.9884	16.1825	17.3772	16.4946
260015	16.5822	17.8817	18.3849	17.5418
260017	16.7916	16.9914	17.9796	17.2888
260018	12.0060	12.5301	13.6120	12.7676
260019	18.6113	*	18.3629	18.4928
260020	20.5142	20.2241	21.0314	20.5884
260021	22.1017	21.6237	23.3527	22.2918
260022	17.2462	17.7772	18.7707	17.9082
260023	16.4705	17.8649	18.5665	17.6119
260024	15.2356	15.7815	15.6095	15.5379
260025	15.4935	17.0965	18.2804	16.9786

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
260027	21.2977	22.0362	23.1505	22.1110
260029	19.7484	21.1858	20.1832	20.3332
260030	12.5118	11.9215	12.8349	12.4289
260031	19.4921	19.7249	22.5379	20.4276
260032	20.1988	19.6728	20.3847	20.0821
260034	17.4233	20.4902	20.5439	19.5050
260035	13.1065	13.0071	15.1611	13.8141
260036	16.7430	18.8104	20.1242	18.6072
260039	14.1866	14.6644	15.9689	14.9611
260040	17.3099	18.0140	18.5132	17.9641
260042	18.7567	18.7514	20.8821	19.5084
260044	15.9927	15.9206	16.7879	16.2332
260047	19.0112	19.2247	20.2724	19.4793
260048	20.0885	21.0602	22.4800	21.2299
260050	15.6908	16.8520	17.8142	16.7717
260052	18.0553	18.0914	19.1044	18.4413
260053	15.2236	16.5166	17.4110	16.3851
260054	20.0199	20.6242	23.0188	21.1083
260055	12.0118	15.4214	17.9547	14.9547
260057	17.4636	19.7144	16.5704	17.9947
260059	16.1000	17.0546	16.2074	16.4474
260061	14.7175	15.7112	17.1343	15.8685
260062	20.1477	21.3138	22.0091	21.1981
260063	18.2309	18.8973	19.7231	18.9234
260064	16.5934	17.8033	18.3749	17.5653
260065	19.4382	20.0975	20.6671	20.0563
260066	14.9640	15.3460	15.3139	15.2114
260067	14.2249	15.1837	14.5499	14.6334
260068	20.2418	19.4240	20.7947	20.1541
260070	*	13.9510	18.7384	16.1582
260073	14.2550	15.9182	16.9496	15.7508
260074	19.0350	19.8915	20.4033	19.8192
260077	18.6473	19.4482	20.5830	19.5877
260078	15.6381	14.9463	16.0586	15.5564
260079	14.2985	16.1453	16.4816	15.5347
260080	13.5384	14.6832	13.1617	13.7147
260081	21.0151	20.3053	20.2471	20.5212
260082	15.9407	15.9858	18.2853	16.7287
260085	20.4669	20.7051	21.5137	20.8993
260086	14.3164	15.2927	16.7579	15.4677
260091	19.9987	21.5464	22.0772	21.4012
260094	18.0085	18.5395	19.7308	18.8006
260095	19.6944	20.7292	21.6999	20.6994
260096	23.0282	22.5972	22.8259	22.8155
260097	16.5582	19.0632	18.6965	18.1123
260100	15.7047	16.6523	16.5439	16.3025
260102	20.1264	20.6361	21.2133	20.6454
260103	18.5957	19.7146	19.9144	19.3556
260104	21.0138	20.3176	21.6624	21.0040
260105	24.7223	24.8181	22.8005	24.0843
260107	19.8422	20.4269	22.5214	20.7581
260108	19.4609	20.0034	20.9029	20.1514
260109	13.9129	14.8181	15.9724	14.8936
260110	17.8375	18.3227	19.5633	18.5673
260113	14.6756	16.2223	16.1346	15.6436
260115	19.2259	17.4698	19.3873	18.6920
260116	16.2774	14.9812	16.0187	15.7314
260119	16.8836	17.2942	18.0725	17.4218
260120	16.3755	16.4904	17.6811	16.8504
260122	14.9697	16.0931	16.3700	15.8295
260123	14.6444	14.6822	15.2926	14.8761
260127	18.3572	18.4026	18.1342	18.2957
260128	13.0481	12.6414	13.2942	12.9961
260131	17.7686	18.4154	18.0395	18.0595
260134	16.2832	17.5127	17.1341	16.9643
260137	17.9531	19.4697	19.5976	19.0342

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
260138	22.6491	23.2364	23.6502	23.1620
260141	19.1580	19.1893	19.0444	19.1314
260142	17.1248	17.3084	18.2023	17.5590
260143	12.7867	13.9040	15.4688	13.9600
260147	14.0778	14.7769	15.8522	14.8908
260148	11.8674	11.3524	12.6651	11.9425
260158	12.3005	12.7699	13.9790	13.0499
260159	20.3177	19.7951	20.9636	20.3519
260160	15.8394	16.5792	18.4007	16.9325
260162	19.5655	21.4099	20.7331	20.5870
260163	16.4245	15.8593	16.8300	16.3731
260164	14.9372	15.1211	16.3874	15.4903
260166	20.1025	21.1224	22.4071	21.2079
260172	15.4163	16.0772	16.4854	15.9816
260173	12.8523	14.2090	15.5733	14.3947
260175	16.9023	17.5625	18.3632	17.6144
260176	26.8712	21.6044	23.2414	23.9990
260177	21.2578	21.9014	22.9112	22.0696
260178	19.6638	20.2796	20.8189	20.2016
260179	21.4906	22.7185	21.4470	21.8753
260180	19.5819	18.9881	19.5983	19.3863
260183	20.0712	21.3175	23.7057	21.6731
260186	19.3238	19.6026	21.0675	20.0580
260188	20.6388	22.5060	23.7475	22.1881
260189	11.3004	16.4233	*	13.8239
260190	18.5168	19.3419	21.6994	19.8001
260191	17.9812	18.1604	19.6784	18.6471
260193	21.1588	20.2577	22.2030	21.2172
260195	17.7237	19.7068	*	18.7154
260197	19.2840	20.5453	*	19.7846
260198	11.9751	19.7552	21.7926	16.7576
260200	20.5339	20.6888	21.7031	21.0210
260205	17.6210	*	*	17.6210
270002	28.9959	19.2387	19.0221	21.4738
270003	22.0995	22.5019	20.7277	21.7202
270004	19.6292	19.4834	20.1821	19.8074
270006	16.0238	17.0715	15.1006	15.9252
270007	11.3143	13.8824	15.5780	13.1858
270009	17.2292	20.8238	20.7031	19.5097
270011	20.2669	21.1653	21.8086	21.0508
270012	19.7346	19.7878	20.7913	20.0975
270014	19.0872	19.9859	20.4321	19.8518
270016	19.6717	18.6149	17.9984	18.9093
270017	21.0800	20.0152	22.1046	21.0660
270019	18.1099	15.4128	18.5111	17.2358
270021	17.1787	16.9457	18.0515	17.3782
270023	22.2639	22.7181	22.7162	22.5721
270026	17.5102	18.0568	20.1673	18.5919
270027	13.1392	17.2091	17.2005	15.5928
270028	21.1492	19.1177	19.6212	19.9204
270029	16.5666	17.3710	18.2097	17.3728
270032	17.7393	18.7811	19.3937	18.6694
270033	16.9602	18.4876	20.7060	18.6303
270035	16.8295	16.4302	17.9822	17.0833
270036	14.2537	16.8552	16.1031	15.5470
270039	15.9368	19.6796	20.3800	18.4120
270040	18.8145	20.1242	20.1887	19.6792
270041	19.0327	25.8153	*	21.5554
270044	16.7710	17.5137	19.2939	17.7721
270048	17.0154	18.0666	17.4506	17.4823
270049	22.2444	22.2540	22.0263	22.1740
270050	16.7110	19.9356	19.6317	18.7001
270051	20.2735	20.1950	20.0386	20.1652
270052	14.4773	14.7009	17.1932	15.3511
270057	21.1317	20.6714	20.1507	20.6215
270058	14.7481	16.1412	18.4780	16.2593

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
270059	14.7530	19.1808	16.9303	16.8245
270060	15.2727	20.4148	21.3776	18.5305
270063	12.6108	15.1049	16.4553	14.5559
270073	14.4569	16.1937	16.6083	15.6741
270079	15.6873	16.7048	19.5493	17.1331
270080	16.3171	15.0705	16.6010	15.9696
270081	15.6262	16.7389	18.0543	16.7908
270082	17.3443	23.1245	23.3209	21.2882
270083	18.4432	17.8554	16.8420	17.6939
270084	16.6243	16.2958	15.7062	16.1694
280001	17.3541	18.1831	18.7137	18.0270
280003	22.3179	23.0213	23.6058	22.9865
280005	19.2405	23.6949	22.8981	22.0010
280009	19.8145	20.9643	23.2300	21.3319
280010	17.4859	20.0462	22.0137	19.0287
280011	15.8573	15.9614	16.2281	16.0212
280013	22.8063	22.5163	24.0852	23.1972
280014	15.9596	16.8368	16.7109	16.5080
280015	17.0281	16.6939	18.0207	17.2299
280017	14.2059	13.9939	16.9884	15.1266
280018	15.1328	15.4496	16.6439	15.7480
280020	19.9667	21.2467	21.9587	21.0976
280021	17.1048	17.6345	19.1263	17.9823
280022	16.7179	16.8184	15.3785	16.3083
280023	25.8494	22.3433	21.5761	23.0011
280024	14.2186	15.0380	15.8747	15.0019
280025	15.5850	21.4764	22.2214	19.5445
280026	16.6861	16.5851	18.7258	17.3340
280028	17.3176	18.0793	19.1080	18.1555
280029	23.1292	24.4359	17.1351	21.6012
280030	24.5366	24.7723	26.3542	25.1586
280031	13.5654	9.6321	9.6951	11.0351
280032	18.8964	19.1191	20.5246	19.5206
280033	15.7583	17.4745	17.9841	17.1215
280035	15.9170	16.6872	18.6089	16.9344
280037	16.7952	17.1064	14.8049	16.2282
280038	17.0878	18.2503	18.9305	18.0758
280039	16.0442	16.1587	17.0153	16.4148
280040	19.5333	20.9896	21.5426	20.7346
280041	16.4083	16.5503	16.6889	16.5558
280042	16.1191	16.6239	16.4684	16.3973
280043	16.6570	17.5937	16.8186	17.0314
280045	16.9048	15.7630	17.7408	16.7631
280046	17.9221	17.3214	17.9752	17.7358
280047	18.3407	17.4735	21.3143	18.9885
280048	15.8723	15.8100	17.9319	16.5389
280049	18.3605	18.4365	19.4589	18.7530
280050	16.6432	20.0379	*	18.4507
280051	15.6336	17.1942	19.6206	17.2054
280052	14.0819	14.1201	14.9903	14.4198
280054	18.7992	18.7575	19.4049	18.9732
280055	13.5667	13.8129	14.2046	13.8644
280056	12.6475	15.6135	15.6442	14.4971
280057	18.0454	20.0686	21.4754	19.8186
280058	19.6752	21.4868	22.8105	21.3952
280060	19.7527	20.7022	22.4677	20.9351
280061	17.1629	18.6370	20.2066	18.7084
280062	14.4896	15.6018	16.1708	15.4336
280064	16.2977	16.8330	18.2196	17.1053
280065	19.2932	20.7370	21.6999	20.6166
280066	11.6621	11.7207	12.2225	11.8688
280068	9.4943	10.5987	10.5103	10.1786
280070	17.7400	22.6201	18.7211	19.4766
280073	17.4244	17.7698	18.3496	17.8530
280074	16.4310	17.3143	13.6025	15.4955
280075	15.5327	13.2230	13.3154	13.8859

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
280076	14.8469	16.7488	16.1939	15.8857
280077	19.2068	20.0148	21.1883	20.1246
280079	10.4540	16.6117	17.1519	13.6519
280080	15.3308	16.9487	16.1902	16.1919
280081	21.0771	20.9606	23.3805	21.7809
280082	14.3399	14.6173	15.4420	14.8136
280083	18.2992	21.5336	20.8995	20.2370
280084	12.5836	13.6536	13.2158	13.1411
280085	20.4302	20.4825	20.8532	20.5742
280088	20.2961	*	*	20.2961
280089	18.1668	18.9567	19.9003	18.9565
280090	14.1362	15.1274	*	14.6858
280091	15.8436	16.1866	16.3456	16.1284
280092	14.1945	14.7912	13.3032	14.1038
280094	17.6873	16.3474	16.9180	16.9734
280097	14.1734	13.8223	14.1870	14.0603
280098	13.0029	12.5875	12.4995	12.6927
280101	13.5261	16.9973	10.5153	13.1647
280102	14.0102	*	*	14.0102
280104	13.2819	16.2167	15.5949	14.8930
280105	18.6575	21.0735	23.7103	21.1232
280106	16.1247	16.0679	16.3564	16.1791
280107	13.3311	14.4679	*	13.8480
280108	17.5625	17.1961	18.5134	17.7698
280109	12.6803	12.4408	*	12.5540
280110	12.7546	14.2136	13.0278	13.3282
280111	21.8773	19.6283	19.7688	20.3886
280114	15.7160	17.3076	17.1154	16.7114
280115	16.7041	18.1480	18.3464	17.7487
280117	17.7276	18.8279	20.3819	18.9864
280118	16.8687	18.6524	17.8891	17.8029
280123	14.0637	11.8582	23.6682	15.2035
280125	16.1332	16.3944	17.2718	16.5861
290001	22.8226	22.7450	24.3681	23.3363
290002	17.2554	16.5419	16.7948	16.8714
290003	22.8840	24.2175	25.4303	24.1777
290005	19.4888	21.9814	22.7804	21.4325
290006	21.8070	22.4063	22.4832	22.2310
290007	29.7706	30.9075	34.9911	31.9541
290008	20.6190	24.1255	26.9216	23.3785
290009	23.3620	23.9373	24.8816	24.0545
290010	15.6423	16.4476	20.8387	17.4968
290011	20.1564	21.1234	19.7410	20.3076
290012	21.8275	25.0430	25.5647	24.2464
290013	18.2713	15.7932	20.2914	17.8815
290014	18.9743	18.7829	20.2762	19.3806
290015	22.3487	19.4504	20.2336	20.6208
290016	14.3542	23.8656	21.8030	19.3661
290019	21.2509	22.2045	22.5584	22.0258
290020	20.8733	21.2380	19.5039	20.6806
290021	21.5806	22.9488	24.1397	22.9083
290022	24.5468	25.5011	25.3914	25.1625
290027	16.7786	13.3769	13.1463	14.2467
290032	22.8447	23.9504	26.9846	24.7498
290036	*	12.9074	*	12.9073
290038	20.6753	27.7030	26.0836	23.3519
290039	25.3864	25.5024	26.6283	25.8754
290041	*	25.9905	27.7740	27.0523
290042	*	18.7527	18.7669	18.7611
290043	*	27.9053	*	27.9053
300001	22.0909	23.8567	25.7142	23.9386
300003	22.9111	24.1297	25.3252	24.1024
300005	20.7545	22.2858	22.3258	21.7858
300006	23.7793	18.9745	22.2642	21.6739
300007	20.2372	20.6325	21.3633	20.7580
300008	20.7702	19.6149	20.9207	20.4237

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
300009	18.0602	20.0938	20.1486	19.3957
300010	19.3940	20.2130	21.0316	20.1973
300011	22.4325	23.0279	23.8390	23.0923
300012	24.5673	24.5619	25.8581	25.0347
300013	19.1247	20.1669	20.0269	19.7788
300014	20.3292	20.1774	21.6705	20.7353
300015	20.4916	19.6627	22.8966	21.0797
300016	21.8659	17.8148	15.1311	18.1853
300017	21.6563	22.7191	23.9651	22.8162
300018	21.2381	21.6385	22.8379	21.9548
300019	20.9753	19.6728	20.5801	20.4037
300020	21.9165	22.6627	23.0806	22.5724
300021	18.6211	19.3101	20.2585	19.4039
300022	18.3507	19.1875	20.1209	19.2058
300023	22.1210	22.7649	22.1896	22.3579
300024	19.9116	21.5842	22.2235	21.2127
300028	17.4075	20.0778	21.4207	19.6713
300029	22.5748	22.6013	23.8415	23.0427
300033	17.1869	17.1632	17.4836	17.2725
300034	25.5182	24.4975	25.2355	25.1020
310001	28.1329	27.4730	31.1568	28.9609
310002	28.3434	27.9728	28.7786	28.3714
310003	29.1096	27.5624	29.3522	28.6667
310005	22.1146	22.9712	23.9477	22.9918
310006	21.5957	22.0894	24.1538	22.5976
310008	23.5084	24.7618	26.4989	24.9206
310009	23.6371	21.7094	23.2420	22.8675
310010	22.5682	23.1060	24.5471	23.4312
310011	23.1977	24.2885	25.4900	24.3173
310012	26.5242	26.6772	28.1367	27.1332
310013	21.2251	22.5603	23.2424	22.3596
310014	27.4614	23.1956	31.0834	27.0285
310015	27.4331	27.9684	29.1340	28.1965
310016	24.3838	24.5206	26.0738	24.9281
310017	25.7902	24.5976	25.1634	25.1866
310018	22.8428	22.4779	24.1428	23.1619
310019	24.0542	24.9914	28.5952	25.8565
310020	24.1848	24.4152	25.0803	24.5523
310021	23.9369	25.4393	27.8958	25.6657
310022	21.2706	20.8258	23.3412	21.7795
310024	24.2353	24.9521	27.0459	25.4016
310025	24.3513	24.1812	25.5227	24.6926
310026	23.5491	22.1997	23.2895	22.9937
310027	21.8846	22.5696	24.4437	22.9152
310028	23.4577	23.9428	26.1931	24.5392
310029	22.6629	23.6610	24.4290	23.5772
310031	26.1567	26.6831	26.7174	26.5090
310032	24.3528	24.7404	24.9133	24.6820
310034	23.2729	24.1150	24.8567	24.0848
310036	20.1905	21.7187	23.0320	21.6137
310037	27.7823	28.1289	28.7738	28.2289
310038	26.7209	28.4893	28.1756	27.8036
310039	22.1754	22.7317	23.6605	22.8221
310040	26.1492	26.3573	26.5769	26.3634
310041	24.8960	23.5559	23.8857	24.0951
310042	23.2472	24.7678	24.9702	24.3057
310043	21.9022	21.6128	24.0238	22.3478
310044	21.6677	23.1549	23.1489	22.6676
310045	28.4854	28.9274	29.4877	28.9512
310047	25.1101	26.1921	25.9777	25.7489
310048	23.6118	25.2870	23.4189	24.0965
310049	24.8299	27.0842	25.6732	25.8686
310050	25.1752	24.7988	23.7735	24.5800
310051	27.1265	27.5378	28.6248	27.7362
310052	22.9326	23.3973	24.9773	23.7348
310054	26.1726	27.7376	27.6290	27.1447

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
310057	21.1686	22.2572	22.2630	21.9057
310058	26.5308	26.3765	25.3983	26.1966
310060	19.1992	20.0997	21.4455	20.2153
310061	23.2646	33.9582	23.4283	26.0987
310062	22.9073	*	*	22.9073
310063	21.9045	22.1080	21.2619	21.7577
310064	24.8567	25.4822	25.9350	25.4143
310067	25.0888	23.9278	24.1943	24.4277
310069	23.7531	24.2329	25.3464	24.4561
310070	26.0903	28.2220	29.5101	27.8193
310072	21.7605	22.5611	24.4480	22.8822
310073	28.5149	26.2937	26.7954	27.1681
310074	23.8340	22.3588	24.2009	23.4890
310075	23.3266	24.4788	23.9771	23.9276
310076	30.0797	27.9918	29.6667	29.2818
310077	25.2500	26.1251	26.7092	26.0055
310078	23.8841	24.0587	24.5862	24.1519
310081	22.0762	22.4086	23.3310	22.6044
310083	23.8852	24.8204	25.0191	24.5773
310084	26.6753	24.6049	25.4946	25.5858
310086	22.1674	23.1719	23.4966	22.9208
310087	20.7243	21.1215	20.6847	20.8455
310088	22.3160	23.1722	23.0610	22.8414
310090	23.8284	24.8986	23.6661	24.1303
310091	22.7978	23.2969	24.5357	23.5110
310092	20.5165	21.6964	22.9721	21.7350
310093	22.4291	23.7251	23.9404	23.3192
310096	25.1572	24.5759	26.6588	25.4191
310105	25.5891	26.2537	28.1317	26.5767
310108	22.4756	23.8308	25.1368	23.7798
310110	21.8341	23.2146	23.3461	22.8546
310111	21.1066	22.1151	23.3646	22.1990
310112	23.6701	24.7914	24.2999	24.2528
310113	23.6841	23.1961	24.2708	23.7328
310115	21.7320	21.1645	23.5148	22.1431
310116	22.9812	23.6366	24.2696	23.6118
310118	26.4625	26.1315	26.8760	26.4761
310119	33.6686	32.7858	29.1045	31.7976
310120	23.9681	23.3200	22.6526	23.3189
320001	19.1150	20.6225	21.5564	20.4107
320002	22.6175	23.0983	25.5144	23.6846
320003	15.9504	16.4642	16.4961	16.3037
320004	18.5824	19.6642	21.3681	19.9888
320005	21.6103	21.0411	22.4178	21.7283
320006	18.9019	20.3863	19.8672	19.6917
320009	18.2883	19.3500	20.3783	19.2661
320011	20.0601	18.5222	19.1476	19.2439
320012	16.4355	17.1764	17.1317	16.8928
320013	22.9573	24.5543	25.5403	24.4572
320014	16.3598	16.8412	22.9026	18.5503
320016	20.5398	18.8519	18.8763	19.4121
320017	18.6388	19.4498	20.4390	19.4898
320018	18.8479	19.2336	20.3141	19.4697
320019	24.4707	26.9637	25.1210	25.6183
320021	17.8705	19.1265	20.0089	18.9760
320022	16.1777	18.0606	20.9797	18.5397
320023	18.0548	17.8419	*	17.9685
320030	16.5495	18.6859	18.1556	17.7555
320031	19.6768	25.1715	18.2244	20.7137
320032	18.8097	20.6871	21.4815	20.2510
320033	25.0777	21.0621	21.9804	22.5777
320035	21.5186	15.0612	17.8058	17.7193
320037	17.0305	17.8280	17.6724	17.5157
320038	16.8117	22.2664	23.1987	20.9645
320046	18.3190	18.9607	19.4732	18.9435
320048	19.9642	16.8769	*	18.3467

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
320063	18.3237	17.9089	18.5600	18.2484
320065	16.7933	18.6525	22.5428	19.0210
320067	33.8654	15.3228	16.8015	18.3132
320068	17.4785	18.5103	15.6864	17.1411
320069	13.0094	14.4212	15.7350	14.3622
320074	19.3406	20.2290	22.3403	20.2679
320079	18.2828	19.8555	20.2473	19.4478
330001	26.5533	27.3996	28.6214	27.5633
330002	26.5370	26.9341	27.1811	26.8727
330003	19.4102	18.9211	19.3972	19.2414
330004	22.5298	20.9501	22.5082	22.0002
330005	24.8338	22.1957	22.6137	22.8232
330006	25.0576	25.8006	26.2970	25.7013
330007	18.9024	*	*	18.9024
330008	19.0045	19.2341	19.6770	19.3060
330009	30.6918	31.3435	30.9087	30.9793
330010	17.4512	16.6508	17.8935	17.3146
330011	18.2986	18.6748	18.7995	18.5936
330012	32.7624	*	*	32.7624
330013	19.0856	19.6269	19.0995	19.2697
330014	32.3370	36.8669	32.4496	33.8020
330016	16.9717	16.8016	18.7194	17.4483
330019	35.9822	33.5369	31.5927	33.4812
330020	15.5527	15.1142	16.6952	15.7780
330023	24.4006	25.6512	26.6997	25.5866
330024	34.1682	37.3316	35.7485	35.6717
330025	16.2033	16.8687	17.6169	16.8903
330027	33.4738	35.5255	35.1046	34.6601
330028	28.2089	29.5294	31.7699	29.9762
330029	18.1567	17.0016	19.4377	18.2068
330030	17.4977	19.1085	18.0866	18.1511
330033	18.5353	17.4444	19.5836	18.5046
330034	31.3997	27.7738	38.2451	31.3373
330036	23.9874	25.2820	25.5888	24.9782
330037	16.1140	16.4866	18.3260	16.9831
330038	16.2549	17.3429	16.2997	16.6434
330041	24.5215	31.4871	29.5305	28.1630
330043	28.7467	27.4661	28.9622	28.3990
330044	20.0238	19.5219	19.9808	19.8437
330045	28.0758	27.9919	28.5267	28.2011
330046	32.4189	35.2703	38.1184	35.1742
330047	18.1815	18.5536	19.5561	18.7655
330048	17.8787	19.1093	19.6129	18.8634
330049	19.4993	20.5731	22.1523	20.7576
330053	17.4430	17.8082	17.9161	17.7212
330055	36.1109	32.8910	34.2159	34.3472
330056	30.4525	30.0945	29.8377	30.1337
330057	18.7478	19.3643	20.0995	19.4010
330058	17.0014	17.7672	18.1007	17.6091
330059	34.1705	34.2426	35.0121	34.4519
330061	25.7331	25.4082	26.8580	25.9786
330062	17.6067	18.1318	18.4662	18.0774
330064	33.1269	33.6447	35.1422	33.9496
330065	19.8940	19.9305	20.1615	19.9917
330066	19.5611	18.8707	19.3644	19.2586
330067	20.9443	22.1065	23.6836	22.2657
330072	30.8019	30.4171	30.3737	30.5362
330073	16.2898	16.4518	16.5166	16.4181
330074	18.0005	17.7308	18.9326	18.2224
330075	17.2298	17.6385	19.2938	18.0353
330078	16.7949	18.7884	18.0362	17.8405
330079	17.4555	18.7622	18.9398	18.3917
330080	29.2686	31.4424	34.6880	31.6540
330084	18.0435	19.3216	19.0261	18.8002
330085	20.2926	20.6203	20.9332	20.6126
330086	31.2980	23.6496	26.2979	27.1579

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
330088	25.6626	25.7940	26.7583	26.0739
330090	19.3954	19.2112	20.1344	19.5790
330091	19.0953	19.7776	21.6004	20.1526
330092	14.0671	13.3723	17.2083	14.8861
330094	17.5585	18.1582	18.8941	18.2051
330095	20.1073	21.1096	21.1809	20.7563
330096	17.9641	18.5149	20.0370	18.8403
330097	16.2169	16.4433	16.1945	16.2798
330100	27.0661	29.0916	28.9956	28.3021
330101	32.4105	31.5914	35.3618	33.2017
330102	17.5755	19.0058	21.0057	19.0881
330103	15.7197	16.8110	17.3511	16.6312
330104	31.6471	31.2074	31.9746	31.6063
330106	40.2686	35.3775	36.2526	37.1762
330107	28.5580	27.7797	28.9225	28.4199
330108	17.3605	18.0786	18.5849	17.9950
330111	19.5314	15.9321	13.3352	15.9787
330114	17.3522	17.0581	19.1162	17.8316
330115	17.4430	17.4684	18.5911	17.8343
330116	24.4622	14.9610	16.8567	18.1237
330118	20.6936	*	*	20.6936
330119	34.8385	33.1179	33.5653	33.8391
330121	16.1052	16.3385	17.1869	16.5359
330122	20.8204	20.2417	23.0384	21.3559
330125	19.8494	19.7638	20.5922	20.0689
330126	23.7938	23.8957	25.1175	24.2981
330127	31.9046	30.7356	40.0112	34.3173
330128	29.0222	30.8242	34.3468	31.2952
330132	15.7633	14.3673	14.8704	15.0313
330133	37.2494	35.3576	37.5192	36.5906
330135	18.7120	22.2670	23.5662	21.3289
330136	18.2422	20.1043	20.4124	19.5654
330140	19.1438	19.3615	21.1841	19.9069
330141	26.4956	26.7096	27.5960	26.9363
330144	14.0566	16.2517	17.1513	15.7880
330148	16.8151	16.2782	16.7251	16.6024
330151	16.0714	15.7594	15.2233	15.6663
330152	30.5409	30.8314	33.5587	31.5460
330153	18.9689	18.1776	19.4417	18.8671
330157	22.0792	22.3804	23.1743	22.5628
330158	25.7569	27.1228	29.3163	27.3406
330159	19.1536	19.4998	20.2753	19.6267
330160	32.7840	29.5885	30.7893	30.9997
330162	27.1166	27.6010	27.9705	27.5570
330163	18.7816	20.7456	21.4143	20.2444
330164	19.8647	20.9003	22.0699	20.9292
330166	15.0954	15.4420	17.0637	15.8309
330167	29.3634	30.2346	32.0541	30.4443
330169	37.2655	35.4794	36.3690	36.3400
330171	25.5307	24.8035	25.1567	25.1635
330175	17.3290	18.3116	18.8701	18.1413
330177	17.2907	16.3704	16.6059	16.7542
330179	13.4999	13.8953	16.0113	14.4058
330180	16.8787	17.9877	19.2670	17.9995
330181	32.5192	33.0908	34.6065	33.3779
330182	32.9371	33.6531	33.3363	33.3137
330183	19.9207	20.6164	20.3520	20.2984
330184	30.0400	31.3706	28.4726	30.0103
330185	25.6112	26.8612	27.8894	26.7722
330188	20.9587	18.8000	20.2849	20.0186
330189	15.1253	18.4498	23.5589	18.7634
330191	18.6206	19.0348	19.5623	19.0759
330193	36.5481	30.2260	32.5496	32.9872
330194	34.6785	35.2036	35.6486	35.1819
330195	33.3254	34.8966	34.4689	34.2028
330196	30.8165	30.5799	28.9488	30.1409

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
330197	17.6646	18.3527	19.2237	18.4045
330198	24.6038	24.8590	25.6669	25.0413
330199	28.7609	30.5409	28.0374	29.1320
330201	32.1149	28.7861	30.0524	30.3389
330202	31.4435	31.2575	35.4943	32.7201
330203	20.7575	25.0345	25.9211	23.7716
330204	29.4418	32.2005	31.1366	30.8772
330205	20.5793	22.3490	24.9040	22.5611
330208	26.1822	26.6682	27.3170	26.7219
330209	23.9924	25.1281	27.0257	25.4421
330211	19.5064	19.5405	20.0006	19.6855
330212	21.7705	24.7681	24.8554	23.7568
330213	18.7722	19.6796	20.1166	19.4878
330214	36.4447	32.4292	32.3130	33.3200
330215	19.6926	17.9863	19.0726	18.8818
330218	21.4796	21.1890	21.4747	21.3812
330219	23.9908	23.4310	25.1792	24.1748
330221	27.8485	33.3796	32.5044	31.2700
330222	18.3666	18.5571	19.3148	18.7515
330223	17.6199	17.8306	19.1604	18.2153
330224	19.6410	20.4309	20.5881	20.2163
330225	25.5823	27.0379	28.0523	26.7760
330226	16.6711	23.1859	21.6368	20.2080
330229	16.8026	17.5326	18.2554	17.5103
330230	29.7626	29.6283	30.6937	29.9984
330231	30.0923	32.7200	32.4163	31.6314
330232	17.9083	19.1787	20.0924	19.0447
330233	30.9241	44.1265	43.1186	38.2032
330234	35.1777	35.0720	35.8327	35.3617
330235	21.0842	19.5880	20.1255	20.2820
330236	29.5913	31.3463	32.1246	30.9874
330238	15.6245	17.3976	17.8867	16.9394
330239	17.4462	18.5079	18.9953	18.2764
330240	29.7082	30.7321	35.6576	31.8043
330241	24.6076	23.8638	24.7545	24.4065
330242	28.2612	27.6384	28.3561	28.0883
330245	17.6767	18.5161	20.7605	19.0556
330246	28.1090	28.1205	29.8777	28.6473
330247	28.5310	27.3937	32.5858	29.3555
330249	16.2687	17.1320	17.6846	17.0482
330250	19.5823	19.9619	20.8742	20.1545
330254	18.4057	15.9123	15.7864	16.7695
330258	29.7426	31.8910	32.6745	31.4411
330259	26.2661	25.9994	26.3620	26.2118
330261	25.7244	27.9766	30.0489	27.8583
330263	20.4149	18.7378	19.5057	19.6112
330264	22.8672	22.8099	24.9714	23.5858
330265	18.0193	17.6301	21.1215	18.8985
330267	24.5183	24.5939	27.8255	25.6678
330268	13.0595	15.9060	16.8358	15.2987
330270	34.4254	36.0824	33.0375	34.5188
330273	23.1511	26.0565	27.0454	25.3482
330275	19.0548	18.7268	*	18.9109
330276	18.2870	19.0228	19.6572	18.9869
330277	18.3169	19.1761	20.7851	19.4340
330279	19.5983	20.7107	21.7827	20.6371
330285	23.5264	24.0491	24.5388	24.0351
330286	26.7633	27.7762	28.0994	27.5677
330290	33.5056	30.4706	34.3439	32.7503
330293	16.2158	16.9238	17.3180	16.7809
330304	26.7683	27.3562	29.2207	27.7999
330306	27.3798	29.5937	29.6641	28.8531
330307	21.0673	21.7257	23.2838	22.0498
330314	24.5444	25.9937	25.5405	25.3155
330316	27.6102	27.9543	27.9277	27.8310
330327	16.4611	20.3874	20.1705	18.8688

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
330331	31.6216	33.1276	32.3249	32.3864
330332	27.6914	25.3689	27.6955	26.9473
330333	29.1931	*	28.8819	29.0166
330336	29.7689	29.8294	27.9163	29.1955
330338	22.4581	21.2670	23.6142	22.4472
330339	20.0111	20.1028	20.2382	20.1121
330340	28.8419	28.4129	28.2732	28.5256
330350	30.8889	30.9763	33.5493	31.7771
330353	32.1984	34.2431	34.2260	33.5106
330357	36.5928	34.1846	36.8598	35.8981
330372	28.8482	33.3771	23.5381	28.1605
330381	31.0091	31.8602	*	31.4219
330385	35.6722	33.2246	37.5523	35.5897
330386	17.6383	20.4231	21.4363	19.4104
330389	30.2505	37.3749	33.1192	33.1975
330390	31.1577	30.8744	31.7344	31.2381
330393	26.4958	27.8352	31.9272	28.5908
330394	19.2392	18.9343	19.6892	19.2847
330395	32.8749	32.7494	33.2318	32.9405
330396	34.8648	30.7961	32.8517	32.9044
330397	33.9061	32.6068	34.6435	33.6607
330398	28.7707	29.2872	*	28.9084
330399	32.9100	33.3012	32.7149	32.9707
330400	*	16.2707	16.8168	16.5566
340001	18.1814	19.7093	22.0257	19.9576
340002	20.8858	20.5253	22.9425	21.5738
340003	20.2540	19.5145	19.6545	19.8018
340004	19.0695	20.9863	23.0890	21.0811
340005	15.8205	16.7176	16.6909	16.4458
340006	16.9818	16.5709	16.1379	16.5756
340007	17.2356	18.3399	18.3760	17.9959
340008	21.2889	20.4157	22.6570	21.4924
340009	20.5023	20.9178	20.6155	20.6734
340010	18.3380	19.4302	20.6547	19.5049
340011	13.6554	14.4798	17.4534	15.1697
340012	18.8701	17.5112	19.3651	18.5479
340013	20.1747	19.4613	21.5130	20.3981
340014	20.5748	27.7888	21.9804	22.9126
340015	20.1562	19.4676	20.3493	19.9875
340016	17.5404	18.8958	19.4160	18.6049
340017	19.4192	20.2775	20.6263	20.1119
340018	14.0930	18.1751	16.4611	16.0927
340019	14.8980	15.2887	15.9037	15.3369
340020	18.6334	18.0897	19.2392	18.6598
340021	19.8020	20.5813	22.0220	20.7507
340022	17.8178	18.7714	20.6484	19.0742
340023	18.5414	19.3146	19.9023	19.2892
340024	17.3824	17.9130	19.1430	18.1515
340025	17.2648	18.4628	19.1770	18.3029
340027	18.0816	19.4548	19.4907	19.0172
340028	18.4787	19.9403	20.6496	19.7560
340030	21.1420	22.4709	23.9505	22.4602
340031	14.6951	14.6370	15.4935	14.9011
340032	20.0049	20.7444	22.0245	20.9102
340035	20.2312	18.9930	18.5883	19.2823
340036	18.2190	17.7619	18.4203	18.1226
340037	16.6576	17.5829	18.3655	17.5271
340038	17.3762	18.1493	20.3091	18.5547
340039	20.5876	21.3711	22.4020	21.4803
340040	20.4282	20.7237	21.1397	20.7708
340041	15.1419	15.5873	16.3200	15.6803
340042	16.9298	17.0034	19.1386	17.6977
340044	18.8687	18.0863	18.9562	18.6425
340045	13.0538	13.6182	20.2641	14.9554
340047	20.0602	20.0744	21.5178	20.5318
340049	19.2050	19.5127	17.2986	18.6550

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
340050	20.0090	19.6726	20.6831	20.1383
340051	16.5617	19.3627	19.0282	18.2702
340052	22.8173	23.2134	26.2243	23.8462
340053	20.9495	19.9915	23.2410	21.3227
340054	15.5993	15.5090	16.6208	15.8560
340055	19.6056	19.4035	20.8253	19.9607
340060	18.7137	19.3410	20.8570	19.6422
340061	21.5385	22.1175	23.7173	22.4390
340063	17.0249	16.7377	26.4132	19.5650
340064	20.7125	18.5069	17.6106	18.8953
340065	17.5414	17.3530	23.2606	18.9401
340067	19.3785	19.7187	22.4054	20.2943
340068	16.6305	17.8065	18.8758	17.7729
340069	21.0840	21.6728	22.5995	21.8080
340070	19.7796	20.6829	21.3511	20.6142
340071	17.1424	18.0767	19.3679	18.2275
340072	16.7400	17.7129	18.7920	17.7544
340073	21.9761	23.5832	24.0794	23.2689
340075	18.7090	20.0081	19.7450	19.4817
340080	22.2533	18.2061	*	20.1809
340084	17.1532	19.0103	19.6087	18.5190
340085	17.3462	18.3179	20.3684	18.6708
340087	17.3884	18.2255	20.2445	18.6743
340088	21.0226	22.2322	22.6462	21.9702
340089	13.8535	15.4760	16.1321	15.1566
340090	17.0584	18.5287	18.7701	18.1576
340091	20.5923	20.3861	21.2665	20.7762
340093	16.3276	16.8903	16.5452	16.5873
340094	19.0406	*	21.0091	20.0488
340096	17.8189	19.4696	20.9686	19.4268
340097	18.8412	18.2399	20.0302	19.0440
340098	21.4135	21.9578	23.4949	22.3232
340099	16.8305	15.3752	16.9979	16.3421
340101	13.9994	15.6509	20.7841	16.3562
340104	13.0462	11.5169	12.1845	12.2454
340105	20.2954	*	*	20.2954
340106	17.7220	18.1211	19.1147	18.3112
340107	18.0205	19.3197	20.7601	19.3267
340109	18.7746	19.0532	19.3357	19.0640
340111	16.3344	16.5976	17.2127	16.7260
340112	14.7562	15.5142	16.9592	15.7587
340113	21.2906	21.9883	24.4222	22.5465
340114	21.2166	20.7261	21.7750	21.2327
340115	19.7578	21.7586	24.7924	21.8733
340116	20.4255	20.6800	21.6744	20.9328
340119	18.8507	19.5827	20.5394	19.6919
340120	15.0410	15.8240	16.9847	15.9742
340121	16.3295	17.8771	19.0420	17.7638
340123	16.9114	18.9078	21.5041	19.1720
340124	15.5779	17.4185	17.5411	16.8707
340125	19.7164	20.2748	*	19.9923
340126	18.8100	19.3734	21.2045	19.7489
340127	19.3925	19.3842	21.4797	20.0982
340129	20.4605	20.6521	21.0773	20.7569
340130	19.7422	19.8707	20.5851	20.0891
340131	19.7908	21.3849	23.2478	21.4650
340132	17.3448	17.5711	17.7110	17.5495
340133	16.4766	17.2138	17.5170	17.0631
340137	21.0249	31.7702	39.9826	26.4042
340138	20.7618	*	*	20.7618
340141	21.3754	21.4986	23.2961	22.0643
340142	17.1525	18.0766	18.1824	17.8038
340143	21.3604	24.4098	21.9304	22.5287
340144	20.9113	22.9183	22.8634	22.2296
340145	20.1081	19.9233	21.5958	20.6005
340146	15.9203	17.3051	19.1306	17.3989

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
340147	19.6827	20.5520	21.5912	20.6397
340148	18.5875	18.9912	20.6790	19.3782
340151	16.7275	18.4733	19.0779	18.0943
340153	20.6420	20.7533	21.7375	21.0743
340155	20.5792	23.1021	25.0965	22.9070
340158	18.1439	19.0843	20.0921	19.1509
340159	17.3893	19.0338	19.4992	18.6617
340160	16.1778	16.7170	17.1963	16.7262
340162	14.3472	*	*	14.3474
340164	21.2523	21.5769	*	21.4120
340166	20.0434	20.8270	22.0519	21.0278
340168	15.2919	15.6071	15.4250	15.4443
340171	21.5973	22.4779	22.7304	22.3095
340173	19.3353	21.0898	23.3690	21.3475
350001	14.9080	16.6551	15.6193	15.7235
350002	17.5259	18.3459	19.1931	18.3399
350003	18.2470	19.2840	20.0663	19.1912
350004	20.6518	23.7016	25.1976	23.1394
350005	18.3792	19.9156	20.7467	19.6757
350006	18.4107	19.0343	19.1257	18.8317
350007	13.3292	13.8824	13.9966	13.7234
350008	20.4777	22.3783	23.4052	22.0656
350009	19.1611	18.3688	19.3668	18.9603
350010	16.2808	16.6272	16.7774	16.5574
350011	18.2008	19.1944	20.6809	19.2312
350012	15.7033	18.2524	16.0990	16.7533
350013	16.4579	17.2596	17.8145	17.1631
350014	16.8403	18.0999	18.6786	17.8036
350015	16.3397	17.1071	17.5658	16.9655
350016	11.6524	*	*	11.6524
350017	17.6278	17.5124	18.0840	17.7360
350018	14.4928	16.4939	16.3210	15.7222
350019	19.3063	20.1608	20.6743	20.0169
350021	16.2898	17.7123	16.3394	16.7592
350023	17.9048	17.4983	18.3253	17.9187
350024	14.7529	15.4788	15.7510	15.3010
350025	17.1199	15.0469	14.6099	15.5234
350027	15.0835	15.5178	17.5882	15.9431
350029	13.5219	14.6173	*	14.0747
350030	17.7209	18.1131	18.7993	18.2025
350033	14.9012	16.0870	16.0903	15.6588
350034	18.7245	19.6445	*	19.1773
350035	10.4570	11.7675	12.6496	11.6111
350038	17.6666	19.6854	19.5497	18.9137
350039	17.0361	16.6278	14.8599	16.1842
350041	14.6680	19.1341	23.1150	18.5427
350042	16.7402	19.3309	19.3370	18.2440
350043	16.8876	16.7433	17.6722	17.1008
350044	10.2154	11.0601	10.9690	10.7163
350047	14.4628	18.0094	19.9749	17.4882
350049	14.8019	18.1993	16.8322	16.4660
350050	11.4921	12.2183	25.2747	13.9652
350051	17.7279	17.0653	16.9201	17.2392
350053	14.6398	15.9160	16.7456	15.7135
350055	14.5691	15.7916	16.1691	15.5004
350056	14.8293	15.0995	15.7752	15.2147
350058	15.9378	16.7034	16.1013	16.2607
350060	10.3666	10.3076	10.5325	10.3988
350061	15.7269	18.8790	19.6460	18.1394
360001	17.0791	19.6655	20.3515	18.9788
360002	18.0139	18.2613	19.6145	18.5918
360003	22.7471	22.7521	23.2905	22.9196
360006	21.8048	22.4436	22.6333	22.2902
360007	18.0941	14.8213	15.3656	16.0665
360008	18.5439	18.7961	19.8034	19.0500
360009	18.9322	18.9935	19.6277	19.2000

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
360010	19.2288	19.1852	20.5934	19.6922
360011	19.3835	21.3659	19.5383	20.0283
360012	19.9881	20.0525	23.0125	21.0366
360013	20.6021	21.3690	22.3407	21.4314
360014	20.2390	20.7419	22.9930	21.3333
360016	17.8065	21.2505	21.3967	20.0182
360017	21.7543	22.2740	22.7446	22.2365
360018	23.5219	24.6686	24.6694	24.2429
360019	18.7147	20.6480	21.4708	20.1693
360020	21.7806	22.1751	21.6607	21.8722
360024	19.8508	20.1352	20.9408	20.3040
360025	20.3638	20.2531	20.9266	20.5175
360026	18.2222	17.9523	18.6739	18.2838
360027	21.0406	21.7650	22.8098	21.8716
360028	17.0177	18.7174	*	17.7935
360029	18.7622	19.2928	19.7466	19.2762
360030	17.5748	17.6058	19.0551	18.0921
360031	19.3858	21.0687	21.0481	20.5037
360032	18.6559	19.8020	19.8367	19.4058
360034	14.9534	17.9594	19.4982	17.4782
360035	20.5557	21.0674	22.6982	21.4596
360036	20.2107	20.9916	21.4486	20.8814
360037	23.5094	23.1674	23.7504	23.5019
360038	21.2467	19.9415	21.4804	20.8884
360039	18.7791	19.0013	19.3703	19.0512
360040	18.1618	18.7425	19.9750	18.9827
360041	19.5744	19.7968	21.9093	20.5114
360042	17.4306	17.1952	19.3774	17.9518
360044	17.0612	17.6882	17.8417	17.5521
360045	22.1471	22.4018	22.8112	22.4244
360046	20.4755	20.4607	21.4292	20.8030
360047	17.1871	15.2922	15.8279	16.0315
360048	22.5857	22.4890	25.6259	23.4295
360049	20.4564	20.8393	*	20.6400
360050	12.9873	15.0568	15.6847	14.5392
360051	20.8338	20.8757	21.2225	20.9792
360052	19.6233	18.7931	19.8037	19.4032
360054	17.2574	17.4911	17.5714	17.4428
360055	21.5585	21.4112	22.8755	21.9415
360056	19.0474	20.6968	23.4405	21.1066
360057	15.0146	15.8569	16.0395	15.6552
360058	18.6992	19.3306	19.0440	19.0197
360059	20.5618	19.9304	23.2129	21.1909
360062	20.7588	21.9195	24.4898	22.4391
360063	18.4512	17.5108	20.2671	18.6964
360064	20.4846	20.0615	20.7659	20.4360
360065	20.0532	19.6199	22.3443	20.6667
360066	21.6015	22.8175	24.1295	22.8841
360067	15.3157	14.2745	17.3734	15.6086
360068	21.2789	22.6227	22.6027	22.1750
360069	16.6982	14.6597	18.5382	16.4901
360070	17.3758	18.8406	19.4700	18.5552
360071	17.9756	19.0302	19.6873	18.9152
360072	18.1467	19.0166	20.8819	19.3874
360074	20.8275	18.5889	19.9947	19.7927
360075	22.4523	26.0663	27.6992	24.6791
360076	20.0700	20.3317	21.0402	20.4919
360077	21.1053	21.5517	22.2964	21.6371
360078	21.4392	22.6490	22.7743	22.2897
360079	22.1096	21.6644	23.9491	22.5122
360080	17.3892	17.6369	18.0392	17.6871
360081	21.7342	20.4614	20.7477	20.9963
360082	22.9460	20.7610	22.9390	22.1817
360084	20.4894	22.0492	22.1699	21.5674
360085	21.9051	21.5151	24.8010	22.5708
360086	19.5378	19.3701	20.5858	19.8561

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
360087	20.1684	20.7969	21.1621	20.7100
360088	24.0097	24.0822	20.5703	22.7567
360089	18.3881	18.1941	19.5260	18.6947
360090	21.0376	20.8971	21.2072	21.0517
360091	21.3126	21.8447	22.6510	21.9522
360092	20.4534	21.5073	20.9588	20.9684
360093	19.3292	19.0261	21.0134	19.7919
360094	18.8780	20.1227	21.1952	20.0119
360095	20.4149	19.8521	21.3505	20.5395
360096	18.2215	19.6726	20.9838	19.6144
360098	19.5314	19.8178	20.8049	20.0522
360099	18.5855	19.6241	20.8801	19.7171
360100	17.8989	18.0442	19.9768	18.5656
360101	21.3914	20.2635	24.1551	21.8064
360102	19.4345	18.5367	*	19.0252
360106	18.9752	19.1778	18.9779	19.0463
360107	19.7599	22.1359	21.9939	21.3334
360108	17.5832	20.0681	19.0649	18.8939
360109	20.1032	19.9237	17.3564	18.9331
360112	22.5589	24.6335	25.7920	24.1917
360113	24.2654	20.8154	22.8088	22.5276
360114	17.8761	18.7509	19.4212	18.7051
360115	18.8059	20.7652	21.0104	20.2115
360116	18.8882	18.8319	20.1408	19.2675
360118	19.3732	19.9141	21.0235	20.1425
360121	22.1093	22.2175	21.9111	22.0788
360123	20.3236	20.9792	21.9985	21.1330
360125	19.0774	20.5508	21.6675	20.3325
360126	19.0036	24.5387	*	21.4419
360127	17.5882	16.5559	18.2150	17.4610
360128	16.1243	17.0515	17.5557	16.8979
360129	15.5002	16.6114	17.2309	16.4330
360130	17.2009	18.4539	19.8906	18.4639
360131	19.2241	18.4688	20.4123	19.3509
360132	19.9171	21.3493	21.0162	20.7647
360133	19.4316	20.2857	22.1957	20.5231
360134	20.6876	20.9564	21.6081	21.0768
360136	17.7827	18.2194	18.5687	18.1837
360137	20.1756	22.3648	23.1867	21.8635
360140	20.2791	21.2881	18.3463	19.9463
360141	23.0016	23.5343	23.5980	23.3798
360142	17.0059	18.3188	19.6189	18.3226
360143	20.1989	21.0336	20.9158	20.7118
360144	23.2191	20.9033	20.9386	21.6583
360145	19.6413	20.0513	21.2931	20.3252
360147	16.6616	17.6779	18.7258	17.7129
360148	19.2816	19.1393	20.3120	19.5918
360149	19.9808	*	*	19.9808
360150	21.1327	22.3620	23.1858	22.2110
360151	16.6019	19.2788	20.5594	18.6756
360152	20.8328	21.6005	20.9704	21.1340
360153	15.4132	16.7399	16.1021	16.0822
360154	14.3270	14.3593	14.9606	14.5355
360155	22.5347	22.2112	22.3347	22.3576
360156	17.8787	18.9095	19.9382	18.8811
360159	20.2841	21.5695	22.7992	21.5782
360161	19.1983	20.6160	19.6266	19.8098
360163	20.7275	21.2689	22.1012	21.3886
360165	18.2571	18.2417	19.6205	18.6959
360166	18.7321	*	*	18.7321
360170	16.4653	20.4407	19.7980	18.7693
360172	18.6720	19.8909	22.3294	20.3872
360174	19.9725	20.5399	20.5874	20.4239
360175	21.1685	21.5450	22.0274	21.5958
360176	15.9430	16.6228	17.6743	16.7422
360177	18.7898	18.9576	19.6992	19.1509

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
360178	18.8704	16.7962	18.0773	17.9514
360179	21.1309	20.7069	21.3520	21.0546
360180	21.3826	21.0146	22.9260	21.7254
360184	19.1224	*	*	19.1224
360185	18.7291	19.4858	20.0848	19.4376
360186	18.3246	20.7572	18.1254	19.0367
360187	18.5109	19.6535	20.8423	19.6414
360188	17.1044	18.3057	16.4329	17.3292
360189	17.8981	18.5940	19.0481	18.4968
360192	21.6365	22.7846	23.9969	22.7928
360194	17.1884	17.6140	19.3901	18.0653
360195	19.9302	20.5828	21.2801	20.6088
360197	20.0603	20.5062	21.6110	20.7240
360200	16.2306	17.9623	19.5866	17.8050
360203	16.3181	15.9609	17.9698	16.7236
360204	22.2494	*	*	22.2494
360210	20.9955	21.8629	21.5961	21.4839
360211	19.9895	20.6081	22.0011	20.8512
360212	21.1123	20.6987	21.0632	20.9556
360213	19.4765	19.0584	20.5448	19.6749
360218	18.9469	18.8204	20.7709	19.5181
360230	21.9763	20.8042	21.2417	21.3193
360231	12.9588	14.4168	12.7388	13.3090
360234	23.2588	20.6131	21.0473	21.6050
360236	17.8426	21.4628	20.5683	19.8573
360239	20.1854	19.2375	20.9440	20.0997
360241	23.5318	25.3741	23.7679	24.1749
360243	14.8694	*	*	14.8694
360245	16.4622	15.9782	16.7956	16.4127
360247	16.3092	17.0776	*	16.6743
360249	*	25.4331	*	25.4330
360250	*	*	50.5106	50.5105
370001	22.5214	24.1929	22.0586	22.8881
370002	14.7315	15.4333	16.1853	15.4106
370004	19.3236	18.5233	22.5027	20.0512
370005	15.1654	15.3881	*	15.2760
370006	16.6484	16.4995	15.7367	16.2765
370007	15.2905	15.8312	14.4961	15.2449
370008	16.6566	17.5553	18.5253	17.5877
370011	14.9701	15.6178	16.1757	15.5584
370012	11.7265	12.4942	13.3824	12.5268
370013	19.3398	18.9584	19.3237	19.2083
370014	20.6512	20.2858	22.7976	21.2589
370015	17.0319	20.8765	18.9169	18.8656
370016	19.1191	19.1613	20.0888	19.4559
370017	12.6400	13.6531	*	13.1855
370018	18.5107	17.7054	18.7928	18.3360
370019	14.2277	14.6216	16.1367	14.9616
370020	14.3798	15.1035	15.6057	15.0288
370021	12.0474	12.9030	*	12.4760
370022	17.2344	17.3724	18.2109	17.5986
370023	17.7630	17.5148	18.1255	17.8019
370025	17.4988	18.4815	19.1013	18.3736
370026	18.3371	18.0412	18.6982	18.3516
370028	18.4445	21.1292	22.1765	20.5544
370029	16.4924	18.2580	19.3285	17.9453
370030	16.3269	16.5803	18.4568	17.1242
370032	18.2821	18.1538	18.9050	18.4517
370033	13.5216	11.3210	15.3857	13.3051
370034	15.6386	15.6288	16.2204	15.8253
370035	25.5764	*	*	25.5764
370036	12.4026	12.4070	11.7667	12.1865
370037	16.7012	18.9556	20.6493	18.6793
370038	13.3084	13.0210	15.4551	13.8393
370039	15.5206	19.4498	22.7015	19.0508
370040	14.4672	15.5109	16.8127	15.5746

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
370041	16.7356	16.2316	14.7346	15.7346
370042	14.9175	15.2764	15.9005	15.3820
370043	15.9534	17.0892	20.0991	17.5940
370045	10.1994	11.3560	11.6163	10.9883
370046	18.8334	*	*	18.8333
370047	16.7554	17.8769	18.4743	17.6862
370048	18.2150	15.6803	17.0785	16.9957
370049	20.7176	19.4868	20.3405	20.1537
370051	11.6736	12.5171	11.4943	11.8576
370054	16.9049	18.0787	19.2294	17.9957
370056	18.4558	18.1432	19.2867	18.6158
370057	16.7261	15.1228	16.0301	15.9579
370059	18.1386	18.3314	21.3103	19.2182
370060	16.5403	19.3051	17.9469	17.9209
370063	14.4132	16.7342	*	15.4260
370064	10.9676	11.9954	11.6347	11.5257
370065	16.6898	18.1349	18.2406	17.6615
370071	16.1439	16.4567	*	16.2906
370072	14.4742	13.6519	12.5765	13.5464
370076	13.5694	14.3555	15.4067	14.4469
370078	18.4086	19.2412	15.2513	17.4148
370079	16.6861	16.9201	17.5915	17.0209
370080	13.9239	14.7323	14.3546	14.3090
370082	13.9634	15.0669	16.9715	15.2230
370083	13.1519	13.1810	15.6824	14.0210
370084	22.0545	13.1197	15.6184	16.0638
370085	11.2842	48.1271	13.7216	15.1761
370086	15.4404	11.1900	*	13.0199
370089	16.0966	17.2638	17.9243	17.0970
370091	19.1698	20.1822	20.8536	20.0799
370092	14.9802	15.7678	16.8432	15.8798
370093	18.4600	19.7008	22.1966	20.1375
370094	18.0002	19.5462	19.5565	19.0506
370095	12.6383	13.4202	14.5909	13.5521
370097	22.9714	23.2056	19.3793	21.5888
370099	15.4549	19.4646	18.1467	17.5179
370100	14.0168	18.8274	12.9784	15.1185
370103	19.2353	18.2685	23.1347	19.9596
370105	21.3352	20.7890	25.1252	22.1529
370106	18.5485	20.3651	21.8937	20.2077
370108	12.3279	12.7470	14.0190	13.0228
370112	14.8539	15.3039	14.3384	14.8216
370113	16.1046	17.6107	20.3439	17.9275
370114	16.5268	17.8941	17.9757	17.4836
370121	22.5611	21.3099	20.5488	21.4026
370122	15.0645	15.4375	*	15.2280
370123	18.9159	19.0313	19.7958	19.2564
370125	15.6284	13.9436	14.4664	14.6695
370126	23.9654	15.8020	*	19.5933
370131	17.5689	15.7261	*	16.5772
370133	10.9575	12.9545	16.1855	13.3276
370138	16.4005	17.5551	17.4574	17.1263
370139	14.8612	14.9964	16.0898	15.3115
370140	16.0721	17.1393	17.4950	16.9403
370141	18.4101	20.7798	19.8606	19.6250
370146	12.6402	13.0399	13.9900	13.2166
370148	20.6458	20.6612	22.6237	21.3227
370149	16.1850	17.0929	18.0699	17.1239
370153	17.8352	16.4669	16.5267	16.9839
370154	15.5127	15.6093	16.6687	15.9283
370156	13.9255	14.5696	15.4303	14.6173
370158	15.6917	15.6994	16.3637	15.9128
370159	28.0536	21.1267	25.5592	24.1706
370163	17.6361	20.4217	*	18.9027
370165	13.0910	13.0375	12.9569	13.0294
370166	17.2849	21.0797	19.4219	19.1747

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
370169	12.5243	12.7138	14.8384	13.3173
370176	15.9476	18.9951	19.6537	18.1230
370177	11.2536	14.6481	14.1304	13.3001
370178	10.5726	11.6200	9.8655	10.5383
370179	17.2829	21.3002	23.8404	20.1287
370183	10.2945	16.9318	16.6061	14.0419
370186	13.6192	15.4533	16.3671	15.1316
370190	14.1397	19.3570	20.6398	17.5727
370192	18.4614	19.6967	21.8343	20.0562
370198	21.3136	*	*	21.3136
370200	*	22.5299	18.3941	20.2627
370201	*	*	18.2548	18.2548
370202	*	*	16.5384	16.5384
370203	*	*	23.5454	23.5454
380001	20.3127	26.4822	25.1542	23.6052
380002	24.0241	21.9185	23.2479	22.9299
380003	21.7826	20.9007	23.8074	22.1844
380004	23.1451	23.3609	24.5418	23.6963
380005	24.0838	25.0750	24.7476	24.6467
380006	21.2731	21.3520	20.5914	21.0574
380007	25.2995	32.2678	25.9239	27.5188
380008	20.7063	22.3004	21.6133	21.5417
380009	23.8104	24.3851	25.1040	24.4366
380010	23.7488	22.7276	24.1931	23.5774
380011	21.1151	20.3357	20.6759	20.7167
380013	18.6818	19.8180	19.9606	19.4970
380014	24.6574	25.9828	26.6038	25.7705
380017	26.0578	25.3954	21.9236	24.5037
380018	22.3525	22.9822	24.8661	23.4431
380019	22.1215	20.8176	21.1743	21.3400
380020	20.1464	22.9568	23.9978	22.4898
380021	21.1590	23.8499	24.4365	23.1615
380022	22.6408	24.5974	25.6255	24.2510
380023	20.5462	21.3831	23.4328	21.9485
380025	26.3652	26.9346	26.9398	26.7561
380026	20.4706	20.6972	22.7561	21.3218
380027	20.8647	21.5490	22.2573	21.6028
380029	19.4246	20.1471	22.0371	20.5671
380031	23.3181	20.3396	23.7634	22.5126
380033	25.2454	27.1343	26.6899	26.3003
380035	22.4099	23.9719	25.6016	23.9444
380036	27.1587	27.2157	*	27.1858
380037	21.9158	22.1774	23.4798	22.5697
380038	26.0869	26.7759	28.1436	26.9990
380039	23.1746	22.8048	25.7614	23.8428
380040	26.2717	22.5477	22.6412	23.5906
380042	21.1176	24.4172	21.6793	22.3496
380047	23.0718	24.2524	25.2591	24.2189
380048	17.5885	18.3005	18.2773	18.0623
380050	20.3934	20.3205	22.1089	20.9066
380051	22.3568	22.3207	24.4081	23.0351
380052	19.4570	18.6299	20.7431	19.6320
380056	19.5185	18.4961	20.7895	19.6447
380060	24.2670	24.2059	23.0106	23.8515
380061	22.3736	22.8781	24.1121	23.0785
380062	20.7716	18.2148	26.1370	21.8465
380063	20.4077	*	*	20.4077
380064	19.9826	22.9160	27.0627	23.2662
380065	26.1404	22.9608	23.3146	24.0398
380066	22.0349	23.2794	23.1175	22.8287
380068	22.3178	*	*	22.3178
380069	19.8300	20.4882	21.2057	20.5172
380070	27.2541	27.7790	29.9706	28.3711
380071	22.6386	25.1808	25.9113	24.6318
380072	19.1553	19.4346	20.6568	19.7391
380075	22.3625	22.4139	23.1910	22.6625

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
380078	20.2507	21.0903	22.6996	21.3468
380081	20.9882	20.4082	22.9805	21.4341
380082	22.2275	22.9606	23.7927	23.0290
380083	21.3859	21.7431	22.4058	21.8126
380084	24.2844	27.1689	31.0111	27.0317
380087	16.5309	17.0380	21.3119	18.4448
380088	21.5225	19.5346	24.8158	21.8578
380089	19.5255	25.2908	26.1967	23.9671
380090	29.2702	24.9351	30.4223	28.0439
380091	27.5560	25.3062	28.7846	27.2892
390001	19.2989	19.6732	20.3350	19.7868
390002	21.8353	19.7833	20.8831	20.8859
390003	17.1371	18.1025	18.0436	17.7426
390004	19.2277	20.3204	20.0557	19.8647
390005	17.3506	16.9472	19.0218	17.7359
390006	20.2959	21.1786	21.7867	21.0548
390007	21.7506	21.3839	*	21.5715
390008	17.8297	18.2743	19.5439	18.5382
390009	20.6507	20.6241	22.5580	21.2847
390010	17.5127	17.3335	18.1275	17.6598
390011	18.1717	18.3257	18.2751	18.2595
390012	20.6523	21.0610	22.2060	21.3101
390013	19.2698	19.6562	20.2186	19.7244
390015	13.1337	13.7352	14.3138	13.7169
390016	16.9892	17.1133	17.4931	17.1968
390017	16.7493	18.6113	18.5869	17.9293
390018	21.3626	19.0279	20.0672	20.1854
390019	16.7848	17.7258	18.7609	17.7608
390022	21.5064	24.8468	25.2980	23.8721
390023	21.8270	22.1044	23.9246	22.7927
390024	24.9437	25.4606	27.7643	26.0343
390025	15.6155	15.5523	14.0077	15.0571
390026	22.3902	22.9718	23.6317	23.0154
390027	26.8878	29.5940	29.4334	28.6169
390028	22.7700	23.6571	22.7820	23.0704
390029	21.5729	21.2661	24.4753	22.2475
390030	17.9580	18.6887	18.9121	18.5104
390031	19.2755	18.8162	19.2040	19.0999
390032	17.8041	21.5105	18.5545	19.2157
390035	20.2029	22.3591	21.9325	21.4746
390036	19.9880	19.7671	20.2103	19.9884
390037	21.0616	20.4263	19.9175	20.4619
390039	17.1046	17.5300	17.6181	17.4169
390040	15.9612	16.6876	17.4451	16.6853
390041	19.8080	20.4397	19.6159	19.9368
390042	22.7693	22.5775	22.0668	22.4719
390043	17.2607	17.4764	17.6739	17.4691
390044	20.2813	20.9831	21.3382	20.8726
390045	18.5574	19.4677	20.2107	19.4227
390046	20.7303	21.7445	21.3960	21.2868
390047	27.6661	26.9709	*	27.3457
390048	19.0920	19.7992	18.9776	19.2752
390049	21.1217	22.1586	22.8196	22.0220
390050	22.8808	22.2639	24.9156	23.2311
390051	25.7910	28.1385	*	26.8617
390052	20.9306	20.1195	21.2729	20.7554
390054	17.8852	18.4975	19.4686	18.5971
390055	24.2211	23.4017	25.7327	24.4723
390056	17.7858	19.3901	21.4121	19.5072
390057	20.2059	20.2395	21.6693	20.6975
390058	19.7379	20.3520	20.7930	20.2983
390061	21.2392	23.8722	22.8728	22.6127
390062	16.6721	17.3750	17.4710	17.1692
390063	20.0125	19.4965	20.1696	19.9019
390065	19.9361	20.0473	20.2930	20.0884
390066	19.8539	18.9296	19.0132	19.2529

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
390067	20.9688	20.8162	21.9885	21.2544
390068	18.3158	19.1109	21.6408	19.5148
390069	19.6466	*	*	19.6466
390070	16.1988	21.8549	22.7909	20.2250
390071	15.7165	16.0100	18.9416	16.7655
390072	16.3133	16.9232	16.9445	16.6922
390073	20.5581	21.2623	22.2703	21.3817
390074	18.4806	18.3093	19.7446	18.8130
390075	17.9840	18.7695	19.5840	18.6669
390076	20.2475	21.3290	19.7719	20.4342
390078	19.2089	19.0156	20.6483	19.5808
390079	18.3312	18.9269	19.5982	18.9583
390080	18.8028	21.4707	22.2449	20.7685
390081	24.8351	24.7461	25.6575	25.0775
390083	*	*	26.1660	26.1660
390084	16.4026	20.2529	17.0197	17.7133
390086	18.5265	18.3563	19.7645	18.9070
390088	23.6173	23.9506	*	23.7777
390090	21.6437	21.3759	20.5433	21.2027
390091	18.1569	18.3770	19.0355	18.5125
390093	17.7171	18.4442	20.0135	18.7217
390095	16.3357	16.6930	17.9697	16.9815
390096	19.1171	22.4382	22.2974	21.1662
390097	23.5963	25.2845	24.7853	24.5092
390100	20.7859	20.9263	21.1186	20.9469
390101	17.9499	18.5039	19.0180	18.4836
390102	19.0461	21.5496	19.3111	19.9785
390103	18.4312	18.8667	20.4422	19.2092
390104	15.9008	16.3255	16.2440	16.1553
390106	16.6666	16.8439	17.4747	16.9857
390107	19.5178	20.9841	20.6024	20.3811
390108	21.0899	21.3142	22.0444	21.4659
390109	16.4597	16.5299	17.4540	16.8127
390110	21.5282	21.6464	21.6005	21.5915
390111	27.5193	33.3971	27.1429	29.3913
390112	14.9427	15.0065	14.8634	14.9388
390113	19.1945	19.3634	19.9496	19.4908
390114	19.6295	20.9533	19.8004	20.1209
390115	23.3461	21.4287	22.3545	22.3386
390116	21.4877	21.3671	22.6783	21.8481
390117	17.9393	18.0769	18.9764	18.3315
390118	18.3440	18.9507	17.2668	18.1975
390119	18.2951	18.8815	19.3946	18.8604
390121	20.8780	19.1315	20.6253	20.2089
390122	17.1902	17.7734	15.5438	16.7430
390123	20.8344	21.3974	21.8897	21.3699
390125	16.7983	17.5446	17.0975	17.1374
390126	20.6498	*	*	20.6498
390127	21.7724	22.4555	22.8787	22.3758
390128	19.6792	19.3165	19.9764	19.6532
390130	17.7049	18.3695	18.5519	18.2059
390131	16.0986	19.2096	19.1931	18.1205
390132	21.1931	22.8414	24.1878	22.7048
390133	23.3489	24.7561	24.1590	24.0369
390135	21.5782	22.1905	22.2501	22.0004
390136	16.9737	20.6286	16.8505	18.1580
390137	17.5687	18.5397	19.4769	18.4683
390138	19.6212	20.6936	20.7726	20.3703
390139	24.4515	23.9757	24.8347	24.4216
390142	26.8086	28.8877	28.4680	28.1212
390145	20.3731	20.4228	20.4964	20.4300
390146	18.7922	18.6505	20.1788	19.1967
390147	20.9651	21.2492	21.7600	21.3199
390150	20.7294	20.3155	20.8970	20.6500
390151	21.6000	22.5206	23.6072	22.6096
390152	20.3353	19.4017	20.2581	19.9941

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
390153	23.7013	22.9707	23.9039	23.5281
390154	17.4036	16.7052	17.8774	17.3537
390156	21.8498	22.6398	24.0034	22.7950
390157	19.6578	19.1783	20.2647	19.6975
390160	21.4810	19.4463	19.4793	20.0709
390161	16.4799	*	*	16.4799
390162	21.4095	21.9188	21.3379	21.5605
390163	16.8013	17.7564	18.1831	17.5889
390164	24.6765	24.9750	26.1698	25.2621
390166	19.0405	19.7978	19.8899	19.5577
390167	19.8973	*	*	19.8973
390168	18.7400	18.8863	19.6875	19.1127
390169	20.2382	22.0547	22.7920	21.7176
390170	26.5891	24.7973	*	25.6898
390173	18.5370	18.6613	18.8265	18.6759
390174	25.4189	25.3307	26.3891	25.6959
390176	17.8740	20.8368	21.7650	20.0495
390178	16.6993	17.0534	17.1142	16.9526
390179	21.6901	21.8593	21.5792	21.7082
390180	25.7074	26.5541	26.7743	26.3551
390181	19.4654	19.3832	18.8681	19.2465
390183	17.8306	17.9848	17.4535	17.7535
390184	20.8060	20.9349	21.1941	20.9693
390185	18.8798	20.3877	20.3301	19.8556
390189	20.0889	20.3338	19.6186	20.0014
390191	16.3240	17.2270	17.1919	16.8998
390192	17.4537	17.6597	16.6469	17.2541
390193	16.7874	18.1209	17.3804	17.3866
390194	20.7953	21.2689	21.0549	21.0283
390195	24.6855	24.1793	24.2891	24.3890
390197	19.2690	20.7998	22.1974	20.7901
390198	15.9721	15.8833	16.6803	16.1535
390199	17.0515	17.3865	17.7782	17.3993
390200	15.1399	15.4012	18.2456	16.2785
390201	20.6296	20.3533	21.3291	20.7767
390203	20.9432	21.4989	22.4685	21.6448
390204	20.1779	22.9616	22.7282	21.9570
390206	18.4027	*	*	18.4027
390209	17.4792	18.7059	16.8200	17.6370
390211	17.8638	18.4213	19.4552	18.6187
390213	18.8555	19.1553	20.1152	19.3527
390215	20.7084	21.2032	23.5953	21.7981
390217	19.1406	19.9837	19.7578	19.6158
390219	18.8292	19.6226	20.1311	19.5227
390220	18.7178	17.7916	22.7617	19.7037
390222	21.5739	22.1548	22.7491	22.1668
390223	23.6482	22.1775	18.9493	21.4503
390224	15.3015	13.7518	17.2173	15.1752
390225	18.6125	18.7290	19.0364	18.7963
390226	21.8268	21.8481	22.8588	22.1457
390228	19.4083	19.8180	19.6212	19.6177
390231	22.7544	19.4798	21.0757	20.9857
390233	19.4887	20.2309	20.5800	20.1134
390235	25.0857	21.4200	19.9925	22.7713
390236	16.2397	17.8735	19.1427	17.7118
390237	19.5230	22.3011	21.7847	21.1302
390238	17.8211	17.1055	18.1956	17.6820
390244	15.4611	15.6402	14.2136	15.1054
390245	26.0194	24.5076	*	25.2650
390246	18.9733	25.0556	22.3892	21.9107
390247	20.9526	21.2151	*	21.0479
390249	12.7920	13.1657	14.1062	13.3677
390256	23.2734	22.2773	22.3540	22.6670
390258	21.9207	22.6852	23.8318	22.8365
390260	21.9509	21.5982	*	21.7740
390262	18.2379	*	18.8942	18.5346

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
390263	20.6855	20.3796	20.6348	20.5647
390265	20.3580	20.4950	20.4760	20.4411
390266	17.1666	17.1966	17.6223	17.3305
390267	21.2974	19.2665	20.2424	20.3797
390268	21.3486	22.0909	22.2046	21.8827
390270	19.0925	19.2074	20.7957	19.6567
390278	18.2865	17.7176	18.5776	18.2038
390279	14.3241	14.8655	15.8080	14.9814
390283	*	22.5490	*	22.5489
390284	*	34.3904	*	34.3902
390285	*	*	29.1270	29.1270
390286	*	*	22.9746	22.9746
390287	*	*	30.3252	30.3252
390288	*	*	26.9662	26.9662
390289	*	*	22.8963	22.8963
390290	*	*	30.5037	30.5037
390291	*	*	20.0272	20.0272
390293	*	*	23.5285	23.5284
400001	9.9463	10.5757	10.7531	10.4326
400002	10.1417	13.0494	13.3684	12.2030
400003	10.8821	12.4078	11.2726	11.5031
400004	8.9864	8.5648	9.0781	8.8776
400005	9.5632	7.7432	9.7802	8.9053
400006	10.3444	10.1048	10.4988	10.3215
400007	6.4490	8.0174	8.1974	7.5136
400009	8.4207	8.8650	8.7341	8.6758
400010	10.6518	10.8011	9.1359	10.1542
400011	7.4979	8.5426	8.6252	8.2277
400012	8.2412	8.4728	8.6538	8.4546
400013	8.4579	9.2624	9.8197	9.2598
400014	9.5235	9.4798	10.2712	9.7458
400015	10.9505	14.4076	15.5827	13.3370
400016	13.2756	13.3922	13.7001	13.4570
400017	8.6421	9.2577	9.9167	9.2527
400018	10.4557	10.6208	10.5583	10.5484
400019	10.4332	10.8940	12.1251	11.2505
400021	10.6988	12.1434	12.7462	11.9145
400022	11.5861	12.2199	13.0915	12.2933
400024	7.8984	9.2409	9.0826	8.6750
400026	5.6454	5.8335	7.4280	6.2931
400027	9.5899	*	*	9.5899
400028	8.8597	9.1794	8.9567	8.9909
400031	8.2660	*	*	8.2660
400032	10.5498	10.0448	10.1898	10.2599
400044	11.9704	11.9486	12.8671	12.2011
400048	9.1701	15.1405	11.5104	11.4186
400061	12.4493	13.0988	10.3664	11.9076
400079	*	9.7203	8.7218	9.1657
400087	9.5097	9.8534	8.6480	9.3956
400094	8.9116	7.9187	9.4600	8.7591
400098	9.3308	9.7791	10.4312	9.8607
400102	9.8536	9.9903	8.5290	9.4812
400103	11.2069	11.5359	11.8454	11.4791
400104	11.0672	10.7292	7.9552	10.3151
400105	9.3049	9.0556	10.6028	9.5117
400106	9.3123	9.2187	9.8694	9.4766
400109	10.9826	11.8760	12.2080	11.7082
400110	10.3326	10.5277	10.7228	10.5456
400111	9.5583	10.9665	12.3311	11.0412
400112	10.1755	10.8694	11.0634	10.7058
400113	9.2238	8.3168	9.3000	8.9540
400114	9.0496	7.0510	9.9477	8.5888
400115	9.8244	8.5487	7.2203	8.5322
400117	10.2295	10.8756	11.3351	10.8116
400118	9.4398	11.4051	11.4317	10.7997
400120	9.5274	10.6584	10.9315	10.3832

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
400121	7.8052	9.8322	8.7584	8.8340
400122	8.1911	7.6413	9.1638	8.3405
400123	7.8099	10.2367	10.9047	9.6438
400124	12.0999	12.2452	12.7323	12.3713
400125	*	10.2056	10.5997	10.3924
410001	23.2808	23.1738	22.4972	22.9875
410004	22.4801	21.0638	23.5408	22.3806
410005	23.1444	22.7170	24.0086	23.2835
410006	23.3968	23.8700	22.8959	23.3695
410007	22.1452	23.1325	24.9846	23.3527
410008	23.0662	24.9726	24.4792	24.1739
410009	24.4899	24.3895	24.3760	24.4190
410010	26.9813	28.4589	29.7315	28.3794
410011	25.2926	26.1183	27.4880	26.2586
410012	24.5811	24.1695	26.4570	25.0414
410013	24.5122	24.8800	25.3688	24.9319
420002	19.4845	20.7804	22.6182	20.9552
420004	19.7968	20.9588	22.4680	21.0257
420005	17.3510	17.9694	17.8202	17.7153
420006	18.3439	19.1760	18.7153	18.7343
420007	18.2096	18.6456	19.0199	18.6081
420009	18.5456	19.9586	21.2566	19.9500
420010	17.1184	18.0252	19.3267	18.2127
420011	16.5664	18.0970	16.7523	17.1112
420014	16.6065	18.0519	19.0455	17.8775
420015	18.8411	20.1164	20.8736	19.8858
420016	15.6241	15.5485	16.6448	15.9623
420018	19.7367	21.8775	20.7779	20.7419
420019	16.9990	17.1726	19.0199	17.6834
420020	20.9449	20.3193	20.5801	20.5993
420023	19.4855	20.4053	20.8600	20.2789
420026	20.3476	21.8749	23.3072	21.9035
420027	18.8457	19.2594	19.7322	19.2883
420030	19.1453	20.6448	22.5159	20.8443
420031	14.1855	8.2516	15.3605	11.6044
420033	21.7279	23.1303	23.7974	22.8884
420036	17.6136	21.3222	19.8285	19.5069
420037	21.7908	22.7099	23.5244	22.7289
420038	17.6726	18.6568	19.9829	18.7495
420039	15.8385	18.3017	18.0055	17.3738
420043	19.4521	19.7570	19.6834	19.6347
420048	18.4367	18.8070	20.5531	19.2732
420049	17.5854	19.4049	20.1765	19.0818
420051	19.5001	19.1555	19.8549	19.5061
420053	16.9599	18.1657	19.0780	18.0364
420054	18.2702	20.2574	20.2275	19.5600
420055	19.2048	16.8717	18.6782	18.0932
420056	14.8695	15.1835	16.5491	15.4839
420057	15.9849	20.5266	22.1312	19.6895
420059	15.8160	17.1483	18.2093	17.0936
420061	16.5555	17.3543	17.7047	17.2228
420062	17.8205	21.7469	20.9032	20.1974
420064	16.7227	16.0794	19.7067	17.5583
420065	19.6902	19.9435	19.2150	19.5969
420066	15.1804	18.0042	19.5366	17.5193
420067	18.8610	19.7824	20.8524	19.8567
420068	18.5030	18.5481	20.2580	19.1326
420069	17.0788	18.1298	18.9017	18.0129
420070	18.0057	17.3876	19.2186	18.1995
420071	19.4482	20.3902	20.1897	20.0146
420072	13.8550	15.0158	18.2531	15.7212
420073	19.1604	19.9986	20.2697	19.8499
420074	16.9292	18.0967	18.1839	17.6249
420075	14.2931	12.8158	15.0132	14.0442
420078	20.7317	21.9082	22.7156	21.7962
420079	20.8639	21.0874	21.3177	21.0994

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
420080	22.3443	21.9968	23.2871	22.5856
420082	20.4653	21.7210	22.8516	21.6895
420083	20.1472	22.6376	24.4499	22.3616
420085	19.9603	21.6791	22.0071	21.2571
420086	25.7179	20.2878	23.5303	23.0156
420087	19.1403	19.8388	20.8217	19.9506
420088	17.1938	19.9919	21.8979	19.5872
420089	20.2537	20.5360	21.3954	20.7386
420091	18.8687	20.3092	21.8367	20.2654
420093	17.4689	18.3902	19.1299	18.3060
420095	*	*	33.4632	33.4634
420096	*	*	26.4863	26.4864
430004	18.5438	19.6344	19.2737	19.1454
430005	16.3059	16.4560	17.3400	16.6979
430007	14.1078	14.6331	15.1494	14.6319
430008	17.6640	18.1323	18.5234	18.0977
430010	17.1766	19.8191	16.5750	17.7180
430011	16.9848	17.4750	18.3648	17.6074
430012	17.2775	17.6997	19.2921	18.0907
430013	18.1338	18.4817	18.8978	18.5085
430014	16.8925	20.2387	20.9118	19.1361
430015	18.0019	18.2875	18.8998	18.3871
430016	19.4759	20.8850	22.7585	20.9797
430018	14.8854	16.2244	15.9424	15.6759
430022	13.4905	14.5118	14.0661	13.9980
430023	12.2331	16.2164	16.7850	14.8010
430024	15.4709	16.1801	17.4816	16.3448
430027	19.1461	20.2591	20.8666	20.0818
430028	18.2312	17.1577	18.2829	17.8947
430029	16.6500	17.6986	17.4932	17.2971
430031	13.1258	12.4660	13.2105	12.9278
430033	15.3003	17.3652	18.3978	16.9036
430034	15.4064	14.2491	13.8535	14.4964
430036	13.6967	15.6258	16.7827	15.2466
430037	16.5368	18.1293	18.7009	17.7855
430038	13.7167	18.4078	*	15.7522
430040	13.6745	14.4509	14.7860	14.2554
430041	13.1936	14.8816	*	14.0079
430043	13.6908	14.9949	17.0193	15.1103
430044	18.4970	21.0823	*	19.6187
430047	17.4956	17.9823	17.5377	17.6691
430048	18.3524	18.7602	19.0261	18.7260
430049	15.5381	15.2237	14.9025	15.2275
430051	17.0574	18.8070	18.8697	18.2650
430054	14.7251	14.8003	15.0101	14.8472
430056	11.7627	10.3697	14.1914	11.9246
430057	15.4390	17.2805	18.8777	17.1911
430060	9.0358	10.0176	9.7678	9.6151
430064	14.4367	14.2184	13.8666	14.1634
430066	14.3557	15.6660	14.5957	14.8566
430073	16.1133	15.3776	16.5112	15.9989
430076	12.7608	13.9883	15.2453	13.9494
430077	19.3012	19.8558	20.4361	19.8699
430079	13.6836	14.1815	14.4154	14.0719
430089	17.8908	17.9790	17.5100	17.7870
430090	21.5239	21.5974	23.5180	22.2918
430091	19.2146	18.1567	21.6239	20.0217
430092	*	21.3807	19.7644	20.5428
430093	*	19.5013	23.3009	21.3125
440001	14.8713	15.5897	17.2282	15.8569
440002	19.1498	20.3740	21.4299	20.3167
440003	18.3658	19.3042	20.3756	19.3464
440006	19.6021	21.4055	23.1483	21.3134
440007	12.1230	14.8959	14.0612	13.6386
440008	17.2848	18.8994	20.3303	18.7894
440009	17.8424	17.4831	18.4068	17.9080

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
440010	19.9829	16.3283	13.3692	16.2699
440011	17.6948	18.3375	19.3165	18.4706
440012	15.9837	19.5739	19.8949	18.4979
440014	15.9195	16.1143	15.0656	15.7064
440015	18.2632	22.0659	21.6106	20.5435
440016	15.4097	16.2964	14.6142	15.3378
440017	19.6215	20.4563	20.4705	20.1721
440018	16.4115	17.4995	18.1620	17.3534
440019	20.0416	21.5402	22.8463	21.4594
440020	18.1154	17.8879	20.2189	18.7233
440022	15.8459	*	*	15.8461
440023	15.4721	16.7837	15.6603	15.9134
440024	18.4432	18.4046	18.4276	18.4251
440025	15.8784	16.3140	17.0997	16.4428
440026	23.0550	23.2566	25.6490	23.8993
440029	19.4326	20.7050	22.2889	20.8403
440030	16.2941	16.9925	17.6297	17.0242
440031	15.5432	17.0211	17.2555	16.5726
440032	13.9775	13.8140	13.9784	13.9249
440033	14.5304	13.7328	16.4679	14.8744
440034	19.5470	20.0309	21.1672	20.2667
440035	18.9026	19.3034	20.4168	19.5344
440039	19.9439	21.6536	22.4158	21.3378
440040	16.3740	16.9275	17.6781	16.9632
440041	14.6621	14.9545	14.6684	14.7645
440046	18.1654	19.3229	20.5562	19.3415
440047	16.6646	17.8092	18.7469	17.7021
440048	19.4498	21.4993	21.6132	20.8900
440049	17.9292	18.7967	19.6920	18.7945
440050	19.1328	18.2511	19.7915	19.0510
440051	13.1901	16.0421	17.7067	15.5027
440052	16.6541	19.8075	18.6589	18.2811
440053	18.5515	19.6494	21.5253	19.8982
440054	13.8716	13.3967	15.2154	14.1791
440056	15.9821	16.2742	20.4903	17.3863
440057	12.7925	13.7257	14.4363	13.6135
440058	18.8118	19.1878	20.7722	19.5723
440059	18.5418	19.6018	20.8882	19.6895
440060	18.0586	19.7916	20.7628	19.4260
440061	14.9708	22.5525	16.9234	17.8112
440063	19.3222	19.8371	18.8072	19.3003
440064	17.7652	18.9809	18.2678	18.2991
440065	18.5825	18.8296	19.2282	18.8924
440067	16.2811	17.2397	18.2973	17.2997
440068	19.4695	19.3668	19.5428	19.4608
440070	13.7035	14.0437	18.0064	15.1918
440071	17.0186	19.7836	*	18.2110
440072	17.5995	19.1522	20.0691	18.8963
440073	19.1714	19.5554	19.6290	19.4550
440078	15.0849	16.0188	17.1645	15.9789
440081	18.3587	19.3454	17.2905	18.2386
440082	22.2857	22.6855	22.5590	22.5073
440083	14.8525	13.7423	13.7630	14.1806
440084	13.4378	13.7731	13.8085	13.6799
440091	19.6114	20.1065	20.1359	19.9669
440100	13.8437	14.7113	15.9969	14.8524
440102	14.3510	14.5500	16.0783	14.9840
440103	20.3052	18.6990	*	19.4877
440104	22.4403	22.6754	21.7135	22.2610
440105	16.7131	17.1172	18.1375	17.2950
440109	16.0446	17.7443	17.6399	17.0830
440110	21.1716	17.4816	18.4998	18.8996
440111	23.2425	23.2254	23.2111	23.2266
440114	14.4997	15.0036	18.5327	16.0830
440115	17.4514	18.5457	18.7054	18.2287
440120	17.2384	16.3115	19.8997	17.7817

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
440125	15.6588	19.4115	20.0599	18.4060
440130	17.8223	17.4857	19.0905	18.1589
440131	15.5048	16.1214	19.9883	17.1760
440132	16.6553	16.8871	17.9186	17.1418
440133	21.5313	23.0891	22.2257	22.2659
440135	19.2010	22.2005	22.5452	21.4251
440137	14.5632	15.0070	15.3530	14.9670
440141	13.5308	15.9429	17.6819	15.3875
440142	15.7287	16.8855	17.1483	16.5303
440143	17.7821	18.2061	18.6844	18.2206
440144	17.6415	18.3859	18.8127	18.2853
440145	17.0608	18.3948	18.3850	17.9146
440147	21.4304	26.1464	25.3766	24.0818
440148	19.2435	19.4598	19.3769	19.3574
440149	16.6923	18.4281	19.8304	18.3721
440150	20.1411	20.3006	21.2942	20.5974
440151	17.4248	18.3928	19.8977	18.5439
440152	21.0287	22.7664	21.7382	21.7452
440153	16.7769	16.5716	18.1781	17.1656
440156	29.5557	21.7577	21.9374	23.7510
440157	16.9265	18.4249	15.5316	17.0209
440159	17.7158	20.9371	21.4914	19.6375
440161	21.8013	22.8816	23.6805	22.8012
440162	14.7637	15.5534	19.8075	16.5656
440166	19.6684	19.2159	19.6632	19.5183
440168	18.6535	19.1509	21.1947	19.6498
440173	18.6402	19.1812	21.0284	19.6315
440174	17.3294	18.0865	19.3966	18.2367
440175	20.0802	18.5186	19.9022	19.4845
440176	18.0294	19.2208	19.8448	19.0126
440180	19.7773	20.2184	20.2057	20.0681
440181	16.4878	17.7709	19.0915	17.6551
440182	17.7487	19.7094	18.1953	18.4985
440183	22.7067	21.3465	22.2401	22.0840
440184	17.2037	16.8880	18.6890	17.3933
440185	19.3870	21.2188	21.1226	20.6133
440186	19.3948	19.7983	20.8600	20.0053
440187	18.9713	17.5872	18.3729	18.3113
440189	*	18.5252	22.2555	20.3772
440192	19.0839	19.1705	19.1976	19.1524
440193	19.0811	18.6999	19.9078	19.2111
440194	19.8682	22.4562	21.9609	21.4700
440197	21.9618	21.8503	22.5282	22.1263
440200	17.9575	19.8078	18.7302	18.8422
440203	18.3400	16.2861	16.9819	17.1896
440206	16.4429	*	*	16.4428
440210	11.0218	11.9815	12.7622	11.9731
440211	14.8972	*	*	14.8972
440212	17.0685	*	*	17.0686
440213	19.5760	*	*	19.5758
440214	*	28.0285	*	28.0287
440215	*	22.2928	*	22.2928
440217	*	*	19.2834	19.2834
450002	21.3749	21.4836	21.5141	21.4583
450004	16.6723	16.7850	15.9452	16.5074
450005	18.3600	16.6396	16.6354	17.2368
450007	16.9681	19.1910	18.0269	18.0419
450008	17.0832	17.6582	19.3745	18.0076
450010	16.5001	17.6677	19.8998	18.3388
450011	17.1942	20.8102	20.2963	19.3771
450014	17.9495	17.5815	19.8846	18.4700
450015	18.9895	21.6773	22.9820	21.1074
450016	18.4463	18.3456	19.1522	18.6447
450018	21.4788	23.2293	21.9921	22.1397
450020	17.8415	19.1153	18.4642	18.4858
450021	23.0843	23.3630	23.7663	23.4150

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
450023	16.0831	17.6360	19.2808	17.6838
450024	17.3518	18.5985	19.5584	18.5411
450025	17.0004	*	*	17.0004
450028	18.8764	19.1658	19.5905	19.2141
450029	17.4716	17.7425	19.9505	18.4194
450031	22.2222	29.6945	29.6772	27.1869
450032	17.3317	14.6530	20.8525	17.3455
450033	19.7437	21.0222	21.3766	20.7326
450034	19.6721	18.8823	19.5233	19.3523
450035	20.0951	20.3599	20.3146	20.2513
450037	19.5411	19.9140	19.6532	19.7050
450039	19.8143	19.7176	20.4660	19.9969
450040	16.8534	19.6370	24.8621	21.1896
450042	19.8921	18.8357	20.6041	19.7840
450044	24.7961	21.0909	23.4476	22.9976
450046	18.6536	17.3631	20.2917	19.2568
450047	13.4486	16.9028	15.9525	15.2979
450050	14.7669	17.7209	19.1390	17.0907
450051	21.0236	21.1008	23.0010	21.6800
450052	13.8881	15.5890	20.3702	16.6434
450053	17.0467	17.2781	19.3347	17.8122
450054	22.8960	19.2431	23.0492	21.9091
450055	15.0433	15.8526	16.4789	15.8195
450056	21.8436	21.8605	22.5341	22.0863
450058	18.0967	18.6172	20.0424	18.9513
450059	15.2168	19.8240	21.4873	18.7159
450063	14.3815	12.7211	15.1779	13.9190
450064	17.4093	19.7682	21.3929	19.5099
450065	21.4934	23.3797	23.8471	22.8509
450068	22.8998	23.3495	22.5626	22.9345
450072	19.0111	18.0307	20.0134	19.0500
450073	17.1002	16.5942	23.7700	19.3382
450078	11.7265	13.2820	13.9324	12.9289
450079	21.0518	20.6483	22.0609	21.2553
450080	17.4553	18.6212	19.8414	18.6088
450081	16.3448	17.5737	19.0276	17.6152
450082	16.1585	16.8677	18.0688	17.0258
450083	21.5884	23.3754	20.7446	21.8692
450085	18.3602	20.0085	17.5001	18.5675
450087	22.0273	21.9320	23.4141	22.4951
450090	15.0939	15.5796	15.6090	15.4353
450092	16.8260	17.9520	17.2058	17.3255
450094	21.3158	23.2863	25.2158	23.1854
450096	17.8813	18.6802	19.4430	18.6508
450097	19.5723	19.7187	20.7653	20.0316
450098	20.5754	19.0454	19.8469	19.8192
450099	19.2258	20.4181	19.3493	19.6218
450101	17.1330	17.7928	17.6368	17.5088
450102	18.6707	19.8793	21.4361	19.9466
450104	16.6744	17.0821	17.8219	17.1908
450107	25.1986	24.1094	24.5034	24.5948
450108	15.6324	15.2797	17.9596	16.3778
450109	13.8127	10.5973	18.1085	13.5597
450110	19.5821	*	*	19.5821
450111	19.6350	21.4908	*	20.6248
450112	16.0441	18.1026	17.9624	17.4193
450113	20.9777	20.8306	20.7782	20.8679
450118	17.9053	*	*	17.9053
450119	20.2853	20.2030	20.1436	20.2055
450121	20.4641	21.9198	22.0485	21.4762
450123	15.7618	14.1755	17.5051	15.6216
450124	22.7480	22.5208	22.9853	22.7584
450126	21.7233	21.4789	22.9423	22.0532
450128	18.2184	18.1446	18.7067	18.3642
450130	20.4156	18.9211	20.2613	19.8921
450131	19.2589	17.4168	18.1401	18.2336

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
450132	18.1713	21.8089	20.8908	20.3184
450133	23.6366	26.0763	24.5319	24.7178
450135	21.0306	20.4068	21.7038	21.0684
450137	22.4590	23.4346	22.8653	22.9109
450140	20.2280	17.3370	19.6205	19.0889
450143	14.5270	15.0871	17.8206	15.8389
450144	18.1121	17.4309	21.9135	19.1672
450145	15.6078	16.1895	18.0437	16.6039
450146	17.8572	15.5030	17.4391	16.8224
450147	18.9363	19.0477	20.3019	19.4231
450148	18.6758	20.4923	21.4982	20.3512
450149	19.7521	21.7219	22.6138	21.3072
450150	16.3719	17.8612	17.8804	17.3567
450151	15.2906	16.4209	16.3279	16.0117
450152	18.0061	17.7265	19.6105	18.4659
450153	19.4419	18.6514	20.9651	19.5973
450154	13.8731	13.9119	16.8748	14.8870
450155	11.5841	13.3456	20.2582	14.4198
450157	15.6371	15.3083	16.8569	15.9683
450160	16.6533	10.6852	18.7780	14.2553
450162	20.9560	21.9218	20.5032	21.1178
450163	17.5403	17.8028	19.7675	18.3370
450164	16.9741	17.7180	18.7103	17.7836
450165	13.9218	17.3283	16.1010	15.6645
450166	11.4772	11.0541	12.6627	11.7456
450169	13.1990	*	*	13.1990
450170	14.2997	14.3234	15.8525	14.8194
450176	16.9674	17.2576	19.2397	17.7972
450177	14.9241	15.2419	16.4503	15.5457
450178	17.8508	16.0280	15.8597	16.5717
450181	15.5622	18.6936	18.3600	17.5713
450184	21.1263	20.0821	22.7744	21.3241
450185	14.0714	11.5228	13.2015	12.8206
450187	16.6945	18.5053	20.8105	18.6152
450188	14.3938	15.1954	16.9800	15.5696
450191	20.1222	20.9512	20.5883	20.5559
450192	20.3795	21.2497	20.8315	20.8154
450193	23.1963	23.1639	25.1215	23.8401
450194	20.5187	20.7745	20.7152	20.6727
450196	17.1955	17.8993	21.1226	18.6516
450200	18.7387	19.2228	19.6496	19.1969
450201	16.9908	17.1463	18.0646	17.4134
450203	20.6712	19.3978	19.7978	19.9564
450209	19.0811	20.0140	21.3218	20.0963
450210	13.9758	16.3470	16.8532	15.7918
450211	17.9857	18.8114	18.7305	18.5258
450213	17.7631	19.0651	19.3440	18.7353
450214	19.0475	20.5070	21.3448	20.2748
450217	12.8457	12.7647	13.1840	12.9276
450219	15.3976	17.6884	18.5534	17.2282
450221	16.3700	15.2120	16.2308	15.9182
450222	20.3129	19.8967	23.2779	21.1824
450224	24.9046	20.1579	20.1723	21.4823
450229	16.4503	16.7853	17.0346	16.7617
450231	19.1564	19.1746	20.7709	19.7438
450234	16.1945	16.3003	17.9478	16.9370
450235	15.2332	16.3115	17.0143	16.2190
450236	16.6703	16.4957	18.4551	17.2049
450237	20.7930	19.0325	21.6497	20.5284
450239	17.1308	17.8401	18.8416	17.9241
450241	12.5675	16.4240	16.6046	14.9426
450243	11.9099	13.6416	11.2035	12.2464
450246	16.5478	16.7959	22.7940	18.4445
450249	12.0302	11.7658	10.6467	11.4953
450250	10.2844	13.6787	18.3361	13.3340
450253	12.2402	13.2177	14.5492	13.3367

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
450258	16.0466	16.7337	17.0724	16.6100
450264	13.8929	14.5956	17.2825	15.2193
450269	12.3594	12.7717	12.2970	12.4710
450270	12.8381	14.4792	13.8881	13.6870
450271	16.6319	16.7831	17.9570	17.1607
450272	19.9331	18.4344	20.5888	19.6562
450276	13.1155	14.0745	14.0779	13.7681
450278	14.8291	15.2950	14.3931	14.8081
450280	22.2984	22.2936	22.2648	22.2845
450283	14.5664	15.1950	15.8224	15.2295
450288	16.2502	18.8935	17.4817	17.4808
450289	20.3104	20.3460	22.4656	21.0290
450292	16.9693	20.5335	21.1511	19.3669
450293	16.0132	16.2721	16.4077	16.2364
450296	21.6000	22.3430	21.5998	21.8526
450299	21.5672	*	21.2754	21.4132
450303	12.4582	12.8996	14.3353	13.2442
450306	13.8216	14.2047	13.6333	13.8808
450307	16.4622	17.0691	17.6757	17.0817
450309	13.1480	13.3771	16.0363	14.2012
450315	22.8140	21.4684	23.8151	22.6579
450320	20.0946	20.6596	24.8602	21.5440
450321	13.1752	14.7344	17.2289	14.9366
450322	22.7667	29.1884	28.9834	26.4969
450324	17.7886	19.1692	20.9081	19.2343
450327	11.7511	13.3639	11.0983	11.9405
450330	18.9425	19.8066	21.0921	19.9853
450334	12.8051	13.8392	13.9812	13.5350
450337	17.1073	25.5708	*	20.0638
450340	17.6914	*	19.2611	18.4733
450341	18.9429	*	20.8814	19.8654
450346	17.5367	18.9475	19.2769	18.6527
450347	17.1099	19.3475	20.1899	18.8713
450348	13.9535	13.3585	15.0069	14.1063
450351	18.4116	19.3159	21.2842	19.6777
450352	18.7480	20.1871	21.2035	20.1227
450353	17.7539	16.0003	17.3274	17.0034
450355	11.9473	11.8933	12.8876	12.2285
450358	22.3235	23.0206	25.5767	23.5999
450362	15.8847	18.1983	18.7687	17.5865
450369	15.2233	15.3122	16.0667	15.5405
450370	12.6061	16.1369	18.7539	15.9177
450371	24.6339	16.0236	17.7591	19.2388
450372	20.0924	22.0746	21.4050	21.1434
450373	17.4183	17.9554	18.5716	17.9576
450374	13.6099	15.1750	15.0146	14.5995
450378	23.5789	23.4599	24.4143	23.8974
450379	22.7632	22.8756	25.1931	23.6182
450381	16.4166	16.7112	16.7237	16.6241
450388	19.2499	19.7408	20.7989	19.9913
450389	18.1797	18.8448	19.3156	18.7899
450393	20.2784	22.4992	21.4405	21.3365
450395	18.3768	18.0024	17.5236	17.9433
450399	15.7845	15.3491	16.3333	15.8319
450400	19.5379	18.6668	19.1345	19.0923
450403	20.1989	22.8430	24.7657	22.7036
450411	14.4832	15.1121	15.9165	15.1694
450417	13.4983	15.3591	15.2713	14.6933
450418	21.9161	21.9690	22.2511	22.0447
450419	20.6325	23.2551	22.9522	22.3158
450422	26.4848	28.0257	28.0395	27.5279
450423	22.7132	*	*	22.7132
450424	18.9741	18.7895	20.7634	19.5561
450429	13.8723	*	*	13.8722
450431	19.6304	22.0361	22.6766	21.4257
450438	19.5028	15.4553	21.0474	18.4017

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
450446	13.0986	20.7592	13.8011	15.2461
450447	18.0376	18.0377	19.7532	18.5828
450451	18.8948	18.2988	18.9519	18.7274
450457	24.7880	19.6569	*	21.9578
450460	15.1765	14.6523	15.9446	15.2519
450462	22.6212	22.1144	22.5413	22.4225
450464	13.2931	15.5908	15.8121	14.8193
450465	15.5650	15.4731	19.3928	16.5297
450467	10.6184	17.0004	18.9388	14.4801
450469	19.6269	22.1930	22.0389	21.2453
450473	19.9761	19.7148	18.3813	19.2637
450475	16.3404	16.9269	19.0010	17.4228
450484	16.8131	18.9825	19.5505	18.4862
450488	19.3457	19.2173	22.0927	20.2121
450489	9.9326	16.3584	17.8779	13.9861
450497	15.0886	16.2997	15.9654	15.7937
450498	13.8551	14.4713	15.9479	14.7991
450508	18.8069	19.0991	19.3274	19.0816
450514	21.3243	20.0144	20.7064	20.6957
450517	27.8815	14.3191	17.6011	18.7482
450518	19.8116	21.4873	20.7355	20.6380
450523	20.0792	21.0393	23.8270	21.6109
450530	22.8623	21.1634	21.8988	21.9395
450534	19.9376	20.1520	19.7410	19.9371
450535	19.6645	21.0513	21.5449	20.7286
450537	20.8438	20.1161	20.8849	20.6189
450539	16.4921	18.7559	19.3681	18.2066
450544	23.9283	23.6652	22.7282	23.5339
450545	19.5558	20.2823	21.0792	20.2860
450547	14.8248	18.1524	20.5049	17.8141
450551	16.9439	16.6237	16.1437	16.5621
450558	22.2574	20.7404	21.3116	21.4292
450563	19.9218	22.0708	21.9935	21.4039
450565	16.2652	17.3803	17.8058	17.1566
450570	18.9532	19.0336	*	18.9910
450571	17.5598	18.2784	19.5325	18.4467
450573	12.2502	17.3518	17.6157	15.5831
450574	14.5965	14.6128	14.8549	14.6891
450575	19.3925	22.5621	24.0386	22.1410
450578	15.4783	18.0925	17.2863	16.9084
450580	15.8321	16.7374	17.8224	16.7968
450583	15.6580	14.4411	15.9430	15.3488
450584	14.2321	14.6735	14.9237	14.6266
450586	14.3773	13.8248	14.7433	14.3053
450587	17.0230	18.0219	18.0014	17.6684
450591	17.8981	17.7795	18.6714	18.1275
450596	22.5420	21.6729	21.9445	22.0245
450597	17.0776	17.6179	19.0641	17.9259
450603	11.6442	23.5572	23.4924	18.9348
450604	16.4535	17.6582	18.7465	17.6322
450605	21.1400	19.4580	19.7400	20.0918
450609	15.9753	17.0986	14.1776	15.7466
450610	18.9924	21.5191	23.5626	21.7315
450614	17.9853	16.5754	*	17.2230
450615	14.8562	15.2956	15.0621	15.0692
450617	20.3387	20.8919	21.5004	20.9383
450620	15.8380	16.0987	16.4330	16.1476
450623	22.1950	23.1270	25.1122	23.4424
450626	18.1673	18.4349	20.5225	19.1158
450628	20.5611	18.6093	20.0411	19.7604
450630	21.6876	20.9605	23.1840	21.9334
450631	20.0417	21.6736	21.8940	21.1769
450632	11.7587	13.9147	15.1416	13.5343
450633	19.5183	19.4949	*	19.5064
450634	23.5333	22.9877	23.0470	23.1838
450638	23.1437	22.1704	23.8335	23.0423

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
450639	23.1936	21.6421	23.0496	22.6205
450641	16.5125	15.7578	15.3652	15.8807
450643	18.7054	16.8152	18.9088	18.1638
450644	23.6587	22.7721	24.5834	23.7084
450646	19.8274	19.1433	23.1240	20.5802
450647	24.7981	24.2763	25.0549	24.7111
450648	14.8488	15.0305	14.4884	14.7695
450649	16.4496	16.6577	16.8505	16.6612
450651	22.7664	22.7112	25.4679	23.6985
450652	13.4389	17.2445	*	14.7103
450653	18.1834	19.2349	20.2436	19.1660
450654	14.5258	14.5423	15.5858	14.8899
450656	17.6723	18.2606	18.5874	18.1828
450658	16.2657	17.2630	19.4139	17.5926
450659	22.2550	23.0108	22.9344	22.7256
450661	19.7160	18.9071	19.5504	19.3935
450662	18.2284	19.3152	20.7973	19.5367
450665	15.2015	16.1319	14.5158	15.2939
450666	20.3248	20.2549	*	20.2912
450668	20.6965	21.0972	21.2002	20.9938
450669	21.7632	21.6746	22.5150	22.0651
450670	16.8893	20.2632	19.7696	19.0807
450672	21.8559	21.4927	23.2623	22.2025
450673	13.9620	13.7005	14.9115	14.2386
450674	22.2796	22.2426	21.9624	22.1483
450675	22.4961	21.4479	23.3954	22.4703
450677	22.6839	20.6556	21.7366	21.6615
450678	23.2617	24.1301	25.1841	24.1797
450683	20.9143	22.8699	22.1965	21.9453
450684	19.7005	21.9962	22.2380	21.3152
450686	16.5661	16.4632	17.4746	16.8354
450688	19.6250	20.1831	21.7691	20.5644
450690	21.6578	22.4707	27.2399	23.4791
450694	17.4758	18.1872	18.5520	18.0935
450696	24.9636	*	*	24.9636
450697	18.8405	19.4949	19.4424	19.2742
450698	14.6680	15.4750	16.5111	15.5420
450700	14.6421	15.9050	14.2055	14.9219
450702	20.8223	21.3739	19.8094	20.6324
450704	20.9821	20.7987	18.1835	19.7101
450705	30.0116	22.1809	18.7138	22.5666
450706	21.2072	22.0884	22.4329	21.9400
450709	20.8889	22.1490	22.0123	21.7006
450711	19.8126	19.8581	20.8047	20.1736
450712	13.6240	15.9298	11.1086	13.3744
450713	20.8065	22.6986	23.6189	22.4743
450715	22.0413	22.5988	24.8068	23.2060
450716	20.5544	20.9074	20.8913	20.7944
450717	20.7192	20.6551	22.0243	21.1286
450718	19.6886	22.1765	23.0051	21.6764
450723	19.7563	20.8213	22.0633	20.9085
450724	20.3235	20.3706	23.3799	21.3424
450727	13.5458	17.9172	24.6125	17.9196
450728	17.5284	19.8879	14.9265	17.3299
450730	22.0819	23.0054	24.5952	23.2900
450733	20.7693	20.2199	21.9921	20.9887
450735	13.8767	*	*	13.8768
450742	22.7655	21.8392	22.8135	22.4714
450743	18.8937	19.6015	20.5017	19.6892
450746	12.7904	30.2657	14.6683	17.1933
450747	19.2585	20.3914	20.3870	20.0318
450749	16.2130	19.1678	18.7138	18.1992
450750	14.6914	13.8098	*	14.2686
450751	21.2198	19.9995	19.8170	20.4240
450754	16.0860	16.7145	17.8497	17.0113
450755	17.9904	19.8743	20.0667	19.3563

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
450757	13.8675	14.9434	15.6425	14.7901
450758	21.8669	19.0221	22.6196	21.1578
450760	17.4852	19.2225	20.4209	19.0477
450761	13.6152	15.7681	14.6511	14.6112
450763	18.2123	18.6092	18.9713	18.6032
450766	22.4348	23.3879	25.4057	23.7704
450769	14.5858	18.4163	17.9879	16.6578
450770	16.5458	19.0183	20.0632	18.5467
450771	22.4542	21.8268	21.6946	21.9479
450774	17.9964	16.2948	*	17.1404
450775	19.8897	21.3504	22.6526	21.2920
450776	15.7750	14.1720	13.4263	14.1832
450777	21.0682	19.0380	18.3119	19.5171
450779	21.4546	21.6642	22.6216	21.9593
450780	19.1498	19.0914	20.0824	19.4503
450785	18.4976	*	*	18.4975
450788	19.1463	19.6469	19.9817	19.6564
450794	18.2229	*	*	18.2229
450795	16.6494	22.5753	27.0250	21.6046
450796	16.5362	19.2059	26.8539	22.7324
450797	15.9188	16.4923	20.2356	17.4420
450798	9.4634	*	*	9.4634
450801	17.5669	17.9548	18.0598	17.8661
450802	19.9168	17.1435	18.2460	18.3472
450803	18.3767	21.6653	37.0925	26.9538
450804	19.4846	19.0893	20.5225	19.7061
450806	*	*	20.7906	20.7906
450807	11.3192	13.4306	18.4410	13.7054
450808	16.9915	17.4917	18.1728	17.5602
450809	20.0202	19.7899	21.9845	20.5837
450811	19.0961	19.9168	21.6115	20.3503
450813	15.9166	14.5392	15.3780	15.2272
450815	*	21.2741	*	21.2742
450819	*	16.5521	*	16.5521
450820	*	26.8348	24.6542	25.7074
450822	*	22.8556	24.8702	23.9136
450823	*	*	17.9756	17.9757
450824	*	*	25.7488	25.7488
450825	*	*	16.0793	16.0793
450827	*	*	20.1310	20.1309
450828	*	*	19.2902	19.2902
450829	*	*	14.7121	14.7122
460001	21.7996	22.2735	23.5485	22.5533
460003	20.0452	22.6289	22.9549	21.8157
460004	21.3744	21.7234	23.1289	22.0969
460005	19.7069	22.5252	23.0189	21.6769
460006	20.6252	21.0700	22.1648	21.3374
460007	20.8026	21.1922	22.0409	21.4007
460008	18.8661	19.1153	22.6808	20.2069
460009	21.9016	22.5295	23.1933	22.5366
460010	21.9830	22.4948	24.0907	22.8868
460011	18.8660	19.7674	25.3818	20.9922
460013	20.7326	20.1936	21.2360	20.7330
460014	18.3865	18.5370	*	18.4531
460015	20.6593	21.0470	22.4872	21.4209
460016	18.2408	21.9105	19.0910	19.6368
460017	17.7103	18.9929	19.0724	18.5937
460018	17.6235	17.0063	17.0385	17.1969
460019	16.2671	17.8690	19.3442	17.7589
460020	17.3467	17.2663	18.1542	17.5580
460021	21.0470	21.5174	23.1368	21.9697
460022	20.1534	21.3614	20.7539	20.7266
460023	22.3535	22.9265	24.1825	23.1937
460025	19.4247	17.3494	17.4070	17.9267
460026	19.9241	20.2576	21.1759	20.4671
460027	21.8868	22.2955	21.4833	21.8607

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
460029	20.5154	20.8366	23.7148	21.6548
460030	17.6071	17.1383	18.7655	17.8282
460032	21.1006	21.4832	21.0286	21.1954
460033	19.5372	19.2664	20.2389	19.6949
460035	16.0021	16.1685	15.6979	15.9450
460036	23.5893	23.4573	24.2651	23.7927
460037	18.6850	17.7399	19.0115	18.4898
460039	24.9134	24.4808	24.5134	24.6186
460041	21.0623	20.2035	21.6676	20.9770
460042	18.8814	19.5662	19.7531	19.4200
460043	24.4779	23.2819	25.1366	24.2896
460044	21.4696	21.8485	23.6604	22.3504
460046	18.2224	*	*	18.2224
460047	23.0433	22.7524	23.5447	23.1136
460049	19.6483	20.8283	21.5241	20.8906
460051	19.4761	22.1758	21.8950	21.1889
460052	*	19.8961	20.1989	20.0325
470001	20.2299	21.3817	21.7774	21.1523
470003	23.6949	22.0563	23.3612	23.0272
470004	16.8842	18.1879	17.3576	17.4706
470005	21.9191	23.1808	22.6589	22.5826
470006	17.8699	20.2829	21.0835	19.7003
470008	19.6069	20.1969	20.3833	20.0728
470010	20.2961	21.0616	22.3913	21.2927
470011	21.7675	22.2415	24.1306	22.7075
470012	18.5339	18.9444	19.8831	19.1162
470015	19.5366	20.2125	21.8204	20.4728
470018	21.5426	21.2406	24.8493	22.4355
470020	20.6643	21.5688	21.9911	21.4308
470023	20.4511	21.7139	22.5334	21.5811
470024	20.8510	21.9807	23.2738	22.0567
490001	21.9755	20.0570	21.4952	21.1603
490002	15.2287	15.7365	16.5198	15.8281
490003	19.1040.	20.3237	20.7688	20.0621
490004	19.2126	19.7074	20.7616	19.8936
490005	20.5517	21.3318	23.1708	21.7445
490006	15.9537	12.3253	19.8977	16.1242
490007	18.7740	19.8938	20.7896	19.8261
490009	23.9344	23.7659	24.7602	24.1271
490010	21.7424	*	*	21.7424
490011	18.6071	19.8042	19.8179	19.3919
490012	15.9973	15.2965	16.0994	15.7867
490013	17.3318	18.2396	18.3901	17.9911
490014	25.8315	23.5266	27.8907	25.6619
490015	19.6363	20.0667	21.4500	20.3969
490017	18.4361	19.3854	19.6594	19.1681
490018	18.3435	18.5508	19.8955	18.9343
490019	19.6178	21.0124	21.6790	20.8153
490020	18.5691	19.3424	20.9212	19.6001
490021	19.3945	20.0496	21.2263	20.2509
490022	21.2183	22.3380	24.3008	22.6504
490023	20.6694	21.5683	22.8400	21.7338
490024	17.7221	18.4314	19.7491	18.7525
490027	16.2761	16.7556	17.5178	16.8693
490030	9.1789	8.6446	*	8.9749
490031	14.9539	16.0003	17.4262	16.1268
490032	22.4262	21.4037	22.2041	22.0055
490033	21.1723	19.2908	23.2088	21.1528
490037	16.3759	17.0113	17.2117	16.8638
490038	21.0218	17.6324	18.6012	18.9881
490040	22.7061	24.1266	25.5461	24.1416
490041	18.3589	18.7987	17.9942	18.3695
490042	16.4666	17.0972	18.1864	17.2848
490043	22.1574	22.1068	23.5367	22.5696
490044	18.3137	19.7842	18.4845	18.8757
490045	20.5468	20.5558	22.5238	21.2366

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
490046	18.4825	19.9102	19.8518	19.4329
490047	25.0438	18.7614	20.1660	20.7033
490048	18.4361	19.5417	20.9110	19.5970
490050	23.0729	23.3668	23.8519	23.4357
490052	16.8600	16.4787	18.5693	17.2849
490053	15.6996	16.8410	17.7363	16.7991
490054	15.4734	19.5780	22.5136	19.1813
490057	19.9210	20.3160	21.1871	20.4871
490059	20.8662	21.4801	24.1516	22.0719
490060	17.6308	18.5917	19.3525	18.5249
490063	28.6536	26.1930	28.0906	27.6046
490066	20.6972	19.8352	21.5920	20.7067
490067	17.0195	17.8487	18.6469	17.8519
490069	17.3297	20.7582	18.8335	18.9275
490071	21.8879	23.3511	24.1882	23.1205
490073	20.7960	26.0957	*	23.1759
490075	18.6983	19.2156	20.5801	19.4875
490077	21.3670	22.6504	21.9175	21.9708
490079	17.0815	17.7016	17.5839	17.4571
490084	16.7834	18.0555	18.9679	17.9259
490085	17.4584	17.6158	19.4261	18.1708
490088	16.4362	17.9141	19.1924	17.7544
490089	17.7692	18.2290	19.7936	18.6306
490090	17.0199	17.5799	19.2094	17.9357
490091	20.8734	25.0272	23.7493	22.9790
490092	16.9533	16.4360	27.1805	18.9439
490093	17.3711	17.8275	19.1131	18.1170
490094	18.9204	22.3033	20.2020	20.4445
490097	15.5780	16.9518	16.6563	16.3410
490098	15.1403	16.0488	18.5133	16.5089
490099	17.9665	18.3985	19.2604	18.5294
490100	22.5010	*	*	22.5010
490101	24.7616	23.5553	25.7804	24.7017
490104	25.6889	40.2529	17.1683	24.3080
490105	18.5765	21.4428	28.7831	21.5414
490106	17.6596	26.3821	31.8566	22.3213
490107	23.5240	22.9283	23.9962	23.5071
490108	20.2112	24.1232	24.8596	22.6562
490109	23.6620	25.9475	23.0609	24.1978
490110	16.5131	18.1561	18.8042	17.8380
490111	17.1768	17.8510	19.9552	18.3170
490112	21.4532	22.1162	23.2843	22.3013
490113	23.2235	23.9043	26.1840	24.4577
490114	17.3047	18.0359	18.8920	18.0825
490115	16.5203	16.8537	18.4499	17.2731
490116	16.6170	17.2040	18.2935	17.3997
490117	14.0104	14.7944	17.1723	15.3528
490118	21.4674	23.2022	24.2668	22.9444
490119	17.9147	18.6046	18.9535	18.4822
490120	19.3707	20.5777	20.6828	20.2247
490122	23.8801	23.8198	26.6681	24.7636
490123	17.7461	19.3056	20.0920	19.0902
490124	22.0884	21.3818	23.6526	22.4301
490126	18.6844	20.4294	19.0782	19.3248
490127	16.0516	16.5993	17.6437	16.7293
490129	22.5885	28.6868	*	23.5799
490130	16.4322	17.6943	18.6406	17.5834
490132	18.6570	18.4671	19.1742	18.7508
500001	22.1896	24.4829	25.3478	23.9717
500002	21.6332	19.8476	22.9942	21.4749
500003	24.2814	24.4333	25.1200	24.6216
500005	22.3955	24.3870	26.2066	24.2052
500007	26.0599	21.9911	24.7889	24.1708
500008	25.3064	26.1737	27.2852	26.2556
500011	24.0162	24.6554	25.7263	24.7924
500012	20.7032	24.2799	24.5450	23.0771

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
500014	24.3419	24.0990	25.0490	24.4936
500015	23.9297	24.9923	25.9465	24.9911
500016	24.3938	24.9439	25.1227	24.8306
500019	22.4213	23.2054	23.5730	23.0604
500021	25.9198	27.6490	25.9403	26.4613
500023	26.6535	27.1025	32.3079	28.0325
500024	23.7472	26.6452	26.2113	25.5094
500025	26.4810	24.4825	27.3697	26.1011
500026	23.8005	26.9884	26.6108	25.7916
500027	22.2158	25.1125	27.7429	25.0474
500028	19.2675	18.9556	19.0261	19.0887
500029	17.9237	18.5042	19.3130	18.5707
500030	24.9039	26.3828	28.5297	26.6182
500031	29.2707	23.6099	25.8542	26.0586
500033	22.3527	22.5462	23.8994	22.9522
500036	22.1096	23.6333	25.1255	23.5838
500037	20.7139	21.4059	22.1774	21.4194
500039	23.8918	24.0007	25.4225	24.4379
500041	23.9608	25.4376	24.7070	24.7067
500042	22.9125	*	*	22.9125
500043	20.9459	22.0466	24.1745	22.4162
500044	23.3364	24.2212	24.7816	24.1154
500045	20.8881	24.0526	24.6265	23.0766
500048	22.1906	20.3207	20.6333	21.0462
500049	24.0489	24.5997	26.5857	25.0314
500050	22.0065	22.6563	23.0804	22.6053
500051	24.8203	25.9447	26.7628	25.8820
500053	23.9397	22.8399	24.2492	23.6675
500054	22.8829	23.8089	25.7815	24.1708
500055	23.7446	23.8622	23.7988	23.8022
500057	18.2737	19.0479	20.5812	19.3310
500058	24.7882	24.1106	26.5679	25.1920
500059	23.3506	26.6270	25.3528	25.0566
500060	25.0233	28.3655	29.6030	27.5162
500061	21.7013	20.8624	24.5908	22.4271
500062	18.6329	19.0557	19.1685	18.9583
500064	25.5748	26.7000	27.5791	26.6387
500065	21.9308	23.5671	24.0966	23.2140
500068	19.6574	19.2638	20.9278	19.9560
500069	21.3592	21.4542	22.4158	21.7566
500071	19.1906	19.1428	22.3253	20.1059
500072	25.3928	25.2001	25.7734	25.4637
500073	21.2469	21.7698	22.5222	21.8777
500074	18.9679	19.5981	20.6120	19.7482
500077	22.8536	23.9410	24.5695	23.7818
500079	24.2036	23.1041	24.7946	24.0303
500080	15.6630	18.3883	18.8188	17.4053
500084	23.4032	24.4044	25.0556	24.3257
500085	21.4403	20.4517	20.7422	20.8523
500086	23.3288	22.8829	24.2556	23.4907
500088	23.2701	25.2478	26.4212	24.8779
500089	18.7080	19.7166	20.3478	19.5281
500090	16.1576	20.4429	21.7716	18.7859
500092	16.7913	19.2028	20.3058	18.6898
500094	18.5835	15.7866	17.6625	17.4874
500096	21.0151	23.3564	25.1135	23.2107
500097	19.7706	20.8774	21.4423	20.6699
500098	16.3511	15.2040	17.8453	16.4653
500101	19.7337	15.8000	19.8614	18.4197
500102	20.9389	21.8963	23.1307	22.0050
500104	22.8154	24.9389	24.7875	24.1421
500106	18.6041	19.1465	17.1066	18.3020
500107	18.1201	17.9489	17.4641	17.8401
500108	26.2939	28.6229	26.1609	27.0259
500110	21.4553	22.9775	23.5941	22.6736
500118	23.8397	24.8034	24.7875	24.4924

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
500119	22.4373	22.1192	23.9939	22.8469
500122	22.4268	23.5264	24.4462	23.5112
500123	20.3181	19.6646	21.7133	20.7526
500124	23.2836	23.7742	24.6591	23.9700
500125	15.1112	14.7910	15.6304	15.1911
500129	26.1575	25.4685	25.2082	25.5438
500132	15.6717	23.1822	21.9915	20.2081
500134	17.7457	17.2430	15.9791	16.9729
500139	22.2297	22.3053	23.7993	22.7606
500141	23.8838	29.9695	28.1014	27.3199
500143	18.0343	18.2570	18.7523	18.3736
500146	21.6003	*	*	21.6002
510001	19.1492	20.0429	20.2514	19.8050
510002	20.1527	17.6392	19.1517	18.9313
510005	14.2503	13.8621	13.8641	13.9934
510006	18.7313	19.9609	19.9760	19.5653
510007	21.2729	21.6761	22.9326	21.9765
510008	18.3296	19.0513	19.9176	19.1112
510012	15.8390	15.6089	15.8596	15.7743
510013	17.8527	19.5798	18.3486	18.5734
510015	14.9039	16.7311	17.1595	16.3249
510018	18.5269	18.5358	18.3023	18.4548
510020	13.1837	14.1211	15.7512	14.3266
510022	20.1763	21.5770	21.4336	21.0418
510023	16.0129	16.7777	17.6516	16.8122
510024	19.0941	18.7461	19.6521	19.1601
510026	13.6888	13.7952	14.8785	14.0865
510027	17.2900	18.5945	20.5222	18.7968
510028	20.0628	19.9208	22.4826	20.8230
510029	17.7124	18.4668	18.9000	18.3777
510030	17.4198	17.7603	19.2558	18.1712
510031	28.6673	18.6341	19.3049	21.2106
510033	18.4082	18.4718	19.6900	18.8637
510035	16.5007	18.3164	21.8290	18.6848
510036	13.4559	13.8786	15.0266	14.0903
510038	15.8132	15.5576	15.9821	15.7873
510039	16.9398	17.1461	17.4002	17.1582
510043	14.0662	13.1308	14.4202	13.8751
510046	17.3821	18.5896	18.7424	18.2568
510047	19.8963	20.8101	21.2885	20.6282
510048	21.0407	17.1647	15.2886	17.8240
510050	16.9136	18.4036	18.3964	17.9380
510053	16.1036	17.5798	18.1046	17.2603
510055	23.7248	24.2133	25.6333	24.5104
510058	18.4156	18.4501	18.6025	18.4938
510059	16.5854	16.1044	17.3844	16.6208
510060	17.5594	*	*	17.5594
510061	13.8204	14.1968	14.6774	14.2360
510062	19.3881	18.1588	19.7202	19.0675
510066	12.2943	*	*	12.2943
510067	16.7161	17.3067	17.8816	17.3091
510068	18.7938	23.0452	19.4299	20.2577
510070	18.5146	18.7091	18.6226	18.6195
510071	17.2148	18.0278	18.8766	18.0317
510072	15.6262	15.9257	16.5279	16.0216
510077	18.0668	18.2947	20.4521	18.9028
510080	17.4485	16.3453	19.7131	17.6898
510081	13.6359	11.9701	10.4972	11.9879
510082	17.4538	13.5946	16.0014	15.5120
510084	17.2395	13.5339	14.9683	15.2567
510085	17.5624	18.6227	19.0175	18.4360
510086	13.4763	14.2241	16.3413	14.6710
510088	*	14.8854	16.2850	15.6272
520002	19.7447	19.6755	20.2691	19.9110
520003	17.1248	18.7956	18.7507	18.2896
520004	19.6512	20.4591	21.1549	20.3927

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
520006	21.5313	21.4884	22.4099	21.7879
520007	16.2001	18.4629	18.3959	17.6275
520008	22.8024	24.9395	24.4927	24.0917
520009	18.6002	21.4638	19.8142	19.9388
520010	22.7703	22.3311	25.5623	23.5734
520011	20.7410	21.5223	21.6945	21.3155
520013	20.3965	20.5944	22.1009	21.0588
520014	17.1646	18.0841	19.2760	18.1480
520015	18.6078	19.7672	21.0428	19.8323
520016	17.3018	18.4320	19.5656	18.4077
520017	19.6008	19.4780	21.1409	20.0934
520018	21.1941	21.5279	22.1929	21.6736
520019	19.5440	20.9164	21.8870	20.7980
520021	21.3471	21.9531	22.8484	22.1016
520024	14.0175	14.4750	16.4879	15.0572
520025	18.2430	20.3838	21.9529	20.1629
520026	21.5453	20.8546	22.4779	21.6324
520027	19.9324	21.5868	22.1450	21.2250
520028	21.2852	22.5941	22.0333	21.9368
520029	19.5750	21.4197	21.5561	20.8404
520030	20.5039	21.6311	22.7239	21.6241
520031	20.4814	20.9875	21.2809	20.8937
520032	19.5697	21.1069	24.1092	21.5816
520033	19.2954	20.2520	21.0088	20.1750
520034	17.1282	20.4307	21.5275	19.7188
520035	18.9452	18.7135	19.8917	19.2020
520037	20.6686	21.6017	23.0801	21.8015
520038	19.6294	20.6130	21.4208	20.5296
520039	20.7641	23.3687	21.1719	21.6634
520040	20.4677	21.2023	23.0710	21.5679
520041	17.1959	18.4117	18.2997	17.9850
520042	18.5843	19.5466	20.6354	19.6057
520044	18.4014	19.1877	21.4913	19.6621
520045	20.5917	21.2427	21.9812	21.2870
520047	18.3048	20.3487	21.0370	19.8304
520048	20.6583	19.8926	20.3488	20.2938
520049	20.3559	20.1667	21.8271	20.7868
520051	21.6497	24.0460	23.4366	23.0036
520053	17.3945	18.0851	18.9512	18.1443
520054	15.1747	16.8363	16.6278	16.1750
520057	19.0872	19.8492	20.6959	19.9036
520058	19.7283	21.2500	23.6794	21.5351
520059	20.9913	21.5796	22.1618	21.5868
520060	17.9258	18.8232	20.3357	19.0291
520062	19.1482	19.7038	21.2865	20.0649
520063	19.6136	20.5262	21.2774	20.4843
520064	22.7423	22.0917	23.8181	22.8706
520066	22.8837	24.0087	25.4528	24.0196
520068	18.9943	19.6855	20.6112	19.7565
520069	20.2934	20.1770	21.7233	20.5221
520070	18.5938	19.4261	20.0096	19.3562
520071	18.7304	19.9866	22.0066	20.1801
520074	20.4601	20.9007	21.6636	20.9770
520075	19.8457	20.7301	22.1894	20.9388
520076	17.6088	19.5878	20.6155	19.2421
520077	17.7830	18.7119	18.1077	18.2004
520078	21.3380	21.7545	21.7414	21.6174
520082	17.7405	*	*	17.7405
520083	23.8849	23.5787	24.2401	23.9015
520084	20.8427	23.5446	21.8102	22.0208
520087	20.3624	20.7821	22.2579	21.1364
520088	20.6312	21.8931	22.3921	21.5920
520089	21.5456	22.1055	23.2335	22.2891
520090	18.9343	20.3645	20.9069	20.0854
520091	20.9927	20.9440	22.2218	21.3884
520092	17.6500	18.6248	19.7181	18.6927

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
520094	20.3611	20.6179	21.3082	20.7652
520095	20.3269	18.6425	21.9177	20.2122
520096	19.7757	20.6668	21.6803	20.7358
520097	20.2354	20.8016	22.2375	21.1096
520098	22.3348	23.4707	25.0055	23.6219
520100	18.3832	19.4788	20.5366	19.4712
520101	19.5186	19.9875	20.0164	19.8451
520102	20.1898	21.0138	22.3640	21.1849
520103	19.4809	20.1092	22.2765	20.6137
520107	20.3747	21.7907	23.8421	21.9354
520109	19.1303	19.7609	20.3208	19.7432
520110	20.4494	21.0055	22.3923	21.3276
520111	17.7834	17.7673	18.2744	17.9282
520112	19.1797	18.9577	17.6226	18.3876
520113	21.1485	21.8852	23.1852	22.0983
520114	16.6616	17.8476	18.5767	17.6415
520115	18.2980	19.2248	21.4279	19.6231
520116	19.8509	20.6922	22.2741	20.9026
520117	18.5414	18.3963	19.3653	18.7838
520118	14.2326	14.8626	13.9920	14.3519
520120	18.7437	*	*	18.7436
520121	19.7305	20.8492	20.9422	20.5799
520122	16.2436	16.9335	16.9905	16.7143
520123	17.3980	17.7986	19.8134	18.4575
520124	17.2619	17.9205	19.2621	18.1369
520130	15.6845	16.6873	18.8845	17.0161
520131	18.7295	20.2591	21.0400	20.0321
520132	15.6379	18.1630	18.2634	17.2681
520134	18.0953	18.8150	19.6881	18.8725
520135	15.8246	17.3476	18.1026	17.0799
520136	19.8480	20.9050	21.3966	20.7380
520138	21.2260	22.5599	23.1498	22.3142
520139	20.9988	21.4042	22.8070	21.7325
520140	21.5207	22.3671	22.5459	22.1346
520142	20.5858	21.9432	21.4120	21.2420
520144	18.5701	19.9120	20.5864	19.6719
520145	18.2654	18.7958	20.3461	19.0923
520146	17.9585	18.2370	18.6337	18.2882
520148	17.2421	19.1502	20.5075	19.0048
520149	14.1901	12.8928	13.8614	13.6192
520151	17.3267	18.7070	19.3362	18.4627
520152	19.5858	22.5980	26.2402	22.5080
520153	15.9753	17.0863	18.5986	17.1925
520154	18.5403	19.5994	21.0486	19.7479
520156	21.3377	20.9638	20.7808	21.0122
520157	17.1974	19.6008	21.6821	19.4299
520159	18.6760	17.7649	21.8783	19.4305
520160	19.4173	20.5154	21.5871	20.5304
520161	19.4905	20.1102	21.4038	20.3456
520170	21.5233	21.9857	23.0867	22.2181
520171	17.4560	18.0785	18.1844	17.8993
520173	21.3016	20.9209	23.2955	21.8315
520177	22.7221	24.0139	25.0908	23.8719
520178	18.6936	20.9010	23.1509	20.7167
520188	13.9135	*	*	13.9135
520189	*	*	22.0889	22.0889
530002	19.3273	21.0560	23.0582	21.0877
530003	16.2139	15.9523	17.1646	16.4518
530004	15.0497	13.3788	17.4672	15.2335
530005	13.3529	15.3255	18.4391	15.7635
530006	18.5894	19.1305	20.7661	19.4956
530007	18.5161	17.7897	18.5286	18.3005
530008	18.8349	19.0113	19.5386	19.1231
530009	22.5009	21.7795	23.5839	22.6178
530010	21.6092	13.9536	17.8687	17.3468
530011	18.7354	19.4606	19.9212	19.3808

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA), AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

[Explanation of footnotes: * Denotes wage data not available for the provider for that year. ** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.]

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly ** wage (3 yrs)
530012	18.9923	21.1854	22.5084	20.9252
530014	18.0869	18.4900	20.0422	18.9065
530015	22.4568	23.4040	24.6527	23.4897
530016	18.1562	19.3205	20.3647	19.2610
530017	16.3478	17.7736	20.9408	18.2556
530018	18.3783	19.5986	20.1226	19.3605
530019	18.5430	20.1097	18.1492	18.8643
530022	18.5002	19.6136	19.7902	19.3159
530023	20.1948	20.0677	21.6352	20.6416
530025	21.2598	22.0300	22.4816	21.9309
530026	17.0118	19.8969	20.9919	19.1178
530027	18.1664	25.5067	*	20.8124
530029	16.5092	19.3361	20.3046	18.6145
530031	18.3322	20.1734	23.2766	20.4477
530032	21.0361	20.0132	20.9856	20.6817

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS

[*Based on the sum of the salaries and hours computed for FYs 2001, 2002, and 2003]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Abilene, TX	18.0997	17.9346
Aguadilla, PR	10.6548	10.3692
Akron, OH	22.2995	21.8274
Albany, GA	24.6091	23.3345
Albany-Schenectady-Troy, NY	19.4753	19.0093
Albuquerque, NM	21.6385	21.0779
Alexandria, LA	18.2564	17.9570
Allentown-Bethlehem-Easton, PA	22.6149	22.2151
Altoona, PA	21.4284	20.7196
Amarillo, TX	20.9866	19.8100
Anchorage, AK	28.7078	28.2120
Ann Arbor, MI	25.7925	25.0051
Anniston, AL	18.6862	18.3987
Appleton-Oshkosh-Neenah, WI	20.9007	20.4194
Arecibo, PR	10.0744	10.0865
Asheville, NC	22.9425	21.4360
Athens, GA	23.7189	22.3278
Atlanta, GA	23.2091	22.5586
Atlantic-Cape May, NJ	25.5908	25.0328
Auburn-Opelika, AL	19.3393	18.4481
Augusta-Aiken, GA-SC	23.8429	21.9436
Austin-San Marcos, TX	22.3866	21.5758
Bakersfield, CA	22.9941	21.7697
Baltimore, MD	23.0654	21.7957
Bangor, ME	22.4487	21.5421

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for FYs 2001, 2002, and 2003]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Barnstable-Yarmouth, MA	30.6686	30.4086
Baton Rouge, LA	19.2668	18.9000
Beaumont-Port Arthur, TX	19.3363	19.0595
Bellingham, WA	28.5297	26.6182
Benton Harbor, MI	21.0032	19.8689
Bergen-Passaic, NJ	28.2237	26.6914
Billings, MT	20.9586	20.9004
Biloxi-Gulfport-Pascagoula, MS	20.3430	19.0627
Binghamton, NY	19.3760	19.0441
Birmingham, AL	21.4215	19.7657
Bismarck, ND	18.5193	17.6555
Bloomington,IN	20.6895	19.8190
Bloomington-Normal, IL	21.1609	20.3703
Boise City, ID	21.6276	20.5028
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	26.0991	25.2557
Boulder-Longmont, CO	22.5070	21.8737
Brazoria, TX	19.8267	19.0174
Bremerton, WA	25.4225	24.4379
Brownsville-Harlingen-San Benito, TX	20.6287	19.9271
Bryan-College Station, TX	20.4911	19.6440
Buffalo-Niagara Falls, NY	21.7541	21.2343
Burlington, VT	23.3505	22.9143

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for FYs 2001, 2002, and 2003]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Caguas, PR	10.1529	10.1915
Canton-Massillon, OH	20.7477	19.7875
Casper, WY	22.5084	20.9252
Cedar Rapids, IA	21.0377	19.8268
Champaign-Urbana, IL	24.7040	21.7883
Charleston-North Charleston, SC	21.4522	20.5545
Charleston, WV	20.6688	20.4836
Charlotte-Gastonia-Rock Hill, NC-SC	22.8817	21.3842
Charlottesville, VA	24.2460	23.7478
Chattanooga, TN-GA	20.8502	21.0493
Cheyenne, WY	20.0422	18.9065
Chicago, IL	25.6542	24.8517
Chico-Paradise, CA	22.6375	22.0699
Cincinnati, OH-KY-IN	21.7907	21.1359
Clarksville-Hopkinsville, TN-KY	19.5257	18.6578
Cleveland-Lorain-Elyria, OH	22.4627	21.4566
Colorado Springs, CO	23.0332	21.9728
Columbia, MO	19.7346	19.5385
Columbia, SC	21.6187	21.2189
Columbus, GA-AL	19.4516	18.9827
Columbus, OH	22.6508	21.6208
Corpus Christi, TX	20.2762	19.3824
Corvallis, OR	26.6038	25.7705
Cumberland, MD-WV	18.2292	18.3160
Dallas, TX	23.2252	22.3304
Danville, VA	20.5801	19.4875

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for FYs 2001, 2002, and 2003]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Davenport-Moline-Rock Island, IA-IL	20.5222	19.7346
Dayton-Springfield, OH	21.5613	20.8864
Daytona Beach, FL	21.0510	20.3725
Decatur, AL	20.8446	19.7238
Decatur, IL	18.7105	18.0859
Denver, CO	24.6248	23.2619
Des Moines, IA	20.4201	19.9495
Detroit, MI	24.2703	23.5057
Dothan, AL	18.9020	17.9750
Dover, DE	21.7344	22.1849
Dubuque, IA	20.4304	19.4823
Duluth-Superior, MN-WI	24.0835	22.9655
Dutchess County, NY	24.8186	23.5537
Eau Claire, WI	20.7949	19.9455
El Paso, TX	21.5232	20.8151
Elkhart-Goshen, IN	22.5833	21.3571
Elmira, NY	19.5496	18.9705
Enid, OK	19.4579	18.9430
Erie, PA	20.7316	19.9094
Eugene-Springfield, OR	25.4233	24.9294
Evansville, Henderson, IN-KY	18.9947	18.5939
Fargo-Moorhead, ND-MN	22.4962	20.6192
Fayetteville, NC	20.6496	19.8938
Fayetteville-Springdale-Rogers, AR	18.8149	18.2982
Flagstaff, AZ-UT	24.8141	23.9367
Flint, MI	25.8662	24.8502
Florence, AL	18.1004	17.3804
Florence, SC	20.3953	19.6524
Fort Collins-Loveland, CO	23.3824	22.9964
Fort Lauderdale, FL	23.9183	22.9781
Fort Myers-Cape Coral, FL	22.4867	21.1683
Fort Pierce-Port St. Lucie, FL	22.8186	22.1142
Fort Smith, AR-OK	18.3399	17.9436
Fort Walton Beach, FL	22.5165	21.1838
Fort Wayne, IN	21.9677	20.4543
Fort Worth-Arlington, TX	21.9417	21.2344
Fresno, CA	23.7314	22.6694
Gadsden, AL	19.7567	19.2100
Gainesville, FL	22.9298	21.9827
Galveston-Texas City, TX	21.9867	22.1243
Gary, IN	22.2630	21.3794
Glens Falls, NY	19.2366	18.6783
Goldsboro, NC	20.6547	19.5049
Grand Forks, ND-MN	20.6675	19.9946
Grand Junction, CO	21.9661	21.0658
Grand Rapids-Muskegon-Holland, MI	22.1261	22.2833
Great Falls, MT	20.7913	20.0975
Greeley, CO	21.4562	21.3343
Green Bay, WI	22.0738	20.9151
Greensboro-Winston-Salem-High Point, NC	21.5609	20.8887
Greenville, NC	21.1397	20.7708
Greenville-Spartanburg-Anderson, SC	21.1902	20.4530
Hagerstown, MD	21.5280	20.1745
Hamilton-Middletown, OH	21.8770	20.8017
Harrisburg-Lebanon-Carlisle, PA	21.4246	21.2205
Hartford, CT	26.8283	25.7523
Hattiesburg, MS	17.7923	16.9367
Hickory-Morganton-Lenoir, NC	20.9718	20.4830
Honolulu, HI	26.6135	26.0576
Houma, LA	19.4770	18.2833
Houston, TX	22.9793	21.8906
Huntington-Ashland, WV-KY-OH	22.3832	21.7861
Huntsville, AL	20.6802	19.9807
Indianapolis, IN	22.5719	21.8463
Iowa City, IA	22.2708	21.7514
Jackson, MI	22.1433	20.9286
Jackson, MS	19.9947	19.3644
Jackson, TN	21.5461	20.3227
Jacksonville, FL	21.7926	20.8047
Jacksonville, NC	19.1386	17.6977
Jamestown, NY	18.5274	17.7979
Janesville-Beloit, WI	22.8793	21.7876
Jersey City, NJ	25.9930	25.3096
Johnson City-Kingsport-Bristol, TN-VA	19.2068	18.8084
Johnstown, PA	19.3478	19.3566
Jonesboro, AR	18.0006	17.9165
Joplin, MO	20.0072	19.0679
Kalamazoo-Battlecreek, MI	24.6108	23.6975
Kankakee, IL	18.8681	20.7325
Kansas City, KS-MO	22.6159	21.5239
Kenosha, WI	22.4996	21.6484
Killeen-Temple, TX	22.2296	21.1752
Knoxville, TN	20.8376	19.6060
Kokomo, IN	20.8390	20.6388
La Crosse, WI-MN	21.8354	20.8331
Lafayette, LA	19.6879	19.0782
Lafayette, IN	21.5534	20.3600
Lake Charles, LA	18.5034	17.2671
Lakeland-Winter Haven, FL	21.7369	20.7023
Lancaster, PA	21.0878	20.6617
Lansing-East Lansing, MI	22.5939	21.9285
Laredo, TX	19.6806	18.3545
Las Cruces, NM	20.3141	19.4697
Las Vegas, NV-AZ	26.7621	25.1310
[1] Lawrence, KS	.....	17.8290
Lawton, OK	19.3161	19.4211
Lewiston-Auburn, ME	21.3222	20.5843
Lexington, KY	19.9333	19.6141
Lima, OH	22.0292	21.1697
Lincoln, NE	22.9794	22.2323
Little Rock-North Little Rock, AR	21.1311	20.1533
Longview-Marshall, TX	20.0437	19.5274
Los Angeles-Long Beach, CA	27.8780	26.8744
Louisville, KY-IN	21.5487	21.0505
Lubbock, TX	22.4063	20.0797
Lynchburg, VA	21.4142	20.3464
Macon, GA	21.3800	20.3043
Madison, WI	24.3133	23.2497
Mansfield, OH	20.6732	19.6809
Mayaguez, PR	11.4145	10.7192
McAllen-Edinburg-Mission, TX	19.5785	18.9844
Medford-Ashland, OR	24.3865	23.3354
Melbourne-Titusville-Palm Bay, FL	23.8179	22.3779
Memphis, TN-AR-MS	20.7202	19.9037
Merced, CA	22.8511	21.9541
Miami, FL	22.7695	22.2828
Middlesex-Somerset-Hunterdon, NJ	26.0484	25.2231
Milwaukee-Waukesha, WI	22.9802	22.1540
Minneapolis-St. Paul, MN-WI	25.3271	24.5840
Missoula, MT	21.2713	20.8023
Mobile, AL	18.8354	18.2108
Modesto, CA	24.3874	23.6713
Monmouth-Ocean, NJ	24.7950	24.5325
Monroe, LA	18.9030	18.4972
Montgomery, AL	17.9647	17.0004
Muncie, IN	21.5664	22.4947
Myrtle Beach, SC	20.8503	19.6435
Naples, FL	22.6587	21.7978
Nashville, TN	22.2485	21.5537
Nassau-Suffolk, NY	31.0283	30.5926
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	28.8227	27.6131
New London-Norwich, CT	27.3351	26.4541
New Orleans, LA	21.0139	20.4714
New York, NY	33.4837	32.5033
Newark, NJ	26.4381	26.0353
Newburgh, NY-PA	26.4506	24.9836
Norfolk-Virginia Beach-Newport News, VA-NC	19.9175	19.1247
Oakland, CA	35.0108	33.9487
Ocala, FL	21.8400	21.1289
Odessa-Midland, TX	21.8283	21.4760
Oklahoma City, OK	20.6736	19.7312
Olympia, WA	25.4588	24.6677
Omaha, NE-IA	23.1783	21.8976
Orange County, CA	26.6537	25.4571
Orlando, FL	22.3924	21.6364
Owensboro, KY	19.3837	18.5916
Panama City, FL	20.5934	20.1588
Parkersburg-Marietta, WV-OH	18.8778	18.3560
Pensacola, FL	20.0814	18.8080
Peoria-Pekin, IL	20.2998	19.5517
Philadelphia, PA-NJ	24.8854	24.3569
Phoenix-Mesa, AZ	22.8121	21.8188

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for FYs 2001, 2002, and 2003]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Pine Bluff, AR	18.4956	17.6590
Pittsburgh, PA	21.7554	21.4243
Pittsfield, MA	23.7753	23.0116
Pocatello, ID	21.7708	20.8557
Ponce, PR	12.0073	11.5031
Portland, ME	22.7505	21.6716
Portland-Vancouver, OR-WA	24.7790	24.4439
Providence-Warwick, RI	25.2127	24.3041
Provo-Orem, UT	23.1919	22.3508
Pueblo, CO	20.4888	19.6349
Punta Gorda, FL	21.4140	20.8215
Racine, WI	21.6818	20.8941
Raleigh-Durham-Chapel Hill, NC	23.2057	22.0194
Rapid City, SD	20.5485	19.8947
Reading, PA	21.5927	20.9553
Redding, CA	25.8663	25.3801
Reno, NV	24.7352	23.6658
Richland-Kennewick-Pasco, WA	26.6936	25.3323
Richmond-Petersburg, VA	22.0137	21.5043
Riverside-San Bernardino, CA	26.4013	25.2038
Roanoke, VA	20.0106	19.2432
Rochester, MN	28.1983	26.1811
Rochester, NY	21.3577	20.7104
Rockford, IL	22.3577	20.7042
Rocky Mount, NC	21.4359	20.3593
Sacramento, CA	26.7146	26.3841
Saginaw-Bay City-Midland, MI	22.4172	21.5444
St. Cloud, MN	22.5321	22.1278
[1] St. Joseph, MO	.....	19.7467
St. Louis, MO-IL	20.5705	20.0669
Salem, OR	24.0818	22.8500
Salinas, CA	33.9674	32.7871
Salt Lake City-Ogden, UT	23.1018	22.1636
San Angelo, TX	19.4526	18.4524
San Antonio, TX	20.3327	19.4056
San Diego, CA	25.8562	25.5485
San Francisco, CA	32.8516	31.7473
San Jose, CA	32.8581	31.3747
San Juan-Bayamon, PR	11.0133	10.6132
San Luis Obispo-Atascadero-Paso Robles, CA	26.1821	24.6268
Santa Barbara-Santa Maria-Lompoc, CA	24.3466	23.8325
Santa Cruz-Watsonville, CA	31.6979	31.1452
Santa Fe, NM	24.8842	23.5075
Santa Rosa, CA	30.3046	28.9555
Sarasota-Bradenton, FL	21.8931	21.9128
Savannah, GA	21.7802	21.7267
Scranton-Wilkes Barre-Hazleton, PA	19.9745	19.2042
Seattle-Bellevue-Everett, WA	26.6536	25.3076
Sharon, PA	18.2797	17.7479

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for FYs 2001, 2002, and 2003]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Sheboygan, WI	20.2034	19.0865
Sherman-Denison, TX	21.4996	20.4082
Shreveport-Bossier City, LA	20.8773	20.0586
Sioux City, IA-NE	21.0135	19.6404
Sioux Falls, SD	21.5029	20.3200
South Bend, IN	22.7694	22.2819
Spokane, WA	25.2082	23.9695
Springfield, IL	20.1137	19.4530
Springfield, MO	19.5680	19.0448
Springfield, MA	25.3838	24.2450
State College, PA	20.7690	20.2726
Steubenville-Weirton, OH-WV	20.4503	19.4333
Stockton-Lodi, CA	24.4040	23.8853
Sumter, SC	19.2186	18.1995
Syracuse, NY	22.5655	21.5986
Tacoma, WA	25.4131	25.5054
Tallahassee, FL	19.7552	19.1410
Tampa-St. Petersburg-Clearwater, FL	21.0569	20.1666
Terre Haute, IN	19.9743	19.0303
Texarkana, AR-Texarkana, TX	18.7873	18.5257
Toledo, OH	22.7892	22.0065
Topeka, KS	21.3678	20.3537
Trenton, NJ	24.2326	23.1923
Tucson, AZ	20.6996	19.9488
Tulsa, OK	19.3548	19.2001
Tuscaloosa, AL	18.8861	18.2479
Tyler, TX	22.1176	21.3312
Utica-Rome, NY	19.6631	18.9748
Vallejo-Fairfield-Napa, CA	31.0202	29.7206
Ventura, CA	25.7748	24.7503
Victoria, TX	20.3401	18.8925
Vineland-Millville-Bridgeton, NJ	23.3023	23.1595
Visalia-Tulare-Porterville, CA	21.9029	21.3706
Waco, TX	18.7525	18.3223
Washington, DC-MD-VA-WV	25.2063	24.3514
Waterloo-Cedar Falls, IA	18.7434	18.3360
Wausau, WI	22.7239	21.6241
West Palm Beach-Boca Raton, FL	23.0874	21.9924
Wheeling, OH-WV	17.8161	17.4926
Wichita, KS	22.1149	21.4272
Wichita Falls, TX	19.7397	18.0189
Williamsport, PA	19.8470	19.0895
Wilmington-Newark, DE-MD	25.9552	24.8359
Wilmington, NC	22.3936	21.3149
Yakima, WA	24.5502	23.1867
Yolo, CA	21.9147	21.8929
York, PA	20.9666	20.7327
Youngstown-Warren, OH	21.7376	21.2695
Yuba City, CA	23.8705	23.4396

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for FYs 2001, 2002, and 2003]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Yuma, AZ	19.9517	20.2223

[1] The MSA is empty for FY 2003. The hospital(s) in the MSA received rural status under Section 401 of the Balanced Budget Refinement Act of 1999 (P.L. 106-113). The MSA is assigned the statewide rural wage index (see Table 4B).

TABLE 3B.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR RURAL AREAS

[*Based on the sum of the salaries and hours computed for FYs 2001, 2002, and 2003]

Nonurban area	FY 2003 average hourly wage	3-Year average hourly wage
Alabama	17.7942	16.8216
Alaska	28.5563	27.3243
Arizona	19.7296	19.0885
Arkansas	17.8073	16.9136
California	22.8571	21.9706
Colorado	20.9408	20.0323
Connecticut	28.7895	27.0512
Delaware	21.2047	20.8163
Florida	20.4742	19.8491
Georgia	19.1171	18.5968
Hawaii	23.8213	24.2205
Idaho	20.3186	19.5606
Illinois	19.0570	18.2606
Indiana	20.3365	19.5067
Iowa	19.3165	18.3182
Kansas	18.4037	17.4835
Kentucky	18.7680	17.9289
Louisiana	17.5769	17.0854
Maine	20.6147	19.7179
Maryland	20.7803	19.8080
Massachusetts	26.2222	25.3808
Michigan	20.9071	20.1900
Minnesota	21.2579	20.2475
Mississippi	17.8404	16.9773
Missouri	18.6314	17.6923
Montana	19.7008	19.3096
Nebraska	19.0579	18.2930
Nevada	22.2480	21.3212
New Hampshire	22.7567	22.0081
New Jersey [1]	.....	.....
New Mexico	20.6102	19.5025
New York	19.8433	19.1359
North Carolina	20.1296	19.1805
North Dakota	18.0907	17.4679
Ohio	20.0074	19.4121
Oklahoma	17.6313	16.9258
Oregon	23.9324	22.8031
Pennsylvania	19.6560	19.1733
Puerto Rico	10.1187	10.0248
Rhode Island [1]	.....	.....
South Carolina	19.9939	19.0908
South Dakota	18.1545	17.3648
Tennessee	18.2990	17.6792
Texas	18.1667	17.2395
Utah	21.6314	20.5109

TABLE 3B.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

[*Based on the sum of the salaries and hours computed for FYs 2001, 2002, and 2003]

Nonurban area	FY 2003 average hourly wage	3-Year average hourly wage
Vermont	21.7086	21.0072
Virginia	19.7552	18.6545
Washington	23.6461	23.0555
West Virginia	18.5259	18.1465
Wisconsin	21.2831	20.2857
Wyoming	20.9222	19.8670

[1] All counties within the State are classified as urban.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties)	Wage index	GAF
0040 [2] Abilene, TX Taylor, TX	0.7827	0.8455
0060 Aguadilla, PR Aguada, PR Aguadilla, PR Moca, PR	0.4587	0.5864
0080 Akron, OH Portage, OH Summit, OH	0.9600	0.9724
0120 Albany, GA Dougherty, GA Lee, GA	1.0594	1.0403
0160 [2] Albany-Schenectady-Troy, NY Albany, NY Montgomery, NY Rensselaer, NY Saratoga, NY Schenectady, NY Schoharie, NY	0.8542	0.8977
0200 Albuquerque, NM Bernalillo, NM Sandoval, NM Valencia, NM	0.9390	0.9578
0220 Alexandria, LA Rapides, LA	0.7883	0.8497
0240 Allentown-Bethlehem-Easton, PA Carbon, PA Lehigh, PA Northampton, PA	0.9735	0.9818
0280 Altoona, PA Blair, PA	0.9225	0.9463
0320 Amarillo, TX Potter, TX Randall, TX	0.9034	0.9328
0380 Anchorage, AK Anchorage, AK	1.2490	1.1645
0440 Ann Arbor, MI Lenawee, MI Livingston, MI Washtenaw, MI	1.1103	1.0743
0450 Anniston, AL Calhoun, AL	0.8044	0.8615
0460 [2] Appleton-Oshkosh-Neenah, WI	0.9162	0.9418

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Calumet, WI Outagamie, WI Winnebago, WI		
0470 [2] Arecibo, PR Arecibo, PR Camuy, PR Hatillo, PR	0.4356	0.5660
0480 Asheville, NC Buncombe, NC Madison, NC	0.9876	0.9915
0500 Athens, GA Clarke, GA Madison, GA Oconee, GA	1.0211	1.0144
0520 [1] Atlanta, GA Barrow, GA Bartow, GA Carroll, GA Cherokee, GA Clayton, GA Cobb, GA Coweta, GA DeKalb, GA Douglas, GA Fayette, GA Forsyth, GA Fulton, GA Gwinnett, GA Henry, GA Newton, GA Paulding, GA Pickens, GA Rockdale, GA Spalding, GA Walton, GA	0.9991	0.9994
0560 Atlantic-Cape May, NJ Atlantic, NJ Cape May, NJ	1.1017	1.0686
0580 Auburn-Opelika, AL Lee, AL	0.8325	0.8820
0600 Augusta-Aiken, GA-SC Columbia, GA McDuffie, GA Richmond, GA Aiken, SC Edgefield, SC	1.0264	1.0180
0640 [1] Austin-San Marcos, TX Bastrop, TX Caldwell, TX Hays, TX Travis, TX Williamson, TX	0.9637	0.9750
0680 Bakersfield, CA Kern, CA	0.9899	0.9931
0720 [1] Baltimore, MD Anne Arundel, MD Baltimore, MD Baltimore City, MD Carroll, MD Harford, MD Howard, MD Queen Anne's, MD	0.9929	0.9951
0733 Bangor, ME Penobscot, ME	0.9664	0.9769
0743 Barnstable-Yarmouth, MA Barnstable, MA	1.3202	1.2095
0760 Baton Rouge, LA Ascension, LA East Baton Rouge, LA Livingston, LA West Baton Rouge, LA	0.8294	0.8798
0840 Beaumont-Port Arthur, TX Hardin, TX Jefferson, TX Orange, TX	0.8324	0.8819
0860 Bellingham, WA Whatcom, WA	1.2282	1.1511
0870 Benton Harbor, MI Berrien, MI	0.9106	0.9379
0875 [1] Bergen-Passaic, NJ Bergen, NJ Passaic, NJ	1.2207	1.1463
0880 Billings, MT Yellowstone, MT	0.9022	0.9319
0920 Biloxi-Gulfport-Pascagoula, MS Hancock, MS Harrison, MS Jackson, MS	0.8757	0.9131
0960 [2] Binghamton, NY Broome, NY Tioga, NY	0.8542	0.8977
1000 Birmingham, AL Blount, AL Jefferson, AL St. Clair, AL Shelby, AL	0.9222	0.9460
1010 Bismarck, ND Burleigh, ND Morton, ND	0.7972	0.8562
1020 Bloomington, IN Monroe, IN	0.8907	0.9238
1040 Bloomington-Normal, IL McLean, IL	0.9109	0.9381
1080 Boise City, ID Ada, ID Canyon, ID	0.9310	0.9522
1123 [1,2] Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (MA Hospitals) Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH	1.1288	1.0865

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
1123 [1] Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (NH Hospitals)	1.1235	1.0830
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1125 Boulder-Longmont, CO	0.9689	0.9786
Boulder, CO		
1145 Brazoria, TX	0.8535	0.8972
Brazoria, TX		
1150 Bremerton, WA	1.0944	1.0637
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	0.8880	0.9219
Cameron, TX		
1260 Bryan-College Station, TX	0.8821	0.9177
Brazos, TX		
1280 [1] Buffalo-Niagara Falls, NY	0.9365	0.9561
Erie, NY		
Niagara, NY		
1303 Burlington, VT	1.0052	1.0036
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4408	0.5707
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		
1320 Canton-Massillon, OH	0.8932	0.9256
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.9690	0.9787
Natrona, WY		
1360 Cedar Rapids, IA	0.9056	0.9344
Linn, IA		
1400 Champaign-Urbana, IL	1.0635	1.0431
Champaign, IL		
1440 Charleston-North Charleston, SC	0.9235	0.9470
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.8898	0.9232
Kanawha, WV		
Putnam, WV		
1520 [1] Charlotte-Gastonia-Rock Hill, NC-SC	0.9850	0.9897
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Stanly, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	1.0438	1.0298
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN-GA	0.8976	0.9287
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 [2] Cheyenne, WY	0.9007	0.9309
Laramie, WY		
1600 [1] Chicago, IL	1.1044	1.0704
Cook, IL		
DeKalb, IL		
DuPage, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 [2] Chico-Paradise, CA	0.9840	0.9890
Butte, CA		
1640 [1] Cincinnati, OH-KY-IN	0.9389	0.9577
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN-KY	0.8419	0.8888
Christian, KY		
Montgomery, TN		
1680 [1] Cleveland-Lorain-Elyria, OH	0.9670	0.9773
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9916	0.9942
El Paso, CO		
1740 Columbia, MO	0.8515	0.8958
Boone, MO		
1760 Columbia, SC	0.9307	0.9520
Lexington, SC		
Richland, SC		
1800 Columbus, GA-AL	0.8374	0.8856
Russell, AL		
Chattahoochee, GA		
Harris, GA		
Muscogee, GA		
1840 [1] Columbus, OH	0.9751	0.9829
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8729	0.9111
Nueces, TX		
San Patricio, TX		
1890 Corvallis, OR	1.1453	1.0974
Benton, OR		
1900 [2] Cumberland, MD-WV (MD Hospitals)	0.8946	0.9266
Allegany, MD		
Mineral, WV		
1900 [2] Cumberland, MD-WV (WV Hospitals)	0.7975	0.8565
Allegany, MD		
Mineral, WV		
1920 [1] Dallas, TX	0.9998	0.9999
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.8859	0.9204
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA-IL	0.8835	0.9187
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9282	0.9503
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.9062	0.9348
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8973	0.9285
Lawrence, AL		
Morgan, AL		
2040 [2] Decatur, IL	0.8204	0.8732
Macon, IL		
2080 [1] Denver, CO	1.0601	1.0408
Adams, CO		
Arapahoe, CO		
Broomfield, CO		
Denver, CO		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Douglas, CO Jefferson, CO		
2120 Des Moines, IA Dallas, IA Polk, IA Warren, IA	0.8827	0.9181
2160 [1] Detroit, MI Lapeer, MI Macomb, MI Monroe, MI Oakland, MI St. Clair, MI Wayne, MI	1.0448	1.0305
2180 Dothan, AL Dale, AL Houston, AL	0.8158	0.8699
2190 Dover, DE Kent, DE	0.9356	0.9554
2200 Dubuque, IA Dubuque, IA	0.8795	0.9158
2240 Duluth-Superior, MN-WI St. Louis, MN Douglas, WI	1.0368	1.0251
2281 Dutchess County, NY Dutchess, NY	1.0684	1.0463
2290 [2] Eau Claire, WI Chippewa, WI Eau Claire, WI	0.9162	0.9418
2320 El Paso, TX El Paso, TX	0.9265	0.9491
2330 Elkhart-Goshen, IN Elkhart, IN	0.9722	0.9809
2335 [2] Elmira, NY Chemung, NY	0.8542	0.8977
2340 Enid, OK Garfield, OK	0.8376	0.8857
2360 Erie, PA Erie, PA	0.8925	0.9251
2400 Eugene-Springfield, OR Lane, OR	1.0944	1.0637
2440 [2] Evansville-Henderson, IN-KY (IN Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8755	0.9130
2440 Evansville-Henderson, IN-KY (KY Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8177	0.8713
2520 Fargo-Moorhead, ND-MN Clay, MN Cass, ND	0.9684	0.9783
2560 Fayetteville, NC Cumberland, NC	0.8992	0.9298
2580 Fayetteville-Springdale-Rogers, AR Benton, AR Washington, AR	0.8100	0.8656
2620 Flagstaff, AZ-UT Coconino, AZ Kane, UT	1.0682	1.0462
2640 Flint, MI Genesee, MI	1.1135	1.0764
2650 Florence, AL Colbert, AL Lauderdale, AL	0.7819	0.8449
2655 Florence, SC Florence, SC	0.8780	0.9148
2670 Fort Collins-Loveland, CO Larimer, CO	1.0066	1.0045
2680 [1] Ft. Lauderdale, FL Broward, FL	1.0704	1.0477
2700 Fort Myers-Cape Coral, FL Lee, FL	0.9680	0.9780
2710 Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL	0.9931	0.9953
2720 Fort Smith, AR-OK Crawford, AR Sebastian, AR Sequoyah, OK	0.7895	0.8506
2750 Fort Walton Beach, FL Okaloosa, FL	0.9693	0.9789
2760 Fort Wayne, IN Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN	0.9457	0.9625
2800 [1] Forth Worth-Arlington, TX Hood, TX Johnson, TX Parker, TX Tarrant, TX	0.9446	0.9617
2840 Fresno, CA Fresno, CA Madera, CA	1.0216	1.0147
2880 Gadsden, AL Etowah, AL	0.8599	0.9018
2900 Gainesville, FL Alachua, FL	0.9871	0.9911
2920 Galveston-Texas City, TX Galveston, TX	0.9465	0.9630
2960 Gary, IN Lake, IN Porter, IN	0.9584	0.9713
2975 [2] Glens Falls, NY Warren, NY Washington, NY	0.8542	0.8977
2980 Goldsboro, NC Wayne, NC	0.8892	0.9227
2985 Grand Forks, ND-MN Polk, MN Grand Forks, ND	0.9243	0.9475
2995 Grand Junction, CO Mesa, CO	0.9679	0.9779
3000 [1] Grand Rapids-Muskegon-Holland, MI Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	0.9548	0.9688
3040 Great Falls, MT Cascade, MT	0.8966	0.9280
3060 Greeley, CO Weld, CO	0.9336	0.9540
3080 Green Bay, WI Brown, WI	0.9668	0.9771
3120 [1] Greensboro-Winston-Salem-High Point, NC Alamance, NC Davidson, NC Davie, NC Forsyth, NCGuilford, NC Randolph, NC Stokes, NC Yadkin, NC	0.9282	0.9503
3150 Greenville, NC Pitt, NC	0.9174	0.9427
3160 Greenville-Spartanburg-Anderson, SC Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9122	0.9390
3180 Hagerstown, MD Washington, MD	0.9268	0.9493
3200 Hamilton-Middletown, OH Butler, OH	0.9418	0.9598
3240 Harrisburg-Lebanon-Carlisle, PA Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9223	0.9461
3283 [1,2] Hartford, CT Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.2394	1.1583
3285 [2] Hattiesburg, MS Forrest, MS Lamar, MS	0.7680	0.8346
3290 Hickory-Morganton-Lenoir, NC Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.9028	0.9324
3320 Honolulu, HI Honolulu, HI	1.1457	1.0976
3350 Houma, LA	0.8385	0.8864

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Lafourche, LA		
Terrebonne, LA		
3360 [1] Houston, TX	0.9892	0.9926
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV-KY-OH	0.9636	0.9749
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8903	0.9235
Limestone, AL		
Madison, AL		
3480 [1] Indianapolis, IN	0.9717	0.9805
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9587	0.9715
Johnson, IA		
3520 Jackson, MI	0.9532	0.9677
Jackson, MI		
3560 Jackson, MS	0.8607	0.9024
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.9275	0.9498
Madison, TN		
Chester, TN		
3600 [1] Jacksonville, FL	0.9381	0.9572
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 [2] Jacksonville, NC	0.8666	0.9066
Onslow, NC		
3610 [2] Jamestown, NY	0.8542	0.8977
Chautauqua, NY		
3620 Janesville-Beloit, WI	0.9849	0.9896
Rock, WI		
3640 Jersey City, NJ	1.1190	1.0800
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN-VA (TN Hospitals)	0.8337	0.8829
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3660 [2] Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals)	0.8504	0.8950
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 [2] Johnstown, PA	0.8462	0.8919
Cambria, PA		
Somerset, PA		
3700 Jonesboro, AR	0.7843	0.8467
Craighead, AR		
3710 Joplin, MO	0.8613	0.9028
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.0595	1.0404
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 [2] Kankakee, IL	0.8204	0.8732
Kankakee, IL		
3760 [1] Kansas City, KS-MO	0.9736	0.9818
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.9686	0.9784
Kenosha, WI		
3810 Killeen-Temple, TX	0.9570	0.9704
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.8970	0.9283
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.9038	0.9331
Howard, IN		
Tipton, IN		
3870 La Crosse, WI-MN	0.9400	0.9585
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8475	0.8929
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN	0.9278	0.9500
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.7965	0.8557
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.9357	0.9555
Polk, FL		
4000 Lancaster, PA	0.9078	0.9359
Lancaster, PA		
4040 Lansing-East Lansing, MI	0.9726	0.9812
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 Laredo, TX	0.8472	0.8927
Webb, TX		
4100 [2] Las Cruces, NM	0.8872	0.9213
Dona Ana, NM		
4120 [1] Las Vegas, NV-AZ	1.1521	1.1018
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.7923	0.8526
Douglas, KS		
4200 Lawton, OK	0.8315	0.8813
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9179	0.9430
Androscoggin, ME		
4280 Lexington, KY	0.8581	0.9005
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.9483	0.9643
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9892	0.9926
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.9097	0.9372
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8629	0.9040
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 [1] Los Angeles-Long Beach, CA	1.2011	1.1337
Los Angeles, CA		
4520 [1] Louisville, KY-IN	0.9276	0.9498
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
4600 Lubbock, TX	0.9646	0.9756
Lubbock, TX		
4640 Lynchburg, VA	0.9219	0.9458
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.9250	0.9480
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0467	1.0317
Dane, WI		
4800 Mansfield, OH	0.8900	0.9233
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR	0.4914	0.6147
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8428	0.8895
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0498	1.0338
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	1.0253	1.0173
Brevard, Fl		
4920 [1] Memphis, TN-AR-MS	0.8920	0.9247
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 [2] Merced, CA	0.9840	0.9890
Merced, CA		
5000 [1] Miami, FL	0.9815	0.9873
Dade, FL		
5015 [1] Middlesex-Somerset-Hunterdon, NJ	1.1213	1.0816
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 [1] Milwaukee-Waukesha, WI	0.9893	0.9927
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 [1] Minneapolis-St. Paul, MN-WI	1.0903	1.0610
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5140 Missoula, MT	0.9157	0.9415
Missoula, MT		
5160 Mobile, AL	0.8110	0.8664
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0498	1.0338
Stanislaus, CA		
5190 [1] Monmouth-Ocean, NJ	1.0814	1.0551
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.8137	0.8683
Ouachita, LA		
5240 Montgomery, AL	0.7734	0.8386
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	0.9284	0.9504
Delaware, IN		
5330 Myrtle Beach, SC	0.8976	0.9287
Horry, SC		
5345 Naples, FL	0.9754	0.9831
Collier, FL		
5360 [1] Nashville, TN	0.9578	0.9709
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 [1] Nassau-Suffolk, NY	1.3357	1.2192
Nassau, NY		
Suffolk, NY		
5483 [1] New Haven-Bridgeport-Stamford-Waterbury-	1.2459	1.1625
Danbury, CT		
Fairfield, CT		
New Haven, CT		
5523 [2] New London-Norwich, CT	1.2394	1.1583
New London, CT		
5560 [1] New Orleans, LA	0.9046	0.9336
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 [1] New York, NY	1.4414	1.2845
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 [1] Newark, NJ	1.1406	1.0943
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY-PA	1.1387	1.0930
Orange, NY		
Pike, PA		
5720 [1] Norfolk-Virginia Beach-Newport News, VA-NC	0.8574	0.9000
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City VA		
Williamsburg City, VA		
York, VA		
5775 [1] Oakland, CA	1.5185	1.3312
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.9402	0.9587
Marion, FL		
5800 Odessa-Midland, TX	0.9397	0.9583
Ector, TX		
Midland, TX		
5880 [1] Oklahoma City, OK	0.8900	0.9233
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.0960	1.0648
Thurston, WA		
5920 Omaha, NE-IA	0.9978	0.9985
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 [1] Orange County, CA	1.1594	1.1066
Orange, CA		
5960 [1] Orlando, FL	0.9640	0.9752

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.8344	0.8834
Daviess, KY		
6015 Panama City, FL	0.8865	0.9208
Bay, FL		
6020 Parkersburg-Marietta, WV-OH (WV Hospitals)	0.8127	0.8676
Washington, OH		
Wood, WV		
6020 [2] Parkersburg-Marietta, WV-OH (OH Hospitals)	0.8613	0.9028
Washington, OH		
Wood, WV		
6080 [2] Pensacola, FL	0.8814	0.9172
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8739	0.9118
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 [1] Philadelphia, PA-NJ	1.0713	1.0483
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 [1] Phoenix-Mesa, AZ	0.9820	0.9876
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.7962	0.8555
Jefferson, AR		
6280 [1] Pittsburgh, PA	0.9365	0.9561
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 [2] Pittsfield, MA	1.1288	1.0865
Berkshire, MA		
6340 Pocatello, ID	0.9674	0.9776
Bannock, ID		
6360 Ponce, PR	0.5169	0.6364
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9794	0.9858
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 [1] Portland-Vancouver, OR-WA	1.0684	1.0463
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 [1] Providence-Warwick-Pawtucket, RI	1.0854	1.0577
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	0.9984	0.9989
Utah, UT		
6560 [2] Pueblo, CO	0.9015	0.9315
Pueblo, CO		
6580 Punta Gorda, FL	0.9218	0.9458
Charlotte, FL		
6600 Racine, WI	0.9334	0.9539
Racine, WI		
6640 [1] Raleigh-Durham-Chapel Hill, NC	0.9990	0.9993
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
6660 Rapid City, SD	0.8846	0.9195
Pennington, SD		
6680 Reading, PA	0.9295	0.9512
Berks, PA		
6690 Redding, CA	1.1135	1.0764
Shasta, CA		
6720 Reno, NV	1.0648	1.0439
Washoe, NV		
6740 Richland-Kennewick-Pasco, WA	1.1491	1.0998
Benton, WA		
Franklin, WA		
6760 Richmond-Petersburg, VA	0.9477	0.9639
Charles City County, VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
6780 [1] Riverside-San Bernardino, CA	1.1365	1.0916
Riverside, CA		
San Bernardino, CA		
6800 Roanoke, VA	0.8614	0.9029
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.2139	1.1420
Olmsted, MN		
6840 [1] Rochester, NY	0.9194	0.9441
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.9625	0.9742
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.9228	0.9465
Edgecombe, NC		
Nash, NC		
6920 [1] Sacramento, CA	1.1513	1.1013
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9650	0.9759
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9785	0.9852
Benton, MN		
Stearns, MN		
7000 [2] St. Joseph, MO	0.8026	0.8602
Andrew, MO		
Buchanan, MO		
7040 [1] St. Louis, MO-IL	0.8855	0.9201
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 Salem, OR	1.0367	1.0250
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.4623	1.2972
Monterey, CA		
7160 [1] Salt Lake City-Ogden, UT	0.9945	0.9962
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.8374	0.8856
Tom Green, TX		
7240 [1] San Antonio, TX	0.8753	0.9128
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 [1] San Diego, CA	1.1135	1.0764

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
San Diego, CA		
7360 [1] San Francisco, CA	1.4142	1.2679
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 [1] San Jose, CA	1.4145	1.2680
Santa Clara, CA		
7440 [1] San Juan-Bayamon, PR	0.4741	0.5998
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Morovis, PR		
Naguabo, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1271	1.0854
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0481	1.0327
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.3646	1.2372
Santa Cruz, CA		
7490 Santa Fe, NM	1.0712	1.0482
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.3046	1.1997
Sonoma, CA		
7510 Sarasota-Bradenton, FL	0.9449	0.9619
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.9376	0.9568
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 Scranton--Wilkes-Barre--Hazleton, PA	0.8599	0.9018
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 [1] Seattle-Bellevue-Everett, WA	1.1474	1.0987
Island, WA		
King, WA		
Snohomish, WA		
7610 [2] Sharon, PA	0.8462	0.8919
Mercer, PA		
7620 [2] Sheboygan, WI	0.9162	0.9418
Sheboygan, WI		
7640 Sherman-Denison, TX	0.9255	0.9484
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.8987	0.9295
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA-NE	0.9046	0.9336
Woodbury, IA		
Dakota, NE		
7760 Sioux Falls, SD	0.9257	0.9485
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9802	0.9864
St. Joseph, IN		
7840 Spokane, WA	1.0852	1.0576
Spokane, WA		
7880 Springfield, IL	0.8659	0.9061
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.8424	0.8892
Christian, MO		
Greene, MO		
Webster, MO		
8003 [2] Springfield, MA	1.1288	1.0865
Hampden, MA		
Hampshire, MA		
8050 State College, PA	0.8941	0.9262
Centre, PA		
8080 Steubenville-Weirton, OH-WV	0.8804	0.9165
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.0650	1.0441
San Joaquin, CA		
8140 [2] Sumter, SC	0.8607	0.9024
Sumter, SC		
8160 Syracuse, NY	0.9714	0.9803
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA	1.0940	1.0635
Pierce, WA		
8240 [2] Tallahassee, FL	0.8814	0.9172
Gadsden, FL		
Leon, FL		
8280 [1] Tampa-St. Petersburg-Clearwater, FL	0.9171	0.9425
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 [2] Terre Haute, IN	0.8755	0.9130
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana,AR-Texarkana, TX	0.8126	0.8675
Miller, AR		
Bowie, TX		
8400 Toledo, OH	0.9810	0.9869
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	0.9199	0.9444
Shawnee, KS		
8480 Trenton, NJ	1.0432	1.0294
Mercer, NJ		
8520 Tucson, AZ	0.8911	0.9241
Pima, AZ		
8560 Tulsa, OK	0.8332	0.8825
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.8203	0.8731
Tuscaloosa, AL		
8640 Tyler, TX	0.9521	0.9669
Smith, TX		
8680 [2] Utica-Rome, NY	0.8542	0.8977
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.3421	1.2232
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.1096	1.0738
Ventura, CA		
8750 Victoria, TX	0.8756	0.9130
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	1.0031	1.0021
Cumberland, NJ		
8780 [2] Visalia-Tulare-Porterville, CA	0.9840	0.9890
Tulare, CA		
8800 Waco, TX	0.8088	0.8647
McLennan, TX		
8840 [1] Washington, DC-MD-VA-WV	1.0851	1.0575
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Culpeper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.8902	0.9234
Black Hawk, IA		
8940 Wausau, WI	0.9782	0.9850
Marathon, WI		
8960 [1] West Palm Beach-Boca Raton, FL	0.9939	0.9958
Palm Beach, FL		
9000 [2] Wheeling, WV-OH (WV Hospitals)	0.7975	0.8565
Belmont, OH		
Marshall, WV		
Ohio, WV		
9000 [2] Wheeling, WV-OH (OH Hospitals)	0.8613	0.9028
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9520	0.9669
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.8498	0.8945
Archer, TX		
Wichita, TX		
9140 Williamsport, PA	0.8544	0.8978
Lycoming, PA		
9160 Wilmington-Newark, DE-MD	1.1173	1.0789
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9640	0.9752
New Hanover, NC		
Brunswick, NC		
9260 Yakima, WA	1.0569	1.0386
Yakima, WA		
9270 [2] Yolo, CA	0.9840	0.9890
Yolo, CA		
9280 York, PA	0.9026	0.9322
York, PA		
9320 Youngstown-Warren, OH	0.9358	0.9556
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0276	1.0188
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.8589	0.9011
Yuma, AZ		

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2003.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7727	0.8381
Alaska	1.2293	1.1519
Arizona	0.8493	0.8942
Arkansas	0.7666	0.8336
California	0.9840	0.9890
Colorado	0.9015	0.9315
Connecticut	1.2394	1.1583
Delaware	0.9128	0.9394
Florida	0.8814	0.9172
Georgia	0.8230	0.8751
Hawaii	1.0255	1.0174
Idaho	0.8747	0.9124
Illinois	0.8204	0.8732
Indiana	0.8755	0.9130
Iowa	0.8315	0.8813
Kansas	0.7923	0.8526
Kentucky	0.8079	0.8641
Louisiana	0.7647	0.8322
Maine	0.8874	0.9215
Maryland	0.8946	0.9266
Massachusetts	1.1288	1.0865
Michigan	0.9013	0.9313
Minnesota	0.9151	0.9411
Mississippi	0.7680	0.8346
Missouri	0.8026	0.8602
Montana	0.8481	0.8933
Nebraska	0.8204	0.8732
Nevada	0.9577	0.9708
New Hampshire	0.9796	0.9860
New Jersey [1]		
New Mexico	0.8872	0.9213
New York	0.8542	0.8977
North Carolina	0.8666	0.9066
North Dakota	0.7788	0.8427
Ohio	0.8613	0.9028
Oklahoma	0.7590	0.8279
Oregon	1.0303	1.0207
Pennsylvania	0.8462	0.8919
Puerto Rico	0.4356	0.5660
Rhode Island1		
South Carolina	0.8607	0.9024
South Dakota	0.7815	0.8447
Tennessee	0.7877	0.8492
Texas	0.7827	0.8455
Utah	0.9312	0.9524
Vermont	0.9345	0.9547
Virginia	0.8504	0.8950
Washington	1.0179	1.0122
West Virginia	0.7975	0.8565
Wisconsin	0.9162	0.9418

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
Wyoming	0.9007	0.9309

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index	GAF
Abilene, TX	0.7827	0.8455
Akron, OH	0.9600	0.9724
Albany, GA	1.0427	1.0290
Albuquerque, NM	0.9390	0.9578
Alexandria, LA	0.7883	0.8497
Allentown-Bethlehem-Easton, PA	0.9735	0.9818
Altoona, PA	0.9225	0.9463
Amarillo, TX	0.8884	0.9222
Anchorage, AK	1.2490	1.1645
Ann Arbor, MI	1.1103	1.0743
Anniston, AL	0.7910	0.8517
Asheville, NC	0.9575	0.9707
Athens, GA	1.0066	1.0045
Atlanta, GA	0.9889	0.9924
Augusta-Aiken, GA-SC	0.9887	0.9922
Austin-San Marcos, TX	0.9637	0.9750
Barnstable-Yarmouth, MA	1.2943	1.1932
Baton Rouge, LA	0.8190	0.8722
Bellingham, WA	1.1642	1.1097
Benton Harbor, MI	0.9106	0.9379
Bergen-Passaic, NJ	1.2207	1.1463
Billings, MT	0.9022	0.9319
Biloxi-Gulfport-Pascagoula, MS	0.8368	0.8851
Binghamton, NY	0.8462	0.8919
Birmingham, AL	0.9222	0.9460
Bismarck, ND	0.7972	0.8562
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1235	1.0830
Burlington, VT	0.9572	0.9705
Caguas, PR	0.4408	0.5707
Casper, WY	0.9586	0.9715
Champaign-Urbana, IL	0.9772	0.9843
Charleston-North Charleston, SC	0.9235	0.9470
Charleston, WV	0.8649	0.9054
Charlotte-Gastonia-Rock Hill, NC-SC	0.9743	0.9823
Charlottesville, VA	1.0120	1.0082
Chattanooga, TN-GA	0.8843	0.9192
Chicago, IL	1.0905	1.0611
Cincinnati, OH-KY-IN	0.9389	0.9577
Clarksville-Hopkinsville, TN-KY	0.8419	0.8888
Cleveland-Lorain-Elyria, OH	0.9670	0.9773
Columbia, MO	0.8515	0.8958
Columbia, SC	0.9194	0.9441
Columbus, GA-AL (GA Hospitals)	0.8230	0.8751

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Columbus, GA-AL (AL Hospitals)	0.7985	0.8572
Columbus, OH	0.9549	0.9689
Corpus Christi, TX	0.8729	0.9111
Dallas, TX	0.9998	0.9999
Davenport-Moline-Rock Island, IA-IL	0.8835	0.9187
Dayton-Springfield, OH	0.9282	0.9503
Denver, CO	1.0484	1.0329
Des Moines, IA	0.8827	0.9181
Detroit, MI	1.0448	1.0305
Dothan, AL	0.8158	0.8699
Dover, DE	0.9254	0.9483
Duluth-Superior, MN-WI	1.0368	1.0251
Eau Claire, WI	0.9162	0.9418
Elkhart-Goshen, IN	0.9516	0.9666
Erie, PA	0.8761	0.9134
Eugene-Springfield, OR	1.0944	1.0637
Fargo-Moorhead, ND-MN	0.9468	0.9633
Fayetteville, NC	0.8992	0.9298
Flagstaff, AZ-UT	1.0131	1.0090
Flint, MI	1.0963	1.0650
Florence, AL	0.7819	0.8449
Florence, SC	0.8780	0.9148
Fort Collins-Loveland, CO	1.0066	1.0045
Ft. Lauderdale, FL	1.0704	1.0477
Fort Pierce-Port St. Lucie, FL	0.9931	0.9953
Fort Smith, AR-OK	0.7738	0.8389
Fort Walton Beach, FL	0.9430	0.9606
Forth Worth-Arlington, TX	0.9446	0.9617
Gadsden, AL	0.8599	0.9018
Gainesville, FL	0.9871	0.9911
Grand Forks, ND-MN	0.9243	0.9475
Grand Junction, CO	0.9679	0.9779
Grand Rapids-Muskegon-Holland, MI	0.9548	0.9688
Great Falls, MT	0.8966	0.9280
Greeley, CO	0.9336	0.9540
Green Bay, WI	0.9668	0.9771
Greensboro-Winston-Salem-High Point, NC	0.9129	0.9395
Greenville, NC	0.9174	0.9427
Harrisburg-Lebanon-Carlisle, PA	0.9223	0.9461
Hartford, CT	1.1549	1.1036
Hattiesburg, MS	0.7680	0.8346
Hickory-Morganton-Lenoir, NC	0.8926	0.9251
Houston, TX	0.9792	0.9857
Huntington-Ashland, WV-KY-OH	0.9167	0.9422
Huntsville, AL	0.8771	0.9141
Indianapolis, IN	0.9717	0.9805
Iowa City, IA	0.9442	0.9614
Jackson, MS	0.8607	0.9024
Jackson, TN	0.9002	0.9305
Jacksonville, FL	0.9237	0.9471
Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals)	0.8504	0.8950
Johnson City-Kingsport-Bristol, TN-VA (KY Hospitals)	0.8337	0.8829
Jonesboro, AR (AR Hospitals)	0.7843	0.8467
Jonesboro, AR (MO Hospitals)	0.8026	0.8602
Joplin, MO	0.8613	0.9028
Kalamazoo-Battlecreek, MI	1.0400	1.0272
Kansas City, KS-MO	0.9736	0.9818
Knoxville, TN	0.8970	0.9283
Kokomo, IN	0.9038	0.9331
Lafayette, LA	0.8316	0.8814
Lakeland-Winter Haven, FL	0.9357	0.9555
Las Vegas, NV-AZ	1.1521	1.1018
Lawton, OK	0.8077	0.8639
Lexington, KY	0.8581	0.9005
Lima, OH	0.9483	0.9643
Lincoln, NE	0.9711	0.9801
Little Rock-North Little Rock, AR	0.8951	0.9269
Longview-Marshall, TX	0.8629	0.9040
Los Angeles-Long Beach, CA	1.2011	1.1337
Louisville, KY-IN	0.9163	0.9419
Lubbock, TX	0.9646	0.9756
Lynchburg, VA	0.8909	0.9239
Macon, GA	0.9250	0.9480
Madison, WI	1.0467	1.0317
Medford-Ashland, OR	1.0303	1.0207
Memphis, TN-AR-MS	0.8712	0.9099
Miami, FL	0.9815	0.9873
Milwaukee-Waukesha, WI	0.9893	0.9927
Minneapolis-St. Paul, MN-WI	1.0903	1.0610
Missoula, MT	0.9047	0.9337
Mobile, AL	0.8110	0.8664
Modesto, CA	1.0498	1.0338
Monmouth-Ocean, NJ	1.0814	1.0551
Monroe, LA	0.8137	0.8683
Montgomery, AL	0.7734	0.8386
Nashville, TN	0.9375	0.9568
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2459	1.1625
New London-Norwich, CT	1.1626	1.1087
New Orleans, LA	0.9046	0.9336
New York, NY	1.4220	1.2726
Newark, NJ	1.1406	1.0943
Newburgh, NY-PA	1.0747	1.0506
Norfolk-Virginia Beach-Newport News, VA-NC	0.8666	0.9066
Oakland, CA	1.5185	1.3312
Odessa-Midland, TX	0.9180	0.9431
Oklahoma City, OK	0.8900	0.9233
Omaha, NE-IA	0.9978	0.9985
Orange County, CA	1.1594	1.1066
Orlando, FL	0.9640	0.9752
Peoria-Pekin, IL	0.8739	0.9118
Philadelphia, PA-NJ	1.0713	1.0483
Phoenix-Mesa, AZ	0.9820	0.9876
Pine Bluff, AR	0.7798	0.8434
Pittsburgh, PA	0.9224	0.9462
Pittsfield, MA	0.9863	0.9906
Pocatello, ID	0.9674	0.9776
Portland, ME	0.9620	0.9738
Portland-Vancouver, OR-WA	1.0684	1.0463
Provo-Orem, UT	0.9984	0.9989
Raleigh-Durham-Chapel Hill, NC	0.9990	0.9993
Rapid City, SD	0.8846	0.9195
Reading, PA	0.9108	0.9380
Redding, CA	1.1135	1.0764
Reno, NV	1.0466	1.0317
Richland-Kennewick-Pasco, WA	1.0800	1.0541
Richmond-Petersburg, VA	0.9477	0.9639
Roanoke, VA	0.8614	0.9029
Rochester, MN	1.2139	1.1420
Rockford, IL	0.9399	0.9584
Sacramento, CA	1.1513	1.1013
Saginaw-Bay City-Midland, MI	0.9543	0.9685
St. Cloud, MN	0.9785	0.9852
St. Joseph, MO	0.8240	0.8758
St. Louis, MO-IL	0.8855	0.9201
Salinas, CA	1.4623	1.2972
Salt Lake City-Ogden, UT	0.9945	0.9962
San Antonio, TX	0.8753	0.9128
San Diego, CA	1.1135	1.0764
Santa Fe, NM	0.9891	0.9925
Santa Rosa, CA	1.2761	1.1817
Sarasota-Bradenton, FL	0.9449	0.9619
Savannah, GA	0.9376	0.9568
Seattle-Bellevue-Everett, WA	1.1474	1.0987
Sherman-Denison, TX	0.9008	0.9310
Shreveport-Bossier City, LA	0.8987	0.9295
Sioux City, IA-NE	0.8647	0.9052
Sioux Falls, SD	0.9059	0.9346
South Bend, IN	0.9802	0.9864
Spokane, WA	1.0663	1.0449
Springfield, IL	0.8659	0.9061
Springfield, MO	0.8153	0.8695
Stockton-Lodi, CA	1.0650	1.0441
Syracuse, NY	0.9612	0.9733
Tampa-St. Petersburg-Clearwater, FL	0.9171	0.9425
Texarkana,AR-Texarkana, TX	0.8126	0.8675
Toledo, OH	0.9810	0.9869
Topeka, KS	0.9031	0.9326
Tucson, AZ	0.8911	0.9241
Tulsa, OK	0.8332	0.8825
Tuscaloosa, AL	0.8203	0.8731
Tyler, TX	0.9195	0.9441
Vallejo-Fairfield-Napa, CA	1.3421	1.2232
Victoria, TX	0.8756	0.9130
Waco, TX	0.8088	0.8647
Washington, DC-MD-VA-WV	1.0851	1.0575

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Waterloo-Cedar Falls, IA	0.8902	0.9234
Wausau, WI	0.9782	0.9850
West Palm Beach-Boca Raton, FL	0.9939	0.9958
Wichita, KS	0.9179	0.9430
Wichita Falls, TX	0.8498	0.8945
Wilmington-Newark, DE-MD	1.0862	1.0583
Wilmington, NC	0.9425	0.9603
York, PA	0.9026	0.9322
Youngstown-Warren, OH	0.9358	0.9556
Rural Alabama	0.7727	0.8381
Rural Florida	0.8814	0.9172
Rural Illinois (IA Hospitals)	0.8315	0.8813
Rural Illinois (MO Hospitals)	0.8204	0.8732
Rural Kentucky	0.8079	0.8641
Rural Louisiana	0.7647	0.8322
Rural Michigan	0.9013	0.9313
Rural Minnesota	0.9151	0.9411
Rural Missouri	0.8026	0.8602
Rural Montana	0.8481	0.8933
Rural Nebraska	0.8204	0.8732
Rural Nevada	0.9117	0.9387
Rural Texas	0.7827	0.8455
Rural Washington	1.0179	1.0122
Rural Wyoming	0.9007	0.9309

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index—reclass hospitals	GAF—reclass. hospitals
Aguadilla, PR	0.9679	0.9779		
[1] Arecibo, PR	0.9192	0.9439		
Caguas, PR	0.9302	0.9517	0.9302	0.9517
Mayaguez, PR	1.0369	1.0251		
Ponce, PR	1.0907	1.0613		
San Juan-Bayamon, PR	1.0004	1.0003		
Rural Puerto Rico	0.9192	0.9439		

[1] Hospitals geographically located in the area are assigned the Rural Puerto Rico wage index for FY 2003.

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties)	Wage index
0040 Abilene, TX	0.7820
Taylor, TX	
0060 Aguadilla, PR	0.4587
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9599
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0594
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8542
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9315
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7859
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9735
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9224
Blair, PA	
0320 Amarillo, TX Potter, TX	0.9034
Randall, TX	
0380 Anchorage, AK	1.2358
Anchorage, AK	
0440 Ann Arbor, MI	1.1103
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8044
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9162
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4356
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9876
Buncombe, NC	
Madison, NC	
0500 Athens, GA	1.0210
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	0.9991
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic-Cape May, NJ	1.1016
Atlantic, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8325
Lee, AL	
0600 Augusta-Aiken, GA-SC	1.0264
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9637
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Williamson, TX	
0680 Bakersfield, CA	0.9898
Kern, CA	
0720 Baltimore, MD	0.9929
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne's, MD	
0733 Bangor, ME	0.9664
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3202
Barnstable, MA	
0760 Baton Rouge, LA	0.8294
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8324
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.2281
Whatcom, WA	
0870 Benton Harbor, MI	0.9041
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2150
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9022
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8757
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8542
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9221
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7972
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8906
Monroe, IN	
1040 Bloomington-Normal, IL	0.9109
McLean, IL	
1080 Boise City, ID	0.9310
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (NH Hospitals)	1.1288
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
1125 Boulder-Longmont, CO	0.9689
Boulder, CO	
1145 Brazoria, TX	0.8535
Brazoria, TX	
1150 Bremerton, WA	1.0944
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8880
Cameron, TX	
1260 Bryan-College Station, TX	0.8821
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9365
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0052
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4371
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8931
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9689
Natrona, WY	
1360 Cedar Rapids, IA	0.9056
Linn, IA	
1400 Champaign-Urbana, IL	1.0635
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9235
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8897
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC	0.9850
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0437
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.8976
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.9007
Laramie, WY	
1600 Chicago, IL	1.1044
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9839
Butte, CA	
1640 Cincinnati, OH-KY-IN	0.9380
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8405
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9670
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9915
El Paso, CO	
1740 Columbia, MO	0.8495
Boone, MO	
1760 Columbia, SC	0.9306
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL Russell, AL	0.8374
Chattahoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9751
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8728
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1452
Benton, OR	
1900 Cumberland, MD-WV (WV Hospital)	0.7975
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9998
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8859
Danville City, VA	
Pittsylvania, VA	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
1960 Davenport-Moline-Rock Island, IA-IL	0.8834
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9282
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9062
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8973
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8204
Macon, IL	
2080 Denver, CO	1.0600
Adams, CO	
Arapahoe, CO	
Broomfield, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8790
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0448
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.8137
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9356
Kent, DE	
2200 Dubuque, IA	0.8795
Dubuque, IA	
2240 Duluth-Superior, MN-WI	1.0367
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0684
Dutchess, NY	
2290 Eau Claire, WI	0.9162
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9265
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9722
Elkhart, IN	
2335 Elmira, NY	0.8542
Chemung, NY	
2340 Enid, OK	0.8376
Garfield, OK	
2360 Erie, PA	0.8925
Erie, PA	
2400 Eugene-Springfield, OR	1.0944
Lane, OR	
2440 Evansville-Henderson, IN-KY (IN Hospitals)	0.8754
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.9684
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8889
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8099
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	1.0682
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1135
Genesee, MI	
2650 Florence, AL	0.7792
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8780
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0066
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0296
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9680
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9823
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.7895
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9693
Okaloosa, FL	
2760 Fort Wayne, IN	0.9457
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9445
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0216
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8505
Etowah, AL	
2900 Gainesville, FL	0.9871
Alachua, FL	
2920 Galveston-Texas City, TX	0.9465
Galveston, TX	
2960 Gary, IN	0.9584
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8542
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8891
Wayne, NC	
2985 Grand Forks, ND-MN	0.8897
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9456
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	0.9525
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8950
Cascade, MT	
3060 Greeley, CO	0.9236
Weld, CO	
3080 Green Bay, WI	0.9502
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9282
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NCGuilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9100
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9122
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9267
Washington, MD	
3200 Hamilton-Middletown, OH	0.9418
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9223
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.2393
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 2Hattiesburg, MS	0.7680
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9028
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1457
Honolulu, HI	
3350 Houma, LA	0.8384
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9892
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV-KY-OH	0.9635
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8902
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9717
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9587
Johnson, IA	
3520 Jackson, MI	0.9532
Jackson, MI	
3560 Jackson, MS	0.8607
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.9275
Madison, TN	
Chester, TN	
3600 Jacksonville, FL	0.9381
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.8665
Onslow, NC	
3610 Jamestown, NY	0.8542
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9849
Rock, WI	
3640 Jersey City, NJ	1.1189
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8268
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8461
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7749
Craighead, AR	
3710 Joplin, MO	0.8613
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0594
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.8204
Kankakee, IL	
3760 Kansas City, KS-MO	0.9736
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9686
Kenosha, WI	
3810 Killeen-Temple, TX	0.9569
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8970
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8971
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.9400
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8475
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9278
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7965
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9357
Polk, FL	
4000 Lancaster, PA	0.9078
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9726
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8472
Webb, TX	
4100 Las Cruces, NM	0.8872
Dona Ana, NM	
4120 Las Vegas, NV-AZ	1.1520
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.7922
Douglas, KS	
4200 Lawton, OK	0.8315
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9179
Androscoggin, ME	
4280 Lexington, KY	0.8581
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9483
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9892
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.9096
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8628
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2001
Los Angeles, CA	
4520 1Louisville, KY-IN	0.9276
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.9645
Lubbock, TX	
4640 Lynchburg, VA	0.9218
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9204
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0466
Dane, WI	
4800 Mansfield, OH	0.8899
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4914
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8428
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0498
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	1.0253
Brevard, Fl	
4920 Memphis, TN-AR-MS	0.8920
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9839
Merced, CA	
5000 Miami, FL	0.9802
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1213
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9892
Milwaukee, WI	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN-WI	1.0903
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9157
Missoula, MT	
5160 Mobile, AL	0.8108
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0498
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0674
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8137
Ouachita, LA	
5240 Montgomery, AL	0.7733
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9284
Delaware, IN	
5330 Myrtle Beach, SC	0.8976
Horry, SC	
5345 Naples, FL	0.9754
Collier, FL	
5360 Nashville, TN	0.9577
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3357
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-	1.2408
Danbury, CT	
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2393
New London, CT	
5560 New Orleans, LA	0.9046
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4414
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1381
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.1386
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA-NC	0.8574
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5071
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9402
Marion, FL	
5800 Odessa-Midland, TX	0.9397
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8900
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0959
Thurston, WA	
5920 Omaha, NE-IA	0.9978
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1474
Orange, CA	
5960 Orlando, FL	0.9639
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8344
Daviess, KY	
6015 Panama City, FL	0.8865
Bay, FL	
6020 Parkersburg-Marietta, WV-OH	0.8126
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8814
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8739
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA-NJ	1.0713
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9820
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7962
Jefferson, AR	
6280 Pittsburgh, PA	0.9365
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.1288
Berkshire, MA	
6340 Pocatello, ID	0.9372
Bannock, ID	
6360 Ponce, PR	0.5169
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9794
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA	1.0667
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0854
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9984
Utah, UT	
6560 Pueblo, CO	0.9015
Pueblo, CO	
6580 Punta Gorda, FL	0.9218
Charlotte, FL	
6600 Racine, WI	0.9334
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9990

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8846
Pennington, SD	
6680 Reading, PA	0.9295
Berks, PA	
6690 Redding, CA	1.1135
Shasta, CA	
6720 Reno, NV	1.0648
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1491
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9476
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1365
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8614
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.2139
Olmsted, MN	
6840 Rochester, NY	0.9194
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9625
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9228
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1500
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9650
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9700
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.8020
Andrew, MO	
Buchanan, MO	
7040 St. Louis, MO-IL	0.8855
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	1.0367
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4622
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9945
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8374
Tom Green, TX	
7240 San Antonio, TX	0.8753
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1131
San Diego, CA	
7360 San Francisco, CA	1.4142
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4145
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4741
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1271
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0481
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3645
Santa Cruz, CA	
7490 Santa Fe, NM	1.0712
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.3045
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9425
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9376
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton--Wilkes-Barre--Hazleton, PA	0.8599
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1474
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8461
Mercer, PA	
7620 Sheboygan, WI	0.9162
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9255
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.8987
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.9046
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9257
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9802
St. Joseph, IN	
7840 Spokane, WA	1.0852
Spokane, WA	
7880 Springfield, IL	0.8659
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8424
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.1288
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.8941
Centre, PA	
8080 Steubenville-Weirton, OH-WV (WV Hospitals)	0.8803
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0505
San Joaquin, CA	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
8140 Sumter, SC	0.8607
Sumter, SC	
8160 Syracuse, NY	0.9714
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.0940
Pierce, WA	
8240 Tallahassee, FL	0.8814
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9065
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8754
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana,AR-Texarkana, TX	0.8088
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9810
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9198
Shawnee, KS	
8480 Trenton, NJ	1.0432
Mercer, NJ	
8520 Tucson, AZ	0.8911
Pima, AZ	
8560 Tulsa, OK	0.8332
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8130
Tuscaloosa, AL	
8640 Tyler, TX	0.9521
Smith, TX	
8680 Utica-Rome, NY	0.8542
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3354
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1095
Ventura, CA	
8750 Victoria, TX	0.8756
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0031
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9839
Tulare, CA	
8800 Waco, TX	0.8073
McLennan, TX	
8840 Washington, DC-MD-VA-WV	1.0851
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpeper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8315
Black Hawk, IA	
8940 Wausau, WI	0.9782
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9939
Palm Beach, FL	
9000 Wheeling, WV-OH	0.7975
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9520
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8498
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8544
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.1173
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9640
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0568
Yakima, WA	
9270 Yolo, CA	0.9839
Yolo, CA	
9280 York, PA	0.9026
York, PA	
9320 Youngstown-Warren, OH	0.9358
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0276
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8589
Yuma, AZ	

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7660
Alaska	1.2293
Arizona	0.8493
Arkansas	0.7666
California	0.9839
Colorado	0.9015
Connecticut	1.2393
Delaware	0.9128
Florida	0.8814
Georgia	0.8230
Hawaii	1.0255
Idaho	0.8747
Illinois	0.8204
Indiana	0.8754
Iowa	0.8315
Kansas	0.7922
Kentucky	0.8079
Louisiana	0.7566
Maine	0.8874
Maryland	0.8945
Massachusetts	1.1288
Michigan	0.9000
Minnesota	0.9151
Mississippi	0.7680
Missouri	0.8020
Montana	0.8481
Nebraska	0.8204
Nevada	0.9577
New Hampshire	0.9796
New Jersey [1]	
New Mexico	0.8872
New York	0.8542
North Carolina	0.8665
North Dakota	0.7788
Ohio	0.8613
Oklahoma	0.7590
Oregon	1.0302
Pennsylvania	0.8461
Puerto Rico	0.4356
Rhode Island [1]	
South Carolina	0.8607
South Dakota	0.7815
Tennessee	0.7877
Texas	0.7820
Utah	0.9528
Vermont	0.9345
Virginia	0.8504
Washington	1.0179
West Virginia	0.7975
Wisconsin	0.9162
Wyoming	0.9007

[1] All counties within the State are classified as urban.

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)*

[Explanation of footnotes: *Medicare Data Have Been Supplemented by Data From 19 States for Low Volume DRGS. **DRGS 469 and 470 Contain Cases Which Could not be Assigned to Valid DRGS. Note: Geometric Mean is Used Only to Determine Payment for Transfer Cases. Note: Arithmetic Mean is Presented for Informational Purposes only. Note: Relative Weights are Based on Medicare Patient Data and May Not be Appropriate for Other Patients.]

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
1	01	SURG	CRANIOTOMY AGE >17 W CC	3.7399	8.1	11.2
2	01	SURG	CRANIOTOMY AGE >17 W/O CC	1.9730	4.0	5.2
3	01	SURG	*CRANIOTOMY AGE 0-17	1.9504	12.7	12.7
4	01	SURG	SPINAL PROCEDURES	2.3184	4.5	7.2
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.3837	2.1	3.1
6	01	SURG	CARPAL TUNNEL RELEASE	0.8242	2.1	2.9
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.5807	6.5	9.8
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.4967	1.9	2.8
9	01	MED	SPINAL DISORDERS & INJURIES	1.3769	4.6	6.6
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2598	4.8	6.6
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	0.8689	3.0	4.0
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.8918	4.4	5.9
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.7968	4.1	5.0
14	01	MED	INTRACRANIAL HEMORRHAGE & STROKE W INFARCT	1.2943	4.8	6.2
15	01	MED	NONSPECIFIC CVA & PRECEREBRAL OCCLUSION W/O INFARCT	0.9858	4.0	5.0
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.2413	4.7	6.2
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.6672	2.5	3.1
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9727	4.2	5.4
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6944	2.8	3.5
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.8156	8.0	10.7
21	01	MED	VIRAL MENINGITIS	1.5369	5.0	6.6
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	1.0343	3.9	5.0
23	01	MED	NONTRAUMATIC STUPOR & COMA	0.8220	3.1	4.3
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	0.9978	3.6	4.9
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	0.6085	2.5	3.2
26	01	MED	SEIZURE & HEADACHE AGE 0-17	0.7847	2.5	4.6
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3164	3.1	5.0
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.3447	4.5	6.3
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.7086	2.7	3.6
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.3299	2.0	2.0
31	01	MED	CONCUSSION AGE >17 W CC	0.8806	3.0	4.1
32	01	MED	CONCUSSION AGE >17 W/O CC	0.5336	1.9	2.4
33	01	MED	*CONCUSSION AGE 0-17	0.2072	1.6	1.6
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	0.9978	3.7	5.0
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.6385	2.5	3.2
36	02	SURG	RETINAL PROCEDURES	0.6830	1.2	1.5
37	02	SURG	ORBITAL PROCEDURES	1.0568	2.6	3.8
38	02	SURG	PRIMARY IRIS PROCEDURES	0.5418	1.9	2.5
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.5936	1.5	1.9
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.8756	2.5	3.6
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.3358	1.6	1.6
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.6593	1.7	2.4
43	02	MED	HYPHEMA	0.4992	2.4	3.0
44	02	MED	ACUTE MAJOR EYE INFECTIONS	0.6409	4.1	5.1
45	02	MED	NEUROLOGICAL EYE DISORDERS	0.7080	2.6	3.2
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	0.7832	3.4	4.6
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.5209	2.5	3.2
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0-17	0.2958	2.9	2.9
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7796	3.3	4.6
50	03	SURG	SIALOADENECTOMY	0.8332	1.5	1.8
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.9461	1.9	3.1
52	03	SURG	CLEFT LIP & PALATE REPAIR	0.7983	1.5	1.9
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.2005	2.1	3.4
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0-17	0.4795	3.2	3.2
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	0.9595	1.9	3.1
56	03	SURG	RHINOPLASTY	0.9666	2.0	3.0
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	0.9927	2.4	3.7
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17.	0.2722	1.5	1.5
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.7528	1.8	2.6
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.2073	1.5	1.5
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.3065	2.9	4.8
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.2936	1.3	1.3
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.4363	3.0	4.5
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.3119	4.4	6.6

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)*—Continued

[Explanation of footnotes: *Medicare Data Have Been Supplemented by Data From 19 States for Low Volume DRGS. **DRGS 469 and 470 Contain Cases Which Could not be Assigned to Valid DRGS. Note: Geometric Mean is Used Only to Determine Payment for Transfer Cases. Note: Arithmetic Mean is Presented for Informational Purposes only. Note: Relative Weights are Based on Medicare Patient Data and May Not be Appropriate for Other Patients.]

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
65	03	MED	DYSEQUILIBRIUM	0.5484	2.3	2.8
66	03	MED	EPISTAXIS	0.5653	2.4	3.1
67	03	MED	EPIGLOTTITIS	0.7774	2.8	3.6
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	0.6696	3.1	3.8
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	0.5025	2.4	3.0
70	03	MED	OTITIS MEDIA & URI AGE 0-17	0.4638	2.8	3.5
71	03	MED	LARYNGOTRACHEITIS	0.6895	2.8	3.4
72	03	MED	NASAL TRAUMA & DEFORMITY	0.7185	2.6	3.6
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.7961	3.2	4.4
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.3337	2.1	2.1
75	04	SURG	MAJOR CHEST PROCEDURES	3.1077	7.7	10.1
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.8647	8.5	11.5
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2097	3.5	4.9
78	04	MED	PULMONARY EMBOLISM	1.3022	5.7	6.7
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.6193	6.7	8.5
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	0.8757	4.4	5.5
81	04	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.5107	6.1	6.1
82	04	MED	RESPIRATORY NEOPLASMS	1.3943	5.2	7.0
83	04	MED	MAJOR CHEST TRAUMA W CC	0.9728	4.3	5.5
84	04	MED	MAJOR CHEST TRAUMA W/O CC	0.5125	2.6	3.2
85	04	MED	PLEURAL EFFUSION W CC	1.2145	4.8	6.4
86	04	MED	PLEURAL EFFUSION W/O CC	0.6963	2.9	3.8
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3658	4.8	6.4
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.9028	4.1	5.1
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.0420	4.8	5.9
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.6262	3.4	4.0
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.7034	3.2	4.0
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.2273	5.0	6.4
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	0.7306	3.3	4.1
94	04	MED	PNEUMOTHORAX W CC	1.1624	4.7	6.4
95	04	MED	PNEUMOTHORAX W/O CC	0.5940	2.9	3.7
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	0.7530	3.7	4.6
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5593	2.9	3.5
98	04	MED	BRONCHITIS & ASTHMA AGE 0-17	0.9540	3.7	5.1
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	0.7034	2.4	3.2
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5350	1.7	2.1
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.8592	3.3	4.4
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.5467	2.0	2.6
103	PRE	SURG	HEART TRANSPLANT	20.5419	30.5	52.1
104	05	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W CARD CATH.	7.9916	12.3	14.4
105	05	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W/O CARD CATH.	5.8063	8.3	10.0
106	05	SURG	CORONARY BYPASS W PTCA	7.4425	9.6	11.4
107	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.3850	9.2	10.5
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.4758	7.8	10.3
109	05	SURG	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	3.9795	6.8	7.7
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1218	6.5	9.1
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.4580	3.5	4.4
112	05	SURG	NO LONGER VALID	0.0000	0.0	0.0
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	3.0261	10.4	13.4
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.6551	6.2	8.5
115	05	SURG	PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GN.	3.4466	5.9	8.3
116	05	SURG	OTHER PERMANENT CARDIAC PACEMAKER IMPLANT	2.3078	3.2	4.5
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.3345	2.6	4.2
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5689	1.9	2.9
119	05	SURG	VEIN LIGATION & STRIPPING	1.3045	3.0	5.1
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.2383	5.3	8.8
121	05	MED	CIRCULATORY DISORDERS W AMI & MAJOR COMP. DISCHARGED ALIVE.	1.6216	5.3	6.6
122	05	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP. DISCHARGED ALIVE.	1.0679	3.0	3.8
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.5529	2.8	4.7

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)*—Continued

[Explanation of footnotes: *Medicare Data Have Been Supplemented by Data From 19 States for Low Volume DRGS. **DRGS 469 and 470 Contain Cases Which Could not be Assigned to Valid DRGS. Note: Geometric Mean is Used Only to Determine Payment for Transfer Cases. Note: Arithmetic Mean is Presented for Informational Purposes only. Note: Relative Weights are Based on Medicare Patient Data and May Not be Appropriate for Other Patients.]

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.4415	3.3	4.4
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1.0844	2.1	2.7
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.7280	9.5	12.2
127	05	MED	HEART FAILURE & SHOCK	1.0039	4.1	5.3
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	0.7230	4.7	5.5
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.0767	1.8	2.8
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	0.9439	4.5	5.7
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	0.5706	3.3	4.1
132	05	MED	ATHEROSCLEROSIS W CC	0.6564	2.3	2.9
133	05	MED	ATHEROSCLEROSIS W/O CC	0.5353	1.8	2.3
134	05	MED	HYPERTENSION	0.5877	2.5	3.2
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.9011	3.3	4.5
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	0.5711	2.1	2.6
137	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.8139	3.3	3.3
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.8274	3.1	4.0
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.5126	2.0	2.5
140	05	MED	ANGINA PECTORIS	0.5382	2.1	2.6
141	05	MED	SYNCOPE & COLLAPSE W CC	0.7296	2.8	3.6
142	05	MED	SYNCOPE & COLLAPSE W/O CC	0.5613	2.1	2.6
143	05	MED	CHEST PAIN	0.5391	1.7	2.1
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1992	3.8	5.5
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.5899	2.1	2.7
146	06	SURG	RECTAL RESECTION W CC	2.7203	8.8	10.2
147	06	SURG	RECTAL RESECTION W/O CC	1.5562	5.8	6.4
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.4503	10.2	12.3
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5251	5.9	6.5
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.8484	9.1	11.2
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.3296	4.5	5.7
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9506	6.9	8.3
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1770	4.8	5.4
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.1533	9.8	13.3
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.3082	3.0	4.0
156	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	0.8382	6.0	6.0
157	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.2612	3.9	5.6
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	0.6503	2.0	2.5
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.3612	3.7	5.1
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	0.8065	2.2	2.6
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.1264	2.8	4.2
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.6325	1.6	1.9
163	06	SURG	*HERNIA PROCEDURES AGE 0-17	0.6877	2.1	2.1
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.2962	7.0	8.3
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2609	4.0	4.6
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.4690	3.7	4.9
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.9088	2.1	2.5
168	03	SURG	MOUTH PROCEDURES W CC	1.3038	3.3	4.9
169	03	SURG	MOUTH PROCEDURES W/O CC	0.7444	1.8	2.3
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8555	7.6	11.1
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.2025	3.1	4.3
172	06	MED	DIGESTIVE MALIGNANCY W CC	1.3624	5.1	7.0
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	0.7540	2.7	3.7
174	06	MED	G.I. HEMORRHAGE W CC	0.9952	3.9	4.8
175	06	MED	G.I. HEMORRHAGE W/O CC	0.5551	2.5	2.9
176	06	MED	COMPLICATED PEPTIC ULCER	1.0826	4.1	5.3
177	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	0.9170	3.7	4.5
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	0.6806	2.6	3.1
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0786	4.6	6.0
180	06	MED	G.I. OBSTRUCTION W CC	0.9443	4.1	5.4
181	06	MED	G.I. OBSTRUCTION W/O CC	0.5331	2.8	3.4

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)*—Continued

[Explanation of footnotes: *Medicare Data Have Been Supplemented by Data From 19 States for Low Volume DRGS. **DRGS 469 and 470 Contain Cases Which Could not be Assigned to Valid DRGS. Note: Geometric Mean is Used Only to Determine Payment for Transfer Cases. Note: Arithmetic Mean is Presented for Informational Purposes only. Note: Relative Weights are Based on Medicare Patient Data and May Not be Appropriate for Other Patients.]

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	0.7986	3.3	4.4
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	0.5723	2.3	2.9
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.4836	2.3	2.8
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	0.8986	3.3	4.7
186	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17.	0.3195	2.9	2.9
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	0.8665	3.1	4.2
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0985	4.1	5.6
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5825	2.4	3.1
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.7006	3.3	4.8
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.3282	9.8	13.8
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7144	4.7	6.1
193	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.4245	10.5	12.8
194	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.6033	5.5	6.9
195	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	3.0071	8.6	10.4
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6046	4.6	5.4
197	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.4857	7.3	9.0
198	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.2250	3.8	4.4
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.4345	7.0	9.9
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	2.9740	6.5	10.5
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.7858	10.4	14.5
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.2941	4.8	6.4
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.6555	5.0	6.8
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.1858	4.4	5.8
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.2003	4.6	6.2
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.7061	3.0	3.9
207	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.1405	4.0	5.3
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	0.6531	2.3	2.9
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.0782	4.5	5.0
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8622	6.1	7.0
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2848	4.6	5.0
212	08	SURG	*HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	0.8418	11.1	11.1
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.8694	6.6	9.2
214	08	SURG	NO LONGER VALID	0.0000	0.0	0.0
215	08	SURG	NO LONGER VALID	0.0000	0.0	0.0
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.2225	6.6	9.6
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS.	3.0272	9.1	13.5
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC.	1.5475	4.3	5.5
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC.	1.0266	2.7	3.2
220	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17.	0.5807	5.3	5.3
221	08	SURG	NO LONGER VALID	0.0000	0.0	0.0
222	08	SURG	NO LONGER VALID	0.0000	0.0	0.0
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	1.0261	2.1	2.9
224	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC.	0.7859	1.6	1.9
225	08	SURG	FOOT PROCEDURES	1.1476	3.5	5.0
226	08	SURG	SOFT TISSUE PROCEDURES W CC	1.5730	4.6	6.7
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	0.8152	2.1	2.7

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)*—Continued

[Explanation of footnotes: *Medicare Data Have Been Supplemented by Data From 19 States for Low Volume DRGS. **DRGS 469 and 470 Contain Cases Which Could not be Assigned to Valid DRGS. Note: Geometric Mean is Used Only to Determine Payment for Transfer Cases. Note: Arithmetic Mean is Presented for Informational Purposes only. Note: Relative Weights are Based on Medicare Patient Data and May Not be Appropriate for Other Patients.]

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
228	08	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC.	1.1379	2.6	4.1
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.7004	1.7	2.2
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.2763	3.3	5.1
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.4007	3.1	4.9
232	08	SURG	ARTHROSCOPY	1.0011	1.8	2.7
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.1159	5.1	7.8
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC ..	1.2428	2.3	3.2
235	08	MED	FRACTURES OF FEMUR	0.7692	3.8	5.1
236	08	MED	FRACTURES OF HIP & PELVIS	0.7350	3.9	4.9
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.5840	2.9	3.6
238	08	MED	OSTEOMYELITIS	1.4039	6.6	8.9
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	1.0065	4.9	6.3
240	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.3372	5.0	6.7
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	0.6511	3.1	3.9
242	08	MED	SEPTIC ARTHRITIS	1.1281	5.1	6.7
243	08	MED	MEDICAL BACK PROBLEMS	0.7418	3.7	4.7
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.7072	3.7	4.7
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.4698	2.7	3.4
246	08	MED	NON-SPECIFIC ARTHROPATHIES	0.5658	2.9	3.8
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	0.5733	2.6	3.4
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	0.8357	3.8	4.9
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	0.6902	2.5	3.7
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	0.6904	3.2	4.2
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	0.4623	2.2	2.8
252	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.2521	1.8	1.8
253	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC.	0.7394	3.7	4.7
254	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC.	0.4440	2.6	3.1
255	08	MED	*FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.2937	2.9	2.9
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	0.8069	3.8	5.1
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	0.8994	2.1	2.7
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7101	1.6	1.8
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.9155	1.7	2.7
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.6827	1.2	1.4
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	0.9817	1.6	2.2
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.9301	2.9	4.3
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.2854	9.3	12.5
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.1644	5.5	7.2
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.6039	4.2	6.8
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	0.8590	2.2	3.1
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	0.9394	2.5	4.2
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.1026	2.3	3.6
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.7172	5.8	8.4
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.7693	2.4	3.4
271	09	MED	SKIN ULCERS	1.0303	5.6	7.3
272	09	MED	MAJOR SKIN DISORDERS W CC	1.0050	4.6	6.1
273	09	MED	MAJOR SKIN DISORDERS W/O CC	0.5587	3.0	3.9
274	09	MED	MALIGNANT BREAST DISORDERS W CC	1.1927	4.8	6.8
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	0.5526	2.2	3.0
276	09	MED	NON-MALIGANT BREAST DISORDERS	0.6805	3.5	4.5
277	09	MED	CELLULITIS AGE >17 W CC	0.8593	4.7	5.8
278	09	MED	CELLULITIS AGE >17 W/O CC	0.5495	3.6	4.3

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)*—Continued

[Explanation of footnotes: *Medicare Data Have Been Supplemented by Data From 19 States for Low Volume DRGS. **DRGS 469 and 470 Contain Cases Which Could not be Assigned to Valid DRGS. Note: Geometric Mean is Used Only to Determine Payment for Transfer Cases. Note: Arithmetic Mean is Presented for Informational Purposes only. Note: Relative Weights are Based on Medicare Patient Data and May Not be Appropriate for Other Patients.]

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
279	09	MED	*CELLULITIS AGE 0-17	0.6601	4.2	4.2
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.6981	3.2	4.2
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.4644	2.3	2.9
282	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.2553	2.2	2.2
283	09	MED	MINOR SKIN DISORDERS W CC	0.7221	3.5	4.7
284	09	MED	MINOR SKIN DISORDERS W/O CC	0.4311	2.4	3.1
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS.	2.0499	8.0	10.7
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.0937	4.5	5.9
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.8722	7.7	10.6
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.2239	4.3	5.4
289	10	SURG	PARATHYROID PROCEDURES	0.9773	1.8	2.8
290	10	SURG	THYROID PROCEDURES	0.8951	1.7	2.2
291	10	SURG	THYROGLOSSAL PROCEDURES	0.6331	1.4	1.6
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.6826	7.3	10.7
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.3164	3.4	5.1
294	10	MED	DIABETES AGE >35	0.7571	3.4	4.5
295	10	MED	DIABETES AGE 0-35	0.7928	3.0	4.0
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.8471	3.9	5.1
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.5043	2.7	3.4
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.5814	2.9	4.3
299	10	MED	INBORN ERRORS OF METABOLISM	0.9420	3.8	5.4
300	10	MED	ENDOCRINE DISORDERS W CC	1.0940	4.7	6.2
301	10	MED	ENDOCRINE DISORDERS W/O CC	0.6319	2.8	3.7
302	11	SURG	KIDNEY TRANSPLANT	3.3000	7.4	8.7
303	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.4282	6.7	8.3
304	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3343	6.2	8.7
305	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.2016	2.9	3.6
306	11	SURG	PROSTATECTOMY W CC	1.2709	3.6	5.5
307	11	SURG	PROSTATECTOMY W/O CC	0.6323	1.8	2.2
308	11	SURG	MINOR BLADDER PROCEDURES W CC	1.6387	4.0	6.3
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	0.8959	1.7	2.2
310	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.1270	2.9	4.3
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	0.6262	1.5	1.8
312	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	1.0623	3.0	4.5
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	0.6703	1.7	2.1
314	11	SURG	*URETHRAL PROCEDURES, AGE 0-17	0.4921	2.3	2.3
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.1046	3.9	7.2
316	11	MED	RENAL FAILURE	1.3284	4.9	6.6
317	11	MED	ADMIT FOR RENAL DIALYSIS	0.6629	2.0	3.1
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1868	4.4	6.1
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.6017	2.1	2.8
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.8551	4.3	5.3
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.5638	3.1	3.8
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.4987	3.2	3.7
323	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.8041	2.4	3.1
324	11	MED	URINARY STONES W/O CC	0.4638	1.5	1.8
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.6517	2.9	3.8
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.4446	2.2	2.7
327	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.3680	3.1	3.1
328	11	MED	URETHRAL STRICTURE AGE >17 W CC	0.7321	2.8	3.8
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	0.4904	1.7	2.2
330	11	MED	*URETHRAL STRICTURE AGE 0-17	0.3170	1.6	1.6
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0597	4.2	5.6
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6023	2.4	3.2
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.7795	3.3	4.7
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.5207	4.0	4.8
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.1255	2.9	3.2
336	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	0.8707	2.6	3.4
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	0.6033	1.8	2.1
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.2293	3.5	5.6
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.1074	2.9	4.6

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)*—Continued

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DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
340	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.2817	2.4	2.4
341	12	SURG	PENIS PROCEDURES	1.2142	1.9	3.1
342	12	SURG	CIRCUMCISION AGE >17	0.7922	2.4	3.2
343	12	SURG	*CIRCUMCISION AGE 0-17	0.1531	1.7	1.7
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.2658	1.6	2.4
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	1.1852	2.9	4.8
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.0468	4.5	6.0
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.5649	2.0	2.7
348	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	0.7106	3.2	4.2
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.3974	1.9	2.5
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.7182	3.6	4.5
351	12	MED	*STERILIZATION, MALE	0.2349	1.3	1.3
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.7283	2.9	4.0
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.8769	5.0	6.5
354	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.5499	4.8	5.8
355	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	0.9144	3.0	3.2
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	0.7657	1.9	2.2
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.3330	6.7	8.4
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2295	3.5	4.3
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.8345	2.4	2.6
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	0.8851	2.3	2.8
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.1095	2.3	3.6
362	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	0.3003	1.4	1.4
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.8840	2.6	3.6
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.8391	2.7	3.9
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.9491	5.2	7.7
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.2885	4.9	6.9
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.5416	2.3	3.0
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.2032	5.2	6.7
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	0.5950	2.4	3.2
370	14	SURG	CESAREAN SECTION W CC	0.9848	4.4	5.7
371	14	SURG	CESAREAN SECTION W/O CC	0.6745	3.2	3.6
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.6259	2.6	3.7
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.3934	2.0	2.3
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.7727	2.5	2.9
375	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.5733	4.4	4.4
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	0.4851	2.6	3.5
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	1.4354	3.0	4.2
378	14	MED	ECTOPIC PREGNANCY	0.8368	2.0	2.5
379	14	MED	THREATENED ABORTION	0.3916	2.1	3.0
380	14	MED	ABORTION W/O D&C	0.3631	1.6	2.0
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.5896	1.6	2.1
382	14	MED	FALSE LABOR	0.1683	1.2	1.3
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.5474	2.7	4.0
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	0.4204	1.8	2.8
385	15	MED	*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3680	1.8	1.8
386	15	MED	*EXTREME IMMATURITY	4.5111	17.9	17.9
387	15	MED	*PREMATURITY W MAJOR PROBLEMS	3.0810	13.3	13.3
388	15	MED	*PREMATURITY W/O MAJOR PROBLEMS	1.8590	8.6	8.6
389	15	MED	*FULL TERM NEONATE W MAJOR PROBLEMS	3.1648	4.7	4.7
390	15	MED	*NEONATE W OTHER SIGNIFICANT PROBLEMS	1.1201	3.4	3.4
391	15	MED	*NORMAL NEWBORN	0.1517	3.1	3.1
392	16	SURG	SPLENECTOMY AGE >17	3.1665	6.9	9.5
393	16	SURG	*SPLENECTOMY AGE 0-17	1.3400	9.1	9.1

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)*—Continued

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DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.8110	4.3	7.1
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	0.8156	3.2	4.4
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	0.6591	2.4	3.8
397	16	MED	COAGULATION DISORDERS	1.2421	3.7	5.2
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2700	4.6	5.9
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.6890	2.8	3.6
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6787	5.5	9.0
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.7850	8.0	11.3
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.1248	2.7	3.9
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.7709	5.7	8.0
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.8587	3.0	4.2
405	17	MED	*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.8998	4.9	4.9
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	2.8059	6.9	9.7
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC.	1.2905	3.3	4.1
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	2.0623	4.7	7.9
409	17	MED	RADIOTHERAPY	1.2077	4.5	6.1
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	1.0456	3.1	4.0
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.3898	2.2	2.9
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	0.2792	1.6	2.0
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.3696	5.3	7.3
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.6931	3.0	4.0
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.6798	10.4	14.5
416	18	MED	SEPTICEMIA AGE >17	1.5985	5.6	7.5
417	18	MED	SEPTICEMIA AGE 0-17	1.1847	4.5	6.2
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0459	4.8	6.2
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.8674	3.6	4.7
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.5908	2.8	3.4
421	18	MED	VIRAL ILLNESS AGE >17	0.7062	2.9	3.8
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.4381	2.4	3.0
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.7896	5.9	8.3
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.3048	8.1	13.0
425	19	MED	ACUTE ADJUSTMENT REACTION & PSYCHOSOCIAL DYSFUNCTION.	0.6822	2.9	3.9
426	19	MED	DEPRESSIVE NEUROSES	0.5167	3.2	4.5
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	0.5188	3.1	4.4
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.7408	4.4	7.4
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.8448	4.7	6.3
430	19	MED	PSYCHOSES	0.7128	5.7	8.0
431	19	MED	CHILDHOOD MENTAL DISORDERS	0.5940	4.2	5.9
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	0.6348	2.9	4.6
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.2755	2.2	3.0
434	20	MED	NO LONGER VALID	0.0000	0.0	0.0
435	20	MED	NO LONGER VALID	0.0000	0.0	0.0
436	20	MED	NO LONGER VALID	0.0000	0.0	0.0
437	20	MED	NO LONGER VALID	0.0000	0.0	0.0
438	20		NO LONGER VALID	0.0000	0.0	0.0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.6965	5.4	8.5
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.9156	5.7	9.1
441	21	SURG	HAND PROCEDURES FOR INJURIES	0.9314	2.1	3.1
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.4136	5.6	8.6
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.0679	2.6	3.5
444	21	MED	TRAUMATIC INJURY AGE >17 W CC	0.7614	3.2	4.3
445	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	0.4881	2.3	2.9
446	21	MED	*TRAUMATIC INJURY AGE 0-17	0.2945	2.4	2.4
447	21	MED	ALLERGIC REACTIONS AGE >17	0.4992	1.8	2.4
448	21	MED	*ALLERGIC REACTIONS AGE 0-17	0.0969	2.9	2.9
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.8267	2.6	3.7
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.4260	1.6	2.0
451	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.2615	2.1	2.1
452	21	MED	COMPLICATIONS OF TREATMENT W CC	1.0433	3.5	5.0

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)*—Continued

[Explanation of footnotes: *Medicare Data Have Been Supplemented by Data From 19 States for Low Volume DRGS. **DRGS 469 and 470 Contain Cases Which Could not be Assigned to Valid DRGS. Note: Geometric Mean is Used Only to Determine Payment for Transfer Cases. Note: Arithmetic Mean is Presented for Informational Purposes only. Note: Relative Weights are Based on Medicare Patient Data and May Not be Appropriate for Other Patients.]

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	0.5146	2.1	2.8
454	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	0.8281	3.0	4.3
455	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.4582	1.8	2.4
456	22		NO LONGER VALID	0.0000	0.0	0.0
457	22	MED	NO LONGER VALID	0.0000	0.0	0.0
458	22	SURG	NO LONGER VALID	0.0000	0.0	0.0
459	22	SURG	NO LONGER VALID	0.0000	0.0	0.0
460	22	MED	NO LONGER VALID	0.0000	0.0	0.0
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.2060	2.2	4.1
462	23	MED	REHABILITATION	1.1298	9.3	11.5
463	23	MED	SIGNS & SYMPTOMS W CC	0.6957	3.2	4.2
464	23	MED	SIGNS & SYMPTOMS W/O CC	0.4959	2.4	3.0
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	0.6786	1.8	2.9
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	0.7500	2.2	4.1
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	0.6012	2.1	8.5
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.7267	9.2	13.0
469			**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	0.0000	0.0	0.0
470			**UNGROUPABLE	0.0000	0.0	0.0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.1053	4.8	5.5
472	22	SURG	NO LONGER VALID	0.0000	0.0	0.0
473	17	SURG	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.5411	7.3	12.6
474	04	SURG	NO LONGER VALID	0.0000	0.0	0.0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.6632	8.0	11.4
476		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2592	8.0	11.3
477		SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.8618	5.3	8.2
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.3725	4.9	7.4
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4321	2.5	3.3
480	PRE	SURG	LIVER TRANSPLANT	10.3805	15.7	21.8
481	PRE	SURG	BONE MARROW TRANSPLANT	7.1307	19.3	22.1
482	PRE	SURG	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	3.5614	9.7	12.6
483	PRE	SURG	TRAC W MECH VENT 96+HRS OR PDX EXCEPT FACE,MOUTH & NECK DX.	17.0510	34.8	42.2
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.5768	8.8	13.1
485	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRAUMA.	3.0493	7.7	9.5
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.8153	8.3	12.3
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	2.0055	5.5	7.8
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.6556	11.4	16.9
489	25	MED	HIV W MAJOR RELATED CONDITION	1.7997	6.0	8.6
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.0261	3.7	5.3
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.7037	2.9	3.5
492	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	3.9528	9.2	15.0
493	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.8152	4.3	5.9
494	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0107	1.9	2.5
495	PRE	SURG	LUNG TRANSPLANT	9.2016	14.4	17.3
496	08	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.7988	7.1	9.5
497	08	SURG	SPINAL FUSION EXCEPT CERVICAL W CC	3.3938	5.4	6.5
498	08	SURG	SPINAL FUSION EXCEPT CERVICAL W/O CC	2.4738	3.7	4.1
499	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.4399	3.3	4.6
500	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	0.9489	2.0	2.5
501	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W CC	2.5922	8.4	10.6
502	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W/O CC	1.5368	5.2	6.4
503	08	SURG	KNEE PROCEDURES W/O PDX OF INFECTION	1.2128	2.9	3.9
504	22	SURG	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	14.6542	26.7	34.9
505	22	MED	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	2.0178	2.2	3.7
506	22	SURG	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.	4.6725	12.7	17.3

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)*—Continued

[Explanation of footnotes: *Medicare Data Have Been Supplemented by Data From 19 States for Low Volume DRGS. **DRGS 469 and 470 Contain Cases Which Could not be Assigned to Valid DRGS. Note: Geometric Mean is Used Only to Determine Payment for Transfer Cases. Note: Arithmetic Mean is Presented for Informational Purposes only. Note: Relative Weights are Based on Medicare Patient Data and May Not be Appropriate for Other Patients.]

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
507	22	SURG	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.	1.7246	6.5	9.0
508	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA.	1.4330	5.8	8.4
509	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA.	0.9691	4.1	5.7
510	22	MED	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.2[illegible]1	4.6	6.7
511	22	MED	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	0.7[illegible]6	3.0	4.4
512	PRE	SURG	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	5.8[illegible]3	11.9	14.5
513	PRE	SURG	PANCREAS TRANSPLANT	6.3271	9.4	10.8
514	05	SURG	CARDIAC DEFIBRILLATOR IMPLANT W CARDIAC CATH	6.3376	5.0	7.3
515	05	SURG	CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH	5.0562	3.3	5.5
516	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROC W AMI	2.7273	3.7	4.8
517	05	SURG	PERC CARDIO PROC W NON-DRUG ELUTING STENT W/O AMI	2.1789	1.9	2.6
518	05	SURG	PERC CARDIO PROC W/O CORONARY ARTERY STENT OR AMI	1.7297	2.3	3.4
519	08	SURG	CERVICAL SPINAL FUSION W CC	2.3551	3.2	5.2
520	08	SURG	CERVICAL SPINAL FUSION W/O CC	1.5389	1.7	2.1
521	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	0.7300	4.3	5.8
522	20	MED	ALC/DRUG ABUSE OR DEPEND W REHABILITATION THERAPY W/O CC.	0.5818	7.5	9.5
523	20	MED	ALC/DRUG ABUSE OR DEPEND W/O REHABILITATION THERAPY W/O CC.	0.3999	3.3	4.1
524	01	MED	TRANSIENT ISCHEMIA	0.7238	2.7	3.4
525	05	SURG	HEART ASSIST SYSTEM IMPLANT	11.6479	9.4	16.6
526	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROC W DRUG ELUTING STENT W AMI.	3.1176	3.7	4.7
527	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROC W DRUG ELUTING STENT W/O AMI.	2.5342	1.9	2.6

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
040.82	Toxic shock syndrome	Y	18	423
066.4	West Nile fever	N	18	421, 422
277.02	Cystic fibrosis with pulmonary manifestations	Y	4	79, 80, 81
277.03	Cystic fibrosis with gastrointestinal manifestations	Y	6	188, 189, 190
277.09	Cystic fibrosis with other manifestations	Y	10	296, 297, 298
357.81	Chronic inflammatory demyelinating polyneuritis	N	1	18, 19
357.82	Critical illness polyneuropathy	N	1	18, 19
357.89	Other inflammatory and toxic neuropathy	N	1	18, 19
359.81	Critical illness myopathy	N	1	34, 35
359.89	Other myopathies	N	1	34, 35
365.83	Aqueous misdirection	N	2	46, 47, 48
414.06	Coronary atherosclerosis of coronary artery of transplanted heart	N	5	132, 133
414.12	Dissection of coronary artery	N	5	121, 144, 145
428.20	Unspecified systolic heart failure	Y	5	115, 121, 124, 127
428.21	Acute systolic heart failure	Y	5	115, 121, 124, 127
428.22	Chronic systolic heart failure	Y	5	115, 121, 124, 127
428.23	Acute on chronic systolic heart failure	Y	5	115, 121, 124, 127
428.30	Unspecified diastolic heart failure	Y	5	115, 121, 124, 127
428.31	Acute diastolic heart failure	Y	5	115, 121, 124, 127
428.32	Chronic diastolic heart failure	Y	5	115, 121, 124, 127
428.33	Acute on chronic diastolic heart failure	Y	5	115, 121, 124, 127
428.40	Unspecified combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
428.41	Acute combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
428.42	Chronic combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
428.43	Acute on chronic combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
438.6	Alterations of sensations	N	1	12
438.7	Disturbances of vision	N	1	12
438.83	Facial weakness	N	1	12
438.84	Ataxia	N	1	12
438.85	Vertigo	N	1	12
443.21	Dissection of carotid artery	N	5	130, 131

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
443.22	Dissection of iliac artery	N	5	130, 131
443.23	Dissection of renal artery	N	11	331, 332, 333
443.24	Dissection of vertebral artery	N	5	130, 131
443.29	Dissection of other artery	N	5	130, 131
445.01	Atheroembolism, upper extremity	Y	5	130, 131
445.02	Atheroembolism, lower extremity	Y	5	130, 131
445.81	Atheroembolism, kidney	Y	11	331, 332, 333
445.89	Atheroembolism, other site	Y	5	130, 131
454.8	Varicose veins of the lower extremities, with other complications	N	5	130, 131
459.10	Postphlebetic syndrome without complications	N	5	130, 131
459.11	Postphlebetic syndrome with ulcer	N	5	130, 131
459.12	Postphlebetic syndrome with inflammation	N	5	130, 131
459.13	Postphlebetic syndrome with ulcer and inflammation	N	5	130, 131
459.19	Postphlebetic syndrome with other complication	N	5	130, 131
459.30	Chronic venous hypertension without complications	N	5	130, 131
459.31	Chronic venous hypertension with ulcer	N	5	130, 131
459.32	Chronic venous hypertension with inflammation	N	5	130, 131
459.33	Chronic venous hypertension with ulcer and inflammation	N	5	130, 131
459.39	Chronic venous hypertension with other complication	N	5	130, 131
537.84	Dielulafoy lesion (hemorrhagic) of stomach and duodenum	Y	6	174, 175
569.86	Dieulafoy lesion (hemorrhagic) of intestine	Y	6	188, 189, 190
633.00	Abdominal pregnancy without intrauterine pregnancy	N	14	378
633.01	Abdominal pregnancy with intrauterine pregnancy	N	14	378
633.10	Tubal pregnancy without intrauterine pregnancy	N	14	378
633.11	Tubal pregnancy with intrauterine pregnancy	N	14	378
633.20	Ovarian pregnancy without intrauterine pregnancy	N	14	378
633.21	Ovarian pregnancy with intrauterine pregnancy	N	14	378
633.80	Other ectopic pregnancy without intrauterine pregnancy	N	14	378
633.81	Other ectopic pregnancy with intrauterine pregnancy	N	14	378
633.90	Unspecified ectopic pregnancy without intrauterine pregnancy	N	14	378
633.91	Unspecified ectopic pregnancy with intrauterine pregnancy	N	14	378
747.83	Persistent fetal circulation	N	15	387, 389
765.20	Unspecified weeks of gestation	N	15	391
765.21	Less than 24 completed weeks of gestation	N	15	386
765.22	24 completed weeks of gestation	N	15	386
765.23	25-26 completed weeks of gestation	N	15	386
765.24	27-28 completed weeks of gestation	N	15	387, 388
765.25	29-30 completed weeks of gestation	N	15	387, 388
765.26	31-32 completed weeks of gestation	N	15	387, 388
765.27	33-34 completed weeks of gestation	N	15	387, 388
765.28	35-36 completed weeks of gestation	N	15	387, 388
765.29	37 or more completed weeks of gestation	N	15	391
770.81	Primary apnea of newborn	N	15	390
770.82	Other apnea of newborn	N	15	390
770.83	Cyanotic attacks of newborn	N	15	390
770.84	Respiratory failure of newborn	Y	15	387, 389
770.89	Other respiratory problems after birth	N	15	390
771.81	Septicemia [sepsis] of newborn	Y	15	387, 389
771.82	Urinary tract infection of newborn	N	15	387, 389
771.83	Bacteremia of newborn	Y	15	387, 389
771.89	Other infections specific to the perinatal period	N	15	387, 389
779.81	Neonatal bradycardia	N	15	390
779.82	Neonatal tachycardia	N	15	390
779.89	Other specified conditions originating in the perinatal period	N	15	390
780.91	Fussy infant (baby)	N	23	463,464
780.92	Excessive crying of infant (baby)	N	23	463,464
780.99	Other general symptoms	N	23	463,464
781.93	Ocular torticollis	N	8	243
795.00	Nonspecific abnormal Papanicolaou smear of cervix, unspecified	N	13	358, 359, 369
795.01	Atypical squamous cell changes of undetermined significance favor benign (ASCUS favor benign).	N	13	358, 359, 369
795.02	Atypical squamous cell changes of undetermined significance favor dysplasia (ASCUS favor dysplasia).	N	13	358, 359, 369
795.09	Other nonspecific abnormal Papanicolaou smear of cervix	N	13	358, 359, 369
795.31	Nonspecific positive findings for anthrax	N	18	423
795.39	Other nonspecific positive culture findings	N	18	423
813.45	Torus fracture of radius	N	8	250, 251, 252
			24	487
823.40	Torus fracture, tibia alone	N	8	253, 254, 255
			24	487
823.41	Torus fracture, fibula alone	N	8	253, 254, 255
			24	487

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
823.42	Torus fracture, fibula with tibia	N	8	253, 254, 255
			24	487
995.90	Systemic inflammatory response syndrome, unspecified	Y	18	416, 417
995.91	Systemic inflammatory response syndrome due to infectious process without organ dysfunction.	Y	18	416, 417
995.92	Systemic inflammatory response syndrome due to infectious process with organ dysfunction.	Y	18	416, 417
995.93	Systemic inflammatory response syndrome due to non-infectious process without organ dysfunction.	Y	18	416, 417
995.94	Systemic inflammatory response syndrome due to non-infectious process with organ dysfunction.	Y	18	416, 417
998.31	Disruption of internal operation wound	Y	21	452, 453
998.32	Disruption of external operation wound	Y	21	452, 453
V01.81	Contact with or exposure to communicable diseases, anthrax	N	15	391 [1]
			23	467
V01.89	Contact with or exposure to communicable diseases, other communicable diseases.	N	15	391 [1]
			23	467
V13.21	Personal history of pre-term labor	N	23	467
V13.29	Personal history of other genital system and obstetric disorders	N	23	467
V23.41	Pregnancy with history of pre-term labor	N	14	469
V23.49	Pregnancy with other poor obstetric history	N	14	469
V46.2	Other dependence on machines, supplemental oxygen	N	23	467
V54.10	Aftercare for healing traumatic fracture of arm, unspecified	N	8	249
V54.11	Aftercare for healing traumatic fracture of upper arm	N	8	249
V54.12	Aftercare for healing traumatic fracture of lower arm	N	8	249
V54.13	Aftercare for healing traumatic fracture of hip	N	8	249
V54.14	Aftercare for healing traumatic fracture of leg, unspecified	N	8	249
V54.15	Aftercare for healing traumatic fracture of upper leg	N	8	249
V54.16	Aftercare for healing traumatic fracture of lower leg	N	8	249
V54.17	Aftercare for healing traumatic fracture of vertebrae	N	8	249
V54.19	Aftercare for healing traumatic fracture of other bone	N	8	249
V54.20	Aftercare for healing pathologic fracture of arm, unspecified	N	8	249
V54.21	Aftercare for healing pathologic fracture of upper arm	N	8	249
V54.22	Aftercare for healing pathologic fracture of lower arm	N	8	249
V54.23	Aftercare for healing pathologic fracture of hip	N	8	249
V54.24	Aftercare for healing pathologic fracture of leg, unspecified	N	8	249
V54.25	Aftercare for healing pathologic fracture of upper leg	N	8	249
V54.26	Aftercare for healing pathologic fracture of lower leg	N	8	249
V54.27	Aftercare for healing pathologic fracture of vertebrae	N	8	249
V54.29	Aftercare for healing pathologic fracture of other bone	N	8	249
V54.81	Aftercare following joint replacement	N	8	249
V54.89	Other orthopedic aftercare	N	8	249
V58.42	Aftercare following surgery for neoplasm	N	23	465, 466
V58.43	Aftercare following surgery for injury and trauma	N	23	465, 466
V58.71	Aftercare following surgery of the sense organs, NEC	N	23	465, 466
V58.72	Aftercare following surgery of the nervous system, NEC	N	23	465, 466
V58.73	Aftercare following surgery of the circulatory system, NEC	N	23	465, 466
V58.74	Aftercare following surgery of the respiratory system, NEC	N	23	465, 466
V58.75	Aftercare following surgery of the teeth, oral cavity and digestive system, NEC	N	23	465, 466
V58.76	Aftercare following surgery of the genitourinary system, NEC	N	23	465, 466
V58.77	Aftercare following surgery of the skin and subcutaneous tissue, NEC	N	23	465, 466
V58.78	Aftercare following surgery of the musculoskeletal system, NEC	N	23	465, 466
V71.82	Observation and evaluation for suspected exposure to anthrax	N	23	467
V71.83	Observation and evaluation for suspected exposure to other biological agent	N	23	467
V83.81	Cystic fibrosis gene carrier	N	23	467
V83.89	Other genetic carrier status	N	23	467

[1] Classified as an "only secondary diagnosis" in this DRG.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
00.01	Therapeutic ultrasound of vessels of head and neck	N		
00.02	Therapeutic ultrasound of heart	N		
00.03	Therapeutic ultrasound of peripheral vascular vessels	N		
00.09	Other therapeutic ultrasound	N		
00.10	Implantation of chemotherapeutic agent	N		
00.11	Infusion of drotrecogin alfa (activated)	N		
00.12	Administration of inhaled nitric oxide	N		

TABLE 6B.—NEW PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
00.13	Injection or infusion of nesiritide	N		
00.14	Injection or infusion of oxazolidinone class of antibiotics	N		
00.50	Implantation of cardiac resynchronization pacemaker without mention of defibrillation, total system [CRT-P].	Y	5	115[1], 116[1]
00.51	Implantation of cardiac resynchronization defibrillator, total system [CRT-D]	Y	5	514[1], 515[1]
00.52	Implantation or replacement of transvenous lead (electrode) into left ventricular coronary venous system.	Y	5	115[2], 116[3], 514[4], 515[4]
00.53	Implantation or replacement of cardiac resynchronization pacemaker pulse generator only [CRT-P].	Y	5	115[2], 116[3], 118
00.54	Implantation or replacement of cardiac resynchronization defibrillator pulse generator only [CRT-D].	Y	5	115[1], 514[4], 515[4]
00.55	Insertion of drug-eluting non-coronary artery stent(s)	N		
36.07	Insertion of drug-eluting coronary artery stents(s)	N*	5	526, 527
39.72	Endovascular repair or occlusion of head and neck vessels	Y	1	1,2,3
			5	110, 111
			11	315
			21	442, 443
			24	486
49.75	Implantation or revision of artificial anal sphincter	Y	6	157, 158
			9	267
			21	442, 443
			24	486
49.76	Removal of artificial anal sphincter	Y	6	157, 158
			9	267
			21	442, 443
			24	486
81.61	360 degree spinal fusion, single incision approach	Y	1	4
			8	496
			21	442, 443
			24	486
84.51	Insertion of interbody spinal fusion device	N		
84.52	Insertion of recombinant bone morphogenetic protein	N		
88.96	Other intraoperative magnetic resonance imaging	N		
89.60[5]	Continuous intra-arterial blood gas monitoring	N		
99.76	Extracorporeal immunoadsorption	N		
99.77	Application or administration of an adhesion barrier substance	N		

* Nonoperating room procedure, but affects DRG.
[1] Classified under "operating room procedures".
[2] Classified under "operating room procedure" and under "as any of the following procedure combinations" as 00.52 and 00.53.
[3] Classified under "any of the following procedure combinations" as 00.52 and 00.53.
[4] Classified under "any of the following procedure combinations" as 00.52 and 00.54.
[5] This code was discussed at the April 18, 2002 meeting of the ICD-9-CM Coordination and Maintenance Committee and included in the final addendum for ICD-9-CM.

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
357.8	Other inflammatory and toxic neuropathy	N	1	18, 19
359.8	Other myopathies	N	1	34, 35
459.1	Postphlebetic syndrome	N	5	130, 131
633.0	Abdominal pregnancy	N	14	378
633.1	Tubal pregnancy	N	14	378
633.2	Ovarian pregnancy	N	14	378
633.8	Other ectopic pregnancy	N	14	378
633.9	Unspecified ectopic pregnancy	N	14	378
770.8	Other respiratory problems after birth	N	15	387, 389
771.8	Other infections specific to the perinatal period	Y	15	387, 389
779.8	Other specified conditions originating in the perinatal period	N	15	390
780.9	Other general symptoms	N	23	463, 464
795.0	Nonspecific abnormal Papanicolaou smear of cervix	N	13	358, 359, 369
795.3	Nonspecific positive culture findings	N	18	423
998.3	Disruption of operation wound	Y	21	452, 453
V01.8	Other communicable diseases	N	23	467
V13.2	Other genital system and obstetric disorders	N	23	467
V23.4	Pregnancy with other poor obstetric history	N	14	469
V54.8	Other orthopedic aftercare	N	8	249

TABLE 6D.—INVALID PROCEDURE CODES

Note: There are no invalid procedure codes for FY 2003.

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
402.00	Hypertensive heart disease, malignant, without heart failure	Y	5	134
402.01	Hypertensive heart disease, malignant, with heart failure	Y	5	115, 121, 124, 127
402.10	Hypertensive heart disease, benign, without heart failure	N	5	134
402.11	Hypertensive heart disease, benign, with heart failure	Y	5	115, 121, 124, 127
402.90	Hypertensive heart disease, unspecified, without heart failure	N	5	134
402.91	Hypertensive heart disease, unspecified, with heart failure	Y	5	115, 121, 124, 127
404.00	Hypertensive heart and renal disease, malignant, without mention of heart failure or renal failure.	Y	5	134
404.01	Hypertensive heart and renal disease, malignant, with heart failure	Y	5	115, 121, 124, 127
404.03	Hypertensive heart and renal disease, malignant, with heart failure and renal failure.	Y	5	115, 121, 124, 127
404.10	Hypertensive heart and renal disease, benign, without mention of heart failure or renal failure.	N	5	134
404.11	Hypertensive heart and renal disease, benign, with heart failure	Y	5	115, 121, 124, 127
404.13	Hypertensive heart and renal disease, benign, with heart failure and renal failure.	Y	5	115, 121, 124, 127
404.90	Hypertensive heart and renal disease, unspecified, without mention of heart failure or renal failure.	N	5	134
404.91	Hypertensive heart and renal disease, unspecified, with heart failure	Y	5	115, 121, 124, 127
404.93	Hypertensive heart and renal disease, unspecified, with heart failure and renal failure.	Y	5	115, 121, 124, 127
414.10	Aneurysm of heart	N	5	121, 144, 145
414.11	Aneurysm of coronary vessels	N	5	121, 144, 145
414.19	Other aneurysm of heart	N	5	121, 144, 145
428.0	Congestive heart failure, unspecified	Y	5	115, 121, 124, 127
454.9	Asymptomatic varicose veins	N	5	130, 131
627.2	Symptomatic menopausal or female climacteric states	N	13	358, 359, 369
627.4	Symptomatic states associated with artificial menopause	N	13	358, 359, 369
V49.81	Asymptomatic postmenopausal status (age-related) (natural)	N	23	467

TABLE 6F.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
02.41 [1]	Irrigation and exploration of ventricular shunt	N		
36.06	Insertion of non-drug-eluting coronary artery stents(s)	N*	5	517
39.79	Other endovascular repair of aneurysm of other vessels	Y	1	1, 2, 3
			5	110, 111
			11	315
			21	442, 443
			24	486
39.90	Insertion of non-drug-eluting, noncoronary artery stents(s)	N		

* Nonoperating room procedure, but affects DRG.

[1] This code title revision was discussed at the April 18, 2002 meeting of the ICD-9-CM Coordination and Maintenance Committee and included in the final addendum for ICD-9-CM.

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*0031	99591	6829	99591	99593	44501	42821	4280
99590	99592	99590	99592	99594	44502	42822	4281
99591	99593	99591	99593	*04186	44581	42823	42820
99592	99594	99592	99594	99590	44589	42830	42821
99593	*03843	99593	*0412	99591	*25090	42831	42822
99594	99590	99594	99590	99592	44501	42832	42823
*0202	99591	*04089	99591	99593	44502	42833	42830
99590	99592	99590	99592	99594	44581	42840	42831
99591	99593	99591	99593	*04189	44589	42841	42832
99592	99594	99592	99594	99590	*25091	42842	42833
99593	*03844	99593	*0413	99591	44501	42843	42840
99594	99590	99594	99590	99592	44502	*40211	42841
*0362	99591	*04100	99591	99593	44581	42820	42842
99590	99592	99590	99592	99594	44589	42821	42843
99591	99593	99591	99593	*0419	*25092	42822	4289
99592	99594	99592	99594	99590	44501	42823	5184
99593	*03849	99593	*0414	99591	44502	42830	*42821
99594	99590	99594	99590	99592	44581	42831	39891
*0380	99591	*04101	99591	99593	44589	42832	40201
99590	99592	99590	99592	99594	*25093	42833	40211
99591	99593	99591	99593	*0545	44501	42840	40291
99592	99594	99592	99594	99590	44502	42841	4280
99593	*0388	99593	*0415	99591	44581	42842	4281
99594	99590	99594	99590	99592	44589	42843	42820
*03810	99591	*04102	99591	99593	*2515	*40291	42821
99590	99592	99590	99592	99594	53784	42820	42822
99591	99593	99591	99593	*1398	56986	42821	42823
99592	99594	99592	99594	99590	*27700	42822	42830
99593	*0389	99593	*0416	99591	27702	42823	42831
99594	99590	99594	99590	99592	27703	42830	42832
*03811	99591	*04103	99591	99593	27709	42831	42833
99590	99592	99590	99592	99594	*27701	42832	42840
99591	99593	99591	99593	*25070	27702	42833	42841
99592	99594	99592	99594	44501	27703	42840	42842
99593	*04082	99593	*0417	44502	27709	42841	42843
99594	0380	99594	99590	44581	*27702	42842	4289
*03819	03810	*04104	99591	44589	27700	42843	5184
99590	03811	99590	99592	*25071	27701	*4280	*42822
99591	03819	99591	99593	44501	27702	42820	39891
99592	0382	99592	99594	44502	27703	42821	40201
99593	0383	99593	*04181	44581	27709	42822	40211
99594	03840	99594	99590	44589	*27703	42823	40291
*0382	03841	*04105	99591	*25072	27700	42830	4280
99590	03842	99590	99592	44501	27701	42831	4281
99591	03843	99591	99593	44502	27702	42832	42820
99592	03844	99592	99594	44581	27703	42833	42821
99593	03849	99593	*04182	44589	27709	42840	42822
99594	0388	99594	99590	*25073	*27709	42841	42823
*0383	0389	*04109	99591	44501	27700	42842	42830
99590	04082	99590	99592	44502	27701	42843	42831
99591	6800	99591	99593	44581	27702	*4281	42832
99592	6801	99592	99594	44589	27703	42820	42833
99593	6802	99593	*04183	*25080	27709	42821	42840
99594	6803	99594	99590	44501	*39891	42822	42841
*03840	6804	*04110	99591	44502	42820	42823	42842
99590	6805	99590	99592	44581	42821	42830	42843
99591	6806	99591	99593	44589	42822	42831	4289
99592	6807	99592	99594	*25081	42823	42832	5184
99593	6808	99593	*04184	44501	42830	42833	*42823
99594	6809	99594	99590	44502	42831	42840	39891
*03841	6820	*04111	99591	44581	42832	42841	40201
99590	6821	99590	99592	44589	42833	42842	40211
99591	6822	99591	99593	*25082	42840	42843	40291
99592	6823	99592	99594	44501	42841	*42820	4280
99593	6825	99593	*04185	44502	42842	39891	4281
99594	6826	99594	99590	44581	42843	40201	42820
*03842	6827	*04119	99591	44589	*40201	40211	42821
99590	6828	99590	99592	*25083	42820	40291	42822
42823	5184	42822	42831	56986	*53270	53784	*56202
42830	*42833	42823	42832	*53140	53784	56986	53784
42831	39891	42830	42833	53784	56986	*53411	56986
42832	40201	42831	42840	56986	*53271	53784	*56203

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

42833	40211	42832	42841	*53141	53784	56986	53784
42840	40291	42833	42842	53784	56986	*53420	56986
42841	4280	42840	42843	56986	*53290	53784	*56212
42842	4281	42841	44501	*53150	53784	56986	53784
42843	42820	42842	44502	53784	56986	*53421	56986
4289	42821	42843	44581	56986	*53291	53784	*56213
5184	42822	4289	44589	*53151	53784	56986	53784
*42830	42823	5184	*4599	53784	56986	*53430	56986
39891	42830	*42843	42820	56986	*53300	53784	*5693
40201	42831	39891	42821	*53160	53784	56986	53784
40211	42832	40201	42822	53784	56986	*53431	56986
40291	42833	40211	42823	56986	*53301	53784	*56985
4280	42840	40291	42830	*53161	53784	56986	53784
4281	42841	4280	42831	53784	56986	*53440	56986
42820	42842	4281	42832	56986	*53310	53784	*56986
42821	42843	42820	42833	*53170	53784	56986	56986
42822	4289	42821	42840	53784	56986	*53441	*5780
42823	5184	42822	42841	56986	*53311	53784	53784
42830	*42840	42823	42842	*53171	53784	56986	56986
42831	39891	42830	42843	53784	56986	*53450	*5781
42832	40201	42831	44501	56986	*53320	53784	53784
42833	40211	42832	44502	*53190	53784	56986	56986
42840	40291	42833	44581	53784	56986	*53451	*5789
42841	4280	42840	44589	56986	*53321	53784	53784
42842	4281	42841	*5184	*53191	53784	56986	56986
42843	42820	42842	42820	53784	56986	*53460	*74783
4289	42821	42843	42821	56986	*53330	53784	42971
5184	42822	4289	42822	*53200	53784	56986	42979
*42831	42823	5184	42823	53784	56986	*53461	7450
39891	42830	*4289	42830	56986	*53331	53784	74510
40201	42831	42820	42831	*53201	53784	56986	74511
40211	42832	42821	42832	53784	56986	*53470	74512
40291	42833	42822	42833	56986	*53340	53784	74519
4280	42840	42823	42840	*53210	53784	56986	7452
4281	42841	42830	42841	53784	56986	*53471	7453
42820	42842	42831	42842	56986	*53341	53784	7454
42821	42843	42832	42843	*53211	53784	56986	74560
42822	4289	42833	*5302	53784	56986	*53490	74569
42823	5184	42840	53784	56986	*53350	53784	7457
42830	*42841	42841	56986	*53220	53784	56986	74601
42831	39891	42842	*5307	53784	56986	*53491	74602
42832	40201	42843	53784	56986	*53351	53784	7461
42833	40211	*44489	56986	*53221	53784	56986	7462
42840	40291	44501	*53082	53784	56986	*53501	7463
42841	4280	44502	53784	56986	*53360	53784	7464
42842	4281	44581	56986	*53230	53784	56986	7465
42843	42820	44589	*53100	53784	56986	*53511	7466
4289	42821	*4449	53784	56986	*53361	53784	7467
5184	42822	44501	56986	*53231	53784	56986	74681
*42832	42823	44502	*53101	53784	56986	*53521	74682
39891	42830	44581	53784	56986	*53370	53784	74683
40201	42831	44589	56986	*53240	53784	56986	74684
40211	42832	*44501	*53110	53784	56986	*53531	74686
40291	42833	44501	53784	56986	*53371	53784	74711
4280	42840	*44502	56986	*53241	53784	56986	74722
4281	42841	44502	*53111	53784	56986	*53541	*76520
42820	42842	*44581	53784	56986	*53390	53784	76501
42821	42843	44581	56986	*53250	53784	56986	76502
42822	4289	*44589	*53120	53784	56986	*53551	76503
42823	5184	44589	53784	56986	*53391	53784	76504
42830	*42842	*4560	56986	*53251	53784	56986	76505
42831	39891	53784	*53121	53784	56986	*53561	76506
42832	40201	56986	53784	56986	*53400	53784	76507
42833	40211	*45989	56986	*53260	53784	56986	76508
42840	40291	42820	*53130	53784	56986	*53783	*76521
42841	4280	42821	53784	56986	*53401	53784	76501
42842	4281	42822	56986	*53261	53784	56986	76502
42843	42820	42823	*53131	53784	56986	*53784	76503
4289	42821	42830	53784	56986	*53410	53784	76504
76505	76506	769	76508	7703	7713	78039	03811
76506	76507	7700	7670	7704	77181	7817	03819
76507	76508	7701	7685	7705	77183	7854	0382

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

76508	*7685	7702	769	7707	77210	78550	0383
*76522	77084	7703	7700	77084	77211	78551	03840
76501	*7686	7704	7701	7710	77212	78559	03841
76502	77084	7705	7702	7711	77213	7863	03842
76503	*7689	7707	7703	7713	77214	78820	03843
76504	77084	77084	7704	77181	7722	78829	03844
76505	*769	*7709	7705	77183	7724	7895	03849
76506	77084	77084	7707	77210	7725	7907	0388
76507	*7700	*7714	77084	77211	7730	7911	0389
76508 -	77084	77181	7710	77212	7731	7913	0545
*76523	*7701	77183	7711	77213	7732	7991	99590
76501	77084	*7715	7713	77214	7733	7994	99591
76502	*7702	77181	77181	7722	7734	*78099	99592
76503	77084	77183	77183	7724	7740	04082	99593
76504	*7703	*7716	77210	7725	7741	44024	99594
76505	77084	77181	77211	7730	7742	78001	*99592
76506	*7704	77183	77212	7731	77430	78003	0362
76507	77084	*7717	77213	7732	77431	7801	0380
76508	*7705	77181	77214	7733	77439	78031	03810
*76524	77084	77183	7722	7734	7744	78039	03811
76501	*7706	*77181	7724	7740	7745	7817	03819
76502	77084	77181	7725	7741	7747	7854	0382
76503	*7707	77183	7730	7742	7751	78550	0383
76504	77084	*77182	7731	77430	7752	78551	03840
76505	*77081	77181	7732	77431	7753	78559	03841
76506	7685	77183	7733	77439	7754	7863	03842
76507	769	*77183	7734	7744	7755	78820	03843
76508	7700	77181	7740	7745	7756	78829	03844
*76525	7701	77183	7741	7747	7757	7895	03849
76501	7702	*77189	7742	7751	7760	7907	0388
76502	7703	77181	77430	7752	7761	7911	0389
76503	7704	77183	77431	7753	7762	7913	0545
76504	7705	*7760	77439	7754	7763	7991	99590
76505	7707	77181	7744	7755	7771	7994	99591
76506	77084	77183	7745	7756	7772	*78550	99592
76507	*77082	*7761	7747	7757	7775	04082	99593
76508	7685	77181	7751	7760	7776	*78551	99594
*76526	769	77183	7752	7761	7780	04082	*99593
76501	7700	*7762	7753	7762	7790	*78559	0362
76502	7701	77181	7754	7763	7791	04082	0380
76503	7702	77183	7755	7771	7797	*7859	03810
76504	7703	*7763	7756	7772	*78091	04082	03811
76505	7704	77181	7757	7775	04082	*7998	03819
76506	7705	77183	7760	7776	44024	04082	0382
76507	7707	*7764	7761	7780	78001	*99590	0383
76508	77084	77181	7762	7790	78003	0362	03840
*76527	*77083	77183	7763	7791	7801	0380	03841
76501	7685	*7765	7771	7797	78031	03810	03842
76502	769	77181	7772	*77989	78039	03811	03843
76503	7700	77183	7775	76501	7817	03819	03844
76504	7701	*7766	7776	76502	7854	0382	03849
76505	7702	77181	7780	76503	78550	0383	0388
76506	7703	77183	7790	76504	78551	03840	0389
76507	7704	*7767	7791	76505	78559	03841	0545
76508	7705	77181	7797	76506	7863	03842	99590
*76528	7707	77183	*77982	76507	78820	03843	99591
76501	77084	*7768	76501	76508	78829	03844	99592
76502	*77084	77181	76502	7670	7895	03849	99593
76503	7685	77183	76503	7685	7907	0388	99594
76504	769	*7769	76504	769	7911	0389	*99594
76505	7700	77181	76505	7700	7913	0545	0362
76506	7701	77183	76506	7701	7991	99590	0380
76507	7702	*77981	76507	7702	7994	99591	03810
76508	7703	76501	76508	7703	*78092	99592	03811
*76529	7704	76502	7670	7704	04082	99593	03819
76501	7705	76503	7685	7705	44024	99594	0382
76502	7707	76504	769	7707	78001	*99591	0383
76503	77084	76505	7700	77084	78003	0362	03840
76504	*77089	76506	7701	7710	7801	0380	03841
76505	7685	76507	7702	7711	78031	03810	03842
03843	99591						
03844	99592						

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

03849	99593
0388	99594
0389	*V096
0545	99590
99590	99591
99591	99592
99592	99593
99593	99594
99594	*V0970
*99791	99590
99831	99591
99832	99592
*99799	99593
99831	99594
99832	*V0971
*99831	99590
99831	99591
99832	99592
*99832	99593
99831	99594
99832	*V0980
*99881	99590
99831	99591
99832	99592
*99883	99593
99831	99594
99832	*V0981
*99889	99590
99831	99591
99832	99592
*9989	99593
99831	99594
99832	*V0990
*V090	99590
99590	99591
99591	99592
99592	99593
99593	99594
99594	*V0991
*V091	99590
99590	99591
99591	99592
99592	99593
99593	99594
99594	*V2341
*V092	V237
99590	V2381
99591	V2382
99592	V2383
99593	V2384
99594	V2389
*V093	V239
99590	*V2349
99591	V237
99592	V2381
99593	V2382
99594	V2383
*V094	V2384
99590	V2389
99591	V239
99592	*V462
99593	V461
99594	
*V0950	
99590	
99591	
99592	
99593	
99594	
*V0951	
99590	

TABLE 6H.—DELETIONS TO THE CC EXCLUSIONS LIST

[CCs that are deleted from the list are in Table 6H-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*7708	7722	9983
7685	7724	*9989
769	7725	9983
7700	7730	*V234
7701	7731	V237
7702	7732	V2381
7703	7733	V2382
7704	7734	V2383
7705	7740	V2384
7707	7741	V2389
*7714	7742	V239
7718	77430	
*7715	77431	
7718	77439	
*7716	7744	
7718	7745	
*7717	7747	
7718	7751	
*7718	7752	
7718	7753	
*7760	7754	
7718	7755	
*7761	7756	
7718	7757	
*7762	7760	
7718	7761	
*7763	7762	
7718	7763	
*7764	7771	
7718	7772	
*7765	7775	
7718	7776	
*7766	7780	
7718	7790	
*7767	7791	
7718	7797	
*7768	*7809	
7718	44024	
*7769	78001	
7718	78003	
*7798	7801	
76501	78031	
76502	78039	
76503	7817	
76504	7854	
76505	78550	
76506	78551	
76507	78559	
76508	7863	
7670	78820	
7685	78829	
769	7895	
7700	7907	
7701	7911	
7702	7913	
7703	7991	
7704	7994	
7705	*99791	
7707	9983	
7710	*99799	
7711	9983	
7713	*9983	
7718	9983	
77210	*99881	
77211	9983	
77212	*99883	
77213	9983	
77214	*99889	

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)

[FY 2001 MEDPAR Update March 2002 Grouper V19.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	34885	8.9770	2	3	6	12	19
2	7211	9.9230	3	5	8	13	20
3	7	7.4290	1	1	3	4	10
4	6510	7.1900	1	2	5	9	16
5	93559	3.0670	1	1	2	3	7
6	398	2.9200	1	1	2	4	6
7	14289	9.7760	1	4	7	12	20
8	4389	2.7520	1	1	1	3	6
9	1755	6.4550	1	3	5	8	13
10	18163	6.5160	2	3	5	8	13
11	3444	4.0010	1	2	3	5	8
12	49862	5.8770	2	3	4	7	11
13	6731	5.0160	2	3	4	6	9
14	321915	5.8150	2	3	5	7	11
15	152910	3.4740	1	2	3	4	6
16	11519	6.0130	2	3	5	7	12
17	3744	3.2760	1	2	3	4	6
18	28192	5.4260	2	3	4	7	10
19	8749	3.5380	1	2	3	5	7
20	5666	10.4560	3	5	8	13	20
21	1445	6.5690	2	3	5	8	13
22	2737	5.0080	2	2	4	6	10
23	11274	4.2370	1	2	3	5	[illegible]
24	55738	4.8890	1	2	4	6	10
25	27443	3.2300	1	2	3	4	6
26	35	4.6290	1	1	2	4	6
27	3897	5.0160	1	1	3	6	11
28	12468	6.2410	1	3	5	8	13
29	4987	3.5570	1	2	3	5	7
31	3887	4.0710	1	2	3	5	8
32	1940	2.4380	1	1	2	3	5
34	21924	5.0460	1	2	4	6	[illegible]
35	6903	3.2410	1	1	3	4	6
36	2513	1.4700	1	1	1	1	2
37	1437	3.8040	1	1	2	4	8
38	93	2.4950	1	1	1	3	6
39	671	1.9400	1	1	1	2	4
40	1534	3.6140	1	1	2	5	[illegible]
42	1951	2.3660	1	1	1	3	5
43	111	3.0270	1	1	2	4	6
44	1302	5.0340	2	3	4	6	9
45	2619	3.2440	1	2	3	4	6
46	3394	4.5840	1	2	4	6	9
47	1359	3.1660	1	1	3	4	6
48	1	2.0000	2	2	2	2	2
49	2347	4.6230	1	2	3	5	9
50	2492	1.8210	1	1	1	2	3
51	254	3.1260	1	1	1	3	7
52	242	1.9130	1	1	1	2	3
53	2528	3.3780	1	1	2	4	8
54	1	4.0000	4	4	4	4	4
55	1583	3.0580	1	1	1	3	6
56	535	2.9780	1	1	2	3	6
57	696	3.7400	1	1	2	4	8
59	129	2.6740	1	1	1	3	6
60	6	3.3330	1	1	2	5	5
61	244	4.7830	1	1	3	6	10
62	3	1.6670	1	1	1	3	3
63	2951	4.4780	1	1	3	6	9
64	3168	6.5990	1	2	4	8	14
65	39160	2.7980	1	1	2	3	5
66	7719	3.1100	1	1	2	4	6
67	441	3.5940	1	2	3	4	6
68	8805	3.8300	1	2	3	5	7
69	3059	2.9940	1	2	2	4	5
70	25	3.4800	1	2	3	4	8
71	87	3.4370	1	2	3	4	6
72	934	3.5630	1	1	3	4	7
73	7115	4.3800	1	2	3	6	9
75	40165	10.0590	3	5	7	12	20

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V19.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
76	41905	11.4330	3	5	9	14	22
77	2458	4.8650	1	2	4	7	10
78	35476	6.6620	3	4	6	8	11
79	166958	8.5080	3	4	7	11	16
80	8364	5.4950	2	3	5	7	10
81	2	8.0000	3	3	13	13	13
82	63860	6.9900	2	3	6	9	14
83	6521	5.4790	2	3	4	7	10
84	1602	3.2040	1	2	3	4	6
85	21367	6.3180	2	3	5	8	12
86	2192	3.8090	1	2	3	5	8
87	59754	6.3130	1	3	5	8	12
88	398448	5.1060	2	3	4	6	9
89	504650	5.8910	2	3	5	7	11
90	47050	4.0300	2	2	3	5	7
91	55	4.0180	2	2	3	5	9
92	14891	6.3630	2	3	5	8	12
93	1721	4.1100	1	2	3	5	8
94	12688	6.3310	2	3	5	8	13
95	1704	3.7280	1	2	3	5	7
96	54007	4.5510	2	2	4	6	8
97	28779	3.5190	1	2	3	4	6
98	15	5.0000	1	2	3	4	13
99	21402	3.1730	1	1	2	4	6
100	9013	2.1320	1	1	2	3	4
101	21303	4.3870	1	2	3	6	9
102	5618	2.5720	1	1	2	3	5
103	453	51.8520	9	14	27	64	130
104	19919	14.4420	6	8	12	17	25
105	27571	9.9950	5	6	8	12	18
106	3320	11.4070	5	7	10	14	20
107	86073	10.4600	5	7	9	12	17
108	6235	10.2790	3	5	8	13	20
109	59810	7.7310	4	5	6	9	13
110	53439	9.0380	2	4	7	11	18
111	9446	4.4130	1	2	4	6	8
113	41687	12.4870	4	6	9	15	24
114	8909	8.5190	2	4	7	11	17
115	15348	8.2670	1	4	7	11	16
116	109696	4.4720	1	2	3	6	9
117	4196	4.1630	1	1	2	5	10
118	8135	2.8930	1	1	1	3	7
119	1322	5.1060	1	1	3	6	12
120	37542	8.7990	1	2	6	11	20
121	167946	6.3300	2	3	5	8	12
122	82148	3.6130	1	2	3	5	7
123	41344	4.7020	1	1	3	6	11
124	137904	4.3540	1	2	3	5	8
125	91635	2.7840	1	1	2	4	5
126	5061	11.9020	4	6	9	15	22
127	684796	5.2710	2	3	4	7	10
128	8303	5.4670	2	3	5	7	9
129	4150	2.8310	1	1	1	3	6
130	89193	5.6610	2	3	5	7	10
131	27944	4.0540	1	2	4	5	7
132	152950	2.9290	1	1	2	4	5
133	8979	2.2630	1	1	2	3	4
134	39813	3.1770	1	2	2	4	6
135	7584	4.4210	1	2	3	5	8
136	1243	2.5710	1	1	2	3	5
138	204244	3.9830	1	2	3	5	8
139	90369	2.4820	1	1	2	3	5
140	66769	2.5570	1	1	2	3	5
141	102878	3.5910	1	2	3	4	7
142	51988	2.5540	1	1	2	3	5
143	251435	2.0830	1	1	2	3	4
144	89218	5.4560	1	2	4	7	11
145	7647	2.6530	1	1	2	3	5
146	10845	10.2150	5	7	8	12	17
147	2812	6.3970	3	5	6	8	10

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V19.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
148	130042	12.2930	5	7	10	15	22
149	19445	6.4620	4	5	6	8	10
150	20434	11.2310	4	7	10	14	20
151	5000	5.6690	1	3	5	8	10
152	4436	8.3290	3	5	7	10	14
153	2027	5.3860	3	4	5	7	8
154	29150	13.2280	3	7	10	16	26
155	7319	3.9840	1	2	3	6	8
156	3	15.0000	11	11	13	21	21
157	8205	5.5530	1	2	4	7	11
158	4604	2.5160	1	1	2	3	5
159	17212	5.0630	1	2	4	6	10
160	12260	2.6480	1	1	2	3	5
161	11221	4.1550	1	1	3	5	9
162	7337	1.9150	1	1	1	2	4
163	3	3.0000	1	1	3	5	5
164	5142	8.2640	3	5	7	10	14
165	2201	4.6460	2	3	4	6	8
166	3935	4.8750	1	2	4	6	9
167	3833	2.5130	1	1	2	3	4
168	1409	4.8810	1	2	3	6	10
169	887	2.3160	1	1	2	3	5
170	12237	10.9980	2	4	8	14	22
171	1367	4.3180	1	2	3	6	9
172	30816	6.9650	2	3	5	9	14
173	2736	3.7380	1	1	3	5	8
174	248283	4.8070	2	3	4	6	9
175	35359	2.9190	1	2	3	4	5
176	15279	5.2510	2	3	4	6	10
177	9466	4.5110	2	2	4	6	8
178	3770	3.0770	1	2	3	4	6
179	12641	5.9620	2	3	5	7	11
180	88694	5.3720	2	3	4	7	10
181	27227	3.3760	1	2	3	4	6
182	262087	4.3630	1	2	3	5	8
183	91760	2.8830	1	1	2	4	5
184	94	2.8400	1	1	2	4	6
185	5155	4.6870	1	2	3	6	9
186	3	4.6670	2	2	3	9	9
187	698	4.1790	1	2	3	6	8
188	79822	5.5600	1	2	4	7	11
189	13196	3.0550	1	1	2	4	6
190	78	4.7690	1	2	3	5	8
191	9286	13.7420	3	6	10	17	28
192	1267	6.1130	1	3	5	8	11
193	4893	12.7480	5	7	10	16	23
194	738	6.8510	2	4	6	8	12
195	4171	10.3630	4	6	9	12	18
196	1056	5.4220	2	3	5	7	9
197	18696	8.9790	3	5	7	11	16
198	5707	4.4310	2	3	4	6	8
199	1663	9.9180	2	4	7	13	21
200	1049	10.4500	1	3	7	14	22
201	1468	14.5860	3	6	11	18	29
202	26324	6.3730	2	3	5	8	13
203	29515	6.7410	2	3	5	9	13
204	61935	5.8110	2	3	4	7	11
205	24648	6.1690	2	3	5	8	12
206	2068	3.9160	1	2	3	5	8
207	32279	5.1810	1	2	4	7	10
208	10815	2.8610	1	1	2	4	5
209	373009	4.9900	3	3	4	6	8
210	122166	6.8910	3	4	6	8	11
211	32764	4.9270	3	4	5	6	7
212	7	3.2860	1	2	2	2	4
213	9936	9.1390	2	4	7	11	18
216	6966	9.5420	2	4	7	12	19
217	17192	13.4090	3	5	9	16	28
218	23017	5.4590	2	3	4	7	10
219	21116	3.2120	1	2	3	4	5

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V19.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
220	1	2.0000	2	2	2	2	2
223	13773	2.8810	1	1	2	3	6
224	12585	1.8630	1	1	1	2	3
225	6183	5.0260	1	2	3	7	11
226	5746	6.6640	1	3	5	8	14
227	4975	2.6700	1	1	2	3	5
228	2509	4.0880	1	1	2	5	9
229	1194	2.2140	1	1	2	3	4
230	2432	5.0670	1	2	3	6	11
231	12627	4.8920	1	1	3	6	11
232	885	2.7380	1	1	1	3	7
233	7255	7.2080	1	3	5	9	15
234	4649	3.1560	1	1	2	4	7
235	5116	5.0300	1	2	4	6	9
236	40046	4.7420	1	3	4	6	9
237	1761	3.6000	1	2	3	4	7
238	8678	8.8670	3	4	7	11	17
239	48474	6.2820	2	3	5	8	12
240	11901	6.7280	2	3	5	8	13
241	3252	3.8840	1	2	3	5	7
242	2531	6.5780	2	3	5	8	13
243	94344	4.6810	1	2	4	6	9
244	13655	4.7310	1	2	4	6	9
245	5760	3.3620	1	2	3	4	6
246	1350	3.7580	1	2	3	5	7
247	19731	3.3700	1	1	3	4	7
248	12158	4.8690	1	2	4	6	9
249	12733	3.6440	1	1	2	4	7
250	3838	4.1640	1	2	3	5	7
251	2517	2.7750	1	1	2	4	5
253	21017	4.6730	1	3	4	6	9
254	10910	3.1320	1	2	3	4	6
255	1	2.0000	2	2	2	2	2
256	6435	5.1150	1	2	4	6	10
257	16786	2.6640	1	1	2	3	5
258	17062	1.8180	1	1	2	2	3
259	3835	2.6770	1	1	1	2	6
260	5111	1.3670	1	1	1	1	2
261	1927	2.1650	1	1	1	2	4
262	688	4.2920	1	1	3	5	10
263	24727	11.8360	3	5	8	14	23
264	4016	6.9110	2	3	5	8	14
265	4092	6.7790	1	2	4	8	14
266	2697	3.1350	1	1	2	4	6
267	272	4.2170	1	1	2	4	8
268	925	3.5950	1	1	2	4	8
269	9136	8.2100	2	3	6	10	17
270	2765	3.2770	1	1	2	4	7
271	19734	7.2900	2	4	6	9	13
272	5508	6.1320	2	3	5	7	12
273	1389	3.9270	1	2	3	5	7
274	2368	6.7490	1	3	5	8	14
275	255	3.0120	1	1	2	4	6
276	1337	4.5030	1	2	4	6	8
277	94462	5.7610	2	3	5	7	10
278	31992	4.2750	2	3	4	5	7
279	4	6.7500	3	3	6	8	10
280	17235	4.1620	1	2	3	5	8
281	7951	2.9070	1	1	2	4	5
283	5674	4.6490	1	2	4	6	9
284	1960	3.0550	1	1	2	4	6
285	6641	10.6710	3	5	8	13	20
286	2193	5.9450	2	3	4	7	11
287	6513	10.5590	3	5	8	12	20
288	3757	5.3890	2	3	4	6	8
289	6449	2.8110	1	1	1	3	6
290	9553	2.2290	1	1	1	2	4
291	78	1.6030	1	1	1	2	3
292	5462	9.9410	2	4	8	13	20
293	354	4.9320	1	2	3	7	10

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V19.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
294	95967	4.5380	1	2	3	6	9
295	3387	3.9770	1	2	3	5	7
296	252270	5.1150	1	2	4	6	10
297	47995	3.3570	1	2	3	4	6
298	109	4.2750	1	2	3	5	7
299	1225	5.3900	1	2	4	6	10
300	17627	6.1590	2	3	5	8	12
301	3661	3.6680	1	2	3	5	7
302	8130	8.6850	4	5	7	10	15
303	20792	8.2750	3	4	6	9	15
304	12047	8.6780	2	4	6	11	18
305	2997	3.5710	1	2	3	4	6
306	7239	5.4920	1	2	3	7	13
307	2175	2.1990	1	1	2	3	4
308	7397	6.3290	1	2	4	8	14
309	4393	2.1880	1	1	2	3	4
310	24716	4.3420	1	1	3	5	9
311	8387	1.8230	1	1	1	2	3
312	1557	4.4950	1	1	3	6	10
313	646	2.1250	1	1	1	2	4
314	1	5.0000	5	5	5	5	5
315	31462	6.8980	1	1	4	9	16
316	117216	6.6330	2	3	5	8	13
317	1913	3.0910	1	1	2	3	7
318	5785	6.0350	1	3	4	8	12
319	503	2.8330	1	1	2	3	6
320	194230	5.3020	2	3	4	7	10
321	30917	3.7520	1	2	3	5	7
322	68	3.7350	1	2	3	5	7
323	18745	3.1420	1	1	2	4	6
324	7509	1.8440	1	1	1	2	3
325	8989	3.7900	1	2	3	5	7
326	2820	2.6710	1	1	2	3	5
327	2	2.5000	1	1	4	4	4
328	690	3.7720	1	1	3	5	7
329	105	2.2000	1	1	1	2	5
331	49529	5.5840	1	3	4	7	11
332	5171	3.1690	1	1	2	4	6
333	321	4.6980	1	2	3	6	10
334	10358	4.7820	2	3	4	5	8
335	12477	3.1770	2	2	3	4	5
336	36484	3.4270	1	2	2	4	7
337	29676	2.0680	1	1	2	2	3
338	1057	5.5560	1	2	3	8	13
339	1518	4.6420	1	1	3	6	10
340	1	1.0000	1	1	1	1	1
341	3693	3.0630	1	1	2	3	6
342	726	3.1640	1	1	2	4	6
343	1	5.0000	5	5	5	5	5
344	3824	2.2880	1	1	1	2	4
345	1188	3.8760	1	1	2	4	8
346	4590	6.0320	1	3	5	8	12
347	379	2.6830	1	1	2	3	6
348	3308	4.1570	1	2	3	5	8
349	605	2.4740	1	1	2	3	5
350	6535	4.5040	2	2	4	6	8
351	1	1.0000	1	1	1	1	1
352	774	3.9810	1	2	3	5	8
353	2685	6.4640	2	3	5	7	12
354	7532	5.8240	3	3	4	7	10
355	5709	3.2350	2	2	3	4	5
356	26094	2.1720	1	1	2	3	4
357	5753	8.4210	3	4	6	10	16
358	20771	4.3060	2	3	3	5	7
359	31334	2.6370	1	2	3	3	4
360	15680	2.8180	1	2	2	3	5
361	371	3.6500	1	1	2	4	8
362	4	1.2500	1	1	1	1	2
363	2701	3.6410	1	2	2	4	7
364	1643	3.8820	1	1	3	5	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V19.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
365	1793	7.3830	1	3	5	9	16
366	4469	6.8500	2	3	5	9	14
367	526	3.0080	1	1	2	4	6
368	3302	6.7190	2	3	5	8	13
369	3304	3.1880	1	1	2	4	6
370	1286	5.6890	3	3	4	5	9
371	1479	3.5800	2	3	3	4	5
372	939	3.7150	1	2	2	3	5
373	3974	2.2870	1	2	2	3	3
374	122	2.8770	1	2	2	3	5
375	8	5.2500	1	3	5	5	9
376	266	3.5080	1	2	2	4	6
377	31	4.1940	1	2	3	4	7
378	173	2.4800	1	1	2	3	5
379	416	2.9760	1	1	2	3	6
380	81	1.9750	1	1	1	2	4
381	187	2.1230	1	1	1	3	4
382	27	1.3330	1	1	1	1	2
383	1881	3.9530	1	1	3	4	8
384	156	2.7820	1	1	1	3	6
386	1	119.0000	119	119	119	119	119
389	7	8.7140	1	2	4	8	10
390	8	2.7500	1	1	1	4	5
392	2275	9.5310	2	4	7	12	20
393	1	2.0000	2	2	2	2	2
394	1971	6.3180	1	2	4	8	14
395	101315	4.3510	1	2	3	5	9
396	11	3.8180	1	1	2	4	6
397	18036	5.1720	1	2	4	7	10
398	17243	5.8910	2	3	5	7	11
399	1806	3.5480	1	2	3	5	7
400	6533	8.9770	1	3	6	11	20
401	5878	11.2420	2	5	9	15	23
402	1606	3.8890	1	1	3	5	8
403	32232	8.0040	2	3	6	10	17
404	4627	4.1950	1	2	3	5	9
406	2508	9.7210	2	4	7	12	20
407	704	4.1210	1	2	3	5	8
408	2142	7.8730	1	2	5	10	18
409	2534	6.1220	2	3	4	6	12
410	30971	4.0150	1	2	4	5	6
411	14	2.9290	1	1	2	4	6
412	18	2.0000	1	1	1	2	4
413	5811	7.3080	2	3	6	9	14
414	771	4.0100	1	2	3	5	8
415	40210	14.5010	4	6	11	18	29
416	181965	7.4660	2	4	6	9	15
417	41	6.1710	1	2	4	8	14
418	23577	6.1810	2	3	5	8	12
419	15866	4.6500	1	2	4	6	9
420	2980	3.4310	1	2	3	4	6
421	9327	3.7870	1	2	3	4	7
422	70	2.9570	1	1	2	3	6
423	7327	8.2410	2	3	6	10	17
424	1308	12.9440	2	5	9	16	26
425	16394	3.8990	1	2	3	5	8
426	4535	4.4740	1	2	3	5	9
427	1609	4.4410	1	2	3	5	9
428	757	7.3750	1	2	4	8	15
429	27186	6.1440	2	3	4	7	12
430	63771	7.9550	2	3	6	10	16
431	328	5.9390	1	2	4	7	13
432	423	4.5820	1	1	3	5	9
433	5584	2.9750	1	1	2	3	6
439	1473	8.5030	1	3	6	10	17
440	5503	9.0500	2	3	6	11	20
441	625	3.0740	1	1	2	4	7
442	16855	8.5610	1	3	6	10	18
443	3849	3.5180	1	1	3	4	7
444	5747	4.3170	1	2	3	5	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V19.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
445	2784	2.8980	1	1	2	4	5
447	6305	2.4430	1	1	2	3	5
448	1	1.0000	1	1	1	1	1
449	30763	3.6800	1	1	3	4	8
450	7473	1.9840	1	1	1	2	4
451	5	1.6000	1	1	2	2	2
452	25447	5.0230	1	2	3	6	10
453	5690	2.7650	1	1	2	3	5
454	4688	4.3390	1	2	3	5	9
455	1114	2.3700	1	1	2	3	5
461	4611	4.1010	1	1	2	4	10
462	12023	11.3750	4	6	10	14	21
463	25420	4.1700	1	2	3	5	8
464	7177	3.0080	1	1	2	4	6
465	227	2.8770	1	1	1	3	5
466	1824	4.0780	1	1	2	4	7
467	1063	8.4440	1	1	2	3	6
468	57546	12.8910	3	6	10	16	25
471	12545	5.5070	3	3	4	6	9
473	8303	12.3500	1	3	7	17	32
475	104500	11.2180	2	5	9	15	22
476	3821	11.2580	2	5	10	15	21
477	25818	8.1450	1	3	6	11	17
478	109191	7.3850	1	3	5	9	16
479	24297	3.3010	1	1	3	4	7
480	649	21.7670	7	9	14	28	51
481	750	22.0970	13	17	20	25	34
482	5619	13.2190	4	7	10	16	25
483	43462	39.9080	15	22	33	49	72
484	331	13.0510	2	5	10	18	27
485	3084	9.4890	4	5	7	11	18
486	1988	12.2010	1	5	10	16	25
487	3690	7.6740	1	3	6	10	16
488	782	16.8530	3	6	13	22	35
489	13676	8.5500	2	3	6	10	18
490	5331	5.2610	1	2	4	6	10
491	13680	3.4640	1	2	3	4	6
492	2898	15.0290	2	5	7	25	34
493	58389	5.8760	1	3	5	7	11
494	31161	2.4740	1	1	2	3	5
495	215	17.3070	8	10	13	20	31
496	1866	9.4750	3	4	7	11	19
497	20076	6.5420	3	4	5	7	11
498	14808	4.1250	2	3	4	5	6
499	32826	4.6350	1	2	3	6	9
500	49835	2.4640	1	1	2	3	5
501	2366	10.6200	4	5	8	13	20
502	643	6.3840	2	4	5	7	11
503	5941	3.8850	1	2	3	5	7
504	124	34.7980	9	15	27	44	66
505	149	3.7250	1	1	1	5	9
506	939	17.2470	4	8	14	22	36
507	289	8.9790	2	4	7	12	18
508	667	8.2220	2	3	6	10	17
509	179	5.6200	1	2	5	7	10
510	1679	6.6240	1	3	5	8	13
511	622	4.3750	1	1	3	5	9
512	481	14.4570	6	8	11	16	25
513	152	10.7570	5	7	9	11	20
514	19636	7.3000	1	3	6	10	15
515	4638	5.5020	1	1	3	7	13
516	76643	4.7310	2	2	4	6	9
517	192533	2.6120	1	1	2	3	6
518	51888	3.3920	1	1	2	4	7
519	7288	5.1560	1	2	3	6	12
520	11196	2.1150	1	1	2	2	4
521	28838	5.7890	2	3	4	7	12
522	6195	9.4550	3	4	8	12	20
523	15001	4.0880	1	2	3	5	7

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V19.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)

[FY 2001 MEDPAR Update March 2002 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	27930	11.1260	3	5	8	14	22
2	14166	5.2220	1	3	4	7	10
3	7	7.4290	1	1	3	4	10
4	6510	7.1900	1	2	5	9	16
5	93559	3.0670	1	1	2	3	7
6	398	2.9200	1	1	2	4	6
7	14289	9.7760	1	4	7	12	20
8	4389	2.7520	1	1	1	3	6
9	1755	6.4550	1	3	5	8	13
10	18163	6.5160	2	3	5	8	13
11	3444	4.0010	1	2	3	5	8
12	49862	5.8770	2	3	4	7	11
13	6731	5.0160	2	3	4	6	9
14	236626	6.0820	2	3	5	7	12
15	102255	4.9520	2	3	4	6	9
16	9310	6.1410	2	3	5	8	12
17	2882	3.1380	1	1	2	4	6
18	28194	5.4260	2	3	4	7	10
19	8749	3.5380	1	2	3	5	7
20	5666	10.4560	3	5	8	13	20
21	1445	6.5690	2	3	5	8	13
22	2737	5.0080	2	2	4	6	10
23	11274	4.2370	1	2	3	5	8
24	55738	4.8890	1	2	4	6	10
25	27443	3.2300	1	2	3	4	6
26	35	4.6290	1	1	2	4	6
27	3897	5.0160	1	1	3	6	11
28	12468	6.2410	1	3	5	8	13
29	4987	3.5570	1	2	3	5	7
31	3887	4.0710	1	2	3	5	8
32	1940	2.4380	1	1	2	3	5
34	22860	5.0270	1	2	4	6	9
35	7575	3.2120	1	1	3	4	6
36	2513	1.4700	1	1	1	1	2
37	1437	3.8040	1	1	2	4	8
38	93	2.4950	1	1	1	3	6
39	671	1.9400	1	1	1	2	4
40	1534	3.6140	1	1	2	5	8
42	1951	2.3660	1	1	1	3	5
43	111	3.0270	1	1	2	4	6
44	1302	5.0340	2	3	4	6	9
45	2619	3.2440	1	2	3	4	6
46	3394	4.5840	1	2	4	6	9
47	1359	3.1660	1	1	3	4	6
48	1	2.0000	2	2	2	2	2
49	2347	4.6230	1	2	3	5	9
50	2492	1.8210	1	1	1	2	3
51	254	3.1260	1	1	1	3	7
52	242	1.9130	1	1	1	2	3
53	2528	3.3780	1	1	2	4	8
54	1	4.0000	4	4	4	4	4
55	1583	3.0580	1	1	1	3	6
56	535	2.9780	1	1	2	3	6
57	696	3.7400	1	1	2	4	8
59	129	2.6740	1	1	1	3	6
60	6	3.3330	1	1	2	5	5
61	244	4.7830	1	1	3	6	10
62	3	1.6670	1	1	1	3	3
63	2951	4.4780	1	1	3	6	9
64	3168	6.5990	1	2	4	8	14
65	39160	2.7980	1	1	2	3	5

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
66	7719	3.1100	1	1	2	4	6
67	441	3.5940	1	2	3	4	6
68	8805	3.8300	1	2	3	5	7
69	3059	2.9940	1	2	2	4	5
70	25	3.4800	1	2	3	4	8
71	87	3.4370	1	2	3	4	6
72	934	3.5630	1	1	3	4	7
73	7115	4.3800	1	2	3	6	9
75	40165	10.0590	3	5	7	12	20
76	41905	11.4330	3	5	9	14	22
77	2458	4.8650	1	2	4	7	10
78	35476	6.6620	3	4	6	8	11
79	166958	8.5080	3	4	7	11	16
80	8364	5.4950	2	3	5	7	10
81	2	8.0000	3	3	13	13	13
82	63860	6.9900	2	3	6	9	14
83	6521	5.4790	2	3	4	7	10
84	1602	3.2040	1	2	3	4	6
85	21367	6.3180	2	3	5	8	12
86	2192	3.8090	1	2	3	5	8
87	59754	6.3130	1	3	5	8	12
88	398448	5.1060	2	3	4	6	9
89	504650	5.8910	2	3	5	7	11
90	47050	4.0300	2	2	3	5	7
91	55	4.0180	2	2	3	5	9
92	14891	6.3630	2	3	5	8	12
93	1721	4.1100	1	2	3	5	8
94	12688	6.3310	2	3	5	8	13
95	1704	3.7280	1	2	3	5	7
96	54007	4.5510	2	2	4	6	8
97	28779	3.5190	1	2	3	4	6
98	15	5.0000	1	2	3	4	13
99	21402	3.1730	1	1	2	4	6
100	9013	2.1320	1	1	2	3	4
101	21303	4.3870	1	2	3	6	9
102	5618	2.5720	1	1	2	3	5
103	453	51.8520	9	14	27	64	130
104	19595	14.4100	6	8	12	17	25
105	27398	9.9560	5	6	8	11	18
106	3320	11.4070	5	7	10	14	20
107	86073	10.4600	5	7	9	12	17
108	6235	10.2790	3	5	8	13	20
109	59810	7.7310	4	5	6	9	13
110	53439	9.0380	2	4	7	11	18
111	9446	4.4130	1	2	4	6	8
113	41687	12.4870	4	6	9	15	24
114	8909	8.5190	2	4	7	11	17
115	15348	8.2670	1	4	7	11	16
116	109696	4.4720	1	2	3	6	9
117	4196	4.1630	1	1	2	5	10
118	8135	2.8930	1	1	1	3	7
119	1322	5.1060	1	1	3	6	12
120	37631	8.7880	1	2	6	11	20
121	167946	6.3300	2	3	5	8	12
122	82148	3.6130	1	2	3	5	7
123	41344	4.7020	1	1	3	6	11
124	138962	4.3690	1	2	3	6	8
125	90577	2.7430	1	1	2	4	5
126	5061	11.9020	4	6	9	15	22
127	684796	5.2710	2	3	4	7	10
128	8303	5.4670	2	3	5	7	9
129	4150	2.8310	1	1	1	3	6
130	89193	5.6610	2	3	5	7	10
131	27944	4.0540	1	2	4	5	7
132	152950	2.9290	1	1	2	4	5
133	8979	2.2630	1	1	2	3	4
134	39813	3.1770	1	2	2	4	6
135	7584	4.4210	1	2	3	5	8
136	1243	2.5710	1	1	2	3	5
138	204244	3.9830	1	2	3	5	8

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
139	90369	2.4820	1	1	2	3	5
140	66769	2.5570	1	1	2	3	5
141	102878	3.5910	1	2	3	4	7
142	51988	2.5540	1	1	2	3	5
143	251435	2.0830	1	1	2	3	4
144	89218	5.4560	1	2	4	7	11
145	7647	2.6530	1	1	2	3	5
146	10845	10.2150	5	7	8	12	17
147	2812	6.3970	3	5	6	8	10
148	130042	12.2930	5	7	10	15	22
149	19445	6.4620	4	5	6	8	10
150	20434	11.2310	4	7	10	14	20
151	5000	5.6690	1	3	5	8	10
152	4436	8.3290	3	5	7	10	14
153	2027	5.3860	3	4	5	7	8
154	29150	13.2280	3	7	10	16	26
155	7319	3.9840	1	2	3	6	8
156	3	15.0000	11	11	13	21	21
157	8205	5.5530	1	2	4	7	11
158	4604	2.5160	1	1	2	3	5
159	17212	5.0630	1	2	4	6	10
160	12260	2.6480	1	1	2	3	5
161	11221	4.1550	1	1	3	5	9
162	7337	1.9150	1	1	1	2	4
163	3	3.0000	1	1	3	5	5
164	5142	8.2640	3	5	7	10	14
165	2201	4.6460	2	3	4	6	8
166	3935	4.8750	1	2	4	6	9
167	3833	2.5130	1	1	2	3	4
168	1409	4.8810	1	2	3	6	10
169	887	2.3160	1	1	2	3	5
170	15002	11.0580	2	5	8	14	22
171	1472	4.2760	1	2	3	6	8
172	30816	6.9650	2	3	5	9	14
173	2736	3.7380	1	1	3	5	8
174	248283	4.8070	2	3	4	6	9
175	35359	2.9190	1	2	3	4	5
176	15279	5.2510	2	3	4	6	10
177	9466	4.5110	2	2	4	6	8
178	3770	3.0770	1	2	3	4	6
179	12641	5.9620	2	3	5	7	11
180	88694	5.3720	2	3	4	7	10
181	27227	3.3760	1	2	3	4	6
182	262087	4.3630	1	2	3	5	8
183	91760	2.8830	1	1	2	4	5
184	94	2.8400	1	1	2	4	6
185	5155	4.6870	1	2	3	6	9
186	3	4.6670	2	2	3	9	9
187	698	4.1790	1	2	3	6	8
188	79822	5.5600	1	2	4	7	11
189	13196	3.0550	1	1	2	4	6
190	78	4.7690	1	2	3	5	8
191	9286	13.7420	3	6	10	17	28
192	1267	6.1130	1	3	5	8	11
193	4893	12.7480	5	7	10	16	23
194	738	6.8510	2	4	6	8	12
195	4171	10.3630	4	6	9	12	18
196	1056	5.4220	2	3	5	7	9
197	18696	8.9790	3	5	7	11	16
198	5707	4.4310	2	3	4	6	8
199	1663	9.9180	2	4	7	13	21
200	1049	10.4500	1	3	7	14	22
201	2020	14.5070	4	6	11	18	29
202	26324	6.3730	2	3	5	8	13
203	29515	6.7410	2	3	5	9	13
204	61935	5.8110	2	3	4	7	11
205	24648	6.1690	2	3	5	8	12
206	2068	3.9160	1	2	3	5	8
207	32279	5.1810	1	2	4	7	10
208	10815	2.8610	1	1	2	4	5

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
209	373009	4.9900	3	3	4	6	8
210	122166	6.8910	3	4	6	8	11
211	32764	4.9270	3	4	5	6	7
212	7	3.2860	1	2	2	2	4
213	9936	9.1390	2	4	7	11	18
216	6966	9.5420	2	4	7	12	19
217	17192	13.4090	3	5	9	16	28
218	23017	5.4590	2	3	4	7	10
219	21116	3.2120	1	2	3	4	5
220	1	2.0000	2	2	2	2	2
223	13773	2.8810	1	1	2	3	6
224	12585	1.8630	1	1	1	2	3
225	6183	5.0260	1	2	3	7	11
226	5746	6.6640	1	3	5	8	14
227	4975	2.6700	1	1	2	3	5
228	2509	4.0880	1	1	2	5	9
229	1194	2.2140	1	1	2	3	4
230	2432	5.0670	1	2	3	6	11
231	12627	4.8920	1	1	3	6	11
232	885	2.7380	1	1	1	3	7
233	7875	7.7800	1	3	6	10	16
234	4676	3.1670	1	1	2	4	7
235	5116	5.0300	1	2	4	6	9
236	40046	4.7420	1	3	4	6	9
237	1761	3.6000	1	2	3	4	7
238	8678	8.8670	3	4	7	11	17
239	48474	6.2820	2	3	5	8	12
240	11901	6.7280	2	3	5	8	13
241	3252	3.8840	1	2	3	5	7
242	2531	6.5780	2	3	5	8	13
243	94344	4.6810	1	2	4	6	9
244	13655	4.7310	1	2	4	6	9
245	5760	3.3620	1	2	3	4	6
246	1350	3.7580	1	2	3	5	7
247	19731	3.3700	1	1	3	4	7
248	12158	4.8690	1	2	4	6	9
249	12733	3.6440	1	1	2	4	7
250	3838	4.1640	1	2	3	5	7
251	2517	2.7750	1	1	2	4	5
253	21017	4.6730	1	3	4	6	9
254	10910	3.1320	1	2	3	4	6
255	1	2.0000	2	2	2	2	2
256	6435	5.1150	1	2	4	6	10
257	16786	2.6640	1	1	2	3	5
258	17062	1.8180	1	1	2	2	3
259	3835	2.6770	1	1	1	2	6
260	5111	1.3670	1	1	1	1	2
261	1927	2.1650	1	1	1	2	4
262	688	4.2920	1	1	3	5	10
263	24727	11.8360	3	5	8	14	23
264	4016	6.9110	2	3	5	8	14
265	4092	6.7790	1	2	4	8	14
266	2697	3.1350	1	1	2	4	6
267	272	4.2170	1	1	2	4	8
268	925	3.5950	1	1	2	4	8
269	9738	8.4120	2	3	6	11	17
270	2865	3.3910	1	1	2	4	7
271	19734	7.2900	2	4	6	9	13
272	5508	6.1320	2	3	5	7	12
273	1389	3.9270	1	2	3	5	7
274	2368	6.7490	1	3	5	8	14
275	255	3.0120	1	1	2	4	6
276	1337	4.5030	1	2	4	6	8
277	94462	5.7610	2	3	5	7	10
278	31992	4.2750	2	3	4	5	7
279	4	6.7500	3	3	6	8	10
280	17235	4.1620	1	2	3	5	8
281	7951	2.9070	1	1	2	4	5
283	5674	4.6490	1	2	4	6	9
284	1960	3.0550	1	1	2	4	6

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
285	6641	10.6710	3	5	8	13	20
286	2193	5.9450	2	3	4	7	11
287	6513	10.5590	3	5	8	12	20
288	3757	5.3890	2	3	4	6	8
289	6449	2.8110	1	1	1	3	6
290	9553	2.2290	1	1	1	2	4
291	78	1.6030	1	1	1	2	3
292	6125	10.6910	2	4	8	14	22
293	371	5.0650	1	2	3	7	11
294	95967	4.5380	1	2	3	6	9
295	3387	3.9770	1	2	3	5	7
296	252270	5.1150	1	2	4	6	10
297	47995	3.3570	1	2	3	4	6
298	109	4.2750	1	2	3	5	7
299	1225	5.3900	1	2	4	6	10
300	17627	6.1590	2	3	5	8	12
301	3661	3.6680	1	2	3	5	7
302	8130	8.6850	4	5	7	10	15
303	20806	8.2750	3	4	6	9	15
304	12148	8.6900	2	4	6	11	18
305	3033	3.6060	1	2	3	5	6
306	7239	5.4920	1	2	3	7	13
307	2175	2.1990	1	1	2	3	4
308	7283	6.2730	1	2	4	8	14
309	4356	2.1520	1	1	2	3	4
310	24716	4.3420	1	1	3	5	9
311	8387	1.8230	1	1	1	2	3
312	1557	4.4950	1	1	3	6	10
313	646	2.1250	1	1	1	2	4
314	1	5.0000	5	5	5	5	5
315	34008	7.2120	1	1	4	9	17
316	115890	6.5900	2	3	5	8	13
317	1913	3.0910	1	1	2	3	7
318	5785	6.0350	1	3	4	8	12
319	503	2.8330	1	1	2	3	6
320	194230	5.3020	2	3	4	7	10
321	30917	3.7520	1	2	3	5	7
322	68	3.7350	1	2	3	5	7
323	18745	3.1420	1	1	2	4	6
324	7509	1.8440	1	1	1	2	3
325	8989	3.7900	1	2	3	5	7
326	2820	2.6710	1	1	2	3	5
327	2	2.5000	1	1	4	4	4
328	690	3.7720	1	1	3	5	7
329	105	2.2000	1	1	1	2	5
331	49529	5.5840	1	3	4	7	11
332	5171	3.1690	1	1	2	4	6
333	321	4.6980	1	2	3	6	10
334	10358	4.7820	2	3	4	5	8
335	12477	3.1770	2	2	3	4	5
336	36484	3.4270	1	2	2	4	7
337	29676	2.0680	1	1	2	2	3
338	1057	5.5560	1	2	3	8	13
339	1518	4.6420	1	1	3	6	10
340	1	1.0000	1	1	1	1	1
341	3693	3.0630	1	1	2	3	6
342	726	3.1640	1	1	2	4	6
343	1	5.0000	5	5	5	5	5
344	3852	2.3750	1	1	1	2	5
345	1343	4.7770	1	1	3	6	11
346	4590	6.0320	1	3	5	8	12
347	379	2.6830	1	1	2	3	6
348	3308	4.1570	1	2	3	5	8
349	605	2.4740	1	1	2	3	5
350	6535	4.5040	2	2	4	6	8
351	1	1.0000	1	1	1	1	1
352	774	3.9810	1	2	3	5	8
353	2685	6.4640	2	3	5	7	12
354	7532	5.8240	3	3	4	7	10
355	5709	3.2350	2	2	3	4	5

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
356	26094	2.1720	1	1	2	3	4
357	5753	8.4210	3	4	6	10	16
358	20771	4.3060	2	3	3	5	7
359	31334	2.6370	1	2	3	3	4
360	15680	2.8180	1	2	2	3	5
361	371	3.6500	1	1	2	4	8
362	4	1.2500	1	1	1	1	2
363	2701	3.6410	1	2	2	4	7
364	1643	3.8820	1	1	3	5	8
365	1863	7.7040	2	3	5	10	17
366	4469	6.8500	2	3	5	9	14
367	526	3.0080	1	1	2	4	6
368	3302	6.7190	2	3	5	8	13
369	3304	3.1880	1	1	2	4	6
370	1286	5.6890	3	3	4	5	9
371	1479	3.5800	2	3	3	4	5
372	939	3.7150	1	2	2	3	5
373	3974	2.2870	1	2	2	3	3
374	122	2.8770	1	2	2	3	5
375	8	5.2500	1	3	5	5	9
376	266	3.5080	1	2	2	4	6
377	31	4.1940	1	2	3	4	7
378	173	2.4800	1	1	2	3	5
379	416	2.9760	1	1	2	3	6
380	81	1.9750	1	1	1	2	4
381	187	2.1230	1	1	1	3	4
382	27	1.3330	1	1	1	1	2
383	1881	3.9530	1	1	3	4	8
384	156	2.7820	1	1	1	3	6
386	1	119.0000	119	119	119	119	119
389	7	8.7140	1	2	4	8	10
390	8	2.7500	1	1	1	4	5
392	2275	9.5310	2	4	7	12	20
393	1	2.0000	2	2	2	2	2
394	2349	7.0870	1	2	5	9	15
395	101315	4.3510	1	2	3	5	9
396	11	3.8180	1	1	2	4	6
397	18036	5.1720	1	2	4	7	10
398	17243	5.8910	2	3	5	7	11
399	1806	3.5480	1	2	3	5	7
400	6533	8.9770	1	3	6	11	20
401	5878	11.2420	2	5	9	15	23
402	1606	3.8890	1	1	3	5	8
403	32232	8.0040	2	3	6	10	17
404	4627	4.1950	1	2	3	5	9
406	2508	9.7210	2	4	7	12	20
407	704	4.1210	1	2	3	5	8
408	2142	7.8730	1	2	5	10	18
409	2534	6.1220	2	3	4	6	12
410	30971	4.0150	1	2	4	5	6
411	14	2.9290	1	1	2	4	6
412	18	2.0000	1	1	1	2	4
413	5811	7.3080	2	3	6	9	14
414	771	4.0100	1	2	3	5	8
415	40210	14.5010	4	6	11	18	29
416	181965	7.4660	2	4	6	9	15
417	41	6.1710	1	2	4	8	14
418	23577	6.1810	2	3	5	8	12
419	15866	4.6500	1	2	4	6	9
420	2980	3.4310	1	2	3	4	6
421	9327	3.7870	1	2	3	4	7
422	70	2.9570	1	1	2	3	6
423	7327	8.2410	2	3	6	10	17
424	1308	12.9440	2	5	9	16	26
425	16394	3.8990	1	2	3	5	8
426	4535	4.4740	1	2	3	5	9
427	1609	4.4410	1	2	3	5	9
428	757	7.3750	1	2	4	8	15
429	27186	6.1440	2	3	4	7	12
430	63771	7.9550	2	3	6	10	16

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
431	328	5.9390	1	2	4	7	13
432	423	4.5820	1	1	3	5	9
433	5584	2.9750	1	1	2	3	6
439	1473	8.5030	1	3	6	10	17
440	5503	9.0500	2	3	6	11	20
441	625	3.0740	1	1	2	4	7
442	16855	8.5610	1	3	6	10	18
443	3849	3.5180	1	1	3	4	7
444	5747	4.3170	1	2	3	5	8
445	2784	2.8980	1	1	2	4	5
447	6305	2.4430	1	1	2	3	5
448	1	1.0000	1	1	1	1	1
449	30763	3.6800	1	1	3	4	8
450	7473	1.9840	1	1	1	2	4
451	5	1.6000	1	1	2	2	2
452	25447	5.0230	1	2	3	6	10
453	5690	2.7650	1	1	2	3	5
454	4688	4.3390	1	2	3	5	9
455	1114	2.3700	1	1	2	3	5
461	4611	4.1010	1	1	2	4	10
462	12023	11.3750	4	6	10	14	21
463	25420	4.1700	1	2	3	5	8
464	7177	3.0080	1	1	2	4	6
465	227	2.8770	1	1	1	3	5
466	1824	4.0780	1	1	2	4	7
467	1063	8.4440	1	1	2	3	6
468	50164	12.9990	3	6	10	17	25
471	12545	5.5070	3	3	4	6	9
473	8303	12.3500	1	3	7	17	32
475	104500	11.2180	2	5	9	15	22
476	3821	11.2580	2	5	10	15	21
477	25809	8.1370	1	3	6	11	17
478	109191	7.3850	1	3	5	9	16
479	24297	3.3010	1	1	3	4	7
480	649	21.7670	7	9	14	28	51
481	750	22.0970	13	17	20	25	34
482	5372	12.5700	4	7	9	15	24
483	43709	39.8370	14	22	33	49	71
484	331	13.0510	2	5	10	18	27
485	3084	9.4890	4	5	7	11	18
486	1988	12.2010	1	5	10	16	25
487	3690	7.6740	1	3	6	10	16
488	782	16.8530	3	6	13	22	35
489	13676	8.5500	2	3	6	10	18
490	5329	5.2600	1	2	4	6	10
491	13680	3.4640	1	2	3	4	6
492	2898	15.0290	2	5	7	25	34
493	58389	5.8760	1	3	5	7	11
494	31161	2.4740	1	1	2	3	5
495	215	17.3070	8	10	13	20	31
496	1866	9.4750	3	4	7	11	19
497	20076	6.5420	3	4	5	7	11
498	14808	4.1250	2	3	4	5	6
499	32826	4.6350	1	2	3	6	9
500	49835	2.4640	1	1	2	3	5
501	2366	10.6200	4	5	8	13	20
502	643	6.3840	2	4	5	7	11
503	5941	3.8850	1	2	3	5	7
504	124	34.7980	9	15	27	44	66
505	149	3.7250	1	1	1	5	9
506	939	17.2470	4	8	14	22	36
507	289	8.9790	2	4	7	12	18
508	667	8.2220	2	3	6	10	17
509	179	5.6200	1	2	5	7	10
510	1679	6.6240	1	3	5	8	13
511	622	4.3750	1	1	3	5	9
512	481	14.4570	6	8	11	16	25
513	152	10.7570	5	7	9	11	20
514	19636	7.3000	1	3	6	10	15
515	4638	5.5020	1	1	3	7	13

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY (LOS)—Continued

[FY 2001 MEDPAR Update March 2002 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
516	61977	4.7310	2	2	4	6	9
517	151552	2.6120	1	1	2	3	6
518	51888	3.3920	1	1	2	4	7
519	7288	5.1560	1	2	3	6	12
520	11196	2.1150	1	1	2	2	4
521	28838	5.7890	2	3	4	7	12
522	6195	9.4550	3	4	8	12	20
523	15001	4.0880	1	2	3	5	7
524	137407	3.3970	1	2	3	4	6
525	497	16.3000	2	5	9	18	36
526	14666	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
527	40981	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	11483663						

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) JULY 2002

State	Urban	Rural
ALABAMA	0.338	0.395
ALASKA	0.408	0.676
ARIZONA	0.345	0.473
ARKANSAS	0.430	0.435
CALIFORNIA	0.328	0.412
COLORADO	0.411	0.532
CONNECTICUT	0.494	0.509
DELAWARE	0.516	0.484
DISTRICT OF COLUMBIA	0.415	
FLORIDA	0.343	0.358
GEORGIA	0.457	0.453
HAWAII	0.410	0.519
IDAHO	0.558	0.543
ILLINOIS	0.392	0.487
INDIANA	0.488	0.526
IOWA	0.471	0.596
KANSAS	0.380	0.587
KENTUCKY	0.477	0.487
LOUISIANA	0.389	0.482
MAINE	0.580	0.517
MARYLAND	0.759	0.821
MASSACHUSETTS	0.514	0.560
MICHIGAN	0.460	0.562
MINNESOTA	0.460	0.585
MISSISSIPPI	0.444	0.424
MISSOURI	0.397	0.474
MONTANA	0.504	0.536
NEBRASKA	0.428	0.547
NEVADA	0.282	0.473
NEW HAMPSHIRE	0.524	0.587
NEW JERSEY	0.356	
NEW MEXICO	0.472	0.516
NEW YORK	0.487	0.595
NORTH CAROLINA	0.512	0.465
NORTH DAKOTA	0.609	0.555
OHIO	0.492	0.566
OKLAHOMA	0.390	0.474
OREGON	0.545	0.577

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) JULY 2002—Continued

State	Urban	Rural
PENNSYLVANIA	0.375	0.499
PUERTO RICO	0.470	0.561
RHODE ISLAND	0.486	
SOUTH CAROLINA	0.438	0.456
SOUTH DAKOTA	0.490	0.552
TENNESSEE	0.429	0.457
TEXAS	0.381	0.483
UTAH	0.495	0.584
VERMONT	0.580	0.599
VIRGINIA	0.451	0.543
WASHINGTON	0.581	0.595
WEST VIRGINIA	0.569	0.549
WISCONSIN	0.518	0.595
WYOMING	0.446	0.614

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) JULY 2002

State	Ratio
ALABAMA	0.042
ALASKA	0.053
ARIZONA	0.037
ARKANSAS	0.045
CALIFORNIA	0.032
COLORADO	0.046
CONNECTICUT	0.036
DELAWARE	0.048
DISTRICT OF COLUMBIA	0.033
FLORIDA	0.041
GEORGIA	0.048
HAWAII	0.039
IDAHO	0.047
ILLINOIS	0.039
INDIANA	0.050

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) JULY 2002—Continued

State	Ratio
IOWA	0.047
KANSAS	0.047
KENTUCKY	0.046
LOUISIANA	0.045
MAINE	0.037
MARYLAND	0.013
MASSACHUSETTS	0.050
MICHIGAN	0.044
MINNESOTA	0.042
MISSISSIPPI	0.042
MISSOURI	0.042
MONTANA	0.051
NEBRASKA	0.047
NEVADA	0.031
NEW HAMPSHIRE	0.059
NEW JERSEY	0.031
NEW MEXICO	0.045
NEW YORK	0.048
NORTH CAROLINA	0.047
NORTH DAKOTA	0.068
OHIO	0.047
OKLAHOMA	0.043
OREGON	0.042
PENNSYLVANIA	0.037
PUERTO RICO	0.041
RHODE ISLAND	0.031
SOUTH CAROLINA	0.046
SOUTH DAKOTA	0.051
TENNESSEE	0.049
TEXAS	0.043
UTAH	0.046
VERMONT	0.049
VIRGINIA	0.056
WASHINGTON	0.067
WEST VIRGINIA	0.045
WISCONSIN	0.050
WYOMING	0.055

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2003

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
010005	01	3440	3440
010008	01	5240	
010010	01	3440	3440
010012	01	2880	
010022	01	2880	
010029	0580	1800	
010035	01	1000	
010036	01	2750	
010043	01	1000	1000
010072	01	0450	0450
010101	01	0450	0450
010118	01	5240	
010120	01	5160	
010121	01	5240	
010126	01	2180	
010150	01	5240	
010158	01	2650	
020008	02	0380	
030007	03	2620	
030012	03	6200	
030033	03	2620	
030043	03	8520	
040014	04	4400	
040017	04	7920	
040019	04	4920	
040020	3700	4920	
040026	04	4400	
040027	04	7920	
040041	04	4400	
040045	04	26	
040066	04	4400	
040069	04	4920	
040076	04	4400	
040078	04	4400	
040080	04	3700	
040088	04	7680	
040091	04	8360	
040107	04	8360	
040119	04	4400	
050042	05	6690	
050045	05		7320
050069	5945	4480	
050071	7400	5775	
050073	8720	5775	
050076	7360	5775	
050101	8720	5775	
050150	05	6920	
050174	7500	8720	
050228	7360	5775	
050230	5945	4480	
050236	8735	4480	
050296	05	7120	
050301	05	7500	
050325	05	5170	
050335	05	5170	
050419	05	6690	
050457	7360	5775	
050464	5170	8120	
050494	05	6920	
050510	7360	5775	
050541	7360	5775	
050549	8735	4480	
050569	05	7500	
050594	5945	4480	
050609	5945	4480	
050686	6780	5945	
050701	6780	7320	
060003	1125	2080	2080
060013	06	0200	
060018	06	2995	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2003—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
060023	2995	6520	
060027	1125	2080	2080
060044	06	2080	
060049	06	2080	
060075	06	2995	
060076	06	3060	
060096	06	2080	
060103	1125	2080	2080
070006	5483	5600	
070018	5483	5600	
070033	5483	5600	
070034	5483	5600	
070036	3283	5483	
080002	08		0720
080004	2190	9160	
080006	08	2190	
080007	08	2190	
100022	5000	2680	
100023	10	5960	
100024	10	5000	
100045	2020	5960	
100049	10	3980	
100098	10	8960	8960
100103	10	3600	3600
100105	10	2710	
100109	10	5960	
100150	10	5000	
100157	3980	8280	
100176	8960	2710	
100217	10	2710	
100232	10	2900	2900
100239	8280	7510	
100249	10	8280	
100268	8960	2680	
110001	11	0520	
110002	11	0520	
110003	11	3600	
110016	11	1800	
110023	11	0520	
110025	11	3600	
110029	11	0520	
110038	11	10	
110040	11	0500	0500
110050	11	0520	
110054	11	0520	
110075	11	7520	
110100	11	0600	
110118	11	0120	
110122	11	10	
110150	11	4680	
110168	11	0520	
110187	11	0520	
110188	11	0520	
110189	11	0520	
110190	11	4680	
110205	11	0520	
130002	13	29	
130003	13	6740	
130011	13	50	
130049	13	7840	
140012	14	1600	
140015	14	7040	
140031	14	1400	
140032	14	7040	
140034	14	7040	
140040	14	1960	
140043	14	6880	
140046	14	7040	
140058	14	7880	
140064	14	6120	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2003—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
140086	14		7040
140093	14	1400	
140102	14	7880	7880
140110	14	6120	
140141	14	7040	7040
140143	14	6120	
140155	3740		1600
140160	14	6880	
140161	14	1600	
140164	14	7040	
140189	14	1400	
140199	14	7040	
140230	14		1400
140234	14	6120	
140245	14		7040
140271	14	7800	7800
150002	2960	1600	
150004	2960	1600	
150006	15	7800	
150008	2960	1600	
150011	15	3480	3480
150015	15	1600	
150027	15		3480
150030	15	3480	3480
150034	2960	1600	
150036	15	3850	
150048	15	2000	
150051	1020		3480
150062	15	3480	3480
150065	15	3480	
150067	15		3480
150069	15	1640	1640
150076	15	7800	
150090	2960	1600	
150096	15	2330	
150105	15	3480	3480
150112	15	3480	3480
150122	15	3480	
150125	2960	1600	1600
150126	2960	1600	1600
150132	2960	1600	
150133	15	2330	
150146	15	2330	
160001	16	2120	
160016	16	2120	
160026	16	2120	
160030	16	2120	
160037	16	24	
160057	16	3500	
160064	16	8920	
160080	16	6880	
160089	16	2120	
160094	16	8920	
160122	16	14	
160147	16	2120	
170001	17	9040	
170006	17	3710	
170010	17	8560	
170012	17	9040	
170013	17	9040	
170014	17	3760	
170020	17	9040	
170022	17	7000	
170023	17	9040	
170025	17	9040	
170033	17	9040	
170058	17	26	
170060	17	28	
170094	17	8440	
170120	17	3710	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2003—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
170131	17		8440
170142	17	8440	
170145	17	8560	
170166	17	0320	
170175	17	9040	
180005	18	3400	
180011	18	4280	
180012	18	4520	
180013	18	5360	
180016	18	4520	
180018	18	4280	
180027	18	1660	
180028	18	3400	
180029	18	3660	
180044	18	3400	
180048	18	4280	
180054	18	1660	
180065	18	1640	
180066	18	5360	
180069	18	3400	
180078	18	3400	
180102	18	1660	
180104	18	1660	
180116	18	1660	
180124	18	5360	
180127	18	4520	
180132	18	4280	
180139	18	4280	
190001	19	5560	5560
190003	19	3880	
190010	19	5560	5560
190014	19	3880	
190015	19	5560	
190018	19	3880	
190025	19	3880	
190054	19	3880	
190083	19	5200	
190086	19	5200	
190099	19	3880	
190106	19	3880	
190131	19	5560	
190218	19	0220	
200020	6403	1123	1123
200024	4243	6403	
200034	4243	6403	
200039	20	6403	
200040	6403		1123
200063	20	6403	
220060	1123	0743	
220077	8003	3283	
230015	23	3720	
230022	23	3720	
230027	23	3000	3000
230030	23	6960	
230036	23	6960	
230037	23	0440	
230040	23	3720	3000
230054	23	3080	
230080	23	6960	
230093	23	3000	
230096	23	3720	
230097	23	3000	
230105	23	6960	
230106	23	3000	
230121	23	2640	2640
230188	23	6960	6960
230199	23	0870	0870
230235	23	6960	6960
230253	23	2160	
240008	24	6820	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2003—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
240011	24	5120	
240014	24	5120	
240016	24	2520	
240018	24		5120
240023	24	5120	
240045	24	2240	
240064	24	2240	
240075	24	6980	
240088	24	6980	
240089	24	5120	
240100	24	2985	
240121	24	2240	
240139	24	5120	
240142	24	6980	
240152	24	5120	
250004	25	4920	
250009	25	3580	
250012	25	4920	
250025	25	01	
250030	25	3560	
250031	25	3560	
250034	25	4920	
250042	25	4920	
250058	25	3285	
250069	25	3560	
250078	3285	0920	
250079	25	3560	
250081	25	3560	
250082	25	6240	
250084	25	19	
250088	25	0760	
250094	3285	0920	
250097	25	0760	
250100	25	8600	
250101	25	3560	
250104	25	3560	
250122	25	19	
250126	25	4920	
260009	26	3760	
260011	26	1740	
260015	26	3700	
260017	26	7040	
260022	26	1740	
260025	26	14	
260034	26	3760	
260047	26	1740	
260050	26	7000	
260064	26	1740	
260074	26	1740	
260078	26	7920	
260094	26	7920	
260110	26	7040	7040
260113	26	14	
260116	26	7040	
260119	26	3700	
260120	26	3700	
260127	26	7040	
260131	26	1740	
260183	26	7040	
260186	26	1740	
270002	27	0880	
270003	27	3040	
270011	27	3040	
270016	27	0880	
270017	27	5140	
270051	27	5140	
270057	27	0880	
270083	27	5140	
280009	28	4360	
280023	28	4360	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2003—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
280032	28	4360	
280054	28	4360	
280061	28	53	
280065	28	3060	
280077	28	5920	
280111	28	5920	
280125	28	7720	
290006	29	6720	
290019	29	6720	
300003	30	1123	
300005	30	1123	1123
300019	30	1123	
300024	30		1123
310001	0875	5600	
310002	5640	5600	
310003	3640	5600	
310015	5640	0875	
310021	8480	5190	
310031	6160	5190	
310038	5015	5600	
310045	0875	5600	
310048	5015	5640	
310049	3640		5640
310070	5015	5640	
310076	5640	5600	
310087	8760	6160	
310118	3640		0875
310119	5640	5600	
320005	32	0200	
320006	32	7490	
320011	32	7490	
320013	32	7490	
320063	32	5800	
320065	32	5800	
330001	5660	5600	
330004	33	5660	
330023	2281	5660	
330027	5380	5600	
330084	33	1303	
330085	33	8160	
330103	33		1280
330106	5380	5600	
330126	5660	5600	
330135	5660	5600	
330136	33	8160	
330157	33	8160	
330181	5380	5600	
330182	5380	5600	
330205	5660	5600	
330209	5660	5600	
330224	33	3283	
330235	8160		6840
330239	3610	2360	
330250	33	1303	
330264	5660	5600	
330307	33	8160	
330386	33	5660	
340003	34	3120	
340008	34	2560	
340013	34	1520	
340017	34	0480	
340021	34	1520	
340023	34	0480	
340027	34	3150	
340039	34	1520	1520
340050	34	2560	
340051	34	3290	
340052	3120	1520	
340064	34	3120	
340068	34	9200	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2003—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
340071	34	6640	6640
340084	34	1520	
340088	34	0480	
340097	34	3120	
340109	34	5720	5720
340115	34	6640	
340124	34	6640	6640
340126	34	6640	6640
340129	34	1520	
340131	34	3150	
340143	3290	1520	
340144	34	1520	
340147	6895	6640	
350005	35	2985	
350006	35	1010	
350009	35	2520	
350017	35	27	
350043	35	1010	
360002	36		1680
360008	36	3400	
360010	36	0080	
360011	36	1840	
360013	36	2000	
360014	36	1840	
360024	36	1680	1680
360025	36	1680	1680
360036	36	0080	
360039	36	1840	
360046	3200	1640	
360046	3200		1640
360056	3200	1640	1640
360063	36	1680	1680
360065	36	1680	1680
360071	36	4320	4320
360076	3200	1640	1640
360078	0080		1680
360084	1320	0080	
360088	36	1840	
360089	36	8400	
360090	8400		2160
360092	36	1840	1840
360095	36	8400	
360107	36	8400	
360109	36	1840	
360112	8400	0440	
360121	36	0440	
360132	3200	1640	1640
360142	36		1640
360159	36	1840	
360175	36	1840	1640
360197	36	1840	1840
360211	8080		6280
370004	37	3710	
370006	37	8560	
370014	37	7640	
370015	37	8560	
370018	37	8560	
370022	37	4200	
370023	37	4200	
370025	37	8560	
370034	37	2720	
370047	37	7640	
370048	37	8360	
370049	37	5880	
370054	37	5880	
370084	37	2720	
370103	37	45	
370153	37	4200	
370200	37	5880	
380001	38	6440	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2003—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
380002	38	4890	
380003	38	2400	
380006	38		6440
380027	38	2400	
380040	38	2400	
380047	38	2400	
380050	38	4890	
380051	7080		6440
380065	38	2400	
380070	38	6440	
380090	38	2400	
390006	39	3240	
390008	39	6280	6280
390013	39	3240	
390016	39	6280	6280
390017	39	6280	6280
390030	39	0240	6680
390031	39	0240	6680
390048	39	3240	
390052	39	0280	
390065	39	9280	9280
390079	39	0960	
390091	39	6280	
390093	39	6280	
390110	3680	6280	
390113	39	9320	
390133	0240	6160	
390138	39	8840	
390150	39	6280	
390151	39	8840	
390181	39	6680	6680
390183	39	6680	6680
390189	39	3240	
390197	0240	6160	
390201	39	5660	5640
390263	0240	6160	
400018	40	1310	
410010	6483	1123	
410013	6483	5523	
420020	42	1440	
420036	42	1520	
420059	42	2655	
420062	42	1520	
420068	42	0600	
420070	8140	1760	
420071	42	0600	
420080	42	7520	
420085	5330	9200	
430008	43	24	
430012	43	7760	
430013	43	7760	
430014	43	2520	
430015	43	6660	
430047	43	28	
430048	43	53	
430089	43	7720	
440020	44	3440	
440024	44	1560	
440050	44	0480	
440058	44	1560	
440059	44	5360	
440067	44	3840	
440068	44	1560	
440073	44	5360	
440083	44	3840	
440143	44	5360	
440148	44	5360	
440175	44	3440	
440180	44	3840	
440182	44	3580	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2003—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
440185	44	1560	
440186	44	5360	
440187	44	18	
440192	44	5360	
440200	44	5360	
440203	44	1560	
450007	45	7240	
450014	45	8750	
450053	45	8750	
450072	1145	3360	
450080	45	4420	
450085	45	9080	
450098	45	4420	
450099	45	0320	
450113	45	1920	
450140	45	5800	
450144	45	5800	
450146	45	0320	
450155	45	0320	
450163	45	1880	
450178	45	5800	
450187	45	3360	
450192	45	1920	
450194	45	1920	
450196	45		1920
450211	45	3360	
450214	45	3360	
450224	45	8640	
450246	45	8750	
450347	45	3360	
450351	45	2800	
450353	45	1880	
450373	45	4420	
450395	45	3360	
450400	45	8800	
450438	45	0640	
450447	45	1920	
450451	45	2800	
450484	45	3360	
450508	45	8640	
450534	45	0320	
450587	45	40	
450591	1145	3360	
450623	45	1920	
450626	45	8750	
450653	45	5800	
450656	45	8640	
450694	45	3360	
450747	45	1920	
450755	45	4600	
450763	45	0320	
460007	46	2620	
460011	46	6520	
460021	46	4120	
460027	46	6520	
460032	46	6520	
460036	46	6520	
460039	46	7160	
470001	47	1303	
470003	1303	1123	
470011	47	1123	
470012	47	6323	
470018	47	1123	
490001	49	3660	
490004	49	1540	
490005	49	8840	
490013	49	4640	
490013	49	4640	
490018	49	4640	
490038	49	3660	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2003—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
490047	49	8840	
490060	49	3660	
490066	5720	6760	
490079	49	3120	
490126	49	6800	
500002	50	6740	
500003	50	0860	
500007	50	0860	
500016	50	7600	
500041	50	6440	
500059	50	7600	
500072	50	7600	
500079	8200		7600
510001	51	6280	
510002	51	6800	
510006	51	6280	
510024	51	6280	6280
510028	51	1480	
510046	51	1480	
510047	51	6280	
510048	51	3400	
510062	51	1480	
510070	51	1480	
510071	51	1480	
520002	52	8940	
520006	52	8940	
520011	52	2290	
520021	3800	1600	1600
520028	52	4720	
520037	52	8940	
520059	6600	5080	5080
520066	3620	4720	
520071	52	5080	5080
520076	52	5080	
520084	52	4720	
520088	52	5080	
520091	52	23	
520094	6600	5080	5080
520096	6600	5080	5080
520102	52	5080	5080
520107	52	3080	
520113	52	3080	
520116	52	5080	5080
520152	52	3080	
520173	52	2240	
520189	3800	1600	1600
530008	53	1350	
530009	53	1350	
530015	53	6340	
530025	53	2670	
530032	53	7160	

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]

DRG	Cases	Mean + 1 standard deviation
1	27,927	$67,404
2	14,163	$34,673
3	7	$55,408
4	6,509	$42,448
5	93,493	$23,377
6	398	$14,176
7	14,289	$47,294
8	4,388	$28,479
9	1,755	$24,328

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
10	18,159	$22,402
11	3,442	$15,623
12	49,827	$15,545
13	6,724	$14,071
14	236,532	$22,079
15	102,208	$17,030
16	9,310	$21,738
17	2,881	$11,621
18	28,178	$17,142

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
19	8,743	$12,381
20	5,664	$52,181
21	1,445	$27,499
22	2,736	$18,514
23	11,272	$14,333
24	55,718	$17,446
25	27,441	$10,729
26	35	$13,582
27	3,897	$23,356

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
28	12,463	$23,965
29	4,983	$12,571
31	3,886	$15,438
32	1,938	$9,262
34	22,854	$17,458
35	7,567	$11,230
36	2,500	$11,056
37	1,436	$18,198
38	93	$9,804
39	670	$10,605
40	1,534	$15,129
42	1,949	$11,426
43	111	$8,988
44	1,302	$11,316
45	2,617	$12,432
46	3,392	$13,759
47	1,359	$9,362
49	2,347	$31,479
50	2,487	$14,084
51	254	$16,545
52	241	$13,058
53	2,527	$20,711
55	1,581	$16,320
56	533	$16,518
57	696	$17,549
59	128	$13,267
60	6	$11,274
61	244	$22,144
62	3	$6,890
63	2,951	$25,340
64	3,167	$24,013
65	39,149	$9,556
66	7,717	$9,940
67	440	$13,390
68	8,803	$11,627
69	3,058	$8,692
70	25	$8,204
71	87	$12,273
72	934	$12,534
73	7,112	$13,972
75	40,140	$53,811
76	41,890	$50,645
77	2,458	$21,413
78	35,432	$22,310
79	166,819	$29,146
80	8,348	$15,446
81	2	$17,847
82	63,839	$25,767
83	6,516	$17,174
84	1,601	$8,832
85	21,359	$21,704
86	2,191	$12,369
87	59,718	$24,643
88	398,067	$15,709
89	504,109	$18,189
90	47,012	$10,687
91	55	$12,834
92	14,880	$21,707
93	1,720	$13,033
94	12,685	$20,773
95	1,704	$10,355
96	53,963	$13,061
97	28,764	$9,660
98	15	$16,638
99	21,397	$12,340
100	9,004	$9,303
101	21,294	$15,036
102	5,616	$9,571

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
103	453	$367,290
104	19,589	$131,533
105	27,384	$95,106
106	3,319	$121,971
107	85,921	$86,478
108	6,230	$96,053
109	59,743	$64,368
110	53,431	$71,935
111	9,445	$42,825
113	41,664	$49,537
114	8,907	$29,181
115	15,346	$58,990
116	109,614	$38,674
117	4,196	$23,243
118	8,129	$27,230
119	1,322	$22,803
120	37,629	$39,645
121	167,925	$27,188
122	82,126	$17,938
123	41,332	$28,224
124	138,910	$24,070
125	90,494	$18,102
126	5,060	$48,433
127	684,227	$17,486
128	8,288	$12,396
129	4,144	$19,235
130	89,165	$16,499
131	27,920	$9,868
132	152,896	$11,175
133	8,967	$9,360
134	39,803	$10,380
135	7,582	$15,485
136	1,243	$10,044
138	204,170	$14,405
139	90,329	$8,871
140	66,747	$9,167
141	102,861	$12,675
142	51,974	$9,733
143	251,298	$9,258
144	89,188	$21,492
145	7,643	$10,459
146	10,841	$46,208
147	2,810	$26,054
148	129,948	$59,703
149	19,421	$24,836
150	20,430	$49,593
151	4,999	$22,731
152	4,435	$33,464
153	2,026	$19,581
154	29,142	$74,212
155	7,318	$21,983
156	3	$32,555
157	8,202	$22,136
158	4,600	$11,003
159	17,205	$23,466
160	12,246	$13,619
161	11,219	$19,197
162	7,321	$10,715
163	3	$7,938
164	5,140	$39,260
165	2,200	$20,663
166	3,934	$24,735
167	3,833	$14,845
168	1,408	$22,688
169	887	$12,798
170	15,000	$50,814
171	1,472	$20,737
172	30,796	$24,650

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
173	2,735	$13,887
174	248,141	$17,311
175	35,336	$9,600
176	15,273	$18,631
177	9,458	$15,796
178	3,768	$11,708
179	12,638	$18,986
180	88,639	$16,610
181	27,216	$9,290
182	262,029	$14,023
183	91,740	$10,011
184	94	$8,737
185	5,154	$15,723
186	3	$17,875
187	696	$15,067
188	79,797	$19,450
189	13,187	$10,387
190	78	$12,670
191	9,283	$78,241
192	1,267	$31,130
193	4,890	$60,095
194	738	$27,831
195	4,164	$50,676
196	1,055	$26,257
197	18,684	$43,002
198	5,702	$21,036
199	1,663	$43,294
200	1,049	$53,896
201	2,020	$67,946
202	26,312	$23,150
203	29,505	$24,900
204	61,908	$20,516
205	24,637	$21,268
206	2,067	$12,532
207	32,271	$19,957
208	10,811	$11,475
209	372,279	$31,962
210	122,061	$29,462
211	32,711	$19,985
212	7	$12,150
213	9,933	$32,907
216	6,966	$39,219
217	17,187	$54,066
218	23,006	$25,987
219	21,106	$16,879
223	13,759	$17,261
224	12,552	$12,912
225	6,183	$19,662
226	5,746	$27,178
227	4,970	$13,622
228	2,509	$19,610
229	1,194	$11,847
230	2,432	$22,178
231	12,624	$24,201
232	883	$16,540
233	7,874	$37,126
234	4,676	$22,187
235	5,113	$13,085
236	40,000	$12,274
237	1,760	$9,994
238	8,670	$25,013
239	48,442	$17,681
240	11,894	$23,382
241	3,248	$11,495
242	2,530	$20,034
243	94,301	$13,030
244	13,641	$12,510
245	5,755	$8,412

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
246	1,350	$9,972
247	19,727	$10,064
248	12,150	$14,678
249	12,731	$11,854
250	3,835	$11,911
251	2,517	$8,099
253	20,998	$12,813
254	10,902	$7,704
256	6,431	$14,288
257	16,772	$14,857
258	17,039	$11,449
259	3,835	$15,369
260	5,097	$11,113
261	1,923	$16,946
262	688	$15,991
263	24,718	$38,028
264	4,016	$19,611
265	4,092	$27,441
266	2,697	$14,755
267	272	$16,075
268	925	$19,327
269	9,735	$30,555
270	2,865	$13,392
271	19,721	$18,266
272	5,507	$17,536
273	1,389	$10,100
274	2,368	$22,159
275	255	$10,372
276	1,336	$12,114
277	94,344	$15,014
278	31,948	$9,512
279	4	$17,604
280	17,227	$12,112
281	7,944	$8,057
283	5,671	$12,657
284	1,960	$7,644
285	6,638	$36,255
286	2,193	$35,893
287	6,511	$33,003
288	3,757	$37,255
289	6,442	$16,278
290	9,537	$14,936
291	78	$10,617
292	6,124	$48,257
293	371	$24,926
294	95,924	$13,312
295	3,386	$13,866
296	252,123	$14,853
297	47,964	$8,755
298	109	$10,034
299	1,225	$16,331
300	17,611	$19,532
301	3,657	$11,338
302	8,130	$55,527
303	20,794	$41,559
304	12,145	$41,008
305	3,031	$20,757
306	7,236	$22,022
307	2,171	$10,310
308	7,283	$28,400
309	4,351	$15,334
310	24,707	$19,400
311	8,377	$10,521
312	1,557	$18,584
313	646	$11,827
315	34,005	$37,125
316	115,837	$23,854
317	1,913	$12,529
318	5,782	$21,457
319	503	$11,336
320	194,070	$14,798
321	30,891	$9,599
322	68	$9,132
323	18,744	$14,366
324	7,505	$8,164
325	8,988	$11,522
326	2,819	$7,922
327	2	$10,762
328	690	$13,079
329	105	$8,710
331	49,515	$18,870
332	5,169	$10,822
333	321	$14,080
334	10,350	$25,041
335	12,465	$18,158
336	36,467	$14,411
337	29,659	$9,712
338	1,057	$21,551
339	1,518	$18,614
341	3,693	$21,558
342	726	$13,124
344	3,851	$22,634
345	1,342	$19,650
346	4,587	$19,105
347	379	$10,965
348	3,306	$12,913
349	605	$7,299
350	6,529	$12,505
352	774	$12,969
353	2,680	$32,047
354	7,526	$25,751
355	5,700	$14,571
356	26,077	$12,521
357	5,750	$40,024
358	20,759	$20,246
359	31,287	$13,396
360	15,672	$14,701
361	371	$18,705
362	4	$8,407
363	2,700	$15,699
364	1,643	$14,803
365	1,863	$34,638
366	4,465	$23,452
367	525	$10,167
368	3,299	$21,265
369	3,302	$10,746
370	1,284	$16,225
371	1,476	$10,644
372	939	$9,848
373	3,971	$6,378
374	122	$12,746
375	8	$21,571
376	265	$8,744
377	31	$23,435
378	173	$15,122
379	416	$6,917
380	81	$6,607
381	186	$10,262
382	27	$3,014
383	1,881	$9,372
384	156	$7,467
389	7	$34,427
390	8	$13,005
392	2,274	$56,008
394	2,346	$31,726
395	101,259	$14,419
396	11	$12,914
397	17,989	$21,897
398	17,236	$22,492
399	1,806	$12,364
400	6,531	$47,849
401	5,876	$50,482
402	1,606	$19,867
403	32,218	$32,326
404	4,622	$15,977
406	2,507	$49,500
407	703	$21,974
408	2,142	$36,720
409	2,532	$21,881
410	30,961	$18,459
411	14	$7,772
412	18	$5,007
413	5,810	$25,090
414	771	$12,969
415	40,196	$66,869
416	181,882	$28,337
417	41	$22,272
418	23,567	$18,479
419	15,855	$15,249
420	2,978	$10,242
421	9,323	$11,975
422	70	$7,706
423	7,321	$32,051
424	1,308	$41,557
425	16,388	$11,974
426	4,533	$9,233
427	1,609	$9,317
428	756	$13,065
429	27,167	$14,265
430	63,752	$12,736
431	327	$10,872
432	423	$11,180
433	5,581	$4,920
439	1,473	$29,717
440	5,498	$33,013
441	625	$15,811
442	16,846	$42,862
443	3,849	$17,778
444	5,746	$13,130
445	2,782	$8,545
447	6,305	$8,528
449	30,756	$14,340
450	7,469	$7,247
451	5	$4,128
452	25,432	$18,482
453	5,687	$9,170
454	4,687	$14,486
455	1,113	$8,155
461	4,611	$21,349
462	12,012	$20,019
463	25,409	$12,194
464	7,163	$8,706
465	227	$10,413
466	1,822	$11,632
467	1,063	$9,841
468	50,149	$67,712
470	56	$320,694
471	12,460	$47,823
473	8,302	$64,225
475	104,462	$67,821
476	3,820	$41,084
477	25,807	$32,999
478	109,163	$42,312
479	24,294	$24,477

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
480	649	$180,578
481	750	$127,638
482	5,371	$62,963
483	43,690	$292,070
484	331	$100,727
485	3,084	$51,800
486	1,988	$86,227
487	3,687	$36,110
488	782	$88,702
489	13,667	$32,494
490	5,324	$18,378
491	13,649	$27,118
492	2,897	$75,913
493	58,366	$30,941
494	31,075	$16,839
495	215	$160,061
496	1,864	$99,536
497	20,068	$58,040
498	14,786	$41,923
499	32,816	$24,399
500	49,773	$15,631
501	2,362	$44,558
502	642	$25,718
503	5,937	$20,667
504	124	$284,775
505	149	$32,946
506	939	$85,181
507	289	$30,660
508	667	$24,870
509	179	$16,930
510	1,679	$20,594
511	622	$11,693
512	481	$98,319
513	152	$102,359
514	19,616	$104,642
515	4,636	$88,517
516	76,556	$42,776
517	191,887	$34,456
518	51,871	$30,445
519	7,284	$40,177
520	11,165	$25,193
521	28,831	$12,761
522	6,193	$10,048
523	14,988	$6,937
524	137,361	$12,413
525	497	$214,078
526	68,336	$34,435
527	189,145	$27,295

[1] Cases are taken from the FY 2001 MedPAR file; DRGs are from GROUPER V20.0.

Appendix A—Regulatory Impact Analysis

I. Introduction

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this final rule is a major rule as defined in 5 U.S.C. 804(2). We estimate that the total impact of these changes for FY 2003 payments compared to FY 2002 payments to be approximately a $0.3 billion increase.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million in any 1 year. For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the acute care hospital inpatient prospective payment systems, we classify these hospitals as urban hospitals.

It is clear that the changes being made in this document will affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) also requires that agencies assess anticipated costs and benefits before issuing a final rule that has been preceded by a proposed rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule will not mandate any requirements for State, local, or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule in light of Executive Order 13132 and have determined that it will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

II. Objectives

The primary objective of the acute care hospital inpatient prospective payment system is to create incentives for hospitals to operate efficiently and minimize unnecessary costs while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of preserving the Medicare Trust Fund.

We believe the changes in this final rule will further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that these changes will ensure that the outcomes of this payment system are reasonable and equitable while avoiding or minimizing unintended adverse consequences.

III. Limitations of Our Analysis

The following quantitative analysis presents the projected effects of our policy changes, as well as statutory changes effective for FY 2003, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case-mix. As we have done in previous proposed rules, we solicited comments and information about the anticipated effects of these changes on hospitals and our methodology for estimating them.

We received several comments on the impact analysis for our May 9, 2002 proposed rule.

Comment: Several commenters noted that the effects of the proposed expansion to the postacute transfer policy were not included in the May 9, 2002 proposed rule impact tables. These commenters were concerned that the effect of implementing either of the two proposed expansions of this policy would result in an overall decrease in per case payments in FY 2003.

Response: We did not analyze the postacute care transfer policy in the impact tables in the proposed rule because we did not propose a specific policy expansion. We did include overall savings estimates attributable to the provision in the preamble discussion.

Comment: Several commenters noted the impact that the large legislated decreases in IME payments and the update factor (market basket increase minus 0.55 percentage point) will have on many hospitals. They argued that these decreases in payments, in combination with our proposals and an update factor of less than inflation, will have an even larger overall impact than indicated

in our impact tables. The commenters indicated that, in a time when other health care costs are escalating due to nursing shortages, rising drug and technology costs, and "skyrocketing" professional and general insurance premiums, hospitals cannot absorb a reduction in inpatient Medicare payments. They argued that decreasing payments and increasing costs will make hospitals less able to make decisions based solely on the needs of the beneficiary and make more decisions based on solvency.

Response: As the commenters pointed out, these reductions are legislated by Congress. However, as discussed further below, one of the biggest impacts on the changes in payments from FY 2002 to FY 2003 is the high outlier payments hospitals are receiving in FY 2002 (approximately 7.2 percent of total DRG payments) compared to the FY 2003 estimated 5.1 percent. The net effect of this difference is to reduce the rate of change by 2.1 percentage points.

IV. Hospitals Included in and Excluded From the Acute Care Hospital Inpatient Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general short-term, acute care hospitals that participate in the Medicare program. There were 44 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 67 such hospitals in Maryland remain excluded from the acute care hospital inpatient prospective payment system under the waiver at section 1814(b)(3) of the Act.

There are approximately 631 critical access hospitals (CAHs). These small, limited service hospitals are paid on the basis of reasonable costs rather than under the acute care hospital inpatient prospective payment system. The remaining 20 percent are specialty hospitals that are excluded from the acute care hospital inpatient prospective payment system. These hospitals include psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, children's hospitals, and cancer hospitals. The impacts of our final policy changes on these hospitals are discussed below.

Thus, as of July 2002, we have included 4,230 hospitals in our analysis. This represents about 80 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

V. Impact on Excluded Hospitals and Hospital Units

There were 1,065 specialty hospitals excluded from the acute care hospital inpatient prospective payment system. Broken down by specialty, there were 493 psychiatric, 216 rehabilitation, 270 long-term care, 75 children's, and 11 cancer hospitals. In addition, there were 1,436 psychiatric units and 936 rehabilitation units in hospitals otherwise subject to the acute care hospital inpatient prospective payment system. Under § 413.40(a)(2)(i)(A), the rate-of-increase ceiling is not applicable to the 67 specialty hospitals and units in Maryland that are paid in accordance with the waiver at section 1814(b)(3) of the Act.

In the past, hospitals and units excluded from the acute care hospital inpatient prospective payment system have been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Hospitals that continue to be paid based on their reasonable costs are subject to TEFRA limits for FY 2003. For these hospitals, the proposed update is the percentage increase in the excluded hospital market basket (currently estimated at 3.5 percent).

Inpatient rehabilitation facilities (IRFs) are paid under the IRF prospective payment system for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning during FY 2003, the IRF prospective payment is based on 100 percent of the adjusted Federal IRF prospective payment amount, updated annually (see the August 7, 2001 final rule (66 FR 41316 through 41430)). Therefore, these hospitals are not impacted by this final rule.

Effective for cost reporting periods beginning during FY 2003, we have proposed that long-term care hospitals would be paid under a long-term care hospital prospective payment system, where long-term care hospitals receive payment based on a 5-year transition period (see the March 22, 2002 proposed rule (67 FR 13416 through 13494)). However, under this proposed payment system, a long-term care hospital may also elect to be paid at 100 percent of the Federal prospective rate at the beginning of any of its cost reporting periods during the 5-year transition period. For purposes of the update factor, the portion of the proposed prospective payment system transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the long-term care hospital's TEFRA limit by the estimate of the excluded hospital market basket (or 3.5 percent).

The impact on excluded hospitals and hospital units of the update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and hospital units receive. Conversely, for excluded hospitals and hospital units with per-case cost increases above the cumulative update in their rate-of-increase limits, the major effect will be the amount of excess costs that would not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit plus 50 percent of the difference between its reasonable costs and 110 percent of the limit, not to exceed 110 percent of its limit. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and hospital units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and hospital units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Policy Changes Under the Hospital Inpatient Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this final rule, we are announcing policy changes and payment rate updates for the hospital inpatient prospective payment systems for operating and capital-related costs. We estimate the total impact of these changes for FY 2003 payments compared to FY 2002 payments to be approximately a $0.3 billion increase. We have prepared separate impact analyses of the changes to each system. This section deals with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 2001 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these policy changes. Second, due to the interdependent nature of the hospital inpatient prospective payment system, it is very difficult to precisely quantify the impact associated with each change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 2001 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the acute care hospital inpatient prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. The impact of payments under the capital prospective payment system, or the impact of payments for costs other than inpatient operating costs, are not analyzed in this section. Estimated payment impacts of FY 2003 changes to the capital prospective payment system are discussed in section IX. of this Appendix.

The changes discussed separately below are the following:

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the DRG relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of the changes in hospitals' wage index values reflecting wage data from

hospitals' cost reporting periods beginning during FY 1999, compared to the FY 1998 wage data, and the effects of removing from the wage data the costs and hours associated with GME and CRNAs.

• The effects of geographic reclassifications by the MGCRB that will be effective in FY 2003.

• The total change in payments based on FY 2003 policies relative to payments based on FY 2002 policies.

To illustrate the impacts of the FY 2003 changes, our analysis begins with a FY 2003 baseline simulation model using: the FY 2002 DRG GROUPER (version 19.0); the FY 2002 wage index; and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total DRG plus outlier payments.

Each final and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 2003 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 2002 to FY 2003. Six factors have significant impacts here. The first is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, as amended by section 301 of Public Law 106–554, we are updating the large urban and the other areas average standardized amounts for FY 2003 using the most recently forecasted hospital market basket increase for FY 2003 of 3.5 percent minus 0.55 percentage points (for an update of 2.95 percent). Under section 1886(b)(3) of the Act, the updates to the hospital-specific amounts for sole community hospitals (SCHs) and for Medicare-dependent small rural hospitals (MDHs) is also equal to the market basket increase of 3.5 percent minus 0.55 percentage points (for an update of 2.95 percent).

A second significant factor that impacts changes in hospitals' payments per case from FY 2002 to FY 2003 is the change in MGCRB status from one year to the next. That is, hospitals reclassified in FY 2002 that are no longer reclassified in FY 2003 may have a negative payment impact going from FY 2002 to FY 2003; conversely, hospitals not reclassified in FY 2002 that are reclassified in FY 2003 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage change in payments for the category may be below the national mean. This effect is alleviated, however, by section 304(a) of Public Law 106-554, which provided that reclassifications for purposes of the wage index are for a 3-year period.

A third significant factor is that we currently estimate that actual outlier payments during FY 2002 will be 7.2 percent of total DRG payments. When the FY 2002 final rule was published, we projected FY 2002 outlier payments would be 5.1 percent of total DRG plus outlier payments; the average standardized amounts were offset correspondingly. The effects of the higher than expected outlier payments during FY 2002 (as discussed in the Addendum to this final rule) are reflected in the analyses below comparing our current estimates of FY 2002 payments per case to estimated FY 2003 payments per case.

Fourth, section 213 of Public Law 106–554 provided that all SCHs may receive payment on the basis of their costs per case during their cost reporting period that began during 1996. This option was to be phased in over 4 years. For FY 2003, the proportion of payments based on affected SCHs' FY 1996 hospital-specific amount increases from 50 percent to 75 percent.

Fifth, under section 1886(d)(5)(B)(ii) of the Act, the formula for IME is reduced beginning in FY 2003. The reduction is from approximately a 6.5 percent increase for every 10 percent increase in the resident-to-bed ratio during FY 2002 to approximately a 5.5 percent increase.

Comment: Numerous commenters expressed concern about the statutory reduction to the IME formula multiplier for FY 2003 of 1.35. The commenters stated that this cut in IME reimbursement will have any extremely detrimental impact on the teaching hospital community.

Response: Congress establishes the IME formula multiplier for FY 2003 by law. Any changes to the multiplier must be made through the legislative process.

Comment: One commenter stated that the reduction to the IME formula multiplier was not considered in the impact analysis table (67 FR 31670) in the proposed rule. The commenter requested that the large impact due to reduction in IME payments be acknowledged and weighed against the cost to hospitals that would be incurred by the proposed outlier reduction, transfer payment expansion, and the removal of resident salary costs from the wage index.

Response: In the May 9, 2002 proposed rule at 67 FR 31670 and 31671, we included several footnotes that explain the various calculations in the impact analysis for FY 2003. Footnote number 9 states that the impact of the reduction in IME adjustment payments is reflected in column 8 of the table, which contains all FY 2003 changes. Thus, we have incorporated the reduction to the IME formula multiplier in the impact analysis of total Medicare hospital expenditures for FY 2003, and have similarly done so in this final rule.

Sixth, the disproportionate share hospital (DSH) adjustment increases in FY 2003 compared with FY 2002. In accordance with section 1886(d)(5)(F)(ix) of the Act, during FY 2002, DSH payments that the hospital would otherwise receive were reduced by 3 percent. This reduction is no longer applicable beginning with FY 2003.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,230 hospitals included in the analysis. This number is 555 fewer hospitals than were included in the impact analysis in the FY 2002 final rule (66 FR 40087). Of this number, 437 are now CAHs and are excluded from our analysis.

The next four rows of Table I contain hospitals categorized according to their geographic location: all urban, which is further divided into large urban and other urban; and rural. There are 2,620 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,519 hospitals located in large urban areas (populations over 1 million), and 1,101 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 1,610 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 2003 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show that the number of hospitals paid based on these categorizations after consideration of geographic reclassifications are 2,650, 1,576, 1,074, and 1,580, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have GME residency programs (teaching hospitals that receive an IME adjustment) or receive DSH payments, or some combination of these two adjustments. There are 3,119 nonteaching hospitals in our analysis, 870 teaching hospitals with fewer than 100 residents, and 241 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (They may, however, have been reclassified for purposes of the wage index.)

The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next five rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and MDHs), as well as rural hospitals not receiving a special payment designation. The RRCs (160), SCHs (526), MDHs (241), and hospitals that are both SCH and RRC (76) shown here were not reclassified for purposes of the standardized amount.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1999 Medicare cost report files, if available (otherwise FY 1998 data are used). Data needed to determine ownership status were unavailable for 177 hospitals. Similarly, the data needed to determine Medicare utilization were unavailable for 126 hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first grouping displays all hospitals that were reclassified by the

MGCRB for FY 2003. The next two groupings separate the hospitals in the first group by urban and rural status. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I—IMPACT ANALYSIS OF CHANGES FOR FY 2003, OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of Hosps.[1]	Drg Changes	New wage data[3]	remove GMS and CRNA 80/20[4]	Remove GME and CRNA 100 percent[5]	DRG and WI changes[6]	MCGRB reclassification[7]	All FY 2003 changes[8]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
By Geographic Location:								
All hospitals	4,230	0.4	0.0	0.0	0.1	0.0 0	.0	0.4
Urban hospitals	2,620	0.5	0.0	0.0	0.1	0.0	−0.4	0.1
Large urban areas (populations over 1 million)	1,519	0.4	0.0	0.0	0.0	0.1	−0.5	0.2
Other urban areas (populations of 1 million of fewer)	1,101	0.5	0.0	0.1	0.1	0.1	0.4	0.7
Rural hospitals	1,610	.1	0.2	0.1	0.1	0.1	2.4	2.1
Bed Size (Urban):								
0–99 beds	645	0.3	0.0	0.1	0.1	0.0	−0.6	1.3
100–199 beds	909	0.3	−0.2	0.1	0.1	−0.3	−0.5	0.8
200–299 beds	523	0.5	0.0	0.1	0.1	0.0	−0.4	0.4
300–499 beds	398	0.6	−0.2	0.0	0.1	0.0	−0.4	−0.1
500 or more beds	145	0.6	0.2	0.0	0.0	0.2	−0.5	−0.6
Bed Size (Rural):								
0–49 beds	747	−0.3	0.3	0.1	0.1	−0.2	0.5	2.4
50–99 beds	501	−0.1	0.2	0.1	0.1	−0.1	0.9	2.3
100–149 beds	215	0.1	0.3	0.1	0.1	0.1	2.8	2.1
150–199 beds	78	0.2	0.2	0.1	0.1	0.1	4.9	1.8
200 or more beds	69	0.6	0.1	0.1	0.1	0.4	3.9	1.6
Urban by Region:								
New England	135	0.3	−0.1	0.1	0.1	0.6	−0.1	−0.3
Middle Atlantic	404	0.6	−0.4	0.0	−0.1	−0.5	0.1	−1.4
South Atlantic.	384	0.5	0.0	0.1	0.1	0.0	−0.5	0.7
East North Central	429	0.5	0.1	0.0	0.1	0.0	−0.5	0.2
East South Central	159	0.4	−0.1	0.0	0.0	−0.3	−0.7	0.6
West North Central	178	0.5	0.2	0.1	0.1	0.3	−0.7	0.6
West South Central	335	0.5	0.5	0.0	0.0	0.3	−0.7	1.0
Mountain	132	0.7	0.5	0.1	0.1	0.8	0.6	1.7
Pacific	417	0.3	−0.3	0.1	0.2	−0.3	−0.5	0.0
Puerto Rico	47	0.3	−0.8	0.0	0.0	−0.7	−0.8	0.6
Rural by Region:								
New England	40	0.2	0.2	0.0	0.0	0.1	2.7	1.1
Middle Atlantic	67	0.1	−0.5	0.0	0.0	−0.7	2.6	1.3
South Atlantic	232	0.1	0.1	0.1	0.1	−0.1	2.9	1.6
East North Central	215	0.3	0.1	0.1	0.1	0.2	2.3	2.6
East South Central	239	−0.1	0.7	0.1	0.1	0.3	2.5	2.0
West North Central	279	0.3	0.4	0.0	0.0	0.5	1.6	2.5
West South Central	285	−0.1	0.3	0.1	0.1	−0.1	3.2	2.0
Mountain	145	0.2	0.1	0.0	0.0	0.2	1.1	2.5
Pacific	103	0.1	0.3	0.1	0.1	0.2	2.3	2.3
Puerto Rico	5	0.1	−5.4	0.1	0.1	−5.6	−0.6	−2.7
By Payment Classification:								
Urban hospitals	2,650	0.5	0.0	0.0	0.1	0.0	−0.4	0.1
Large urban areas (populations over 1 million)	1,576	0.4	−0.1	1	0.0	−0.1	−0.4	−0.2
Other urban areas (populations of 1 million of fewer).	1,074	0.5	0.0	0.1	0.1	0.2	−0.4	0.7
Rural areas	1,580	0.1	0.2	0.1	0.1	0.1	2.3	2.1
Teaching Status:								
Non-teaching	3,119	0.3	0.0	0.1	0.1	0.0	0.3	1.3
Fewer than 100 Residents	870	0.6	−0.1	0.0	0.1	0.0	−0.3	0.5
100 or more Residents	241	0.5	0.0	0.0	0.0	0.0	−0.3	−1.4
Urban DSH:.								
Non-DSH	1,549	0.6	0.0	0.0	0.1	0.1	0.2	0.6
100 or more beds	1,361	0.4	0.0	0.0	0.1	−0.1	−0.5	0.0
Less than 100 beds	286	0.0	0.1	0.1	0.1	−0.2	−0.4	1.2
Rural DSH:								
Sole Community (SCH)	470	−0.2	0.2	0.1	0.1	−0.1	0.2	2.5
Referral Center (RRC)	156	0.2	0.3	0.1	0.1	0.2	4.7	1.6
Other Rural:								
100 or more beds	76	0.0	0.3	0.1	0.1	−0.1	1.3	1.6

TABLE I—IMPACT ANALYSIS OF CHANGES FOR FY 2003, OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of Hosps.[1]	Drg Changes	New wage data[3]	remove GMS and CRNA 80/20[4]	Remove GME and CRNA 100 percent[5]	DRG and WI changes[6]	MCGRB reclassification[7]	All FY 2003 changes[8]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Less than 100 beds	332	−0.2	0.4	0.1	0.1	−0.2	0.6	2.0
Urban teaching and DSH:								
DSH	757	0.5	−0.1	0.0	0.0	0.0	−0.6	−0.4
Teaching and no DSH	284	0.7	0.0	0.0	0.0	0.1	0.0	−0.1
No teaching and DSH	890	0.3	0.0	0.1	0.1	−0.1	−0.4	1.1
No teaching and no DSH	719	0.5	−0.1	0.1	0.1	0.0	−0.4	0.7
Rural Hospital Types:								
Non special status hospitals	577	−0.1	0.4	0.1	0.1	−0.1	1.2	1.9
RRC	160	0.3	0.2	0.1	0.1	0.1	6.2	1.1
SCH	526	−0.1	0.2	0.0	0.0	0.0	0.2	2.7
Medicare-dependent hospitals (MDH)	241	−0.2	0.4	0.1	0.1	−0.1	0.6	2.5
SCH and RRC	76	0.5	0.1	0.0	0.0	0.6	1.3	3.1
Type of Ownership:								
Voluntary	2,461	0.5	0.0	0.0	0.1	0.0	0.0	0.4
Proprietary	723	0.4	0.1	0.1 0	.1	0.0	−0.1	0.4
Government	869	0.2	0.2	0.1	0.1	0.0	0.2	0.6
Unknown	5	177	0.4	−0.2	0.0	0.1	−0.3	−0.5
Medicare Utilization as a Percent of Inpatient Days:								
0–25	310	0.3	−0.1	0.1	0.1	−0.3	−0.3	−0.6
25–50	1,613	0.5	0.0	0.0	0.1	0.0	−0.3	0.0
50–65	1,677	0.4	0.0	0.1	0.1	0.0	0.3	1.0
Over 65	504	0.3	−0.1	0.0	0.1	−0.2	0.5	0.7
Unknown	126	0.9	0.1	0.0	0.0	0.3	−0.7	0.2
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2003 Reclassifications:								
All Reclassified Hospitals	628	0.4	0.0	0.1	0.1	0.2	4.5	1.2
Standardized Amount Only	28	0.2	−0.1	0.1	0.1	−0.3	0.3	1.0
Wage Index Only	521	0.4	0.1	0.1	0.1	0.2	4.7	0.8
Both	38	0.4	0.0	0.1	0.1	−0.1	5.5	0.8
Nonreclassified Hospitals	3,605	0.4	0.0	0.0	0.1	0.0	−0.7	0.3
All Reclassified Urban Hospitals	113	0.6	−0.2	0.0	0.1	0.1	4.5	0.1
Standardized Amount Only	11 0.2	−0.9	0.1	0.1	−1.2	−0.9	0.2	
Wage Index Only	87	0.7	−0.2	0.0	0.0	0.2	4.8	−0.2
Both	15	0.5	0.2	0.1	0.2	0.4	4.3	3.0
Urban Nonreclassified Hospitals	2,473	0.5	0.0	0.0	0.1	0.0	−0.7	0.1
All Reclassified Rural Hospitals	515	0.3	0.2	0.1	0.1	0.2	4.5	1.9
Standardized Amount Only	11	0.5	0.4	0.1	0.1	0.4	3.7	3.1
Wage Index Only	485	0.3	0.2	0.1	0.1	0.2	4.5	1.9
Both	19	0.3	−0.1	0.1	0.1	−0.1	5.9	1.8
Rural Nonreclassified Hospitals	1,094	−0.1	0.3	0.1	0.1	−0.1	−0.6	2.3
Other Reclassified Hospitals (Section 1886(D)(8)(B))	35	−0.1	−0.2	0.0	0.0	−0.9	−1.3	2.7

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 2001, and hospital cost report data are from reporting periods beginning in FY 1999 and FY 1998.

[2] This column displays the payment impact of the recalibration of the DRG weights based on FY 2001 MedPAR data and the DRG reclassification changes, in accordance with section 1886(d)(4)(C) of the Act.

[3] This column displays the impact of updating the wage index with wage data from hospitals' FY 1999 cost reports.

[4] This column displays the impact of an 80/20 percent blend of removing the labor costs and hours associated with graduate medical education (GME) and for the Part A costs of certified registered nurse anesthetists (CRNAs).

[5] This column displays the impact of completely removing the labor costs and hours associated with GME and for the Part A costs of CRNAs.

[6] This column displays the combined impact of the reclassification and recalibration of the DRGs, the updated and revised wage data used to calculate the wage index, the phase-out of GME and CRNA costs and hours, and the budget neutrality adjustment factor for DRG and wage index changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 2, 3, 4 and 5, and the FY 2003 budget neutrality factor of 0.993209.

[7] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2003 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2003. Reclassification for prior years has no bearing on the payment impacts shown here.

[8] This column shows changes in payments from FY 2002 to FY 2003. It incorporates all of the changes displayed in columns 6 and 7 (the changes displayed in columns 2, 3, 4, and 5 are included in column 6). It also displays the impact of the FY 2003 update, changes in hospitals' reclassification status in FY 2003 compared to FY 2002, and the difference in outlier payments from FY 2002 to FY 2003. It also reflects the gradual phase-in for some SCHs of the full 1996 hospital-specific rate. Finally, the impacts of the reduction in IME adjustment payments, and the increase in the DSH adjustment are shown in this column. The sum of these impacts may be different from the percentage changes shown here due to rounding and interactive effect.

B. Impact of the Changes to the DRG Reclassifications and Recalibration of Relative Weights (Column 2)

In column 2 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II. of the preamble to this final rule. Section 1886(d)(4)(C)(i) of the Act requires us to annually make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 2002 DRG relative weights (GROUPER version 19.0) to aggregate payments using the FY 2003 DRG relative weights (GROUPER version 20.0). We note that, consistent with section 1886(d)(4)(C)(iii) of the Act, we have applied a budget neutrality factor to ensure that the overall payment impact of the DRG changes (combined with the wage index changes) is budget neutral. This budget neutrality factor of 0.993209 is applied to payments in Column 6. Because this is a combined DRG reclassification and recalibration and wage index budget neutrality factor, it is not applied to payments in this column.

The DRG changes we are making will result in 0.4 percent higher payments to hospitals overall. This effect is largely attributable to the anticipated higher payments after April 1, 2003 for drug-eluting stents, as described in section II.B. of this final rule. Specifically, we created two new DRGs (526 and 527) to be effective April 1, 2003. The relative weights for these new DRGs are 14 and 16 percent higher, respectively, than the weights for current DRGs 516 and 517, the current DRGs for stents. Hospitals that are currently doing these procedures benefit demonstrate positive impacts from this change in this impact analysis.

Another change is to DRGs 14 (retitled, Intracranial Hemorrhage and Stroke with Infarction) and 15 (retitled, Nonspecific Cerebrovascular Accident and Precerebral Occlusion without Infarction), and new DRG 524 (Transient Ischemia). With the new configuration of these DRGs, over 100,000 cases that previously would have been assigned to DRG 14 (with a FY 2003 relative weight of 1.2943) will now be assigned to DRG 15 (with a FY 2003 relative weight of 0.9858).

Urban hospitals with 300 or more beds, and rural hospitals with 200 or more beds benefit from these changes. Rural hospitals with fewer than 50 beds would experience a 0.3 percent decrease due to these changes, and rural hospitals with between 50 and 99 beds would experience a 0.1 percent decrease. Among rural hospitals categorized by region, the East South Central and West South Central would experience a 0.1 percent decrease in payments. Among special rural hospital categories, SCHs would experience a 0.1 percent decrease and MDHs would experience a 0.2 percent decrease.

C. Impact of Wage Index Changes (Columns 3, 4, and 5)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the wage index for FY 2003 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1998 and before October 1, 1999. As with column 2, the impact of the new data on hospital payments is isolated in columns 3, 4 and 5 by holding the other payment parameters constant in the three simulations. That is, columns 3, 4, and 5 show the percentage changes in payments when going from a model using the FY 2002 wage index (based on FY 1997 wage data before geographic reclassifications to a model using the FY 2003 pre-reclassification wage index based on FY 1998 wage data).

The wage data collected on the FY 1999 cost reports are similar to the data used in the calculation of the FY 2002 wage index. Also, as described in section III.B of this preamble, the FY 2003 wage index is calculated by removing 100 percent of hospitals' GME and CRNA costs (and hours). The FY 2002 wage index was calculated by blending 60 percent of hospitals' average hourly wages, excluding GME and CRNA data, with 40 percent of average hourly wages including these data.

Column 3 shows the impacts of updating the wage data using FY 1999 cost reports. This column maintains the same 60/40 phase-out of GME and CRNA costs as the FY 2002 wage index, which is the baseline for comparison. Among regions, the largest impact of updating the wage data is seen in rural Puerto Rico (a 5.4 percent decrease). Rural hospitals in the East South Central region experience the next largest impact, a 0.7 percent increase. Among urban hospitals, Puerto Rico and the Middle Atlantic regions would experience a 0.8 and 0.4 percent decreases, respectively. The Mountain region would experience a 0.5 percent increase.

The next two columns show the impacts of removing the GME and CRNA data from the wage index calculation. Under the 5-year phaseout of these data, FY 2003 would have been the fourth year of the phaseout. This would have meant that, under the phaseout, the FY 2003 wage index would be calculated with 20 percent of the GME and CRNA data included and 80 percent with these data removed, and FY 2004 would begin the calculation with 100 percent of these data removed. However, we are removing 100 percent of GME and CRNA costs from the FY 2003 wage index. To demonstrate the impacts of this provision, we first show the impacts of moving to a wage index with 80 percent of these data removed (Column 4), then show a wage index with 100 percent of these data removed (Column 5). As expected, the impacts in the two columns are similar, with some differences due to rounding. Generally, no group of hospitals is impacted by more than 0.2 percent by this change. Even among the hospital group most likely to be negatively impacted by this change, teaching hospitals with 100 or more residents, the net effect of removing 100 percent of GME and CRNA data is no change in payments.

We note that the wage data used for the final wage index are based upon the data available as of July 2002 and, therefore, do not reflect revision requests received and processed by the fiscal intermediaries after that date.

The following chart compares the shifts in wage index values for labor market areas for FY 2002 relative to FY 2003. This chart demonstrates the impact of the changes for the FY 2003 wage index, including updating to FY 1999 wage data and removing 100 percent of GME and CRNA data. The majority of labor market areas (343) experience less than a 5-percent change. A total of 11 labor market areas experience an increase of more than 5 percent and less than 10 percent. Three areas experience an increase greater than 10 percent. A total of 15 areas experience decreases of more than 5 percent and less than 10 percent. Finally, 1 areas experience declines of 10 percent or more.

Percentage change in area wage index values	Number of labor market areas	
	FY 2002	FY 2003
Increase more than 10 percent	2	3
Increase more than 5 percent and less than 10 percent	26	11
Increase or decrease less than 5 percent	335	343
Decrease more than 5 percent and less than 10 percent	10	15
Decrease more than 10 percent	1	1

Among urban hospitals, 42 would experience an increase of between 5 and 10 percent and 9 more than 10 percent. A total of 22 rural hospitals have increases greater than 5 percent, but none have greater than 10-percent increases. On the negative side, 55 urban hospitals have decreases in their wage index values of at least 5 percent but less than 10 percent. Two urban hospitals have decreases in their wage index values greater than 10 percent. There are 17 rural hospitals with decreases in their wage index values greater than 5 percent or with increases of more than 10 percent. The following chart

shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Number of hospitals	
	Urban	Rural
Increase more than 10 percent	9	0
Increase more than 5 percent and less than 10 percent	42	22
Increase or decrease less than 5 percent	2553	1975
Decrease more than 5 percent and less than 10 percent	55	17
Decrease more than 10 percent	2	0

D. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 6)

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this final rule, we compared simulated aggregate payments using the FY 2002 DRG relative weights and wage index to simulated aggregate payments using the FY 2003 DRG relative weights and blended wage index. In addition, we are required to ensure that any add-on payments for new technology under section 1886(d)(5)(K) of the Act are budget neutral. As discussed in section II.D. of this final rule, we are approving one new technology for add-on payments in FY 2003. We estimate the total add-on payments for this new technology will be $74.8 million.

We computed a wage and recalibration budget neutrality factor of 0.993209. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 6. The 0.0 percent impact for all hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

In addition, section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. This provision is required to be budget neutral. The impact of this provision, which is to increase overall payments by 0.1 percent, is not shown in columns 2, 3, 4, and 5. It is included in the impacts shown in column 6.

The changes in this column are the sum of the changes in columns 2, 3, 4, and 5, combined with the budget neutrality factor and the wage index floor for urban areas. There also may be some variation of plus or minus 0.1 percentage point due to rounding.

E. Impact of MGCRB Reclassifications (Column 7)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 6 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 2003. These decisions affect hospitals' standardized amount and wage index area assignments.

By February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may approve a hospital's reclassification request for the purpose of using another area's standardized amount, wage index value, or both. The final FY 2003 wage index values incorporate all of the MGCRB's reclassification decisions for FY 2003. The wage index values also reflect any decisions made by the CMS Administrator through the appeals and review process.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 0.990672 to ensure that the effects of reclassification are budget neutral. (See section II.A.4.b. of the Addendum to this final rule.)

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.4 percent in column 7. Payments to urban hospitals decline 0.4 percent. Hospitals in other urban areas see a decrease in payments of 0.4 percent, while large urban hospitals lose 0.5 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally decline.

A positive impact is evident among most of the rural hospital groups. The smallest increases among the rural census divisions are 1.1 and 1.6 percent for Mountain and West North Central regions, respectively. The largest increases are in rural South Atlantic and West South Central regions. These regions receive increases of 2.9 and 3.2 percent, respectively.

Among all the hospitals that were reclassified for FY 2003 (including hospitals that received wage index reclassifications in FY 2001 or FY 2002 that extend for 3-years), the MGCRB changes are estimated to provide a 4.5 percent increase in payments. Urban hospitals reclassified for FY 2003 are expected to receive an increase of 4.5 percent, while rural reclassified hospitals are expected to benefit from the MGCRB changes with a 4.5 percent increase in payments. Overall, among hospitals that were reclassified for purposes of the standardized amount only, a payment increase of 0.3 percent is expected, while those reclassified for purposes of the wage index only show a 4.7 percent increase in payments. Payments to urban and rural hospitals that did not reclassify are expected to decrease slightly due to the MGCRB changes, decreasing by 0.7 for urban hospitals and 0.6 for rural hospitals. Those hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act are expected to receive a decrease in payments of 1.3 percent.

F. All Changes (Column 8)

Column 8 compares our estimate of payments per case, incorporating all changes reflected in this proposed rule for FY 2003 (including statutory changes), to our estimate of payments per case in FY 2002. This column includes all of the policy changes to date. Because the reclassifications shown in column 7 do not reflect FY 2002 reclassifications, the impacts of FY 2003 reclassifications only affect the impacts from FY 2002 to FY 2003 if the reclassification impacts for any group of hospitals are different in FY 2003 compared to FY 2002.

It includes the effects of the 2.95 percent update to the standardized amounts and the hospital-specific rates for MDHs and SCHs. It also reflects the 2.1 percentage point difference between the projected outlier payments in FY 2002 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 2002 (7.2 percent), as described in the introduction to this Appendix and the Addendum to this final rule.

Section 213 of Public Law 106–554 provided that all SCHs may receive payment on the basis of their costs per case during their cost reporting period that began during 1996. For FY 2003, eligible SCHs that rebase receive a hospital-specific rate comprised of 25 percent of the higher of their FY 1982 or FY 1987 hospital-specific rate or their Federal rate, and 75 percent of their 1996 hospital-specific rate. The impact of this provision is modeled in column 8 as well.

Under section 1886(d)(5)(B)(ii) of the Act, the formula for IME is reduced beginning in FY 2003. The reduction is from approximately a 6.5 percent increase for every 10 percent increase in the resident-to-bed ratio during FY 2002 to approximately a 5.5 percent increase. We estimate the impact of this change to be a 0.9 percent reduction in hospitals' overall FY 2003 payments. The impact upon teaching hospitals would be larger.

Finally, the DSH adjustment increases in FY 2003 compared with FY 2002. In accordance with section 1886(d)(5)(F)(ix) of

the Act, during FY 2002, DSH payments that the hospital would otherwise receive were reduced by 3 percent. This reduction is no longer applicable beginning with FY 2003. The estimated impact of this change is to increase overall hospital payments by 0.2 percent.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 8 may not equal the sum of the changes in columns 6 and 7, plus the other impacts that we are able to identify.

The overall change in payments per case for hospitals in FY 2003 increases by 0.4 percent. Hospitals in urban areas experience a 0.1 percent increase in payments per case compared to FY 2002. Hospitals in rural areas, meanwhile, experience a 2.1 percent payment increase. Hospitals in large urban areas experience a 0.2 percent decline in payments, largely due to the reduction in IME payments. The impact of the reduction in IME payments is most evident among teaching hospitals with 100 or more residents, who would experience a decrease in payments per case of 1.4 percent.

Among urban census divisions, the largest payment increase was 1.7 percent in the Mountain region. Hospitals in urban Middle Atlantic would experience an overall decrease of 1.4 percent and hospitals in the New England region would experience a decrease of 0.3 percent. This is primarily due to the combination of the negative impact on these hospitals of reducing IME and the lower outlier payments during FY 2003. The only hospital category experiencing overall payment decreases is Puerto Rico, where payments decrease by 2.7 percent, largely due to the updated wage data. In the East North Central region, payments appear to increase by 2.6 percent. Mountain and West North Central regions also benefited, both with 2.5 percent increases.

Among special categories of rural hospitals, those hospitals receiving payment under the hospital-specific methodology (SCHs, MDHs, and SCH/RRCs) experience payment increases of 2.7 percent, 2.5 percent, and 3.1 percent, respectively. This outcome is primarily related to the fact that, for hospitals receiving payments under the hospital-specific methodology, there are no outlier payments. Therefore, these hospitals do not experience negative payment impacts from the decline in outlier payments from FY 2002 to FY 2003 as do hospitals paid based on the national standardized amounts.

Hospitals that were reclassified for FY 2003 are estimated to receive a 1.2 percent increase in payments. Urban hospitals reclassified for FY 2003 are anticipated to receive an increase of 0.1 percent, while rural reclassified hospitals are expected to benefit from reclassification with a 1.9 percent increase in payments. Overall, among hospitals reclassified for purposes of the standardized amount, a payment increase of 1.0 percent is expected, while those hospitals reclassified for purposes of the wage index only show an expected 0.8 percent increase in payments. Those hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act are expected to receive an increase in payments of 2.7 percent.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

	Num. of hosps. (1)	Average FY 2002 payment per case[1] (2)	Average FY 2003 payment per case[1] (3)	All FY 2003 changes (4)
By Geographic Location:				
All hospitals	4,230	7,218	7247.2	0.4
Urban hospitals	2,620	7,718	7727.8	0.1
Large urban areas (populations over 1 million)	1,519	8,269	8249.2	−0.2
Other urban areas (populations of 1 million of fewer)	1,101	7,002	7050.4	0.7
Rural hospitals	1,610	5,168	5275.0	2.1
Bed Size (Urban):				
0–99 beds	645	5,309	5376.3	1.3
100–199 beds	909	6,424	6474.8	0.8
200–299 beds	523	7,394	7422.6	0.4
300–499 beds	398	8,345	8332.6	−0.1
500 or more beds	145	10,007	9943.6	−0.6
Bed Size (Rural):				
0–49 beds	747	4,260	4362.7	2.4
50–99 beds	501	4,776	4887.0	2.3
100–149 beds	215	5,106	5211.2	2.1
150–199 beds	78	5,515	5617.2	1.8
200 or more beds	69	6,750	6860.1	1.6
Urban by Region:				
New England	135	8,224	8203.0	−0.3
Middle Atlantic	404	8,789	8667.9	−1.4
South Atlantic	384	7,311	7360.5	0.7
East North Central	429	7,293	7311.6	0.2
East South Central	159	6,956	7000.5	0.6
West North Central	178	7,358	7404.2	0.6
West South Central	335	7,103	7172.5	1.0
Mountain	132	7,417	7546.6	1.7
Pacific	417	9,386	9385.9	0.0
Puerto Rico	47	3,319	3338.5	0.6
Rural by Region:				
New England	40	6,405	6475.6	1.1
Middle Atlantic	67	5,267	5338.0	1.3
South Atlantic	232	5,245	5330.7	1.6
East North Central	215	5,139	5275.2	2.6
East South Central	239	4,746	4843.1	2.0
West North Central	279	5,223	5354.7	2.5
West South Central	285	4,536	4626.7	2.0
Mountain	145	5,789	5933.2	2.5
Pacific	103	6,652	6803.3	2.3

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

	Num. of hosps. (1)	Average FY 2002 payment per case[1] (2)	Average FY 2003 payment per case[1] (3)	All FY 2003 changes (4)
Puerto Rico	5	2,753	2677.6	−2.7
By Payment Classification:				
Urban hospitals	2,650	7,703	7713.5	0.1
Large urban areas (populations over 1 million)	1,576	8,196	8180.0	−0.2
Other urban areas (populations of 1 million of fewer)	1,074	7,027	7075.0	0.7
Rural areas	1,580	5,155	5261.6	2.1
Teaching Status:				
Non-teaching	3,119	5,890	5965.9	1.3
Fewer than 100 Residents	870	7,475	7511.1	0.5
100 or more Residents	241	11,352	11196.8	−1.4
Urban DSH:				
Non-DSH	1,549	6,567	6604.7	0.6
100 or more beds	1,361	8,296	8299.2	0.0
Less than 100 beds	286	5,168	5232.1	1.2
Rural DSH:				
Sole Community (SCH)	470	4,942	5067.0	2.5
Referral Center (RRC)	156	5,974	6067.9	1.6
Other Rural:				
100 or more beds	76	4,517	4589.9	1.6
Less than 100 beds	332	4,089	4172.8	2.0
Urban teaching and DSH:				
Both teaching and DSH	757	9,177	9140.8	−0.4
Teaching and no DSH	284	7,773	7763.4	−0.1
No teaching and DSH	890	6,535	6608.4	1.1
No teaching and no DSH	719	6,041	6086.3	0.7
Rural Hospital Types:				
Non special status hospitals	577	4,261	4341.7	1.9
RRC	160	5,677	5737.5	1.1
SCH	526	5,280	5420.1	2.7
Medicare-dependent hospitals (MDH)	241	4,048	4150.6	2.5
SCH and RRC	76	6,626	6829.3	3.1
Type of Ownership:				
Voluntary	2,461	7,342	7369.6	0.4
Proprietary	723	6,945	6969.7	0.4
Government	869	6,809	6851.5	0.6
Unknown	177	7,302	7318.9	0.2
Medicare Utilization as a Percent of Inpatient Days:				
0–25	310	9,845	9786.3	−0.6
25–50	1,613	8,267	8268.6	0.0
50–65	1,677	6,257	6318.9	1.0
Over 65	504	5,647	5684.7	0.7
Unknown	126	8,992	9011.1	0.2
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2002 Reclassifications:				
All Reclassified Hospitals	628	6,530	6609.5	1.2
Standardized Amount Only	28	5,971	6029.0	1.0
Wage Index Only	521	6,749	6805.1	0.8
Both	38	5,901	5947.1	0.8
All Nonreclassified Hospitals	3,605	7,327	7351.4	0.3
All Urban Reclassified Hospitals	113	8,610	8615.0	0.1
Urban Nonreclassified Hospitals	11	5,794	5804.7	0.2
Standardized Amount Only	87	9,211	9195.4	−0.2
Wage Index Only	15	5,870	6047.1	3.0
Both	2,473	7,690	7699.1	0.1
All Reclassified Rural Hospitals	515	5,721	5829.0	1.9
Standardized Amount Only	11	4,848	5000.7	3.1
Wage Index Only	485	5,728	5835.5	1.9
Both	19	5,875	5981.2	1.8
Rural Nonreclassified Hospitals	1,094	4,516	4621.1	2.3
Other Reclassified Hospitals (Section 1886(D)(8)(B))	35	4,894	5026.9	2.7

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the changes for FY 2003 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the estimated payments per case for FY 2002 with the average estimated per case payments for FY 2003, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 8 of Table I.

VII. Impact of Specific Policy Changes

A. Impact of Changes Relating to Payment for the Clinical Training Portion of Clinical Psychology Training Programs

In section V.I.5. of the preamble to this final rule, we have revised our policy on Medicare payment for approved nursing and allied health education programs to permit payment for the costs incurred by a provider for the clinical training portion of clinical psychology training programs.

Our actuarial estimates indicate that there will be a fiscal impact of $40 million the first year after payments begin, growing to $50 million by the 5th year ($220 million over 5 years). Costs are expected to increase because we believe that Medicare's support through its education regulations will encourage hospitals to report more costs for clinical psychology training programs than are reported today. This estimate is based on assumptions as to how much Medicare could pay for additional educational programs and how quickly other providers with clinical training portions would begin seeking those payments.

The following chart shows projected costs to the Medicare program for the next 5 years:

Fiscal year	Medicare program costs (in millions)
2003	$40
2004	40
2005	40
2006	50
2007	50

B. Impact of Changes Relating to EMTALA Provisions

We are addressing proposed changes related to the EMTALA provisions in a separate final rule to be published at a later date.

C. Impact of Policy Changes Relating to Provider-Based Entity

In section V.K. of the preamble of this proposed rule, we discuss our proposed Medicare payment policy changes relating to determinations of provider-based status for entities of main providers. These changes are intended to focus mainly on issues raised by the hospital industry surrounding the provider-based regulations and to allow for a orderly and uniform implementation strategy once the grandfathering provision for these entities expires on September 30, 2002.

Because we believed it would be difficult to quantify the impact of these changes, in the May 9, 2002 proposed rule, we solicited comments on these issues. However, we received no comments that would assist us in developing a quantitative analysis of impact. Therefore, we are not able to prepare such an analysis.

VIII. Impact of Policies Affecting Rural Hospitals

A. Raising the Threshold To Qualify for the CRNA Pass-Through Payments

In section V. of the preamble of this final rule, we are raising the maximum number of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that a rural hospital may perform to qualify for pass-through payments for the costs of CRNAs to 800 from 500. Currently, we have identified 622 hospitals that qualify under this provision.

To measure the impact of this provision, we determined that approximately half of the hospitals that would appear to be eligible based on the current number of procedures appear to receive this adjustment. In order to be eligible, hospitals must employ the CRNA and the CRNA must agree not to bill for services under Part B. We estimate approximately 90 rural hospitals would qualify under the increased maximum volume threshold. If one-half of these hospitals then met the other criteria, 45 additional hospitals would be eligible for these pass-through payments under this change.

B. Removal of Requirement for CAHs To Use State Resident Assessment Instrument

In section VII. of the preamble of this final rule, we are eliminating the requirement that CAHs use the State resident assessment instrument (RAI) to conduct patient assessments. There are approximately 600 CAHs. The overwhelming majority of CAHs, 95 percent, or approximately 270 CAHs, provide SNF level care. The elimination of the requirement to use the State RAI will greatly reduce the burden on CAHs because facilities will no longer be required to complete an RAI document for each SNF patient (which would involve approximately 12,000 admissions based on the most recent claims data). Facilities would have the flexibility to document the assessment data in the medical record in a manner appropriate for their facility. The elimination of the requirement for use of the State RAI will reduce the amount of time required to perform patient assessments and allow more time for direct patient care.

IX. Impact of Changes in the Capital Prospective Payment System

A. General Considerations

Fiscal year 2001 was the last year of the 10-year transition period established to phase in the prospective payment system for hospital capital-related costs. During the transition period, hospitals were paid under one of two payment methodologies: fully prospective or hold harmless. Under the fully prospective methodology, hospitals were paid a blend of the Federal rate and their hospital-specific rate (see § 412.340). Under the hold-harmless methodology, unless a hospital elected payment based on 100 percent of the Federal rate, hospitals were paid 85 percent of reasonable costs for old capital costs (100 percent for SCHs) plus an amount for new capital costs based on a proportion of the Federal rate (see § 412.344). As we state in section VI.A. of the preamble of this final rule, the end of the 10-year transition period ending with hospital cost reporting periods beginning on or after October 1, 2001 (FY 2002), capital prospective payment system payments for most hospitals are based solely on the Federal rate in FY 2003. Therefore, we no longer include information on obligated capital costs or projections of old capital costs and new capital costs, which were factors needed to calculate payments during the transition period, for our impact analysis.

In accordance with § 412.312, the basic methodology for determining a capital prospective payment system payment is: (Standard Federal Rate) x (DRG weight) x (Geographic Adjustment Factor(GAF)) x (Large Urban Add-on, if applicable) x (COLA adjustment for hospitals located in Alaska and Hawaii) x (1 + Disproportionate Share (DSH) Adjustment Factor + Indirect Medical Education (IME) Adjustment Factor, if applicable).

In addition, hospitals may also receive outlier payments for those cases that qualify under the threshold established for each fiscal year.

The data used in developing the impact analysis presented below are taken from the March 2002 update of the FY 2001 MedPAR file and the March 2002 update of the Provider Specific File that is used for payment purposes. Although the analyses of the changes to the capital prospective payment system do not incorporate cost data, we used the June 2002 update of the most recently available hospital cost report data (FY 1999) to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases (for instance, the number of beds), there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available sources overall. However, for individual hospitals, some miscategorizations are possible.

Using cases from the March 2002 update of the FY 2001 MedPAR file, we simulated payments under the capital prospective payment system for FY 2002 and FY 2003 for a comparison of total payments per case. Any short-term, acute care hospitals not paid under the general hospital inpatient prospective payment systems (Indian Health Service Hospitals and hospitals in Maryland) are excluded from the simulations.

As we explain in section III.A.4. of the Addendum of this final rule, payments will no longer be made under the regular

exceptions provision under §§ 412.348(b) through (e). Therefore, we are no longer using the actuarial capital cost model (described in Appendix B of August 1, 2001 final rule (66 FR 40099)). We modeled payments for each hospital by multiplying the Federal rate by the GAF and the hospital's case-mix. We then added estimated payments for indirect medical education, disproportionate share, large urban add-on, and outliers, if applicable. For purposes of this impact analysis, the model includes the following assumptions:

- We estimate that the Medicare case-mix index will increase by 0.99800 percent in FY 2002 and will increase by 1.01505 percent in FY 2003.
- We estimate that the Medicare discharges will be 13,398,000 in FY 2002 and 13,658,000 in FY 2003 for a 1.9 percent increase from FY 2002 to FY 2003.
- The Federal capital rate was updated beginning in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The FY 2003 update is 1.1 percent (see section III.A.1.a. of the Addendum to this final rule).
- In addition to the FY 2003 update factor, the FY 2003 Federal rate was calculated based on a GAF/DRG budget neutrality factor of 0.9957, an outlier adjustment factor of 0.9469, an exceptions adjustment factor of 0.9970, and a special adjustment for FY 2003 of 1.0255 (see section III.A. of the Addendum of this final rule).

2. Results

In the past, in this impact section we presented the redistributive effects that were expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals and a cross-sectional summary of hospital groupings by the capital prospective payment system transition period payment methodology. We are no longer including this information since all hospitals (except new hospitals under § 412.324(b) and under § 412.32(c)(2)) are paid 100 percent of the Federal rate in FY 2003.

We used the actuarial model described above to estimate the potential impact of our changes for FY 2003 on total capital payments per case, using a universe of 4,230 hospitals. As described above, the individual hospital payment parameters are taken from the best available data, including the March 2002 update of the FY 2001 MedPAR file, the March 2002 update to the Provider-Specific File, and the most recent cost report data from the June 2002 update of HCRIS. In Table III, we present a comparison of total payments per case for FY 2002 compared to FY 2003 based on FY 2003 payment policies. Column 3 shows estimates of payments per case under our model for FY 2002. Column 4 shows estimates of payments per case under our model for FY 2003. Column 5 shows the total percentage change in payments from FY 2002 to FY 2003. The change represented in Column 5 includes the 1.1 percent update to the Federal rate, a 1.01505 percent increase in case-mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB, as well as changes in special exception payments. The comparisons are provided by: (1) geographic location; (2) region; and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to increase 3.8 percent in FY 2003. Our comparison by geographic location shows an overall increase in payments to hospitals in all areas. This comparison also shows that urban and rural hospitals will experience slightly different rates of increase in capital payments per case (3.6 percent and 4.8 percent, respectively). This difference is due to a projection that urban hospitals will experience a larger decrease in outlier payments from FY 2002 to FY 2003 compared to rural hospitals.

All regions are estimated to receive an increase in total capital payments per case, partly due to the elimination of the 2.1 percent reduction to the Federal rate for FY 2003 (see section VI.D. of the preamble of this final rule). Changes by region vary from a minimum increase of 2.7 percent (Pacific urban region) to a maximum increase of 5.3 percent (East North Central rural region). Hospitals located in Puerto Rico are expected to experience an increase in total capital payments per case of 4.4 percent.

By type of ownership, government hospitals are projected to have the largest rate of increase of total payment changes (4.2 percent). Similarly, payments to voluntary hospitals will increase 4.1 percent, while payments to proprietary hospitals will increase 2.1 percent.

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes also affects the geographic adjustment factor, since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 2003 compared to the effects of reclassification for FY 2002, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 2003 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 2003 as a whole are projected to experience a 4.5 percent increase in payments. Payments to nonreclassified hospitals will increase slightly less (3.7 percent) than reclassified hospitals, overall. Hospitals reclassified during both FY 2002 and FY 2003 are projected to receive an increase in payments of 4.1 percent. Hospitals reclassified during FY 2003 only are projected to receive an increase in payments of 8.6 percent. This increase is primarily due to changes in the GAF (wage index).

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 2002 Payments Compared to FY 2003 Payments]

	Number of hospitals	Average FY 2002 payments/case	Average FY 2003 payments/case	Change
By Geographic Location:				
All hospitals	4,230	668	693	3.8
Large urban areas (populations over 1 million)	1,519	772	798	3.4
Other urban areas (populations of 1 million or fewer)	1,101	653	679	4.0
Rural areas	1,610	451	472	4.8
Urban hospitals	2,620	720	746	3.6
0–99 beds	645	511	532	4.2
100–199 beds	909	607	630	3.7
200–299 beds	523	692	718	3.7
300–499 beds	398	767	794	3.6
500 or more beds	145	933	964	3.4
Rural hospitals	1,610	451	472	4.8
0–49 beds	747	371	392	5.5
50–99 beds	501	412	434	5.3
100–149 beds	215	456	478	4.8

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 2002 Payments Compared to FY 2003 Payments]

	Number of hospitals	Average FY 2002 payments/case	Average FY 2003 payments/case	Change
150–199 beds	78	494	517	4.7
200 or more beds	69	569	591	3.8
By Region:				
Urban by Region	2,620	720	746	3.6
New England	135	771	805	4.4
Middle Atlantic	404	807	829	2.8
South Atlantic	384	692	717	3.6
East North Central	429	688	720	4.6
East South Central	159	654	677	3.6
West North Central	178	706	736	4.3
West South Central	335	671	693	3.4
Mountain	132	694	728	4.8
Pacific	417	840	862	2.7
Puerto Rico	47	306	320	4.4
Rural by Region	1,610	451	472	4.8
New England	40	549	574	4.6
Middle Atlantic	67	473	496	4.9
South Atlantic	232	469	490	4.3
East North Central	215	457	482	5.3
East South Central	239	415	434	4.8
West North Central	279	443	466	5.2
West South Central	285	405	424	4.7
Mountain	145	467	490	5.0
Pacific	103	531	556	4.7
By Payment Classification:				
All hospitals	4,230	668	693	3.8
Large urban areas (populations over 1 million)	1,576	765	792	3.4
Other urban areas (populations of 1 million or fewer)	1,074	655	681	4.0
Rural areas	1,580	449	470	4.8
Teaching Status:				
Non-teaching	3,119	546	568	4.0
Fewer than 100 Residents	870	698	725	3.8
100 or more Residents	241	1,030	1,064	3.3
Urban DSH:				
100 or more beds	1,361	758	784	3.4
Less than 100 beds	286	482	502	4.2
Rural DSH:				
Sole Community (SCH/EACH)	470	394	414	5.1
Referral Center (RRC/EACH)	156	516	537	4.1
Other Rural:				
100 or more beds	76	419	438	4.6
Less than 100 beds	332	379	399	5.2
Urban teaching and DSH:				
Both teaching and DSH	757	836	864	3.4
Teaching and no DSH	284	750	781	4.2
No teaching and DSH	890	602	624	3.6
No teaching and no DSH	719	596	619	3.8
Rural Hospital Types:				
Non special status hospitals	577	399	419	5.0
RRC/EACH	160	528	549	4.0
SCH/EACH	526	417	438	5.1
Medicare-dependent hospitals (MDH)	241	372	394	5.9
SCH, RRC and EACH	76	507	532	5.0
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
Reclassification Status During FY2002 and FY2003:				
Reclassified During Both FY2002 and FY2003	573	585	610	4.1
Reclassified During FY2003 Only	54	525	570	8.6
Reclassified During FY2002 Only	77	764	758	-0.7
FY2003 Reclassifications:				
All Reclassified Hospitals	628	581	606	4.5
All Nonreclassified Hospitals	3,567	684	709	3.7
All Urban Reclassified Hospitals	113	780	814	4.4
Urban Nonreclassified Hospitals	2,473	719	745	3.6
All Reclassified Rural Hospitals	515	503	525	4.5
Rural Nonreclassified Hospitals	1,094	389	409	5.2
Other Reclassified Hospitals (Section 1886(D)(8)(B))	35	455	483	6.2
Type of Ownership:				
Voluntary	2,461	680	708	4.0
Proprietary	723	659	673	2.1

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 2002 Payments Compared to FY 2003 Payments]

	Number of hospitals	Average FY 2002 payments/case	Average FY 2003 payments/case	Change
Government	869	604	629	4.2
Medicare Utilization as a Percent of Inpatient Days:				
0–25	310	864	892	3.3
25–50	1,613	766	792	3.5
50–65	1,677	583	607	4.1
Over 65	504	523	546	4.3

Appendix B: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Consistent with section 1886(e)(5)(B) of the Act, in this final rule we are publishing our final recommendations for updating hospital payments for FY 2003. In accordance with section 1886(d)(3)(A) and section 1886(b)(3)(B)(i)(XVIII) of the Act, we are updating the standardized amounts for FY 2003 equal to the rate of increase in the hospital market basket minus 0.55 percentage points for acute inpatient prospective payments to hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 2003 percentage increase in the hospital-specific rates applicable to SCHs and MDHs equal to the rate of increase in the market basket minus 0.55 percentage points.

Based on the revised and rebased second quarter 2002 forecast of the FY 2003 market basket increase of 3.5 percent, the update to the standardized amounts for hospitals subject to the acute inpatient prospective payment system is 2.95 percent (that is, the market basket rate of increase minus 0.55 percentage points) for hospitals in both large urban and other areas. The update to the hospital-specific rate applicable to SCHs and MDHs is also 2.95 percent. In the proposed rule, the market basket was 3.3 percent, for proposed update factors of 2.75 percent.

Under section 1886(b)(3)(B)(ii)(VIII) of the Act, the FY 2003 percentage increase in the rate-of-increase limits for hospitals and hospital units excluded from the acute inpatient prospective payment system is equal to the market basket percentage increase. Facilities excluded from the acute inpatient prospective payment system include psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, cancer hospitals, and children's hospitals.

In the past, hospitals and hospital units excluded from the acute inpatient prospective payment system have been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Hospitals that continue to be paid based on their reasonable costs are subject to TEFRA limits for FY 2003. For these hospitals, the update is the percentage increase in the excluded hospital market basket (currently estimated at 3.5 percent).

Inpatient rehabilitation facilities (IRFs) are paid under the IRF prospective payment system for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning during FY 2003, the Federal prospective payment for IRFs is based on 100 percent of the adjusted Federal IRF prospective payment amount, updated annually (see the August 7, 2001 final rule (66 FR 41316)).

Effective for cost reporting periods beginning during FY 2003, we have proposed that long-term care hospitals would be paid under a prospective payment system based on a 5-year transition period (see the March 22, 2002 proposed rule (67 FR 13416)). We also proposed that a long-term care hospital may elect to be paid on 100 percent of the Federal prospective payment rate at the beginning of any of its cost reporting periods during the 5-year transition period. For purposes of the update factor, the portion of the proposed prospective payment system transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the long-term care hospital's TEFRA limit by the current estimate of the excluded hospital market basket (or 3.5 percent).

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for inpatient hospital services for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act. Accordingly, we published the FY 2003 update factors recommended by the Secretary as Appendix C in the May 9, 2002 proposed rule (67 FR 31685). In that appendix, we discussed the recommendations of appropriate update factors and the analysis underlying our recommendations. We also responded to MedPAC's recommendations concerning the update factors.

II. Secretary's Final Recommendations for Updating the Prospective Payment System Standardized Amounts

In recommending an update, the Secretary takes into account the factors in the update framework, as well as other factors such as the recommendations of MedPAC, the long-term solvency of the Medicare Trust Funds, and the capacity of the hospital industry to continually provide access to high quality care to Medicare beneficiaries through adequate reimbursement to health care providers.

Comment: Numerous commenters pointed out the negative impact of reducing the market basket estimate by 0.55 percentage points. However, the commenters acknowledged that the statute requires an update to payments for FY 2002 of the market basket percentage increase minus 0.55 percentage points. One commenter stated that another year of "market basket minus" update was unsustainable.

Response: The commenters are correct that the 0.55 percentage point reduction from the market basket in calculating the update factor is required by statute.

Our final recommendation of the update is market basket minus 0.55 percentage points, which is consistent with current law, and does not differ from the proposed recommendation. However, the second quarter forecast of the market basket percentage increase is 3.5 for prospective payment hospitals (up from 3.3 percent estimated in the proposed rule). Thus, the Secretary's final recommendation is that the update to the prospective payment system standardized amounts for both large urban and other urban areas is 2.95 percentage points. The update to the hospital-specific rate applicable to SCHs and MDHs is also 2.95 percent (or consistent with current law, market basket percentage increase minus 0.55 percentage points).

III. Secretary's Final Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals and Hospital Units

We received no comments concerning our proposed recommendation for updating the rate-of-increase for excluded hospitals and hospital units. Our final recommendation does not differ from the proposed recommendation. However, the second quarter forecast of the market basket percentage increase is 3.5 for excluded hospitals and hospital units (up from 3.4 percent estimated in the proposed rule).

For cost reporting periods beginning on or after October 1, 2002, the IRF prospective payment is based on 100 percent of the adjusted Federal IRF prospective payment system amount updated annually.

For purposes of the proposed long-term care hospital prospective payment system update factor, the portion of the transition blend payment based on reasonable costs for inpatient operating services for FY 2003 would be determined by updating the TEFRA target amount for long-term care hospitals by

the most recent available estimate of the increase in the excluded hospital operating market basket (or 3.5 percent).

Thus, the Secretary's final recommendation is that the update for the remaining hospitals and hospital units excluded from the acute inpatient prospective payment system is 3.5 percent.

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August 1, 2002

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 020409080–2174–05; I.D. 061402D]

RIN 0648–AP78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NOAA Fisheries is implementing additional interim measures intended to reduce overfishing on species managed under the Northeast Multispecies Fishery Management Plan (FMP), under the authority of section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This interim final rule implements additional restrictions specified in the Settlement Agreement Among Certain Parties ("Settlement Agreement"), which was ordered to be implemented by the U.S. District Court for the District of Columbia (Court) in a Remedial Order issued on May 23, 2002. The additional measures include the following: A freeze on days-at-sea (DAS) at the highest annual level used from fishing years 1996–2000 (beginning May 1, 1996, through April 30, 2001) and a 20-percent cut from that level; a freeze on the issuance of new open access Hand-gear permits, and a decreased cod, haddock, and yellowtail flounder possession limit for that category; increased gear restrictions for certain gear types, including gillnets, hook-gear and trawl nets; restrictions on yellowtail flounder catch; and mandated observer coverage levels for all gear sectors in the Northeast (NE) multispecies (groundfish) fishery. This interim final rule also continues many of the measures contained in an earlier interim final rule that was published on April 29, 2002, for this fishery. This action is necessary to bring the regulations governing the NE multispecies fishery into compliance with the Settlement Agreement and the Court's Remedial Order.

DATES: Effective August 1, 2002.

ADDRESSES: Written comments regarding the approved collection-of-information requirements should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Copies of this interim final rule, including the Environmental Assessment/ Regulatory Impact Review/ Final Regulatory Flexibility Analysis (EA/RIR/FRFA) are available upon request from the Regional Administrator. The EA/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978–281–9347, fax: 978–281–9135; e-mail: *thomas.warren@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

A proposed interim rule for this action, requesting public comment, was published on July 1, 2002 (67 FR 44139). A discussion of the events leading up to this interim final rule follows: On December 28, 2001, a decision was rendered by the Court on a lawsuit brought by the Conservation Law Foundation (CLF), Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NOAA Fisheries *(Conservation Law Foundation, et al.*, v. *Evans*, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the FMP violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*), as amended by the Sustainable Fisheries Act (SFA). The Court granted Plaintiffs' Motion for Summary Judgment on all counts, but did not impose a remedy. Instead, the Court asked the parties to the lawsuit to propose remedies consistent with the Court's findings. Shortly thereafter, several additional parties were allowed to intervene in the lawsuit for purposes of proposing the appropriate remedy. These parties ("Intervenors") included the States of Maine, New Hampshire, Massachusetts, and Rhode Island, and three industry groups. Additional background on the lawsuit is contained in the preambles to the interim rules published by NOAA Fisheries on April 29, 2002 (67 FR 21140), May 6, 2002 (67 FR 30331), and June 5, 2002 (67 FR 38608), and in the proposed interim rule published July 1, 2002 (67 FR 44139), and is not repeated here.

From April 5–9, 2002, Plaintiffs, Defendants and Intervenors engaged in Court-sponsored mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as an appropriate remedy. Although these discussions ended with no agreement, several of the parties continued mediation and filed a Settlement Agreement with the Court on April 16, 2002. In addition to NOAA Fisheries, the parties signing the agreement include CLF, which is one of the Plaintiff conservation groups, all four state Intervenors, and two of three industry Intervenors.

In order to ensure the implementation of protective management measures by May 1, 2002, NOAA Fisheries, notwithstanding that the Court had not yet issued its Remedial Order, filed an interim final rule with the Office of the Federal Register on April 25, 2002, for publication on April 29, 2002. The interim final rule that was published on April 29, 2002, implemented measures identical to the short-term measures contained in the Settlement Agreement filed with the Court.

On April 26, 2002, the Court issued a Remedial Order that ordered the promulgation of two specific sets of management measures—one to be effective from May 1, 2002, to July 31, 2002, and the other from August 1, 2002, until promulgation of Amendment 13 to the FMP. The Court-ordered measures for the first set of measures were, in the majority, identical with those contained in the Settlement Agreement and the measures contained in NOAA Fisheries' April 29, 2002, interim final rule. However, the Court-ordered measures included additional provisions and an accelerated schedule of effectiveness for all measures, which were not contained in either the Settlement Agreement or the April 29, 2002, interim final rule. According to the Court, these additional provisions were included to strengthen the Settlement Agreement provisions "in terms of reducing overfishing and minimizing bycatch without risking the lives of fishers or endangering the future of their communities and their way of life." Remedial Order, p.13. Further, the Court ordered that NOAA Fisheries publish in the **Federal Register**, as quickly as possible, an "amended interim rule and an amended second interim rule" that would "include the departures from the Settlement Agreement incorporated in the Remedial Order." To comply with the Court Order, NOAA Fisheries published a second interim final rule ("amended

interim rule") to modify the measures implemented through the April 29, 2002, interim final rule and to accelerate the effectiveness of the gear restrictions, as required by the Remedial Order. Because the Court's Remedial Order was not entirely consistent with the terms of the Settlement Agreement, NOAA Fisheries, CLF, and the Intervenors filed motions for reconsideration with the Court, requesting that the Court implement the terms of the Settlement Agreement without change.

On May 23, 2002, the Court issued an Order, in the case of *Conservation Law Foundation, et al.* v. *Evans et al.* (Case No. 001134 GK) (D.D.C. May 23, 2002) granting the motions for reconsideration on the basis that "the important changes made by the Court in the complex and carefully crafted Settlement Agreement Among Certain Parties * * * would produce unintended consequences." The Court ordered that the Settlement Agreement be implemented according to its terms; that the Secretary of Commerce (Secretary) publish an interim rule, effective no later than June 1, 2002, to reduce overfishing in the first quarter of the 2002–2003 fishing year; that the Secretary publish another interim rule to be effective no later than August 1, 2002, to reduce overfishing beginning with the second quarter of the 2002–2003 fishing year, and continuing until implementation of Amendment 13 to the FMP, which complies with the overfishing, rebuilding, and bycatch provisions of the SFA; and that, no later than August 22, 2003, the Secretary promulgate such an amendment to the FMP. The Court further ordered that the Secretary shall make public the most current scientific information to enable completion of the FMP Amendment no later than December 1, 2002, provide at least 5 percent observer coverage, and inform the Court of the steps taken to comply with the Order no later than September 5, 2002. The Order relating to observer coverage differs from the Settlement Agreement in that it requires a minimal level of 5 percent at first and 10 percent by May 1, 2003, unless it can be established by scientific information that an increase is not necessary. NMFS intends to implement a program to provide at least 5 percent observer coverage in the multispecies fishery for the period August 1, 2002-April 30, 2003, and thereafter, at a level of at least 5 percent depending on statistical need.

In response to the May 23, 2002, Court Order, on May 31, 2002, NOAA Fisheries filed an interim rule with the **Federal Register** (67 FR 38608, June 5, 2002) that implemented regulations for the June 1 through July 31, 2002, period, consistent with the Settlement Agreement. On July 1, 2002, NOAA Fisheries published a proposed interim rule (67 FR 44139) for measures ordered by the Court to be effective August 1, 2002; public comments were accepted through July 16, 2002. This interim final rule implements management measures for the period August 1, 2002, through the implementation of Amendment 13, in accordance with the Settlement Agreement and the Remedial Order. Amendment 13, which will bring the FMP into full compliance with the SFA, is under development by NOAA Fisheries and the New England Fishery Management Council (Council) and is intended to be implemented by August 22, 2003. This interim final rule is an interim action necessary to reduce overfishing consistent with and pursuant to section 305(c) of the Magnuson-Stevens Act, while Amendment 13 is being developed. Under the provisions of section 305(c)(3) of the Magnuson-Stevens Act, interim measures shall remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the **Federal Register** for one additional period of not more than 180 days, provided that the public has had an opportunity to comment on the interim measures. Because of the Court's Remedial Order, it is very unlikely that NOAA Fisheries will not extend this action beyond the first 180-day period. NOAA Fisheries will confirm this extension by publishing notification of continuation of regulations in the **Federal Register**. If for any reason, these interim measures do not need to remain in effect until they are replaced by the final rule implementing Amendment 13 to the FMP, as currently required by the Remedial Order, NOAA Fisheries will publish, pursuant to appropriate rulemaking procedures, a rule to amend these measures or to restore the regulations governing the NE multispecies fishery to their form prior to the effectiveness of this interim final rule.

Management Measures

All management measures for this fishery that were in effect prior to May 1, 2002, and not amended by this interim final rule, remain in effect as of August 1, 2002. These measures are not discussed specifically in the description that follows. This interim final rule will implement the following management measures beginning on August 1, 2002, which are designed to reduce overfishing on all "regulated species" managed under the FMP.

New Regulated Mesh Areas

This interim action redefines and divides the Gulf of Maine/Georges Bank (GOM/GB) Regulated Mesh Area (RMA) into two areas: The GOM RMA, which is the area north of the GOM cod exemption line currently used to define the areas where the GOM cod and GB cod trip limits apply; and the GB RMA, which is that part of the current GOM/GB RMA that lies south of the GOM cod exemption line and continues south to the EEZ for the areas lying east of 69°00′W. long. The Southern New England (SNE) and Mid-Atlantic (MA) RMAs are also redefined by this interim final rule. The SNE RMA is redefined as the area that lies west of the GB RMA and east of a line beginning at the intersection of 74°00′W. long. and the south-facing shoreline of Long Island, NY, and running southward along the 74°00′W. long. line. The MA RMA is redefined as the area west of the SNE RMA. Specific management measures apply, depending on the area fished. For the purposes of the exempted fishery programs already implemented under the FMP, the GOM/GB and SNE RMAs, as defined under Amendment 7, remain in effect and are referred to as Exemption Areas.

DAS Freeze

This measure establishes a new DAS baseline, or "used DAS baseline," for each vessel, based on the permit history of that vessel. The used DAS baseline for a limited access permit will be calculated based on the highest number of DAS that a vessel(s) fished during a single fishing year using the 1996 through 2000 fishing years, beginning May 1, 1996, through April 30, 2001, not to exceed the vessel's current DAS allocation in any given year. For vessels where the calculation of the baseline DAS will result in a net amount of DAS less than 10, the vessel will be allocated a used DAS baseline of 10 DAS. If a vessel owner seeks a correction to the determination of a used DAS baseline, he may request such correction from the Regional Administrator by August 31, 2002. A vessel owner's request for a correction must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's used DAS baseline was based on mistaken or incorrect data. The decision to correct a baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on

the DAS baseline is the final decision of the Department of Commerce.

DAS Effort Reduction

This measure reduces the vessel's baseline level of used DAS by 20 percent. This measure is specific to the 2002 fishing year, beginning May 1, 2002, through April 30, 2003, and for the 2003 fishing year, beginning May 1, 2003, until implementation of Amendment 13 to the FMP. For the 2002 fishing year, NE multispecies DAS that were fished by a vessel during the period May 1 through July 31, 2002, will be deducted from that vessel's total allocated DAS. That is, each vessel's DAS allocation for August 1, 2002, through April 30, 2003, will be equal to that vessel's used DAS baseline, minus 20 percent of that vessel's used DAS baseline, minus the DAS that vessel fished during May through July, 2002. During the period May 1 through July 31, 2002, all NE multispecies DAS vessels were subject to a minimum of 15 hours for each NE multispecies DAS trip that exceeded 3 hours. For the purposes of determining NE multispecies DAS used during the period May through July, 2002, DAS will be counted based on the 15-hour minimum restriction for Day gillnet vessels only. DAS for all other vessels fishing under a NE multispecies DAS during May through July, 2002, will be counted in terms of actual time spent at sea.

Vessels for which the amount of NE multispecies DAS available for use as of August 1, 2002, is less than or equal to the DAS fished during the May through July 2002, period, the vessel is left with zero NE multispecies DAS for the remainder of the fishing year, unless the vessel had carry-over DAS from the previous fishing year (see description below of how carry-over DAS would apply).

For vessels that have a monkfish Category C or D permit (i.e., vessels that possess both a monkfish and a limited access NE multispecies DAS permit), and for which the NE multispecies DAS reduction will result in the vessel having more monkfish DAS allocated than NE multispecies DAS, such vessels can still fish under a monkfish DAS when NE multispecies DAS are no longer available, but will then be required to fish under the provisions of a monkfish Category A or B vessel, i.e., limited access monkfish vessels that do not possess a limited access NE multispecies permit.

Under this interim final rule, vessels will be allowed to fish any carry-over DAS from the 2001 fishing year beginning August 1, 2002, through April 30, 2003. These carry-over DAS will be in addition to the vessel's 2002 NE multispecies DAS allocation and will, therefore, be factored into that vessel's total NE multispecies DAS available for the 2002 fishing year, after the 20-percent DAS reduction and after the DAS fished during the May-July period are deducted from that vessel's used DAS baseline.

Freeze on Issuance of New Handgear Permits

Under this interim final rule, vessels that have never been issued an open access NE multispecies Handgear permit, or that did not apply for an open access Handgear permit by August 1, 2002, will be prohibited from obtaining a Handgear permit for the duration of this action.

Prohibition on Front-loading the DAS Clock

The term "frontloading the DAS clock" refers to the practice of vessel owners starting their DAS clock well in advance of the actual departure of the vessel. Front-loading was prohibited through July 31, 2002, as a result of the interim rule published April 29, 2002. This interim final rule continues the prohibition for the duration of this action.

Under this measure, a vessel owner or authorized representative will be required to notify NMFS no earlier than 1 hour prior to the vessel leaving port to fish under the NE multispecies DAS program. A day at sea will begin once the call has been received and a confirmation number is given. This measure will apply in all management areas.

Closed Area Additions/Modifications

This action continues, in its current configuration, the closure of the Western Gulf of Maine (WGOM) Area Closure. This action also expands Rolling Closure Area III by closing area blocks 124 and 125 for the month of May, 2003, and expands Rolling Closure Area IV by closing area blocks 132 and 133 for the month of June, 2003. This action further expands the Georges Bank (GB) Seasonal Closure Area by closing blocks 80 and 81 and the portion of blocks 118–120 that are south of 42°20′ N. lat. during the month of May, 2003.

Additionally, the Cashes Ledge Closure Area, in its original configuration, is closed for the duration of the interim final rule.

Exemptions to the current GOM rolling closure areas will remain the same for the expanded rolling closures and the expanded GB Seasonal Closure Area that is implemented by this interim final rule. All of the exemptions that applied prior to August 1, 2002, still apply to the WGOM and Cashes Ledge Closure Areas, with the following exceptions: Vessels are prohibited from fishing with scallop dredge gear or fishing in the Raised Footrope Trawl Exempted Whiting Fishery.

Finally, this interim action opens an inshore area from January through March, which corresponds to area blocks 124 and 125, by eliminating the groundfish January Massachusetts Bay-Stellwagen Bank Conditional Closure Area and the February Rolling Closure Area VI, and by eliminating blocks 124 and 125 from the March Rolling Closure Area I. All other closure areas remain unchanged. Charts of the proposed closure areas are available from the Regional Administrator upon request (see **ADDRESSES**).

Gear Restrictions

Trawl Vessels When Fishing in the SNE RMA

Under this interim final rule, when fishing any part of a NE multispecies DAS in the SNE RMA, otter trawl vessels are required to fish with a minimum 7.0-inch (17.8-cm) diamond or 6.5-inch (16.5-cm) square mesh codend. This requirement applies only to the codend of the net, which is defined as described above under the GOM and GB trawl mesh restrictions.

Gillnet Vessels When Fishing in the GB RMA

Under this interim final rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the GB RMA at any time throughout the fishing year are required to declare into the Day or Trip gillnet category. Vessels fishing under either the Day or Trip gillnet category in the GB RMA during any part of a trip under a NE multispecies DAS, are required to fish with nets with a minimum of 6.5-inch (16.5-cm) mesh and are restricted from fishing more than 50 nets, with two tags fixed to each net.

Gillnet Vessels When Fishing in the SNE RMA

Under this interim final rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the SNE RMA at any time throughout the fishing year are required to declare into the Day or Trip gillnet category. Vessels fishing under either the Day or Trip gillnet category in the SNE RMA during any part of a trip under a NE multispecies DAS, are required to fish with nets with a minimum of 6.5-inch (16.5-cm) mesh and are restricted from fishing more

than 75 nets, with two tags fixed to each net.

Gillnet Vessels When Fishing in the MA RMA

The minimum mesh size restrictions and number of nets required for gillnet vessels when fishing in the MA RMA under a NE multispecies DAS remains unchanged.

Gillnet Vessels When Fishing Under a Monkfish DAS

Under this interim final rule, monkfish vessels that have a monkfish limited access Category C or D permit (i.e., vessels that possess both a monkfish and NE multispecies limited access permit) and that are fishing under a monkfish DAS in all areas are restricted from fishing more than 150 nets, provided the vessel fishes with nets with a minimum mesh size of 10 inches (25.4 cm). Vessels are required to affix one tag to each net. Category A and B monkfish vessels are unaffected by these interim final rule measures.

Large-Mesh Vessel Permit Categories

Under this interim final rule, vessels that have a valid limited access NE multispecies Large Mesh Individual DAS category or a Large Mesh Fleet Das category permit are required to fish with nets with mesh that is 2.0 inches (5.1 cm) larger than the current regulated mesh size when fishing under the NE multispecies DAS program. That is, when fishing in the GOM, GB, and SNE RMAs, vessels fishing with trawl nets or sink gillnets are required to fish with nets with a minimum mesh size of 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. Vessels fishing with trawl nets or sink gillnets when fishing in the MA RMA are required to fish with nets with a minimum mesh size of 7.5-inch (19.0-cm) diamond or 8.0-inch (20.3-cm) square mesh throughout the entire net.

There will be a delay in the effectiveness for certain gillnet, trawl and large mesh categories as a result of the difficulty obtaining new net supplies. Because of the changes in gear requirements, fishermen will need additional time to purchase new supplies and construct nets which conform to the regulations specified in this interim final rule. In addition, the limited availability of larger nets will also make it more difficult for the large-mesh categories to come into compliance by August 1, 2002. The delayed effectiveness dates for the gear categories are specified in the regulatory text of this interim final rule.

Hook-Gear Vessels

Under this interim final rule, vessels that have a valid NE multispecies limited access permit are prohibited from using de-hookers (crucifiers) with less than 6-inch (15.2-cm) spacing between the fairlead rollers. In addition, limited access Small-vessel permitted vessels and limited access permitted vessels that are fishing any part of a NE multispecies DAS trip in the GOM, GB or SNE RMAs are required to use 12/0 or larger circle hooks on longline gear and are subject to a maximum number of rigged hooks on board the vessel. Specifically, vessels fishing in the GOM or SNE RMAs are prohibited from possessing more than 2,000 rigged hooks, and vessels fishing in the GB RMA are prohibited from possessing more than 3,600 rigged hooks.

Table 1 summarizes the gear restriction measures for each gear sector when fishing in the various RMAs.

* * * * *

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS

	GOM	GB	SNE	Mid-Atl
Minimum Mesh Size Restrictions for Gillnet Gear				
NE Multispecies Day Gillnet Category *	July-February only: *Roundfish nets* 6.5″ (16.5 cm) mesh; 50-net allowance; 2 tag/net Year-round: *Flatfish nets* 7.0″ (17.8 cm) mesh; 100-net allowance; 1 tag/net	*All nets* 6.5″ (16.5 cm) mesh; 50-net allowance; 2 tag/net	*All nets* 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net	*Roundfish nets* 5.5″ (14.0 cm) diamond or 6.0″ (15.2 cm) square mesh; 80-net allowance; 2 tags/net *Flatfish nets* 5.5″ (14.0 cm) diamond or 6.0″ (15.2 cm) square mesh; 160-net allowance; 1 tag/net;
NE Multispecies Trip Gillnet Category *	*All nets* 6.5″ (16.5 cm) mesh; 150-net allowance; 1 tags/net	*All nets* 6.5″ (16.5 cm) mesh; 50-net allowance; 2 tags/net	*All nets* 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net	*All gillnet gear* 5.5″ (14.0 cm) diamond or 6.0″ (15.2 cm) square mesh; No net limit; no tag requirement.
Monkfish Vessels **	10″ (25.4 cm) mesh/150-net allowance			
	1 tag/net			
Minimum Mesh Size Restrictions for Trawl Gear				
Codend only mesh size *	6.5″ (16.5 cm) diamond or square		7.0″ (17.8 cm) diamond or 6.5″ (16.5 cm) square	6.5″ (16.5 cm) diamond or square.

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS—Continued

	GOM	GB	SNE	Mid-Atl
Large Mesh Category—entire net	8.5″ (21.59 cm) diamond or square			7.5″ (19.0 cm) diamond or 8.0″ (20.3 cm) square.
Minimum Number of Hooks and Size Restrictions for Hook-Gear***				
Limited access multispecies vessels	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (Hook-gear vessels only)
	No less than 6″ (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required for longline gear			N/A

*When fishing under a NE multispecies DAS.
**Monkfish Category C and D vessels when fishing under a monkfish DAS.
***When fishing under a NE multispecies DAS or when fishing under the Small-vessel permit.

Cod Minimum Fish Size (Commercial Vessels)

Under this interim final rule, the minimum size for cod that may be lawfully sold is 22 inches (55.9 cm) (total length).

NE Multispecies Possession Restrictions

Yellowtail Flounder

This interim final rule requires enrollment in one of two authorization programs for any possession of yellowtail flounder and implements restrictions on the harvest of yellowtail flounder when fishing west or south of the GB RMA. During the period March 1 through May 31, all vessels are subject to a possession and landing limit of 250 lb (113.4 kg) of yellowtail flounder per trip when fishing any part of a trip in the SNE and MA RMAs north of 40°00′ N. lat. In addition, during the period June 1 through February 28, all vessels are subject to a possession and landing limit of 750 lb (340.3 kg) of yellowtail flounder per day, and a maximum trip limit of 3,000 lb (1,361.2 kg) per trip when fishing any part of trip in the SNE and MA RMAs north of 40°00′ N. lat. Vessels fishing for yellowtail flounder in the SNE and MA RMAs north of 40°00′ N. lat. are allowed to possess and land up to the seasonal yellowtail flounder allowable limits, provided the vessel does not fish south of 40°00′ N. lat. and has on board a SNE/MA yellowtail flounder possession/landing authorization issued by the RA. Under this interim final rule, all vessels are prohibited from possessing yellowtail flounder in the MA or SNE RMAs unless fishing north of 40°00′ N. lat., or unless the vessel is transiting areas south of 40°00′ N. lat. and all fishing gear on board the vessel is properly stowed according to the regulations. Vessels fishing east or north of the SNE RMA are not subject to the yellowtail flounder possession limit restrictions, provided that the vessel does not fish west of the GB RMA, and possesses on board a GOM/GB yellowtail flounder possession/landing authorization issued by the RA. Vessels exempt from the yellowtail flounder possession limit requirements may transit areas outside of the specific exempted area that they are fishing, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

Handgear Permitted Vessels

Under this interim final rule, the cod, haddock and yellowtail flounder possession limit for vessels that have been issued a valid open access Handgear permit is reduced to 200 lb (90.7 kg), combined, per trip. Such vessels are not required to obtain a yellowtail flounder possession/landing authorization in order to harvest yellowtail flounder, but may not harvest yellowtail flounder south of 40°00′ north latitude.

GB Cod Trip Limit Modification

This action modifies how the DAS clock accrues for those vessels fishing in the GB RMA and harvesting GB cod, consistent with how the DAS clock accrues when fishing in the GOM RMA and harvesting GOM cod. That is, a vessel subject to this landing limit restriction may come into port with, and offload cod in excess of the landing limit, as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that the vessel operator does not call out of the DAS program and does not depart from a dock or mooring in port until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded.

GOM Cod

This action increases the daily possession limit for GOM cod from 400 lb (181.8 kg) per DAS to 500 lb (227.3 kg) per DAS. The maximum possession limit remains at 4,000 lb (1,818.2 kg) per trip.

Recreational and Charter/Party Vessel Restrictions

Under this action, the minimum size for cod and haddock that may be retained by a federally permitted charter/party vessel not on a DAS, or a private recreational vessel not holding a Federal permit and fishing in the EEZ, is 23 inches (58.4 cm) total length.

This action implements a cod and haddock bag (possession) limit for the charter/party recreational fishing sector when a vessel is fishing in the GOM RMA and not under a DAS. During the period April through November, each person on a charter/party vessel not under a DAS is allowed to possess no more than 10 cod or haddock, combined, per trip. For each trip during the period December through March, each person on a charter/party vessel not under a DAS would be allowed to possess no more than 10 cod or haddock combined, no more than 5 of which may be cod. This action further restricts the cod possession limit for private recreational vessels by requiring that, when fishing in the GOM RMA during the period December through March, each person on a recreational vessel is allowed to possess no more than 10 cod or haddock combined, no more than 5 of which may be cod. Cod and haddock harvested by recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board.

For a vessel that intends to charter/party fish in the GOM closed areas, this interim final rule requires that the vessel possess on board a letter of authorization (LOA) issued by the RA. This LOA is required for the entire

fishing year if the vessel intends to fish in the year-round GOM closure areas, and for a minimum of 3 months if the vessel intends to fish in the seasonal GOM closure areas. Vessels can obtain an LOA by calling the NMFS Permit Office at 978–281–9370.

All other existing recreational measures remain unchanged, including the no-sale provision for all fish caught for both the party/charter and private recreational sectors when not fishing under a NE multispecies DAS. Table 2 summarizes the party/charter and private recreational sector measures.

TABLE 2.—CHARTER/PARTY AND PRIVATE RECREATIONAL FISHING MEASURES

	Minimum fish size, inches cod & haddock [1]	Bag limit (combined)	GOM closure exemption authorization
Charter/party not on a DAs	23	*April–November*: 10 cod/haddock [2]	A minimum of 3 months, or duration of closure.
			December–March: 10 cod/haddock, no more than 5 which can be cod [2].
Private Recreational	23	*Areas outside of GOM RMA*: 10 cod/haddock	N/A
			GOM RMA: 10 cod/haddock, no more than 5 which can be cod, Dec.–Mar N/A.

[1] All other minimum fish sizes remain unchanged.
[2] When fishing in the GOM RMA.

Observer Coverage

NMFS has been ordered by the Court to expand its observer coverage in the NE multispecies fishery by providing a minimum of 5-percent coverage, or higher if statistically necessary to monitor and collect information on bycatch, as well as other biological and fishery-related information. Additionally, NMFS has been ordered, by May 1, 2003, to expand further its observer coverage to 10% or that level necessary to provide statistically reliable data. NMFS intends to have a program in place in August to provide at least 5% observer coverage in the fishery.

Comments and Responses

Twenty nine comments were received on this interim final rule. Because management measures contained in this interim final rule are being implemented as a result of a negotiated Settlement Agreement and a Court Order, NOAA Fisheries has limited discretion to substantively alter the measures that were published in the July 1, 2002, proposed interim rule. Therefore, the following responses reflect the relatively narrow scope of this rule and NMFS' limited discretion in making substantive changes.

Comment 1: Several environmental organizations noted that the proposed interim rule did not specify 5% observer coverage and that the status of NMFS' compliance with the Court Order is unclear. They commented that the Environmental Assessment (EA) for the proposed interim rule fails to analyze the level of observers sufficient to monitor bycatch.

Response: The proposed interim rule did not specify the level of observer coverage NMFS intends to deploy because it is not necessary to promulgate additional regulations in order to deploy additional observers in the multispecies fishery. NMFS is training and deploying new observers and NMFS reasonably expects to have a program in place to provide at least 5% observer coverage for the period August 1, 2002–April 30, 2003 and, thereafter, at a level of 5% of higher if statistically necessary. Five percent observer coverage represents a substantial increase over the past level of coverage and will provide additional data necessary to determine more precisely the level of observer coverage necessary to provide statistically reliable data.

Comment 2: The environmental organizations noted that the EA was inadequate because it failed to contain or adequately address the following elements: a rationale for management measures, a cumulative impact analysis, analysis of impact on fishing mortality, analysis of impact of bycatch minimization, and analysis of Days-at-Sea (DAS) measures.

Response: The EA for the August 1 interim rule (June, 2002 EA) contains an adequate discussion of all of the elements noted by the commentor. All of the management measures are intended to reduce fishing mortality on groundfish stocks. It is not practicable or necessary, given the limited scope and context of this interim final rule, to comprehensively address requirements relating to habitat and bycatch, for example, particularly since Amendment 13 will address these issues in a more comprehensive way. The scope of economic analyses is a 12 month period because the duration of the interim action in expected to be approximately 12 months. The April 2002 EA that pertains to the measures in effect May through July 2002 includes an analysis of impacts due to changes to the DAS accounting system that was implemented for the May to July period. The April EA does not contain an analysis of the impacts due to the DAS freeze and adjustment measures because the May to July measures do not include these management measures.

Comment 3: The environmental organizations stated that there is no guarantee that catch levels will not be exceeded (no hard TAC or Vessel Monitoring System (VMS)). One commentor suggested that the EA should have analyzed target and hard TACs for each alternative.

Response: As recognized in the Court Order and Settlement Agreement, such a guarantee is not necessarily required for this interim rule given its short term duration and its limited goal of reducing, rather than eliminating, overfishing. The kinds of guarantees referred to by the environmental organizations are elements of the Amendment 13 alternatives under development by the New England Fishery Management Council.

Comment 4: The environmental organizations stated that the the EA contains no analysis of how the proposed rules relate to statutory objectives, and that under the measures there would be no significant reduction in fishing mortality and DAS would increase.

Response: The intent of this interim rule is to reduce overfishing while the Council and NOAA Fisheries develop long-term measures in Amendment 13 that will meet SFA requirements. As agreed to in the Settlement Agreement and endorsed by the Court, these types of measures are more appropriate for Amendment 13. Nevertheless, Section 7.0 of the June EA discusses the compliance of the interim rule to all applicable laws, including the Magnuson-Stevens Act. With respect to the impact of the measures, the number of DAS available for use for the 2002 fishing year is significantly less than the number allocated for the 2001 fishing year, and this will eliminate the possibility of using the majority of the latent DAS current existing in the fishery. Moreover, the number of DAS available to each individual vessel that has recently fished in the fishery will be considerably fewer. The prohibition on frontloading will likely be a factor that contributes to a reduction in the number of total DAS used. The effect of the DAS reductions should be evaluated in the context of the management measures as a whole. For example, the EA estimates that the reduction in fishing mortality for GOM cod due to the combined effects of closed areas, DAS, and trip limits will be 15%. Other restrictions such as the increase in minimum mesh size, gear limitations, and open access category restrictions will further reduce landings of groundfish, although they are difficult to quantify.

Comment 5: One industry member suggested a refinement to the requirement to use a minimum hook size of 12/0—specifically, that the restriction be clarified to apply to longline gear and not treble hooks that are fished in a different manner.

Response: The final interim rule was revised to incorporate this clarification.

Comment 6: Thirteen industry members (Charter/Party) stated that haddock should not be included with cod in the possession limit.

Response: According to the March 19, 2002 Final Report of the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish, both the biomass of Gulf of Maine cod and haddock stocks are at levels lower than is required to produce maximum sustainable yield. A per trip possession limit, therefore, seems to be a necessary precautionary measure that sets a cap on the amount of haddock than can be harvested for this interim measure. Amendment 13 to the FMP will reassess the continuation of this measure.

Comment 7: Sixteen industry members (charter/party) stated that the different charter/party possession limits being established for cod for the Gulf of Maine and Georges Bank were not appropriate. One commentor noted a concern about enforcing the two bag limits.

Response: The two stocks of cod are not equivalent. According to the March 19, 2002 Final Report of the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish, the Gulf of Maine cod stock needs a greater reduction in fishing mortality (F) from the 2001 level of F than does the Georges Bank cod stock in order to achieve the level of F necessary to rebuild the stock. The numbers of Georges Bank cod harvested by charter/party vessels are only a small fraction of the numbers of Gulf of Maine cod harvested by charter/party vessels (MRFSS data; 1998-2001). The EA notes that changes in customer demand may occur, with the possibility that demand will increase for some business and decrease for others. NMFS agrees that the two bag limits may be more difficult to enforce, but feels that most fishers will abide by them. Amendment 13 to the FMP will reassess the continuation and enforceability of this measure.

Comment 8: Twelve industry members (charter/party) stated that the cod possession limit was too restrictive, especially from December through March.

Response: The party/charter cod possession limit is intended to reduce fishing mortality on the Gulf of Maine stock of cod. Data suggest that the majority of charter/party catch of cod occurs between November and April. Therefore, the measure focuses on the December to March time period. Section 5.2.5.2 of the EA describes the impacts of the charter/party measures and states "* * * it is likely that the majority of economic impacts will be borne by the 20–25 operators whose primary business is in offering groundfish trips to their recreational fishing customers."

Comment 9: Four industry members (charter/party) commented that the haddock minimum size should be 19 inches.

Response: According to March 19, 2002 Final Report of the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish, both the biomass of Gulf of Maine and Haddock stocks are at levels much lower than is required to produce maximum sustainable yield. An increased size limit is a precautionary measure that may enhance stock structure and contribute to increased recruitment.

Comment 10: One industry member noted that the Environmental Assessment (EA) does not adequately discuss the impact on individual DAS category vessels and stated that if gross income were cut by 20% for a vessel there would be no profit, and that such a cut would reduce the income of the crew by greater than 20% due to fixed and trip costs. Two industry members based in Boston commented that the 20% cut in DAS would decrease their annual gross income by 20%, and stated that vessel owners with only a limited access multispecies permit are more impacted than those vessels holding other limited access permits in addition to a multispecies permit. A commenter noted that full-time groundfish vessels will not be able to make up for lost income by fishing in another fishery.

Response: These comments are consistent with the conclusions of the economic analyses. The EA in fact states that "As the economic impact analyses indicated, DAS changes would affect active fishers across the board, but would particularly impact, in terms of total DAS usage, those vessels that currently fish their maximum DAS, mostly large vessels, vessels in the Individual permit categories, and vessels with homeport states in Maine, Massachusetts, and New Hampshire." Data pertaining to the relative distribution of impacts of the DAS reductions are contained in Tables 5.17, 5.18, and 5.19. For vessels that have had a sustained record of groundfish fishing, the 20-percent DAS reduction is likely to represent a "real" reduction in effort. Vessels that rely to a large extent (or solely) on groundfish income will be impacted more than those vessels that rely on groundfish for only a portion of their total fishing income. The EA will be revised to clarify the potential impact on crew income.

Comment 11: One commentor noted that the EA did not contain information on the effect of the minimum mesh size increase that is contained in the draft framework 36 document.

Response: NMFS concurs, and is revising the final EA to include this information.

Comment 12: A comment from several industry associations (The Groundfish Group, Associated Fisheries of Maine, and Trawlers Survival Fund) noted that the EA does not detail the impacts to vessels and provided a range of anticipated landings and revenue losses (26,000 to 179,000 lbs; $27,000 to $199,000) per vessel. A commentor from the state of Maine note that the EA underestimates the overall impacts of the action and estimated the loss of revenue to the Maine groundfish vessels at $8.5 million.

Response: The examples provided by the commentor are consistent with the analysis contained in Table 5.26 of the EA that indicate for vessels dependent upon groundfish for at least 75% of fishing income, some vessels may experience an annual reduction in gross revenue of at least 20%. NMFS is revising the final EA to include this information as an example of potential losses.

Comment 13: The industry groups noted that the biological impacts analysis in the EA ignores the contribution of some vessels when determining the biological benefits of the 20% DAS reduction, and therefore concludes erroneously that there is no reduction in catch associated with the DAS freeze. The particular vessels under discussion are those vessels for which the DAS reduction is constraining.

Response: NMFS agrees with the commentor that DAS reductions will result in a reduction of effort and landings for vessels that historically use most or all of their DAS. However, for the fishery as a whole, it is not possible to predict a reduction in catch due to the DAS freeze because of the total number of DAS that will be available. The EA states "Compared to observed DAS use in FY 2001, this FY 2002 DAS allocation would not necessarily constrain total fishing effort, even though it would be constraining for about half of all vessels that called in DAS in FY 2001."

Comment 14: The industry groups indicated that the break-even analysis in the EA was flawed. Specifically they noted the fixed costs are underestimated, that if a vessel is dependent upon groundfishing, the DAS are not sufficient to break even, and the difference in the number of break-even DAS across vessel sizes is not accurate. A commentor for the state of Maine noted that the break-even DAS analysis was too low.

Response: NMFS agrees that the number of break-even DAS may not be representative because the fixed costs may be over or under estimated, but it is not possible to be more precise because of limited data. The EA notes the "the cost estimates used for this analysis were based on relatively small sample sizes and the extent to which these data are representative of the population of groundfish vessels by size or gear is unknown." The cost data for trawlers is from 1996 and 1997 survey that have been adjusted for inflation in 2000 dollars. The EA explains that break-even DAS for larger trawl vessels are lower than for small trawlers primarily because of the relative difference in daily revenue potential is much greater than the relative difference in costs."

Comment 15: The industry groups noted that the analysis of the biological and economic impact of the mesh size requirements and limitations to the number of gillnets are inadequately characterized, and estimate anticipated losses at 15% of total year landings per vessel. One commentor noted that the limitation on the number of gillnets on Georges Bank to 50 would make fishing on Georges Bank unprofitable for the trip vessel category.

Response: NMFS agrees that the increase in mesh size will likely cause a short run reduction in catch rates for cod and may also affect short-run and long run catch rates for other species. However, NMFS does not believe it is possible or appropriate to make precise predictions in the amount of reduction due to the limited selectivity data, the fact that selectivity differs across species, and the difficulty in making predictions for the fishery based on experimental data. NMFS agrees that the profitability of a fishing vessel on GB may be affected by the 50 net limit, depending primarily upon the number of nets fished in the past.

Comment 16: The industry groups noted that there is no analysis of the impacts of the measures on safety in the EA, and stated that the DAS reduction will be an incentive to fish in the fall and winter in order to maximize the value of a DAS.

Response: NMFS disagrees that there is no analysis of safety issues in the EA. Section 8.0 contains a discussion of whether the action would be expected to have a substantial adverse impact on public health or safety. The EA will be revised to include the commentor's point about a potential change in fishing patterns.

Comment 17: A trawl vessel owner stated that the requirement to use 7" diamond mesh in Southern New England was not appropriate, and that there are no data on the selectivity of this mesh size.

Response: Although the EA does not present quantitative information on the impact of a 7.0" diamond mesh because such information is not available, the relationship between mesh size and catch of groundfish is explored. Even though it is difficult to predict the precise impacts of changing the minimum mesh size from the current 6-inch diamond mesh to 7.0-inch diamond, such a change should reduce the probability of selection for groundfish and result in the positive impacts on regulated groundfish that are listed in Section 5.1.6.6 of the EA.

Comment 18: A trawl vessel owner stated that the application of the cod-end mesh requirement for the first 50 meshes (diamond mesh) or 100 bars (square mesh) for vessels greater than 45 feet in length was a problem.

Response: This application of cod-end mesh requirements is consistent with the way the cod-end has been defined in previous actions in the Northeast Multispecies Fishery Management Plan.

Comment 19: One commentor noted that the proposed regulations are too complex to be addressed through an interim rule, but should instead be addressed through public hearings. Another commentor noted that some measures were not fair to those not represented and that the opportunity for public comment under the Magnuson-Stevens Act and Administrative Procedure Act was bypassed.

Response: NMFS agrees that the normal process for developing fishery regulations as specified in the Magnuson-Stevens Act would enable better public participation in order to address complex issues. Given the short time available to implement these measures, however, it was not possible to provide for more than a 15 day public comment period. NMFS believes that, in light of the extensive publicity of this interim rule and the fact that the measures contained in the interim rule have been known for over two months, the public has had adequate opportunity to understand and comment on the interim rule.

Comment 20: A trip gillnetter commented that the net limits in GOM and GB are too restrictive, that the gillnet sector will bear an unfair share of the conservation burden, and that gillnet effort will be redirected in the GOM. An industry coalition noted that the gear limitations on the gillnet fleet are unfair.

Response: Several stocks of groundfish in the GOM and GB regulated mesh areas require significant mortality reductions, and the gillnet restrictions were part of the measures designed to reduce overfishing because such gear is extensively used in the areas where reductions are needed. NMFS agrees that a subset of the gillnet fishery will be affected by both types of gillnet restrictions (mesh size and maximum number of nets), and some effort may be redirected from GB to the GOM, but the impacts are unavoidable due to the areas where depleted stocks occur. The complexity of the FMP makes it difficult to precisely compare the impacts of all regulations across gear sectors. Notwithstanding this comment, the EA concludes that "revenue losses would be greatest for trawl vessels

under the Preferred Alternative, with 50 percent of all trawlers losing at least 1 percent of annual gross income, and with 10 percent of these vessels losing more than 18 percent of annual gross revenue." Amendment 13 to the FMP will reassess the continuation of these measures.

Comment 21: One commentor stated that NMFS does not articulate a rational basis for relying on section 305(c) of the Magnuson-Stevens Act as the authority for use of an interim rule.

Response: Section 305(c)(1) clearly states the following: "If the Secretary finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency regulations or interim measures necessary to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery." In this case, it is necessary to promulgate interim measures in order to reduce overfishing.

Comment 22: One commenter noted that the EA fails to present environmental impacts in a useful form to the public because it does not discuss certain analyses in the context suggested by the commentor.

Response: Whereas analysis of impacts can always be presented differently, as long as the public is able to understand them and draw their own conclusions, such analyses are sufficient for purposes of an EA. The June EA, as well as other recent documents provide the public adequate information in order to make comparisons, as evidenced by the table produced by the commentor.

Comment 23: One commentor noted that the FONSI in the EA was not justified.

Response: The Finding of No Significant Impact was based upon the nine criteria in the National Oceanic and Atmospheric Administration Administrative Order (NAO) 216–6. The significance of this action is analyzed in the context of the fact that it is the second step in a three-step process agreed to as a compromise in a lawsuit to bring the FMP into full compliance with the SFA, the Magnuson-Stevens Act and all other applicable law as quickly as possible. It is a short-term interim measure that should not result in a significant impact.

Comment 24: One commentor stated that the biological objectives were not clearly defined.

Response: The biological objective of reducing overfishing is clearly stated and is consistent with the concept of interim rules as defined in the Magnuson-Stevens Act. The goals are limited in scope and are temporary.

Comment 25: One commentor noted that the inshore GOM measures are unjustified.

Response: The inshore GOM is the area where several overfished stocks occur and a significant amount of the catch occurs. For example, because most of the catch of the Gulf of Maine stock of cod is from the inshore GOM area, many management measures necessarily must focus on that area. Amendment 13 to the FMP will reassess the continuation of these measures.

Comment 26: Two commentors stated that the DAS reductions are unfair due to the method of calculating the baseline.

Response: The criterion for establishing the baseline was chosen as a compromise with industry and state managers to lessen impact on vessels as much as possible. NMFS recognizes that for some few vessel owners the criterion may result in more severe impacts. These more severe impacts are unavoidable, however for such a broadly based measure. The conservation benefits of having a reduced overall cap on the amount of effort available for this fishery, on balance, justifies the freeze despite the more severe impacts on a few vessel owners. Since this freeze is short term only, these more severe impacts can be addressed in the development of Amendment 13.

Comment 27: One commentor noted that the change in the boundary of the Southern New England Regulated Mesh Area (SNE RMA) will impact other fisheries.

Response: Although the SNE RMA will impact the groundfish fishery, the impact will be minimal on other fisheries due to the fact that the previous definition of the SNE RMA will be retained for the purposed of exempted fisheries and redesignated the Southern New England Exemption Area.

Comment 28: One commentor stated that the EA fails to consider the impacts on communities and fishery infrastructure.

Response: Section 5.2.2.3.6 of the EA describes the economic impact of the measures on communities by port group. Section 5.2.6 describes the impact on industries in communities associated with the harvest sector.

Comment 29: One commentor was concerned that the regulations favor the gillnet sector because the gillnet regulations are unenforceable.

Response: NMFS agrees that the gillnet regulations may be complex and difficult to enforce, but believes that most fishers will abide by them. Amendment 13 to the FMP will reassess the continuation and enforceability of these measures.

Comment 30: One commentor was concerned that the final interim rule would interpret the Court's Order with respect to the open access handgear category trip limit as 200 lb of regulated species per trip instead of 200 lb of cod, haddock, and yellowtail, and noted that this decreased trip limit was in contrast to the GOM cod trip limit increase for limited access vessels.

Response: The open access trip limit is as written in the proposed interim rule (200 lb of cod, haddock, and yellowtail). A justification for the contrasting change in trip limits is the fact that the discards are a very serious problem in the limited access trawl fishery that represent a significant source of mortality for GOM cod. An increase in the GOM cod trip limit will improve this problem.

Changes to the Proposed Interim Rule

The following changes are corrections or modifications to the proposed interim rule to clarify and better reflect the intent of the measures contained in the Settlement Agreement, as well as the FMP. These changes are listed below in the order that they appear in the regulations.

In § 648.4, paragraph (a)(1)(i)(I)(2) is revised to reflect the fact that if a vessel changes permit category (into or out of one of the large mesh categories), the associated DAS may have to be adjusted accordingly.

In § 648.14, paragraph (a)(125) is revised to reflect that the frontloading prohibition applies only to vessels fishing under a multispecies DAS and to vessels with a limited access monkfish Category C or D permit when fishing under a monkfish DAS and a multispecies DAS at the same time. The prohibition on frontloading does not apply to Category C and D vessels when fishing under the limited access monkfish Category A or B only in the event the vessel is allocated less than 40 multispecies DAS for the fishing year, as allowed under § 648.92(b)(2).

In § 648.14, paragraph (b)(1) is revised to reflect the prohibition specific to the possession limits and landing restrictions for yellowtail flounder.

In § 648.14, paragraph (b)(4) is revised to clarify that vessels may not fish for, land, or possess yellowtail flounder unless in compliance with the provisions of the trip landings and/or possession limits specified in § 648.86(h).

In § 648.14, paragraph (b)(5) is removed and reserved since this

prohibition is repeated in paragraph (b)(4) of this section.

In § 648.14, paragraph (c)(8) is revised to reflect the restrictions on fishing and gear when fishing in the MA RMA, as specified in §§ 648.80(c), and to clarify that, when fishing with hook-gear in the GOM, GB, and SNE RMAs, the limitations on number, size, and type of hooks and the prohibition on the use of dehookers are specific to all limited access multispecies vessels fishing under a multispecies DAS, and vessels fishing under the limited access Small vessel permit, when fishing with hook-gear.

In § 648.14, paragraph (c)(20) is removed and reserved as reflected in the amendatory language in the proposed interim rule.

In § 648.14, paragraph (c)(32) is removed and reserved since the reference in this paragraph is incorrect and the correct references are stated in paragraph (c)(13) of this section.

In § 648.80, paragraph (a)(2)(iii), is corrected by changing the GB Regulated Mesh Area W. long. coordinate point NL2 to read 69°40', rather than 69°00'.

In § 648.80, paragraphs (a)(3)(iii), (a)(3)(iv)(B), (a)(4)(i), (a)(4)(iii), (a)(4)(iv), (b)(2)(i), (b)(2)(iii), (c)(2)(i), and (c)(2)(iii) are revised to delay implementation of the mesh size requirements for the trawl and gillnet mesh in GB, gillnet mesh in SNE, gillnet mesh in GOM, SNE trawl mesh, MA trawl mesh, and for the large mesh permit categories.

In § 648.80, paragraph (c)(2)(i), (ii), and (iii) are revised to implement the MA trawl mesh restriction that was omitted in the proposed interim rule.

In § 648.80, paragraphs (a)(3)(v), (a)(4)(v) and (b)(2)(v) are revised to clarify that the limitations on number, size, and type of hooks and the prohibition on the use of dehookers are specific to all limited access multispecies vessels fishing under a multispecies DAS, and vessels fishing under the limited access Small vessel permit, when fishing with hook-gear. A change was made to clarify to reflect that the size restriction applies to longline gear hooks only.

In § 648.80, paragraph (b)(9)(i)(B) is revised since it was mistakenly reserved in the proposed interim rule. This paragraph, which allows the retention of bonito as an allowable incidental species when fishing in the SNE Little Tunny Gillnet Exemption Area, has been reinstated and modified to remove the requirement for vessels to obtain an exempted fishing permit from the Highly Migratory Species (HMS) Division since bonito are no longer contained in the HMS management unit.

In § 648.80, paragraph (c)(2)(iv) is revised to clarify that the prohibition on the use of dehookers is specific to all limited access multispecies vessels fishing under a multispecies DAS, and vessels fishing under the limited access Small vessel permit, when fishing with hook-gear.

In § 648.81, paragraphs (c)(2)(iii)(B) and (g)(2)(iii)(B) are corrected to state that charter/party vessels, when fishing under the closed area exemptions in the GOM Rolling Closure Areas, the WGOM Closure Area, Cashes Ledge Closure Area, or Nantucket Lightship Closure Area, "With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught" rather than "may not possess or sell fish." A review of the record for the development and implementation of the final rule promulgating Framework 33, which implemented this provision, including the framework document, meeting transcripts, and pertinent rules, indicate that the intent of the Council regarding the charter/party exemption in these closure areas was to prohibit the sale of species managed by New England and Mid-Atlantic Fishery Management Councils, and not tuna.

In § 648.82, paragraph (k)(1)(ii)(B) is revised to clarify net tag requirements.

In § 648.82, paragraph (k)(2)(i) has been revised to state that multispecies vessels fishing under a NE multispecies DAS are not limited to the number of nets that can properly be stowed on board the vessel since, unlike Day gillnet vessels, Trip gillnet vessels are not restricted to a specific number of nets when fishing in the MA RMA.

In § 648.82, paragraph (k)(2)(ii) has been corrected to reflect that vessels must have written confirmation that the vessel is a Trip gillnet vessel, rather than a Day gillnet vessel.

In § 648.82, paragraph (l)(3)(i), is corrected by changing § 648.80(l) to read § 648.82(l).

In § 648.82, paragraphs (l)(3)(i) and (ii) are revised to clarify that DAS baselines may be "corrected" (as opposed to "appealed").

In § 648.86, paragraphs (h)(1), (h)(1)(ii), (h)(2), and (h)(2)(ii) are revised to reflect that the yellowtail flounder possession and landing limit restrictions north of the 40°00′ N. lat. and west of the GB RMA are specific to both the SNE and MA RMAs, rather than just the SNE RMA, and/or to clarify that this restriction pertains to vessels fishing under both a multispecies DAS and a monkfish DAS, if, when fishing under a monkfish DAS, the vessel is fishing under the limited access monkfish Category C or D permit provisions. Paragraphs (h)(1) and (2) have also been revised to reflect that more restrictive yellowtail flounder trip limits apply when fishing with a NE limited access Small Vessel permit category, as specified under § 648.82(b)(3), and when fishing with an open access NE multispecies permit, as specified under § 648.88. Further explanation is provided that a vessel owner is required to contact a designee of the Regional Administrator in order to obtain a yellowtail exemption letter.

In § 648.86, paragraph (h)(3) is revised to reflect that the prohibition on possessing yellowtail flounder is specific to areas south of 40°00′ N. lat. within the SNE and MA RMAs, or when not in possession of a valid yellowtail flounder exemption letter issued by the RA.

In § 648.88, paragraph (c) has been revised to reflect that vessels fishing with an open access Scallop multispecies possession limit permit may be further restricted by the yellowtail flounder trip limit restrictions specified in § 648.86(h).

In § 648.92, paragraph (b)(2) is revised to reflect that limited access monkfish Category C and D vessels may fish under the monkfish Category A or B provisions when its allocation of multispecies DAS is less than 40 for the entire fishing year of May 1 through April 30.

In § 648.92, paragraph (b)(8)(i) is revised to reflect that the 150 gillnet limitation stated in the proposed interim rule is specific to vessels issued a monkfish limited access Category C or D permit only and that vessels issued a limited access Category A or B permit may continue to fish with up to 160 gillnets.

NOAA codifies its OMB control numbers for information collection 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number for 0648–0457 for §§ 648.82 and 648.86. Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA, has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

Because this rule must be made effective by August 1, 2002, pursuant to Court Order, and because of the need to maintain management measures to provide protection from overfishing to

the groundfish stocks, there is good cause under the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1) to waive the 30-day delay in effective date for this rule.

This interim final rule has been determined to be significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis

The proposed interim rule to implement the Court Order/Settlement Agreement was published in the **Federal Register** on July 1, 2002. A copy of the Initial Regulatory Flexibility Analysis (IRFA) is available from the Regional Administrator (see **ADDRESSES**). In addition to the discussion below, the Final Regulatory Flexibility Analysis (FRFA) incorporates the IRFA and its findings, the finding from the EA, and the public comments and responses. Because all entities affected by this interim final rule are small entities, all of the comments and responses are considered to pertain to small entities. In the Comments and Responses portion of this interim final rule, comment numbers 7,8,10,12,14, and 15 summarize the nine comments submitted that primarily address the possible economic affects of the action (where different commentors address the same issue the issue is not repeated). No changes to the proposed regulations are necessary as a result of these comments as they reflect an unavoidable consequence of the rule. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the **SUMMARY** section of the preamble and in the FRFA.

The FRFA considered three alternatives: The Preferred Alternative, the No Action Alternative, and a Hard TAC Alternative. This interim final rule implements the Preferred Alternative. Analysis of the Preferred Alternative examined the impacts on industry that would result from the Settlement Agreement. Analysis of the No Action alternative examined the impacts on industry that would result from leaving all current management measures in place and allowing fishing inside the WGOM Area Closure. Analysis of the hard TAC alternative examined the impacts to the industry under two different options for how TACs would be implemented: Option 1 was based on achieving a zero fishing mortality rate for all stocks that would have a zero management TAC under Amendment 9 to the FMP; Option 2 assumed that, rather than reducing fishing mortality to absolute zero for those stocks with a management TAC of zero under Amendment 9, management measures would reduce the fishing mortality on those stocks to as close to zero as possible. The economic impacts of the first two alternatives were analyzed and described according to the type of management measure as follows: (a) Commercial measures that were modeled (DAS restrictions, area closures, and trip limits); (b) commercial measures that were not modeled (changes to the open access hand gear category, prohibition on frontloading, prohibition on de-hooker use, mesh size restrictions, and limitations on the number of gillnets and hooks); and (c) recreational measures (private recreational vessel and party/charter). The hard TAC alternative is a fundamentally different type of management scheme and was examined in terms of the economic impacts that would result under the two TAC options that were considered. Option 1 would result in a total closure of GB, a significant portion of southern New England, and Long Island Sound to all gear that is capable of catching groundfish in any significant numbers. Option 2 would result in approximately a 35-percent reduction in the total number of DAS used by all vessels in 1999—a significant reduction in effective effort across the entire commercial fishery.

This final action (preferred alternative in FRFA) would have a nominal effect on all NE multispecies permit holders (1,442 limited access, 1,812 open access hand gear, and 610 open access party/charter), all of which may be considered small entities according to the Small Business Administration standards for commercial fishing vessels. The number of actual participants in the NE multispecies fishery is less than the total number of those eligible to participate in the fishery (i.e., not every vessel holding a permit for the fishery actually fishes in a given year); the number of participating vessels that may actually be affected by any one or more of the regulatory measures is estimated to be 37 percent of the permit holders.

The implemented measures could result in an aggregate reduction in total groundfish income of 4.2 percent. On an individual vessel basis, about 25 percent (approximately 250) of the participating limited access vessels could experience at least a 5-percent loss in gross annual fishing revenues (relative to the No Action Alternative). Ten percent of the participating limited access vessels could experience at least a 16-percent loss in gross annual fishing revenues. In contrast, fishing revenues could increase for approximately 25 percent of the vessels due to modifications in the area closures and an increase in the GOM cod trip limit. Among those adversely impacted, small otter trawl vessels could be most affected. Vessels positively affected would be gillnet or hook vessels, due to the increase in the GOM cod trip limit and the fact that, for these vessels, cod constitutes a much higher proportion of their total fishing income than it does for other vessels. Detailed cost data, and the analytical tools necessary for calculation of profitability changes that could result from the implemented measures were not available. While profitability of small entities could be affected, it was not possible to estimate such changes. Similarly, it was not possible to estimate the impacts of this action on solvency of small entities. Furthermore, because this is only an interim action, analysis of impacts on long-term profitability or solvency of small entities, even if the necessary data were available, would not be appropriate. NMFS does not have the data to make a determination regarding long-term profitability or solvency at this time. Although NMFS requested comments on this issue during the comment period, none were received. Long-term impacts will be analyzed in association with Amendment 13 to the FMP, which will replace this interim action.

For some vessel owners, the new DAS restrictions will not allow them to fish the number of days that they would need to cover their fixed costs. Based on a break-even analysis, the number of such vessels could be as high as 213 vessels (22 percent). This estimate, however, may be an overestimation, due to limitations in the data. Further explanation of the break-even analysis is contained in section 5.2.3.3 of the Environmental Assessment.

The reduction in the trip limit for the open access hand gear permit category could affect about one half of the 172 permit holders that reported fishing activity. The average loss was estimated to be $33,700 per vessel. The impact of the front-loading prohibition was estimated based on landings associated with front-loading trips. The prohibition could decrease income by approximately $911 to $1,450 per trip. The following table summarizes the estimated cost to replace trawl codends and gillnet gear that could result from these changes in mesh size requirements.

TABLE 3.—ECONOMIC IMPACT OF MESH SIZE INCREASE—(GEAR REPLACEMENT)

Gear	No. of vessels analyzed	Average vessel cost
Trawl (replace codend)	424 (GOM or GB) 211 SNE	$1,250
Day Gillnet in GOM (tie-down nets)	18	7,794
Day Gillnet in GOM (stand-up nets)	31	9,300
Trip Gillnet in GOM	25	18,352
Gillnets in GB or SNA	32	8,800

The implemented measures (for GOM cod) affecting charter/party vessels may result in a loss of revenue due to decreased passenger demand. Based on historic cod landings, the majority of economic impacts will likely be borne by the 20–25 charter/party operators that catch 80 percent of the recreationally harvested GOM cod.

Although there are alternative sets of management measures to those implemented by this interim final rule that would accomplish the objectives, this interim final rule represents the measures agreed to in the Settlement Agreement that was negotiated by numerous interested parties and ordered by the Court.

Relative to the Preferred Alternative that is implemented, the No Action Alternative would have mitigated most of the adverse economic impacts associated with the Preferred Alternative. In general, gross fishing incomes would have increased, particularly for vessels operating in the GOM and would have particularly beneficial impacts on small vessels and gillnet vessels in general. However, the No Action alternative also would have resulted in unacceptably high increases in fishing mortality rates that could have compromised the rebuilding of several GOM stocks, GOM cod in particular. For this reason, the No Action alternative would not have met the regulatory objectives of this action.

Relative to the Preferred Alternative, the Hard TAC Alternative would have more significantly impacted the NE multispecies fishery because of the severe consequences of closing down fisheries when a TAC is reached. The economic and social impacts of either option considered under this alternative would have been very severe, if not irreparable. Option 1 would have severely impacted (essentially done away with) the NE multispecies fishery on GB and southern New England in the near term, and would have largely prohibited the monkfish, sea scallop, and spiny dogfish fisheries from operating in that area, as well. Option 2 would have prohibited hook and groundfish gillnet gear from GB and allow some low level of trawl fishing, but with a bycatch trigger for GB cod that would have likely closed the fishery at sometime during the fishing year. Many small entities might have either gone out of business or had to relocate. To the extent that participants in the industry could do so, many would have been expected to shift effort into other fisheries for which they had permits or could acquire permits for, or that are open access, and/or would have shifted fishing effort northward, to the GOM, or to south of GB. Fisheries that did not use gear capable of catching groundfish, such as purse seines, traps, and mid-water trawls, would have been unaffected by the restrictions, but could have experienced increases in effort displaced from the groundfish, monkfish, scallop, and other fisheries that would have been restricted under Option 1. The primary impact on the recreational fishery would have been the prohibition on retention of GB cod. In any event, neither the No Action Alternative nor the Hard TAC Alternative could have been implemented because they were not agreed to in the Settlement Agreement endorsed by the Court.

An informal consultation under section 7 of the Endangered Species Act was conducted for this interim final rule under the FMP on June 14, 2002. As a result of the informal consultation, the RA determined that fishing activities conducted under this interim final rule are not likely to adversely affect endangered or threatened species or critical habitat. The RA has determined that fishing activities conducted under this interim final rule will have no adverse impact on marine mammals.

The compliance requirements associated with the proposed measures are the two yellowtail exemption programs described previously in this document, and the used DAS baseline appeal procedure, if applicable.

This final action does not duplicate other Federal rules and takes into consideration the monkfish regulations under § 648.92 in order to be consistent with the objectives of the Monkfish Fishery Management Plan.

This interim final rule includes new collection-of-information requirements and references to previously-approved requirements subject to the Paperwork Reduction Act (PRA). The following collection-of-information requirements have been previously approved by OMB under control number 0649–0202. The estimated times per response for these collections are as follows: 30 minutes for a new vessel permit application; 15 minutes for a renewal application for a vessel permit; 3 minutes for a gillnet annual declaration and request for tags; 1 minute for attaching a gillnet tag; 2 minutes to report lost and/or ask for replacement of lost gillnet tags; 2 minutes for a DAS notification; 2 minutes for a transit report for a vessel that has exceeded the cod landing limit; and 5 minutes to request an LOA for either the Cultivator shoals, Nantucket shoals dogfish, Nantucket lightship, SNE little tunny gillnet, small-mesh northern shrimp fishery, mid-Atlantic, Rolling Closure Area charter/party boat, and GOM charter/party boat exemption programs. Requests for an LOA for the whiting raised footrope trawl exempted fishery have been approved under OMB control number 0648–0422, with an estimated response time of 2 minutes.

This action contains two new collection-of-information requirements subject to PRA. The collection of this information has been approved by OMB, OMB control number 0648–0457. A response time of 2 minutes has been estimated for requests for entry into one of two exemption programs for vessel owners choosing to fish for yellowtail flounder in the SNE/MA, GB/GOM RMAs. A response time of 2 hours has been estimated for appeals of used baseline DAS determinations.

The aforementioned response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to

respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 29, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National: Marine Fisheries Service.

For the reasons stated in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 648, chapter VI are amended as follows:[1]

15 CFR Chapter IX

PART 902–NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 350 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by revising the entries for 648.82 and 648.86 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection number is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR:	
* * * * *	
648.82	–0202 and –0457
* * * * *	
648.86	–0202, –0391, and –0457
* * * * *	

[1] The amendments to 50 CFR part 648 published at 67 FR 21140 (April 29, 2002) are effective through July 31, 2002.

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definitions of "Non-exempt species," and "Prior to leaving port" are revised, and new definitions for "De-hooker," "Private recreational fishing vessel," and "Used DAS baseline" are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

De-hooker, with respect to the NE multispecies hook gear fishery, means the fairlead rollers when used in a manner that extracts fish hooks from caught fish, also known as "crucifiers."

* * * * *

Non-exempt species means species of fish not included under the GOM, GB and SNE Regulated Mesh Area exempted fisheries, as specified in § 648.80(a)(5); (a)(6); (a)(9) through (14); (b)(3)(i) and (ii); (b)(5) through (8); and (d), (e), (h), and (i).

* * * * *

Prior to leaving port, with respect to the call-in notification system for NE multispecies, and the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category C or D permit provisions, means no more than 1 hour prior to the time a vessel leaves the last dock or mooring in port from which that vessel departs to engage in fishing, including the transport of fish to another port. With respect to the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category A or B permit provisions, it means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

Private recreational fishing vessel, with respect to the NE multispecies fishery, means a vessel engaged in recreational fishing that has not been issued a Federal NE multispecies permit, does not sell fish, and does not take passengers for hire.

* * * * *

Used DAS baseline, with respect to the NE multispecies fishery, means the number of DAS that represent the historic level of DAS use associated with a particular limited access permit, as described in § 648.82(l).

* * * * *

3. In § 648.4, paragraphs (a)(1)(i)(I)(*2*) and (c)(2)(iii) are revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *
(1) * * *
(i) * * *
(I) * * *

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(*1*) of this section. The owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon the vessel's permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit, unless otherwise allowed under § 648.82(b). If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel permit category will remain unchanged for the duration of the fishing year. Changes in permit category may require adjustments in DAS allocation. A vessel may not fish in more than one multispecies permit category during a fishing year, unless otherwise allowed under § 648.82(b).

* * * * *

(c) * * *
(2) * * *

(iii) An application for a limited access multispecies permit must also contain the following information: For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel informing him/her of the costs associated with this tagging requirement and directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year, unless otherwise allowed in this paragraph. For the 2002 fishing year, vessels electing a Day or Trip gillnet designation will be allowed to change their designation prior to September 1, 2002, and will be allowed to fish under this new designation

during the period September 1, 2002, through April 30, 2003. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

4. In § 648.10, paragraph (c)(1) is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(c) * * *

(1) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies permit or, for vessels issued a limited access NE multispecies permit and a limited access monkfish Category C or D permit, and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, port of departure, and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first.

* * * * *

5. In § 648.14, paragraphs (a)(35), (a)(42), (a)(43), (a)(45), (a)(47), (a)(52), (a)(102), (a)(112), (a)(116), (b)(1), (b)(2), (c)(7), (c)(8), (c)(13) through (15), (c)(23), (c)(26), (c)(29), (c)(31), and (z)(2)(i) are revised, paragraphs (a)(123) through (126), (b)(3) through (4), (c)(32) and (c)(33) are added, and paragraph (c)(20) is removed and reserved, to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(35) Fish with, use, or have on board, within the areas described in § 648.80(a)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in § 648.80(a)(3) and (4), except as provided in § 648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (d),(e), and (i), unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(42) Fish within the areas described in § 648.80(a)(6) with nets of mesh smaller than the minimum size specified in § 648.80(a)(3) or (4).

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the small-mesh northern shrimp fishery exemption area; (a)(6), the Cultivator Shoal whiting fishery exemption area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals dogfish fishery exemption area; (a)(12), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(13), the GOM/GB monkfish gillnet exemption area; (a)(14), the GOM/GB dogfish gillnet exemption area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

(45) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5).

* * * * *

(47) Fish for the species specified in § 648.80(d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a)(2) or (3), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(d) or (e), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(52) Enter, be on a fishing vessel in, or fail to remove gear from, the EEZ portion of the areas described in § 648.81(g)(1) through (i)(1), and (n)(1), except as provided in § 648.81(d), (g)(2), (h)(2), (i)(2), and (n)(2).

* * * * *

(102) Enter or fish in the Gulf of Maine, Georges Bank, and Southern New England Regulated Mesh Areas, except as provided in §§ 648.80(a)(3)(vi) and (b)(2)(vi), and for purposes of transiting, provided that all gear (other than exempted gear) is stowed in accordance with § 648.23(b).

* * * * *

(112) Fish for, harvest, possess, or land in or from the EEZ, when fishing with trawl gear, any of the exempted species specified in § 648.80(a)(9)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5)(ii) or (a)(9)(ii).

* * * * *

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(v) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.48 cm).

* * * * *

(123) Fish for, land, or possess NE multispecies harvested with the use of de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(124) Possess or use de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(125) For vessels issued a limited access NE multispecies permit, or those issued a limited access NE multispecies permit and a limited access monkfish Category C or D permit but not fishing under the limited access monkfish Category A or B provisions as allowed under § 648.92(b)(2), call into the DAS program prior to 1 hour before leaving port.

(126) Call in DAS in excess of that allocated under the methods described in § 648.82(l).

(b) * * *

(1) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b), (c), (d), (e), and (h) or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(2) If the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(g)(2)(iii) when fishing in the areas described in § 648.81(g)(1) through (i)(1), during the time periods specified in those sections.

(3) Possess in, or harvest from the EEZ southward of 40°00′ N. lat., any yellowtail flounder unless fishing under recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) Fish for, land, or possess yellowtail flounder unless in compliance with the provisions of the trip landings and/or maximum

possession limits specified in § 648.86(h).

(c) * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d), (e), and (h), and under § 648.82(b)(3), if the vessel has been issued a limited access multispecies permit.

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access multispecies permit and fishes with hook-gear in areas specified under § 648.80(a), (b), and (c).

* * * * *

(13) If the vessel has been issued a Day gillnet category designation, fail to remove gillnet gear from the water as described in § 648.82(g) and § 648.82(k)(1)(iv) and (5).

(14) Fail to comply with the tagging requirements for a day gillnet vessel as described in § 648.82(k)(1)(ii), or fail to produce or, cause to be produced, gillnet tags when requested by an authorized officer.

(15) Produce, or cause to be produced, gillnet tags under § 648.82(k)(1) or (2), without the written confirmation from the Regional Administrator described in § 648.82(k)(1)(ii) or (2)(ii).

* * * * *

(20) [Reserved]

* * * * *

(23) Fail to enter port and call-out of the DAS program no later than 14 DAS after starting a multispecies DAS trip (i.e., the time a vessel leaves port or when the vessel received a DAS authorization number, whichever comes first), as specified in § 648.10(f)(3), unless otherwise specified in § 648.86(b)(1)(ii) or (2)(ii).

* * * * *

(26) Enter port, while on a multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2)(ii). Under no circumstances may such trip exceed 14 days in length.

* * * * *

(29) Enter, be on a fishing vessel in, or fail to remove gear from, the areas described in § 648.81(g)(1) through (i)(1), during the time periods specified, except as provided in § 648.81(d), (g)(2), (h)(2) and (i)(2).

* * * * *

(31) If the vessel has been issued a Charter/Party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(g)(2)(iii) when fishing in the areas described in § 648.81(g)(1) through (i)(1) during the time periods specified in those sections.

(32) If the vessel has been issued a limited access Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(k)(2).

(33) Fail to remain in port for the appropriate time specified in § 648.86(b)(2)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

(z) * * *

(2) * * *

(i) Fish with, use or have available for immediate use within the areas described in §§ 648.80(a), (b), and (c), nets of mesh size smaller than 3-in (7.62-cm), unless otherwise exempted pursuant to § 648.80(a)(8).

* * * * *

6. In § 648.80, paragraphs (a), (b), (c)(1), (c)(2), (d)(2), (e)(2), (h)(1), and (i)(8) are revised, and paragraphs (c)(2)(iv) and (c)(5) are added to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) *Gulf of Maine (GOM) and Georges Bank (GB) Regulated Mesh Areas*—(1) *GOM Regulated Mesh Area.* The GOM Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary defined by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
CII3	42°22′	67°20′ [2]

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
CII3	42°22′	67°20′ [1]
G6	42°20′	67°20′
G7	42°20′	69°30′
G8	42°00′	69°30′
G9	42°00′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] The intersection of the Cape Cod, MA, coastline and 42°00′ N. lat.

(2) *GB Regulated Mesh Area.* The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (a)(1)(ii) of this section; and

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate loran C bearings
CII3	42°22′	67°20′	(1)
SNE1	40°24′	65°43′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

(iii) Bounded on the west by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
G12	(1)	70°00′
G11	40°50′	70°00′
NL1	40°50′	69°40′
NL2	40°18.7′	69°40′
NL3	40°22.7′	69°00′
	(2)	69°00′

[1] South facing shoreline of Cape Cod.
[2] Southward to its intersection with the EEZ.

(3) *GOM Regulated Mesh Area minimum mesh size and gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (a)(3)(i) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) For vessels greater than 45 ft (13.7 m) in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as

the first 100 bars counting from the terminus of the net.

(B) For vessels 45 ft (13.7 m) or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(ii) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* As of September 1, 2002, when fishing in the GOM Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(6) and (7), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*—(A) *Trip gillnet vessels.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(B) *Day gillnet vessels.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any roundfish gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net and the minimum mesh size for any flatfish (tie-down) gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 7.0 inches (17.8 cm) throughout the entire net. No roundfish nets may be fished or on board a vessel during the period March through June in the GOM Regulated Mesh Area. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(v) *Hook-gear restrictions.* Vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-vessel permit, in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook-gear permit and fishing under a multispecies DAS in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(16) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (a)(7), (a)(9) through (a)(14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the small vessel exemption specified in § 648.82(b)(3); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(vii) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.48 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM23	42°00′	69°50′
GM24	43°00′	69°50′
GM11	43°00′	70°00′
GM17	43°30′	70°00
GM18	43°00′	(4)

[1] Massachusetts shoreline
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline

(4) *GB Regulated Mesh Area gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (a)(3)(vi) and (a)(4)(i) of this section, and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and as of August 15, 2002, 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph 648.80(a)(3)(i) of this section, provided the vessel complies with the

requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(vi) and (a)(4)(ii) of this section, and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* As of September 1, 2002, when fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(6) and (7), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* As of August 15, 2002, except as provided in paragraphs (a)(3)(vi) and (a)(4)(iv) of this section, the minimum mesh size for any roundfish or flatfish gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(v) *Hook-gear restrictions.* Vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-vessel permit, in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 3,600 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 3,600-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook-gear permit and fishing under a multispecies DAS in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel.

(5) *Small Mesh Northern Shrimp Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in this paragraph (a) may fish for, harvest, possess, or land northern shrimp in the Small Mesh Northern Shrimp Fishery Exemption Area with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(5)(i) through (iii) of this section. The Small Mesh Northern Shrimp Fishery Exemption Area is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

SMALL MESH NORTHERN SHRIMP FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′
G2	43°58′	67°22′
G1	(1)	(1)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* (A) Through April 30, 2003, an owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(B) Beginning May 1, 2003, an owner or operator of a vessel fishing for northern shrimp may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to 100 lb (45.4 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size

specified in paragraphs (a)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission's letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
C1	42°10′	68°10′
C2	41°30′	68°41′
CI4	41°30′	68°30′
C3	41°12.8′	68°30′
C4	41°05′	68°20′
C5	41°55′	67°40′
C1	42°10′	68°10′

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) Through April 30, 2003, an owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Beginning May 1, 2003, an owner or operator of a vessel fishing in this area is subject to the mesh size restrictions specified in paragraph (a)(6)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (a)(6)(i)(B) of this section.

(D) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length applied to and the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Fishing is confined to a season of June 15 through September 30, unless otherwise specified by notification in the **Federal Register**.

(F) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in this paragraph (a).

(G) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in this paragraph (a)(6)(i) for the entire trip.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting.* (i) Vessels fishing in the Small Mesh Northern Shrimp Fishery or the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraphs (a)(5) and (9) of this section, may transit through the Small Mesh Northern Shrimp Fishery Exemption Area as specified in paragraph (a)(5) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Small Mesh Northern Shrimp Fishery Exemption Area defined in paragraph (a)(5) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (a)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(6), (a)(10), (a)(15), (b), and (c) of this section. Vessels may retain exempted small-mesh species as provided in paragraphs (a)(6)(i), (a)(10)(i), (a)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions*—(i) *Species*—(A) *Regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated

species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the **Federal Register**.

(B) *Small-mesh multispecies.* Beginning May 1, 2003, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small-mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small-mesh multispecies caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of small-mesh multispecies. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications are made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species or small-mesh multispecies.

(iii) The Regional Administrator may, using the process described in either paragraph (a)(8)(i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) Bycatch in exempted fisheries authorized under this paragraph (a)(8) are subject, at a minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(8)(iii) of this section, a prohibition on the possession of regulated species.

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (c)(4), (c)(5) or (c)(6), as applicable, whichever is less.

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(D) A limit on the possession of skate or skate parts in the SNE Exemption Area described in paragraph (b)(10) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description.* (A) Unless otherwise prohibited in § 648.81, through April 30, 2003, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1, and from January 1 through June 30, when fishing in Small Mesh Area 2. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2003, in addition to the requirements specified in paragraph (a)(9)(i)(A) of this section, nets may not have a mesh size of less than 3-inch (7.6-cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and counting the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch, as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Small-mesh areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

Point	N. Lat.	W. Long.
Small Mesh Area I		
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′
Small Mesh Area II		
SM13	43°05.6′	69°55.0′
SM14	43°10.1′	69°43.3′

Point	N. Lat.	W. Long.
SM15	42°49.5′	69°40.0′
SM16	42°41.5′	69°40.0′
SM17	42°36.6′	69°55.0′
SM13	43°05.6′	69°55.0′

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (j)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than ½-inch (1.2-cm) for the top leg, not larger than ⅝-inch (1.6-cm) for the bottom leg, and not larger than ¾-inch (1.9-cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wingends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of ⅜-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5/16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals dogfish fishery exemption area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. Lat.	W. Long.
NS1	41°45′	70°00′
NS2	41°45′	69°20′
NS3	41°30′	69°20′
CI1	41°30′	69°23′
NS5	41°26.5′	69°20′
NS6	40°50′	69°20′
NS7	40°50′	70°00′
NS1	41°45′	70°00′

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(3) and (4) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) *Incidental species provisions.* (*1*) Through April 30, 2003, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(*2*) Beginning May 1, 2003, all nets must comply with a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh, counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and counting the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length. Vessels may retain the allowable incidental species listed in paragraph (j)(10)(i)(D)(1) of this section.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling.* The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *Scallop Dredge Fishery Exemption within the GOM Small Mesh Northern Shrimp Fishery Exemption Area.* Unless otherwise prohibited in §§ 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a general scallop permit, may fish in the GOM Small Mesh Northern Shrimp Fishery Exemption Area when not under a NE multispecies DAS, providing the vessel

complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is the same as the area defined in paragraph (a)(5) of this section and designated as the Small Mesh Northern Shrimp Fishery Exemption Area.

(i) *Requirements.* (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in paragraph (a)(11) of this section may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by or in possession on board vessels fishing in the GOM Scallop Dredge Fishery Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(h) and (i).

(ii) [Reserved]

(12) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area.* A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified under paragraph (a)(10) of this section.

(13) *GOM/GB Monkfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. Lat.	W. Long.
41°35′	70°00′
42°49.5′	70°00′
42°49.5′	69°40′
43°12′	69°00′
(1)	69°00′

[1] Due north to Maine shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(13) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. The exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(h) and (i). The Raised Footrope Trawl Whiting Fishery area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION

Point	N. Lat.	W. Long.
RF 1	42°01.9′	70°14.7′
RF 2	41°59.45′	70°23.65′
RF 3	42°07.85′	70°30.1′
RF 4	42°15.05′	70°08.8′
RF 5	42°08.35′	70°04.05′
RF 6	42°04.75′	70°16.95′
RF 1	42°01.9′	70°14.7′

(i) *Requirements.* (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) Through April 30, 2003, all nets must comply with a minimum mesh size of 2.5-inch (6.4-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(C) Beginning May 1, 2003, in addition to the requirements specified in paragraph (a)(15)(i)(B) of this section, all nets must comply with a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of any vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(15)(i)(B) and (C) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Raised footrope trawl gear is required and must be configured as

specified in paragraphs (a)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area and would be restricted to a minimum mesh size of 3 inches (7.6 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area, the use of the raised footrope trawl, and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for red hake, which is restricted to 10 percent of the total catch under the Cultivator Shoal Whiting Fishery.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(16) *GOM/GB Exemption Area—Area definition.* The GOM/GB Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE/GEORGES BANK EXEMPTION AREA

Point	N. Lat.	W. Long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
G5	41°18.6′	66°24.8′

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate loran C bearings
G6	40°55.5′	66°38′	5930–Y–30750 and 9960–Y–43500.
G7	40°45.5′	68°00′	9960–Y–43500 and 68°00′ W. lat.
G8	40°37′	68°00′	9960–Y–43450 and 68°00′ W. lat.
G9	40°30′	69°00′	
NL3	40°22.7′	69°00′	
NL2	40°18.7′	69°40′	
NL1	40°50′	69°40′	
G11	40°50′	70°00′	
G12		[1] 70°00′	

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(b) *Southern New England (SNE) Regulated Mesh Area—(1) Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the western boundary of the Georges Bank Regulated Mesh Area described under § 648.80(a)(2)(iii); and

(ii) Bounded on the west by a line beginning at the intersection of 74°00′ W. long. and the south facing shoreline of Long Island, NY, and then running southward along the 74°00′ W. long. line.

(2) *Gear restrictions—(i) Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with section § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and as of August 15, 2002, 6.5-inch (16.5-cm) square mesh or, as of September 1, 2002, 7-inch (17.8-cm) diamond mesh applied to the codend of the net, as defined under paragraph § 648.80(a)(3)(i). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (vi) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with section § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* As of September 1, 2002, when fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with section § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(6) and (7), is 8.5-inch (21.6) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Vessels using sink gillnets.* As of August 15, 2002, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with section § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(v) *Hook-gear restrictions.* Vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels

fishing with a valid NE multispecies limited access Small-vessel permit, in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook-gear permit and fishing under a multispecies DAS in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (c), (e), (h) and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel exemption specified in § 648.82(b)(3), or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(3) *Exemptions*—(i) *Species exemptions.* (A) Through April 30, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(B) Beginning May 1, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may not use nets with mesh size less than 3 inches (7.6 cm), unless exempted pursuant to paragraph (b)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake—up to 10,000 lb (4,536 kg), and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the possession limit restrictions specified under § 648.86. Nets may not have a mesh size of less than 3-inch (7.6-cm) square or diamond mesh, counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length, and counting the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as under paragraph (a)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section and the monkfish regulations, as applicable under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10′ N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish, skates, and the incidentally caught species and amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must have a minimum mesh size of 8-inch (20.3-cm) square or diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section and the monkfish regulations, as applicable under § 648.91 through 94. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish, skates, and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part a gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section and the applicable dogfish regulations under sub-part (L). The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long. south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption.* A vessel may fish with a dredge in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m) measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI) southwesterly through Fishers Island, NY; to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to 41°06.5′ N. lat. and 71°50.2′ W. long.; east-northeast through Block Island, RI, to 41°15′ N. lat. and 71°07′ W. long.; then due north to the intersection of the RI–MA shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) of this section and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to evaluate the likelihood of gear interactions with protected resources.

(10) *SNE Exemption Area—Area definition.* The SNE Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND EXEMPTION AREA

Point	N. Lat.	W. Long.
G5	41°18.6′	66°24.8′
G6	40°55.5′	66°38′
G7	40°45.5′	68°00′
G8	40°37′	68°00′
G9	40°30.5′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12		[1] 70°00′

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI) southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to the intersection of the 3-nautical mile line east of Montauk Point: southwesterly along the 3-nautical mile line to the intersection of 72°30′ W. long., and south along that line to the intersection of the outer boundary of the EEZ.

(c) * * *

(1) *Area definition.* The Mid-Atlantic Regulated Mesh Area is that area bounded on the east by the western boundary of the SNE Regulated Mesh Area, described under § 648.80(b)(1)(ii).

(2) *Gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (c)(2)(iii), the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with section § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and as of August 15, 2002, 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined under paragraph § 648.80(a)(3)(i).This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with section § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified by § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* As of September 1, 2002, when fishing in the Mid-Atlantic Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with section § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(6) and (7), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh throughout the entire net. This

restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Hook-gear restrictions.* Vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-vessel permit, when fishing in the Mid-Atlantic Regulated Mesh Area, are prohibited from using de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers. Vessels fishing with a valid NE multispecies limited access Hook-gear permit and fishing under a NE multispecies DAS in the Mid-Atlantic Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited.

* * * * *

(5) *Mid-Atlantic Exemption Area.* The Mid-Atlantic Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(d) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area as defined in paragraph (a)(16) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

* * * * *

(e) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area as defined in paragraph (a)(16) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator;

* * * * *

(h) * * *

(1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

* * * * *

(i) * * *

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters may also possess and retain skate as incidental take in this fishery.

* * * * *

7. In § 648.81, paragraphs (c)(2)(iii)(B), (d), (g)(1), (g)(2)(iii) through (v), (h), (i) and (n) are revised to read as follows:

§ 648.81 Closed areas.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught; and

* * * * *

(d) *Transiting.* A vessel may transit Closed Area I, the Nantucket Lightship Closed Area, the GOM Rolling Closure Areas, the Cashes Ledge Closure Area, the Western GOM Area Closure, and the GB Seasonal Area Closure, as defined in paragraphs (a)(1), (c)(1), (g)(1), (h)(1), (i)(1) and (n)(1), respectively, of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

* * * * *

(g) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas I through V, as described in paragraphs (g)(1)(i) through (v) of this section, for the times specified in paragraphs (g)(1)(i) through (v) of this section, except as specified in paragraphs (d) and (g)(2) of this section. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I

[March 1–March 31]

Point	N. Lat.	W. Long.
GM3	42°00′	(1)
GM5	42°00′	68°30′
GM6	42°30′	68°30′
GM23	42°30′	70°00′

[1] Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II

[April 1–April 30]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM5	42°00′	68°30′
GM6	42°30′	68°30′
GM9	42°30′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III

[May 1–May 31]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM23	42°30′	70°00′
GM6	42°30′	68°30′
GM14	43°30′	68°30′
GM10	43°30′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area

IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV

[June 1–June 30]

Point	N. Lat.	W. Long.
GM9	42°30′	(1)
GM23	42°30′	70°00′
GM17	43°30′	70°00′
GM19	43°30′	67°32′ or (2)
GM20	44°00′	67°21′ or (2)
GM21	44°00′	69°00′
GM22	(3)	69°00′

[1] Massachusetts shoreline.
[2] U.S.-Canada maritime boundary.
[3] Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V

[October 1–November 30]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM8	42°30′	70°00′
GM9	42°30′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.

(2) * * *

(iii) * * *

(A) For vessels fishing under charter/party regulations in a Rolling Closure Area described under § 648.81(g)(1), it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater; For vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western Gulf of Maine Area Closure, as described under § 648.81 (h) and (i), respectively, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment until the end of the fishing year.

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught;

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid.

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip.

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15), and in the GOM Rolling Closure Area V, as specified in paragraph (g)(1)(v) of this section.

(h) *Cashes Ledge Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated:

CASHES LEDGE CLOSURE AREA [1]

Point	N. Lat.	W. Long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

[1] A chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter).

(2) Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (g)(2) (ii) and (iii) of this section.

(i) *Western GOM Area Closure.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Area Closure, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (i)(2) of this section:

WESTERN GOM AREA CLOSURE [1]

Point	N. Lat.	W. Long.
WGM1	42°15′	70°15′
WGM2	42°15′	69°55′
WGM3	43°15′	69°55′
WGM4	43°15′	70°15′

WESTERN GOM AREA CLOSURE [1]—Continued

Point	N. Lat.	W. Long.
WGM1	42°15′	70°15′

[1] A chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter).

(2) Paragraph (i)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (g)(2) (ii) and (iii) of this section.

* * * * *

(n) *GB Seasonal Closure Area.* (1) From May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the GB Seasonal Closure Area, as defined by the straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (n)(2) of this section:

GEORGES BANK SEASONAL CLOSURE AREAS

[May 1–May 31]

Point	N. Lat.	W. Long.
GB1	42°00′	(1)
GB2	42°00′	68°30′
GB3	42°20′	68°30′
GB4	42°20′	67°20′
GB5	41°30′	67°20′
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
GB6	40°30′	68°30′
GB7	40°30′	69°00′
G10	40°50′	69°00′
GB8	40°50′	69°30′
GB9	41°00′	69°30′
GB10	41°00′	70°00′
G12	(1)	70°00′

[1] Northward to its intersection with the shoreline of Mainland Massachusetts.

(2) Paragraph (n)(1) of this section does not apply to persons on fishing vessels or to fishing vessels:

(i) That meet the criteria in paragraphs (g)(2) (i) or (ii) of this section;

(ii) That are fishing as charter/party or recreational vessels; or

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel uses an 8-inch (20.3-cm) twine top and complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h).

8. In § 648.82, paragraph (b); introductory paragraphs (k) and (k)(1), paragraphs (k)(1)(i), (k)(1)(ii), and (k)(2) are revised; paragraphs (k)(1) (vi) and (vii) are removed; and paragraphs (k)(3) through (5), and paragraph (l) are added to read as follows:

§ 648.82 Effort-control program for multispecies limited access vessels.

* * * * *

(b) *DAS program—permit categories and allocations.* All limited access NE multispecies permit holders shall be assigned to one of the following DAS permit categories according to the criteria specified. For the fishing year 2002 only, permit holders that may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(*2*), and that were issued a limited access permit prior to August 1, 2002, may request a change in permit category one time prior to either August 31, or within 45 days of permit issuance, whichever date is later. For the fishing year 2003 permit holders may request a change in permit category as specified in § 648.4(a)(1)(i)(I)(*2*). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning August 1, 2002, with the exception of the Small Vessel category described in paragraph (b)(3) of this section, NE multispecies DAS available for use will be calculated as described below.

(1) *Individual DAS category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Individual DAS category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year, will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section.

(2) *Fleet DAS category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Fleet DAS category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year, will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section.

(3) *Small Vessel category*—(i) *DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(h). Such a vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(*2*), if such vessel meets or complies with the following:

(ii) The vessel is 30 ft (9.1 m) or less in length overall as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(iii) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the overall length divided by the beam is not less than 2.5.

(iv) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(v) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(4) *Hook-Gear category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Hook-gear category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year, will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(vii), (a)(4)(ii), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(5) *Combination vessel category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Combination Vessel category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year, will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section.

(6) *Large Mesh Individual DAS category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Large Mesh Individual DAS category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year, will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section, and then increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii) and (c)(2)(ii) of this section.

(7) *Large Mesh Fleet DAS category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Large Mesh Fleet DAS category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year, will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section, and then increased by 36 percent. To be eligible to fish under the Large Mesh Fleet DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii) and (c)(2)(ii) of this section.

* * * * *

(k) *Gillnet restrictions.* Beginning August 1, 2002, vessels issued a limited access NE multispecies permit and fishing under a NE multispecies DAS with gillnet gear must obtain an annual designation as either a Day or Trip gillnet vessel as described in § 648.4(c)(2)(iii).

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a multispecies DAS is not required to remove gear from the water upon returning to the dock and calling-out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (k)(1)(i) through (v) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Number and size of nets.* Vessels may not fish with, haul, possess, or deploy more than the number of nets specified in paragraphs (k)(1)(i)(A) through (D) of this section, when fishing in the respective regulated mesh areas, provided the nets are tagged in accordance with paragraph (k)(1)(ii) of this section, unless otherwise specified in this paragraph. Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

(A) A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area, as described in § 648.80(a)(1), may not fish with, haul, possess, or deploy more than 50 roundfish gillnets or 100 flatfish gillnets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, provided that the number of roundfish and flatfish gillnets does not exceed the limitations specified in this paragraph (k)(1)(i)(A).

(B) A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area as described in § 648.80(a)(2), may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets.

(C) A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area as described in § 648.80(b)(1), may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 75 nets.

(D) A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the Mid-Atlantic Regulated Mesh Area, as described in § 648.80(c)(1), may not fish with, haul, possess, or deploy more than 80 roundfish gillnets or 160 flatfish gillnets. Vessels may fish any combination of roundfish and flatfish gillnets, up to 160 nets, provided that the number of roundfish and flatfish gillnets does not exceed the limitations specified in this paragraph (k)(1)(i)(D).

(ii) *Tagging requirements.* When fishing under a NE multispecies DAS, all gillnets fished, hauled, possessed, or deployed by a vessel in the Day gillnet category, must be tagged according to the provisions specified in paragraphs (k)(1)(ii)(A) through (D) of this section, when fishing in the respective regulated mesh areas, or as otherwise specified under § 648.92(b)(8)(ii). Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are onboard the vessel and can be made available for inspection.

(A) When fishing in the GOM Regulated Mesh Area, roundfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish nets must have one tag per net, with one tag secured to every other bridle of every net within a string of nets.

(B) When fishing in the Mid-Atlantic Regulated Mesh Area, roundfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish gillnets must be tagged with one tag per net, with one tag secured to every other bridle of every net within a string of nets.

(C) When fishing in the GB Regulated Mesh Area, roundfish or flatfish gillnets must be tagged with 2 tags per net, with one tag secured to each bridle of every net, within a string of nets.

(D) When fishing in the SNE Regulated Mesh Area, roundfish or flatfish gillnets must be tagged with 2 tags per net, with one tag secured to each bridle of every net within a string of nets.

* * * * *

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(3), and must comply with the restrictions specified in paragraphs (k)(2)(i) and (ii) of this section. When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear as authorized under the exemptions described in § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator, that the vessel is a Trip gillnet vessel.

(i) *Number and size of nets.* Vessels may not fish with, haul, possess, or deploy more than the number of nets specified in paragraphs (k)(2)(i)(A) through (D) of this section, when fishing in the respective regulated mesh areas, provided the nets are tagged in accordance with paragraph (k)(1)(ii) of this section, unless otherwise specified in this paragraph. Such vessels, in accordance with § 648.23(b), may stow nets in excess of the number specified in paragraph (k)(2)(i)(A) through (C). Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

(A) A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area, as described in § 648.80(a)(1), may not fish with, haul, possess, or deploy more than 150 gillnets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 150 nets.

(B) A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area as described in § 648.80(a)(2), may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets.

(C) A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area as described in § 648.80(b)(1), may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 75 nets.

(D) A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the Mid-Atlantic Regulated Mesh Area is not subject to a restrictions on number of allowable nets.

(ii) *Tagging requirements.* When fishing under a NE multispecies DAS, all gillnets fished, hauled, possessed, or deployed by a vessel in the Trip gillnet category, must be tagged according to the provisions specified in paragraphs (k)(2)(ii)(A) through (C) of this section, when fishing in the respective regulated mesh areas, or as otherwise specified under § 648.92(b)(8)(ii) or under paragraph (k)(2)(ii)(D) of this section. Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Trip gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are on board the vessel and can be made available for inspection.

(A) When fishing in the GOM Regulated Mesh Area, roundfish or flatfish nets must be tagged with one tag per net, secured to every other bridle of every net within a string of nets.

(B) When fishing in the GB Regulated Mesh Area, roundfish or flatfish gillnets must be tagged with 2 tags per net, with one tag secured to each bridle of every net, within a string of nets.

(C) When fishing in the SNE Regulated Mesh Area, roundfish or flatfish gillnets must be tagged with 2 tags per net, with one tag secured to each bridle of every net within a string of nets.

(D) When fishing in the Mid-Atlantic Regulated Mesh Area, gillnets are not required to be tagged.

(3) *Lost tags.* Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(4) *Replacement tags.* Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received before tags will be re-issued.

(5) *Removal of nets from the water.* Gillnets must be removed from the water when the vessel's annual NE multispecies DAS allocation has been used.

(l) *Used DAS baseline and DAS reduction*—(1) *Used DAS baseline.* For all valid limited access NE multispecies permits and NE multispecies confirmation of permit histories (CPH), beginning with the 2002 fishing year, a vessel's used DAS baseline will be based on the fishing history associated with its permit and will be determined by the highest number of DAS fished during a single fishing year, as specified in paragraphs (l)(1)(i) through (iv) of this section, during the 5-year period from May 1, 1996, through April 30, 2001, not to exceed the vessel's annual allocation prior to August 1, 2002. If the highest number of DAS fished under such permit during a single fishing year is less than 10 DAS, the used DAS baseline will be 10 DAS. If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in section § 648.4(a), then the used DAS baseline will be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the 5-year period specified above.

(i) Except as provided in paragraphs (l)(1)(ii) through (iv) of this section, historic DAS use will be determined as specified under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from or not subject to the DAS notification system, specified in § 648.10, during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be defined based on the vessel's DAS use, calculated from vessel trip reports submitted to NMFS prior to April 9, 2002.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in § 648.82(b)(6) and (7), calculation of the used DAS baseline will be determined based on the highest number of DAS fished during a single fishing year during the 1996 through 2000 fishing years, from May 1, 1996, through April 30, 2001, not to exceed the vessel's allocation in any given year. That is, the used DAS baseline shall not be based on additional DAS the vessel fished under the Large Mesh DAS category.

(iv) For vessels fishing under the Day gillnet designation, as specified under § 648.82(k)(1), used DAS, beginning on May 1, 1997 (implementation of differential DAS accounting for gillnet vessels, i.e., Framework Adjustment 20), for trips greater than 3 hours but less than or equal to 15 hours, will be counted as 15 hours. Trips less than or equal to 3 hours, or greater than 15 hours, will be counted as actual time.

(2) *DAS reduction.* For fishing years beginning May 1, 2002, and May 1, 2003, a NE multispecies DAS vessel, unless otherwise specified in paragraph (l)(2) of this section, shall be allocated 80 percent of its DAS baseline specified under paragraph (l)(1) of this section. An additional 36 percent will be subsequently added and available for use for participants in the Large Mesh DAS categories, as described at § 648.80(b)(6) and (7), provided the participants comply with the applicable gear restrictions.

(i) NE multispecies DAS fished by a vessel during the period May 1, 2002, through July 31, 2002, will be deducted from the DAS available for use for the 2002 fishing year, as calculated under § 648.80(l)(2).

(ii) For vessels fishing under the Day gillnet designation, as specified in § 648.82(k)(1), NE multispecies DAS for the period May 1, 2002, through July 31, 2002, for trips greater than 3 hours, but less than or equal to 15 hours, will be counted as 15 hours. Trips less than or equal to 3 hours, or greater than 15 hours, will be counted as actual time.

(iii) For vessels fishing with gear other than gillnet gear, NE multispecies DAS used for the period May 1, 2002, through July 31, 2002, will be counted as actual time.

(iv) Beginning on August 1, 2002, if the number of DAS used by a vessel during the May 1 through July 31, 2002, period equals or exceeds the number of DAS available for use calculated by NMFS as described in this section, the number of DAS available for use for the remainder of the 2002 fishing year will be zero, unless the vessel has available carry-over days from the previous fishing year, as specified under paragraph (a)(1) of this section.

(3) *Correction of used DAS baseline.* (i) A vessel's used DAS baseline as determined under paragraph (l)(1) of this section, may be corrected, if a mistake has been made, by submitting a written request to correct the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2002. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on mistaken or incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration, the vessel is limited to fishing with the number of DAS in accordance with § 648.82(l).

9. In § 648.83, paragraph (a)(1) is revised to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) * * *

(1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	22 (55.9 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

10. In § 648.86, paragraphs (b)(1)(i), (b)(1)(ii)(A), (b)(2) and (b)(3) are revised and paragraph (h) is added to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(b) * * *

(1) * * *

(i) Except as provided in paragraph (b)(1)(ii) and (b)(4) of this section, and subject to the call-in provision specified in § 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land only up to 500 lb (272.3 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 500 lb (272.3 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 500 lb (272.2 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than 1,000 lb (454.5 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g. a vessel that has been called into the DAS program for more than 24 hr but less than 48 hr) may land up to an additional 500 lb (272.2 kg) of cod for that trip provided the vessel complies with § 648.86(b)(1)(ii). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) * * *

(A) The vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 1000 lb (454.5 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(2) *Georges Bank Cod Landing and Maximum Possession Limits.* (i) For each fishing year, a vessel that is exempt from the landing limit described in paragraph (b)(1) of this section and fishing under a NE multispecies DAS may land up to 2,000 lb (907.2 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 2,000 lb (907.2 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 2,000 lb (907.2 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 20,000 lb (9,071.8 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 4,000 lb (1,814.4 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 2,000 lb (907.2 kg) of cod for that trip of cod for that trip provided the vessel complies with 648.86(b)(2)(ii). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel subject to the cod landing limit restrictions described in paragraph (b)(1)(i) of this section may come into port with and offload cod in excess of the landing limit as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that:

(A) The vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 4,000 lb (1,814.4 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(B) [Reserved]

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (b)(1) and (2) of this section, and is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (b)(1)(ii)(A) and (b)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator either at the time the vessel reports its hailed weight of cod or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

* * * * *

(h) *Yellowtail Flounder*—(1) *Yellowtail flounder possession limit north of 40°00′ N. lat. in the Georges Bank or Gulf of Maine Regulated Mesh Area.* Beginning August 1, 2002, except when fishing under the recreational and charter/party restrictions specified under § 648.89, unless otherwise restricted as specified in § 648.82(b)(3) and § 648.88(a) and (c), there is no possession limit for yellowtail flounder for a vessel issued a NE multispecies permit and fishing under a NE multispecies DAS north of 40°00′ N. lat. in either the GB or GOM Regulated Mesh Areas, provided the vessel complies with the following requirements in order to fish for, possess, or land yellowtail flounder:

(i) The vessel possesses on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator (RA). The vessel owner is required to contact a designee of the RA to obtain this exemption letter.

(ii) The vessel does not fish in the SNE or MA Regulated Mesh Area, for a minimum of 30 consecutive days (when fishing under the NE multispecies DAS program, or under the monkfish DAS program if the vessel is fishing under the limited access monkfish Category C or D permit provisions). Vessels subject to these restrictions may transit the SNE and MA Regulated Mesh Areas with yellowtail flounder on board the vessel, provided that the gear is stowed in accordance with one of the provisions of § 648.23(b).

(2) *Yellowtail flounder possession limit north of 40°00′ N. lat. in the Southern New England and Mid-Atlantic Regulated Mesh Areas.* Beginning August 1, 2002, except when fishing under the recreational and charter/party restrictions specified under § 648.89, unless further restricted as specified in § 648.82(b)(3) and § 648.88(a) and (c), a vessel issued a NE multispecies permit and fishing any portion of a trip under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, north of 40°00′ N. lat. in the SNE or MA Regulated Mesh Areas is subject to the following requirements

and trip limits in order to fish for, possess, or land yellowtail flounder:

(i) The vessel possesses on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator (RA). The vessel owner is required to contact a designee of the RA to obtain this exemption letter.

(ii) The vessel does not fish south of 40°00′ N. lat. for a minimum of 30 consecutive days (when fishing under the NE multispecies DAS program, or under the monkfish DAS program if the vessel is fishing under the limited access monkfish Category C or D permit provisions). Vessels subject to these restrictions may transit the GOM and GB Regulated Mesh Areas and the area south of 40°00′ N. lat. provided that the gear is stowed in accordance with one of the provisions of § 648.23(b).

(iii) During the period March through May, vessels may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip; and

(iv) During the period June through February; vessels may land only up to 750 lb (340.9 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(3) *Yellowtail flounder prohibition.* Beginning August 1, 2002, unless fishing under the recreational and charter/party restrictions specified under § 648.89, or transiting as provided for under § 648.86(h)(1) or (2), a vessel may not harvest, posses or land yellowtail flounder in or from the area south of 40°00′ N. lat.

11. In § 648.88, the introductory text for paragraph (a), and paragraphs (a)(1) and (c) are revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) *Handgear permit.* Beginning August 1, 2002, NE multispecies open access Handgear permits shall not be issued to any vessel that has never been issued such permit, or has not submitted a complete application for such permit as of August 1, 2002. A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) Unless otherwise restricted under § 648.86(h), the vessel may possess and land up to 200 lb (90.9 kg) of cod, haddock, and yellowtail flounder, combined, one Atlantic halibut, per trip, and unlimited amounts of the other NE multispecies, provided that the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

* * * * *

(c) *Scallop multispecies possession limit permit.* A vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of yellowtail flounder on board the vessel does not exceed the trip limitations specified in § 648.86(h) and provided the vessel has at least one standard tote on board.

* * * * *

12. In § 648.89, paragraphs (b)(1), (c), and (e)(1) are revised to read as follows:

§ 648.89 Recreational and charter/party restrictions.

* * * * *

(b) * * *

(1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and private recreational fishing vessels in the EEZ, may not retain fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes (inches)
Cod	23 (58.4 cm)
Haddock	23 (58.4 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

(c) *Cod and haddock possession restrictions*—(1) *Private recreational vessels.* (i) Each person on a private recreational vessel may possess per trip no more than 10 cod and/or haddock, combined, in, or harvested from the EEZ, unless further restricted under paragraph (c)(1)(ii) of this section.

(ii) During the period December 1 through March 31, each person on a private recreational vessel fishing any part of a trip in the GOM Regulated Mesh Area as defined in § 648.80(a)(1), may possess no more than 10 cod and/or haddock combined, no more than 5 of which may be cod, in, or harvested from the EEZ.

(iii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iv) Cod and haddock harvested by private recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(v) Cod and haddock must be stored so as to be readily available for inspection.

(2) *Charter/party vessels.* Charter/party vessels fishing any part of a trip in the GOM Regulated Mesh Area as defined in § 648.80(a)(1), are subject to the following possession limit restrictions:

(i) During the period April 1 through November 30, each person on the vessel may possess no more than 10 cod and/or haddock combined.

(ii) During the period December 1 through March 31, each person on the vessel may possess no more than 10 cod and/or haddock combined, no more than 5 of which may be cod.

(iii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iv) Cod and haddock harvested by charter/party vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limits on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(v) Cod and haddock must be stored so as to be readily available for inspection.

(3) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

* * * * *

(e) * * *

(1) *Gulf of Maine Closed Areas.* A vessel fishing under charter/party regulations may not fish in the Gulf of Maine closed areas specified in § 648.81(g)(1) through (i)(1), during the time periods specified in those sections, unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to §§ 648.81(g)(2)(iii) and 648.89(e)(3). The letter of authorization is required for a minimum of 3 months if the vessel intends to fish in the seasonal GOM closure areas, or required for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel intends to fish in the year-round GOM closure areas.

* * * * *

13. In § 648.91, paragraphs (c)(1)(i) and (ii) are revised to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(1) * * *

(i) *Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(ii) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified under § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i) of the Northeast multispecies regulations, depending upon and consistent with the NE multispecies regulated mesh area being fished.

(ii) *Trawl nets while on a monkfish and NE multispecies DAS.* For vessels issued a Category C or D limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS, the minimum mesh size is that allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i), depending upon, and consistent with, the NE multispecies regulated mesh area being fished.

* * * * *

14. In § 648.92, paragraphs (b)(2) and (b)(8)(i) are revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) *Category C and D limited access monkfish permit holders.* Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable, except when, beginning August 1, 2002, a Category C or D vessel that has an allocation of multispecies DAS under § 648.82(l) that is less than 40 (the number of monkfish DAS) for the fishing year May 1 through April 30, may fish under Category A or B provisions, as applicable, for the number of DAS that equal the difference between 40 and the number of allocated multispecies DAS. For such vessels, when the total allocation of multispecies DAS have been used, a monkfish DAS may be used without concurrent use of a multispecies DAS. (For example, if a monkfish Category D vessel's multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 multispecies DAS would also be used. However, after all 30 multispecies DAS are used the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated multispecies.)

* * * * *

(8) * * *

(i) *Number and size of nets.* (A) *Category A and B vessels.* A vessel issued a monkfish limited access Category A or B permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 160 gillnets. Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

(B) *Category C and D vessels.* A vessel issued a monkfish limited access Category C or D permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 150 gillnets. A vessel issued a NE multispecies limited access permit and a limited access monkfish permit, and fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 150 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

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[FR Doc. 02–19425 Filed 7–29–02; 2:30 pm]

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Federal Register

Thursday,
August 1, 2002

Part IV

Securities and Exchange Commission

17 CFR Parts 230 and 240
Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–8114; 34–46264; File No. S7–29–02]

RIN 3235–AI55

Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose new exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for most standardized options. The proposals would exempt standardized options issued by registered clearing agencies and traded on a registered national securities exchange or an automated quotation system of a registered national securities association from all provisions of the Securities Act, other than the Section 17 antifraud provision, as well as the Exchange Act registration requirements. The proposals further would clarify that a security futures product that is cleared by a registered clearing agency and traded on a registered national securities exchange or an automated quotation system of a registered national securities association is exempt from the registration requirements of Exchange Act Section 12(g). The proposed rules would ensure comparable regulatory treatment of standardized options and security futures products.

DATES: You should send us your comments so that they arrive at the Commission by September 3, 2002.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Alternatively, you may submit your comments electronically to the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–29–02; please include this file number in the subject line if you use e-mail. We will make all comment letters available for public inspection and copying in our public reference room at the same address. We will post electronically submitted comment letters on the Commission's Internet Web site (http://www.sec.gov).[1]

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, Office of Rulemaking, Division of Corporation Finance at (202) 942–2910, at the Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are proposing new Rule 238 under the Securities Act of 1933[2] and new Rule 12a-9 under the Securities Exchange Act of 1934.[3] We also propose to amend Exchange Act Rules 9b–1[4] and 12h–1.[5]

I. Background

In 1973, we first permitted national securities exchanges to establish pilot programs for the trading of standardized options.[6] The Chicago Board Options Exchange ("CBOE") established the first of these pilot programs.[7] The American Stock Exchange,[8] Philadelphia Stock Exchange,[9] Pacific Exchange[10] and the Midwest Stock Exchange[11] also later began to list standardized options.

Before CBOE could commence trading of standardized options, it had to register the options under both the Securities Act and the Exchange Act.[12] The Commission determined that the Options Clearing Corporation ("OCC")[13] should be deemed to be the sole issuer of the standardized options to be listed on CBOE.[14] Therefore, OCC registered standardized options under both the Securities Act and the Exchange Act.[15] At that time, all transactions in standardized options were registered under the Securities Act on Form S–1, our general registration form. OCC filed a registration statement on Form 10 to register standardized options under the Exchange Act.[16]

In 1977, we placed a moratorium on any further expansion of standardized option trading in connection with a comprehensive examination of the trading and regulation of these securities.[17] As part of this examination, consideration was given as to whether the disclosure regime existing at the time was meeting the informational needs of buyers and sellers of standardized options. The results of this examination were presented to Congress in December 1978. The Report of the Special Study of Options Markets ("Options Study")[18] concluded that,

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[1] We do not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. You should only submit information that you wish to make publicly available.

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 240.9b–1.

[5] 17 CFR 240.12h–1.

[6] See Release No. 34–9985 (February 1, 1973). Section 9(b) of the Exchange Act [15 U.S.C. 78i(b)] prohibits the trading of options, by use of any facility of a national securities exchange, "in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

[7] The Commission granted CBOE's application to register as a national securities exchange to trade standardized options in February 1973. See Release No. 34–9985.

[8] *See* Release No. 34–11144 (December 19, 1974) [40 FR 3258].

[9] *See* Release No. 34–11423 (May 15, 1975).

[10] *See* Release No. 34–12283 (March 30, 1976) [41 FR 14454].

[11] *See* Release No. 34–13045 (December 8, 1976) [41 FR 54783].

[12] Offers and sales of standardized options listed on national securities exchanges or traded through the facilities of a registered securities association must be registered under section 5 of the Securities Act [15 U.S.C. 77e]. Section 12(a) of the Exchange Act [15 U.S.C. 78l(a)] prohibits any broker or dealer from engaging in any transaction in a security on a national exchange unless the security is registered under the Exchange Act.

[13] Founded in 1973, OCC was the successor to CBOE's original clearing agency, the Chicago Board Options Exchange Clearing Corporation. OCC, which is a registered clearing agency under section 17A of the Exchange Act [15 U.S.C. 78q–1], is the issuer and clearing facility for all U.S. exchange listed securities options. The American Stock Exchange, Chicago Board Options Exchange, Pacific Exchange, Philadelphia Stock Exchange and International Securities Exchange share equal ownership of OCC.

[14] *See* Release No. 33–6411 (June 24, 1982) [47 FR 28688].

[15] In 1974, the Commission approved OCC's registration as a common clearing agency for exchange listed options. See Release No. 34–11146 (December 19, 1974).

[16] Registration of a class of securities under section 12 of the Exchange Act [15 U.S.C. 78*l*] generally imposes several reporting duties on the registrant, including the duty to file periodic and current reports under Section 13(a) [15 U.S.C. 78m(a)]. Additionally, the rules under Exchange Act Sections 13(d), 13(e), 13(g), 14(d) and Section 16 [15 U.S.C. 78m(d), 78m(e), 78m(g), 78n(d) and 78p] apply to classes of equity securities registered under Section 12. Because the securities underlying standardized options are issued by persons other than the clearing agency and are themselves registered under Section 12, it serves no purpose to require the clearing agency to file Exchange Act reports. The value of standardized options derives primarily from the value of the underlying security or index, not from matters peculiar to the issuing clearing agency. Moreover, because there is no possibility that a purchaser of standardized options could gain control over the clearing agency, there is no need for the disclosure mandated by sections 13(d) and 14(d) of the Exchange Act, which govern stock accumulations and tender offers. Clearing agency insiders have no informational advantages with respect to the issuers of the securities underlying standardized options. In recognition of these unique circumstances, we issued an order under Section 12(h) [15 U.S.C. 78l(h)] exempting OCC from Sections 13(a), 13(d), 13(e), 14(d), 15(d) and 16 of the Exchange Act. See Release No. 34–10483 (Nov. 7, 1973). If we adopt these proposals, this order would remain in effect to prevent OCC from becoming subject to reporting obligations pursuant to Exchange Act Section 15(d) [15 U.S.C. 78o(d)].

[17] *See* Release No. 34–14056 (October 17, 1977) [42 FR 56706].

[18] 96th Cong., 1st Sess. (Comm. Print 1978).

while OCC had simplified the disclosure about standardized options, the Form S–1 registration statement was lengthy, complicated and not particularly well-suited to satisfying investors' informational needs.[19] The Options Study also found that options investors were frustrated by the available disclosure. Furthermore, OCC, as the nominal issuer of standardized options, was incurring substantial costs related to the annual revision and redistribution of the Form S–1 prospectus.

In 1982, we extensively revised our system of regulation of standardized options in accordance with the recommendations included in the Options Study.[20] First, we adopted Form S–20 as a simplified Securities Act registration form customized for standardized options.[21] Form S–20 requires limited information about the clearing agency registrant and the options being registered.[22] We also adopted Securities Act Rule 153b[23] to provide that the prospectus delivery requirement in Securities Act Section 5(b)(2)[24] is satisfied by delivery of copies of the Form S–20 prospectus to each options market trading the options covered by the prospectus.[25] These changes simplified the registration process for options and eliminated some of the costs associated with the distribution and annual redistribution of options prospectuses to investors.

The central element of the reformed registration system was the newly created options disclosure document ("ODD"), required by Exchange Act Rule 9b–1.[26] The ODD discloses information relevant to standardized options trading generally, instead of information about the issuing clearing agency.[27] Broker-dealers are precluded from accepting orders to purchase or sell standardized options from a customer or from approving a customer's account for trading in these options unless the broker-dealer has furnished the customer with the ODD. The ODD is the only document required to be provided to options investors and thus has supplanted the options prospectus as the primary disclosure document with respect to trading in standardized options.[28] Under these proposals, broker-dealers would continue to be required to furnish the ODD to their customers investing in standardized options.

II. Reasons for the Proposals

Although our 1982 rulemaking streamlined and improved disclosure regarding standardized options, it continued to apply the Securities Act registration provisions to offers and sales of standardized options. This always has been somewhat anomalous because, in its role as an issuer, a registered clearing agency is fundamentally different than a conventional issuer that registers transactions in its securities under the Securities Act. For example, the purchaser of a standardized option does not invest in the clearing agency that registers transactions in standardized options. As a result, information about the registrant's business, its officers and directors, and its financial statements, is less relevant to investors in standardized options.[29] In standardized options transactions, the investment risk is determined by the market performance of the underlying security rather than the performance of the clearing agency registrant.

Moreover, registered clearing agencies are self-regulatory organizations subject to Commission oversight under section 17A of the Exchange Act.[30] Furthermore, unlike a conventional issuer, a registered clearing agency does not receive the proceeds from sales of the securities that it issues.[31] Registration does not appear to provide any additional protections to investors in standardized options. In this regard, as a result of the proposals, registered clearing agencies would not be subject to sections 11 and 12 of the Securities Act.[32]

Compliance with Exchange Act registration requirements also has been more burdensome for the clearing agency issuer of standardized options than for a conventional issuer. Section 12(a) of the Exchange Act makes it unlawful for any broker or dealer to effect a transaction in a non-exempt security on a national securities exchange unless the security has been registered for trading on that exchange. Section 12(g)(1),[33] as modified by rule, requires any issuer with more than $10,000,000 in total assets and a class of equity securities held by 500 or more persons to register such security with the Commission.

Regulation 12B prescribes the procedures for registration under both Section 12(b) and Section 12(g).[34] Standardized options are listed on national securities exchanges and, therefore, must be registered under section 12(b) of the Exchange Act. OCC, a clearing agency registered under Exchange Act Section 17A, currently acts as the issuer of all standardized

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[19] Options Study at 39.

[20] See Release No. 33–6426 (September 16, 1982) [47 FR 41950].

[21] 17 CFR 239.20.

[22] Part I of Form S–20 requires the prospectus to include a description of the registrant and a brief summary of the securities being registered. Part II specifies information required to be included in the registration statement but not in the prospectus, including information as to the directors and executive officers of the registrant, material legal proceedings involving the registrant, certain exhibits and undertakings, and the registrant's financial statements.

[23] 17 CFR 230.153b.

[24] 15 U.S.C. 77e(b)(2).

[25] The options market must deliver the prospectus to any investor requesting it.

[26] 17 CFR 240.9b–1. Rule 9b–1 requires an options market, defined in Rule 9b–1(a)(1) as a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange on which standardized options are traded, to file the ODD with the Commission at least 60 days before the date that definitive copies are furnished to customers, or at least 30 days before that date with respect to an amended ODD if the information contained in the ODD becomes or will become materially inaccurate or incomplete or there is or will be an omission of material information necessary to make the ODD not misleading. Form S–20 prohibits the issuance of an option registered on the form unless a definitive ODD meeting the requirements of Rule 9b–1 for the options class is available. As a practical matter, OCC works with the options markets to prepare and file the ODD. Rule 9b–1 allows an options exchange to use an ODD only if there is also an effective Form S–20 registration statement for the same options classes that are the subject of the ODD. The proposals would revise Rules 9b–1(b)(1) and 9b–1(c)(8) [17 CFR 240.9b–1(b)(1) and 9b–1(c)(8)] to permit use of the ODD if the option class is the subject of an effective Form S–20 registration statement or is exempt from registration.

[27] The ODD describes: the mechanics of buying, writing and exercising standardized options; the risks of trading these options; the market for the options; the tax consequences of standardized options trading; the issuer of standardized options; the instruments underlying an options class; the Form S–20 registration process; and the availability of the options prospectus. We revised Rule 9b–1 to explicitly state that amendments and supplements to the ODD are part of the ODD, and to describe more clearly the type of information to be included in the ODD. *See* Release No. 34–43461 (October 19, 2000) [65 FR 64137].

[28] Securities Act Rules 134a and 135b also are part of the revised options disclosure regime [17 CFR 230.134a and 135b]. Rule 134a provides that written materials, including advertisements, containing limited information concerning standardized options may be disseminated without being deemed to be a prospectus. Rule 135b provides that, solely for purposes of section 5 of the Securities Act, materials meeting the requirements of Rule 9b–1 of the Exchange Act will not be deemed an "offer to sell" or "offer to buy" a security, nor will the materials be deemed a prospectus for purposes of sections 2(a)(10) and 12(a)(2) of the Securities Act. Rule 135b would remain in effect if we adopt these proposals. Similarly, although Rule 134a would not apply to standardized options exempted under proposed Rule 238, it would continue to apply to any standardized options that remain subject to the registration provisions of the Securities Act.

[29] Options Study at 378.

[30] 15 U.S.C. 78q–1.

[31] OCC does receive a clearing fee of up to $0.09 per option contract from its members.

[32] 15 U.S.C. 77k and 77l.

[33] 15 U.S.C. 78*l*(g)(1).

[34] 15 U.S.C. 78*l*(b) and (g).

options listed on national securities exchanges. As the issuer, OCC registers standardized options on Form 8–A.[35] Whenever an exchange introduces options on a new underlying security or index of securities, OCC files an amended Form 8–A to identify the underlying security or index of securities and the exchange or exchanges on which the option is to be traded. OCC also provides an updated list of all classes of options being traded on all exchanges as part of the amendment. Because it must file a Form 8–A amendment every time a new class of options opens for trading, OCC typically files more than 200 Form 8–A amendments each year. It is not clear that these numerous amendments benefit investors.

The National Securities Markets Improvement Act of 1996 ("NSMIA")[36] conferred on the Commission authority to adopt exemptive rules under the Securities Act and the Exchange Act. By virtue of this authority, we can resolve the anomalies associated with registration of standardized options that we were unable to resolve when standardized options began to trade nearly three decades ago or when we streamlined the registration of standardized options 20 years ago. Section 28 of the Securities Act authorizes us to exempt any person, security or transaction from any provision of the Securities Act by rule or regulation to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.[37] Similarly, Section 36 of the Exchange Act gives us the authority to exempt any person, security or transaction from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. [38]

The enactment of the Commodity Futures Modernization Act of 2000 ("CFMA")[39] is another factor motivating the issuance of these proposals. The CFMA addressed the regulation of security futures products.[40] Because these products are both securities and futures, the CFMA established a framework for the joint regulation of these products by the Commission and the Commodity Futures Trading Commission.

The CFMA permits national securities exchanges registered under section 6(a) of the Exchange Act[41] and national securities associations registered under Section 15A(a) to trade futures on individual securities and on narrow-based security indices. The CFMA amended the Securities Act in the following manner:

- It amended Section 2(a)(1)[42] to include a security future[43] within the definition of "security."
- It added Section 3(a)(14) [44] to exempt from all provisions of the Securities Act, except as expressly provided,[45] any security futures product that is traded on a national securities exchange or a national securities association registered under section 15A(a) of the Exchange Act, [46] and cleared by a clearing agency that is registered under section 17A of the Exchange Act or exempt from registration under Section 17A(b)(7).[47]
- It amended Section 2(a)(3)[48] to ensure that a security futures product could not be used by an issuer, affiliate of an issuer or underwriter to circumvent the registration requirements of Section 5 with respect to an issuer's securities underlying the security futures product.[49]

In addition, the CFMA exempted security futures products from the provisions of section 12(a) of the Exchange Act[50] and stated that a security futures product will not be considered a class of equity security of the issuer of the securities underlying the security futures product.[51] Because security futures products can be used for financial purposes similar to those served by standardized options, such as portfolio management and risk reduction, we believe that it is appropriate to propose comparable regulatory treatment for standardized options by adopting parallel exemptions under the Securities Act and Exchange Act.

Like security futures products, standardized options are derivative securities whose value is derived principally from the underlying security or index. Furthermore, standardized options represent the obligation of a registered clearing organization and are otherwise more similar to other exchange-traded derivative products than they are to conventional debt and equity securities. For these reasons, it seems appropriate to provide the same types of exemptions under the Securities Act and the Exchange Act for standardized options as were statutorily created for security futures products. By harmonizing the treatment of standardized options and security futures products in this respect, we would eliminate any unintended consequences that could result from differing regulatory treatment of these two types of securities.

III. Description of the Proposals

We propose new Securities Act Rule 238 to exempt standardized options that are issued by a registered clearing agency and traded on a national securities exchange registered under section 6(a) of the Exchange Act, or a national securities association registered under section 15A(a) of the Exchange Act, from all provisions of the Securities Act except:

- The antifraud provisions of section 17 of the Securities Act still would apply; and
- Any offer or sale of a standardized option by or on behalf of the issuer of the securities underlying the standardized option, an affiliate of the issuer, or an underwriter, would constitute a contract for sale of, sale of, offer for sale, or offer to sell (as these terms are defined in section 2(a)(3) of the Securities Act) the underlying securities.[52]

The proposed Rule 238 exemption would not make Form S–20 obsolete. We would retain Form S–20 for use by an issuer of standardized options that is not a clearing agency registered under section 17A of the Exchange Act, such

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[35] 17 CFR 240.208a.

[36] Pub. L. 104–290, 110 Stat. 3416 (1996).

[37] 15 U.S.C. 77z–3.

[38] 15 U.S.C. 78mm.

[39] Pub. L. 106–554 Stat. 2763 (2000).

[40] Securities Act Section 2(a)(16) [15 U.S.C. 77b(a)(16)], Exchange Act Section 3(a)(56) [15 U.S.C. 78c(a)(56)], and CEA Section 1a(32) [7 U.S.C. 1a(32)] define "security futures product" as a security future or an option on a security future.

[41] 15 U.S.C. 78f(a).

[42] 15 U.S.C. 77b(a)(1).

[43] Securities Act Section 2(a)(16) [15 U.S.C. 77b(a)(16)] states that the term "security future" has the same meaning as provided in section 3(a)(55) of the Exchange Act [15 U.S.C. 78c(a)(55)]. Section 3(a)(55) defines a "security future" as a contact of sale for future delivery of a single security or of a narrow-based security index.

[44] 15 U.S.C. 77c(a)(14).

[45] Section 17(c) of the Securities Act [15 U.S.C. 77q(c)] states that the exemptions provided in section 3 of the Securities Act, including the exemption for security futures products, do not apply to the provisions of Section 17.

[46] 15 U.S.C. 78o–3.

[47] 15 U.S.C. 78q–l(b)(7).

[48] 15 U.S.C. 77b(a)(3).

[49] As amended, Section 2(a)(3) provides "Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities."

[50] 15 U.S.C. 78l(a).

[51] *See* Exchange Act Section 12(g)(5) [15 U.S.C. 78*l*(g)(5)].

[52] Consequently, a transaction in a standardized option on the securities of an issuer by such persons also is a transaction in the issuer's securities that must be registered under the Securities Act unless an exemption from registration is available.

as a foreign clearing agency.[53] Form S–20 also would continue to be available for use by issuers of standardized options that do not trade on a registered national securities exchange or on an automated quotation system of a registered national securities association.

The proposed rule would not affect the requirements under Exchange Act Rule 9b–1(d)(1)[54] that preclude broker-dealers from accepting orders to purchase or sell standardized options from a customer or from approving a customer's account for trading in standardized options unless the broker-dealer has furnished the customer with an ODD, other than to make conforming changes to reflect the fact that some standardized options would be exempt from Securities Act registration if the proposals are adopted. [55]

We also propose to create new Exchange Act Rule 12a–9 and to revise Rule 12h–1 to exempt standardized options from the registration requirements of section 12 of the Exchange Act.[56] The terms of the proposed rules are substantively comparable to the Securities Act and Exchange Act exemptions provided by the CFMA for security futures products. Proposed Exchange Act Rule 12a–9 states that the provisions of Exchange Act Section 12(a) do not apply in respect of any standardized option, as defined by Rule 9b–1, that is issued by a clearing agency registered under section 17A of the Exchange Act and traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act. Proposed Exchange Act Rule 12h–1(d) would exempt issuers from the provisions of section 12(g) of the Exchange Act with respect to a standardized option, as defined by Rule 9b–1, that is issued by a clearing agency registered under section 17A of the Exchange Act and traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act or an automated quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act.

We also propose to include a new paragraph in Rule 12h–1 to clarify that any security futures product that is traded on a registered national securities exchange or on an automated quotation system of a registered national securities association and cleared by a registered clearing agency is exempt from registration under Section 12(g).[57]

Request for Comment

We request and encourage any interested person to submit comments regarding the proposed changes that are the subject of this release.

- Do Securities Act and Exchange Act filings made to register standardized options benefit investors?
- Should we treat standardized options comparably to security futures products?
- Does registration of standardized options provide investor protection?
- Are there any differences between security futures products and standardized options that warrant different regulatory treatment?
- Should the exemptions for standardized options be broader or narrower than proposed? If so, how should we modify them?
- Should the exemptions apply only to standardized options cleared by a clearing agency that is registered under Exchange Act Section 17A? Should the proposed exemptions be available for standardized options issued by a clearing agency that qualifies for an exemption from Section 17A registration?
- Should the proposed exemptions be available for standardized options that are not traded on a registered national securities exchange or automated quotation system of a registered national securities association?
- Is there any information contained in the Form S–20 about the clearing agency issuer of standardized options that should be disclosed in the ODD? Should we otherwise amend the ODD in light of these proposals?

We request comment from the point of view of exchanges, clearing agencies, registrants, investors and other users of information about the sale of standardized options. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Paperwork Reduction Act

The proposed amendments affect "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[58] We are submitting the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[59] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The title for the collection of information affected by the proposed amendments is "Form 8–A" (OMB Control No. 3235–0056).[60]

There is no mandatory retention period for the information disclosed and Form 8–A is not kept confidential. We currently estimate that Form 8–A results in a total annual compliance burden of 5,934 hours. The burden was calculated by multiplying the estimated number of respondents filing Form 8–A annually (1,978) by the estimated average number of hours each entity spends completing the form (3 hours).

If adopted, the proposed amendments would eliminate the need for OCC, the only clearing agency currently registered under Exchange Act Section 17A that issues standardized options, to file Form 8–A and amendments thereto. During fiscal year 2001, OCC filed four Form 8–A registration statements and 214 Form 8–A amendments. Therefore, if the proposals are adopted, we estimate that the total annual burden for Form 8–A would be 5,280 hours, a decrease of 654 hours.

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[53] Presently, no foreign clearing agencies are registered under Section 17A. Securities Act Rule 153b prospectus delivery requirements would continue to apply in connection with standardized option transactions registered on Form S–20.

[54] 17 CFR 240.9b–1(d)(1).

[55] See Proposed Rule 9b–1(b)(1) and (c)(8).

[56] Proposed Rule 12h–1(d) would be necessary even though standardized options currently are registered only pursuant to section 12(b) of the Exchange Act. In the event that we adopt proposed Rule 12a–9, standardized options no longer would qualify for the exemption in Section 12(g)(2)(A) [15 U.S.C. 78*l*(g)(2)(A)], which exempts any security listed and registered on a national securities exchange from registration under Section 12(g). Pursuant to Rule 12g–2 [17 CFR 240.12g–2], a class of securities that no longer is entitled to the Section 12(g)(2)(A) exemption is deemed to automatically be registered under Section 12(g) if, at the time that its Section 12(b) registration terminates, the securities are not exempt from registration under Section 12 or rules thereunder, and are held of record by 300 or more persons. Even if standardized options were not held of record by 300 or more persons when their Section 12(b) registration terminated (OCC currently has only 126 clearing members that would be considered record holders for purposes of Rule 12g–2), standardized options nevertheless would be required to be registered under Section 12(g) if, at the end of any fiscal year, standardized options issued by the registered clearing agency were held of record by 500 or more persons. Proposed Rule 12h–1(d) would exempt standardized options from Section 12(g), thereby avoiding the possibility that standardized options might automatically be registered or required to be registered under that section.

[57] Proposed Exchange Act Rule 12h–1(e).

[58] 44 U.S.C. 3501 *et seq.*

[59] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[60] The PRA defines a "collection of information" as "the obtaining, causing to be obtained, soliciting or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for * * * answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons * * *." The Form S–20 does not constitute a "collection of information" under the PRA because fewer than ten entities file Form S–20 registration statements.

We request comment in order to: (a) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) evaluate the accuracy of our estimates of the burden of the proposed collections of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate whether the proposed amendments would have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–29–02. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–29–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW, Washington DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

V. Cost-Benefit Analysis

The proposed changes are intended to harmonize the regulatory treatment of standardized options and security futures products under the Securities Act and the Exchange Act. It is anticipated that these proposals would benefit registered clearing agencies that issue standardized options covered by the exemptions by eliminating Form S–20 and Form 8–A filing requirements currently applicable to issuers of standardized options. No detrimental effects to investors are expected.

According to data provided to us by OCC, it estimates that Form 8–A filings, and amendments to Form 8–A, result in an annual compliance cost to it of $23,000. OCC estimates that Form S–20 filings, and post-effective amendments to Form S–20, result in a total annual compliance cost to it of $50,538 which includes $17,500 of in-house costs and $33,038 in fees for outside counsel and other expenses.

The proposed Securities Act and Exchange Act exemptions reflect our view that registration provides little useful information to investors in standardized options issued by registered clearing agencies and traded on a national securities exchange or on an automated quotation system of a registered national securities association and imposes costs on options market participants that are not justified by the benefits to investors. Commenters are requested to provide their views and data relating to any costs and benefits associated with these proposals to aid us in our evaluation of the costs and benefits that may result from the changes proposed in this release.

VI. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. § 605(b), that proposed Rule 238 under the Securities Act, proposed Rule 12a–9 under the Exchange Act, and amendments to Rules 9b–1 and 12h–1 under the Exchange Act contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposals would exempt standardized options issued by a clearing agency registered pursuant to section 17A of the Exchange Act and traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act or an automated quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act from all provisions of the Securities Act, other than Section 17, as well as from the Exchange Act registration requirements. Standardized options currently are traded on five registered national securities exchanges; these exchanges are not small entities. OCC is a registered clearing agency that is the sole issuer of standardized options trading on these options markets; it is not a small entity. For this reason, the proposed amendments should not have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether the proposed changes could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[61] a rule is "major" if it has resulted, or is likely to result in:

- an annual effect on the economy of $100 million or more;
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 23(a)(2) of the Exchange Act[62] requires us to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, section 2(b) of the Securities Act[63] and section 3(f) of the Exchange Act[64] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.

The purpose of these proposed amendments is to harmonize the treatment of standardized options with security futures products under the Securities Act and the Exchange Act. We think that the proposals would promote efficiency by eliminating the potential for regulatory arbitrage opportunities that could result from discordant treatment of security futures products and standardized options. In fact, we expect that the proposals would encourage competition among issuers of standardized options by removing

[61] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[62] 15 U.S.C. 78w(a)(2).

[63] 15 U.S.C 77b(b).

[64] 15 U.S.C. 78c(f).

regulatory obstacles to trading of these securities. We do not expect that the proposals would have any anti-competitive effects.

We solicit comment on these matters with respect to the proposed rules. Would the proposals have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Securities Act or the Exchange Act? Would the proposed amendments, if adopted, promote efficiency, competition and capital formation? Commenters are requested to provide empirical data and other factual support for their views, if possible.

VIII. Statutory Authority

The amendments contained in this release are being proposed under the authority set forth in sections 19 and 28 of the Securities Act and sections 12(h), 23(a) and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.238 is added to read as follows:

§ 230.238 Exemption for standardized options.

(a) *Exemption.* Except as expressly provided in paragraphs (b) and (c) of this section, the Act does not apply to any standardized option, as that term is defined by § 240.9b–1(a)(4) of this chapter, that is:

(1) Issued by a clearing agency registered under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1); and

(2) Traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(a)).

(b) *Limitation.* The exemption provided in paragraph (a) of this section does not apply to the provisions of section 17 of the Act (15 U.S.C. 77q).

(c) *Offers and sales.* Any offer or sale of a standardized option by or on behalf of the issuer of the securities underlying the standardized option, an affiliate of the issuer, or an underwriter, will constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities as defined in section 2(a)(3) of the Act (15 U.S.C. 77b(a)(3)).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–l, 78k, 78k–l, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.9b–1 is amended by:

a. Removing the authority citation following § 240.9b–1;

b. Revising the phrase "under the Securities Act" in the last sentence of paragraph (b)(1) to read "under the Securities Act of 1933, or is exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*)"; and

c. Revising paragraph (c)(8).

The revisions read as follows:

§ 240.9b–1 Options disclosure document.

* * * * *

(c) * * *

(8) If the options are not exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the registration of the options on Form S–20 (17 CFR 239.20) and the availability of the prospectus and the information in Part II of the registration statement; and

* * * * *

5. Section 240.12a–9 is added to read as follows:

§ 240.12a–9 Exemption of standardized options from section 12(a) of the Act.

The provisions of section 12(a) of the Act (15 U.S.C. 78*l*(a)) do not apply in respect of any standardized option, as defined by § 240.9b–1(a)(4), issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q–1) and traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)).

6. Section 240.12h–1 is amended by:

a. Removing the authority citation following § 240.12h–1;

b. Removing "and" at the end of paragraph (b)(2);

c. Removing the period at the end of paragraph (c) and adding a semicolon; and

d. Adding paragraphs (d) and (e).

The addition reads as follows:

§ 240.12h–1 Exemptions from registration under section 12(g) of the Act.

* * * * *

(d) Any standardized option, as that term is defined in § 240.9b–1(a)(4), that is issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q–1) and traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o–3(a)); and

(e) Any security futures product that is traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o–3(a)).

Dated: July 25, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19393 Filed 7–31–02; 8:45 am]

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Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement for Targeted Community Action Planning: An Intensive Technical Assistance Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1352]

Program Announcement for Targeted Community Action Planning: An Intensive Technical Assistance Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications for the Targeted Community Action Planning (TCAP) Technical Assistance Program, which will support the delinquency prevention efforts of States, communities, and Federally recognized Indian Tribes and Alaska Native groups. OJJDP will select one organization to provide intensive training and technical assistance to support at least 15 selected jurisdictions to help them develop and deliver a targeted response to their most pressing juvenile justice issues. The TCAP effort further advances OJJDP's mission to provide national leadership, coordination, and resources to develop, implement, and support effective methods to prevent juvenile delinquency and respond appropriately to juvenile victimization. This mission is accomplished through prevention programs and a juvenile justice system that protects public safety, holds juvenile offenders accountable, and provides treatment and rehabilitative services based on the needs of individuals.

DATES: Applications must be received by September 3, 2002.

ADDRESSES: All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. (See "Delivery Instructions" below for additional information.) Interested applicants can obtain the OJJDP *Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The *Application Kit* is also available at OJJDP's Web site at *www.ojjdp.ncjrs.org/grants/about.html#kit*. (See "Application Format" in this program announcement for instructions on application standards.)

FOR FURTHER INFORMATION CONTACT: Dennis M. Mondoro, Program Manager, State and Tribal Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 202–514–3913. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this program is to improve delinquency prevention efforts and the juvenile justice system by providing intensive technical assistance to jurisdictions that is community-based, results oriented, and the product of best practices and promising programs nationwide.

Background

Since 1993, OJJDP has been engaged in the development of a comprehensive, community-based planning initiative, the Comprehensive Strategy. In 1996, in partnership with Developmental Research and Programs, Inc. (DRP), and the National Council on Crime and Delinquency (NCCD), OJJDP began intensive Comprehensive Strategy training and technical assistance in three pilot sites: San Diego County, CA; Lee County, FL; and Duval County, FL. OJJDP continued to expand the Comprehensive Strategy initiative in 1997 by selecting five States (Florida, Iowa, Maryland, Rhode Island, and Texas) to receive the intensive training and technical assistance. In 1998, OJJDP selected three additional States (Ohio, Oregon, and Wisconsin). In 2000, OJJDP expanded the Comprehensive Strategy by providing additional training and technical assistance to Hawaii, Kentucky, New Jersey, and Oklahoma. The Comprehensive Strategy training and technical assistance initiative strove to mobilize communities to create a multidisciplinary continuum of care that would provide timely, effective, and appropriate responses to their prevention, intervention, and graduated sanctions needs.

Community and agency leaders are an essential component of any effort made to effect social change. Leaders are needed not only to champion the planning effort, but also to leverage the required resources. Because the Comprehensive Strategy planning process required a significant time commitment from participants and a considerable planning phase (typically 9–12 months) before a community could move to action, maintaining the initial momentum was difficult. Constant changes in the structure of the planning team and in the makeup of the community's key leaders frustrated the strategy's objectives. For these reasons, OJJDP re-evaluated the Comprehensive Strategy planning process.

Based on information gathered during the national evaluation of the Comprehensive Strategy, OJJDP revised the existing community planning initiative by shortening the planning process and focusing on the implementation of an action plan. OJJDP's Targeted Community Action Planning (TCAP) effort is designed to help communities assess their juvenile justice and delinquency prevention needs and identify effective interventions. Using the best available program models and strategies, TCAP will provide intensive technical assistance to help communities develop a targeted response to the juvenile justice issues identified by community leaders as the most critical.

Planning Process

The following results-oriented planning process has been developed to help communities plan for action:

Diagnostic Assessment

The diagnostic assessment provides OJJDP and its consultants with basic information about the site before they enter a community. Information gathered during this phase includes readily available crime and delinquency data; risk factor data; information on past and current Federal, State, and local initiatives (e.g., Weed and Seed, America's Promise, Title V); existing community plans; State juvenile justice priorities (i.e., legislative mandates); and information on weaknesses and/or gaps in a community's comprehensive continuum of services for youth, from neonatal care to intensive juvenile aftercare services. During this phase, it is important to identify the key stakeholders and community leaders who will be included in the planning process.

Key Leader Interviews

Interviews of key community leaders are crucial to developing relationships and building capacity prior to the summit of key community leaders (see below). Interviews allow communities to gather information, build support, and review and analyze available services, resources, funding, and existing statutes and policies. The interview process is necessary to develop a thorough and accurate understanding of a community's strengths, weaknesses, opportunities, obstacles, and demographics, particularly as these factors relate to the continuum of services available to children and families in the community.

Key Leader Summit

The summit of key leaders offers an opportunity for a community's key stakeholders and policymakers to share their concerns. The summit will establish a community vision and allow participants to identify critical issues in the community (e.g., juvenile justice system needs, problem behaviors, crime, risk factors, or lack of available resources). Participants will also discuss obstacles that prevent them from attaining their agency's mission. The goal of the summit is for key leaders to prioritize their community's most pressing juvenile justice needs.

Development of the Targeted Response

Developing a targeted response brings the community together to work toward achieving the community vision that was established during the key leader summit. During this phase, data on specific risk factors, information on resource assessment, and statistics on problem behaviors and crime are gathered to legitimize the areas of concern identified during the summit of key leaders. A community's targeted response should use strategies and concepts of best practices and promising programs nationwide, and it should include identified goals, clear roles and responsibilities, measurable objectives, and evaluation components. In addition, the targeted response should integrate the comprehensive strategic planning framework into the ongoing operations of the continuum of services for youth and their families.

Goals

This program has two primary goals:

- To help interested States, communities, and American Indian Tribes and Alaska Native groups assess their juvenile justice issues and develop targeted responses that reduce juvenile delinquency and victimization and improve the juvenile justice system.
- To enhance the awareness of promising approaches and successful strategies to reduce juvenile delinquency and improve the juvenile justice system.

Objectives

To accomplish these goals, the TCAP effort will do the following:

- Conduct diagnostic assessments of selected communities. Assessments will include readily available crime and delinquency data; risk factor data; information on past and current Federal, State, and local initiatives (e.g. Weed and Seed, America's Promise, Title V); existing community plans; State juvenile justice priorities (e.g., legislative mandates); and information on weaknesses and/or gaps in a community's comprehensive continuum of services for youth from neonatal care to intensive juvenile aftercare services.
- Conduct key leader interviews to gather additional information and support that will lead to community action. Interviews will continue the review and analysis process: available services, resources, and funding will be considered, as will the existing statutes and policies required to develop a thorough and accurate understanding of the strengths, weaknesses, opportunities, obstacles, and demographics of the entire continuum of services available to children and their families in the community.
- Facilitate key leader summits to provide all key stakeholders and policymakers with an opportunity to identify their most pressing juvenile delinquency concerns.
- Develop targeted responses that are based on the best possible program models (e.g.,the Prenatal and Infancy Home Visitation by Nurses Program). TCAP must promote the concepts and strategies of promising programs and best practices in the areas of prevention, intervention, and graduated sanctions.
- Further develop a planning process that allows communities to access and use resources and tools without lengthy onsite training and technical assistance.
- Identify and work with existing local infrastructure (e.g., local colleges or universities) that will provide planning support to the community throughout the extended planning process.
- Develop and train people in more efficient ways to retrieve, analyze, and display usable data for collaborative decisionmaking and interagency information management. Provide information regarding national indicator data, comparison data, and additional options for mapping local conditions and resources.
- Provide technical assistance on how to develop action plans for target audiences within the community. These plans may include service and mental health providers, educators, law enforcement officers, court personnel, detention and corrections representatives, parks and recreation staff, and policymakers.
- Apply geomapping instruments to assist with data collection and resource mapping for target areas, neighborhoods, or specific geographic/service areas and to promote research, evaluation, development, and dissemination of geographic information systems technology and the spatial analysis of crime.
- Provide training with customized and indepth program information relevant to the community's identified gaps in service, areas of need, and intended program enhancements (e.g., gender-specific program development, plans to address the disproportionate level of minorities in confinement, and mental health needs).
- Provide an overview of selected Blueprints for Violence Prevention and other identified promising programs that present practical descriptions of effective programs. This overview is intended to help States, communities, and individual agencies to (1) determine the appropriateness of this intervention for their State or community, (2) provide a realistic cost estimate for this intervention, (3) provide an assessment of the organizational capacity needed to ensure successful program startup and operation over time, and (4) indicate the potential barriers and obstacles that might be encountered when attempting to implement this type of intervention.

Telephone technical assistance and other support efforts will be coordinated with representative from OJJDP's State and Tribal Assistance Division (STAD). Technical assistance will be provided in the areas of prevention, intervention, and graduated sanctions and will guide the States and sites in implementing the strategic plans. All technical assistance requests will be coordinated with STAD. The technical assistance provider may be directed to perform other tasks, including gathering State/site specific data, identifying resources, and assisting in the revision of strategic plans.

Program Strategy

OJJDP will competitively select one organization to provide intensive TCAP technical assistance for the first 12-month budget period of the 3-year project period. Through a cooperative agreement, the organization will support 10–15 selected jurisdictions interested in reallocating resources and developing a targeted community response to their most pressing juvenile justice issues. Communities eligible for TCAP assistance will have the following characteristics:

- An identified high rate of juvenile crime and delinquency.
- A population of no more than 250,000. In a city larger than 250,000, the community population may be defined as that of a specific quadrant or zip code area.
- An existing local decisionmaking component or community champion who can convene key community leaders.

Applicants must clearly demonstrate (1) experience in the delivery and management of national, multifaceted training and technical assistance programs and (2) expertise in the areas of juvenile delinquency prevention, intervention, immediate sanctions, corrections, and, specifically, reentry. Applicants must also display an understanding of the challenges that exist in the field of juvenile delinquency prevention programming and juvenile justice system improvement. Applicants are encouraged to be creative in their approach to designing and delivering technical assistance and training; however, they should also exhibit an understanding of the resources and obstacles involved in implementing a juvenile justice action planning effort. Applications must include detailed plans for implementing training and technical assistance, including measurable goals and objectives. Applicants should indicate how they will use electronic mediums to provide training and technical assistance via teleconferencing and other Internet-based modalities.

Performance Measurement

With the enactment of the Juvenile Justice and Delinquency Prevention Act in 1974, Congress established a Formula Grant Program within OJJDP. The program is managed by OJJDP's State and Tribal Assistance Division (STAD) and provides grant funds and technical assistance to participating States and territories to help them implement the provisions of the Act. The provisions include deinstitutionalizing status offenders, separating juveniles and adult offenders, removing juveniles from adult jails and lockups, monitoring compliance with the Act, and implementing programs that support advanced techniques in juvenile justice and delinquency prevention (Section 223[a][10]).

To enhance States' ability to meet the requirements of the Act, OJJDP has developed the TCAP effort to provide support for local community planning and program implementation.

To ensure compliance with the Government Performance and Results Act (GPRA), Pubic Law 103–62, this solicitation notifies applicants that they are required to collect and report on data that measure the results of the program implemented by the grant. To ensure accountability of this data, for which OJJDP is responsible, the following performance measures are provided.

In years one and two, the TCAP Provider will be required to collect the following performance-related data:

- The number of jurisdictions provided with training.
- The number of jurisdictions provided with technical support.
- The number of targeted responses (*e.g.*, comprehensive strategic planning, best practices, measurable objectives) to pressing juvenile justice issues, including summary written documentation regarding the jurisdictions.

Additionally, a peer review panel will be used at the beginning of year two to assess the implementation of the local plans (or targeted responses) developed in year one. Local impact evaluation methodology must be established at this stage in order for the sites to receive further assistance.

At the end of year 2, and prior to drawing down third year funds, the TCAP grantee will submit to a peer review panel approved by OJJDP one action plan from each TCAP community. The peer review panel will assess the community's progress in implementing the local plan and evaluation and will recommend the level of assistance that should be provided in the third and final year.

In year three, the TCAP Provider will continue to render onsite assistance, as approved by OJJDP, and will provide OJJDP with a written report describing the progress made by each community in implementing its action plan. Progress will be measured according to milestones articulated in the individual plans.

OJJDP will coordinate the program evaluations in local jurisdictions with the selected TCAP Provider. Quarterly progress reports will be required from the TCAP Provider for the duration of the project. The quarterly reports, which will include impact data that have been identified during the peer review process, will measure each local jurisdiction's progress toward implementing its targeted responses to pressing juvenile justice issues. Data collected from the TCAP Provider will provide crucial baseline data necessary for a national evaluation, contingent on funding, of the TCAP effort.

Deliverables

In addition to the deliverables identified in the strategy and content of the technical assistance design, the following deliverables are required during the 3-year period:

Year 1

- A protocol for delivering intensive training and technical assistance to selected sites.
- Testing and refinement of the technical assistance protocol with the targeted sites.
- Delivery of intensive training and technical assistance to support 10–15 selected jurisdictions in developing a targeted response to their most pressing juvenile justice needs.
- A monograph that lists and categorizes the range of programs for prevention and graduated sanctions in use within the communities and that identifies those that are most effective and worthy of replication.
- A draft of a proposed manual that delineates the design specifications of the proven effective elements that contribute to successful programs for prevention, intervention, immediate sanctions, corrections, and reentry, along with instructions for community implementation.
- Development of up to three technical assistance Bulletins, articles, Fact Sheets, or briefs about existing TCAP efforts.

Year 2

- Testing and refinement of the technical assistance protocol with the targeted sites.
- Delivery of intensive training and technical assistance to support 10–15 additional jurisdictions in developing a targeted response to their most pressing juvenile justice needs.
- A monograph that lists and categorizes the range of programs for prevention and graduated sanctions in use within the communities and that identifies those that are most effective and worthy of replication.
- The final draft manual that delineates the design specifications of the proven effective elements that contribute to successful programs for prevention, intervention, immediate sanctions, corrections, and reentry, along with instructions for community implementation.
- Development of up to three technical assistance Bulletins, articles, Fact Sheets, or briefs about existing TCAP efforts.
- Training about the TCAP effort delivered at a minimum of four events, which may include presentations at local, regional, State, or national training conferences.

Year 3

- Assessments of sites' progress in implementing action plans developed by the TCAP assistance previously provided.
- Additional deliverables to be identified based on the needs of the sites.

Guiding Principles

Technical assistance and training will be developed according to the following principles:

- Design and deliver the training and technical assistance in a manner that empowers local communities to implement programs,
- Use standardized protocols for needs assessment, delivery of training and technical assistance, evaluation, tracking, and followup.
- Be sensitive to diverse cultural and ethnic needs.

Eligibility Requirements

OJJDP invites applications from public and private nonprofit agencies, organizations, institutions, or individuals. Private, for-profit organizations must agree to waive any profit or fee.

Selection Criteria

Applications will be rated by a peer review panel according to the criteria outlined below. A site visit may be conducted to confirm information provided in the application.

Need(s) To Be Addressed (15 points)

Applicants must clearly demonstrate an understanding of the need(s) to be addressed by the program and the issues relevant to current delinquency prevention and juvenile justice system programs and practices. Specific attention should be given to demonstrating an understanding of the problems associated with local community planning and the reallocation of resources.

Goals and Objectives (10 points)

Applicants must provide succinct statements that demonstrate an understanding of the goals and objectives associated with the program. Training and technical assistance related to the objectives must be clearly stated and measurable.

Project Design (30 points)

Applicants must present a project design that is specific and constitutes an effective approach to meeting the goals and objectives of this program. The design must include a detailed workplan with timelines that link the training and technical assistance tasks to each of the program's stated objectives. Applicants must demonstrate how these activities will achieve the program's overall goal. The design must provide protocols for assessing technical assistance and training needs and protocols for delivering technical assistance. The design must also describe the process and structure that will be used for presentation development and demonstrate how adult learning theory will be employed. Applicants should specify how the problems associated with developing programs within a community will be overcome and what approach will be used to inventory the range of prevention and graduated sanctions programs. Applicants should also specifically describe their understanding of the Juvenile Justice and Delinquency Prevention Act of 1974 and the relationship of the State and local communities contained therein. Competitive applications will clearly discuss how training and technical assistance will be delivered in each of the identified TCAP areas in the program strategy outlined above.

Project Management (25 points)

Applicants must discuss how they will coordinate and manage the program to achieve the training and technical assistance objectives. An applicant's management structure and staffing must be adequate and appropriate for the successful implementation of the project and must identify a program manager who is experienced in delivering successful training and technical assistance. Applicants must describe an organizational framework, managerial structure, and staffing approach that are capable of effectively executing the TCAP effort. Applicants need to have available a pool of consultants with high levels of expertise in juvenile justice and must be able to identify responsible individuals, their time commitment, and the assignment of major tasks under this project. When choosing consultants, it is important to consider their experience in designing and delivering training and technical assistance on a national level. Key staff should have significant experience with the delivery of training and technical assistance and some combination of experience with community planning and juvenile justice programming.

Competitive applications will clearly demonstrate (1) the ability to attract seasoned experts who understand current juvenile justice programs and trends and (2) the ability to develop program materials and a management structure that support the deployment of consultants and the delivery of services. Competitive applications will also demonstrate (1) the ability to develop partnerships with other agencies and organizations having expertise that expands the knowledge and experience base of the grantee and (2) prior experience in the management of multifaceted projects employing the use of one or more contractors.

Organizational Capability (10 points)

Applicants should clearly demonstrate their ability to administer the initiative effectively. Documentation should include organizational and/or staff experience in the subject areas described above under "Program Strategy" and successful experience in managing the finances of Federal grants and cooperative agreements. The application should also clearly describe how the grant will be managed as a free-standing operation within the applicant's organization. Applicants must also describe and demonstrate professional competency to offer cutting-edge technical assistance approaches and an organizational infrastructure that will support the technological and resource requirements of this program. Applicants may find it more cost effective to use contractors to develop and provide some of the required training and technical or specialized products.

Budget (10 points)

Applicants must provide a proposed budget that is detailed, reasonable, and cost effective for the activities to be undertaken. Competitive applications will budget for tangible training resources that will assist program participants with the daily operation of juvenile justice programs (e.g., software, training manuals, and technical assistance bulletins) and will support selected program sites.

Application Format

The application narrative must not exceed 30 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8½- by 11-inch paper, double spaced on one side of the paper, and printed in a standard 12-point font. The double-spacing requirement applies to all parts of the program narrative and project abstract, including any lists, tables, bulleted items, or quotations. These standards are necessary to maintain fair and uniform considerations among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

Award Period

The project will be funded as a cooperative agreement for 3 years in three 1-year budget periods. Funding after the first budget period depends on the availability of funds, grantee performance, and other criteria established at the time of award.

Award Amount

Up to $800,000 is available for the first year of the budget period.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.542. Form 424 is included in the OJJDP *Application Kit,* which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to *puborder@ncjrs.org.* The *Application Kit* is also available online at *www.ojjdp.ncjrs.org/grants/about.html#kit.*

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice (DOJ) is requiring applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from DOJ; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose. The term "related efforts" is defined for these purposes as one of the following:

1. Efforts for the same purpose (i.e., the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).

2. Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).

3. Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All applicants must submit the original application (signed in blue ink) and five copies. Applications should be unbound and fastened by a binder clip in the top left-hand corner.

OJJDP strongly recommends that applicants number each page of the application. To ensure that applications are received by the due date, applicants should use a mail service that documents the date of receipt. Because OJJDP anticipates sending applicants written notification of application receipt approximately 4 weeks after the solicitation closing date, applicants are encouraged to use a traceable shipping method. Faxed or e-mailed applications will not be accepted. Postmark dates will not be accepted as proof of meeting the deadline. Applications received after September 3, 2002, will be deemed late and may not be accepted. The closing date and time apply to all applications. To ensure prompt delivery, please adhere to the following guidelines:

Applications Sent by U.S. Mail

Use registered mail to send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850. In the lower left-hand corner of the envelope, clearly write "Targeted Community Action Planning: An Intensive Technical Assistance Program."

Applications Sent by Overnight Delivery Service

Allow at least 48 hours for delivery. Send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 800–638–8736 (phone number required by some carriers). In the lower left-hand corner of the envelope, clearly write "Targeted Community Action Planning: An Intensive Technical Assistance Program."

Applications Delivered by Hand

Deliver by September 3, 2002, to the Juvenile Justice Resource Center, 2277 Research Boulevard, Rockville, MD 20850; 301–519–5535. Hand deliveries will be accepted daily between 8:30 a.m. and 5:00 p.m. EST, excluding Saturdays, Sundays, and Federal holidays. Entrance to the resource center requires proper photo identification.

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by September 3, 2002.

Contact

For further information, contact Dennis M. Mondoro, Program Manager, State and Tribal Assistance Division, Office of Juvenile Justice and Delinquency Prevention, at 202–514–3913, or send an e-mail inquiry to *mondorod@ojp.usdoj.gov.*

Dated: July 19, 2002.

William Woodruff,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–19452 Filed 7–31–02; 8:45 am]

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Federal Register

Thursday,
August 1, 2002

Part VI

The President

Notice of July 30, 2002—Continuation of the National Emergency With Respect to Iraq

Federal Register
Vol. 67, No. 148
Thursday, August 1, 2002

Presidential Documents

Title 3—

The President

Notice of July 30, 2002

Continuation of the National Emergency With Respect to Iraq

On August 2, 1990, by Executive Order 12722, President Bush declared a national emergency with respect to Iraq pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and polices of the Government of Iraq. By Executive Orders 12722 of August 2, 1990, and 12724 of August 9, 1990, the President imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued to engage in activities hostile to U.S. interests, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

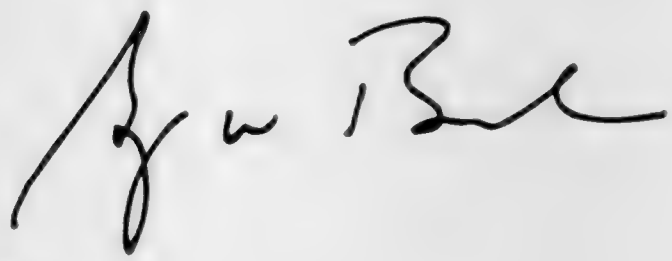

THE WHITE HOUSE,
July 30, 2002.

[FR Doc. 02–19638
Filed 7–31–02; 10:51 am]
Billing code 3195–01–P

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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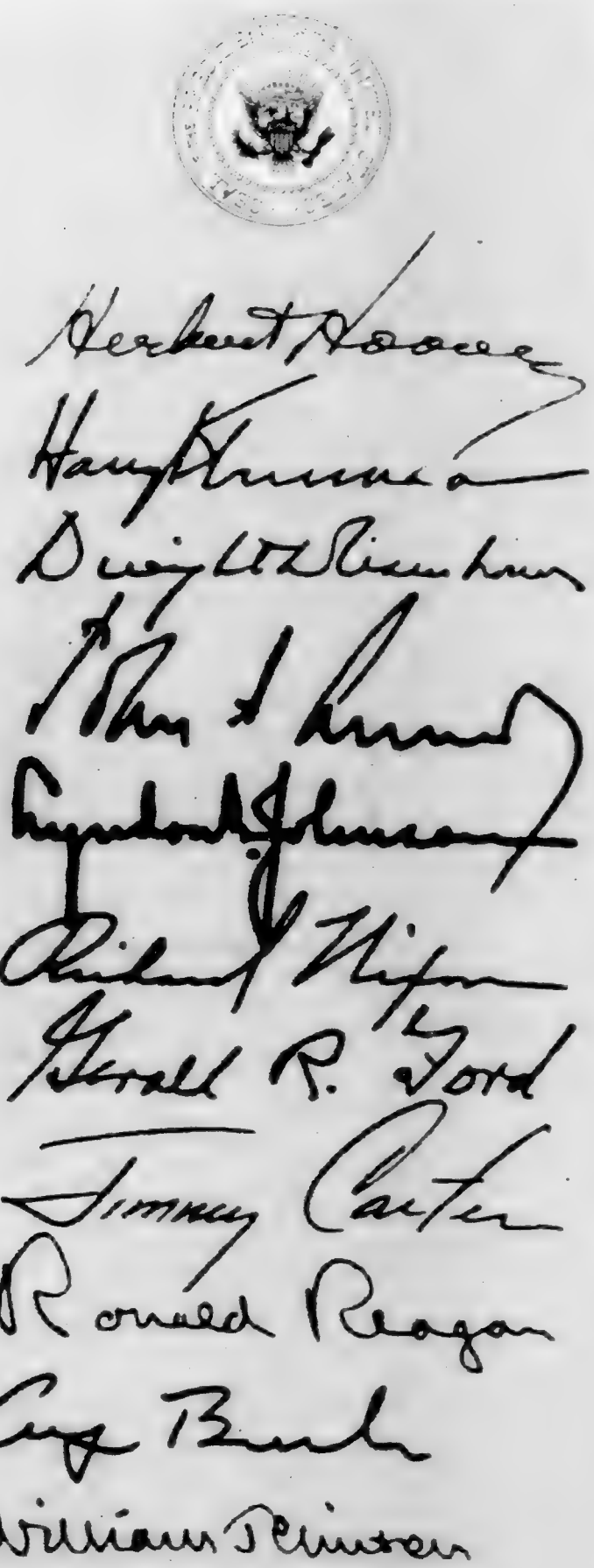

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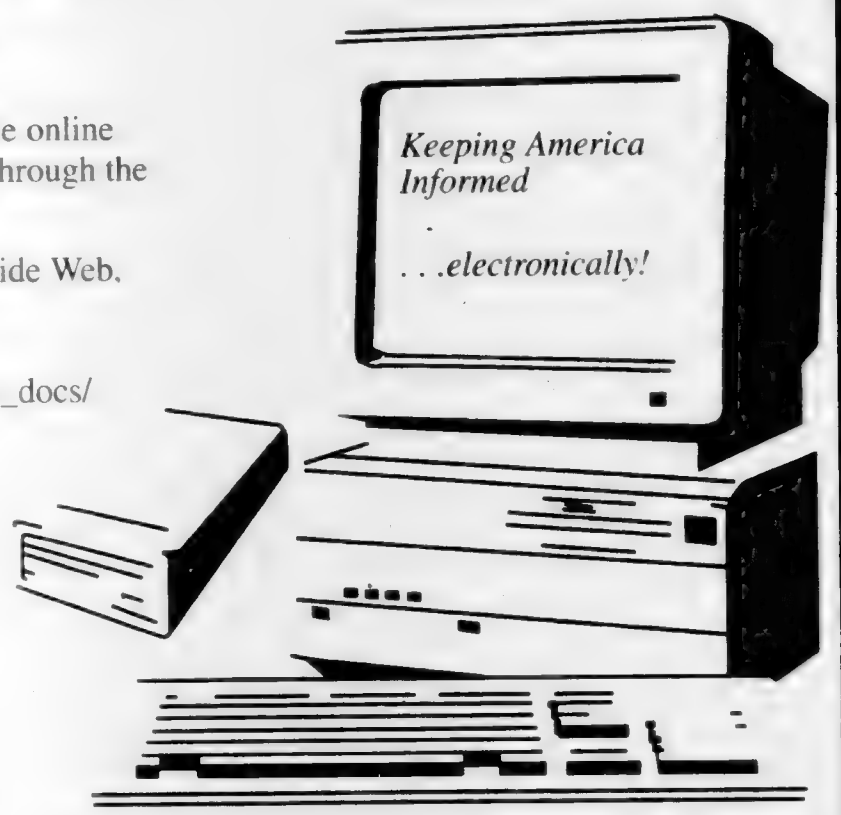

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 02–26 of July 17, 2002

Determination Under Section 610(a) of the Foreign Assistance Act of 1961, as amended, to Transfer $10.3 million to the Operating Expense Appropriation

Memorandum for the Administrator of the United States Agency for International Development

Pursuant to the authorities vested in me by section 610(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine that it is necessary for the purposes of the Act that $10.3 million appropriated to carry out chapter 1 of part I of the Act be transferred to, and consolidated with, appropriations made to carry out section 667(a) of the Act. I hereby authorize such transfer and consolidation.

This determination shall be effective immediately and shall be published in the **Federal Register**.

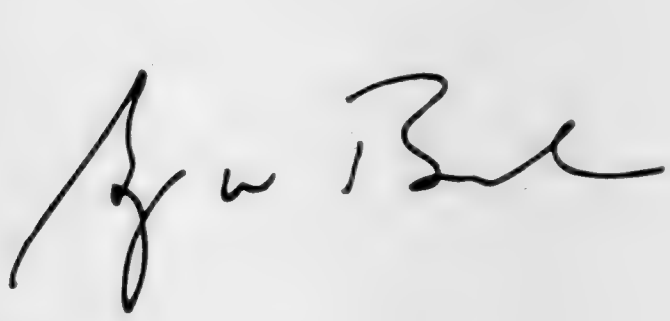

THE WHITE HOUSE,
Washington, July 17, 2002

[FR Doc. 02–19698
Filed 8–1–02; 8:45 am]
Billing code 6116–01–M

Rules and Regulations

Federal Register
Vol. 67, No. 149
Friday, August 2, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–50–AD; Amendment 39–12838; AD 2002–15–08]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC120B, EC 155B, SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, AS332L2, AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, AS365N2, AS 365 N3, SA–365N, and SA–365N1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for specified Eurocopter France (ECF) model helicopters. This AD requires determining the load release unit (cargo hook) serial number, measuring the clearance between the locking catch and the cargo hook, and removing unairworthy cargo hooks from service. This amendment is prompted by the discovery of a defect on certain cargo hooks that may prevent load release. The actions specified by this AD are intended to prevent failure of a cargo hook to release a load creating an additional hazard in an emergency situation and subsequent loss of control of a helicopter.

DATES: Effective September 6, 2002.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for specified ECF model helicopters was published in the **Federal Register** on April 10, 2002 (67 FR 17306). That action proposed to require, before the next flight utilizing the cargo hook, measuring the clearance between the locking catch and the cargo hook, and removing any cargo hook from service if that clearance is equal to or greater than 14mm (0.55 inches).

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on various ECF model helicopters. The DGAC advises of the discovery of an anomaly on the locking catch of certain cargo hooks that could jam the ring on the cargo hook and jeopardize the release of an underslung load.

ECF has issued Alert Telexes 01.00.47, 01.00.49, 01.00.53, 01.00.60, 01.00.66 04A001, and 04A004, dated July 10, 2001, which specify measuring the clearance between the locking catch and the cargo hook and the acceptable dimension of the ring. The telexes state that the clearance, as illustrated in their Figure 1, must be less than 14 millimeters (mm) (0.55 inches). The DGAC classified these telexes as mandatory and issued AD 2001–318(A), dated July 25, 2001, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for a minor change. In paragraph (a) of the AD, we moved the parenthetical phrase "(see Figure 1)" to the end of the paragraph, removed the parenthesis, and added a colon. These changes will neither increase the economic burden on any operator nor increase the scope of the AD .

The FAA estimates that this AD will affect 725 helicopters of U.S. registry and will take approximately ¼ work hour to determine the serial number of the part, 1 work hour to measure the gap between the locking catch and the cargo hook for an estimated 50 helicopters, and 1 work hour to remove and replace each of an estimated 10 cargo hooks. The average labor rate is estimated to be $60 per work hour. Required parts would cost approximately $5,000. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,475 assuming 10 cargo hooks require replacement.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–15–08 Eurocopter France: Amendment 39–12838. Docket No. 2001–SW–50–AD.

Applicability: Model EC120B, EC155B, SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, AS332L2, AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, AS–365N2, AS 365 N3, SA–365N, and SA–365N1 helicopters, with a SIREN load release unit (cargo hook), part number (P/N) AS21–5–1 through –7, and a cargo hook serial number less than 415, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before the next flight utilizing the cargo hook, unless accomplished previously.

To prevent failure of a cargo hook, inability to release a load creating an additional hazard in an emergency situation, and subsequent loss of control of a helicopter, accomplish the following:

(a) With the cargo hook in the no-load position, measure the clearance "J" in accordance with Figure 1 of this AD. Remove any cargo hook if clearance "J" is equal to or greater than 14 millimeters (0.55 inches). See Figure 1:

BILLING CODE 4910–13–P

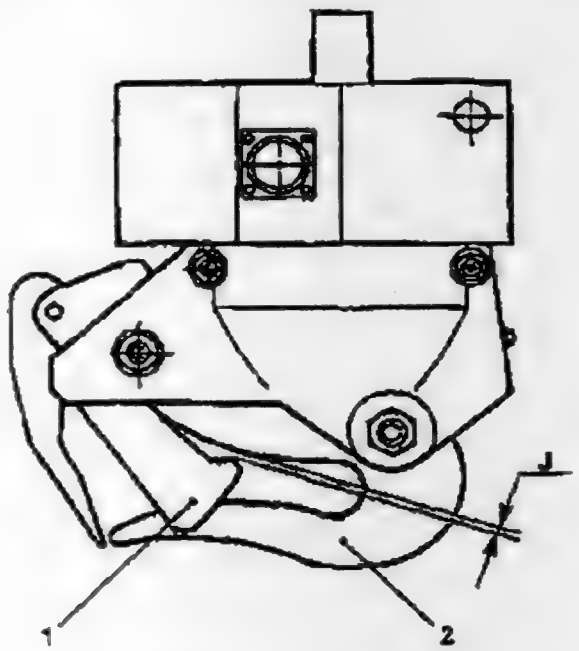

Figure 1

Siren Load Release Unit
P/N AS21-5-(1 through 7)

1. Locking Catch
2. Cargo Hook

Clearance "J" must be less than 14 mm (0.55 inches)

BILLING CODE 4910–13–C

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits will not be issued allowing use of the affected cargo hook.

(d) This amendment becomes effective on September 6, 2002.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile, (France) AD 2001–318(A), dated July 25, 2001.

Issued in Fort Worth, Texas, on July 24, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, , Aircraft Certification Service.

[FR Doc. 02–19488 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–21–AD; Amendment 39–12836; AD 2002–13–51]

RIN 2120–AA64

Airworthiness Directives; Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 Helicopters Manufactured by Bell Helicopter Textron, Inc. for the Armed Forces of the United States

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2002–13–51, sent previously to all known U.S. owners and operators of the specified helicopters by individual letters. This AD requires cleaning and inspecting a certain tail rotor (T/R) grip with a magnet to determine if it is made of steel. If it is not made of steel, this AD requires replacing each affected T/R grip with an airworthy, steel T/R grip. This AD is prompted by reports of timed-out T/R grips being improperly remarked and reinstalled on certain helicopters. This unsafe condition, if not detected, could result in failure of the T/R grip and subsequent loss of control of the helicopter.

DATES: Effective August 19, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–13–51, issued on June 27, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before October 1, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Kennedy Jones, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5148, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: The FAA issued Emergency AD (EAD) 2002–08–53, Docket No. 2002–SW–23–AD, on April 22, 2002, and superseding EAD 2002–09–51, Docket No. 2002–SW–24–AD, on May 9, 2002, for Bell Helicopter Textron, Inc. (Bell) Model 204B, 205A, A–1, and B helicopters. That EAD requires cleaning and inspecting T/R grip, part number (P/N) 204–011–728–019, with a magnet to determine if it is made of steel. If it is not made of steel, the current EAD requires replacing the T/R grip with an airworthy steel T/R grip. According to reports, T/R grips, P/N 204–011–728–019, removed from service on the Bell Model 204B and 205A–1 helicopters as required by AD 73–17–04 (38 FR 22223, August 17, 1973), were re-marked as P/N 205–011–711–101 and may have been installed on Bell Model 204 and 205 helicopters. These T/R grips may also be installed on similar restricted category military surplus helicopters.

On June 27, 2002, the FAA issued EAD 2002–13–51 for the specified model helicopters, which requires cleaning the T/R grip, determining if it is made of steel, and replacing the T/R grip with an airworthy T/R grip if the main body is not made of steel. That action was prompted by reports of timed-out T/R grips being improperly remarked and reinstalled on certain helicopters. This unsafe condition, if not detected, could result in failure of the T/R grip and subsequent loss of control of the helicopter.

This unsafe condition is likely to exist or develop on certain restricted category helicopters of these same type designs. Therefore, the FAA issued EAD 2002–13–51 to prevent failure of the T/R grip and subsequent loss of control of the helicopter. The AD requires cleaning the affected T/R grip, inspecting the T/R grip by placing a magnet on the exterior of the main body of the T/R grip to determine if the T/R grip is made of steel, and replacing any T/R grip not made of steel. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, cleaning, inspecting, and determining if the T/R grip is made of steel and replacing any T/R grip not made of steel are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest; and good cause existed to make the AD effective immediately by individual letters issued on June 27, 2002, to all known U.S. owners and operators of Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters manufactured by Bell for the Armed Forces of the United States. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that this AD will affect 75 helicopters of U.S. registry and will take approximately 2 work hours per helicopter to accomplish the required actions at an average labor rate of $60 per work hour. Required parts will cost approximately $4,864 per helicopter if the T/R is replaced. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $373,800 assuming the T/R is replaced on the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–

21–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–13–51 Arrow Falcon Exporters, Inc. (previously Utah State University); Firefly Aviation Helicopter Services (previously Erickson Air-Crane Co.); Garlick Helicopters, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC (previously Western International Aviation, Inc.); Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Robinson Air Crane, Inc.; Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Tamarack Helicopters, Inc. (previously Ranger Helicopters Services, Inc.); U.S. Helicopter, Inc.; and Williams Helicopter Corporation (previously Scott Paper Co.): Amendment 39–12836. Docket No. 2002–SW–21–AD.

Applicability: Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters manufactured by Bell Helicopter Textron, Inc. for the Armed Forces of the United States, with tail rotor (T/R) grip, part number 205–011–711–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight, unless accomplished previously.

To prevent failure of the T/R grip and subsequent loss of control of the helicopter, accomplish the following:

(a) Clean the T/R grip.

(b) Determine if the T/R grip is made of steel by placing a magnet on the exterior of the main body of the T/R grip. Do *not* make this determination by placing the magnet on the steel bushing or steel interior liner. If the main body of the T/R grip is not made of steel, replace it with an airworthy steel T/R grip. Only replacement T/R grips made of steel are eligible for installation.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on August 19, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–13–51, issued June 27, 2002, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on July 25, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–19489 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 020509118–2164–02]

RIN 0694–AC62

Revisions and Clarifications to the Export Administration Regulations—Chemical and Biological Weapons Controls: Australia Group; Chemical Weapons Convention; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correction.

SUMMARY: On Friday, May 31, 2002 (67 FR 37977), the Bureau of Industry and Security (BIS) published a final rule that amended the Export Administration Regulations (EAR) to implement the understandings reached at the October 2001 plenary meeting of the Australia Group (AG). The May 31, 2002, final rule contained two errors in the List of Items Controlled for Export Control Classification Number (ECCN) 2B350 on the Commerce Control List (CCL). This document corrects those errors.

DATES: This correction is effective August 2, 2002.

FOR FURTHER INFORMATION CONTACT: James Seevaratnam, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 501–7900.

SUPPLEMENTARY INFORMATION: This document corrects two errors in the List of Items Controlled for Export Control Classification Number (ECCN) 2B350, which was revised in a final rule that was published by the Bureau of Industry and Security (BIS) on May 31, 2002 (67 FR 37977).

The **SUPPLEMENTARY INFORMATION** section of the May 31, 2002, rule stated that BIS was revising ECCN 2B350 to control exports and reexports of critical components of certain AG-controlled chemical manufacturing equipment listed in that ECCN and also indicated that these critical components included the following: casings (valve bodies) or preformed casing liners designed for valves controlled by 2B350.g. The May 31, 2002, rule inadvertently omitted

these critical valve components from the introductory text of paragraph (g) in the List of Items Controlled for ECCN 2B350. This document corrects that oversight.

The May 31, 2002, rule also contained a minor typographical error in the List of Items Controlled for ECCN 2B350. The introductory text of 2B350.i used the phrase "casing (pump bodies)" to describe certain critical pump components controlled under 2B350.i. The phrase should have read: "casings (pump bodies)". This document corrects that error.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This rule contains collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0694–0088 and 0694–0117.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

According, in the final rule, FR Doc. 02–13581, published at 67 FR 37977, make the following corrections:

PART 774—[CORRECTED]

Supplement No. 1 to Part 774—[Corrected]

1. On page 37988, first column, in ECCN 2B350, in the List of Items Controlled, paragraph g. (which includes g.1 through g.7) is corrected to read as follows:

2B350 Chemical manufacturing facilities and equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

g. Valves with nominal sizes greater than 1.0 cm (3/8 in.), and casings (valve bodies) or preformed casing liners designed for such valves, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

g.1. Nickel or alloys with more than 40% nickel by weight;

g.2. Alloys with more than 25% nickel and 20% chromium by weight;

g.3. Fluoropolymers;

g.4. Glass or glass lined (including vitrified or enameled coatings);

g.5. Tantalum or tantalum alloys;

g.6. Titanium or titanium alloys; *or*

g.7. Zirconium or zirconium alloys.

* * * * *

2. On page 37988, first column, in ECCN 2B350, in the List of Items Controlled, in paragraph i. introductory text, line 8, the word "casing" is corrected to read "casings".

Dated: July 26, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–19515 Filed 8–1–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4078]

Visas: Passports and Visas Not Required for Certain Nonimmigrants—Visa Waiver Program

AGENCY: Department of State, Bureau of Consular Affairs.

ACTION: Final rule; correction.

SUMMARY: On May 7, 2002, the Department of State published in the **Federal Register** [*see* 67 FR 30546], a document which removed the list of countries designated to participate in the Visa Waiver Program. The rule also amended the regulation by replacing "Visa Waiver Pilot Program" with "Visa Waiver Program" since the program is no longer a pilot program. The Department is publishing this rule to correct an error in this document.

DATES: Effective on August 2, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Office, Room L624, SA–1, Department of State 20520–0106, 202–663–1206, or e-mail *chavezpr@state.gov*.

SUPPLEMENTARY INFORMATION: On May 7, 2002, the Department published a final rule document amending the regulations at 22 CFR 41.2(l). The document contained an error in the last line of the regulation making reference to part 40 rather than part 41.

Correction

In the **Federal Register** issue of May 7, 2002, on page 30547, in the last line of § 41.2(l)(2), correct "part 40" to read "part 41.

Dated: July 8, 2002.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–19540 Filed 8–1–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–008]

RIN 2115–AE47

Drawbridge Operation Regulations; Oklawaha River, Marion County, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Muclan Farms swingbridge across the Oklawaha River, mile 63.9, Marion County, Florida by allowing the span to remain permanently in the closed position. The bridge has not received a request for an opening since 1998. This action will accommodate the needs of the bridge owner and provide for the reasonable needs of navigation.

DATES: This rule is effective September 3, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–02–008] and are available for inspection or copying at Commander (obr) Seventh Coast Guard District, 909 SE 1st Ave., Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 26, 2002 we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Oklawaha River, Marion County, Fla" in the **Federal Register** (67 FR 13736). We did not receive any comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Muclan Farms swingbridge is located in a rural section of Marion County. The current regulations in 33 CFR 117.319 require the swingbridge to open if three hours advance notice is given to the St. Johns River Water Management District. The Water Management District has not received any requests for an opening since 1998. The Water Management District requested the Coast Guard change the current regulation to allow the bridge to remain closed.

Discussion of Comments and Changes

We received no comments on this proposed rule. No changes were made to the proposed rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The economic impact of this rule will be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because there have been no requests for a bridge opening since 1998.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels on the Oklawaha River intending to transit through the Muclan Farms swingbridge. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because no one has requested a bridge opening since 1998 and no comments were received in response to the NPRM.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant

energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. In section § 117.319, revise paragraph (a) and add paragraph (c) to read as follows:

§ 117.319 Oklawaha River.

(a) The draw of the Sharpes Ferry (SR 40) bridge, mile 55.1 shall open on signal if at least three hours notice is given.

* * * * *

(c) The draw of the Muclan Farms bridge, mile 63.9, need not open for the passage of vessels.

Dated: July 19, 2002.

J.S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–19562 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–01–046]

RIN 2115–AE84

Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On January 28, 2002, we published a direct final rule. The rule notified the public of our excluding warships or other vessels owned, leased, or operated by the U.S. Government from certain carriage requirements for navigational charts and publications by allowing the use of approved electronic systems for charting and navigation while operating in the Chesapeake Bay Regulated Navigation Area. We received no comments on the rule; therefore, this rule will go into effect as scheduled.

DATES: The effective date of this direct final rule was April 29, 2002.

FOR FURTHER INFORMATION CONTACT: LTjg Anne Grabins, Fifth Coast Guard District Aids to Navigation and Waterways Management Branch, at (757) 398–6559.

SUPPLEMENTARY INFORMATION:

On May 2, 2001, the Coast Guard published in the **Federal Register** a direct final rule that amended 33 CFR part 164, specifically, § 164.01 paragraphs (a) and (c) (66 FR 21864). The amendment exempts public vessels equipped with electronic charting and navigation systems from paper chart carriage requirements. This geographically broad rule, which became effective July 31, 2001 (66 FR 42753, August 15, 2001), applies to public vessels operating in the navigable waters of the United States. A separate section of the CFR, however, still requires public vessels operating in the Chesapeake Bay Regulated Navigation Area (RNA) to carry paper charts (33 CFR 165.501(d)(7)). We amended the Chesapeake Bay RNA regulation to bring its navigation requirements for public vessels operating in this area in alignment with the requirements for all other U.S. waters.

The direct final rule (67 FR 3812, January 28, 2002) excludes public vessels from the corrected paper chart requirements contained in 33 CFR 165.501(d)(7), when operating in the Chesapeake Bay RNA. This exclusion only applies to public vessels equipped with an electronic charting and navigation systems that meet the standards approved by the Federal agency exercising operational control of the vessel.

Dated: July 19, 2002.

Arthur E. Brooks,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–19549 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–02–094]

RIN 2115–AA97

Safety Zone; Salem Heritage Days Fireworks, Salem, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Salem Heritage Days Fireworks, to be held on August 17, 2002, in Salem Harbor, Salem, MA. The safety zone will temporarily close all waters of Salem Harbor within a four hundred (400) yard radius of the fireworks barge. The possibility of firework debris entering the waterway necessitates the need for a safety zone to prevent any potential marine casualties. This rule prohibits entry into or movement within this portion of Salem Harbor and is needed to protect the maritime public from the hazards posed by a fireworks display.

DATES: This rule is effective from 9 p.m. until 10 p.m. on August 17, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–094) and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Information about this event was not provided to the Coast Guard until July 17, 2002, making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Any delay in implementing this rule would be contrary to the public interest, since immediate action is needed to prevent traffic from transiting a portion of Salem Harbor, Salem, Massachusetts, and provide for the safety of life on

navigable waters. Additionally, vessels will only be limited from the area of the safety zone for 1 hour, the zone will have negligible impact on vessel transits due to the fact that vessels can safely transit outside the zone in the majority of Salem Harbor, and vessels are not precluded from using any portion of the waterway except the safety zone area itself.

Background and Purpose

The Town of Salem is holding a fireworks display for its Salem Heritage Days celebration. This rule establishes a safety zone on all waters in Salem Harbor within a four hundred (400) yard radius around the fireworks barge located at 42°32′27″ N, 070°051′74″ W (NAD 83). The safety zone is in effect from 9 p.m. until 10 p.m. August 17, 2002. This rule prohibits entry into or movement within this portion of Salem Harbor and is needed to protect the maritime public from the dangers posed by this event. Marine traffic may transit safely outside of the safety zone during the event. The Captain of the Port anticipates negligible impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this rule prevents traffic from transiting into a portion of Salem Harbor during this event, the effect of this rule will be negligible for several reasons: Vessels will only be restricted from the safety zone for 1 hour, vessels may safely transit outside of the safety zone without restriction, and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Salem Harbor from 9 p.m. until 10 p.m. August 17, 2002. For reasons enumerated under the *Regulatory Evaluation* section above this rule will have a negligible economic impact on small entities.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From 9 p.m. until 10 p.m. on August 17, 2002, add temporary § § 165.T01–094 to read as follows:

§ 165.T01–094 Safety Zone; Salem Heritage Days Fireworks, Salem, Massachusetts.

(a) *Location.* The following area is a safety zone:

All waters of Salem Harbor within a four hundred (400) yard radius of the fireworks barge located in Salem Harbor, Salem, MA, at 42°32′27″ N, 070°051′74″ W. All coordinates are North American Datum 1983.

(b) *Effective date.* This section is effective from 9 p.m. until 10 p.m. on August 17, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel including commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: July 19, 2002.

B.M. Salerno,

Captain, U. S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–19548 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 927

Regulations Dealing With Penalties or Fines, Deductions, and Damages Related to Transportation of Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule revises postal regulations dealing with civil penalties, fines, deductions and damages assessed in the administration of the mail transportation statutes. The rule provides detailed procedures for the imposition of penalties and other assessments and conforms the regulations to the current organization of the Postal Service.

EFFECTIVE DATE: August 2, 2002.

FOR FURTHER INFORMATION CONTACT: Frank Panico, Manager, International Transportation and Network Support, International Network Operations at (202) 268–8058.

SUPPLEMENTARY INFORMATION: This change is being made to reflect:

1. United States Postal Service's organizational realignment.

2. Technological enhancements which have affected the methodology of recording and adjudicating air carrier irregularities.

This has contributed to the elimination of the mid level review and adjudication process. These changes are detailed in section 927.3. This new process is expected to improve service performance and expedite the irregularity process for international and military mail.

List of Subjects in 39 CFR Part 927

Administrative practice and procedure, Air carriers, Government contracts, Maritime carriers, Penalties.

For the reasons set forth in the preamble, 39 CFR part 927 is revised to read as follows:

PART 927—RULES OF PROCEDURE RELATING TO FINES, DEDUCTIONS, AND DAMAGES

Sec

927.1 Noncontractual carriage of international mail by vessel.
927.2 Noncontractual air service for international and military mail.
927.3 Other remedies.

Authority: 39 U.S.C. 401, 2601 Chap. 56 Section 5604; 49 U.S.C. 1357, 1471.

§ 927.1 Noncontractual carriage of international mail by vessel.

(a) *Report of infraction.* Where evidence is found or reported that a carrier of mail by vessel which has transported mail pursuant to the provisions of Chapter 4, USPS Purchasing Manual, has unreasonably or unnecessarily delayed the mails, or committed other delinquencies in the transportation of mail, has failed to carry the mail in a safe and secure manner, or has caused loss or damage to the mail, the facts will be reported to International Network Operations, Headquarters.

(b) *Review, investigation, recommendation.* International Network Operations will investigate the matter, record findings of fact, make a recommendation concerning the need for imposition of fine or penalty with reasons for the recommendation, and will advise the carrier of the recommendation.

(c) *Penalty action.* International Network Operations, upon review of the record, may impose a fine or penalty against a carrier for any irregularity properly documented, whether or not penalty action has been recommended. A tentative decision of International Network Operations to take penalty action will be set forth in detail the facts and reasons upon which the determination is based. International Network Operations will send the tentative decision, including notice of the irregularities found and the amount of fine or penalty proposed, to the carrier. The carrier may present a written defense to the proposed action within 21 days after receipt of the tentative decision. International Network Operations will advise the carrier of the final decision.

(d) *Appeal.* If the final decision includes a penalty International Network Operations will advise the carrier that it may, within 30 days, appeal the action in writing to the Vice President, Network Operations Management, U.S. Postal Service Headquarters and that its written appeal should include all facts and arguments upon which the carrier relies in support of the appeal. If an appeal is not received, International Network Operations will close the record. When an appeal is taken, the Vice President, Network Operations Management will review the complete record the decide the appeal. He will advise the carrier of the decision in writing and will take actions consistent with that decision. The Vice President, Network Operations Management, may sustain, rescind, or compromise a fine or penalty. The decision of the Vice President, Network Operations Management on appeal shall be the final decision of the Postal Service. The Postal Service may, in its discretion, deduct from payment otherwise due the carrier an amount necessary to satisfy the penalty action taken under this section.

(e) *Details of administration.* For further administrative details, see USPS Purchasing Manual, chapter 4.

§ 927.2 Noncontractual air service for international and military mail.

(a) *Report of infraction.* Each mail handling irregularity will be reported in the prescribed format by the cognizant postal official or designated representative. As soon as possible the reporting authority will ask the local representative of the air carrier to provide an explanation of the irregularity. A summary of the explanation, if any, will be entered in

the record. A copy of the report will be provided to the local station manager of the air carrier concerned at the close of each tour or not less frequently than each 24 hours.

(b) *Carrier conferences.* At least one a month, postal officials will schedule meetings with the local representatives of the affected air carriers to discuss the reported irregularities. The carrier's representative will be advised of any irregularity for which the reporting authority will recommend penalty action. The carrier's representative will be offered the opportunity to comment on any irregularity, and any comments will be attached and/or be made part of the record. The reports on which penalty action is recommended will then be processed by International Network Operations, Postal Headquarters.

(c) *Review, investigation, penalty action.* International Network Operations will review the matter and advise the carrier of the recommendations. The carrier has 21 days from receipt of notice to dispute the recommended penalties. In those instances which the carrier has disputed the facts alleged by the reporting authority, International Network Operations will investigate the matter to resolve the differences. International Network Operations, upon review of the record, may impose a fine or penalty against an air carrier for any irregularity properly documented, whether or not penalty action has been recommended. International Network Operations will send the decision, including notice of the irregularities alleged and the amount of fine or penalty proposed to the carrier. The Postal Service may, in its discretion, deduct from payment otherwise due the air carrier an amount necessary to satisfy the penalty action taken under this section.

(d) *Appeal.* If the final decision includes a penalty, International Network Operations will advise the carrier that it may, within 30 days, appeal the action in writing to the Vice President, Network Operations Management, Postal Headquarters, and that its written appeal should include all facts and arguments upon which the carrier relies in support of the appeal. If an appeal is not received, International Network Operations will close the file. When an appeal is taken, the Vice President, Network Operations Management, will review the complete record and decide the appeals. He will advise the carrier of the decision in writing and will take action consistent with that decision. The Vice President, Network Operations Management, may sustain, rescind, or compromise a fine or penalty. The decision of the Vice President, Network Operations Management, on appeal shall be the final decision of the Postal Service. The Postal Service, may, in its discretion, deduct from pay otherwise due the air carrier an amount necessary to satisfy the penalty action taken under this section.

(e) *Details of administration.* For further administrative details, forms, and other implementing materials adapted to the respective modes of transportation, see International Mail Operations, Handbook T–5, chapter 5.

§ 927.3 Other remedies.

The procedures and other requirements of this part apply only where the Postal Service proposes to assess penalties, fines, deductions, or damages. This part does not limit other remedies available to the Postal Service, including such remedies as summary action to withhold tender of mail to protect the public interest in the event of major irregularities such as theft, deliberate loss, damage, abandonment of the mail or service failures by the air carrier.

Stanley F. Mires,

Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0158; FRL–7188–7]

Fludioxonil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fludioxonil in or on bushberry subgroup, caneberry subgroup, fruit, stone, group, juneberry, lingonberry, pistachio, salal, and watercress. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective August 2, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0158 must be received on or before October 1, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0158 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://

www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0158. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 29, 2000 (65 FR 16602) (FRL–6495–5) and May 1, 2002 (67 FR 21671) (FRL–6833–4), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of pesticide petitions (PP 8E5026, 9E6049, 2E6359, 2E6365, 2E6377, and 2E6393]) by IR–4, New Jersey Agricultural Experiment Station, P. O. Box 231 Rutgers University, New Brunswick, NJ 08903. These notices included summaries of the petitions prepared by Novartis Crop Protection Inc., and Syngenta Crop Protection Inc., the registrants. There were no comments received in response to the notices of filing.

The petitions requested that 40 CFR 180.516 be amended by establishing tolerances for residues of the fungicide fludioxonil, (4-(2,2-difluoro- 1,3-benzodioxol-4-yl)-1 *H*-pyrrole-3-carbonitrile), in or on bushberry subgroup at 2.0 part per million (ppm), caneberry subgroup at 5.0 ppm, juneberry at 2.0 ppm, lingonberry at 2.0 ppm, pistachio at 0.10 ppm, salal at 2.0 ppm, stone fruit group at 2.0 ppm, and watercress at 7.0 ppm. The petition for the stone fruit group was amended to propose a tolerance for fludioxonil at 5.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that " there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of these actions. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of fludioxonil in or on the bushberry subgroup at 2.0 ppm, caneberry subgroup at 5.0 ppm, fruit, stone, group at 5.0 ppm, juneberry at 2.0 ppm, lingonberry at 2.0 ppm, pistachio at 0.10 ppm, salal at 2.0 ppm, and watercress at 7.0 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fludioxonil are discussed in Unit III.A. of the final rule on fludioxonil, which published in the **Federal Register** of December 29, 2000 (65 FR 82927) (FRL–6760–9). Additionally, recent toxicological studies (May 2002) concluded findings in conjunction to the toxicological profile noted in Unit III.A. of the final rule on fludioxonil (65 FR 82927). These studies are shown in Table 1:

TABLE 1.—CARCINOGENIC AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.4200b	Carcino-genicity rats	NOAEL = 590 mg/kg/day (M) and 715 mg/kg/day (F). LOAEL: 851 mg/kg/day (M) and 1,008 mg/kg/day (F) based on reduced survival (F), decreased body weights (M), bile duct hyperplasia (M) and severe nephropathy (both sexes). No evidence of carcinogenicity.
870.5395	*In vivo* Rat hepatocyte micronucleus assay	Male rats were orally dosed at 50, 250, and 1,250 mg/kg and hepatocytes were harvested. There was no evidence of a significant increase in micronucleated hepatocytes in treated groups in comparison to controls.
870.5550	Unscheduled DNA synthesis assay	There was no evidence that unscheduled DNA synthesis, as determined by nuclear silver grain counts, was induced in hepatocyte cultures obtained from male rats dosed at 2,500 or 5,000 mg/kg.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fludioxonil used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUDIOXONIL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13–50 years of age	NOAEL = 100 mg/kg/day UF = 100 Acute RfD = 1.0 mg/kg/day	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = 1.0 mg/kg/day	Developmental Toxicity Study - rat Developmental LOAEL = 1,000 mg/kg/day based on increased incidence of fetuses and litters with dilated renal pelvis and dilated ureter
Chronic Dietary all populations	NOAEL= 3.3 mg/kg/day UF = 100 Chronic RfD = 0.03 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD ÷ FQPA SF = 0.03 mg/kg/day	1 year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs
Incidental Oral, Short-Term	NOAEL = 10 mg/kg/day	LOC for MOE = 100	Rabbit developmental study LOAEL = 100 mg/kg/day based on decreased weight gain during gestation
Incidental Oral, Intermediate-Term	NOAEL = 3.3 mg/kg/day	LOC for MOE = 100	1 year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs
Short-and Intermediate Term Dermal (1–30 days and 1–6 months) (Residential)	None	No systemic toxicity was seen at the limit dose (1,000 mg/kg/day) in the 28–day dermal toxicity study in rats	Endpoint was not selected
Long-Term (several months-lifetime) Dermal (Residential)	Oral study NOAEL = 3.3 mg/kg/day (dermal penetration = 40%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	1 year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs
Short-Term (1–30 Days) Inhalation (Residential)	Oral NOAEL = 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	Rabbit developmental study LOAEL = 100 mg/kg/day based on decreased weight gain during gestation
Intermediate-term (1 month – 6 months) Inhalation (Residential)	Oral NOAEL = 3.3 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	1 year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUDIOXONIL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Long-Term (several months-lifetime) Inhalation (Residential)	Oral NOAEL = 3.3 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	1 year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs
Cancer (oral, dermal, inhalation)	"Group D" - not classifiable as to human carcinogenicity via relevant routes of exposure	Not applicable	There was no evidence of carcinogenicity in mice when tested up to the limited dose 7,000 ppm. There was no evidence of carcinogenicity in male rats, but there was a statistically significant increase, both trend and pairwise, of combined hepatocellular tumors in female rats. The pairwise increase for combined tumors was significant at p=0.03, which is not a strong indication of a positive effect. In addition, the increase in these tumors was within, but at the high end, of the historical controls.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.516) for the residues of fludioxonil, in or on a variety of raw agricultural commodities ranging from 0.01 ppm to 7.0 ppm as follows: cotton gin byproducts; flax, seed; forage, fodder, and straw of cereal grains; fruiting vegetables except cucurbits; grain, cereal; grape; grass, forage, fodder and hay, group; herbs and spices; leafy vegetables except brassica; leaves and roots of tuber vegetables; legume vegetables; non-grass animal feed; onion, dry bulb; onion, green; peanut hay; peanuts meat (hulls removed); rape forage; rape seed; safflower, seed; strawberry; sunflower, seed; undelinted cottonseed; vegetable, brassica, leafy, group; vegetable, bulb, group; vegetable, cucurbit, group; vegetable, legume, foliage; and vegetable, root and tuber, group. Risk assessments were conducted by EPA to assess dietary exposures from fludioxonil in food as follows:

i. *Acute Exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A conservative acute analysis was performed for the females 13–50 years old population subgroup using published and proposed tolerance levels, default concentration factors, and 100% CT assumptions for all commodities.

ii. *Chronic Exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A chronic analysis was performed for the U.S. population, and other population subgroups using published and proposed tolerance levels, default concentration factors, and 100% CT assumptions for all commodities.

iii. *Cancer.* In accordance with the EPA Draft Guidelines for Carcinogen Risk Assessment (July, 1999), the Agency classified fludioxonil as a "Group D" - not classifiable as to human carcinogenicity.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fludioxonil in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fludioxonil.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a

pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fludioxonil they are further discussed in the aggregate risk sections in Unit II.E. of this document.

Fludioxonil is relatively immobile in soil (K_{oc} = 991 – 2440 ml/g). Laboratory adsorption-desorption studies suggest that the parent compound would be bound to soil and have a relatively low potential to leach to ground water and move in runoff to surface water. Degradates of fludioxonil are highly mobile and may enter both surface and ground water. Based on their low K_{oc} values, two of the three photolytic degradates identified in the laboratory studies (CGA–192155 and CGA–339833) are expected to be highly mobile in the environment. The third major photolytic degradate was found to be extremely unstable in the batch-equilibrium system; therefore, the mobility of this degradate could not be determined.

Tier I models, FIRST and SCI-GROW, were used to derive the surface water and ground water EECs, respectively. According to the proposed label information, the maximum application rate for fludioxonil is 4 lbs ai/Acre/year on turf (maximum single application rate of 0.675 lbs ai/Acre). Application to turf provided the high exposure scenario; therefore, the drinking water EECs were derived from the use on turf.

Based on the [FIRST] model the estimated environmental concentrations (EECs) of fludioxonil for acute and chronic exposures are estimated to be 132 parts per billion (ppb) and 49 ppb, respectively, for surface water.

Based on the SCI GROW model the estimated environmental concentration (EEC) of fludioxonil for ground water is estimated to be 0.11 ppb for both the acute and chronic exposures.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fludioxonil is currently registered for use on the following residential non-dietary sites: Based on the registered labels, fludioxonil is used as a protectant fungicide for control of certain diseases of turfgrass and certain foliar, stem and root diseases in ornamentals in residential and commercial landscapes. Medallion® (EPA Reg. No. 100–769) is registered for use on residential lawns and ornamentals. Medallion® is a wettable powder packaged in water-soluble packets, and the current label indicates that this product is "for professional use only." As such, no residential handler (i.e., applicator) exposures are anticipated.

However, short- and intermediate-term dermal (adults and toddlers), and incidental ingestion (toddlers) post-application residential exposures are anticipated based on the use pattern for turfgrass applications detailed on the Medallion® label (specifies that the product be applied at 14-day application intervals, with an annual maximum rate of 2 lbs ai/A/yr, which equates to about 3 applications at the maximum per application rate. Also, fludioxonil has half-lives ranging from 95 to 440 days in thatch sod). A residential post-application dermal assessment was not performed since the risks from short- and intermediate-term dermal exposure are negligible. Short- and intermediate-term dermal endpoints were not selected due to the NOAEL of 1000 mg/kg/day (highest dose tested) in the 28-day dermal toxicity study in rats and also since there were no developmental concerns. EPA has concluded that there are no significant post-application exposures anticipated from treated landscape ornamentals. Therefore, the risk assessment was conducted using the following residential exposure assumption: post-residential lawn applications for toddler incidental ingestion.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether fludioxonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fludioxonil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fludioxonil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The developmental and reproductive toxicity data did not indicate increased quantitative or qualitative susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.

3. *Conclusion.* There is a complete toxicity data base for fludioxonil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be reduced to 1X. The FQPA factor was reduced because the toxicology data base is complete; the developmental and reproductive toxicity data did not indicate increased quantitative or qualitative susceptibility of rats or rabbits to *in utero* and/or postnatal exposure; a developmental neurotoxicity study is not required by the Agency because there was no evidence of neurotoxicity in the current toxicity data base; and the exposure assessment approach will not underestimate the potential dietary (food and water) and non-dietary exposures for infants and children resulting from the use of fludioxonil.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the

Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to fludioxonil will occupy 0.7% of the aPAD for the females 13 years and older. Risk estimated for the general U.S. population subgroups were included in the representative population (females 13–50 years old). In addition, there is potential for acute dietary exposure to fludioxonil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FLUDIOXONIL

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females 13–50 years old	1.0	0.7	132	0.11	30,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fludioxonil from food will utilize 6.6% of the cPAD for the U.S. population; 32% of the cPAD for all infants (< 1 year old); 16% of the cPAD for children (1–6 years old); and 4.2% of the cPAD for females (13–50 years old). Based the use pattern, chronic residential exposure to residues of fludioxonil is not expected. In addition, there is potential for chronic dietary exposure to fludioxonil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FLUDIOXONIL

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.03	6.6	49	0.11	980
All infants (< 1 year old)	0.03	32	49	0.11	200
Children 1–6 years old	0.03	16	49	0.11	250
Females 13–50 years old	0.03	4.2	49	0.11	860

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fludioxonil is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for fludioxonil. The label specifies that residential application is restricted to commercial handlers. Therefore, only post-application exposure is expected to result from the residential uses of fludioxonil. For adults, post-application exposures may result from dermal contact with treated turf. For toddlers, dermal and non-dietary oral post-application exposures may result from dermal contact with treated turf as well as hand-to-mouth transfer of residues from turfgrass. However, the Agency did not select short- dermal endpoints for fludioxonil. Therefore, the short-term aggregate risk for fludioxonil considers food, water, and residential non-dietary oral exposures (for toddlers).

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 5,000 for the U.S. population; 780 for all infants (< 1 year old); 820 for children (1–6 years old); and 7,900 for females (13–50 years old). These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of fludioxonil in ground and surface water.

After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO FLUDIOXONIL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	5,000	100	49	0.11	3,400
All infants (< 1 year old)	450	100	49	0.11	780
Children (1–6 years old)	570	100	49	0.11	820
Females (13–50 years old)	7,900	100	49	0.11	3,000

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fludioxonil is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for fludioxonil. The label specifies that the residential application of fludioxonil is restricted to commercial handlers. Therefore, only post-application exposure is expected to result from the residential uses of fludioxonil. For adults, post-application exposures may result from dermal contact with treated turf. For toddlers, dermal and non-dietary oral post-application exposures may result from dermal contact with treated turf as well as hand-to-mouth transfer of residues from turfgrass. However, the data did not indicate any adverse effects as a result of intermediate-term dermal exposure. Therefore, the intermediate-term aggregate risk for fludioxonil considers food, water, and residential non-dietary oral exposures (for toddlers).

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,700 for the U.S. population; 190 for all infants (< 1 year old); 270 for (children 1–6 years old); and 2,600 for females (13–50 years old). These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of fludioxonil in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 6:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO FLUDIOXONIL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
U.S. population	1,700	100	49	0.11	980
All infants (< 1 year old)	190	100	49	0.11	130
Children (1–6 years old)	270	100	49	0.11	180
Females (13–50 years old)	2,600	100	49	0.11	860

5. *Aggregate cancer risk for U.S. population.* The Agency classified fludioxonil as (a "Group D") not classifiable as to human carcinogenicity based on the lack of evidence in mice when tested up to the limited dose 7,000 ppm. Additionally, there was no evidence of carcinogenicity in male rats, despite the statistically significant increase in both trend and pairwise of combined hepatocellular tumors in female rats. The pairwise increase for combined tumors was significant at p=0.03, which is not a strong indication of a positive effect. Furthermore, the increase in these tumors was within, but at the high end, of the historical controls.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fludioxonil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Based on the concurrent recovery values obtained from the crop field trial analyses and the previous successful petition method validation (PMV) conducted by EPA's Analytical Chemistry Branch (ACB), EPA concludes that HPLC method AG–597B is adequate to enforce the recommended tolerance levels for residues of fludioxonil *per se* in the bushberry subgroup, the caneberry subgroup, fruit, stone, group, juneberry, lingonberry, pistachio, salal, and watercress.

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center,

Environmental Protection Agency, 701 Mapes Road, Fort George G. Mead, MD 20755–5350; telephone number (410) 305–2905; e-mail address: griffith.francis@epa.gov.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of fludioxonil in/on the bushberry subgroup, the caneberry subgroup, fruit, stone, group, juneberry, lingonberry, pistachio, salal, and watercress. Therefore, compatibility issues are not relevant to the proposed tolerances.

V. Conclusion

Therefore, tolerances are established for residues of fludioxonil, (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1 *H*-pyrrole-3-carbonitrile), in or on bushberry subgroup at 2.0 ppm, caneberry subgroup at 5.0 ppm, fruit, stone, group at 5.0 ppm, juneberry at 2.0 ppm, lingonberry at 2.0 ppm, pistachio at 0.10 ppm, salal at 2.0 ppm, and watercress at 7.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0158 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 1, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0158, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not

contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 18, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.516 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

(a) * * *

Commodity	Parts per million
Bushberry subgroup	2.0
Caneberry subgroup	5.0
* * * * *	
Fruit, stone, group	5.0
* * * * *	
Juneberry	2.0
* * * * *	
Lingonberry	2.0
* * * * *	
Pistachio	0.10
* * * * *	
Salal	2.0
* * * * *	
Watercress	7.0

* * * * *

[FR Doc. 02–19442 Filed 8–1–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified Base (1-percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive

Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Administrator, Federal Insurance and Mitigation Administration has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and Recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and Case No.:	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa, (Docket No. FEMA-B–7426).	Town of Buckeye, (01–09–453P).	November 1, 2001, November 8, 2001, *Buckeye Valley News*.	The Honorable Dusty Hull, Mayor, Town of Buckeye, 100 North Apache Road, Suite A, Buckeye, Arizona 85326.	Oct. 9, 2001	040039
Maricopa, (Docket No. FEMA–B–7426).	Town of Cave Creek, (02–09–241X0.	December 27, 2001, January 3, 2002, *Arizona Republic*.	The Honorable Vincent Francis, Mayor, Town of Cave Creek, Cave Creek Town Hall, 37622 North Cave Creek Road, Cave Creek, AZ 85331.	Apr. 3, 2002	040129
Maricopa, (Docket No. FEMA–B–7428).	City of El Mirage, (00–09–083P).	January 31, 2002, February 7, 2002, *Arizona Republic*.	The Honorable Jose Delgado, Mayor, City of El Mirage, 14405 North Palm Street, El Mirage, Arizona 85335.	Jan. 4, 2002	040041
Maricopa, (Docket No. FEMA–B–7428).	City of Goodyear, (02–09–257P).	January 24, 2002, January 31, 2002, *Arizona Republic*.	The Honorable Bill Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338.	Jan. 15, 2002	040046
Maricopa, (Docket No. FEMA–B–7428).	City of Peoria, (01–09–1060P).	March 7, 2002, March 14, 2002, *Arizona Republic*.	The Honorable John Keegan, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, Ariizona 85345.	June 13, 2002	040050

State and county	Location and Case No.:	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa, (Docket No. FEMA–B–7426).	City of Phoenix, (01–09–1003P).	September 21, 2001, September 28, 2001, *Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	Sept. 10, 2001	040051
Maricopa, (Docket No. FEMA–B–7426).	City of Phoenix, (01–09–285P).	November 8, 2001, November 15, 2001, *Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	Oct. 15, 2001	040051
Maricopa, (Docket No. FEMA–B–7428).	Cit of Phoenix, (01–09–526P).	January 10, 2002, January 17, 2002, *Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	Dec. 12, 2001	040051
Maricopa, (Docket No. FEMA–B–7428).	City of Scottsdale,)01–09–1199P).	February 28, 2002, March 7, 2002, *Arizona Republic.*	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 Civic Center Boulevard, Scottsdale, Arizona 85251.	June 5, 2002	045012
Maricopa, (Docket No. FEMA–B–7428).	City of Surprise, (00–09–083P).	January 31, 2002, February 7, 2002, *Arizona Republic.*	The Honorable Joan Shafer, Mayor, City of Surprise, 12425 West Bell Road, Suite D100, Surprise, Arizona 85374.	Jan. 4, 2002	040053
Maricopa, (Docket No. FEMA–B–7428).	Cit of Surprise, (02–09–165P).	March 7, 2002, March 14, 2002, *Arizona Republic.*	The Honorable Joan Shafer, Mayor, City of Surprise, 12425 West Bell Road, Suite D–100, Surprise, Arizona 85374.	Feb. 19, 2002	040053
Maricopa, (Docket No. FEMA–B–7426).	Unincorporated Areas, (01–09–453P).	November 1, 2001, November 8, 2001, *Bucker Valley News.*	The Honorable Janice K. Brewer, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	Oct. 9, 2001	040037
Maricopa, (Docket No. FEMA–B–7426).	Unincorporated Areas, (02–09–241X).	December 27, 2001, January 3, 2001, *Arizona Republic.*	The Honorable Jamice Brewer, Chairperson, Maricopa County Board of Supervisor, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	Apr. 3, 2002	040037
Maricopa, (Docket No. FEMA–B–7428).	Unincorporated Areas, (00–09–083P).	January 31, 2002, February 7, 2002, *Arizona Republic.*	The Honorable Janice Brewer, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	Jan. 4, 2002	040037
Maricopa, (Docket No. FEMA–B–7428).	Unincorporated Areas, (01–09–1158P).	March 15, 2002, March 22, 2002, *Arizona Republic.*	The Honorable Janice Brewer, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	Mar. 5, 2002	040037
Pima, (Docket No. FEMA–B–7428).	City of Tucson, (00–09–051P).	November 8, 2001, November 15, 2001, *Arizona Daily Star.*	The Honorable Robert Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	Nov. 2, 2001	040076
California:					
Alameda, (Docket No. FEMA–B–7428).	City of Livermore, (01–09–344P).	February 7, 2002, February 14, 2002, *Tri-Valley Herald.*	The Honorable Cathie Brown, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550.	Dec. 19, 2001	060008
Alameda, (Docket No. FEMA–B–7428).	Unincorporated Areas, (01–09–344P).	January 11, 2002, January 18, 2002, *Inter-City Express.*	The Honorable Scott Haggerty, Chairman, Alameda County Board of Supervisors, 1221 Oak Street, Suite 536, Oakland, California 94612.	Dec. 19, 2001	060001
Kern, (Docket No. FEMA–B–7426).	Unincorporated Areas, (01–09–804P).	October 22, 2001, October 25, 2001, *Bakersfield Californian.*	The Honorable Ken Peterson, Chairman, Kern County Board of Supervisors, 1115 Truxton Avenue, Fifth Floor, Bakersfield, California 93301.	Sept. 27, 2001	060075
Orange, (Docket No. FEMA–B–7426).	City of Huntington Beach, (00–09–825P).	November 8, 2001, November 15, 2001, *Huntington Beach Independent.*	The Honorable Pam Julien Houchen, Mayor, City of Huntington Beach, 2000 Main Street, Huntington Beach, California 92648.	Feb. 13, 2002	065034
Riverside, (Docket No. FEMA–B–7426).	City of Norco, (02–09–195X).	October 25, 2001, November 1, 2001, *Press Enterprise.*	The Honorable Hal H. Clark, Mayor, City of Norco, 3036 Sierra Avenue, Norco, California 92860.	Jan. 30, 2002	060256
Riverside, (Docket No. FEMA–B–7426).	Unincorporated Areas, (02–09–195X).	October 25, 2001, November 1, 2001, *Press Enterprise.*	The Honorable Jim Venable, Chairperson, Riverside County Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501.	Jan. 30, 2002	060245

State and county	Location and Case No.:	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Riverside, (Docket No. FEMA–B–7428).	Unincorporated Areas, (02–09–069P).	December 21, 2001, December 28, 2001, *Press–Enterprise*.	The Honorable Jim Venable, Chairman, Riverside County Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501.	Nov. 27, 2001	060245
San Diego, (Docket No. FEMA–B–7426).	City of Carlsbad, (01–09–204P).	November 1, 2001, November 8, 2001 *North County Times*.	The Honorable Claude A. Lewis, Mayor, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, California 92008.	Oct. 25, 2001	060285
San Diego, (Docket No. FEMA–B–7426).	City of Escondido, (01–09–835P).	January 3, 2002, January 10, 2002, *North County Times*.	The Honorable Lori Pfeiler, Mayor, City of Escondido, 201 North Broadway, Escondido, California 92025.	Apr. 10, 2002	060290
San Diego, (Docket No. FEMA–B–7428).	City of Escondido, (01–09–8498X).	February 8, 2002, February 15, 2002, *North County Times*.	The Honorable Lori Pfeiler, Mayor, City of Escondido, 201 North Broadway, Escondido, California 92025.	Feb. 19, 2002	060290
San Diego, (Docket No. FEMA–B–7428).	City of San Diego, (02–09–498X).	February 8, 2002, February 15, 2002 *San Diego Daily Transcript*.	The Honorable Dick Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	Feb. 19, 2002	060295
San Diego, (Docket No. FEMA–B–7426).	City of Vista, (01–09–568P).	November 28, 2001, December 5, 2001, *North County Times*.	The Honorable Gloria E. McClellan, Mayor, City of Vista, P.O. Box 1988, Vista, California 92085.	Nov. 7, 2001	060297
Santa Clara, (Docket No. FEMA–B–7428).	City of Santa Clara, (01–09–1106P).	January 24, 2002, January 31, 2002, *San Jose Mercury News*.	The Honorable Judy Nadler, Mayor, City of Santa Clara, 1500 Warburton Avenue Santa Clara, California 95050.	Jan. 4, 2002	060350
Shasta, (Docket No. FEMA–B–7426).	City of Redding, (01–09–682P).	December 5, 2001, December 12, 2001, *Redding Record Searchlight*.	The Honorable Dave McGeorge, Mayor, City of Redding, 777 Cypress Avenue, Redding, California 96001.	May 12, 2002	060360
Solano, (Docket No. FEMA–B–7428).	City of Vacaville, (01–09–935P).	March 21, 2002, March 28, 2002, *The Reporter*.	The Honorable David Fleming, Mayor, City of Vacaville, City Hall, 650 Merchant Street, Vacaville, California 95688.	Feb. 21, 2002	060373
Ventura, (Docket No. FEMA–B–7428).	City of Fillmore, (01–09–709P).	January 31, 2002, February 7, 2002, *Fillmore Gazette*.	The Honorable Donald Gunderson, Mayor, City of Fillmore, Fillmore City Hall, Central Park Plaza, 250 Central Avenue, Fillmore, California 93015–1907.	May 8, 2002	060415
Ventura, (Docket No. FEMA–B–7426).	City of Simi Valley, (01–09–981P).	December 12, 2001, December 19, 2001, *Ventura County Star*.	The Honorable William Davis, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063–2199.	Nov. 26, 2001	060421
Ventura, (Docket No. FEMA–B–7428).	Unincorporated Areas, (01–09–709P).	January 31, 2002, February 7, 2002, *Fillmore Gazette*.	The Honorable Frank Schillo, Chairman, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	May 8, 2002, ...	060413.
Colorado:					
Adams, (Docket No. FEMA–B–7426).	City of Aurora, (00–08–342P).	November 1, 2001, November 8, 2001, *Aurora Sentinel*.	The Honorable Paul E. Adams Tauer, Mayor, City of Aurora, 1470 South Havana Street, Eighth Floor, Aurora, Colorado 80012–4090.	Jan. 23, 2002	080002
Adams, (Docket No. FEMA–B–7428).	Unincorporated Areas, (00–08–342P).	October 6, 2001, October 24, 2001, October 27, 2001, *Brighton Standard—Blade*.	The Honorable Marty Flaum, Chairman, Adams County Board of Commissioners, 450 South Fourth Avenue, Brighton, Colorado 80601.	Jan. 23, 2002	080001
Adams, (Docket No. FEMA–B–7428).	Unincorporated Areas, (01–08–416P).	January 23, 2002, January 30, 2002, *Brighton Standard—Blade*.	The Honorable Ted Strickland, Chairman, Adams County Board of Commissioners, 450 South Fourth Avenue, Brighton, Colorado 80601.	Apr. 9, 2002	080001
Adams and Boulder, (Docket No. FEMA–B–7428).	City of Broomfield, (01–08–416P).	January 2, 2002, January 9, 2002, *Boulder Daily Camera*.	The Honorable William Berens, Mayor, City of Broomfield, One Descombes Drive, Broomfield, Colorado 80020.	Apr. 9, 2002	085073
Arapahoe, (Docket No. FEMA–B–7426).	City of Cherry Hills Village, (01–08–262P).	October 18, 2001, October 25, 2001, *The Villager*.	The Honorable Joan Ducan, Mayor, City of Cherry Hills Village, 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80110.	Jan. 23, 2002	080013

State and county	Location and Case No.:	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Boulder, (Docket No. FEMA–B–7426).	City of Broomfield, (01–08–339P).	October 31, 2001, November 7, 2001, *Boulder Daily Camera.*	The Honorable William Berens, Mayor, City of Broomfield, One DesCombers Drive, Broomfield, Colorado 80020.	Feb. 5, 2002	085073
El Paso, (Docket No. FEMA–B–7428).	Unicorporated Areas, (01–08–226P).	February 6, 2002, February 13, 2002, *El Paso County News.*	Mr. Ed Jones, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Third Floor, Colorado Springs, Colorado 80903–2208.	May 4, 2002	080059
Gilpin, (Docket No. FEMA–B–7428).	City of Black Hawk, (01–08–251P).	March 15, 2002, March 22, 2002, *Weekly Register Call.*	The Honorable Kathryn Eccker, Mayor, City of Black Hawk, P.O. Box 17, Black Hawk, Colorado 80422.	June 20, 2002	080076
Larimer, (Docket No. FEMA–B–7426).	City of Fort Collins, (01–08–045P).	December 27, 2001, January 3, 2002, *Fort Collins Coloradoan.*	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	Nov. 29, 2001	080102
Larimer, (Docket No. FEMA–B–7428).	City of Fort Collins, (02–08–045P).	March 21, 2002, March 28, 2002, *Fort Collins Coloradoan.*	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	Mar. 6, 2002	080102
Larimer, (Docket No. FEMA–B–7428).	Unicorporated Areas, (01–08–404P).	January 3, 2002, January 10, 2002, *Fort Collins Coloradoan.*	The Honorable Kathay Rennels, Chairperson, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522–1190.	Apr. 10, 2002	080101
Hawaii:					
Hawaii, (Docket No. FEMA–B–7428).	Hawaii County, (01–09–1038P).	January 17, 2002, January 24, 2002, *Hawaii Tribune Herald.*	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	Dec. 27, 2001	155166
Nevada:					
Clark, (Docket No. FEMA–B–7426).	City of North Las Vegas, (01–09–514P).	November 21, 2001, November 28, 2001, *Las Vegas Review-Journal.*	The Honorable Michael L. Montandon, Mayor, City of North Las Vegas, 2200 Civic Center Drive, North Las Vegas, Nevada 89030.	Oct. 31, 2001	320007
Elko, (Docket No. FEMA–B–7428).	City of Elko, (01–09–621P).	January 31, 2002, February 7, 2002, *Elko Daily Free Press.*	The Honorable Mike Franzoia, Mayor, City of Elko, 1751 College Avenue, Elko, Nevada 89801.	May 8, 2002	320010
Independent City, (Docket No. FEMA–B–7428).	City of Carson City, (01–09–066P).	December 21, 2001, December 28, 2001, *Nevada Appeal.*	The Honorable Ray Masayko, Mayor, City of Carson City, 201 North Carson Street, Suite 2, Carson City, Nevada 89701.	Nov. 29, 2001	320001
Washoe, (Docket No. FEMA–B–7428).	City of Reno, (01–09–689P).	January 10, 2002, January 17, 2002, *Reno Gazette-Journal.*	The Honorable Jeff Griffin, Mayor, City of Reno, P.O. Box 1900, Reno, Nevada 89505–1900.	Dec. 14, 2001	320020
Washoe, (Docket No. FEMA–B–7426).	Unincorporated Areas, (01–09–307P).	December 21, 2001, December 28, 2001, *Reno Gazette-Journal.*	The Honorable Ted Short, Chairman, Washoe County Board of Commissioners, P.O. Box 11130, Reno, Nevada 89520.	Nov. 26, 2001	320019
Oklahoma:					
Oklahoma, (Docket No. FEMA–B–7428).	City of Edmond, (02–06–210P).	March 7, 2002, March 14, 2002, *Edmond Evening Sun.*	The Honorable Sandra Naifeh, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73083–2970.	June 12, 2002	400252
Oregon:					
Coos, (Docket No. FEMA–B–7428).	City of Bandon, (00–10–392P).	January 2, 2002, January 9, 2002, *Western World.*	The Honorable Brian M. Vick, Mayor, City of Bandon, City Hall, P.O. Box 433, Bandon, Oregon 97411.	Dec. 10, 2001	410043
South Dakota:					
Pennington, (Docket No. FEMA–B–7428).	Town of New Underwood, (02–08–085P).	January 10, 2002, January 17, 2002, *Rapid City Journal.*	The Honorable Benita White, Mayor, Town of New Underwood, P.O. Box 278, New Underwood, South Dakota 57761.	Dec. 14, 2001	460092
Texas:					
Collin, (Docket No. FEMA–B–7426).	City of Plano, (01–06–1043P).	November 8, 2001, November 15, 2001, *Plano Star Courier.*	The Honorable Jeran Akers, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Oct. 17, 2001	480140

State and county	Location and Case No.:	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Collin, (Docket No. FEMA–B–7428).	City of Plano, (01–06–1678P).	March 15, 2002, March 22, 2002, *Plano Star Courier.*	The Honorable Jeran Akers, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Mar. 5, 2002	480140
Dallas, (Docket No. FEMA–B–7426).	City of Dallas (01–06–1381P).	December 27, 2001, January 3, 2002, *Commercial Recorder.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201.	Dec. 6, 2001	480171
Dallas, (Docket No. FEMA–B–7426).	City of Sachse, (01–06–309P).	November 7, 2001, November 14, 2001, *Dallas Morning News.*	The Honorable Hugh Cairns, Mayor, City of Sachse City Hall, 5560 Highway 78, Sachse, Texas 75048.	Oct. 12, 2001	480186
Dallas, (Docket No. FEMA–B–7426).	Unincorporated Areas, (01–06–309P).	November 7, 2001, November 14, 2001, *Dallas Morning News.*	The Honorable Lee F. Jackson, Dallas County Judge, Administration Building, 411 Elm Street, Second Floor, Dallas, Texas 75202.	Oct. 12, 2001	480165
Virginia:					
Prince William, (Docket No. FEMA–B–7428).	City of Manassas, (01–03–207P).	March 14, 2002, March 21, 2002, *Manassas Journal Messenger.*	The Honorable Marvin L. Gillum, Mayor, City of Manassas, 9027 Center Street, Room 101, Manassas, Virginia 20110.	June 21, 2002	510122
Prince William, (Docket No. FEMA–B–7428).	Unincorporated Areas, (01–03–207P).	March 14, 2002, March 21, 2002, *Manassas Journal Messenger.*	The Honorable Sean Connaughton, Chairman, Prince William County Board of Supervisors, One County Complex Court, Prince William, Virginia 22192.	June 21, 2002	510119
Washington:					
Cowlitz, (Docket No. FEMA–B–7426).	Unincorporated Areas, (01–10–401P).	November 8, 2001, November 15, 2001, *Daily News.*	The Honorable Jeff M. Rasmussen, Chairman, Cowlitz County, Board of Commissioners, 207 Fourth Avenue North, Kelso, Washington 98626.	Feb. 13, 2002	530032
Mason, (Docket No. FEMA–B–7428).	Skokomish Indian Tribe, (01–10–496P).	February 28, 2002, March 7, 2002, *Shelton Mason County Journal.*	The Honorable Denny Hurtado, Chairman, Skokomish Tribal Council, North 80 Tribal Center Road, Shelton, Washington 98584.	Feb. 7, 2002	530326
Whatcom, (Docket No. FEMA–B–7426).	Unincorporated Areas, (01–10–534P).	November 29, 2001, December 6, 2001, *Bellingham Herald.*	The Honorable Pete Kremen, County Executive, Whatcom County, 311 Grand Avenue, Suite 108, Bellingham, Washington 98225.	November 13, 2001.	530198

Dated: July 23, 2002.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–19576 Filed 8–1–02; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 072302B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Reopening of the Commercial Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of a reopening of a fishery.

SUMMARY: NMFS announces that the closed commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico will reopen. Reopening of the fishery is necessary because the 2002 spring quota for red snapper has not been reached.

DATES: The commercial fishery for red snapper will reopen at noon, local time, August 1, 2002, and will close at noon, local time, August 7, 2002. The fishery will remain closed until noon, local time, October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2002. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached. The spring season was originally scheduled

to be closed at noon, local time, July 7, 2002, when NMFS projected the spring quota would be reached. However, inclement weather during the July 1–7, 2002, opening (abbreviated opening) and the 4th of July holiday limited fishing activities for red snapper in some areas of the Gulf and, therefore, the spring quota was not reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available commercial spring quota of 3.10 million lb (1.41 million kg) for red snapper will be reached when the fishery closes at noon, local time, August 7, 2002. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, October 1, 2002. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, August 7, 2002.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, August 7, 2002, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: July 30, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19542 Filed 7–30–02; 3:20 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010710173–2184–05; I.D. 032102A]

RIN 0648–AN70

Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Recreational Measures for the 2002 Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement recreational measures for the 2002 summer flounder, scup, and black sea bass fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the upcoming fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Effective August 2, 2002.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees, the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA) contained within the RIR, and the Environmental Assessment (EA) are available from the Northeast Regional Office at the following address: National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov/ro/doc/nr.htm.*

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail rick.a.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) and its implementing regulations (50 CFR part 648, subparts G, H, and I) describe the process for specifying annual recreational measures. Final specifications for the 2002 summer flounder, scup, and black sea bass fisheries were published at 66 FR 66348, December 26, 2001. These specifications included a coastwide recreational harvest limit of 9.72 million lb (4.40 million kg) for summer flounder, 2.71 million lb (1.23 million kg) for scup, and 3.43 million lb (1.55 million kg) for black sea bass. A proposed rule to implement annual Federal recreational measures for the 2002 summer flounder, scup, and black sea bass fisheries was published at 67 FR 36139, on May 23, 2002, and contained management measures (i.e., minimum fish size, possession limit, and season) intended to keep annual recreational harvest from exceeding the specified harvest limits. For scup, one of the two alternatives that was being considered in the proposed rule is being implemented through this final rule (i.e., NMFS Scup Alternative 1). In the proposed rule, the proposed regulatory text for NMFS Scup Alternative 2 was published. The more stringent alternative was published in order to focus public comment on potential impacts of the two alternatives. However, no comments were received. Because Scup Alternative 1 has lower potential revenue losses associated with it, NMFS has selected Scup Alternative 1 for implementation in the final rule to minimize adverse economic impacts on small entities, yet still prevent the recreational harvest limit from being exceeded. Therefore, the regulatory text for the scup measures differ from those contained in the proposed rule. The recreational measures for black sea bass contained in this final rule are unchanged from those published in the proposed rule. Table 1 contains the coastwide Federal measures for scup and black sea bass that are being implemented. For summer flounder, this final rule implements conservation equivalency, as the process was described in the proposed rule. The management measures will vary according to the state of landing (see Table 2). A complete discussion of the development of the recreational measures appeared in the preamble of the proposed rule and is not repeated here.

TABLE 1—2002 RECREATIONAL MEASURES

Species	Minimum Size (total length)	Possession Limit	Open Season
Summer Flounder	Varies according to state of landing		
Scup	10 inches (25.4 cm)	20 fish	Jan. 1 through Feb. 28 and July 1 through Oct. 2
Black Sea Bass	11.5 inches (29.21 cm)	25 fish	Jan.1 through Dec. 31

TABLE 2—2002 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum Size (inches)	Minimum size (cm)	Possession Limit	Open Seasons
MA	16.5	41.9	7 fish	Year-Round
RI	18	45.7	5 fish	May 25 through Sep. 20
CT	17	43.2	6 fish	Year-Round
NY	17	43.2	7 fish	May 2 through Oct. 31
NJ	16.5	41.9	8 fish	May 18 through Sep. 24
DE	17.5	44.4	4 fish	May 16 through Dec. 31
MD	17	43.2	8 fish	Jan 1 through July 25&Aug. 12 through Dec. 31
VA	17.5	44.4	8 fish	Mar. 29 through July 23&Aug. 8 through Dec. 31
NC	15.5	39.4	8 fish	July 4 through Nov. 19

Comments and Responses

One co-signed letter was received from four environmental organizations regarding the proposed recreational measures for summer flounder, scup, and black sea bass. The letter contained two comments. Both comments received prior to the close of the comment period that were relevant to the proposed measures were considered in development of this final rule.

Comment 1: The commenters requested that NMFS explain how the recreational scup measures would ensure that overfishing of scup does not occur in 2002, considering that the states, through the Atlantic States Marine Fisheries Commission (ASMFC) Addendum VII, are implementing a different suite of management measures in state waters.

Response: The FMP was originally developed as a joint management plan between ASMFC and the Council. However, ASMFC chose to implement different measures to manage the scup recreational fishery than the Council did, through the adoption of ASMFC Addendum VII. NMFS does not, and cannot, regulate state vessel activity in state waters, except under a very narrow set of circumstances under section 306 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that do not exist in this situation. Therefore, NMFS is implementing one of the scup alternatives that was analyzed by the Council, and determined to result in landings that do not exceed the scup recreational harvest limit. By implementing measures in conjunction with the states (closed season, minimum fish size and possession limit) designed to reduce recreational landings by 57.4 percent, NMFS is doing all that can be done under the statute, short of closing the recreational scup fishery in the EEZ. A closure of the EEZ to recreational fishing would have virtually no effect, since 92 percent of the recreational harvest comes from state waters. The negative impact of the closure would fall mainly on the party and charter boat sector of the fleet, which may be viewed as unfair, given the minimal effect of such a closure. Further, the cost of enforcing such a closure would, on at least a qualitative basis, exceed whatever benefit would be derived from the closure.

Both the Council and ASMFC sought to achieve an equivalent scup recreational harvest limit (2.71 million lb (1.23 million kg)). However, the Council used a coastwide approach while ASMFC adopted state-specific measures. For instance ASMFC allowed Delaware, Maryland, Virginia and North Carolina to retain their existing management measures due to low historical scup landings. States from Massachusetts through New York were required to implement state-specific measures based upon the effectiveness of their 2001 regulations relative to landings from 1998 —2000. In the case of New Jersey, which has very limited recreational landings data, ASMFC approved measures which were determined to most likely achieve the required landings reduction.

As a result, the 2002 coastwide Federal scup recreational regulations will differ from the state-specific scup recreational measures. NMFS believes that the combination of ASMFC's measures in state waters and NMFS' coastwide Federal measures are consistent with the FMP, given that both the state and Federal measures were developed to achieve the same recreational harvest limit of 2.71 million lb (1.23 million kg).

Comment 2: The commenters requested that NMFS explain how using conservation equivalency to manage the summer flounder recreational fishery, whereby Federal measures are waived in lieu of state measures, will ensure that overfishing of the resource does not occur in compliance with the requirements of the Magnuson-Stevens Act, its implementing regulations, and the FMP.

Response: The summer flounder measures being implemented through this final rule were selected because they meet the conservation equivalency guidelines and are consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. The ASMFC Summer Flounder Technical Committee and Management Board have evaluated each state's proposal to determine whether they are consistent with the achievement of the overall summer flounder recreational harvest limit. NMFS has received a determination from ASMFC verifying that each state's proposal is consistent with the state-specific requirements established by the Management Board. The requirement to implement conservation equivalency for the recreational summer flounder fishery have been met. Adopting measures that achieve the required reduction in landings from the 2001

level and that are tailored to address the differences in the fishery in each state, thereby ensuring state support in enforcing these measures, is a reasonable approach to meeting the mandates of the Magnuson-Stevens Act to prevent overfishing.

Changes From the Proposed Rule

Section 648.107 was revised to better reflect the procedural requirements for implementing conservation equivalency for the recreational summer flounder fishery. The change clarifies that the Regional Administrator shall determine that the state recreational management measures are the conservation equivalent of the Federal coastwide measures based upon a recommendation from the ASMFC Summer Flounder Board.

Sections 648.122, 648.124, and 648.125 were revised to incorporate NMFS' selection of Scup Alternative 1 for implementation through this final rule, rather than Scup Alternative 2. This selection was made in consideration of the economic analyses presented in the Initial Regulatory Flexibility Analysis (IRFA) which indicated that less severe economic impacts on small entities were associated with Scup Alternative 1. NMFS did not receive any public comments regarding the economic impacts of the proposed measures contained in the IRFA.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This action establishes recreational management measures for the 2002 summer flounder, scup, and black sea bass fisheries. Immediate action to impose more stringent size and possession limits in the scup and black sea bass fisheries must be taken to slow the recreational harvest of these species and enhance the probability that the harvest limits for these species will not be exceeded. For summer flounder, immediate action is necessary to achieve consistency between state and Federal measures. This is a benefit to the states as their vessels can fish under their rules without compromising conservation of the resource. For all of the species, it is important to implement these measures as soon as possible to prevent overfishing. Failure to implement these provisions immediately could result in landings in excess of the recreational harvest limits and prevent NMFS from carrying out its mandate to prevent overfishing of these resources. It would, therefore, be impracticable and contrary to the public interest to delay implementation of these provisions. The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effectiveness of the 2002 summer flounder, scup, and black sea bass recreational measures.

The Council and NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. A copy of this analysis is available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule contained a detailed summary of the methodology and analyses contained in the IRFA and that discussion is not repeated in its entirety here. A summary of the FRFA follows.

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule.

Public Comments

One letter was received on the recreational measures contained in the proposed rule. The letter did not reference the IRFA or the economic impacts on small entities.

Number of Small Entities

The measures established by this action could affect any recreational angler who fishes for summer flounder, scup or black sea bass in Federal waters. However, the summary of impacts focused upon the 738 party/charter vessels that held Federal party/charter permits for the summer flounder, scup, and/or black sea bass fisheries in 2000 (the most recent year for which complete permit data are available) because these vessels can be specifically identified in the Federal vessel permit database, and would be impacted by the regulations regardless of whether they fish in state or Federal waters. Although other recreational fishers are likely to be impacted, they are not considered small entities, nor is a Federal permit required to participate in these fisheries. Of the 738 vessels possessing a Federal party/charter permit for these fisheries, only 393 reported actively participating in these fisheries in 2000.

Minimization of Significant Economic Impacts on Small Entities

The FRFA contains an analysis of the measures being implemented and the other alternatives that were considered. The measures being implemented in this final rule consist of the Council's preferred alternative for summer flounder and black sea bass, and the Council's non-preferred alternative for scup (NMFS Scup Alternative 1).

The category of small entities likely to be affected by this action are party/charter vessels harvesting summer flounder, scup, and/or black sea bass. This action could affect any party/charter vessel holding a Federal permit for summer flounder, scup, and/or black sea bass, regardless of whether it is fishing in Federal or in state waters. The measures implemented through this final rule could affect 738 vessels with a Federal charter/party permit for summer flounder, scup and/or black sea bass. However, only 393 of these vessels actively reported participating in the recreational summer flounder, scup, and/or black sea bass fisheries in 2000.

The FRFA analysis assessed each of the management alternatives and their impacts upon revenues of federally permitted party/charter vessels. Projected Marine Recreational Fisheries Statistics Survey (MRFSS) data indicate that 1.778 million trips were taken by anglers aboard party/charter vessels in 2001 in the Northeast Region. The methodology used to assess the economic impacts of the management measures upon party/charter vessels was described in detail in the IRFA summary contained in the proposed rule and is not repeated here.

The final 2002 summer flounder recreational measures are expected to limit the coastwide catch to 9.72 million lb (4.40 million kg) and reduce landings by at least 27 percent, compared to 2001, by deferring to state management measures as the process for state conservation equivalency was specified through Framework Adjustment 2 to the FMP (66 FR 36208). Comparatively, the economic impact of conservation equivalency among states will likely be proportional to the level of landings reductions that are required of each state. Based upon the number of fish landed in 1998 and projected to have been landed in 2001, the percent reduction in landings required by the states for 2002 (relative to 2001) are: Rhode Island - 5 percent; New Jersey - 16.7 percent; Delaware - 3.5 percent; Maryland - 5.3 percent; Virginia - 43.8 percent; and North Carolina - 28.4 percent. Massachusetts, Connecticut and New York do not require any reductions in recreational summer flounder landings if their current regulations are maintained. If conservation equivalency is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts on small entities, to the extent practicable, yet still achieves the biological objectives of the FMP. This is because each state may adopt measures that are most appropriate for that state to

achieve its conservation objectives, rather than being required to adopt Federal coastwide measures.

The precautionary default provision that was included in the conservation equivalency proposal was not analyzed as a separate provision because it was assumed that, if conservation equivalency were approved in the final rule, the states would use the opportunity to tailor less restrictive measures designed specifically to their state fisheries. Precautionary default measures are defined as measures that would achieve at least the overall required reduction in landings for each state. The Precautionary Default Alternative consists of an 18–inch (45.72–cm) total length (TL) minimum fish size, a possession limit of one fish per person, and no closed season. The precautionary default measures would reduce state specific landings by 41 percent (Delaware) to 88.2 percent (North Carolina). As specified by Framework 2 to the FMP, specific states that fail to implement conservation equivalent measures would be required to implement the precautionary default measures. For 2002, none of the states are required to implement the precautionary default measures.

Under the coastwide summer flounder alternative (17–inch (43.2–cm) TL minimum fish size, eight-fish possession limit, and a year-round open season), less than 1 percent of trips aboard party/charter vessels would be affected, assuming that angler effort and catch rates in 2002 are similar to 2001. The average potential revenue loss per vessel under this alternative was estimated to be $1,506 in Delaware, $961 in New Jersey, $808 in Virginia, $186 in Maryland, and $67 in Rhode Island. This coastwide alternative was not selected because the Council recommended conservation equivalency instead, because that alternative would be more likely to minimize economic impacts on small entities.

The status quo summer flounder alternative would have maintained a 15.5–inch (39.4–cm) TL minimum fish size, a three-fish possession limit, and an open season from May 25 to September 4. Assuming that angler effort in 2002 is similar to 2001, and that catch rates remain constant, the status quo alternative would not affect any additional recreational fishing trips for summer flounder in 2002. This alternative was not selected because it did not achieve the recreational harvest limit established for 2002.

The final 2002 recreational scup measures (10–inch (25.4–cm) TL minimum fish size, 20–fish possession limit, and January 1 through February 28 and July 1 through October 2 open seasons) will affect approximately 4 percent of the total angler trips taken aboard party/charter vessels in 2002, assuming catch rates and angler effort in 2002 are similar to those in 2001. Under this alternative, the average maximum revenue loss per vessel was estimated to be $13,425 in New York, $8,267 in Delaware, $3,114 in Massachusetts, $2,525 in Connecticut, $2,083 in Rhode Island, and $899 in New Jersey. Scup Alternative 1 was selected for implementation because it would result in landings that do not exceed the recreational harvest limit and because the revenue losses associated with this alternative are less than those associated with Scup Alternative 2.

As emphasized in the IRFA summary in the proposed rule, the methodology used in the economic analysis likely overestimates the potential revenue impacts associated with each alternative. The analysis assumes that any affected fishing trip (i.e., not in compliance with the management measures) in 2001 would not occur in 2002. It is quite likely that some anglers would continue to take party/charter vessel trips, even if the restrictions limit their landings.

The measures proposed under Scup Alternative 2 (a 9–inch (22.9–cm) TL minimum fish size, a 20–fish possession limit, and open seasons from January 1 through February 28 and September 2 through October 31) would affect approximately 7.3 percent of the total angler trips taken aboard party/charter boats in 2001, assuming catch rates and angler effort in 2002 are similar to those in 2001. The average maximum gross revenue loss per party/charter vessel associated with NMFS Scup Alternative 2 was estimated to be $15,509 in New York, $11,733 in Delaware, $10,495 in New Jersey, $6,704 in Massachusetts, $3,591 in Rhode Island, and $2,754 in Connecticut. This alternative was not selected because of the higher potential revenue losses associated with it.

The economic impacts associated with the Council's Preferred Scup Alternative and with Scup Alternative 3 were summarized in the proposed rule and are not repeated here. The Council's Preferred Scup Alternative was not implemented because it would not achieve the landings reduction necessary to attain the 2002 scup recreational harvest limit and would not be in compliance with the FMP. Scup Alternative 3 was not selected for implementation because it specified a very short fishing season and, consequently, had very high associated potential revenue losses.

The status quo alternative for scup would have maintained a 50–fish possession limit, a 9–inch (22.9–cm) TL minimum fish size, and an open season from August 15 through October 31. Assuming that angler effort in 2002 is similar to 2001 and that catch rates remain constant, the status quo alternative would not affect any additional recreational fishing trips for scup in 2001. This alternative was not selected because it does not meet the goals and objectives of the FMP.

For black sea bass, about 1.8 percent of the trips aboard party/charter vessels in 2001 would be affected by the final 2002 recreational measures, assuming that catch rates and angler effort in 2002 are similar to 2001. Under this alternative, the average maximum revenue loss per vessel is estimated to be $26,122 in Maryland, $11,091 in Delaware, $3,075 in New Jersey, $1,818 in Virginia, $1,378 in North Carolina, and $54 in Rhode Island. This alternative was selected because it minimizes economic impacts and attains the goals and objectives of the FMP.

Under black sea bass alternative 1 (an 11–inch (27.9–cm) TL minimum fish size, a 25–fish possession limit, and an open season from May 19 through November 30) about 5.5 percent of the trips aboard party/charter vessels would have been affected. Under this alternative, the average maximum revenue loss per vessel was estimated to be $27,264 in Maryland, $12,868 in Delaware, $4,119 in New Jersey, $2,023 in Virginia, $1,578 in Rhode Island, $1,542 in North Carolina, and $36 in Massachusetts. This alternative was not selected because it has a greater negative economic impact than the selected alternative and does not minimize economic impacts on small entities.

Under black sea bass Alternative 2 (an 11–inch (27.94–cm) TL minimum fish size, a 15–fish possession limit, and an open season from January 1 through February 28 and May 1 through December 26) about 5.5 percent of the trips aboard party/charter vessels would have been affected. The average maximum revenue loss per vessel associated with this alternative was estimated to be $36,772 in Maryland, $23,462 in New Jersey, $10,582 in Delaware, $1,869 in Virginia, $1,378 in North Carolina, $183 in Rhode Island, $59 in New York, and $5 in Massachusetts. Black sea bass Alternative 2 was not selected because it would have a greater negative economic impact than the selected alternative and would not minimize the economic impacts on small entities.

The status quo alternative for black sea bass would have maintained an 11–inch (27.9–cm) TL minimum fish size, a 25–fish possession limit, and open seasons from January 1 through February 28 and May 10 through December 31. Assuming that angler effort in 2002 is similar to 2001 and that catch rates remain constant, the status quo alternative would not affect any additional recreational fishing trips for black sea bass in 2002. This alternative was not selected because it would not meet the goals and objectives of the FMP.

It is important to re-emphasize that the revenue losses discussed above represent the maximum potential gross revenue losses per vessel. These losses were calculated by assuming that all of the angler trips constrained by the proposed measures would no longer occur. Because anglers would continue to have the ability to engage in catch-and-release fishing for summer flounder, scup, and black sea bass and because of the numerous alternative target species available to anglers, the reduction in effort and associated expenditures should be substantially lower than indicated in this summary. The lack of a demand model limits the ability to empirically estimate how sensitive the affected anglers might be to the proposed regulations. Because the measures affect the number and size of the fish that may be kept and do not prohibit anglers from engaging in catch-and-release fishing or fishing up to the possession limit, demand and revenues for party/charter vessels are expected to remain relatively stable in 2002.

In summary, the summer flounder recreational measures minimize economic impacts on small entities by allowing states to develop and implement measures that are most appropriate for their fisheries, yet are consistent with the biological objectives of the FMP. The scup recreational alternative that is being implemented through this final rule has been determined to have the lowest potential revenue losses associated with it, as compared to all of the alternatives that achieve the biological objectives of the FMP. Similarly, the black sea bass recreational alternative that is being implemented through this final rule has been determined to have the lowest potential revenue losses associated with it, compared to all of the alternatives that achieve the biological objectives of the FMP. This action does not contain any additional collection-of-information, reporting, recordkeeping, or other compliance requirements.

This action does not duplicate, overlap, or conflict with any other Federal rules.

The RIR/FRFA is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 29, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.100, a heading is added to paragraph (d) introductory text to read as follows:

§ 648.100 Catch quotas and other restrictions.

* * * * *

(d) *Commercial measures.** * *

3. Section 648.102 is revised to read as follows:

§ 648.102 Time restrictions.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to the possession limit may fish for summer flounder from January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.100.

4. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 17 inches (43.2 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

* * * * *

5. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than eight summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit.***

* * * * *

6. Section 648.107 is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2002 are the conservation equivalent of the season, minimum size and possession limit prescribed in §§648.102, 648.103 and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

(1) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting summer flounder in or from the EEZ and subject to the recreational fishing measures of this part, landing summer flounder in a state whose fishery management measures are determined by the Regional Administrator to be conservation equivalent shall not be subject to the more restrictive Federal measures, pursuant to the provisions of § 648.4(b). Those vessels shall be subject to the recreational fishing measures implemented by the state in which they land.

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission shall be subject to the following precautionary default measures: Season through January 1 through December 31; minimum size - 18 inches (45.7 cm); and possession limit - one fish.

7. In § 648.122, paragraph (g) is revised to read as follows:

§ 648.122 Time and area restrictions.

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through February 28 and from July 1 through October 2. This time period may be adjusted pursuant to the procedures in § 648.120.

8. In § 648.124, paragraph (b) is revised to read as follows:

§ 648.124 Minimum fish sizes.

* * * * *

(b) The minimum size for scup is 10 inches (25.4 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

* * * * *

9. In § 648.125, the first sentence of paragraph (a) is revised to read as follows:

§ 648.125 Possession limit.

(a) No person shall possess more than 20 scup in, or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit.***

* * * * *

10. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit, may not possess black sea bass, except from January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.140.

11. In § 648.143, paragraph (b) is revised to read as follows:

§ 648.143 Minimum sizes.

* * * * *

(b) The minimum size for black sea bass is 11.5 inches (29.2 cm) TL for all vessels that do not qualify for a moratorium permit, and party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members, or charter boats holding a moratorium permit if fishing with more than three crew members. The minimum size may be adjusted for recreational vessels pursuant to the procedures in § 648.140.

* * * * *

[FR Doc. 02–19582 Filed 8–1–02; 8:45 am]

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Proposed Rules

Federal Register
Vol. 67, No. 149
Friday, August 2, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

RIN 3150–AG76

Combustible Gas Control in Containment

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend its regulations for combustible gas control in power reactors applicable to current licensees and to set and consolidate combustible gas control regulations for future applicants and licensees. The proposed rule eliminates the requirements for hydrogen recombiners and hydrogen purge systems and relaxes the requirements for hydrogen and oxygen monitoring equipment to make them commensurate with their risk significance. This action stems from the Commission's ongoing effort to risk-inform its regulations, and is intended to reduce the regulatory burden on present and future power reactor licensees.

In addition to the rulemaking and its associated analyses, the NRC is also proposing a draft regulatory guide, a draft standard review plan revision, and a Consolidated Line Item Improvement Process (CLIIP) for draft technical specifications changes to implement the proposed rule. The NRC is requesting comments on these documents as well as the proposed rulemaking.

DATES: Submit comments by October 16, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Website at *http://ruleforum.llnl.gov*. This site provides the capability to upload comments as files (any format) if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. Some of these documents may also be viewed and downloaded electronically via the rulemaking Website.

FOR FURTHER INFORMATION CONTACT: Anthony W. Markley, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3165, e-mail *awm@nrc.gov*.

SUPPLEMENTARY INFORMATION:

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II. Rulemaking Initiation
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I. Background

On October 27, 1978 (43 FR 50162), the Commission adopted a new rule, 10 CFR 50.44, specifying the standards for combustible gas control systems. The rule requires the applicant or licensee to show that during the time period following a postulated loss-of-coolant accident (LOCA), but prior to effective operation of the combustible gas control system, either: (1) An uncontrolled hydrogen-oxygen recombination would not take place in the containment, or (2) the plant could withstand the consequences of an uncontrolled hydrogen-oxygen recombination without loss of safety function. If neither of these conditions could be shown, the rule required that the containment be provided with an inerted atmosphere to provide protection against hydrogen burning and explosion. The rule defined a release of hydrogen involving up to 5 percent oxidation of the fuel cladding as the amount of hydrogen to be assumed in determining compliance with the rule's provisions. This design-basis hydrogen release was based on the design-basis LOCA postulated by 10 CFR 50.46 and was multiplied by a factor of five for added conservatism to address possible further degradation of emergency core cooling.

The accident at Three Mile Island, Unit 2 involved oxidation of approximately 45 percent of the fuel cladding [NUREG/CR–6197, dated March 1994] with hydrogen generation well in excess of the amounts required to be considered for design purposes by § 50.44. In the aftermath of the Three Mile Island accident, the Commission reevaluated the adequacy of the regulations related to hydrogen control to provide greater protection in the event of accidents more severe than design-basis LOCAs. The Commission reassessed the vulnerability of various containment designs to hydrogen burning, which resulted in additional hydrogen control requirements adopted as amendments to § 50.44. The 1981 amendment, which added paragraphs (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) to the rule, imposed the following requirements: (1) An inerted atmosphere for boiling water reactor (BWR) Mark I and Mark II containments, (2) installation of recombiners for light water reactors that rely on a purge or repressurization system as a primary means of controlling combustible gases following a LOCA, and (3) installation of high point vents to relieve noncondensible gases from the reactor vessel (46 FR 58484, December 2, 1981).

On January 25, 1985 (50 FR 3498), the Commission published another amendment to § 50.44. This

amendment, which added paragraph (c)(3)(iv), required a hydrogen control system justified by a suitable program of experiment and analysis for BWRs with Mark III containments and pressurized water reactors (PWRs) with ice condenser containments. In addition, plants with these containment designs must have systems and components to establish and maintain safe shutdown and containment integrity. These systems must be able to function in an environment after burning and detonation of hydrogen unless it is shown that these events are unlikely to occur. The control system must handle an amount of hydrogen equivalent to that generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region.

When § 50.44 was amended in 1985, the NRC recognized that an improved understanding of the behavior of accidents involving severe core damage was needed. During the 1980s and 1990s, the Commission sponsored a severe accident research program to improve the understanding of core melt phenomena, combustible gas generation, transport and combustion, and to develop improved models to predict the progression of severe accidents. The results of this research have been incorporated into various studies (*e.g.*, NUREG–1150 and probabilistic risk assessments performed as part of the Individual Plant Examination (IPE) program) to quantify the risk posed by severe accidents for light water reactors.

The result of these studies has been an improved understanding of combustible gas behavior during severe accidents and confirmation that the hydrogen release postulated from a design-basis LOCA was not risk-significant because it would not lead to containment failure, and that the risk associated with hydrogen combustion was from beyond design-basis (*e.g.*, severe accidents) accidents. These studies also confirmed the assessment of vulnerabilities that went into the 1981 and 1985 amendments which required additional hydrogen control measures for some containment designs.

II. Rulemaking Initiation

In a June 8, 1999, Staff Requirements Memorandum (SRM) on SECY–98–300, Options for Risk-informed Revisions to 10 CFR part 50—"Domestic Licensing of Production and Utilization Facilities," the Commission approved proceeding with a study of risk-informing the technical requirements of 10 CFR part 50. The NRC staff provided its plan and schedule for the study phase of its work to risk-inform the technical requirements of 10 CFR part 50, in SECY–99–264, "Proposed Staff Plan for Risk-Informing Technical Requirements in 10 CFR part 50" dated November 8, 1999. The Commission approved proceeding with the plan for risk-informing the part 50 technical requirements in a February 3, 2000, SRM. Section 50.44 was selected as a test case for piloting the process of risk-informing 10 CFR part 50 in SECY–00–0086, "Status Report on Risk-Informing the Technical Requirements of 10 CFR part 50 (Option 3)."

Mr. Christie of Performance Technology, Inc. submitted letters, dated October 7 and November 9, 1999, that requested changes to the regulations in § 50.44. He requested that the regulations be amended to: reflect that the hydrogen source term be based on realistic calculations for accidents with a high probability of causing severe reactor core damage; eliminate the requirement to monitor hydrogen concentration; eliminate the requirement to control combustible gas concentration resulting from a postulated-LOCA; retain the requirement to inert Mark I and II containments; retain the requirement for high point vents; require licensees with Mark III and ice condenser containments to have hydrogen control systems capable of meeting a specified performance level; and specify that facilities with other types of containments "must demonstrate that the reactor containment (based on realistic calculations) can withstand, without any hydrogen control system, a hydrogen burn for accidents with a high probability of causing severe core damage."

These letters have been treated by the NRC as a petition for rulemaking and assigned the Docket No. PRM–50–68. The NRC published a document requesting comment on the petition in the **Federal Register** on January 12, 2000 (65 FR 1829). The issues associated with § 50.44 raised by the petitioner were discussed in SECY–00–0198, Status Report on Study of Risk-Informed Changes to the Technical Requirements of 10 CFR part 50 (Option 3) and Recommendations on Risk-Informed Changes to 10 CFR 50.44 (Combustible Gas Control). The proposed rule and the petition are consistent in most areas, with the following exceptions proposed by the NRC: a functional requirement for hydrogen monitoring, the capability for ensuring a mixed atmosphere, and the expectation that future plants preclude concentrations of hydrogen below limits that may support detonation. The Commission's basis for including these requirements in the proposed rule is addressed in the subsequent sections of this supplementary information.

The Commission also received a petition for rulemaking filed by the Nuclear Energy Institute. The petition was docketed on April 12, 2000, and has been assigned Docket No. PRM–50–71. The petitioner requests that the NRC amend its regulations to allow nuclear power plant licensees to use zirconium-based cladding materials other than zircaloy or ZIRLO, provided the cladding materials meet the requirements for fuel cladding performance and have received approval by the NRC staff. The petitioner believes the proposed amendment would improve the efficiency of the regulatory process by eliminating the need for individual licensees to obtain exemptions to use advanced cladding materials which have already been approved by the NRC. The proposed rule would remove the restrictive language in 10 CFR 50.44 that precludes the use of zirconium-based cladding materials other than zircaloy or ZIRLO. The change requested by the petitioner is unrelated to the risk-informing of 10 CFR 50.44. The Commission is addressing this petition in this rulemaking for effective use of resources. The NRC published a document requesting comment on the petition in the **Federal Register** on May 30, 2000 (65 FR 34599).

In SECY–00–0198, dated September 14, 2000, the NRC staff proposed a risk-informed voluntary alternative to the current § 50.44. Attachment 2 to that paper, hereafter referred to as the Feasibility Study, used the framework described in Attachment 1 to the paper and risk insights from NUREG–1150 and the IPE programs, to evaluate the requirements in § 50.44. The Feasibility Study found that combustible gas generated from design-basis accidents was not risk-significant for any containment type, given intrinsic design capabilities or installed mitigative features. The Feasibility Study also concluded that combustible gas generated from severe accidents was not risk significant for (1) Mark I and II containments provided that the required inerted atmosphere was maintained, (2) Mark III and ice condenser containments provided that the required igniter systems were maintained and operational, and (3) large, dry and sub-atmospheric containments because the large volumes, high failure pressures, and likelihood of random ignition help prevent the build-up of hydrogen concentrations.

The Feasibility Study did conclude that the existing requirements for

combustible gas mitigative features were risk-significant and must be retained. Additionally, the Feasibility Study also indicated that some mitigative features may need to be enhanced beyond current requirements. This was identified as Generic Issue (GI) 189. The resolution of GI–189 will assess whether improvements to safety can be achieved and the costs and benefits of enhancing combustible gas control requirements for Mark III and ice condenser containment designs. The resolution of GI–189 will proceed independently of this rulemaking.

The staff incorporated Mr. Christie's petition into the effort to risk-inform § 50.44. A comparison of Mr. Christie's petition for rulemaking to the staff's recommended alternative was provided in Attachment 3 to SECY–00–0198. In an SRM dated January 19, 2001, the Commission directed the NRC staff to proceed expeditiously with rulemaking on the risk-informed alternative to § 50.44.

In SECY–01–0162, Staff Plans for Proceeding with the Risk-informed Alternative to the Standards for Combustible Gas Control Systems in Light-water-cooled Power Reactors in 10 CFR 50.44, dated August 23, 2001, the NRC staff recommended a revised approach to the rulemaking effort. This revised approach recognized that risk-informing part 50, Option 3 was based on a realistic reevaluation of the basis of a regulation and the application of realistic risk analyses to determine the need for and relative value of regulations that address a design-basis issue. The result of this process necessitates a fundamental reevaluation or "rebaselining" of the existing regulation, rather than the development of a voluntary alternative approach to rulemaking. Lastly, upon its own initiative, the staff incorporated the relevant portions of the NEI petition into this rulemaking. On November 14, 2001, in response to Commission direction in an SRM dated August 2, 2001, the staff published draft rule language on the NRC web site for stakeholder review and comment. In an SRM dated December 31, 2001, the Commission directed the staff to proceed with the revision to the existing § 50.44 regulations.

III. Proposed Action

The Commission proposes to retain existing requirements for ensuring a mixed atmosphere, inerting Mark I and II containments, and hydrogen control systems capable of accommodating an amount of hydrogen generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region in Mark III and ice condenser containments. The Commission proposes to eliminate the design-basis LOCA hydrogen release from § 50.44 and to consolidate the requirements for hydrogen and oxygen monitoring into § 50.44 while relaxing safety classifications and licensee commitments to certain design and qualification criteria. The Commission also proposes to relocate without change the hydrogen control requirements in § 50.34(f) to § 50.44. The Commission proposes to relocate the high point vent requirements from § 50.44 to § 50.46a with a change that eliminates a requirement prohibiting venting the reactor coolant system if it could "aggravate" the challenge to containment. The NRC received comments on the draft rule language published on the Web site from seven members of the public which included both petitioners, four utilities, and a law firm that represents the Nuclear Utility Group on Equipment Qualification. The comments were overwhelmingly supportive of the draft proposed rule language. The Commission used stakeholder comments on the draft rule language, information provided in licensee exemption submittals, in the petitions for rulemaking, and in the Boiling Water Reactor Owners Group (BWROG) topical report to inform its deliberations and decisions with respect to specific rule language and positions taken.

The Commission also received feedback on several issues for which comments were specifically requested in the draft rule language. The existing rule provides detailed, prescriptive instructions using American Society of Mechanical Engineers (ASME) references for the performance of boiling water reactor (BWR) Mark III and pressurized water reactor (PWR) ice condenser containments. The staff provided an option for a more performance-based approach for stakeholder consideration, which received positive public comment. Based upon stakeholder input, the proposed rule eliminates the existing references to ASME and prescriptive requirements and the proposed regulatory guide, attached to this paper, includes the ASME approach as one in which the intent of the regulations could be satisfied which simplifies the proposed regulations.

The staff also requested feedback on the utility of post-accident inerting as a means of combustible gas control. To date, no current licensee facility has exercised this alternative to address the control of combustible gas nor has any new reactor design opted for this approach. The major concerns involved with post-accident inerting of containment are expense and the issues associated with its adverse effects and actuation. Stakeholder feedback during public meetings and in the comments received on the draft rule language supported elimination of this option. Based upon stakeholder input, the proposed rule eliminates the post-accident inerting option which also simplifies the proposed regulations.

Substantive changes in rule language that resulted from consideration of public comments are addressed in the following subject sections.

A. Retention of Inerting, BWR Mark III and PWR Ice Condenser Hydrogen Control Systems, Mixed Atmosphere Requirements, and Associated Analysis Requirements

The Commission proposes to retain the existing requirement in § 50.44(c)(3)(i) to inert Marks I and II type containments. Given the relatively small volume and large zirconium inventory, these containments, without inerting, would have a high likelihood of failure from hydrogen combustion due to the potentially large concentration of hydrogen that a severe accident could cause. Retaining the requirement maintains the current level of public protection, as discussed in section 4.3.2 of the Feasibility Study.

The Commission proposes to retain the existing requirements in § 50.44(c)(3) (iv), (v), and (vi) that BWRs with Mark III containments and PWRs with ice condenser containments provide a hydrogen control system justified by a suitable program of experiment and analysis. The amount of hydrogen to be considered is that generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region (excluding the cladding surrounding the plenum volume). The analyses must demonstrate that the structures, systems and component necessary for safe shutdown and maintaining containment integrity must perform their functions during and after exposure to the conditions created by the burning hydrogen. Environmental conditions caused by local detonations of hydrogen must also be included, unless such detonations can be shown unlikely to occur. A beyond design-basis accident generating significant amounts of hydrogen (on the order of Three Mile Island, Unit 2, accident or a metal water reaction involving 75 percent of the fuel cladding surrounding the active fuel region) would pose a severe threat to the integrity of these containment types in the absence of the

installed igniter systems. Section 4.3.3 of the Feasibility Study concluded that hydrogen combustion is not risk-significant, in terms of the framework document's quantitative guidelines, when igniter systems installed to meet § 50.44(c)(3) (iv), (v), and (vi) are available and operable. The Commission proposes to retain these requirements. Previously reviewed and approved licensee analyses to meet the existing regulations constitute compliance with this proposed section. The results of these analyses must continue to be documented in the plant's Updated Final Safety Analysis Report in accordance with § 50.71(e).

The Commission proposes to retain the § 50.44(b)(2) requirement that all containments ensure a mixed atmosphere. A mixed containment atmosphere prevents local accumulation of combustible or detonable gases which could threaten containment integrity or equipment operating in a local compartment. The current regulation ensures that features that promote atmospheric mixing, either active systems and/or containment internal structures that have design features which promote the free circulation of the containment atmosphere, are provided.

B. Elimination of Design-Basis LOCA Hydrogen Release

The proposed rule would remove the existing definition of a design-basis LOCA hydrogen release and eliminate requirements for hydrogen control systems to mitigate such a release. The installation of recombiners and/or vent and purge systems required by § 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission finds that this hydrogen release is not risk-significant. This finding is based on the Feasibility Study which found that the design-basis LOCA hydrogen release did not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. The requirements for combustible gas control that were developed after the Three Mile Island Unit 2 accident were intended to minimize potential additional challenges to containment due to long term residual or radiolytically generated hydrogen. The Commission found that containment loadings associated with long term hydrogen concentrations are no worse than those considered in the first 24 hours and are, therefore, not risk-significant. The Commission believes that accumulation of combustible gases beyond 24 hours can be managed by licensee implementation of the severe accident management guidelines (SAMGs) or other ad hoc actions because of the long period of time available to take such action. Therefore, the Commission proposes to eliminate the hydrogen release associated with a design-basis LOCA from § 50.44 and the associated requirements that necessitated the need for the hydrogen recombiners and the backup hydrogen vent and purge systems.

In plants with Mark I and II containments, the containment atmosphere is required to be maintained with a low concentration of oxygen, rendering it inert to combustion. Mark I and II containments can be challenged beyond 24 hours by the long-term generation of oxygen through radiolysis. The regulatory analysis for this proposed rulemaking found the cost of maintaining the recombiners exceeded the benefit of retaining them to prevent containment failure sequences that progress to the very late time frame. The Commission believes that this conclusion would also be true for the backup hydrogen purge system even though the cost of the hydrogen purge system would be much lower because the system is also needed to inert the containment.

The Commission continues to view severe accident management guidelines as an important part of the severe accident closure process. Severe accident management guidelines are part of a voluntary industry initiative to address accidents beyond the design basis and emergency operating instructions. In November 1994, the U.S. nuclear industry committed to implement severe accident management at their plants by December 31, 1998, using the guidance contained in NEI 91–04, Revision 1, "Severe Accident Issue Closure Guidelines." Generic severe accident management guidelines developed by each nuclear steam system supplier owners group includes either purging and venting or venting the containment to address combustible gas control. On the basis of the industry-wide commitment, the Commission is not proposing to require such capabilities, but continues to view purging and/or controlled venting of all containment types to be an important combustible gas control strategy that should be considered in a plant's severe accident management guidelines.

C. Oxygen Monitoring Requirements

The Commission proposes to amend § 50.44 to codify the existing regulatory practice of monitoring oxygen in containments that use an inerted atmosphere for combustible gas control. Standard technical specifications and licensee technical specifications currently require oxygen monitoring to verify the inerted condition in containment. Combustible gases produced by beyond design-basis accidents involving both fuel-cladding oxidation and core-concrete interaction would be risk-significant for plants with Mark I and II containments if not for the inerted containment atmosphere. If an inerted containment was to become de-inerted during a beyond design-basis accident, then other severe accident management strategies, such as purging and venting, would need to be considered. The oxygen monitoring is needed to implement these severe accident management strategies, in plant emergency operating procedures and is also used as an input in emergency response decision making.

The Commission proposes reclassifying oxygen monitors as not safety-related components. Currently, as recommended by the Commission's Regulatory Guide (RG) 1.97, oxygen monitors are classified as Category 1. Category 1 is defined as applying to instrumentation designed for monitoring variables that most directly indicate the accomplishment of a safety function for design-basis events. By eliminating the design-basis LOCA hydrogen release, the oxygen monitors are no longer required to mitigate design-basis accidents. The Commission finds that Category 2, defined in RG 1.97, as applying to instrumentation designated for indicating system operating status, to be the more appropriate categorization for the oxygen monitors, because the monitors will still continue to be required to verify the status of the inerted containment. Further, the staff concludes that sufficient reliability of oxygen monitoring, commensurate with its risk-significance, will be achieved by the guidance associated with the Category 2 classification. Because of the various regulatory means, such as orders, that were used to implement post-TMI requirements, this proposed relaxation may require a license amendment. Licensees would also need to update their final safety analysis report to reflect the new classification and RG 1.97 categorization of the monitors in accordance with 10 CFR 50.71(e).

D. Hydrogen Monitoring Requirements

The Commission proposes to maintain the existing requirement in § 50.44(b)(1) for monitoring hydrogen in the containment atmosphere for all plant designs. Section 50.44(b)(1),

standard technical specifications and licensee technical specifications currently contain requirements for monitoring hydrogen, including operability and surveillance requirements for the monitoring systems. Licensees have also made commitments to design and qualification criteria for hydrogen monitors in NUREG–0737, Item II.F.1, Attachment 6 and in RG 1.97. The hydrogen monitors are required to assess the degree of core damage during a beyond design-basis accident and confirm that random or deliberate ignition has taken place. Hydrogen monitors are also used, in conjunction with oxygen monitors in inerted containments, to guide response to emergency operating procedures. Hydrogen monitors are also used in emergency operating procedures of BWR Mark III facilities. If an explosive mixture that could threaten containment integrity exists, then other severe accident management strategies, such as purging and/or venting, would need to be considered. The hydrogen monitors are needed to implement these severe accident management strategies.

The Commission proposes to reclassify the hydrogen monitors as not safety-related components. With the proposed elimination of the design-basis LOCA hydrogen release (see Item B. . earlier), the hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in § 50.2. This is consistent with the Commission's proposal that oxygen monitors that are used for beyond-design basis accidents need not be safety grade.

Currently, RG 1.97 recommends classifying the hydrogen monitors in Category 1, defined as applying to instrumentation designed for monitoring key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97 and, therefore, the Commission believes that licensees' current commitments are unnecessarily burdensome. The Commission believes that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Category 3 applies to high-quality, off-the-shelf backup and diagnostic instrumentation. As with the revision to oxygen monitoring, this proposed relaxation may require a license amendment. Licensees would also need to update their final safety analysis report to reflect the new classification and RG 1.97 categorization of the monitors in accordance with 10 CFR 50.71(e).

E. Combustible Gas Control Requirements for Future Applicants

The Commission proposes to set forth combustible gas control requirements for all future applicants for or holders of a construction permit or an operating license under part 50, and to all future applicants for design approval, design certification, or a combined license under Part 52. These requirements would consolidate combustible gas requirements for existing and future light water reactors in § 50.44. Section 52.47(a)(ii) requires demonstration of compliance with the technically relevant portions of the Three Mile Island requirements in § 50.34(f). Section 50.34(f)(2)(ix) requires a system for hydrogen control that can safely accommodate hydrogen generated by the equivalent of a 100 percent fuel-clad metal-water reaction. In addition, the regulation requires this system to be capable of precluding uniform concentrations of hydrogen from exceeding 10 percent (by volume), or providing an inerted atmosphere within the containment. The Commission is proposing requirements for future light water reactors that are consistent with the criteria currently contained in § 50.34(f)(2)(ix) to preclude local concentrations of hydrogen collecting in areas where unintended combustion or detonation could cause loss of containment integrity or loss of appropriate mitigating features. These requirements are in keeping with the Commission's expectation that future designs will achieve a higher standard of severe accident performance (50 FR 32138; August 8, 1985). Additional advantages of providing hydrogen control mitigation features (rather than reliance on random ignition of richer mixtures) include the lessening of pressure and temperature loadings on the containment and essential equipment.

F. Clarification and Relocation of High Point Vent Requirements From 10 CFR 50.44 to 10 CFR 50.46a

The Commission proposes to remove the current requirements for high point vents from § 50.44 and to transfer them to a new § 50.46a. The Commission proposes relocating these requirements because high point vents are relevant to emergency core cooling system (ECCS) performance during severe accidents, and § 50.44 does not address ECCS performance. The requirement to install high point vents was imposed by the 1981 amendment to § 50.44. This requirement permitted venting of noncondensible gases which may interfere with the natural circulation pattern in the reactor coolant system. This process is regarded as an important safety feature in accident sequences that credit natural circulation of the reactor coolant system. In other sequences, the pockets of noncondensible gases may interfere with pump operation. The high point vents could be instrumental for terminating a core damage accident if ECCS operation is restored. Under these circumstances, venting noncondensible gases from the vessel allows emergency core cooling flow to reach the damaged reactor core and thus prevents further accident progression.

The Commission proposes to amend the language in current § 50.44(c)(3)(iii) by deleting the statement, "the use of these vents during and following an accident must not aggravate the challenge to the containment or the course of the accident." For certain severe accident sequences, the use of reactor coolant system high point vents is intended to reduce the amount of core damage by providing an opportunity to restore reactor core cooling. While the release of noncondensible and combustible gases from the reactor coolant system will, in the short term, "aggravate" the challenge to containment, the use of these vents will positively affect the overall course of the accident. The release of any combustible gases from the reactor coolant system has been considered in the containment design and mitigative features that are required for combustible gas control. Any venting is highly unlikely to affect containment integrity; however, such venting will reduce the likelihood of further core damage. Inasmuch as the overall safety is increased by venting through high point vents, the Commission proposes elimination of this statement in § 50.46a.

G. Elimination of Post-Accident Inerting

The proposed rule would no longer provide an option to use post-accident inerting as a means of combustible gas control. Although post-accident inerting systems were permitted as a possible alternative for mitigating combustible gas concerns after the accident at Three Mile Island, Unit 2, these systems have never been implemented to date. Concerns with a post-accident inerting system include: corrosion (if halon gas is used as the inerting agent), increase in containment pressure with use, limitations on emergency response personnel access, and cost. Sections 50.44(c)(3)(iv)(D) and 50.34(f)(ix)(D)

were promulgated to address these concerns. On November 14, 2001, draft rule language was made available to elicit comment from interested stakeholders. The draft rule language recommended eliminating the option to use post-accident inerting as a means of combustible gas control and asked stakeholders if there was a need to retain these requirements. Stakeholder feedback supported the staff recommendation to eliminate the post-accident inerting option and indicated that licensees do not intend to convert existing plants to use post-accident inerting. Because there is no need for the regulations to support an approach that is unlikely to be used, post-accident inerting requirements are being eliminated.

IV. Section-by-Section Analysis of Substantive Changes

Section 50.44—Combustible Gas Control in Containment

Paragraph (a) [Definitions]. Paragraph (a) adds definitions for two previously undefined terms, "mixed atmosphere," and "inerted atmosphere."

Paragraph (b) [Requirements for currently-licensed reactors]. This paragraph would set forth the requirements for control of combustible gas in containment for currently-licensed reactors. All BWRs with Mark I and II type containments will be required to have an inerted containment atmosphere, and all BWR Mark III type containments and PWR s with ice condenser type containments would be required to include a capability for controlling combustible gas generated from a metal water reaction involving 75% of the fuel cladding surrounding the active fuel region (excluding the cladding surrounding the plenum volume) so that there is no loss of containment integrity. Current requirements in § 50.44(c) (i), (iv), (v), and (vi) would be incorporated in to the proposed amended regulation without substantial change. Previously reviewed and installed combustible gas control mitigation features to meet the existing regulations are considered in compliance with this proposed section. Because these proposed requirements address beyond design-basis combustible gas control, it is acceptable for structures, systems, and components provided to meet these requirements to not be safety-related and may be procured as commercial grade items.

Proposed paragraph (b)(1) [Mixed atmosphere]. The requirement for capability ensuring a mixed atmosphere in all containments is consistent with the current requirement in § 50.44(b)(2) and would not require further analysis or modifications by current licensees. The intent of this requirement is to maintain those plant design features (*e.g.*, availability of active mixing systems or open compartments) that promote atmospheric mixing. The requirement could be met with active or passive systems. Active systems could include a fan, a fan cooler or containment spray. Passive capability could be demonstrated by evaluating the containment for susceptibility to local hydrogen concentration. These evaluations have been conducted for currently licensed reactors as part of the IPE program.

Proposed paragraph (b)(3) retains the existing requirements for BWR Mark III and PWR ice condenser facilities that do not use inerting to establish and maintain safe shutdown and containment structural integrity to use structures, systems, and components capable of performing their functions during and after exposure to hydrogen combustion.

Proposed paragraph (b)(4)(i) would codify the existing regulatory practice of monitoring oxygen in containments that use an inerted atmosphere for combustible gas control. The proposed rule would not require further analysis or modifications by current licensees but certain design and qualification criteria would be relaxed. The proposed rule requires that equipment for monitoring oxygen be functional, reliable and capable of continuously measuring the concentration of oxygen in the containment atmosphere following a beyond design-basis accident. Equipment for monitoring oxygen is expected to perform in the environment anticipated in the severe accident management guidance. The oxygen monitors are expected to be of high-quality and may be procured as commercial grade items. Existing oxygen monitoring commitments for currently licensed plants are sufficient to meet the intent of this rule.

Proposed paragraph (b)(4)(ii) would retain the requirement in § 50.44(b)(1) for measuring the hydrogen concentration in the containment. The proposed rule would not require further analysis or modifications by current licensees but certain design and qualification criteria would be relaxed. The proposed rule requires that equipment for monitoring hydrogen be functional, reliable and capable of continuously measuring the concentration of hydrogen in the containment atmosphere following a beyond design-basis accident. Equipment for monitoring hydrogen is expected to perform in the environment anticipated in the severe accident management guidance. The hydrogen monitors may be procured as commercial grade items. Existing hydrogen monitoring commitments for currently licensed plants are sufficient to meet the intent of this rule.

Paragraph (c) [Requirements for future applicants and licensees]. Proposed paragraph (c) would promulgate requirements for combustible gas in containment control for all future construction permits or operating licenses under part 50 and to all design approvals, design certifications, combined licenses or manufacturing licenses under part 52. The current requirements in § 50.34(f)(2)(ix) and (f)(3)(v) would be retained. Proposed paragraph (c)(2) would require all containments to have an inerted atmosphere or limit hydrogen concentrations in containment during and following an accident that releases an equivalent amount of hydrogen as would be generated from a 100 percent fuel-clad coolant reaction, uniformly distributed, to less than 10 percent and maintain containment structural integrity and appropriate mitigating features. Structures, systems, and components (SSCs) provided to meet this requirement must be designed to provide reasonable assurance that they will operate in the severe accident environment for which they are intended and over the time span for which they are needed. Equipment survivability expectations under severe accident conditions should consider the circumstances of applicable initiating events (such as station blackout [1] or earthquakes) and the environment (including pressure, temperature, and radiation) in which the equipment is relied upon to function. The required system performance criteria will be based on the results of design-specific reviews which include probabilistic risk-assessment as required by 10 CFR 52.47(a)(v). Because these requirements address beyond design-basis combustible gas control, SSCs provided to meet these requirements need not be subject to the environmental qualification requirements of 10 CFR Section 50.49; quality assurance

[1] The Proposed Section 50.44 does not require the deliberate ignition systems used by BWRs with Mark III type containments and PWRs with ice condenser type containments to be available during station blackout events. The deliberate ignition systems should be available upon the restoration of power. Additional guidance concerning the availability of deliberate ignition systems during station blackout sequences is being developed as part of the staff's review of Generic Safety Issue 189 "Susceptibility of Ice Condenser and Mark III Containments to Early Failure from Hydrogen Combustion During a Severe Accident."

requirements of 10 CFR part 50, Appendix B; and redundancy/diversity requirements of 10 CFR part 50, Appendix A. Guidance such as that found in Appendices A and B of RG 1.155, "Station Blackout," is appropriate for equipment used to mitigate the consequences of severe accidents. Proposed paragraph (c) would also promulgate requirements for ensuring a mixed atmosphere and monitoring oxygen and hydrogen in containment, consistent with the requirements for current plants set forth in proposed paragraphs (b)(1), and (b)(4)(i) and (ii).

Section 50.46a—Acceptance Criteria for Reactor Coolant System Venting Systems

Proposed § 50.46a would be a new section which relocates the requirements for high point vents currently contained in § 50.44. The amendment includes a change that eliminates a requirement prohibiting venting the reactor coolant system if it could "aggravate" the challenge to containment. Any venting is highly unlikely to affect containment integrity; however, such venting will reduce the likelihood of further core damage. Commission continues to view use of the high point vents to be an important strategy that should be considered in a plant's severe accident management guidelines.

Section 52.47—Contents of Applications

§ 52.47 would be amended to eliminate the reference to subsections within § 50.34(f) for technically relevant requirements for combustible gas control in containment for future design approval, design certification or license applicants. These applicants would reference § 50.44 for technical requirements for combustible gas control in containment.

V. Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule specifically with respect to the clarity and reflectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC proposes to use the following Government-unique standard: 10 CFR 50.44, U.S. Nuclear Regulatory Commission, October 27, 1978 (43 FR 50163), as amended. The NRC is not aware of any voluntary consensus standard that could be used instead of the proposed Government-unique standard. The NRC will consider a voluntary consensus standard if an appropriate standard is identified. If a voluntary standard is identified for consideration, the submittal should explain how the voluntary consensus standard is comparable and why it should be used instead of the proposed Government-unique standard.

VII. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The basis for this determination reads as follows:

This action endorses existing requirements and establishes regulations that reduce regulatory burdens for current and future licensees and consolidates combustible gas control regulations for future applicants and licensees. This action stems from the Commission's ongoing effort to risk-inform its regulations. The proposed rule would reduce the regulatory burdens on present and future power reactor licensees by eliminating the LOCA design-basis accident as a combustible gas control concern. This change eliminates the requirements for hydrogen recombiners and hydrogen purge systems and relaxes the requirements for hydrogen and oxygen monitoring equipment to make them commensurate with their safety and risk significance.

The proposed action would not significantly increase the probability or consequences of an accident. No changes are being made in the types or quantities of radiological effluents that may be released off site, and there is no significant increase in public radiation exposure since there is no change to facility operations that could create a new or affect a previously analyzed accident or release path. There may be a reduction of occupational radiation exposure since personnel will no longer be required to maintain or operate, if necessary, the hydrogen recombiner systems which are located in or near radiologically controlled areas.

With regard to non-radiological impacts, no changes are being made to non-radiological plant effluents and there are no changes in activities that would adversely affect the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

The primary alternative to this action would be the no action alternative. The no action alternative would continue to impose unwarranted regulatory burdens for which there would be little or no safety, risk, or environmental benefit.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

VIII. Paperwork Reduction Act Statement

This proposed rule decreases the burden on new applicants to complete the hydrogen control analysis required to be submitted in a license application, as required by sections 50.34 or 52.47. The public burden reduction for this information collection is estimated to average 720 hours per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0011 and 3150–0151.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document

displays a currently valid OMB control number.

IX. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of Commission alternatives for updating the existing rule to accommodate technological advances while addressing regulatory relaxation issues. From an overall safety and value impact perspective, the analysis recommends removing hydrogen recombiner requirements and relaxing hydrogen and oxygen monitoring requirements.

The Commission requests public comment on the draft regulatory analysis. The regulatory analysis may be viewed and downloaded, and comments may be submitted at the NRC Rulemaking Web site. Single copies of the analysis are also available from Anthony Markley, Office of Nuclear Reactor Regulation, (301) 415–3165, e-mail *awm@nrc.gov*. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

X. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the Size Standards established by the Nuclear Regulatory Commission (10 CFR 2.810).

XI. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule because these amendments do not impose more stringent safety requirements on 10 CFR part 50 licensees. For current licensees, the proposed amendments either maintain without substantive change existing requirements or reduce current regulatory requirements. For future applicants and future licensees, the proposed requirements do not involve backfitting as defined in 10 CFR 50.109(a)(1). This is because any changes will have only a prospective effect on future design certification applicants and future applicants for licensees under 10 CFR part 50 and 52. As the Commission has indicated in other rulemakings, sec., *e.g.*, 54 FR 15372, April 18, 1989 (Final Part 52 Rule), the expectations of future applicants are not protected by the Backfit Rule. Therefore, the NRC has not prepared a backfit analysis for this rulemaking.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 50 and 52.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.34, paragraph (a)(4) is revised, paragraph (g) is redesignated as paragraph (h), and a new paragraph (g) is added to read as follows:

§ 50.34 Contents of applications; technical information.

(a) * * *

(4) A preliminary analysis and evaluation of the design and performance of structures, systems, and components of the facility with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents. Analysis and evaluation of ECCS cooling performance and the need for high point vents following postulated loss-of-coolant accidents must be performed in accordance with the requirements of § 50.46 and § 50.46a of this part for facilities for which construction permits may be issued after December 28, 1974.

* * * * *

(g) Combustible gas control. All applicants for a construction permit or operating license under part 50 of this chapter, and all applicants for design approval, design certification, or license under part 52 of this chapter, whose application was submitted after [EFFECTIVE DATE OF RULE], shall include the descriptions of the equipment, systems, and analyses required by § 50.44 as a part of their application.

* * * * *

3. Section 50.44 is revised to read as follows:

§ 50.44 Combustible gas control in containment.

(a) Definitions. (1) Inerted atmosphere means a containment atmosphere with less than 4 percent oxygen by volume.

(2) Mixed atmosphere means that the concentration of combustible gases in any part of the containment is below a level that supports combustion or detonation that could cause loss of containment integrity.

(b) Requirements for currently-licensed reactors. Each boiling or pressurized light-water nuclear power reactor with an operating license on [EFFECTIVE DATE] must comply with

the following requirements, as applicable:

(1) *Mixed atmosphere.* All containments must have a capability for ensuring a mixed atmosphere.

(2) *Combustible gas control.* (i) All boiling water reactors with Mark I or Mark II type containments must have an inerted atmosphere.

(ii) All boiling water reactors with Mark III type containments and all pressurized water reactors with ice condenser containments must have the capability for controlling combustible gas generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region (excluding the cladding surrounding the plenum volume) so that there is no loss of containment structural integrity.

(3) *Equipment survivability.* All boiling water reactors with Mark III containments and all pressurized water reactors with ice condenser containments that do not rely upon an inerted atmosphere inside containment to control combustible gases must be able to establish and maintain safe shutdown and containment structural integrity with systems and components capable of performing their functions during and after exposure to the environmental conditions created by the burning of hydrogen. Environmental conditions caused by local detonations of hydrogen must also be included, unless such detonations can be shown unlikely to occur. The amount of hydrogen to be considered must be equivalent to that generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region (excluding the cladding surrounding the plenum volume).

(4) *Monitoring.* (i) Equipment must be provided for monitoring oxygen in containments that use an inerted atmosphere for combustible gas control. Equipment for monitoring oxygen must be functional, reliable, and capable of continuously measuring the concentration of oxygen in the containment atmosphere following a beyond design-basis accident for combustible gas control and accident management, including emergency planning.

(ii) Equipment must be provided for monitoring hydrogen in the containment. Equipment for monitoring hydrogen must be functional, reliable, and capable of continuously measuring the concentration of hydrogen in the containment atmosphere following a beyond design-basis accident for accident management, including emergency planning.

(5) *Analyses.* Each holder of an operating license for a boiling water reactor with a Mark III type of containment or for a pressurized water reactor with an ice condenser type of containment, shall perform an analysis that:

(i) Provides an evaluation of the consequences of large amounts of hydrogen generated after the start of an accident (hydrogen resulting from the metal-water reaction of up to and including 75 percent of the fuel cladding surrounding the active fuel region, excluding the cladding surrounding the plenum volume) and include consideration of hydrogen control measures as appropriate;

(ii) Includes the period of recovery from the degraded condition;

(iii) Uses accident scenarios that are accepted by the NRC staff. These scenarios must be accompanied by sufficient supporting justification to show that they describe the behavior of the reactor system during and following an accident resulting in a degraded core.

(iv) Supports the design of the hydrogen control system selected to meet the requirements of this section; and,

(v) Demonstrates, for those reactors that do not rely upon an inerted atmosphere to comply with paragraph (b)(2)(ii) of this section, that:

(A) Containment structural integrity is maintained. Containment structural integrity must be demonstrated by use of an analytical technique that is accepted by the NRC staff in accordance with § 50.90. This demonstration must include sufficient supporting justification to show that the technique describes the containment response to the structural loads involved. This method could include the use of actual material properties with suitable margins to account for uncertainties in modeling, in material properties, in construction tolerances, and so on; and

(B) Systems and components necessary to establish and maintain safe shutdown and to maintain containment integrity will be capable of performing their functions during and after exposure to the environmental conditions created by the burning of hydrogen, including local detonations, unless such detonations can be shown unlikely to occur.

(c) *Requirements for future applicants and licensees.* The requirements in this paragraph apply to all construction permits or operating licenses under this part, and to all design approvals, design certifications, combined licenses or manufacturing licenses under part 52 of this chapter, any of which are issued after [EFFECTIVE DATE].

(1) *Mixed atmosphere.* All containments must have a capability for ensuring a mixed atmosphere.

(2) *Combustible gas control.* All containments must have an inerted atmosphere or limit hydrogen concentrations in containment during and following an accident that releases an equivalent amount of hydrogen as would be generated from a 100 percent fuel clad-coolant reaction, uniformly distributed, to less than 10 percent and maintain containment structural integrity and appropriate mitigating features.

(3) *Equipment survivability.* Containments that do not rely upon an inerted atmosphere to control combustible gases must be able to establish and maintain safe shutdown and containment structural integrity with systems and components capable of performing their functions during and after exposure to the environmental conditions created by the burning of hydrogen. Environmental conditions caused by local detonations of hydrogen must also be included, unless such detonations can be shown unlikely to occur. The amount of hydrogen to be considered must be equivalent to that generated from a fuel clad-coolant reaction involving 100 percent of the fuel cladding surrounding the active fuel region.

(4) *Monitoring.* (i) Equipment must be provided for monitoring oxygen in containments that use an inerted atmosphere for combustible gas control. Equipment for monitoring oxygen must be functional, reliable, and capable of continuously measuring the concentration of oxygen in the containment atmosphere following a beyond design-basis accident for combustible gas control and accident management, including emergency planning.

(ii) Equipment must be provided for monitoring hydrogen in the containment. Equipment for monitoring hydrogen must be functional, reliable, and capable of continuously measuring the concentration of hydrogen in the containment atmosphere following a beyond design-basis accident for accident management, including emergency planning.

(5) *Analyses.* An applicant shall perform an analysis that demonstrates containment structural integrity. This demonstration must use an analytical technique that is accepted by the NRC staff and include sufficient supporting justification to show that the technique describes the containment response to the structural loads involved. The analysis must address an accident that releases hydrogen generated from 100

percent fuel clad-coolant reaction accompanied by hydrogen burning. Systems necessary to ensure containment integrity must also be demonstrated to perform their function under these conditions.

4. Section 50.46a is added to read as follows:

§ 50.46a Acceptance criteria for reactor coolant system venting systems.

Each nuclear power reactor must be provided with high point vents for the reactor coolant system, for the reactor vessel head, and for other systems required to maintain adequate core cooling if the accumulation of noncondensible gases would cause the loss of function of these systems. High point vents are not required for the tubes in U-tube steam generators. Acceptable venting systems must meet the following criteria:

(a) The high point vents must be remotely operated from the control room.

(b) The design of the vents and associated controls, instruments and power sources must conform to appendix A and appendix B of this part.

(c) The vent system must be designed to ensure that:

(1) The vents will perform their safety functions, and

(2) There would not be inadvertent or irreversible actuation of a vent.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

5. The authority citation for Part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

6. In § 52.47, paragraph (a)(1)(ii) is revised to read as follows:

§ 52.47 Contents of applications

(a) * * *

(1) * * *

(ii) Demonstration of compliance with any technically relevant portions of the Three Mile Island requirements set forth in 10 CFR 50.34(f) except paragraphs (f)(1)(xii), (f)(2)(ix) and (f)(3)(v);

* * * * *

Dated at Rockville, Maryland, this 26th day of July , 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–19419 Filed 8–1–02; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR PART 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to grant the nonmanufacturer rule for small arms ammunition manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering a class waiver of the Nonmanufacturer Rule for small arms ammunition manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal Government. The effect of a waiver would be to allow otherwise qualified small business nonmanufacturer to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and source information from interested parties.

DATES: Comments and sources must be submitted on or before August 16, 2002.

ADDRESSES: Address comments to Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 619–0422.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget *North American Industry Classification System (NAICS)*. The second is the Product and Service Code established by the Federal Procurement Data System.

This notice proposes to grant the Nonmanufacturer Rule for small arms ammunition manufacturing, North American Industry Classification System (NAICS) 332992. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for small arms ammunition manufacturing, and provide information on potential small business manufacturers for these products.

In an effort to identify potential small business manufacturers, the SBA has searched Procurement Marketing & Access Network (PRO-Net) and the SBA will publish a notice in the **Federal Register**. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for these classes of products.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 02–19472 Filed 8–1–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–29–AD]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Model S10–VT Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Stemme GmbH & Co. KG (Stemme) Model S10–VT sailplanes. This proposed AD would require you to modify the engine compartment fuel and oil system and firewall. This

proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this proposed AD are intended to reduce the potential for a fire to ignite in the engine compartment and increase the containment of an engine fire in the engine compartment. A fire in the engine compartment could lead to loss of control of the sailplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 3, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–29–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–29–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–29–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Cauaused This Proposed AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Stemme Model S10–VT sailplanes. The LBA reports an incident of an in-flight fire on a Model S10–VT sailplane. The accident investigation revealed that the fire was not contained in the engine compartment. The manufacturer conducted a design review and determined that modifications to the fuel and oil system and the firewall design will significantly reduce the potential for a fire to ignite in the engine compartment and increase the containment of an engine fire in the engine compartment.

What Are the Consequences if the Condition Is Not Corrected?

If this condition is not corrected, there is potential for a fire to ignite in the engine compartment and spread into the cockpit. Such a condition could lead to loss of control of the sailplane.

Is There Service Information That Applies to This Subject?

Stemme has issued Service Bulletin Document Number A31–10–057, dated June 7, 2001, Service Bulletin Document Number A31–10–061, dated April 22, 2002, and Installation Instruction Document Number A34–10–061E, dated April 22, 2002.

What Are the Provisions of This Service Information?

These service documents include procedures for:

—Modifying the engine compartment fuel and oil system; and

—Modifying the firewall by sealing all gaps.

What Action Did the LBA Take?

The LBA classified this service information as mandatory and issued German AD 2002–156, dated June 13, 2002, in order to ensure the continued airworthiness of these sailplanes in Germany.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the LBA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD What Has FAA Decided?

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Stemme Model S10–VT sailplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected sailplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletins.

Cost Impact

How Many Sailplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 41 sailplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Sailplanes?

We estimate the following costs to accomplish the proposed modifications:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S operators Sailplane
10 workhours × $60 per hour = $600	$620.	$1,220.	$1,220 × 41 = $50,020.

Compliance Time of this Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "within the next 50 hours time-in-service (TIS) or 3 months after the effective date of this AD, whichever occurs first."

Why Is the Compliance Time of This Proposed AD Presented in Both Hours TIS and Calendar Time?

The unsafe condition on these sailplanes is not a result of the number of times the sailplane is operated. Sailplane operation varies among operators. For example, one operator may operate the sailplane 50 hours TIS in 3 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this proposed AD should be specified in both hours time-in-service (TIS) and calendar time in order to ensure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore. it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Stemme GMBH & Co. KG: Docket No. 2002–CE–29–AD

(a) *What sailplanes are affected by this AD?* This AD affects Model S10–VT sailplanes, serial numbers 11–002 through 11–072, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to reduce the potential for a fire to ignite in the engine compartment and increase the containment of an engine fire in the engine compartment. A fire in the engine compartment could lead to loss of control of the sailplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Modify the firewall by sealing all gaps and modify the fuel and oil lines in the engine compartment.	Within the next 50 hours time-in-service (TIS) or 3 months after the effective date of this AD, whichever occurs first.	Modify the firewall in accordance with Stemme Service Bulletin A31–10–057, dated June 7, 2001, as specified in Stemme Service Bulletin A31–10–061, dated April 22, 2002. Modify the fuel and oil lines in accordance with Stemme Service Bulletin A31–10–061, dated April 22, 2002, and Stemme Installation Instruction A34–10–061E, dated April 22, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from

Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in German AD 2002–156, dated June 13, 2002.

Issued in Kansas City, Missouri, on July 25, 2002.

James E. Jackson,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–19570 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–133254–02; REG–126100–00]

RIN 1545–BA86; RIN 1545–AY62

Guidance on Reporting of Deposit Interest Paid to Nonresident Aliens

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of public hearing; and withdrawal of previously proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on the reporting requirements for interest on deposits maintained at U.S. offices of certain financial institutions and paid to nonresident alien individuals that are residents of certain specified countries. These proposed regulations affect persons making payments of interest with respect to such deposits. This document also provides a notice of public hearing on these proposed regulations and withdraws the notice of proposed rulemaking (REG 126100–00, 66 FR 3925) published on January 17, 2001.

DATES: Written or electronic comments must be received by November 14, 2002. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for 10 a.m. on December 5, 2002, must be received by November 14, 2002. The proposed rule published on January 17, 2001 (66 FR 3925) and corrected on March 21, 2001 (66 FR 15820) and March 22, 2001 (66 FR 16019) is withdrawn as of August 2, 2002.

ADDRESSES: Send submissions to: CC:DOM:ITA:RU (REG–133254–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:ITA:RU (REG–133254–02), Courier's Desk, Internal Revenue Service 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Alexandra K. Helou, (202) 622–3840 (not a toll free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622–7180 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collections of information should be received by October 1, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper operation of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in §§ 1.6049–4(b)(5)(i) and 1.6049–6(e)(4) (i) and (ii). This information is required to determine if taxpayers have properly reported amounts received as income. The collection of information is mandatory. The likely respondents are businesses and other for-profit institutions.

The estimated average annual burden per respondent and/or recordkeeper required by §§ 1.6049–4(b)(5)(i) and 1.6049–6(e)(4) (i) and (ii) will be reflected in the burdens of Forms 1042, 1042–S and the income tax return of a foreign person.

Further, the estimated average annual burden per respondent and/or recordkeeper for the statement required by § 1.6049–6(e)(4)(i) is as follows:

Estimated total annual reporting burden: 500 hours.

Estimated average annual burden per respondent: 15 minutes.

Estimated number of respondents: 2000.

Estimated annual frequency of responses: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

On January 17, 2001, the IRS and Treasury published a notice of proposed rulemaking (REG 126100–00) in the **Federal Register** (66 FR 3925, corrected by 66 FR 15820 and 66 FR 16019) under section 6049 (the 2001 proposed regulations), which would provide that U.S. bank deposit interest paid to any nonresident alien individual must be reported annually to the IRS. Under regulations currently in effect, reporting of U.S. bank deposit interest is required only if the interest is paid to a U.S. person or a nonresident alien individual who is a resident of Canada.

The IRS and Treasury requested comments on the 2001 proposed regulations, and a public hearing regarding the 2001 proposed regulations was held on June 21, 2001. The IRS and Treasury received numerous comments on the proposed regulations, and several

commentators spoke at the public hearing on the 2001 proposed regulations. After careful consideration of all the comments received, the IRS and Treasury have concluded that the 2001 proposed regulations should be withdrawn and a new notice of proposed rulemaking should be issued on this subject. Accordingly, this document withdraws the 2001 proposed regulations and provides new proposed regulations (the 2002 proposed regulations).

Most of the comments received on the 2001 proposed regulations were highly critical of the regulations. In particular, many commentators expressed the view that the administrative burden imposed by the 2001 proposed regulations would significantly outweigh any benefits obtained by the IRS from the additional information collected. Some commentators also stated that the 2001 proposed regulations could have a severe negative impact on U.S. banks, particularly U.S. banks with a deposit base that included a significant number of nonresident alien individuals, some of whom had expressed concerns that the information collected under the 2001 proposed regulations might be misused. Other commentators raised certain technical concerns regarding the 2001 proposed regulations, particularly with respect to the reporting requirements for bank deposit interest paid to joint account holders.

After consideration of the comments received, the IRS and Treasury have concluded that the 2001 proposed regulations were overly broad in requiring annual information reporting with respect to U.S. bank deposit interest paid to any nonresident alien. The IRS and Treasury have decided instead that reporting should be required only for nonresident alien individuals that are residents of certain designated countries. The IRS and Treasury believe that limiting reporting to residents of these countries will facilitate the goals of improving compliance with U.S. tax laws and permitting appropriate information exchange without imposing an undue administrative burden on U.S. banks. Accordingly, the 2002 proposed regulations would modify the current regulations (which require reporting of U.S. bank deposit interest only if paid to Canadian residents) by requiring in addition reporting of U.S. bank deposit interest paid to residents of Australia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, and the United Kingdom. Payors may, however, at their option, choose to report bank deposit interest paid to all nonresident aliens or to any nonresident alien who is a resident of a country other than the countries listed above. If the IRS and Treasury determine that this list of countries should be modified in the future, regulations providing such a modification will be proposed and comments will be requested on those proposed regulations.

In other respects, the 2002 proposed regulations generally follow the approach set forth in the 2001 proposed regulations. Thus, the 2002 proposed regulations provide that, if a nonresident alien who is a recipient of U.S. bank deposit interest is a resident of a country for which reporting of such interest is required, a copy of Form 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding", must be furnished to the nonresident alien. Like the 2001 proposed regulations, the 2002 proposed regulations provide that the payor or middleman can satisfy this requirement by furnishing a copy of Form 1042–S either in person or to the last known address of the nonresident alien.

In addition, to conform to the changes made in the 2002 proposed regulations, the Form 1042–S requirements have been modified with respect to joint accounts. For example, the 2001 proposed regulations provide that, if a joint account holder is a U.S. non-exempt recipient, the payor or middleman must report the entire payment to that person. If all joint account holders are foreign persons, the 2001 proposed regulations require the payor or middleman to report the payment to the nonresident alien individual that is a resident of a country with which the United States has an income tax treaty or a tax information exchange agreement (TIEA). The 2002 proposed regulations retain the requirement that the entire payment be reported to a U.S. non-exempt recipient if there is a U.S. non-exempt recipient that is a joint account holder. However, the 2002 proposed regulations modify the 2001 proposed regulations by providing that, if all joint account holders are foreign persons, reporting is required to any one of the joint account holders that is a resident of one of the listed countries.

Section 1.6049–8(a) currently provides, for purposes of the requirement that U.S. bank deposit interest paid to individuals who are Canadian residents must be reported, that the payor or middleman may rely on the permanent address found on an applicable withholding certificate described in § 1.1441–1(c)(16) (Form W–8) to make the determination of whether the nonresident alien individual resides in Canada. However, the regulation also provides that a payor or middleman may rely on its actual knowledge of the individual's residence address in Canada, even if a valid Form W–8 has not been provided, to make such a determination. The 2002 proposed regulations, like the 2001 proposed regulations, eliminate this "actual knowledge of the individual's residence address" rule because it creates a result that is contrary to the presumption rules contained in § 1.1441–1(b)(3)(iii) (and made applicable to reportable payments by § 1.6049–5(d)(2)). In this regard, the presumption rules generally provide that interest on a U.S. bank deposit that cannot be reliably associated with a valid Form W–8 or Form W–9, "Request for Taxpayer Identification Number and Certification", must be presumed to be paid to an undocumented U.S. non-exempt recipient. Accordingly, the 2002 proposed regulations clarify that a payor of interest on such a deposit must report the payment on a Form 1099 as made to a U.S. non-exempt recipient in accordance with the presumption rules. Further, such payment is subject to backup withholding under section 3406.

Proposed Effective Date

These regulations are proposed to apply to payments made after December 31 of the year in which they are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The IRS and Treasury

Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 5, 2002, beginning at 10 a.m. in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the main entrance, located at 1111 Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by November 14, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations is Alexandra K. Helou, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 1 and 31

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments

Accordingly, under the authority of 26 U.S.C. 7805, the proposed amendment to 26 CFR parts 1 and 31 that was published in the **Federal Register** on Wednesday, January 17, 2001 (66 FR 3925, corrected by 66 FR 15820 and 66 FR 16019) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.6049–4, paragraph (b)(5) is revised to read as follows:

§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

* * * * *

(b) * * *

(5) *Interest payments to nonresident alien individuals*—(i) *General rule.* In the case of interest aggregating $10 or more paid to a nonresident alien individual (as defined in section 7701(b)(1)(B)) that is reportable under § 1.6049–8(a), the payor shall make an information return on Form 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding", for the calendar year in which the interest is paid. The payor or middleman shall prepare and file Form 1042–S at the time and in the manner prescribed by section 1461 and the regulations under that section and by the form and its accompanying instructions. See § 1.6049–6(e)(4) for furnishing a copy of the Form 1042–S to the payee. To determine whether an information return is required for original issue discount, see §§ 1.6049–5(f) and 1.6049–8(a).

(ii) *Effective dates.* Paragraph (b)(5)(i) of this section shall apply for payments made after December 31 of the year in which the final regulations are published in the **Federal Register** with respect to an applicable withholding certificate described in § 1.1441–1(c)(16) (Form W–8) furnished to the payor or middleman after that date. (For interest paid to a Canadian nonresident alien individual on or before December 31 of the year in which final regulations are published in the **Federal Register**, *see* § 1.6049–4(b)(5) in effect prior to [EFFECTIVE DATE OF FINAL RULE] (*See* 26 CFR part 1 revised April 1, 2002.))

* * * * *

Par. 3. Section 1.6049–6 is amended as follows:

1. Paragraph (e)(4) is revised.

2. In paragraph (e)(5), the first sentence is revised and a new sentence is added at the end of the paragraph.

The addition and revisions read as follows:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(e) * * *

(4) *Special rule for amounts described in § 1.6049–8(a)*—(i) *In general.* In the case of amounts described in § 1.6049–8(a) (relating to certain payments of deposit interest to nonresident alien individuals) paid after December 31 of the year in which the final regulations are published in the **Federal Register**, any person who files a Form 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding", under section 6049(a) and § 1.6049–4(b)(5) shall furnish a statement to the recipient of the interest either in person or by first-class mail to the recipient's last known address. The statement shall include a copy of the Form 1042–S required to be prepared pursuant to § 1.6049–4(b)(5) and a statement to the effect that the information on the form is being furnished to the United States Internal Revenue Service and may be furnished to the government of the foreign country where the recipient resides.

(ii) *Joint account holders.* In the case of joint account holders, a payor or middleman must report the entire amount of interest as paid to any one of the joint account holders that provides a valid Form W–9, "Request for Taxpayer Identification Number and Certification," or, if any account holder has not furnished an applicable withholding certificate described in § 1.1441–1(c)(16) (Form W–8) or Form W–9, any one of the joint account holders that is presumed to be a U.S. non-exempt recipient under §§ 1.6049–5(d)(2) and 1.1441–1(b)(3)(iii). If all of the joint account holders have furnished valid Forms W–8 certifying their status as foreign persons and any joint account holder is a resident of one of the countries specified in § 1.6049–8(a), then the payor or middleman must report the payment to any one of the joint account holders that is a resident of one of the countries specified in § 1.6049–8(a) (selected account holder). If, however, any joint account holder, including the selected account holder, requests its own Form 1042–S and provides information regarding the correct amount to be reported to him, the payor or middleman must furnish a Form 1042–S to such account holder and make a corresponding reduction to the amount reported to the selected account holder. If the selected account holder makes such request, the payor or middleman must report the corrected amount to the selected account holder and report the remaining amount to any

other joint account holder that is a resident of one of the countries specified in § 1.6049–8(a).

(5) *Effective dates.* Paragraph (e)(4) of this section applies for payee statements due with respect to payments made after December 31 of the year in which the final regulations are published in the **Federal Register**, without regard to extensions. * * * (For interest paid to a Canadian nonresident alien individual on or before December 31 of the year in which final regulations are published in the **Federal Register**, *see* § 1.6049–6(e)(4) in effect prior to [EFFECTIVE DATE OF FINAL RULE] (*See* 26 CFR part 1 revised April 1, 2002.))

* * * * *

Par. 4. In § 1.6049–8, the section heading and paragraph (a) are revised to read as follows:

§ 1.6049–8 Certain interest and original issue discount paid to nonresident alien individuals.

(a) *Interest subject to reporting requirement.* For purposes of §§ 1.6049–4, 1.6049–6, and this section and except as provided in paragraph (b) of this section, the term *interest* means interest described in section 871(i)(2)(A) with respect to a deposit maintained at an office within the United States by a nonresident alien individual who is a resident of any of the following countries: Australia, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, and the United Kingdom. For purposes of the regulations under section 6049, a nonresident alien individual is a person described in section 7701(b)(1)(B). The payor or middleman may rely upon an applicable withholding certificate described in § 1.1441–1(c)(16) (Form W–8) that is valid to determine whether the payment is made to a nonresident alien individual who is a resident of one of the countries for which reporting is required. Generally, amounts described in this paragraph (a) are not subject to backup withholding under section 3406. *See* § 31.3406(g)–1(d) of this chapter. However, if the payor or middleman does not have either a valid Form W–8 or valid Form W–9, "Request for Taxpayer Identification Number and Certification", the payor or middleman must report the payment as made to a U.S. non-exempt recipient if it must so treat the payee under the presumption rules of §§ 1.6049–5(d)(2) and 1.1441–1(b)(3)(iii) and must also backup withhold under section 3406. (For interest paid to a Canadian nonresident alien individual on or before December 31 of the year in which final regulations are published in the **Federal Register**, *see* § 1.6049–8(a) in effect prior to [EFFECTIVE DATE OF FINAL RULE] (*See* 26 CFR part 1 revised April 1, 2002.))

* * * * *

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 5. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 6. In § 31.3406(g)–1, paragraph (d) is revised to read as follows:

§ 31.3406(g)–1 Exceptions for payments to certain payees and certain other payment.

* * * * *

(d) *Reportable payments made to nonresident alien individuals.* A payment of interest that is reported on Form 1042–S as paid to a nonresident alien individual under § 1.6049–8(a) of this chapter is not subject to withholding under section 3406. (For interest paid to a Canadian nonresident alien individual on or before December 31 of the year in which final regulations are published in the **Federal Register**, *see* § 31.3406(g)–1(d) in effect prior to [EFFECTIVE DATE OF FINAL RULE] (*See* 26 CFR part 1 revised April 1, 2002.))

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 02–19348 Filed 7–30–02; 1:35 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Naval Restricted Area, Naval Submarine Base Bangor, Bangor, WA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend its regulations which establish a restricted area in the waters of Hood Canal adjacent to Naval Submarine Base Bangor, at Bangor, Washington. This amendment will enlarge the existing naval restricted area, and change the enforcement responsibility from Commander, Naval Base, Seattle, Washington (now Commander, Navy Region Northwest) to Commander, Naval Submarine Base Bangor. The amendment to the regulation is necessary to increase the protection of Navy strategic assets moored at Naval Submarine Base Bangor.

DATES: Comments must be submitted on or before September 3, 2002.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–OR. 441 G Street, NW., Washington DC, 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch at (202) 761–4618 or Mr. Jack Kennedy, Corps Seattle District, at (206) 764–6907.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriation Act of 1919 (40 Stat.892; 33 U.S.C. 3) the Corps proposes to amend the regulations in 33 CFR part 334 by amending Section 334.1220 to enlarge the presently established naval restricted Area 1, in Hood Canal, adjacent to the submarine base. The present boundaries of Area 1 provide a minimum 150-yard restriction from the shoreline of the submarine base and 300-yard restriction from submarine moorage facilities. The amendment would extend the restricted area an average 300 yards further out into Hood Canal, and provide a 500-yard restriction adjacent to the submarine moorage. At its narrowest point along the length of Area 1, Hood Canal is over a mile wide.

With the enlarged naval restricted area implemented, over 1400 yards of deep water would remain in the center and western thirds of Hood Canal, sufficient for the unimpeded passage of recreational and fishing vessels typically using the area, and equally sufficient for larger commercial vessels that occasionally transit the area.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act (Public Law 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities

(*i.e.*, small businesses and small governments). The Corps expects that the economic impact of the establishment of this restricted area would have no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic, and accordingly, certifies that this proposal, if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

The Seattle District has prepared a preliminary Environmental Assessment (EA) for this action. The preliminary EA concluded that this action will not have a significant impact on the human environment. After receipt and analysis of comments from this **Federal Register** posting and the Seattle District's concurrent Public Notice, the Corps will prepare a final environmental document detailing the scale of impacts this action will have upon the human environment. The environmental assessment may be reviewed at the District Office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Waterways.

For the reasons set out in the preamble, we propose to amend 33 CFR Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS.

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Revise § 334.1220 to read as follows:

§ 334.1220 Hood Canal, Bangor; naval restricted areas.

(a) *Hood Canal, Bangor; Naval restricted areas*—(1) *Area No. 1.* That area bounded by a line commencing on the east shore of Hood Canal at latitude 47 deg.46'18" N, longitude 122 deg.42'18" W; thence latitude 47 deg.46'32" N, longitude 122 deg.42'20" W; thence to latitude 47 deg.46'38" N, longitude 122 deg.42'52" W; thence to latitude 47 deg.44'15" N, longitude 122 deg.44'50" W; thence to latitude 47 deg.43'53" N, longitude 122 deg.44'58" W; thence to latitude 47 deg.43'17" N, longitude 122 deg.44'49" W.

(2) *Area No. 2.* Waters of Hood Canal within a circle of 1,000 yards diameter centered on a point located at latitude 47 deg.46'26" N, longitude 122 deg.42'49" W.

(3) *The regulations*—(i) *Area No. 1.* No person or vessel shall enter this area without permission from the Commander, Naval Submarine Base Bangor, or his/her authorized representative.

(ii) *Area No. 2.* (A) The area will be used intermittently by the Navy for magnetic silencing operations.

(B) Use of any equipment such as anchors, grapnels, *etc.*, which may foul underwater installations within the restricted area, is prohibited at all times.

(C) Dumping of any nonbuoyant objects in this area is prohibited.

(D) Navigation will be permitted within that portion of this circular area not lying within Area No. 1 at all times except when magnetic silencing operations are in progress.

(E) When magnetic silencing operations are in progress, use of the area will be indicated by display of quick flashing red beacons on the pier located in the southeast quadrant of the area.

(4) *Enforcement.* The regulations in this section shall be enforced by the Commander, Naval Submarine Base Bangor, or his/her authorized representative.

(b) [Reserved]

Dated: July 19, 2002.

Michael G. Ensch,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 02–19589 Filed 8–1–02; 8:45 am]

BILLING CODE 3710–GB–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Narragansett Bay, East Passage, Coddington Cove, Naval Station Newport, Newport, RI

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing regulations to establish a restricted area on the east side of Narragansett Bay East Passage at Coddington Cove in the vicinity of Naval Station Newport. These regulations will enable the Navy to enhance safety and security around active military vessels berthed at the facility. The regulations will safeguard military vessels and United States government contractor facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of Navy use of the area and its security measures.

DATES: Written comments must be submitted on or before September 3, 2002.

ADDRESSES: U. S. Army Corps of Engineers, ATTN: CECW-OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Richard Roach, Corps of Engineers, New England District, at (978) 318–8211 or 1–800–343–4789.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps proposes to amend the restricted area regulations in 33 CFR part 334 by adding Section 334.81 which establishes a restricted area in Coddington Cove, off of the Naval Station Newport piers on the eastern side of the East Passage of Narragansett Bay in Newport, Rhode Island. To better protect active naval vessels and personnel stationed at the facility and the general public, the Navy, has requested the Corps of Engineers establish a Restricted Area. This will enable the Navy to keep persons and vessels out of the area at all times, except with the permission of the Commanding Officer, Naval Station Newport.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory

Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334. 81 would be added to read as follows:

§ 334. 81 Naragansett Bay, East Passage, Coddington Cove, Naval Station Newport, Newport, Rhode Island, Restricted Area.

(a) *The area.* All of the navigable waters of Coddington Cove east of a line that connects Coddington Point at latitude 41° 31′ 24.0″ N, longitude 071° 19′ 24.0″ W; with the outer end of the Coddington Cove Breakwater on the north side of the cove at latitude 41° 31′ 55.7″ N, longitude 071° 19′ 28.2″ W.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted areas without permission from the Commanding Officer Naval Station Newport, USN, Newport, Rhode Island or his authorized representative.

(c) *Enforcement.* (1) The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the United States Navy, Commanding Officer Naval Station Newport, Newport, Rhode Island and/or other persons or agencies as he/she may designate.

(2) Federal and State Law enforcement vessels and personnel may enter the restricted area at any time to enforce their respective laws.

Dated: June 26, 2002.

Karen Durham-Aguilera,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 02–19588 Filed 8–1–02; 8:45 am]

BILLING CODE 3710–24–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–61–3–7561; FRL–7254–6]

Approval and Promulgation of Implementation Plan; State of Louisiana; 1-Hour Ozone Attainment Demonstration; Attainment Date Extension, and Withdrawal of Nonattainment Determination and Reclassification

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Baton Rouge 1-hour ozone Attainment Plan and Transport State Implementation Plan (hereinafter referred to as Attainment Plan/Transport SIP) for the Baton Rouge serious ozone nonattainment area (hereinafter referred to as the Baton Rouge area). The attainment demonstration SIP, showing attainment by November 15, 2005, was submitted by the Governor of Louisiana on December 31, 2001. In conjunction with its proposed approval of the attainment demonstration, EPA proposes: extending the ozone attainment date for the Baton Rouge area to November 15, 2005, while retaining the area's current classification as a serious ozone nonattainment area; and withdrawing EPA's June 24, 2002, rulemaking determining nonattainment and reclassification of the Baton Rouge area. EPA is also proposing to find that the Baton Rouge area meets the reasonably available control measures (RACM) requirements of the Act.

In proposing to approve the attainment demonstration, EPA is also proposing to approve the State's enforceable commitment to perform a mid-course review and submit a SIP revision to EPA by May 1, 2004, to approve the motor vehicle emissions budget (MVEB) and an enforceable commitment to submit revised budgets using MOBILE6, and an enforceable transportation control measure (TCM).

This proposed rule also addresses SIP submittals relating to corrections to the 1990 Base Year Emissions Inventory, the 9% Rate-of-Progress Plan, and the 15% Rate-of-Progress Plan.

DATES: Written comments must be received on or before September 3, 2002.

ADDRESSES: All comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Copies of the Louisiana submittals addressed in this proposed rule, and other relevant documents in support of this proposal are available for public inspection during normal business hours at the following addresses: U.S. Environmental Protection Agency, Region 6, Air Planning Section, 1445 Ross Avenue, Dallas, Texas 75202; Louisiana Department of Environmental Quality, 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884. Please contact the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Maria L. Martinez, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–2230.

SUPPLEMENTARY INFORMATION: The use of "we," "us," or "our" in this document refers to EPA.

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I. Background

A. Basis for State's Attainment Demonstration

What Are the Relevant Clean Air Act Requirements?

The Clean Air Act (Act or CAA) requires EPA to establish National Ambient Air Quality Standards (NAAQS) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. Clean Air Act sections 108 and 109. In 1979, EPA promulgated the 1-hour ground-level ozone standard of 0.12 parts per million (ppm) (120 parts per billion (ppb)). 44 FR 8202 (February 9, 1979).

Ground-level ozone is not emitted directly by sources. Rather, VOC and Nitrogen oxides (NO_X), emitted by a wide variety of sources, react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

Ozone formation is accelerated or enhanced under certain meteorological conditions, such as high temperatures and low wind speeds. Higher ozone concentrations occur downwind of areas with relatively high VOC and NO_X concentrations or in areas subject to relatively high background ozone and ozone precursor concentrations (ozone and ozone precursors entering an area as the result of transport from upwind source areas).

VOC emissions are produced by a wide variety of sources, including stationary and mobile sources. Significant stationary sources of VOC include industrial solvent usage, various coating operations, industrial and utility combustion units, petroleum and oil storage and marketing operations, chemical manufacturing operations, and personal solvent usage. Significant mobile sources of VOC include on-road vehicle usage and off-road vehicle and engine usage, such as farm machinery, aircraft, locomotives, and motorized, lawn care and garden implements.

NO_X emissions are produced primarily through combustion processes, including industrial and utility boiler use, process heaters and furnaces, and on-road and off-road mobile sources.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.124 ppm in any given day (only the highest 1-hour ozone concentration at the monitor during any 24 hour day is considered when determining the number of exceedance days at the monitor). An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of exceedances occur at any monitor in the area. 40 CFR part 50, appendix H.

The highest of the fourth-highest daily peak ozone concentrations over the 3 year period at any monitoring site in the area is called the ozone design value for the area. The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data for the 3 year period from 1987 through 1989 period. Clean Air Act section 107(d)(4); 56 FR 56694 (November 6, 1991). The Act further classified these areas, based on the areas' ozone design values, as marginal, moderate, serious, severe, or extreme. Marginal areas were suffering the least significant ozone nonattainment problems, while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the 1-hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005, or November 15, 2007, depending on each area's ozone design value for the period from 1987 through 1989. The Baton Rouge area was classified as serious and its attainment date was November 15, 1999. The Baton Rouge area encompasses East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Livingston Parishes (40 CFR 81.319).

The requirements of the Act for ozone attainment demonstrations for serious ozone nonattainment areas are specified in several sections of the Act. Section 182(c) sets forth the requirements for serious areas. Section 172(c)(6) of the Act requires all nonattainment area SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment by the applicable attainment date. Section 172(c)(1) requires the implementation of all reasonably available control measures (including, at a minimum, Reasonably Available Control Technology (RACT)) and requires the SIP to provide for attainment of the NAAQS. Section 182(c) incorporates Section 182(b)(1)(A) and requires the SIP for serious areas to provide for reductions in emissions of VOC and NO_X from the baseline emissions of at least 3 percent averaged over each consecutive 3-year period until the applicable attainment date. Finally, section 182(c)(2)(A) requires the use of photochemical grid modeling or other methods judged to be at least as effective to demonstrate attainment of the ozone NAAQS by the applicable attainment date. EPA's "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992) provides the interpretative basis for EPA's rulemakings under the nonattainment plan provisions of the Act (hereinafter referred to as the General Preamble). As part of today's proposal, EPA is proposing action on the attainment demonstration SIP revisions submitted by the State of Louisiana for the Baton Rouge area and its associated ozone modeling domain. See Section I.B. below.

In general, an attainment demonstration SIP includes a modeling analysis showing how an area will achieve the standard by its attainment date and the emission control measures

necessary to achieve attainment. The attainment demonstration SIPs must include motor vehicle emission budgets for transportation conformity purposes. Transportation conformity is a process required by Section 176(c) of the Act for ensuring that emissions from all on-road sources are consistent with the attainment of the standard. Ozone attainment demonstrations must include the estimates of motor vehicle VOC and NO_X emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether transportation plans, programs, and projects conform to the attainment SIP. Refer to Section II.A.4. for more details.

What Is the History and Time Frame for the State Attainment Demonstration SIP?

On May 10, 2000, the Governor of Louisiana requested an attainment date extension for the Baton Rouge area. On May 9, 2001, EPA proposed its finding that the Baton Rouge area did not attain the 1-hour ozone NAAQS by the applicable attainment date (66 FR 23646). The proposed finding was based upon ambient air quality data from the years 1997, 1998, 1999. These data show that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) was exceeded on an average of more than one day per year over this three-year period. Furthermore, the area did not qualify for an attainment date extension under section 181(a)(5) as the area had more than 1 exceedance of the 1-hour standard in 1999. EPA also proposed that the appropriate reclassification of the area was too severe.

In that proposed action, we also stated that Louisiana was seeking an extension of its attainment date pursuant to EPA's July 16, 1998, guidance memorandum entitled "Extension of Attainment Dates for Downwind Transport Areas," published in a March 25, 1999, **Federal Register** notice (64 FR 14441) (hereinafter referred to as EPA's extension policy). EPA's extension policy includes EPA's interpretation of the Act regarding the extension of attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour ozone standard and which are downwind of areas that have interfered with their ability to demonstrate attainment of the ozone standard by dates prescribed in the Act.

EPA proposed to take final action on the determination of nonattainment and reclassification of the Baton Rouge area only after the area had received an opportunity to qualify for an attainment date extension under the extension policy. Louisiana submitted an Attainment Plan/Transport SIP on December 31, 2001, for the Baton Rouge area. EPA was in the process of reviewing the Attainment Plan/Transport SIP when the United States District Court for the Middle District of Louisiana entered a Judgment on March 7, 2002, ordering EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. *LEAN* v. *Whitman*, No. 00–879–A. In compliance with Court's Order, on June 24, 2002, (67 FR 42688) we published in the **Federal Register** our determination that the Baton Rouge area did not attain the 1-hour ozone standard by November 15, 1999. By operation of law, that determination results in the Baton Rouge area being reclassified from a serious to a severe nonattainment area on the effective date of that rule. EPA concurrently proposed to extend the effective date of our determination from August 23, 2002, to October 4, 2002 (67 FR 42697, June 24, 2002). In the June 24, 2002, proposed rulemaking, EPA also set forth its intent to withdraw the final determination and reclassification, if EPA granted the State an attainment date extension before the effective date of the determination and reclassification rule.

What Is the Time Frame for Taking Action on the Attainment Demonstration SIPs?

Louisiana submitted the attainment demonstration SIP revisions and supporting documentation between December 2001 and July 2002. EPA believes that it is important to keep the process moving forward in evaluating these plans and, as appropriate, approving them. In today's **Federal Register**, EPA is proposing to approve the Attainment Demonstration SIP. EPA is taking separate actions on other related revisions to the Baton Rouge SIP, including the Inspection and Maintenance Program (67 FR 44410, July 2, 2002), NO_X regulations (67 FR 30638, May 7, 2002, and 67 FR 48095, July 23, 2002), New Source Review (see 67 FR 48090, July 23, 2002), emissions reductions credit banking (see 67 FR 48083, July 23, 2002), Contingency Measures (see 67 FR 35468, May 20, 2002), and SIP revisions dealing with VOC emissions from industrial wastewater (67 FR 41840, June 20, 2002). EPA will not take final action to approve the attainment demonstration and extension of the attainment data unless and until it completes action on all other required rules.

The anticipated schedule for actions on the State's submittals has been set forth in a recent proposed rulemaking June 24, 2002, (67 FR 42697). EPA intends to complete rulemaking on the attainment demonstration and attainment date extension for the Baton Rouge area after it completes action on the submittals from Louisiana of the additional measures necessary to support the attainment demonstration and necessary to address the criteria of the extension policy. Provided EPA has taken final action on all other required rules, EPA plans to send a notice of final rulemaking on the attainment demonstration and attainment date extension to the Office of the Federal Register no later than October 4, 2002, for publication.

What Action Is EPA Proposing Regarding the Determination of Nonattainment as of November 15, 1999, and Reclassification Published on June 24, 2002?

EPA is here proposing to withdraw the June 24, 2002, Notice of Nonattainment and Reclassification, if EPA issues a final rulemaking granting an attainment date extension prior to the effective date of the Notice of Nonattainment. EPA believes this is appropriate for a number of reasons. Section 181(b)(2)(A) of the Act requires that EPA determine attainment within six months of the attainment date. If the attainment date were extended, there would be a new deadline for the determination. See section I.D. below. Thus if the attainment date were extended, EPA's obligation to determine attainment would not yet have occurred and EPA could withdraw the published nonattainment determination and the consequent reclassification, which would not yet have gone into effect. Such a course would harmonize the need to allow the Agency to fulfill its duty to take into account upwind transport, while adhering to a fixed and very near-term schedule. See EPA's rulemaking in St. Louis, Missouri, 66 FR 33995 (June 26, 2001). See also EPA's recent granting of an attainment date extension in Atlanta, Georgia. 67 FR 30,574 (May 7, 2002).

On July 2, 2002, the U.S. Court of Appeals for the District of Columbia vacated EPA's approval of an attainment date extension for the Washington, DC ozone nonattainment area. *Sierra Club* v. *EPA*, Nos. 01–1070 and 01–1158 (D.C. Cir., 2002). EPA is currently evaluating this decision and considering what impact it may have on EPA's future actions concerning the Baton Rouge area.

B. Components of a Modeled Attainment Demonstration

EPA provides guidance (GUIDELINE FOR REGULATORY APPLICATION OF THE URBAN AIRSHED MODEL, July 1991; Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, June 1996; and Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled, November 1999) to which States may refer when developing a modeled attainment demonstration and supplementing it with additional evidence to demonstrate attainment. To have a complete modeling demonstration submission, States should have submitted the modeling analyses and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard. Additional components are discussed below.

What EPA Guidelines Apply to the Attainment Demonstration Submittals?

The following documents, among others, contain EPA's guidelines affecting the content and review of ozone attainment demonstration submittals:

1. Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, July 1991. Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMREG").
2. Memorandum, "The Ozone Attainment Test in State Implementation Plan (SIP) Modeling Demonstrations," from Joseph A. Tikvart, Office of Air Quality Planning and Standards, December 16, 1992.
3. Guidance on Urban Airshed Model (UAM) Reporting Requirements for Attainment Demonstrations, EPA–454/R–93–056, March 1994. Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMRPTRQ").
4. Memorandum, "Ozone Attainment Demonstrations," from Mary D. Nichols, Assistant Administrator for Air and Radiation, March 2, 1995. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*
5. Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, June 1996. Web site: *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").
6. Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS," from Richard Wilson, Office of Air and Radiation, December 29, 1997. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*
7. Memorandum, "Extension of Attainment Dates for Downwind Transport Areas," from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, July 16, 1998.
8. Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations," from Merrylin Zaw-Mon, Acting Director of the Regional and State Programs Division, November 3, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*
9. Memorandum, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," from John S. Seitz, Director of Office of Air Quality Planning and Standards, November 30, 1999.
10. Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled, Office of Air Quality Planning and Standards, November 1999. Web site: *http://www.epa.gov/ttn/scram/* (file name: "ADDWOE1H");
11. Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources (Revised) (1992);
12. User's Guide to MOBILE5 (Mobile Source Emission Factor Model), May 1994;
13. Memorandum, "Ozone Attainment Dates for Areas Affected by Overwhelming Transport," from Mary D. Nichols, Assistant Administrator for Air and Radiation, Environmental Protection Agency, September 1994.

What Are the Modeling Requirements for the Attainment Demonstration?

For purposes of demonstrating attainment, the Act requires States containing serious or above ozone nonattainment areas to use photochemical grid modeling or an analytical method judged by EPA to be at least as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone in the nonattainment area and its modeling domain. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values. Following validation of the modeling system for a base year, emissions are projected to an attainment year to predict air quality changes in the attainment year due to the emission changes, which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted ozone concentrations inside the modeling domain are at or below the ozone standard or an acceptable upper limit above the standard under certain conditions provided in EPA's guidance. When the predicted concentrations are above the standard or upper limit, EPA guidance provides for the use of an optional weight-of-evidence determination which incorporates other analyses, such as air quality and emissions trends, to address uncertainty inherent in the application of photochemical grid models. This latter approach may be used under certain circumstances to support the demonstration of attainment.

EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the State develops and implements a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (State and local agencies, EPA, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the State selects air pollution days, *i.e.*, days in the past with high ozone concentrations exceeding the standard, that are representative of the ozone pollution problem for the nonattainment area. Third, the State identifies the appropriate dimensions of the area to be modeled, *i.e.*, the modeling domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include any large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Alternatively, a much larger modeling domain may be established, addressing the impacts of both local and regional emission control measures on a number of ozone nonattainment areas. In both cases, the attainment determination is based on the review of ozone predictions within the local area where control measures are most beneficial to bring the area into attainment (referred to as the local modeling domain). Fourth, the State determines the grid resolution. The horizontal and vertical resolutions in the model can significantly affect the modeled results of dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not

properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the State generates meteorological and emissions data that describe atmospheric conditions and emissions inputs reflective of the selected high ozone days. Finally, the State verifies that the modeling system is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests (generally referred to as model validation). Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates to support an attainment demonstration.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the ozone standard. A predicted peak ozone concentration above 0.124 ppm (124 ppb) indicates that the area is expected to exceed the standard in the attainment year. This type of test is often referred to as an exceedance test. EPA's June 1996 guidance recommends that States use either of two exceedance tests for the 1-hour ozone standard: a deterministic test or a statistical test.

Under the deterministic test, the State compares predicted 1-hour daily maximum ozone concentrations for each modeled day [1] to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

The statistical test takes into account the fact that the form of the 1-hour ozone standard allows exceedances. If, over a 3 year period, the area has an average of 1 or fewer ozone standard exceedances per year at any monitoring site, the area is not violating the standard. Thus, if the State models a severe day (considering meteorological conditions that are very conducive to high ozone levels and that should lead to fewer than 1 exceedance per year at any location in the nonattainment area and in the modeling domain over a 3 year period), the statistical test provides that a prediction above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard.

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet or attain the 1-hour standard. For example, a monitoring site for which the 4 highest 1-hour average concentrations over a 3 year period are 0.136 ppm, 0.130 ppm, 0.128 ppm, and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration level observed at a location on a single day and it would be the only reading above that standard that would be expected to occur no more than an average of once a year over a 3 year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the standard. Thus, these upper limits are rarely significantly higher than the attainment level of 0.124 ppm.

What Are the Additional Analyses That May Be Considered When the Modeling Fails To Show Attainment?

When the modeling does not conclusively demonstrate that the area will attain, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. EPA's guidance recognizes these limitations and provides a means for considering other evidence to help assess whether attainment of the standard is likely. The process by which this is done is called a weight-of-evidence determination.

Under a weight-of-evidence determination, the State can rely on and EPA will consider factors such as: model performance and results, episode selection, other modeled attainment tests, *e.g.*, relative reduction factor analysis; other modeled outputs, *e.g.*, changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emission trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exhaustive list of factors that may be considered and these factors could vary from case to case. EPA's guidance contains no limit on how close a modeled attainment test must be to passing to conclude that other evidence besides a modeled attainment test is a sufficiently compelling case for attainment. However, the further a modeled attainment test is from being passed, the more compelling the weight-of-evidence needs to be.

C. Framework for Proposing Action on the Attainment Demonstration SIP

In addition to the modeling analysis and weight-of-evidence determination demonstrating attainment, EPA has identified the following key elements which must be present in order for EPA to approve the 1-hour attainment demonstration SIP.

1. Clean Air Act Measures and Other Measures Relied on in the Attainment Demonstration State Implementation Plan

The attainment demonstration must incorporate the emission impacts of any emission control measures needed to achieve attainment. The rules for these emission controls must also have been adopted by the State and approved by EPA as part of the SIP no later than the time EPA finally approves the attainment demonstration. The emission controls for these sources must be implemented as expeditiously as practicable but not later than the applicable attainment date.

For purposes of fully approving the State's attainment demonstration SIP, the State must adopt and submit all VOC and NO_X control regulations for affected sources within the State and within the local modeling domain as reflected in the adopted emission control strategy and as reflected in the attainment demonstration.

The measures required for serious ozone nonattainment areas by section 182(c) of the CAA include: (1) Attainment and reasonable further progress demonstrations; (2) enhanced vehicle inspection and maintenance (I/M) programs; (3) clean-fuel vehicle programs; (4) RACT for VOC and NO_X; (5) New Source Review (NSR) regulations for VOC and NO_X, including an offset ratio of 1.2:1 and a major VOC and NO_X source size cutoff of 50 tons per year (TPY); (6) an enhanced air monitoring program; and (7) contingency provisions. These requirements are specified in sections 182(c) and 182(f) of the Act.

To receive an extension of the attainment date, under the extension policy, the State must have adopted the emission control measures required under the Act for the area's classification or must have established negative declarations for the source

[1] The initial, "ramp-up" days for each episode are excluded from this determination.

categories for which the area has no major sources that are subject to Clean Air Act requirements.

2. Motor Vehicle Emissions Budget

An attainment demonstration SIP must estimate the motor vehicle emissions that will be produced in the attainment year and must demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. Generally when a state makes an initial SIP submittal, EPA conducts an expedited review, including an opportunity for public comment, to determine if the submitted budgets meet the adequacy criteria contained in the transportation conformity rule (40 CFR 93.118). A motor vehicle emissions budget contained in an initial SIP submittal cannot be used to determine the conformity of the transportation plans and programs to the SIP, as required by section 176(c) of the Act, until it is found adequate. EPA then conducts a review of the entire SIP submittal to determine if the SIP, including the attainment motor vehicle emissions budgets, can be approved. An appropriately identified motor vehicle emissions budget is a necessary part of an attainment SIP.

D. Criteria for Attainment Date Extensions

What Is EPA's Policy With Regard to an Ozone Attainment Date Extension?

EPA's policy regarding an extension of the ozone attainment date for the Baton Rouge area is addressed in EPA's notice of proposed rulemaking dated May 9, 2001. 66 FR 23646. In the May 9, 2001, document, EPA proposed to reclassify the Baton Rouge area to a severe ozone nonattainment area, but also provided notice of the area's potential eligibility for an attainment date extension based on the July 16, 1998 EPA guidance memorandum. In today's document, EPA proposes to approve the State's request for an attainment date extension under that policy provided that EPA issues a final approval of the State's attainment demonstration and any other required local measures. The specifics of the attainment date policy are repeated below for clarity.

That memorandum stated that EPA will consider extending the attainment date for an area or a State that:

(1) Has been identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind ozone nonattainment;

(2) Has submitted an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that shows it will attain the 1-hour standard no later than the date that the emission reductions are expected from upwind areas under the final NO_X SIP call (by 2003) and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind emission reductions;

(3) Has adopted all applicable local measures required under the area's current ozone classification and any additional emission control measures demonstrated to be necessary to achieve attainment, assuming the emission reductions occur as required in the upwind areas; and

(4) Has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

Once an area receives an extension of its attainment date based on ozone/precursor transport impacts, the area would no longer be subject to reclassification to a higher ozone nonattainment classification. If the Baton Rouge area is granted an attainment date extension, it would no longer be subject to a reclassification to severe nonattainment for ozone and no longer subject to the additional emission control requirements that would result from the reclassification to severe nonattainment.

Louisiana has requested an extension of the attainment date for the Baton Rouge area in conjunction with the ozone attainment demonstration submittals. The ozone attainment demonstration uses November 15, 2005, as the appropriate ozone attainment date. EPA is proposing to extend the attainment date for the Baton Rouge area to November 15, 2005, if EPA takes final action to approve the attainment demonstration and any other required local measures. For a discussion of how the Baton Rouge area satisfies the criteria for the attainment date extension, see section II.D. below.

II. Technical Review of the Submittals

A. Summary of the State Submittals

1. General Information

When Were the Ozone Attainment Demonstration State Implementation Plan Revisions Submitted to the Environmental Protection Agency?

Louisiana has made the following submittals, which in whole or in part concern the ozone attainment demonstration and an extension of the attainment date for the Baton Rouge area:

(a) On December 31, 2001, LDEQ submitted an ozone attainment demonstration and transport SIP revision. The SIP revision included:

i. A revision to the 15% ROPP for the control of VOC emissions in the Baton Rouge area. The 15% Rate ROPP was approved by EPA on October 22, 1996 (61 FR 54737).

ii. Revisions to the 1990 base year emissions inventory. The inventory was approved on July 2, 1999 (64 FR 35930).

iii. Revisions to the Post-1996 ROPP. The Post-1996 ROPP was approved on July 2, 1999 (64 FR 35930).

iv. Revisions to the I/M program.

v. Attainment MVEBs for 2005 for VOCs and NO_X.

vi. An enforceable commitment to submit revised MVEBs within 24 months after the release of MOBILE6.

vii. An enforceable commitment for mid-course review.

viii. An enforceable transportation control measure referred to as the Advanced Transportation Management System.

ix. An emissions control strategy that incorporates federal, state, and local control measures.

x. Revisions to Louisiana's New Source Review rules.

(b) On February 1, 2002, LDEQ submitted the changes to the proposed rule for the control of NO_X emissions.

(c) On February 27, 2002, LDEQ submitted final rules for the emission reductions credit banking program and for the control of NO_X emissions.

(d) On February 27, 2002, LDEQ also submitted final revisions to the contingency measures proposed in the December 31, 2002, SIP submittal.

(e) On April 8, 2002, LDEQ submitted a letter requesting parallel processing of revisions to the State's NO_X regulations.

(f) On May 20, 2002, LDEQ submitted a letter concerning the revisions to the rulemaking dealing with VOC emissions from industrial wastewater.

EPA is taking separate actions on certain revisions to the Baton Rouge SIP, including the Inspection and Maintenance Program (67 FR 44410,

July 2, 2002), NO_x regulations (67 FR 30638, May 7, 2002, and 67 FR 48095, July 23, 2002), New Source Review (see 67 FR 48090, July 23, 2002), emissions reductions credit banking (see 67 FR 48083, July 23, 2002), Contingency Measures (see 67 FR 35468, May 20, 2002), and SIP revisions dealing with VOC emissions from industrial wastewater (67 FR 41840, June 20, 2002). In this proposed rulemaking the following are considered: the ozone attainment demonstration plan and its associated MVEBs; the transport SIP related materials; the RACM analysis; and the revisions to the 1990 base year inventory, the 15% ROPP, and the Post-1996 ROPP.

When Was the Submittal Addressed in a Public Hearing, and When Was the Submittal Formally Adopted by the State?

LDEQ held a public hearing on the attainment plan and transport SIP on November 26, 2001, and adopted it on December 27, 2001.

2. Modeling Procedures, Input Data, and Results

What Modeling Approach Was Used in the Analyses?

The attainment modeling approach is documented in Louisiana's December 31, 2001, ozone attainment demonstration SIP and information Louisiana previously submitted to EPA on May 10, 2000. EPA's technical analysis discussed later in this document is based on data from this modeling domain. For additional information, see the Technical Support Document (TSD) and the State's submittal.

Besides being able to model ozone and other pollutants in nested horizontal grids, the UAM-V photochemical model (used by LDEQ) can also model individual elevated source plumes within the modeling grid. Gaussian dispersion models are used to grow plumes until the plumes essentially fill grid cells. At these points, the numerical dispersion and advection components of UAM take over to address further downwind dispersion and advection.

The following input data systems and analyses were also used as part of the combined modeling system:

Emissions: UAM–V requires the input of an emissions inventory of gridded, hourly estimates of CO, NO_x, and speciated VOC emissions (speciated based on carbon bond types). The State provided regional and local emission inventories, which were processed through the Emissions Preprocessor System, Version 2.5 (EPS–2.5) to prepare UAM–V emissions data input files.

Louisiana has also made changes to the 1996 emission inventory as documented in the December 31, 2001, submittal. The State submittals describe in detail the procedures used to develop, and then project, the base year emission inventories to the 1997/1999 period and to project emissions to account for growth and control through November 15, 2005.

What High Ozone Periods Were Selected for the Modeling Demonstration?

EPA's Guideline sets forth a recommended procedure for selecting ozone exceedance episodes appropriate for conducting a modeling demonstration. This procedure, in part, considers wind rose analyses based upon the four morning hours of 0700 to 1000 standard time. LDEQ's episode selection for the Baton Rouge 1-hour ozone modeling analysis was based on a review of historical meteorological and air quality data, and application of a procedure for optimizing representation of the key meteorological regimes. The results for 1-hour ozone for Baton Rouge overlap with the Gulf Coast Ozone Study (GCOS) modeling episodes for two of the four GCOS episode periods. The Baton Rouge 1-hour ozone modeling analysis also includes a third episode that is not a part of the GCOS study. The selected episode periods were:

a. August 24–31, 1997 (Sunday–Sunday)
b. September 10–18, 1997 (Wednesday–Thursday)
c. August 1–8, 1999 (Sunday–Sunday)

With respect to the considerations listed above, the three episode periods included:

a. Six 1-hour exceedance days that represent five different types of meteorological regimes.

b. Eleven days with ozone concentrations within 10 ppb of the design value for Baton Rouge (these include several days that represent the three most frequently occurring exceedance meteorological regimes).

c. A range of ozone concentrations among the 1-hour exceedance days from 126 to 143 ppb (with a mean of 131 ppb).

Based on observed ozone concentrations and meteorological conditions, and considering the EPA guidance procedures, LDEQ chose September 13, 1997, August 31, 1997, and August 7, 1999 as the three primary episode days for the Baton Rouge 1-hour ozone modeling analysis.

For the September 1997 episode period, September 13 is a key exceedance day with a maximum ozone concentration near the 1997–1999 design value (126 ppb) and meteorological conditions representative of a key exceedance meteorological regime (the "continental high" regime). Wind directions (near the surface and aloft) are primarily from the north.

For the August 1997 episode period, August 31 is the only exceedance day (with a peak of 127 ppb) and the key episode day. Meteorological conditions transition from a key exceedance meteorological regime (the "gulf high" regime) to a disturbance regime during this day. Light and variable winds are associated with a high-pressure system that is located over Baton Rouge on the 31st and the local conditions reflect the influence of high pressure.

For the August 1999 episode period, the 7th stands out as the best day for use in the attainment demonstration. This is due to high ozone and, partially, representative meteorological conditions. It also complements the other key days (from the August and September 1997 episode periods) with southerly to southeasterly winds (with this day, the key three episode days combined include northerly, southerly, and light and variable wind components). The maximum ozone concentration (143 ppb) is more than 10 ppb greater than the design values for 1997–1999 and 1999–2001.

What Procedures and Sources of Projection Data Were Used To Project the Emissions to Future Years?

The 2005 future-year basecase episode incorporates the effects of population and industry growth (or, in some cases, decline) as well as national and statewide control measures or programs that should be in place by 2005. The future-year basecase emissions inventory is based on typical summer day emissions, with adjustments for source-specific and episode-specific information. Growth and control factors (for the entire modeling domain) were obtained from the Bureau of Economic Analysis (BEA) and applied based on 2-digit Standard Industrial Code (SIC) for point sources and on the EPS 2.5 default projection factor assignments by source category code for area and mobile sources. Employment was used as the basis for the growth factors for Louisiana. The control factors represent reductions in emissions that should occur as a result of required control requirements. The 2005 basecase emissions inventory also incorporates the expected emission reductions

associated with EPA's NO_X SIP Call and Tier II vehicle standards and fuel sulfur program, as well as emissions reductions associated with the 2007 SIPs for the Houston/Galveston and Beaumont/Port Arthur, Texas, areas. For the Baton Rouge subdomain (Grid D), projection of the emissions to 2005 resulted (approximately) in a one percent increase in NO_X emissions and a corresponding 15 percent decrease in VOC emissions compared to the base year (1997/1999). The offshore area and point sources were projected to 2005 using the information provided by Mineral Management Services (MMS) reflecting expected future activity. The offshore oil platforms were modeled as point sources, and other source categories were modeled as area sources. Details of the above methods are discussed further in the TSD and Louisiana's submittals.

How Did the State Validate the Photochemical Modeling Results?

The LDEQ SIP modeling analysis included the application of the UAM–V modeling system for basecase year episode periods and a future year of 2005. LDEQ selected three basecase episodes for this attainment demonstration modeling. They were the August 24–31, 1997, September 10–18, 1997 and August 1–8, 1999 episodes. Model performance evaluations were conducted for each of these episodes.

Model performance evaluation based upon diagnostic and sensitivity analyses consisted of testing the response of modeled ozone to changes in the various model inputs (*i.e.*, meteorology, emission inventory, and initial & boundary conditions). The model performance evaluation based upon graphical measures consisted of comparing time series of monitored and modeled ozone and ozone precursor concentrations, and comparing modeled ozone concentration contours with monitored ozone data. The model performance evaluation based upon statistical measures consisted of comparing the modeled versus monitored ozone "Unpaired Peak Accuracy", "Normalized Bias", and "Gross Error" with EPA's recommended ranges for acceptable model performance. These evaluation methods and performance measurement analyses were utilized to pick representative ozone episode days for which the model could sufficiently replicate the episode day.

The key simulation days for the Baton Rouge 1-hour ozone attainment demonstration are: September 13, 1997, August 31, 1997, and August 7, 1999. These are exceedance days for which acceptable model performance was achieved. They also represent a range of meteorological conditions and, in particular, a variety of wind directions, which makes them especially suitable, in combination, for use in the attainment demonstration (*i.e.*, a variety of wind directions and thus, potential source-receptor relationships are represented by the key modeling episode days). Further discussion of the choice of these days as the episode days is included in the individual episode discussions below. The 1-hour ozone attainment demonstration analysis presented focuses on these three primary episode days. The analysis of results for these days is supplemented by weight of evidence.

What Were the Ozone Modeling Results for the Base Period and for the Future Attainment Period?

The basecase modeling analysis results indicate that the MM5/UAM–V modeling system can be used to successfully simulate the complex processes leading to high ozone in the Baton Rouge area, although in some cases it is difficult for the model to replicate site-specific details. Key findings related to model performance include:

—Model performance varies by day, and among the modeling episode periods.
—Statistical measures for Grid D are generally within the EPA recommended ranges.
—For the episodes modeled there is no consistent bias toward over- or under estimation on a domain-wide or site-specific basis.
—Gradients in the concentration fields, especially along the coastline, influence sites-specific model performance (especially when using the maximum values in the vicinity of sites to calculate the performance measures).
—Changes to the UAM–V inputs (emissions, meteorological, initial and boundary conditions) produce expected (and moderate) responses.

The simulated high ozone concentrations for the three primary episode days occur in Baton Rouge (September 13, 1997), to the south of Baton Rouge (August 31, 1997), and to the northwest of Baton Rouge (August 7, 1999). From evaluation of meteorological conditions, these three primary episode days appear to represent the three key types of ozone episode meteorological patterns that typically occur in the Baton Rouge area. Because the meteorological conditions for August 7th represent a distinct wind pattern that is representative of ozone episodes, this episode day truly compliments the other two days. These three primary episode days represent the three key types of ozone episode meteorological patterns that typically occur in the Baton Rouge area. Acceptable basecase model performance is achieved that meets EPA statistical guidance for the two 1997 episode days. The August 7, 1999, episode day basecase modeling is slightly outside of EPA statistical guidance parameters, but can still be utilized to evaluate control strategy impacts based upon other evaluation techniques. Specifically, the 1999 episode day has generally good performance for sites within Baton Rouge and to the north of the urban area, but the simulated ozone profiles are flatter than observed at some of the outlying monitoring sites. The normalized bias value for August 7, 1999 is −16.8% (Grid D), which is just outside the preferred range of +/−15%. The Gross Tete monitoring site is one of the significant reasons the bias is off, and if this location were not included the bias would be within desired parameters. For further information concerning the Gross Tete monitoring site see the TSD.

Do the Modeling Results Demonstrate Attainment of the Ozone Standard?

The modeling results for the Baton Rouge 5-parish nonattainment area were 123.4, 124.0, and 121.3 ppb for the three episode days. The maximum simulated ozone concentrations for Grid D (a rectangular area 112 km × 148 km that includes the Baton Rouge nonattainment area) were 123.4, 124.0, and 127.4 ppb. The 127.4 ppb peak is predicted to occur outside of the Baton Rouge nonattainment area for the 1999 episode day. The two 1997 episode days demonstrated attainment utilizing the deterministic test. Therefore, Louisiana has demonstrated with these two episodes that the Baton Rouge nonattainment area will attain the standard by November 15, 2005. Since the 1999 episode does not meet the deterministic test because it predicts a level slightly above the standard occurring in an attainment parish outside of the Baton Rouge nonattainment area, to ensure that the chosen control strategy for the Baton Rouge nonattainment area will not cause an exceedance of the standard to occur in an attainment parish, Louisiana supplemented the attainment demonstration with weight-of-evidence. With weight-of-evidence for the 1999 episode, these modeling results indicate that the Baton Rouge nonattainment area will attain (and the surrounding area will continue to attain) the ozone

standard by November 15, 2005, with the proposed rules control scenario and other reductions occurring within the domain.

What Weight-of-Evidence Analyses and Determinations Are Used In This SIP?

The modeling by itself does demonstrate attainment in the Baton Rouge nonattainment area, but the modeling for the 1999 episode day by itself does not conclusively demonstrate attainment in Grid D, an area outside the nonattainment area but downwind of it and within the State and part of the modeling domain. The modeling for both of the 1997 episode days do show attainment within Grid D. The results for the 1999 episode day, however, are close enough to warrant the consideration of weight of evidence arguments that support the modeling demonstration of attainment. EPA's guidance on the use of modeled results to demonstrate attainment of the ozone NAAQS (June, 1996) allows for the use of alternative analyses as weight-of-evidence. The alternative analyses should provide compelling evidence that a specific control strategy, even if it is not capable of demonstrating modeled attainment utilizing modeling, is nonetheless expected to achieve monitored attainment by the attainment date. In this case, the modeling does demonstrate attainment in the Baton Rouge nonattainment area and Grid D for the two 1997 episodes, but weight of evidence provides additional support that is needed to determine that the attainment parishes within Grid D will stay in attainment for all three episode days (including the 1999 episode day). The EPA's 1999 guidance document entitled "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled" addressed additional weight-of-evidence approaches, one of which considers methods that relate modeled ozone concentrations to monitored design values for a particular area.

LDEQ's weight-of-evidence determination includes:

- Consideration of certain factors that are also the benchmarks for the statistical determination approach.
- Consideration of uncertainties associated with the modeling system.
- Application of relative-reduction procedures for 1-hour ozone on a site-specific basis (attainment and screening tests).
- Assessment of simulation results relative to 8-hour ozone.
- Application of relative-reduction procedures for 1-hour ozone on a domain-wide basis.
- Analysis of observed and simulated ozone trends.

Using the statistical approach included in the 1996 guidance, Benchmark Test #1, which limits the number of exceedances within each subregion of the modeling domain according to the severity of the modeled primary episode days, is not met. One of the primary episode days (August 7, 1999) is characterized as severe, which is when the expected frequency of occurrence of the meteprological conditions associated with the episode is less than 2 times per year. The characterization of the episode determines the number of exceedances allowed using this method. The Grid D domain was divided into subregions, with each subregion containing 64 2-km grid cells, for this analysis. The number of allowable exceedances in each subregion is zero; for one subregion, one exceedance is simulated.

Benchmark Test #2, which limits the extent to which the simulated concentrations for the severe primary episode days may exceed 124 ppb, is met. For the August 7, 1999 episode day, the maximum simulated value (Grid D) of 127.4 ppb is within the range of the estimated allowed maximum values of 124 to 129 ppb.

Benchmark Test #3, provides that, for a composite of all primary episode days, the number of grid cell hours with simulated ozone concentrations greater than 124 ppb should be reduced by at least 80 percent. The value of this parameter is reduced by 97.6 percent. This test is passed by a significant margin.

The results from application of the statistical approach did not pass Benchmark Test #1. However, components of the statistical approach analyses do show improvements and thus this data can be used as one of the weight-of-evidence components.

Additional weight of evidence was also considered. Uncertainties associated with modeling system were considered as part of the weight of evidence. Overestimation of the Baton Rouge nonattainment area domain-wide (Grid D) 1-hour maximum ozone concentration for the three episode days adds to the weight-of evidence that the results demonstrate attainment, since both the deterministic and (to a lesser extent) statistical methods for the 1-hour ozone attainment demonstration emphasize the reduction of the simulated peak concentration. The good model performance achieved for the September 13, 1997, and August 31, 1997, primary episode days adds to the credibility of the attainment test results for these two days, which in both cases clearly indicate that attainment has been demonstrated (using both the deterministic and statistical methods). Poorer model performance for the August 7, 1999 episode supports use of greater caution in interpreting the results for this day than those for the other episode days. Additional weight-of-evidence is used to determine that the episode day demonstrates attainment.

Despite the differences in simulated and observed ozone concentrations and model performance among the primary episode days, the response of the modeling system to the emission reductions is consistent among the simulation days, both on a percentage and absolute basis. The peak concentration for the attainment strategy simulation is reduced from that for the future year basecase simulation by approximately 7.5 percent for the September 13, 1997 and August 7, 1999 simulation days and by approximately 10 percent for the August 31, 1997 simulation day. The number of grid cell hours greater than 124 ppb and the value of the related 1-hour exceedance exposure metrics are about 95 to 100 percent lower for the attainment strategy simulation. For the three primary episode days, separately and combined, the simulation results indicate emission reductions that comprise the attainment strategy are sufficient to bring the Baton Rouge area into attainment for three different but representative sets of meteorological conditions.

Application of relative-reduction procedures for 1-hour ozone on a site-specific basis showed that for the simulated attainment strategy, the future-year estimated design value (EDV) for all sites is estimated to be less than 124 ppb (less than 120ppb) when the 1997–1999 design value is used for the calculation. Since the episodes modeled are from 1997 and 1999, the 1997–1999 design values is considered to be the representative design values. LDEQ also performed analyses for two other design values periods as additional support. For the 1999–2001 design values the future-year EDVs were all less than 120 ppb. When the 1998–2000 design values are used for the calculation, the EDV for one site (LSU) is greater than 124 ppb and the EDV is less than 120 ppb for all the other sites. The EDV for the LSU site is 126.4 ppb. In summary, LDEQ utilized three different periods (1997–1999, 1998–2000, 1999–2001) for the starting design value of the Baton Rouge area. The relative-reduction-factor (RRF) analysis yielded EDVs below 120 ppb for all three starting design values with the one exception. This exception was for one

monitor (LSU) and only occurred when one of the three latest design values were used. The application of the site-specific relative-reduction method provides additional weight-of-evidence that the emission reductions associated with the attainment strategy will result in attainment of the 1-hour ozone standard by November 15, 2005. This method complements the traditional 1-hour attainment demonstration methods since the modeling results are used in a relative sense and some of the uncertainty associated with traditional 1-hour modeling is therefore avoided.

The results of the site-specific relative-reduction attainment test for 8-hour ozone shows that the attainment-strategy emission reduction measures are also effective in reducing the 8-hour EDVs for all sites. For example, use of the 1997–1999 design values as the basis for the EDV calculation gives a reduction in the average (over all sites) 8-hour design value from 88.1 to 81.4 ppb. The number of sites with design values greater than 84 ppb is reduced from ten (based on the 1997–1999 design value) to four. While the details and schedule for implementation of 8-hour ozone standard and the associated attainment demonstration procedures are not fully known at this time, the modeling results indicate that the emission reductions associated with the 1-hour attainment strategy will also significantly contribute to attainment of an 8-hour ozone standard for Baton Rouge.

Application of relative-reduction procedures for 1-hour ozone on a domain-wide basis, gives an estimated design value for the Baton Rouge nonattainment area of 121.6 ppb. This additional weight-of-evidence test indicates that the attainment strategy will be sufficient to bring the area into attainment by November 15, 2005, and that further emission reductions are not required. Application of the domain-wide relative-reduction procedures provides additional strong support for the attainment strategy.

3. Emission Control Strategies

What Emission Control Strategies Were Considered in the Attainment Demonstration?

Louisiana's emission control strategy relies on emission control requirements through 2005, including the impacts of the State's ROPPs for the Baton Rouge area, federal emission controls expected to be implemented before or by 2005, and the State's regional NO_X emission limit.

Louisiana has recently finalized regional NO_X emission control regulations to cover this NO_X limit. EPA has recently proposed approval of these regulations as meeting the RACT requirements of the Act. See 67 FR 48095, July 23, 2002. It should be noted that Louisiana has adopted NO_X regulations for the Baton Rouge area and is no longer seeking an exemption from NO_X RACT, NO_X NSR, or NO_X general conformity requirements. The modeling used to support the attainment demonstration does consider the impacts of NO_X emission reductions resulting from NO_X RACT implementation in the Baton Rouge area. EPA proposed to rescind the NO_X exemptions for the Baton Rouge area under separate rulemaking actions. See 67 FR 30638, May 7, 2002.

The emission control strategy also considers the emission impacts of the following control measures: VOC emission reductions from implementation of RACT on various sources (see the discussion of the contents of Louisiana's December 31, 2001, submittal above); an improved vehicle I/M program; EPA's rulemakings for the National Low Emission Vehicle Program and the Tier 2 motor vehicle emissions standards and low sulfur gasoline program; and a TCM.

The State included a TCM in its SIP as a control strategy for attainment of the 1-hour ozone NAAQS. The TCM is an Intelligent Transportation System (ITS) initiative which is locally referred to as the Advanced Transportation Management System (ATMS) facility and is described in detail in Chapter 4 and Appendix F of the State's SIP submittal. The SIP includes information about the project's description, implementation date, and emission reductions. This TCM will be incorporated by reference into the Code of Federal Regulations, if EPA takes final action to approve the attainment demonstration.

4. Motor Vehicle Emission Budgets

What Is a MVEB and Why Is It Important?

The MVEB is the level of total allowable on-road emissions established by a control strategy implementation plan or maintenance plan. In this case, the MVEB establishes the maximum level of on-road emissions that can be produced in 2005, when considered with emissions from all other sources, which demonstrate attainment of the ozone NAAQS. It is important because the MVEB is used to determine the conformity of transportation plans and programs to the SIP, as described by section 176(c)(2)(A) of the Act.

What Are the MVEBs Established by This Plan and Proposed for Approval by This Action?

On December 31, 2001, Louisiana submitted motor vehicle emissions budgets for the 2005 attainment year for the Baton Rouge area in their SIP. The attainment year MVEBs established by this plan that the EPA is proposing to approve are 15.48 tons per day for VOC and 34.26 tons per day for NO_X for the Baton Rouge area. These budgets were posted on the EPA website for public comment. No comments were received and EPA has determined that the emissions budgets meet the adequacy requirements. We notified the State by letter of our determination on July 5, 2002, and notice of our determination was published on July 17, 2002, (67 FR 46970) and is effective 15 days after that publication. In addition, we find the MVEBs consistent with all pertinent SIP requirements, and the MVEBs are proposed for approval as limited by the discussion below.

What Is the State's Commitment To Revise the MVEBs With MOBILE6?

All States whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and resubmit their MVEBs after we release MOBILE6. On December 31, 2001, the State submitted an enforceable commitment to perform new mobile source modeling for the Baton Rouge area, using MOBILE6, within 24 months of the model's official release. In addition, the enforceable commitment includes a provision stating that if a transportation conformity analysis is to be performed between 12 months and 24 months after the release of MOBILE6, transportation conformity will not be determined until the State submits an MVEB which is developed using MOBILE6 and which we find adequate. LDEQ informed the Capital Region Planning Commission (CRPC) and the Louisiana Department of Transportation and Development of these commitments, and that conformity cannot be determined during the second year until the MOBILE6-based budgets are submitted to EPA and found adequate.

We are proposing that if we finalize this action, the current MOBILE5-based budgets will only be effective for conformity until revised motor vehicle emissions budgets are submitted and found adequate. We are proposing to limit the duration of our approval in this manner because we are only proposing to approve the attainment demonstration and the budgets because the State has committed to revise them

using MOBILE6. Therefore, if we confirm that the revised budgets are adequate, they will be more appropriate than the budgets we are proposing to approve today. Therefore we are proposing to approve the motor vehicle emission budgets and the enforceable commitment to submit revised budgets using MOBILE6 within 24 months after MOBILE6's release.

If future changes to the budgets raise issues about the sufficiency of the attainment demonstration, we will work with the State. If the revised budgets show that motor vehicle emissions are lower than the budgets we approve, a reassessment of the attainment demonstration's analysis will be necessary.

This action does not propose any change to the existing transportation conformity rule or to the way it is normally implemented with respect to other submitted and approved SIPs, which do not contain commitments to revise the budget.

If the State fails to meet its commitment to submit revised budgets using MOBILE6, we could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

What Is the Applicable MVEB To Use for Conformity Analysis After 2005?

When evaluating transportation plans and programs, emissions in years after 2005 must be less than the 2005 attainment MVEBs being proposed for approval here.

We are proposing to approve the attainment MVEBs, pursuant to the State's commitments related to MOBILE6, only until revised MVEBs are submitted and we have found them adequate for transportation conformity purposes.

5. RACM Analysis and Determination of Availability

Section 172(c)(1) of the Act requires SIPs to provide for the implementation of all RACM as expeditiously as practicable and for attainment of the standard. EPA has previously provided guidance interpreting the RACM requirements of 172(c)(1) in the General Preamble. *See* 57 FR 13498, 13560 (April 16, 1992). In the General Preamble, EPA indicated its interpretation of section 172(c)(1), under the 1990 Amendments, as imposing a duty on States to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the particular nonattainment area. EPA also retained its pre-1990 interpretation of the RACM provisions, stating that we would not consider it reasonable to require implementation of measures that might in fact be available for implementation in the nonattainment area, but could not be implemented on a schedule that would advance the date for attainment in the area. EPA indicated that a State could reject certain measures as not reasonably available for various reasons related to local conditions. A State could include area-specific reasons for rejecting a measure as RACM such as, but not limited to, the rejected measure would not advance the attainment date, or would not be technologically or economically feasible for the area.

The EPA also issued a recent memorandum reaffirming its position on this topic, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards, dated November 30, 1999. In this memoranda, we state that in order to determine whether a state has adopted all RACM necessary for attainment as expeditiously as practicable, the state will need to provide a justification as to why measures within the arena of potentially reasonable measures have not been adopted. The justification would need to support that a measure was not reasonably available for that area and could be based on technological or economic grounds, or a showing that it would not advance the attainment date.

EPA has reviewed the RACM analysis provided in LDEQ's SIP submittal for the Baton Rouge nonattainment area and believes that the State has included sufficient documentation concerning the rejection of certain available measures as RACM for the specific Baton Rouge area.

LDEQ conducted a mobile source analysis that consisted of a broad range of TCMs. As part of this analysis, LDEQ relied on an in-depth TCM evaluation study performed for the Baton Rouge area. LDEQ concluded that, relative to the total NO_X reductions required for attainment of the 1-hour ozone NAAQS, additional TCMs that could potentially be implemented in the Baton Rouge area were only a small percentage (approximately 1%) of the emissions reductions needed for attainment and did not advance the attainment date. For more information regarding LDEQ's mobile source RACM analysis, including a description of the basic methodology employed to analyze TCM RACM, and a copy of the TCM evaluation study, please refer to the RACM TSD for this proposed action.

An additional mobile source measure, the Vehicle Inspection and Maintenance (I/M) program has been implemented in the area. On-Board Diagnostics testing will be implemented in 2002. There is a state statute prohibiting the expansion of the I/M program beyond the five-parish area [La. R.S. 30:2054.B(8)(a)]. The 2002 Louisiana legislative session is a "fiscal only" session. The next legislative session where expansion of the I/M program area could be considered would be the Regular Legislative Session of 2003. LDEQ concludes that the State has applied RACM for the I/M program because legislative authority is needed for any I/M program expansion, and that opportunity is not available until 2003, and because the fleet in the Baton Rouge area is small (approximately 400,000 subject to the I/M program), LDEQ concludes that the state has applied RACM for the I/M program, in that expansion of the I/M program could not be accomplished so as to advance the attainment date for the Baton Rouge nonattainment area. LDEQ also considered off-road mobile RACM. In view of local feasibility and the economic impact of use restrictions, LDEQ has determined that further off-road measures are not RACM.

LDEQ conducted a stationary source RACM analysis. A VOC major source analysis concluded that a 30% "across the board" reduction in VOCs yielded less than 1 ppb decrease in the ozone peak in all three episodes modeled in the attainment demonstration. Furthermore, Louisiana has implemented RACT on all major stationary sources of VOC in the Baton Rouge area. LDEQ concluded that further VOC reductions at this time are deemed as not cost effective and would not advance the attainment date for the Baton Rouge area.

LDEQ conducted a NO_X major source RACM analysis. Chapter 4, Section 4.3 of the SIP submittal contains the proposed Baton Rouge NO_X control strategy. In the Baton Rouge area the plan will reduce NO_X by approximately 77 tons per day. LDEQ has adopted rule revisions, which are the subject of a separate EPA rulemaking (67 FR 48095, July 23, 2002), to control emissions from point sources of NO_X in the Baton Rouge area. (LAC 33:III, Chapter 22, "Control of Emissions of Nitrogen Oxides"). RACT is defined by EPA as the lowest achievable emission rate considering technical and economic feasibility. Based on the revised rule, LDEQ will be controlling emissions beyond levels that EPA has previously approved as RACT for such sources. Therefore, LDEQ concluded that the

Baton Rouge area NO_X control plan meets RACM for major NO_X sources.

Area sources were also evaluated by LDEQ. The evaluation identified 17 tons per day of "potentially controllable" VOC emissions reductions but this estimate was considered to be an overestimation in the Baton Rouge area because it did not take into account specific federal and state rules and regulations that are in effect to control such emissions. Based on its analysis that these categories are already controlled in the Baton Rouge area, LDEQ concluded that the amount of reduction available from additional controls on area sources were minimal, that there are little or no remaining potentially available emissions reductions, and that additional controls would not advance the attainment date for the Baton Rouge area.

LDEQ also noted that NO_X area sources were smaller and more numerous than the VOC area sources. Therefore, LDEQ concluded that control of NO_X area sources would be expensive and would require an intensive effort. As a result, controls on these categories of sources was not considered reasonably available.

Based on these analyses, LDEQ concluded that the additional set of evaluated measures are not reasonably available for the Baton Rouge area, because: (a) Some would require an intensive and costly effort for numerous small area sources, (b) the measures would not produce emission reductions sufficient to advance the attainment date in the Baton Rouge area and, therefore, should not be considered RACM for the Baton Rouge area. Please refer to the RACM TSD and LDEQ's RACM analysis for further information.

6. Revisions to the 15% ROPP, for the Control of VOC Emissions, the 1990 Base Year Emissions Inventory, and the Post-1996 ROPP

Under the 1990 Clean Air Act Amendments (CAAA), States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAAA require ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce VOC emissions by 15 percent within six years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress projection inventory, and the modeling inventory are derived.[2] The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of Title I of the CAAA. EPA has issued a General Preamble describing EPA's preliminary views on how EPA intends to review SIP revisions submitted under Title I, including requirements for the preparation of the 1990 base year inventory (see 57 FR 13502; April 16, 1992, and 57 FR 18070; April 28, 1992). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble (57 FR 18070, Appendix B, April 28, 1992) for a more detailed discussion of the interpretations of Title I advanced in today's action and the supporting rationale.

States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the 1990 CAAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources by November 15, 1992. This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of VOC, NO_X, and carbon monoxide (CO).

The inventory is to address actual VOC, NO_X, and CO emissions for the area during a peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992). EPA approved the Louisiana 1990 Base Year Emissions Inventories on March 15, 1995 (60 FR 13911).

Section 182(c)(2)(B) of the Act requires each State having one or more ozone nonattainment areas classified as serious or worse to develop a plan by November 15, 1994, that provides for additional actual VOC reductions of at least three percent per year, averaged over each consecutive three year period, beginning six years after enactment of the Act, until such time as these areas have attained the NAAQS for ozone. These plans are referred to hereafter as Post-1996 ROPP. EPA approved the revisions to the Post-1996 ROPP for the Baton Rouge area on July 2, 1999 (64 FR 35930).

The current revisions to the 1990 Base Year Emissions Inventory, the 15% Rate-of-Progress Plan, and the 9% Rate-of-Progress Plan were submitted as part of the December 31, 2001, Attainment Plan/Transport SIP. Specifically, they were submitted as part of the substitute contingency measures. The substitute contingency measures are the subject of a separate EPA rulemaking action (see 67 FR 35468, May 20, 2002).

The current revisions consist of emission reductions resulting from the installation of VOC emission controls at the Trunkline Gas Company—Patterson Compressor Station (hereinafter referred to as Trunkline or Trunkline facility) in St. Mary Parish. The Trunkline facility is located approximately 40 kilometers from the Baton Rouge ozone nonattainment area. In 1997, EPA issued a policy allowing 1-hour ozone nonattainment areas to take credit in their Post-1996 ROPP [3] for emission reductions obtained from sources outside the designated nonattainment area, provided the sources are no farther away than 100 km (for VOC sources) or 200 km (for NO_X sources) away from the nonattainment area.[4]

The Trunkline Gas Company had not accounted for 13.4 tons per day of VOC emissions. As a result, the VOC emissions from this facility had not been included in the point source emissions inventory for 1990. Emissions reported in a corrected 1992 annual emissions inventory submitted to LDEQ June 6, 1997, are the best estimate of the source's 1990 base year emissions. These emissions were added back to the 1990 base year emissions inventory. The revised 1990 VOC base year inventory that included these Trunkline emissions would result in a 204.6 tons per day revised 1990 base year inventory.

[2] Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991.

[3] EPA has historically allowed a surplus emission reduction in ROPP to be credited towards meeting the section 172 and section 182 requirements. EPA's rationale is that not allowing excess emission reductions to be used as contingency measures discourages areas from reducing emissions "as expeditiously as practicable" and is, therefore, inconsistent with section 172 of the CAA.

[4] EPA memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS," from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, December 23, 1997.

An additional 2.0 tons per day of emission reductions required were identified in the 15% ROPP revisions. The additional 2.0 tons per day were offset by 1.4 tons per day "surplus" 9% ROPP reduction from the Trunkline permit plus 0.6 tons per day of point source reductions (163 tons per year or 0.45 tons per day of VOCs from the Dow Chemical permit and 56 tons per year or 0.15 tons per day of VOCs from the BASF Corporation permit).

There was also an additional 1.2 tons per day of reductions required for the 9% ROPP identified in the revisions. These were taken from the 13.0 tons per day Trunkline emissions reductions that were netted from the post-90 emissions growth.

See Table 1 below for a listing of the revisions to the emissions inventory. Table 2 below contains the revisions to the ROPPs. Table 3 below itemizes the Trunkline emissions reductions. For further detail on the calculation of these emissions inventories please see the related prior rulemaking actions referenced above.

TABLE 1.—1990 EMISSIONS INVENTORY

[Tons per day]

Trunkline 1990 Base Year Emissions Inventory	13.4
1990 Adjusted VOC Base Year Inventory	[1]191.2
Revised 1990 Adjusted VOC Base Year Inventory	[2]204.6

[1] From the approved 9% ROPP.
[2] Includes Trunkline permit emissions.

TABLE 2.—REVISIONS TO ROPPS

[Tons per day]

Revised 3% Contingency Requirement	[1]6.1
Additional 9% ROPP Reductions Required	[2]1.2
Additional 15% ROPP Reductions Required	[3]2.0

[1] Three percent requirement times the total emissions inventory or 0.03 × 204.6 tons per day.
[2] Nine percent requirement times the Trunkline 1990 base year emissions inventory or 0.09 × 13.4 tons per day.
[3] Fifteen percent requirement times the Trunkline 1990 base year emissions inventory or 0.15 × 13.4 tons per day.
a—Sources of additional 15% ROPP reductions is from approved 9% ROPP "surplus" (1.4 tons per day), plus point source reductions of 163 tons per year or 0.45 tons per day of VOCs from Dow Chemical permit and 56 tons per year or 0.15 tons per day of VOCs from the BASF Corporation permit, totaling 2.0 tons per day.

TABLE 3.—TRUNKLINE EMISSIONS REDUCTIONS

[Tons per day]

Trunkline Emissions Reductions	[1]13.0
3% Contingency Requirement	[2]6.1
Additional 9% ROPP Requirement	[3]1.2
"Surplus" 9% ROPP Reductions from Trunkline	5.7

[1] Trunkline 1990 base year emissions inventory of 13.4 tons per day minus 0.4 tons per day of new allowables.

B. Environmental Protection Agency Review of the Submittals

1. Adequacy of the State's Demonstration of Attainment

Did the State Adequately Document the Techniques and Data Used To Derive the Modeling Input Data and Modeling Results?

The submittals from the State adequately documented the techniques and data used to derive the modeling input data. The submittals adequately summarized the modeling outputs and the conclusions drawn from these model outputs. The submittals adequately documented the State's weight-of-evidence determinations and the bases for concluding that these determinations adequately support the attainment demonstration.

Did the Modeling Procedures and Input Data Used Comply With the Environmental Protection Agency Guidelines and Clean Air Act Requirements?

Yes. The modeling procedures, and input data (including evaluation of the emissions inventory input and procedures), validation of the modeling results, and selection of episode days, meet the CAA requirements and are consistent with EPA's guidance.

Does the Weight-of-Evidence Determination Support the Attainment Demonstration?

Yes, the weight-of-evidence determination, when viewed in aggregate with the modeling, shows attainment of the standard and thus EPA is proposing approval of the attainment demonstration.

2. Adequacy of the Emission Control Strategies

Do the Emission Control Strategies Meet the Requirements of the Clean Air Act?

The selected emission control strategy, based upon modeling and the weight-of-evidence techniques, plus additional information regarding the effect of southeast Texas upon Baton Rouge, demonstrates attainment of the 1-hour ozone standard.

3. Adequacy of the Request for Extension of the Attainment Date

The policy for the extension of an ozone attainment date is discussed above. How the State addressed it is discussed here.

a. Identification of the Area as a Downwind Area Affected by Ozone Transport

The State submitted its Transport Demonstration on May 10, 2000, and provided supplemental information in the December 31, 2001, package. The State provided transport demonstration modeling and meteorological analyses. LDEQ applied the procedures used in the Ozone Transport Assessment Group (OTAG) modeling for evaluating "significant contribution" for the NO_x SIP Call. This procedure has been used for other areas' transport demonstrations under the attainmentment date extension policy. The OTAG procedures appeared to equate a "significant contribution" with a "Zero-out" modeling analysis of the upwind area's emissions resulting in a 2 ppb or greater impact to the downwind area. LDEQ used Urban Airshed Model V (UAM–V) to model an episode representing the most frequently occurring exceedance meteorological regime (*i.e.*, the August 17–19, 1993 ozone episode) to quantify the contribution from southeast Texas (Houston/Galveston and Beaumont/Port Arthur areas). LDEQ "Zero-out" modeling analysis indicated a "significant contribution," since the modeling results showed a contribution of approximately 2 to 6 ppb from the Houston/Galveston nonattainment area to the five-parish Baton Rouge nonattainment area.

The OTAG procedures for evaluating "significant contribution" also include a demonstration that the impact is large and/or frequent. To address the issues of the frequency of transport, LDEQ presented the analysis of meteorological and air quality data. LDEQ used the Classification and Regression Tree (CART) analysis technique to classify and analyze meteorological and air quality data for a five-year period (1996–2000). The results indicated that 7 percent of the Baton Rouge exceedance days (*i.e.*, 2 out of 28 exceedance days) were potentially associated with transport of ozone and/or precursor pollutants from the Houston area. For more information about the transport demonstration modeling, please refer to the Modeling TSD prepared for this document.

In the information submitted in 2000, the modeling showed that emissions from the Houston/Galveston area of

southeast Texas resulted in impacts in a 1993 modeling episode. In the December 31, 2001 package, the air flow into Baton Rouge was not particularly conducive to showing transport from southeast Texas for the episodes modeled, but LDEQ submitted a model run that still showed a "significant contribution" of emissions from southeast Texas (Houston/Galveston and Beaumont/Port Arthur areas). We have reviewed LDEQ's submittals and are proposing to agree that LDEQ has demonstrated that on some occasions, emissions from the Houston/Galveston and Beaumont/Port Arthur areas have significant impacts on exceedances in the Baton Rouge area. This transported pollution happens frequently enough to adversely affect the area's ability to attain by its current attainment date, since the area is only allowed 3 exceedances in a three-year period. Thus for Baton Rouge to attain, controls in both the Houston/Galveston area and the Beaumont/Port Arthur area are necessary.

In conclusion, EPA is proposing that Louisiana has demonstrated that during some Baton Rouge area exceedances, ozone levels are influenced by emissions from the Houston/Galveston and Beaumont/Port Arthur areas, and that the Houston/Galveston area and Beaumont/Port Arthur area emissions affect the Baton Rouge area's ability to meet attainment of the 1-hour ozone standard by November 15, 1999. Therefore, EPA proposes to find that the State's demonstration of ozone transport is consistent with the criteria in EPA's attainment date extension policy and meets the technical requirements established by the NO_X SIP Call for a "significant contribution". Please refer to the TSD for more details.

b. Submittal of an Approvable Attainment Demonstration

Based on our review of the attainment demonstration submitted by the State in December 31, 2001, EPA believes Louisiana has submitted an approvable attainment demonstration. As a part of this action, EPA is proposing to approve Louisiana's ground-level one-hour ozone attainment demonstration SIP for the Baton Rouge area. In addition, the State has adopted all of the emission control measures relied upon in the attainment demonstration but for one rule. On April 8, 2002, the Governor of Louisiana submitted rule revisions to LAC:33:III, Chapter 22, "Control of Emissions of Nitrogen Oxides," (AQ224), as a revision to the Louisiana SIP for lean burn engines in the BR ozone nonattainment area and requested that EPA act on the rule revision concerning NO_X RACT for lean burn engines through "parallel processing." *See* 40 CFR Part 51, Appendix V for more information on "parallel processing" process. EPA has agreed to parallel process this rule revision and will complete its rulemaking on this revision before taking final action on the attainment demonstration or an attainment date extension. EPA is proposing to extend the attainment date for the Baton Rouge area, only if EPA takes final action to approve the attainment demonstration and any other required local measures.

LDEQ has requested that the EPA grant an extension of the attainment date for the 1-hour ozone NAAQS for the Baton Rouge area to November 15, 2005. In keeping with EPA's attainment date extension policy, the November 15, 2005 date is well before the Houston/Galveston attainment date of November 15, 2007. The Baton Rouge attainment demonstration relies heavily on NO_X controls to be implemented as expeditiously as possible, but no later than May 1, 2005. It is expected that the Houston/Galveston area and the Beaumont/Port Arthur area will have achieved sufficient emissions reductions to lower the background concentration of ozone and ozone precursors in the Baton Rouge area. LDEQ feels that with a combination of local and federal controls, and with the expected emissions reductions from the upwind area, the Baton Rouge nonattainment area can attain by November 15, 2005. Thus, EPA believes that the November 15, 2005, attainment date is as "expeditiously as practicable" for the Baton Rouge area.

c. Adoption of All Applicable Local Measures Required Under the Area's Current Ozone Classification

As noted above, Louisiana has completed the adoption of all local measures required by the Act for the area's current classification with the exception of NO_X RACT, and has submitted these revisions to EPA for approval. EPA is proposing to extend the attainment date for the Baton Rouge area, only if EPA takes final action to approve all applicable required local measures.

d. Implementation of All Adopted Measures as Expeditiously as Practicable and No Later Than the Time Upwind Controls Are Expected

In anticipation of the implementation of certain upwind controls in the Houston/Galveston and Beaumont/Port Arthur areas, Louisiana has adopted State regional NO_X controls requiring implementation as expeditiously as practicable, but no later than May 1, 2005. As a part of the Attainment Demonstration/Transport SIP submitted by Louisiana, the State has committed to implementing all adopted measures as expeditiously as practicable and no later than the time upwind controls are expected. For more information please refer to the Modeling TSD and to the State's Control Strategy (Chapter 4 of the SIP). Therefore, EPA proposes that the State's sumbittals are consistent with this criterion of the extension policy.

EPA concludes that, at the present time, the State has addressed the conditions for an attainment date extension. EPA believes that Louisiana has met the criteria for obtaining an attainment date extension under the conditions contained in EPA's July 16, 1998, attainment date extension policy, provided that EPA approves the attainment demonstration and any local measures which require EPA approval to qualify for the extension. Therefore, EPA proposes to extend the attainment date for the Baton Rouge area to November 15, 2005.

To the extent that comments received on EPA's March 25, 1999 document, "Extension of Attainment Dates for Downwind Transport Areas," 64 FR 14441, are applicable to this rulemaking, EPA will address and respond to these comments in its final rulemaking action.

4. Determination of RACM Availability

EPA has reviewed LDEQ's SIP submittal and LDEQ's analysis to evaluate emission levels of NO_X and VOC and their relationships to the application of current and anticipated control measures expected to be implemented in the five-parish Baton Rouge serious nonattainment area.

Based on this review, EPA proposes to conclude that the additional set of evaluated measures are not reasonably available for the Baton Rouge area, because: (a) The additional set of measures would require an intensive and costly effort for numerous small area sources, and (b) the measures would not produce emission reductions sufficient to advance the attainment date in the Baton Rouge area and, therefore, should not be considered RACM for the specific area.

EPA reached this conclusion primarily because the reductions expected to be achieved by the potential RACM measures are very small. These potential reductions are far less than the emissions reductions needed to advance the date for attainment in the Baton Rouge area. LDEQ has concluded from its modeling analysis, and we agree, that NO_X emission reductions in Baton

Rouge are the most effective way to reduce ozone in the Baton Rouge area. VOC reductions are not as effective as NO_X in reducing ozone, and further local VOC reductions in this area would not produce significant ozone reductions in the Baton Rouge area. EPA agrees with LDEQ that VOC reductions would not advance the attainment date and are not as effective in reducing ozone in the Baton Rouge area, as demonstrated in the modeling.

Furthermore, as shown in the modeled attainment demonstration, the Baton Rouge area also relies upon emissions reductions from outside of the nonattainment area and from federal rules with implementation dates prior to 2005. There are no other reasonably available control measures that could advance the attainment date for the Baton Rouge area prior to full implementation, by 2005, of all measures in Louisiana's SIP control strategy for the Baton Rouge area.

Although EPA encourages areas to implement available RACM measures as potentially cost-effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow the Baton Rouge area to achieve attainment in advance of full implementation of all other required measures. Therefore, EPA proposes to conclude that the additional set of evaluated measures are not reasonably available for the Baton Rouge area and should not be considered RACM for the specific area.

5. Adequacy of ROPPs and the 1990 Base Year Inventory

We are proposing approval of the revised 1990 Base Year Emissions Inventory, the 15% Rate-of-Progress Plan, and the 9% Rate-of-Progress Plan submitted as part of the December 31, 2001, Attainment Plan/Transport SIP.

These plans demonstrate that ozone forming emissions are reduced from the baseline emissions by 15% during the time period of 1990–1996 and by 9% during the time period of 1996–1999. We are also proposing to approve the MVEBs associated with the revisions to these plans. Additionally, we are proposing to approve the changes to the 1990 base year emissions inventory for the Baton Rouge area.

6. Completeness Finding

The Baton Rouge area Attainment Plan and Transport SIP is deemed to be complete by operation of law. Section 110(k)(1)(B) of the CAA states that a plan or plan revision that has not been determined by the Administrator to have failed to meet the minimum criteria by the date 6 months after receipt of the submission shall on that date be deemed by operation of law to meet such minimum criteria. The Baton Rouge area SIP was deemed complete by operation of law as of June 30, 2002.

III. Proposed Action

EPA proposes to approve the following actions on the submittal of the Attainment Plan/Transport SIP (December 31, 2001) and related submittals (May 10, 2000, February 27, 2002, February 1, 2002, April 8, 2002, and May 20, 2002):

1. EPA is proposing to approve the ground-level one-hour ozone attainment demonstration SIP for the Baton Rouge area, which shows attainment by November 15, 2005, provided that EPA issues a final approval of all other required local measures.

2. EPA is proposing to approve the Transport Demonstration and the State's request to extend the ozone attainment date for the Baton Rouge area to November 15, 2005, while retaining the area's current classification as a serious ozone nonattainment area, provided that EPA issues a final approval of the State's attainment demonstration and any other required local measures.

3. EPA is proposing to approve the Attainment Demonstration SIP's associated MVEBs, only until the MVEBs are revised according to the State's enforceable commitment.

4. EPA is proposing to approve the RACM Analysis for the Baton Rouge area.

5. EPA is proposing to approve the State's TCM.

6. EPA is proposing to approve the revisions to the 15% ROPP for the control of VOC emissions, the 1990 base year emissions inventory, and the Post-1996 ROPP emissions.

7. EPA is proposing to withdraw our June 24, 2002, rulemaking action entitled "Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area."

8. EPA is proposing to approve the State's enforceable commitments regarding MOBILE6.

9. EPA is proposing to approve the State's enforceable commitment to conduct and submit a mid-course review by May 1, 2004. If the subsequent analyses conducted by the State as part of the mid-course review indicates additional reductions are needed for the Baton Rouge area to attain the ozone standard, EPA will require the State to implement additional controls as soon as possible until attainment is demonstrated through an approvable attainment demonstration.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of

regulatory policies on matters that significantly or uniquely affect their communities." Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 25, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 25, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–19441 Filed 8–1–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. MARAD–2002–12842]

General Approval of Time Charters

AGENCY: Maritime Administration, DOT.

ACTION: Policy review with request for comments.

SUMMARY: Section 9 of the Shipping Act of 1916 requires prior approval of the Secretary of Transportation of U.S. vessel charters to persons who are not U.S. citizens. In 1992, the Maritime Administration (MARAD, we, us, or our), which is charged with responsibility for administering section 9, issued regulations that granted general prior approval of time charters and other forms of temporary use agreements to persons who are not U.S. citizens.

Pursuant to this notice, we are requesting public comment on whether the policy of granting general approval of time charters should be changed.

DATES: Interested parties are requested to submit comments on or before September 3, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12842. Written comments may be submitted by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of

Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Edmund T. Sommer, Jr., Chief, Division of General and International Law, Office of the Chief Counsel, Maritime Administration, Department of Transportation, Room 7228, 400 7th Street SW., Washington, DC 20590, telephone (202) 366–5181.

Comments regarding this policy review should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

SUPPLEMENTARY INFORMATION: Section 9 of the Shipping Act of 1916, 46 App U.S.C. 808, requires the approval of the Secretary of Transportation (MARAD) for, inter alia, the charter to noncitizens of documented vessels owned by citizens of the United States.

In 1989, as a result in substantial changes in the Ship Mortgage Act and amendments to section 9, MARAD began a rulemaking to amend our regulations at 46 CFR part 221—Regulated Transactions Involving Documented Vessels and other Maritime Interests.

In view of the significant changes in the statutory provisions to which the regulations in part 221 are addressed, the interim final rule published February 2, 1989, (54 FR 5382, amended at 54 FR 8195), adopted a conservative approach to interpretation and application of the new law, pending the opportunity to obtain comments from all interested parties. It therefore continued the preexisting requirement that time charters of vessels to noncitizens for 6 months or longer be submitted for review and approval.

After evaluation of the comments received on the first interim final rule, a number of amendments and clarifications of the rule appeared to be warranted. Mindful of Congress' admonition that MARAD should "temper the consideration of a transfer in interest or control to a [noncitizen] with a concern that the vessel may be needed in time of war or national emergency", and in an attempt to balance this national security role with the desire of many that MARAD completely relinquish its regulatory role in these transactions, we proposed in an April 13, 1990, NPRM a regulation that would significantly relax regulation of the financing and transfer of documented vessels. One proposed change was that general approval for all charters (other than demise charters for operation in the coastwise trade) to noncitizens be granted for periods of up to five years, and that certain limited charters, such as space charters, slot charters, drilling contracts, and contracts of affreightment (except where a named vessel is dedicated to the contract), be granted general approval, regardless of their duration. Information copies of all charters granted general approval would have to be filed with MARAD.

In the April 13, 1990 NPRM (55 FR 14040), the views of interested parties were specifically invited with regard to further liberalization of the section which granted general approvals. One possibility on which we asked for comment was general approval for transactions involving transfers of an interest in or control of citizen-owned documented vessels to persons who are noncitizens for purposes of section 2, but who, nevertheless, are eligible to document a vessel pursuant to 46 U.S.C. 12102 (documentation citizens). Another possibility was general approval for transactions under section 9(c)(1) so as to place U.S. citizens on an exact par with documentation citizens, which need not apply for such approvals (section 9(c)(1) applies only to documented vessels *owned by citizens of the United States*, a section 2 test). In all events, we noted, bareboat/demise charters to non-section 2 citizens of vessels operating in coastwise trade would be excepted.

While there were many specific comments on certain issues, commenters generally agreed that MARAD should provide general approval for all transfers short of a change of registry. Their position was that MARAD should recognize the distinction between the two basic classes of section 9 transfer: (1) Those involving transfer of flag for operation (whether or not involving sale to new owners), and (2) other section 9 transactions in which the vessel remains under U.S. flag. In respect to national security, commenters suggested, the two classes present risks very different in kind and degree. In the one, there may be not only a foreign owner and a foreign crew, but a new sovereign whose national interests would have to be respected. As stated by one commenter, "[i]f the ship is certifiably of present or foreseeable importance for national defense, the case for refusing approval is evidently strong." In the other class of transfers, even in the case of a sale, the owner will remain an American corporation subject to American law (including requisition authority in time of emergency), the vessel will and must remain documented under U.S. flag, and the officers and crew will still consist of American citizens. In this case, as was pointed out, national security interests are fully preserved regardless of the form or substance of the transaction. The commenter stated that "[t]his analysis suggests an order of supervision different for each of these classes (of transfer)."

Upon reexamination of the legislative history of Public Law 100–710 and analysis of the many comments received on this issue, we accepted the argument for different "order(s) of supervision" for the two distinct classes of transfer as not inconsistent with that legislative history or with MARAD's national security responsibilities under section 9. Accordingly, in a second interim final rule published July 3, 1991 (56 FR 30654), we provided general approval for all section 9 transactions other than transfer of registry except certain transfers to "Bowaters" corporations, sales for scrapping in a foreign country and bareboat charters of vessels operating in the coastwise trade. Consistent with MARAD's national security role, however, that general section 9 approval was not applicable during any period of national emergency nor would it apply to transactions involving certain named countries with whom trade is prohibited. The requirement that information copies of all charters be filed was eliminated, in favor of an "as requested" filing requirement.

With the endorsement of many and the objection of none (save those who favored further liberalization), the final rule, published June 3, 1992 (57 FR 23470), incorporated the above changes. Part 221 as now written grants general approval for the sale, mortgage, lease, charter, etc. (but not transfer of registry) of citizen-owned vessels to noncitizens, so long as the country is not at war, there is no Presidential declaration of national emergency invoking Section 37 of the Shipping Act and the noncitizen

is not subject to the control of a country with whom trade is prohibited.

Reinstatement of a requirement for MARAD review and written approval of time charters to noncitizens of documented vessels would require a rulemaking proceeding to amend 46 CFR part 221.

Commenters are requested to specifically address the question of what, if any, economic impact a return to case by case review prior to approval of time charters would cause?

Dated: July 30, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19593 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–81–P

Notices

Federal Register
Vol. 67, No. 149
Friday, August 2, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–996–2–Notice]

Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for nominations.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (Farm Bill) requires that the Secretary of Agriculture establish a Peanut Standards Board for the purpose of advising the Secretary regarding the establishment of quality and handling standards for domestically produced and imported peanuts. The Department of Agriculture (USDA) seeks nominations of individuals to be considered for selection as Board members. The Board consists of 18 members representing producers and industry representatives who would serve staggered three-year terms of office.

DATES: Written nominations must be received on or before September 3, 2002.

ADDRESSES: Nominations should be sent to Mr. Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Phone: (202) 720–2491; Fax: 202–720–8938.

SUPPLEMENTARY INFORMATION: Section 1308 of the Farm Bill (Public Law 107–171) requires that the Secretary of Agriculture establish a Peanut Standards Board (Board) for the purpose of advising the Secretary regarding the establishment of quality and handling standards for domestically produced and imported peanuts. The Farm Bill requires the Secretary to consult with the Board in advance whenever the Secretary considers establishing or changing quality and handling standards for peanuts.

The Farm Bill provides that the Board consist of 18 members, with three producers and three industry representatives from the States specified in each of the following producing regions: (a) Southeast (Alabama, Georgia, and Florida); (b) Southwest (Texas, Oklahoma, and New Mexico); and (c) Virginia/Carolina (Virginia and North Carolina.) The Farm Bill also provides that during the transition period, the Secretary may designate persons serving as members of the Peanut Administrative Committee (Committee) to serve as members of the Board for the purpose of carrying out the duties of the Board. Members of the Committee have been designated to serve as interim members of the Board. The transition period is the period beginning with the date of enactment of the Farm Bill (May 13, 2002) and ending with the earlier of the date the Secretary appoints the members of the Board or 180 days after enactment of the Farm Bill.

For the initial appointments, the Farm Bill requires that the Secretary shall stagger the terms of the members so that: (a) One producer member and peanut industry member from each peanut producing region services a one-year term; (b) one producer member and peanut industry member from each peanut producing region serves a two-year term; and (c) one producer member and peanut industry member from each peanut producing region serves a three-year term. The appointees will serve staggered terms of office ending June 30, 2003, June 30, 2004, and June 30, 2005, respectively. For the purposes of this request for nominations, the term "peanut industry representatives" includes representatives of the manufacturers, sellers, buying points, marketing associations, marketing cooperatives, and other like entities. The Farm Bill exempts the Board from the requirements of the Federal Advisory Committee Act.

USDA invites those individuals, organizations, and group affiliated with the categories listed above to nominate individuals for membership on the Board for both producer and industry members. Nomination documents should include: the nominee's name, address and phone number; the nominee's qualifications for membership to the Board (e.g., number of years in industry, current position, membership and offices held in industry organizations); and a statement signed by the nominee indicating his/her willingness to serve on the Board. Also, nominees should complete a qualification form which may be obtained from: Jim Wendland or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, suite 2A04, Unit 155, Riverdale, Maryland 20737; telephone (301) 734–5243, Fax: (301) 734–5275.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the Board takes into the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: Section 1308 of Public Law 107–171.

Dated: July 29, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–19507 Filed 8–1–02: 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–027N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a public meeting on August 28, 2002. The committee will continue to discuss (1) *Salmonella* performance standards in meat and poultry products, (2) the scientific basis for establishing safety-based "use by" date labeling for refrigerated, ready-to-eat foods, (3) undertake a new topic of assessing the analytical utility of *Campylobacter*

identification and quantification methodologies, and (4) introduce a new topic discussing redefining the meaning of the term "pasteurization." Subcommittees will also meet on August 26th (performance standards), and the 27th and 29th (safety-based "use by" date labeling for refrigerated, ready-to-eat foods) to continue working on issues in-progress that will be discussed during the full committee session. In addition, a subcommittee will convene on August 6–8, 2002, to continue its discussion of performance standards and discuss the new charge to the committee regarding the FSIS *Campylobacter* baseline studies.

DATES: The full Committee will hold an open meeting beginning at 9 a.m. on Wednesday, August 28, 2002. During the week of the plenary session, subcommittee meetings will be held on Monday, Tuesday and Thursday, August 26, 27 and 29, 2002. Also, a subcommittee will meet Tuesday through Thursday, August 6–8, 2002. Subcommittee meetings are open to the public.

ADDRESSES: The August 27–29 subcommittee and full committee meetings will be held at the Jurys Washington Hotel, 1500 New Hampshire Ave., NW., Washington, DC, 20036. The subcommittee meetings schedule for August 6–8, and 26, 2002, will be held at the Aerospace Building, 901 "D" St., SW., Washington, DC. The comments and all NACMCF documents related to this meeting will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments and NACMCF documents will also be available on the Internet at *http://www.fsis.usda.gov/OPPDE/rdad/Publications.htm*. FSIS will finalize an agenda on or before the meeting date and post it to its Internet Web page. Send an original and two copies of comments to the Food Safety and Inspection Service Docket Room: Docket #02–027N, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250. Comments may also be sent by facsimile (202) 690–0486. The comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the above address.

FOR FURTHER INFORMATION CONTACT: Persons interested in making a presentation, submitting technical papers, or providing comments should contact Karen Thomas (202) 690–6620, Fax (202) 690–6334, e-mail address: *Karen.Thomas@fsis.usda.gov*, or mailing address: Food Safety and Inspection Service, Department of Agriculture, Office of Public Health and Science, Aerospace Center, Room 333, 1400 Independence Avenue, SW, Washington, DC 20250–3700. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Thomas, by August 16, 2001.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established on April 18, 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for food, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal 1988. The Charter for the NACMCF is available for viewing on the FSIS Internet Web page at *http://www.fsis.usda.gov/OA/programs/nacmcf_chart.htm*.

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply, including development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides advice to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense. Dr. Merle Pierson, Deputy Under Secretary for Food Safety, USDA, is the Committee Chair, Dr. Robert E. Brackett, Director for Food Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration, is the Co-Chair, and Brenda Halbrook, FSIS, is the Director of the Executive Secretariat office.

At the August 28, 2002, meeting, the Committee will

- Discuss *Salmonella* performance standards in meat and poultry products;
- Discuss the scientific basis for establishing safety-based "use by" date labeling for refrigerated, ready-to-eat foods; and
- Undertake a new topic of assessing the analytical utility of *Campylobacter* identification and quantification methodologies.
- Introduce a new topic discussing redefining the meaning of the term "pasteurization."

Documents Reviewed by NACMCF

FSIS intends to make available to the public all materials that are reviewed and considered by NACMCF regarding its deliberations. Generally, these materials will be made available as soon as possible after the full committee meeting. Further, FSIS intends to make these materials available in both electronic format on the FSIS web page, as well as hard copy format in the docket room. Often, an attempt is made to make the materials available at the start of the full committee meeting when sufficient time is allowed in advance to do so.

FSIS also intends to post all comments associated with this docket on its web page in the near future. FSIS reserves the right to redact any offensive language that may have been included in these public comments. The uncensored text will be made available in the FSIS Docket Room.

For electronic copies, all NACMCF documents and comments are electronic conversions from a variety of source formats into HTML that may have resulted in character translation or format errors. Readers are cautioned not to rely on this HTML document. Minor changes to materials in electronic format may be necessary in order to meet the Web Accessibility Act requirement in which graphs, charts, and tables must be accompanied by a text descriptor in order for the vision impaired to be made aware of the content. FSIS will add these text descriptors along with a qualifier that the text is a simplified interpretation of the graph, chart, or table. Portable Document Format (PDF) and/or paper documents of the official text, figures, and tables can be obtained from the FSIS Docket Room.

Copyrighted documents will not be posted on the FSIS web site, but are available for inspection in the FSIS docket room.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv

consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on July 30, 2002.

William J. Hudnall,

Acting Administrator.

[FR Doc. 02–19529 Filed 8–1–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Intent To Prepare an Environmental Impact Statement for the Sugar Run Project, McKean County, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, Allegheny National Forest, Bradford Ranger District, will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed Sugar Run Project. The Forest Service is proposing actions that would move the Sugar Run Project Area from the existing condition towards the Desired Future Condition (DFC) and would maintain the DFC in situations where it has been attained. The DFC is described in the Allegheny National Forest Land and Resource Management Plan (Forest Plan).

Proposed activities to meet the Desired Future Condition fall into three main categories. (1) Timber harvest and reforestation treatments consist of: Shelterwood seedcut/removal cuts, removal cuts, commercial thinning, group selection, single tree selection, improvement cutting, manual site preparation and release, herbicide application, fertilization, fencing, and tree planting. (2) Wildlife habitat improvement treatments consist of: noncommercial thinning, oak/hickory/shrub underplanting, pruning and release of apple trees, hawthorn release, constructing new openings, planting/fencing shrubs in openings, mowing, topdressing, seeding with wildflowers and grass, constructing bat boxes, bluebird boxes and vernal ponds. (3) Recreation treatments consist of: trail relocation, trail drainage improvement and footbridge construction. (4) Transportation treatments consist of: road decommissioning, road repair, road construction, road resurfacing, obtaining a right of way from an adjacent property owner, expanding stone pits, and changing road access.

DATES: Comments and suggestions concerning the scope of the analysis should be submitted (postmarked) by September 3, 2002 to ensure timely consideration.

ADDRESSES: Submit written, oral, or e-mail comments by: (1) Mail "Sugar Run Project," ID Team Leader, HC 1 Box 88, Bradford, PA 16701; (2) phone—814–362–4613; (3) e-mail—*anf/r9_allegheny@fs.fed.us* (**please note:** when commenting by e-mail be sure to list *Sugar Run EIS* in the subject line and include a US Postal Service address so we may add you to our mailing list). For further information contact Chris Losi, project team leader, Bradford Ranger District, at 814–362–4613 or mail/e-mail correspondence to addresses listed above.

SUPPLEMENTARY INFORMATION: The Allegheny National Forest Land and Resource Management Plan (Forest Plan) sets site-specific goals for the management of forest resources. The Sugar Run Project includes portions of Management Area (MA) 3.0, which emphasizes timber harvesting as a means to make desired changes to forest vegetation and satisfy the public demand for wood products. The project area also includes portions of MA 6.1, which emphasizes providing habitat for wildlife, attractive scenery, and opportunities for non-motorized recreation.

Preliminary Issues were identified based on past projects in the area (environmental assessments), issues developed for similar projects, and site-specific concerns raised by the resource specialists. These issues, listed below, will provide a framework that the Forest Service will use to analyze a range of alternatives, including No Action for the Project Area.

1. *Road Management*—The Sugar Run Project Area contains an array of Forest Service, state, and private roads. Although roads provide important access for management and recreation, they are also capable of causing resource damage. The activities that have been proposed are the result of a detailed roads analysis. As alternatives are developed, the Forest Service will continue to analyze the risks and benefits of changes to the road system.

2. *Even-Aged/Uneven-Aged Management*—Even-aged management has been identified by the Forest Plan as the primary silvicultural system to be used in MA 3.0. Uneven-aged management is an option for MA 6.1 as well as inclusions within MA 3.0 such as riparian areas, wet soils, or visually sensitive areas. Previous environmental analyses have shown that many members of the public have a strong interest in the silvicultural system used on Forest Service lands.

3. *Threatened and Endangered Species*—Although no endangered, threatened, or sensitive species were found within the project area, an endangered Indiana bat was documented near the project area. Potential effects to the Indiana bat and its habitat will be evaluated for all of the alternatives considered in detail.

4. *OHV trail expansion*—A project to expand an existing trail for Off-Highway-Vehicles (OHVs) into the Sugar Run Project Area is in the preliminary planning stage. Although analysis of this trail expansion will occur in a separate environmental document, the Sugar Run EIS will need to consider the cumulative effects anticipated over the next ten years associated with the OHV trail expansion.

5. *Location of North Country National Scenic Trail*—Some concerns were raised about the proximity of timber treatments and proposed road construction to the North Country National Scenic Trail. Since the trail is currently near MA 6.1, there may be an opportunity to permanently relocate the trail. On the other hand, a permanent relocation may best be considered on a larger scale than the current project.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Your comments will help the Forest Service refine and enhance the list of issues that are considered when analyzing alternatives to the proposed action. When this analysis is nearly complete, the Draft EIS will be filed with the Environmental Protection Agency and become available for public review (expected by April 2003). At that time the Environmental Protection Agency will publish a Notice of Availability of the document in the **Federal Register** (this will begin the 45-day comment period on the Draft EIS). After the comment period ends on the Draft EIS, the comments will be

analyzed and considered by the Forest Service in preparing the final environmental impact statement. The Final EIS is scheduled for release in September 2003.

Comments received, including names and addresses of those who comment, will be considered part of the public record and may be subject to public disclosure. Any person may request the Agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 553 [1978]). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement stage may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]).

Because of the above rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the final environmental impact statement. Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages, sections, or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to Council on Environmental Quality *Regulations for implementing the procedural provisions of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points.

This decision will be subject to appeal under 36 CFR 215. The responsible official is John R. Schultz, Bradford Ranger District, HC 1 Box 88, Bradford, PA 16701.

Dated: July 19, 2002.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 02–18817 Filed 8–1–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Blue Mountain Land Exchange; Malheur, Umatilla, and Wallowa-Whitman National Forests; Baker, Grant, Morrow, Umatilla, Union, Wallowa, and Wheeler Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA will prepare an environmental impact statement on a proposal to exchange lands with Clearwater Land Exchange-Oregon. Clearwater is acting as a third-party facilitator for multiple non-federal landowners. The environmental impact statement will analyze the proposed exchange of approximately 20,570 acres of federal lands for approximately 36,370 acres of non-federal lands in the vicinity of the Blue Mountains Province of Northeast Oregon. The federal and non-federal lands proposed for exchange are located in Baker, Grant, Morrow, Umatilla, Union, Wallowa, and Wheeler Counties of Northeast Oregon. The affected Forest Service units are the Blue Mountain and Prairie City Ranger Districts of the Malheur National Forest; the Heppner, North Fork John Day, Pomeroy, and Walla Walla Ranger Districts of the Umatilla National Forest; and the Eagle Cap, LaGrande, Pine, Unity, and Wallowa Valley Ranger Districts and the Hells Canyon National Recreation Area of the Wallowa-Whitman National Forest. Implementation of the proposed exchange is scheduled for January 2004. The Malheur, Umatilla, and Wallowa-Whitman National Forrest Supervisors invite the public to submit comments on their proposal and suggestions on the scope of the proposed exchange. The Forest Supervisors also invite the public to participate in the environmental analysis and decision-making process for the proposed exchange of lands.

DATES: In order to maintain the estimated schedule for completing the final environmental impact statement, comments about the proposed exchange and the scope of the analysis should be received by September 13, 2002. Written comments are preferable, but oral comments will also be accepted. The draft environmental impact statement is scheduled for availability in June 2003, and the final environmental impact statement is expected to be available in October 2003.

ADDRESSES: Written comments or requests for information about this proposal should be addressed to Linda Vore, Supervisory Realty Specialist, Wallowa-Whitman National Forest, PO Box 907, Baker City, OR 97814. Oral comments may be conveyed to Linda Vore in person at the Wallowa-Whitman National Forest, 1550 Dewey Avenue, Baker City, Oregon; or by telephone at 541–523–1249.

FOR FURTHER INFORMATION CONTACT: Linda Vore, Supervisory Realty Specialist, PO Box 907, Baker City, OR 97814; Telephone 541–523–1249.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The proposal to exchange lands in the Blue Mountain Province of Northeast Oregon responds to the Forest Service's need for consolidation of federal land ownership patterns in the Malheur, Umatilla, and Wallowa-Whitman National Forests. The consolidation of federal ownership allows the Forest Service to enhance the management of the public's natural resources by acquiring lands that (1) facilitate public access to present federal lands, (2) protect habitat for several threatened, endangered, and sensitive species, (3) improve wetlands, floodplains, and riparian areas, (4) preserve segments of the Imnaha, Lostine, Eagle Creek, and North Fork John Day Wild and Scenic Rivers, (5) convert ownership within the Eagle Cap, Hells Canyon, and Wenaha-Tucannon Wildernesses and the Hells Canyon National Recreation Area, (6) decrease the complexity of maintaining property boundaries, (7) reduce the number of access permits to private inholdings, and (8) improve the efficiency of resource management by focusing the Forests' funding and staff on consolidated ownerships.

Proposed Action

The Forest Supervisors propose to exchange approximately 20,570 acres of federal lands for approximately 36,370 acres of non-federal lands in the vicinity of the Blue Mountains Province of Northeastern Oregon. The federal and non-federal lands proposed for exchange are located in Baker, Grant, Morrow, Umatilla, Union, Wallowa, and Wheeler Counties of Northeast Oregon. The affected Forest Service units are the Blue Mountain and Prairie City Ranger Districts of the Malheur National Forest; the Heppner, North Fork John Day,

Pomeroy, and Walla Walla Ranger Districts of the Umatilla National Forest; and the Eagle Cap, LaGrande, Pine, Unity, and Wallowa Valley Ranger Districts and the Hells Canyon National Recreation Area of the Wallowa-Whitman National Forest. All of the parcels proposed for exchange are located within the geographic area of ceded lands and/or areas of interest of the Burns Paiute Tribes, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Reservation, or the Confederated Tribes of the Warm Springs Reservation. All acreages in this proposal are approximate.

The United States of America would convey fee title to Clearwater Land Exchange-Oregon for parcels totaling approximately 20,570 acres throughout Baker, Grant, Morrow, Umatilla, Union, and Wallowa counties in the State of Oregon. Approximately 40 acres of these parcels are in Baker County in the vicinity of South Fork Burnt River in the Wallowa-Whitman National Forest. Approximately 6,090 acres of these parcels are in Grant County in the vicinity of Deer Creek (2,400 acres), Bear Creek (3,170 acres), Beech Creek (70 acres), Jeff Davis Creek (120 acres), and Thompson Gulch (20 acres) in the Malheur National Forest and in the vicinity of Rains Canyon (150 acres) and Bully Creek (160 acres) in the Umatilla National Forest. Approximately 380 acres of these parcels are in Morrow County in the vicinity of Willow Creek (220 acres) and Butler Creek (160 acres) in the Umatilla National Forest. Approximately 6,670 acres of these parcels are in Umatilla County in the vicinity of Meacham Creek (3,600 acres), Cooper Creek (1,800 acres), Swiss Flat (320 acres), Snipe Creek (150 acres), Wilkins Creek (200 acres), Deerhorn Creek (80 acres), California Gulch (40 acres), Pearson Creek (110 acres), and butcher Creek (370 acres) in the Umatilla National Forest. Approximately 400 acres of these parcels are in Union County in the vicinity of Sullivan creek in the Wallowa-Whitman National Forest. Approximately 6,990 acres of these parcels are in Wallowa County in the vicinity of Water Canyon (30 acres), Big Canyon (40 acres), Big Sheep Creek (1,900 acres), Imnaha River (1,740 acres), Powwatka Ridge (1,760 acres), Big Flat (120 acres), McCoy Flat (80 acres), Lostine River (40 acres), Spring Creek (120 acres), Prairie Creek (280 acres), Carrol Creek (680 acres), and Summit Creek (200 acres) in the Wallowa-Whitman National Forest.

Clearwater Land Exchange-Oregon would convey fee title to the United States of America for parcels totaling approximately 36,370 acres throughout Baker, Grant, Morrow, Umatilla, Union, Wallowa, and Wheeler counties in the State of Oregon. Approximately 320 acres of these parcels are in Baker County in the vicinity of Eagle Creek in the Wallowa-Whitman National Forest. Approximately 10,660 acres of these parcels are in Grant County in the vicinity of Aldrich Mountain (200 acres), Crazy Creek (640 acres), Deer Creek (160 acres), West Fork Deer Creek (400 acres), Murderers Creek (630 acres), Birch Creek (480 acres), Lewis Officer Creek (40 acres), Beech Creek (2440 acres), Clear Creek (1,110 acres), Four Corners (120 acres), Bridge Creek (40 acres), Phipps Meadow (280 acres), Bridge Creek Meadow (160 acres), and Wallowa Spring (30 acres) in the Malheur National Forest; in the vicinity of Wilson Prairie (2,250 acres), Happy Jack Creek (480 acres), Bologna Basin (200 acres), Rains Canyon (120 acres), Patterson Basin (400 acres), North Fork John Day River (270 acres), Deep Creek (50 acres), and Trout Meadows (110 acres) in the Umatilla National Forest; and in the vicinity of Trout Creek (50 acres) in the Wallowa-Whitman National Forest. Approximately 160 acres of these parcels are in Morrow County in the vicinity of Matlock Creek in the Umatilla National Forest. Approximately 8,120 acres of these parcels are in Umatilla County in the vicinity of Meacham Creek (2,900 acres), Owens Creek (480 acres), North Fork John Day River (1,900 acres), Bear Wallow Creek (320 acres), Camp Creek (1,880 acres), and Camas Creek (640 acres) in the Umatilla National Forest. Approximately 550 acres of these parcels are in Union County in the vicinity of McCoy Creek (160 acres), Burnt Corral Creek (90 acres), Pelican Creek (260 acres), and Five Points Creek (40 acres) in the Wallowa-Whitman National Forest. Approximately 16,240 acres of these parcels are in Wallowa County in the vicinity of Eden Ridge (380 acres) and the Wenaha River (760 acres) in the Umatilla National Forest and in the vicinity of Kuhn Ridge (1,020 acres), Joseph Creek (660 acres), Doe Creek (160 acres), Chesnimnus Creek (2,200 acres), Big Sheep Creek (260 acres), Imnaha River (8,950 acres) Cow Creek (940 acres), Lostine River (140 acres), Hurricane Creek (510 acres), Morgan Ridge (120 acres), and McGraw Creek (140 acres) in the Wallowa-Whitman National Forest. Approximately 320 acres of these parcels are in Wheeler County in the vicinity of Wineland Lake in the Umatilla National Forest.

The proposed exchange of lands may require amendments to the Land and Resource Management Plans for the Malheur, Umatilla, and Wallowa-Whitman National Forests. Pursuant to the regulations for land exchanges (36 CFR 254.3(f)): "Lands acquired by exchange that are located within areas having an administrative designation established through the land management planning process shall automatically become part of the area within which they are located, without further action by the Forest Service, and shall be managed in accordance with the laws, rules, and regulations, and land and resource management plan applicable to such area." Accordingly, lands acquired within Congressionally Designated Areas such as Wilderness, Wild and Scenic Rivers, and National Recreation Areas would be respectively designated and managed consistently with the surrounding lands.

Possible Alternatives

A full range of alternatives to the proposed action, including a no-action alternative, will be considered in the environmental impact statement. The no-action alternative represents no change from the current pattern of land ownership, and it serves as the baseline for the comparison among the action alternatives. In addition to the proposed action and the no-action alternatives, the environmental impact statement will consider other reasonable alternatives regarding the number and location of parcels to exchange, including alternatives that respond to issues identified by the public during the scoping process.

Responsible Officials

The Responsible Officials are the Forest Supervisors for the Malheur, Umatilla, and Wallowa-Whitman National Forests. They will review all issues, alternatives, and environmental consequences associated with the analysis; consider all public comments and response; and comply with all policies, regulations, and laws in making a decision regarding the proposed exchange of lands documented in the Final Environmental Impact Statement for the Blue Mountain Land Exchange. The Responsible Officials will document their decision and their rationale for the decision in a Record of Decision. Their decision will be subject to public notice, review, comment, and appeal under the Forest Service Regulations for Notice, comment, and Appeal Procedures for National Forest System Projects and Activities at 36 CFR part 215.

Nature of Decision To Be Made

The Forest Service will determine if the lands to be exchanged are desirable in the public interest and suitable for inclusion in the National Forest System. Land exchanges are discretionary, voluntary real estate transactions between the federal and non-federal parties. The exchange can only be completed after the authorized officer determines that the exchange meets the requirements at 36 CFR 254.3(b): (1) The resource values and the public objectives served by the non-federal lands and interests to be acquired are equal to or exceed the resource values and public objectives served by the federal lands to be disposed, and (2) the intended use of the disposed federal lands will not substantially conflict with established management objective son adjacent federal lands, including Indian Trust Lands.

Lands will be exchanged on a value for value basis, based on current fair market value appraisals. The appraisal is prepared in accordance with the Uniform Appraisal Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal prepared for the land exchange is reviewed by a qualified review appraiser to ensure that it is fair and complies with the appropriate standards. Under the Federal Land Policy and Management Act of 1976, all exchanges must be equal in value. Forest Service regulations at 36 CFR 254.3 require that exchanges must be of equal value or equalized pursuant to 36 CFR 254.12 by cash payment after making all reasonable efforts to equalize values by adding or deleting lands. If lands proposed for exchange are not equal in value, either party may make them equal by cash payment not to exceed 25 percent of the federal land value.

Preliminary Issues

Preliminary scoping indicates that there may be issues associated with public access, protected species, old-growth habitat, floodplain areas, structures and facilities, private lands within Congressionally designated areas, and Tribal interests. The proposed exchange may require amendments to the National Forest Land and Resource Management Plans for the Malheur, the Umatilla, and the Wallowa-Whitman National Forests.

Scoping Process

The Forest Service encourages full participation in the proposed land exchange, beginning with the scoping process. Scoping will include notice in the Malheur, Umatilla, and Wallowa-Whitman National Forests' Quarterly Schedule of Proposed Actions; distribution of letters to individuals, organizations, and agencies who have already indicated interest in land exchanges; communication with tribal interests; and publication of news releases in the Blue Mountain Eagle, the Eastern Oregoinian, and the Baker City Herald, the newspapers of record, respectively, for the Malheur, Umatilla, and Wallowa-Whitman National Forests. The news release will also be distributed to other local newspapers that serve areas affected by this proposal. Public meetings in the form of open houses will be scheduled, and notice of times and locations will be provided at a later date. The scoping process will include identifying key issues, exploring additional alternatives, and identifying potential environmental effects of the proposed action and the alternatives.

Comment Requested

The Forest Service is seeking comments from individuals, organizations, tribes, state and local agencies, and other federal agencies that may be interested in or affected by the proposed land exchange. All comments received in response to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. The comments will be use din the preparation of the draft environmental impact statement.

The draft environmental impact statement is scheduled for distribution to the public in June 2003. The comment period on the draft statement will be 45 days. Comments on the draft statement should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the 45-day comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled for completing by October 2003. In the final statement, the Forest Service will respond to all substantive comments received during the public comment period.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corporation versus Natural Resources Defense Council, 435 US 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until completion of the final environmental impact statement, may be waived or dismissed by the courts. City of Angoon versus Hodel, 803 F 2d 1016, 1022 (9th Cir, 1986) and Wisconsin Heritages, Incorporated versus Harris, 490 F Supp 1334, 1338 (ED Wis, 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period, so substantive comments and objections are made available to the Forest Service at a time when it can be meaningfully consider them and respond to them in the final environmental impact statement.

Dated: July 25, 2002

Roger W. Williams,

Malheur National Forest.

Dated: July 25, 2002.

Jeff D. Blackwood,

Forest Supervisor, Umatilla National Forest.

Dated: July 25, 2002.

John C. Schuyler,

Deputy Forest Supervisor, Wallowa-Whitman National Forest.

[FR Doc. 02–19481 Filed 8–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Advisory Committee (OPAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic Province Advisory Committee (OPAC) will meet on August 16, 2002. The meeting will be held at the Quinault Indian Nation's Department of Natural Resource Conference Room in Taholah, Washington. The meeting will begin at 9:30 a.m. and end at approximately 3 p.m. Agenda topics are: (1) Current status of key Forest issues; (2) Status

update on the Resource Advisory Committees for Rural Schools and Community Self-Determination Act of 2000; (3) Regional and local tribal relations; (4) Open forum; and (5) Public comments.

All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encourage to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd. Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor at (360) 956–2301.

Dated: July 23 2002.

Kathy O'Halloran,

Acting Forest Supervisor, Olympic National Forest.

[FR Doc. 02–19480 Filed 8–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet on August 19, 2002, and then again on August 26, 2002 in Yreka, California. The purpose of the meetings is to review the fiscal year 2002 project proposals in order to make recommendations to the designated federal official.

DATES: The meetings will be held August 19, 2002 from 1 p.m. to 7 p.m., and August 26, 2002 from 4 p.m. to 8 p.m.

ADDRESSES: The meetings will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Brian Harris, Meeting Coordinator, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California, 96097, (530) 841–4485; E-mail *bdharris@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 25, 2002.

Margaret J. Boland,

Forest Supervisor.

[FR Doc. 02–19479 Filed 8–1–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 1, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

On June 7, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 39337) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Medical Transcription, Federal Bureau of Prisons, Greenville, Illinois.

NPA: The Lighthouse of Houston, Houston, Texas.

Contract Activity: Federal Bureau of Prisons, Greenville, Illinois.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–19526 Filed 8–1–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 1, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Cup, Paper, Disposable, Hot, 7350–00–NIB–0177,
7350–00–NIB–0178.
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana.
Contract Activity: GSA, General Products Center, Fort Worth, Texas.
Product/NSN: Handle Assembly, 3895–01–135–2538.
NPA: Knox County ARC, Knoxville, Tennessee.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Lewis & Clark Discovery Box, 7125–00–R10–0001 (Lightweight Box), 7125–00–R10–0002 (Cabbage Box).
NPA: Development Workshop, Inc., Idaho Falls, Idaho.
Contract Activity: U.S. Army Corps of Engineers, Omaha, Nebraska.
Product/NSN: Junior Wooden Kitchen Set, M.R. 808.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Services

Service Type/Location: Dining Facility Attendant Services,
At the following locations:
29th Engineering Battalion, Fort Shafter, Hawaii.
Aviation Brigade Dinning Facility, Building 102, Wheeler Army Airfield, Hawaii.
HHC 25th Infantry Division Lite, Buildings 133, 6056, 550, 855 and 1492, Schofield Barracks, Hawaii.
NPA: Opportunities for the Retarded, Inc., Wahiawa, Hawaii.
Contract Activity: U.S. Army Support Command, Fort Shafter, Hawaii.
Service Type/Location: Janitorial/Custodial,
U.S. Air Force/Marine Corps Recruiting Office, Aiea, Hawaii.
U.S. Army Recruiting Office, Aiea, Hawaii.
U.S. Army Recruiting Office, Honolulu, Hawaii.
U.S. Army Recruiting Office, Kaneohe, Hawaii.
U.S. Marine Corps Recruiting Office, Honolulu, Hawaii.
U.S. Navy Recruiting Office, Aiea, Hawaii.
U.S. Navy, Marine Corps & Air Force Recruiting Office, Kaneohe, Hawaii.
NPA: Network Enterprises, Inc., Honolulu, Hawaii.
Contract Activity: U.S. Army Engineer District, Honolulu, Honolulu, Hawaii.
Service Type/Location: Janitorial/Related Services,
U.S. Border Patrol Station, Air Operations, Yuma, Arizona.
U.S. Border Patrol Station, Blythe Office, Blythe, California (Janitorial and Grounds Maintenance).
U.S. Border Patrol Station, Maintenance Facility, Yuma, Arizona.
U.S. Border Patrol Station, Station Office, Yuma, Arizona.
U.S. Border Patrol Station, Traffic Check Point, Highway #78, Arizona.
U.S. Border Patrol Station, Traffic Check Point, Highway #95, Arizona.
U.S. Border Patrol Station, Traffic Check Point, Interstate 8, Arizona.
U.S. Border Patrol Station, Wellton Office, Wellton, Arizona.
NPA: Yuma WORC Center, Inc., Yuma, Arizona.
Contract Activity: Immigration and Naturalization Service, DOJ.
Service Type/Location: Mailroom Support Services, BLM—Arizona State Offices, Phoenix, Arizona.
NPA: The Centers for Habilitation/TCH, Tempe, Arizona.
Contract Activity: Bureau of Land Management—Arizona, Phoenix, AZ.
Service Type/Location: Medical Transcription,
VA Medical Center, West Los Angeles, Los Angeles, California.
NPA: Landmark Services, Inc., Santa Ana, California.
Contract Activity: VA Network Business Center, San Diego, California.
Service Type/Location: Vehicle Maintenance, Basewide, Fort Lewis, Washington.
NPA: Skookum Educational Programs, Port Townsend, Washington.
Contract Activity: USA, Intermediate Brigade Combat Team, Fort Lewis, Washington.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Grounds Maintenance,
Nininger U.S. Army Reserve Center, Fort Lauderdale, Florida.
NPA: Goodwill Industries of Broward County, Inc., Fort Lauderdale, Florida.
Contract Activity: U.S. Army, 81st Regional Support Command, Fort Lauderdale, Florida.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–19527 Filed 8–1–02; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Annual Capital Expenditures Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 1, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Charles Funk, U.S. Census Bureau, Room 1285–3, Washington, DC 20233–6400, (301) 763–3324 or via the Internet at *charles.allen.funk @census.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans the continuing information collection for the 2002 Annual Capital Expenditures Survey (ACES). The annual survey collects data on fixed assets and depreciation, sales and receipts, capitalized computer software developed for internal use, and capital expenditures for new and used structures and equipment. The ACES is the sole source of detailed comprehensive statistics on actual business spending by domestic, private, nonfarm businesses operating in the United States. Industrial sectors covered by the survey are based on the 1997 North American Industry Classification System (NAICS). Both employer and nonemployer companies are included in the survey.

The Bureau of Economic Analysis (BEA), the primary Federal user of our annual program statistics, uses the information in refining and evaluating annual estimates of investment in structures and equipment in the national income and product accounts, compiling annual input-output tables, and computing gross domestic product (GDP) by industry. The Federal Reserve Board (FRB) uses the data to improve estimates of investment indicators for monetary policy. The Bureau of Labor Statistics (BLS) uses the data to improve estimates of capital stocks for productivity analysis.

Industry analysts use these data for market analysis, economic forecasting, identifying business opportunities, product development, and business planning.

Proposed changes to the collection are the elimination of two questions requesting the estimated cost of assets acquired under capital lease arrangements entered into during the year, and the amount of capitalized interest incurred during the year to produce or construct assets reported as capital expenditures; and, the addition of a request for data on capitalized costs of computer software developed or obtained for internal use. Data relating to assets acquired under capital lease arrangements (previously collected from employer and nonemployer companies) and capitalized interest (previously collected from employer companies only) will continue to be included as capital expenditures, but the individual questions regarding each will be eliminated. The new question related to computer software will request from employer companies, total capitalized computer software, value of capitalized pre-packaged computer software, value of capitalized custom computer software, and value of capitalized own-account (internally developed) computer software.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. Employer companies will be mailed one of three forms based on their diversity of operations and number of industries with payroll. Companies that operate in only one industry will receive an ACE–1 (S) form. Companies that operate in more than one but less than nine industries will receive an ACE–1 (M) form. And, companies that operate in nine or more industries will receive an ACE–1 (L) form. Respondent companies are permitted to respond via facsimile machine to our toll-free number. Companies will be asked to respond to the survey within 30 days of the initial mailing. Letters and/or telephone calls encouraging participation will be directed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0782.

Form Number: ACE–1 (S), (M), (L), (Sent to employer companies reporting payroll to the Internal Revenue Service), and the ACE–2 (Sent to nonemployer companies).

Type of Review: Regular Review.

Affected Public: Businesses or other for-profit organizations, non-profit institutions, small businesses or organizations, and self-employed individuals.

Estimated Number of Respondents: Approximately 61,000 (46,000 employer companies, and 15,000 nonemployer companies).

Estimated Time Per Response: The average for all respondents is 2.4 hours. For employer companies completing form ACE–1, the range is from 2 to 16 hours, averaging 2.8 hours. For nonemployer companies completing form ACE-2, the range is from less than 1 hour to 2 hours, averaging 1 hour.

Estimated Total Annual Burden Hours: 145,000 hours.

Estimated Total Annual Cost to Respondents: $3 million.

Respondents' Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 30, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–19519 Filed 8–1–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Requirements for Approved Construction Projects

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce as part of its continuing effort to reduce paperwork and respondent burden invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1994, 44 U.S.C. 3501, *et seq.*

DATES: Written comments must be submitted on or before October 1, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 or via Internet at *MClayton@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Patricia Flynn, Director, Operations Review and Analysis Division, Economic Development Administration, Room 7015, Washington, DC 20230, telephone (202) 482–5353.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) helps our partners across the nation (states, regions, and communities) create wealth

and minimize poverty by promoting a favorable business environment to attract private capital investment and jobs through world-class capacity building, planning, infrastructure, research grants, and strategic initiatives.

This information collection is needed to monitor construction projects for compliance with Federal and other program and administrative requirements as set forth in EDA's authorizing legislation the Public Works and Economic Development Act of 1965, as amended, including the comprehensive amendments by the Economic Development Reform Act of 1998, Public Law 105–393, (PWEDA), EDA's implementing regulations at 13 CFR parts 305 and 308, and the Common Rule as set forth at 15 CFR parts 14 and 24. The *Requirements for Approved Construction Projects* manual is intended to supplement and explain the requirements that apply to Federally-assisted construction projects. The requirements are not intended to derogate, replace or negate the above cited Federal requirements. The information collected from grant recipients is used by EDA to safeguard the public's interest in the grant assets, and to promote the effective use of grant funds accomplishing the purpose for which they were granted. EDA uses information gathered to analyze and report on program performance for over 1,160 projects which at any one time are still in design or construction.

II. Method of Collection

To responsibly administer its programs and to fulfill its statutory mandate, EDA must obtain certain data to monitor project progress from the earliest stages of design to the final performance measures report following completion of construction. The data is used to determine if time schedules, contract specifications, procurement regulations, environmental regulations, civil rights regulations, bonding requirements, and financial safeguards, among others are being followed. Additionally, EDA must collect information on the jobs to be created and saved, by those that apply for and receive its assistance (applicants and recipients), and by those that create or save 15 or more jobs as a result of EDA's assistance.

III. Data

OMB Number(s): 0610–0096.
Form Number: Not Applicable.
Burden: 23,200.
Type of Review: Extension of currently approved collection.
Affected Public: EDA-funded grantees: State, local and tribal governments; community organizations; and not-for-profit organizations.
Estimated Number of Respondents: Approximately 1,160.
Estimated Time per Response: 20 hours.
Estimated Total Annual Burden Hours: 23,200.
Estimate Total Annual Cost: $928,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 29, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–19516 Filed 8–1–02; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposal and Application for Federal Assistance, and Civil Rights Guidelines

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

DATES: Written comments must be submitted on or before October 1, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Patricia Flynn, Director, Operations Review and Analysis Division, Economic Development Administration, Room 7015, Washington, DC 20230, telephone: (202) 482–5353.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) provides investments that will help our partners across the nation (states, regions and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and high skill, high wage jobs through world-class capacity building, infrastructure, business assistance, research grants and strategic initiatives.

EDA's Proposal and Application for Federal Assistance, and Civil Rights Guidelines are needed to determine conformance to statutory and regulatory requirements as set forth in EDA's authorizing legislation (Public Law 105–393) and EDA's implementing regulations at 13 CFR Chapter III. EDA must obtain certain data to assess the quality of the scope of work proposed to address the pressing needs and other economic problem(s) of the area, the merits of the activity for which funding is requested, and the ability of the prospective applicant to carry out the proposed activities successfully.

II. Method of Collection

Potential applicants are responsible for demonstrating to EDA, by providing statistics and other appropriate information, the nature and level of the distress their project efforts are intended to alleviate. EDA provides funding for eligible investment activities through direct grants and cooperative agreements. The Civil Rights Guidelines are required by the Department of Justice at 28 CFR 42.404, which directs Federal agencies to publish Title VI guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information of the requirements of Title VI of the Civil Rights Act of 1964. To responsibly administer its programs, EDA must obtain certain data on the jobs to be created and saved, by those

that apply for and receive its assistance (applicants and recipients), and by those that create or save 15 or more jobs as a result of EDA's assistance.

III. Data

OMB Number(s): 0610–0094.

Agency Form Number: ED–900P, ED–900A, and ED–900R.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or Tribal Governments and not-for-profit organizations.

Estimated Number of Respondents: 1,900 (1,100 for ED–900P, 800 for ED–900 A, ED–900R and for Civil Rights Guidelines).

Estimated Time per Response: 9 burden hours for ED–900P, 48.5 burden hours for ED–900A, ED–900R, and Civil Rights Guidelines).

Estimated Total Annual Burden Hours: 48,700.

Estimated Total Annual Cost: $2,539,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; and they also will become a matter of public record.

Dated: July 29, 2002.

Madeleine G. Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–19517 Filed 8–1–02; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JUNE 20, 2002–JULY 16, 2002

Firm name	Address	Date petition accepted	Product
Mellano Enterprises, Inc	P.O. Box 100, San Luis Rey, CA 92068	24–Jun–2002	Foliage and cut flowers.
Performance Coating, Inc	128 E. Pioneer St., Phoenix, AZ 85040	24–Jun–2002	Relay tower components for the telecommunications industry.
SMM Management, L.L.C., dba Morris Industries.	21002 North 19th Avenue, Phoenix, AZ 85027.	01–Jul–2002	Precision metal fabrication, primarily antenna parts.
Evergreen Air Center, Inc	Pinal Air Park, Marana, AZ 85653	01–Jul–2002	Aircraft reconfiguration and rebuilding.
Marquette Tool & Die Company	3185 South Kingshighway, St. Louis	01–Jul–2002	Metal stamping dies.
Ruddock Manufacturing Co., Inc	1801 Magoffin Avenue, El Paso, TX 79901.	02–Jul–2002	Mens and womens shirts.
XTAL Technologies, Ltd	28 Mill Race Drive, Lynchburg, VA 24502.	02–Jul–2002	Freqeuency devices including crystals and filters used in the production of circuit boards.
Aerostar Aerospace Manufacturing, Inc	2011 West Peoria Avenue, Phoenix, AZ 85029.	03–Jul–2002	Aircraft undercarriage and motorcycle components.
John Dusenbery Company, Inc	220 Franklin Road, Randolph, NJ 07869.	03–Jul–2002	Slitters/re-winders which unwind, slit and rewind large reels of material.
MAFCO, Inc	1203 North 6th Street, Rogers, AR 72757.	10–Jul–2002	Cast Iron hydrants and brass well system valves.
Randolph Manufacturing Corporation	4 Danforth Drive, Easton, PA 18045	15–Jul–2002	Precision screw parts used in the automotive, electronic and OEM markets.
Faulkner Land & Livestock Co., Inc	1989 South 1875 East, Gooding, ID 83330.	15–Jul–2002	Lamb.
Ramsey Winch Company	1600 North Garnett Road, Tulsa, OK 74416.	17–Jul–2002	Winches.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 25, 2002.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 02–19510 Filed 8–1–02; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping and Countervailing Duties, Procedures for Initiation of Downstream Product Monitoring

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 1, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *MClayton@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Jeffrey May, Import Administration, Office of Policy, Room 3713, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–3693, and fax number: (202) 482–4412.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's (ITA), Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty law. Under section 1320 of the Omnibus Trade and Competitiveness Act of 1988, a domestic producer of an article that is like a component part of a downstream product may petition the Department of Commerce to designate the downstream product for monitoring. Section 1320, and the Department's rule 19 CFR 351.223, requires that the petition identify the downstream product to be monitored, the relevant component part, and the likely diversion of foreign exports of the component part into increased exports of the downstream product to the United States. ITA will evaluate the petition and will issue either an affirmative or negative "monitoring" determination.

II. Method of Collection

Form ITA–4119P is sent by request to potential U.S. petitioners.

III. Data

OMB Number: 0625–0200.
Form Number: ITA–4119P.
Type of Review: Regular Submission.
Affected Public: U.S. companies or industries that suspect the presence of unfair competition from foreign firms selling merchandise in the United States below fair value.
Estimated Number of Respondents: 1.
Estimated Time Per Response: 15 hours.
Estimated Total Annual Burden Hours: 15 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $3,450 ($2,250 for respondents and $1,400 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 29, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–19518 Filed 8–1–02; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year ("Sunset") Review of Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year ("sunset") review of the antidumping duty order listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* covering this same antidumping duty order.

FOR FURTHER INFORMATION CONTACT: James P. Maeder or Amir R. Eftekhari, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–3330 or (202) 482–5331, respectively, or Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

The Applicable Statue

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (2001). Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 -- Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background:

Initiation of Review

In accordance with 19 CFR 351.218 we are initiating a sunset review of the following antidumping duty order:

DOC Case No.	ITC Case No.	Country	Product
A–570–848	731–TA–752	China	Freshwater Crawfish Tail Meat

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset Internet website at the following address: "http://ia.ita.doc.gov/sunset/".

All submissions in this sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the Federal Register of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties:

Domestic interested parties (defined in 19 CFR 351.102) wishing to participate in this sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15–day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic interested parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 26, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–19543 Filed 8–1–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–475–824

Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

EFFECTIVE DATE: August 2, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Bolling at 202–482–3434, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Background

On July 2, 2001, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910 (July 2, 2001). On July 31, 2001, ThyssenKrupp Acciai Speciali Terni S.p.A.[1] ("TKAST"), an Italian producer of subject merchandise, its affiliate, ThyssenKrupp AST USA[2] ("TKAST USA"), a U.S. importer of subject merchandise, and the petitioners from the original investigation requested the Department conduct an administrative review. On August 20, 2001, the Department published a notice of initiation of an administrative review of the antidumping duty order on subject merchandise, for the period July 1, 2000 through June 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001). On February 26,

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

[1] Formerly "Acciai Speciali Terni S.p.A.".

[2] Formerly "Acciai Speciali Terni USA, Inc.".

2002, the Department extended the time limit for the preliminary results of this administrative review. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 9960 (March 5, 2002). On May 13, 2002, the Department extended the time limit for the preliminary results of this administrative review. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 32015 (May 13, 2002). The preliminary results of this administrative review are currently due no later than July 31, 2002.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. Due to the complexity of issues present in this administrative review, such as home market affiliated downstream sales, constructed export price versus export price, selling expenses, and complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. Therefore, we are extending the due date for the preliminary results, until no later than July 31, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: July 26, 2002.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–19545 Filed 8–1–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Technology Administration

Technology Administration Performance Review Board Membership

The Technology Administration Performance Review Board (TA PRB) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the TA PRB and supersedes the list published in **Federal Register** Document 01–29675, Vol. 66, No. 230, page 59575, dated November 29, 2001.

Cathleen Campbell (C), Director of International Technology, Policy and Programs, Technology Administration, Washington, DC 20230, *Appointment Expires:* 12/31/02 (General).

Charles Clark (C), Chief, Electron & Optical Physics Division, Physics Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 12/31/04 (Limited).

Belinda L. Collins (C), Deputy Director for Technology Services, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 12/31/04 (Limited).

Stephen Freiman (C), Deputy Director, Materials Science & Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 12/31/04 (Limited).

Daniel Hurley (C), Director of Communication and Information, Infrastructure Assurance Program, National Telecommunications and Information Administration, Washington, DC 20230, *Appointment Expires:* 12/31/03 (General).

Richard K. Kayser (C), Director for Technology Services, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 12/31/04 (General).

William F. Koch (C), Deputy Director, Chemical Science & Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 12/31/04 (Limited).

Willie E. May (C), Chief, Analytical Chemistry Division, Chemical Science & Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 12/31/04 (Limited).

Robert F. Moore (C), Deputy Director for Safety and Facilities, National Institute of Standards & Technology, Gaithersburg, MD 20899–3200, *Appointment Expires:* 12/31/03 (Limited).

Tyra Dent Smith (C), Chief, Human Resources Division, Census Bureau, Washington, DC 20233, *Appointment Expires:* 12/31/04 (Limited).

John F. Sopko (C), National Technical Information Service, Springfield, VA 22161, *Appointment Expires:* 12/31/04 (General).

Dennis Swyt (C), Chief, Precision Engineering Division, Manufacturing Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899–8210, *Appointment Expires:* 12/31/04 (General).

Kathleen Taylor (C), Chief, Employment and Labor Law Division, Assistant General Counsel for Administration, Office of the General Counsel, Office of the Secretary, Washington, DC 20230, *Appointment Expires:* 12/31/03 (General).

Susan Zevin (C), Deputy Director, Information Technology Laboratory, Information Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899–8900, *Appointment Expires:* 12/31/02 (Limited).

Dated: July 24, 2002.

Benjamin H. Wu,

Deputy Under Secretary of Commerce for Technology, Technology Administration, Department of Commerce.

[FR Doc. 02–19569 Filed 8–1–02; 8:45 am]

BILLING CODE 3510–18–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Short Supply Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

July 30, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that certain 100 percent stock-dyed worsted wool woven fabric, used in the production of certain men's suits and suit jackets, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On July 19, 2002 the Chairman of CITA received a request from Oxford Industries, Inc., alleging that certain 100 percent worsted (i.e.,

combed) wool woven fabric, stock-dyed (not piece-dyed) of wool yarns with an average fiber diameter of more than 18.5 microns, classified in subheading 5112.19.95 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in the production of men's suit-type jackets for suits classified in subheading 6203.31.9010 of the HTSUS and men's suits classified in subheading 6203.11.9000 of the HTSUS but excluding "morning dress", "evening dress" and "dinner jacket suits" (as defined in Note 3 (a) to Chapter 62 of the HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that these apparel articles of such fabrics be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. To be insured a full consideration, comments must be submitted by August 19, 2002, to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, NW. Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Carribean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On July 19, 2002, the Chairman of CITA received a request from Oxford Industries, Inc., alleging that certain 100 percent worsted (i.e., combed) wool woven fabric stock-dyed (not piece-dyed) of wool yarns with an average fiber diameter of more than 18.5 microns, classified in subheading 5112.19.95 of the HTSUS, for use in the production of men's suit-type jackets for suits classified in subheading 6203.31.9010 of the HTSUS and men's suits classified in subheading 6203.11.9000 of the HTSUS but excluding "morning dress", "evening dress" and "dinner jacket suits" (as defined in Note 3 (a) to Chapter 62 of the HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for these apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these fabrics for purposes of the intended use. To be insured a full consideration, comments must be received no later than August 19, 2002. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabrics stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–19631 Filed 7–31–02; 12:12 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Waiver of 10 U.S.C. 2534 for Certain Defense Items Produced in the United Kingdom

AGENCY: Department of Defense (DoD).

ACTION: Notice of waiver of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom.

SUMMARY: The Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom (UK). 10 U.S.C. 2534 limits DoD procurement of certain items to sources in the national technology and industrial base. The waiver will permit procurement of items enumerated from sources in the UK, unless otherwise restricted by statute.

EFFECTIVE DATE: This waiver is effective for one year, beginning August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, OUSD (AT&L), Director of Defense Procurement, Foreign Contracting, Room 3C762, 3060 Defense Pentagon, Washington, DC 20301–3060, telephone (703) 697–9352.

SUPPLEMENTARY INFORMATION:

Subsection (a) of 10 U.S.C. 2534 provides that the Secretary of Defense may procure the items listed in that subsection only if the manufacturer of the item is part of the national technology and industrial base. Subsection (i) of 10 U.S.C. 2534 authorizes the Secretary of Defense to exercise the waiver authority in subsection (d), on the basis of the applicability of paragraph (2) or (3) of that subsection, only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country. Subsection (d) authorizes a waiver if the Secretary determines that application of the limitation "would impede the reciprocal

procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items" and if he determines that "that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country." The Secretary of Defense has delegated the waiver authority of 10 U.S.C. 2534(d) to the Under Secretary of Defense (Acquisition, Technology, and Logistics).

DoD has a reciprocal procurement Memorandum of Understanding (MOU) with the UK that was signed on December 13, 1994.

The Under Secretary of Defense (Acquisition, Technology, and Logistics) finds that the UK does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in the UK, and also finds that application of the limitation in 10 U.S.C. 2534 against defense items produced in the UK would impede the reciprocal procurement of defense items under the MOU.

Under the authority of 10 U.S.C. 2534, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that application of the limitation of 10 U.S.C. 2534(a) to the procurement of any defense item produced in the UK that is listed below would impede the reciprocal procurement of defense items under the MOU with the UK.

On the basis of the foregoing, the Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation in 10 U.S.C. 2534(a) for procurements of any defense item listed below that is produced in the UK. This waiver applies only to the limitations in 10 U.S.C. 2534(a). It does not apply to any other limitation, including sections 8016 and 8065 of the DoD Appropriations Act for Fiscal Year 2002 (Public Law 107–117). This waiver applies to procurements under solicitations issued during the period from August 19, 2002, to August 18, 2003. Similar waivers were granted for the period from August 4, 1998, to August 18, 2002 (63 FR 38815, July 20, 1998; 64 FR 38896, July 20, 1999; 65 FR 47968, August 4, 2000; and 66 FR 40680, August 3, 2001). For contracts resulting from solicitations issued prior to August 4, 1998, this waiver applies to procurements of the defense items listed below under—

(1) Subcontracts entered into during the period from August 19, 2002, to August 18, 2003, provided the prime contract is modified to provide the Government adequate consideration such as lower cost or improved performance; and

(2) Options that are exercised during the period from August 19, 2002, to August 18, 2003, if the option prices are adjusted for any reason other than the application of the waiver, and if the contract is modified to provide the Government adequate consideration such as lower cost or improved performance.

List of Items to Which This Waiver Applies

1. Air circuit breakers.
2. Welded shipboard anchor and mooring chain with a diameter of four inches or less.
3. Gyrocompasses.
4. Electronic navigation chart systems.
5. Steering controls.
6. Pumps.
7. Propulsion and machinery control systems.
8. Totally enclosed lifeboats.
9. Ball and roller bearings.

Michele P. Peterson,

Executive Editor. Defense Acquisition Regulations Council.

[FR Doc. 02–19525 Filed 8–1–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Technology for Base Security will meet to review basic and advanced research and associated science and technology opportunities with respect to the following anti-terrorism/force protection (AT/FP) issues: access control, automation, intrusion detection systems, consolidation of manpower, threat detection, counter-surveillance, situational awareness, and deterrence. From these discussions and review, the Panel will recommend appropriate naval science and technology investments both near and far term, to enhance base security. All sessions of the meeting will be closed to the public.

DATES: The meetings will be held on Tuesday, August 13, 2002, from 1 p.m. to 5:30 p.m.; Wednesday, August 14, 2002, from 8:30 a.m. to 5:30 p.m.; and Thursday, August 15, 2002, from 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meetings will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dennis Ryan, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of a closed meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to discussions of basic and advanced research and associated science and technology opportunities with respect to the following anti-terrorism/force protection (AT/FP) issues: access control, automation, intrusion detection systems, consolidation of manpower, threat detection, counter-surveillance, situational awareness, and deterrence. These discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Under Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1). Due to an unavoidable delay in administrative processing, the 15-day advance notice could not be provided.

Dated: July 30, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, , U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–19619 Filed 8–1–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Floodplain and Wetlands Statement of Findings for the Proposed Deactivation and Demolition of the Zone 13 Sewage Treatment Plant at the Pantex Plant, Amarillo, TX

AGENCY: Department of Energy (DOE).

ACTION: Floodplain and wetlands statement of findings.

SUMMARY: This is a Floodplain and Wetlands Statement of Findings for the demolition of a decommissioned sewage

treatment plant located on the Pantex Plant in Carson County, 17 miles northeast of Amarillo, Texas, in accordance with 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. A floodplain and wetlands assessment was conducted that evaluated the potential impacts of this project. The floodplain and wetlands assessment describes the possible effects, alternatives, and measures designed to avoid or minimize potential harm to the floodplain and wetlands or their flood storage potential. DOE will allow 15 days of public review after publication of the Statement of Findings before implementation of the Proposed Action.

FOR FURTHER INFORMATION CONTACT: Brenda G. Finley, Public Affairs Officer, U.S. DOE/NNSA, Office of Amarillo Site Operations, P.O. Box 30020, Amarillo, Texas 79120–0020, (806) 477–3120, (806) 477–6641 (FAX).

For Further Information on General DOE Floodplain/Wetlands Environmental Review Requirements, Contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, (800) 472–2756.

SUPPLEMENTARY INFORMATION: A notice of Floodplain and Wetlands Involvement for the Proposed Deactivation and Demolition of the Zone 13 Sewage Treatment Plant at the Pantex Plant was published in the **Federal Register** on April 15, 2002 (67 FR 18182); and, subsequently, a floodplain and wetlands assessment was prepared. The floodplain and wetlands assessment documented the floodplain and wetlands communities that have the potential to be affected by the demolition of the Zone 13 Sewage Treatment Plant. Alternatives considered include: (1) removing and disposing of abandoned equipment and piping; razing the buildings, roads, and associated structures; disposing of all waste; returning the land to the original grade, and re-establishing vegetation (the Preferred Alternative), and (2) no action.

With the Preferred Alternative, some minor short-term impacts could occur during demolition and grading, which would be associated with stormwater runoff and erosion of soil particles. To mitigate these potential effects, erosion control measures will be installed during demolition and grading activities; and will remain in place until vegetative cover is established on 75 percent of the disturbed area. Potential long-term impacts to the wetland are associated with contaminants of concern entrained in building materials or sediments confined to below grade sumps. Because these materials are currently confined, and can be well controlled during demolition, the potential for being transported to the wetlands is limited to receding floodwaters that could inundate the area during demolition. To mitigate this potential negative effect, the existing tailwater pit will be used to control rising waters; and may have a pump installed to keep water from building up in the tailwater pit. The tailwater pit has enough volume to contain 1.26 acre feet of stormwater. The controls on the tailwater pit will remain operational until demolition activities are completed. Equipment and materials used during demolition and grading will be staged in an area outside the floodplain. This proposed action complies with State and local floodplain requirements.

Issued in Amarillo, Texas, on July 10, 2002.

Jerry S. Johnson,

Associate Director for Environmental & Site Engineering Programs.

[FR Doc. 02–19520 Filed 8–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–409–000]

ANR Storage Company; Notice of Application

July 29, 2002.

Take notice that on July17, 2002, ANR Storage Company (ANR Storage), 9 E Greenway Plaza, Houston, Texas 77046, filed in the captioned docket an application for a certificate of public convenience and necessity and related authorizations pursuant to section 7 of the Natural Gas Act (NGA), as amended, and the Commission's Rules and Regulations thereunder, requesting that the Commission issue an order authorizing ANR Storage to make the well modifications as described in its application.

ANR Storage states that it does not seek to increase the existing certificated storage capacity or injection/withdrawal deliverability of its facility. ANR Storage's proposed activities will improve operational efficiency of its storage reservoir within existing certificated limits. While ANR Storage has met all of its customer requests for service since the Excelsior 6 field has been in operation, attempts have been made to improve deliverability from the west reef, including various replacements. However, working gas remains stranded at free flow conditions due to a lack of processing facilities to remove hydrocarbon liquids from the gas stream. This effectively excludes utilization of compressors for withdrawal, resulting in an inability to cycle an additional 4.0 Bcf of combined working gas. Consequently, ANR Storage proposes to drill several lateral extensions from the boreholes of two wells in order to enhance deliverability during the withdrawal season, and to install gas cooling and separation equipment at the Excelsior station, which will enable the use of compression withdrawal. These modifications will increase Excelsior 6 and Cold Springs 31 late-season deliverability and ability to cycle working gas, while remaining within the certificated limits of 200 Mmcfd.

More specifically, ANR Storage requests authorization to—

(i) drill several lateral extensions from the well bores of two existing wells in the Excelsior 6/East Kalkaska 1 storage fields towards zones of high porosity and permeability in the west reef; and

(ii) install gas cooling and separation equipment at the Excelsior station in Kalkaska County, Michigan for the purposes of removing hydrocarbon liquids from the gas stream;

at a total capital cost of $4,397,400, all as more thoroughly described in the application on file with the Commission and open to public inspection. ANR Storage also requests that this application be disposed of in accordance with the shortened procedures set forth in Rules 801 and 802 of the Commission's Rules of Practice and Procedure. ANR Storage requests that the intermediate decision procedure be omitted and waives oral hearing, and requests that the Commission grant such other and further authorizations, relief and/or waivers as the Commission deems necessary to enable ANR Storage to complete the project as proposed.

This filing may be viewed on the Web at *http://www.ferc.gov*. Using the "RIMS" link, select "Docket#" and follow the instructions (please call (202)208–2222 for assistance). Any questions regarding this application should be directed to Dawn A. McGuire, Attorney, 9 E Greenway Plaza, Houston, Texas 77046, (832) 676–5503.

ANR Storage states that no new rates or rate schedules are being proposed, and that it will charge rates as currently set forth in its tariff for any service that utilizes the proposed facilities. Further,

ANR Storage is not requesting any change to the Maximum Daily Withdrawal Quantity and Maximum Daily Injection Quantity from the currently authorized levels.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 19, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19508 Filed 8–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000, EL00–98–000, and ER02–1656–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; California Independent System Operator (MD02); Notice of Technical Conference

July 29, 2002.

As directed by the Commission order issued on July 17, 2002 in Docket No. ER02–165–000 and EL01–68–017, 100 FERC ¶ 61,060, the Federal Energy Regulatory Commission Staff is convening a technical conference to facilitate continued discussions between the California Independent System Operator Corporation (CAISO), market participants, state agencies and other interested participants on the development of a revised market design for the CAISO. Staff will issue an agenda the week of August 5, 2002. The conference will be held in San Francisco, California, at the Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, CA, on August 13, 14 and 15, 2002, beginning at 9 a.m.

For additional information concerning the conference, interested persons may contact Susan G. Pollonais at (202) 208–0011 or by electronic mail at *susan.pollonais@ferc.gov*. No telephone communication bridge will be provided at this technical conference.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19509 Filed 8–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–851–000]

Southern Company Services, Inc.; Notice of Non-Disclosure Agreement at Technical Conference

July 26, 2002.

On July 5, 2002, notice was issued that a technical conference will be held in the above-captioned matter on Wednesday, August 7, 2002 at 9:30 a.m.

and that the conference may continue on Thursday, August 8, 2002 at 9:30 a.m. if needed. The conference is open to all interested parties and staff. The July 5, 2002 notice stated that the parties should be prepared to discuss at the technical conference the contested issues, staff's information requests, and the answers thereto.

On July 12, 2002, Southern Company Services, Inc. filed responses to staff's requests for information that included a request for confidential treatment of certain materials pursuant to section 388.112 of the Commission's regulations, 18 CFR 388.112, and under the Commission's order on critical energy infrastructure information in Docket Nos. RM02–4–000 and PL02–1–000.[1] At the upcoming August 7, 2002 technical conference, to ensure that the answers to staff's information requests may be freely discussed, all interested parties will be expected to sign the attached nondisclosure agreement as a precondition to attendance and participation.

Dated:

Linwood A. Watson, Jr.,

Deputy Secretary.

Non-Disclosure Agreement

I hereby agree that I will not disclose the non-public material divulged at the August 7–8, 2002 technical conference in this proceeding to anyone other than, as appropriate, my client, my supervisor(s), or anyone else whom I represent or to whom I report and must not engage in any communications prohibited under 18 CFR § 37.4 (2002). That person(s) in turn may not disclose the information to anyone. I understand that the contents of the non-public material, any notes or other memoranda, or any other form of information that copies or discloses this material shall not be disclosed to anyone other than as noted. I further understand that I shall use this material only in connection with this proceeding. I acknowledge that a violation of this agreement constitutes a violation of the Commission's orders in this proceeding establishing a technical conference to explore the issues. *Southern Company Services, Inc.*, 98 FERC ¶ 61,328 at 62,386, *order on reh'g*, 99 FERC ¶ 61,839 at 61,840 (2002).

By: _____
Date: _____
(Print Name) _____
Title: _____
Representing: _____
Mailing Address: _____
Telephone Number: _____
Email Address: _____
Date of Intervention: _____

[1] Rule Regarding Critical Energy Infrastructure Information, 67 FR 3129, FERC Stats. & Regs. ¶ 35,542 (2002).

[FR Doc. 02–19406 Filed 8–1–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7254–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Personal Exposure of High-Risk Subpopulations to Particles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Personal Exposure of High-Risk Subpopulations to Particles; OMB Control Number 2080–0058, expiring July 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 3, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1887.02 and OMB Control No. 2080–0058, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at Auby.Susan@epamail.epa.gov, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1887.02. For technical questions about the ICR contact Lance Wallace, Office of Research and Development, on 703–620–4543.

SUPPLEMENTARY INFORMATION:

Title: Personal Exposure of High-Risk Subpopulations to Particles (OMB Control number 2080–0058; EPA ICR No.1887.02) expiring July 31, 2002. This is a request for extension of a currently approved collection.

Abstract: Because of the possible health effects of particulate air pollution, the Agency has a responsibility to determine the relationship of human exposure to particles with ambient air concentrations. At the urging of the National Academy of Sciences, four studies were begun in 1999 to determine personal exposure of high-risk subpopulations to particles. Three of the studies have completed data collection, but the fourth study will still be collecting data after the July 31, 2002 expiration date of the OMB-approved original questionnaire. The data will be used to help the Agency in its determination of the proper regulatory approach to ambient particles. All participation is completely voluntary. This will not involve any addition to the burden hours already approved.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 2, 2002 (67 FR 15565). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 20 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Respondents with chronic obstructive pulmonary disease and cardiovascular disease.

Estimated Number of Respondents: 104

Frequency of Response: Daily for 12 days.

Estimated Total Annual Hour Burden: 2,090.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1887.02 and OMB Control No. 2080–0058 in any correspondence.

Dated: July 23, 2002.

Oscar Morales,

Collection Strategies Division.

[FR Doc. 02–19564 Filed 8–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed July 22, 2002 Through July 26, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020318, FINAL EIS, BLM, CA, Northern and Eastern Colorado Desert Plan (Plan), Implementation, Comprehensive Framework for Managing Species and Habitats (BLM), Joshua Tree National Park (JTNP) and Chocolate Mountains Aerial Gunnery Range, California Desert, Riverside, Imperial and San Bernardino Counties, CA, Wait Period Ends: September 03, 2002, *Contact:* Dick Crowe (909) 697–5216.

EIS No. 020319, FINAL EIS, AFS, MT, Lolo National Forest Post Burn Management Activities, Implementation, Ninemile, Superior and Plains Ranger Districts, Mineral, Missoula, and Sanders Counties, MT, Wait Period Ends: September 03, 2002, *Contact:* Deborah L.R. Austin (406) 329–3750. This document is available on the Internet at: *http://www.fs.fed.us/r1/lolo/index.html.*

EIS No. 020320, DRAFT EIS, COE, PA, Allegheny and Ohio Rivers Commercial Sand and Gravel Dredging Operations, Granting and Extending Permits for Continuance of Dredging, Section 10 and 404 Permits, PA, *Comment Period Ends:* November 07, 2002, *Contact:* Albert H. Rogalla (412) 395–7155. This document is available on the Internet at: *http://www.lrp.usace.army.mil.*

EIS No. 020321, DRAFT EIS, USN, NC, SC, VA, Introduction of F/A 18 E/F (Super Hornet) Aircraft, Replacing the F–14 (TOMCAT) and F/A–18 C/D (Hornet) Aircraft, Homebasing and Operation, Possible Homebase Sites include Naval Air Station (NAS) Oceana, VA; Marine Corps Air Station (MCAS) Beaufort, SC; and MCAS Cherry Point, NC, *Comment Period Ends:* October 02, 2002, *Contact:* Fred Pierson (757) 322–4935. This document is available on the Internet at: *http://www.ef.aircraft.ene.com.*

EIS No. 020322, DRAFT EIS, SFW, AK, Swanson River Satellites Natural Gas Exploration and Development Project, Evaluation of a Right-of-Way Permit Application, US COE Section 10 and 404 Permits, NPDES Permit, Kenai Natural Wildlife Refuge, Kenai Peninsula, AK, *Comment Period Ends:* October 1, 2002, *Contact:* Brian Anderson (907) 786–3379.

EIS No. 020323, FINAL EIS, TVA, AL, MS, TN, Pickwick Reservoir Land Management Plan (Plan) Proposal to use the Plan to Guide Land-Use Approvals, Private Water Use Facility Permitting and Resource Management Decisions, Colbert and Lauderdale Counties, AL, and Tishomingo County, MS and Hardin County, TN, *Wait Period Ends:* September 3, 2002, *Contact:* Chellye Campbell (256) 386–3518.

EIS No. 020324, FINAL EIS, FHW, MI, I–96/Airport Area Access Study, Transportation Improvements, Surrounding the Gerald R. Ford International Airport, Kent County, MI, *Wait Period Ends:* September 3, 2002, *Contact:* James A. Kirschensteiner (517) 702–1835.

EIS No. 020325, DRAFT EIS, COE, WA, Centralia Flood Damage Reduction Project, Chehalis River, Lewis and Thurston Counties, WA, *Comment Period Ends:* September 19, 2002, *Contact:* George Hart (206) 764–3641. This document is available on the Internet at: *http://www.nws.usace.army.mil.*

Dated: July 30, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–19566 Filed 8–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Final EISs

ERP No. F–AFS–J65357–MT, White Pine Creek Project, Timber Harvest, Prescribe Fire Burning, Watershed Restoration and Associated Activities, Implementation, Kootenai National Forest, Cabinet Ranger District, Sanders County, MT.

Summary: EPA expressed environmental concerns about potential impacts to water quality from 70 miles of new, temporary and reconstructed roads. EPA supports improvements to habitat and stream channels, 47 miles of road closures and other water resource mitigation measures such as harvesting using skyline cable and helicopter logging methods.

ERP No. F–BLM–K40248–AZ, Diamond Bar Road Improvement Project, Sections of Grapevine Wash, Road Pavement and Realignment, Right-of-Way Permits, Mohave County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K67053–CA, Mesquite Mine Expansion Project, Expansion of the Existing Open-Pit, Heap-Leach, and Precious Metal Mine, Federal Mine Plan of Operations Approval, Conditional Use Permits Issuance and Reclamation Plan Approval, Imperial County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–D40370–WV, WV–9 Transportation Corridor Improvements from Martinsburg to Charles Town, Funding, Berkeley, Jefferson and Morgan Counties, WV.

Summary: EPA's prior comments on the draft EIS have been adequately addressed in this document. Therefore, EPA concurs with the analysis of impacts and findings and has no objection to the action as proposed.

ERP No. F–FRC–F05123–00, Bond Falls Project, New License Issuance for an Existing Hydroelectric License, (FERC No. 1864–005) Ontonagon River Basin, Ontonagon and Gogebic Counties, MI and Vilas County, WI.

Summary: EPA has no objections to this project. The project has not changed significantly since the Draft stage.

ERP No. F–GSA–K81011–CA, Los Angeles Federal Building—U. S. Courthouse, Construction of a New Courthouse in the Civic Center, City of Los Angeles, Los Angeles County, CA.

Summary: EPA reviewed the FEIS and found that the document adequately addresses the issues raised in EPA's comment letter on the DEIS.

ERP No. F–IBR–G65070–NM, Elephant Butte and Caballo Reservoirs, Resource Management Plan (RMP), Implementation, Sierra and Socorro Counties, NM.

Summary: EPA had no further comments to offer.

ERP No. F–UAF–K11107–CA, EL Rancho Road Bridge Project, Flood-Free Crossing Construction at San Antonia Creek to access from the north of Vandenberg Air Force Base, Santa Barbara County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–FRC–L05053–WA, Condit Hydroelectric (No. 2342) Project, Updated Information concerning an Application to Amend the Current License to Extend the License Term to October 1, 2006, White Salmon River, Skamania and Klickitat Counties, WA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: July 30, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–19567 Filed 8–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7255–1]

Relocation of EPA Headquarter Dockets; Temporary Closures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the temporary closure and relocation of the Agency's Headquarter Dockets. EPA is consolidating the Headquarter paper docket facilities, that are identified in this document, into a combined docket facility to be known as the "EPA Docket Center" (EPA/DC). This new facility will be located in the basement of the EPA West Building at 1301 Constitution Ave., NW, Washington, DC. In order to prepare for this relocation, the various docket facilities, identified in this document, will be closed to the public at various times between the dates of Tuesday, August 13, 2002, through Monday, August 26, 2002. EPA expects each of the dockets located in the new EPA/DC to be open starting Tuesday, August 27, 2002, from the hours of 8:30 a.m. until 4:30 p.m. Eastern Standard Time (EST), or by appointment. This document provides additional details related to the relocation of EPA Headquarter dockets.

FOR FURTHER INFORMATION CONTACT: Patrick Grimm, Information Strategies Branch, Collection Strategies Division, Office of Environmental Information, Environmental Protection Agency, Mailcode 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202–566–1677; fax number: 202–566–1639; email address: *grimm.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION:

What Docket Facilities Are Affected?

In order to efficiently complete the relocation of the following physical Headquarter dockets, the docket facilities will be closed to the public as follows:

Aug. 16–26: OAR Docket (supporting the Clean Air Act [CAA])
Aug. 21–26: OECA Docket
Aug. 14–26: OEI Docket (supporting the Toxic Release Inventory [TRI])
Aug. 14–26: OPPT Docket, Non-Confidential Information Center (supporting the Toxic Substances Control Act [TSCA])
Aug. 19–26: OSWER Docket and Information Center (supporting the Resource Conservation and Recovery Act [RCRA], the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA], and the Oil Pollution Act [OPA])
Aug. 13–26: OW Docket (supporting the Clean Water Act [CWA] and the Safe Drinking Water Act [SDWA])

The Office of Pesticide Programs (OPP) Public Regulatory Docket (supporting the Federal Insecticide, Fungicide and Rodenticide Act [FIFRA]), located in Arlington, VA, is not moving at this time and will remain open to the public.

This temporary closure will enable EPA to effectively transfer docket collections, while ensuring document integrity. By moving into this consolidated environment, the Agency intends to improve the docket's internal workflow processes and enhance customer service and public access to information. A central facility for most EPA Headquarter dockets will offer the public both convenience and efficiency, enabling citizens to access multiple program dockets and conduct cross-docket searches from one location.

How Can I Submit Comments During the Closure?

During the closure, each docket will continue to receive comments via the U.S. Postal Service at the EPA Headquarters mailing address: 1200 Pennsylvania Ave., NW, Washington, DC 20460. These dockets will be closed, however, for receiving personal or courier deliveries at their current locations. During the scheduled docket closures, public comments may be submitted in person or by courier to Patrick Grimm, EPA West, Room 6146B, 1301 Constitution Ave. NW, Washington, DC. Beginning August 27, 2002, hand-delivered comments should be delivered to the new EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave. NW, Washington, DC. Online receipt of public comments transmitted through the Agency's electronic docket and commenting system, EPA Dockets (EDOCKET) *http://www.epa.gov/edocket*, will not be affected during the physical docket move.

How Can I Access Material in the Dockets During the Closure?

EDOCKET may contain electronic copies of support documentation and background materials for some regulatory and non-regulatory dockets. If a particular document is not available electronically, but must be viewed in person during the period of time dockets are closed, special arrangements may be made by calling the appropriate contact from the following list:

OAR Docket: Lorraine Reddick-Smith (202) 564–1293
OECA Docket: Carlton Burns (202) 564–8231
OEI Docket: Patrick Grimm (202) 566–1677
OPPT Docket: Vanessa Williams (202) 564–8957
OSWER Docket: Scott Maid (703) 308–8029
OW Docket: Gloria Posey (202) 564–0465

Since access to the docket materials may be limited given the activities associated with the relocation, EPA appreciates your patience and asks that you limit requests to true emergencies.

What Dockets Are Currently Open for Public Comment?

The following is a list of rules/notices that are expected to be open for public comment during the scheduled docket closure periods. This listing, which identifies the docket ID number for the item, is not expected to be complete and the program docket should be contacted if a more detailed and current listing of open dockets is necessary.

OAR Docket

A–2000–50: National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

A–97–52: National Emission Standards for Hazardous Air Pollutants; Surface Coating of Wood Building Products

OPPT Docket

OPPT–2002–0040: Certain New Chemicals; Receipt and Status Information

OSWER Docket

RCRA–1999–0011: Management of Cement Kiln Dust—Notice of Data Availability

RCRA–2002–0019: NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Final Replacement Standards and Phase II)—Notice of Data Availability

RCRA–2002–0021: Agency Collection Activities: Continuing Collection; Comment Request; Notification of Regulated Waste Activity

RCRA–2002–0022: Agency Collection Activities: Proposed Collection; Comment Request; National Waste Minimization Partnership Program

RCRA–2002–0023: Agency Information Collection Activities: Continuing Collection; Comment Request; Information Collection Request for RCRA Reporting and Recordkeeping Requirements for Incinerators, Boilers and Industrial Furnaces Burning Hazardous Waste

SFUND–2002–004: Contaminated Sediments Science Plan—Notice

OW Docket

W–99–18: Standards for the Use or Disposal of Sewage Sludge

W–02–06: Effluent Limitation Guidelines and New Source Performance Standards for the Construction and Development Category

W–00–27: Notice of Data Availability; National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations (CAFO)

Dated: July 30, 2002.

Mark Luttner,

Office of Information Collection, Office of Environmental Information.

[FR Doc. 02–19565 Filed 8–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0134; FRL–7185–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0134, must be received on or before September 3, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0134 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda A. DeLuise, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5428; e-mail address: deluise.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0134. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0134 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0134. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned o this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 23, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

FMC Corporation

2F6444

EPA has received a pesticide petition (2F6444) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of zeta-cypermethrins-Cyano(3-phenoxyphenyl)methyl (±) *cis, trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate and its inactive isomers) in or on the raw agricultural commodities (RACs) root and tuber vegetables, roots at 0.10 part per million (ppm); peanuts at 0.05 ppm; and cucurbit vegetables at 0.10 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cypermethrin in plants are adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection (LOD) that allows monitoring of food with residues at or 'above the levels set in these tolerances (gas chromatography with electron capture detection (GC/ECD)).

3. *Magnitude of residues.* Crop field trial residue data from studies conducted at the maximum label rates for root and tuber vegetables, peanuts, and cucurbit vegetables show that the proposed zeta-cypermethrin tolerances on root and tuber vegetables, roots at 0.10 ppm; peanuts at 0.05 ppm; and cucurbit vegetables at 0.10 ppm will not be exceeded when the zeta-cypermethrin products labeled for these uses are used as directed.

B. Toxicological Profile

1. *Acute toxicity.* For the purposes of assessing acute dietary risk, FMC Corporation has used the no observed adverse effect levels (NOAEL) at 10.0 milligram/kilograms/day (mg/kg/day) from the zeta-cypermethrin acute neurotoxicity study in rats. The lowest observed adverse effect levels (LOAEL) at 50.0 mg/kg/day was based on clinical signs. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicty.* The following genotoxicity tests were all negative:

i. *In vivo* chromosomal aberration in rat bone marrow cells.

ii. *In vitro* cytogenic chromosome aberration.

iii. Unscheduled DNA synthesis (UDS).

iv. Chinese hampster ovary/hypoxanthine guanine phophoribosyl transferase (CHO/HGPRT) mutagen assay; weakly mutagenic: Gene mutation (Ames).

3. *Reproductive and developmental toxicity.* No evidence of additional sensitivity to young rats was observed following prenatal or postnatal exposure to zeta-cypermethrin.

i. A 2–generation reproductive toxicity study with zeta-cypermethrin in rats demonstrated a NOAEL at 7.0 mg/kg/day and the LOAEL at 27.0 mg/kg/day for parental/systemic toxicity based on body weight (bwt), organ weight, and clinical signs. There were no adverse effects in reproductive performance. The NOAEL for reproductive toxicity was considered to be >45.0 mg/kg/day (the highest dose tested (HDT)).

ii. A developmental study with zeta-cypermethrin in rats demonstrated a maternal NOAEL at 12.5 mg/kg/day and a LOAEL at 25 mg/kg/day based on decreased maternal body weight gain, food consumption and clinical signs. There were no signs of developmental toxicity at 35.0 mg/kg/day, the HDT.

iii. A developmental study with cypermethrin in rabbits demonstrated a maternal NOAEL at 100 mg/kg/day and a LOAEL at 450 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 700 mg/kg/day, the HDT.

4. *Subchronic toxicity.* Short-term and intermediate-term toxicity (incidental oral exposure). The NOAEL at 10.0 mg/kg/day based on clinical signs at the lowest effect level (LEL) at 50.0 mg/kg/day in the zeta-cypermethrin acute neurotoxicity study in rats would also be used for short-term percent of the acute population adjusted dose (aPAD) and margin of exposure (MOE) calculations (as well as acute, discussed in paragraph (1) above), and the NOAEL at 5.0 mg/kg/day based on decreased motor activity in the zeta-cypermethrin subchronic neurotoxicity study in rats, would be used for intermediate-term MOE calculations.

5. *Chronic toxicity*—i. The chronic reference dose (RfD) at 0.06 mg/kg/day for zeta-cypermethrin is based on a NOAEL at 6.0 mg/kg/day from a cypermethrin chronic feeding study in dogs and an uncertainty factor (UF) of 100. The endpoint effect of concern was based on clinical signs.

ii. Cypermethrin is classified as a Group C chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in female mice; assignment of a Q^* has not been recommended.

6. *Animal metabolism.* The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oxidation.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance expression nor in the risk exposure assessments.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of cypermethrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Permanent tolerances, in support of registrations, currently exist for residues of zeta-cypermethrin on: alfalfa hay, alfalfa forage, alfalfa seed, aspirated grain fractions, sugar beets (roots and tops), head, stem, and leafy Brassica vegetables, cabbage, field corn grain, pop corn grain, field corn forage, field corn stover, pop corn stover, sweet corn (K+CWHR), sweet corn forage, sweet corn stover, cottonseed, dried shelled peas, and beans, edible podded legume vegetables, fruiting vegetables (except Cucurbits), leafy vegetables, head lettuce, bulb, and green onions, pecans, rice grain, rice hulls, rice straw, sorghum forage, sorghum grain, sorghum stover, soybean seed, succulent shelled peas and beans, sugarcane, wheat forage, wheat grain, wheat hay, wheat straw, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and poultry, eggs, milk, and milk fat. For the purposes of assessing the potential dietary exposure for these existing and the subject proposed tolerances, FMC Corporation has utilized available information on anticipated residues, monitoring data, and percent crop treated as follows:

ii. *Acute exposure and risk.* Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC Corporation has used the NOAEL of 10.0 mg/kg/day from the zeta-cypermethrin acute neurotoxicity study in rats with an UF of 100 (acute RfD = 0.10 mg/kg/day). The LEL of 50.0 mg/kg/day was based on clinical signs. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data, and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the percent of acute PAD all fall below EPA's level of concern (LOC) (≥100%). The 95th percentile of exposure for the overall U.S. population was estimated to be 0.001012 mg/kg/day (percent of the acute RfD at 1.01); 99th percentile 0.002913 mg/kg/day (percent of the acute RfD at 2.91); and 99.9th percentile 0.012145 mg/kg/day (percent of the acute RfD at 12.14). The 95th percentile of exposure for all infants <1 year old was estimated to be 0.000716 mg/kg/day (percent of the acute RfD at 0.72); 99th percentile 0.005735 mg/kg/day (percent of the acute RfD at 5.74); and 99.9th percentile 0.027673 mg/kg/day (percent of the acute RfD of 27.67). The 95th percentile of exposure for nursing infants 1 year old was estimated to be 0.000420 mg/kg/day (percent of the acute RfD at 0.42); 99th percentile 0.001087 mg/kg/day (percent of the acute RfD at 1.09); and 99.9th percentile 0.004944 mg/kg/day (percent of the acute RfD at 4.94). The 95th percentile of exposure for non-nursing infants <1 year old (the most highly exposed population subgroup) was estimated to be 0.000826 mg/kg/day (percent of the acute RfD at 0.83); 99th percentile 0.011124 mg/kg/day (percent of the acute RfD at 11.12); and 99.9th percentile 0.031431 mg/kg/day (percent of the acute RfD of 31.43). The 95th percentile of exposure for

children 1 to 6 years old and children 7 to 12 years old was estimated to be, respectively, 0.001228 mg/kg/day (percent of the acute RfD at 1.23) and 0.001001 mg/kg/day (percent of the acute RfD at 1.0); 99th. percentile 0.003716 mg/kg/day (percent of the acute RfD at 3.72) and 0.002724 (percent of the acute RfD at 2.72); and 99.9th percentile 0.015244 mg/kg/day (percent of the acute RfD at 15.24) and 0.008805 (percent of the acute RfD at 8.81). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.001051mg/kg/day (percent of the acute RfD at 1.05); 99th percentile 0.003029 mg/kg/day (percent of the acute RfD at 3.03); and 99.9th percentile 0.013146 mg/kg/day (percent of the acute RfD at 13.15). Therefore, FMC Corporation concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iii. *Chronic exposure risk.* The chronic RfD at 0.06 mg/kg/day for zeta-cypermethrin is based on a NOAEL of 6.0 mg/kg/day from a cypermethrin chronic feeding study in dogs and an UF of 100. The endpoint effect of concern was based on clinical signs. A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above chronic RfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000184 mg/kg bwt/day and utilize 0.3% of the chronic RfD for the overall U.S. population. The ARC for nursing infants (<1 year) and non-nursing infants (<1 year) (subgroup most highly exposed) are estimated to be 0.000052 mg/kg bwt/day and 0.000380 mg/kg bwt/day and utilizes 0.1% and 0.6% of the chronic RfD, respectively. The ARC for children 1 to 6 years old and children 7 to 12 years old are estimated to be 0.000337 mg/kg bwt/day and 0.000203 mg/kg bwt/day and utilizes 0.6% and 0.3% of the chronic RfD, respectively. The ARC for females (13+/nursing) are estimated to be 0.000177 mg/kg bwt/day and utilizes 0.3% of the RfD. Generally speaking, EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the chronic RfD. Therefore, FMC Corporation concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iv. *Drinking water.* Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into ground water. Other data show that cypermethrin is virtually insoluble in water and extremely lipophilic. As a result, FMC Corporation concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Drinking water estimated concentrations (DWEC) and the corresponding drinking water level of comparison (DWLOC) values were calculated for chronic and acute exposures. The results show that all DWLOC values exceed the DWEC values. Thus, exposure to zeta-cypermethrin and cypermethrin residues in drinking water is not of concern. EPA's draft SOP for Incorporating Estimates of Drinking Water Exposure into Aggregate Risk Assessments was used to perform a drinking water analysis. This SOP utilizes a variety of tools to conduct drinking water assessment. These tools include water models such as the Food Quailty Protection Act/Index Reservoir Screening Tool (FQPA)(FIRST), EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), Screening Concentration in Ground Water (SCIGROW), and monitoring data. If monitoring data is not available, then the models are used to predict potential residues in drinking water. The technique recommended in the drinking water SOP compares a calculated DWLOC value to the drinking water estimated concentration (DWEC) value. The DWEC value results from either the monitoring data residues or modeled water residues. If the DWLOC value exceeds the DWEC value, then there is reasonable certainty that no harm will result from the acute or chronic aggregate exposure.

In the case of cypermethrin and zeta-cypermethrin, monitoring data do not exist. Therefore, the FIRST model was used to estimate a surface water residue. The risk assessment for drinking water compares two values:

a. The DWLOC and the DWEC. The DWLOC is the drinking water level of comparsion. This is the maximum allowable drinking water concentration (in parts per billion). The DWEC is the drinking water environmental concentration, which is derived either from monitoring studies or from modeling.

b. If the DWLOC is greater than the DWEC, then the overall exposure from water, food, and residential is considered to be acceptable. The calculated DWLOC values for acute and chronic exposures for all adults, adult females, and children exceed the modeled DWEC surface water residues. Therefore, there is reasonable certainty that no harm will result from cumulative and aggregate (food and water) exposure to cypermethrin and zeta-cypermethrin residues.

2. *Non-dietary exposure.* Zeta-cypermethrin is registered for agricultural crop applications only, therefore non-dietary exposure assessments are not warranted.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC Corporation intends to submit information for EPA to consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA at (62 FR 42020, August 4, 1997) (FRL–5734–6), and other EPA publications pursuant to the FQPA.

E. Safety Determination

1. *U.S. population.* The chronic RfD at 0.06 mg/kg/day for zeta-cypermethrin is based on a NOAEL at 6.0 mg/kg/day from a cypermethrin chronic feeding study in dogs and an UF of 100. The endpoint effect of concern was based on clinical signs. A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above chronic RfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the anticipated residue contribution ARC. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC is estimated to be 0.000184 mg/kg bwt/day and utilize 0.3% of the chronic RfD for the overall U.S. population. The ARC for nursing infants (<1 year) and non-nursing infants (<1 year) (subgroup most highly exposed) are estimated to be 0.000052 mg/kg bwt/day and 0.000380 mg/kg bwt/day and utilizes 0.1% and 0.6% of the chronic RfD, respectively. The ARC for children 1 to 6 years old and children 7 to 12 years old are estimated to be 0.000337 mg/kg bwt/day

and 0.000203 mg/kg bwt/day and utilizes 0.6% and 0.3% of the chronic RfD, respectively. The ARC for females (13+/nursing) are estimated to be 0.000177 mg/kg bwt/day and utilizes 0.3% of the RfD. Generally speaking, EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the chronic RfD. Therefore, FMC Corporation concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC Corporation has used the NOAEL of 10.0 mg/kg/day from the zeta-cypermethrin acute neurotoxicity study in rats with an UF of 100 (acute RfD = 0.10 mg/kg/day). The LEL of 50.0 mg/kg/day was based on clinical signs. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the percent of acute PAD all fall below EPA's LOC (≥100%). The 95th percentile of exposure for the overall U.S. popuation was estimated to be 0.001012 mg/kg/day (percent of the acute RfD at 1.01); 99th percentile 0.002913 mg/kg/day (percent of the acute RfD at 2.91); and 99.9th percentile 0.012145 mg/kg/day (percent of the acute RfD at 12.14). The 95th percentile of exposure for all infants <1 year old was estimated to be 0.000716 mg/kg/day (percent of the acute RfD at 0.72); 99th percentile 0.005735 mg/kg/day (percent of the acute RfD at 5.74); and 99.9th percentile 0.027673 mg/kg/day (percent of the acute RfD at 27.67). The 95th percentile of exposure for nursing infants <1 year old was estimated to be 0.000420 mg/kg/day (percent of the acute RfD at 0.42); 99th percentile 0.001087 mg/kg/day (percent of the acute RfD at 1.09); and 99.9th percentile 0.004944 mg/kg/day (percent of the acute RfD at 4.94). The 95th percentile of exposure for non-nursing infants <1 year old (the most highly exposed population subgroup) was estimated to be 0.000826 mg/kg/day (percent of the acute RfD at 0.83); 99th percentile 0.011124 mg/kg/day (percent of the acute RfD at 11.12); and 99.9 th percentile 0.031431 mg/kg/day (percent of the acute RfD at 31.43). The 95th percentile of exposure for children 1 to 6 years old and children 7 to 12 years old was estimated to be, respectively, 0.001228 mg/kg/day (percent of the acute RfD at 1.23); and 0.001001 mg/kg/day (percent of the acute RfD at 1.0); 99th percentile 0.003716 mg/kg/day (percent of the acute RfD at 3.72); and 0.002724 (percent of the acute RfD at 2.72); and 99.9th percentile 0.015244 mg/kg/day (percent of the acute RfD of 15.24); and 0.008805 (percent of the acute RfD at 8.81). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.001051 mg/kg/day (percent of the acute RfD at 1.05); 99th percentile 0.003029 mg/kg/day (percent of the acute RfD at 3.03); and 99.9th percentile 0.013146 mg/kg/day (percent acute RfD at 13.15). Therefore, FMC Corporation concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

2. *Infants and children*—i. *General.* In assessing the potential for additional sensitivity of infants and children to residues of zeta-cypermethrin, FMC Corporation considered data from developmental toxicity studies in the rat, rabbit, and a 2–generation reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats to zeta-cypermethrin or rabbits to cypermethrin *in utero* and/or postnatal exposure to zeta-cypermethrin or cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety (MOS) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base.

ii. *Developmental toxicity studies.* In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the HDT (35.0 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOAEL in each study; the maternal NOAEL was established at 12.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

iii. *Reproductive toxicity study.* In the 2–generation reproduction study in rats, offspring toxicity (body weight), parental toxicity (body weight, organ weight, and clinical signs), were observed at 27.0 mg/kg/day and greater. The parental systemic NOAEL was 7.0 mg/kg/day and the parental systemic LOAEL was 27.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 45.0 mg/kg/day, HDT.

iv. *Prenatal and postnatal sensitivity*—a. *Prenatal.* There was no evidence of developmental toxicity in the studies at the HDT in the rat (70.0 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Postnatal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special postnatal sensitivity to infants and children in the rat reproduction study.

v. *Conclusion.* Based on the above, FMC Corporation concludes that reliable data support use of the standard 100-fold UF, and that an additional UF is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U.S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

F. International Tolerances

There are no Canadian, or Mexican residue limits for residues of cypermethrin or zeta-cypermethrin in or on cucurbit vegetables, peanuts, root, and tuber vegetables. The Codex maximum residue levels for cypermethrin are cucumbers 0.2 ppm; peanuts 0.05 ppm; and for root and tuber vegetables 0.05 ppm.

[FR Doc. 02–19443 Filed 8–1–02; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated to the Public by the Export-Import Bank of the U.S. (Ex-Im Bank)

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice of draft guidelines.

SUMMARY: The Export-Import Bank (Ex-Im Bank) is seeking comments on the draft Information Quality Guidelines that follow.

ADDRESSES: Export-Import Bank of the United States, 811 Vermont Avenue, NW., Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: Kalesha Malloy, Office of the Chief Information Officer Information Management & Technology Group, 811 Vermont Avenue, NW., Room 763, Washington DC 20571; by e-mail at *kalesha.malloy@exim.gov*, by phone at (202) 565–3857; or by fax at (202) 565–3424.

DATES: Comments should be received on or before August 16, 2002.

SUPPLEMENTARY INFORMATION:

Dated: July 29, 2002.

Carlista D. Robinson,

Agency Clearance Officer.

Introduction and Purpose

The Export-Import Bank (Ex-Im Bank) is seeking comments on the draft Information Quality Guidelines that follow. These draft Information Quality Guidelines describe Ex-Im Bank's pre-dissemination information publicly disseminated by Ex-Im Bank. Ex-Im Bank will post its draft Information Quality Guidelines on its Web site at *htlp://www.exim.gov/omb/dataquality.doc* and encourages public comment on the report. Please submit comments to Kalesha Malloy, Office of the Chief Information Officer, Information Management & Technology Group, 811 Vermont Ave, NW., Room 763, Washington, DC 20571, by phone at (202) 565–3857, by e-mail at *kalesha.malloy@exim.gov* or by fax at (202) 565–3424. Comments should be received on or before August 16, 2002.

These guidelines are drafted in accordance with "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies" ("Agency-wide guidelines") published by the Office of Management and Budget ("OMB) in 66 FR 49718 on Friday, September 28, 2001, updated in 67 FR 369 on Thursday, January 3, 2002 and corrected in 67 FR 8452 on February 22, 2002. These published guidelines were issued pursuant to Section 515 of the Treasury and General Government Appropriations Act for FY2001 (Public Law 106–554). In accordance with these provisions, each Federal Agency is obligated to:

1. Issue their own information quality guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency no later than October 1, 2002;

2. Establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with these OMB guidelines; and

3. Report annually to the Director of OMB, beginning January 1, 2004, the number and nature of complaints received by the agency regarding agency compliance with these OMB guidelines concerning the quality, objectivity, utility, and integrity of information and how such complaints were resolved.

Consistent with the Agency-wide Guidelines, Ex-Im Bank's draft guidelines rely on its existing practices, to the extent they are consistent with the recently published guidelines, while adopting a new administrative mechanism to satisfy the new procedural requirements. Ex-Im Bank's guidelines reflect its internal procedures for reviewing and substantiating information to maximize quality, including the objectivity, utility, and integrity of information, before it is disseminated. The administrative mechanism allows affected persons to seek and obtain, where appropriate correction of information disseminated by Ex-Im Bank that does not comply with these guidelines or with the Agency-wide Guidelines.

Ex-Im Banks draft guidelines follow:

Background

Ex-Im Bank publishes these guidelines in accordance with the Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (Agency-wide guidelines) published by the Office of Management and Budget in 66 FR 49718 on Friday, September 28, 2001, updated in 67 FR 369 on Thursday, January 3, 2002 and corrected in 67 FR 8452 on February 22, 2002. These published guidelines were issued pursuant to Section 515 of the Paperwork Reduction Act (44 U.S.C. 3502(1) et seq.) In response to the legislation and the published guidelines, Ex-Im Bank identifies the following policies and procedures for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by Ex-Im Bank; and it hereby establishes additional procedures for affected persons to seek and obtain correction of information maintained and disseminated by Ex-Im Bank that does not comply with standards set out in the Agency-wide Guidelines.

Ex-Im Bank is an independent U.S. Government agency that helps finance the overseas sales of U.S. goods and services. In 65 years, Ex-Im Bank has supported more than $300 billion in U.S. exports. Ex-Im Bank's mission is to create jobs through exports. It provides guarantees of working capital loans for U.S. exporters, guarantees the repayment of commercial export loans, or makes loans to foreign purchasers of U.S. goods and services. Ex-Im Bank also provides credit insurance that protects U.S. exporters against the risks of non-payment by foreign buyers for political or commercial reasons. Ex-Im Bank does not compete with commercial lenders, but assumes the risks they cannot accept. Ex-Im Bank must always conclude that there is reasonable assurance of repayment on every transaction financed. Ex-Im Bank takes pride in the quality, objectivity, utility, and integrity of hte information that it disseminates to the public.

1. Procedures for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Prior to Dissemination

In Agency-wide Guidelines, "quality" is defined as a term comprising utility, objecteivity, and integrity.

(a) Objectivity of Information

(i) As defined in Section IV, below, "objecteivity" is a measure of whether disseminated information "accurate, clear, complete, and unbaised;" "utility" refers to the usefulness of the information to its intended audience. Ex-Im Bank is committed to disseminating reliable and useful information. Before disseminating information, appropriate Ex-Im Bank staff and officials will review the information.

(ii) It is the primary responsibility of the Office drafting information intended for dissemination to pursue the most knowledgeable and reliable sources reasonably available to confirm the objectivity of such information and to ensure appropriate technical and policy clearance before public dissemination. Clearance procedures will vary with the

nature of the information and the manner of its dissemination.

(iii) Ex-Im seeks to achieve objectivity by using reliable sources, sound analytical and editorial techniques, and by having qualified staff prepare information products that are carefully reviewed.

(1) Use of reliable data sources

Information products disseminated by Ex-Im Bank will be based on reliable, accurate data that have been validated. Most of the information disseminated by Ex-Im Bank is based on program and administrative data files. Qualified Ex-Im Bank staff conduct ongoing reviews of the programs, producers, and services that it provides to its customers such as what they are, who is eligible, and how and where to apply for the programs to obtain the products and services. Information that is disseminated on a program, service or product is derived from data maintained by Ex-Im Bank staff responsible for that program, service or product. The review also considers the presentation of the information to ensure that it is put in the proper context and presented in a clear, complete and unbiased manner. FOIA requests are answered in accordance with FOIA requirements. Where appropriate, Ex-Im Bank identifies the source of supporting data so that the public can assess for itself the objectivity of those sources.

(2) Sound analytical techniques

Information on programs products, and services are derived from reliable sources. Ex-Im Bank's staff is knowledgeable about the data sources that are used, and sound, archival, analytical or statistical techniques are applied when appropriate. Data files incorporating external data sources are reviewed to ensure that extraction and linkage processes have been implemented correctly. Documentation in Ex-Im Bank's publication contains information on data sources including definitions and specifications of variables. Technically qualified staff reviews all analytical reports and policy studies to ensure that analysis is valid, complete, unbiased, objective, and relevant.

(3) Editorial review for accuracy and clarity of information in publications

All information on programs, products, and services are edited and proofread before release to ensure clarity and coherence of the final report. Text is edited to ensure that the product is easy to read and grammatically correct, thoughts flow logically, and information is worded concisely and clearly. Tables and charts are edited so that they clearly and accurately illustrate and support points made in the text and include concise but descriptive titles. Appropriate Ex-Im Bank staff reviews and approves all changes made.

(4) Policy for correcting errors

If an error is detected before information is disseminated, it is corrected or a correction notice is given. If information has already been disseminated, it is corrected and/or an amendment is provided. The Ex-Im Bank division that originally issued an information product on the web site tracks and records any correction to it. When appropriate, correction notices and the corrected information itself are posted on our web site.

(b) Utility of Information

Utility involves the usefulness of the information to its intended users, including the public. Ex-Im Bank is committed to maximizing the utility of the information it disseminates to the public.

(i) Ex-Im Bank achieves utility by staying informed of information needs and developing new information sources by revising existing methods. Ex-Im Bank keeps abreast of information needs by convening and attending conferences and seminars, conducting user surveys, working with advisory committees, and responding to inquiries from exporters, potential foreign borrowers, bankers, academia, Congress, other US government agencies, and the press. Contact information is available, where appropriate on a variety of information products to allow for questions, comments, and suggestions from users.

(ii) The User's Guide, the web site, and other information products are reviewed to ensure that they remain relevant and address current information needs. Information products are revised frequently, new products are introduced, and some products are discontinued based on internal product reviews and consultations with users. To the extent practicable information products are disseminated in the format or formats that make the information most useful and accessible to the users. These documents are available on the Ex-Im Bank website, and the electronic versions can be accessed and downloaded directly. All documents posted on the Ex-Im Bank web site are in compliance with section 508 and are therefore available to an audience that includes persons who have a visual impairment and who read online using assistive technology.

(c) Integrity of Information

Integrity refers to security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised.

(i) To ensure the integrity of its administrative information, Ex-Im Bank has in place rigorous controls that have been identified as representing sound security practices, and which are reviewed by Em-Im Bank's outside auditor. Ex-Im Bank administers financial and product programs that touch the operations of exporters, banks, and other government agencies. Ex-Im Bank has in place programs and policies for securing its resources as required by Governmental Information Security Reform Act (P.L. 106–398, title X, subtitle G). These security procedures address all major components of information security and apply to all Ex-Im Bank operating components.

(ii) Ex-Im Bank is subject to statutory requirements to protect the sensitive information it gathers and maintains on companies, banks, products, and services. These requirements are contained in the following documents:

- Privacy Act of 1974
- Computer Security Act of 1987
- Office of Management and Budget (OMB) Circulars A–123, A–127, and A–130
- Government Information Security Reform Act; and
- Federal Managers' Financial Integrity Act (FMFIA) of 1982

2. Requests for Correction of Information Publicly Disseminated by Ex-Im Bank

(a) Affected members of the public who believe that information disseminated by Ex-Im Bank does not comply with OMB guidelines or these agency guidelines may contact Kalesha Malloy, Office of the Chief Information Officer, Information Management & Technology Group, 811 Vermont Ave, NW., Room 763, Washington, DC 20571, by phone at (202) 565–3857, by email at *kalesha.malloy@exim.gov* or by fax at (202) 565–3424, to request a correction of the information. The correction request will be referred to the program unit responsible for development or maintenance for the information. The initial request should include name of requester and requester's organization, mailing address, telephone number, email address, and a brief statement of the alleged conflict with OMB or Ex–Im Bank guidelines.

(b) Ex-Im Bank will respond to requests by letter, or email. The letter or email will inform the requester whether Ex-Im Bank believes a correction is appropriate given the nature and timeliness of the information involved, and if so, will provide correction of information.

(c) A response to a request will be made within 30 calendar days after its receipt (or sooner, if it is possible to quickly resolve the request and if immediate attention is necessary due to the nature of the information).

(d) If Ex-Im Bank denies a request for correction the requester can request reconsideration at the above contact information. Requests for reconsideration shall be made within 30 days of the date of notification of action on the original request, shall include that the communication is a request for reconsideration and should include a copy of the original request.

(e) Requests for reconsideration shall be considered by Ex-Im Bank's Chief Information Officer. Ex-Im Bank will respond to the request for reconsideration in written form within 60 days.

3. Definitions

(a) "Affected" persons are those who may benefit or be harmed by the disseminated information. This includes both: (a) persons seeking to address information about themselves or about other persons to which they are related or associated; and (b) persons who use the information.

(b) "Dissemination" means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) "Conduct or Sponsor"). Dissemination does not include distributions of information or other materials that are:

(i) intended for government employees or agency contractors or grantees;

(ii) intended for U.S. Government agencies;

(iii) produced in response to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or similar law;

(iv) correspondence or other communication limited to individuals or to other persons, within the meaning of paragraph 7, below; or

(v) communications such as press releases, interviews, speeches, and similar statements.

(vi) Also excluded from the definition are archival records; public filings; responses to subpoenas or compulsory document productions; or documents prepared and released in the context of adjudicative processes. These guidelines do not impose any additional requirements on agencies during adjudicative proceedings any additional rights of challenge or appeal.

(c) "Influential" means disseminated information that Ex-Im Bank determines will have a clear and substantial impact on important public policies or important private sector decisions.

(d) "Information," for purposes of these guidelines means any communication or representation of facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition does not include:

(i) opinions, where the presentation makes clear that the statements are subjective opinions, rather than facts. Underlying information upon which the opinion is based may be subject to these guidelines only if that information is published by Ex-Im Bank;

(ii) information originated by, and attributed to, non-Ex-Im Bank sources. Examples include: non-U.S. Government information reported and duly attributed in materials prepared and disseminated by Ex-Im Bank; hyperlinks on Ex-Im Bank's website to information that others disseminate; and information from third parties published on Ex-Im Bank's website;

(iii) statements related solely to the internal personnel rules and practices of Ex-Im Bank;

(iv) and other materials produced for Ex-Im Bank employees or contractors;

(v) descriptions of the agency, its responsibilities and its organizational components;

(vi) statements, the modification of which might cause harm to the national security, including harm to the national defense or foreign relations of the United States;

(vii) testimony or comments of Ex-Im Bank officials before courts, administrative bodies, Congress, or the media;

(viii) investigatory material compiled pursuant to U.S. law or for law enforcement purposes in the United States; or statements which are, or which reasonably may be expected to become, the subject of litigation, whether before a U.S. foreign court or in an international arbitral or other dispute resolution proceeding.

(e) "Integrity" refers to the security of information—protection of the information from unauthorized access or revision, to prevent the information from being compromised through corruption or falsification.

(f) "Objectivity" addresses whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner, including background information where warranted by the circumstances.

(g) "Person" means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a regional, national, State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision, or an international organization.

(h) "Quality" is an encompassing term comprising utility, objectivity, and integrity. Therefore, the guidelines sometimes refer these four statutory terms, collectively, as "quality".

(i) "Utility" refers to the usefulness of the information to its intended users, including the public.

[FR Doc. 02–19498 Filed 8–1–02; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–1807]

Rescheduling of Eleventh Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee originally scheduled for August 22, 2002 (FR/Vol. 67, No. 139/Friday, July 19, 2002/ Notices) has been rescheduled and will now be held on September 5, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: September 5, 2002; 2:00 pm–4:00 pm.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States

proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the eleventh meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the eleventh meeting is as follows:

Agenda

Eleventh Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington, DC 20554, September 5, 2002; 2 p.m.–4 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Tenth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Anna Gomez,

Deputy Bureau Chief.

[FR Doc. 02–19491 Filed 8–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2566]

Petition for Reconsideration of Action in Rulemaking Proceedings

July 25, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by August 19, 2002. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the FM Table of Allotments (MM Docket No. 01–131, MM Docket No. 01–133).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19492 Filed 8–1–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, August 6, 2002, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum re: Proposed 2002 Budget Increase.

Memorandum and resolution re: Draft Regulation on Living Trust Accounts and Other Changes to the Deposit Insurance Regulations.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–3742.

Federal Deposit Insurance Corporation.

Dated: July 30, 2002.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–19618 Filed 7–31–02; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

DeWitt and Victoria Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–19574 Filed 8–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1429–DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1429–DR), dated July 19, 2002, and related determinations.

EFFECTIVE DATE: July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 19, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms and flooding on June 21–25, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Individual Assistance is later requested and warranted, Federal funds provided under the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James L. Roche of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Adams, Clark, Dunn, Marathon, Marinette, Portage, Waushara, and Wood Counties for Public Assistance.

All counties within the State of Wisconsin are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–19572 Filed 8–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1429–DR]

Wisconsin; Amendment 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1429–DR), dated July 19, 2002, and related determinations.

EFFECTIVE DATE: July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of James L. Roche as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–19573 Filed 8–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

NAME: Federal Interagency Committee on Emergency Medical Services (FICEMS).

DATE OF MEETING: September 5, 2002.

PLACE: Building S, Room 114, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

TIME: 10:30 a.m.

PROPOSED AGENDA: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; Counter-terrorism Subcommittee report; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, September 3, 2002, via mail at NATEK Incorporated, 4200–G Technology Court, Chantilly, Virginia 20151, or by telephone at (703) 818–7070, or via facsimile at (703) 818–0165, or via e-mail at *proman@natekinc.com*. This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. Members should call in around 10:30 a.m. The number is 1–800–320–4330. The FICEMS conference code is "16." If you plan to call in, you should just enter the

number "16"—no need to hit any other buttons, such as the star or pound keys.

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on December 5, 2002. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the December 5, 2002 FICEMS Committee Meeting.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 02–19575 Filed 8–1–02; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 16, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. George R. Dill and Mary S. Dill, both of Fife, Washington, Elsie J. Dill and Henry Dill, both of Salinas, California, and Dorothy Foland, Wenatchee, Washington; to increase their ownership in Puget Sound Financial Services, Inc., and thereby indirectly acquire voting shares of Fife Commercial Bank, both of Fife, Washington.

Board of Governors of the Federal Reserve System, July 29, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–19478 Filed 8–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 29, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lauritzen Corporation, Omaha, Nebraska; to acquire an additional 4.1 percent, for a total of 28 percent of the voting shares of First National of Nebraska, Inc., Omaha, Nebraska, and thereby indirectly acquire additional voting shares of Platte Valley State Bank and Trust Company, Kearney, Nebraska; First National Bank & Trust Company of Columbus, Columbus, Nebraska; First National Bank, North Platte, Nebraska; The Fremont National Bank and Trust Company, Fremont, Nebraska; First National Bank South Dakota, Yankton, South Dakota; Union Colony Bank, Greeley, Colorado; First National Bank of Omaha, Omaha, Nebraska; First National Bank, Fort Collins, Colorado; Castle Bank, National Association, De Kalb, Illinois; First National Bank of Colorado, Boulder, Colorado; First National Bank of Kansas, Overland Park, Kansas; First National of Colorado, Inc., Fort Collins, Colorado; and First National of Illinois, Inc., Omaha, Illinois.

Board of Governors of the Federal Reserve System, July 30, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–19587 Filed 8–1–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Governmentwide Per Diem Advisory Board

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Governmentwide Per Diem Advisory Board will hold an open meeting from 8:30 a.m. to 4 p.m. on Tuesday, August 13, 2002. The meeting will be held at The Council on Foundations Conference Center, 1828 L Street, NW., Suite 505, Washington, DC 20036. This meeting is open to the public. Members of the public who wish to file a written statement with the Board may do so in writing c/o Rob Miller, Designated Federal Officer (MTT), General Services Administration, 1800 F St., NW., Room G–219, Washington, DC 20405, or via e-mail at *robl.miller@gsa.gov.* Due to critical mission and schedule requirements, there is insufficient time to provide the full 15 calendar days' notice in the **Federal Register** prior to this meeting, pursuant to the final rule on Federal Advisory Committee management codified at 41 CFR 102–3.150.

Purpose: To review the current process and methodology that is used by GSA's Office of Governmentwide Policy to determine the per diem rates for destinations within the continental United States (CONUS). The Board will receive a committee report for developing an organizational structure to improve the per diem process, and receive a committee plan for identifying best practices for a Governmentwide lodging program.

For security and building access: (1) Attendees should be prepared to present a government-issued photo identification; (2) ADA accessible facility; (3) Public seating may be limited.

FOR FURTHER INFORMATION CONTACT: Rob Miller, Designated Federal Officer, on (202) 501–4621, or Joddy Garner on (202) 501–4857, Per Diem Program Manager, General Services Administration. Also, inquiries may be sent to *robl.miller@gsa.gov*.

Dated: July 29, 2002.

Peggy DeProspero,

Acting Director of Travel Management Policy, Office of Transportation and Personal Property.

[FR Doc. 02–19568 Filed 8–1–02; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–11]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for a grant award for one project at a federal share of approximately $100,000 per year for a project period of one year.

Legislative authority: The Older Americans Act, Public Law 106–501 (Catalog of Federal Domestic Assistance 93.048, Title IV and Title II Discretionary Projects).

Purpose of grant awards: The purpose of the project is to support the development of an action plan to raise osteoporosis awareness in post-menopausal women. The grant will assist AoA in the development and implementation of effective strategies to raise awareness about osteoporosis in post-menopausal women.

Eligibility for grant awards and other requirements: Eligibility to apply under this announcement is limited to applications from public and non-profit organizations, including Indian tribes, tribal organizations, tribal faith groups, faith-based and community-based organizations, with demonstrated expertise in osteoporosis education and awareness.

Grantees are required to provide a 25% non-federal match.

DATES: The deadline date for the submission of applications is September 16, 2002.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Center for Communication and Consumer Services, 330 Independence Ave., SW., Washington, DC 20201, Attn: Sherri Clark, or by calling 202/619–3955. Applications must be mailed or hand-delivered to the Office of Grants Management at the same address. Instructions for electronic mailing of grant applications are available at *http://www.aoa.gov/egrants*.

Dated: July 29, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–19505 Filed 8–1–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–37–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

National Hospital Discharge Survey (OMB No. 0920–0212)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The National Hospital Discharge Survey (NHDS), which has been conducted continuously by the National Center for Health Statistics, CDC, since 1965, is the principal source of data on in-patient utilization of short-stay, non-Federal hospitals and is the only annual source of nationally representative estimates on the characteristics of discharges, the lengths of stay, diagnoses, surgical and non-surgical procedures, and the patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are compared. Data collected through the NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. NHDS data have been used extensively in the development and monitoring of goals for the Year 2000 and 2010 Health Objectives. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, *Health, United States*. Data for the NHDS are collected annually on approximately 300,000 discharges from a nationally representative sample of noninstitutional hospitals, exclusive of Federal, military and Veterans' Administration hospitals. The data items collected are the basic core of variables contained in the Uniform Hospital Discharge Data Set (UHDDS) in addition to two data items (admission type and source) which are identical to those needed for billing of in-patient services for Medicare patients. Data for approximately forty-five percent of the responding hospitals are abstracted from medical records while the remainder of the hospitals supply data through commercial abstract service organizations, state data systems, in-house tapes or printouts. The estimated annual burden for this data collection is 2,653 hours.

Form	Number of Respondents	Number of Responses/Respondents	Average Burden/Response (in hours)
Medical record abstracts—Primary Procedure Hospitals	68	250	5/60
Medical record abstracts—Alternate Procedure Hospitals	130	250	1/60
Medical record abstracts—In-house tape or printout hospitals	80	12	12/60
Update form (abstract service hospitals)	156	1	2/60
Induction form	15	1	2
Inpatient Drug Study	50	22	20/60

Form	Number of Respondents	Number of Responses/ Respondents	Average Burden/Response (in hours)
Non-response Study	50	1	2

Dated: July 29, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–19514 Filed 8–1–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02175]

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Applied Research on Antimicrobial Resistance : Validation of National Committee for Clinical Laboratory Standards Breakpoints for Human Pathogens of Public Health Importance

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Applied Research on Antimicrobial Resistance (AR): Validation of National Committee for Clinical Laboratory Standards (NCCLS) Breakpoints for Human Pathogens of Public Health Importance, PA 02175

Times And Date: 8:30 a.m.–9 a.m., August 22, 2002 (Open); 9:15 a.m.–12:00 p.m., August 22, 2002 (Closed).

Place: Atlanta Airport Hilton, 1031 Virginia Avenue, Atlanta, GA 30354.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA 02175.

Contact Person for More Information: Marsha A. Jones, Health Scientist, National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE, MS C–12, Atlanta, Georgia 30333, 404–639–2603, e-mail: *maj4@cdc.gov*.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 29, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office.

[FR Doc. 02–19511 Filed 8–1–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Interventional Epidemiologic Research Studies To Reduce Mother-to-Child HIV–1 Transmission and Improve Infant Survival in Resource-Limited Countries of High HIV–1 Seroprevalence, Program Announcement 02074

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Interventional Epidemiologic Research Studies to Reduce Mother-to-Child HIV–1 Transmission and Improve Infant Survival in Resource-Limited Countries of High HIV–1 Seroprevalence, Program Announcement 02074.

Times and Dates: 9 a.m.–9:30 a.m., August, 28, 2002 (Open) 9:30 a.m.–4:30 p.m., August 28, 2002 (Closed).

Place: Double Tree Hotel, 3342 Peachtree Road, NE, Atlanta, GA.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02074.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road NE MS E–07, Atlanta, Georgia 30333, 404–639–8025.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 29, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–19512 Filed 8–1–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Science and Program Review Subcommittee (SPRS) and the Advisory Committee for Injury Prevention and Control (ACIPC): Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee and committee meetings:

Name: Science and Program Review Subcommittee to ACIPC.

Time and Dates: 6:30 p.m.–9 p.m., August 18, 2002. 9 a.m.–12 p.m., August 19, 2002.

Place: The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337.

Status: Open: 6:30 p.m.–7 p.m., August 18, 2002. Closed: 7 p.m.–9 p.m., August 18, 2002, through 12 p.m., August 19, 2002.

Purpose: The Subcommittee provides advice on the needs, structure, progress and performance of the National Center for Injury Prevention and Control (NCIPC) programs. The Subcommittee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Subcommittee also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters To Be Discussed: Agenda items include updates on research and review activities, agenda for November meeting, and role of secondary reviewers. Beginning at 7 p.m., August 18, through 12 p.m., August 19, the Subcommittee will conduct a secondary review and discuss the results of Injury Control Research Center (ICRC) mid-course reviews of continuing applications of two Centers; results of an Injury Research Grant Review Committee (IRGRC) review of an ICRC that submitted a revised application; results of the IRGRC review of individual research grant applications; results of reviews by NCIPC Disease, Disability, and Injury Prevention and Control Special Emphasis Panels; and Small Business Innovation Research applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Acting Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

Name: Advisory Committee for Injury Prevention and Control.

Time and Date: 1:00 p.m.–2:30 p.m., August 19, 2002.

Place: The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337.

Status: Open: 1 p.m.–1:45 p.m., August 19, 2002.

Closed: 1:45 p.m.–2:30 p.m., August 19, 2002.

Purpose: The Committee advises and makes recommendations to the Secretary, Health and Human Services; the Director, CDC; and the Director, NCIPC; regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters To Be Discussed: Agenda items include an update on Center activities from the Director, NCIPC. Beginning at 1:45 p.m. through 2:30 p.m., August 19, the Committee will vote on results of the secondary review. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Acting Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Louise Galaska, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone 770/488–4694.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 25, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19513 Filed 8–1–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–21]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Withholding Medicare Payments to Recover Medicaid Overpayments and Supporting Regulations in 42 CFR 447.31; *Form No.:* CMS–R–21 (OMB# 0938–0287); *Use:* Overpayments may occur in either the Medicare and Medicaid program, at times resulting in a situation where an institution or person that provides services owes a repayment to one program while still receiving reimbursement from the other. Certain Medicaid providers that are subject to offsets for the collection of Medicaid overpayments may terminate or substantially reduce their participation in Medicaid, leaving the State Medicaid Agency unable to recover the amounts due. These information collection requirements give CMS the authority to recover Medicaid overpayments by offsetting payments due to a provider under the program; *Frequency:* On occasion; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 27; *Total Annual Hours:* 81.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Julie Brown Attn: CMS–R–21, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 25, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–19499 Filed 8–1–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–267]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Plus Choice Program Requirements Referenced in 42 CFR 422.000–422.700; *Form No.* CMS–R–267 (OMB# 0938–0753); *Use:* ction 4001 of the Balanced Budget Act of 1997 added sections 1851 through 1859 to the Social Security Act to establish a new Part C of the Medicare Program, known as the Medicare+Choice Program. Under this program, every individual entitled to Medicare Part A and enrolled under Part B may elect to receive benefits through either the existing Medicare fee-for-service program or a Part C M+C Plan. The regulations implementing these sections was published on June 26, 1998. The regulations revising these sections was published on February 17, 1999 and June 29, 2000; *Frequency:* As Needed; *Affected Public:* Business or other for-profit, Individuals or Households, federal government, not-for-profit institutions, State, Local or Tribal Gov't.; *Number of Respondents:* 2,450; *Total Annual Responses:* 7,657,534; *Total Annual Hours:* 2,120,006.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 24, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–19500 Filed 8–1–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–282]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Blood Bank Inspection Checklist and Report and Supporting Regulations in 42 CFR 493.1269–493.1285; *Form No.:* CMS–282 (OMB# 0938–0170); *Use:* The Clinical Laboratory Improvement Amendments (CLIA) of 1988 provides for inspections on an announced or unannounced basis regular hours of operation. All records and information having a bearing on whether the laboratory is being operated in accordance with the law can be requested by the surveyor. The CMS–282 is the Blood Bank Inspection Checklist and Report which is outlined in the CLIA of 1988; *Frequency:* Biennially; *Affected Public:* Not-for-profit institutions, Business or other for-profit, Federal Government, and State, Local, and Tribal Government; *Number of Respondents:* 1,363; *Total Annual Responses:* 1,363; *Total Annual Hours:* 682.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 23, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–19501 Filed 8–1–02; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–232]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The

necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Program Integrity Program Organizational Conflict of Interest Disclosure Certificate and Supporting Regulations in 42 CFR 421.300 and 421.318; *Form No.:* CMS–R–232 (OMB #0938–0723); *Use:* This information is used to assess whether contractors who perform, or who seek to perform, Medicare Integrity Program functions, such as medical review, fraud review or cost audits, have organizational conflicts of interest and whether any conflicts have been resolved. The entities providing the information will be organizations that have been awarded, or seek award of, a Medicare Integrity Program contract; *Frequency:* On occasion; *Affected Public:* Businesses or other for profit; *Number of Respondents:* 5; *Total Annual Responses:* 5; *Total Annual Hours:* 1,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 23, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–19502 Filed 8–1–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–65]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in Final Peer Review Organization Sanction Regulations—42 CFR 1004.40, 1004.50, 1004.60, and 1004.70; *Form No.:* CMS–R–65 (OMB# 0938–0444); *Use:* This final rule updates the procedures governing the imposition and adjudication of program sanctions predicated on the recommendations of Peer Review Organizations (PROs). These changes are being made as a result of statutory revisions designed to address health care fraud and abuse issues and the OIG sanction process; *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions and Business or other for-profit; *Number of Respondents:* 53; *Total Annual Responses:* 1,060; *Total Annual Hours:* 22,684.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 18, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–19503 Filed 8–1–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02n–0319]

Agency Information Collection Activities; Proposed Collection; Comment Request; Blood Establishment Registration and Product Listing, Form FDA 2830

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions relating to the blood establishment registration and product listing requirements and Form FDA 2830.

DATES: Submit written or electronic comments on the collection of information by October 1, 2002.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/*

oc/dockets/edockethome.cfm. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Blood Establishment Registration and Product Listing, Form FDA 2830—21 CFR Part 607—(OMB Control Number 0910–0052)—Extension

Under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), any person owning or operating an establishment that manufactures, prepares, propagates, compounds, or processes a drug or device must register with the Secretary of Health and Human Services, on or before December 31 of each year, his or her name, place of business and all such establishments, and submit, among other information, a listing of all drug or device products manufactured, prepared, propagated, compounded, or processed by him or her for commercial distribution. In part 607 (21 CFR part 607), FDA has issued regulations implementing these requirements for manufacturers of human blood and blood products.

Section 607.20(a) requires certain establishments that engage in the manufacture of blood products to register and to submit a list of blood products in commercial distribution. Section 607.21 requires the establishments entering into the manufacturing of blood products to register within 5 days after beginning such operation and to submit a blood product listing at that time. In addition, establishments are required to register annually between November 15 and December 31 and update their blood product listing every June and December. Section 607.22 requires the use of Form FDA 2830 for registration and blood product listing. Section 607.25 indicates the information required for establishment registration and blood product listing. Section 607.26 requires certain changes to be submitted as an amendment to the establishment registration within 5 days of such changes. Section 607.30 requires establishments to update, as needed, their blood product listing information every June and at the annual registration. Section 607.31 requires that additional blood product listing information be provided upon FDA request. Section 607.40 requires foreign blood product establishments to register and submit the blood product listing information, the name and address of the establishment, and the name of the individual responsible for submitting blood product listing information.

Among other uses, this information assists FDA in its inspections of facilities, and its collection is essential to the overall regulatory scheme designed to ensure the safety of the nation's blood supply. Form FDA 2830, Blood Establishment Registration and Product Listing, is used to collect this information. The likely respondents are blood banks, blood collection facilities, and blood component manufacturing facilities.

FDA estimates the burden of this collection of information based upon the database and past experience of the Center for Biologics Evaluation and Research, Division of Blood Applications in regulatory blood establishment registration and product listing. Most blood banks are familiar with the regulations and registration requirements to fill out this form.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form FDA 2830	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
607.20(a), 607.21, 607.22, 607.25, and 607.40	Initial Registration	300	1	300	1	300
607.21, 607.22, 607.25, 607.26, 607.31, and 607.40	Re-registration	2,867	1	2,867	0.5	1,434
607.21, 607.25, 607.30, 607.31, and 607.40	Product Listing Update	75	1	75	0.25	19

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Form FDA 2830	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total						1,753

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 26, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19493 Filed 8–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members of Public Advisory Committee; Food Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Food Advisory Committee (the Committee) in FDA's Center for Food Safety and Applied Nutrition (CFSAN) and six subcommittees. Nominations will be accepted for current vacancies and vacancies that will or may occur on the Committee during the next 12 months.

FDA has special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations from these groups. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: September 3, 2002.

ADDRESSES: All nominations for membership should be sent to Catherine M. DeRoever (*see* **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: *Regarding all nominations for membership*: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–6), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2397, FAX 301–436–2633, e-mail: *Catherine.DeRoever@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the advisory committees listed below. Individuals should have expertise in the activity of the Committee. Vacancies will begin June 30, 2002.

Food Advisory Committee

The Committee provides advice primarily to the Director, Center for Food Safety and Applied Nutrition (CFSAN), and as needed, to the Commissioner of Food and Drugs (the Commissioner), and other appropriate officials, on emerging food safety, food science, nutrition, and other food-related issues that FDA considers of primary importance for its food and cosmetics program. The Committee may be charged with reviewing and evaluating available data and making recommendations on matters such as those relating to: (1) Broad scientific and technical food or cosmetic related issues, (2) the safety of new foods and food ingredients, (3) labeling of foods and cosmetics, (4) nutrient needs and nutritional adequacy, and (5) safe exposure limits for food contaminants. The Committee also may be asked to provide advice and make recommendations on ways of communicating to the public the potential risks associated with these issues and on approaches that might be considered for addressing the issues.

The Committee was restructured on July 28, 2000, to consist of a "parent" Committee and four standing Subcommittees. The Subcommittees are as follows: (1) Additives and Ingredients, (2) Contaminants and Natural Toxicants, (3) Dietary Supplements, and (4) Food Biotechnology. Two additional Subcommittees are being added to the "parent" Committee: (1) Infant Formula, and (2) Nutrition.

The purpose of the new Subcommittees is to provide highly specialized expertise in the review and analysis of assigned topics. Meetings of the subcommittees will be open to the public except as otherwise determined by the Commissioner or designee. The Subcommittee's findings, conclusions, and recommendations will be reported to the "parent" Committee. As a general matter, included in this report will be a recommendation(s) from the Subcommittee on the final disposition of an assigned topic. Generally, matters that cross-cut agency program areas will fall under the purview of the "parent" Committee. Issues relating to the microbiological safety of food will be addressed by the National Advisory Committee on Microbiological Criteria for Foods.

Criteria for Members

Persons nominated for membership on the Committee shall be knowledgeable in the fields of physical sciences, biological and life sciences, food science, risk assessment and other relevant scientific and technical disciplines. The agency particularly is interested in considering candidates with a comprehensive background in food technology, molecular biology, genetics, biotechnology, and a variety of medical specialties, as many issues brought before the Committee involve medical or epidemiological impact on nutrients, additives, contaminants, or other constituents of the diet, such as dietary supplements. The term of office is up to 4 years.

The Committee includes technically qualified members who are identified with consumer interests and representatives of industry interests.

Nomination Procedures

Interested persons may nominate one or more qualified persons for membership on the Committee. Nominations shall state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude Committee membership. Additionally, the nominee's mailing address, telephone number, and curriculum vitae must accompany the nomination. The agency cannot guarantee further consideration of nominations that do not include this requested information. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, employment, consultancies, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

Industry Representatives

Regarding nominations for members representing industry interests, a letter will be sent to each person or

organization that has made a nomination and to other organizations that have expressed an interest in participating in the selection process together with a complete list of all such organizations and the nominees. The letter will state that it is the responsibility of each nominator or organization that has expressed an interest in participating in the selection process to consult with their peers to provide their selections representing industry interests within 60 days. In the event that selections have not been provided to FDA within 60 days, the Commissioner may select an industry representative for each such vacancy from the list of industry nominees. The agency is interested in nominees that possess the scientific credentials needed to participate fully and knowledgeably in the Committee's deliberations and had special insight into, and direct experience in, specific industrywide issues, practices, and concerns that might not otherwise be available to others not similarly situated.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 23, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–19494 Filed 8–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

FDA Food Labeling and Allergen Declaration; Public Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of Friday, March 29, 2002 (67 FR 15211). The document announced a public workshop entitled "FDA Food Labeling and Allergen Declaration" that intends to provide information about FDA food labeling regulations, allergen declaration, and other related matters to the regulated industry, particularly small business and startups. The document was published with some inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: David Arvelo, Food and Drug Administration, 4040 North Central Expwy., suite 900, Dallas, TX 75204, 214–253–4952, FAX 214–253–4970.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–7583, appearing on page 15211 in the **Federal Register** of Friday, March 29, 2002, the following correction is made:

1. On page 15211, in the third column, under "Contact", beginning in the fourth line, "7920 Elmbrook Dr., suite 102, Dallas, TX 75247, 214–655–8100, ext. 130 or 128, FAX 214–655–8114," is corrected to read "4040 North Central Expwy., suite 900, Dallas, TX 75204, 214–253–4952, FAX 214–253–4970,".

Dated: July 26, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19495 Filed 8–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 2003

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2003. The Federal Food, Drug, and Cosmetic Act (the act), as amended most recently by the Prescription Drug User Fee Amendments of 2002 (Title 5 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (PHSBPRA or PDUFA III)), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. This notice establishes fee rates by PDUFA for FY 2003 for application fees ($533,400 for an application requiring clinical data, and $266,700 for an application not requiring clinical data or a supplement requiring clinical data), establishment fees ($209,900), and product fees ($32,400). These fees are effective on October 1, 2002, and will remain in effect through September 30, 2003. For applications and supplements that are submitted on or after October 1, 2002, the new fee schedule must be used. Invoices for establishment and product fees for FY 2003 will be issued in August 2002 using the new fee schedule.

FOR FURTHER INFORMATION CONTACT: Frank Claunts, Office of Management and Systems (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the act (21 U.S.C. 379g and 379h), establish three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)). For FY 2003 through FY 2007 revenue amounts for application fees, establishment fees, and product fees are established by PDUFA III. Revenue amounts established for years after FY 2003 are subject to adjustment for inflation and workload. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will approximate the levels established in the statute, after those amounts have been first adjusted for inflation and workload. The revenue levels established by PDUFA III continue the arrangement under which one-third of the total user fee revenue is projected to come from each of the three types of fees: Application fees, establishment fees, and product fees.

This notice establishes fee rates for FY 2003 for application, establishment, and product fees. These fees are effective on October 1, 2002, and will remain in effect through September 30, 2003.

II. Inflation and Workload Adjustment Process

PDUFA III provides that fee revenue amounts for each FY after 2003 shall be adjusted for inflation. The adjustment must reflect the greater of : (1) The total percentage change that occurred in the Consumer Price Index (CPI) (all items; U.S. city average) during the 12-month period ending June 30 preceding the FY for which fees are being set, or (2) the total percentage pay change for the previous FY for Federal employees stationed in the Washington, DC metropolitan area. PDUFA III provides for this annual adjustment to be cumulative and compounded annually after 2003 (see 21 U.S.C. 379h(c)(1)). No inflation adjustment is to be made with respect to fee revenue amounts established in the statute for FY 2003.

For each FY beginning in FY 2004, PDUFA III provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in workload for the process for the review of human drug applications (see 21 U.S.C. 379h(c)(2)). No workload adjustment is to be made with respect to fee revenue amounts established in the statute for FY 2003.

Since neither inflation nor workload adjustments apply to the revenue amounts established in PDUFA III for FY 2003, the levels specified in the statute are the amounts that fees set by FDA for FY 2003 should generate. Those statutory revenue amounts are $74,300,000 from application fees, $74,300,000 from establishment fees, and $74,300,000 from product fees.

III. Fee Calculations

PDUFA III provides that the fee rates for application, product, and establishment fees be established 60 days before the beginning of each FY (21 U.S.C. 379h(c)(4)). The fees are to be established so that they will generate the fee revenue amounts specified in the statute, as adjusted for inflation and workload.

A. Application Fee Revenues and Application Fees

Application fees are assessed at different rates for qualifying applications depending on whether the applications require clinical data for safety or effectiveness (other than bioavailability or bioequivalence studies) (21 U.S.C. 379h(a)(1)(A)). Applications that require clinical data are subject to the full application fee. Applications that do not require clinical data and supplements that require clinical data are assessed one-half the fee of applications that require clinical data. If FDA refuses to file an application or supplement, 75 percent of the application fee is refunded to the applicant (21 U.S.C. 379h(a)(1)(D)).

The application fee revenue amount that PDUFA III established for FY 2003 is $74,300,000 (21 U.S.C. 379h(b)). For FY 2003 no adjustment is to be made for either inflation or workload changes (21 U.S.C. 379h(c)). Application fees for FY 2003 will be set to generate $74,300,000.

B. Estimate of Numbers of Fee-Paying Applications and Establishment of Application Fees

For FY 2003 through FY 2007, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive each year by averaging the number of fee-paying FAEs received in each of the five most recent FYs. This use of the rolling average of the five most recent FYs is the same method that will also be applied in future years in making the workload adjustment.

In estimating the number of fee-paying FAEs that FDA will receive in FY 2003, the 5-year rolling average for the most recent 5 years will be based on actual counts of fee-paying FAEs received for FYs 1998 through 2001. For FY 2002, FDA is estimating the number of fee-paying FAEs for the full year based on the actual count for the first 9 months and estimating the number for the final 3 months.

Table 1, under column 2 of this document, shows the total number of each type of FAE received in the first 9 months of FY 2002, whether fees were paid or not. Column 3 shows the number of FAEs for which fees were waived or exempted during this period, and column 4 shows the number of fee-paying FAEs received through June 30, 2002. The last column estimates the 12-month total fee-paying FAEs for FY 2003 based on the applications received through June 30, 2002. All of the counts are in FAEs. A full application requiring clinical data counts as one FAE. An application not requiring clinical data counts one-half an FAE, as does a supplement requiring clinical data. An application that is withdrawn or refused for filing counts as one-fourth of an FAE if it initially paid a full application fee, or one-eighth of an FAE if it initially paid one-half of the full application fee amount.

TABLE 1.—FY 2002 FULL APPLICATION EQUIVALENTS (FAEs) RECEIVED THROUGH JUNE 30, 2002, AND PROJECTION

Application or Action	Total FAEs Received Through June 30, 2002	Fee Exempt or Waived FAEs Through June 30, 2002	Total Fee Paying FAEs Through June 30, 2002	12-Month Projection for Fee-Paying FAEs
Applications requiring clinical data	65.00	18.00	47.00	62.667
Applications not requiring clinical data	9.00	3.00	6.00	8.00
Supplements requiring clinical data	43.50	11.00	32.50	43.333
Withdrawn or refused to file	0.75	0.25	0.50	0.667
Total	118.25	32.25	86.00	114.67

In the first 9 months of FY 2002, FDA received 118.25 FAEs, of which 86 were fee-paying. Based on data from the last 5 FYs, on average, 25 percent of the applications submitted each year come in the final 3 months. Thus, dividing 86 by 3 and multiplying by 4 extrapolates the amount to the full 12 months of the FY and projects the number of fee-paying FAEs in FY 2002 at 114.7.

All pediatric supplements, which had been exempt from fees prior to January 4, 2002, were required to pay fees effective January 4, 2002. This is the result of section 5 of the Best Pharmaceuticals for Children Act that repealed the fee exemption for pediatric supplements effective January 4, 2002. Thus, in estimating FY 2003 fee-paying receipts we must assume all the pediatric supplements that were previously exempt from fees will be subject to fees in FY 2003. In FY 1998, 8 full fees were exempted for pediatric supplements; the exempted number of FAEs for pediatric supplements for FY 1999, FY 2000, FY 2001, and FY 2002, respectively, were 5.25, 12.5, 19, and 4.5. Since fees on these supplements will be paid for pediatric applications submitted in FY 2003, the number of pediatric supplement FAEs exempted from fees each year from FY 1998 through FY 2002 (the only years when fees were exempted) are added to the total of fee-paying FAEs received each year.

As table 2 of this document shows, the average number of fee-paying FAEs

received annually in the most recent 5-year period, assuming all pediatric supplements had paid fees, and including our estimate for FY 2002, is 139.3 FAEs. FDA will set fees for FY 2003 based on this estimate as the number of full application equivalents that will pay fees.

TABLE 2.

Type of FAE	1998	1999	2000	2001	2002	5-year Average
Fee-paying FAEs	118.7	153.0	153.4	107.6	114.7	129.5
Exempt pediatric supplement FAEs	8.0	5.3	12.5	19.0	4.5	9.9
Total	126.7	158.3	165.9	126.6	119.2	139.3

The FY 2003 application fee is estimated by dividing the estimated number of full applications that will pay fees, 139.3, into the statutorily set amount to be derived from application fees in FY 2003, $74,300,000. The result, rounded to the nearest one hundred dollars, is a fee of $533,400 per full application requiring clinical data, and $266,700 per application not requiring clinical data or per supplement requiring clinical data.

IV. Adjustment for Excess Collections in Previous Years

Under the provisions of PDUFA, as amended, if the agency collects more fees than were provided for in appropriations in any year after 1997, FDA is required to reduce its anticipated fee collections in a subsequent year by that amount (21 U.S.C. 379h(g)(4)).

In FY 1998, Congress appropriated a total of $117,122,000 to FDA in PDUFA fee revenue. To date, collections for FY 1998 total $117,737,470—a total of $615,470 in excess of the appropriation limit. This is the only FY since 1997 in which FDA has collected more in PDUFA fees than Congress appropriated.

FDA also has requests for waivers or reductions of FY 1998 fees that have been decided but that are pending appeals. For this reason, FDA is not reducing its FY 2003 fees to offset excess collections at this time. An offset will be considered in a future year, if FDA still has collections in excess of appropriations for FY 1998 after the pending appeals for FY 1998 waivers and reductions have been resolved.

V. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2002, the establishment fee was based on an estimate that 354 establishments would be subject to and would pay fees. By the end of FY 2002, FDA estimates that 379 establishments will have been billed for establishment fees, before all decisions on requests for waivers or reductions are made. FDA again estimates that a total of 25 establishment fee waivers or reductions will be made for FY 2002, for a net of 354 fee-paying establishments. FDA will use this number, 354, for its FY 2003 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($74,300,000), by the estimated 354 establishments, for an establishment fee rate for FY 2003 of $209,900 (rounded to the nearest one hundred dollars).

B. Product Fees

At the beginning of FY 2002, the product fee was based on an estimate that 2,293 products would be subject to and pay product fees. By the end of FY 2002, FDA estimates that 2,348 products will have been billed for product fees, before all decisions on requests for waivers or reductions are made. Assuming that there will be about 55 waivers and reductions made, FDA estimates that 2,293 products will qualify for product fees in FY 2002, after allowing for waivers and reductions, and will use this number for its FY 2003 estimate. Accordingly, the FY 2003 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($74,300,000) by the estimated 2,293 products for a product fee rate of $32,400 (rounded to the nearest ten dollars).

VI. Fee Schedule for FY 2003

The fee rates for FY 2003 are set out in table 3 of this document:

TABLE 3.

Fee Category	Fee rates for FY 2003
Applications	
Requiring clinical data	$533,400
Not requiring clinical data	$266,700
Supplements requiring clinical data	$266,700
Establishments	$209,900
Products	$32,400

VII. Implementation of Adjusted Fee Schedule

A. Application Fees

Any application or supplement subject to fees under PDUFA that is submitted after September 30, 2002, must be accompanied by the appropriate application fee established in the new fee schedule. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the U.S. Food and Drug Administration. Please include the user fee ID number on your check. Your check can be mailed to: U.S. Food and Drug Administration, P.O. Box 360909, Pittsburgh, PA 15251–6909.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Food and Drug Administration (360909), Mellon Client Service Center, rm. 670, 500 Ross St., Pittsburgh, PA 15262–0001. (Note: This Mellon Bank address is for courier delivery only.)

Please make sure that the FDA P.O. Box number (P.O. Box 360909) is on the enclosed check. The tax identification number of the U.S. Food and Drug Administration is 530 19 6965.

B. Establishment and Product Fees

By August 31, 2002, FDA will issue invoices for establishment and product fees for FY 2003 under the new fee schedule. Payment will be due on October 1, 2002. FDA will issue invoices in October 2003 for any products and establishments subject to fees for FY 2003 that qualify for fees after the August 2002 billing.

Dated: July 30, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19594 Filed 7–31–02; 9:59 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs: Forms—(OMB No.0915–0044)—Revision

The HPSL Program provides long-term, low-interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The NSL Program provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma in nursing, and an associate degree, a baccalaureate degree, or a graduate degree in nursing. Participating HPSL and NSL schools are responsible for determining eligibility of applicants, making loan, and collecting monies owed by borrowers on their outstanding loans. The deferment form (HRSA form 519) provides the schools with documentation of a borrower's eligibility for deferment. The Annual Operating Report (AOR–HRSA form 501) provides the Federal Government with information from participating and non-participating schools (schools that are no longer granting loans but are required to report and maintain program records, student records, and repayment records until all student loans are repaid in full and all monies due the Federal Government are returned) relating to HPSL and NSL program operations and financial activities.

The estimates of burden for the forms are as follows:

Form and number	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Defer-HRSA–519	6,000	1	6,000	10 min	1,000
AOR–HRSA–501	1,048	1	1,048	4 hrs.	4,192
Total Burden	7,048		7,048		5,192

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–19496 Filed 8–1–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps (NHSC) Professional Training and Information Questionnaire (PTIQ) (OMB No. 0915–0208)—Revision

The NHSC of the HRSA's Bureau of Health Professions (BHPr), is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The NHSC (authorized by the Public Health Service Act, section 331) collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, the NHSC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends.

The PTIQ is used to collect data related to professional practice from NHSC Scholarship Program recipients including physicians, dentists, physician assistants (PAs), nurse practioners (Nps), and certified nurse midwives (CNMs), in the current year's placement cycle. This data is used to match an individual health care professional with an appropriate clinical practice setting.

The PTIQ will be mailed twelve months in advance of the intended service availability date.

Estimates of annualized reporting burden are as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response (minutes)	Total burden hours
Physicians and Dentists	186	1	5	15.5 (16)
NPs, PAs, CNMs	125	1	5	10.42 (10)
Health Care Professionals	311			26

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 26, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–19497 Filed 8–1–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Professions and Nurse Education Special Emphasis Panels; Meetings; Addendum and Correction

In **Federal Register** Document 01–28108, appearing on pages 56689–56690 in the issue for Friday, November 9, 2001, the following meetings of the Health Professions and Nurse Education Special Emphasis Panel are added:

Name: Cooperative Agreements for Health Workforce Research.

Date and Time: August 12–15, 2002.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Open on: August 12, 2002, 8 a.m. to 10 a.m.

Closed on: August 12, 2002, 10 a.m. to adjournment (approximately 6 p.m.). August 13–15, 2002, 8 a.m. to adjournment (approximately 6 p.m.).

Name: National Research Service Awards.

Date and Time: August 26–29, 2002.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Open on: August 26, 2002, 8 a.m. to 10 a.m.

Closed on: August 26, 2002, 10 a.m. to adjournment (approximately 6 p.m.). August 27–29, 2002, 8 a.m. to adjournment (approximately 6 p.m.).

Name: Area Health Education Centers Bioterrorism Supplement.

Date and Time: August 27–28, 2002.

Place: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Open on: August 27, 2002, 10 a.m. to 12 p.m.

Closed on: August 27, 2002, 12 p.m. to adjournment (approximately 4 p.m.). August 28, 2002, 10 a.m. to adjournment (approximately 4 p.m.).

Name: Public Health Fellowships & Internships.

Date and Time: September 18–19, 2002.

Place: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Open on: September 18, 2002, 12 p.m. to 1 p.m.

Closed on: September 18, 2002, 1 p.m. to adjournment (approximately 4 p.m.). September 19, 2002, 1 p.m. to adjournment (approximately 4 p.m.).

In **Federal Register** Document 02–5357 appearing on pages 10419–10420 in the issue for Thursday, March 7, 2002, the dates of the following meetings of the Health Professions and Nurse Education Special Emphasis Panel are corrected as follows:

Name: National Research Service Awards.

Date and Time: August 5–8, 2002.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Open on: August 5, 2002, 8 a.m. to 10 a.m.

Closed on: August 5, 2002, 10 a.m. to adjournment (approximately 6 p.m.). August 6–8, 2002, 8 a.m. to adjournment (approximately 6 p.m.).

Name: Geriatric Academic Career Awards.

Date and Time: August 12, 2002.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Open on: August 12, 2002, 8 a.m. to 10 a.m.

Closed on: August 12, 2002, 10 a.m. to adjournment (approximately 6 p.m.). August 13–15, 2002, 8 a.m. to adjournment (approximately 6 p.m.).

Purpose: The Health Professions and Nurse Education Special Emphasis Panel shall advise the Associate Administrator for Health Professions on the technical merit of grants to improve the training, distribution, utilization, and quality of personnel required to staff the Nation's health care delivery system.

Agenda: The open portion of each meeting will cover introductions, opening remarks, housekeeping details, and an orientation to the review process. The meetings will be closed after Orientation on the first day of each meeting until adjournment while the review of grant applications is conducted. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5 U.S.C., as amended, and the Determination by the Acting Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix 2).

For further information, contact Ms. Theresa Derville, Acting Director, Office of Peer Review, Bureau of Health Professions, Parklawn Building, Room 8C–23, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301–443–6339.

Dated: July 30, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–19630 Filed 8–1–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these

telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 25, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–19248 Filed 8–1–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Impact Statement for the Swanson River Satellites Natural Gas Exploration and Development Project

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that the Draft Environmental Impact Statement (DEIS) for the Swanson River Satellites Natural Gas Exploration and Development Project is available for public review. During the 60-day review and comment period, there will be two public hearings on the DEIS as described below. The DEIS evaluates the potential environmental impacts of constructing natural gas exploration and production facilities. The proposed project would be located in the northwest portion of the Kenai National Wildlife Refuge, Kenai Peninsula, Alaska, in the vicinity of the existing Swanson River oil and gas field. The U.S. Fish and Wildlife Service (USFWS) is the lead Federal agency in the environmental review process. The Bureau of Land Management (BLM) and U.S. Army Corps of Engineers (USACE) are serving as cooperating agencies. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1503.1) to invite comments from other agencies and the public on the content of the DEIS.

DATES: The public hearing dates are:

1. September 5, 2002, 7 p.m. to 9 p.m., Soldotna, Alaska.
2. September 17, 2002, 2 p.m. to 4 p.m., Washington, DC.

Written comments must be received by October 1, 2002.

ADDRESSES: The public hearing locations are:

1. Soldotna, Alaska—Aspen Hotel, 326 Binkley Circle, Soldotna, AK
2. Washington, DC—U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 200B, Arlington, VA

Comments should be addressed to: Brian Anderson, U.S. Fish and Wildlife Service, Division of Natural Resources, Stop 221,1011 E. Tudor Road., Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Brian Anderson (907) 786–3379.

SUPPLEMENTARY INFORMATION: Union Oil Company of California d.b.a. Unocal has applied for a right-of-way grant to construct facilities, including roads, pipelines, drill pads, and other facilities necessary for exploration and production of natural gas resources within the Kenai National Wildlife Refuge, a Conservation System Unit established by the Alaska National Interest Lands Conservation Act (ANILCA) (Sec. 303, Pub. L. 96–487, 16 U.S.C.668dd). The right-of-way application is being evaluated under regulations at 43 CFR part 36 implementing Title XI of ANILCA, "Transportation and Utility Systems in and Across, and Access into, Conservation System Units in Alaska."

The East Swanson River Satellite is approximately five miles east of the Swanson River Field (T8N, R8W, SM). The North Swanson River Satellite encompasses the Birch Hill Unit, and is located approximately three miles northeast of the northern Swanson River Field boundary (T9N, R9W, SM). Most of the surface estate within the project area is owned by the United States and is managed by the USFWS, although a portion of the surface estate involved has been conveyed to the Tyonek Native Corporation. The subsurface oil, gas, and coal mineral estate is owned by Cook Inlet Region Incorporated (CIRI), with the exception of the Birch Hill Unit, where these minerals are leased from the United States. Under Title XI, CIRI is entitled to adequate and feasible access to their valid inholdings for economic and other purposes, subject to reasonable regulations necessary to protect the natural and other values of the Refuge. Unocal has leased the natural gas development rights from CIRI and the United States.

Unocal proposes to develop natural gas exploration and production from up to two locations in the North Swanson River Satellite area, and up to two locations in the East Swanson River Satellite area. In addition to natural gas wells, a water well and drainage sump will be installed at each site. The satellite areas would be connected to the existing Swanson River Field infrastructure via a new 100-foot-wide road and pipeline corridor extending a total of approximately 12 miles. The corridor would accommodate a gravel road, primary and secondary products pipelines, a produced water disposal pipeline, and communications and electric power lines. Constructing the roads and pads would require approximately 278,600 cubic yards of gravel, which would be extracted from sources specified by the USFWS. A phased construction is proposed, beginning with roads and pads needed for natural gas exploration, and followed as necessary by installation of pipelines and other production facilities. In the event that exploration results do not warrant production, or at the conclusion of production activities, roads and pads would be restored according to a restoration plan approved by the USFWS.

Unocal has also applied for a Department of the Army permit under Section 404 of the Clean Water Act from the USACE, and notice of staking/permit to drill for existing Federal oil and gas leases from the BLM. Under Title XI of ANILCA, the USFWS, USACE, and BLM each has an independent decision regarding their authority over the proposed project, but that these decisions will be issued concurrently.

The DEIS evaluates the potential direct, indirect, and cumulative impacts of constructing the proposed project, and assesses reasonable alternatives that would protect the resources of the Refuge. The environmental review is being conducted in accordance with the requirements of NEPA (42 U.S.C. 4371 *et seq.*) as implemented by the Council on Environmental Quality regulations at 40 CFR 1500–1508, and the pertinent regulations of USFWS. Copies of the DEIS are available for public review at the following locations: Z.J. Loussac Public Library, Anchorage; Soldotna Public Library, Soldotna; and the Kenai Community Library, Kenai. The DEIS is also available online at *http://alaska.fws.gov/refuges.cfm*.

Dated: July 2, 2002.

David B. Allen,

Regional Director, Region 7, U.S. Fish and Wildlife Service.

[FR Doc. 02–19482 Filed 8–1–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Conduct Restoration Planning for Natural Resources Injured by the Release of Oil From the T/V Command, San Francisco, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of the Interior, acting through the Fish and Wildlife Service, the U.S. Department of Commerce, acting through the National Oceanic and Atmospheric Administration, California Department of Fish and Game (CDFG), the California State Lands Commission (SLC), and the California Department of Parks and Recreation (DPR), are joint trustees (Trustees) for natural resources and are authorized to assess injuries to Federal and State resources caused by the T/V Command Oil Spill and to plan and implement restoration actions to address those injuries. The Trustees announce the intent to prepare a draft Restoration Plan (RP) and Environmental Assessment (EA) for the T/V Command Oil Spill. As an initial step, a scoping document has been prepared to guide development of the restoration plan. The Trustees have invited and encouraged agencies and the public to provide written comments on the scoping document through publication in newspapers, mailings, agency websites and other notices. In addition, a public meeting on the scoping document was held in May, 2002, and other opportunities for public comment are provided through public review and comment on documents contained in the Administrative Record, and on the Draft Restoration Plan when it has been prepared.

ADDRESSES: Written comments on all restoration planning documents should be sent to: Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825 (facsimile 916/414–6713). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. All restoration planning documents will be available on the T/V Command website at *http://www.darcnw.noaa.gov/command.htm* and *http://www.dfg.ca.gov/Ospr/restorations.html*. Copies of Comments and reports will also be on file at the Gulf of the Farallones National Marine Sanctuary, Fort Mason, Building 201, San Francisco, CA 94123; (415) 561–6622. It is available for public inspection during normal business hours, by appointment, at that address.

FOR FURTHER INFORMATION CONTACT: For further information, or to be notified of future restoration planning activities contact Charlene Hall, Fish and Wildlife Service, Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section) at (916) 414–6739 or visit the T/V Command website at *http://www.darcnw.noaa.gov/command.htm* and *http://www.dfg.ca.gov/Ospr/restorations.html*.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1998, the T/V Command (owned and operated by Anax International Agencies) left San Francisco Bay bound for Panama. As it traveled in the southbound traffic lane off San Francisco and San Mateo County coasts, it released an estimated 3,000 gallons of Intermediate Bunker Fuel (IBF) 380, also known as Fuel Oil No. 6. On September 30, oil began to wash ashore, largely in the form of scattered tarballs, over 15 miles of beaches, primarily in San Mateo County.

The primary impacts from the spill were: (1) Injuries to large numbers of seabirds; (2) Injuries to sandy beach and rocky intertidal shoreline habitats; and (3) Lost and diminished use of beaches for human recreation. The restoration effort is aimed at developing a strategy for restoring habitats, species, and natural resource services that are lost or impaired as a result of the spill. The draft RP/EA will describe the restoration alternatives considered and identify a preferred restoration alternative.

The Trustees reached a settlement with Pearl Shipping Corporation and Anax International Agencies, Inc. (responsible parties). The Settlement was embodied in a Consent Decree that was reviewed by a U.S. District Court and was subject to public comment prior to being formally entered by the Court on March 31, 2000. Pursuant to the Consent Decree, the responsible parties placed a total of $5,518,000 into an interest bearing account. Of the total civil settlement, $3,913,015.97 was deposited in the Natural Resources Damage Assessment and Restoration Fund created pursuant to 43 U.S.C. 1474b (NRDAR Fund) as natural resource damages.

The Trustees have committed to the expenditure of the NRDA money for the design, implementation, permitting (as necessary), monitoring and oversight of restoration projects, and for the costs of complying with the requirement of the law to conduct a restoration planning and implementation process. The Trustees share joint responsibilities regarding the injured seabirds, habitat, and human use losses and have entered into a Memorandum of Understanding (MOU) to coordinate restoration planning and oversight activities.

Trustees' Determinations

The Trustees have made the following determinations pursuant to 15 CFR 990.41 and 990.42:

(1) Beginning on or about September 26, 1998, an occurrence involving a vessel in the Southern Traffic Lane seaward of San Francisco Bay, California, within the territorial sea of the United States, resulted in the discharge of oil into and upon navigable waters and adjoining shorelines of San Francisco and San Mateo Counties, and other areas to be determined, within the State of California. This occurrence constituted an incident within the meaning of 15 CFR 990.30. The Incident is also a spill or discharge as defined at California Government Code 8670.3(aa).

(2) The Incident was not permitted under a permit issued under Federal, State, or Local law: was not from a public vessel; and was not from an offshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq*.

(3) Oil discharged during the Incident affected marine habitats, wildlife, and human uses in the area. Consequently, natural resources under the trusteeship of the Trustees have been injured as a result of the incident.

(4) As a result of the foregoing determinations, the Trustees have jurisdiction to pursue restoration under the Federal Oil Pollution Act (OPA), 33 U.S.C. Sections 2701–2761, and California's Lampert-Keene-Seastrand Oil Spill Prevention and Response Act, Government Code Sections 8670.1 *et seq*.

Trustees' Determination To Conduct Restoration Activities

(1) Injuries resulted from the Incident. Data collected and analyzed pursuant to 15 CFR Section 990.43 demonstrate that injuries to natural resources are likely to have resulted from the incident, including, but not limited to the following:

(A) Seabirds: Oiled birds were collected during the response. One hundred seventy-seven live and dead birds were recovered from the beaches. In addition, other birds were believed injured based on modeling, although not directly recovered. Injured species were primarily common murres, California brown pelicans and marbled murrelets, along with various other seabird species. California brown pelicans and marbled murrelets are listed as threatened and/or endangered species under the Endangered Species Act (ESA) (16 U.S.C. Section 1533(c)), and the California Endangered Species Act (Fish & Game Code Sections 2050, *et seq.*).

(B) Sandy Beach and Rocky Intertidal Shoreline Habitats: The T/V Command oil spill affected over 15 miles of shoreline areas extending from Montara State Beach to Bean Hollow State Beach in San Mateo County, California.

(C) Lost Human Use: From September 30 to October 11, the Incident interrupted recreational services to individuals participating in beach-related activities in San Mateo County, California. These activities include, but are not limited to, walking, jogging, swimming, surfing, tidal viewing, and picnicking.

(2) Response actions have not adequately addressed the injuries resulting from the Incident. Although response actions were initiated promptly, the nature of the discharge and the sensitivity of the environment precluded prevention of injuries to some natural resources.

(3) Feasible primary and/or compensatory restoration actions exist to address the potential injuries. The Trustees will be considering restoration projects that are feasible to implement. Components of a restoration plan may include seabird enhancement, shoreline habitat enhancement, and compensation for lost human use.

Based on the above findings, the Trustees made the determination that they have jurisdiction to pursue restoration pursuant to the Oil Pollution Act, 33 U.S.C. Sections 2702 and 2706 (b)–(c).

Restoration Planning

The primary impacts from the spill were injuries to large numbers of seabirds, primarily common murres. In addition, a number of California brown pelicans and marbled murrelets were impacted along with various other seabirds species. California brown pelicans and marbled murrelets are listed as threatened and/or endangered species under the Endangered Species Act (ESA) (16 U.S.C. 1533(c)) and the California Endangered Species Act (Fish & Game Code 2050, *et seq.*). In addition, injuries occurred to sandy beach and rocky intertidal shoreline habitats and lost and diminished use of beaches for human recreation.

The Trustee Council has begun the public scoping process for restoration planning. The goal of scoping is to initiate a public process to determine the scope of issues under consideration. The Trustees have developed a public scoping document to involve the public in the development of a draft restoration plan and environmental assessment (RP/EA). All persons affected by, or otherwise interested in, the proposed restoration plan have been invited (through publication in newspapers, mailings, and other notice) to participate in determining the scope of significant issues to be considered in the draft RP/EA by submitting written comments on the scoping document. Through the scoping process, the Trustees will identify and prioritize alternatives for potential restoration actions.

The Trustees will develop a restoration plan and environmental assessment (RP/EA) to restore the resources injured from this spill. The RP/EA will set forth the details of specific project proposals to be developed by the Trustees. The final restoration plan will be prepared and implemented jointly by the Trustees, after providing public notice, opportunity for public input, and consideration of any public comment. In addition, certain projects may require the preparation of individual environmental impact statements or other additional compliance for NEPA or state NEPA-equivalent laws.

Administrative Record

The Trustees have opened an Administrative Record (Record) in compliance with 15 CFR Section 990.45. The Record will include documents relied upon by the Trustees during the assessment and restoration planning performed in connection with the Incident. The Record is on file at the Gulf of the Farallones National Marine Sanctuary, Fort Mason, Building 201, San Francisco, California 94123. Arrangements can be made to review the Record by calling (415) 561–6622. The Record can also be viewed on the T/V Command website at *http://www.darcnw.noaa.gov/command.htm* and *http://www.dfg.ca.gov/Ospr/restorations.html*.

Opportunity To Comment

Pursuant to 15 CFR 990.44, the Trustees seek public involvement in restoration planning through public review and comment on the public scoping document and documents contained in the Administrative Record, as well as on the Draft Restoration Plan when it has been prepared. To receive future public notices regarding restoration planning, and for review of restoration planning documents, contact Charlene Hall (*see* **ADDRESSES** section) or visit the T/V Command website at *http://www.darcnw.noaa.gov/command.htm* and *http://www.dfg.ca.gov/Ospr/restorations.html*. Requests must be in writing to be processed.

National Environmental Policy Act

The Fish and Wildlife Service and any other agencies that may receive funds from the Trustees must agree to obtain and comply with any applicable permits or authorizations from environmental regulatory agencies. In addition, recipients of funds must complete all environmental documentation and public review requirements under the National Environmental Policy Act (NEPA) and/or California Environmental Quality Act (CEQA).

Author

The primary authors of this notice are Kolleen Bannon (NOAA) and

James Haas (Service; *see* **ADDRESSES** section).

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*).

Dated: July 26, 2002.

D. Kenneth McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–19483 Filed 8–1–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the Information Collection Request for the Johnson-O'Malley Program Annual Report Form has been submitted to the Office of Management and Budget for approval and renewal under provision

of the Paperwork Reduction Act. You may submit comments on this information collection. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 1076–0096.

DATES: Please submit your comments and suggestions on or before September 3, 2002.

ADDRESSES: Send comments or suggestions directly to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503.

Send a copy of your comments to Garry R. Martin, Bureau of Indian Affairs, Office of Indian Education Programs, 1849 C Street, NW., MS 3512–MIB, Washington, DC 20240–0001. Telephone number 202–208–3478.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is necessary to assess the need for Johnson-O'Malley programs in accordance with 25 CFR Part 273, Subpart D, Section 273.50 Annual Reporting. A 60-day request for public comments on this information collection was published in the **Federal Register** on Monday, March 18, 2002 (67 FR 12043). No comments were received. Copies of the collection of information may be obtained by contacting the Bureau's clearance officer at 202–208–2574.

II. Request for Comments

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including through the use of automated collection techniques or other forms of information technology.

The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to OMB within 30 days in order to assure their maximum consideration.

All comments received are subject to public inspection. If you wish to have your name and address withheld from the public, you must state this prominently at the beginning of your comment. The requested information to be withheld will be honored to the extent of the law.

III. Data

Title: Johnson-O'Malley Program Annual Report Form.

OMB approval number: 1076–0096.

Frequency: Annually.

Description of respondents: Tribal, Tribal Organizations, School District education program administrators.

Estimated completion time: 5 hours.

Annual responses: 360.

Annual Burden hours: 1,800 hours.

Dated: May 24, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–19471 Filed 8–1–02; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; F–14880–A; NAA–5]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Kikiktagruk Inupiat Corporation, for lands within Secs. 11, 12 and 14, T. 17 N., R. 18 W., Kateel River Meridian, located in the vicinity of Kotzebue, Alaska, containing approximately 130 acres. Notice of this decision will also be published four times in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision, shall have until September 3, 2002 to file an appeal.

2. Parties receiving service by certified mail shall have until 30 days from the receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: Copies of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, # 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Chris Sitbon, Land Law Examiner, (907) 271–3226.

Chris Sitbon,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 02–19580 Filed 8–1–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–14015, SEA–6]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Sealaska Corporation for lands on Catherine Island, located in T. 51 S., R. 66 E., Copper River Meridian, Alaska. Notice of this decision will also be published four times in the *Juneau Empire*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 3, 2002 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 02–19581 Filed 8–1–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–01–1610–DQ]

Notice of Availability of the Northern and Eastern Colorado Desert Proposed Plan, an Amendment to the California Desert Conservation Area Plan, and the Final Environmental Impact Statement

AGENCY: Department of Interior, Bureau of Land Management, California Desert District.

ACTION: Notice of Availability of the Northern and Eastern Colorado Desert Proposed Plan (NECO), an amendment to the Bureau of Land Management (BLM) California Desert Conservation Area (CDCA) Plan, and associated Final Environmental Impact Statement (FEIS).

SUMMARY: NECO amends the CDCA Plan for a 5.5 million acre area in the southeastern part of the CDCA and provides for conservation of desert ecosystems for federal lands in the planning area on a landscape basis—for BLM lands, Joshua Tree National Park, and the Chocolate Mountains Aerial Gunnery Range, managed by the U.S. Marine Corps Yuma Air Station. NECO includes goals, objectives, management prescriptions, and monitoring in accordance with the Federal Land Policy and Management Act (FLPMA) of 1976 for comprehensive management of desert ecosystems, including the recovery of two species listed under the federal Endangered Species Act: the desert tortoise and Coachella Valley milkvetch. The FEIS evaluates the Proposed Plan Amendments and three alternatives. The FEIS also includes public comments on the DEIS and BLM's responses to those comments.

DATES: Written protests on the FEIS will be accepted if received by September 3, 2002, by the Environmental Protection Agency. Instructions for filing protests are contained in the NECO document Cover Sheet just inside the front cover, and are included below under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Copies of the document are being mailed to those who received the DEIS or provided comments on the DEIS. The document is available for review on line at *http://www.ca.blm.gov/cdd/landuseplanning.html* and is also available in hard copy or CDrom at the following addresses and telephone numbers:

BLM, 6221 Box Springs Blvd, Riverside, CA 92507; (909) 697–5200
BLM, 2601 Barstow Road, Barstow, CA 92311; (760) 252–6000
BLM, 300 So. Richmond Rd, Ridgecrest, CA 93555; (760) 384–5400
BLM, 690 W. Garnet, North Palm Springs, CA 92258; (760) 251–4800
BLM, 1661 So. 4th St., El Centro, CA 92243; (760) 337–4400
BLM, 101 W. Spikes Rd, Needles, CA 92363; (760) 326–7000

FOR FURTHER INFORMATION CONTACT: Richard E. Crowe, BLM, 6221 Box Springs Blvd, Riverside, CA 92507; (909) 697–5216.

Background Information: The Environmental Protection Agency published the Notice of Availability of the NECO DEIS in the **Federal Register** on February 23, 2001. The public review period on the DEIS began February 26, 2001 and ended November 1, 2001.

SUPPLEMENTARY INFORMATION: Following are the instructions from the *43 Code of Federal Regulations 1610.5–2* for filing protests:

(a) Any person who participates in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process.

(1) The protest shall be in writing and shall be filed with the Director. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final environmental impact statement containing the plan or amendment in the **Federal Register**. For an amendment not requiring the preparation of an environmental impact statement, the protest shall be filed within 30 days of the publication of the notice of its effective date.

(2) The protest shall contain:

(i) The name, mailing address, telephone number and interest of the person filing the protest;

(ii) A statement of the issue or issues being protested;

(iii) A statement of the part or parts of the plan or amendment being protested;

(iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

(v) A concise statement explaining why the State Director's decision is believe to be wrong.

(3) The Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(b) The decision of the Director shall be the final decision for the Department of the Interior.

Mailing address for filing a protest:

Regular mail—U.S. Department of the Interior, Director, Bureau of Land Management (210), Attn: Brenda Williams, P.O. Box 66538, Washington, DC 20240.

Overnight mail—U.S. Department of the Interior, Director, Bureau of Land Management (210), Attn: Brenda Williams, Telephone (202) 452–5045, 1620 "L" Street, NW., Rm 1075, Washington, DC 20036.

Alan Stein,

Acting District Manager.

[FR Doc. 02–19303 Filed 8–1–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–046748]

Public Land Order No. 7527; Revocation of Public Land Order No. 2632; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order in its entirety as to the remaining 10,119.14 acres of public lands withdrawn for the Savory-Pot Hook Reclamation Project. The lands are no longer needed for reclamation purposes. This action will open the lands to surface entry and mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 2632, which withdrew public lands for the Bureau of Reclamation Savory-Pot Hook Project, is hereby revoked in its entirety insofar as it affects the remaining lands within the following Townships:

Sixth Principal Meridian
Tps. 11 and 12 N., R. 89 W.,
T. 12 N., R. 90 W.,
Tps. 11 and 12 N., R. 91 W.,
T. 11 N., R. 92 W.,
T. 12 N., R. 93 W.,
T. 12 N., R. 94 W.,
T. 6 N., R. 99 W.

The areas described aggregate 10,119.14 acres in Moffat County.

More specific legal descriptions showing sections and subdivisions may be obtained by contacting the address or

phone number listed above. The documents may also be examined by the public during regular working hours at the Bureau of Land Management Colorado State Office.

2. At 9 a.m. on September 3, 2002, the lands described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 3, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on September 3, 2002, the lands described in paragraph 1 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 2, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–19579 Filed 8–1–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–2002–1430–EU]

COC 65896; Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Direct sale of public land in San Juan County, Colorado.

SUMMARY: The following lands have been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at not less than the appraised fair market value. The single parcel is described as: Public land within the NE¼ of Section 31, T.42 N., R.7 W., New Mexico Principal Meridian, identified as Tract 73, and containing 3.88 acres, more or less.

These lands are classified for disposal pursuant to section 7 of the Taylor Grazing Act and were identified for disposal in a land use plan which was in effect on September 5, 1985. The lands are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

Publication of this notice will initiate public review, consultation, and collaboration for this proposed sale. Copies of the notice will be provided to the Congressional delegation, the Governor, local government officials, and other interested parties for review and comment. Preliminary consultation with local governmental officials and other adjacent landowners indicates that there will be no opposition to the proposed sale.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. The sale is consistent with the San Juan/San Miguel Resource Management Plan, and no significant resource values will be affected by this transfer. Disposal of this small parcel to resolve an inadvertent occupancy trespass outweighs retaining the land in federal ownership. The public interest, therefore, will be well served by offering this parcel for direct sale.

The parcel is being offered only to Daren Hillery, fee owner of the adjoining property (Munzer Claim, MS 18619). The subject parcel contains a cabin that is owned by Mr. Hillery. Use of the direct sale procedures authored under 43 CFR 2711.3–3, will resolve an inadvertent occupancy trespass situation. The mineral estate will be reserved to the United States. Payment of purchase price will be deposited in the Federal Land Disposal Account authorized under Section 206 of the Federal Land Transaction Facilitation Act of 2000 (Public Law 106–248).

Terms, conditions, and reservations applicable to the sale are as follows:

1. The public land will be conveyed for not less than fair market value.

2. All mineral deposits in the land, and the right to prospect for, mine and remove such deposits from the same under applicable law and regulations shall be reserved to the United States.

3. A right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945) shall be reserved to the United States.

4. The conveyance shall be subject to an existing 25-foot wide right-of-way grant for a power distribution line.

The lands will not be offered for sale until at least 60 days after this notice is published in the **Federal Register**. This notice is also being published in a newspaper of general circulation in the vicinity of the public lands being proposed for sale.

DATES: Interested parties may submit comments to the Columbine Field Office Manager within 45 days of publication of this notice. Please reference the applicable serial number in all correspondence. Objections will be reviewed and this realty action may be sustained, vacated, or modified.

Unless vacated or modified, this realty action will become the final determination of the Department of the Interior.

Address for Comments: Bureau of Land Management, Columbine Field Office Manager, 15 Burnett Court, Durango, Colorado 81301.

FOR FURTHER INFORMATION CONTACT: Charlie Higby, BLM Realty Specialist, (970) 385–1374; San Juan Public Land Center, 15 Burnett Court, Durango, Colorado 81301.

Mark Stiles,

Center Manager, San Juan Public Lands Center.

[FR Doc. 02–19578 Filed 8–1–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–921–1410–BK–P]

Alaska; Notice for Publication; Filing of Plat of Survey; Alaska

The plat of survey of the following described land was officially filed in the Alaska State Office, Anchorage, Alaska, on the date indicated.

A plat representing the dependent resurvey of U.S. Survey No. 465, Alaska, Tract B, and the survey of partition lines for accreted land in front of U.S. Survey No. 465, Tract B, situated approximately 75 miles northwesterly from Kodiak, Alaska, was accepted November 30, 2001, and was officially filed March 20, 2002.

This plat was prepared at the request of the National Park Service to delineate the surrounding public lands.

This plat will immediately become the basic record for describing the land for all authorized purposes. This survey

has been placed in the open files in the Alaska State Office and is available to the public as a matter of information.

All inquires relating to these lands should be sent to the Alaska State Office, Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599; 907–267–1403.

Michael D. Wilson,

Acting Chief, Branch of Field Surveys.

[FR Doc. 02–19577 Filed 8–1–02; 8:45 am]

BILLING CODE 1410–BK–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–744 (Review)]

Brake Rotors from China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on brake rotors from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on March 1, 2002 (67 FR 9462) and determined on June 4, 2002 that it would conduct an expedited review (67 FR 40964, June 14, 2002).

The Commission transmitted its determination in this review to the Secretary of Commerce on July 29, 2002. The views of the Commission are contained in USITC Publication 3528 (July 2002), entitled Brake Rotors From China: Investigation No. 731–TA–744 (Review).

By order of the Commission.

Issued: July 30, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–19586 Filed 8–1–02; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–752 Review]

Crawfish Tail Meat From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on crawfish tail meat from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on crawfish tail meat from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is September 20, 2002. Comments on the adequacy of responses may be filed with the Commission by October 15, 2002. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: August 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1997, the Department of Commerce issued an antidumping duty order on imports of crawfish tail meat from China (62 FR 48218). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as crawfish tail meat, whether peeled or "shell-on."

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as tail meat processors.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is September 15, 1997.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations,

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 02–5–072, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List.

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 20, 2002. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 15, 2002. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1996.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2001 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of

total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2001 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2001 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 25, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–19544 Filed 8–1–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 00–4]

Gregory D. Owens, D.D.S.; Grant of Restricted Registration

On October 1, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Gregory D. Owens, D.D.S. (Respondent), seeking to revoke his DEA Certificate of Registration as a practitioner and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f) for reason that his continued registration is inconsistent with the public interest, as defined by 21 U.S.C. 823(f) and 824(a)(4). The Respondent timely filed a request for a hearing on the allegations raised by the Order to Show Cause, and the requested hearing was held before Judge Gail A. Randall in Abingdon, Virginia, on October 4, 2000. At the hearing, each party called one witness to testify and the Government introduced documentary evidence. The Respondent offered no documentary evidence at the hearing. After the hearing, both parties submitted Proposed Findings of Fact, Conclusions of Law and Argument. On May 4, 2001, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge, recommending that Respondent's registration be continued subject to certain restrictions.

On May 24, 2001, the Government filed Exceptions to Judge Randall's decision, and thereafter Judge Randall transmitted the record of these proceedings to the Deputy Administrator for final decision on June 4, 2001.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the recommended rulings, findings of fact, conclusions of law, and decision of the Administrative Law Judge. His adoption is in no way diminished by any recitation of facts, issues, or conclusions herein, or of any failure to mention a matter of fact or law.

On October 20, 1981, the Respondent received a DEA Certificate of Registration, number AO1188881, with a registration location of Knoxville, Tennessee. The registration was renewed annually until it expired on December 31, 1985. The last renewal of that registration number was given for a location in Kingsport, Tennessee.

In 1981, the Respondent received a license to practice dentistry in the state of Virginia. Sometime in 1986, the Respondent moved from Tennessee to Virginia. The Respondent has maintained his license to practice dentistry in the Commonwealth of Virginia since the time he first received it, through the time of this hearing.

Before July 1, 1996, licensed health care professionals in Virginia needed a separate Controlled Substance Registration from the Virginia Board of

Pharmacy. After July 1, 1996, a valid Virginia license to practice dentistry also conferred upon the license state authorization to handle controlled substances without a separate certificate from the Board of Pharmacy.

On August 29, 1987, the Respondent received a Controlled Substances Registration Certificate, number 0204–030208, from the Virginia Board of Pharmacy. The Respondent maintained the registration until its expiration on December 31, 1992.

On November 5, 1996, the Virginia Board of Dentistry, Department of Health Professions, conducted an unannounced inspection of the Respondent's practice. The Board of Dentistry found that the Respondent had hired an unlicensed hygienist, that the Respondent failed to keep records for two patients, and that he did not keep records for any prescriptions written on the weekends for any patient.

The Government alleged in the Order to Show Cause, and the Respondent agreed, that the Respondent issued prescriptions without a valid state license to handle controlled substances and with an expired DEA Certificate of Registration.

The Respondent testified that he did not realize that his DEA Certificate of Registration had expired until the Board of Dentistry inspected his office. The Respondent testified that he now understands that he must maintain a DEA registration if he wants to prescribe controlled substances.

On or about December 16, 1996, the DEA received an application from the Respondent for a controlled substances registration. The Respondent testified that he sent in the application after discussing his expired registration with the DEA on the telephone. The Respondent testified that he did not remember who told him that the DEA registration had expired. That application was granted, for on February 4, 1997, the DEA issued to the Respondent the DEA Certificate of Registration number BO5201366, and renewed it on October 25, 1999. An additional pending application for renewal is at issued in this proceeding.

Between the time that the DEA received the Respondent's 1996 application and the time that the DEA issued the certificate of registration at issue, the Respondent continued to prescribe controlled substances. A DEA Diversion Investigator (DI) testified that, on March 3, 1997, he received a tip from a Special Agent (SA) of the Virginia State Police that the Respondent may have prescribed controlled substances without authorization from either the DEA or the Commonwealth of Virginia. Consequently, the DI and SA began an investigation of area pharmacies.

The DI discovered that the Respondent used his expired DEA number, AO1188881, to prescribe controlled substances from January 1990 to January 1997. In addition, from December 31, 1992 to July 1, 1996, the Respondent lacked state authorization when he wrote prescriptions for controlled substances. The DI also testified that he found no evidence of diversion to the illicit market by the Respondent of any controlled substances. Furthermore, he testified that there was no indication by the regulatory agencies of Virginia, or by the DEA, that the Respondent had intentionally refused to renew a license or registration.

The DI testified that the Respondent called in a prescription to East Gate Drugstore for Darvocet on or about January 3, 1997, and again on or about January 15, 1997.

The Respondent credibly testified that he did not know, prior to this hearing, that Darvocet was a controlled substance, and further, at the hearing he stated that he did not understand what 'Schedule IV' meant.

While the Respondent awaited action on his December 16, 1996 application, he pleaded guilty to a misdemeanor in the U.S. District Court for the Western District of Virginia for failure to file income tax returns from 1990–94. Upon the Respondent's plea entered on January 30, 1997, the District Court sentenced him with a fine of $10,000 plus cost of $125 and five months in the Virginia Community Correctional Center, where the Respondent was allowed daily work release.

The Respondent testified that he was wrong not to file his taxes. He explained that he believed that he was not legally obligated to pay federal income taxes, and that he had so written to the IRS. The IRS chose not to pursue the matter at the time. The Respondent testified that he now understands that he is obligated to pay taxes, having learned "the hard way."

On June 30, 1997, the Respondent pleaded guilty to a second misdemeanor in the Western District of Virginia, this time for failure to report his change of address to the DEA. The District Court sentenced the Respondent to two years of probation, a $5,000 fine and $25 in costs.

On November 24, 1997, the Board of Dentistry for the Commonwealth of Virginia (Board) issued an Order, placing the Respondent on indefinite probation and imposing various terms and conditions on his continued dental license. For example, the Respondent was ordered to attend fifteen hours of continuing education for the renewal of his license, with a specific course on OSHA. The Respondent must provide the Board with certificates of his attendance within six months of the date that the Order became final. The Order also required the Respondent to provide a copy of his "current DEA registration/certificate" within two weeks of that same date of finality. The Respondent credibly testified that he had completed these requirements, and the Government presented no evidence to the contrary. Significantly, the Board's Order did not limit the Respondent's authority to handle controlled substances, despite a finding that the Respondent prescribed controlled substances at a time when he did not have authority from either Virginia or the DEA to do so. The Respondent consented to one annual unannounced inspection of his patent records by the Board, and he further consented to the Board's observing the on-site treatment of his patients. Also, the Board required that the Respondent's conduct be commensurate with Virginia's statutes that regulate dentistry, specifically Virginia Code sections 54.1–2700–2729, and Virginia's Drug Control Act, Virginia Code sections 54.1–3400–3472.

The DEA last renewed the Respondent's registration, number BO5201366, on October 1, 1999. That registration expired on December 31, 1999. On November 17, 1999, the DEA received the Respondent's renewal application, which was dated November 8, 1999. The address on the Certificate of Registration is current.

On March 30, 2000, the DI approved the Respondent's renewal application and sent it to DEA Headquarters.

Pursuant to 21 U.S.C. 823(f), and subdelegations of authority thereunder found at 28 CFR 0.100(b) and 0.104, the Deputy Administrator may deny an application for registration as a practitioner, if he determines that the issuance of such a registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in evaluating the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances;

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances;

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive. The Deputy Administrator may properly rely on any one or any combination of these factors, and may give each factor the weight he deems appropriate in determining whether an application for registration should be denied. *See Henry J. Schwarz, M.D.*, 54 FR 16,422 (1989). As an initial matter, the Government bears the burden of proving that registration of the Respondent is not in the public interest. *See Shatz* v. *United States Dep't of Justice*, 873 F.2d 1089, 1091 (8th Cir. 1989).

Regarding factor one, the recommendation of the State licensing board, Judge Randall found the Virginia Board of Dentistry has not made any official recommendation regarding this proceeding's outcome. The record shows that Respondent's dental license is currently on indefinite probation, under the conditions imposed by the Board's Order.

Judge Randall found it significant that the Board's Order did not limit Respondent's authority to handle controlled substances, despite a finding that Respondent prescribed controlled substances during a period when he was not authorized to do so by either the State of Virginia nor by DEA. The parties did not dispute that Respondent currently has state authority to handle controlled substances.

The Deputy Administrator concurs with Judge Randall's noting that a review of the Respondent's terms of probation serves to shed light on what the Board believed was necessary to protect the public interest. The following terms are relevant: the Respondent must attend fifteen hours of continuing education for the renewal of his license, with a specific course on OSHA, and must provide the Board with certificates of his attendance; the Respondent must submit to the Board quarterly reports of his current address and current employment, if any; the Respondent must consent to one annual unannounced inspection of his patient records by the Board; the Respondent must also consent to the Board's observation of the on-site treatment of his patients, if requested; and finally, the Board required Respondent to comply with Virginia's statues that regulate dentistry, specifically Virginia Code Sections 54.1–2700–2729, and Virginia's Drug Control Act, Virginia Code Sections 54.1–3400–3472.

The Deputy Administrator concurs with Judge Randall's conclusion that the Board's placement of Respondent's license on probation reflects favorably upon Respondent's retaining his DEA Certificate of Registration, and upon DEA's granting Respondent's pending renewal application. Instead of suspending or limiting Respondent's authority to handle controlled substances, the Board simply chose to heighten monitoring of Respondent's practice. The Deputy Administrator concurs with Judge Randall's conclusion that such action by the Board demonstrates that the Board does not believe Respondent poses a danger to the public health or safety, to the extent that he cannot be trusted with the serious responsibilities of practicing dentistry and handling controlled substances.

Regarding factors two and four, experience in dispensing controlled substances, and compliance with laws related to controlled substances, the Deputy Administrator concurs with Judge Randall's finding that the record shows Respondent clearly has demonstrated a lack of attention to maintaining the necessary state licenses and federal registration to handle controlled substances. While maintaining his license to practice dentistry in Virginia since 1981, Respondent allowed his state license to handle controlled substances lapse in December 1992. The record further shows Respondent continued to prescribe controlled substances without a valid DEA registration number from January 1990 to January 1997, and without state authority from January 1993 to July 1996. The Government correctly asserts that the Respondent's conduct was proscribed by 21 U.S.C. 822(b), 841(a)(1), and 843(a)(2), as well as 21 CFR 1306.03.

The Deputy Administrator concurs with Judge Randall's finding that Respondent's admitted ignorance of his responsibilities as a practitioner are extremely troubling. Not only did Respondent forget to renew his state license and DEA registration over the years, but he also continued to prescribe controlled substances without the authority granted by these licenses. Judge Randall noted that Respondent prescribed Darvocet for a patient in January 1997, while his initial application for the DEA registration at issue was pending. Respondent testified at the hearing that he did not know Darvocet was a controlled substance or in what schedule it was. In fact, Respondent testified he did not know what the term "Schedule IV" meant.

The Deputy Administrator concurs with Judge Randall's conclusion that Respondent's past failures to pay attention to his state license to handle controlled substances and his DEA registration provide ample evidence for the revocation of his DEA Certificate of Registration and the denial of any pending applications for renewal.

The Deputy Administrator also concurs, however, with Judge Randall's findings that Respondent credibly testified that he has been made acutely aware of his licensing obligations since the Board's involvement in his practice since 1997, and also the significance of the Board's decision to continue Respondent's state authorization to handle controlled substances, with conditions, as discussed pursuant to factor one, above.

Regarding factor three, convictions under Federal or State laws relating to controlled substances, the Deputy Administrator finds the record contains no evidence that Respondent has been convicted of a crime related to his handling of controlled substances. Respondent does have a federal misdemeanor conviction for his failure to report his change of address to the DEA.

Regarding factor five, other conduct which may threaten the public health or safety, Judge Randall found the Government's reliance on Respondent's conduct prior to the 1999 DEA renewal of Respondent's registration as a basis for denial was inappropriate. The Deputy Administrator concurs with Judge Randall's conclusion that since the Government knew about this conduct before it renewed Respondent's registration in 1999, it would be inconsistent to now allow the Government to use this information as a basis to revoke Respondent's registration and deny his application for renewal, especially since there is no information in the record of any additional or subsequent misconduct that would warrant a change in DEA's position. The Deputy Administrator has considered and rejected the Government's Exceptions to this finding.

The Deputy Administrator further concurs with Judge Randall's findings that the record demonstrates that Respondent has learned from his past mistakes and has demonstrated sufficient willingness to accept responsibility, as shown by his 1997 guilty pleas to the charges of federal income tax evasion and failure to notify DEA of his change of address. The Deputy Administrator has considered and rejected the Government's

exceptions to Judge Randall's findings in this regard.

Further evidence relevant to this factor was received by the Deputy Administrator subsequent to the transmittal of the record for his final decision. Judge Randall's Recommended Decision included a requirement that, within one year of the final order, Respondent attend a course in the handling and identification of controlled substances, and provide proof to DEA of his completion of the course. Apparently acting upon his own initiative following receipt of Judge Randall's Recommended Decision, Respondent wrote a letter to the attention of Judge Randall wherein he stated that he was unable to find a course concerning controlled substances, but instead had attended "three minor and two major dental meetings" and in a four page attachment had apparently taken the Virginia Board of Dentistry Statutes and Regulations and had apparently handwritten in outline format "all pertinent laws" relating to controlled substances. By letter dated January 25, 2002, Judge Randall transmitted this submission to the Office of the Deputy Administrator, noting also that she "informed both parties that I am forwarding this letter to you for consideration with the record." While this submission's primary relevance lies in tending to show Respondent's apparent desire to rehabilitate himself, more concrete evidence was soon forthcoming.

By letter dated March 27, 2002, Respondent submitted documentation to the Office of the Deputy Administrator evidencing his attendance of the 70th Annual Nation's Capitol Dental Meeting, held February 28 through March 2, 2002, and sponsored by the District of Columbia Dental Society. Respondent's submission included a Continuing Education Verification Form indicating his attendance at *inter alia* two Registered Clinics entitled Pharmacology and Therapeutics I and II. The course outline, also submitted, indicated the clinics focused on the proper handling of controlled substances in a dental setting. The Verification Form states that, at the end of each clinical program listed thereon, a verification code will be announced. Respondent's Verification Form listed such a code beside each of the above-mentioned clinics. The Form further stated the verification codes could be checked by contacting the District of Columbia Dental Society. This was done, and Respondent's codes were verified as being correct, indicating his attendance at the clinics.

By letter dated June 18, 2002, the Office of the Deputy Administrator transmitted copies of the two above-referenced submissions to the attention of counsel for the Government in this matter, and granted until close of business June 21, 2002, to provide any response deemed necessary. By letter dated June 21, 2002, the Government objected to the consideration of the submissions as an unauthorized attempt to re-open the record, and further objected on the purported grounds that the Government would be prejudiced by lack of an opportunity to cross-examine the Respondent and introduce rebuttal evidence. The Deputy Administrator hereby rejects the Government's objections for the following reasons. First, the Deputy Administrator finds that this evidence is cumulative, in that it merely reinforces the same conclusion he would have reached in the absence of this evidence. Second, of the two submissions, the March 27, 2002, submission of Respondent's attendance at the Registered Clinics at the 70th Annual Nation's Capitol Dental Meeting carries far more probative weight, for the very reason the Government seeks to object to its consideration—Respondent's attendance at the clinics is objectively verifiable by checking the verification codes. The codes were verified as correct, indicating Respondent's attendance at the clinics. It is hard to conceive what cross examination and rebuttal evidence could accomplish to change that fact.

Therefore, the Deputy Administrator has considered these two submissions, and finds they constitute evidence that Respondent is sincere in his desire to comply with the obligations of a DEA registrant, and that they contribute to the Deputy Administrator's finding that Respondent would not pose a threat to the public health or safety if allowed to maintain a DEA Registration.

The Deputy Administrator concurs with Judge Randall's finding that the Government has met its burden of proof for revocation of the Respondent's Certificate of Registration and denial of the pending renewal application. The Deputy Administrator notes, however, that he must consider all of the facts and circumstances of a particular case when deciding the appropriate remedy. *See Martha Hernandez, M.D.*, 62 FR 61,145, 61,147 (1997). The Deputy Administrator must also consider the Respondent's acceptance of responsibility for past offenses and rehabilitation efforts when deciding the likelihood that the Respondent's future conduct with respect to his DEA registration will be consistent with the public interest as defined by 21 U.S.C. 823(f). *See e.g., Michael Alan Patterson, M.D.*, 65 FR 5,682 (2000).

In the instant case, the Deputy Administrator concurs with Judge Randall's conclusion that the Respondent should be allowed the opportunity to demonstrate that he can now handle the responsibilities of a DEA registrant. The Deputy Administrator further concurs with Judge Randall's determination that the public interest would best be served by monitoring the Respondent's handling of controlled substances during this registration period. Therefore, like Judge Randall, the Deputy Administrator concludes that granting the Respondent a registration, with restrictions, "will allow the Respondent to demonstrate that he can responsibly handle controlled substances in his [dental] practice, yet simultaneously protect the public by providing a mechanism for rapid detection of any improper activity related to controlled substances." *Michael J. Septer, D.O.*, 61 FR 53,762, 53,765 (1996) (*citing Steven M. Gardner, M.D.*, 51 FR 12,576 (1986)).

Therefore, the Respondent's application shall be granted, pursuant to the following restrictions and conditions:

(1) During the duration of the newly renewed registration, the Respondent must provide the local DEA office with a log of activities on a quarterly basis that shall state: (1) The date that a controlled substance prescription was written, or such substance was administered; (2) the name of the patient for whom the prescription was written, or to whom the substance was administered; (3) the patient's complaint; (4) the name, dosage, and quantity of the substance prescribed, dispensed, or administered; and (5) the date that the medication was last prescribed, dispensed, or administered to that patient, as well as the amount last provided to that patient. If no controlled substances are prescribed, administered, or dispensed during a given quarter, the Respondent shall indicate that fact in writing, in lieu of submission of the log.

(2) Within 30 days of the event, the Respondent must inform the local DEA office of any action taken by any state upon his medical license or upon his authorization to handle controlled substances within that state.

(3) Should the Respondent change employment during this registration period, he shall immediately notify the local DEA office that is monitoring his log of activities.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the

authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for renewal of his registration submitted by Gregory D. Owens, D.D.S., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than September 3, 2002.

Dated: July 24, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–19530 Filed 8–01–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: Interagency alien witness and informant record; Form I/854.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 12, 2002 at 67 FR 18039, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Type of the Form/Collection:* Interagency Alien Witness and Informant Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–854, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collection is used by law enforcement agencies to bring alien witnesses and informants to the United States in "S" nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 125 responses at 4.25 per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 531 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: July 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–19473 Filed 8–01–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Nonimmigrant Petition Based on Blanket L Petition; Form I–129S.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 12, 2002 at 67 FR 18038, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 3, 2002.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques of other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Nonimmigrant Petition Based on Blanket L Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–29S, Immigration Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by an employer to classify employees as L–1 nonimmigrant intracompany transferees under a blanket L petition approval. The INS will use the data on this for to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 145,750 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: July 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–19474 Filed 8–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Application for Nonresident Alien's Mexican Border Crossing Card; Form I–190.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 12, 2002 at 67 FR 18037, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comment and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Nonresident Alien's Mexican Border Crossing Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–190, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Individuals or households. This form will be used to obtain data from an applicant for replacement lost, stolen, or mutilated Mexican Border Crossing Card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 270,410 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 22,444 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D

Street, NW., Ste. 1600, Washington, DC 20530.

Dated: July 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–19475 Filed 8–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Certificate for health care benefits.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 5, 2002 at 67 FR 16438, allowing or a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Certificate of Health Care Benefits.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–15), Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. The data collected in this process is used by the credentialing organization to determine if the alien is eligible to receive a certificate. The Certificate is then submitted to the INS by an alien in order to obtain an immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 7,000 respondents at 2 hours per response and 14,000 applicant responses at 1.66 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 37,240 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding he estimated pubic burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: July 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–19476 Filed 8–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Arrival and Department Record; Form I–94.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 12, 2002 at 67 FR 18038, allowing for a 60-day public comment period. Comments were received and have been reconciled in the Supporting Statement.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Arrival and Departure Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–94, Inspections Divisions, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Documentation of alien arrival and departure to and from the United States is a part of the manifest requirements of Sections 231 and 235 of the Immigration and Nationality Act (INA) and may be evidence of registration when issued as provided by Section 264 of the INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 13,924,380 responses at 4 minutes (.066) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 919,009 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additional, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: July 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–19477 Filed 8–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 26, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: O*NET® Data Collection Program.

OMB Number: 1205–0421.

Affected Public: Individual or households; Business or other for-profit institutions; Farms; Federal Government; and State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Every 3 to 5 years.

Number of Respondents: 80,919.

Annual Responses: 80,919.

Average Response Time: 30 minutes to complete survey and 15 to 90 minutes for point-of-contact to perform various survey distribution and coordination activities.

Estimated Burden Hours: 33,373.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The O*NET® Data Collection Program yields information on worker and job characteristics to populate the O*NET (Occupational Information Network) database. The O*NET system is replacing the out-of-date Dictionary of Occupational Titles, and is used for a wide range of purposes related to employment and training program administration, career counseling and development, training curriculum design, Employment Service job matching and referral, development of Labor Market Information, rehabilitation and disability programs, and private sector human resources functions. The survey includes contacting businesses to gain their cooperation, and collecting information from employees of cooperating businesses. For a small number of occupations, professional associations will be contacted to gain their cooperation in providing member lists for surveying. Subject matter experts will also be surveyed in a limited number of cases. This collection of information is authorized by the Workforce Investment act (WIA). Section 309 of Workforce Investment Act (P.L. 105–220) requires the Secretary of Labor to oversee the "development, maintenance, and continuous improvement of a nationwide employment statistics system," which shall include, among other components, "skill trends by occupation and industry."

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–19522 Filed 8–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 26, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Servicing Multi-Piece and Single-Piece Rim Wheels—29 CFR 1910.177(d)(3)(iv).

OMB Number: 1218–0219.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government; and Federal Government.

Frequency: On occasion.

Type of Response: Recordkeeping and Third-party disclosure.

Number of Respondents: 8.

Number of Responses: 8.

Average Time per Response: 5 minutes.

Annual Burden Hours: 1.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1910/177(d)(3)(iv) specifies one paperwork requirement. The following section describes who uses the information collected under the requirement, as well as how they use it. The purpose of the requirement is to reduce employees' risk of death or serious injury by ensuring that restraining devices used by them during the servicing of multi-piece and single piece rim wheels are in safe operating condition. Based on previous ICR approvals, OSHA has determined that the training requirements in paragraphs (c), (f), and (g) of the Standard are not collection-of-information requirements under the Paperwork Reduction Act.

Certification of Repair (paragraph (d)(3)(iv)) requires that when restraining devices and barriers are removed from service because they have been found to be defective, they shall not be returned to service until they are repaired and reinspected. If the repair is of a structural nature, the manufacturer or a Registered Professional Engineer must certify that the strength requirements specified in (d)(3)(i) of the standard have been met.

The certification records are used to assure that equipment has been properly repaired. The certification record also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

Agency: Occupational safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Shipyard Employment Standards—29 CFR 1915.113(b)(1) and 1915.172(d).

OMB Number: 1218–0220.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government; and Federal Government.

Frequency: Quarterly and Annually.

Type of Response: Recordkeeping and Third-party disclosure.

Number of Respondents: 800.

Number of Responses: 16,320.

Average Time per Response: 30 minutes to examine and test hooks; 15 minutes to quarterly examine unfired pressure vessels; and 20 minutes to conduct a yearly hydrostatic pressure test of vessels and to generate, maintain, and disclose a certificate or a record of test results.

Annual Burden Hours: 4,416.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Standard specifies two paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that equipment has been tested and is in safe operating condition.

Test Records for Hooks (paragraphs 1915.113(b)(1)). This paragraph requires that the manufacturer's recommendations be followed in determining the safe working loads of the various sizes and types of hooks. If the manufacturer's recommendations are not available, the hook must be tested to twice the intended safe working load before it is initially put into use. The employer must maintain and keep readily available a certification record which includes the date of such test, the signature of the person who performed the test, and the identifier for the hook which was tested.

Examination and Test Records for Unfired Pressure Vessels (paragraph 1915.172(d)). This paragraph requires that portable, unfired pressure vessels be examined quarterly by a competent person and subjected to a yearly hyddrostatic pressure test. A certification record of such examinations and tests shall be maintained.

The records are used to assure that equipment has been properly tested. The records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standards.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Telecommunications, Training Certification—29 CFR 1910.168(c).

OMB Number: 1218–0225.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government; and Federal Government.

Frequency: On occasion.

Type of Response: Recordkeeping and Third-party disclosure.

Number of Respondents: 306.

Number of Responses: 107,138.

Average Time per Response: 2 minutes for existing employees and 4 minutes for new employees.

Annual Burden Hours: 7,487.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Standard specifies one information-collection requirement. The following section describes who uses the information collected under the requirement, as well as how they use it. The purpose of this requirement is to ensure that employees have been trained as required by the standard to prevent risk of death or serious injury.

Under the paperwork requirement specified by paragraph (c) of the Standard, employers must certify that his or her employees have been trained as specified by the performance-language training provision of the standard. Specifically, employers must prepare a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the employee's employment. The information collected would be used by employers as well as compliance officers to determine that employees have been trained according to the requirements set forth in 29 CFR 1910.268(c).

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–19523 Filed 8–1–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 23, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: New collection.

Title: Study of the WIA Allocation Formula—Phase II.

OMB Number: 1205–0NEW.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: One time.

Number of Respondents: 52.

Annual Responses: 52.

Average Response Time: 1 hour.

Total Annual Burden Hours: 52.

Total Annualized Capital/Startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Study of the Workforce Investment Act (WIA) Allocation Formula is authorized by section 171(c)(2)(B) of the Act. There are two principal goals of this data collection: (1) To provide a national snapshot of the different WIA allocation formulae States use and (2) to identify alternative mechanisms by which States could consider allocating funds and how different allocation strategies impact funding levels. Respondents will be key workforce officials in each State.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–19524 Filed 8–1–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29

CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA020005 (Mar. 1, 2002)
PA020006 (Mar. 1, 2002)
PA020007 (Mar. 1, 2002)
PA020009 (Mar. 1, 2002)
PA020014 (Mar. 1, 2002)
PA020023 (Mar. 1, 2002)
PA020024 (Mar. 1, 2002)
PA020029 (Mar. 1, 2002)
PA020040 (Mar. 1, 2002)
PA020060 (Mar. 1, 2002)
West Virginia
WV020001 (Mar. 1, 2002)
WV020002 (Mar. 1, 2002)
WV020006 (Mar. 1, 2002)

Volume III

None

Volume IV

None

Volume V

None

Volume VI

Oregon
OR020001 (Mar. 1, 2002)
OR020007 (Mar. 1, 2002)
OR020017 (Mar. 1, 2002)

Volume VII

California
CA020001 (Mar. 1, 2002)
CA020002 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020019 (Mar. 1, 2002)
CA020023 (Mar. 1, 2002)
CA020025 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
CA020031 (Mar. 1, 2002)
CA020033 (Mar. 1, 2002)
CA020035 (Mar. 1, 2002)
CA020036 (Mar. 1, 2002)
CA020037 (Mar. 1, 2002)
Hawaii
HI020001 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 25th day of July, 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–19346 Filed 8–1–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities; Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined

that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 1, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Research Libraries, Associations, and Institutions, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

2. *Date:* August 1, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Asian Studies, submitted to the Division of Research Programs at the May 1, 2002 deadline.

3. *Date:* August 2, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in British Literature I, submitted to the Division of Research Programs at the May 1, 2002 deadline.

4. *Date:* August 5, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Philosophy, submitted to the Division of Research Programs at the May 1, 2002 deadline.

5. *Date:* August 5, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships Program in British Literature II, submitted to the Division of Research Programs at the May 1, 2002 deadline.

6. *Date:* August 6, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Political Science, Economics, Geography, and Sociology, submitted to the Division of Research Programs at the May 1, 2002 deadline.

7. *Date:* August 7, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Romance Languages and Literatures, submitted to the Division of Research Programs at the May 1, 2002 deadline.

8. *Date:* August 9, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships Program in Comparative Literature and Theater, submitted to the Division of Research Programs at the May 1, 2002 deadline.

9. *Date:* August 9, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in American Studies, submitted to the Division of Research Programs at the May 1, 2002 deadline.

10. *Date:* August 12, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Anthropology and Archaeology, submitted to the Division of Research Programs at the May 1, 2002 deadline.

11. *Date:* August 13, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships Program in Latin American Studies, submitted to the Division of Research Programs at the May 1, 2002 deadline.

12. *Date:* August 13, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in History of Art, Architecture, and Archaeology I, submitted to the Division of Research Programs at the May 1, 2002 deadline.

13. *Date:* August 14, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Classical, Medieval, and Renaissance Studies, submitted to the Division of Research Programs at the May 1, 2002 deadline.

14. *Date:* August 15, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in African and Near Eastern Studies, submitted to the Division of Research Programs at the May 1, 2002 deadline.

15. *Date:* August 19, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Germanic and Slavic Languages and Literatures, Literary Criticism, and Linguistics, submitted to the Division of Research Programs at the May 1, 2002 deadline.

16. *Date:* August 20, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Film, Communication, Rhetoric, and Media, submitted to the Division of Research Programs at the May 1, 2002 deadline.

17. *Date:* August 21, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in History of Art and Architecture II, submitted to the Division of Research Programs at the May 1, 2002 deadline.

18. *Date:* August 22, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in European History II, submitted to the Division of Research Programs at the May 1, 2002 deadline.

Heather Gottry,
Acting Advisory Committee Management Officer.

[FR Doc. 02–19571 Filed 8–1–02; 8:45 am]
BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 313, "Application for Material License"; and NRC Form 313A, "Training and Experience and Preceptor Statement."

3. *The form number if applicable:* NRC Form 313 and NRC Form 313A.

4. *How often the collection is required:* There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the information for renewal of the license.

5. *Who will be required or asked to report:* All applicants requesting a license for byproduct or source material.

6. *An estimate of the number of responses:* 17,549.

7. *The estimated number of annual respondents:* 17,549 (3,743 NRC licensees + 12,726 Agreement State licensees + 1080 new modalities).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 116,255 (26,687 hours for reporting and 89,568 hours for recordkeeping).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Applicants must submit NRC Forms 313, and 313A to obtain a specific license to possess, use, or distribute byproduct or source material. The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures which are adequate to protect the public health and safety, and minimize danger to life or property.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 3, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen,
Office of Information and Regulatory Affairs (3150–0120),
NEOB–10202,
Office of Management and Budget,
Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 29th day of July, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–19536 Filed 8–1–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–251]

Florida Power and Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–41, issued to Florida Power and Light (the licensee), for operation of the Turkey Point Unit 4 located in Miami-Dade County.

The proposed amendment would modify the existing rod position Technical Specifications to allow the use of an alternate method of determining rod position for a control rod with an inoperable rod position indication. This would be effective until repair of the indication system can be completed.

The reason for the exigency is due to the unanticipated failure of the Turkey Point Unit 4 Analog Rod Position Indication for control rod C–9 in Shutdown Bank A which was declared inoperable on Thursday, July 25, 2002. Additionally, there is a concern regarding excessive wear due to exercising the movable incore detectors every 8 hours (90 times per month), to comply with the compensatory actions required by the current Action Statement a. of TS 3.1.3.2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Florida Power and Light Company (FPL) has concluded that the proposed amendment to the Turkey Point Unit 4 operating license does not involve a significant hazards consideration. In support of this determination, an evaluation of each of the three standards set forth in 10 CFR 50.92 is provided below.

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change provides an alternative method for verifying rod position of one shutdown rod. The proposed change meets the intent of the current specification in that it ensures verification of position of the shutdown rod once every eight (8) hours. The proposed change provides only an alternative method of monitoring shutdown rod position and does not change the assumption or results of any previously evaluated accident.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As described above, the proposed change provides only an alternative method of determining the position of one shutdown rod. No new accident initiators are introduced by the proposed alternative manner of performing rod position verification. The proposed change does not affect the reactor protection system or the reactor control system. Hence, no new failure modes are created that would cause a new or different kind of accident from any accident previously evaluated.

Therefore, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. The bases of Specification 3.1.3.2 state that the operability of the rod position indicators is required to determine control rod positions and thereby ensure compliance with the control rod alignment and insertion limits. The proposed change does not alter the requirement to determine rod position but provides an alternative method for determining the position of the affected rod. As a result, the initial conditions of the accident analysis are preserved and the consequences of previously analyzed accidents are unaffected.

Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in the margin of safety.

Based on the reasoning presented above, FPL has determined that the requested changes involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 3, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.741(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 29, 2002, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 29th day of July, 2002.

For the Nuclear Regulatory Commission.

Eva A. Brown,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–19537 Filed 8–1–02; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement To Modify Requirements Regarding Mode Change Limitations Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the modification of requirements regarding technical specifications (TS) mode change limitations. The NRC staff has also prepared a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to modify requirements that limit changing operational modes. Licensees of nuclear power reactors to which the models apply could then request amendments, confirming the applicability of the SE and NSHC determination to their reactors. The NRC staff is requesting comment on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires September 3, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike (Room O–1F21), Rockville, Maryland. Comments may be submitted by electronic mail to *CLIIP@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Dennig, Mail Stop: O–12H4, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1156.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors," was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes, by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS after a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice solicits comment on a proposed change to the STS that modifies requirements for mode change limitations. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or announce the availability of the change for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the modification of TS requirements regarding mode change limitations. This change was proposed for incorporation into the standard technical specifications by the Owners Groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF–359. TSTF–359 can be viewed on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/techspecs.html*.

Applicability

This proposal to modify technical specification requirements for mode change limitations is applicable to all licensees who have adopted or will adopt, in conjunction with the proposed change, technical specification requirements for a Bases control program consistent with the TS Bases Control Program described in Section 5.5 of the applicable vendor's STS.

To efficiently process the incoming license amendment applications, the staff requests that each licensee applying for the changes proposed in TSTF–359 include Bases for the proposed TS consistent with the Bases proposed in TSTF–359. In addition, licensees that have not adopted requirements for a Bases control program by converting to the improved STS or by other means, are requested to include the requirements for a Bases control program consistent with the STS in their application for the proposed change. The need for a Bases control program stems from the need for adequate regulatory control of some key elements of the proposal that are contained in the proposed Bases for LCO 3.0.4 and SR 3.0.4. The staff is requesting that the Bases be included with the proposed license amendments in this case because the changes to the TS and the changes to the associated Bases form an integral change to a plant's licensing bases. To ensure that the overall change, including the Bases, includes appropriate regulatory controls, the staff plans to condition the issuance of each license amendment on the licensee's incorporation of the changes into the Bases document and on requiring the licensee to control the changes in accordance with the Bases Control Program. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested Bases and Bases control program. However, deviations from the approach recommended in this notice may require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. After evaluating the comments received as a result of this notice, the staff will either reconsider the proposed change or announce the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or the proposed no significant hazards consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change must submit an application in accordance with applicable rules and other regulatory requirements. For each application the staff will publish a notice of consideration of issuance of amendment to facility operating licenses, a proposed no significant hazards consideration determination, and a notice of opportunity for a hearing. The staff will also publish a notice of issuance of an amendment to operating license to announce the modification of requirements for mode change limitations for each plant that receives the requested change.

Proposed Safety Evaluation

U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement, Technical Specification Task Force (TSTF) Change TSTF–359, Changes to Limiting Condition for Operation 3.0.4 and Surveillance Requirement 3.0.4 Regarding Mode Change Limitations

1.0 Introduction

On March 9, 2001, the Nuclear Energy Institute (NEI) Risk Informed Technical Specifications Task Force (RITSTF) submitted a proposed change, TSTF–359, Revision 5, to the standard technical specifications (STS) (NUREGs 1430–1434) on behalf of the industry (TSTF–359 Revisions 1 through 4 were internal NEI iterations). TSTF–359, Revision 5, is a proposal to change the STS Limiting Condition for Operation (LCO) 3.0.4 and Surveillance Requirement (SR) 3.0.4 requirements regarding mode change limitations. The proposed change would modify LCO 3.0.4 and SR 3.0.4 by risk informing limitations on entering the mode of applicability of a LCO.

At the July 31, 2001, NRC/RITSTF meeting, the staff provided verbal comments, questions and requests for additional information (RAIs) pertaining to TSTF–359, Revision 5. In response to the staff RAIs and questions, the RITSTF submitted TSTF–359, Revision 6, on February 22, 2002. In a letter of April 26, 2002, the staff suggested specific changes that were needed, and after further discussions, the RITSTF submitted the final TSTF–359, Revision 7, on July 17, 2002. This proposal is one of the industry's initiatives under the risk-informed technical specifications program. These initiatives are intended to maintain or improve safety while reducing unnecessary burden and to make technical specification requirements consistent with the Commission's other risk-informed regulatory requirements, in particular the maintenance rule.

The current technical specifications (TS) specify that a nuclear power plant cannot go to higher modes of operation [1] (*i.e.*, move towards power operation) unless all TS systems, normally required for the higher mode, are operable. This limitation is included (with several exceptions for some plants) in LCO 3.0.4 and SR 3.0.4. LCO 3.0.4 and SR 3.0.4 in the STS currently state in part that when an LCO or SR is not met, "entry into a MODE or other specified condition in the applicability shall not be made except when the associated actions to be entered permit continued operation in the MODE or other specified condition in the applicability for an unlimited period of time." The industry believes that this requirement is unnecessarily restrictive and can unduly delay plant startup while considerable resources are being used to resolve startup issues that are risk insignificant or low risk. A maintenance activity that takes longer than planned can delay a mode change and adversely impact a utility's orderly plant startup and return to power operation. The objective of the proposed change is to provide additional operational flexibility without compromising plant safety.

The proposed changes to LCO 3.0.4 and SR 3.0.4 would allow, for systems and components, mode changes into a TS condition that has a specific required action and completion time. The licensee will utilize the LCO 3.0.4 or SR 3.0.4 allowance only when they determine that there is a high likelihood that the LCO will be satisfied within the LCO completion time (CT), after the mode change. In addition, the LCO 3.0.4 and SR 3.0.4 allowances can be applied to values and parameters in specifications when explicitly stated in the TS (non-system/component TS such as: Reactor Coolant System Specific Activity). These changes are in addition to the current mode change allowance when a required action has an indefinite completion time. The LCO 3.0.4 and SR 3.0.4 mode change allowances are not permitted for the systems and components (termed "higher risk") listed in Section 3.1.1, "Identification of Risk Important TS Systems and Components," for the modes specified. Two examples are: (1) Westinghouse plants cannot transition from Mode 5 to Mode 4 without a High Head Safety Injection System train operable; and, (2)

[1] MODE numbers decrease in the transition "up to a higher mode of operation"; power operation is MODE 1.

Westinghouse plants cannot transition up into any mode with an inoperable required emergency diesel generator.

2.0 Regulatory Evaluation

In 10 CFR 50.36, the Commission established its regulatory requirements related to the content of TS. Pursuant to 10 CFR 50.36, TS are required to include items in the following five specific categories related to station operation: (1) Safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCOs); (3) surveillance requirements (SRs); (4) design features; and (5) administrative controls. The rule does not specify the particular requirements to be included in a plant's TS. As stated in 10 CFR 50.36(c)(2)(i), the "Limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility. When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow any remedial action permitted by the technical specification * * *" By convention, the LCOs are contained in Sections 3.1 through 3.10 of the TS. TS Section 3.0, on "LCO and SR Applicability," provide details or ground rules for complying with the LCOs. LCO 3.0.4 and SR 3.0.4 address requirements for LCO compliance when transitioning between modes of operation.

Technical specifications have taken advantage of risk technology as experience and capability have increased. Since the mid-1980's, the NRC has been reviewing and granting improvements to technical specifications that are based, at least in part, on probabilistic risk assessment (PRA) insights. In its final policy statement on technical specification improvements of July 22, 1993, the Commission stated that it expects that licensees will utilize any plant specific PRA or risk survey in preparing their technical specification related submittals. In evaluating these submittals, the staff applies the guidance in RG 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," dated July 1998 and in RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," dated August 1998. The staff has appropriately adapted this guidance to assess the acceptability of upward mode changes with equipment inoperable. This review had the following objectives:

- To ensure that the plant risk does not increase unacceptably during the actual implementation of the proposed change (*e.g.*, when the plant enters a higher mode while an LCO is not met). This risk increase is referred to as "temporary."
- To compare and assess the risk impact of the proposed change to the acceptance guidelines of the Commission's Safety Goal Policy Statement, as documented in RG 1.174. The risk impact, which is measured by the average yearly risk increase associated with the change, aims at minimizing the "cumulative" risk associated with the proposed change so that the plant's average baseline risk is maintained within a minimal range.
- To assess the licensee's ability to identify risk significant configurations resulting from maintenance or other operational activities and take appropriate compensatory measures to avoid such configurations.

The staff reviewed the reliance on 10 CFR 50.65(a)(4) for the non-higher risk systems and components, and related guidance to assess and manage the risk of upward mode changes. The Commission has found that compliance with 10 CFR 50.65(a)(4) satisfies the configuration risk management objectives of RG 1.177 for technical specification surveillance interval and completion time extensions. Reliance on 10 CFR 50.65(a)(4) processes was also found adequate for managing risk of missed surveillances as described in the **Federal Register** on September 28, 2001 (66 FR 49714).

The staff review also had the objective of ensuring that existing inspection programs have the necessary controls in place to allow NRC staff to oversee the implementation of the proposed change, reliance on 10 CFR 50.65(a)(4), and the ability to adequately assess the licensee's performance associated with risk assessments. The review encompassed inspection procedures (*i.e.*, NRC Inspection Procedure 62709 (12/28/00), "Configuration Risk Assessment and Risk Management Process," and NRC Inspection Procedure 71111.13 (1/17/02), "Maintenance Risk Assessments and Emergent Work Control"), the significance determination process (SDP) (*i.e.*, draft "Maintenance Risk Assessment and Risk Management Significance Determination Process"), enforcement guidance (*i.e.*, draft Enforcement Manual Section 8.1.11, "Actions Involving the Maintenance Rule"), and the associated reactor oversight process.

2.1 Proposed Change to LCO 3.0.4 and SR 3.0.4

Currently LCO 3.0.4 does not allow entrance into a higher mode (or other specified condition) in the applicability when an LCO is not met, except when the associated actions to be entered permit continued operation in that mode or condition indefinitely or a specific exception is granted. Similarly, when an LCO's surveillances have not been met within their specified frequency, entry into a higher mode (or other specified condition) is not allowed by SR 3.0.4. The current STS [2] LCO 3.0.4 reads:

"When an LCO is not met, entry into a MODE or other specified condition in the Applicability shall not be made except when the associated ACTIONS to be entered permit continued operation in the MODE or other specified condition in the Applicability for an unlimited period of time. This Specification shall not prevent changes in MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit.

Exceptions to this Specification are stated in the individual Specifications. These exceptions allow entry into MODES or other specified conditions in the Applicability when the associated ACTIONS to be entered allow unit operation in the MODE or other specified condition in the Applicability only for a limited period of time.

LCO 3.0.4 is only applicable for entry into a MODE or other specified conditions in the Applicability in [MODES 1, 2, 3, and 4 {for PWRs}][MODES 1, 2, and 3 {for BWRs}]."

The revised LCO 3.0.4 will read:

"When an LCO is not met, entry into a MODE or other specified condition in the Applicability shall only be made

(a) when the associated Actions to be entered permit continued operation in that MODE or other specified condition in the Applicability for an unlimited period of time, or

(b) after performance of a risk assessment addressing inoperable systems and components, consideration of the results, determination of the acceptability of entering the MODE or other specified condition in the Applicability, and establishment of risk management actions, if appropriate; exceptions to this Specification are stated in the individual Specifications, or

(c) when an allowance is stated in the individual value or parameter Specification."

This Specification shall not prevent changes in MODES or other specified conditions in

[2] Plant specific wording for current equivalent LCO 3.0.4 is similar to current STS LCO 3.0.4 wording.

the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit.

LCO 3.0.4 is only applicable for entry into a MODE or other specified conditions in the Applicability in [MODES 1, 2, 3, and 4 {for PWRs}][MODES 1, 2, and 3 {for BWRs}]."

The current STS [3] SR 3.0.4 reads:

"Entry into a MODE or other specified condition in the Applicability of an LCO shall not be made unless the LCO's Surveillances have been met within their specified frequency. This provision shall not prevent entry into MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit.

SR 3.0.4 is only applicable for entry into a MODE or other specified conditions in the Applicability in [MODES 1, 2, 3, and 4 {for PWRs}][MODES 1, 2, and 3 {for BWRs}]."

The revised SR 3.0.4 will conform to the changes to LCO 3.0.4 and read:

"Entry into a MODE or other specified condition in the Applicability of an LCO shall not be made unless the LCO's Surveillances have been met within their specified frequency. When an LCO is not met due to a Surveillance not having been met, entry into a MODE or other specified condition in the Applicability shall only be made

(a) when the associated Actions to be entered permit continued operation in that MODE or other specified condition in the Applicability for an unlimited period of time, or

(b) after performance of a risk assessment addressing inoperable systems and components, consideration of the results, determination of the acceptability of entering the MODE or other specified condition in the Applicability, and establishment of risk management actions, if appropriate; exceptions to this Specification are stated in the individual Specifications, or

(c) when an allowance is stated in the individual value or parameter Specification.

This provision shall not prevent entry into MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit.

SR 3.0.4 is only applicable for entry into a MODE or other specified conditions in the Applicability in [MODES 1, 2, 3, and 4 {for PWRs}][MODES 1, 2, and 3 {for BWRs}]."

The proposed LCO 3.0.4(a) retains the current allowance for when the required actions allow indefinite operation. The proposed LCO 3.0.4(b) and SR 3.0.4(b) allow entering modes or other specified conditions in the applicability except when higher risk systems and components (listed in section 3.1.1), for the mode being entered, are inoperable. The decision for entering a higher mode or condition in the applicability of the LCO will be made by plant management after the required risk assessment has been performed and requisite risk management actions established, through the program established to implement 10 CFR 50.65(a)(4). Entry into the modes or other specified conditions in the applicability of the TS shall be for no more than the duration of the applicable required actions completion time or until the LCO is met. Current notes in individual specifications that permitted mode changes are now encompassed by LCO 3.0.4(b) and can be removed. Notes that prohibit mode changes under LCO 3.0.4(b) must be added (i.e., for higher risk systems and components). The proposed LCO 3.0.4(b) and SR 3.0.4(b) allowances can involve multiple components in a single LCO or in multiple LCOs; however, use of the LCO 3.0.4(b) and SR 3.0.4(b) provisions are always contingent upon completion of a 10 CFR 50.65(a)(4) based risk assessment.

LCO 3.0.4 or SR 3.0.4 allowances related to values and parameters of TS are not typically addressed by LCO 3.0.4(b) or SR 3.0.4(b) risk assessments, and are therefore addressed by a new LCO 3.0.4(c) and SR 3.0.4(c). LCO 3.0.4(c) and SR 3.0.4(c) refer to allowances already in the TS and annotated in the individual TS. LCO 3.0.4(c) and SR 3.0.4(c) also allow for entry into the modes or other specified conditions in the applicability of a TS for no more than the duration of the applicable required actions completion time or until the LCO is met. Examples of LCO 3.0.4 and SR 3.0.4 utilization of required actions and completion times are provided in Appendix A for clarification.

3.0 Technical Evaluation

During the development of the current STS, improvements were made to LCO 3.0.4, such as clarifying its applicability with respect to plant shutdowns, cold shutdown mode and refueling mode. In addition, during the STS development, almost all the LCOs with completion times greater than or equal to 30 days, and many LCOs with completion times greater than or equal to 7 days, were given individual LCO 3.0.4 exceptions. During some conversions to the STS, individual plants provided acceptable justifications for other LCO 3.0.4 exceptions. All of these specific LCO 3.0.4 exceptions allow entry into a mode or other specified condition in the TS applicability while relying on the TS required actions and associated completion times. The proposed change under evaluation would provide standardization and consistency to the use and application of LCO 3.0.4 and SR 3.0.4, both internal to and between each of the specifications and STS NUREGs. This proposed change will also ensure consistency through the utilization of appropriate levels of risk assessment of plant configurations for application of LCO 3.0.4 and SR 3.0.4. However, nothing in this safety evaluation should be interpreted as encouraging upward mode transition with inoperable equipment. Good practice should dictate that such transitions should normally be initiated only when all required equipment is operable and that mode transition with inoperable equipment should be the exception rather than the rule.

The current LCO 3.0.4(a) and SR 3.0.4(a) allowances are retained in the proposal and do not represent a change in risk from the current situation. The LCO 3.0.4(b) and SR 3.0.4(b) allowances apply to systems and components, and require a risk assessment prior to utilization to ensure an acceptable level of safety is maintained. The LCO 3.0.4(c) and SR 3.0.4(c) allowances apply to parameters and values which have been previously approved by the NRC in a plants specific TS. The licensee will provide in their TS Bases a discussion and list of each NRC approved LCO 3.0.4(c) and SR 3.0.4(c) specific value and parameter allowances. The Bases of LCO 3.0.4 and SR 3.0.4 will be revised to explain the new allowances and their utilization.

The staff did a qualitative assessment of the risk impact of the proposed change in LCO 3.0.4(b) and SR 3.0.4(b) allowances by evaluating how the licensee's implementation of the proposed risk-informed approach is expected to meet the requirements of the applicable RGs. The staff referred to the guidance provided in RG 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and in RG 1.177, "An approach for Plant-Specific, Risk-Informed Decsionmaking: Technical Specifications." RG 1.177 provides the staff's recommendations on utilizing risk-information to assess the impact of proposed changes to nuclear power plant technical specifications on the risk associated with plant operation. Although RG 1.177 does not specifically address the type of generic change in this proposal, the staff considered the approach documented in RG 1.177 in evaluating the risk information provided in support of the proposed change in LCO 3.0.4 and SR 3.0.4.

The staff's evaluation of how the implementation of the proposed risk-informed approach, used to justify LCO 3.0.4(b) and SR 3.0.4(b) allowances, agrees with the objectives of the

[3] Plant specific wording for current equivalent SR 3.0.4 is similar to current STS SR 3.0.4 wording.

guidance outlined in RG 1.177 is discussed in Section 3.1. Oversight of the risk-informed approach associated with the LCO 3.0.4(b) and SR 3.0.4(b) allowances is discussed in Section 3.2.

3.1 Evaluation of Risk Management

Both the temporary and cumulative risk of the proposed change are adequately limited. The temporary risk is limited by the exclusion of higher risk systems and components, and completion time limits contained in technical specifications (Section 3.1.1). The cumulative risk is limited by the temporary risk limitations and by the expected low frequency of the proposed mode changes with inoperable equipment (Section 3.1.2). NRC oversight of a licensee's implementation of 10 CFR 50.65(a)(4) as applied to the proposed change provides adequate assurance of the licensee's ability to use the LCO 3.0.4(b) or SR 3.0.4(b) provisions under appropriate circumstances, *i.e.*, to identify risk-significant configurations when entering a higher mode or condition in the applicability of an LCO (Section 3.1.3).

3.1.1 Temporary Risk Increases

RG 1.177 proposes the incremental conditional core damage probability (ICCDP) and the incremental conditional large early release probability (ICLERP) as appropriate measures of the increase in probability of core damage and large early release, respectively, during the period of implementation of a proposed TS change. In addition, RG 1.177 stresses the need to preclude potentially high risk configurations introduced by the proposed change. The ICCDP associated with any specified plant condition, such as the condition introduced by entering a higher mode with plant equipment inoperable, is expressed by the following equation:

$$ICCDP = \Delta R\ d = (R_1 - R_0)\ d \qquad (1)$$

where

ΔR = the conditional risk increase, in terms of core damage frequency (CDF), caused by the specified condition

d = the duration of the specified plant condition

R_1 = the plant CDF with the specified condition permanently present

R_0 = the plant CDF without the specified condition

The same expression can be used for ICLERP by substituting the measure of risk, i.e., large early release frequency (LERF) for CDF. The magnitude of the ICCDP and ICLERP values associated with plant conditions applicable to LCO 3.0.4(b) and SR 3.0.4(b) allowances can be managed by controlling the conditional risk increase, ΔR (in terms of both CDF and LERF) and the duration, d, of such conditions. The following sections discuss how the key elements of the proposed risk-informed approach, used to justify LCO 3.0.4(b) and SR 3.0.4(b) allowances, are expected to limit ΔR and d and, thus, prevent any significant temporary risk increases.

Identification of Risk Important TS Systems and Components. A major element that limits the risk of the proposed mode change flexibility is the exclusion of certain systems and associated LCOs for the mode change allowance. Technical specifications allow operation in Mode 1 (power operation) with specified levels of inoperability for specified times. This provides a benchmark of currently acceptable risk against which to measure any incremental risk inherent in the proposed LCO 3.0.4(b) and SR 3.0.4(b). If a system inoperability accrues risk at a higher rate in one or more of the transition modes than it would in Mode 1, then an upward transition into that mode should not be allowed without demonstration of a high degree of experience and sophistication in risk management. However, the risk management process evaluated in Section 3.1.3 is adequate if high risk systems/components are excluded from the scope of LCO 3.0.4(b) and SR 3.0.4(b).

The importance of most TS systems in mitigating accidents increases as power increases. However, some TS systems are relatively more important during lower power and shutdown operations, because:

- certain events are peculiar to modes of plant operation other than power operation,
- certain events are more probable at modes of plant operation other than power operation,
- some modes of plant operation have less mitigation system capability than power operation.

The risk information submitted in support of the proposed changes to LCO 3.0.4 and SR 3.0.4 includes qualitative risk assessments performed by each owners group to identify higher risk systems and components at the various modes of operation, including transitions between modes, as the plant moves upward from the refueling mode of operation toward power operation. The owners groups' generic qualitative risk assessments are included as attachments to TSTF–359, Revision 7. Each of the owners groups' generic qualitative risk assessments discuss the technical approach used and the systems/components subsequently determined to be of higher risk significance; the systems/components not to be granted the LCO 3.0.4 or SR 3.0.4 allowances for the various modes listed. The owners groups generic qualitative risk assessments are:

- BWR Owners' Group Risk-informed Technical Specification Committee. "Technical Justification to Support Risk-informed Improvements to Technical Specification Mode Restraints for BWR Plants," General Electric Company GE–NE A13–00464 (Rev[2]).
- "B&W Owners Group Qualitative Risk Assessment for Increased Flexibility in MODE Restraints," Framatome Technologies BAW–2383.
- Combustion Engineering Owners Group (CEOG) Task 1181, "Qualitative Risk Assessment for Relaxation of Mode Entry Restraints," CE Nuclear Power LLC, CE NPSD–1207 (Rev[0]).
- "WOG Qualitative Risk Assessment Supporting Increased Flexibility in MODE Restraints."

Following interactions with the staff, all owners groups used the same systematic approach in their qualitative risk assessments to identify the higher risk systems in the STS, consisting of the following steps:

- identification of plant conditions (*i.e.*, plant parameters and availability of key mitigation systems) associated with changes in plant operating modes while returning to power.
- identification of key activities that have the potential to impact risk and which are in progress during transitions between modes while the plant is returning to power.
- identification of applicable accident initiating events for each mode or other specified condition in the applicability.
- identification of the higher risk systems and components by combining the information in the first three steps (qualitative risk assessment).

The risk assessments properly used the results and insights from previous deterministic and probabilistic studies to systematically search for plant conditions in which certain key plant components are more important in mitigating accidents than at power operation (Mode 1). This search was systematic, taking the following factors into account for the various stages of returning the plant to power:

- the status of accident mitigation and normally operating systems.
- the status of key plant parameters such as reactor coolant system pressure.
- the key activities that are in progress during transitions between modes which have the potential to impact risk (*e.g.* the transfer from

auxiliary to main feedwater at some PWR plants when Mode 1 is entered).

- the applicable accident initiating events for each mode of plant operation.
- design and operational differences among plants or groups of plants.

The following systems and components were identified by each of the four owners groups as higher risk systems and components, when the plant is entering a new mode.

BOILING WATER REACTOR OWNERS GROUP (BWROG) PLANTS

System	BWR type	Entering mode
High Pressure Coolant Injection (HPCI) System	BWR 3 & 4	2, 1
High Pressure Core Spray (HPCS)	BWR 5 & 6	2, 1
Reactor Core Isolation Cooling (RCIC) System	BWR 3, 4, 5 & 6	2, 1
Isolation Condenser Diesel Generators (including other	BWR 2	2, 1
Emergency/Shutdown AC Power Supplies)	All	All
Hardened Wetwell Vent System	BWR 2, 3 & 4 with Mark I Containment	3, 2, 1
Residual Heat Removal System	All	4

System	Entering Mode
Babcock & Wilcox Owners Group (B&WOG) Plants	
Emergency Diesel Generators (EDG) & Hydro-Electric Units for Oconee	5, 4, 3, 2, 1
Emergency Feedwater (EFW) System	1
Decay Heat Removal (DHR) System	5, 4
Combustion Engineering Owners Group (CEOG) Plants	
Emergency Diesel Generators (EDGs)	5, 4, 3, 2, 1
Auxiliary Feedwater/Emergency Feedwater (AFW/EFW) System	4, 3, 2, 1
High Pressure Safety Injection (HPSI) System	4, 3 (below 1700 psia)
LTOP/PORVs (when used for Low Temperature Overpressure Protection (LTOP))	5, 4 (below set temperature)
Shutdown Cooling System (Low Pressure Safety Injection (LPSI) pumps)	5
Westinghouse Owners Group (WOG) Plants	
Emergency Diesel Generators (EDGs)	5, 4, 3, 2, 1
Auxiliary Feedwater (AFW) System (for plants depending on AFW for startup)	4, 3, 2, 1
High Head Safety Injection System	4
Cold Overpressure Protection System	5, 4
Residual Heat Removal (RHR) System	5

If a licensee identifies a higher risk system for only some of the modes of applicability, the TS for that system would be modified by a Note that reads, for example, "LCO 3.0.4(b) is not applicable when entering MODE 1 from MODE 2." Systems identified as higher risk for modes outside the applicability of LCO 3.0.4 and SR 3.0.4 (Modes 5 and 6 for PWRs, and Modes 4 and 5 for BWRs), are also to be excluded from transitioning up to the mode of higher risk, however, those systems will be addressed by administrative controls.

In summary, the staff's review of the owners groups qualitative risk assessments finds that they are of adequate quality to support the application (*i.e.*, they identify the higher risk systems and components) associated with entering higher modes of plant operation with equipment inoperable while returning to power.

[Plant Specific changes will be described here.]

Limited Time in TS Required Actions. Any temporary risk increase will be limited by, among other factors, duration constraints imposed by the TS CTs of the inoperable systems. For the systems and components which are not higher risk, any temporary risk increase associated with the proposed allowance will be smaller than what is considered acceptable when the same systems and components are inoperable at power. This is due to the fact that CTs associated with the majority of TS systems and components were developed for power operation and pose a smaller plant risk for action statement entries initiated or occurring at lower modes of operation as compared to power operation.

The LCO 3.0.4(b) or SR 3.0.4(b) allowance will be used only when the licensee determines that there is a high likelihood that the LCO will be satisfied following the mode change. This will minimize the likelihood of additional temporary risk increases associated with the need to exit a mode due to failure to restore the unavailable equipment within the CT. As discussed in Section 3.2, the revised reactor oversight process monitors unplanned power changes as a performance indicator. The reactor oversight process thus discourages licensees from entering a mode or other specified condition in the applicability of an LCO, and moving up in power, when there is a likelihood that the mode would have to be subsequently exited due to failure to restore the unavailable equipment within the CT.

3.1.2 Cumulative Risk Increases

The cumulative risk impact of the change to allow the plant to enter a higher mode of operation with one or more safety-related components unavailable (as proposed here), is measured by the average yearly risk increase associated with the change. In general, this cumulative risk increase is assessed in terms of both CDF and LERF (*i.e.*, ΔDCDF and ΔLERF, respectively). The increase in CDF due to the proposed change is expressed by the following equation, which integrates the risk impact from all expected specified conditions (*i.e.*, all expected plant conditions caused by mode changes with various TS systems and components unavailable).

$$\Delta CDF = \Sigma(\Delta CDF_i) = \Sigma\ ICCDP_i\ f_i \quad (2)$$

where

ΔCDF_i = the CDF increase due to specified condition i

$ICCDP_i$ = the ICCDP associated with specified condition i

f_i = the average yearly frequency of occurrence of specified condition i

A similar expression can be used for ΔLERF by substituting the measure of risk, *i.e.*, LERF for CDF. The magnitude of the ΔCDF and ΔLERF values associated with plant conditions applicable to LCO 3.0.4(b) or SR 3.0.4(b) allowances can be managed by controlling the temporary risk increases, in terms of both CDF and LERF (*i.e.*, ICCDP and ICLERP), and the frequency (f), of each of such conditions. In addition to the points made in the previous section regarding temporary risk increases, the following points put into perspective how the key elements of the proposed risk-informed approach, used to justify an LCO 3.0.4(b) or SR 3.0.4(b) allowance, are expected to prevent significant cumulative risk increases by limiting the frequency of its use:

- The frequency of risk significant conditions will be limited by not providing the LCO 3.0.4(b) and SR 3.0.4(b) allowances to the higher risk systems and components.
- The frequency of risk significant conditions will be limited by the requirement to assess the likelihood that the LCO will be satisfied following the mode change. In addition, the reactor oversight process discourages licensees from entering a mode or other specified condition in the applicability of an LCO and moving up in power when it is likely that the mode would have to be subsequently exited due to failure to restore the unavailable equipment within the completion time.
- The frequency of risk significant conditions is limited by the fact that such conditions can occur only when the plant is returning to power following shutdown, i.e., during a small fraction of time per year (data over the past five years indicates that the plants are averaging 2.1 startups per year).

The addition of the proposed LCO 3.0.4(b) or SR 3.0.4(b) allowances to the plant maintenance activities is not expected to change the plant's average (cumulative) risk significantly.

3.1.3 Risk Assessment and Risk Management of Mode Changes

With all safety systems and components operable, a plant can transition up in mode to power operation. With one or more system(s) or component(s) inoperable, this change permits a plant to transition up in mode to power operation if the inoperable system(s) or component(s) are not in the pre-analyzed higher risk category, a 10 CFR 50.65(a)(4) based risk assessment is performed prior to the mode transition, and the requisite risk management actions are taken. The proposed TS Bases state, "When an LCO is not met, LCO 3.0.4 also allows entering MODES or other specified conditions in the Applicability following assessment of the risk impact and determination that the impact can be managed. The risk assessment may use quantitative, qualitative, or blended approaches, and the risk assessment will be conducted using the plant program, procedures, and criteria in place to implement 10 CFR 50.65(a)(4), which requires that risk impacts of maintenance activities to be assessed and managed." It should be noted that, the risk assessment, for the purposes of LCO 3.0.4(b) and SR 3.0.4(b), must take into account all inoperable TS equipment regardless whether the equipment is included in the licensee's normal 10 CFR 50.65(a)(4) risk assessment scope. The risk assessments will be conducted using the procedures and guidance endorsed by Regulatory Guide 1.182, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants." The results of the risk assessment shall be considered in determining the acceptability of entering the MODE or other specified condition in the Applicability, and any corresponding risk management actions. * * * A risk assessment and establishment of risk management actions, as appropriate, are required for determination of acceptable risk for entering MODES or other specified conditions in the Applicability when an LCO is not met. Elements of acceptable risk assessment and risk management actions are included in Section 11 of NUMARC 93–01 "Assessment of Risk Resulting from Performance of Maintenance Activities," as endorsed by RG 1.182 which addresses general guidance for conduct of the risk assessment, quantitative and qualitative guidelines for establishing risk management actions, and example risk management actions. These risk management actions include actions to plan and conduct other activities in a manner that controls overall risk, increased risk awareness by shift and management personnel, actions to reduce the duration of the conditions, actions to minimize the magnitude of risk increases (establishment of backup success paths or compensatory measures), and determination that the proposed MODE change is acceptable.

The guidance references state that a licensee's risk assessment process should be sufficiently robust and comprehensive to assess risk associated with maintenance activities during power operating, low power and shutdown conditions (all modes of operation), including changes in plant conditions. NUMARC 93–01 states that the risk assessment should include consideration of: the degree of redundancy available for performance of the safety function(s) served by the out of service equipment; the duration of the out of service condition; component and system dependencies that are affected; the risk impact of performing the maintenance during shutdown versus at power; and, the impact of mode transition risk. For power operation, key plant safety functions are those that ensure the integrity of the reactor coolant pressure boundary, ensure the capability to shut down and maintain the reactor in safe shutdown condition, and ensure the capability to prevent or mitigate the consequences of accidents that could result in potentially significant offsite exposures.

While the inoperabilities permitted by the completion times of technical specification required actions take into consideration the safety significance and redundancy of the system or components within the scope of an LCO, the completion times generally do not address or consider concurrent system or component inoperabilities in multiple LCOs. Therefore, the performance of the 10 CFR 50.65(a)(4) risk assessment which looks at the entire plant configuration is essential (and required) prior to changing operational mode. The 10 CFR 50.65(a)(4) risk assessment will confirm (or reject) the appropriateness of transitioning up in mode given the actual status of plant safety equipment.

The risk impact on the plant condition of invoking an LCO 3.0.4(b) or SR 3.0.4(b) allowance will be assessed and managed through the program established to implement 10 CFR 50.65(a)(4). This program is consistent with RG 1.177 and RG 1.174 in its approach. The Maintenance Rule implementation guidance addresses controlling temporary risk increases resulting from maintenance activities. This guidance, consistent with guidance in RG 1.177, establishes action thresholds based on qualitative and

quantitative considerations and risk management actions. Significant temporary risk increases following an LCO 3.0.4(b) or SR 3.0.4(b) allowance are unlikely to occur unless:

- High risk configurations are allowed (*e.g.*, certain combinations of multiple component outages), or
- Risk management of plant operation activities is inadequate.

The requirements associated with the proposed change are established to ensure that such conditions will not occur.

The thresholds of the cumulative (aggregate) risk impacts, assessed pursuant to 10 CFR 50.65(a)(4) and the associated implementation guidance, are based on the permanent change guidelines in NRC RG 1.174. Therefore, licensees will manage the risk exercising LCO 3.0.4 or SR 3.0.4 in conjunction with the risk from other concurrent plant activities to ensure that any increase, in terms of core damage frequency (CDF) and large early release frequency (LERF) will be small and consistent with the Commission's Safety Goal Policy Statement.

3.2 Oversight

The reactor oversight process (ROP) provides a means for assessing the licensee's performance in the application of the proposed mode change flexibility. The adequacy of the licensee's assessment and management of maintenance-related risk is addressed by existing inspection programs and guidance for 50.65(a)(4). Although the current versions of that guidance do not specifically address application of the licensee's (a)(4) program to support risk-informed technical specifications, it is expected that in most cases, risk assessment and management associated with risk-informed technical specifications would be required by (a)(4) anyway.

Adoption of the proposed change will make failure to assess and manage the risk of an upward mode change with inoperable equipment covered by technical specifications, prior to commencing such a mode change, a violation of technical specifications. Further, as explained above in general, under most foreseeable circumstances, such a change in configuration would also require a risk assessment under 10 CFR 50.65(a)(4). Inoperable systems or components will necessitate maintenance to restore them to operability, and hence a 10 CFR 50.65(a)(4) risk assessment would be performed prior to the performance of those maintenance actions (except for immediate plant stabilization and restoration actions if necessary). Further, before altering the plant's configuration, including plant configuration changes associated with mode changes, the licensee must update the existing (a)(4) risk assessment to reflect those changes.

The **Federal Register** Notice issuing a revision to the maintenance rule, 10 CFR 50.65, (**Federal Register**, Vol 64 No 137, Monday, July 19, 1999, pg 38553), along with NRC Inspection Procedure 71111.13, and Section 11, dated February 22, 2000, "Assessment of Risk Resulting from Performance of Maintenance Activities," of NUMARC 93–01, all indicate that to determine the safety impact of a change in plant conditions during maintenance, a risk assessment must be performed before changing plant conditions. The Bases for the proposed TS change mandate that the risk assessment and management of upward mode changes will be conducted under the licensee's program and process for meeting 10 CFR 50.65(a)(4). Oversight of licensee performance in assessing and managing the risk of plant maintenance activities is conducted principally by inspection in accordance with Reactor Oversight Program Baseline Inspection Procedure (IP) 71111.13, "Maintenance Risk Assessment and Emergent Work Control." Supplemental IP 62709, "Configuration Risk Assessment and Risk Management Process," is utilized to evaluate the licensee's process, when necessary. Appendix B of this SE presents excerpts from IP 71111.13 and IP 62709 that provide evidence of how the oversight of licensee risk assessment and risk management activities is accomplished.

The ROP is described in overview in NUREG–1649, Rev 3, "Reactor Oversight Process," and in detail in the NRC Inspection Manual. Inspection Procedure 71111.13 requires verification of performance of risk assessments when they are required by 10 CFR 50.65(a)(4) and in accordance with licensee procedures. The procedure also requires verification of the adequacy of those risk assessments and verification of effective implementation of licensee-prescribed risk management actions. The rule itself requires such assessment and management of risk prior to maintenance activities, including preventive maintenance, surveillance and testing, (and promptly for emergent work) during all modes of plant operation. The guidance documents for both industry implementation of (a)(4) and NRC oversight of that implementation indicate that changes in plant configuration (which would include mode changes) in support of maintenance activities must be taken into account in the risk assessment and management process. Revisions to NRC inspection guidance and licensee implementation procedures will be needed to address oversight of risk assessment and management required by TS in support of mode changes that are not already required under the circumstances by (a)(4). This consideration provides performance-based regulatory oversight of the use of the proposed flexibility, and a disincentive to use the flexibility without the requisite care in planning.

In addition, the staff is in the process of developing detailed significance determination process (SDP) guidance for use in assessing inspection findings related to 10 CFR 50.65(a)(4). This guidance was issued in draft for comment and is expected to become final in Fall 2002. The ROP considers inspection findings and performance indicators in evaluating licensee ability to operate safely. The SDP is used to determine the significance of inspection findings related to licensee assessment and management of the risk associated with performing maintenance activities under all plant operating or shutdown conditions. Unplanned reactor shutdowns (automatic and manual) and unplanned power changes are two of the Reactor Safety Performance Indicators that the ROP utilizes to assess licensee performance and inform the public. Thus, the ROP provides a disincentive to entering a mode or other specified condition in the applicability of an LCO and moving up in power, when there is a significant likelihood that the mode would have to be subsequently exited due to failure to restore the unavailable equipment within the completion time.

3.3 Summary

The industry, through the Nuclear Energy Institute (NEI) Risk Informed Technical Specifications Task Force (RITSTF), has submitted a proposed technical specification (TS) change to allow entry into a higher mode of operation, or other specified condition in the TS applicability, while relying on the TS conditions, and associated required actions and completion times, provided a risk assessment is performed to confirm the acceptability of that action. The proposal revises standard technical specification (STS) LCO 3.0.4 and SR 3.0.4, and their application to the TS. New paragraphs (a), (b), and (c) are proposed for LCO 3.0.4 and SR 3.0.4.

The proposed LCO 3.0.4(a) and SR 3.0.4(a) retain the current allowance, permitting the mode change when the TS required actions allow indefinite operation.

Proposed LCO 3.0.4(b) and SR 3.0.4(b) is the change to allow entry into a higher mode of operation, or other specified condition in the TS applicability, while relying on the TS conditions and associated required actions and completion times, provided a risk assessment is performed to confirm the acceptability of that action for the existing plant configuration. The staff review finds that the process proposed by industry for assessing and managing risk during the implementation of the proposed LCO 3.0.4(b) and SR 3.0.4(b) allowances, meets Commission guidance for technical specification changes. Key elements of this process are listed below.

- A risk assessment shall be performed before any LCO 3.0.4(b) or SR 3.0.4(b) allowance is invoked.
- The risk impact on the plant condition of invoking an LCO 3.0.4(b) or SR 3.0.4(b) allowance will be assessed and managed through the program established to implement 10 CFR 50.65(a)(4) and the associated guidance in RG 1.182. Allowing entry into a higher mode or condition in the applicability of an LCO after an 10 CFR 50.65(a)(4) based risk assessment and appropriate risk management actions are taken for the existing plant configuration will ensure that plant safety is maintained.
- The LCO 3.0.4(b) or SR 3.0.4(b) allowance will be used only when the licensee determines that there is a high likelihood that the LCO will be satisfied within the required action's completion time.
- TS systems and components which may be of higher risk during mode changes have been identified generically by each owner's group for each plant operational mode or condition. Licensees will identify such plant specific systems and components in the individual plant TS. The proposed LCO 3.0.4(b) and SR 3.0.4(b) allowances do not apply to these systems and components for the mode or condition in the applicability of an LCO at which they are of higher risk.
- Plants adopting LCO 3.0.4(b) and SR 3.0.4(b) will ensure that plant procedures in place to implement 10 CFR 50.65(a)(4) address the situation where entering a mode or other specified condition in the applicability is contemplated with plant equipment inoperable. Such plant procedures typically follow the guidance in NUMARC 93–01, Section 11, as revised in February 2000 and endorsed by NRC RG 1.182.

The NRC's reactor oversight process provides the framework for inspectors and other staff to oversee the implementation of 10 CFR 50.65(a)(4) requirements at a specific plant and assess the licensee's actions and performance.

The LCO 3.0.4(b) and SR 3.0.4(b) allowance does not apply to values and parameters of the technical specifications that have their own respective LCOs (e.g., Reactor Coolant System Specific Activity), but instead those values and parameters are addressed by LCO 3.0.4(c) and SR 3.0.4(c). The TS values and parameters for which mode transition allowances apply, will have a note that states LCO 3.0.4(c) or SR 3.0.4(c) is applicable.

The objective of the proposed change is to provide additional operational flexibility without compromising plant safety.

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20 and change surveillance requirements. [For licensees adding a Bases Control Program: The amendment also changes record keeping, reporting, or administrative procedures or requirements.] The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards considerations, and there has been no public comment on the finding. Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) [and (c)(10)]. Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, on the basis of the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: A change is proposed to the standard technical specifications (STS) (NUREGs 1430 through 1434) and plant specific technical specifications (TS), to allow entry into a mode or other specified condition in the applicability of a TS, while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). LCO 3.0.4 and SR 3.0.4 exceptions in individual TS would be eliminated, and SR 3.0.4 revised to reflect the LCO 3.0.4 allowance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS Limiting Conditions for Operation (LCO). The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this 26th day of July, 2002.

For the Nuclear Regulatory Commission.

Robert L. Dennig,

Section Chief, Technical Specifications Section, Operating Improvements Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

Appendix A

LCO 3.0.4 Examples

Example 1, LCO 3.0.4(a), (NUREG–1431): The plant is in Mode 3 ready to go to Mode 1, power operation, with one power range neutron flux channel inoperable. LCO 3.3.1, "Reactor Trip System (RTS) Instrumentation," Table 3.3.1–1, Function 2.a., requires four power range neutron flux-high channels to be operable, and the applicability is Modes 1 and 2. With one power range neutron flux-high channel inoperable, Condition D, Required Actions D.1.1 and D.1.2 require the inoperable channel to be placed in trip within 6 hours and reduce thermal power to ≤ 75% RTP within 12 hours; or, Required Actions D.2.1 and D.2.2 require placing the inoperable channel in trip within 6 hours and verifying QPTR is within limits (performance of SR 3.2.4.2) once per 12 hours. Verifying QPTR is within limits is only required if the power range neutron flux input to QPTR is inoperable. The plant can proceed to Mode 2 (or further, *i.e.*, Mode 1) as long as the Required Actions of Condition D are met. If the plant has proceeded to Mode 2 (or further, *i.e.*, Mode 1) and the Required Actions of Condition D have not been met, the plant must be placed in Mode 3. No risk assessment is required because the allowance of LCO 3.0.4(a) applies. However, risk assessment may be required by 10 CFR 50.65(a)(4).

Example 2, LCO 3.0.4(b), (NUREG–1431): The plant is in Mode 5 ready to go to Mode 1, power operation, with one component cooling water (CCW) train inoperable. LCO 3.7.7, "Component Cooling Water (CCW)," requires two CCW trains to be operable and the applicability is Modes 1, 2, 3, and 4. With one CCW train inoperable Required Action A.1 of LCO 3.7.7 requires the inoperable CCW train to be restored and the completion time is 72 hours. There is also a note applied to Required Action A.1 that requires entry into applicable Conditions and Required Actions of LCO 3.4.6, "RCS Loops—MODE 4," for residual heat removal loops made inoperable by CCW. If a residual heat removal loop is being used to comply with LCO 3.4.6, and that loop is made inoperable by the inoperable CCW train, the completion times for the applicable conditions and required actions of LCO 3.4.6 may be more restrictive than those of LCO 3.7.7. The plant can proceed to Mode 4 if there is reasonable assurance that the inoperable CCW train can be restored to operable status within the applicable completion time, and a risk assessment has been performed and requisite risk management actions have been implemented. If the plant has proceeded to Mode 4 (or further, *i.e.*, Mode 3, 2, or 1) and the inoperable CCW train has not been restored within the required completion time, the plant must return to Mode 5. Note that if two trains of CCW are inoperable, the plant cannot proceed to Mode 4 because LCO 3.7.7 does not contain a condition for two inoperable CCW trains.

Example 3, LCO 3.0.4(b), (NUREG–1431): The plant is in Mode 5 ready to go to Mode 1, power operation (with steam generators operable). In Case 1, one required Atmospheric Dump Valve (ADV) line is inoperable. In Case 2, two or three required ADV lines are inoperable.

Case 1—LCO 3.7.4, "Atmospheric Dump Valves (ADVs)," requires three ADV lines to be operable and the Applicability is Modes 1, 2, and 3 and Mode 4 when steam generator is relied upon for heat removal. With one required ADV line inoperable Required Action A.1 requires the required ADV line to be restored with a Completion Time of seven days. The plant can proceed to Mode 4 (when steam generator(s) are relied on for heat removal) provided there is reasonable assurance that the required ADV line can be restored within 7 days, and a risk assessment has been performed and requisite risk management actions have been implemented. If the plant has proceeded to Mode 4 (or further, *i.e.*, Mode 3, 2, or 1) and the required ADV is not restored within 7 days, the plant must return to Mode 5 (if steam generator(s) are being used for heat removal) or Mode 4 where steam generators are not being used for heat removal, as applicable.

Case 2—With two or three required ADV lines inoperable, Condition B, Required Action B.1 requires restoration of all but one of the required ADV lines within a Completion Time of 24 hours. The plant can proceed to Mode 4 (when steam generators are relied on for heat removal) provided there is reasonable assurance that the required ADV lines will be restored, and a risk assessment has been performed and requisite risk management actions have been implemented. After the plant has restored all but one of the required ADV lines to operability within 24 hours, the final required ADV line must be restored within seven days from the time of entry into Mode 4. If the plant has proceeded to Mode 4 (or further, *i.e.*, Mode 3, 2 or 1) and the required ADV lines have not been restored within the applicable completion time, the plant must return to Mode 5 or Mode 4 (where steam generators are not relied on for heat removal).

Appendix B

Reactor Oversight Process, Inspection Procedures 71111.13 and 62709 Excerpts

Inspection Procedure (IP) 71111.13, "Maintenance Risk Assessment and Emergent Work Control"

IP 71111.13–02, Inspection Requirements, 02.01, Risk Assessment and Management of Risk

a. *Risk Assessment Performance.* Verify performance of risk assessments when required by 10 CFR 50.65(a)(4) and in accordance with licensee procedures, prior to changes in plant configuration for maintenance activities, including preventive maintenance, surveillance and testing, (and promptly for emergent work) during all

modes of plant operation. Verify risk assessment performance for configuration changes involving structures, systems or components * * *

b. *Risk Assessment Adequacy.* Verify the accuracy and completeness of the information considered in the risk assessment. Verify the appropriate use of the risk assessment tool, i.e., that the licensee uses it in a manner consistent with (1) its capabilities and limitations, (2) plant conditions and evolutions, (3) external events and containment status, and (4) licensee procedures. * * *

c. *Risk Management.* Verify that the licensee recognizes, and/or enters as applicable, the appropriate licensee-established risk category or band according to risk assessment results and licensee procedures. Verify that normal work controls or risk management actions as required are promptly and effectively implemented commensurate with the risk band in effect and in accordance with licensee procedures. Verify that the key safety functions for the plant mode of operation are preserved. * * *

IP 71111.13, Appendix A, Risk Assessment Performance Verification Phase

"Determine if a Risk Assessment (RA) was required using the following criteria:

1. *When required.* RAs are required by (a)(4) prior to maintenance-related plant configuration changes and are normally performed for scheduled maintenance. However, emergent conditions, such as external events or SSC failures or degraded performance in service or during testing, may require actions prior to performing an RA, or could invalidate the existing RA. In this case, the RA should be performed (or reevaluated) to address the changed plant conditions. The industry guidance, revised Section 11 of NUMARC 93001, as endorsed by RG 1.182, states that if the plant configuration is restored prior to conducting or reevaluating the RA, the RA need not be conducted, or reevaluated if already performed. Nevertheless, to the extent practicable and commensurate with safety, the licensee should perform or reevaluate the RA before changing the plant configuration further, but in any case, promptly and to the extent practicable concurrently with, but without delaying, plant stabilization and restoration. Note that licensee deviation from work schedules and work plans, just as emergent work can, may invalidate risk assessments prepared for the maintenance period (e.g., the common 12-week rolling schedule).

2. *Operating Modes When RA Required.* RAs are required by (a)(4) for maintenance activities performed during all modes of plant operation and transitions between modes. For (a)(4) purposes, at power means normal steaming (Mode 1) and startup (Mode 2). Shutdown means hot standby (Mode 3 in a pressurized water reactor (PWR) only), hot shutdown (Mode 3 in a boiling water reactor, Mode 4–PWR), cold shutdown (Mode 5), and refueling (Mode 6). Plants without a shutdown probabilistic risk assessment (PRA) must still assess shutdown maintenance risk by some means, typically an expert panel using a qualitative (key safety function) or blended qualitative/quantitative approach. * * *"

Supplemental IP 62709, "Configuration Risk Assessment and Risk Management Process"

IP62709

An appropriate assessment would include a review of the current configuration of the plant and the plant configuration expected during the planned maintenance activity. Assessing the current plant configuration as well expected changes to plant configuration due to the planned maintenance activities is intended to insure that the plant is not inadvertently placed in risk-significant configurations. * * * Furthermore, assessing the degree of safety function degradation requires that there be an understanding of the impact of maintenance activities on the capability of the plant to prevent or mitigate accidents and transients, as well as the potential impact of external conditions (*e.g.*, inclement weather, electrical grid instability, flooding or seismic events) on plant maintenance configurations. The assessments may range from deterministic judgments to the use of an on-line PSA tool. * * * The process for performing these safety assessments should be scrutable and repeatable. Known limitations in the assessment process should be described in the licensee's Maintenance Rule program documentation. The licensee's process should be sufficiently robust and comprehensive to assess maintenance activities during power operating conditions and low power and shutdown conditions. The sophistication of the assessment(s) for evaluating the risk of a maintenance configuration should be commensurate with the complexity of the configuration.

IP 62709, 02.02 *Configuration Risk Assessments*: Determine if the licensee has adequately assessed the overall effect on the performance of safety functions when SSCs are removed from service for surveillance or maintenance activities. Obtain plant operating/maintenance records for at least two or three monthly periods of high maintenance activities during power operation with a particular focus on periods when trains of components were removed from service or when components of different trains were out of service simultaneously for surveillance or maintenance. In the case of plant shutdown conditions, select two or three weekly periods of plant outage surveillance or maintenance activities with a particular focus on periods of reduced reactor coolant system inventory, reduced shutdown cooling availability, or reduced electrical availability. Evaluate the results of the licensee's safety assessments of those time periods, and verify the licensee's safety assessments encompassed all the SSCs that have significant impact on public health and safety. If the licensee had not kept records of prior assessment results, * * * consider performing independent assessments of current maintenance activities.

IP 62709, 02.03 *Risk Management*: Determine if a licensee is using a reasonable approach to manage risk of the planned configurations when SSCs are removed from service for surveillance or maintenance activities. On the basis of licensee's safety assessments of those selected maintenance configurations, either during power operation or shutdown conditions, verify that the licensee has process controls in place that ensure risk management actions would be implemented for plant maintenance configurations with risk increases that exceed risk management thresholds."

[FR Doc. 02–19538 Filed 8–1–02; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Request for Review of part B Medicare Claim; OMB 3220–0100. Under section 7(d) of the Railroad Retirement Act (RRA), the RRB administers the Medicare program for persons covered by the railroad retirement system.

The RRB utilizes Forms G–790 and G–791 to provide railroad retirement beneficiaries who are claimants for part B Medicare benefits with the means for requesting Palmetto GBA, the RRB's current Medicare carrier, to review claims determinations or to hold hearings on the review determinations. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes non-burden impacting, editorial and formatting changes to G–790 and G–791 for clarification purposes. The carrier's name and address have been changed to reflect the new part B carrier. The RRB has deleted to reference to OMB from the Paperwork Reduction Act/Privacy Act notice as instructed by OMB staff. The completion time both the G–790 and G–791 is estimated at 15 minutes.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a

copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rust Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–19504 Filed 8–1–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 10b–17, SEC File No. 270–427, OMB Control No. 3235–0476

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 USC 3501 et seq.) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 10b–17, Untimely announcements of record dates (17 CFR 240.10b–17)

Rule 10b–17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following actions relating to such class of securities: (1) A dividend; (2) a stock split; or (3) a rights or other subscription offering. Notice shall be (1) given to the National Association of Securities Dealers, Inc.; (2) in accordance with the procedures of the national securities exchange upon which the securities are registered; or (3) may be waived by the Commission.

The information required by Rule 10b–17 is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. The consequence of not requiring the information collection pursuant to Rule 10b–17 is that sellers who have received distributions as recordholders may dispose of the cash or stock dividends or other rights received as recordholders without knowledge of possible claims of purchasers.

It is estimated that, on an annual basis, there are approximately 29,430 respondents and that each response takes about 10 minutes to complete, thus imposing approximately 4,905 burden hours annually (29,430 x 10 minutes). We believe that the average hourly cost to produce and file a response under the rule is about $50. Therefore, the annual reporting cost burden for complying with this rule is about $245,250 (4,905 x $50).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 26, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19531 Filed 8–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Regulations 13D and 13G; Schedules 13D and 13G, SEC File No. 270–137, OMB Control No. 3235–0145

and

Form F–6 SEC File No. 270–270, OMB Control No. 3235–0292

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 USC 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the office of Management and Budget for extension and approval.

Schedules 13D and 13G are filed pursuant to sections 13(d) and 13(g) of the Securities Exchange Act and Regulations 13D and 13G thereunder to report beneficial ownership of equity securities registered under section 12 of the Exchange Act. Regulations 13D and 13G are intended to provide investors and subject issuers with information about accumulations of securities that may have the potential to change or influence control of the issuer. Schedules 13D and 13G are used by persons including small entities to report their ownership of more than 5% of a class of equity securities registered under section 12. Schedule 13D takes approximately 43,500 total burden hours and is filed by 3,000 respondents. The filer prepares 25% of the 43,500 annual burden hours for a total reporting burden of 10,875 hours. Schedule 13G takes approximately 98,800 total burden hours and is filed by 9,500 respondents. The filer prepares 25% of the 98,800 annual burden hours for a total reporting burden of 24,700 hours. Therefore, the reporting burden for both Schedules is 35,575 hours and they are prepared by a total of 12,500 respondents.

The Commission under section 19 of the Securities Act of 1933 established Form F–6 for registration of American Depositary Receipts (ADRs) of foreign companies. Form F–6 requires disclosure of information regarding the terms of depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one, which periodically furnishes information to the Commission. Such information is available to the public for inspection. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and foreign company. Approximately 150 respondents file Form F–6 and it takes .9 hours to prepare for a total of 135 annual burden hours. It is estimated that 25% of the 135 total burden hours

(33.75 hours) is prepared by the company. The information provided on Form F–6 is mandatory to best ensure full disclosure of ADRs being issued in the U.S. All information provided to the Commission is available for public review upon request.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington DC. 20549.

Dated: July 24, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19532 Filed 8–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25688; 812–12574]

Fremont Mutual Funds, Inc. and Fremont Investment Advisors, Inc.; Notice of Application

July 29, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the "Act") for exemptions from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of the Application: The requested order would permit certain registered management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: Fremont Mutual Funds, Inc. (the "Company"), all existing and future registered management investment companies for which Fremont Investment Advisors, Inc. ("Fremont") or any entity controlling, controlled by, or under common control with Fremont (together with Fremont, the "Adviser"), serves as an investment adviser (all such registered investment companies and their series together with the existing and future series of the Company, collectively, the "Funds") and the Adviser.

Filing Dates: The application was filed on July 13, 2001 and amended on April 25, 2002 and July 19, 2002.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 23, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC, 20549–0609. Applicants, c/o Wendell M. Faria, *Esq.*, Paul, Hastings, Janofsky and Walker, LLP, 1299 Pennsylvania Avenue, NW, 10th Floor, Washington, DC, 20004–2400.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company. The Company currently offers twelve Funds, including the Fremont Money Market Fund. The Fremont Money Market Fund and any future money market Fund that holds itself out a money market fund and is subject to the requirements of rule 2a–7 under the Act are referred to as the "Money Market Funds."[1] Fremont, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to the Company.

2. Applicants state that each Fund has, or may have, uninvested cash in an account held by a custodian ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, liquidation proceeds of investment securities, or new monies received from investors. The Funds also may participate in a securities lending program under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors ("Securities Lending Arrangements"). The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash ("Cash Collateral" and together with Uninvested Cash, "Cash Balances").

3. Applicants request an order to permit certain Funds ("Investing Funds") to invest their Cash Balances in shares of one or more of the Money Market Funds, the Money Market Funds to sell their shares to, and redeem their shares from, the Investing Funds and the Adviser to effect such purchases and sales. Investment of Cash Balances in shares of the Money Market Funds will be made only to the extent that such investments are consistent with each Investing Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and further diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies,

[1] All Funds that currently intend to rely on the requested relief are named as applicants. Any other Funds that may rely on the relief in the future will do so only in accordance with the terms and conditions of the application.

represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act authorizes the Commission to exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of sections 12(d)(1)(A) and (B) to permit the Investing Funds to invest Cash Balances in Money Market Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Fund will not be in a position to gain undue influence over a Money Market Fund through threat of redemption. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' ("NASD") Conduct Rules), or, if such shares are subject to a sales load, redemption fee, distribution fee or service fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. Applicants state that if a Money Market Fund offers more than one class of shares, each Investing Fund will invest Cash Balances only in the class with the lowest expense ratio at the time of the investment. In connection with approving any advisory contract for an Investing Fund, the board of directors of the Company (the "Board"), including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), will consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of the investment of Uninvested Cash in a Money Market Fund. In this regard, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. Applicants represent that a Money Market Fund will not acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an "affiliated person" of an investment company to include, among others, any person directly or indirectly controlling, controlled by, or under common control with the other person and any person owning, controlling, or holding with power to vote, 5% or more of the other person. Applicants state that, because the Funds share a common investment adviser, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. Applicants state that the Adviser and its affiliates may hold of record 5% or more outstanding shares of certain Funds and such Funds may be deemed affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of a Money Market Fund to the Investing Funds, and the redemption of such shares by the Money Market Funds.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of a Money Market Fund by the Investing Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Money Market Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that each Money Market Fund reserves the right to discontinue selling shares to any of the Investing Funds if the board of directors of the Money Market Fund determines that such sales would adversely affect the Money Market Fund's portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Investing Fund, by purchasing shares of the Money Market Funds, each Money Market Fund, by selling shares to the Investing Funds, and the Adviser, by effecting the proposed transactions, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission will consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Investing Funds in shares of a Money Market Fund would be on the same basis and would be indistinguishable from any other shareholder account maintained by the Money Market Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of a Money Market Fund sold to and redeemed by the Investing

Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the NASD's Conduct Rules), or if such shares are subject to any such fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Before relying on the order, an Investing Fund will hold a meeting of the Board for the purpose of voting on the advisory contract under section 15 of the Act. Before approving any advisory contract for an Investing Fund, the Board, including a majority of the Independent Directors, taking into account all relevant factors, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of the Uninvested Cash being invested in the Money Market Funds. In connection with this consideration, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of an Investing Fund that can be expected to be invested in the Money Market Funds. The minute books of the Investing Fund will record fully the Board's considerations in approving the advisory contract, including the consideration relating to fees referred to above.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund and Money Market Fund that may rely on the order shall be shall be advised or, provided the Adviser manages Cash Balances, sub-advised by the Adviser.

6. No Money Market Fund whose shares are held by an Investing Fund shall acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in Securities Lending Arrangements, a majority of the Board, including a majority of the Independent Directors, will approve the Fund's participation in Securities Lending Arrangements. The Board also will evaluate the Securities Lending Arrangements and their results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19506 Filed 8–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25687; File No. 812–12516]

The Phoenix Edge Series Fund, et al.

July 26, 2002.

AGENCY: The Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order of exemption under Section 6(c) of the Investment Company Act of 1940, as amended (the "1940 Act") from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to permit shares of the Phoenix Edge Series Fund ("Phoenix Fund") or any other existing or future investment company that is designed to fund insurance products and for which the Advisors (as defined below) or any of their affiliates may serve as investment manager, investment advisor, sub-advisor, administrator, manager, principal underwriter or sponsor (the Phoenix Fund and such other investment companies being herein referred to, collectively, as the "Fund"), or any current or future series of any Fund (a "Portfolio") to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies ("Separate Accounts"); and (2) qualified pension and retirement plans outside of the separate account context ("Qualified Plans" or "Plans").

Applicants: The Phoenix Fund, Phoenix Investment Counsel, Inc. ("PIC"), Phoenix-Aberdeen International Advisors, LLC ("PAIA"), Duff & Phelps Investment Management Co. ("DPIM") and Phoenix Variable Advisors, Inc. ("PVA") (collectively, "Applicants").

Filing Date: The application was filed on May 17, 2001 and amended and restated on April 17, 2002.

Hearing Or Notification Of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 19, 2002 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0690. Applicants, c/o Ruth S. Epstein, Esq., Dechert, 1775 Eye Street, NW., Washington, DC 20006–2401.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Phoenix Fund is a no-load, open-end, management investment company registered under the 1940 Act. The Phoenix Fund is organized as a Massachusetts business trust established pursuant to an Agreement and Declaration of Trust dated February 18, 1986. The Phoenix Fund is comprised of twenty-seven separate Portfolios, each of which has its own investment objectives and policies. Additional Portfolios may be added in the future.

2. Shares of the Phoenix Fund are currently offered to the Separate Accounts of Phoenix Home Life Mutual Insurance Company ("Phoenix"), PHL Variable Insurance Company ("PHL Variable"), and Phoenix Life and

Annuity Company ("PLAC"), which fund benefits under variable annuity and variable life insurance contracts issued by those companies. Shares of the Phoenix Fund are not sold directly to the public.

3. Phoenix Equity Planning Corporation ("PEPCO") is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the National Association of Securities Dealers, Inc. PEPCO performs bookkeeping, pricing and administrative services for the Phoenix Fund. PEPCO also serves as principal underwriter for certain variable annuity and life insurance contracts. PEPCO is a subsidiary of Phoenix Investment Partners, Ltd. ("PXP"). PXP and PEPCO are each a subsidiary of the Phoenix Companies, Inc.

4. PIC, PAIA, DPIM and PVA (each an "Advisor" and collectively, "Advisors") serve as the Phoenix Fund's investment advisors. Each is registered as an investment advisor under the Investment Advisers Act of 1940, as amended. PVA is a subsidiary of Phoenix. All of the outstanding stock of PIC is owned by PEPCO. PAIA is a joint venture jointly owned and managed by PM Holdings, Inc., a subsidiary of Phoenix, and Aberdeen Fund Managers, Inc., a subsidiary of Aberdeen Asset Management PLC. DPIM is a subsidiary of Phoenix.

5. The Fund intends to offer shares of the Portfolios to Separate Accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies") to serve as investment vehicles for various types of insurance products. These products may include, but are not limited to, variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, modified single premium variable life insurance policies, and flexible premium variable life insurance contracts (collectively referred to herein as "variable contracts" or "contracts").[1] Participating Insurance Companies will be those insurance companies that purchase shares of the Fund for such purposes.

6. The Participating Insurance Companies will establish their own Separate Accounts and design their own variable contracts. Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to such insurance company under both federal and state law. It is anticipated that Participating Insurance Companies, including Phoenix, PHL Variable, and PLAC, will rely on Rule 6e–2 or Rule 6e–3(T) under the 1940 Act, in connection with variable life insurance contracts, although some Participating Insurance Companies may rely on individual exemptive orders as well. The role of the Fund, so far as the federal securities laws are applicable, will be limited to that of offering its shares, as described below, to Separate Accounts of various insurance companies and to Qualified Plans, and fulfilling any conditions the Commission may impose upon granting the order requested in the application.

7. Each Participating Insurance Company will enter into a participation agreement with the applicable Fund on behalf of the Portfolios in which the Participating Insurance Company invests. The Separate Accounts of the Participating Insurance Companies will invest in shares of the Fund in accordance with allocation instructions received from contract owners.

8. The Fund intends to offer shares of the Portfolios directly to Qualified Plans outside of the separate account context. Qualified Plans may choose a Portfolio as the sole investment under the Qualified Plan or as one of several investments. Qualified Plan participants may or may not be given an investment choice depending on the Qualified Plan itself. Fund shares sold to such Qualified Plans would be held by the trustee(s) of said Qualified Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act ("ERISA"). Certain Qualified Plans, including those described in Sections 403(b)(7) and 408(a) of the Internal Revenue Code of 1986, as amended ("Code"), may vest voting rights in Plan participants instead of Plan trustees.[2] Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b).[3] Section 9(a) provides that it is unlawful for any company to serve as an investment advisor or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rule 6e–2(b)(15)(i) and (ii) provides a partial exemption from Section 9(a) to the extent that such section would render a company ineligible to serve as investment advisor or principal underwriter of any registered open end management investment company, where an officer, director, employee or affiliated person of such company is subject to a disqualification enumerated in Section 9(a), but the individual subject to such disqualification does not participate directly in the management or administration of the underlying registered management investment company. Rule 6e–2(b)(15)(iii) provides a partial exemption from Sections 13(a), 15(a), and 15(b) to the extent those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company." Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a variable life insurance separate account that owns shares of a management company that also offers its shares to a variable annuity separate account of the same insurance company or any other insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding."

2. In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying management company that also offers

[1] Some Separate Accounts to which the Fund may offer its Portfolio shares may be exempt from registration under the 1940 Act pursuant to Sections 3(c)(1) or 3(c)(7) thereof.

[2] Qualified Plans described in Sections 403(b)(7) and 408(a) of the Code may invest in mutual funds through custodial arrangements. Such custodial arrangements typically provide that shares held of record by the custodian are held for the benefit of the participant that beneficially owns such shares. Because of the limited role of custodians of those Plans, Applicants intend to treat each participant in those Plans as a separate Qualified Plan for purposes of the Application.

[3] The exemptions provided by Rule 6e-2 also are available to a separate account's investment advisor, principal underwriter, and sponsor or depositor.

its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding."

3. Moreover, because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Fund are also to be sold to Qualified Plans.

4. Accordingly, Applicants are requesting an order of the Commission granting exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of each Fund to be offered and sold to, and held by: (a) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; and (b) Qualified Plans.

5. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b). The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions.[4] However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

6. Applicants state that the relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Fund by Qualified Plans. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Fund are also to be sold to Qualified Plans.

7. Accordingly, Applicants are requesting an order of the Commission granting exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rule 6e–3(T)(b)(15) (and any comparable permanent rule) thereunder, to the extent necessary to permit shares of each Portfolio to be offered and sold to, and held by: (a) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by unaffiliated life insurance companies; and (b) Qualified Plans.

8. In its most recent release adopting amendments to Rule 6e–3(T), the Commission stated that shared funding arrangements presented "a very new and somewhat complicated area from a regulatory perspective" (Investment Company Act Release No. 15651 (March 30, 1987)). In the context of mixed funding, the Commission noted in this same Release that "it would prefer to see any evolvement in this area * * * take place in the context of the application process."

9. Applicants state they believe that the reason the Commission did not grant greater relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that any Commission concern in this area is not warranted in the context of the application. If and when a material irreconcilable conflict between the Separate Accounts arises in this context or between Separate Accounts on the one hand and Qualified Plans on the other hand, the Participating Insurance Companies and Qualified Plans must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Portfolios as eligible investment options. Applicants state they have concluded that the inclusion of Qualified Plans as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans arose, the Qualified Plans, unlike the Separate Accounts (which are subject to Section 26(c) of the 1940 Act with respect to substitutions), can simply redeem their shares and make alternative investments. Applicants argue that allowing Qualified Plans to invest directly in the Fund should not increase the opportunity for conflicts of interest.

10. Applicants state that the Commission has previously granted exemptive orders permitting open-end management investment companies to offer their shares directly to Qualified Plans as well as to separate accounts of affiliated or unaffiliated insurance companies that issue variable annuity contracts and variable life insurance contracts.

11. Applicants request relief under Section 6(c) of the 1940 Act for the class consisting of the Fund and the Portfolios; life insurance companies (*i.e.*, Participating Insurance Companies) and their Separate Accounts that invest or in the future will invest in the Fund and the Portfolios; and, to the extent necessary, investment managers, investment advisors, sub-advisors, administrators, managers, principal underwriters or sponsors of Separate Accounts that currently invest or in the future will invest in the Fund and the Portfolios. Applicants assert that there is ample precedent, in a variety of contexts, for granting exemptive relief not only to Applicants in a given case, but also to members of the class not currently identified that may be similarly situated in the future. In the context of mixed and shared funding, Applicants note that the Commission has previously granted exemptions covering a class composed of registered investment companies designed to fund variable contracts for which a named party to the exemptive application or, in some instances, an affiliate thereof, would serve in one or more of the following capacities: investment manager, investment advisor, sub-advisor, administrator, manager, principal underwriter or sponsor.

12. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the

[4] The exemptions provided by Rule 6e–3(T) also are available to a separate account's investment advisor, principal underwriter, and sponsor or depositor.

protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For the reasons stated below, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

13. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment advisor or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding imposed by the 1940 Act and the rules thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

14. Applicants state that Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) provide, in effect, that the fact that an individual disqualified under Section 9(a)(1) or Section 9(a)(2) is an officer, director, or employee of an insurance company, or any of its affiliates, would not, by virtue of Section 9(a)(3), disqualify the insurance company or any of its affiliates from serving in any capacity with respect to an underlying investment company, provided that the disqualified individual did not participate directly in the management or administration of the underlying investment company.

15. Applicants state that Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) provide, in effect, that the fact that any company disqualified under Section 9(a)(1) or Section 9(a)(2) is affiliated with the insurance company would not, by virtue of Section 9(a)(3), disqualify the insurance company from serving in any capacity with respect to an underlying investment company, provided that the disqualified company did not participate directly in the management or administration of the investment company.

16. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. These Rules recognize that it is not necessary to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. These Rules further recognize that it is also unnecessary to apply Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Fund as a funding medium for variable contracts.

17. Applicants believe that there is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed or shared funding. The Participating Insurance Companies are not expected to play any role in the management or administration of the Fund. Those individuals who participate in the management or administration of the Fund will remain the same regardless of which Separate Accounts or insurance companies use the Fund. Applicants maintain that, therefore, applying the monitoring requirements of Section 9(a) because of investment by Separate Accounts of other insurers would be unjustified and would not serve any regulatory purpose. Applicants also state that, furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants.

18. Applicants submit that the relief requested herein from Section 9(a) in no way will be affected by the proposed additional use of the shares of the Fund in connection with Qualified Plans. The insulation of the Fund from those individuals who are disqualified under the 1940 Act remains in place. Since the Qualified Plans are not investment companies and will not be deemed to be affiliated solely by virtue of their shareholdings, no additional relief from Section 9(a), with respect to Qualified Plans, is necessary.

19. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment advisor, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A) provide that, with respect to registered management investment companies whose shares are held by a separate account of an insurance company, the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such investment company's investment policies, principal underwriter, or any investment advisor (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T)).

20. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. Applicants believe that, in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisors, or principal underwriters. The Commission also expressly has recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer."[5] Applicants conclude that, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) undoubtedly were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

21. Applicants state that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding. Such mixed and shared funding does not compromise the goals of the insurance regulatory authorities or of the Commission. Applicants assert that, while the Commission may have

[5] Investment Company Act Release No. 9104 (Dec. 30, 1975) (proposing Rule 6e–2).

wished to reserve wide latitude with respect to the once unfamiliar variable annuity product, that product is now familiar and there appears to be no reason for the maintenance of prohibitions against mixed and shared funding arrangements. Applicants note that, by permitting such arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and potentially increases an investment company's assets, thereby making effective portfolio management strategies that are easier to implement and promoting other economies of scale.

22. Applicants state that the Fund's sale of shares to Qualified Plans will not have any impact on the relief requested herein in this regard. Shares of the Fund sold to Qualified Plans would be held by the trustees of such Plans. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, Applicants state that there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with certain types of Plan assets to certain specified persons. For example, under Section 403(a) of ERISA, shares of a fund sold to a Qualified Plan must be held by the trustee(s) of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustee(s) have the exclusive authority and responsibility for voting proxies.

23. Applicants note that, if a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Applicants further note that the Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Certain Qualified Plans, however, may provide for the trustees(s) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

24. If a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and Plan participants with respect to voting of the respective Portfolio's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans because the Qualified Plans are not entitled to pass-through voting privileges.

25. Applicants further note that there is no reason to believe that participants in Qualified Plans that provide participants with the right to give voting instructions generally, or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage variable contract owners. Applicants, therefore, assert that the purchase of shares of the Portfolios by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

26. Applicants submit that the prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. Applicants note that when Rule 6e–2 was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. At the time of the adoption of Rule 6e–2, therefore, the Commission staff contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. Applicants state that the Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and to affect the investment decisions of public shareholders.

27. Applicants state that, for reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (Sept. 25, 1981) effectively deprived variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment medium for variable contracts (including variable life contracts). Section 817(h) of the Code, in effect, requires that the investments made by variable annuity and variable life insurance separate accounts be "adequately diversified." If a separate account is organized as a unit investment trust that invests in a single fund or series, then the separate account will not be diversified. Applicants note that in this situation, however, Section 817(h) of the Code and the regulations promulgated thereunder, in effect, provide that the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *"[6] Applicants state that, accordingly, a unit investment trust separate account that invests solely in a publicly available mutual fund will not be adequately diversified. In addition, Applicants state that any underlying mutual fund, including any fund that sells shares to separate accounts, in effect, would be precluded from selling its shares to the public. Applicants conclude that, consequently, there will be no public shareholders of the Fund.

28. Applicants state that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Applicants maintain that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

29. Applicants submit that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers

[6] U.S. Department of the Treasury Regulation 1.817–5, which established diversification requirements for such funds, specifically permits, among other things, investment company managers, insurance company general and separate accounts and "qualified pension or retirement plans" to share the same underlying management investment company.

may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. Applicants assert that, in any event, the conditions discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce.

30. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners. Applicants state that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment advisor initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

31. Applicants note, however, that a particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Fund's election, to withdraw its Separate Account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal.

32. Applicants state that there is no reason that the investment policies of the Fund would or should be materially different from what these policies would or should be if the Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans (*i.e.*, long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts.

33. Applicants do not believe that the sale of shares of the Fund to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners. Applicants submit that either there are no additional conflicts of interest or there exists the ability by the affected parties to resolve any such conflicts without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

34. Applicants note that Section 817 of the Code is the only section where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance for any period (and any subsequent period) for which the investments, in accordance with regulations prescribed by the Treasury Department, are not adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) (the "Treasury Regulations") that established diversification requirements for the investment portfolios underlying variable contracts. The Treasury Regulations provide that, in order to rely on certain look-through provisions of the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. The Treasury Regulations, however, also contain certain exceptions to this requirement, one of which allows shares in the investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by insurance company separate accounts (Treas. Reg. 1.817–5(f)(3)(iii)). Applicants assert, therefore, that neither the Code nor the Treasury Regulations or revenue rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity Separate Accounts, and variable life insurance Separate Accounts all invest in the same management investment company.

35. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of the Treasury Regulations that made it possible for shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Applicants submit that the sale of shares of the same investment company to Separate Accounts and to Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

36. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts, and Qualified Plans, these differences will have no impact on the Fund and, therefore, the tax consequences of distributions from variable contracts and Qualified Plans do not raise any conflicts of interest with respect to the use of the Fund. When distributions are to be made, and the Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Separate Account or the Qualified Plan will redeem shares of the affected Fund at its net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan. The life insurance company will surrender values from the Separate Account into the general account to make distributions in accordance with the terms of the variable contract. Distributions and dividends will be declared and paid by the Fund without regard to the character of the shareholder.

37. Applicants state that with respect to voting rights, it is possible to provide an equitable means of giving such voting rights to separate account contract owners and to Qualified Plans. The transfer agent for each Fund will inform each Participating Insurance Company of its share ownership in each Separate Account, as well as inform the trustees of Qualified Plans of their holdings. The Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

38. Applicants maintain that the ability of the Fund to sell its shares directly to Qualified Plans does not create a "senior security" with respect to any variable annuity or variable life contract owner as opposed to a participant under a Qualified Plan. The

term "senior security" is defined under Section 18(g) of the 1940 Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." As noted above, regardless of the rights and benefits of participants under the Qualified Plans, or contract owners under variable contracts, the Qualified Plans and the Separate Accounts, respectively, have rights only with respect to their respective shares of the Fund. The Qualified Plans and the Separate Accounts can redeem such shares of the Fund only at the net asset value of the shares. No shareholder of a Fund will have any preference over any other shareholder of such Fund with respect to distribution of assets or payment of dividends.

39. Applicants maintain that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Fund as a common investment medium for variable contracts, as well as for Qualified Plans, would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants assert that Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise of the responsible advisors and their affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. According to Applicants, mixed and shared funding, including the sale of shares of a Fund to Qualified Plans, also would permit a greater amount of assets available for investment by such Fund, thereby promoting economies of scale, by permitting increased safety through greater diversification, and by making the addition of new Portfolios to a Fund more feasible. Applicants maintain that making the Fund available for mixed and shared funding will therefore encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

40. Applicants submit that, regardless of the type of shareholder in a Fund, the responsible Advisor will continue to manage a Portfolio's investments solely and exclusively in accordance with each such Portfolio's investment objectives and restrictions as well as with any guidelines established by the board of trustees or directors, as applicable, of the Fund. Applicants state that individual Portfolio managers work with a pool of money and do not take into account the identity of the shareholders and that, thus, the Fund is managed in the same manner as any other mutual fund. According to Applicants, if shareholders are not pleased with a mutual fund's investment results, or the manner in which the mutual fund is being operated, these shareholders may redeem their shares. Applicants state that it is the duty of the management of a mutual fund to keep shareholders informed through updated prospectuses and annual and semi-annual reports. Applicants believe that these periodic communications to shareholders function as these communications are intended. Qualified Plans, as well as contract owners, thus, will be given up-to-date information necessary for them to make informed investment decisions.

Applicants' Conditions

Applicants consent to the following conditions:

1. A majority of the Board of Trustees or Board of Directors ("Board") of each Fund shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor the respective Fund for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, Plan participants, and Qualified Plans investing in that Fund, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, Plan trustees, or Plan participants; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund, any Participating Insurance Company (collectively, "Participating Entities") and the relevant Advisor or its affiliate will report any potential or existing conflicts to the Board. The relevant Advisor and each of the Participating Entities will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever it has determined to disregard contract owner voting instructions and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participating Entity to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Entities investing in a Fund under their agreements governing participation in the Fund, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, if applicable, Plan participants.

4. If it is determined by a majority of the Board of a Fund, or a majority of its disinterested trustees or directors, that a

material irreconcilable conflict exists, the relevant Participating Entities shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the affected Fund or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio; (b) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (c) withdrawing the assets allocable to some or all of Qualified Plans that are Participating Entities from the affected Fund or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio; and (d) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Fund's election, to withdraw its Separate Account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of the decision of a Qualified Plan that is a Participating Entity to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Entities under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of the contract owners or, as applicable, Plan participants.

For the purposes of this Condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Advisors or their affiliates, as relevant, be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan that is a Participating Entity shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without a Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participating Entities and the relevant Advisor or its affiliate.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participating Insurance Companies will vote shares of each Portfolio held in their registered separate accounts in a manner consistent with voting instructions timely received from such contract owners. Each Participating Insurance Company will vote shares of each Portfolio held in its registered Separate Accounts for which no timely voting instructions are received, as well as shares attributable to the Participating Insurance Company, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their registered Separate Accounts investing in a Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote a Fund's shares and to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in a Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund. Each Plan will vote as required by applicable law and governing Plan documents.

7. A Fund will notify all Participating Insurance Companies and Qualified Plans that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan documents. Each Fund will disclose in its prospectus that: (a) Shares of the Fund are offered to insurance company Separate Accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund might at some time be in conflict; and (c) the Board will monitor the Fund for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participating Entities and any Advisor and its affiliates of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then each Fund and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Fund), and in particular each Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply

with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The Participating Entities and the relevant Advisor or its affiliate shall at least annually submit to the Board of a Fund such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application and said reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of Participating Entities to provide these reports, materials and data to the Board of the Fund when it so reasonably requests, shall be a contractual obligation of all Participating Entities under their agreements governing participation in each Fund.

12. If a Qualified Plan should become an owner of 10% or more of the assets of a Fund, the Fund shall require such Plan to execute a participation agreement with such Fund which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

Applicants submit, based on the grounds summarized above, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19533 Filed 8–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46272; File No. SR–ISE–2002–11]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 Relating to a Market Maker Inactivity Fee

July 26, 2002.

I. Introduction

On April 16, 2002, the International Securities Exchange LLC ("ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to impose a Competitive Market Maker ("CMM") inactivity fee. On May 6, 2002, the Exchange's rule proposal was published for comment in the **Federal Register**.[3] The Commission received two comment letters on the proposal.[4] On April 30, 2002 and June 19, 2002, ISE submitted Amendment Nos. 1 and 2 to the proposal, respectively.[5] On June 19, 2002, the ISE submitted a response to comments.[6] This order approves the proposed rule change, publishes notice of Amendment Nos. 1 and 2 to the proposed rule change, and grants accelerated approval of Amendment Nos. 1 and 2.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45816 (April 24, 2002), 67 FR 30406.

[4] *See* letters to Jonathan G. Katz, Secretary, Commission, from Henry Swartz, Principal, Equity Financial Products, Banc of America Securities, LLC, ("Banc of America") dated May 23, 2002 ("Banc of America Letter"), and Matthew D. Wayne, Chief Legal Officer, Knight Financial Products LLC, ("Knight") dated April 30, 2002 ("Knight Letter").

[5] *See* letters from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 29, 2002 ("Amendment No. 1") and June 18, 2002 ("Amendment No. 2"). In Amendment No. 1, the ISE made a technical change to the rule text. In Amendment No. 2, the ISE clarified the application of the fee between lessors and lessees, changed terminology to reflect the fact that the ISE has "demutualized" and that trading rights are now reflected in shares of Class B Common Stock, removed obsolete language from the Primary Market Maker ("PMM") inactivity fee regarding the effective date of that fee, and extended the proposed effective date from July 1, 2002 to August 1, 2002.

[6] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Jonathan G. Katz, Secretary, Commission, dated June 18, 2002 ("ISE Response").

II. Description of the Proposed Rule Change

The Exchange proposes to adopt a fee that would allow it to charge $25,000 per month to inactive CMM memberships, effective August 1, 2002.[7] The fee would apply to the owner of an inactive CMM membership except with regard to an owner that entered into a lease prior to August 1, 2002. In that case, the fee would apply to the lessee, if the lessee has been approved to operate the membership.

The fee would not apply to a member that holds an inactive CMM membership in a group of securities in which it also is operating the PMM membership pursuant to a lease. In that case, the member cannot operate both the PMM and CMM membership, and the member reasonably may want to retain control of the CMM membership so that it can operate the membership when its PMM lease expires. The proposal also would authorize the Exchange staff to grant exemptions if a member holds multiple inactive CMM memberships. In that situation, the Exchange could grant exemptions for all but one such membership as long as the member presents a business plan establishing that trading will begin in the inactive memberships over a reasonable time period.

The Exchange represents that it based the amount of the fee on conservative estimates of the revenues lost due to an inactive CMM membership. In addition, the Exchange represents that it would periodically reevaluate this fee to maintain the relationship between the amount of the fee and the lost revenue being recouped.

III. Comments Received

The Commission received comments on the proposal from Banc of America and Knight.[8] Banc of America objected to the proposal for several reasons. In particular, Banc of America argued that no precedent supports the proposed fee; the proposal improperly targets owners that do not operate their memberships, and that owners could not always rely on leasing to avoid the fee because seats would unlikely be leased continually and the proposed effective date would not provide enough time for owners to lease their seats; the fee would add to the start-up costs for market makers which may result in a barrier to entry to the exchange; and to require

[7] *See* Amendment No. 2, *supra* note.

[8] *See* Banc of America Letter and Knight Letter, supra note.

additional members to trade could reduce liquidity on the exchange.[9]

ISE responded to Banc of America's comment regarding precedent for the fee by arguing that its PMM inactivity fee and the Philadelphia Stock Exchange, Inc.'s shortfall fee, which imposes a fee on specialists who do not meet certain volume thresholds, set precedent for the CMM inactivity fee.[10] In response to Banc of America's argument that the proposal targets owners, ISE believes that the purpose of an exchange is to provide a market place on which members can trade, and that it is reasonable for an exchange to take action that encourages the active use of its trading rights and that imposes fees for revenues that are foregone when those rights are not used.[11] ISE believes that this is particularly true due to its recent demutualization. ISE notes that the proposed fee applies only to those persons with trading rights associated with its Series B–2 Common Stock, the CMM interests. In addition, ISE notes that Banc of America is free to hold its Class A Common Stock (the ISE Class A Stock representing virtually all the equity in the ISE) for investment purposes without being subject to an inactivity fee. Further, ISE believes that leasing is a viable alternative for an owner of a CMM membership to avoid the fee.[12] ISE notes that it provided all ISE members with notice of this proposed fee on April 18, 2002, and amended the proposal to delay the effective date by one month. In addition, ISE represents that some current ISE members that already have trading operations on the ISE and could promptly begin trading in such memberships once entering into a lease, are seeking to lease or buy additional memberships.

With regard to Banc of America's claim that the fee could be a barrier to entry, ISE notes that a potential lessee can control the time it enters into a lease and is approved for membership so that it can start trading immediately.[13] In addition, if a member leases multiple CMM memberships, the proposal permits the ISE to grant a lessee an exemption from the fee if the lessee is operating one membership and presents a reasonable plan for opening trading in all additional memberships. Thus, ISE believes that the proposed inactivity fee would not create a barrier to entry to the ISE market because the fee could be avoided. Finally, Banc of America suggested that the proposed fee could reduce liquidity on ISE.[14] In contrast, ISE believes that the fee would likely enhance liquidity on the Exchange.[15]

Knight supported a monthly fee applicable to inactive CMM memberships but argued that the amount of the fee should be no more than $10,000 per month, one-tenth the amount charged to inactive PMM memberships.[16] ISE responded to Knight's concern by noting that although there is a ten-to-one ratio between PMMs and CMMs on the ISE, both the PMM and CMM inactivity fees are based on the approximate revenue the ISE foregoes when a membership is not trading. ISE represents that PMMs do not, on average generate ten times the fees that a CMM generates. ISE believes that both the $100,000 PMM inactivity fee and the $25,000 CMM inactivity fee fairly represent the lost revenue for each category of membership and thus each fee is proper.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether Amendments No. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–11 and should be submitted by August 23, 2002.

V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[18] and, in particular, the requirements of section 6 of the Act.[19] Among other provisions, section 6(b)(4) of the Act[20] requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the Exchange currently imposes an inactivity fee on PMM memberships and that the Phlx also imposes a similar fee on its specialists.[21] In addition, the Commission believes that under ISE's unique market structure the proposal should provide an appropriate incentive for entities that control ISE trading rights to encourage participation on the Exchange. In this regard, the Commission notes that shares of ISE common stock, exclusive of trading rights, may be held for investment purposes without being subject to the proposed fee.[22] Finally, the Commission believes that the criteria used by the Exchange to calculate the amount of the fee is consistent with its obligation to equitably allocate reasonable fees and charges among its members.

VI. Conclusion

The original rule proposal was noticed for public comment in April 2002. Amendment No. 1 makes a technical correction to the rule text. Amendment No. 2 makes, technical changes, clarifies the proposal, and extends the effective date in response to comments. The Commission believes that it has received and fully considered substantial, meaningful comments with respect to the ISE's proposal, and that Amendment Nos. 1 and 2 do not raise issues that warrant delay. In addition, the Commission notes that ISE proposes August 1, 2002, as the effective date for this proposal. Accordingly, pursuant to section 19(b)(2) of the Act,[23] the Commission finds good cause to approve Amendment Nos. 1 and 2 prior to the thirtieth day after notice of the

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[9] *See* Banc of America Letter, supra note.

[10] *See* ISE Response, *supra* note 6. *See also* Exchange Act Release No. 45442 (February 13, 2002), 67 FR 8330 (February 22, 2002) (File No. SR–Phlx–2001–115).

[11] *See* ISE Response, *supra* note 6. *See also* ISE Rule 300(b), which requires non-member owners of market maker shares to lease the trading rights to approved members.

[12] *See* ISE Response, *supra* note 6.

[13] *See* ISE Response, *supra* note 6.

[14] *See* Banc of America Letter, *supra* note 4.

[15] *See* ISE Response, *supra* note 6.

[16] *See* Knight Letter, *supra* note 4.

[17] *See* ISE Response, supra note 6.

[18] The Commission has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(4).

[21] *See supra* note 10.

[22] *See* ISE Response, *supra* note 6.

[23] 15 U.S.C. 78s(b)(2).

Amendments is published in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[24] that Amendment Nos. 1 and 2 to the ISE's proposed rule change are hereby granted accelerated approval; and

It is also ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (File No. SR–ISE–2002–11), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19535 Filed 8–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46256; File No. SR–NASD–2002–62]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amending Code of Arbitration Procedure to Conform Rule 10314(b) to the Current Minimum Standard Applicable to Claims

July 25, 2002.

I. Introduction

On May 9, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the NASD Code of Arbitration Procedure to conform Rule 10314(b) to the current minimum standard applicable to claims.

The proposed rule change was published for comment in the **Federal Register** on June 20, 2002.[3] The Commission received two comments on the proposal.[4] This order approves the proposed rule change.

II. Description of the Proposal

In its proposal, NASD Dispute Resolution proposed to amend the Code to conform Rule 10314(b) to the current minimum standard applicable to claims, so that Answers need only specify relevant facts and available defenses to the Statement of Claim that was submitted by the claimant, rather than specifying all such facts and defenses that may be relied upon at the hearing.

In the proposal, NASD Dispute Resolution explained that it recently streamlined its procedures for review of arbitration claims. NASD Dispute Resolution does not consider a Statement of Claim to be deficient if it meets the minimum requirements of a properly signed Uniform Submission Agreement that names the same respondents as shown on the Statement of Claim, proper fees, and sufficient copies of the Statement of Claim. The proposed rule change would make the minimum requirements contents of an Answer consistent with those of a Statement of Claim.

III. Summary of Comments

The Commission received two comments on the proposal.[5] Commenters noted a perceived ambiguity in the proposed text of NASD Rule 10314(b)(1). In the proposed rule change, NASD Dispute Resolution had proposed the following text: "The Answer shall specify all relevant facts and available defenses to the Statement of Claim submitted. . . ." One commenter suggested that the modifier "all" should be placed before "available defenses,"[6] while another suggested that "the" should precede "relevant facts."[7] NASD Dispute Resolution maintains, and the Commission agrees, that the proposed rule text does not require the revisions proposed by the commenters.[8]

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[9] and, in particular, the requirements of section 15A of the Act[10] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 15A(b)(6) of the Act,[11] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[12] The Commission believes that the proposed rule harmonizes the pleading requirements for claimants and respondents in arbitration proceedings administered by NASD Dispute Resolution in a manner consistent with the Act. Further, the Commission has carefully considered the suggestions submitted by commenters and has concluded that the proposed rule text does not require the revisions proposed by the commenters.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–NASD–2002–62) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19534 Filed 8–1–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before October 1, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to

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[24] *Id.*

[25] *Id.*

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46077 (June 14, 2002), 67 FR 42088 (June 20, 2002).

[4] *See* letters to Jonathan G. Katz, Secretary, Commission, from Franklin Geerdes, Attorney, dated May 24, 2002 ("Geerdes Letter"); Martin L. Feinberg, Attorney, dated July 7, 2002 ("Feinberg Letter").

[5] *See* note 4, *supra*.

[6] *See* Feinberg Letter.

[7] *See* Geerdes Letter.

[8] Telephone conference between Jean I. Feeney, Associate Vice President and Chief Counsel, NASD Dispute Resolution and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission (July 25, 2002).

[9] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

Ying Lowery, Senior Economist, Office Advocacy, Small Business Administration, 409 3rd Street, SW., Suite 7800, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Ying Lowery, Senior Economist, (202) 205–6947 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Impact of the American Disabled Act on Small Business.

Form No's: N/A.

Description of Respondents: Business Owners.

Annual Responses: 1000.

Annual Burden: 500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–19585 Filed 8–1–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3435]

State of California

Plumas County and the contiguous counties of Butte, Lassen, Sierra, Shasta, Tehama, and Yuba in the State of California constitute a disaster area as a result of damages caused by a microburst that occurred on July 11, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 27, 2002 and for economic injury until the close of business on April 29, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.750
Homeowners Without Credit Available Elsewhere	3.375
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 343511 and for economic damage is 9Q8300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 29, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–19584 Filed 8–1–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3414]

State of New York; Amendment #3

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to September 15, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is February 17, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 29, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–19583 Filed 8–1–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–12916]

National Offshore Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for membership on the National Offshore Safety Advisory Committee (NOSAC). NOSAC provides advice and makes recommendations to the Coast Guard on matters affecting the offshore industry.

DATES: Applications should reach us on or before September 30, 2002.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202 267–1181; or by faxing 202–267–4570. A copy of the application form is available from the Coast Guard's Advisory Committee Web page at: *http://www.uscg.mil/hq/g-m/advisory/index.htm*. Send your application in written form to the above street address. This notice and an application form are available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Captain M.W. Brown, Executive Director of NOSAC, or James M. Magill, Assistant to the Executive Director, telephone 202 267–1181, fax 202 267–4570.

SUPPLEMENTARY INFORMATION:

NOSAC is a Federal advisory committee under 5 U.S.C. App. 2. It consists of 14 regular members who have particular knowledge and experience regarding offshore technology, equipment, safety and training and environmental expertise in the exploration or recovery of offshore mineral resources. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety, Security and Environmental Protection on safety and rulemaking matters relating to the offshore mineral and energy industries. This advice assists us in formulating the positions of the United States in advance of meetings of the International Maritime Organization.

NOSAC meets twice a year, with one of these meetings being held at Coast Guard Headquarters in Washington, DC. It may also meet for extraordinary purposes. Subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for five positions that expire or become vacant in January 2003. To be eligible, applicants should have experience in one of the following categories: (1) Offshore supply vessel services including geophysical services, (2) offshore operations, (3) construction of offshore facilities, (4) offshore production of petroleum, or (5) offshore drilling. Please state on the application form which of the five categories you are applying for. Each member normally serves a term of 3 years or until a replacement is appointed. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the U.S. Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and minority group members.

Applicants selected may be required to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: July 24, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–19547 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12927]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Transportation on matters relating to the training, qualifications, licensing, certification, and fitness of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: MERPAC will meet on Wednesday, September 4, 2002, from 8 a.m. to 4 p.m. and on Thursday, September 5, 2002, from 8 a.m. to 3 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before August 21, 2002. Written material and requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before August 21, 2002.

ADDRESSES: MERPAC will meet on both days at the Coast Guard Club of Cleveland, 1055 East 9th Street, Cleveland, OH. Further directions regarding the location of the Coast Guard Club may be obtained by contacting Mr. Danny Morris at (216) 687–1755. Send written material and requests to make oral presentations to Commander Brian J. Peter, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–0229, fax 202–267–4570, or e-mail *mgould@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting on September 4, 2002

The full committee will meet to discuss the objectives for the meeting. The committee will then break up into the following working groups: Task Statement 30, concerning use of military sea service and training for merchant marine licenses; Task Statement 34, concerning the minimum standard of competence in security for a ship's security officer and crew; Task Statement 35, concerning the gap in signaling requirements between STCW and domestic rules; and Task statement 36, concerning the recommendations on a training program for officers in charge of an engineering watch coming up through the hawsepipe. New working groups may be formed to address any new issues or tasks. At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

Agenda of Meeting on September 5, 2002

The agenda comprises the following:

(1) Introduction.

(2) Working Groups' Reports:

(a) Task Statement 30, concerning use of military sea service and training for merchant marine licenses;

(b) Task Statement 34, concerning the minimum standard of competence in security for a ship's security officer and crew;

(c) Task Statement 35, concerning the gap in signaling requirements between STCW and domestic rules;

(d) Task Statement 36, concerning the recommendations on a training program for officers in charge of an engineering watch coming up through the hawsepipe.

(3) Other items to be discussed:

(a) Standing Committee—Prevention Through People;

(b) Other items brought up for discussion by the committee or the public.

Procedural

Both meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than August 21, 2002. Written material for distribution at a meeting should reach the Coast Guard no later than August 21, 2002. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to the Executive Director no later than August 21, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: July 24, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 02–19550 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Four Corners Regional Airport, Farmington, New Mexico

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Farmington, New Mexico under the provisions of Title 49, USC, Chapter 475 and CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities and Senate Report No. 96–52 (1980). On January 9, 2002, the FAA determined that the noise exposure maps submitted by the City of Farmington under Part 150 were in compliance with applicable requirements. On July 8, 2002, the Administrator approved the noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the City of Farmington Noise Compatibility Program is July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Joyce M. Porter, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, 76137, (817) 222–5640. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Four Corners Regional Airport, Farmington, New Mexico, effective July 8, 2002.

Under Title 49 USC, Section 47504 (hereinafter referred to as Title 49''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses within the area covered by the noise exposure maps. Title 49 requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and Title 49 and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discrimination against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affective other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval or an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not, by itself, constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The City of Farmington, New Mexico submitted to the FAA on December 26, 2001, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 10, 1999 through March 28 2002. The City of Farmington noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 9, 2002. Notice of this determination was published in the **Federal Register** on March 1, 2002.

The Noise Compatibility Program Study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2007. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Title 49. The FAA began its review of the program on April 12, 2002 and was required by provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained six proposed actions for noise mitigation (on and/or off) the airport. The FAA completed its review and determined that the procedural and substantive requirements of Title 49 and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator or effective July 8, 2002.

Outright approval was granted for five of the six specific program elements. Elements #1 and #3 involved changes in utilization and improvements to engine run-up areas; Element #4 addressed use of general aviation noise abatement procedures; Element #5 involved land acquisition, avigation easements, and insultation options; and Element #6 addressed extension of noise contour zone 2. Element #2 was disapproved pending submission of additional information addressing utilization of other airports in the area.

These determination are set forth in detail in a Record of Approval endorsed by the Administrator on July 8, 2002. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the City of Farmington, New Mexico.

Issued in Fort Worth, Texas, July 25, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–19559 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Port Columbus International Airport Columbus, Ohio

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Columbus Municipal Airport Authority for Port Columbus International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATES: The effective date of the FAA's determination on the noise exposure maps is July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Jagiello, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–AGL 670.1, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7296.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Port Columbus International Airport are in compliance with applicable requirements of Part 150, effective July 8, 2002.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict

non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or propose for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Columbus Municipal Airport Authority. The specific maps under consideration are Exhibit 8, "Existing (2001) Noise Exposure Map," and Exhibit 6, "Future (2006) Noise Exposure Map" in the submission. The FAA ha determined that these maps for Port Columbus International Airport are in compliance with applicable requirements. This determination is effective on July 8, 2002. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.12 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591. Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018. Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. Mr. Bernard F. Meleski, Columbus Airport Authority, Port Columbus International Airport, 4600 International Gateway, Columbus, Ohio 43219.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, July 8, 2002.

Irene Porter,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 02–19560 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–46]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 22, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7271.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 30, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12534.

Petitioner: University of Illinois at Urbana-Champaign.

Section of 14 CFR Affected: 14 CFR 141.55(d)(3), 141.55(e)(4) and 141.63(b).

Description of Relief Sought: To permit the University of Illinois at Urbana-Champaign to hold examining authority for its FAA-approved training courses that do not meet the minimum ground and flight training time requirements of part 141.

[FR Doc. 02–19558 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held August 27, 2002 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 850, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The agenda will include:

- Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting)
- Publication Consideration/ Approval:
- Final Draft, *Minimum Operational Performance Standards for Universal Access Transceiver (UAT) Automatic Dependent Surveillance Broadcast (ADS–B)*, RTCA Paper No. 182–02/ PMC–224, prepared by SC–186.
- Final Draft, Change 2 to DO–224A, *Signal-in-Space Minimum Aviation System Performance Standards (MASPS) for Advanced VHF Digital Data Communications Including Compatibility with Digital Voice Techniques*, RTCA Paper No. 180–02/ PMC–223, prepared by SC–172.
- Final Draft, DO–271A, *Minimum Operational Performance Standards (MOPS) for Aircraft VDL Mode 3 Transceiver Operating in the Frequency Range 117.975–137.000MHz*, prepared by SC–172, RTCA Paper No. 178–02/ PMC–222.
- Discussion:
- Special Committee Chairman's Reports
- Action Item Review:
- Review/Status—All Open Action Items
- Other Business:
- Eurocontrol 8.33 kHz Vertical Expansion Study Report
- AOC Messages, Hazards and Procedural Mitigation
- Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn)

Attendance is open to interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 25, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–19561 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dallas and Ellis Counties, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Dallas and Ellis Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Bauer, P.E., District Engineer, Federal Highway Administration, 300 East 8th Street, Room 826, Austin, Texas 78701, Telephone 512–536–5950.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and the Dallas County Department of Public Works, will prepare an environmental impact statement (EIS) on the proposal to build Loop 9, a new location highway, from S.H. 360 to I.H. 20 in Southern Dallas and Northern Ellis Counties.

The study corridor is approximately 40 miles in length. From a regional and local perspective, there is a demand for additional east-west transportation capacity and access throughout the limits of the corridor. Over the last 30 years, this area has experienced tremendous growth and has more than quadrupled in population.

As directed by the Transportation Efficiency Act for the 21st Century (TEA–21), the Major Investment Study (MIS) will be integrated with the EIS. The Loop 9 facility is included in the Mobility 2025 Update: the Metropolitan Transportation Plan (MTP) for the Dallas-Fort Worth region, as a new location staged parkway calling for the preservation of right-of-way through this corridor. The environmental study will examine viable alternatives and potential transportation modes including the No-Build; Transportation Systems Management/Congestion Management Systems; controlled access freeway; and other potential options. It will also include extensive and continuous public involvement to address the long-term mobility needs of both the region and local communities. The environmental study will include the determination of the number of lanes (four to six are anticipated), roadway configuration, and operational characteristics. It will also include a discussion of the effects on the social, economic, and natural environments and of other known and reasonably foreseeable agency actions proposed within the Loop 9 study corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed an interest or are known to have an interest in this proposal. A public scoping meeting is planned for the summer of 2002. The date will be announced locally at a later time. This will be the first in a series of meetings to solicit public comments on the proposed action during the National Environmental Policy Act (NEPA) process. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and the hearing. The Draft EIS will be available for public and agency review and comment before the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 25, 2002.

Patrick A. Bauer,

District Engineer, Austin, Texas.

[FR Doc. 02–19541 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12978]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FANTASIA.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 3, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12978. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: FANTASIA. Owner: Roger J. Taylor.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Size is 50.7, capacity is eleven persons and the tonnage is gross 22GRT, Net 19NRT." "Breath: 14.1 ft. and Depth: 6.2 ft."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: The intended use for the vessel is occasional chartering for hire in and around the Hawaiian Islands."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1982. Place of construction: Taipei, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The impact to other commercial passenger vessel operators will be slim to none. To my knowledge there are no other sailboats being offered for charter on an occasional basis in the Hawaiian waters."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "I believe this waiver will be of benefit to U.S. shipyards as it may create more demand in the future."

Dated: July 30, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19590 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12977]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration. Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel STEPHANIE ANN.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 3, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12977. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build

requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: STEPHANIE ANN. *Owner:* Brian P. Sweeney.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length 70 ft., Beam 23 ft., Draft 10 ft., Gross Tonnage 85, Net Tonnage 68."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Occasional charters along the west coast of the U.S.; we are expecting to do this a total of two (2) to four (4) weeks a year. Additionally, chartering in the Gulf of Mexico and along the Eastern Seaboard; we are expecting to do this one (1) or two (2) weeks every few years. Therefore we are requesting a waiver that is valid in all the U.S. waters. Intended operations will be mainly the west coast of the United States, from the Canadian border to the Mexican border, more specifically from the Seattle and the San Juan Islands south to San Diego Bay. Additionally, on occasion, once every few years, it is our intention that the boat will be in the Gulf of Mexico and the western seaboard. Therefore we are requesting a waiver that would be valid in all U.S. waters."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1998. *Place of construction:* Viareggio (Lucca), Italy.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Given that we are expecting to charter the vessel for only two to four weeks a year, twelve (12) or less passengers, interested in longer day, or coastal cruises, the approval of this application will not have an adverse effect on existing passenger operators. This lack of impact is further supported given the large geographic region for which we are requesting the waiver; since the boat will only be available for charter two (2) to four (4) weeks of the entire year it is very unlikely that a charter each will originate multiple times from any one particular port and thus should have no effect on other commercial passenger vessel operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This waiver will have no adverse effect on U.S. Shipyards; it in fact has a very positive fiscal impact. In the last twelve (12) months approximately $250,000.00 has been spent on maintaining and upgrading the vessel all of which was done in U.S. (San Diego) Shipyards. All maintenance and additional work on the vessel will be carried out in U.S. Shipyards."

Dated: July 30, 2002.
By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19592 Filed 8–1–02; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12725]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel THORR with expanded geographic area of operation.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver was initially received by MARAD and noticed by **Federal Register** on July 12, 2002 (Vol. 67, No. 134, page 46246). By further submission the applicant has amended the proposed geographic area of operation and this notice supercedes the original request and extends the comment period. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 3, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12725. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: THORR. Owner: Mark S. Kulstad.

(2) Size, capacity and tonnage of vessel. According to the applicant:

"44'2" LWL, 50'6" LOD, 41 gross tons, 33 net tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The geographic region of intended use of the vessel for which waiver is being requested is Coastwise USA and Territories, with primary use between the West Coast of the United States and Seward Alaska. I intended to use THORR as my private yacht and offer one to two couples to share in that experience for a charter fee, within the region. I will charter on weekends and days off until my retirement in 5–10 years at which time I will begin to cruise the world."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1997. Place of construction: Taipei, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "None to minimal. There are no known boats operating in the region that do trips for just one to two couples. To the extent that there may be others, in fact that there will only be one to two couples on the boats means that the impact on others will be minimal to non existent."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The issuing of this waiver will have no impact on U.S. shipyards. No U.S. shipyard markets a yacht less that 50 foot, capable of crossing an ocean, for an owner who wants to take the occasional guest for charter."

Dated: July 30, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19591 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–11882; Notice 2]

Michelin North America, Inc., Grant of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc., (Michelin) has determined that approximately 385 275/80 R–22.5 Michelin PXZE TL LRG tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Notice of receipt of the application was published, with a 30-day comment period, on April 2, 2002, in the **Federal Register** (67 FR 15672). NHTSA received no comments.

During the period of the 42nd week through the 44th week of 2001, the Kentville, Nova Scotia, Canada plant of Michelin North America (Canada) Inc., produced tires where, on one side of the tire, the tire inflation pressure information was omitted. This condition does not meet the labeling requirements of FMVSS No. 119, S6.5(d) as the incorrectly marked tires read:

Max Load Single 2800 kg (6175 lbs) 2800 kg (6175 lbs)
Max Load Dual 2575 kg (5675 lbs) 2575 kg (5675 lbs)

Instead of:

Max Load Single 2800kg (6175 lbs) at 760 kPa (110 psi) cold
Max Load Dual 2575 kg (5675 lbs) at 760 kPa (110 psi) cold

Of the 385 noncompliant tires, approximately 283 tires may have been delivered to end-users. The remaining tires have been isolated in Michelin's warehouses and will be brought into full compliance with the requirement of FMVSS No. 119 or scrapped.

Michelin does not believe that this marking error will impact motor vehicle safety because the tires meet all other Federal motor vehicle safety performance standards. The routine source of tire inflation pressure is not the tire sidewall marking. Typically the proper inflation pressures are obtained from the vehicle placard, the vehicle owner's manual, or tire industry standards publications. Thus, the proper inflation is readily available to the user.

The agency believes the true measure of inconsequentiality with respect to the noncompliance with FMVSS No. 119, paragraph S6.5, is whether the consumer can reference the maximum load rating and corresponding inflation pressure information for a particular tire. In the case of this noncompliance, the information is marked correctly on one side of the tire while the opposite side has the maximum load stated twice with no corresponding inflation pressure. The consumer can determine the recommended inflation by referring to the fully marked side of the tire if it is facing outwards or from the other sources cited in the preceding paragraph if the fully marked side it is not facing outwards.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Michelin's application is hereby granted, and the applicant is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 30, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–19551 Filed 8–1–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 621X)]

CSX Transportation, Inc. Abandonment Exemption in Marion County, IN

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.61-mile portion of its Sequoia Supply Industrial Track extending from milepost BD–127.19, at the east side of Holmes Street (marked on the ground as milepost BD–126.9), to milepost BD–127.80 (end of track), in Indianapolis, Marion County, IN. The line traverses United States Postal Service Zip Code 46222.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this

condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 3, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 12, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 22, 2002, with: Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by August 9, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by August 2, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: July 22, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–19075 Filed 8–1–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which is currently set at $1,100. *See* 49 CFR 1002.2(f)(25).

Federal Register

Friday,
August 2, 2002

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Exclusions From Gross Income of Foreign Corporations; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208280–86; REG–136311–01]

RIN 1545–AJ57; RIN 1545–BA07

Exclusions From Gross Income of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of previously proposed rules; notice of proposed rulemaking; and notice of public hearing.

SUMMARY: This document contains new proposed rules implementing the portions of sections 883(a) and (c) of the Internal Revenue Code of 1986, as amended, that relate to the exclusion from gross income available to corporations organized in foreign countries that grant equivalent exemptions to corporations organized in the United States for income derived from the international operation of ships or aircraft. This document also provides notice of a public hearing on the proposed rules and withdraws the notice of proposed rulemaking (REG–208280–86) (65 FR 6065) published on February 8, 2000.

DATES: Written or electronic comments, requests to speak, and outlines of topics to be discussed at the public hearing scheduled for November 12, 2002, at 10 a.m. must be received by October 22, 2002. The proposed amendment to 26 CFR part 1 published on February 8, 2000 (65 FR 6065) is withdrawn as of August 2, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–136311–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–136311–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, comments may be transmitted electronically via the Internet by submitting comments directly to the IRS Internet site at: *http://www.irs.gov/regs*. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed rules, Patricia A. Bray, (202) 622–3880; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the IRS, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collection of information should be received by October 1, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.883–1, 1.883–2, 1.883–3. 1.883–4 and 1.883–5. The information required in these sections will enable a foreign corporation to determine if it is eligible to exclude its income from the international operation of a ship or ships or aircraft from gross income on its U.S. Federal income tax return. The information required in these sections will also enable the IRS to monitor compliance with the provisions of the proposed regulations with respect to the stock ownership requirements of § 1.883–1(c)(2), and to make a preliminary determination of whether the foreign corporation is eligible to claim such an exemption and is accurately reporting income as required under section 6012.

The collection of information and responses to these collections of information are mandatory. The likely respondents are foreign corporations engaged in the international operation of a ship or ships or aircraft that wish to claim an exemption from U.S. tax under section 883, and certain of their shareholders owning (directly or indirectly) a majority of the value of the shares of such corporations.

Estimated total annual reporting/recordkeeping burden on corporations: 1400 hours.

The estimated annual burden per respondent varies from 30 minutes to eight hours, depending on the circumstances of the foreign corporation, with an estimated average of one hour.

Estimated number of respondents: 1400.

Estimated annual frequency of responses: Once.

Estimated total annual reporting/recordkeeping burden on shareholders: 22,500 hours.

The estimated annual burden per respondent varies from zero minutes to eight hours, depending on the circumstances of the shareholder or intermediary, with an estimated average of 90 minutes.

Estimated number of respondents: 15,000.

Estimated annual frequency of responses: Zero if the shareholder falls within a special rule that permits the foreign corporation to use the address of record in the shareholder records.

Once every three years if there is no change in reported shareholder information.

Annually in years in which a change of information occurs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

I. Overview

On February 8, 2000, the IRS and Treasury published a notice of proposed rulemaking (REG–208280–86) in the **Federal Register** (65 FR 6065) under sections 883(a) and (c) (the 2000 proposed regulations). The 2000 proposed regulations, in accordance

with section 883(a) and (c), generally provide that a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships or aircraft shall exclude from its gross income for purposes of United States Federal income taxation qualified income it derives from its international operation of ships or aircraft, provided that the corporation satisfies certain ownership and related documentation and filing requirements. The 2000 proposed regulations explain how to determine whether a foreign country is a qualified foreign country, what income is considered qualified income, and what activities constitute international operation of ships or aircraft. They also specify how a foreign corporation satisfies the ownership and related documentation requirements.

The IRS and Treasury held a public hearing regarding the 2000 proposed regulations on June 8, 2000, and received numerous comments in connection with the hearing and otherwise. In consideration of the substantial number of comments received, and due to the significant impact the regulations have on large segments of the shipping and air transport industries, the IRS and Treasury believe it is appropriate to repropose the regulations in order to address those comments and to provide a further opportunity for comment both on the changes and more generally. Accordingly, this document withdraws the 2000 proposed regulations and provides new proposed regulations, which are referred to herein as the reproposed regulations.

Part II of this preamble discusses the principal differences between the 2000 proposed regulations and the reproposed regulations and the reasons changes have been made. Part II.A provides background. Part II.B addresses comments on the 2000 proposed regulations relating to § 1.883–1 (the general requirements for the exclusion). Part II.C addresses comments relating to § 1.883–2 (the publicly traded test). Part II.D addresses comments relating to § 1.883–3 (the CFC stock ownership test). Part II.E addresses comments relating to § 1.883–4 (the qualified shareholder stock ownership test). Finally, Part II.F addresses comments relating to § 1.883–5 (the effective date of the 2000 proposed regulations).

This preamble addresses each of the five sections of the reproposed regulations in order. Within each section, the preamble discusses first the most significant differences between the 2000 proposed regulations and the reproposed regulations, including: (1) The qualification of participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture as operation of ships or aircraft (*see* § 1.883–1(e)(1) and (2) and Part II.B.1 of this preamble); (2) the qualification of certain lightering activity as international operation of ships (*see* § 1.883–1(f)(2)(ii) and Part II.B.2 of this preamble); (3) the treatment of certain income attributable to the inland leg following the international carriage of passengers or cargo (*see* § 1.883–1(g)(1)(v) and (vi) and (g)(2)(vi) and Part II.B.2 of this preamble); (4) the treatment of income from certain container usage in the United States (*see* § 1.883–1(g)(1)(x) and (g)(2)(viii) and Part II.B.3 of this preamble)); and (5) the revision of certain aspects of the closely-held test for qualification of a foreign corporation as a publicly traded corporation (*see* § 1.883–2(d)(3) and Part II.C.2 of this preamble).

II. Section 883(a) and (c): Exclusions From Gross Income of Foreign Corporations

A. Background

The reproposed regulations provide (as do the 2000 proposed regulations) that, in general, qualified income derived by a qualified foreign corporation from its international operation of ships or aircraft is excluded from gross income and exempt from United States Federal income tax. Section 1.883–1 of both the 2000 proposed regulations and the reproposed regulations provide general operational rules and definitions to determine whether a foreign corporation is entitled to this exclusion and exemption, which are elaborated on in §§ 1.883–2 through 1.883–4. The preamble to the 2000 proposed regulations contains a detailed explanation of the provisions in the 2000 proposed regulations. That explanation is not repeated herein. Comments the IRS received on the 2000 proposed regulations and the consequent changes reflected in the reproposed regulations are described herein.

B. Comments Relating to § 1.883–1: Exclusions of Income From the International Operation of Ships or Aircraft

Section 1.883–1 of the 2000 proposed regulations provides, in accordance with section 883, that income derived from the international operation of ships or aircraft by a foreign corporation organized in a foreign country that grants a reciprocal exemption to U.S. corporations shall be exempt from U.S. Federal income tax. In response to comments the IRS received concerning the 2000 proposed regulations, the reproposed regulations modify the rules of the 2000 proposed regulations regarding the definition of *international operation of ships and aircraft* and the scope of income considered derived from such operation.

1. *Operation of ships or aircraft.* Section 1.883–1(e) of the 2000 proposed regulations provides generally that the term *operation of ships or aircraft* includes carriage of passengers or cargo for hire; time or voyage charter (full charter) of a ship, or wet lease of an aircraft; and bareboat charter of a ship, or dry lease of an aircraft. The 2000 proposed regulations also include within the term the active participation by a foreign corporation that is otherwise engaged in the operation of ships or aircraft in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangements or other joint venture, that is itself engaged in the operation of ships or aircraft.

i. *Investment in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.* Commentators suggested modifying the definition of *operation of ships or aircraft* to permit an investor in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture that is itself engaged in the operation of ships or aircraft to be treated as engaged in the operation of ships or aircraft, whether or not the investor is itself so engaged and whether or not its participation is active.

This suggestion has been generally adopted in the reproposed regulations, with modifications. Under § 1.883–1(e)(2) of the reproposed regulations, a foreign corporation is considered engaged in the operation of ships or aircraft with respect to its participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture, provided that such arrangement is a fiscally transparent entity under the income tax laws of the United States and that it would be considered engaged in the operation of ships or aircraft if it were a foreign corporation. Alternatively, if the pool, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture does not rise to the level of a partnership or other entity under the income tax laws of the United States (*e.g.*, it is a contractual arrangement only that involves the carriage of cargo or passengers for hire), a foreign

corporation that participates in such a pool, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture will be considered engaged in the operation of ships or aircraft only if the foreign corporation is otherwise engaged in the operation of ships or aircraft under paragraph (e)(1). Thus, through participation in a fiscally transparent entity, a foreign corporation may be considered engaged in the operation of ships or aircraft even if it is not itself otherwise engaged in the operation of ships or aircraft. However, through participation in a contractual arrangement that is not a fiscally transparent entity, a foreign corporation may only be considered engaged in the operation of ships or aircraft with respect to activities under such contractual arrangement only if the foreign corporation is otherwise engaged in the operation of ships or aircraft.

Section 1.883–1(e)(5)(iv) and (v) defines for these purposes the terms *entity* and *fiscally transparent entity under the income tax laws of the United States* respectively. In general, an entity is fiscally transparent under the income tax laws of the United States with respect to a category of income if the entity would be considered fiscally transparent under the income tax laws of the United States for purposes of § 1.894–1 with respect to an item of income within that category of income.

In the case of a foreign corporation that is considered engaged in the operation of ships or aircraft with respect to its participation in certain fiscally transparent entities, § 1.883–1(h)(3)(ii) provides an exception to the general rule that a foreign country that provides an exemption only through an income tax convention with the United States will not be considered to grant an equivalent exemption for purposes of section 883. Under the reproposed regulations, a foreign corporation will be treated as organized in a foreign country that grants an equivalent exemption for purposes of section 883 with respect to a category of income derived by or pursuant to a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture, but only if treaty benefits are denied to the foreign corporation solely because the foreign corporate interest holder's jurisdiction (*i.e.*, the treaty-partner jurisdiction) views the pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture as not fiscally transparent.

ii. *Space or slot charters.* Commentators also suggested modifying the definition *operation of ships or aircraft* to include space or slot chartering, which involves the leasing out of a certain amount of space (but less than all of the space) on a ship or aircraft. In the context of passenger aircraft, such a charter may be referred to as a block seat sale or charter. In response to these comments and to clarify the concept of what it means for a foreign corporation to be engaged in the operation of ships or aircraft, the rules of the 2000 proposed regulations have been revised.

Section 1.883–1(e)(1) of the reproposed regulations provides generally that a foreign corporation is considered engaged in the operation of ships or aircraft only during the time it is an owner or lessee of an entire ship or aircraft and the foreign corporation (1) uses that ship or aircraft to carry passengers or cargo for hire; or (2) either (a) leases out the ship under a time or voyage charter (full charter), space or slot charter, or bareboat charter to a lessee or sublessee, provided the ship is used to carry passengers or cargo for hire; or (b) leases out the aircraft under a wet lease (full charter), space, slot, or block-seat charter, or dry lease to a lessee or sublessee, provided the aircraft is used to carry passengers or cargo for hire. In addition, § 1.883–1(g)(1)(ix) clarifies that a foreign corporation that is engaged in the international operation of ships or aircraft within the meaning of § 1.883–1(e) may derive income that is incidental to the operation ships or aircraft by arranging by means of a space or slot charter for the carriage of cargo listed on a bill of lading or airway bill issued by the foreign corporation on the ship or aircraft of another corporation engaged in the international operation of ships or aircraft.

Thus, the reproposed regulations generally adopt the commentators' recommendations regarding space or slot chartering. A foreign corporation that has an ownership interest in an entire ship or an aircraft will be considered engaged in the operation of ships or aircraft if it space or slot charters the ship or block-seat charters the aircraft to another corporation that uses the ship or aircraft to carry passengers or cargo for hire.

iii. *Non-vessel operating common carriers.* The 2000 proposed regulations do not include within the list of activities constituting the operation of ships or aircraft the activities of a non-vessel operating common carrier (an NVOCC). Commentators suggested that NVOCCs should be treated as engaged in the operation of ships because they are common carriers that issue bills of lading and have liability for the goods shipped under that bill of lading just as an ocean common carrier.

The reproposed regulations do not adopt this suggestion. An NVOCC is not engaged in the operation of ships within the meaning of § 1.883–1(e) because it does not own an entire ship or use it in one of the listed activities in § 1.883–1(e)(1). Section 883 does not apply simply because a corporation is a common carrier. Therefore, the activities of an NVOCC continue to be included on the § 1.883–1(e)(3) list of activities that do not constitute the operation of ships or aircraft.

2. *International operation of ships or aircraft.* i. *General definition.* Section 1.883–1(f) of the 2000 proposed regulations distinguishes the international operation of ships or aircraft from the domestic operation of ships or aircraft based largely upon the amendments made to section 863(c)(1) and (2) by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). In the legislative history to TAMRA, Congress directed that transportation income derived solely from sources within the United States (section 863(c)(1) income) should not be exempt from U.S. income tax under section 883. Congress further provided that transportation income derived 50 percent from sources within the United States (section 863(c)(2) income) should be eligible for exemption from U.S. income tax under section 883. See S. Rep. No. 100–445, 100th Cong., 2d Sess. 241–242 (1988).

Section 863(c)(1) income is defined as income attributable to transportation that begins and ends in the United States. Section 863(c)(2) income is defined as income attributable to transportation that begins or ends in the United States, and that is not section 863(c)(1) income. The 2000 proposed regulations adopt this distinction between section 863(c)(1) income and section 863(c)(2) income in defining the term *international operation* to mean the operation of ships or aircraft on voyages or flights that begin or end in the United States and correspondingly end or begin in a foreign country.

Commentators objected to this definition. Several argued that the term *international operation* should be defined coextensively with the term *international transport*, as used in Article 8 of the OECD Model Income Tax Convention and in the 1996 United States Model Income Tax Convention.

Nevertheless, the IRS and Treasury believe that Congress meant the definition of *international operation* to correspond with the definition of section 863(c)(2) income. Section 863(c)(2) does not apply to

transportation that begins and ends in the United States; it applies to transportation that begins or ends in the United States. Therefore, the reproposed regulations do not modify the definition of *international operation of ships or aircraft* to include transportation that begins and ends in the United States (such as the U.S. inland legs following international transport, discussed immediately below). The IRS and Treasury believe this interpretation to be consistent with the intent of Congress.

ii. *Inland leg of transportation.* The 2000 proposed regulations generally do not include within the definition of international operation the inland leg of transportation of passengers or cargo before or after an intermediate stop in the United States.

Commentators criticized the exclusion of the inland leg in the 2000 proposed regulations as inconsistent with long-standing industry practice and other provisions of domestic law, such as the Shipping Act of 1984, Public Law 98–237, 2 (97 Stat. 67) (March 20, 1984), as amended, Public Law 105–258, Title 1, 101 (112 Stat. 1902) (Oct. 14, 1998), which considers certain inland transportation to form a part of international service. Commentators also suggested that the 2000 proposed regulations contradicted the established U.S. transportation policy of promoting intermodal transportation (*i.e.*, transportation by more than one form of carrier during a single journey).

After reviewing these comments, the IRS and Treasury have determined not to change the definition of international operation of ships or aircraft in the reproposed regulations. As explained above, in Part II.B.2.i, the language of section 883 and the legislative history of TAMRA, in the view of IRS and Treasury, do not permit the inland leg of transportation to be considered international operation of ships or aircraft. In recognition of the need to promote efficient international transportation, however, the IRS and Treasury have amended the rules of the 2000 proposed regulations to include income with respect to certain inland transportation as income from an activity incidental to the international operation of ships or aircraft, and thus eligible for exemption. *See* Part II.B.3, below.

iii. *Cruises to nowhere.* The 2000 proposed regulations generally include within the definition of international operation a round trip cruise that begins in the United States, stops at a foreign port, and returns to the same or another US port. Because the 2000 proposed regulations require a stop at a foreign intermediate port, the 2000 proposed regulations effectively exclude from the definition of international operation of ships or aircraft a "cruise to nowhere" (*i.e.*, a cruise that begins and ends in the United States without stopping at a foreign port).

Several commentators criticized the exclusion of cruises to nowhere. The reproposed regulations, however, do not treat a cruise to nowhere as international operation of ships or aircraft. Although a cruise to nowhere travels beyond the U.S. territorial limits, its passengers may embark and disembark only in the United States. A cruise to nowhere begins and ends its voyage in the United States, within the meaning of section 863(c)(1), with respect to its passengers and thus should not constitute international operation of ships or aircraft.

iv. Lightering. The 2000 proposed regulations exclude from the definition of international operation the activities of a lighter vessel that carries cargo to, or picks up cargo from, a vessel located beyond the territorial limits of the United States, and correspondingly loads or unloads that cargo at a U.S. port.

Commentators recommended that lighter vessels that service host vessels engaged in international operation should be considered engaged in international operation. Commentators relied for support on § 1.954–6(b)(3)(iv), which treats a lighter vessel that services a host vessel used in foreign commerce as also used in foreign commerce for purposes of determining foreign base company shipping income.

While the IRS and Treasury did not adopt the commentators' approach, the reproposed regulations, unlike the 2000 proposed regulations, do not require that a ship be operated on voyages that begin or end in the United States and correspondingly end or begin in a foreign country. Instead, the reproposed regulations require simply that the ship or aircraft be operated on voyages or flights that begin or end in the United States and correspondingly end or begin outside the United States. In servicing a host vessel beyond the territorial limits of the United States, a lighter vessel begins its voyage outside the United States alongside the host vessel with respect to the cargo transported, and ends its voyage with respect to that cargo upon delivery of the cargo in the United States. Accordingly, under § 1.883–1(f)(2)(ii) of the reproposed regulations, lightering activity that extends beyond United States territorial waters will constitute the international operation of a ship.

3. *Activities Incidental to International Operation.* Section 1.883–1(g) of the 2000 proposed regulations provides that certain activities of an operator of a ship or aircraft are so closely related to the primary activity of the international operation of ships or aircraft that income from those incidental activities shall be considered income from the international operation of ships or aircraft, and thus eligible for exemption.

i. *Intermodal containers.* Section 1.883–1(g)(1)(v) of the 2000 proposed regulations provides that rental of containers during the international carriage of goods by sea by the operator of a ship or by air by the operator of an aircraft is incidental to the international operation of ships or aircraft. By contrast, § 1.883–1(g)(2)(iv) of the 2000 proposed regulations provides that the rental of containers for a domestic leg of transportation in connection with international carriage of cargo is not incidental to the international operation of ships or aircraft.

As discussed above in Part II.B.2(ii), the reproposed regulations do not change the general definition of the term *international operation of ships or aircraft* to cover the inland leg. The IRS and Treasury, however, recognize that intermodal transportation is a critical adjunct to the international transportation of cargo.

Accordingly, § 1.883–1(g)(1)(x) of the reproposed regulations treats certain container rental activities in the United States as incidental to the international operation of ships or aircraft. The reproposed regulations limit incidental treatment to the rental of containers for use in the United States for a period not exceeding five days beyond the original delivery date to the consignee as stated on the bill of lading. The reproposed regulations also impose other limitations on incidental treatment, and no other rental of containers within the United States is considered incidental to the international operation of ships or aircraft (*e.g.*, the extended rental of containers for use by the customer for temporary warehousing of cargo).

ii. *Inland legs of transportation—cargo transport.* As discussed above, the 2000 proposed regulations may treat some inland legs of transportation of cargo as domestic because the international transportation provided by a ship or aircraft is considered to end when the cargo is transferred from the ship or aircraft and clears customs or is considered to begin when the ship or aircraft is loaded at the United States port or airport. Again as discussed above, commentators argued that this rule inhibits intermodal transportation.

In recognition of this concern, § 1.883–1(g)(1)(v) of the reproposed regulations provides that (i) if a foreign corporation engaged in the international operation of ships or aircraft issues a through bill of lading, airway bill or similar document for the carriage of cargo from a port or airport outside the United States to an intermediate port or airport in the United States and then to an inland destination within the United States, or from an inland point of origin in the United States to an intermediate U.S. port or airport and then to a destination outside the United States, and (ii) to fulfill its common carrier obligations under the bill, the foreign corporation arranges through a related or unrelated corporation (either by subcontracting or otherwise) for carriage of cargo by air, ship, truck or rail between the U.S. port or airport and the inland point either preceding or following the international carriage of that cargo, then the activity of arranging for that transportation is incidental to its international operation of ships or aircraft, and income from such activity is thus eligible for exemption.

The reproposed regulations do not provide the same treatment where the bill of lading issued by the foreign corporation is solely for the international carriage of cargo between a U.S. port or airport where the cargo is loaded on or unloaded from the ship or aircraft and a point outside the United States. In such cases, arranging for further transportation of the cargo by another party on an inland leg is not incidental to the international operation of ships or aircraft. See § 1.883–1(g)(2)(vi). In addition, if the qualified foreign corporation carries cargo between a U.S. inland point and a U.S. port or airport with its own trucks, buses or rail service preceding or following the international carriage of such cargo by the qualified foreign corporation, the activity is not incidental to its international operation of ships or aircraft. See § 1.883–1(g)(2)(vii).

iii. *Inland legs of transportation—passenger transport under a code-sharing arrangement.* Under the 2000 proposed regulations, passenger carriage is deemed to begin or end upon a change of aircraft. Pursuant to that rule, international transportation provided by an air carrier ends when a passenger changes planes at a gateway city en route from a foreign point of origin to a U.S. destination, or begins when a passenger changes planes at a gateway city en route to a foreign destination. Thus, under the 2000 proposed regulations, an inland leg of passenger transportation is not treated as international even if it follows international transportation and is pursuant to a through ticket sold by a foreign airline, for example, under a code-sharing arrangement with a U.S. airline or is pursuant to an interline ticket.

Commentators argued that this rule would give rise to inefficiency, inhibit economies of scale from developing within the airline industry, and limit services available to passengers desiring international travel.

In recognition of these comments, § 1.883–1(g)(1)(vi) of the reproposed regulations provides that the sale or issuance of an interline or code-sharing passenger ticket for the carriage of persons by air between the U.S. gateway and another U.S. city preceding or following international transportation is an activity incidental to the international operation of aircraft. This rule only applies, however, if all such flight segments are provided pursuant to the passenger's original invoice, ticket, or itinerary.

4. *Activities not incidental to international operation of ships or aircraft.* i. *Hotel accommodations.* Under the 2000 proposed regulations, the sale or arranging for train travel, land tour packages and port city hotels is not an activity incidental to the international operation of ships or aircraft. Commentators suggested that an exception to that general rule be provided in the case of arranging for hotels for the one night before or after the international carriage of a passenger.

The reproposed regulations adopt this suggestion. It is not always possible for a cruise ship passenger to arrive at the port city on the morning of the scheduled departure or to arrange for a return flight home on the evening of the arrival back in port. Arranging for one night's accommodation in such situations is an adjunct to the operation of the cruise business. Thus, arranging for one night in a hotel before or after a cruise is considered incidental to the international operation of ships under § 1.883–1(g)(1)(vii) of the reproposed regulations.

ii. *Ground services and other services.* Under § 1.883–1(g)(2)(vi) of the 2000 proposed regulations, services performed for parties other than passengers, consignors or consignees, such as ground services at ports or airports or ship or aircraft maintenance, are not considered incidental to the international operation of ships or aircraft.

Several commentators suggested that income from services other than ground services provided by an operator, such as crewing, operating casinos, fleet management, operating reservations systems, and marketing or administrative services to consignors, consignees, as well as to members of the same pool, partnership, strategic alliance, joint operating agreement, code-sharing or other joint venture or joint operating arrangement, should be considered incidental.

The IRS and Treasury believe that no clear international norm or standard has developed regarding the appropriate treatment of such services. Accordingly, the reproposed regulations, in § 1.883–1(g)(3), reserve on the treatment of ground services, maintenance and catering, as well as other services not mentioned as included among incidental activities. The IRS and Treasury solicit comments on the appropriate rule.

5. *Activities incidental to the international operation of ships or aircraft performed by pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.* The 2000 proposed regulations do not address whether activities performed by a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture can be considered incidental to the international operation of ships or aircraft.

Commentators argued that activities a foreign corporation would perform for itself, absent such an arrangement or entity, should be incidental to the foreign corporation's international operation of ships or aircraft, within the meaning of § 1.883–1(g).

In response to these comments, § 1.883–1(g)(4) of the reproposed regulations broadens the scope of incidental activities. An activity may be considered incidental to the international operation of ships or aircraft by a foreign corporation, and income derived by the foreign corporation with respect to such activity is deemed to be income derived from the international operation of ships or aircraft, if the activity is performed by or pursuant to a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture in which such foreign corporation participates, if (i) the activity is incidental to the international operation of ships or aircraft by the pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture, provided the joint venture is itself engaged in the operation of ships or aircraft; or (ii) such activity would be incidental to the international operation of ships or

aircraft by the foreign corporation, if it performed such activity itself, and provided the foreign corporation is otherwise is engaged in the operation of ships or aircraft.

6. *Interaction with income tax conventions.* i. *Eligibility for benefits under both a treaty and this regulation.* Section 1.883–1(h)(3) of the 2000 proposed regulations contains special rules regarding income tax conventions. Under the 2000 proposed regulations, if a corporation is organized in a foreign country that offers an exemption under an income tax convention and also some other means, such as a diplomatic note pursuant to section 883, the foreign corporation must choose annually whether to claim an exemption under section 894 and the income tax convention, or under section 883.

Commentators objected to this rule, stating that there was no tax policy rationale for requiring a foreign corporation eligible for an exemption under both section 883 and an income tax convention to make an annual election to claim under one or the other.

In response to these comments, § 1.883–1(h)(3)(i) of the reproposed regulations provides that if the taxpayer is eligible to exempt income under both an applicable income tax convention and section 883, the taxpayer may claim an exemption under both the applicable income tax convention and section 883 with respect to such category of income. As under the 2000 proposed regulations, however, such an election must be made with respect to all income of the foreign corporation from the international operation of ships or aircraft, and cannot be made separately with respect to different categories of income.

ii. *Regulation not intended to be used for interpretation of U.S. income tax conventions.* Many U.S. income tax conventions define the terms regarding international transport used therein, such as the term *international traffic,* but some conventions do not define such terms. In general, conventions provide that undefined terms have the meaning provided by the domestic laws of the contracting state from which treaty benefits are claimed. The 2000 proposed regulations do not state specifically whether the definitions and descriptions of terms used within those regulations should be used to interpret similar terms or concepts in income tax conventions or to delimit the scope of the exemption available under treaties for profits from shipping and air transport.

Treasury and IRS have received a number of inquiries regarding whether terms used in the 2000 proposed regulations should be used to interpret terms and concepts in U.S. income tax conventions, most commonly with respect to the definition of *international traffic* and related terms and concepts in the shipping and air transport article (typically, Article 8 of the convention).

In response to these inquiries, § 1.883–1(h)(3)(iii) of the reproposed regulations clarifies that definitions provided in these regulations do not give meaning or provide guidance regarding similar terms in U.S. income tax conventions or the scope of any treaty exemption. For example, the definition of the term *international operation of ships or aircraft* will not control the meaning of the terms *international traffic* and *international transport,* as used in U.S. income tax conventions. *See* H.R. Conf. Rep. No. 99–841, 99th Cong., 2d Sess. 599 (1986), reprinted in 1986–3 C.B. vol. 4, at 599 ("The conferees wish to clarify that the [conference] agreement's provisions do not deny any benefits available under present law in an income tax treaty between the United States and a foreign country.").

7. *Substantiation and reporting requirements.* For a foreign corporation to be considered a qualified foreign corporation under § 1.883–1(c), the 2000 proposed regulations require that the corporation identify on its return each category of qualified income for which it claims an exemption and provide a reasonable estimate of the amount of qualified income for each such category.

Commentators criticized this requirement on the ground that many foreign corporations, such as foreign airlines, do not keep books and records based on U.S. generally accepted accounting principles reflecting each separate item of income. Commentators also complained that foreign corporations could not determine without significant administrative burden how much income would be from sources within the United States under U.S. income tax principles.

In response to these comments, § 1.883–1(c)(3) of the reproposed regulations provides that a reasonable estimate of each category of qualified income for which an exemption is claimed must be provided to the extent such amounts are readily determinable. This standard is consistent with the general standards in § 1.6012–2(g)(1)(i) for information included on returns filed by foreign corporations that claim an exemption from income tax by reason of U.S. domestic law or a U.S. income tax convention.

C. Comments Relating to § 1.883–2: Treatment of Publicly-Traded Corporations

Section 883(c)(1) provides that a foreign corporation shall not be eligible for the exclusion of income from the international operation of ships or aircraft if 50 percent or more of the value of its stock is owned by individuals who are not residents of a qualified foreign country. Section 883(c)(3) provides, however, that this rule shall not apply to any foreign corporation whose stock is primarily and regularly traded on an established securities market in either the United States or a qualified foreign country.

Section 1.883–2 of the 2000 proposed regulations provides rules regarding section 883(c)(3). As explained more fully in the preamble to those regulations, the branch profits tax rules under § 1.884–5(d) provide the framework for § 1.883–2. Section 1.883–2(d) of the 2000 proposed regulations defines the term *regularly traded.* For the stock of foreign corporation to be considered regularly traded, one or more classes of the corporation's stock that in the aggregate represent 80 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote must be listed on an established securities market. In addition, the 2000 proposed regulations provide that a class of stock cannot be counted for purposes of meeting the regularly traded requirement if one or more persons who own at least 5 percent of the value of the outstanding shares of the class of stock (5-percent shareholders) own in the aggregate 50 percent of more of the value of stock in the class.

As discussed below, in response to comments received, the reproposed regulations modify the 2000 proposed regulations rules regarding the 80 percent listing requirement and the rules for closely-held classes of stock. The reproposed regulations do not, however, modify the rules regarding the reporting (on the corporation's Form 1120F) of the names of any 5-percent shareholders upon which the foreign corporation intends to rely to satisfy section 883(c). Moreover, the reproposed regulations do not adopt a suggestion regarding the treatment for purposes of the stock ownership test of section 883(c)(1) of shareholders in a publicly-traded class of stock of a non-publicly traded corporation.

1. *Regularly traded listing threshold.* Under the 2000 proposed regulations, in accordance with Section 883(c)(3)(A), the stock of a foreign corporation must be regularly traded for the foreign

corporation to satisfy the publicly traded test. To determine whether the foreign corporation's stock is regularly traded, § 1.883–2(d) of the 2000 proposed regulations generally adopts the threshold used in connection with the branch profits tax rules of § 1.884–5(d)(4)(i)(A). Under § 1.883–2(d), the stock of a corporation is regularly traded if one or more classes of stock of the corporation are listed on an established securities market in the United States or in a qualified foreign country, and those classes, in the aggregate, represent 80 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock (provided also that certain trading requirements are satisfied).

Commentators objected to the 80 percent listing requirement. Commentators suggested that in cases where a corporation has an initial public offering of a new class of stock, or where a founding family retains voting control through a separate class of stock from the publicly traded class, the 80 percent listing requirement could make it impossible for the corporation to be regularly traded, even where the listed class or classes are widely held and actively traded. For example, commentators posited that a foreign government's minority interest of 25 percent held in a separate unlisted class over the time period required for privatization of a national airline would disqualify the airline, even if its stock were otherwise widely held and actively traded.

In response to these comments, § 1.883–2(d)(1) of the reproposed regulations reduces the 80 percent listing requirement to 50 percent. The lower percentage corresponds more closely with recent U.S. treaty policy regarding the publicly traded test contained in the Limitation on Benefits articles of certain U.S. income tax conventions. This modification of the general regularly traded test also mitigates some commentators' concerns regarding the closely-held test, as explained below in Part II.C.2.

2. *Closely-held classes of stock.* Section 1.883–2(d)(3) of the 2000 proposed regulations disqualifies a class of stock from being relied on to satisfy the publicly traded test if, at any time during the taxable year, one or more 5-percent shareholders of that class of stock (determined without regard to the attribution rules in § 1.883–4) owns, in the aggregate, 50 percent or more of the total value of that class of stock. The 2000 proposed regulations, however, provide an exception to this disqualification. An otherwise qualifying closely-held class of stock still can meet the regularly traded test if the foreign corporation can establish that more than 50 percent of the value of the outstanding shares of that class of stock are owned or treated as owned by persons who are qualified shareholders for more than half the number of days during the taxable year. These rules are based upon the closely-held test provided in § 1.884–5(d)(4)(iii) with respect to the branch profits tax.

Several commentators suggested that the legislative history of section 883 does not support the adoption of a closely-held test. Commentators pointed out a number of statutory distinctions between sections 883 and 884 in advocating deletion of the closely-held test in its entirety.

Other commentators contended that the closely-held rules effectively eliminate the publicly traded test as a viable alternative to the qualified shareholder stock ownership test for closely-held corporations that otherwise meet the listing and trading requirements. These commentators felt it would be administratively impossible to identify and document that qualified shareholders hold more than 50 percent of the value of the outstanding shares of a class of stock because the corporation would not be able to collect sufficient information from individuals owning shares through the widely-held block of stock or from custodians such as financial institutions holding shares on behalf of customers. These commentators therefore requested that the closely-held test be deleted, or that the widely-held block be treated as owned by qualified shareholders, such that the foreign corporation only would have to look to the qualified 5-percent shareholders of the closely-held block to prove up the difference between the percentage owned by the widely-held block and 50 percent.

The reproposed regulations take into account the principal concerns of the commentators. While the reproposed regulations retain the closely-held test and do not change substantially the definition of a closely-held class of stock, the reproposed regulations broaden the exception in § 1.883–2(d)(3)(ii). Under the reproposed regulations, a class of stock will not be treated as closely-held if the foreign corporation can establish that qualified shareholders, applying the attribution rules of § 1.883–4(c), own enough shares of the closely-held block of stock to preclude non-qualified shareholders in the closely-held block of stock from owning 50 percent or more of the total value of the class of stock for more than half the number of days during the taxable year. A foreign corporation may establish that a class of stock meets this exception if it obtains documentation described in § 1.883–4(d) from those qualified shareholders owning shares in the closely-held block of stock whom the foreign corporation has relied upon to meet the exception. This change broadens the exception to the closely-held test by allowing a foreign corporation to prove that a class of shares is not closely-held using information solely from shareholders within the closely-held block of stock.

In addition, § 1.883–2(d)(3)(iii)(B) of the reproposed regulations provides that an investment company will not be treated as a 5-percent shareholder for purposes of the closely-held test if no person owning an interest in the investment company owns, after application of the attribution rules of § 1.883–4(c), 5 percent or more of the value of the outstanding shares of the class of stock of the foreign corporation seeking qualified foreign corporation status. This rule prevents a corporation from having a closely-held class of stock simply because an investment company that meets the above requirements causes a class of stock of that corporation to be owned more than 50 percent in the aggregate by 5-percent shareholders.

Finally, the reproposed regulations in § 1.883–4(d)(3)(viii) adopt the suggestion of one commentator that an otherwise publicly-traded foreign corporation seeking qualified foreign corporation status or a publicly-traded shareholder corporation that is traded on an established securities market in the United States may rely on its latest SEC Form 13G filing (Statement of Beneficial Ownership by Certain Persons) for the taxable year to determine if the class of stock being considered has a 5-percent shareholder. The IRS and Treasury believe these changes to the 2000 proposed regulations will facilitate compliance with the closely-held test.

3. *Publicly-traded classes of stock of a non-publicly traded corporation.* Regulations under section 884 regarding the branch profits tax provide that a publicly traded class of stock is treated as owned by individuals who are residents of a qualified foreign country. Such a provision might be relevant as well in the context of section 883 if one or more classes of the corporation's stock are publicly traded but the corporation itself is not considered publicly traded. If these other classes were treated as owned by qualified shareholders, the foreign corporation might be more likely to satisfy section 883(c), as provided in §§ 1.883–1(c)(2)

and 1.883–4. Commentators recommended that the reproposed regulations adopt the rule of the branch profit regulations.

The reproposed regulations, however, do not adopt this suggestion. The IRS and Treasury believe that the reduction in the listing threshold from 80 percent to 50 percent and the change in the exception to the closely-held test provide sufficient latitude for foreign corporations seeking to comply with the publicly traded test. Moreover, as discussed below in Part II.E.1, the reproposed regulations adopt commentators' suggestions regarding the treatment of certain institutional 5-percent shareholders for purposes of § 1.883–4 which should also ease compliance.

4. *Identification of 5-percent qualified shareholders on return.* Sections 1.883–2(f) and 1.883–4(e) of the 2000 proposed regulations require that the foreign corporation identify on its Form 1120F, "U.S. Income Tax Return of a Foreign Corporation," its qualified shareholders that own, or are treated as owning within the meaning of § 1.883–4(c), 5 percent or more of the stock of the foreign corporation and upon which the foreign corporation intends to rely to satisfy the stock ownership test of § 1.883–1(c)(2).

Commentators were concerned that the identity of such qualified shareholders might be disclosed. Although the name of a 5-percent shareholder is return information that is not subject to disclosure under section 6110, commentators believed that such information might nevertheless become public, for example, in the context of taxpayer litigation. They also expressed concern that there could be spontaneous exchanges of information with treaty partners that do not have the same non-disclosure restrictions as the United States. Some commentators suggested that the documentation instead be made available to a third party for use by the Commissioner upon request.

The reproposed regulations do not adopt these suggestions, in the interest of sound tax administration. The IRS and Treasury believe that there exist sufficient safeguards in our treaties and in the Internal Revenue Code to prevent the unintended disclosure of the identity of qualified 5-percent shareholders relied upon to satisfy the requirements of §§ 1.883–2(f) and 1.883–4(e).

D. Comments Relating to § 1.883–3—Treatment of Controlled Foreign Corporations

Section 883(c)(2) provides that the stock ownership test of section 883(c)(1) shall not apply to controlled foreign corporations (CFCs). Under the 2000 proposed regulations, a CFC is considered to satisfy the CFC exception of section 883(c)(1) if it meets the requirements of § 1.883–3. To meet those requirements, a CFC must, among other things, pass the income inclusion test of § 1.883–3(b). The income inclusion test contained in the 2000 proposed regulations requires that more than 50 percent of the subpart F income derived by the CFC from the international operation of ships or aircraft be includible in the gross income of one or more U.S. citizens, individual residents of the United States, or domestic corporations. For example, a CFC owned by a domestic partnership, the partners of which are residents of foreign countries, would not meet the income inclusion test.

One commentator argued that the income inclusion test was too restrictive because it could deny qualified foreign corporation status to CFCs legitimately owned and controlled by U.S. shareholders. For example, a foreign corporation owned by U.S. citizens who are family members could be a CFC as a result of the constructive ownership rules of section 958(b), but fail the income inclusion test because not all the family members own directly or indirectly, under section 958(a), 10 percent or more of the CFC's voting stock, and thus may not be required to include in their gross income the subpart F income of the CFC.

The CFC exception of the 2000 proposed regulation has not been changed substantively in these reproposed regulations. The Conference report accompanying the legislation that added the CFC exception provides with respect to the exception that "corporations are not considered residents of countries that exempt U.S. persons unless 50 percent or more of the ultimate individual owners are U.S. shareholders of controlled foreign corporations". H.R. Conf. Rep. No. 99–841, 99th Cong., 2d Sess. 598 (1986), reprinted in 1986–3 C.B. vol. 4, at 598 (1986). The intent of the CFC exception therefore is for the general ownership requirement 883(c)(1) to apply unless the foreign corporation is a CFC and 50 percent or more of the subpart F income of that corporation derived from the international operation of ships or aircraft is includible by U.S. citizens, individual residents or domestic corporations.

The reproposed regulations do clarify the operation of the income inclusion test by specifying with greater precision than the 2000 proposed regulations that the income inclusion test only applies to subpart F income derived from the international operation of ships and aircraft.

E. Comments Relating to § 1.883–4—Qualified Shareholder Stock Ownership Test

As noted above, section 883(c)(1) provides that a foreign corporation shall not be eligible for the exclusion of income from the international operation of ships or aircraft if 50 percent or more of the value of its stock is owned by individuals who are not residents of a qualified foreign country. Section 1.882–4 of the 2000 proposed regulations provides detailed rules regarding this statutory requirement.

In response to comments the IRS received regarding those provisions of the 2000 proposed regulations, the reproposed regulations modify the rules regarding the permissible categories of qualified shareholders, the requirements for establishing qualified shareholder status under an income tax convention, the attribution of ownership in the case of taxable non-stock corporations, and the preparation of ownership statements from foreign governments. As discussed below, however, the reproposed regulations generally do not modify the 2000 proposed regulations with respect to the treatment of bearer shares or with respect to the attribution of ownership of discretionary trusts.

1. *Qualified shareholders.* Under the 2000 proposed regulations, a foreign corporation may satisfy the stock ownership test of § 1.883–1(c)(2) if it meets the qualified shareholder stock ownership test of § 1.883–4. The qualified shareholder stock ownership test generally requires more than 50 percent ownership by qualified shareholders. Section 1.883–4(b) of the 2000 proposed regulations provides a list of persons who can be qualified shareholders.

Several commentators requested the inclusion of additional categories of qualified shareholders. One commentator suggested that foreign airlines covered by a bilateral air services agreement between the United States and another country should be deemed to satisfy the ownership requirements of § 1.883–4(a) because these agreements require substantial ownership and effective control by nationals of the other country. In response to this comment, the reproposed regulations add shareholders of such airlines to the list of qualified shareholders in § 1.883–4(b)(1)(i)(F), subject to certain conditions.

Other commentators suggested that the list of qualified shareholders include

a mutual fund, money market manager, regulated investment company, open and closed-end fund, investment partnership or other type of investment vehicle available to the public and subject to regulation by the Securities and Exchange Commission. Such entities have great difficulty in demonstrating that more than 50 percent of the value of their shares is owned, or treated as owned, by qualified shareholders.

The reproposed regulations do not adopt these suggestions. The IRS and Treasury recognize the difficulty in proving ownership of such entities, but many owners of such entities may in fact be U.S. residents or other non-qualified shareholders. However, § 1.883–4(d)(3)(viii) of the reproposed regulations does permit a publicly traded corporation to rely on its Form 13G "Statement of Beneficial Ownership by Certain Persons" to identify 5-percent shareholders for purposes of the documentation requirements of § 1.883–2(e). Certain of these entities may be able to rely upon this section without additional compliance burden because they are already required to file Form 13G and identify 5-percent shareholders.

2. *Bearer shares.* Section 1.883–4(b)(1)(ii) of the 2000 proposed regulations provides that a shareholder is a qualified shareholder only if the shareholder does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of § 1.883–4(c).

Several commentators criticized this rule. They contended that the restriction on the use of bearer shares raises concerns of fundamental fairness and that the IRS should not attempt to regulate the personal property rights of nonresident alien individuals. These commentators suggested that the rule should be deleted or substantially modified to allow the use of bearer shares whose ownership can be substantiated to the satisfaction of the Commissioner.

Due to the difficulty of reliably demonstrating the true ownership of such shares, the reproposed regulations do not adopt this suggestion, in the interest of sound tax administration.

3. *Certain limitation on benefits article restrictions in income tax conventions applied to shareholders.* Under § 1.883–4(b)(3)(i) of the 2000 proposed regulations, a shareholder resident in a treaty country is not a qualified shareholder by virtue of the treaty exemption unless the foreign corporation of which it is a shareholder would be able to satisfy, if it were organized in the treaty country, any additional requirement imposed by the shipping and air transport article or the limitation of benefits article of the treaty upon which the shareholder relies.

Commentators objected to this rule because it effectively prevents many foreign corporations, especially airlines, from relying on ownership resident in a treaty country to obtain a section 883 exemption. Commentators also argued that the provision would act as a significant and inappropriate barrier to joint venture corporations with owners or partners resident in treaty countries.

In response to these comments, the reproposed regulations modify the 2000 proposed regulations, so that if a shareholder relies on an income tax convention to demonstrate residence in a qualified foreign country, the shareholder alone must satisfy the residence requirements and limitation on benefits requirements of the convention. The reproposed regulations thus eliminate the requirement that the corporation seeking qualified foreign corporation status itself must satisfy any additional requirements.

4. *Taxable non-stock corporations.* The 2000 proposed regulations, in § 1.883–4(c), provide for attribution of ownership through various entities for purposes of the closely-held test in § 1.883–2(d)(3)(ii) and the stock ownership test in § 1.883–4(a).

Several commentators called for additional guidance on attribution of ownership in the case of taxable non-stock corporations entitled to deduct amounts distributed for charitable purposes.

The reproposed regulations address this request for guidance in § 1.883–4(c)(5). Under this provision, if a taxable non-stock corporation is entitled in its country of organization to deduct from its taxable income amounts distributed for charitable purposes, the corporation may deem a recipient of such charitable distributions to be a shareholder owning stock in the same proportion as the amount received in the taxable year bears to the total income of the corporation in that taxable year. Whether each such recipient is a qualified shareholder then may be determined under § 1.883–4(b) or under the special rules of § 1.883–4(d)(3)(vii).

5. *Discretionary trusts.* The 2000 proposed regulations, in § 1.883–4(c)(3)(i), adopt the attribution rules for discretionary trusts contained in the branch profits tax regulations under § 1.884–5(b)(2)(iii)(A). If a beneficiary's actuarial interest in a nongrantor trust cannot be determined, then stock held by the trust will not be attributed to any beneficiary unless all beneficiaries with an interest in the stock are qualified shareholders.

One commentator recommended that the regulations instead follow Notice 97–19 (1997–1 C.B. 394), which provides guidance for purposes of section 877 in determining the net worth of an individual beneficiary of a trust. Notice 97–19 generally attributes all interests in a trust based on relevant facts and circumstances, in order to assure that an individual will not avoid the application of section 877 by alleging he or she has no actuarially determinable interest in a trust.

The reproposed regulations do not adopt this suggestion because of the substantially different purpose of the trust attribution rules under section 877 as opposed to section 883. The purpose of those rules is to attribute trust income to United States persons using constructive attribution. The purpose of the trust attribution rules under section 883 is to determine whether a foreign corporation is a qualified foreign corporation by virtue of the residence of its shareholders. This difference in purpose prevents effective use of the section 877 methodology.

6. *Substantiation of stock ownership.* Section 1.883–4(b)(1)(iii) of the 2000 proposed regulations provides that a shareholder is a qualified shareholder only if the shareholder provides to the foreign corporation the documentation required in § 1.883–4(d), and the foreign corporation meets the reporting requirements of § 1.883–4(e) with respect to such shareholder.

Several commentators argued that the requirement that the foreign corporation obtain ownership statements was excessive, at least with respect to foreign corporations that do not have U.S. branches. Other commentators suggested that certain qualified professionals and financial institutions be authorized to provide ownership statements on behalf of foreign governments. They noted that, as drafted, practical compliance with the procedures may be difficult in countries where ownership of a shipping company, for example, is held by several state enterprises, some of which have begun the privatization process or are in transition to privatization and where any state supervision or control may be remote from the shipping company.

The reproposed regulations under § 1.883–4(d) generally retain the structure and substance of the 2000 proposed regulations with respect to the substantiation of stock ownership. However, § 1.883–4(d)(4)(ii) of the reproposed regulations, regarding ownership statements from foreign

governments, permits foreign corporations with shareholders that are foreign governments to engage accounting or law firms or financial institutions to prepare certificates as to ultimate beneficial interest with respect to the aggregate government investment in the stock of the foreign corporation.

F. Comments Related to § 1.883–5—Effective Date

Section 1.883–5 of the 2000 proposed regulations provides that the regulations will apply to taxable years of the foreign corporation ending 30 days or more after the date the regulations are published as final regulations in the **Federal Register**.

A number of commentators argued that compliance with the 2000 proposed regulations would require foreign corporations to develop new accounting and record-keeping conventions and procedures. Some commentators therefore suggested that the effective date be extended to taxable years beginning 30 days or more after the date these regulations are published as final regulations in the **Federal Register**. Other commentators suggested that the regulations should not be effective earlier than six months or one year after the publication date of the final regulations.

In response to these suggestions, the reproposed regulations provide that they will apply to taxable years of a foreign corporation beginning 30 days or more after the date these regulations are published as final regulations in the **Federal Register**.

In addition, when the reproposed regulations are published as final, taxpayers will be permitted to elect to apply the provisions of §§ 1.883–1 through 1.883–4, as finalized, to any open taxable year beginning after 1986. Such election shall apply to the taxable year of the election and to all subsequent taxable years. Notwithstanding this election, the substantiation and reporting requirements of § 1.883–1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) and §§ 1.883–2(f), 1.883–3(d) and 1.883–4(e) (relating to additional information to be included in the return to demonstrate whether the foreign corporation satisfies the stock ownership test) will not apply to any years beginning before the effective date of the final regulations. However, if a foreign corporation complies with the proposed regulations, including the substantiation and reporting rules, such compliance will be considered substantial evidence that the foreign corporation is a qualified foreign corporation.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because this notice of proposed rulemaking does not impose a collection of information on U.S. small entities, the regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for November 12, 2002, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. All visitors must present photo identification to enter the building at the Constitution Avenue entrance. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 22, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Patricia A. Bray of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments

Accordingly, under the authority of 26 U.S.C. 7805, the proposed amendment to 26 CFR Part 1 that was published in the **Federal Register** on Tuesday, February 8, 2000, (65 FR 6065) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.883–1 is also issued under 26 U.S.C. 883.

Section 1.883–2 is also issued under 26 U.S.C. 883.

Section 1.883–3 is also issued under 26 U.S.C. 883.

Section 1.883–4 is also issued under 26 U.S.C. 883.

Section 1.883–5 is also issued under 26 U.S.C. 883. * * *

Par. 2. Section 1.883–0 is added to read as follows:

§ 1.883–0 Outline of major topics.

This section lists the major paragraphs contained in §§ 1.883–1 through 1.883–5.

§ 1.883–0 Outline of major topics.

§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.

(a) General rule.

(b) Qualified income.

(c) Qualified foreign corporation.

(1) General rule.

(2) Stock ownership test.

(3) Substantiation and reporting requirements.

(i) General rule.

(ii) Further documentation.

(4) Commissioner's discretion to cure defects in documentation.

(d) Qualified foreign country.

(e) Operation of ships or aircraft.

(1) General rule.

(2) Pool, partnership, strategic alliance, joint operating agreement,

code-sharing arrangement or other joint venture.
(3) Activities not considered operation of ships or aircraft.
(4) Examples.
(5) Definitions.
(i) Bareboat charter.
(ii) Code-sharing arrangement.
(iii) Dry lease.
(iv) Entity.
(v) Fiscally transparent entity under the income tax laws of the United States.
(vi) Full charter.
(vii) Nonvessel operating common carrier.
(viii) Space or slot charter.
(ix) Time charter.
(x) Voyage charter.
(xi) Wet lease.
(f) International operation of ships or aircraft.
(1) General rule.
(2) Determining whether income is derived from international operation of ships or aircraft.
(i) International carriage of passengers.
(A) General rule.
(B) Round trip travel on ships.
(ii) International carriage of cargo.
(iii) Bareboat charter of ships or dry lease of aircraft used in international operation of ships or aircraft.
(A) Ratio based on use.
(B) Ratio based on gross income.
(g) Activities incidental to the international operation of ships or aircraft.
(1) General rule.
(2) Activities not considered incidental to the international operation of ships or aircraft.
(3) Services.
(i) Ground services, maintenance, and catering.
(ii) Other services.
(4) Activities involved in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.
(h) Equivalent exemption.
(1) General rule.
(2) Determining equivalent exemptions for each category of income.
(3) Special rules with respect to income tax conventions.
(i) General rule.
(ii) Participation in certain joint ventures.
(iii) Independent interpretation of income tax conventions.
(4) Exemptions not qualifying as equivalent exemptions.
(i) General rule.
(ii) Reduced tax rate or time limited exemption.
(iii) Inbound or outbound freight tax.
(iv) Exemptions for limited types of cargo.
(v) Territorial tax systems.
(vi) Countries that tax on a residence basis.
(vii) Exemptions within categories of income.
(i) Treatment of possessions.
(j) Expenses related to qualified income.

1.883–2 Treatment of publicly-traded corporations.

(a) General rule.
(b) Established securities market.
(1) General rule.
(2) Exchanges with multiple tiers.
(3) Computation of dollar value of stock traded.
(4) Over-the-counter market.
(5) Discretion to determine that an exchange does not qualify as an established securities market.
(c) Primarily traded.
(d) Regularly traded.
(1) General rule.
(2) Classes of stock traded on a domestic established securities market treated as meeting trading requirements.
(3) Closely-held classes of stock not treated as meeting trading requirements.
(i) General rule.
(ii) Exception.
(iii) Five-percent shareholders.
(A) Related persons.
(B) Investment companies.
(4) Anti-abuse rule.
(5) Example.
(e) Substantiation that a foreign corporation is publicly-traded.
(1) General rule.
(2) Availability and retention of documents for inspection.
(f) Reporting requirements.

§ 1.883–3 Treatment of controlled foreign corporations.

(a) General rule.
(b) Income inclusion test.
(1) General rule.
(2) Examples.
(c) Substantiation of CFC stock ownership.
(1) General rule.
(2) Documentation from certain United States shareholders.
(i) General rule.
(ii) Availability and retention of documents for inspection.
(d) Reporting requirements.

§ 1.883–4 Qualified shareholder stock ownership test.

(a) General rule.
(b) Qualified shareholder.
(1) General rule.
(2) Residence of individual shareholders.
(i) General rule.
(ii) Tax home.
(3) Certain income tax convention restrictions applied to shareholders.
(4) Not-for-profit organizations.
(5) Pension funds.
(i) Pension fund defined.
(ii) Government pension funds.
(iii) Non-government pension funds.
(iv) Beneficiary of a pension fund.
(c) Rules for determining constructive ownership.
(1) General rules for attribution.
(2) Partnerships.
(i) General rule.
(ii) Partners resident in the same country.
(iii) Examples.
(3) Trusts and estates.
(i) Beneficiaries.
(ii) Grantor trusts.
(4) Corporations that issue stock.
(5) Taxable non-stock corporations.
(6) Mutual insurance companies and similar entities.
(7) Computation of beneficial interests in non-government pension funds.
(d) Substantiation of stock ownership.
(1) General rule.
(2) Application of general rule.
(i) Ownership statements.
(ii) Three-year period of validity.
(3) Special rules.
(i) Substantiating residence of certain shareholders.
(ii) Special rule for registered shareholders owning less than one percent of widely-held corporations.
(iii) Special rules for beneficiaries of pension funds.
(A) Government pension fund.
(B) Non-government pension fund.
(iv) Special rule for stock owned by publicly-traded corporations.
(v) Special rule for not-for-profit organizations.
(vi) Special rule for a foreign airline covered by an air services agreement.
(vii) Special rule for taxable non-stock corporations.
(viii) Special rule for closely-held corporations traded in the United States.
(4) Ownership statements from shareholders.
(i) Ownership statements from individuals.
(ii) Ownership statements from foreign governments.
(iii) Ownership statements from publicly-traded corporate shareholders.
(iv) Ownership statements from not-for-profit organizations.
(v) Ownership statements from intermediaries.
(A) General rule.
(B) Ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediary.
(C) Ownership statements from pension funds.
(*1*) Ownership statements from government pension funds.

(2) Ownership statements from non-government pension funds.

(3) Time for making determinations.

(D) Ownership statements from taxable non-stock corporations.

(5) Availability and retention of documents for inspection.

(e) Reporting requirements.

§ 1.883–5 Effective date.

(a) General rule.

(b) Election for retroactive application.

(c) Transitional information reporting rule.

Par. 3. § 1.883–1 is revised to read as follows:

§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.

(a) *General rule.* Qualified income derived by a qualified foreign corporation from its international operation of ships or aircraft is excluded from gross income and exempt from United States Federal income tax. Paragraph (b) of this section defines the term *qualified income.* Paragraph (c) of this section defines the term *qualified foreign corporation.* Paragraph (f) of this section defines the term *international operation of ships or aircraft.*

(b) *Qualified income.* Qualified income is income derived from the international operation of ships or aircraft that—

(1) Is properly includible in any of the income categories described in paragraph (h)(2) of this section; and

(2) Is the subject of an equivalent exemption, as defined in paragraph (h) of this section, granted by the qualified foreign country, as defined in paragraph (d) of this section, in which the foreign corporation seeking qualified foreign corporation status is organized.

(c) *Qualified foreign corporation*—(1) *General rule.* A qualified foreign corporation is a corporation that is organized in a qualified foreign country and considered engaged in the international operation of ships or aircraft. The term *corporation* is defined in section 7701(a)(3) and the regulations thereunder. Paragraph (d) of this section defines the term *qualified foreign country.* Paragraph (e) of this section defines the term *operation of ships or aircraft,* and paragraph (f) of this section defines the term *international operation of ships or aircraft.* To be a qualified foreign corporation, the corporation must satisfy the stock ownership test of paragraph (c)(2) of this section and satisfy the substantiation and reporting requirements described in paragraph (c)(3) of this section. A corporation may be a qualified foreign corporation with respect to one category of qualified income but not with respect to another such category. See paragraph (h)(2) of this section for a discussion of the categories of qualified income.

(2) *Stock ownership test.* To be a qualified foreign corporation, a foreign corporation must satisfy the publicly-traded test of § 1.883–2(a), the CFC stock ownership test of § 1.883–3(a), or the qualified shareholder stock ownership test of § 1.883–4(a).

(3) *Substantiation and reporting requirements*—(i) *General rule.* To be a qualified foreign corporation, a foreign corporation must include the following information in its Form 1120F, "U.S. Income Tax Return of a Foreign Corporation," in the manner prescribed by such form and its accompanying instructions—

(A) The corporation's name and address (including mailing code);

(B) The corporation's U.S. taxpayer identification number;

(C) The foreign country in which the corporation is organized;

(D) The applicable authority for an equivalent exemption, for example, citation of a statute in the country where the corporation is organized, a diplomatic note between the United States and such country, Rev. Rul. 2001–48 (2001–42 I.R.B. 324, October 15, 2001) as amended from time to time (*see* § 601.601(d)(2) of this chapter), or, in the case of a corporation described in paragraph (h)(3)(ii) of this section, an income tax convention between the United States and such country;

(E) The category or categories of qualified income for which an exemption is being claimed;

(F) A reasonable estimate of the amount of income in each category of qualified income for which the exemption is claimed, to the extent such amounts are readily determinable;

(G) Any other information required under §§ 1.883–2(f), 1.883–3(d), or 1.883–4(e), as applicable; and

(H) Any other relevant information specified by the Form 1120F and its accompanying instructions.

(ii) *Further documentation.* If the Commissioner requests in writing that the foreign corporation document or substantiate representations made under paragraph (c)(3)(i) of this section, or under § 1.883–2(f), 1.882–3(d) or 1.883–4(e), the foreign corporation must provide the documentation or substantiation within 60 days following the written request. If the foreign corporation does not provide the documentation and substantiation requested within the 60-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the documentation or substantiation. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner after considering all the facts and circumstances.

(4) *Commissioner's discretion to cure defects in documentation.* The Commissioner retains the discretion to cure any defects in the documentation where the Commissioner is satisfied that the foreign corporation would otherwise be a qualified foreign corporation.

(d) *Qualified foreign country.* A qualified foreign country is a foreign country that grants to corporations organized in the United States an equivalent exemption, as described in paragraph (h) of this section, for the category of qualified income, as described in paragraph (h)(2) of this section, derived by the foreign corporation seeking qualified foreign corporation status. A foreign country may be a qualified foreign country with respect to one category of qualified income but not with respect to another such category.

(e) *Operation of ships or aircraft*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, a foreign corporation is considered engaged in the operation of ships or aircraft only during the time it is an owner or lessee of one or more entire ships or aircraft and uses such ships or aircraft in one or more of the following activities—

(i) Carriage of passengers or cargo for hire;

(ii) In the case of a ship, the leasing out of the ship under a time or voyage charter (full charter), space or slot charter, or bareboat charter, as those terms are defined in paragraph (e)(5) of this section, provided the ship is used to carry passengers or cargo for hire; and

(iii) In the case of aircraft, the leasing out of the aircraft under a wet lease (full charter), space, slot, or block-seat charter, or dry lease, as those terms are defined in paragraph (e)(5) of this section, provided the aircraft is used to carry passengers or cargo for hire.

(2) *Pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.* A foreign corporation is considered engaged in the operation of ships or aircraft with respect to its participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture that is either—

(i) An entity, as defined in paragraph (e)(5)(iv) of this section, that is a fiscally transparent entity under the income tax

laws of the United States, as defined in paragraph (e)(5)(v) of this section, with respect to the category of income derived from such operation, and that would be considered engaged in the operation of ships or aircraft under paragraph (e)(1) of this section if it were a foreign corporation; or

(ii) A pool, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture that is not an entity, as defined in paragraph (e)(5)(iv) of this section, involving one or more activities described in paragraphs (e)(1)(i) through (iii) of this section, but only if the foreign corporation is otherwise engaged in the operation of ships or aircraft under paragraph (e)(1) of this section.

(3) *Activities not considered operation of ships or aircraft.* Activities that do not constitute operation of ships or aircraft include, but are not limited to—

(i) The activities of a nonvessel-operating common carrier, as defined in paragraph (e)(5)(vii) of this section;

(ii) Ship or aircraft management;

(iii) Obtaining crews for ships or aircraft operated by another party;

(iv) Acting as a ship's agent;

(v) Ship or aircraft brokering;

(vi) Freight forwarding;

(vii) The activities of travel agents and tour operators;

(viii) Rental by a container leasing company of containers and related equipment; and

(ix) The activities of a concessionaire.

(4) *Examples.* The rules of paragraphs (e)(1) through (3) of this section are illustrated by the following examples:

Example 1. Three tiers of charters—(i) Facts. A, B, and C are foreign corporations. A purchases a ship. A and B enter into a bareboat charter of the ship for a term of 20 years, and B, in turn, enters into a time charter of the ship with C for a term of 5 years. Under the time charter, B is responsible for the complete operation of the ship, including providing the crew and maintenance. C uses the ship during the term of the time charter to carry its customers' freight between U.S. and foreign ports. C owns no ships. (ii) *Analysis.* Because A is the owner of the entire ship and leases out the ship under a bareboat charter to B, and because the sublessor, C, uses the ship to carry cargo for hire, A is considered engaged in the operation of a ship under paragraph (e)(1) of this section during the term of the time charter. B leases in the entire ship from A and leases out the ship under a time charter to C, who uses the ship to carry cargo for hire. Therefore, B is considered engaged in the operation of a ship under paragraph (e)(1) of this section during the term of the time charter. C time charters the entire ship from B and uses the ship to carry its customers' freight during the term of the charter. Therefore, C is also engaged in the operation of a ship under paragraph (e)(1) of this section during the term of the time charter.

Example 2. Partnership with contributed shipping assets—(i) *Facts.* X, Y, and Z, each a foreign corporation, enter into a partnership, P. P is a fiscally transparent entity under the income tax laws of the United States, as defined in paragraph (e)(5)(iv) and (v) of this section, with respect to all relevant categories of income. Under the terms of the partnership agreement, each partner contributes all of the ships in its fleet to P in exchange for interests in the partnership and shares in the P profits from the international carriage of cargo. The partners share in the overall management of P, but each partner, acting in its capacity as partner, continues to crew and manage all ships previously in its fleet.

(ii) *Analysis.* P owns the ships contributed by the partners and uses these ships to carry cargo for hire. Therefore, if P were a foreign corporation, it would be considered engaged in the operation of ships within the meaning of paragraph (e)(1) of this section. Accordingly, because P is a fiscally transparent entity under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section, X, Y, and Z are each considered engaged in the operation of ships through P, within the meaning of paragraph (e)(2)(i) of this section, with respect to their distributive share of income from P's international carriage of cargo.

Example 3. Joint venture with chartered in ships—(i) *Facts.* Foreign corporation A owns a number of foreign subsidiaries involved in various aspects of the shipping business, including S1, S2, S3, and S4. S4 is a foreign corporation that provides cruises but does not own any ships. S1, S2, and S3 are foreign corporations that own cruise ships. S1, S2, S3, and S4 form joint venture JV, in which they are all interest holders, to conduct cruises. JV is fiscally transparent under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section, with respect to its income from the carriage of passengers. Under the terms of the joint venture, S1, S2, and S3 each enter into time charter agreements with JV, pursuant to which S1, S2, and S3 retain control of the navigation and management of the individual ships, and JV will use the ships to carry passengers for hire. The overall management of the cruises line will be provided by S4.

(ii) *Analysis.* S1, S2, and S3 each owns ships and time charters those ships to JV, which uses the ships to carry passengers for hire. Accordingly, S1, S2, and S3 are each considered engaged in the operation of ships under paragraph (e)(1) of this section. JV leases in entire ships by means of the time charters, and JV uses those ships to carry passengers on cruises. Thus, JV would be engaged in the operation of ships within the meaning of paragraph (e)(1) of this section if it were a foreign corporation. Therefore, although S4 does not directly own or lease in a ship, S4 also is engaged in the operation of ships, within the meaning of paragraph (e)(2)(i) of this section, with respect to its participation in JV.

(5) *Definitions*—(i) *Bareboat charter.* A bareboat charter is a contract for the use of a ship or aircraft whereby the lessee is in complete possession, control, and command of the ship or aircraft. For example, in a bareboat charter, the lessee is responsible for the navigation and management of the ship or aircraft, the crew, supplies, repairs and maintenance, fees, insurance, charges, commissions and other expenses connected with the use of the ship or aircraft. The lessor of the ship bears none of the expense or responsibility of operation of the ship or aircraft.

(ii) *Code-sharing arrangement.* A code-sharing arrangement is an arrangement in which one air carrier puts its identification code on the flight of another carrier. This arrangement allows the first carrier to hold itself out as providing service in markets where it does not otherwise operate or where it operates infrequently. Code-sharing arrangements can range from a very limited agreement between two carriers involving only one market to agreements involving multiple markets and alliances between or among international carriers which also include joint marketing, baggage handling, one-stop check-in service, sharing of frequent flyer awards, and other services. For rules involving the sale of code-sharing tickets, see paragraph (g)(1)(vi) of this section.

(iii) *Dry lease.* A dry lease is the bareboat charter of an aircraft.

(iv) *Entity.* For purposes of this paragraph (e), an entity is any person that is treated by the United States as other than an individual for U.S. Federal income tax purposes. The term includes disregarded entities.

(v) *Fiscally transparent entity under the income tax laws of the United States.* For purposes of this paragraph (e), an entity is fiscally transparent under the income tax laws of the United States with respect to a category of income if the entity would be considered fiscally transparent under the income tax laws of the United States for purposes of § 1.894–1 with respect to an item of income within that category of income.

(vi) *Full charter.* Full charter (or full rental) means a time charter or a voyage charter of a ship or a wet lease of an aircraft but during which the full crew and management are provided by the lessor.

(vii) *Nonvessel operating common carrier.* A nonvessel operating common carrier is an entity that does not exercise control over any part of a vessel, but holds itself out to the public as providing transportation for hire, issues bills of lading, assumes responsibility or is liable by law as a common carrier for safe transportation of shipments, and

arranges in its own name with other common carriers, including those engaged in the operation of ships, for the performance of such transportation.

(viii) *Space or slot charter.* A space or slot charter is a contract for use of a certain amount of space (but less than all of the space) on a ship or aircraft, and may be on a time or voyage basis. When used in connection with passenger aircraft this sort of charter may be referred to as the sale of block seats.

(ix) *Time charter.* A time charter is a contract for the use of a ship or aircraft for a specific period of time, during which the lessor of the ship or aircraft retains control of the navigation and management of the ship or aircraft (*i.e.*, the lessor continues to be responsible for the crew, supplies, repairs and maintenance, fees and insurance, charges, commissions and other expenses connected with the use of the ship or aircraft).

(x) *Voyage charter.* A voyage charter is a contract similar to a time charter except that the ship or aircraft is chartered for a specific voyage or flight rather than for a specific period of time.

(xi) *Wet lease.* A wet lease is the time or voyage charter of an aircraft.

(f) *International operation of ships or aircraft*—(1) *General rule.* The term *international operation of ships or aircraft* means the operation of ships or aircraft, as defined in paragraph (e) of this section, with respect to the carriage of passengers or cargo on voyages or flights that begin or end in the United States, as determined under paragraph (f)(2) of this section. The term does not include the carriage of passengers or cargo on a voyage or flight that begins and ends in the United States, even if the voyage or flight contains a segment extending beyond the territorial limits of the United States, unless the passenger disembarks or the cargo is unloaded outside the United States. Operation of ships or aircraft beyond the territorial limits of the United States does not constitute in itself international operation of ships or aircraft.

(2) *Determining whether income is derived from international operation of ships or aircraft.* Whether income is derived from international operation of ships or aircraft is determined on a passenger by passenger basis (as provided in paragraph (f)(2)(i) of this section) and on an item-of-cargo by item-of-cargo basis (as provided in paragraph (f)(2)(ii) of this section). In the case of the bareboat charter of a ship or the dry lease of an aircraft, whether the charter income for a particular period is derived from international operation of ships or aircraft is determined by reference to how the ship or aircraft is used by the lowest-tier lessee in the chain of lessees (as provided in paragraph (f)(2)(iii) of this section).

(i) *International carriage of passengers*—(A) *General rule.* Except in the case of a round trip described in paragraph (f)(2)(i)(B) of this section, income derived from the carriage of a passenger will be income from international operation of ships or aircraft if the passenger is carried between a beginning point in the United States and an ending point outside the United States, or vice versa. Carriage of a passenger will be treated as ending at the passenger's final destination even if, en route to the passenger's final destination, a stop is made at an intermediate point for refueling, maintenance, or other business reasons, provided the passenger does not change ships or aircraft at the intermediate point. Similarly, carriage of a passenger will be treated as beginning at the passenger's point of origin even if, en route to the passenger's final destination, a stop is made at an intermediate point, provided the passenger does not change ships or aircraft at the intermediate point. Carriage of a passenger will be treated as beginning or ending at a U.S. or foreign intermediate point if the passenger changes ships or aircraft at that intermediate point.

(B) *Round trip travel on ships.* In the case of income from the carriage of a passenger on a ship that begins its voyage in the United States, calls on one or more foreign intermediate ports, and returns to the same or another U.S. port, such income from carriage of a passenger on the entire voyage will be treated as income derived from international operation of ships or aircraft under paragraph (f)(2)(i)(A) of this section. This result obtains even if such carriage includes one or more intermediate stops at a U.S. port or ports and even if the passenger does not disembark at the foreign intermediate point.

(ii) *International carriage of cargo.* Income from the carriage of cargo will be income derived from international operation of ships or aircraft if the cargo is carried between a beginning point in the United States and an ending point outside the United States, or vice versa. Carriage of cargo will be treated as ending at the final destination of the cargo even if, en route to that final destination, a stop is made at a U.S. intermediate point, provided the cargo is transported to its ultimate destination on the same ship or aircraft. If the cargo is transferred to another ship or aircraft, the carriage of the cargo may nevertheless be treated as ending at its final destination, if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Similarly, carriage of cargo will be treated as beginning at the cargo's point of origin, even if en route to its final destination a stop is made at a U.S. intermediate point, provided the cargo is transported to its ultimate destination on the same ship or aircraft. If the cargo is transferred to another ship or aircraft at the U.S. intermediate point, the carriage of the cargo may nevertheless be treated as beginning at the point of origin, if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Repackaging, recontainerization, or any other activity involving the unloading of the cargo at the U.S. intermediate point does not change these results, provided the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. A lighter vessel that carries cargo to, or picks up cargo from, a vessel located beyond the territorial limits of the United States and correspondingly loads or unloads that cargo at a U.S. port, carries cargo between a point in the United States and a point outside the United States. However, a lighter vessel that carries cargo to, or picks up cargo from, a vessel located within the territorial limits of the United States, and correspondingly loads or unloads that cargo at a U.S. port, is not engaged in international operation of ships or aircraft. Income from the carriage of military cargo on a voyage that begins in the United States, stops at a foreign intermediate port or a military prepositioning location, and returns to the same or another U.S. port without unloading its cargo at the foreign intermediate point, will nevertheless be treated as derived from international operation of ships or aircraft.

(iii) *Bareboat charter of ships or dry lease of aircraft used in international operation of ships or aircraft.* If a qualified foreign corporation bareboat charters a ship or dry leases an aircraft to a lessee, and the lowest tier lessee in the chain of ownership uses such ship or aircraft for the international carriage of passengers or cargo for hire, as described in paragraphs (f)(2)(i) and (ii) of this section, then the amount of charter income attributable to the period the ship or aircraft is used by the lowest

tier lessee is income from international operation of ships or aircraft. The foreign corporation must adopt a reasonable method consistently applied for determining the amount of the charter income that is attributable to such international operation of ships or aircraft. Two reasonable methods for determining the amount of charter income attributable to international operation of ships or aircraft are the following:

(A) *Ratio based on use.* Multiply the amount of charter income by a fraction, the numerator of which is the total number of days of uninterrupted travel on voyages or flights of such ship or aircraft between the United States and the farthest point or points where cargo or passengers are loaded en route to, or discharged en route from, the United States during the smaller of the taxable year or the particular charter period, and the denominator of which is the total number of days in the smaller of the taxable year or the particular charter period. For this purpose, the number of days during which the ship or aircraft is not generating transportation income, within the meaning of section 863(c)(2), are not included in the numerator of the fraction. For example, the numerator of the fraction does not include days during which the ship or aircraft is out of service while being repaired or maintained or days during which the ship is not being used to carry cargo or persons for hire.

(B) *Ratio based on gross income.* Multiply the amount of charter income by a fraction, the numerator of which is the U.S. source gross transportation income, as that term is defined in section 887(b), earned from the operation of the vessel or aircraft by the lowest tier lessee during the smaller of the taxable year or the particular charter period, and the denominator of which is the total gross income of the lessee from the operation of the ship or aircraft during the smaller of the taxable year or the particular charter period. An allocation based on the net income of such lessee, however, will not be considered reasonable for purposes of this paragraph (f)(2)(iii)(B).

(g) *Activities incidental to the international operation of ships or aircraft*—(1) *General rule.* Certain activities of a foreign corporation engaged in the international operation of ships or aircraft are so closely related to the international operation of ships or aircraft that they are considered incidental to such operation, and income derived by the foreign corporation from its performance of these incidental activities is deemed to be income derived from the international operation of ships or aircraft. Examples of such activities include—

(i) Temporary investment of working capital funds to be used in the international operation of ships or aircraft by the foreign corporation;

(ii) Sale of tickets by the foreign corporation engaged in the international operation of ships for the international carriage of passengers by ship on behalf of another corporation engaged in the international operation of ships;

(iii) Sale of tickets by the foreign corporation engaged in the international operation of aircraft for the international carriage of passengers by air on behalf of another corporation engaged in the international operation of aircraft;

(iv) Contracting with concessionaires for performance of services onboard during the international operation of the foreign corporation's ships or aircraft;

(v) Providing through a related or unrelated corporation (either by subcontracting or otherwise) for the carriage of cargo preceding or following the international carriage of cargo under a through bill of lading, airway bill or similar document;

(vi) To the extent not described in paragraph (g)(1)(iii) of this section, the sale or issuance by the foreign corporation engaged in the international operation of aircraft of interline or code-sharing tickets for the carriage of persons by air between a U.S. gateway and another U.S. city preceding or following international carriage of passengers, provided that all such flight segments are provided pursuant to the passenger's original invoice, ticket or itinerary;

(vii) Arranging for port city hotel accommodations within the United States for a passenger for the one night before or after the international carriage of that passenger by the foreign corporation engaged in the international operation of ships;

(viii) Bareboat charter of ships or dry lease of aircraft normally used by the foreign corporation in international operation of ships or aircraft but currently not needed, if the ship or aircraft is used by the lessee for international carriage of cargo or passengers;

(ix) Arranging by means of a space or slot charter for the carriage of cargo listed on a bill of lading or airway bill or similar document issued by the foreign corporation on the ship or aircraft of another corporation engaged in the international operation of ships or aircraft; and

(x) Rental of containers by the foreign corporation for use in the United States for a period not exceeding five days beyond the original delivery date by the foreign corporation to the consignee as stated on the bill of lading, provided that—

(A) The consignee takes delivery in the United States;

(B) The container is owned by or leased to the foreign corporation; and

(C) The container is identified (for example, by a 4 digit alpha code and serial number) on a bill of lading or attached manifest or similar document issued by the foreign corporation that provides for the transportation of cargo between points not solely within the United States.

(2) *Activities not considered incidental to the international operation of ships or aircraft.* Examples of activities that are not considered incidental to the international operation of ships or aircraft include—

(i) The sale of or arranging for train travel, bus transfers, or land tour packages;

(ii) Arranging for port city hotel accommodations within the United States other than as provided in paragraph (g)(1)(vii) of this section;

(iii) The sale of airline tickets or cruise tickets other than as provided in paragraph (g)(1)(ii), (iii), or (vi) of this section;

(iv) The sale or rental of real property;

(v) Treasury activities involving the investment of excess funds or funds awaiting repatriation, even if derived from the international operation of ships or aircraft;

(vi) The carriage of passengers or cargo on ships or aircraft on domestic legs of transportation not treated as either international operation of ships or aircraft under paragraph (f) of this section or as an activity that is incidental to such operation under paragraph (g)(1) of this section;

(vii) The carriage of cargo by bus, truck or rail by a foreign corporation between a U.S. inland point and a U.S. gateway port or airport preceding or following the international carriage of such cargo by the foreign corporation; and

(viii) Rental of containers attributable to the use of a container within the United States other than as provided in paragraph (g)(1)(x) of this section.

(3) *Services*—(i) *Ground services, maintenance and catering.* [Reserved]

(ii) *Other services.* [Reserved]

(4) *Activities involved in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.* Notwithstanding paragraph (g)(1) of this section, an activity is considered incidental to the international operation of ships or aircraft by a foreign

corporation, and income derived by the foreign corporation with respect to such activity is deemed to be income derived from the international operation of ships or aircraft, if the activity is performed by or pursuant to a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture in which such foreign corporation participates, provided that—

(i) Such activity is incidental to the international operation of ships or aircraft by the pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture, and provided that it is described in paragraph (e)(2)(i) of this section; or

(ii) Such activity would be incidental to the international operation of ships or aircraft by the foreign corporation, if it performed such activity itself, and provided the foreign corporation is engaged in the operation of ships or aircraft under paragraph (e)(1) of this section.

(h) *Equivalent exemption*—(1) *General rule.* A foreign country grants an equivalent exemption when it exempts from taxation income from the international operation of ships or aircraft derived by corporations organized in the United States. Whether a foreign country provides an equivalent exemption must be determined separately with respect to each category of income, as provided in paragraph (h)(2) of this section. An equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa. For rules regarding foreign corporations organized in countries that provide exemptions only through an income tax convention, see paragraph (h)(3) of this section. An equivalent exemption may exist where the foreign country—

(i) Generally imposes no tax on income, including income from the international operation of ships or aircraft;

(ii) Specifically provides a domestic law tax exemption for income derived from the international operation of ships or aircraft, either by statute, decree, or otherwise; or

(iii) Exchanges diplomatic notes with the United States, or enters into an agreement with the United States, that provides for a reciprocal exemption for purposes of section 883.

(2) *Determining equivalent exemptions for each category of income.* Whether a foreign country grants an equivalent exemption must be determined separately with respect to income from the international operation of ships and income from the international operation of aircraft for each category of income listed in (i) through (viii) of this section paragraph (h)(2). If an exemption is unavailable in the foreign country for a particular category of income, the foreign country is not considered to grant an equivalent exemption with respect to that category of income. Income in that category is not considered to be the subject of an equivalent exemption and thus is not eligible for exemption from income tax in the United States, even though the foreign country may grant an equivalent exemption for other categories of income. The following categories of income derived from the international operation of ships or aircraft may be exempt from United States income tax if an equivalent exemption is available—

(i) Income from the carriage of passengers and cargo;

(ii) Time or voyage (full) charter income of a ship or wet lease income of an aircraft;

(iii) Bareboat charter income of a ship or dry charter income of an aircraft;

(iv) Incidental bareboat charter income or incidental dry lease income;

(v) Incidental container-related income;

(vi) Income incidental to the international operation of ships or aircraft other than incidental income described in paragraph (h)(2)(iv) and (v) of this section;

(vii) Capital gains derived by a qualified foreign corporation engaged in the international operation of ships or aircraft from the sale, exchange or other disposition of a ship, aircraft, container or related equipment or other moveable property used by that qualified foreign corporation in the international operation of ships or aircraft; and

(viii) Income from participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement, international operating agency, or other joint venture described in paragraph (e)(2) of this section.

(3) *Special rules with respect to income tax conventions*—(i) *General rule.* Except as provided in paragraph (h)(3)(ii) of this section, if a corporation is organized in a foreign country that provides an exemption only through an income tax convention with the United States, the foreign corporation is not organized in a foreign country that grants an equivalent exemption. Rather, the foreign corporation must satisfy the terms of that convention to receive a benefit under the convention, and the foreign corporation may not claim an exemption under section 883. If the corporation is organized in a foreign country that offers an exemption under an income tax convention and also by some other means, such as by diplomatic note or domestic statutory law, the foreign corporation may choose annually whether to claim an exemption under section 883 based upon the equivalent exemption provided by such other means, under the income tax convention, or under both the income tax convention and section 883. Any such choice will apply with respect to all qualified income of the corporation from the international operation of ships or aircraft and cannot be made separately with respect to different categories of such income. If a foreign corporation bases its claim for an exemption on section 883, the foreign corporation must satisfy all of the requirements of this section to qualify for an exemption from U.S. income tax. See § 1.883–4(b)(3) for rules regarding satisfying the ownership test of paragraph (c)(2) of this section using shareholders resident in a foreign country that offers an exemption under an income tax convention.

(ii) *Participation in certain joint ventures.* Notwithstanding paragraph (h)(3)(i) of this section, if a corporation is organized in a foreign country that provides an exemption only through an income tax convention with the United States, the foreign corporation will be treated as organized in a foreign country that grants an equivalent exemption under section 883 with respect to a category of income derived through participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture described in paragraph (e)(2) of this section, but only where treaty benefits would be available under the treaty but for the treatment of the pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture as not fiscally transparent with respect to that category of income under the income tax laws of the foreign country in which the foreign corporate interest holder is organized for purposes of § 1.894–1(d)(3)(iii)(A).

(iii) *Independent interpretation of income tax conventions.* Nothing in this section and §§ 1.833–2 through 1.883–5 affects the rights or obligations under any income tax convention. The definitions provided in this section and §§ 1.833–2 through 1.883–5 shall neither give meaning to similar terms used in income tax conventions nor provide guidance regarding the scope of any exemption provided by such conventions.

(4) *Exemptions not qualifying as equivalent exemptions*—(i) *General rule.* Certain types of exemptions provided to corporations organized in the United States by foreign countries do not satisfy the equivalent exemption requirements of this section. The following paragraphs provide descriptions of some of the types of exemptions that do not qualify as equivalent exemptions for purposes of this section.

(ii) *Reduced tax rate or time limited exemption.* The exemption granted by the foreign country's law or income tax convention must be a complete exemption. The exemption may not constitute merely a reduction to a non-zero rate of tax levied against the income of corporations organized in the United States derived from the international operation of ships or aircraft or a temporary reduction to a zero rate of tax, such as in the case of a tax holiday.

(iii) *Inbound or outbound freight tax.* With respect to the carriage of cargo, the foreign country must provide an exemption from tax for income from transporting freight both inbound and outbound. For example, a foreign country that imposes tax only on outbound freight will not be treated as granting an equivalent exemption for income from transporting freight inbound into that country.

(iv) *Exemptions for limited types of cargo.* A foreign country must provide an exemption from tax for income from transporting all types of cargo. For example, if a foreign country were generally to impose tax on income from the international carriage of cargo but were to provide a statutory exemption for income from transporting agricultural products, the foreign country would not be considered to grant an equivalent exemption with respect to income from the international carriage of cargo, including agricultural products.

(v) *Territorial tax systems.* A foreign country with a territorial tax system will be treated as granting an equivalent exemption if it treats all income derived from the international operation of ships or aircraft derived by a U.S. corporation as entirely foreign source and therefore not subject to tax, including income derived from a voyage or flight that begins or ends in that foreign country.

(vi) *Countries that tax on a residence basis.* A foreign country that provides an equivalent exemption to corporations organized in the United States but also imposes a residence-based tax on certain corporations organized in the United States may nevertheless be considered to grant an equivalent exemption if the residence-based tax is imposed only on a corporation organized in the United States that maintains its center of management and control or other comparable attributes in that foreign country. If the residence-based tax is imposed on corporations organized in the United States and engaged in the international operation of ships or aircraft that are not managed and controlled in that foreign country, the foreign country shall not be treated as a qualified foreign country and shall not be considered to grant an equivalent exemption for purposes of this section.

(vii) *Exemptions within categories of income.* A foreign country must provide an exemption from tax for all income in a category of income, as defined in paragraph (h)(2) of this section. For example, a country that exempts income from the bareboat charter of passenger aircraft but not the bareboat charter of cargo aircraft does not provide an equivalent exemption. However, an equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa.

(i) *Treatment of possessions.* For purposes of this section, a possession of the United States will be treated as a foreign country. A possession of the United States will be considered to grant an equivalent exemption and will be treated as a qualified foreign country if it applies a mirror system of taxation. If a possession does not apply a mirror system of taxation, the possession may nevertheless be a qualified foreign country if, for example, it provides for an equivalent exemption through its internal law. A possession applies the mirror system of taxation if the United States Internal Revenue Code of 1986, as amended, applies in the possession with the name of the possession used instead of "United States" where appropriate.

(j) *Expenses related to qualified income.* If a qualified foreign corporation derives qualified income from the international operation of ships or aircraft as well as income that is not qualified income, and the non-qualified income is effectively connected with the conduct of a trade or business within the United States, the foreign corporation may not deduct from such non-qualified income any amount otherwise allowable as a deduction from qualified income, if that qualified income is excluded under this section. See section 265(a)(1).

Par. 4. Sections 1.883–2 through 1.883–5 are added to read as follows:

§ 1.883–2 Treatment of publicly-traded corporations.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if it is considered a publicly-traded corporation and satisfies the substantiation and reporting requirements of paragraphs (e) and (f) of this section. To be considered a publicly-traded corporation, the stock of the foreign corporation must be primarily traded and regularly traded, as defined in paragraphs (c) and (d) of this section, respectively, on one or more established securities markets, as defined in paragraph (b) of this section, in either the United States or any qualified foreign country.

(b) *Established securities market*—(1) *General rule.* For purposes of this section, the term *established securities market* means, for any taxable year—

(i) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the qualified foreign country in which the market is located, and has an annual value of shares traded on the exchange exceeding $1 billion during each of the three calendar years immediately preceding the beginning of the taxable year;

(ii) A national securities exchange that is registered under section 6 of the Securities Act of 1934 (15 U.S.C. 78f);

(iii) A United States over-the-counter market, as defined in paragraph (b)(4) of this section;

(iv) Any exchange designated under a Limitation on Benefits article in a United States income tax convention; and

(v) Any other exchange that the Secretary may designate by regulation or otherwise.

(2) *Exchanges with multiple tiers.* If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(3) *Computation of dollar value of stock traded.* For purposes of paragraph (b)(1)(i) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the International Federation of Stock Exchanges located in Paris, or, if not so reported, then by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(4) *Over-the-counter market.* An over-the-counter market is any market reflected by the existence of an

interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers that regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets that are prepared and distributed by a broker or dealer in the regular course of business and that contain only quotations of such broker or dealer.

(5) *Discretion to determine that an exchange does not qualify as an established securities market.* The Commissioner may determine that a securities exchange that otherwise meets the requirements of paragraph (b) of this section does not qualify as an established securities market, if—

(i) The exchange does not have adequate listing, financial disclosure, or trading requirements (or does not adequately enforce such requirements); or

(ii) There is not clear and convincing evidence that the exchange ensures the active trading of listed stocks.

(c) *Primarily traded.* For purposes of this section, stock of a corporation is primarily traded in a country on one or more established securities markets, as defined in paragraph (b) of this section, if, with respect to each class of stock described in paragraph (d)(1)(i) of this section (relating to classes of stock relied on to meet the regularly traded test)—

(1) The number of shares in each such class that are traded during the taxable year on all established securities markets in that country exceeds

(2) The number of shares in each such class that are traded during that year on established securities markets in any other single country.

(d) *Regularly traded*—(1) *General rule.* For purposes of this section, stock of a corporation is regularly traded on one or more established securities markets, as defined in paragraph (b) of this section, if—

(i) One or more classes of stock of the corporation that, in the aggregate, represent more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the taxable year; and

(ii) With respect to each class relied on to meet the more than 50 percent requirement of paragraph (d)(1)(i) of this section—

(A) Trades in each such class are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the taxable year (or 1/6 of the number of days in a short taxable year); and

(B) The aggregate number of shares in each such class that are traded on such market or markets during the taxable year are at least 10 percent of the average number of shares outstanding in that class during the taxable year (or, in the case of a short taxable year, a percentage that equals at least 10 percent of the average number of shares outstanding in that class during the taxable year multiplied by the number of days in the short taxable year, divided by 365).

(2) *Classes of stock traded on a domestic established securities market treated as meeting trading requirements.* A class of stock that is traded during the taxable year on an established securities market located in the United States shall be considered to meet the trading requirements of paragraph (d)(1)(ii) of this section if the stock is regularly quoted by dealers making a market in the stock. A dealer makes a market in a stock only if the dealer regularly and actively offers to, and in fact does, purchase the stock from, and sell the stock to, customers who are not related persons (as defined in section 954(d)(3)) with respect to the dealer in the ordinary course of a trade or business.

(3) *Closely-held classes of stock not treated as meeting trading requirements*—(i) *General rule.* Except as provided in paragraph (d)(3)(ii) of this section, a class of stock of a foreign corporation that otherwise meets the requirements of paragraph (d)(1) or (2) of this section shall not be treated as meeting such requirements for a taxable year if, at any time during the taxable year, one or more persons who own at least 5 percent of the vote and value of the outstanding shares of the class of stock, as determined under paragraph (d)(3)(iii) of this section (each a 5-percent shareholder), own, in the aggregate, 50 percent or more of the vote and value of the outstanding shares of the class of stock. If one or more 5-percent shareholders own, in the aggregate, 50 percent or more of the vote and value of the outstanding shares of the class of stock, such shares held by the 5-percent shareholders will constitute a closely-held block of stock.

(ii) *Exception.* Paragraph (d)(3)(i) of this section shall not apply to a class of stock if the foreign corporation can establish that qualified shareholders, as defined in § 1.883–4(b), applying the attribution rules of § 1.883–4(c), own sufficient shares in the closely-held block of stock to preclude non-qualified shareholders in the closely-held block of stock from owning 50 percent or more of the total value of the class of stock of which the closely-held block is a part for more than half the number of days during the taxable year. Any shares that are owned, after application of the attribution rules in § 1.883–4(c), by a qualified shareholder shall not also be treated as owned by a non-qualified shareholder in the chain of ownership for purposes of the preceding sentence. A foreign corporation must obtain the documentation described in § 1.883–4(d) from the qualified shareholders relied upon to satisfy this exception. However, no person shall be treated for purposes of this paragraph (d)(3) as a qualified shareholder if such person holds an interest in the class of stock directly or indirectly through bearer shares.

(iii) *Five-percent shareholders*—(A) *Related persons.* Solely for purposes of determining whether a person is a 5-percent shareholder, persons related within the meaning of section 267(b) shall be treated as one person. In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned through the application of section 1563(e)(1), and stock owned through the application of section 267(c). In determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned through the application of section 267(e)(3).

(B) *Investment companies.* For purposes of this paragraph (d)(3), an investment company registered under the Investment Company Act of 1940, as amended, shall not be treated as a 5-percent shareholder if no person owns both 5 percent or more of the value of the outstanding interests in the investment company (applying the attribution rules of § 1.883–4(c)) and 5-percent or more of the value of the shares of the class of stock of the foreign corporation seeking qualified foreign corporation status (applying the attribution rules of § 1.883–4(c)).

(4) *Anti-abuse rule.* Trades between or among related persons described in section 267(b), as modified by paragraph (d)(3)(iii) of this section, and trades conducted in order to meet the requirements of paragraph (d)(1) of this section shall be disregarded. A class of stock shall not be treated as meeting the trading requirements of paragraph (d)(1) of this section if there is a pattern of trades conducted to meet the requirements of that paragraph. For example, trades between two persons

that occur several times during the taxable year may be treated as an arrangement or a pattern of trades conducted to meet the trading requirements of paragraph (d)(1)(ii) of this section.

(5) *Example.* The closely-held test in paragraph (d)(3) of this section is illustrated by the following example:

Example. Closely-held exception—(i) Facts. X is a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships. X has one class of stock, which is primarily traded on an established securities market in the qualified foreign country. The stock of X meets the regularly traded requirements of paragraph (d)(1)(ii) of this section without regard to paragraph (d)(3)(i) of this section. A, B, C and D are four members of the corporation's founding family who each own, during the entire taxable year, 25 percent of the stock of Hold Co, a company that issues registered shares. Hold Co, in turn, owns 60 percent of the stock of X during the entire taxable year. The remaining 40 percent of the stock of X is not owned by any 5-percent shareholder, as determined under paragraph (d)(3)(iii) of this section. A, B, and C are not residents of a qualified foreign country, but D is a resident of a qualified foreign country. (ii) *Analysis.* Because Hold Co owns 60 percent of the stock of X for more than half the number of days during the taxable year, Hold Co is a 5-percent shareholder that owns 50 percent or more of the value of the stock of X. Thus, the shares owned by Hold Co constitute a closely-held block of stock. Under paragraph (d)(3)(i) of this section, the stock of X will not be regularly traded within the meaning of paragraph (d)(1) of this section unless X can establish, under paragraph (d)(3)(ii) of this section, that qualified shareholders within the closely-held block of stock own sufficient shares in the closely-held block of stock to preclude non-qualified shareholders in the closely-held block of stock from owning 50 percent or more of the value of the outstanding shares in the class of stock for more than half the number of days during the taxable year. A, B, and C are not qualified shareholders within the meaning of § 1.883–4(b) because they are not residents of a qualified foreign country, but D is a resident of a qualified foreign country and therefore is a qualified shareholder. D owns 15 percent of the outstanding shares of X through Hold Co (25 percent × 60 percent = 15 percent) while A, B, and C in the aggregate own 45 percent of the outstanding shares of X through Hold Co. D, therefore, owns sufficient shares in the closely-held block of stock to preclude the non-qualified shareholders in the closely-held block of stock, A, B and C, from owning 50 percent or more of the value of the class of stock (60 percent − 15 percent = 45 percent) of which the closely-held block is a part. Provided that X obtains from D the documentation described in § 1.883–4(d), X's sole class of stock meets the exception in paragraph (d)(3)(ii) of this section and will not be disqualified from the regularly traded test by virtue of paragraph (d)(3)(i) of this section.

(e) *Substantiation that a foreign corporation is publicly traded*—(1) *General rule.* A foreign corporation that relies on the publicly traded test of this section to meet the stock ownership test of § 1.883–1(c)(2) must substantiate that the stock of the foreign corporation is primarily and regularly traded on one or more established securities markets, as that term is defined in paragraph (b) of this section. If one of the classes of stock on which the foreign corporation relies to meet this test is closely-held within the meaning of paragraph (d)(3)(i) of this section, the foreign corporation must obtain an ownership statement described in § 1.883–4(d) from each qualified shareholder and intermediary that it relies upon to satisfy the exception to the closely-held test, but only to the extent such statement would be required if the foreign corporation were relying on the qualified shareholder stock ownership test of § 1.883–4 with respect to those shares of stock. The foreign corporation must also maintain and provide to the Commissioner upon request a list of its shareholders of record and any other relevant information known to the foreign corporation supporting its entitlement to an exemption under this section.

(2) *Availability and retention of documents for inspection.* The documentation described in paragraph (e)(1) of this section must be retained by the corporation seeking qualified foreign corporation status until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and such place as the Commissioner may request in writing.

(f) *Reporting requirements.* A foreign corporation relying on this section to satisfy the stock ownership test of § 1.883–1(c)(2) must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120F for the taxable year. The information must be current as of the end of the corporation's taxable year and must include the following—

(1) The name of the country in which the stock is primarily traded;

(2) The name of the established securities market or markets on which that the stock is listed;

(3) A description of each class of stock relied upon to meet the requirements of paragraph (d) of this section, including the number of shares issued and outstanding as of the close of the taxable year;

(4) For each class of stock relied upon to meet the requirements of paragraph (d) of this section, if one or more 5-percent shareholders, as described in paragraph (d)(3)(iii) of this section, own in the aggregate 50 percent or more of the value of the outstanding shares of that class of stock at any time during the taxable year—

(i) The highest total percentage of the value of the class of stock that is owned by 5-percent shareholders, as described in paragraph (d)(3)(iii) of this section, at any time during the taxable year;

(ii) For each qualified shareholder who owns or is treated as owning stock in the closely-held block upon whom the corporation intends to rely to satisfy the exception to the closely-held test of paragraph (d)(3)(ii) of this section—

(A) The name of each such shareholder;

(B) The percentage of the total value of the class of stock held by each such shareholder;

(C) The address of record of each such shareholder;

(D) The country of residence of each such shareholder, determined under § 1.883–4(b)(2) (residence of individual shareholders) or § 1.883–4(d)(3) (special rules for residence of certain shareholders);

(E) The portion of the taxable year of the corporation during which the stock was closely-held without regard to the exception in paragraph (d)(3)(ii) of this section; and

(5) Any other relevant information specified by Form 1120F and its accompanying instructions.

§ 1.883–3 Treatment of controlled foreign corporations.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if it is a controlled foreign corporation (CFC), as defined in section 957(a), and satisfies the income inclusion test in paragraph (b) of this section and the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively. A CFC that fails the income inclusion test of paragraph (b) of this section will not be a qualified foreign corporation unless it meets either the publicly traded test of § 1.883–2(a) or the qualified shareholder stock ownership test of § 1.883–4(a).

(b) *Income inclusion test*—(1) *General rule.* A CFC shall not be considered to satisfy the requirements of paragraph (a) of this section unless more than 50 percent of the CFC's adjusted net foreign base company income (as defined in § 1.954–1(d) and as increased or decreased by section 952(c)) derived from the international operation of ships

or aircraft is includible in the gross income of one or more United States citizens, individual residents of the United States or domestic corporations, pursuant to section 951(a)(1)(A) or another provision of the Internal Revenue Code, for the taxable years of such persons in which the taxable year of the CFC ends.

(2) *Examples.* The income inclusion test of paragraph (b)(1) of this section is illustrated in the following examples:

Example 1. Ship Co is a CFC organized in a qualified foreign country. All of ship Co's income is foreign base company shipping income that is derived from the international operation of ships. All of its shares are owned by a domestic partnership that is a United States shareholder for purposes of section 951(b). All of the partners in the domestic partnership are citizens and residents of foreign countries. Ship Co fails the income inclusion test of paragraph (b)(1) of this section because no amount of Ship Co's subpart F income that is adjusted net foreign base company income derived from the international operation of ships is includible under any provision of the Internal Revenue Code in the gross income of one or more United States citizens, individual residents of the United States or domestic corporations. Therefore, Ship Co must satisfy the qualified shareholder stock ownership test of § 1.883–4(a), in order to satisfy the stock ownership test of § 1.883–1(c)(2) and to be considered a qualified foreign corporation.

Example 2. Ship Co is a CFC organized in a qualified foreign country. All of ship Co's income is foreign base company shipping income that is derived from the international operation of ships. Corp A, a domestic corporation, owns 50 percent of the value of the stock of Ship Co. X, a domestic partnership, owns the remaining 50 percent of the value of the stock of Ship Co. A United States citizen is a partner owning a 10 percent income interest in X. Individual partners owning 80 percent of X are citizens and residents of foreign countries. There are no special allocations of partnership income. Ship Co satisfies the income inclusion test of paragraph (b)(1) of this section because 55 percent (50 percent + (10 percent x 50 percent)) of the subpart F income that is adjusted net foreign base company income derived from the international operation of ships would be includible in the gross income of U.S. citizens, individual residents of the United States or domestic corporations. If Ship Co satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section, it will meet the stock ownership test of § 1.883–1(c)(2).

(c) *Substantiation of CFC stock ownership*—(1) *General rule.* A foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883–1(c)(2) must substantiate all the facts necessary to satisfy the Commissioner that it qualifies under the income inclusion test of paragraph (b)(1) of this section. For purposes of the income inclusion test, if the CFC has one or more United States shareholders, as defined in section 951(b), that are domestic partnerships, estates, or trusts, the pro rata share of the subpart F income includible in the gross income of such shareholders will only be treated as includible in the income of any partner, beneficiary or other interest owner of such United States shareholder that is a United States citizen, resident of the United States or a domestic corporation if the CFC obtains the documentation described in paragraph (c)(2) of this section.

(2) *Documentation from certain United States shareholders*—(i) *General rule.* A CFC only meets the documentation requirements of paragraph (c)(1) of this section if the CFC obtains the following documentation with respect to each United States shareholder, as defined in section 951(b), that is a partnership, estate or trust, for the taxable year of the shareholder which ends with or within the taxable year of the CFC—

(A) A copy of the Form 5471, "Information Return of U.S. Persons with Respect to Certain Foreign Corporations," filed with the controlling United States shareholder's return;

(B) A written statement, signed under penalties of perjury by a person authorized to sign the U.S. Federal tax return of each such United States shareholder, providing the following information with respect to each United States citizen, individual resident of the United States or domestic corporation that is a partner, beneficiary or other interest owner of each such United States shareholder and upon whom the CFC intends to rely to satisfy the income inclusion test of paragraph (b)(1) of this section—

(*1*) The name, address from the CFC's corporate records (that is a specific street address and not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent), and taxpayer identification number of the interest owner;

(*2*) The interest owner's proportionate interest in the United States shareholder that reflects that owner's share of subpart F income required to be included in income on such interest owner's U.S. Federal income tax return;

(*3*) The percentage of the vote and the percentage of the value of shares of the CFC owned by each such interest owner pursuant to the attribution rules in § 1.883–4(c)(2)(i); and

(C) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(ii) *Availability and retention of documents for inspection.* The documentation described in paragraph (c)(2)(i) of this section must be retained by the corporation seeking qualified foreign corporation status (the CFC) until the expiration of the statute of limitations for the taxable year of the CFC to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such place as the Commissioner may request in writing.

(d) *Reporting requirements.* A foreign corporation that relies on the CFC test of this section to satisfy the stock ownership test of § 1.883–1(c)(2) must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120F for the taxable year. The information must be current as of the end of the corporation's taxable year and must include the following—

(1) The name, address from the CFC's corporate records (that is a specific street address and not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent), and taxpayer identification number of each United States shareholder, as defined in section 951(b), of the CFC;

(2) The percentage of the vote and value of the shares of the CFC that is owned by each United States shareholder, as defined in section 951(b);

(3) If one or more of the United States shareholders is a domestic partnership, estate or trust, the name, address, taxpayer identification number and percentage of the vote and the percentage of the value of shares of the CFC owned (as determined under § 1.883–4(c)(2)(i)) by each interest owner of each such United States shareholder that is a United States citizen, individual resident of the United States or a domestic corporation; and

(4) Any other relevant information specified by Form 1120F and its accompanying instructions.

§ 1.883–4 Qualified shareholder stock ownership test.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if more than 50 percent of the value of its outstanding shares is owned, or treated as owned by applying the attribution rules of paragraph (c) of this section, for at least half of the number of days in the foreign corporation's taxable year by one or more qualified shareholders, as defined

in paragraph (b) of this section. A shareholder may be a qualified shareholder with respect to one category of income while not being a qualified shareholder with respect to another. A foreign corporation will not be considered to satisfy the stock ownership test of A1.883–1(c)(2) pursuant to this section unless the foreign corporation meets the substantiation and reporting requirements of paragraphs (d) and (e) of this section.

(b) *Qualified shareholder*—(1) *General rule.* A shareholder is a qualified shareholder only if the shareholder—

(i) With respect to the category of income for which the foreign corporation is seeking an exemption, is—

(A) An individual not described in paragraph (b)(1)(i)(E) or (F) of this section, who is a resident, as described in paragraph (b)(2) of this section, of a qualified foreign country, as defined in § 1.883–1(d);

(B) The government of a qualified foreign country (or a political subdivision or local authority of such country);

(C) A foreign corporation that is organized in a qualified foreign country and meets the publicly traded test of § 1.883–2(a);

(D) A not-for-profit organization described in paragraph (b)(4) of this section that is not a pension fund as defined in paragraph (b)(5) of this section and that is organized in a qualified foreign country;

(E) An individual beneficiary of a pension fund (as defined in paragraph (b)(5)(iv) of this section) that is administered in or by a qualified foreign country, who is treated as a resident under paragraph (d)(3)(iii) of this section, of a qualified foreign country; or

(F) A shareholder of foreign corporation that is an airline covered by a bilateral Air Services Agreement in force between the United States and the qualified foreign country in which the airline is organized, provided the United States has not waived the ownership requirement in the Air Services Agreement, or that the ownership requirement has not otherwise been made ineffective;

(ii) Does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of paragraph (c) of this section; and

(iii) Provides to the foreign corporation the documentation required in paragraph (d) of this section and the foreign corporation meets the reporting requirements of paragraph (e) of this section with respect to such shareholder.

(2) *Residence of individual shareholders*—(i) *General rule.* Except for an individual described in paragraph (b)(1)(i)(E) or (F) of this section, an individual is a resident of a qualified foreign country only if the individual is fully liable to tax as a resident in such country (e.g., an individual who is liable to tax on a remittance basis in a foreign country will not be treated as a resident of that country) and, in addition—

(A) The individual has a tax home, within the meaning of paragraph (b)(2)(ii) of this section, in that qualified foreign country for 183 days or more of the taxable year; or

(B) The individual is treated as a resident of a qualified foreign country based on special rules pursuant to paragraph (d)(3) of this section.

(ii) *Tax home.* For purposes of this section, an individual's tax home is considered to be located at the individual's regular or principal (if more than one regular) place of business. If the individual has no regular or principal place of business because of the nature of his business (or lack of a business), then the individual's tax home is located at his regular place of abode in a real and substantial sense. If an individual has no regular or principal place of business and no regular place of abode in a real and substantial sense in a qualified foreign country for 183 days or more of the taxable year, that individual does not have a tax home for purposes of this section. A foreign estate or trust, as defined in section 7701(a)(31), does not have a tax home for purposes of this section. See paragraph (c)(3) of this section for alternative rules in the case of trusts or estates.

(3) *Certain income tax convention restrictions applied to shareholders.* For purposes of paragraph (b)(1) of this section, a shareholder described in paragraph (b)(1) of this section may be considered a resident of, or organized in, a qualified foreign country if that foreign country provides an exemption by means of an income tax convention with the United States, but only if the shareholder demonstrates that it is treated as a resident of that country under the convention and qualifies for benefits under any Limitation on Benefits article, and that the convention provides an exemption for the relevant category of income. If the convention has a requirement in the shipping and air transport article other than residence, such as place of registration or documentation of the ship or aircraft, the shareholder is not required to demonstrate that the corporation seeking qualified foreign corporation status could satisfy any such additional requirement.

(4) *Not-for-profit organizations.* The term *not-for-profit organization* means an organization that meets the following requirements—

(i) It is a corporation, association taxable as a corporation, trust, fund, foundation, league or other entity operated exclusively for religious, charitable, educational, or recreational purposes, and not organized for profit;

(ii) It is generally exempt from tax in its country of organization by virtue of its not-for-profit status; and

(iii) Either—

(A) More than 50 percent of its annual support is expended on behalf of persons described in paragraph (b)(1)(i)(A) of this section (see paragraph (d)(3)(v) of this section for rules regarding the residence of individual beneficiaries); or

(B) More than 50 percent of its annual support is derived from persons described in paragraph (b)(1)(i)(A) of this section (see paragraph (d)(3)(v) of this section for rules regarding the residence of individual supporters).

(5) *Pension funds*—(i) *Pension fund defined.* The term *pension fund* shall mean a government pension fund or a non-government pension fund, as those terms are defined, respectively, in paragraphs (b)(5)(ii) and (iii) of this section, that is a trust, fund, foundation, or other entity that is established exclusively for the benefit of employees or former employees of one or more employers, the principal purpose of which is to provide retirement, disability, and death benefits to beneficiaries of such entity and persons designated by such beneficiaries in consideration for prior services rendered.

(ii) *Government pension funds.* A government pension fund is a pension fund that is a controlled entity of a foreign sovereign within the principles of § 1.892–2T(c)(1) (relating to pension funds established for the benefit of employees or former employees of a foreign government).

(iii) *Non-government pension funds.* A non-government pension fund is a pension fund that—

(A) Is administered in a foreign country and is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country;

(B) Is generally exempt from income taxation in its country of administration;

(C) Has 100 or more beneficiaries; and

(D) The trustees, directors or other administrators of which pension fund provide the documentation required in paragraph (d) of this section.

(iv) *Beneficiary of a pension fund.* The term *beneficiary of a pension fund* shall mean any person who has made contributions to a pension fund, as that term is defined in paragraph (b)(5)(i) of this section, or on whose behalf contributions have been made, and who is currently receiving retirement, disability, or death benefits from the pension fund or can reasonably be expected to receive such benefits in the future, whether or not the person's right to receive benefits from the fund has vested. See paragraph (c)(7) of this section for rules regarding the computation of stock ownership through non-government pension funds.

(c) *Rules for determining constructive ownership*—(1) *General rules for attribution.* For purposes of applying paragraph (a) of this section and the exception to the closely-held test in § 1.883–2(d)(3)(ii), stock owned by or for a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors, or other interest holders, as provided in paragraphs (c)(2) through (7) of this section. The proportionate interest rules of this paragraph (c) shall apply successively upward through a chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period taken into account in determining whether a foreign corporation satisfies the requirements of paragraph (a) of this section. Stock treated as owned by a person by reason of this paragraph (c) shall be treated as actually owned by such person for purposes of this section. An owner of an interest in an association taxable as a corporation shall be treated as a shareholder of such association for purposes of this paragraph (c). No attribution will apply to an interest held directly or indirectly through bearer shares.

(2) *Partnerships*—(i) *General rule.* A partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the least of—

(A) The partner's percentage distributive share of the partnership's dividend income from the stock;

(B) The partner's percentage distributive share of gain from disposition of the stock by the partnership; or

(C) The partner's percentage distributive share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership.

(ii) *Partners resident in the same country.* For purposes of this paragraph, all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country shall be treated as one partner. Thus, the percentage distributive shares of dividend income, gain and liquidation rights of all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country are aggregated prior to determining the least of the three percentages set out in paragraph (c)(2)(i) of this section. For the meaning of the term *resident*, see paragraph (b)(2) of this section.

(iii) *Examples.* The rules of paragraph (c)(2)(ii) of this section are illustrated by the following examples:

Example 1. Stock held solely by qualified shareholders through a partnership. Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P's only asset is the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. A's distributive share of P's income and gain on the disposition of P's assets is 80 percent, but A's distributive share of P's assets (or the proceeds therefrom) on P's liquidation is 20 percent. B's distributive share of P's income and gain is 20 percent and B is entitled to 80 percent of the assets (or proceeds therefrom) on P's liquidation. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B will be treated as a single partner owning in the aggregate 100 percent of the stock of Z owned by P.

Example 2. Stock held by both qualified and non-qualified shareholders through a partnership. Assume the same facts as in *Example 1* except that C, an individual who is not a resident of a qualified foreign country, is also a partner in P and that C's distributive share of P's income is 60 percent. The distributive shares of A and B are the same as in *Example 1*, except that A's distributive share of income is 20 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, qualified shareholders A and B will be treated as a single partner owning in the aggregate 40 percent of the stock of Z owned by P (i.e., the lowest aggregate percentage of A and B's distributive shares of dividend income (40 percent), gain (100 percent), and liquidation rights (100 percent) with respect to the Z stock). Thus, only 40 percent of the Z stock is treated as owned by qualified shareholders.

Example 3. Stock held through tiered partnerships. Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P is a partner in Partnership P1, which owns the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. Assume that P's distributive share of the dividend income, gain and liquidation rights with respect to the Z stock held by P1 is 40 percent. Assume that of the remaining partners of P1 only D is a qualified shareholder. D's distributive share of P1's dividend income and gain is 15 percent; D's distributive share of P1's assets on liquidation is 25 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B, treated as a single partner, will own 40 percent of the Z stock owned by P1 (100 percent x 40 percent) and D will be treated as owning 15 percent of the Z stock owned by P1 (the least of D's dividend income (15 percent), gain (15 percent), and liquidation rights (25 percent) with respect to the Z stock). Thus, 55 percent of the Z stock owned by P1 is treated as owned by qualified shareholders.

(3) *Trusts and estates*—(i) *Beneficiaries.* In general, an individual shall be treated as having an interest in stock of a foreign corporation owned by a trust or estate in proportion to the individual's actuarial interest in the trust or estate, as provided in section 318(a)(2)(B)(i), except that an income beneficiary's actuarial interest in the trust will be determined as if the trust's only asset were the stock. The interest of a remainder beneficiary in stock will be equal to 100 percent minus the sum of the percentages of any interest in the stock held by income beneficiaries. The ownership of an interest in stock owned by a trust shall not be attributed to any beneficiary whose interest cannot be determined under the preceding sentence, and any such interest, to the extent not attributed by reason of this paragraph (c)(3)(i), shall not be considered owned by a beneficiary unless all potential beneficiaries with respect to the stock are qualified shareholders. In addition, a beneficiary's actuarial interest will be treated as zero to the extent that someone other than the beneficiary is treated as owning the stock under paragraph (c)(3)(ii) of this section. A substantially separate and independent share of a trust, within the meaning of section 663(c), shall be treated as a separate trust for purposes of this paragraph (c)(3)(i), provided that payment of income, accumulated income or corpus of a share of one beneficiary (or group of beneficiaries) cannot affect the proportionate share of income, accumulated income or corpus of another beneficiary (or group of beneficiaries).

(ii) *Grantor trusts.* A person is treated as the owner of stock of a foreign corporation owned by a trust to the extent that the stock is included in the portion of the trust that is treated as owned by the person under sections 671 through 679 (relating to grantors and others treated as substantial owners).

(4) *Corporations that issue stock.* A shareholder of a corporation that issues stock shall be treated as owning stock of a foreign corporation that is owned by such corporation on any day in a proportion that equals the value of the stock owned by such shareholder to the value of all stock of such corporation. If, however, there is an agreement, express or implied, that a shareholder of a corporation will not receive distributions from the earnings of stock owned by the corporation, the shareholder will not be treated as owning that stock owned by the corporation.

(5) *Taxable non-stock corporations.* A taxable non-stock corporation that is entitled in its country of organization to deduct from its taxable income amounts distributed for charitable purposes may deem a recipient of such charitable distributions to be a shareholder of such taxable non-stock corporation in the same proportion as the amount that such beneficiary receives in the taxable year bears to the total income of such taxable non-stock corporation in the taxable year. Whether each such recipient is a qualified shareholder may then be determined under paragraph (b) of this section or under the special rules of paragraph (d)(3)(vii) of this section.

(6) *Mutual insurance companies and similar entities.* Stock held by a mutual insurance company, mutual savings bank, or similar entity (including an association taxable as a corporation that does not issue stock interests) shall be considered owned proportionately by the policy holders, depositors, or other owners in the same proportion that such persons share in the surplus of such entity upon liquidation or dissolution.

(7) *Computation of beneficial interests in non-government pension funds.* Stock held by a pension fund shall be considered owned by the beneficiaries of the fund equally on a pro-rata basis if—

(i) The pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(ii) The trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries's actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(iii) Either—

(A) Any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or

(B) The foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or

(C) The pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions and employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(iv) The trustees, directors or other administrators provide the relevant documentation as required in paragraph (d) of this section.

(d) *Substantiation of stock ownership*—(1) *General rule.* A foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883–1(c)(2), must establish all the facts necessary to satisfy the Commissioner that more than 50 percent of the value of its shares is owned, or treated as owned applying paragraph (c) of this section, by qualified shareholders. A foreign corporation cannot meet this requirement with respect to any stock that is issued in bearer form. A shareholder that holds shares in the foreign corporation either directly or indirectly in bearer form cannot be a qualified shareholder.

(2) *Application of general rule*—(i) *Ownership statements.* Except as provided in paragraph (d)(3) of this section, a person shall only be treated as a qualified shareholder of a foreign corporation if—

(A) For the relevant period, the person completes an ownership statement described in paragraph (d)(4) of this section or has a valid ownership statement in effect under paragraph (d)(2)(ii) of this section;

(B) In the case of a person owning stock in the foreign corporation indirectly through one or more intermediaries (including mere legal owners or recordholders acting as nominees), each intermediary in the chain of ownership between that person and the foreign corporation seeking qualified foreign corporation status completes an intermediary ownership statement described in paragraph (d)(4)(v) of this section or has a valid intermediary ownership statement in effect under paragraph (d)(2)(ii) of this section; and

(C) The foreign corporation seeking qualified foreign corporation status obtains the statements described in paragraphs (d)(2)(i)(A) and (B) of this section.

(ii) *Three-year period of validity.* The ownership statements required in paragraph (d)(2)(i) of this section shall remain valid until the earlier of the last day of the third calendar year following the year in which the ownership statement is signed, or the day that a change of circumstance occurs that makes any information on the ownership statement incorrect. For example, an ownership statement signed on September 30, 2000, remains valid through December 31, 2003, unless a change of circumstance occurs that makes any information on the ownership statement incorrect.

(3) *Special rules*—(i) *Substantiating residence of certain shareholders.* A foreign corporation seeking qualified foreign corporation status or an intermediary that is a direct or indirect shareholder of such foreign corporation may substantiate the residence of certain shareholders, for purposes of paragraph (b)(2)(i)(B) of this section, under one of the following special rules in paragraphs (d)(3)(ii) through (viii) of this section, in lieu of obtaining the ownership statements required in paragraph (d)(2)(i) of this section from such shareholders.

(ii) *Special rule for registered shareholders owning less than one percent of widely-held corporations.* A foreign corporation with at least 250 registered shareholders, that is not a publicly-traded corporation, as described in § 1.883–2 (a widely-held corporation), is not required to obtain an ownership statement from an individual shareholder owning less than one

percent of the widely-held corporation at all times during the taxable year if the requirements of paragraphs (d)(3)(ii)(A) and (B) are satisfied. If the widely-held foreign corporation is the foreign corporation seeking qualified foreign corporation status, or an intermediary that meets the documentation requirements of paragraphs (d)(4)(v)(A) and (B) of this section, the widely-held foreign corporation may treat the address of record in its ownership records as the residence of any less than one percent individual shareholder if—

(A) The individual's address of record is a specific street address and not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(B) The officers and directors of the widely-held corporation neither know nor have reason to know that the individual does not reside at that address.

(iii) *Special rule for beneficiaries of pension funds*—(A) *Government pension fund.* An individual who is a beneficiary of a government pension fund, as defined in paragraph (b)(5)(ii) of this section, may be treated as a resident of the country in which the pension fund is administered if the pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*1*) of this section.

(B) *Non-government pension fund.* An individual who is a beneficiary of a non-government pension fund, as described in paragraph (b)(5)(iii) of this section, may be treated as a resident of the country of the beneficiary's address as it appears on the records of the fund, provided it is not a nonresidential address, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not an individual resident of such foreign country. The rules of this paragraph (d)(3)(iii)(B) shall apply only if the non-government pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*2*) of this section.

(iv) *Special rule for stock owned by publicly-traded corporations.* Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a publicly-traded corporation will be treated as owned by an individual resident in the country where the publicly-traded corporation is organized if the foreign corporation receives the statement described in paragraph (d)(4)(iii) of this section from the publicly-traded corporation and copies of any relevant ownership statements from shareholders of the publicly-traded corporation relied on to satisfy the exception to the closely-held test of § 1.883–2(d)(3)(ii), as required in paragraph (d)(2)(i) of this section.

(v) *Special rule for not-for-profit organizations.* For purposes of meeting the ownership requirements of paragraph (a) of this section, a not-for-profit organization may rely on the addresses of record of its individual beneficiaries and supporters to determine the residence of an individual beneficiary or supporter, within the meaning of paragraph (b)(2)(i)(B) of this section, to the extent required under paragraph (b)(4) of this section, provided that—

(A) The addresses of record are not nonresidential addresses such as a post office box or in care of a financial intermediary;

(B) The officers, directors or administrators of the organization do not know or have reason to know that the individual beneficiaries or supporters do not reside at that address; and

(C) The foreign corporation seeking qualified foreign corporation status receives the statement required in paragraph (d)(4)(iv) of this section from the not-for-profit organization.

(vi) *Special rule for a foreign airline covered by an air services agreement.* A foreign airline that is covered by a bilateral Air Services Agreement in force between the United States and the qualified foreign country in which the airline is organized may rely exclusively on the Air Services Agreement currently in effect and will not have to otherwise substantiate its ownership under this section, provided that the United States has not waived the ownership requirements in the agreement or that the ownership requirements have not otherwise been made ineffective. Such an airline will be treated as owned by qualified shareholders resident in the country where the foreign airline is organized.

(vii) *Special rule for taxable non-stock corporations.* Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a taxable non-stock corporation will be treated as owned, in any taxable year, by the recipients of distributions made during that taxable year, as set out in paragraph (c)(5) of this section. The taxable non-stock corporation may treat the address of record in its distribution records as the residence of any recipient if—

(A) An individual recipient's address is in a qualified foreign country and is a specific street address and not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent;

(B) The address of a non-individual recipient's principal place of business is in a qualified foreign country;

(C) The officers and directors of the taxable non-stock corporation neither know nor have reason to know that the recipients do not reside or have their principal place of business at such addresses; and

(D) The foreign corporation receives the statement described in paragraph (d)(4)(v)(D) of this section from the taxable non-stock corporation intermediary.

(viii) *Special rule for closely-held corporations traded in the United States.* To demonstrate that a class of stock is not closely-held for purposes of § 1.883–2(d)(3)(i), a foreign corporation whose stock is traded on an established securities market in the United States may rely on its most current SEC Form 13G filing (Statement of Beneficial Ownership by Certain Persons) for the taxable year to identify its 5-percent shareholders in each class of stock relied upon to meet the regularly traded test, without having to make any independent investigation to determine the identity of the 5-percent shareholder. However, if any class of stock is determined to be closely-held within the meaning of § 1.883–2(d)(3)(i), the publicly traded corporation cannot satisfy the requirements of § 1.883–2(e) unless it obtains sufficient documentation described in this paragraph (d) to demonstrate that the requirements of § 1.883–2(d)(3)(ii) are met with respect to the 5-percent shareholders.

(4) *Ownership statements from shareholders*—(i) *Ownership statements from individuals.* An ownership statement from an individual is a written statement signed by the individual under penalties of perjury stating—

(A) The individual's name, permanent address, and country where the individual is fully liable to tax as a resident, if any;

(B) If the individual was not a resident of the country for the entire taxable year of the foreign corporation seeking qualified foreign corporation status, each of the foreign countries in which the individual resided and the dates of such residence during the taxable year of such foreign corporation;

(C) If the individual directly owns stock in the corporation seeking qualified foreign corporation status, the name of the corporation, the number of shares in each class of stock of the corporation that are so owned, and the

period of time during the taxable year of the foreign corporation during which the individual owned the stock;

(D) If the individual directly owns an interest in a corporation, partnership, trust, estate or other intermediary that directly or indirectly owns stock in the corporation seeking qualified foreign corporation status, the name of the intermediary, the number and class of shares or amount and nature of the interest of the individual in such intermediary, and the period of time during the taxable year of the corporation seeking qualified foreign corporation status during which the individual held such interest;

(E) To the extent known by the individual, a description of the chain of ownership through which the individual owns stock in the corporation seeking qualified foreign corporation status, including the name and address of each intermediary standing between the intermediary described in paragraph (d)(4)(i)(D) of this section and the foreign corporation and whether this interest is owned either directly or indirectly through bearer shares; and

(F) Any other information as specified in guidance published by the Internal Revenue Service (*see* § 601.601(d)(2) of this chapter).

(ii) *Ownership statements from foreign governments.* An ownership statement from a foreign government that is a qualified shareholder is a written statement—

(A) Signed by any one of the following—

(*1*) An official of the governmental authority, agency or office who has supervisory authority with respect to the government's ownership interest and who is authorized to sign such statement on behalf of the authority, agency or office; or

(*2*) The competent authority of the foreign country (as defined in the income tax convention between the United States and the foreign country); or

(*3*) An income tax return preparer that, for purposes of this paragraph (d)(4)(ii) only, shall mean a firm of licensed or certified public accountants, a law firm whose principals or members are admitted to practice in one or more states, territories or possessions of the United States or the country of such government, or a bank or other financial institution licensed to do business in such foreign country and having assets at least equivalent to 50 million U.S. dollars and who is authorized to represent the government or governmental authority; and

(B) That provides—

(*1*) The title of the official or other person signing the statement;

(*2*) The name and address of the government authority, agency or office that has supervisory authority and, if applicable, the income tax preparer which has prepared such ownership statement;

(*3*) The information described in paragraphs (d)(4)(i)(C) through (F) of this section (as if the language applied "government" instead of "individual") with respect to the government's direct or indirect ownership of stock in the corporation seeking qualified resident status;

(*4*) In the case of an ownership statement prepared by an income tax return preparer, a statement under penalties of perjury identifying the documentation relied upon in the conduct of due diligence for the taxable year to determine the aggregate government investment in the stock of the shipping or aircraft company in preparation of such ownership statement attached to a valid power of attorney to represent the taxpayer for the taxable year; and

(*5*) Any other information as specified in guidance published by the Internal Revenue Service (*see* § 601.601(d)(2) of this chapter).

(iii) *Ownership statements from publicly-traded corporate shareholders.* An ownership statement from a publicly-traded corporation that is a direct or indirect owner of the corporation seeking qualified foreign corporation status is a written statement, signed under penalties of perjury by a person that would be authorized to sign a tax return on behalf of the shareholder corporation containing the following information—

(A) The name of the country in which the stock is primarily traded;

(B) The name of the established securities market or markets on which that the stock is listed;

(C) A description of each class of stock relied upon to meet the requirements of § 1.883–2(d)(1), including the number of shares issued and outstanding as of the close of the taxable year;

(D) For each class of stock relied upon to meet the requirements of § 1.883–2(d)(1), if one or more 5-percent shareholders, as defined in § 1.883–2(d)(3)(i), own in the aggregate 50 percent or more of the value of the outstanding shares of that class of stock at any time during the taxable year, state—

(*1*) The highest total percentage of the value of the class of stock that is owned by such 5-percent shareholders;

(*2*) For each qualified shareholder who owns or is treated as owning stock in the closely-held block upon whom the corporation intends to rely to satisfy the exception to the closely-held test of § 1.883–2(d)(3)(ii)—

(*i*) The name of each such shareholder;

(*ii*) The percentage of the total value of the class of stock held by each such shareholder;

(*iii*) The address of record of each such shareholder;

(*iv*) The country of residence of each such shareholder, determined under paragraph (b)(2) or (d)(3) of this section; and

(E) The portion of the taxable year of the corporation during which the stock was closely-held without regard to the exception in § 1.883–2(d)(3)(ii);

(F) The information described in paragraphs (d)(4)(i)(C) through (F) of this section (as if the language applied "publicly-traded corporation" instead of "individual") with respect to the publicly-traded corporation's direct or indirect ownership of stock in the corporation seeking qualified resident status; and

(G) Any other information as specified in guidance published by the Internal Revenue Service (*see* § 601.601(d)(2) of this chapter).

(iv) *Ownership statements from not-for-profit organizations.* An ownership statement from a not-for-profit organization (other than a pension fund as defined in paragraph (b)(5) of this section) is a written statement signed by a person authorized to sign a tax return on behalf of the organization under penalties of perjury stating—

(A) The name, permanent address, and principal location of the activities of the organization (if different from its permanent address);

(B) The information described in paragraphs (d)(4)(i)(C) through (F) of this section (as if it the language applied "not-for-profit organization" instead of "individual");

(C) A representation that the not-for-profit organization satisfies the requirements of paragraph (b)(4) of this section; and

(D) Any other information as specified in guidance published by the Internal Revenue Service (*see* § 601.601(d)(2) of this chapter).

(v) *Ownership statements from intermediaries*—(A) *General rule.* The foreign corporation seeking qualified foreign corporation status under the shareholder stock ownership test must obtain an intermediary ownership statement from each intermediary standing in the chain of ownership between it and the qualified

shareholders on whom it relies to meet this test. An intermediary ownership statement is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or a person who would be authorized to sign a tax return on behalf of the intermediary (if the intermediary is not an individual) containing the following information—

(*1*) The name, address, country of residence, and principal place of business (in the case of a corporation or partnership) of the intermediary, and, if the intermediary is a trust or estate, the name and permanent address of all trustees or executors (or equivalent under foreign law), or if the intermediary is a pension fund, the name and permanent address of place of administration of the intermediary;

(*2*) The information described in paragraphs (d)(4)(i)(C) through (F) of this section (as if the language applied "intermediary" instead of "individual");

(*3*) If the intermediary is a nominee for a shareholder or another intermediary, the name and permanent address of the shareholder, or the name and principal place of business of such other intermediary;

(*4*) If the intermediary is not a nominee for a shareholder or another intermediary, the name and country of residence (within the meaning of paragraph (b)(2) of this section) and the proportionate interest in the intermediary of each direct shareholder, partner, beneficiary, grantor, or other interest holder (or if the direct holder is a nominee, of its beneficial shareholder, partner, beneficiary, grantor, or other interest holder), on which the foreign corporation seeking qualified foreign corporation status intends to rely to satisfy the requirements of paragraph (a) of this section. In addition, such intermediary must obtain from all such persons an ownership statement that includes the period of time during the taxable year for which the interest in the intermediary was owned by the shareholder, partner, beneficiary, grantor or other interest holder. For purposes of this paragraph (d)(4)(v)(A), the proportionate interest of a person in an intermediary is the percentage interest (by value) held by such person, determined using the principles for attributing ownership in paragraph (c) of this section;

(*5*) If the intermediary is a widely-held corporation with registered shareholders owning less than one percent of the stock of such widely-held corporation, the statement set out in paragraph (d)(4)(v)(B) of this section, relating to ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediaries;

(*6*) If the intermediary is a pension fund, within the meaning of paragraph (b)(5) of this section, the statement set out in paragraph (d)(4)(v)(C) of this section, relating to ownership statements from pension funds;

(*7*) If the intermediary is a taxable non-stock corporation, within the meaning of paragraph (c)(5) of this section, the statement set out in paragraph (d)(4)(v)(D) of this section, relating to ownership statements from intermediaries that are taxable non-stock corporations; and

(*8*) Any other information as specified in guidance published by the Internal Revenue Service (*see* § 601.601(d)(2) of this chapter).

(B) *Ownerships statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediary.* An ownership statement from an intermediary that is a corporation with at least 250 registered shareholders, but that is not a publicly-traded corporation within the meaning of § 1.883–2, and that relies on paragraph (d)(3)(ii) of this section, relating to the special rule for registered shareholders owning less than one percent of widely-held corporations, must provide the following information in addition to the information required in paragraph (d)(4)(v)(A) of this section—

(*1*) The aggregate proportionate interest by country of residence in the widely-held corporation of such registered shareholders or other interest holders whose address of record is a specific street address and not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(*2*) A representation that the officers and directors of the widely-held intermediary neither know nor have reason to know that the individual shareholder does not reside at his or her address of record in the corporate records; and

(*3*) Any other information as specified in guidance published by the Internal Revenue Service (*see* § 601.601(d)(2) of this chapter).

(C) *Ownership statements from pension funds—(1) Ownership statements from government pension funds.* A government pension fund (as defined in paragraph (b)(5)(ii) of this section) that relies on paragraph (d)(3)(iii) of this section (relating to the special rules for pension funds) generally must provide the documentation required in paragraph (d)(4)(v)(A) of this section, and, in addition, the government pension fund must also provide the following information—

(*i*) The name of the country in which the plan is administered;

(*ii*) A representation that the fund is established exclusively for the benefit of employees or former employees of a foreign government, or employees or former employees of a foreign government and non-governmental employees or former employees that perform or performed governmental or social services;

(*iii*) A representation that the funds that comprise the trust are managed by trustees who are employees of, or persons appointed by, the foreign government;

(*iv*) A representation that the trust forming part of the pension plan provides for retirement, disability, or death benefits in consideration for prior services rendered;

(*v*) A representation that the income of the trust satisfies the obligations of the foreign government to the participants under the plan, rather than inuring to the benefit of a private person; and

(*vi*) Any other information as specified in guidance published by the Internal Revenue Service (*see* § 601.601(d)(2) of this chapter).

(*2*) *Ownership statement from non-government pension funds.* The trustees, directors, or other administrators of the non-government pension fund, as defined in paragraph (b)(5)(iii) of this section, that rely on paragraph (d)(3)(iii) of this section, relating to the special rules for pension funds, generally must provide the pension fund's intermediary ownership statement described in paragraph (d)(4)(v)(A) of this section. In addition, the non-government pension fund must also provide the following information—

(*i*) The name of the country in which the pension fund is administered;

(*ii*) A representation that the pension fund is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country, and, if so, the name of the governmental authority (or other authority delegated to perform such supervision or regulation);

(*iii*) A representation that the pension fund is generally exempt from income taxation in its country of administration;

(*iv*) The number of beneficiaries in the pension plan;

(*v*) The aggregate percentage interest of beneficiaries by country of residence based on addresses shown on the books

and records of the fund, provided the addresses are not nonresidential addresses, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not a resident of such foreign country;

(*vi*) A representation that the pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(*vii*) A representation that the trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries' actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(*viii*) A representation that any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or that the foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or that the pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions, and that employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(*ix*) Any other information as specified in guidance published by the Internal Revenue Service (*see* § 601.601(d)(2) of this chapter).

(*3*) *Time for making determinations.* The determinations required to be made under this paragraph (d)(4)(v)(C) shall be made using information shown on the records of the pension fund for a date during the foreign corporation's taxable year to which the determination is relevant.

(*D*) *Ownership statements from taxable non-stock corporations.* An ownership statement from an intermediary that is a taxable non-stock corporation must provide the following information in addition to the information required in paragraph (d)(4)(v)(A) of this section—

(*1*) With respect to paragraph (d)(4)(v)(A)(*7*) of this section, for each beneficiary that is treated as a qualified shareholder, the name, address of residence (in the case of an individual beneficiary, the address must be a specific street address and not a non-residential address, such as a post office box or in care of a financial intermediary; in the case of a non-individual beneficiary, the address of the principal place of business) and percentage that is the same proportion as the amount that the beneficiary receives in the tax year bears to the total net income of the taxable non-stock corporation in the tax year;

(*2*) A representation that the officers and directors of the taxable non-stock corporation neither know nor have reason to know that the individual beneficiaries do not reside at the address listed in paragraph (d)(4)(v)(D)(*1*) of this section or that any other non-individual beneficiary does not conduct its primary activities at such address or in such country of residence; and

(*3*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(5) *Availability and retention of documents for inspection.* The documentation described in paragraphs (d)(3) and (4) of this section must be retained by the corporation seeking qualified foreign corporation status (the foreign corporation) until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and place as the Commissioner may request in writing.

(e) *Reporting requirements.* A foreign corporation relying on the qualified shareholder stock ownership test of this section to meet the stock ownership test of § 1.883–1(c)(2) must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120F, "U.S. Income Tax Return of a Foreign Corporation" for each taxable year. The information should be current as of the end of the corporation's taxable year. The information must include the following—

(1) A representation that more than 50 percent of the value of the outstanding shares of the corporation is owned (or treated as owned by reason of paragraph (c) of this section) by qualified shareholders for each category of income for which the exemption is claimed;

(2) With respect to each individual qualified shareholder owning 5 percent or more of the foreign corporation, applying the attribution rules of paragraph (c) of this section, and relied upon to meet the 50 percent ownership test of paragraph (a) of this section, the name and street address, as represented on each such individual's ownership statement;

(3) With respect to all qualified shareholders relied upon to satisfy the 50 percent ownership test of paragraph (a) of this section, the total percentage of the value of the outstanding shares owned, applying the attribution rules of paragraph (c) of this section, by all qualified shareholders resident in a qualified foreign country, by country; and

(4) Any other relevant information specified by the Form 1120F and its accompanying instructions.

§ 1.883–5 Effective dates.

(a) *General rule.* Sections 1.883–1 through 1.883–4 apply to taxable years of a foreign corporation seeking qualified foreign corporation status beginning 30 days or more after the date these regulations are published as final regulations in the **Federal Register**.

(b) *Election for retroactive application.* When these regulations are published as final regulations, taxpayers will be permitted to elect to apply §§ 1.883–1 through 1.883–4, as finalized, for any open taxable year of the foreign corporation beginning after December 31, 1986, except that the substantiation and reporting requirements of § 1.883–1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) or §§ 1.883–2(f), 1.883–3(d) and 1.883–4(e) (relating to additional information to be included in the return to demonstrate whether the foreign corporation satisfies the stock ownership test) will not apply to any year beginning before the applicable date of the final regulations. Such election shall apply to the taxable year of the election and to all subsequent

taxable years prior to the effective date of this regulation. Pending finalization of these regulations, if a foreign corporation complies with the proposed regulations, it will be considered substantial evidence that the foreign corporation is a qualified foreign corporation.

(c) *Transitional information reporting rule.* For taxable years of the foreign corporation beginning 30 days or more after the date these regulations are published as final regulations in the **Federal Register**, and until such time as the Form 1120F and its instructions are revised to conform to §§ 1.883–1 through 1.883–4, the information required in § 1.883–1(c)(3) and § 1.883–2(f), 1.883–3(d) or 1.883–4(e), as applicable, must be included on a written statement signed under penalties of perjury by a person authorized to sign the return, attached to the Form 1120F, and filed with the return.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–19127 Filed 7–31–02; 8:45 am]

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Part III

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Part 385
Programmatic Regulations for the Comprehensive Everglades Restoration Plan; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 385

RIN 0710–AA49

Programmatic Regulations for the Comprehensive Everglades Restoration Plan

AGENCY: Army Corps of Engineers; DoD.

ACTION: Proposed rule.

SUMMARY: The Army Corps of Engineers proposes to establish programmatic regulations for the Comprehensive Everglades Restoration Plan. Congress approved the Comprehensive Everglades Restoration Plan in section 601 of the Water Resources Development Act of 2000, which was enacted into law on December 11, 2000. The Act requires the Secretary of the Army to promulgate programmatic regulations within two years to ensure that the goals and purposes of the Comprehensive Everglades Restoration Plan are achieved. We have developed these proposed regulations in response to that statutory requirement. The proposed regulations establish processes and procedures that will guide the Army Corps of Engineers and its partners in the implementation of the Comprehensive Everglades Restoration Plan.

DATES: We will accept comments until October 1, 2002.

ADDRESSES: If you wish to comment on the proposed regulations, you may submit your comments by any one of several methods:

1. You may submit written comments to U.S. Army Corps of Engineers, ATTN: CESAJ–DR–R, P.O. Box 4970, Jacksonville, FL 32232–0019.

2. You may send comments by electronic mail (e-mail) to: *proregs@usace.army.mil.* See the Public Comments Solicited section below for file formats and other information about electronic filing.

3. You may also submit comments through the Internet by completing a comment form on the programmatic regulations web page at: *http://www.evergladesplan.org/pm/progr_regs_comment_form.shtml/.*

FOR FURTHER INFORMATION CONTACT: Stu Appelbaum, Corps of Engineers, Jacksonville District, at the above address, phone (904) 232–1877; fax (904) 899–5001. You may also access the programmatic regulations web page at: *http://www.evergladesplan.org/pm/progr_regs.shtml/.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 601(h)(3) of the Water Resources Development Act of 2000, Public Law 106–541 (114 Stat. 2688) (hereinafter "WRDA 2000") requires the Secretary of the Army, after notice and opportunity for public comment, to promulgate regulations to ensure that the goals and purposes of the Comprehensive Everglades Restoration Plan (the Plan) are achieved. These regulations implement this provision and establish the administrative structure for carrying out the Plan. They establish a process: for the development of Project Implementation Reports, Project Cooperation Agreements, and Operating Manuals that will ensure that the goals and the objectives of the Comprehensive Everglades Restoration Plan (CERP) are achieved; to ensure that new information resulting from changes or unforeseen circumstances, new scientific or technical information or information that is developed through the principles of adaptive management contained in the Plan, and future authorized changes to the Plan will be integrated into the implementation of the Plan; and to ensure the protection of the natural system consistent with the goals and purposes of the Plan, including the establishment of interim goals to provide a means by which the restoration success of the plan will be evaluated throughout the implementation process.

In general, the programmatic regulations envision that the goals and purposes of the Plan will be achieved through the development of project-specific and system-wide measures. Project specific measures include but are not limited to project implementation reports, project cooperation agreements, operating manuals, and design documentation reports. The more generally applicable system-wide measures include, but are not limited to, the development of guidance memoranda, system-wide performance measures, the Master Implementation Sequencing Plan, interim goals, and targets for evaluating progress towards achieving other water-related needs of the region, including water supply and flood protection. The interim goals and targets for other water-related needs are of special significance. They establish incremental targets to evaluate progress toward the expected level of performance of the Plan and are used to monitor overall progress toward meeting the goals and purposes of the Plan. Taken together, the project specific and system-wide measures form the foundation of the Plan and are critical to the successful restoration of the South Florida ecosystem.

The South Florida ecosystem is a nationally and internationally unique and important natural resource. It is also a resource in peril, having been severely impacted by human activities for over a hundred years. The Central and Southern Florida Project extends from south of Orlando to the Florida Keys and is composed of a regional network of canals, levees, water storage areas, and water control structures. First authorized by Congress in 1948, the project serves multiple purposes. The authorized purposes of the project include flood control, regional water supply for agricultural and urban areas, prevention of salt water intrusion, water supply to Everglades National Park, preservation of fish and wildlife, recreation, and navigation. While fulfilling these authorized purposes, the project has had unintended adverse effects on the unique natural environment that constitutes the Everglades and South Florida ecosystem. In 1996, the Army Corps of Engineers was directed to develop a comprehensive plan to restore and preserve south Florida's natural ecosystem, while enhancing water supplies and maintaining flood protection. The resulting plan, which was submitted to Congress on July 1, 1999, is called the Comprehensive Everglades Restoration Plan.

The overarching goal of the Plan is the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region such as flood protection and water supply. The Plan contains 68 major components that involve creation of approximately 217,000 acres of reservoirs and wetland-based water treatment areas, wastewater reuse plants, seepage management, and removal of levees and canals in natural areas. These components vastly increase storage and water supply for the natural system, as well as for urban and agricultural needs, while maintaining existing Central and Southern Florida Project purposes. The Comprehensive Everglades Restoration Plan will restore more natural flows of water, including sheet flow; improve water quality; and establish more natural hydroperiods in the South Florida ecosystem. Improvements to native flora and fauna, including those that benefit threatened and endangered species, are expected to occur as a result of the restoration of hydrologic conditions.

In enacting section 601 of WRDA 2000, Congress approved the Comprehensive Everglades Restoration Plan as a framework for modifications to

the Central and Southern Florida Project. Section 601 of WRDA 2000 contains a variety of provisions associated with implementation of the Comprehensive Everglades Restoration Plan, including an authorization for the construction of four pilot projects and ten initial projects of the Comprehensive Everglades Restoration Plan.

Section 601(h) of WRDA 2000 states that "the overarching objective of the Plan is the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection." This subsection directs that the Plan be implemented to ensure the protection of water quality in, the reduction of the loss of fresh water from, and the improvement of the environment of the South Florida Ecosystem. Implementation of the Plan also seeks to achieve and maintain the benefits to the natural system and human environment described in the Plan.

Section 601(h)(2) of WRDA 2000 requires the President and Governor to enter into a binding agreement ensuring that the water generated by the Plan will be made available to the natural system. The President and Governor signed this agreement on January 9, 2002. The agreement specifies that the State will ensure by regulation, or other appropriate means, that water made available by each project of the Plan will not be permitted for a consumptive use or otherwise made unavailable by the State until such time as sufficient reservations of water for restoration of the natural system are made under State law in accordance with the Project Implementation Report for that project and consistent with the Plan. This agreement also specifies that the State will monitor and assess the continuing effectiveness of reservations as long as the project is authorized to achieve the goals and objectives of the Plan.

Section 601(h)(3) of WRDA 2000 requires that the Secretary of the Army, after notice and opportunity for public comment, and with the concurrence of the Governor of Florida and the Secretary of the Interior, and consultation with the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and other Federal, State, and local agencies, issue programmatic regulations within two years of the date of enactment of WRDA 2000 to ensure that the goals and purposes of the Plan are achieved. The proposed regulations are a specific response to the requirements of this section.

Section 601(h)(4) of WRDA 2000 describes the project specific assurance requirements for Project Implementation Reports, Project Cooperation Agreements, and Operating Manuals. Finally, section 601(h)(5) contains a Savings Clause that provides protection for existing legal sources of water that will be eliminated or transferred due to project implementation and provides for maintenance of the level of service for flood protection that is in existence on the date of enactment and in accordance with applicable law.

II. Process for Developing the Proposed Regulations

The Army developed the proposed regulations through an open and inclusive process that involved numerous meetings, briefings, and discussions with other Federal, State, and local agencies; the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida; agricultural, environmental, urban utilities, recreational, and urban interest groups; and the public. Briefings on the programmatic regulations were provided to the Governing Board of the South Florida Water Management District and its Water Resources Advisory Commission and the South Florida Ecosystem Restoration Task Force and its Working Group. In addition, programmatic regulations web pages were developed and posted on the Comprehensive Everglades Restoration Plan web site (http://www.evergladesplan.org). The web site was used to disseminate information about the programmatic regulations and to provide a place for individuals and organizations to submit comments electronically during the development of the programmatic regulations. This was designed to identify the major concerns of the agencies and various groups, prior to publishing the proposed regulations and soliciting formal public comment.

The Army held an opening round of meetings with agencies, interest groups, and the public in May and June 2001. The purpose of these meetings was to discuss the process that would be used to develop the programmatic regulations and to solicit comments on the major issues and concerns that should be addressed in developing the regulations.

Following this initial round of meetings, we developed a draft outline of the programmatic regulations. We then held a second round of meetings in September and October 2001 with agencies, interest groups, and the public to solicit comments on the draft outline. We also consulted with the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida, and sought their comments on the outline.

After the second round of meetings, we developed an initial draft of the programmatic regulations. We distributed this initial draft to the public on December 28, 2001, and allowed for informal public comment until February 15, 2002. We then held meetings with agencies, tribes, and interest groups, to discuss the initial draft. We also received written comments on the initial draft that we posted on the programmatic regulations web site. In addition, the Water Resources Advisory Commission formed a subcommittee on the programmatic regulations. The subcommittee met several times to discuss issues concerning the initial draft and potential solutions to these issues. The South Florida Ecosystem Restoration Task Force also met several times after the release of the initial draft to discuss the programmatic regulations.

Finally, we developed the proposed regulations after considering all of the information received at the meetings, as well as written comments that were received from agencies, interest groups, and the public.

III. Major Issues Addressed in Developing the Programmatic Regulations

A. General

As discussed, we held numerous meetings with agencies, tribes, interest groups, and the public. The initial draft regulations released in December 2001 prompted a number of written comments by agencies, tribes, interest groups, and the public. The major issues identified in those comments and how we considered the comments in developing the proposed rule are described in the following sections.

B. References to Senate Committee Report Language

A number of comments concerned referring to the Senate Environment and Public Works Committee Report (Senate Report No. 106–362) in the preamble to the proposed regulations. Some commenters believed that the Senate Report sets forth guidance for implementing the Plan and fulfilling the assurances provisions of section 601(h) of WRDA 2000. Others expressed the opinion that Senate Committee Report 106–362 carries no legislative weight since the bill discussed in Senate Committee Report 106–362 differs in several critical areas from the final version of the bill adopted by the full United States Senate. We have referred

to the Senate Report in the proposed regulations, like any other part of the history of the Plan, where we believe it may be helpful to understanding the statute or the issues involved in interpreting or implementing the statute.

C. Defining Restoration

Many comments concerned the value of defining restoration in the regulation. Some commenters expressed the view that a definition is needed in order to better define what is meant by the phrase "restoration, preservation, and protection of the South Florida ecosystem" used in section 601 of WRDA 2000.

Some commenters maintained that the Plan is only a framework and that Congress expected the implementing agencies to propose improvements to the Plan's goal of restoration through a regular process of adaptive management. These commenters believed that a comprehensive definition of restoration, including environmental and ecological recovery of the natural system, is needed to guide the process.

While recognizing the theoretical merits of these views, other commenters felt that this concept of restoration was too open-ended. These commenters believed that Congress adopted a specific framework for restoration in enacting WRDA 2000 and that framework was set forth in the Comprehensive Everglades Restoration Plan. They maintained that the restoration authorized by this Plan, while extensive, does not envision restoring the Everglades to its natural condition before the intervention of humans.

For the purposes of this regulation, we have adopted a middle ground between these two perspectives. We have defined the term "restoration" to mean the level of recovery and protection described in the plan that was approved by Congress in enacting WRDA 2000 as a framework for hydrologic restoration, and any future Congressional amendments to that framework. However, we have also highlighted in the definition that the Plan is designed to deliver water to and improve water quality in the natural system so that it once again exhibits and sustains essential physical and ecological characteristics that defined the pre-drainage South Florida ecosystem, including more natural hydropatterns, and that these hydrological modifications are a precursor to improvements to native flora and fauna, restoration of key habitats, and promotion of a pattern of plant communities that form a gradient from aquatic communities to uplands. Our proposed definition also envisions using the principles of adaptive management to seek continuous improvement of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific or technical information, or information developed through the adaptive assessment principles contained in the Plan, or future authorized changes to the Plan that are integrated into the implementation of the Plan.

In adopting this definition, we recognize that the Plan envisions the recovery and maintenance of certain important ecological components and patterns that are thought to have characterized the natural system. Achievement of these attributes is expected to result in the overall improvement of the environment of the South Florida ecosystem, including improvements to native flora and fauna, including threatened and endangered species; restoring the presence of key species in historic habitats; promoting a pattern of plant communities that form a gradient from aquatic communities to uplands; and providing habitat within the Everglades natural system to the species that inhabit the Everglades. These improvements are accomplished generally by increasing water storage and water supply for the Everglades natural system; restoring more natural flows of water, including sheet flow; establishing more natural hydroperiods, including wet and dry season cycles, natural recession rates, surface water depth patterns, and, in coastal areas, salinity and mixing patterns; and protecting water quality for the Everglades natural system as described in the Plan.

It is important to understand that the "restored" Everglades of the future will be different from any version of the Everglades that has existed in the past. While it will be significantly healthier than the current system, it will not completely match the pre-drainage system. The irreversible physical changes made to the ecosystem make a complete match impossible. The restored Everglades will be smaller and somewhat differently arranged than the historic ecosystem. However, it will have recovered those essential hydrological and biological characteristics that defined the original Everglades and made it unique among the world's wetlands systems. It will evoke the wildness and richness of the former Everglades.

D. Partnership With the State of Florida and With Others

Implementation of the Comprehensive Everglades Restoration Plan will require an effective partnership between the Federal and State governments. The State of Florida has established a trust fund, the Save Our Everglades Trust Fund, to pay for a significant portion of the non-Federal sponsor's share of implementation of the Plan and the South Florida Water Management District will serve as the non-Federal sponsor for implementing many of the projects of the Plan. Section 601 of WRDA 2000 recognizes the importance of this constructive relationship and further encourages this partnership.

The proposed regulations promote the implementation of the Comprehensive Everglades Restoration Plan by defining the processes and procedures needed to accomplish the necessary planning, design, construction, and operation of the projects authorized pursuant to the Plan. In addition, the proposed regulations establish a process of adaptive management where completed projects are monitored and assessed and changes to the Plan, its operations, or the schedule and sequence of projects are considered as appropriate to ensure that the goals and purposes of the Plan are achieved. The processes and requirements included in the proposed regulations also were developed to take into account the interests of the South Florida Water Management District, the State of Florida, or other non-Federal sponsors as the Plan is implemented. The proposed regulations also recognize that the non-Federal sponsor for some projects of the Plan will be governmental entities other than the South Florida Water Management District.

E. Consultation

The implementation of the Comprehensive Everglades Restoration Plan is the responsibility of the Corps of Engineers and the non-Federal sponsor; however, successful implementation of the Comprehensive Everglades Restoration Plan requires not just the involvement of the implementing agencies, but also extensive involvement by other Federal, State, local agencies, and the Tribes. The proposed regulations envision that the implementing agencies will consult with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and

local agencies as part of the planning and implementation process. The consultation provisions ensure that these interested parties are appropriately involved with the Corps of Engineers and the non-Federal sponsor in implementing, evaluating, and adapting the Plan.

The consultation provisions contemplate a timely exchange of views between parties. In other words, consultation is not to be used as a de facto veto power. Similar to the considerations for setting time limits for consulting under NEPA (40 CFR 1501.8), the regulations envision that the Corps of Engineers and the South Florida Water Management District may set reasonable limits on the amount of time for consultation, giving due consideration to the size of the proposed action, the degree to which relevant information is known or obtainable, the degree to which the action is controversial, the state of the art of analytical techniques, the number of persons affected, the consequences of delay, and other time limits imposed on the agency by law, regulations, or executive order.

F. Amount of Detail in the Proposed Regulations

Many comments addressed the degree of detail in the regulations. Some believed that the programmatic regulations should be very detailed, specific, and prescriptive. Others believed that the programmatic regulations should be more general. Some commenters also expressed concern that the Federal regulations not infringe on the sovereignty of the State of Florida or its right to allocate its water resources. Others sought to ensure that the regulations safeguard the Federal interest and investment in restoration, preservation, and protection of the South Florida ecosystem, including Federal properties such as national parks and wildlife refuges.

The proposed regulations attempt to address these concerns and provide guidance in implementing the Plan. We recognize that more detailed guidance memoranda will be needed to assist the implementation of the Plan. We have determined that the guidance memoranda should not be included in the programmatic regulations because they will be very technical, and are intended to provide internal guidance to the implementing agencies, and also because they still are in development. This decision is consistent with the view of some who felt that including the guidance memoranda in the regulations was incompatible with rule-making procedures because of the changing nature of the adaptive management process. These commenters were concerned that if guidance memoranda were included in these regulations, every revision to them would require us to initiate a rulemaking process. We expect that revisions may occur frequently for some of these procedures, particularly during the early stages of implementation of the Plan.

The programmatic regulations contemplate that the guidance memoranda be developed six months after the effective date of the final rule published in the **Federal Register** or December 31, 2003, whichever is sooner, with the concurrence of the Secretary of the Interior and the Governor. Even though we are not including the guidance memoranda in the regulations, we believe that the public should have an opportunity to review and comment on them in view of its interest in these matters. Accordingly, the programmatic regulations envision that we will provide a notice of availability of the guidance memoranda in the **Federal Register** and seek public comments before they are completed. After they are completed, the Corps of Engineers will consider during the next review and revision of the programmatic regulations, whether or not a particular guidance memorandum that has been completed, is appropriate for inclusion in the regulations.

G. Restoration Coordination and Verification (RECOVER)

Many comments focused on the role of RECOVER in implementing the Plan. Some of the commenters expressed concerns about how best to integrate individual projects into the Plan to ensure that the goals and purposes of the Plan are achieved. Others articulated concerns about the need to use the best scientific information available. Finally, some urged that RECOVER also focus on achieving the other water-related needs provided for in the Plan such as water supply and flood protection, along with restoration benefits.

RECOVER is an interdisciplinary, interagency scientific and technical team that is described in the Plan. The proposed regulations recognize that the Restoration Coordination and Verification (RECOVER) team already is in place and envision using RECOVER to ensure that a system-wide perspective is applied and that the best available scientific and technical information will be used during the implementation, evaluation, and adaptation of the Plan. The Corps of Engineers and the South Florida Water Management District will oversee the activities of RECOVER. The regulations also recognize the key role of the Department of the Interior in RECOVER because of its extensive experience in managing the Everglades National Park, and provide an important role for the Department in the Leadership Group of RECOVER, along with the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Indians, the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection, and other Federal, State and local agencies as appropriate. While RECOVER is not a policy making body, the regulations outline a series of specific scientific and technical responsibilities for RECOVER that will assist the implementing agencies (the Corps of Engineers and the South Florida Water Management District) in achieving the goals and purposes of the Plan, particularly restoration of the natural system.

RECOVER will be responsible for, among other things, developing system-wide performance measures for consideration by the Corps of Engineers and South Florida Water Management District, in evaluating projects in achieving the system-wide goals and purposes of the Plan, preparing Project Implementation Reports, developing and recommending proposals for a system-wide monitoring plan, conducting assessment activities for the adaptive management program, considering proposed revisions to the Plan, and developing recommendations for interim goals. The proposed regulations memorialize many of the activities already underway by RECOVER. The proposed regulations make it clear that RECOVER is a scientific and technical team. Documents prepared by RECOVER are not self-executing and must be reviewed, discussed, revised, and/or approved by responsible management officials of the Corps of Engineers and the South Florida Water Management District, in consultation with the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Indians, the U.S. Department of the Interior, the U.S. Department of Commerce, U.S. Environmental Protection Agency, the Florida Department of Environmental Protection, and other Federal, State and local agencies as appropriate prior to implementation of management responses based on the results and findings contained therein.

H. Independent Scientific Review

Some commenters emphasized the need to maintain the system-wide focus of the Plan during implementation and felt that a mechanism must be developed to ensure that the best and

most current scientific information be used throughout implementation. Other commenters also expressed the view that an independent entity should be responsible for reviewing the science used to support the implementation of the Plan. The regulations recognize that, as required by Section 601(j) of WRDA 2000, an independent scientific review panel should be established. The proposed regulations do not establish this panel, but provide for its establishment. The regulations include provisions for cooperating with the panel, considering the panel's advice, and responding to the panel's recommendations.

I. Project Implementation Reports

Section 601 of WRDA 2000 establishes a new type of reporting document called a Project Implementation Report to bridge the gap between the conceptual level of detail in the Comprehensive Everglades Restoration Plan and the detail needed for project design. Section 601(h)(4)(A) of WRDA 2000 specifies a number of items required to be in a Project Implementation Report, including identification of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system, and the identification of the amount of water to be reserved or allocated for the natural system.

Some comments focused on the need to create a clearly defined process for the development of Project Implementation Reports, and, in particular, the formulation and evaluation of individual projects of the Plan. The report of the Senate Committee on Environment and Public Works on the Water Resources Development Act of 2000 (Senate Report No. 106–362) defines Project Implementation Reports as follows:

> The project implementation report is a new type of reporting document, similar to a General Reevaluation Report in that it will contain additional project formulation and evaluation. The project implementation report also will contain General Design Memorandum level of detail, or higher, for engineering and design. Some of the tasks associated with the preparation of the project implementation report will include: surveys and mapping; geotechnical analyses; flood damage assessment; real estate analyses; and preparation of supplemental National Environmental Policy Act documents. The project implementation reports will bridge the gap between the programmatic-level design contained in the Plan and the detailed design necessary to proceed to construction. Furthermore, each project implementation report will be accompanied by a Project Management Plan, which will detail schedules, funding requirements, and resource needs for final design and construction of the project.

The proposed regulations provide guidance for the development of Project Implementation Reports. They describe the requirements of a Project Implementation Report, including providing information required by the State of Florida for the participation of the non-Federal sponsor in the implementation of various components of the Plan. These requirements are set forth in Florida Statutes sections 373.1501 and 373.470, which specify the information that must be available before State agencies can participate in implementation of CERP projects. The proposed regulations contemplate that the Project Implementation Report will contain performance evaluations of alternatives in achieving the system-wide goals and purposes of the Plan, interim goals, and targets for progress toward other water-related needs. The Project Implementation Report also will include evaluations designed to ensure, to the extent practicable and consistent with the system-wide goals and purposes of the Plan, that the project delivers benefits, including benefits to the natural system, that would justify the project, in the context of the then existing Central and Southern Florida Project as modified by any CERP components that have already been implemented. The regulations also envision the development of a guidance memorandum that describes the major tasks necessary to develop a Project Implementation Report and an outline for the content of the Project Implementation Report. Finally, the regulations provide for development of a guidance memorandum establishing procedures for the formulation and evaluation of projects.

J. Project Cooperation Agreements

The Project Cooperation Agreement is the legal agreement between the Department of the Army and the non-Federal sponsor that must be executed before a project can be constructed. Section 601(h) of WRDA 2000 requires that the Secretary not execute a Project Cooperation Agreement until the State has reserved or allocated water for the natural system under State law as described in the Project Implementation Report. Some commenters questioned how the reservation or allocation would be made in accordance with the Project Implementation Report and how the Project Cooperation Agreement would verify this allocation of reservation had, in fact, been made. These commenters recommended that a guidance memorandum be developed to outline how the verification would occur. Others commenters were concerned that the Federal government not infringe on the State's authority under state law to make and revise reservations as necessary.

We agree that a guidance memorandum should be developed that outlines how Project Implementation Reports will identify how the appropriate quantity, timing and distribution of water dedicated and managed for the natural system will be determined, and how they will identify the amount of water that is to be reserved or allocated for the natural system in accordance with the provisions of WRDA 2000. The proposed regulations state that the Project Cooperation Agreement must include a finding that the reservation or allocation has been made by the State as required by Section 601(h) of WRDA 2000. This will provide the assurances regarding the reservation and Project Implementation Report that Congress intended without infringing on the State's right to reserve or allocate water under State law. In addition, the regulations further specify that the Project Cooperation Agreement (PCA) include a provision that any change to the reservation or allocation of water for the natural system made under State law shall require an amendment to the PCA. Further, the Secretary shall verify, in consultation with the South Florida Water Management District, the Florida Department of Environmental Protection, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and other Federal, State, and local agencies that the revised reservation or allocation continues to provide for an appropriate quantity, timing and distribution of water dedicated and managed for the natural system after considering any changed circumstances or information since completion of the Project Implementation Report. Finally, the proposed regulations recognize that the Project Cooperation Agreement must include several provisions required by the savings clause of Section 601(h)(5) of WRDA 2000. Accordingly, the Project Cooperation Agreement includes a provision that prohibits the Corps of Engineers and the non-Federal sponsor from eliminating or transferring existing legal sources of water until a new source of comparable quantity and quality is available as that available on the date of enactment of WRDA 2000. Similarly, in satisfaction of the savings clause requirements, the regulations specify

that a Project Cooperation Agreement must include a provision that existing levels of service for flood protection: (1) On the date of enactment of WRDA 2000; and (2) in accordance with applicable law, not be reduced.

K. Operating Manuals

Operating Manuals provide guidance on how projects are to be operated to ensure that the goals and purposes of the Plan are achieved. To achieve the goals and purposes of the Plan, individual projects must be operated as part of a system. Some commenters sought to ensure that Operating Manuals prepared for individual projects take into account the system-wide purposes of the Plan. Accordingly, the proposed regulations envision the development of two kinds of Operating Manuals. In addition to Project Operating Manuals, a System Operating Manual will be developed to provide a system-wide plan for operating projects and other C&SF Project features to ensure that individual facilities are linked together in a system-wide framework.

The regulations view Project Operating Manuals as supplements to the System Operating Manual, presenting aspects of the project not common to the system. The proposed regulations contemplate that a Project Operating Manual will be developed for each project. A draft Project Operating Manual will be included as an appendix in the Project Implementation Report. This will connect the operation of the project to the expected benefits of the project recommended in the Project Implementation Report. The final Project Operating Manual is to be prepared as soon as possible after completion of the operational testing and monitoring phase of the project.

L. Sequencing and Scheduling of Projects

The Plan consists of 68 components that will be implemented as approximately 45 separate projects, including pilot projects. The "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999, included a sequence and schedule for implementation of the Plan. In July 2001, the Corps of Engineers and the South Florida Water Management District updated the sequence and schedule to incorporate updated information and requirements from Congress and the Florida legislature. The sequence and schedule of projects was the subject of many comments. Some commenters sought to ensure that the sequencing and schedule of projects would produce restoration benefits early in the implementation process. Others were apprehensive of this early focus on restoration benefits and were concerned that other water-related needs of the region as provided for in the Plan would be postponed until late in the implementation process. The proposed regulations establish a process for developing a Master Implementation Sequencing Plan and specify that projects will be sequenced and scheduled to maximize the achievement of the goals and purposes of the Plan, including the achievement of the interim goals at the earliest possible time, to the extent practical given scientific, technical, funding, contracting, and other constraints. The Master Implementation Sequencing Plan will also provide for sequencing and scheduling of projects to ensure, to the extent practicable and consistent with the system-wide goals of the Plan, that each project delivers benefits, including benefits to the natural system, that would justify the project, in the context of the then existing Central and Southern Florida Project as modified by any CERP components that have already been implemented. The Master Implementation Sequencing Plan will base the sequence and schedule of projects on the best scientific, technical, funding, contracting, and other information available.

The proposed regulations also envision that the Master Implementation Sequencing Plan will be revised as necessary to integrate new information such as updated schedules from Project Management Plans, the results of pilot projects and other studies, updated funding information, revisions to the Plan, Congressional or other authorization and direction, or information from the adaptive management program, including achievement of the expected performance level of the Plan and the interim goals.

M. Adaptive Management Program

One of the key components of the Plan is adaptive management. Adaptive management provides the opportunity to improve the design and performance of the Plan based on new information. The report of the Senate Committee on Environment and Public Works on WRDA 2000 (Senate Report No. 106–362) describes the intent of the adaptive management program:

> The committee does not expect rigid adherence to the Plan as it was submitted to Congress. This result would be inconsistent with the adaptive management principles in the Plan. Restoration of the Everglades is the goal, not adherence to the modeling on which the April, 1999 Plan was based. Instead, the committee expects that the agencies responsible for project implementation report formulation and Plan implementation will seek continuous improvement of the Plan based upon new information, improved modeling, new technology and changed circumstances.

The regulations define adaptive management as the process of improving the understanding of the natural and human systems in the South Florida ecosystem, specifically as these understandings pertain to the goals and purposes of the Plan, and to ensure continuous improvement of the Plan reflective of new information resulting from changed or unforeseen circumstances, new scientific or technical information, or information developed through the adaptive assessment principles contained in the Plan, or future authorized changes to the Plan. The opportunity for performance improvement offered by the adaptive management program is crucial for dealing with the uncertainties of the ecological responses that will occur as the Plan is implemented. The proposed regulations establish an adaptive management program to guide implementation of the Plan and recognize the importance of assessment reports to this process.

The proposed regulations specify that the implementing agencies will use assessment reports to seek continuous improvement in the Plan. The proposed regulations provide that in considering how the Plan may be improved, the Corps of Engineers and non-Federal project sponsor specifically consider modifying the design or operational plan for a project of the Plan not yet implemented; modifying the sequence or schedule for implementation of the Plan; adding new components to the Plan or deleting components not yet implemented; removing or modifying a component of the Plan already in place; or a combination of any of these actions. RECOVER will be responsible for carrying out these assessment tasks and submitting them to the Corps and the South Florida Water Management District for review.

N. Revisions to the Plan

We anticipate that the Plan will need to be revised periodically as part of the adaptive management program to reflect new information and to improve performance. The proposed regulations provide that a Comprehensive Plan Modification Report be prepared whenever significant revisions to the Plan are necessary to ensure that the goals and purposes of the Plan are achieved. The Comprehensive Plan Modification Report will be prepared

using a process consistent with the processes used to develop a Project Implementation Report. The proposed regulations provide that the final approved Comprehensive Plan Modification Report will be transmitted to Congress.

O. Ensuring Achievement of Plan Benefits

The Plan will improve the quantity, quality, timing, and distribution of water to the South Florida ecosystem. Section 601(f) of WRDA 2000 specifies that the Secretary in coordination with the non-Federal sponsor prepare Project Implementation Reports prior to implementation of those projects. Section 601(h)(4)(A) of WRDA 2000 specifies a number of items required to be in a Project Implementation Report, including identification of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system, and the identification of the amount of water to be reserved or allocated for the natural system. The reservation or allocation of water for the natural system will be implemented under State law and must be made before the Army can execute a Project Cooperation Agreement for the project. "State law" includes reservations or allocations of water made by Florida's Water Management Districts under authority of State law.

A number of commenters expressed the view that the Plan required that water be reserved for the natural system on an 80%–20% basis. These commenters rely on the report of the Senate Committee on Environment and Public Works on WRDA 2000 (Senate Report No. 106–362) that states:

> The Plan contains a general outline of the quantities of water to be produced by each project. According to the Army Corps, 80 percent of the water generated by the Plan is needed for the natural system in order to attain restoration goals, and 20 percent of the water generated for use in the human environment. * * * Subject to future authorizations by Congress, the committee fully expects that the water necessary for restoration, currently estimated at 80 percent of the water generated by the Plan, will be reserved or allocated for the benefit of the natural system (Emphasis added).

Although those percentages were appropriate as an initial estimate for the purpose of evaluating the Plan, the regulations anticipate that each Project Implementation Report will evaluate and identify water to be reserved for the natural system and made available for other water-related needs of the region, and that the Plan itself will be continually evaluated through adaptive management. Accordingly, the water actually allocated to meet the needs of the natural system and the water allocated under the Savings Clause may be greater or less than the initial Plan estimate. Therefore, the regulations do not contemplate that water will be strictly allocated on an 80%–20% basis, either system-wide or on a project-by-project basis.

Many commenters questioned how water would be reserved or allocated for the natural system. These questions focused on how the statutorily-required identification of water reservations and allocations for the natural system in each Project Implementation Report, would be coordinated with the actual reservation or allocation process which is conducted under State law.

Developing the pre-CERP baseline is of central importance to ensuring attainment of the benefits of the Plan and to resolving this issue. This baseline represents the conditions in the region on the date of enactment of WRDA 2000 accounting for natural variations and including existing legal sources of water. The baseline will establish the amount of water that is presently delivered by the Central and Southern Florida Project. The proposed regulations provide that the pre-CERP baseline will be established by June 30, 2003. The proposed regulations also provide that each Project Implementation Report will consider the change of pre-CERP baseline water availability in identifying the quantity, timing, and distribution of water to be made available for the natural system by a project component; whether improvements in water quality are needed in order to ensure that water delivered to the natural system meets applicable water quality standards; whether additional quantity, timing, and distribution of water and/or improved water quality should be made available by subsequent projects; whether to recommend preparation of a Comprehensive Plan Modification Report; and whether to recommend that the State of Florida and its agencies re-examine the reservation or allocation of water needed under State law in order to meet the needs of the natural system and such uses identified under the savings clause.

The Comprehensive Everglades Restoration Plan was developed as an integrated set of components or projects that are intended to work together to successfully achieve the goals and purposes of the Plan. Although individual projects increase the amount of water available, the effect of an individual project extends far beyond the location of the project. Accordingly, it is important that the identification of water to be reserved for the natural system take into account the synergistic and regional effect of projects. The proposed regulations contemplate that a guidance memorandum will be developed to provide uniform guidance for quantifying water made available by projects and for identifying the water to be reserved for the natural system. The proposed regulations also provide direction for the development of the guidance memorandum.

Some agencies, interest groups, and the public were concerned about potential variations from the predicted availability of water once projects actually are implemented and operated. The proposed regulations provide that development of a Comprehensive Plan Modification Report be undertaken to determine the need for revisions to the Plan. The regulations also provide that in the interim during preparation of the Comprehensive Plan Modification Report, operation of the project should be consistent with the procedures identified in the Project Implementation Report and Project Operating Manual.

P. Savings Clause Provisions

Many commenters questioned the effects of implementation of the Plan on existing legal sources of water and on existing levels of flood protection. As discussed, Section 601(h)(5)(A) of WRDA 2000 contains a savings clause provision that is designed to ensure that existing sources of water and levels of flood protection are preserved. The report of the Senate Committee on Environment and Public Works on WRDA 2000 (Senate Report No. 106–362) describes the intent of this savings clause as follows:

> Elimination of existing sources of water supply is barred until new sources of comparable quantity and quality of water are available; existing authorized levels of flood protection are maintained; and the water compact among the Seminole Tribe of Florida, the State, and the South Florida Water Management District is specifically preserved. With respect to flood control, the committee intends that implementation of the Plan will not result in significant adverse impact to any person with an existing, legally recognized right to a level of protection against flooding. The committee does not intend that, consistent with benefits included in the Plan, this bill create any new rights to a level of protection against flooding that is not currently recognized under applicable Federal or State law.

Although the savings clause uses the term "existing legal sources of water," it does not define the term. Nor could we find a definition elsewhere in Federal or State law. We have not defined the term in the proposed regulations, leaving the definition of an "existing legal source"

of water to be determined on a case-by-case basis after consideration of all relevant facts. We may include a definition after considering submitted comments. Currently, the proposed regulations specify that the Project Implementation Report will include an analysis to determine if the project will cause an elimination or transfer of existing legal sources of water. If the project will cause an elimination or transfer of a source of water, then the Project Implementation report will include measures to ensure that such elimination or transfer will not take place until a new source of water of comparable quantity or quality is available to replace the water that would be lost as a result of implementation of the Plan. Existing legal sources of water may include water currently available for agriculture, water supply, tribal use, or elements of the natural system including the Everglades, as well as any other existing legal sources.

The proposed regulations require a Project Implementation Report to include an analysis of the level of service for flood protection that was in existence on the date of enactment of the statute; and is in accordance with applicable law. If this analysis shows that the level of service for flood protection would be reduced by implementation of a project, then the regulations state that the project or its implementation plan will be modified to mitigate or eliminate the adverse effect on flood protection.

Some commenters raised the question of how the Plan would address opportunities for increased levels of flood protection or the provision of flood protection in locations where there currently is no flood protection. The overarching objective of the Plan is the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. Accordingly, the proposed regulations allow for the evaluation of increased levels of flood protection or the provision of flood protection in areas where there is currently no flood protection, provided that such flood protection is consistent with the goals and purposes of the Plan and is in accordance with the provisions of section 601(f)(2)(B) of WRDA 2000 and other applicable laws.

Q. Interim Goals

Many comments focused on development of the interim goals. Section 601(h)(3)(c)(i)(III) of WRDA 2000 requires that interim goals be established to provide a means by which the restoration success of the Plan may be evaluated throughout the restoration process. Progress towards meeting the interim goals is to be reported to Congress as part of the periodic reports required by the Act. While there was widespread agreement among agencies, tribes, interest groups, and the public that interim goals should be established to ensure that the goals and purposes of the Plan are achieved, there were different views about whether these interim goals should be a part of the programmatic regulations. Some believed that the interim goals needed to be a part of the programmatic regulations to ensure that the goals would be met. They also believed that goals had to be incorporated into the regulations to enable the public to take part in the process of establishing the goals. Others were concerned that the statute specifically required the regulations to set up the *process* for establishing interim goals rather than the goals themselves. Additional commenters were concerned that placing the interim goals in the programmatic regulations would make goals difficult to adopt and amend, and that the adaptive management process authorized by section 601 of WRDA 2000 was incompatible with the Administrative Procedures Act rule-making process. Other commenters were concerned that incorporating the goals into the regulations would suggest that the goals were meant to set standards or schedules enforceable in court rather than planning targets, and assessment and reporting tools.

In addition, during development of the proposed regulations, it was apparent that there was not complete agreement on exactly what the interim goals should be. Staff of the implementing agencies required additional time to model the implementation schedule to evaluate expected performance at specific points in the implementation process. This modeling is an important first step in developing incremental stages (interim goals) for achieving that performance. Moreover, the South Florida Ecosystem Restoration Task Force and others indicated an interest in reviewing and discussing interim goals before they were adopted. Thus, even among those who thought that interim goals should be included in these regulations, it was clear that more time for modeling was needed.

The proposed regulations recognize these facts and attempt to accommodate the views of commenters by establishing the principles that will guide the development of the interim goals and appropriately involve the public. The proposed regulations establish the structure for developing and adopting the interim goals, and make it clear that interim goals are targets for use of the agencies and Congress in evaluating the success of the restoration effort. They are not intended to be standards or schedules enforceable in court.

The Restoration Coordination and Verification (RECOVER) team will use the principles set forth in the proposed regulations to develop and recommend a set of interim goals for implementation of the Plan no later than June 30, 2003. The regulations specify that interim goals shall reflect the incremental accomplishment of the expected performance level of the Plan, and will identify improvements in quantity, timing and distribution of water in five-year increments beginning in 2005. The interim goals will also include indicators for water quality improvement and ecological responses, such as increases in extent of wetlands, improvements in habitat quality, and improvements in native plant and animal abundance. However, the regulations also recognize that achievement of improvements in water quality and desired ecological responses may be dependent on other programs and activities outside the scope of CERP. The extent of this dependence on outside programs and activities should be explicitly assessed and described at the time goals are developed, and should be taken into account as the CERP is subsequently evaluated relative to the goals. The interim goals shall be predicted by appropriate models and tools and shall provide a quantitative basis for evaluating the restoration success of the Plan during the period of implementation. The expected level of the Plan is generally represented by the output of the model run of D–13R as described in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999, as modified by section 601 of WRDA 2000, or any subsequent modification authorized in law.

The proposed regulations envision that RECOVER will provide its recommendations to the Corps of Engineers and South Florida Water Management District for review and discussion. Interim goals will be memorialized in an agreement to be signed by the Department of the Army, the Department of the Interior, and the State no later than December 31, 2003. The Department of the Army, the Department of the Interior, and the State will provide a notice of availability of the proposed agreement to the public in the **Federal Register**, seek public

comments, and consult with Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Environmental Protection Agency, the Department of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies and the South Florida Ecosystem Restoration Task Force concerning the proposed interim goals. Finally, the proposed regulations establish a process for revising the interim goals in five-year increments or sooner, if appropriate in light of new information.

Finally, some commenters believed that the interim goals should take into account other water-related needs of the region, including water supply and flood protection, as provided for in the Plan. Other commenters believed that the interim goals should not evaluate other water-related needs of the region. We felt that the interim goals should focus solely on restoration success because section 601(h)(3)(c)(i)(III) of WRDA 2000 specifies that the interim goals are to provide a means by which restoration success may be evaluated throughout the implementation process. The proposed regulations reflect this view. However, the statute recognizes that providing for other water-related needs of the region, including water supply and flood protection, are also objectives of the Plan. Therefore, the proposed regulations also provide for separately monitoring progress on other water-related needs of the region as provided for in the Plan during the implementation process, thus ensuring that all of the goals and purposes of the Plan will be achieved.

R. Relationship Among Restoration, Performance Measures, and Interim Goals

In order to comprehend how the Plan will be evaluated to ensure that its restoration objectives are achieved, it is essential to understand the relationship among the concepts of restoration, performance measures, and interim goals. In this regulation, restoration is defined as the level of recovery and protection to the South Florida ecosystem described in the Plan approved by Congress, with such modifications that Congress may provide for in the future. As the regulations indicate, the concept of restoration in the Plan approved by Congress was expressed in a level of recovery assessed in terms of performance measures, consisting chiefly of hydrologic characteristics. The definition also recognizes that increased flows to the natural system are expected to restore essential physical and ecological characteristics that defined the pre-drainage ecosystem, including more natural hydroperiods, which are a precursor to improvements to native flora and fauna, presence of key species in historic habitats, and patterns of plant communities that form a gradient from aquatic communities to uplands. The regulations recognize that the concept of restoration anticipates future improvements to the Plan through adaptive management. The regulations also recognize that performance measures will continue to be refined and developed throughout the course of implementing the Plan. Interim goals will show incremental progress towards reaching the expected performance level of the Plan at different time intervals during implementation. The regulations envision that the RECOVER team will provide their recommendations about interim goals to the Corps of Engineers and South Florida Water Management District. These recommendations will be considered during the development of an agreement on interim goals that is to be finalized by the Army, the Department of the Interior, and the State of Florida by December 31, 2003. These interim goals will be used initially to evaluate the success of the restoration effort and will be refined periodically during the implementation of the Plan as appropriate to ensure that the overall restoration objectives of the Plan are achieved.

S. Targets for Other Water-Related Needs of the Region

The overarching objective of the Plan is the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. Some commenters urged that, in addition to the interim goals aimed at evaluating restoration success of the Plan, the regulations also should provide incremental targets for the other water-related needs of the region. They believe that this will ensure that all of the goals and purposes of the Plan are achieved. Others commented that, if these other incremental targets were included, progress towards achieving these targets should be evaluated separately from interim goals.

Identifying incremental targets for the other water-related needs of the region will help evaluate the success of implementation of the Plan in achieving the non-restoration goals of the Plan. Therefore, we have decided to establish in the regulations a mechanism for evaluating progress towards providing for these other water-related needs. The regulations provide that by June 30, 2003, RECOVER will develop recommendations on targets to evaluate progress on achieving the other water-related needs of the region, for consideration by the Corps of Engineers and the South Florida Water Management District, in consultation with others. The Corps of Engineers and the South Florida Water Management District will also consult with the South Florida Ecosystem Restoration Task Force in establishing targets for evaluating progress towards achieving other water-related needs of the region provided for in the Plan. These targets shall be established by the Corps of Engineers and the South Florida Water Management District by December 31, 2003. These targets are intended to facilitate inter-agency planning, monitoring, and assessment throughout the implementation process and are not intended to be standards or schedules enforceable in court.

Interim goals, which are directed at restoration success of the Plan, and targets for achieving the other water-related needs of the region, which are not directed at restoration, are set out in two distinct sections to make clear that they are intended to evaluate two different types of goals of the Plan.

In recognition of the significant technical and scientific analyses that are needed in the development of interim goals and targets, RECOVER has already begun the work necessary in order to meet the June 30, 2003 deadline for providing recommendations on interim goals and targets for other water-related needs to the Corps of Engineers and the South Florida Water Management District.

T. Role of the Department of the Interior

Several commenters urged that the Department of the Interior play a significant role in implementation of the Plan because of its stewardship role over Federal lands and natural resources involved in the Plan. The regulations give the Department of the Interior a special concurring role, along with the Governor of the State of Florida, in the development of six specific guidance memoranda related to important program-wide aspects of implementing the Plan: (1) General format and content of Project Implementation Reports; (2) processes for Project Delivery Team evaluation of alternatives developed for Project Implementation Reports, their cost effectiveness and impacts; (3) process for system-wide evaluation of PIR alternatives by RECOVER; (4) the general content of operating manuals; (5) general processes for the conduct of assessment activities of RECOVER; and

(6) the process used in Project Implementation Reports for identifying the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system. The regulations also give the Secretary of the Interior and the Governor of the State of Florida a concurring role in the Secretary of the Army's determination of the pre-CERP baseline. They also specify that interim goals will be established through a formal Interim Goals Agreement between the Corps of Engineers, the State, and the Department of the Interior. Further, the Department of the Interior is provided an important role in the Leadership Group of RECOVER, along with several other Federal and State agencies and the two Tribes. Finally, the regulations give the Department of the Interior an important consulting role throughout implementation of the program, including, among other things, participation on Project Development Teams; development of the Adaptive Management Program; selection and revision of hydrologic models; development of Project Management Plans and Program Management Plans; development of Project Implementation Reports; development of Operating Manuals; development, review and revision of changes to the Master Implementation Sequencing Schedule; recommending and developing Comprehensive Plan Modification Reports; and developing means for monitoring progress towards other water-related needs of the region as provided for in the Plan.

U. Role of South Florida Ecosystem Restoration Task Force

Several commenters suggested that the Programmatic Regulations create a specific role for the South Florida Ecosystem Restoration Task Force, an interagency group created by section 528(f) of the Water Resources Development Act of 1996 (110 Stat. 3770) (hereinafter "WRDA 96"). The legal basis for the Task Force's role in the restoration effort is found both in Section 528 of WRDA 96 and in Section 601 of WRDA 2000. Section 528 envisions that the Task Force will coordinate programs and research on ecosystem restoration, exchange information, provide assistance and facilitate resolution of conflicts involving South Florida ecosystem restoration. In Section 601(j) of WRDA 2000, the Task Force is also given a consultation responsibility concerning the establishment of an independent scientific review panel to review the progress that is being made toward achieving the natural system restoration goals of the Plan. Some members of the Task Force and its associated working group represent agencies involved in implementing CERP under the programmatic regulations, such as the Jacksonville District Corps of Engineers and the South Florida Water Management District. As recognized by this regulation, the South Florida Water Management District and the Jacksonville District already regularly report to the Task Force and its working group on CERP matters. The Task Force also has appointed the Water Resources Advisory Commission (WRAC) of the South Florida Water Management District as an advisory body to the Task Force. The Corps of Engineers serves on this body and regularly briefs that body on CERP. The Department of the Army recognizes the important role that these collaborative groups play in discussion and resolution of CERP issues.

We expect that informal coordination among the implementing agencies, the Task Force and its working group and its other advisory bodies will continue. For example, the Task Force may wish to have regular briefings on CERP implementation issues, on the Master Implementation Sequencing Plan, on Project Implementation Reports, or on Operating Manuals; or the Task Force may decide to have RECOVER provide the working group with information on work in progress. Further, we contemplate that the Task Force will determine, on a case-by-case basis, the manner and extent to which it is appropriate for it to be involved in CERP in order to carry out its existing statutory responsibilities. If a regular process evolves, it can be incorporated into revisions of the Programmatic Regulations.

At recent meetings, the Task Force expressed an interest in consultation on several subjects. Accordingly, this draft regulation incorporates consultation with the Task Force on those subjects. They include: interim goals; targets for other water-related needs of the region as provided for in the Plan; certain assessment reports; Comprehensive Plan Modification Reports; Pilot Project Technical Data Reports; and periodic reports to Congress by the Secretary of Army and Secretary of Interior in consultation with EPA, Department of Commerce, and the State of Florida. The final regulation may provide for additional subjects upon which the Task Force may consult, if deemed appropriate after consideration of public comments.

V. NEPA Compliance

As required by regulations of the Council on Environmental Quality (40 CFR 1505.1 and 1507.3), agencies must issue regulations identifying classes of actions generally requiring an Environmental Impact Statement (EIS), generally not subject to the National Environmental Policy Act (NEPA), and actions requiring an Environmental Assessment (EA) of whether a full NEPA EIS is required or not. The Corps of Engineers has adopted procedures generally implementing NEPA in § 230 of this chapter. The Programmatic Regulations consider on a system-wide basis, the kinds of actions needed to implement the Plan, and apply the principles of § 230 to those activities. The programmatic regulations identify certain actions which generally require preparation of a NEPA document (either an Environmental Impact Statement or an environmental assessment), or which are categorically excluded from NEPA. Actions, such as the development or revision of methods or guidance memoranda, are listed as categorically excluded. Although the development or revision of a method or guidance memorandum itself would not require a NEPA analysis, use of the method or guidance memorandum would be analyzed under NEPA, as appropriate, in a decision document such as a Project Implementation Report.

In general, the NEPA documentation for a particular project will be included in the Project Implementation Report. For this reason, other project-specific documents such as the Design Documentation Report, Project Cooperation Agreement, Project Management Plan, and detailed plans and specifications for the project are listed as categorically excluded from NEPA documentation requirements. The Corps recognizes that these documents may address elements of the project that have a potential to significantly affect the quality of the human environment, and fully intends that these effects should be analyzed and considered as required by NEPA, but believes that this analysis and consideration can be most effectively accomplished by including one comprehensive NEPA analysis for each project in the Project Implementation Report, rather than having piecemeal analyses in each of the supporting documents.

Some commenters expressed the view that the guidance memorandum for determining the quantity, timing and distribution of water dedicated and managed for the natural system in a Project Implementation Report (PIR) should be analyzed in an Environmental Impact Statement (EIS). Since the guidance memorandum is procedural and does not affect the environment, recommend legislation, or determine a

specific quantity, timing, or distribution of water for a specific component, it was not considered to be a "major Federal action" under NEPA. It is important to note that NEPA would apply to the decision made in a PIR for a specific project applying a guidance memorandum to that project and determining that a certain quantity, timing or distribution of water was required for the project.

Similar comments were directed at the interim goals. Some commenters felt that the interim goals were not "major Federal actions" affecting the environment under NEPA. These commenters regarded the interim goals as evaluation and reporting tools. Other commenters maintained that the interim goals are planning goals and that as such should be subject to a full NEPA analysis. In proposing these regulations, we determined that it was not appropriate at this time to make a programmatic decision on precisely how NEPA applied to interim goals because the interim goals have not yet been established and since the extent to which interim goals will be used in planning is still under consideration. When specific interim goals are proposed for adoption, a decision can be made on exactly how NEPA applies. Moreover, when the Programmatic Regulations are revised for the first time, the Corps will consider whether interim goals should be listed as categorically excluded, generally requiring an EIS, or generally requiring an Environmental Assessment but not necessarily an EIS.

IV. Project Implementation Reports Approved Pursuant to Transition Rule

Section 601(h)(3)(D) of WRDA 2000 establishes a transition rule for Project Implementation Reports approved before the date of promulgation of the programmatic regulations. This transition rule requires that the Project Implementation Reports be consistent with the Plan. The transition rule also requires that the preamble of the programmatic regulations contain a statement concerning the consistency with the programmatic regulations of the Project Implementation Reports approved prior to the date of promulgation of those regulations.

A number of Project Implementation Reports are underway currently, but no Project Implementation Reports have been approved to date. The Project Implementation Report for the Southern Golden Gates Estates project in Collier County is scheduled to be completed prior to promulgation of the final rule. If the final Project Implementation Report on Southern Golden Gates Estates is approved before the date of promulgation of the final rule, then the preamble to the final rule will contain a statement concerning the consistency of that Project Implementation Report with the programmatic regulations.

V. Concurrence Requirements for This Regulation

The Secretary of the Interior and the Governor are required by Section 601(h)(3)(B) of WRDA 2000 to provide the Secretary with a written statement of concurrence or non-concurrence on the proposed programmatic regulations within 180 days from the end of the public comment period. This statute specifies that a failure to provide a written statement of concurrence or nonconcurrence within the 180-day time frame will be deemed as meeting the concurrency requirements. A copy of any concurrency or nonconcurrency statement shall be made a part of the administrative record and be referred to in the final programmatic regulations. Any nonconcurrency statements shall specifically detail the reason or reasons for the nonconcurrence. Throughout the process of developing the proposed regulations, we have maintained close coordination with the Department of the Interior and the State of Florida. The Army will give good faith consideration to the concurrence or non-concurrence statements of the Secretary of Interior and the Governor. The final regulations will include a reference to these statements before making a decision to issue final regulations.

VI. Organization of the Proposed Rule

We have organized the proposed regulations under five major headings. The first heading, General Provisions, provides the purpose of the regulations, the applicability of the rule, definitions pertaining to the regulations and other general information. The second heading, Program Goals and Responsibilities, describes the goals and purposes of the Plan; implementation principles; and implementation responsibilities, consultation, and coordination. The remaining headings were designed to be consistent with the content required by section 601(h)(3)(C). These headings are: Comprehensive Everglades Restoration Plan Implementation Processes; Incorporating New Information into the Plan; and Ensuring Protection of the Natural System and Water Availability Consistent with the Goals and Purposes of the Plan.

VII. Public Comments Solicited

We are soliciting comments and suggestions from the public, governmental organizations, and other interested parties on the proposed regulations.

If you wish to comment on this proposed rule, you may submit your comments and materials by any one of several methods (see **ADDRESSES** section). If submitting comments by electronic format, please submit them in ASCII file format or Word file format and avoid the use of special characters and any form of encryption. Please include your name and return e-mail address in your e-mail message. Please note that your e-mail address will not be retained at the termination of the public comment period.

VIII. Administrative Requirements

A. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

These regulations do not impose any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. Thus, this action is not subject to the Paperwork Reduction Act.

B. Executive Order 12866, as Amended

Under Executive Order 12866 (58 FR 51735, October 4, 1993), as amended, we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, as amended, it has been determined that these regulations are a "significant regulatory action" in light of the provisions of paragraph (4) above. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

C. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the development of an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." These regulations do not have significant federalism implications. The proposed regulations define the relationships between the Federal and State partners in implementing the Comprehensive Everglades Restoration Plan. These proposed regulations are limited to implementation of the Comprehensive Everglades Restoration Plan. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule. Nonetheless, the Corps of Engineers has consulted closely with the State and local officials in developing the proposed rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of the proposed rule on small entities, a small entity is defined as: (1) A small business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of the proposed rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed regulations only establish processes and governmental relationships that will be used for implementation of the Comprehensive Everglades Restoration Plan.

E. Unfunded Mandates Reform Act

We have determined in accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) These regulations will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that they agree to act as a non-Federal sponsor for implementation of projects for the Comprehensive Everglades Restoration Plan. The proposed regulations do not establish new or different requirements for non-Federal sponsors for implementation of projects for the Comprehensive Everglades Restoration Plan.

(b) The proposed regulations will not produce a Federal mandate of $100 million or greater in any year, and therefore, does not constitute a "significant regulatory action" under the Unfunded Mandates Reform Act. The regulations define processes and relationships between the Federal and State partners in implementing the Comprehensive Everglades Restoration Plan. The regulations do not affect the cost sharing requirements for non-Federal sponsors in implementing the Plan and therefore, imposes no new obligations on State or local governments.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. These regulations do not involve technical standards. Therefore, we did not consider the use of any voluntary consensus standards.

G. Executive Order 13045

Executive Order 13045, entitled "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Was initiated after April 21, 1997, or for which a notice of proposed rulemaking was published after April 21, 1998; (2) is determined to be "economically significant" as defined under Executive Order 12866, and (3) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets all three criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that we considered. The regulations are not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. The regulations establish processes for the implementation of the Comprehensive Everglades Restoration Plan and define the relationships between the Federal and State partners for implementation. Furthermore, they do not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13175

Under Executive Order 13175, we may not issue a regulation that has substantial, direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of powers and responsibilities between the Federal government and Indian tribes, and imposes substantial direct compliance costs on those communities, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the Tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13175 requires us to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires us to develop an effective process permitting

elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." The proposed regulations are required by section 601(h)(3) of WRDA 2000. Additionally, the proposed rule does not impose significant compliance costs on any Indian Tribes. The regulations establish processes for the implementation of the Comprehensive Everglades Restoration Plan and define the relationships between the implementing entities. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to these regulations. However, the Corps of Engineers recognizes that two Indian Tribes, the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida, have a significant direct interest in the implementation of the CERP and the framework for its implementation that will be established by these programmatic regulations. We have thus consulted extensively with these Tribes in the development of this proposed rule, and have included requirements for continued consultation in all significant project implementation components, including program-wide guidance memoranda, Project Management Plans, Program Management Plans, Project Implementation Reports, Project Operating Manuals, the System Operating Manual, and the Master Implementation Sequencing Plan. These Tribes are also included in the Leadership Group of RECOVER and participate in the Project Delivery Teams and the South Florida Ecosystem Restoration Task Force, which has played and will continue to play a consultative role on many aspects of CERP implementation. Finally, § 385.10(b) includes a general requirement for consultation with the Tribes "throughout the implementation process."

I. Executive Order 12630

In accordance with Executive Order 12630 entitled "Governmental Actions and Interference with Constitutionally Protected Property Rights," the proposed regulations will not effect a taking of private property or otherwise have taking implications. A takings implication assessment is not required. The regulations establish processes to be used in implementing the Comprehensive Everglades Restoration Plan.

J. Civil Justice Reform

In accordance with Executive Order 12988, we have determined that the proposed regulations do not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulations establish processes to be used in implementing the Comprehensive Everglades Restoration Plan and defines the relationships between the governmental entities that will implement the Plan.

K. Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) that applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because the proposed regulations are not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

L. Environmental Documentation

We have determined that these proposed regulations do not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, environmental documentation under the National Environmental Policy Act (NEPA) is not required for these proposed regulations. The Corps of Engineers has prepared appropriate environmental documentation, including a Programmatic Environmental Impact Statement, for the Comprehensive Everglades Restoration Plan. Moreover, the proposed regulations establish requirements for the preparation of appropriate environmental documentation as part of the implementation process.

List of Subjects in 33 CFR Part 385

Environmental protection, Flood control, Intergovernmental relations, Natural resources, Water resources, Water supply.

Dated: July 19, 2002.

R.L. Brownlee,

Under Secretary of the Army, Acting Assistant Secretary of the Army (Civil Works), Department of the Army.

For the reasons set forth in the preamble, the Army Corps of Engineers proposes to add 33 CFR part 385 as follows:

Add part 385 to read as follows:

PART 385—PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE EVERGLADES RESTORATION PLAN

Subpart A—General Provisions

Sec.
385.1 Purpose of the programmatic regulations.
385.2 Applicability of the programmatic regulations.
385.3 Definitions.
385.4 Limitation on applicability of programmatic regulations.
385.5 CERP guidance memoranda.
385.6 Review of programmatic regulations.
385.7 Concurrency statements.

Subpart B—Program Goals and Responsibilities

385.8 Goals and purposes of the Comprehensive Everglades Restoration Plan.
385.9 Implementation principles.
385.10 Implementation responsibilities, consultation, and coordination.

Subpart C—CERP Implementation Processes

385.11 Implementation process for projects.
385.12 Pilot projects.
385.13 Projects implemented under additional program authority.
385.14 Incorporation of NEPA and related considerations into the implementation process.
385.15 Consistency with requirements of the State of Florida.
385.16 Design agreements.
385.17 Project Delivery Team.
385.18 Public outreach.
385.19 Environmental and economic equity.
385.20 Restoration Coordination and Verification (RECOVER).
385.21 Quality control.
385.22 Independent scientific review.
385.23 Dispute resolution.
385.24 Project Management Plans.
385.25 Program Management Plans.
385.26 Project Implementation Reports.
385.27 Project Cooperation Agreements.
385.28 Operating Manuals.
385.29 Other project documents.

Subpart D—Incorporating New Information Into the Plan

385.30 Master Implementation Sequencing Plan.
385.31 Adaptive Management Program.
385.32 Comprehensive Plan Modification Report.
385.33 Revisions to models and analytical tools.
385.34 Changes to the Plan.

Subpart E—Ensuring Protection of the Natural System and Water Availability Consistent With the Goals and Purposes of the Plan

385.35 Achievement of the benefits of the Plan.
385.36 Elimination or transfer of existing legal sources of water.
385.37 Flood protection.
385.38 Interim goals.

385.39 Evaluating progress on achieving other water-related needs of the region provided for in the Plan.
385.40 Reports to Congress.
Appendix A—Illustrations to Part 385

Authority: Section 601, Pub. L. 106–541, 114 Stat. 2680; 10 U.S.C. 3013(g)(3); 33 U.S.C. 1 and 701; and 5 U.S.C. 301.

Subpart A—General Provisions

§ 385.1 Purpose of the programmatic regulations.

(a) The regulations in this part implement the provisions of section 601(h)(3) of the Water Resources Development Act of 2000, Public Law 106–541, 114 Stat. 2688 (hereinafter "WRDA 2000"), which was enacted on December 11, 2000.

(b) The purpose of these programmatic regulations is to establish the processes necessary for implementing the Comprehensive Everglades Restoration Plan (the Plan) to ensure that the goals and purposes of the Plan are achieved. Some of these processes are project specific, including, but not limited to, development of Project Implementation Reports, project-specific performance measures, Project Cooperation Agreements, plans and specifications, Design Documentation Reports, Pilot Project Technical Data Reports, and Operating Manuals. Other processes are of more general applicability, including, but not limited to, development of program-wide guidance memoranda, system-wide performance measures, interim goals, targets for monitoring progress on other goals and purposes of the Plan, and the Master Implementation Sequencing Plan. Taken together these documents establish the process by which the programmatic regulations ensure that the restoration success and other goals and purposes of the Plan are achieved. These programmatic regulations also describe the relationship among the various Federal, State, tribal, and local governmental entities charged with Plan implementation responsibilities.

§ 385.2 Applicability of the programmatic regulations.

(a) This part applies to all activities conducted to implement the Comprehensive Everglades Restoration Plan.

(b) Nothing in this part shall be interpreted to amend, alter, diminish, or otherwise affect:

(1) The powers and duties provided under the "Comprehensive Everglades Restoration Plan Assurance of Project Benefits Agreement" dated January 9, 2002 pursuant to section 601(h)(2) of WRDA 2000; or

(2) Any existing legal water rights of the United States, the State of Florida, the Miccosukee Tribe of Indians of Florida, or the Seminole Tribe of Florida, including rights under the compact among the Seminole Tribe of Florida, the State, and the South Florida Water Management District, defining the scope and use of water rights of the Seminole Tribe of Florida, as codified by section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e).

(c) This part is intended to aid the internal management of the implementing agencies and are not intended to create any right or benefit enforceable at law by a party against the implementing agencies or their officers. Nothing in this part shall create a right or expectation to benefits or enhancements, temporary or permanent, in third parties that are not specifically authorized by Congress in Section 601 of WRDA 2000.

(d) Nothing in this part is intended to, or shall be interpreted to, reserve or allocate water or to prescribe the process for reserving or allocating water or for water management under Florida law. Nor is this part intended to, nor shall it be interpreted to, prescribe any process of Florida law.

§ 385.3 Definitions.

The following terms are defined for the purposes of this Part 385:

Adaptive management means the process of improving understandings of the natural and human systems in the South Florida ecosystem, specifically as these understandings pertain to the goals and purposes of the Plan, and to seek continuous improvement of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific or technical information, new or updated models, or information developed through the assessment principles contained in the Plan, or as future authorized changes to the Plan are integrated into the implementation of the Plan.

Assessment means the process whereby the actual performance of implemented projects is measured and interpreted based on analyses of information obtained from research, monitoring and modeling or other relevant sources.

Central and Southern Florida (C&SF) Project means the project for Central and Southern Florida authorized under the heading "CENTRAL AND SOUTHERN FLORIDA" in section 203 of the Flood Control Act of 1948 (62 Stat. 1176) and any modification authorized by any other provision of law, including section 601 of WRDA 2000.

Component means features of the Plan that include, but are not limited to, storage reservoirs, aquifer storage and recovery facilities, stormwater treatment areas, water reuse facilities, canals, levees, pumps, water control structures, and seepage management facilities, or the removal of canals, levees, pumps, and water control structures.

Comprehensive Everglades Restoration Plan (CERP) means the plan contained in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement," dated April 1, 1999, as modified by section 601 of WRDA 2000, or any subsequent modification authorized in law.

Comprehensive Plan Modification Report means the report prepared by the Corps of Engineers and the South Florida Management District for approval by Congress of major modifications to the Plan that are needed to ensure that the goals and purposes of the Plan are achieved. The Comprehensive Plan Modification Report describes alternative plans considered, the recommended modifications to the Plan, and other economic, environmental, and engineering information, and includes the appropriate NEPA document.

Concurrence means the issuance of a written statement of concurrence, or non-concurrence or the failure to provide such a written statement within a time frame prescribed by law or this part.

Consultation means a process to ensure meaningful and timely input in the development of system-wide and project-level implementation reports, manuals, plans, and other documents from Federal, State, and local agencies, and the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida.

Coordination means the formal exchange of information and views, by letter, report, or other prescribed means, between the Corps of Engineers and the non-Federal sponsor and another agency or tribe, including but not limited to, the exchange of information and views regarding the development of Project Implementation Reports. Coordination activities are required by and in accordance with purposes and procedures established by Federal policy (public law, executive order, agency regulation, memorandum of agreement, and other documents that memorialize policy of the Corps of Engineers).

Cost effective means the least costly way of attaining a given level of output

or performance consistent with the goals and purposes of the Plan and applicable laws.

Design Agreement means the agreement between the Corps of Engineers and a non-Federal sponsor concerning cost sharing for activities related to planning, engineering, design, and other activities needed to implement the Plan.

Design Documentation Report means the document that describes the results of investigations, analyses, and calculations made during the detailed design phase that provides the technical basis for the plans and specifications.

Dispute means any disagreement between the agencies or tribes associated with implementation of the Plan that cannot be resolved by the members of a Project Delivery Team or RECOVER and that is elevated to decision makers at the respective agencies or tribes.

District Engineer means the District Engineer of the Corps of Engineers, Jacksonville District.

Division Engineer means the Division Engineer of the Corps of Engineers, South Atlantic Division.

Drought contingency plan refers to the plan required by § 222.5(i)(5) of this chapter and described in implementing Engineer Regulation ER 1110–2–1941 Drought Contingency Plans, and means a plan contained within an Operating Manual that describes procedures for dealing with drought situations that affect management decisions for operating projects.

Environmental and economic equity means the fair treatment of all persons regardless of race, color, creed, or national origin, including environmental justice, and the provision of economic opportunities for small business concerns controlled by socially and economically disadvantaged individuals, including individuals with limited English proficiency in the implementation of the Plan.

Environmental justice means identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of a Federal agency's programs, policies, and activities on minority and low-income populations.

Evaluation means the process whereby the performance of plans and designs relative to desired objectives is forecast through predictive modeling.

Expected performance level means the projected level of benefits to the natural system and human environment described in the Plan.

Governor means the Governor of the State of Florida.

Improved or new flood protection benefits mean an increased or new level of service for flood protection that is identified in a Project Implementation Report and approved as a purpose of the project.

Independent scientific review means the process established pursuant to section 601(j) of WRDA 2000, or other process that is independent of the Corps of Engineers, the South Florida Water Management District, and other entities involved in the implementation of the Plan, to review and validate the scientific and technical processes and information developed for the Plan.

Independent Technical Review Team means the team established by the Corps of Engineers and the non-Federal sponsor, to ensure quality control of documents and products produced by the Project Delivery Team through periodic technical reviews.

Indicator means an element or component of the natural or human systems that is expected to be influenced by the Plan, and has been selected to be monitored as representative of a class of system responses.

Individual features of the Plan means a feature of the Plan related to and limited to one specific project of the Plan.

Interim goal is a means by which success of restoration, as defined for purposes of this part, may be evaluated throughout the implementation process.

Last added increment means the evaluation of a project as the last project to be added to a system of projects. For the purposes of the Plan, this means analyzing a proposed project assuming that all the other components of the Plan have been implemented.

Level of service for flood protection means the water level or flow duration and frequency, which the Central and Southern Project and other water management systems in the South Florida ecosystem provide in order to prevent flooding of the related surface water basins.

Master Implementation Sequencing Plan means the document that describes the sequencing and scheduling of the pilot projects, individual projects, and program-level activities that comprise the Plan.

Mediation means a non-binding dispute resolution process designed to assist the disputing parties to resolve the dispute. In mediation, the parties mutually select a neutral and impartial third party to facilitate the negotiations.

Monitoring means the systematic process of collecting data designed to show the status, trends, and relationships of elements of natural and human systems at predetermined locations and times.

Natural system means all land and water managed by the Federal government or the State within the South Florida ecosystem and includes water conservation areas; sovereign submerged land; Everglades National Park; Biscayne National Park; Big Cypress National Preserve; other Federal or State (including a political subdivision of a State) land that is designated and managed for conservation purposes; and any tribal land that is designated and managed for conservation purposes, as approved by the tribe.

Next added increment means the evaluation of a project as the next project to be added to a system of projects already implemented.

Non-Federal sponsor means a legally constituted public body that has full authority and capability to perform the terms of the Project Cooperation Agreement and the ability to pay damages, if necessary, in the event of failure to perform, pursuant to Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d–5b).

Operating Manuals means the set of documents that describe how the projects of the Plan and the Central and Southern Florida Project are to be operated to ensure that the goals and purposes of the Plan are achieved. Operating Manuals include the System Operating Manual and Project Operating Manuals. Operating Manuals may include water control plans, regulation schedules, and operating criteria for project and/or system regulations as well as additional provisions to collect, analyze, and disseminate basic data in order to operate projects to ensure that the goals and purposes of the Plan are achieved.

Outreach means activities undertaken to inform the public about the Plan and activities associated with implementation of the Plan and to involve the public in the decision-making process for implementation of the Plan.

Performance measure means an indicator and the target that has been set for that indicator.

Pilot project means a project undertaken to better determine the technical viability of a component in the Plan prior to full-scale implementation of that component.

Pilot Project Technical Data Report means the report that documents the findings and conclusions from the implementation and testing phases of a pilot project.

Plan means the Comprehensive Everglades Restoration Plan contained

in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999, as modified by section 601 of WRDA 2000, or any subsequent modification authorized in law.

Plans and Specifications means the information required to bid and construct the project detailed in the Project Implementation Report and documented in the Design Documentation Report.

Pre-CERP baseline means the hydrologic conditions in the South Florida ecosystem that existed on December 11, 2000, the date of enactment of section 601 of WRDA 2000, accounting for natural variations and including existing legal sources of water. The pre-CERP baseline will be established through modeling using a multi-year period of record and will take into account such things as land use, population, water demand, and operations of the Central and Southern Florida Project.

Program-level activity means those tasks, activities, or products that support more than one project or that are Plan-wide in scope.

Program Management Plan means a document that defines the activities, tasks, and responsibilities for completing program-level activities.

Project means a component or group of components of the Plan that are implemented together to provide functional benefits towards achieving the goals and purposes of the Plan.

Project Cooperation Agreement (PCA) means the legal agreement between the Department of the Army and a non-Federal sponsor that is executed prior to project construction. The Project Cooperation Agreement describes the financial, legal, and other responsibilities for construction, operation, maintenance, repair, rehabilitation, and replacement of a project.

Project Delivery Team means the inter-agency, interdisciplinary group led by the Corps of Engineers and the non-Federal sponsor that develops the products necessary to implement projects or program-level activities.

Project Implementation Report (PIR) means the report prepared by the Corps of Engineers and the non-Federal sponsor pursuant to section 601(h)(4)(A) of WRDA 2000 and described in Section 10.3 of the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement," dated April 1, 1999.

Project Management Plan means a document that establishes the project's scope, requirements and technical performance requirements, including various functions and quality criteria that will be used to produce and deliver the products that compromise the project.

Project Operating Manual means the manual that describes the operating criteria for a project or group of projects of the Plan. The Project Operating Manual is considered a supplement to the System Operating Manual and presents more detailed information on the operation of a specific project or group of projects.

Public means any individuals, organizations, or non-Federal unit of government that might be affected by or interested in the implementation of the Plan. The public includes regional, State, and local government entities and officials, public and private organizations, Native American (Indian) tribes, and individuals.

Quality control plan means the plan prepared in accordance with applicable regulations or policies of the Corps of Engineers that describes the procedures that will be employed to insure compliance with all technical and policy requirements of the Corps of Engineers and the non-Federal sponsor.

Reservation of water for the natural system means the actions taken by the South Florida Water Management District or the Florida Department of Environmental Protection, pursuant to Florida law, to legally reserve water from allocation for consumptive use for the protection of fish and wildlife.

Restoration for the purposes of this part means to bring about the level of recovery and protection to the South Florida ecosystem described in the Plan as approved by Congress in Section 601 of the Water Resources Development Act of 2000, with such modifications as Congress may provide for in the future. This is accomplished by increasing water storage and water supply, improving water quality, and increasing the connectivity of the natural system so that the ecosystem once again exhibits and sustains essential physical and ecological characteristics that defined the pre-drainage South Florida ecosystem, including establishing more natural hydropatterns, including wet and dry season cycles, natural recession rates, surface water depth patterns, and, in coastal areas, salinity and mixing patterns for the natural system. These actions are a precursor to achieving anticipated ecological benefits, including improvements to native flora and fauna; restoring the presence of key species in historic habitats; and promoting patterns of plant communities that form a gradient from aquatic communities to uplands. Restoration for the purpose of this regulation also incorporates a process of adaptive management to seek continuous improvement of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific or technical information, or information developed through the adaptive assessment principles contained in the Plan, or future authorized changes to the Plan integrated into the implementation of the Plan.

Restoration Coordination and Verification (RECOVER) means the interagency and interdisciplinary scientific and technical team, established by the Corps of Engineers and the South Florida Water Management District to assess, evaluate, and integrate the projects of the Plan with the overall goal of ensuring that the system-wide goals and purposes of the Plan are achieved.

Secretary means the Secretary of the Army, unless indicated otherwise. The Secretary of the Army acts through the Assistant Secretary of the Army (Civil Works) with respect to the Army's civil works program pursuant to 10 U.S.C. 3016.

South Florida ecosystem means the area consisting of the land and water within the boundary of the South Florida Water Management District in effect on July 1, 1999 and includes the Everglades, the Florida Keys, and the contiguous near-shore coastal water of South Florida.

South Florida Ecosystem Restoration Task Force means the task force established pursuant to section 528(f) of the Water Resources Development Act of 1996 (110 Stat. 3770), including the Florida-based working group and any advisory bodies established by the task force.

South Florida Water Management District (SFWMD) means the public body constituted by the State of Florida pursuant to Chapter 373.069 of the Florida Statutes.

State means the State of Florida.

System Operating Manual means the Operating Manual that provides an integrated system-wide framework for operating all of the implemented projects of the Plan and the C&SF Project.

System-wide means pertaining to the Central and Southern Florida Project or the South Florida ecosystem, as a whole.

Target means a measure of a level of output of an indicator that is expected and desired during or following the implementation of the Plan.

Technical review means the process that confirms the proper selection and application of established criteria.

regulations, laws, codes, principles, and professional procedures to ensure a quality product. Technical review also confirms the constructability and effectiveness of the product and the use of clearly justified and valid assumptions and methodologies.

Water budget means an account of all water inflows, outflows, and changes in storage over a period of time.

Water made available means water generated pursuant to the implementation of the components of the Plan and operation of the C&SF Project over and above water that was available on the date of enactment of WRDA 2000.

Without CERP condition means the conditions predicted (forecast) in the South Florida ecosystem without implementation of any of the projects of the Plan.

WRDA 2000 means the Water Resources Development Act of 2000, Public Law 106–541, which was enacted on December 11, 2000.

§ 385.4 Limitation on applicability of programmatic regulations.

In accordance with section 601(h)(3)(c)(ii) of WRDA 2000, this part expressly prohibits any requirement for concurrence by the Secretary of the Interior or the Governor on Project Implementation Reports, Project Cooperation Agreements, Operating Manuals for individual projects undertaken in the Plan, and any other documents relating to the development, implementation, and management of individual features of the Plan, unless such concurrence is provided for in other Federal or State laws.

§ 385.5 CERP guidance memoranda.

(a) *General.* (1) Technical matters and guidance for internal management of Corps of Engineers personnel during Plan implementation will be issued in the normal form of Engineer Regulations, Circulars, Manuals, or Pamphlets, or other appropriate form of guidance.

(2) Guidance on the following six program-wide subjects will be developed in accordance with paragraphs (b) and (c) of this section:

(i) General format and content of Project Implementation Reports (§ 385.26(a));

(ii) Instructions for Project Delivery Team evaluation of alternatives developed for Project Implementation Reports, their cost effectiveness and impacts (§ 385.26(b));

(iii) Guidance for system-wide evaluation of Project Implementation Report alternatives by RECOVER (§ 385.26(c));

(iv) General content of operating manuals (§ 385.28(a));

(v) General directions for the conduct of the assessment activities of RECOVER (§ 385.31(b)); and

(vi) Instructions relevant to Project Implementation Reports for identifying the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system (§ 385.35(b)).

(b) *Special processes for development of six Program-wide guidance memoranda.* The Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop the six guidance memoranda described in paragraph (a) of this section. In addition to consultation with the South Florida Ecosystem Restoration Task Force specified elsewhere in this part, the Corps of Engineers and the South Florida Water Management District shall consult with the South Florida Ecosystem Restoration Task Force, its working group, and its advisory bodies, on matters related to these guidance memoranda, as the Task Force from time to time may request.

(1) Guidance memoranda shall be consistent with this part, applicable law, and achieving the goals and purposes of the Plan.

(2) The public shall be given notice of the guidance memoranda through the issuance of a notice of availability in the **Federal Register** and be afforded an opportunity to comment on the proposed guidance memoranda.

(3) Completed guidance memoranda shall be made available to the public.

(4) Any guidance memorandum specifically referenced in this part shall be developed not later than six months after the effective date of the final rule published in the **Federal Register** or December 31, 2003, whichever is sooner.

(5) Concurrence by the Secretary of the Interior and the Governor shall be required on the six guidance memoranda described in paragraph (a) of this section. Within 180 days from the development of the proposed guidance memorandum, or such shorter period that the Secretary of the Interior and the Governor may agree to, the Secretary of the Interior and the Governor may provide the Secretary with a written statement of concurrence or nonconcurrence with the proposed guidance memorandum. A failure to provide a written statement of concurrence or nonconcurrence within such time frame shall be deemed as meeting the concurrency requirements of this section. Any nonconcurrency statement shall specifically detail the reason or reasons for the non-concurrence. The Corps of Engineers and the South Florida Water Management District shall give good faith consideration to any nonconcurrency statement, and take the reason or reasons for the nonconcurrence into account in the final decision to promulgate or revise the guidance memoranda specified in this section. If the six guidance memoranda described in paragraph (a) of this section create a special procedure for any individual Project Implementation Report, a specific Project Cooperation Agreement, an Operating Manual for a specific project component, or any other document relating to the development, implementation, and management of one specific individual feature of the Plan, this section does not require concurrence on that special procedure. In lieu of concurrence on such a special procedure, the Corps of Engineers and the South Florida Water Management District shall consult with the Department of the Interior and the State of Florida.

(c) *Revisions to six Program-wide guidance memoranda.* The Corps of Engineers and the South Florida Water Management District may, whenever they believe it is necessary, and in consultation with the Department of the Interior and the State, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, revise guidance memoranda that have been completed. Such revisions shall be developed consistent with the provisions of paragraph (a) of this section. Concurrence of the Secretary of the Interior and the Governor shall be required for revisions to those guidance memoranda to which initial concurrence was required.

(d) *Other guidance.* Nothing in this part shall be considered or construed to preclude the ability of the Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors from issuing other guidance or policy to assist in implementing the Plan. Any such guidance or policy shall be consistent with applicable law and regulations.

§ 385.6 Review of programmatic regulations.

(a) The Secretary shall review, and if necessary revise, the programmatic regulations in this part at least every five years from their date of promulgation. In addition, the Secretary may review and revise the programmatic regulations whenever the Secretary believes that such review and revision is necessary to attain the goals and purposes of the Plan. The Secretary shall place appropriate notice in the **Federal Register** upon initiating review of the programmatic regulations.

(b) Upon completing the review of the programmatic regulations in this part, the Secretary shall promulgate any revisions to the programmatic regulations after notice and opportunity for public comment in accordance with applicable law, with the concurrence of the Governor and the Secretary of the Interior, and in consultation with the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and other Federal, State, and local agencies.

(c) Within 180 days from the end of the public comment period on the proposed revisions to the programmatic regulations in this part, or such shorter period that the Secretary of the Interior and Governor may agree to, the Secretary of the Interior and the Governor may provide the Secretary with a written statement of concurrence or nonconcurrence with the proposed revisions. A failure to provide a written statement of concurrence or nonconcurrence within such time frame shall be deemed as meeting the concurrency requirements of paragraph (b) of this section. A copy of any concurrency or nonconcurrency statements shall be made a part of the administrative record and referenced in the final revised programmatic regulations. Any nonconcurrency statement shall specifically detail the reason or reasons for the nonconcurrence. The Secretary shall give good faith consideration to any nonconcurrency statement, and take the reason or reasons for the nonconcurrence into account in the final decision to promulgate or revise the programmatic regulations.

§ 385.7 Concurrency statements.

Pursuant to section 601(h)(3)(B) of WRDA 2000, a copy of any concurrency or nonconcurrency statements by the Secretary of the Interior or the Governor to the Secretary shall be made a part of the administrative record for this part.

Subpart B—Program Goals and Responsibilities

§ 385.8 Goals and purposes of the Comprehensive Everglades Restoration Plan.

(a) The Comprehensive Everglades Restoration Plan is a framework for modifications and operational changes to the Central and Southern Florida Project that are needed to restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. The overarching objective of the Plan is the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection.

(b) The Corps of Engineers and non-Federal sponsors shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, implement the Plan to ensure the protection of water quality in, the reduction of the loss of fresh water from, and the improvement of the environment of the South Florida Ecosystem and to achieve and maintain the benefits to the natural system and human environment described in the Plan, and required pursuant to section 601 of WRDA 2000 for as long as the project is authorized.

(c) The goal of the Plan is to provide the quantity, quality, timing, and distribution of water necessary to achieve the goals and purposes of the Plan. The Corps of Engineers and non-Federal sponsors shall implement the projects of the Plan with the goal of achieving the expected performance level of the Plan and to seek continuous improvement of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific or technical information, new or updated models, or information developed through the adaptive assessment principles contained in the Plan, or future authorized changes to the Plan integrated into the implementation of the Plan.

§ 385.9 Implementation principles.

The Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, conduct activities, including program-level activities, necessary to implement the projects of the Plan. Such activities shall be conducted as part of an integrated implementation program, in accordance with this part, and based on the following principles:

(a) Individual projects shall be formulated based on their contribution to the system-wide goals and purposes of the Plan and the achievement of the expected performance level of the Plan, as well as on their ability to provide benefits without regard to projects not yet implemented.

(b) Interim goals shall be established pursuant to this part to provide a means for evaluating restoration success at specific time intervals during implementation. Progress on achieving other water-related needs of the region as provided for in the Plan shall also be evaluated at specific time intervals during implementation.

(c) Endorsement of the Plan as a restoration framework is not intended as a constraint on innovation in its implementation through the adaptive management process. Continuous improvement of the Plan shall be sought to ensure that new information resulting from changed or unforeseen circumstances, new scientific or technical information, or information developed through the adaptive assessment principles contained in the Plan, or future authorized changes to the Plan are integrated into the implementation of the Plan. The adaptive management process provides a means for analyzing performance of the Plan and assessing progress towards meeting the goals and purposes of the Plan as well as a basis for improving the performance of the Plan. Improving the performance of the Plan means either enhancing the benefits of the Plan in terms of restoration of the natural system while providing for other water-related needs of the region, including water supply and flood protection, or delivering Plan benefits at reduced cost.

§ 385.10 Implementation responsibilities, consultation, and coordination.

(a) *Implementing agencies.* Implementation of the projects of the Plan shall be the responsibility of the Corps of Engineers and the non-Federal sponsors as the implementing agencies for projects or program-level activities.

(b) *Consultation.* (1) *Consultation with Indian Tribes.* (i) In addition to the provision for consultation with Native

American Tribes provided for by Executive Order, the Corps of Engineers and non-Federal sponsors shall consult with and seek advise from the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida throughout the implementation process to ensure meaningful and timely input by tribal officials regarding programs and activities covered by this part.

(ii) In carrying out their responsibilities under section 601 of WRDA 2000 with respect to the restoration of the South Florida ecosystem, the Secretary of the Army and the Secretary of the Interior shall fulfill any obligations to the Indian tribes in South Florida under the Indian trust doctrine as well as other applicable legal obligations.

(2) *Consultation with agencies.* The Corps of Engineers and non-Federal sponsors shall consult with and seek advice from the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies throughout the implementation process to ensure meaningful and timely input by those agencies regarding programs and activities covered under this part. The time for, and extent of, consultation shall be appropriate for, and limited by, the activity involved.

(c) *Coordination.* The Corps of Engineers and the non-Federal sponsor shall coordinate implementation activities and the preparation of documents with other Federal, State, and local agencies and the tribes to fulfill the requirements of Federal and State laws, such as the Fish and Wildlife Coordination Act, the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, the National Historic Preservation Act, and the Endangered Species Act.

(d) *Timeliness obligations of consultation.* Consultation involves reciprocal obligations: on the part of the Corps of Engineers and the non-Federal sponsor to involve agencies, tribes, and the public at an early stage and in such a way to ensure meaningful consultation, and on the part of the parties consulted to respond in a timely and meaningful fashion so that the implementation of the Plan is not jeopardized and so that delays do not result in other adverse consequences to restoration of the natural system, to the other goals and purposes of the Plan, or to the public interest. Prescribed time limits set by regulation are too inflexible for the entire consultation process. It is expected that the Corps of Engineers and the non-Federal sponsor will set reasonable time limits for consultation on specific decisions consistent with the purposes of this part and that the parties consulted will consult in a timely and meaningful way. This part does not intend for a delay in consultation to be used as a *de facto* veto power. This part authorizes the Corps of Engineers and the non-Federal sponsor to set reasonable limits on the amount of time for consultation. In setting reasonable time limits, the agencies may consider relevant considerations such as sequencing of projects, planning, contracting and funding, and any factor listed for setting time limits for consulting under NEPA (40 CFR § 1501.8), including but not limited to, the nature and size of the proposed action, the degree to which relevant information is known or obtainable, the degree to which the action is controversial, the state of the art of analytical techniques, the number of persons affected, and the consequences of delay. In addition, the agencies should adhere to all time limits imposed by law, regulations or executive order. In appropriate circumstances, the Corps of Engineers and the non-Federal sponsor may extend the time for consultation upon a showing that delays will not result in adverse consequences to the implementation of the Plan, to the restoration of the natural system, to the other goals and purposes of the Plan, or to the public interest and that relevant considerations justify a longer time. Failure to consult with, or file comments in, a timely and meaningful way shall not be a sufficient reason for extending a consultation or comment period. Nothing in this part is intended to alter existing time limits established by statute or other regulations.

(e) *South Florida Ecosystem Restoration Task Force.* The Department of the Army recognizes the valuable role that the South Florida Ecosystem Restoration Task Force, its working group, and its other advisory bodies play in the discussion and resolution of issues related to the South Florida ecosystem. The Department of the Army and the South Florida Water Management District regularly brief the Task Force on CERP issues and regularly serve on the working group and other advisory bodies. It is the intent of the Department of the Army that the Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall continue to provide information to, and consult with, the South Florida Ecosystem Restoration Task Force, the Florida-based working group, and advisory bodies to the Task Force as requested throughout the implementation process for the Plan. In addition to consultation with the Task Force specified elsewhere in this part, the Corps of Engineers and the South Florida Water Management District shall consult with the South Florida Ecosystem Restoration Task Force, its working group, and its advisory bodies, on other matters related to the implementation of the Plan, as the Task Force from time to time may request. Providing information to, or consulting with, the Task Force usually will occur on a case-by-case basis.

Subpart C—CERP Implementation Processes

§ 385.11 Implementation process for projects.

Generally, the Corps of Engineers and non-Federal sponsors shall develop and implement projects in accordance with a process that is shown in figure 1 in Appendix A of this part. This process covers planning, design, construction and operation of the projects. Typical steps in this process involve:

(a) *Project Management Plan.* The purpose of the Project Management Plan is to establish the project's initial scope, schedule, costs, funding requirements, and technical performance requirements, including the various functional areas performance and quality criteria that shall be used to produce and deliver the products that comprise the project.

(b) *Project Implementation Report.* The Project Implementation Report provides information on plan formulation and evaluation, engineering and design, economic benefits and estimated costs, and environmental effects to bridge the gap between the conceptual design included in the Plan and the detailed design necessary to ready a project for construction.

(c) *Design Documentation Report.* The Design Documentation Report describes the results of investigations, analyses and calculations made during the detailed design phase and provides the technical basis for the plans and specifications.

(d) *Plans and Specifications.* Plans and Specifications contain information required to bid and construct the projects detailed in the Project Implementation Report and documented in the Design Documentation Report.

(e) *Real estate acquisition.* The non-Federal sponsor is primarily responsible for acquisition of lands, easements, and rights-of-way needed for the project.

(f) *Construction.* This phase is the actual construction of a project's components and includes an interim

operation and monitoring period to ensure that the project operates as designed.

(g) *Operation and monitoring.* After the project has been constructed, it is operated in accordance with the Operating Manuals. Monitoring is also conducted to determine the effectiveness of the project and to provide information that will be used in adaptive management.

§ 385.12 Pilot projects.

(a) The Plan includes pilot projects to address uncertainties associated with certain components such as aquifer storage and recovery, in-ground reservoir technology, seepage management, and wastewater reuse. The purpose of the pilot projects is to develop information necessary to determine the technical viability of these components prior to development of a Project Implementation Report.

(b) Prior to initiating activities on a pilot project, the Corps of Engineers and the non-Federal sponsor shall develop a Project Management Plan as described in § 385.24.

(c) Project Implementation Reports shall not be necessary for pilot projects. Prior to proceeding with implementation, the Corps of Engineers and the non-Federal sponsor shall prepare a Pilot Project Design Report.

(1) The Pilot Project Design Report shall contain the technical information necessary to construct the pilot project including engineering and design, cost estimates, real estate analyses, and appropriate NEPA analyses.

(2) The Pilot Project Design Report shall include a detailed operational testing and monitoring plan to develop information to assist in determining the technical viability of certain components prior to development of a Project Implementation Report.

(3) In accordance with § 385.18, the Corps of Engineers and the non-Federal sponsor shall provide the public with opportunities to review and comment on the draft Pilot Project Design Report.

(4) The Corps of Engineers and the non-Federal sponsor shall approve the final Pilot Project Design Report in accordance with applicable law.

(d) Upon completion of operational testing and monitoring, the Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, prepare a Pilot Project Technical Data Report, documenting the findings and conclusions from the implementation and testing of the pilot project. The Corps of Engineers and the non-Federal sponsor shall also consult with the South Florida Ecosystem Restoration Task Force in preparing the report.

(1) As appropriate, RECOVER shall conduct activities to support the preparation of the Pilot Project Technical Data Report.

(2) The independent scientific review panel established pursuant to § 385.22 shall be given the opportunity to review the draft Pilot Project Technical Data Report.

(3) In accordance with § 385.18, the Corps of Engineers and the non-Federal sponsor shall provide the public with opportunities to review and comment on the draft Pilot Project Technical Data Report.

(4) The Corps of Engineers and the non-Federal sponsor shall prepare and make public the final Pilot Project Technical Data Report.

§ 385.13 Projects implemented under additional program authority.

(a) To expedite implementation of the Plan, the Corps of Engineers and non-Federal sponsors may implement projects under the authority of section 601(c) of WRDA 2000 that are described in the Plan and that will produce a substantial benefit to the restoration, preservation and protection of the South Florida ecosystem.

(b) Each project implemented under the authority of section 601(c) of WRDA 2000 shall:

(1) In general follow the process described in § 385.11;

(2) Not be implemented until a Project Implementation Report is prepared and approved in accordance with § 385.26; and

(3) Not exceed a total cost of $25,000,000.

(c) The total aggregate cost of all projects implemented under the additional program authority shall not exceed $206,000,000.

§ 385.14 Incorporation of NEPA and related considerations into the implementation process.

(a) In implementing the CERP the Corps of Engineers shall comply with the requirements of NEPA (42 U.S.C. 4371, *et seq.*) and applicable implementing regulations.

(b) *Actions normally requiring an Environmental Impact Statement (EIS).* In addition to the actions listed in § 230.6 of this chapter, actions normally requiring an EIS are:

(1) Comprehensive Plan Modification Report;

(2) System Operating Manual or significant changes to the System Operating Manual;

(3) Project Implementation Reports, including the draft Project Operating Manual when included in the Project Implementation Report;

(4) Pilot Project Design Report, including the detailed operational testing and monitoring plan;

(5) Proposed major changes in operation and/or maintenance of completed projects; and

(6) Project Operating Manuals for any project where a Project Implementation Report is not prepared.

(c) The District Engineer may consider the use of an environmental assessment (EA) on the types of actions described in paragraph (b) of this section if early studies and coordination show that a particular action, considered individually and cumulatively, is not likely to have a significant impact on the quality of the human environment.

(d) *Actions normally requiring an EA.* In addition to the actions listed in § 230.7 of this chapter, actions normally requiring an EA, but not necessarily an EIS, are:

(1) Modifications to Project Operating Manuals for projects or groups of projects, not expected to be a major change in operation and/or maintenance; and

(2) Changes in the System Operating Manual not expected to be a major change in operation and/or maintenance.

(e) *Categorical exclusions.* In addition to the activities listed in § 230.9 of this chapter, the following actions, when considered individually and cumulatively, do not have significant effects on the quality of the human environment and are categorically excluded from NEPA documentation.

(1) Design Documentation Reports;

(2) Project Cooperation Agreements;

(3) Project Management Plans;

(4) Plans and Specifications for projects;

(5) Pilot Project Technical Data Reports;

(6) Assessment reports prepared for the adaptive management program;

(7) Minor technical changes to the System Operating Manual or Project Operating Manuals, not significant enough to warrant notice and opportunity for public comment under section 601(h)(4)(B)(ii) of WRDA 2000;

(8) Development or revision of guidance memoranda or methods such as adaptive management, monitoring, plan formulation and evaluation, quantification of water needed for the natural system or protection of existing uses, methods of determining levels of

flood protection, and similar guidance memoranda or methods; and

(9) Deviations from Operating Manuals for emergencies and unplanned minor deviations as described in applicable Corps of Engineers regulations, including § 222.5(f)(4) and § 222.5(i)(5) of this chapter, and Engineer Regulation ER 1110–2–8156 "Preparation of Water Control Manuals."

(f) Even though an EA or EIS is not indicated for a Federal action because of a "categorical exclusion," that fact does not exempt the action from compliance with any other applicable Federal, State, or Tribal law, including but not limited to, the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, Clean Air Act, and the Marine Mammal Protection Act.

§ 385.15 Consistency with requirements of the State of Florida.

The State of Florida has established procedures, requirements, and approvals that are needed before the State or the South Florida Water Management District can participate as the non-Federal sponsor for Comprehensive Everglades Restoration Plan projects. Project Implementation Reports shall include such information and analyses as are necessary to facilitate review and approval of projects by the non-Federal sponsor and the State pursuant to the requirements of Florida law.

§ 385.16 Design agreements.

(a) The Corps of Engineers shall execute a design agreement with each non-Federal sponsor of the projects of the Plan prior to initiation of design activities with that non-Federal sponsor.

(b) Any procedures, guidance, or documents developed by the Corps of Engineers and the non-Federal sponsor pursuant to a design agreement shall be consistent with this part.

§ 385.17 Project Delivery Team.

(a) The Corps of Engineers and the non-Federal sponsor shall assign individual project managers to be responsible for the successful implementation of projects, and to ensure that projects are planned, designed, and constructed consistent with the design agreement, Project Management Plan, and achieving the goals and purposes of the Plan.

(b) The Corps of Engineers and the non-Federal sponsor shall form a Project Delivery Team to develop the products necessary to implement the project. Project Delivery Teams shall be interdisciplinary in composition.

(c) It shall be the intent of the Corps of Engineers and the South Florida Water Management District to encourage the participation of other Federal, State, and local agencies and the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida on Project Delivery Teams, and to use the expertise of other agencies on Project Delivery Teams to ensure that information developed by the Project Delivery Team is shared at the earliest possible time in the implementation process. In forming the Project Delivery Team, the Corps of Engineers and the non-Federal sponsor shall request that the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies participate on the Project Delivery Team.

(1) In general, participation on the Project Delivery Team shall be the financial responsibility of the participating agency or tribe. However, the Corps of Engineers shall provide funding for the U.S. Fish and Wildlife Service to prepare Fish and Wildlife Coordination Act Reports, as required by applicable law, regulation, or agency procedures.

(2) Participation by an agency or tribe on the Project Delivery Team shall not be considered or construed to be a substitute for consultation or coordination required by applicable law or this part.

(d) Documents, work products, or recommendations prepared by the Project Delivery Team shall not be self-executing, but shall be provided to the Corps of Engineers and the non-Federal sponsor for review, discussion, revision, and/or approval, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies.

§ 385.18 Public outreach.

(a) *Goals.* (1) The goal of public outreach is to open and maintain channels of communication with the public in order to:

(i) Provide information about proposed activities to the public;

(ii) Make the public's desires, needs, and concerns known to decision-makers before decisions are reached; and

(iii) Consider the public's views in reaching decisions.

(2) In carrying out implementation activities for the Plan, the Corps of Engineers and the non-Federal sponsor shall undertake outreach activities to:

(i) Increase general public awareness for the Plan;

(ii) Involve interested groups and interested communities in the decision-making process and incorporate public values into decisions;

(iii) Better serve minority communities and traditionally under served communities, persons with limited English proficiency, and socially and economically disadvantaged individuals;

(iv) Improve the substantive quality of decisions as a result of public participation; and

(v) Reduce conflict among interested and affected parties by building agreement on solutions to emerging issues.

(b) *General Requirements.* (1) The Corps of Engineers and the non-Federal sponsors shall provide a transparent, publicly accessible process through which scientific and technical information is used in the development of policy decisions.

(2) The Corps of Engineers and the non-Federal sponsor shall develop and conduct outreach activities for each project or program-level activity in order to provide information to the public and to provide opportunities for involvement by the public.

(3) Project Management Plans and Program Management Plans shall include information concerning outreach activities to be undertaken during the implementation of the project or activity.

(4) In general, Project Delivery Team meetings and RECOVER meetings shall be open to attendance by the public. The public shall be notified in advance of these meetings through e-mail, posting on a web site, or other appropriate means. The public shall be given the opportunity to comment at such meetings.

(5) The Corps of Engineers and the non-Federal sponsor shall provide opportunities for the public to review and comment on draft documents.

(c) *Outreach to socially and economically disadvantaged communities.*

(1) The Corps of Engineers and the non-Federal sponsor shall develop and conduct public outreach activities to ensure that socially and economically disadvantaged individuals, including individuals with limited English proficiency, are provided opportunities to review and comment during implementation of the Plan.

(2) Project Management Plans and Program Management Plans shall include information concerning outreach activities to socially and economically disadvantaged communities, including individuals of limited English proficiency to be undertaken during the implementation of the project or activity.

(3) The Corps of Engineers and the non-Federal sponsor shall make project and program information available in languages other than English for individuals of limited English proficiency.

(4) The Corps of Engineers and the non-Federal sponsor shall provide translators or similar services at public meetings where a significant number of participants are expected to have limited English proficiency.

§ 385.19 Environmental and economic equity.

(a) Project Management Plans and Program Management Plans shall include information concerning environmental and economic equity activities to be undertaken during the implementation of the project or activity.

(b) As required by applicable laws and policies, the Corps of Engineers and the non-Federal sponsor shall consider and evaluate environmental justice issues and concerns in the implementation of projects.

(c) The District Engineer shall ensure that small business concerns owned and controlled by socially and economically disadvantaged individuals are provided opportunities to participate under section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

§ 385.20 Restoration Coordination and Verification (RECOVER).

(a) RECOVER (Restoration Coordination and Verification) is an interagency and interdisciplinary scientific and technical team, outlined in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999. RECOVER was established by the Corps of Engineers and the South Florida Water Management District to assess, evaluate, and integrate the projects of the Plan with the overall goal of ensuring that the system-wide goals and purposes of the Plan are achieved. RECOVER has been organized into a Leadership Group that provides management and coordination for the activities of RECOVER and a number of teams that accomplish activities such as: developing performance measures; conducting the monitoring and assessment program; evaluating projects and components developed by Project Delivery Teams in achieving the system-wide goals and purposes of the Plan; conducting system-wide water quality analyses; developing, refining, and applying system-wide models and tools; and considering modifications to the Plan. RECOVER is not a policy making body, but has technical and scientific responsibilities that assist the Corps of Engineers and the South Florida Water Management District in achieving the goals and purposes of the Plan.

(b) Any documents, reports, or recommendations, including performance measures or evaluations of alternatives developed for the Project Implementation Report, prepared or developed by RECOVER shall not be self-executing, but shall be provided to the Corps of Engineers and the South Florida Water Management District for review, discussion, revision, and/or approval, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies.

(c) It shall be the intent of the Corps of Engineers and the South Florida Water Management District to encourage the participation of other Federal, State, and local agencies and the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida on RECOVER and to use the expertise of other agencies and the tribes on RECOVER, to ensure that information developed by RECOVER is shared at the earliest possible time, and to ensure that matters of concern are addressed as early as possible. The Corps of Engineers and the South Florida Water Management District recognize the special role of the National Marine Fisheries Service of the Department of Commerce and the Florida Fish and Wildlife Conservation Commission in marine system issues. The Corps of Engineers and the South Florida Water Management District recognize the special role of the Department of the Interior and the Florida Fish and Wildlife Conservation Commission as stewards of the natural system and for their technical and scientific activities in support of restoration. The Corps of Engineers and the South Florida Water Management District recognize the special role of the Environmental Protection Agency and the Florida Department of Environmental Protection in water quality issues. Accordingly, the Corps of Engineers and the South Florida Water Management District have used and will continue to use the Department of the Interior, Department of Commerce, the Florida Fish and Wildlife Conservation Commission, the Environmental Protection Agency, and the Florida Department of Environmental Protection as co-chairs along with the Corps of Engineers and the South Florida Water Management District on the appropriate technical teams that have been established to date as part of RECOVER.

(1) In general, participation on RECOVER shall be the financial responsibility of the participating agency or tribe.

(2) Participation by an agency or tribe on RECOVER shall not be considered or construed to be a substitute for consultation or coordination required by applicable law or this part.

(d) The Corps of Engineers and the South Florida Water Management District shall:

(1) Assign program managers to be responsible for carrying out the activities of RECOVER;

(2) Establish a RECOVER Leadership Group that shall assist the program managers in coordinating and managing the activities of RECOVER, including the establishment of sub-teams or other entities, and in reporting on the activities of RECOVER;

(3) Determine the structure and functions of the RECOVER Leadership Group, but membership shall include the Department of the Interior, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Indians, the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection, and may include other Federal, State, and local agencies; and

(e) RECOVER shall perform functions, including, but not limited to:

(1) Developing performance measures for achieving the system-wide goals and purposes of the Plan;

(2) Conducting evaluations of alternatives developed for the Project Implementation Report in achieving the system-wide goals and purposes of the Plan;

(3) Developing and implementing a monitoring plan to support the adaptive management program;

(4) Conducting assessment activities as part of the adaptive management program to assess the actual performance of the Plan;

(5) Conducting analyses associated with preparation of the Master Implementation Sequencing Plan;

(6) Developing refinements and improvements in the design or operation of the Plan during all phases of implementation;

(7) Developing and refining system-wide models and tools;

(8) Conducting activities associated with the preparation of Pilot Project Technical Reports;

(9) Conducting activities associated with preparation of Comprehensive Plan Modification Reports;

(10) Conducting activities associated with the preparation of Operating Manuals;

(11) Developing recommendations for interim goals pursuant to § 385.38;

(12) Assessing progress towards meeting the interim goals established pursuant to § 385.38;

(13) Developing recommendations for targets for evaluating progress in achieving other water-related needs of the region as provided for in the Plan pursuant to § 385.39;

(14) Assessing progress towards achieving other water-related needs of the region as provided for in the Plan pursuant to § 385.39;

(15) Cooperating with the independent scientific review panel constituted pursuant to § 385.22;

(16) Evaluating new information and science that could have an effect on the Plan; and

(17) Preparing technical information to be used in the development of the periodic reports to Congress prepared in accordance with § 385.40.

(f) RECOVER shall assist Project Delivery Teams in ensuring that project design and performance is fully linked to the system-wide goals and purposes of the Plan and to incorporate, as appropriate, information developed for Project Implementation Reports into the Plan.

(g) In carrying out its responsibilities, RECOVER shall consider projects that are not part of the Plan, but could affect the ability of the Plan to achieve its goals and purposes.

(h) As appropriate, the Corps of Engineers and the South Florida Water Management District shall consider seeking independent scientific review or other similar assistance to RECOVER in carrying out its responsibilities, including review of documents developed by RECOVER.

§ 385.21 Quality control.

(a) The Corps of Engineers and the non-Federal sponsor shall prepare a quality control plan, in accordance with applicable Corps of Engineers regulations, for each product that will be produced by a Project Delivery Team. The quality control plan shall be included in the Project Management Plan and shall describe the procedures to be used to ensure compliance with technical and policy requirements during implementation.

(b) During development of the Project Management Plan for each project, the Corps of Engineers and the non-Federal sponsor shall establish an Independent Technical Review Team to conduct reviews to ensure that products are consistent with established criteria, guidance, procedures, and policy. The members of the Independent Technical Review Team shall be independent of the Project Delivery Team and the project being reviewed, and should be knowledgeable of design criteria established for the Plan.

(c) Independent technical review is intended to be a continuous process throughout project implementation. Project managers shall coordinate accomplishment of technical reviews. The Independent Technical Review Team shall document its actions and recommendations and provide reports to the Project Delivery Team at designated points during the implementation process that shall be described in the quality control plan.

§ 385.22 Independent scientific review.

(a) The Secretary, the Secretary of the Interior, and the Governor, in consultation with the South Florida Ecosystem Restoration Task Force, shall establish an independent scientific review panel convened by a body, such as the National Academy of Sciences, to review the Plan's progress toward achieving the natural system restoration goals of the Plan pursuant to section 601(j) WRDA 2000.

(1) The Secretary, the Secretary of the Interior, and the Governor shall prepare agreements, procedures, and guidance as necessary to establish the panel and to provide for its operation in accordance with section 601(j) of WRDA 2000.

(2) Completed reports, documents, or other materials prepared by the panel shall be provided to the Secretary, the Secretary of the Interior, the Governor and the South Florida Ecosystem Restoration Task Force and shall also be made available to the public.

(3) The panel shall produce a biennial report to Congress, the Secretary, the Secretary of the Interior, and the Governor, pursuant to section 601(j) WRDA 2000, that includes an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the Plan.

(b) The Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall cooperate with the independent scientific review panel constituted pursuant to Section 601 (j) of WRDA 2000, including responding to reasonable requests for information concerning the implementation of the Plan, and shall consider and respond to recommendations made by such panel.

(c) Notwithstanding the provisions of Section 601(j) of WRDA 2000, the Corps of Engineers, the State, or the non-Federal sponsor may establish other independent scientific review panels or peer reviews as necessary to provide assistance in implementation of the Plan.

§ 385.23 Dispute resolution.

(a) Disputes with the non-Federal sponsor concerning a Project Cooperation Agreement shall be resolved under the specific procedures of the Project Cooperation Agreement.

(b) Disputes with the non-Federal sponsor concerning design activities shall be resolved under the specific procedures of the design agreement.

(c) All other unresolved issues with the non-Federal sponsor and disputes with the State associated with the implementation of the Plan shall be resolved according to the terms of the Dispute Resolution Agreement developed by the Secretary and the Governor pursuant to section 601(i) of WRDA 2000.

(d) For disputes with parties not covered by the provisions of paragraphs (a), (b), or (c) of this section, the Corps of Engineers shall attempt to resolve the dispute in accordance with applicable statutory requirements and/or the following procedures:

(1) The parties will attempt to resolve disputes at the lowest organizational level before seeking to elevate a dispute.

(2) Any disputed matter shall first be elevated to the District Engineer and the equivalent official of the other agency, or their designees. The parties may decide to continue to elevate the dispute to higher levels within each agency.

(3) The parties to a dispute may agree to participate in mediation.

(4) When a dispute is resolved the parties shall memorialize the resolution in writing.

§ 385.24 Project Management Plans.

(a) *General requirements.* (1) The Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a Project Management Plan prior to initiating activities on a project.

(2) The Project Management Plan shall define the activities, and where

appropriate, the subordinate tasks, as well as the assignment of responsibility for completing products such as Project Implementation Reports, Pilot Project Design Reports, Design Documentation Reports, plans and specifications, real estate acquisition, construction contracts and construction, Comprehensive Plan Modification Reports, and other activities necessary to support the delivery of projects.

(3) The Project Management Plan shall include a quality control plan, as described in § 385.21.

(4) As appropriate, the Project Management Plan shall include activities to be conducted to meet the requirements of the Fish and Wildlife Coordination Act, as described in § 385.26(e).

(5) The Project Management Plan shall provide schedule and funding information for the project.

(6) In accordance with § 385.18, Corps of Engineers and the non-Federal sponsor shall provide opportunities for the public to review and comment on the Project Management Plan.

(b) *Changes to Project Management Plans.* The Corps of Engineers and the non-Federal sponsor may, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, revise the Project Management Plan whenever necessary, including after completion of the Project Implementation Report, Design Documentation Report, or Plans and Specifications.

§ 385.25 Program Management Plans.

(a) *General requirements.* (1) The Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a Program Management Plan prior to initiating program-level activities.

(2) The Program Management Plan shall define the activities, and where appropriate, the subordinate tasks, as well as the assignment of responsibility for completing products developed in support to program-level activities.

(3) In accordance with § 385.18, Corps of Engineers and the non-Federal sponsor shall provide opportunities for the public to review and comment on the Program Management Plan.

(b) *Changes to Program Management Plans.* The Corps of Engineers and the non-Federal sponsor may, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, revise the Program Management Plan whenever necessary to incorporate new or changed information that affects the scope, schedule, or budget of the activities described in the Program Management Plan.

§ 385.26 Project Implementation Reports.

(a) *General requirements.* (1) The Project Implementation Report is a document containing additional project formulation and evaluation as well as more detailed engineering and design. The Project Implementation Report bridges the gap between the conceptual level of detail contained in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" and the detailed design necessary to proceed to construction. Prior to implementation of a project, the Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, complete a Project Implementation Report addressing the project component's economic and environmental benefits, engineering feasibility, and other factors required by section 601(h)(4)(A) of WRDA 2000. To eliminate duplication with State and local procedures, the Project Implementation Report shall also address the factors of relevant State laws including sections 373.1501 and 373.470 of the Florida Statutes.

(2) The Project Implementation Report shall:

(i) Be consistent with the Plan and this part;

(ii) Be based on the best available science;

(iii) Comply with all applicable Federal, State, or Tribal laws;

(iv) Contain sufficient information for proceeding to final design of the project, such as: additional plan formulation and evaluation, engineering and design, economics, environmental analyses, flood damage assessment, real estate analyses, and the preparation of supplemental National Environmental Policy Act documents;

(v) In accordance with section 601(b)(2)(A)(ii) of WRDA 2000, comply with applicable water quality standards and applicable water quality permitting requirements;

(vi) Identify, pursuant to § 385.35, the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system;

(vii) Identify the amount of water to be reserved or allocated for the natural system under State law necessary to implement the provisions in paragraphs (a)(2)(v) and (vi) of this section;

(viii) Identify the quantity, timing, and distribution of water made available for other water-related needs of the region;

(ix) Determine, pursuant to § 385.36, if existing legal sources of water are to be transferred or eliminated;

(x) Determine, pursuant to § 385.37(b) if a proposed implementation of the Plan would reduce levels of service for flood protection;

(A) In existence on the date of enactment of section 601 of WRDA 2000; and

(B) In accordance with applicable law and consider, as appropriate, pursuant to § 385.37(c), opportunities to provide additional flood protection;

(xi) Include an analysis concerning costs and benefits, cost-effectiveness, and engineering feasibility of the project;

(xii) Include an analysis, prepared by RECOVER as described in paragraph (c)(2) of this section, of the project's effect on achieving the system-wide goals and purposes of the Plan, and recommendations, if necessary, concerning modifications to the Plan to ensure that the goals and purposes of the Plan are achieved and a response, as appropriate, to the analysis and recommendations prepared by RECOVER; and

(xiii) To eliminate duplication with State and local procedures, include, as appropriate, information necessary for the non-Federal sponsor to address the requirements of Chapter 373 of the Florida Statutes, and other applicable planning and reporting requirements of Florida law.

(3) The Corps of Engineers and the non-Federal sponsor shall develop the Project Implementation Report generally in accordance with the process shown in figure 2 in Appendix A of this part.

(4) The Corps of Engineers and the South Florida Water Management District shall, with the concurrence of the Secretary of the Interior and the Governor, develop a guidance

memorandum in accordance with § 385.5 that describes the major tasks that are generally needed to prepare a Project Implementation Report and the format and content of a Project Implementation Report.

(b) *Formulation and evaluation.*

(1) In preparing a Project Implementation Report, the Corps of Engineers and the non-Federal sponsor shall formulate and evaluate alternatives to better define and refine project plan components to optimize the project's contributions towards the system-wide goals and purposes of the Plan. In designing individual project components, Project Delivery Teams shall attempt to stay within the funding target for the project established in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement," dated April 1, 1999, adjusted for inflation. In cases where it is not feasible to accomplish the project goals and purposes without exceeding this target, or where the project ratio of benefits to costs can be significantly improved by exceeding the target, the PIR shall document deviations from the funding target in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement," dated April 1, 1999 and explain the need for such deviations.

(i) *General.* The Corps of Engineers and the South Florida Water Management District shall, with the concurrence of the Secretary of the Interior and the Governor, develop a guidance memorandum in accordance with § 385.5 that describes the processes to be used to formulate and evaluate alternatives, their costs and benefits, both monetary and non-monetary, and their cost effectiveness, and the basis for scoping and selecting the features which comprise the selected alternative. Project Implementation Reports approved before the date of promulgation of these regulations or the development of a guidance memorandum may use whatever method that, in the District Engineer's discretion, and in cooperation with the non-Federal sponsor, is deemed appropriate and is consistent with applicable law and the Programmatic Regulations in this part.

(ii) *System formulation and evaluation.* The guidance memorandum shall describe the process for formulating alternatives to optimize contributions to the system-wide goals and purposes of the Plan by including each alternative with all of the other components of the Plan and comparing total benefits and costs of the alternative under both the with-CERP and the without CERP condition.

(iii) *Interim project assessment.* The guidance memorandum shall also include a process for evaluation of each alternative as the next added increment of the Plan for the purposes of impact assessment, evaluating the project's contribution toward achieving the interim goals and targets for other water related needs, determining appropriate sequencing of the project and determining if the benefits of the alternative justify its costs without regard to projects not yet implemented.

(iv) *Identification of selected alternative.* The guidance memorandum shall also include a process for identification of the selected alternative, based on the analyses conducted in paragraphs (b)(1)(ii) and (iii) of this section. This alternative should be justified based on the project's contributions to both the system-wide goals and purposes of the Plan and the interim goals and targets. If the alternative cannot be justified on a next added basis, it should be justified based on sequencing factors, dependency of other CERP projects on its completion, and/or operational considerations. The Guidance Memorandum shall also include an evaluation of the selected alternative as the last added increment of the Plan to determine the incremental benefits and costs of the project in terms of how it contributes to achievement of the system-wide goals and purposes of the Plan. This analysis should also identify the extent to which benefits are dependent on other components of the Plan, and note any benefits that will also be included in the last added increment analysis for other projects. The PIR should also include an identification of the water to be reserved for the natural system, based on the next added increment analysis.

(c) *RECOVER Performance Evaluation of Alternatives for a Project Implementation Report.* (1) The Corps of Engineers and the South Florida Water Management District shall, with the concurrence of the Secretary of the Interior and the Governor, develop a guidance memorandum in accordance with § 385.5 that describes the process to be used by RECOVER for the evaluation of alternatives developed for the Project Implementation Report in achieving the goals and purposes of the Plan.

(2) RECOVER shall evaluate the performance of alternatives developed for the Project Implementation Report towards achieving the goals and purposes of the Plan using appropriate performance measures.

(3) RECOVER shall prepare information for the Project Delivery Team describing the results of the evaluations of alternatives developed for the Project Implementation Report towards achieving the goals and purposes of the Plan, including, as appropriate, recommendations and suggestions for improving the performance of the alternatives.

(d) *National Environmental Policy Act Documentation.* (1) The Corps of Engineers and the non-Federal sponsor shall prepare the appropriate NEPA document for inclusion in the Project Implementation Report. The NEPA document for the Project Implementation Report shall use the Programmatic Environmental Impact Statement included in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999 as appropriate for the purpose of tiering as described in § 230.14(c) of this chapter.

(2) Whenever possible, the NEPA document shall be integrated into the Project Implementation Report.

(3) As appropriate, other agencies shall be invited to be cooperating agencies in the preparation of the NEPA document pursuant to § 230.16 of this chapter.

(4) The District Engineer is the NEPA official responsible for compliance with NEPA for actions conducted to implement the Plan. Unless otherwise provided for by this part, NEPA coordination for CERP implementation shall follow the NEPA procedures established in part 230 of this chapter.

(5) The District Engineer shall prepare the Record of Decision for Project Implementation Reports. Review and signature of the Record of Decision shall follow the same procedures as for review and approval of feasibility reports in § 230.14 of this chapter and other applicable Corps of Engineers regulations.

(e) *Fish and Wildlife Coordination Act Requirements.* (1) The Corps of Engineers and the non-Federal sponsor shall coordinate with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Florida Fish and Wildlife Conservation Commission, and other appropriate agencies in the preparation of a Project Implementation Report, as required by applicable law.

(2) The Project Management Plan shall include a discussion of any activities to be conducted for compliance with the Fish and Wildlife Coordination Act and other applicable laws.

(3) As appropriate, coordination shall include preparation of the following as shown in figure 2 in Appendix A of this part:

(i) Planning Aid Letter that describes the fish and wildlife resources in the

project area and any recommendations to assist the planning process;

(ii) Fish and Wildlife Issues and Recommendations on effects, concerns, and issues about alternative plans; and

(iii) Draft and final Coordination Act Reports that provide the formal views of the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Florida Fish and Wildlife Conservation Commission on alternative plans.

(f) *Project Implementation Report review and approval process.*

(1) The Corps of Engineers and the non-Federal sponsor shall provide opportunities for review and comment by the public on the draft Project Implementation Report and NEPA document, in accordance with applicable law.

(2) Upon approval of the Project Implementation Report by the Division Engineer and the non-Federal sponsor, the Division Engineer shall issue a public notice announcing completion of the Project Implementation Report based upon:

(i) His/her endorsement of the findings and recommendations of the District Engineer and the non-Federal sponsor; and

(ii) His/her assessment that the report is in accord with current policy. The notice shall indicate that the report has been submitted for Washington level review.

(3) Headquarters, US Army Corps of Engineers shall coordinate the Washington level review in accordance with applicable policies and regulations of the Corps of Engineers. Headquarters, US Army Corps of Engineers shall administer the 30-day state and agency review of the Project Implementation Report as required by law.

(4) After completion of the policy review, the Chief of Engineers shall transmit the Chief of Engineers Report to the Assistant Secretary of the Army for Civil Works for review.

(5) The Assistant Secretary of the Army for Civil Works shall review all Project Implementation Reports.

(i) For projects authorized by section 601(c) of WRDA 2000, the Assistant Secretary of the Army for Civil Works shall review and approve the Project Implementation Report prior to implementation of the project.

(ii) For projects authorized by section 601(b)(2)(C) of WRDA 2000, the Assistant Secretary of the Army for Civil Works shall transmit the Project Implementation Report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate for approval.

(iii) For all other projects, the Assistant Secretary of the Army for Civil Works shall transmit the Project Implementation Report to Congress for authorization.

(6) The non-Federal sponsor may use the Project Implementation Report as the basis for obtaining approval under applicable Florida law.

§ 385.27 Project Cooperation Agreements.

(a) *General.* Prior to initiating construction or implementation of a project, the Corps of Engineers shall execute a Project Cooperation Agreement with the non-Federal sponsor in accordance with applicable law.

(b) *Verification of water reservations.* The Project Cooperation Agreement shall include a finding that a reservation or allocation of water for the natural system as identified in the Project Implementation Report has been executed under State law.

(c) *Changes to water reservations.* Reservations or allocations of water are a State responsibility. Any change to the reservation or allocation of water for the natural system made under State law shall require an amendment to the Project Cooperation Agreement. The Secretary shall verify, in consultation with the South Florida Water Management District, the Florida Department of Environmental Protection, the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and other Federal, State, and local agencies that the revised reservation or allocation continues to provide for an appropriate quantity, timing and distribution of water dedicated and managed for the natural system after considering any changed circumstances or new information since completion of the Project Implementation Report. In accordance with applicable State law, the non-Federal sponsor shall provide opportunities for the public to review and comment on any proposed changes in the water reservation made by the State.

(d) *Savings clause provisions.* The Project Cooperation Agreement shall include a provision that the Corps of Engineers and the non-Federal sponsor shall not:

(1) Eliminate or transfer existing legal sources of water until a new source of comparable quantity and quality as that available on the date of enactment of WRDA 2000 is available to replace the water to be lost as a result of implementation of the Plan; and

(2) Reduce levels of service for flood protection that are:

(i) In existence on the date of enactment of WRDA 2000; and

(ii) In accordance with applicable law.

§ 385.28 Operating Manuals.

(a) *General provisions.* (1) The Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop Operating Manuals to ensure that the goals and purposes of the Plan are achieved.

(2) Operating Manuals for the Plan shall consist of a System Operating Manual and Project Operating Manuals. In general, the System Operating Manual shall provide a system-wide operating plan for the operation of the projects of the Plan and other C&SF Project features. The Project Operating Manuals shall provide the details necessary for integrating the operation of the individual projects with the system operation described in the System Operating Manual.

(3) The Division Engineer and the non-Federal sponsor shall approve Operating Manuals prior to their development or revision.

(4) In accordance with applicable law the Corps of Engineers and the non-Federal sponsor shall only carry out any significant modifications to Operating Manuals after notice and opportunity for public comment.

(5) The Corps of Engineers and the South Florida Water Management District shall, with the concurrence of the Secretary of the Interior and the Governor, develop a guidance memorandum in accordance with § 385.5 that describes the content of Operating Manuals and the tasks necessary to develop Operating Manuals.

(6) Operating Manuals shall:

(i) Describe regulation schedules, water control, and operating criteria for a project, group of projects, or the entire system;

(ii) Make provisions for the natural fluctuation of water made available in any given year and fluctuations necessary for the natural system as described in the Plan;

(iii) Be consistent with the identification of the appropriate quantity, timing, and distribution of water for the natural system;

(iv) Be consistent with applicable water quality standards and applicable water quality permitting requirements;

(v) Be consistent with the water reservation or allocation for the natural system and the savings clause provisions described in the Project Implementation Report and the Project Cooperation Agreement and the provisions of § 385.35(b), § 385.36 and § 385.37;

(vi) Include a drought contingency plan as required by § 222.5(i)(5) of this chapter and Engineer Regulation ER 1110–2–1941;

(vii) Include NEPA documentation, as appropriate;

(viii) Allow for adjustments during the year when substantial departures from expected rainfall and runoff occur, or are necessary based on adaptive management; and

(ix) Include provisions authorizing temporary deviations from all applicable regulations for emergencies and unplanned minor deviations as described in applicable Corps of Engineers regulations, including § 222.5(f)(4) and § 222.5(i)(5) of this chapter, and Engineer Regulation ER 1110–2–8156 "Preparation of Water Control Manuals." However, deviations shall be minimized by including planning for flooding events caused by rainfall and hurricane events, as well as by including a drought contingency plan.

(7) As appropriate, RECOVER shall conduct activities associated with the preparation of Operating Manuals as described in § 385.20.

(8) Except as provided in this part, operating manuals generally shall follow the procedures for water control plans in § 222.5 of this chapter and applicable Corps of Engineers regulations for preparation of water control manuals and regulation schedules, including Engineer Regulation ER 1110–2–8156.

(b) *System Operating Manual.* (1) The Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a System Operating Manual that provides a system-wide operating plan for the operation of implemented projects of the Plan and other C&SF Project features to ensure that the goals and purposes of the Plan are achieved.

(2) The System Operating Manual shall initially be based on the existing completed Central and Southern Florida Project features and shall be initially developed by the Corps of Engineers as provided in § 222.5(g) of this chapter and by the South Florida Water Management District as its laws and regulations require. Existing water control plans, regulation schedules, and Master Water Control Plans shall remain in effect until development of the System Operating Manual.

(3) The System Operating Manual shall be revised whenever the Corps of Engineers and the non-Federal Sponsor, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, believe it is necessary due to making operational changes that have system-wide effects or prior to the completion of new projects that are expected to have system-wide effects.

(4) Except as provided in this part, the System Operating Manual shall follow the procedures for preparation of water control manuals, regulation schedules and Master Water Control Manuals in § 222.5 of this chapter and applicable Corps of Engineers regulations.

(c) *Project Operating Manuals.* (1) The Corps of Engineers and the non-federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a Project Operating Manual for each project of the Plan that is implemented.

(2) Project Operating Manuals shall be considered as supplements to the System Operating Manual, and present aspects of the projects not common to the system as a whole.

(3) Each Project Implementation Report shall, as appropriate, include a draft Project Operating Manual as an appendix to the Project Implementation Report.

(4) As necessary, the draft Project Operating Manual shall be revised for project construction phase and the monitoring and testing phase after completion of project construction.

(5) The final Project Operating Manual shall be completed as soon as practicable after completion of the operational testing and monitoring phase of the project. The completed project shall continue to be operated in accordance with the approved draft Project Operating Manual until the final Project Operating Manual is approved.

§ 385.29 Other project documents.

(a) Whenever necessary, the Corps of Engineers and the non-Federal sponsor shall prepare a Design Documentation Report to provide additional design details needed for the preparation of Plans and Specifications for the project. Such documents shall be approved in accordance with applicable policies of the Corps of Engineers and the non-Federal sponsor.

(b) The Corps of Engineers and the non-Federal sponsor shall prepare Plans and Specifications necessary for construction of the project. Such documents shall be approved in accordance with applicable policies of the Corps of Engineers and the non-Federal sponsor.

(c) The Corps of Engineers and the non-Federal sponsor may prepare other documents as necessary during the real estate acquisition and construction phases of the project. Such documents shall be approved in accordance with applicable policies of the Corps of Engineers and the non-Federal sponsor.

Subpart D—Incorporating New Information Into the Plan

§ 385.30 Master Implementation Sequencing Plan.

(a) The Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a Master Implementation Sequencing Plan that includes the sequence and schedule for implementation of all of the projects of the Plan, including pilot projects and operational elements, based on the best scientific, technical, funding, contracting, and other information available.

(1) Projects shall be sequenced and scheduled to maximize the achievement of the goals and purposes of the Plan at the earliest possible time and in the most cost-effective way, including the achievement of the interim goals established pursuant to § 385.38 and the targets for achieving progress towards other water-related needs of the region provided for in the Plan established pursuant § 385.39, to the extent

practical given funding, engineering, and other constraints.

(2) The Master Implementation Sequencing Plan shall include appropriate discussion of the logic, constraints, and other parameters used in developing the sequence and schedule of projects.

(3) In accordance with § 385.18, Corps of Engineers and the non-Federal sponsor shall provide opportunities for the public to review and comment on the Master Implementation Sequencing Plan.

(4) The existing sequence and schedule developed by the Corps of Engineers and the South Florida Water Management District shall remain in effect until the Master Implementation Sequencing Plan is developed.

(b) At least annually, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, review the Master Implementation Sequencing Plan.

(1) The Master Implementation Sequencing Plan may be revised as necessary, and consistent with the goals and purposes of the Plan, to incorporate new information such as:

(i) Updated schedules from Project Management Plans;

(ii) The results of pilot projects and other studies;

(iii) Updated funding information;

(iv) Approved revisions to the Plan;

(v) Congressional or other authorization or direction;

(vi) Information resulting from the adaptive management program including new information on costs and benefits; or

(vii) Progress towards achieving the interim goals established pursuant to § 385.38 and the targets for achieving progress towards other water-related needs of the region provided for in the Plan established pursuant to § 385.39.

(2) As appropriate, proposed revisions to the Master Implementation Sequencing Plan shall be evaluated by RECOVER for effects on plan performance.

(3) The revised Master Implementation Sequencing Plan shall include information about the reasons for the changes to the sequence and schedule of individual projects.

(4) In accordance with § 385.18 the Corps of Engineers and the non-Federal sponsor shall provide opportunities for the public to review and comment on revisions to the Master Implementation Sequencing Plan.

§ 385.31 Adaptive Management Program.

(a) *General.* The Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, establish an adaptive management program to assess responses of the system to implementation of the Plan; to determine whether or not these responses match expectations, including the achievement of the expected performance level of the Plan, the interim goals established pursuant to § 385.38, and the targets for achieving progress towards other water-related needs of the region provided for in the Plan established pursuant § 385.39; to determine if the Plan, system or project operations, or the sequence and schedule of projects should be modified to achieve the goals and purposes of the Plan or to increase benefits or improve cost effectiveness; and to seek continuous improvement of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific or technical information, new or updated models, or information developed through the adaptive assessment principles contained in the Plan, or future authorized changes to the Plan integrated into the implementation of the Plan. Endorsement of the Plan as a restoration framework is not intended as an artificial constraint on innovation in its implementation.

(b) *Assessment activities.* (1) RECOVER shall design an assessment program to assess responses of the system to implementation of the Plan, and the Corps of Engineers and the South Florida Water Management District shall, with the concurrence of the Secretary of the Interior and the Governor, develop a guidance memorandum, in accordance with § 385.5, that describes the processes to be used to conduct these assessments.

(2) RECOVER shall develop and implement a monitoring plan that is designed to measure status and trends towards achieving the system-wide goals and purposes of the Plan.

(3) RECOVER shall use the information collected and analyzed through the monitoring program as a basis for conducting assessment tasks, which may include, but are not limited to, the following:

(i) Determining if measured responses are undesirable or are falling short of achieving interim goals or the expected performance level of the Plan;

(ii) Evaluating if corrective actions to improve performance or improve cost-effectiveness should be considered; and

(iii) Preparing annual reports on the monitoring program.

(4) Whenever it is deemed necessary, but at least every five years, RECOVER shall prepare an assessment report for approval by the Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, that presents an assessment of whether the goals and purposes of the Plan are being achieved, including whether interim goals and targets for evaluating progress on achieving other water-related needs of the region are being achieved or are likely to be achieved.

(i) The Corps of Engineers and the South Florida Water Management District shall also consult with the South Florida Ecosystem Restoration Task Force in preparing the report.

(ii) The independent scientific review panel established pursuant to § 385.22 shall be provided an opportunity to review the draft assessment report.

(iii) In accordance with § 385.18, Corps of Engineers and the South Florida Water Management District shall provide opportunities for the public to review and comment on the draft assessment report.

(c) *Management actions.* (1) *General.* In seeking continuous improvement of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific or technical information, new or updated models, or information developed through the adaptive assessment principles contained in the Plan, or future authorized changes to the Plan integrated into the implementation of the Plan, the Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, shall

use the assessment reports prepared by RECOVER, information resulting from the activities of the independent scientific review panel pursuant to § 385.22, or other appropriate information including progress towards achievement of the interim goals established pursuant to§ 385.38 and the targets for achieving progress towards other water-related needs of the region provided for in the Plan established pursuant to § 385.39. In developing improvements to the Plan, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, consider the following actions:

(i) Modifying current operations of the Plan;

(ii) Modifying the design or operational plan for a project of the Plan not yet implemented;

(iii) Modifying the sequence or schedule for implementation of the Plan;

(iv) Adding new components to the Plan or deleting components not yet implemented;

(v) Removing or modifying a component of the Plan already in place; or

(vi) A combination of these.

(2) *Operational changes.* Whenever the Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, determine that changes to operations are necessary to ensure that the goals and purposes of the Plan are achieved or that they are achieved cost-effectively, including achievement of the interim goals established pursuant to § 385.38 and the targets for achieving progress towards other water-related needs of the region provided for in the Plan established pursuant to § 385.39, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, prepare revisions to the Operating Manuals in accordance with the provisions of § 385.28.

(3) *Sequence and schedule changes.* Whenever the Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, determine that changes to the sequence and schedule for implementation of the Plan are necessary to ensure that the goals and purposes of the Plan are achieved or that they are achieved cost-effectively, including achievement of the interim goals established pursuant to § 385.38 and the targets for achieving progress towards other water-related needs of the region provided for in the Plan established pursuant to § 385.39, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, prepare revisions to the Master Implementation Sequencing Plan in accordance with the provisions of § 385.30.

(4) *Plan changes.* Whenever the Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, determine that changes to the Plan are necessary to ensure that the goals and purposes of the Plan are achieved or that they are achieved cost-effectively, including achievement of the interim goals established pursuant to § 385.38 and the targets for achieving progress towards other water-related needs of the region provided for in the Plan established pursuant to § 385.39, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, prepare a Comprehensive Plan Modification Report in accordance with § 385.32.

§ 385.32 Comprehensive Plan Modification Report.

Whenever, the Corps of Engineers and the South Florida Water Management District determine, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, that changes to the Plan are necessary to ensure that the goals and purposes of the Plan are achieved or that they are achieved cost-effectively, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, prepare a Comprehensive Plan Modification Report using a process that is consistent with the provisions of § 385.10, § 385.18, and § 385.19. The Corps of Engineers and the South Florida Water Management District shall also consult with the South Florida Ecosystem Restoration Task Force in preparing the report.

(a) *General requirements.* The Comprehensive Plan Modification Report shall:

(1) Be initiated at the discretion of the Corps of Engineers and the South Florida Water Management District after consideration of the recommendations of RECOVER, requests from the Department of the Interior or the State, or other appropriate information;

(2) Comply with all applicable Federal and State laws, including the National Environmental Policy Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, the Safe Drinking Water Act, the Clean Air Act, and any other applicable law;

(3) Contain information such as: plan formulation and evaluation, engineering and design, economics, environmental analyses, flood damage assessment, and real estate analyses;

(4) Include appropriate analyses conducted by RECOVER;

(5) Contain appropriate NEPA documentation to supplement the Programmatic Environmental Impact Statement included in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999; and

(6) Include coordination with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Florida Fish and Wildlife Coordination Commission, and other appropriate agencies in the preparation of the Comprehensive Plan Modification Report, as required by applicable law.

(b) *Review and approval of Comprehensive Plan Modification Report.* (1) The Corps of Engineers and the South Florida Water Management District shall provide opportunities for review and comment by the public on the draft Comprehensive Plan Modification Report and NEPA document, in accordance with applicable law.

(2) Upon approval of the Comprehensive Plan Modification Report by the Division Engineer and the non-Federal sponsor, the Division Engineer shall issue a public notice announcing completion of the Comprehensive Plan Modification Report based upon:

(i) His/her endorsement of the findings and recommendations of the District Engineer and the non-Federal sponsor; and

(ii) His/her assessment that the report is in accord with current policy. The notice shall indicate that the report has been submitted for Washington level review.

(3) Headquarters, US Army Corps of Engineers shall coordinate the Washington level review in accordance with applicable policies and regulations of the Corps of Engineers. Headquarters, US Army Corps of Engineers shall administer the 30-day state and agency review of the Comprehensive Plan Modification Report as required by law.

(4) After completion of the policy review, The Chief of Engineers shall transmit the Chief of Engineers Report to the Assistant Secretary of the Army for Civil Works for review.

(5) Upon approval, the Assistant Secretary of the Army for Civil Works shall transmit the Comprehensive Plan Modification Report to Congress.

(6) As appropriate, the non-Federal sponsor may use the Comprehensive Plan Modification Report as the basis for obtaining approval under applicable Florida law.

(c) *Minor changes to the Plan.* The Plan requires a process for adaptive management and incorporation of new information into the Plan. As a result of this process, each Project Implementation Report may make minor adjustments in the Plan. It is not the intent of this section to require a continual cycle of report writing for minor changes. Instead, the intent of this section is to develop a Comprehensive Plan Modification Report for major changes to the Plan comparable to those that would require a supplement to the programmatic Environmental Impact Statement. The Corps of Engineers and South Florida Water Management District may, in their discretion, elect to prepare a Comprehensive Plan Modification Report for other changes.

§ 385.33 Revisions to models and analytical tools.

(a) In carrying out their responsibilities for implementing the Comprehensive Everglades Restoration Plan and this part, the Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors shall rely on the best available science including models and other analytical tools for conducting analyses for the planning, design, construction, operation, and assessment of projects. The selection of models and analytical tools shall be done in consultation with the Department of the Interior, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Environmental Protection Agency, the Department of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies.

(b) The Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors may, in consultation with the Department of the Interior, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Environmental Protection Agency, the Department of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, periodically revise models and analytical tools or develop new models and analytical tools as needed. As necessary, RECOVER shall review the adequacy of system-wide simulation models and analytical tools used in the evaluation and assessment of projects, and shall make recommendations for improvements in models and analytical tools required for the evaluation and assessment tasks.

(c) The Corps of Engineers and the South Florida Water Management District shall determine on a case-by-case basis what documentation is appropriate for revisions to models and analytic tools, depending on the significance of the changes and their impacts to the Plan. Such changes may be treated as Minor Changes to the Plan, in accordance with § 385.32(c) where appropriate.

§ 385.34 Changes to the Plan.

(a) The Plan shall be updated to incorporate approved changes to the Plan resulting from:

(1) Approval by the Secretary of a project to be implemented pursuant to § 385.13;

(2) Authorization of projects by Congress;

(3) Comprehensive Plan Modification Reports approved by Congress; or

(4) Other changes authorized by Congress.

(b) The Corps of Engineers and the South Florida Water Management District shall periodically prepare a document for dissemination to the public that describes:

(1) The components of the Plan including any approved changes to the Plan;

(2) The estimated cost of the Plan including any approved changes to the Plan;

(3) A water budget for the Plan; and

(4) The water that has been reserved or allocated for the natural system under State law for the Plan.

(c) The Corps of Engineers shall provide annually to the Office of Management and Budget an updated estimate of total CERP cost, the costs of individual project components, and an explanation of any changes in these estimates from the initial estimates contained in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement," dated April 1, 1999.

Subpart E—Ensuring Protection of the Natural System and Water Availability Consistent With the Goals and Purposes of the Plan

§ 385.35 Achievement of the benefits of the Plan.

(a) *Pre-CERP baseline water availability.* (1) Not later than June 30, 2003, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Environmental Protection Agency, the Department of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop the pre-CERP baseline to determine the quantity, quality, timing, and distribution of water delivered by the existing Central

and Southern Florida Project prior to the date of enactment of section 601 of WRDA 2000. In developing the pre-CERP baseline, the Corps of Engineers and the South Florida Water Management District shall use a method that is consistent with the guidance memorandum approved in accordance with paragraph (b)(2) of this section.

(2) Concurrence by the Secretary of the Interior and the Governor shall be required on the proposed pre-CERP baseline. Within 180 days from the development of the pre-CERP baseline, or December 31, 2003, whichever is sooner, or such shorter period that the Secretary of the Interior and the Governor may agree to, the Secretary of the Interior and the Governor may provide the Secretary with a written statement of concurrence or nonconcurrence with the proposed pre-CERP baseline. A failure to provide a written statement of concurrence or nonconcurrence within such time frame shall be deemed as meeting the concurrency requirements of this section. Any nonconcurrency statement shall specifically detail the reason or reasons for the non-concurrence. The Corps of Engineers and the South Florida Water Management District shall give good faith consideration to any nonconcurrency statement, and take the reason or reasons for the nonconcurrence into account in the final decision to determine the pre-CERP baseline.

(3) In preparing a Project Implementation Report, the Corps of Engineers and the South Florida Water Management District shall determine whether the pre-CERP baseline quantity of water of comparable quality is still available. The Corps of Engineers and the non-Federal sponsor shall consider any change in availability of pre-CERP baseline water and previously reserved water in identifying the quantity, timing, and distribution of water to be made available for the natural system by a project component in preparing the Project Implementation Report. The Project Implementation Report shall consider: whether additional quantity, timing, and distribution of water should be made available by subsequent projects; whether improvements in water quality are needed in order to ensure that water delivered to the natural system meets applicable water quality standards; whether to recommend preparation of a Comprehensive Plan Modification Report as described in § 385.32; and whether to recommend that the State of Florida and its agencies re-examine the reservation or allocation of water made pursuant to State law in order to provide for restoration of the natural system consistent with the Plan. In preparing a Project Implementation Report, the concurrence provisions of paragraph (a)(2) of this section shall not apply to a determination of whether the pre-CERP baseline is still available.

(b) *Identification of water to be reserved or allocated for the natural system in the Project Implementation Report.* (1) Each Project Implementation Report shall take into account the pre-CERP baseline water and previously reserved water in identifying the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system, determining whether improvements in water quality are necessary to ensure that water delivered to the natural system meets applicable water quality standards; and identifying the amount of water for the natural system necessary to implement, under State law, the provisions of section 601(h)(4)(A)(iii)(V) of WRDA 2000.

(2) Section 601(h)(3)(C)(i)(I) of WRDA 2000 requires the programmatic regulations in this part to establish a process for development of Project Implementation Reports, Project Cooperation Agreements, and Operating Manuals that ensure that the goals and objectives of the Plan are achieved. Section 601(h)(4)(A)(iii)(IV) of WRDA 2000 provides that Project Implementation Reports shall identify the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system. Section 601(h)(4)(A)(iii)(V) of WRDA 2000 provides that Project Implementation Reports shall identify the amount of water to be reserved or allocated for the natural system necessary to implement, under State law, the provisions of section 601(h)(4)(A)(iii)(IV) and (VI) of WRDA 2000. To implement these provisions and § 385.5, the Corps of Engineers and the South Florida Water Management District shall, with the concurrence of the Secretary of the Interior and the Governor, develop a guidance memorandum for use of the Corps of Engineers and the non-federal sponsor. The guidance memorandum shall provide a process to be used in the preparation of Project Implementation Reports for identifying the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system; determining whether improvements in water quality are necessary to ensure that water delivered to the natural system meets applicable water quality standards; and identifying the amount of water for the natural system necessary to implement, under State law, the provisions of section 601(h)(4)(A)(iii) of WRDA 2000.

(i) The guidance memorandum shall generally be based on a system-wide analysis that adds the project recommended in the Project Implementation Report to the projects of the Plan for which Project Implementation Reports have already been implemented and may express the quantity, timing and distribution of water in stage duration curves; exceedance frequency curves; quantities available in average, wet, and dry years; or any other method which is based on the best available science. The guidance memorandum shall also provide for projects that are hydrologically separate from the rest of the system. The guidance memorandum also shall address procedures for determining whether improvements in water quality are necessary to ensure that water delivered to the natural system meets applicable water quality standards. These procedures shall ensure that any features to improve water quality are implemented in a manner consistent with the cost sharing provisions of the Water Resources Development Acts of 1996 and 2000.

(ii) The guidance memorandum shall generally take into account the natural fluctuation of water made available in any given year; the objective of restoration of the natural system; the need for protection of existing uses transferred to new sources; contingencies for drought protection; the need to identify the additional quantity, timing, and distribution of water made available by a new project component while maintaining a system-wide perspective on the amount of water made available by the Plan; and the need to determine whether improvements in water quality are necessary to ensure that water delivered to the natural system meets applicable water quality standards.

(iii) Project Implementation Reports approved before the date of promulgation of these regulations or the development of the guidance memorandum may use whatever method that the Corps of Engineers and the non-Federal sponsor deem is reasonable and consistent with the provisions of section 601 of WRDA 2000.

(iv) Nothing in this section is intended to, or shall it be interpreted to, reserve or allocate water or to prescribe the process for reserving or allocating water or for water management under Florida law. Nothing in this section is intended to, nor shall it be interpreted to, prescribe any process of Florida law.

§ 385.36 Elimination or transfer of existing legal sources of water.

(a) Pursuant to the provisions of section 601(h)(5)(A) of WRDA 2000, Project Implementation Reports shall include analyses to determine if existing legal sources of water are to be transferred or eliminated as a result of project implementation. If implementation of the project shall cause a transfer or elimination of existing legal sources of water, then the Project Implementation Report shall include an implementation plan that ensures that such transfer or elimination shall not occur until a new source of water of comparable quantity and quality is available to replace the water to be lost as a result of implementation of the Plan.

(b) In determining if implementation of a project shall cause an elimination or transfer of existing legal sources of water, the Corps of Engineers and the non-Federal sponsor shall include those for:

(1) An agricultural or urban water supply;

(2) Allocation or entitlement to the Seminole Indian Tribe of Florida under section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e);

(3) The Miccosukee Tribe of Indians of Florida;

(4) Water supply for Everglades National Park; or

(5) Water supply for fish and wildlife.

§ 385.37 Flood protection.

(a) *General.* In accordance with section 601 of WRDA 2000, flood protection, consistent with restoration, preservation, and protection of the natural system, is a purpose of the Plan.

(b) *Level of service.* (1) For each Project Implementation Report, the level of service for flood protection that:

(i) Was in existence on the date of enactment of section 601 of WRDA 2000; and

(ii) Is in accordance with applicable law, shall be determined for the area affected by the project.

(2) The Project Implementation Report shall include analyses to demonstrate that the level of service for flood protection in paragraph (b)(1) of this section will not be reduced by implementation of the project.

(c) *Improved and new flood protection benefits.* The overarching objective of the Plan is the restoration, preservation, and protection of the South Florida Ecosystem while providing for other water-related needs of the region, including water supply and flood protection. In preparing the Project Implementation Report, the Corps of Engineers and the non-Federal sponsor may consider opportunities to provide additional flood protection consistent with restoration of the natural system, and the provisions of section 601(f)(2)(B) of WRDA 2000 and other applicable laws.

§ 385.38 Interim goals.

(a) *Agreement.* The Secretary, the Secretary of the Interior, and the Governor shall, by December 31, 2003, and in consultation with the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Environmental Protection Agency, the Department of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, and the South Florida Ecosystem Restoration Task Force, execute an Interim Goals Agreement establishing interim goals to facilitate inter-agency planning, monitoring and assessment so as to achieve the overarching objectives of the Comprehensive Everglades Restoration Plan and to ensure the means by which the restoration success of the Plan may be evaluated, and ultimately reported to the Congress pursuant to § 385.40 throughout the implementation process.

(b) *Purpose.* (1) Interim goals are targets by which the restoration success of the Plan may be evaluated at specific points by agency managers, the State, and Congress throughout the overall planning and implementation process. In addition, interim goals will facilitate adaptive management and allow the Corps of Engineers and its non-federal sponsors opportunities to make adjustments if actual project performance is less than anticipated, including recommending any changes to the Plan. Interim goals are not intended to be standards or schedules enforceable in court.

(2) To ensure flexibility in implementing the Plan over the next several decades, and to ensure that interim goals may reflect changed circumstances or new information resulting from adaptive management, the interim goals may be modified, consistent with the processes set forth in paragraph (c) of this section, to reflect new information resulting from changed or unforeseen circumstances, new scientific or technical information, new or updated models, or information developed through the adaptive assessment principles contained in the Plan, or future authorized changes to the Plan.

(3) The Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall sequence and schedule projects as necessary to achieve the interim goals and the targets for achieving progress towards other water-related needs of the region provided for in the Plan, to the extent practical given funding, technical, or other constraints.

(4) If the interim goals have not been met or are unlikely to be met, then the Corps of Engineers and the South Florida Water Management District shall:

(i) Document why the interim goals have not been met or are unlikely to be met and either

(ii) Develop a plan of action that achieves the interim goals as soon as practical consistent with the other objectives of the Plan, and initiate adaptive management actions pursuant to § 385.31(c) based on the plan of action; or

(iii) Recommend changes to the interim goals in accordance with paragraph (b)(2) of this section.

(c) *Process for establishing interim goals.* (1) In developing proposed goals for inclusion in the Interim Goals Agreement, the Secretary, the Secretary of the Interior, and the Governor, shall be provided with, and consider, the technical recommendations of RECOVER and any modifications to those recommendations by the Corps of Engineers or the South Florida Water Management District. These recommendations shall be provided no later than June 30, 2003. Thereafter, the Secretary, the Secretary of the Interior, and the Governor shall provide a notice of availability of the proposed agreement to the public in the **Federal Register**, seek public comments, and consult with the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Environmental Protection Agency, the Department of the Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, and the South Florida Ecosystem Restoration Task Force. After considering comments of the public and consulted agencies on the proposed agreement, and incorporating any suggestions that are appropriate and consistent with the goals and purposes of the Plan, the Secretary, the Secretary of the Interior, and the Governor, shall execute the final agreement, and provide a notice of availability to the public in the **Federal Register** by no later than December 31, 2003.

(2) In developing its recommendations for interim goals, RECOVER shall use the principles in paragraph (d) of this section.

(3) The Secretary, Secretary of the Interior, and the Governor shall review the proposed interim goals agreement at

a minimum every five years beginning October 1, 2005, to determine if the Interim Goals should be revised. Thereafter, the Secretary, the Secretary of the Interior, and the Governor shall revise the interim goals as appropriate and execute a new agreement every five years. However, they may revise interim goals whenever appropriate as new information becomes available. Any revisions to interim goals shall be adopted consistent with the process established pursuant to this part.

(d) *Principles for developing interim goals.* (1) RECOVER, using best available science and information, shall recommend a set of interim goals for implementation of CERP, consisting of regional hydrologic performance targets, improvements in water quality, and anticipated ecological responses for areas such as, Lake Okeechobee, the Kissimmee River Region, the Water Conservation Areas, the Lower East Coast, the Upper East Coast, the Everglades Agricultural Area, and the Caloosahatchee River, Everglades National Park, Big Cypress National Preserve, and the estuaries. These interim goals shall reflect the incremental accomplishment of the expected performance level of the Plan, and will identify improvements in quantity, quality, timing and distribution of water in five-year increments beginning in 2005. The interim goals shall be predicted by appropriate models and tools and shall provide a quantitative basis for evaluating the restoration success of the Plan during the period of implementation. The expected performance level of the Plan is generally represented by the output of the model run of D–13R as described in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999, as modified by section 601 of WRDA 2000, or any subsequent modification authorized in law. In developing the interim goals for the five-year increments, RECOVER shall use the Master Implementation Sequencing Plan as the basis for predicting the increments. RECOVER may recommend additional interim goals for implementation of CERP in addition to those initially developed and may propose revisions to the initial set of hydrologic interim goals as new information is gained through adaptive management.

(2) In developing its recommendations for interim goals, RECOVER shall consider indicators including, but not limited to:

(i) Hydrologic indicators, including:

(A) The amount of water, in addition to the pre-CERP baseline and assumptions regarding without project conditions, which will be available to the natural system;

(B) Hydroperiod targets in designated sample areas throughout the Everglades;

(C) The changes in the seasonal and annual overland flow volumes in the Everglades which will be available to the natural system;

(D) The frequency of extreme high and low water levels in Lake Okeechobee;

(E) The frequency of meeting salinity envelopes for the St. Lucie and Caloosahatchee estuaries; and

(ii) Improvement in water quality; and

(iii) Ecological responses, including:

(A) Increases in total spatial extent of restored wetlands;

(B) Improvement in habitat quality; and

(C) Improvement in native plant and animal abundance.

(3) In developing the interim goals based upon water quality and expected ecological responses, the Secretary of the Army, the Secretary of the Interior, and the Governor shall take into consideration the extent to which actions undertaken by federal, state, tribal, and other entities under programs not within the scope of this part may effect achievement of the goals.

§ 385.39 Evaluating Progress on achieving other water-related needs of the region Provided for in the Plan.

(a) *Purpose.* (1) The overarching objective of the Plan is the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. Progress towards providing for these other water-related needs shall also be evaluated.

(2) As provided for in paragraph (b) of this section, the Corps of Engineers and the South Florida Water Management District shall establish targets for evaluating progress towards achieving other water-related needs of the region, including water supply and flood protection, throughout the implementation process.

(3) The Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall sequence and schedule projects as necessary to achieve the targets for other water-related needs of the region provided for in the Plan, consistent with the interim goals established pursuant to § 385.38, to the extent practical given funding, technical, or other constraints.

(4) If the targets for evaluating progress towards achieving other water-related needs of the region have not been met or are unlikely to be met, then the Corps of Engineers and the South Florida Water Management District shall:

(i) Document why the targets have not been met or are unlikely to be met; and either

(ii) Develop a plan of action that achieves the targets as soon as practical consistent with the purposes of the Plan and initiate adaptive management actions pursuant to § 385.31(c) based on the plan of action; or

(iii) Adopt changes to the targets in accordance with paragraph (b)(3) of this section.

(b) *Process for establishing targets.* (1) Not later than June 30, 2003 RECOVER shall develop recommendations on targets to evaluate progress on achieving the other water-related needs of the region, for consideration by the Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Environmental Protection Agency, the Department of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies. The Corps of Engineers and the South Florida Water Management District shall also consult with the South Florida Ecosystem Restoration Task Force in establishing targets for evaluating progress towards achieving other water-related needs of the region provided for in the Plan. These targets shall be established by the Corps of Engineers and the South Florida Water Management District by December 30, 2003. Targets for evaluating progress towards achieving other water-related needs of the region provided for in the Plan are intended to facilitate inter-agency planning, monitoring, and assessment throughout the implementation process and are not intended to be standards or schedules enforceable in court.

(2) In accordance with § 385.18, the Corps of Engineers and the South Florida Water Management District shall provide the public with opportunities to review and comment on proposed targets.

(3) The Corps of Engineers and the South Florida Water Management District shall review the targets for evaluating progress towards achieving the other water-related needs of the region under the Plan at a minimum every five years beginning in 2005, to determine if they should be revised, and revise them as appropriate. However, they may revise the targets for achieving the other water-related needs of the

region whenever appropriate as new information becomes available.

(c) *Principles for evaluating progress.* (1) RECOVER, using best available science and information, shall recommend a set of targets for evaluating progress on achieving other water-related needs of the region provided for in the Plan. These targets shall reflect the incremental accomplishment of the expected performance level of the Plan, and will identify improvements in quantity, quality, timing and distribution of water in five-year increments beginning in 2005. The targets shall be predicted by appropriate models and tools and shall provide a quantitative basis for evaluating progress on achieving other water-related needs of the region provided for in the Plan during the period of implementation. The expected performance level of the Plan is generally represented by the output of the model run of D–13R as described in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999, as modified by section 601 of WRDA 2000, or any subsequent modification authorized in law. In developing the targets for the five-year increments, RECOVER shall use the Master Implementation Sequencing Plan as the basis for predicting the increments. RECOVER may recommend additional targets for implementation of CERP in addition to those initially developed and may propose revisions to the initial set of hydrologic targets as new information is gained through adaptive management.

(2) In developing its recommendations for targets, RECOVER shall consider the following indicators, but not limited to:

(i) The frequency of water restrictions in the Lower East Coast Service Areas at each time increment.

(ii) The frequency of water restrictions in the Lake Okeechobee Service Areas at each time increment.

(iii) The frequency of meeting salt-water intrusion protection criteria for the Lower East Coast Service Area at each time increment.

§ 385.40 Reports to Congress.

(a) Beginning on October 1, 2005 and periodically thereafter until October 1, 2036, the Secretary and the Secretary of the Interior shall jointly submit to Congress a report on the implementation of the Plan as required by section 601(l) of WRDA 2000. Such reports shall be completed not less often than every 5 years.

(b) This report shall be prepared in consultation with the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, the South Florida Water Management District, and other Federal, State, and local agencies and the South Florida Ecosystem Restoration Task Force.

(c) Such reports shall include a description of planning, design, and construction work completed, the amount of funds expended during the period covered by the report, including a detailed analysis of the funds expended for adaptive management, and the work anticipated over the next 5-year period and updated estimates of total CERP cost and individual component costs and an explanation of any changes from the initial estimates contained in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement," dated April 1, 1999.

(d) In addition, each report shall include:

(1) The determination of each Secretary, and the Administrator of the Environmental Protection Agency, concerning the benefits to the natural system and the human environment achieved as of the date of the report and whether the completed projects of the Plan are being operated in a manner that is consistent with the requirements of section 601(h) of WRDA 2000;

(2) Progress towards the interim goals established in accordance with § 385.38;

(3) Progress towards achieving targets for other water-related needs of the region provided for in the Plan established pursuant § 385.39; and

(4) A review of the activities performed by the Secretary pursuant to section 601(k) of WRDA 2000 and § 385.18 and § 385.19 as they relate to socially and economically disadvantaged individuals and individuals with limited English proficiency.

(e) The discussion on interim goals in the periodic reports shall include:

(1) A discussion of the performance that was projected to be achieved in the last periodic report to Congress;

(2) A discussion of the steps taken to achieve the interim goals since the last periodic Report to Congress and the actual performance of the Plan during this period;

(3) If performance did not meet the interim goals, a discussion of the reasons for such shortfall;

(4) Recommendations for improving performance; and

(5) The interim goals to be achieved in the next five years, including any revisions to the interim goals, reflecting the work to be accomplished during the next five years, along with a discussion of steps to be undertaken to achieve the interim goals.

(f) In preparing the report to Congress required pursuant to this section, the Corps of Engineers and the Department of the Interior shall provide an opportunity for public review and comment, in accordance with § 385.18.

Appendix A to Part 385—Illustrations to Part 385

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Project Development Process

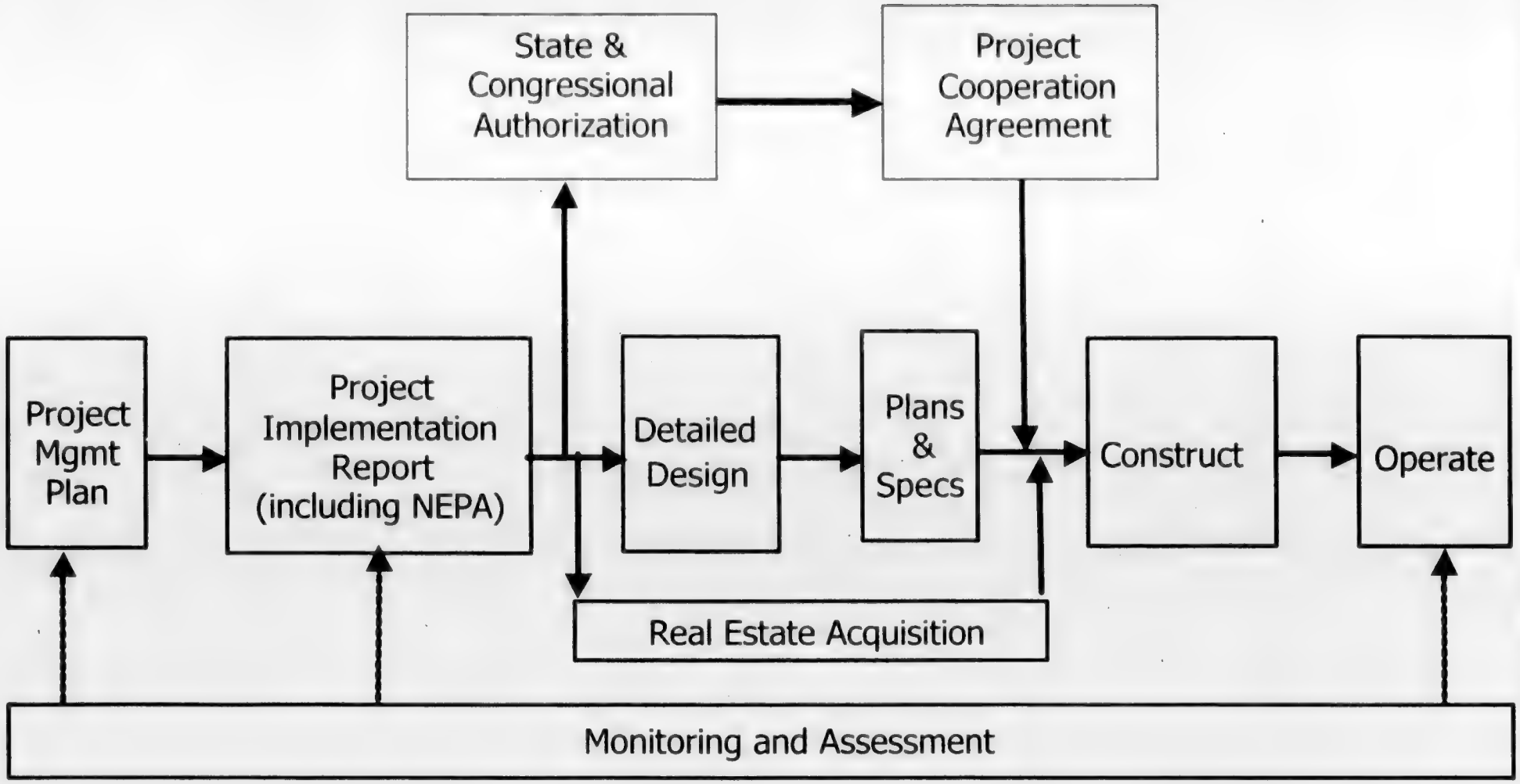

Appendix A

Figure 1

TYPICAL PROJECT IMPLEMENTATION REPORT (PIR) PROCESS

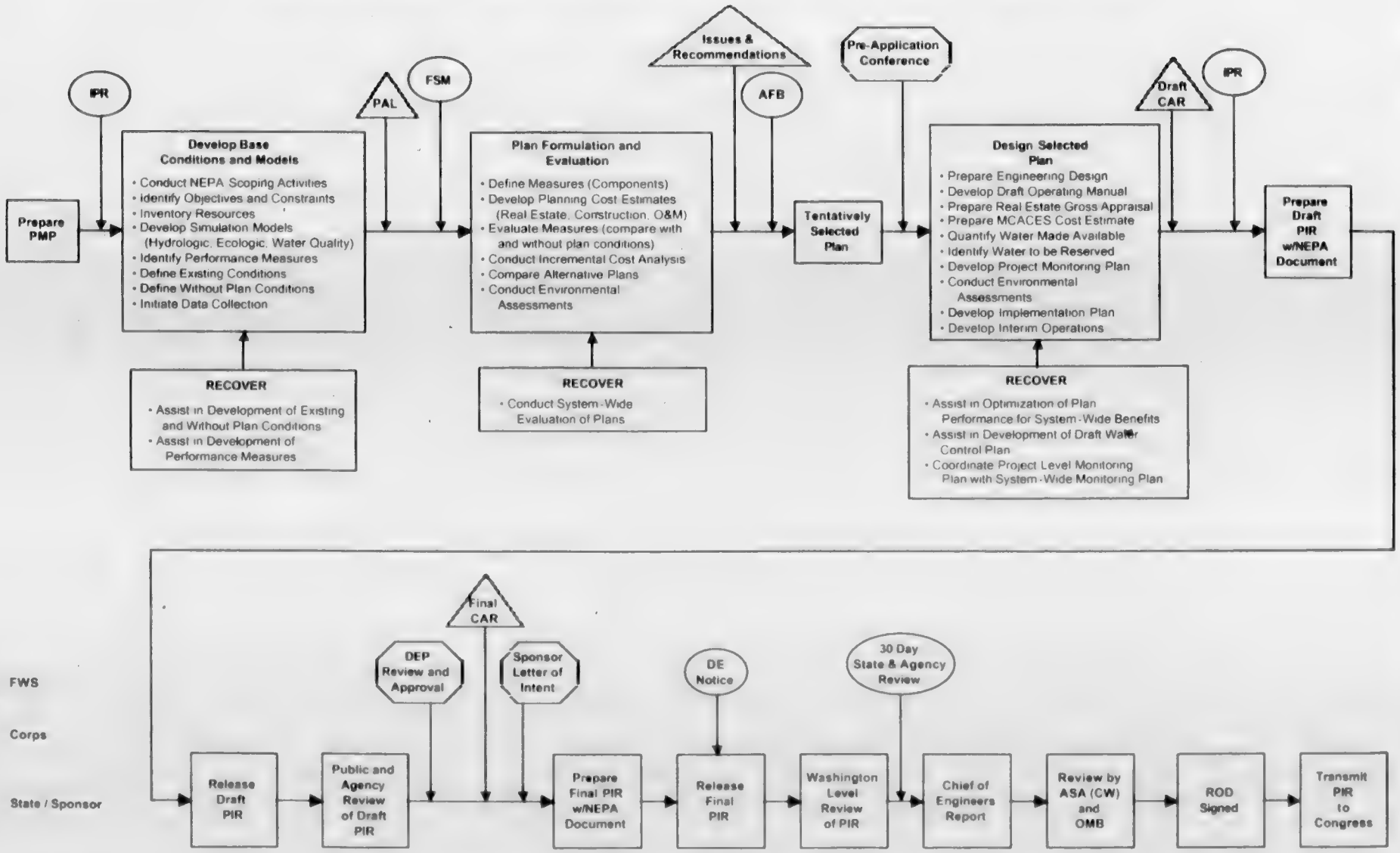

Appendix A

Figure 2

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Federal Register

Friday,
August 2, 2002

Part IV

Office of Science and Technology Policy

Proposed Federal Actions To Update Field Test Requirements for Biotechnology Derived Plants and To Establish Early Food Safety Assessments for New Proteins Produced by Such Plants; Notice

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Proposed Federal Actions To Update Field Test Requirements for Biotechnology Derived Plants and To Establish Early Food Safety Assessments for New Proteins Produced by Such Plants

AGENCY: Office of Science and Technology Policy.

ACTION: Request public comments on proposed federal actions.

SUMMARY: These proposed federal actions are put forward to address regulatory issues associated with the expanding development and use of biotechnology-derived crops. Rapid developments in genomics are resulting in dramatic changes in the way new plant varieties are developed and commercialized. Scientific advances are expected to accelerate significantly over the next decade, leading to the development and commercialization of a greater number and diversity of biotechnology-derived crops. Consistent with the Coordinated Framework for the Regulation of Biotechnology Products (51 FR 23302, June 26,1986), the Office of Science and Technology Policy (OSTP), working with Departments of Agriculture (USDA) and Health and Human Services (HHS) and the Environmental Protection Agency (EPA), is proposing these coordinated actions to update field testing requirements of biotechnology-derived food and feed crop plants and to establish early food safety assessments for new proteins produced by such plants.

DATES: The Office of Science and Technology Policy welcomes comments on the proposed federal actions. To be assured consideration by USDA, HHS, and EPA, comments must be postmarked no later than September 30, 2002.

ADDRESSES: Comments on this notice should be sent to OSTP by e-mail at *comments@ostp.eop.gov* or by FAX at 202–456–6027.

Background

The use of biotechnology-derived crops in the United States has increased markedly over the past decade. In 1994, approximately 7,000 acres were planted under 593 USDA field-test authorizations, compared to 57,000 acres under 1,117 authorizations in 2001. The first biotechnology-derived crops were commercialized in 1996 and, in 2001, approximately 88 million acres were planted in the United States and 130 million acres were planted worldwide (ISAAA). While the increases are most dramatic in the United States, other nations (*e.g.*, Canada, Argentina, China) are also experiencing significant growth in the development and use of biotechnology-derived crops.

Rapid developments in genomics (plant, animal, and microbial) are making this expansion possible. The genomes of the model plant Arabidopsis and rice have been sequenced. Such scientific advances are expected to accelerate significantly over the next decade, leading to the development and commercialization of a greater number and diversity of biotechnology-derived crops. In addition to developing plants expressing traits for improved agronomic properties (*e.g.*, disease and pest resistance and drought and herbicide tolerance), scientists are adding traits for the benefit of the consumer (*e.g.*, enhanced nutrition, other health benefits, and prolonged shelf-life), and traits that produce substances not intended for consumption through food or feed (*e.g.*, industrial enzymes and pharmaceuticals).

While the expansion of biotechnology-derived crops is expected to result in net benefits to producers, consumers, and the environment, the federal government must maintain appropriate regulatory oversight, adjusting its requirements based on scientific developments and industry trends. For example, the National Research Council's reports "Environmental Effects of Transgenic Plants" (NRC, 2002) and "Genetically Modified Pest-Protected Plants: Science and Regulation" (NRC, 2000) make several recommendations to strengthen various aspects of federal oversight of agricultural biotechnology.

The overall federal regulatory structure for biotechnology products (Coordinated Framework) was adopted by federal agencies in 1986 (51 FR 23302, June 26, 1986). The Coordinated Framework provides a regulatory approach that is intended to ensure the safety of biotechnology research and products, using existing statutory authority and building upon agency experience with agricultural, pharmaceutical, industrial, and other products developed through traditional genetic modification techniques. The oversight of biotechnology-derived plants rests with the USDA's Animal and Plant Health Inspection Service (APHIS), the HHS' Food and Drug Administration (FDA), and the EPA. The Coordinated Framework anticipated that agencies might need to develop specific regulations or guidelines under existing statutory authority. The Framework also anticipated further elaboration of federal biotechnology policy consistent with scientific advances and product development.

Federal regulatory agencies recognized that the expansion in agricultural biotechnology increasingly will put pressure on seed production and commodity handling systems to ensure applicable seed, commodity, and food and feed safety standards are met. Those plants that have already been reviewed by federal regulatory agencies and found safe are not of concern. While existing field-testing requirements have been appropriate for current agricultural biotechnology development and commercialization activities, federal regulations must anticipate future activities. As the number and diversity of field tests increase, the likelihood that cross-pollination due to pollen drift from field tests to commercial fields and commingling of seeds produced under field tests with commercial seeds or grain may also increase. This could result in intermittent, low-levels of biotechnology-derived genes, and gene products occurring in commerce that have not gone through all applicable regulatory reviews.

Therefore, in anticipation of the expansion of the development and commercialization of agricultural biotechnology, these proposed federal actions would establish a coordinated regulatory approach to update field testing requirements of biotechnology-derived plants and to establish early food safety assessments for new proteins produced by such plants that are intended for food or feed use. The measures proposed in this Notice address only those biotechnology-derived crop plants intended for food and feed use. These measures are aimed at preventing low levels of biotechnology-derived genes and gene products from being found in commercial seed, commodities, and processed food and feed until appropriate safety standards can be met. Actions addressing other regulatory aspects of biotechnology-derived crop plants may be proposed in the future.

Proposed Federal Actions

These proposals are aimed at further reducing in commercial seed lots, bulk commodities, and processed food and feed the likelihood of the occurrence of intermittent, low levels of biotechnology-derived genes and gene products from crops under development for food or feed use until all appropriate safety standards have been met. These actions are part of the government's continuing protection of public health

and the environment and efforts to enhance public confidence in the regulatory oversight of biotechnology-derived food crops and foods/feeds derived from such crops.

These proposals would be implemented through the coordinated actions of FDA, USDA, and EPA. In developing these proposals, the U.S. government has relied on the following three principles:

- The level of confinement under which a field test of a biotechnology-derived plant is conducted should be consistent with the level of environmental, human, and animal health risk associated with the introduced protein and trait.
- If a trait or protein presents an unacceptable risk or the risks cannot be determined adequately, field test confinement requirements would be rigorous to restrict out-crossing and commingling of seed and the occurrence at any level of biotechnology-derived genes and gene products from these field tests would be prohibited in commercial seed, commodities, and processed food and feed.
- Even if a trait or protein does not present an unacceptable risk to the environment or public health, field test requirements should still minimize the occurrence of out-crossing and commingling of seed from these field tests, but intermittent, low levels of biotechnology-derived genes and gene products from such field tests could be found acceptable based on data and information indicating the newly introduced traits and proteins meet the applicable regulatory standards.

FDA

FDA would publish for comment draft guidance on procedures to address the possible intermittent, low level presence in food and feed of new non-pesticidal proteins from biotechnology-derived crops under development for food or feed use, but that have not gone through FDA's premarket consultation process. The guidance would focus on proteins new to such plants, because FDA believes that at the low levels expected from such material, any food or feed safety concerns would be limited to the potential that a new protein could cause an allergic reaction in some people or could be a toxin. Through this guidance, FDA would encourage sponsors (domestic and foreign) to submit protein safety information once field testing was about to reach a stage of development such that there could be concerns that new non-pesticidal proteins produced in the field-tested plants might be found in commercial seed, commodities, or food/feed.

For this kind of low-level intermittent exposure, FDA does not believe there is a need to evaluate potential unintended compositional changes in food that might be associated with separate transformation events. Consequently, the agency would propose to establish procedures under which developers could provide FDA with food/feed safety information on any non-pesticidal protein engineered into a food/feed crop when that protein has not previously been evaluated by FDA and is new to the food crop into which it was engineered. FDA would principally be interested in looking at data and other information addressing potential toxicity and allergenicity. For developers who have intentionally altered the composition of the food or feed, FDA would encourage them to consult with the agency about whether the presence in food/feed of such material at low and intermittent levels would raise any potential safety issues.

Since this guidance would be focusing only on the new protein and its potential allergenicity and toxicity, FDA would not expect multiple submissions for the same protein from the same source gene. FDA also would not expect submissions for proteins moved within the same species, as such movement would not raise new toxicity or allergenicity issues for the food.

Consistent with procedures the agency has implemented or has proposed to implement for its voluntary premarket consultation process and proposed mandatory premarket notification process for foods/feeds from bioengineered plants, the agency would propose in the draft guidance to provide developers with a written response at the conclusion of its evaluation, and to make the submission and FDA's response available through its web site. FDA would propose to maintain a list on its website, consistent with confidentiality requirements, of all proteins it had evaluated and considered acceptable (or unacceptable) through this procedure. FDA would still expect developers to conduct a complete consultation with FDA prior to marketing food or feed from the plant, consistent with current practices.

EPA

EPA would rely on its existing processes to address residues of pesticidal proteins in food, and would publish for comment guidance for individuals and organizations conducting field-testing on plant-incorporated protectants (PIPs). PIPs are pesticidal substances and the genetic material necessary to produce the substance, when produced and used in living plants, and are regulated as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act (FFDCA). This guidance would address broadly two issues: (1) The process for obtaining EPA review of the safety of the presence of low-level intermittent residues of PIPs in food and (2) guidance on containment controls that a person should employ when conducting experimental field trials, in order to minimize the potential occurrence of unapproved PIPs in food.

EPA would encourage developers to seek approval for residues of PIPs in food very early in the research and development process, if there is a likelihood for the pesticide to be in food through gene flow. EPA decisions about the safety in food of low levels of PIPs would be made under the provisions of section 408 of the FFDCA, which requires that EPA determine whether there is a reasonable certainty of no harm from aggregate exposure to the pesticide. EPA would discuss its legal authority and would explain that, like all safety determinations for PIPs, EPA would need to issue a rule under FFDCA permitting the residues of the PIP to be present in food, even if the PIP is only found at low levels. Such rules typically would last only as long as necessary to allow any food that might contain residues to pass through the food distribution chain. A person seeking an approval under the FFDCA to allow the PIP residue to be present in food would need to submit PIP-specific information sufficient to establish the PIP's safety. In general, EPA would expect the same types and amount of information as FDA, with the focus on product identity and potential allergenicity and toxicity. In a few areas, however, EPA would likely need some additional data because the products regulated by EPA have a different character—they are intended to display pesticidal properties—from the products that FDA reviews.

In addition, EPA would discuss the regulation of PIPs under FIFRA, focusing on the provisions which require a person to obtain an experimental use permit (EUP) prior to conducting field research with a pesticide. EPA would provide guidance on the circumstances under which the Agency would "reasonably anticipate" that PIP residues would be present in food, and thus would presumptively require an EUP. EPA would also describe the containment controls that would be appropriate for experimental field trials to minimize the potential for gene-flow to commercial seed production fields or commercial

commodity production fields, either through pollen drift or other avenues of transfer of genetic material, such that those responsible for the field trials would not anticipate residues. EPA would coordinate its approach to containment controls for field testing with other federal agencies.

USDA

USDA has strengthened field-testing controls for permits on those bioengineered traits that are not intended for commodity uses, such as pharmaceuticals, veterinary biologics, or certain industrial products. This has been accomplished by requiring specific additional safeguards as a condition of permits for confined release into the environment of such products. The potential for exposure would be mitigated through additional appropriate safeguards. These safeguards may include overall confinement procedures, performance standards, and monitoring/auditing practices for ensuring that out-crossing or commingling of non-commodity appropriate traits with seeds and commodities are prevented.

USDA would also propose, under its biotechnology regulations in 7 CFR part 340, to amend its regulations to provide criteria under which regulated articles may be allowable in commercial seed and commodities, if they pose no unacceptable environmental risk. Criteria would be announced as part of an overall updating of 7 CFR part 340, incorporating APHIS' new authorities under the Plant Protection Act and in consideration of recommendations given to USDA in the National Research Council (February 2002) report "Environmental Effects of Transgenic Plants: The Scope and Adequacy of Regulation."

USDA will also continue and expand a critical emphasis on transparency of the regulatory process and on the use of broad internal and external scientific expertise and review as the foundation for decision-making.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 02–19746 Filed 8–1–02; 11:20 am]

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Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

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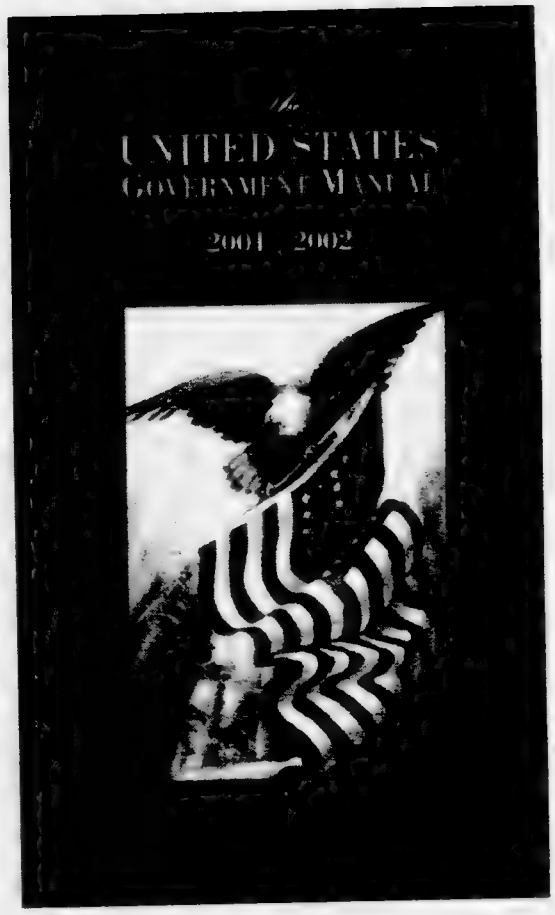

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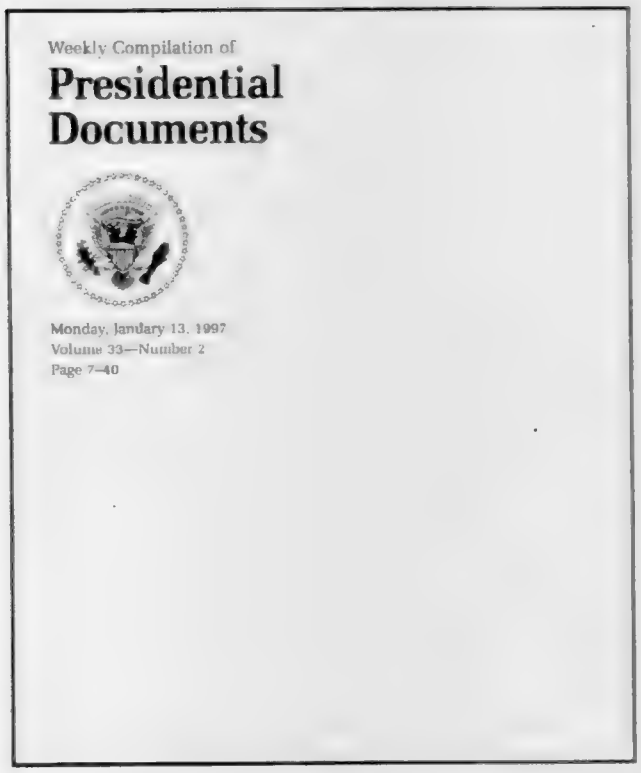

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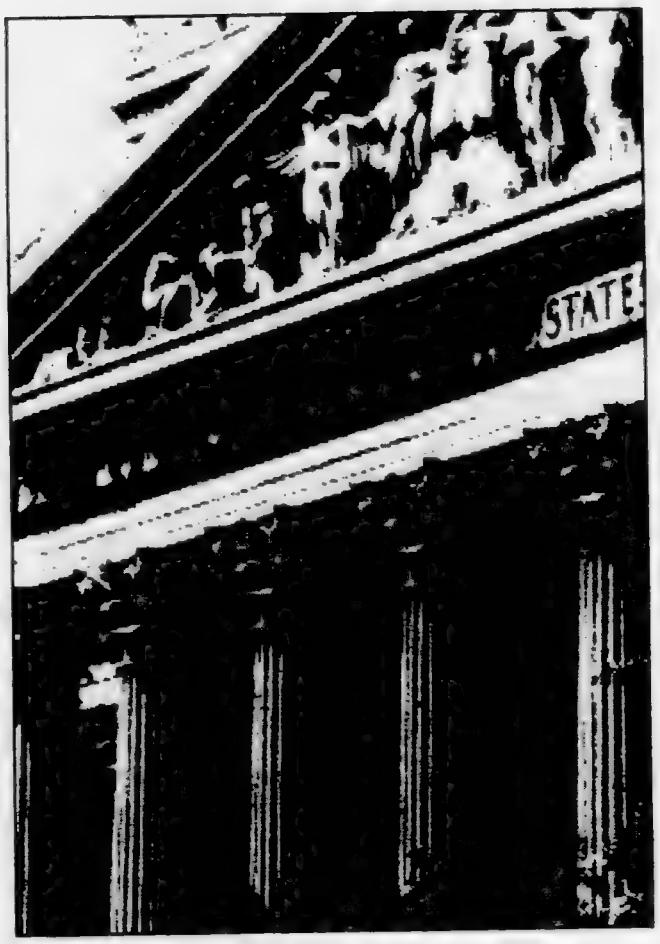

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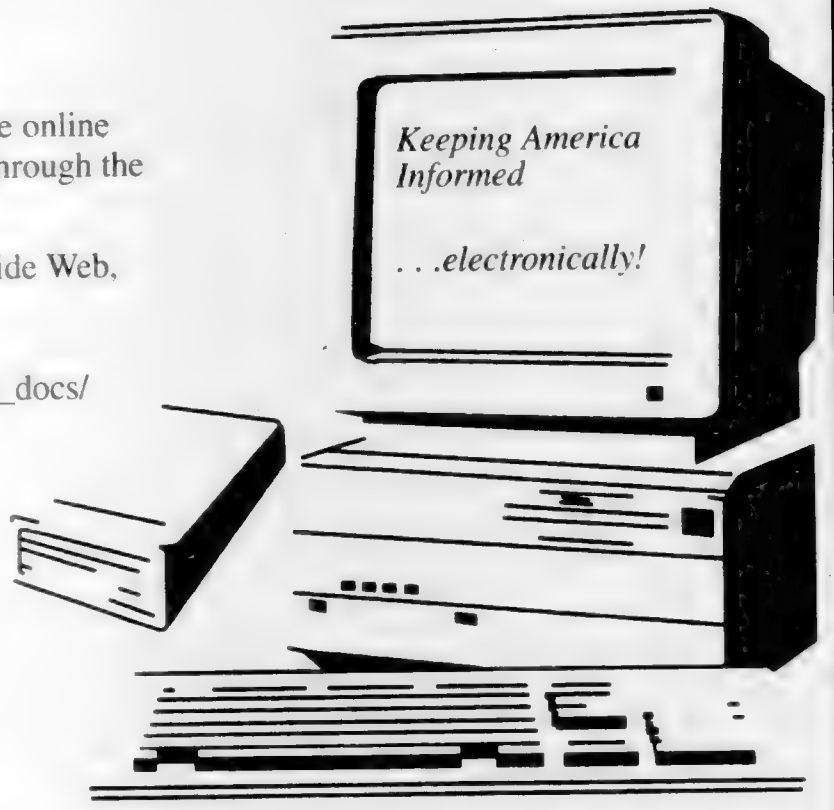

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV02–928–3 FR]

Papayas Grown in Hawaii; Suspension of Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends the reporting and assessment regulations in effect under the Hawaii papaya marketing order. The Department of Agriculture has determined that the order should be terminated due to the results of a recently held referendum in which growers indicated they did not want the program to continue. Termination of the order must be delayed until after a 60-day Congressional notification period. Because the 2002 fiscal year has begun, suspension of reporting and assessment requirements is needed so that papaya handlers are not subject to regulation during that year.

EFFECTIVE DATE: August 1, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (559) 487–5901, Fax (559) 487–5906; or Anne Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This action is being taken under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," and §§ 928.53(b) and 928.64(b) of Marketing Order No. 928, regulating the handling of papayas grown in Hawaii, hereinafter referred to as the "order."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order has been in effect since 1971. It authorizes the establishment of grade, size, quality, pack, and container requirements, although such requirements are not currently in effect. The order also authorizes production and marketing research, market development, and paid advertising for Hawaii papayas. The program is funded by assessments imposed on papaya handlers.

This rule suspends the assessment and reporting requirements currently prescribed under the order.

Section 928.64(e) of the order specifies that continuance referenda must be conducted among papaya producers every sixth year before October 1. Therefore, during the period from May 6 to May 31, 2002, USDA conducted a referendum among papaya growers to determine if they favored continuation of their program. The referendum order provided that USDA would consider terminating the provisions of the order if less than two-thirds of the number of growers voting and growers of less than two-thirds of the papaya volume represented in the referendum favored continuance.

Ballots were mailed to 462 known papaya growers in Hawaii. By the close of the voting period, 55 valid votes had been cast. The results show that 49 percent of the growers voting, who produced 21 percent of the volume represented in the referendum, favored continuation of the program. The order failed to pass both criteria for continuance, demonstrating a lack of producer support needed to carry out the objectives of the Act. Thus, it has been determined that the provisions of the order no longer tend to effectuate the declared policy of the Act.

Therefore, pursuant to section 8c(16)(A) of the Act and § 928.64 of the order, it has been found that the order provisions should be terminated. Section 8c(16)(A) of the Act requires USDA to notify Congress at least 60 days before terminating a Federal marketing order program. Congress has been so notified.

The 2002–03 fiscal year for Hawaii papayas began July 1. Because implementation of any regulatory requirements during the 2002–03 fiscal year would be inconsistent with USDA's decision to terminate the order, this action suspends the assessment and reporting requirements in effect under the order. Papayas shipped during the month of July would have to be reported to the Papaya Administrative Committee (committee), the agency established to locally administer the program, by August 15. Based on those handler reports, the committee would bill handlers for assessments owed. Suspending these requirements results in no regulatory requirements imposed

on papayas handled during the 2002–03 fiscal year.

It is hereby determined that the reporting and assessment requirements specified in §§ 928.160 and 928.226, respectively, do not effectuate the declared policy of the Act and should not be applied during the 2002–03 and subsequent seasons. Therefore, these sections are suspended effective August 1. Once the order provisions pertaining to papayas grown in Hawaii have been terminated, these and other regulations under the order will no longer be in effect.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order those small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 400 producers of papayas in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers are defined as those having annual receipts of less than $750,000, and small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000.

Based on a reported current average f.o.b. price for fresh papayas of $0.65 per pound, a handler would have to ship in excess of 7.69 million pounds to have annual receipts of $5 million. Based on a reported current average grower price of $0.25 per pound, and average annual industry shipments of 40 million pounds since 1996, annual total grower revenues would be $10 million. Average annual grower revenue would, therefore, be $25,000. Thus, the majority of handlers and producers of papayas may be classified as small entities, excluding receipts from other sources.

This final rule suspends the reporting and assessment requirements specified in §§ 928.160 and 928.226, respectively. This is consistent with USDA's decision to terminate the provisions of the Hawaii papaya marketing order. The order is being terminated because in a recently held referendum, papaya producers failed to support continuation of the program.

This action eliminates the cost of assessments. Currently, handlers are required to pay an assessment rate of $0.008 per pound handled.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. Suspension of the reporting requirements specified in § 928.160 is expected to reduce the total annual reporting burden on Hawaii papaya handlers by 720 hours (60 handlers × 12 reports per year × 1 hour per report).

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the results of a recently held producer referendum, it is hereby found that the regulations in effect under the papaya marketing order do not tend to effectuate the declared policy of the Act and, therefore, are being suspended.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This action relieves restrictions on handlers by lifting reporting and assessment requirements; (2) this rule should apply to all papayas handled during the 2002–03 fiscal year, which began July 1; (3) handlers were given notice of this action in a press release issued by USDA; and (4) no useful purpose would be served by delaying the effective date.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 928, §§ 928.160 and 928.226 are suspended.

Dated: July 31, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–19671 Filed 8–2–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2002–12]

Reorganization of Regulations on "Contribution" and "Expenditure"

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The recently enacted Bipartisan Campaign Reform Act of 2002 ("BCRA") substantially amended the Federal Election Campaign Act ("FECA" or "the Act"). Among its amendments is the deletion of the office building or facility exception in the definition of "contribution" in section 431(8)(B) of FECA. The Federal Election Commission ("the Commission") is amending the regulations to reflect this statutory change. As part of this effort, the Commission is also reorganizing the sections defining "contribution" and "expenditure" in its regulations. Further information is provided in the supplementary information that follows.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, 999 E Street, NW., Washington DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (March 27, 2002), significantly amends the Federal Elections Campaign Act, as amended, 2 U.S.C. 431 *et seq.*, and directs the Commission to promulgate regulations implementing Title I of BCRA within 90 days of enactment and to promulgate regulations implementing the other titles of BCRA that are under the Commission's jurisdiction within 270 days of enactment. *See* BCRA, section 402(c). One amendment to the definition of "contribution" is in Title I, section 103(b)(1) of BCRA. These final rules address this amendment.

Section 103(b)(1) of BCRA deletes current 2 U.S.C. 431(8)(B)(viii), thus eliminating the office building or facility exception from the definition of "contribution." Congress in BCRA also amended 2 U.S.C. 453 to prescribe that "notwithstanding any other provision of the Act, a State or local committee if a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee." In these final rules, the Commission amends the definitions of "contribution" and "expenditure" to comply with these amendments. The Commission has promulgated separate final rules to address the impact of this statutory change on State and local party committees, as well as other changes from BCRA Title I. *See* Explanation and Justification of "Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money" ("Non-Federal Funds Final Rules"), 67 FR part II (July 29, 2002).

This rulemaking is one in a series of rulemakings that the Commission will undertake to implement the various provisions of BCRA. The other separate rulemakings will address: (1) Electioneering communications; (2) coordinated and independent expenditures; (3) the so-called "millionaires" amendment," which increases contribution limits for congressional candidates facing self-financed candidates on a sliding scale, based on the amount of personal funds the opponent contributes to his or her campaign; (4) the limitations and prohibition on contributions including the increase in contribution limits, and the ban on contributions by minors and foreign nationals; (5) other provisions, including inaugural committees; fraudulent solicitations; disclaimers; personal use of campaign funds; (6) reporting; and (7) BCRA's impact on national nominating conventions.

In addition, the Commission is reorganizing 11 CFR 100.7 and 100.8 to facilitate locating and reading the definitions of "contribution" and "expenditure," and the exceptions to both definitions.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on Reorganization of Regulations on "Contribution" and "Expenditure" were transmitted to Congress on July 26, 2002.

Explanation and Justification

The Notice of Proposed Rulemaking ("NPRM") on which these final rules are based was published in the **Federal Register** on June 14, 2002. 67 FR 40881 (June 14, 2002). The Commission received comments from The Campaign and Media Legal Center; Center for Responsive Politics; Common Cause and Democracy 21 (joint comment); Senators John McCain and Russell D. Feingold, and Representatives Christopher Shays and Marty Meehan; and Ms. Cynthia Minchillo-Synhort, RP. The Commission did not hold a hearing on the NPRM, and none of the commenters requested an opportunity to testify.

Non-Federal Funds Final Rules Effect on 11 CFR 100.7 and 100.8

The NPRM raised the possibility of the Commission addressing, as part of the Non-Federal Funds Final Rules, changes to the definitions of "contribution" and "expenditure." The NPRM also stated that any changes to these definitions in the Non-Federal Funds Final Rules would be incorporated into these final rules. Several commenters, including the principal Congressional sponsors of BCRA, expressed concern that the Commission had acted "prematurely" in undertaking this reorganization rulemaking at a time when the soft money rulemaking was not completed. These commenters stated that conforming amendments to the definitions of "contribution" and "expenditure" may be substantive in nature or have substantive impact. They argued that the Commission should issue a new NPRM with proposed regulatory text for the conforming amendments and seek comments before promulgating the final rules.

This rulemaking does not make substantive changes to the current definitions of "contribution" and "expenditures" to conform to the Non-Federal Funds Final Rules. The NPRM contemplated that if the Non-Federal Funds Final Rules included amendments to 11 CFR 100.7 and 100.8, those amendments would be included in these final rules, similar to the way in which in the Brokerage Loans and Lines of Credit final rules are being incorporated in this reorganization. *See* below.

However, because the Commission's regulations in the Non-Federal Funds Final Rules do not change the definitions of "contribution" or "expenditure," the Commission's statements in the NPRM about the possibility of the soft money rulemaking affecting these final rules are moot. Other than the reorganization and the changes discussed below, these final rules do not amend the substantive definitions of "contribution" and "expenditure."

Other BCRA Provisions That Affect the Definition of "Contribution" and "Expenditure"

Several commenters noted that other provisions in BCRA affect the definitions of "contribution" and "expenditure." The Commission recognizes that rules implementing the rest of BCRA may require amendments to these definitions. Such changes, however, will be the subject of separate rulemakings described above. The public will receive full notice and an opportunity to comment on the Commission's proposed rules on the implementation of such changes. This final rule, however, makes preparations for the separate rulemakings that may amend the definitions of "contribution" and "expenditure." The structure of current 11 CFR 100.7 and 100.8 is difficult to amend in a clear and comprehensive manner. By reorganizing the rules contained in these two sections into multiple sections, subsequent amendments, in subsequent rulemakings, will be easier for the Commission to incorporate, and easier for the public to identify, comment on, and ultimately use. *See* discussion about reorganization, below.

"Allocation" Versus "Attribution"

In the NPRM, the Commission raised the possibility of changing the use of the word "allocation" or any of its derivatives to "attribution" or one of its derivatives, and sought comment on this possibility. The proposed rules did not reflect such proposed change. The comments the Commission received on this suggestion did not support this proposed change. One public interest group questioned what such a change would accomplish. Several commenters stated that the necessity for clarification around "allocation" in the rules requires more than a word change, especially in the area of exempt activities. They argued that the allocation provisions in the Non-Federal Funds Final Rules at 11 CFR parts 100 and 300 have direct impact on this issue. They urged the Commission to amend the definitions to reflect the new allocation rules.

In response to those concerns, the final rules do not replace "allocation" and its derivatives with "attribution" or its derivative. As was emphasized in the new Non-Federal Funds Final Rules and

Explanation and Justification, exempt activities conducted in conjunction with Non-Federal activities that are not Federal election activities are governed by 11 CFR 106.1 and 106.7. To the extent that these activities do constitute Federal election activities, however, they must be allocated between Federal funds and Levin funds pursuant to new 11 CFR part 300. Nothing in this reorganization of the "contribution" and "expenditure" definitions changes the use of Federal, non-Federal, or Levin funds for the payment of any exempt activities. To clarify this, a cross-reference to the new allocation rules in 11 CFR 100.24, 104.17(a), and part 300, subparts B, D, and/ or E has been added in the final rules in 11 CFR 100.80 (slate cards and sample ballots), 100.87 (volunteer activity for party committees), 100.88 (volunteer activity for candidates), 100.89 (voter registration and get-out-the-vote activities for Presidential candidates), 100.140 (slate cards and sample ballots), 100.147 (volunteer activity for party committees), 100.148 (volunteer activity for candidates), and 100.149 (voter registration and get-out-the-vote activities for Presidential candidates).

Reorganization of Current 11 CFR 100.7 and 100.8

The Commission is reorganizing 11 CFR 100.7 and 100.8 in these final rules. The reorganizing makes it easier to locate and read the definitions of "contribution" and "expenditure" and the detailed exceptions to those definitions. Three commenters, including the principal Congressional sponsors of BCRA, expressed support for, and encouraged, this reorganization to make the rules more "user friendly" and "easier to read and understand."

The new rules create four new subparts, B through E, within 11 CFR part 100 which contain the definitions of, and exceptions to, "contribution" and "expenditure." Subpart B contains sections describing items that are contributions; subpart C contains sections describing items that are not contributions; subpart D contains sections describing items that are expenditures; and subpart E contains sections describing items that are not expenditures. The distribution table attached to these final rules lists where the various paragraphs of 11 CFR 100.7 and 100.8 can now be found within these new subparts.

Inclusion of "Brokerage Loans and Lines of Credit"

The final rules also incorporate another recent change to FECA—the inclusion of a loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate as an item that is not a contribution. The Commission published the final rules, entitled "Brokerage Loans and Lines of Credit," to amend 11 CFR 100.7(b) and 100.8(b) to include these types of loans as exceptions to the definitions of "contribution" and "expenditure." *See* 67 FR 38353 (June 4, 2002). The language in this final rule at 11 CFR 100.83 and 100.144 reflects the language in the "Brokerage Loans and Lines of Credit" final rules. The Commission received no comment on this incorporation of the rules from a previous rulemaking.

Amendments to the Office Building or Facility Exceptions

Current 11 CFR 100.7(b)(12) and 100.8(b)(13) designate that the construction or purchase of an office building or facility are exceptions to the definitions of "contribution" and "expenditure." New 11 CFR 100.56 (stating that a contribution to national party committees for the construction or purchase of an office building or facility is a "contribution" under the Act) and 100.114 (stating that an expenditures by a national party committees for the construction or purchase of an office building or facility is an "expenditure" under the Act) make clear that these exceptions no longer apply to national party committees. Similarly, in light of BCRA's amendment of 2 U.S.C. 453, new 11 CFR 100.84 and 100.144 make clear that the office building or facility exceptions still apply to State, local, and district party committees, subject to the provisions of 11 CFR 300.34. The final rules reflect the language proposed in the NPRM. The Commission received no comment on its proposed changes implementing BCRA's deletion of the office building or facility exception.

Grammatical and Technical Revisions

In addition to nonsubstantive grammatical corrections, minor technical revisions have been made to reflect the reorganization structure. Also, a cross-reference in paragraph (f) of section 100.142 has been corrected, now directing the reader to the other bank loan provisions. Other substantive changes to the definitions of "contribution" and "expenditure" will take place in separate rulemakings.

Other Comments

One commenter criticized the NPRM in general, but made no specific comment or suggestion. Another commenter advocated the complete, or at least partial, elimination of the exception to the definitions of "contribution" and "expenditure" for recounts and election contests, on the basis that recounts and election contests, which are not Federal elections as defined by the Act, *see generally Federal Election Regulations,* H. R. Doc. No. 44, 95th Cong., 1st Sess. at 40 (1977) (*FEC E&J Compilation* at 38, 42), "serve as an avenue for the use of soft money to influence federal elections," as evidenced by unregulated contributions used to pay for the 2000 Florida recount. This change is beyond the scope of this rulemaking dealing only with nonsubstantive changes, with the exception of the deletion of the office building or facility exception for national parties.

Distribution Table

100.7 AND 100.8 DISTRIBUTION TABLE

Old section	New section
100.7	100.51(a)
100.7(a)(1)	100.52(a)
100.7(a)(1)(i)	100.52(b)
100.7(a)(1)(i)(A)	100.52(b)(1)
100.7(a)(1)(i)(B)	100.52(b)(2)
100.7(a)(1)(i)(C)	100.52(b)(3)
100.7(a)(1)(i)(D)	100.52(b)(4)
100.7(a)(1)(i)(E)	100.52(b)(5)
100.7(a)(1)(ii)	100.52(c)
100.7(a)(1)(iii)(A)	100.52(d)(1)
100.7(a(1)(iii)(B)	100.52(d)(2)
100.7(a)(2)	100.53
100.7(a)(3)	100.54
100.7(a)(3)(i)	100.54(a)
100.7(a)(3)(ii)	100.54(b)
100.7(a)(3)(iii)	100.54(c)
100.7(a)(4)	100.55
100.7(b)	100.71(a)
100.7(b)(1)(i)	100.72(a)
100.7(b)(1)(ii)	100.72(b)
100.7(b)(1)(ii)(A)	100.72(b)(1)
100.7(b)(1)(ii)(B)	100.72(b)(2)
100.7(b)(1)(ii)(C)	100.72(b)(3)
100.7(b)(1)(ii)(D)	100.72(b)(4)
100.7(b)(1)(ii)(E)	100.72(b)(5)
100.7(b)(2)	100.73
100.7(b)(3)	100.74
100.7(b)(4)	100.75
100.7(b)(5)	100.76
100.7(b)(6)	100.77
100.7(b)(7)	100.78
100.7(b)(8)	100.79
100.7(b)(9)	100.80
100.7(b)(10)	100.81
100.7(b)(11)	100.82(a) through (d)
100.7(b)(11)(i)	100.82(e)
100.7(b)(11)(ii)(A)(1)	100.82(e)(1)(i)
100.7(b)(11)(ii)(A)(2)	100.82(e)(1)(ii)
100.7(b)(11)(i)(B)	100.82(e)(2)
100.7(b)(11)(i)(B)(1)	100.82(e)(2)(i)
100.7(b)(11)(i)(B)(2)	100.82(e)(2)(ii)
100.7(b)(11)(i)(B)(3)	100.82(e)(2)(iii)
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100.7(b)(11)(i)(B)(5)	100.82(e)(2)(v)
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100.7(b)(13)	100.85

100.7 AND 100.8 DISTRIBUTION TABLE—Continued

Old section	New section
100.7(b)(14)	100.86
100.7(b)(15)	100.87
100.7(b)(15)(i)	100.87(a)
100.7(b)(15)(ii)	100.87(b)
100.7(b)(15)(iii)	100.87(c)
100.7(b)(15)(iv)	100.87(d)
100.7(b)(15)(v)	100.87(e)
100.7(b)(15)(vi)	100.87(f)
100.7(b)(15)(vii)	100.87(g)
100.7(b)(16)	100.88(a) and (b)
100.7(b)(17)	100.89
100.7(b)(17)(i)	100.89(a)
100.7(b)(17)(ii)	100.89(b)
100.7(b)(17)(iii)	100.89(c)
100.7(b)(17)(iv)	100.89(d)
100.7(b)(17)(v)	100.89(e)
100.7(b)(17)(vi)	100.89(f)
100.7(b)(17)(vii)	100.89(g)
100.7(b)(18)	100.90
100.7(b)(19) reserved	Removed
100.7(b)(20)	100.91
100.7(b)(21)	100.92
100.7(b)(22)	100.83
100.7(c)	100.51(b) and 100.71(b)
100.8(a)	100.110(a)
100.8(a)(1)	100.111(a)
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100.8(a)(1)(ii)	100.111(c)
100.8(a)(1)(iii)	100.111(d)
100.8(a)(1)(iv)(A)	100.111(e)(1)
100.8(a)(1)(iv)(B)	100.111(e)(2)
100.8(a)(2)	100.112
100.8(a)(3)	100.113
100.8(b)	100.130(a)
100.8(b)(1)(i)	100.131(a)
100.8(b)(1)(ii)	100.131(b)
100.8(b)(1)(ii)(A)	100.131(b)(1)
100.8(b)(1)(ii)(B)	100.131(b)(2)
100.8(b)(1)(ii)(C)	100.131(b)(3)
100.8(b)(1)(ii)(D)	100.131(b)(4)
100.8(b)(1)(ii)(E)	100.131(b)(5)
100.8(b)(2)	100.132
100.8(b)(2)(i) and (ii)	100.132(a) and (b)
100.8(b)(3)	100.133
100.8(b)(4)	100.134(a)
100.8(b)(4)(i)	100.134(b)
100.8(b)(4)(ii)	100.134(c)
100.8(b)(4)(iii)	100.134(d)
100.8(b)(4)(iii)(A)(1)	100.134(d)(1)(i)
100.8(b)(4)(iii)(A)(2)	100.134(d)(1)(ii)
100.8(b)(4)(iii)(B)(1)	100.134(d)(2)(i)
100.8(b)(4)(iii)(B)(2)	100.134(d)(2)(ii)
100.8(b)(4)(iii)(B)(3)	100.134(d)(2)(iii)
100.8(b)(4)(iii)(B)(4)	100.134(d)(2)(iv)
100.8(b)(4)(iii)(C)	100.134(d)(3)
100.8(b)(4)(iii)(D)	100.134(d)(4)
100.8(b)(4)(iv)(A)	100.134(e)
100.8(b)(4)(iv)(A)(1)	100.134(e)(1)
100.8(b)(4)(iv)(A)(2)	100.134(e)(2)
100.8(b)(4)(iv)(A)(3)	100.134(e)(3)
100.8(b)(4)(iv)(A)(4)	100.134(e)(4)
100.8(b)(4)(iv)(A)(5)	100.134(e)(5)
100.8(b)(4)(iv)(A)(6)	100.134(e)(6)
100.8(b)(4)(iv)(B)	100.134(f)
100.8(b)(4)(iv)(B)(1)	100.134(f)(1)
100.8(b)(4)(iv)(B)(2)	100.134(f)(2)
100.8(b)(4)(iv)(B)(3)	100.134(f)(3)
100.8(b)(4)(iv)(C)	100.134(g)
100.8(b)(4)(iv)(D)	100.134(h)
100.8(b)(4)(iv)(E)	100.134(i)
100.8(b)(4)(iv)(F)	100.134(j)
100.8(b)(4)(v)	100.134(k)
100.8(b)(4)(vi)	100.134(l)
100.8(b)(4)(vii)	100.134(m)
100.8(b)(5)	100.135
100.8(b)(6)	100.136
100.8(b)(7)	100.137
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100.8(b)(9)	100.139
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100.8(b)(11)	100.141
100.8(b)(12)	100.142(a) through (d)
100.8(b)(12)(i)	100.142(e)
100.8(b)(12)(i)(A)(1)	100.142(e)(1)(i)
100.8(b)(12)(i)(A)(2)	100.142(e)(1)(ii)
100.8(b)(12)(i)(B)	100.142(e)(2)
100.8(b)(12)(i)(B)(1)	100.142(e)(2)(i)
100.8(b)(12)(i)(B)(2)	100.142(e)(2)(ii)
100.8(b)(12)(i)(B)(3)	100.142(e)(2)(iii)
100.8(b)(12)(i)(B)(4)	100.142(e)(2)(iv)
100.8(b)(12)(i)(B)(5)	100.142(e)(2)(v)
100.8(b)(12)(ii)	100.142(e)(3)
100.8(b)(13)	100.144
100.8(b)(14)	100.145
100.8(b)(15)	100.146
100.8(b)(16)	100.147
100.8(b)(16)(i)	100.147(a)
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100.8(b)(16)(iii)	100.147(c)
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100.8(b)(16)(vi)	100.147(f)
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100.8(b)(18)	100.149
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100.8(b)(18)(vi)	100.149(f)
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100.8(b)(19)	100.150
100.8(b)(20)	100.151
100.8(b)(21)(i)	100.152(a)
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100.8(b)(21)(iii)	100.152(c)
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100.8(b)(21)(iii)(B)	100.152(c)(2)
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100.8(b)(24)	100.143
100.8(c)	100.110(b) and 100.130(b)

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules do not have a significant economic impact on a substantial number of small entities. This certification is based on that fact that the final rules' only substantive change, eliminating the office building or facility exceptions to the definitions of "contribution" and "expenditure" for national party committees, affects only national party committees. The national party committees of the two major political parties are not small entities under 5 U.S.C. 601. The other provisions in these final rules have already been certified as not having any significant economic impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 100

Elections.

For the reasons set out in the Explanation and Justification, the Commission amends Chapter I of title II of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434(a)(11), 438(a)(8).

2. Section 100.7 is removed and reserved.

§ 100.7 [Removed and reserved].

3. Section 100.8 is removed and reserved.

§ 100.8 [Removed and reserved].

4. Part 100 is amended by adding new subparts B, C, D, and E to read as follows:

Subpart B—Definition of Contribution (2 U.S.C. 431(8))

Sec.

100.51 Scope.
100.52 Gift, subscription, loan, advance or deposit of money.
100.53 Attendance at a fundraiser or political event.
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100.77 Invitations, food, and beverages.
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100.81 Payment by corporations and labor organizations.
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100.83 Brokerage loans and lines of credit to candidates.
100.84 Office building for State, local, or district party committees or organizations.
100.85 Legal or accounting services to political party committees.

100.86 Legal or accounting services to other political committees.
100.87 Volunteer activity for party committees.
100.88 Volunteer activity for candidates.
100.89 Voter registration and get-out-the-vote activities for Presidential candidates ("coattails" exception).
100.90 Ballot access fees.
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Subpart D—Definition of Expenditure (2 U.S.C. 431(9))

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100.111 Gift, subscription, loan, advance or deposit of money.
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Subpart E—Exceptions to Expenditures

100.130 Scope.
100.131 Testing the waters.
100.132 News story, commentary, or editorial by the media.
100.133 Voter registration and get-out-the-vote activities.
100.134 Internal communication by corporations, labor organizations, and membership organizations.
100.135 Use of a volunteer's real or personal property.
100.136 Use of church or community room.
100.137 Invitations, food, and beverages.
100.138 Sale of food or beverages by vendor.
100.139 Unreimbursed payment for transportation and subsistence expenses.
100.140 Slate cards and sample ballots.
100.141 Payment by corporations and labor organizations.
100.142 Bank loans.
100.143 Brokerage loans and lines of credit to candidates.
100.144 Office building for State, local, or district party committees or organizations.
100.145 Legal or accounting services to political party committees.
100.146 Legal or accounting services to other political committees.
100.147 Volunteer activity for party committees.
100.148 Volunteer activity for candidate.
100.149 Voter registration and get-out-the-vote activities for Presidential Candidates ("coattails" exception).
100.150 Ballot access fees.
100.151 Recounts.
100.152 Fundraising costs for Presidential candidates.
100.153 Routine living expenses.
100.154 Candidate debates.

Subpart B—Definition of Contribution (2 U.S.C. 431(8))

§ 100.51 Scope.

(a) The term *contribution* includes the payments, services, or other things of value described in this subpart.

(b) For the purpose of this subpart, a contribution or payment made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual in accordance with 11 CFR 110.1(k).

§ 100.52 Gift, subscription, loan, advance or deposit of money.

(a) A gift, subscription, loan (except for a loan made in accordance with 11 CFR 100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution.

(b) For purposes of this section, the term *loan* includes a guarantee, endorsement, and any other form of security.

(1) A loan that exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR part 110 shall be unlawful whether or not it is repaid.

(2) A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. A loan, to the extent it is repaid, is no longer a contribution.

(3) Except as provided in paragraph (b)(4) of this section, a loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a loan by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

(4) A candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan. The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan that is used for the candidate's campaign.

(5) If a political committee makes a loan to any person, such loan shall be subject to the limitations of 11 CFR part 110. Repayment of the principal amount of such loan to such political committee shall not be a contribution by the debtor to the lender committee. Such repayment shall be made with funds that are subject to the prohibitions of 11 CFR 110.4(a) and part 114. The payment of interest to such committee by the debtor shall be a contribution only to the extent that the interest paid exceeds a commercially reasonable rate prevailing at the time the loan is made. All payments of interest shall be made from funds subject to the prohibitions of 11 CFR 110.4(a) and part 114.

(c) For purposes of this section, the term *money* includes currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instruments payable on demand.

(d)(1) For purposes of this section, the term *anything of value* includes all in-kind contributions. Unless specifically exempted under 11 CFR part 100, subpart C, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.

(2) For purposes of paragraph (d)(1) of this section, *usual and normal charge for goods* means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; and usual and normal charge for any services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

§ 100.53 Attendance at a fundraiser or political event.

The entire amount paid to attend a fundraiser or other political event and the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution.

§ 100.54 Compensation for personal services.

The payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose, except for

legal and accounting services provided under 11 CFR 100.74 and 100.75, is a contribution. No compensation is considered paid to any employee under any of the following conditions:

(a) *Paid on an hourly or salaried basis.* If an employee is paid on an hourly or salaried basis and is expected to work a particular number of hours per period, no contribution results if the employee engages in political activity during what would otherwise be a regular work period, provided that the taken or released time is made up or completed by the employee within a reasonable time.

(b) *Paid on commission or piecework basis.* No contribution results where an employee engages in political activity during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee's time is considered his or her own to use as he or she sees fit.

(c) *Vacation or earned leave time.* No contribution results where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time.

§ 100.55 Extension of credit.

The extension of credit by any person is a contribution unless the credit is extended in the ordinary course of the person's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. If a creditor fails to make a commercially reasonable attempt to collect the debt, a contribution will result. (See 11 CFR 116.3 and 116.4.) If a debt owed by a political committee is forgiven or settled for less than the amount owed, a contribution results unless such debt is settled in accordance with the standards set forth at 11 CFR 116.3 and 116.4.

§ 100.56 Office building or facility for national party committees.

A gift, subscription, loan, advance, or deposit of money or anything of value to a national party committee for the purchase or construction of an office building or facility is a contribution.

Subpart C—Exceptions to Contributions

§ 100.71 Scope.

(a) The term *contribution* does not include payments, services or other things of value described in this subpart.

(b) For the purpose of this subpart, a contribution or payment made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual in accordance with 11 CFR 110.1(k).

§ 100.72 Testing the waters.

(a) *General exemption.* Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.

(b) *Exemption not applicable to individuals who have decided to become candidates.* This exemption does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(4) The individual conducts activities in close proximity to the election or over a protracted period of time.

(5) The individual has taken action to qualify for the ballot under State law.

§ 100.73 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story:

(a) That represents a *bona fide* news account communicated in a publication of general circulation or on a licensed broadcasting facility; and

(b) That is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution.

§ 100.74 Uncompensated services by volunteers.

The value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a contribution.

§ 100.75 Use of a volunteer's real or personal property.

No contribution results where an individual, in the course of volunteering personal services on his or her residential premises to any candidate or to any political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity. For the purposes of this section, an individual's residential premises, shall include a recreation room in a residential complex where the individual volunteering services resides, provided that the room is available for use without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not a contribution.

§ 100.76 Use of church or community room.

No contribution results where an individual, in the course of volunteering personal services to any candidate or political committee of a political party, obtains the use of a church or community room and provides such room to any candidate for candidate-related activity or to any political committee of a political party for party-related activity, provided that the room is used on a regular basis by members of the community for noncommercial purposes and the room is available for use by members of the community without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not a contribution.

§ 100.77 Invitations, food, and beverages.

The cost of invitations, food and beverages is not a contribution where such items are voluntarily provided by

an individual volunteering personal services on the individual's residential premises or in a church or community room as specified at 11 CFR 100.65 and 100.66 to a candidate for candidate-related activity or to any political committee of a political party for party-related activity, to the extent that: The aggregate value of such invitations, food and beverages provided by the individual on behalf of the candidate does not exceed $1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed $2,000 in any calendar year.

§ 100.78 Sale of food or beverages by vendor.

The sale of any food or beverage by a vendor (whether incorporated or not) for use in a candidate's campaign, or for use by a political committee of a political party, at a charge less than the normal or comparable commercial rate, is not a contribution, provided that the charge is at least equal to the cost of such food or beverage to the vendor, to the extent that: The aggregate value of such discount given by the vendor on behalf of any single candidate does not exceed $1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed $2,000 in a calendar year.

§ 100.79 Unreimbursed payment for transportation and subsistence expenses.

(a) *Transportation expenses.* Any unreimbursed payment for transportation expenses incurred by any individual on behalf of any candidate or any political committee of a political party is not a contribution to the extent that:

(1) The aggregate value of the payments made by such individual on behalf of a candidate does not exceed $1,000 with respect to a single election; and

(2) The aggregate value of the payments made by such individual on behalf of all political committees of each political party does not exceed $2,000 in a calendar year.

(b) *Subsistence expenses.* Any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution.

§ 100.80 Slate cards and sample ballots.

The payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not a contribution. The payment of the portion of such costs allocable to Federal candidates must be made from funds subject to the limitations and prohibitions of the Act. If made by a political committee, such payments shall be reported by that committee as disbursements, but need not be allocated in committee reports to specific candidates. This exemption shall not apply to costs incurred by such a committee with respect to the preparation and display of listings made on broadcasting stations, or in newspapers, magazines, and similar types of general public political advertising such as billboards. *But see* 11 CFR 100.24, 104.17(a) and part 300, subpart B for exempt activities that also constitute Federal election activity.

§ 100.81 Payments by corporations and labor organizations.

Any payment made or obligation incurred by a corporation or a labor organization is not a contribution, if under the provisions of 11 CFR part 114 such payment or obligation would not constitute an expenditure by the corporation or labor organization.

§ 100.82 Bank loans.

(a) *General provisions.* A loan of money to a political committee or a candidate by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it:

(1) Bears the usual and customary interest rate of the lending institution for the category of loan involved;

(2) Is made on a basis that assures repayment;

(3) Is evidenced by a written instrument; and

(4) Is subject to a due date or amortization schedule.

(b) *Reporting.* Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a) and (d).

(c) *Endorsers and guarantors.* Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse, the provisions of 11 CFR 100.52(b)(4) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

(d) *Overdrafts.* For purposes of this section, an overdraft made on a checking or savings account of a political committee shall be considered a contribution by the bank or institution unless:

(1) The overdraft is made on an account that is subject to automatic overdraft protection;

(2) The overdraft is subject to a definite interest rate that is usual and customary; and

(3) There is a definite repayment schedule.

(e) *Made on a basis that assures repayment.* A loan, including a line of credit, shall be considered made on a basis that assures repayment if it is obtained using either of the sources of repayment described in paragraphs (e)(1) or (2) of this section, or a combination of paragraphs (e)(1) and (2) of this section:

(1)(i) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan, the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan, and the candidate or political committee provides documentation to show that the lending institution has a perfected security interest in the collateral. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit.

(ii) Amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, part 114 and part 115; or

(2) The lending institution making the loan has obtained a written agreement whereby the candidate or political

committee receiving the loan has pledged future receipts, such as public financing payments under 11 CFR part 9001 through part 9012, or part 9031 through part 9039, contributions, or interest income, provided that:

(i) The amount of the loan or loans obtained on the basis of such funds does not exceed the amount of pledged funds;

(ii) Loan amounts are based on a reasonable expectation of the receipt of pledged funds. To that end, the candidate or political committee must furnish the lending institution documentation, i.e., cash flow charts or other financial plans, that reasonably establish that such future funds will be available;

(iii) A separate depository account is established at the lending institution or the lender obtains an assignment from the candidate or political committee to access funds in a committee account at another depository institution that meets the requirements of 11 CFR 103.2, and the committee has notified the other institution of this assignment;

(iv) The loan agreement requires the deposit of the public financing payments, contributions and interest income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan agreement; and

(v) In the case of public financing payments, the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt.

(3) If the requirements set forth in this paragraph are not met, the Commission will consider the totality of the circumstances on a case-by-case basis in determining whether a loan was made on a basis that assures repayment.

(f) This section shall not apply to loans described in 11 CFR 100.73.

§ 100.83 Brokerage loans and lines of credit to candidates.

(a) *General provisions.* Any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, including an overdraft made on a personal checking or savings account of a candidate, provided that:

(1) Such loan is made in accordance with applicable law and under commercially reasonable terms; and

(2) The person making such loan makes loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit in the normal course of the person's business.

(b) *Endorsers and guarantors.* Each endorser, guarantor, or co-signer shall be deemed to have contributed that portion of the total amount of the loan derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, for which he or she agreed to be liable in a written agreement, including a loan used for the candidate's routine living expenses. Any reduction in the unpaid balance of the loan, advance, or line of credit shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan, advance, or line of credit for which each endorser, guarantor, or co-signer is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser, guarantor, or co-signer bears to the total number of endorsers or guarantors. However, if the spouse of the candidate is the endorser, guarantor, or co-signer, the spouse shall not be deemed to make a contribution if:

(1) For a secured loan, the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan that is used for the candidate's campaign; or

(2) For an unsecured loan, the amount of the loan used for in connection with the candidate's campaign does not exceed one-half of the available credit extended by the unsecured loan.

(c) *Routine living expenses.*

(1) A loan derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, that is used by the candidate solely for routine living expenses, as described in 11 CFR 100.153, does not need to be reported under 11 CFR part 104 provided that the loan, advance, or line of credit is repaid exclusively from the personal funds of the candidate or payments that would have been made irrespective of the candidacy pursuant to 11 CFR 113.1(g)(6).

(2) Any repayment, in part or in whole, of the loan, advance, or line of credit described in paragraph (c)(1) of this section by the candidate's authorized committee constitutes the personal use of campaign funds and is prohibited by 11 CFR 113.2.

(3) Any repayment or forgiveness, in part or in whole, of the loan, advance, or line of credit described in paragraph (c)(1) of this section by a third party (other than a third party whose payments are permissible under 11 CFR 113.1(g)(6)) or the lending institution is a contribution, subject to the limitations and prohibitions of 11 CFR parts 110 and 114, and shall be reported under 11 CFR part 104.

(4) Notwithstanding paragraph (c)(1) of this section, the portion of any loan or advance from a candidate's brokerage account, credit card account, home equity line of credit, or other line of credit that is used for the purpose of influencing the candidate's election for Federal office shall be reported under 11 CFR part 104.

(d) *Repayment.* The candidate's authorized committee may repay a loan from the candidate that is derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, directly to the candidate or the original lender. The amount of the repayment shall not exceed the amount of the principal used for the purpose of influencing the candidate's election for Federal office and interest that has accrued on that principal.

(e) *Reporting.* Loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate shall be reported by the candidate's principal campaign committee in accordance with 11 CFR part 104.

§ 100.84 Office building for State, local, or district party committees or organizations.

A donation made to a non-Federal account of a State, local, or district party committee or organization in accordance with 11 CFR 300.35 for the purchase or construction of an office building is not a contribution. A donation includes a gift, subscription, loan, advance, or deposit of money or anything of value.

§ 100.85 Legal or accounting services to political party committees.

Legal or accounting services rendered to or on behalf of any political committee of a political party are not contributions if the person paying for such services is the regular employer of the individual rendering the services and such services are not attributable to activities that directly further the election of any designated candidate for Federal office. For purposes of this section, a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for such services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

§ 100.86 Legal or accounting services to other political committees.

Legal or accounting services rendered to or on behalf of an authorized committee of a candidate or any other political committee are not contributions if the person paying for such services is the regular employer of the individual rendering the services and if such services are solely to ensure compliance with the Act or 26 U.S.C. 9001 et seq. and 9031 et seq. For purposes of this section, a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for these services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

§ 100.87 Volunteer activity for party committees.

The payment by a state or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the following conditions are met:

(a) *Exemption not applicable to general public communication or political advertising.* Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. For purposes of this paragraph, the term *direct mail* means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(b) *Allocation.* The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act. *But see* 11 CFR 100.24, 104.17(a), and part 300, subpart B for exempt activities that also constitute Federal election activity.

(c) *Contributions designated for particular Federal candidates.* Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of this paragraph, a contribution shall not be considered a designated contribution if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(d) *Distribution of materials by volunteers.* Such materials are distributed by volunteers and not by commercial or for-profit operations. For the purposes of this paragraph, payments by the party organization for travel and subsistence or customary token payments to volunteers do not remove such individuals from the volunteer category.

(e) *Reporting.* If made by a political committee such payments shall be reported by the political committee as disbursements in accordance with 11 CFR 104.3 but need not be allocated to specific candidates in committee reports.

(f) *State candidates and their campaign committees.* Payments by a State candidate or his or her campaign committee to a State or local political party committee for the State candidate's share of expenses for such campaign materials are not contributions, provided the amount paid by the State candidate or his or her committee does not exceed his or her proportionate share of the expenses.

(g) *Exemption not applicable to campaign materials purchased by national party committees.* Campaign materials purchased by the national committee of a political party and delivered to a State or local party committee, or materials purchased with funds donated by the national committee to such State or local committee for the purchase of such materials, shall not qualify under this exemption. Rather, the cost of such materials shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

§ 100.88 Volunteer activity for candidates.

(a) The payment by a candidate for any public office (including State or local office), or by such candidate's authorized committee, of the costs of that candidate's campaign materials that include information on or any reference to a candidate for Federal office and that are used in connection with volunteer activities (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) is not a contribution to such candidate for Federal office, provided that the payment is not for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising.

(b) The payment of the portion of the cost of such materials allocable to Federal candidates shall be made from contributions subject to the limitations and prohibitions of the Act. For purposes of this section, the term *direct mail* means any mailing(s) by commercial vendors or mailing(s) made from lists that were not developed by the candidate. *But see* 11 CFR 100.24, 104.17(a), and part 300, subparts D and E for exempt activities that also constitute Federal election activity.

§ 100.89 Voter registration and get-out-the-vote activities for Presidential candidates ("coattails" exception).

The payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party, is not a contribution to such candidate(s) provided that the following conditions are met:

(a) *Exemption not applicable to general public communication or political advertising.* Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of this paragraph, the term *direct mail* means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(b) *Allocation.* The portion of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act. *But see* 11 CFR 100.24, 104.17(a), and part 300, subpart B for exempt activities that also constitute Federal election activity.

(c) *Contributions designated for particular Federal candidates.* Such payment is not made from contributions designated to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of this paragraph, a contribution shall not be considered a designated contribution if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(d) *References to House or Senate candidates.* For purposes of this section, if such activities include references to any candidate(s) for the House or Senate, the costs of such activities that are allocable to that candidate(s) shall be a contribution to such candidate(s) unless the mention of such candidate(s) is merely incidental to the overall activity.

(e) *Phone banks.* For purposes of this section, payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not a contribution when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is permissible. The payment of the costs of such

professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR 104.3 if made by a political committee.

(f) *Reporting of payments for voter registration and get-out-the-vote activities.* If made by a political committee, such payments for voter registration and get-out-the-vote activities shall be reported by that committee as disbursements in accordance with 11 CFR 104.3, but such payments need not be allocated to specific candidates in committee reports except as provided in 11 CFR 100.78(d).

(g) *Exemption not applicable to donations by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote activities.* Payments made from funds donated by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote activities shall not qualify under this exemption. Rather, such funds shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

§ 100.90 Ballot access fees.

Payments made to any party committee by a candidate or the authorized committee of a candidate as a condition of ballot access are not contributions.

§ 100.91 Recounts.

A gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election, is not a contribution except that the prohibitions of 11 CFR 110.4(a) and part 114 apply.

§ 100.92 Candidate debates.

Funds provided to defray costs incurred in staging candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(f) are not contributions.

Subpart D—Definition of Expenditure (2 U.S.C. 431(9))

§ 100.110 Scope.

(a) The term *expenditure* includes payments, gifts or other things of value described in this subpart.

(b) For the purpose of this subpart, a payment made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual. To the extent that a payment made by an individual qualifies as a contribution, the provisions of 11 CFR 110.1(k) shall apply.

§ 100.111 Gift, subscription, loan, advance or deposit of money.

(a) A purchase, payment, distribution, loan (except for a loan made in accordance with 11 CFR 100.113 and 100.114), advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office is an expenditure.

(b) For purposes of this section, the term *payment* includes payment of any interest on an obligation and any guarantee or endorsement of a loan by a candidate or a political committee.

(c) For purposes of this section, the term *payment* does not include the repayment by a political committee of the principal of an outstanding obligation that is owed by such committee, except that the repayment shall be reported as disbursements in accordance with 11 CFR 104.3(b).

(d) For purposes of this section, the term *money* includes currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instrument payable on demand.

(e)(1) For purposes of this section, the term *anything of value* includes all in-kind contributions. Unless specifically exempted under 11 CFR part 100, subpart E, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for the goods or services is an expenditure. Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the expenditure is the difference between the usual and normal charge for the goods or services at the time of the expenditure and the amount charged the candidate or political committee.

(2) For the purposes of paragraph (e)(1) of this section, *usual and normal charge for goods* means the price of those goods in the market from which they ordinarily would have been purchased at the time of the expenditure; and usual and normal charge for services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

§ 100.112 Contracts, promises, and agreements to make expenditures.

A written contract, including a media contract, promise, or agreement to make an expenditure is an expenditure as of the date such contract, promise or obligation is made.

§ 100.113 Independent expenditures.

An independent expenditure that meets the requirements of 11 CFR 104.4 or part 109 is an expenditure, and such independent expenditure is to be reported by the person making the expenditure in accordance with 11 CFR 104.4 and part 109.

§ 100.114 Office building or facility for national party committees.

A payment, distribution, loan, advance, or deposit of money or anything of value made by, or on behalf of, a national party committee for the purchase or construction of an office building or facility is an expenditure.

Subpart E—Exceptions to expenditures

§ 100.130 Scope

(a) The term *expenditure* does not include payments, gifts, or other things of value described in this subpart.

(b) For the purpose of this subpart, a payment made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual. To the extent that a payment made by an individual qualifies as a contribution, the provisions of 11 CFR 110.1(k) shall apply.

§ 100.131 Testing the waters.

(a) *General exemption.* Payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such payments. *See* 11 CFR 101.3. If the individual subsequently becomes a candidate, the payments made are subject to the reporting requirements of the Act. Such expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the payments were made.

(b) *Exemption not applicable to individuals who have decided to become candidates.* This exemption does not apply to payments made for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign.

Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(4) The individual conducts activities in close proximity to the election or over a protracted period of time.

(5) The individual has taken action to qualify for the ballot under State law.

§ 100.132 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a new story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story:

(a) That represents a *bona fide* news account communicated in a publication of general circulation or on a licensed broadcasting facility; and

(b) That is part of a general pattern of campaign-related news account that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not an expenditure.

§ 100.133 Voter registration and get-out-the-vote activities.

Any cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote, except that corporations and labor organizations shall engage in such activity in accordance with 11 CFR 114.4 (c) and (d). *See also* 11 CFR 114.3(c)(4).

§ 100.134 Internal communications by corporations, labor organizations, and membership organizations.

(a) *General provision.* Any cost incurred for any communication by a membership organization, including a labor organization, to its members, or any cost incurred for any communication by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, except that the costs directly attributable to such a communication that expressly advocates the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed $2,000 per election, be reported to the Commission on FEC Form 7 in accordance with 11 CFR 104.6.

(b) *Definition of labor organization.* For purposes of this section, *labor organization* means an organization of any kind (any local, national, or international union, or any local or State central body of a federation of unions is each considered a separate labor organization for purposes of this section) or any agency or employee representative committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(c) *Definition of stockholder.* For purposes of this section, *stockholder* means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.

(d) *Definition of executive or administrative personnel.* For purposes of this section, executive or administrative personnel means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(1) This definition includes—

(i) Individuals who run the corporation's business, such as officers, other executives, and plant, division, and section managers; and

(ii) Individuals following the recognized professions, such as lawyers and engineers.

(2) This definition does not include—

(i) Professionals who are represented by a labor organization;

(ii) Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;

(iii) Former or retired personnel who are not stockholders; or

(iv) Individuals who may be paid by the corporation, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)–(1), of the corporation for the purpose of the collection of, and liability for, employee tax under 26 CFR 1.3402(a)–(1).

(3) Individuals on commission may be considered executive or administrative personnel if they have policymaking, managerial, professional, or supervisory responsibility and if the individuals are employees, within the meaning of 26 CFR 31.3401(c)–(1), of the corporation for the purpose of the collection of, and liability for, employee tax under 26 CFR 31.3402(a)–(1).

(4) The Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* and the regulations issued pursuant to such Act, 29 CFR part 541, may serve as a guideline in determining whether individuals have policymaking, managerial, professional, or supervisory responsibilities.

(e) *Definition of membership organization.* For purposes of this section membership organization means an unincorporated association, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(1) Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;

(2) Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;

(3) Makes its articles, bylaws, constitution or other formal organizational documents available to its members;

(4) Expressly solicits persons to become members;

(5) Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and

(6) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for Federal office.

(f) *Definition of members.* For purposes of this section, the term *members* includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

(1) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or

(2) Pay membership dues at least annually, of a specific amount predetermined by the organization; or

(3) Have a significant organizational attachment to the membership organization that includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

(g) *Additional considerations in determining membership.* Notwithstanding the requirements of paragraph (f) of this section, the Commission may determine, on a case-by-case basis, that persons who do not precisely meet the requirements of the general rule, but have a relatively enduring and independently significant financial or organizational attachment to the organization, may be considered members for purposes of this section. For example, student members who pay a lower amount of dues while in school, long term dues paying members who qualify for lifetime membership status with little or no dues obligation, and retired members may be considered members of the organization.

(h) *Members of local unions.* Notwithstanding the requirements of paragraph (f) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

(i) *National federation structures.* In the case of a membership organization that has a national federation structure or has several levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (f)(1), (2), or (3) of this section shall also qualify as a member of all affiliates for purposes of paragraphs (d) through (i) of this section. The factors set forth at 11 CFR 100.5(g)(2), (3) and (4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

(j) *Non-applicability of state law in determining status of membership organizations:* The status of a membership organization, and of members, for purposes of this section, shall be determined pursuant to paragraphs (d) through (i) of this section and not by provisions of state law governing unincorporated associations, trade associations, cooperatives, corporations without capital stock, or labor organizations.

(k) *Definition of election.* For purposes of this section, *election* means two separate processes in a calendar year, to each of which the $2,000 threshold described above applies separately. The first process is comprised of all primary elections for Federal office, whenever and wherever held; the second process is comprised of all general elections for Federal office, whenever and wherever held. The term election shall also include each special election held to fill a vacancy in a Federal office (11 CFR 100.2(f)) or each runoff election (11 CFR 100.2(d)).

(l) *Definition of corporation.* For purposes of this section, *corporation* means any separately incorporated entity, whether or not affiliated.

(m) *Reporting.* When the aggregate costs under this section exceed $2,000 per election, all costs of the communication(s) shall be reported on the filing dates specified in 11 CFR 104.6, and shall include the total amount expended for each candidate supported.

§ 100.135 Use of a volunteer's real or personal property.

No expenditure results where an individual, in the course of volunteering personal services on his or her residential premises to any candidate or political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity. For the purposes of this section, an individual's residential premises shall include a recreation room in a residential complex where the individual volunteering services resides, provided that the room is available for use without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not an expenditure.

§ 100.136 Use of a church or a community room.

No expenditure results where an individual, in the course of volunteering personal services to any candidate or political committee of a political party, obtains the use of a church or community room and provides such room to any candidate for candidate-related activity or to any political committee of a political party for party-related activity, provided that the room is used on a regular basis by members of the community for noncommercial purposes and the room is available for use by members of the community without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not an expenditure.

§ 100.137 Invitations, food, and beverages.

The cost of invitations, food, and beverages is not an expenditure where such items are voluntarily provided by an individual in rendering voluntary personal services on the individual's residential premises or in a church or community room as specified at 11 CFR 100.106 and 100.107 to a candidate for candidate-related activity or to a political committee of a political party for party-related activity, to the extent that: The aggregate value of such invitations, food and beverages provided by the individual on behalf of the candidate does not exceed $1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed $2,000 in any calendar year.

§ 100.138 Sale of food and beverages by vendor.

The sale of any food or beverage by a vendor (whether incorporated or not) for use in a candidate's campaign, or for use by a political committee of a political party, at a charge less than the normal or comparable commercial charge, is not an expenditure, provided that the charge is at least equal to the cost of such food or beverage to the vendor, to the extent that: The aggregate value of such discount given by the vendor on behalf of any single candidate does not exceed $1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed $2,000 in a calendar year.

§ 100.139 Unreimbursed payment for transportation and subsistence expenses.

(a) *Transportation expenses.* Any unreimbursed payment for transportation expenses incurred by any individual on behalf of any candidate or political committee of a political party is not an expenditure to the extent that:

(1) The aggregate value of the payments made by such individual on behalf of a candidate does not exceed $1,000 with respect to a single election; and

(2) On behalf of all political committees of each political party does not exceed $2,000 in a calendar year.

(b) *Subsistence expenses.* Any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incident to volunteer activity is not an expenditure.

§ 100.140 Slate cards and sample ballots.

The payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not an expenditure. The payment of the portion of such costs allocable to Federal candidates must be made from funds subject to the limitations and prohibitions of the Act. If made by a political party committee, such payments shall be reported by that committee as disbursements, but need not be allocated in committee reports to specific candidates. This exemption shall not apply to costs incurred by such a committee with respect to the preparation and display of listings made on broadcasting stations, or in newspapers, magazines, and similar types of general public political advertising such as billboards. *But see* 11 CFR 100.24, 104.17(a), and part 300, subpart B for exempt activities that also constitute Federal election activity.

§ 100.141 Payment by corporations and labor organizations.

Any payment made or obligation incurred by a corporation or labor organization is not an expenditure if under the provisions of 11 CFR part 114 such payment or obligation would not constitute an expenditure by the corporation or labor organization.

§ 100.142 Bank loans.

(a) *General provisions.* Repayment of a loan of money to a candidate or a political committee by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not an expenditure by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it:

(1) Bears the usual and customary interest rate of the lending institution for the category of loan involved;

(2) Is made on a basis that assures repayment;

(3) Is evidenced by a written instrument; and

(4) Is subject to a due date or amortization schedule.

(b) *Reporting.* Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a) and (d).

(c) *Endorsers and guarantors.* Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse, the provisions of 11 CFR 100.52(b)(4) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that the loan agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered an expenditure by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

(d) *Overdrafts.* For the purpose of this section, repayment of an overdraft made on a checking or savings account of a political committee shall be considered an expenditure unless:

(1) The overdraft is made on an account that is subject to automatic overdraft protection; and

(2) The overdraft is subject to a definite interest rate and a definite repayment schedule.

(e) *Made on a basis that assures repayment.* A loan, including a line of credit, shall be considered made on a basis that assures repayment if it is obtained using either of the sources of repayment described in paragraphs (e)(1) or (2) of this section, or a combination of paragraphs (e)(1) or (2) of this section:

(1) (i) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan; the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan; and the candidate or political committee provides documentation to show that the lending institution has a perfected security interest in the collateral. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit.

(ii) Amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, part 114 and part 115; or

(2) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts, such as public financing payments under 11 CFR part 9001 through part 9012 or part 9031 through 9039, contributions, or interest income, provided that:

(i) The amount of the loan(s) obtained the basis of such funds does not exceed the amount of pledged funds;

(ii) Loan amounts are based on a reasonable expectation of the receipt of pledged funds. To that end, the candidate or political committee must furnish the lending institution documentation, i.e., cash flow charts or other financial plans, that reasonably establish that such future funds will be available;

(iii) A separate depository account is established at the lending institution or the lender obtains an assignment from the candidate or political committee to access funds in a committee account at another depository institution that meets the requirements of 11 CFR 103.2, and the committee has notified the other institution of this assignment;

(iv) The loan agreement requires the deposit of the public financing payments, contributions, interest or other income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan; and

(v) In the case of public financing payments, the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt.

(3) If the requirements set forth in paragraph (e) of this section are not met, the Commission will consider the totality of circumstances on a case-by-case basis in determining whether a loan was made on a basis that assures repayment.

(f) This section shall not apply to loans described in 11 CFR 100.83 and 100.143.

§ 100.143 Brokerage loans and lines of credit to candidates.

Repayment of a loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, as described in 11 CFR 100.83, is not an expenditure.

§ 100.144 Office building for State, local, or district party committees or organizations.

A payment, distribution, loan, advance, or deposit of money or anything of value, made by, or on behalf of, a State, local, or district party committee or organization for the purchase or construction of an office building in accordance with 11 CFR 300.35 is not an expenditure.

§ 100.145 Legal or accounting services to political party committees.

Legal or accounting services rendered to or on behalf of any political committee of a political party are not expenditures if the person paying for such services is the regular employer of the individual rendering the services and such services are not attributable to activities that directly further the election of any designated candidate for Federal office. For purposes of this section, a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for such services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

§ 100.146 Legal or accounting services to other political committees.

Legal or accounting services rendered to or on behalf of an authorized committee of a candidate or any other political committee are not expenditures if the person paying for such services is the regular employer of the individual rendering such services and if the services are solely to ensure compliance with the Act or 26 U.S.C. 9001 et seq. and 9032 et seq. For purposes of this section, a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for these services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h). Expenditures for these services by a candidate certified to receive Primary Matching Funds under 11 CFR part 9034 do not count against such candidate's expenditure limitations under 11 CFR part 9035 or 11 CFR 110.8. Unless paid for with federal funds received pursuant to 11 CFR part 9005, disbursements for these services by a candidate who is certified to receive payments from the Presidential Election Campaign Fund under 11 CFR part 9005 do not count against that candidate's expenditure limitations under 11 CFR 110.8.

§ 100.147 Volunteer activity for party committees.

The payment by a state or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not an expenditure, provided that the following conditions are met:

(a) *Exemption does not apply to general public communications or political advertising.* Such payment is not for costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For the purposes of this paragraph, the term *direct mail* means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(b) *Allocation.* The portion of the cost of such materials allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act. *But see* 11 CFR part 300 for exempt activities that also constitute Federal election activity.

(c) *Contributions designated for Federal candidates.* Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of this paragraph, a contribution shall not be considered a designated contribution if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(d) *Distribution of materials by volunteers.* Such materials are distributed by volunteers and not by commercial or for-profit operations. For the purposes of this paragraph, payments by the party organization for travel and subsistence or customary token payments to volunteers do not remove such individuals from the volunteer category.

(e) *Reporting.* If made by a political party committee, such payments shall be reported by that committee as disbursements, in accordance with 11 CFR 104.3, but need not be allocated to specific candidates in committee reports.

(f) *State candidates and their campaign committees.* Payments by a State candidate or his or her campaign committee to a State or local political party committee for the State candidate's share of expenses for such campaign materials are not expenditures, provided the amount paid by the State candidate or his or her committee does not exceed his or her proportionate share of the expenses.

(g) Exemption not applicable to campaign materials purchased by national party committees. Campaign materials purchased by the national committee of a political party and delivered to a State or local party committee, or materials purchased with funds donated by the national committee to such State or local committee for the purchase of such materials, shall not qualify under this exemption. Rather, the cost of such materials shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

§ 100.148 Volunteer activity for candidate.

The payment by a candidate for any public office (including State or local office), or by such candidate's authorized committee, of the costs of that candidate's campaign materials that include information on or any reference to a candidate for Federal office and that are used in connection with volunteer activities (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) is not an expenditure on behalf of such candidate for Federal office, provided that the payment is not for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising. The payment of the portion of the cost of such materials allocable to Federal candidates shall be made from contributions subject to the limitations and prohibitions of the Act. For purposes of this section, the term direct mail means mailings by commercial vendors or mailings made from lists that were not developed by the candidate. *But see* 11 CFR 100.24, 104.17(a), and part 300, subparts D and E for exempt activities that also constitute Federal election activity.

§ 100.149 Voter registration and get-out-the-vote activities for Presidential candidates ("coattails" exception).

The payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party is not an expenditure for the purpose of influencing the election of such candidates provided that the following conditions are met:

(a) *Exemption not applicable to general public communication or political advertising.* Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of this paragraph, the term direct mail means any mailing(s) by a

commercial vendor or any mailing(s) made from commercial lists.

(b) *Allocation.* The portion of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act. *But see* 11 CFR 100.24, 104.17(a), and part 300, subpart B for exempt activities that also constitute Federal election activity.

(c) *Contributions designated for Federal candidates.* Such payment is not made from contributions designated to be spent on behalf of a particular candidate or candidates for Federal office. For the purposes of this paragraph, a contribution shall not be considered a designated contribution if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(d) *References to House or Senate candidates.* For purposes of this section, if such activities include references to any candidate(s) for the House or Senate, the costs of such activities that are allocable to that candidate(s) shall be an expenditure on behalf of such candidate(s) unless the mention of such candidate(s) is merely incidental to the overall activity.

(e) *Phone banks.* For purposes of this section, payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not an expenditure when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is permissible. The payment of the costs of such professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR 104.3 if made by a political committee.

(f) *Reporting of payments for voter registration and get-out-the-vote activities.* If made by a political committee, such payments for voter registration and get-out-the-vote activities shall be reported by that committee as disbursements, in accordance with 11 CFR 104.3 but such payments need not be allocated to specific candidates in committee reports except as provided in paragraph (d) of this section.

(g) *Exemption not applicable to donations by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote activities.* Payments made from funds donated by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote activities shall not qualify under this exemption. Rather, such funds shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

§ 100.150 Ballot access fees.

Amounts transferred by a party committee to another party committee or payments made to the appropriate State official of fees collected from candidates or their authorized committees as a condition of ballot access are not expenditures.

§ 100.151 Recounts.

A purchase, payment, distribution, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election, is not an expenditure except that the prohibitions of 11 CFR 110.4(a) and part 114 apply.

§ 100.152 Fundraising costs for Presidential candidates.

(a) *Costs incurred in connection with the solicitation of contributions.* Any costs incurred by a candidate or his or her authorized committee(s) in connection with the solicitation of contributions are not expenditures if incurred by a candidate who has been certified to receive Presidential Primary Matching Fund Payments, or by a candidate who has been certified to receive general election public financing under 26 U.S.C. 9004 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2) to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation applicable to the candidate. These costs shall, however, be reported as disbursements pursuant to 11 CFR part 104.

(b) *Definition of in connection with the solicitation of contributions.* For a candidate who has been certified to receive general election public financing under 26 U.S.C. 9004 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2), *in connection with the solicitation of contributions* means any cost reasonably related to fundraising activity, including the costs of printing and postage, the production of and space or air time for, advertisements used for fundraising, and the costs of meals, beverages, and other costs associated with a fundraising reception or dinner.

(c) *Limitation on costs that may be exempted.* For a candidate who has been certified to receive Presidential Primary Matching Fund Payments, the costs that may be exempted as fundraising expenses under this section shall not exceed 20% of the overall expenditure limitation under 11 CFR 9035.1, and shall equal the total of:

(1) All amounts excluded from the state expenditure limitations for exempt fundraising activities under 11 CFR 110.8(c)(2), plus

(2) An amount of costs that would otherwise be chargeable to the overall expenditure limitation but that are not chargeable to any state expenditure limitation, such as salary and travel expenses. See 11 CFR 106.2.

§ 100.153 Routine living expenses.

Payments by a candidate from his or her personal funds, as defined at 11 CFR 110.10(b), for the candidate's routine living expenses that would have been incurred without candidacy, including the cost of food and residence, are not expenditures. Payments for such expenses by a member of the candidate's family as defined in 11 CFR 113.1(g)(7), are not expenditures if the payments are made from an account jointly held with the candidate, or if the expenses were paid by the family member before the candidate became a candidate.

§ 100.154 Candidate debates.

Funds used to defray costs incurred in staging candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(f) are not expenditures.

Dated: July 26, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–19339 Filed 8–2–02; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin Liquid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by First Priority, Inc. The ANADA provides for oral use of an ivermectin solution in sheep for the treatment and control of various internal parasites.

DATES: This rule is effective August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123, filed ANADA 200–327 for PRIVERMECTIN (ivermectin) Drench for Sheep. The application provides for oral use of a 0.08 percent ivermectin solution in sheep for the treatment and control of various internal parasites. First Priority's PRIVERMECTIN Drench for Sheep is approved as a generic copy of Merial Limited's IVOMEC Drench for Sheep, approved under NADA 131–392. ANADA 200–327 is approved as of May 15, 2002, and the regulations are amended in § 520.1195 (21 CFR 520.1195) to reflect the approval. The basis of approval is discussed in the freedom of information summary. Section 520.1195 is also being amended to correctly describe the concentration of the product and to incorporate 21 CFR 520.1194 in a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1194 [Removed]

2. Section 520.1194 *Ivermectin drench* is removed.

3. Section 520.1195 is revised to read as follows:

§ 520.1195 Ivermectin liquid.

(a) *Specifications*—(1) Each milliliter (mL) contains 10 milligrams (mg) ivermectin.

(2) Each mL of micellar solution contains 0.8 mg ivermectin.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter.

(1) Nos. 050604, 051259, 058829, and 059130 for use of product described in paragraph (a)(1) of this section as in paragraph (e)(1) of this section.

(2) Nos. 050604 and 058829 for use of product described in paragraph (a)(2) of this section as in paragraph (e)(2) of this section.

(c) *Related tolerances.* See § 556.344 of this chapter.

(d) *Special considerations.* See § 500.25 of this chapter.

(e) *Conditions of use*—(1) *Horses*—(i) *Amount.* 200 micrograms (mcg) per kilogram (/kg) of body weight as a single dose by stomach tube or as an oral drench.

(ii) *Indications for use.* For the treatment and control of large strongyles (*Strongylus equinus* (adult), *S. vulgaris* (adult and arterial larval stages), *S. endentatus* (adult and migrating tissue stages), *Triodontophorus* spp. (adult)); small strongyles, including those resistant to some benzimidazole class compounds (*Cyathostomum* spp. (adult and fourth-stage larvae), *Cylicocyclus* spp., *Cylicodontophorus* spp., *Cylicostephanus* spp.); pinworms (*Oxyuris equi* (adult and fourth-stage larvae)); ascarids (*Parascaris equorum* (adult and third- and fourth-stage larvae)); hairworms (*Trichostongylus axei*(adult)); large-mouth stomach worms (*Habronema muscae* (adult)); stomach bots (*Gastrophilus* spp. (oral and gastric stages)); lungworms (*Dictyocaulus arnfieldi* (adult and fourth-stage larvae)); intestinal threadworms (*Strongyloides westeri* (adult)); summer sores caused by *Habronema* and *Draschia* spp. cutaneous third-stage larvae; and dermatitis caused by neck threadworm microfilariae (*Onchocerca* spp.).

(iii) *Limitations.* Do not use in horses intended for food purposes. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Sheep*—(i) *Amount.* 200 mcg/kg (3 mL/26 pounds) of body weight as a single dose oral drench.

(ii) *Indications for use.* For treatment and control of the adult and fourth-stage larvae of gastrointestinal roundworms (*Haemonchus contortus, H. placei* (adults only), *Ostertagia circumcincta, Trichostrongylus axei, T. colubriformis, Cooperia oncophora* (adults only), *C. curticei, Oesophagostomum columbianum, O. venulosum*(adults only), *Nematodirus battus, N. spathiger, S. papillosus* (adults only), *Chabertia ovina* (adult only), *Trichuris ovis* (adults only)); lungworms (*D. filaria*); and all larval stages of the nasal bot *Oestrus ovis.*

(iii) *Limitations.* For use in sheep only. Do not use in other animal species as severe adverse reactions, including fatalities in dogs, may result. Do not treat sheep within 11 days of slaughter.

Dated: July 17, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–19729 Filed 8–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Copper River, Afognak Bay, Southeastern Alaska Rivers

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect sockeye salmon escapement in Afognak Lake and in the Copper River, while still providing for a subsistence harvest opportunity. It also suspends the coho harvest regulations for three rivers in Southeastern Alaska where there are legal uncertainties and a possible conflict with an international treaty. The fishing schedules and closures will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 7, 2002. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and

shellfish for subsistence uses during the 2002 regulatory year.

DATES: The Afognak Bay action is effective June 13, 2002, through August 12, 2002. The second Copper River action is effective June 2, 2002, through July 31, 2002. The third Copper River action is effective June 8, 2002, through August 7, 2002. The fourth Copper River action is effective June 13, 2002, through August 12, 2002. The fifth Copper River action is effective June 20, 2002, through August 12, 2002. The sixth Copper River action is effective June 29, 2002, through August 28, 2002. The seventh Copper River action is effective July 8, 2002, through September 7, 2002. The eighth Copper River action is effective July 10, 2002, through August 31, 2002. The suspension of the coho harvest for the Stikine Taku and Alsek Rivers is effective July 10, 2002, through February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2002 fishing seasons, harvest limits, and methods and means were published on February 7, 2002, (67 FR 5890). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These adjustments (including restricted subsistence fishing schedules) are necessary because of predictions of potentially weak returns of chinook, summer-run chum, and fall-run chum salmon in the Yukon River drainage, poor runs of chinook and chum salmon in the Kuskokwim River drainage, and the need to manage the sockeye salmon run in the Chitina Subdistrict of the Copper River based on in-season run assessments. These actions are authorized and in accordance with 50 CFR 100.19(d)–(e) and 36 CFR 242.19(d)–(e).

Afognak Bay

The 2002 return of sockeye salmon to the Afognak River drainage is one of the lowest observed since 1986. Current weir counts and run timing allow managers to project that the total escapement may be substantially below the minimum escapement goal of 40,000 fish. In response to this poor return at this time, the Alaska Department of Fish and Game (ADF&G) has closed the State sport, commercial, and subsistence fisheries targeting sockeye salmon within Afognak Bay waters. After consultation with subsistence users and ADF&G managers, closure of the Federal subsistence seine and gill net fishery for salmon within the Afognak Bay waters of the Alaska Maritime National Wildlife Refuge is the responsible course of action as all remaining sockeye salmon entering Afognak Bay are required to achieve spawning escapement goals. Subsistence fishing with rod and reel for all species except sockeye salmon continues to be permitted. This closure action is taken to ensure the conservation of the Afognak River sockeye salmon stock.

Copper River—Chitina Subdistrict

In December 2001, the Board adopted regulatory proposals establishing a new Federal subsistence fishery in the Chitina Subdistrict of the Copper River. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State also conducts a subsistence fishery in this Subdistrict that is open to all Alaska residents.

Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals. A run that approximates the pre-season forecast will allow fishing to proceed similar to the pre-season schedule with some adjustments made to fishing time based on in-season data. Adjustments to the preseason schedule are expected as a normal function of an abundance-based management strategy. State and Federal managers, reviewing and discussing all available in-season information, will make these adjustments.

While Federal and State regulations currently differ for this Subdistrict, the Board indicated that Federal in-season management actions regarding fishing periods were expected to mirror State actions for the 2002 season. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. This preseason schedule is intended to distribute the harvest throughout the salmon run and provide salmon for

upriver subsistence fisheries and the spawning escapement. State and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2002. No deviation from this date is anticipated.

Special Actions 2—8, adopted the changing State preseason schedule for the Federal subsistence fishery, adjusting the weekly or daily harvest period to protect the sockeye salmon run or to provide additional harvest opportunity as more fish entered the river. Each Special Action superseded the previous one. Continuous fishing with no additional adjustments is presently anticipated until the regularly scheduled end of the season (September 30, 2002.)

Southeastern Alaska Rivers

In December 2001, the Federal Subsistence Board adopted a proposal that established regulations for the taking of coho salmon throughout Southeast Alaska including on the Stikine, Taku and Alsek Rivers. The salmon resources on these three transboundary rivers are managed under the auspices of the Pacific Salmon Treaty (PST), an agreement for management of salmon stocks that are harvested by both the United States and Canada. The most recent agreement (the 1999 PST Revised Annexes) negotiated by the Pacific Salmon Commission, the administrative and management authority of the PST, has been interpreted as prohibiting the establishment of new fisheries until abundance based management plans are developed. There are legal uncertainties regarding the exact relationship of Title VIII of ANILCA to the PST and whether these fisheries are a matter of domestic allocation or constitute new fisheries. Action by the Federal Subsistence Board in December 2001 to establish a subsistence fishery in the transboundary rivers may violate the principles in Annex IV, Chapter 1 of the PST. The Board, therefore, acted to suspend the harvest for the remainder of the regulatory year for that portion of the requirements (50 CFR 100.27(i)(13)(vi) and 36 CFR 242.27(i)(13)(vi)) that allows a subsistence coho salmon fishery within the three transboundary rivers. The Board will continue to work within established international protocols through the PSC and the Transboundary Panel to provide future subsistence fisheries in these three transboundary rivers.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these emergency closures are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: July 16, 2002.

Kenneth E. Thompson,

Subsistence Program Leader, USDA-Forest Service.

Dated: July 17, 2002.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 02–19620 Filed 8–2–02; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[OH1521; FRL72553]

Completeness Status of Oxides of Nitrogen Regulations; Submission of a Complete Plan by the State of Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; completeness determination.

SUMMARY: EPA is notifying the public that it has made a finding that Ohio's July 11, 2002 submission regarding State Implementation Plan (SIP) revisions for the reduction of oxides of nitrogen (NO_X) is a complete submission under the Clean Air Act. Ohio's SIP revision was submitted to satisfy EPA's October 27, 1998 regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call". The NO_X SIP Call originally required 22 states and the District of Columbia to submit enforceable SIP measures to control NO_X emissions. The intended effect of a NO_X SIP revision is to reduce emissions of NO_X in order to help attain the national ambient air quality standard for ozone.

On December 26, 2000, EPA determined that Ohio, along with several other states, had failed to submit a SIP in response to the NO_X SIP Call, thus starting an 18-month clock for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP) within 24 months. On July 11, 2002, Ohio submitted a NO_X SIP and EPA has determined that Ohio's SIP submission is complete. Therefore, through this rule, EPA is notifying the public that the sanctions clock as it pertains to Ohio is terminated.

This determination is limited to the completeness of Ohio's submission and is not an approval of Ohio's plan. A determination as to the adequacy of Ohio's plan will be made at a later date and only after a thorough review of Ohio's submission by EPA personnel and the completion of rule and comment rulemaking.

EFFECTIVE DATE: August 5, 2002.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Regulation Development Section, Air Programs Branch, Air and Radiation Division (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6084. Copies of documents relative to this action are available at the above listed contact for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day.

SUPPLEMENTARY INFORMATION:

The contents of this rule are listed in the following outline:

I. Background
  A. What Criteria are Used to Judge the Submission Complete?
  B. What is the Next Step?
II. What Action is EPA Taking Today?
III. Administrative Requirements

I. Background

Throughout this document, whenever "we," "us" or "our" is used, we mean EPA.

This rule is simply an announcement that the NO_X SIP revision submitted by Ohio to EPA on July 11, 2002 has been found to be complete. NO_X control plans are required from certain states, including Ohio, as a result of EPA's NO_X SIP Call that found that certain upwind states were significantly contributing to ozone transport and preventing east coast states from attaining the ambient ozone air quality standard (63 FR 57356, October 27, 1998). Sources within states affected by this finding are large emitters of NO_X which, using available technology, can control NO_X emissions. These large emitters include coal fired electric generating units (EGUs) and industrial boilers (non-EGUs).

EPA's SIP Call established emission budgets, for all of the listed states (including the District of Columbia). Listed states are required to demonstrate in their NO_X plans that they can meet the EPA specified NO_X emissions budget. A major feature of the plans are allowance trading programs which states, including Ohio, have included to provide flexibility for sources to meet the strict emission reduction requirements of a state plan.

After a series of court challenges, the deadline by which most of the 22 states and the District of Columbia were required to submit NO_X SIP revisions was extended to October 30, 2000. *See* 65 FR 81366, December 26, 2000 (discussion of legal history surrounding EPA's NO_X SIP Call). Several states, including the State of Ohio, failed to submit NO_X plans by the October 2000 deadline. As a result, EPA published a finding of this failure in the **Federal Register** on December 26, 2000 (65 FR 81366). This finding triggered, among

other things, a mandatory application of sanctions in the ozone non-attainment areas of states that did not submit a plan. The sanctions were scheduled to take effect within 18 months of January 25, 2001, the effective date of EPA's December 2000 finding. The triggered sanctions included, among other things, the imposition of 2:1 offsets on new source construction in ozone non-attainment areas.

On July 11, 2002, Ohio submitted a NO_X plan to EPA. EPA has reviewed the plan and has determined that it contains all of the required elements for a complete submission. Therefore, EPA is taking action to stop the previously scheduled sanctions from taking effect in Ohio.

A. What Criteria Are Used To Judge the Submission Complete?

The criteria by which we determined the submission to be complete are outlined in 40 CFR part 51, appendix V, Criteria for Determining the Completeness of Plan Submissions. These criteria include: (1) A formal letter of submittal from the governor or his designee requesting approval; (2) approved rules or regulations noting the dates of adoption or effective date of the plan; (3) evidence that the state has legal authority to adopt and implement the plan; (4) a copy of the regulation or rule; signed, stamped, and dated by the appropriate state official; (5) evidence that the procedural requirements of the state were followed; (6) evidence of public notice; (7) evidence of public hearings; (8) compilation of public comments; (9) inventory of affected sources; and (10) a budget demonstration. EPA has determined that the State of Ohio's July 11, 2002 submission, contains all of these elements.

B. What Is the Next Step?

EPA is taking the next step to perform a detailed technical review of Ohio's rules and budget demonstration to determine if Ohio's plan is approvable. EPA intends to publish the results of this review at a later date. Ohio has indicated, in its effort to develop a State plan, that it wishes to have an approved SIP for the control of NO_X emissions from affected sources and intends to work diligently to that end. EPA, therefore, will continue to work with Ohio towards the goal of approving Ohio's plan..

II. What Action Is EPA Taking Today?

Today, EPA is announcing to the public that Ohio has submitted a complete NO_X State implementation plan in response to EPA's NO_X SIP Call, originally published on October 27, 1998 (63 FR 57356). We are also announcing that all of the potential sanctions, some of which were scheduled to take effect on July 25, 2002, in Ohio non-attainment areas, will not take effect because we are affirmatively determining that Ohio has corrected the original deficiency (failure to file a plan) that formed the basis of EPA's December 2000 finding (65 FR 81366). EPA will take action regarding the approval or disapproval of Ohio's submission at a later date.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely finds that a State submission meets Federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule finds that a State submission is complete and as such does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely finds that a state submission is complete, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This document is final agency action but is not subject to notice-and-comment requirements of the Administrative Procedures Act (APA), 5 U.S.C. 553(b). The EPA invokes, consistent with past practice (for example, 61 FR 36294), the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). The USEPA believes that because of the limited time provided to make findings of failure to submit and findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice-and-comment rulemaking. Notice and comment are unnecessary because no significant EPA judgment is involved in making a nonsubstantive findings of a SIP submission or elements of SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. The APA also provides that notice and comment may not be necessary where a rule relieves a restriction. Finally, notice and comment rulemaking would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272, n.17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under the section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Authority: 42 U.S.C. 7401–7671q.

Dated: July 23, 2002.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 02–19692 Filed 8–2–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 182–4196a; FRL–7255–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Direct Final Rule; Motor Vehicle Inspection and Maintenance Program—Request for Delay in the Incorporation of On-Board Diagnostics Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to our receipt of an adverse comment, EPA is withdrawing the direct final rule to approve Pennsylvania?s request for a one-year extension of the federal deadline to commence testing of automotive on-board diagnostic (OBD) systems as part of its motor vehicle inspection and maintenance program. In the direct final rule published on June 6, 2002 (67 FR 38894), EPA stated that if we received adverse public comment by July 8, 2002, the rule would be withdrawn and would not take effect. EPA subsequently received a letter of adverse comment. EPA will address the comments received in a subsequent final action based upon the proposed action also published on June 6, 2002 (67 FR 38924). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The Direct final rule is withdrawn as of August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, via mail at: Air Quality Planning and Information Services Branch, Mail Code 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or via telephone at: (215) 814–2176; or via e-mail at: *rehn.brian@epa.gov*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone.

Dated: July 29, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

Accordingly, the addition of §52.2022(f) is withdrawn as of August 5, 2002.

[FR Doc. 02–19693 Filed 8–2–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC 96–45; FCC 02–196]

Federal-State Joint Board on Universal Service: Children's Internet Protection Act

AGENCY: Federal Communications Commission.

ACTION: Suspension of final rules; interim procedures; notice of modification of collection of information.

SUMMARY: In this document, the Commission adopts interim measures for the schools and libraries universal service support mechanism in response to the decision issued by the United States District Court for the Eastern District of Pennsylvania. The court held that section 1721(b) of the Children's Internet Protection Act (CIPA), codified at 47 U.S.C. 254(h)(6), was facially unconstitutional and enjoined the Commission from withholding federal funds from any public library for failure to comply with the Internet-filtering requirements of the provision. In keeping with the court's injunction, we suspend enforcement of those portions of § 54.520 of our rules implementing the provision pending final judicial action by the Supreme Court. We also adopt certain specific measures to ensure that libraries that have applied for discounted services under the schools and libraries support mechanism are not denied such discounts because of lack of compliance with the unconstitutional CIPA requirements. Finally, we direct the Universal Service Administrative Company to implement the necessary changes to program procedures and forms. We take these steps to respond promptly to the court's mandate and to ensure that the schools and libraries universal service support mechanism continues to operate in accordance with federal law.

EFFECTIVE DATE: August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, Attorney-Advisor, (202) 418–7369.

SUPPLEMENTARY INFORMATION: This document, adopted and released on June 28, 2002, will be available for public inspection during regular business hours at the FCC Reference Information Center, Room CY–A257, at the Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. The complete text is available through the Commission's duplicating contractor: Qualex International, Portals II, 445 12th Street, S.W., Room CY–B402, Washington, DC 20554, telephone 202–863–2898, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com*.

Synopsis of Order

1. Pending Supreme Court action, we suspend enforcement against libraries of those sections of 47 CFR 54.520 that were adopted to implement 47 U.S.C. 254(h)(6). Specifically, we suspend enforcement of 47 CFR 54.520(c)(2)(i) and (iii), 54.520(c)(3), and 54.520(d) as they apply to all libraries, to the extent that these provisions require any library to filter or certify to such filtering under 47 U.S.C. 254(h)(6). We further suspend enforcement of 47 CFR 54.520(g)(1) as it applies to all libraries.

2. In addition, we direct the Schools and Libraries Division (SLD) of the Administrator to take the following specific actions to effectuate the principle that library applicants not be penalized for non-compliance with section 254(h)(6). First, SLD shall accept without penalty all FCC Forms 486 from Funding Year 4 library applicants that have not previously filed their FCC Forms 486 for a period lasting 120 days from the release date of this Order or the release date of a funding commitment decision letter, whichever is later. If a library applicant files an FCC Form 486 after that period, the normal 120 day rule shall be applied to the applicant's service requests, limiting funding to services received on or after the date 120 days prior to the postmark of the FCC Form 486.

3. Second, for those Funding Year 2001 library applicants that filed an FCC Form 486 after the October 28, 2001 deadline, SLD shall not apply any penalty for having missed the October

28, 2001 deadline, but such FCC Forms 486 shall still be subject to the normal 120 day rule.

4. Third, for those Funding Year 2001 library applicants that filed an FCC Form 486 by October 28, 2001 without completing the CIPA certifications, SLD shall accept these forms and process them without penalty for the lack of certification.

5. Fourth, SLD shall determine if there are consortia applicants that include library members and that either filed their FCC Forms 486 late or reduced the shared discount rate requested by eliminating the library members through an FCC Form 500. In the former case, SLD shall deal with these consortia in a manner consistent with the measures specified above. In the latter case, the consortia shall be given an opportunity, within 120 days of the release date of this Order, to request funded discounts at the original rate requested.

6. The measures specified above shall be taken only for library applicants. Because the court's decision does not address the constitutionality of the CIPA requirements as they apply to schools, all of the CIPA requirements as codified at sections 254(h)(5) and 254(l) and implemented by the Commission's rules remain in effect for schools. This includes schools that are members of consortia, including consortia comprised of both schools and libraries.

7. In addition, because the court's decision holds invalid only the filtering requirements set forth in section 254(h)(6) and does not address the validity of section 254(l), section 254(l) remains in effect with respect to libraries. Because the current FCC Form 486 and FCC Form 479 do not permit library applicants to certify to compliance only with section 254(l) without also certifying to compliance with section 254(h)(6), a change in these forms will be necessary so that libraries may certify to compliance with section 254(l) only. We therefore direct the Administrator, in consultation with the Bureau, to make any changes necessary to the procedures and to FCC Form 486 and FCC Form 479 consistent with this Order and the court's decision.

8. Accordingly, IT IS ORDERED that, pursuant to the authority of sections 1–5 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, and 254, and the Children's Internet Protection Act, Public Law 106–554 §§ 1701 *et seq.* as codified at 47 U.S.C. 254(h) and (l), this Order is ADOPTED. The modifications to a collection of information contained within this Report and Order is contingent upon approval by the Office of Management and Budget.

9. IT IS FURTHER ORDERED that enforcement of §§ 54.520(c)(2)(i) and (iii), 54.520(c)(3), 54.520(d), and 54.520(g)(1) of the Commission's rules, 47 CFR 54.520, as they apply to all libraries and to the extent that they require any library to filter or certify to such filtering under 47 U.S.C. 254(h)(6), is SUSPENDED consistent with the terms of this Order.

10. IT IS FURTHER ORDERED that AUTHORITY IS DELEGATED to the CHIEF OF THE WIRELINE COMPETITION BUREAU pursuant to section 5(c) of the Communications Act of 1934, 47 U.S.C. 155(c), to modify any forms that are necessary to implement the decisions adopted in this Order.

11. IT IS FURTHER ORDERED that THIS ORDER IS EFFECTIVE August 5, 2002. Good cause exists to make this effective immediately upon publication in the **Federal Register**. The actions we take in this Order are intended to bring implementation of the CIPA into compliance with the judgment of the federal court. It is necessary that this Order take effect as soon as possible in order to best fulfill this purpose.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54–UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. The following note is added to § 54.520:

§ 54.520 Children's Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

* * * * *

Note to § 54.520: Enforcement of paragraphs (c)(2)(i) and (iii), (c)(3), (d), and (g)(1), as they apply to all libraries and to the extent that they require any library to filter or to certify to such filtering under 47 U.S.C. 254(h)(6), is suspended as of August 5, 2002.

[FR Doc. 02–19645 Filed 8–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1777, MB Docket No. 01–23, RM–9960]

Digital Television Broadcast Service; Ontario, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of USA Station Group Partnership of Southern California, licensee of noncommercial station KFTR–TV, substitutes DTV channel 29c for DTV channel 47c at Ontario, California. *See* 16 FCC Rcd 2276 (2001). DTV channel 29c can be allotted to Ontario in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 34–13–37 N. and 118–03–58 W. with a power of 155 kW, HAAT of 927 meters and with a DTV service population of 12,982,000.

With this action, this proceeding is terminated.

DATES: *Effective* September 12, 2002.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 01–23, adopted July 23, 2002, and released July 29, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Accordingly, Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the DTV Table of Allotments under California, is

amended by removing DTV channel 47c and adding DTV channel 29c at Ontario.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–19490 Filed 8–2–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.; I.D. 073002A]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 3 Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the Quarter 3 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in these states north of 35°15.3′ N. lat. for the remainder of the 2002 Quarter 3 quota period (through September 30, 2002). Regulations governing the black sea bass fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3′ N. lat.

DATES: Effective 0001 hrs local time, August 6, 2002, through 2400 hrs local time, September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, at (978) 281–9279.

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods, based upon percentages of the annual quota. The Quarter 3 (July through September) commercial quota is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota is described in § 648.140.

The total commercial quota for black sea bass for the 2002 calendar year was initially set at 3,332,000 lb (1,511,370 kg) and then adjusted downward to 3,294,758 lb (1,494,477 kg) for research quota set-asides (66 FR 66351; December 26, 2001). The Quarter 3 period quota, which is equal to 12.33 percent of the annual commercial quota, is 406,244 lb (184,269 kg). The quota allocation was adjusted downward to compensate for 2001 Quarter 3 landings in excess of the 2001 Quarter 3 quota, consistent with the procedures specified at § 648.140. The final adjusted 2002 Quarter 3 quota is 400,101 lb (181,483 kg).

The Regional Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial black sea bass quota for each quota period using dealer reports, state data, and other available information to determine when the commercial quota has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the Quarter 3 period, north of 35°15.3′ N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota for the 2002 Quarter 3 period has been harvested.

The regulations at § 648.4(b) provide that Federal black sea bass moratorium permit holders agree, as a condition of the permit, not to land black sea bass in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for black sea bass is available. The Regional Administrator has determined that the Quarter 3 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, August 6, 2002, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.3′ N. lat., by vessels holding commercial Federal fisheries permits are prohibited through September 30, 2002. The 2002 Quarter 4 period for commercial black sea bass harvest will open on October 1, 2002. Effective August 6, 2002, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders who land in coastal states from Maine through North Carolina, north of 35°15.3′ N. lat., for the remainder of the Quarter 3 period (through September 30, 2002).

The regulations at § 648.4(b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′N. lat., any vessel owners who hold valid commercial permits for both the black sea bass and the NMFS Southeast Region snapper-grouper fisheries may surrender their black sea bass moratorium permit by certified mail addressed to the Regional Administrator (see table 1 at § 600.502) and fish pursuant to their snapper-grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19688 Filed 8–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 073002B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific ocean perch in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the Pacific ocean perch 2002 total

allowable catch (TAC) in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 31, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC allocation of Pacific ocean perch for the Western Regulatory Area was established as 2,610 metric tons by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 6, 2002).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to overharvesting the allocation of the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19687 Filed 7–31–02; 3:17 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 01–067–1]

Viruses, Serums, Toxins, and Analogous Products; Determination of Moisture Content in Desiccated Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations for the determination of moisture content in desiccated biological products to specify that such determinations be made using the harmonized gravimetric method adopted by the International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products that expresses moisture content as the percentage of weight a product loses during a drying cycle, and to require that the maximum percentage of moisture permitted for a satisfactory test must be specified in a filed Outline of Production. We are proposing this change in order to replace the variety of tests for moisture determination that are currently described by manufacturers in Outlines of Production filed with the Animal and Plant Health Inspection Service with a test recognized as an international standard by scientific experts and regulatory authorities in the United States, Japan, and the European Union. In addition, we are proposing to amend sections of the regulations pertaining to general requirements for live bacterial vaccines and general requirements for live virus vaccines to specify the gravimetric method when testing for moisture content. These actions would update the regulations by providing a uniform method of determining moisture content in desiccated products and ensure the stability of that product during its dating period.

DATES: We will consider all comments that we receive on or before October 4, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–067–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–067–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–067–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief of Operational Support, Licensing and Policy Development, Center for Veterinary Biologics, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD, 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 113 (referred to below as the regulations) contain requirements for the preparation and testing of certain veterinary biological products. Section 113.29 of the regulations sets forth the requirement for determination of moisture content in desiccated biological products.

In this document, we are proposing to amend the regulations regarding the determination of moisture content in desiccated biological products. Residual moisture in desiccated biological products is related to the stability of these products during their dating period. Under the current regulations in § 113.29, a uniform method for determining residual moisture is not prescribed. Rather, biologics manufacturers establish an acceptable range for moisture for each of their products and test for moisture content using approved procedures specified in a filed Outline of Production. This allows biologics manufacturers to utilize test procedures that may be unique to specific products.

Three common methods are generally recognized for use in determining residual moisture:

- The titrimetric method, also known as the Karl Fischer method, which involves titration of the water content of a sample and comparison with a standard curve that has been created by titrating different volumes of water;
- The azeotropic method, which measures change in the composition (weight) of a mixture after it is boiled under a given pressure; and
- The gravimetric method, which expresses residual moisture as a percentage of weight a product loses during a drying cycle.

Although the gravimetric method or some variation thereof is used by most of the veterinary biologics manufacturers licensed by the U.S. Department of Agriculture (USDA) to test for residual moisture, the other methods may also be used if they are prescribed as a required test by regulatory authorities in other countries that receive these products as exports. Some manufacturers may be using two or more test methods in order to satisfy the regulatory requirements of other countries.

Currently, each manufacturer describes its own test for moisture content in its filed Outline of Production. Because of the variety of assay procedures specified in Outlines of Production and the conditions that exist in the different laboratories performing the procedures, even a subtle difference in conditions or technique can cause large variations in measured moisture content and raise questions concerning the stability of the

product. When performing moisture determinations, control of all critical factors that may affect an assay is important. The validity of the assay and the quality of the product during its dating period are greatly dependent on control of all factors critical to the assay. The use of a uniform method for determining the moisture content would allow for the control of all the critical factors that are part of the assay.

Therefore, in an attempt to harmonize residual moisture testing in countries with similar regulatory requirements, the International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) is recommending that regulatory authorities cooperating in the VICH initiative adopt a harmonized procedure for determining residual moisture that is based on the gravimetric method. (VICH is a unique project that brings together regulatory authorities of the United States, European Union, and Japan and representatives from the animal health industry in the three regions to harmonize technical requirements for veterinary products as a means of reducing the differences in technical requirements for veterinary drugs and biologics among regulatory agencies in different countries.) The agreement by VICH to recommend adoption of a harmonized gravimetric procedure was preceded by collaborative and comparative testing by regulatory agencies and representatives of the veterinary biologics industry to validate the method.[1] The harmonized procedure has been adopted in this proposed rule.

We are proposing to implement the recommendation of the VICH by amending the regulations in § 113.29 concerning determination of moisture content in desiccated biological products. We are proposing to require that final container samples of completed desiccated biological products be tested for residual moisture using the harmonized gravimetric method. We also are proposing to require that the maximum allowable moisture content for each product must be specified in the Outline of Production approved for filing by the Animal and Plant Health Inspection Service (APHIS). The majority of USDA-licensed biologics manufacturers currently specify a gravimetric method for determining residual moisture in their Outlines of Production. However, manufacturers are allowed to customize the assay procedure to accommodate conditions that are most suitable to a particular product. Therefore, while most manufacturers express moisture content as a percentage of weight a product loses during a drying cycle, the methods used to determine the percentage of weight loss are not uniform and, therefore, not easily duplicated or confirmed by other laboratories. This proposed rule would establish a uniform test method applicable to all products that are tested for moisture content.

The residual moisture assay proposed in this document would apply to final container samples of completed product for all desiccated vaccines. It was selected because it is a familiar, commonly used procedure that does not require special equipment or reagents, and should yield reproducible results in all laboratories. However, manufacturers would be allowed an exemption under § 113.4 of the regulations to use other test methods based on specific requirements or characteristics of the test material.

Determination of Moisture Content in Desiccated Biological Products

We are proposing to amend the regulations to specify that the requirements in § 113.29 pertain to using a VICH harmonized gravimetric method to determine the moisture content of desiccated biological products. The basis for this proposed amendment is the collaborative and comparative study performed by APHIS, other VICH members, and the animal health industry to validate the gravimetric method and earn its recognition as a VICH-recommended, harmonized procedure. In addition, we propose to amend the regulations in §§ 113.64 and 113.300 to specify the gravimetric method as the applicable procedure for determining moisture content.

Materials and Equipment

The proposed change to the regulations in § 113.29 would require the use of a heat-regulated vacuum oven with air-drying device attached to the inlet valve, a balance with a rated precision of ± 0.1 mg, and other commonly used and readily available laboratory equipment.

Compliance

Veterinary biologics manufacturers that determine moisture content in desiccated biological products by a method other than the gravimetric method that would be required by this proposed rule would be allowed 1 year after the effective date of the final rule to come into compliance or to request an exemption under § 113.4 of the regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Virus-Serum-Toxin Act regulations for determination of moisture content in desiccated biological products to require that such moisture determinations be made using a VICH harmonized gravimetric method that determines residual moisture by measuring the percentage of weight a product loses during a product drying cycle. In addition, we are proposing to specify the gravimetric method as the applicable test for moisture content for live bacterial and live viral vaccines. The effect of this action would be to provide a standardized method for the determination of moisture content in desiccated biological products and ensure that such moisture determinations are uniform and reproducible.

This proposed rule would affect all licensed manufacturers of veterinary biologics that test desiccated vaccines for moisture content. Currently, there are approximately 135 veterinary biologics establishments, including permittees. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

This proposed rule should not impose any additional testing or economic burden on these manufacturers because the regulations currently require manufacturers to specify an assay procedure for moisture content in their filed Outline of Production, and most manufacturers currently specify the gravimetric method, or some variation thereof, as the test procedure that they are using. In addition, manufacturers would have the ability to request an exemption to use other test methods based on specific requirements or characteristics of the test material.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not

[1] We published a notice in the **Federal Register** on January 24, 2001 (65 FR 7614–7615, Docket No. 00–123–1), regarding the draft guideline "Testing of Residual Moisture" developed by VICH. The notice included information on how a copy of the draft guideline could be obtained from APHIS. The VICH harmonized gravimetric method can be viewed on the Internet at http://vich.eudra.org/htm/guidelines.htm#t3.

have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program /activity is listed in the catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting, and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 113 as follows:

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. Section 113.29 would be revised to read as follows:

§ 113.29 Determination of moisture content in desiccated biological products.

Methods provided in this section must be used when a determination of moisture content in desiccated biological products is prescribed in an applicable Standard Requirement or in the filed Outline of Production for the product. Firms currently using methods other than those provided in this section for determining the moisture content in desiccated biological products have until [Insert date 1 year from effective date of the final rule] to update their Outlines of Production to be in compliance with this requirement.

(a) Final container samples of completed product shall be tested. The weight loss of the sample due to drying in a vacuum oven shall be determined. All procedures should be performed in an environment with a relative humidity less than 45 percent. The equipment necessary to perform the test is as follows:

(1) Cylindrical weighing bottles with airtight glass stoppers.

(2) Vacuum oven equipped with validated thermometer and thermostat. A suitable air-drying device should be attached to the inlet valve.

(3) Balance, accurate to 0.1 mg (rated precision ± 0.01mg).

(4) Desiccator jar equipped with phosphorous pentoxide, silica gel, or equivalent.

(5) Desiccated vaccine in original sealed vial. Sample and control should be kept at room temperature in their original airtight containers until use.

(b) Test procedure:

(1) Thoroughly cleaned and labeled sample-weighing bottles with stoppers should be allowed to dry at 60 ± 3 °C under vacuum at less than 2.5 kPa.

(i) Transfer hot bottles and stoppers into the desiccator and allow to cool to room temperature.

(ii) After bottles have cooled, insert stoppers and weigh and record the weights of the bottles as "A."

(iii) Return weighing bottles to the desiccator.

(2) Remove the sample container seal.

(i) Using a spatula, break up the sample plug and transfer the required amount of sample to the previously tared weighing bottle.

(ii) Insert the stopper and weigh and record the weights of the weighing bottles as "B."

(3) Place the weighing bottle with the stopper at an angle in the vacuum oven. Set the vacuum to < 2.5 kPa and the temperature to 60 ± 3 °C.

(4) After a minimum of 3 hours of drying time, turn off the vacuum pump and allow dry air to bleed into the oven until the pressure inside the oven is equalized with the prevailing atmospheric pressure.

(5) While the bottle is still warm, replace the stopper in its normal position and transfer the weighing bottle to the desiccator .

(i) Allow a minimum of 2 hours for the weighing bottle to cool to room temperature or for its weight to reach equilibrium.

(ii) Weigh, and record the weight as "C."

(6) Calculate the percentage of moisture in the original sample as follows:

(B–C)/(B–A) × (100) = Percentage of residual moisture, where:

A = tare weight of weighing bottle

B–A = weight of sample before drying

B—C = weight of sample after drying

(7) The results are considered satisfactory if the percentage of residual moisture is less than or equal to the manufacturer's specification.

3. In § 113.64, paragraph (e) would be amended by adding a new paragraph (e)(3) as follows:

§ 113.64 General requirements for live bacterial vaccines.

* * * * *

(e) * * *

(3) Final container samples of completed product from each serial and subserial must be tested for moisture content in accordance with the test provided in § 113.29.

4. Section 113.300 would be amended by revising paragraph (e) as follows:

§ 113.300 General requirements for live virus vaccines.

* * * * *

(e) *Moisture content.* (1) The maximum moisture content in desiccated vaccines must be stated in the filed Outline of Production.

(2) Final container samples of completed product from each serial or subserial must be tested for moisture content in accordance with the test prescribed in § 113.29.

Done in Washington, DC, this 30th day of July 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service,

[FR Doc. 02–19669 Filed 8–2–02; 8:45 am]

BILLING CODE 3410–34–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

RIN 3038–AB91

Reporting Levels for Large Trader Reports; TRAKRS

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend its regulations to establish a reporting level for TRAKRS futures contracts to be traded on the Chicago Mercantile Exchange (CME). The reporting level being proposed is 25,000 contracts.

DATES: Comments must be received by September 4, 2002.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by

facsimile transmission to (202) 418–5521 or by e-mail to *secretary@cftc.gov*. Reference should be made to "Reporting Levels for TRAKRS."

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, Deputy Associate Director, Market Surveillance Section, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. E-mail: [*GMartinaitis@cftc.gov*].

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law the Commodity Futures Modernization Act of 2000 (CFMA), Pub. L. No. 106–544, which extensively revises the Commodity Exchange Act (Act). Among other things, the CFMA facilitated the introduction of new futures products by the exchanges. The CME intends to introduce a new product, called TRAKRS, which are low notional value futures contracts based on broad based indices of stocks, bonds, currencies, or other financial instruments. The value of the first TRAKRS futures contract, with is scheduled to begin regular trading sessions on August 1, 2002, will be less than $25 at the start of trading.[1]

TRAKRS, like all other commodities traded on Commission-designated markets, will be subject to the Commission's large trader reporting rules. Those rules require futures commission merchants, members of contract markets and foreign brokers to report to the Commission position information of the largest futures and options traders and, upon special call by the Commission, require the traders themselves to file reports with the Commission. Reporting levels are set in the designated futures and option markets under the authority of sections 4i and 4c of the Act to ensure that the Commission receives adequate information to carry out its market surveillance programs. These market surveillance programs are designed to detect and to prevent market congestion and price manipulation and to enforce speculative position limits. They also provide information regarding the overall hedging and speculative use of, and foreign participation in, the futures markets and other matters of public interest.

Based upon its experience in administering a large trader reporting system that is designed to provide adequate market coverage in light of positions traded or expected to be traded, the Commission is proposing to establish a reporting level for TRAKRS of 25,000 contracts. The Commission intends to review this level over time to determine whether it provides adequate coverage. Furthermore, since the proposed reporting level is significantly influenced by the relatively low value of the initial TRAKRS contract (which will be less than $25), the Commission intends to reconsider this reporting level if new TRAKRS contracts are introduced at a substantially higher price or any TRAKRS contract begin to trade at a substantially higher price.

The Commission notes that the low value of TRAKRS contracts could result in very large positions being reported. Due to current limitations in the Commission's large trader record format,[2] and similar limitations in the CME's own large trader reporting system, the Commission is proposing that TRAKRS positions be reported under Part 17 of its rules, 17 CFR Part 17, only after they have been rounded down to the nearest 1000 and then divided by 1000. For example, a position of 27, 955 contracts would be rounded down to 27,000, divided by 1000 and reported as 27.[3]

Because, in the absence of this rule amendment, the Commission's default reporting level of 25 contracts would apply, the Commission hereby is granting no-action relief to futures commission merchants, members of contracts markets and foreign brokers that comply with the requirements on this proposed rule prior to its final adoption. Accordingly, the Commission will not bring any enforcement action against any futures commission merchant, member of a contract market or foreign broker who complies with the rule as proposed herein. Such futures commission merchants, members of contract markets and foreign brokers will, however, be required to bring their conduct into compliance with the final rule to the extent that the final rule differs from the proposed rule.

Cost Benefit Analysis

Section 15 of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to "consider the cost and benefits" of the subject rule.

Section 15(a) further specifies that the costs and benefits of the proposed rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed rule imposes limited costs in terms of reporting requirements, particularly since most entities that trade on U.S. futures markets already file large trader reports with the Commission. Moreover, to reduce the cost of reporting, the Commission will periodically review the reporting level for TRAKRS, as it generally does for reporting levels for all commodities.[4] The countervailing benefits of these costs are that the Commission will have the necessary information to perform its market surveillance function and thus carry out its mandate of assuring the continued existence of competitive and efficient markets, protecting their price discovery function and protecting market participants and the public interest therein.

After considering these factors, the Commission has determined to propose the revision to part 15 set forth below.

The Commission specifically invites public comment on its application of the criteria contained in the Act for consideration. Commenters are also invited to submit any quantifiable date that they may have concerning the costs and benefits of the proposed rule with their comment letters.

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that federal agencies, in proposing rules, consider the impact of those rules on small entities. The Commission has previously determined that large traders and FCMs are not "small entities" for

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[1] Securities broker-dealers and their registered representatives may offer and sell TRAKRS futures contract pursuant to a no-action letter issued by Commission staff on July 11, 2001. *See* CFTC Letter 02–22, Division of Trading and Markets, CFTC (July 11, 2001), available on the Commission website at *http://www.cftc.gov*.

[2] *See* 17 CFR 17.00(g)(1).

[3] Contract markets should continue to report under Part 16, 17 CFR Part 16, the actual TRAKRS position without regard to the reporting convention proposed to be applied for reports under part 17.

[4] *See, e.g.*, 65 FR 14452 (Mar. 17, 2000).

purposes of the RFA.[5] The proposed amendment to reporting requirements primarily impacts FCMs. Similarly, members of contract markets and foreign brokers report only if carrying or holding reportable, *i.e.*, large positions. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. The Commission invites comments from any firm believing that these rules would have a significant economic impact on its operation.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as fined by the PRA, does not apply to this rule. The Commission believes that the proposed rule amendment does not contain information requirements which require the approval of the Office of Management and Budget. The purpose of this rule is to establish a specific reporting level for TRAKRS.

List of Subjects in 17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 4g, 4i, 5, 5a and 8a of the Act, 7 U.S.C. 6g, 6i, 7, 7a and 12a, as amended, the Commission hereby proposes to amend Part 15 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority section for part 15 continues to read as follows:

Authority: U.S.C. §§ 2, 5, 6a 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000); 5 U.S.C. 552 and 552(b).

2. Section 15.03 is proposed to be amended by revising paragraph (b) to read as follows:

§ 15.03 Reporting levels.

* * * * *

(b) The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
Agricultural:	
Wheat	100
Corn	150
Oats	60
Soybeans	100
Soybean Oil	200
Soybean Meal	200
Cotton	50
Frozen Concentrated Orange Juice	50
Rough Rice	50
Live Cattle	100
Feeder Cattle	50
Lean Hogs	100
Sugar No. 11	400
Sugar No. 14	100
Cocoa	100
Coffee	50
Natural Resources:	
Copper	100
Gold	200
Silver Bullion	150
Platinum	50
No. 2 Heating Oil	250
Crude Oil, Sweet	350
Unleaded Gasoline	150
Natural Gas	175
Financial:	
Municipal Bond Index	300
3-month (13-seek) U.S. Treasury Bills	150
30-Year U.S. Treasury Bonds	1,000
10-Year U.S. Treasury Notes	1,000
5-Year U.S. Treasury Notes	800
2-Year U.S. Treasury Notes	500
3-Month Eurodollar Time Deposit Rates	1,000
30-Day Fed Funds	300
1-month LIBOR Rates	300
3-month Euroyen	100
Major-Foreign Currencies	400
Other Foreign Currencies	100
U.S. Dollar Index	50
S&P 500 Stock Price Index	1,000
E-Mini S&P Stock Price Index	300
S&P 400 Midcap Stock Index	100
Dow Jones Industrial Average Index	100
New York Stock Exchange Composite Index	50
Amex Major Market Index, Maxi	100
NASDAQ 100 Stock Index	100
Russell 2000 Stock Index	100
Value Line Average Index	50
NIKKEI Stock Index	100
Goldman Sachs Commodity Index	100
Security Futures Products:	
Individual Equity Security	1,000
Narrow-Based Index of Equity Securities	200
TRAKRS	[1] 25,000
All Other Commodities	25

[1] For purposes of part 17, positions in TRAKRS should be reported by rounding down to the nearest 1000 and dividing by 1000.

Issued in Washington, DC this 30th day of July, 2002, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 02–19608 Filed 8–2–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. H–011G]

RIN No. 1218–AB89

Hearing Conservation Program for Construction Workers

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Advance notice of proposed rulemaking (ANPR); request for information and comment.

SUMMARY: OSHA is considering rulemaking to revise the construction noise standards to include a hearing conservation component for the construction industry that provides a similar level of protection to that afforded to workers in general industry. OSHA is not, at this time, requesting information regarding the appropriateness of the permissible exposure limit (PEL) or exchange rate. This document asks the public to comment on whether specific provisions of OSHA's general industry hearing conservation amendment should be applied to the construction industry or if alternative strategies would be easier to implement and more cost effective.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or sent) by November 4, 2002.

Facsimile and electronic transmission: Your comments must be sent by November 4, 2002. (Please see the **SUPPLEMENTARY INFORMATION** provided below for additional information on submitting comments.)

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. H–011G, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C., 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST .

[5] 47 FR 18618–20 (Apr. 30, 1982).

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. H–011G, in your comments.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov*.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Ms. Bonnie Friedman, OSHA, Office of Information and Consumer Affairs, N–3647,200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For technical inquiries, contact Mr. Neil Davis, Directorate for Health Standards Programs, OSHA, N–3718, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2281. For additional copies of this **Federal Register** document, contact OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW, Washington, DC, 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** document, as well as news releases and other relevant documents, are available at OSHA's web page on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this notice by (1) hard copy, or (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage. Please note that you cannot attach materials, such as studies or journal articles, to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the address above. Comments and submissions posted on OSHA's Webpage are available at *www.osha.gov*. OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions.

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III. Authority

I. Background

The Federal Government has recognized the hazardous conditions caused by noise on construction projects for many years. OSHA's current noise standard for construction stems from the occupational noise standard originally published in 1969 by the Bureau of Labor Standards under the authority of the Construction Safety Act (40 U.S.C. 333). OSHA adopted the construction noise standard in 1971 (36 FR 7340, 4/27/71) and later recodified it at 29 CFR 1926.52. Another section of the construction standard (29 CFR 1926.101) contains a provision requiring employers to provide hearing protection devices when needed. Both sections 1926.52 and 1926.101 apply to employers engaged in construction and renovation work when high noise levels are present.

A. Occupational Noise Exposure Standards in Construction

Paragraph (a) of section 1926.52 requires protection against the effects of noise exposure when 8-hour time-weighted average sound levels exceed a permissible exposure limit (PEL) of 90 decibels (dBA) measured on the A scale of a sound level meter set at slow response. The exposure level is raised 5 dB for every halving of exposure duration as shown in Table D–2 of the standard.

TABLE D–2.—PERMISSIBLE NOISE EXPOSURES

Duration per day, hours	Sound level DBA slow response
8	90
6	92
4	95
3	97
2	100
1½	102
1	105
½	110
¼ or less	115

Paragraph 29 CFR 1926.52(b) states that when employees are subjected to noise doses exceeding those shown in Table D–2, feasible administrative or engineering controls must be used to lower employee noise exposure. If such controls fail to reduce sound to the levels shown in the table, personal protective equipment must be provided and used to reduce noise exposure to within those levels.

Paragraph (c) defines continuous noise as noise levels where the maxima occur at intervals of 1 second or less, and paragraph (d)(1) requires that a "continuing, effective hearing conservation program" be administered whenever levels exceed those in the table. However, no details are given about the components of such a program. Paragraph (d)(2) gives instruction on how to calculate an employee's noise exposure when the employee is exposed to two or more periods of noise at different levels, and paragraph (e) states that exposure to impulsive or impact noise should not exceed a peak sound pressure level of 140 dB.

The requirements of 29 CFR 1926.101 are: (a) Hearing protection devices shall be provided and used wherever it is not feasible to reduce the noise exposure (level times duration) to within the Permissible Exposure Limit (PEL) specified in Table D–2 (see above); (b) hearing protection devices inserted in the ear shall be fitted by competent persons; and (c) plain cotton is not an acceptable protective device.

B. Occupational Noise Exposure Standard for General Industry

Workers in general industry are covered by the Agency's Occupational Noise Standard (29 CFR 1910.95), which sets maximum noise exposure levels and certain other requirements that are similar to those found in 29 CFR 1926.52 and 1926.101. However, the general industry noise standard provides more protection for general

industry workers than the construction standards provide for construction workers, due to the provisions of OSHA's 1983 Hearing Conservation Amendment (HCA), which added a requirement for employers to implement a hearing conservation program if employee noise exposures exceed a time-weighted average level (TWA) of 85 dBA over an 8-hour workday, using an exchange rate of 5 dB for each doubling or halving of exposure time. The HCA program (29 CFR 1910.95(c) through (o)) includes, among other things:

- Baseline and annual audiometric testing,
- Monitoring of noise exposure levels,
- Requirements to provide effective hearing protection devices (HPDs),
- Training and education, and
- The maintenance of employee exposure and hearing loss records.

OSHA requests information and data on whether the general industry requirements should be applied to construction work and, if so, how these requirements should be adapted for the construction industry.

C. Recommendations of NIOSH and Other Groups

In 1998, the National Institute for Occupational Safety and Health (NIOSH) published "Criteria for a Recommended Standard; Occupational Exposure to Noise; Revised Criteria", in which NIOSH recommended a maximum 8-hour TWA of 85 dBA and a 3-dB exchange rate (Ex. 2–1). NIOSH originally recommended an 8-hour TWA of 85 dBA and a 5-dB exchange rate in 1972. The revised 1998 NIOSH Criteria document also recommends specific requirements that they believe should be included in hearing conservation programs, such as noise exposure assessment; engineering and administrative controls and work practices; hearing protectors; medical surveillance; hazard communication; training; program evaluation; and recordkeeping. Some of the NIOSH recommendations are discussed in later sections along with questions about how an OSHA standard on noise in construction might implement the NIOSH recommendations. The American Conference of Governmental Industrial Hygienists also recommended an 85 dBA 8-hour TWA with a 3 dB exchange rate in 1994. (ACGIH, Threshold Limit Values and Biological Exposure Indices for 1994, Ex. 2–14)

In recent years, several groups have expressed a renewed interest in the issue of hearing loss in construction workers. For example, the Laborers Health and Safety Fund of North America is sponsoring a Construction Noise Control Partnership made up of interested parties from labor, industry, academia, and government to discuss noise and hearing conservation issues. The Laborers Health and Safety Fund has also co-sponsored several conferences to discuss the best practices for preventing hearing loss in the construction industry.

D. Noise Induced Hearing Loss

In the preamble to the HCA, first issued on January 16, 1981 (46 FR 4078), OSHA described the risk of "material impairment" of health resulting from a working lifetime of noise exposure based on data developed by three organizations: The International Organization for Standardization (ISO), the U.S. Environmental Protection Agency (EPA), and NIOSH. The risk estimates are presented in Table 1 as reprinted in the 1998 NIOSH criteria document (Ex. 2–1).

TABLE 1.—ESTIMATED EXCESS RISK OF INCURRING MATERIAL HEARING IMPAIRMENT [1] AS A FUNCTION OF AVERAGE DAILY NOISE EXPOSURE OVER A 40-YEAR WORKING LIFETIME [2]

Reporting organization	Average daily noise exposure (dBA)	Excess organization Risk (%) [3]
ISO	90	21
	85	10
	80	0
EPA	90	22
	85	12
	80	5
NIOSH	90	29
	85	15
	80	3

[1] For purposes of comparison in this table, material hearing impairment is defined as an average of the Hearing Threshold Levels (HTLs) for both ears at 500, 1000, and 2000 Hz that exceeds 25 dB.

[2] Adapted from 39 FR 43802.

[3] Percentage with material hearing impairment in an occupational-noise-exposed population after subtracting the percentage who would normally incur such impairment from other causes in an unexposed population, i.e., the percentage of the risk attributable to noise exposure at work.

This table shows that about one in four workers will experience impaired hearing when exposed to average daily noise levels of 90 dBA over a 40-year working lifetime. The risk is lower but still about one in eight workers at 85 dBA over 40-year working lifetime. As a result of this residual risk, OSHA established an "action level" of 85 dBA for an 8-hour TWA in its general industry noise standard (even at 80 dBA, EPA and NIOSH report a small risk of hearing impairment). When employees are occupationally exposed at or above the action level, the general industry noise standard requires employers to take certain steps to prevent noise-exposed workers from developing hearing loss. The steps required by the HCA include: Noise exposure monitoring, audiometric testing, the provision of hearing protectors, and recordkeeping.

Noise-induced hearing loss can be a serious disability. Once noise exposure damages the sensory-neural mechanism of the inner ear, the hearing loss is permanent (permanent threshold shift). The likelihood of permanent hearing loss increases with prolonged exposure. Noise-induced hearing loss can cause difficulty in hearing and understanding critical verbal instruction and warning sounds at work. It can also cause problems in hearing and perceiving spoken communication, thus interfering with normal social interaction outside the workplace.

Exposure to other agents can adversely affect the auditory system and may worsen noise-induced hearing loss (Ex. 2–1). These agents include some organic solvents, physical agents, such as whole-body vibration, and gases, such as carbon monoxide. Excessive noise may also accelerate age-related hearing loss in exposed workers, causing more serious auditory impairment than might have otherwise occurred.

E. Noise Exposure In Construction

Many construction jobs, such as concrete work, site excavation, highway construction, and carpentry involve high levels of noise. Major noise sources include heavy equipment, such as loaders, dozers, and cranes, as well as tools like jackhammers and chipping guns. Excessive noise at construction sites not only causes hearing loss, but can create a safety hazard by masking the sounds of oncoming vehicles (Ex. 2–2). Hearing loss and the use of hearing protectors by those with pre-existing hearing loss may further interfere with the workers' ability to hear and perceive the sounds of danger. Although these difficulties occur in many occupational settings, they are a particular problem in construction, where a variety of moving vehicles, back-up alarms, and other signals and activities may occur simultaneously.

There is a large body of literature describing occupational hearing loss from noise exposure (see, e.g., Exs. 2–2, 2–3, 2–4, 2–5, 2–6). OSHA

commissioned several studies during 1997–1999 to provide recent information targeted specifically to the construction population. One, by Alice H. Suter, Ph.D., is entitled "Construction Noise: Exposure, Effects, and the Potential for Remediation" (Ex. 2–2). Three by Dale Hattis, Ph.D., of the Center for Technology, Environment, and Development, Clark University, are: "Preliminary Analysis of OSHA Inspection Data for Noise Exposures in Construction" (1997) (Ex. 2–3); "Occupational Noise Sources and Exposures in Construction Industries," *Human and Ecological Risk Assessment* 4:1417–1441(1998) (Ex. 2–4); and "Expected Hearing Loss and Disability from Noise Exposures in Construction" (co-author, Anna Makri) (1999) (Ex. 2–5). Dr. Suter also wrote a monograph in 1992 on the effects of noise on workers' ability to communicate entitled "Communication and Job Performance in Noise: A Review," *ASHA Monographs* No. 28 (American Speech-Language-Hearing Association, Rockville, Maryland) (Ex. 2–6).

These studies show that as many as 750,000 U.S. construction workers are currently exposed to hazardous noise levels (defined as a time weighted average of 85 dBA or above for 8 hours) on the job and that regular hearing protector use in the construction industry averages only about 15 to 33 percent among these noise-exposed workers (Exs. 2–2, 2–5). Hattis and Makri quantified the extent of hearing loss disability expected to occur among construction workers. Their measure of disability was based on the United Kingdom's "% disability method", which expresses the magnitude and duration of hearing loss disability in units of %-disability life-years, where one %-disability life-year is equal to the loss of one percent of overall hearing ability for one year (Ex. 2–5). Among the entire population of 5 million construction workers, Hattis and Makri estimated that between 25 million and 65 million %-disability life-years would accumulate each year taking into account age-related hearing loss, prevailing noise exposures, and current practice with regard to use of hearing protection (Ex. 2–5, pp. 49–52). To place the Hattis and Makri estimates of hearing disability in perspective, assume that the average age of the 750,000 most highly exposed workers is 38 and that workers are employed in the construction industry an average of 13 years (based on 1997 data for British Columbia workers, see Table 21 of Ex. 2–5). Assuming also that the average life span is 75 years, the estimated 25 million to 65 million %-disability life-years that are predicted to accumulate each year among the 750,000 most highly exposed construction workers means that construction workers exposed at or above 85 dB are predicted to lose, on average, between 12 and 30 percent of their hearing over their employment in the construction industry, and that the disability will persist for the remaining 37 years of life.[1] The authors conclude in their summary section that "it is clear that construction worker noise-induced hearing loss is a significant national problem" (Ex. 2–5).

Dr. Suter's review of the literature shows that the highest concentrations of workers with potentially hazardous noise exposures occur in highway and street construction, carpentry, and concrete work (Ex. 2–2). According to a 1995 study of Canadian workers by Sinclair and Haflidson, the average noise exposure for workers engaged in various types of construction is 98.8 dB, based on TWA sound levels using the 3-dB exchange rate. The average exposure would be lower if the 5-dB exchange rate were used. Boilermakers and ironworkers are particularly heavily exposed, largely as a result of pneumatic tool use (Ex. 2–7).

OSHA believes that these studies show that many U.S. construction workers suffer hearing loss from noise at their worksites. Other information shows that hearing conservation programs can be effective in reducing occupational hearing loss (Ex. 2–8). Therefore, OSHA is publishing this ANPR to solicit data, comments, and information about initiating rulemaking to revise the construction industry noise standard to include a hearing conservation component that will protect construction workers against further hearing loss.

[1] The derivation of the 13 (it is actually closer to 12) to 30 percent hearing loss for the average worker was calculated as follows. The Hattis and Makri population estimate of 25 million to 65 million % disability life-years accumulated each year was divided by the estimated 750,000 workers currently at and above 85 dBa eight hour TWA. This gives, on average, between 33.3 and 86.6% disability life-years accumulated each year by an individual worker over his entire lifetime. The resulting annualized individual risk is then multiplied by the average 13 years of employment to obtain the aggregate % disability life-years experienced by the typical worker as a result of his total exposure. if the typical worker is 38 years old and has an average life span of 75 years, then the disability life-years is divided by his remaining 37 years of life to obtain the 12 to 30 percent hearing loss estimate.

(a) (25,000,000 × 13) / 750,000 × 37) = 11.7 percent

(b) (65,000,000 × 13) / (750,000 × 37) = 30.4 percent

II. Request for Information, Data and Comments

OSHA solicits data and information on the following issues related to the prevention of work-related hearing loss in construction workers. In your response to these questions, please refer to the section and subsection headings (e.g. Section II.A.2.a. Hearing Conservation Program Provisions—Monitoring—Area Monitoring) as well as the specific question being referenced. Also, include relevant data and analyses to support your response.

A. Hearing Conservation Program Provisions

OSHA seeks information on whether and how the provisions of the general industry Hearing Conservation Amendment (paragraphs (c) through (o) of 29 CFR 1910.95) could be applied to the construction industry. Do the general industry requirements need to be altered to reflect the unique characteristics of the construction industry? For example, what methods have construction employers adopted to obtain baseline and periodic audiograms and to keep the records of these tests up-to-date and accessible? What approaches have employers found useful in achieving effective hearing protection device use in this industry? OSHA is particularly interested in receiving information on the results of hearing loss prevention program evaluations in the construction industry. The following paragraphs raise specific questions about selected provisions of the Hearing Conservation Amendment and their potential applicability in the construction environment.

1. Methods of Compliance

In paragraphs (c) and (d) of the general industry noise standard (29 CFR 1910.95), OSHA requires the employer to conduct an initial noise evaluation when exposure is expected to exceed 85 dBA. If this requirement was applied in a construction setting, a new evaluation might be required for each new construction site. Alternatively, in the asbestos standard (29 CFR 1926.1101(e)) and lead standard (29 CFR 1926.62(d)(2)) for construction activities, OSHA adopted a different approach of identifying tasks that are presumed to have high exposures and workers engaged in these tasks are protected by a combination of engineering and administrative controls supplemented by the use of personal protective equipment. Which approach is more appropriate to evaluate and control noise exposures in construction?

Please provide noise data from construction sites to support your position. If a certain set of procedures or tasks were identified by OSHA as having presumed significant noise exposure, which are the best criteria to use: Equipment type, task type, or job title by type of construction and phase of work? OSHA also believes that the time of tool use or time spent at a task is an essential or required element in any exposure calculation. Please provide your experience and data regarding the relative efficacy of the above criteria.

The British Columbia regulation requires employers to implement a written program that includes noise measurement, education and training, engineered noise control, hearing protection, posting of noise hazard areas, hearing tests, and annual program review (Ex. 2–9). The British Columbia program presumes that employees in specific construction occupations are routinely exposed to noise in excess of the exposure limits. These occupations are carpenters, plumber pipefitters, sprinkler installers, mobile equipment operators, steel erectors, welders/fabricators, sandblasters, drillers, electricians, concrete workers operating concrete pumps, vibrators, jack hammers or powered finishing equipment, and drywallers shooting track or boarding (Ex. 2–10). Are the trades identified in British Columbia as highly exposed, and therefore presumptively covered under the HCP, reasonable and comparable to United States conditions? Are there other occupations that should be presumed to be noisy enough to be a part of a hearing conservation program?

Investigators at the University of Washington are also conducting a series of studies on Washington state construction apprentices and journeymen. These study populations include bricklayers, carpenters, operating engineers, ironworkers, electricians, insulation workers, sheet metal workers, laborers and cement masons. (Ex. 2–12, 2–13) These studies will provide additional noise-related risk data on a current U.S. construction population. Are there any other investigations on the effects of hearing conservation programs in other populations of U.S. construction workers? If so, please provide study descriptions and data.

2. Monitoring

Paragraph (d)(1)(i) of the general industry noise standard (29 CFR 1910.95) addresses noise exposure monitoring. It requires monitoring when information indicates that any employee's exposure may equal or exceed an 8-hour TWA of 85 dBA. Employers may design their own sampling strategy so long as employees above this action level are included in the program. How much noise monitoring is currently being done at construction sites?

Many construction firms are small; approximately 85 percent of the firms employing 50 percent of the construction workforce have less than 20 employees. (U.S. Census Bureau, County Business Patterns, 1997) Should OSHA provide specific sampling strategies for the construction industry? Should these strategies be mandatory or recommended? When is exposure monitoring appropriate in the construction industry? What criteria should trigger noise exposure monitoring?

a. Area Monitoring

Paragraph (d)(1)(ii) of the general industry noise standard (29 CFR 1910.95) permits employers to use area monitoring under certain circumstances, but where conditions such as high worker mobility, significant variations in sound level, or a significant component of impulse noise makes area monitoring inappropriate, representative personal sampling must be performed. These latter conditions characterize most construction sites. Are there any circumstances in the construction industry where area monitoring would be appropriate?

b. Continuous, Intermittent and Impulsive Sound

Paragraph (d)(2)(i) of the general industry noise standard (29 CFR 1910.95) requires that all continuous, intermittent and impulsive sound levels from 80 dB to 130 dB be integrated into the measurement of noise exposure. The range of 80 to130 dB as opposed to a range of 80 to 140 dB reflected the technological limitations of sound level meters and dosimeters at the time of the standard's promulgation. OSHA, in the preamble of the 1981 rulemaking, stated the intent to increase the upper limit to 140 dB, as improved dosimeters became readily available (46 FR 4135, 1/16/81). OSHA believes that most, if not all, of today's dosimeters and integrating sound level meters are capable of dynamic ranges from 80 dB to 140 dB. The NIOSH revised noise criteria (Ex. 2–1) and the ACGIH TLV for noise (Ex. 2–11) recommend the inclusion of all continuous, intermittent, and impulsive noise from 80 to 140 DBA in the calculation of employee exposure or dose. OSHA seeks information on the characterization of construction workers' exposures to impulse or impact noise, particularly in the range of 130–140 dB. Is the integration of all noise levels between 80 dBA and 140 dB the appropriate criteria for calculating construction workers' noise dose? Please support your answer. What are the additional costs associated with this requirement and how can they be minimized? Is 140 dB the appropriate ceiling level for impulse noise?

c. Repeat Noise Monitoring

Paragraph (d)(3) of the general industry noise standard (29 CFR 1910.95) requires that monitoring be repeated whenever a change in production, process, equipment or control increases noise exposures to the extent that additional employees may be exposed at or above the action level, or the attenuation provided by hearing protectors may be rendered inadequate. OSHA is seeking information on whether it would be practical to apply such a requirement in the construction environment. Would employers know when to repeat noise exposure monitoring? Should there be a more specific requirement, such as the NIOSH recommendation for remonitoring every 2 years or if workers are developing significant threshold shifts (STSs)(Ex. 2–1)? Would such a requirement be useful, feasible, or effective in the construction industry? Are there any alternative monitoring schemes that would be easier for construction employers to follow that would obtain the same objective?

d. Secondary Sources of Noise Exposure

The construction noise literature and field observations indicate that there are multiple sources of significant noise exposure during many phases of different types of construction projects (Ex 2–12). Many times the primary sources of exposure are tools or equipment being used by co-workers nearby (jackhammer) or by another craft working nearby (e.g. welder's compressor affecting electricians). Are there other methods, besides direct employee noise monitoring on a site-by-site basis that would characterize elevated noise exposure to other or co-workers who are not using tools or equipment generating loud noise? Please provide data showing the prevalence of noise exposures near or exceeding 85 dBA (1) to coworkers or helpers doing a supporting task, or (2) to other trades receiving secondary exposures they did not create. Also provide, if available, information on the trades, type of construction, tasks, tools or equipment used, and the range of exposure levels and distances from

noise source. Has any exposure or prediction modeling been done in this area? How can information concerning expected or measured secondary exposure be incorporated into training requirements, hazard warnings and the general phasing of work in different types of construction?

3. Employee Notification

Paragraph (e) of the general industry noise standard requires that employers notify each employee exposed at or above an 8-hour TWA of 85 dBA of the results of the employee's noise monitoring. No time limit is given for this notification. Is a similar notification requirement appropriate for the construction industry? Should employers be required to notify construction workers within a certain period, such as 1, 5, 10 or 15 days, of the results of noise exposure monitoring?

4. Audiometric Testing Program

Paragraph (g) of the general industry noise standard requires employers to make audiometric testing available, at no cost, to all employees who are exposed at or above the action level of 85 dBA. Is a similar requirement appropriate and feasible for the construction industry? How can this service be delivered in a cost-effective way to a mobile workforce of predominantly small employers? In general industry the trigger for audiometric testing is an employee exposure at or above 85 dBA. Are there alternative triggers that might be more appropriate or less burdensome to initiate audiometric testing in the construction industry? For example, should OSHA require audiometric testing for those in specified construction trades? Does OSHA need more precise provisions in terms of audiometric procedures, equipment, and sound booth requirements so as to reduce the variability between audiograms or has this variability been anticipated in the general industry hearing conservation standard? Please specify and support recommended alternatives, if any.

a. Baseline Audiograms

Paragraph (g)(5) of the general industry noise standard calls for a baseline audiogram to be performed within 6 months of an employee's first exposure at or above the action level unless the audiometric provider uses a mobile van, in which case the waiting period may be up to a year. Because of the mobility of many construction workers from employer to employer, these provisions, if adopted, would result in some construction workers not receiving baseline audiograms even after many years of noise exposure. OSHA seeks information on the best way to ensure that construction workers are given a baseline audiogram prior to exposure to harmful levels of noise. Should the maximum waiting period for baseline audiograms be shorter or longer than 6 months? For example, NIOSH recommends an audiogram within 30 days after hire. What length of time with a given employer should trigger the requirement to provide an audiometric test? Should the trigger for audiometric testing be by exposure level, type of construction, job process, job title or equipment type or should there be multiple triggers? Alternatively, should baseline audiograms be considered for all workers entering construction employment?

Paragraph (g)(5)(ii) of the general industry noise standard requires workers whose exposures equal or exceed the action level to use hearing protectors until a baseline audiogram is completed, if the employer is using the one-year period allowed when mobile test vans are used. Should a construction worker be allowed to have exposures above the action level but less than the PEL without hearing protectors for any amount of time before the baseline audiogram is obtained? Should the use of hearing protectors in this circumstance be advisory rather than mandatory if exposures are between the action level and the PEL?

Paragraph (g)(5)(iii) of the general industry noise standard requires that a baseline test be preceded by at least 14 hours without exposure to workplace noise. Should this requirement be extended to the construction industry?

b. Annual Testing

Paragraph (g)(6) of the general industry noise standard requires that employers obtain audiograms at least annually for employees exposed at or above the action level. The NIOSH Criteria Document (Ex. 2–1) contains a similar recommendation. OSHA is requesting information on the feasibility and desirability of annual audiograms for construction workers. Should the frequency of audiometric testing vary by the type of work and the degree of anticipated exposures? For example, should audiograms be required every six months for workers with exposures that are consistently above 100 dBA? Should audiograms be less frequent for workers whose measured or expected exposures are between 85 and 90 dBA? Is there a way to make sure that construction workers who move from one site to another during the year are identified and given annual audiometric tests?

c. Retest Audiograms

Paragraph (g)(7)(ii) of the general industry noise standard gives employers the option to retest an employee within 30 days if an STS has occurred and to consider the retest as the annual audiogram. Considering the high mobility of the construction workforce and NIOSH's recommendation for immediate retesting (Ex 2–1, pp 49–50), should there be a requirement for an immediate retest if an STS has occurred? Is a confirmatory retest within 30 days desirable or feasible for construction workers? Should there be a requirement or recommendation that the retest be preceded by 14 hours without exposure to workplace noise and should hearing protectors be allowed to substitute for this pre-test "quiet"?

d. Follow-up Procedures for Audiograms Showing Hearing Loss

Paragraph (g)(8)(ii) of the general industry noise standard details follow-up procedures triggered by an STS unless a physician determines that the STS is neither work related nor aggravated by occupational noise exposure. These procedures include: (A) Fitting with hearing protectors and training in their use and care; (B) refitting and retraining for those already wearing hearing protectors; (C) referral for a clinical audiological or otological examination if additional testing is necessary or if an ear pathology (medical problem) is determined to be related to the wearing of hearing protectors; and (D) informing the worker of a need for an otological exam if an ear pathology is deemed unrelated to the use of hearing protectors.

OSHA is seeking comments and information on whether there are follow-up actions that should be taken even when an STS has not occurred, and specifically on the provisions of paragraph (g)(8)(ii)(C) of 1910.95, which require referral in cases where additional testing is necessary to obtain a valid audiogram or a medical problem is related to the wearing of hearing protectors, and paragraph (g)(8)(ii)(D) of 1910.95, informing the worker of a need for an otological exam regardless of whether the problem is related to the use of hearing protectors. Are there other circumstances where follow-up actions should be either required or recommended for construction workers, such as counseling in the event of an STS or pathology of the ear?

5. Hearing Protectors

The studies by Suter (Ex. 2–2) and Hattis and Makri (Ex. 2–5) report that currently available data (1998) on the use of hearing protectors among U.S. construction workers show that, at best, hearing protector use among workers routinely exposed to high noise levels is about 33%, with a range from 1% to 50% for workers in different trades. These authors note that this figure is likely to be an overestimate. This was an apparent improvement from the NIOSH NOES survey, 1981–1983, where the overall average use was 15% for workers exposed to 85 dBA or greater (Ex. 2–2). Are other data available on current hearing protector use in the U.S. construction industry? If yes, please provide such data or indicate where they may be obtained.

Dr. Suter's studies point out that construction workers need to hear warning signals and to communicate in noisy backgrounds (Exs. 2–2, 2–6). Operators of heavy mobile equipment and other workers who need to communicate with them need to be able to maintain effective two-way or multi-way communication while protecting their hearing. It is also essential for all construction workers to be able to hear and identify the location of warning signals, backup alarms, and spoken or shouted communication (localization). Workers who have already incurred hearing impairments and who must wear hearing protectors will experience difficulty hearing in those situations. The use of hearing protectors and the need for communication and identifying the location of co-workers complicate efforts to prevent noise-induced hearing loss. OSHA solicits information from employers, employees, and safety and health professionals on their experience with regard to the ability to communicate or other risks that may be incurred while wearing hearing protectors. This includes information on the effectiveness of traditional hearing protectors and particularly on the effectiveness of newer devices (both plugs and muffs) with uniform attenuation, active attenuators, and communication systems developed, at least in part, to address these problems.

a. When Should Hearing Protectors Be Required?

Paragraphs (i)(1) and (2) of the general industry noise standard require that hearing protectors be made available to all employees exposed at or above the action level of 85 dBA, but do not require workers to wear these devices until their exposures exceed the PEL or the worker has experienced a work-related STS. Should the requirement be contingent upon incurring an STS or waiting for a baseline audiogram, as in the general industry noise standard? Is there an increased hazard for these workers that is caused by the inability to hear warning signals at moderate noise levels, such as 80–85 dBA, when wearing hearing protectors?

Paragraph (b)(1) of OSHA's general industry noise standard requires that employers use feasible engineering or administrative controls whenever employees are exposed above the 90 dBA PEL. Whenever these controls fail to reduce sound levels to or below the PEL, employers must issue hearing protectors to employees and employees are required to use these devices. Similar requirements are found in 29 CFR 1926.52 and 1926.101 covering the construction industry. Whether workers must wear their hearing protectors for the entire workshift or only when noise levels exceed 90 dBA is not addressed. OSHA is aware of the potential safety hazard of overprotection during periods of relative quiet or even moderate noise levels.

The Agency is requesting information on the use of hearing protectors in varying noise environments, especially in the intermittent noise environments that characterize many construction exposures. Should construction workers be required to wear hearing protectors only in noise levels that exceed the PEL of 90 dBA, an action level of 85 dBA, or should they be required to wear hearing protectors in all noise environments where exposures are expected to exceed a certain TWA? If the requirement is only for levels above the action level, how would workers know when to put on their hearing protectors?

b. Selection of Hearing Protectors

Paragraph (i)(3) of the general industry noise standard states that employees must be given the opportunity to select their hearing protectors from a variety of suitable hearing protectors provided by the employer. This requirement has been interpreted to mean that at least one variety of plug and one variety of muff must be available (Ex. 2–14). Is a choice between two protectors sufficiently protective where noise exposure is often intermittent and communication may be of particular importance? The Agency solicits information on the appropriate type and number of hearing protectors which should be offered to construction workers.

c. Hearing Protector Attenuation

The general industry noise standard's paragraph (j)(1) requires employers to use one of the evaluation methods described in Appendix B, "Methods for Estimating the Adequacy of Hearing Protection Attenuation" to evaluate the amount of protection the hearing protector is likely to provide under workplace conditions. The vast majority of employers and hearing conservation professionals use the Noise Reduction Rating (NRR), which, according to an EPA regulation, must be printed on the hearing protector package. The NRR represents the noise reduction potential of the protector under laboratory conditions. There are, however, large differences between the hearing protector attenuation measured in the laboratory and that found in actual field use. Therefore, it is current OSHA policy to adjust the NRR when the use of hearing protectors is, under certain circumstances, permitted in lieu of engineering noise controls. Appendix B of the general industry noise standard calls for an additional reduction in the estimated attenuation of 7 dB when the average C-weighted noise level in the worker's environment is not known. In addition, the OSHA Technical Manual (Section III, Chapter 5) and OSHA's Enforcement Directive for Noise Enforcement (CPL 2–2.35A) use a safety factor of 50%, which is applied by further dividing the NRR by 2. Thus an earplug with an NRR of 28 dB would be considered to have useful attenuation of only 10.5 dB when the NRR is subtracted from the average A-weighted noise level in the worker's environment ($28 - 7 = 21 \div 2 = 10.5$).

NIOSH (Ex. 2–1) recommends de-rating (subtracting values from) the NRR, but conditions the amount of de-rating upon the type of hearing protector: 25% for earmuffs, 50% for slow-recovery foam earplugs, and 70% for all other plugs and semi-inserts. NIOSH further recommends that once manufacturers test and label their products using the new "subject-fit" method incorporated in ANSI S12.6–1997, the subject-fit noise reduction rating (NRR(SF)) should be used.

Should OSHA continue to recommend the use of the NRR for estimating the attenuation provided by hearing protectors for construction workers? Should a standard for construction recommend or require a 50% de-rating to account for the difference between laboratory and field performance? Should OSHA continue to require the 7-dB subtraction for spectral uncertainty? Should OSHA adopt the NIOSH device-dependent de-rating

formula discussed above? Should OSHA allow or recommend the NRR(SF) or a similar rating based on subject fit data as an alternative to the NRR?

6. Training Program

Paragraph (k) of the general industry noise standard contains requirements for training programs, which must be repeated annually for each employee in the hearing conservation program. These programs must include: Information on the effects of noise on hearing; the type of task or equipment that can cause loud noise and maximum usage time without hearing protection, the purpose of hearing protectors; the advantages, disadvantages, and attenuation of various types of hearing protectors; instructions on selection, fitting, use, and care of hearing protectors; and the purpose of audiometric test procedures. Are these training requirements appropriate for the construction industry? In general industry the trigger for training is an employee exposure at or above 85 dBA. Are there alternative triggers that might be more appropriate and less burdensome in the construction industry?

OSHA is aware that some hearing conservation training programs in general industry use written materials or videos without face-to-face training. The Agency seeks information on the success of such programs. Is there a need for face-to-face training in the construction industry? Why? Also, are there exemplary training programs that are construction or trade specific that should be brought to OSHA's attention? Briefly describe these programs.

7. Recordkeeping

Most construction work is characterized by relatively short job tenures with a given employer (median of 3 to 5 years), temporary or seasonal employment, and employment in very small firms. These features may make periodic audiometric testing and recordkeeping more difficult than in the general industry environment. OSHA is aware of two possible approaches to this logistical problem in construction: (1) Centralized (possibly web based) recordkeeping systems and (2) portable smart cards carried by workers (currently being used in British Columbia). Workers could also take their records manually from one employer to the next. This might work for employment of one or two years, but would be cumbersome and inefficient over a working lifetime. OSHA seeks information on successful approaches for maintaining and transferring medical records used in the construction industry, whether maintained by the company, state, union, trade association, or other groups. What problems have surfaced in these efforts? What costs are incurred and how are the delivery of services structured between the involved parties? In any shared record system, how is the privacy of the employee's medical data protected? For what duration should employers be required to retain records?

B. Other Hearing Conservation Issues Raised by NIOSH in its Criteria Document

Most of the issues raised by NIOSH in their 1998 criteria for a recommended noise standard have been discussed throughout this document. However, NIOSH made additional recommendations, three of which are discussed below.

1. Hazard Communication

a. Warning Signs

The general industry noise standard does not contain a provision for warning signs and regulated areas, although the NIOSH criteria document recommends a requirement stating that warning signs shall be clearly visible at the entrance to or at the periphery of areas where noise exposures routinely equal or exceed a TWA of 85 dBA (Ex. 2–1). Should a hearing conservation rule for construction have such a requirement? If so, should the requirement be for areas where noise levels or noise exposures (TWAs) equal or exceed a certain level? How should these areas be selected? Should OSHA give specific guidance on how to post these areas? Could the posting of warning signs serve as an alternative to noise monitoring under the assumption that the assigned site or project is above the hearing conservation action level?

b. Noise Labeling of Equipment and Tools

Another form of hazard communication is the labeling of equipment for noise levels at a set distance. Suter's report describes a program for labeling products used in construction that has been adopted by the European Economic Community (Ex. 2–2). The European construction noise directive requires manufacturers to display labels showing either the sound-power level or sound pressure level at the operator's position. Suter points out that in the United States an ANSI standard is being developed for the purpose of labeling machinery and equipment. OSHA requests data and information, including the outcomes, of any noise labeling programs in the U.S. or abroad, as well as information about the progress of the ANSI working group, S12 WG38. Have employers used noise labels on equipment or tools to communicate risk of hearing loss?

2. Program Evaluation Criteria

The general industry noise standard does not include criteria for evaluating the effectiveness of hearing conservation programs. However, the NIOSH criteria document does contain a section on this topic and there is a draft ANSI standard, S12.13–1991 (currently in the process of revision), that addresses the evaluation of audiometric testing programs. NIOSH recommends a two-step process: (1) The evaluation of an individual worker's hearing loss prevention program at the time of the annual audiometric test, and (2) Annual evaluation on a programmatic level.

OSHA seeks information on methods to evaluate the success of hearing conservation programs in construction. If the occurrence of an STS is used as the measure of hearing loss, what rates of STSs are seen in effective programs, i.e., when does an employer know that the program is working? What other benchmarks can be used to evaluate a successful program in construction? OSHA also seeks information on the advisability of using the provisions of the draft ANSI standard, S12.13, for evaluating the effectiveness of hearing conservation programs through the examination of audiometric data. Is this method practical and does it produce useful results? Is there a simple self-evaluation tool that can be used by small employers?

3. ANSI Standards

NIOSH also recommended that any new hearing conservation requirements should incorporate the current ANSI standards intended to improve performance and calibration criteria for audiometric testing, audiometric booths and vans, dosimeters, and sound level instruments. Table 2 below briefly summarizes the relevant ANSI standards. Should OSHA adopt the most recent ANSI standards? Please provide data and documentation supporting your position. Are any of these ANSI standards not applicable to the construction industry?

TABLE 2.—ANSI STANDARDS RELEVANT TO AUDIOMETRIC TESTING

Equipment type or activity	Current ANSI standards	Select requirement changes
Audiometers	ANSI S3.6–1996	Tighter tolerances and criteria, multiple changes.
Audiometric test booths and vans	ANSI S3.1–1999	Less background noise permitted.
Noise Calibration, Calibrators	ANSI S1.40–1984	Tighter tolerances possible.
Integrating/Average Sound Level Meters	ANSI S1.43–1997	Broader performance range, 80–140 dB, TWA measures steady intermittent and impulsive sounds.
Noise Dosimeters	ANSI S1.25–1991	Same as above, 80–140 Db.

C. Noise and Safety on the Construction Site

Suter's work discusses the possible link between noise, hearing loss, and the occurrence of accidents in the construction industry, as well as studies of this problem in other industries (ship building, general industry) (Exs. 2–2; 2–6). OSHA seeks information and data on construction worker accidents associated with or caused by excessive construction project noise or noise-induced hearing loss, including individual accident investigation reports, and research results. The Agency also seeks information on the availability of warning signals, such as reverse alarms on heavy vehicles that are specially designed to be audible in the noise environments typical of construction sites or by workers with noise-induced hearing loss. Are there alternatives to reverse alarms (visual as well as acoustical) that have proven to be effective?

D. Noise Exposure Control

While OSHA is not considering changes to its requirements for controlling workplace noise levels at this time, the Agency is interested in obtaining information concerning the methods employers have used to successfully control or reduce noise levels on construction projects. This data may be used for several purposes, including:

- Identifying and establishing best practices
- Updating OSHA and NIOSH training materials
- Identifying effective engineering and administrative controls

1. Engineering and Administrative Controls

In construction, as in general industry, the preferred methods of abating the noise hazard are the use of engineering and administrative controls. OSHA solicits noise exposure data and noise abatement information from the manufacturers of equipment and tools used in the construction industry that emit high levels of noise and thus expose the operators and those working nearby to potentially hazardous noise levels. The Agency is particularly interested in noise exposure and noise abatement information on two major sources of construction noise: (1) Heavy equipment, such as loaders, dozers, asphalt spreaders, power shovels, crawler and other kinds of cranes, and (2) graders, and pneumatic tools, such as jackhammers and chipping guns.

What are the noise exposures of operators of heavy equipment and those who work nearby? What progress has been made over the last two decades to control the noise of heavy construction equipment? Are quieter tools powered by means other than pneumatic power available for the kinds of construction jobs traditionally done by pneumatic tools? Are these tools as efficient and cost-effective as the pneumatic versions? Please provide data on the availability of quieter equipment and tools, price quotes, productivity information, and any other data that would be helpful in determining the relative cost-effectiveness of purchasing quieter equipment. What types of engineering and administrative controls have proved most effective? How have these controls affected operations on construction sites?

2. Machine Design, Retrofit, and Substitutions

OSHA seeks information on quieter tools, equipment, or processes for the construction industry that have been developed either in the U.S. or abroad that could be substituted for existing noisy tools, equipment, and processes. The Agency also requests information from equipment manufacturers, noise control engineers, and others involved in the purchase, use, or modification of equipment or parts of equipment used in construction on those features of machine design and retrofit (including installation of mufflers, power rating of the engine, presence of enclosed, sound-insulated cabs) affecting the noise exposure of workers operating the equipment or working in the vicinity of such equipment. Please provide specific information on the types and noise emission levels (both sound power and sound pressure levels, if available), as well as information on the cost-effectiveness of various types of "quiet" construction equipment now being marketed and used in the construction industry. In commercial, road and bridge and residential construction, control of which types of equipment would have the greatest impact in reducing the number of people exposed and the intensity of exposure? Has any study or modeling been done in this area?

3. Administrative Controls

Administrative controls include changes in the work schedule or the provision of quiet areas to allow workers to recover from TTS. To what degree are administrative controls feasible or desirable in the construction industry? What administrative controls are used for noise control in the construction industry? How are such controls implemented? What are the costs? Are there any data on the effectiveness of administrative controls in the construction industry? Do certain construction operations preclude the use of administrative controls? If so, which are they, and why do they make the use of such controls difficult or impossible?

III. Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); section 107 of the Construction Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secretary of Labor's Order No. 3–2000 6–96 (65 FR 50017); and 29 CFR Part 1911.

Signed at Washington, DC, July 31, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–19691 Filed 8–2–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI62

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2003–2004 Subsistence Taking of Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 2003–2004 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the wildlife taking regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—2002–2003 Subsistence Taking of Fish and Wildlife Regulations," which expire on June 30, 2003. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of wildlife.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than October 18, 2002. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule from September 4, 2002–October 11, 2002. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

ADDRESSES: You may submit proposals electronically to *Subsistence@fws.gov*. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may also submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council, Hoonah, September 30, 2002
Region 2—Southcentral Regional Council, Cordova, October 2, 2002
Region 3—Kodiak/Aleutians Regional Council, Nelson Lagoon, September 18, 2002
Region 4—Bristol Bay Regional Council, Naknek, September 30, 2002
Region 5—Yukon-Kuskokwim Delta Regional Council, Chevak, October 10, 2002
Region 6—Western Interior Regional Council, Holy Cross, October 3, 2002
Region 7—Seward Peninsula Regional Council, Nome, October 10, 2002
Region 8—Northwest Arctic Regional Council, Kotzebue, September 18, 2002
Region 9—Eastern Interior Regional Council, Beaver, October 8, 2002
Region 10—North Slope Regional Council, Barrow, September 4, 2002

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

Electronic filing of comments (preferred method): You may submit electronic comments (proposals) and other data to *Subsistence@fws.gov*. Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

We will compile and distribute for additional public review during November 2002 the written proposals to change Subpart D hunting and trapping regulations and customary and traditional use determinations in Subpart C. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on January 6, 2003.

We will hold a second series of Regional Council meetings in February and March 2003, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change hunting and trapping and customary and traditional use determination regulations to the Regional Councils at those winter meetings.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, May 2003. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

Please Note: The Board will not consider proposals for changes relating to fish or shellfish regulations at this time. The Board will be calling for proposed changes to those regulations in January 2003.

The Board's review of your comments and wildlife proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which your change is being suggested; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § __.24, Subpart C and §§ __.25 or __.26, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence hunting and trapping seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior

and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA.

However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, as revised June 12, 2001, (66 FR 31533), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2001) and 50 CFR 100.11 (2001), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in May 2003.

Proposed Changes From 2002–2003 Seasons and Bag Limit Regulations

Subpart D regulations (§§ __.25 and __.26) are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§ __.24 of Subpart C) are also subject to an annual review process providing for modification each year. The text of the 2002–2003 Subparts C and D final rule, without modification, served as the foundation for the 2003–2004 Subparts C and D proposed rule. Please see 67 FR 43709, June 28, 2002. The amendments made to subparts C and D in that rule are the same as the amendments we are proposing in this rule. The regulations contained in this proposed rule would take effect on July 1, 2003, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction does not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA—A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord

subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the rule will not reach the "may significantly restrict" threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act—This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. It applies to the use of public lands in Alaska. The information collection requirements are approved by OMB under 44 U.S.C. 3501 and have been assigned control number 1018–0075, which expires July 31, 2003. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

Currently, information is being collected by the use of a Federal Subsistence Registration Permit and Designated Hunter Application. The information collected on these two permits establishes whether an applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health in order to make management decisions relative to the conservation of healthy wildlife populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (1 hour or less). This information is accessed via computer data base.

Form	Estimated number of respondents	Completion time for each form (hour)	Estimated annual response	Estimated annual burden (hours)	Hourly cost for respondent	Financial burden on respondents
Federal Subsistence Registration Permit.	5,000	1/4	5,000	1,250	$20.00	$5.00 each or $25,000 total.
Designated Hunter Application	2,000	1/4	2,000	500	20.00	$5.00 each or $10,000 total.

You may direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, DC 20503. Additional information collection requirements may be imposed if local advisory committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects—This rule is not a significant rule subject to OMB review under Executive Order 12866.

This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, would equate to about $6 million in food value state-wide.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State

from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information—William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; and Ken Thompson, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Dated: July 24, 2002.

Kenneth E. Thompson,

Subsistence Program Manager, USDA-Forest Service.

Peggy Fox,

Acting Chair, Federal Subsistence Board.

[FR Doc. 02–19621 Filed 8–2–02; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 68d

RIN 0925–AA18

Public Health Service; National Institutes of Health Loan Repayment Program for Research Generally (GR–LRP)

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to issue regulations to implement section 487C of the Public Health Service Act, as amended, authorizing the NIH Loan Repayment Program for Research Generally. The purpose of the program is to recruit and retain appropriately qualified health professionals, as employees of the NIH, to conduct research by providing repayment of qualified educational loans.

DATES: Comments must be received on or before October 4, 2002, in order to assure that NIH will be able to consider the comments in preparing the final rule.

ADDRESSES: Comments should be sent to Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Blvd., Room 601, MSC 7669, Rockville, MD 20892. Comments may also be sent electronically by FAX (301–402–0169) or e-mail *(jm40z@nih.gov)*.

FOR FURTHER INFORMATION CONTACT: Jerry Moore at the address above or telephone 301–496–4607 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 10, 1993, the United States Congress enacted the NIH Revitalization Act of 1993 (Public Law 103–43). Section 1621 of Pub. L. 103–43 amended the Public Health Service (PHS) Act by adding a new section 487C (42 U.S.C. 288–3). Subsequently, section 410 of the Health Professions Education Partnership Act of 1998 (Public Law 105–392), enacted on November 13, 1998, amended section 487C. As amended, section 487C directs the Secretary to implement and establish a program of entering into agreements with appropriately qualified health professionals under which such health professionals agree to conduct research as employees of NIH for a period of at least three years, research in consideration of the Federal Government agreeing to repay, for each year of service, not more than $35,000 of the principal and interest of the educational loans of such health professionals. This program is known as the NIH Loan Repayment Program for Research Generally (GR–LRP). Section 487C further states that the provisions of subpart III of part D of title III of the PHS Act, which apply to the National Health Service Corps Loan Repayment Program, apply to the Loan Repayment Program for Research Generally, except to the extent they are inconsistent with the provisions of section 487C. The NIH is proposing to amend title 42 of the Code of Federal Regulations by adding a new part 68d to govern the administration of this loan repayment program.

The proposed regulations specify the scope and purpose of the program, who is eligible to apply, how individuals apply to participate in the program, how participants are selected, and the terms and conditions of the program. The purpose of this notice is to invite public comment on the proposed regulations. The following is provided as public information.

Executive Order 12866

Executive Order 12866, Regulatory Planning and Review, requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term "significant regulatory action" contained in § 3(f) of the Order, pre-publication review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) is necessary. The OIRA reviewed this proposed rule under Executive Order 12866 and is deemed a significant regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that regulatory proposals be analyzed to determine whether they create a significant impact on a substantial number of small entities. The Secretary certifies that any final rule resulting from this proposal will not have any such impact.

Executive Order 13132

Executive Order 13132, Federalism, requires that federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. The Acting Director, NIH, reviewed the proposed rule as required under the Order and determined that it does not have any federalism implications. The Secretary certifies that

the proposed rule will not have an effect on the States, or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements which are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The application forms used by the NIH Loan Repayment Program for Research Generally have been approved by OMB under OMB No. 0925–0361 (expires December 31, 2004).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered program affected by the proposed regulations is:

93.232—NIH Loan Repayment Program for General Research

List of Subjects in 42 CFR Part 68d

Health—medical research; Loan repayment programs—health.

Dated: March 31, 2002.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

Approved: May 29, 2002.

Tommy G. Thompson,

Secretary.

For reasons presented in the preamble, it is proposed to amend title 42 of the Code of Federal Regulations by adding a new Part 68d to read as set forth below.

PART 68d—NATIONAL INSTITUTES OF HEALTH (NIH) LOAN REPAYMENT PROGRAM FOR RESEARCH GENERALLY (GR–LRP)

Sec.

68d.1 What is the scope and purpose of the NIH Loan Repayment Program for Research Generally (GR–LRP)?
68d.2 Definitions.
68d.3 Who is eligible to apply?
68d.4 Who is eligible to participate?
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68d.7 How are applicants selected to participate in the GR–LRP?
68d.8 What does the GR–LRP provide to participants?
68d.9 What loans qualify for repayment?
68d.10 What does an individual have to do in return for loan repayments received under the GR–LRP?
68d.11 How does an individual receive loan repayments beyond the initial three-year contract?
68d.12 What will happen if an individual does not comply with the terms and conditions of participation in the GR–LRP?
68d.13 Under what circumstances can the service or payment obligation be canceled, waived, or suspended?
68d.14 When can a GR–LRP payment obligation be discharged in bankruptcy?
68d.15 Additional conditions.
68d.16 What other regulations and statutes apply?

Authority: 42 U.S.C. 288–3.

§ 68d.1 What is the scope and purpose of the NIH Loan Repayment Program for Research Generally (GR–LRP)?

The regulations of this part apply to the award of educational loan payments under the NIH Loan Repayment Program for Research Generally (GR–LRP) authorized by section 487C of the Public Health Service Act (42 U.S.C. 288–3). The purpose of this program is to address the need for biomedical and behavioral researchers by providing an economic incentive to appropriately qualified health professionals to conduct research as employees of the NIH.

§ 68d.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

Applicant means an individual who applies to and meets the eligibility criteria for the GR–LRP.

Approved research means research approved by the General Research Loan Repayment Committee.

Commercial loans means loans made for educational purposes by banks, credit unions, savings and loan associations, not-for-profit organizations, insurance companies, schools, and other financial or credit institutions which are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or of the State in which the lender has its principal place of business.

Current payment status means that a qualified educational loan is not past due in its payment schedule as determined by the lending institution.

Debt threshold means the minimum amount of qualified educational debt an individual must have, on their program eligibility date, in order to be eligible for Program benefits. Debt threshold is the amount of qualified educational debt equal to 20 percent of an individual's annual NIH salary on his/her program eligibility date.

Educational expenses means the cost of the health professional's undergraduate, graduate, and health professional school's education, including the tuition expenses and other educational expenses such as fees, books, supplies, educational equipment and materials, and laboratory expenses.

General Research Loan Repayment Committee (GR–LRC) means the scientific board, whose members are appointed by the Director, NIH, assembled to review, rank, and approve or disapprove General Research Loan Repayment Program applications. The GR–LRC is composed of NIH scientific staff and chaired by the Deputy Director for Intramural Research, NIH. Members are nominated by the Deputy Directors for Extramural and Intramural Research, NIH.

General Research Loan Repayment Program (GR–LRP or Program) means the NIH Loan Repayment Program for Research Generally authorized by section 487C of the Act, as amended.

General Research Loan Repayment Program (GR–LRP or Program) contract refers to the agreement, which is signed by an applicant and the Secretary, wherein the applicant agrees to engage in approved research as an employee of the NIH and the Secretary agrees to repay qualified educational loans for a prescribed period as specified in this part.

Government loans means loans made by Federal, State, county, or city agencies which are authorized by law to make such loans.

Institute, Center or Agency (ICA) means an institute, center, or agency of the National Institutes of Health.

Living expenses means the reasonable cost of room and board, transportation and commuting costs, and other reasonable costs incurred during an individual's attendance at an educational institution.

Participant means an individual whose application to the GR–LRP has been approved and whose Program contract has been executed by the Secretary.

Participant obligation means the amount of qualified educational debt payable by the participant. Specifically, participants are obligated to repay 50 percent of their debt threshold.

Program means the NIH Loan Repayment Program for Research Generally.

Program eligibility date means the date on which an individual's Program contract is executed by the Secretary and that individual is engaged in approved research as an employee of the NIH.

Qualified educational loans and interest/debt include Government and commercial educational loans and interest for:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s)

attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses incurred.

Reasonable educational and living expenses means those educational and living expenses which are equal to or less than the sum of the school's estimated standard student budget for educational and living expenses for the degree program and for the year(s) during which the participant was enrolled in school. If there is no standard budget available from the school or if the participant requests repayment for educational and living expenses which exceed the standard student budget, reasonableness of educational and living expenses incurred must be substantiated by additional contemporaneous documentation, as determined by the Secretary.

Repayable debt means the proportion, as established by the Secretary, of an individual's total qualified educational debt relative to the NIH salary, which can be paid by the GR–LRP. Specifically, qualifying educational debt amounts in excess of 50 percent of the debt threshold will be considered for repayment.

Salary means base pay. For individuals appointed under Title 42, salary includes base pay only; for those employed under Title 5, it includes base pay plus locality pay. For individuals appointed under the U.S. Commissioned Corps, salary includes base pay plus Basic Allowance for Subsistence (BAS) and Basic Allowance for Housing (BAH) and excludes special pays.

School means undergraduate, graduate, and health professions schools which are accredited by a body or bodies recognized for accreditation purposes by the Secretary of Education.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

Service means the Public Health Service.

State means one of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

Withdrawal means a request by a participant, prior to the Program making payments on his or her behalf, for withdrawal from Program participation. A withdrawal is without penalty to the participant and without obligation to the Program.

§ 68d.3 Who is eligible to apply?

To be eligible to apply to the GR–LRP, an individual must be a citizen, national, or permanent resident of the United States; hold a Ph.D., M.D., D.O., D.D.S., D.M.D., D.V.M., D.P.M., Pharm.D., A.D.N./B.S.N., or equivalent degree; and have qualified educational debt in excess of the debt threshold.

§ 68d.4 Who is eligible to participate?

To be eligible to participate in the GR–LRP, an applicant must have the recommendation of the employing ICA Scientific Program Director, the concurrence of the employing ICA Director, and the approval of the GR–LRC. Since participation in the Program is contingent, in part, upon employment with NIH, a Program contract may not be awarded to an applicant until an employment commitment has been made by the employing ICA Personnel officer.

§ 68d.5 Who is ineligible to participate?

The following individuals are ineligible for GR–LRP participation:

(a) Persons who are not eligible applicants as specified under § 68d.3;

(b) Persons who owe an obligation of health professional service to the Federal Government, a State, or other entity, unless a deferral is granted for the length of his/her service obligation under the GR–LRP. The following are examples of programs which have a service obligation: Physicians Shortage Area Scholarship Program, National Research Service Award Program, Public Health Service Scholarship, National Health Service Corps Scholarship Program, Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program, National Institutes of Health Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, and Indian Health Service Scholarship Program; or

(c) Persons who are not NIH employees, such as Intramural Research Training Award (IRTA) recipients, Cancer Research Training Award (CRTA) recipients, Visiting Fellows, National Research Service Award (NRSA) recipients, Guest Researchers or Special Volunteers, NIH-National Research Council (NRC) Biotechnology Research Associates Program participants, and Intergovernmental Personnel Act (IPA) participants.

§ 68d.6 How do individuals apply to participate in the GR–LRP?

An application for participation in the GR–LRP shall be submitted to the NIH office which is responsible for the Program's administration, in such form and manner as the Secretary may prescribe.

§ 68d.7 How are applicants selected to participate in the GR–LRP?

To be selected for participation in the GR–LRP, applicants must satisfy the following requirements:

(a) Applicants must meet the eligibility requirements specified in § 68d.3 and § 68d.4.

(b) Applicants must not be ineligible for participation as specified in § 68d.5.

(c) Applicants must be selected for approval by the GR–LRC, based upon a review of their applications.

§ 68d.8 What does the GR–LRP provide to participants?

(a) *Loan repayments.* For each year of service the individual agrees to serve, with a minimum of 3 years of obligated service, the Secretary may pay up to $35,000 per year of a participant's repayable debt.

(b) Payments on repayable debt will be made directly to a participant's lender(s). If there is more than one outstanding qualified educational loan, the Secretary will repay the loans in the following order, unless the Secretary determines significant savings would result from paying loans in a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services;

(2) Loans guaranteed by the U.S. Department of Education;

(3) Loans made or guaranteed by a State;

(4) Loans made by a School;

(5) Loans made by other entities.

(c) *Tax liability payments.* The Secretary shall make payments to partially reimburse the participant for the increased Federal tax liability resulting from loan repayments received under the GR–LRP. These Federal tax payments are 39 percent of the total annual loan repayments being made and are made to the Federal Reserve Bank as a credit to the participant's IRS account. The Secretary may make additional tax liability payments to those participants who show increased Federal, State and/or local tax liability.

(d) Under paragraphs (a), (b) and (c) of this section, the Secretary will make payments in the discharge of debt and resulting tax liabilities to the extent

appropriated funds are available for these purposes.

§ 68d.9 What loans qualify for repayment?

(a) The GR–LRP will repay participants' lenders the principal, interest, and related expenses of qualified Government and commercial educational loans obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

(b) The following educational loans are ineligible for repayment under the GR–LRP:

(1) Loans obtained from other than a government entity or commercial lending institution;

(2) Loans for which contemporaneous documentation is not available;

(3) Loans or portions of loans obtained for educational or living expenses which exceed the standard of reasonableness as determined by the participant's standard school budget for the year in which the loan was made, and are not determined by the Secretary to be reasonable based on additional documentation provided by the individual;

(4) Loans, financial debts, or service obligations incurred under the following programs: Physicians Shortage Area Scholarship Program, National Research Service Award Program, Public Health and National Health Service Corps Scholarship Training Program, National Health Service Corps Scholarship Program, Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program, Indian Health Service Program, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, and similar programs, upon determination by the Secretary, which provide loans, scholarships, loan repayments, or other awards in exchange for a future service obligation;

(5) Any loan in default or not in a current payment status;

(6) Loan amounts which participants have paid or were due to have paid prior to the program eligibility date;

(7) Loans (other than consolidation loans) for which promissory notes have been signed after the program eligibility date; and

(8) Payments on loan consolidations which include the underlying loans of spouses or other individuals.

§ 68d.10 What does an individual have to do in return for loan repayments received under the GR–LRP?

Individuals must agree to be primarily engaged in approved research, as employees of the NIH, for a minimum initial period of three consecutive years.

§ 68d.11 How does an individual receive loan repayments beyond the initial three-year contract?

An individual may apply for and the Secretary may grant extension contracts for one-year periods, if there is sufficient debt remaining to be repaid and the individual is engaged in approved research as an NIH employee.

§ 68d.12 What will happen if an individual does not comply with the terms and conditions of participation in the GR–LRP?

(a) Absent withdrawal (see § 68d.2), or termination under paragraph (d) of this section, any participant who fails to complete the minimum three-year service obligation required under the initial Program contract will be considered to have breached the contract and will be subject to assessment of monetary damages and penalties as follows:

(1) Participants who leave during the first year of the initial contract are liable for amounts already paid by the NIH on behalf of the participant plus an amount equal to $1,000 multiplied by the number of months of the original obligation.

(2) Participants who leave after the first year but before the end of the second year of the contract are liable for amounts already paid by the NIH on behalf of the participant plus $1,000 for each unserved month.

(3) Participants who leave after the second year but before the end of the third year of the contract are liable for amounts already paid by the NIH on behalf of the participant for periods of obligated service not served plus $10,000 if the individual fails to provide a one-year notice of the intended breach (or such shorter time as is determined to be adequate to find a replacement).

(b) Payments of any amount owed under paragraph (a) of this section shall be made within one year of the participant's breach.

(c) Participants who sign a continuation contract for any year beyond the initial three-year period and fail to complete the one-year period are liable for the pro rata amount of any benefits advanced beyond the period of completed service.

(d) Terminations will not be considered a breach of contract in cases where such terminations are beyond the control of the participant as follows:

(1) Terminations for cause or for convenience of the Government will not be considered a breach of contract and monetary damages will not be assessed.

(2) Occasionally, a participant's research assignment may evolve and change to the extent that the individual is no longer engaged in approved research. Similarly, the research needs and priorities of the ICA and/or the NIH may change to the extent that a determination is made that the health professional's skills may be better utilized in a non-approved research assignment. Under these circumstances, the following will apply:

(i) Program participation and benefits will cease as of the date an individual is no longer engaged in approved research; and

(ii) Normally, job changes of this nature will not be considered a breach of contract on the part of either the NIH or the participant. Based on the recommendation of the ICA Director and concurrence of the Secretary, the participant will be released from the remainder of his or her service obligation without assessment of monetary penalties. The participant in this case will be permitted to retain all Program benefits made or owed by NIH on his/her behalf up to the date the individual is no longer engaged in approved research, except for the pro rata amount of any benefits advanced beyond the period of completed service.

§ 68d.13 Under what circumstances can the service or payment obligation be canceled, waived, or suspended?

(a) Any obligation of a participant for service or payment will be canceled upon the death of the participant.

(b) The Secretary may waive or suspend any service or payment obligation incurred by the participant upon request whenever compliance by the participant:

(1) Is impossible,

(2) Would involve extreme hardship to the participant, or

(3) If enforcement of the service or payment obligation would be against equity and good conscience. The Secretary may approve a request for a suspension of the service or payment obligations for a period of 1 year. A renewal of this suspension may also be granted.

(c) Compliance by a participant with a service or payment obligation will be considered impossible if the Secretary determines, on the basis of information and documentation as may be required,

that the participant suffers from a physical or mental disability resulting in the permanent inability of the participant to perform the service or other activities which would be necessary to comply with the obligation.

(d) In determining whether to waive or suspend any or all of the service or payment obligations of a participant as imposing an undue hardship and being against equity and good conscience, the Secretary, on the basis of information and documentation as may be required, will consider:

(1) The participant's present financial resources and obligations;

(2) The participant's estimated future financial resources and obligations; and

(3) The extent to which the participant has problems of a personal nature, such as a physical or mental disability or terminal illness in the immediate family, which so intrude on the participant's present and future ability to perform as to raise a presumption that the individual will be unable to perform the obligation incurred.

§ 68d.14 When can a GR–LRP payment obligation be discharged in bankruptcy?

Any payment obligation incurred under § 68d.12 may be discharged in bankruptcy under Title 11 of the United States Code only if such discharge is granted after the expiration of the five-year period beginning on the first date that payment is required and only if the bankruptcy court finds that a non-discharge of the obligation would be unconscionable.

§ 68d.15 Additional conditions.

When a shortage of funds exists, participants may be funded only partially, as determined by the Secretary. However, once a GR–LRP contract has been signed by both parties, the Secretary will obligate such funds as necessary to ensure that sufficient funds will be available to pay benefits for the duration of the period of obligated service unless, by mutual written agreement between the Secretary and the participant, specified otherwise. Benefits will be paid on a quarterly basis after each service period unless specified otherwise by mutual written agreement between the Secretary and the participant. The Secretary may impose additional conditions as deemed necessary.

§ 68d.16 What other regulations and statutes apply?

Several other regulations and statutes apply to this part. These include, but are not necessarily limited to:

(a) Debt Collection Act of 1982, Public Law 97–365, as amended (5 U.S.C. 5514);

(b) Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*);

(c) Federal Debt Collection Procedures Act of 1990, Public Law 101–647 (28 U.S.C. 1); and

(d) Privacy Act of 1974 (5 U.S.C. 552a).

[FR Doc. 02–19610 Filed 8–2–02; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Notice of Availability of a Final Recovery Plan for the Howell's Spectacular Thelypody (*Thelypodium howellii* ssp. *spectabilis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a final recovery plan for the Howell's spectacular thelypody (*Thelypodium howellii* ssp. *spectabilis*; thelypody). This threatened plant, a member of the mustard family, occurs on fewer than 12 small sites located within 100 acres of private lands near North Powder and Haines in eastern Oregon (Baker and Union Counties). The thelypody occurs in mesic, alkaline meadow habitats and all remaining populations occur within or directly adjacent to agricultural fields or urban areas. Actions needed for recovery include permanent protection of remaining populations and habitat, and management to provide for naturally reproducing populations that have stable or increasing trends.

ADDRESSES: Recovery plans that have been approved by the U.S. Fish and Wildlife Service are available on the World Wide Web at *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm*. Recovery plans may also be obtained from: Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, (301) 429–6403 or 1–800–582–3421. The fee for the plan varies depending on the number of pages of the plan.

FOR FURTHER INFORMATION CONTACT: Johnna Roy, Wildlife Biologist, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 South Vinnell Way, Boise, ID 83709; phone (208) 378–5243.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of the our endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973, as amended in 1988 (Act) (16 U.S.C. 1531 *et seq.*), requires that recovery plans be developed for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. Information presented during the comment period has been considered in the preparation of the final recovery plan, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

The thelypody was listed as a threatened species on June 25, 1999. This taxon is endemic to the Baker-Powder River Valley in eastern Oregon. It is currently found in five populations in Baker and Union Counties, Oregon. It formerly also occurred in the Willow Creek Valley in Malheur County. The species grows in alkaline meadows in valley bottoms, usually in and around shrubs such as greasewood or rabbitbrush. The plants are threatened by habitat modification such as grazing during spring and early summer, trampling, urban development, and competition from non-native plants.

The objective of this plan is to provide a framework for the recovery of the thelypody so that protection by the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed and it will be considered for removal from the List of Endangered and Threatened Wildlife (50 CFR part 17). The Howell's spectacular thelypody will be considered for delisting when: (1) At least five stable or increasing thelypody

populations are distributed throughout its extant or historic range and populations must be naturally reproducing with stable or increasing trends for 10 years; (2) all five populations are located on permanently protected sites; (3) management plans have been developed and implemented for each site that specifically provide for the protection of thelypody and its habitat; and (4) a post-delisting monitoring plan is in place that will monitor the status of thelypody for at least 5 years at each site once it has been delisted.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: June 3, 2002.

Rowand W. Gould,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 02–19624 Filed 8–2–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 150
Monday, August 5, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

False Island Timber Sale(s), Sitka Ranger District, Tongass National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) for the False Island Timber Sale(s) project to disclose the environmental effects of proposed actions within the Project Area. The proposed project is located on Chichagof Island, part of the Sitka Ranger District of the Tongass National Forest. The proposed action provides for: (1) Timber harvest on approximately 1,400 acres of forested land resulting in the production of an estimated 44,000 CCF (hundred cubic feet) of sawlog and utility timber, (2) construction of approximately seven miles of specified road, eight miles of temporary road, and reconstruction of seven miles of previously constructed road, and (3) reconstruction of two existing log transfer facilities.

DATES: To be most useful, comments concerning the scope of the analysis for this project should be received within 45 days of publication.

ADDRESSES: Send written comments to: False Island Planning Team, Sitka Ranger District, 204 Siginaka Way, Sitka, AK 99835.

FOR FURTHER INFORMATION CONTACT: Carol Goularte, District Ranger or Rick Abt, Team Leader, phone (907) 747–4220, fax (907) 747–4253.

SUPPLEMENTARY INFORMATION:

This EIS will tier to the EIS for the 1997 Tongass Land and Resource Management Plan (TLRMP) that provides the overall guidance, goals, objectives, standards, guidelines, and management area direction to achieve the desired condition for the project area.

The False Island Project Area is located on the southeastern part of Chichagof Island about 35 air miles north of Sitka, Alaska, approximately 20 air miles west of Angoon, Alaska, and an estimated 15 air miles south of Tenakee Springs, Alaska. The Project Area is administered by the Sitka Ranger District of the Tongass National Forest, Sitka, Alaska and occurs in Value Comparison Units (VCU) 2410, 2420, 2430, 2440, and 2450 as designated by the TLRMP. The Project Area includes approximately 82,513 acres. It lies south of Kadashan River, extends east from Oly Creek to Lindenberg Head, and continues north of Little Basket Lake. The purpose and need for the False Island Timber Sales(s) Project is: (1) To implement the direction contained in the 1997 TLRMP and the 1997 ROD, including goals, objectives, management prescriptions, and standards and guidelines; (2) to maintain wood production from suitable timber lands, providing a continuous supply of wood to meet society's needs; (3) to help provide a stable supply of timber from the Tongass National Forest that meets existing and potential market demand and is consistent with sound multiple use and sustained yield objectives; and (4) to help meet the desired future condition of the landscape as described in the 1997 TLRMP. The False Island Timber Sale(s) Project is consistent with the 1997 Tongass Land Management Plan.

The Project Area includes portions of the Chicagof Roadless Area (311). In 2001, the Secretary of Agriculture began a review of the roadless area rule, and the Chief of the Forest Service undertook a review of the road management policy. These reviews have led the agency to initiate several Interim Directives intended to ensure full consideration of the values associated with inventoried roadless areas within the context of forest planning. In *Sierra Club* v. *Lyons* (J00–0009 (CV)), the U.S. District Court, District of Alaska enjoined the Tongass National Forest from taking any action to change the wilderness character of any roadless area until a Supplement to the 1997 TLMP Environmental Impact Statement (SEIS) has been completed. This SEIS is currently being prepared. Planning for the False Island Timber Sale(s) Project will continue simultaneously and in coordination with the SEIS and will meet the requirements in the Interim Directives. The repercussions of delaying the project planning process regarding road building and timber harvest, even for a relatively short period, can have a significant effect on the amount of timber available for sale.

The Project Area includes Old Growth Reserves (OGR) as designated in TLRMP. Sealaska Regional Native Corporation has recently acquired portions of these OGRs as a result of a land conveyance. A Forest Plan amendment may be required to change the location of the OGR to meet Forest Plan standards.

Decisions to be made include whether or not to authorize timber harvest within the False Island Project Area. In addition, if timber harvest will occur, the following will be determined: (1) Whether the design of the timber sale(s) is consistent with meeting the resource protection standards and guidelines set forth in the 1997 TLRMP and the 1997 ROD; (2) how much timber volume will be made available; (3) the location and design of the timber harvest units, log transfer facilities and road system, (4) mitigation and monitoring required for sound resource management, (5) whether there is a significant possibility of a significant restriction on subsistence uses, (6) road management objectives, including closures for resource protection and economics; and (7) the location for new OGR designation. In order to maintain the TLRMP standards for old growth, a Forest Plan amendment may be required to change the location of the medium OGR.

Tribal Governments, Federal, State, and local agencies, as well as individuals and organizations that may be interested in, or affected by, the Proposed Action are invited to participate in the scoping process. This process will determine the scope of the project and significant issues to be analyzed in depth in the Environmental Impact Statement. Following publication of this notice, a scoping document will be mailed to interested people and organizations. The document will briefly describe the project and Project Area, the purpose and need for the project, the Proposed Action, and will invite public comment. Scoping meetings will then be held in

Sitka and Angoon, Alaska. Locations and times of the scoping meetings will be announced in local newspapers and on local radio stations.

The Interdisciplinary Planning Team will review comments received during the scoping period to determine which issues are significant and within the scope of this project. The team will then develop a range of alternatives to address the significant issues. One of these will be the "No Action" alternative, in which no additional timber harvest or road construction is proposed. Other alternatives will consider various levels and locations of timber harvest in response to issues and non-timber objectives. The team will then prepare a Draft Environmental Impact Statement (DEIS) that will display the alternatives and the direct, indirect, and cumulative effects of each alternative.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) by November 2002. The comment period on the DEIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. In addition to commenting on the proposed action and the DEIS when it is released, agencies and other interested persons or groups are invited to write to or speak with Forest Service officials at any time during the planning process.

The Forest Service believes that at this early scoping stage, it is important to inform reviewers of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time during which the agency can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including the names and addresses of those who comment, will be considered part of the public record on this Proposed Action, will be available for public inspection, *and may be released under* the Freedom of Information Act (FOIA). Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request that the agency withhold a submission from the public record by showing how the Freedom of Information Act permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform persons requesting confidentiality of the agency's decision regarding their request, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without the name and address.

The Final Environmental Impact Statement (FEIS) and Record of Decision for the False Island Timber Sale(s) is expected to be released in June 2003. The Responsible Official will make a decision regarding this proposal after considering public comments, the environmental consequences displayed in the FEIS, and applicable laws, regulations, and policies. The decision and supporting reasons will be documented in the Record of Decision (ROD). Permits required for implementation include the following

1. U.S. Army Corp of Engineers
   —Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
   —Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;
2. Environmental Protection Agency
   —National Pollutant Discharge Elimination System (402) Permit;
   —Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
   —Tideland Permit and Lease or Easement;
4. State of Alaska, Department of Environmental Conservation
   —Solid Waste Disposal Permit;
   —Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Tom Puchlerz, Forest Supervisor, Tongass National Forest, 648 Mission Street, Ketchikan, Alaska 99901–6591, is the Responsible Official. In making the decision, the Responsible Official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies. The Responsible Official will state the rationale for the chosen alternative in the Record of Decision.

Dated: July 29, 2002.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 02–19622 Filed 8–2–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #317 Composting Facility; #422. Hedgerow Planting; #500. Obstruction Removal; #580. Streambank and Shoreline Protection, and #359. Waste Treatment Lagoon to account for improved technology. These practices will be used to plan and install conservation practices on cropland.

pastureland, woodland, and wildlife land.

DATES: Comments will be received on or before September 4, 2002.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1665; Fax number (804) 287–1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS web site *http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITStds/EditStandards.htm.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: July 22, 2002.

L. Willis Miller,

Assistant State Conservationist for Programs, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 02–19670 Filed 8–2–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 020726181–2181–01]

RIN 0693–ZA49

Building Systems Research Grants Program; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites proposals from eligible organizations for funding projects under the Building Systems Research Grants Program (Program). The Program is seeking proposals in two specific areas: (1) cyber-security of computerized building control and safety systems, and (2) design/construction product (and process) data models to support building systems commissioning, which occurs after construction is completed and before operation and maintenance begins.

DATES: Proposals must be received no later than 5 p.m. Eastern Daylight Time on September 4, 2002.

ADDRESSES: Submit one signed original and two copies of the proposal to: Building and Fire Research Laboratory (BFRL), Attn.: Ms. Tina Faecke, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8602, Gaithersburg, Maryland 20899–8602, Tel: (301) 975–5911, E-mail: *tina.faecke@nist.gov*, Website: *http://www.bfrl.nist.gov*.

FOR FURTHER INFORMATION CONTACT: All grants related administration questions concerning these programs should be directed to the NIST Grants and Agreements Management Division at (301) 975–6328.

SUPPLEMENTARY INFORMATION:

Authority: As authorized by 15 U.S.C. 272(b) and (c), the NIST Building and Fire Research Laboratory is conducting a basic and applied building systems research program directly and through grants and cooperative agreements to eligible recipients.

Program Description and Objectives: The Building Systems Research Grants Program solicits proposals in support of the program objectives identified below. All proposals submitted to the Building Systems Research Grants Program must be in accordance with these program objectives. The appropriate Program Manager for each field of research may be contacted for clarification of the program objectives.

I. Cyber-Security of Computerized Building Control and Safety Systems—Evaluate and test different approaches to providing secure dynamic networks and mobile devices to communicating parties, including first responders, along with the capability to distinguish between legitimate entities and malicious intruders.

The contact person for this field of research is: Mr. Steven T. Bushby, and he may be reached at (301) 975–5873.

II. Design/Construction Product (and Process) Data Models to Support Building Commissioning, Which Occurs After Construction is Completed and Before Operation and Maintenance Begins—Determine the information needs of the building systems commissioning process and propose extensions or enhancements to the current product and process models being developed in the standards community to support the automation of this process.

The contact person for this field of research is: Dr. Kent A. Reed, and he may be reached at (301) 975–5852.

Eligibility: The Building Systems Research Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; state, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Funding Availability: For fiscal year 2002, the Building Systems Research Grants Program anticipates funding one award of up to $300,000 in each field of systems research described in the Program Description and Objectives section of this notice.

Award Period: Proposals will be considered for research projects at a funding level not to exceed $300,000 per proposal within a two-year period. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award.

Proposal Review Process: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for recordkeeping purposes. The remaining copies will be destroyed.

Responsive proposals will be forwarded to the Program Manager who will assign them to appropriate reviewers. At least three independent, objective individuals knowledgeable about the particular scientific area described above that the proposal addresses will conduct a technical review of each proposal, based on the evaluation criteria described below. When non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. The Program Manager will make funding recommendations to the Chief, Building Environment Division based on the technical evaluation score and the relationship of the work proposed to the objectives of the program.

In making application selections, the Chief, Building Environment Division will take into consideration the results of the evaluations, the scores of the reviewers, the Program Manager's recommendation, the availability of funds, and relevance to the objectives of the Building Systems Research Grants Program, as described in the Program

Description and Objectives section for this program.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time. The Program will retain one copy of each application that is not funded for three years for recordkeeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: The technical evaluation criteria are as follows:

a. *Technical quality of the research.* Reviewers will assess the rationality, innovation and imagination of the proposal and the fit to NIST's in-house building systems research program. (0–35 points).

b. *Potential impact of the results.* Reviewers will assess the potential impact and the technical application of the results to our in-house building systems research program. (0–25 points)

c. *Staff and institution capability to do the work.* Reviewers will evaluate the quality of the facilities and experience of the staff to assess the likelihood of achieving the objective of the proposal. (0–20 points)

d. *Match of budget to proposed work.* Reviewers will assess the budget against the proposed work to ascertain the reasonableness of the request. (0–20 points)

Matching Requirements: Matching funds are not required.

Application Kit: For the Building Systems Research Grants Program, an application kit, containing all required application forms and certifications is available by contacting Ms. Tina Faecke, (301) 975–5911, or from the website: *http://www.bfrl.nist.gov/866/extramuralprogram.htm.*

Additional Information: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget, in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh*, 172 F.Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

In addition, the following information is applicable to this program.

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards—11.609. Where websites are referenced within this notice, those who do not have access to the internet websites may contact the appropriate Program official to obtain information.

Fees and/or Profit: It is not the intent of NIST to pay fee or profit for any of the financial assistance awards that may be issued pursuant to this announcement.

Automated Standardized Application for Payment System (ASAP): During FY 2002 and becoming mandatory in FY 2003, the Department of Commerce will begin using the Department of Treasury's ASAP. NIST began using the ASAP system in July 2001 and continues to establish new accounts in ASAP. Awards made pursuant to this announcement may contain the ASAP payment clause. In order to receive payments for services under these awards, recipients will be required to register with the Department of Treasury and indicate whether or not they will use the on-line or voice response method of withdrawing funds from their ASAP established accounts. More information regarding ASAP can be found on-line at http://www.fms.treas.gov/asap/index.html.

Paperwork Reduction Act: The standard forms in the application kit involve collections of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by the Office of Management and Budget (OMB) under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Type of Funding Instrument: The funding instrument will be a grant or cooperative agreement, depending on the nature of the proposed work. A grant will be used unless NIST is "substantially involved" in the project, in which case a cooperative agreement will be used. A common example of substantial involvement is collaboration between NIST scientists and recipient scientists or technicians. Further examples are listed in Section 5.03.d of Department of Commerce Administrative Order 203–26, which can be found at *http://www.doc.gov/oebam/GCA manual.htm.* NIST will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for contractual arrangements for services and products for delivery to NIST is not available under this announcement.

Classification: This funding notice was determined to be "not significant" for purposes of Executive Order 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Applications under these programs are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 et seq.

Dated: July 29, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–19699 Filed 8–2–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Deep Seabed Mining: Approval of Extension and Revision of Exploration License

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval of extension of Deep Seabed Mining Exploration License USA–1 and revision of exploration plan.

SUMMARY: On December 5, 2001, at 66 FR 234, the National Oceanic and Atmospheric Administration (NOAA) noticed receipt of an application for a five-year extension of Deep Seabed Mining–Exploration License USA–1 and revision of exploration plan from Ocean

Minerals Company (OMCO). No comments objecting to approval of the extension and revision were received. Pursuant to the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283) and 15 CFR part 970, on July 26, 2002, NOAA approved the extension of the license and revision to the exploration plan through the year 2004.

FOR FURTHER INFORMATION CONTACT: John King, Coastal Programs Division (NORM/3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713–3155, extension 188, e-mail *john.king@noaa.gov*.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: July 26, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 02–19686 Filed 8–2–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073102A]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Community Demonstration Project Program Advisory Panel (CDPP-AP) will meet to select and rank proposals to be recommended for Council review. The Advisory Panel will develop criteria, objectives and priorities for recommendation to the Council for a subsequent solicitation for the Community Demonstration Project Program.

DATES: The meetings will be held on August 21, 22, and 23, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates, and times for the meetings.

ADDRESSES: The meeting will be held at the Council Office, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: On April 16, 2002 (67 FR 18512), proposals were solicited through the **Federal Register** for grants to support Community Demonstration Projects in the Western Pacific Area. The grants are authorized under section 111(b) of the Sustainable Fisheries Act of 1996, Public Law 104–297. Solicitation was closed on June 17, 2002, 5 p.m., Hawaii Time.

A meeting of the CDPP-AP is scheduled for August 22, 23, and 24, 2002, to review proposals and discuss the program.

At the meeting, the Advisory Panel will select proposals to be recommended for Council review. The Council or its designee will select proposals to be recommended for funding to the NMFS Grants Management Division. Successful applicants will be notified of their selection. Proposals not selected will be returned to the applicants. Successful applicants will participate in a Grant Workshop in Honolulu to complete their grant application.

The CDPP-AP will meet from 8 a.m., and as late as necessary to complete scheduled business. The order in which agenda items are addressed may change. The agenda for the CDPP-AP will include the items listed below:

August 22, 2002

1. Introductions
2. Report on the program implementation and workshops
3. Review selection criteria
4. Review of qualified proposals

August 23, 2002

1. Selection of proposals for recommendation to the Council
2. Program review
   a. Development and review of objectives and priorities for the next solicitation
   b. Review program eligibility criteria
   c. Workshop and materials
   d. Discussion and recommendations

August 24, 2002

1. Review and approval of Advisory Panel report
   a. Memorandum of selection
   b. Program review recommendations

Although other issues not contained in this notice may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: July 31, 2002.

Theophilus R. Brainerd.,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19690 Filed 8–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072302A]

Marine Mammals; File Nos. 1026–1671 and 1033–1683 and Permit No. 358–1585–01

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for permits and application for permit amendment.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit or permit amendment to take marine mammals for purposes of scientific research:

File No. 1026–1671–Belinda L. Rubinstein, New England Aquarium, Central Wharf, Boston, MA 02110;

File No. 1033–1683–Michael A. Castellini, Ph.D., Institute of Marine Science, School of Fisheries and Ocean Sciences, University of Alaska, Fairbanks, AK 99775; and

Permit No. 358–1585–01–Alaska Department of Fish and Game, (Dr. Robert Small, PI), Division of Wildlife Conservation, P.O. Box 25526, Juneau, AK 99802–5526.

DATES: Written or telefaxed comments on these actions must be received on or before September 4, 2002.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment (see **SUPPLEMENTARY INFORMATION** for addresses).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits and amendment request are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Applications for Permit

Belinda L. Rubinstein (File No. 1026–1671) requests a permit to take five species of seals found in waters off he northeast U.S. coast. These include the harbor seal (*Phoca vitulina*), harp seal (*Phoca groenlandica*), gray seal(*Halichoerus grypus*), hooded seal (*Cystophora cristata*) and ringed seal (*Phoca hispida*). Seals will be captured, tagged, sampled (including tooth extraction, biopsy, milk collection and anal swabs), and released. In addition to taking wild animals, the applicant also requests authority to sample conspecifics held in rehabilitation facilities. The purposes of the research are to: study habitat utilization using satellite telemetry and flipper tagging, determine stock association, and monitor health.

Michael A. Castellini, Ph.D., (File No. 1033–1683) requests a permit to take Weddell seals (*Leptonychotes weddellii*) in the Antarctic. Seals will be captured, instrumented, sampled and released. The applicant proposes to study the nutrient metabolism in predatory carnivores by examining how Weddell seals process nutrients while foraging, examining the kinetics of lipid uptake and utilization during active foraging, use labeled traced experiments to quantify lipid turnover rates and separate the lipid pool into its various components. Other species such as leopard, crabeater, Ross, southern elephant, and Antarctic fur seals occur in the study area and may be incidentally harassed during capture operations.

Amendment Request

Permit No. 358–1565–01 authorizes the Alaska Department of Fish and Game scientists to capture, sample, handle, tag, collect samples from subsistence harvested animals and export samples for analysis. The Permit also authorizes two accidental mortalities per year not to exceed 500 over five years.

The Holder now requests authority to amend the Permit to allow implantation of subcutaneous radio-telemetry transmitters in harbor seals. In the initial pilot project, the Holder proposes to perform implant surgery on 10 of the seals already authorized to be taken. Pending a successful pilot season, individuals already authorized in the permit will receive subcutaneous implants of radio transmitters.

Additionally, the Holder requests authority to increase the number of accidental mortalities allowed per year from 2 during capture operations to 6 annually [which includes mortalities associated with tag implant and capture operations], not to exceed 10 over the next three years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Comments may also be submitted by facsimile at (301)713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents are available for review in the following offices:

All files are available in the Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376:

File No. 1026–1671: Assistant Regional Administrator Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978)281–9200; fax (978)281–9371;

Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

File No. 1033–1683: Assistant Regional Administrator for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

File No. 358–1585–01: Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, P.O Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Dated: July 25, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19689 Filed 8–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2002–C–003]

Request for Comments on Agenda for the National Intellectual Property Law Enforcement Coordination Council

AGENCIES: Department of Justice and United States Patent and Trademark Office, Department of Commerce, as Co-Chairs, National Intellectual Property Law Enforcement Coordination Council.

ACTION: Notice and request for public comments.

SUMMARY: The National Intellectual Property Law Enforcement Coordination Council (the Council) seeks public comments relating to the agenda and mission of the Council. Interested members of the public are invited to present written comments on how to improve overall coordination and the topics outlined in the Supplementary Information section of this Notice.

DATES: All comments are due by September 4, 2002.

ADDRESSES: Persons wishing to offer written comments should address comments to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Box 4, Washington, DC 20231, marked for the attention of Elizabeth Shaw. Comments may also be submitted by facsimile transmission to (703) 305–7575, or by electronic mail through the internet to *Elizabeth.shaw2@uspto.gov*. All comments will be maintained for public inspection in Room 902, Crystal Park II, 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shaw by telephone at (703) 305–1033, by fax at (703) 305–7575, or by mail marked to her attention and addressed to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

Background

The National Intellectual Property Law Enforcement Coordination Council (the Council) was created pursuant to 15

USC 1128. The Council's mission is "to coordinate domestic and international intellectual property law enforcement among federal and foreign entities." The Council consists of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, co-chair of the Council (The Honorable James E. Rogan); the Assistant Attorney General, Criminal Division, co-chair of the Council (The Honorable Michael Chertoff); the Under Secretary of State for Economic, Business, and Agricultural Affairs (The Honorable Alan P. Larson); the Deputy United States Trade Representative (Ambassador Peter Allgeier); the Commissioner of Customs (The Honorable Robert C. Bonner); and the Under Secretary of Commerce for International Trade (The Honorable Grant Aldonas). By statute, the Council shall also consult with the Register of Copyrights (The Honorable Marybeth Peters).

The work of the Council is a United States Government effort aimed at coordinating domestic and international intellectual property law enforcement among Federal and foreign entities. This coordinating role may be divided into two parts. The first is to provide a vehicle for agencies to share information on their activities relating to enforcement of intellectual property rights and related training activities. The second role involves projects that the Council itself may undertake.

The Council has identified the following areas of focus in fulfilling its mission: law enforcement liaison, training coordination, industry and other outreach, and increasing public awareness .

On June 5, 2000, the Council published a notice in the **Federal Register** seeking public comment on issues associated with the Council's mission (65 FR 35611 (2000)). A summary of comments previously received is published in the Council's 2000 Annual Report, available on the internet at *http://www.uspto.gov*.

Issues for Public Comment

How the Council may best address the areas of focus listed above;

Activities the private sector is engaged in relating to public awareness campaigns involving intellectual property rights protection;

How the Council may be effective in coordinating a public awareness campaign.

Guidelines for Written Comments

Written comments should include the following information: the name, affiliation, and title of the individual providing the written comment; and if applicable, an indication of whether the comments offered represent the views of the respondent's organization or personal views.

Parties offering written comments should also provide comments in an electronic format. Such submissions may be provided via internet electronic mail or on a 3.5" floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Electronic submissions should be provided as unformatted text (*e.g.* ASCII or plain text) or as formatted text in one of the following formats: Microsoft Word (Macintosh, DOS or Windows versions); or WordPerfect (Macintosh, DOS or Windows versions).

Information provided pursuant to this notice will be made part of the public record and may be made available via the internet. In view of this, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who rely on confidential information to illustrate a point are requested to summarize, or otherwise submit, the information in a way that permits its public disclosure.

Dated: July 19, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Dated: July 25, 2002.

Michael Chertoff,

Assistant Attorney General for the Criminal Division, United States Department of Justice.

[FR Doc. 02–19612 Filed 8–2–02; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

July 30, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 67232, published on December 28, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 30, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on August 9, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Group I	
200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [2], 369–O [3], 400–414, 469pt [4], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [5], as a group.	218,531,351 square meters equivalent.
Sublevels in Group I	
225/317/326	45,010,775 square meters.
619/620	16,661,808 square meters.
Group I subgroup	
200, 219, 313, 314, 315, 361, 369–S and 604, as a group	155,458,524 square meters equivalent.
Group II	
237, 239pt [6], 331pt. [7], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C [8], 659–H [9], 359pt. [10], 433-438, 440, 442, 443, 444, 445/446, 447/448, 459pt. [11], 631pt. [12], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S [13], 659pt. [14], 846 and 852, as a group.	618,291,051 square meters equivalent.
Sublevels in Group II	
336	157,797 dozen.
340	1,250,601 dozen.
352/652	3,618,536 dozen.
659–H	2,495,749 kilograms.
438	30,924 dozen.
633/634/635	1,667,128 dozen of which not more than 978,503 dozen shall be in Categories 633/634 and not more than 867,079 dozen shall be in Category 635.
638/639	6,541,662 dozen.
640	999,426 dozen of which not more than 281,710 dozen shall be in Category 640–Y [15].
642	819,415 dozen.
659–S	1,729,838 kilograms.
Group II Subgroup	
333/334/335, 341, 342, 351, 447/448, 636, 641 and 651, as a group	73,435,466 square meters equivalent.
Within Group II Subgroup	
333/334/335	347,640 dozen of which not more than 188,306 dozen shall be in Category 335.
341	366,238 dozen.
342	252,995 dozen.
351	322,641 dozen.
447/448	22,803 dozen.
636	406,481 dozen.
651	522,790 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[9] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[10] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[11] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[12] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–19634 Filed 8–2–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before September 4, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy R. Page, Office of General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5136; FAX: (202) 418–5524; e-mail: *npage@cftc.gov* and refer to OMB Control No. 3038–0033.

SUPPLEMENTARY INFORMATION: This is a request for extension of a currently approved information collection.

Abstract: Title: Notification of Pending Legal Proceedings Pursuant to 17 CFR § 1.60, OMB Control No. 3038–0033—Extension.

The rules is designed to assist the Commission in monitoring legal proceedings involving the responsibilities imposed on contract markets and their officials and futures commission merchants and their principals by the Commodity Exchange Act, or otherwise. These rules are promulgated pursuant to the Commission's rulemaking authority contained in Sections 4a(a), 4i, and 8a(5) of the Act, 7 U.S.C. 6a(1), 6i and 12a(5).

An agency man not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers of the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on June 27, 2002 (67 FR 43285).

Burden statement: The respondent burden for this collection is estimated to average .10 hours per response.

Respondents/Affected Entities: 100.

Estimated number of responses: 100.

Estimate total annual burden on respondents: 10 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0033 in any correspondence.

Nancy R. Page, Office of General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: July 31, 2002.

Catherine D. Dixon,

Assistant Secretary of the Commission

[FR Doc. 02–19701 Filed 8–2–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–22]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–33 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

25 JUL 2002

In reply refer to:
I-02/007721

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-33 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Lithuania for defense articles and service estimated to cost $34 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Lithuania

(ii) Total Estimated Value:

Major Defense Equipment*	$15 million
Other	$19 million
TOTAL	$34 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 8 Vehicle Mounted STINGER Launch Platform systems; 69 STINGER RMP/Block I International missiles including 54 complete tactical missiles, 9 captive flight trainers, and 6 lot acceptance test missiles; 2 Portable Search and Target Acquisition Radars; 2 tactical operations centers; inert training missiles; remote terminal units, containers; modification/integration kits; systems integration; support equipment; training devices; spare and repair parts; publications and technical data; test support; personnel training and training equipment; U.S. Government and contractor engineering and logistics personnel services; a Quality Assurance Team; and other related elements of logistics support.

(iv) Military Department: Army (UAP)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: Yes. Consistent with FAR and DFARS.

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(viii) Date Report Delivered to Congress: 25 JUL 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Lithuania – Vehicle Mounted STINGER Platform Launched Air Defense System with RMP/Block 1 International Missiles

The Government of Lithuania has requested a possible sale of 8 Vehicle Mounted STINGER Launch Platform systems; 69 STINGER RMP/Block I International missiles including 54 complete tactical missiles, 9 captive flight trainers, and 6 lot acceptance test missiles; 2 Portable Search and Target Acquisition Radars; 2 tactical operations centers; inert training missiles; remote terminal units, containers; modification/integration kits; systems integration; support equipment; training devices; spare and repair parts; publications and technical data; test support; personnel training and training equipment; U.S. Government and contractor engineering and logistics personnel services; a Quality Assurance Team; and other related elements of logistics support. The estimated cost is $34 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security and defense of a friendly country which has been and continues to be an important Partnership for Peace member within Central Europe.

Lithuania will use the STINGER missiles to upgrade their air defense capability and will have no difficulty absorbing these new missiles into their armed forces. The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be: Raytheon Company of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require nine U.S. contractor representatives for up to two years and four additional U.S. contractor representatives for a week when the missiles arrive. Up to eight U.S. Government Quality Assurance Team will be required for one week following delivery of the missiles in Lithuania.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The STINGER Block 1 International missile system, hardware, software, guidance section of the missile, tracking head trainer and documentation contain sensitive technology and are classified Confidential. The system will be permanently mounted in the truck bed.

2. Missile system hardware and fire unit components contain sensitive/critical technologies which is primarily in the area of design and production know-how and not in end-items. This sensitive/critical technology is inherent in the hybrid microcircuit assemblies; microprocessors; magnetic and amorphous metals; purification; firmware; printed circuit boards; laser range finder; dual detector assembly; detector filters; missile software; optical coatings; ultraviolet sensors; semi-conductor detectors; infrared band sensors; compounding and handling of electronic, electro-optic, and optical materials; equipment operating instructions; energetic materials formulation technology; energetic materials fabrication and loading technology; warhead components seeker assembly and the Identification Friend or Foe (IFF) system with Mode 3 capabilities. Information on vulnerability to electronic countermeasures and counter-countermeasures, system performance capabilities and effectiveness, and test data are classified up to Secret.

3. Loss of this hardware and/or data could permit development of information leading to the exploitation of countermeasures. Therefore, if a technologically capable adversary were to obtain these devices, the missile system could be compromised through reverse engineering techniques which could defeat the weapon systems effectiveness.

4. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 02–19602 Filed 8–2–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–35]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the house of Representatives, Transmittal 02–35 with attached transmittal and policy justification.

Dated: July 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

25 JUL 2002

In reply refer to:
I-02/008194

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-35, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $70 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-35

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Egypt

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$70 million
TOTAL	$70 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** six Theater Airborne Reconnaissance System (TARS) Pods, aircraft integration, ground station equipment, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.

(iv) **Military Department:** Air Force (QEN)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:** 25 JUL 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – Theater Airborne Reconnaissance System Pods

The Government of Egypt has requested a possible sale of six Theater Airborne Reconnaissance System (TARS) Pods, aircraft integration, ground station equipment, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $70 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The TARS will provide Egypt with under-the-weather, medium-to-high threat, short range, and daytime only imagery collection capability. It is an entry level, low technology system, which will provide Egypt important border-area image collection capability. These systems will be integrated on existing Block 40 F-16 aircraft to provide daytime electro-optical imagery along Egypt's borders. It also allows Egypt to provide support during coalition operations and exercises. The Egyptian Air Force should have no problem operating and maintaining the TARS system on the F-16 aircraft.

The principle contractors will be: BAE Systems of Syosset, New York, and Recon Optical Incorporated of Barrington, Illinois. There are no offset agreements proposed in connection with this potential sale.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Implementation of this proposed sale will require semi-annual technical reviews with 10 each U.S. Government and contractor representatives to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–19603 Filed 8–2–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–55]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–55 with attached transmittal and policy justification.

Dated: July 30, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 JUL 2002
In reply refer to:
I-02/010033

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-55, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Pakistan for defense articles and services estimated to cost $155 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-55

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Pakistan

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$155 million
TOTAL	$155 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: six Aerostat L-88 Radar Systems, spare and repair parts, facility construction and support, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support.

(iv) Military Department: Air Force (DWM)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: 26 JUL 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Pakistan – Aerostat L-88 Radar System

The Government of Pakistan has requested a possible sale of six Aerostat L-88 Radar Systems, spare and repair parts, facility construction and support, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support. The estimated cost is $155 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important partner in the war on terrorism in South Asia.

The radar systems will add to Pakistan's ability to monitor its western borders in support of OPERATION ENDURING FREEDOM and control narcotics trade activities. Specifically, the radar systems will be used to monitor ground traffic and low-flying aircraft along this border. The Aerostat is a relatively low technology, fixed site system which Pakistan can easily absorb and utilize within its existing structure.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Lockheed Martin-Akron of Akron, Ohio and/or TCOM, L.P. of Columbia, Maryland. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of eight each U.S. Government and contractor representatives for annual program management and technical reviews to Pakistan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–19606 Filed 8–2–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.
ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Enduring Freedom Lessons Learned will meet in closed session on August 20, 2002, in the Pentagon, Washington, DC. This Task Force will review current activities of Operation Enduring Freedom to determine both near and longer-term technical and operational considerations that could be used to improve this operation and future campaigns initiated in the War Against Terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate operational policy and procedures, command and control, intelligence, combat support activities, weapon system performance, and science and technology requirements.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: July 29, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–19600 Filed 8–2–02; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.
ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Defense Against Unconventional Use of Nuclear Weapons Against the U.S. Homeland will meet in closed session on September 17–18, 2002, at Lawrence Livermore National Laboratory and October 15–16, 2002, in Arlington, VA. This Task Force will review the Department of Defense's responsibilities, current capabilities, and the scope of activities conducted by DoD to ensure its future preparedness to prevent, deter, detect, identify, warn, defend against, respond to, and attribute attack of the U.S. homeland by unconventional delivery of conventional and unconventional nuclear weapons, as well as radiological weapons.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will determine the adequacy of the U.S. ability to detect, identify, respond, and prevent unconventional nuclear attacks by terrorist or sub-national entities. The Task Force will also identify capabilities of the Department to provide protection against such nuclear attacks in support of national capabilities in homeland defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: July 29, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–19601 Filed 8–2–02; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Defense Finance and Accounting Service, DoD
ACTION: None.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Finance and Accounting Service (DFAS). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DFAS.

EFFECTIVE DATES: August 14, 2002.
FOR FURTHER INFORMATION CONTACT: Jerry Hovey, Human Capital and Staffing Division, Human Resources Directorate, Defense Finance and Accounting Service, Arlington, Virginia, (703) 607–3829.
SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the DFAS PRB: Rear Admiral Mark A. Young, Susan J. Grant, Zack E. Gaddy, James J. Cornell.

Executives listed will serve a 1-year renewable term, effective August 14, 2002.

Dated: July 30, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–19607 Filed 8–2–02; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Reissuance of Military Traffic Management Command Military Freight Rules Publication 1B as Military Freight Rules Publication 1C

AGENCY: Department of the Army, DoD.
ACTION: Notice; Request for comments.

SUMMARY: The Military Traffic Management Command (MTMC) as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services (Defense Transportation Regulation vol. 2, pgs 201–13 through 201–14) hereby cancels Military Freight Traffic Rules Publication (MFTRP) 1B in its entirety and replaces it with the revised MFTRP 1C outlined herein, effective November 1, 2002. The purpose of this issuance is to incorporate significant changes to the Security Service rules due to recent world events, add interim changes made since the last revision, update addresses and contact information, and introduce new items to the motor carriers doing business with DOD shippers. Motor carriers and anyone interested may view the proposed MFTRP 1C on the Internet at *www.mtmc.army.mil* with proposed changes highlighted. After accessing the MTMC web site, interested parties should enter the "Publications" area,

then "Air/Land" to find the proposed MFTRP 1C.

DATES: Comments must be submitted on or before October 4, 2002. The MFTRP 1B is cancelled and MFTRP 1C is effective with any accepted changes November 1, 2002.

ADDRESSES: Comments may be mailed to: MTMC Operations Center, ATTN: MTDC–OPCF, Room 207, 661 Sheppard Place, Fort Eustis, VA 23604–1644.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Lord at (757) 878–8547, e-mail: *lords@mtmc.army.mil* or Mr. Brad Bernard at (757) 878–8351, e-mail: *bernardb@mtmc.army.mil*.

SUPPLEMENTARY INFORMATION: The intent is to replace the entire text of the existing MFTRP 1B with the revised MFTRP 1C outlined herein. The specific changes are listed followed by either NEW or MODIFY to identify which items are new or being changed, then followed by a brief synopsis of the parts that are changed.

Items undergoing a significant change are as follows:

(1) Item 18 SpotBid—MODIFY—Sentence 7 now restricts Arms, Ammunition and Explosives (AA&E) from SpotBid.

(2) Section 2 Header—MODIFY—The 'and' is changed to 'or' e.g. Secret material or AA&E, allowing non-AA&E carriers which are qualified to offer Protective Security Service (PSS) for Secret shipments, to do so.

(3) Item 30 Consıant Surveillance Service (CIS)—MODIFY—Qualified carrier representative must stay within 25 ft of vehicle; previously distance was 100 ft.

(4) Item 30 Constant Surveillance Service (CIS)—MODIFY—Carrier shall provide dual drivers if CIS shipment exceeds 500 miles.

(5) Item 31 Driver ID Requirements—MODIFY—Identification documents must be in English and document must employ tamper proof technology.

(6) Item 32 DOD Carrier Security Clearance Requirement—NEW—Effective 1 OCT 2002 carriers' personnel providing service for AA&E commodities, specifically drivers/dispatchers/key personnel etc. must have Secret clearances issued by the Defense Security Service (DSS).

(7) Item 35 Dual Driver with National Agency Check (DDN)—MODIFY—DDN no longer includes ";Exclusive Use" (EXC) as part of the service, however, shippers are still required to request EXC on the BL when DDN is required.

(8) Item 40 Protective Security Service (PSS)—MODIFY—This Item was entirely rewritten to reflect revised security requirements and changes are too numerous to identify a specific change.

(9) Item 41 Security Escort Service (SEV)/Military Escort Service (MEV)—MODIFY—Escort vehicle must employ Satellite Motor Surveillance Service (SNS) and carriers providing transportation for commodities that require SEV may use other approved/qualified carriers as escort.

(10) Item 47 Satellite Motor Surveillance Service (SNS)—MODIFY—SNS charges rolled into linehaul IAW **Federal Register** Notice published on April 10, 2002 (67 FR 17415).

(11) Item 48 Transloading Arms, Ammunition, Explosives—MODIFY—Security Risk Category (CAT) I & II commodities may not be transloaded. CAT III, IV, and UNCAT 1.1, 1.2, 1.3 commodities may be transloaded at DOD installations and those same commodities in dromedary boxes may be Transloaded at MTMC approved carrier terminals.

(12) Item 49 Transportation Protective Service Compatibilities—MODIFY—Corrected Table.

(13) Item 65 Astray Freight and Emergency Notification—MODIFY—Added contact information for explosive cargo emergency response guidance.

(14) Item 70 Capacity Load—MODIFY—Added sentence 3b giving guidance on billing multiple vehicle shipments.

(15) Item 85 Detention—MODIFY—Carriers may charge for delays caused by Military Escort Vehicle (MEV).

(16) Item 106 Exceptions for Exclusive Use Service—MODIFY—Deleted sentence that included Exclusive Use as part of DDN and PSS.

(17) Item 178 Protective Tarps—MODIFY—Tarps for protective service must be water and fire resistant.

(18) Item 228 Towaway Service (TOW)—MODIFY—Removes commodity restrictions from Towaway service.

(19) Item 305 AA&E Shipment Delivery—ADD/NEW—Directs carriers to provide consignee adequate intransit delivery notification and allows carriers to charge DEL (1) per hour when drivers must guard shipment and/or DEL (2) per mile for diversion when destination cannot unload or provide secureholding.

(20) Item 311 Armed Guards—NEW—MTMC approved commercial terminals that are used for in-transit holding of DOD shipments containing any quantity of arms, ammunition, and explosives must provide armed guards.

(21) Item 312 Terminal Security—NEW—No CAT I & II commodities are allowed in carrier terminals; CAT III, IV, and UNCAT 1.1, 1.2, 1.3 commodities may be in carrier terminals up to 100 hours. Removes reference to CAT I & II in terminal, also standardizes all references to Security Risk Categories/Codes.

(22) Item 328 Dromedary Boxes—MODIFY—Clarifies what is an acceptable substitute for a dromedary.

(23) Section 5 Small Package Express—NEW—Rules governing Small Package ground voluntary tender shipments under 150 pounds which do not fall within scope of other small package contracts or Blanket Purchase Agreements.

(24) Item 1000 Abbreviations—NEW—CAT = Security Risk Category and SRC = Security Risk Code.

(25) Item 1031 E-mail addresses—NEW—List all E-mail addressing in the MFTRP to include how to propose changes to MFTRPs.

(26) Item 1032 SRC to CAT cross-reference—NEW—Self-explanatory.

Regulatory Flexibility Act

This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. *et seq.*, does not apply because no information collection requirements or recordkeeping responsibilities are imposed on offerors, contractors, or members of the public.

John Piparato,

Chief, Global Distribution—Domestic.

[FR Doc. 02–19704 Filed 8–2–02; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Bacterial Superantigen Vaccines

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent No. 6,399,332 entitled "Bacterial Superantigen Vaccines," issued June 4, 2002. Foreign rights (PCT/US98/16766) are also available. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge

Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The present invention relates to genetically attenuated super-antigen toxin vaccines altered such that superantigen attributes are absent, however the superantigen is effectively recognized and an appropriate immune response is produced. The attenuated superantigen toxins are shown to protect animals against challenge with wild type toxin. Methods of producing and using the altered superantigen toxins are described.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–19708 Filed 8–2–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Catheter Securing Device

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/894,880 entitled "Catheter Securing Device," filed June 29, 2001. Foreign rights (PCT/US01/20772) are also available. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A securing device for a catheter such as an endotracheal tube that preferably includes a guard that covers a patient's upper or lower teeth and a latch mounted on the guard for release ably immobilizing a catheter with respect to the guard. The guard preferably includes (or is attached to) a wedge, which contacts the patient's molars to prevent the guard from shifting in the patient's mouth and assists in keeping the patients teeth apart.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–19713 Filed 8–2–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Chimeric Filovirus Glycoprotein

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 10/066,506 entitled "Chimeric Filovirus Glycoprotein," filed January 31, 2002. Foreign rights are also available (PCT/US02/03339). The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Chimeric GP molecules were constructed which contain portions of both the EBOV and MBGV GP proteins by swapping the subunits between EBOV and MBGV. The chimeric molecules were cloned into an alphavirus replicon, which offers the advantage of high protein expression levels in mammalian cells and is a proven vaccine vector. These chimeric molecules fully protected guinea pigs from MBGV challenge, and conversely protected the animals from EBOV challenge. These results indicate that a protective epitope resides within the GP2 submit of the MBGV GP protein and at least partially within the GP2 subunit of the EBOV GP protein. Additionally these results show that a construction of a single-component bivalent vaccine protective in guinea pigs is achievable.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–19714 Filed 8–2–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Dip-Stick Assay for C-Reactive Protein

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent No. 6,406,862 entitled "Dip-Stick Assay for C-Reactive Protein," issued June 18, 2002. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A C-reactive protein concentration level test and kit for on-site determination of C-reactive protein levels in biological samples is disclosed.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–19711 Filed 2–2–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Free Floating Cryostat Sections for Immunoelectron Microscopy

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/949,572 entitled "Free Floating Cryostat Sections for Immunoelectron Microscopy," filed September 10, 2001. Foreign rights are also available (PCT/US01/28340). The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates to the field of histology and immuno-histology using immunoelectron microscopy. More specifically, this invention relates to the field of free-floating cryostat sections for use in light and electron microscopy to bridge the gap between these two viewing mediums.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–19709 Filed 8–2–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Heterologous Protection Induced by Immunization With Invaplex Vaccine

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 10/150,814 entitled "Heterologous Protection Induced by Immunization with Invaplex Vaccine," filed May 17, 2002. Foreign rights (PCT/US02/16029) are also available. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: In this application is described a composition, Invaplex, derived from a gram negative bacteria for use in generating an immune response in a subject against one or more heterologous species or strains of gram-negative bacteria.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–19710 Filed 8–2–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Microfluidized Leishmania Lysate and Methods of Making and Using Thereof

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/975,020 entitled "Microfluidized Leishmania Lysate and Methods of Making and Using Thereof," filed October 12, 2001. Foreign rights (PCT/US01/31894) are also available. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates generally to microfluidized *Leishmania* lysate preparations. In particular, the present invention relates to microfluidized *Leishmania* lysate preparations for assays and immunogenic compositions.

Luz D. Ortiz,

Army Federla Register Liaison Officer.

[FR Doc. 02–19715 Filed 8–2–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Applications Concerning Specific Inihibitors and Therapeutic Agents for Botulinum Toxin B and Tetanus Neurotoxins

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the related U.S. patent applications concerning "Specific Inhibitors and therapeutic Agents for Botulinum Toxin B and Tetanus Neurotoxins" listed below. The United States Government, as represented by the Secretary of the Army, has rights in these inventions. Foreign rights are also available.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 1702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, bh at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The following patents are available for licensing:

(1) *U.S. Patent Application No.:* 09/570,022.

Filed: May 12, 2000.

Title: Previns as Specific Inhibitors and Therapeutic Agents for Botulinum Toxin B and Tetanus Neurotoxins.

Supplementary Information: The compounds of the invention may be used as molecular building blocks to create compounds that are optimized for inhibiting the protease activity of Botulinum B and tetanus toxins. Foreign rights (PCT/US00/13215) are also available.

(2) *U.S. Patent Application No.:* 09/570,023.

Filed: May 12, 2000.

Title: Buforin I as a Specific Inhibitor and Therapeutic Agent for Botulinum Toxin B and Tetanus Neurotoxins.

Supplementary Information: The compounds of the invention may be used to inhibit the protease activity of Botulinum B and tetanus toxins. . Foreign rights (PCT/US00/12909) are also available.

(3) *U.S. Patent Application No.:* 09/979,101.

Filed: November 19, 2001.

Title: Previns as Specific Inhibitors and Therapeutic Agents for Botulinum Toxin B and Tetanus Neurotoxins.

Supplementary Information: The compounds of the invention may be used as molecular building blocks to create compounds that are optimized for inhibiting the protease activity of Botulinum B and tetanus toxins. Foreign rights (PCT/US00/13215) are also available.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–19712 Filed 8–2–02; 8:45 am]

BILLING CODE 3910–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Prospective Grant of a Partially Exclusive License

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with the provisions of 15 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(I), U.S. Army Soldier and Biological Chemical Command (SBCCOM) hereby gives notice that it is contemplating the grant of a partially exclusive license in the United States to practice the inventions embodied in U.S. Patents 5,884,418, issued March 23, 1999, entitled, "Process and System for Impregnating Garments with Insect Repellent" and 5,930,909, issued August 3, 1999, entitled, "System for Impregnating Garments with Insect Repellent" to Spinnerin Dye, LLC having a place of business in South Hackensack, New Jersey and Buzz Off Insect Shield, LLC having a place of business in Greensboro, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone: (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: The prospective partially exclusive licenses will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive licenses may be granted, unless SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Written objections along with supporting evidence, if any, are to be filed on or before August 20, 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–19703 Filed 8–2–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration adds four routine uses to the existing system of records.

DATES: This proposed action would be effective without further notice on September 4, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 22, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 30, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0195–2b USACIDC

SYSTEM NAME:

Criminal Investigation and Crime Laboratory Files (December 8, 2000, 65 FR 77002).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add 'witnessing' to entry.

CATEGORIES OF RECORDS IN THE SYSTEM:

Add 'and criminal intelligence reports', 'suspects', 'polygraph reports', and 'and intelligence' to entry.

* * * * *

PURPOSE(S):

Delete entry and replace with 'To conduct criminal investigations, crime prevention and criminal intelligence activities; to accomplish management studies involving the analysis, compilation of statistics, quality control, etc., to ensure that completed investigations are legally sufficient and result in overall improvement in techniques, training and professionalism. Includes personnel security, internal security, criminal, and other law enforcement matters, all of which are essential to the effective operation of the Department of the Army.

The records in this system are used for the following purposes: Suitability for access or continued access to classified information; suitability for promotion, employment, or assignment; suitability for access to military installations or industrial firms engaged in government projects/contracts; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; advising higher authorities and Army commands of the important developments impacting on security, good order or discipline; reporting of statistical data to Army commands and higher authority; input into the Defense Security Service managed Defense Clearance and Investigations Index (DCII) database under system notice V5–02.'

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add three new paragraphs 'To Federal, state, and local agencies to comply with the Victim and Witness Assistance Program and the Victims' Rights and Restitution Act of 1990, when the agency is requesting information on behalf of the individual.

To Federal, state, and local law enforcement agencies and private sector entities for the purposes of complying with mandatory background checks, i.e., Brady Handgun Violence Prevention Act (18 U.S.C. 922) and the National Child Protection Act of 1993 (42 U.S.C. 5119 *et seq.*).

To Federal, state, and local child protection services or family support agencies for the purpose of providing assistance to the individual.

To the Immigration and Naturalization Service, Department of Justice, for use in alien admission and naturalization inquiries conducted under Section 105 of the Immigration and Naturalization Act of 1952, as amended.'

STORAGE:

Delete entry and replace with 'Paper records in file folders and on electronic media.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Reports of Investigation:

At Headquarters, U.S. Army Criminal Investigation Command (USACIDC), criminal investigative case files are retained for 40 years after final action, except that at USACIDC subordinate elements, such files are retained from 1 to 5 years depending on the level of such unit and the data involved

Laboratory Reports: Laboratory reports at the USACIDC laboratory are destroyed after 5 years.

Criminal Intelligence Reports: At Headquarters, USACIDC Intelligence Division criminal intelligence reports are destroyed when no longer needed. Except reports containing information of current operation value may be kept and reviewed yearly for continued retention, not to exceed 20 years. Group headquarters destroy after 5 years. District and field office elements destroy after 3 years or when no longer needed.'

* * * * *

A0195–2b USACIDC

SYSTEM NAME: CRIMINAL INVESTIGATION AND CRIME LABORATORY FILES.

SYSTEM LOCATION:

Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

Segments exist at subordinate U.S. Army Criminal Investigation Command elements. Addresses may be obtained from the Commander, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

An automated index of cases is maintained at the U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, civilian or military, involved in, witnessing or suspected of being involved in or reporting possible criminal activity affecting the interests, property, and/or personnel of the U.S. Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, rank, date and place of birth, chronology of events; reports of investigation and criminal intelligence reports containing statements of witnesses, suspects, subject and agents; laboratory reports, polygraph reports, documentary evidence, physical evidence, summary and administrative data pertaining to preparation and distribution of the report; basis for allegations; Serious or Sensitive Incident Reports, modus operandi and other investigative information from Federal, State, and local investigative and intelligence agencies and departments; similar relevant documents. Indices contain codes for the type of crime, location of investigation, year and date of offense, names and personal identifiers of persons who have been subjects of electronic surveillance, suspects, subjects and victims of crimes, report number which allows access to records noted above; agencies, firms, Army and Defense Department organizations which were the subjects or victims of criminal investigations; and disposition and suspense of offenders listed in criminal investigative case files, witness identification data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 195–2, Criminal Investigation Activities; 42 U.S.C. 10606 *et seq.*; DoD Directive 1030.1, Victim and Witness Assistance; and E.O. 9397 (SSN).

PURPOSE(S):

To conduct criminal investigations, crime prevention and criminal intelligence activities; to accomplish management studies involving the analysis, compilation of statistics, quality control, etc., to ensure that completed investigations are legally sufficient and result in overall improvement in techniques, training and professionalism. Includes personnel security, internal security, criminal, and other law enforcement matters, all of which are essential to the effective operation of the Department of the Army.

The records in this system are used for the following purposes: Suitability for access or continued access to classified information; suitability for promotion, employment, or assignment; suitability for access to military installations or industrial firms engaged in government projects/contracts; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; advising higher authorities and Army commands of the important developments impacting on security, good order or discipline; reporting of statistical data to Army commands and higher authority; input into the Defense Security Service managed Defense Clearance and Investigations Index (DCII) database under system notice V5–02.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information concerning criminal or possible criminal activity is disclosed to Federal, State, local and/or foreign law enforcement agencies in accomplishing and enforcing criminal laws; analyzing modus operandi, detecting organized criminal activity, or criminal justice employment. Information may also be disclosed to foreign countries under the provisions of the Status of Forces Agreements, or Treaties.

To the Department of Veterans Affairs to verify veterans claims. Criminal investigative files may be used to adjudicate veteran claims for disability benefits, post dramatic stress disorder, and other veteran entitlements.

To Federal, state, and local agencies to comply with the Victim and Witness Assistance Program and the Victims' Rights and Restitution Act of 1990,

when the agency is requesting information on behalf of the individual.

To Federal, state, and local law enforcement agencies and private sector entities for the purposes of complying with mandatory background checks, i.e., Brady Handgun Violence Prevention Act (18 U.S.C. 922) and the National Child Protection Act of 1993 (42 U.S.C. 5119 et seq.).

To Federal, state, and local child protection services or family support agencies for the purpose of providing assistance to the individual.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To the Immigration and Naturalization Service, Department of Justice, for use in alien admission and naturalization inquiries conducted under Section 105 of the Immigration and Naturalization Act of 1952, as amended.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and on electronic media.

RETRIEVABILITY:

By name or other identifier of individual.

SAFEGUARDS:

Access is limited to designated authorized individuals having official need for the information in the performance of their duties. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Reports of Investigation: At Headquarters, U.S. Army Criminal Investigation Command (USACIDC), criminal investigative case files are retained for 40 years after final action, except that at USACIDC subordinate elements, such files are retained from 1 to 5 years depending on the level of such unit and the data involved.

Laboratory Reports: Laboratory reports at the USACIDC laboratory are destroyed after 5 years.

Criminal Intelligence Reports: At Headquarters, USACIDC Intelligence Division criminal intelligence reports are destroyed when no longer needed. Except reports containing information of current operation value may be kept and reviewed yearly for continued retention, not to exceed 20 years. Group headquarters destroy after 5 years. District and field office elements destroy after 3 years or when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature.

RECORD ACCESS PROCEDURES:

Individual seeking access to information about themselves contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Suspects, witnesses, victims, USACIDC special agents and other personnel, informants; various Department of Defense, federal, state, and local investigative agencies; departments or agencies of foreign governments; and any other individual or organization which may supply pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 02–19604 Filed 8–2–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army is proposing to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 4, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 22, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 30, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–5a DASG

SYSTEM NAME:

DoD Health Surveillance/Assessment Registries.

SYSTEM LOCATION:

U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403; and

Army Medical Surveillance Activity, Building T–20, Room 213, 6900 Georgia Avenue, NW, Washington, DC 20307–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: ANY INDIVIDUAL THAT PARTICIPATES IN A DOD HEALTH SURVEY.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system of records originates from health surveys/assessments (e.g., Pentagon Post Disaster Health Assessment) conducted by or for the Department of Defense. Records being maintained include individual's name, Social Security Number, date of birth, sex, branch of service, home address, age, medical treatment facility, condition of medical and physical health and capabilities, responses to survey questions, register number assigned, and similar records, information and reports, relevant to the various registries, (e.g., cancer, Human Immunodeficiency Virus (HIV), serum repository).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3013, Secretary of the Army, 10 U.S.C. 8013, Secretary of the Air Force, 10 U.S.C. 5013, Secretary of the Navy; DoD Instruction 1100.13, Surveys of DoD Personnel; DoD Directive 6490.2, Joint Medical Surveillance; DoD Directive 6490.3, Implementation and Application of Joint Medical Surveillance for Deployments; and E.O. 9397 (SSN).

PURPOSE(S):

To record, store and document injury, illness and exposure to chemical/biochemical elements, and collect data for statistical purposes. To enhance efficient management practices and effective analysis and comparisons of statistical data utilized in the public health assessment data registry.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Information is retrieved by individual's name, Social Security Number, and registry number.

SAFEGUARDS:

Records are maintained within secured buildings in areas accessible only to persons having official need, and who therefore are properly trained and screened. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed for reference and for conducting business.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and mortality reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–19605 Filed 8–2–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Lake Okeechobee Watershed Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District, intends to prepare an integrated Project Implementation Report/Draft Environmental Impact Statement (PIR/DEIS) for the Lake Okeechobee Watershed Project. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. One of the recommendations of the final report of the Central & South Florida (C&SF) Comprehensive Review Study (Restudy) was the implementation of the Lake Okeechobee Watershed Project. This project is intended to improve the water quality of Lake Okeechobee and it's tributaries by capturing and treating surface water discharges into the watershed, while managing optimal water levels necessary to improve the habitats within the lake and downstream bodies. This project is a component of the Comprehensive Everglades Restoration Plan, a multi-year effort to restore the greater Everglades ecosystem while providing water supply and other water-related benefits to South Florida over many decades.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Tarr, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970,

Jacksonville, FL, 32232–0019, by e-mail bradley.a.tarr@usace.army.mil, or by telephone at 904–232–3582.

SUPPLEMENTARY INFORMATION:

a. *Authorization:* The authority for this project is contained within the Water Resources Development Act (WRDA) 2000. The "Design Agreement between the Department of the Army and the SFWMD for the Design of Elements of the Comprehensive Plan for the Everglades and South Florida Ecosystem Restoration Project" contains additional guidance.

b. *Study Area:* Lake Okeechobee lies 30 miles west of the Atlantic Ocean and 60 miles east of the Gulf of Mexico, in the central part of the Florida peninsula. The Lake is approximately 730 square miles, and is the principal natural reservoir in south Florida. The study area includes portions of St. Lucie, Martin, Okeechobee, Glades, and Hendry Counties.

c. *Project Scope:* The Lake Okeechobee Watershed Project includes four separable elements including; North of Lake Okeechobee Storage Reservoir, Taylor Creek/Nubbin Slough Storage and Treatment Area, Lake Okeechobee Watershed Quality Treatment Facilities, and Lake Okeechobee Tributary Sediment Dredging. The Restudy recommends the construction of 14,375 acres of reservoir-assisted stormwater treatment areas, a 17,500 acre reservoir with a 2,500 acre stormwater treatment area (providing up to 210,000 acre-feet of storage), the removal of 150 tons of phosphorus from tributaries, and the restoration of approximately 3,500 acres of wetlands.

The objectives of the project are to improve the water quality of inflows to Lake Okeechobee, store excess water to allow for better management of Lake Okeechobee water levels and reduce damaging fresh water releases to the Caloosahatchee estuary and the St. Lucie estuary, and restore several wetlands in the basins. Wet season runoff from the watershed north of the Lake will be attenuated by reservoirs and restored wetlands. The increased storage capacity in these basins will reduce the duration and frequency of both extreme high and low water levels in the Lake that are stressful to the Lake's littoral zone and ecosystem and will reduce large discharges from the Lake that damage the downstream estuarine ecosystems. Runoff from the basins will be diverted to stormwater treatments areas to reduce phosphorus loading to the Lake.

The study will evaluate alternatives based on their ability to improve water deliveries to the natural system, protect and conserve water resources, improve water quality, protect or restore fish and wildlife and their associated habitat, restore and manage wetland and associated upland ecosystems, sustain economic and natural resources, and other performance criteria being developed by the Project Delivery Team.

d. *Preliminary Alternatives:* Formulation of alternative plans will involve the selection of the most suitable locations, sizes, depths, and configurations of facilities through detailed planning and design.

The Environmental Impact Statement (EIS) will include an evaluation of adverse environmental impacts, including but not limited to, water quality, socio-economic, archaeological and biological. In addition to adverse impacts, the evaluation will also focus on how well the plans perform with regard to specific performance measures.

e. *Issues:* The EIS will address the impacts of capturing and holding excess water in large storage areas during wet periods and the subsequent release for later use during dry periods into stormwater treatment areas.

The EIS will also address environmental issues: water quality; impacts to the estuaries; flood protection; aesthetics and recreation; fish and wildlife resources, including protected species; cultural resources; and other impacts identified through scoping, public involvement, and interagency coordination.

f. *Scoping:* A scoping letter and public workshops will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals. The next public workshop is scheduled for 13 August 2002, at the Okeechobee Freshman Campus Auditorium, on 700 SW., Avenue, Okeechobee, Florida. The meeting will begin at 6 p.m. and continue to 9 p.m.

Other public meeting will be held over the course of the study; the exact location, dates, and times will be announced in public notices and local newspapers.

g. *DEIS Preparation:* The integrated draft PIR, which will include a DEIS, is currently scheduled for publication in November 2005.

Dated: February 2, 2002.

James C. Duck,

Chief, Planning Division.

[FR Doc. 02–19707 Filed 8–2–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Draft Environmental Impact Statement for the Centralia Flood Reduction Project, Lewis County, WA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the U.S. Army Corps of Engineers (USACE), Seattle District has prepared a Draft Environmental Impact Statement (DEIS) examining the impacts of feasible structural and nonstructural alternatives to reduce flood damage within Lewis County, WA.

The alternatives initially considered included: (1) No action; (2) modifications to Skookumchuck Dam; (3) overbank excavation and flow-way bypass at various locations; (4) construction of a flood levee system; (5) upstream flow-restriction structures and upstream flood-water storage; (6) non-structural flood control measures including watershed management, flood-proofing structures, developing evacuation plans, and removal of certain structures from the floodplain; and (7) a variety of flood control, regulatory, and planning measures developed by an interagency committee. After initial screening of the above alternatives for engineering feasibility, economic justification, environmental effects and other criteria, four were carried forward for detailed analysis: (1) Alternative #3 combined with alternative #2 (specifically Centralia overbank excavation and Chehalis SR6 flow-way bypass with modifications to Skookumchuck Dam); (2) alternative #4 combined with modifications to Skookumchuck Dam (preferred alternative); (3) alternative #7 combined with modifications to Skookumchuck Dam; and (4) no action.

DATES: The comment period for this DEIS is 45 days from the date of publication in the **Federal Register** or September 18, 2002, whichever is later.

ADDRESSES: Comments may be submitted to the attention of: Mr. George A. Hart, Environmental Coordinator, U.S. Army Corps of Engineers, P.O. Box 3755, Seattle, WA 98124–3755; Fax: (206) 764–4470, or e-mail *george.a.hart@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. George A. Hart at the above address, e-mail, or telephone (206) 764–3641.

SUPPLEMENTARY INFORMATION: The Chehalis River basin is located in west central Washington, south of Olympia. The focus of the flood damage reduction study encompasses the cities of Centralia and Chehalis and the urbanizing areas immediately adjacent to the cities.

The cities of Centralia and Chehalis have been subject to repeated flooding for many years. This flooding has caused extensive damage to private and public property and periodic closure of critical transportation routes resulting in significant economic losses. Flood closures of the transportation routes have also significantly disrupted emergency response actions by local governments. Stream habitat functions of the Chehalis River and its tributaries have been affected from long-term development throughout the Chehalis Basin. This has resulted in the diminishment of the remaining habitat resources to adequately support sustainable fish and wildlife resources. The losses of wetlands, riparian areas, and backwater channels have also contributed to increased flooding in the area. The purpose of the Centralia-Chehalis Flood Damage Reduction study are to reduce flood hazards in the project area, the cities of Centralia and Chehalis, and the urbanizing area immediately adjacent and to incorporate appropriate fish and wildlife habitat improvements. Flood hazards are defined as significant damage to existing structures, high risk to life, and extended closures of transportation corridors.

Authority for this study is contained in Section 401(a) of the 1986 Flood Control Act (Pub. L. 99–662). This section provided authorization for the construction of "works of improvement" substantially in accordance with the Report of the Chief of Engineers, dated June 20, 1984.

Request for copies of the Centralia Flood Reduction Project DEIS or other information regarding this environmental analysis should be addressed to Mr. Hart (see **ADDRESSES**). Copies of the DEIS are also available for public inspection and review at the following locations:

(1) U.S. Army Corps of Engineers, Federal Center South, 4735 Marginal Way, Seattle, WA 98124–2385.

(2) Chehalis Timberland Library, 76 N.E. Part Street, P.O. Box 419, Chehalis, WA 98532–0419; (360) 748–3301.

(3) Timberland Regional Library, 110 S. Silver, Centralia, WA 98531–4296; (360) 736–0183.

(4) Timberland Regional Library, 125 South Main Street, Montesano, WA 98563; (360) 249–4211.

(5) Internet at: *http://www.nws.usace.army.mil/ers/doc_table.cfm.*

A public hearing on the Centralia Flood Reduction Project DEIS will be held August 21, 2002 at the Lewis County Court House, Lewis County, WA starting at 6 p.m. USACE personnel will be present to answer questions. The hearings will provide an opportunity for information exchange and discussion between USACE and the public, as well as opportunities for the public to present oral or written comments.

Ralph H. Graves,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 02–19705 Filed 8–2–02; 8:45 am]

BILLING CODE 3710–ER–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Cancellation of Notice of Intent To Prepare a Draft Environmental Impact Statement for the Mississippi River Diversion Near Benny's Bay, Mississippi River Delta, LA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of cancellation.

SUMMARY: The U.S. Army Corps of Engineers, New Orleans District, is canceling a notice of intent to prepare a Draft Environmental Impact Statement (EIS) published in the **Federal Register** (66 FR 65681), December 20, 2001.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be addressed to Mr. Michael Salyer: U.S. Army Corps of Engineers, PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267, phone (504) 862–2037, fax number (504) 862–2572 or by E-mail at *michael.r.salyer@mvn02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: As a result of additional information, a decision was reached that significant impacts are no longer anticipated at the outset of planning for the Mississippi River Diversion near Benny's Bay, Mississippi River Delta, LA. An environmental analysis will be accomplished through an Environmental Assessment (EA) and not an EIS. Upon completion of the EA, full disclosure to the public will be accomplished as mandated through Engineers Regulation 200–2. Should the EA indicate 1 significant impacts as a result of the diversion project, another notice of intent would be published at that time to specify the intent to prepare an EIS; formal procedures for the public scoping process would ensue at that time.

Dated: July 19, 2002.

Peter J. Rowan,

Colonel, U.S. Army, District Engineer.

[FR Doc. 02–19706 Filed 8–2–02; 8:45 am]

BILLING CODE 3710–84–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Proposed Future Operations and Facility Modernization at the Naval Air Warfare Center Weapons Division Point Mugu Sea Range, Point Mugu, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy announces its decision to modernize facilities and support current levels of weapons test and evaluation activities, increased levels of fleet training activities, and Theater Missile Defense testing and training at the Naval Air Warfare Center Weapons Division Point Mugu Sea Range, Point Mugu, CA.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. Sections 4321 *et seq.*; Council on Environmental Quality regulations (40 CFR Parts 1500–1508), Department of the Navy regulations (32 CFR 775); and Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions), the Department of the Navy (Navy) announces its decision to modernize facilities and support current levels of weapons test and evaluation activities, increased levels of fleet training activities, and Theater Missile Defense (TMD) testing and training on the Sea Range, as described in the Preferred Alternative. This decision will enable the Navy to conduct state-of-the-art weapons systems testing and evaluation and maintain the level of operational readiness of our military services on a safe, operationally realistic, and thoroughly instrumented Sea Range.

Background and Issues: The 36,000 square mile Sea Range lies both inside and outside U.S. territorial waters and includes San Nicolas Island and assets at Naval Base Ventura County (NBVC), Point Mugu, CA. It is scheduled and managed by Naval Air Warfare Center Weapons Division (NAWCWPNS) Point Mugu. The Navy has continuously operated the Sea Range for more than 50 years. It provides a safe, highly instrumented volume of air and sea space in which to conduct controlled

test and evaluation of sea, land, and air weapons systems. The test and evaluation process is critical to the assessment, improvement, and safe operation of current and future weapons systems. The Sea Range also provides realistic training opportunities. Maintaining military units in their highest state of operational readiness has become even more demanding as military strategy increasingly involves the use of new or enhanced technologies.

Alternatives: A screening process, based upon criteria set out in the Environmental Impact Statement/ Overseas Environmental Impact Statement (EIS/OEIS), was conducted to identify a reasonable range of alternatives that would satisfy the Navy's purpose and need. Three alternatives were analyzed in detail in the EIS/OEIS: the Preferred Alternative, the Minimum Components Alternative, and the No Action Alternative.

The Preferred Alternative was comprised of the following elements: (1) Continued testing activities at the Sea Range at current levels, including air-to-air, air-to-surface, surface-to-air, surface-to-surface, and subsurface-to-surface tests; 2) TMD testing and training elements (boost phase, upper tier, lower tier, and nearshore intercept); (3) up to three Fleet training events annually; (4) up to four special warfare training events annually; (5) continuation of other training activities at current levels; and (6) facility modernizations at NVBC Point Mugu and San Nicolas Island to enhance the capability of the Sea Range to support existing and future operations. Facility modernization would include new launch pads at NVBC Point Mugu and construction and operation of missile launchers, a range support building, and five multiple-purpose instrumentation sites at San Nicholas Island.

The Minimum Components Alternative was comprised by the following elements: (1) Testing activities at current levels; (2) up to eight nearshore intercept TMD events annually; (3) up to four Fleet training exercises annually; (4) other training activities at current levels, and (5) facility modernization that includes the construction of five multiple-purpose instrumentation sites on San Nicolas Island.

Under the No Action Alternative, the Navy would continue test and training operations at current annual levels. No TMD activities would be conducted and there would be no facility modernizations. The No Action Alternative is the environmentally preferred alternative because it involves no change to the physical environment.

Environmental Impacts: Potential environmental impacts occurring both inside and outside U.S. territory were analyzed in this combined EIS/OEIS for each of the three alternatives. No significant impacts on any resource, either inside or outside U.S. territory, were identified. The results of consultations conducted with federal regulatory agencies are briefly described below.

The Navy initiated informal consultation with the National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act (16 U.S.C. Section 1531) for all activities on the Sea Range addressed in the EIS/ OEIS. The consultation concluded in January 2002, with the NMFS determination that all current activities, and those future activities to be accommodated as part of the Preferred Alternative, would not adversely affect federally listed species under their jurisdiction.

The Navy also coordinated with NMFS on the Marine Mammal Protection Act (16 U.S.C. Section 1431 et seq.). For all activities at sea, the Navy determined that "takes" of marine mammals are unlikely. To accommodate missile launch events potentially affecting pinnipeds (seals and sea lions) hauled out on land at San Nicolas Island, the Navy applied for and received an Incidental Harassment Authorization (IHA). The term of the IHA is one year.

In January 1999, the Navy initiated formal consultation under Section 7 of the Endangered Species Act with the U.S. Fish and Wildlife Service (USFWS) for all activities associated with the preferred alternative that may adversely affect federally listed species under USFWS jurisdiction onboard NVBC Point Mugu. The USFWS issued a No Jeopardy Final Programmatic Biological Opinion in June 2001 that addresses all activities associated with the Preferred Alternative.

In December 2000, the Navy initiated formal consultation with the USFWS under Section 7 of the Endangered Species Act for all activities associated with the Preferred Alternative that may adversely affect federally listed species under USFWS jurisdiction on San Nicolas Island. The USFWS issued a No Jeopardy Final Programmatic Biological Opinion in October 2001 that addresses all activities associated with the Preferred Alternative.

Mitigation: Environmental management procedures and mitigation measures incorporated into the EIS/ OEIS process, including those in the Biological Opinions issued by the USFWS and the IHA issued by NMFS, are summarized below.

Marine Mammal Mitigation/ Monitoring Measures Associated with the Sea Range Section 7 Consultation: NMFS and the Navy agreed to five standard operating procedures to protect marine mammals during operations on the Sea Range: (1) There will be no intentional interaction between marine mammals and Navy ships and aircraft; (2) when vessels are on the Sea Range, safety lookouts are to be posted 24 hours a day to look for any and all objects in the water, including marine mammals, with all sightings reported to the ship's bridge for tracking; (3) when whales have been sighted in an area, ships will undertake increased vigilance and reasonable and practicable actions, including changing speed and/or direction (as dictated by environmental and safety or weather conditions), to avoid collisions and activities that might result in close interaction between the vessels and marine mammals; (4) in the event of a collision between a Navy vessel and a marine mammal, the Navy will notify NMFS as soon as practicable (normally within 48 hours of the incident) and provide a follow-up written report or a schedule for submission of a report within 30 days; and (5) for intercepts close to San Nicolas Island, the Navy will increase marine mammal survey efforts beyond those for normal open ocean operations.

Marine Mammal Mitigation and Monitoring Measures Under the IHA: The Navy expects that planned launches will cause disturbance reactions by some of the pinnipeds hauled out on San Nicolas Island beaches, but there would be no pinniped mortality and no significant long-term effect on pinniped stocks. Where practicable, and when doing so will not compromise operational safety requirements or mission goals, the Navy will implement the following marine mammal monitoring and mitigation procedures: (1) Personnel will be prohibited from entering pinniped haul-out sites below a missile's predicted flight path prior to launch; (2) launch activities during harbor seal pupping seasons will be avoided; (3) launch activities during the pupping seasons of other pinnipeds will be limited; (4) target missiles will not be launched at low elevations on launch azimuths that pass close to beach haul-out site(s); (5) multiple target launches in quick succession over haul-out sites will be avoided, especially when young pups are present; (6) night-time launch activities will be limited; (7) during aircraft and helicopter operations, a minimum altitude of 1,000 feet will be

maintained from pinniped haul-out sites; and (8) NMFS will be contacted within 48 hours if injurious or lethal takes are discovered during marine mammal monitoring.

Mitigation/Monitoring Procedures Under the NBVC Point Mugu Biological Opinion: USFWS and the Navy agreed to annual reporting and implementation of mitigation and conservation measures. The Navy has already implemented a jet assisted takeoff (JATO) bottle retrieval program for the salt marsh in front of Building 55. In addition, the Navy will: (1) Conduct standardized and consistent population monitoring of salt marsh bird's-beak, western snowy plover, California least tern, and light-footed clapper rail; (2) areas shall be restored as salt marsh, sandy beach, or other habitat for listed species where physical parameters are appropriate and no other use is anticipated; (3) aircraft overflights will be modified and monitored by air operations personnel in order to avoid and minimize potential adverse effects to listed species; (4) Base personnel and contractors shall be educated on the identification and importance of conserving listed species, and their personal responsibilities in that regard; (5) All mitigation measures shall be evaluated to determine their effectiveness in avoiding and minimizing take of listed species, and where these mitigation measures are not effective, corrective measures shall be implemented.

Mitigation/Monitoring Procedures Under the San Nicolas Island Biological Opinion: The Navy has closed the south side of the island to all activities year-round from the barge landing at Daytona Beach to Bachelor Beach to protect three species of marine mammals, western snowy plovers, Brandt's cormorants, western gulls, and California brown pelicans, and to provide undisturbed habitat for a variety of other wildlife species. Other mitigation and conservation measures to be implemented by the Navy, in addition to annual reporting, include: (1) Closure of western snowy plover nesting areas during the breeding season using signs and barricades; (2) regular and consistent monitoring of the distribution and status of listed species, particularly those with habitat in or near operational areas, in order to assess the potential effects of Navy activities; (3) mandatory attendance by permanent and visiting island personnel at an "environmental briefing" on personal responsibilities regarding protected species under federal legislation and Navy regulations; (4) restoration of island night lizard habitat using revegetation; (5) alteration of the substrate immediately adjacent to the Building 807 launch area (during the nonbreeding season) to reduce its attractiveness as a nest site by snowy plovers (this area is not designated critical habitat for the species); (6) thorough cleaning and inspection of construction equipment, vehicles, and supplies prior to their shipment to San Nicolas Island to reduce the potential for introduction of non-native species; (7) whenever feasible, staging areas for temporary storage of equipment and materials will be sited in areas with low island night lizard densities; and (8) when practicable, proposed facility construction projects sites and associated access roads will be placed to avoid habitat that may harbor island night lizards.

Cultural Resources: Prior to use of the drop zone located in the near-shore areas of Becher's Bay at Santa Rosa Island, the Navy will conduct a thorough survey of the entire impact area, in addition to a buffer zone, for the presence of shipwrecks. If resources are found to be present, the Navy will comply with Section 106 of the National Historic Preservation Act.

As concluded in the EIS/OEIS and this Record of Decision, all practicable means to avoid or minimize environmental harm that would result from implementing this alternative will be adopted by the Navy.

Response to Comments Received Regarding the Final EIS: Comments on the EIS/OEIS were received from USFWS. No other comments were received from any other federal agency, state or local agencies, or from non-governmental organizations or individual members of the public.

The USFWS commented that the Final EIS/OEIS did not recognize that programmatic Biological Opinions had been completed for both NBVC Point Mugu and San Nicolas Island and that the Navy may have erroneously concluded in the EIS/OEIS that these Biological Opinions would protect all "sensitive species" present at the installations, not just those that are federally listed as endangered or threatened or proposed for listing. The Navy indicates that in Chapter 4.8, the Final EIS/OEIS contains a thorough discussion of both completed Biological Opinions. In addition, the Navy acknowledges that the Biological Opinions pertain only to the protection of federally listed endangered or threatened species or those proposed for listing.

Conclusions: After carefully considering the purpose and need of the proposed action, the analysis contained in the EIS/OEIS, the IHA issued by NMFS, the Biological Opinions issued by USFWS, and the comments received on the EIS/OEIS from federal, state, and local agencies, non-governmental organizations, and individual members of the public, I have determined that the Preferred Alternative will best meet the needs of the Navy. I have also determined that the Preferred Alternative will cause no significant harm to the resources of the global commons. Therefore, implementation of the Preferred Alternative will enable NAWCWPNS Point Mugu to continue to conduct state-of-the-art weapons systems testing and evaluation and maintain the operational readiness of our military services on a safe, operationally realistic, and thoroughly instrumented Sea Range.

Dated: July 24, 2002.

Donald R. Schregardus,

Deputy Assistant Secretary of the Navy (Environment).

[FR Doc. 02–19629 Filed 8–2–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12234–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Lower Anacoco Hydro, LLC.

e. *Name and Location of Project:* The Lower Anacoco Dam Project would be located on the Bayou Anacoco in Vernon Parish, Louisiana. The proposed project would be located on an existing dam owned by the Louisiana Department of Wildlife and Fisheries and would not occupy any federal lands or facilities.

f. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, Fax (208) 745–7909.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P–12234–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed run-of-river project would consist of: (1) An existing 3,600-foot-long, 47-foot-high concrete dam, (2) an impoundment, Lake Anacoco, with a surface area of 2,600 acres and a storage capacity of 24,000 acre-feet at normal maximum water surface elevation of 200 feet, (3) a proposed powerhouse with a total installed capacity of 1.2 megawatts, (4) a proposed 100-foot-long, 7-foot-diameter penstock, (5) a proposed 1-mile-long, 15 kv transmission line, and (6) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 10.5 GWh.

k. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19655 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–391–000]

Natural Gas Pipeline Company of America; Notice of Intent To Prepare an Environmental Assessment for the Proposed North Lansing Storage Field NSS Project and Request for Comments on Environmental Issues

July 30, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the North Lansing Storage Field NSS Project involving construction and operation of facilities by Natural Gas Pipeline Company of America (NGPL) in Harrison County, Texas [1] These facilities would consist of one additional 6,000 horsepower compressor at an existing compressor station, drill 17 additional injection/withdrawal wells, and about 4,255 feet of connecting well pipelines and appurtenant facilities. The project

[1] NGPL's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

would create an additional 10.7 billion cubic feet of gas storage service capability beginning in 2003. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by ■ pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Natural Gas Pipeline Company of America (NGPL) provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.gov).

Summary of the Proposed Project

NGPL seeks authority to:

- Install one 6,000 horsepower electric-motor-driven compressor at existing Compressor Station 388 in Harrison County; Texas;
- Drill 17 additional injection/withdrawal wells in Harrison County, Texas; well installation would require development of 8 well drilling pads (1 to 3 wells would be drilled at each pad). Each new well would be offset from existing or new well by about 100 feet. Each well pad would disturb an area of about 600 feet by 600 feet;
- Construct a total of 4,255 feet of 10-inch-diameter laterals that would connect the new wells to pipelines; and
- Expand an electrical substation at Compressor Station 388.

The general location of the facilities is shown in appendix 1.[2]

[2] The appendices referenced in this notice are being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

Construction of the proposed facilities would require about 51.9 acres of land. Following construction, about 20.3 acres would be maintained as permanent right-of-way. The remaining 31.6 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries,
- Vegetation and wildlife
- Endangered and threatened
- Air quality and noise
- Land use
- Cultural resources and wetlands
- Hazardous waste
- Public safety species

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

[3] "We", "us", "our" refer to the environmental staff of the Office of Energy Projects (OEP).

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by National Fuel. This preliminary list of issues may be changed based on your comments and our analysis.

- The project has a potential to impact cultural resources.
- Four intermittent streams may be impacted.
- The project may have noise impacts on nearby residences.
- Threatened and endangered species may be impacted

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of (Gas Branch 2).
- Reference Docket No. CP02–391–000.
- Mail your comments so that they will be received in Washington, DC on or before August 28, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-

Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs at 1–866–208–FERC (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC Web site (*www.ferc.gov*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet Web site, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19647 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1984–083]

Wisconsin Department of Natural Resources v. Wisconsin River Power Company; Notice of Complaint

July 30, 2002.

Take notice that on July 8, 2002, the State of Wisconsin Department of Natural Resources (WDNR) filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2002), and Part I of the Federal Power Act, 16 U.S.C. 791, *et seq.*, against Wisconsin River Power Company (WRPC), licensee of the Petenwell and Castle Rock Project No. 1984, located on the Wisconsin River in Wood, Juneau, and Adams Counties, Wisconsin. WDNR alleges that WRPC has violated Articles 410 and 411 of its project license by marketing and selling licensee-owned lands. On July 18, 2002, the licensee filed an answer to WDNR's complaint. Copies of the complaint are on file with the Commission and are available for public inspection in the Commission's Public Reference Room. The complaint may also be viewed on the Internet at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Any person desiring to be heard or to protest this filing should file comments, a motion to intervene, or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The licensee's answer to the complaint and all comments, motions, or protests must be filed on or before August 19, 2002. Any entity wishing to become a party must file a motion to intervene. The answer to the complaint, comments, motions to intervene, and protests may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(ii), and the instructions on the Commission's Web site under the "e-filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19648 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EC98–40–000, et al.]

American Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

July 26, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Company

[Docket Nos. EC98–40–000, ER98–2777–000 and ER98–2786–000]

Take notice that on July 23, 2002, Charles River Associates Incorporated filed Market Monitoring of American Electric Power: Eighth Quarterly Report and a request for privileged treatment of the portions of certain documents.

Comment Date: August 13, 2002.

2. Nevada Power Company

[Docket Nos. ER01–2754–005, ER01–2755–004, ER01–2758–004, and ER01–2759–004 (Not Consolidated)]

Take notice that on July 23, 2002, Nevada Power Company (Nevada Power) filed, pursuant to Section 205 of the Federal Power Act and the Commission's Order dated June 12, 2002,in the above-referenced proceedings, an executed version of Service Agreement No. 100, which is a transmission service agreement (TSA) with Pinnacle West Energy Corporation (Pinnacle West). An unexecuted version of the TSA was included in Nevada Power's compliance filing of July 12, 2002. Since that time, Pinnacle West has executed the TSA and Nevada Power is now filing it in executed form. No changes were made to the TSA filed on July 12 other than its execution by the parties.

Comment Date: August 13, 2002.

3. NorthWestern Energy, L.L.C.

[Docket Nos. ER02–1784–001 and SC00–1–004]

Take notice that on July 23, 2002, NorthWestern Energy, L.L.C. (NorthWestern Energy) tendered for filing a Notice of Cancellation of FERC Rate Schedules 39 and 181 (requirements service to Central Montana Electric Power Cooperative, Inc. and Big Horn Electric Cooperative) in compliance with the Commission's order in *NorthWestern Energy, L.L.C.*, 100 FERC ¶ 61,049 (2002) and *Montana Power Company*, 91 FERC ¶ 61,296 (2000). NorthWestern Energy requests an effective date of February 15, 2002 for the notice of cancellation.

Comment Date: August 13, 2002.

4. Virginia Electric and Power Company

[Docket No. ER02–2359–000]

Take notice that on July 23, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Select Energy, Inc. designated as Service Agreement No. 370 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Select Energy, Inc. designated as Service Agreement No. 371 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to Select Energy, Inc. under the rates, terms and conditions of the Open Access Transmission Tariff. Dominion Virginia Power requests an effective date of June 24, 2002, as requested by the customer.

Copies of the filing were served upon Select Energy, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: August 13, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19614 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–613–002, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

July 29, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. San Diego Gas & Electric Company

[Docket No. ER02–613–002]

Take notice that on July 24, 2002 San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) its corrected Transmission Owner Tariff sheets in accordance with the Commission's Order Conditionally Accepting Tariff Sheets as Modified, issued in the above docket on June 27, 2002 (99 FERC ¶ 61,364).

The corrections reflect an increase to SDG&E's Reliability Must Run (RMR) revenue requirement that will allow SDG&E to recover franchise fee payments to the cities and counties in its service territory for the period beginning May 1, 2002 through December 31, 2002, subject to refund, as stated in the June 27, 2002 order. The corrected tariff sheets are effective July 1, 2002.

Comment Date: August 14, 2002.

2. San Diego Gas & Electric Company

[Docket No. ER02–1558–002]

Take notice that on July 22, 2002 San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) Amendment No. 1 to Service Agreement No. 5 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6.

The Amendment No. 1, incorporates a change to the rate of the Operating & Maintenance (O&M) charges to be paid by RAMCO Escondido to SDG&E. The change in O&M rate was approved by the Commission in a letter order dated June 11, 2002.

SDG&E states in its filing that copies of the Amendment No. 1 have been served on RAMCO, Inc.

Comment Date: August 12, 2002.

3. Dominion Energy Marketing, Inc.

[Docket No. ER02–2360–000]

Take notice that on July 24, 2002, Dominion Energy Marketing, Inc. (the Company) respectfully tendered for filing the a Service Agreement by Dominion Energy Marketing, Inc. to Old Dominion Electric Cooperative designated as Service Agreement No. 7 under the Company's Market-Based Sales Tariff, FERC Electric Tariff, Original Volume No. 1, effective on December 15, 2000. The Company requests an effective date of June 26, 2002, as requested by the customer.

Copies of the filing were served upon the Old Dominion Electric Cooperative, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: August 14, 2002.

4. WPS Westwood Generation, LLC

[Docket No. ER02–2361–000]

Take notice that July 24, 2002 WPS Resources Corporation, on behalf of WPS Westwood Generation, LLC (WPS Westwood), tendered for filing with the Federal Energy Regulatory Commission (Commission) a rate schedule and cost support for WPS Westwood's Reactive Supply and Voltage Control from Generation Sources Service to be provided by its 30 MW Generating station located in Joliett, Pennsylvania pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d; Part 35 of the Commission's regulations, 18 CFR Part 35; and Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff with a requested effective date of July 25, 2002.

Copies of the filing were served on PJM and the Pennsylvania Public Utilities Commission.

Comment Date: August 14, 2002.

5. Sunbury Generation, LLC

[Docket No. ER02–2362–000]

Take notice that on July 24, 2002 WPS Resources Corporation on behalf of Sunbury Generation, LLC (Sunbury) tendered for filing with the Federal Energy Regulatory Commission (Commission) a rate schedule and cost support for Sunbury's Reactive Supply and Voltage Control from Generation Sources Service Reactive Power Service to be provided by the 389 MW coal-fired units in its generating station located in Snyder County, Pennsylvania pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 724d; Part 35 of the Commission's regulations, 18 CFR Part 35; and Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff with a requested effective date of July 25, 2002.

Copies of the filing were served on PJM and the Pennsylvania public Utilities Commission.

Comment Date: August 14, 2002.

6. MEG Marketing, LLC

[Docket No. ER02–2368–000]

Take notice that on July 23, 2002, MEG Marketing, LLC (MEG) filed a notice of cancellation of MEG's Rate Schedule FERC No. 2, as supplemented by Supplement No. 1 to Rate Schedule FERC No. 2, filed with the Federal Energy Regulatory Commission by MEG in FERC Docket No. ER98–2284–004 on April 14, 1999, and effective June 14, 1999. MEG's Rate Schedule FERC No. 2, as supplemented, superseded its Rate Schedule FERC No. 1, filed in Docket No. ER98–2284–000 on March 24, 1998, and effective May 4, 1998. MEG proposes that the cancellation be effective as of July 23, 2002.

Comment Date: August 13, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19613 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

July 30, 2002.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 2101.

c. *Date filed:* July 18, 2002.

d. *Submitted By:* Sacramento Municipal Utility District.

e. *Name of Project:* Upper American River Project.

f. *Location:* Project is located in Sacramento County and EL Dorado County, California, along the Rubicon River, Silver Creek, and South Fork of the American River. Nearby cities include Placerville, South Lake Tahoe, Folsom, and Sacramento, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the Sacramento Municipal Utility District, 6301 S. Street, Hydro Relicensing Public Library, Sacramento, CA., 95817–1899, 916–648–1234.

i. *FERC Contact:* James Fargo, 202–219–2848. James.Fargo@Ferc.Gov.

j. *Expiration Date of Current License:* July 31, 2007.

k. *Project Description:* The project's facilities include three dams and storage reservoirs, eight diversion dams and eight powerhouses with a total generating capacity of approximately 68,800 kilowatts.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2101. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2005.

A copy of the Notice of Intent is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in the item above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19649 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Prepare an Environmental Assessment; Notice Soliciting Written Scoping Comments

July 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New License.

b. *Project No.:* 2574–032.

c. *Date filed:* April 29, 2002.

d. *Applicant:* Merimil Limited Partnership.

e. *Name of Project:* Lockwood Hydroelectric Project.

f. *Location:* On the Kennebec River in Kennebec County, near City of Waterville and Town of Winslow, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. F. Allen Wiley, Kennebec Hydro Resources Inc., c/o FPL Energy Maine Hydro, LLC, 150 Main Street, Lewiston, ME 04240, (207) 795–1342.

i. *FERC Contact:* David Turner, (202) 219–2844 or *david.turner@ferc.gov.*

j. *Deadline for filing scoping comments:* August 29, 2002.

All documents (original and eight copies) should be filed with: Magalie R.

Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site, *http://www.ferc.gov*, under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The existing Lockwood Project consists of: (1) A 1,300-foot-long concrete gravity dam, consisting of three spillway sections, a small island, and the forebay headworks; (2) 450-foot-long forebay; (3) a 81.5-acre reservoir; (3) two powerhouses, one containing six vertical Francis type turbines and the second containing one horizontal variable pitch kaplan turbine, for a total installed capacity of 7,250 kilowatts; (4) about 4,225 feet of buried and overhead transmission lines; and (5) appurtenant facilities.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff do not propose to conduct any on-site scoping meetings at this time. Instead, we will solicit comments, recommendations, information, and alternatives by issuing Scoping Document 1 (SD1).

Copies of SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of SD1 may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19659 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Soliciting Comments, Motions To Intervene, and Protests

July 30, 2002.

Take notice that the following hydroelectric applications have been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of Licenses.

b. *Project Nos.:* 3939–020 and 3940–014.

c. *Date Filed:* June 28, 2002.

d. *Applicants:* City of Denton, Texas (Transferor) and Spencer Station Generating Company, L.P. (Transferee).

e. *Name of Projects:* Ray Roberts Dam and Lewisville Dam.

f. *Location:* The projects are located on the Elm Fork of the Trinity River, in Denton County, Texas, occupy lands of the United States, and utilize the U.S. Army Corps of Engineers' Federal Ray Roberts Dam and Federal Lewisville Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants Contacts:* Kenneth M. Simon, Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, NW., Washington, DC 20037, (202) 785–9700 (for the City of Denton); Donna M. Attanasio and Daniel A. Hagan, Dewey Ballantine LLP, 1775 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 429–2327 (for Spencer Station Generating Company, L.P.).

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments and or motions:* August 30, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the Project Numbers (3939–020 and 3940–014) on any comments or motions filed.

k. *Description of Transfers:* On June 29, 2001, the transferor sold a significant portion of its electric generating assets, including both projects, to the transferee. The applicants seek Commission approval to transfer the licenses for both projects from the City of Denton, Texas to Spencer Station Generating Company, L.P.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www/ferc/gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.

Deputy Secretary

[FR Doc. 02–19651 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 30, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Increase Generating Capacity.

b. *Project No:* 10805–034.

c. *Date Filed:* July 26, 2002.

d. *Applicant:* Midwest Hydraulic Company.

e. *Name of Project:* Hatfield Hydroelectric.

f. *Location:* The project is located on the Black River, in Jackson and Clark Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a) § 825(r) and § 799 and 801.

h. *Applicant Contact:* A.R. Blystra, Midwest Hydraulic Company, P.O. Box 1078, Holland, MI 49422–1078, (616) 394–0606.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 219–3297, or e-mail address: *anumzziatta.purchiaroni@ferc.gov.*

j. *Deadline for filing comments and or motions:* August 16, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–10805–034) on any comments or motions filed.

k. *Description of Request:* Midwest Hydroelectric is proposing to replace a non-functioning exciter unit with a 100-kW generating unit. The unit will use 18 cfs of water and operation will occur when there are sufficient flows above existing project hydraulic capacity. Installation will take approximately 2 weeks and involve minor changes to the powerhouse.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19652 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12224–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Eagle Mountain Hydro, LLC.

e. *Name of Project:* Eagle Mountain Dam Hydroelectric Project.

f. *Location:* On the West Fork Trinity River, in Tarrant County, Texas. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

h. *Applicant Contact:* Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442 (208) 745–8630.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12224–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 85—foot-high, 4,400-foot-long concrete dam, (2) a proposed 78-inch-diameter steel penstock approximately 250 feet long, (3) a proposed powerhouse containing one turbine generator having a total installed capacity of 1.5 MW, (4) a proposed 1-mile-long, 15 kV transmission line, and (5) appurtenant facilities. The project

would have an annual generation of 2.9 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www/ferc/gov* using the "RIMS" link, select "DOCKET #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant (s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19653 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Aceepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12230–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Lake Bistineau Hydro, LLC.

e. *Name of Project:* Lake Bistineau Hydroelectric Project.

f. *Location:* At an existing dam owned by the Louisiana Department of Wildlife and Fisheries, on the Loggy Bayou, in Bienville Parish, Louisiana. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442 (208) 745–8630.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12230–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 46-foot-high, 7,635-foot-long concrete dam, (2) two proposed 144-inch-diameter steel penstocks approximately100 feet long, (3) a proposed powerhouse containing two turbine generators having a total installed capacity of 9.3 MW, (4) a proposed 1-mile-long, 25 kV

transmission line, and (5) appurtenant facilities. The project would have an annual generation of 20.8 Gwh.

l. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www/ferc/gov* using the "RIMS" link, select "DOCKET #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant (s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19654 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12240–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Pat Mayse Hydro, LLC.

e. *Name of Project:* Pat Mayse Dam Hydroelectric Project.

f. *Location:* At an existing dam owned by the U.S. Army Corps of Engineers, on Sanders Creek in Lamar County, Texas. Part of the project would be on lands administered by the U.S. Army Corps of Engineers.

g. *Filed pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

h. *Applicant Contact:* Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442 (208) 745–8630.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12240–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 63-foot-high, 7,080-foot-long concrete dam, (2) a proposed 132-inch-diameter steel penstock approximately 250 feet long, (3) a proposed powerhouse containing one turbine generator having a total installed capacity of 4 MW, (4) a proposed 1-mile-long, 25 kV transmission line, and

(5) appurtenant facilities. The project would have an annual generation of 12 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www/ferc/gov* using the "RIMS" link, select "DOCKET #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant (s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19656 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12278–000.

c. *Date filed:* June 26, 2002.

d. *Applicant:* KR 6 Hydro, LLC.

e. *Name and Location of Project:* The Kentucky River L&D #6 Hydroelectric Project would be located on the Kentucky River in Mercer County, Kentucky. The project would utilize the U.S. Army Corps of Engineers' existing Lock and Dam No. 6.

f. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions and may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link. Please include the project number (P–12278–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the existing Kentucky River Lock and Dam No. 6, would consist of: (1) A proposed 50-foot-long, 12-foot-diameter concrete penstock, (2) a proposed powerhouse containing one

generating unit with an installed capacity of 2.5 megawatts, (3) a proposed five-mile-long, 25-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 14 gigawatthours.

k. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19657 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12284–000.

c. *Date filed:* June 26, 2002.

d. *Applicant:* Bayview Hydro, LLC.

e. *Name and Location of Project:* The Bayview Lake Dam Hydroelectric Project would be located at an existing dam owned by USX Corporation on Village Creek in Jefferson County, Alabama.

f. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions and may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link. Please include the project number (P–12284–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project would consist of: (1) The existing 100-foot-high, 550-foot-long gravity dam impounding Bayview Lake, which has a 397-acre surface area at normal maximum water surface elevation 494 feet, (2) a proposed 250-

foot-long, 60-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit with an installed capacity of one megawatt, (4) a proposed two-mile-long, 15-kilovolt transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 5.6 gigawatt hours.

k. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19658 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12289–000.

c. *Date filed:* July 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Crooked Creek Dam Hydroelectric Project would be located on Crooked Creek in Armstrong County, Pennsylvania. The project would utilize the U.S. Army Corps of Engineers' existing Crooked Creek Dam and Lake.

f. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P–12289–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Crooked Creek Dam and Lake, would consist of: (1) A proposed 46-foot-long, 66-inch-diameter steel penstock, (2) a proposed

powerhouse containing one generating unit with an installed capacity of 1.06 megawatts, (3) a proposed 1,200-foot-long, 12.7-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 3.5 gigawatthours.

k. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19569 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12292–000.

c. *Date filed:* July 5, 2002.

d. *Applicant:* Pleasant Hill Hydro, LLC.

e. *Name of Project:* Pleasant Hill Dam Hydroelectric Project.

f. *Location:* At an existing dam owned by the U.S. Army Corps of Engineers (Corps), on the Clear Fork branch of the Mohican River in Ashland County, Ohio. Part of the project would be on lands administered by the Corps.

g. *Filed pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

h. *Applicant Contact:* Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442 (208) 745–8630.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12292–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project would be located at the Corps' Pleasant Hill Dam and would consist of: (1) A proposed 60-inch-diameter steel penstock approximately 200 feet long, (2) a proposed powerhouse containing one turbine generator having a total installed capacity of 1.5 MW, (3) a proposed 1-

mile-long, 25 kV transmission line, and (4) appurtenant facilities. The project would have an annual generation of 5.4 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www/ferc/gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant (s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19660 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12300–000.

c. *Date filed:* July 5, 2002.

d. *Applicant:* Dover Hydro, LLC.

e. *Name and Location of Project:* The Dover Dam Hydroelectric Project would be located on the Tuscarawas River in Tuscarawas County, Ohio. The project would utilize the U.S. Army Corps of Engineers' existing Dover Dam and Lake.

f. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P–12300–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Dover Dam and Lake, would consist of: (1) A proposed 300-foot-long, 10-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating

unit with an installed capacity of 4.8 megawatts, (3) a proposed one-mile-long, 25-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 23.8 gigawatthours.

k. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19661 Filed 8–2–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7255–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP: Steel Pickling; 40 CFR Part 63, Subpart CCC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standard for Hazardous Air Pollutants (NESHAP): Steel Pickling; 40 CFR part 63, subpart CCC; OMB Control No. 2060–0419; expiration date July 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 4, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1821.03 and OMB Control No. 2060–0419 to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1821.03. For technical questions about the ICR contact María Malavé; in the Office of Compliance at (202) 564–7027 or via E-mail to *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: NESHAP (National Emission Standard for Hazardous Air Pollutants): Steel Pickling; 40 CFR part 63, Subpart CCC; OMB Control No. 2060–0419, EPA ICR No. 1821.03; expiration date July 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The National Emission Standards for Hazardous Air Pollutants

(NESHAP) for Steel Pickling, published at 40 CFR part 63, subpart CCC, were proposed on September 18, 1997, (62 FR 49051) and promulgated on June 22, 1999 (64 FR 33202). This rule applies to all facilities that pickle steel using hydrochloric acid or regenerate hydrochloric acid, and are major sources or are part of a facility that is a major source. This regulation does not apply to any pickling line that uses an acid other than hydrochloric acid or an acid solution containing less than 6 percent HCl or at a temperature less than 100 °F. This rulemaking establishes limits for hydrochloric acid emissions from continuous and batch pickling lines and acid regeneration units and limits for chlorine emissions from acid regeneration units. Also, operational and equipment standards are established for stationary acid storage vessels.

The monitoring, recordkeeping, and reporting requirements outlined in the rule are similar to those required for other NESHAP regulations. Plants must demonstrate compliance with the emission standards by monitoring their control devices and performing annual emissions testing. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), respondents would submit one-time notifications of applicability and a one-time report on performance test results for the primary emission control device. Plants also must develop and implement a Startup, Shutdown, and Malfunction Plan (SSMP) and submit semiannual reports of any event where the procedures in the plan were not followed. Sources are required to submit semiannual reports at all times including for periods of monitoring exceedances and periods of compliance certifying that no exceedances have occurred. Subpart CCC also requires the owner or operator to submit a written maintenance plan for each emission control device. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 108.8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Major sources that pickle steel using hydrochloric acid or regenerate hydrochloric acid/Affected entities include continuous and batch pickling lines, acid regeneration units, and stationary acid storage vessels.

Estimated Number of Respondents: 71.3.

Frequency of Response: Initial and semiannual.

Estimated Total Annual Hour Burden: 25,104 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $8,388.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA Preliminary ICR No. 1821.03 and OMB Control No. 2060–0419, in any correspondence.

Dated: July 29, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–19695 Filed 8–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7255–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Disinfectants/Disinfection Byproducts, Chemical and Radionuclides Rules: Lead and Copper Rule Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Disinfectants/Disinfection Byproducts, Chemical and Radionuclides Rules: Lead and Copper Rule Amendment, EPA ICR No. 1896.04, OMB Control No. 2040–0204. This ICR amendment will add the updated burden and costs for the Lead & Copper Rule (LCR) ICR, which expires September 30, 2002, to the Disinfectants/Disinfection Byproducts, Chemical and Radionuclides Rules ICR. The ICR amendment describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 4, 2002.

ADDRESSES: Send comments, referencing EPA ICR No 1896.04 and OMB Control No. 2040–0204, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *auby.susan@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1896.04. For technical questions about the ICR contact Lisa Christ at (202)564–8354, fax (202) 564–3755, *e-mail:christ.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Disinfectants/Disinfection Byproducts, Chemical and

Radionuclides Rules: Lead and Copper Rule Amendment, EPA ICR No. 1896.04, OMB Control No. 2040–0204. This amendment will update burden and costs associated with the LCR and move the burden from the National Primary Drinking Water Regulations for Lead and Copper; Final Rule, EPA No. 1912.01, OMB Control No. 2040–0210, which expires September 2002, to the Disinfectants/Disinfection Byproducts, Chemical and Radionuclides Rules ICR, EPA ICR No. 1896.03, OMB Control No. 2040–0204. The Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules ICR is the result of a consolidation of activities covered in the 1998 Stage 1 Disenfenfectants/Disinfection Byproduct Rule (DBPR) ICR, some rules and activities covered in the 1993 Public Water Systems Supervision (PWSS) program ICR and activities and rules previously covered in other Office of Ground Water and Drinking Water (OGWDW) standalone ICRs. As part of the consolidation effort, the Disinfectants/Disinfection, Chemical, and Radionuclides Rules ICR will be amended to include burden and costs associated with the Lead and Copper Rule. The National Primary Drinking Water Regulations (NPDWRs) for Lead and Copper (The Lead and Copper Rule or LCR), promulgated by EPA in 1991, is a regulatory program mandated by the Safe Drinking Water Act (SDWA). The LCR's goal is to reduce the levels of lead and copper at the tap to as close to the maximum contaminant level goals of 0 parts per billion (ppb) of lead and 1.3 ppb of copper as possible. To accomplish this, the LCR requires community and non-transient non-community water systems to conduct periodic monitoring to optimize corrosion control and, under specified conditions, install source water treatment, conduct public education, and/or replace lead service lines in the distribution system.

In January 2000, EPA published the Lead and Copper Rule Minor Revisions (LCRMR) which eliminated unnecessary requirements, streamlined and reduced reporting burden, and promoted consistent national implementation. The LCRMR do not affect the lead or copper rule maximum contaminant level goals, action levels, or the basic regulatory requirements. Monitoring, reporting and recordkeeping are required at both the system and State levels under the National Primary Drinking Water Regulations (NPDWRs). EPA has chosen to require the least frequent collection that remains consistent with overall public health preservation objectives. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 9, 2002 (67 FR 17070–17071), no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this amendment to a collection of information is estimated to average 2.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Public Water Systems and Primacy Agents.

Estimated Number of Respondents: 74,587.

Frequency of Response: Bi-weekly, monthly, quarterly, annually, semi-annually, triennially, and every nine years.

Estimated Total Annual Hour Burden: 1,780,049 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $11,456,047.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1896.04 and OMB Control No. 2040–0204 in any correspondence.

Dated: July 26, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–19696 Filed 8–2–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, August 6, 2002, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's enforcement and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC:

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–3742.

Dated: August 1, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–19811 Filed 8–1–02; 2:18 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011812.

Title: Contship/CMA CGM-Safmarine Space Charter Agreement.

Parties: Contship Containerlines, CMA CGM, S.A., Safmarine Containerlines N.V.

Synopsis: The proposed agreement authorizes Contship and CMA CGM to charter space to Safmarine on the service they operate between the Indian Subcontinent/Middle East and the U.S. East Coast. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: July 30, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–19615 Filed 8–2–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0330]

International Conference on Harmonisation Workshop on Gene Therapy; Public Meeting

AGENCY: Food and Drug Administration, HHS

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) is announcing a public meeting entitled "Public Meeting: ICH Workshop on Gene Therapy." The purpose of the meeting is to solicit input and conduct discussion on gene therapy issues regarding the development of viral vector reference materials, adenovirus shedding, and the safe use of Lentivirus vectors in clinical trials.

Date and Time: The meeting will be held on September 9, 2002, from 8 a.m. to 5 p.m.

Location: The meeting will be held at the Sheraton Premiere Tysons Corner, McLean, VA.

Contact: Stephanie Simek, Division of Cellular and Gene Therapies (HFM–591), Food and Drug Administration, Woodmont Office Complex One, 1401 Rockville Pike, suite 380 North, Rockville, MD 20852, 301–827–5102, FAX 301–827–5397.

Registration and Request for Oral Representations: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by August 26, 2002. To register electronically, please see the Pharmaceutical Research and Manufacturers of America at http://www.phrma.org/meetings/ and register by August 16, 2002.

If you need special accommodations due to a disability, please contact Stephanie Simek at least 7 days in advance.

SUPPLEMENTARY INFORMATION:

I. Background

The International Conference on Harmonisation (ICH) was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations. The ICH Steering Committee includes representatives from each of the ICH sponsors and Canadian Therapeutics Programme, and the European Free Trade Area. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions. The current ICH process and structure can be found on the Internet at http://www.ifpma.org/ich1.html.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of gene therapy regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to participating with the international community in the development and clinical use of safer and more effective gene therapy products.

The ICH held its first workshop on Gene Therapy in Chiba Japan, May 21 through 24, 2001. The workshop was held as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for sharing information on the development of gene therapy products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

At this workshop, it was agreed that the scientific principles for the regulation of gene therapy or gene therapy products are currently harmonized in the three ICH regions. Because the field of gene therapy is extremely complex and rapidly evolving, the group suggested that an exchange of scientific expertise and experience among the ICH partners could foster prospective harmonization of technical requirements.

It was then agreed that an ICH scientific workshop would be held in conjunction with the Spring ICH Steering Committee and Expert Working Group meetings in Washington, DC.

II. Issues To Be Discussed at the Public Meeting

The issues to be discussed include the following: (1) Development of viral vector reference standards, and (2) safe use of Lentivirus vectors in gene therapy clinical trials.

Interested persons may take part in an open discussion at two sessions during the September 9, 2002, meeting. The morning panel discussion will be between approximately 9:45 a.m. and 10:45 a.m. and will be focused on the development of viral vector reference standards. The afternoon discussion panel will be scheduled between approximately 3:40 p.m. and 4:40 p.m. and will focus on the safe use of Lentivirus vectors in gene therapy clinical trials.

The agenda for the public meeting will be made available on August 26, 2002, at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, under docket number 02N–0330.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: July 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19728 Filed 8–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; National Kidney Disease Education Program Evaluation Survey

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management (OMB) for review and approval.

Proposed Collection:

Title: National Kidney Disease Education Program Evaluation Survey.

Type of Information Collection Request: New.

Need and Use of Information Collection: NIDDK will conduct a survey to monitor and evaluate the effects of a pilot kidney disease education program. This will be accomplished through baseline and follow-up surveys of the primary target audience members, i.e. African American adults and primary care providers, in four pilot site locations. The research is designed to assess the overall impact of the program, but also to provide information that will be useful in developing and refining this and future programs.

Frequency of Response: A baseline and follow-up survey will each require a onetime response.

Affected Public: Individuals or households, clinics or doctor's offices.

Type of Respondents: African-American adults, and Primary Care Providers (e.g., physicians, physician assistants, and nurse practitioners, etc.).

The annual reporting burden is as follows:

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: 1 (Respondents will answer a single survey: African American adults will complete a 20 minute computer assisted telephone interview (CATI); Primary care providers will complete a 10 minute faxed survey.

Average Burden Hours Per Response: .298

Estimated Total Annual Burden Hours Requested: 596.

The annualized total cost of respondents' time is estimated at $10,684. All respondents will be contacted via telephone. To reduce respondent burden and overall costs of administering the study, it is expected that random digit dialing will be used to contact African American adults and telephone lists will be used to contact primary care providers. Because different program materials will be developed for each audience the questionnaires will be tailored such that respondents will be asked only target-audience pertinent questions. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
African Americans	1,600	1.0	.33	528
Primary Care Providers	400	1.0	.17	68
Total	2,000			596

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mimi Lising, Project Officer, NIDDK National Kidney Disease Education Program, NIH, Building 31, Room 9A04, Bethesda, MD 20892–2560, or call non-toll-free number (301) 496–3583 or e-mail your request, including your address, to: *lisingm@extra.niddk.nih.gov.*

Comments Due Date: Comments regarding this information are best assured of having their full effect if received within 60 days following the date of this publication.

Dated: July 17, 2002.

Barbara Merchant,

Executive Officer, NIDDK.

[FR Doc. 02–19726 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Extended Lung Cancer Incidence Follow-Up for the Mayo Lung Project Participants

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Collection: Title: Extended Lung Cancer Incidence Follow-Up for the Mayo Lung Project Participants.

Type of Information Collection Request: EXTENSION, OMB No. 0925–0496, expiration date 10–31–2002.

Need and Use of Information Collection: The Mayo Lung Project (MLP) was an NCI-funded randomized controlled trial (RCT) of lung cancer screening conducted among 9,211 male smokers from 1971 to 1983. No reduction in lung cancer mortality was observed in the MLP with an intense regimen of x-ray and sputum cytology screening. Recent analysis of updated mortality and case survival data (through 1996) suggests that lesions with little-to-no clinical relevance (over-diagnosis may have been detected through screening in the MLP intervention arm. Over-diagnosis leads to unnecessary medical interventions, including diagnostic and treatment procedures that carry with them varying degrees of risk. Consequently, over-diagnosis can result in considerable harm, including premature death, that would not have occurred in the absence of screening. The persistence, after screening ends, of an excess of lung cancer cases in the intervention arm is the strongest evidence in support of over-diagnosis, but this information cannot be adequately obtained with available MLP data. Therefore, we propose to re-contact the MLP participants and/or their next-of-kin to determine the participants who were diagnosed with lung cancer after the formal end of the Project. These data will allow the NCI to either more-convincingly state or perhaps refute the

possibility of over-diagnosis in lung cancer screening, and may be used to guide future research agendas and lung cancer screening policies.

Frequency of response: Once.

Affected public: Individuals.

Type of respondents: MLP participants or their next-of-kin. The annual reporting burden is as follows:

Maximum number of respondents: 6,223;

Estimated number of Responses per Respondent: 1.

Average Burden Hours Per Response: 0.25;

Estimated Maximum Total Annual Burden Hours Requested: 1,556. The annualized cost to respondents is estimated at zero. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Pamela Marcus, Epidemiologist, Biometry Research Group, Division of Cancer Prevention, National Cancer Institute, Suite 3131 EPN, 6130 Executive Blvd, Bethesda, MD 20892–7354; or call non-toll free 301–496–7468; or email *pm145q@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: July 29, 2002.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–19727 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: September 12–13, 2002.

Closed: September 12, 2002, 8:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: September 12, 2002, 10:30 am to 5 pm.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of Council.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: September 13, 2002, 8:30 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Norka Ruiz Bravo, PhD, Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24G, Bethesda, MD 20892, (301) 594–4499.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://pub.nigms.nih.gov/council/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19716 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: September 13, 2002.

Open: 8:30 a.m. to 11:30 a.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: 31 Center Drive, Bldg. 31, Conf. Rm. 6, Bethesda, MD 20892.

Closed: 11:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: 31 Center Drive, Bldg. 31, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/councils/ndcdac/ndcdac.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19717 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, R13: Understanding Islet Biology.

Date: August 5, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Room 752, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Francisco O. Calvo, PhD., Chief Review Branch, DEA, NIDDK, Room 752, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897.

This notice is being published less than 15 days prior to the meetings due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19721 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, August 8, 2002, 4 p.m. to August 8, 2002, 5 p.m. Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA, 22202 which was published in the **Federal Register** on July 15, 2002, 67 FR 46531.

The meeting on August 8, 2002 will be from 3 a.m. to 5 p.m. at the Courtyard by Marriott Hotel in Arlington, VA. The meeting is closed to the public.

Dated: July 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19722 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, August 7, 2002, 7 p.m. to August 8, 2002, 4 p.m., Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA, 22202 which was published in the **Federal Register** on July 15, 2002, 67 FR 46531.

The meeting on August 8, 2002 will be from 8 a.m. to 3 p.m. at the Courtyard by Marriott Hotel in Arlington, VA. The meeting is closed to the public.

Dated: July 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19723 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, August 6, 2002, 8 a.m. to August 6, 2002 5 p.m. Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA, 22202 which was published in the **Federal Register** on July 15, 2002, 67 FR 46531.

The meeting on August 6, 2002 will be held at the Courtyard by Marriott Hotel in Arlington, VA. The meeting is closed to the public.

Dated: July 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19724 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

Date: September 9, 2002.

Closed: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 8600 Rockville Pike, Conference Room B, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

Date: September 10, 2002.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Program documents.

Place: National Library of Medicine, 8600 Rockville Pike, Conference Room B, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine,

Date: September 10–11, 2002.

Open: September 10, 2002, 9 a.m. to 4:30 p.m.

Agenda: Administrative Reports and Program Discussion,

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 10, 2002, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 11, 2002, 9 a.m. to 12 p.m.

Agenda: Administrative Reports and Program Discussion.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a phot I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page:*www.nim.nih.gov/od/bor.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalolgue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19718 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice hereby give of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN–6 02.

Date: July 30, 2002.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN–6 02.

Date: August 1, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 83.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19719 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 9, 2002, 2 p.m. to August 9, 2002, 3 p.m., NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on July 23, 2002, 67 FR 48199–48201.

The meeting will be held on August 12, 2002, from 12 p.m. to 1 p.m. The

location remains the same. The meeting is closed to the public.

Dated: July 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19720 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–4 (07) Neurosciences.

Date: August 5, 2002.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 6, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5118, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN 4 (08) Behavioral Neurosicence.

Date: August 6, 2002.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Metabolism.

Date: August 7, 2002.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN 4 (09) Neurosciences.

Date: August 9, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19725 Filed 8–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a Telephone Conference Call meeting of the Center for Mental Health Services (CMHS) National Advisory Council in August 2002.

The meeting will include the review, discussion and evaluation of individual grant applications. Therefore the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2. & 10(d).

Substantive program information, a summary of the meeting and a roster of Council members may be obtained from the contact listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: August 5, 2002 (Closed).

Time: 12 p.m.–2 p.m.

Place(s): Parklawn Building, 5600 Fishers Lane, Conference Room 17–94, Rockville, Maryland 20857.

Contact: Eileen S. Pensinger, M.Ed., 5600 Fishers Lane, Parklawn Building, Room 17C–27, Rockville, Maryland 20857, Telephone: (301) 443–4823.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: July 30, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–19633 Filed 8–2–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board to be held in September 2002.

A portion of the meeting will be open and will include a Department of Health

and Human Services drug testing program update, a Department of Transportation drug testing program update, and an update on the draft guidelines for alternative specimen testing and on-site testing. If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The meeting will include developing the final requirements for specimen validity testing that had been published in the **Federal Register** on August 21, 2001 (66 FR 43876), and evaluation of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with Title 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App.2, § 10(d).

A roster of the board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014. The transcript for the open session will be available on the following website: http://workplace.samhsa.gov. Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Center for Substance Abuse Prevention Drug Testing Advisory Board

Meeting Date: September 4, 2002; 8:30 a.m.–4:30 p.m. September 5, 2002; 8:30 a.m.–Noon

Place: Residence Inn by Marriott 7335 Wisconsin Avenue Bethesda, Maryland 20814

Type:

Open: September 4, 2002; 8:30 a.m.–10:00 a.m.

Closed: September 4, 2002; 10:00 a.m.–4:30 p.m.

Closed: September 5, 2002; 8:30 a.m.–Noon

Contact: Donna M. Bush, Ph.D., Executive Secretary Telephone: (301) 443–6014, and FAX: (301) 443–3031

Dated: July 26, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–19632 Filed 8–2–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4738–N–02]

Notice of Proposed Information Collection; Notice of Funding Availability (NOFA) for Healthy Homes and Lead Hazard Programs (Lead-Based Paint Hazard Control Grant Program, Healthy Homes Demonstration Grant Program, the Operation Lead Elimination Action Program, and the Healthy Homes and Lead Technical Studies Grant Program

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the Notice of Funding Availability for Healthy Homes and Lead Hazard Programs will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: October 4, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Matt Ammon, Department of Housing and Urban Development, 451 7th Street, SW., Room P3206, Washington, DC 20410, telephone number (202) 755–1785 extension 158 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of Proposal: Notice of Funding Availability (NOFA) for Healthy Homes and Lead Hazard Programs (Lead-Based Paint Hazard Control Grant Program, Healthy Homes Demonstration Grant Program, the Operation Lead Elimination Action Program, and the Healthy Homes and Lead Technical Studies Grant Program).

OMB Control Number: 2539–0015.

Need for the Information and Proposed Use: This information collection is required in conjunction with the issuance of NOFAs announcing the availability of approximately $97,500,000 for Healthy Homes and Lead Hazard Programs (Lead-Based Paint Hazard Control Grant Program, Healthy Homes Demonstration Grant Program, the Operation Lead Elimination Action Program, and the Healthy Homes and Lead Technical Studies Grant Program). Grants are authorized under Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550, Section 1011(g) and other legislation.

Agency For Numbers: None.

Members of Affected Public: Potential applicants include a State, tribal, or unit of local governments. In addition, potential applicants to the Healthy Homes Demonstration Grant Program, the Operation Lead Elimination Action Program, and the Healthy Homes and Lead Technical Studies Grant Program may include not-for-profit institutions and for-profit firms located in the U.S.

Total Burden Estimate (First Year):

Task: Application Development.

Number of Respondents: 225.

Frequency of Response: 1.

Hours of Response: 80.

Burden Hours: 18,000.

Number of copies to be submitted to the Office of Lead Hazard Control for evaluation: Original and four (4) copies.

Award of Grant 65, 1, 16, 1,040.

Total Estimated Burden Hours: 19,040.

Status of the Proposed Information Collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 26, 2002.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 02–19596 Filed 8–2–02; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–35]

Notice of Proposed Information Collection: Comment Request; Repayment Agreement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 4, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, Albany Financial Operations Center, Department of Housing and Urban Development, telephone (518) 464–4200 extension 4206 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Repayment Agreement.

OMB Control Number, if applicable: 2502–0483.

Description of the need for the information and proposed use: Once a Debt Servicing Representative has a clear understanding of the debtor's ability to repay the debt, attempts should be made to secure a signed repayment agreement.

Agency form numbers, if applicable: HUD–56146.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 250, the number of respondents is 500 generating approximately 500 annual responses, the frequency of response is on occasion, and the estimated time needed to prepare the response is 30 minutes.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: July 24, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–19597 Filed 8–2–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–36]

Notice of Proposed Information Collection: Comment Request; Section 811 Supportive Housing for Persons With Disabilities—Application Submission Requirements

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 4, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: William Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 811 Supportive Housing for Persons with Disabilities—Application Submission Requirement.

OMB Control Number, if applicable: 2502–0462.

Description of the need for the information and proposed use: The collection of this information is necessary to the Department to assist HUD in determining applicant eligibility, and the applicant's ability to develop housing for the disabled that is within statutory and program criteria. A thorough evaluation of an applicant's submission is necessary to protect the Government's financial interest and to mitigate any possibility of fraud, waste, and mismanagement of public funds.

Agency form numbers, if applicable: HUD–92016–CA, HUD–92043, HUD–50070, HUD–50071, HUD–2880, HUD–2991, HUD–2992, SF–424, and SF–LLL.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 10,556, the number of respondents is 260 generating approximately 260 annual responses, the frequency of response is on occasion, and the estimated time needed to prepare the response varies from 20 minutes to 21 hours.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: July 24, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–19598 Filed 8–2–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–37]

Notice of Proposed Information Collection: Comment Request; Requisition for Disbursement of Section 202 Funds

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 4, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Requisition of Disbursement of Section 202 Funds.

OMB Control Number, if applicable: 2502–0187.

Description of the need for the information and proposed use: This information collection is used by Owner entities and submitted to HUD on a periodic basis (generally monthly) during the course of construction for the purpose of obtaining Section 202/811 capital advance/loan funds. The information will also be used to identify the Owner, the project, the type of disbursement being requested, the items to be covered by the disbursement, and the name of the depository holding the Owner's bank account, including the account number.

Agency form numbers, if applicable: HUD–92403–CA and HUD–92403–EH.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 3,168, the number of respondents is 664 generating approximately 6,336 annual responses, the frequency of response is monthly and on occasion, the estimated time needed to prepare the response is approximately 30 minutes.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 25, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–19599 Filed 8–2–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Information Collection

AGENCY: Office of the Secretary, Interior.

ACTION: Notice and Request of Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Department of the Interior, Office of the Secretary is announcing its intention to request re-approval for the collection of information for the DI-Form 381, Claim for Relocation Payments—Residential and DI-Form 382, Claim for Relocation Payments-Nonresidential.

DATES: Comments on the proposed information collection must be received by October 4, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Moresko, Department of the Interior, Office of Acquisition and Property Management, 1849 C Street NW., Mail Stop 5512, Washington, DC 20240. Comments may also be submitted electronically to *john_moresko@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John Moresko at (202) 208–5704.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implements the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of the Secretary will be submitting to OMB for extension or re-approval.

Form DI–381 and Form DI–382 were created because of the amendments to the Uniform Relocation Assistance and

Real Property Acquisition Policies Act of 1970 (Act) made by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100–17.

The Office of the Secretary will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the function of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the Office of the Secretary's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Claim For Relocation Payments-Residential; Claim for Relocation Payments-Nonresidential.

OMB Control Number: 1084–0010.

Summary: The information required is obtained through application made by displaced person(s) or business(es) to the funding agency for determination as to the specific amount of monies due under the law.

Bureau Form Number: DI–381, DI–382.

Frequency of Collection: On occasion.

Description of Respondents: Individuals and businesses who are displaced because of Federal acquisitions of their real property.

Total Annual Response: 200.

Total Annual Burden Hours: 88 hours.

Dated: July 27, 2002.

Debra E. Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. 02–19611 Filed 8–2–02; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658)

AGENCY: U.S. Department of the Interior.

ACTION: Notice of Availability of Proposed Bureau Information Quality Guidelines for: Bureau of Land Management; Bureau of Reclamation; Fish and Wildlife Service; Office of Surface Mining; Minerals Management Service; National Park Service; U.S. Geological Survey.

SUMMARY: The U.S. Department of the Interior is issuing notice of availability of the proposed bureau-specific Information Quality Guidelines in order to comply with the guidance published by the Office of Management and Budget, in the **Federal Register**, Vol., 2, No. 67, dated January 2, 2002, and re-issued February 22, 2002, Vol. 67, No. 36.

FOR FURTHER INFORMATION CONTACT: Nancy Trent, U.S. Department of the Interior, Office of the Chief Information Officer, Phone: 202–208–6051, fax: 202–501–7864.

SUPPLEMENTARY INFORMATION: The Department of the Interior issued proposed draft guidelines, made available for public comment on the web at *http://www.mms.gov/whatsnew/* on May 24, 2002, which provide a framework for these bureau policies and which may be referred to for more information, The U.S. Department of the Interior, its offices, and its component bureaus disseminate a wide variety of information to the public regarding the Nation's Federal lands, National Parks, natural resources, geographic and spatial data, wildlife and fisheries, and Indian lands. As the Department of the Interior operates a decentralized information management program, its subordinate bureaus are responsible for establishing administrative procedures for review of information quality. These proposed Information Quality Guidelines detail the procedures under which each separate bureau intends to operate. These documents are intended to incorporate the basic guidance set forth by the Office of Management and Budget, and the proposed guidance published by the U.S. Department of the Interior. Persons interested in reviewing the proposed Information Quality Guidelines issued by the Bureau of Land Management; Bureau of Reclamation; Fish and Wildlife Service; Office of Surface Mining; Minerals Management Service; National Parks Service; and the U.S. Geological Survey, may access these proposed guidelines via the website for the U.S. Department of the Interior (*http://;www.doi.gov*), then accessing *Bureaus*, then the bureau(s) of interest. Comments on a particular bureau's proposed guidelines should be submitted to that bureau according to the instructions on its website. Comment period will be open no less than thirty (30) days. The bureaus may specify a longer period.

Dated: July 26, 2002.

P. Lynn Scarlett,

Assistant Secretary for Policy, Management and Budget.

[FR Doc. 02–19609 Filed 8–2–02; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Piping Plover (Charadrius melodus) Great Lakes Population Draft Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability for public review of the draft recovery plan for the Great Lakes population of Piping Plovers (*Charadrius melodus*), a species that is federally listed as endangered under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). This species occurs or may occur on public and private land in Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, Wisconsin, Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina, Mississippi, and Texas. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 4, 2002, will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, East Lansing Ecological Services Field Office, 2651 Coolidge Road, East Lansing, Michigan 48823 or by accessing the website: *http://midwest.fws.gov/Endangered*.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Dingledine at the above address, or telephone at (517) 351–6320. TTY users may contact Mr. Dingledine through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help

guide the recovery effort, the Service is working to prepare recovery plans for most of the federally listed threatened and endangered species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for reclassification and delisting, and provide estimates of the time and costs for implementing the recovery measures needed.

The Act, requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into consideration in the course of implementing approved recovery plans.

The Great Lakes population of piping plovers was listed as endangered on December 11, 1985. The species inhabits beaches on the Great Lakes during the breeding season of April through September, and winters on Atlantic and Gulf Coast beaches. Destruction of habitat, disturbance, and increased predation rates due to elevated predator densities in piping plover habitat are described as the main reasons for this species' endangered status and continue to be the primary threats to its recovery. Thirty nesting pairs were recorded in 2000, all in Michigan. Breeding has not occurred outside of Michigan and Wisconsin for over a decade, although occurrence during migration has been recorded in other Great Lakes States.

Critical habitat for the breeding population of the Great Lakes piping plover was designated on May 7, 2001. A total of 35 units, encompassing 325 kilometers (201 miles) of shoreline in eight states are included in the designation. Critical habitat designation identifies habitat areas that provide essential life cycle needs of the species and seeks to protect adequate habitat to meet the recovery criteria. Designation does not, however, signify that areas outside of designation are unimportant or may be required for recovery.

Recovery will be achieved and the species may be removed from the list of Threatened and Endangered Species when the following five criteria are met: (1) The population has increased to at least 150 pairs with at least 100 breeding pairs in Michigan and 50 breeding pairs distributed among other sites in other Great Lakes States; (2) five-year average fecundity has increased to 2.0 fledglings each pair per year across the breeding range; (3) essential breeding habitat in the Great Lakes region and wintering habitat areas are protected; (4) genetic diversity within the population is adequate for population persistence and can be maintained over the long-term; and (5) agreements and funding mechanisms are in place for long-term protection and management activities in essential breeding and wintering habitats. The species may be reclassified from endangered to threatened when the first four criteria are met and delisted when all five criteria are achieved.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan. Written comments and materials regarding the plan should be sent to the Field Supervisor, Ecological Services Field Office, and comments received will be available for public inspection by appointment during normal business hours (see **ADDRESSES** section.)

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 18, 2002.

Charles M. Wooley,

Assistant Regional Director, Ecological Services.

[FR Doc. 02–19626 Filed 8–2–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Illinois Cave Amphipod (*Gammarus acherondytes*) Draft Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability of the endangered Illinois cave amphipod (*Gammarus acherondytes*) draft recovery plan for public review and comment. The Illinois cave amphipod is known only to occur in Monroe and St. Clair Counties in southwestern Illinois. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 4, 2002 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Rock Island Ecological Services Field Office, 4469 48th Avenue Court, Rock Island, Illinois 61201 or by accessing the website: *http://midwest.fws.gov/endangered.*

FOR FURTHER INFORMATION CONTACT: Ms. Jody Gustitus Millar at the above address, or telephone at (309) 793–5800. TTY users may contact Ms. Millar through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for reclassification and delisting, and provide estimates of time and costs for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The document submitted for review is the Illinois Cave Amphipod (*Gammarus acherondytes*) Draft Recovery Plan. The Illinois cave amphipod was listed as endangered by the U.S. Fish and Wildlife Service on September 3, 1998, (63 FR 46900). The principle threat to the existence of the species is degradation of karst terrain habitat through groundwater contamination (resulting from urbanization, agricultural activities, and human and

animal waste from residential septic systems and livestock feedlots).

Historically, the Illinois cave amphipod was known to occur in six cave systems in Monroe and St. Clair Counties, Illinois. Its presence has not been confirmed in Madonnaville Cave, Monroe County and it appears to be extirpated from Stemler Cave, St. Clair County. Additional populations have been found within the known range of the species in two additional groundwater systems in Monroe County.

The quality and condition of groundwater in the amphipod's habitats are tied to land use practices within cave recharge areas. Surface activities that have the potential to contribute to the degradation of groundwater and cave habitats are best managed at the individual landowner and community level. The draft plan proposes to develop partnerships with Federal and state agencies, organizations, and private landowners that will provide mechanisms for protecting Illinois cave amphipod populations through voluntary and incentive-driven stewardship efforts.

Public Comments Solicited

The Service requests written comments on the recovery plan described. Comments should be sent to the Field Supervisor, Rock Island Ecological Services Field Office. All comments and materials received by the date specified will be considered prior to approval of the plan. They will also be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 19, 2002.

Charles M. Wooley,

Assistant Regional Director, Ecological Services.

[FR Doc. 02–19627 Filed 8–2–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Laster) for Incidental Take of the Houston Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Michael Laster and Elizabeth Pardue (Applicants) have applied for an incidental take permit (TE–053011–0) pursuant to Section 10(a) of the Endangered Species Act (Act). The requested permit would authorize the incidental take of the endangered Houston toad. The proposed take would occur as a result of the construction and occupation of a single-family residence on approximately 0.5 acres of a 10.004-acre property in Cottletown Ranches Subdivision, Bastrop County, Texas.

DATES : Written comments on the application should be received within 30 days of the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Please refer to permit number TE–053011–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Clayton Napier, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicant: Michael Laster and Elizabeth Pardue plan to construct a single-family residence, within 5 years, on approximately 0.5 acres of a 10.004-acre property in Cottletown Ranches Subdivision, Bastrop County, Texas. Houston toads have been documented on or within one mile of the Cottletown Ranches Subdivision, which is evidence that take of the Houston toad will occur on this subject property. Therefore, the Service has recommended that the landowner apply for a 10(a)(1)(B) permit to be fully covered under the Endangered Species Act for any incidental take of the toad that may occur as a result of the Applicants' activities on the subject property. The Applicants voluntarily have agreed to apply for a 10(a)(1)(B) permit to reduce their risk of liability.

This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The Applicant proposes to compensate for this incidental take of the Houston toad by providing $3,000.00 to the Houston Toad Conservation Fund at the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat.

Bryan Arroyo,

Acting Regional Director, Southwest Region.

[FR Doc. 02–19625 Filed 8–2–02; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Compact between the Northern Cheyenne Tribe and the State of Montana regarding the Class III Gaming on the Northern Cheyenne Reservation.

DATES: This action is effective August 5, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 19, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–19641 Filed 8–2–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0074

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) to extend an existing approval to collect information to determine whether a bidder is qualified to hold a lease and to conduct geothermal resource operations under the terms of the Mineral Leasing Act of 1920 and the Geothermal Steam Act of 1969. BLM uses Forms 3000–2 and 3200–9 to collect this information.

DATES: You must submit your comments to BLM at the address below on or before October 4, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include "ATTN: 0004–0074" any your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluids Minerals Group, on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) the accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 600 million acres of public lands and national forests, and private lands where the Federal Government retains the mineral rights. Congress passed the Federal Onshore Oil and Gas Leasing Reform Act of 1987 requiring BLM to offer all public lands that are available for oil and gas leasing by competitive oral bidding before accepting noncompetitive lease applications. The Department of the Interior Appropriations Act of 1981 (43 U.S.C. 6508) provides for the competitive leasing of the lands in the National Petroleum Reserve—Alaska. The Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025) authorizes the Secretary of the Interior to issue leases for geothermal development.

The regulations (43 CFR part 3100) outline procedures for obtaining a lease to explore for, develop, and produce oil and gas resources located on public lands. The regulations (43 CFR part 3200) outline procedures to issue geothermal leases and the exploration, development and utilization of Federally-owned geothermal resources. BLM needs the information requested on the two forms to process lease bids for oil and gas and geothermal resources and to complete environmental reviews required by NEPA.

You must submit the forms to the proper BLM office. Form 3000–2 requires the name and address to identify the bidder. This allows BLM to ensure that the bidder meets the eligibility requirements in the regulations. The regulations require the bidder to submit one-fifth of the amount of the bid for a geothermal bid or the minimum acceptable bid for an oil and gas lease is the first year's rental and administrative fee. Form 3200–9 requires the name and address of the entity who will conduct operations on the land. You must also submit the legal land description of the lands you plan to enter or disturb for your exploration/operation. We use the starting and ending dates to determine how long the applicant/operator/contractor intends to conduct operations on the land.

Based on BLM's experience administering this program, we estimate the public reporting burden is 2 hours for completing Form 3000–2 and 2 hours for completing Form 3200–9. These estimates include the time spent on research, gathering, and assembling information, reviewing instructions, and completing the respective forms. In FY 2000, BLM estimated 393 competitive bids for oil and gas and geothermal resources and 50 Notice of Intent to Conduct Geothermal Resource Exploration Operations are filed annually, with a total annual burden of 886 hours. Respondents vary from individuals and small businesses to large corporations.

Any member of the public may request and obtain, without charge, a copy of BLM Forms 3000–2 or 3200–9 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: July 18, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–19663 Filed 8–2–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–880–9500–PF–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0109

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collection information from the Governors of States to allow the BLM to compute units of payments due to local governments under the Payments In Lieu of Taxes (PILT) Act of

September 13, 1982, as amended. The nonform information we collect under 43 CFR part 1881 helps local governments recover some of the expenses incurred by providing services on public lands.

DATES: You must submit your comments to BLM at the address below on or before October 4, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0109" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Bill Howell, Budget Group, on (202) 452–7721 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Howell.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) the accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM makes payments in lieu of taxes to units of local governments for certain Federal lands within their boundaries through authority provided under the Payment in Lieu of Taxes Act of October 20, 1976 (90 Stat. 2662, 31 U.S.C. 6901–6907). The implementing regulations (43 CFR part 1881) require the Governor of each State to furnish BLM with a listing of payments made to local governments by the State on behalf of the Federal Government under 11 receipt-sharing statutes. BLM provides the States with a printout matrix designed to facilitate recording the requested information. BLM uses the information provided by the States to compute the PILT payments to local governments within the State.

Based on BLM's experience in administering the PILT program, we estimate the public reporting burden is 20 hours. The respondents already maintain this information for their own record keeping purposes and need only transfer the information to the printout matrix that BLM will provide. The respondents are offices designated by the Governor of each State, usually the Treasurer's Office. The frequency of response is once annually, reporting on the previous fiscal year revenues. The number of responses per year is 50. We estimate the total annual burden is 1,000 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: July 11, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–19664 Filed 8–2–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[COC–23653]

Public Land Order No. 7530; Extension of Public Land Order No. 6311; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 6311 for an additional 20-year period. This extension is necessary to continue the protection of the Forest Service's Fravert Administrative Site.

EFFECTIVE DATE: August 10, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 6311 (47 FR 34539, August 10, 1982), which withdrew public land to protect the Fravert Administrative Site, is hereby extended for an additional 20-year period on the following described land, which was formerly described by metes and bounds:

Sixth Principal Meridian

T. 6 S., R. 93 W., sec. 8, lot 1.

The area described contains 4.84 acres in Garfield County.

2. Public Land Order No. 6311 will expire August 9, 2022, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: July 18, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–19665 Filed 8–2–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5855–EU; N–61259, N–66238]

Notice of Realty Action: Direct Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale to the City of Mesquite, Nevada.

SUMMARY: The Mesquite Lands Act of 1988, was amended by Section 121 of Public Law 104–208, dated September 30, 1996, to afford the City of Mesquite, Nevada (City) the exclusive right to purchase certain public lands, at not less than fair market value, for a period of 12 years. On October 24, 1996, these public lands were segregated from all forms of appropriation under the public land laws, including the general mining laws, until September 29, 2008. In accordance with the Act, the City has notified the Bureau of Land Management (BLM) as to which of the described lands the City wishes to purchase. The Mesquite Lands Act was further amended by Public Law 106–113, dated November 29, 1999, which provided that for a period of 12 years after the date of the enactment of this Amendment, the City shall have the exclusive right to purchase certain

public lands described in the Amendment. The lands are subject to all existing rights and for 12 years after the date of the enactment are withdrawn from all forms of entry and appropriation under the public land laws, including the mining laws, and from operation of the mineral leasing and geothermal leasing laws. The City has notified the Bureau of Land Management as to which of the described lands the City wishes to purchase at this time. The lands are identified for disposal through sale in the Las Vegas Resource Management Plan, and consist of approximately 2,346.30 acres.

Lands being offered to the City under Serial Number N–61259 are described as follows:

Mount Diablo Meridian, Nevada

T. 13 S., R. 71 E.,
Sec. 4, Lots 6 through 11, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 5, Lots 5 through 12, inclusive, S½N½, S½;
Sec. 6, Lots 8 through 15, inclusive, S½N½, S½;
Sec. 7, N½.
T. 13 S., R. 70 E.,
Sec. 1, Lots 5 through 12, inclusive, S½N½, S½;
Sec. 11, E½SE¼;
Sec. 12, All;
Sec. 13, W½;
Sec. 14, E½NE¼, S½;
Sec. 23, Lots 5, 7, 8, and 10, N½, W½SW¼, NE¼SW¼;
Sec. 24, Lot 7, NW¼NW¼;
Sec. 26, Lots 9, 11, and 12.
Consisting of approximately 5,345.79 acres.

Lands being offered to the City under Serial Number N–66238 are described as follows:

Mount Diablo Meridian, Nevada

T. 13 S., R. 69 E.,
Sec. 25, Lots 5, 7, 10, and 13;
Sec. 36, All.
T. 13 S., R. 70 E.,
Sec. 27, Lots 4, 6, 12, 14, and 15, N½NE¼, NW¼, NW¼SW¼;
Sec. 28, Lot 1, NE¼, W½SE¼, NE¼SE¼;
Sec. 30, Lot 11;
Sec. 31, Lots 6, 7, 8, 10, 12, 14, and 16, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 32, Lots 1, 5, 8, and 11, S½NW¼, SW¼;
Sec. 33, Lots 3, 5, 7, and 9.
Consisting of approximately 2,346.30 acres.

The total acreage of the above-described lands is approximately 7,692.09 acres. The lands will be sold non-competitively to the City in accordance with Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976, the Mesquite Lands Act of 1988, as amended, and the regulations at 43 CFR part 2710, at not less than the appraised fair market value (FMV).

When the lands are sold, conveyance of the locatable mineral interests will occur simultaneously with the sale of the land. The locatable mineral interests being offered have no known mineral value. Acceptance of the sale offer will constitute an application for conveyance of those mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the locatable mineral interests.

The lands are not required for any federal purpose. The direct sale is consistent with current Bureau planning for this area and would be in the public interest. The patent will be subject to the provisions of the Federal Land Policy and Management Act and applicable regulations of the Secretary of the Interior, and the lands will be subject to the following terms and conditions:

1. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890, (43 U.S.C. 945).

2. All leaseable and saleable mineral deposits are reserved on land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

3. The lands are subject to all valid existing rights. The lands may also be subject to applications received prior to publication of this notice if processing the application would have no adverse affect on the appraised FMV. Encumbrances of record are available for review during business hours, 7:30 a.m. to 4:15 p.m., PDT, Monday through Friday, at the Bureau of Land Management, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV.

4. The lands are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. The purchaser/patentee, by accepting a patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgements of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property; (2) Judgements, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

The lands have been withdrawn from all forms of entry and appropriation under the public land laws, including the mining laws, and from operation of the mineral leasing and geothermal leasing laws. Upon publication of this notice and until completion of the sale, the BLM is no longer accepting land use applications affecting any lands being offered for sale. Detailed information concerning this sale, including the maps, reservations, sale procedures and planning and environmental documents, is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130 or by calling (702) 515–5000.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed direct sale to the Las Vegas Field Manager, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse

comments, this realty action will become the final determination of the Department of the Interior. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address be made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: August 1, 2002.

Mark Chatterton,

Acting Field Manager.

[FR Doc. 02–19781 Filed 8–1–02; 1:38 pm]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new modified, discontinued, or completed since the last publication of this notice on April 25, 2002. The January 31, 2002, notice should be used as a reference point to identify changes. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, April 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 2002. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

BON—Basis of Negotiation
BCP—Boulder Canyon Project
Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CUP—Central Utah Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
D&MC—Drainage and Minor Construction
FR—Federal Register
IDD—Irrigation and Drainage District
ID—Irrigation District
M&I—Municipal and Industrial
NEPA—National Environmental Policy Act
O&M—Operation and Maintenance
P-SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
RRA—Reclamation Reform Act
R&B—Rehabilitation and Betterment
SOD—Safety of Dams
SRPA—Small Reclamation Projects Act

WCUA—Water Conservation and Utilization Act
WD—Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5223.

New Contract Action

25. Twenty-three irrigation districts of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

Modified Contract Action

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Fremont-Madison ID, Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; and Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA (Public Law 97–293).

Completed Contract Action

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Fremont-Madison ID, Lenroot Canal Company, Liberty Park Canal Company, Parsons Ditch Company, Poplar ID, Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon; and Gem, Ridgeview, and Owyhee IDs, Owyhee Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA (Public Law 97–293). Contracts with Parsons and Wearyrick Ditch Companies and Gem, Ridgeview, and Owyhee IDs were executed in April 2002.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New Contract Action

40. Placer County Water Agency, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and adjustment to Project water quantities. The amended contract will conform to current Reclamation law.

Modified Contract Action

39. Sacramento River Settlement Contracts, CVP, California: Up to 145 contracts and one contract with Colusa Drain Mutual Water Company will be renewed; water quantities for these contracts total 2.2M acre-feet. Colusa Drain Mutual Water Company will be renewed for a period of 25 years, and the rest will be renewed for a period of 40 years. These contracts will reflect an agreement to settle the dispute over water rights' claims on the Sacramento River.

Discontinued Contract Action

24. Resource Renewal Institute, CVP, California: Proposed water purchase agreement with Resource Renewal Institute for the permanent purchase of water rights on Butte Creek for instream flow purposes.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New Contract Action

48. Harquahala Valley ID, CAP, Arizona: The District has requested that Reclamation transfer title to the District's CAP Distribution System and assign to the District, permanent easements acquired by the United States. Title transfer of the District's CAP distribution system is authorized by Public Law 101–628 and contract No. 3–07–30–W0289 between the District and Reclamation, dated December 8, 1992.

Completed Contract Actions

34. Gila River Farms, Arizona: Amendment of SRPA contract to restructure the repayment schedule.

38. Arizona State Land Department, CAP, Arizona: Proposed assignment of 1,000 acre-feet of the Department's CAP M&I water entitlement to the City of Peoria.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

New Contract Action

21. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Contract to allow the District to use up to approximately 2,500 acre-feet of project water for irrigation and M&I uses.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

Modified Contract Actions

12. City of Cheyenne, Kendrick Project, Wyoming: Negotiation of a long-term contract for storage space. Contract for up to 10,000 acre-feet of storage space for replacement water on a yearly basis in Seminoe Reservoir. A temporary contract has been issued pending negotiation of the long-term contract.

30. Milk River Project, Montana: City of Harlem water service contract expires December of 2002. Initiating negotiation for renewal of a water service contract for an annual supply of raw water for domestic use from the Milk River not to exceed 500 acre-feet. An interim contract may be issued to continue delivery of water until the necessary actions can be completed to renew the long-term contract. A draft contract is available for review and public comment. Comments are due by August 15, 2002.

42. Helena Valley Unit, P–SMBP, Montana: The long-term water service contract with the City of Helena, Montana, expires December 31, 2004. Initiating negotiations for contract renewal for an annual supply of raw water for domestic and municipal and industrial use from Helena Valley Reservoir not to exceed 5,680 acre-feet of water annually.

Completed Contract Action

11. P–SMBP, Kansas: Existing water service contracts with the Kirwin and Webster IDs in the Solomon River Basin in Kansas were extended for a period of 4 years in accordance with Public Law 104–326. These contracts will be renewed prior to their expiration on December 31, 2003 (Kirwin ID), and December 31, 2005 (Webster ID). Reclamation has prepared a draft environmental assessment (DEA) for the conversion of long-term water service contracts to repayment contracts. On December 10, 2001, the DEA became available for a 30-day review and comment period. Public comments were accepted through January 9, 2002. Written comments were directed to Jill Manring, Team Leader, Bureau of Reclamation, PO Box 1607, Grand Island, NE 68802. Renewal of the existing water service contracts with the Kirwin and Webster IDs in the Solomon River Basin in Kansas was completed on June 20, 2002, with the contracts being converted to long-term repayment contracts. These contracts were renewed prior to their expiration. The draft environmental assessment was issued in December 2001. The final environmental assessment was revised to incorporate the environmental commitments, public comments, and responses, additional information, and corrections and/or editorial changes. The Finding of No Significant Impact

for the Conversion of Long-Term Water Service Contracts to Repayment Contracts was executed on June 14, 2002.

Dated: July 10, 2002.

Sandra L. Simons,

Acting Deputy Director, Office of Policy.

[FR Doc. 02–19628 Filed 8–2–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting; Emergency Notice of Revised Agenda, USITC SE–02–023

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: August 6, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public. In accordance with 19 C.F.R. 201.35, the Commission has determined to revise the agenda for the meeting of August 6, 2002 at 11 a.m. as follows:

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Final)(Reconsideration)(Remand) (Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' views on remand to the Court of International Trade on or before September 13, 2002.)
5. Inv. No. 731–TA–859 (Final)(Remand)(Certain Circular Seamless Stainless Steel Hollow Products from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' views on remand to the Court of International Trade on or before August 26, 2002.)
6. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this revised agenda was not possible.

Issued: August 1, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–19812 Filed 8–1–02; 2:19 pm]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities; Proposed Collection, Comments Requested

ACTION: 30 Day Notice of Information Collection Under Review: Monthly Return of Arson Offenses Known to Law Enforcement.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the review procedures of the Paperwork Reduction Act of 1995. The 60-day notice was published in the **Federal Register** on April 29, 2002, (Volume 67, Number 82, Pages 20997–20998) and no comments were received from the public by the FBI. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 4, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20530. Comments may also be submitted to DOJ, Justice Management Division, Information Management and Security Staff, Attention: Robert B. Briggs, Department Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Monthly Return of Arson Offenses Known to Law Enforcement.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: I–725. Federal Bureau of Investigation.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local Law Enforcement Agencies. This collection if needed to collect information on arson offenses throughout the United States. Data are tabulated and published in the annual *Crime in the United States.*

(5) An estimate of the total number of respondents and the number of time estimated for an average respondent to respond: Estimated number of respondents: 16,825 agencies with 201,900 estimated annual responses (includes zero reports); with an average completion time of 9 minutes a month per report.

(6) An estimate of the total public burden (in Hours) associated with this collection: 30,285 hours annually.

If additional information is required contact: Robert B. Briggs, Department Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 29, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–19642 Filed 8–2–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30 Day Notice of Information Collection Under Review: Number of Full-Time Law Enforcement Employees as of October 31.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the review procedures of the Paperwork Reduction Act of 1995. The 60-day notice was published in the **Federal Register** on April 29, 2002, (Volume 67, Number 82, Pages 20998)) and no comments were received from the public by the FBI. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20530. Comments may also be submitted to DOJ, Justice Management Division, Information Management and Security Staff, Attention: Robert B. Briggs, Department Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Number of Full-Time Law Enforcement Employees as of October 31.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–711a/711b/711c. Federal Bureau of Investigation.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local Law Enforcement Agencies. This collection is needed to determine the number of civilian and sworn full-time law enforcement employees throughout the United States. Data are tabulated and published in the annual *Crime in the United States.*

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Estimated number of respondents: 16,825 agencies with 16,825 responses (includes zero reports); with an average of 8 minutes a year devoted to compilation of data for this information collection.

(6) An estimate of the total public burden (in Hours) associated with this collection: 2,243 hours annually.

If additional information is required contact: Robert B. Briggs, Department Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 29, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–19643 Filed 8–2–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30 day notice of information collection under review: age, sex, and race of persons arrested (18 years of age and over) and age, sex, and race of persons arrested (under 18 years of age).

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the review procedures of the Paperwork Reduction Act of 1995. The 60-day notice was published in the **Federal Register** on April 29, 2002, (Volume 67, Number 82, Pages 20998–20999) and no comments were received from the public by the FBI. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 4, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20530. Comments may also be submitted to DOJ, Justice Management Division, Information Management and Security Staff, Attention: Robert B. Briggs, Department Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Age, Sex, and Race of Persons Arrested (18 Years of Age and Over) and Age, Sex, and Race of Persons Arrested (Under 18 Years of Age).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: I–708. Federal Bureau of Investigation.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State and Local Law Enforcement Agencies. This collection is needed to collect information on the age, sex, and race of all persons arrested throughout the United States. Data are tabulated and published in the annual *Crime in the United States.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Estimated number of respondents:* 16,825 agencies with 403,800 responses (includes zero reports); with an average of 30 minutes a month devoted to compilation of data for this information collection.

(6) *An estimate of the total public burden (in Hours) associated with this collection:* 201,900 hours annually.

If additional information is required contact: Robert B. Briggs, Department Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 29, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–19644 Filed 8–2–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of Disability Employment Policy; Disability Technical Assistance for Providers (TAP) Cooperative Agreement

AGENCY: Office of Disability Employment Policy, Labor

ACTION: Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications (SGA 02–15).

SUMMARY: The U.S. Department of Labor (DOL or the Department), Office of Disability Employment Policy (ODEP) announces the availability of $600,000 to award one cooperative agreement. This cooperative agreement will provide funds for the implementation of a national technical assistance and training effort designed to increase the capacity of Community Rehabilitation Programs (CRPs) and other community-based service providers that currently operate programs that result in segregated work outcomes and non-work options for people with disabilities in the "Special Minimum Wage" program established under section 14(c) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 214(c). The desired outcome of this proposed technical assistance and training effort is to work with providers using section 14(c) certificates to: (1) evolve their programs to provide integrated employment outcomes (*i.e.*, non section 14(c) employment) in non-stereotypical jobs based on customized employment strategies and individual choice; and (2) to increase wages of people with disabilities who are currently working at less than minimum wage through the use of customized employment strategies and individual choice.

This cooperative agreement is for a one-year period and may be renewed for up to four additional years depending upon project performance and funding availability. All forms necessary to prepare an application are included in this solicitation package.

This cooperative agreement anticipates substantial involvement between ODEP and the awardee during the performance of the project. Involvement will include collaboration or participation by ODEP in the management of the project throughout the period of the award. For example, ODEP will be involved in decisions involving strategy, hiring of personnel, deployment of resources, release of public information materials, quality assurance, coordination of activities with other offices, and conducting research.

DATES: One ink-signed original, complete application plus two (2) copies of the Technical Proposal and two copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Grant Officer, Reference SGA 02–15, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. Eastern Daylight Savings Time (EDST), September 4, 2002.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference Cooperative Agreement 02–15, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Application announcements or forms will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. In addition, a copy of this notice and the application requirements may be downloaded from the Office of Disability Employment Policy's Web site at *http://www2.dol.gov./odep.* Questions concerning this solicitation may be sent to Cassandra Willis, at (202) 693–4570 (this is not a toll-free number). Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

Late Proposals: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, by telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

Acceptable Methods of Submission The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services Center after 4:45 p.m., EDST, September 4, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before September 4, 2002; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post

Office to Addressee, not later than 5 p.m. at the place of mailing two working days, excluding weekends and Federal holidays, prior to September 4, 2002; and/or

3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U. S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however the Department does not accept dates or date stamps on such packages as evidence of timely mailing. Thus, the applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Authority

Consolidated Appropriations Act, 2001, Pub. L. 106–554, 114 Stat. 2763; 29 U.S.C. 557b; DOL, HHS, Education and Related Appropriations Act, 2002, Pub. L. 107–116, 115 Stat. 2177.

II. Background

Too often, many people with disabilities, including those in sheltered workshops, day activity center programs, many young people transitioning from school, and people covered by the U.S. Supreme Court's *Olmstead* v. *L.C* decision, 527 U.S. 581 (1999), are tracked into jobs that are customary and stereotypical. These employment options usually pay low wages, offer no benefits, and do not provide any opportunity for advancement. Fortunately programs and providers of employment services have challenged these conventional employment practices as too limiting for persons with disabilities, and have instead successfully facilitated employment in a variety of new and expanded jobs. These opportunities include employment in industries which offer increased earnings, benefits, and career advancement possibilities, such as jobs in technology-related industries, and professional, administrative, and office support. Such employment also includes self-employment and entrepreneurial opportunities, as well as a host of other individually designed, customized employment options.

People with disabilities and high support needs have traditionally been relegated to placements characterized by non-work activities, segregated environments, and/or part-time jobs where they earn less than minimum wage. A large percent of this population receives no employment services; are in institutional settings; or, are on waiting lists for available community programs. A recent GAO Report, *Special Minimum Wage Program* (September 2001) documents that there are about 424,000 employees with disabilities who earn less than minimum wage under section 14(c) of the Fair Labor Standards Act (FLSA). In addition, over half earn less than $2.50 per hour, and have been in the same segregated facility for over five years, and some for over 20 years. For every one person with a disability working in integrated settings through supportive employment, 4.5 people remain in segregated settings.

These circumstances continue to exist despite research and demonstration programs documenting that many members of this population can achieve customized, individually-determined, integrated, competitive jobs; can increase their earnings and develop assets; and, as a result, can more fully participate in community life. Increasing numbers of individuals once thought to be "nonfeasible" for employment are demonstrating their competence and capacity in non-stereotypical jobs that pay minimum wage or more, include benefits, and provide for career growth.

Negative stereotyping, unemployment, underemployment, and placement in segregated work and non-work settings are likely to continue for people with disabilities until there are systemic changes undertaken. One such change is increasing provider capacity to provide individually determined, customized employment in non-stereotypic jobs for persons with disabilities.

For purposes of this solicitation, customized employment means individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of the strengths, needs, and interests of the person with a disability, and is also designed to meet the specific needs of the employer. It may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

Fortunately, customized employment strategies (such as supported employment, supported entrepreneurship, job carving and restructuring, development of micro-boards and microenterprises, use of personal agents, and use of individual vouchers, training accounts, and personal budgets) are increasingly leading to integrated community life and jobs for people with high support needs. However, there exists a critical lack of professional development efforts designed to increase service providers' expertise in utilizing such strategies to support people with disabilities who are seeking integrated, customized employment. Challenges exist related to: (1) Identifying strengths and needs of the individuals with disabilities; (2) providing individual negotiation with employers and job development personnel for identifying and securing desired employment; (3) understanding the range of customized employment strategies that may be utilized in securing the individual employment outcome; and (4) implementing organizational change strategies

necessary to incorporate such customized employment techniques into the provider services. Additional challenges relate to the need for Community Rehabilitation Programs and other community-based providers that currently operate programs under section 14(c) to be better equipped to effectively engage the employer/business community. In addition, the high staff turnover in direct service positions, which is typical in many community programs, further exacerbates the problem of inadequate staff capacity to effectively support people with disabilities into integrated customized employment. Finally, there is a critical need for providers participating in programs under section 14(c) to identify ways to more broadly and creatively use existing service and funding systems. The current initiative is designed to begin to address these needs through a program of technical assistance and training aimed at promoting organizational change.

Various community-based providers (*e.g.*, Community Rehabilitation Providers, school systems, public vocational rehabilitation agencies, substance abuse treatment providers, etc.), who are utilizing FLSA 14(c) Special Minimum Wage certificates can benefit from the technical assistance and training efforts to be provided by this cooperative agreement and can develop the necessary capacity to enable them to further refine their program so that customized employment outcomes will become their hallmark.

It is critical that community providers utilizing 14(c) certificates are supported and encouraged to further utilize customized employment strategies. Critical to this is the understanding that customized employment begins with identifying the strengths, interests and desires of the individual with a disability.

Providers utilizing section 14(c) certificates must also be able to better understand and respond to the needs of local employers; create ongoing partnerships with the business community; and function more as businesses. Other currently operating ODEP/DOL grant efforts (*e.g.*, Customized Employment Grants and The Technical Assistance Consortia for Adults and Youth with Disabilities) focus on building capacity of One-Stop Career Centers and other workforce development system partners. Still other federal, state, and local funding efforts focus on training exemplary providers to expand their services in other localities. This Technical Assistance for Providers (TAP) Cooperative Agreement seeks to integrate the aforementioned grant initiatives in its technical assistance and training efforts.

Currently, little attention is being given at the federal level to initiatives that focus on providing training and technical assistance to providers of segregated services (*e.g.*, sheltered workshops and day activity programs), and others participating in Special Minimum Wage programs under section 14(c) of the FLSA. If people with disabilities are to become employed in quality jobs, these providers must be the beneficiaries of targeted technical assistance and training efforts such as those proposed in this solicitation.

This cooperative agreement would also be consistent with the U.S. Department of Labor's commitment under Executive Order 13217, "Community-Based Alternatives for Individuals with Disabilities," as stated in the November 8, 2001 Report to the Secretary of the United States Department of Health and Human Services. In this Report, ODEP indicated that it would collaborate with the Employment Standards Administration's Wage and Hour Division to develop training and technical assistance on increasing earnings and customized employment for individuals with disabilities earning commensurate wages under section 14(c) of the FLSA, and disseminate this assistance to their stakeholder networks.

III. Purpose

The purpose of this cooperative agreement is to help Community Rehabilitation Service Providers (CRSPs) and other disability community service providers operating section 14(c) programs to take a leadership role in changing their program outcomes from segregated and non-employment services to program outcomes that lead to customized, competitive employment in non-stereotypical jobs for people with disabilities. This cooperative agreement is for the purpose of developing and providing training and technical assistance designed to enable community-based providers that are currently participating in section 14(c) of the FLSA (Special Minimum Wage certificates) programs to develop and/or increase their program's provision of customized integrated employment outcomes for people with disabilities. Funds will be used to develop the capacity of community providers utilizing 14(c) certificates to effectively support the movement of people with disabilities into integrated jobs based upon customized employment strategies. Particular emphasis is to be placed on employment that pays above minimum wage and provides opportunities for career growth. It is expected that the awardee will take steps to establish a core of trained and committed community providers participating in section 14(c) programs who can then work with other providers participating in the section 14(c) program to replicate and expand upon these concepts. Further, the direct contact with community providers will offer the awardee insight and information on related policy concerns that shall be shared with ODEP/DOL on an ongoing basis.

This cooperative agreement is intended to: (1) Develop capacity for provision of customized employment strategies among providers who utilize the FLSA 14(c) program; (2) build effective relationships between employers and these employment service providers that result in the development of non-stereotypical employment opportunities, providing increased earnings, benefits, and career advancement potential for people with disabilities; (3) address the production, operations, and technical assistance needs of businesses to promote their hiring of people with disabilities in non-stereotypical jobs; (4) promote positive organizational change, as described in the "Background" section through professional and organizational development and other means of on-site assistance to individual providers; and (5) increase the number of section 14(c) providers that have the capacity to provide customized employment as eligible training providers with One-Stop Career Centers and other workforce development system partners. Efforts should be undertaken to ensure that community rehabilitation providers operating section 14(c) programs consider the possibilities of developing jobs for their customers in non-stereotypical occupations which lead to increased earnings, benefits, and career advancement possibilities. To accomplish these objectives, a comprehensive and integrated array of training and technical assistance initiatives will be undertaken, including utilization of experienced trainers using demonstrated effective training techniques and options, access to individual coaching, and other technical assistance for providers operating 14(c) programs seeking to undertake organizational change, and development and dissemination of information relevant to these goals.

IV. Statement of Work

The applicant must provide the following services and materials:

1. Develop and implement training at the programmatic and systemic levels

that promotes change from segregated work and non-work options for people with disabilities to integrated customized employment based on individual choice. The goal is to increase integrated, non-stereotypical employment, earnings, and opportunities for career advancement potential (as appropriate), based on the individual strengths and desires of the individual, as well as increased community participation through employment for people with disabilities. This requirement includes:

a. Documenting existing individual programmatic and systemic barriers to community-based employment for people with disabilities in the state;

b. Conducting needs assessment of community rehabilitation providers utilizing 14(c) certificates to assist in determining the array, type, and intensity of technical assistance, training and information to be provided;

c. Developing training and technical assistance materials and curriculum for providers utilizing 14(c) certificates to facilitate their understanding and adoption of person-driven, customized employment strategies resulting in community-based, integrated employment;

d. Utilizing the curriculum and materials developed to provide training for community rehabilitation providers that utilize 14(c) certificates to assist them in incorporating customized employment strategies and integrated employment outcomes into their programs;

e. Making all training/materials/curriculum available through distance learning options such as interactive websites and video conferencing;

f. Documenting the use of customized employment strategies by participating providers following any training, and how the use of such strategies impacts on successful employment outcomes; and

g. Documenting the increased participation of providers utilizing customized employment strategies as eligible training providers under the Workforce Investment Act (WIA) (Public Law No. 105–220, 29 U.S.C. 2801 et seq.).

2. Provide ongoing coaching and technical assistance to providers utilizing 14(c) certificates and WIA partners through phone and in-person assistance, as well as through on-line resources such as list-servs or e-mail responses to inquiries, including:

a. Providing personal technical assistance, training, and information for particular providers utilizing section 14(c) certificates to assist them in their organizational change to integrated, customized employment. Such technical assistance, training and information shall focus on integrating customized employment practices into the providers' services and result in increased choice, self-determination, and increased earnings for individuals with disabilities (including benefits and career advancement opportunities as appropriate). Such strategies shall also result in increased community participation for the people with disabilities involved;

b. Developing linkages and collaborating with other national federal initiatives providing services and supports for people with disabilities (including but not limited to systems change efforts promoting permanent systems improvement and comprehensive coordination; health care; housing; transportation; education; supported employment; benefits planning and assistance; small business development; and technology related assistance) and other national initiatives, as appropriate. Coordinating with DOL's other related initiatives (e.g., ETA's Work Incentive Grants) and ODEP's other initiatives (e.g., WorkFORCE Coordinating and Action Grants, Customized Employment Grants.);

c. Developing and communicating regularly with: (1) A network of local providers which can be utilized as a leadership network or constituency support group for this technical assistance and training effort; and (2) national experts in the area of customized employment strategies;

d. Developing ongoing communication and linkages with employers, trade associations, and professional and business service organizations; and

e. Assisting CRPs that provide customized employment services in becoming eligible training providers with One-Stop Career Centers and other workforce development system partners.

3. Acting as a central locus of information and expertise on customized, community-based employment for people with disabilities by:

a. Providing national linkages to information, experts and activities including exemplary and promising practices on how to promote organizational change (at the provider and system levels) that increases community-based, customized employment in non-stereotypical jobs for people with disabilities;

b. Providing information and conducting initiatives to educate employers and the general public about the abilities of people with disabilities to work in a wide variety of occupations and contribute to the workforce;

c. Providing information to people with disabilities and their families, and others, as appropriate, about promising practices that facilitate increased employment and earnings for people with disabilities;

d. Developing and disseminating materials to supplement existing technical assistance and training materials. All materials must be made available through an accessible Internet Web site;

e. Serving as a repository and dissemination center for information and materials developed by ODEP grantees, including promising practices; and

f. Providing coordination and information sharing among multiple DOL grantees and initiatives of other agencies related to people with disabilities (such as projects of the Rehabilitation Services Administration (RSA), Office of Special Education Programs (OSEP), Department of Health and Human Services (HHS), the Substance Abuse Mental Health Services Administration (SAMHSA), the Centers for Medicare and Medicaid Services (CMS), Social Security Administration (SSA), Small Business Administration (SBA), National Institute on Disability and Rehabilitation Research (NIDRR), including coordinating with other national initiatives).

4. Conducting policy studies, conduct evaluation of project activities, and otherwise collect and analyze employment policy-related information, as directed by the Office of Disability Employment Policy (ODEP), and otherwise support ODEP, as requested, in its efforts to increase integrated, customized employment, choice and wages for persons with disabilities, including the following:

a. Researching, collecting and disseminating information from states about effective policies and practices that support community-based employment over segregated services;

b. Collaborating with other federal technical assistance projects that provide information and/or technical assistance about increasing employment and needed supports for people with disabilities in conducting policy studies, as appropriate;

c. Collaborating with other research institutes, centers, and studies and evaluations that are supported by DOL and other relevant Federal agencies;

d. Conducting periodic studies and analysis about employment characteristics and conditions of people with disabilities currently in segregated

work and non-work settings such as day activity centers, job club programs, institutions, nursing homes and other facility-based settings, and collaborating with ODEP in developing a range of strategies to respond to identified needs;

e. Conducting periodic studies and analysis of federal and state policies which impede community-based employment for people and evaluate the effectiveness of new policy initiatives, such as the Ticket-to-Work, and Olmstead and Customized Employment Grants which are intended to address these barriers;

f. Conducting ongoing evaluation of the project using thorough and appropriate measures to determine the performance of the project to obtain its goals, objectives, and deliverable; and

g. Responding to requests for information, analysis and other assistance from ODEP on national employment policy as it impacts people with disabilities and the workforce investment system.

V. Funding Availability

The initial period of performance will be 12 months from the date of execution by the Government. Based on availability of funds and project performance, the Department may elect to exercise the option to extend this cooperative agreement for up to four additional option years for a total not to exceed 60 months. With the agreement of the awardee, the Department also may elect to change, modify and/or supplement this cooperative agreement during this period based on the Department's needs.

VI. Eligible Applicants

Eligible applicants may include a public, private non-profit, or for-profit organization or consortium, including community and faith-based organizations with demonstrated appropriate experience and expertise. If the proposal includes multiple consortia members, there must be a prime or lead member who is the responsible fiscal agent.

According to section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan. *See* 2 U.S.C. § 1611; 26 U.S.C. § 501(c)(4).

VII. Applications Contents

General Requirements—Two copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only. There are three required sections of the application. Requirements for each section are provided in this application package.

Part I—Executive Summary

The Executive Summary must be no more than two single-spaced pages in length giving a clear summary of the project narrative.

Part II—Project Narrative—(Appendices: Letters of Commitment and Support, Resumes, etc.)

Applicants must include a project narrative that addresses the Statement of Work in Part IV of this notice and the selection criteria that are used by reviewers in evaluating the application in Part IX.

You must limit the project narrative to the equivalent of no more than 70 pages using the following standards. This page limit does not apply to Part I, the Executive Summary; Part III, the Project Financial Plan (Budget); and, the Appendices (the assurances and certifications, resumes, a bibliography or references, and the letters of support). A page is 8.5″ × 11″ (on one side only) with one-inch margins (top, bottom, and sides). All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch.)

Part III—Project Financial Plan (Budget)

Applications must include a detailed financial plan that identifies by line item the budget plan designed to achieve the goals of this cooperative agreement. The Financial Plan must contain the SF–424, Application for Federal Assistance, (Appendix A) and a Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a cooperative agreement should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

IX. Evaluation Criteria/Selection

A. Evaluation Criteria

The application must include information of the type described below.

1. Significance of the Proposed Project (20 points)

In determining the significance of the proposed project, the Department considers the following factors:

a. The potential contribution of the proposed project to increase knowledge or understanding of problems, issues, or effective strategies for providing integrated employment outcomes in non-stereotypical jobs, based on customized employment strategies and individual choice for people with disabilities;

b. The extent to which the applicant demonstrates an understanding of the issues facing community providers as outlined in this SGA, especially those utilizing section 14(c) Special Minimum Wage certificates;

c. The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

d. The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for the products being used effectively in a variety of other settings;

e. The extent to which the proposed project disseminates promising practices in ways that will enable others to use the information or strategies; and

f. The importance or magnitude of the results that are likely to be attained by the proposed project.

2. Quality of the Project Design (20 points)

In evaluating the quality of the proposed project design, the Department considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

b. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population and other identified needs;

c. The extent to which the design of the proposed project provides an outline of training topics and content to be delivered or utilized; strategies for providing ongoing coaching and technical assistance to community providers; and other strategies to achieve the goals of this solicitation;

d. The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this cooperative agreement;

e. The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, state, and Federal resources;

f. The extent to which the applicant encourages involvement of people with disabilities, relevant experts, and organizations in project activities; and

g. The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

3. Quality of Project Personnel (15 points)

The Project Narrative must describe the proposed staffing of the project and must identify and summarize the qualifications of the personnel who will carry it out. In addition, the Department considers the qualifications, including relevant education, training, and experience of key project personnel as well as the qualifications, including relevant training and experience of project consultants or subcontractors. Resumes must be included in the Appendices.

4. Adequacy of the Budget (10 points)

In evaluating the adequacy of the budget for the proposed project, the Department considers the following factors:

a. The extent to which the budget is adequate to support the proposed project and

b. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

The applicant may include letters of commitment from proposed partners in the Appendix.

5. Quality of the Management Plan (20 points)

In evaluating the quality of the management plan for the proposed project, the Department considers the following factors:

a. The extent to which the management plan for project implementation achieves the objectives of the proposed project on time and within budget, including clearly defined staff responsibilities, and time allocated to project activities, time lines, milestones for accomplishing project tasks and project deliverables;

b. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and

c. The extent to which the time commitments of the project director and/or principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

6. Quality of the Project Evaluation (15 points)

In evaluating the quality of the project's evaluation design, the Department considers the following factors:

a. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, context, and outcomes of the proposed project;

b. The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

c. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data;

d. The extent to which the evaluation will provide information to other programs about effective strategies suitable for replication or testing in other settings; and

e. The extent to which the methods of evaluation measure in both quantitative and qualitative terms, program results and satisfaction of people with disabilities.

B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any cooperative agreement requirement and/or procedures. Awardees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require, that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., to avoid competition.

A panel will objectively rate each complete application against the criteria described in this solicitation. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award a cooperative agreement either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF–424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the panel's findings and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

1. Findings of the technical evaluation panel; and

2. The availability of funds.

X. Reporting

Awardees will be required to submit periodic financial and participation reports under this program. Specifically the following reports will be required:

1. Quarterly progress reports, and upon completion of the cooperative agreement period a final report. The quarterly report is estimated to take ten hours, and the final report is estimated to take 20 hours. The Department will work with the awardee to identify the requirements of the various reports, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction.

2. Standard Form 269, Financial Status Report Form, on a quarterly basis;

3. Final Project Report, including an assessment of project performance and outcomes achieved. This report will be submitted in hard copy and on electronic disk using a format and instructions which will be provided by the Department. A draft of the final report is due to the Department 30 days before the termination of the cooperative agreement, and the final report is due 60 days after the termination of the cooperative agreement.

XI. Administration Provisions

A. Administrative Standards and Provisions

The monies awarded under this cooperative agreement shall be subject to the following:

29 CFR part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.

29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements.

29 CFR part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

B. Allowable Cost

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Government—OMB Circular A–87

Nonprofit Organizations—OMB Circular A–122

Profit-making Commercial Firms—48 CFR part 31

Profit will *not* be considered an allowable cost in any case.

C. Non-Discrimination Assurances

As a condition of the award, the applicant must certify that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

29 CFR part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of title VI of the Civil Rights Act of 1964.

29 CFR part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794)

29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et. seq.)

The applicant must include assurances and certifications that it will comply with these laws in its grant application. The assurances and certifications are attached as Appendix C.

Signed at Washington, DC this 30th day of July, 2002.

Lawrence J. Kuss,

Grant Officer.

Appendix A. Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications Signature Page 1

BILLING CODE 4510–CX–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED July 26, 2002	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

D. Applicant is not a 501 (c) (4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 02–19637 Filed 8–2–02; 8:45 am]
BILLING CODE 4510–CX–C

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Office of the 21st Century Workforce; and Center for Faith-Based Community Initiatives; Employment Training and Services Grants for Community and Faith-Based Organizations Serving People With Significant Disabilities (SGA 02–22)

AGENCY: Office of Disability Employment Policy, Department of Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications for Employment Training and Services Grants for Community and Faith-Based Organizations Serving People with Significant Disabilities.

SUMMARY: The Office of Disability Employment Policy (ODEP) in collaboration with the Office of the 21st Century Workforce (Office of 21CW), and the Center for Faith-Based Community Initiatives (CFBCI or Center), announce the availability of up to $300,000 to award approximately three to five grants, ranging in amounts between $60,000 to $100,000 each, to community and faith-based organizations to implement model employment programs for people with significant disabilities [1] for the purposes of developing new or enhancing existing employment training and/or services. Grant activities may include the purchase and utilization of, and training in, the use of electronic and information technology (e.g., computers, computer software, fax machines, copiers, Internet, distance learning equipment). The intent of these grants is to provide community and faith-based organizations that wish to do so with the technical ability to offer employment training and related services to people with significant disabilities as service providers participating as partners within their local One-Stop Career Center. These grants will be limited to public or private non-profit community and faith-based organizations with a demonstrated record of service to their local communities. All forms necessary to prepare an application are included in this Solicitation for Grant Application (SGA).

DUE DATE: One ink-signed original, complete grant application plus two copies of the Technical Proposal and two copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 02–22, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. Eastern Daylight Savings Time (EDST), September 4, 2002. Hand-delivered applications must be received by the Procurement Services Center by that time.

ADDRESS: Applications must be hand delivered or mailed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 02–22, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Application announcements or forms will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. In addition, a copy of this notice and the application requirements may be downloaded from the Office of Disability Employment Policy's website at *http://www2.dol.gov/odep*. All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services Center after 4:45 p.m., EDST, September 4, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before September 4, 2002; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days, excluding weekends and Federal holidays, prior to September 4, 2002; and/or

3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U. S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however the Department does not accept dates or date stamps on such packages as evidence of timely mailing. Thus, the applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Authority

Consolidated Appropriations Act, 2001, Pub. L. 106–554, 114 Stat. 2763; 29 U.S.C. 557b; DOL, HHS, Education and Related Appropriations Act, 2002, Pub. L. 107–116, 115 Stat. 2177; 21st Century Workforce Initiative, Exec. Order No. 13218, 66 Fed. Reg. 33627 (June 20, 2001); Agency Responsibilities with Respect to Faith-Based and Community Initiatives, Exec. Order No. 13198, 66 FR 8497 (January 29, 2001).

[1] For the purposes of this SGA, a person with a "significant disability" is defined as adult who has a physical or mental impairment that substantially limits one or more major life activities and has a record of such impairment.

II. Background

ODEP's mission is to provide leadership to increase employment opportunities for adults and youth with disabilities through expanded access to training, education, employment supports, assistive technology, integrated employment, entrepreneurial development and small business opportunities. ODEP also fosters the creation of employment opportunities by building partnerships with both public and private sector employers and with regional and local agencies to increase their awareness of the benefits of employing people with significant disabilities and to facilitate the use of the effective strategies to accomplish this goal.

The mission of the Office of the 21st CW is to ensure that all American workers have as fulfilling and financially rewarding a career as they aspire to have. Integral to this mission is making sure that no worker gets left behind in the limitless potential of the dynamic, global economy of this new millennium.

The Department of Labor's CFBCI seeks to create effective partnerships between faith-based and community-based organizations and the Department at the federal, state, and local levels. The purpose of these partnerships is to bring the faith-based and community-based organizations that are often in closest touch with the people and problems that are the focus of federal social policy efforts into the Department's employment and training programs.

The CFBCI coordinates a comprehensive departmental effort to incorporate faith-based and other community-based organizations into DOL programs and initiatives. CFBCI supports the creation of initiatives and programs within the Department that utilize the strengths of faith-based and community-based organizations to better address the needs of underprivileged populations. The Center directs national outreach efforts to educate faith-based and other community organizations about the opportunities for partnership with local One-Stop Career Centers, State and Local Workforce Investment Boards, State Workforce Agencies, and the U.S. Department of Labor. CFBCI also works in conjunction with DOL agencies to remove barriers to the participation of community and faith-based organizations in federal programs, including, but not limited to, the reform of regulations, procurement and other internal policies and practices, and outreach activities.

American workers with significant disabilities represent a potentially abundant labor resource for employers, but encounter a multitude of barriers, due, in part, to a lack of employment training opportunities, employment-related services and access to technology. Consequently, many people with significant disabilities have incomes at or below the poverty rate and are economically disadvantaged.

This SGA reflects collaboration between ODEP, Office of 21CW, and CFBCI born out of a commitment by each of these offices to ensure that people with significant disabilities acquire the skills and services they need to become employed through the One-Stop System in a variety of jobs, industries, and levels, based on consumer choice. A key component to employment success in the 21st century work place is access to primary resources, such as electronic and information technology (e.g., computers, computer software, fax machines, copiers, Internet, distance learning equipment). This SGA addresses the lack of these key resources by providing community and faith-based organizations with appropriate technological and other resources needed to allow them to effectively provide employment services to people with disabilities.

Throughout the nation, local community organizations, many of which are faith-based, make significant efforts to provide support and social services to people with significant disabilities. These efforts include, but are not limited to, food, shelter, counseling, and financial support. Increasingly, these efforts include employment training and placement assistance.

The effectiveness of employment training and services provided by community and faith-based organizations, however, is often thwarted by a lack of technological and other resources necessary to comprehensively address the employment needs of the individuals with significant disabilities. Incorporating community and faith-based organizations as employment service providers in the One-Stop Center System under the Workforce Investment Act of 1998 (WIA) (Public Law 105–220, 29 U.S.C. 2801 et seq.) will help to address this need. Access to electronic and information technology has the potential to increase the ability of these types of organizations to administer other social service programs such as those aimed at homelessness and reduced dependency on federally funded social programs.

Technology creates gateways to jobs and training for people with significant disabilities. Specialized devices, known as assistive technology, in conjunction with generic technology products and services designed for the broadest number of users ("universal design") enable a person with a disability to earn a living and participate in the community. However, the resources for local community and faith-based organizations are limited. Many of these organizations are only able to operate through the support of community churches, synagogues, and other community-based and faith-based organizations. Their strength is frequently found in the humanity of their efforts and the support of their volunteers who contribute time and money. Additionally, these same organizations are often not equipped to apply for federal grants because of the complexity of the grant process.

As a result, community and faith-based organizations often lack the capacity and resources to provide employment or placement assistance services in the most effective or innovative manner. With access to appropriate technological and other resources, however, many local community and faith-based organizations may be in an excellent position to assist in increasing employment opportunities for the population with disabilities that they serve.

III. Purpose

The purpose of this grant program is to enable community and faith-based organizations, to institute and/or expand upon the level of employment-related services they provide to people with significant disabilities in their training and services programs, working in direct connection with the One-Stop Center system. Specifically, these organizations will have the opportunity to become active in or expand upon their current activities supporting the employment needs of people with significant disabilities. Where needed to further employment training and services to people with significant disabilities, this grant may be used to acquire distance learning capabilities and access electronic and information technology (e.g., computers, computer software, fax machines, copiers, Internet, distance learning equipment).

In responding to this SGA, the applicants must take into account the following parameters of the project:

- This SGA supports three to five grant demonstrations, not to exceed the amount of $100,000 each, for community and faith-based

organizations that institute or expand their services to include an employment services program.

• The demonstration must support employment opportunities for people with significant disabilities in the applicant's local community.

• The SGA does not require applicants to pursue access or acquisition to technology or technological training, but applicants are encouraged to consider conducting such activities where a need has been identified.

• Where necessary, accessible electronic, assistive, and information technology (e.g., computers, computer software, fax machines, copiers, Internet, distance learning equipment) may be purchased using grant funds to use in training customers with disabilities for gainful employment and to allow them to better access employment-related training and other services. This equipment will become the property of the grantee at the end of the grant period.

• An applicant can consider a range of model demonstration activities using technology, including the use of loaned accessible equipment for the home to enable the person to become trained and/or employed (e.g., laptop, adapted computer keyboards, large button keypads, software, TTY) or the use of technology where the organization is located to enable people with significant disabilities to search for jobs (e.g., Internet access and training on how to write and format a scannable resume, job search using the Internet).

• The applicant must explain how it will keep track of electronic and information technology equipment that is purchased with grant funds for use in an individual's home.

IV. Statement of Work

A successful applicant must initiate and/or expand its current support and social services programs to include employment training and services for people with significant disabilities and forge a link with the local One-Stop Center. In developing these strategies, the applicant must specifically outline its plan for: (1) Staffing and support of the proposed project; (2) recruitment of people with significant disabilities in the community who may benefit from employment training and services; and (3) the acquisition, installation, and maintenance of electronic and information technology (*e.g.*, computers, computer software, fax machines, copiers, Internet, distance learning equipment) either at the organization's location or in the person with disabilities' home if necessary to implement the proposed project. The applicant organizations must be prepared to implement their proposed employment training and services programs in accordance with the descriptions presented in their grant proposal.

In addition the applicant must:

• Provide a detailed plan for project goals, objectives, and activities;

• Produce procedures and materials that would enable other local community and faith-based organizations to adopt the best practices derived from this project;

• Explain how it will integrate employment training and employment services for people with significant disabilities into the existing infrastructure of the services and support it provides; and,

• Explain how it will work within the local One-Stop Center(s) to address barriers to employment for people with significant disabilities including those relating to access to technology. Also, the grantees must be prepared to submit a report of progress, six months after the award begins; and, a final report describing the grant's achievements, upon the conclusion of the award. These reports will be from three to six pages in length, with no more than two pages exclusively devoted to a progress narrative.

V. Funding Availability

The total amount of the funds to be awarded is $300,000, with individual awards of between $60,000 and $100,000. Accordingly, approximately three to five grants will be awarded. It is expected that the funds used for this SGA will support the costs associated with the development and implementation of an employment services training program in a community and faith-based organization, that, where feasible, employs the use of information technology (e.g., computers, computer software, fax machines, copiers, Internet, distance learning equipment).

VI. Eligible Applicants

Eligible applicants must be community and faith-based organizations operating at the local level. They must be public or private non-profit organizations, including community-based and faith-based organizations, with a demonstrated record of service to the community. States and other governmental entities are not eligible. Under Section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities is not eligible for the receipt of federal funds constituting an award, grant, or loan. *See* 2 U.S.C. § 1611; 26 U.S.C. § 501(c)(4).

VII. Application Contents

There are three required Parts and an Appendix of the application. Requirements for each Part are provided in this application package, as are all required forms.

Part I—Project Financial Plan (Budget).

Part II—Executive Summary.

Part III—Project Narrative.

Appendices—Letters of Commitment/Support, Resumes, etc.

General Requirements

Two copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only. Page limits do not apply to the Project Financial Plan, the Executive Summary, or the Appendices (assurances, resumes, bibliography or references as appropriate, and letters of support.) A font size of at least twelve point is required throughout.

Part I—Project Financial Plan (Budget)

To be considered, applications must include a detailed financial plan that identifies by line item the budget plan designed to achieve the goals of this grant. The Project Financial Plan must contain the SF–424, Application for Federal Assistance, (Appendix A) and an SF–424A Budget Information Sheet (Appendix B). The Project Financial Plan (Budget) must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to bind the responsible financial and administrative entity for a grant should that application result in an award.

Part II—Executive Summary

The application must contain an Executive Summary limited to no more than two single-spaced, single-sided pages that are not included in the overall page limit. Each application must provide a grant synopsis that identifies the following:

• The Applicant's capacity to administer this project including its demonstrated record of service to the community;

• The geographic area to be served through this grant; and

• The amount of funding requested and planned period of performance up to a year.

Part III—Project Narrative

The project narrative must describe how the applicant, as an employment service provider in the local One-Stop system, will provide employment services for people with significant disabilities. Specifically, the project narrative should set forth the strategic plan to implement the Statement of Work set forth earlier in this document. In developing the project narrative, the following should be incorporated:

• A description of the population to be served;

• A description of the employment training and/or services to be provided;

• A description of the current, if any, and/or proposed involvement with the local One-Stop Center;

• A description of the applicant's experience, if any, in managing resources through grant awards, from Federal, State or units of local governments, and/or from private organizations; and

• A description of the applicant's objectives, how the project results will be measured, and who will be responsible for providing DOL with financial and other information.

This project narrative may not exceed 15 pages. The narrative will be evaluated in accordance with the Evaluation Criteria/Selection section of this document. A Technical Evaluation Panel will assign scores that are based on how well the project narrative meets the evaluation criteria described in Section VIII of this solicitation. The panel will make recommendations to the Grant officer who will make the final determination based on all available information.

VIII. Evaluation Criteria/Selection

A. Evaluation Criteria

In evaluating the significance of the proposed project, the Department will consider the following factors:

(1). The potential of the proposed project to impact the employment opportunities of people with significant disabilities, including persons whose disabilities arise from chronic illnesses; and, its plans to work with the local One-Stop Center. (See Statement of Work section on preceding pages of this document for further guidance on what will be evaluated in this section of your proposal)—50 points

(2). The current employment needs of people with significant disabilities that this proposed project will attempt to meet (offer any statistics, case studies or other information which outline the reasons why the proposed grant program is needed in the community)—20 points

(3). The qualifications of available staff, including volunteer staff (identify who will direct and/or operate your proposed program and include in your proposal either resumes or brief summary statements indicative of their capabilities to deliver the proposed employment support services that you wish to fund under this grant program)—10 points

(4). Evidence of past community service by the organization (either describe or include in the Appendices any relevant articles, reports, statements, etc. which attest to the organization's record of serving your community with any kind of social services or support)—15 points

(5). The methodology for measuring success of this project. The objectives must be clearly defined and the applicant must describe how it will report: (a) The number of participants served; (b) the number of participants who received employment; (c) the types of training and/or services provided; and (d) the number of applicants that were referred for more advanced job training in the local One-Stop Center—5 points

B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Awardees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require, that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., to avoid competition.

A panel will objectively rate each complete application against the criteria described in this solicitation. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award a cooperative agreement either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF–424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

1. Findings of the technical evaluation panel;

2. Geographic distribution of the competitive applications;

3. Assuring a variety of program designs; and,

4. The availability of funds.

The Establishment Clause of the First Amendment of the United States Constitution prohibits the government from directly funding religious activity. These grants may not be used for instruction in religion or sacred literature, worship, prayer, proselytizing or other inherently religious practices. The services provided under these grants must be secular and non-ideological. Grant or sub-grant recipients, therefore, may not and will not be defined by reference to religion. Neutral, secular criteria that neither favor nor disfavor religion must be employed in their selection. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not employ or train a participant in sectarian activities, or permit participants to construct, operate, or maintain any part of a facility that is primarily used or devoted to sectarian instruction or worship. Under WIA, no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.

IX. Reporting

The grantee must furnish a progress report at the 6-month anniversary of the award; and a final report due approximately 45 days from the day of completion of the grant (approximately 12 months from the execution of the grant award). These reports should be no more than two pages of narrative, discussing the organization's efforts and progress in meeting the objectives of its proposal. Additionally, these reports should identify specific accounts of success in achieving employment outcomes and other accomplishments of the grant. In addition, a brief standard financial report will be required with each report.

X. Administration Provisions

A. Administrative Standards and Provisions

Grants awarded under this SGA are subject to the following:

29 CFR Part 95— Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations

29 CFR Part 96—Audit Requirements for Grants, Contracts and Other Agreements

B. Allowable Cost

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

Nonprofit Organizations—OMB Circular A–122

Profit will *not* be considered an allowable cost in any case.

C. Grant Non-Discrimination Assurances

As a condition of the award the applicant must certify that it will comply with the nondiscrimination and equal opportunity provisions of the following laws:

29 CFR Part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964

29 CFR Part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794)

29 CFR Part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (Implementing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*)

29 CFR Part 37—Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA) (Implementing Section 188 of the Workforce Investment Act, 29 U.S.C. 2938)

The applicant must include assurances and certifications that it will comply with these laws in its grant application. The assurances and certifications are attached as Appendix C.

Signed at Washington, DC this 30th day of, July 2002.

Lawrence J. Kuss,

Grant Officer.

Appendix A. Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications Signature Page

BILLING CODE 4510–CX–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED July 26, 2002	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

D. Applicant is not a 501 (c) (4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 02–19639 Filed 8–2–02; 8:45 am]
BILLING CODE 4510–CX–C

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Telework/Telecommuting Pilot Demonstration Grant for Adults with Significant Disabilities

AGENCY: Office of Disability Employment Policy, DOL.

ACTION: Notice of availability of funds and Solicitation for Grant Applications (SGA) for Telework/Telecommuting Pilot Demonstrations (SGA 02–16).

SUMMARY: The U.S. Department of Labor ("DOL" or "Department"), Office of Disability Employment Policy ("ODEP"), announces the availability of $1,000,000 to award one competitive grant to support the implementation and evaluation of three pilot demonstration projects involving DOL and two other Federal agencies over a period of 24 months designed to evaluate the extent to and the manner in which various home-based telework/telecommuting arrangements can enhance the employment of people with disabilities. This solicitation responds to an expression of Congressional intent in the Conference Report to ODEP's FY 2002 appropriation to set up these programs and to "include in these pilots all appropriate positions, whether the work is performed in-house, contracted, or outsourced in the types of jobs which can be performed from home, such as customer service/call contact centers, and claims, loan or financial transaction processing operations." (H. Conf. Rep. No. 342, 107th Cong., 1st Sess. (2001)). Integral to the pilot projects will be tailored/individualized training, appropriate technology, and supportive mechanisms (e.g., reasonable accommodations, job coaching, shadowing, mentoring, customized employment, etc.).

A critical element of this endeavor will be the generation of data and information on successful strategies and approaches to telework/telecommuting, the difficulties and challenges that may be encountered, and mechanisms for addressing these challenges. This data will be used by DOL and other Federal entities in considering the development of telework/telecommuting options as an alternative to more traditional types of employment, particularly for people with significant disabilities.

The funds for this solicitation will be used to develop, implement, and evaluate three discrete pilot demonstration projects. The first pilot will be conducted at the U.S. Department of Labor and will involve the Labor Department's current call center operation. The other two pilot projects must involve two other types of jobs that can be performed from home such as customer service, claims, loan, financial transaction or processing operations in two additional Federal agencies.

These pilot demonstration projects will be staggered; each pilot will begin at a different time. Each pilot will run for a total of nine months—six months for a training/trial work period, and an additional three months for follow-up. The grantee funded under this solicitation must: (1) Identify positions appropriate for home-based work among the three Federal agencies included in the overall project; (2) equip and train qualified individuals with significant disabilities for these positions; and (3) report on the results of the telework/telecommuting pilot.

DATES: One ink-signed original, completed grant application plus two copies of the Technical Proposal and two copies of the Cost Proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer Reference SGA 02–16, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. Eastern Daylight Savings Time (EDST) September 4, 2002. Hand-delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 02–16, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Application announcements or forms will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. In addition, a copy of this notice and the application requirement may be downloaded from the Office of Disability Employment Policy's Web site at *http://www2.dol.gov/odep*. Questions concerning this solicitation should be directed to Cassandra Willis at phone (202) 693–4570 (this is not a toll-free number). Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

Late Proposals: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application(s) by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, at (202) 693-4570, prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877-8339.

Acceptable Methods of Submission: The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services Center after 4:45 p.m., EDST, September 4, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before September 4, 2002; or 2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days, excluding weekends and Federal holidays, prior to September 4, 2002; and/or

3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U. S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however the Department does not accept dates or date stamps on such packages as evidence of timely mailing. Thus, the applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Authority

Consolidated Appropriations Act, 2001, Public Law 106–554, 114 Stat. 2763; 29 U.S.C. 557b; DOL, HHS, Education and Related Appropriations Act, 2002, Public Law 107–116, 115 Stat. 2177.

II. Background

The mission of the Office of Disability Employment Policy (ODEP) is to provide leadership to increase employment opportunities for adults and youth with disabilities through expanded access to training, education, employment supports, assistive technology, integrated employment, entrepreneurial development and small business opportunities. ODEP fosters the creation of employment opportunities by building partnerships with both public and private sector employers, and with regional and local agencies to: (1) Increase their awareness and experience the benefits of employing people with disabilities, including significant disabilities; and (2) facilitate the use of effective strategies to accomplish this goal.

Workers with significant disabilities are an important and insufficiently tapped resource for employers. As such, ODEP is committed to ensuring appropriate skills development and training opportunities, and supporting and encouraging the creative use of alternative employment strategies and employment supports for this population segment. Congress included $1,000,000 in FY 2002 for ODEP to explore the feasibility of developing and extending home-based telework/telecommuting options to people with significant disabilities through an evaluation of pilot demonstration projects. (H. Conf. Rep. No. 342, 107th Cong., 1st Sess. (2001)).

In general, "telework/telecommuting" is a collective term for a wide variety of work arrangements. Teleworkers/telecommuters may be employees or independent contractors who may work full-time or part-time. In addition teleworkers/telecommuters may work from home or a telecenter all of the time, or may alternate between the two. For the purposes of this solicitation, telework/telecommuting will refer to home-based settings only.

As a general matter, telework/telecommuting provides opportunities for all employees and employers seeking alternative employment options. For employers, telework/telecommuting can be useful in solving business problems by decreasing certain overhead costs; satisfying fluctuating demands for additional office and parking space; and helping its employees balance work and family demands and thereby increase their loyalty, productivity, and retention. For certain employees, telework/telecommuting is appealing because it can eliminate long commutes, and is flexible—allowing for balancing of work and home life, and reduced workplace distractions.

For people with significant disabilities, telework/telecommuting sometimes presents the most viable opportunity to work, due to the lack of reliable and available employment supports such as transportation and personal assistance. While telework/telecommuting is not a complete solution to the employment barriers encountered by persons with significant disabilities, home-based work can be an effective way of bringing persons with severe or significant disabilities who have limited ability to leave their homes into the workforce.

Effective telework/telecommuting policies are key to successful telework/telecommuting arrangements for persons with and without disabilities. Accordingly, the best practices derived from this project are likely to have utility extending beyond the employment of people with disabilities to the population generally.

III. Purpose and Parameters

The purpose of the grant award is to explore using telework/telecommuting in innovative ways in Federal agencies to support high quality employment for people with significant disabilities. Specifically, it will provide DOL and other participating agencies with a means to assess the extent to which tailored/individualized training, appropriate technology, and supportive mechanisms (e.g., reasonable accommodations, job coaching, shadowing, mentoring, customized employment, etc.) can facilitate various telework/telecommuting arrangements for people with significant disabilities. Through its evaluation research component, the grant will also generate data on both the benefits and the challenges encountered in creating home-based telework/telecommuting options for people with significant disabilities.

All forms necessary to prepare an application are included in this SGA. Additional forms can be obtained from the following OMB Web site address: *www.whitehouse.gov/OMB/grants/forms.html*. In responding to the SGA, the applicant must take into account the following parameters of this project:

- The award will support one grant that will be used to develop, implement, evaluate, and disseminate information that can increase critical knowledge of and provide data about "best practices" in a home-based telework/telecommuting environment for people with significant disabilities.
- The first pilot will be conducted at the U.S. Department of Labor and will involve the Labor Department's current call center operation. The other two pilot projects will involve two of the following: customer service, claims, loan, financial transaction or processing centers in two additional Federal agencies.
- For the purposes of this solicitation, "telework/telecommuting" is defined as work performed in a home-based workstation.
- The grantee must: (1) Identify appropriate positions within the three Federal agencies included in the overall project; (2) equip and train qualified individuals with significant disabilities for these positions; and (3) report on the results of the telework/telecommuting pilot.
- A person with a "significant disability" for purposes of this SGA is defined as an adult to whom one or more of the following applies: (1) Is a long-term user of a mobility aid (e.g., a cane or wheel chair); (2) Is unable, or needs assistance, to see, hear, or climb stairs; or (3) Is unable, or needs assistance, to get around inside the home, dress, eat, or prepare meals.
- During each nine-month pilot, the telework/telecommuting participants recruited as part of this solicitation will be employees of the applicant's organization. The applicant, therefore, may use grant funds to cover their employment costs (e.g., salaries, benefits, assistive technology, reasonable accommodations). Telework/telecommuting participants are to be compensated at prevailing rates equal to that of other trainees or employees with similar training, experience, and skills, performing similar work and such rates shall be in accordance with applicable

law, but in no event less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

• Applicants must prepare an evaluation plan for the three pilot demonstration projects which is to include, at a minimum: (1) The number of individuals with disabilities participating in telework/telecommuting positions; (2) the participants' attrition rates; (3) information on the performance of such individuals in comparison to people without significant disabilities performing similar jobs in the participating agency; and (4) the feasibility of employing more individuals with disabilities in home-based work in other Federal agency positions.

• The success of telework/telecommuting for people with significant disabilities will be measured in terms of growth (e.g., skills development, production, hiring level, etc.) and stability. Training will be a critical element in the pilot demonstrations inasmuch as it will be important that participants recruited for the pilot projects enhance their current skills level and develop additional skills and abilities to perform telework/telecommuting tasks. Accordingly, the applicant must describe the procedures and approach it will use to ensure that the particpants' training provides them with the specific skills needed for the target occupation, including the operation of relevant equipment, including assistive technology. The applicant must also discuss how it will assess and provide appropriate telework/telecommuting supports, needed accommodations, and training in self-management skills.

• In some cases, Federal agencies, such as DOL, contract for services such as call centers, claims processing, and application processing. Applicants should note that if the Federal agency that is to be a part of this demonstration uses a contractor for a job function which is potentially appropriate for home-based telework/telecommuting environment, the agency must agree to assist the applicant in working with the Federal contractor to identify appropriate positions for the pilot demonstration project.

• The applicant must describe the procedures and approaches it will use in cases where modifications (e.g., telephone lines, software, technology, etc.) may be required to facilitate the pilot demonstration projects (e.g., a contracted call center facility). Grant funds may be used for this purpose. This kind of facilitation may be accomplished in a number of ways, for example, by a subcontract with the contracted call center under which the call center purchases and installs all of the appropriate equipment, or by direct purchase and installation by the grantee with the consent of the call center contractor.

IV. Statement of Work

The applicant must design and implement pilot demonstration projects that incorporate research-based best practices, or that develop and evaluate additional practices that are flexible, unique, and innovative.

The successful applicant will develop and outline strategies to integrate specific job functions, ordinarily performed at a centrally located facility, into home-based work settings. Therefore, the applicant must include specific details concerning its personnel and support capacity for the pilot demonstration projects; the procedures and approaches for the recruitment, retention, and management of people with significant disabilities who prefer home-based telework/telecommuting; the acquisition, installation, and maintenance of equipment that will be required; necessary security; job task training, quality assurance, supervision, and technical assistance and training for the Federal agency and contractor (if applicable) supporting the pilot demonstrations.

The applicant must describe the methods and procedures for collecting, analyzing, and reporting data from the evaluation of the pilot demonstration projects. The applicant must describe the procedures and approaches for working with three Federal agencies (the Department of Labor and two other Federal agencies) in order to implement the various strategies proposed in relation to the specific employment situation in each agency (e.g., call center, claims processing, and/or application processing activity.) Additionally, the applicant must provide:

(1) a detailed management plan for project goals, objectives, and activities;

(2) a detailed timeline for phasing in the three pilot demonstration projects on a staggered basis; conducting evaluations of the pilots; and producing and submitting a final report;

(3) a detailed outline for an evaluation research design which includes: (a) A justification of appropriate evaluation methodology; (b) a descriptions of the outcome measures expected to be used to evaluate the pilot demonstration projects and determine the effectiveness of each; and (c) an explanation of how the evaluation information and data collected on the pilot demonstration projects will be aggregated and analyzed for the purpose of providing useful information about the overall feasibility of home-based telework/telecommuting for people with significant disabilities performing Federal sector jobs;

(4) documentation (e.g., letter of intent, memorandum of agreement) which reflects that each Federal agency which is to be included in the pilot demonstration project is committed to participating and working cooperatively with the applicant; or alternatively, a description of the process the applicant will use to recruit, enlist, and secure cooperation with each Federal agency the applicant wishes to include in the projects;

(5) a description detailing a plan for designing three distinct telework/telecommuting pilots in different environments. The first pilot will be conducted at the U.S. Department of Labor and will involve the Labor Department's current call center operation. The other two pilot projects must involve two other types of jobs that can be performed from home such as customer service, claims, loan, financial transaction or processing operations in two additional Federal agencies.

(6) a description of the procedures and approaches that will be used to integrate home-based telework/telecommuting into the existing infrastructure of any organizations currently providing contractual services within participating Federal agencies; and identify positions appropriate for home-based telework/telecommuting within the three Federal agencies included in the overall project; and address and resolve any problems and barriers;

(7) a description of the procedures and approaches which the applicant will use to: (a) Recruit and retain pilot demonstration participants; (b) employ pilot demonstration participants for up to nine months; (c) replace participants who drop out of the project, to the extent that funds and time will allow; and (d) address and resolve any other problems and barriers;

(8) a description of the procedures and approaches the applicant will use for: (a) The acquisition, installation, and maintenance of required equipment and implementation of necessary security measures; (b) job task training, quality assurance, and supervision; and (c) for providing technical assistance and training to the entity(ies) providing contractual services to the Federal government in jobs appropriate for home-based telework/telecommuting

which are to be included in the pilot demonstrations;

(9) a detailed description of procedures and materials that would enable others to replicate the successful strategies developed; and

(10) a description of procedures and approaches which will be used to provide ongoing communication and collaboration with, and input from ODEP's Project Officer on all grant-related activities.

Utilizing grant funds, the applicant must support the travel cost associated with sending at least one representative for two days to the annual ODEP Grantees' training conference, to be held in Washington, DC.

V. Funding Availability and Period of Performance

The period of performance will be 24 months from the date of the execution of the award unless extended by the Government. The amount of the grant awarded will be $1,000,000. It is expected that the costs associated with each individual pilot will vary, as the job functions/tasks and technology required to perform home-based teleworking/telecommuting within a participating agency will be different. The funds used for this SGA will support the costs associated with the development and implementation of the three Federal pilot demonstration projects, one of which is to be at DOL, to determine whether, and to what extent, home-based telework/telecommuting represents viable employment alternative for people with significant disabilities and for Federal agencies. To this end, the applicant may use the available funds to conduct a variety of activities to support these pilots such as recruitment, retention, training, acquiring needed technology and equipment, making modifications, planning, management activities, and evaluations. To the extent possible, the applicant should provide specific cost estimates and justifications for costs in its application. With the agreement of the grantee, the Department also may elect to change, modify, and/or supplement this grant during this period based on the Department's needs.

VI. Eligible Applicants

Applications will be accepted from both for profit and non-profit organizations. States and other governmental entities are ineligible. Applicants must have demonstrated experience in employment and disability research, and have demonstrated experience and capacity for providing services related to telework/telecommuting or technology generally for people with disabilities. According to section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, or loan. [See 2 U.S.C. 1611; 26 U.S.C. 501(c)(4).]

VII. Application Contents

General Requirements—Two copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only. There are three required sections of the application. Requirements for each section are provided in this application package.

Part I—Executive Summary

The Executive Summary may not be more than two single-spaced pages in length giving a clear summary of the project narrative.

Part II—Project Narrative—(Appendices—Letters of Commitment/Support, Resumes, etc.)

Applicants must include a narrative that addresses the Statement of Work in Part IV of the notice and the evaluation/selection criteria in Part VIII that will be used by reviewers in evaluating the application. You must limit Part II to the equivalent of no more than 75 pages using the following standard. This page limit does not apply to Part I the Executive Summary; Part III the Project Financial Plan (Budget); and, the Appendices (the assurances and certifications, resumes, a bibliography or references, and the documentation of commitment/letters of support).

A page is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch.)

Part III—Project Financial Plan (Budget)

Applications must include a detailed financial plan, which identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Plan must contain the SF–424, Application for Federal Assistance, (Appendix A) and a Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include, on a separate page, a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

VIII. Evaluation Criteria/Selection

A. Evaluation Criteria

The application must include appropriate information of the type described below.

1. Significance of the Proposed Project (25 points)

In determining the significance of the proposed project, the Department considers the following factors:

a. The potential contribution of the proposed project to increase knowledge or understanding of problems, issues, or effective strategies for providing home-based telework/telecommuting options to people with significant disabilities as an alternative to traditional types of employment;

b. The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

c. The extent to which the proposed project involves the development or demonstration of promising new strategies that build upon, or are alternatives to, existing strategies;

d. The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including their potential for being used effectively in a variety of other settings;

e. The extent to which the promising practices of the proposed project are to be disseminated in ways that will enable others to use the information or strategies;

f. The potential replicability (national significance) of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings; and

g. The importance or magnitude of the results that are likely to be attained by the proposed project.

2. Quality of the Project Design (20 points)

In evaluating the quality of the proposed project design, the Department considers the following factors:

a. The adequacy of the documentation submitted in support of the proposed project to demonstrate the commitment of each Federal agency which is be included in the pilot demonstration or alternatively the quality of the plan that the applicant will use to recruit, enlist, and secure cooperation of Federal agencies which the applicant wishes to include in the projects;

b. The extent to which the proposal provides a description detailing a plan for designing three distinct pilot programs, in three different telework/telecommuting environments, with DOL and two additional Federal agencies.

c. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

d. The extent to which the proposal incorporates the 9 key activities identified in Part IV, the Statement of Work;

e. The extent to which the design of the proposed project is appropriate to, and will successfully address the needs of the target population and other identified needs;

f. The extent to which the design of the proposed project can identify barriers and challenges associated with providing home-based telework/telecommuting options to persons with disabilities;

g. The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this grant;

h. The extent to which the design of the proposed project reflects a review of disability related literature, up-to-date knowledge of research and effective practices relating to planning and implementing telework/telecommuting options, and the use of appropriate methodological tools to ensure successful achievement of project objectives;

i. The extent to which the applicant encourages involvement of people with significant disabilities most likely to benefit from home-based telework/telecommuting options, and relevant experts, and organizations in project activities; and

j. The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

k. The extent to which the design of the proposed project incorporates measures adequate to ensure that the current employees of a Federal contractor or Federal agency involved in the pilot project do not suffer a loss of wages, are not displaced, and are not deprived of any rights conferred as a result of a collective bargaining agreement or an existing contract for their services or as a result of grant activities.

3. Quality of Project Personnel (15 points)

The Project Narrative must describe the proposed staffing of the project and must identify and summarize the qualifications of the personnel who will carry it out. The Project Narrative should also describe how the applicant plans to comply with the employment discrimination and equal employment opportunity requirements of the various laws listed in the assurances section.

In addition, the Department considers the qualifications, including relevant education, training and experience of key project personnel as well as the qualifications, including relevant training and experience of project consultants or subcontractors. Resumes must be included in the Appendices.

4. Budget and Resource Capacity (10 points)

In evaluating the capacity of the applicant to carry out the proposed project, the Department considers the following factors:

a. The applicant's demonstrated experience in employment and disability research, and in providing services related to telework/telecommuting or technology generally for people with disabilities;

b. The extent to which the budget is adequate to support the proposed project; and

c. The extent to which the anticipated costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

5. Quality of the Management Plan (10 points)

In evaluating the quality of the management plan for the proposed project, the Department considers the following factors:

a. The extent to which the management plan for project implementation appears likely to achieve the objectives of the proposed project on time and within budget, and includes clearly defined staff responsibilities, time allocation to project activities, time lines, milestones for accomplishing project tasks, and project deliverables;

b. The adequacy of mechanisms for ensuring high-quality products and services relating to the scope of work for the proposed project; and

c. The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

6. Quality of the Project Evaluation (20 points)

In evaluating the quality of the project's evaluation design, the Department considers the following factors:

a. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, context, and outcomes of the proposed project;

b. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data;

c. The extent to which the evaluation will provide information to the Federal government and other employers about effective telework/telecommuting strategies suitable for replication or testing in other settings; and

d. The extent to which the methods of evaluation measure in both quantitative and qualitative terms program results and satisfaction of adults with disabilities.

B. Selection Criteria

Acceptance of a proposal and an award of Federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. The selected applicant must comply with all applicable Federal statutes, regulations, administrative requirements and OMB circulars. For example, the OMB circulars require, and an entity's procurement procedures must require, that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF–424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any

information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

(1) The findings of the grant technical evaluation panel; and

(2) The geographic distribution of the sites of the three demonstration projects.

IX. Reporting

The selected applicant must submit on a quarterly basis, beginning ninety days from the award of the grant, financial and participation reports under this program as prescribed by OMB Circulars A-110 codified at 29 CFR part 95. Specifically the following reports will be required:

1. *Quarterly report:* The quarterly report is estimated to take five hours to complete. The form for the Quarterly Report will be provided by ODEP. The Department will work with the grantee to help refine the requirements of the report, which, among other things, will include measures of ongoing analysis for continuous improvement;

2. *Standard Form 269:* Financial Status Report Form: This form is to be completed on a quarterly basis.

3. *Final Project Report:* The Final Project Report is to include an assessment of project performance and outcomes achieved. It is estimated that this report will take twenty hours to complete. This report will be submitted in hard copy and on electronic disk using a format and following instructions, which will be provided by the Department. A draft of the final report is due to the Department thirty days before the termination of the grant. The final report is due to DOL 60 days following the termination of the grant.

The Department will arrange for an independent evaluation of outcomes, impacts, and benefits of the project. The selected applicant must make records and data available to external evaluation personnel, as specified by the Department.

X. Administration Provisions

A. Administrative Standards and Provisions

Applicants are strongly encouraged to read these regulations before submitting a proposal. The grant awarded under this SGA shall be subject to the following as applicable:

(1) 29 CFR part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations

(2) 29 CFR part 96—Audit Requirements for Grants, Contracts, and Other Agreements.

B. Allowable Cost

Determinations of allowable costs are made in accordance with the following applicable Federal cost principles:

(1) Nonprofit Organizations—OMB Circular A–122

(2) Profit-making Commercial Firms—48 CFR part 31

Profit will not be considered an allowable cost in any case.

C. Grant Non-Discrimination Assurances

As a condition of the award, the applicant must certify that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

29 CFR part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964.

29 CFR part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794)

29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq.)

The applicant must include assurances and certifications that it will comply with these laws in its grant application. The assurances and certifications are attached as Appendix C.

Signed at Washington, DC, this 30th day of July, 2002.

Lawrence J. Kuss,

Grant Officer.

APPENDIX A. Application for Federal Assistance, Form SF 424

APPENDIX B. Budget Information Sheet, Form SF 424A

APPENDIX C. Assurances and Certifications Signature Page

BILLING CODE 4510–CX–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
July 26, 2002	
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application ☐ **Construction** ☐ **Non-Construction**

Preapplication ☐ **Construction** ☐ **Non-Construction**

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

D. Applicant is not a 501 (c) (4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 02–19640 Filed 8–2–02; 8:45 am]
BILLING CODE 4510–CX–C

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Request for Information on Efforts by Certain Countries To Eliminate the Worst Forms of Child Labor

AGENCY: The Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Request for information on efforts by certain countries to eliminate the worst forms of child labor.

SUMMARY: This notice is a request for information for use in Department of Labor research regarding the implementation of international commitments to eliminate the worst forms of child labor by countries seeking benefits under the Generalized System of Preferences (GSP), and/or eligibility for additional benefits provided for in the Caribbean Basin Trade Partnership Act (CBTPA) or the African Growth and Development Act (AGOA).

The Trade and Development Act of 2000 (TDA) established a new eligibility criterion—concerning efforts to eliminate the worst forms of child labor—for receipt of these trade benefits. The TDA requires the Secretary of Labor to make annual findings with respect to beneficiary countries' implementation of their international commitments to eliminate the worst forms of child labor. The first annual report under the TDA was published on July 12, 2002. This information request is for use in producing the second report.

DATES: Submitters of information are requested to provide two (2) copies of their written submission to the International Child Labor Program at the address below by 5 p.m., September 6, 2002.

ADDRESSES: Written submissions should be addressed to Nicholas J. Levintow and/or Christine Camillo at the International Child Labor Program, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5307, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Nicholas J. Levintow or Christine Camillo, Bureau of International Labor Affairs, International Child Labor Program, at (202) 693–4862, or (202) 693–4839; fax (202) 693–4830. The Department of Labor's international child labor reports can be read on the Internet at *http://www.dol.gov/ilab/reports/iclp/pubs_reports_ilab_iclp.htm* or can be obtained from the International Child Labor Program.

SUPPLEMENTARY INFORMATION: The Trade and Development Act of 2000 [Pub. L. 106–200], established new eligibility criteria concerning beneficiary country efforts to eliminate the worst forms of child labor for receipt of trade benefits under the GSP, CBTPA, and AGOA programs. The TDA amends the GSP reporting requirements of the Trade Act of 1974 (Section 504) [19 U.S.C. 2464] to require that the President's annual report on the status of internationally recognized worker rights include "findings by the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor."

Title II of the TDA includes as a criteria for receiving benefits under the CBTPA "whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974." The TDA Conference Report [Joint Explanatory Statement of the Committee of Conference, 106th Cong.2d.sess. (2000)] indicates that "the conferees intend that the GSP standard, including the provision with respect to implementation of obligations to eliminate the worst forms of child labor, apply to eligibility for those additional benefits" [provided for in the AGOA.]

Scope of Report

Countries presently eligible under the GSP are: Albania, Angola, Antigua and Barbuda, Argentina, Armenia, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Comoros, Congo (Brazzaville), Congo (Kinshasa), Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Gabon, the Gambia, Georgia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Latvia, Lebanon, Lesotho, Lithuania, Macedonia (former Yugoslav Republic of), Madagascar, Malawi, Mali, Mauritania, Mauritius, Moldova, Mongolia, Morocco, Mozambique, Namibia, Nepal, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Slovakia, Solomon Islands, Somalia, South Africa, Sri Lanka, Suriname, Swaziland, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, Uruguay, Uzbekistan, Vanuatu, Venezuela, Republic of Yemen, Zambia, and Zimbabwe.

Countries eligible or potentially eligible for additional benefits under the AGOA include: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo (Brazzaville), Congo (Kinshasa), Cote d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, the Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, and Zimbabwe.

Countries potentially eligible for additional benefits under the CBTPA are: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago.

Information Sought

The Department invites interested parties to submit written information relevant to the findings to be made by the Department of Labor under the TDA, for all listed countries. Information provided through public submission will be considered by the Department of Labor in preparing its findings. Materials submitted should be confined to the specific topic of the study. In particular, the Department's Bureau of International Labor Affairs is seeking written submissions on the following topics:

1. Whether the country has adequate laws and regulations proscribing the worst forms of child labor;
2. Whether the country has adequate laws and regulations for the implementation and enforcement of such laws and regulations;
3. Whether the country has established formal institutional mechanisms to investigate and address complaints relating to allegations of the worst forms of child labor;

4. Whether social programs exist in the country to prevent the engagement of children in the worst forms of child labor, and to assist in the removal of children engaged in the worst forms of child labor;

5. Whether the country has a comprehensive policy for the elimination of the worst forms of child labor;

6. Whether the country is making continual progress toward eliminating the worst forms of child labor.

Information relating to the nature and extent of child labor in the country is also sought.

Definition of "Worst Forms of Child Labor"

The term "Worst Forms of Child Labor" in the TDA is defined by International Labor Organization (ILO) Convention No. 182, which defines a child as all persons under the age of 18, and the worst forms of child labor as comprising all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties; or any work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The TDA Conference Report noted that the phrase,

* * * work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children * * *

is to be defined as in Article II of Recommendation No. 190, which accompanies ILO Convention No. 182. This includes work that exposes children to physical, psychological, or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment or tools, or work under circumstances which involve the manual handling or transport of heavy loads; work in an unhealthy environment that exposes children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and work under particularly difficult conditions such as for long hours, during the night or under conditions where children are unreasonably confined to the premises of the employer.

The TDA Conference Report further indicated that the phrase,

* * * work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children * * *

be interpreted in a manner consistent with the intent of Article 4 of ILO Convention No. 182, which states that such work shall be determined by national laws or regulations or by the competent authority in the country involved.

This notice is a general solicitation of comments from the public.

Signed at Washington, DC, this 30th day of July, 2002.

Thomas B. Moorhead,

Deputy Under Secretary for International Labor Affairs.

[FR Doc. 02–19636 Filed 8–2–02; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the ETA 204, Experience Rating Report. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 4, 2002.

ADDRESSES: Edward M. Dullaghan, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S4231, 200 Constitution Ave. NW., Washington, DC, 20210; telephone number (202) 693–2927 (This is not a toll-free number); fax (202) 693–3229; e-mail *edullaghan@doleta.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The data submitted annually on the ETA 204 report enables the Employment and Training Administration to project revenues for the Unemployment Insurance program on a state-by-state basis and to measure the variations in assigned contribution rates which result from different experience rating systems. Used in conjunction with other data, the ETA 204 assists in determining the effects of certain factors (*e.g.*, seasonality, stabilization, expansion, or contraction in employment, etc.) on the unemployment experience of various groups of employers. The data also provide an early signal for potential solvency problems, are useful in analyzing factors which give rise to these potential problems and permit an evaluation of the effectiveness of the various approaches available to correct the detected problems. Further, the data are the basis for determining the Experience Rating Index; the index allows for the evaluation of the extent to which benefits in states are effectively charged, noncharged, and ineffectively charged.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The extension of the Experience Rating Report will allow for the continued calculation of the Experience Rating Index and to continue experience rating analysis and research on a national, regional or state level.

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Experience Rating Report.
OMB Number: 1205–0164.
Affected Public: State Government.
Cite/Reference/Form/etc: ETA 204.
Frequency: Annually.
Total Responses: 53.
Average Time per Response: 15 minutes.
Estimated Total Burden Hours: 14.
Total Burden Cost (operating/maintaining): $350.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 30, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security, Employment and Training Administration.

[FR Doc. 02–19635 Filed 8–2–02; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Calvert Cliffs Nuclear Power Plant, Inc., Calvert Cliffs Nuclear Power Plant, Unit Nos 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License Nos. DPR–53 and DPR–69, issued to Calvert Cliffs Nuclear Power Plant, Inc. (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

Environmental Assessment

Identification of Proposed Action

The proposed action would correct administrative errors in Section 5.6.5, "Core Operating Limits Report (COLR)," of the Technical Specifications (TSs) and Section 2.0, "Environmental Protection Issues," of the Environmental Protection Program (EPP).

The proposed action is in accordance with the licensee's application dated January 31, 2002.

The Need for the Proposed Action

On March 17, 1994, the NRC staff issued Amendment Nos. 186/163 to the licensee. These amendments inadvertently introduced two typographical errors on Page 5.0–36 of the TSs.

Page 2–1 of the EPP states that the effective National Pollution Discharge Elimination System (NPDES) Permit is issued by "the State of Maryland Department of Health and Mental Hygiene." This agency no longer exists; "the Maryland Department of the Environment" is the state agency currently responsible for regulation of matters involving water quality and aquatic biota.

The licensee proposed to correct these administrative errors. The proposed amendments have no impact on actual plant equipment, regulatory requirements, operating practices, or analyses.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the amendments are granted. No changes will be made to the design, licensing bases, or the applicable procedures at the unit. Other than the correction of administrative errors, no other changes will be made to the TSs and the EPP. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Contacted

On May 15, 2002, the NRC staff consulted with the Maryland State official, Richard McLean, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the foregoing environmental assessment, the NRC concludes that the proposed amendment will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to the proposed action, see the licensee's letter dated January 31, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 30th day of July 2002.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–19683 Filed 8–2–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–46280; File Nos. SR–Amex–2002–02, SR–BSE–2002–02, SR–CBOE–2002–02, SR–CHX–2002–06, SR–CSE–2002–02, SR–ISE–2002–06, SR–NASD–2002–08, SR–NYSE–2002–12, SR–PCX–2002–04, SR–Phlx–2002–05)

Self-Regulatory Organizations; American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., International Securities Exchange LLC, National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Changes and Amendments Thereto Relating to Decimal Pricing

July 29, 2002.

I. Introduction

On June 8, 2000, the Securities and Exchange Commission ("Commission"), pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act"),[1] ordered the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the International Securities Exchange, LLC ("ISE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX") and the Philadelphia Stock Exchange, Inc. ("Phlx") ("Participant" or "Participants") to act jointly in planning, discussing, developing, and submitting to the Commission a plan that would begin phasing in the implementation of decimal pricing in equity securities and options on or before September 5, 2000, and to fully implement the conversion to decimal pricing by April 9, 2001.[2] In its June 2000 Order, the Commission also suggested that the Participants discuss the development and implementation of a phase-in plan with interested market participants, including, but not limited to, the Securities Industry Association ("SIA") and its members, the National Securities Clearing Corporation, the Depository Trust and Clearing Corporation ("DTCC"), the Options Clearing Corporation ("OCC"), the Securities Industry Automation Corporation, the Intermarket Trading System Operating Committee, the Options Price Reporting Authority, the Consolidated Tape Association, and the Consolidated Quote Operating Committee (collectively the "Interested Parties"). In its June 2000 Order, the Commission indicated that the Participants' phase-in plan could establish a minimum price variation ("MPV") for quoting equity securities during the conversion, provided that the MPV was set no greater than $0.05 and no less than $0.01. The Commission directed the Participants to submit studies to the Commission two months after full implementation of decimal pricing, analyzing the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum increment for a security ("Study" or "Studies"). The June 2000 Order also directed each Participant, within 30 days after submitting its Study, to file for notice, comment, and Commission consideration, proposed rule changes to permanently establish its choice of the MPVs by which equities and options are quoted on their respective markets. By its terms, the June 2000 Order would remain in effect until the Commission acts on the proposed rule changes filed by the individual Participants pursuant to Section 19(b)(2) of the Act[3] permanently establishing the MPVs by which equities and options are quoted on their respective markets or until otherwise ordered by the Commission.

The NYSE, on behalf of the Participants, submitted to the Commission the Decimals Implementation Plan for the Equities and Options Markets on July 26, 2000 (the "Plan").[4] The Plan indicated that the phase-in of decimal pricing for equities would begin on August 28, 2000, and that decimal pricing would be fully implemented for all equities and options by April 9, 2001. In the Plan, the Participants adopted on a pilot basis a uniform MPV of $0.01 for quoting equity securities.[5] Due to capacity limitations in quoting and trading options, however, the Plan selected uniform MPVs for quoting options that were closer to existing fractional MPVs: $0.05 for quoting equity options quoted under $3.00 and $0.10 for quoting equity options at $3.00 or greater.

As a result of the careful planning, preparation, and coordination among the markets, clearing agencies, vendors, and the securities industry, the phase-in of decimal pricing was completed on schedule and without significant operational problems or trading disruptions. Moreover, preliminary reviews by the Commission's Office of Economic Analysis ("OEA") and Nasdaq indicated that some of the anticipated benefits of decimalization, such as the significant narrowing of quoted spreads, were evident almost immediately. For example, OEA estimated that, from December 2000 to March 2001, quoted spreads in securities listed on the NYSE narrowed an average of 37%. An even more dramatic reduction in quoted spreads was observed in Nasdaq securities, with spreads narrowing an average of 50% following decimalization. The overall narrowing of spreads was consistent with the view that decimalization had the potential to reduce trading costs for investors entering small orders that are executed at or within the quotes.

Nevertheless, the Commission has long recognized that the shift from fractional to decimal prices had the potential to influence market dynamics and trading behavior in ways that could affect the transparency, liquidity, and fairness of the markets. In view of the complexities of some of issues that were raised during the decimal conversion process, therefore, the Commission extended the deadline for submission of the Studies to September 10, 2001.[6]

In general, the Studies addressed the issues the Commission directed the Participants to analyze.[7] For example,

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[1] Section 11A(a)(3)(B) of the Act authorizes the Commission, in furtherance of its statutory directive to facilitate the establishment of a national market system, by rule or order, "to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof." 15 U.S.C. 78k–1(a)(3)(B).

[2] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000) ("June 2000 Order").

[3] 15 U.S.C. 78s(b)(2).

[4] *See* letter from Dennis L. Covelli, Vice President, NYSE, to Annette Nazareth, Director, Division of Market Regulation ("Division"), Commission, dated July 25, 2000.

[5] While the Plan set an MPV of $0.01 for consolidated quotations in equity securities, the Plan did not address the limited amount of stock trading at smaller price increments that had developed over recent years. For example, the last sale tape operated by Nasdaq records trade prices in increments of less than $0.01.

[6] *See* Securities Exchange Act Release No. 44336 (May 22, 2001), 66 FR 29368 (May 30, 2001). The Commission also extended the deadline for the Participants' MPV rule filings to November 5, 2001, and again to January 14, 2002. *See* Securities Exchange Act Release Nos. 44336 (May 22, 2001), 66 FR 29368 (May 30, 2001); and 44846 (September 25, 2001), 66 FR 49983 (October 1, 2001).

[7] *See The Impact of Decimalization on the Nasdaq Stock Market, Final Report to the SEC*, submitted by the Nasdaq Stock Market ("Nasdaq") on behalf of the NASD, dated June 11, 2001 ("Nasdaq Study"); *Decimalization Impact Report*, submitted by the CHX on September 7, 2001 ("CHX Study"); *Decimalization of Trading on the New York Stock Exchange, A Report to the Securities*

Continued

the Studies submitted by the NYSE and Nasdaq confirmed preliminary estimates on the reduction of quoted spreads following decimalization. The NYSE Study found that bid-ask spreads in NYSE-listed stocks fell to less than half their pre-decimalization average size and effective spreads [8] averaged 43% lower. [9] Nasdaq also found that quoted and effective spreads declined for most Nasdaq stocks by an average of about 50%.[10]

Despite the liquidity improvements implied by smaller effective spreads, the Studies offered more mixed conclusions regarding liquidity and transparency. For example, the NYSE Study found that the amounts of buying or selling interest displayed at the quoted prices fell by an average of two-thirds for NYSE-listed securities, and that the cumulative amount of displayed liquidity on the overall limit order book also fell by two-thirds. [11] While the Nasdaq Study also found that the quoted size posted at the best bid or offer in Nasdaq securities also fell by about two-thirds, the cumulative displayed depth (measured by a specific distance from the bid-ask mid-point) fell by a much smaller percentage.[12] Moreover, Nasdaq found that there was no evidence to indicate that liquidity for large institutional investors had diminished, although there was evidence that large institutional orders may take longer to be "worked."§ [13]

The Studies also discussed a number of other issues related to the decimal conversion experience. For example, the NYSE and Nasdaq Studies indicated that, while decimalization had increased quote traffic in their stocks, these increases were not of a magnitude to strain systems capacity.[14] In addition, while some of the Studies also discussed some of the reported negative effects of decimalization, such as complaints by some institutional traders that professional traders were using penny increments to trade ahead of large orders (so-called "penny jumping"),[15] none of the Studies offered compelling empirical evidence to suggest that the $0.01 MPV for stocks [16] or the $0.05 and $0.10 MPVs for options [17] should be changed.

The Participants individually filed proposed rule changes to implement the Plan, and individually submitted Studies as required by the Commission's June 2000 Order. As set forth below, the Participants submitted proposed rule changes necessary to make permanent the pilot rule changes previously adopted to implement decimal pricing.

II. Description of the Proposed Rule Changes

SR–Amex–2002–02

On January 14, 2002, the Amex filed SR–Amex–2002–02 to amend its equities and options rules to make permanent the pilot rules adopted in SR–Amex–2000–41.[18] On March.18, 2002, the Amex amended the proposed rule change.[19] The Amex again amended the proposal on April 18, 2002.[20] On May 8, 2002, notice of the proposed rule change, as amended, was published in the **Federal Register**.[21] The Commission received no comments on the proposal.

The Amex proposes to make permanent the MPVs for equities and options established on a pilot basis in SR-Amex-2000–41[22] of: $0.01 MPV for equities, exchange traded funds, and trust issued receipts; $0.05 MPV for option issues quoted under $3 a contract; and $0.10 MPV for option issues quoted at $3 a contract or greater. The proposal also deletes any remaining references to quoting in fractions.

SR–BSE–2002–02

On February 15, 2002, the BSE filed SR–BSE–2002–02 to amend its rules to delete all references to fractional pricing and to permanently the pilot rules established in SR–BSE–2000–11.[23] On March 1, 2002, the BSE amended the proposed rule change.[24] On March 18, 2002, notice of the proposed rule change, as amended, was published in

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and Exchange Commission, submitted by the NYSE on September 7, 2001 ("NYSE Study"); *Decimal Pricing Impact Study for Equities and Options*, submitted by the Phlx on September 7, 2001 ("Phlx Study"); *Report on the Impact of Decimal Pricing*, submitted by the CBOE on September 10, 2001 ("CBOE Study"); letter from Jeffrey T. Brown, CSE, Vice President Regulation and General Counsel, to Jonathan G. Katz, Secretary for the Commission, dated September 10, 2001 ("CSE Study"); letter from David Krell, ISE, President & Chief Executive Officer, to Jonathan G. Katz, Secretary for the Commission, dated September 10, 2001 ("ISE Study"); *Report on Decimal Pricing*, submitted by the PCX on September 10, 2001 ("PCX Study"); *The Impact of Decimalization at the Boston Stock Exchange*, submitted by the BSE on September 26, 2001; and *The Impact of Decimalization, Final Report to the SEC*, dated September 10, 2001, but submitted on October 25, 2001, due to the effects on the Amex from the events of September 11, 2001 ("Amex Study").

[8] The quote spread is the difference between the national best ask price and the national best bid price. The effective spread is twice the difference between the midpoint of the bid-ask spread and the price paid (or received) by investors, and accounts for trading that occurs at prices other than the quoted prices. Effective spreads are generally viewed as giving a more accurate view of trading costs and liquidity than do quoted spreads.

[9] *See* NYSE Study at 1.

[10] *See* Nasdaq Study at i.

[11] *See* NYSE Study at 2.

[12] *See* Nasdaq Study at i.

[13] *See* Nasdaq Study at 2.

[14] *See* NYSE Study at 1, 24, and 25, and Nasdaq Study at 1. While the NYSE Study found a very large rise in the number of transactions with a reduction in the size of limit orders and an increase in order cancellations, the Nasdaq Study found little change in the number of trades or share volume in Nasdaq stocks. *See* NYSE Study at 2, and Nasdaq Study at i, respectively.

[15] *See, e.g.*, NYSE Study at 2.

[16] Some of the Studies that cited apparent negative effects from decimalization in terms of market liquidity, transparency, and trading behavior (such as penny jumping) suggested that these effects would be exacerbated if the MPV for quoting stocks was reduced to less than $0.01. Moreover, these Studies opined that the use of "sub-penny" quotes across markets would likely lead to a large increase in the number of trades, cancellations, and quotes that would imply a need for substantially higher communications capacity and infrastructure. *See, e.g., id.*, at 3. The Commission has separately solicited public comments on the market structure and investor protection issues that could be raised if the current limited extent of sub-penny quoting and trading in stocks were significantly expanded. *See* Securities Exchange Act Release No. 44568 (July 18, 2001), 66 FR 38390 (July 24, 2001); as extended by Securities Exchange Act Release No. 44845 (September 25, 2001), 66 FR 49877 (October 1, 2001). The Commission received a total of 29 comment letters on this subject.

[17] Because the $0.05 and $0.10 MPVs selected by the Participants for options during the conversion process were not significantly different from the fractional MPVs used prior to the conversion, the studies submitted by the options exchanges could cite little or no evidence based on post-decimalization trading to argue for retaining or changing the decimal MPVs for options. *See generally* Amex Study, CBOE Study, ISE Study, PCX Study, and Phlx Study. The Amex Study, however, provided findings from a penny pilot simulation (based on a theoretical $0.01 MPV for options) that the Amex believed counseled against penny increments in options at this time. *See* Amex Study at 18.

[18] *See* Securities Exchange Act Release No. 43231 (August 30, 2000), 65 FR 54574 (September 8, 2000) (SR–Amex–2000–41).

[19] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Alton S. Harvey, Assistant Director, Division, Commission, dated March 14, 2002 ("Amendment No. 1"). In Amendment No. 1, the Amex made technical corrections to the proposed rule text.

[20] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Alton S. Harvey, Assistant Director, Division, Commission, dated April 17, 2002 ("Amendment No. 2"). In Amendment No. 2, the Amex: (1) deleted the term "Trading Increment" from Amex Rule 1000, Commentary .03(e) and Amex Rule 1000A, Commentary, .02(e); and (2) amended Amex Rule 952(a) to replace the term "trading increments" with "quoting increments."

[21] *See* Securities Exchange Act Release No. 45858 (May 1, 2002), 67 FR 30984.

[22] *See supra* note 15.

[23] *See* Securities Exchange Act Release No. 43255 (September 6, 2000), 65 FR 54574 (September 14, 2000) (SR–BSE–2000–11).

[24] *See* letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Alton S. Harvey, Chief, Office of Market Watch, Division, Commission, dated February 28, 2002 ("Amendment No. 1"). In Amendment No. 1, the BSE asked that the proposed rule change be considered pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

the **Federal Register**.[25] The Commission received no comments on the proposal.

SR–CBOE–2002–02

On January 14, 2002, the CBOE filed SR–CBOE–2002–02 to permanently adopt the pilot MPV rules currently in place on the CBOE established in SR–CBOE–2000–07.[26] On March 20, 2002, notice of the proposed rule change was published in the **Federal Register**.[27] The Commission received no comments on the proposal.

The CBOE's MPVs established in CBOE–2000–07 are: $0.05 MPV for option issues quoted under $3 a contract; $0.10 MPV for option issues quoted at $3 a contract or greater; and a $0.01 MPV for the quoting of CBOE's equity products. The proposed rule change would also provide that future changes to the CBOE's MPVs would be handled as they were handled before the conversion to decimal pricing, namely that the CBOE Board of Directors may determine to change the minimum increments and that the CBOE will designate any such change as a stated policy, practice, or interpretation with respect to the administration of the CBOE minimum increment rule for bids and offers (CBOE Rule 6.42) within the meaning of Section 19(b)(3)(A) of the Exchange Act[28] and will file a rule change for effectiveness upon filing with the Commission. Lastly, the CBOE also seeks to formally eliminate CBOE Rule 15.11 (Mandatory Year 2000 Testing) and CBOE Rule 15.22 (Mandatory Decimal Pricing Testing), both of which have expired.

SR–CHX–2002–06

On March 1, 2002, the CHX filed SR–CHX–2002–06 to make permanent the pilot rule changes established in SR–CHX–2000–25[29] during the securities industry transition to a decimal pricing environment. On March 22, 2002, notice of the proposed rule change was published in the **Federal Register**.[30] The Commission received no comments on the proposal.

The CHX proposal would: (1) Make permanent the CHX's MPV of $0.01; (2) delete references to the procedures and conventions that were used during the conversion from quoting in fractions to quoting in decimals; and (3) remove all references to fractional price increments.[31]

SR–CSE–2002–02

On March 4, 2002, the CSE filed SR–CSE–2002–02 to make permanent the pilot rule changes established in SR–CSE–2000–01[32] and eliminate references to fractional price variations in stocks traded on the CSE. On March 18, 2002, notice of the proposed rule change was published in the **Federal Register**.[33] The Commission received no comments on the proposal.

The CSE proposes to activate the provisions of CSE Rules 11.3(a) and (c) to eliminate Rules 11.3(a) and (c). With regard to all equity securities, CSE Rule 11.3 will reflect only decimal pricing upon approval of this proposed rule change.

SR–ISE–2002–06

On February 12, 2002, the ISE filed SR–ISE–2002–06 to make permanent the pilot rule changes established in SR–ISE–2001–14[34] setting forth its current minimum pricing increments for quotations as $0.05 for options trading at less than $3.00 and $0.10 for options trading at $3.00 or more. On March 18, 2002, notice of the proposed rule change was published in the **Federal Register**.[35] The Commission received no comments on the proposal.

SR–NASD–2002–08

On January 15, 2002, the NASD, through its subsidiary Nasdaq, filed SR–NASD–2002–08 to make permanent the pilot rule changes established in SR–NASD–2001–07.[36] On March 28, 2002, Nasdaq amended the proposed rule change.[37] On April 22, 2002, notice of the proposed rule change, as amended, was published in the **Federal Register**.[38] The Commission received no comments on the proposal.

The proposed rule change would amend NASD Rule 4613 to permanently adopt a $0.01 minimum quotation increment for Nasdaq securities. The proposed rule change would also permit Nasdaq to continue to display and disseminate quotations in Nasdaq securities in decimal-based increments to two places beyond the decimal point (*i.e.*, to the penny). This proposed rule change again reminds market participants that decimal quotations submitted to Nasdaq that do not comport with the penny minimum quotation increment standard will be rejected by Nasdaq systems.

SR–NYSE–2002–13

On March 5, 2002, the NYSE filed SR–NYSE–2002–13 to make permanent the pilot rules established in (SR–NYSE–2000–22),[39] and to amend its rules to eliminate references to fractional pricing increments and to make such rules compatible with quoting in decimals. On March 20, 2002, notice of the proposed rule change was published in the **Federal Register**.[40] The Commission received no comments on the proposal.

In SR–NYSE–2000–22,[41] the NYSE established an MPV of $0.01 for equities. In SR–NYSE–2002–13, the NYSE proposes to continue the MPV for equities of $0.01. The NYSE proposes to delete references to quoting in fractions that were retained in NYSE rules to accommodate securities that continued quoting in fractions during the phase in of full decimalization.

SR–PCX–2002–04

On January 15, 2002, the PCX filed SR–PCX–2002–04 to permanently adopt the pilot rule changes the PCX made in SR–PCX–2000–23[42] and SR–PCX–2001–39.[43] On March 18, 2002, notice of the proposed rule change was published in the **Federal Register**.[44] The Commission received no comments on the proposal. The PCX is not making

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[25] *See* Securities Exchange Act Release No. 45537 (March 12, 2002), 67 FR 12067.

[26] *See* Securities Exchange Act Release No. 43238 (August 31, 2000), 65 FR 54582 (September 8, 2000) (SR–CBOE–2000–07).

[27] *See* Securities Exchange Act Release No. 45543 (March 12, 2002), 67 FR 13029.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] *See* Securities Exchange Act Release No. 43256 (September 6, 2000), 65 FR 55659 (September 14, 2000) (SR–CHX–2000–25).

[30] *See* Securities Exchange Act Release No. 45585 (March 18, 2002), 67 FR 13385.

[31] *See supra* note 17. SR–CHX–2000–25 contained language that sought to remove fractional references automatically once the transition to decimal trading had been completed. SR–CHX–2002–06 recognizes that that automatic removal was not an available alternative and formally removes the fractional references from the Exchange's rules.

[32] *See* Securities Exchange Act Release No. 43408 (October 3, 2000), 65 FR 60708 (October 12, 2000) (SR–CSE–2000–01).

[33] *See* Securities Exchange Act Release No. 45538 (March 12, 2002), 67 FR 12069.

[34] *See* Securities Exchange Act Release No. 44349 (May 24, 2001), 66 FR 9617 (May 31, 2001) (SR–ISE–2001–14).

[35] *See* Securities Exchange Act Release No. 45541 (March 12, 2002), 67 FR 12071.

[36] *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001) (SR–NASD–2001–07).

[37] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated March 28, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule text.

[38] *See* Securities Exchange Act Release No. 45763 (April 16, 2002), 67 FR 19608.

[39] *See* Securities Exchange Act Release No. 43230 (August 30, 2000), 65 FR 54589 (September 8, 2000) (SR–NYSE–2000–22).

[40] *See* Securities Exchange Act Release No. 45547 (March 12, 2002), 67 FR 13031.

[41] *See supra* note 36.

[42] *See* Securities Exchange Act Release No. 43369 (September 27, 2000), 65 FR 59485 (October 5, 2000) (SR–PCX–2000–23).

[43] *See* Securities Exchange Act Release No. 45077 (November 19, 2001), 66 FR 59280 (November 27, 2001) (SR–PCX–2001–39) (eliminating all references to fractional pricing from its rules).

[44] *See* Securities Exchange Act Release No. 45544 (March 12, 2002), 67 FR 12074.

any changes to its rules; rather, the PCX is permanently adopting the rule changes that were initially implemented on a pilot basis.

SR–Phlx–2002–05

On January 14, 2002, the Phlx filed SR–Phlx–2002–05 with the Commission make permanent the pilot rule changes established in SR–Phlx–2000–05[45] that amended certain Phlx rules and Phlx Options Floor Procedure Advices and Order and Decorum Regulations ("Options Advices"), and to remove references to fractional pricing and references dual pricing in fractions and in decimals. On March 8, 2002, the Phlx amended the proposed rule change.[46] On March 22, 2002, notice of the proposed rule change, as amended, was published in the **Federal Register**.[47] The Commission received no comments on the proposal.

The Phlx proposes to continue the $0.01 MPV for equities, and the $0.05 and $0.10 MPVs for options and Exchange-Traded Fund Shares. The Phlx proposes to delete references to fractions and dual pricing from its options rules and Options Advices. According to the Phlx, the proposed amendments are non-substantive, technical changes for the purpose of conforming Phlx rules to the development of full decimalization in the securities industry.

This order approves all the proposed rule changes, as amended.

III. Discussion

The Commission has reviewed carefully the proposed rule changes, as amended, and the Studies, and finds, for the reasons set forth below, that the proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and a registered national securities association, and, in particular, with the requirements of Sections 6(b)(5)[48] and 15A(b)(6)[49] of the Act. Section 6(b)(5) of the Act[50] requires the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 15A(b)(6) of the Act[51] imposes the same requirements on a registered national securities association.

The Commission finds that the proposed rule changes are consistent with these Sections of the Act.[52] The Commission also finds that the proposed rule changes accurately and reasonably implement the requirements of the June 2000 Order.

Specifically, the Commission finds that the Participants complied with the June 2000 Order by jointly developing a phase-in plan for the implementation of decimal pricing, by submitting the Studies evaluating the impact of decimalization on the marketplace, and by filing proposed rule changes to permanently adopt pilot rules that were established during the initial phase-in of decimal pricing. After careful review of the Studies, discussions with the Participants and the with the Interested Parties, and complete review of the proposed rule changes, as amended, the Commission finds that the proposed rule changes to make permanent the pilot rules established during the phase-in of decimal pricing by the Participants, and to remove any remaining references to fractional pricing, are consistent with the Act.

The Commission notes that the Participants selected the MPVs, and agreed to abide by the MPV schedule set forth in the Plan while the Plan remained in effect. Specifically, the Participants chose an MPV of $0.01 MPV for equity issues, a $0.05 MPV for option issues quoted under $3.00 a contract, and a $0.10 MPV for option issues quoted at $3.00 a contract or greater. Notably, the Studies did not provide any compelling empirical evidence to suggest that the Commission should require the Participants to alter the MPVs they selected and used during implementation. Further, the Commission notes that the proposed rule changes described herein represent each Participant's individual choice permanently establishing the MPVs by which equities and/or options are quoted on its market.

Moreover, the Commission notes that, since the full implementation of decimal pricing, there have been no significant systems or capacity problems as a result of the conversion from quoting in fractions to decimals. The Commission received no comment letters on any of the proposed rule changes to make permanent the pilot proposed rule changes that the Participants established during the conversion to decimal pricing.

The Commission believes that the full implementation of decimal pricing, as represented by the proposed rule changes set forth herein, is consistent with the Act, because decimal pricing promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, is designed to prevent fraudulent and manipulative acts and practices, and, in general, protects investors and the public interest.[53] The Commission acknowledges that, as the marketplace continues to evolve, and unforeseen issues arise, additional rule changes may be necessary to ensure the operation of a free and open market and a national market system in a decimals pricing environment. The Commission fully expects that the Participants will continue to review their rules and will make any changes necessary to further the public interest.

Moreover, the Commission notes that, while some Participants have rules that would permit changes to their MPVs by filing proposed rule changes under Section 19(b)(3)(A) of the Act,[54] the Commission believes if a proposed change raised significant capacity concerns or other issues that had the potential to disrupt the orderly operation of the national market system, it would not be appropriately filed under Section 19(b)(3)(A) of the Act.[55] Accordingly, any proposed change to a Participant's MPV that has the potential to raise such concerns should be implemented only after notice, comment, and Commission

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[45] *See* Securities Exchange Act Release No. 43421 (October 6, 2000), 65 FR 61207 (October 16, 2000) (SR–Phlx–;2000–05).

[46] The Phlx submitted a new Form 19b–4, which replaced and superseded the original filing in its entirety.

[47] *See* Securities Exchange Act Release No. 45581 (March 18, 2002), 67 FR 12067.

[48] 15 U.S.C. 78f(b)(5).

[49] 15 U.S.C. 78o–3(b)(6).

[50] 15 U.S.C. 78f(b)(5).

[51] 15 U.S.C. 78o–3(b)(6).

[52] In approving these rules, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[53] 15 U.S.C. 78f(b)(5); 15 U.S.C. 78o–3(b)(6).

[54] 15 U.S.C. 78s(b)(3)(A).

[55] *Id.* Section 19b(3)(C) of the Act provides that "the Commission summarily may abrogate the change in the rules of the self-regulatory organization made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection and reviewed in accordance with the provisions of Section (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title." 15 U.S.C. 78s(b)(3)(C).

consideration pursuant to Section 19(b)(2) of the Act.[56]

Finally, the Commission notes that this approval order marks the official end of the decimalization phase-in plan, established in the June 2000 Order. Any antitrust immunity conferred upon the Participants by the June 2000 Order is terminated as of the effective date of this order.[57]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[58] that the proposals SR–Amex–2002–02, SR–BSE–2002–02, SR–CBOE–2002–02, SR–CHX–2002–06, SR–CSE–2002–02, SR–ISE–2002–06, SR–NASD–2002–08, SR–NYSE–2002–12, SR–PCX–2002–04, and SR–Phlx–2002–05 be and hereby are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[59]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19666 Filed 8–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46274; File No. SR–CSE–2001–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Cincinnati Stock Exchange, Inc. Amending CSE Rule 12.6, Customer Priority, to Require Designated Dealers to Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

July 29, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 30, 2001, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 22, 2002, the CSE filed Amendment No. 1 to the proposal.[3] On April 26, 2002, the CSE filed Amendment No. 2 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change for a pilot period until September 30, 2002.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CSE Rule 12.6, Customer Priority, by adding new Interpretation .02, which will require a CSE Designated Dealer ("Specialist") to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order. Under the rule, the Specialist will be required to better a customer limit order at the NBBO by at least one penny and at a price outside the current NBBO by at least the nearest penny increment. The Exchange is requesting approval of the proposed rule change on a pilot basis, through September 30, 2002. The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Chapter XII

Rule 12.6 Customer Priority

(a)–(c) No change.

Interpretations and Policies:

.01—No change.

.02(a)—A Designated Dealer shall be deemed to have violated Rule 12.6 if, while holding a customer limit order (as rounded to a penny increment) representing the NBBO, the Designated Dealer, for his own account, trades with an incoming market or marketable limit order at a price which is less than one penny better than the price of such customer limit order (not the quoted price) held by such Designated Dealer.

.02(b)—A Designated Dealer shall be deemed to have violated Rule 12.6 if, while holding a customer limit order (as rounded to a penny increment) at a price outside the current NBBO, the Designated Dealer, for his own account, trades with an incoming market or marketable limit order at a price which is less than the nearest penny increment to the actual price of the customer limit order (not the quoted price) held by such Designated Dealer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 12.6[5] by adding an interpretation to the rule covering the trading of Nasdaq National Market ("NNM") and SmallCap securities in subpenny increments.[6] New Interpretation .02 to the Rule will require a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the

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[56] 15 U.S.C. 78s(b)(2).

[57] In issuing the June 2000 Order, the Commission instructed the Participants to act jointly in planning, discussing, developing, and submitting to the Commission the Plan, as discussed herein. *See supra* note 1. The June 2000 Order did not address: (a) any joint or other conduct that occurred prior to the issuance of the June 2000 Order or prior orders; and (b) any joint or other conduct occurring after June 8, 2000, that was not ordered or requested by the June 2000 Order.

[58] 15 U.S.C. 78s(b)(2).

[59] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] In Amendment No. 1, the CSE requested that the proposal be converted to pilot status and that the pilot expire on September 30, 2002. *See* Letter from Jeffrey T. Brown, Senior Vice President and General Counsel, CSE, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC (April 19, 2002).

[4] In Amendment No. 2, the CSE requested that additional proposed rule language be added to the proposal so that the rule would apply in instances when the customer limit order is not at the national best bid or offer ("NBBO"), rather than just instances when the customer limit order is at the NBBO. *See* Letter from Jeffrey T. Brown, Senior Vice President and General Counsel, CSE, to Katherine England, Assistant Director, Division, SEC (April 25, 2002).

[5] CSE Rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such a member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

[6] In conjunction with this proposed rule change, the CSE is requesting that the Commission grant exemptive relief pursuant to Rules 11Ac1–1(e)(17 CFR 240.11Ac1–1(e)), 11Ac1-2(g) (17 CFR 240.11Ac1–2(g)) and 11Ac1–4(d) (17 CFR 240.11Ac1–4(d)) to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination ("Exemptive Request"). *See* Letter to Annette Nazareth, Director, Division of Market Regulation ("Division"), Commission, from Jeffrey T. Brown, General Counsel, CSE (November 27, 2001).

NBBO) or by at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.[7]

The purpose of the new Interpretation is to prevent a Specialist from taking unfair advantage of customer limit orders held by that Specialist by trading ahead of such orders with incoming market or marketable limit orders. Notwithstanding the fact that a Specialist may price-improve incoming orders by providing prices superior to that of customer limit orders it holds, customers should have a reasonable expectation to be filled at their limit order prices. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the customer limit order prices (not the customers' quoted prices) it holds.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange requests that this rule be approved on a pilot basis until September 30, 2002, to be co-extensive with: (a) The conditional temporary exemptive relief requested in the Exemptive Request [10]; (b) the Chicago Stock Exchange's ("CHX's") similar pilot related to customer limit order protection;[11] and (c) the National Association of Securities Dealers, Inc.'s similar pilot related to customer limit order protection.[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CSE–2001–06 and should be submitted by August 26, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[13] and, in particular Section 6(b)(5) of the Act.[14]

Simultaneous with the filing of this proposal, the Commission received a request for exemptive relief submitted by the Exchange that would allow the Exchange, Exchange members, and vendors that disseminate Exchange quote information to display and disseminate their quotes for NNM and SmallCap securities in penny increments, while trading in sub-penny increments.[15] By letter dated July 26, 2002, the Division, pursuant to delegated authority under Rules 11Ac1–1(e),[16] 11Ac1–2(g),[17] and 11Ac1–4(d)[18] under the Act, granted a conditional temporary exemption to the Exchange, Exchange members, and vendors that disseminate CSE quote information to permit them to display and disseminate their quotes for NNM and SmallCap securities in rounded, penny increments without a rounding identifier.[19] The exemption expires September 30, 2002. The Commission believes that the proposed rule change should help to provide protection to customer limit orders in the subpenny trading environment by helping to ensure that such orders will continue to have access to market liquidity ahead of Exchange Specialists in appropriate circumstances.

The Commission finds good cause for approving the proposed rule change on a pilot basis prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to continue to provide protection to customer limit orders in subpenny increments for NNM and SmallCap securities. Moreover, the Commission believes that approving the proposal on an accelerated basis should help to ensure fair competition among the CSE, the CHX, and the Nasdaq Stock Market, Inc.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR-CSE–2001–06) is hereby approved on an accelerated basis for a pilot period ending on September 30, 2002.

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[7] Interpretation .01 to Rule 12.6 provides that "[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer."

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, General Counsel, CSE (July 26, 2002) ("Exemptive Relief Letter"). The letter outlines several other conditions to trading in subpenny increments. The Commission will examine data provided by the CSE as specified in the Exemptive Relief Letter and information provided by all self-regulatory organizations as required by the Commission's order concerning decimals implementation. *See* Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000). The Commission intends to reconsider the position expressed in its letter (July 26, 2002) before the expiration of the exemption on September 30, 2002.

[11] *See* Exchange Act Release No. 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002).

[12] *See* Exchange Act Release No. 45762 (April 16, 2002), 67 FR 19787 (April 23, 2002).

[13] In granting approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Exemptive Request, *supra* note 6.

[16] 17 CFR 240.11Ac1–1(e).

[17] 17 CFR 240.11Ac1–2(g).

[18] 17 CFR 240.11Ac1–4(d).

[19] *See* Exemptive Relief Letter, *supra* note 10.

[20] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19616 Filed 8–2–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of United/US Airways Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice requesting comments.

SUMMARY: United Air Lines and US Airways have submitted agreements to the Department for review under 49 U.S.C. 41720. That statute requires certain types of agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date but does not require Department approval for the agreements. The Department may extend the waiting period for either or both of the United/US Airways agreements at the end of the thirty-day period or take other appropriate action. The Department is inviting interested persons to submit comments that would assist the Department in determining whether further action should be taken.

DATES: Any comments should be submitted by August 15, 2002.

ADDRESSES: Comments must be filed with Randall Bennett, Director, Office of Aviation Analysis, Room 6401, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file three copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: Congress enacted a provision, 49 U.S.C. 41720, that requires certain kinds of joint venture agreements among major U.S. passenger airlines to be submitted to the Department at least thirty days before they can be implemented. This requirement covers code-sharing agreements, long-term wet leases involving a substantial number of aircraft, and agreements concerning frequent flyer programs. The requirement would also cover certain other significant cooperative working arrangements designated by regulation. By publishing a notice in the **Federal Register**, we may extend the waiting period by 150 days with respect to a code-sharing agreement and by sixty days for the other types of agreements covered by the advance-filing requirement. At the end of the waiting period (either the thirty-day period or any extended period implemented by us), the parties are free to implement their agreement. We may also allow the joint venture agreement to be implemented before the thirty-day waiting period expires.

The statute does not require the parties to obtain our approval before they implement an agreement. To block two airlines from implementing an agreement, we would normally need to issue an order under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) in a formal enforcement proceeding that determines that the agreement's implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section.

We have not adopted regulations expanding the scope of the filing requirement or establishing procedures for our review of agreements submitted under 49 U.S.C. 41720.

In the past we have informally conducted the reviews authorized by 49 U.S.C. 41720. The airline parties to a joint venture agreement have filed the agreement directly with the Department staff that reviews them, we have not established a docketed proceeding on any such agreement, and we have not sought comments from other parties. In determining whether to extend the waiting period (or start a formal proceeding under section 41712), we have focused on whether the agreement would reduce competition. Our review is analogous to the review of major mergers and acquisitions conducted by the Justice Department and the Federal Trade Commission under the Hart-Scott-Rodino Act, 15 U.S.C. 18a, since we are considering whether we should institute a formal proceeding for determining whether an agreement would violate section 41712. We consult the Justice Department as part of our review, and we avoid unnecessary duplication of efforts by the Justice Department and this Department. If an agreement appears to violate the antitrust laws, the Justice Department may file suit and seek injunctive relief against the parties to the agreement.

On July 25 United and US Airways submitted code-share and frequent flyer program reciprocity agreements for review under 49 U.S.C. 41720. We still intend to conduct an informal review, but, due to the public interest in these agreements, we want to give interested persons an opportunity to submit comments. The views of outside parties may assist us in determining whether to extend the waiting period and whether either agreement presents serious issues under section 41712.

Since the statute requires us to decide within thirty days of filing to determine whether to extend the waiting period, we request that any comments be filed by August 15. To assist the commenters, United and US Airways have prepared a redacted copy of the agreements that will be available for review and copying in room PL–401 of the Nassif Building, located in the northeast corner on the Plaza level, 400 7th St. SW., Washington, DC. We are making the copy available there, even though this case is not docketed, because it is readily accessible to the public and has a copying machine for public use.

Issued in Washington, DC on August 1, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–19810 Filed 8–1–02; 2:33 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver Of Aeronautical Land-use Assurance Capital Airport, Springfield, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale/exchange of the airport property. The proposal consists of Parcel 16–3–F1, a 3.169 acre portion of Parcel 16–3–F, and Parcel 14–1, a 0.636 acre portion of Parcel 14. Presently the land is vacant an used as open land for control of FAR Part 77 surfaces and compatible land use and is not needed for aeronautical use, as shown on the Airport Layout Plan. Parcel 16–3–F (57.17 acres) was acquired in 1970 with partial Federal participation. Of the original 57.17 acres, 44.46 acres was purchased with Federal Participation. 12.71 acres of the original 57.17-acre parcel have been

[21] 17 CFR 200.30–3(a)(12).

previously released from Federal obligations to the Illinois Department of Transportation for highway Right-of-Way. Parcel 14 (215.70 acres) was acquired in 1946 without federal participation. Of the original 215.70 acres, 9.68 acres of this parcel have been previously released from Federal obligations to the Illinois Department of Transportation for highway Right-of-Way. It is the intent of the Springfield Airport Authority (SAA) to exchange Parcel 16–3–F1 for Parcel 14–1 (collectively 3.805 Acres) with the City of Springfield for the R.O.W. currently owned by the City of Springfield (1.958 Acres) that is located adjacent to the southeast quadrant General Aviation development area. While the acreages exchanged are not equal, the benefit the SAA will obtain from the acquisition of the 1.958 acres of R.O.W will outweigh the shortfall in releasing 3.805 acres, as the new acquisition will allow for further General Aviation development in the south quadrant area. This notice announces that the FAA intends to authorize the disposal/exchange of the subject airport property at Capital Airport, Springfield, IL. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 4, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Pur, Program Manager, 2300 East Devon Avenue, Des Plaines, IL, 60018. Telephone Number 847–294–7527/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location by appointment or at the Springfield Airport Authority, Capital Airport, 1200 Capital Airport Drive, Springfield, IL 62707.

SUPPLEMENTARY INFORMATION: The following legal description of the proposed land sale is:

Parcel 16–3–F1 (Part of Original Tract 16–3–F)

Part of the North Half of the Southwest Quarter of Section 16, Township 16 North, Range 5 West of the Third Principal Meridian, further described as follows:

Commencing at an axle marking the Southwest Corner of the North Half of the Southwest Quarter of said Section 16; thence North 00 degrees 54 minutes 59 seconds West, 639.06 feet along the west line of said Southwest Quarter, Section 16 to the Point of Beginning; thence North 00 degrees 54 minutes 59 seconds West, 234.84 feet along said west line; thence South 53 degrees 49 minutes 46 seconds East, 1080.74. feet; thence along a tangential curve to the left having a radius of 260.00 feet, arc length of 204.84 feet and a chord which bears South 76 degrees 23 minutes 58 seconds East, 199.58 feet; thence North 81 degrees 01 minutes 50 seconds East, approximately 294.57 feet to the west line of the Northeast Quarter of the Southwest Quarter of said Section 16, thence south along the west line on the Northeast Quarter of the Southwest Quarter of said Section 16, approximately 80.80 feet; thence South 81 degrees 01 minutes 50 seconds West, approximately 283.22 feet; thence along a tangential curve to the right having a radius of 340.00 feet, arc length of 267.87 and a chord which bears North 76 degrees 23 minutes 58 seconds West, 260.99 feet; thence North 53 degrees 49 minutes 46 seconds West, 797.21 feet; thence South 89 degrees 04 minutes 04 seconds West, 177.94 feet to the Point of Beginning. containing approximately 3.169 acres, more or less. Said parcel also being shown by the plat attached hereto and made a part hereof.

Parcel 14–1 (Part of Original Tract 14)

Part of the North Half of the Southwest Quarter of Section 16, Township 16, North, Range 5 West of the Third Principal Meridian, further described as follows:

Commencing at an axle marking the Southwest Corner of the North Half of the Southwest Quarter of said Section 16; thence North 00 degrees 54 minutes 59 seconds West, 639.06 feet along the west line of said Southwest Quarter, Section 16; thence North 00 degrees 54 minutes 59 seconds West, 234.84 feet along said west line; thence South 53 degrees 49 minutes 46 seconds East, 1080.74 feet; thence along a tangential curve to the left having a radius of 260.00 feet, arc length of 204.84 feet and a chord which bears South 76 degrees 23 minutes 58 seconds East, 199.58 feet; thence North 81 degrees 01 minutes 50 seconds East, approximately 294.57 feet to the west line of the Northeast Quarter of the Southwest Quarter of said Section 16 also being the Point of Beginning; thence continuing North 81 degrees 01 minutes 50 seconds East, approximately 329.52 feet to a point on the southwesterly right-of-way line of Relocated Township Road 810; thence along said southwesterly right-of-way line, along a non-tangent curve to the right having a radius of 750.09 feet, arc length of 82.65 feet and a chord which bears South 23 degrees 24 minutes 08 seconds East, 82.61 feet; thence South 81 degrees 01 minutes 50 seconds West, approximately 361.45 feet to the west line of the Northeast Quarter of the Southwest Quarter of said Section 16; thence north along the west line of the Northeast Quarter of the Southwest Quarter of said Section 16, 80.80 feet more or less to the point of Beginning. Containing 0.636 acres, more or less. Said parcel is shown by the plat attached hereto and made a part hereof.

This legal description does not represent a boundary survey and is based on a suggested land description provided by the SAA.

Issued in Des Plaines, Illinois on July 10, 2002.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 02–19681 Filed 8–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Release of Federal Property at Columbia Metropolitan Airport, Columbia, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Richland-Lexington Airport District to waive the requirement that a 3.95 acre parcel of Federal property, located at the Columbia Metropolitan Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before September 4, 2002.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Aimee A. McCormick, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Frank Manning, General Council for Richland-Lexington Airport District at the following address:

125–A Summer Lake Drive

West Columbia, SC 29170

FOR FURTHER INFORMATION CONTACT: Aimes McCormick, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7153. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Richland-Lexington Airport District to release 3.95 acres of Federal property at the Columbia Metropolitan Airport. The property will be released for purchase of compatible, industrial development. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Richland-Lexington Airport District.

Issued in Atlanta, Georgia on July 19, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–19676 Filed 8–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Delta County Airport, Escanaba, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use. There are no impacts to the airport by allowing the airport to dispose of the property. Parcel 63 was acquired April 1978. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 4, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–650.6, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7281. Documents reflecting this FAA action may be reviewed at this same location or at Mr. Richard Severson (Airport Manager), Delta County Airport, 3300 Airport Road, Escanaba, Michigan 49829.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property:

The Northwest ¼ Southwest ¼ of Section 1, T38N, R23W, City of Escanaba, Delta County, Michigan.

This notice announces that the FAA intends to authorize the disposal of the subject airport property at Delta County Airport, Escanaba, Michigan.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with the FAA's Policy and Procedures Concerning the Use of Airport Revenue.

Issued in Belleville, Michigan, July 25, 2002.

Arlene B. Draper,

Acting Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 02–19680 Filed 8–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Opportunity for Public Comment on Surplus Property Release at Georgetown County Airport, Georgetown, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Georgetown County Airport Commission to waive the requirement that a 5.0-acre parcel of surplus property, located at the Georgetown County Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before September 4, 2002.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Aimee A. McCormick, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to A.J. Rigby, Chairman of the Georgetown County Airport Commission at the following address: 302 Sundial Drive, PO Box 3757, Pawley's Island, SC 29585.

FOR FURTHER INFORMATION CONTACT: Aimee McCormick, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7153. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Georgetown County Airport Commission to release 5.0 acres of surplus property at the Georgetown County Airport. The property will be purchased to construct a manufacturing plant. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Georgetown County Airport Commission.

Issued in Atlanta, Georgia on July 19, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–19679 Filed 8–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–47]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary

is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91.

Issued in Washington, DC on July 31, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–11900.
Petitioner: AMSAFE Aviation.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To permit AMSAFE to issue export airworthiness approvals for class II and class III products manufactured by AMSAFE Aviation UK in the United Kingdom under AMSAFE's technical standard order authorizations. *Grant, 07/19/2002, Exemption No. 7354A.*

Docket No.: FAA–2002–11901.
Petitioner: Embraer Aircraft Maintenance Services, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Embrarer to establish and maintain a number of fixed locations within Embraer for the repair station inspection procedures manual (IPM) and assign IPMs to key individuals within departments instead of giving a copy of the IPM to each of its supervisory and inspection personnel. *Grant, 07/12/2002, Exemption No. 7835.*

Docket No.: FAA–2002–12332.
Petitioner: Chromalloy Gas Turbines Corporation.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Chromalloy to make its IPM available electronically to its supervisory, inspection, and other personnel rather than give a copy of the IPM to each of its supervisory and inspection personnel. *Grant, 07/16/2002, Exemption No. 7836.*

Docket No.: FAA–2002–12402.
Petitioner: VARIG ENGENHARIE E MANUTENÇÃO S.A.
Section of 14 CFR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit VARIG to use the calibration standards of the Instituto Nacional de Metrologia, Normalização e Qualidade Industrial, Brazil's national standards laboratory, in lieu of the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment. *Grant, 07/16/2002, Exemption No. 7837.*

Docket No.: FAA–2002–12432.
Petitioner: American Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 43.3(a) and 121.709(b)(3).
Description of Relief Sought/ Disposition: To permit American to allow its properly trained and certificated flight engineers to stow passenger supplemental oxygen masks during flight and to make the appropriate entry in the aircraft maintenance logbook. *Grant, 07/16/2002, Exemption No. 2678M.*

Docket No.: FAA–2002–12456 .
Petitioner: Unison Industries.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Unison to give copies of its IPM to key individuals and make the manual available electronically to all other employees, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel. *Grant, 07/10/2002, Exemption No. 7833.*

[FR Doc. 02–19682 Filed 8–2–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 199: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of RTCA Special Committee 199 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 199: Airport Security Access Control Systems.

DATES: The meeting will be held on August 22, 2002 starting at 9:00 a.m.
ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.
FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*
SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 199 meeting. *NOTE: Consolidated Working Groups will be held on August 21 & 23.* The agenda for the Plenary Session will include:

- August 22:
  - Opening Session (Welcome, Introductory and Administrative Remarks, Agenda Overview, Review Minutes of Previous Meeting. Action Items from Last Meeting)
- Review of New Sections
  - Document Section 1
  - Document Section 2
  - Document Section 3
  - Document Section 4
  - Consolidated Appendix
- Closing Session (Any Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 29, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–19675 Filed 8–2–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on August 27–29, 2002, starting at 9 a.m.
ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC 20036.
FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- August 27:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda and Minutes of Previous Meeting)
  - FAA Presentation on Airspace Planning (FAA–ATA)
  - Status of Working Group 4, VHF Data Link (VDL) 3 Implementation
  - Status of Working Group 5, VDL 3 Operational Safety Analysis, System Performance Requirements (OHA/SPR), for NEXCOM VDL 3
  - Status of Working Group 6, VDL 3 Interoperability of NEXCOM
  - Working Group 5 Presentation of WG–5 Draft Document for Plenary Approval
- August 28:
  - Working Group 4, NEXCOM Transition
- August 29:
  - Working Group 6, Interoperability of NEXCOM VDL Mode 3

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 29, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–19678 Filed 8–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Tuesday, August 13, 2002, at Washington Marriott in Washington DC. The meeting runs from 9 a.m. to 1 p.m.

The General Session includes the following items: (1) Welcome; (2) Introductions and Antitrust statement; (3) Minutes—approval of minutes from last meeting; (4) Approval of Program Plan Homeland Security Supplement and Advice Letter; (5) Approval of IVI Advice Letter; (6) Review Leadership Steering Committee Appointments; (7) Discussion of Areas of Responsibility (coverage)—Forums and Programs; (8) Review Two-Day Summit Agenda and Discussion of Logistics; (9) Discussion of Outcome Strategies: Special Interest Groups, Management of Projects, Member Communication, and Other Items; (10) Other Business; (11) Lunch (at Noon); (12) Adjourn.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Tuesday, August 13, 2002 from 9 a.m.–1 p.m.

ADDRESSES: Washington Marriott, 1221 22nd Street, NW., Washington DC 20037. Meeting Room TBA. Phone: (202) 872–1500. Fax: (202) 872–1424.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, DC 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: July 31, 2002.

Jeffrey Paniati,

Acting Associate Director, Office of Operations, Federal Highway Administration, and Acting Director, ITS Joint Program Office, Department of Transportation.

[FR Doc. 02–19673 Filed 8–2–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12990]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FINNESSE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 4, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12990. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build

requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement:

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* FINNESSE. *Owner:* Fairwinds Sailing LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "47.6 in length, US Coast Guard, 35 Gross Tons, 31 Net tons, Breadth: 14.5, and depth: 10.2."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The vessel will be used in the coastwide trade, specifically carrying passengers with a crew, for a fee. The vessel will have two bases of operation. One base will be from Woods Hole, Massachusetts and the vessel will cruise the waters from Eastport, Maine to Atlantic City, New Jersey. The second base of operation will be Fort Lauderdale, Florida and the cruising waters will cover the waters from Hilton Head, South Carolina to the Florida Keys."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1989. *Place of construction:* Finland.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Both areas of operation have large passenger vessel activity with lots of opportunity for employment. The operators of FINNESSE are the principals of the company and are not competing for employment with other operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "There is no adverse effect on US vessel builders. Based on the size of the boat and the passenger capacity of less than 6 passengers, the vessel will not economically impact US vessel builders. The National Marine Manufacturers Association has data illustrating that there are 16 million vessels in the United States. The subject vessel's economic impact on United States vessel builders will be negligible."

Dated: July 31, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19684 Filed 8–2–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12991]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LAMLASH.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 4, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12991. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended.

By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* LAMLASH. *Owner:* Alastair Hunter-Henderson and Noralyn Marshall.

(2) Size, capacity and tonnage of vessel. According to the applicant: *"Length (ft.):* 59.3, *Hull Depth (ft.):* 9, *Hull Breath (ft.):* 16.2, *Gross Tonnage:* 43, *Net Tonnage:* 38, *Capacity:* not to exceed 12 passengers."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

Recreational chartering in US coastal waters both on the East Coast and the West Coast of the United States and Caribbean waters (including the US Virgin Islands) but excluding Alaska and Hawaii."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1990. *Place of construction:* Tan Shui, Taipei.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The granting of the

waiver will have no impact on any other commercial passenger operators or existing operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The granting of the waiver will have no impact the operations of any U.S. shipyards."

Dated: July 31, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19685 Filed 8–2–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34231]

Missouri & Valley Park Railroad Corporation—Lease Exemption—The Burlington Northern and Santa Fe Railway Company

Missouri & Valley Park Railroad Corporation (MVP), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to lease [1] from The Burlington Northern and Santa Fe Railway Company (BNSF) and operate approximately 2.14 miles of rail line between BNSF's milepost 20.50 near West Valley Park, MO, on the south side of the Cuba Sub Main Line, and at or near BNSF's milepost 18.36 on the Cuba Sub at East Valley Park, MO, on the south side of the Cuba Sub Main Line. MVP certifies that its projected revenues do not exceed those that would qualify it as a Class III rail carrier.

The transaction was due to be consummated on or after July 22, 2002. The earliest the transaction could have been consummated was on July 22, 2002, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34231, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Edwin I. Josephson, Chuhak & Tecson, P.C., 30 South Wacker Drive, Suite 2600, Chicago, IL 60606.

Board decisions and notices are available on our website at "*www.stb.dot.gov.*"

Decided: July 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–19310 Filed 8–2–02; 8:45 am]

BILLING CODE 4915–00–P

[1] MVP states that it has also entered into a trackage and interchange agreement with BNSF that affects the above leased rail line.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Suspicious Activity Report by the Securities and Futures Industry

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed information collection contained in a new form, "Suspicious Activity Report by the Securities and Futures Industry (SAR–SF)." The form will be used by broker-dealers to report suspicious activity to the Department of the Treasury. Futures commission merchants may also use the form to report suspicious activity to the Department of the Treasury on a voluntary basis. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before October 4, 2002.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—SAR-Securities and Futures Industry Form. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, "Attention: PRA Comments—SAR–Securities and Futures Industry Form."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Executive Assistant Director Regulatory Policy, FinCEN, at (703) 905–3930; Russell Stephenson, Regulatory Program Specialist, Office of Compliance and Regulatory Enforcement, FinCEN, at (202) 354–6015; and Judith R. Starr, Chief Counsel and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

Title: Suspicious Activity Report by the Securities and Futures Industry (SAR–SF).

OMB Number: 1506–0019.

Form Number: TD F 90–22.XX.

Abstract: The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions. On July 1, 2002, FinCEN issued a final rule requiring brokers or dealers in securities ("broker-dealers") to report suspicious transactions ("Broker-Dealer SAR Rule"). (67 FR 44048). The final rule can also be found at 31 CFR 103.19.

In the preamble to the final Broker-Dealer SAR Rule, FinCEN indicated that it would be developing a suspicious activity reporting form for broker-dealers entitled "Suspicious Activity Report—Brokers or Dealers in Securities," or "SAR-BD."[2] The form may also be used by futures commission merchants ("FCMs") registered with the Commodities Futures Trading

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), P.L. 107–56.

[2] *See* 67 FR 44048, 44051.

Commission voluntarily to report suspicious activity to FinCEN. Thus, the title of the draft form has been revised slightly from "SAR-BD" to "SAR-SF," and several fields are provided on the form for use by FCMs.[3]

The information collected on the new form is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.19. This information will be made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel, and to the registered securities associations and national securities exchanges (so-called self-regulatory organizations) for use in official performance of their duties, for regulatory purposes and in investigations and proceedings involving domestic and international money laundering, tax violations, fraud, and other financial crimes.

Reports filed by broker-dealers required to report suspicious transactions under 31 CFR 103.19, and any reports filed voluntarily by other broker-dealers will be subject to the protection from liability contained in 31 U.S.C. 5318(g)(3) and the provision contained in 31 U.S.C. 5318(g)(2) which prohibits notification of any person involved in the transaction that a suspicious activity report has been filed.

The draft SAR–SF is presented only for purposes of soliciting public comment on the form. This form should not be used at this time to report suspicious activity. A final version of the form will be made available at a later date.

Type of Review: New information collection.

Affected public: Business or other for-profit institutions.

Frequency: As required.

Estimated Burden: Reporting average of 40 minutes per response.[4]

Estimated number of respondents = 8,300.

Estimated Total Annual Responses = 2,000.

Estimated Total Annual Burden Hours: 1,350.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: July 26, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Attachment—Suspicious Activity Report by the Securities and Futures Industry

BILLING CODE 4810–02–P

[3] FinCEN anticipates issuing shortly a Notice of Proposed Rulemaking that would require FCMs to report suspicious activity.

[4] This burden relates to the completion of the SAR-SF form. The recordkeeping burden of 31 CFR 103.19 is reflected in the final rule requiring broker-dealers to file reports of suspicious activity. *See* 67 FR 44048, 44055.

TD F 90-22.XX
Treasury Form
January 2003

Suspicious Activity Report by the Securities and Futures Industry

▶ Please type or print. Always complete entire report. Items marked with an asterisk * are considered critical. (See instructions).

OMB No. 1506 - 0019

1 Check the box if this report corrects a prior report (see instructions, page 7) ☐

Part I Subject Information

2 Check box ☐ if multiple subjects (See Instructions, page 7)

*3 Individual's last name or entity's full name	*4 First name	5 Middle initial
6 also known as (AKA - individual), doing business as (DBA - entity)	7 Occupation or type of business	
*8 Address		*9 City
10 State	*11 ZIP code	*12 Country (if not U.S.)
13 E-mail address (if available)		
*14 SSN/ITIN (individual), or EIN (entity)	*15 Account number ☐ No account affected	Account open? Yes ☐ No ☐
16 Date of birth ___/___/___ MM DD YYYY		

*17 Government issued identification (If available)

a ☐ Driver's license/state ID b ☐ Passport c ☐ Alien registration d ☐ Corporate/Partnership Resolution

e ☐ Other _____

f ID Number _____ g Issuing authority _____

18 Phone number - work	19 Phone number - home	20 Is individual/business associated/affiliated with the reporting institution? (See instructions)
( ) —	( ) —	a ☐ Yes b ☐ No

Part II Suspicious Activity Information

*21 Date or date range of suspicious activity	*22 Total dollar amount involved in suspicious activity
From ___/___/___ To ___/___/___ (MM DD YYYY)	$ .00

*23 Instrument type (Check all that apply)

a ☐ Bonds/Notes b ☐ Cash or equiv. c ☐ Commercial Paper d ☐ Commodity futures contract
e ☐ Money Market Mutual Fund f ☐ Mutual Fund g ☐ OTC Derivatives h ☐ Other derivatives i ☐ Commodity options
j ☐ Security Futures Products k ☐ Stocks l ☐ Warrants m ☐ Other securities n ☐ Other non-securities
o ☐ Foreign currency futures p ☐ Foreign currencies q ☐ Market where traded ___ (Enter appropriate three-letter code) r ☐ Other (Explain in Part VI)

24 CUSIP® number	25 CUSIP® number	26 CUSIP® number
27 CUSIP® number	28 CUSIP® number	29 CUSIP® number

*30 Type of suspicious activity:

a ☐ Bank Secrecy Act
b ☐ Bribery/gratuity
c ☐ Check fraud
d ☐ Computer intrusion
e ☐ Credit/debit card fraud
f ☐ Futures fraud
g ☐ Forgery
h ☐ Insider trading
i ☐ Mail fraud
j ☐ Margin violation
k ☐ Money laundering
l ☐ Market Manipulation
m ☐ Prearranged or other non-competitive trading
n ☐ Securities fraud
n ☐ Suspicious documents or ID presented
o ☐ Significant wire or other transactions without economic purpose
p ☐ Terrorist financing
q ☐ Wash or other fictitious trading
r ☐ Wire fraud
s ☐ Other (Describe in Part VI)

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Part III Law Enforcement or Regulatory Contact Information 2

31 If a law enforcement or regulatory authority has been contacted (excluding submission of a SAR) check the appropriate box.

a ☐ DEA
b ☐ FBI
c ☐ IRS
d ☐ U.S. Attorney (**32)
e ☐ U.S. Customs Svc.
f ☐ U.S. Secret Svc.
g ☐ CFTC
h ☐ SEC
i ☐ NASD
j ☐ NFA
k ☐ NY Stock Exchg.
l ☐ Other Registered Futures Assoc
m ☐ Other registered entity-futures
n ☐ Other state/local
o ☐ Other SRO (PHLX, PCX, CBOE, AMEX, etc.)
p ☐ State securities regulator
q ☐ Foreign
r ☐ Other (Explain in Part VI)

32 Other authority contacted (for Box 31 m through s) ** List U.S. Attorney office here.

33 Name of individual contacted (for all of Box 31)

34 Telephone number of individual contacted (box 33) ( ) —

35 Date contacted ___/___/___ MM DD YYYY

Part IV Reporting Financial Institution Information

*36 Name of financial institution or sole proprietorship

*37 EIN / SSN / ITIN

*38 Address

*39 City

*40 State

*41 ZIP code —

42 Additional branch address locations handling account, activity or customer.

43 ☐ Multiple locations (see instructions)

44 City

45 State

46 ZIP code —

47 Central Registration Depository number

48 SEC ID number —

49 Nat'l. Futures Ass'n. ID number

50 Has this reporting individual/entity coordinated this report with another reporting individual/entity? Yes ☐ (Provide details in Part VI) No ☐

*51 Type of institution or individual- Check box(es) for functions that apply to this report

a ☐ Agriculture trade option merchant
b ☐ Affiliate of bank holding company
c ☐ Commodity pool operator
d ☐ Commodity trading advisor
e ☐ Direct participation program
f ☐ Futures commission merchant
g ☐ Futures floor broker
h ☐ Futures floor trader
i ☐ Introducing Broker-Futures
j ☐ Investment advisor
k ☐ Investment company - mutual fund
l ☐ Market maker
m ☐ Municipal securities dealer
n ☐ National Futures Assoc.
o ☐ Registered Enity-futures
p ☐ Other Registered Futures Assn.
q ☐ Securities broker - clearing
r ☐ Securities broker - introducing
s ☐ Securities dealer
t ☐ Securities floor broker
u ☐ Securities options broker-dealer
v ☐ Self regulatory organization (SRO)
w ☐ Specialist
x ☐ Subsidiary of bank
y ☐ U.S. Government broker-dealer
z ☐ U.S. Government interdealer broker
aa ☐ Variable life insurance or annuities broker-dealer
bb ☐ Other (List in Part VI)

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Part V Contact For Assistance

*52 Last name of individual to be contacted regarding this report

*53 First name

*54 Middle initial

*55 Title/Position

*56 Work phone number ( ) —

*57 Date report prepared ___/___/___ MM DD YYYY

Paperwork Reduction Act Notice: The purpose of this form is to provide an effective means for financial institutions to notify appropriate law enforcement agencies of suspicious transactions that occur by, through, or at the financial institutions. This report is required by law, pursuant to authority contained in 31 U.S.C. 5318(g). Information collected on this report is confidential (31 U.S.C. 5318(g)). Federal securities regulatory agencies and the U.S. Departments of Justice and Treasury, and other authorized authorities may use and share this information. Public reporting and recordkeeping burden for this form is estimated to average 4 hours, 45 minutes per response, and includes time to gather and maintain information for the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 and to the Financial Crimes Enforcement Network, Attn.: Paperwork Reduction Act, P.O. Box 39, Vienna VA 22183-0039. The agency may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part VI Suspicious Activity Information - Narrative * 3

Explanation/description of suspicious activity(ies). This section of the report is critical. The care with which it is completed may determine whether or not the described activity and its possible criminal nature are clearly understood by investigators. Provide a clear, complete and chronological description (**not exceeding this page and the next page**) of the activity, including what is unusual, irregular or suspicious about the transaction(s), using the checklist below as a guide, as you prepare your account.

a. **Describe** conduct that raised suspicion.
b. **Explain** whether the transaction(s) was completed or only attempted.
c. **Describe** supporting documentation (e.g. transaction records, new account information, tape recordings, e-mail messages, correspondence, etc.) and retain such documentation in your file for five years.
d. **Explain** who benefited, financially or otherwise, from the transaction(s), how much and how (if known).
e. **Describe and retain** any admission, or explanation of the transaction(s) provided by the subject(s), or other persons. Indicate to whom and when it was given.
f. **Describe and retain** any evidence of cover-up or evidence of an attempt to deceive federal or state examiners, SRO, or others.
g. **Indicate** where the possible violation of law(s) took place (e.g., main office, branch, other).
h. **Indicate** whether the suspicious activity is an isolated incident or relates to another transaction.
i. **Indicate** whether there is any related litigation. If so, specify its status.
j. **Recommend** any further investigation that might assist law enforcement authorities.
k. **Indicate** whether any information has been excluded from this report; if so, state reasons.
l. **Indicate** whether U.S. or foreign currency and/or U.S. or foreign negotiable instrument(s) were involved. If foreign, provide the amount, name of currency, and country of origin.
m. **Indicate** "Market where traded" and "Wire transfer identifier" information when appropriate.
n. **Indicate** whether funds or assets were recovered and, if so, enter the dollar value of the recovery in whole dollars only.
o. **Indicate** any additional account number(s), and any foreign bank(s) account number(s) which may be involved.
p. **Indicate** for a foreign national any available information on subject's passport(s), visa(s), and/or identification card(s). Include date, country, city of issue, issuing authority, and nationality.
q. **Describe** any suspicious activities that involve transfer of funds to or from a foreign country, or transactions in a foreign currency. Identify the country, sources and destinations of funds.
r. **Describe** subject(s) position if employed by the financial institution.
s. **Indicate** whether securities, futures or options were involved. If so, list the type, CUSIP* number or ISID* number, and amount.
t. **Indicate** the type of institution filing this report, if this is not clear from Part IV. For example, an investment advisor that is managing partner of a limited partnership that is acting as a hedge fund that detects suspicious activity tied in part to its hedge fund activities should note that it is operating as a hedge fund.
u. **Indicate** in instances when the subject or entity has a CRD or NFA number, what that number is.
v. If correcting a prior report, complete the form in its entirety and note the changes here in Part VI.

Information already provided in earlier parts of this form need not necessarily be repeated if the meaning is clear.

Supporting documentation should not be filed with this report. Maintain the information for your files.

Enter explanation/description in the space below. Continue on the next page if necessary.

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Suspicious Activity Report Narrative (continued) 4

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Suspicious Activity Report Instructions 5

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure."

Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) provides that a financial institution, and its directors, officers, employees, and agents who, voluntarily or by means of a suspicious activity report, reports suspicious transactions to the government, may not notify any person involved in the transaction that the transaction has been reported.

In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the financial institution shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a timely suspicious activity report.

When to file a report

1. Every broker or dealer in securities within the United States (for purposes of this section, a "broker-dealer") shall file with FinCEN, to the extent and in the manner required by 31 CFR 103.19, a report of any suspicious transaction relevant to a possible violation of law or regulation. A broker-dealer may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by 31 CFR 103.19. A voluntary filing does not relieve a broker-dealer from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission or a self-regulatory organization ("SRO") (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)).

2. A transaction requires reporting if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least $5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

   i. Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

   ii. Is designed, whether through structuring or other means, to evade any requirements of 31 CFR 103 or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332;

   iii. Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

   iv. Involves use of the broker-dealer to facilitate criminal activity.

3. The obligation to identify and properly and timely report a suspicious transaction rests with each broker-dealer involved in the transaction, provided that no more than one report is required to be filed by the broker-dealers involved in a particular transaction (so long as the report filed contains all relevant facts).

4. A SAR-SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute a basis for filing a SAR-SF. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR-SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. (continued)

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In situations involving violations that require immediate attention, such as money laundering schemes, the broker-dealer shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR-SF. Broker-dealers wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SAR-SF if required by this section. The broker-dealer may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

5. **Exceptions.** A broker-dealer is not required to file a SAR-SF to report:

i. A robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the broker-dealer files a report pursuant to the reporting requirements of 17 CFR 240.17f-1;

ii. A violation otherwise required to be reported on a SAR-SF of any of the federal securities laws or rules of an SRO by the broker-dealer or any of its officers, directors, employees or other registered representatives, other than a violation of 17 CFR 240.17a-8 or 17 CFR 405.4, so long as such violation is appropriately reported to the SEC or an SRO.

6. The Bank Secrecy Act requires financial institutions to file currency transaction reports (CTRs) in accordance with the Department of the Treasury's implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious aspects of the transaction). If a currency transaction is $10,000 or less and is suspicious, the institution should only file a suspicious activity report. Appropriate records must be maintained in each case.

See: 31 CFR Part 103; 17 CFR 240.17a-8; 17 CFR 405.4

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General Instructions

A. Abbreviations and Definitions

1. AKA-- also known as (individual)
2. ASE-- American Stock Exchange
3. CBOE-- Chicago Board Options Exchange
4. CPO-- Commodity Pool Operator
5. CRD-- Central Registration Depository
6. CFTC-- Commodity Futures Trading Commission
7. CTA-- Commodity Trading Advisor
8. CUSIP®-- Committee on Uniform Securities ID Procedures
9. DEA-- Drug Enforcement Administration
10. DBA-- doing business as (entity)
11. EIN-- Employer Identification Number
12. FBI-- Federal Bureau of Investigation
13. FCM-- Futures Commission Merchant
14. IA-- Investment Advisor
15. IB-- Introducing Broker-Futures
16. IRS-- Internal Revenue Service -Criminal Investigation
17. ITIN-- Individual taxpayer ID number
18. ISID®-- International Securities ID Directory
19. NASD-- National Assoc. of Securities Dealers
20. NFA-- National Futures Association
21. NYSE-- New York Stock Exchange
22. OTC-- Over-the-counter
23. PCX-- Pacific Exchange
24. PHLX-- Philadelphia Stock Exchange
25. RE-futures-- Registered entity-futures
26. RFA-- Registered futures association
27. SEC-- Securities and Exchange Commission
28. SRO- Self-Regulatory Organization- Securities
29. SSN-- social security number

B. How to make a report:

1. Send each completed suspicious activity report to:

Detroit Computing Center
Attn: SAR SF
P.O. Box XXXXX
Detroit, MI 48232

2. Leave blank any items that do not apply or for which information is unavailable.

3. Items marked with an asterisk * are considered critical and **are required to be completed if known.**

4. Complete each suspicious activity report by providing as much information as possible on initial and corrected reports.

5. Do not include supporting documentation with the suspicious activity report filed. Identify and retain a copy of the suspicious activity report and all supporting documentation (e.g. transaction records, new account information, tape recordings, e-mail messages, correspondence, etc.) or business record equivalent for your files for five (5) years from the date of the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.

6. If more than one subject is being reported, make a copy of page 1, complete only the subject information in Part I, and attach the additional page(s) behind page 1. If more space is needed to complete any other item(s), identify that item in Part VI by "item number," and provide the additional information.

7. Financial institutions are encouraged to provide copies of SARs to State and local authorities, if appropriate.

8. Type or complete the report using block written letters.

9. Enter all **dates** in MM/DD/YYYY format where MM=month, DD=day, and YYYY=year. Precede any single number with a zero, *i.e.*, 01,02, etc.

10. List all **Telephone numbers** with (area code) first and then the seven numbers, using the format, i.e., (XXX) XXX-XXXX. List international telephone and fax numbers in Part VI.

11. Always enter an **individual's name** by entering the last name, first name, and middle initial (if known). If a legal entity is listed, enter its name in the last name field.

12. Enter all **identifying numbers** (alien registration, Corporate/Partnership Resolution, CRD, CUSIP,® driver's license/state ID, EIN, ITIN, Foreign National ID, ISID,® NFAID, passport, SEC, and SSN etc.) starting from left to right. Do not include spaces, dashes, or other punctuation.

13. Enter all **Post Office ZIP codes** with at least the first five numbers (all nine (ZIP + 4)) if known) and listed from left to right.

14. Enter all **monetary amounts** in U.S. Dollars. Use whole dollar amounts rounded up when necessary. Use this format: $0,000,000.00. If foreign currency is involved, state name of currency and country of origin.

15. **Addresses, general.** Enter the permanent street address, city, two letter state/territory abbreviation used by the U.S. Postal Service and ZIP code (ZIP+4 if known) of the individual or entity. A post office box number should not be used for an individual, unless no other address is available. For an individual, also enter any apartment number or suite number, road or route number. If a P.O. Box is used for an entity, enter the street name, suite number, and road or route number. If the address of the individual or entity is in a foreign country, enter the city, province or state, postal code and the name of the country. Complete any part of the address that is known, even if the entire address is not known. If from the United States, leave country box blank.

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C. Specific Suspicious Activity Report Preparation Instructions

Item 1-- Type of report. Check Box , "Corrects Prior Report", if this report is filed to correct a previously filed SAR-SF. To correct a report, a new SAR must be completed in its entirety. Note corrected information in Section VI (see line"v").

PART I Subject Information

Item 2 -- Multiple Subjects. Check this box if multiple subjects are involved. Attach additional copy(ies) of Part I to this report.

Items 3, 4, and 5--*Name of Subject. See General Instruction B11. If the organization is operated under a different trade or business name than its legal name, enter the organization's legal name in Item 3 (e.g., Smith Enterprises, Inc.) and the name of the business in Item 6 (e.g., Smith's Tours). If more than one Part I is required, make a copy of page 1 and provide the additional information.

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Item 6-- also known as (AKA-individual), or doing business as (DBA-entity). If a reporting institution has knowledge of a subject's separate "AKA" and/or entity's "DBA" name, enter it in Item 6.

Item 7-- Occupation/type of business. If known, identify the occupation, profession or business that best describes the individual in Part I (e.g., attorney, car dealer, carpenter, doctor, farmer, plumber, truck driver, etc.). Do not use nondescript terms such as businessman, merchant, store owner (unless store's name is provided), self employed, unemployed, or retired unless the regular or former occupation is provided. If the individual's business activities can be described more fully, provide the additional information in Part VI. Indicate in Item 7 if "unknown."

Items 8, 9, 10, 11, and 12-- *Address. See General Instructions B13 and B15.

Item 13-- E-mail address. Enter the subject's e-mail address if available.

Item 14-- *SSN/ITIN (individual) or EIN (entity). See General Instruction B12 and definitions. If the subject named in items 3 through 6 is a U.S. Citizen or an alien with a SSN, enter his or her SSN in Item 14. If that individual is an alien who has an ITIN, enter that number. If the subject is an entity, enter the EIN.

Item 15-- *Account number. See General Instruction B12. Enter the number of any account in or through which the suspicious activity occurred. If an account is not affected or if no affected account is known, mark the "no account affected" box. Check box to indicate if the account is open or closed. If more than one account is affected, provide the additional information in Part VI.

Item 16-- Date of birth. See General Instruction B9. If an individual is named in Items 3 through 5, enter the date of birth. If the month and/or day is not available or unknown, fill in with zeros (e.g., "01/00/1969" indicates an unknown date in January, 1969).

Item 17-- *Government issued identification. See General Instruction B12. Check the appropriate box showing the type of document used to verify the subject's identity. Box "d" denotes that a corporate or partnership resolution was used to identify an entity. If you check the "Other" box "e", be sure to specify the type of document used. In box "f", list the ID number of the identifying document. In box "g", list the issuing authority.

Items 18 & 19-- Telephone numbers. See General Instruction B10. List any additional number(s) (e.g., hotel, etc.) in Part VI.

Item 20-- Institution association. Indicate whether the subject identified in Part I is still associated with the reporting institution as an "associated person" as defined in section 3(a)(18) of the Securities Exchange Act of 1934 or CFTC rule 1.3(aa), or is still "affiliated with" the reporting institution, as defined in the CFTC rule 4.7(a)(1)(i). If so, explain in Part VI.

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PART II Suspicious Activity Information

Item 21-- *Date or date range of suspicious activity. See General Instruction B9. Enter the date of the reported activity in the "From" field. If more than one day, indicate the duration of the activity by entering the first date in the "From" field and the last date in the "To" field. If the same individual or organization conducts multiple or related activities within the 30 calendar day period after the date of initial detection, the reporting institution may consider reporting the suspicious transactions on one form but only if doing so will fully describe what has occurred. A new report must be filed for other related suspicious transactions committed after the initial detection period.

Item 22-- *Total dollar amount. See General Instruction B14. Enter the total dollar value of the funds or assets involved in the suspicious activity that is conducted by the same individual or organization within the 30 calendar day period after the date of initial detection. For multiple or related suspicious transactions, show the breakdown of this aggregated total in Part VI. For abuse by a person associated with the institution, the value of this item can be zero (0). Do not use any words, such as "thousand", "million", etc. For foreign currency, convert to U.S. Dollars.

Item 23-- *Instrument type. Mark the type of instrument identified in Item 23. (Check all that apply.) In item 23b indicate U.S. Dollars only. For Item 23q, enter appropriate three-letter code.

Items 24, 25, 26, 27, 28, and 29-- CUSIP® Numbers. Enter up to six (6) securities numbers. If more, enter additional in Part VI.

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Item 30-- *Type of suspicious activity. Check the box(es) that identifies the suspicious activity. More than one box may be checked. Provide a brief explanation in Part VI of why each box is checked. If none of these items applies, mark "other" and provide in Part VI an explanation of the type of suspicious activity.

PART III Law Enforcement or Regulatory Contact Information

Items 31, 32, and 33-- Contacting enforcement authorities. If no contact, go to **Part IV.** See General Instructions "A" "Abbreviations and Definitions" for law enforcement and regulatory identities. If you have advised any law enforcement authority SRO, RFA, or RE-futures entity of the suspicious transactions by telephone or written communication, complete this section. If box "d" or boxes "m" through "s" are checked, provide the name of the authority contacted in Item 32. If no contact, leave Items 31-35 blank.

Item 34-- Telephone number of individual contacted. See General Instruction B10 for format.

Item 35-- Date contacted. See General Instruction B9 for format.

Part IV Reporting Financial Institution Information

Item 36-- *Name of financial institution or sole proprietorship. Enter the full legal name of the institution, *i.e.*, the name shown on the charter or other document creating the entity and registered with the SEC or CFTC. If a sole proprietor, enter the business name of the proprietorship registered with the SEC or CFTC.

Item 37--*Employer identification number. See General Instruction B12. Enter the reporting financial institution's EIN. If sole proprietor enter SSN or ITIN.

Items *38, *39, *40, and *41-- Address. See General Instruction B15. This address should be of the principal office or headquarters in the United States.

Items 42, 43, 44, 45 and 46-- Additional address locations. See General Instruction 15. If more than one location is involved, e.g., branch office etc., provide the address of the location where the most significant portion of the suspicious transactions occurred. If more than two locations are involved check box 43 and list locations in Part VI.

Item 47-- Central Registration Depository number. See General Instruction B12. If none, leave blank.

Item 48-- SEC number. See General Instruction B12. If none, leave blank.

Item 49-- National Futures Association identification number. See General Instruction B12. If none, leave blank.

Item 50-- Dual reporting. If this is a coordinated report involving more than one individual/entity (see "When to file a report item 3") check the appropriate box and provide the details in Part VI.

Item 51-- *Type of reporting institution. Check all boxes that apply to this particular report. If **none** of these categories apply to you, explain in Part VI. The Federal Bureau of Public Debt, its agents, and any other Federal agency issuers of Federal securities should mark "U.S. Government broker/dealer." State or municipal issuers of municipal securities should mark "Municipal broker/dealer." A securities SRO, RFA or RE-futures entity filing this form should identify the institution type as that of the member institution for which this report is being filed, and in **Part V,** Items 52, 53, 54, 55, 56, and 57 identify the securities SRO, RFA or RE-futures entity individual to contact.

Part V Contact for.assistance

Items 52, 53, and 54-- *Contact individual. See General Instruction B11.

Item 55-- *Title/Position. Enter the job title/position of the contact individual

Item 56-- *Work telephone number. See General Instruction B10.

Item 57-- *Date report prepared. See General Instruction B9.

Part VI *Suspicious Activity Information - Narrative See page 3 for instructions.

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[FR Doc. 02–19662 Filed 8–2–02; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 30, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 4, 2002, to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0051.
Form Number: Customs Form 7523.
Type of Review: Extension.
Title: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release.
Description: Customs Form 7523 is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions and by Customs to authorize the entry of such merchandise. It is also used by carriers to show that the articles being imported are to be released to the importer or consignee.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 4,950.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 8,247 hours.

OMB Number: 1515–0052.
Form Number: None.
Type of Review: Extension.
Title: Petition for Remission of Mitigation of Forfeitures and Penalties Incurred.
Description: Persons whose property is seized or who incur monetary penalties due to violations of the Tariff Act are entitled to seek remission or mitigation by means of an informal appeal. The violator has the opportunity to claim mitigation and provides a record of such administration appeals.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 28,000.
Estimated Burden Hours Per Respondent: 14 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 6,500 hours.

OMB Number: 1515–0055.
Form Number: Customs Form 3229.
Type of Review: Extension.
Title: Certificate of Origin.
Description: This certification is required to determine whether an importer is entitled to duty-free entry for goods which are: (1) The growth or product of a U.S. insular possession, or (2) Caribbean Basin initiative imports.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent : 22 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 113 hours.

OMB Number: 1515–0060.
Form Number: Customs Form 1300.
Type of Review: Extension.
Title: Vessel Entrance or Clearance Statement Form.
Description: This form is submitted upon the arrival of a vessel into the United States. Customs needs this information to record tonnage fees and to obligate the vessel captain to the truth of the manifest.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 12,000.
Estimated Burden Hours Per Respondent : 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 21,991 hours.

OMB Number: 1515–0181.
Form Number: None.
Type of Review: Extension.
Title: Line Release/Border Release Advanced Screening and Selectivity (BRASS).
Description: Line Release (new name-BRASS) was developed to release and track high volume and repetitive shipments using bar code technology.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 257.
Estimated Burden Hours Per Respondent : 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 6,425 hours.

Clearance Officer: Tracey Denning , U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, (202) 927–1429.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,
Departmental Reports Management Officer.

[FR Doc. 02–19702 Filed 8–2–02; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

General Counsel Designation No. 282; Appointment of Members to the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101–5 (Revised), and pursuant to the Civil Services Reform Act, I hereby appoint the following individuals to the General Counsel Panel of the Legal Division Performance Review Board:

George B. Wolfe, Deputy General Counsel, who shall serve as Chairperson;
Thomas M. McGivern, Counselor to the General Counsel;
Kenneth R. Schmalzbach, Assistant General Counsel (General Law and Ethics);
Roberta K. McInerney, Assistant General Counsel (Banking & Finance);
Russell L. Munk, Assistant General Counsel (International Affairs);
William J. Fox, Associate Deputy General Counsel;
Marilyn L. Muench, Deputy Assistant General Counsel (International Affairs);
Traci J. Sanders, Deputy Counselor to the General Counsel;
John J. Manfreda, Chief Counsel, Bureau of Alcohol, Tobacco & Firearms;
Alfonso Robles, Chief Counsel, United States Customs Service;
John J. Kelleher, Chief Counsel, United States Secret Service;
Debra N. Diener, Chief Counsel, Financial Management Service;
Carrol H. Kinsey, Jr., Chief Counsel, Bureau of Engraving and Printing;
Judith Starr, Chief Counsel, Financial Crimes Enforcement Network; and
Daniel P. Shaver, Chief Counsel, U.S. Mint.

Dated: July 17, 2002.

David D. Aufhauser,

General Counsel.

[FR Doc. 02–19697 Filed 8–2–02; 8:45 am]

BILLING CODE 4810–39–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Liquidation—the Connecticut Surety Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Liquidation of an insurance company formerly certified by this Department as an acceptable surety/reinsurer on Federal bonds.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: The Connecticut Surety Company, a Connecticut company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 64 FR 35871, July 1, 1999. The Company's authority was terminated by the Department of the Treasury effective March 9, 2000. Notice of the termination was published in the **Federal Register** of March 21, 2000, on page 15196.

On May 17, 2002, upon a petition by the Insurance Commissioner of the State of Connecticut, the Superior Court of the Judicial District of Hartford, issued an Order of Liquidation with respect to The Connecticut Surety Company. Susan F. Cogswell, Insurance Commissioner of the State of Connecticut, and her successors in office were appointed as the Liquidator. All persons having claims against The Connecticut Surety Company must file their claims by November 15, 2002, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, and priorities asserted, and any other pertinent facts to substantiate the claim. Federal Agencies should assert claim priority status under 31 U.S.C. 3713, and send a copy of their claim, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, D.C. 20044–0875, Attn: Mr. Randy Harwell, Attorney.

The above office will consolidate and file any and all claims against The Connecticut Surety Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Mr. Harwell at (202) 307–0180.

The Circular may be viewed and downloaded through the Internet (*http://www.fms.treas.gov/c570/index.html*). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, (202) 512–1800. When ordering the Circular from GPO, use the following stock number 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782.

Dated: July 30, 2002.

Wanda Rogers,

Director, Financial Accounting and Services, Division Financial Management Service.

[FR Doc. 02–19700 Filed 8–2–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office; Notice of Intent to Grant Exclusive License

AGENCY: Research and Development Office, VA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs Research and Development Office intends to grant to TransMedics, Inc., a Delaware corporation having a principal place of business in Woburn, Massachusetts, U.S.A., an exclusive license to U.S. Patent Numbers: 6,046,046, issued April 4, 2000, entitled Compositions, Methods and Devices for Maintaining an Organ; and 6,100,082, issued August 8, 2000, entitled Perfusion Apparatus and Method Including Chemical Compositions for Maintaining an Organ.

DATES: Comments must be received within fifteen (15) days from the date of this published Notice.

ADDRESSES: Send comments to: Mindy Aisen, M.D., Director of Technology Transfer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Telephone: (202) 408–3670; Facsimile: (202) 275–7228; e-mail: *mindy.aisen@mail.va.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the issued patents may be obtained from the U.S. Patent and Trademark Office at *http://www.uspto.gov*.

SUPPLEMENTARY INFORMATION: It is in the public interest to so license these inventions as TransMedics, Inc. submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, the Department of Veterans Affairs Research and Development Office receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: July 29, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–19646 Filed 8–2–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 150

Monday, August 5, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Correction

In notice document 02–16959 beginning on page 45278 in the issue of Monday, July 8, 2002, make the following correction:

On page 45280, in the third column, in paragraph (j)(4), in the eighth line, "10 satellite" should read "satellite".

[FR Doc. C2–16959 Filed 8–2–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-131-AD; Amendment 39-12825; AD 2002-14-25]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 and -145 Series Airplanes

Correction

In rule document 02–18028 beginning on page 48366 in the issue of Wednesday, July 24, 2002, make the following corrections:

1. On page 48366, in the second column, in the **ACTION** heading, "Final rule" should read "Final rule; "

2. On the same page, in the same column, in the **SUMMARY** heading, in the second line, "directives" should read "directive ".

3. On the same page, in the third column, in the first paragraph, in the 10th line, "would " should read "could ".

4. On the same page, in the same column, in the same paragraph, in the 13th line, "needed " should read "intended ".

5. On the same page, in the same column, in the **DATES** heading, in the second paragraph, in the 6th line, "21567), " should read "21567 ".

6. On the same page, in the same column, in the **ADDRESSES** heading, in the first paragraph, in the 14th line " *9/anm*" should read " 9-anm,".

7. On the same page, in the same column, in the same paragraph, in the 17th line, " 202" should read "2002 ".

8. On the same page, in the same column, in the second paragraph, in the third line, "Braileira " should read "Brasileira ".

9. On page 48367, in the first column, in the **SUPPLEMENTARY INFORMATION** heading, in the third line, "(65" should read "(67".

10. On page 48367, in the first column, in the second paragraph, under the heading **Actions Since Issuance of Previous Rule**, in the sixth line, "instruments" should read "instructions".

11. On the same page, in the second column, in the fourth paragraph, in the third line, "Organized " should read "Organize ".

12. On the same page in the third column, in the second paragraph, in the 18th line, "if filed " should read "if filed, ".

§39.13 [Corrected]

13. On the same page in §39.13, in the same column, in the **Authority citation**, in the first line, "100(g) " should read "106(g) ".

14. On the same page in §39.13, in the same column, in the ninth line from the bottom, "39-128.25 " should read " 39-12825".

15. On page 48368, in the same section, in the first column, in **Note 1:**, in the fourth line, "modified altered," should read "modified, altered,".

16. On the same page, in the same section, in the same column, the heading " *Repetitive Inspectors (Tests)/Replacement*"should read " *Repetitive Inspections (Tests)/Replacement*".

17. On the same page, in the same section, in the same column, in paragraph (b), in the 11th line, "their" should read "after".

18. On the same page, in the same section, in the second column, in paragraph (f)(3), in the second line, "Aeronautics" should read "Aeronautica".

19. On the same page, in the same section, in the second column, in paragraph (f)(3), in the third line, "San" should read "Sao".

[FR Doc. C2–18028 Filed 8–2–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
August 5, 2002

Part II

Department of Housing and Urban Development

Notice of Funding Availability (NOFA) for the Operation Lead Elimination Action Program Fiscal Year 2002; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4757–N–01]

Notice of Funding Availability (NOFA) for the Operation Lead Elimination Action Program Fiscal Year 2002

AGENCY: Healthy Homes and Lead Hazard Control, Office of the Secretary.

ACTION: Notice of funding availability.

SUMMARY: *Purpose of the NOFA.* The purpose of the Operation Lead Elimination Action Program (LEAP) is to leverage private sector resources to eliminate lead poisoning as a major public health threat to young children.

Available Funds: $6.5 million.

Eligible Applicants: Not-for-profit and for-profit organizations and entities.

DATES: *Application Due Date:* October 31, 2002.

ADDITIONAL INFORMATION:

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Submit your completed application (an original and four copies) to HUD, October 31, 2002, at the address shown below.

Address for Submitting Applications. The address for mailed applications is: Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, 451 Seventh Street, SW, Room P3206, Washington, DC 20410.

Note New Security Procedures. HUD has implemented new security procedures that apply to application submission. Please read the following instructions carefully and completely. HUD's new policy is: No hand delivered applications will be accepted. Applications sent to the Robert C. Weaver HUD Headquarters Building may only be shipped using DHL, Falcon Carrier, Federal Express (FedEx), United Parcel Service (UPS), or the United States Postal Service (USPS). All mailed applications must be postmarked on or before midnight of their due date and received within 15 days of the due date. All applicants who mail applications must have a Certificate of Mailing (USPS Form 3817) as their documentary evidence that the application was filed on time.

Applications Sent by Overnight/Express Mail Delivery to HUD Headquarters. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Delivery must be made during HUD Headquarters business hours, between 8:30am and 5:30pm, Eastern Time, Monday through Friday.

For Application Kits and NOFA User Guide. You may obtain an application kit by calling the NOFA Information Center at 1–866–483–5327 (HUD–LEAP). Persons with speech or hearing impairments may call the Center's TTY number at 1–800–HUD–2209. When requesting an application kit, please refer to the Operation Lead Elimination Action Program (LEAP). Please be sure to provide your name, address (including zip code), and telephone number (including area code).

HUD is pleased to provide you with instructions for applying for this HUD program. Please note that if there is a discrepancy between information provided in the application kit and the information provided in the published NOFA, the information in the published NOFA prevails. Therefore, please be sure to review your application submission against the requirements in the NOFA.

For Further Information and Technical Assistance. You may contact Ellis G. Goldman, Director, Lead Hazard Control Grants Division, Office of Healthy Homes and Lead Hazard Control, at the address to which applications are to be submitted; telephone (202) 755–1785, extension 112 (this is not a toll-free number). If you are a hearing- or speech-impaired person, you may reach the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

II. Authority, Available Funding, and Amount Allocated

(A) The Operation Lead Elimination Program is authorized by HUD's FY 2002 Appropriation approved November 26, 2001 (Pub. L. 107–73).

(B) *Available Funding.* $6.5 million will be available for the FY 2002 Operation Lead Elimination Action Program (LEAP). Grants of 24 months duration will be awarded on a competitive basis following evaluation of all proposals according to the rating factors described in this NOFA. HUD anticipates that approximately 6–10 grants will be awarded.

(C) *Allocation of Funds/Grant Awards.* Operation LEAP will aggressively pursue additional private sector resources with the goal of securing the resources needed to eliminate lead-based paint hazards in housing. Resources generated by awardees must be used and/or distributed to assist National, State and local entities actively committed to lead hazard control in residential structures. All resources generated will be provided to state and local government and non-government entities that possess the requisite skills, certifications, and capacity to utilize these resources to conduct lead hazard control/abatement related activities in low-income privately owned rental or owner occupied housing containing lead-based paint hazards. All allocation decisions will be carried out with prior approval of the HUD Office of Healthy Homes and Lead Hazard Control.

III. Program Description, Eligible Applicants, Statutory Requirements, Eligible Activities, Strategies/Approaches, Support Elements, and Ineligible Activities

(A) Program Description

Operation LEAP funds will be used to support non-profit and for-profit entities with substantial fund raising and/or leveraging skills to use those skills to mobilize substantial private sector resources for addressing lead hazards in housing. HUD is particularly looking for innovative or creative regional or nationwide fund raising and/or leveraging and mobilization strategies that can yield large amounts of contributions in a two-year time frame and also increase awareness of lead hazards and abatement measures in the home. Grants will be awarded to those entities that are able to demonstrate the ability to generate substantial private sector resources which can be used toward lead abatement programs and efforts, based upon the responses provided in the Factors for Award described below.

LEAP funds may also be used to eliminate lead-based paint hazards in low-income privately owned housing, which supplements the National strategy as defined by Title X of the Housing and Community Development Act of 1992 (42 U.S.C. 4851 *et. seq.*).

(B) Eligible Applicants

To be eligible to apply for funding under this program, the applicant must be a tax-exempt (501(c)), other non-profit or for-profit entity or firm.

(C) Eligible Activities

Activities that you may conduct for the purposes of developing a national or regional (multi-state) strategy designed to leverage or mobilize resources from the private sector may include but are not limited to:

(1) Recruiting and placing appropriate staff skilled in leveraging private sector resources;

(2) Identifying innovative approaches for mobilizing resources and coordinating activities among a number of diverse organizations in both the public and private sector;

(3) Providing all necessary administrative and indirect support, including rent, equipment, materials, travel expenses and logistics, and subcontractors/consultants necessary to carry out grant activities; and

(4) Conducting fund raising activities which will result in increased funding resources for use in carrying out lead hazard abatement and control activities in low-income privately owned or owner occupied housing with lead-based paint hazards.

(5) Other activities that may be carried out include: (a) Performing dust, paint or soil testing, hazard screens, inspections, and risk assessments of eligible housing constructed before 1978 to determine the presence of lead-based paint and/or lead hazards from paint, dust, or soil.

(a) Conducting lead hazard control, which may include: interim control of lead based paint hazards in housing (which may include specialized cleaning techniques to address lead dust); and abatement of lead-based paint hazards, including soil and dust, by means of removal, enclosure, encapsulation, or replacement methods. Unless there are only a few surfaces coated with lead paint, complete abatement of all lead-based paint or lead-contaminated soil is not usually acceptable as a cost-effective strategy unless justification is provided and subsequently approved by HUD. Abatement of lead-contaminated soil should be limited to areas with bare soil in the immediate vicinity of the structure, *i.e.*, drip line or foundation of the structure being treated, and children's play areas. All hazard control activities must comply with 24 CFR part 35, subpart R, the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing and all applicable Federal, State and local regulations; in the case of a conflict between any of the above, the more stringent shall apply.

(b) Carrying out temporary relocation of families and individuals during the period in which lead hazard control is conducted and until the time the affected unit receives clearance for re-occupancy.

(c) Performing blood lead testing and air sampling to protect the health of the hazard control workers, supervisors, and contractors.

(d) Undertaking minimal housing rehabilitation activities that are specifically required to carry out effective hazard control, and without which the hazard control could not be completed and maintained. Operation LEAP grant funds may be used for lead hazard control work done in conjunction with other housing rehabilitation programs. HUD strongly encourages integration of this grant program with housing rehabilitation, weatherization, and other energy conservation activities.

(e) Conducting clearance dust-wipe testing and associated laboratory analysis.

(D) Strategies/Approaches

The applicant is encouraged to employ creativity and initiative in achieving the objective of the program—the leverage of private sector resources to increase local and regional lead hazard control measures through a variety of means. Examples of possible strategies/approaches include but are not limited to the following:

(1) Enlist the support and resource commitment of financial institutions, foundations, private industry, and others to make residential housing lead-safe and eliminate lead poisoning as a public health threat to children.

(2) Solicit the support of national building materials providers, building component manufacturers, and housing-related national retail outlets to donate money or materials to lead hazard control programs in housing and health departments, landlords and owner-occupants to eliminate lead-based paint hazards in privately owned low-income dwellings. For example: a window, wallboard, or paint manufacturer/retailer could donate or coordinate the donation and distribution of windows to lead-based paint and/or rehabilitation projects throughout the country.

(3) Form partnerships with banks or other mortgage institutions willing to provide no or low-interest home improvement loans to finance lead hazard control activities and abatement measures among low-income recipients who would not otherwise be served. By participating, banks could fulfill a major element of their responsibilities under the Community Reinvestment Act.

(4) Create a national clearinghouse for facilitating the coordination and distribution of donated building materials such as windows, trim molding, paint, etc. to local projects involved in lead hazard control programs.

(5) Identify and facilitate the availability and use of temporary relocation facilities for families who need to move out of their dwellings while lead hazard control work is being undertaken. For example, hotel chains, colleges, and other lead-safe sites could be contacted to make housing for the temporary relocation of families available during lead hazard control.

(6) Work with landlord and tenant groups to form consortia or otherwise engage landlords and owner-occupants to enroll their eligible housing units in local lead hazard control or rehabilitation programs. The applicant should obtain commitments from landlords to provide matching resources for work to be done on their units. For example, LEAP could offer landlords grant funds for replacement windows if the landlords contribute the cost of additional repairs such as basic system upgrades, or other rehabilitation work including painting and maintenance that is associated with lead hazard control.

(7) Create a nationwide "lead-safe unit" identification seal of approval program that would be used by landlords and others to market lead-safe units. Housing units that safely complete hazard control activities, or housing units that pass a lead clearance test, would receive a lead-safe unit seal.

(8) Promote homebuilder, remodelers, or contractor associations to coordinate efforts to reduce lead hazards by contributing technical assistance, training, presentations and materials and/or labor to lead hazard control efforts.

(9) Encourage landscaping firms, nurseries, and landscape architects to contribute lead-safe soil, mulch, and other forms of vegetation cover and shrubbery designed to mitigate lead contamination of soil around the exterior/perimeter and play areas of affected housing units.

(10) Work with faith-based and other community-based organizations that are committed to improving the quality of life within the community.

(11) Provide training for significant numbers of trades people to implement lead safe work practices, such as window replacement and weatherization work.

(12) Expand dust testing and clearance testing, especially in high-risk communities.

(E) Support Elements

(1) Administrative costs: Up to 10 percent of the HUD funds may be used for administration. Such costs would include the costs associated with completing HUD reports, accounting and bookkeeping expenses, costs associated with obtaining audits, and other direct grant management expenses

(*see* Appendix A for definition of Administrative Costs applicable to this program).

(2) Up to 20 percent of the *leveraged funds* may be used for training, lead hazard awareness and other public education, outreach and education initiatives.

(F) Ineligible Activities

You may not use grant funds for any of the following:

(1) Purchase of real property.

(2) Chelation or other medical treatment costs related to children with elevated blood lead levels.

(3) Lead hazard control activities in publicly owned housing, or project-based Section 8 housing.

(4) Capital expenditures in excess of $5,000 per unit cost.

IV. Program Requirements

Period of Performance

The period of performance is 24 months. Grantees will be expected to report on program progress on a quarterly basis in a format provided by HUD. HUD reserves the right to approve no-cost time extensions for a period of up to 24 months based upon the submission of adequate justification by the grantee.

Statutory Requirements

To be eligible for funding under this NOFA, the applicant must meet all Federal statutory and regulatory requirements applicable to this program. The specific requirements will be identified in the grant agreement for successful applicants. In addition, you will be required to comply with all State and local statutes, regulations, or other applicable requirements.

Threshold Requirements

(1) Compliance with Fair Housing and Civil Rights Laws

(a) All applicants and their sub-recipients must comply with all Fair Housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a).

(b) You may not apply for assistance under this NOFA if you, the applicant:

(i) Have been charged with a systemic violation of the Fair Housing Act alleging on-going discrimination;

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(iii) Have received a letter of non-compliance findings under Title VI, Section 504, or Section 109, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in the individual program NOFA.

HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(2) Additional Non-discrimination Requirements

You, the applicant, and your sub-recipients must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*) and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq*).

(3) Affirmatively Furthering Fair Housing

Under section 808(e)(5) of the Fair Housing Act, HUD is obliged to affirmatively further fair housing. HUD requires the same of its grant recipients. If you are a successful applicant, you will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes are race, color, national origin, religion, sex, disability or perceived disability, and family status. Unless otherwise instructed in this NOFA, your application must include specific steps to:

(a) Overcome the effects of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(b) Remedy discrimination in housing.

(4) Promote fair housing rights and fair housing choice

Further, you, the applicant, have a duty to carry out the specific activities provided in your responses to the NOFA rating factors that address affirmatively furthering fair housing.

(5) Conducting Business in Accordance with Core Values and Ethical Standards

Entities subject to 24 CFR parts 84 and 85 (most non-profit organizations and State, local, and tribal governments or government agencies or instrumentalities who receive Federal awards of financial assistance) are required to develop and maintain a written code of conduct (*see* §§ 84.42 and 85.36(b)(3)). Consistent with regulations governing this program, your code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal. If awarded assistance under this NOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct.

(6) Environmental Policy

The application shall contain an assurance that the applicant agrees to assist HUD in complying with 24 CFR part 50 and that, where LEAP funds are proposed to be used for eligible physical activities, the applicant shall:

(a) Supply HUD with all available relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50;

(b) Carry out mitigating measures required by HUD or select alternate eligible property; and

(c) Not rehabilitate, convert, or repair property, nor commit or expend HUD or HUD-leveraged funds for these program activities with respect to any eligible property repair, until HUD approval of the property is received.

The instructions for this assurance and certification are located in "Section 2—Preparing Your Application" of the application kit.

(7) Coastal Barrier Resources Act

Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), you may not use grant funds for properties located in the Coastal Barrier Resources System.

(8) Flood Disaster Protection Act

Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), you may not use grant funds for lead-based paint hazard control of a building or manufactured home that is located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(a) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the applicable regulations (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding these hazards; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act (42 U.S.C. 4012a(a)). You are responsible for assuring that flood

insurance is obtained and maintained for the appropriate amount and term.

V. Application Selection Process

(A) Award Offers

In the selection process, once available funds have been allocated to meet the requested or negotiated amounts of the top eligible applicants, HUD reserves the right to offer any residual amount as partial funding to the next eligible applicant, provided HUD is satisfied that the residual amount is sufficient to support a viable though reduced effort by such applicant(s). If you are an applicant that is offered a reduced grant amount, you will have a maximum of seven (7) calendar days to accept such a reduced award and a maximum of 30 calendar days after acceptance to submit a revised strategy and budget. If you fail to respond within the seven-day limit, you shall be considered to have declined the award and the award will be offered to the next highest ranked applicant. HUD intends to fund the highest ranked applications within the limits of funding.

(B) Budget

HUD will evaluate your proposal to determine if it is reasonable, clearly justified, and consistent with the intended use of grant funds. HUD is not required to approve or fund all proposed activities. You must thoroughly document and justify all budget categories and costs (Part B of Standard Form 424A).

(C) Factors for Award Used to Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are stated below. The maximum number of points to be awarded is 100. Your application must receive a total score of at least 70 points to remain in consideration for funding.

Rating Factor 1: Organizational Capacity (30 points)

(1) Description: This factor addresses your organizational capacity to successfully implement the proposed activities in a timely manner.

(a) Describe the knowledge and experience of the staff responsible for the following functions: Executive Direction, Finance, Marketing, and Program Coordination. The applicant must have sufficient qualified personnel or be able to quickly retain qualified experts or professionals in financial/grant management, marketing, and lead-based paint programs that will allow you to immediately begin your proposed work program and to perform your proposed activities within the two-year period of performance. In your narrative, you should include information about your organization and staff capacity in fund raising and/or leveraging, private sector recruitment, lead-based paint identification and lead hazard control that you have successfully conducted recently (*e.g.*, within the past five years). Include a discussion of staff knowledge and expertise in fund raising, organizational skills, lead hazard control and lead-safe housing. Your discussion on capacity should include the depth and range (depth dealing with the number of persons with available knowledge and expertise, and range dealing with the extent of knowledge and expertise) of your program staff, their experience, commitment of time to the program, salary information, length of time with organization and position titles. Resumes or detailed job announcements for the above key positions must be included as an Appendix with your application. Indicate the percentage of time that key personnel will devote to your proposed project. The Program Coordinator must be dedicated to this effort for a minimum of 75 percent of the time. You may demonstrate capacity by thoroughly describing your prior experience in this type of activity and/or how you will develop the necessary capacity to carry out proposed activities.

(b) Describe your agency or organization's ability to manage grants and leveraged program funds and activities.

(c) Describe the knowledge you and your project participants/partners possess regarding lead poisoning as a public health threat to children, and your experience and/or knowledge of lead-based paint issues and hazard control. Use of staff with more recent, relevant and demonstrated successful experience will result in a higher rating.

Rating Factor 2: Approach (35 points)

(1) Description: This factor addresses the work plan strategy that the applicant intends to follow in meeting the goals and objectives of the program. This work plan strategy should address the following:

(2) Describe the selection process for those organizations that are to conduct or coordinate work activities for lead hazard control, outreach, evaluation, *etc.* Describe how you intend to involve faith-based and other community-based organizations in your proposed activities.

(3) Describe the proposed strategy for leveraging private sector resources including:

(a) Target audiences/constituencies;

(b) Use of contractors/subgrantees/partners and their method of selection;

(c) Methods of outreach/promotion;

(d) Types of leveraging to be employed;

(e) Proposed use and distribution of funds/resources leveraged;

(f) Overall project management and coordination;

(g) Proposed schedule of activities within the 24-month period of performance.

Rating Factor 3: Leveraging Resources (35 points)

(1) Description: This factor addresses your ability to obtain and use private sector resources or leverage private sector activities that can be combined with HUD and other program resources to achieve program objectives. The applicant should:

(a) Describe what your organization has done in the recent past (e.g., within the past five years) that gives evidence that it has the ability and experience to leverage substantial resources. Describe specific activities, the amount of funds or goods leveraged, and what the leveraged funds were used to support. If you have experience in generating funds or goods for purposes similar to addressing lead paint abatement or control measures, you should describe those activities and the results achieved.

(b) Describe the types of public or private sector commitments, if any, you already have to devote to your LEAP grant program activities, and anticipated future amounts to be generated. Based upon the estimated amount of funding you anticipate leveraging over the life of the award, identify the general geographic locations of the units the increased funding or leveraged goods that will be treated as a result of your work. Also provide an estimate of the number of units that can be expected to be treated as well as the type of treatment to be used. Your description of the location of treatment areas should be sufficient to determine that the units serve low-income persons. Generated resources may include cash or in-kind contributions of services, equipment, or supplies. In evaluating this factor, HUD will consider the extent to which you have established working partnerships, memoranda of understanding and/or firm agreements with other identified entities for the commitment of additional resources. Resources may be provided by any private source, including contributions of investor-owners. However, care should be taken in calculating such contributions when the exact amount is not easily determined. Applicants that do not have such partnerships at the time of

application will be required to establish partnerships immediately following notification of grant award. Only contributions that have a stated monetary value with supporting documentation from the contributing organization/entity authorized to make such commitment must sign all the commitments to receive credit in the evaluation for existing resources. Firm established commitments will be rated more highly than applications with commitments that have not yet been established. Applicants that have targeted specific high-risk neighborhoods or geographic locations for leveraging/fund raising and abatement/control activities will receive a higher number of rating points.

(D) Applicant Debriefing

Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for at least 120 days after awards for assistance are announced, HUD will provide any requesting applicant with a debriefing on their application. All requests for debriefing must be made in writing or by email by the authorized official whose signature appears on the HUD–424 or his/her successor in office. Submit your request to the person or organization identified as the Contact under the section entitled "Further Information and Technical Assistance." Information provided to you during your debriefing will include, at a minimum, the final score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

(E) Rating Panels

To review and rate applications, HUD may establish panels. These panels may include persons not currently employed by HUD. HUD may include these non-HUD employees to obtain certain expertise and outside points of view, including views from other Federal agencies.

(F) Adjustments to Funding

(1) HUD will not fund any portion of your application that is not eligible for funding under specific program statutory and regulatory requirements or which does not meet the requirements of this NOFA. Only the eligible portions of your application (including non-duplicative portions) may be funded.

(2) If funds remain after the highest-ranking applications, HUD may fund all or part of the next highest-ranking application in a given program. If you, the applicant, turn down an award offer, HUD will make an offer of funding to the next highest-ranking application.

(G) Performance and Compliance Actions of Grantees

HUD will measure and address the performance and compliance actions of grantees in accordance with the applicable standards and sanctions of their respective state and local programs.

VI. Application Submission Requirements

(A) Applicant Information

(1) Application Format

The application narrative response to the Rating Factors are limited to a maximum of 15 pages. Your response must be typewritten on one (1) side only on 8 ½″ × 11″ paper using a 12-point (minimum) font with not less than ¾″ margins on all sides. Appendices should be referenced and discussed in the narrative response. Materials provided in the appendices should directly apply to the rating factor narrative.

(2) Application Checklist

Your application must contain the items listed in the Checklist and Submission Table of Contents included in Appendix B of this NOFA. These items include the standard forms, certifications, and assurances listed that are applicable to this funding (collectively, referred to as the "standard forms"). The standard forms can be found in Appendix B of this NOFA. The application items required for submission are:

(a) Transmittal Letter that identifies "the applicant" (or applicants) submitting the application, the dollar amount requested, what the program funds are requested for, and the nature of involvement with community-based organizations.

(b) The name, mailing address, telephone number, and principal contact person of "the applicant." If you have consortium associates, sub-grantees, partners, major subcontractors, joint venture participants, or others contributing resources to your project, you must provide similar information for each of these partners.

(c) *Applicant Abstract.* Provide an abstract describing the goals and objectives of your proposed program (2 page maximum).

(d) HUD 424, Application for Federal Assistance.

(e) HUD 424–B, Applicant Assurances and Certifications.

(f) HUD 424C, Budget Summary for Competitive Grant Programs.

(g) Standard Form SF–LLL and HUD Form 2880:

(h) Contracts, Memoranda of Understanding or Agreement, letters of commitment or other documentation must describe the proposed roles of agencies, local broad-based task forces, participating faith-based and other community or neighborhood-based groups or organizations, local businesses, and others working with the program. For profit entities and/or firms must clearly demonstrate and document how the lead-based paint hazard identification and control measures will be coordinated with local organizations, State(s) or units of general local government to carry out lead hazard control.

(i) *Assurances.* All applicants must comply with HUD's policy on assurances as listed in section IV(6) of this NOFA.

(B) Proposed Activities

All applications must, at a minimum, describe the proposed activities in the narrative responses to the rating factors. Your narrative statement must be numbered in accordance with each factor for award (Rating Factors 1 through 3).

VII. Findings and Certifications

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact remains available for public inspection during regular business in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC. 20410–0500.

(B) Federalism Impact

Executive Order 13132 (captioned "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

(C) Executive Order 12372, Intergovernmental Review of Federal Programs

Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform a State review function. The official listing of State Points of Contact (SPOC) for this review process can be found at *http://www.whitehouse.gov/omb/grants/spoc.html*. States not listed on the Web site have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your State has a SPOC, you should contact them to see if they are interested in reviewing your application prior to submission to HUD. Please make sure that you allow ample time for this review process when developing and submitting your applications. If your State does not have a SPOC, you may send applications directly to HUD.

(D) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of non-appropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) Documentation and public access requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA is sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(2) Disclosures

HUD will make available for public inspection for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(3) Publication of Recipients of HUD Funding

HUD's regulations at 24 CFR part 4 provide that HUD will publish a Notice in the Federal Register to notify the public of all decisions made by the Department to provide:

(a) Assistance subject to section 102(a) of the HUD Reform Act; and/or

(b) Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(F) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815 (this is not a toll-free number). For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(G) Paperwork Reduction Act Statement

The LEAP information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2539–0015. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

IX. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a

uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

X. Environmental Requirements

Certain activities assisted under this program may be subject to HUD environmental review to the extent required under 24 CFR part 50. An award under the Lead Elimination Action Program (LEAP) does not constitute approval of specific sites where activities that are subject to environmental review may be carried out. Following grant award execution, HUD will be responsible for ensuring that any necessary environmental reviews are completed. You may not rehabilitate, convert or repair property, or commit or expend grant funds or HUD-leveraged funds for any eligible property, until you receive written notification from the appropriate HUD official that HUD has completed its environmental review and the property has been approved. The results of the environmental reviews may require that proposed activities be modified or proposed sites rejected.

Dated: July 29, 2002.

David Jacobs,

Director, , Office of Healthy Homes and Lead Hazard Control.

Appendix A: Administrative Costs

Appendix B: Checklist and Submission Table of Contents and Applicable Forms

Appendix C: Other requirements

The standard forms applicable to the Office of Healthy Homes and Lead Hazard Control Operation LEAP application are included in this Appendix.

Appendices and Common Forms

Appendix A—Administrative Costs

I. Purpose

The intent of this HUD grant program is to allow the Grantee to be reimbursed for the reasonable direct and indirect costs, subject to a top limit, for overall management of the grant. In most circumstances the Grantee, whether a state or a local government, is expected to serve principally as a conduit to pass funding to sub-grantees, which are to be responsible for performance of the lead-hazard reduction work. Up to *10 percent of the federal funds* may be used for administration. Such costs would include the costs associated with completing HUD reports, accounting and bookkeeping expenses, costs associated with obtaining audits, and other direct grant management expenses.

II. Administrative Costs: What They Are Not

For the purposes of this HUD grant program the term "administrative costs" should not be confused with the terms "general and administrative cost", "indirect costs", "overhead", and "burden rate". These are accounting terms, usually represented by a government-accepted standard percentage rate. The percentage rate allocates a fair share of an organization's costs that cannot be attributed to a particular project or department (such as the chief executive's salary or the costs of the organization's headquarters building) to all projects and operating departments (such as the Fire Department; the Police Department; the Community Development Department, the Health Department or this program). Such allocated costs are added to those projects' or departments' direct costs to determine their total costs to the organization.

III. Administrative Costs: What They Are

For the purposes of this HUD grant program, "Administrative Costs" are the Grantee's allowable direct costs for the overall management of the grant program plus the allocable indirect costs. The allowable limit of such costs that can be reimbursed under this program is ten (10) percent of the federal funds may be used for administration. Should the Grantee's actual costs for overall management of the grant program exceed ten (10) percent of the total federal funds, those excess costs shall be paid for by the Grantee. However, excess costs paid for by the Grantee may be shown as part of the requirement for cost-sharing funds to support the grant.

IV. Administrative Costs: Definition

A. General

Administrative costs are the allowable, reasonable, and allocable direct and indirect costs related to the overall management of the HUD grant for lead-hazard reduction activities. Those costs shall be segregated in a separate cost center within the Grantee's accounting system, and they are eligible costs for reimbursement as part of the grant, subject to the ten (10) percent limit. Such administrative costs do not include any of the staff and overhead costs directly arising from specific sub-grantee program activities eligible under this NOFA, because those costs are eligible for reimbursement under a separate cost center as a direct part of project activities.

The Grantee may elect to serve solely as a conduit to sub-grantees, who will in turn perform the direct program activities eligible under this NOFA, or the Grantee may elect to perform all or a part of the direct program activities in other parts of its own organization, which shall have their own segregated, cost centers for those direct program activities. In either case, not more than up to 10 percent of the federal funds may be used for administration. 10 percent of the total HUD award may be devoted to administrative costs, and not less than 90% of the total grant sum shall be devoted to direct program activities. Grantee shall take care not to mix or attribute administrative costs to the direct project cost centers.

B. Specific

Reasonable costs for the Grantee's overall grant management, coordination, monitoring, and evaluation are eligible administrative costs. Subject to the ten (10) percent limit, such costs include, but are not limited to, necessary expenditures for the following, goods, activities and services:

(1) Salaries, wages, and related costs of the Grantee's staff, the staff of affiliated agencies, or other staff engaged in Grantee's overall grant management activities. In charging costs to this category the recipient may either include the entire salary, wages, and related costs allocable to the program for each person whose primary responsibilities (more than 65% of their time) with regard to the grant program involve direct overall grant management assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any overall grant management assignments. The Grantee may use only one of these two methods during this program. Overall grant management includes the following types of activities:

(a) Preparing Grantee program budgets and schedules, and amendments thereto;

(b) Developing systems for the selection and award of funding to sub-grantees and other sub-recipients;

(c) Developing suitable agreements for use with sub-grantees and other sub-recipients to carry out grant activities;

(d) Developing systems for assuring compliance with program requirements;

(e) Monitoring sub-grantee and sub-recipient activities for progress and compliance with program requirements;

(f) Preparing presentations, reports, and other documents related to the program for submission to HUD;

(g) Evaluating program results against stated objectives;

(h) Providing local officials and citizens with information about the overall grant program; (However, a more general education program, helping the public understand the nature of lead hazards, lead hazard reduction, blood-lead screening, and the health consequences of lead poisoning is a direct project support activity).

(i) Coordinating the resolution of overall grant audit and monitoring findings; and

(j) Managing or supervising persons whose responsibilities with regard to the program include such assignments as those described in paragraphs (a) through (i).

(2) Travel costs incurred for official business in carrying out the overall grant management;

(3) Administrative services performed under third party contracts or agreements, for services directly allocable to overall grant management such as overall-grant legal services, overall-grant accounting services, and overall-grant audit services;

(4) Other costs for goods and services required for and directly related to the overall management of the grant program, including such goods and services as telephone, postage, rental of equipment, renter's insurance for the program management space, utilities, office supplies, and rental and maintenance (but not purchase) of office space for the program.

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Annex B

Threshold Review Checklist

Name of Applicant

HUD Office of Healthy Homes & Lead Hazard Control Programs Threshold Review Checklist

This Threshold Review Checklist will be used to conduct the Threshold Reviews of the Lead Elimination Action Program. This is the form that will be used by HUD and is provided as part of the application kit to assist you in preparing a complete application. It is not necessary to include this checklist with your application.

The following checklist is provided to ensure that the applicant has submitted all of the required items in order to receive consideration for funding. **Reviewers must check off each item that has been included in the submission package and note the corresponding page number where the response is located.**

	Check One OK	Problem	*Review Criterion*	*Standards for Performance*	**Assessment (Include page number)**
1			Transmittal Letter	Did an authorized official sign the transmittal letter?	Yes No Page _____
2			Abstract	Does the application include an abstract? *(not to exceed 2 pages)*	Yes No Page _____
3			LEAP	Is the applicant a nonprofit or for-profit entity or firm?	Yes No
4			HUD 424	What is the total amount of Federal funds requested? How much has been shown as leverage?	Federal _____ Leverage _____ Total _____
5			HUD 424-B	Did applicant submit the 424B Assurances and Certifications?	Yes No
6			HUD 424-C	Did the applicant submit the 424C Budget Summary?	Yes No
	Certifications and Disclosures			Review the Certifications and Disclosures to ensure they are signed or properly executed	**Circle One**
7			HUD 2880	Did the applicant complete and sign the HUD 2880?	Yes No
8			Certifications and Disclosures	Lobbying SF-LLL	Yes No Page _____ or Not required (As Stated by Applicant)
9			Application Size and Style	Is the application narrative in response to the Rating Factors 15 pages or less? Are the type size and margins appropriate? (at least 12 point type and at least ¾" margins)	Yes No Yes No
10			Civil Rights Findings	The applicant *has* been identified with civil rights findings.	Yes No

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Appendix C—Other Requirements; Guidance on Requirements Issues

Drug-Free Workplace

Background and Requirement

The applicant must make certifications and agreements to provide a drug-free workplace. If it is later determined that the applicant knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

How Should You Respond to This Requirement?

Enclose with the application submission a completed copy of the Certification for a Drug-Free Workplace form.

Indicate the address of the worksite on the form. When completing this form, the applicant's office address should be considered the worksite.

You Should Include

The address of the worksite on the signed form.

Public Access to Application Material

Background and Requirement

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552 and HUD regulations at 24 CFR part 15). Application material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the announcement of the awards.

HUD will publish in the **Federal Register** a notice listing all the recipients of HUD assistance awarded on a competitive basis under this NOFA.

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA.

The applicant may note, by clearly identifying or otherwise indicating those portions of your application, which information you believe should not be disclosed in the event of a FOIA request. While HUD will consider your advice in its determination whether to release the requested information, HUD is required by the FOIA to make an independent evaluation of that information. If you believe that confidential treatment is appropriate, the basis for this view should be provided where possible, because general assertions or blanket requests for confidentiality are not particularly helpful to HUD in making determinations concerning release of information under the Act.

It should also be noted that HUD is required to segregate disclosable information from non-disclosable items, so particular care should be taken in the identification of each portion for which confidential treatment is requested. Applicant views concerning confidentiality will be used solely to aid HUD in preparing its response to FOIA requests. Please note that the presence or absence of such comments or earmaking regarding confidential information will have no bearing whatsoever on the evaluation of your application submitted under this solicitation, nor will the absence of this earmarking automatically result in greater disclosure.

You should evaluate your proposal to determine if it contains any material that should be treated as confidential.

How Should You Respond?

Enclose with the application submission a completed copy of the HUD Form 2880 Applicant/Recipient Disclosure/Update Report.

All applicants must sign the HUD Form 2880.

You Should Include

A signed copy of the HUD Form 2880.

Prohibition Against Lobbying Activities

Background and Requirement

Applicants for funding under this NOFA are subject to the provisions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for FY 1991 (31 U.S.C. 1352, the Byrd Amendment) and the lobbying Disclosure Act of 1995 (P.L. 104–65). The Byrd amendment, which is implemented in HUD regulations at 24 CFR 87, prohibits applicants for and recipients and sub-recipient of Federal contracts, grants, loans, cooperative agreements, and loan insurance or guarantees from using appropriated funds to attempt to influence Federal Executive or Legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification.

In addition, applicants for and recipients and sub-recipients of Federal contracts, grants, loans, cooperative agreements, and loan insurance or guarantees above certain monetary amounts must file either a certification stating that they have not made and will not make any prohibited payments or a statement disclosing any prohibited payments or agreements to make such payments.

Requirement—The Lobbying Disclosure Act requires all persons and entities that lobby covered Executive or Legislative Branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

How Should You Respond to This Requirement?

If applicable, complete the Disclosure of Lobbying Activities—Form SF–LLL that is included in this application package. If not applicable, please indicate on the Checklist and Submission Table of Contents.

You Should Include

A signed copy of the Form SF–LLL (all pages must be signed) or statement that the form SF–LLL is not required.

Debarred and Suspended Applicants

Background and Requirement

HUD shall not award an assistance instrument to any applicant that is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. Prior to award, HUD shall check the General Services Administration's Lists of Parties Excluded from Federal Procurement and Non-procurement Programs. Any applicant found to be on that list shall be ineligible for an award under this NOFA.

How Should You Respond to This Requirement?

Enclose with the application submission a completed copy of the Certification regarding debarred or suspended applicants form.

Other Issues (No Response Is Required in Application)

Davis-Bacon Act—The Davis-Bacon Act does not apply to this program. However, if Lead Elimination Action Program funds are used in conjunction with other Federal programs in which prevailing wage rates apply, then Davis-Bacon provisions would apply to the extent required under the other Federal programs.

Prohibition Against Advance Information on Funding Decisions—HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (HUD Reform Act), codified at 24 CFR 4, applies to this funding competition. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are prohibited from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR 4. Applicants or employees who have ethics-related questions should contact the HUD Office of Ethics (202) 708–3815 (this is not a toll-free number).

Procurement Standards—All grantees are governed by and should consult 24 CFR 85.40. Sections 84.41 through 84.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by HUD upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

Federalism Executive Order—The General Counsel, as the Designated Official under Section 8(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States

or their political subdivisions, or the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Under this NOFA, grants will be made for the control of lead-based paint and lead-dust hazards in low-income, owner-occupied units and privately owned, low-income rental units. Although HUD encourages State and local governments to initiate or expand lead-based paint certification, testing, abatement, and financing programs, any action by a State or local government in these areas is voluntary. Because action is not mandatory, the NOFA does not impinge upon the relationships between the Federal Government, and State and local governments, and the notice is not subject to review under the Order.

Family Executive Order—The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document will likely have a beneficial impact on family formation, maintenance and general well being. The NOFA, insofar as it controls lead-based paint hazards in privately owned housing, will assist in preserving decent housing stock for low-income resident families. Accordingly, since the impact on the family is beneficial, no further review is necessary.

Common Forms

The following forms are provided in this section

HUD 424 Application for Federal Assistance *

HUD–424–B Applicant Assurances and Certifications *

SF–424C Budget Summary for Competitive Grant Programs

HUD–2880 Applicant/Recipient Disclosure/ Update Report *

SF–LLL Disclosure of Lobbying Activities *

* These forms are also available as fillable Adobe Reader (PDF) or Word (DOC) formats from the HUDClips Web site at *www.hudclips.org* (available from the HUD home page at *www.hud.gov*).

† These forms are also available as Excel (XLS) spreadsheets from the HUD Office of Healthy Homes and Lead Hazard Control Web site at *www.hud.gov/offices/lead*.

[FR Doc. 02–19595 Filed 8–2–02; 8:45 am]

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Federal Register

Monday,
August 5, 2002

Part III

Department of Agriculture

Farm Service Agency

7 CFR Parts 735, 736, 737, 738, 739, 740, 741, and 742
Implementation of the United States Warehouse Act; Final Rule

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 735, 736, 737, 738, 739, 740, 741 and 742

RIN 0560–AG45

Implementation of the United States Warehouse Act

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations administering the United States Warehouse Act (USWA) to implement the provisions of the Grain Standards and Warehouse Improvement Act of 2000 (the 2000 Act). The 2000 Act amended the USWA in its entirety. The 2000 Act updates Federal warehouse licensing operations, authorizes electronic warehouse receipts (EWR) for all commodities, and authorizes the Secretary of Agriculture (Secretary) to establish regulations for voluntary systems for other electronic documents (OED) related to sales and transfers of agricultural products. The USWA is administered by the Farm Service Agency (FSA).

EFFECTIVE DATE: August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Roger Hinkle, Chief, Licensing Authority Branch, Warehouse and Inventory Division, FSA, USDA, Room 5971, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553, telephone (202) 720–2121, FAX (202) 690–3123, e-mail address, *USWA@wdc.fsa.usda.gov*, or the USWA Internet Web page at *http://www.fsa.usda.gov/daco/uswa.htm*. Persons with disabilities who require alternative means for communication of regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB).

A Regulatory Impact Analysis (RIA) was prepared. The use of electronic systems will expedite and facilitate the timely receipt and acceptance of documents at export or cross-border points in trade of agriculture products. The cost to operate the USWA is paid for by users of the program. Therefore, governmental cost of implementing the 2000 Act for the current and future fiscal years is budget neutral, meaning expenses must approximate equal collections. Using total grain movements as an example of a closed marketing system, and using knowledge garnered from cotton industry participants of existing electronic systems, FSA's analysis indicates a potential benefit of $74 million available to the marketplace. While $74 million is a relatively small amount in absolute terms for the multi-billion dollar grain industry, the industry operates on low margins, and the benefits are not insignificant.

Copies of the RIA are available upon request at the address shown above.

Regulatory Flexibility Act

FSA finds that the Regulatory Flexibility Act does not apply to this final rule because the rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the Administrative remedies must be exhausted.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

The provisions and activities of this Act are not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the rule does not mandate expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of the threshold amount, $100 million.

Executive Order 12612

It has been determined that this rule/activity does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this final rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

This final rule requires only minor changes to the information collection requirements that are currently approved by OMB under control number 0560–0120. A proposed rule containing an estimate of the information collection burden of these regulations was published on September 4, 2001, in the **Federal Register** [66 FR 46310] for public comment. FSA received comments concerning the use of acronyms to identify when an information block or data field is intentionally unused. FSA addresses this issue in the background of the final rule. A new request for approval of the information collections has been submitted to OMB.

Background

The 2000 Act, enacted on November 9, 2000, revises the USWA. The 2000 Act provides for licensing and inspection of warehouses used to store and handle agricultural products, issuance of warehouse receipts, including EWR's, for agricultural products, and for other purposes.

The USWA, originally enacted in 1916, authorized the Secretary to license warehouse operators who stored agricultural products and persons to sample, weigh, inspect and grade agricultural products. The USWA licensing program has always been voluntary and regulated licensees in order to protect depositors.

The 2000 Act includes several provisions that thoroughly modernize the program and reflect the current technology advancements within the agricultural marketing systems. The new provisions make U.S. agriculture more competitive in both domestic and foreign markets through efficiencies and cost savings provided by today's computer technology and information management systems. These new provisions include: (1) Extending the USWA's authority to all agricultural products, including a processed product of an agricultural commodity; (2) granting the Secretary the power to establish regulations governing one or more electronic systems under which EWR's or OED's related to the shipment, payment and financing of domestic and foreign agricultural products may be issued or transferred; (3) allowing

licensees or providers to provide a bond or other financial assurance as the Secretary determines appropriate; (4) allowing warehouse operators to allocate storage space to a depositor; (5) requiring warehouse operators to issue warehouse receipts only when requested by the depositor; and (6) allowing for arbitration.

The operation of the licensing program for warehouse operators, inspectors, samplers, classifiers, and weighers is not substantially changed by the final rule. The general licensing program requirements are furnished in subparts B and C, with the more specific requirements stated in the licensing agreements.

Section 3(h) of the 2000 Act allows the Secretary to issue regulations governing one or more electronic systems under which EWR's may be issued and transferred and OED's relating to the shipment, payment, and financing of the sale of agricultural products. Previously, EWR's were only authorized for cotton. The authority for electronic conveyance of other business documents (such as grade and weight certificates, phytosanitary certificates, bills of lading, export evidence certificates or letters of credit) is a new authority. The final rule provides for a system where FSA will establish regulatory guidelines for systems for the electronic conveyance of these and OED's that will allow their transfer from buyer to seller across state and international boundaries.

The structure will mirror the structure established for cotton EWR's consisting of independent providers who have signed an agreement with FSA. Section 735.300 provides the general warehouse requirements applicable to all warehouse receipts, whether paper or electronic, for any agricultural product. Requirements specific to EWR's are found in § 735.303.

The final rule establishes two provider agreements, one for EWRs and electronic USWA documents and one for OEDs. The EWR provider agreement for EWR's and electronic USWA documents will cover all approved agricultural products. Separate addenda will be developed to cover the commodity-specific EWR's. The second provider agreement will cover all OED's. Separate addenda may be developed for each specific document.

Section 11(e)(4) of the 2000 Act provides that "an electronic receipt issued or other electronic document transferred, in accordance with this Act shall not be denied legal effect, validity, or enforceability on the ground that the information is generated, sent, received, or stored by electronic or similar means." Accordingly, this final rule sets forth in subpart E the manner in which FSA may approve a private person to establish a system that accomplishes these functions. Under the provider agreement for these functions, in addition to other activities, a party can take a paper document relating to the shipment, payment, and financing of the sale of an agricultural product to an approved provider and the provider may generate an identical electronic document for electronic transmission. This aspect of the USWA will allow parties to conduct all aspects of these agricultural transactions in an electronic manner, whereas currently, in many instances, necessary documents are in a paper format and must be physically delivered to another party.

The 2000 Act authorizes the Secretary to assess and collect fees from Federally-licensed warehouse operators, approved providers and other users of the USWA. The fees are intended to offset the cost of operating the revised USWA. The fee schedule is included as an addendum to the licensing and provider agreement and is available from the Deputy Administrator for Commodity Operations, in Washington, DC.

Discussion of Public Comments and Changes from the Proposed Rule

FSA published a proposed rule requesting public comments in the **Federal Register** on September 4, 2001 [66 FR 46310–46343], with a 30-day comment period.

FSA received a total of 83 comments from seven trade associations (representing the overall cotton industry, grain and feed industry, cotton warehousing, terminal grain merchants, community bankers, warehouse control officials, and fire protection), five cotton warehouse operators, two EWR providers, one grain warehouse operator, one e-commerce company, one electronic cotton marketing service company, one board of trade clearing corporation, one FSA warehouse examiner, and one FSA retiree.

Most of the comments received supported the changes proposed by FSA. Some comments and suggestions were of an administrative nature that do not impact the final rule and will be addressed in either FSA internal procedures or in the applicable licensing or provider agreements. And, while FSA did adopt some of the recommendations and understands the concerns and opinions expressed by the respondents, FSA did not adopt all of them. The final rule gives FSA necessary flexibility and is consistent with statutory requirements. Therefore, in consideration of comments and suggestions received, FSA adopts the proposed rule as final, with the changes discussed below. Changes made in response to public comments are noted.

Changes to Part 735 in General

Three respondents requested that the language be more specific and found the term "program requirements" confusing. In response, FSA removed all references to "program" throughout the final rule and detailed the extent of authority in § 735.1, Applicability. The word "activities" was substituted for "program" throughout part 735. Also, in the interest of clarity, FSA replaced the term "approval" with the term "authority" throughout part 735. Also, all references to a "license" that referred to a piece of paper were changed to "certificate of license" in order to separate references to a paper document from the concept of an electronic "license." Similarly, all references to "authorization" that referred to a piece of paper were changed to "certificate of authorization" in order to separate the paper documents from the electronic "authorization."

Changes to Specific Sections

Subpart A—General Provisions

Section 735.1 Applicability

One comment was received addressing situations in which State agencies advise USWA-licensed warehouses that the warehouse operator "* * * must obtain State weigher, grader and/or handler licenses" and suggested that FSA should "clarify that a Federal Service License precludes the need for State licensing in this area." *In Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 234–236 (1947) the U.S. Supreme Court found that the USWA preempted State law with respect to State laws when it was clear that Congress had intended to regulate the activities of USWA-licensed warehouses: "The test, therefore, is whether the matter on which the State asserts the right to act is in any way regulated by the Federal Act. If it is, the federal scheme prevails though it is a more modest, less pervasive regulatory plan than that of the State." Among other provisions of the USWA, section 3(g) provides that: "Subject to the other provisions of this Act, the Secretary may prescribe the duties of a warehouse operator operating a warehouse licensed under this Act with respect to the warehouse operator's care of and responsibility for agricultural products stored or handled by the warehouse operator." Accordingly, a USWA-licensed warehouse operator must meet the

conditions set forth in 7 CFR part 735 and the accompanying licensing agreements. Such a warehouse operator does not have to meet State imposed requirements relating to warehousing, grading, weighing, storing, merchandising or other similar activities otherwise applicable to State-licensed warehouses in order to operate a USWA-licensed facility.

But, to the extent a person engages in these types of activities and they do not relate to the activities of the USWA-licensed facility (for example, if a USWA-licensed warehouse is operated with respect to oilseeds in the western part of a State and a separate facility not covered by the USWA license is operated in the eastern part of a State with respect to dry edible beans) then the activities in the non-USWA licensed facility would be solely a matter of State jurisdiction. In order to provide greater clarity on this matter, the regulations, as opposed to the single agreement referenced by the respondent, is revised at 7 CFR 735.1 by adding a new subsection (c) to read as follows: "(c) Compliance with State laws relating to the warehousing, grading, weighing, storing, merchandising or other similar activities is not required with respect to activities engaged in by a warehouse operator in a warehouse subject to a license issued in accordance with this part."

Section 735.2 Administration

Two respondents suggested that FSA provide advance notice of changes to the regulations to licensees and other affected persons. In consideration of the suggestions, FSA added paragraphs (c) and (d) describing methods for notifying licensees and authorized providers of changes to the various agreements.

Section 735.3 Definitions

(1) FSA deleted the definition and use of "approval" in the final rule to prevent confusion with Commodity Credit Corporation and other USDA programs.

(2) A respondent expressed confusion about the definition of "central filing system," with respect to the contextual meaning of the terms "transparent" and "anonymous." FSA has revised the definition for clarity. The applicable licensing and provider agreements will be revised accordingly.

(3) A definition for the term "certificate" was added to clarify the definition of "license."

(4) In response to the suggestion of one respondent that FSA insert the term "XML" into the definition of "electronic document," the term "advanced communication methods" was inserted.

(5) At the suggestion of one respondent, FSA amended the definition of "other electronic documents" to exclude USWA electronic documents.

(6) A respondent suggested modifying the definition of "schedule of fees" to include those fees "FSA assesses for licensing and provider agreement services." In addition to adopting the suggestion, FSA added a new definition "schedule of charges" that refers to the rates of charges assessed by warehouse operators. This differentiates what warehouse operators or providers charge their customers from the fees assessed warehouse operators or providers by FSA.

(7) At the suggestion of one respondent, FSA added a definition of "USWA electronic document."

(8) At the suggestion of one respondent FSA inserted the phrase "for the purpose of interstate or foreign commerce" into the definition of "warehouse."

(9) A definition of the term "warehousing activities" was added to clarify the definitions of both "license" and the duties of warehouse operators.

(10) Definitions of the terms "examiner," "holder," "provider agreement" and "service license" were revised for clarity.

Section 735.4 Fees

At the suggestion of one respondent and to conform to the language in the enabling legislation, FSA included a statement that the assessing of fees is intended to offset the costs of administering the USWA.

Section 735.6 Suspension, Revocation and Liquidation

FSA expanded the section to include liquidation of stocks and to specify additional reasons for a suspension, revocation or liquidation and to further clarify FSA's jurisdiction in a suspension or revocation of a license or liquidation of stocks.

Section 735.8 Appeals

FSA changed all references to deadlines for seeking review of actions from 21 business days to 28 calendar days in order to simplify business practices.

Section 735.9 Dispute Resolution and Arbitration of Private Parties

A number of respondents objected to binding arbitration, which they interpreted as a requirement in the proposed rule. In response, FSA clarified the language to make it clear that arbitration is an acceptable but not a mandatory method of dispute resolution and that FSA will provide no assistance or representation to any of the parties in such disputes.

Section 735.14(d) Bonding and Other Financial Assurance Requirements

The term "approved" was changed to "accepted" to correct an operational error.

Subpart A—General Provisions—Comments Not Adopted

(1) One respondent was concerned that FSA has had to resort to a single, broad set of regulations because of the labor- and resource-intensive process of amending regulations.

FSA has determined to remove the eight commodity-specific regulations and replace them with one general regulation. The final rule updates and modifies the regulatory language, merges all similar language from the specific commodity regulations and removes redundancies, but does not substantially change the program operations. The commodity-specific requirements have been moved to the applicable licensing or provider agreements.

As a result of the merger of all the specific-commodity warehouse regulations into one generic regulation, the cotton flow standard previously codified at 7 CFR 735.201, is not included in the final rule. The cotton flow standard has been included in the cotton licensing and EWR provider agreements.

(2) A suggestion that the term "agricultural product" be redefined to refer to "commodity" was not adopted because the term as used in this final rule was defined in the enabling legislation.

(3) A suggestion that FSA should not be in the business of regulating shipping orders because they are non-title documents and therefore, should not be part of this process was not adopted because the enabling legislation does not make a distinction between title and non-title documents. Further, FSA is not regulating shipping orders or similar documents. FSA is establishing the framework by which such documents may be electronically generated and transmitted by interested parties.

(4) A suggestion that FSA should use the National Fire Protection Association's published standards for the storage of records was not adopted because the publication had not received USDA clearance and approval.

Subpart B—Warehouse Licensing

Section 735.100 Application

FSA reworded the required documentation for a corporation to

correct an error and to present the information in a more usable format.

Section 735.106 Excess Storage and Transferring of Agricultural Products

In response to a suggestion, FSA clarified the rule to specify DACO as the authority for allowing the transfer of stored agricultural products to another warehouse.

Section 735.107 Warehouse Charges and Tariffs

The schedule of charges and rates language was revised for clarity.

Section 735.108 Inspections and Examinations of Warehouses

(1) In response to several comments, the section was expanded to specify additional conditions in the examination of warehouses.

(2) In response to several comments about the nature of examinations, FSA added paragraphs (b), (c), (d) and (e) to further clarify the warehouse examination process.

Section 735.110 Conditions for Delivery of Agricultural Products

In response to several comments, FSA modified this section to clarify the timely cancellation of warehouse receipts.

Subpart B—Warehouse Licensing—Comments Not Adopted

One respondent commented that irrevocable letters of credit were expensive and often not issued for more than one year. FSA has chosen to offer this as one of several acceptable, but not mandatory, forms of financial assurance that warehouse operators may offer to FSA to meet their financial requirement.

Subpart C—Inspectors, Samplers, Classifiers and Weighers—Comments Not Adopted

One respondent interpreted § 735.200, Service licenses, to include a requirement for competency testing by warehouse operators of all service licensing applicants. FSA revised the language to conform to the enabling legislation.

Subpart C—Inspectors, Samplers, Classifiers and Weighers—Changes Requested but Not Adopted

One respondent commented that service licenses should not be a function of the USWA. FSA has determined that issuing service licenses for activities described in this subpart is an appropriate role for the Federal government. Accordingly, the requested change is not adopted.

Subpart D—Warehouse Receipts

Section 735.300 Warehouse Receipt Requirements

(1) In response to many questions and comments, FSA added instructions on filling blank areas in the required data fields of the warehouse receipt.

(2) Several respondents expressed concerns about the language concerning the issuance of warehouse receipts and the language required in the various data sections of the warehouse receipt. FSA revised the section to provide that those who are subject to this rule, are to refer to the applicable licensing or provider agreement for individual specifications of the required data required for warehouse receipts. FSA also expanded upon the language dealing with the issuance of duplicate warehouse receipts to make clear the prohibition on issuing duplicate warehouse receipts. The term "grade" replaces "quality" to agree with the enabling legislation.

Section 735.302 Electronic Warehouse Receipts

Several respondents expressed concerns regarding the differences between paper warehouse receipts and EWR's. FSA split this section into two sections, § 735.302, Paper warehouse receipts, and § 735.303, Electronic warehouse receipts, to clarify the distinction. A number of suggestions were considered and adopted in modifying and clarifying the language of the new sections. Also, FSA revised language now in the new § 735.303(b)(6) to correct an error concerning correcting information on EWR's.

Subpart E—Electronic Providers—Comments Adopted

Section 735.401 Electronic Warehouse Receipt and USWA Electronic Document Providers

(1) Several respondents expressed opinions concerning financial standards, required financial assurance instruments and insurance requirements. After careful consideration of the comments received FSA has determined to increase the net worth and the insurance requirement for providers of EWR's. The net worth requirement was increased from $25,000 to $100,000 and the insurance coverage required was increased to $4 million. The specific requirements were moved from the regulations to the EWR provider agreement and addenda.

Section 735.402 Providers of Other Electronic Documents

(2) Several respondents expressed opinions concerning financial standards, required financial assurance instruments and insurance requirements. After careful consideration of the comments received FSA has determined to move the specific requirements from the regulations to the OED provider agreement and addenda.

(3) Several respondents suggested that the "conflict of interest" statement set forth in the provider agreements also be included in the final rule. FSA concurs and has included the "conflict of interest" statement in paragraph (5) of the applicable sections in addition to the provider agreements.

(4) Two respondents expressed opinions concerning the use of documentation approved by FSA when applying for a provider agreement. FSA has specified the required documentation necessary when applying to be a provider of EWR's and USWA electronic documents or providers of OEDs.

(5) FSA revised the language in § 735.404, Schedule of charges and rates, to comply with the new definitions for the various schedules of fees.

Subpart E—Electronic Providers—Comments Not Adopted

(1) One respondent expressed concern that the USWA was involved with other than electronic title documents. The enabling legislation includes the authorization to utilize any electronic document relating to the sale and financing of agricultural products. Accordingly, FSA has determined to include all such documents specified in § 735.400, Administration.

(2) Several respondents wanted more flexibility for providers to change rates and charges more often than once a year. FSA has chosen to keep the limit at once a year to provide certainty to all users.

Section 735.402 Providers of Other Electronic Documents

(3) FSA received five comments with respect to the proposed requirement specified in § 735.402, Providers of other electronic documents, that an entity that desires to be approved by FSA as an approved provider of electronic documents have a minimum net worth of $10 million. One respondent suggested a $1 million requirement would allow for a larger number of firms to be approved to be such a provider. One respondent requested that FSA review the proposed level and "tie it more closely to the type of electronic document, and corresponding risks, that are to be undertaken by the system provider."

One respondent stated that the level should be lowered to "* * * levels shown in § 735.401(a). Alternatively, some maximum (not to exceed) amounts (these amounts should still be lower than the $10 million and $25 million) could be put in § 735.402(a) and the actual (even lower) amounts should be included in the Provider Agreement where the figures can be modified as justified over time." Later, the same respondent noted that "* * * The figure should be reduced perhaps to $500,000 * * *" One respondent suggested that the level should be $100,000 and disagreed with FSA's rationale that the higher level was warranted due to the increased risks that these providers have as compared with a provider of only electronic warehouse receipts. The respondent suggested that if there was a concern about the potential risk that these providers may have, that the regulations should be revised to provide that such providers not be allowed to generate electronic documents from a paper document and that letters of credits not be included in the types of documents that such a provider could transmit. One respondent recommended a $1 million without any further elaboration. Another respondent agreed with FSA's assessment that there were increased risks associated with being a provider for all electronic documents as compared with only those providers who issue an electronic warehouse receipt.

In proposing a minimum net worth requirement of $10 million, FSA took into consideration the potential benefits that could be attained by allowing a provider of electronic documents to handle all types of documents relating to agricultural commodity transactions. FSA intends to implement sections 3(h) and 11(e) of the USWA, as it relates to those providers who intend to engage in transactions that are not limited to only electronic warehouse receipts, in a manner that encompasses as wide a range of transactions as possible. It is not FSA's intention to exclude or exert economic hardship on current or future providers with these requirements. Nonetheless, the evolution of regulating OEDs and OED providers is new and untested. FSA wants to assure the public and users of these systems that FSA has properly protected them should a failure or loss occur. However, FSA will monitor and evaluate these requirements over the next year and make adjustments as warranted.

FSA does not believe that limiting the provider to handling only certain types of documents in order to lessen the liability potential of a provider is in the best interests of those numerous entities that will utilize the system and also believes that such a restraint will diminish the ability of entities to reduce costs thus decreasing the competitive advantage of U.S. agricultural products sold in export markets. Excluding letters of credit and those documents referred to in the letter of credit, for example, would mean that there would be no savings in time for the completion of financial transactions involving virtually all export shipments since those financial institutions involved in the transaction would have to wait for physical delivery of some documents even though other documents had been transmitted electronically. Participants in the transaction may then have incurred increased borrowing costs and possibly increased berthing charges with respect to the vessel because the vessel would not be authorized to leave the port until the financial transaction had been completed.

In determining which entities FSA should approve to be responsible for handling these types of documents, FSA must analyze, at a minimum, the risks to participants and to the Federal government by looking at the volume of transactions that they will handle, the monetary value of individual transactions and the aggregate value of the transactions. The total value of agricultural production in the U.S. annually will exceed $200 billion and the total value of U.S. agricultural exports annually will exceed $50 billion. Individual export shipments of soybeans and rice, for example, can exceed $10 million and individual shipments of value-added products can be well in excess of this amount. FSA anticipates that the total value of transactions that may flow through a provider at any one time may exceed $100 million and, therefore, has determined that a provider should have a sufficient financial net worth in order to handle the liability that accompanies the handling of the transactions. For example, if the provider has erroneously entered data in the generation of an electronic document that relates to the purchase of an entire shipment of an exported agricultural commodity, FSA intends that the parties to the transaction will have adequate recourse against the provider for any damage that may result. Accordingly, FSA has determined that the minimum net worth requirement should be at least $10 million and that the provider should maintain two insurance policies, one for errors and omissions and one for fraud and dishonesty. Each policy must have a minimum coverage of $25 million. These requirements are set forth in the OED provider agreement.

Section 735.403 Audits

(4) In response to several comments about limiting examinations to be at the provider's invitation and convenience, FSA will not change the language in § 735.403, Audits, concerning the examination process because such changes would hinder the ability for FSA to conduct meaningful examinations.

Section 735.405 Choice of Law

(5) Three comments were received with respect to the proposed requirement that all disputes arising under the electronic document provider system, but not those systems dealing only with EWRs, would be resolved by using the laws of the State of New York. One respondent requested that "FSA should ensure the conflicting state law are not preempted." One respondent expressed concern that "* * * USDA is in no position to determine that the laws of one sovereign state are better than those of another." Another respondent thought that the choice of New York "* * * may be confusing to companies throughout the United States that are familiar with their own commercial laws."

In proposing to use the law of one jurisdiction to resolve disputes arising under the electronic provider system, FSA is attempting to interject uniformity among the providers in terms of data required for entry into the system and in terms of dispute resolution. FSA is concerned that uncertainty in which laws will be applied in multi-State and multi-national transactions involving multi-million dollar transactions may diminish the viability of this system. Because when a person uses the FSA-approved system it is purely voluntary and there is no preemption of State law with respect to any transaction conducted in any other system established by a private or public entity, any party may avoid application of this requirement, and other requirements relating to their use of the FSA approved systems, by conducting their transactions as they currently do. If this provision were removed, conceivably a provider approved by FSA could mandate the use of a given State law for use in resolving claims and disputes arising as a result of the use of their system. In such a case, if there were several providers operating in several different States, different results could occur simply because of the selection of an applicable body of law by a provider. This problem would be made worse in

those transactions that initiate in one FSA-approved system and end in another FSA-approved system. However, the respondents expressed several opinions concerning the proposed requirement that all disputes arising under the other electronic document provider system would be resolved using the laws of the State of New York. Accordingly, to further evaluate these issues, FSA has determined to remove the proposed requirement as set forth in § 735.405.

Final Rule

List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Agricultural commodities, Beans, Cotton, Cottonseed, Grain, Nuts, Sugar, Surety Bonds, Tobacco, Warehouses, Wool.

For the reasons stated in the preamble, FSA amends 7 CFR Chapter VII as follows:

PART 735—COTTON WAREHOUSES

1. Part 735 is revised to read as follows:

PART 735—REGULATIONS FOR THE UNITED STATES WAREHOUSE ACT

Subpart A—General Provisions

Sec.

735.1 Applicability.
735.2 Administration.
735.3 Definitions.
735.4 Fees.
735.5 Penalties.
735.6 Suspension, revocation and liquidation.
735.7 Return of suspended or revoked certificates of licensing or certificates of authorization.
735.8 Appeals.
735.9 Dispute resolution and arbitration of private parties.
735.10 Posting of certificates of licensing, certificates of authorization or other USWA documents.
735.11 Lost or destroyed certificates of licensing, authorization or agreements.
735.12 Safe keeping of records.
735.13 Information of violations.
735.14 Bonding and other financial assurance requirements.

Subpart B—Warehouse Licensing

735.100 Application.
735.101 Financial records and reporting requirements.
735.102 Financial assurance requirements.
735.103 Amendments to license.
735.104 Insurance requirements.
735.105 Care of agricultural products.
735.106 Excess storage and transferring of agricultural products.
735.107 Warehouse charges and tariffs.
735.108 Inspections and examinations of warehouses.
735.109 Disaster loss to be reported.
735.110 Conditions for delivery of agricultural products.
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Subpart C—Inspectors, Samplers, Classifiers, and Weighers

735.200 Service licenses.
735.201 Agricultural product certificates; format.
735.202 Standards of grades for other agricultural products.

Subpart D—Warehouse Receipts

735.300 Warehouse receipt requirements.
735.301 Notification requirements.
735.302 Paper warehouse receipts.
735.303 Electronic warehouse receipts.

Subpart E—Electronic Providers

735.400 Administration.
735.401 Electronic warehouse receipt and USWA electronic document providers.
735.402 Providers of other electronic documents.
735.403 Audits.
735.404 Schedule of charges and rates.

Authority: 7 U.S.C. 241 *et seq.*

Subpart A—General Provisions

§ 735.1 Applicability.

(a) The regulations of this part set forth the terms and conditions under which the Secretary of Agriculture through the Farm Service Agency (FSA) will administer the United States Warehouse Act (USWA or the Act) and sets forth the standards and the terms and conditions a participant must meet for eligibility to act under the USWA. The extent the provisions of this part are more restrictive, or more lenient, with respect to the same activities governed by State law, the provisions of this part shall prevail.

(b) Additional terms and conditions may be set forth in applicable licensing agreements, provider agreements and other documents.

(c) Compliance with State laws relating to the warehousing, grading, weighing, storing, merchandising or other similar activities is not required with respect to activities engaged in by a warehouse operator in a warehouse subject to a license issued in accordance with this part.

§ 735.2 Administration.

(a) FSA will administer all provisions and activities regulated under the Act under the general direction and supervision of the FSA's Deputy Administrator, Commodity Operations (DACO), or a designee.

(b) DACO may waive or modify the licensing or authorization requirements or deadlines in cases where lateness or failure to meet such requirements does not adversely affect the licensing or authorizations operated under the Act.

(c) DACO will provide affected licensees or authorized providers with changes to their licensing or provider agreements before the effective date.

(d) Licensing and authorization agreement updates will be available at:

(1) DACO's USWA website, and

(2) The following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW, Washington, DC 20250–0550.

§ 735.3 Definitions.

Words used in this part will be applicable to the activities authorized by this part and will be used in all aspects of administering the Act.

Access means the ability, when authorized, to read, change, and transfer warehouse receipts or other applicable document information retained in a central filing system.

Agricultural product means an agriculturally-produced product stored or handled for the purposes of interstate or foreign commerce, including a processed product of such agricultural product, as determined by DACO.

Central filing system (CFS) means an electronic system operated and maintained by a provider, as a disinterested third party, authorized by DACO where information relating to warehouse receipts, USWA documents and other electronic documents is recorded and maintained in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

Certificate means a USWA document that bears specific assurances under the Act or warrants a person to operate or perform in a certain manner and sets forth specific responsibilities, rights, and privileges granted to the person under the Act.

Control of the facility means ultimate responsibility for the operation and integrity of a facility by ownership, lease, or operating agreement.

Department means the Department of Agriculture.

Electronic document means any document that is generated, sent, received, or stored by electronic, optical, or similar means, including, but not limited to, electronic data interchange, advanced communication methods, electronic mail, telegram, telex, or telecopy.

Electronic warehouse receipt (EWR) means a warehouse receipt that is authorized by DACO to be issued or transmitted under the Act in the form of an electronic document.

Examiner means an individual designated by DACO for the purpose of examining warehouses or for any other activities authorized under the Act.

Financial assurance means the surety or other financial obligation authorized by DACO that is a condition of receiving a license or authorization under the Act.

Force majeure means severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, act of civil or military, non-availability of transportation facilities, or any other cause beyond the control of the warehouse operator or provider that renders performance impossible.

Holder means a person that has possession in fact or by operation of law of a warehouse receipt, USWA electronic document, or any electronic document.

License means a license issued under the Act by DACO.

Licensing agreement means the document and any amendment or addenda to such agreement executed by the warehouse operator and FSA specifying licensing terms and conditions specific to the warehouse operator and the agricultural product licensed to be stored.

Non-storage agricultural product means an agricultural product received temporarily into a warehouse for conditioning, transferring or assembling for shipment, or lots of an agricultural product moving through a warehouse for current merchandising or milling use, against which no warehouse receipts are issued and no storage charges assessed.

Official Standards of the United States means the standards of the quality or condition for an agricultural product, fixed and established under (7 U.S.C. 51) the United States Cotton Standards Act, (7 U.S.C. 71) the United States Grain Standards Act, (7 U.S.C. 1622) the Agricultural Marketing Act of 1946, or other applicable official United States Standards.

Other electronic documents (OED) means those electronic documents, other than an EWR or USWA electronic document, that may be issued or transferred, related to the shipment, payment or financing of agricultural products that DACO has authorized for inclusion in a provider's CFS.

Person means a person as set forth in 1 U.S.C. 1, a State; or a political subdivision of a State.

Provider means a person authorized by DACO, as a disinterested third party, which maintains one or more confidential and secure electronic systems independent of any outside influence or bias in action or appearance.

Provider agreement means the document and any amendment or addenda to such agreement executed by the provider and FSA that sets forth the provider's responsibilities concerning the provider's operation or maintenance of a CFS.

Receipt means a warehouse receipt issued in accordance with the Act, including an electronic warehouse receipt.

Schedule of charges means the tariff or uniform rate or amount charged by an authorized person for specific services offered or rendered under the Act.

Schedule of fees means the fees charged and assessed by FSA for licensing, provider agreements or services furnished under the Act to help defray the costs of administering the Act, and as such are shown in a schedule of fees attached to the licensing or provider agreement.

Service license means the document and any amendment to such document, issued under the Act by DACO to individuals certified competent by the licensed warehouse operator to perform inspection, sampling, grading classifying, or weighing services according to established standards and procedures, set forth in § 735.202, at the specific warehouse license.

Stored agricultural products means all agricultural products received into, stored within, or delivered out of the warehouse that are not classified as a non-storage agricultural product under this part.

User means a person that uses a provider's CFS.

USWA electronic document means a USWA electronic document initiated by DACO to be issued, transferred or transmitted that is not identified as an EWR or OED in the appropriate licensing or provider agreement or as determined by DACO.

Warehouse means a structure or other authorized storage facility, as determined by DACO, in which any agricultural product may be stored or handled for the purpose of interstate or foreign commerce.

Warehouse capacity means the maximum quantity of an agricultural product that the warehouse will accommodate when stored in a manner customary to the warehouse as determined by DACO.

Warehouse operator means a person lawfully engaged in the business of storing or handling agricultural products.

Warehousing activities and practices means any legal, operational, managerial or financial duty that a warehouse operator has regarding an agricultural product.

§ 735.4 Fees.

(a) FSA will assess persons covered by the Act fees to cover the costs of administering the Act.

(b) Warehouse operators, licensees, applicants, or providers must pay:

(1) An annual fee as provided in the applicable licensing or provider agreement; and

(2) Fees that FSA assesses for specific services, examinations and audits, or as provided in the applicable licensing or provider agreement.

(c) The schedule of fees showing the current fees or any annual fee changes will be provided as an addendum to the applicable licensing or provider agreement or/and:

(1) Will be available at DACO's USWA Web site, or

(2) May be requested at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250–0550.

(d) At the sole discretion of DACO, these fees may be waived.

§ 735.5 Penalties.

If a person fails to comply with any requirement of the Act, the regulations set forth in this part or any applicable licensing or provider agreement, DACO may assess, after an opportunity for a hearing as provided in § 735.8, a civil penalty:

(a) Of not more than $25,000 per violation, if an agricultural product is not involved in the violation; or

(b) Of not more than 100 percent of the value of the agricultural product, if an agricultural product is involved in the violation.

§ 735.6 Suspension, revocation and liquidation.

(a) DACO may, after an opportunity for a hearing as provided in § 735.8, suspend, revoke or liquidate any license or agreement issued under the Act, for any violation of or failure to comply with any provision of the Act, regulations or any applicable licensing or provider agreement.

(b) The reasons for a suspension, revocation or liquidation under this part include, but are not limited to:

(1) Failure to perform licensed or authorized services as provided in this part or in the applicable licensing or provider agreement;

(2) Failure to maintain minimum financial requirements as provided in the applicable licensing or provider agreement;

(3) Failure to submit a proper annual financial statement within the established time period as provided in the applicable licensing or provider agreement.

(4) Failure to maintain control of the warehouse or provider system.

(5) The warehouse operator or provider requests closure, cancellation or liquidation, and

(6) Commission of fraud against FSA, any depositor, EWR or OED holder or user, or any other function or operation under this part.

(c) FSA retains USWA's full authority over a warehouse operator or provider for one year after such license revocation or provider agreement termination or until satisfaction of any claims filed against such warehouse operator or provider are resolved, whichever is later.

(d) Upon DACO's determination that continued operation of a warehouse by a warehouse operator or an electronic provider system by a provider is likely to result in probable loss of assets to storage depositors, or loss of data integrity to EWR or OED holders and users. DACO may immediately suspend, close, or take control and begin an orderly liquidation of such warehouse inventory or provider system data as provided in this part or in the applicable licensing or provider agreement.

(e) Any disputes involving probable loss of assets to storage depositors, or loss of data integrity to EWR or OED holders and users will be determined by DACO for the benefit of the depositors, or EWR or OED holders and users and such determinations shall be final.

§ 735.7 Return of suspended or revoked certificates of licensing or certificates of authorization.

(a) When a license issued to a warehouse operator or service license ends or is suspended or revoked by DACO, such certificates of licensing and applicable licensing agreement and certificates of authorization must be immediately surrendered and returned to DACO.

(b) When an agreement with a provider ends or is suspended or revoked by DACO, such certificates of authorization and applicable provider agreement must be immediately surrendered to DACO

§ 735.8 Appeals.

(a) Any person who is subject to an adverse determination made under the Act may appeal the determination by filing a written request with DACO at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250–0550.

(b) Any person who believes that they have been adversely affected by a determination under this part must seek review by DACO within twenty-eight calendar days of such determination, unless provided with notice by DACO of a different deadline.

(c) The appeal process set forth in this part is applicable to all licensees and providers under any provision of the Act, regulations or any applicable licensing agreement as follows:

(1) DACO will notify the person in writing of the nature of the suspension, revocation or liquidation action;

(2) The person must notify DACO of any appeal of its action within twenty-eight calendar days;

(3) The appeal and request must state whether:

(i) A hearing is requested,

(ii) The person will appear in person at such hearing, or

(iii) Such hearing will be held by telephone;

(4) DACO will provide the person a written acknowledgment of their request to pursue an appeal;

(5) When a person requests an appeal and does not request a hearing DACO will allow that person:

(i) To submit in writing the reasons why they believe DACO's determination to be in error,

(ii) Twenty-eight calendar days from the receipt of the acknowledgment to file any statements and documents in support of their appeal, unless provided with notice by DACO of a different deadline, and

(iii) An additional fourteen calendar days to respond to any new issues raised by DACO in response to the person's initial submission, unless provided with notice by DACO of a different deadline;

(6) If the person requests to pursue an appeal and requests a hearing, DACO will:

(i) Notify the person of the date of the hearing,

(ii) Determine the location of the hearing, when the person asks to appear in person,

(iii) Notify the person of the location of the hearing,

(iv) Afford the person twenty-eight calendar days from the receipt of the notification of the scheduling of the hearing to submit any statements and documents in support of the appeal, unless provided with notice by DACO of a different deadline, and

(v) Allow the person an additional fourteen calendar days from the date of the hearing to submit any additional material, unless provided with notice by DACO of a different deadline:

(7) Determinations of DACO will be final and no further appeal within USDA will be available except as may be specified in the final determination of DACO; and

(8) A person may not initiate an action in any court of competent jurisdiction concerning a determination made under the Act prior to the exhaustion of the appeal process set forth in this section.

§ 735.9 Dispute resolution and arbitration of private parties.

(a) A person may initiate legal action in any court of competent jurisdiction concerning a claim for noncompliance or an unresolved dispute with respect to activities authorized under the Act.

(b) Any claim for noncompliance or an unresolved dispute between a warehouse operator or provider and another party with respect to activities authorized under the Act may be resolved by the parties through mutually agreed-upon arbitration procedures or as may be prescribed in the applicable licensing or provider agreement. No arbitration determination or award will affect DACO's authority under the Act.

(c) In no case will USDA provide assistance or representation to parties involved in an arbitration proceeding arising with respect to activities authorized under the Act.

§ 735.10 Posting of certificates of licensing, certificates of authorization or other USWA documents.

(a) The warehouse operator must post, in a conspicuous place in the principal place where warehouse receipts are issued, any applicable certificate furnished by DACO that the warehouse operator is an authorized licensee under the Act.

(b) Immediately upon receipt of their certificate of service licensing or any modification or extension thereof under the Act, the licensee and warehouse operator must jointly post the same, and thereafter, except as otherwise provided in the regulations in this part or as prescribed in the applicable licensing agreement, keep such certificate of licensing conspicuously posted in the office where all or most of the services are done, or in such place as may be designated by DACO.

(c) The provider must post, in a conspicuous place in the principal place of business, any applicable certificate of authorization furnished by DACO that the provider is authorized to offer and provide specific services under the Act.

§ 735.11 Lost or destroyed certificates of licensing, authorization or agreements.

FSA will replace lost or destroyed certificates of licensing, certificate of authorization or applicable agreement upon satisfactory proof of loss or destruction. FSA will mark such certificates or agreements as duplicates.

§ 735.12 Safe keeping of records.

Each warehouse operator or provider must take necessary precautions to safeguard all records, either paper or electronic format, from destruction.

§ 735.13 Information of violations.

Every person licensed or authorized under the Act must immediately furnish DACO any information they may have indicating that any provision of the Act or the regulations in this part has been violated.

§ 735.14 Bonding and other financial assurance requirements.

(a) As a condition of receiving a license or authorization under the Act, the person applying for the license or authorization must execute and file with DACO a bond or provide such other financial assurance as DACO determines appropriate to secure the person's compliance with the Act.

(b) Such bond or assurance must be for a period of not less than one year and in such amount as required by DACO.

(c) Failure to provide for, or renew, a bond or a financial assurance instrument will result in the immediate and automatic revocation of the warehouse operator's license or provider's agreement.

(d) If DACO determines that a previously accepted bond or other financial assurance is insufficient, DACO may immediately suspend or revoke the license or authorization covered by the bond or other financial assurance if the person that filed the bond or other financial assurance does not provide such additional bond or other financial assurance as DACO determines appropriate.

(e) To qualify as a suitable bond or other financial assurance, the entity issuing the bond or other financial assurance must be subject to service of process in lawsuits or legal actions on the bond or other financial assurance in the State in which the warehouse is located.

Subpart B—Warehouse Licensing

§ 735.100 Application.

(a) An applicant for a license must submit to DACO information and documents determined by DACO to be sufficient to conclude that the applicant can comply with the provisions of the Act. Such documents must include a current review or an audit-level financial statement prepared according to generally accepted accounting standards as defined by the American Institute of Certified Public Accountants. For any entity that is not an individual, a document that establishes proof of the existence of the entity, such as:

(1) For a partnership, an executed partnership agreement; and

(2) For a corporation:

(i) Articles of incorporation certified by the Secretary of State of the applicable State of incorporation;

(ii) Bylaws; and

(iii) Permits to do business; and

(3) For a limited partnership, an executed limited partnership agreement; and

(4) For a limited liability company:

(i) Articles of organization or similar documents; and

(ii) Operating agreement or similar agreement.

(b) The warehouse facilities of an operator licensed under the Act must, as determined by DACO, be:

(1) Physically and operationally suitable for proper storage of the applicable agricultural product or agricultural products specified in the license;

(2) Operated according to generally accepted warehousing activities and practices in the industry for the applicable agricultural product or agricultural products stored in the facility; and

(3) Subject to the warehouse operator's control of the facility including all contiguous storage space with respect to such facilities.

(c) As specified in individual licensing agreements, a warehouse operator must:

(1) Meet the basic financial requirements determined by DACO; and

(2) Meet the net worth requirements determined by DACO;

(d) In order to obtain a license, the warehouse operator must correct any exceptions made by the warehouse examiner at the time of the original warehouse examination.

(e) DACO may issue a license for the storage of two or more agricultural products in a single warehouse as provided in the applicable licensing agreements. The amount of the bond or financial assurance, net worth, and inspection and license fees will be determined by DACO in accordance with the licensing agreements applicable to the specific agricultural product, based upon the warehouses' total capacity for storing such product, that would require:

(1) The largest bond or financial assurance;

(2) The greatest amount of net worth; and

(3) The greatest amount of fees.

§ 735.101 Financial records and reporting requirements.

(a) Warehouse operators must maintain complete, accurate, and current financial records that must be available to DACO for review or audit at DACO's request as may be prescribed in the applicable licensing agreement.

(b) Warehouse operators must, annually, present a financial statement as may be prescribed in the applicable licensing agreement to DACO.

§ 735.102 Financial assurance requirements.

(a) Warehouse operators must file with DACO financial assurances approved by DACO consisting of:

(1) A warehouse operator's bond; or

(2) Obligations that are unconditionally guaranteed as to both interest and principal by the United States, in a sum equal at their par value to the amount of the bond otherwise required to be furnished, together with an irrevocable power of attorney authorizing DACO to collect, sell, assign and transfer such obligations in case of any default in the performance of any of the conditions required in the licensing agreement; or

(3) An irrevocable letter of credit issued in the favor of DACO with a term of not less than two years; or

(4) A certificate of participation in, and coverage by, an indemnity or insurance fund as approved by DACO, established and maintained by a State, backed by the full faith and credit of the applicable State, which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouse operator under the terms of the Act. If a warehouse operator files a bond or financial assurance in the form of a certification of participation in an indemnity or insurance fund, the certification may only be used to satisfy any deficiencies in assets above the minimum net worth requirement as prescribed in the applicable licensing agreement. A certificate of participation and coverage in this fund must be furnished to DACO annually; or

(5) Other alternative instruments and forms of financial assurance approved by DACO as may be prescribed in the applicable licensing agreement.

(b) The warehouse operator may not withdraw obligations required under this section until one year after license termination or until satisfaction of any

claims against the obligations, whichever is later.

§ 735.103 Amendments to license.

FSA will issue an amended license upon:

(a) Receipt of forms prescribed and furnished by DACO outlining the requested changes to the license;

(b) Payment of applicable licensing and examination fees;

(c) Receipt of bonding or other financial assurance if required in the applicable licensing agreement; and

(d) Receipt of a report on the examination of the proposed facilities pending inclusion or exclusion, if determined necessary by DACO.

§ 735.104 Insurance requirements.

Each warehouse operator must comply fully with the terms of insurance policies or contracts covering their licensed warehouse and all products stored therein, and must not commit any acts, nor permit others to do anything, that might impair or invalidate such insurance.

§ 735.105 Care of agricultural products.

Each warehouse operator must at all times, including during any period of suspension of their license, exercise such care in regard to stored and non-storage agricultural products in their custody as required in the applicable licensing agreement.

§ 735.106 Excess storage and transferring of agricultural products.

(a) If at any time a warehouse operator stores an agricultural product in a warehouse subject to a license issued under the Act in excess of the warehouse capacity for which it is licensed, such warehouse operator must immediately notify DACO of such excess storage and the reason for the storage.

(b) A warehouse operator who desires to transfer stored agricultural products to another warehouse may do so either by physical movement, by other methods as may be provided in the applicable licensing agreement, or as authorized by DACO.

§ 735.107 Warehouse charges and tariffs.

(a) A warehouse operator must not make any unreasonable or exorbitant charge for services rendered.

(b) A warehouse operator must follow the terms and conditions for each new or revised warehouse tariff or schedule of charges and rates as prescribed in the applicable licensing agreement.

§ 735.108 Inspections and examinations of warehouses.

(a) Warehouse operators must permit any agent of the Department to enter and inspect or examine, on any business day during the usual hours of business, any licensed warehouse, the offices of the warehouse operator, the books, records, papers, and accounts.

(b) Routine and special inspections and examinations will be unannounced.

(c) Warehouse operators must provide safe access to all storage facilities.

(d) Warehouse operators must inform any agent of the Department, upon arrival, of any hazard.

(e) Agents of the Department must accomplish inspections and examinations of warehouses in a manner that is efficient and cost-effective without jeopardizing any inspection and examination integrity.

§ 735.109 Disaster loss to be reported.

If at any time a disaster or loss occurs at or within any licensed warehouse, the warehouse operator must report immediately the occurrence of the disaster or loss and the extent of damage, to DACO.

§ 735.110 Conditions for delivery of agricultural products.

(a) In the absence of a lawful excuse, a warehouse operator will, without unnecessary delay, deliver the agricultural product stored or handled in the warehouse on a demand made by:

(1) The holder of the warehouse receipt for the agricultural product; or

(2) The person that deposited the agricultural product, if no warehouse receipt has been issued.

(b) Prior to delivery of the agricultural product, payment of the accrued charges associated with the storage or handling of the agricultural product, including satisfaction of the warehouse operator's lien, must be made if requested by the warehouse operator.

(c) When the holder of a warehouse receipt requests delivery of an agricultural product covered by the warehouse receipt, the holder must surrender the warehouse receipt to the warehouse operator before obtaining the agricultural product.

(d) A warehouse operator must cancel each warehouse receipt surrendered to the warehouse operator upon the delivery of the agricultural product for which the warehouse receipt was issued and in accordance with the applicable licensing agreement.

(e) For the purpose of this part, unless prevented from doing so by force majeure, a warehouse operator will deliver or ship such agricultural products stored or handled in their warehouse as prescribed in the applicable licensing agreement.

§ 735.111 Fair treatment.

(a) Contingent upon the capacity of a warehouse, a warehouse operator will deal in a fair and reasonable manner with persons storing, or seeking to store, an agricultural product in the warehouse if the agricultural product is:

(1) Of the kind, type, and quality customarily stored or handled in the area in which the warehouse is located;

(2) Tendered to the warehouse operator in a suitable condition for warehousing; and

(3) Tendered in a manner that is consistent with the ordinary and usual course of business.

(b) Nothing in this section will prohibit a warehouse operator from entering into an agreement with a depositor of an agricultural product to allocate available storage space.

§ 735.112 Terminal and futures contract markets.

(a) DACO may issue service licenses to weigh-masters or their deputies to perform services relating to warehouse receipts that are deliverable in satisfaction of futures contracts in such contract markets or as may be prescribed in any applicable licensing agreement.

(b) DACO may authorize a registrar of warehouse receipts issued for an agricultural product in a warehouse licensed under the Act that operates in any terminal market or in any futures contract market the official designated by officials of the State in which such market is located if such individual is not:

(1) An owner or employee of the licensed warehouse;

(2) The owner of, or an employee of the owner of, such agricultural product deposited in any such licensed warehouse; or

(3) As may be prescribed in any applicable licensing or provider agreement.

Subpart C—Inspectors, Samplers, Classifiers, and Weighers

§ 735.200 Service licenses.

(a) FSA may issue to a person a license for:

(1) Inspection of any agricultural product stored or handled in a warehouse subject to the Act;

(2) Sampling of such an agricultural product;

(3) Classification of such an agricultural product according to condition, grade, or other class and certify the condition, grade, or other class of the agricultural product;

(4) Weighing of such an agricultural product and certify the weight of the agricultural product; or

(5) Performing two or more services specified in paragraphs (a)(1), (a)(2), (a)(3) or (a)(4) of this section.

(b) Each person seeking a license to perform activities described in this section must submit an application on forms furnished by DACO that contain, at a minimum, the following information:

(1) The name, location and license number of the warehouses where the applicant would perform such activities;

(2) A statement from the warehouse operator that the applicant is competent and authorized to perform such activities at specific locations; and

(3) Evidence that the applicant is competent to inspect, sample, classify, according to grade or weigh the agricultural product.

(c) The warehouse operator will promptly notify DACO in writing of any changes with respect to persons authorized to perform such activities at the licensed warehouse.

§ 735.201 Agricultural product certificates; format.

Each inspection, grade, class, weight or combination certificate issued under the Act by a licensee to perform such services must be:

(a) In a format prescribed by DACO;

(b) Issued and maintained in a consecutive order; and

(c) As prescribed in the applicable licensing or provider agreement and authorized by DACO.

§ 735.202 Standards of grades for other agricultural products.

Official Standards of the United States for any kind, class or grade of an agricultural product to be inspected must be used if such standards exist. Until Official Standards of the United States are fixed and established for the kind of agricultural product to be inspected, the kind, class and grade of the agricultural product must be stated, subject to the approval of DACO. If such standards do not exist for such an agricultural product, the following will be used:

(a) State standards established in the State in which the warehouse is located, (b) In the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the agricultural product trade generally in the locality in which the warehouse is located, or

(c) In the absence of the standards set forth in paragraphs (a) and (b) of this section, in accordance with any standards approved for the purpose by DACO.

Subpart D—Warehouse Receipts

§ 735.300 Warehouse receipt requirements.

(a) Warehouse receipts may be:

(1) Negotiable or non-negotiable;

(2) For a single unit, multiple units, identity preserved or commingled lot; and

(3) In a paper or electronic format that, besides complying with the requirements of the Act, must be in a format as prescribed in the applicable licensing or provider agreement and authorized by DACO.

(b) The warehouse operator must:

(1) At the request of a depositor of an agricultural product stored or handled in a warehouse licensed under the Act, issue a warehouse receipt to the depositor;

(2) Not issue a warehouse receipt for an agricultural product unless the agricultural product is actually stored in their warehouse at the time of issuance;

(3) Not issue a warehouse receipt until the quality, condition and weight of such an agricultural product is ascertained by a licensed inspector and weigher;

(4) Not directly or indirectly compel or attempt to compel the depositor to request the issuance of a warehouse receipt omitting the statement of quality or condition;

(5) Not issue an additional warehouse receipt under the Act for a specific identity-preserved or commingled agricultural product lot (or any portion thereof) if another warehouse receipt representing the same specific identity-preserved or commingled lot of the agricultural product is outstanding. No two warehouse receipts issued by a warehouse operator may have the same warehouse receipt number or represent the same agricultural product lot;

(6) When issuing a warehouse receipt and purposefully omitting any information, notate the blank to show such intent;

(7) Not deliver any portion of an agricultural product for which they have issued a negotiable warehouse receipt until the warehouse receipt has been surrendered to them and canceled as prescribed in the applicable licensing agreement;

(8) Not deliver more than 90% of the receipted quantity of an agricultural product for which they have issued a non-negotiable warehouse receipt until such warehouse receipt has been surrendered or the depositor or the depositor's agent has provided a written order for the agricultural product and the warehouse receipt surrendered upon final delivery; and

(9) Deliver, upon proper presentation of a warehouse receipt for any agricultural product, and payment or tender of all advances and charges, to the depositor or lawful holder of such warehouse receipt the agricultural product of such identity, quantity, grade and condition as set forth in such warehouse receipt.

(c) In the case of a lost or destroyed warehouse receipt, a new warehouse receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the original warehouse receipt may be issued.

§ 735.301 Notification requirements.

Warehouse operators must file with DACO the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouse operator, and will promptly notify DACO of any changes with respect to persons authorized to sign.

§ 735.302 Paper warehouse receipts.

Paper warehouse receipts must be issued as follows:

(a) On distinctive paper specified by DACO;

(b) Printed by a printer authorized by DACO; and

(c) Issued, identified and maintained in a consecutive order.

§ 735.303 Electronic warehouse receipts.

(a) Warehouse operators issuing EWR under the Act may issue EWR's for the agricultural product stored in their warehouse. Warehouse operators issuing EWR's under the Act must:

(1) Only issue EWR's through one FSA-authorized provider annually;

(2) Inform DACO of the identity of their provider, when they are a first time user of EWR's, 60 calendar days in advance of issuing an EWR through that provider. DACO may waive or modify this 60-day requirement as set forth in § 735.2(b);

(3) Before issuing an EWR, request and receive from FSA a range of consecutive warehouse receipt numbers that the warehouse will use consecutively for issuing their EWR's;

(4) When using an authorized provider, issue and cancel all warehouse receipts as EWR's;

(5) Cancel an EWR only when they are the holder of the warehouse receipt;

(6) Be the holder of an EWR to correct information contained within any required data field;

(7) Receive written authorization from FSA at least 30 calendar days before changing providers. Upon authorization, they may request their current provider to transfer their EWR data from its Central Filing System (CFS) to the CFS of the authorized provider whom they select; and

(8) Notify all holders of EWR's by inclusion in the CFS at least 30 calendar days before changing providers, unless otherwise required or allowed by FSA.

(b) An EWR establishes the same rights and obligations with respect to an agricultural product as a paper warehouse receipt and possesses the following attributes:

(1) The holder of an EWR will be entitled to the same rights and privileges as the holder of a paper warehouse receipt.

(2) Only the current holder of the EWR may transfer the EWR to a new holder.

(3) The identity of the holder must be confidential and included as information for every EWR.

(4) Only one person may be designated as the holder of an EWR at any one time.

(5) A warehouse operator may not issue an EWR on a specific identity-preserved or commingled lot of agricultural product or any portion thereof while another valid warehouse receipt representing the same specific identity-preserved or commingled lot of agricultural product remains not canceled. No two warehouse receipts issued by a warehouse operator may have the same warehouse receipt number or represent the same agricultural product lot.

(6) An EWR may only be issued to replace a paper warehouse receipt if requested by the current holder of the paper warehouse receipt.

(7) Holders and warehouse operators may authorize any other user of their provider or the provider itself to act on their behalf with respect to their activities with this provider. This authorization must be in writing, and acknowledged and retained by the warehouse operator and provider.

(c) A warehouse operator not licensed under the Act may, at the option of the warehouse operator, issue EWRs in accordance with this subpart, except this option does not apply to a warehouse operator that is licensed under State law to store agricultural products in a warehouse if the warehouse operator elects to issue an EWR under State law.

Subpart E—Electronic Providers

§ 735.400 Administration.

This subpart sets forth the regulations under which DACO may authorize one or more electronic systems under which:

(a) Electronic documents relating to the shipment, payment, and financing of the sale of agricultural products may be issued or transferred; or

(b) Electronic receipts may be issued and transferred.

§ 735.401 Electronic warehouse receipt and USWA electronic document providers.

(a) To establish a USWA-authorized system to issue and transfer EWR's and USWA electronic documents, each applicant must submit to DACO information and documents determined by DACO to be sufficient to determine that the applicant can comply with the provisions of the Act. Each provider operating pursuant to this section must meet the following requirements:

(1) Have and maintain a net worth as specified in the applicable provider agreement;

(2) Maintain two insurance policies: one for "errors and omissions" and another for "fraud and dishonesty." Each policy's minimum coverage and maximum deductible amounts and applicability of other forms of financial assurances as set forth in § 735.14 will be prescribed in the applicable provider agreement. Each policy must contain ■ clause requiring written notification to FSA 30 days prior to cancellation or as prescribed by FSA;

(3) Submit a current review or an audit level financial statement prepared according to generally accepted accounting standards as defined by the American Institute of Certified Public Accountants;

(4) For any entity that is not an individual, a document that establishes proof of the existence, such as:

(i) For a partnership, an executed partnership agreement; and

(ii) For a corporation:

(A) Articles of incorporation certified by the Secretary of State of the applicable State of incorporation;

(B) Bylaws; and

(C) Permits to do business; and

(iii) For a limited partnership, an executed limited partnership agreement; and

(iv) For a limited liability company:

(A) Articles of organization or similar documents; and

(B) Operating agreement or similar agreement.

(5) Meet any additional financial requirements as set forth in the applicable provider agreement;

(6) Pay user fees annually to FSA, as set and announced annually by FSA prior to April 1 of each calendar year; and

(7) Operate a CFS as a neutral third party in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

(b) The provider agreement will contain, but not be limited to, these basic elements:

(1) Scope of authority;

(2) Minimum document and warehouse receipt requirements;

(3) Liability;

(4) Transfer of records protocol;

(5) Records;

(6) Conflict of interest requirements;

(7) USDA common electronic information requirements;

(8) Financial requirements

(9) Terms of insurance policies or assurances;

(10) Provider's integrity statement;

(11) Security audits; and

(12) Submission, authorization, approval, use and retention of documents.

(c) DACO may suspend or terminate a provider's agreement for cause at any time.

(1) Hearings and appeals will be conducted in accordance with procedures as set forth in §§ 735.6 and 735.8.

(2) Suspended or terminated providers may not execute any function pertaining to USDA, USWA documents, or USWA or State EWR's during the pendency of any appeal or subsequent to this appeal if the appeal is denied, except as authorized by DACO.

(3) The provider or DACO may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to termination.

(d) Each provider agreement will be automatically renewed annually on April 30th as long as the provider complies with the terms contained in the provider agreement, the regulations in this subpart, and the Act.

§ 735.402 Providers of other electronic documents.

(a) To establish a USWA-authorized system to issue and transfer OED, each applicant must submit to DACO information and documents determined by DACO to be sufficient to determine that the applicant can comply with the provisions of the Act. Each provider operating pursuant to this section must meet the following requirements:

(1) Have and maintain a net worth as specified in the applicable provider agreement;

(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Each policy's minimum coverage and maximum deductible amounts and applicability of other forms of financial assurances as set forth in § 735.14 will be prescribed in the applicable provider agreement. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation or as prescribed by FSA;

(3) Submit a current review or an audit level financial statement prepared according to generally accepted accounting standards as defined by the American Institute of Certified Public Accountants;

(4) For any entity that is not an individual, a document that establishes proof of the existence, such as:

(i) For a partnership, an executed partnership agreement; and

(ii) For a corporation:

(A) Articles of incorporation certified by the Secretary of State of the applicable State of incorporation;

(B) Bylaws; and

(C) Permits to do business; and

(iii) For a limited partnership, an executed limited partnership agreement; and

(iv) For a limited liability company:

(A) Articles of organization or similar documents; and

(B) Operating agreement or similar agreement.

(5) Meet any additional financial requirements as set forth in the applicable provider agreement;

(6) Pay user fees annually to FSA, as set and announced annually by FSA prior to April 1 of each calendar year; and

(7) Operate a CFS as a neutral third party in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

(b) The provider agreement will contain, but not be limited to, these basic elements:

(1) Scope of authority;

(2) Minimum document and warehouse receipt requirements;

(3) Liability;

(4) Transfer of records protocol;

(5) Records;

(6) Conflict of interest requirements;

(7) USDA common electronic information requirements;

(8) Financial requirements;

(9) Terms of insurance policies or assurances;

(10) Provider's integrity statement;

(11) Security audits; and

(12) Submission, authorization, approval, use and retention of documents.

(c) DACO may suspend or terminate a provider's agreement for cause at any time.

(1) Hearings and appeals will be conducted in accordance with procedures as set forth in §§ 735.6 and 735.8.

(2) Suspended or terminated providers may not execute any function pertaining to USDA, USWA documents, USWA or State EWR's or OED's during the pendency of any appeal or subsequent to this appeal if the appeal is denied, except as authorized by DACO.

(d) Each provider agreement will be automatically renewed annually on April 30th as long as the provider complies with the terms contained in the provider agreement, the regulations in this subpart, and the Act.

(e) In addition to audits prescribed in this section the provider must submit a copy of any audit, examination or investigative report prepared by any Federal regulatory agency with respect to the provider including agencies such as, but not limited to, the Comptroller of the Currency, Department of the Treasury, the Federal Trade Commission, and the Commodity Futures Trading Commission.

§ 735.403 Audits.

(a) No later than 120 calendar days following the end of the provider's fiscal year, the provider authorized under §§ 735.401 and 735.402 must submit to FSA an annual audit level financial statement and an electronic data processing audit that meets the minimum requirements as provided in the applicable provider agreement. The electronic data processing audit will be used by DACO to evaluate current computer operations, security, disaster recovery capabilities of the system, and compatibility with other systems authorized by DACO.

(b) Each provider will grant the Department unlimited, free access at any time to all records under the provider's control relating to activities conducted under this part and as specified in the applicable provider agreement.

§ 735.404 Schedule of charges and rates.

(a) A provider authorized under §§ 735.401 or 735.402 must furnish FSA with copies of its current schedule of charges and rates for all services as they become effective.

(b) Charges and rates assessed any user by the provider must be in effect for a minimum period of one year.

(c) Providers must furnish FSA and all users a 60-calendar day advance notice of their intent to change any charges and rates.

PARTS 736 THROUGH 742 [Removed]

2. Parts 736 through 742 are removed and reserved.

Signed at Washington, DC, on July 29, 2002.

James R. Little,

Administrator, Farm Service Agency.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 3487/P.L. 107–205
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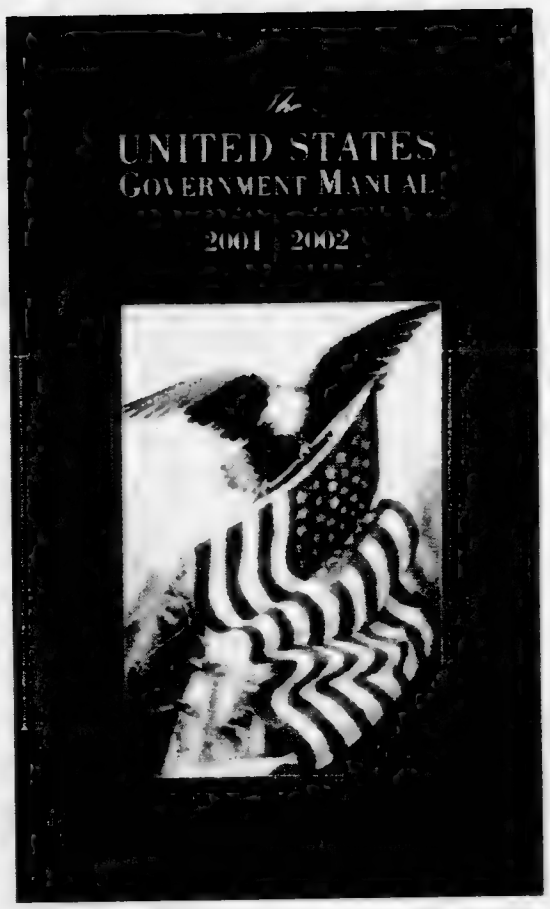

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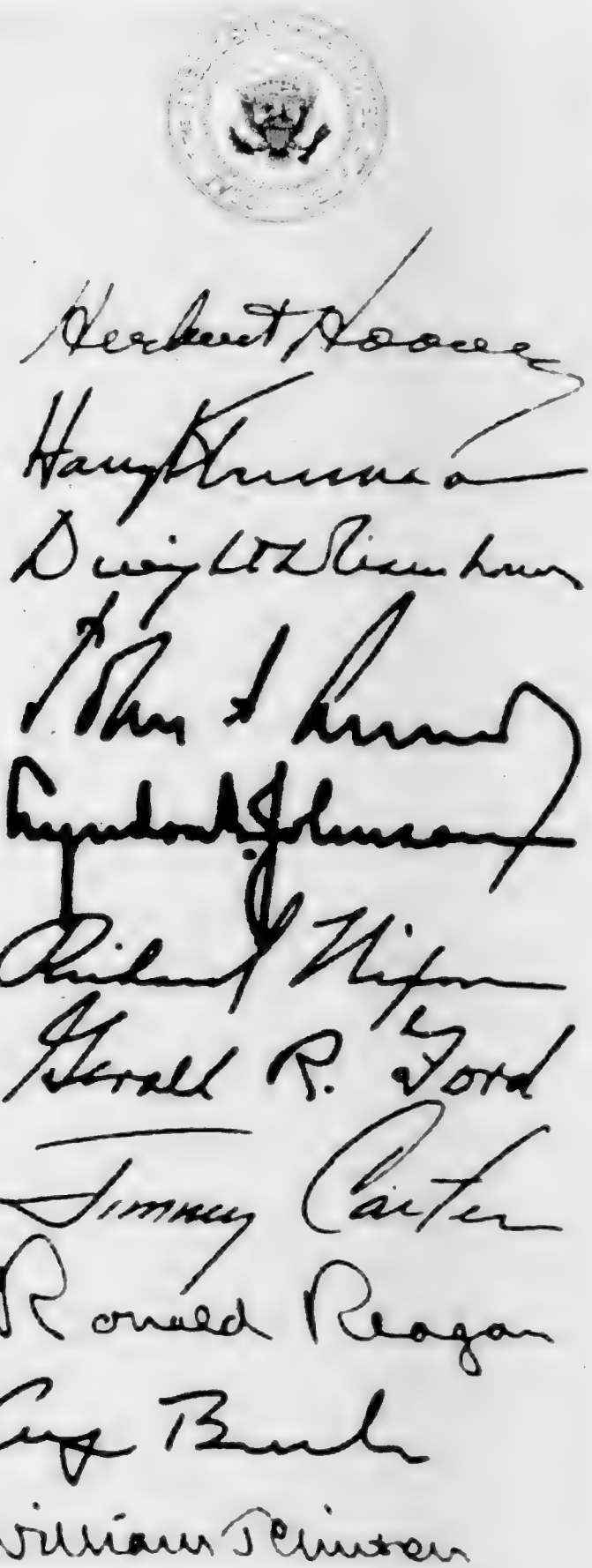

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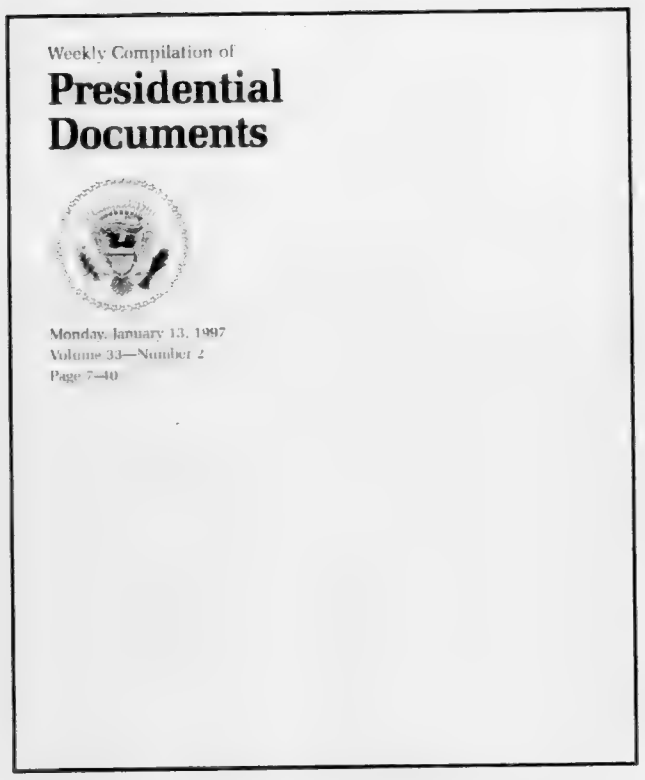

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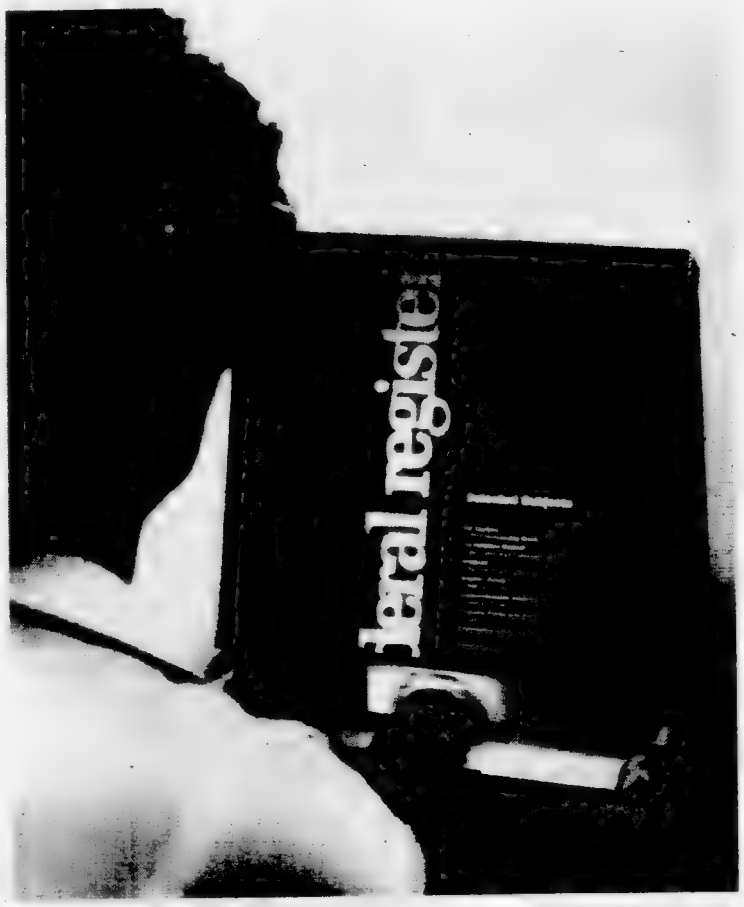

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Rules and Regulations

Federal Register
Vol. 67, No. 151
Tuesday, August 6, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 02–021–2]

Tuberculosis in Cattle and Bison; State and Zone Designations; Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for an interim rule that amended the bovine tuberculosis regulations regarding State and zone classifications by removing the split-State status of Texas and classifying the entire State as modified accredited advanced. The interim rule also solicited comments on the current regulatory provisions of the domestic bovine tuberculosis eradication program. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before September 5, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–021–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–021–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–021–1" on the subject line.

You may read any comments that we receive on Docket No. 02–021–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2002, we published an interim rule in the **Federal Register** (67 FR 38841–38844, Docket No. 02–021–1). In that document, we amended the bovine tuberculosis regulations regarding State and zone classifications by removing the split-State status of Texas and classifying the entire State as modified accredited advanced. In addition to requesting comments on the change in the tuberculosis classification status of Texas, we requested comments on the current regulatory provisions of the domestic bovine tuberculosis eradication program.

Comments were required to be received or postmarked by August 5, 2002. Based on requests received during the comment period, we are reopening and extending the comment period for Docket 02–021–1 until September 5, 2002. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 31st day of July, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–19769 Filed 8–5–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–25–AD; Amendment 39–12837; AD 2002–15–07]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc., Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for MD Helicopters, Inc., Model MD900 helicopters that requires, for the lateral-mixer bellcrank assembly (bellcrank), establishing a life limit, creating a component history card or equivalent record, determining the hours time-in-service (TIS), and applying a serial number (S/N). This amendment is prompted by additional testing that revealed that the original load test to establish the life limits of the bellcrank did not accurately represent the actual loading. The actions specified by this AD are intended to prevent fatigue failure of the bellcrank and subsequent loss of lateral control of the helicopter.

DATES: Effective September 10, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the Web at *www.mdhelicopters.com*. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or

at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for MD Helicopters, Inc. Model MD900 helicopters was published in the **Federal Register** on January 16, 2002 (67 FR 2145). That action proposed to require, before further flight, the following for the bellcrank on an affected helicopter:

- Create a component history card or equivalent record.
- Determine the hours TIS of the bellcrank.
- Apply a S/N.
- Remove any affected bellcrank that exceeds the life limit.

This AD would revise the Limitations section of the maintenance manual by establishing a life limit of 13,300 hours TIS for the bellcrank, P/N 900C2010203–105.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 30 helicopters of U.S. registry will be affected by this AD, that it will take approximately ½ work hour per helicopter to accomplish the required actions for the bellcrank, and that the average labor rate is $60 per work hour. Required parts will cost approximately $10,120 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $304,500, assuming replacement of the bellcranks in all 30 helicopters.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–15–07 MD Helicopters, Inc.: Amendment 39–12837. Docket No. 2001–SW–25–AD.

Applicability: Model MD900 helicopters, serial number (S/N) 900–00008, 900–00010 through 900–00098, and 900–00100, with a lateral-mixer bellcrank assembly (bellcrank), part number (P/N) 900C2010203–105, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Before further flight, unless accomplished previously.

To prevent fatigue failure of the bellcrank and subsequent loss of lateral control of the helicopter, accomplish the following:

(a) Create a component history card or equivalent record for each bellcrank and record the hours time-in-service (TIS) of the bellcrank. If the hours TIS of the bellcrank cannot be determined, use the helicopter's total hours TIS as the hours TIS for the bellcrank.

(b) Apply a S/N to the bellcrank in accordance with the Accomplishment Instructions, paragraph (1)(a) and (1)(b), of MD Helicopters, Inc. Service Bulletin SB 900–084, dated December 3, 2001.

(c) Remove any bellcrank that has exceeded 13,300 hours TIS.

(d) This AD revises the Limitations section of the maintenance manual by establishing a life limit of 13,300 hours TIS for bellcrank, P/N 900C2010203–105.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The marking of the S/N shall be done in accordance with the Accomplishment Instructions, paragraphs (1)(a) and (1)(b), of MD Helicopters, Inc. Service Bulletin SB 900–084, dated December 3, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the Web at *www.mdhelicopters.com*. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 10, 2002.

Issued in Fort Worth, Texas, on July 24, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–19487 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–22–AD; Amendment 39–12835; AD 2002–08–54]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, and 230 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Emergency Airworthiness Directive (EAD) 2002–08–54, which was sent previously to all known U.S. owners and operators of the specified Bell Helicopter Textron Canada (BHTC) model helicopters by individual letters. This AD requires a visual check of each main rotor grip assembly (grip) and pitch horn at specified intervals and a visual inspection using a 10-power or higher magnifying glass of each affected grip and pitch horn for a crack at specified intervals. If a crack is found, this AD requires replacing each unairworthy grip or pitch horn with an airworthy part before further flight. This AD is prompted by three reports each of a fatigue crack in the grip and pitch horn found during routine inspection of the rotor head. This condition, if not detected, could result in failure of the grip or pitch horn and subsequent loss of control of the helicopter.

DATES: Effective August 21, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–08–54, issued on May 2, 2002, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 21, 2002.

Comments for inclusion in the Rules Docket must be received on or before October 7, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–22–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The applicable service information may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On May 2, 2002, the FAA issued EAD 2002–08–54, for the specified BHTC model helicopters, which requires visually checking and subsequently inspecting each affected grip and pitch horn for a crack at specified intervals. If a crack is found, the EAD requires replacing each unairworthy grip or pitch horn with an airworthy part before further flight. That action was prompted by three reports each of a fatigue crack in the grip and pitch horn found during routine inspection of the rotor head. When EAD 2002–08–54 was mailed to all known U.S. owners and operators of the specified model helicopters, two hidden text boxes were inadvertently shown in Figure 2. However, a correction to EAD 2002–08–54 was mailed on May 6, 2002, which removed the text boxes labeled "Inspection Area" and "Grip Assembly" from Figure 2.

The FAA has reviewed Bell Helicopter Textron Canada (BHTC) Alert Service Bulletin Nos. 222U–02–64, 222–02–93, and 230–02–26, all dated April 1, 2002, which describe procedures for checking and inspecting each grip and pitch horn with more than 1250 hours time-in-service since new for a crack.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on these helicopter models. Transport Canada advises of the need for repeated daily checks and visual inspections at specified intervals of the grip and pitch horn for a crack until the cause of the premature failures is determined. Transport Canada classified these alert service bulletins as mandatory and issued AD No. CF–2002–23, dated April 2, 2002, to ensure the continued airworthiness of these helicopters.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, the FAA issued EAD 2002–08–54 to prevent failure of the grip or pitch horn and subsequent loss of control of the helicopter. The AD requires, before further flight, and at specified intervals, visually checking each affected grip and pitch horn for a crack. The AD also requires using a 10-power or higher magnifying glass to visually inspect each affected grip and pitch horn for a crack at specified intervals. If a crack is found, this AD requires replacing each unairworthy grip or pitch horn with an airworthy part before further flight. The actions must be accomplished in accordance with the alert service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, visually checking each affected grip and pitch horn for a crack and replacing any unairworthy part are required before further flight, and this AD must be issued immediately.

An owner/operator (pilot) may perform the visual check required by this AD. The pilot must enter compliance with paragraph (a) of this AD into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v)). A pilot may perform this check because it involves only a visual check for a crack in the grip or pitch horn and can be performed equally well by a pilot or a mechanic.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 2, 2002, to all known U.S. owners and operators of BHTC Model 222, 222B, 222U, and 230 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons. A minor editorial correction is made to add a colon at the end of paragraph (a)(3) of this AD. This change neither increases the economic burden

on any operator nor increases the scope of the AD.

The FAA estimates that 107 helicopters of U.S. registry will be affected by this AD, that it will take approximately 20.5 work hours per helicopter per year to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $51,735 for one configuration and $22,504 for the other configuration if a crack is found. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $131,610 assuming no cracked parts are found.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–22–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–08–54 Bell Helicopter Textron Canada: Amendment 39–12835, Docket No. 2002–SW–22–AD.

Applicability: The following model helicopters with the listed part number (P/N) installed, certificated in any category:

Model	With hub assembly P/N	With grip assembly P/N	With pitch horn assembly P/N
(1) 222 or 222B	222–011–101–103, –105, –107, or –109	222–010–104–105	222–011–104–101
	222–012–101–103, or –107	222–012–104–101	222–012–102–101
(2) 222U	222–011–101–105, –107, or –109	222–010–104–105	222–011–104–101
	222–012–101–103, OR –107	222–012–104–101	222–012–102–101
(3)	222–012–101–105, or –109	222–012–104–101	222–012–102–101

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the grip or pitch horn and subsequent loss of control of the helicopter, if either the grip or pitch horn has accumulated 1250 or more hours time-in-service (TIS) since initial installation on any helicopter, accomplish the following:

(a) Before further flight and thereafter at intervals not to exceed 8 hours TIS:

(1) Wipe clean the main rotor grip and pitch horn surfaces to remove grease and dirt in the check area as shown in Figure 1 of this AD:

BILLING CODE 4910–13–P

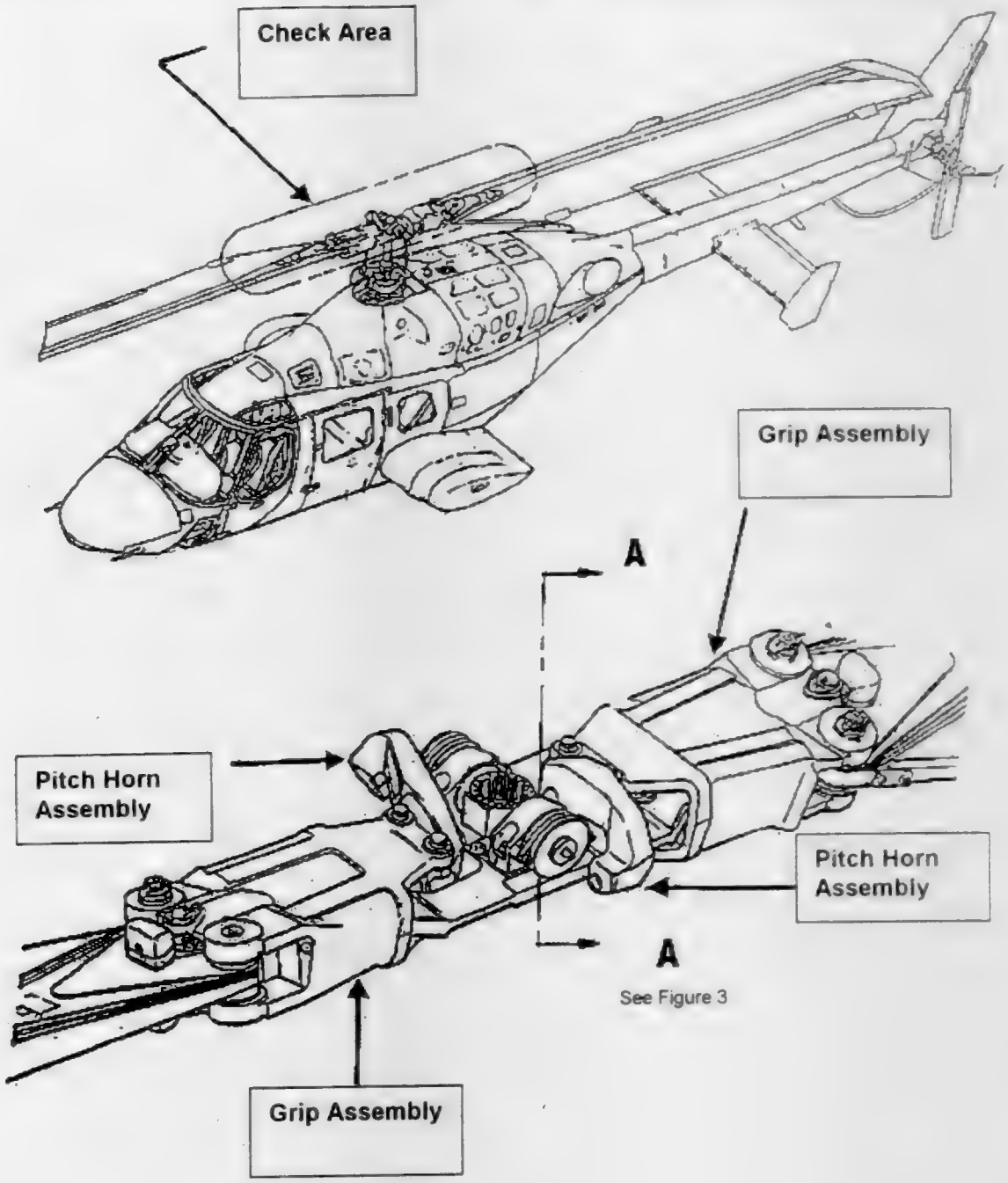

Figure 1

(2) Visually check both main rotor grips for a crack, paying particular attention to the inboard and outboard tangs/portions of the grip, which are in direct contact with the pitch horns and the main rotor blades. Check the area to at least 3 inches beyond the grip/pitch and grip/blade contact areas as shown in Figure 2 of this AD:

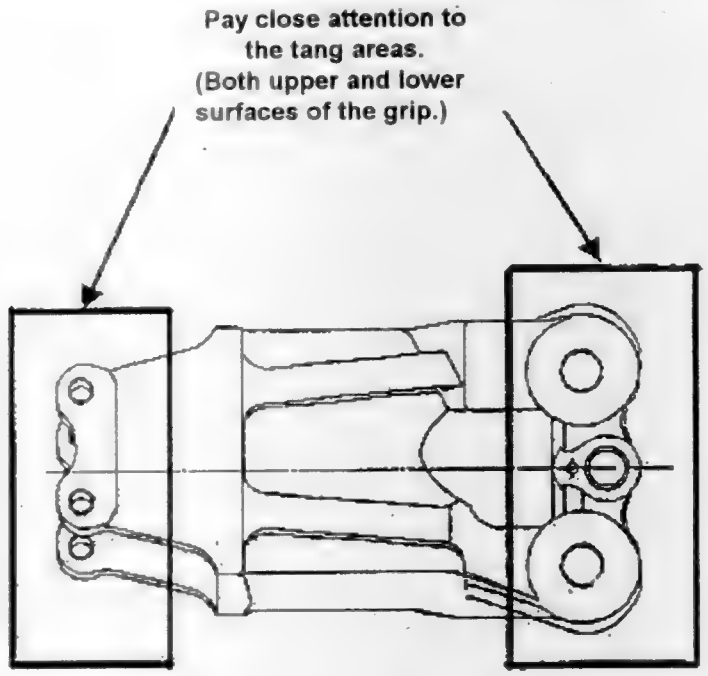

Main rotor Grip
Enlarged View

Check entire surface of the grip.

Figure 2

(3) Visually check all visible portions of each pitch horn for a crack. Pay particular attention to the attachment lugs of the pitch horns, which are in direct contact with the inboard tangs of the main rotor grips, as shown in Figure 3 of this AD, and the four large bolt cutouts, as shown in Figure 4 of this AD:

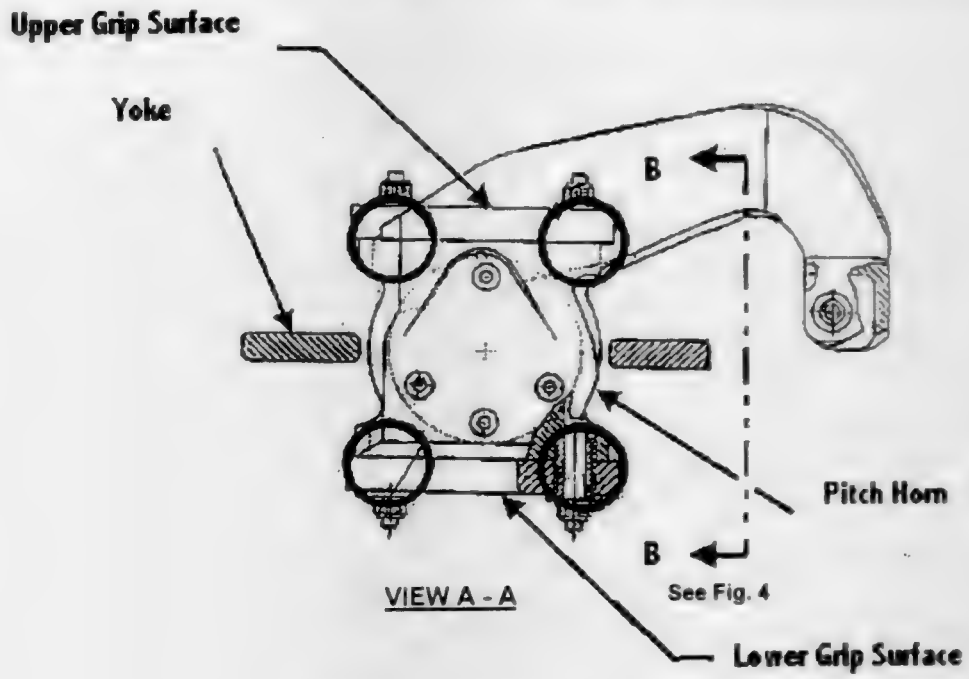

View from trunnion
looking outboard

All visible portions of the pitch horn must be checked.
Pay particular attention to the circled areas shown above and View B-B, Fig. 4.

Figure 3

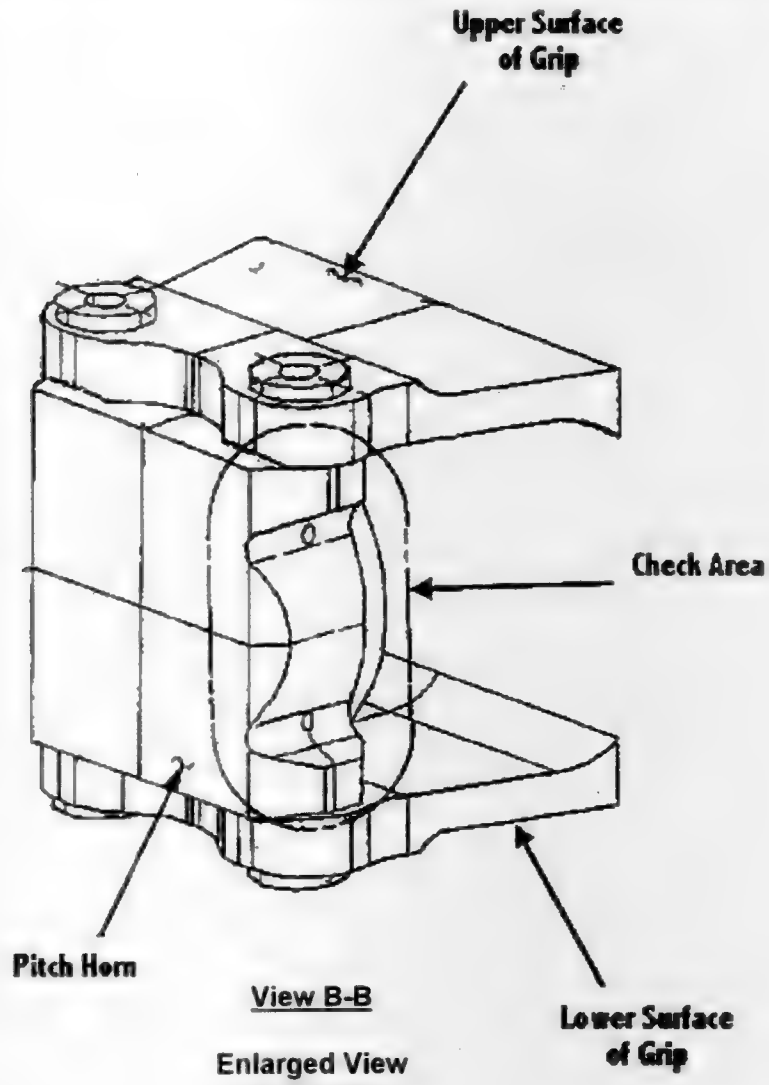

Figure 4

(4) An owner/operator (pilot) may perform the visual check required by this AD. The pilot must enter compliance with paragraph (a) of this AD into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v)). A pilot may perform this check because it involves only a visual check for a crack in the grip or pitch horn and can be performed equally well by a pilot or a mechanic.

(b) Within 7 days or 10 hours TIS, whichever occurs first, and thereafter at intervals not to exceed 25 hours TIS, using a 10-power or higher magnifying glass, visually inspect each grip and pitch horn for a crack in accordance with the Accomplishment Instructions, Part II, paragraphs 1 and 2, of Bell Helicopter Textron Alert Service Bulletin Nos. 222U–02–64, 222–02–93, and 230–02–26, all dated April 1, 2002, as applicable.

(c) If a crack is found, replace the unairworthy grip or pitch horn with an airworthy part before further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the inspection requirements of paragraph (b) of this AD can be accomplished.

(f) The inspection shall be done in accordance with the Accomplishment Instructions, Part II, paragraphs 1 and 2, of Bell Helicopter Textron Alert Service Bulletin Nos. 222U–02–64, 222–02–93, and 230–02–26, all dated April 1, 2002, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363-8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NE., suite 700, Washington, DC.

(g) This amendment becomes effective on August 21, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–08–54, issued May 2, 2002, which contained the requirements of this amendment.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2002–23, dated April 2, 2002.

Issued in Fort Worth, Texas, on July 25, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–19486 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–32–AD; Amendment 39–12832; AD 2002–15–04]

RIN 2120–AA64

Airworthiness Directives; Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) T5313B, T5317 Series, and T53 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) T5313B, T5317 series and former military T53 series, turboshaft engines having certain serial number centrifugal compressor impellers, installed. This amendment requires for T53 series engines, a revised operating cycle count (prorate) for those compressor impellers if installed, and initial and repetitive inspections, with eventual compressor impeller replacement. In addition, this amendment requires the marking of those compressor impellers. This amendment is prompted by a report from the supplier that four centrifugal compressor impellers may have been inadvertently misidentified. The actions specified by this AD are intended to prevent premature failure of the impellers from being operated beyond their design service life, which could result in an uncontained engine failure, in-flight shutdown, or damage to the helicopter.

DATES: Effective September 10, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming), Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003, telephone: (602) 365–2493; fax: (602) 365–5577. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5245; fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) T5313B, T5317 series and former military T53 series, turboshaft engines having certain serial number centrifugal compressor impellers, installed was published in the **Federal Register** on June 12, 2001 (66 FR 31566). That action proposed to require for T53 series engines, a revised operating cycle count (prorate) for those compressor impellers if installed, and initial and repetitive inspections, with eventual compressor impeller replacement. In addition, that action proposed to require the marking of those compressor impellers in accordance with Honeywell International, Inc. Service Bulletins (SB's) T5313B/17–0020, Revision 5, dated March 31, 2001; T53–L–13B–0020, Revision 2, dated April 25, 2001; T53–L–13B/D–0020, Revision 1, dated April 25, 2001; and T53–L–703–0020, Revision 1, dated April 25, 2001. Also, Textron Lycoming SB T5313B/17–0052, Revision 2, dated December 16, 1993; AlliedSignal, Inc. SB's T53–L–13B–0108, Revision 1, dated November 22, 1999; T53–L–13B/D–0108, Revision 1, dated November 22, 1999; and T53–L–703–0108, Revision 1, dated November 22, 1999.

Since the publication of the proposed amendment, two Honeywell International, Inc. service bulletins have been revised. Therefore, this AD requires compliance in accordance with Honeywell International, Inc. SB's T5313B/17–0020, Revision 6, dated May 2, 2001 and T53–L–13B–0020, Revision 3, dated October 25, 2001.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

The FAA estimates there are approximately four Honeywell International, Inc., (formerly AlliedSignal, Inc., and Textron Lycoming) T5313B series, T5317 series, and former military T53 series turboshaft engines having the misidentified centrifugal compressor impellers, that are installed on helicopters of U.S. registry. The FAA also estimates that it would take approximately eight work hours per engine to perform the inspection, and that the average labor rate is $60 per work hour. No additional work hour cost would be incurred if the centrifugal compressor impeller is replaced during normal engine disassembly. The prorated cost of a replacement compressor impeller is estimated to be $20,000. Based on these figures, the total labor cost of the AD to U.S. operators is estimated to be $21,920.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–15–04 Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) T5313B, T5317 Series, and T53 Series Turboshaft Engines: Amendment 39–12832. Docket No. 2000–NE–32–AD.

Applicability: This airworthiness directive (AD) is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc., and Textron Lycoming) T5313B series, T5317 series, and former military T53 series, turboshaft engines with centrifugal compressor impellers having serial numbers (SN's) 83317, 83327, 83328, or 83330 installed. These engines are installed on, but not limited to Bell Helicopter Textron 204, 205, and 209 series, and Kaman K–1200 series helicopters, and the following surplus military helicopters that have been certified in accordance with §§ 21.25 or 21.27 of the Federal Aviation Regulations (14 CFR 21.25 or 21.27): Bell Helicopter Textron manufactured AH–1, UH–1, and SW–204/205 (UH–1) series.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent premature failure of the impellers from being operated beyond their design service life, which could result in an uncontained engine failure, in-flight shutdown, or damage to the helicopter, do the following:

Life Limits

(a) When conducting a revised centrifugal compressor impeller operating cycle count on impellers having SN's 83317, 83327, 83328, or 83330, consider these impellers to be centrifugal compressor impeller P/N 1–100–078–07. The life limit must use the value as if these centrifugal compressor impellers are P/N 1–100–078–07.

Revised Operating Cycle Count (Prorate) for T53 Engines

(b) For T5313B series, T5317 series, and former military T53 series engines, within 25 operating cycles or 7 calendar days, whichever occurs first, after the effective date of this AD, perform the following:

(1) Conduct a revised centrifugal compressor impeller operating cycle count (prorate) in accordance with paragraph 2.E.of the Honeywell International, Inc. Service Bulletin (SB) that applies to the engine, from the following list:

(i) For T53–L–13B series engines, use SB T53–L–13B–0020, Revision 3, dated October 25, 2001.

(ii) For T53–L–13B/D engines, use SB T53–L–13B/D–0020, Revision 1, dated April 25, 2001.

(iii) For T53–L–703 engines, use SB T53–L–703–0020, Revision 1, dated April 25, 2001.

(iv) For T5313B series and T5317 series engines, use SB T531B/17–0020, Revision 6, dated May 2, 2001.

(2) Remove from service centrifugal compressor impellers with SN's 83317, 83327, 83328, or 83330, that exceed their new life limit as calculated in accordance with paragraph (b)(1) of this AD.

Impeller Marking

(c) At the next access to the centrifugal compressor impeller, mark the impeller by vibropeening a line over the –14 suffix, and vibropeen a –07 suffix immediately following the –14. Use the following vibropeening parameters:

(1) Vibropeen to a depth of 0.001–0.006 inch.

(2) Do not vibropeen within 0.30 inch of corners, fillets, or sharp edges.

Definition

(d) For the purpose of this AD, access to the centrifugal compressor impeller is defined as whenever the turboshaft engine is disassembled sufficiently as specified by the applicable maintenance manual, to expose the compressor impeller for marking in accordance with paragraph (c) of this AD.

Inspection of Impellers on T5313B and T5317 Series Engines

(e) For T5313B and T5317 series engines, inspect centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, for cracks in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993, as follows:

(1) For those centrifugal compressor impellers installed on AlliedSignal, Inc. Model T5313B engines, accomplish the following:

(i) For centrifugal compressor impellers with equal to or greater than 4,600 cycles in service (CIS) on the effective date of this AD, initially inspect within 200 CIS after the effective date of this AD.

(ii) For those centrifugal compressor impellers with less than 4,600 CIS on the effective date of this AD, initially inspect no later than 4,800 CIS.

(2) For those centrifugal compressor impellers installed on AlliedSignal, Inc. T5317 series engines, accomplish the following:

(i) For those centrifugal compressor impellers with equal to or greater than 3,500 CIS on the effective date of this AD, initially inspect within 200 CIS after the effective date of this AD.

(ii) For those centrifugal compressor impellers with less than 3,500 CIS on the effective date of this AD, initially inspect no later than 3,700 CIS.

(3) Centrifugal compressor impellers found cracked in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993, must be removed from service and replaced with a serviceable part that does not exceed the life limit.

(4) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 500 CIS since last inspection in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993.

Inspection of Impellers on T53–L–13B Series Engines

(f) For T53–L–13B series engines with centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, perform the following:

(1) Within 25 operating hours from the effective date of this AD, inspect the centrifugal compressor impeller for cracks using the revised cycle count (prorate) required by paragraph (b)(1) of this AD, in accordance with Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B–0108, Revision 1, dated November 22, 1999.

(2) If cracks are detected, then prior to further flight, replace centrifugal compressor impellers found cracked in accordance with

the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B–0108, Revision 1, dated November 22, 1999, and replace with a centrifugal compressor impeller P/N 1–100–078–13/–14.

(3) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 100 operating hours since last inspection in accordance with the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B–0108, Revision 1, dated November 22, 1999.

(4) Within 300 operating hours or 6 calendar months, whichever occurs first, after the effective date of this AD, replace centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14. Replacement of centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14 constitutes terminating action for the inspection requirements of paragraphs (f)(1) and (f)(3) of this AD.

Inspection of Impellers on T53–L–13B/D Series Engines

(g) For T53–L–13B/D series engines with centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, perform the following:

(1) Within 25 operating hours from the effective date of this AD, inspect the centrifugal compressor impeller for cracks using the revised cycle count (prorate) required by paragraph (b)(1) of this AD, in accordance with Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B/D–0108, Revision 1, dated November 22, 1999.

(2) If cracks are detected, then prior to further flight, replace centrifugal compressor impellers found cracked in accordance with the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B/D–0108, Revision 1, dated November 22, 1999, and replace with a centrifugal compressor impeller P/N 1–100–078–13/–14.

(3) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 100 operating hours since last inspection in accordance with the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B/D–0108, Revision 1, dated November 22, 1999.

(4) Within 300 operating hours or 6 calendar months, whichever occurs first, after the effective date of this AD, replace centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14. Replacement of centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14 constitutes terminating action for the inspection requirements of paragraphs (g)(1) and (g)(3) of this AD.

Inspection of Impellers on T53–L–703 Engines

(h) For T53–L–703 series engines with centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, perform the following:

(1) Within 25 operating hours from the effective date of this AD, inspect the centrifugal compressor impeller for cracks using the revised cycle count (prorate) required by paragraph (b)(1) of this AD, in accordance with Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–703–0108, Revision 1, dated November 22, 1999.

(2) If cracks are detected, then prior to further flight, replace centrifugal compressor impellers found cracked in accordance with the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–703–0108, Revision 1, dated November 22, 1999, and replace with a centrifugal compressor impeller part number (P/N) 1–100–078–13/–14.

(3) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 100 operating hours since last inspection in accordance with the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–703–0108, Revision 1, dated November 22, 1999.

(4) Within 300 operating hours or 6 calendar months, whichever occurs first, after the effective date of this AD, replace centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14. Replacement of centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14 constitutes terminating action for the inspection requirements of paragraphs (h)(1) and (h)(3) of this AD.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(k) The inspections must be done in accordance with the following SB's:

Document No.	Pages	Revision	Date
Honeywell International, Inc., SB T5313B/17–0020	All	6	May 2, 2001.
Total pages 14			
Honeywell International, Inc., SB T53–L–13B–0020	All	3	Oct. 25, 2001.
Total pages 13			
Honeywell International, Inc., SB T53–L–13B/D–0020	All	1	April 25, 2001.
Total pages 12			
Honeywell International, Inc., SB T53–L–703–0020	All	1	April 25, 2001.
Total pages 12			
Textron Lycoming SB, SB T5313B/17–0052	All	2	Dec. 16, 1993.
Total pages 8			
AlliedSignal, Inc., SB T53–L–13B–0108	1	Original	July 22, 1999.
	2	1	Nov. 22, 1999.
	3–12	Original	July 22, 1999.
Total pages 12			
Allied Signal, Inc., SB T53–L–13B/D–0108	1	Original	July 22, 1999.
	2	1	Nov. 22, 1999.
	3–12	Original	July 22, 1999.
Total pages 12			
AlliedSignal, Inc., SB T53–L–703–0108	1	Original	July 22, 1999.
	2	1	Nov. 22, 1999.
	3–12	Original	July 22, 1999.
Total pages 12			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell International Inc. Aerospace Services Attn.: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on September 10, 2002.

Issued in Burlington, Massachusetts, on July 19, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–19253 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's address for Endo Pharmaceuticals, Inc.

DATES: This rule is effective August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Endo Pharmaceuticals, Inc., 223 Wilmington West Chester Pike, Chadds Ford, PA 19317, has informed FDA of a change of sponsor address to 100 Painters Dr., Chadds Ford, PA 19317. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor address.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "Endo Pharmaceuticals, Inc." and in the table in paragraph (c)(2) by revising the entry for "060951" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Endo Pharmaceuticals, Inc., 100 Painters Dr., Chadds Ford, PA 19317	060951
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
060951	Endo Pharmaceuticals, Inc., 100 Painters Dr., Chadds Ford, PA 19317
* * * * * * *	

Dated: July 19, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–19767 Filed 8–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 196

[Public Notice 4077]

The Thomas R. Pickering Foreign Affairs/Graduate Foreign Affairs Fellowship Program and Grants to Post-Secondary Institutions

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This document establishes the rule by which the Department of State's Thomas R. Pickering Foreign Affairs/Graduate Foreign Affairs Fellowship program will be administered. The State Department Basic Authorities Act states that the Department shall establish regulations which will provide for a limit on the size of any specific grant and, regarding any grant to individuals, shall ensure no grant recipient receives grants from one or more Federal programs which in the aggregate would exceed the cost of his or her educational expenses and shall require satisfactory educational progress by grantees as a

condition of eligibility for continued participation in the program. This rule will facilitate the recruitment of a talented and diverse group of students into the Foreign Service.

EFFECTIVE DATE: October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Esper, Office of Recruitment/ Student Programs at (202) 261–8924.

SUPPLEMENTARY INFORMATION: The Thomas R. Pickering Foreign Affairs/ Graduate Foreign Affairs Fellowship Program was established to recruit a talented and diverse group of students into the Foreign Service. The State Department Basic Authorities Act (22 U.S.C. 2719) authorizes the Secretary of State to make grants to post-secondary education institutions or students for the purpose of increasing the level of knowledge and awareness of and interest in employment with the Foreign Service. The program provides scholarships to undergraduate and graduate students in academic programs relevant to international affairs, political and economic analysis, administration, management and science policy. While in school, Fellows participate in one domestic and one overseas internship within the U.S. Department of State. After completing their academic training, and successfully passing the Foreign Service entry requirements, Fellows will enter the U.S. Department of State Foreign Service as Foreign Service Officers. Consideration is given to all qualified applicants who, in addition to outstanding leadership skills and academic achievement, demonstrate financial need. The number of fellowships awarded is determined by available funding.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule after it was published as a proposed rule on January 11, 2002 (67 FR 1420). No comments were received regarding the final rule.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $1 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

The reporting or recordkeeping action required from the public under the rule requires the approval of the Office of Management and Budget under the Paperwork Reduction Act. A Fellowship application form was forwarded to OMB as required. The Pickering Fellowship application form number is: DS–3091 and the number of the collection is: OMB #1405–0143.

List of Subjects in 22 CFR Part 196

Education, Educational study programs, Grant programs—education, Grant programs—foreign affairs, Reporting and recordkeeping requirements, Scholarships and fellowships, Students.

For the reasons discussed in the preamble, the U.S. Department of State amends 22 CFR chapter I by adding part 196 to read as follows:

PART 196—THOMAS R. PICKERING FOREIGN AFFAIRS/GRADUATE FOREIGN AFFAIRS FELLOWSHIP PROGRAM

Sec.

196.1 What is the Fellowship Program?
196.2 How is the Fellowship Program administered?
196.3 Grants to post-secondary education institutions.
196.4 Administering Office.

Authority: 22 U.S.C. 2719.

§ 196.1 What is the Fellowship Program?

The Thomas R. Pickering Foreign Affairs/Graduate Foreign Affairs Fellowship Program is designed to attract outstanding men and women at the undergraduate and graduate educational levels for the purpose of increasing the level of knowledge and awareness of and employment with the Foreign Service, consistent with 22 U.S.C. 3905. The Program develops a source of trained men and women, from academic disciplines representing the skill needs of the Department, who are dedicated to representing the United States' interests abroad.

§ 196.2 How is the Fellowship Program administered?

(a) *Eligibility.* Eligibility will be determined annually by the Department of State and publicized nationwide. Fellows must be United States citizens.

(b) *Provisions.* The grant awarded to each individual student shall not exceed $250,000 for the total amount of time the student is in the program. Fellows are prohibited from receiving grants from one or more Federal programs, which in the aggregate would exceed the cost of his or her educational expenses. Continued eligibility for participation is contingent upon the Fellow's ability to meet the educational requirements set forth in paragraph (c) of this section.

(c) *Program requirements.* Eligibility for participation in the program is conditional upon successful completion of pre-employment processing specified by the Department of State, including background investigation, medical examination, and drug testing. As a condition of eligibility for continued receipt of grant funds, fellows are required to complete prescribed coursework and maintain a satisfactory

grade point average as determined by the Department of State. Fellows are also required to accept employment with the Department of State's Foreign Service upon successful completion of the program, and Foreign Service entry requirements. Fellows must continue employment for a period of one and one-half years for each year of education funded by the Department of State.

§ 196.3 Grants to post-secondary education institutions.

The Department of State may make a grant to a post-secondary education institution for the purpose of increasing the level of knowledge and awareness of and interest in employment with the Foreign Service, consistent with 22 U.S.C. 3905, not to exceed $1,000,000, unless otherwise authorized by law.

§ 196.4 Administering office.

The Department of State's Bureau of Human Resources, Office of Recruitment is responsible for administering the Thomas R. Pickering Foreign Affairs/Graduate Foreign Affairs Fellowship Program and grants to post-secondary institutions and may be contacted for more detailed information.

Dated: July 17, 2002.

Ruben Torres,

Executive Director, Bureau of Human Resources, Department of State.

[FR Doc. 02–19449 Filed 8–5–02; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 542

[BOP–1076–F]

RIN 1120–AA72

Administrative Remedy Program: Excluded Matters

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) amends its regulations to allow staff to process under the Administrative Remedy Program any request or appeal related to an inmate's conditions of confinement. We intend this amendment to provide the inmate with maximum opportunity to seek review of any issue related to his/her confinement.

DATES: This rule is effective August 6, 2002.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: We proposed this rule on June 27, 2000 (65 FR 39767). We received no comments on the proposed rule. In this document, we finalize the proposed rule.

What Does This Final Rule Do?

This final rule amends our regulations on the Administrative Remedy Program (28 CFR part 542, subpart B, published in the **Federal Register** on January 2, 1996, at 61 FR 88).

Administrative Remedy Program. The Bureau's Administrative Remedy Program allows inmates to seek review of issues relating to their confinement. Often, we may satisfy an inmate's grievance by explaining the relevant policy or practice. The Administrative Remedy Program also allows us to examine our policies and practices and make changes without judicial intervention.

Our previous regulation. Previously, § 542.12 specified matters excluded from consideration under the Administrative Remedy Program. Under paragraph (b) of this section, we did not accept requests or appeals for claims with other statutorily-mandated procedures (including tort claims [*see* 28 CFR 543, subpart C], Inmate Accident Compensation claims [28 CFR 301], and Freedom of Information Act or Privacy Act requests [28 CFR 513, subpart D]) for processing under the Administrative Remedy Program. We intended these exclusions to reflect the fact that there were other procedures for corrective action which would not be available under the Administrative Remedy Program.

Our new final rule. In this rule, we remove these exclusions. In accepting such requests or appeals under the Administrative Remedy Program, we will more quickly address the full range of corrective actions available, including any that may be peripheral to issues which have other statutorily-mandated administrative procedures in place.

For example, the Administrative Remedy Program ordinarily cannot provide monetary relief. An inmate's claim for monetary relief may, however, present the basis for non-monetary relief. Under the previous regulations, we did not ordinarily accept the inmate's claim in the Administrative Remedy Program, even though we could provide non-monetary relief on the claim.

Under this final rule, however, we will accept the inmate's claim for monetary relief in the Administrative Remedy Program. We will then provide non-monetary relief on the claim, if warranted, and refer the inmate to the appropriate statutorily-mandated procedure to resolve remaining issues.

Where the inmate's claim can only be addressed by another administrative procedure, we will simply respond by referring the inmate to the appropriate procedure. Bureau staff responding to the administrative remedy are not responsible for investigating such a claim.

Therefore, we delete § 542.12. Sections 542.10 and 542.16 already cover statements in § 542.12 of the regulation's intent and provisions for assistance to the inmate. We also moved the previous stipulation in § 542.12 that an inmate may not submit a Request or Appeal on behalf of another inmate to § 542.10.

We revise § 542.10 to allow inmates to file any claim under the Administrative Remedy Program, even those which have statutorily-mandated remedies. In our revision, we state that, if an inmate raises an issue in a request or appeal that cannot be resolved through the Administrative Remedy Program, we will refer the inmate to the appropriate statutorily-mandated procedures.

This rule does not require the inmate to file under the Administrative Remedy Program before filing under statutorily-mandated procedures for tort claims (*see* 28 CFR 543, subpart C), Inmate Accident Compensation claims (28 CFR 301), and Freedom of Information Act or Privacy Act requests (28 CFR 513, subpart D).

Of course, if an inmate has a claim that is solely governed by other statutorily-mandated administrative procedures, the inmate need not first file a claim under the Administrative Remedy Program.

Executive Order 12866

The Office of Management and Budget (OMB) determined that certain rules are part of a category of actions which are not "significant regulatory actions" under section 3(f) of Executive Order 12866. Because this rule falls within that category, OMB did not review it.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have

sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make our documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write to Sarah Qureshi at the address or telephone number listed above.

List of Subjects in 28 CFR Part 542

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 542 as set forth below. .

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 542—ADMINISTRATIVE REMEDY

1. Revise the authority citation for 28 CFR part 542 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Revise § 542.10 to read as follows:

§ 542.10 Purpose and scope.

(a) *Purpose.* The purpose of the Administrative Remedy Program is to allow an inmate to seek formal review of an issue relating to any aspect of his/her own confinement. An inmate may not submit a Request or Appeal on behalf of another inmate.

(b) *Scope.* This Program applies to all inmates in institutions operated by the Bureau of Prisons, to inmates designated to contract Community Corrections Centers (CCCs) under Bureau of Prisons responsibility, and to former inmates for issues that arose during their confinement. This Program does not apply to inmates confined in other non-federal facilities.

(c) *Statutorily-mandated procedures.* There are statutorily-mandated procedures in place for tort claims (28 CFR part 543, subpart C), Inmate Accident Compensation claims (28 CFR part 301), and Freedom of Information Act or Privacy Act requests (28 CFR part 513, subpart D). If an inmate raises an issue in a request or appeal that cannot be resolved through the Administrative Remedy Program, the Bureau will refer the inmate to the appropriate statutorily-mandated procedures.

§ 542.12 [Removed and Reserved]

3. Remove and reserve § 542.12.

[FR Doc. 02–19747 Filed 8–5–02; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–034–FIN; FRL–7256–1]

Clean Air Act Redesignation and Reclassification, Searles Valley Nonattainment Area; Designation of Coso Junction, Indian Wells Valley, and Trona Nonattainment Areas; California; Determination of Attainment of the PM–10 Standards for the Coso Junction Area; Particulate Matter of 10 microns or less (PM–10)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is changing the boundaries of the Searles Valley, California moderate PM–10 nonattainment area (NA) by dividing that area into three new, separate moderate NAs: Coso Junction, Indian Wells Valley, and Trona. EPA is also finding that the Trona NA has attained the 24-hour and annual PM–10 national ambient air quality standards (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas.

EFFECTIVE DATE: September 5, 2002.

ADDRESSES: You can inspect a copy of the docket for this action at EPA's Region IX office during normal business hours. See address below. This document and the proposal for this final rule are also available as electronic files on EPA's Region 9 Web page at *www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Karen Irwin, U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, California 94105, (415) 947–4116, *irwin.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Nonattainment Area Boundary Changes

On November 15, 1990, the date of enactment of the 1990 Clean Air Act Amendments, pursuant to CAA sections 107(d)(4)(B) and 188(a) respectively, the Searles Valley planning area was designated nonattainment and classified as moderate by operation of law. *See* 40 CFR 81.305. The Searles Valley NA is situated at the southeastern end of the Sierra Nevada Mountains and includes portions of Inyo, Kern and San Bernardino Counties. The boundaries of the NA are defined by United States

Geological Survey (USGS) Hydrologic Unit #18090205, an area of approximately 2000 square miles. *Id.*

Under section 107(d)(3)(D), the Governor of any state, on the Governor's own motion, is authorized to submit to the Administrator a revised designation [1]*COM019* of any nonattainment area or portions thereof within the State. On May 4, 2001, the California Air Resources Board (CARB) submitted to EPA a request under CAA section 107(d)(3)(D) to revise the boundaries for the Searles Valley NA by dividing the area into three separate PM–10 nonattainment areas, Coso Junction, Indian Wells Valley and Trona, to be separated along the Inyo, Kern, and San Bernardino County lines within the Searles Valley NA.

In determining whether to approve or deny a state's request for a revision to the designation of an area under section 107(d)(3)(D), EPA uses the same factors Congress directed EPA to consider when the Agency initiates a revision to a designation of an area on its own motion under section 107(d)(3)(A). These factors include air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.

B. Determinations of Attainment/ Nonattainment

States containing areas such as Searles Valley which were designated as moderate nonattainment by operation of law under section 107(d)(4)(B) were required to develop and submit state implementation plans (SIPs) to provide for the attainment of the PM–10 NAAQS by no later than December 31, 1994.

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date whether PM–10 nonattainment areas have attained the NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's "air quality as of the attainment date" and section 188(b)(2) is consistent with this requirement. A total of 3 consecutive years of clean air quality data are generally necessary to show attainment of the 24-hour and annual standards for PM–10. Because the attainment deadline for the Searles Valley was December 31, 1994, for purposes of the attainment finding, EPA is using monitoring data from 1992–1994.

EPA makes the determinations of whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area. These data are reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50, appendix K. Pursuant to appendix K, attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration is equal to or less than 50 µg/m3. Attainment of the 24-hour standard is determined by calculating the expected number of exceedances of the 150 µg/m3 limit per year. The 24-hour standard is attained when the expected number of exceedances is 1.0 or less.

II. EPA's Proposed Actions

On June 13, 2001, EPA proposed to divide, pursuant to CAA section 107(D)(3)(d), the Searles Valley PM–10 NA into three separate, newly created NAs: Coso Junction, Indian Wells Valley and Trona. 66 FR 31873. EPA proposed that the Coso Junction NA boundaries would consist of the portion of Inyo County contained within USGS Hydrologic Unit #18090205; the proposed Indian Wells Valley NA boundaries would include the portion of Kern County contained within USGS Hydrologic Unit #18090205; and the proposed Trona NA boundaries would include the portion of San Bernardino County contained within USGS Hydrologic Unit #18090205. The combination of these three proposed NAs would comprise the same area included in the Searles Valley NA as set forth in 40 CFR 81.305. EPA's rationale for the boundary revisions is discussed in detail in the proposed rule. *See* 66 FR 31873, 31874–31875.

In addition, EPA proposed to find, pursuant to CAA sections 179(c) and 188(b)(2), that the proposed Trona NA had attained the 24-hour and annual PM–10 standards by the moderate area attainment deadline, December 31, 1994.[2] This proposed finding was based on air quality data showing that the Trona area has not recorded any exceedances of the 24-hour and annual PM–10 NAAQS for the 1992–1994 period. *See* 66 FR 31873, 31875–31877.

EPA received comment letters on its June 13, 2001 proposed actions from the Kern County Air Pollution Control District, the Department of the Navy and CARB. Both the Navy and CARB supported changing the boundaries of the Searles Valley NA to create three new nonattainment areas and the attainment finding for the Trona area. EPA received no negative comments on these proposed actions.[3]

III. Today's Action

In today's final action, EPA is dividing the Searles Valley NA into three, newly created NAs: Coso Junction, Indian Wells Valley and Trona. EPA is also finding that the newly created Trona moderate NA attained the 24-hour and annual PM–10 NAAQS by the CAA mandated deadline of December 31, 1994.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

The splitting of the Searles Valley NA into three new, separate NAs with a moderate classification will not impose any new requirements on any sectors of the economy because the area is already classified as moderate. Moreover, under the CAA, a determination that the Trona area has attained the PM–10 national ambient air quality standards is based on an objective review of measured air quality. As such, the nonattainment area split and the attainment determination do not impose any new requirements on any sectors of the economy and do not have any adverse impact on State, local, or tribal governments or communities.

Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

These actions do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because the division of the Searles Valley NA into three, new and separate NAs with a moderate classification and the determination of attainment for the new Trona area will not impose any new requirements on any sectors of the economy. For the same reason, this rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the

[1] Boundary changes are an inherent part of a designation or redesignation of an area under the CAA. *See* CAA section 107(d)(1)(B)(ii).

[2] On June 13, 2001, EPA also proposed to find that the proposed Indian Wells and Coso Junction NAs have not attained the 24-hour and annual PM–10 NAAQS by December 31, 1994. Today's final rule addresses only the finding concerning the Trona NA. EPA intends to take additional action with respect to the Indian Wells and Coso NAs in future rulemakings.

[3] EPA received a number of comments on its proposed nonattainment findings for the proposed Indian Wells and Coso Junction NAs. The Agency will address these comments in any future rulemakings regarding these proposals.

distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). For these same reasons, these actions will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). These actions are also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because they are not economically significant. Finally, for these same reasons, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing these actions, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. These actions do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for Judicial review may be file, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 25, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.305 the "California-PM–10" table is amended as follows:

a. By adding "Coso Junction planning area" as a designated area immediately under the entry "Inyo County;

b. By revising the entry "San Bernardino, Inyo and Kern Counties";

c. By adding "Indian Wells Valley planning area" as a designated area immediately under the entry "Fresno, Kern, Kings, Tulare, San Joaquin, Stanislaus, Madera Counties."

§ 81.305 California.

* * * * *

CALIFORNIA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Inyo County				
Coso Junction planning area	September 5, 2002	Nonattainment	September 5, 2002	Moderate.
That portion of Inyo County contained within Hydrologic Unit #18090205				
* * *	*	*	*	*
San Bernardino County				
San Bernardino (part):				
Excluding that portion located in the Trona planning area, and				
Excluding that area in the South Coast Air Basin				
Trona planning area: That portion of San Bernardino County contained within Hydrolagic Unit #18090285.	September 5, 2002	Nonattainment	September 5, 2002	
* * *	*	*	*	*
Fresno, Kern, Kings, Tulare, San Joaquin, Medera Counties:				
Indian Wells Valley Planning area	September 5, 2002	Nonattainment	September 5, 2002	Moderate
That portions of Kern County contained with Hyrdologic Unit #18090205.				
* * *	*	*	*	*

* * * * *

[FR Doc. 02–19798 Filed 8–5–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[FRL–7256–3]

RIN 2060–AJ70

Transportation Conformity Rule Amendments: Minor Revision of 18-Month Requirement for Initial SIP Submissions and Addition of Grace Period for Newly Designated Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating two minor revisions to the transportation conformity rule. Transportation conformity is required by the Clean Air Act to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of a state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the state air quality plan.

First, today's final rule will implement a Clean Air Act amendment that provides a one-year grace period before conformity is required in areas that are designated nonattainment for a given air quality standard for the first time. This Clean Air Act amendment was enacted on October 27, 2000. Although the grace period is already available to newly designated nonattainment areas as a matter of law, EPA is today incorporating the one-year conformity grace period into the conformity rule.

Second, today's final rule will change the point by which a conformity determination must be made following a State's submission of a control strategy implementation plan or maintenance plan for the first time (an "initial" SIP submission). Today's rule requires conformity to be determined within 18 months of EPA's affirmative finding that the SIP's motor vehicle emissions budgets are adequate. Prior to today's action, the conformity rule required a new conformity determination within 18 months of the submission of an initial SIP.

This change to the conformity rule better aligns when the 18-month requirement for conformity to initial SIP submissions is implemented, so that state and local agencies have sufficient time to redetermine conformity when initial SIPs are submitted and after EPA finds the SIP budgets adequate.

EFFECTIVE DATE: This final rule is effective on September 5, 2002.

ADDRESSES: Materials relevant to this rulemaking are in Public Docket A–2001–12 located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor). Ph: 202–260–7548. The docket is open and supporting materials are available for review between 8 a.m. and 5:30 p.m. on all federal government workdays. You may have to pay a reasonable fee for copying docket materials.

This final rule is available electronically from EPA's Web site. *See* **SUPPLEMENTARY INFORMATION** for information on accessing and downloading files.

FOR FURTHER INFORMATION CONTACT: Angela Spickard, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, *spickard.angela@epa.gov*, (734) 214–4283.

SUPPLEMENTARY INFORMATION: You can access and download today's final rule on your computer by going to the following address on EPA's Internet Web site: *http://www.epa.gov/otaq/traq* (Once at the site, click on "conformity.").

Regulated Entities

Entities potentially regulated by the transportation conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by this action include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies, including metropolitan planning organizations.
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)) and EPA.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this rule. This table lists the types of entities of which EPA is aware that could potentially be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102 of the transportation conformity rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The contents of this preamble are listed in the following outline:

I. Background
II. One-year Conformity Grace Period for Newly Designated Nonattainment Areas
III. Conformity Determinations for Initial SIP Submissions
IV. What Comments That Addressed Topics Other Than Those Covered in This Rulemaking Did We Receive?
V. How Does Today's Final Rule Affect Conformity SIPs?
VI. Administrative Requirements

I. Background

Transportation conformity is required under section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of a state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the state air quality plan.

EPA first published the transportation conformity rule on November 24, 1993 (58 FR 62188), and made subsequent minor revisions to the rule in 1995 (60

FR 40098, August 7, 1995, and 60 FR 57179, November 14, 1995). On August 15, 1997, however, EPA published a comprehensive set of amendments that clarified and streamlined language from the 1993 transportation conformity rule and 1995 amendments (62 FR 43780). Since the publication of the 1997 rule, we made one additional minor revision to the conformity rule in 2000 (65 FR 18911, April 10, 2000).

As described in the October 5, 2001, proposal to this final rule (66 FR 50954), EPA's 1995 conformity rule provided a one-year conformity grace period to areas that were designated nonattainment for a given air quality standard for the first time (§ 93.102(d) of the November 14, 1995, final rule; 60 FR 57179). However, this provision was challenged by the Sierra Club under the Clean Air Act as amended in 1990, and the U.S. Court of Appeals for the District of Columbia Circuit overturned the grace period on statutory grounds on November 4, 1997 (*Sierra Club* v. *EPA, et al.*, 129 F. 3d 137, D.C. Cir. 1997). As a result of the court's decision, the one-year conformity grace period was no longer available to areas and EPA removed it from the conformity rule in 2000 (65 FR 18911). Subsequently, Congress amended the Clean Air Act on October 27, 2000, to reinstate the grace period as a matter of law. Today's final rule amends the conformity regulation by reinstating the grace period provision to be consistent with the October 2000 Clean Air Act amendment, and therefore will provide newly designated nonattainment areas with a one-year grace period before the conformity regulation applies.

Today's action also amends the conformity rule to respond, in part, to the impact of a decision made on March 2, 1999, by the U.S. Court of Appeals for the District of Columbia Circuit that affected several provisions of the 1997 rulemaking (*Environmental Defense Fund* v. *EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). Specifically, today's final rule addresses the indirect impact of this court decision on one provision of the conformity rule (§ 93.104(e)), the provision that requires conformity to be redetermined within 18 months of an initial SIP submission. In addition to today's minor rule revision, we are currently preparing a future rulemaking to respond to the remaining issues addressed by the March 1999 court decision that will be separately proposed in the **Federal Register**.

In the interim, areas where conformity applies are currently operating under administrative guidance that EPA and the U.S. Department of Transportation (DOT) issued to address the provisions directly affected by the court decision. See EPA's web site listed in the **SUPPLEMENTARY INFORMATION** section to download an electronic version of EPA's May 14, 1999, and DOT's January 2, 2002, memoranda implementing the March 1999 court decision.

Today's final rule is based on the October 5, 2001, proposed rule entitled, "Transportation Conformity Rule Amendments: Minor Revision of 18-month Requirement for Initial SIP Submissions and Addition of Grace Period for Newly Designated Nonattainment Areas" (66 FR 50954) and comments received on that proposal. The public comment period for the proposed rule ended on November 5, 2001. EPA received twelve public comments on the proposed rule from metropolitan planning organizations, state transportation and air quality agencies, and an environmental group.

This final rule makes two minor changes to the October 5, 2001, proposed rule that further clarify the applicability of the one-year conformity grace period to newly designated nonattainment areas. No other modifications to the proposed rule, however, have been made in today's final rule. EPA will not restate here its rationale for the changes to the conformity rule that are identical to the October 5 proposal. The reader is referred to the proposal notice for such discussions.

II. One-year Conformity Grace Period for Newly Designated Nonattainment Areas

A. What Are We Finalizing?

Today, EPA is adding the existing one-year conformity grace period for newly designated nonattainment areas for a given air quality standard to the transportation conformity rule. We are finalizing this change to make the transportation conformity rule consistent with an October 27, 2000, amendment to the Clean Air Act (42 U.S.C. 7506(c)(6)).

Specifically, the October 2000 amendment provides areas, that for the first time are designated nonattainment for a given air quality standard, with a one-year grace period before the conformity regulation applies with respect to that standard. This grace period begins upon the effective date of EPA's published notice in the **Federal Register** that designates an area as nonattainment. Although today's final rule incorporates the grace period into the transportation conformity rule, it has been available to newly designated nonattainment areas as a matter of law since Congress enacted the October 2000 amendment to the Act. For more information on what defines a "newly designated" nonattainment area, see the October 5, 2001, proposal to today's rulemaking.

B. How Soon Does Conformity Apply in a Newly Designated Nonattainment Area?

Under the current Clean Air Act as amended in October 2000, conformity applies one year after EPA first designates an area or portion of an area as nonattainment for a given air quality standard. More specifically, conformity applies one year after the effective date of EPA's final nonattainment designation, as published in the **Federal Register**.

Therefore, one year after the effective date of EPA's designation of an area to nonattainment for the first time for a given standard, metropolitan areas must have a conforming transportation plan and Transportation Improvement Program (TIP) in place to fund or approve transportation projects. If, at the conclusion of the one-year grace period, a metropolitan area is not able to make a conformity determination for its plan and TIP, the area will be in what is known as a "conformity lapse."

In the absence of a conforming transportation plan and TIP, no new project-level conformity determinations may be made. According to existing guidance, during a conformity lapse exempt projects listed in § 93.126 (*e.g.*, safety projects), projects listed in § 93.127 and § 93.128, and project phases that have received all applicable funding commitments or approvals from the FHWA, FTA or state and local authorizing agencies can proceed toward implementation. Transportation control measures (TCMs) that EPA has approved into a SIP can also proceed during a lapse. TCMs are projects that support air quality goals by reducing travel or relieving congestion.

The transportation plan and TIP must conform with respect to all pollutants for which the area is designated nonattainment to end the conformity lapse. Transportation conformity applies in areas that are designated nonattainment or maintenance for ozone, carbon monoxide, particulate matter, and nitrogen dioxide. For example, a carbon monoxide nonattainment area that is subsequently designated nonattainment for ozone has a one-year grace period before conformity determinations must be made for ozone; conformity would continue to apply in the interim for carbon monoxide. By the end of the one-year grace period, a conforming

transportation plan and TIP must be in place for all pollutants in a given area, in this case, for carbon monoxide and ozone.

C. What Comments Did We Receive?

In general, commenters supported amending the conformity rule to include the one-year conformity grace period for newly designated nonattainment areas. Most commenters believe that newly designated areas, especially those with little or no conformity experience, need the additional time to evaluate their long range transportation plans, TIPs and projects, and to complete the conformity process. Although the grace period has been available to newly designated areas since the enactment of the October 2000 Clean Air Act amendment, several commenters felt that its inclusion into the conformity rule will help to reduce confusion and provide assurance to future newly designated areas.

Though most commenters agreed with amending the conformity rule to include the one-year grace period, some commenters argued that one year is not enough time to complete the transportation planning and conformity processes when an area becomes designated nonattainment for a given air quality standard for the first time. Some of these commenters believe that a longer grace period of three years is more appropriate.

The October 2000 Clean Air Act amendment specifically provides newly designated areas with a one-year grace period, after which conformity applies. Therefore, we believe that the statutory language precludes EPA from extending the conformity grace period beyond one year for new areas. We should also emphasize, however, that areas will have prior notification of their pending designation well before the **Federal Register** notice announcing their designation is published. We encourage areas to use the time provided by the designation process to begin preparing themselves for implementing the conformity regulation.

One commenter also requested that EPA consider delaying the effective date of designation to 60–90 days after a **Federal Register** notice is published, so that areas will have more time beyond the one-year grace period to meet the conformity requirements. Generally, the amount of time between publication and effective date is established through EPA's administrative discretion on a case-by-case basis. Therefore, we do intend to consider how areas are designated, particularly for areas designated under new air quality standards, so that the transition to implementing the conformity regulation will be reasonable. Furthermore, as previously stated, the designation process will provide areas advanced notification of their pending designation. Areas should use this additional time prior to the one-year conformity grace period to prepare for the implementation of the conformity regulation and other Clean Air Act requirements. EPA can not now determine the appropriate effective date for all future designations, but will continue to do so, as appropriate on a case-by-case basis, in the course of future designation rulemaking.

Finally, EPA received a comment questioning whether the proposed rule text included in our October 5, 2001, proposal is consistent with the statutory language in the Clean Air Act, section 176(c)(6). Specifically, one commenter suggested that the proposed rule language does not incorporate the limitation that the one-year grace period only applies to areas that are designated nonattainment for a given pollutant for the "first" time. This commenter argued that the Clean Air Act precludes the availability of the grace period to areas that were once nonattainment for a standard, redesignated to attainment under Clean Air Act section 107(d)(3), but then designated back to nonattainment because they again violated the same air quality standard.

EPA agrees with this commenter's interpretation of the statutory language; we do not believe that the grace period is available to areas that are designated nonattainment for a given pollutant and standard more than one time. The preamble to the October 5, 2001, proposal further supports this limitation by stating that the conformity grace period is not available to areas that have been previously designated nonattainment for a given pollutant and standard.

Although EPA continues to believe that the proposed regulatory language for § 93.102(d) is consistent with the Clean Air Act, we are finalizing two minor clarifying changes to the proposed rule to ensure that the grace period is correctly implemented. Specifically, we have clarified in the final rule language that the grace period is only available to areas that have been "continuously" designated attainment for a given standard since 1990, or have not been designated at all for a given standard for that same period. In addition, we specify that for areas that are designated nonattainment for the first time for a given air quality standard, the one-year conformity grace period only applies "with respect to that standard." These minor clarifications ensure that the regulatory language limits the applicability of the one-year grace period to only areas that have been designated nonattainment for a given pollutant and standard for the first time, and therefore, is consistent with our interpretation and implementation of the Clean Air Act section 176(c)(6). EPA believes that a reproposal is not necessary to incorporate these minor clarifying changes in today's final rule, as these clarifications are consistent with EPA's original intentions and stakeholders' understanding of the proposed regulatory language.

III. Conformity Determinations for Initial SIP Submissions

A. What Are We Finalizing?

As in the proposed rule, this final rule revises § 93.104(e)(2) to change the trigger point or starting point of the requirement to determine conformity after an initial SIP submission is made. With this rule change, conformity must be determined within 18 months of the effective date of the **Federal Register** notice announcing EPA's finding that the budgets in an initial SIP submission are adequate. Today's action changes the 1997 conformity rule that required conformity to be determined within 18 months of the submission date for an initial SIP. The net effect is that areas will have the full 18 months to satisfy the conformity requirement for initial submissions once adequate budgets have become available for conformity. EPA is promulgating this minor rule revision to provide a reasonable response to an indirect impact of the March 2, 1999, court decision that requires EPA to first find the budgets from an initial SIP submission adequate before such budgets can be used in a conformity determination.

Today's final rule will also change the starting point for 18-month clocks that are currently running for areas with initial SIP submissions, so that these areas are given the full 18 months to determine conformity to their initial SIPs. In other words, in areas where a SIP has been submitted and EPA is currently reviewing it for adequacy, the 18-month clock required by § 93.104(e)(2) will not start until the effective date of our adequacy finding (*i.e.*, today's action voids the current 18-month clock that started from the SIP submission date for these areas). If we are currently reviewing the adequacy of a submitted SIP, and subsequently find it inadequate, the 18-month clock will not start because today's rule requires EPA to first find budgets in initial SIP submissions adequate before § 93.104(e)(2) applies. Finally, for areas

that have submitted initial SIPs that EPA has already found adequate and to which conformity has not yet been determined, this final rule will restart the 18-month clock from the effective date of EPA's positive adequacy finding.

Consistent with the proposed rule, today's final rule will not require an 18-month clock to begin if budgets from an initial SIP submission are found inadequate. Furthermore, this rule will void any 18-month clocks that are running for initial SIP submissions that EPA finds adequate, but subsequently finds inadequate before a conformity determination is made, at the time that EPA finds such budgets inadequate.

Today's action does not change the current requirement to redetermine conformity for each initial SIP that is submitted for a given pollutant, standard, and Clean Air Act requirement. For example, an 18-month clock will still be triggered for the first attainment demonstration that an area submits and EPA subsequently finds adequate, as well as for the first rate-of-progress SIP for a given year and maintenance plan that is submitted and found adequate. Today's rule changes only the date on which these 18-month clocks begin to run.

In addition, today's action does not change the current rule's requirement that an area need only satisfy the 18-month requirement to determine conformity to an initial SIP submission once for a given Clean Air Act requirement. Once § 93.104(e)(2) is satisfied, areas do not have to satisfy this requirement again for subsequent submissions of the same type prior to EPA SIP approval. EPA believes that the requirement to update conformity every three years (40 CFR 93.104), along with other transportation planning and conformity requirements, provides sufficient additional opportunity for periodically introducing new air quality information into the conformity process. Furthermore, this action does not change the conformity rule's requirement of 40 CFR 93.104(e)(3); areas are still required to demonstrate conformity within 18 months of EPA's approval of a SIP containing revised budgets.

Finally, as indicated in the proposal, today's final rule will not affect those SIPs that are submitted to reflect additional control measures or to update MOBILE5 interim estimates of federal Tier 2 vehicle and fuel standards with MOBILE6. EPA has already stated that these SIP revisions are not initial SIP submissions that start 18-month clocks under 40 CFR 93.104(e)(2). EPA addressed this issue in the July 28, 2000, supplemental notice of proposed rulemaking (65 FR 46386) for certain ozone attainment areas.

For more information on what defines an "initial SIP submission," see the October 5, 2001, proposal to today's final rule.

B. Why Is This Rule Change Necessary?

Today's rule change is necessary because it provides a reasonable response to an indirect impact of the March 2, 1999, court decision. In its March 1999, decision, the court ruled that EPA must first find newly submitted motor vehicle emissions budgets adequate before such budgets can be used in a conformity determination. An effect of the combination of the court decision and EPA's previous rule was that a significant portion of the 18-month period for demonstrating conformity could elapse prior to the time EPA made a determination that the submitted budgets were adequate.

As described in our May 14, 1999, guidance implementing the court's decision, EPA's current adequacy process for a newly submitted initial SIP starts when the SIP is submitted and ends with the effective date of our adequacy finding, which we formally announce through a **Federal Register** notice. EPA tries to complete an adequacy review in approximately three months, although in some cases additional time is needed. During the adequacy review period, the public is provided at least 30 days to comment on the appropriateness of the newly submitted budgets. EPA must then address all comments received for the submitted budgets before we can make our adequacy finding. Areas cannot begin the process of determining conformity using the submitted budgets with certainty until EPA has determined that the budgets are adequate.

Under the conformity rule prior to today and the court decision, a conformity determination cannot be made until budgets are found adequate, and therefore, transportation agencies should not be expected to invest valuable time and resources completing a regional emissions analysis and conformity determination prior to knowing which SIP budgets apply. As a result, under the prior rule, areas had a maximum of 15 months to determine conformity following an initial SIP submission (*i.e.*, the 18-month conformity clock for initial submissions minus the three months minimally required for EPA to determine adequacy). Where adequacy review was complex and subsequently delayed, particularly in situations with significant public involvement, areas may have had even less time to determine conformity under the previous rule. As a consequence, the shortening of the 18-month period by the amount of time needed for the adequacy review process could lead to significant difficulties for those that implement the conformity program.

If budgets cannot be used until EPA completes its adequacy review and the finding becomes effective, the 18-month clock for conformity should not start until that time. EPA believes this rule change is reasonable and necessary, given that this additional time needed for adequacy review was not contemplated when the original 18-month initial SIP conformity requirement was established.

There can also be situations where EPA finds submitted budgets adequate, but later finds them inadequate because new information has become available that affects the adequacy of the budgets. In these situations, conformity implementers may try in good faith to determine conformity to adequate budgets in an initial SIP submission within 18 months, only to have the budgets found inadequate before a conformity determination is made.

To address the situations described above and based on our experience in implementing conformity to date, EPA continues to believe that areas should have the full 18 months to determine conformity. In these cases, an 18-month period provides areas with the time needed to assess new information contained in a SIP, perform additional emissions analyses and provide the public with an opportunity to review new changes to the transportation plan and TIP and conformity determination. We continue to encourage air quality and transportation planners to coordinate their processes so that new air quality plans can be used expeditiously in the transportation conformity and planning processes.

For more information on EPA's adequacy process for initial SIP submissions, *see* the **SUPPLEMENTARY INFORMATION** section in this final rule to download a copy of EPA's May 14, 1999 memorandum implementing the court's decision.

C. What Comments Did We Receive?

The majority of commenters agreed that the 18-month requirement for conformity to initial SIP submissions should be aligned with EPA's adequacy finding for such submitted budgets. Most commenters supported this rule change, as it will allow for greater certainty in the conformity process and will provide transportation planners sufficient time to incorporate new

information into the transportation planning and conformity processes.

One commenter, however, believed that the proposed rule is arbitrary and capricious because it could potentially delay implementing new budgets in nonattainment areas where expeditious emissions reductions are necessary to meet statutory requirements and deadlines. The commenter asserted that 18 months is an excessive amount of time to allow for a revision of the plan and TIP to take place, and that the time frame for redetermining conformity when new budgets become available should be tailored to the time remaining before a required milestone or attainment year.

In addition, the commenter stated that EPA's proposal is inconsistent with the Clean Air Act's requirements for how often conformity determinations should be conducted. The commenter acknowledged that Clean Air Act section 176(c)(4)(B)(ii) provides EPA discretion in determining the frequency of conformity determinations, but believed that EPA must also consider Congress' intention to have transportation agencies be "active players" in implementing the emission reductions required for reasonable further progress or attainment. The commenter cited Congressional records from the development of the 1990 Clean Air Act that stated that transportation activities can only be accepted by DOT if they are consistent with the SIP's air quality goals; if a transportation plan and TIP does not meet the emissions targets set by the SIP and further motor vehicle emission reductions are needed to reach attainment, the plan and TIP must be modified to achieve the SIP's budgets.

EPA does not agree that the final rule will further delay the use of new budgets in the transportation planning and conformity processes. We are finalizing today's rule change to provide a reasonable response to an indirect effect of the March 2, 1999, court decision that requires EPA to formally review and find initially submitted budgets adequate before they can be used in a conformity determination. As a result of the court's ruling, we do not believe that starting an 18-month clock from the submission of a budget that may or may not be adequate and available for use for conformity purposes is environmentally sensible. We believe that good air quality results will be most effectively achieved by ensuring that new budgets are consistent with timely attainment or maintenance through the adequacy process before requiring their use in the transportation planning and conformity processes.

EPA also believes that the final rule is consistent with the Clean Air Act. While EPA agrees that the Clean Air Act requires transportation activities to conform to the SIP before federal funding and approval occurs and that the latest SIP budget should be used in such a conformity determination, the Clean Air Act does not specifically require conformity determinations to be done more often than every three years. Clean Air Act section 176(c)(4)(B) requires EPA to promulgate conformity procedures and criteria that "shall, at a minimum, * * * address the appropriate frequency for making conformity determinations, but in no case shall such determinations for transportation plans and programs be less frequent than every three years * * *"

EPA established the frequency requirements for conformity determinations covered by 40 CFR 93.104 in previous rulemakings, including the requirements to determine plan/TIP conformity within 18 months of certain SIP actions (*e.g.*, initial SIP submissions, EPA SIP approvals). The conformity rule's frequency requirements meet the statutory minimum and, along with the requirement that new plans, TIPs, and plan/TIP amendments must demonstrate conformity before they can be implemented in between 3-year update cycles, provide sufficient opportunities for reevaluating plans and TIPs in relation to new SIPs, especially in areas that have more significant air quality challenges. Therefore, even in cases where EPA's adequacy findings require more than three months to complete, existing conformity and transportation planning requirements provide a safeguard to prevent negative impacts on air quality.

Moreover, areas typically begin considering new air quality information during the transportation planning process prior to EPA's formal adequacy finding for initial SIP submissions, as our pending adequacy finding on newly submitted budgets may necessitate additional emissions reductions or alterations to an area's current plan and TIP. In other words, transportation planners frequently become aware through early consultation with their air quality partners of when new, more stringent budgets are being developed, and thus, have the opportunity to consider changes to the transportation plan and TIP to ensure conformity to those new budgets in the future. Therefore, EPA continues to believe that the iterative nature of the conformity and transportation planning processes, along with early and effective interagency consultation, allows for new transportation activities to be continuously evaluated to ensure that attainment is not delayed.

Furthermore, it is important to understand the role that transportation conformity plays in ensuring clean air. The transportation conformity process is one of many mechanisms established by the Clean Air Act for protecting public health. Although transportation conformity ensures that the SIP's motor vehicle emissions targets are achieved through the transportation planning process, air quality planners and EPA are primarily responsible for ensuring that SIPs containing sufficient emissions reductions to meet applicable air quality requirements are developed according to statutory requirements and are available in the transportation planning process in a timely manner.

This rule change will not have a significant impact on air quality because it in no way affects the overall statutory requirements and deadlines established to attain the air quality standards. The Clean Air Act defines the dates by which nonattainment areas must attain the air quality standards. It is the responsibility of EPA and the state and local air quality agencies to ensure that SIPs can achieve the necessary reductions to meet these deadlines, taking into account, among other factors, control measure implementation schedules and the timing of conformity.

EPA also believes that the suggested approach of tailoring the amount of time that an area has to redetermine conformity with the amount of time remaining before an area's next required milestone or attainment year would lead to inconsistencies and confusion in implementing the conformity rule. Moreover, the practical implementation of adjusting the time allowed to redetermine conformity following the submission of each initial SIP would introduce a great deal of uncertainty in the air quality and transportation planning processes, and would be logistically difficult and burdensome to implement.

Transportation conformity is a process that coordinates two different planning processes—transportation and air quality planning. As a result, EPA has an obligation to balance the need to incorporate new air quality planning information and the need of transportation planners to have sufficient time to incorporate this new information into their planning process. We believe that today's rule change regarding the conformity requirement for initial SIP submissions will achieve

this balance, as well as remain within the boundaries of the statutory requirements.

The same commenter also claimed that EPA provided no rational basis in the proposal for providing areas with an 18-month time period for redetermining conformity to an initial SIP submission. Alternatively, the commenter suggested providing areas with a shorter time period of nine months to meet the conformity requirement for initial SIP submissions, particularly when the time between submission of a SIP budget and a statutory attainment or reasonable further progress deadline is less than 24–36 months, or when such deadlines have not been met. According to the commenter, expediting conformity determinations in these situations would ensure that motor vehicle emissions control measures, such as transportation control measures and transit capital investments, will be in place in time to achieve necessary emissions reductions.

EPA does not believe that the role of conformity, or of this rule change in particular, is to facilitate emissions reductions in the manner in which this commenter has suggested. The conformity provisions of the statute merely require that transportation activities conform to the SIP, and that such determinations include new transportation activities and are conducted at least every three years.

For this rulemaking, EPA did not propose extending or reducing the 18-month time period that is already provided to areas to redetermine conformity to initially submitted SIPs under existing federal rules. The 18-month time period for initial SIP submissions was established through the November 14, 1995, final rule (60 FR 57182). When EPA promulgated this rulemaking, we concluded that 18-months was an appropriate time frame in which to incorporate new SIP submissions into the transportation planning process. Since that time, no new information has indicated that the 18-month time period is inappropriate, as explained further below. Today's final rule only changes the starting point of the 18-month time period for initial SIP submissions. This change is needed to response to an indirect impact of the March 2, 1999, court decision in which the court ruled that budgets could not be used for conformity purposes until EPA has found them adequate.

Moreover, from EPA's experience implementing the conformity rule to date, providing areas with 18 months to determine conformity to new SIP budgets is a reasonable time period, given the amount of time, resources and public participation that is required for the transportation planning and conformity processes. Prior to our November 14, 1995, amendment to the conformity rule, areas only had 12 months to redetermine conformity to an initial SIP submission. Due to the overwhelming difficulties areas had in meeting these 12-month clocks, EPA proposed, considered public comment, and finalized extending the conformity requirement for initial SIP submissions to 18 months. As a result, EPA continues to believe that 18 months from an initial SIP conformity trigger for all areas is the most reasonable and workable time frame for redetermining conformity to initial SIPs. For more information regarding EPA's rationale and response to comments for extending the initial SIP conformity trigger to 18 months, see our November 1995 rulemaking. An electronic version of this rulemaking can be downloaded from EPA's web site listed in the **SUPPLEMENTARY INFORMATION** section of this rule.

In addition, EPA believes that the existing transportation and air quality planning requirements do ensure that motor vehicle control measures that are approved into a SIP are implemented in such a manner that achieves the necessary emissions reductions in a timely fashion. Therefore, we do not believe that conformity determinations need to be expedited specifically for this purpose. Clean Air Act sections 174(a) and 176(c)(4) require the inclusion of transportation planners in the SIP development process and the formal establishment of consultation procedures among state and local transportation and air quality agencies involved in the conformity process, respectively. This required consultation among transportation and air quality agencies is intended to ensure that the transportation planning process becomes a routine component of any analysis (*e.g.*, determining implementation schedules, evaluating emissions benefits, *etc.*) involving transportation control measures slated for inclusion in a SIP. Furthermore, as a practical matter, transportation projects, including those that have emissions reduction benefits, cannot receive federal funding or approval unless they are contained in a fiscally constrained and conforming transportation plan and TIP that has been approved through the transportation planning process, pursuant to 23 CFR part 450 and 49 CFR part 613. Therefore, these transportation and air quality planning requirements ensure that any transportation measure that EPA approves into a SIP has been coordinated through the transportation planning process and is designed to timely reduce emissions in accordance with the SIP's purpose of achieving further progress, attainment or maintenance.

The same commenter expressed concern over not requiring a new 18-month clock when a conformity determination is made using budgets that EPA has found adequate, but not yet approved, prior to a subsequent submission of new, more stringent budgets for the same Clean Air Act requirement. In this particular case, the commenter believes that § 93.104(e)(2) should be triggered again, thus requiring areas to revise their plan and TIP to conform to the newly submitted revised budgets upon EPA's adequacy finding. By not requiring § 93.104(e)(2) to apply in this situation, the commenter argues that this rule will sever the link between the conformity process and the obligation of transportation agencies to revise plans and TIPs to achieve the Clean Air Act's objectives.

EPA disagrees. EPA did not propose the additional 18-month requirement for the unique situation the commenter describes, and therefore can not address this issue in today's final rule. Moreover, this suggested requirement is contrary to the historic position that EPA has held on this issue, as described in the preamble to our August 29, 1995 proposed rulemaking initially establishing the 18-month requirement (60 FR 44792). In that proposal to extend the conformity requirement for initial SIP submissions to within 18 months of their submissions, EPA states: "If conformity to the initial submission has been demonstrated and that submission is subsequently revised, no 18-month clock would start until * * * the SIP is approved by EPA." EPA's intent and implementation of § 93.104(e)(2) of the conformity rule has always been to serve as a one-time conformity requirement for initial SIP submissions, so that areas can use new motor vehicle emissions budgets in a conformity determination when no budgets for a particular year and/or purpose had previously existed. Historically, we have never considered § 93.104(e)(2) to be an iterative requirement that mandates continual conformity updates outside of the normal transportation planning process. Therefore, EPA continues to maintain that once conformity is determined and § 93.104(e)(2) is satisfied for a SIP having a given purpose (*e.g.*, attainment, rate-of-progress, maintenance), it is not necessary for areas to meet this requirement again for subsequent

submissions of the same type of SIP prior to EPA's approval. Areas will again be required to determine conformity within 18 months of EPA's approval of any revised budgets. However, in this situation, if new transportation activities are proposed after EPA finds the revised budgets adequate, but before SIP approval, a conformity determination based on the revised budgets along with all other applicable budgets would be required before such activities could be implemented. In other words, the revised budgets must be used (along with all other existing applicable budgets) in any determination after they have been found adequate, even though they are not subject to a new 18-month clock, pursuant to § 93.104(e)(2).

Furthermore, we do not agree that the integration of air quality and transportation planning via the conformity process will be compromised as a result of implementing § 93.104(e)(2) as a one-time requirement for each initial SIP consistent with the current rule. Due to the iterative nature of the transportation planning and conformity processes, the most current air quality information is incorporated on a regular and consistent basis. The three-year conformity requirement for transportation plans and TIPs, along with other transportation planning and conformity requirements, provides for the reasonable and timely introduction of the most current information into the conformity process.

The same commenter also requested from EPA a clarification that § 93.118(a) requires a conformity determination for a plan and TIP to show consistency with all applicable adequate and approved budgets at the time a conformity determination is made. EPA agrees that this requirement applies for all conformity determinations, including those made for TIPs that rely on a previous emissions analysis pursuant to § 93.122(e).

Like all conformity determinations, a determination for a TIP that relies on a previous emissions analysis must satisfy the emissions test requirements of § 93.118 (or § 93.119, if no applicable adequate or approved budgets exist), and must do so over the time frame of the transportation plan. EPA agrees with this clarification of § 93.118(a) and its requirement for demonstrating conformity using all applicable budgets, and will consider elaborating on this proposed clarification in a future rulemaking. Since EPA did not propose such a change, EPA is not making any changes in this final rule with regard to the described interpretation of § 93.118(a). Nonetheless, EPA reiterates that this clarification is the intent of the existing rule.

Finally, one commenter indicated that the October 2001 proposal was not clear as to how the one-year conformity grace period and the 18-month requirement for initial SIPs relate to one another. From the commenter's reading of the proposed rule amendments, it appeared that the one-year grace period and 18-month requirement for initial SIP submissions overlap.

In response, the one-year conformity grace period and the 18-month conformity requirement for initial SIPs are not interrelated. Typically, when areas are newly designated they do not have a submitted SIP for which an 18-month clock would start. In the unique situation where an area is newly designated and submits an initial SIP during the one-year grace period, conformity of the plan and TIP would still need to be demonstrated at the conclusion of the one-year grace period. If EPA has found adequate or approved the submitted SIP and budgets before the grace period expires, those adequate or approved budgets must be used for conformity. Therefore in this situation, both conformity requirements—a conforming plan and TIP one year after designation and the 18-month conformity requirement for the submitted SIP—would be satisfied if a conformity determination using the adequate or approved budgets is made prior to the expiration date of the one-year grace period.

If no adequate or approved budgets exist at the time that the one-year grace period expires, areas should use the conformity test(s) that EPA has deemed appropriate for satisfying the conformity requirement. EPA is currently considering what conformity test(s) will apply for areas that are designated nonattainment under new air quality standards (*e.g.*, EPA's ozone and particulate matter standards issued in 1997) and will address this issue in future guidance documents and rulemakings prior to area designations. In this situation, an 18-month conformity clock pursuant to § 93.104(e)(2) as amended today would not start until these areas submit an initial SIP and EPA has found the submitted budgets adequate for conformity purposes.

IV. What Comments That Addressed Topics Other Than Those Covered in This Rulemaking Did We Receive?

Several commenters raised concerns about aspects of the transportation conformity rule that are not germane to this specific rulemaking, including the implementation of the conformity regulation under EPA's new 8-hour ozone and PM–2.5 (particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) standards, and the impact of the March 2, 1999, court decision on projects that can proceed during a conformity lapse. These comments do not affect whether EPA should proceed with this final action, but EPA will be considering these comments when we develop policy guidance and future rulemakings to address these larger issues.

In addition, one commenter requested that EPA consider eliminating two additional conformity SIP triggers required in § 93.104(e). Specifically, the commenter requested that we eliminate the 18-month conformity frequency requirements for SIP approvals that establish new budgets (§ 93.104(e)(3)) and for SIP approvals that revise TCMs (§ 93.104(e)(4)). This commenter characterized these additional SIP requirements as being superfluous and onerous to the transportation planning process.

For today's rulemaking, EPA did not propose eliminating the conformity triggers outlined in 93.104(e)(3) and 93.104(e)(4), nor have we provided the public with an opportunity to comment on the suggested deletion of these provisions from the conformity rule. Therefore, we are not making any changes to these requirements at this time. However, we will consider this flexibility, along with others, for future rulemakings. A complete response to comments documents is in the docket for this rulemaking (see **ADDRESSES** for more information regarding the docket and additional documents relevant to this rulemaking).

V. How Does Today's Final Rule Affect Conformity SIPs?

Clean Air Act section 176(c)(4)(C) requires states to submit revisions to their SIPs to reflect the criteria and procedures for determining conformity. Section 51.390(b) of the conformity rule specifies that after EPA approves a conformity SIP revision (including those that have been approved as a Memorandum of Understanding or Memorandum of Agreement), the federal conformity rule no longer governs conformity determinations (for the parts of the rule that are covered by the approved conformity SIP). In some areas, EPA has already approved conformity SIPs that include § 93.104(e)(2) from the 1997 transportation conformity rule (62 FR 43780). In these areas, today's final rule changes will be effective only when EPA approves a conformity SIP revision

that includes the amendment to align the 18-month clock for initial SIP submissions with EPA's adequacy finding. EPA will work with states as appropriate to approve such revisions as expeditiously as possible through flexible administrative techniques such as parallel processing and direct final rulemaking to insure that all areas will be able to benefit from this rule change in a timely manner.

In some areas, however, EPA may have approved such provisions in error, if EPA had approved a conformity SIP that included § 93.104(e)(2) after the March 2, 1999, court decision, but prior to today. In these areas, EPA will publish, as appropriate, a technical correction in the **Federal Register** under section 110(k)(6) of the Clean Air Act to limit EPA's approval of such SIPs and clarify that § 93.104(e)(2) should not have been approved into a conformity SIP since the court's ruling indirectly affected this provision by requiring EPA to find submitted budgets adequate before the initial SIP requirement could be satisfied. Once EPA has corrected its approval of such SIPs to exclude the state's version of § 93.104(e)(2), these areas will become subject to the amended version of § 93.104(e)(2) and 18 month clocks will immediately begin to run from EPA's adequacy determination rather than from the submission date of an initial SIP.

In contrast, the one-year conformity grace period currently applies as a statutory matter for all newly designated nonattainment areas, including areas that have EPA-approved conformity SIPs, since this grace period was required as a matter of law once the Act was amended even prior to today's final rule.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant "regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB.

B. Paperwork Reduction Act

This final rule does not impose any new information collection requirements from EPA that require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires the Agency to conduct a regulatory flexibility analysis of any significant impact a rule will have on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

EPA has determined that today's rule will not have a significant impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan planning organizations that by definition, are designated only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities. The Regulatory Flexibility Act defines a "small governmental jurisdiction" as the government of a city, county, town, school district or special district with a population of less than 50,000.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. These rule amendments simplify the conformity rule and make it more practicable to implement, in accordance with the Clean Air Act and our

reasonable and thoughtful approach to an indirect impact of the court's decision. They do not impose any additional burdens. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this final rule.

F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and does not require the consideration of relative environmental health or safety risks.

G. Executive Order 13175

Executive Order 13175: "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The Clean Air Act requires transportation conformity to apply in areas designated nonattainment and maintenance by EPA. Today's minor amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments. Specifically, this rulemaking will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

H. Executive Orders on Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule, that amends a regulation that is required by statute, will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit directed EPA to affirmatively find the motor vehicle emissions budgets contained in a SIP adequate before the budgets can be used in conformity determinations. To effectively implement the court's directive on this matter, we believe it is necessary to modify the timing of when one of our existing frequency requirements for conformity is required. The rule will also provide newly designated nonattainment areas with a one-year grace period before conformity becomes applicable, as required by an October 2000 amendment to the Clean Air Act.

In summary, one of the provisions in this final rule is required by statute and one provision will provide a reasonable response to an indirect impact of the court's decision, and by themselves will not have substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking.

I. Executive Order 13211

This rule is not subject to Executive Order 13211, "Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66

FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. Submission to Congress and the Comptroller General

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule or action. This action may not be challenged later in proceeding to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act.)

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: July 31, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is amended as follows:

PART 93—[AMENDED]

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 93.102 is amended by adding paragraph (d) to read as follows:

§ 93.102 Applicability.

* * * * *

(d) *Grace period for new nonattainment areas.* For areas or portions of areas which have been continuously designated attainment or not designated for any standard for ozone, CO, PM_{10} or NO_2 since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any standard for any of these pollutants, the provisions of this subpart shall not apply with respect to that standard for 12 months following the effective date of final designation to nonattainment for each standard for such pollutant.

3. Section 93.104 is amended by revising paragraph (e)(2) to read as follows:

§ 93.104 Frequency of conformity determinations.

* * * * *

(e) * * *

(2) The effective date of EPA's finding that motor vehicle emissions budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to § 93.118(e) and can be used for transportation conformity purposes;

* * * * *

[FR Doc. 02–19797 Filed 8–5–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7789]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the

communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New Jersey: Deal, Borough of, Monmouth County.	340292	January 14, 1972, Emerg.; March 5, 1976, Reg.; August 6, 2002.	8/6/02	8/6/02.
New York:				
Angola, Village of, Erie County	360982	April 14, 1975, Emerg.; May 18, 1979, Reg.; August 6, 2002.	do	Do.
East Aurora, Village of, Erie County	365335	December 23, 1971, Emerg.; July 20, 1973, Reg.; August 6, 2002.	do	Do.
Region VII				
Leigh, Village of, Colfax County	310386	August 25, 1975, Emerg.; July 1, 1987, Reg.; August 6, 2002.	do	Do.
Schuyler, City of, Colfax County	310046	August 30, 1974, Emerg.; March 5, 1990, Reg.; August 6, 2002.	do	Do.
Region I				
Massachusetts:				
Revere, City of, Suffolk County	250288	December 29, 1972, Emerg.; October 16, 1984, Reg.; August 20, 2002.	8/20/02	8/20/02.
Malden, City of, Middlesex County	250202	July 25, 1975, Emerg.; May 19, 1987, Reg.; August 20, 2002.	do	Do.
Region II				
New Jersey: Watchung, Borough of, Somerset County.	340447	September 17, 1973, Emerg.; December 4, 1979, Reg.; August 20, 2002.	do	Do.
Region VII				
Iowa:				
Hills, City of, Johnson County	190170	August 11, 1975, Emerg.; August 16, 1988, Reg.; August 20, 2002.	do	Do.
North Liberty, City of, Johnson County	190630	May 24, 1977, Emerg.; November 5, 1986, Reg.; August 20, 2002.	do	Do.
Oxford, City of, Johnson County	190172	June 26, 1990.; September 18, 1991, Reg.; August 20, 2002.	do	Do.
Shueyville, City of, Johnson County	195184	March 6, 1991, Emerg.; September 1, 1991, Reg.; August 20, 2002.	do	Do.
Region X				
Oregon:				
Tillamook County, Unincorporated Areas.	410196	December 29, 1972, Emerg.; August 1, 1978, Reg.; August 20, 2002.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Tillamook, City of, Tillamook County	410202	March 30, 1973, Emerg.; May 1, 1978, Reg.; August 20, 2002.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: July 26, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance Administration and Mitigation Administration.

[FR Doc. 02–19752 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1652; MM Docket No. 02–24 RM–10360]

Radio Broadcasting Services; Harrodsburg and Keene, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission substitutes Channel 256A for Channel 257C3 at Harrodsburg and reallots Channel 256A from Harrodsburg to Keene, Kentucky, as the community's first local aural transmission service, and modifies the license for Station WJMM–FM to reflect the changes. *See* 67 FR 8219 (02/22/2002). On June 2, 1997, the Audio Services Division granted a minor change application (BPH–970129IB) for WJMM–FM (formerly WHBN–FM), upgrading its facilities to specify operation on Channel 257C3 in lieu of Channel 257A. Channel 256A is allotted at Keene, Kentucky, without a site restriction. Coordinates for Channel 256A at Keene are: NL 37–56–36 and WL 84–38–31.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–24, adopted July 3, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Accordingly, part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Keene, Channel 256A, and removing Harrodsburg, Channel 257A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19733 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1726; MM Docket No. 01–197; RM–10170]

Radio Broadcasting Services; Baird, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 243C3 to Baird, Texas, in response to a petition filed by Katherine Pyeatt. See 66 FR 46426, September 5, 2001. The coordinates for Channel 243C3 at Baird are 32–35–06 and 99–21–56. There is a site restriction 21.4 (13.3 miles) north of the community. With this action, this proceeding is terminated. A filing window for Channel 243C3 at Baird will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective September 3, 2002

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–197, adopted July 10, 2002, and released July 19, 2002. The full text of this Commission decision is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Accordingly, Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 243C3 at Baird.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19735 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1629; MM Docket No. 01–247; RM–10232]

Radio Broadcasting Services; Big Wells, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 271A to Big Wells, Texas, in response to a petition filed by Katherine Pyeatt. *See* 66 FR 51361, October 9, 2001. The coordinates for Channel 271A at Big Wells are 28–34–05 and 99–32–52. There is a site restriction 2.1 kilometers (1.3 miles) east of the community. With this action, this proceeding is terminated. A filing window for Channel 271A at Big Wells will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–247, adopted July 3, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Accordingly, Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Big Wells, Channel 271A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19736 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1727; MM Docket No. 01–262; RM–10231]

Radio Broadcasting Services; La Pryor, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 278A to La Pryor, Texas, in response to a petition filed by Katherine Pyeatt. *See* 66 FR 52565, October 16, 2001. The coordinates for Channel 278A at La Pryor are 28–58–09 and 99–56–05. There is a site restriction 8.9 kilometers (5.6 miles) west of the community. With this action, this proceeding is terminated. A filing window for Channel 278A at La Pryor will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–262, adopted July 10, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Accordingly, Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding La Pryor, Channel 278A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19737 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1624; MM Docket No. 02–48; RM–10386]

Radio Broadcasting Services; Cuthbert and Buena Vista, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 67 FR 16351 (April 5, 2002), this document reallots Channel 264C3 from Cuthbert, Georgia, to Buena Vista, Georgia, and provides Buena Vista with its first local aural transmission service. The coordinates for Channel 264C3 at Buena Vista are 32–11–57 North Latitude and 84–35–07 West Longitude.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–48, adopted July 3, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Accordingly, Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Buena Vista, Channel 264C3, and removing Cuthbert, Channel 264C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19745 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1728; MM Docket No. 01–246; RM–10230]

Radio Broadcasting Services; Asherton, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 284A to Asherton, Texas, in response to a petition filed by Jeraldine Anderson. *See* 66 FR 51360, October 9, 2001. The coordinates for Channel 284A at Asherton are 28–22–58 and 99–45–00. There is a site restriction 6.8 kilometers (4.2 miles) south of the community. With this action, this proceeding is terminated. A filing window for Channel 284A at Asherton will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–246, adopted July 10, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Accordingly, Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Asherton, Channel 284A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19738 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1627; MM Docket No. 01–234; RM–10262]

Radio Broadcasting Services; Firth, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Starboard Broadcasting, Inc., allots Channel 229A at Firth, Nebraska, as the community's first local FM service. Channel 229A can be allotted to Firth, Nebraska, in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.8 km (6.7 miles) northwest of Firth. The coordinates for Channel 2295A at Firth, NE, CA are 40–36–32 North Latitude and 96–41–08 West Longitude. A filing window for Channel 229A at Firth, NE, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–234, adopted July 3, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

Accordingly, Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Firth, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19739 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1622; MM Docket No. 01–221; RM–10171]

Radio Broadcasting Services; Buffalo Gap, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 227A to Buffalo Gap, Texas, in response to a petition filed by Katherine Pyeatt. See 66 FR 47432, September 12, 2001. The coordinates for Channel 227A at Buffalo Gap are 32–16–55 and 99–53–54. There is a site restriction 6.5 kilometers (4.0 miles) west of the community. With this action, this proceeding is terminated. A filing window for Channel 227A at Buffalo

Gap will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–221, adopted July 3, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Accordingly, Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Buffalo Gap, Channel 227A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19743 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1626; MM Docket No. 01–311; RM–10318]

Radio Broadcasting Services; Burney, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Corey J. McCaslin, allots Channel 225A to Burney, California, as the community's second local FM service. Channel 225A can be allotted to Burney, California, in compliance with the Commission's minimum distance separation requirements at center city coordinates without a site restriction. The coordinates for Channel 225A at Burney, CA are 40–52–56 North Latitude and 121–39–34 West Longitude. A filing window for Channel 225A at Burney, CA, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–311, adopted July 3, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

Accordingly, Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 225A at Burney.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19740 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1623; MM Docket No.01–196; RM–10208]

Radio Broadcasting Services; Childress, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 281C2 to Childress, Texas, in response to a petition filed by Jeraldine Anderson. *See* 66 FR 46425, September 5, 2001. The coordinates for Channel 281C2 at Childress are 34–12–44 and 100–15–55. There is a site restriction 23.6 kilometers (14.6 miles) south of the community. With this action, this proceeding is terminated. A filing window for Channel 281C2 at Childress will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective September 3, 2002

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–196, adopted July 3, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the Commission's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Accordingly, Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 281C2 at Childress.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19741 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1813, 1815, 1825, and 1852

RIN 2700–AC33

Conformance With FAC 01–07 and Miscellaneous Administrative and Technical Changes

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the NASA FAR Supplement (NFS) to remove language pertaining to the Balance of Payments Program as a result of Federal Acquisition Circular (FAC) 01–07, and make miscellaneous administrative and technical changes. These changes are required to conform to the FAR, clarify administrative procedures, and correct references.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–1645, e-mail: *cdalton@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Item II of Federal Acquisition Circular (FAC) 01–07 removed Subpart 25.3, Balance of Payments Programs. This change makes conforming changes to NFS parts 1825 and 1852 as a result of FAC 01–07. Additionally, this final rule makes administrative changes in section 1804.670, Individual Procurement Action Report (NASA 507 series); removes redundant language in section 1804.7403, Procedures, regarding offeror registration in the Central Contractor Registration (CCR) database and contract award; and clarifies the prescription language for NFS provisions in 1813.302–570 and 1815.209–70, NASA solicitation provisions.

Finally, this final rule makes technical corrections to organizational addresses and reference citations.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Parts 1804, 1813, 1815, 1825, and 1852 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1804, 1813, 1815, 1825, and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1804, 1813, 1815, 1825, and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1804, 1813, 1815, 1825, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

1804.601 [Amended]

2. Amend section 1804.601 by removing "(Code HS)" and adding "(Code HC)" in its place.

1804.602 [Amended]

3. Amend section 1804.602 in paragraph (d) by removing "Code HS" and adding "Code HC" in its place.

4. Revise section 1804.670 to read as follows:

1804.670 Individual Procurement Action Report (NASA Form 507 series).

The Individual Procurement Action Report and Supplements (NASA Form 507 series) provide essential procurement records and statistics through a single uniform reporting program as a basis for required recurring and special reports to Congress, Federal Procurement Data Center, and other Federal agencies. The preparation and utilization of the NASA Form 507 series are integral parts of the agencywide Financial and Contractual Status (FACS) system. The Headquarters Office of Procurement issues Procurement Information Circulars (PICs) to—

(a) Identify the procurement actions subject to reporting; and

(b) Provide instructions on preparation of the NASA Forms 507.

1804.670–1, 1804.670–2, and 1804.670–3 [Removed]

5. Remove sections 1804.670–1, 1804.670–2, and 1804.670–3.

1804.7402 [Amended]

6. Amend section 1804.7402 in the first sentence of the introductory text by removing "after March 31, 2001".

7. Amend section 1804.7403 by removing "must" in paragraphs (a)(1) and (c) and adding "shall" in its place; and revising paragraph (b) to read as follows:

1804.7403 Procedures.

* * * * *

(b) If the contracting officer determines that a prospective awardee is not registered in the CCR database, the contracting officer shall —

(1) If delaying the acquisition would not be to the detriment of the Government, proceed to award after the contractor is registered; or

(2) If delaying the acquisition would be to the detriment of the Government, proceed to award to the next otherwise successful registered offeror, with the written approval of the Procurement Officer.

* * * * *

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

8. Revise section 1813.302–1 to read as follows:

1813.302–1 General.

(a) *See* 1813.003(g).

9. Amend section 1813.302–570 by revising paragraphs (a)(1) and (b) to read as follows:

1813.302–570 NASA solicitation provisions.

(a)(1) The contracting officer may use the provision at 1852.213–70, Offeror Representations and Certifications—Other Than Commercial Items, in simplified acquisitions exceeding the mircro-purchase threshold that are for other than commercial items. This provision shall not be used for acquisition of commercial items as defined in FAR 2.101.

* * * * *

(b) The contracting officer may insert a provision substantially the same as the provision at 1852.213–71, Evaluation—Other than Commercial Items, in solicitations using simplified acquisition procedures for other than commercial items when a trade-off source selection process will be used.

that is, factors in addition to technical acceptability and price will be considered. (*See* FAR 13.106.)

PART 1815—CONTRACTING BY NEGOTIATIONS

10. In section 1815.209–70, revise paragraphs (b) and (c) to read as follows:

1815.209–70 NASA solicitation provisions.

* * * * *

(b) When it is not in the Government's best interest to make award for less than the specified quantities solicited for certain items or groupings of items, the contracting officer shall insert the provision at

1852.214–71, Grouping for Aggregate Award. *See* **1814.201–670(b).**

(c) When award will be made only on the full quantities solicited, the contracting officer shall insert the provision at 1852.214–72, Full Quantities. *See* 1814.201–670(c).

* * * * *

PART 1825—FOREIGN ACQUISITION

1825.400 [Amended]

11. Amend section 1825.400 by removing "and the Balance of Payments Program apply" and adding "applies" in its place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.213–70 [Amended]

12. Amend section 1852.213–70 by—

a. In the provision heading, removing "(JUN 2002)" and adding "(JULY 2002)" in its place;

b. Removing "—Balance of Payments Program" in the introductory text of paragraph (e) (twice), and from paragraph (e)(1);

c. Removing "—Balance of Payments Program" in paragraph (f)(1) (twice), and from paragraphs (f)(1)(i), (f)(1)(ii), (f)(1)(iii), (f)(2) (twice), and (f)(3) (twice);

d. Removing "or the Balance of Payments Program" in paragraph (f)(4)(iii); and

e. In the introductory text of paragraph (g), removing "(j)(1)" and adding "(g)(1)" in its place.

[FR Doc. 02–19815 Filed 8–5–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1819

RIN 2700–AC33

Small Business Competitiveness Demonstration Program

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the NASA FAR Supplement by removing Research and Development in the Physical Engineering and Life Sciences from the list of targeted industry categories (TICs) for NASA under the Small Business Competitiveness Demonstration Program. This change is required to prevent potential conflicts between the goals of the Small Business Competitiveness Demonstration Program and the Small Business Innovative Research Program created by the conversion from Standard Industrial Classification to the North American Industry Classification System.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Yolande Harden, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1279; e-mail: *yharden@hq.nasa.gov*.

SUPPLEMENTABY INFORMATION:

A. Background

The conversion from Standard Industrial Classification (SIC) to North American Industry Classification System (NAICS) combined several stand-alone classification categories together. As a result, NAICS 54171 now contains not only categories previously listed as TICs but also other categories, some of which are used in conjunction with the Small Business Innovative Research (SBIR) Program. The deletion of this category will avoid any potential conflicts between the goals of the Competitiveness Demonstration Program and the SBIR Program.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS part 1819 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1819

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR Part 1819 is amended as follows:

1. The authority citation for 48 CFR Part 1819 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS PROGRAMS

1819.1005 [Amended]

2. Amend the table in paragraph (b) of section 1819.1005 as follows:

a. In the first column by removing "54171"; and

b. In the second column by removing "Research and Development in the Physical Engineering and Life Sciences".

[FR Doc. 02–19814 Filed 8–5–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Amendment 192–77]

RIN 2137–AD64

Pipeline Safety: High Consequence Areas For Gas Transmission Pipelines

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule defines areas of high consequence where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. The definition includes: current class 3 and 4 locations; facilities with persons who are mobility-impaired, confined, or hard to evacuate, and places where people gather for recreational and other purposes. For facilities with mobility-impaired, confined, or hard-to-evacuate persons and places where people gather, the corridor of protection from the pipeline is 300 feet, 660 feet or 1000 feet depending on the pipeline's diameter and operating pressure. This final rule

is the first step in a two-step process to develop integrity management program requirements for gas transmission operators. In the second step, the Research and Special Programs Administration (RSPA) will propose requirements to improve the integrity of gas transmission pipelines located in these high consequence areas. This definition satisfies, in part, the Congressional mandate in 49 U.S.C. 60109 for RSPA to prescribe standards that establish criteria for identifying each gas pipeline facility located in a high-density population area.

RSPA developed the definition from the comments received on the notice of proposed rulemaking, and the earlier notice that invited public comment about integrity management concepts as they relate to gas pipelines. The definition does not yet require any specific action by gas transmission pipeline operators. Action will not be required until we issue integrity management program requirements that use the definition.

DATES: This rule is effective September 5, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Israni by telephone at (202) 366–4571, by fax at (202) 366–4566, or by e-mail at *mike.israni@rspa.dot.gov*, regarding the subject matter of this rule; or the Docket Facility (202) 366–9329, for copies of this rule or other material in the docket. All materials in the docket may be accessed electronically at *http://dms.dot.gov*. General information about the RSPA/OPS programs may be obtained by accessing OPS's Internet page at *http://ops.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 2002, RSPA published a notice of proposed rulemaking (67 FR 1108) that proposed to define areas of high consequence where a gas pipeline accident could do considerable harm to people and their property. The proposed definition included as high consequence areas: Class 3 and 4 locations as defined in 49 CFR part 192; areas where a pipeline is within 660 or 1000 feet of a building with mobility-impaired or confined persons (hospitals, schools, retirement and day-care facilities); and areas where a pipeline is within 660 or 1000 feet of a place where 20 or more people gather at least 50 days in any 12-month period (playground, camping ground). The 1000-foot area was proposed for a pipeline with a diameter larger than 30 inches and operating at a pressure greater than 1000 psig.

In the Notice proposing the definition, we explained that because of differences in the physical properties and consequences of a gas release versus a hazardous liquid release, and the benefits of gas transmission operators already maintaining accurate data on population near their pipelines, the definition differed from the definition we developed for hazardous liquid pipelines (49 CFR 195.450). The primary differences were that we structured the proposed definition to use the data pipeline companies already collect and maintain, and we did not include environmentally sensitive areas. A more detailed discussion of why the definitions were structured differently for liquid and gas pipelines can be found in the NPRM (67 FR 1108; Jan. 9, 2002).

Advisory Committee Consideration

On July 18, 2002, the Technical Pipeline Safety Standards Committee (TPSSC) met to review the proposed high consequence area definition for gas transmission pipelines. TPSSC is the Federal advisory committee charged with responsibility for advising on the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed natural gas pipeline safety standards. The committee voted unanimously to approve our proceeding with the high consequence area rule with consideration of several issues. First, the committee recommended that the preamble clarify that, although the definition requires no specific action on the part of operators, the rule applies only to gas transmission pipelines. RSPA has made the clarification. Second, the committee recommended that wording be included in the preamble clarifying that the definition is the first step in the process of defining requirements for managing the integrity of gas pipelines. RSPA has clarified the preamble. The upcoming proposed integrity management rule for gas transmission pipelines will describe the additional integrity assurance measures gas transmission operators will be required to implement for pipeline segments that are located in high consequence areas. Third, the committee recommended that we modify the provision defining areas where people congregate to add the word "known." RSPA agrees with the intent of this comment and has revised the definition and preamble to reflect this intent. Finally, the committee recommended that RSPA consider renaming the definition as "Potential" High Consequence Areas. In making this recommendation, the committee was under the impression that the proposed integrity management rule would give operators the opportunity to analyze high consequence areas using the "potential impact zone" concept to identify areas within the high consequence area where no additional integrity management measures would be required. Because this issue will be addressed directly in the upcoming proposed integrity management rule, RSPA believes that renaming the definition would not be appropriate.

Comments to NPRM

We received comments from 28 sources in response to the NPRM:

Three (3) public interest groups or individual members of the public
- Citizens for Safe Pipelines (a New Mexico citizens' group)
- Cook Inlet Keeper
- Gary L. Smith

Five (5) state agencies
- Iowa Utilities Board
- State of New York Department of Public Service (NYDPS)
- State of New York, Office of the Attorney General
- Washington State Department of Ecology (Ecology)
- Washington Utilities and Transportation Commission (WUTC)

Five (5) industry associations
- American Gas Association (AGA)
- American Public Gas Association (APGA)
- Gas Piping Technology Committee (GPTC)
- Interstate National Gas Association of America (INGAA)
- New York Gas Group (NYGAS)

18 natural gas pipeline operators
- Baltimore Gas & Electric Company, ChevronTexaco, CMS Energy, Consumers Energy Company, Duke Energy Gas Transmission, El Paso Corporation, Enbridge Energy Company, Inc., Enron Transportation Services, Kinder Morgan, National Fuel Gas Supply Corporation, the Energy Distribution Segment of NiSource Inc. (NiSource EDG), North Shore Gas Company, Pacific Gas and Electric Company, PECO Energy, Peoples Gas Light and Coke Company, Questar Regulated Services, Southwest Gas and, Williston Basin Interstate Pipeline Company.

One (1) risk management consulting company
- Accufacts, Inc.

One (1) suspension bridge engineering and construction company
- SEFBO Pipeline Bridge, Inc.

In the following section we discuss these comments and how we addressed them in developing the final definition

of high consequence areas for gas transmission pipelines.

General Comments

Placement of Definition

The Notice proposed to place the definition of high consequence areas in a new section in Part 192, subpart M on integrity management.

Southwest Gas Corporation suggested that the definition of high consequence area be added to the general definition section in part 192 (§ 192.3) so that all definitions are in the same location.

Response: We will leave the definition of high consequence areas in the section on integrity management. Because this definition will be used in the forthcoming integrity management program regulations, it fits better in this section rather than in the section on general definitions.

Lines Covered

The proposed definition of high consequence areas applied to all gas transmission pipelines.

Several commenters recommended excluding certain low stress pipelines from the definition. These commenters explained that lower stress pipelines tend to result in leaks, rather than ruptures. Suggestions varied on which low stress pipelines we should exclude.

Many of the commenters (AGA, APGA, Consumers Energy, National Fuel Gas Supply Corporation, North Shore Gas, New York Gas Group, Peoples Gas, Questar, Southwest Gas) recommended that the definition be limited to transmission pipelines operating at or above 20% of specified minimum yield strength. Baltimore Gas & Electric recommended exempting transmission piping operated as part of and integral to a distribution system if the piping is operated below a determined pressure, such as 300 psig and is less than a determined diameter, such as 30 inches. CMS Energy recommended excluding from the definition pipelines that operate at pressures lower than 40% of the maximum hoop stress. Energy Distribution Segment of NiSource Inc. recommended that high consequence areas be limited to pipelines operating at or above 30% SMYS.

The Iowa Utilities Board suggested RSPA consider developing separate integrity management program requirements for pipelines operating at stress levels below 30% SMYS. The Utilities Board maintained that the C-FER method is not an appropriate indicator of the high consequence area for pipelines operating at stress levels below 30% SMYS. The Iowa Board explained that because these pipelines fail by leakage rather than by rupture, the C-FER formula significantly overestimates the potential impact zone. (More discussion on the C-FER formula appears later in this document.)

New York State Department of Public Service urged that integrity management be applied to all gas transmission pipelines, not just those that traverse a high consequence area. The Department suggested that pipelines in high consequence areas could have higher priority for testing and repair.

Response: We have not revised the definition to exclude pipelines operating below a certain stress level. The high consequence area definition applies to gas transmission pipelines, as those lines are defined in part 192. Lines not falling withing the definition of transmission line are not covered. We will consider ways to address transmission pipelines operating at lower stress in developing the proposed integrity management rule for gas transmission pipelines.

However, as discussed later in this document, we have added to the definition a 300-foot zone for small diameter pipelines operating at lower pressure.

As for extending integrity management to all transmission lines, RSPA's initial goal is to provide greater assurance of pipeline integrity in geographic areas where a gas pipeline rupture could do the most harm to people. Once we propose and implement the integrity management program requirements for the areas we define, we will study the results and consider how effective it would be to extend added protection to other areas.

Class 3 and 4 Locations—Proposed 49 CFR 192.761 (a) and (b)

The proposed definition of high consequence areas included class 3 and class 4 locations, as those areas are defined in § 192.5. In the Notice, we said that because class location definitions are based on population density, gas operators already maintain current data on the location of people in areas adjacent to their pipelines. It seemed more logical to structure a definition using this data rather than basing the definition on a Census Bureau definition, as we had done for hazardous liquid pipelines.

All commenters supported basing the definition of high consequence areas on current class location regulations.

However, several pipeline distribution companies (Baltimore Gas & Electric, NiSource EDG, PECO Energy) objected to RSPA's assumption that information about population density is in the hands of operators. These commenters explained that many local distribution companies utilized class four criteria when constructing a facility, and, therefore, never established a population density baseline and do not track changes in population density.

AGA and APGA disagreed with our statements in the NPRM about the quality, timeliness and accuracy of class location data. AGA and APGA objected to the assumption that class location regulations require operators to periodically monitor and record data on increases in population near their pipelines, and that this data monitoring gives an accurate picture of where people live and work who can be affected by a release. These associations explained that many operators in metropolitan areas design their transmission lines for a Class 4 location even though the classification might be a class 2 or 3; therefore, subsequent population increases do not require detailed surveys of the area. Or if a pipeline is in a class 3 location, the operator need only determine if buildings of four or more stories become prevalent, rather than perform a survey of population density. AGA and APGA further objected to our characterizing the data operators have on buildings within 660 feet as adequate to identify the high consequence areas. They explained that the existing house count data is good information but it may not be extensive, detailed or approach real-time analysis.

Consumers Energy pointed out that by including class 3 areas, the burden is placed on local distribution company feeder systems. The company explained that its entire system would be treated as a high consequence area whereas many cross-country pipelines have few class 3 areas. PECO Energy commented that annual aerial photography and weekly aerial or foot patrols would be needed to keep current information on populations or buildings within 660 feet of its pipeline.

Response: RSPA recognizes that some operators, particularly local distribution companies, may have designed their pipelines for a class 4 location, and, as a consequence, may not maintain current data on the number and location of buildings near their pipelines. However, we continue to believe that it is preferable to base a definition for high consequence areas for gas transmission operators on the existing class location definitions, and to allow the majority of operators to use the information they have on people and buildings near their pipelines rather than to base the definition on the Census Bureau

definitions. An operator who does not maintain the data needed to define a class location will need to decide whether to treat its entire system as being within a high consequence area, or to take steps to identify which segments of the system are actually in high consequence areas. Either decision will be acceptable to OPS.

Hard-To-Evacuate Facilities—Proposed §§ 192.761 (c) and (d)

The NPRM proposed to include areas where a pipeline lies within 660 feet of a hospital, school, day-care facility, retirement facility, prison, or other facility having persons who are confined, are of impaired mobility or would be difficult to evacuate. The proposed area of protection increased to 1000 feet for a pipeline greater than 30 inches in diameter and operating at a maximum allowable operating pressure greater than 1000 psig. In the NPRM, we said we wanted to ensure that areas where there are facilities with people who may not be able to evacuate the area quickly are better protected from a potential release.

The State of New York's Office of the Attorney General supported the proposed definition. As discussed below, other commenters recommended revisions.

AGA and APGA supported including areas with buildings occupied by persons with limited mobility, but maintained that we should better define these facilities to allow operators a reasonable chance of identifying them. The trade associations explained that it would be impractical for operators to identify "other facilities having persons who are confined, are impaired, or would be difficult to evacuate" because these facilities could include home-based day-care facilities housing only one or two people. APA and APGA proposed that we include clarifying language such as "licensed facilities" or "known facilities that are visibly marked and occupied by a defined number of people." AGA and APGA also noted that the phrase "difficult to evacuate" could refer to either the building itself or to the occupants of the building.

Baltimore Gas & Electric maintained that it would have problems identifying facilities unless there is some publicly available data source. The distribution system operator argued that without corresponding data validation source references, the definition creates an unattainable requirement on system operators.

CMS Energy argued that there was no method for distinguishing what constitutes a facility or how many people need to occupy a building for it to be considered a school or hospital. The transmission system operator commented that a definition needs a minimum number of people that have to be associated with a day care facility, school or retirement facility to prevent including residences that are used for such purposes. CMS Energy suggested using the number from the outside area of the class 3 definition, because operators could use information currently available to them and minimal retraining of field personnel would be needed.

Consumers Energy commented that facilities, such as day care facilities, are difficult to discover because they may be small, located within homes and have short business lives. The company recommended adding a requirement that at least 20 persons occupy a facility for it to be included. Consumers Energy further suggested revising the phrase difficult to evacuate because the phrase could be interpreted as meaning the people are difficult to evacuate, or the facility is difficult to evacuate because of lack of staff.

Duke Energy recommended that the language be clarified to state that facilities must be public, licensed, and marked visibly as viewed from the nearest public roadway. Duke Energy argued that operators cannot be expected to determine the locations of private, home-based day-care facilities or private homes. The company further recommended that the phrase difficult to evacuate be removed because the language is vague.

El Paso commented that revising the definition to include facilities that are public, licensed and visibly marked when viewed from the nearest public roadway would help operators identify the facilities.

Enbridge recommended specifying that facilities have to be clearly identified by external signs. Enbridge explained that there are numerous family day-care settings, group homes for home-schooled foster children, ill or elderly, but that operators cannot be expected to identify these facilities unless they are marked. Enbridge further explained that because licensing requirements vary, operators cannot always get this information through public officials.

Enron Transportation supported including these facilities in the definition but suggested we clarify the definition by adding "or other similar, well defined facility having persons who are confined * * *"

The Gas Piping Technology Committee suggested that RSPA discuss what attributes qualify a facility for coverage, whether commercial databases are available, and if public officials have this information. The technical committee recommended that facilities be known, and that they normally have at least 20 persons.

INGAA recommended that the facilities included in the definition be public, licensed and marked visibly from the nearest public roadway, because operators could not be expected to identify private, home-based daycare facilities or private homes with retirement-age people. INGAA further argued that the phrase difficult to evacuate is vague.

National Fuel Gas Supply Corporation suggested we more closely delineate the facilities covered by the definition because operators cannot identify unmarked homes with handicapped persons.

New York Gas Group commented that local distribution companies would not be able to identify these facilities. The trade association explained that unless the facilities are licensed or are on lists maintained by local municipalities, it would be too resource intensive and impractical to locate these facilities. New York Gas Group recommended that we require operators to obtain the lists on a periodic basis.

North Shore objected that the proposed language did not include a minimum number of people that have to be in a facility, and suggested a 20-person minimum. North Shore argued that without a minimum, places such as a small police station or in-home day care would be included. The distribution company further suggested that the definition require facilities to be known, and the phrase difficult to evacuate be clarified to apply only to facilities with confined or mobility-impaired persons.

Pacific Gas and Electric Company recommended specifying a minimum number of 20 persons in a facility. The company also recommended we require that the facility be licensed to help ensure the information is available or that we work with the states to develop a database of all facilities that should be considered high consequence areas.

PECO Energy recommended specifying that the facilities be known facilities to ensure that operators have knowledge of the facility. The company explained that small operators might not have knowledge of newer facilities constructed or buildings renovated for these purposes.

Peoples Gas recommended adding a lower bound on the number of people that are present in the facility, and to add the word "known." Peoples Gas suggested that the phrase difficult to

evacuate apply to facilities with confined or mobility-impaired persons and not be an additional, separate factor because any structure in an emergency could be difficult to evacuate.

Questar commented that it was unclear if the proposed language refers to buildings that are difficult to evacuate because of the number of occupants, the design of the building, or because the occupants are confined or are impaired. Questar argued that the focus should not be on building design. Questar was not in favor of including schools in the examples. Questar explained that schools would probably be covered under the existing class location definitions, and that many types of schools are not in use all week and are not occupied by persons with impaired mobility. The company suggested that because day-care facilities may be home-based, and not visibly marked, and not known to local governments, and because certain types of retirement facilities may be difficult to identify, we should limit the definition to licensed day care and retirement facilities that are clearly marked and visible from a public roadway. Questar further recommended adding a threshold number of occupants, such as 20.

Gary Smith favored including a distance greater than 660 feet from a larger diameter pipeline for individuals with limited mobility, but did not know how realistic it would be to monitor for such individuals.

Response: RSPA has revised the definition to better define the types of facilities that are to be included. We have clarified that the facilities we are focusing on have people that because of impaired mobility or because they are confined, or because of other reasons, such as age, would be difficult to evacuate. The definition makes clear that it is focusing on the occupants not the design of the building.

We have added a requirement that the building with the occupants who are confined, mobility-impaired, or hard to evacuate has to be an identified site. An identified site is a building that can be identified through any of the following means—it has a sign; it is licensed or registered by a federal, state or local agency; it is known to public safety officials; or it appears on a list or map that is available through a federal, state or local agency, or through a publicly available or commercially available database. This revision should alleviate the concern that operators will be required to identity a family home that has elderly or disabled persons, or day-care age children.

We have kept schools in the list of examples. We agree that many schools will likely fall within the definition for a class 3 or 4 location, and that many may not contain persons who are mobility-impaired. However, schools are facilities occupied by groups of people, most likely children, who may, because of their age, number or fear, be difficult to organize and evacuate during an emergency.

We have not required that these be public facilities. Many day care facilities and assisted-living and retirement facilities and communities are private. To limit the definition to public facilities would eliminate a great number of facilities housing children and the elderly. We have not specified a minimum number of occupants that need to be in these facilities because the populations in these facilities are in constant flux. Although a facility can be identified because it has a sign or is on a list maintained by a governmental agency, it is unlikely there would be information on how many persons occupy the facility.

The information many operators currently maintain on people and buildings near their pipelines should help operators to identify these facilities. This information may have to be supplemented with patrols that specifically look for these types of facilities along the right-of-way. This information will need to be periodically updated to ensure that newer facilities are not overlooked. To supplement this information, government websites provide listings of nursing homes, assisted-living facilities and communities that house elderly. For example, the Federal Government's Firstgov (*www.firstgov.gov*) website provides information on nursing home and elder care facilities in all areas of the country, as well as providing information on state websites, and state and local agencies that can be contacted for information to help locate facilities. The website also provides a hyperlink to the National Center for Education Statistics, which lists all private and public schools in any geographic area. In addition, telephone directories offer a listing source for many of the types of facilities an operator will need to identify. Addresses obtained through phone listings can be located using commercially available Web sites such as mapblast (*www.mapblast.com*) or mapquest (*www.mapquest.com*).

Areas Where People Congregate—Proposed § 192.761(e)

The proposed definition of high consequence area included an area where a pipeline was within 660 feet or 1000 feet, depending on the diameter and operating pressure of the pipeline, of a place where 20 or more persons gather at least 50 days in any 12-month period. We listed examples of beaches, camping grounds, recreational facilities and museums. The 20-person minimum used in the proposed definition was based on the number used in the current definition of a class 3 location, and it was a number we believed typical of the number of people that frequent a recreational area. We stated that although gas transmission operators are not currently required to maintain data on areas where people congregate near their pipelines, they are required to patrol their pipeline rights-of-way, and should have knowledge about these areas. We further stated that this information should also be available from local public safety officials.

AGA and APGA thought this part of the definition should be limited to well-defined outside areas. The associations were against including buildings, such as museums, because they are likely covered by other parts of the definition, and against including seldom-used or unmarked buildings, which would require daily patrols to identify. AGA and APGA further suggested that the frequency of usage be 20 or more persons at least 5 days a weeks for ten weeks, because that is consistent with current regulations requiring operators to survey areas within 330 feet of the pipeline for well-defined areas.

Baltimore Gas & Electric maintained it was not practical or attainable to analyze every place where people may congregate on an intermittent basis.

Chevron Texaco was opposed to including places where people might congregate, and preferred focusing the definition on cities, towns, buildings and roads. Chevron thought that using Carlsbad as an example was too broad and could end up including all areas unless on company-owned property.

Citizens for Safe Pipelines urged that public recreation areas be included. The group thought that the proposed standard was too high and would be difficult to measure, and suggested that the standard should simply be evidence of public use, including evidence of vehicle traffic or camping sites, particularly near watercourses. The citizens' group explained that in the west, watercourses are places where people congregate on public land for recreation. The group recommended that operators use regular aerial patrol and consult with public land management and local government officials to identify these areas. The group also recommended including religious buildings, because significant numbers of people regularly congregate in these buildings.

Consumers Energy commented that the example of a museum did not fit because the proposed definition was aimed at outdoor facilities. The company maintained that the language was too broad and should be limited to well-defined areas, or data would be difficult to develop and maintain. Consumers Energy further maintained that the proposed occupation period was too restrictive, and too hard to identify, and suggested using a weekly basis for the occupation period or eliminating it.

Cook Inlet Keeper was not convinced that the proposed definition would cover the location of the Carlsbad pipeline accident. The organization recommended that to ensure that Carlsbad and similar areas are covered, we lower the proposed 50-day threshold, and instead, use as the trigger whether the operator has any knowledge of periodic use for recreational or other purposes.

CMS Energy maintained that the proposed definition would require operators to monitor pipelines 24-hours, 7 days a week, 365 days a year. The company objected that the proposed language could be interpreted to include areas, such as large parks or golf courses where people might not be close to the pipeline. CMS Energy objected to the example of a museum because this expands the definition to include buildings, and buildings such as rural churches might be covered. The company recommended limiting the area to a small, well-defined area within 220 yards (or 333 yards for larger pipelines).

Duke Energy acknowledged the difficulty in defining areas where people gather. The company suggested using 50 days when defining the frequency of use, a rate that would cover one day per week or a full weekend during the summer months. Duke maintained that the word area by itself was too illusive, and should be modified by the phrase "small, well-defined outside area." Duke explained that without this modification, operators would have to include beaches, parks or other large areas. Duke suggested removing museums as an example because current regulations address land use associated with structures such as office buildings, restaurants and museums, but do not address outdoor areas where people gather for weekend-type use. Duke argued that use of the word outside is critical to capture the recreational land user.

Enbridge recommended that we revise the definition to focus on areas of significantly higher consequence. Enbridge suggested focusing on areas of significant, specific, well-defined outdoor congregation, otherwise, the proposed criteria would incorporate rural places of worship or other facilities used only for an hour or two per week. Enbridge further recommended that the definition specify areas that are clearly and publicly identified, because operators can only be expected to identify areas that have visible signs, or are on official local maps or in public information sources. The operator suggested that we base the definition on data that is public, accessible and verifiable.

Enron was against including buildings such as museums because these have multiple exits and would be protected from an accident. Enron recommended that the definition focus on small, well-defined outdoor areas, because operators will not be able to identify areas used on occasional weekends or evenings unless they are defined.

The Gas Piping Technology Committee noted that the proposed definition targets weekend activity, which will require operators to conduct weekend patrols at some frequency. The committee suggested RSPA clarify if its intent is to include organized congregation in camping grounds and other areas or to include any place where people congregate. The committee suggested revising the definition to include known areas, at established weekend or seasonal recreational facilities, such as campgrounds, beaches, or parks within a well-defined area.

INGAA expressed concerns with the proposed definition. INGAA argued that local officials could only be expected to identify well-defined and frequently-used areas, and that it was unreasonable to expect operators to identify areas, similar to the Carlsbad site, that are undefined and infrequently used. The industry association objected to including museums in the examples of areas where people congregate, because operators would have to include buildings or structures, particularly, seldom-used buildings, such as rural churches or bingo halls. INGAA commented that having to include these seldom-used structures would require operators to increase the frequency of monitoring, and to monitor on weekends and evenings. INGAA submitted substitute language that it maintained is more consistent with existing regulations, and easier for operators to comply with. This language defined the areas as small, well-defined outside areas within 660 feet of a pipeline, and occupied by 20 or more people on at least 5 days a week for ten weeks in any 12-month period. The association argued this language would preclude operators from having to include large facilities of low usage, such as golf courses or national parks. INGAA explained that requiring an area to be well-defined would allow better utilization of land use data operators have collected, and that a usage rate of 5 days a week would not require surveillance during evening and weekend hours and is more consistent with existing regulations.

Kinder Morgan suggested that areas where people congregate only be included if they are within the pipeline's defined hazard area calculated from the C–FER model.

National Fuel commented that the proposed area would be too difficult to define, and should be revised to refer to small, well-defined outside areas.

NiSource EDG disagreed with our statement in the NPRM that the patrolling frequency required in the class location regulations is sufficient for an operator to have knowledge of where people congregate near its pipeline. The company thought only daily patrolling would uncover the proposed level of use. NiSource EDG was not aware of any public safety agency that collects, maintains and distributes recreational land use information on a statewide basis. NiSource EDG further commented that the proposed definition was subjective and imprecise, and should be revised to enable operators to identify with a level of certainty and precision the kinds of facilities that make an area high consequence.

New York Gas Group commented that based on its members' experience, it is unlikely that the proposed areas could be identified under current patrolling requirements. The trade association maintained that securing this information would require an excessive resource expenditure for expanded patrolling. New York Gas Group further maintained that such information is not available from local officials or available in standardized format.

New York State Department of Public Service commented that it is unclear whether we intended for areas where people congregate to include facilities such as transportation terminals, manufacturing facilities or business locations, and recommended clarifying the language to include these facilities. The Department of Public Service questioned the basis for the 20 or more persons congregating at least 50 days in a 12-month period, and explained that a stadium or arena may be used less than 50 days per year but, nonetheless, attract large crowds to individual events.

North Shore Gas suggested that the areas where people congregate be known and well-defined. The company also suggested the usage rate should be 5 days a week for 10 weeks in a 12-month period instead of the proposed 50 days in 12 months, because it would be easier for operators to monitor. North Shore Gas thought that the example of a museum is out of place if outside areas are being targeted.

Pacific Gas recommended that RSPA provide the pipeline industry with references to help identify public gathering areas or provide additional guidance for identifying these locations. The company further recommended that we revise the definition to known locations that can be identified by patrols during the business week.

PECO Energy suggested adding the words known or established because small operators might not have knowledge of these facilities. The company argued that operators could be forced to instigate weekend surveillance to identify the proposed areas.

Peoples Gas recommended that areas an operator has to identify be known and well-defined. Peoples Gas suggested changing the proposed 50 days of occupancy to 5 days per week for 10 weeks, otherwise, increased monitoring is needed. The company further suggested that we delete museum from the examples to focus on outdoor areas.

Questar recommended focusing the definition on well-defined outside areas where large groups of people congregate near gas transmission pipelines, and requiring that the areas be known and controlled by public officials. Questar was opposed to including buildings because they are picked up in other sections of the definition, and seldom-used buildings would be difficult to identify.

Response: We have revised the part of the definition addressing areas where people congregate. The intent in including these areas was to pick up areas that are used for recreational purposes. Such areas typically are used on weekends, and after business hours. Although an operator may only patrol during business hours during the week, it may have to expand its efforts to identify areas that people frequent at other hours. A pipeline does not shut down during evening and weekend hours, when people are using these areas. Even if an operator does not expand its patrolling, it should be able to identify these areas through its procedures for continuing surveillance or through its communications with local public safety officials.

We have revised the definition to require that there be evidence of use at an identified site. As with the buildings with mobility-impaired or confined persons, an identified site is a building or outside area that has a visible sign, is registered or licensed by a Federal, State or local agency, is known by public officials, or is on a list or map available through a Federal, State or local agency or that can be obtained through a publicly available or commercially available database. At the site there needs to be evidence that the site is used by 20 or more persons on at least 50 days in any 12-month period. These revisions should alleviate concerns operators expressed about the proposed definition being too vague and the areas too difficult to identify. The definition now provides criteria for identifying locations where people congregate.

We have revised the examples. In the list of examples, we have included stadiums. Although stadiums holding large crowds may be located in Class 3 or 4 locations, we want to ensure such facilities are not ignored if they are located in a less densely populated area. We have added buildings used for religious purposes because groups of people are likely to gather in these buildings on weekends and in the evening. We have also added crossings of water bodies to the examples. We agree with the comment that the area near a pipeline crossing of a waterway may be used as a camping or recreational area.

We have not added modifiers, such as small and well-known. An adjective such as the word small is open to interpretation. One person's idea of small could be 10 feet, whereas another operator might consider 500 feet as small. Similarly, there would likely be disagreement about what makes an area a known area. Would it be enough that local residents know and frequent the area or would it have to be on a list maintained by a local agency for it to be known? What if it is an area known by local officials but the operator only conducts patrols during the week and has no knowledge that it is being used on weekends? By requiring that there be evidence of use at an identified site we are focusing on any area that can be identified as an area where there is regular activity by people around the pipeline.

Although concern was expressed that golf courses and national parks may have to be included, the area that needs to be looked at is only 300, 660 or 1000 feet from a pipeline. Even if the area falls within a large area as a golf course or park, the operator only has to determine if the specified area around the pipeline shows evidence of regular use by people, or the operator can assume that people regularly frequent the area near the pipeline.

We have not limited the definition to outside areas but have included other structures that may be used for recreational or other purposes during weeknight or weekend hours. As explained above we included in the examples stadiums and religious buildings. We have taken out the example of a museum, because we agree that this type of building is most likely covered under the class location definitions.

We have not changed the usage rate from what was proposed. We believe this is a valid rate to pick up areas that are used as recreational areas because the rate will support identification of areas that are used only during week days in a typical ten (10) week summer, and areas that are used only on weekends throughout the entire year. The number of people is appropriate for a recreational activity such as baseball, football or soccer, and for a moderately used facility such as a campground.

We continue to believe that evidence of recreational use can be determined through required patrols of the pipeline right-of-way, perhaps, supplemented with patrol on a weekend or after business hours during the week. Operators are already required to have procedures for continuing surveillance and to have emergency procedures that provide for maintaining communication with public officials. Thus, it should not be burdensome for operators to consult with these officials to determine if the officials have knowledge about these areas. In addition, most recreational areas will be designated areas such as parks or campgrounds for which records are retained by governmental units at the local, county or state level.

660 and 1000-Foot Corridors

Where a pipeline is near a building with mobility-impaired or confined persons, or near an area where people congregate, we proposed that the protected area from the pipeline should be 660 feet or 1000 feet, depending on the diameter and operating pressure of the pipeline. In the NPRM we explained that we based the proposed 660-foot and 1000-foot corridors on a model developed by C–FER, a Canadian research and consulting organization. (More information on this model is in Docket #7666). The C–FER analysis was based on a simplified model of a gas pipeline rupture. The model included a simplified mathematical treatment of several phenomena important to characterizing the extent of damage following a pipeline rupture, as for

example, critical heat flux, the time of ignition of the escaping gas, the height of the burning jet, and the pipe decompression rate. The model also included estimates of several important parameters associated with the phenomena. The model validated the distance of 660 feet as the impact area for pipelines smaller than 30 inches in diameter and operating at 1000 psig or less. The model also showed that a pipeline with a diameter greater than 30 inches and operated at a pressure greater than 1000 psig has the potential to impact an area greater than 660 feet from the pipeline.

Several commenters supported our expanding the area of protection from 660 feet to 1000 feet to accommodate large pipelines operating at high pressure, but recommended decreasing the area for small-diameter pipelines operating at low pressure. These operators maintained that a decreased area would reduce the costs of surveillance and record keeping.

APA and APGA recommended that instead of the proposed 660 and 1000 foot corridors, a high consequence area be defined by the C–FER equation. AGA and APGA explained that this equation would calculate the pipeline affected zone i.e., the zone affected by the heat emitted from the burning gas.

CMS Energy urged RSPA to include along with the proposed 660-foot and 1000-foot corridors, a smaller corridor for small diameter, lower pressure lines. CMS explained that this would more accurately use the information in the C–FER report and allow operators to use technical justification to concentrate on areas of greater consequence.

Consumers Energy observed that using the C–FER model for smaller pipelines operating below 1000 psig would reduce the area of influence but that the model is more useful because it uses actual pipeline attribute data to determine the heat affected zone.

El Paso encouraged that, instead of the 660 and 1000-foot areas, we incorporate into the definition the concept of a pipeline-affected zone, as used in the C–FER study. Enbridge made the same recommendation.

GPTC commented that the C–FER Report forms a sound technical basis for determining a zone of thermal influence for a potential gas pipeline rupture, but that the simplified model we used does not consider small diameter low pressure pipelines.

INGAA recommended that we include the pipeline-affected zone equation used in the C–FER study so that operators could better use the data they have been collecting since 1970. INGAA argued that use of programmed distances, such as the proposed 660 feet and 1000 feet, does not utilize the findings of the C–FER study.

The Iowa Utilities Board commented that two pipelines in the State and at least one that is proposed for construction in Iowa would have impact zone widths of greater than 1000 feet, using the C–FER formula. The Board also pointed out that the C–FER formula will predict smaller impact zones than those proposed for some pipelines having diameter greater than 30 inches with operating pressure over 1000 psig. The Iowa Board suggested we consider specifying operators use the C–FER formula for pipelines with diameter greater than 30 inches and operating pressure over 1000 psig rather than the proposed 1000-feet limit.

New York Department of Public Service maintained that the heat flux value of 5000 btu/hr-ft^2 used in the C–FER formula is too high. A lower critical heat flux value should be used, which would increase the width of the predicted impact zone.

Pacific Gas and Electric recommended using the C–FER equation in class 3 and 4 areas to determine which portions of these areas require an integrity management plan, and focusing efforts on those portions where the pipeline's impact zone encompasses a structure such as a school or hospital containing a specified number of people. The company further suggested that the definition use the C–FER equation to determine the extent of the pipeline that requires integrity verification.

Questar recommended that operators be allowed to use the C–FER equation to determine the pipeline affected zone rather than the proposed 660 or 1000 feet.

The State of New York, Office of the Attorney General supported the 660 and 1000-foot areas, but cautioned that the C–FER model used to define these dimensions does not consider low-angle, horizontal jet fires. The New York State Attorney General's office explained that this type of rupture would cause more of the heat-radiating flame surface to be concentered near the ground surface in the direction of the initial horizontal jet, potentially creating a heat flux for more than 1000 feet.

Williston Basin agreed that zones of damage can extend out from the current class location defined distance of 660 feet during a release, but disagreed with applying the C–FER model only when the hazard radius exceeds 660 feet. The company thought the model should be applied over the full spectrum of pipeline operating conditions because more can be accomplished by focusing resources on the hazard radius area.

Response: RSPA has revised the definition to include a third zone for small diameter, low pressure pipelines. For a pipeline with a diameter of 12 inches or less and an operating pressure of 1200 psig or less, the area of protection will be 300 feet. Although the C–FER model predicted a potential impact area of less than 300 feet for a pipeline of the above-specified size, we will not include an area smaller than 300 feet. In addition, RSPA is further exploring ways to address low stress pipelines in the proposed gas pipeline integrity management rule. We are also considering the comment about use of the C–FER model in calculating the zone of impact in developing that proposed rule. While arguments, such as that by the New York State Attorney General's Office, may be theoretically possible, the actual incident data developed at gas pipeline rupture sites over a twenty-year period were used to validate the predictions of the C–FER model. Thus, a spectrum of different events produced burn radii that were reasonably accurately predicted by the simple formulation contained in the C–FER model. The forthcoming proposed integrity management rule will address situations where the pipe diameter and operating pressure are sufficiently large that the predicted impact zone using the C–FER model could exceed 1000 feet.

Other Area of Potential High Consequence Not Proposed

Environmental Areas

In the NPRM we explained because of the way gas products behave, a rupture would affect a very limited area, and would not pollute drinking water or ecological resources. Because any environmental consequences following a rupture would be limited, we did not include environmentally sensitive areas in the proposed definition.

Citizens for Safe Pipelines recommended adding watercourses to better protect these areas from spills of natural gas condensates.

Cook Inlet Keeper favored adding environmentally sensitive areas because natural gas condensates form in transmission pipelines and can pose environmental hazards. Cook Inlet Keeper also listed eight recent releases of natural gas pipeline condensates (spills of up to 10 gallons of condensate) in the Cook Inlet region in Alaska.

The State of New York, Office of the Attorney General recommended including pipelines within the Great Lakes because of environmental sensitivity.

The Washington State Department of Ecology recommended including

unusually sensitive areas and navigable waterways as high consequence areas, because these may be affected by a fire ignited by a gas pipeline rupture. The Department also recommended that we require operators to consult with state and local government officials to identify environmentally sensitive areas.

The Washington Utilities and Transportation Commission urged RSPA to include environmentally sensitive areas in the definition. The Commission explained that a habitat for a threatened or endangered species in the heat affected zone could be destroyed by a pipeline rupture and ignition. The Commission also urged that operators be required to consult with state and local government agencies to ensure that environmentally sensitive high consequence areas have been correctly identified.

Response: As we explained above in the section discussing areas where people congregate, we have added recreational areas near water bodies to the definition. However, we have not revised the definition to include environmental areas. RSPA believes that the limited physical impact of a gas pipeline rupture and the short duration of the impact justify excluding these areas. A natural gas release is limited to the area immediately adjacent to the pipeline, so that any resulting fire would do limited damage to a sensitive area or to a species in the area. We recognize that gas condensates that form in gas transmission pipelines can pose an environmental hazard should the pipeline rupture. However, because we believe that these discharges tend to be small and do limited damage, we are not at this stage including these areas in the definition.

Other Areas

Cook Inlet Keeper recommended adding to the definition high-traffic areas and passenger and flammable cargo rail areas. The organization also recommend including religious buildings because significant numbers of individuals are confined in these buildings on a regular basis.

The New York State Department of Public Service thought the definition should be expanded to consider important infrastructure including major electric transmission corridors and substations, other pipeline facilities, bridges, major roads and railways. The Department recommended we also consider historic landmarks near transmission pipelines and services that would be disrupted and would have a major impact on people and businesses.

SEFBO argued that pipeline bridges represent potential high consequence areas in themselves, and should be separately included as high consequence areas. SEFBO agreed that pipeline crossings of roads, highways and railroads should not be included because disruption from an explosion of a gas pipeline at such a crossing should be fairly localized and relatively short. According to SEFBO, an explosion of a natural gas pipeline on a bridge poses a unique risk of substantial economic disruption, and on a heavily traveled bridge may cause injury or death to a substantial number of persons.

Washington State Department of Ecology pointed out that recent experience has shown that a rupture of a gas pipeline could impact a near-by liquid pipeline (within 1000 feet), causing an explosion or oil spill.

Response: The primary purpose of this definition is to define areas where a pipeline rupture would lead to the greatest consequences to the public. Most areas are adequately protected by current pipeline safety regulations. In most cases, a rupture of a gas pipeline will result in limited physical damage from a pipeline rupture, and be of short duration (one or more hours). We are focusing the definition on those areas where additional protection may be necessary because the consequences to people are potentially the greatest. Except for those areas previously discussed, we have not revised the definition to include the suggested areas.

Our review of accident data concluded that the maximum spill from a gas rupture resulting in a spill from a liquid pipeline has been too small to necessitate additional protection. We believe the impact of pipelines on infrastructure is adequately treated by existing regulations, although we will consider the comments about pipeline bridges in developing the integrity management program requirements. For example, pipelines supported by bridges (vehicular, railroad, pedestrian, pipeline), or that cross public roads, highways or railroads have special design factors. (§ 192.111). Special welding requirements apply to pipeline crossings of rivers, railroads, highways, tunnels and bridges (§ 192.243). More frequent patrols are required at highway and railroad crossings (§ 192.705).

As previously discussed, we added religious buildings to the list of examples of areas where people congregate. Transportation terminals, manufacturing facilities or business locations would usually fall within a class 3 or 4 location, or be covered under the high consequence area definition if they normally have 20 or more people on at least 50 days a year.

Costs Associated With the Definition

In the NPRM, we explained that the proposed definition had no cost impact on the pipeline industry because the definition did not by itself require an operator to take action. Costs would be incurred once we issued integrity management program requirements that required an operator to take action on transmission pipelines located in these areas.

AGA and APGA thought we should consider in this rulemaking the initial costs associated with determining the high consequence areas, including identifying the areas, documenting them and verifying them periodically.

The Gas Piping Technology Committee also pointed out that we had not considered the initial costs, the frequency of verification and the potential recurring costs associated with determining the high consequence areas. The Committee recommended we consider these costs in this rulemaking so as not to overlook them in the integrity management program rulemaking.

Kinder Morgan commented that operators will incur additional costs to determine the applicability of the definition, and will have to gather additional information to identify the facilities with mobility-impaired persons and areas where people congregate. The company noted that operators will also have to conduct additional field surveys to identify the facilities and areas within 1000 feet of a pipeline.

New York Gas Group commented that the definition would require additional company resources and significant paperwork to identify facilities with mobility-impaired persons and areas where people congregate in class 1 and 2 areas.

NiSource EDG observed that this definition will drive future costs because it will dictate the integrity management actions an operator will have to take with respect to those pipelines located in the high consequence areas.

Questar commented that we need to discuss the incremental costs associated with determining the high consequence areas, such as the incremental costs for identifying, documenting and re-verifying the high consequence areas, and expanding the survey corridor.

Williston Basin commented that assessment costs are a significant expense and that the definition will directly affect assessment costs. The company argued that because the high

consequence area definition and integrity management rulemaking are directly related, the definition cannot be complete without evaluating the definition under the requirements of the integrity management rule.

Response: We have not changed our conclusion that there are no costs associated with the definition because the definition by itself does not require an operator to take any action. We recognize that once we issue regulations requiring action based on this definition, there will be costs. Thus, when RSPA issues its notice of proposed rulemaking for gas integrity management, RSPA will estimate the cost to gas pipeline operators to determine which segments in its system satisfy the definition of high consequence areas, and other costs associated with identifying and periodically re-verifying the areas.

The Final Rule

In the final rule RSPA has defined high consequence areas to include—

- *Class 3 areas.* A Class 3 area is defined in the pipeline safety regulations as a class location unit with 46 or more buildings intended for human occupancy. A class location unit is an area that extends 220 yards on either side of the centerline of any continuous one-mile length of pipeline. A class 3 area is also an area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area, such as a playground, recreation area, outdoor theater, or other place of public assembly, which is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. Neither the days nor the weeks need be consecutive.
- *Class 4 areas.* A Class 4 area is any class location unit where buildings with four or more stories are prevalent.

We have included class 3 and 4 location areas, as those areas are defined in § 192.5, to give additional protection to populated areas from a gas release. These areas will encompass about 85% of populated areas. These are the areas where most gas transmission pipeline operators maintain data on population and buildings near their pipelines. However, because the class location definitions may not cover all areas where a pipeline may pose a risk to the public, we have also included as high consequence areas:

- Areas where the pipeline is within 300, 660 or 1000 feet of a building occupied by persons who are confined, or are of impaired mobility, or would be difficult to evacuate, and
- Areas where the pipeline is within 300, 660 or 1000 feet of a building or outside area where 20 or more persons congregate at least 50 days in any 12-month period. (The days need not be consecutive.)

The definition picks up facilities with people who may not be able to evacuate an area quickly and most recreational areas or other areas where the public may not live, but may gather regularly for recreational or other purposes. Our analysis of data on the area affected by a pipeline accident demonstrated the need for special consideration of buildings located near a pipeline that house people with limited mobility and of areas where people congregate. These last two elements explicitly include distances between the pipeline and the facility or recreational area where greater protection will be provided. Defining these distances is necessary for two reasons. First, there is a need to limit the magnitude of the search to identify facilities and recreational areas that can potentially be affected by a pipeline rupture. Second, recently completed research has defined the extent of the area potentially affected by a pipeline rupture and subsequent ignition and fire. The results from this research has been used to define the distances we have included in the definition.

Our analysis of research data on the area affected by a pipeline accident demonstrated that, for most pipelines, the area affected by the rupture and fire extended no greater than 660 feet from the pipeline. The recently completed research demonstrated that the extent of the area potentially affected by a rupture increases in direct proportion to the square root of the pressure at which the pipeline is operated, and increases in direct proportion to the pipe diameter. Therefore, the rupture of smaller pipelines can impact facilities and recreational areas at distances less than 660 feet, and the rupture of larger pipelines can impact facilities and recreational areas at distances greater than 660 feet. Our analysis determined that, for a pipeline with a diameter of 12 inches or less and a maximum allowable operating pressure of 1200 psig or less, the distance from the pipeline of potential impact is 300 feet. For pipelines with a diameter greater than 30 inches and a maximum allowable operating pressure greater than 1000 psig, the distance from the pipeline of potential impact is 1000 feet.

The research that we used as the basis for the 300, 660 and 1000-feet distances is in the docket and is referred to as the C–FER model. We compared the predictions from the C–FER model against RSPA accident data and concluded that the impact distances predicted by the model are consistent with the burn radii observed in accidents that have occurred during the past twenty years. For example, a rupture of a 30-inch diameter pipeline operating at a maximum pressure of 1000 psig would affect an area no greater than 660 feet from the pipeline. Our research also showed that a rupture or release from a smaller-sized pipeline (a pipeline 12 inches or less in diameter and operating at a pressure of 1200 psig or less) would affect an area no larger than 300 feet from the pipeline. Therefore, for these smaller pipelines, we have defined a smaller area in which operators must identify buildings housing mobility-impaired or confined people and areas where people congregate. Similarly, for larger pipelines (a pipeline with a diameter greater than 30 inches and operating at a pressure greater than 1000 psig), we have defined a larger area of 1000 feet from the pipeline.

Because operators were concerned that they would be required to identify home-based day care and private homes with elderly occupants, the definition provides that the facility has to be an identified site. An identified site would be a building with confined or mobility-impaired persons that can be identified by any of several means: it has a sign; it is licensed or registered by a Federal, State or local authority; or it is on a list or map that is available from a Federal, State or local authority, or through a publicly available or commercially available database. Similarly, because of concerns raised about identifying recreational areas where people congregate, we have required that the building or outside area be an identified site (described above) that has evidence of use by 20 or more persons on at least 50 days a year.

The areas we have defined as high consequence areas go beyond current pipeline safety regulations in the following ways:

1. A current Class 3 location includes buildings or areas where people congregate located within 300 feet of the pipeline. The definition extends these areas out to 660 feet for pipelines of diameter greater than 12 inches and out to 1000 feet for larger pipelines (those greater than 30 inches in diameter and operating at pressures greater than 1000 psig).

2. Current Class location regulations include no explicit provision for facilities housing people with limited mobility. The definition includes these facilities.

3. The definition places more emphasis on areas where people congregate near a pipeline, such as

camping grounds and recreational areas near bodies of water. These areas may not be identified under the current class 3 location definition.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

DOT considers this action to be a non-significant regulatory action under section 3(f) of Executive Order 12866 958 FR 57135;October 4, 1993). Therefore, the Office of Management and Budget (OMB) has not reviewed this rulemaking document. This final rule is also not significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979).

Several commenters to the proposed rule (67 FR 1108–1115, January 9, 2002) disagreed with RSPA's determination that the proposed rule would incur no costs because it was only a definition. These comments were discussed above. As we previously explained, this definition does not require operators to take any action. Until there are requirements for the pipeline segments that are located in the high consequence areas we have defined, there are no cost impacts on the pipeline industry or the public. The costs will be incurred when we issue integrity management program regulations that require gas transmission operators to take actions on pipelines located in the high consequence areas. When we issue proposed regulations on integrity management for gas operators, we will then consider the costs involved in identifying and periodically re-verifying the high consequence areas.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) RSPA must consider whether a rulemaking would have a significant impact on a substantial number of small entities. This final rulemaking will not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. As this action only involves a definition, there are no cost implications, and thus we have determined it has no immediate impact on small entities. Costs are likely to result once we issue requirements for actions that use this definition. When RSPA proposes integrity management requirements for gas transmission pipelines in high consequence areas, RSPA will then examine the costs and benefits of the proposed requirements, including actions based on the high consequence area definition. Based on this information demonstrating that this rulemaking will not have an economic impact, I certify that this final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains no information collection subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)). Therefore, RSPA concludes the final rule contains no paperwork burden and is not subject to OMB review under the paperwork Reduction Act of 1995.

This final rule defines high consequence areas, but does not require an operator to take any action. The definition will be used in the forthcoming rulemaking on "Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Operators)". RSPA will prepare a paperwork burden analysis for that proposed rule.

Executive Order 13084

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not have any requirement that:

(1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) imposes substantial direct compliance costs on States and local governments; or

(3) preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply. Nevertheless, in public meetings on November 18–19, 1999, and February 12–14, 2001, RSPA invited the National Association of Pipeline Safety Representatives (NAPSR), an organization that includes State pipeline safety regulators, to participate in a general discussion on pipeline integrity. RSPA also had conference calls with NAPSR to receive their input before proposing a definition of high consequence areas. Several state agencies responded to the NPRM and their comments were considered in developing the final definition.

Unfunded Mandates

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We analyzed the final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and determined the action would not significantly affect the quality of the human environment. The Environmental Assessment is available for review in the docket.

The Environmental Assessment (EA) considered the impacts of the definition, in conjunction with future requirements of an integrity management rule. The EA found that the definition by itself, did not by itself have any impact on the environment. When integrity management program requirements are issued which will incorporate the definition, there should be positive environmental benefits for the areas receiving additional protection. However, because the environmental consequences from a gas release are limited, any impact is expected to be minimal. Therefore, the definition of high consequence areas for gas pipeline integrity management will not have a significant environmental impact.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA is amending part 192 of title 49 of the Code of Federal Regulations as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Section 192.761 is added under a new undesignated centerheading of "High Consequence Areas" in subpart M to read as follows:

Subpart M—Maintenance

* * * * *

HIGH CONSEQUENCE AREAS

§ 192.761 Definitions.

The following definitions apply to this section and § 192.763:

A *high consequence area* means any of the following areas:

(a) An area defined as a Class 3 location under § 192.5;

(b) An area defined as a Class 4 location under § 192.5;

(c) For a pipeline not more than 12 inches in nominal diameter and operating at a maximum allowable operating pressure of not more than 1200 p.s.i.g., an area which extends 300 feet from the centerline of the pipeline to the identified site;

(d) For a pipeline greater than 30 inches in nominal diameter and operating at a maximum allowable operating pressure greater than 1000 p.s.i.g., an area which extends 1000 feet from the centerline of the pipeline to the identified site; and

(e) For a pipeline not described in paragraph (c) or (d) of this section, an area which extends 660 feet from the centerline of the pipeline to the identified site.

(f) An identified site. An identified site is a building or outside area that—

(1) Is visibly marked;

(2) Is licensed or registered by a Federal, State, or local agency;

(3) Is known by public officials; or

(4) Is on a list or map maintained by or available from a Federal, State, or local agency or a publicly or commercially available database; and

(5) Is occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate. Examples include, but are not limited to hospitals, prisons, schools, day-care facilities, retirement facilities, and assisted-living facilities; or

(6) There is evidence of use of the site by at least 20 or more persons on at least 50 days in any 12-month period. (The days need not be consecutive.) Examples include, but are not limited to, beaches, playgrounds, recreational facilities, camping grounds, outdoor theaters, stadiums, religious facilities, and recreational areas near bodies of water.

Issued in Washington, DC, on August 1, 2002.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–19840 Filed 8–5–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

50 CFR Part 660

[Docket No. 011231309–2090–03; I.D. 072902E]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Removal of the Sablefish Size Limit South of 36° N. Latitude for Limited Entry Fixed Gear and Open Access Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason sablefish size limit adjustment; request for comments.

SUMMARY: NMFS announces removal of the sablefish size limit south of 36° N. latitude (lat.) for limited entry fixed gear and open access Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), is intended to help the fisheries achieve optimum yield (OY) while protecting overfished and depleted stocks.

DATES: Changes to management measures are effective 0001 hours (local time) August 1, 2002, through the effective dates of the 2003 specifications and management measures for the Pacific Coast groundfish fishery, unless modified, superseded, or rescinded, which will be published in the **Federal Register**. Comments on this action will be accepted through August 21, 2002.

FOR FURTHER INFORMATION CONTACT: Jamie Goen or Carrie Nordeen (Northwest Region, NMFS) 206–526–6140.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. The specifications and management measures for the current fishing year (January 1 - December 31, 2002) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2002 (67 FR 1540, January 11, 2002), and as a proposed rule for all of 2002 (67 FR 1555, January 11, 2002), then finalized effective March 1, 2002 (67 FR 10490, March 7, 2002). The final rule was subsequently amended at 67 FR 15338, April 1, 2002; 67 FR 18117, April 15, 2002; 67 FR 30604, May 7, 2002; 67 FR 40870, June 14, 2002; 67 FR 44778, July 5, 2002; and 67 FR 48571, July 25, 2002.

The July inseason trip limit adjustments (67 FR 44778, July 5, 2002) to the groundfish management measures were recommended by the Council in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California at its June 18–21, 2002, meeting in Foster City, CA and subsequently corrected by 67 FR 48571, July 25, 2002. The July trip limit adjustments were made to slow the catch of overfished species, particularly darkblotched and bocaccio rockfish. By the end of June the projected bocaccio rockfish catch in the commercial and recreational fisheries combined may have exceeded the rebuilding OY of 100 mt and could approach or exceed the acceptable biological catch of 122 mt. In order to reduce fishing effort on the continental shelf where bocaccio are found and move vessels into deeper waters off the slope, the Council recommended reinstating the minimum 22–inch (56–cm) size requirement for sablefish taken with non-trawl (fixed) gear and a reduced trip limit for sablefish under the 22–inch (56–cm)requirement taken with trawl gear. Adult sablefish tend to be found at greater depths (109 to 547 fathoms), while bocaccio tend to be found at shallower depths (27 to 137 fathoms). Prohibiting retention of small sablefish in the non-trawl fisheries and reducing the trip limit for small sablefish in the limited entry trawl fishery is expected to force vessels into deeper water when targeting sablefish, thereby reducing opportunities for fishermen targeting sablefish to intercept bocaccio. Therefore, in the trawl fishery south of 40° 10' N. lat., the July trip limit changes kept the currently scheduled cumulative sablefish limit of 4,500 lb (2,041 kg) per 2 months, but added a per trip restriction of no more than 500 lb (227 kg) of sablefish smaller than 22 inches (56 cm). To encourage the non-trawl (fixed gear) fisheries to also operate in deeper waters, the July trip limit changes kept the currently scheduled limits, but reinstated the size restriction prohibiting retention of sablefish smaller than 22 inches (56 cm) south of 40°10' N. lat. This restriction was put in place south of the 40°10' N. lat. management line to protect bocaccio, which are most abundant along the California coast. In addition, bocaccio tend to be at the deeper end of

their depth range (i.e., closer to 137 fathoms) along California, making it necessary to push the sablefish fishery into even deeper waters south of 40°10' N. lat.

After receiving inquiries from the fixed gear industry regarding the sablefish size restriction south of 36° N. lat., the Council staff, Groundfish Management Team (GMT), and NMFS decided to re-evaluate the basis of the Council's June decision. The Council decision to reinstate the 22–inch (56–cm) minimum size restriction for sablefish landed by the limited entry fixed gear and open access fleets south of 40°10' N. lat. was intended to protect bocaccio rockfish, a continental shelf overfished species, as small sablefish and bocaccio may co-occur in some areas. Public comment received in July, however, indicated that not only are sablefish smaller at all depths south of 36° N. lat., but that sablefish may not co-occur with bocaccio south of 36° N. lat.

Trawl surveys and stock assessments conducted by NMFS do not extend south of Pt. Conception (34°27' N. lat.) and cannot provide data on whether sablefish are smaller in that area. However, data from two Alaska Fisheries Science Center resource assessment and conservation engineering (RACE) surveys summarizing sablefish average weight by depth and latitude, show a noticeably smaller average weight at all depths south of 36° N. lat. The average weight of sablefish north of 40°10' N. lat. is 0.88 kg at depths less than 150 fathoms, 1.52 kg at depths between 150 to 250 fathoms, and 1.84 kg for depths greater than 250 fathoms. The average weight of sablefish between 40°10' N. lat. and 36° N. lat. is 0.68 kg at depths less than 150 fathoms, 1.19 kg at depths between 150 to 250 fathoms, and 1.95 kg for depths greater than 250 fathoms. The average weight of sablefish south of 36° N. lat. is 0.51 kg at depths less than 150 fathoms, 0.97 kg at depths between 150 to 250 fathoms, and 1.63 kg for depths greater than 250 fathoms. In addition to the RACE surveys, data from pot surveys conducted between 1979 and 1991 also reported smaller sablefish south of Monterey Bay. Because the sablefish south of 36° N. lat. are smaller at all depths, the minimum size restriction south of 36° N. lat. does not necessarily move effort into deeper waters away from bocaccio but does increase discards of sablefish under 22 inches.

Regarding whether bocaccio and sablefish co-occur south of 36° N. lat., according to NMFS' triennial survey data in an area between roughly 37° N. lat. and 34°27' N. lat. (Pt. Conception), 14 percent of the sablefish distribution within the survey area overlaps with the distribution of bocaccio. However, the majority of sablefish in the survey area, 86 percent, tend to be at depths greater than 150 fathoms (i.e., generally beyond bocaccio's depth range). In addition to the triennial survey data, NMFS reviewed landings data supplied by the California Department of Fish and Game (CDFG) for the years 2000 and 2001 from trips targeting sablefish in the Conception Area (south of 36° N. lat.). The highest rate at which bocaccio was reported landed with sablefish over these 2 years was 0.0227 mt of bocaccio with 42 mt of sablefish, or 0.05 percent. The expected catch of bocaccio under the remaining commercial sablefish OY south of 36° N. lat. (142 mt), is between 0.02 mt and 0.08 mt.

Based on the evidence from the RACE surveys, pot surveys, triennial survey, and CDFG landings data, NMFS has determined, in consultation with the GMT, that removing the minimum size restriction of 22 inches for the sablefish fishery south of 36° N. lat. is warranted and will only have a negligible impact on bocaccio rockfish. Because sablefish are larger in deeper waters between 40°10' N. lat. and 36° N. lat., the 22–inch (56–cm) minimum size restriction on sablefish in that area will remain as previously announced for the limited entry fixed gear and open access fleets at 67 FR 44778, July 5, 2002, and subsequently corrected at 67 FR 48571, July 25, 2002. For the limited entry trawl fleet, the minimum size restriction will also remain as previously announced (67 FR 44778, July 5, 2002, as corrected at 67 FR 48571, July 25, 2002).

NMFS Actions

For the reasons stated here, NMFS rescinds the requirement for a 22–inch (56–cm) minimum size restriction for the limited entry fixed gear and open access fleets south of 36° N. lat. as implemented in 67 FR 44778, July 5, 2002, and subsequently corrected at 67 FR 48571, July 25, 2002. NMFS hereby announces the following changes to the 2002 specifications and management measures (67 FR 10490, March 7, 2002, as amended at 67 FR 15338, April 1, 2002; 67 FR 18117, April 15, 2002; 67 FR 30604, May 7, 2002; 67 FR 40870, June 14, 2002; 67 FR 44778, July 5, 2002; and 67 FR 48571, July 25, 2002, to read as follows:

1. In **Federal Register** Document 02–5302 of March 7, 2002, on page 10518, in section IV, under B. Limited Entry Fishery, at the end of paragraph (1), Table 4 is revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

(1) * * *

BILLING CODE 3510–22–S

Table 4. Trip Limits[1] for Limited Entry Fixed Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	****NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS CLOSED OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT FOR SABLEFISH, THORNYHEADS, AND SLOPE ROCKFISH. SEE FOOTNOTE 8/.**						
1	**Minor slope rockfish**						
2	North	1,000 lb/ month		5,000 lb/ 2 months			2,000 lb/ 2 months
3	South						
4	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
6	**Splitnose - South**						
7	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
8	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb / 2 months	
9	**Pacific ocean perch - North[9/]**	2,000 lb/ month	4,000 lb/ month		4,000 lb/ 2 months		2,000 lb/ month
10	**Sablefish**						
11	North of 36° N. lat.[9/]	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
12	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
13	**Longspine thornyhead**	9,000 lb/ 2 months					
14	**Shortspine thornyhead**	2,000 lb/ 2 months					
15	**Dover sole**	5,000 lb/ month (all flatfish)				5,000 lb/ month (all flatfish)[6/]	
16	**Arrowtooth flounder**						
17	**Petrale sole**						
18	**Rex sole**						
19	**All other flatfish[2/]**						
20	**Whiting[3/]**	20,000 lb/ trip					
21	**Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[5/]**	200 lb/ month					
22	North						
23	South						
24	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[4/]	Shoreward of 20 fm depth, 200 lb/ month, otherwise CLOSED[4/]	CLOSED[4/]		
25	South of 34°27' N. lat.	CLOSED[4/]	1,000 lb/ month				
26	**Canary rockfish**	CLOSED[4/]					
27	**Yelloweye rockfish**	CLOSED[4/]					
28	**Cowcod**	CLOSED[4/]					
29	**Bocaccio - South[5/]**						
30	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[4/]		CLOSED[4/]		
31	South of 34°27' N. lat.	CLOSED[4/]	200 lb/ month				
32	**Chilipepper - South[5/]**						
33	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[4/]		CLOSED[4/]		
34	South of 34°27' N. lat.	CLOSED[4/]	2,500 lb/ month				
35	**Minor nearshore rockfish**						
36	North	5,000 lb/ month, no more than 2,000 lb of which may be species other than black or blue rockfish[6/]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[6/]			
37	South						
38	40°10' - 34°27' N. lat.	1,600 lb/ 2 months	CLOSED[4/]	Shoreward of 20 fm depth, 1,600 lb/ 2 months, otherwise CLOSED[4/]	1,600 lb/ 2 months[6/]		CLOSED[4/]
39	South of 34°27' N. lat.	CLOSED[4/]	2,000 lb/ 2 months		2,000 lb/ 2 months[6/]		
40	**Lingcod[7/]**						
41	North	CLOSED[4/]		400 lb/ month			CLOSED[4/]
42	South						
43	40°10' - 34°27' N. lat.	CLOSED[4/]		Shoreward of 20 fm depth, 400 lb/ month, otherwise CLOSED[4/]	400 lb/ month[6/]		CLOSED[4/]
44	South of 34°27' N. lat.			400 lb/ month			

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies.

4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

5/ Yellowtail rockfish and widow rockfish coastwide and bocaccio and chilipepper rockfishes in the north are included in the trip limits for shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

6/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.) there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ South of 40°10' N. lat., trip limits apply to inside of 20 fm only. Beginning July 1, 2002, it is prohibited to prosecute groundfish fisheries with non-trawl gear outside 20 fm south of 40°10' N. lat.

9/ The minimum size requirement for sablefish is 22 inches (56 cm) total length between 40°10' N. lat. and 36° N. lat.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

2. In **Federal Register** Document 02–5302 of March 7, 2002, on page 10520, under C. Trip Limits in the Open Access Fishery, after paragraph (1), Table 5 is revised to read as follows:

C. Trip Limits in the Open Access Fishery

(1) * * *

Table 5. Trip Limits[1/] for Open Access Gears
Other Limits and Requirements Apply – Read Sections IV. A. and C. NMFS Actions before using this table
Exceptions for exempted gears at Section IV.C.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS **CLOSED OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT SABLEFISH AND SLOPE ROCKFISH. SEE FOOTNOTE 8/.						
	** NOTE: EFFECTIVE JULY 1, 2002, THERE IS NO RETENTION OF GROUNDFISH WITH EXEMPTED TRAWL GEAR.						
1	**Minor slope rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
2	North						
3	South						
4	40°10' - 36° N. lat.	10,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.	10,000 lb/ 2 months					
6	**Splitnose - South**	200 lb/ month					
7	**Pacific ocean perch - North[6/]**	100 lb/ month					
8	**Sablefish**						
9	North of 36° N. lat.[7/]	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
10	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
11	**Thornyheads**	CLOSED[3/]					
12	North of 34° 27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
13	South of 34° 27' N. lat.						
14	**Dover sole**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs			3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sandabs[4/]		
15	**Arrowtooth flounder**						
16	**Petrale sole**						
17	**Rex sole**						
18	**All other flatfish[2/]**	300 lb/ month					
19	**Whiting**						
20	**Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[4/]**	200 lb/ month					
21	North						
22	South						
23	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3/]	Shoreward of 20 fm depth, 200 lb/ month, otherwise CLOSED[3/]	CLOSED[3/]		
24	South of 34°27' N. lat.	CLOSED[3/]	500 lb/ month				
25	**Canary rockfish**	CLOSED[3/]					
26	**Yelloweye rockfish**	CLOSED[3/]					
27	**Cowcod**	CLOSED[3/]					
28	**Bocaccio - South[4/]**						
29	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3/]		CLOSED[3/]		
30	South of 34°27' N. lat.	CLOSED[3/]	200 lb/ month				
31	**Chilipepper - South[4/]**						
32	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[3/]		CLOSED[3/]		
33	South of 34°27' N. lat.	CLOSED[3/]	2,500 lb/ month				
34	**Minor nearshore rockfish**						
35	North	3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[5/]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[5/]			
36	South						
37	40°10' - 34°27' N. lat.	1,200 lb/ 2 months	CLOSED[3/]	Shoreward of 20 fm depth, 1,200 lb/ 2 months, otherwise CLOSED[3/]	1,200 lb/ 2 months[8/]	CLOSED[3/]	
38	South of 34°27' N. lat.	CLOSED[3/]	1,200 lb/ 2 months				
39	**Lingcod[6/]**						
40	North	CLOSED[3/]		300 lb/ month		CLOSED[3/]	
41	South						
42	40°10' - 34°27' N. lat.	CLOSED[3/]		Shoreward of 20 fm depth, 300 lb/ month, otherwise CLOSED[3/]	300 lb/ month[8/]	CLOSED[3/]	
43	South of 34°27' N. lat.			300 lb/ month			

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border. "South" means 40°10' N. lat. To the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

4/ Yelloweye rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

5/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ The minimum size requirement for sablefish is 22 inches (56 cm) total length between 40°10' N. lat. and 36° N. lat.

8/ South of 40°10' N. lat., trip limits apply to inside of 20 fm only. Beginning July 1, 2002, it is prohibited to prosecute groundfish fisheries with non-trawl gear outside 20 fm south of 40°10' N. lat.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

* * * * *

Classification

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable and contrary to the public interest. It would be impracticable and contrary to the public interest because affording prior notice and opportunity for public comment would impede the agency's function of managing fisheries to achieve OY. By removing the size restriction on sablefish south of 36° N. lat., this inseason action allows fishers to access sablefish allocations without exceeding the OY for that species. Delaying removal of the size restriction in this area could prevent the industry from obtaining the intended benefit and unnecessarily increase discards of adult sablefish under 22 inches. The changes implemented in this action are based in part on comment received on the July 5, 2002 (67 FR 44778) **Federal Register** document implementing the Council's decision. For these reasons, good cause also exists to waive the 30–day delay in effectiveness requirement of 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2002.

John H. Dunnigan

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19809 Filed 8–1–02; 2:44 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 151
Tuesday, August 6, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103823–99]

RIN 1545–AX12

Guidance on Cost Recovery Under the Income Forecast Method; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a correction to a notice of proposed rulemaking that was published in the **Federal Register** on Friday, May 31, 2002 (67 FR 38025), relating to deductions available to taxpayers using the income forecast method of depreciation.

FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–103823–99) that is the subject of this correction is under section 167 of the Internal Revenue Code.

Need for Correction

As published the notice of proposed rulemaking (REG–103823–99), contains an error that my prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–103823–99), which was the subject of FR Doc. 02–13578, is corrected as follows:

§ 1.167(n)–6 [Corrected]

On page 38035, column 1, § 1.167(n)–6(c)(2)(ii), line 5, the language "income) in any taxable year prior" is corrected to read "income) in any prior taxable year".

LaNita VanDyke,
Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting).

[FR Doc. 02–19834 Filed 8–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–105316–98 and REG–161424–01]

RIN 1545–AW67 and 1545–BA43

Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns; Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 6050S of the Internal Revenue Code.

DATES: The public hearing originally scheduled for August 13, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on April 29, 2002, (67 FR 20923), announced that a public hearing was scheduled for August 13, 2002, at 10 a.m., Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. The subject of the public hearing is proposed regulations under section 6050S of the Internal Revenue Code. The public comment period for these proposed regulations expired on July 29, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of August 1, 2002, no one has requested to speak. Therefore, the public hearing scheduled for August 13, 2002, is cancelled.

LaNita Van Dyke,
Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–19833 Filed 8–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Chapter I

[USCG–2002–12835]

Review of Boating Safety Regulations

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is conducting a comprehensive review of current boating safety regulations in three stages. These stages correspond with sequential meetings of the National Boating Safety Advisory Council (NBSAC). This document requests comments for the third stage, involving requirements for operators of recreational vessels. We will provide NBSAC members with a summary and copy of the comments before the April 2003 meeting and will consider all relevant public comments and NBSAC recommendations in determining which regulations, if any, should be changed.

DATES: Comments and related material for the third stage of the review must reach the Docket Management Facility on or before November 4, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2002–12835), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001. (2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (3) By fax to the Docket Management Facility at 202–493–2251. (4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet, at the Web Site for the Office of Boating Safety, at *http://www.uscgboating.org* or at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Carlton Perry, Project Manager, Office of Boating Safety, U.S. Coast Guard, by telephone at 202–267–0979 or by e-mail at *cperry@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Background and Purpose

NBSAC is a Federal advisory committee created under 46 U.S.C. 13110(a) and operated under 5 U.S.C. App. 2 and a charter from the Secretary of Transportation (*see* 66 FR 7951; January 26, 2001). It advises the Coast Guard on substantive matters of boating safety. Its 21 members come from 3 segments of the boating community: the boating industry; State officials on boating safety; and representatives of national recreational boating organizations and the general public. NBSAC meets twice a year, in the spring and fall. The meetings are open to the public. Under 46 U.S.C. 4302 (c)(4), the Coast Guard must consult NBSAC in the formulation of boating safety regulations.

Past Comprehensive Reviews

In 1981, 1986, 1992, and 1997, we conducted comprehensive reviews of our boating safety regulations in conjunction with a single NBSAC meeting. We asked NBSAC to determine whether the regulations were still necessary, beneficial, cost-effective, and consistent with current technology. These periodic reviews led NBSAC to make numerous recommendations to improve and update specific provisions in the regulations.

Current Comprehensive Review

We are conducting this review in three stages at sequential NBSAC meetings. This is the notice for the third stage of the review that will be discussed at NBSAC's April 2003 meeting. We published a document announcing the first stage of the review in the **Federal Register** on August 30, 2001 [66 FR 45791], and NBSAC reviewed those regulations at its April 2002 meeting. We published a notice announcing the second stage of the review in the **Federal Register** on March 26, 2002 [67 FR 13817], stating that NBSAC would review regulations of the second stage in October 2002. Each stage will evaluate current boating safety regulations, but will not include any rules under development.

The *first review stage* included administrative requirements for manufacturers and importers of recreational vessels (33 CFR part 179 and part 181, subparts B and C) and fire and explosion prevention requirements for manufacturers and importers of recreational vessels (33 CFR part 183, subparts I, J, and K). NBSAC reviewed these regulations and related comments at its April 2002 meeting.

The *second review stage* included requirements for manufacturers and importers of recreational vessels to prevent drownings (33 CFR part 183, subparts B, C, D, F, G, H, and L). NBSAC will review these regulations and related comments at its October 2002 meeting.

The *third review stage* includes requirements for operators of recreational vessels (33 CFR parts 95, 100, 173, 174, 175, 177, 181 (subparts A and G), 187 and 46 CFR part 25 (subpart 25.30), and part 58 (subparts 58.03 and 58.10)). NBSAC will review these regulations and related comments at its April 2003 meeting. We will publish a notice in the **Federal Register** announcing the date and time of that public meeting, prior to that meeting.

You may find copies of the boating safety regulations at any public library that carries the United States Code of Federal Regulations. You may buy them from the Superintendent, Government Printing Office, telephone: 202–512–2250; facsimile: 202–512–1800. You may also access them on the Internet at URL address *http://www.gpo.gov/nara/cfr*.

Request for Comments

We encourage interested persons from all sectors of the boating community to participate in this third regulatory review stage by submitting comments and related material regarding any changes to the current boating safety regulations, including elimination or revocation of any requirements. If you submit comments, please include your name and address, identify the docket number for this notice (USCG–2002–12835) and give the reasons for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

We are especially interested in responses to the following questions:

- *Need*—Is there still a need for the regulation? Is the problem that the regulation was originally intended to solve still a problem?
- *Technical Accuracy*—Has the regulation kept pace with the technological, economic, environmental, or other relevant conditions? Would any particular changes make it more effective in achieving its intended goal?
- *Cost/Benefit*—What are the costs, or other burdens or adverse effects, including impacts on use of energy, of the regulation? What are the benefits of the regulation in terms of personal safety or other values? Do the benefits outweigh the costs?
- *Problems*—Are there any problems or complaints in understanding or complying with the regulation?
- *Alternative*—Are there any nonregulatory ways to achieve the goal of the regulation at a lower cost, lower burden, or adverse effect?

We will summarize all comments received in response to this request during the comment period and will provide a copy of the summary and individual comments to the NBSAC members for their consideration before the April 2003 meeting. We will consider all relevant comments in the formulation of any changes to the boating safety regulations that may result from this review stage.

Dated: July 26, 2002.

James C. Olson,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 02–19674 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–091]

RIN 2115–AE47

Drawbridge Operation Regulations; Miami River, Miami-Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of all drawbridges on the Miami River from the mouth of the river to and including the N.W. 27th Avenue bridge, mile 3.7, Miami, Florida, by allowing tugs and tugs with tows to pass through these bridges, except the new Second Avenue bridge, upon proper signal to the bridge tender even during the normal rush hour traffic periods. This proposed rule would also allow the new Second Avenue bridge to only open a single-leaf of the bridge during certain times of the day for approximately seven months. This action is intended to facilitate commercial vessel traffic along the Miami River and facilitate construction of the new Second Avenue bridge.

DATES: Comments and related material must reach the Coast Guard on or before September 5, 2002.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131.

Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–02–091] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Bridge Branch, 909 SE 1st Ave, Miami, FL 33131, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–091], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

We believe a 30-day comment period for this rulemaking is sufficient based on the pre-rulemaking meetings that have taken place between the bridge owner, Florida Department of Transportation (FDOT), their contractor, Gilbert Southern, and both marine and land-based stakeholders that may be impacted by this rule who have been working together to develop an acceptable schedule. Additionally, this 30-day comment period will allow us to publish a final rule in the **Federal Register** before construction begins.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave, Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On July 8, 2002, we received a request from Gilbert Southern, the bridge contractor, requesting permission to keep a single-leaf of the new Second Avenue bridge in the closed position for periods of time during the day to allow them to construct the spans. Gilbert Southern informed the Coast Guard that construction in the upright position was not feasible due to the length of each span. Construction is scheduled to begin in October, 2002, and will require single-span closures during certain periods of time until April, 2003. Gilbert Southern estimates that the horizontal clearance of the bridge with a single-span of the bridge in the closed position will be 70 feet. This proposed rule would allow the Second Avenue bridge to keep a single-span of the bridge in the closed position from 4 a.m. until 10 p.m. from October 15, 2002, until April 30, 2003. One span of the bridge will always open on signal and both spans of the bridge will be open from 10 p.m. until 4 a.m. During the initial construction from October through approximately December only one span of the bridge will exist. Once the first span is complete, it will be placed in the open position while construction on the second leaf is completed.

Gilbert Southern held meetings during June, 2001 and July, 2002, with the Florida Department of Transportation (FDOT) project supervisor and industry representatives to attempt to reach an acceptable schedule for single leaf operations. The contractor has stated that they will attempt to accommodate commercial navigation that cannot clear the approximately 70 feet of horizontal clearance provided by a single-span opening by only working 6 days of the week and they will attempt to adjust their daily construction schedule to allow both spans to remain open during at least one high and low tidal period. Moreover, the contractor only anticipates single-span closures between 8 and 14 hours a day.

This proposed rule would also alleviate some of the burden on commercial vessels requiring a full double-leaf opening and certain tidal conditions to navigate the Miami River by allowing tugs and tugs with tows to pass through the other bridges on the Miami River during the morning and evening rush hour bridge closures from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays. This proposed rule would allow tugs and tugs with tows to navigate the river during favorable tidal and construction conditions by excepting them from the current vehicle rush hour times where the bridges remain closed. Each bridge on the Miami River from the mouth of the River to N.W. 27th Avenue, excluding the new Second Avenue, need open only for public vessels of the United States, tugs and tugs with tows, and vessels in an emergency involving danger to life or property, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

Discussion of Proposed Rule

The Coast Guard proposes to allow the new Second Avenue bridge to keep a single-span of the bridge in the down position from 4 a.m. until 10 p.m. daily from October15, 2002 until April 30, 2003. At all times, one span of the bridge will be open and both spans of the bridge will be open from 10 p.m. until 4 a.m. from October 15, 2002 until April 30, 2003.

Additionally, in order to meet the reasonable needs of commercial navigation while not unreasonably impacting vehicular traffic during the construction of the new Second Avenue bridge, the Coast Guard proposes to allow tugs and tugs with tows to pass

through the Miami River bridges from the mouth of the Miami River to N.W. 27th Avenue, excluding the new Second Avenue bridge, upon proper signal to the bridge tender, even during the normal rush hour closures from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays. These bridges need not open for all other vessels, except public vessels of the United States and vessels in an emergency involving danger to life or property, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because this proposed rule only makes a slight exception the existing bridge operation schedules during heavy vehicle traffic hours for tugs and tugs with tows and still provides for regular openings. Moreover, a single-leaf of the new Second Avenue bridge will remain open 24 hours a day and single-leaf closures will only impede a small segment of the vessel traffic on the Miami River and the contractor intends to work with the commercial vessels to try to have both spans of the bridge open during at least one high and low tide.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels and vehicles intending to transit under and over the bridges on the Miami River during the hours of 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. as well as some waterfront facility owners on the Miami River. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because this proposed rule only makes a slight exception to the existing bridge operation schedules during heavy vehicle traffic hours for tugs and tugs with tows and still provides for regular openings. Moreover, a single-leaf of the new Second Avenue bridge will remain open 24 hours a day and single-leaf closures will only impede a small segment of the vessel traffic on the Miami River and the contractor intends to work with the commercial vessels to try to have both spans of the bridge open during at least one high and low tide.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that my result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 3361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.305 [Suspended]

2. From October 15, 2002 until April 30, 2003, temporarily suspend § 117.305.

3. From October 15, 2002, until April 30, 2003, add a new § 117.T306 to read as follows:

§ 117.T306 Miami River, Florida.

(a) The draws of each bridge from the mouth of the Miami River to and including N.W. 27th Avenue bridge, mile 3.7 at Miami, but excluding the new Second Avenue bridge, mile 0.5, Miami, Florida, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday except Federal holidays, the draws need not open for the passage of vessels. Public vessels of the United States, tugs and tugs with tows, and vessels in an emergency involving danger to life or property shall be passed at any time.

(b) The new Second Avenue bridge, mile 0.5, Miami, Florida, need open only a single-leaf of the bridge from 4 a.m. until 10 p.m. daily; and the bridge will remain in the fully open to navigation position from 10:01 p.m. to 3:59 a.m. daily.

Dated: July 29, 2002.

John E. Crowley, Jr.,

Captain, U.S. Coast Guard, Acting, Commander, Seventh Coast Guard District.

[FR Doc. 02–19847 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–02–020]

RIN 2115–AE47

Drawbridge Operation Regulations; Nanticoke River, Seaford, DE

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the Norfolk Southern Railway Bridge across the Nanticoke River, mile 39.4, in Seaford, Delaware. The proposed rule would allow for increased bridge openings by extending the daytime hours of operation and reducing the required advance notice time for opening the draw. This proposed rule change would reduce delays for navigation by allowing more draw openings.

DATES: Comments and related material must reach the Coast Guard on or before September 5, 2002.

ADDRESSES: You may mail comments and related material to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The Commander (Aowb), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–02–020), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Nanticoke River Bridge is owned and operated by Norfolk Southern Railway. The regulation in 33 CFR 117.243 requires the railroad bridge over the Nanticoke River, mile 39.4, in Seaford, Delaware to open on signal from May 1 through September 30 from 8 a.m. to 8 p.m. but need not be opened from 8 p.m. to 8 a.m. At all times from October 1 through April 30, the draw shall open on signal if at least four hours notice is given.

The bridge connects The Towns of Blades and Seaford. This bridge is part of one of two railways supplying the southern Delmarva Peninsula. Mariners do not have an alternate route. The Town of Blades has requested permission to increase the number of hours the bridge will be open to marine traffic due to the increased navigation on the waterway. The Town of Blades asserts that the present regulation for this bridge is too restrictive for the increased number of mariners. Blades Economic Development Commission (BEDCO) is just completing an 87-slip marina in the Town of Blades, upstream from the bridge. Once the marina is complete, the drawbridge will need to

be opened more frequently to accommodate the increased flow of maritime traffic in this area. As the flow of vessel traffic increases, the current operating schedule of the bridge may cause vessel back-ups and potential hazardous impacts on navigation.

The Town of Blades requested permission to increase the number of hours the bridge will be open for boats to avoid excessive/hazardous vessel back-ups at the bridge. Norfolk Southern Railway and local mariners developed an inter-modal compromise. The plan allows for an extended amount of time that the draw could be open, while not excessively limiting the rail traffic. This compromise will help to decrease the back-up of mariners at the bridge and thus avoid potentially hazardous/dangerous situations. The Coast Guard believes that this proposed rule change is needed and would not overburden marine traffic.

Due to the fact that the proposed rule will increase the number of hours the bridge will open, and the bridge owner has agreed to these changes, we anticipate only positive impacts on the boating community. Therefore, the time for public comment is shortened.

Discussion of Proposed Rule

This proposed rule will govern the opening schedule of the Norfolk Southern drawbridge on the Nanticoke River, Seaford, Delaware. The proposed rule will allow the draw to open more frequently, extend the summer season and the hours of operation. In the proposed rule, the draw will open on signal from 5 a.m. through 11 p.m. from March 15 through November 15. During the night (11 p.m. to 5 a.m.) from March 15 to November 15, the draw will open after 2½ hours notice is given. At all times during the remainder of the year, the draw will open after 2½ hours notice is given.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the fact that this proposed rule change will not overburden marine traffic but actually improve the quality of navigation on the Nanticoke River.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities because the regulation removes current restrictions on navigation by allowing for an increased number of draw openings. In addition, maritime advisories will be widely available to users of the river about all proposed regulations and any potential impacts to navigation.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation

and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The proposed rule only involves the operation of an existing drawbridge and will not have any impact on the environment.

List of Subjects 33 CFR Part 117

Bridges.

For reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.243 is revised to read as follows:

§ 117.243 Nanticoke River.

(a) The draw of the Norfolk Southern Railway bridge across the Nanticoke River, at mile 39.4, at Seaford, Delaware will operate as follows:

(1) From March 15 through November 15 the draw shall open on signal for all vessels except that, from 11 p.m. to 5 a.m. at least 2½ hours notice shall be required.

(2) At all times from November 16 through March 14 the draw will open on signal if at least 2½ hours notice is given.

(b) When notice is required, the owner operator of the vessel must provide the bridge tender with an estimated time of passage by calling 717–541–2151/2140.

Dated: July 25, 2002.

Arthur E. Brooks,

Captain, U.S. Coast Guard Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–19846 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–007]

RIN 2115–AA97

Regulated Navigation Area, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking, withdrawal.

SUMMARY: The Coast Guard is withdrawing the Notice of Proposed Rulemaking (NPRM) which proposed to decrease the safety zone ahead of loaded Liquefied Natural Gas Carrier (LNGC) vessels found at 33 CFR 165.110. In light of the terrorist attacks in New York City and Washington, DC on September 11, 2001, safety and security zones are being established to safeguard the LNGC vessels and LNG facilities in the Captain of the Port Boston, MA zone that conflict with this NPRM and thus necessitate its withdrawal.

DATES: The NPRM proposing to amend 33 CFR 165.110 that was published on May 2, 2000 (65 FR 25458) is withdrawn as of August 6, 2002.

ADDRESSES: Comments and related material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket CGD01–00–007 and are available for copying or inspection at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3030.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 2, 2000 we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area, Boston, MA" in the **Federal Register** (65 FR 25458). We received no comments on the proposed rule. No public hearing was requested and none was held. No final rule was published.

The NPRM proposed to change 33 CFR 165.110(a)(1) by removing the words "two miles" and replace them with the words "one mile", effectively reducing the size of the safety zone described therein. At this time this reduction was intended to reduce burdens imposed on commercial and recreational mariners by the safety zone.

Withdrawal

In light of the terrorist attacks in New York City and Washington, DC on September 11, 2001, the Captain of the Port Boston, MA has had to reconsider this NPRM. In a post-September 11, 2001 security assessment it was determined that LNGC vessels represent a potential terrorist target. As a result, safety and security zones are being established to increase protective measures around LNGC vessels while in transit, at anchor, and moored at a transfer facility in the COTP Boston, MA zone. These proposed increased measures are intended to protect LNGC vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature. These safety and security zones have been proposed in an NPRM [Docket # CGD01–02–023] published July 26, 2002 (67 FR 48834). Since the proposal to reduce the size of the safety zone around LNGC vessels in transit published May 2, 2000, at 65 FR 25458, is in conflict with the July 26, 2002 NPRM, which increases protective measures in response to new potential threats, the May 2, 2000 NPRM must be withdrawn.

Dated: July 26, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–19850 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA242–0334; FRL–7255–9]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from aerospace manufacturing and rework coating operations. We are proposing action on ICAPCD Rule 425; a rule regulating these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATE: Any comments must arrive by September 5, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
ICAPCD	425	Aerospace Coating Operations	09/14/99	05/26/00

On October 6, 2000, EPA found that the Rule 425 submittal met the completeness criteria in 40 CFR Part 51 Appendix V. These criteria must be met before formal EPA review begins.

B. Are There Other Versions of This Rule?

There are no previous versions of Rule 425 in the SIP.

C. What is the Purpose of the Submitted Rule?

Imperial County Air Pollution Control District Rule 425, Aerospace Coating Operations, is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in coating airplanes, space craft and their component parts. VOCs are emitted during the preparation and coating of the parts, as well as the drying phase of the coating process. Rule 425 establishes general emission limits in units of grams of Reactive Organic Compound (ROC) per litre (gr/l) of coating, less water and exempt compounds as applied. It also allows for the use of add-on emission controls whose combined capture and control efficiency must be 85.5 percent or better and specifies certain operating equipment. The rule also contains provisions for appropriate methods of analysis, exemptions, and record keeping. Rule 425 includes the following provisions:

1. applicability of and exemptions from the rule;
2. emission reduction requirements and prohibitions of the rule;
3. record keeping to demonstrate compliance with the rule; and,
4. test methods for determining compliance with the rule.

The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rule?

Imperial County is classified as a transitional area for ozone (*see* section 185(A) of the Act). In general, SIP rules in transitional areas must be enforceable (*see* section 110(a) of the Act), must not interfere with any applicable requirement concerning attainment and reasonable further progress (*see* section 110(l)), and must not relax existing requirements (*see* section 193).

Guidance and policy documents that we used to define enforceability and other requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations: Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498, April 16, 1992.
4. "Control of Volatile Organic Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations," USEPA, 1997, EPA–453/R–97–004.

B. Does the rule meet the evaluation criteria?

Rule 425 improves the SIP by establishing VOC emissions limitations for certain sources in Imperial County that are not otherwise covered by a SIP rule. Such limitations reduce emissions of a precursor of a pollutant (ozone) for which the county was designated "transitional" nonattainment under the Act and for which the county continues to experience NAAQS exceedances. Transitional areas (*see* section 185A of the Act) must ensure, at a minimum, that any deficiencies regarding

enforceability of an existing rule implementing Reasonably Available Control Technology (RACT) (*i.e.*, pre-CAAA enactment RACT rule) are corrected. Transitional areas were exempt from all subpart 2 requirements (of part D, title I of the Act) until December 31, 1991, and this exemption continues until we redesignate the area as attainment or designate the area as nonattainment under section 107(d)(4) of the Act. *See* 57 FR 13498, 13523–13527 (April 16, 1992).

In 1992, EPA determined that Imperial County had not violated the ozone NAAQS from January 1, 1987 through December 31, 1991. (*See* letter from Daniel McGovern, Regional Administrator, U.S. EPA—Region 9, to James Boyd, Executive Director, CARB, dated August 3, 1992.) Our 1992 determination does not constitute a redesignation to attainment, and Imperial County has never been redesignated as an ozone attainment area under section 107(d)(3), nor has it been designated as nonattainment under section 107(d)(4) in light of post-1991 ozone NAAQS violations. Therefore, only the general requirement to correct deficiencies in enforceability of pre-1990 RACT rules applies for ozone planning purposes within Imperial County. Also, ICAPCD rule 425 would not supercede any existing SIP rule; thus, the requirement to correct deficiencies in enforceability in pre-1990 RACT rules does not apply.

However, ICAPCD Rule 425 does contain enforceability deficiencies that preclude our full approval of the rule. However, if finalized, our proposed limited disapproval action would not trigger a sanctions timeclock under Section 179 because the rule does not represent a required submittal under the Act.

Section 110(l) of the Act prohibits EPA from approving any revision of a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. In nonattainment areas, our evaluation extends beyond the issue of whether the submitted SIP revision is as stringent as the existing SIP provision that it would supercede and considers the submitted SIP revision in light of current ambient air quality and nonattainment planing requirements within the applicable nonattainment area. *See Hall v. EPA, 263 F.3d 926 (9th Cir.), amended 273 F.3d 1146 (2001).*

Based on ozone monitoring data in EPA's AIRS database, exceedances of the one-hour ozone NAAQS have been recorded each year since 1991 in Imperial County. However, the issue of classifying Imperial County under subpart B (of part D, title I of the Act) is complicated by its location next to a heavily populated area within Mexico. The population of the entire county is approximately 140,000; far less than the single Mexican city of Mexicali (approximately 660,000), which lies immediately across the border from the Imperial County city of Calexico. Given this situation, we have not determined, under section 185A of the Act, whether or not Imperial County attained the ozone NAAQS by December 31, 1991. Consequently, the planning requirements for Imperial County have not been determined. Also, while the State has not provided a demonstration under section 179B of the Act that Imperial County would have attained the standard by December 31, 1991 but for emissions emanating from outside the United States, we are aware of a CARB study showing that under certain circumstances, Mexicali's emissions do overwhelmingly impact air quality in Calexico. See California Air Resources Board, *Ozone Transport: 2001 Review*, April 2001.

Given the difficulty of establishing the root cause of historic and continuing ozone NAAQS exceedances in Imperial County and the ensuing uncertainty with respect to future ozone planning requirements, we have concluded that approval of ICAPCD Rule 425 will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act; thus, it will comply with section 110(l). With the proposed approval, we recognize that the VOC emissions limitations and the enforceability provisions in this rule could conceivably be revisited if we were to classify the area under subpart 2 or require preparation of a maintenance plan.

Section 193 of the Act prohibits modifications to pre-1990 SIP control requirements in any nonattainment area for any nonattainment pollutant unless such modification insures equivalent or greater emission reductions of such air pollutant. ICAPCD Rule 425 would not replace pre-1990 SIP control requirements because EPA has not approved a previous version of this rule into the SIP. Consequently, Section 193 does not apply to our proposed action.

C. What Are the Rule's Deficiencies?

The provisions listed below conflict with section 110 and part D of the Act and prevent full approval of the SIP revision. There are two cases of unlimited "director's discretion" that are deficiencies under EPA's review criteria.

1. Paragraph A.3.c contains "director's discretion" in providing a specialty coatings exemption from the requirements of the rule.

2. Paragraph C.4 contains "director's discretion" in providing for an "alternative recordkeeping plan" as a means to meet the rule's recordkeeping provisions.

These "director's discretion" provisions allow for a variance from SIP requirements, which is not allowed under section 110(i) of the Act and the requirement that SIP provisions may only be modified by SIP revisions approved by EPA.

D. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). No Section 179 sanctions are associated with this disapproval action. Given Imperial County's classification as a transitional area, this submittal is not required under the CAA. Sanction clocks are not started for a disapproval of a submittal not mandated by the CAA. Note that the submitted rule has been adopted by the ICAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires each State to adopt and submit to EPA a plan which provides for implementation, maintenance and enforcement of the NAAQS. With respect to the ozone NAAQS, each State is required to submit regulations that control

emissions of ozone precursors, including VOC, along with other requirements. Table 2 lists some of the national milestones leading to the submittal of this local agency VOC rule.

TABLE 2—OZONE NONATTAINMENT MILESTONES

Date	Event
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
April 16, 1992	EPA publishes "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498), which provides EPA's interpretation of the requirements under the Act for transitional (ozone) nonattainment areas.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility

analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 16, 2002.

Keith Takata,

Associate Regional Administrator, Region IX.

[FR Doc. 02–19794 Filed 8–5–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1620, MB Docket No. 10463, RM–10463]

Radio Broadcasting Services; Balmorhea, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 283C at Balmorhea, Texas, as that community's first local FM service. The coordinates for Channel 283C at Balmorhea are 31–08–42 and 103–36–54. There is a site restriction 21.7 kilometers (13.5 miles) northeast of the community. Since Balmorhea is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment at Balmorhea.

DATES: Comments must be filed on or before September 9, 2002, and reply comments on or before September 24, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda Crawford, 3500 Maple Avenue, #1320, Dallas, Texas 75219.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–185, adopted July 3, 2002 and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Balmorhea, Channel 283C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19731 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1730, MB Docket No. 02–192, RM–10507]

Radio Broadcasting Services; Albany, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lutterloh Community Broadcasters proposing the allotment of Channel 233A at Albany, Vermont, as that community's first local broadcast service. The coordinates for Channel 233A at Albany are 44–45–26 and 72–

20–09. There is a site restriction 4.6 kilometers (2.8 miles) northeast of the community. Canadian concurrence will be requested for the allotment of Channel 233A at Albany as a specially negotiated short-spaced allotment.

DATES: Comments must be filed on or before September 9, 2002, and reply comments on or before September 24, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jerrold Miller, Miller & Miller, P.C., P. O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–192, adopted July 10, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by adding Albany, Channel 233A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19732 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1650, MB Docket No. 02–188, RM–10462]

Radio Broadcasting Services; Encinal, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 273A at Encinal, Texas, as that community's first local FM service. The coordinates for Channel 273A at Encinal are 28–06–40 and 99–27–15. There is a site restriction 12.5 kilometers (7.8 miles) northwest of the community. Since Encinal is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment at Encinal.

DATES: Comments must be filed on or before September 9, 2002, and reply comments on or before September 24, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda Crawford, 3500 Maple Avenue, #1320, Dallas, Texas 75219.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–188, adopted July 3, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Encinal, Channel 273A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19734 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1621; MB Docket No. 02–186; RM–10494]

Radio Broadcasting Services; Los Banos and Planada, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of Buckley Communications, Inc., licensee of FM Station KHTN, Channel 284B, Los

Banos, California, requesting the reallotment of Channel 284B to Planada, California, as that community's first local aural transmission service, and modification of its authorization accordingly. The petitioner's modification proposal complies with the provisions of Section 1.420(i) of the Commission's Rules and therefore, we will not accept competing expressions of interest in the use of Channel 284B at Planada, or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates used for Channel 284B at Planada are those of the petitioner's currently authorized transmitter site at 37–11–29 NL and 120–32–03 WL.

DATES: Comments must be filed on or before September 9, 2002, and reply comments on or before September 24, 2002.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Martin R. Leader, David D. Oxenford and Colette M. Capretz, Esqs., Law Offices of Shaw Pittman, 2300 N Street, NW., Washington, DC 20037–1128.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–186, adopted July 3, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 284B at Los Banos, and by adding Planada, Channel 284B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19744 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1729; MM Docket No. 01–296; RM–10299]

Radio Broadcasting Services; Roscommon, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document dismisses a petition for rulemaking filed by Charles Crawford requesting the allotment of Channel 246A at Roscommon, Michigan. *See* 66 FR 54191, October 26, 2001. Charles Crawford withdrew his interest in the allotment of Channel 246A at Roscommon, Michigan. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–296, adopted July 10, 2002, and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19742 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 67, No. 151
Tuesday, August 6, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Chapter I

Grain Inspection, Packers and Stockyards Administration

7 CFR Chapter VIII

Facilitating the Marketing of U.S. Agricultural Products With New Testing and Process Verification Services

AGENCY: Agricultural Marketing Service; Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: In response to market needs, the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) and Grain Inspection, Packers and Stockyards Administration (GIPSA) have developed and are planning to develop additional voluntary testing and process verification programs to facilitate the marketing of agricultural products.

FOR FURTHER INFORMATION CONTACT: Marianne Plaus, Chief, Market Analysis and Standards Branch, Federal Grain Inspection Service, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1641–S, Washington, DC 20250–3630; e-mail: *Marianne.Plaus@usda.gov;* tel: 202–690–3460; fax: 202–720–1015.

SUPPLEMENTARY INFORMATION: The marketing structure of the U.S. food and feed industry is undergoing significant change as it moves from a supply-driven to a consumer-driven market. The emergence of value-enhanced commodities and a niche market for non-biotechnology-derived commodities have created a greater need to differentiate products in the handling system. In light of these changes, USDA sought public comment, through an Advance Notice of Proposed Rulemaking (ANPR), on how USDA can best foster the marketing of grains, oilseeds, and other commodities in this evolving marketplace. The ANPR, which USDA's GIPSA and AMS published on November 30, 2000, in the **Federal Register** (65 FR 71272), closed on April 16, 2001. As a result of that ANPR, many respondents expressed a clear need for USDA to facilitate the marketing of products, not through the traditional grades and standards, but through the exchange of information and services concerning analytical testing and various marketing mechanisms, such as identity preservation and process verification. In response to market needs, USDA's AMS and GIPSA have begun to provide and are planning to develop a variety of programs and services to facilitate the marketing of agricultural products, as discussed below.

Standardizing Testing Methodology

The rising importance of value-enhanced products with specific quality attributes and the emergence of a non-biotech niche market have created a need in the marketplace for additional testing and standardization procedures. USDA's experience in providing testing, weighing, and inspection services provides a strong foundation to enhance the accuracy, standardization, and availability of tests for new value-enhanced products. To this end, USDA's AMS and GIPSA have begun to provide a variety of programs and services to meet market needs.

Sampling Guidelines

Recognizing that sampling is the single largest source of error in the analysis of grains, GIPSA developed and offered sampling guidelines to the grain-handling industry. As industry interest develops, AMS will provide a similar service for seed, fruit, and vegetable markets.

Proficiency Programs

At the Agency's Technical Center in Kansas City, Missouri, GIPSA conducted a Proficiency Study to assess the capability and reliability of DNA-based testing for U.S. commercialized biotechnology events in corn. This study provided evidence of a need for standardization and quality assurance tools in biotechnology analysis. On February 7, 2002, GIPSA began offering a voluntary Proficiency Program for organizations testing for biotechnology-derived grains and oilseeds to help improve the reliability of testing. As industry interest develops, AMS will provide a similar service for seed, fruit, and vegetable markets.

Rapid Test Performance Evaluation Programs

At GIPSA's Technical Center, the Agency also evaluates the performance of rapid tests developed to detect biotechnology-derived grains and oilseeds, and confirms the tests operate in accordance with manufacturers' claims. As industry interest develops, AMS will provide a similar service for seed, fruit, and vegetable markets at its laboratory facility in Gastonia, North Carolina.

Testing Services

AMS and GIPSA intend to provide voluntary testing services using rapid test kits and other testing technology whose performance the Agencies have verified.

Methods Development

AMS and GIPSA continue to develop methods and evaluate commercial test instrumentation to measure end-use value attributes that are meaningful to the marketplace. Examples of such attributes include oil concentration in soybeans and corn and protein concentration in wheat and soybeans.

USDA will continue to monitor market trends and needs and will continue to expand its testing and standardization programs in response to market need. If new regulations are necessary, USDA will propose them when appropriate. At this time, USDA is not proposing any rulemaking or regulatory actions.

Process Verification

Many of the ANPR respondents also described a wide variety of differing identity preservation and marketing systems used in the private sector. Given the growing importance of these marketing systems as more value-enhanced grains enter the commercial market and the non-biotech niche market continues, USDA is exploring options for expanding its process verification programs to include seeds and bulk commodities such as grains and oilseeds. USDA's experience in providing voluntary, audit-based programs for fruits, vegetables, and

livestock products provides a strong foundation upon which to expand.

Voluntary Market-Based Process Verification Program for Seeds

Under the authority of the Agricultural Marketing Act of 1946, 7 U.S.C. 1621–1627, USDA's AMS anticipates that it will propose a voluntary, audit-based system of process verification for the production and labeling of seed. This program would be based on existing seed certification (or equivalent) standards and procedures, and existing AMS process verification programs, with additional quality assurance criteria as needed to substantiate label claims regarding seed quality, including genetic purity. This program will be based on market need and is expected to be of particular benefit to participants who intend to market seeds that have regulatory restrictions or concerns with transgenic event(s) that have been deregulated and commercialized in the United States but not in certain other markets.

Under this program, AMS would verify that minimum criteria for seed production and handling have been followed, thus providing a reasonable assurance that claims regarding seed quality and genetic purity are truthful. AMS will use auditing documentation and onsite monitoring in the process verification program for seeds. AMS will certify that the seed lots produced under this program have met established quality assurance criteria. A statement could be included on a seed label to the effect that USDA-approved quality assurance procedures have been followed. Seed buyers will be assured that appropriate production and handling practices were followed to ensure the accuracy of seed quality claims.

Further, minimum seed certification standards and procedures, as well as labeling requirements, are published in the Federal Seed Act regulations (7 CFR 201). The Federal Seed Act, 7 U.S.C. 1592 *et seq.*, is a truth-in-labeling law that applies to agricultural and vegetable seed in interstate commerce. In addition to labeling requirements of the Federal Seed Act, additional information is allowed on the seed label, provided the claims are truthful. Additional label claims could include information pertaining to identity preservation of the seed lot, specific claims regarding genetic purity or maximum level of occurrence of transgenic material. Under the Federal Seed Act, techniques similar to those under the prospective 1946 Act program, could be used to support any additional claims.

Voluntary Market-Based Process Verification Program for Agricultural Commodities

Under the authority of the Agricultural Marketing Act of 1946, USDA's GIPSA anticipates that it will propose a voluntary, audit-based system of process verification for grains, oilseeds, rice, pulses, and products derived from these products. The proposed system will involve defining minimum requirements for process-based programs to provide assurances through third party process verification services. This program will be based on internationally-recognized quality management system standards. The program will verify existing quality system plans developed by the private sector. It will be flexible enough to incorporate, where appropriate, already existing standards and procedures such as those developed by private organizations. At the same time, the program will have sufficient safeguards to ensure the integrity of its results. This program will be based on market need and is expected to be of particular benefic to participants who intend to market commodities with specific end-use attributes or that have regulatory restrictions or concerns with transgenic event(s) that have been deregulated and commercialized in the United States but not in certain other markets.

Under this prospective program, GIPSA would verify that minimum requirements for commodity production, handling, and processing have been followed. GIPSA will verify compliance with the requirements by reviewing required process documentation plans and auditing the performance adherence to the prescribed plan to ensure the plan is followed. GIPSA will certify as to the market partipants' adherence to their processes, when applicable.

GIPSA and AMS plan to propose process verification service programs in the **Federal Register** in the near future.

Authority: 7 U.S.C. 71 *et seq.* and 7 U.S.C. 1621 *et seq.*

Dated: July 31, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–19668 Filed 8–5–02; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of the Land and Resource Management Plan for the Tonto National Forest located in Gila, Maricopa, Pinal and Yavapai Counties, AZ

AGENCY: Forest Service, USDA.

ACTION: Cancellation Notice.

SUMMARY: On September 30, 1999, a Notice of Intent (NOI) to prepare an environmental impact statement of the revision of the Land and Management Plan for the Tonto National forest was published in the **Federal Register** (64 FR 52765–52766). This 1999 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Eddie Alford, Planning Group Leader or Paul Stewart, Acting Team Leader, Tonto National Forest, 2324 E. McDowell Road, Phoenix, AZ 85006, telephone (602) 225–5200.

SUPPLEMENTARY INFORMATION: On November 30, 2001 (66 FR 59775–59777), the Chief of the Forest Service, as required by the Land and Resource Management Planning Rule adopted in November 2000, published in plan revision schedule for National Forest System units that have not completed revisions of their plans. This notice set out the schedule for revisions and an explanation of some of the factors that affected scheduling decisions. This schedule indicates a revision initiation date for the Tonto National Forest of 2005. A new notice of intent to revise will be published with the initiation of the plan revision process.

Dated: July 16, 2002.

Lucia M. Turner,

Regional Forester.

[FR Doc. 02–19451 Filed 8–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on August 5, 2002, at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to receive and review final project proposal submissions for 2002 funds.

DATES: The meeting will be held August 5, 2002, from 12:00 p.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370, (209) 532–3671; e-mail *pkaunert@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Continue project proposal review from July 15 meeting; (2) Committee members interview project proponents regarding project specifies (3) Finalize project selection criteria for 2002 funds; (4) Public Comments; (5) Discuss purpose of upcoming August 12, 2002 meeting. This meeting is open to the public.

Dated: July 18, 2002.

Glenn Gottschall,

Acting Forest Supervisor.

[FR Doc. 02–19787 Filed 8–5–02; 8:45 am]

BILLING CODE 3410–EO–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on August 12, 2002, at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to receive and review final project proposal submissions for 2002 funds.

DATES: The meeting will be held August 12, 2002, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370, (209) 532–3671; E-mail *pkaunert@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Continue project proposal review focusing on final clarification; (2) Determine agreement on top projects (3) Public comments; (4) Take final vote on projects to recommend for funding; (5) Discuss purpose of upcoming August 19, 2002 meeting. This meeting is open to the public.

Dated: July 22, 2002.

Glenn Gottschall,

Acting Forest Supervisor.

[FR Doc. 02–19788 Filed 8–5–02; 8:45 am]

BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on August 19, 2002, at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to receive and review final project proposal submissions for 2002 funds.

DATES: The meeting will be held August 19, 2002, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370, (209) 532–3671; EMAIL *pkaunert@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Take final vote on any remaining projects to recommend for funding; (2) Public comments; (3) Discuss purpose of upcoming September 9, 2002 meeting. This meeting is open to the public.

Dated: July 22, 2002.

Glenn Gottschall,

Acting Forest Supervisor.

[FR Doc. 02–19789 Filed 8–5–02; 8:45 am]

BILLING CODE 3410–ED–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the Arizona Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 3 p.m. on August 23, 2002, at the Radisson Hotel City Center, 181 W. Broadway, Tucson, Arizona 85701. The purpose of the planning meeting with briefing is to hold new member orientation and discuss the United States-Mexico border crossing fatalities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–19778 Filed 8–5–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the Florida Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, August 29, 2002, at the Omni Hotel Jacksonville, 245 Waters Street, Jacksonville, Florida 32202. The purpose of the planning meeting with briefing is to: (1) Provide new member orientation, (2) be briefed by the mayor and the staff of Jacksonville on city contracts, and (3) be briefed by the Clay County officials on the incarceration of immigrants.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–19777 Filed 8–5–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[I.D. 080102B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Survey of Intent and Capacity to Process Fish and Shellfish.

Form Number(s): None.

OMB Approval Number: 0648–0235.

Type of Request: Regular submission.

Burden Hours: 8.

Number of Respondents: 30.

Average Hours Per Response: 15 minutes.

Needs and Uses: The Fishery Management Plans for Atlantic Mackerel, Squid, and Butterfish include requirements that the National Marine Fisheries Service and/or the Mid-Atlantic Fishery Management Council annually survey domestic processors and joint venture operators to establish industry capacity to utilize the managed species. If US industry is unable to utilize fully the allowed harvest of these species, this information is used in establishing suitable levels of catch for joint ventures and/or direct foreign harvest.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 30, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–19817 Filed 8–5–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 080102A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: U.S. Fishermen Fishing in Russian Waters.

Form Number(s): None.

OMB Approval Number: 0648–0228.

Type of Request: Regular submission.

Burden Hours: 1.

Number of Respondents: 1.

Average Hours Per Response: 30 minutes.

Needs and Uses: U.S. fishermen who wish to fish in the Russian Federation Economic Zone may apply for a Russian permit by submitting application information to the National Marine Fisheries Service for transmittal to Russian authorities. Permit holders must provide information regarding their permits and must report when entering or leaving the U.S. Exclusive Economic Zone.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 30, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–19818 Filed 8–5–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2001) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of August 2002, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period to be reviewed
Antidumping Duty Proceeding	
Argentina:	
Oil Country Tubular Goods, A–357–810	8/1/01–7/31/02
Seamless Line and Pressure Pipe, A–357–809	8/1/01–7/31/02
Australia: Corrosion-Resistant Carbon Steel Flat Products, A–602–803	8/1/01–7/31/02
Belgium: Cut-to-Length Carbon Steel Plate, A–423–805	8/1/01–7/31/02

	Period to be reviewed
Brazil:	
Cut-to-Length Carbon Steel Plate, A–351–817	8/1/01–7/31/02
Seamless Line and Pressure Pipe, A–351–826	8/1/01–7/31/02
Canada:	
Corrosion-Resistant Carbon Steel Flat Products, A–122–822	8/1/01–7/31/02
Pure Magnesium, A–122–814	8/1/01–7/31/02
Czech Republic: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–851–802	8/1/01–7/31/02
Finland: Cut-to-Length Carbon Steel Plate, A–405–802	8/1/01–7/31/02
France:	
Corrosion-Resistant Carbon Steel Flat Products, A–427–808	8/1/01–7/31/02
Industrial Nitrocellulose, A–427–009	8/1/01–7/31/02
Germany:	
Corrosion-Resistant Carbon Steel Flat Products, A–428–815	8/1/01–7/31/02
Cut-to-Length Carbon Steel Plate, A–428–816	8/1/01–7/31/02
Seamless Line and Pressure Pipe, A–428–820	8/1/01–7/31/02
Italy:	
Grain Oriented Electrical Steel, A–475–811	8/1/01–7/31/02
Oil Country Tubular Goods, A–475–816	8/1/01–7/31/02
Granular Polytetrafluoroethylene Resin, A–475–703	8/1/01–7/31/02
Japan:	
Brass Sheet & Strip, A–588–704	8/1/01–7/31/02
Corrosion-Resistant Carbon Steel Flat Products, A–588–824	8/1/01–7/31/02
Oil Country Tubular Goods, A–588–835	8/1/01–7/31/02
Granular Polytetrafluoroethylene Resin, A–588–707	8/1/01–7/31/02
Tin Mill Products, A–588–854	8/1/01–7/31/02
Mexico:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches), A–201–827	8/1/01–7/31/02
Gray Portland Cement and Cement Clinker, A–201–802	8/1/01–7/31/02
Cut-to-Length Carbon Steel Plate, A–201–809	8/1/01–7/31/02
Oil Country Tubular Goods, A–201–817	8/1/01–7/31/02
Poland: Cut-to-Length Carbon Steel Plate, A–455–802	8/1/01–7/31/02
Republic of Korea:	
Corrosion-Resistant Carbon Steel Flat Products, A–580–816	8/1/01–7/31/02
Oil Country Tubular Goods, A–580–825	8/1/01–7/31/02
Structural Steel Beams, A–580–841	8/1/01–7/31/02
Romania:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–485–805	8/1/01–7/31/02
Cut-to-Length Carbon Steel Plate, A–485–803	8/1/01–7/31/02
Spain: Cut-to-Length Carbon Steel Plate, A–469–803	8/1/01–7/31/02
Sweden: Cut-to-Length Carbon Steel Plate, A–401–805	8/1/01–7/31/02
The People's Republic of China:	
Petroleum Wax Candles, A–570–504	8/1/01–7/31/02
Sulfanilic Acid, A–570–815	8/1/01–7/31/02
The United Kingdom: Cut-to-Length Carbon Steel Plate, A–412–814	8/1/01–7/31/02
Turkey: Aspirin, A–489–602	8/1/01–7/31/02
Countervailing Duty Proceedings	
Belgium: Cut-to-Length Carbon Steel Plate, C–423–806	1/1/01–12/31/01
Brazil: Cut-to-Length Carbon Steel Plate, C–351–818	1/1/01–12/31/01
Canada:	
Pure Magnesium, C–122–815	1/1/01–12/31/01
Alloy Magnesium, C–122–815	1/1/01–12/31/01
France:	
Corrosion-Resistant Carbon Steel Flat Products, C–427–810	1/1/01–12/31/01
Stainless Steel Sheet and Strip in Coils, C–427–815	1/1/01–12/31/01
Germany:	
Corrosion-Resistant Carbon Steel Flat Products, C–428–817	1/1/01–12/31/01
Cut-to-Length Carbon Steel Plate, C–428–817	1/1/01–12/31/01
Italy:	
Oil Country Tubular Goods, C–475–817	1/1/01–12/31/01
Stainless Steel Sheet and Strip in Coils, C–425–825	1/1/01–12/31/01
Mexico: Cut-to-Length Carbon Steel Plate, C–201–810	1/1/01–12/31/01
Republic of Korea:	
Corrosion-Resistant Carbon Steel Plate, C–580–818	1/1/01–12/31/01
Stainless Steel Sheet and Strip in Coils, C–580–835	1/1/01–12/31/01
Structural Steel Beams, C–580–841	1/1/01–12/31/01
Spain: Cut-to-Length Carbon Steel Plate, C–469–804	1/1/01–12/31/01
Sweden: Cut-to-Length Carbon Steel Plate, C–401–804	1/1/01–12/31/01
United Kingdom: Cut-to-Length Carbon Steel Plate, C–412–815	1/1/01–12/31/01

Suspension Agreements

None.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/ Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of August 2002. If the Department does not receive, by the last day of August 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 30, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–19823 Filed 8–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Fresh Tomatoes From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of suspension agreement, termination of sunset review, and resumption of antidumping investigation: Fresh Tomatoes from Mexico.

EFFECTIVE DATE: July 30, 2002

SUMMARY: On May 31, 2002, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of Commerce of their withdrawal from the agreement suspending the antidumping investigation on fresh tomatoes from Mexico. Because the suspension agreement no longer covers substantially all imports of fresh tomatoes from Mexico, the Department of Commerce hereby terminates the suspension agreement, terminates the sunset review of the suspended investigation, and resumes the antidumping investigation.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Mark Ross at (202) 482–5760 or (202) 482–4794, respectively; Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 353 (1996).

Background

On April 18, 1996, the Department initiated an antidumping investigation to determine whether imports of fresh tomatoes from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV) (61 FR 18377, April 25, 1996). On May 16, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination.

On October 10, 1996, the Department and Mexican tomato growers/exporters initialed a proposed agreement suspending the antidumping investigation, and on October 28, 1996, the Department preliminarily determined that imports of fresh tomatoes from Mexico are being sold at LTFV in the United States. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes from Mexico*, 61 FR 56607 (November 1, 1996) (*Preliminary Determination*). On the same day the *Preliminary Determination* was signed, the Department and certain growers/ exporters of fresh tomatoes from Mexico signed the final suspension agreement. See *Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico*, 61 FR 56618 (November 1, 1996).

On May 31, 2002, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico submitted to the Department a notice of their withdrawal from the agreement suspending the antidumping investigation on fresh tomatoes from Mexico. Because the suspension agreement would no longer cover substantially all imports of fresh tomatoes from Mexico when the withdrawals became effective, on June 19, 2002, the Department issued a notice of intent to terminate the suspension agreement, intent to terminate the five-year sunset review of the suspended investigation, and intent to resume the antidumping investigation. The Department also invited interested parties to submit comments on whether it should use updated information to complete the antidumping investigation. See *Notice of Intent to Terminate Suspension Agreement, Intent to Terminate the Five-Year Sunset Review, Intent to Resume Antidumping Investigation, and Request for Comments on the Use of Updated Information*, 67 FR 43278 (June 27, 2002).

Interested parties filed comments and rebuttal comments on the use of

updated information. Upon consideration of these comments, we have determined that, for completion of this particular investigation, we will use the original information submitted by the original respondents for the original period of investigation. See July 30, 2002, memorandum entitled "Resumed Antidumping Investigation on Fresh Tomatoes from Mexico; Respondent Selection and Period of Investigation.

On July 3, 2002, the California Tomato Commission filed letters of accession from twenty-four Baja California growers/exporters of fresh tomatoes, asserting that these growers/exporters represent new signatories and, when added to the existing Baja California signatories, represent 94.8 percent of exports of fresh tomatoes from Baja California to the United States. The California Tomato Commission suggested that, with the accession of these Baja California growers/exporters, the Department should reevaluate participation in the suspension agreement and determine whether it now covers substantially all imports of fresh tomatoes from Mexico.

Scope of the Investigation

The products covered by this investigation are all fresh or chilled tomatoes (fresh tomatoes) except for cocktail tomatoes and those tomatoes which are for processing. For purposes of this investigation, cocktail tomatoes are greenhouse-grown tomatoes, generally larger than cherry tomatoes and smaller than Roma or common round tomatoes, and are harvested and packaged on-the-vine for retail sale. For purposes of this investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying or the addition of chemical substances, or converting the tomato product into juices, sauces or purees. Further, imports of fresh tomatoes for processing are accompanied by an "Importer's Exempt Commodity Form" (FV–6) (within the meaning of 7 CFR 980.501(a)(2) and 980.212(l)). Fresh tomatoes that are imported for cutting up, not further processed (*e.g.*, tomatoes used in the preparation of fresh salsa or salad bars), and not accompanied by an FV–6 form are covered by the scope of this investigation.

All commercially grown tomatoes sold in the United States, both for the fresh market and for processing, are classified as Lycopersicon esculentum. Important commercial varieties of fresh tomatoes include common round, cherry, plum, and pear tomatoes, all of which, with the exception of cocktail tomatoes, are covered by this investigation. Tomatoes imported from Mexico covered by this investigation are classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702 and 9906.07.01 through 9906.07.09. Although the HTSUS numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is March 1, 1995, through February 29, 1996.

Termination of Suspension Agreement

The agreement suspending the antidumping investigation on fresh tomatoes from Mexico is an agreement to eliminate injury under section 734(c) of the Act. Under this type of suspension agreement the Department may suspend an investigation based upon an agreement with exporters accounting for substantially all of the imports of the subject merchandise. The regulations in turn define "substantially all" as exporters (growers and resellers) which have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring dumping in the investigation or such other period that the Secretary considers representative. See 19 CFR 353.18(c).

On May 31, 2002, signatory growers/exporters accounting for a large percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the agreement suspending the antidumping investigation on fresh tomatoes from Mexico. Pursuant to the terms of the suspension agreement, signatory growers/exporters may withdraw from the agreement upon 60 days written notice to the Department. Therefore, these withdrawals from the suspension agreement become effective on July 30, 2002.

On July 3, 2002, the California Tomato Commission filed letters of accession from twenty-four Baja California growers/exporters of fresh tomatoes, asserting that these companies represent new signatories and, when added to the existing Baja California signatories, represent 94.8 percent of the Baja California fresh tomatoes imported into the United States during 2001. With the accession of these Baja California growers/exporters, the California Tomato Commission suggests that the Department reevaluate participation in the suspension agreement and determine whether the suspension agreement covers substantially all imports of fresh tomatoes from Mexico.

To ensure that termination of this suspension agreement is not premature, we have reevaluated participation in the suspension agreement as of July 30, 2002, the date on which the May 31, 2002, withdrawals become effective. Based on our analysis of import data from the U.S. Customs Service (Customs) and given the large percentage of imports which these growers/exporters represent, the signatories remaining in the agreement will not account for substantially all of the imports of the subject merchandise after these withdrawals become effective. See July 30, 2002, memorandum entitled "Analysis of Whether Signatories Account for Substantially All Imports."

Because the suspension agreement does not cover substantially all imports of fresh tomatoes from Mexico without the participation of the growers/exporters which provided notice of their withdrawal on May 31, 2002, the Department determines that terminating the suspension agreement effective July 30, 2002, is appropriate.

End of the Five-Year Sunset Review

On October 1, 2001, the Department initiated a five-year sunset review of the suspended antidumping investigation on fresh tomatoes from Mexico pursuant to section 751(c) of the Act (66 FR 49926, October 1, 2001). On January 29, 2002, the Department published its preliminary results of the sunset review (67 FR 4237) (*Preliminary Results*). In the *Preliminary Results*, the Department preliminarily found that termination of the suspended antidumping duty investigation on fresh tomatoes from Mexico would be likely to lead to the continuation or recurrence of dumping. On May 13, 2002, the Department extended the deadline for the final results of sunset review until August 27, 2002 (67 FR 35099, May 17, 2002).

Because the Department is terminating the suspension agreement, there is no longer a suspended investigation for which to perform a sunset review. Therefore, the Department hereby announces its termination of the sunset review of the suspended LTFV investigation on fresh tomatoes from Mexico, effective July 30, 2002.

Resumption of Antidumping Investigation

With the termination of the suspension agreement on July 30, 2002, in accordance with section 734(i)(1)(B) of the Act, the Department hereby

resumes the underlying antidumping investigation. Pursuant to section 734(i)(1)(B) of the Act, the Department resumes the investigation as if it had published the affirmative preliminary determination under section 733(b) of the Act on July 30, 2002.

As explained in the *Preliminary Determination* at 61 FR 56609, the Department postponed the final determination until the 135th day after the date of the preliminary determination. The Department therefore intends to make its final determination in the resumed investigation by December 12, 2002.

Verification

As provided in section 782(i) of the Act, the Department will verify all information determined to be acceptable for use in making the final determination.

Suspension of Liquidation

The Department will instruct Customs to suspend liquidation of entries of fresh tomatoes from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the termination of the suspension agreement, which is July 30, 2002. Customs shall require antidumping duty cash deposits or bonds for entries of the subject merchandise based on the preliminary dumping margins, which are as follows:

Grower/Exporter	Weighted-average percentage margin
San Vincente Camalu	4.16
Ernesto Fernando Echavarria Salazar Grupo Solidario	11.89
Arturo Lomeli Villalobas S.A. de C.V.	26.97
Eco-Cultivos S.A. de C.V.	188.45
Ranchos Los Pinos S. de R.L. de C.V.	10.26
Administradora Horticola del Tamazula	28.30
Agricola Yory, S. de P.R. de R.I.	11.95
All Others	17.56

International Trade Commission

The Department will notify the ITC of its termination of the suspension agreement, termination of the sunset review of the suspended investigation, and resumption of the LTFV investigation. If the Department makes a final affirmative determination, the ITC is scheduled to make its final determination concerning injury within 45 days after publication of the Department's final determination. If both the Department's and the ITC's final determinations are affirmative, the Department will issue an antidumping duty order.

Administrative Protective Order Access

Administrative protective orders previously granted in the original investigation will remain in effect. Parties must submit any necessary amendments for changes in staff promptly.

We are issuing and publishing this determination under section 733(f) of the Act and 19 CFR 353.15.

Dated: July 30, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19822 Filed 8–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Rescission, in Part, of Antidumping Duty Administrative Review for the Period September 1, 2000, Through August 31, 2001

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to timely requests from interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) covering the period September 1, 2000, to August 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 54195 (October 26, 2001). Because the petitioner has withdrawn its request for an administrative review of certain companies, the Department is rescinding, in part, this review of freshwater crawfish tail meat from the PRC, in accordance with section 351.213(d)(1) of the Department's regulations. In addition, the Department is also rescinding the administrative review with respect to three companies which we have found had no exports of the subject merchandise to the United States during the period of review, in accordance with section 351.213(d)(3) of the Department's regulations.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–1395 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (2001).

Background

On September 4, 2001, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review* (66 FR 46257). On September 28, 2001, the Department received a timely request from the Crawfish Processors Alliance, petitioner in this case, and the Louisiana Department of Agriculture & Forestry and Bob Odom, Commissioner, for an administrative review covering the period from September 1, 2000, through August 31, 2001, in accordance with 19 CFR 351.213(b)(1). The petitioner requested a review of the following companies: China Everbright; China Kingdom Import & Export Co., Ltd., aka China Kingdoma Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd. (China Kingdom); Coastal (Jiang Su) Foods Co., Ltd. (Coastal Foods); Fujian Pelagic Fishery Group Co. (Fujian Pelagic); Hefei Zhongbao Aquatic Co., Ltd. (Hefei Zhongbao); Huaiyin Foreign Trade Corporation (5), aka Jiangsu Hilong International Trading (Huaiyin 5); Huaiyin Foreign Trade Corporation (30) (Huaiyin 30); Jiangsu Cereals, Oils, & Foodstuffs Import & Export Corp. (Jiangsu Cereals); Nantong Delu Aquatic Food Co., Ltd. (Nantong Delu); Nantong Shengfa Frozen Food Co., Ltd. (Nantong Shengfa); Ningbo Nanlian Frozen Foods Co., Ltd. (Ningbo Nanlian); North Supreme Seafood (Zhejiang) Co., Ltd. (North Supreme); Qingdao Rirong Foodstuff Co., Ltd., aka Qingdao Rirong Foodstuffs (Qingdao Rirong); Qingdao Zhengri Seafood Co., Ltd., aka Qingdao Zhengri Seafoods (Qingdao Zhengri); Rizhao Riyuan Marine and Food Products Co., Ltd. (Rizhao Riyuan); Shanghai Taoen International Trading Co., Ltd. (Shanghai Taoen); Shantou

SEZ Yangfeng Marine Products Co. (Shantou SEZ); Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou Huaxiang); Suqian Foreign Trade Corp., aka Suqian Foreign Trading (Suqian Foreign Trade); Taizhou Tianhe Aquatic Products Co., Ltd. (Taizhou Tianhe); Weishan Fukang Foodstuffs Co., Ltd. (Weishan Fukang); Yancheng Baolong Biochemical Products Co., Ltd. (Yancheng Baolong); Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Cheng Foreign Trading (Yancheng Foreign Trade); Yancheng Haiteng Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng); Yancheng Yaou Seafoods (Yancheng Yaou); Yangzhou Lakebest Foods Co., Ltd. (Yangzhou Lakebest); and Yixing Ban Chang Foods Co., Ltd. (Yixing Ban Chang).

On September 28, 2001, China Kingdom and Qingdao Zhengri, which were included in the petitioner's request for review, also requested review of their own shipments. The Department published a notice of initiation of this antidumping duty administrative review on October 26, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 65 FR 54195 (October 26, 2001).

On December 10, 2001, petitioner withdrew its request for review of the following companies: China Everbright, China Kingdom, Coastal Foods, Huaiyin 30, Hefei Zhongbao, Jiangsu Cereals, North Supreme, Rizhao Riyuan, Shouzhou Huaxiang, Taizhou Tianhe, Yancheng Baolong, Yancheng Yaou, and Yixing Ban Chang. On January 24, 2002, petitioner withdrew its request for review of the following companies: Nantong Delu, Nantong Shengfa, Weishan Fukang, and Yancheng Haiteng.

On November 27, 2001, Huaiyin 5 informed the Department that it did not export the subject merchandise to the United States during the period of review. On November 28, 2001, Ningbo Nanlian informed the Department that it did not export the subject merchandise to the United States during the period of review, and that its affiliated importer, Louisiana Packing Company, did not import the subject merchandise to the United States during the period of review. In addition, on December 27, 2001, Shanghai Taoen informed the Department that it did not produce, sell, or export the subject merchandise to the United States during the period of review. The Department reviewed data on entries under the order during the period of review from the U.S. Customs Service, and requested further information regarding certain entries from Huaiyin 5 and Ningbo Nanlian. Based on the March 18, 2002 responses to its inquiries, the Department is satisfied that those companies had no reportable U.S. entries or exports of subject merchandise during the period of review. The Department's review of U.S. Customs data regarding Shanghai Taoen revealed no reportable U.S. entries or exports of subject merchandise by that company during the period of review.

Rescission, in Part, of the Administrative Review

Pursuant to our regulations, the Department will rescind an administrative review, "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). Since petitioner submitted timely withdrawals of its request for review of China Everbright, China Kingdom, Coastal Foods, Huaiyin 30, Hefei Zhongbao, Jiangsu Cereals, Nantong Delu, Nantong Shengfa, North Supreme, Rizhao Riyuan, Shouzhou Huaxiang, Taizhou Tianhe, Weishan Fukang, Yancheng Baolong, Yancheng Haiteng, Yancheng Yaou, and Yixing Ban Chang, the Department is rescinding its antidumping administrative review of those companies, with the exception of China Kingdom and Yancheng Yaou, in accordance with 19 CFR 351.213(d)(1). On September 28, 2001, China Kingdom requested review of its own shipments. Therefore, the Department cannot rescind the review of that company. In the previous administrative review, covering the period September 1, 1999, through August 31, 2000, Yancheng Yaou and Qingdao Zhengri were treated as a single entity. In the current review, Qingdao Zhengri and Yancheng Yaou have not reported any changes with respect to their ownership and operations. Therefore, although petitioner withdrew its request for review of Yancheng Yaou, the Department is still considering whether it is appropriate to rescind the review for that company.

In addition, the Department's regulations provide that the Secretary "may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be." *See* 19 CFR 351.213(d)(3). The Department reviewed data on entries under the order during the period of review from the U.S. Customs Service, and, after further inquiries, is satisfied that Huaiyin 5, Ningbo Nanlian, and Shanghai Taoen had no reportable U.S. entries or exports of the subject merchandise during the period of review. Therefore, the Department is rescinding the administrative review with respect to those companies, in accordance with 19 CFR 351.213(d)(3).

On June 3, 2002, the Department issued a memorandum stating our intent to rescind, in part, the administrative review of the antidumping order on freshwater crawfish tail meat from the PRC. *See Memorandum to the File from Adina Teodorescu, Case Analyst, through Barbara E.Tillman, Director, Office of AD/CVD Enforcement VII: Intent to Partially Rescind the Antidumping Administrative Review* (on file in the Department's Central Records Unit in Room B–099). We provided copies of the memorandum to all the parties which had received a questionnaire in this review. *See Memorandum to the File, through Maureen Flannery, from Adina Teodorescu: Partial Rescission Memorandum for the Antidumping Review of Freshwater Crawfish Tail Meat from the People's Republic of China* (June 3, 2002); *Memorandum to the File, through Maureen Flannery, from Adina Teodorescu: Partial Rescission Memorandum for the Administrative Review of Freshwater Crawfish Tail Meat from the People's republic of China* (June 21, 2002); *Memorandum to the File, through Maureen Flannery, from Adina Teodorescu: Attempts to Contact Parties about the Partial Rescission Memorandum for the Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China* (July 11, 2002). Since none of the parties commented on our intent to rescind, the Department is rescinding, in part, the administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC for the period September 1, 2000, through August 31, 2001. The Department will issue appropriate assessment instructions to the Customs Service. Although the Department is rescinding the administrative review of Shouzhou Huaxiang and North Supreme, those companies are still subject to new shipper reviews for the period September 1, 2000, through August 31, 2001.

Based on these rescissions, the administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC, for the period September 1, 2000, through August 31, 2001, now covers the following companies: China Kingdom,

Fujian Pelagic, Qingdao Rirong, Qingdao Zhengri/Yancheng Yaou, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, and Yangzhou Lakebest.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 24, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–19826 Filed 8–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Donna Kinsella at (202) 482–3019 or (202) 482–0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2002).

Background

The Department has received timely requests from Chengdu-Dujiangyan Dubao Bee Industrial Co., Ltd ("Dubao") and Wuhan Bee Healthy Co., Ltd. ("Wuhan Bee"), in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the People's Republic of China ("PRC"), which has a December annual anniversary month and a June semiannual anniversary month. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), each of the companies identified above, which are also producers, has certified that it did not export honey to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which did export honey during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv)(A), Dubao and Wuhan Bee each submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the volume of that first shipment, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(d)(i), and based on information on the record, we are initiating new shipper reviews for Dubao and Wuhan Bee. It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide de jure and de facto evidence of an absence of government control over the company's export activities. Accordingly we will issue a questionnaire to Dubao and Wuhan Bee, including a separate rates section. If the response from each respondent provides sufficient indication that it is not subject to either de jure or de facto government control with respect to its exports of honey, each review will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and that it did not establish entitlement to a separate rate, and the review of that respondent will be rescinded.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the antidumping duty order on honey from the PRC. Therefore, we intend to issue the preliminary results of these reviews not later than 180 days after the date on which the reviews are initiated. We intend to issue the final results of these reviews within 90 days after the date on which the preliminary results were issued.

Pursuant to 19 CFR 351.214(g)(1)(i)(B) of the Department's regulations, the period of review ("POR") for a new shipper review initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for this new shipper review is:

Antidumping duty proceeding	Period to be reviewed
Chengdu-Dujiangyan Dubao Bee Industrial Co., Ltd.: ..	12/01/01 - 05/31/02
Wuhan Bee Healthy Co., Ltd..	

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above-listed companies. This action is in accordance with 19 CFR 351.214(e). Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19825 Filed 8–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–502]

Certain In-Shell Raw Pistachios from Iran: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review of Certain In-Shell Raw Pistachios from Iran.

SUMMARY: In response to a request from Tehran Negah Nima Trading Company, Inc., (Nima), the Department of Commerce (Department) is conducting a new shipper review of the antidumping duty order on certain in-shell raw pistachios from Iran. This new shipper review covers imports of subject merchandise from Nima. The period of review is July 1, 2000, through June 30, 2001. The Department preliminarily determines that Nima has made sales of subject merchandise to the United States below normal value. If these preliminary results are adopted in our final results of this new shipper review, we will instruct the U.S. Customs Service to liquidate entries during the period of review. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Interested parties are invited to comment on these preliminary results. *See* Preliminary Results of the Review section, infra. Parties who submit comments are requested to submit with the argument: (1) a statement of the issues and (2) a brief summary of the arguments.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Donna Kinsella, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–1398 or 202–482–0194, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Background

On July 17, 1986, the Department published in the Federal Register a notice of the antidumping duty order on certain in-shell pistachios from Iran. *See* Antidumping Duty Order; Certain In-Shell Pistachios from Iran, 51 FR 25922 (July 17, 1986). On July 31, 2001, Tehran Negah Nima Trading Company, Inc., an exporter of subject merchandise during the period of review (POR), requested that the Department conduct a new shipper review of the antidumping duty order. We initiated the review on October 10, 2001 (66 FR 51638). On October 11, 2001, the Department issued the antidumping questionnaire. On November 15, 2001, the respondent submitted section A of the questionnaire. On December 10, 2001, the respondent submitted sections B-C of the questionnaire. On January 25, 2002, the Department issued the first supplemental questionnaire. On March 20, 2002, the Department issued a second supplemental questionnaire. On May 3, 2002, the Department issued a third supplemental questionnaire. On February 22, 2002, the respondent submitted its response to the first supplemental questionnaire. On April 4, 2002 and May 15, 2002, respondent submitted its responses to the second and third supplemental questionnaires. On May 3, 2002, the Department sought information from Fallah Pistachio. On May 6, 2002, the Department issued Section D of its questionnaire to Maghousdi Farm. On June 3, 2002, Fallah Pistachio submitted its response to the Department's request for information. On June 20, 2002, Maghousdi Farm submitted its response to Section D. Under section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of a new shipper review if it determines that the case is extraordinarily complicated. On April 2, 2002, the Department fully extended the time limit for the preliminary results of this new shipper review by 120 days until July 29, 2002. *See Certain In-Shell Raw Pistachios From Iran: Extension of Time Limit for Preliminary Results of Antidumping New Shipper Review*, 67 FR 15530 (April 2, 2002).

Period of Review

The POR is July 1, 2000, through June 30, 2001.

Scope of the Review

Imports covered by this review are raw, in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meats, from Iran. The merchandise under review is currently classifiable under item 0802.50.20.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the "Scope Review" section above and sold in the comparison market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. If there were no home market foreign like products to compare to a U.S. sale, we used constructed value (CV).

Export Price/Constructed Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, constructed export price is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. For purposes of this review, Nima classified its sales as EP sales. *See* Section C response, at 5. Nima identified one channel of distribution for its U.S. sales during the POR. *Id.* at 6. With respect to Nima's sale dated June 25, 2001, based on Nima's description of the sale, the Department preliminarily determines that the goods were sold directly to an unaffiliated purchaser in the United States and as such the transaction constitutes an EP sale. We calculated EP in accordance with section 772(a) of the Act. We based EP on the FOB price to the unaffiliated purchaser in the United States. We made deductions for freight charges (*i.e.*, foreign inland freight) to

the customer in accordance with section 772(c)(2)(A) of the Act.

With respect to Nima's sale dated January 25, 2001, the Department has preliminarily determined to exclude this sale for purposes of this new shipper review. According to information submitted by respondent on the record, this sale was not conducted by Tehran Negah Nima Trading Company, Inc.

Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company, the requester of this new shipper review, was incorporated and registered as a limited liability company in Iran on January 3, 2001. On February 10, 2001, the sole proprietor of Nima Trading Company, an entity established in November 2000, agreed to transfer all of his interest in Nima Trading Company and to allow Tehran Negah Nima Trading Company, Inc. to trade as "Nima Trading Company." Evidence on the record indicates that the January 25, 2001, U.S. sale reported by Tehran Negah Nima Trading, Inc., was actually concluded by the former sole proprietorship of Nima Trading Company. As of the date of sale, January 25, 2001, the entity requesting this review, Tehran Negah Nima Trading, Inc., did not have the authority to trade as Nima Trading Company. As noted above, that authority was not granted until February 10, 2001.

Since Tehran Negah Nima Trading Company Inc., trading as Nima Trading Company, is the entity which requested the new shipper review, the Department has determined to limit this review to sales made by Tehran Negah Nima Trading Company, Inc. The Department does not have sufficient information available on the record to conduct a successorship analysis to determine whether Tehran Negah Nima Trading Company, Inc., is the successor to the sole proprietorship of Nima Trading Company. Referencing the January 25, 2001, U.S. sale, respondent stated on the record that it "does not have any objection to have this sale removed from the file." *See* February 22, 2002 response at 8. The Department therefore has preliminary determined to exclude the January 25, 2001, sale by Nima Trading Company for purposes of this review.

Normal Value

A. Ordinary Course of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, the normal value shall be the price at which the foreign like product is first sold (or, in the absence of a sales, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price. Nima reported one sale of subject merchandise in the home market during the POR. *See* December 10, 2001, response at 10. Nima reported no sales of subject merchandise to any third country market. *See* November 15, 2001, response at 19. Regarding Nima's home market sale, Nima stated "the sole purpose of establishing Nima...was to be able to exploit business opportunities in the US market for Iranian pistachios. Therefore, Nima's home market sale to Bakhshie was certainly a deviation from the company's main objective...." Nima also stated that "the sale of raw in-shell pistachios in the home market is not part of Nima's ordinary course of business." Furthermore, Nima stated that it "does not have any plans for selling pistachios in the Iranian market in the future." *See* April 4, 2002, response at 7. Based on this information, the Department preliminarily finds that Nima's sale in the home market during the POR was not in the ordinary course of trade as defined in the statute and Departmental regulations.

Where sales of the foreign like product sold for consumption in the exporting country are determined not to be in ordinary course of trade, section 773(a)(1)(B)(ii) of the Act directs the Department to employ the price of sales to a third country as the basis for NV. However, as noted above, Nima reported no sales of subject merchandise to any third country markets during the POR. Section 773(a)(4) of the Act states that if the administering authority determines that the normal value of the subject merchandise cannot be determined under paragraph 773(a)(1)(B)(i), and there are no third country sales, the normal value of the subject merchandise may be based on the constructed value of that merchandise. Therefore, the Department determines that the use of constructed value in determining NV is appropriate in this review.

B. Normal Value Based on CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the COP plus the exporter's SG&A expenses and an amount for profit. For COP, we included the producer's cost of production and the middleman's operational costs. Because the exporter's G&A costs were not separately reported from its selling expenses, and were included as such, we did not include them again in calculating CV.

Because there are no viable home market sales or third country sales made by Nima during the POR, we cannot calculate CV profit under sections 773(e)(2)(A). Section 773(e)(2)(B)(iii) of the Act allows the Department to use amounts incurred and realized for profits, based on any other reasonable method as long as that profit does not exceed the amount normally realized by exporters or producers in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise. We based profit on the profit the middleman reported for the sale of subject merchandise to the exporter. We believe that the use of the middleman's profit meets the requirements of section 773(e)(2)(B)(iii) of the Act. First, the profit calculated is based on the middleman's sale of in-shell raw pistachios. Second, the sale took place in Iran. Third, the sale occurred during the POR. Thus, the profit rate is a profit realized in connection with the sale, for consumption in the foreign country, of subject merchandise. Finally, there is no evidence on the record that indicates this profit rate is aberrational or not representative of home market profit rates of subject merchandise. *See* Constructed Value Adjustments for Preliminary Determination, Memorandum from Gina K. Lee through Michael P. Martin to Neal M. Halper dated July 29, 2002. The Department is currently seeking additional information on CV and may adjust its CV calculation for the Final Results. If the CV calculation is substantially altered based on additional information, the Department will allow interested parties an opportunity to comment before the Final Results.

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which the material terms of sale are established. Nima stated that, for the U.S. market, date of sale is based on invoice date. *See* February 22, 2002, response at 11. Therefore, the Department is using the date of invoice as the dale of sale.

Currency Conversion

According to the International Monetary Fund's 2001 Annual International Monetary Report, as of March 20, 2000, Iran had a dual exchange rate system. The two

officially-approved rates are:1) the effective Tehran Stock Exchange (TSE) which is applied to all transactions, except for 2) government imports of essential goods, and services of public and publicly guaranteed debt (the exchange rate for which is approximately 1750Rls/$US.) There is a separate TSE rate for "oil exports" and "non-oil exports", but both are within the first category of official exchange rates for private rather than public transactions.

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. When the Federal Reserve Bank does not provide exchange rates for a certain currency, the Department's practice has been to use exchange rates obtained from the Dow Jones News/Retrieval Service. The Federal Reserve Bank does not provide exchange rates for the Iranian rial. Exchange rates for the Iranian rial published in the Dow Jones News/ Retrieval Service appear to be official rates for public rather than private transactions and are not reflective of the actual exchange rates at which Nima converted foreign exchange earnings in the POR. Nima has documented on the record the dual exchange rate system in Iran, utilizing Iranian government reports and bank statements. The record shows clearly that the exchange rates Nima realized during the POR are dramatically different from the rates listed in the Dow Jones. For this reason and because there are no other appropriate exchange rates on the record, the Department used the actual exchange rates at which respondent converted its foreign exchange earnings during the POR.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period July1, 2000, through June 30, 2001:

Company	Weighted-Average Margin
Nima Trading Company (Nima)	120.04 percent

In accordance with 19 CFR 351.224(b), the Department will disclose to parties to this proceeding the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.

Pursuant to 19 CFR 351.309, interested parties may submit written comments on these preliminary results. Case briefs must be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, within 30 days of the date of publication of this notice, an interested party may request a public hearing on arguments to be raised in the case and rebuttal briefs. See 19 CFR 351.310(c). Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this new shipper review, including the results of its analysis of issues raised in any case or rebuttal brief, within 90 days of these preliminary results.

Assessment

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We calculated importer-specific duty assessment rates on a unit value per kilogram basis and then dividing this sum by the entered value for that sale. If these preliminary results are adopted in our final results, we will instruct Customs to assess antidumping duties on the merchandise subject to review. Upon completion of this review, the Department will issue appraisement instructions directly to Customs.

The Department is currently conducting a new shipper review of the countervailing duty order on raw in-shell pistachios from Iran involving Nima. The Department will adjust both the antidumping duty assessment rate and cash deposit rate resulting from this review for any duties imposed to offset export subsidies found at the conclusion of the countervailing new shipper review.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this new shipper review (except that no deposit will be required if the rate is zero or de minimis, *i.e.*, less than 0.5 percent); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or the original LTFV investigation, the cash deposit rate will continue to be the "all others" rate of 184.28 percent established in the LTFV investigation. This rate reflects the amount of export subsidies found in the final countervailing duty determination in the investigation subtracted from the dumping margin found in the less than fair value determination. *See* 51 FR 8344. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This new shipper review and notice are issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July 29, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19824 Filed 8–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–875]

Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald Trentham or Sam Zengotitabengoa at (202) 482–6320 or (202) 482–4195, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2002).

Statutory Time Limits

Section 733(b)(1)(A) of the Act, requires the Department of Commerce (the Department) to issue the preliminary determination of an antidumping duty investigation within 140 days after the date of initiation. However, if the petitioner makes a timely request for an extension of the period, section 733(c)(1)(A) of the Act allows the Department to postpone the preliminary determination until not later than 190 days after the date of initiation.

Background

On March 13, 2002, the Department initiated an antidumping duty investigation of non-malleable cast iron pipe fittings from the People's Republic of China. *See Notice of Initiation of Antidumping Investigation*: Non-malleable Cast Iron Pipe Fittings from the People's Republic of China, 67 FR 12966 (March 20, 2002). The notice stated that the Department would issue its preliminary determination no later than 140 days after the date of initiation. The preliminary determination currently is due no later than July 31, 2002.

Extension of Preliminary Determination

On July 5, 2002, the Department received a timely request for postponement of the preliminary determination from Anvil International Inc. and Ward Manufacturing Inc., (hereinafter, the petitioners), in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e). Petitioners requested an extension to provide themselves and the Department with more time to review respondents' submissions and to allow the Department to request and analyze additional information from respondents, if needed. There are no compelling reasons for the Department to deny the petitioners' request. Therefore, pursuant to section 733(c)(1)(A) of the Act, the Department is postponing the preliminary determination until September 19, 2002.

This notice of postponement is in accordance with section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: July 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19820 Filed 8–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recission

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on persulfates from the People's Republic of China in response to a request by the petitioner, FMC Corporation. The period of review is July 1, 2000, through June 30, 2001. In addition, we are rescinding our initiation of an administrative review for an additional exporter because no review was requested for this company.

We have preliminarily determined that U.S. sales have not been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess no antidumping duties on the exports subject to this review.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Strollo, AD/CVD Enforcement, Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0629.

Applicable Statute and Regulations: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2001, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on persulfates from the People's Republic of China (PRC) covering the period July 1, 2000, through June 30, 2001. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910 (July 2, 2001).

On July 31, 2001, in accordance with 19 CFR 351.213(b), the petitioner, FMC Corporation, requested an administrative review of Shanghai Ai Jian Import & Export Corporation (Ai Jian). We published a notice of initiation of this review on August 20, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (Aug. 20, 2001) (*Persulfates Initiation*). In this notice, we also initiated an administrative review for an additional company for which no review had been requested by any interested party. For further discussion, *see* the "Partial Recission of Review" section of this notice, below.

On August 3, 2001, we issued an antidumping questionnaire to Ai Jian. We received Ai Jian's timely responses to section A of the questionnaire on September 24, 2001, and to sections C and D on October 9, 2001. We issued a supplemental questionnaire to Ai Jian on October 29, 2001. We received Ai Jian's response to this supplemental questionnaire on November 29, 2001.

On November 30, 2001, Ai Jian and the petitioner submitted publicly available information for consideration in valuing the factors of production. On

December 7, 2001, the parties submitted rebuttal comments.

On February 15, 2002, we issued an additional supplemental questionnaire to Ai Jian. Ai Jian submitted a response to this supplemental questionnaire on March 7, 2002.

In June 2002, we conducted verification of the sales and factor information provided by Ai Jian.

Partial Recission of Review

In *Persulfates Initiation*, we inadvertently initiated an administrative review for Sinochem Jiangsu Wuxi Import and Export Corp. (Wuxi). However, no administrative review for this exporter had been requested by any interested party in this proceeding. Therefore, in accordance with 19 CFR 351.213(d)(2), we have rescinded this administrative review with respect to Wuxi.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classifiable under subheading 2833.40.60 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Sodium persulfate is classifiable under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Separate Rates

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. With respect to evidence of a de facto absence of government control, the Department considers the following four factors: (1) Whether the respondent sets its own export prices independently from the government and other exporters; (2) whether the respondent can retain the proceeds from its export sales; (3) whether the respondent has the authority to negotiate and sign contracts; and (4) whether the respondent has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

With respect to Ai Jian, for purposes of our preliminary results covering the period of review (POR) July 1, 2000, through June 30, 2001, the Department determined that there was an absence of *de jure* and *de facto* government control of its export activities and determined that it warranted a company-specific dumping margin. *See Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 66 FR 42628 (Aug. 14, 2001) (*Persulfates Third Review Final*). For purposes of this POR, Ai Jian has responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final results in *Persulfates Third Review Final* and continues to demonstrate an absence of government control, both in law and in fact, with respect to Ai Jian's exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

Export Price

For Ai Jian, we calculated export price (EP) in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price methodology was not otherwise warranted based on the facts of record. We calculated EP based on packed, cost-insurance-freight (CIF) U.S.-port, or free-on-board, PRC-port prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for ocean freight services which were provided by market economy suppliers. We also deducted from the starting price, where appropriate, an amount for foreign inland freight, foreign brokerage and handling, and marine insurance expenses. As these movement services were provided by NME suppliers, we valued them using Indian rates. For further discussion of our use of surrogate data in an NME proceeding, as well as selection of India as the appropriate surrogate country, see the "Normal Value" section of this notice, below.

For foreign inland freight we used price quotes obtained by the Department from Indian truck freight companies in November 1999. These price quotes were used in *Persulfates Third Review Final*, and were also used in the investigation of bulk aspirin from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 116, 118 (Jan. 3, 2000) (*Bulk Aspirin Prelim*). For foreign brokerage and handling expenses, we used public information reported in the new shipper review of stainless steel wire rod from India. *See Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews*, 63 FR 48184, 48185 (Sept. 9, 1998). With respect to marine insurance, Ai Jian asserted that it used a market-economy supplier for its shipments of persulfates. However, based on the submitted information, we could not establish that the insurance charges Ai Jian paid reflect prices set by market-economy carriers. Due to the proprietary nature of the facts underlying our analysis, we cannot discuss them in this forum. For further discussion, see the July 31, 2002, memorandum from the team to the file entitled "U.S. Price and Factors of Production Adjustments for the Preliminary Results." Therefore, in accordance with our practice, we based the marine insurance charges on surrogate values. *See, e.g., Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (*Persulfates Third Review Prelim*); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (Apr. 13, 2000) and accompanying decision memorandum at *Comment 3*; and *Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537 (Aug. 14, 2000) and accompanying decision memorandum at *Comment 8*.

Accordingly, we valued marine insurance using price quotes obtained from Roanoke Trade Services, Inc., a provider of marine insurance. *See* the

memorandum to the File from Gregory Kalbaugh entitled "Marine Insurance Rates," in the administrative review of sebacic acid from the PRC, dated July 9, 2002, and the memorandum to the File from Michael Strollo entitled "Preliminary Valuation of Factors of Production for the Preliminary Results of the 2000–2001 Administrative Review of Persulfates from the People's Republic of China," dated July 31, 2002 (*FOP Memo*), which are on file in the Central Records Unit, Room B099 of the main Commerce building (CRU).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is at a level of economic development comparable to that of the PRC. On the basis of per capita gross domestic product (GDP), the growth rate in per capita GDP, and the national distribution of labor, we find that India is at a level of economic development comparable to that of the PRC. [1] *See* the Surrogate Country Selection Memorandum from Jeffrey May to Luis Apple Re: Administrative Review of Persulfates from the People's Republic of China, dated September 24, 2001, which is on file in the CRU.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to persulfates. For purposes of the most recent segment of this proceeding, we found that India was a producer of persulfates based on information submitted by the respondent. *See Persulfates Third Review Prelim*, 66 FR at 18442.[2] For purposes of this administrative review, we continue to find that India is a significant producer of persulfates based on information submitted by both the respondent and the petitioner. We find that India fulfills both statutory requirements for use as the surrogate country and continue to use India as the surrogate country in this administrative review. We have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was" (1) An average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, see the *FOP Memo*, which is on file in the CRU. In accordance with this methodology, we valued the factors of production as follows:

To value ammonium sulfate, caustic soda, and sulfuric acid, we used public information from the Indian publication *Chemical Weekly*, as provided by both petitioner and the respondent in their November 30, 2001, submissions. For caustic soda and sulfuric acid, because price quotes reported in *Chemical Weekly* are for chemicals with a 100 percent concentration level, we made chemical purity adjustments according to the particular concentration levels of caustic soda and sulfuric acid used by Shanghai Ai Jian Reagent Works (AJ Works), Ai Jian's PRC supplier. Where necessary, we adjusted the values reported in *Chemical Weekly* to exclude sales and excise taxes. For potassium sulfate and an hydrous ammonia, we relied on import prices contained in the January 2001 issue of *Monthly Statistics of the Foreign Trade of India* (*Monthly Statistics*), as provided by the respondent in its November 2001 submission. For those values not contemporaneous with the POR, we adjusted for inflation using the WPI published by the IMF.

During the POR, AJ Works self-produced ammonium persulfates, which is a material input in the production of potassium persulfates and sodium persulfates. In order to value ammonium persulfates, we calculated the sum of the materials, labor, and energy costs based on the usage factors submitted by AJ Works in its questionnaire responses. Consistent with our methodology used in *Persulfates Third Review Final*, we then applied this value to the reported consumption amounts of ammonium persulfates used in the production of potassium and sodium persulfates.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

For electricity, we derived a surrogate value based on 1998/1999 electricity price data published by Data Energy Research Institute. These data were used in the antidumping duty administrative review of manganese metal from the PRC. *See Persulfates Third Review Final*; and *Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China*, 66 FR 15076 (Mar. 15, 2001) and accompanying decision memorandum at *Comment 10*. We adjusted the values to reflect inflation up to the POR using the electricity-specific price index published by the Reserve Bank of India.

To value water, we relied on public information reported in the October 1997 publication of *Second Water Utilities Data Book: Asian and Pacific Region*. To value coal, we relied on import prices contained in the March 2001 annual volume of *Monthly Statistics*. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

For the reported packing materials—polyethylene bags, woven bags, polyethylene sheet/film and liner, fiberboard, and paper bags—we relied upon Indian import data from the March 2001 annual volume of *Monthly Statistics*. For wood pallets, we relied upon Indonesian import data from the 1998 issues of *Indonesian Foreign Trade Statistics*, because the submitted Indian data on this material were unreliable as a surrogate value. *See* the *FOP Memo* at page 5. The data for wood pallets was submitted by the respondent in its November 30, 2001, submission, and used in the previous administrative review of *See Persulfates Third Review*

[1] We also find that Indonesia is at a level of economic development comparable to that of the PRC.

[2] This finding was unchanged in the final results. *See Persulfates Third Review Final*.

Final. We adjusted the Indian rupee values to reflect inflation up to the POR using the WPI published by the IMF. We also adjusted the U.S. dollar value for wood pallets to reflect inflation (or deflation, as appropriate) using the producer price indices published by the IMF.

We made adjustments to account for freight costs between the suppliers and AJ Works' manufacturing facilities for each of the factors of production identified above. In accordance with out practice, for inputs for which we used CIF import values from India or Indonesia, we calculated a surrogate freight cost using the shorter of the reported distances either from the closet PRC ocean port to the factory or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964, 61977 (Nov. 20, 1997) and the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*. 7 F.3d 1401 (Fed. Cir. 1997).

For foreign inland freight we used price quotes obtained by the Department from Indian truck freight companies in November 1999. These price quotes were used in *Persulfates Third Review Final*, and were also used in *Bulk Aspirin Prelim*. *See* the *FOP Memo*.

For factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied on the experience of two producers of identical merchandise, Gugarat Persalts (P) Lts. (Gujarat) and Calibre Chemicals Pvt., Ltd. (Calibre), as reflected in their fiscal year 2000 financial statements. *See* the *FOP Memo*. Consistent with our practice, we did not rely on the financial statements of an additional producer of comparable merchandise (*i.e.*, National Peroxide Ltd.) because it did not produce persulfates during the POR. *See Persulfates Third Review Final* and accompanying decision memorandum at *Comment 5*.

We note that the financial statements of Gujarat and Calibre indicate that both produce persulfates and both are equally contemporaneous (*i.e.*, these financial statements cover the fiscal period April 1999 through March 2000). We disagree with the petitioner's argument that Gujarat's financial statements are not publicly available because Gujarat is not a public corporation. Gujarat's financial statements were submitted as public information. In addition, we note that these statements were audited. Therefore, for these preliminary results, we have relied upon the financial statements of both Gujarat and Calibre in order to calculate the surrogate factory overhead, SG&A, and profit ratios.

Consistent with the methodology used in *Persulfates Third Review Final*, we calculated factory overhead as a percentage of the total raw material costs for subject merchandise, as opposed to calculating factory overhead as a percentage of total materials, labor, and energy costs for all products. *See* the *FOP Memo* at page 7. We also reclassified certain depreciation expenses from Calibre's financial statements as SG&A expenses. We removed from the profit calculation the excise duties and sales taxes.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Shanghai Ai Jian Import & Export Corporation	0.00

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written briefs, within 120 days of the publication of these preliminary results.

The Department will determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review will be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

For assessment purposes in this case, we do not have the information to calculate entered value. Therefore, we have calculated importer-specific duty assessment rates for the merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the EPs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ai Jian will be that established in the final results of this administrative review; (2) for any company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) the cash deposit rate for all other PRC exporters will be 119.02 percent, the PRC-wide rate established in the less than fair value investigation; and (4) the cash deposit rate for a non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary, Import Administration.

[FR Doc. 02–19827 Filed 8–5–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on sebacic acid from the People's Republic of China in response to a request by CasChem Inc., a domestic producer of the subject merchandise, and requests by Sinochem Tianjin Import & Export Corporation and Guangdong Chemicals Import & Export Corp., exporters of the subject merchandise. The period of review is July 1, 2000, through June 30, 2001. We have preliminarily found that sales of subject merchandise have been made below normal value for the respondents. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on entries subject to this review by these exporters.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Strollo, AD/CVD Enforcement, Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0629.

Applicable Statute and Regulations: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2001, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on sebacic acid from the People's Republic of China (PRC) covering the period July 1, 2000, through June 30, 2001. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910 (July 2, 2001).

On July 27, 2001, in accordance with 19 CFR 351.213(b)(2), Guangdong Chemicals Import & Export Corp. (Guangdong) and Sinochem Tianjin Import & Export Corporation (Tianjin), exporters of the subject merchandise, requested an administrative review. On July 31, 2001, in accordance with 19 CFR 351.213(b)(1), CasChem Inc., a U.S. producer of sebacic acid, requested an administrative review of Tianjin and one additional exporter, Sinochem International Chemicals Corp. (Sinochem International).

On July 31, 2001, in accordance with 19 CFR 351.214, Hengshui Dongfeng Chemicals Import & Export Co., Ltd. (Hengshui), a foreign producer of the subject merchandise, requested a new shipper review. On August 9, 2001, Hengshui withdrew this request.

On August 20, 2001, we published a notice of initiation of this administrative review, and we issued antidumping questionnaires to Guangdong, Sinochem International, and Tianjin. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (Aug. 20, 2001).

On October 1, 2001, we received timely responses to sections A, C and D of the questionnaires from Guangdong and Tianjin. Sinochem International did not respond to our request for information. Accordingly, the Department has based the margin for Sinochem International on facts available for purposes of these preliminary results pursuant to section 776 of the Act and 19 CFR 351.308. For further discussion, see the "Use of Facts Available for Non-Responding Companies" section of this notice.

On October 3, 2001, the Department invited interested parties to submit publicly available information for consideration in valuing the factors of production. On June 24, 2002, Guangdong and Tianjin submitted data from the *Economic Times of Bombay* newspaper for consideration in valuing castor oil and castor seeds.

We issued supplemental questionnaires to Guangdong and Tianjin in February 2002. We received responses to these supplemental questionnaires in March 2002.

In June 2002, we verified the information submitted by Guangdong and Tianjin.

Scope of Review

The products covered by this review are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake. Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings. Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Notice of Intent Not To Revoke in Part

In its request dated July 27, 2001, Tianjin requested that the Department revoke the antidumping order on sebacic acid with respect to its sales of subject merchandise. Section 351.222(b)(2) of the Department's regulations notes that the Secretary may revoke an antidumping order in part if the Secretary concludes, *inter alia*, that one or more exporters or producers covered by the order have sold the merchandise at not less than normal value (NV) for a period of at least three consecutive years. Thus, in determining whether a requesting party is entitled to a revocation inquiry, the Department must determine that the party received zero or *de minimis* margins for the three years forming the basis for the revocation request. *See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands*, 65 FR 742, 743 (Jan. 6, 2000).

Tianjin's request was accompanied by a certification that it had not sold the subject merchandise at less than NV during the current period of review (POR) and would not do so in the future. Tianjin further certified that they

sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. The company also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the revocation, Tianjin sold the subject merchandise at less than NV.

In this administrative review, we preliminarily find that, as indicated below, a margin of greater than 0.5 percent exists for Tianjin. As such, we preliminarily find that Tianjin does not qualify for revocation.

Separate Rates

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to its exports to the United States. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. With respect to evidence of a *de facto* absence of government control, the Department considers the following four factors: (1) Whether the respondent sets its own export prices independently from the government and other exporters; (2) whether the respondent can retain the proceeds from its export sales; (3) whether the respondent has the authority to negotiate and sign contracts; and (4) whether the respondent has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

With respect to Guangdong and Tianjin, in our final results for the most recently completed review period (*i.e.*, July 1, 1998, through June 30, 1999), the Department determined there was both *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537, 49538 (Aug. 14, 2000) (*Sebacic Acid Fifth Review*). For this review, both Guangdong and Tianjin have responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final results in the *Sebacic Acid Fifth Review* and continues to demonstrate an absence of both *de jure* and *de facto* government control with respect to their exports in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

With respect to Sinochem International, which did not respond to the Department's questionnaire, we preliminarily determine that this company does not merit a separate rate. The Department assigns a single rate to companies in a non-market economy, unless an exporter demonstrates an absence of government control. We preliminarily determine that Sinochem International is subject to the country-wide rate for this review because it failed to demonstrate an absence of government control.

Use of Facts Available for Non-Responding Companies

On August 20, 2001, we issued an antidumping questionnaire to Sinochem International. Sinochem International did not respond to the questionnaire. Because we have received no response, we determine that the use of facts available is appropriate.

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Because Sinochem International, which is part of the PRC entity (*see* the "Separate Rates" section above), has failed to respond to the original questionnaire and has refused to participate in this administrative review, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of facts available is appropriate.

The Department finds that by not providing the necessary responses to the questionnaire issued by the Department, Sinochem International has failed to cooperate to the best of its ability. Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Final Rule*). Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Sinochem International never attempted to respond to our questionnaire or explain why it could not respond. Without this information, the Department cannot make a determination of whether this company demonstrates an absence of government control and is therefore entitled to a separate rate. As noted above, section 776(b) of the Act provides that if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, the Department may make an inference that is adverse to the interests of that party in selecting from the facts available, which includes information derived from the petition. In this proceeding, in accordance with Department practice, as adverse facts available we have preliminarily assigned Sinochem International and all other exporters subject to the PRC-wide

rate the petition rate of 243.40 percent, which is the PRC-wide rate established in the LTFV investigation and currently in effect, and the highest dumping margin determined in any segment of this proceeding. *See Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid From the People's Republic of China*, 59 FR 28053 (May 31, 1994). The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (Feb. 23, 1998). The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. *See Roller Chain, Other than Bicycle, from Japan; Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review*, 62 FR 60472, 60477 (Nov. 10, 1997). It is reasonable to assume that if Sinochem International could have demonstrated that its actual dumping margins were lower than the PRC-wide rate established in the LTFV investigation, it would have participated in this review and attempted to do so.

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative value. See id. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. Although the petition rate of 243.40 percent constitutes secondary information, the information was corroborated in the most recently completed administrative review of sebacic acid from the PRC. *See See Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 18968, 18970 (April 10, 2000) (unchanged in the final results) (*Sebacic Acid Fifth Review Preliminary Results*). With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (Feb. 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated); *see also Borden Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1246–48 (CIT 1998) (the Department may not use an uncorroborated petition margin that is high when compared to calculated margins for the POR). None of these unusual circumstances are present here; nor have we any other reason to believe that application of the rate of 243.40 percent as adverse facts available would be inappropriate for the PRC-wide rate. Moreover, the rate used is the currently applicable PRC-wide rate. Thus, the 243.40 percent margin does have relevance. Accordingly, we have used the petition rate from the LTFV investigation, 243.40 percent, because there is no evidence on the record indicating that the selected margin is not appropriate as adverse facts available.

Export Price

For Guangdong and Tianjin, we calculated export price (EP) in accordance with section 772(a) of the Act because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price methodology was not otherwise warranted. As appropriate, we calculated EP based on packed, free-on-board, PRC-port prices to unaffiliated purchasers in the United States. We deducted from the starting price amounts for foreign inland truck freight and foreign brokerage and handling. As these movement services were provided by NME suppliers, we valued them using surrogate values from Indian suppliers. For further discussion of our use of surrogate data in a NME proceeding, as well as the selection of India as the appropriate surrogate country, see the "Normal Value" section of this notice, below.

For calculating inland truck freight for Guangdong and Tianjin, we used information obtained from the Indian newspaper *Financial Express*. For further discussion, see the Memorandum to the File from Michael Strollo entitled "Preliminary Valuation of Factors of Production for the Preliminary Results of the 2000–2001 Administrative Review of Sebacic Acid from the People's Republic of China," dated July 31, 2002 (*FOP Memo*), which is on file in the Central Records Unit, Room B099 of the main Commerce building (CRU). For brokerage and handling expenses, we used information reported in the new shipper review of stainless steel wire rod from India. *See Certain Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative and New Shipper Reviews*, 64 FR 856 (Jan. 6, 1999).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from a NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

The Department has treated the PRC as a NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is at a level of economic development comparable to that of the PRC. On the basis of *per capita* gross domestic product (GDP), the growth rate in *per capita* GDP, and the national distribution of labor, we find that India is at a level of economic development comparable to that of the

PRC. *See* the Surrogate Country Selection Memorandum from Jeffrey May to Louis Apple Re: Administrative Review of Sebacic Acid from the People's Republic of China, dated September 24, 2001, which is on file in the CRU.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to sebacic acid. We determined in prior reviews of this order that India was a significant producer of comparable merchandise (*i.e.*, oxalic acid). *See Sebacic Acid Fifth Review Preliminary Results*, 65 FR at 18970 (unchanged in the final results). For this review, we find that India was a significant producer of oxalic acid during the POR based on the Customs Service import data, and no party to this proceeding has challenged this finding. *See* the memorandum to the File from Gregory Kalbaugh entitled "Oxalic Acid Production in India During the Period of Review," dated July 16, 2002. We find that India fulfills both statutory requirements for use as the surrogate country and have continued to use India as the surrogate country in this administrative review. Unless otherwise noted, we have used publicly available information relating to India to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, see the *FOP Memo*. In accordance with this methodology, we valued the factors of production as follows:

To value caustic soda, cresol, phenol, sulfuric acid, and zinc oxide, we obtained information from the Indian publication *Chemical Weekly*. Where necessary, we adjusted the values reported in *Chemical Weekly* to exclude sales and excise taxes. To value activated carbon and macropore resin, steam coal, inner polyethylene bags, woven plastic bags, jumbo plastic bags, and bag closing thread, we obtained import prices from the March 2001 annual volume of the *Monthly Statistics of the Foreign Trade of India*. To value castor oil and castor seed, we used information from the *Economic Times of Bombay* newspaper.

Consistent with the methodology employed in *Sebacic Acid Fifth Review*, we have determined that fatty acid, glycerine, and castor seed cake (when castor oil is self-produced) are by-products. Because they are by-products, we subtracted the sales revenue of fatty acid, glycerine, and, where applicable, castor seed cake, from the estimated production costs of sebacic acid. This treatment of by-products is also consistent with generally accepted accounting principles. *See Cost Accounting: A Managerial Emphasis* (1991) at pages 539–544. To value fatty acid and glycerine, we used prices published in *Chemical Weekly*. We valued castor seed cake using market prices quoted in the *Economic Times of Bombay* newspaper.

We also allocated a by-product credit for glycerine to the production cost for the co-product capryl alcohol. We deducted a by-product credit for glycerine from sebacic acid based on the ratio of the value of sebacic acid to the total value of both sebacic acid and capryl alcohol.

Consistent with the methodology employed in the previous administrative review, we have determined that capryl alcohol is a co-product and have allocated the factor inputs based on the relative surrogate values for this product and sebacic acid. Additionally, we have used the production times necessary to complete each production stage of sebacic acid as a basis for allocating the amount of labor, energy usage, and factory overhead among the co-product(s). This treatment of co-products is consistent with generally accepted accounting principles. *See Cost Accounting: A Managerial Emphasis* (1991) at pages 528–533. To value capryl alcohol, consistent with our methodology from the previous administrative review, we used POR market prices reported in the *Chemical Weekly* and adjusted the prices for sales and excise taxes.

For electricity, we derived a surrogate value based on 1998/1999 electricity price data published by Tata Energy Research Institute in *The Energy Data Directory and Yearbook 1999/2000*. These data were used in the antidumping duty administrative review of manganese metal from the PRC. *See Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China*, 66 FR 15076 (Mar. 15, 2001) and accompanying decision memorandum at *Comment 10*; and *Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 66 FR 42628 (Aug. 14, 2001). We adjusted the values to reflect inflation up to the POR using the electricity-specific price index published by the Reserve Bank of India.

We made adjustments to account for freight costs between the suppliers and the respective manufacturing facilities for each of the factors of production identified above. In accordance with our practice, for inputs for which we used cost-insurance-freight import values from India, we calculated a surrogate freight cost using the shorter of the reported distances either from the closest PRC ocean port to the factory or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964, 61977 (Nov. 20, 1997); *see also Sigma Corp.* v. *United States*, 117 F.3d 1401 (Fed. Cir. 1997).

For calculating foreign inland truck freight, we used information obtained from the Indian newspaper *Financial Express*. *See* the *FOP Memo*. To value foreign inland rail freight, we relied upon price quotes obtained from Indian rail freight companies in November 1999. These quotes were used in the investigation of bulk aspirin from the PRC and the 1999–2000 administrative review of tapered roller bearings from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 116, 119 (Jan. 3, 2000); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Notice of Intent Not To Revoke Order in Part*, 66 FR 35937, 35941 (July 10, 2001). We averaged these quotes, then inflated this average to the POR using the wholesale price index data published in the International Monetary Fund's *International Financial Statistics*.

To value marine insurance, we relied on price quotes obtained from Roanoke Trade Services, Inc., a provider of marine insurance. *See* the memorandum to the File from Gregory Kalbaugh entitled "Marine Insurance Rates," dated July 9, 2002, which is on file in the CRU. To value ocean freight, we relied upon price quotes obtained from Maersk Sealand, a provider of ocean freight services. *See* the memorandum to the File from Gregory Kalbaugh entitled "Ocean Freight Rates," dated

July 9, 2002, which is on file in the CRU.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This information is available on the Department's website at *http://ia.ita.doc.gov/wages/9*.

To value factory overhead, selling, general, and administrative expenses, and profit, we obtained data from the January 1997 *Reserve Bank of India Bulletin*.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Guangdong Import and Export Corporation	2.05
Sinochem Tianjin Import and Export Corporation	1.95
PRC-Wide Rate	243.40

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written briefs, within 120 days of the publication of these preliminary results.

The Department will determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

For assessment purposes, we do not have the information to calculate an estimated entered value. Accordingly, we have calculated importer-specific duty assessment rates for the merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific ad valorem ratios based on the EPs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Guangdong and Tianjin will be that established in the final results of this administrative review; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) the cash deposit rate for all other PRC exporters will be 243.40 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for a non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary, Import Administration.

[FR Doc. 02–19828 Filed 8–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072902F]

Marine Mammals; File No. 1245

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that J. David Whitaker; South Carolina Department of Natural Resources; P.O. Box 12559; Charleston, South Carolina 29422–2559, has requested an amendment to scientific research Permit No. 1245.

DATES: Written or telefaxed comments must be received on or before September 5, 2002.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 1245, issued on May 19, 2000 (65 FR 36666) is requested under the authority of Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 1245 authorizes the permit holder to capture, handle, flipper and

PIT tag, blood and tissue sample, perform ultrasound, and release 250 loggerhead, 50 Kemp's ridley, 10 green and 1 leatherback turtle. The permit holder requests authorization to extend the permit for two more years, until October 31, 2005, and increase the take of loggerheads to 300 and leatherbacks to 3 due to the increasing numbers of turtles encountered.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 30, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19819 Filed 8–5–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 7, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 31, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Annual Progress Reporting Form for the American Indian Vocational Rehabilitation Services (AIVRS) Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 66.

Burden Hours: 1,056.

Abstract: This data collection will be conducted annually to obtain program and performance information from the AIVRS grantees on their project activities. The information collected will assist federal Rehabilitation Services Administration (RSA) staff in responding to the Government Performance and Results Act (GPRA). Data will primarily be collected through an Internet form.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2064. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19779 Filed 8–5–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On July 31, 2002, the Department of Education published two 60-day public comment period notices for the information collections, "Guidance to SEAs Seeking to Use an Alternative Method to Distribute Title I Funds to LEAs with Fewer Than 20,000 Total Residents" and "Guidance to SEAs on Procedures for Adjusting ED-determined Title I Allocations to Local Educational Agencies (LEAs)." These notices were incorrectly published since comment period will be provided with the publication of the Notice of Proposed Rulemaking (NPRM) for Title I—Improving the Academic Achievement of the Disadvantaged. The comment period for these two information collections should coincide with the published NPRM. The Leader, Regulatory Information Management, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Axt at her internet address *Kathy.Axt@ed.gov*.

Dated: July 31, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 02–19780 Filed 8–5–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065, California]

El Dorado Irrigation District; Notice of Public Meetings

July 31, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies have asked the Commission for time to work collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. .

On Monday, August 12, the Recreation/Socioeconomics workgroup will meet from 10 a.m. until 4 p.m. On Tuesday, August 13 and Wednesday, August 14, the Aquatics/Hydrology workgroup will meet from 9 a.m. until 4 p.m.

The workgroup meetings will focus on reviewing study results and the development of management objectives. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

All meetings will be held at the Kirkwood Community Service Building, 33540 Loop Road, Kirkwood, California.

For further information, please contact Elizabeth Molloy at (202) 208–0771 or John Mudre at (202) 219–1208.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19773 Filed 8–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–110–000]

New England Coalition On Nuclear Pollution and Citizens Awareness Network, Complainants, v. Vermont Yankee Nuclear Power Corporation, New England Power Company, Green Mountain Power Company, Central Vermont Public Service Corporation, Central Maine Power Company, Cambridge Electric Light Company, Northeast Utilities (Through Its Affiliates and Operating Companies Western Massachusetts Electric Company, Connecticut Light and Power Company, and Public Service Company of New Hampshire) and Entergy Corporation d/b/a Entergy Nuclear Vermont d/b/a ENVY, Respondents; Notice of Complaint

July 31, 2002.

Take notice that on July 30, 2002, The New England Coalition on Nuclear Pollution, Inc., and The Citizens Awareness Network, Inc., submitted a Complaint seeking a declaratory ruling and Order on an allegation that the July 22, 2002 agreement among Entergy Nuclear Vermont Yankee, Vermont Yankee Nuclear Power Corporation, Central Vermont Public Service Company, Green Mountain Power Company, Connecticut Light & Power, New England Power Company, Western Massachusetts Electric Company, Public Service Company Of New Hampshire, Central Maine Power, and Cambridge Electric Light Company, eliminates the right of non-Vermont ratepayers to a return of any excess Vermont Yankee decommissioning funds, violates 18 CFR 35.32(a)(7), has been placed in effect without filing in violation of 16 U.S.C. Sec. 824d, and is unlawful discrimination in violation of 16 U.S.C. Sec. 824d and Sec. 824e. Complainants request that the Commission give this matter fast-track consideration. Complainants further request that the Commission order Respondents to comply with 16 U.S.C. 824d by filing the July 22, 2002, Agreements in the manner required by 18 CFR part 35, and suspend the effectiveness of the July 22, 2002 Agreements until Respondents have filed them with the FERC and the 60-day suspension period has expired.

Copies of the Complaint were served via e-mail on the FERC listed corporate representatives of respondents.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before August 19, 2002. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.

Deputy Secretary.

[FR Doc. 02–19771 Filed 8–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 31, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 184–065.

c. *Date filed:* February 22, 2000.

d. *Applicant:* El Dorado Irrigation District.

e. *Name of Project:* El Dorado Project.

f. *Location:* Located on the South Fork of the American River and its tributaries in the counties of El Dorado, Alpine, and Amador, California, partially within the boundaries of the Eldorado National Forest. The project also diverts about 1,900 acre-feet of water from lower Echo Lake in the upper Truckee River Basin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* William Wilkins, General Manager, El Dorado Irrigation District, 2890 Mosquito Road,

Placerville, CA 95667–4700. Telephone (530) 622–4513.

i. *FERC Contact:* Any questions concerning this notice should be addressed to Susan O'Brien, e-mail address *susan.obrien@ferc.gov*, or telephone (202) 502–8849.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* October 31, 2002; reply comments due November 30, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (http://www.ferc.gov) under the "e-Filing" link. The Commission strongly encourages electronic filings.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The project consists of the following existing facilities: (1) A 113-foot-long, 20-foot-high rubble and masonry main dam with a crest elevation of 8,210 feet mean sea level (msl) and 11 auxiliary dams, impounding Lake Aloha, a reservoir that covers 590 acres (at full pond) with a usable storage of 5,179 acre-feet; (2) a 320-foot-long, 14-foot-high roller-compacted concrete dam with a crest elevation of 7,413 feet msl, impounding lower Echo Lake, a reservoir that covers 335 acres (at full pond) with a usable storage of 1,900 acre-feet; (3) a 6,125-foot-long conduit from lower Echo Lake to the South Fork of the American River; (4) a 1,200-foot-long, 84.5-feet-high gunite-core earthfill main dam with a crest elevation of 7,959.5 feet msl and one auxiliary dam, impounding Caples Lake, a reservoir that covers 624 acres (at full pond) with a usable storage of 22,490 acre-feet; (5) a 280-foot-long, 30-foot-high rock and earthfill dam with a crest elevation of 7,261 feet msl, impounding Silver Lake, a reservoir that covers 502 acres (at full pond) with usable storage of 13,280 acre-feet; (6) a 160-foot-long, 15-foot-high rockfill reinforced binwall diversion dam with a crest elevation of 3,910.5 feet msl, impounding 200 acre-feet of the South Fork of the American River; (7) a 22.3-mile-long conveyance from the diversion dam to the forebay; (8) a 70-foot-long, 9.5-foot-high concrete diversion dam with a crest elevation of 4,007 feet msl on Alder Creek; (9) six small creeks that divert into the conveyance—Mill Creek, Bull Creek, Carpenter Creek, Ogilby Creek, Esmeralda Creek and an unnamed creek; (10) a 836-foot-long, 91-foot-high earthfill forebay dam with a crest elevation of 3,804 feet msl, a reservoir that covers 23 acres (at full pond) with a usable storage of 356-acre-feet; (11) a 2.8-mile combination pipeline and penstock conveyance, with surge tank, from the forebay to the powerhouse; (12) a 110-foot-long by 40-foot-wide steel frame powerhouse with reinforced concrete walls and an installed capacity of 21,000 kilowatts, producing about 106 gigawatt-hours annually when operational; and (13) other appurtenances. No transmission lines are included with the project.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of application ready for environmental analysis: July 30, 2002.
Comment due date: October 31, 2002.
Reply comment due date: November 30, 2002.
Notice of the availability of the draft EIS: January 31, 2003.
Comment due date: March 31, 2003.
Notice of the availability of the final EIS: May 15, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19772 Filed 8–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

Issued: July 31, 2002.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 2101.

c. *Date filed:* July 18, 2002.

d. *Submitted By:* Sacramento Municipal Utility District.

e. *Name of Project:* Upper American River Project.

f. *Location:* Project is located in Sacramento County and EL Dorado County, California, along the Rubicon River, Silver Creek, and South Fork of the American River. Nearby cities include Placerville, South Lake Tahoe, Folsom, and Sacramento, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to section 16.19 of the Commission's regulations, the licensee is required to make available the information described in section 16.7 of the regulations. Such information is available from the Sacramento Municipal Utility District, 6301 S. Street, Hydro Relicensing Public Library, Sacramento, CA, 95817–1899, 916–648–1234.

i. *FERC Contact:* James Fargo, 202–219–2848. James.Fargo@Ferc.Gov.

j. *Expiration Date of Current License:* July 31, 2007.

k. *Project Description:* The project's facilities include three dams and storage reservoirs, eight diversion dams and eight powerhouses with a total generating capacity of approximately 68,800 kilowatts.

l. The licensee states its unequivocal intent to submit an application for a

new license for Project No. 2101. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2005.

A copy of the Notice of Intent is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in the item above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19774 Filed 8–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 31, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2782–006.

c. *Date filed:* October 30, 2001.

d. *Applicant:* Parowan City.

e. *Name of Project:* Red Creek Hydroelectric Project.

f. *Location:* On Red Creek, near the City of Paragonah, in Iron County, Utah. The project occupies about 19 acres of United States lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Alden C. Robinson, Sunrise Engineering, Inc., 25 E. 500 N., Fillmore, Utah 84631–3513; (435) 743–1143.

i. *FERC Contact:* Steve Hocking at *steve.hocking@ferc.gov* or (202) 219–2656.

j. *Cooperating agencies:* We ask Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of an environmental document for this project. Agencies who would like to request cooperating agency status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing comments, recommendations, terms and conditions, prescriptions, and requests for cooperating agency status:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, prescriptions, and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link. The Commission strongly encourages electronic filings.

l. This application has been accepted and is ready for environmental analysis at this time.

m. *Description of the Project:* The existing project consists of: (1) The Red Creek diversion dam which is a concrete structure 8 feet high and 48 feet long; an intake with a radial gate and trash rack connected to a 16,098-foot-long, 16 to 18-inch diameter steel penstock, (2) the South Fork diversion dam which is a concrete structure 8 feet high and 29 feet long; an intake with a radial gate and trash rack connected to a 4,263-foot-long, 10-inch diameter steel penstock, (3) a pump station at the junction of the South Fork and Red Creek penstocks housing a 15 horsepower and a 20 horsepower pump with control equipment, (4) a 27-foot by 32-foot concrete block powerhouse with a single 500-kilowatt (kW) generator, (5) two 270-foot-long transmission lines, and (6) appurtenant facilities.

n. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

o. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19775 Filed 8–5–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket Nos. II–2000–04, 05, 06; FRL–7256–2]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for the Rochdale Village Power Plant; Tanagraphics, Inc.; and the North Shore Towers Apartments Total Energy Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final orders on petitions to object to three State operating permits.

SUMMARY: This document announces that the EPA Administrator has responded to three citizen petitions asking EPA to object to operating permits issued to three facilities by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied a petition submitted by the New York Public Interest Research Group (NYPIRG) to object to the State operating permit issued to the power plant operated by Rochdale Village, Inc. in Queens, NY. Second, the Administrator has partially granted and partially denied a petition submitted by NYPIRG to object to the State operating permit issued to Tanagraphics, Inc., in New York, NY. Third, the Administrator has partially granted and partially denied a petition submitted by NYPIRG to object to the State operating permit issued to North Shore Towers Apartments Total Energy Plant, in Floral Park, NY.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), petitioner may seek judicial review of those portions of the petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final orders, the petitions, and other supporting information at the EPA, Region 2, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Each of the final orders is also available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2000.htm.*

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

I. Rochdale Village

On June 7, 2000, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit to Rochdale Village. The petition raises issues regarding the permit application, the permit issuance process, and the permit itself. NYPIRG asserts that (1) NYSDEC violated the public participation requirements of 40 CFR 70.7(h) by inappropriately denying NYPIRG's request for a public hearing; (2) the permit is based on an incomplete permit application in violation of 40 CFR 70.5(c); (3) the permit lacks a statement of basis as required by 40 CFR 70.7(a)(5); (4) the permit repeatedly violates the 40 CFR 70.6(a)(3)(iii)(A) requirement that the permittee submit reports of any required monitoring at least every six months; (5) the permit distorts the annual compliance certification requirement of CAA section 114(a)(3) and 40 CFR 70.6(c)(5); (6) the permit does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 70.6(a)(1) because it illegally sanctions the systematic violation of applicable requirements during startup/shutdown, malfunction, maintenance, and upset conditions; (7) the permit does not require prompt reporting of all deviations from permit requirements as mandated by 40 CFR 70.6(a)(3)(iii)(B); and (8) the permit does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 70.6(a)(1) because many individual permit conditions lack adequate periodic monitoring and are not practically enforceable.

NYPIRG raises each of these issues in the petitions on Tanagraphics and North Shore Towers Apartments, as well. In each of these petitions, the eighth issue is subdivided into several detailed points, some which are permit-specific and some which are shared among the other permits.

On July 3, 2002, the Administrator issued an order partially granting and partially denying the petition on Rochdale Village. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Indicate the facility employs continuous opacity monitors, and to require quarterly reporting of opacity data; (2) require quarterly reporting of natural gas and fuel oil consumption data, as required by the approved plan for complying with the Reasonably Available Control Technology requirements for nitrogen oxides; and (3) remove a condition that improperly applies an inapplicable sulfur requirement to the facility. The order also explains the reasons for denying NYPIRG's remaining claims.

II. Tanagraphics

On July 7, 2000, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit to Tanagraphics, on the grounds listed above. On July 3, 2002, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Include periodic monitoring to assure compliance with DEC's rules on the use of open containers; (2) require testing of fountain solutions, inks, and coatings more frequently than one time; and (3) include two opacity conditions (with periodic monitoring) that were omitted from the original permit. The order also explains the reasons for denying NYPIRG's remaining claims.

III. North Shore Towers Apartments

On August 1, 2000, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit to North Shore Towers Apartments on the grounds listed above. On July 3, 2002, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Revise a nitrogen oxides monitoring provision to reference the most recently approved stack test results; and (2) revise a sulfur-in-fuel recordkeeping requirement to retain records on-site for 5-years. The order also explains the reasons for denying NYPIRG's remaining claims.

Dated: July 23, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 02–19795 Filed 8–5–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7255–2]

Joint USEPA/State Environmental Council of the States (ECOS) Agreement to Pursue Regulatory Innovation: Alternative Treatment Technique for National Primary Drinking Water Lead and Copper Regulations for Certain Non-transient Non-community Water Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of draft variance for public review and comment.

SUMMARY: USEPA Region 5 is today proposing to issue a variance under section 1415(a)(3) of the Safe Drinking Water Act (SDWA) for certain Non-Transient Non-Community Water Systems (NTNCWSs) in the State of Michigan. The final SDWA variance would be used to implement a project entitled "Use of Flushing to Meet the Federal Lead/Copper Regulation for Nontransient Noncommunity Public Water Supply Systems." This project is being proposed under the Joint USEPA/State Agreement to Pursue Regulatory Innovation between the USEPA and the Environmental Council of the States (ECOS).

DATES: All public comments on this draft variance must be received on or before September 5, 2002.

ADDRESSES: All written comments on the SDWA draft variance should be sent to: Miguel Del Toral, USEPA Region 5, Ground Water and Drinking Water Branch, Mailcode WG–15J, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Comments may also be faxed to Miguel Del Toral at (312) 886–6171, or via electronic mail to: *deltoral.miguel@epa.gov*.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the SDWA draft variance, and other project documents, contact: Miguel Del Toral, USEPA Region 5, Ground Water and Drinking Water Branch, Mailcode WG–15J, 77 West Jackson Boulevard, Chicago, Illinois 60604. The SDWA draft variance and other project documents are also available on the Internet at the following location: *http://www.epa.gov/region 5/water/notices.htm*. Questions regarding the SDWA draft variance can be directed to Miguel Del Toral at (312) 886–5253.

SUPPLEMENTARY INFORMATION: The National Primary Drinking Water Regulations (NPDWRs) for lead and copper require all Community Water Systems (CWS) and NTNCWSs to optimize corrosion control, to minimize levels of lead and copper at consumers' taps. CWSs and NTNCWSs that exceed either the lead or copper "action level" must follow the treatment technique specified in the NPDWRs (i.e., installing corrosion control treatment (CCT)) to minimize lead levels at consumers' taps. The Michigan Department of Environmental Quality (MDEQ), which has primary enforcement responsibility for implementing the NPDWRs for lead and copper in the State of Michigan, believes that an alternative approach to CCT would be just as efficient in lowering the levels of lead and copper at consumers' taps. The alternative approach includes the replacement of fixtures contributing significant levels of lead and/or copper, and the flushing of all taps used for human consumption on a regular basis.

On May 5, 1998, USEPA and ECOS signed the "Joint EPA/State Agreement to Pursue Regulatory Innovation." Under this Agreement, USEPA and State environmental officials agreed to explore innovative ways to implement environmental programs. MDEQ has submitted a Joint Agreement proposal under this Agreement that would allow certain NTNCWSs to use the alternative approach in lieu of complying with the treatment technique specified in the NPDWRs for lead and copper promulgated by USEPA under section 1412 of SDWA (*See* 40 CFR 141.80 through 141.91). USEPA has identified a variance, under Section 1415(a)(3) of SDWA, as the potentially appropriate mechanism for allowing NTNCWSs within Michigan that qualify for the variance and comply with its terms to use an alternative approach. Section 1415(a)(3) of SDWA gives USEPA the authority to issue a variance from a treatment technique ". . .upon

a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed." USEPA has preliminarily determined that MDEQ has made a proper showing that the alternative approach will be as efficient in lowering the levels of lead and/or copper and therefore proposes to issue a variance. The SDWA draft variance specifies eligibility and performance criteria that NTNCWSs must satisfy to be eligible for the SDWA variance, and performance criteria that these systems must satisfy to remain eligible for the SDWA variance.

After consideration of public comments received on the SDWA draft variance, USEPA will take final action on the SDWA variance, which would include any necessary modification(s) based on comments received. USEPA and MDEQ have also signed a Memorandum of Understanding (MOU) which also contains the draft eligibility and participation criteria, and outlines the roles and responsibilities of USEPA and MDEQ in implementing this project. A copy of the MOU can also be obtained by contacting Miguel Del Toral at the addresses or phone number above.

Dated: July 19, 2002.

Bharat Mathur,

Acting Regional Administrator, Region V.

[FR Doc. 02–19800 Filed 8–5–02; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA and other Federal agencies policies and procedures for providing Federal support for offsite radiological emergency planning and preparedness. It describes the process for providing Federal facilities and resources to the nuclear power plant licensee after an affirmative determination has been made on the licensee's certification of a "decline or fail" situation.

SUPPLEMENTARY INFORMATION: Executive Order 12657, dated November 18, 1998, charged FEMA and other Federal agencies with the emergency planning response in cases where State and Local governments have declined or failed to prepare emergency plans. To implement Executive Order 12657, FEMA worked with the Nuclear Regulatory Commission (NRC) and other Federal agencies on the Federal Radiological Preparedness Coordinating Committee (FRPCC) to develop regulation 44 CFR 352, Commercial Nuclear Power Plants: Emergency Preparedness planning. This

regulation establishes policies and procedures for a licensee submission of a certification of "decline or fail", and for FEMA's determination concerning Federal assistance to the licensee. It also establishes policies and procedures for providing Federal Support for offsite planning and preparedness.

In accordance with Executive Order 12657, FEMA will need certain information from the licensee in order to form a decision as to whether or not a condition of "decline or fail" exists on the part of State or Local governments (44 CFR 352.3–4). This information will be collected by the appropriate FEMA Regional Office or Headquarters. Also, when a licensee requests Federal facilities or resources, FEMA will need information from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47(c)(1) and 44 FR 352.5. This information will be collected by the NRC and will be provided to FEMA through consultation between the two agencies.

Collection of Information

Title: Federal Assistance for Offsite Radiological Emergency Planning.

Type of Information Collection: Reinstatement, without change of a previously approved collection for which approval has expired.

OMB Number: 3067–0201.

Form Numbers: None.

Abstract: In accordance with Executive Order 12657 and under regulation 44 CFR 352, FEMA will need certain information from the licensee in order to form a decision as to whether or not a condition of "decline or fail" exists on the part of the State or Local government. Also, when a licensee requests Federal facilities or resources, FEMA will need information from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47(c)(1).

Affected Public: Business or Other For-Profit and State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 160.

Estimated Cost: 3,323.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact William McNutt, Program Specialist, Office of National Preparedness and (202) 646–2857 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or email *muriel.Anderson@fema.gov*.

Dated: July 29, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–19753 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection of information required to implement the Flood Mitigation Assistance program requirements.

SUPPLEMENTARY INFORMATION: The Program was created with the enactment of the National Flood Insurance Reform Act of 1994 (the Act). Section 553 of the Act authorizes a mitigation assistance program which FEMA has designated Flood Mitigation Assistance (FMA). Section 554 establishes the National Flood Mitigation Fund to provide assistance under Section 553. FMA regulations implement requirements of Section 553 and 554 of the Act.

FMA was developed to address concerns regarding repetitively or substantially damaged structures, or both, and the associated claims on the National Flood Insurance Fund. The overall goal of FMA is to fund cost-effective measures that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other insurable structures.

The purpose of the planning grants is to develop or update a Flood Mitigation Plan that FEMA must approve before approving a project grant. Native American tribes or authorized tribal organizations may submit applications to the State POC or directly to the FEMA Regional Director.

The regulations outline a basic planning process with minimum standards for the Flood Mitigation Plans. Existing plans, such as those credited through the Community Rating System or those prepared in conformance with Section 322 of the Stafford Act, as amended by Section 104 of the Disaster Mitigation Act of 2000, may meet the requirements of FMA with few or no modifications. The plan should summarize the planning process, and should be reviewed periodically by the community in order to remain a viable document. Flood Mitigation Plans must be formally adopted by the legal entity submitting the plan for FEMA approval.

Collection of Information

Title: Flood Mitigation Assistance Program.

Type of Information Collection: Revisions of a currently approved collection.

OMB Number: 3067–0271.

Form Numbers: None.

Abstract: FMA Application Package. The State will use the local government's application for grant assistance to recommend to FEMA its preference for use of limited grant funds. FEMA will use the application to determine for which projects in which communities it will provide funding from among the limited annual appropriation. The application will provide FEMA sufficient information to determine whether the project meets the minimum eligibility criteria and objectively evaluate its merits.

Affected Public: State, Local, Tribal Government.

Estimated Total Annual Burden Hours: 2,069.

Estimated Cost: $36,518.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3619, (facsimile) 202–646–3104 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information

Dated: July 29, 2002.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 02–19754 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the application for participation in the National Flood Insurance Program (NFIP).

SUPPLEMENTARY INFORMATION: The NFIP is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973). Communities must make application for eligibility in the program by submitting the items listed on the enclosed "prerequisites for the sale of flood insurance" which is taken from section 59.22 CFR 44 of the NFIP regulations. Section 201 of the Flood Disaster Protection Act of 1973 requires all flood-prone communities throughout the country to apply for participation one year after their flood prone identification or submit to the prohibition of certain types of Federal and Federally-related financial assistance for use in their floodplains.

Collection of Information

Title: Application for Participation in the National Flood Insurance Program.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0020.

Form Number(s): FEMA Form 81–64.

Abstract: The NFIP provides flood insurance to communities that apply for participation and make a commitment to adopt and enforce land use control measures that are designed to protect development from future flood damages. The application form will enable FEMA to continue to rapidly process new community applications and to thereby more quickly provide flood insurance protection to the residents of the communities. Participation in the NFIP is mandatory in order for flood related Presidentially-declared communities to receive Federal disaster assistance.

Affected Public: State, Local or Tribal Governments.

Estimated Total Annual Burden Hours: 400 hours.

Estimated Cost: The estimated annual cost to the government is $21,000 for printing and mailing the forms to regional and state offices.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact William Lesser, Program Specialist, Federal Insurance and Mitigation Administration, (202) 646–2807 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail address: *information collections@fema.gov*.

Dated: July 30, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–19755 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning State Plans for the administration of the Individual and Family Grant Program.

SUPPLEMENTARY INFORMATION: The State Administrative Plan for the Individual and Family Grant Program was established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288 as amended, section 411(a), and its implementing federal regulation 44 CFR 206.131. The Governor of a State administers the grant program in a State. The plan forms an agreement between the State and the Federal Emergency Management Agency (FEMA) to administer Individual Family Grants (IFG) according to national criteria, standards, and procedures for determination of disaster victims eligibility. The IFG program is intended to provide funds to individuals or families with disaster-related necessary expenses or serious needs, who are unable to meet such expenses or needs through other means.

Collection of Information

Title: State Administrative Plans for the Individual and Family Grant Program.

Type of Information Collection: Extension of a current approved collection.

OMB Number: 3067–0146.

Form Numbers: None.

Abstract: The Governor is required by law to administer the IFG Program and FEMA is required to publish regulations and procedures. FEMA carries out its role by requiring a State Plan which conforms to the regulations while allowing individual State procedural variations.

Affected Public: State, Local or Tribal Government.

ESTIMATED TOTAL ANNUAL BURDEN HOURS

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
	56	1	3	168
Total	56	1	3	168

Estimated Cost: The average salary level for a State employee at a GS–9 to update a State Plan is estimated to be $2,773.68

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Telephone number (202) 646–2625. Fax number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Sharon Hordesky, Emergency Management Specialist, Response and Recovery Directorate, Community and Family Services Branch, (202) 646–2778 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information or facsimile number (202) 646–3347 or e-mail address: *information collections@fema.gov*.

Dated: July 30, 2002.

Reginald Trujillo,

Director, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–19756 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an existing information collection in use without OMB approval. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(C)(2)(A), this notice seeks comments on hotels and motels and other places of public accommodations meeting the fire safety requirements as identified in Public Law 101–391, Hotel and Motel Fire Safety Act of 1990.

SUPPLEMENTARY INFORMATION: Public Law 101–391 requires FEMA to establish and maintain a National Master List (NML) of fire safe hotels, motels and other places of public accommodation (property). This public law was enacted as a result of a number of major life-loss fires occurring in the late 1970's and 1980's. The purpose of this public law is to assure the traveling public of fire safe accommodations. Under Public Law 101–391, Federal employees on official travel are required to stay in properties approved and listed on the NML.

Collection of Information

Title: Federal Hotel and Motel Fire Safety Declaration Form.

Type of Information Collection: Existing collection in use without OMB approval.

Form Number: No number issued at this time.

Abstract: Public Law 101–391 requires FEMA to establish and maintain a National Master List (NML) of fire safe places of public accommodation. The information collected will be available electronically to the general public identifying properties meeting the specified level of fire safety equipment as required in the public law. It is also available to Federal employees required by Public Law 101–391 to stay at properties on the NML when on official travel.

Affected Public: Business or other for-Profit, Not-For-Profit Institutions, and the Federal Government.

No. of Respondents: 2,000.

Frequency of Response: On Occasion.

Hours Per Response: 0.25.

Estimated Total Annual Burden Hours: 500.

Estimated Cost: $10,000.00 per year. Rate of first level manager at $20.00 × 0.25 hour × 2,000 respondents.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Timothy B. Ganley, Fire Program Specialist, United States Fire Administration, Federal Emergency Management Agency at 301–447–1358 for additional information. Contact Ms. Anderson at telephone number (202) 646–2625, facsimile number (202) 646–3347, or e-mail address: *muriel.anderson@fema.gov*, for copies of the proposed collection of information.

Dated: July 30, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–19757 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the community inspection report, which is the subject of this information collection submission. The community inspection report will be used in the implementation of the inspection procedure in the Monroe County, the City of Marathon, and the Village of Islamorada, Florida and any other community that incorporates in Monroe County on or after January 1, 1999. The inspection procedure has two major purposes: (1) To help the communities of Monroe County, City of Marathon, the Village of Islamorada, Florida, and any other communities in Monroe County that incorporate after January 1, 1999 verify that structures in their communities (those built after the effective date of the Flood Insurance Rate Map (FIRM), referred to as Post-FIRM) comply with the community's floodplain management ordinance; and (2) to ensure that property owners pay flood insurance premiums commensurate with their flood risk.

SUPPLEMENTARY INFORMATION: The community inspection report, which is the subject of this information collection submission, will be used in the implementation of the inspection procedure in the Monroe County, the City of Marathon, and the Village of Islamorada, Florida and any other community that incorporates in Monroe County on or after January 1, 1999. The inspection procedure has two major purposes: (1) To help the communities of Monroe County, City of Marathon, the Village of Islamorada, Florida, and any other communities in Monroe County that incorporate after January 1, 1999 verify that structures in their communities (those built after the effective date of the Flood Insurance Rate Map (FIRM), referred to as Post-FIRM) comply with the community's floodplain management ordinance; and (2) to ensure that property owners pay flood insurance premiums commensurate with their flood risk.

The National Flood Insurance Program (NFIP) was established by the National Flood Insurance Act of 1968 (Public law 90–448), as amended. The Flood Disaster Protection Act of 1973 (Public Law 93–234) and the National Flood Insurance Reform Act of 1994 (Public Law 103–325) made significant changes to the program. The primary purposes of the NFIP are to: (1) Better indemnify individuals for flood losses through insurance; (2) reduce future flood damages through state and community floodplain management regulations; and (3) reduce federal expenditures for disaster assistance and flood control. The NFIP makes Federally-backed flood insurance coverage available only in those communities that adopt and enforce a floodplain management ordinance to regulate new development in flood hazard areas. Over 19,000 communities participate in the NFIP.

The concept behind the program is that the communities would join the NFIP to make their citizens eligible to purchase subsidized flood insurance for existing buildings. It was recognized that insurance for many of these buildings would be prohibitively expensive if the premium were not subsidized. It was also recognized that most of these floodprone buildings were built by individuals that did not have sufficient knowledge of the hazard to make informed decisions.

In exchange for the availability of this subsidized insurance, communities would protect new construction through adoption and enforcement of community floodplain management ordinances. Owners of these new buildings (those built after the Federal Emergency Management Agency (FEMA) had identified flood hazards in the community) would pay actuarial rates for flood insurance that fully reflect the risk to the building.

Community floodplain management regulations require that residential buildings be elevated to or above the elevation of the base flood (the flood that has a 1 percent chance of occurring during any given year, also known as the 100-year flood). Non-residential buildings can either be elevated or floodproofed (made watertight) to the base flood. Without community oversight of building activities and development in the floodplain, the best efforts of some to reduce flood losses could be undermined or destroyed by the careless building of others. Community enforcement of a floodplain management ordinance is critical in

protecting a building from future flood damages, in reducing taxpayer funded disaster assistance, and also in keeping flood insurance rates affordable.

The purpose of the inspection procedures is to require owners of insured buildings (policyholders) to obtain an inspection from community floodplain management officials and submit a community inspection report as a condition of renewing the Standard Flood Insurance Policy (SFIP) on the building. The community inspection report, which is the subject of this information collection submission, will materially assist in reducing the number of buildings at risk to flood losses. The inspection procedure has two major purposes: (1) To help the pilot communities for this inspection procedure, Monroe County, City of Marathon, and the Village of Islamorada, Florida, and any community that incorporates after January 1, 1999 verify that structures in their communities (those built after the effective date of the FIRM, or post-FIRM) comply with the community's floodplain management ordinance; and (2) to ensure that property owners pay flood insurance premiums commensurate with their flood risk. Post-FIRM construction is charged an actuarial rate that must fully reflect the risk of flooding. The community inspection report will be needed to effectively implement the inspection procedure. The community inspection report will be used to document whether the insured building is in compliance with the community's floodplain management ordinance. The inspection report will also assist FEMA to ensure that property owners are paying flood insurance premiums commensurate with their flood risk.

Under the NFIP Floodplain Management Regulations at 44 CFR 60.3, all new construction and substantial improvements of structures in A Zones on the community's FIRM must have any enclosed areas below the lowest floor of an elevated building designed to include openings to equalize hydrostatic flood pressure on exterior walls by allowing for the automatic entry and exit of floodwaters. In V Zones, new construction and substantial improvements must have the space below the lowest floor either free of obstruction or constructed with open wood lattice-work, insect screening, or non-supporting breakaway walls, intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. In both A and V Zones on the community's FIRM, the area below the lowest floor of an elevated building can only be used for parking of vehicles, building access, or storage.

In addition, owners must build the area below the lowest floor of an elevated building using flood resistant materials and must use construction methods and practices that minimize flood damages. Owners must also build with electrical, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

FEMA conducted a Community Assistance Visit (CAV) in Monroe County, Florida, in 1982, 1987, and in 1995. The purpose of a CAV is to assess an NFIP community's floodplain management program and to provide whatever assistance the community needs to administer its floodplain management ordinance effectively when program deficiencies or violations are identified. One of the more serious problems that FEMA identified through the CAVs was the apparent widespread use of the enclosed area below the lowest floor of elevated buildings for uses other than parking of vehicles, building access, or storage. Follow-up contacts with Monroe County had indicated that it was unable to identify possible violations and remedy violations identified.

There are several factors that have limited Monroe County's ability to determine whether a building with an enclosure complies with the county's floodplain management ordinance: (1) A provision in Florida laws exempts "owner-occupied family residences" from the administrative warrant inspection procedure provided under State law for identifying building-safety issues. Under Florida State law, entry by local officials into owner-occupied single family homes without consent of the owner requires a search warrant, which is extremely difficult to obtain. (2) It is often difficult from the street to determine whether the enclosed area below an elevated building contains uses other than parking of vehicles, building access, or storage. Although the County can seek consent and approval of the owner to inspect their property, the community has had limited success in identifying violations using this method. (3) The volume of possible violations is also a contributing factor in the community's ability to address this problem. Monroe County estimated that there are several thousand buildings with illegal enclosures below the lowest floor of an elevated building. Consequently, the community has had little success in identifying possible violations so that it could then require actions to remedy the violations to the maximum extent possible.

Given these circumstances, Monroe County indicated its interest in participating in an inspection procedure. In January 1997, a Monroe County Citizen's Task Force, which was appointed by the Monroe County Board of County Commissioners to address the issue of illegal enclosures below the lowest floor of an elevated building, recommended establishment of a procedure to require an inspection and a compliance report prior to the renewal of a flood insurance policy. On June 11, 1998, the Board of County Commissioners of Monroe County, Florida, passed a resolution that requested FEMA to establish an inspection procedure for the County as a means of verifying that insured buildings in the Special Flood Hazard Area under the NFIP comply with the County's floodplain management ordinance.

The Village of Islamorada incorporated as a separate community within Monroe County in January 1998 and became a separate participating NFIP community on October 1, 1998. The Village of Islamorada encompasses four of the Florida Keys that would have been included as part of the inspection procedure in Monroe County. Because of possible illegal enclosures in the Village of Islamorada, the community indicated its interest in participating in the pilot inspection procedure in a letter dated September 24, 1998, in its application to join the NFIP.

The City of Marathon incorporated as a separate community within Monroe County on November 2, 1999 and became a separate participating NFIP community on October 16, 2000. The City of Marathon encompasses 12 miles of the Florida Keys that would have been included as part of the inspection procedure in Monroe County. Because of possible illegal enclosures in the City of Marathon, the community indicated its interest in participating in the pilot inspection procedure in a resolution titled, "A Resolution of the City Council of the City of Marathon, Florida, Providing for Approval of the City's Participation in the National Flood Insurance Program's Pilot Inspection Program and Providing for an Effective Date", which was passed and adopted on September 13, 2000.

An interim final rule was published in the **Federal Register** on March 8, 2002 (67 FR 10631) that amended the NFIP regulations to clarify that areas of Monroe County that incorporate on or

after January 1, 1999, and become eligible for the sale of flood insurance must participate in the inspection procedures as a condition of joining the NFIP. This requirement was specifically stated in the supplementary of the proposed rule (published in the **Federal Register** on May 5, 1999, 64 FR 24256) and in the final rule (published in the **Federal Register** on June 27, 2000, 65 FR 39726) establishing the inspection procedure. However, this requirement was not clearly stated in the Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61, the endorsements to the Standard Flood Insurance Policy. The interim final rule amended 44 CFR 59.30 and the appendices to make clearer that participation in the inspection procedures is a requirement for any area within Monroe County that incorporates on or after January 1, 1999. FEMA will publish notices in the **Federal Register** when communities in Monroe County incorporate, agree to implement the pilot inspection procedure, and become eligible for the sale of flood insurance.

Due to the fact that there has been widespread use of the enclosed area below the lowest floor of elevated buildings for uses other than parking of vehicles, building access or storage, the community inspection report will materially assist the communities in identifying and remedying the violation, thereby reduce the number of buildings exposed to significant flood losses. Furthermore, the collection of information will help FEMA ensure that the policyholders of buildings with illegal enclosures are paying premiums commensurate with their flood risk.

The inspection procedure will be conducted in the communities of Monroe County, City of Marathon, the Village of Islamorada, and any other community in Monroe County that incorporates after January 1, 1999. FEMA would make any decision to implement the inspection procedure in NFIP participating communities outside Monroe County only after completing the pilot inspection procedure within the selected communities and after an evaluation to determine how effective the procedure is in achieving NFIP building compliance. Implementation of the inspection procedure beyond Monroe County would require separate rulemaking and preparation of supporting materials for Paperwork Reduction Act submissions.

Collection of Information

Title: Inspection of Insured Structures by Communities.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0275.

Abstract: The purpose of the inspection procedure and need for the community inspection report is to:

(1) To help the communities of Monroe County, City of Marathon, the Village of Islamorada, Florida, and any other community in Monroe County that incorporates after January 1, 1999 verify and document that post-FIRM structures in their communities comply with the community's floodplain management ordinance; and

(2) To ensure that property owners pay flood insurance premiums commensurate with their flood risk due to the increased exposure to flood damages.

The final rule (published in the **Federal Register** on June 27, 2000, 65 FR 39726) and the interim final rule (published in the **Federal Register** on March 8, 2002, 67 FR 10631) established an inspection procedure in Monroe County, City of Marathon, the Village of Islamorada, Florida and any other community in Monroe County that incorporates after January 1, 1999 that would be built around the flood insurance policy renewal process. The requirement that a building be inspected by the community, as a condition of renewing the flood insurance policy on the building, would *only* apply to NFIP insured buildings in Special Flood Hazard Areas that are identified as possible violations by the community in which the property is located. The Special Flood Hazard Areas (SFHA) is an area that is based on a flood that would have a 1-percent chance of being equaled or exceeded in any given year, referred to as the 100-year flood.

Policyholders that have a flood insurance policy with a renewal effective date on and after the implementation date of the pilot inspection procedure would receive, along with their policy renewal notice, an endorsement established in Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61. The endorsement would provide that an inspection by the community may be required before a subsequent renewal of the flood insurance policy. Policies issued as new policies after the effective date for implementing the pilot inspection procedure would also contain the endorsement established in Appendices (A)(4), (A)(5), and (A)(6). The endorsement amended all flood insurance policies (pre-FIRM and post-FIRM) on buildings in Monroe County, City of Marathon, and the Village of Islamorada, Florida (there are approximately 28,771 flood insurance policies in these communities at the time of this submission). Pre-FIRM insured buildings are included for the endorsement since there may be some policies within this category that should be rated post-FIRM because they were misrated or substantially improved after the effective date of the community's FIRM. A notice describing the purpose of the inspection procedure would accompany the new endorsement to the Standard Flood Insurance Policy regarding the inspection procedure.

Monroe County, City of Marathon, and the Village of Islamorada would identify possible violations and forward the list to FEMA. There are an estimated 2,000–4,000 number of insured buildings within the three communities that may be subject to an inspection based on the identification as possible violations. This estimate was reported to FEMA from the communities. Based on FEMA's review of floodplain development in these communities, FEMA is comfortable with this estimate.

Monroe County, City of Marathon, and the Village of Islamorada would identify possible violations through a review of the pre-FIRM and post-FIRM flood insurance policies provided by FEMA and from a visual street inspection of the building, from tax records, and through a review of other documents on file in the community pertaining to the property and through other community procedures. For buildings identified by Monroe County, City of Marathon, and the Village of Islamorada as possible violations, the insurer of the flood insurance policy would send a notice to policyholders approximately 6 months before the policy expiration date. This notice would state that the policyholder must obtain an inspection from the community and submit the results of the property inspection as part of the renewal of the flood insurance policy by the end of the renewal grade period (30 days after date of the policy expiration). The insurer would send a reminder notice to the policyholder with the Renewal Notice about 45 to 60 days before the policy expires.

The policyholder would be responsible for contacting the community to arrange for an inspection. The community would inspect the building to determine whether it complies with the community's floodplain management ordinance and document its findings in an inspection report. The community would provide two copies of the inspection report to the policyholder.

If the policyholder obtained a timely inspection and sent the community's inspection report and the renewal premium payment to the insurer by the end of the renewal grace period, the

insurer would renew the flood insurance policy whether or not the building has been identified as a violation by the community. The insurer would review the insurance policy for rerating upon review of the community inspection report. If the building was not properly rated to reflect the building's risk of flooding, the policy would be rerated to reflect that risk. If the community's inspection found a violation, the community would undertake an enforcement action in accordance with its floodplain management ordinance.

If the policyholder did not obtain an inspection and submit an inspection report with the renewal premium payment by the end of the renewal grace period (30 days after date of expiration), the flood insurance policy would not be renewed. The insurer would send a notice to the insured that the flood insurance policy expired and cannot be re-issued without the community inspection report.

The communities will not be using a FEMA designed form in documenting the inspection of an insured structure. FEMA consulted with local officials from the communities participating in the inspection procedure on the type of existing building inspection reports they use to implement their floodplain management ordinance and we determined that the current community inspection documents could be used for purposes of implementing the inspection procedure and for purposes of determining whether the building's flood insurance policy needs to be rerated by insurer.

The community inspection report is critical to the effective implementation of the inspection procedure. Without the inspection procedure, the Village of Islamorada, City of Marathon, and Monroe County would continue to have limited ability to inspect properties for illegal enclosures that violate their floodplain management ordinance and as a result, both communities would be unable to undertake appropriate actions to remedy the violations. There are several potential serious consequences if these structures continue to be in violation of the community's floodplain management ordinance.

Allowing uses other than parking of vehicles, building access, or storage in the enclosed area below the Base Flood Elevation (elevation of the 100-year flood) significantly increases the flood damage potential to the area below the lowest floor of the elevated building. Improperly constructed enclosure walls and utilities can tear away and damage the upper portions of the elevated building exposing the building to greater damage. Improperly constructed enclosures can also result in flood forces being transferred to the elevated portion of the building with the potential for catastrophic damage. If a flood disaster occurs, the impact will go beyond the building itself. If the ground level enclosure is finished with living spaces, there is an increased risk to lives. Residents who live in these ground level enclosures may not be fully aware of the flood risk.

Furthermore, there is limited coverage in this area for elevated post-FIRM buildings, as provided for in the Standard Flood Insurance Policy (SFIP) under Article 6—Property Not Covered. This provision of the SFIP, effective since October 1, 1983, limits coverage for enclosures, including personal property contained therein. FEMA does not cover such items as finished enclosure walls, floors, ceilings, and personal property such as rugs, carpets, and furniture. In 1983, FEMA limited the coverage for enclosed areas below elevated buildings due to the financial losses experienced in the NFIP when FEMA provided full coverage in these areas. Consequently, property owners and residents that may live in these lower enclosed areas may have significant uninsured losses in the event of a flood for finished items and contents below the lowest floor.

However, in spite of the limited coverage afforded for these enclosed areas, they do affect the rating of the policy. Because of the increase in flood damage potential to the building resulting from flood forces being transferred to the elevated portion of the building, the damage potential must be recognized in the rates by adding rate loadings based on the size of the enclosure. In addition, the rates must also reflect whether the enclosure contains essential building elements which are covered, namely, sump pumps, well water tanks and pumps, electrical junction and circuit breaker boxes, elevators, natural gas tanks, pumps or tanks related to solar energy, cisterns, stairways and staircases attached to the building, and foundation elements that support the building. The collection of information from the policyholder in the inspection procedure will ensure that the policyholders of buildings with enclosures are paying premiums commensurate with their flood risk.

Along with significant flood damages to the building and the potential for loss of life, the community, the State, and the Federal Government will be faced with costly outlays for flood fighting and rescue operations, response, and recovery as well as taxpayer funded disaster assistance.

Under the inspection procedure, the policyholder will be required to obtain an inspection in order to renew the policy. This will be a one-time collection of information during the period of time for which the inspection procedure is to be implemented. Since the primary purpose of the inspection is to provide communities with a mechanism to ensure compliance with the floodplain management ordinance and for FEMA to verify flood insurance rates, less frequent collection of the information through the inspection report is not possible.

Affected Public: Individuals or Households and Business or Other For-Profit.

Estimated Total Annual Burden Hours: We expect a total of 2,000 to 4,000 respondents (policyholders) to obtain an inspection from the community in which the property is located. This is the total estimated number of insured buildings that are possible violations of the community's floodplain management ordinance in Monroe County, City of Marathon, and the Village of Islamorada. The burden hours are calculated based on the maximum number of estimated respondents (4,000 insured buildings). Monroe County, City of Marathon, and the Village of Islamorada will identify which insured buildings are possible violations of the community's floodplain management ordinance. It is anticipated that the inspection procedure will be implemented over a multi-year period in each community in order to inspect several hundred insured buildings identified as possible violations each year.

It is estimated that Monroe County will inspect 500–700 insured buildings per year, the City of Marathon will inspection 200–400 insured buildings per year, and the Village of Islamorada will inspect 200–400 insured buildings per year.

The policyholders of insured buildings identified as possible violations by the community will receive a notice from their insurer approximately 6 months before the policy expiration date. This notice will state that the policyholder must obtain an inspection from the community and submit the results of the inspection as part of the renewal of the flood insurance policy by the end of the renewal grace period (30 days after date of the policy expiration). In addition, for each of the 2,000–4,000 insured buildings identified as a possible violation of the community's floodplain

management ordinance, the following will apply:

- The policyholder will receive a reminder notice from the insurer regarding the inspection with the Renewal Notice about 45 to 60 days before the policy expires.
- The policyholder is responsible for contacting the community to arrange for an inspection by a local official in the community in which the property is located.
- The policyholder will receive two copies of the inspection report from the community and submit one copy of the inspection report as part of the policy renewal process, which includes the payment of the premium.
- If the policyholder did not obtain an inspection and submit an inspection report with the renewal payment by the end of the renewal grade period (30 days after date of expiration), the flood insurance policy would not be renewed. The insurer would send a notice at expiration or shortly thereafter to the policyholder that the flood insurance policy expired and cannot be re-issued without the community inspection report.

The flood insurance renewal notice and flood insurance application have previously been approved by OMB (OMB 3067–0022).

Number of respondents/type of response	Frequency of response	Burden hours	Total burden hours
4,000 policyholders to receive & read a notice that an inspection is required in order for the flood insurance policy to be renewed. These 4,000 policyholders will also receive a reminder notice about 45–60 days before the policy expires.	1	15 minutes (total for both notices).	1,000
4,000 policyholders contact respective community to arrange for an inspection of the property. Local official inspects the property with the policyholder or his/her designee. (Note: in any given year we expect several hundred policyholders to receive the notice and contact their community.) Compliant buildings should take less time to inspect compared to an insured building that is non-compliant.	1	1–2.5 hours**	10,000
4,000 policyholders submit a copy of the inspection report with the renewal premium payment.	1	8 minutes	533
800 estimated no. of respondents that did not obtain an inspection. These respondents will be sent a notice at time of policy expiration that their flood insurance policy expired. (FEMA estimates that less than 20% of the 4,000 respondents will not obtain an inspection and as a result their flood insurance policy will not be renewed.).	1	8 minutes	107
Total number of Burden Hours to implement the inspection procedure over a multi-year period*			11,640
Annual (one-time) total burden hours for each policyholder is approximately			3
Total annual burden for approximately 500–700 inspections per year in Monroe County			2,100
Total annual burden for approximately 200–400 inspections per year in the Village of Islamorada			1,200
Total annual burden for approximately 200–400 inspections per year in the City of Marathon			1,200 hours

*It is estimated that 2,000–4,000 buildings will need to be inspected over a multi-year period. On an annual basis, it is estimated that 900–1,500 buildings will be inspected each year when you combine the estimated annual inspections to be conducted by each community. The total number of inspections would not change with the incorporation of any community within Monroe County that joins the National Flood Insurance Program and agrees to participate in the inspection procedure after January 1, 1999. The estimated total number of inspections (2,000–4,000) remains the same. The addition of any other community only offsets the total number, burden hours, and costs in Monroe County.

**FEMA has estimated that the amount of time to contact the community to arrange for the inspection and for the policyholder or his/her designee to be available to let the community official into the building to conduct the inspection will range from 1 hour to 2.5 hours.

Estimated Cost: Communities generally charge a fee for permits and inspections as part of their administration of their zoning ordinance, building code, and floodplain management ordinance. It is estimated that it will cost the policyholder on average between $35 to $50.00 for each inspection. There may be expenses related to telephone calls and arranging for someone to be available at the property so that local officials can inspect the building. These expenses are estimated to be on average $15.00 per respondent. Therefore, policyholders who are required to obtain an inspection as a condition of renewing the flood insurance policy and who obtain that inspection, it is estimated to cost on average $65.00 per policyholder. For approximately 900 to 1,500 inspections per year, the total annual cost burden to respondents is estimated to be between $58,500 and $97,500.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Lois C. Forster, Program Specialist, Federal Insurance and Mitigation Administration, (202) 646–2720 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *muriel.Anderson@fema.gov*.

Dated: July 29, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–19758 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1426–DR]

Guam; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Territory of Guam (FEMA–1426–DR), dated July 6, 2002, and related determinations.

EFFECTIVE DATE: July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Territory of Guam is hereby amended to include Categories C through G under the Public Assistance program for the Territory of Guam determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 6, 2002:

The Territory of Guam for Categories C through G under the Public Assistance program (already designated for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance at 75 percent Federal funding and Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–19760 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1427–DR]

Federated States of Micronesia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Federated States of Micronesia (FEMA–1427–DR), dated July 11, 2002, and related determinations.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Federated States of Micronesia is hereby amended to include Individual Assistance and Categories C through G under the Public Assistance program for Chuuk State determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2002:

Chuuk State for Individual Assistance and Categories C through G under the Public Assistance program (already designated for debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance at 75 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–19761 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Frio, Gonzales, Karnes, Live Oak, McMullen, Real, and Zavala Counties for Public Assistance (already designated for Individual Assistance).

San Saba County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–19759 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1428–DR]

Vermont; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont, (FEMA–1428–DR), dated July 12, 2002, and related determinations.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or Rich.Robuck@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 12, 2002:

Lamoille County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–19762 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Competitive Pre-Disaster Mitigation Grant Process

AGENCY: Federal Insurance and Mitigation Administration, Federal Emergency Management Agency.

ACTION: Notice and request for comments.

SUMMARY: The President's Fiscal Year (FY) 2003 budget proposal includes $300 million under the National Pre-Disaster Mitigation Fund to initiate a competitive grant program for pre-disaster mitigation. While Congress has not acted on the President's proposal, the Federal Emergency Management Agency (FEMA) is preparing to implement the program competitively if enacted by Congress. As part of a preliminary exploration of the issues, FEMA is soliciting ideas from all interested parties on the process for implementing the grant program on a competitive basis. During the comment period, FEMA also will hold meetings on this subject with invited representatives from the State and local stakeholders and overall emergency management profession for the purpose of obtaining a variety of individual opinions.

DATES: Comments must be received by September 30, 2002.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington DC 20472, (facsimile) 202–646–4536, or (e-mail) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Terry Baker, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–4648 or e-mail *Terry.Baker@fema.gov*.

SUPPLEMENTARY INFORMATION: The President's FY 2003 budget proposal includes $300 million to initiate a competitive pre-disaster mitigation grant program, which would replace the formula-based Hazard Mitigation Grant Program for FY 2003.

This proposed funding would represent a change in funding source for mitigation (annual funding versus funding linked to disasters), but would continue to support the goals of the Disaster Mitigation Act of 2000. While there are specific mitigation opportunities that occur immediately after a disaster, an annual grant program that provided a consistent source of funding would allow States and communities to develop more comprehensive proposals and projects to reduce their overall risks. Communities would no longer be dependent on a disaster declaration in order to obtain a FEMA mitigation grant. However, FEMA would continue to work with State and local governments to take advantage of post-disaster mitigation opportunities.

The President's budget proposal outlines a program whereby grants would be awarded on a competitive basis to ensure that the most worthwhile, cost-beneficial projects receive funding. Funded activities would reduce the risks of future damage in hazard prone areas, thereby reducing the need for future disaster assistance. Grant awards would be made without reference to State allocations, quotas or other formula-based allocation of funds. Consistent with funding available under the FY 2002 Pre-Disaster Mitigation grant program, authorized by § 203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, eligible activities under a competitive grant program would include: risk assessments; State and local mitigation planning; the reinforcement of structures against seismic, wind, and other hazards; elevation, acquisition, or relocation of flood-prone structures; and minor flood control or drainage management projects.

State emergency management authorities currently play an essential role in the implementation of all of FEMA mitigation grant programs. They provide technical assistance to communities, solicit and review applications, and coordinate statewide mitigation activities. FEMA's Pre-Disaster Mitigation implementation strategy will include the States, and we will collaborate with our State and local partners and stakeholders to develop a means for competitive review of grant proposals.

Although FEMA does not know whether this proposal for a competitive pre-disaster mitigation grant program will be included in the FY 2003 appropriations or what our authority will be in implementing such a program, we would like to prepare for the possibility by gathering comments on the proposal from our partners and stakeholders. In preliminary exploration of the issues surrounding design of the President's proposed Competitive Pre-Disaster Mitigation grant program, FEMA is soliciting responses to the following questions:

1. What key factors should FEMA consider in developing a competitive grant program?

2. What role should the States play in a competitive grant process?

3. If FEMA was authorized to set aside funds for States in addition to the competitive process, do you think there should be a set aside that States could depend on annually to maintain a level of capability in mitigation? What types of activities should be eligible for such funding?

4. Should mitigation planning funds be set aside for States in addition to competitive pre-disaster mitigation grants?

5. How could FEMA ensure that funds would be spent to address all hazards?

6. Should activities addressing multi-hazard vs. single hazard be more heavily weighted in a ranking system?

7. What methodologies could FEMA use to distribute funding based on risk?

8. How could the evaluation of applications be designed to ensure that the most worthwhile, cost-beneficial projects receive funding?

9. What should FEMA consider in addition to cost benefit analysis in developing a ranking system to evaluate applications (e.g., repetitive loss, life safety)?

10. What factors does FEMA need to consider in developing a process where agencies such as departments of economic development or natural resources were encouraged to engage in natural hazard risk reduction by applying for a competitive pre-disaster mitigation grant?

11. Should there be a cap on project costs in order to ensure a broader distribution of funds? How would a project cap amount be determined?

Dated: July 31, 2002.

Robert F. Shea,

Deputy Administrator for Mitigation, Federal Insurance and Mitigation Administration.

[FR Doc. 02–19792 Filed 8–5–02; 8:45 am]

BILLING CODE 6718–04–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, August 12, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 2, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–20015 Filed 8–2–02; 3:43 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community and Tribal Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee and committee meetings.

Name: Community and Tribal Subcommittee.

Times and Dates: 9 a.m.–4:30 p.m., August 29, 2002.

8:30 a.m.–2 p.m., August 30, 2002.

Place: Radisson Inn, 2061 N. Druid Hills Road, Atlanta, Georgia 30329.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 50 people.

Purpose: This subcommittee brings to the Board advice, citizen input, and recommendations on community and tribal programs, practices, and policies of the Agency.

Matters To Be Discussed: Agenda items include an update on Thermal Treatment Technologies; presentation on National Environmental Justice Advisory Council; presentation by the ATSDR's Ombudsman; overview of the Federal Advisory Committee Act; update on the CTS Review Process; discussion on Recommendations from Special Consultants' Caucus; breakout sessions to discuss Cultural Sensitivity Activities, education training and development of Toolbox; evaluation of Public Health Assessments for compliance to Guidelines; review of Action Items; and a report on the nomination of four new Special Consultants.

Written comments are welcomed and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ruby L. Palmer, Designated Federal Official, CTS/ATSDR contact, ATSDR, M/S E–54, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498–1749.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 29, 2002.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19623 Filed 8–5–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02163]

Support for Civil Society of Organizations Responding to HIV/AIDS in Zimbabwe; Notice of Availability of Funds; Amendment II

A notice announcing the availability of Fiscal Year 2002 funds for cooperative agreements for Support for Civil Society of Organizations Responding to HIV/AIDS in Zimbabwe was published in the **Federal Register** on May 23,2002, Volume 67, Number 100, Pages 36194–36196. The notice is amended as follows: On page 36194, column 3, section C, Availability of Funds, should be amended to include, "Funding priorities for this program have been established by the CDC-Zimbabwe AIDS Program Office, to allow for geographic diversity of grantees as well as diversity in the functions and roles of grantees. These priorities include the following categories:

"(1) *Behavior Change Training:* One or two organizations to lead efforts involving training, workshops, and seminars on behavior change in young persons to prevent HIV/AIDS, incorporating the CDC MARCH strategy and/or other science-based strategies;

"(2) *Ecumenical MARCH Reinforcement Partner:* One multidenominational, faith-based organization that can serve as a lead institution for development of behavior change reinforcement materials and strategies to reach church-based youth groups.

"(3) *Denominations:* Two or three major denominations or faith organizations with commitment and capacity to implement a comprehensive HIV prevention plan for young persons in their denomination or organization.

"(4) *Organization of HIV-positive persons:* One or two organizations that symbolize, represent, and advocate for HIV-positive persons in Zimbabwe.

"(5) *Trainers in HIV/AIDS Medical Care:* One nongovernmental organization that provides training for health care professionals taking care of persons with HIV/AIDS.

"(6) *Multisectoral, district level organizations:* At least one to two (or possibly more) organizations that function principally at the district level, working across multiple sectors, with the capacity to assist in mobilizing multiple sectors for involvement with

the CDC MARCH reinforcement strategy at the district level.

"Applications responsive to this program announcement will be funded in the categories listed above. CDC expects to fund at least one, but no more than the maximum number identified. Additional organizations may be funded based on evaluation criteria and the availability of funds."

Dated: July 31, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19766 Filed 8–5–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Workplace Violence Prevention Research, Announcement Number: OH–02–011

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Workplace Violence Prevention Research, RFA OH–02–011.

Times and Dates:

8:30 a.m.–9 a.m., August 21, 2002 (Open).
9:10 a.m.–5:30 p.m., August 21, 2002 (Closed).
8:30 a.m.–5:30 p.m., August 22, 2002 (Closed).

Place: Harbor Court Hotel, 550 Light Street, Baltimore, MD 21202 phone (1–800–824–0076 or 410–347–9700).

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–011.

Contact Person for More Information: Gwendolyn Cattledge, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road NE MS E–74, Atlanta, GA 30333, telephone (404) 498–2508.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 1, 2002.

John Burkchardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–19898 Filed 8–2–02; 10:57 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Collection; Public Comment Request: Indian Health Service Medical Staff Credentials and Privileges Files

AGENCY: Indian Health Service.

ACTION: Request for Public Comment: 60-day Proposed Information Collection: Indian Health Service Medical Staff Credentials and Privileges Files.

SUMMARY: The Department of Health and Human Services, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Indian Health Service (IHS) is providing a 60-day advance opportunity for public comment on a proposed extension of current information collection activity to be submitted to the Office of Management and Budget for review.

Proposed Collection: Title: 09–17–0009, "Indian Health Service Medical Staff Credentials and Privileges Files". *Type of Information Collection Request:* Extension, without revision, of currently approved information collection, 09–17–0009, "Indian Health Service Medical Staff Credentials and Privileges Files." *Form Number:* Instructions and information collection formats are contained in IHS Circular No. 93–2, "Credentials and Privileges Review Process for the Medical Staff." *Need and Use of Information Collection:* The IHS operates health care facilities that provide health care services to American Indians and Alaska Natives. To provide these services, the IHS employs (directly and under contract) several categories of health care providers including: physicians (M.D. and D.O.), dentists, psychologists, optometrists, podiatrists, audiologists; and in some states, physician assistants, certified registered nurse anesthetists, nurse practitioners, and certified nurse midwives. IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice. Health care providers become medical staff members, depending on the local health care facility's capabilities and medical staff bylaws. There are three types of IHS medical staff applicants: (1) Health care providers applying for direct employment with IHS; (2) contract health care providers who will not seek to become IHS employees; and (3) employed IHS health care providers who seek to transfer between IHS health care facilities. National health care standards developed by the Centers for Medicare and Medicaid Services, formerly the Health Care Financing Administration and by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) require health care facilities to review, evaluate and verify the credentials, training and experience of medical staff applicants prior to granting medical staff privileges. To meet these standards, IHS health care facilities require each medical staff applicant to provide information concerning their education, training, licensure, and work experience and any adverse disciplinary actions taken against them. This information is then verified with references supplied by the applicant and may include: former employers, educational institutions, licensure and certification boards, the American Medical Association, the Federation of State Medical Boards, the National Practitioner Data Bank, and the applicants themselves.

In addition to the initial granting of medical staff membership and clinical privileges, JCAHO standards require that a review of the medical staff be conducted not less than every two years. This review evaluates the current competence of the medical staff and verifies whether they are maintaining their licensure and the certification requirements of their specialty. The medical staff credentials and privileges records are maintained at the health care facility where the health care provider is a medical staff member. The establishment of these records at IHS health care facilities is not optional; such records must be established and

maintained at all health care facilities in the United States that are accredited by JCAHO. This information collection activity is used to evaluate individual health care providers applying for medical staff privileges at IHS health care facilities. *Affected Public:* individuals, businesses or other for-profit, not-for-profit institutions and Staff, local or Tribal Government. *Type of Respondents:* health care providers requesting medical staff privileges at IHS health facilities. The table below provides: types of data collection instruments, estimated number of respondents, number of responses per respondent, annual number of responses, average burden hour per response, and total annual burden hour.

Data collection instruction	Estimated No. of respondents	Responses per respondent	Annual No. of responses	Average burden hour per response*	Total annual burden hours
Application to Medical Staff	600	1	600	0.75 (45 mins)	450.0
Reference letter	1,800	1	1,800	0.33 (0 mins)	600.0
Reappointment request	644	1	644	1.00 (60 mins)	644.0
Medical Privileges	387	1	387	1.00 (60 mins)	387.0
Ob-Gyn Privileges	25	1	25	1.00 (60 mins)	25.0
Surgical Privileges	23	1	23	1.00 (60 mins)	23.0
Psychiatric Privileges	18	1	18	1.00 (60 mins)	18.0
Anesthesia Privileges	16	1	16	1.00 (60 mins)	16.0
Dental Privileges	128	1	128	0.33 (0 mins)	42.2
Optometric Privileges	21	1	21	0.33 (0 mins)	6.9
Psychology Privileges	23	1	23	0.17 (0 mins)	3.9
Audiologic Privileges	6	1	6	0.08 (0 mins)	0.5
Podiatric Privileges	6	1	6	0.08 (0 mins)	0.5
Radiology Privileges	9	1	9	0.33 (0 mins)	3.0
Pathology Privileges	3	1	3	0.33 (mins)	1.0
Total	3,709	.....	.....		2,221.0

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests For Further Information: Send your written comments and requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lance Hadahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, call non-toll free (301) 443–5938; send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: *lhodahkw@hqe.ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: July 31, 2002.

Duane L. Jeanotte,

Acting Deputy Director, Indian Health Service.

[FR Doc. 02–19768 Filed 8–5–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Invitation for Proposals

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: The *Exxon Valdez* Oil Spill Trustee Council is asking the public, private organizations, and government agencies to submit proposals for implementation of the Gulf Ecosystem Monitoring and Research Program. The Invitation to Submit Restoration Proposals for Federal Fiscal Year 2003: Phase II is available on the Trustee Council Internet site.

DATES: Proposals are due September 4, 2002.

ADDRESSES: *Exxon Valdez* Oil Spill Trustee Council, 441 West 5th Avenue, Suite 500, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: The Trustee Council Office, 907–278–8012 or toll free at 800–478–7745 (in Alaska) or 800–283–7745 (outside Alaska) or via Internet at *www.oilspill.state.ak.us.*

SUPPLEMENTARY INFORMATION: Following the *Exxon Valdez* oil spill in March 1989, a Trustee Council of three state and three federal trustees, including the Secretary of the Interior, was formed. The Trustee Council prepared a restoration plan for the injured resources and services within the oil spill area. The restoration plan called for annual work plans identifying projects to accomplish restoration. An extension of the Restoration Plan, the Gulf Ecosystem Monitoring and Research Program, also requires implementation through annual work plans. Each year proposals for restoration, monitoring, and research projects are solicited from a variety of organizations, including the public.

Dated: July 26, 2002.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–19791 Filed 8–5–02; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–933–1430–ET; AA–82862, A–053428]

Public Land Order No. 7531; Withdrawal of Public Land at King Salmon; Partial Revocation of Air Navigation Site No. 169, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 1.25 acres of public land from surface entry and mining but not from mineral leasing for a period of 20 years for the United States Air Force to protect the King Salmon Environmental Remediation Project. This action also revokes a Secretarial Order insofar as it affects the same 1.25 acres of public land withdrawn for use by the Federal Aviation Administration as part of Air Navigation Site No. 169.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the public land laws, including the United States mining laws, 30 U.S.C. ch 2 (2000), but not from leasing under the mineral leasing laws, for the United States Air Force to protect the King Salmon Remediation Project (AA–82862):

Seward Meridian

T. 17 S., R. 45 W.,
Sec. 15, N½NE¼SW¼SW¼SE¼.

The area described contains approximately 1.25 acres.

2. The Secretarial Order dated October 15, 1941, as amended, which withdrew public land for Air Navigation Site No. 169 (A–053428), is hereby revoked insofar as it affects the land described in Paragraph 1 containing approximately 1.25 acres.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: July 18, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–19784 Filed 8–5–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM 42163]

Public Land Order No. 7532; Revocation of Secretarial Order Dated May 2, 1908; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial Order in its entirety as to 50.00 acres of National Forest System land withdrawn for a Forest Service administrative site. The land is no longer needed for this purpose and the revocation is needed to facilitate a U.S. Army, Corps of Engineers' wetlands mitigation project. This action will open the land to such forms of disposition as may by law be made of National Forest System lands and to mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: September 5, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Erickson, U.S. Forest Service, Region 1, P.O. Box 7669, Missoula, Montana 59807, (406) 329–3623.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated May 2, 1908, which withdrew National Forest System land for the Swamp Creek Administrative Site, is hereby revoked in its entirety as to the following described National Forest System land:

Principal Meridian, Montana

Kootenai National Forest

T. 27 N., R. 30 W.,
Sec. 11, NE¼SE¼;
Sec. 12, W½W½NW¼SW¼.

The area described contains 50.00 acres in Lincoln County.

2. At 9 a.m. on September 5, 2002, the land will be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 18, 2002.

Rebecca W. Watson,

Assistant Secretary—Lands and Minerals Management.

[FR Doc. 02–19785 Filed 8–5–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; GPO–02–0138; WAOR–55695]

Public Land Order No. 7533; Withdrawal of National Forest System Lands for the Holden Mine Reclamation Project; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,265 acres of National Forest System lands from location and entry under the United States mining laws for a period of 20 years to protect the Holden Mine Reclamation Project. The lands have been and will remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Norman Day, Holden Mine Rehabilitation Project Manager, Wenatchee National Forest, 509–662–4304, or Charles R. Roy, BLM Oregon/Washington State Office, 503–952–6189.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), to protect the Holden Mine Reclamation Project:

Willamette Meridian

T. 31 N., R. 16 E.,
Protraction Block 37.
T. 31 N., R. 17 E.,
Sec. 8, S½ and S½N½; Protraction Block 37.
The areas described aggregate 1,265 acres in Chelan County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f)(1994), the Secretary determines that the withdrawal shall be extended.

Dated: July 18, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–19786 Filed 8–5–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0072).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 280, "Prospecting for Minerals other than Oil, Gas, and Sulphur in the Outer Continental Shelf."

DATES: Submit written comments by October 7, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments to MMS, the address is: *rules.comments@MMS.gov*. Reference "Information Collection—1010–0072" in your subject line. Include your name and return address in your message and mark it for return receipt.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 280, Prospecting for Minerals other than Oil, Gas, and Sulphur in the Outer Continental Shelf.

OMB Control Number: 1010–0072.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Section 1340 states that "* * * any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area." The section further requires that, permits to conduct such activities may only be issued if it is determined that: the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance.

Section 1352 further requires that certain costs be reimbursed to the parties submitting required G&G information and data. Under the Act, permittees are to be reimbursed for the costs of reproducing any G&G data required to be submitted. Permittees are to be reimbursed also for the reasonable cost of processing geophysical information required to be submitted when processing is in a form or manner required by the Director and is not used in the normal conduct of the business of the permittee.

Regulations implementing these responsibilities are under 30 CFR part 280. On December 8, 1999, MMS published a Notice of Proposed Rulemaking (64 FR 68649) that proposed amendments to, and revised into plain language, the 30 CFR 280 regulations, as well as other amendments. The OMB approved the information collection burden for the proposed rulemaking. On July 17, 2002, MMS published final regulations (67 FR 46855) with an effective date of August 16, 2002. There were no changes from proposed to final that impacted the information collection burden that OMB had approved as part of the proposed rulemaking process. The current OMB approval expires in January 2003. The revised 30 CFR 280 final regulations, as published, are the subject of this notice and the subsequent submission to OMB for approval of the information collection burden.

Responses are mandatory or required to obtain or retain a benefit. No questions of a "sensitive" nature are asked. The MMS protects information considered proprietary according to 30 CFR 280.70 and applicable sections of 30 CFR parts 250 and 252, and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2).

MMS OCS Regions collect information required under part 280 to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs. Respondents are required to submit form MMS–134 to provide the information necessary to evaluate their qualifications. The information is necessary for MMS to determine if the applicants for permits or filers of notices meet the qualifications specified by the Act. The MMS uses the information collected to understand the G&G characteristics of hard mineral-bearing physiographic regions of the OCS. It aids MMS in obtaining a proper balance among the potentials for environmental damage, the discovery of hard minerals, and adverse impacts on affected coastal states. Information from permittees is necessary to determine the propriety and amount of reimbursement.

Frequency: On occasion, annual; and as required in the permit.

Estimated Number and Description of Respondents: Approximately 1 permittee, 1 notice filer, and 1 adjacent State.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual "hour" burden for this information collection is 88 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 280	Reporting and recordkeeping requirement	Hour burden
10; 11(a); 12; 13; Permit Forms.	Apply for a permit (form MMS–134) to conduct prospecting or G&G scientific research activities, including prospecting/scientific research plan and environmental assessment or drilling plan as required.	8
11(b); 12(c)	File notice to conduct scientific research activities related to hard minerals, including notice to MMS prior to beginning and after concluding activities.	8
21(a)	Report to MMS if hydrocarbon/other mineral occurrences or environmental hazards are detected or adverse effects occur.	1
22	Request approval to modify operations	1
23(b)	Request reimbursement for expenses for MMS inspection	1
24	Submit status and final reports quarterly or on specified schedule and final report	8
28	Request relinquishment of permit	1
31(b); 73(a) and (b)	Governor(s) of adjacent state(s) submissions to MMS: comments on activities involving an environmental assessment; request for proprietary data, information, and samples; and disclosure agreement.	1
33, 34	Appeal penalty, order, or decision—burden covered under 1010–0121	.....
40; 41; 50; 51; Permit Forms.	Notify MMS and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including.	4
42(b); 52(b)	Advise 3rd party recipient of obligations. Part of licensing agreement between parties; no submission to MMS.	.....
42(c), 42(d); 52(c), 52(d)	Notify MMS of 3rd party transactions	1
60; 61(a)	Request reimbursement for costs of reproducing data/information & certain processing costs	20
72(b)	Submit in not less than 5 days comments on MMS intent to disclose data/information	1
72(d)	Contractor submits written commitment not to sell, trade, license, or disclose data/information	1
1–80	General departure and alternative compliance requests not specifically covered elsewhere in part 280 regulations.	2
Permit Forms	Request extension of permit time period	1
Permit Forms	Retain G&G data/information for 10 years and make available to MMS upon request	1

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour cost burdens for this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves ■ collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: July 26, 2002.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–19813 Filed 8–5–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 13, 2002.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by August 21, 2002.

Dated: August 21, 2002

Patrick W. Andrus,

Acting Keeper of the National Register of Historic Places.

Connecticut

Fairfield County

Baldwin, Caleb, Tavern (Rochambeau's Army in Connecticut, 1780–1782 MPS), 32 Main St., Newtown, 02000869

Basset, Daniel, House (Rochambeau's Army in Connecticut, 1780–1782 MPS), 1024 Monroe Turnpike, Monroe, 02000870

Litchfield County

Sherman, David, House (Rochambeau's Army in Connecticut, 1780–1782 MPS), 63 Middle Quarter Rd., Woodbury, 02000868

New Haven County

Strauss, Adler Company Corset Factory, 78–84 Olive St., New Haven, 02000864

New London County

Avery Point Lighthouse, On Long Island Sound at 1084 Shennecossett Rd., Groton, 02000866

Gales Ferry Historic District No. 2 (Ledyard MPS), Roughly along Hurlbutt Rd., from Allyn Rd. to Military Hwy., Ledyard, 02000865

Taintor, Charles M., House (Rochambeau's Army in Connecticut, 1780–1782 MPS), 12 Buckley Hill Rd., Colchester, 02000871

Windham County

Dorrance Inn (Rochambeau's Army in Connecticut, 1780–1782 MPS), 748 Plainfield Pike, Sterling, 02000867

Georgia

Fulton County

Southern Dairies, 593 Glen Iris Dr., Atlanta, 02000872

Hall County

Gainesville Commercial Historic District, Roughly bounded by Broad St., Maple St., Academy St. and Green St., Gainesville, 02000873

Missouri

Jackson County

BMA Tower, 700 Karnes Blvd., Kanssas City, 02000886

Nevada

Washoe County

Barnard, W.E., 950 Joaquin Miller Dr., Reno, 02000874

Greystone Castle, 970 Joaquin Miller Dr., Reno, 02000875

New York

Greene County

Rowena Memorial School, NY 23A, Palenville, 02000879

Orange County

Hays, John R., House, 45 Maple St., Walden, 02000880

Mould, Moses, House, 1743 NY 17K, Montgomery, 02000876

Saratoga County

Marshall House, 136 NY 32N, Schuylerville, 02000878

Steuben County

Younglove, Timothy M., Octagon House, 8329 Pleasant Valley Rd., Urbana, 02000877

Ohio

Cuyahoga County

Ambler Heights Historic District, Roughly bounded by Martin Luther King, Jr. Blvd., Cedar Glen, N. Park, Blvd., and along Harcourt Dr., Cleveland Heights, 02000883

Euclid City Hall, 585 E. 222nd St., Euclid, 02000884

Euclid Golf Allotment, Roughly bounded by Cedar Rd., Coventry Rd., Scarborough Rd., W. St. James Pkwy, and Ardleigh Dr., Cleveland Heights, 02000887

Harrison County

Law, Henry, Farm Historic District, 87675 Reed Rd., Uhrichsville, 02000882

Miami County

Pleasant Hill United Church of Christ, 10 W. Monument St., Pleasant Hill, 02000881

Montgomery County

Bixler, George, Farm, 13213 Providence Pike, Brookville, 02000888

Pennsylvania

Adams County

Cline's Church of the United Brethren in Christ, Cline's Church Rd., 0.5 mi. S of PA 34, Menallen, 02000894

Berks County

Berkley Historic District, Section of Snyder Rd. bet PA 61 and Berkley Rd., Ontelaunee, 02000892

Franklin County

Handycraft Farmstead, 11071 Country Club Rd., Washington, 02000893

Luzerne County

St. Gabriel's Catholic Parish Complex, 122–142 S. Wyoming St., Hazleton, 02000889

Philadelphia County

Warburton House, 1929 Sansom St., Philadelphia, 02000890

Washington County

Stephenson—Campbell House, At the endof Tomahawk Claim Lne. off of Reissing Rd., Cecil, 02000891

Texas

Refugio County

Refugio County Courthouse, 808 Commerce, Refugio, 02000895

Smith County

People's National Bank Building (Tyler, Texas MPS), 102 N. College Ave., Tyler, 02000896

Short-Line Residential Historic District, (Tyler, Texas MPS), Roughly bounded by West Ln., N. Ellis, Short St., and an unnamed alley to the east, Tyler, 02000897

West Virginia

Harrison County

Bassel, Daniel, House, WV 25, S of Jct. of WV 270 and WV 25, Lost Creek, 02000898

Kanawha County

Maple Terrace Court and Walton Apartments, Maple Terrace Court, Charleston, 02000885

Mineral County

Carskadon, Thomas R., House, Carskadon Rd., Keyser, 02000900

Mingo County

Smith, Elven C., House, 210 Little Oak St., Williamson, 02000899

A request for REMOVAL has been made for the following resource:

Puerto Rico

Aguadilla County

Silva-Benejan House 15 Munoz Rivera St., Aguadilla, 87000725

[FR Doc. 02–19765 Filed 8–5–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–376, 377, and 379 (Final) and Investigations Nos. 731–TA–788–793 (Final) (Remand)]

Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan; Amended Notice and Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Correction notice for the subject investigation.

SUMMARY: On July 29, 2002, the Commission published in the **Federal Register** (67 FR 145) an amended notice of investigation on Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Nos. 701–TA–376, 377 and 379 (Final) and 731–TA–788–793 (Final). The document was published incorrectly and this notice replaces the previous published document. The U.S. International Trade Commission (the Commission) hereby gives notice of its amended schedule in the court-ordered remand of its final antidumping and countervailing duty investigations, Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Nos. 701–TA–376, 377 and 379 (Final) and 731–TA–788–793 (Final).

EFFECTIVE DATE: July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake, Office of Investigations, telephone 202–205–3188 or Neal J. Reynolds, Office of General Counsel, telephone 202–205–3093, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

In May 1998, the Commission determined, by a four-to-two vote, that an industry in the United States was not being materially injured or threatened with material injury by reason of imports of cold-rolled stainless steel plate in coils from Belgium and Canada. On August 28, 2000, the Court of International Trade affirmed this determination as being in accordance with law and supported by substantial evidence. *Allegheny Ludlum Corp.* v. *United States*, 116 F.Supp. 2d 1276 (CIT 2000). On April 19, 2002, the U.S. Court of Appeals for the Federal Circuit vacated the lower court ruling, finding that the Commission's volume and impact findings with respect to cold-rolled stainless steel plate were not in accordance with law and that its pricing finding for cold-rolled plate was unsupported by substantial evidence. *Allegheny Ludlum Corp.* v. *United States*, Appeal No. 01–1223 (April 19, 2002). On June 18, 2002, in accordance with the Federal Circuit's decision, the Court of International Trade vacated its earlier decision and remanded to the Commission its final negative determination with respect to cold-rolled stainless steel plate. In its order, the Court of International Trade remanded the determination to the Commission "for proceedings not inconsistent with the Federal Circuit's decision in Appeal No. 01–1223." It also directed the Commission to issue a remand determination within sixty days of the date of the order, i.e., by August 19, 2002. On July 8, 2002, the Commission published its schedule for the remand proceeding in the **Federal Register**. 67 FR 47147.

On July 10, 2002, the Commission filed a motion with the Court of International Trade requesting an extension of the deadline for filing the remand determination until September 27, 2002. On July 15, 2002, the Court granted the Commission's request. Accordingly, the Commission is amending the schedule of its remand proceeding to reflect the Court's order. Any deadlines not specified below remain unchanged from the Commission's original notice.

Scheduling the Vote

The Commission will vote on the remand determination at a public meeting to be held on Thursday, September 12, 2002. The meeting is tentatively scheduled for 2:00 p.m.

Written Submissions

Each party who is an interested party in this remand proceeding may submit a written brief to the Commission. The brief must be concise and be limited to comments on how the data obtained in this remand proceeding affect the Commission's original determination with respect to cold-rolled stainless steel plate products. Any material in the comments not addressing this limited issue will be stricken from the record. The brief must be double-spaced, single-sided, and on stationary measuring 8½ by 11 inches. The brief will be limited to thirty (30) pages, and must be filed no later than the close of business on August 23, 2002.

Each party who is an interested party may also a submit a rebuttal brief to the Commission. The brief must be concise and limited to rebutting or commenting on the arguments made or facts presented by other parties in their initial brief. Any material in the comments not addressing these issues will be stricken from the record. The brief must be double-spaced, single-sided, and on stationary measuring 8½ by 11 inches. The rebuttal brief will be limited to ten (10) pages, and must be filed no later than the close of business on August 30, 2002.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with sections 3201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: August 2, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–19973 Filed 8–5–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on June 28, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, National City Corporation, Cleveland, OH; Comerica Bank, Detroit, MI; and Canadian Payments Association, Ottawa, Ontario, Canada have been added as parties to this venture. Also, ESI International, Woodland Hills, CA; CUNA & Affiliates, Washington, DC; Data Treasury Corp., Melville, NY; ValiCert, Mountain View, CA; Experian, Orange, CA; and CashEdge, New York, NY have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project.

Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on March 29, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act of April 30, 2002 (67 FR 21271).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–19749 Filed 8–5–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Effect of Emission Control Technologies on the Chemical and Physical Characteristics of Particulate Matter

Notice is hereby given that, on June 25, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute: Effect of Emission Control Technologies on the Chemical and Physical Characteristics of Particulate Matter has filed written notifications simultaneously with the Attorney General and the federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Caterpillar, Inc., Peoria, IL; INTEVEP, Cartacas, Venezuela; and Lubrizol Corporation, Wickliff, OH. The nature and objectives of the venture are to research the impact of various modern and novel NO_X and PM control technologies on the chemical and physical characteristics of particles emitted from diesels. For NO_X reduction, NO_X adsorber technology and its control will be developed. For particulate matter control, diesel oxidation catalysts in combination with diesel particulate filters will be included.

Membership in this research group remains open, and the participants intend to file additional written notification disclosing all changes in membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–19750 Filed 8–5–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 22, 2002, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The firm plans to manufacture the listed controlled substances for distribution as bulk pharmaceutical products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 7, 2002.

Dated: July 9, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–19830 Filed 8–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 7, 2002, and published in the **Federal Register** on March 18, 2002, (67 FR 12050), Roxane Laboratories, Inc., 1809 Wilson Road, P.O. Box 16532; Columbus, Ohio 43216–6532, made application by renewal to the Drug Enforcement Administration to be registered as an importer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to import cocaine to manufacture topical solutions for distribution to customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Roxane Laboratories, Inc. to import cocaine is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roxane Laboratories, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 28, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–19832 Filed 8–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing

a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 19, 2002, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import the coca leaves to manufacture bulk controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 5, 2002.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 12, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–19831 Filed 8–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Application for waiver of grounds of excludability; Form I–690.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 8, 2001 at 66 FR 41608, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 5, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will be practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of Form/Collection:* Application of Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–690, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information on the application will be used by the Service in considering eligibility for legalization under sections 210 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 85 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 21 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: July 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–19821 Filed 8–5–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 30, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E-Mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection

Title: Hazard Communication—29 CFR 1910.1200; Parts 1915, 1917, 1918, 1926, 1928.

OMB Number: 1218–0072.

Affected Public: Business or other for-profit; Farms; Federal Government; and State, Local, or Tribal Government.

Frequency: On occasion.

Type of Response: Recordkeeping and Third-party disclosure.

Number of Respondents: 6,035,925.

Requirement	Annual responses	Average response time (hours)	Estimated annual burden hours
1. Written Hazard Communication Program—New Establishments:			
Manufacturing	5,258	5.00	26,290
Non-Manufacturing	61,465	2.50	153,663
2. Written Hazard Communication Program—Existing Establishments:			
Manufacturing	154,644	1.00	154,644
Non-Manufacturing	2,259,726	0.50	1,129,863
3. Hazardous Determination	30,248	8	241,984
4. Existing Establishments Sending of MSDSs for New Hazardous:			
Manufacturing	1,014,462	0.14	142,025
Non-Manufacturing	3,434,784	0.14	480,870
5. New Establishments Sending of MSDSs for All Hazardous Chemicals:			
Manufacturing	465,648	0.14	65,191
Non-Manufacturing	1,261,262	0.14	176,577
6. Obtaining & Maintaining MSDSs—Existing Establishments:			
Manufacturing	154,644	1.00	154,644
Non-Manufacturing	2,259,726	1.00	2,259,726
7. Obtaining & Maintaining MSDSs—New Establishments:			
Manufacturing	465,648	0.14	65,191
Non-Manufacturing	1,261,262	0.14	176,577
8. Labeling Shipping Containers	0	0.00	0
9. Labeling In-Plant Containers	443,636,930	0.0033	1,464,002
10. Access to Trade Secrets	62,870	4.00	251,480
Employee Access	3,621,555	0.17	603,351
Federal Access	92,351	0.08	7,388
Total	460,242,484		7,553,465

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $494,078.

Description: 29 CFR 1910.1200; Parts 1915, 1917, 1918, 1926, and 1928 require all employers to establish hazard communication programs and to transmit information on the hazards of chemicals to their employees by means of container labels, material safety data sheets and training programs. These actions reduce the incidents of chemical-related illnesses and injury in the workplace.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–19855 Filed 8–5–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

A China Labor Rule of Law Program

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications (SGA 02–18).

This notice contains all of the necessary information and forms needed to apply for cooperative agreement funding.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), will award up to US $4.5 million through one or more cooperative agreements to an organization or organizations ("the applicant") to develop and implement a program that focuses on the promotion of labor rule of law in the People's Republic of China ("China"). USDOL is seeking applications from qualified applicants for the development of a strategy for the enhancement of labor rule of law and for the implementation of such a program through collaboration with central and local government agencies, academic institutions, and NGOs. Each applicant will submit one proposal for the entire program. USDOL, however, reserves the right to award more than one cooperative agreement for the implementation of the projects.

DATES: The closing date for receipt of applications is September 4th, 2002. As described in Section III, A and B, applications must be received by 4:45 p.m. (Eastern Daylight Savings Time) at the address below. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored.

ADDRESSES: Application forms will not be mailed. They are published in this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office, public library or on-line at *http://www.archives.gov/federal_register/index*. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Attention: Lisa Harvey, Reference: SGA 02–18, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, *etc.*, will be accepted; however, the applicant bears the responsibility for timely submission.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey: e-mail address: *harvey-lisa@dol.gov*. All applicants are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to the recent enhanced security measures. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline. All inquiries should reference SGA 02–18. See Section III.B for further information.

SUPPLEMENTARY INFORMATION: ILAB announces the availability of funds to be granted by cooperative agreement(s) to one or more qualifying organization to achieve the following program objectives: (1) Enhance the Chinese government's capacity to develop laws and regulations to implement internationally recognized workers rights; (2) promote greater awareness of labor law among Chinese workers and employers; (3) improve industrial relations and develop a national system to educate government officials, employers, workers and academics on worker rights, collective bargaining, and labor dispute prevention and resolution; and (4) enhance legal aid services to workers and migrant laborers, providing services through government and non-governmental organizations. The cooperative agreement(s) will be carried out through project(s) with China's national government in Beijing and through pilot projects in one or more of the following cities: Shenyang, Chengdu, Shanghai, and Guangzhou. Proposals of pilot projects in other cities will also be considered, provided that the cities are located within a reasonable distance from a U.S. Consulate General. In each city, the pilot project should focus on one or more of the above-mentioned objectives, depending on the specific needs of each city. In choosing cities for pilot project(s), applicants are encouraged to engage financial and human resources in the city or cities where the pilot project(s) is most likely to produce demonstrable results and success. It is neither necessary nor desirable to propose pilot projects in all these cities, unless the applicant can demonstrate that there are adequate financial and human resources to ensure project success. In addition, any successful pilot project should address the specific challenges in each locality but should also be mindful of the needs of national policymakers in China. Each pilot project should be relevant to the local labor conditions and problems and should supplement the overall program objectives. Finally, the designs of these pilot projects should reflect the understanding of and appropriate strategy to deal with China's current central-local relations, *i.e.*, proposals should be sensitive to the needs and conditions of municipal and provincial governments while also respecting national laws, procedures and policies.

Applicants are advised that USDOL is also currently soliciting grant applications under a separate SGA, SGA 02–17, to implement a program to improve mine safety in China.

The cooperative agreement(s) is to be actively managed by ILAB to assure the achievement of the stated objectives. Applicants are encouraged to be creative in proposing an innovative and cost-effective program that will have a demonstrable impact on achieving the overall objectives. Applicants are strongly encouraged to form partnerships with other national, international, or Chinese organizations to submit a joint proposal.

Limitation: Technical assistance under the proposed program may not be provided to the All-China Federation of Trade Unions. For additional information, *see* 22 U.S.C. 6981 (b)(3).

I. Background and Program Scope

A. Background: Labor Rule of Law

In China, several government agencies are responsible for administrating labor law at the national, provincial and municipal levels. At the national level, the Ministry of Labor and Social Security (MOLSS) is the principal policy-making institution.

The enforcement of national labor law and regulations is carried out by provincial and municipal bureaus of labor and social security, which are under the jurisdiction of the municipal or provincial government; they receive policy and technical guidance from MOLSS. Provincial and municipal governments also establish local regulations and policies for the implementation of national laws and policies.

(i) Labor Law Enforcement: Implementing of National Laws

Over the past decade, China has taken steps toward establishing laws and regulations and creating institutions in the labor area.[1] However, the enforcement of these laws and regulations remains problematic at both the national level as well as the local level. China's 1994 Labor Law establishes fundamental legal principles in the following nine areas:

- Promotion of employment

[1] See, for example, Chang Kai, Li Qi, and Bama Athreya, *A Comparison between International Labor Standards and Chinese Labor Standards*, August 2001, unpublished manuscript; available from the US-China Business Council or the International Labor Rights Fund; *CLB Analysis of the New Trade Union Law*, in *China Labor Bulletin*, *http://iso.china-labour.org.hk*, online February 28, 2002.

- Labor contracts and collective contracts
- Working hours, rest, and leave
- Wages
- Labor safety and sanitation
- Special protection for female staff and workers and juvenile workers
- Professional training
- Social insurance and welfare treatment
- Labor disputes

In each of these areas, the law provides the basic legal framework and guidelines but does not provide sufficient detail to implement these basic principles. The MOLSS formulates regulations and directions in each of the areas. Without adequate regulations, the government cannot protect the rights of workers as provided by the 1994 Labor Law. Enforcement is a major challenge in small and medium enterprises where violations (most often non-payment of wages and overtime and unsafe working conditions) reportedly occur most frequently.

Moreover, inspectors are not well trained as a result of the government's limited budget for training and the lack of modern training methods and materials. Many of the available training resources were developed in the 1960s and the training system is in dire need of modernization. Finally, traditional labor inspection techniques were developed for use in state-owned-enterprises (SOEs) under China's planned economy. China now needs a modern and capable inspection staff that can work to promote and enforce the law with privately owned enterprises, foreign invested enterprises, small to medium-sized SOEs, and township and village enterprises.

(ii) Worker Education: Promoting Awareness of Labor Laws

As China continues the transition toward a market-oriented economy, fear of unemployment often inhibits workers from exercising their rights at work. China's economic reforms have displaced about 150 million rural workers who seek employment in urban areas. Competition for jobs often leads workers to accept jobs that do not pay the legal minimum wage, over-time wages, holiday pay, maternity leave, or provide a safe and healthy working environment. It also leads to unscrupulous management practices and abuse by employers.

Most of the labor-intensive, low paying jobs in urban areas are filled by migrant workers, often young women, who have little education or employment experience. These workers have the greatest need to learn about their rights and responsibilities granted by national labor law.

Workers' lack of awareness and understanding of China's labor laws and regulations often prevents them from exercising their rights. The government and a very small number of NGOs are making some effort to educate workers about labor law. For example, several cities, including Shanghai, Guangzhou, and Shenzhen, initiated ad hoc workshops for job-seekers and migrant laborers to explain to them rules and regulations regarding work permits, wages and overtime payments, and other rights and obligations. A few NGOs in Guangzhou also provide information to migrant workers who seek guidance on employment laws regarding workplace disputes. However, these efforts cover only a small portion of the workforce and the services provided tend to be sporadic.

(iii) Industrial Relations: Training and Education on Rights, Collective Bargaining and Dispute Prevention and Resolution

Industrial relations in China are changing profoundly, but the legal and regulatory framework for industrial relations has not kept pace with these changes. There is no effective national structure for the promotion and education of negotiations among government, employers and workers.

An increasing number of workers are taking disputes to formal arbitration mechanisms. These mechanisms are not fully developed and are perceived as not always being staffed with well-trained neutral arbitrators. Chinese officials and analysts have spoken publicly about the need to adopt a new style of labor relations. Lawyers and workers, in small but potentially significant numbers, have begun to utilize the courts to adjudicate disputes and protect the rights of workers following the arbitration process.[2]

China currently has a small but growing corps of young lawyers, but few have expertise on labor issues. China has seen a sharp increase in labor disputes in recent years. According to official MOLSS statistics, arbitration committees nationwide handled over 135,000 labor disputes in 2000, an increase of 12.5 percent over the previous year.[3] Given China's evolving industrial relations, the need for legal and managerial professionals in the labor area is growing steadily.

The international community is lending technical assistance to China to address industrial relations issues. The International Labor Organization (ILO) is implementing a technical assistance project to improve human resource management and labor management relations in three cities in China.[4] The ILO project seeks to address three topics: (1) the development of high quality human resource practices; (2) the promotion of sound labor-management relations; and (3) the upgrading of working conditions and productivity in small and medium enterprises. Other international donors, such as the Ford Foundation and the government of the Netherlands, are supporting a number of small pilot projects that focus on legal aid to workers in Guangdong, Shanghai, and Beijing.[5]

(iv) Legal Aid: Improving Services to Workers

Women and migrants are China's most vulnerable workers.[6] Many workers do not seek effective protection from labor abuse because they are not aware of their rights and obligations under the law. While in recent years the Chinese government has enhanced its efforts to provide improved benefits and protections for workers, workers are frequently ignorant of these changes.

Local governments provide some legal assistance in all areas of law (criminal, civil and labor) to eligible citizens, including workers, through legal aid centers, but such assistance is extremely limited in both the number of citizens it serves and the quality of service provided. The legal aid centers are typically run by the local bureaus of justice, and are often under-staffed and under-budgeted. For example, in a district in Shanghai, where the legal aid services are supposedly the best in the country, the legal aid center is staffed by two lawyers who offer consulting services to qualified citizens on a walk-in basis and four additional law professionals who staff legal telephone hotlines. According to city officials, the center was visited by nearly 7,000 persons in the past year and received over 11,000 telephone inquiries. Such high levels of demand for such a small

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[2] U.S. Department of State Cable, Unclas Beijing 2001, 011990, December 12, 2001.

[3] U.S. Department of State, *China: Country Reports on Human Rights Practices, 2001*, March 4, 2002.

[4] For more information, see ILO project CPR/00/MO1/SW1, available from ILO Washington DC branch office, 202–653–7652.

[5] It is advisable that the applicants contact these organizations directly to obtain further information about these projects. Ford Foundation Beijing Office, telephone 8610–6532–6668; Royal Netherlands Embassy in Beijing, telephone 8610–6532–1131.

[6] Asia Foundation working paper, *Migrant Women Workers and Emerging Civil Society in China*, Zhang Ye, October 22, 2001.

staff put the quality of service at risk, and limit the number of persons who can be assisted.

Some NGOs are beginning to provide legal aid services as a part of their overall mission. A handful of NGOs in Guangzhou and Shenzhen provide legal aid services to migrant workers, particularly to women. However, such NGOs are extremely limited in number and most lack the human and financial resources to expand their services beyond the several dozen cases they work on each year.

B. Program Scope

For any proposal to be considered responsive to this solicitation, it must contain proposed projects that cover all of the following four aspects, with each corresponding to issues identified in section A.

(i) Labor Legislation and Labor Law Administration

Applicants should seek to propose project(s) that (1) assist the government in developing laws and regulations, emphasizing employment promotion, labor contracts and labor inspection, to protect workers' rights as provided in China's 1994 Labor Law, taking into consideration ILO international labor standards; (2) develop a national system for the training of government officials concerned with implementation and enforcement of national labor laws and regulations; (3) provide the government with technical expertise and other resources for the training of officials at all levels, and; (4) develop training materials and techniques and provide training for labor inspectors to enhance their abilities and effectiveness. Applicants are encouraged to design pilot projects in localities and to engage local and central government agencies, as well as national universities, where appropriate.

(ii) Labor Law Awareness

All applications should include a means to develop an educational infrastructure on labor law to educate workers and employers about their legal rights, protections and responsibilities under national labor laws and regulations. Particular attention should be directed to reaching socially and economically disadvantaged groups, such as women and migrant workers; and privately owned enterprises. Applicants are encouraged to develop innovative forms of cooperative relationships with national organizations, including non-governmental organizations.

(iii) Industrial Relations

Applicants should include a project to (1) promote innovative forms of labor-management cooperation in the workplace; (2) develop practical and effective ways to improve the existing labor dispute prevention and resolution system; and (3) develop a national, sustainable system for the diffusion of knowledge and best international practices in the areas of worker rights, collective bargaining, and dispute prevention and resolution among key government officials, employers, workers, and academics.

(i) Legal Aid

All applicants should include a project to (1) work with appropriate organizations to provide legal services in the labor area to workers; (2) provide training both in the area of legal knowledge as well as effective methods of providing legal service to workers, especially migrant and women workers; (3) develop sustainable institutional capacities in China for the continuation of legal services to workers beyond the program period; and (4) develop a labor and social security legal information consultation system to provide a network platform for western provinces and finally establish a national network to provide legal consultation services in the labor area. Applicants are encouraged to form partnerships with NGOs, including universities and research institutes, which are already providing legal aid to workers. Applicants are strongly encouraged to form new partnerships in China for the same purpose.

II. Authority

ILAB is authorized to award and administer this program by the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2002, Pub. L. No. 107–116, 115 Stat. 2177 (2002).

III. Application Process

A. Eligible Applicants

Any commercial, international, or non-profit organization, which may include faith-based organizations, capable of successfully implementing a labor rule of law program in China, and successfully working with MOLSS, local labor bureaus, local work safety bureaus, courts, NGOs, Chinese legal professionals, Chinese universities and other appropriate agencies or organizations in China to meet the stated program objectives is eligible to apply for this cooperative agreement. An applicant may, and indeed is encouraged, to collaborate with other organizations in submitting a joint proposal, although in such a case a lead organization must be identified. The capability of an applicant and collaborating organizations to perform necessary aspects of this solicitation will be determined under Section V. B Rating Criteria and Selection.

Please note that eligible cooperative agreement applicants must not be classified under the Internal Revenue Code as a Section 501(c)(4) entity. See 26 U.S.C. 501(c)(4). According to the Lobbying Disclosure Act of 1995, as amended, 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application plus two (2) copies must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, not later than 4:45 p.m. EDST, September 4th, 2002.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix A) (The entry on SF 424 for the Catalog of Federal Domestic Assistance Number (CFDA) is 17.700) and sections A–F of the Budget Information Form SF 424A (Appendix B). Part II must contain a technical proposal that demonstrates capabilities in accordance with the Statement of Work (Section IV.A) and the selection criteria (Section V.B).

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 40 single-sided (8½" x 11"), double-spaced, 10 to 12 pitch typed pages. Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated. Standard forms and attachments are not included in the page limit. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. These pages are also *not* included in the page limits.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Procurement Services Center after 4:45 p.m. EDST, September 4, 2002, will not be considered unless it is received before the award is made and:

1. it was sent by registered or certified mail not later than the fifth calendar day before September 4, 2002;

2. it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. it was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to September 4, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, *etc.*, will be accepted, however, the applicant bears the responsibility for timely submission. Because of delay in the receipt of mail in the Washington, DC area, it is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. All inquires should reference SGA 02–18.

D. Funding Levels

Approximately US$4.5 million is budgeted to fund this program. Although USDOL reserves the right to award more than one cooperative agreement, joint applications, consisting of more than one organization may apply to implement the program. Applicants will submit one application for the implementation of all projects (including pilot projects in localities) and are encouraged to utilize local organizations to implement portions of the program in order to institutionalize and sustain project improvements and reduce costs.

The award of any sub-contract to a local organization will be subject to USDOL approval. *See* Section IV.D Administrative Requirements.

E. Program Duration

The duration of the program is four (4) years. The start date of project activities will be negotiated upon the awarding of the cooperative agreements.

IV. Requirements

A. Statement or Work

In developing their proposals, applicants should develop a strategy for implementation of the project objectives as stated in the section **SUPPLEMENTARY INFORMATION.** The strategy should take into account the implementing environment in China as well as that of the specific cities selected for pilot projects. For the labor law administration component of the proposal (*see* Section I.B.(i)), the proposed strategy should clearly identify areas in which laws and regulations are to be developed under this program. The strategy should also identify the major components, methods and approaches of the proposed "national system" for the training of Chinese officials in the administration of labor law. Further, the strategy should identify cities for pilot projects and should clearly demonstrate how the pilot projects serve to achieve the overall program objectives. Finally, the strategy should clearly identify key organizations or universities with which the applicant proposes to form partnerships. For the labor law awareness component (*see* Section I.B.(ii)), the strategy should clearly identify the organization(s) or other venues through which workers and employers can be reached. For the industrial relations component (*see* Section I.B.(iii)), the strategy should identify partners and effective ways of providing education and training at the national level to prevent and resolve labor disputes. For the legal aid component (*see* section I.B.(iv)), the strategy should include both the identification of organizations to provide such services as well as plans to expand and sustain such services beyond the program period.

The strategy should also demonstrate how the applicant proposes to build upon the success of existing or past projects supported by other international donors, and coordinate activities among them at the local and national level. Further, the applicant should draft a strategy demonstrating how it will meet the project objectives by the end of the grant period, and how sustainability will be an integral element of the overall program.

The applicant must present a strategy to demonstrate that at least

- 80% of the target groups (targeted for training or education of labor law) exhibit an increased awareness of workers' and employers' rights as provided under national laws;
- 50% of the target groups (targeted for legal aid assistance) receive adequate legal assistance or counseling;
- 50% of targeted employers develop and implement workplace policies or programs aimed at improving employer-employee relations; and
- 80% of government inspectors of general labor law demonstrate greater skill in carrying out their functions.

The applicant should include a basis on which the target groups will be established (i.e., target industries, regions or disadvantaged groups), outline the information, education, and communication (IEC) materials that will be used as well as a strategy for translating education and capacity building efforts into concrete and demonstrable results. In addition, the applicant should develop sustainable innovative strategies for involving government and employers organizations and nongovernmental organizations as appropriate, in the development, implementation and enforcement of appropriate workplace

policies at the national and enterprise levels aimed at ensuring workers' and employers' rights under the law.

The applicant awarded the cooperative agreement ("grantee") will be required to work cooperatively with stakeholders in China, including but not limited to, MOLSS, local bureaus of labor and social security, local bureaus of work safety, provincial and city governments, NGOs, universities, research institutions, and other national or international organizations that work in similar areas. In addition, the grantee is expected to identify one or more key national or regional organizations that are capable of ensuring the sustainability of the program beyond the grant period.

B. Deliverables

Following the award of the cooperative agreement(s), unless otherwise indicated, the grantee must submit copies of all required reports to USDOL by the specified due dates. Other documents, such as project designs, are to be submitted by mutually agreed-upon deadlines.

1. Project Designs

Grantee(s) will travel to cities in China with USDOL officials on a project design mission trip, draft the design, and submit a project document in the format established by USDOL, to include a background/justification section, project strategy (objectives, outputs, activities, indicators), project implementation timetable, project management organizational chart, project budget, logical framework and performance monitoring plan to systematically monitor project results. The document will also include sections, which cover coordination strategies, project management, and sustainability of project improvements involving government, employers' and workers' organizations as well as other nongovernmental organizations as appropriate. The project design will be drawn, in part, from the proposal written in response to this solicitation.

2. Technical Progress Reports

The grantee(s) must furnish a typed technical report to USDOL on a quarterly basis, no later than 15 days from the last date of each quarter, *i.e.*, 31 March, 30 June, 30 September and 31 December of each year. The 30 June (2nd quarter) and 31 December (4th quarter) reports are abbreviated and need only indicate whether the work plan was fully implemented and if not, explain why not and attach the amended work plan. The grantee(s) must also furnish a separate financial report (SF 272) to USDOL on the same quarterly basis. The format for the technical progress report will be the standard format developed by USDOL and must contain the following information:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period as it relates to the work plan;

b. Major trends in the project that note particular success with a particular activity or trends that indicate a need to readjust or expand the work plan;

c. An account of problems, proposed solutions, actions taken or required regarding implementation of the project;

d. New proposals for activities, staffing, funding, etc.;

e. Lessons learned in project implementation;

f. Future actions planned in support of each project objective;

g. An accounting of staff and any sub-contractor hours expended; and

h. Aggregate amount of costs incurred during the reporting period, including estimated expenditures vs. budget.

3. Annual Work Plan

An annual work plan for each project will be submitted within 45 days after the approval of the project design by USDOL. Subsequent annual work plans, when revised, will be delivered to reflect modifications in implementation, no later than one year following submission of the previous work plan; or to reflect revisions based on recommendations made during mid-term evaluations, no later than 30 days following the mid-term evaluation.

4. Monitoring and Evaluation

A performance monitoring plan will be developed in collaboration with USDOL, including beginning and ending dates for projects, planned and actual dates for mid-term and final project evaluations, and will be included as part of the submission of the project document for USDOL approval. The plan will include performance indicators and instruments to collect and report on performance data on a semi-annual basis.

5. Evaluation Reports

The Grant Officer's Technical Representative (GOTR) will determine whether a mid-term evaluation will be conducted by an internal or external evaluation team. The final evaluation will be external in nature. In all cases, evaluations will be objective and carried out by independent evaluators. The grantee(s) must respond to any comments and recommendations resulting from the review of the mid-term report and will submit a work plan for implementing the recommendations of the mid-term report within 15 days following formal submission of the report to the grantee(s) by USDOL. Applicants need to allocate funds for these activities in the proposed budget.

C. Production of Deliverables

1. Materials Prepared and Purchased Under the Cooperative Agreement.

The grantee(s) must submit to USDOL all media-related and educational materials developed by it or its sub-contractor under this cooperative agreement(s), including relevant press releases, for use in this project(s) before they are reproduced, published, or used. The grantee(s) must consult with USDOL to ensure that materials are compatible with USDOL materials relating to the program, *i.e.*, public relations material such as video and web site. USDOL considers brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program, educational materials. USDOL will review materials for technical accuracy. USDOL will also review training curricula and purchased training materials for accuracy before they are used. The grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this cooperative agreement. All materials produced by grantee(s) must be provided to USDOL in a digital format for possible publication on the Internet by USDOL.

2. Acknowledgment of USDOL Funding

In all circumstances, the following must be displayed on printed materials:

> Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. [insert the appropriate cooperative agreement number].

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including State and local governments and recipients of research grants, must clearly state:

a. The percentage of the total costs of the program or project that will be financed with Federal money;

b. The dollar amount of Federal funds for the project or program; and

c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with USDOL, USDOL's role will be acknowledged in one of the following ways:

a. The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The grantee(s) will consult with USDOL on whether the logo should be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the grantee written permission to use the logo, after obtaining appropriate internal USDOL approval for use of the logo on the item.

b. If the USDOL determines the logo is not appropriate and does not give written permission, the following notice must appear on the document:

> This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

D. Administrative Requirements

1. General

Grantee organizations will be subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *i.e.*, Non-Profit Organizations—OMB Circular A–122. The cooperative agreement(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

29 CFR part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR part 93—New Restrictions on Lobbying.

29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements..

29 CFR part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

29 CFR part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

2. Sub-Contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928, and 13021 as amended, the grantee(s) is strongly encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

3. Key Personnel

The applicant must list the individual(s) who has been designated as having primary responsibility for the conduct and completion of all work in project(s) it proposes. The grantee(s) agrees to inform the GOTR whenever it appears impossible for one or more of these individual(s) to continue work on the project as planned. The grantee(s) may nominate substitute personnel for approval of the GOTR; however, the grantee(s) must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer determines not to approve the personnel change, he/she reserves the right to terminate the cooperative agreement.

4. Encumbrance of Cooperative Agreement Funds

Cooperative agreement funds may not be encumbered/obligated by the grantee(s) before or after the cooperative agreement period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations may involve only commitments for which a need existed during the cooperative agreement period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the grantee(s)'s purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

5. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the grantee(s) or a sub-contractor(s) under this cooperative agreement(s), the grantee(s) must provide and must require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations must be performed in such a manner as will not unduly delay the work.

V. Review and Selection of Applications for Cooperative Agreement Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A technical panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more grantee/s on the basis of the initial proposal submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, the best value to the Government, cost, and other factors. The Grant Officer's determination for award under this SGA 02–18 is final.

Notice: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, the Grant Officer may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Rating Criteria and Selection

The technical panel will review grant applicants against the criteria listed below on the basis of 100 points.

The criteria are presented in the order of emphasis that they will receive.

1. Approach, Understanding of the Issue, and Program Plans (40 points)

a. *Overview.* This section of the proposal must explain the strategy employed by the applicant to achieve the following results:

(1) At least 80% of the target group (targeted for training or education of labor law) exhibits an increased awareness of workers' and employers' rights as provided under the laws;

(2) At least 50% of the target group (targeted for legal aid assistance) receive adequate legal assistance or counseling;

(3) At least 50% of targeted employers have developed and implemented workplace policies or programs aimed at improving employer-employee relations; and

(4) At least 80% of targeted government labor law inspectors acquire increased skills to carry out their functions.

The applicant must describe in detail the proposed approach to comply with each requirement in Section IV.A of this solicitation, including all tasks and methods to be utilized to implement the project. Also, the applicant must propose projects that would address issues discussed in Section I.(A) and (B).

b. *Logical Framework.* The strategy should include an outline of the objectives, activities and indicators envisioned for implementation of the program.

c. *Implementation Plan.* The applicant must submit an implementation plan for the entire program, preferably with a visual such as a Gantt chart. The implementation plan should outline the approach that will be used to implement the program. The plan should list the activities envisioned for the life of the program as well as scheduling of activities by objective, starting with the execution of the cooperative agreement and ending with the final report. In describing the implementation plan, the applicant must address the following points:

(1) Describe the use of existing or potential infrastructure and use of qualified personnel, including qualified nationals, to implement the projects in Beijing as well as in selected pilot project cities. The applicant also must include a project organizational chart, demonstrating management structure, key personnel positions and indicating proposed links with the relevant government ministries, local government agencies/bureaus, NGOs, universities and other significant local actors.

(2) Develop a list of activities and explain how each relates to the overall development objectives as stated in Section I.

(3) Explain how appropriate IEC materials and training curriculum will be developed.

(4) Explain the strategy for coordinating activities conducted at the central government level with those conducted at the local (provincial/city) level.

(5) Demonstrate how the program will strengthen national government's capacity and enhance policies to protect the rights of workers as prescribed by national law.

(6) Demonstrate how the grantee would systematically monitor and report on project performance to measure the achievement of the project objective(s).

(7) Demonstrate how the grantee would build national and local capacity to ensure that project efforts to enhance the implementation and enforcement of national labor laws would be sustained after completion of the project.

d. *Management and Staff Loading Plan.* The management plan must also include a management and staff loading plan. The management plan should include the following:

(1) If two organizations are applying for the award in collaboration, they must demonstrate an approach to ensure successful collaboration including clear delineation of respective roles and responsibilities. The applicants must also identify the lead organization and submit the collaboration agreement.

(2) A project organization chart and accompanying narrative which differentiates between elements of the applicant's staff and subcontractors or consultants who will be retained;

(3) A description of the functional relationship between elements of the project's organization; and

(4) The identity of the individual(s) responsible for project management and the lines of authority between this/these individual(s) and other elements of the project.

The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

2. Experience and Qualifications of the Applicant (25 points)

The evaluation criteria in this category are as follows:

a. The applicant organization and collaborating organizations applying for the award must demonstrate experience of working on developmental projects in China or in countries with similar political, economic and social constraints.

b. The applicant must demonstrate prior experience of working directly with government ministries, local government organizations, employers, workers, NGOs and academic institutions, as well as with U.S. Missions, in the area of labor law.

c. The applicant must also demonstrate that it can negotiate and implement developmental projects in China and that it has the appropriate international experience and expertise to carry out program responsibilities in China.

d. The applicant must demonstrate that it has staff or is able to recruit staff that can communicate effectively with Chinese employers, workers, migrant workers, and Chinese officials. Preference will be given to applicant organizations with staff that have Chinese language skills.

e. The proposal must include information regarding previous grants, contracts or cooperative agreements relevant to this solicitation. This information must include:

(1) The organization for whom the work was done;

(2) A contact person in that organization with his/her current phone number;

(3) The dollar value of the grant, contract or cooperative agreement for the project(s);

(4) The time frame and administrative and programmatic effort involved in the project(s);

(5) A brief summary of the work performed; and

(6) A brief summary of accomplishments.

This information on previous grants and contracts shall be provided in appendices and will *not* count toward the 40-page maximum page requirement.

3. Experience and Qualifications of Key Personnel (25 points)

This section of the application must include sufficient information for judging the quality and the competence of key staff proposed to be assigned to the project(s) proposed to assure that they meet the required qualifications. Successful performance of the proposed

work depends heavily on the qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's commitment of key personnel qualified for the work involved in accomplishing the assigned tasks. Information provided on the experience and educational background of personnel must indicate the following:

(a) The identity of key personnel assigned to the project. "Key personnel" are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have their hours reduced without the approval of the Grant Officer.

(b) The educational background, Chinese language skills, and experience of key personnel.

(c) The special capabilities of key personnel that demonstrate prior experience in organizing, managing and performing similar efforts.

(d) The current employment status of key personnel and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance is proposed, organizational control should be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

The following information must be furnished:

(a) The applicant must designate a Program Director and other key personnel to oversee the program. The Program Director must have a minimum of three years of professional experience in a leadership role in implementation of complex labor programs in developing countries. He or she must demonstrate sufficient knowledge of and understanding of China's political and economic development, its government, and the complexity of China's current state-local relations. Chinese language (Mandarin) proficiency is highly desirable.

(b) The applicant should specify other key personnel proposed to carry out the requirements of this solicitation.

(c) An organization chart showing the applicant's proposed organizational structure for performing task requirements for the project(s) proposed, along with a description of the roles and responsibilities of all key personnel proposed for this project(s). The chart should also differentiate between elements of the applicant's staff and sub-contractors or consultants who will be retained.

(d) Identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

(e) A resume for each of the key personnel to be assigned to the program. At a minimum, each resume must include: The individual's current employment status and previous work experience, including position title, duties performed, dates in position, employing organizations and educational background, including Chinese language skills (if any). Duties must be clearly defined in terms of role performed, i.e., manager, team leader, consultant, *etc.* (Resumes must be included as attachments, which do not count toward the page limitation.)

(f) The special capabilities of staff that demonstrate prior experience in organization, managing and performing similar efforts.

(g) The current employment status of key personnel proposed for work under the cooperative agreement, *i.e.*, whether personnel are currently employed by the organization or whether their employment depends upon planned recruitment or sub-contracting.

4. Budget Plan (10 points)

The applicant must develop one proposed budget for the implementation of the entire program, including pilot projects in localities. This section of the application must explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables presented in this solicitation; costs must include labor, training, material production and dissemination, equipment, travel and other related costs. The budget plan will be evaluated solely for the purpose of determining the efficient and effective allocation of funding for proposed program implementation. Preference may be given to applicants with low administrative costs. Administrative costs shall be reflected separately on the budget plan from programmatic costs.

The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation.

This stated commitment will be incorporated into the text of the cooperative agreement with the selected applicant(s).

Signed in Washington, DC, on this 31 day of July, 2002.

Daniel P. Murphy,

Director, Procurement Services Center.

BILLING CODE 4510–28–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ___

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) .....

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ___

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$
b. Applicant	$
c. State	$
d. Local	$
e. Other	$
f. Program Income	$
g. TOTAL	$ 0

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0 00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0 00	$ 0.00	$ 0.00	$ 0.00	$ 0 00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

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BILLING CODE 4510–28–C

DEPARTMENT OF LABOR

Office of the Secretary

A Program To Improve Mine Safety in China

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications (SGA 02–17).

This notice contains all of the necessary information and forms needed to apply for cooperative agreement funding.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), will award up to US$2.5 million through one or more cooperative agreements to an organization or organizations ("the applicant") to develop and implement a program to improve mine safety in the People's Republic of China ("China"). USDOL is seeking applications from qualified applicants for the development of a strategy to improve mine safety, and for the implementation of such a program through collaboration with central and local government agencies, enterprises, and NGOs. Each applicant will submit one proposal for the entire program. USDOL, however, reserves the right to award more than one cooperative agreement for the implementation of distinct projects as part of the program.

DATES: The closing date for receipt of applications is September 4, 2002. As described in Section III.B and C, applications must be received by 4:45 p.m. (Eastern Daylight Savings Time) at the address below. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored.

ADDRESSES: Application forms will not be mailed. They are published in this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office, public library or on-line at *http://www.archives.gov/federal_register/index* Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: SGA 02–17, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; however, the applicant bears the responsibility for timely submission.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey: e-mail address: *harvey-lisa@dol.gov*. All applicants are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to the recent enhanced security measures. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline. All inquiries should reference SGA 02–17. See Section III.B for further information.

SUPPLEMENTARY INFORMATION: ILAB announces the availability of funds to be granted by cooperative agreement to one or more qualifying organization to achieve the following program objective: Improve work safety by reducing accidents and injuries in Chinese mines. The cooperative agreement(s) will be carried out through project(s) with China's national government in Beijing and through pilot projects in one or more mining areas provided that the selected mines are located within a reasonable distance from a U.S. Consulate General. (U.S. Consulate Generals are located in Shanghai, Guangzhou, Chengdu, and Shenyang.) In each location, the pilot project should focus on the above-mentioned objective. In choosing the location for pilot project(s), applicants are encouraged to engage financial and human resources in areas where the pilot project(s) is most likely to produce demonstrable results and success. It is neither necessary nor desirable to propose pilot projects in all mining areas in China, unless the applicant can demonstrate that there are adequate financial and human resources to ensure project success. In addition, any successful pilot project should address the specific challenges in each locality but should also be mindful of the needs of national policymakers in China. Each pilot project should be relevant to the local labor conditions and problems and should supplement the overall program objective. Finally, the designs of these pilot projects should reflect the understanding of and appropriate strategy to deal with China's current central-local relations, *i.e.*, proposals should be sensitive to the needs and conditions of municipal and provincial governments while also respecting national laws, procedures and policies.

Applicants are advised that ILAB is also currently soliciting grant applications under a separate SGA, SGA 02–18, to implement a program to enhance China's labor rule of law. The cooperative agreement(s) is to be actively managed by ILAB to assure the achievement of the stated objectives. Applicants are encouraged to be creative in proposing an innovative and cost-effective program that will have a demonstrable impact on achieving the overall objectives. Applicants are strongly encouraged to form partnerships with other national, international, or Chinese organizations to submit a joint proposal.

Limitation: Technical assistance under the proposed program may not be provided to the All-China Federation of Trade Unions. *See* 22 U.S.C. 6981(b)(3).

I. Background and Program Scope

A. Background: Mine Safety in China

In China, labor issues, including mine safety, are dealt with by several government agencies at the national, provincial, and municipal levels. At the national level, the State Administration for Work Safety (SAWS) is responsible for the development of policy and legislation on work safety and inspections.

The enforcement of mine safety law is carried out at the provincial and municipal level by the local bureaus of coal mine safety supervision, which report to the provincial government but take policy guidance from the SAWS. The local bureaus of work safety are under the jurisdictions of the provincial/municipal commissions on economics and trade but must uphold national laws and policies set by SAWS. Provincial and municipal governments also establish local regulations and policies for the implementation of national laws and policies.

China has one of the world's largest mining industries both in terms of number of workers and production. Chinese mines also have one of the highest fatality rates in the world. Coal mining is the most dangerous sector for workers in China and resulted in approximately 6,000 deaths in 2001.[1] Some sources claim an even higher fatality rate in the mining industry: Disaster Relief, an organization affiliated with the American Red Cross, reports that "many disasters take place in illegally run mines * * * leaving some to believe that annual mining deaths in China exceed the 10,000 mark." [2] The high rate and severity of coal mining accidents has highlighted serious labor law enforcement problems. Despite the

[1] U.S. Department of State, China: County Reports on Human Rights Practices, 2001, March 4, 2002.

[2] Disaster Relief, China's Coal Mines: A Working Graveyard, Post April 11, 2002, at *http://www.disasterrelief.org*.

recent government efforts to close tens of thousands of small coal mines with the worst safety problems, the enforcement of mine safety laws at the local level remains weak. The central government announced in 2001 tougher mine inspection and closure standards.[3]

China faces many challenges in improving mine safety. Recent discussions with officials of SAWS provide some insights into the actions required to improve conditions in the mines. First, China needs to improve its capacity to train mine rescue personnel. Chinese officials emphasized the need to establish a national safety training center for coal mines for this purpose. Second, the government needs to enhance its capacity to enforce mine safety laws and regulations at the local level. Finally, the government needs to educate workers and mine operators about workplace safety and safety management.

B. Program Scope

To be considered responsive to this solicitation, an applicant should propose projects that (1) work with the relevant government bodies to develop mine rescue techniques and institutionalize, with the appropriate government agencies, the systematic training of government and mine personnel in such techniques; (2) strengthen the capacity of government personnel to promote workplace safety and health in Chinese mines; (3) train miners and mine operators in mine safety methods and practices; (4) improve the enforcement of work safety laws and regulations, including the sharing of education and training material; and, (5) develop pilot projects with selected coal mines or other related enterprises in technical aspects of safety supervision.

II. Authority

ILAB is authorized to award and administer this program by the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2002, Pub.L. No. 107–116, 115 Stat. 2177 (2002).

III. Application Process

A. Eligible Applicants

Any commercial, international, or non-profit organization capable of successfully implementing a mine safety program in China, and successfully working with SAWS, local mine safety bureaus, Chinese mines, NGOs, and other appropriate agencies or organizations in China to meet the stated program objective is eligible to apply for this cooperative agreement(s). Joint applications, consisting of more than one organization are also eligible, and indeed are encouraged, although in such a case a lead organization must be identified. The capability of an applicant and collaborating organizations to perform necessary aspects of this solicitation will be determined under Section V.B Rating Criteria and Selection.

Please note that eligible cooperative agreement applicants must not be classified under the Internal Revenue Code as a Section 501(c)(4) entity. See 26 U.S.C. 501(c)(4). According to the Lobbying Disclosure Act of 1995 as amended, 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application plus two (2) copies must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, not later than 4:45 p.m. ESDT, September 4, 2002.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix A) (The entry on SF 424 for the Catalog of Federal Domestic Assistance Number (CFDA) is 17.700) and sections A–F of the Budget Information Form SF 424A (Appendix B). Part II must contain a technical proposal that demonstrates capabilities in accordance with the Statement of Work (Section IV.A) and the selection criteria (Section V.B).

To be considered *responsive* to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 30 single-sided (8½" x 11"), double-spaced, 10 to 12 pitch typed pages. *Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated.* Standard forms and attachments are not included in the page limit. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. These pages are also *not* included in the page limits.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Procurement Services Center after 4:45 p.m. EDST September 4, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before September 4, 2002;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than ■ p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to September 4, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or

[3] U.S. Department of State, China: Country Reports on Human Rights Practices, 2001, March 4, 2002.

other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the applicant bears the responsibility for timely submission. Because of delay in the receipt of mail in the Washington, DC area, it is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. All inquires should reference SGA 02–xx.

D. Funding Levels

Approximately US $2.5 million is budgeted to fund this program.

Although USDOL reserves the right to award more than one cooperative agreement, joint applicants consisting of more than one organization may apply to implement the program. Applicants will submit one application for the implementation of all projects (including pilot projects in localities) and are encouraged to utilize local organizations to implement portions of the program in order to institutionalize and sustain project improvements and reduce costs. The award of any sub-contract will be subject to USDOL approval. *See* Section IV.D Administrative Requirements.

E. Program Duration

The duration of the program is four (4) years. The start date of project activities will be negotiated upon the awarding of the cooperative agreement(s).

IV. Requirements

A. Statement of Work

In developing their proposals, applicants should develop a strategy for implementation of the project objective as stated in the section **SUPPLEMENTARY INFORMATION**. The strategy should take into account the implementing environment in China as well as that of the specific cities selected for pilot projects. The strategy should identify key mines and personnel for the program to successfully reduce mine accidents and improve the government's inspection and rescue functions (*see* Section I.B.).

The strategy should demonstrate how the applicant proposes to build upon the success of existing or past projects supported by other international donors, and coordinate activities among them at the local and national level. Further, the applicant should draft a strategy demonstrating how it will meet the project objectives by the end of the grant period, and how sustainability will be an integral element of the overall program.

The applicant must present a strategy to demonstrate that at least

- 50% of targeted mines improve work safety conditions for workers; and
- 80% of government inspectors of mine safety law demonstrate greater skill in carrying out their functions.

The applicant should include a basis on which the target groups will be established (*i.e.*, target mines or regions), outline the information, education, and communication (IEC) materials that will be used as well as a strategy for translating education and capacity building efforts into concrete and demonstrable results. In addition, the applicant should develop sustainable innovative strategies for involving government and employers organizations, and nongovernmental organizations, as appropriate, in the development, implementation and enforcement of appropriate workplace policies at the national and enterprise levels aimed at ensuring workers' and employers' rights under the law. The applicant awarded the cooperative agreement ("grantee") will be required to work cooperatively with stakeholders in China, including but not limited to, MOLSS, SAWS, local bureaus of work safety, provincial and city governments, local mine bureaus, mines, NGOs, and other national or international organizations that work in similar areas. In addition, the grantee is expected to identify one or more key national or regional organizations that are capable of ensuring the sustainability of the program beyond the grant period.

B. Deliverables

Following the award of the cooperative agreement(s), unless otherwise indicated, the grantee must submit copies of all required reports to USDOL by the specified due dates. Other documents, such as project designs, are to be submitted by mutually agreed-upon deadlines.

1. Project Designs

The grantee(s) will travel to cities in China with USDOL officials on a project design mission trip, draft the design, and submit a project document in the format established by USDOL, to include a background/justification section, project strategy (objectives, outputs, activities, indicators), project implementation timetable, project management organizational chart, project budget, logical framework and performance monitoring plan to systematically monitor project results. The document will also include sections, which cover coordination strategies, project management, and sustainability of project improvements involving government, employers' and workers' organizations as well as other nongovernmental organizations as appropriate. The project design will be drawn, in part, from the proposal written in response to this solicitation.

2. Technical Progress Reports

The grantee(s) must furnish a typed technical report to USDOL on a quarterly basis, no later than 15 days from the last date of each quarter, *i.e.*, 31 March, 30 June, 30 September and 31 December of each year. The 30 June (2nd quarter) and 31 December (4th quarter) reports are abbreviated and need only indicate whether the work plan was fully implemented and if not, explain why not and attach the amended work plan. The grantee(s) must also furnish a separate financial report (SF 272) to USDOL on the same quarterly basis. The format for the technical progress report will be the standard format developed by USDOL and must contain the following information:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period as it relates to the work plan;

b. Major trends in the project that note particular success with a particular activity or trends that indicate a need to readjust or expand the work plan;

c. An account of problems, proposed solutions, actions taken or required regarding implementation of the project;

d. New proposals for activities, staffing, funding, etc.;

e. Lessons learned in project implementation;

f. Future actions planned in support of each project objective;

g. An accounting of staff and any sub-contractor hours expended;

h. Aggregate amount of costs incurred during the reporting period, including estimated expenditures vs. budget; and

i. An accounting of travel performed under the cooperative agreement during the reporting period, including purpose of trip, persons or organizations contacted, and benefits derived.

3. Annual Work Plan

An annual work plan for each project will be submitted within 45 days after the approval of the project design by USDOL. Subsequent annual work plans, when revised, will be delivered to reflect modifications in implementation,

no later than one year following submission of the previous work plan; or to reflect revisions based on recommendations made during mid-term evaluations, no later than 30 days following the mid-term evaluation.

4. Monitoring and Evaluation

A performance monitoring plan will be developed in collaboration with USDOL, including beginning and ending dates for projects, planned and actual dates for mid-term and final project evaluations, and will be included as part of the submission of the project document for USDOL approval. The plan will include performance indicators and instruments to collect and report on performance data on a semi-annual basis.

5. Evaluation Reports

The Grant Officer's Technical Representative (GOTR) will determine whether a mid-term evaluation will be conducted by an internal or external evaluation team. The final evaluation will be external in nature. In all cases, evaluations will be objective and carried out by independent evaluators. The grantee(s) must respond to any comments and recommendations resulting from the review of the mid-term report and will submit a work plan for implementing the recommendations of the mid-term report within 15 days following formal submission of the report to the grantee(s) by USDOL. Applicants need to allocate funds for these activities in the proposed budget.

C. Production of Deliverables

1. Materials Prepared and Purchased Under the Cooperative Agreement

The grantee(s) must submit to USDOL all media-related and educational materials developed by it or its sub-contractors under this cooperative agreement(s), including relevant press releases, for use in this project(s) before they are reproduced, published, or used. The grantee(s) must consult with USDOL to ensure that materials are compatible with USDOL materials relating to the program, *i.e.*, public relations material such as video and web site. USDOL considers brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program, educational materials. USDOL will review materials for technical accuracy. USDOL will also review training curricula and purchased training materials for accuracy before they are used. The grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this cooperative agreement. All materials produced by grantee(s) must be provided to USDOL in a digital format for possible publication on the Internet by USDOL.

2. Acknowledgment of USDOL Funding

In all circumstances, the following must be displayed on printed materials:

> Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. [insert the appropriate cooperative agreement number].

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including State and local governments and recipients of research grants, must clearly state:

a. The percentage of the total costs of the program or project that will be financed with Federal money;

b. The dollar amount of Federal funds for the project or program; and

c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with USDOL, USDOL's role will be acknowledged in one of the following ways:

a. The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The grantee(s) will consult with USDOL on whether the logo should be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the grantee written permission to use the logo, after obtaining appropriate internal USDOL approval for use of the logo on the item.

b. If the USDOL determines the logo is not appropriate and does not give written permission, the following notice must appear on the document:

> This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

D. Administrative Requirements

1. General

Grantee organizations will be subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *i.e.*, Non-Profit Organizations—OMB Circular A–122. The cooperative agreement(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

29 CFR part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR part 93—New Restrictions on Lobbying.

29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

29 CFR part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

2. Sub-Contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 1323 0, 12928, and 13021 as amended, the grantee(s) is strongly encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

3. Key Personnel

The applicant must list the individual(s) who has been designated as having primary responsibility for the conduct and completion of all work in project(s) it proposes. The grantee(s) agrees to inform the GOTR whenever it appears impossible for one or more of these individual(s) to continue work on the project as planned. The grantee(s) may nominate substitute personnel for approval of the GOTR; however, the grantee(s) must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer determines not to approve the personnel change, he/she reserves the right to terminate the cooperative agreement.

4. Encumbrance of Cooperative Agreement Funds

Cooperative agreement funds may not be encumbered/obligated by the grantee(s) before or after the cooperative agreement period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations may involve only commitments for which a need existed during the cooperative agreement period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the grantee(s)'s purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

5. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the grantee(s) or a sub-contractor(s) under this cooperative agreement(s), the grantee(s) must provide and must require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations must be performed in such a manner as will not unduly delay the work.

V. Review and Selection of Applications for Cooperative Agreement Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A technical panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more grantee on the basis of the initial proposal submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, the best value to the Government, cost and other factors. The Grant Officer's determination for award under this SGA is final.

Notice: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, the Grant Officer may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Rating Criteria and Selection

The technical panel will review grant applicants against the criteria listed below on the basis of 100 points.

The criteria are presented in the order of emphasis that they will receive.

1. Approach, Understanding of the Issue, and Program Plans (40 points)

a. *Overview.* This section of the proposal must explain the strategy employed by the applicant to achieve the following results:

(1) At least 50% of targeted mines have improved safety and health conditions for workers; and

(2) At least 80% of targeted government mine safety inspectors acquire increased skills to carry out their functions.

The applicant must propose a set of indicators to measure these stated program results and describe in detail the proposed approach to comply with each requirement in Section IV.A of this solicitation, including all tasks and methods to be utilized to implement the project. Also, the applicant must propose projects that would address issues discussed in Section I.A and B.

b. *Logical Framework.* The strategy should include an outline of the objectives, activities and indicators envisioned for implementation of the program.

c. *Implementation Plan.* The applicant must submit an implementation plan for the entire program, preferably with a visual such as a Gantt chart. The implementation plan should outline the approach that will be used to implement the program. The plan should list the activities envisioned for the life of the program as well as scheduling of activities by objective, starting with the execution of the cooperative agreement and ending with the final report. In describing the implementation plan, the applicant must address the following points:

(1) Describe the use of existing or potential infrastructure and use of qualified personnel, including qualified nationals, to implement the projects in Beijing as well as in selected pilot project cities. The applicant also must include a project organizational chart, demonstrating management structure, key personnel positions and indicating proposed links with the relevant government ministries, local government agencies/bureaus, NGOs, and other significant local actors.

(2) Develop a list of activities and explain how each relates to the overall development objective as stated in Section I.

(3) Explain how appropriate IEC materials and training curriculum will be developed.

(4) Explain the strategy for coordinating activities conducted at the central government level with those conducted at the local (provincial/city) level.

(5) Explain how the project(s) on mine safety will effectively engage government inspectors, mineworkers, and mine owners.

(6) Demonstrate how the program will strengthen national government's capacity and enhance policies to protect the rights of workers as prescribed by national law.

(7) Demonstrate how the grantee would systematically monitor and report on project performance to measure the achievement of the project objective(s).

(8) Demonstrate how the grantee would build national and local capacity to ensure that project efforts to increase mine safety would be sustained after completion of the project.

d. *Management and Staff Loading Plan.* The management plan must also include a management and staff loading plan. The management plan should include the following:

a. If two organizations are applying for the award in collaboration, they must demonstrate an approach to ensure successful collaboration including clear delineation of respective roles and responsibilities. The applicants must also identify the lead organization and submit the collaboration agreement.

b. A project organization chart and accompanying narrative which differentiates between elements of the applicant's staff and sub-contractors or consultants who will be retained;

(3) A description of the functional relationship between elements of the project's organization; and

(4) The identity of the individual(s) responsible for project management and the lines of authority between this/these individual(s) and other elements of the project.

The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including subcontractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

2. Experience and Qualifications of the Applicant (25 points)

The evaluation criteria in this category are as follows:

a. The applicant organization and collaborating organizations applying for the award must demonstrate experience working on developmental projects in China or in countries with similar political, economic and social constraints.

b. The applicant must demonstrate prior experience of working directly with government ministries, local government organizations, employers, workers, NGOs and academic institutions, as well as with U.S. Missions, in the area of mine safety.

c. The applicant must also demonstrate that it can negotiate and implement developmental projects in China and that it has the appropriate international experience and expertise to carry out program responsibilities in China.

d. The applicant must demonstrate that it has staff or is able to recruit staff that can communicate effectively with Chinese miners, workers, migrant workers, and Chinese officials. Preference will be given to applicant organizations with staff that have Chinese language skills.

e. The proposal must include information regarding previous grants, contracts or cooperative agreements relevant to this solicitation. This information must include:

(1) The organization for whom the work was done;

(2) A contact person in that organization with his/her current phone number;

(3) The dollar value of the grant, contract or cooperative agreement for the project(s);

(4) The time frame and administrative and programmatic effort involved in the project(s);

(5) A brief summary of the work performed; and

(6) A brief summary of accomplishments.

This information on previous grants and contracts shall be provided in appendices and will *not* count toward the 30-page maximum page requirement.

3. Experience and Qualifications of Key Personnel (25 points)

This section of the application must include sufficient information for judging the quality and the competence of key staff proposed to be assigned to the project(s) proposed to assure that they meet the required qualifications. Successful performance of the proposed work depends heavily on the qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's commitment of key personnel qualified for the work involved in accomplishing the assigned tasks. Information provided on the experience and educational background of personnel must indicate the following:

(a) The identity of key personnel assigned to the project. "Key personnel" are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have their hours reduced without the approval of the Grant Officer.

(b) The educational background, Chinese language skills, and experience of key personnel.

(c) The special capabilities of key personnel that demonstrate prior experience in organizing, managing and performing similar efforts.

(d) The current employment status of key personnel and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance is proposed, organizational control should be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

The following information must be furnished:

(a) The applicant must designate a Program Director and other key personnel to oversee the program. The Program Director must have a minimum of three years of professional experience in a leadership role in implementation of complex labor programs in developing countries. He or she must demonstrate sufficient knowledge of and understanding of China's political and economic development, its government, and the complexity of China's current state-local relations. Chinese language (Mandarin) proficiency is highly desirable.

(b) The applicant should specify other key personnel proposed to carry out the requirements of this solicitation.

(c) An organization chart showing the applicant's proposed organizational structure for performing task requirements for the project(s) proposed, along with a description of the roles and responsibilities of all key personnel proposed for this project(s). The chart should also differentiate between elements of the applicant's staff and sub-contractors or consultants who will be retained.

(d) Identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

(e) A resume for each of the key personnel to be assigned to the program. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties performed, dates in position, employing organizations and educational background, including Chinese language skills (if any). Duties must be clearly defined in terms of role performed, i.e., manager, team leader, consultant, etc. (Resumes must be included as attachments, which do not count toward the page limitation.)

(f) The special capabilities of staff that demonstrate prior experience in organization, managing and performing similar efforts.

(g) The current employment status of key personnel proposed for work under the cooperative agreement, *i.e.*, whether personnel are currently employed by the organization or whether their employment depends upon planned recruitment or sub-contracting.

4. Budget Plan (10 points)

The applicant must develop one proposed budget for the implementation of the entire program, including pilot projects in localities. This section of the application must explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables presented in this solicitation; costs must include labor, training, material production and dissemination, equipment, travel and other related costs. The budget plan will be evaluated solely for the purpose of determining the efficient and effective allocation of funding for proposed program implementation. Preference may be given to applicants with low administrative costs. Administrative costs shall be reflected separately on the budget plan from programmatic costs.

The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation.

This stated commitment will be incorporated into the text of the cooperative agreement with the selected applicant(s).

Signed in Washington, DC, on this 31 day of July, 2002.

Daniel P. Murphy,

Director, Procurement Services Center.

BILLING CODE 4510–28–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ___

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. ndependent School Dist
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** If "Yes," attach an explanation. ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1	Self-explanatory
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service
7.	Enter the appropriate letter in the space provided
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

[FR Doc. 02–19858 Filed 8–5–02; 8:45 am]
BILLING CODE 4510–28–C

DEPARTMENT OF LABOR

Office of the Secretary

Expanding Economic Opportunity and Income Security Through Workforce Education, Skills Training, Employment Creation, and Local Economic Development

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications (SGA 02–19).

This notice contains all of the necessary information and forms needed to apply for cooperative agreement funding.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), will award up to US $4 million through one or more cooperative agreement to an organization or organizations to develop and implement a project to expand economic opportunity and improve income security for targeted populations of current workers and workforce entrants in the Philippines and Pakistan. USDOL is seeking applicants from qualified organizations for the implementation of workforce education, skills training, employment creation, and local economic development that will lead directly to new or improved employment and income opportunities for current or future workers. Applicants will submit one application with separate proposals for each country and include outreach to one or more targeted populations including women, disenfranchised young adults, religious and ethnic minorities, people with disabilities, and rural or economically disadvantaged communities.

DATES: The closing date for receipt of applications is Wednesday, September 4, 2002. Applications must be received by 4:45 p.m. (Eastern Daylight Savings Time) at the address below. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted.

ADDRESSES: Application forms will not be mailed. They are published in this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office, public library, or on-line at *http://www.archives.gov/federal_register/index.html*. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Attention: Lisa Harvey, Reference: SGA 02–19, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the applicant bears the responsibility for timely submission.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey: E-mail address: *harvey-lisa@dol.gov*. All applicants are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number) prior to the closing deadline. All inquiries should reference SGA 02–19. See Section III.B for further information.

SUPPLEMENTARY INFORMATION: ILAB's Office of Foreign Relations (OFR) carries out a worldwide international technical assistance program in support of three objectives: (1) Expanding Economic Opportunity and Income Security for Workers; (2) Protecting the Basic Rights of Workers; and (3) Reducing the Prevalence of HIV/AIDS through Workplace Education. As a means to develop and implement projects to expand economic opportunity and income security for workers, ILAB announces the availability of funds to be granted by cooperative agreement to one or more qualifying organizations to achieve the USDOL program objectives to implement a program of workforce education (possibly including literacy), skills training, employment creation (possibly including self-employment opportunities), and local economic development in Pakistan and the Philippines. These objectives are part of a broader USDOL program to address social safety net needs. The process of globalization and economic liberalization have often led to high expectations of the population to foster social progress after achieving a more stable and solid economy and democratic government. National, regional, and local social safety nets are viewed as an important element in efforts to garner support for economic reform and trade liberalization as they provide a modicum of security in a highly dynamic labor market. The cooperative agreement(s) will focus on providing skills training to one or more targeted populations including women, disenfranchised young adults, religious and ethnic minorities, people with disabilities, and rural or economically disadvantaged communities that are directly linked to real jobs and increased earned income. Program elements may also include the provision of training in self-employment and business development, community-based local economic development, and job-related tools and equipment to individual participants or service providers as needed to ensure the success of the program.

The cooperative agreement(s) will be actively managed by ILAB to assure achievement of the stated objectives. Applicants are encouraged to be creative in proposing innovative and cost-effective interventions that will have a demonstrable impact on unemployment rates and earnings for project participants and their communities.

I. Background and Program Scope

A. Problem Identification: Islamic Republic of Pakistan

The country is divided into four provinces (Balochistan, North-West Frontier, Punjab, and Sindh), one territory (Federally Administered Tribal Areas), and one capitol territory (Islamabad Capitol Territory). Although the military is the primary political force, the religious clergy, landowners, industrialists, and small business owners have significant influence over domestic and international politics.

Pakistan has a total population estimated at 140 million and a national literacy rate of 33% (55.3% for males and 29% for females). There is no national law mandating compulsory education nor are sufficient public resources dedicated to education. As a result many children reach legal working age without basic education, literacy, or workforce preparedness skills.

Nearly 56% of the population is of working age but the actual labor force is only 40 million (44% in agriculture, 39% in services, and 17% in industry). There is also extensive export of labor, primarily to the Middle East. The official unemployment rate is 6% although it is generally agreed that real unemployment is much higher, especially for youth, women, and ethnic minorities.

Although 97% of the population is Muslim, there is ethnic tension between the Sunnis, who comprise 77% of the total Muslim population, and the Shi'as, who are 20% of the total Muslim population. There is reportedly frequent discrimination in both public and private sector employment and education for all religious minorities but primarily Christians. Despite a legal

requirement that employers either hire qualified persons with disabilities for at least 2% of their positions or pay a fee to a government fund for persons with disabilities, this is rarely enforced.

Women, particularly in the rural areas where female literacy rates are 2% or less, are also subject to discrimination in education and employment opportunities. The National Institute of Psychology conducted a survey in the rural areas and reported that 42% of parents cited "no financial benefit" as the reason they did not send their daughters for formal education. Other surveys have found that girls are also not sent to school so that they can assist with household duties. Discrimination in college acceptance rates of qualified applicants between boys (83%) and girls (28%) further discourages investment in girls' education.

Forty percent (40%) of the population lives below the poverty line and foreign investment is limited. Per capita GDP is estimated at about US$441 and is tied closely to agricultural yields that are adversely affected due to current and persistent drought conditions. Pakistan's largest exports are textiles (garments, cotton cloth, and yarn), rice, and other agricultural products. The U.S. is the largest recipient of exported goods, receiving nearly one quarter of Pakistan's exports.

B. Problem Identification: Republic of the Philippines

The Philippines has a total population of nearly 83 million of which 48.1 million are in the labor force, primarily in agriculture, government, and services, and to a lesser extent in assembly manufacturing. Primary education is compulsory and the national literacy rate is 94.6%, 95% for males and 94.3% for females. Secondary school dropout rates are high, however, with a total graduation rate of 50%; among the poor the rate is even lower due to the cost of school uniforms, supplies, and transportation.

Forty one percent (41%) of the population lives below the poverty line with higher rates among Muslims and those living in rural areas. The economy has had a difficult time recovering from the Asian financial crisis of the late 1990s and the country's political instability since the overthrow of the Marcos regime. Exports, reaching US$38 billion in 2000, are concentrated in electronic equipment, machinery, garments, and coconut products.

Employment opportunities for youth, women, people with disabilities, rural residents, indigenous people, and Muslims (primarily those residing in the Autonomous Region of Muslim Mindinao) are especially limited. With regard to the latter, religious leaders from both the Muslim and the Christian communities contend that the economic disparities are the basis for the violence and armed aggression, not religious intolerance. Workplace sexual harassment, particularly in the special economic zones, is thought to be significant although underreported due to fear of job loss in retaliation. In addition, women are traditionally hired under short term and part time work contracts. Although there are legal protections against these forms of discrimination, they are not enforced.

C. Program Scope

Given the magnitude of the need for skills training and the size of the potential beneficiary population, applicants are encouraged to focus their responses in ways that target a specific community or target population, support U.S. foreign policy objectives within the country, and leverage other donor-funded or host government activities. Furthermore, applicants should emphasize the interconnectedness of the proposed training with real employment opportunities and benefits to a broader community.

Applicants may wish to consider the following programs as illustrative examples of the types of projects that might be considered for USDOL funding. In the Philippines, with the support of an international NGO, young adults are trained in the repair and maintenance of hospital equipment. Subsequent to the receipt of the training, graduates are provided with a personal set of the hardware needed to perform the job and are linked to hospitals willing to hire them. This program also has the developmental benefit of improving healthcare services for disadvantaged populations. In Pakistan, the government has developed a partnership with the Chambers of Commerce to increase the involvement of the private sector in the identification of skills needed for employment and the successful transfer of those skills by the public sector education system.

II. Authority

ILAB is authorized to award and administer this program by the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002, Pub. L. No.107–116, 115 Stat. 2177 (2002).

III. Application Process

A. Eligible Applicants

Any commercial, international, or not-for-profit organization capable of successfully implementing workforce education and skill training (including literacy), employment creation, and local economic development, and working with foreign national government ministries, regional and local government entities, employers, non-governmental and community-based organizations, and labor groups to improve workforce preparedness skills (possibly including literacy education), employment creation (possibly including self-employment opportunities), and local economic development is eligible for this cooperative agreement(s). Government ministries likely to be involved include those for labor, education, social affairs, commerce, finance, and those for special targeted populations such as youth, women, or minorities. Partnerships of more than one organization are also eligible although in such a case a lead organization must be identified. The capability of an applicant, partners, and co-applicants to perform necessary aspects of this solicitation will be determined under Section V.B Rating Criteria.

Please note that eligible cooperative agreement applicants must not be classified under the Internal Revenue Code as a section 501(c)(4) entity. *See* 26 U.S.C. 501(c)(4). According to the Lobbying Disclosure Act of 1995, as amended, 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application plus two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Washington, DC 20210, not later than 4:45 p.m. EDST, September 4, 2002.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix A) (The entry on SF 424 for the Catalog of Federal Domestic Assistance Number (CFDA) is 17.700) and sections A–F of the Budget Information Form SF 424A (Appendix B). Part II must contain a technical proposal that demonstrates capabilities in accordance with the Statement of

Work (Section IV.A) and the selection criteria (Section V.B).

To be considered *responsive* to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 60 single-sided (8½″ x 11″), double-spaced, 10 to 12 pitch typed pages for which a response is submitted. *Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated.*

Standard forms and attachments are not included in the page limit. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. These pages are also *not* included in the page limits.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 pm EDST on September 4, 2002 will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 6, 2002;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to August 6, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the applicant bears the responsibility for timely submission. Because of delay in the receipt of mail in the Washington, DC area, it is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. All inquires should reference SGA 02–19.

D. Funding Levels

Approximately US $4 million is budgeted for this project to fund activities in Pakistan and the Philippines. Although USDOL reserves the right to award more than one cooperative agreement, a partnership of more than one organization may apply to implement the project. Applicants will submit one application with separate proposals for each country, for the implementation of projects in both countries and are encouraged to utilize locally-based entities and personnel to implement much of the project in order to institutionalize and sustain project improvements and reduce costs. The award of any sub-contract will be subject to USDOL approval (Section IV.D).

E. Program Duration

The duration of the project funded by this SGA is three (3) years. The start date of project activities will be negotiated upon the awarding of the cooperative agreement(s).

IV. Requirements

A. Statement of Work

In developing their proposals, applicants should develop a strategy for the implementation of the project that will achieve the stated objectives to expand economic opportunity and income security through workforce education, skills training, employment creation, and local economic development for one or more targeted populations including women, disenfranchised young adults, religious and ethnic minorities, people with disabilities, and rural or economically disadvantaged communities.

The strategy should take into account the implementing environment in Pakistan and the Philippines and incorporate innovative methodologies for identifying participants, selecting project partners, engaging local employers and education and training service providers, and, if possible, leveraging other investments or activities. The strategy should also demonstrate how the applicant proposes to involve employer, labor, non-governmental and community-based organizations and local, regional, and national government officials in the implementation of the project. The applicant should draft a strategy demonstrating how it will meet the project objectives by the end of the grant period and how the issue of sustainability will be integral to project implementation. The applicant should present a strategy that also includes indicators of successful implementation with specific and realistic numerical goals such as employment placement rates, literacy improvements, self-employment starts, and the monetary value of local economic development activities.

The applicant should include a rationale for the selection of the participants (i.e., industries, regions, gender, ethnicity, age groups, or U.S. government policy interests), outline the training materials, individual assessment tools, business development approaches, other materials that will be used as well as a strategy for ensuring that the project activities will lead directly to employment and improved earned income for participants. In addition, the applicant should develop sustainable innovative strategies for involving government, employers' and workers' organizations, community-based entities, and non-governmental organizations, as appropriate, in the development, implementation, evaluation, and management of project activities.

B. Deliverables

Following the award of the cooperative agreement(s), unless otherwise indicated, the applicant must submit copies of all required reports to USDOL by the specified due dates. Other documents, such as project designs, are to be submitted by mutually agreed-upon deadlines.

1. *Project Designs.* The organization(s) awarded the cooperative agreement (grantee) will, draft the design, and submit a project document in the format established by USDOL, to include a background and justification section, project strategy (objectives, outputs, activities, indicators), project implementation timetable, project management organizational chart, project budget, logical framework and performance monitoring plan to systematically monitor project results. The document will also include sections, which cover coordination strategies, project management, and sustainability of project improvements involving government, employers' and workers' organizations as well as other non-governmental organizations as appropriate. Each project design will be drawn, in part, from the proposal written in response to this solicitation. Based upon the responses to this solicitation and subsequent to the award, it may be determined by USDOL that in order to finalize a project design, the grantee(s) will need to travel to both countries with a USDOL official for a project design mission trip.

2. *Technical Progress Reports.* The grantee(s) must furnish a typed technical report to USDOL on a quarterly basis, no later than 15 days from the last date of each quarter, i.e., 31 March, 30 June, 30 September and 31 December of each year. The 30 June (2nd quarter) and 31 December (4th quarter) reports are abbreviated and need only indicate whether the work plan was fully implemented and if not, explain why not and attach the amended work plan. The grantee(s) must also furnish a separate financial report (SF 272) to USDOL on the same quarterly basis. The format for the technical progress report will be the standard format developed by USDOL and must contain the following information:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period as it relates to the work plan;

b. Major trends in the project that note particular success with a particular activity or trends that indicate a need to readjust or expand the work plan (after a sufficient period of implementation, to be determined by USDOL in consultation with the grantee(s), this ought to include the development of individual vignettes of how specific individuals' lives and their communities were improved as a result of their participation in this project);

c. An account of problems, proposed solutions, actions taken or required regarding implementation of the project;

d. New proposals for activities, staffing, funding, etc.;

e. Lessons learned in project implementation;

f. Future actions planned in support of each project objective;

g. An accounting of staff and any sub-contractor hours expended; and

h. Aggregate amount of costs incurred during the reporting period, tracking expenditures vs. budget.

4. *Annual Work Plan.* An annual work plan for the project as implemented in each country will be submitted within 45 days after the approval of the project design by USDOL. Subsequent annual work plans will be delivered as amended to reflect modifications in implementation, no later than one year following submission of previous work plan, or to reflect amendments based on recommendations made during mid-term evaluations, no later than 30 days following the mid-term evaluation.

5. *Monitoring and Evaluation.* A performance monitoring plan will be developed in collaboration with USDOL, including beginning and ending dates for projects and planned and actual dates for mid-term and final project evaluations, and included as part of the submission of the project document for USDOL approval. The monitoring plan will be prepared after analysis of existing baseline data, including revision of indicators provided in project documents. The plan will include performance indicators and instruments to collect and report on performance data on a semi-annual basis.

6. *Evaluation Reports.* The Grant Officer's Technical Representative (GOTR) will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations will be external in nature. The grantee(s) must respond to any comments and recommendations resulting from the review of the mid-term report and will submit a work plan for implementing the recommendations of the mid-term report within 15 days following formal submission of the report to the grantee(s) by USDOL.

C. Production of Deliverables

1. *Materials Prepared and Purchased Under the Cooperative Agreement.* The grantee(s) must submit to USDOL all media-related and educational materials developed by it or its sub-contractors under this cooperative agreement(s), including relevant press releases, for use in this project before they are reproduced, published, or used. The grantee(s) must consult with USDOL to ensure that materials are compatible with USDOL materials relating to its overall technical assistance program, i.e., public relations material such as video and web site. USDOL considers brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the project, educational materials. USDOL will review materials for technical accuracy. USDOL will also review training curricula and purchased training materials for accuracy before they are used. The grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this cooperative agreement. All materials produced by grantee(s) must be provided to USDOL in a digital format for possible publication on the Internet by USDOL.

2. *Acknowledgment of USDOL Funding.* In all circumstances, the following must be displayed on printed materials:

Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. [insert the appropriate cooperative agreement number].

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including State and local governments and recipients of research grants, must clearly state:

a. The percentage of the total costs of the program or project, which will be financed with Federal money;

b. The dollar amount of Federal funds for the project or program; and

c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with USDOL, identification of USDOL's role will be determined to be one of the following:

a. The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice

reports, and other publications of global interest. The grantee(s) will consult with USDOL on whether the logo should be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the grantee written permission to use the logo, after obtaining appropriate internal USDOL approval for use of the logo on the item.

b. If the USDOL determines the logo is not appropriate and does not give written permission, the following notice must appear on the document:

This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

D. Administrative Requirements

1. *General.* Grantee organizations, which may include faith-based organizations, will be subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *i.e.*, Non-Profit Organizations—OMB Circular A–122. The cooperative agreement(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

29 CFR part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR part 93—New Restrictions on Lobbying.

29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR part 98—Federal Standards for Government wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

29 CRF part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

2. *Sub-contracts.* Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928, and 13021 as amended, the grantee(s) is strongly encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

3. *Key Personnel.* The applicant must list the individual(s) who has been designated as having primary responsibility for the conduct and completion of all work in the project it proposes. The grantee(s) agrees to inform the GOTR whenever it appears impossible for one or more of these individual(s) to continue work on the project as planned. The grantee(s) may nominate substitute personnel for approval of the GOTR, however, the grantee(s) must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer determines not to approve the personnel change, he/she reserves the right to terminate the cooperative agreement.

4. *Encumbrance of Cooperative Agreement Funds.* Cooperative agreement funds may not be encumbered/obligated by the grantee(s) before or after the cooperative agreement period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations may involve only commitments for which a need existed during the cooperative agreement period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the grantee(s)'s purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

5. *Site Visits.* USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the grantee(s) or a sub-contractor(s) under this cooperative agreement(s), the grantee(s) must provide and must require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations must be performed in such a manner as will not unduly delay the work.

V. Review and Selection of Applications for Cooperative Agreement Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A technical panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more grantees on the basis of the initial proposal submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, the best value to the government, cost and other factors. The Grant Officer's determination for award under this SGA is final.

Notice: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, the Grant Officer may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Rating Criteria and Selection

The technical panel will review grant applicants against the criteria listed below on the basis of 100 points with up to additional five points available for non-federal or leveraged resources. The criteria are presented in the order of emphasis that they will receive.

1. Approach, Understanding of the Programmatic Area and Specific Country Context, and Management Plan (40 points)

a. *Overview.* This section of the proposal must provide the following:

(1) A summary of the applicant's general strategy for each country in addressing the needs as identified in Section I of this SGA;

(2) The applicant's rationale for selection of the target population(s), which demonstrates an understanding of the in-country situation with regards to specific populations and communities and the delivery of workforce and economic development services;

(3) The applicant's identification of specific, challenging, but realistic numerical goals for project success;

(4) Indicators for assessing attainment of the goals; and

(5) The other expected outcomes over the period of performance for each task.

The applicant must describe in detail the proposed approach to comply with each requirement in Section IV.A of this solicitation, including all tasks and methods to be utilized to implement the project. Also, the applicant must explain the rationale for using this approach. In addition, this section of the proposal must demonstrate the applicant's thorough knowledge and understanding of the education and employment needs of the target populations in each of the specific country contexts, best-practice approaches for meeting these needs, working with the tripartite partners, and work that has been done and is being done in the field as applied to each country.

b. *Logical Framework.* The strategy should include an outline of the objectives, activities, outputs, assumptions, and indicators envisioned for implementation of the project.

c. *Implementation Plan.* The applicant must submit an implementation plan for the entire project, preferably with a visual aid such as a Gantt chart. The implementation plan should outline the approach that will be used to implement the project including a list of activities and an explanation of how each relates to the overall development objective of expanding employment opportunities and increasing income security for the project participants and their communities. The plan should list the activities envisioned for the life of the project as well as scheduling of activities by objective, starting with the execution of the cooperative agreement and ending with the final report. In describing the implementation plan, the applicant must address the following points:

(1) Describe the use of existing or potential infrastructure and the use of qualified personnel, including qualified foreign nationals, to implement the project in each country. One chart for the entire project is acceptable if the approach will be uniform in both countries. Describe existing education, training, and personal assessment materials, if any, that will be used and explain how other materials and training curriculum will be developed.

(2) Explain the strategy for delivering the education and training services including where, when, and how the services will be delivered and whether any supportive services, such as child care, food allocation, and transportation, will be provided. Outline how the local partners will be involved in the implementation.

(3) Demonstrate how the project will strengthen national, local, public, and private institutions and policies on meeting the education, training, employment, and economic development needs of the target population(s) and their communities.

(4) Demonstrate how the organization would systematically monitor and report on project performance to measure the achievement of the project objective(s).

(5) Demonstrate how the organization would build the national, regional, and local capacity to ensure that project activities are sustained after completion of the project.

d. *Management and Staff Loading Plan.* The management plan for each country must also include a management and staff loading plan. The management plan should include the following:

(1) A project organizational chart, demonstrating management structure, key personnel positions, and indicating proposed links with the relevant national, regional, and local government entities, employer, worker, non-governmental, and community-based organizations, and other significant local actors.

(2) A description of the functional relationship between elements of the project's organization; and

(3) The identity of the individual responsible for project management and the lines of authority between this individual and other elements of the project.

The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

2. Experience and Qualifications of the Organization (25 points)

The evaluation criteria in this category are as follows:

a. The applicant, either individually or together with its partners or co-applicants, in applying for the award must demonstrate experience with workforce education, skills training, literacy, employment creation, self-employment assessment and promotion, and local economic development; working directly with government ministries, employers' and worker's organizations, non-governmental and community-based organizations, and local government officials; analyzing relevant national and provincial laws relating to discrimination in education, training, and employment; and implementing a project in both countries.

Organizations applying in partnership or as co-applicants must identify the lead organization, demonstrate an approach to ensure successful collaboration including clear delineation of respective roles and responsibilities, and submit a signed letter of agreement between the parties verifying the commitment of the parties to work together to implement the program. The partnership agreement must include a designation for the lead organization. (Please note that points will be neither awarded nor deducted for partnership formation as long as a collaborative capability can be shown.)

b. The organization(s) must also demonstrate that it has an effective system of operations in each designated country. These contacts must enable the organization(s) to demonstrate that they can perform successfully in both countries.

c. The proposal must include information regarding previous grants, contracts, or cooperative agreements, including all of the following:

(1) The organization for which the work was done;

(2) A contact person in that organization with his/her current phone number;

(3) The dollar value of the grant, contract, or cooperative agreement for the project(s);

(4) The time frame and professional effort, either directly by key personnel, by consultants, or under contractual arrangements involved in the project(s);

(5) A brief summary of the work performed; and

(6) A brief summary of accomplishments.

This information on previous grants and contracts shall be provided in appendices and will *not* count in the 40-page maximum page requirement.

3. Experience and Qualifications of Key Personnel (25 points)

This section of the application must include sufficient information for judging the quality and the competence of key staff proposed to be assigned to the project(s) proposed to assure that they meet the required qualifications. Successful performance of the proposed work depends heavily on the qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's commitment of key personnel qualified for the work involved in accomplishing the assigned tasks. Information provided on the experience and educational background of personnel must indicate the following:

(a) The identity of key personnel assigned to the project. "Key personnel" are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have their hours reduced without the approval of the Grant Officer.

(b) The educational background and experience of all staff to be assigned to the project.

(c) The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

(d) The current employment status of staff and their availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance is proposed, organizational control should be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project and indicate availability to commence work within three weeks of grant award.

The following information must be furnished:

(a) The applicant must designate a Project Director to oversee the project and other key personnel to perform the requirements necessary for success in both countries. The Project Director must have a minimum of three years of professional experience in a leadership role in the implementation of workforce education and training programs and local economic development in a developing country, including project design, management, monitoring, and evaluation, participant selection, stakeholder identification and inclusion, and the development and effective use of outreach, education, training, and assessment materials.

(b) The applicant should specify other personnel proposed to carry out the requirements of this solicitation.

(c) A resume should be provided for each of the key personnel to be assigned to the project. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties performed, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed, i.e., manager, team leader, consultant, etc. (Resumes must be included as attachments, which do not count against the page limitation.)

(d) The special capabilities of staff that demonstrate prior experience in organization, managing, and performing similar efforts.

(e) The current employment status of key personnel proposed for work under the cooperative agreement, i.e., whether personnel are currently employed by the organization or whether their employment depends upon planned recruitment or sub-contracting.

4. Budget Plan (10 points)

The applicant must develop two proposed budgets, one each for implementation of the project in each country. This section of the application must explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables presented in this solicitation; costs must include labor, training, material production and dissemination, equipment, travel, and other related costs. The budget plans will be evaluated solely for the purpose of determining the efficient and effective allocation of funding for proposed program implementation. Preference may be given to applicants with low administrative costs. Administrative costs shall be reflected separately on the budget plan from programmatic costs.

(e) The current employment status of key personnel proposed for work under the cooperative agreement, i.e., whether personnel are currently employed by the organization or whether their employment depends upon planned recruitment or sub-contracting.

5. Leveraging of Funding (5 points)

USDOL will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, non-monetary resources, size and scope of the proposal, or capitalize upon previous U.S. government or private investments. The applicant may include any leveraging or co-funding anticipated. To be eligible for additional points under this criterion, the applicant must list the source(s) of funds, the nature, and activities anticipated with these funds under this cooperative agreement, and any partnerships, linkages or coordination of activities, and/or cooperative funding.

This stated commitment will be incorporated into the text of the cooperative agreement with the selected applicant(s).

Signed at Washington, DC, this 31 day of July, 2002.

Daniel P. Murphy,

Director, Procurement Services Center.

BILLING CODE 4510-28-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable)
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16	$	$	$	$
17.				
18.				
19				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges	22. Indirect Charges
23. Remarks	

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Standard Form 124A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g), the appropriate amounts of funds needed to support the project for the first funding period (usually a year)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter Column (a) the same grant program titles shown in Column . Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

[FR Doc. 02–19856 Filed 8–5–02; 8:45 am]
BILLING CODE 4510–28–C

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 16, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 16, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

Petitions Instituted on 06/24/2002

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,689	Voluneer Knit Apparel (Comp).	Rutledge, TN	06/11/2002	Cotton Knits
41,690	Peterson-Kruse Inc. (Comp).	Rockford, IL	06/04/2002	Electrician Hard Tools
41,691	Montgomery Production (Comp).	Montgomery, IL	06/11/2002	Lipton Rice, Noodles, and Sauce
41,692	SMS Sutton (IAMAW)	Bellefonte, PA	05/24/2002	Heavy Equipment
41,693	Great Lakes Fleet, Inc. (USWA).	Duluth, MN	05/20/2002	Bulk Cargo Transport
41,694	Joy Mining Machinery (IBB).	Mt. Vernon, IL	06/03/2002	Chains
41,695	P.C.C. Airfoils (MWA)	Minerva, OH	06/05/2002	Metal Castings
41,696	eMag Solutions LLC (Wrks).	Graham, TX	06/05/2002	Magnetic Computer Tape
41,697	Silver Furniture (Comp)	Knoxville, TN	06/06/2002	Tables
41,698	Volant Ski Co., LLC (Wrks).	Wheatridge, CO	06/05/2002	Alpine Skis
41,699	Jean Michael's Inc. (UNITE).	Willimgboro, NJ	06/03/2002	Womens Apparel
41,700	Flextronics International (Wrks).	Longmont, CO	05/31/2002	PCB Boards
41,701	FCI Electronics (Wrks)	Etters, PA	06/03/2002	Fiber Optic Cables
41,702	Farmland Industries, Inc (Comp).	Pollock, LA	05/14/2002	Nitrogen Fertilizer/ Androus Ammonia
41,703	E.I. DuPont (Comp)	Orange, TX	06/04/2002	Polyethylene/Plastics
41,704	LTV Steel Tubular (USWA).	Marion, OH	05/30/2002	Flat Steel
41,705	Cooper Crouse-Hinds (Wrks).	Roanoke, VA	06/03/2002	Compression Fittings
41,706	Henry's Cutting Service (Wrks).	Hialeah, FL	05/10/2002	Cutting Services
41,707	Jarvis East (Wrks)	Palmer, MA	05/31/2002	Casters and Wheels
41,708	Rosemont Analytical (Comp).	Orrville, OH	05/27/2002	Combustibles
41,709	Elbeco, Inc. (Wrks)	Meyersdale, PA	05/29/2002	Uniform Shirts
41,710	Lander Co., Inc. (Comp)	Camarillo, CA	05/30/2002	Bath and Body Products
41,711	A.O. Smith (Wrks)	McMinnville, TN	05/14/2002	Engineering Services
41,712	Denim Processing Inc. (Comp).	Oneida, TN	05/31/2002	Jeans
41,713	Wiegand Appliance	Vernon, AL	06/10/2002	Electronic Heating Elements
41,714	J.R. Simplot Co (Comp)	Pocatello, ID	06/07/2002	Nitrogen & Phosphate
41,715	Superior Essex (IUE)	Elizabethtown, KY	05/17/2002	Telephone Cable
41,716	Motorola (Wrks)	Ft. Woth, TX	05/21/2002	Cell Phone Equipment
41,717	IMI Cornelius (Wrks)	Anoka, MN	06/04/2002	Beverage Dispensers
41,718	Grafx Packaging (Wrks)	Canal Wincheste, OH	06/05/2002	Folding Carton
41,719	State of the Art, Inc. (Comp).	State College, PA	06/14/2002	Film Resistors
41,720	New Boston Coke Corp (USWA).	New Boston, OH	06/13/2002	Coke

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,721	Collins and Aikman (Wrks).	Marshall, MI	05/22/2002	Ribbon Mixers
41,722	Maurice Silvera, Inc. (Wrks).	New York, NY	05/28/2002	Children's Clothing
41,723	Snorkel Manufacturing (Comp).	Elwood, KS	06/05/2002	Telescopic Boom
41,724	Lake City Manufacturing (Wrks).	Lake City, SC	05/29/2002	Shirts, Pants, Swimsuits etc
41,725	Nu-Gro Technologies (UNITE).	Gloversville, NY	05/31/2002	Fertilizer
41,726	Parker Dayco (Wrks)	Eldora, IA	05/31/2002	Shell Production Machine
41,727	Solectron of Oregon (Wrks).	Hillsboro, OR	06/06/2002	Auto Electronic Safety Components
41,728	Wesbar Corp (Comp)	Peru, IN	05/29/2002	Lights for Trailers
41,729	Sirena Apparel Group (Wrks).	Los Angeles, CA	05/29/2002	Women and Children Swimwear
41,730	Motorola, RFI (Wrks)	Phoenix, AZ	03/18/2002	Semiconductors
41,731	ABB, Inc (Wrks)	Columbus, OH	05/30/2002	Process Control Equipment
41,732	APL Logistics (Wrks)	Socorro, TX	05/13/2002	Electonics

[FR Doc. 02–19763 Filed 8–5–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State governors under section 250 (b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request if filed in writing with the Director of DTAA not later than August 16, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than August 16, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 25th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date Received at Governor's office	Petition No.	Articles produced
Topsoil Electronics (Comp)	Wendell, NC	05/16/2002	NAFTA–6,201	Hard File Assemblies.
Pacific Northwest Sugar Co (Comp)	Moses Lake, WA	05/13/2002	NAFTA–6,202	Sugar.
Specialty Minerals, Inc (Wrks)	Plainwell, MI	05/15/2002	NAFTA–6,203	Precipitated Calcium Carbonate.
Victor Forstmann, Inc. (Wrks)	East Dublin, GA	05/08/2002	NAFTA–6,204	Wool Cloth.
ZF Meritor (Wrks)	Maxton, NC	05/17/2002	NAFTA–6,205	Heavy Duty Truck Clutches.
IEC Electronics Corp. (Wrks)	Newark, NY	05/14/2002	NAFTA–6,206	Scanning & Telecommunication Equipment.
Cains Pickles, Inc. (Co.)	South Deerfield, MA	05/20/2002	NAFTA–6,207	Pickles.
Clements Manufacturing, LLC (Comp).	Harbor Beach, MI	05/16/2002	NAFTA–6,208	Wire Harnesses.

APPENDIX—Continued

Subject firm	Location	Date Received at Governor's office	Petition No.	Articles produced
Schlumberger Oilfield Sonices (Wrks).	Webster, TX	05/16/2002	NAFTA–6,209	Oil.
Smith Aerospace (Comp.)	Malvern, PA	05/22/2002	NAFTA–6,210	Display Units & Fuel Systems.
General Electric Transportation (UE)	Erie, PA	05/23/2002	NAFTA–6,211	Locomotive Components.
Aaron Automotive (Wrks)	Joplin, MO	05/22/2002	NAFTA–6,212	Remanufacture Transmissions.
Diversified Tool Corp. (Comp.)	Cambridge Springs, PA	05/22/2002	NAFTA–6,213	
Farley's and Sathers Candy Co. (Wrks).	Pittston, PA	05/23/2002	NAFTA–6,214	Hard Candy, Chewy Candy.
J.R. Simplot Co (BCTW)	Heyburn, ID	05/20/2002	NAFTA–6,215	Fries, Hashbrowns.
Textron Golf, Turfcare (UAW)	Racine, WI	04/26/2002	NAFTA–6,216	Lawnmowers.
Protel, Inc (Wrks)	Lakeland, FL	12/03/2001	NAFTA–6,217	Pay phones.
LnSystems Technologies (Wrks)	Roanoke, VA	05/14/2002	NAFTA–6,218	Electronic Document Automation.
Pillowtex Corporation (Co.)	Phenix City, AL	05/24/2002	NAFTA–6,219	Hand towels and washclothes.
Thermal Engineering International ( ).	Wauwatosa, WI	05/24/2002	NAFTA–6,220	Heat exchangers and pressure vessels.
Collins and Aikman ( )	Marshall, MI	05/28/2002	NAFTA–6,221	Sheet form sound deadener.
Dean Pickle and Specialty Products Co ( ).	Atkins, AR	05/28/2002	NAFTA–6,222	
Gold Toe Brands, Inc ( )	Burlington, NC	05/23/2002	NAFTA–6,223	Socks.
Metokote Corporation ( )	Loudon, TN	05/07/2002	NAFTA–6,224	E-coat paint.
Breeze Industrial Products Corporation ( ).	Saltsburg, PA	05/22/2002	NAFTA–6,225	Hose clamps.
Fender Musical Instruments Corporation ( ).	Corona, CA	05/23/2002	NAFTA–6,226	Amplifiers.
ADC Telecommunications ( )	Shakopee, MN	05/30/2002	NAFTA–6,227	Optical connector.
Decrane Aircraft Seating Co. ( )	Peshtigo, WI	05/30/2002	NAFTA–6,228	X-ray and oncology medical equipment.
Insilco Technologies, Inc. (CO)	Hiddenite, NC	05/30/2002	NAFTA–6,229	Custom cable assemblies.
Premier Machining Industries, LLC ( ).	Concord, NC	05/31/2002	NAFTA–6,230	Components for MRI machines.
Thomson Consumer Electronic ( )	Socomo, TX	05/31/2002	NAFTA–6,231	Television.
West Penn Hat & Cap Corporation ( ).	Creighton, PA	05/31/2002	NAFTA–6,232	Caps, visors, and constructed men's hats.
Moltrup Steel Products Company ( )	Beaver Falls, PA	05/31/2002	NAFTA–6,233	Cold drawn bar steel products.
Scotty's Fashions of Lehighton, Inc. ( ).	Lehighton, PA	05/31/2002	NAFTA–6,234	Garments, basketliners and chair covers.
Mechanical Products ( )	Jackson, MI	05/30/2002	NAFTA–6,235	Circuit breakers for airospace.
Burlington Industries, Inc. ( )	Greensboro, NC	05/31/2002	NAFTA–6,236	Upholstery fab., bedding & windows fash.
Buehler Motor, Inc. (Co.)	Kinston, NC	05/31/2002	NAFTA–6,237	Permanent magnet DC motors.
Siemens Energy & Automation Inc. ( ).	Belle Fontaine, OH	05/20/2002	NAFTA–6,238	Distribution.
Square D Company ( )	Oxford, OH	05/20/2002	NAFTA–6,239	Wireway.
Price Pfister ( )	Pacoima, CA	05/23/2002	NAFTA–6,240	Fabrication and machine shops.
Henry's Cutting Service ( )	Hialeah, FL	06/07/2002	NAFTA–6,241	
Nu-Gro Technologies, Inc. ( )	Gloversville, NY	06/07/2002	NAFTA–6,242	Fertilizer.
VMV Enterprises ( )	Paducah, KY	05/24/2002	NAFTA–6,243	Rebuilds component parts for locomotives.
Specialty Machine Company, Inc. ( )	Gastonia, NC	05/22/2002	NAFTA–6,244	Tool and die parts.

APPENDIX—Continued

Subject firm	Location	Date Received at Governor's office	Petition No.	Articles produced
Oxord Industries, Inc. ( )	Walhalla, SC	06/03/2002	NAFTA–6,245	Women's apparel.
JD Holding Company & Subsidiaries, Inc. ( ).	Springport, MI	06/03/2002	NAFTA–6,246	Automatic brake systems.
DuPont Company ( )	Niagara Falls, NY	06/03/2002	NAFTA–6,247	Terathane-polyethylene glycol.
Lear Corporation Marlette ( )	Marlette, MI	06/03/2002	NAFTA–6,248	Automative & Truck headliner & sunvisor.
Standex Corp. ( )	Palmer, MA	06/04/2002	NAFTA–6,249	Casters, bolts, stems.
Florsheim Distribution Center ( )	Jefferson City, MO	05/23/2002	NAFTA–6,250	Footwear.
Kimble Glass ( )	Lenoir, NC	06/05/2002	NAFTA–6,251	Deco printers, pipet machines.
Nichirin Coupler ( )	El Paso, TX	06/05/2002	NAFTA–6,252	Alum. pipe & flanges.
Calumet Steet Company	Chicago Heights, IL	06/06/2002	NAFTA–6,253	Steel.
Denim Processing, Inc	Oneida, TN	06/05/2002	NAFTA–6,254	Menswear dockers.
Chevron Phillips Chemical ( )	Orange, TX	06/07/2002	NAFTA–6,255	High density polyethylene.
Alexander Garments (Wrks)	Hialeah, FL	05/24/2002	NAFTA–6,256	Boys' Pants.
Associated Garments, LLP ( )	Miami, FL	06/04/2002	NAFTA–6,257	Jeans.
Jones Apparel Group ( )	Rural Hall, NC	06/05/2002	NAFTA–6,258	Raw material for clothing.
Stream International ( )	Memphis, TN	06/06/2002	NAFTA–6,259	Technical phone support.
GretagMacbeth ( )		05/14/2002	NAFTA–6,260	
Pepperell Paper Company ( )	Pepperell, MA	05/15/2002	NAFTA–6,261	Colored kraft paper.
Taconite Engineering & Mfg. Co. ( )	Hibbing, MN	06/03/2002	NAFTA–6,262	Roll screen used to size pellets (metal).
Harry J. Price Textiles, Inc. ( )	Lowell, NC	05/22/2002	NAFTA–6,263	Textiles.
Washington Garment Company, Inc. ( ).	Washington, NC	06/11/2002	NAFTA–6,264	Children's dresses.
Ark-Les Corp. (Comp)	Raleigh, NC	06/12/2002	NAFTA–6,265	Clutch and flow switches.
Landers Co., Inc. (Comp)	Camarillo, CA	06/05/2002	NAFTA–6,266	Mouthwash, gels, creams.
Wesbar Corp. (Comp)	Peru, IN	06/12/2002	NAFTA–6,267	Trailer lights and wire harnesses.
Ilsco Corp. (Comp)	Glasgow, KY	05/21/2002	NAFTA–6,268	Electrical connectors.
Kraft Foods, Inc. (Comp)	Chicago, IL	06/12/2002	NAFTA–6,269	Powered soft drinks, barbeque sauce.
Sovereign Specialty Chemicals (IBT)	Ewing, NJ	05/21/2002	NAFTA–6,270	Adhesives, laminations, sealants.
Industrial Coils (Comp)	Baraboo, WI	06/12/2002	NAFTA–6,271	Magnetic windings.

[FR Doc. 02–19764 Filed 8–5–02; 8:45 am]

BILLING CODE 4510–30M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Proposal for a Redesign of Federal Records Management; Request for Comment.

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of document; request for comment.

SUMMARY: NARA is seeking public comment on the Proposal for a Redesign of Federal Records Management. This proposal is part of NARA's series of records management initiatives to examine and redesign, as necessary, its records management policies and procedures. The Proposal is available on the NARA Records Management web page at: *http://www.archives.gov/records_management/pdf/rm_redesign.pdf*. For a paper copy of the report, contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

DATES: Comments must be received by September 15, 2002.

ADDRESS: Please send your comments to Susan Cummings (NPOL) by email to *susan.cummings@nara.gov* or by fax to 301–837–0319 or by mail to NPOL, National Archives at College Park, Room 4100, 8601 Adelphi Rd, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Susan Cummings at 301–837–1636.

SUPPLEMENTARY INFORMATION: The Strategic Plan of the National Archives and Records Administration (NARA) states that NARA will ensure ready access to essential evidence that documents the rights of American citizens, the actions of Federal officials, and the national experience. In support of the NARA Strategic Plan, this Proposal for a Redesign of Federal Records Management lays out a strategy for a redesigned records management program at NARA. The strategy calls for NARA to partner with stakeholders to ensure that:

- Federal agencies can economically and effectively create and manage records necessary to meet business needs,
- Records are kept long enough to protect rights, assure accountability, and document the national experience, and
- Records are destroyed when they are no longer needed and it is practical to do so.

Dated: August 2, 2002.

Nancy Allard,

Federal Register Liaison.

[FR Doc. 02–19909 Filed 8–5–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meeting

DATE AND TIME: August 14, 2002: 10 a.m.–10:30 a.m., Closed Session; August 15, 2002: 1 p.m.–3 p.m., Closed Session; August 15, 2002: 3 p.m.–4:30 p.m., Open Session.

PLACE: The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb.*

STATUS: Part of this meeting will be closed to the public, Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, August 14, 2002

Closed Session (10 a.m.–10:30 a.m.)

—Closed Session Minutes, May, 2002.
—Election for one member of the Executive Committee.
—NSB Member Proposal.

Thursday, August 15, 2002

Closed Session (1 p.m.–3 p.m.)

—Awards and Agreements.
—NSF FY 04 Budget.

Open Session (3 p.m.–4:30 p.m.)

—Open Session Minutes, May, 2002.
—Closed Session Items for October, 2002.
—Chair's Report.
—Director's Report.
—Committee Reports.
—Other Business.

Gerard Glaser,

Executive Officer.

[FR Doc. 02–19938 Filed 8–2–02; 11:32 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Nuclear Management Company, LLC; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 158 to Facility Operating License No. DPR–42 and Amendment No. 149 to Facility Operating License DPR–60, issued to Nuclear Management Company, LLC (the licensee), which revised the Operating Licenses and Technical Specifications (TSs) for operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2, respectively, located in Goodhue County, Minnesota. The amendments are effective as of the date of issuance.

The amendments replace the current TSs (CTS) in their entirety with a set of improved TSs (ITS) based on NUREG–1431, "Standard Technical Specifications for Westinghouse Plants," Revision 1, dated April 1995, and on guidance provided in the Commission's "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors," published on July 22, 1993 (58 FR 39132). In addition, the amendments add new conditions to the Operating Licenses regarding (1) the schedule for the first performance of new and revised surveillance requirements (four conditions), (2) the relocation of CTS requirements into licensee-controlled documents as part of the implementation of the ITS, and (3) the schedule for completion of actions associated with verifying the maximum test face velocity for the ventilation systems included in ITS Section 5.5.9.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on June 25, 2002 (67 FR 42808). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (67 FR 47868).

For further details with respect to the action see (1) the application for amendment dated December 11, 2000, as supplemented by letters dated March 6, June 5, July 3, August 13, August 29, October 15, November 12, and December 12, 2001, and January 25, January 31, February 14, February 15, February 16, March 6, April 11, May 10, May 30, June 7, June 25, and June 28, 2002 (2) Amendment No. 158 to License No. DPR–42 and Amendment No. 149 to License No. DPR–60, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 26th day of July 2002.

For the Nuclear Regulatory Commission.

Tae Kim,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–19776 Filed 8–5–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

DATE: Weeks of August 5, 12, 19, 26, September 2, 9, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTER TO BE CONSIDERED:

Week of August 5, 2002

There are no meetings scheduled for the Week of August 5, 2002.

Week of August 12, 2002—Tentative

Tuesday, August 13, 2002

9:25 a.m. Affirmation Session (Public Meeting) (if needed).

9:30 a.m. Briefing on Special Review Group Response to the Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–415–1703.

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of August 19, 2002—Tentative

Wednesday, August 21, 2002

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Janice Dunn Lee, 301–415–1780).

This meeting will be web cast live at the Web address—*www.nrc.gov*.

1:55 p.m. Affirmation Session (Public Meeting) (if needed).

2 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of August 26, 2002—Tentative

There are no meetings scheduled for the Week of August 26, 2002.

Week of September 2, 2002—Tentative

There are no meetings scheduled for the Week of September 2, 2002.

Week of September 9, 2002—Tentative

There are no meetings scheduled for the Week of September 9, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By vote of 4–0 on July 31, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Pacific Gas & Electric Co. (Diablo Canyon Power Plant, Units, 1 and 2); Multiple Petitions to intervene" be held on August 1, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: August 1, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–19913 Filed 8–2–02; 11:13 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, July 12, 2002, through July 25, 2002. The last biweekly notice was published on July 23, 2002 (67 FR 48213).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's

Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 5, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

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[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest .

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New York

Date of amendment request: June 26, 2002.

Description of amendment request: The licensee proposed to amend the Oyster Creek Nuclear Generating Station (OCNGS) Technical Specifications (TSs) regarding the safety limit minimum critical power ratio (SLMCPR) to reflect the results of cycle-specific calculations performed for the next fuel cycle (i.e., Cycle 19), using Nuclear Regulatory Commission (NRC)-approved methodology for determining SLMCPR values. Specifically, the licensee proposed to revise TS 2.1.A, changing the SLMCPR from 1.09 to 1.12 for three-recirculation-loop operation, and to 1.11 for four-or five-recirculation-loop operation. The proposed amendment would also editorially revise references to topical reports which document the approved methodology, and make editorial corrections to the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The licensee used NRC-approved methods and procedures in Topical Report NEDE–24011–P–A–14, "General Electric Standard Application for Reactor Fuel" (GESTAR II) and U.S. Supplement, NEDE–24011–P–A–14–US, dated June 2000, to derive the SLMCPR values for OCNGS, Cycle 19. The analysis methodology incorporates cycle-specific parameters. These calculations do not change the operating procedures of OCNGS and have no effect on the probability of an accident initiating event or transient. The basis of the SLMCPR is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPR values preserve the existing margin to transition boiling and the probability of fuel damage is not increased (*i.e.*, in the event of an accident or transient, the amount of fuel damaged would not be increased as a result of the new SLMCPR values). Furthermore, the proposed new SLMCPR values do not lead to, nor do they arise as a result of, plant design or procedural changes. The balance of the changes is purely administrative. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The new SLMCPR values for OCNGS Cycle 19 core have been calculated in accordance with the methods and procedures described in NRC-approved topical reports. The proposed new SLMCPR values do not lead to, nor do they arise as a result of, plant design or procedural changes. The balance of the changes is purely administrative. The changes do not involve any new method for operating the facility and do not involve any facility modifications. As a result, no new initiating events or transients could develop from the proposed changes. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The margin of safety as defined in OCNGS's licensing basis will remain the same. The new, cycle-specific SLMCPR values are calculated using NRC-approved methods and procedures that are in accordance with the current fuel design and licensing criteria. The SLMCPR values will remain high enough to ensure that greater than 99.9% of all fuel rods in the core are expected to avoid transition boiling if the limits are not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

Based on the above review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant (BSEP), Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: June 26, 2002.

Description of amendments request: The proposed amendment would revise the Technical Specifications (TS) to revise the reactor coolant system pressure-temperature limit curves for operation to 32 effective full-power years (EFPY).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. Development of the revised BSEP, Unit 1 and 2 pressure-temperature limits was performed using the approved fracture toughness methodologies of 10 CFR 50, Appendix G; the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI, Appendix G; and ASME Code Case N–640, "Alternative Reference Fracture Toughness for Development of P–T Limit Curves for ASME Section XI, Division 1." The revised pressure-temperature limits were also developed using NRC Regulatory Guide 1.190, "Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence," March 2001, for evaluating neutron fluence and NRC Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials," for evaluating predicted irradiation effects on vessel beltline materials. Use of these methods provides compliance with the intent of 10 CFR 50, Appendix G, and provides adequate protection against nonductile-type fractures of the reactor pressure vessel. Therefore, the probability of occurrence of a previously analyzed event is not significantly increased.

The consequences of a previously evaluated accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the accident, the availability and successful functioning of the equipment assumed to operate in response to the accident, and the setpoints at which these actions are initiated. The proposed revisions do not impact the source term or pathways assumed in accidents previously evaluated. No analysis assumptions are violated, and there are no adverse effects on the factors contributing to offsite and onsite dose. The proposed changes to the pressure-temperature limits curves do not affect the performance of any equipment used to mitigate the consequences of a previously evaluated accident. Also, the proposed changes do not affect setpoints that initiate protective or mitigative actions. Based on the above, the proposed changes to the pressure-temperature limits curves do not significantly increase the consequences of a previously evaluated accident.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes extend the pressure-temperature limits for use up to 32 EFPY of

operation while providing adequate protection against a nonductile-type fracture of the reactor pressure vessel. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. This proposed license amendment does not involve any facility modifications, and plant equipment will not be operated in a different manner. Also, no new initiating events or transients result from the pressure-temperature limits curves changes. As a result, no new failure modes are being introduced. Therefore, the proposed changes to the pressure-temperature limits curves will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety.

The margin of safety is established through the design of the plant structures, systems, and components; through the parameters within which the plant is operated; through the establishment of setpoints for actuation of equipment relied upon to respond to an event; and through margins contained within the safety analyses. The proposed changes to the pressure-temperature limit curves do not adversely impact the performance of plant structures, systems, components, and setpoints relied upon to respond to mitigate an accident. The revised pressure-temperature limits were developed using the approved fracture toughness methodologies of 10 CFR 50, Appendix G; the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI, Appendix G; and ASME Code Case N–640, "Alternative Reference Fracture Toughness for Development of P–T Limit Curves for ASME Section XI, Division 1." The proposed changes are acceptable because the ASME guidance maintains the relative margin of safety commensurate with that which existed at the time that the ASME Boiler and Pressure Vessel Code, Section XI, Appendix G, was approved in 1974. In addition, the revised pressure-temperature limits were also developed using NRC Regulatory Guide 1.190, "Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence," March 2001, for evaluating neutron fluence and NRC Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials" for evaluating predicted irradiation effects on vessel beltline materials. Use of these methods has provided revised pressure-temperature limit curves that will ensure that the reactor pressure vessel materials continue to behave in a non-brittle manner, thereby preserving the original safety design bases[.] No plant safety limits, setpoints, or design parameters are adversely affected by the proposed changes to the pressure-temperature limit curves. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Kahtan Jabbour, Acting.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant (BSEP), Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: July 2, 2002.

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) to change the administrative controls of TS 5.7, "High Radiation Area." The proposed changes would be consistent with the guidance of Regulatory Guide 8.38, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants," Section C, Regulatory Position 2.4, Alternative Methods for Access Control, with the exception that "should" would be changed to "shall."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes are administrative and affect personnel access control requirements for high radiation areas. The changes do not affect the operation, physical configuration, or function of plant equipment or systems. The changes do not impact the initiators or assumptions of analyzed events; nor do they impact the mitigation of accidents or transient events. Therefore, these changes do not increase the probability or consequences of an accident previously evaluated.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes are administrative and affect personnel access control requirements for high radiation areas. The changes do not alter plant configuration, require installation of new equipment, alter assumptions about previously analyzed accidents, or impact the operation or function of plant equipment or systems. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety.

The changes are administrative and affect personnel access control requirements for high radiation areas. The changes do not impact any safety assumptions; nor do the changes have the potential to reduce any margin of safety as described in the BSEP TS Bases. The proposed changes maintain an equivalent level of protection for radiation workers and, thereby, provide reasonable assurance that individuals will not exceed regulatory dose limits. The proposed changes are consistent with: (1) the guidance of Regulatory Guide (RG) 8.38, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants," Section C, Regulatory Position 2.4, Alternative Methods for Access Control, with the exception that "should" has been changed to "shall"; (2) the BSEP TSs prior to conversion to Improved Standard Technical Specifications; and (3) other nuclear plants' existing TSs, including the Crystal River, H. B. Robinson, and Shearon Harris nuclear plants.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Kahtan Jabbour, Acting.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: July 8, 2002.

Description of amendment request: The amendment would revise Technical Specification (TS) 3/4.8.1.1, "Electrical Power Systems—A.C. Sources—Operating" and TS 3/4.8.1.2, "Electrical Power Systems—A.C. Sources—Shutdown" by revising the minimum level to a volume-based indication versus a level-based indication.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Harris Nuclear Plant (HNP) Technical Specification (TS) Bases for Electrical Power Systems—A. C. Systems states that; "A

separate day tank containing a minimum of 1457 gallons of fuel, which is equivalent to a minimum indicated level of 40% * * *'' and, the asterisked note states; * * * Minimum indicated level with a fuel oil specific gravity of 0.83 and the level instrumentation calibrated to a reference specific gravity of 0.876.'' These changes do not modify the design or operation of Structures, Systems, and Components (SSCs) that could initiate an accident. The minimum volume of fuel in the day tank is unchanged by this amendment and consequently would not impact the probability or consequences of any accident scenario.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve new plant components or procedures, but only revise existing Technical Specification Limiting Condition for Operation Requirements. No significant impact on any postulated accident is made due to this change since the required fuel oil volume is not changed and the level indication for the operations personnel is not changed. These changes do not modify the design or operation of Structures, Systems, and Components (SSCs) that could initiate an accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes do not affect the design or operation of safety related components relied upon to automatically mitigate the consequences of a design basis event. The day tank level specified in TS is not accurate for all fuel oil specific gravities so these changes provide better monitoring capability by reducing the possibility of confusion. Indicated day tank level is used to determine volume by comparing the indicated level to the day tank curve using the actual specific gravity of the fuel. The Diesel Generator day tank minimum volume is not altered by these changes and therefore there * * * is no significant impact on any safety system and these changes do not reduce the margin of safety.

Based on these considerations, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: July 11, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications to make several administrative changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Would implementation of this amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This license amendment request makes editorial corrections to several Oconee Technical Specifications. These corrections are solely administrative in nature. The deletion of the Reactor Building Engineered Safeguards Channels, as proposed in the change to the Technical Specification 3.3.6, Engineered Safeguards Protective System Manual Initiation, was investigated through Duke's corrective action program and also confirmed to be administrative in nature. Therefore, all the changes contained in this license amendment request are administrative in nature and have no impact on any accident probabilities or consequences.

Second Standard

Would implementation of this amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. There are no new accident causal mechanisms created as a result of the implementation of this license amendment request. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request only makes administrative changes and does not impact any plant systems that are accident initiators; therefore, no new accident types are being created.

Third Standard

Would implementation of this statement involve a significant reduction in a margin of safety?

No. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. The changes proposed in this license amendment request are administrative in nature and do not affect the performance of the barriers. Consequently, no safety margins will be impacted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: January 10, 2002.

Description of amendment request: Energy Northwest is requesting changes to the technical specifications (TS) to reflect the application of a 24-month surveillance test interval (STI) to coincide with its intention to implement a 24-month fuel cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The extension of the intervals to 24 months for the subject SRs [surveillance requirements] does not impact the ability of any of the equipment to function as assumed in the Columbia Generating Station accident analysis. None of the equipment within the scope of analysis for this TS amendment request performs a function in any of the systems required for safe shutdown as described in section 7.4 of the Columbia Generating Station FSAR [Final Safety Analysis Report]. Historical maintenance and surveillance data as well as projected instrument drift indicate the proposed amendment will not affect performance or reliability of the equipment tested to meet the requirements of these SRs. Therefore, the extension of the surveillance intervals does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

An event related to surveillance testing Frequency or instruments drifting beyond Allowable Values is not postulated in the Columbia Generating Station accident analysis. None of the analyses performed for this amendment request indicate an increase in the probability of equipment failure resulting from the surveillance interval extension. Because all of the equipment related to the proposed SR interval extensions is expected to function normally during the longer intervals, extending the subject SRs does not introduce any new accident initiators.

Therefore, the operation of Columbia Generating Station in accordance with the

proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment to the Technical Specifications will extend the intervals at which testing is performed to meet the requirements of the selected SRs. The overall effect of the extensions on safety is small due to other more frequent testing that is performed on the same equipment, projected instrument drift that is bounded by the current setpoint analysis, or the existence of redundant mechanical or electrical components. Reviews of historical surveillance and maintenance records indicate there is no evidence of time-related failures. The proposed amendment does not impact the performance of any system, structure, or component relied upon for accident mitigation. The proposed surveillance interval extensions do not impact any safety analysis assumptions or results.

Therefore, operation of Columbia Generating Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 24, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) surveillance requirements (SR) 3.7.7.1 and SR 3.7.7.2. Specifically, SR 3.7.7.1 would be changed to require the verification of the city water tank volume rather than city water header pressure and increase the SR frequency from 12 hours to 24 hours. SR 3.7.7.2 would be revised to require all city water header isolation valves are open rather than only the one header supply isolation valve.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The current TS surveillance to verify City Water (CW) header pressure did not provide assurance that adequate volume of water was available in the City Water Tank (CWT) as an alternate source of cooling if Condensate Storage Tank (CST) was not available. The CST is not designed to withstand the effect of a tornado-generated missile. However, the Auxiliary Feedwater System (AFS) is provided sufficient redundancy of water supplies such that an alternate source of water from the CWT is available in the event the CST is damaged by a tornado-generated missile. The proposed amendment to verify CWT volume is ≥360,000 gallons would ensure that adequate volume of CW is available in the CWT to cool the RCS [reactor coolant system] from 102% rated thermal power to RHR [residual heat removal] entry conditions in 10 hours, if the CST is unavailable or depleted for any reason. The surveillance frequency for the CWT volume is 24 hours. The proposed amendment to change SR 3.7.7.2 to include additional isolation valves that are in the flow path from CWT to AFS suction would ensure that all applicable isolation valves in the flow path are properly positioned. Thus, the proposed amendment involves changes to the Technical Specifications that would properly reflect the Surveillance Requirements for CWT. The CWT is not an initiator of any accident addressed in the FSAR [Final Safety Analysis Report] and the proposed amendment does not have any change to the accident analysis addressed in the FSAR.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment involves changes to the Technical Specifications to properly reflect the surveillance requirements of City Water Tank. The proposed change provides assurance of availability of adequate volume of water in the CWT to cool the RCS from 102% rated thermal power to RHR entry conditions in 10 hours, if the CST is unavailable or depleted for any reason, and verifies the correct position of isolation valves in the flow path between the CWT and the AFS pump suction. These changes do not affect any accident initiators.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed license amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment involves changes to the Technical Specifications to properly reflect the surveillance requirements of City Water Tank. The proposed change to verify the CWT volume would ensure that an adequate volume of CW is available in the tank to cool the RCS from 102% rated thermal power to RHR entry conditions in 10 hours, if the CST is unavailable or depleted for any reason. The proposed change to verify the valve position for isolation valves in the flow path between the CWT and the AFS pump suction would ensure that isolation valves in the flow path are properly positioned. The proposed amendment does not involve any changes to plant equipment, or the way in which the plant is operated.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 26, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.6.5.b, "Core Operating Limits Report (COLR)," to incorporate the reference to Westinghouse topical report WCAP–12945–P–A, "Code Qualification Document for Best Estimate Loss-of-Coolant Analysis [LOCA]," dated March 1998. The proposed amendment would also allow the use of the analytical methodology to determine the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

No physical changes are being made by this change. The proposed changes involve use of the Best Estimate Large Break LOCA [loss-of-coolant accident] analysis methodology and associated TS [technical specification] changes. The plant conditions assumed in the analysis are bounded by the design conditions for all equipment in the plant. Therefore, there will be no increase in

the probability of a loss of coolant accident. The consequences of a LOCA are not being increased. That is, it is shown that the emergency core cooling system is designed so that its calculated cooling performance conforms to the criteria contained in 10 CFR 50.46 paragraph b, that is it meets the five criteria listed in Section II of this evaluation. No other accident is potentially affected by this change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously analyzed?

Response: No.

There are no physical changes being made to the plant. No new modes of plant operation are being introduced. The parameters assumed in the analysis are within the design limits of existing plant equipment. All plant systems will perform equally during the response to a potential accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

It has been shown that the analytic technique used in the analysis more realistically describes the expected behavior of the Indian Point 3 reactor system during a postulated loss of coolant accident. Uncertainties have been accounted for as required by 10 CFR 50.46. A sufficient number of loss of coolant accidents with different break sizes, different locations and other variations in properties have been analyzed to provide assurance that the most severe postulated loss of coolant accidents were calculated. It has been shown by the analysis that there is a high level of probability that all criteria contained in 10 CFR 50.46 paragraph b) are met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 26, 2002.

Description of amendment request: Extend the use of the pressure-temperature (P–T) limits in Technical Specification (TS) Figure 3.4.6.1–1 to 32 effective full power years by deleting a note on each unit's TS Figure limiting the validity of the Figure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to the technical specifications to extend the use of the existing pressure-temperature (P-T) limits does not affect the operation or configuration of any plant equipment. Thus, no new accident initiators are created by this change. The existing P-T limits are based on the projected reactor vessel neutron fluence at 32 effective full power years (EFPY) of operation specified in the current licensing basis for LGS [Limerick Generating Station], Units 1 and 2. A plant-specific calculation of reactor vessel 32 EFPY fast neutron fluence has been completed for LGS, Units 1 and 2, using the methodology described in a General Electric (GE) Company Licensing Topical Report (LTR), which adheres to the guidance in Regulatory Guide 1.190, "Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence." The three-dimensional spatial distribution of neutron flux was modeled by combining the results of two separate two-dimensional neutron transport calculations. The latest available cross section libraries for the important components of Boiling Water Reactor (BWR) neutron flux calculations, i.e., oxygen, hydrogen and individual iron isotopes, were included. The resulting reactor vessel fast neutron fluence value is lower than the value in the current licensing basis for LGS, Units 1 and 2. Therefore, the existing 32 EFPY P-T limits bound the fast neutron fluence value calculated using the GE methodology. This provides sufficient assurance that the LGS, Unit 1 and Unit 2, reactor vessels will be operated in a manner that will protect them from brittle fracture under all operating conditions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change to the technical specifications to extend the use of the existing P–T limits does not affect the operation or configuration of any plant equipment. The current P–T limits will remain valid and conservative during the proposed extension. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change extends the use of the existing P–T limits. The existing P–T limits are based on the projected reactor vessel neutron fluence at 32 EFPY of operation specified in the current licensing basis for LGS, Units 1 and 2. A plant-specific calculation of reactor vessel 32 EFPY fast neutron fluence has been completed for LGS, Units1 and 2, using the NRC [Nuclear Regulatory Commission] approved methodology in a GE LTR, which adheres to the guidance in Regulatory Guide 1.190. The three-dimensional spatial distribution of neutron flux was modeled by combining the results of two separate two-dimensional neutron transport calculations. The latest available cross section libraries for the important components of BWR neutron flux calculations, i.e., oxygen, hydrogen and individual iron isotopes, were included. The resulting reactor vessel fast neutron fluence value is lower than the value in the current licensing basis for LGS, Units 1 and 2. Therefore, the existing 32 EFPY P–T limits bound the fast neutron fluence value calculated using the GE methodology. This provides sufficient margin such that the LGS, Unit 1 and Unit 2, reactor vessels will be operated in a manner that will protect them from brittle fracture under all operating conditions. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Acting Section Chief: Jacob I. Zimmerman.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket No. 50–277, Peach Bottom Atomic Power Station, Unit 2, York County, Pennsylvania

Date of application for amendment: June 10, 2002

Description of amendment request: Exelon Generation Company, LLC, the licensee, is proposing a change to the Peach Bottom Atomic Power Station (PBAPS), Unit 2, Technical Specifications (TSs) contained in Appendix A to the Operating License. This proposed change will revise the TS section on safety limits to incorporate revised safety limit minimum critical power ratios (SLMCPRs) due to the cycle-specific analysis performed by Global Nuclear Fuel for PBAPS, Unit 2, Cycle 15.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle specific safety limit minimum critical power ratios (SLMCPRs) for incorporation into the (TS[s]), and their use to determine cycle specific thermal limits, has been performed using the methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which incorporates Amendment 25. Amendment 25 was approved by the NRC in a March 11, 1999 safety evaluation report.

The basis of the SLMCPR calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling. The GE–14 fuel is in compliance with Amendment 22 to "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which provides the fuel licensing acceptance criteria. The probability of fuel damage will not be increased as a result of this change. Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR is a TS numerical value, calculated to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core if the limit is not violated. The new SLMCPRs are calculated using NRC approved methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which incorporates Amendment 25. Additionally, the GE–14 fuel is in compliance with Amendment 22 to "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR–II), and U. S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which provides the fuel licensing acceptance criteria. The SLMCPR is not an accident initiator, and its revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

There is no significant reduction in the margin of safety previously approved by the NRC as a result of the proposed change to the SLMCPRs, which includes the use of GE–14 fuel. The new SLMCPRs are calculated using methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June, 2000, which incorporates Amendment 25. The SLMCPRs ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated when all uncertainties are considered, thereby preserving the fuel cladding integrity. Therefore, the proposed TS change will not involve a significant reduction in the margin of safety previously approved by the NRC.

Based on the above, Exelon Generation Company, LLC, concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Jacob I. Zimmerman, Acting.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: July 18, 2002

Description of amendment request: The proposed amendments would implement an administrative change to relocate the Technical Specifications (TS) requirements for the spent fuel crane to the respective unit's Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes to the Technical Specifications are administrative in nature in that the Technical Specifications for operation and surveillance of the spent fuel cask crane and the fuel handling crane will be relocated from Appendix A of the facility operating license to the UFSAR for each unit. The crane operation and surveillance requirements are not altered by this relocation. Once relocated, any future changes will be controlled by 10 CFR 50.59, and the UFSARs will be updated pursuant to 10 CFR 50.71(e). Because no operating requirements are changed by the proposed amendment, crane operation following the proposed amendment would not differ from current crane operation. The proposed Technical Specification changes do not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor do the changes alter any assumptions or conditions in any of the plant accident analyses. Therefore, facility operation in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated in the UFSAR.

2. Would operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment will not affect the design function of any system, structure, or component. Relocating the existing Technical Specification requirements for the spent fuel cask crane and the fuel handling crane to the UFSAR is an administrative change and will not modify the physical plant or the modes of plant operation defined in the Facility Operating License. The operating restrictions imposed on the spent fuel-related cranes by the existing Technical Specifications will be retained in the UFSAR under this change. The change does not involve the addition or modification of equipment, nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different accident from any accident previously evaluated.

3. Would operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed changes to the Technical Specifications are administrative in nature in that the Technical Specifications for operation and surveillance of the spent fuel cask crane and the fuel handling crane will be relocated from Appendix A of the facility operating license to the UFSAR for each unit. The crane operating restrictions that are being relocated to the UFSAR by this change are not being relaxed or eliminated. The proposed changes do not alter the basis for any technical specification that is related to the establishment of or the maintenance of a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety as defined in the basis for any Technical Specification or in any licensing document.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: July 3, 2002.

Description of amendment request: The amendment would revise the Improved Technical Specifications (ITS) 3.8.1 and associated bases, "AC Sources—Operating," by extending the allowed outage time for the emergency diesel generators (EDGs) from 72 hours to 14 days and to modify a note for two EDG ITS Surveillance Requirements (SRs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed license amendment extends the Completion Time for restoring an inoperable EDG to OPERABLE status and permits performance of certain SRs at power under specified conditions. The EDGs are designed to supply backup AC power to equipment in essential safety systems in the event of a loss of offsite power, and as such, the EDGs are not initiators of any design basis accident.

The design functions, operational characteristics, and interfaces between the EDGs and other plant systems will not be affected by the change. In addition, the initial conditions and assumptions for accidents that require the EDGs will remain unchanged. Defense in depth will be maintained by the redundant OPERABLE EDG, diverse 1E offsite power sources, and the availability of multiple emergency feedwater (EFW) and auxiliary feedwater (AFW) equipment capable of operating independently of both offsite power and the EDGs.

A Probabilistic Safety Assessment (PSA) has been performed to quantitatively assess the risk impact of an increase in Completion Times. Although the proposed changes result in slight increases in core damage frequency (CDF) and incremental conditional core damage probability (ICCDP), and large early release frequency (LERF) and incremental conditional large early release probability (ICLERP), these increases are well below values that are considered risk significant in accordance with current regulatory guidance.

Based on the above, the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

(2) Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment extends the Completion Time for restoring an inoperable EDG to OPERABLE status and permits performance of certain SRs at power under specified conditions. The proposed amendment will not result in changes to the design, physical configuration or operation of the plant or the assumptions made in the safety analysis for accidents that require the EDGs. In addition, the proposed amendment will not result in changes to corrective or preventive maintenance activities associated with the EDGs, plant operating procedures, or the procedures used to respond to abnormal or emergency conditions. Assumptions made in the safety analysis related to EDG availability will also remain unchanged. Performance of certain SRs at power requires an evaluation to assure plant safety is maintained or enhanced, which would include evaluation for new or different plant conditions. As such, no new failure modes are being introduced. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does not involve a significant reduction in the margin of safety.

The proposed license amendment increases the Completion Times for restoring an inoperable EDG to OPERABLE status and permits performance of certain SRs at power under specified conditions. The proposed changes will improve EDG reliability by providing flexibility in scheduling and performing EDG preventive and corrective maintenance activities. This flexibility will reduce the probability (and associated risk) of a plant shutdown to repair an inoperable EDG that cannot be restored within the current ITS 3.8.1 Completion Times. Performance of the proposed SRs at power requires an evaluation to assure plant safety is maintained or enhanced. The proposed change will also increase the availability of the EDGs during MODE 5 and 6 outages, thus reducing shutdown risk.

The proposed amendment will not change the plant design, safety analysis, or the design, configuration or operation of the EDGs. The EDGs are designed to supply backup AC power to equipment in essential safety systems in the event of a loss of offsite power. Either EDG is capable of performing this function; therefore, as long as one train is available, the margin of safety is maintained. Defense in depth will be provided by the redundant OPERABLE EDG, the availability of diverse offsite circuits capable of supplying power to plant emergency loads, and EFW and AFW equipment that can perform their design function independently of both offsite power and the EDGs.

To ensure these defense in depth capabilities are maintained during required EDG maintenance, maintenance and surveillance activities that have the ability to impact the availability of the redundant EDG, required support systems and/or backup systems, the EFW and AFW systems and the 1E offsite power circuits will be controlled in accordance with the normal work controls process. As part of this process, weekly qualitative and quantitative risk assessments of scheduled on-line maintenance activities, and additional risk assessments of emergent work activities, will be performed in accordance with the guidance provided in CR–3 Compliance Procedure CP–253, "Power Operation Risk Assessment and Management." If the results of these assessments indicate an increase in risk, appropriate actions to control temporary and aggregate risk increases and minimize risk increases above the overall plant baseline will be implemented in accordance with CP–253.

Additional measures to minimize risk will include increased administrative controls related to switchyard access, and increased inspection of identified risk significant fire areas within the plant. A Tier 2 analysis has also been performed to identify the dominant risk significant plant configurations during the time that an EDG is inoperable due to required corrective or preventive maintenance, and appropriate configuration controls/restrictions will be established prior to extended EDG maintenance.

As discussed in question (1) above and in the submittal, the slight increases in CDF, ICCDP, LERF and ICLERP resulting from the proposed amendment are all below values that are considered risk significant in accordance with the guidance provided in Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," for changes to the plant, and Regulatory Guide 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," for proposed increases in ITS Completion Times.

Based on the above, this proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC–BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Acting Section Chief: Kahtan N. Jabbour.

GPU Nuclear Inc., Docket No. 50–320, Three Mile Island Nuclear Generating Station, Unit 2, (TMI–2) Dauphin County, Pennsylvania

Date of amendment request: June 13, 2002.

Description of amendment request: The proposed technical specifications change request (TSCR) No. 79, Revision 1, is to revise Three Mile Island Nuclear Generating Station, Unit 2 (TMI–2) Technical Specification (TS) Administrative Controls section that will provide consistency with Three Mile Island Nuclear Generating Station, Unit 1, (TMI–1) TS changes submitted

by AmerGen Energy Company, LLC (AmerGen) and Exelon Generation Company, LLC (EGC), which are currently under review by the U.S. Nuclear Regulatory Commission (NRC). GPU Nuclear utilizes EGC/AmerGen administrative controls under contract to TMI–2. The proposed request would delete TS Sections 6.4, "Training," and 6.5.4, "Independent Onsite Safety Review Group" (IOSRG) from the administrative requirements in Section 6 of the TMI–2 Post Defueled Monitored Storage (PDMS) TS. Additionally, the IOSRG has been removed from the list of recipients of audit reports in Section 6.5.3.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

TMI–2 is a defueled facility holding a Possession Only License is being maintained in Post Defueling Monitored Storage (PDMS). The introduction of the PDMS Quality Assurance Plan states in part in the second paragraph, "Since the plant will be in a non-operating and defueled status, there will no longer be any structures, systems, or components that perform a safety function."

Deletion of the technical specifications requirements for training and the IOSRG will have no adverse effect on any plant system; will not alter the source term, containment isolation, or allowable radiological consequences. These administrative changes will have no effect on any plant systems, structures or components and do not affect the physical plant, operating procedures, maintenance procedures, or emergency procedures at TMI–2.

The elimination of the IOSRG oversight function removes a function that is redundant to other oversight programs, not required by NRC regulation, and is not needed for the safe monitoring of TMI–2. Programmatic assessments of the TMI–2 programs will continue to be assessed by Nuclear Oversight personnel in accordance with the PDMS Quality Assurance Plan. Training will continue to be conducted in accordance with regulatory requirements.

The training programs for appropriate unit staff personnel other than licensed operators is now addressed by 10 CFR 50.120. With the 10 CFR 50.120 rule, the NRC is emphasizing the need to ensure that industry personnel training programs are based upon job performance requirements. This will be accomplished using the systems approach to training implemented by INPO [Institute of Nuclear Power Operations] accredited training programs for selected nuclear personnel. Included within the rule is the requirement that the training program must reflect industry experience. Deletion of the training requirements in the technical specifications will conform the license to the current requirements of 10 CFR 50.120.

Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

These changes are administrative in nature and do not affect any system functional requirements, plant maintenance, or operability requirements. The proposed changes involve the elimination of a redundant oversight function and the replacement of training requirements by the more vigorous requirements of 10 CFR 50.120, which are applicable to operating plants.

The proposed changes have no direct effect on any plant systems or components. The programs for the monitoring, surveillance, or maintenance of TMI–2 are unaffected. Oversight of TMI–2 will continue to be provided by Nuclear Oversight personnel and the TMI–2 Safety Oversight Committee in accordance with the requirements of the PDMS Quality Assurance Plan.

Therefore, the proposed changed will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The training and IOSRG requirements contained in TMI–2 Technical Specifications Section 6.0 "Administrative Controls" are administrative in nature. The proposed changes have no direct effect on any plant systems. There are currently no safety limits that apply to TMI–2 during PDMS. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Robert A. Gramm.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: June 28, 2002.

Description of amendment request: The licensee proposed changes to surveillance requirements in Table 4.6.2b, "Instrumentation that Initiates Primary Coolant System or Containment Isolation," of the Nine Mile Point Nuclear Station, Unit No. 1 (NMP1) Technical Specifications (TS) regarding the isolation capability of the shutdown cooling system (SDCS). Specifically, the changes will remove the restriction to perform channel functional testing and channel calibration associated with SDCS high area temperature only during refueling outages. The changes will allow these surveillance activities to be performed during other operating conditions on a once-per-operating-cycle basis, thereby maintaining SDCS availability to support reactor shutdown operations during refueling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The only safety-related functions of the SDCS are (i) to maintain the integrity of the reactor coolant pressure boundary, and (ii) to provide primary containment isolation of the shutdown cooling lines. The proposed amendment removes an unnecessary restriction to perform channel functional testing and calibration associated with SDCS isolation capability only during refueling outages. It provides the flexibility to perform these surveillances during other operating conditions on a "once per operating cycle" basis. The change does not modify the surveillance frequency, surveillance acceptance criteria, high area temperature setpoint limit for initiating SDCS isolation, plant equipment configurations during SDCS surveillances, or the existing requirements for maintaining SDCS isolation and reactor coolant pressure boundary integrity.

Based on the above, the operation of NMP1 in accordance with the proposed amendment will not involve a significant increase in the probability or the consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical modifications to the plant and does not alter equipment configuration, setpoints, safety parameters, surveillance interval durations, or surveillance acceptance criteria. It does not affect the operation of any safety-related structure, system, or component in a manner that could introduce a new accident precursor or a new failure mechanism. The SDCS isolation valves will continue to perform their isolation function by remaining closed with power removed during power operation of the reactor.

Based on the above, the operation of NMP1 in accordance with the proposed amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 1 in accordance with the proposed

amendment will not involve a significant reduction in a margin of safety.

The proposed change does not affect any of the plant's fission product barriers or safety/operational limits. The high area temperature setpoint for SDCS isolation will remain within the existing TS limit.

The SDCS isolation valves will continue to remain closed with power removed during power operation of the reactor. The proposed "[o]nce per operating cycle" surveillances will be adequate to ensure acceptable SDCS equipment operability and reliability.

Based on the above, the operation of NMP1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: July 12, 2002.

Description of amendment request: The licensee proposed to change the Technical Specifications (TSs), Sections 3.1.1 and 4.1.1, "Control Rod System," by reducing the power level below which the rod worth minimizer (RWM) or a second independent verification of rod positions must be used from 20% rated thermal power (RTP) to 10% RTP. The licensee stated that analysis has shown that no significant control rod drop accident (CRDA) can occur above 10% RTP. The low power setpoint change will reduce the time necessary for both reactor startup and shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is reproduced below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The TS revision lowers the power level at which the analyzed rod position sequence must be followed by use of the RWM or a second independent verification of rod positions. The RWM enforces the analyzed rod position sequence to ensure that the initial conditions of the CRDA analysis are not violated. Compliance with the analyzed rod position sequence and operability of the RWM is required in the startup and run modes when thermal power is less than 10% RTP. When thermal power is 10% RTP or greater, there is no possible control rod configuration that results in a control rod worth that could exceed the 280 cal/gram fuel design limit during a CRDA. None of the accidents previously evaluated assume the RWM is an initiator of the accident and therefore, the probability of an accident is not significantly increased by the change. Because the fuel design limit is not exceeded, the change to the low power setpoint will not significantly increase the consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The TS revision lowers the power level below which the analyzed rod position sequence must be followed. The change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. Therefore, a new or different type of accident from any accident previously evaluated is not created.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The RWM enforces the analyzed rod position sequence to ensure that the initial conditions of the CRDA analysis are not violated. Compliance with the analyzed rod position sequence and operability of the RWM are required in the startup and run modes when thermal power is less than 10% RTP. When thermal power is 10% RTP and greater, there is no possible control rod configuration that results in a control rod worth that could exceed the 280 cal/gram fuel design limit during a CRDA. Because the fuel design limit is not exceeded at 10% RTP and greater, the change to the RWM low power setpoint does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: July 12, 2002.

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) Section 3.1.a.3, "Pressurizer Safety Valves." Also, the proposed amendment would reformat TS 3.1.a.3 to more closely resemble the format of Improved Standard Technical Specification (ISTS) to improve clarity. The proposed amendment would allow both pressurizer safety valves to be inoperable or removed while the reactor vessel head is on. This would only be applicable when the temperature and pressure are low enough such that the Low Temperature Overpressure Protection (LTOP) System can safely protect the Reactor Coolant System (RCS). The TSs currently requires the LTOP System to protect the RCS when the RCS temperature is less than LTOP enabling temperature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The format changes are administrative in nature and therefore have no effect on the probability or consequences of an accident. The situation where the plant has two inoperable or removed pressurizer safeties while the LTOP System is enabled is not considered an accident initiator. Therefore, any change to the system would not affect the probability of an accident previously evaluated. The risk of core damage/release of radioactivity would not increase with all of the other plant safety features still in place.

The proposed changes adds clarity to the TSs by describing a specific situation when the RCS is at low temperature & pressure while overpressure protection is provided by the LTOP System. Since this TS change is not an accident initiator and existing TS will ensure the LTOP System will continue to protect the RCS pressure boundary, this proposed amendment does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The situation where the plant has two inoperable pressurizer safeties while the LTOP System is enabled is not considered an accident initiator. A failure of this system will not result in an accident. The format changes are administrative in nature and therefore have no effect on the probability or consequences of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a change to the physical plant or operations. As the RCS temperature is lowered to less than 200 °F, the LTOP System provides the RCS overpressure protection required. Since the LTOP System is currently approved for use by TS 3.1.b.4, it would not create the

possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, any change to the system would not affect the probability of an accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

The format changes are administrative in nature and therefore are not involved in a significant reduction in the margin of safety. Margin of safety relates to overpressure protection when the RCS is less than 200 °F. This margin is controlled by the LTOP System completely and does not rely on the pressurizer safeties. This proposed amendment allows KNPP to have both pressurizer safeties to be inoperable as long as the RCS is below the LTOP System enabling temperature. Therefore, NMC concludes that there is not a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: L. Raghavan.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: June 24, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.5.3, "Post Accident Sampling System (PASS)," to eliminate the requirements to have and maintain the PASS at Plant Hatch. The changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, "Elimination of Requirements for a Post Accident Sampling System (PASS)."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment application in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated June 24, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the [Three Mile Island, Unit 2] TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: July 11, 2002.

Description of amendment request: The proposed amendments would delete Technical Specification 3.3.1.1.I.2, which requires returning the Oscillating Power Range Monitor to operable status within 120 days of discovering its operability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Oscillating Power Range Monitor (OPRM) is not designed for the prevention of an instability event or any other previously evaluated event. Accordingly, it cannot increase the probability of an instability event or any other previously evaluated event.

The consequences of the instability event are not significantly increased, because the alternate method of detection and suppression of thermal-hydraulic instability oscillations is well established at Plant Hatch. Furthermore, operators are adequately trained on instabilities.

This proposed change to delete the 120-day Completion Time restriction on an inoperable OPRM does not affect any other system designed for the mitigation of previously analyzed events.

For the above reasons, the probability and consequences of a previously analyzed event are not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change only deletes a Technical Specification requirement. It does not physically alter the design, operation, testing, or maintenance of any plant system or piece of equipment. The proposed change introduces no new modes of operation. Consequently, the change does not create the possibility of a new or different kind [of] event.

3. The change does not involve a significant reduction in the margin of safety.

The proposed change deletes the requirement to restore the OPRM system to operable status within 120 days of discovering its inoperability. A manual alternate method to detect and suppress thermal-hydraulic instability oscillations has been included in Plant Hatch procedures for many years. Also, operators are trained on instability events.

Accordingly, the manual alternate method is adequate and thus, the margin of safety for the instability event is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 2, 2001.

Description of amendment request: The proposed amendment revises Technical Specifications to extend, on a one-time basis, the current interval for Type A testing from 10 years to 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed Technical Specification revision extends the current interval for Type A testing. The current test interval of ten years would be extended on a one-time basis to 15 years from the preceding Type A test. Pursuant to 10 CFR 50.91, this analysis provides a determination that the proposed change to the Technical Specifications for a one-time extension of the interval for Integrated Leakage Rate Testing does not involve any significant hazards consideration as defined in 10 CFR 50.92.

Criterion 1: The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed extension to the Type A testing interval will not increase the probability of an accident previously evaluated. The containment Type A testing interval extension is not a modification and the testing interval extension is not of a type that could lead to equipment failure or accident initiation.

The proposed extension to the Type A testing interval does not involve a significant increase in the consequences of an accident. Research documented in NUREG–1493 has determined that Type B and C tests can identify the vast majority (more than 95%) of all potential leakage paths.

NUREG–1493 concluded that reducing the Type A test frequency to one per twenty years leads to an imperceptible increase in risk. Testing and inspection provide a high degree of assurance that the containment will not degrade in a manner detectable only by Type A testing. Previous Type A tests show leakage does not exceed acceptance criteria, indicating a very leak-tight containment. Inspections required by the Maintenance Rule and ASME code are performed in order to identify indications of containment degradation that could affect leak tightness.

Experience at the South Texas Project demonstrates that excessive containment leakage paths are detected by Type B and C Local Leakage Rate Tests. Type B and C testing will identify any containment opening, such as a valve, that would otherwise be detected by the Type A tests. These factors show that a Type A test interval extension will not involve a significant increase in the consequences of an accident.

Criterion 2: The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed extension of the Type A testing interval will not create the possibility of a new or different type of accident from any previously evaluated. There are no physical changes being made to the plant and there are no changes in operation of the plant that could introduce a new failure mode creating an accident or affecting the mitigation of an accident.

Criterion 3: The proposed change does not involve a significant reduction in the margin of safety.

The proposed extension of the Type A testing interval will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year interval in Type A leakage testing results in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1 percent to the individual risk and that the decrease in Type A testing frequency would have a minimal effect on this risk because 95% of the potential leakage paths are detected by Type B and C testing.

Deferral of Type A testing for the South Texas Project does not increase the level of public risk due to loss of capability to detect and measure containment leakage or loss of containment structural capability. Other containment testing methods and inspections will assure all limiting conditions of operation will continue to be met. The margin of safety inherent in existing accident analyses is maintained.

Based on the evaluation provided above, the South Texas Project concludes that the proposed change does not involve a significant hazards consideration and will not have a significant effect on safe operation of the plant. Therefore, there is reasonable

assurance that operation of the South Texas Project in accordance with the proposed revised Technical Specifications will not endanger the public health and safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Alvin H. Gutterman, Esqr., Morgan, Lewis, & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: July 10, 2002.

Description of amendment request: The proposed one-time technical specification (TS) change revises the Sequoyah Unit 2 Limiting Condition for Operation for Section TS 3.7.4, "Essential Raw Cooling Water System," to include provisions for maintaining operability of this system during performance of heavy load lifts associated with the Unit 1 steam generator replacement (SGR) project. The provisions should ensure safe operation of Unit 2 during heavy load lift activities. In addition, compensatory measures proposed should ensure safe shutdown capability of Unit 2 in the unlikely event a heavy load drop occurs over Essential Raw Cooling Water system piping.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the Tennessee Valley Authority (TVA) has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has concluded that operation of Sequoyah (SQN) Unit 2, in accordance with the proposed change to Technical Specification (TS) 3/4.7.4, does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

TVA's proposed license amendment is a one-time change to the SQN Unit 2 TSs. The proposed change revises SQN Limiting Condition for Operation 3.7.4, "Essential Raw Cooling Water System," to include provisions for maintaining operability of this system during performance of heavy load lifts associated with the Unit 1 steam generator replacement (SGR) project. The provisions ensure safe operation of Unit 2 during heavy load lift activities. In addition, compensatory measures ensure safe shutdown capability of Unit 2 in the unlikely event a heavy load drop occurs over ERCW system piping.

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

No changes in event classification as discussed in SQN Updated Final Safety Analysis Chapter 15 will occur due to the proposed TS amendment. The one-time TS provision ensures that the SQN essential raw cooling water (ERCW) system remains operable for continued safe operation of Unit 2 during heavy load lifts performed on Unit 1 during SGR replacement activities.

Accordingly, the proposed modification to SQN Unit 2 TSs and the implementation of compensatory measures for a postulated load drop will not significantly increase the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility of a new or different accident scenario occurring as a result of activities conducted during the SQN Unit 1 SGR project are not created. Three postulated scenarios related to heavy load handling during the SGR project were examined for their potential to represent a new or different kind of accident from those previously evaluated: (1) a breach of the old steam generator (OSG), resulting in the release of contained radioactive material, (2) flooding in the Auxiliary Building caused by the failure of piping in the ERCW tunnel, and (3) loss of ERCW to support safe shutdown of the operating unit.

Failure of an OSG that results in a breach of the primary side of the steam generator (SG) could potentially result in a release of a contained source outside containment. The consequences of this event, both offsite and in the control room, were examined and found to be within the consequences of the failure of other contained sources outside containment at the SQN site (*i.e.*, within the SQN design basis).

With regard to flooding of the Auxiliary Building from a heavy load drop, the protective measure taken prior to the lifting of heavy loads include installation of a wall in the ERCW tunnel near the Auxiliary Building interface. The wall provides protection against a postulated flood of the ERCW tunnel and protects against flooding of the Auxiliary Building beyond those events previously evaluated.

With regard to the potential for a heavy load drop causing the loss of ERCW cooling water to the operating unit (i.e., Unit 2), TVA is implementing provisions to preclude a load drop. A heavy load drop is considered an unlikely accident for the following reasons:

- The lifting equipment was specifically designed and chosen for the subject heavy lifts,
- Crane operators will be specially trained in the operation of the lift equipment and in the SQN site conditions,
- Qualifying analyses and administrative controls will be used to protect the lifts from the effects of external events,
- The areas over which a load drop could cause loss of ERCW are a small part of the total travel path of the loads.

In addition, protection against the potential for a loss of ERCW is established prior to any heavy load lifts. Compensatory measures ensure the ERCW system is isolated should a pipe break occur, and that ERCW flow is redirected to equipment essential for safe shutdown capability of Unit 2.

Accordingly, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change to the Unit 2 TSs support safe operation and safe shutdown capability of Unit 2 during replacement of the Unit 1 SGs. These measures do not result in changes in the design basis for plant structures, systems, and components (SSCs). Consequently, the proposed change will not affect any margins of safety for plant SSCs.

Accordingly, a significant reduction in the margin of safety is not created by the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A Knoxville, Tennessee 37902.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendments: March 29, 2002 (TS 02–02).

Brief description of amendments: The proposed amendment would change the Sequoyah (SQN) Unit 1 Technical Specifications (TSs) by revising Specification 3/4.4.5 to eliminate surveillance requirements associated with two alternate repair criteria. The associated License Condition 2.C.9.d is also deleted. In addition, the proposed change revises SR 3/4.4.5.3.a to allow a one-time, 40-month steam generator (SG) inspection interval after the first (post-Unit 1 SG replacement) inservice inspection resulting in a C–1 category. The proposed change is in lieu of the current TS criteria that requires two consecutive category C–1 inspections for application of the 40-month SG inspection interval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has concluded that operation of Sequoyah Nuclear Plant (SQN) Unit 1, in accordance with the proposed change to the technical specifications and License Condition, does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

TVA is proposing to modify SQN Unit 1 TS 3/4.4.5, "Steam Generators" to delete surveillance requirements (SRs) that describe steam generator (SG) tube plugging limits for two alternate repair criteria (ARC). The first ARC is for axial outside diameter stress corrosion cracking (ODSCC) at non-dented tube support plates and the second ARC is for axial primary water stress corrosion cracking (PWSCC) at dented tube support plates. TVA's proposed amendment removes both ARCs through the deletion of the following SRs: SR 4.4.5.2.b.4, 4.4.5.2.d, 4.4.5.2.e, a portion of 4.4.5.4.a.6, 4.4.5.4.a.10, 4.4.5.4.a.11, 4.4.5.5.d, and 4.4.5.5.e. TVA's proposed removal of these SRs for ARC reestablishes standard tube plugging criteria within the TS for SQN Unit 1. Returning to the standard TS 40 percent through-wall tube plugging limit is inherently more conservative.

Included with the above change is deletion of License Condition 2.C.9.d that references prior TVA commitment letters for SG inspection. The TVA letters and their commitments will no longer apply following replacement of the Unit 1 SGs.

In addition, TVA is proposing a revision to TS 3/4.4.5.3.a to allow application of the 40-month inspection interval after one SG inspection resulting in a C–1 category. The proposed change replaces the current TS requirement that invokes the extended 40-month inspection interval after two consecutive inspections resulting in a category of C–1. TVA's proposed change provides a relaxation of the SG inspection requirements and schedule. The relaxation in the inspection schedule is intended to coincide with replacement of SQN Unit 1 SGs during the Cycle 12 refueling outage (Spring 2003). The replacement of the SQN Unit 1 SGs incorporate significant design improvements that include thermally treated Alloy 690 SG tubing. The improvements in SG design and tube material properties increase the resistance to SG tube degradation mechanisms and allow optimization of SG inspection schedules. The proposed optimization of SG inspections reduce the cumulative number of SG inspections over the life of the plant and result in significant dose, schedule, and cost savings to TVA.

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA's proposed TS amendment does not compromise limits associated with SG tube integrity. TVA's proposed change removes existing SG tube plugging criteria (*i.e.*, ARC) from the TS and reestablishes the standard TS criteria (40 percent through-wall criteria). This change is inherently more conservative. The proposed allowance for an extended inspection interval is a conservative inspection strategy that is based on improved SG design features and SG tube materials that have been shown to resist degradation and preserve SG tube integrity.

The proposed revision does not alter plant equipment, test methods or operating practices. The proposed change continues to provide controls for safe operation of SQN SGs within the required limits. The proposed change does not contribute to events or assumptions associated with postulated design basis accidents (*i.e.*, SG tube rupture). The proposed change does not affect operator indicators or actions required to diagnose or mitigate a SG tube rupture accident. The proposed revisions continue to maintain the required safety functions. Accordingly, the probability of an accident or the consequences of an accident previously evaluated is not increased.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

TVA's proposed amendment removes existing repair criteria and incorporates the more conservative TS limit for SG tube plugging (*i.e.*, plug tubes with degradation depths equal to or greater than 40 percent through-wall). This change will not give rise to new failure modes. The failure of a SG tube to maintain leakage integrity during operation is an analyzed event in the SQN Updated Final Safety Analysis Report. TVA's proposed change to the SG inspection interval will not introduce a new or different kind of accident scenario. Accordingly, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

TVA's proposed TS amendment is conservative with respect to the margin of safety. The margin of safety is preserved through ensuring structural integrity and leakage integrity of the SG tubes.

TVA's proposed change that to remove ARC from the TS does not compromise structural integrity or leakage integrity of SG tubes. The proposed change invokes the standard TS tube plugging criteria limit (40 percent through-wall criteria) which is inherently conservative.

TVA's proposed change to include a one-time extension to the SQN Unit 1 SG inspection interval retains conservative inspection strategy that maintains the structural and leakage integrity of the SGs. TVA intends to replace SQN Unit 1 SGs during the Cycle 12 refueling outage and perform a 100 percent full length inspection of SG tubes during the Cycle 13 refueling outage to verify that damage mechanisms do not exist. Twelve years of SG operation history indicate that corrosion damage mechanisms do not appear in replacement SGs that contain thermally treated Alloy 690 tubing. The replacement SG design also contains design improvements that provide reasonable assurance that tube degradation is not likely to occur over the proposed 40-month operating period (Cycle 13 refueling outage to Cycle 15 refueling outage). The corrosion resistant properties of the thermally treated Alloy 690 tubing and the improved design will limit the initiation of damage mechanisms and limit growth rate such that tube structural and leakage integrity will be maintained over two operating cycles.

TVA's proposed change to extend the SG inspection interval does not result in a change to system design features. The proposed change does not affect the plant conditions, setpoints, or safety limits that could result in precursors to accidents or degrade accident mitigation systems. Accordingly, plant system safety functions are not altered by the proposed change.

The effect of this change is to extend allowable SG inspection intervals while retaining conservative margins to maintain the structural and leakage integrity of the SGs. Consequently, the proposed TS revisions does not reduce the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: July 10, 2002 (TS 01–09).

Brief description of amendments: The proposed amendment would change the Sequoyah (SQN) Unit 1 and 2 Technical Specifications (TSs) by removing the requirement to not make positive reactivity changes during certain conditions and replace it with requirements to maintain shutdown margin or boron concentration. The changes will permit limited positive reactivity changes that are necessitated by plant operations. These changes will limit the amount of reactivity changes to those that will continue to assure appropriate reactivity limits are met. The proposed changes are consistent with TS Task Force 286 and Revision 2 to NUREG–1431.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

The proposed change does not involve an increase in the probability or consequences of an accident previously evaluated. The proposed activities to be allowed during certain operating conditions are permitted at other times during routine operating conditions. The changes do not affect the limits on reactivity that are specified in other specifications. The proposed changes continue to ensure restrictions on additions and flowpaths of unborated water that are in the existing specifications. The proposed change does not affect the limits on reactivity that are credited in the safety analysis. Therefore, no increase in the probability or consequences of any accident previously evaluated will occur.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes permit the conduct of normal operating evolutions during limited periods when additional controls over reactivity margin are imposed by the TSs. The proposed change does not introduce any new equipment into the plant or significantly alter the manner in which existing equipment will be operated. The changes to operating allowances are minor and are only applicable during certain conditions. The operating allowances are consistent with those acceptable at other times. Since the proposed changes only allow activities that are presently approved and routinely conducted, no possibility exists for a new or different kind of accident from those previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety because the ability to make the reactor subcritical and maintain it subcritical during all operating conditions and modes of operation will be maintained. The margin of safety is defined by the shutdown margin limits and the refueling boron concentration limit. The proposed changes do not affect these operating restrictions and the margin of safety which assures the ability to make and maintain the reactor subcritical is not affected.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of amendment request: July 18, 2002.

Brief description of amendment request: These amendments would revise the Facility Operating Licenses (FOLs) to change the implementation date for the Improved Technical Specifications (ITS), including the relocation of certain existing TS requirements to licensee-controlled documents, from no later than September 2, 2002, to no later than December 20, 2002.

Date of publication of individual notice in ***Federal Register:*** July 25, 2002 (67 FR 48679).

Expiration date of individual notice: August 26, 2002.

Notice of Issuance of Amendments to Facility Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e—mail to pdr@nrc.gov.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: December 28, 2000, as supplemented May 31, 2002.

Brief description of amendment: The amendment decreases the allowed outage time for an inoperable channel or channels of the anticipated transient without scram recirculation pump trip instrumentation.

Date of issuance: July 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 153.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 7, 2001 (66 FR 9378). The supplemental letter did not significantly change the requested amendment or affect the proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 2002.

No significant hazards consideration comments received: No.

Consumers Energy Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix, County, Michigan

Date of amendment request: July 31, 2001, as supplemented by letters dated March 6, and April 23, 2002.

Brief description of amendment: The amendment revises License Condition 2.C.(3) of Operating License DPR–6 to reference revisions of the Big Rock Point Defueled Security Plan, Defueled Suitability Training and Qualification Plan, Defueled Safeguards Contingency Plan, and Independent Spent Fuel Storage Installation Security Plan.

Date of issuance: July 18, 2002.

Effective date: As of the date of issuance and shall be implemented prior to placing the spent fuel in the Big Rock Point Plant independent spent fuel storage installation.

Amendment No.: 123.

Facility Operating License No. DPR–6: The amendment revised the Facility Operating License.

Date of initial notice in **Federal Register:** August 22, 2001 (66 FR 44166). The March 6 and April 23, 2002, supplemental letters provided additional clarifying information that did not expand the scope of the application as originally noticed and did not change the NRC staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 2002.

No significant hazards considerations comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: February 5, 2002 as supplemented on March 6, 2002.

Brief description of amendment: The amendment changes the term in the technical specifications "once each REFUELING INTERVAL" to "once per 24 months" in several surveillance requirements.

Date of issuance: July 24, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 206.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36930). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 20, 2001.

Brief description of amendments: The amendments revised the Technical Specifications (TS) 5.5.14 to eliminate the use of the term "unreviewed safety question," and replace the word "involve" with the word "require" as it applies to changes made to the updated Final Safety Analysis Report and the TS Bases.

Date of issuance: July 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 200 & 193.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10010). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendment: December 20, 2001.

Brief description of amendments: The amendments revised the Technical Specifications (TS) 5.5.14 to eliminate the use of the term "unreviewed safety question," and replace the word "involve" with the word "require" as it applies to changes made to the updated Final Safety Analysis Report and the TS Bases.

Date of issuance: July 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 204 & 185.

Facility Operating License Nos. NPF- and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2921). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 2002.

No significant hazards consideration comments received: No.

Energy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Energy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: January 31, 2002, as supplemented by letter dated June 20, 2002.

Brief description of amendment: The amendment revises Technical Specification 3.8.1, "AC Sources-Operating," to extend the allowed outage time for a Division 1 or Division 2 Diesel Generator from the current 72 hours to 14 days.

Date of issuance: July 16, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No: 151.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 2, 2002 (67 FR 15623). The June 20, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 16, 2002.

No significant hazardous consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–a254 and 50–265, Quad Cites Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: May 1, 2002.

Brief description of amendments: The amendments revise the start delay time in the surveillance for the emergency diesel generators from "≤10 seconds" to "≤13 seconds."

Date of issuance: July 17, 2002.

Effective date: For Unit 2, as of the date of issuance and shall be implemented within 30 days of the completion of Unit 1 refueling outage 17, which is scheduled for November 2002. For Unit 1, as of the date of issuance and shall be implemented within 30 days following the date when General Electric (GE)–14 fuel is loaded into the reactor, which is scheduled during refueling outage 17 in November 2002. The amendment may not be implemented prior to the date GE–14 fuel is loaded into the reactor.

Amendment Nos.: 206 and 202.

Facility Operating License Nos. DPR–29 and DRP–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** a May 28, 2002 (67 FR 36931). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 2002.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendments: July 24, 2001, as supplemented June 5, and July 1.

Brief description of amendments: The amendments revise the Improved Technical Specifications (ITS) to accommodate future changes in plant design, including increased levels of Once—Through Steam Generator (OTSG) tube plugging. The changes are categorized into two sets. The first set of changes relocate parameters from the ITS to the cycle-specific Core Operating Limits Report (COLR). These parameters are the Variable Low Pressure Trip equation specified in ITS Table 3.3.1–1, and Reactor Coolant System (RCS) pressure limit within Surveillance Requirement (SR) 3.4.1.1. The second set of changes are applicable to raising the OTSG tube plugging limit to a maximum of 20% equivalent of all tubes, and addresses its impact. These changes include the revision of the hot leg maximum temperature limit, and the revision of the RCS minimum flow limits for four- and three-reactor coolant pump operation. The RCS limits associated with 20% tube plugging will be maintained in its ITS. Cycle-specific values of these limits, however, have been relocated to the COLR. The hot leg temperature and RCS flow limit values within SR 3.4.1.2 and 3.4.1.3 "RCS Pressure, Temperature, and Flow DNB [departure from nucleate boiling] Limits," were relocated to reflect their location in the COLR. For both sets of changes, ITS 5.6.2.18(a) was modified to reflect the relocation of cycle-specific values from the ITS and the COLR.

Date of issuance: July 16, 2002.

Effective date: As of the date of issuance shall be implemented within 60 days of issuance.

Amendment Nos.: 204.

Facility Operating License Nos. DPR–72: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** a August 22, 2001 (66 FR 44173). The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 16, 2002.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 30, 2001, as supplemented by letter dated August 23, 2001.

Description of amendment request: The amendment revises the Cooper Nuclear Station's licensing basis.

Date of issuance: July 19, 2002.

Effective date: The amendment is effective on the date of issuance, to be implemented within 30 days from the date of issuance.

Amendment No.: 192.

Facility Operating License No. DPR–46: Amendment revises the Cooper Nuclear Station's licensing basis.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. June 25, 2002 (67 FR 42828). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by July 29, 2002, but indicated that, if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated July 19, 2002.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station (CNS), Nemaha County, Nebraska.

Date of amendment request: May 20, 2002, as supplemented by letters dated June 19, July 3 (two letters), and July 12, 2002. The letters dated July 3 (two letters), and July 12, 2002, were of a clarifying nature, did not expand the application beyond the scope of the initial notice, and did not affect the staff's initial proposed no significant hazards consideration determination.

Description of amendment request: The amendment revises the Cooper Nuclear Station's Technical Specifications (TS) 3.7.2 and 3.7.3 reflecting increases in TS temperature limits for ultimate heat sink and reactor equipment cooling water temperatures.

Date of issuance: July 22, 2002.

Effective date: The amendment is effective on the date of issuance, to be implemented within 30 days from the date of issuance.

Amendment No.: 193.

Facility Operating License No. DPR–46: Amendment revises the Cooper Nuclear Station's TS.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. 67 FR 43688 dated June 28, 2002. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by July 12, 2002, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated July 22, 2002.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: September 20, 2001, as supplemented by letters dated March 27 and April 12, 2002.

Brief description of amendments: The amendments revised the Technical Specifications to support extension of the operating cycle from 18 months to 24 months.

Date of issuance: July 12, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 232/174.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59512). The supplements dated March 27 and April 12, 2002, provided clarifying information that did not

change the scope of the September 20, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 2002.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 22, 2001, as supplemented by letters dated May 16 and June 25, 2002.

Brief description of amendments: The amendments change TS 3/4.9.4, "Refueling Operations—Containment Building Penetrations", to allow the equipment hatch to be open during core alterations or movement of irradiated fuel within the containment.

Date of issuance: July 18, 2002.

Effective date: July 18, 2002.

Amendment Nos.: Unit 1—139; Unit 2—128.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2930). The May 16 and June 25, 2002, supplemental letters provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 26th day of July 2002.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–19420 Filed 8–5–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25690; File No. 812–12767]

American United Life Insurance Company, et al.; Notice of Application July 31, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an order pursuant to section 26(c) of the Investment Company Act of 1940, as amended ("1940 Act"), approving certain substitutions of securities, and pursuant to section 17(b) of the 1940 Act exempting related transactions from section 17(a) of the 1940 Act.

APPLICANTS: American United Life Insurance Company ("AUL"), AUL American Unit Trust ("AUL Account"), AUL American Individual Unit Trust ("AUL Individual Account") and, with respect only to the relief requested pursuant to section 17(b), OneAmerica Funds, Inc. ("OneAmerica"). AUL, the AUL Account, the AUL Individual Account and OneAmerica are together referred to herein as the "Applicants."

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute (i) shares of common stock issued by OneAmerica Asset Director Portfolio ("Asset Director Portfolio"), a series of OneAmerica for shares of common stock issued by OneAmerica Tactical Asset Allocation Portfolio ("Tactical Asset Allocation Portfolio"), also a series of OneAmerica; and (ii) Investor Class shares issued by American Century Strategic Allocation: Conservative Fund ("Strategic Allocation: Conservative Fund"), American Century Strategic Allocation: Moderate Fund ("Strategic Allocation: Moderate Fund"), and American Century Strategic Allocation: Aggressive Fund ("Strategic Allocation: Aggressive Fund" and, together with the Strategic Allocation: Conservative Fund and the Strategic Allocation: Moderate Fund, the "Strategic Allocation Funds"), each a series of American Century Strategic Asset Allocations, Inc. ("American Century Strategic") for shares of common stock issued by the OneAmerica Conservative Investor Portfolio ("Conservative Investor Portfolio"), OneAmerica Moderate Investor Portfolio ("Moderate Investor Portfolio"), and OneAmerica Aggressive Investor Portfolio ("Aggressive Investor Portfolio" and, together with the Conservative Investor Portfolio and the Moderate Investor Portfolio, the "Lifestyle Portfolios"), each a series of OneAmerica, respectively, currently held by those unit investment trusts, and to permit in-kind purchases and redemptions of portfolio securities in connection with the proposed substitution transactions relating to the Tactical Asset Allocation Portfolio and the Asset Director Portfolio ("In-Kind Transactions").

FILING DATE: The application was filed on January 28, 2002, and amended and restated on July 26, 2002 ("Amended and Restated Application").

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 26, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: c/o Richard A. Wacker, *Esq.*, American United Life Insurance Company, One American Square, Indianapolis, Indiana 46282. Copies to: Keith T. Robinson, Dechert, 1775 Eye Street, NW, Washington, DC 20006–2401.

FOR FURTHER INFORMATION CONTACT: Patrick F. Scott, Attorney, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549, (202) 942–8090.

Applicants' Representations

1. AUL is an Indiana stock insurance company. AUL is the depositor and sponsor of the AUL Account and the AUL Individual Account, each a separate investment account established under Indiana law.

2. The AUL Account and the AUL Individual Account are each registered with the Commission under the 1940 Act as a unit investment trust. The assets of the AUL Account and the AUL Individual Account support certain individual and group variable annuity contracts (collectively, the "Contracts"). The individual variable annuity contracts include Contracts for which premiums may vary in amount and frequency, subject to certain limitations and Contracts for which premiums may vary in amount and frequency during

the first year. The group variable annuity Contracts may allow ongoing contributions that can vary in amount and frequency, while other Contracts may allow only a single contribution to be made. All of the Contracts provide for the accumulation of values either on a variable basis, a fixed basis, or both. The Contracts also provide several options for fixed annuity payments to begin on a future date.

3. The AUL Account is currently divided into sixty-two (62) sub-accounts referred to as Investment Accounts. Each Investment Account, in turn, invests exclusively in shares of an underlying fund or in shares of specific series thereof. Contributions may be allocated to one or more Investment Accounts available under a Contract. Not all of the Investment Accounts may be available under a particular Contract and some of the Investment Accounts are not available for certain types of Contracts. AUL may in the future establish additional Investment Accounts of the AUL Account which may invest in other securities, mutual funds or investment vehicles.

4. The AUL Individual Account is currently divided into nineteen (19) sub-accounts also referred to as Investment Accounts. Each Investment Account in turn, invests exclusively in shares of an underlying fund or in shares of specific series thereof. Premiums may be allocated to one or more Investment Accounts available under a Contract. AUL may in the future establish additional Investment Accounts of the AUL Individual Account which may invest in other securities, mutual funds or investment vehicles.

5. OneAmerica is organized as a Maryland corporation and is registered as an open-end management investment company under the 1940 Act. OneAmerica is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently offers shares of eight (8) separate series. Only five (5) such series would be involved in the proposed substitutions. The Conservative Investor Portfolio, the Moderate Investor Portfolio, the Aggressive Investor Portfolio and the Tactical Asset Allocation Portfolio are herein referred to as the Removed Portfolios. The Asset Director Portfolio is one of the Substituted Portfolios, as defined in paragraph nine (9).

6. Effective May 1, 2002, OneAmerica's name was changed from "AUL American Series Fund, Inc." to "OneAmerica Funds, Inc." In addition, the names of the various series of OneAmerica involved in the proposed Substitutions, were changed effective May 1, 2002 as follows:

Former name	New name
AUL American Tactical Asset Allocation Portfolio.	OneAmerica Tactical Asset Allocation Portfolio.
AUL American Managed Portfolio.	OneAmerica Asset Director Portfolio.
AUL American Conservative Investor Portfolio.	OneAmerica Conservative Investor Portfolio.
AUL American Moderate Investor Portfolio.	OneAmerica Moderate Investor Portfolio.
AUL American Aggressive Investor Portfolio.	OneAmerica Aggressive Investor Portfolio.

7. AUL, an investment adviser registered under the Investment Advisers Act of 1940, as amended ("Advisers Act"), currently serves as the investment adviser for each of the OneAmerica Portfolios pursuant to an investment advisory agreement between AUL and OneAmerica, on behalf of the OneAmerica Portfolios, dated March 8, 1990 ("Investment Advisory Agreement"). Pursuant to the Investment Advisory Agreement, and subject to the overall supervision of the Board of Directors of OneAmerica, AUL exercises overall responsibility for the investment and reinvestment of the assets of each OneAmerica Portfolio. AUL currently manages the day-to-day investment operations and the composition of all of the assets of each of the OneAmerica Portfolios.

8. Until May 1, 2002, Credit Suisse Asset Management, LLC ("CSAM"), another investment adviser registered under the Advisers Act, was responsible for managing the growth-oriented equity and international equity portions of the Conservative Investor Portfolio, the Moderate Investor Portfolio and the Aggressive Investor Portfolio (together, the "Lifestyle Portfolios"), pursuant to a sub-advisory agreement ("CSAM Sub-Advisory Agreement"). On October 30, 2001, CSAM notified AUL and the Lifestyle Portfolios that it intended to terminate the CSAM Sub-Advisory Agreement effective May, 1, 2002. Consequently, AUL assumed responsibility for managing all of the assets of the Lifestyle Portfolios on May 1, 2002.

9. Dean Investment Associates ("Dean"), a division of C.H. Dean and Associates, Inc., served as the sub-adviser for the Tactical Asset Allocation Portfolio from May 15, 1995 to November 10, 2001 pursuant to a sub-advisory agreement ("Dean Sub-Advisory Agreement"). On September 7, 2001, AUL gave notice to Dean that it intended to terminate the Dean Sub-Advisory Agreement, effective November 10, 2001. AUL assumed the investment management duties for the Tactical Asset Allocation Portfolio on November 10, 2001.

10. American Century Strategic is organized as a Maryland corporation and is registered as an open-end management investment company under the 1940 Act. American Century Strategic is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently offers shares of three separate series, the Strategic Allocation: Conservative Fund; the Strategic Allocation: Moderate Fund; and the Strategic Allocation: Aggressive Fund (together with the Asset Director Portfolio, the "Substituted Portfolios").

11. The prospectuses for both the AUL Account and the AUL Individual Account state that "AUL reserves the right, subject to compliance with the law as then in effect, to make additions to, deletions from, substitutions for, or combinations of the securities that are held by the Variable Account or any Investment Account or that the Variable Account or any Investment Account may purchase." Comparable language appears in the Contracts.

12. With the exceptions noted below, neither the AUL Account nor the AUL Individual Account imposes any limitations on the number of transfers between variable investment accounts available under a Contract or the fixed account or imposes charges on transfers. With respect to the AUL Individual Account, the minimum transfer amount from any one Investment Account or from the fixed account is $500. Under certain circumstances, amounts transferred from the fixed account to an Investment Account during any given year may not exceed 20% of the fixed account's value as of the beginning of that year. AUL reserves the right, however, at a future date, to impose a different minimum or maximum transfer amount, to assess transfer charges, to change the limit on remaining balances, to limit the number and frequency of transfers, and to suspend the transfer privilege or the telephone authorization, interactive voice response, or internet based transfers.

13. Applicants propose to substitute (i) shares of common stock issued by the Tactical Asset Allocation Portfolio currently held by the AUL Account and the AUL Individual Account for shares of common stock issued by the Asset Director Portfolio; and (ii) shares of common stock issued by each of the Lifestyle Portfolios currently held by the

AUL Account for the Investor Class shares issued by the corresponding Strategic Allocation Funds (the "Substitutions").

14. As shown in the chart below, the Tactical Asset Allocation Portfolio has investment objectives, investment strategies and anticipated risks that are compatible, although not identical, to those of the Asset Director Portfolio.

	Removed portfolio	Substituted portfolio
	Tactical asset allocation portfolio	Asset director portfolio
Investment objective	Preservation of capital and competitive investment returns.	High total return consistent with prudent investment risk.
Investment Strategies	Primary Investment Strategy: To achieve this objective, the portfolio invests primarily in stocks, United States Treasury issues, corporate bonds, and other debt securities. When markets are favorable, the portfolio concentrates on peformance; in declining markets, the portfolio will have less equities in its portfolio it an effort to protect its assets.	Primary Investment Strategy: The investments of the portfolio are not limited to one type of investment, and it purchases publicly traded common stocks, debt securities, and money market instruments. The makeup of the portfolio changes based on AUL's evaluation of economic and market trends and the expected total return from a particular type of security. Therefore, up to 100% of the portfolio may be invested in any one type of investment such as common stocks, debt securities, or money market instruments.
	Types of Securities: The portfolio will normally invest at least 65% of its equity assets in the common or preferred stocks of companies listed on a national exchange or traded over-the-counter. The focus is generally on high quality, liquid, undervalued stocks of small, medium and large capitalization companies. When market conditions require a more defensive position, the portfolio invests more of its assets in investment grade corporate debt securities, U.S. government securities and money market instruments.	Types of Securities: The portfolio may buy common stocks listed on a national securities exchange or traded over-the-counter and debt securities, including investment grade corporate bonds, U.S. government securities, convertible bonds and mortgage-backed securities. The portfolio can invest up to 10% of its assets in debt securities that are rated below-investment grade ("junk bonds"). The portfolio also may buy high quality money market instruments.

15. Applicants represent it is also the case that: (i) the management fees with respect to the Asset Director Portfolio were lower than the management fees applicable to the Tactical Asset Allocation Portfolio as of December 31, 2001; and (ii) the total expense ratio with respect to the Asset Director Portfolio was lower than the total expense ratio of the Tactical Asset Allocation Portfolio as of December 31, 2001. The chart below shows the management fees, operating expenses and total expenses for the Tactical Asset Allocation Portfolio and the Asset Director Portfolio for the year ended December 31, 2001. The fees and expenses in the chart are presented as a percentage of average daily net assets.

	Removed portfolio	Substituted portfolio
	Tactical asset allocation portfolio (%)	Asset director portfolio (%)
Management Fee	0.80	0.50
12b–1 Fee	0.00	0.00
Other Expenses	0.20	0.14
Gross Total Annual Operating Expenses	1.00	0.64

16. As shown in the chart below, each Lifestyle Portfolio has investment objectives, investment strategies and anticipated risks that are substantially similar to those of the corresponding Strategic Allocation Fund.

	Removed portfolio	Substituted portfolio
	Conservative investor portfolio	Strategic allocation: Conservative Fund
Investment Objective	High current income, with opportunities for capital appreciation.	Highest level of total return consistent with its asset mix.
Investment Strategies	Primary Investment Strategy: To achieve its objective, the portfolio invests in a strategically allocatted portfolio, primarily of bond and money market instruments, with the balance of the portfolio in equities.	Primary Investment Strategy: Seeks regular income through its emphasis on bonds and cash-equivalent securities. It also has the potential for moderate long-term total return as a result of its stake in equity securities.

	Removed portfolio	Substituted portfolio
	Conservative investor portfolio	Strategic allocation: Conservative Fund
	Types of Securities: The portfolio invests in a mix of equity securities, bonds and money market instruments. Within each asset class, the portfolio's holdings are invested across a diversified group of industries and issuers based on AUL's investment criteria. AUL regularly reviews the portfolio's investments and allocations and may make changes in the particular securities or in the asset mix (within defined operating ranges) to favor investments that it believes will help achieve the portfolio's objective.	Types of Securities: The fund may invest in any type of U.S. or foreign equity security that meets certain fundamental and technical standards. The fund managers draw on growth, value and quantitative investment techniques in managing the equity portion the fund's portfolio and they diversify the fund's equity investments among small, medium and large companies. The fund also invests in a variety of debt securities payable in both U.S. and foreign currencies. The fund primarily invests in investment grade securities, that is, securities rated in the four highest categories by independent rating organizations.
	Neutral Mix: Equity: 35% Debt: 50% Cash: 15%	Neutral Mix: Equity: 45% Debt: 45% Cash: 10%
	Moderate Investor Portfolio	Strategic Allocation: Moderate Fund
Investment Objective Investment Strategies	Blend of capital appreciation income ..... Primary Investment Strategy: To achieve its objective, the portfolio invests in a strategically allocated portfolio of equities, bonds and money market instruments with a weighting that is normally slightly heavier in equities. Type of Securities: Same as Conservative Investor Portfolio.	Highest level of total return consistent with its asset mix. Primary Investment Strategy: Seeks long-term capital growth with some regular income. It emphasizes investments in equity securities but maintains a sizeable stake in bonds and cash-equivalent securities. Type of Securities: Same as the Strategic Allocation: Conservative Fund. The fund may invest up to 5% of its assets in below investment-grade (high-yield) securities.
	Neutral Mix: Equity: 55% Debit: 35% Cash: 10%	Neutral Mix: Equity: 63% Debt: 31% Cash: 6%
	Aggressive Investor Portfolio	Strategic Allocation: Aggressive Fund
Investment Objective Investment Strategies	Long-term capital appreciation ..... Primary Investment Strategy: To achieve its objective, the portfolio invests in a strategically allocated portfolio consisting primarily of equities. Current income is not a major consideration. Types of Securities: Same as Conservative Investor Portfolio.	Highest level of total return consistent with its asset mix. Primary Investment Strategy: Seeks long-term capital growth with a small amount of regular income. It emphasizes investments in equity securities but maintains a portion of its assets in bonds and cash-equivalent securities. Types of Securities: Same as the Strategic Allocation: Conservative Fund. The fund may invest up to 10% of its assets in below investment-grade (high-yield) securities.
	Neutral Mix: Equity: 80% Debt: 20% Cash: 0%	Neutral Mix: Equity: 78% Debt: 20% Cash: 2%

17. It is expected that the net total annual operating expenses with respect to certain of the Strategic Allocation Funds may be higher than the net total annual operating expenses currently applicable to the corresponding Lifestyle Portfolios, even though the gross total annual operating expenses of each Strategic Allocation Fund are lower than those of the corresponding Lifestyle Portfolios. The chart below shows: (i) the management fees, operating expenses and total annual operating expenses (both gross and net of applicable fee waivers and reimbursements) for the shares of common stock of each Lifestyle Portfolio for the year ended December 31, 2001; and (ii) the current total operating expenses of the Investor Class shares of each Strategic Allocation Fund. The fees and expenses in the chart are presented as a percentage of average daily net assets.

	Removed portfolios (percent)	Substituted portfolios (percent)
	Conservative Investor Portfolio	Strategic Allocation: Conservative Fund
Management Fee	0.70	1.00
12b–1 Fee	0.00	0.00
Other Expenses	0.83	0.00
Gross Total Annual Operating Expenses	1.53	1.00
Applicable Waiver or Reimbursements	0.53	0.00
Net Total Annual Operating Expenses	1.00	1.00

	Removed portfolios (percent)	Substituted portfolios (percent)
	Moderate Investor Portfolio	Strategic Allocation: Moderate Fund
Management Fee	0.70	1.10
12b–1 Fee	0.00	0.00
Other Expenses	0.80	0.00
Gross Total Annual Operating Expenses	1.50	1.10
Applicable Waiver or Reimbursements	0.50	0.00
Net Total Annual Operating Expenses	1.00	1.10
	Aggressive Investor Portfolio	Strategic Allocation: Aggressive Fund
Management Fee	0.70	1.20
12b–1 Fee	0.00	0.00
Other Expenses	0.81	0.00
Gross Total Annual Operating Expenses	1.51	1.20
Applicable Waiver or Reimbursements	0.51	0.00
Net Total Annual Operating Expenses	1.00	1.20

18. With respect to the Management Fee for the Strategic Allocation Funds listed in the table above, Applicants state that, out of this fee, American, Century Investment Management, Inc. ("American Century"), the investment adviser to the Strategic Allocation Funds, pays all the ordinary expenses of managing and operating the portfolio, except brokerage expenses, taxes, interest, and fees and expenses of the independent directors (including legal counsel fees). This fee does not apply to extraordinary expenses as determined under generally accepted accounting principles. In other words, American Century pays substantially all of the ordinary operating expenses that would normally be shown under "Other Expenses" out of the management fee. This management fee may not be raised without a shareholder vote. A breakpoint in the management fee will apply to each Strategic Allocation Fund when it reaches $1 billion. In that case, assets in excess of $1 billion will incur a management fee that is 10 basis points lower than that shown in the table.

19. With respect to the Gross Total Annual Operating Expenses for the Conservative Investor Portfolio, Moderate Investor Portfolio and Aggressive Investor Portfolio listed in the table above, Applicants state that AUL has currently agreed to waive its advisory fee if the ordinary expenses of the portfolio exceed 1% and, to the extent necessary, assume any expenses in excess of its advisory fee so that the expenses of the portfolio, including the advisory fee but excluding extraordinary expenses, will not exceed 1% of the portfolio's average daily net asset value per year. AUL may terminate the policy of reducing its fee and/or assuming fund expenses upon 30 days written notice to the portfolio and such policy will be terminated automatically by the termination of the investment advisory agreement between AUL and the portfolio.

20. Applicants represent that the unified management fee structure employed by the Strategic Allocation Funds has the practical effect of locking in a specific expense ratio for shareholders. AUL's policy of reducing its fee and/or assuming expenses of the Lifestyle Portfolios may be terminated unilaterally by AUL upon thirty (30) days written notice to the portfolio. In comparison, the unified management fees for each of the Strategic Allocation Funds may only be changed by a vote of shareholders.

21. Applicants represent that AUL has determined that it is not feasible to maintain the Lifestyle Portfolios for an extended period of the time following the resignation of CSAM, or to maintain the Tactical Asset Allocation Portfolio for an extended period of time following the resignation of Dean. CSAM was originally hired for its expertise in growth equity and foreign investing—areas in which AUL has little expertise. However, the Lifestyle Portfolios are strategically managed and, as a result, would need to be able to invest in these markets. In addition, Dean was retained in order to provide a process-driven asset allocation program that relies on proprietary forecasting models. AUL has determined that it will not be cost effective to hire internal managers to attempt to provide a comparable model-driven asset allocation program or to manage the small amount of assets that would be invested in the growth equity and foreign equity markets.

22. Applicants assert that finding replacement sub-advisers would not be feasible due to the relatively small size of the Tactical Allocation Portfolio and each of the Lifestyle Portfolios. Management of funds the size of the Removed Portfolios simply is not cost-effective, as demonstrated by AUL's substantial subsidization of the Lifestyle Portfolios, and many investment advisers are not interested in managing registered investment companies of this size. Moreover, since each of these Portfolios is so small, allocating the assets among asset classes can be difficult and inefficient.

23. Applicants respresent that Contract Owners and Participants who have allocated contract values to one or more of the Removed Portfolios have been provided with a detailed notice (in the form of a prospectus or prospectus supplement) disclosing the Substitutions ("First Notice"), which described the relevant Substituted Portfolio(s), identified the relevant Removed Portfolio(s), disclosed the impact of the Substitutions on fees and expenses at the underlying fund level, and disclosed that AUL will not impose any fee, charge or restriction that might otherwise be imposed through a date at least thirty (30) days after the effective date of the proposed Substitutions ("Substitution Date").

24. Applicants represent that, following Commission approval of the Amended and Restated Application, Applicants will send Contract Owners and Participants who have allocated Contract values to one or more of the Removed Portfolios further detailed notice concerning the proposed Substitutions ("Second Notice"). The Second Notice will inform affected Contract Owners and Participants that the substitutions will be carried out, identify the anticipated date of the

Substitutions and inform Contract Owners and Participants that AUL will not impose any fee, charge or restriction that might otherwise be imposed through a date at least thirty (30) days after the Substitution Date. Together with this disclosure, affected Contract Owners and Participants also will be sent a prospectus for the applicable Substituted Portfolio(s). New purchasers of Contracts also will be provided with the Contract prospectuses, the Second Notice, and a prospectus for the applicable Substituted Portfolio(s).

25. Applicants will effect the Substitutions by redeeming the contributions and premium payments invested in the shares of common stock of the Removed Portfolios and purchasing shares of common stock of the Asset Director Portfolio or Investor Class shares of the Strategic Allocation Funds, as applicable, with the proceeds of that distribution.

26. Redemptions from the Lifestyle Portfolios will be made in cash, as will the corresponding purchases of Investor Class shares of the Strategic Allocation Funds.

27. In the case of the Tactical Asset Allocation Portfolio, the redemptions will take the form of a distribution of that portion of the Tactical Asset Allocation Portfolio's gross assets attributable to the AUL Account and the AUL Individual Account along with the assumption of a corresponding portion of the Tactical Asset Allocation Portfolio's liabilities. Assets to be distributed and liabilities to be assumed may include rights, obligations and liabilities associated with the Tactical Asset Allocation Portfolio's pending trade transactions and over-the-counter positions. All assets and liabilities will be valued based on the normal valuation procedures of the Tactical Asset Allocation Portfolio and the Asset Director Portfolio (which are identical), as set forth in OneAmerica's registration statement. The Substitutions of shares of the Asset Director Portfolio for shares of the Tactical Asset Allocation Portfolio are expected to be performed wholly on an in-kind basis.

28. Confirmation of the Substitutions will be mailed to affected Contract Owners and Participants within five (5) days after the Substitution Date. The confirmation will disclose (i) that the substitution was carried out and (ii) that Contract Owners and Participants may transfer assets from the Substituted Portfolios to another investment option available under their Contract without the imposition of any fee, charge or restriction that might otherwise be imposed through a date at least thirty (30) days after the Substitution Date.

29. Applicants represent that the significant terms of the proposed Substitution described above and in the Amended and Restated Application include:

a. Each Substituted Portfolio will have investment objectives, investment strategies, and anticipated risks that are substantially similar, or at least comparable, in all material respects to those of the corresponding Removed Portfolio.

b. Contract Owners and Participants who have allocated Contract values to one or more of the Removed Portfolios may transfer assets from a Removed Portfolio or a Substituted Portfolio to another investment option available under their Contract without the imposition of any fee, charge or other penalty that might otherwise be imposed from the date of the First Notice through a date at least thirty (30) days following the Substitution Date.

c. The Substitutions, in all cases, will be effected at the relative net asset values of the respective shares of the Removed Portfolios and the corresponding Substituted Portfolios in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by the Applicants, and with no change in the amount of any Contract Owner's Contract value or in the dollar value of any Contract Owner's or Participant's investment in such Contract.

d. Contract Owners and Participants will not incur any fees or charges as a result of the proposed Substitutions, nor will their rights or AUL's obligations under the Contracts be altered in any way. AUL will bear all expenses incurred in connection with proposed seed capital redemptions as well as the Substitutions and related filings and notices, including brokerage, legal, accounting and other fees and expenses. The proposed Substitutions will not cause the Contract fees and charges currently being paid by existing Contract Owners or Participants to be greater after the proposed Substitutions than before the proposed Substitutions.

e. Redemptions in-kind and contributions in-kind will be done in a manner consistent with the investment objectives, policies and diversification requirements of both the Tactical Asset Allocation Portfolio and the Asset Director Portfolio. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid in connection with the In-Kind Transactions.

f. The Substitutions will not be counted as new investment selections in determining the limit, if any, on the total number of Investment Accounts that Contract Owners or Participants can select during the life of a Contract.

g. The Substitutions will not alter in any way the tax benefits, insurance and other Contract benefits, or any Contract obligations of the Applicants, under the Contracts.

h. Contract Owners and Participants may withdraw amounts under the Contracts or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

i. Contract Owners and Participants affected by the Substitutions will be sent written confirmation of the Substitutions that identify each Substitution transaction made on behalf of that Contract Owner or Participant within five (5) days following the Substitution Date.

j. AUL will waive its management fee with respect to the Asset Director Portfolio and/or reimburse ordinary expenses incurred by the Asset Director Portfolio during the twenty-four (24) months following the Substitution Date to the extent necessary to ensure that the total operating expenses for any period (not to exceed a fiscal quarter) of the Asset Director Portfolio do not exceed 1.00% (the total annual operating expenses, net of fee waivers and/or expense reimbursements, for the Tactical Asset Allocation Portfolio for the year ended December 31, 2001) of the Asset Director Portfolio's average daily net assets on an annualized basis.

k. In addition, for all Contract Owners and Participants with contract values allocated to the Tactical Asset Allocation Portfolio as of the Substitution Date, AUL will not increase sub-account or Contract expenses for a period of twenty-four (24) months following the Substitution Date.

l. AUL does not receive, and will not receive for three (3) years following the Substitution Date, any direct or indirect benefits from the Strategic Allocation Funds or their investment adviser or underwriter (or their affiliates), in connection with assets representing contract values of Contracts affected by the Substitution, at a higher contractual rate than it had been entitled to receive from the Lifestyle Portfolios or their investment adviser or underwriter (or their affiliates), including, without limitation: 12b–1 fees; shareholder service fees; administration or other service fees; revenue sharing; or other arrangements in connection with such assets.

m. The Substitution and the selection of the Strategic Allocation Funds were

not motivated by any financial consideration paid or to be paid to AUL, or its affiliates, by the Strategic Allocation Funds, their investment adviser or underwriter, or their respective affiliates.

n. AUL agrees that if the total operating expenses for a Strategic Allocation Fund (taking into account any fee waivers and/or reimbursements) ("Strategic Allocation Fund Expenses") for any fiscal quarter during the one (1) year period following the Substitution Date exceed on an annualized basis the expense ratio for the corresponding Lifestyle Portfolio (taking into account any fee waivers and/or expense reimbursements) as a percentage of average daily net assets for the fiscal year ended December 31, 2001 ("Lifestyle Portfolio Expenses"), AUL will waive separate account fees and/or reimburse separate account expenses applicable to the Investment Account that invests in the relevant Strategic Allocation Fund for those Contract Owners who were Contract Owners on the Substitution Date, such that the Strategic Allocation Fund Expenses, together with Investment Account expenses paid during that period, will not exceed, on an annualized basis, the corresponding Lifestyle Portfolio Expenses and Investment Account expenses prior to the Substitution Date.

30. Applicants submit that they will not complete the Substitutions as described in the Amended and Restated Application unless all of the following conditions are met:

a. The Commission will have issued an order approving the Substitutions under section 26(c) of the 1940 Act.

b. The Commission will have issued an order exempting the In-Kind Transactions from the provisions of section 17(a) of the 1940 Act, to the extent necessary to carry out the Substitutions as described herein with respect to the Tactical Asset Allocation Portfolio and the Asset Director Portfolio.

c. The amendments to the registration statements for the Contracts describing the Substitutions shall have become effective.

d. Each Contract Owner and Participant who has allocated Contract values to the Removed Portfolios will have been mailed the First Notice, the Second Notice and current prospectuses for the Contracts and the applicable Substituted Portfolio(s).

e. The Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Contracts allow the substitution of portfolios as described in the Amended and Restated Application, and that the Substitution transactions can be consummated, as described herein, under applicable insurance laws and under the Contracts.

f. The Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts have been qualified for sale.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(c) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. Applicants request an order pursuant to section 26(c) of the 1940 Act approving the Substitutions. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protections for which Section 26(c) was designed.

3. Applicants state that Contract Owners and Participants who do not want their assets allocated to the Substituted Portfolios would be able to transfer assets to any one of the other Investment Accounts available under their Contract without any transfer charge until thirty (30) days after the Substitution Date.

4. Applicants represent that the Substitution and related redemptions and purchases will not result in any change in the amount of any Contract Owner's or Participant's Contract value or in the dollar value of his or her investment in such Contract. Contract Owners and Participants will not incur any fees or charges as a result of the proposed Substitutions, nor will their rights or AUL's obligations under the Contracts be altered in any way. Furthermore, the proposed Substitutions will not cause the Contract fees and charges currently being paid by existing Contract Owners or Participants to be greater after the proposed Substitutions than before the proposed Substitutions.

5. For these reasons, Applicants assert that the proposed Substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

6. Section 17(a)(1) of the 1940 Act prohibits an affiliated person or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

7. Section 17(b) of the 1940 Act authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

8. The Applicants request an order pursuant to section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to permit them to carry out the In-Kind Transactions.

9. The Applicants assert that the In-Kind Transactions, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. The In-Kind Transactions will be effected at the respective net asset values of the Tactical Asset Allocation Portfolio and the Asset Director Portfolio, as determined in accordance with the procedures disclosed in the registration statement for OneAmerica and as required by Rule 22c–1 under the 1940 Act. The In-Kind Transactions will not change the dollar value of any Participant's or Contract Owner's investment in the AUL Account or the AUL Individual Account, the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transactions, the value of the AUL Account's or AUL Individual Account's investments in the Asset Director Portfolio will equal the value of its investment in the Tactical Asset Allocation Portfolio (together with the value of any pre-existing investment in the Asset Director Portfolio) before the In-Kind Transactions.

10. The Applicants also state that the transactions will conform substantially to the conditions of Rule 17a–7. To the extent that the In-Kind Transactions do not comply fully with the provisions of paragraphs (a) and (b) of Rule 17a–7, the Applicants assert that the terms of the In-Kind Transactions provide the same degree of profection to the participating companies and their shareholders as if the In-Kind Transactions satisfied all of the conditions enumerated in Rule 17a–7. The Applicants also assert that the proposed In-Kind Transactions by the Applicants does not involve overreaching on the part of any person concerned. Furthermore, the Applicants represent that the proposed In-Kind Transactions will be consistent with the policies of the Tactical Asset Allocation Portfolio and the Asset Director Portfolio, as recited in OneAmerica's current registration statement.

11. The Applicants assert that the In-Kind Transactions are consistent with the general purposes of the 1940 Act and that the In-Kind Transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the Commission should grant the requested order approving the Substitutions and the In-Kind Transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19782 Filed 8–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46282; File No. SR–NYSE–2001–33]

Self-Regulatory Organizations; New York Stock Exchange; Order Granting Approval of a Proposed Rule Change Relating to Issuing Book-Entry Securities

July 30, 2002.

On April 24, 2001, the New York Stock Exchange ("NYSE") filed with the Securities and Exchange Commission ("Commission") and on April 16, 2002, and May 7, 2002, amended proposed rule change SR–NYSE–2001–33 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on May 28, 2002.[2] One comment letter in support of the proposed rule change was received.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

Over the years the NYSE has accommodated the market's desire to immobilize or dematerialize securities by amending its rules to provide alternatives to issuing physical certificates. For example, in 1988 the NYSE amended Section 501.02 of its Listed Company Manual ("Manual") to allow the issuance of bonds on a book-entry-only basis by using global certificates held by a depository.[4] To further book-entry delivery and settlement of trades between brokers, the U.S. markets, including NYSE, adopted uniform rules in the 1990s that required securities listed on U.S. exchanges and securities associations to be depository-eligible[5] and that required members of exchanges and securities associations to settle trades in "depository-eligible" securities through book-entry movements at registered clearing agencies.[6] In 1996, the NYSE amended section 501.01 of the Manual to rescind its policy of requiring issuers to provide certificates to record holders with respect to distributions and instead allowed issuers to offer shareholders a choice of receiving certificates or holding their positions in book-entry form directly with the issuer through a direct registration system offered by a depository.[7]

In recent months, several non-U.S. issuers have approached the NYSE expressing an interest in listing their ordinary shares on the NYSE. These non-U.S. issuers would prefer or are required by home country law to issue in dematerialized format. In order for the NYSE to accommodate such non-U.S. issuers' need or preference to dematerialize or immobilize their shares, the exchange must amend its Manual.

Section 501 of the Manual sets out the certification requirements for stocks and bonds, including when certificates must be distributed and what form stock certificates must take. Section 501.01 of the Manual currently does not require a listed company to send stock certificates to a record holder unless the record holder requests one if (1) the stock distribution relates an issuance pursuant to a stock dividend reinvestment plan, stock dividend reinvestment purchase plan, or a similar stock purchase plan and (2) regardless of the nature of the distribution, the company's stock is included in DRS. Because a listed company has to send a record holder a certificate upon request, Section 501.01 did not afford the issuer the ability to completely dematerialize securities positions or immobilize securities positions where certificates would not be available to anyone other than the depository.

The rule change will amend Section 501.01 to allow a listed company to issue in a dematerialized or completely immobilized form and therefore not send stock certificates to record holders, provided the company's stock is issued pursuant to a dividend reinvestment program, stock purchase plan, or similar plan or is included in DRS.[8] The rule change will not mandate dematerialization or immobilization but rather will allow listed companies the option of issuing traditional stock certificates or not. Securities that have traditionally been issued in a dematerialized or completely immobilized form, such as bonds and derivatives, will continue to be covered by the specific rules applicable to them and will not be required to be in DRS.[9] Dematerialized or immobilized equities listed on the NYSE will continue to be subject to the requirement of Rules 226 and 227 that the issue must be depository eligible and must be settled

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45970, (May 21, 2000), 67 FR 102 (May 28, 2002).

[3] Letter from C. Michael Viviano, Chairman, Securities Industry Association, Operations Committee; Chairman and Chief Executive Officer, Bank of New York Clearing Services L.L.C. (June 4, 2002).

[4] Securities Exchange Act Release No. 25872 (June 30, 1988), 53 FR 25560 [File No. SR–NYSE–88–07] (order approving permitting the use of a single global certificate for bonds).

[5] NYSE Rule 227. Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 [File No. SR–NYSE–95–19] (order approving adopting of Rule 227 requiring issuers' shares to be depository eligible).

[6] NYSE Rule 226. Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 [File Nos. SR–AMEX–93–07; SR–BSE–93–08; SR–MSE–93–03; SR–NASD–93–11; SR–NYSE–93–13; SR–PSE–93–04; and SR–PHLX–93–09] (order approving SRO rules requiring book-entry settlement of securities transactions).

[7] Securities Act Release No. 37937 (November 8, 1996), 61 FR 58728 [File No. SR–NYSE–96–29] (order approving rule change requiring participation in a direct registration system for certain stock distributions). Using the direct registration system operated by The Depository Trust Company ("DRS"), an investor is able to hold a book-entry position on the books of the issuer, to update stock ownership information directly with an issuer's transfer agent, and to electronically transfer shares between the books of the issuer and his or her broker.

[8] Listed companies incorporated in states that require certification may not be able to issue their securities in an immobilized or dematerialized format.

[9] Sections 501.11 and 703.16 of the Manual respectively.

through book-entry movements at registered clearing agencies.

The NYSE believes the rule change recognizes the desirability of providing issuers with the efficiencies and safety of not issuing certificates while still providing shareholders with the ability to hold book-entry securities in their own name through DRS. The NYSE notes that the successful expansion of the DRS since its implementation in the mid-1990s should readily accommodate non-U.S. companies trading ordinary shares in this country.

The NYSE also believes that in accommodating the immobilization or dematerialization of common stock, it is aligning itself with the rules and policies of the other U.S. markets. The National Association of Securities Dealers Automated Quotations System ("Nasdaq") does not have rules requiring certification or dictating the format of issues that are certificated. The American Stock Exchange ("Amex"), which had rules similar to the traditional NYSE rules, eliminated all those rules as part of a sweeping set of amendments intended to more closely align the Amex and the Nasdaq listing requirements following the acquisition of the Amex by the National Association of Securities Dealers ("NASD") in 1998. As a result, both the Amex and Nasdaq are fully able to accommodate a listing applicant that wishes to immobilize or dematerialize their common stock.

II. Discussion

Section 6(b)(5) of the Act requires that the rules of an exchange are designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public interest.[10] For the reasons set forth below, the Commission believes that the NYSE's rule change is consistent with the exchange's obligations under the Act.

In an effort to facilitate a more efficient and secure marketplace, including the trading and clearance and settlement of securities transactions, the Commission encourages the use of alternatives to holding securities in certificated form. The Commission believes that use of certificates results in unacceptable delays and expenses in processing securities and securities transactions and raises safety concerns because of lost, stolen, or forged certificates. The difficulty with lost certificates was dramatically demonstrated during the September 11, 2001, tragedy when thousand of certificates were destroyed in vaults maintained by broker-dealers. Allowing NYSE listed companies to issue securities in a dematerialized or immobilized format should increase efficiencies and safety in both the trading and settling of securities. As a result, industry participants and investors should see reduced costs.

Furthermore, now that DRS is operational, investors have the ability to register their securities in their own name on the issuer's records and to efficiently transfer using book-entry movements their securities positions to their brokers. As the Securities Industry Association ("SIA") noted in their comment letter supporting NYSE's rule change, DRS with the Profile System enhancement now provides equity securities a similar level of portability as other book-entry securities such as treasury securities, municipal bonds, mutual funds, and derivatives. Using DRS, an investor can register a position directly with the issuer and can electronically move the position to a broker of choice for disposition within the current settlement timeframes as well as any future shortened settlement cycle.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NYSE–2001–33) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19783 Filed 8–5–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78(f).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4079]

Culturally Significant Objects Imported for Exhibition Determinations: "Magna Graecia: Greek Art From South Italy and Sicily"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Magna Graecia: Greek Art from South Italy and Sicily," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Cleveland Museum of Art, Cleveland, Ohio, from on or about October 27, 2002, to on or about January 5, 2003, the Tampa Museum of Art, Tampa, Florida, from on or about February 2, 2003, to on or about April 20, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: July 26, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–19837 Filed 8–6–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4075] (TE)

Bureau of Consular Affairs; Certain Foreign Passports Validity

In accordance with section 212(a)(7)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(B)), a nonimmigrant alien who makes an application for a visa or for admission into the United States is required to possess a passport that: (1) Is valid for a minimum of six months beyond the date of the expiration of the initial period of the alien's admission into the United States or contemplated initial period of stay and, (2) authorizes the alien to return to the country from which he or she came, or to proceed to

and enter some other country during such period. Because of the foregoing requirement, certain competent authorities have agreed that their passports will be recognized as valid for the return of the bearer for a period of six months beyond the expiration date specified in the passport, thereby effectively extending the validity period of the foreign passport an additional six months beyond its expiration date, *see* 22 CFR 41.104(b).

This public notice adds Bolivia and Latvia to the list of competent authorities that have provided the necessary assurances to the Government of the United States. The updated list of competent authorities which have made the necessary assurances is shown below:

Table of Foreign Passports Recognized for Extended Validity

Algeria
Antigua & Barbuda
Argentina
Australia
Austria
Bahamas, The
Bangladesh
Barbados
Belgium
Bolivia
Brazil
Canada
Chile
Colombia
Costa Rica
Cote D'Ivoire
Cuba
Cyprus
Czech Republic
Denmark
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Ethiopia
Finland
France
Germany
Greece
Grenada
Guinea
Hong Kong (Certificates of identity & passports)
Hungary
Iceland
India
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Korea
Kuwait
Laos
Latvia
Lebanon
Liechtenstein
Luxembourg
Macau
Madagascar
Malaysia
Malta
Mauritius
Mexico
Monaco
Netherlands
New Zealand
Nicaragua
Nigeria
Norway
Oman
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Russia
Senegal
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
St. Kitts & Nevis
St. Lucia
St. Vincent & The Grenadines
Sudan
Suriname
Sweden
Switzerland
Syria
Taiwan
Thailand
Togo
Trinidad & Tobago
Tunisia
Turkey
United Arab Emirates
United Kingdom
Uruguay
Venezuela
Zimbabwe

Public Notice 3562 of February 2, 2001, published at 66 FR 8836 is hereby superseded.

Dated: July 8, 2002.

Mary A. Ryan,

Asssistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–19836 Filed 8–5–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4090]

United States—Egypt Science and Technology Joint Board Public Announcement of a Science and Technology Program for Competitive Grants to Support International, Collaborative Projects in Science and Technology Between U.S. and Egyptian Cooperators

August 4, 2002.

AGENCY: Department of State.

ACTION: Notice.

EFFECTIVE DATE: August 4, 2002.

FOR FURTHER INFORMATION, CONTACT: Joan Mahoney, Program Administrator, U.S.—Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011–(20–2) 797–2925; fax: 011–(20–2) 797–3150; e-mail: *mahoneyjm@state.gov*.

The 2002 Program Announcement, including proposal guidelines, will be available starting August 4, 2002 on the Joint Board web site: *http://www.usembassy.egnet.net/usegypt.joint-st.htm*.

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt. A solicitation for this program will begin August 1, 2002. This program will provide modest grants for successfully competitive proposals for binational collaborative projects and other activities submitted by U.S. and Egyptian experts. Projects must help the United States and Egypt utilize science and apply technology by providing opportunities to exchange ideas, information, skills, and techniques, and to collaborate on scientific and technological endeavors of mutual interest and benefit. Proposals which fully meet the submission requirements as outlined in the Program Announcement will receive peer reviews. Proposals considered for funding in Fiscal Year 2002 must be postmarked by November 1, 2002. All proposals will be considered; however, special consideration will be given to proposals that address priority areas defined/approved by the Joint Board. These include priorities in the areas of information technology, environmental technologies, biotechnology, energy, standards and metrology, and manufacturing technologies. More information on these priorities and

copies of the Program Announcement/Application may be obtained by request.

Dated: July 31, 2002.

Kay Anske,

Director, Office of Science and Technology Cooperation Bureau of Oceans and International Environmental and Scientific Affairs and, Chair, U.S.—Egypt S&T Joint Board, Department of State.

[FR Doc. 02–19838 Filed 8–5–02; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4091]

United States—Egypt Science and Technology Joint Board; Public Announcement of a Science and Technology Program for Competitive Grants To Support Junior Scientist Development Visits by U.S. and Egyptian Scientists

August 11, 2002.

AGENCY: Department of State.

ACTION: Notice.

EFFECTIVE DATE: August 11, 2002.

FOR FURTHER INFORMATION, CONTACT: Joan Mahoney, Program Administrator, U.S.—Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011-(20–2) 797–2925; fax: 011-(20–2) 797–3150; e-mail: *mahoneyjm@state.gov*..

The 2002 Program guidelines for Junior Scientist Development visits will be available starting August 11, 2002 on the Joint Board web site: *http://www.usembassy.egnet.net/usegypt.joint-st.htm.*

SUPPLEMENTARY INFORMATION: Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

A solicitation for this program will begin November 1, 2002. This program will provide modest grants for successfully competitive proposals for development visits by Junior American Scientists to Egypt; and Junior Egyptian Scientists to the United States. Applicants must be scientists who have received their PhD within the past ten years. Proposals considered for funding must be postmarked by December 13, 2002. All proposals, which fully meet the submission requirements, will be considered; however, special consideration will be given to proposals in the areas of Biotechnology, Standards and Metrology, Environmental Technologies, Energy, Manufacturing Technologies and Information Technology. More information on these priorities and copies of the Program Announcement/Application may be obtained request.

Dated: July 31, 2002.

Kay Anske,

Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs, and, Chair, U.S.-Egypt S&T Joint Board, Department of State.

[FR Doc. 02–19839 Filed 8–5–02; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12897]

Commercial Fishing Industry Vessel Advisory Committee; Correction

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting, correction of dates.

SUMMARY: The Coast Guard published a notice in the **Federal Register** of July 26, 2002 announcing a meeting of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). The notice contained incorrect dates. This notice corrects those dates.

DATES: This correction is effective August 6, 2002. The CFIVAC will meet on Tuesday, August 20, 2002, from 9 a.m. to 5 p.m. and Wednesday, August 21, 2002, from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Frost, Assistant to the CFIVAC Executive Director, telephone (202) 267–0315, fax (202) 267–0506.

SUPPLEMENTARY INFORMATION: The Coast Guard published a document in the **Federal Register** of July 26, 2002, (67 FR 48964) announcing a meeting of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). We listed incorrect dates in the notice. This correction replaces the incorrect dates with the correct dates. The days of the week remain the same as do the non-meeting dates in the notice.

In notice FR Doc. 02–18915 published on July 26, 2002, (67 FR 48964) make the following correction. On page 48964, in the second column, starting on line 14, remove the first sentence in the DATES section, and, add in its place, the sentence "CFIVAC will meet on Tuesday, August 20, 2002, from 9 a.m. to 5 p.m. and Wednesday, August 21, 2002, from 9 a.m. to 5 p.m."

Dated: July 31, 2002.

Joseph J. Angelo,

Acting Assistant Commandant Marine Safety, Security and Environmental Protection.

[FR Doc. 02–19848 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–12973]

Guidelines for Assessing Merchant Mariners Through Demonstrations of Proficiency as Mate (Pilot) of Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability and request for public comments.

SUMMARY: The Coast Guard announces the availability of, and seeks public comments on, the national performance measures proposed here for use as guidelines when mariners demonstrate their proficiency as Mates (Pilots) of Towing Vessels. These measures were developed from recommendations and input provided by the Towing Safety Advisory Committee (TSAC).

DATES: Comments and related material must reach the Docket Management Facility on or before October 7, 2002.

ADDRESSES: Please identify your comments and related material by the docket number of this notice [USCG 2002–12973]. Then, to make sure they enter the docket only once, submit them by just one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this Notice. Comments and related material received from the public, as well as documents mentioned in this Notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

The measures proposed here are also available from Mr. Gerald P. Miante, Assistant Executive Director of TSAC, Maritime Personnel Qualifications Division, Office of Operating and Environmental Standards, Room 1210 (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone 202–267–0229, or e-mail address *gmiante@comdt.uscg.mil*.

FOR FURTHER INFORMATION CONTACT: For questions on this Notice or on the national performance measures proposed here, write, call or e-mail Mr. Miante where indicated under **ADDRESSES.** For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

What Action Is the Coast Guard Taking?

An interim rule on Licensing and Manning for Officers of Towing Vessels [USCG 1999–6224] appeared in the **Federal Register** on Thursday, April 26, 2001 [66 FR 20931]. It requires certain candidates for licenses as officers of towing vessels to hold completed Towing Officers' Assessment Records (TOARs). This is to ensure that these mariners attain the minimum standard of competence through demonstrations of their proficiency as Mates (Pilots) of Towing Vessels.

The Coast Guard charged the TSAC with creating first a list of tasks or duties that candidates should be able to perform, and, subsequently, recommending national performance measures for completing those tasks. The TSAC's License Implementation Work Group completed the list in early 2001, and this turned up as the "TOAR" in the Coast Guard's guidance document for the implementation of the new rules, Navigation and Inspection Circular (NVIC) 4–01, "Licensing and Manning for Officers of Towing Vessels." Recently, the TSAC approved the Working Group's second effort, their recommendation of assessment criteria or performance measures that Designated Examiners (DEs) can use in judging candidates' execution of the required tasks.

The Coast Guard has reviewed the measures recommended by the TSAC. We are here presenting them for public comment on their suitability for use as guidelines in assessing proficiency.

The guidelines are set up as follows: First, the TOARs come in four varieties, according to the candidate's intended route or area of operation: Near-Coastal and Oceans, Great Lakes and Inland, Western Rivers, and Limited areas. Next, within each TOAR, we assign a letter to each of a series of main tasks or duties. Then we assign a number to each of several sub-tasks under these, indicate whether each sub-task is common to all routes, and finally set forth particular performance measures.

For example, in the TOAR for Near-Coastal and Oceans, main task or duty "D" is "Maneuvering" and sub-task D–1 directs the candidate to "Maneuver a light boat." An "X" evident in the second column indicates that this sub-task applies to all candidates for all TOARs.

Under the name of sub-task D–1, we instruct the DE generally to "Have the mariner demonstrate the ability to safely navigate the vessel in the following scenarios:"

One of these scenarios is "Landing", with the Performance Standard that "the mariner land safely on a vessel and dock, both with and against the current" and "[e]nsure that the mariner maintain a safe speed with no headway or excess momentum at the moment of contact."

If the mariner properly meets all of the Performance Standards, he or she passes the practical demonstration. If he or she fails to properly carry out any of the Performance Standards, he or she fails it.

Why Is the Coast Guard Taking This Action?

The Coast Guard is taking this action to comply with the interim rule on towing officers published in 2001. To act as a DE and determine whether a candidate has successfully completed the required demonstrations, the would-be DE must himself or herself be approved by the Coast Guard's National Maritime Center (NMC), and also have relevant experience in the task(s) being demonstrated, have read a guidance document for assessors published by the Coast Guard at *http://www.uscg.mil/NMC/assessorman.pdf*, and employ a set of approved assessment criteria. These versions of the TOARs should fulfill this last condition.

How May I Participate in This Action?

You may participate in this action by submitting comments and related material on the national performance measures proposed here. These measures are available on the Internet at *http://dms.dot.gov*, under this docket number [USCG 2002–12973]. They are also available from Mr. Miante where indicated under **ADDRESSES.** If you submit written comments please include—

- Your name and address;
- The docket number for this Notice [USCG 2002–12973];
- The specific section of the performance measures to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and related material to the Docket Management Facility, using an address or fax number listed in **ADDRESSES.** Please do not submit the same comment or material more than once. If you mail or deliver your comments and material, they must be on 8½-by-11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and material and would like to know whether the Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the 60-day comment period.

Once we have considered all comments and related material, we will publish a final version of the national performance measures for use as guidelines by the general public. Individuals and institutions assessing the competence of mariners may refine the final version of these measures and develop innovative alternatives. If you vary from the final version of these measures, however, you must submit your alternative to the National Maritime Center for approval by the Coast Guard under 46 CFR 10.303(e) before you use it as part of an approved course or training program.

Dated: July 30, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 02–19845 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–48]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions

for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 26, 2002.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12573 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Boylon (425–227–1152), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 1, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12573.
Petitioner: Air Shamrock, Inc.
Section of 14 CFR Affected: 14 CFR 25.562.
Description of Relief Sought: Relief from the 16g seat requirements for 6 passenger seats installed in the main cabin area of a BBJ Boeing Model 737–700 IGW airplane.

[FR Doc. 02–19852 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (02–05–C–00–SLC) To Impose and Use a Passenger Facility Charge (PFC) at Salt Lake City International Airport Submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Salt Lake City International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before September 5, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy L. Campbell, Executive Director, at the following address; Salt Lake City Department of Airports, 776 N. Terminal Dr., TUI, Suite 250, Salt Lake City, Utah 84122.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Salt Lake City International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 02–05–C–00–SLC to impose and use PFC revenue at Salt Lake City International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 30, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, not later than October 31, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.
Proposed charge effective date: February 1, 2003.
Proposed charge expiration date: October 1, 2003.
Total requested for use approval: $19,421,900.
Brief description of proposed projects:

Project 1: Airfield Improvement Projects

1.1 Concourse A Apron Expansion
1.2 Concourse A Apron Reconstruction Phase I
1.3 Concourse A Apron Reconstruction Phase II
1.4 Deicing Lagoon Upgrade
1.5 East Side Oil/Water Separator
1.6 East Apron Rehabilitation Phase II
1.7 East Apron Rehabilitation Phase III
1.8 SIDA Perimeter Patrol Road Phase II
1.9 SIDA Perimeter Patrol Road Phase III
1.10 Taxiway H. Reconstruction H10—H12
1.11 Taxiway H Reconstruction H7—H10
1.12 Surface Condition Analyzer Upgrade
1.13 Airport II Runway Overlay
1.14 Runway 16/34 Widening and Extension at Tooele Valley

Project 2: Terminal Improvement Projects

2.1 TU–2 Checked Baggage and Screening Checkpoint Queuing Modifications
2.2 EVIDS Installation
2.3 Concourse E SkyWest Interim Facility

Project 3: Miscellaneous Projects

3.1 Land Acquisition for Approach Protection and Noise Compatibility Phase I
3.2 Terminal Roadway Security Improvements Phase II
3.3 ALP/Environmental Update Phase I

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office

listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Salt Lake City International Airport.

Issued in Renton, Washington on July 30, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–19853 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (#02–01–C–00–WRL) To Impose and To Use a Passenger Facility Charge (PFC) at the Worland Municipal Airport, Submitted by the City of Worland, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and to use a PFC at the Worland Municipal Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before September 5, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager, Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary J. Thompson, Airport Manager, at the following address: Worland Municipal Airport, PO Box 606, Worland, Wyoming 82401.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the City of Worland, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (02–01–C–00–WRL) to impose and to use a PFC at the Worland Municipal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (24 CFR part 158).

On July 30, 2002, the FAA determined that the application to impose and to sue a PFC submitted by the City of Worland, Wyoming, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 5, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: October 1, 2002.

Proposed charge expiration date: October 1, 2026.

Total requested for use approval: $334,250.00.

Brief description of proposed projects: Rehabilitate and shift Runway 16/34; Preliminary design engineering for runway extension, road and canal relocation; Acquisition of land for runway extension and land use protection; and Relocation of obstructions.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Worland Municipal Airport.

Issued in Renton, Washington on July 30, 2002.

David A. Field.

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–19854 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2002–12971

Agency Information Collection Activities; Request for Comments; Clearance of a New Information Collection; Survey of Drivers' Attitudes on Speeding and Speed Limits

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection that involves drivers' attitudes on speeding and speed limits. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 7, 2002.

ADDRESSES: You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to 202/493–2251; or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number in this notice's heading. All comments may be examined and copied at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you desire a receipt you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Alicandri, 202–366–6409, Office of Highway Safety, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7 a.m. to 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Survey on Drivers' Attitudes on Speeding and Speed Limits.

OMB Control No: New.

Background: The FHWA plans to enter into a cooperative agreement with the State of Massachusetts to initiate a project entitled "Demonstration and Evaluation of Rational Speed Limits", to be performed by the Governor's Highway Safety Bureau of the Commonwealth of Massachusetts. As part of this cooperative agreement,

information on local drivers' attitudes towards speeding, speed limits and enforcement will be gathered through a survey. A survey will be performed both before and after engineering, enforcement and educational measures to reduce speeding are implemented. The information obtained from the survey will help the FHWA understand the effectiveness of the measures and the drivers' responses to them. The responses to the survey will be voluntary and will not involve information that is required by regulations. There will be no direct costs to the respondents other than their time.

Respondents: General public.

Frequency: Data will be collected before and after engineering, enforcement and educational measures to reduce speeding are implemented.

Estimated Total Annual Burden Hours: The burden hours per response will be approximately 10 minutes. We estimate that a total of 800 drivers (400 "before" and 400 "after") will be involved in the survey. Therefore, the total estimate is 134 burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register** home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 31, 2002.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 02–19790 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12937]

Notice of Tentative Decision That Certain Nonconforming Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on tentative decision that certain nonconforming vehicles are eligible for importation.

SUMMARY: This notice requests comments on a tentative decision by the National Highway Traffic Safety Administration (NHTSA) that certain vehicles that do not comply with all applicable Federal motor vehicle safety standards, but that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, are eligible for importation into the United States. The vehicles in question either (1) are substantially similar to vehicles that were certified by their manufacturers as complying with the U.S. safety standards and are capable of being readily altered to conform to those standards, or (2) have safety features that comply with, or are capable of being altered to comply with, all U.S. safety standards.

DATE: The closing date for comments on this tentative decision is September 5, 2002.

ADDDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided, either pursuant to a petition from the manufacturer or registered importer or on its own initiative, that the motor vehicle (1) is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with all applicable FMVSS, and (2) is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Most Recent Decision

On May 13, 1997, NHTSA published a notice in the **Federal Register** at 62 FR 26348 announcing that it had made a decision on its own initiative that certain motor vehicles that do not comply with all applicable FMVSS, but that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards (CMVSS), are eligible for importation into the United States. The notice identified these vehicles as:

(a) All passenger cars manufactured on or after September 1, 1996 and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, and that comply with FMVSS No. 214;

(b) All multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1993, and before September 1, 1998, that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; and

(c) All multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1998, and before September 1, 2002, that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216.

Existing Cut-Off Date

In the notice of tentative decision that preceded this final decision, published on March 7, 1997 at 62 FR 10614, NHTSA announced its intention to limit all previously open-ended import eligibility decisions for Canadian-certified passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses to such vehicles manufactured before September 1, 2002. The agency

explained that it had selected that date because it is the one "on which revised interior impact protection requirements that are to be phased in under FMVSS No. 201, *Occupant Protection in Interior Impact*, and that are not found in the corresponding CMVSS, will become effective for all passenger cars and for MPVs, trucks, and buses with a GVWR of 10,000 pounds or less." *See* 62 FR 10616. The agency stated its intention "to issue new decisions covering vehicles manufactured on or after September 1, 2002 within a sufficient period before that date is reached." *Id.*

Outstanding Compliance Issues

In addressing one of the comments submitted on the notice of tentative decision, the agency stated in the notice of final decision that if Canada should "adopt the revised interior impact protection requirements that are to be phased in under FMVSS No. 201 by September 1, 2002, there will be no need for compliance with this standard to be made a specific condition for import eligibility." *See* 62 FR 26350. The FMVSS No. 201 requirements that were the subject of the phase-in were for upper interior occupant protection. Canada has not adopted these requirements. Since complex modifications may be required to bring a vehicle into conformity with the FMVSS No. 201 upper interior impact requirements, NHTSA is reluctant to make a blanket import eligibility decision for Canadian-certified vehicles that do not meet these requirements. The capability of any particular make and model vehicle to be conformed to the upper interior impact requirements should be assessed by the agency on a case-by-case basis, through its consideration of individual import eligibility petitions.

Another standard that will become effective for all U.S.-certified passenger cars on September 1, 2002 is FMVSS No. 401, *Interior Trunk Release*. Canada has not adopted a similar standard. Because complex modifications may also be required in some vehicles to achieve conformity with the requirements of this standard, particularly if the trunk compartment is situated in the front of the vehicle, NHTSA is also reluctant to make a blanket import eligibility decision for Canadian-certified vehicles that do not meet these requirements.

Lastly, there are requirements for the lower anchorages of child restraint anchorage systems under FMVSS No. 225, *Child Restraint Anchorage Systems*, which have not been adopted by Canada. In light of these differences, NHTSA is reluctant to make a blanket import eligibility decision for Canadian-certified vehicles that do not meet these requirements. FMVSS No. 225 applies to passenger cars, to trucks and MPVs with a GVWR of 3,855 kg (8,500 lb) or less, except walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service, and to buses (including school buses) with a GVWR of 4,536 kg (10,000 lb) or less, except shuttle buses.

As a consequence, the agency has tentatively decided to require, as a condition for import eligibility, that Canadian-certified passenger cars manufactured on or after September 1, 2002 comply, as originally manufactured, with FMVSS Nos. 201, 225, and 401. In addition, we have tentatively decided to require, as a condition for import eligibility, that Canadian-certified MPVs, trucks, and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less manufactured on or after September 1, 2002 comply, as originally manufactured, with FMVSS No. 201 and, insofar as it is applicable, with FMVSS No. 225.

Future Cut-off Date

To avoid the need to amend any existing eligibility decisions in the event that there are any further requirements imposed under the FMVSS that are not carried into the corresponding CMVSS, NHTSA has tentatively decided to limit its import eligibility decisions for Canadian-certified passenger cars and for MPVs, trucks, and buses with a GVWR of 10,000 pounds or less to such vehicles manufactured before September 1, 2007. Prior to that date, the agency will assess whether there is a need to condition the import eligibility of any subsequently manufactured Canadian-certified vehicles on compliance with any additional FMVSS. The agency intends to issue new decisions covering vehicles manufactured on or after September 1, 2007 within a sufficient period before that date is reached.

Tentative Decisions

Pending its review of any comments submitted in response to this notice, NHTSA hereby tentatively decides that:

(a) All passenger cars manufactured on or after September 1, 2002 and before September 1, 2007, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, and that comply with FMVSS No. 201, 214, 225, and 401; and

(b) All multipurpose passenger vehicles, trucks and buses with a GVWR of 4,535 kg (10,000 lb) or less that were manufactured on or after September 1, 2002, and before September 1, 2007, and that, as originally manufactured, comply with FMVSS Nos. 201, 202, 208, 214, and 216, and, insofar as it is applicable, with FMVSS No. 225;

that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, are eligible for importation into the United States on the basis that either:

1. They are substantially similar to vehicles of the same make, model, and model year originally manufactured for importation into and sale in the United States, or originally manufactured in the United States for sale therein, and certified as complying with all applicable FMVSS, and are capable of being readily altered to conform to all applicable FMVSS, or

2. They have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

Vehicle Eligibility Number

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility number VSA–80 is currently assigned to Canadian-certified passenger cars and vehicle eligibility number VSA–81 is currently assigned to Canadian-certified MPVs, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less. If this tentative decision is made final, all passenger cars admissible under that decision will be assigned vehicle eligibility number VSA–80, and all MPVs, trucks, and buses admissible under that decision will be assigned vehicle eligibility number VSA–81.

Comments

Section 30141(b) of Title 49, U.S. Code requires NHTSA to provide a minimum period for public notice and comment on decisions made on its own initiative consistent with ensuring expeditious, but full consideration and avoiding delay by any person. NHTSA believes that a comment period of 30 days is appropriate for this purpose. Interested persons are invited to submit comments on the tentative decision described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested, but not required, that 10 copies be submitted. Alternatively, you may submit your

comments electronically by logging onto the Docket Management System (DMS) website at *http://dms.dot.gov*. Click on "Help & Information" of "Help/Info" to view instructions for filing your comments electronically.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of NHTSA's final decision will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on: August 1, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–19842 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Petition for Rulemaking; Code of Federal Regulations

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies the petition submitted by Nicholas Bromer to amend the Code of Federal Regulations to require vehicles to be equipped with vehicle identification number-encoded brake and/or rear running lamps to assist law enforcement in more accurately identifying motor vehicles and in combating vehicle theft.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–4807. Her facsimile number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

The Petition

By letter dated December 3, 2001, Nicholas Bromer petitioned the agency to amend the Code of Federal Regulations (CFR) to require that brake and/or running lamps for vehicles be equipped with flickering, red, light-emitting diodes (LEDs) encoded with the vehicle identification number (VIN) or a derivative of the VIN to assist law enforcement in the accurate identification of vehicles from any distance. Mr. Bromer did not identify the regulation within the CFR he was petitioning the agency to amend.

Mr. Bromer's idea is that, once a vehicle is reported stolen, its VIN would be put into a database. Automatic scanners placed on the roadside or on overpasses would check each passing vehicle against a list of stolen or wanted vehicles. Simultaneously, law enforcement authorities would be alerted. The LEDs would radiate the VIN in a binary digital format, rapidly turning on and off and capable of flickering out a complete VIN in a thousandth of a second. The petitioner asserted that the flickering would be invisible to the human eye and would slightly decrease the brightness of the brake or running lights. A light-sensing detector, aimed at the flickering lamp can read the VIN. The system will sort out the flickering light patterns from background noise, decode the flickering and access a databank. According to the petitioner, intermittent flickering, flickers from two different vehicles, both in a group of vehicles in optical range of a detector are unlikely to overlap, thus allowing the identification of both vehicles. Because flickering a complete VIN only takes a thousandth of a second, the flicker repetition interval can be much longer than that, while still insuring that there are plenty of flickers from each vehicle for the detector to register. Therefore, a detector can easily read the VINs of a large group of vehicles flickering simultaneously. The petitioner also asserted that because the brakes or running lamps would only flicker for a small proportion of time, its brightness would only be slightly decreased, by about 1 percent.

The Bromer system allows augmented VINs with at least one secret character or numeral. The VIN plate, vehicle title, and other public records would omit the secret portion of the VIN, which would be kept in a central databank. When a complete VIN is sent to the database, the incoming identifier would be checked against a secret database. The database response would read either "authentic" or "fake".

The petitioner suggests that the system could be used to record all vehicles that have entered a building or area, or that law enforcement could use it to determine the history of any vehicle prior to making contact with the driver. The petitioner even states that owner information such as the owner's criminal record could also be made available.

Background

Since Mr. Bromer's request for amending the CFR did not identify a particular regulation, the agency believes that there are three regulations that may be relevant to his petition. Those applicable regulations are: 49 CFR Part 541, *Federal Motor Vehicle Theft Prevention Standard;* Federal Motor Vehicle Safety Standard (FMVSS) No. 114, *Theft Protection;* and FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*. In addition, there is the possibility that the agency could issue a new FMVSS.

Agency Analysis

In 1984, Congress enacted the Motor Vehicle Theft Law Enforcement Act (the 1984 Theft Act) in response to escalating motor vehicle thefts (Pub. L. 98–547). The 1984 Theft Act was designed to reduce the incidence of motor vehicle thefts and simplify the tracing and recovery of parts from stolen vehicles. The 1984 Theft Act directed NHTSA to issue a theft prevention standard requiring vehicle manufacturers to mark major parts of high-theft passenger car lines with identifying numbers or symbols. The 1984 Theft Act is codified at 49 U.S.C. 33101. Under 49 U.S.C. Chapter 331, *Theft Prevention*, NHTSA has the authority to develop standards to reduce the incidence of motor vehicle theft. NHTSA issued the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541 (50 FR 43166, October 24, 1985). The standard applies only to those motor vehicle lines that the agency has designated as high-theft. Manufacturers of these high-theft passenger motor vehicle lines must mark the certain "major parts" in those lines with the vehicle identification number (VIN). Subsequently, Congress enacted the Anti Car Theft Act of 1992 (the 1992 Theft Act). The 1992 Theft Act (59 FR 64164, December 13, 1994) extended the parts marking requirements to multipurpose passenger vehicles (MPVs) (i.e., passenger vans and sports utility vehicles) and light trucks (pickup trucks) with a gross vehicle weight rating (GVWR) of 6,000 pounds or less that NHTSA designated as high-theft. The 1992 Theft Act also extended the parts marking requirements to selected motor vehicle lines that were below the 1990/1991 median theft rate. However, neither Act provides NHTSA with the authority to mandate that a manufacturer be required to use a particular parts marking system such as that suggested by Mr. Bromer, on its motor vehicle lines.

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety*, NHTSA has the authority to develop standards to reduce the incidence of crashes, and deaths and injuries resulting from crashes. FMVSS No.114, *Theft Protection*, specifies requirements to reduce the incidence of crashes that result from unauthorized use of a motor vehicle. The standard accomplishes this by requiring that vehicles be equipped with a system to warn the driver/operator when his/her keys are left in the ignition and the door is opened. This warning serves as a reminder to the owner operator to remove his or her keys, consequently protecting the vehicle from unauthorized use. In contrast, the goal of the petitioner's system is to identify stolen vehicles for purposes of recovery.

FMVSS No. 108, *Lamps, Reflective Devices and Associated Equipment*, specifies requirements to reduce the incidence of crashes through the use of exterior vehicle lighting devices. The standard accomplishes this by setting performance and installation requirements for such devices and motor vehicles so that the vehicles are conspicuous, that the roadway is illuminated, and that important information about drivers' intentions are signaled to other drivers.

For the Bromer system to be effective, the stop and/or taillamps would need to be on all the time. Under current Federal lighting requirements, taillamps need to be on only when headlamps are on. Per state laws this is mostly during the nighttime. Thus, the only time the VIN information would be transmitted through taillamps would be at night. The total percentage of vehicle travel at night is low. As the petitioner stated, there would likely be no visual perception of the data being transmitted, but there is the possibility of slight intensity reduction. To this extent, the taillamp would still be required to comply with the specified intensity requirements for taillamps.

Stop lamps using the Bromer system could transmit only the VIN information when these lamps were actuated during braking, further reducing the total time that any VIN signal would be transmitted. Thus, in order for the system to be effective, the taillamps and/or stop lamps would need to be on all the time. The stop lamps could not be permitted to do this for obvious safety reasons. Additionally, operation of the stop lamps without braking is not permitted by FMVSS No. 108.

There is the possibility of developing a new FMVSS. As it is, the Bromer system could help in recovering a vehicle during the period between when it is reported stolen and logged into the system, and when the system is disabled. Possibly, if the Bromer system is not disabled, it could identify the vehicle as stolen if it were to be resold. The likelihood of vehicle recovery could be very high if the Bromer system were not disabled immediately or shortly after being initially stolen. Conversely, the effectiveness of the Bromer system could be low if a thief immediately disabled the device at the time of theft or within a few minutes of when the vehicle could be stopped. At that point, the vehicle would become like any other vehicle, having no emitted signal and invisible to a police cruiser's receiver.

Relative to the system operating through Federally required signal lighting, the Bromer system would require all motor vehicles to use LED technology for stop and/or taillamps. Most vehicles would have to be equipped with LEDs at some expense ($10 to $30 per vehicle at a minimum). There would also be an additional cost for the installation of the vehicle transmitter circuitry. Because few vehicles use LEDs, mandating their use would certainly increase the cost of most vehicles.

An additional consideration is that such a system, if Federally mandated for installation on motor vehicles, would have to be accompanied by a receiver installed in every police vehicle throughout the United States if the system's goals were to be fully realized. If NHTSA were to mandate this, it would be many years until the entire fleet of citizen vehicles and police vehicles were equipped and compatible. Also, a system for national distribution of computer programs to law enforcement jurisdictions and the national and immediate distribution of stolen vehicle VINs would have to be implemented. This could impose substantial costs to states. In sum, we believe that the cost to manufacturers, vehicle owners and states outweigh any possible benefits that the Bromer system might have in reducing motor vehicle theft and increasing vehicle recovery.

A final concern is that each vehicle transmitting this unique information would instantly provide the police and any other person having access to a system receiver, the whereabouts of the vehicle and its owner or operator. Transmitting this type of information may constitute an unwarranted invasion of personal privacy to the persons who would be identified (5 U.S.C. 552(b)6)).

This completes the agency's technical review, and, on the basis of the foregoing, the agency has decided to deny Mr. Bromer's petition.

Authority: 49 U.S.C. 33102–33104 and 33106; delegation of authority at 49 CFR 1.50.

Issued on: August 1, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–19841 Filed 8–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34226]

R.J. Corman Equipment Company, LLC—Acquisition Exemption—Line of CSX Transportation, Inc.

R.J. Corman Equipment Company, LLC (RJCE), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately 2.16 miles of track in Wayne County, OH, from CSX Transportation, Inc. The line, known as the Wooster Industrial Track, extends between approximately milepost 16.81 and milepost 18.97.

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 34227, *R.J. Corman Railroad Company/ Cleveland Line-Lease and Operation Exemption-Line of R.J. Corman Equipment Company, LLC*, wherein R.J. Corman Railroad Company/Cleveland Line will lease and operate the line being acquired by RJCE.

The parties reported that they intended to consummate the transaction on or soon after July 18, 2002, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34226, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, 1800 Massachusetts Avenue, NW., Suite 200, Washington, DC 20036–1221.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: July 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–19433 Filed 8–5–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34227]

R.J. Corman Railroad Company/ Cleveland Line—Lease and Operation Exemption—Line of R.J. Corman Equipment Company, LLC

R.J. Corman Railroad Company/ Cleveland Line (RJCL), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 2.16 miles of track in Wayne County, OH, known as the Wooster Industrial Track, extending between approximately milepost 16.81 and milepost 18.97. This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 34226, *R.J. Corman Equipment Company, LLC—Acquisition Exemption—Line of CSX Transportation, Inc.*, wherein R.J. Corman Equipment Company, LLC will acquire the Wooster Industrial Track from CSX Transportation, Inc. (CSXT).

As part of this transaction, RJCL will acquire by assignment from CSXT incidental overhead trackage rights over rail lines of the Norfolk Southern Railway Company between East Gravel, OH (approximately milepost 1.74), and Massillon, OH (approximately milepost 0.0), and between Massillon (approximately milepost 110.7) and Wooster, OH (approximately milepost 138.0), a distance of approximately 29.04 miles in Wayne and Stark Counties, OH. RJCL states that the trackage rights will enable it to connect with the segment of rail line that it owns between Massillon and Warwick, OH.

RJCL certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.

The parties reported that they intended to consummate the transaction on or soon after July 18, 2002, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34227, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, 1800 Massachusetts Avenue, NW., Suite 200, Washington, DC 20036–1221.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: July 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–19434 Filed 8–5–02; 8:45 am]

BILLING CODE 4915–00–P

Federal Register

Tuesday,
August 6, 2002

Part II

Department of Education

34 CFR Part 200
Title I—Improving the Academic Achievement of the Disadvantaged; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA91

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the programs administered under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA)—referred to in these proposed regulations as the Title I programs. These proposed regulations are needed to implement recent changes to Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

DATES: We must receive your comments on or before September 5, 2002.

ADDRESSES: Address all comments for subparts A, B, and D of part 200 in these proposed regulations and all comments on information collection requirements to Jacquelyn C. Jackson, Ed.D., Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W230, FB–6, Washington, DC 20202–6132. The Fax number for submitting comments on subparts A, B, and D is (202) 260–7764.

Address all comments for subpart C of part 200 in these proposed regulations to Francisco Garcia, Director, Migrant Education Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E317, FB–6, Washington, DC 20202–6135. The Fax number for submitting comments on subpart C is (202) 205–0089.

If you prefer to send your comments through the Internet, use the following address: *TitleIRulemaking@ed.gov*.

FOR FURTHER INFORMATION CONTACT: For subparts A, B, D, and E, of part 200, Jackie Jackson, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

For subparts C and E of part 200, James English, Migrant Education Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E315, FB–6, Washington, DC 20202–6135. Telephone (202) 260–1394.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum value in helping us develop the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange your comments in the same order as the proposed regulations.

During and after the comment period, you may inspect all public comments about subparts A, B, D, and E of part 200, as appropriate, of these proposed regulations in room 3C147, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. You may inspect all public comments about subparts C and E of part 200, as appropriate, of these proposed regulations in room 3E315, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The NCLB Act reauthorized the ESEA and incorporated the major educational reforms proposed by President George W. Bush in his No Child Left Behind initiative. These reforms included important changes to Title I of the ESEA, which is designed to help disadvantaged children meet high academic standards.

These proposed regulations would implement those changes in a manner that respects State and local control over education while ensuring strong accountability for results. On July 5, 2002, the Secretary separately published in the **Federal Register** final regulations for the standards and assessment provisions of Title I, part A of the ESEA.

The Secretary intends to regulate only if absolutely necessary: for example, if the statute requires regulations or if regulations are necessary to provide flexibility or clarification for State educational agencies (SEAs) and local educational agencies (LEAs). Rather than regulating extensively, the Secretary intends to issue nonregulatory guidance addressing particular legal and policy issues under the Title I programs. This guidance will inform schools, parents, school districts, States, and other affected parties about the flexibility that exists under the statute, including different approaches they may take to carry out the statute's requirements.

Significant Proposed Regulations

We group major issues according to subject. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

Section 200.11 Participation in NAEP

Statute: Section 1111(c)(2) of the NCLB Act requires each State to participate in biennial State assessments of 4th and 8th grade reading and mathematics under the National Assessment of Educational Progress (NAEP). Similarly, section 1112(b)(1)(F) of the NCLB Act requires each LEA participating under subpart A of this part to participate, if selected, in the State NAEP.

Proposed Regulations: The proposed regulation would clarify that LEAs receiving Title I funds must participate in NAEP if they are selected.

Reasons: The proposed regulations make clear that a condition of receiving Title I funds is that, if selected, the LEA must participate in NAEP despite section 411(d)(1) of the National Education Statistics Act of 1994, which provides for voluntary participation of LEAs.

State Accountability System

Section 200.12 Single State Accountability System

Statute: Under section 1111(b)(2)(A) of the ESEA, each State must develop and implement a single, statewide accountability system to ensure that all LEAs and public schools in the State make adequate yearly progress. The State's accountability system must be based on the State's academic standards and assessment system and take into account all public elementary and secondary school students; be the same accountability system the State uses for all public schools and LEAs in the State; and include rewards and sanctions the State will use to hold LEAs and public schools accountable for student achievement. The State's accountability system may, but is not required to, apply the requirements in section 1116 of Title I relating to identifying schools for improvement, corrective action, and restructuring to non-Title I schools and non-Title I LEAs.

Proposed Regulations: Proposed § 200.12 would implement the statutory provisions requiring a single, statewide accountability system. It would make clear that these provisions take effect beginning with the 2002–2003 school year. Proposed § 200.12 also would require States to include, in their accountability system, guidelines for identifying the students with disabilities who should take alternate assessments and would require reporting on the number of students with disabilities who take an alternate assessment.

Reasons: Proposed § 200.12 reflects the Secretary's goal of regulating only where necessary to provide clarity or flexibility. It emphasizes the importance of a single, statewide accountability system and sets the context for the subsequent regulations on adequate yearly progress. By requiring States to establish guidelines governing alternate assessments, it also ensures that only students with the most significant disabilities take those assessments.

Adequate Yearly Progress

Sections 200.13 Through 200.20 Adequate Yearly Progress

Statute: Under section 1111(b)(2)(B), each State must demonstrate what constitutes adequate yearly progress of the State, and of all public elementary and secondary schools and LEAs in the State, toward enabling all students to meet the State's student achievement standards. "Adequate yearly progress" definitions must apply the same high standards of academic achievement to all public elementary and secondary school students in the State, be statistically valid and reliable, and measure progress based primarily on the State's academic assessments. The definition must include separate annual measurable objectives for continuous and substantial improvement in both mathematics and reading/language arts for all students and for each of the following specific groups of students: students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.

Adequate yearly progress must include a timeline that ensures that all students in each subgroup meet or exceed the State's proficient level of academic achievement no later than the 2013–2014 school year. Using data from the 2001–2002 school year, each State must determine a starting point for reading/language arts and mathematics for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement. The starting point must, at a minimum, be based on the higher of two proficiency levels specified in the statute. Adequate yearly progress must include intermediate goals that increase in equal increments over the timeline: the first increment must occur in not more than two years from the baseline year (2001–2002) and the following increases must occur in not more than three years. Adequate yearly progress must also include the graduation rate for high schools and a similar academic indicator for elementary and middle schools.

To make adequate yearly progress, a school must meet two criteria. First, the school must meet or exceed the State's annual measurable objectives with respect to all students and students in each subgroup. If students in any subgroup fail to make the requisite progress, however, the school can still make adequate yearly progress if the percentage of students below proficient in that subgroup decreased by at least 10 percent compared to the preceding year and that subgroup made progress on one or more of the additional academic indicators. Second, at least 95 percent of the students in each subgroup enrolled in the school must take the assessment.

Current Regulations: The current regulations governing adequate yearly progress (34 CFR 200.3) reflect provisions of section 1111 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: The proposed regulations in §§ 200.13 through 200.20 would implement the statutory provisions in section 1111(b)(2) that require each State to demonstrate what constitutes adequate yearly progress. For the most part, the proposed regulations would merely reorganize the statutory provisions to make them more understandable, particularly the interrelationship among the timeline, starting points, intermediate goals, and annual measurable objectives.

In several instances, the proposed regulations would clarify the statutory provisions or provide flexibility. For example, proposed § 200.13(c)(1) permits a State to define achievement standards for students with the most significant cognitive disabilities who take an alternate assessment. Section 1111(b)(2)(I)(ii) of the ESEA provides that children with disabilities who take an alternate assessment must be included in the 95 percent of students who must participate in the assessments in order for a school to make adequate yearly progress. Under the Title 1 accountability system, alternate assessments are an appropriate way to measure the progress of only that very limited portion of students with the most significant cognitive disabilities who will never be able to demonstrate progress on grade level academic achievement standards even if provided the very best possible education. Based on current prevalence rates of students with the most significant cognitive disabilities, proposed § 200.13(c)(2), would set the number of students with disabilities who should be included in accountability measures using alternate standards at not more than 0.5 percent of all students assessed in a State or LEA. For accountability purposes, the performance of all other students with disabilities (including any other students with disabilities who take an alternate assessment) must be assessed against the academic content and achievement standards established under § 200.1.

Proposed § 200.13(d) would make clear that a State must have a way to hold accountable schools in which no grade level is assessed under the State's academic assessment system or whose purpose is to serve students for less than a full academic year. The proposed regulations emphasize, however, that the State does not need to administer a formal assessment to students in these schools. Similarly, proposed § 200.15(b) would clarify that, if a State changes its academic assessment system or its definition of adequate yearly progress, the State may not extend, beyond the 2013–2014 school year, its timeline for enabling all students to reach proficiency. Proposed § 200.16 would make clear that a State must set separate starting points for reading/language arts and mathematics, because the State

must hold schools accountable for student achievement in each subject. That section would permit a State to establish separate starting points by grade span. Proposed § 200.16(b)(2) also would clarify how a State determines a starting point based on the percentage of students at the proficient level in the "school at the 20th percentile in the State, based on enrollment."

Section 1111(b)(2)(C)(vi) of the ESEA requires a State to include the graduation rate in its determination of adequate yearly progress for public secondary schools and defines graduation rate as "the percentage of students who graduate from secondary school with a regular diploma in the standard number of years." Proposed § 200.19, which deals with other academic indicators, would rely on language in the conference report to the NCLB Act to permit a State to submit for the Secretary's approval another definition that accurately measures the high school graduation rate. Proposed § 200.19(c) would make clear that a State may, but is not required to, increase the goals of its other academic indicators over the course of its timeline.

Proposed § 200.20, which would implement the statutory provisions for how a school or LEA makes adequate yearly progress, would clarify the statutory requirement that 95 percent of the students enrolled in each subgroup in a school must take the State's academic assessment in order for the school to make adequate yearly progress. Proposed § 200.20(c)(1)(ii) would make clear that the number of students in a subgroup must be of sufficient size to produce statistically reliable results for the 95 percent requirement to affect adequate yearly progress. In other words, if the number of students in a subgroup is too small to produce statistically reliable results, the State need not, on the basis of the 95 percent requirement, identify the school as failing to make adequate yearly progress if less than 95 percent of the students in that subgroup take the State's assessment. This proposed provision would not, however, authorize a State to exclude students in small subgroups from taking the assessment. Finally, proposed § 200.20(e) would permit a State to define "full academic year" for the purpose of determining adequate yearly progress.

Reasons: Proposed §§ 200.13 through 200.20 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements. These sections also reflect the Secretary's goal to provide added flexibility wherever possible.

In developing these proposed regulations, the Department has carefully based them on the statutory provisions governing adequate yearly progress. These requirements are designed to enhance the quality systems of accountability that many States have already developed. At the core of the NCLB Act's accountability pillar, the statutory provisions require each State to implement a single statewide system for annually holding all public schools and LEAs accountable. This single system will ensure that all students, including students with disabilities, limited English proficient students, economically disadvantaged students, and students from major racial and ethnic groups, will be proficient in reading/language arts and mathematics by the 2013–2014 school year. We are aware that there are rigorous models that States have already developed that may achieve the same fundamental principles of the statute, although through different approaches. For example, some models establish a growth trajectory for each school based on the school's baseline performance. Other models, in determining a school's performance, take into consideration the school's progress in moving students from "below basic" to "basic" as well as from "basic" to "proficient" and from "proficient" to "advanced." We specifically invite States that have been using different models to comment on the statutory provisions that might affect their use, and how these requirements could be incorporated into their current systems.

Section 200.21 Adequate Yearly Progress of a State

Statute: Section 6161 of the ESEA requires the Secretary, beginning with the 2004–2005 school year, to review whether each State that receives funds under Title I, part A has made adequate yearly progress with respect to each subgroup of students under section 1111(b)(2)(C)(v) of the ESEA. If a State also receives funds under Title III, part A, subpart 1 of the ESEA, the Secretary must also review whether the State has met its annual measurable achievement objectives relating to the development and attainment of English proficiency by limited English proficient students.

Proposed Regulations: Proposed § 200.21 would implement this new requirement. This section would emphasize that the Secretary will review whether a State has made adequate yearly progress as defined in proposed §§ 200.13 through 200.20 for each subgroup of students as well as has met its annual measurable achievement objectives relating to the development and attainment of English proficiency by limited English proficient students.

Reasons: Proposed § 200.21 reflects the Secretary's goal of regulating only where necessary to provide clarity or flexibility. It is included to emphasize, for the first time, a State's responsibility to make adequate yearly progress for each subgroup of students and meet its goals for improving the English proficiency of its limited English proficient students.

Schoolwide Programs

Statute: Section 1114 of the ESEA made three substantive changes to the existing requirements governing schoolwide programs. Section 1114(a)(1) allows a school to operate a schoolwide program if the school serves an eligible school attendance area in which at least 40 percent of the children are from low-income families, or if at least 40 percent of the children enrolled in the school are from such families. Under the previous statute, the eligibility threshold was 50 percent.

Section 1114(b)(1)(A) requires the comprehensive needs assessment for a schoolwide program to take into account the needs of migratory children.

Section 1306(b)(4) of the ESEA made one additional substantive change in the schoolwide program requirements. Under that provision, a school must document that the special educational needs of migrant students have been met before Title I, part C funds may be included in a schoolwide program. Previously, a school was required only to address those needs, not document that they had been met, before including Title I, part C funds.

Current Regulations: Current § 200.8 reflects the basic statutory requirements for schoolwide programs. The regulations specify (1) the eligibility requirements for a schoolwide program—including a provision that permits an LEA to determine schoolwide eligibility using a poverty measure that is different from the poverty measure used to identify and rank school attendance areas; (2) requirements for and restrictions on combining funds in a schoolwide program; (3) components of a schoolwide program; (4) schoolwide program planning and needs assessment; and (5) the effects of operating a schoolwide program in relation to other Federal program requirements.

Proposed Regulations: The proposed regulations would not substantively

change the current regulations beyond conforming them to the new statutory requirements. However, the proposed regulations would reorganize the current regulations in a way that emphasizes the fundamental purpose of a schoolwide program. The provisions of current § 200.8 would be divided into four new, smaller and simpler sections—proposed §§ 200.25 through 200.28.

Proposed § 200.25 would clarify that the purpose of a schoolwide program is to improve the academic achievement of all students, especially those furthest from meeting the State's proficient academic achievement standard. Proposed § 200.25 would also contain the eligibility requirements.

Proposed § 200.26 would clarify that a schoolwide plan must describe how the school will improve academic achievement so that all students will meet the State's proficient academic achievement standard, especially those furthest from meeting proficiency. The proposed section would also clarify that the plan must be reviewed and revised as necessary to reflect changes in the schoolwide program or in the State's academic content standards and academic achievement standards. The proposed section would also include the provisions requiring the comprehensive needs assessment to take into account the needs of migratory children.

Proposed § 200.27 would reorganize the schoolwide components into four primary categories: (1) Schoolwide reform strategies, (2) instruction by highly qualified teachers, (3) parent involvement, and (4) additional support. The proposed section also would emphasize that reform strategies must address the needs of students in the school, but particularly those furthest from meeting the State's proficient academic achievement standard.

Proposed § 200.28 would group together all the statutory provisions addressing the uses of funds in a schoolwide program. These provisions include the new provisions governing meeting the needs of migrant students.

Reasons: The Department has found that school-level officials are sometimes confused about the purpose of the schoolwide approach. Often, schools do not use the flexibility offered by the schoolwide approach as a means to improve achievement, particularly for those students furthest from meeting the proficient standard. These regulations are intended to help schools better understand that schoolwide flexibility is a strategic approach, using scientifically based strategies, for improving student achievement to ensure that no child is left behind.

LEA and School Improvement

Section 200.30 Local Review; and § 200.31 Opportunity To Review School Level Data

Statute: Under section 1116(a) and (b) of Title I, each participating LEA must use the State academic assessments and other indicators in the State plan, and, at the LEA's discretion, other academic indicators described in the LEA's plan, to review the progress of each school served under subpart A of this part to determine whether the school is making adequate yearly progress. The LEA must publicize the results of its review to parents, teachers, principals, schools, and the community.

In general, the LEA's use of other academic indicators may not reduce the number or change the identity of schools that would otherwise be identified for improvement, corrective action, or restructuring, but may result in the identification of additional schools for improvement, corrective action, or restructuring. However, the use of these indicators may permit a school to make adequate yearly progress if the school reduces by at least 10 percent the percentage of a student subgroup failing to meet the proficient level of academic achievement.

Before identifying a school for improvement, corrective action, or restructuring, an LEA must provide the school an opportunity to review the school-level data, including academic assessment data, on which the LEA has based the proposed identification.

Current Regulations: The current regulations governing LEA review of school performance reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed § 200.30 would repeat the statutory requirement for LEAs to conduct an annual review of the performance of all schools receiving funds under subpart A of this part. The review would determine whether the schools are making adequate yearly progress toward the goal of helping all students reach proficiency in reading and mathematics within 12 years of enactment of the NCLB Act.

Proposed § 200.30 would further clarify the circumstances under which an LEA could limit its review to the progress of only those students served, or eligible for services, in a school operating a targeted assistance program. The LEA could limit its review only if the students selected for services under the targeted assistance program are those with the greatest need for academic assistance.

Proposed § 200.31 would repeat and reorganize the statutory requirement that an LEA provide a school with the opportunity to review the data on which an LEA has based a proposed identification of the school for improvement, corrective action, or restructuring. The proposed provision would make clear that this review must occur before the LEA's final decision on identification.

Reasons: Proposed §§ 200.30 and 200.31 would reflect the Secretary's goal of clarifying and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Section 200.32 Identification for School Improvement; § 200.33 Identification for Corrective Action; § 200.34 Identification for Restructuring; and § 200.35 Delay and Removal

Statute: Under section 1116(b) of Title I, an LEA must (1) identify for school improvement any school that fails to make adequate yearly progress for two consecutive years and (2) must make available public school choice to all students enrolled in the school. If the school fails to make adequate yearly progress for a third consecutive year, the LEA must continue to offer public school choice and must also make available supplemental educational services to students who remain in the school.

In the case of a school that fails to make adequate yearly progress after two years of improvement, the LEA must identify the school for corrective action and continue to offer public school choice and supplemental educational services to students enrolled in the school. If a school fails to make adequate yearly progress after one year of corrective action, the LEA must identify the school for restructuring and must continue to offer public school choice and supplemental educational services while it prepares a restructuring plan for the school.

The statute also includes transition provisions governing schools identified for improvement or corrective action before the enactment of the NCLB Act:

- An LEA must treat any school that was in improvement on January 7, 2002 as a school that is in the first year of improvement for the 2002–2003 school year.
- An LEA must treat any school that was in improvement for two or more consecutive years on January 7, 2002 as a school in its second year of school improvement for the 2002–2003 school year.
- An LEA must treat any school that was in corrective action on January 7,

2002 as a school that is in corrective action for the 2002–2003 school year.

An LEA may delay for one year the requirements for any school under the second year of improvement, under corrective action, or under restructuring, if (1) the school makes adequate yearly progress for one year or (2) if the school's failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA or school. However, the LEA may not take into account this period of delay in determining the number of consecutive years of failure to make adequate yearly progress for the purpose of subjecting the school to further improvement actions.

If a school identified for improvement, corrective action, or restructuring makes adequate yearly progress for two consecutive years, the LEA may no longer subject the school to the requirements of improvement, corrective action, or restructuring or identify the school for improvement for the next school year.

Current Regulations: The current regulations governing LEA identification of schools for improvement and corrective action reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: In general, proposed §§ 200.32, 200.33, 200.34, and 200.35 would restate and reorganize the statutory provisions related to the LEA's identification of schools for improvement, corrective action, and restructuring, as well as provisions governing the delay or termination of requirements related to identification.

Proposed § 200.32 clarifies the statutory timeline for identifying schools for improvement. The statute requires the identification to take place "before the beginning of the school year following such failure to make adequate yearly progress." To clarify the meaning of this deadline, proposed § 200.32(a)(2) restates the deadline so that it is clear that the identification must take place "before the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make adequate yearly progress for a second consecutive year."

In addition, proposed § 200.32(f) states that if the LEA misses this deadline, the school is nevertheless subject to the requirements of school improvement—including the provision of public school choice options to all students enrolled in the school—upon identification and that the LEA must count that school year as a full year of school improvement for the purpose of subjecting the school to additional improvement measures if it continues to fail to make adequate yearly progress. This proposed regulation is intended to prevent the potential delay of needed improvement measures for an additional year if States and LEAs fail to make identification in accordance with the statutory deadline.

Proposed §§ 200.32 and 200.33 also address identification issues related to schools that are not covered under the statutory transition provisions. More specifically, the statute does not account for the potential impact of the results of assessments administered during the 2001–2002 school year. Proposed § 200.32(d) gives an LEA discretion to remove from improvement status a school that, on the basis of the 2001–2002 assessments, makes adequate yearly progress for a second consecutive year. Similarly, proposed § 200.33(c) permits an LEA to remove from corrective action a school that, on the basis of the 2001–2002 assessments, makes adequate yearly progress for a second consecutive year. Proposed § 200.32(e) permits, but does not require, an LEA to identify for improvement a school that, on the basis of the 2001–2002 assessments, fails to make adequate yearly progress for a second consecutive year.

Reasons: Proposed §§ 200.32, 200.33, 200.34, and 200.35 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements. In particular, proposed § 200.32(a)(2) clarifies the statutorily ambiguous deadline for identifying schools for improvement and proposed § 200.32(f) ensures that the school improvement timeline is not thwarted by the failure to meet this deadline.

In addition, proposed § 200.32(d) and (e) and § 200.33(c) apply the statutory provisions for entering and exiting improvement status—two consecutive years of failure to make adequate yearly progress and two consecutive years of making adequate yearly progress, respectively—to schools not covered under the transition provisions in section 1116(f) of the NCLB Act.

Section 200.36 Communication With Parents; § 200.37 Notice of Identification for Improvement, Corrective Action, or Restructuring; and § 200.38 Information About Action Taken

Statute: Under section 1116 of Title I, SEAs and LEAs must keep parents informed throughout the improvement process. In particular, section 1116(b)(6) requires LEAs to provide the parents of each student enrolled in a school identified for improvement, corrective action, or restructuring an explanation of what the identification means, the reasons for the identification, what the school, LEA, and SEA are doing to address the achievement problems that led to the identification, how parents can help the school improve, and the parents' option to transfer their child to another public school or to obtain supplemental educational services for their child.

Current Regulations: The current regulations governing LEA notification of parents during the school improvement process reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed § 200.36 clarifies the manner in which SEAs, LEAs, and schools must meet notification requirements under section 1116 by providing guidelines for all communications with parents. These guidelines include the use of an understandable and uniform format for all required notices; the provision, to the extent practicable, of all notices in a language that parents can understand; the use of direct means of communication, such as mailing materials home, as well as broader electronic means such as the Internet; and assurances that all notices respect the privacy of students and their families.

Proposed § 200.37 repeats the statutory requirement to notify parents when the school their child attends is identified for improvement, corrective action, or restructuring. Proposed § 200.37(b)(4) would add to the statutory requirement for an explanation of the public school choice option the inclusion of information on the performance of the schools to which a student may transfer. Proposed § 200.37 also would require LEAs to include in their annual notice of the availability of supplemental educational services the identification of any providers of technology-based or distance-learning services.

Proposed § 200.38 restates the statutory requirement for LEA notification to parents of action taken to

address the problems that led the LEA to identify the school for improvement, corrective action, or restructuring.

Reasons: Proposed §§ 200.36, 200.37, and 200.38 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements. The proposed regulations would help ensure that SEAs, LEAs, and schools develop a uniform approach for communicating with parents throughout the school improvement process.

Section 200.39 Responsibilities Resulting From Identification for School Improvement; § 200.40 Technical Assistance; and § 200.41 School Improvement Plan

Statute: Under section 1116(b) of Title I, if an LEA identifies a school for improvement, the LEA must provide all students enrolled in the school with the option to transfer to schools served by the LEA that have not been identified for improvement. The LEA also must ensure that the school receives technical assistance in identifying and addressing the problems that led to the identification for improvement. The school must develop and implement a school improvement plan covering a two-year period that specifies the responsibilities of the school, the LEA, and the SEA under the plan; incorporates scientifically based strategies for strengthening instruction in the core academic subjects; includes annual measurable objectives for helping all student groups make adequate yearly progress; and sets aside 10 percent of the school's Title I allocation for professional development that directly addresses the achievement problems that led the LEA to identify the school for improvement.

The LEA must promptly review the school improvement plan, work with the school to make any necessary revisions, and approve the plan within 45 days of receiving it from the school. The LEA may condition approval of the plan on the inclusion of one of the corrective actions specified in section 1116(b)(7)(C)(iv) of Title I or on feedback from parents and community leaders.

If a school continues to fail to make adequate yearly progress after one year of school improvement, the LEA must continue to offer a public school choice option to students enrolled in the school, continue to provide technical assistance, and make available supplemental educational services to eligible students who remain in the school.

Current Regulations: The current regulations governing LEA and school-level responsibilities when the LEA identifies a school for improvement reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: In general, proposed §§ 200.39, 200.40, and 200.41 restate the statutory requirements related to LEA and school-level responsibilities under the school improvement process, including the LEA's obligation to offer public school choice options and to provide technical assistance and the school's responsibility to develop and implement a comprehensive school improvement plan. Proposed § 200.41(c)(4) also clarifies that school improvement plans must include measurable goals that address the specific reasons for the school's failure to make adequate yearly progress. This proposal is intended to eliminate possible confusion between the goals in the improvement plan and the State-level annual measurable objectives established under section 1111 for the purpose of determining adequate yearly progress.

Proposed § 200.41(c)(5) would increase flexibility in the use of the 10 percent set-aside for professional development under the school improvement plan by making instructional staff other than teachers and principals eligible for these professional development activities.

Reasons: Proposed §§ 200.39, 200.40, and 200.41 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Section 200.42 Corrective Action; and § 200.43 Restructuring

Statute: Under section 1116(b)(7) of Title I, if an LEA identifies a school for corrective action, it must continue to provide all students enrolled in the school with the option to transfer to another public school, continue to ensure that the school receives technical assistance, continue to make available supplemental educational services to students who remain in the school, and take at least one of the corrective actions specified in the statute. These corrective actions include replacing the school staff, implementing a new curriculum, decreasing management authority at the school, appointing an outside expert to advise the school, extending the school day or year, and reorganizing the school internally.

If an LEA identifies a school for restructuring, it must continue to provide a public school choice option and make available supplemental educational services while preparing a plan to carry out an alternative governance arrangement specified in the statute. These alternative governance arrangements include reopening the school as a public charter school, replacing all or most of the school staff, entering into a contract with a private management company to operate the school as a public school, turning over operation of the school to the SEA, or any other major restructuring of a school's governance arrangements.

If the school continues to fail to make adequate yearly progress, the LEA must implement its restructuring plan no later than the beginning of the school year following the year in which it identified the school for restructuring.

Current Regulations: The current regulations governing corrective action reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act, and restructuring is a new requirement under the NCLB Act.

Proposed Regulations: In general, §§ 200.42 and 200.43 restate the statutory requirements related to corrective action and restructuring. Proposed § 200.42(b)(4)(iv)(A) and (B) clarify that the purpose of appointing an outside expert as a corrective action is to help revise the school improvement plan developed under § 200.41 and implement the revised plan.

Reasons: Proposed §§ 200.42 and 200.43 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Section 200.44 Public School Choice

Statute: Under section 1116(b) of Title I, if an LEA identifies a school for improvement, corrective action, or restructuring it must provide each student enrolled in the school with the option to transfer to another public school served by the LEA that is not identified for improvement, corrective action, or restructuring, unless such an option is prohibited by State law. The LEA must provide the option to transfer no later than the first day of the school year following the identification for improvement, corrective action, or restructuring, and must provide or pay for the transportation of the student to the school the student chooses to attend.

In providing students the option to transfer, the LEA must give priority to the lowest-achieving students from low-income families. If a student exercises

the option to transfer to another public school, the LEA must permit the student to remain in that school until the student has completed the highest grade in the school. However, the LEA's obligation to provide transportation ends at the end of a school year if the school from which the student transferred is no longer identified for improvement, corrective action, or restructuring.

Current Regulations: The public school choice requirement is new under the NCLB Act and not covered under current regulations.

Proposed Regulations: Proposed § 200.44 restates and reorganizes the statutory provisions in section 1116(b) related to public school choice. The proposed regulations also clarify the statutory deadline by requiring LEAs to provide a choice option not later than the first day of the school year following the year in which the LEA administered the assessments that resulted in the identification of the school for improvement, corrective action, or restructuring.

In addition, proposed § 200.44(a)(4) would require LEAs to offer the parents of each eligible student a choice of more than one school, if there is more than one school within the LEA that has not been identified for improvement, corrective action, or restructuring, and to take into account the parents' preferences in assigning students to a new school.

Proposed § 200.44(b) would clarify that the statutory exception from the public school choice requirements where choice is prohibited by State law applies only if the State law prohibits choice through restrictions on public school assignments or the transfer of students from one public school to another public school. Proposed § 200.44(c) clarifies that LEA implementation of a desegregation plan does not exempt the LEA from the public school choice requirement in section 1116(b) of Title I.

Proposed § 200.44(f) and (h) would limit an LEA's obligation to provide or pay for choice-related transportation due to insufficient funding resulting from the application of § 200.48.

Reasons: Proposed § 200.44 reflects the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements. Proposed § 200.44(a)(2) clarifies the deadline for providing choice to be consistent with the statutory requirement that identification for improvement, corrective action, or restructuring occur prior to the beginning of the school year.

Proposed § 200.44(a)(4) would empower parents by ensuring, wherever possible, that they have the option of choosing, from among several options, the school that best meets the educational needs of their child.

Proposed § 200.44(b) and (c) are intended to prevent LEAs from arbitrarily invoking either State law or desegregation plans in seeking an exemption from the public school choice requirement. Proposed § 200.44(f) and (h) reflect the interpretation under § 200.48 that the statute caps the set-aside for choice-related transportation and supplemental educational services at an amount equal to 20 percent of an LEA's allocation under subpart A of this part, thereby limiting the LEA's obligation to satisfy all requests for choice-related transportation.

Proposed §200.44(i) clarifies that for children with disabilities, the public school choice option must provide a free and appropriate public education.

Section 200.45 Supplemental Educational Services; § 200.46 LEA Responsibilities for Supplemental Educational Services; and § 200.47 SEA Responsibilities for Supplemental Educational Services

Statute: Section 1116(e) of Title I defines supplemental educational services as tutoring and other academic enrichment services designed to increase the academic achievement of eligible students and help them attain proficiency in meeting State academic achievement standards. If an LEA has identified a school for a second year of school improvement, for corrective action, or for restructuring, it must arrange for supplemental educational services for each eligible student from a State-approved provider selected by the student's parents. Eligible students are defined in the statute as students from low-income families, and if funding is insufficient to provide services to all such students, LEAs must give priority to the lowest-achieving eligible students.

SEAs must promote participation by as many providers as possible, develop criteria for approval as a provider that are based on a demonstrated record of effectiveness in increasing student achievement in subjects relevant to meeting State academic content and achievement standards, maintain an updated list of providers from which parents may select, and monitor the quality and effectiveness of approved providers.

An LEA making available supplemental educational services must, funding permitting, continue to make available such services until the end of the school year. An SEA may waive the requirement for an LEA to provide supplemental educational services if none of the providers on the State's list make services available within a reasonable distance of the LEA and if the LEA itself is not able to provide the services.

Current Regulations: The requirement to provide supplemental educational services is new under the NCLB Act and not covered under current regulations.

Proposed Regulations: In general, proposed §§ 200.45, 200.46, and 200.47 repeat the statutory requirements for the provision of supplemental educational services. Proposed § 200.47 would modify the standards for SEA approval of providers to clarify that supplemental service providers may include a non-profit entity, a for-profit entity, a public school, including a public charter school, a private school, or an LEA. The proposed § 200.47 also would prohibit schools that are identified for improvement, corrective action, or restructuring from being a provider.

Reasons: Proposed §§ 200.45, 200.46, and 200.47 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Examples of evidence from a provider that may demonstrate effectiveness include the following:

- Significant improvement in student academic achievement as measured by statewide assessments;
- Successful use of instructional practices based on research;
- Successful and sustained remediation of reading/language arts or math difficulties, such as bringing students up to grade-level standards.

Section 200.48 Funding for Choice-Related Transportation and Supplemental Educational Services

Statute: Section 1116(b)(10) of Title I requires LEAs to make available funding to pay for transportation costs related to the provision of public school choice options and for supplemental educational services. In general, affected LEAs must spend an amount equal to 20 percent of their allocation under subpart A of this part to pay for choice-related transportation, supplemental educational services, or a combination of the two. In reserving such funds, an LEA may not reduce by more than 15 percent the allocation it provides to a

school identified for corrective action or restructuring.

LEAs must use, at a minimum, an amount equal to five percent of their allocations under subpart A of this part to pay for supplemental educational services, if parents request such services. SEAs may use funds reserved for State-level activities under subpart A of this part and under part A of Title V to assist LEAs that do not have sufficient funds to satisfy all requests for supplemental educational services. For each student receiving such services, the LEA must make available the lesser of the LEA's per-child allocation under subpart A of this part or the actual cost of services.

Current Regulations: The requirement to reserve funding for choice-related transportation and supplemental educational services is new under the NCLB Act and not covered under current regulations.

Proposed Regulations: Proposed § 200.48 would clarify statutory ambiguity regarding the reservation of funding to pay for choice-related transportation and supplemental educational services. Specifically, the proposed regulation would require LEAs to spend an amount equal to 20 percent of their allocation under subpart A of this part to provide or pay for the transportation of students exercising a choice option, to satisfy all requests for supplemental educational services, or a combination of the two. Proposed § 200.48 clarifies that LEAs may use funds allocated under subpart A of this part, from other Federal education programs, or from State, local, or private resources to satisfy this requirement.

Proposed § 200.48 also clarifies that if the costs of satisfying all requests for supplemental educational services exceed an amount equal to 5 percent of an LEA's allocation under subpart A of this part, the LEA may not spend less than this amount for supplemental educational services. In addition, the proposed regulations would permit—but not require—LEAs to exceed the 20 percent cap to pay all choice-related transportation costs and to meet the demand for supplemental educational services.

Reasons: Proposed § 200.48 reflects the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Section 200.49 SEA Responsibilities for School Improvement, Corrective Action, and Restructuring

Statute: Sections 1003 and 1116 of Title I include various provisions relating to SEA responsibilities in the school improvement process. Section 1116(f) requires an SEA to ensure that LEAs serving schools identified for improvement or corrective action prior to enactment of the NCLB Act provide public school choice options and make available supplemental educational services, as appropriate, not later than the first day of the 2002–2003 school year.

Section 1003 requires SEAs to reserve two percent of the amounts received under subpart A of this part, rising to four percent in fiscal year 2004, to support local school improvement activities and to provide technical assistance to schools that LEAs have identified for improvement, corrective action, or restructuring and to LEAs that the SEA has identified for improvement or corrective action. SEAs must allocate not less than 95 percent of these funds directly to LEAs serving schools identified for improvement, corrective action, and restructuring, with a priority on LEAs serving the lowest-achieving schools and demonstrating the greatest need for assistance.

SEAs also must ensure that the results of academic assessments in a given school year are available to LEAs before the beginning of the next school year, and that such results are provided to a school before an LEA may identify the school for school improvement, corrective action, or restructuring.

Current Regulations: The current regulations governing SEA responsibilities related to school improvement reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed § 200.49 repeats and reorganizes the statutory requirements related to SEA responsibilities in the school improvement process.

Reasons: Proposed § 200.49 reflects the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements.

Section 200.50 SEA Review of LEA Progress

Statute: Under section 1116(c) of Title I, SEAs must annually review the progress of each LEA receiving funds under subpart A of this part to determine whether the LEA is making adequate yearly progress toward meeting the State's student academic achievement standards and whether the LEA is carrying out its responsibilities under subpart A of this part with respect to technical assistance, parental involvement, and professional development. After providing an LEA with the opportunity to review academic assessment data, the SEA must identify for improvement an LEA that has failed to make adequate yearly progress for two consecutive years.

The SEA must identify for corrective action an LEA that fails to make adequate yearly progress for two consecutive years following the identification for improvement. The SEA may delay corrective action if the LEA makes adequate yearly progress for one year or if the LEA's failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the LEA's financial resources.

The SEA may remove from improvement or corrective action status an LEA that makes adequate yearly progress for two consecutive years, and may provide rewards to LEAs that exceed adequate yearly progress for two consecutive years.

Current Regulations: The current regulations governing SEA review of LEA progress reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: In general, proposed § 200.50 repeats the statutory requirements related to SEA review of LEA progress in helping all students meet State academic achievement standards.

In addition, proposed § 200.50 clarifies the circumstances under which an SEA may include, in its review of an LEA serving schools operating targeted assistance programs, only the progress of students served or eligible for services under subpart A of this part. Proposed § 200.50(d)(2) clarifies the timeline for identifying LEAs for corrective action to be consistent with the statutory requirement that such identification occur prior to the beginning of the school year.

Proposed § 200.50(d) and (e) also clarify SEA discretion in identifying LEAs for improvement or removing LEAs from improvement or corrective action status on the basis of assessments administered during the 2001–2002 school year.

Reasons: Proposed § 200.50 reflects the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of

and compliance with those requirements. Specifically, the proposed regulation clarifies the identification timeline for LEA corrective action and applies the statutory provisions for entering and exiting improvement status—two consecutive years of failure to make adequate yearly progress and two consecutive years of making adequate yearly progress, respectively—to LEAs not covered by the transition language in section 1116(f) of the NCLB Act.

Section 200.51 Notice of SEA Action

Statute: Under section 1116(c) of Title I, an SEA must publicize and disseminate the results of its review of an LEA to the LEA, teachers and other staff, parents, students, and the community. If an SEA identifies an LEA for improvement or corrective action, it must provide to the parents of each student enrolled in a school served by the LEA the reasons for the identification and an explanation of how the parents can participate in upgrading the LEA. The SEA also must publish and disseminate to parents and the public information on any corrective action it takes against an LEA.

Current Regulations: The current regulations governing SEA notice requirements related to its review of LEA progress reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: In general, proposed § 200.51 restates the statutory notice requirements triggered when an SEA reviews the progress of an LEA under § 200.50. Proposed § 200.51 also clarifies the manner in which SEAs must meet these notification requirements by providing guidelines for all communications with parents. These guidelines include the use of an understandable and uniform format for all required notices; the provision, to the extent practicable, of all notices in a language that parents can understand; the use of direct means of communication, such as sending materials home with students, as well as broader electronic means such as the Internet; and assurances that all notices respect the privacy of students and their families.

Reasons: Proposed § 200.51 reflects the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of and compliance with those requirements. The proposed regulations would help ensure that SEAs develop a uniform approach for communicating with parents throughout the LEA review and improvement process.

Section 200.52 LEA Improvement; and § 200.53 LEA Corrective Action

Statute: Under section 1116(c) of Title I, if an SEA identifies an LEA for improvement, the LEA must develop or revise an LEA improvement plan that incorporates scientifically based strategies to strengthen instruction in core academic subjects in schools served by the LEA, addresses the professional development needs of the LEA's instructional staff by reserving for that purpose not less than 10 percent of the funds received by the LEA under subpart A of this part, and includes specific measurable goals and targets consistent with adequate yearly progress requirements. The improvement plan also must incorporate extended learning time strategies, specify LEA and SEA responsibilities under the plan, and promote effective parental involvement. At the request of the LEA, the SEA must provide or arrange for technical or other assistance in developing and implementing the improvement plan. The LEA must implement its improvement plan not later than the beginning of the school year after the school year in which the SEA identified the LEA for improvement.

If an SEA identifies an LEA for corrective action, it must continue to make available technical assistance to the LEA and take at least one of the corrective actions specified in the statute. These corrective actions include deferring programmatic funds or reducing administrative funds, instituting a new curriculum, replacing LEA personnel, removing particular schools from the jurisdiction of the LEA and establishing alternative governance for these schools, appointing a receiver or trustee to administer the LEA in place of the superintendent and school board, and abolishing or restructuring the LEA. In addition, in conjunction with at least one of these actions, the SEA may authorize students to transfer, with transportation provided, from a school operated by the LEA to a higher-performing public school operated by another LEA.

Current Regulations: The current regulations governing LEA improvement and corrective action reflect provisions of section 1116 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: In general, §§ 200.52 and 200.53 restate the statutory requirements for LEA improvement and corrective action. Proposed § 200.52(a)(4) also clarifies that an LEA must implement its improvement plan not later than the beginning of the school year following the year in which the LEA administered the assessments that resulted in the SEA's identification of the LEA for improvement.

Reasons: Proposed §§ 200.52 and 200.53 reflect the Secretary's goal of providing clarity where the statute is ambiguous and reorganizing the statutory requirements to facilitate a better understanding of, and compliance with, those requirements. Proposed § 200.52(a)(4) clarifies the deadline for implementation of an LEA's improvement plan to be consistent with the statutory requirement that such implementation occur prior to the beginning of the school year following the identification for improvement.

Section 200.54 Rights of School and School District Employees

Statute: Section 1116(d) of Title I provides that none of the requirements concerning school and LEA improvement, corrective action, and restructuring shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or LEA employees under Federal, State, or local law (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between the employers and their employees.

Current Regulations: The current regulations do not address this requirement.

Proposed Regulations: Section 200.54(a) implements the statutory provision with respect to State or local laws or collective bargaining agreements in effect on January 8, 2002—the day the NCLB Act was signed into law. Section 200.54(b) makes clear, however, that any State or local laws, regulations, or policies adopted after January 8, 2002 may not exempt an LEA from taking actions it may be required to take by §§ 200.30–200.53 with respect to school and LEA employees. Similarly, § 200.54(c) requires an LEA to ensure that any collective bargaining agreements, memoranda of understanding or other similar agreements negotiated after January 8, 2002 do not prohibit actions that the LEA may be required to take with respect to school or school district employees to implement §§ 200.30–200.53.

Reasons: These proposed regulations are necessary to clarify that the statutory provision applies to laws, regulations, and agreements in effect on January 8, 2002. States and LEAs, however, have affirmative responsibilities to ensure that laws, regulations, policies, and agreements that take effect after January 8 do not prohibit actions that an LEA or

State may be required to take to implement §§ 200.30–200.53.

Qualifications of Teachers and Paraprofessionals

Sections 200.55 through 200.57 Highly Qualified Teachers

Statute: Under section 9101(23) of the ESEA, a highly qualified teacher in any public elementary or secondary school must hold at least a bachelor's degree and either (1) have obtained full State teacher certification or (2) have passed the State teacher licensing examination and hold a license to teach in that State. A teacher in a public charter school may instead meet the certification or licensure requirements of the State's public charter school law. No highly qualified teacher may have his or her certification or licensure requirements waived on an emergency, temporary, or provisional basis.

Section 9101(23) of the ESEA contains additional requirements for a highly qualified teacher depending on which grade level the teacher teaches and whether the teacher is new to the profession. An elementary school teacher who is new to the profession must have demonstrated subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum by passing a rigorous State test. Passing a rigorous State test can mean passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum.

A middle or secondary school teacher who is new to the profession must have demonstrated a high level of competency in each academic subject that he or she teaches by (1) passing a rigorous State academic subject test in each of those subjects or (2) successfully completing, in each of those subjects, an academic major, coursework equivalent to an undergraduate academic major, a graduate degree, or advanced certification or credentialing. Passing the rigorous State test can mean receiving a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects that the teacher teaches.

To be highly qualified, an elementary, middle, or secondary school teacher who is not new to the profession must meet the applicable requirements for a new teacher or must demonstrate competence in all academic subjects that he or she teaches based on a high objective uniform State standard of evaluation. To be considered a high objective uniform standard of evaluation, the State standard may involve multiple, objective measures of teacher competency and must satisfy these six criteria:

- Be set both for grade-appropriate academic subject matter knowledge and for teaching skills.
- Be aligned with challenging State academic content and student academic achievement standards and developed through consultation with core content specialists, teachers, principals, and school administrators.
- Provide objective and coherent information about the teacher's attainment of the core content knowledge in the applicable academic subject.
- Be applied uniformly to all teachers in the same academic subject and grade level throughout the State.
- Take into consideration, although not primarily, the time the teacher has been teaching the subject.
- Be available to the public on request.

Under section 1119(a)(1) of the ESEA, beginning with the first day of the 2002–2003 school year, each LEA receiving assistance under Title I, part A is responsible for applying these requirements to any public school teacher in a core academic subject supported by part A funds who is hired after that day. The LEA also must have a plan to ensure that all public school teachers teaching in core academic subjects in the LEA meet these requirements by the end of the 2005–2006 school year.

At the State level, section 1119(a)(2) of the ESEA requires each State to develop a plan to ensure that all teachers teaching in core academic subjects in the State meet these requirements by the end of the 2005–06 school year. The State plan must set annual measurable objectives for each LEA and school. At a minimum, these objectives must provide for an increase in the percentage of highly qualified teachers in each LEA and school and an annual increase in the percentage of teachers receiving high-quality professional development toward becoming highly qualified and successful. The objectives may include other appropriate measures to improve teacher qualifications.

Proposed Regulations: In addition to incorporating the statutory provisions described above, proposed §§ 200.55 through 200.57 would clarify that the requirements for teacher qualifications apply to teachers in core academic subjects. Proposed § 200.55(a)(2) would clarify that a teacher in a program supported by funds under subpart A of this part is a teacher in a targeted assistance program paid with Title I, part A funds and any teacher in a schoolwide program. Proposed § 200.56(a)(1)(iii) would clarify that a teacher meets the full certification and licensure requirements applicable to the years of experience the teacher possesses. For example, a first-year teacher would meet this requirement if State law requires that teacher to work on a probationary basis for a limited time. Proposed § 200.56(a)(1)(iii) would also clarify that a teacher meets the alternate route certification program requirements if the State permits the teacher to assume functions as a teacher and if the teacher is making satisfactory progress toward full certification as prescribed by the State and the program.

A teacher who does not teach a core academic subject, or an employee of a third-party contractor or supplemental services provider, would not be required to meet the teacher qualification requirements.

Reasons: Most of the provisions in proposed §§ 200.55 through 200.57 would clarify unclear areas of the statute. Exempting teachers who do not teach in core academic subjects from the teacher qualification requirements, for example, would recognize and encourage the traditional flexibility that States have exercised in setting qualification standards in such areas as vocational education. Yet extending this flexibility would not jeopardize the statute's overall objective of ensuring that, through high-quality instruction, all students reach proficient levels of State academic student achievement standards.

Sections 200.58 through 200.59 Paraprofessionals

Statute: Section 1119(c) through (g) of the ESEA contains requirements that apply to all paraprofessionals working in a program supported with Title I, part A funds and specify how each LEA receiving assistance under part A must ensure that those paraprofessionals meet those requirements.

Under section 1119(a), each paraprofessional hired after January 8, 2002, must have—

(1) Completed at least two years of study at an institution of higher education;

(2) Obtained an associate's or higher degree; or

(3) Met a rigorous standard of quality and be able to demonstrate, through a formal State or local academic assessment, knowledge of, and the ability to assist in instructing reading, writing, and mathematics or, as appropriate, in reading readiness,

writing readiness, and mathematics readiness.

Section 1119(d) requires a paraprofessional hired before January 8, 2002, to meet these requirements within four years of that date. Section 1119(e) excepts from these requirements a paraprofessional who serves primarily as a translator, if the paraprofessional is proficient in English and a language other than English. Section 1119(e) also excepts a paraprofessional working solely on parental involvement activities.

Section 1119(f) of the ESEA requires all paraprofessionals, regardless of hiring date, to have earned a secondary school diploma or the recognized equivalent.

Section 1119(g) of the ESEA specifies that a paraprofessional may provide one-on-one tutoring for eligible students, provided the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher; assist with classroom management, such as organizing instructional and other materials; provide assistance in a computer laboratory; conduct parental involvement activities; provide support in a library or media center; act as a translator; or provide, under the direct supervision of a teacher, instructional services.

Section 1119(g)(3) allows a paraprofessional to assume limited duties assigned to similar personnel who do not work in a program supported with part A funds. Those duties may include duties beyond classroom instruction or duties that do not benefit participating children, if the paraprofessional spends the same proportion of time on those duties that similar personnel in the school spend on the same duties.

Proposed regulations: Proposed §§ 200.58 and 200.59 would incorporate the statutory provisions governing paraprofessionals. In addition, proposed § 200.58(a)(2) would clarify that the term "paraprofessional" applies to an individual performing instructional support duties and not to an individual performing only non-instructional duties. Proposed § 200.58(a)(3) would clarify that a paraprofessional in a program supported by funds under subpart A of this part means a paraprofessional in a targeted assisted program paid with those funds and any paraprofessional in a schoolwide program.

Proposed § 200.59(b) would clarify the duties that paraprofessionals may perform. Proposed § 200.59(c)(2) would clarify that a paraprofessional works under the direct supervision of a teacher if the teacher plans the paraprofessional's instructional activities and evaluates the achievement of the students with whom the paraprofessional works. The paraprofessional also would be required to work in close physical proximity of the teacher.

Reasons: The clarifications in proposed §§ 200.58(a)(2) and 200.59(b) would reinforce the consistent application of the statutory concept that paraprofessional qualification requirements apply to the performance of instructional support duties. The clarification in proposed § 200.59(c)(2) on what would constitute working under the direct supervision of a teacher is intended to reinforce the statutory safeguards against the improper use of paraprofessionals to provide actual instruction.

Section 200.60 Expenditures for Professional Development

Statute: Section 1119(h) allows an LEA to use funds under Title I, part A for ongoing training and professional development to help teachers and paraprofessionals meet the new statutory requirements governing their qualifications.

Section 1119(l) requires the LEA, for each of fiscal years 2002 and 2003, to use a minimum of 5 percent and a maximum of 10 percent of its part A funds for professional development aimed at ensuring that teachers who are not qualified become highly qualified by the end of the 2005–2006 school year. For each subsequent fiscal year, the LEA must use a minimum of 5 percent of its part A funds for that purpose. Section 1119(j) of the ESEA permits an LEA to combine part A funds used for professional development with other Federal funds, including those from Title II of the ESEA, and funds from other sources.

Section 1119(k) prohibits a State from mandating, beyond the amounts specified in section 1119(l), the specific amount that an LEA, other than an LEA identified for improvement, may spend for professional development.

Proposed Regulations: Proposed § 200.60(a) would clarify that professional development funds may be used for paraprofessionals, as well as teachers. It also would clarify that the statutory minimum would not apply to an LEA, if most teachers and paraprofessionals in the LEA's school district already meet the statutory qualification requirements. Proposed § 200.60(b) would clarify that an LEA may use additional funds under subpart A of this part for ongoing training and professional development to help teachers and paraprofessionals carry out their subpart A activities.

Reasons: Proposed § 200.60(a) is needed to ensure consistent application of the requirements in section 1119 and elsewhere in the ESEA that permit flexibility in the use of funds for professional development. The requirements in section 1119 contemplate that an LEA will give priority for the use of professional development expenditures to helping teachers and paraprofessionals meet the requirements for highly qualified teachers and the qualifications for paraprofessionals, respectively. Nevertheless, in cases where that priority has been met, and to help teachers and paraprofessionals carry out their activities under subpart A, funds under subpart A remain available, notwithstanding the mandated percentages in section 1119, to an LEA for ongoing training and professional development.

Participation of Eligible Children in Private Schools

Statute: Section 1120 of Title I requires LEAs to provide on an equitable basis educational services or other benefits (1) to eligible children attending private schools; and (2) to the teachers and families of these children in Title I—supported parent involvement and professional development activities. It requires LEAs to develop these services in consultation with officials of the private schools and prescribes how an LEA determines that it is providing services on an equitable basis.

Current Regulations: The current regulations governing equitable participation of eligible children in private schools (34 CFR 200.10 through 200.13) implement provisions of section 1120 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed §§ 200.61 through 200.66 contain several provisions to address changes in the statute from the previous law and to clarify issues about which questions have arisen in the past. The proposed regulations would—

- Reiterate which children an LEA must serve;
- Clarify the equal expenditure requirement for instructional services;
- Define equitable expenditures for teachers and families of participating private school children;
- Require consultation on specified topics and expand those topics to include equitable services to teachers and families of participating private school students; and

• Clarify the flexibility that exists for private school officials to appoint representatives for consultation and sign-off purposes.

Additionally, the proposed regulations would remove regulations governing capital expenses (currently contained in §§ 200.15 through 200.17), because the authority for capital expenses expires October 1, 2003 and no funds were appropriated for fiscal year 2002.

Reasons: The existing regulations need to be updated to reflect the changes made by the NCLB Act. The proposed regulations also facilitate implementation of the requirements for providing services to eligible private school students, their teachers, and their families by ensuring that both public and private school officials have consistent and accurate information to implement fully the requirements of this section. Finally, the proposed regulations remove current provisions that are no longer needed.

Allocations to LEAS

Statute: Title I, part A, subpart 2 establishes the formulas the Secretary must use to determine LEA allocations for Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants (EFIG). The Secretary makes allocations to LEAs for all four programs using data that include children ages 5 through 17 in families with incomes below the poverty line based on the most recent satisfactory data available from the Census Bureau, in families not in poverty but receiving assistance under the Temporary Assistance for Needy Families program, in foster homes, and in locally operated institutions for neglected children. These data are then adjusted to account for each State's per-pupil expenditure for education. The Targeted Grants program further requires that the Secretary adjust the number of children counted in the formula to give greater weight to those LEAs that have higher numbers or percentages of formula children. The formula for EFIG, in addition to including the number of children counted in the Title I formula and each State's per-pupil expenditure, uses two other factors that measure (1) a State's effort to provide financial support for education compared to its relative wealth based on its per capita income (fiscal effort factor) and (2) the degree to which education expenditures among school districts within a State are equalized (equity factor). Once a State's EFIG allocation is determined using all four of these factors, the Secretary distributes funds among LEAs within a State using a process similar to Targeted Grants by giving a greater weight to those LEAs that have higher numbers or percentages of formula children. The weights used to determine EFIG allocations for each LEA will vary for each State depending on its equity factor. After initial LEA allocations are determined for all four programs using the factors described, the Secretary must guarantee that no LEA (depending on its formula child rate) receives less than 85, 90, or 95 percent of the amount allocated to it in the preceding year and ensure that no State in total receives less than the minimum amount prescribed in the statute.

Title I further authorizes States to use alternative data to determine eligibility and redistribute allocations that the Secretary determined for its "small" LEAs with fewer than 20,000 residents. This provision in the law responds to concerns about the quality of census poverty estimates for small LEAs, which account for roughly 79 percent of all districts nationally, but serve only 24 percent of all school-age children. Under this provision, SEAs have the flexibility to use alternative data, which the Secretary must approve, that better reflect the location of poor children among small LEAs in a State.

Current Regulations: The current regulations (contained in 34 CFR 200.20 through 200.26) outline procedures that an SEA uses to sub-allocate county Title I, part A allocations determined by the Secretary to LEAs. Because the Secretary now makes Title I, part A allocations directly to LEAs rather than to counties, these regulations are no longer applicable and would be replaced by the proposed regulations.

Proposed Regulations: Proposed §§ 200.70 through 200.75 would outline procedures SEAs must follow to adjust allocations determined by the Secretary to account for unique situations within their States.

Proposed § 200.70 would outline the general process that the Secretary follows to determine Title I, part A LEA allocations and establish the principle that an SEA may change those allocations in limited instances.

Proposed § 200.71 would clarify the eligibility thresholds for Basic Grants, Concentration Grants, Targeted Grants, and EFIG. For Basic Grants, an LEA is eligible if the number of children counted for allocation purposes is at least 10 and exceeds two percent of its school-age population ages 5 through 17. An LEA is eligible for a Concentration Grant if it is eligible for a Basic Grant and the number of formula children exceeds 6,500 or 15 percent of its school-age population. To be eligible for a Targeted Grant and EFIG, an LEA must have at least 10 formula children and a formula child rate of at least 5 percent. Targeted Grant and EFIG eligibility is based on the raw number of formula children without application of the weights provided in the statute.

Proposed § 200.72 would establish the general procedures an SEA must follow to adjust allocations determined by the Secretary to account for eligible "new" LEAs not on the Census list that the Secretary used to calculate LEA allocations and to reflect changes in district boundaries. Under this section, an SEA must first determine the number of Title I formula children for new LEAs that are not on the Secretary's list of LEAs, second determine the eligibility of these new LEAs for a Basic, Concentration, Targeted, and EFIG based on that number, and third provide the new LEAs with Title I funds based on the number of formula children that they draw from the LEAs that are on the Secretary's list for which the Department made allocations.

Proposed § 200.73 would outline the statutory "hold-harmless" provisions more clearly. The hold-harmless protection limits the maximum reduction in an LEA's allocation when compared to its prior year's allocation. Under each program, an LEA is guaranteed at least 85, 90, or 95 percent of the amount received in the preceding year. The hold-harmless percentage varies according to each LEA's formula child rate. For Targeted Grants and EFIG, the hold-harmless percentage is based on formula counts without application of the weights. Except when an SEA is calculating LEA reductions to account for reserves for school improvement, State administration, and the State academic achievement awards program, the hold-harmless percentage is applied separately for Basic Grants, Concentration Grants, Targeted Grants, and EFIG. With the exception of Concentration Grants, an LEA must be eligible for Basic Grants, Targeted Grants, and EFIG in order for the hold-harmless protection to apply. For Concentration Grants an LEA is entitled to its hold-harmless percentage based on its prior year amount for four consecutive years even if it no longer meets the eligibility thresholds.

Proposed § 200.74 would clarify the statutory procedures an SEA would follow if it chooses to use an alternative method to redistribute Title I, part A grants to LEAs with fewer than 20,000 total residents. Language in proposed § 200.74(a) would extend this flexibility to EFIG.

Proposed § 200.75 would outline the flexibility available to States in which their Title I formula count on January 8.

2002 makes up less than .25 percent of the national total. These "small" States may redistribute Concentration Grant allocations determined by the Secretary to LEAs in which the number or percentage of formula children equals or exceeds the Statewide average number or percentage.

Reasons: The proposed regulations are needed to give guidance to States on how to adjust the LEA allocations determined by the Secretary to account for circumstances unique to each State. The Secretary determines LEA allocations directly using a list of LEAs provided to us by the Census Bureau, which is based on LEAs that existed in school year 1999–2000. Because that list does not match the current universe of LEAs in many States, SEAs must adjust the Secretary's LEA allocations to account for newly created LEAs (*e.g.* charter schools and LEA consolidations) and district boundary changes. An SEA must also adjust our allocations to (1) reserve funds for school improvement, State administration, and the State academic achievement awards programs, (2) allow for the use of alternative data to redistribute Title I allocations determined by the Secretary among districts with fewer than 20,000 total residents, and (3) in the case of "small" States, redistribute Concentration Grant allocations determined by the Secretary to LEAs in which the number or percentage of formula children equal or exceed the Statewide average number or percentage of formula children.

In outlining SEA procedures for adjusting our allocations in the proposed regulations, we have tried to give SEAs as much flexibility as possible. For example, in proposed § 200.72 concerning a State's use of alternative data to redistribute allocations determined by the Secretary, we believe it appropriate to extend that flexibility to EFIG even though the statute specifically authorizes this flexibility only for Basic, Concentration, and Targeted Grants.

Section 200.78 Allocation of Funds to School Attendance Areas and Schools

Statute: Section 1113 of the Title I statute lays out the procedures an LEA must use to determine school-level Title I allocations once it receives its final allocation from the State. In calculating school-level allocations, an LEA must first determine which school attendance areas or schools are eligible to participate in Title I. As a general rule, a school attendance area is eligible if its percentage of children from low-income families is above 35 percent poverty or is at least as high as the percentage of children from low-income families in the LEA as a whole. An LEA may also serve a school in an ineligible area if the percentage of children from low-income families enrolled in that school is equal to, or greater than, the percentage of such children in a participating school attendance area. The statute also allows an LEA to continue serving an attendance area or school for one more year if it has become ineligible.

An LEA must serve eligible schools or attendance areas in rank order according to their poverty percentage. An LEA must serve those areas or schools above 75 percent poverty, including any middle or high schools, before it serves any with a poverty percentage below 75 percent. Once all of the attendance areas or schools with a poverty rate above 75 percent have been served, an LEA may serve lower-poverty areas and schools either by continuing with the district-wide ranking or by ranking its areas or schools below 75 percent poverty according to grade-span groupings.

When calculating the total number of children from low-income families, the LEA must include children from low-income families who reside in a participating area and attend private schools. If the same poverty data for public and private school children are not available, an LEA may use comparable poverty data for private school children. If complete actual poverty data are not available on private school children, an LEA may extrapolate, from actual data on a representative sample of private school children, the number of children from low-income families who attend private schools. An LEA may also correlate sources of data or apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that area. If an LEA selects a public school to participate on the basis of enrollment, rather than because it serves an eligible school attendance area, the LEA must determine an equitable way to count poor private school children in order to calculate the amount of Title I funds available to serve private school children. In making this determination an LEA must consult with private school officials.

If an LEA serves any attendance area with a poverty rate less than 35 percent, the LEA must allocate to all its participating school attendance areas or schools an amount per poor child that equals at least 125 percent of the LEA's part A allocation per poor child. If an LEA serves only areas with a poverty rate greater than 35 percent, it must allocate funds in rank order on the basis of the total number of poor children in each area or school but is not required to allocate a per-pupil amount of at least 125 percent.

Proposed Regulations: Proposed §§ 200.77 and 200.78 would clarify the within-district allocation procedures in section 1113 of the statute. Because the section 1113 requirements in the new law are largely the same as the old law, the proposed regulations change little from the old regulations.

Proposed § 200.77 would clarify what funds an LEA must reserve before allocating funds to school attendance areas and schools. An LEA must, for example, reserve funds needed to provide comparable services to children in local institutions for neglected children and for homeless children. An LEA is also required to reserve funds, as appropriate, to meet the (1) transportation and supplemental services requirements in § 200.48, unless the LEA meets those requirements with non-Title I funds, (2) the professional development requirements for LEAs identified for improvement under section 1116(c)(7)(A)(iii), (3) the professional development needs of teachers who are not highly qualified under section 1119(l), and (4) the parental support and involvement requirements in section 1118(a)(3)(A). An LEA may further reserve funds to meet the needs of children in local institutions for delinquent children and of neglected or delinquent children in community day school programs, to provide financial incentives and rewards (not to exceed 5 percent of the amount received by the LEA under Title I, part A) for teachers who serve schools identified for improvement, and to conduct other authorized activities such as school improvement and coordinated services.

Reasons: The proposed regulations are needed to clarify statutory provisions concerning how LEAs allocate Title I funds within school districts.

Fiscal Requirements

Section 200.79 Exclusion of Supplemental State and Local Funds From Supplement, Not Supplant and Comparability Determinations

Statute: Under section 1120A(d) of Title I, an LEA may exclude supplemental State and local funds from supplement, not supplant and comparability determinations if those supplemental funds meet the intent and purposes of Title I.

Current Regulations: Section 200.63 of the current regulations clarifies a similar provision in the old law by describing what criteria a State or local program

must meet in order to be excluded from supplement, not supplant and comparability determinations.

Proposed Regulations: Proposed § 200.79 would continue the provisions contained in § 200.63 of the current regulations by clarifying the criteria a State or local program must meet in order to be excluded from supplement, not supplant and comparability determinations. Section 200.79(b)(1)(i) reflects the change in the poverty threshold for schoolwide programs under section 1114.

Reasons: Proposed § 200.79 is needed to provide continued guidance to LEAs on what criteria a State or local program must fulfill in order to meet the intent and purposes of Title I.

Subpart C—Migrant Education Program

Subpart C of this part contains the program-specific regulations for the Migrant Education Program (MEP) authorized under Title I, part C of the statute. The proposed MEP regulations contained in §§ 200.81 through 200.88 are intended to clarify ambiguous or unclear provisions of the statute and replace §§ 200.40 through 200.45 of the current regulations.

Section 200.81 Program Definitions

Statute: Section 1309 of Title I provides a basic definition of a "migratory child."

Current Regulations: The current regulations (contained in 34 CFR 200.40) provide definitions of several additional terms that are necessary to interpret the statutory definition of a "migratory child."

Proposed Regulations: Proposed § 200.81 would make no changes to these additional program definitions included in the current regulations.

Reasons: The program definitions are included in these proposed regulations solely to provide, in one place, a complete set of the regulations published for subpart C.

Section 200.82 Use of Program Funds for Unique Program Function Costs

Statute: Section 1302 of Title I provides the authority for SEAs to operate the MEP either directly or though local operating agencies. This authority means that the MEP, unlike the Title I, part A program, is a State-operated, not simply a State-administered, program and, as such, may carry out particular operational functions that are unique to the program and beyond those usually carried out by SEAs under Title I, part A.

Current Regulations: The current regulations (contained in 34 CFR 200.41) clarify that SEAs may use MEP funds to carry out "other administrative activities," beyond those normally paid for by the SEA using its general Title I administrative set-aside funds. These "other administrative activities" are those that are unique to the MEP, including activities that are the same as, or similar to, those carried out by an LEA under Title I, part A. The current regulations provide several examples of such unique program costs.

Proposed Regulations: Proposed § 200.82 would repeat the current regulations, except that proposed § 200.82(e) has been revised to clarify that MEP funds may be used for the administrative aspects of developing the statewide needs assessment and comprehensive State plan that are required in section 1306(a) of the statute and proposed § 200.83.

Reasons: The revision to § 200.82(e) is intended to emphasize that SEAs may use MEP funds to conduct the statewide needs assessment and develop the statewide service delivery plan required under section 1306(a) of the statute and proposed § 200.83.

Section 200.83 Responsibilities of SEAs To Implement Projects Through a Comprehensive Needs Assessment and a Comprehensive State Plan for Service Delivery

Statute: Under section 1306(a) of Title I, each SEA receiving MEP funds must identify and address the special educational needs of migrant children in accordance with a comprehensive needs assessment and service delivery plan.

Proposed Regulations: Proposed § 200.83 would clarify the responsibilities of an SEA receiving MEP funds regarding development of a comprehensive needs assessment and service delivery plan. The proposed regulations would clarify that SEAs must deliver and evaluate MEP-funded services to migratory children based on a written plan that reflects the results of a current statewide needs assessment and identified performance targets. The proposed regulations would further clarify that this plan must be developed in consultation with the parents of migratory children, and that this requirement is applicable to both SEAs and their local operating agency projects.

Reasons: The provisions in proposed § 200.83 would outline to grantees the minimum requirements the Secretary believes necessary for the development of a comprehensive needs assessment and plan for service delivery required by section 1306(a) of Title I.

Section 200.84 Responsibilities of SEAs for Evaluating the Effectiveness of the MEP

Statute: Section 1304(c)(5) of Title I requires SEAs to provide an assurance that the effectiveness of the State MEP be determined, where feasible, using the same approaches and standards that will be used to assess Title I, part A.

Current Regulations: The current regulations (contained in 34 CFR 200.42) define the responsibilities of SEAs and their local projects in regard to assessing the effectiveness of their operations using the content and performance standards and, where possible, the assessments that the State has established for all children. The current regulations also note that, where it is not feasible to use the assessments the State has established for all children, *e.g.*, in short-term summer projects, the SEA and the local project still have a responsibility to use a reasonable process for assessing the effectiveness of the project.

Proposed Regulations: Proposed § 200.84 renames and simplifies the language of the regulatory requirements to clarify that SEAs have a responsibility to evaluate the MEP in terms of the performance targets established for migratory children in proposed § 200.83.

Reasons: The provisions of proposed § 200.84 simplify the regulatory language and align it with the requirements of proposed § 200.83.

Section 200.85 Responsibilities of SEAs and Operating Agencies for Improving Services to Migratory Children

Statute: Section 1304(b)(1)(D) of the new statute requires that measurable goals and outcomes be used when planning and implementing State and local MEP projects to address the needs of migratory children.

Current Regulations: The current regulations (contained in 34 CFR 200.43) explain that, while the specific school improvement requirements of section 1116 of the statute do not apply to the MEP, SEAs and their local projects are required to use assessment results to improve the design of services provided to migratory children.

Proposed Regulations: In proposed § 200.85, a minor conforming change has been made to the language of the current regulations that would clarify that it is the results of the evaluations conducted under proposed § 200.84 that are to be used to improve the design of services to migratory children.

Reasons: The minor conforming change is necessary to establish the

correct reference to the evaluations to be conducted under proposed § 200.84.

Section 200.86 Use of MEP funds in Schoolwide Projects

Statute: The new statute sets a new and higher threshold for combining MEP funds with other funds in a schoolwide program. Section 1306(b)(4) of Title I now requires that a schoolwide program that receives MEP funds must not only continue to "address" the identified needs of migratory children (as was required under the prior statute) but now must also "meet" these identified needs before it can combine the MEP funds with other funds in the schoolwide program. This new statutory requirement would be addressed in § 200.28 of the proposed subpart A regulations.

Current Regulations: The current regulations (contained in 34 CFR 200.44) note that a schoolwide program may combine MEP funds with other funds subject to meeting the requirements found in current § 200.8(c)(3)(ii)(B)(*1*).

Proposed Regulations: In proposed § 200.86, a minor conforming change would be made to clarify that the requirements for combining MEP funds are now to be found in proposed § 200.28(c)(3)(i) of the proposed subpart A regulations.

Reasons: The minor conforming change is necessary to establish the correct reference to the requirements of proposed § 200.28(c)(3)(i).

Section 200.87 Responsibilities for Participation of Children in Private Schools

Statute: Section 1304(c)(2) of Title I eliminates the reference, in the prior statute, to the applicability of section 1120 (Participation of Children in Private Schools) of Title I to the MEP. Instead, section 9501(b) of the new statute makes the private school provisions of section 9501 of the statute applicable to the MEP.

Current Regulations: The current regulations (contained in 34 CFR 200.45) note that the provisions of section 1120 regarding the participation of private school children are applicable to the MEP.

Proposed Regulations: In proposed § 200.87, a minor conforming change has been made that would clarify that the provisions regarding the participation of children in private schools contained in section 9501 of the new statute apply to the MEP.

Reasons: The minor conforming change is necessary to establish the correct reference to the requirements of section 9501 of the new statute.

Section 200.88 Exclusion of Supplemental State and Local Funds From Supplement, not Supplant and Comparability Determinations

Statute: Section 1120A(b) and (c) of the statute define the "comparability" and "supplement, not supplant" requirements that apply to Title I, part A. Subsection (d) of section 1120A provides an exception to the "comparability" and "supplement, not supplant" requirements for State and local funds that are expended for programs that meet the intent and purposes of Title I. The assurances in section 1304(c)(2) of Title I, in turn, adopt, by reference, the "comparability" and "supplement, not supplant" requirements in section 1120A.

Current Regulations: The current regulations (contained in 34 CFR 200.63) implement the exclusion from both the "comparability" and "supplement, not supplant" requirements in section 1120A(d), and, because of section 1304(c)(2), make that exclusion applicable, as a general regulatory provision, to the MEP as well as to Title I, part A. The exclusion is only for State and local funds spent for programs that meet the intent and purposes of Title I. That is, under current § 200.63(b), a State or local program is considered to meet the intent and purposes of Title I if it has basic aspects of the Title I, part A program—*e.g.*, if implemented in any schoolwide program or school that: (1) serves only children failing or at risk of failing to achieve to high standards, (2) provides supplementary educational services to meet the special educational needs of participating children, and (3) uses the State's system of assessments.

Proposed Regulations: Proposed § 200.88 would clarify that, for purposes of the MEP, only "supplemental" State or local funds that are used for programs specifically designed to meet the unique needs of migratory children may be excluded in terms of determining compliance with the "comparability" and "supplement, not supplant" provisions of the statute.

Reasons: In the past few years, the Department has learned of situations in which, with State approval, one or more LEAs paid the costs of their summer programs with a mixture of State compensatory education program funds and MEP funds. While these programs served both migratory and non-migratory children, they paid for a portion of services available to migrant students out of their MEP funds, excluding them from the level of services provided with the State compensatory education program funds to non-migratory children. While this arrangement is consistent with the letter of current § 200.63 as written, the Department believes that it violates the intent of section 1304(c)(2) of the statute.

The broad purpose of the section 1120A statutory exclusion is to encourage States and LEAs to use their own funds to support supplemental programs without concern for "comparability" and "supplement, not supplant" considerations. The Department believes that the requirement in section 1304(c)(2), that the MEP be implemented "in a manner consistent with the objectives of" the section 1120A "comparability" and "supplement, not supplant" requirements, is best interpreted, for purposes of the MEP, to exclude only State and local funds used in programs that are specifically designed, like the MEP itself, to serve migratory children. Proposed § 200.88 would serve to establish this reasonable interpretation through regulations.

Subpart D—Prevention Programs for Children and Youth Who Are Neglected, Delinquent, or At-risk of Dropping Out

Statute: Title I, part D of the ESEA authorizes two programs that address the needs of neglected, delinquent, and at-risk children and youth. The basic provisions of this part of the new law are the same as the old law. Subpart 1 of part D establishes the State agency Neglected or Delinquent (N or D) program, which provides Federal financial assistance to State agencies that operate educational programs for children and youth in institutions or community day programs for N or D children and for youth in adult correctional facilities. Subpart 2 of part D authorizes a program that provides assistance to LEAs to serve children and youths who are in locally operated correctional facilities (including institutions for delinquent children) or are at risk of dropping out of school. Funds for this program are generated by counts of children, which the Department collects annually for Title I, part A purposes, that live in locally operated institutions for delinquent children or are in locally operated correctional facilities. States award Subpart 2 funds to LEAs with high numbers or percentages of youth residing in correctional facilities or institutions for delinquent children to conduct programs that provide an array of services to meet the special needs of at-risk children and youth.

Current Regulations: The current regulations in 34 CFR 200.50 and 200.51 contain several specific program

definitions and set out requirements for SEAs to follow when providing the Department with enrollment data used to determine State agency N or D allocations.

Proposed Regulation: The proposed regulations would continue the regulations with no change in policy.

Reasons: The Department needs the proposed regulations in order to collect the annual data used for determining part D, Subpart 1 allocations, and to provide guidance and clarification about the children, who are eligible for services under part D, subpart 2.

The definitions in proposed § 200.90 would ensure that the data used by the Secretary to allocate funds are based on common definitions. For example, the definition of a regular program of instruction is included to ensure that the children counted are enrolled in actual educational programs that involve classroom instruction supported by State funds. The definitions of institutions for neglected or delinquent children and youth further require that the average length of stay in the institution be at least 30 days. This continues current policy and ensures that the children counted for allocation purposes are in an institution for a sufficient length of time so that educational services provided by the institution can be effective.

Proposed § 200.92, which outlines the requirements for an SEA in providing the Department with enrollment data for use in determining State Agency N or D allocations, clarifies, for example, how States adjust their enrollment counts to account for the length of the school year as required by the statute.

Subpart E—General Provisions Section 200.100 Reservation of Funds for School Improvement, State Administration, and the State Academic Achievement Award Program; and § 200.103 Definitions

Statute: Section 1003 of Title I requires that an SEA reserve two percent of its funds received under Title I, part A for school improvement activities authorized in section 1116 and 1117 of the statute. The amount reserved rises to four percent beginning in 2004. Section 1004 authorizes an SEA to reserve up to the greater of one percent or $400,000 from funds it receives under Title I, part A, part C (Migrant Education program) and part D (State Agency Neglected or Delinquent program) for State administration. Section 1117(c)(2)(A) further authorizes the SEA to reserve up to five percent of the Title I, part A amount received in excess of the prior-year amount for the State academic awards program.

Current Regulations: The current regulations (contained in 34 CFR 200.60 through 200.65) outline procedures for how a State reserves funds for State administration and school improvement activities, provides guidance to an SEA on the use of funds reserved for State administration, and defines certain terms that apply to all programs covered by the regulations.

Proposed Regulations: Proposed § 200.100 would clarify new procedures an SEA must follow when reserving funds for school improvement, State administration, and the State academic achievement awards program. When reserving funds for these activities, the SEA must first reserve funds for school improvement activities authorized under sections 1116 and 1117 of the Title I statute. In reserving funds for school improvement, an SEA may not reduce the sum of the Title I, part A allocations each LEA would receive below the total amount the LEA received in the preceding year. After reserving funds for school improvement, an SEA may then reserve funds for State administration and the State academic achievement awards program. In reducing LEA allocations, the SEA has the flexibility of (1) ensuring that no LEA receives, in total, less than 85, 90, or 95 percent, as applicable, of the amount it received in the preceding year (depending on its percentage of formula children) or (2) reducing each LEA at the same rate even if that results in an LEA receiving less than its hold-harmless amount.

In addition, proposed §§ 200.100 and 200.103 would (1) address the use of funds reserved for State administration and (2) provide certain definitions that apply to all of the programs governed by the proposed regulations.

Reasons: The provisions in proposed § 200.100 work in combination with the requirements outlined in proposed §§ 200.70 through 200.75 for allocating Title I, part A funds to an LEA by establishing the procedures that an SEA follows when reserving funds for school improvement, State administration, and the State academic achievement awards program. The key issue in proposed § 200.100 is whether the Department should give an SEA the flexibility to reduce an LEA below its hold-harmless amount when reserving funds for State administration and the State academic awards program so that all LEAs would contribute proportionately to these activities.

In the past, an SEA has always followed Title I's hold-harmless provisions when reserving funds for State administration, provided there was enough money available to honor the hold-harmless requirement. However, in ensuring that no LEA receives less than its hold-harmless amount, any LEA that gained additional funds under the Title I formula had to give up all or part of its gain in order to bring any LEA falling below its hold-harmless amount up to that level. As a result, any LEA that gained funds under the formula contributed a disproportionately larger share of its Title I allocations to support these Statewide activities, while an LEA funded at its hold-harmless level contributed nothing.

In order to provide more equity in how each LEA contributes to the reserve for State administration and the State academic achievement award program, the language in proposed § 200.100(d) would give a State the option of proportionately reducing each LEA's total Title I allocation even if the outcome results in some LEAs receiving less than their hold-harmless amounts. If the SEA adopts this option, every LEA would contribute an equal proportion of its Title I allocation to these Statewide activities.

The language in proposed § 200.103 is the same as in the current regulations and would define certain terms that are used throughout the proposed regulations.

Executive Order 12866

1. Potential Costs and Benefits

The proposed costs have been reviewed in accordance with Executive Order 12866. Under the terms of the Order, the Department has assessed the costs and benefits of this regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Department has determined that the benefits of the proposed regulations justify the costs. The Department has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the programs.

Summary of Benefits and Costs

As noted elsewhere, most of the regulations the Secretary proposes to

issue through this notice would add clarity where the statute is ambiguous or unclear or would reorganize statutory provisions to facilitate a better understanding of their requirements. The proposed regulations would not add significantly to the costs of implementing the programs authorized by ESEA Title I or alter the benefits that the Secretary believes will be obtained through successful implementation. The vast majority of the implementation costs and benefits will stem from the underlying legislation.

The programs authorized by Title I of the Elementary and Secondary Education Act, as reauthorized by the No Child Left Behind Act of 2001, have as their goal the education of all students, including students who are economically disadvantaged, limited English proficient, disabled, migrant, residing in institutions for neglected or delinquent youth and adults, or members of other groups typically considered "at risk," so that they can achieve to challenging content and academic achievement standards. Thus, the benefits that will be obtained through the reauthorized Title I and its implementing regulations are those primarily of a more educated society. National data sets and studies by prominent researchers have demonstrated repeatedly that better education has major benefits, both economic and non-economic, not only for the individuals who receive it but for society as a whole. Nations that invest in quality education enjoy higher levels of growth and productivity, and a high-quality education system is an indispensable element of a strong economy and successful civil society.

Data from the 1999 Current Population Survey, conducted by the Census Bureau, indicate that adults with a high school diploma (but no further education) had a median income of $23,061, compared to $17,015 for those with no diploma and $15,098 for those with less than 9 years of education. High school graduates are more likely to continue their education and receive the additional skills and knowledge necessary to compete for jobs in a high-technology, knowledge-driven economy. Scholars have also found strong, positive correlations between higher levels of schooling and higher lifetime earnings, higher savings rates, and reduced costs of job search.

Researchers have, in addition, found that more and better education correlates with other outcomes that, while not directly related to employment and earnings, have a major, positive benefit on society. More educated individuals lead healthier lives and have lower mortality rates. They are more likely to donate time and money to charity, and to vote in elections. Researchers have demonstrated the intergenerational impact of education, as the educational level of parents is a positive predictor of children's health, cognitive development, education, occupational status, and future earnings. In addition, education is negatively correlated with criminal activity and incarceration, and more educated mothers are less likely to have daughters who give birth out of wedlock as teens.

The reauthorized Title I programs, and the regulations that the Department is proposing for those programs, will also lead to improvements in the qualifications of teachers, both in programs supported by Title I and in schools generally. The Department believes that the new teacher qualifications provisions will also convey major benefits on students and on society generally. Research has found that the academic success of children is more dependent on teacher quality than on any other variable, with the exception of family background; it is, in other words, the most important school-related determinant of achievement.

The major costs to States and to LEAs imposed by the statute and the proposed regulations are the costs of administering the Title I programs: at the State level, distributing funds to LEAs, monitoring LEA activities, providing technical assistance, and carrying out other activities specified in the statute, and, at the local level, administering programs in schools and classrooms, providing professional development to teachers and other staff, and ensuring program accountability, among other things. The Department believes that these activities will be financed through the appropriations for Title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources. For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 200.12 Single State accountability system.*)
- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easy to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) has been prepared in accordance with the Regulatory Flexibility Act. It involves proposed rules under Title I of the Elementary and Secondary Education Act, as amended by the NCLB Act. Its provisions require LEAs, without regard to size, to take certain actions to improve student academic achievement.

1. Reasons for, and Objectives of, Proposed Rules

The purpose of the proposed rules is to implement recent changes to Title I of the ESEA made by the NCLB Act.

2. Legal Basis

We are proposing the rules under the authority in section 1901(a) of Title I.

3. Small Entities Subject to the Proposed Rules

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under Title I programs.

4. Reporting, Recordkeeping and Other Compliance Requirements

Among other requirements, LEAs must: (1) Publicize and disseminate the results of its annual progress review, (2)

notify parents and teachers of any school identified for improvement or subject to corrective action or restructuring, (3) publicize and disseminate information regarding any action taken by the school and LEA to address the problems that led to the identification, and (4) for schools subject to restructuring, prepare a plan to carry out alternative governance arrangements. An LEA also must maintain in its records, and provide to the SEA, a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred.

5. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap or conflict with the proposed rules.

6. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. We believe there are no regulatory alternatives as the portions of these regulations that would affect small entities restate statutory requirements. Moreover, activities required under these proposed regulations would be financed through the appropriations for Title I programs, and the responsibilities encompassed in the law and regulations would not impose a financial burden that small entities would have to meet from non-Federal resources.

7. Request for Comments

Little data are available that would permit a separate analysis of how the proposed changes affect small entities in particular. Therefore, the Secretary specifically invites comments on the differential effects of the proposed regulations on small entities, and whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of Title I programs. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be considered in the preparation of the final regulations and the accompanying Final Regulatory Flexibility Analysis, and will be placed in the public comment file.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications.

"Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although we do not believe these proposed requirements would have federalism implications as defined in Executive Order 13132, we encourage State and local elected officials to review them and to provide comments.

Paperwork Reduction Act of 1995

Title I, part A of the Elementary and Secondary Education, as amended by the No Child Left Behind Act, contains several provisions that require State educational agencies (SEAs), Local educational agencies (LEAs), or schools to collect or disseminate information. They are: Sections 200.26, 200.27, 200.28, 200.30, 200.31, 200.34, 200.36, 200.36, 200.37, 200.38, 200.39, 200.41, 200.42, 200.43, 200.45, 200.46, 200.47, 200.49, 200.50, 200.51, 200.52, 200.57, and 200.62. Sections 200.12, 200.13, and 200.33 are covered under OMB control number 1810–0576. Section 200.53 is covered under OMB control number 1810–0516. Sections 200.70 through 200.75 are covered under OMB control numbers 1810–0620 and 1810–0622. Section 200.91 is covered under OMB control number 1810–0060.

SEAs must: (1) Provide annual notice to potential supplemental service providers of the opportunity to provide such services, and (2) maintain an updated list of approved providers from which parents may select, and (3) publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by each approved provider and for withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving supplemental services. As part of their responsibility to annually review the progress of each LEA to determine whether schools are making adequate yearly progress, SEAs must: (1) Provide, before the beginning of the next school year, the results of academic assessments administered as part of the State assessment system in a given school year to LEAs, (2) publicize and disseminate the results of the State review, (3) notify parents when LEAs are identified for improvement or corrective action, including providing information on the corrective action, and (4) notify the Secretary of Education of major factors that have significantly affected student academic achievement in schools identified for improvement. Additionally, under Title I, part D, States must submit a count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected children and youth and adult correctional institutions.

As part of their responsibility to annually review the progress of schools to determine whether they are making adequate yearly progress, each LEA must (1) publicize and disseminate the results of its annual progress review, (2) notify parents and teachers of any school identified for improvement or subject to corrective action or restructuring, (3) publicize and disseminate information regarding any action taken by the school and LEA to address the problems that lead to the identification, and (4) for schools subject to restructuring, prepare a plan to carry out alternative governance arrangements. LEAs also must maintain in their records, and provide to the SEA, written affirmation signed by officials of each private school with participating children, or appropriate private school representatives, that the required consultation has occurred.

At the school level, an eligible school choosing to operate a schoolwide program must develop a comprehensive schoolwide plan and maintain records demonstrating that it addresses the intents and purpose of each Federal program included.

The total estimated burden hours for SEA activities covered by the paperwork requirements is 55,952 across 52 SEAs. The total estimated burden hours for LEA activities covered by the paperwork requirements is 959,480 hours across 13,335 LEAs. The total estimated burden hours for school-level activities is 1,410,976 hours. Almost all the burden hours at the LEA and school level result from statutory requirements that require: (1) LEAs to prepare restructuring plans for schools that do not make adequate yearly progress after one full year in corrective action, and (2) schools seeking to operate schoolwide programs to develop schoolwide program plans. The actual impact on an individual LEA or school will vary depending on whether the LEA or school is subject to these specific requirements.

§ 200.83 outlines an SEA's responsibility to implement its State Title I, part C (Migrant Education) program through a comprehensive needs assessment and a comprehensive State plan for service delivery. § 200.84 outlines an SEA's responsibility for evaluating the effectiveness of its Title I, part C (Migrant Education) program. The yearly estimated public reporting burden for the collection of information to implement these two proposed regulatory requirements is 19,405 hours.

The Office of Management and Budget is currently reviewing the information collections pertaining to this regulation. We invite comments on the paperwork sections of this proposed regulation by September 5, 2002. If you want to comment on the information collection requirements, please send your comments to Jacquelyn C. Jackson at the address listed under **ADDRESSES.**

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(Catalog of Federal Domestic Assistance Numbers: 84.010 Improving Programs Operated by Local Educational Agencies)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of children with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs-education, Indians-education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: July 30, 2002.

Rod Paige,

Secretary of Education.

The Secretary proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 is revised to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

2. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.10 (as revised in a final rule published in the **Federal Register** on July 5, 2002 (67 FR 45038)) to read as follows:

Participation in NAEP

2a. In subpart A to part 200, remove the undesignated center headings "Schoolwide Programs", "Participation of Eligible Children in Private Schools", "Capital Expenses", Procedures for the Within-State Allocation of LEA Program Funds", and "Procedures for the Within-District Allocation of LEA Program Funds".

3. Revise § 200.11 and place it under the new undesignated center heading "Participation in NAEP" in subpart A of part 200 to read as follows:

§ 200.11 Participation in NAEP.

(a) *State participation.* Beginning in the 2002–2003 school year, each State that receives funds under subpart A of this part must participate in biennial State academic assessments of fourth and eighth grade reading and mathematics under the State National Assessment of Educational Progress (NAEP), if the Department pays the costs of administering those assessments.

(b) *Local participation.* In accordance with section 1112(b)(1)(F) of the Act, and notwithstanding section 441(d)(1) of the National Education Statistics Act, an LEA that receives funds under subpart A of this part, if selected, must participate in the State-NAEP assessments referred to in paragraph (a) of this section.

(Authority: 20 U.S.C. 6311(c)(2); 6312(b)(1)(F), 9010(d)(1))

4. Add a new undesignated center heading to subpart A of part 200 and place it after revised § 200.11 to read as follows:

State Accountability System

5. Revise § 200.12 and place it under the new undesignated center heading "State Accountability System" in subpart A of part 200 to read as follows:

§ 200.12 Single State accountability system.

(a)(1) Each State must demonstrate in its State plan that the State has developed and is implementing, beginning with the 2002–2003 school year, a single, statewide accountability system.

(2) The State's accountability system must be effective in ensuring that all public elementary and secondary schools and LEAs in the State make adequate yearly progress as defined in §§ 200.13 through 200.20.

(b)(1) Except as provided in paragraph (b)(2) of this section, each State must use the same accountability system for all public elementary and secondary schools and all LEAs in the State.

(2) The State may, but is not required to, subject schools and LEAs not participating under subpart A of this part to the requirements of section 1116 of the Act.

(c) The State's accountability system must—

(1) Be based on the State's academic standards under § 200.1, academic assessments under § 200.2, and other academic indicators under § 200.19;

(2) Take into account the achievement of all public elementary and secondary school students;

(3) Include sanctions and rewards that the State will use to hold public elementary and secondary schools and LEAs accountable for student achievement and for making adequate yearly progress;

(4) Establish guidelines to ensure that alternate assessments are used only when appropriate for students with disabilities who have the most significant cognitive disabilities; and

(5) Require schools and LEAs to report the percentage of students taking an alternate assessment.

(Authority: 20 U.S.C. 6311(b)(2)(A))

6. Add a new undesignated center heading to subpart A of part 200 and place it after revised § 200.12 to read as follows:

Adequate Yearly Progress

7. Revise § 200.13 and place it under the new undesignated center heading "Adequate Yearly Progress" in subpart A of part 200 to read as follows:

§ 200.13 Adequate yearly progress in general.

(a) Each State must demonstrate in its State plan what constitutes adequate yearly progress of the State and of all public schools and LEAs in the State—

(1) Toward enabling all public school students to meet the State's student academic achievement standards; while

(2) Working toward the goal of narrowing the achievement gaps in the State, its LEAs, and its schools.

(b) A State must define adequate yearly progress, in accordance with §§ 200.14 through 200.20, in a manner that—

(1) Except as provided in paragraph (c) of this paragraph, applies the same high standards of academic achievement to all public school students in the State;

(2) Is statistically valid and reliable;

(3) Results in continuous and substantial academic improvement for all students;

(4) Measures the progress of all public schools, LEAs, and the State—

(i) Based primarily on the State's academic assessment system under § 200.2; or

(ii) Consistent with paragraph (d) of this section;

(5) Measures progress separately for reading/language arts and for mathematics;

(6) Is the same for all public schools and LEAs in the State; and

(7) Consistent with § 200.7, applies the same intermediate goals, annual measurable objectives, and other academic indicators under §§ 200.17 through 200.19 to each of the following:

(i) All public school students.

(ii) Students in each of the following subgroups:

(A) Economically disadvantaged students.

(B) Students from major racial and ethnic groups.

(C) Students with disabilities, as defined in section 9101(5) of the Act.

(D) Students with limited English proficiency, as defined in section 9101(25) of the Act.

(c)(1) For students with the most significant cognitive disabilities who take an alternate assessment, a State may, through a documented and validated standards-setting process, define achievement standards that—

(i) Are aligned with the State's academic content standards; and

(ii) Reflect professional judgment of the highest learning standards possible for those students.

(2)(i) In calculating adequate yearly progress for schools, a State may permit the use of the achievement standards in paragraph (c)(1) of this section, provided that schools in the aggregate do not exceed the State and LEA limitations in paragraph (c)(2)(ii) of this section.

(ii) In calculating adequate yearly progress for States and LEAs, a State may not permit the use of the achievement standards in paragraph (c)(1) of this section for more than 0.5 percent of all students in the grades assessed.

(iii) For purposes of calculating adequate yearly progress for States and LEAs, the State must require that grade-level academic content and achievement standards established under § 200.1 apply to any students taking alternate assessments that exceed the number established under paragraph(c)(2)(ii) of this section.

(d)(1) The State must establish a way to hold accountable schools—

(i) In which no grade level is assessed under the State's academic assessment system; or

(ii) Whose purpose is to serve students for less than a full academic year.

(2) The State is not required to administer a formal assessment to meet the requirement in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 6311(b)(2))

8. Add § 200.14 and place it under the new undesignated center heading "Adequate Yearly Progress" in subpart A of part 200 to read as follows:

§ 200.14 Components of adequate yearly progress.

A State's definition of adequate yearly progress must include all of the following:

(a) A timeline in accordance with § 200.15.

(b) Starting points in accordance with § 200.16.

(c) Intermediate goals in accordance with § 200.17.

(d) Annual measurable objectives in accordance with § 200.18.

(e) Other academic indicators in accordance with § 200.19.

(Authority: 20 U.S.C. 6311(b)(2))

9. Revise §§ 200.15 through 200.17 and place them under the new undesignated center heading "Adequate Yearly Progress" in subpart A of part 200 to read as follows:

§ 200.15 Timeline.

(a) Each State must establish a timeline for making adequate yearly progress that ensures that, not later than the 2013–2014 school year, all students in each group described in § 200.13(b)(7) will meet or exceed the State's proficient level of academic achievement.

(b) Notwithstanding subsequent changes a State may make to its academic assessment system or its definition of adequate yearly progress under §§ 200.13 through 200.20, the State may not extend its timeline for all students to reach proficiency beyond the 2013–2014 school year.

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.16 Starting points.

(a) Using data for the 2001–2002 school year, each State must establish starting points in reading/language arts and in mathematics for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement.

(b) Each starting point must be based, at a minimum, on the higher of the following percentages of students at the proficient level:

(1) The percentage in the State of proficient students in the lowest-achieving subgroup of students under § 200.13(b)(7)(ii).

(2) The percentage of proficient students in the school in which is enrolled the student at the 20th percentile of the State's total enrollment. The State must determine this percentage as follows:

(i) Rank each school in the State according to the percentage of proficient students in the school.

(ii) Determine 20 percent of the total enrollment in all schools in the State.

(iii) Beginning with the lowest-ranked school, add the number of students enrolled in each school until reaching the school that represents 20 percent of the total enrollment in all schools.

(iv) Identify the percent of proficient students in the school identified in paragraph (iii).

(c)(1) Except as permitted under paragraph (c)(2) of this section, each starting point must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7).

(2) A State may use the procedures under paragraph (b) of this section to establish separate starting points by grade span.

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.17 Intermediate goals.

Each State must establish intermediate goals that increase in equal increments over the period covered by the timeline under § 200.15 as follows:

(a) The first incremental increase must take effect not later than the 2004–2005 school year.

(b) Each following incremental increase must occur within three years.

(Authority: 20 U.S.C. 6311(b)(2))

10. Add §§ 200.18 and 200.19 and place them under the new undesignated center heading "Adequate Yearly Progress" in subpart A of part 200 to read as follows:

§ 200.18 Annual measurable objectives.

(a) Each State must establish annual measurable objectives that—

(1) Identify for each year a minimum percentage of students that must meet or exceed the proficient level of academic achievement on the State's academic assessments; and

(2) Ensure that all students meet or exceed the State's proficient level of academic achievement within the timeline under § 200.15.

(b) The State's annual measurable objectives—

(1) Must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7); and

(2) May be the same for more than one year, consistent with the State's intermediate goals under § 200.17.

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.19 Other academic indicators.

(a) Each State must include in its definition of adequate yearly progress—

(1) The graduation rate for public high schools, which means—

(i) The percentage of students who graduate from high school with a regular diploma (not including a GED) in the standard number of years; or

(ii) Another definition, developed by the State and approved by the Secretary in the State plan, that more accurately measures the high school graduation rate; and

(2) At least one academic indicator for public elementary schools and at least one academic indicator for public middle schools, such as those under paragraph (b) of this section.

(b) The State may include additional academic indicators determined by the State, including, but not limited to, the following:

(1) Additional State or locally administered assessments not included in the State assessment system under § 200.2.

(2) Grade-to-grade retention rates.

(3) Attendance rates.

(4) Percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

(c) The State may, but is not required to, increase the goals of its other academic indicators over the course of the timeline under § 200.15.

(d) In carrying out paragraphs (a) and (b) of this section, a State must ensure that the indicators are—

(1) Valid and reliable;

(2) Consistent with relevant, nationally recognized professional and technical standards, if any; and

(3) Consistent throughout the State within each grade span.

(e) Except as provided in § 200.20(b)(2), a State—

(1) May not use the indicators in paragraphs (a) and (b) of this section to reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring if those indicators were not used; but

(2) May use the indicators to identify additional schools for school improvement, corrective action, or restructuring.

(Authority: 20 U.S.C. 6311(b)(2))

11. Revise §§ 200.20 and 200.21 and place them under the new undesignated center heading "Adequate Yearly Progress" in subpart A of part 200 to read as follows:

§ 200.20 Making adequate yearly progress.

A school or LEA makes adequate yearly progress if it complies with paragraph (c) and with either paragraph (a) or (b) of this section separately in reading/language arts and in mathematics.

(a) A school or LEA makes adequate yearly progress if each group of students under § 200.13(b)(7) meets or exceeds the State's—

(1) Annual measurable objectives under § 200.18; and

(2) Other academic indicators consistent with § 200.19(e).

(b) If students in any group under § 200.13(b)(7) in a school or LEA do not meet the State's annual measurable objectives under § 200.18, the school or LEA makes adequate yearly progress if—

(1) The percentage of students in that group below the State's proficient achievement level decreased by at least 10 percent from the preceding year; and

(2) That group made progress on one or more of the State's academic indicators under § 200.19 or the LEA's academic indicators under § 200.70(a)(2)(ii).

(c)(1) A school or LEA makes adequate yearly progress if, consistent with paragraph (e) of this section—

(i) Not less than 95 percent of the students enrolled in each group under § 200.13(b)(7) take the State assessments under § 200.2; and

(ii) The group is of sufficient size to produce statistically reliable results under § 200.7(a).

(2) If a group under § 200.13(b)(7) is not of sufficient size to produce statistically reliable results under paragraph (c)(1)(ii) of this section, the State must still include students in that group in its State assessments under § 200.2.

(d) For the purpose of determining whether a school or LEA has made adequate yearly progress, a State may establish a uniform procedure for averaging data that includes one or more of the following:

(1) *Averaging data across school years.* (i) A State may average data from the school year for which the determination is made with data from one or two school years immediately preceding that school year.

(ii) If a State averages data across school years, the State—

(A) May not delay—

(*1*) Implementing the assessments under § 200.5(a)(2) and (b);

(*2*) Determining adequate yearly progress under §§ 200.13 through 200.20 on the basis of assessments under § 200.5(a)(1);

(*3*) Reporting data resulting from the assessments under § 200.5(a)(2) and (b); or

(*4*) Implementing the requirements in section 1116 of the Act; but

(B) May delay determining adequate yearly progress on the basis of assessments under § 200.5(a)(2) until it has data from two or three years to average.

(2) *Combining data across grades.* Within each subject area, the State may combine data across grades in a school or LEA.

(e)(1) In determining the adequate yearly progress of an LEA, a State must include all students who were enrolled in schools in the LEA for a full academic year, as defined by the State.

(2) In determining the adequate yearly progress of a school, the State may not include students who were not enrolled in that school for a full academic year, as defined by the State.

(Authority: 20 U.S.C. 6311(b)(2), (b)(3)(C)(xi))

§ 200.21 Adequate yearly progress of a State.

For each State that receives funds under subpart A of this part and under subpart 1 of part A of Title III of the Act, the Secretary must, beginning with the 2004–2005 school year, annually review whether the State has—

(a) Made adequate yearly progress as defined in §§ 200.13 through 200.20 for each group of students in § 200.13(b)(7); and

(b) Met its annual measurable achievement objectives relating to the development and attainment of English proficiency by limited English

proficient students under section 3122(a) of the Act.

(Authority: 20 U.S.C. 7325)

12. Remove and reserve §§ 200.22 through 200.24 and place them under the new undesignated center heading "Adequate Yearly Progress" in subpart A of part 200.

12a. Add a new undesignated center heading following §200.24 to read as follows:

Schoolwide Programs

13. Revise § 200.25 and place it under the undesignated center heading "Schoolwide Programs" in subpart A of part 200 to read as follows:

§ 200.25 Schoolwide program purpose and eligibility.

(a) *Purpose.* (1) The purpose of a schoolwide program is to improve academic achievement throughout a school so that all students demonstrate proficiency related to the State's academic content and student academic achievement standards, particularly those students furthest away from demonstrating proficiency.

(2) The improved achievement is to result from improving the entire educational program of the school.

(b) *Eligibility.* (1) A school may operate a schoolwide program if—

(i) The school's LEA determines that the school serves an eligible attendance area or is a participating school under section 1113 of the Act; and

(ii) For the initial year of the schoolwide program—

(A) The school serves a school attendance area in which not less than 40 percent of the children are from low-income families; or

(B) Not less than 40 percent of the children enrolled in the school are from low-income families.

(2) In determining the percentage of children from low-income families under paragraph (b)(1)(ii) of this section, the LEA may use a measure of poverty that is different from the measure or measures of poverty used by the LEA to identify and rank school attendance areas for eligibility and participation under subpart A of this part.

(c) *Participating students and services.* A school operating a schoolwide program is not required to—

(1) Identify particular children under subpart A of this part as eligible to participate in a schoolwide program; or

(2) Provide services to those children that supplement the services they would receive, as otherwise required by section 1120A(b) of the Act.

(d) *Funding.* An eligible school may consolidate and use funds or services under subpart A of this part, together with other Federal, State, and local funds that the school receives, to operate a schoolwide program in accordance with §§ 200.25 through 200.28.

(Authority: 20 U.S.C. 6314)

14. Add a new § 200.26 and place it under the undesignated center heading "Schoolwide Programs" in subpart A of part 200 to read as follows:

§ 200.26 Development and evaluation of program plan.

(a) *Development of plan.* (1) A school must develop for its schoolwide program a comprehensive schoolwide program plan that describes how the school will improve academic achievement so that all students demonstrate proficiency on the State's academic content and student academic achievement standards, particularly those students furthest away from demonstrating proficiency.

(2) The school's process for developing its schoolwide plan must—

(i) Reflect an understanding of the school's academic strengths and needs related to the State's academic content and student academic achievement standards;

(ii) Focus on scientifically based research that reflects best practices for improving student academic achievement;

(iii) Involve the individuals who will have responsibility for implementing the schoolwide program plan in accordance with paragraph (d)(2) of this section;

(3) Reflect a process that occurs over time; and

(4) Provide for regular evaluation of the program's effectiveness related to the State's academic content and student academic achievement standards.

(b) *Comprehensive needs assessment.* An eligible school that desires to operate a schoolwide program must first conduct a comprehensive needs assessment of the entire school that—

(1) Takes into account the needs of migratory children as defined in section 1309(2) of the Act;

(2) Is developed with the participation of individuals who will carry out the comprehensive schoolwide program plan as that plan is described in paragraph (c) of this section;

(3) Is based on information about all students in the school, including all the demographic groups of students listed in section 1111(b)(2)(C) of the Act in relation to the State academic standards described in § 200.1;

(4) Reflects current achievement data that will help the school understand the subjects and skills in which teaching and learning need to be improved; and

(5) Reflects data that will identify—

(i) Students and groups of students who are not yet achieving to the State academic content standards and the State student academic achievement standards; and

(ii) The specific academic needs of those students that are to be addressed in the schoolwide program plan.

(c) *Comprehensive schoolwide program plan.* (1) After conducting the comprehensive needs assessment described in paragraph (b) of this section, the school must develop a comprehensive plan for assisting all students to achieve proficiency in relation to the State's academic content and student academic achievement standards.

(2) The school must develop the comprehensive plan in consultation with the LEA and its school support team or other technical assistance provider under section 1117 of the Act.

(3) The comprehensive plan must—

(i) Describe how the school will carry out the implementation components described in § 200.27;

(ii) Describe how the school will use resources under this part and from other sources to carry out the implementation components described in § 200.27; and

(iii) Include a list of SEA and LEA programs and other Federal programs under § 200.28 that the school will consolidate in the schoolwide program.

(d) *Schoolwide program planning process.* (1) The school must develop the comprehensive schoolwide program plan, including the comprehensive needs assessment over a one-year period unless—

(i) The LEA, after considering the recommendations of its technical assistance providers under section 1117 of the Act, determines that less time is needed to develop and implement the schoolwide program; or

(ii) The school is operating a schoolwide program on or before January 7, 2002, in which case the school may continue to operate its program, but must amend its existing plan to reflect the provisions of §§ 200.25 through 200.28 during the first year that it receives funds under subpart A of this part.

(2) The school must develop the comprehensive plan with the involvement of parents and other members of the community to be served and individuals who will carry out the plan, including—

(i) Teachers, principals, and administrators, including administrators of programs described in other parts of Title I of the Act;

(ii) If appropriate, pupil services personnel, technical assistance providers, and other school staff; and

(iii) If the plan relates to a secondary school, students from the school.

(3) If appropriate, the school must develop the comprehensive plan in coordination with other programs including those under Reading First, Early Reading First, Even Start, the Carl D. Perkins Vocational and Technical Education Act of 1998, and the Head Start Act.

(4) The comprehensive plan must remain in effect for the duration of the school's participation under §§ 200.25 through 200.28.

(5) The school must review and revise the plan as necessary to reflect changes in the schoolwide program or changes in State academic content standards and student academic achievement standards.

(e) *Evaluation.* The school must include in the comprehensive schoolwide program plan provisions to—

(1) Evaluate the implementation and results achieved by the schoolwide program using the State's annual assessment data, other State indicators of academic achievement, and other locally determined indicators of achievement;

(2) Determine whether the schoolwide program has been effective in increasing the extent to which students are meeting the State's academic content and student academic achievement standards, particularly those students who had been furthest from achieving those standards; and

(3) Amend the plan, as necessary, based on the results of this evaluation, to ensure continuous improvement of the schoolwide program.

(Authority: 20 U.S.C. 6314)

15. Revise §§ 200.27 and 200.28 and place them under the undesignated center heading "Schoolwide Programs" in subpart A of part 200 to read as follows:

§ 200.27 Schoolwide program implementation components.

The schoolwide program must include the following implementation components:

(a) *Schoolwide reform strategies.* The schoolwide program must incorporate reform strategies in the overall instructional program. Those strategies must—

(1) Address the needs of all children in the school, particularly the needs of students furthest away from demonstrating proficiency related to the State's academic content and student academic achievement standards; and

(2) Reflect effective methods and instructional practices that are based on scientifically based research, as defined in section 9101 of the Act, and that—

(i) Improve the teaching of reading/language arts, mathematics, and, at least by the 2005–2006 school year, science, consistent with the State's academic content and student academic achievement standards throughout the school;

(ii) Strengthen the core academic program; and

(iii) Increase the amount and quality of learning time.

(b) *Instruction by highly qualified teachers.* A schoolwide program must ensure instruction by highly qualified teachers and ongoing professional development by—

(1) Including strategies to ensure instruction in the schoolwide program by highly qualified teachers, as defined in § 200.56;

(2)(i) Providing high-quality and ongoing professional development in accordance with sections 1119 and 9101 of the Act for teachers, principals, paraprofessionals and, if appropriate, pupil services personnel, parents, and other staff; and

(ii) Aligning professional development with the State's academic content and student academic achievement standards;

(3) Devoting sufficient resources to carry out effectively the professional development activities described in paragraph (b)(2) of this section; and

(4) Including teachers in professional development activities regarding the use of academic assessments described in § 200.2 and, thus, to enable them to provide information on, and to improve, the achievement of individual students and the overall instructional program.

(c) *Parental involvement.* (1) A schoolwide program must involve parents in the planning, review, and improvement of the comprehensive schoolwide program plan.

(2) A schoolwide program must have a parental involvement policy that—

(i) Includes strategies to increase parental involvement in accordance with sections 1118 and 9101 of the Act, such as family literacy services;

(ii) Describes how the school will provide individual student academic assessment results, including an interpretation of those results, to the parents of students who participate in the academic assessments required by § 200.1;

(iii) Makes the comprehensive schoolwide program plan available to the LEA, parents, and the public; and

(iv) Provides the information contained in the comprehensive schoolwide program plan in an understandable and uniform format and, to the extent practicable, in a language that the parents can understand.

(d) *Additional support.* A schoolwide program must improve the entire educational program of a school, particularly with respect to those students who are furthest away from demonstrating proficiency in attaining the State's academic content and academic achievement standards. The schoolwide program must—

(1) Include activities to ensure that students who experience difficulty attaining the proficient or advanced levels of academic achievement standards required by § 200.1 will be provided with effective, timely additional support;

(2) Ensure that those students' difficulties are identified on a timely basis; and

(3) Provide sufficient information to teachers on which to base effective assistance to those students.

(e) *Transition.* A schoolwide program in an elementary school must include plans for assisting preschool students in the successful transition from early childhood programs, such as Head Start, Even Start, Early Reading First, or a preschool program under Individuals with Disabilities Act or a State-run preschool program, to the schoolwide program.

(Authority: 20 U.S.C. 6314)

§ 200.28 Use of funds in a schoolwide program.

(a) *Supplemental funds.* A school operating a schoolwide program must use funds available to carry out §§ 200.25 through 200.28 only to supplement funds that would, in the absence of funds under subpart A of this part, be made available from non-Federal sources for the school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency.

(b) *Prekindergarten Program.* A school that is eligible for a schoolwide program under § 200.1 may use funds made available under subpart A of this part to establish or enhance prekindergarten programs for children below the age of 6, such as Even Start programs or Early Reading First programs.

(c) *Availability of other Federal funds.* (1) In addition to funds under subpart A of this part, a school may use for its schoolwide program Federal funds of any program administered by the Secretary that is included in the most recent notice published for this purpose in the **Federal Register**.

(2) For the purposes of §§ 200.25 through 200.28, the authority of the school to consolidate funds from other Federal programs also applies to the consolidation of services provided to the school with those funds.

(3) If a school consolidates and uses funds from other programs in its schoolwide program, the school must meet the following requirements:

(i) *Migrant education.* Before the school chooses to consolidate in its schoolwide program funds received under part C of Title I of the Act, the school must—

(A) Use these funds first to meet the identified unique educational needs of migratory students that result from the effects of their migratory lifestyle, and to permit these students to participate effectively in school; and

(B) Document that these needs have been met.

(ii) *Indian education.* The school may consolidate funds received under subpart 1 of part A of Title VII of the Act if the parent committee established by the LEA under section 7114(c)(4) of the Act approves the inclusion of these funds.

(iii) *Special education.* (A) The school may consolidate funds received under part B of the Individuals with Disabilities Education Act (IDEA).

(B) However, the amount of funds consolidated may not exceed the amount received by the LEA under part B of IDEA for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA, and multiplied by the number of children with disabilities participating in the schoolwide program.

(C) The school may also consolidate funds received under section 8003(d) of the Act (Impact Aid) for children with disabilities in a schoolwide program.

(D) A school that consolidates funds under part B of IDEA or section 8003(d) of the Act may use those funds for any activities under its schoolwide program plan but must comply with all other requirements of part B of IDEA, to the same extent it would if it did not consolidate funds under part B of IDEA or section 8003(d) of the Act in the schoolwide program.

(4)(i) Except as provided in paragraph (c)(4)(ii) of this section, a school that consolidates and uses in a schoolwide program funds from different Federal programs administered by the Secretary—

(A) Is not required to meet the statutory or regulatory requirements of that program applicable at the school level;

(B) Is not required to maintain separate fiscal accounting records, by program, that identify the specific activities supported by those particular funds;

(C) Is required to maintain records that demonstrate that the schoolwide program, as a whole, addresses the intent and purposes of each of the Federal programs whose funds were consolidated to support the schoolwide program; and

(D) Is required to ensure that the needs of the intended beneficiaries of those other programs are addressed.

(ii) A school that chooses to use funds from other Federal programs must meet the requirements of those other programs relating to—

(A) Health;

(B) Safety;

(C) Civil rights;

(D) Student and parental participation and involvement;

(E) Services to private school children;

(F) Maintenance of effort;

(G) Comparability of services;

(H) Use of Federal funds to supplement, not supplant non-Federal funds in accordance with paragraph (a) of this section; and

(I) Distribution of funds to SEAs or LEAs.

(Authority: 20 U.S.C. 6314, 1413(a)(s)(D), 6396(b), 7703(d), 7815(c))

16. Place reserved § 200.29 under the undesignated center heading "Schoolwide Programs" in subpart A of part 200.

17. Add a new undesignated center heading to subpart A of part 200 and place it after reserved § 200.29 to read as follows:

LEA and School Improvement

18. Transfer §§200.30 through 200.69 to subpart A of part 200.

19. Revise § 200.30 and place it under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.30 Local review.

(a) Each LEA receiving funds under subpart A of this part must use the results of the State assessment system described in § 200.2 to review annually the progress of each school served under subpart A of this part to determine whether the school is making adequate yearly progress in accordance with § 200.20.

(b)(1) In reviewing the progress of an elementary or secondary school operating a targeted assistance program, an LEA may choose to review the progress of only the students in the school who are served, or are eligible for services, under subpart A of this part.

(2) The LEA may exercise the option under paragraph (b)(1) of this section so long as the students selected for services under the targeted assistance program are those with the greatest need for academic assistance, consistent with the requirements of section 1115 of the Act.

(c)(1) To determine whether schools served under subpart A of this part are making adequate yearly progress, an LEA also may use any additional academic assessments or any other academic indicators described in the LEA's plan.

(2) These indicators—

(i) May identify additional schools for school improvement or in need of corrective action or restructuring;

(ii) May permit a school to make adequate yearly progress if, in accordance with § 200.20(b), the school also reduces the percentage of a student group failing to meet the State's proficient level of academic achievement by at least 10 percent; and

(iii) With the exception described in paragraph (ii), may not be used to reduce the number of or change the schools that would otherwise be identified for school improvement, corrective action, or restructuring if the LEA did not use these additional indicators.

(d) The LEA must publicize and disseminate the results of its annual progress review to parents, teachers, principals, schools, and the community.

(e) The LEA must review the effectiveness of actions and activities that schools are carrying out under subpart A of this part with respect to parental involvement, professional development, and other activities assisted under subpart A of this part.

(Authority: 20 U.S.C. 6316(a) and (b))

20. Add new §§ 200.31 through 200.39 and place them under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.31 Opportunity to review school-level data.

(a) Before identifying a school for school improvement, corrective action, or restructuring, an LEA must provide the school with an opportunity to review the school-level data, including academic assessment data, on which the proposed identification is based.

(b)(1) If the principal of a school that an LEA proposes to identify for school improvement, corrective action, or restructuring believes, or a majority of the parents of the students enrolled in the school believe, that the proposed identification is in error for statistical or other substantive reasons, the principal

may provide supporting evidence to the LEA.

(2) The LEA must consider the evidence referred to in paragraph (b)(1) of this section before making a final determination.

(c) The LEA must make public a final determination of the status of the school with respect to identification not later than 30 days after it provides the school with the opportunity to review the data on which the proposed identification is based.

(Authority: 20 U.S.C. 6316(b)(2))

§ 200.32 Identification for school improvement.

(a)(1) An LEA must identify for school improvement any elementary or secondary school served under subpart A of this part that fails, for two consecutive years, to make adequate yearly progress as defined under §§ 200.13 through 200.20.

(2) The LEA must make the identification described in paragraph (a)(1) of this section before the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make adequate yearly progress for a second consecutive year.

(b)(1) An LEA must treat any school that was in the first year of school improvement status on January 7, 2002 as a school that is in the first year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must, in accordance with § 200.44, provide public school choice to all students in the school.

(c)(1) An LEA must treat any school that was identified for school improvement for two or more consecutive years on January 7, 2002 as a school that is in its second year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must—

(i) In accordance with § 200.44, provide public school choice to all students in the school; and

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school.

(d) An LEA may remove from improvement status a school otherwise subject to the requirements of paragraphs (b) or (c) of this section if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school makes adequate yearly progress for a second consecutive year.

(e) An LEA may, but is not required to, identify a school for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school fails to make adequate yearly progress for a second consecutive year.

(f) If an LEA identifies a school for improvement after the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make adequate yearly progress for a second consecutive year—

(1) The school is subject to the requirements of school improvement under § 200.39 immediately upon identification, including the provision of public school choice; and

(2) The LEA must count that school year as a full school year for the purposes of subjecting the school to additional improvement measures if the school continues to fail to make adequate yearly progress.

(Authority: 20 U.S.C. 6316)

§ 200.33 Identification for corrective action.

(a) If a school served by an LEA under subpart A of this part fails to make adequate yearly progress by the end of the second full year after the LEA has identified the school for improvement under § 200.32, the LEA must identify the school for corrective action under § 200.42.

(b) If a school was subject to corrective action on January 7, 2002, the LEA must—

(1) Treat the school as a school identified for corrective action under § 200.42 for the 2002–2003 school year; and

(2) Not later than the first day of the 2002–2003 school year—

(i) In accordance with § 200.44, provide public school choice to all students in the school; and

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school.

(c) An LEA may remove from corrective action a school otherwise subject to the requirements of paragraphs (a) or (b) of this section if, on the basis of assessments administered by the LEA during the 2001–2002 school year, the school makes adequate yearly progress for a second consecutive year.

(Authority: 20 U.S.C. 6316)

§ 200.34 Identification for restructuring.

(a) If a school continues to fail to make adequate yearly progress after one full school year of corrective action under § 200.42, the LEA must prepare a restructuring plan for the school and make arrangements to implement the plan.

(b) If the school continues to fail to make adequate yearly progress, the LEA must implement the restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (a) of this section.

(Authority: 20 U.S.C. 6316(b)(8))

§ 200.35 Delay and removal.

(a) An LEA may delay, for a period not to exceed one year, implementation of requirements under the second year of school improvement, under corrective action, or under restructuring if—

(1) The school makes adequate yearly progress for one year; or

(2) The school's failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA or school.

(b)(1) The LEA may not take into account a period of delay under paragraph (a) of this section in determining the number of consecutive years of the school's failure to make adequate yearly progress.

(2) Except as provided in paragraph (c) of this section, the LEA must subject the school to further actions as if the delay never occurred.

(c) If any school identified for school improvement, corrective action, or restructuring makes adequate yearly progress for two consecutive school years, the LEA may not, for the succeeding school year—

(1) Subject the school to the requirements of school improvement, corrective action, or restructuring; or

(2) Identify the school for improvement.

(Authority: 20 U.S.C. 6316(b))

§ 200.36 Communication with parents.

(a) Throughout the school improvement process, the State, LEA, and school must communicate with the parents of each child attending the school.

(b) The State, LEA, and school must ensure that, regardless of the method or media used, it provides information to parents—

(1) In an understandable and uniform format, including alternative formats upon request; and

(2) To the extent practicable, in a language that parents can understand.

(c) The State, LEA, and school must provide information to parents—

(1) Directly, through such means as regular mail or, if possible, e-mail; and

(2) Through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families.

(d) All communications must respect the privacy of students and their families.

(Authority: 20 U.S.C. 6316)

§ 200.37 Notice of identification for improvement, corrective action, or restructuring.

(a) If an LEA identifies a school for improvement or subjects the school to corrective action or restructuring, the LEA must promptly notify the parent or parents of each child enrolled in the school of this identification.

(b) The notice referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the identification means, and how the school compares in terms of academic achievement to other elementary and secondary schools served by the LEA and the SEA involved.

(2) The reasons for the identification.

(3) An explanation of how parents can become involved in addressing the academic issues that led to identification.

(4)(i) An explanation of the parents' option to transfer their child to another public school, in accordance with § 200.44.

(ii) The explanation of the parents' option to transfer must include, at a minimum, information on the performance of the school or schools to which the child may transfer.

(iii) The explanation may include other information on the school or schools to which the child may transfer, such as—

(A) A description of any special academic programs or facilities;

(B) The availability of before– and after-school programs; and

(C) The professional qualifications of teachers in the core academic subjects.

(5)(i) If the school is in its second year of improvement or subject to corrective action or restructuring, a notice explaining how parents can obtain supplemental educational services for their child in accordance with § 200.45.

(ii) The annual notice of the availability of supplemental educational services must include, at a minimum, the following:

(A) The identity of approved providers of those services available within the LEA, including providers of technology-based or distance-learning supplemental educational services, or providers that make services reasonably available in neighboring LEAs.

(B) A brief description of the services, qualifications, and demonstrated effectiveness of the providers referred to in paragraph (b)(5)(ii)(A) of this section.

(Authority: 20 U.S.C. 6316)

§ 200.38 Information about action taken.

(a) An LEA must publish and disseminate to parents and the public information regarding any action taken by a school and the LEA to address the problems that led to the LEA's identification of the school for improvement, corrective action, or restructuring.

(b) The information referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the school is doing to address the problem of low achievement.

(2) An explanation of what the LEA or SEA is doing to help the school address the problem of low achievement.

(3) If applicable, a description of specific corrective actions or restructuring plans, including opportunities for parental participation.

(Authority: 20 U.S.C. 6316(b))

§ 200.39 Responsibilities resulting from identification for school improvement.

(a) If an LEA identifies a school for school improvement under § 200.32—

(1) The LEA must—

(i) Not later than the first day of the school year following identification, with the exception described in § 200.32(f), provide all students enrolled in the school with the option to transfer, in accordance with § 200.44, to another public school served by the LEA; and

(ii) Ensure that the school receives technical assistance in accordance with § 200.40; and

(2) The school must develop or revise a school improvement plan in accordance with § 200.41.

(b) If a school fails to make adequate yearly progress by the end of the first full school year after the LEA has identified it for improvement under § 200.32, the LEA must—

(1) Continue to provide all students enrolled in the school with the option to transfer, in accordance with § 200.44, to another public school served by the LEA;

(2) Continue to ensure that the school receives technical assistance in accordance with § 200.40; and

(3) Make available supplemental educational services in accordance with § 200.45.

(Authority: 20 U.S.C. 6316(b))

21. Revise §§ 200.40 through 200.45 and place them under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.40 Technical assistance.

(a) An LEA that identifies a school for improvement under § 200.32 must ensure that the school receives technical assistance as the school develops and implements its improvement plan under § 200.41 and throughout the plan's duration.

(b) The LEA may arrange for the technical assistance to be provided by one or more of the following:

(1) The LEA through the statewide system of school support and recognition described under section 1117 of the Act.

(2) The SEA.

(3) An institution of higher education that is in full compliance with all the reporting provisions of Title II of the Higher Education Act of 1965.

(4) A private not-for-profit organization, a private for-profit organization, an educational service agency, or another entity with experience in helping schools improve academic achievement.

(c) The technical assistance must include the following:

(1) Assistance in analyzing data from the State assessment system, and other examples of student work, to—

(i) Identify and address problems in instruction and problems in implementing requirements for parental involvement and professional development under subpart A of this part; and

(ii) Identify the responsibilities of the school and LEA in developing solutions to these problems.

(2) Assistance in identifying and implementing professional development and instructional strategies and methods that have been proven effective, through scientifically based research, in addressing the specific instructional issues that caused the LEA to identify the school for improvement.

(3) Assistance in analyzing and revising the school's budget so that the school allocates its resources more effectively to the activities most likely to—

(i) Increase student academic achievement; and

(ii) Remove the school from school improvement status.

(Authority: 20 U.S.C. 6316(b)(4))

§ 200.41 School improvement plan.

(a)(1) Not later than three months after an LEA has identified a school for

improvement under § 200.32, the school must develop or revise a school improvement plan for approval by the LEA.

(2) The school must consult with parents, school staff, the LEA, and outside experts in developing or revising its school improvement plan.

(b) The school improvement plan must cover a 2-year period.

(c) The school improvement plan must—

(1) Specify the responsibilities of the school, the LEA, and the SEA serving the school under the plan, including the technical assistance to be provided by the LEA under § 200.40;

(2)(i) Incorporate strategies, drawn from scientifically based research, that will strengthen instruction in the core academic subjects at the school and address the specific academic issues that caused the LEA to identify the school for improvement; and

(ii) May include a strategy for implementating of a comprehensive school reform model described in section 1606 of the Act;

(3) With regard to the school's core academic subjects, adopt policies and practices most likely to ensure that all groups of students described in § 200.13(b)(7) and enrolled in the school will meet the State's proficient level of achievement, as measured by the State's assessment system, not later than the 2013–2014 school year;

(4) Establish measurable goals that—

(i) Address the specific reasons for the school's failure to make adequate progress; and

(ii) Promote, for each group of students described in § 200.13(b)(7) and enrolled in the school, continuous and substantial progress that ensures that all these groups meet the State's annual measurable objectives described in § 200.18;

(5) Provide an assurance that the school will spend not less than 10 percent of the allocation it received under subpart A of this part for each year that the school is in school improvement status, for the purpose of providing high-quality professional development to the school's teachers, principal, and, as appropriate, other instructional staff, consistent with section 9101(34) of the Act, that will contribute to removing the school from school improvement status and that—

(i) Directly addresses the academic achievement problem that caused the school to be identified for improvement; and

(ii) Is provided in a manner that affords increased opportunity for participating in that professional development;

(6) Incorporates a teacher mentoring program;

(7) Includes strategies to promote effective parental involvement at the school; and

(8) As appropriate, incorporates activities before school, after school, during the summer, and during any extension of the school year.

(d)(1) Within 45 days of receiving a school improvement plan, the LEA must—

(i) Establish a peer-review process to assist with review of the plan;

(ii) Promptly review the plan;

(iii) Work with the school to make any necessary revisions; and

(iv) Approve the plan if it meets the requirements of this section.

(2) The LEA may condition approval of the school improvement plan on—

(i) Inclusion of one or more of the corrective actions specified in § 200.42; or

(ii) Feedback on the plan from parents and community leaders.

(e) A school must implement its school improvement plan immediately on approval of the plan by the LEA.

(Authority: 20 U.S.C. 6316(b)(3))

§ 200.42 Corrective action.

(a) *Definition.* "Corrective action" means action by an LEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure of a school that led the LEA to identify the school for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the school;

(2) Is designed to increase substantially the likelihood that each group of students described in § 200.13(b)(7) and enrolled in the school will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Requirements.* If an LEA identifies a school for corrective action, in accordance with § 200.33, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Continue to ensure that the school receives technical assistance consistent with the requirements of § 200.40.

(3) Make available supplemental educational services in accordance with § 200.45.

(4) Take at least one of the following corrective actions:

(i) Replace the school staff who are relevant to the school's failure to make adequate yearly progress.

(ii) Institute and fully implement a new curriculum, including the provision of appropriate professional development for all relevant staff, that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students and of enabling the school to make adequate yearly progress.

(iii) Significantly decrease management authority at the school level.

(iv) Appoint one or more outside experts to advise the school on—

(A) Revising the school improvement plan developed under § 200.41 to address the specific issues underlying the school's continued failure to make adequate yearly progress and resulting in identification for corrective action; and

(B) Implementing the revised improvement plan.

(v) Extend for that school the length of the school year or school day.

(vi) Restructure the internal organization of the school.

(Authority: 20 U.S.C. 6316(b)(7))

§ 200.43 Restructuring.

(a) *Definition.* "Restructuring" means a major reorganization of a school's governance arrangement by an LEA that—

(1) Makes fundamental reforms, such as significant changes in the school's staffing and governance, to improve student academic achievement in the school;

(2) Has substantial promise of enabling the school to make adequate yearly progress as defined under §§ 200.13 through 200.20; and

(3) Is consistent with State law.

(b) *Requirements.* If the LEA identifies a school for restructuring in accordance with § 200.34, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Make available supplemental educational services in accordance with § 200.45.

(3) Prepare a plan to carry out one of the following alternative governance arrangements:

(i) Reopen the school as a public charter school.

(ii) Replace all or most of the school staff, which may include the principal, who are relevant to the school's failure to make adequate yearly progress.

(iii) Enter into a contract with an entity, such as a private management

company, with a demonstrated record of effectiveness, to operate the school as a public school.

(iv) Turn the operation of the school over to the SEA, if permitted under State law and agreed to by the State.

(v) Any other major restructuring of a school's governance arrangement consistent with this section.

(4) Provide to parents and teachers—

(i) Prompt notice that the LEA has identified the school for restructuring; and

(ii) An opportunity for parents and teachers to—

(A) Comment before the LEA takes any action under a restructuring plan; and

(B) Participate in the development of any restructuring plan.

(c) *Implementation.* If a school continues to fail to make adequate yearly progress, the LEA must implement the restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (b)(3) of this section.

(d) *Rural schools.* On request, the Secretary will provide technical assistance for developing and carrying out a restructuring plan to any rural LEA—

(1) That has fewer than 600 students in average daily attendance at all of its schools; and

(2) In which all of the schools have a School Locale Code of 7 or 8, as determined by the National Center for Education Statistics.

(Authority: 20 U.S.C. 6316(b)(8))

§ 200.44 Public school choice.

(a) *Requirements.* (1) In the case of a school identified for school improvement under § 200.32, for corrective action under § 200.33, or for restructuring under § 200.34, the LEA must provide all students enrolled in the school with the option to transfer to another public school served by the LEA.

(2) The LEA must offer this option not later than the first day of the school year following the year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring.

(3) The schools to which students may transfer under paragraph (a)(1) of this section—

(i) May not include schools that—

(A) The LEA has identified for improvement, corrective action, or restructuring; or

(B) Are persistently dangerous as determined by the State; and

(ii) May include one or more public charter schools..

(4) If more than one school meets the requirements of paragraph (a)(3) of this section, the LEA must—

(i) Provide to parents of students eligible to transfer under paragraph (a)(1) of this section a choice of more than one such school; and

(ii) Take into account the parents' preferences among the choices offered under paragraph (a)(4)(i) of this section.

(5) The LEA must offer the option to transfer described in this section unless it is prohibited by State law in accordance with paragraph (b) of this section.

(6) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action before January 8, 2002, the State must ensure that the LEA provides a public school choice option in accordance with paragraph (a)(1) of this section not later than the first day of the 2002–2003 school year.

(b) *Limitation on State law prohibition.* An LEA may invoke the State law prohibition on choice described in paragraph (a)(4) of this section only if the State law prohibits choice through restrictions on public school assignments or the transfer of students from one public school to another public school.

(c) *Desegregation plans.* (1) If an LEA is subject to a desegregation plan, whether that plan is voluntary, court-ordered, or required by a Federal or State administrative agency, the LEA is not exempt from the requirement in paragraph (a)(1) of this section.

(2) In determining how to provide students with the option to transfer to another school, the LEA may take into account the requirements of the desegregation plan.

(3) If the desegregation plan forbids the LEA from offering the transfer option required under paragraph (a)(1) of this section, the LEA must secure appropriate changes to the plan to permit compliance with paragraph (a)(1) of this section.

(d) *Priority.* (1) In providing students the option to transfer to another public school in accordance with paragraph (a)(1) of this section, the LEA must give priority to the lowest-achieving children from low-income families.

(2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part.

(e) *Status.* Any public school to which a student transfers under paragraph (a)(1) of this section must ensure that the student is enrolled in classes and other activities in the school in the same manner as all other students in the school.

(f) *Duration of transfer.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must permit the student to remain in that school until the student has completed the highest grade in the school.

(2) The LEA's obligation to provide transportation for the student may be limited under the circumstances described in paragraph (h) of this section and in § 200.48.

(g) *No eligible schools within an LEA.* If all public schools to which a student may transfer within an LEA are identified for school improvement, corrective action, or restructuring, the LEA—

(1) Must, to the extent practicable, establish a cooperative agreement for a transfer with one or more other LEAs in the area; and

(2) May offer supplemental educational services to eligible students under § 200.45 in schools in their first year of school improvement under § 200.39.

(h) *Transportation.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must, consistent with § 200.48, provide or pay for the student's transportation to the school.

(2) The LEA's obligation to provide transportation for the student ends at the end of the school year in which the school from which the student transferred is no longer identified by the LEA for school improvement, corrective action, or restructuring.

(i) *Students with disabilities and students covered under section 504 of the Rehabilitation Act of 1973 (Section 504).* For students with disabilities under the IDEA and students covered under Section 504, the public school choice option must provide a free appropriate public education as that term is defined in section 602(8) of the IDEA or 34 CFR 104.33, respectively.

(Authority: 20 U.S.C. 6316)

§ 200.45 Supplemental educational services.

(a) *Definition.* "Supplemental educational services" means tutoring and other supplemental academic enrichment services that are—

(1) In addition to instruction provided during the school day;

(2) Specifically designed to—

(i) Increase the academic achievement of eligible students as measured by the State's assessment system; and

(ii) Enable these children to attain proficiency in meeting State academic achievement standards; and

(3) Of high quality and research-based.

(b) *Requirement.* (1) If an LEA identifies a school for improvement under § 200.39(b), corrective action under § 200.33, or restructuring under § 200.34, the LEA must arrange, consistent with paragraph (d) of this section, for each eligible student in the school to receive supplemental educational services from a State-approved provider selected by the student's parents.

(2) Except as described in §§ 200.32(d) and 200.33(c), if the school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the State must ensure that the LEA makes available, consistent with paragraph (d) of this section, supplemental educational services to all eligible students not later than the first day of the 2002–2003 school year.

(3) The LEA must, consistent with § 200.48, continue to make available supplemental educational services to eligible students until the end of the school year in which the LEA is making those services available.

(4)(i) At the request of an LEA, the SEA may waive, in whole or in part, the requirement that the LEA make available supplemental educational services if the SEA determines that—

(A) None of the providers of those services on the list approved by the SEA under § 200.47 makes those services available in the area served by the LEA or within a reasonable distance of that area; and

(B) The LEA provides evidence that it is not otherwise able to make those services available.

(ii) The SEA must notify the LEA, within 30 days of receiving the LEA's request for a waiver under paragraph (b)(4)(i) of this section, whether it approves or disapproves the request, and if it disapproves, the reasons for the disapproval, in writing.

(iii) An LEA that receives a waiver must renew its request for that waiver on an annual basis.

(c) *Eligibility.* (1) Only students from low-income families are eligible for supplemental educational services.

(2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part.

(d) *Priority.* If the amount of funds available for supplemental educational services is insufficient to provide services to each student whose parents request these services, the LEA must give priority to the lowest-achieving students.

(Authority: 20 U.S.C. 6316)

22. Add new §§ 200.46 through 200.49 and place them under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.46 LEA responsibilities for supplemental educational services.

(a) If an LEA is required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the LEA must do the following:

(1) Provide the notice to parents described in § 200.37(b)(5).

(2) If requested, assist parents in choosing a provider from the list of approved providers maintained by the SEA.

(3) Apply fair and equitable procedures for serving students if the number of spaces at approved providers is not sufficient to serve all eligible students whose parents request services.

(4) Ensure that eligible students with disabilities and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(5) Not disclose to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(b)(1) In addition to meeting the requirements in paragraph (a) of this section, the LEA must enter into an agreement with each provider selected by a parent or parents.

(2) The agreement must—

(i) Require the LEA to develop, in consultation with the parents and the provider—

(A) A statement of specific achievement goals for the student;

(B) A description of how the student's progress will be measured; and

(C) A timetable for improving achievement that, in the case of a student with disabilities under IDEA or a student covered under Section 504, is consistent with the student's individualized education program under section 614(d) of the IDEA or the student's individualized services under Section 504;

(ii) Describe procedures for regularly informing the student's parents and teachers of the student's progress;

(iii) Provide for the termination of the agreement if the provider is unable to meet the goals and timetables specified in the agreement;

(iv) Specify how the LEA will pay the provider; and

(v) Prohibit the provider from disclosing to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(3) The LEA may not pay the provider for religious worship or instruction.

(c) If State law prohibits an SEA from carrying out one or more of its responsibilities under § 200.47 with respect to those who provide, or seek approval to provide, supplemental educational services, each LEA must carry out those responsibilities with respect to its students who are eligible for those services.

(Authority: 20 U.S.C. 6316(e))

§ 200.47 SEA responsibilities for supplemental educational services.

(a) If one or more LEAs in a State are required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the SEA for that State must do the following:

(1)(i) In consultation with affected LEAs, parents, teachers, and other interested members of the public, promote participation by as many providers as possible.

(ii) This promotion must include annual notice to potential providers of—

(A) The opportunity to provide supplemental educational services; and

(B) Procedures for obtaining the SEA's approval to be a provider of those services.

(2) Consistent with paragraph (b) of this section, develop and apply to potential providers objective criteria that are based on a demonstrated record of effectiveness in increasing the academic proficiency of students in subjects relevant to meeting the State academic content standards and the State student achievement standards described under § 200.1;

(3) Maintain by LEA an updated list of approved providers from which parents may select.

(4) Develop, implement, and publicly report on standards and techniques for—

(i) Monitoring the quality and effectiveness of the services offered by each approved provider; and

(ii) Withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving supplemental educational services from that provider.

(5) Ensure that eligible students with disabilities and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(b) *Standards for approving providers.* (1) As used in this section and in

§ 200.46, "provider" means a non-profit entity, a for-profit entity, an LEA, a public school, including a public charter school, or a private school that——

(i) Has a demonstrated record of effectiveness in increasing student academic achievement;

(ii) Is capable of providing supplemental educational services that are consistent with the instructional program of the LEA and with the State academic content standards and State student achievement standards described under § 200.1;

(iii) Is financially sound; and

(iv) In the case of a public school, has not been identified under §§ 200.32, 200.33, or 200.34.

(2) In order for the SEA to include a provider on the State list, the provider must agree to—

(i)(A) Provide parents of each student receiving supplemental educational services and the responsible LEA with information on the progress of the student in increasing achievement.

(B) This information must be in an understandable and uniform format, including alternative formats upon request, and, to the extent practicable, in a language that the parents can understand;

(ii) Ensure that the instruction the provider gives and the content the provider uses—

(A) Are consistent with the instruction provided and the content used by the LEA and the SEA;

(B) Are aligned with State student academic achievement standards; and

(C) Are secular, neutral, and nonideological; and

(iii) Meet all applicable Federal, State, and local health, safety, and civil rights laws.

(3) A private provider may not, on the basis of disability, exclude a qualified student with disabilities or a student covered under Section 504 if the student can, with minor adjustments, be provided supplemental educational services designed to meet the individual educational needs of the student unless otherwise provided by law.

(4) As a condition of approval, a State may not require a provider to——

(i) Hire only staff who meet the requirements under §§ 200.55 and 200.56; or

(ii) Document that its instructional strategies include scientifically based research, as that term is defined in section 9101(37) of the Act.

(Authority: 20 U.S.C. 6316(e))

§ 200.48 Funding for choice-related transportation and supplemental educational services.

(a) *Amounts required.* (1) To pay for choice-related transportation and supplemental educational services required under section 1116 of the Act, an LEA may use—

(i) Funds allocated under subpart A of this part;

(ii) Funds, where authorized, from other Federal education programs; and

(iii) State, local, or private resources.

(2) Unless a lesser amount is needed, the LEA must spend an amount equal to 20 percent of its allocation under subpart A of this part to——

(i) Provide, or pay for, transportation of students exercising a choice option under § 200.44;

(ii) Satisfy all requests for supplemental educational services under § 200.45; or

(iii) Pay for both paragraph (a)(2)(i) and (ii) of this section, except that——

(A) If the cost of satisfying all requests for supplemental educational services under § 200.45 exceeds an amount equal to 5 percent of the LEA's allocation under subpart A of this part, the LEA may not spend less than this amount for supplemental educational services; and

(B) The LEA may not include costs for transportation or administration in meeting this 5 percent requirement

(3) If the amount specified in paragraph (a)(2) of this section is insufficient to pay all choice-related transportation costs, the LEA may, but is not required to, make available any additional needed funds from Federal, State, or local sources.

(4) To assist an LEA that does not have sufficient funds to make available supplemental educational services to all students requesting these services, an SEA may use funds that it reserves under part A of Title I and part A of Title V.

(b) *Cap on school-level reduction.* (1) An LEA may not, in applying paragraph (a) of this section, reduce by more than 15 percent the total amount it makes available under subpart A of this part to a school it has identified for corrective action or restructuring.

(c) *Per-child funding for supplemental educational services.* For each student receiving supplemental educational services under § 200.45, the LEA must make available the lesser of——

(1) The amount of its allocation under subpart A of this part, divided by the number of students from families below the poverty level, as counted under section 1124(c)(1)(A) of the Act; or

(2) The actual costs of the supplemental educational services received by the student.

(Authority: 20 U.S.C. 6316)

§ 200.49 SEA responsibilities for school improvement, corrective action, and restructuring.

(a) *Transition requirements for public school choice and supplemental educational services.* (1) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school provides public school choice in accordance with § 200.44 not later than the first day of the 2002–2003 school year.

(2) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school makes available supplemental educational services in accordance with § 200.45 not later than the first day of the 2002–2003 school year.

(b) *State reservation of funds for school improvement.* (1) In accordance with § 200.100(a), an SEA must reserve two percent of the amount it receives under subpart A of this part for fiscal years 2002 and 2003, and four percent of the amount it receives under subpart A of this part for fiscal years 2004 through 2007, to——

(i) Support local school improvement activities;

(ii) Provide technical assistance to schools identified for improvement, corrective action, or restructuring; and

(iii) Provide technical assistance to LEAs that the SEA has identified for improvement or corrective action in accordance with § 200.50.

(2) Of the amount it reserves under paragraph (a)(1) of this section, the SEA must—

(i) Allocate not less than 95 percent directly to LEAs serving schools identified for improvement, corrective action, and restructuring to support improvement activities; or

(ii) If requested by an LEA, directly provide for these improvement activities or arrange to provide them through such entities as school support teams or educational service agencies.

(3) In providing assistance to LEAs under paragraph (b)(2) of this section, the SEA must give priority to LEAs that—

(i) Serve the lowest-achieving schools;

(ii) Demonstrate the greatest need for this assistance; and

(iii) Demonstrate the strongest commitment to ensuring that this assistance will be used to enable the lowest-achieving schools to meet the progress goals in the school improvement plans under § 200.41.

(c) *Technical assistance.* The SEA must make technical assistance available, through the statewide system of support and improvement required by section 1117 of the Act, to schools that LEAs have identified for improvement, corrective action, or restructuring.

(d) *LEA failure.* If the SEA determines that an LEA has failed to carry out its responsibilities with respect to school improvement, corrective action, or restructuring, the SEA must take the corrective actions it determines to be appropriate and in compliance with State law.

(e) *Assessment results.* (1) The SEA must ensure that the results of academic assessments administered as part of the State assessment system in a given school year are available to LEAs before the beginning of the next school year.

(2) The SEA must provide the results described in paragraph (e)(1) of this section to a school before an LEA may identify the school for school improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34.

(f) *Factors affecting student achievement.* Consistent with section 1111(b)(9) of the Act, the SEA must notify the Secretary of Education of major factors that have significantly affected student academic achievement in schools and LEAs identified for improvement within the State.

(Authority: 20 U.S.C. 6316)

23. Revise §§ 200.50 and 200.51 and place them under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.50 SEA review of LEA progress.

(a) *State review.* (1)(i) An SEA must annually review the progress of each LEA in its State that receives funds under subpart A of this part.

(ii) The review must determine whether—

(A) The LEA's schools served under subpart A of this part are making adequate yearly progress toward meeting the State's student academic achievement standards; and

(B) The LEA is carrying out its responsibilities under subpart A of this part with respect to technical assistance, parental involvement, and professional development.

(2) In reviewing the progress of an LEA, the SEA may, in the case of targeted assistance schools served by the LEA, consider the progress only of the students served or eligible for services under subpart A of this part, provided the students selected for services in such schools are those with the greatest need for academic assistance, consistent with the requirements of section 1115 of the Act.

(b) *Rewards.* If an LEA has exceeded adequate yearly progress as defined under §§ 200.13 through 200.20 for two consecutive years, the SEA may—

(1) Reserve funds in accordance with § 200.100(c); and

(2) Make rewards of the kinds described under section 1117 of the Act.

(c) *Opportunity for review of LEA-level data.* (1) Before identifying an LEA for improvement or corrective action, the SEA must provide the LEA with an opportunity to review the data, including academic assessment data, on which the SEA has based the proposed identification.

(2)(i) If the LEA believes that the proposed identification is in error for statistical or other substantive reasons, the LEA may provide supporting evidence to the SEA.

(ii) The SEA must consider the evidence before making a final determination not later than 30 days after it has provided the LEA with the opportunity to review the data under paragraph (c)(1) of this section.

(d) *Identification for improvement.* (1) The SEA must identify for improvement an LEA that, for two consecutive years, including the period immediately before January 8, 2002, fails to make adequate yearly progress as defined under §§ 200.13 through 200.20.

(2) The SEA must identify for improvement an LEA that was in improvement status on January 7, 2002.

(3) The SEA may identify an LEA for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA fails to make adequate yearly progress for a second consecutive year.

(4) The SEA may remove an LEA from improvement status if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA makes adequate yearly progress for a second consecutive year.

(e) *Identification for corrective action.* After providing technical assistance under § 200.52(b), the SEA—

(1) May take corrective action at any time with respect to an LEA that the SEA has identified for improvement under paragraph (d) of this section;

(2) Must take corrective action—

(i) With respect to an LEA that fails to make adequate yearly progress, as defined under §§ 200.13 through 200.20, by the end of the second full school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make adequate yearly progress for a second consecutive year and led to the SEA's identification for improvement under paragraph (d) of this section; and

(ii) With respect to an LEA that was in corrective action status on January 7, 2002; and

(3) May remove an LEA from corrective action if, on the basis of assessments administered by the LEA during the 2001–2002 school year, it makes adequate yearly progress for a second consecutive year.

(f) *Delay of corrective action.* (1) The SEA may delay implementation of corrective action under § 200.53 for a period not to exceed one year if—

(i) The LEA makes adequate yearly progress for one year; or

(ii) The LEA's failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the LEA's financial resources.

(2)(i) The SEA may not take into account the period of delay referred to in paragraph (f)(1) of this section in determining the number of consecutive years the LEA has failed to make adequate yearly progress; and

(ii) The SEA must subject the LEA to further actions following the period of delay as if the delay never occurred.

(g) *Continuation of public school choice and supplemental educational services.* An SEA must ensure that an LEA identified under paragraph (d) or (e) of this section continues to offer public school choice in accordance with § 200.44 and supplemental educational services in accordance with § 200.45.

(h) *Removal from improvement or corrective action status.* If an LEA makes adequate yearly progress for two consecutive years following identification for improvement under paragraph (d) of this section, the SEA need no longer—

(1) Identify the LEA for improvement; or

(2) Subject the LEA to corrective action for the succeeding school year.

(Authority: 20 U.S.C. 6316(c))

§ 200.51 Notice of SEA action.

(a) *In general.* (1) An SEA must—

(i) Communicate with parents throughout the review of an LEA under § 200.50; and

(ii) Ensure that, regardless of the method or media used, it provides information to parents—

(A) In an understandable and uniform format, including alternative formats upon request; and

(B) To the extent practicable, in a language that parents can understand.

(2) The SEA must provide information to parents—

(i) Directly, through such means as regular mail or, if possible, e-mail; and

(ii) Through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families.

(3) All communications must respect the privacy of students and their families.

(b) *Results of review.* The SEA must publicize and disseminate to the LEAs, teachers and other staff, parents, students, and the community the results of its review under § 200.50, including statistically sound disaggregated results in accordance with §§ 200.2 and 200.7.

(c) *Identification for improvement or corrective action.* If the SEA identifies an LEA for improvement or subjects the LEA to corrective action, the SEA must promptly provide to the parents of each student enrolled in a school served by the LEA—

(1) The reasons for the identification; and

(2) An explanation of how parents can participate in upgrading the LEA.

(d) *Information about action taken.* (1) The SEA must publish, and disseminate to parents and the public, information on any corrective action the SEA takes under § 200.53.

(2) The SEA must provide this information—

(i) In a uniform and understandable format, including alternative formats upon request; and

(ii) To the extent practicable, in a language that parents can understand.

(3) The SEA must disseminate the information through such means as the Internet, the media, and public agencies.

(Authority: 20 U.S.C. 6316(c))

24. Add new §§ 200.52 through 200.54 and place them under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.52 LEA improvement.

(a) *Improvement plan.* (1) Not later than 3 months after an SEA has identified an LEA for improvement under § 200.50(d), the LEA must develop or revise an LEA improvement plan.

(2) The LEA must consult with parents, school staff, and others in developing or revising its improvement plan.

(3) The LEA improvement plan must:

(i) Incorporate strategies, drawn from scientifically based research, that will strengthen instruction in core academic subjects in schools served by the LEA.

(ii) Identify actions that have the greatest likelihood of improving the achievement of participating children in meeting the State's student academic achievement standards.

(iii) Address the professional development needs of the instructional staff serving the LEA by committing to spend for professional development not less than 10 percent of the funds received by the LEA under subpart A of this part for each fiscal year in which the SEA identifies the LEA for improvement. These funds—

(A) May include funds reserved by schools for professional development under § 200.41(c)(5); but

(B) May not include funds reserved for professional development under section 1119 of the Act.

(iv) Include specific measurable achievement goals and targets—

(A) For each of the groups of students described in the disaggregated data under § 200.13(b)(7); and

(B) That are consistent with adequate yearly progress as defined under §§ 200.13 through 200.20.

(v) Address—

(A) The fundamental teaching and learning needs in the schools of the LEA; and

(B) The specific academic problems of low-achieving students, including a determination of why the LEA's previous plan failed to bring about increased student academic achievement.

(vi) As appropriate, incorporate activities before school, after school, during the summer, and during any extension of the school year.

(vii) Specify the responsibilities of the SEA and LEA under the plan, including the technical assistance the SEA must provide under paragraph (b) of this section and the LEA's responsibilities under section 1120A of the Act.

(viii) Include strategies to promote effective parental involvement in the schools served by the LEA.

(4) The LEA must implement the improvement plan—including any revised plan—expeditiously, but not later than the beginning of the school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make adequate yearly progress for a second consecutive year and led to the SEA's identification of the LEA for improvement under § 200.50(d).

(b) *SEA technical assistance.* (1) An SEA that identifies an LEA for improvement under § 200.50(d) must, if requested, provide or arrange for the provision of technical or other assistance to the LEA, as authorized under section 1117 of the Act.

(2) The purpose of the technical assistance is to better enable the LEA to—

(i) Develop and implement its improvement plan; and

(ii) Work with schools needing improvement.

(3) The technical assistance provided by the SEA or an entity authorized by the SEA must—

(i) Be supported by effective methods and instructional strategies drawn from scientifically based research; and

(ii) Address problems, if any, in implementing the parental involvement and professional development activities described in sections 1118 and 1119, respectively, of the Act.

(Authority: 20 U.S.C. 6316(c))

§ 200.53 LEA corrective action.

(a) *Definition.* For the purposes of this section, the term "corrective action" means action by an SEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure that caused the SEA to identify an LEA for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the LEA;

(2) Is designed to increase substantially the likelihood that each group of students described in § 200.13(b)(7) and enrolled in the LEA's schools will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Notice and hearing.* Before implementing any corrective action under paragraph (c) of this section, the SEA must provide notice and a hearing to the affected LEA—if State law provides for this notice and hearing—not later than 45 days following the decision to take corrective action.

(c) *Requirements.* If the SEA identifies an LEA for corrective action, the SEA must do the following:

(1) Continue to make available technical assistance to the LEA.

(2) Take at least one of the following corrective actions:

(i) Defer programmatic funds or reduce administrative funds.

(ii) Institute and fully implement a new curriculum based on State and local content and academic achievement standards, including the provision of appropriate professional development for all relevant staff that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students.

(iii) Replace the LEA personnel who are relevant to the failure to make adequate yearly progress.

(iv) Remove particular schools from the jurisdiction of the LEA and establish alternative arrangements for public governance and supervision of these schools.

(v) Appoint a receiver or trustee to administer the affairs of the LEA in place of the superintendent and school board.

(vi) Abolish or restructure the LEA.

(vii) In conjunction with at least one other action in paragraph (c)(2) of this section—

(A) Authorize students to transfer from a school operated by the LEA to a higher-performing public school operated by another LEA in accordance with § 200.44, and

(B) Provide to these students transportation, or the costs of transportation, to the other school consistent with § 200.44(h).

(Authority: 20 U.S.C. 6316(c)(10))

§ 200.54 Rights of school and school district employees.

(a) Nothing in §§ 200.30 through 200.53 is intended to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between those employees and their employers in effect on January 8, 2002.

(b)(1) Any State or local law, regulation, or policy adopted after January 8, 2002 may not exempt an LEA from taking actions it may be required to take with respect to school or school district employees to implement §§ 200.30 through 200.53.

(2) When the collective bargaining agreements, memoranda of understanding, or other agreements referred to in paragraph (a) of this section are renegotiated, an LEA must ensure that those agreements do not prohibit actions that the LEA may be required to take with respect to school or school district employees to implement §§ 200.30 through 200.53.

(Authority: 20 U.S.C. 6316(d))

25. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.54 to read as follows:

Qualifications of Teachers and Paraprofessionals

26. Add new §§ 200.55 through 200.59 and place them under the new undesignated center heading "Qualifications of Teachers and Paraprofessionals" in subpart A of part 200 to read as follows:

§ 200.55 Qualifications of teachers.

(a) *Newly hired teachers in Title I programs.* (1) An LEA must ensure that all teachers hired after the first day of the 2002–2003 school year to teach core academic subjects in a program supported with funds under subpart A of this part are highly qualified as defined in § 200.56.

(2) For the purpose of paragraph (a)(1) of this section, a teacher teaching in a program supported with funds under subpart A of this part is—

(i) A teacher in a targeted assisted school who is paid with funds under subpart A of this part; or

(ii) A teacher in a schoolwide program school.

(b)(1) *All teachers of core academic subjects.* Not later than the end of the 2005–2006 school year, each State that receives funds under subpart A of this part must ensure that all teachers in the State who teach core academic subjects are highly qualified as defined in § 200.56.

(2) A teacher of a subject other than a core academic subject—such as some vocational education teachers—is not required to meet the requirements in § 200.56.

(c) *Definition.* The term "core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 6319; 7801(11))

§ 200.56 Definition of "highly qualified teacher."

To be a "highly qualified teacher," a teacher covered under § 200.55 must meet the requirements in paragraph (a) and either paragraph (b) or (c) of this section.

(a) *In general.* (1) Except as provided in paragraph (a)(2) of this section, a teacher covered under § 200.55 must—

(i) Have obtained full State certification as a teacher—which may include certification obtained through alternative routes to certification; or

(ii)(A) Have passed the State teacher licensing examination; and

(B) Hold a license to teach in the State.

(iii) A teacher meets the requirement in paragraphs (a)(1)(i) or (ii) of this section if the teacher—

(A) Has fulfilled the State's . certification and licensure requirements applicable to the years of experience the teacher possesses; or

(B) Is participating in an alternate route certification program under which the teacher is—

(*1*) Permitted by the State to assume functions as a teacher; and

(*2*) Making satisfactory progress toward full certification as prescribed by the State and the program.

(2) A teacher teaching in a public charter school in a State must meet the certification and licensure requirements, if any, contained in a State's charter school law.

(3) If a teacher has had certification or licensure requirements waived on an emergency, temporary, or provisional basis, the teacher is not highly qualified.

(b) *Teachers new to the profession.* A teacher covered under § 200.55 who is new to the profession must—

(1) Hold at least a bachelor's degree; and

(2) At the elementary level, demonstrate, by passing a State test, subject knowledge and teaching skills in reading/language arts, writing, mathematics, and other areas of the basic elementary school curriculum; or

(3) At the middle and high school levels, demonstrate a high level of competency by—

(i) Passing a State test in each academic subject in which the teacher teaches; or

(ii) Successfully completing in each academic subject in which the teacher teaches—

(A) An undergraduate major;

(B) A graduate degree;

(C) Coursework equivalent to an undergraduate major; or

(D) Advanced certification or credentials.

(c) *Teachers not new to the profession.* A teacher covered under § 200.55 who is not new to the profession must—

(1) Hold at least a bachelor's degree;

(2) Meet the applicable requirements in paragraph (b) of this section; and

(3) Based on a high, objective, uniform State standard of evaluation in accordance with section 9101(23)(C)(ii) of the Act, demonstrate competence in all the academic subjects in which the teacher teaches.

(Authority: 20 U.S.C. 7801(23))

§ 200.57 Plans to increase teacher quality.

(a) *State plan.* (1) A State that receives funds under subpart A of this part must develop a plan to ensure that all teachers in the State who teach core academic subjects are highly qualified not later than the end of the 2005–2006 school year.

(2) The State's plan—

(i) Must establish annual measurable objectives for each LEA and school that include, at a minimum, an annual increase in the percentage of—

(A) Highly qualified teachers at each LEA and school; and

(B) Teachers who are receiving high-quality professional development as

defined in section 9101(34) of the Act; and

(ii) May include other measures that the State determines are appropriate to increase teacher qualifications.

(b) *Local plan.* An LEA that receives funds under subpart A of this part must develop a plan to ensure that all teachers in the LEA who teach core academic subjects are highly qualified not later than the end of the 2005–2006 school year.

(Authority: 20 U.S.C. 6319(a)(2)–(3); 7801(34))

§ 200.58 Qualifications of paraprofessionals.

(a)(1) *Applicability.* An LEA must ensure that each paraprofessional who works in a program supported with funds under subpart A of this part meets the requirements in paragraph (b) of this section and, except as provided in paragraph (e) of this section, the requirements in paragraph (c) or (d) of this section.

(2) For purposes of this section, the term "paraprofessional"—

(i) Means an individual who provides instructional support consistent with § 200.59; and

(ii) Does not include individuals who have only non-instructional duties (such as providing technical support for computers, providing personal care services, or performing clerical duties).

(3) For the purpose of paragraph (a) of this section, a paraprofessional working in "a program supported with funds under subpart A of this part" is—

(i) A paraprofessional in a targeted assisted school who is paid with funds under subpart A of this part; or

(ii) Any paraprofessional in a schoolwide program school.

(b) *All paraprofessionals.* A paraprofessional covered under paragraph (a) of this section, regardless of the paraprofessional's hiring date, must have earned a secondary school diploma or its recognized equivalent.

(c) *New paraprofessionals.* A paraprofessional covered under paragraph (a) of this section who is hired after January 8, 2002 must have—

(1) Completed at least two years of study at an institution of higher education;

(2) Obtained an associate's or higher degree; or

(3)(i) Met a rigorous standard of quality, and can demonstrate—through a formal State or local academic assessment—knowledge of, and the ability to assist in instructing, as appropriate—

(A) Reading/language arts, writing, and mathematics; or

(B) Reading readiness, writing readiness, and mathematics readiness.

(ii) A secondary school diploma or its recognized equivalent is necessary, but not sufficient, to meet the requirement in paragraph (c)(3)(i) of this section.

(d) *Existing paraprofessionals.* Each paraprofessional who was hired before January 8, 2002 must meet the requirements in paragraph (c) of this section within four years after that date.

(e) *Exceptions.* A paraprofessional does not need to meet the requirements in paragraph (c) or (d) of this section if the paraprofessional—

(1)(i) Is proficient in English and a language other than English; and

(ii) Acts as a translator to enhance the participation of limited English proficient children under subpart A of this part; or

(2) Has duties that consist solely of conducting parental involvement activities.

(Authority: 20 U.S.C. 6319(c)–(f))

§ 200.59 Duties of paraprofessionals.

(a) A paraprofessional covered under § 200.58 may not be assigned a duty inconsistent with paragraph (b) of this section.

(b) A paraprofessional covered under § 200.58 may perform the following duties:

(1) One-on-one tutoring for eligible students if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher—that is, not during the regular school day.

(2) Assisting in classroom management.

(3) Assisting in computer instruction.

(4) Conducting parent involvement activities.

(5) Providing instructional support in a library or media center.

(6) Acting as a translator.

(7) Providing instructional support services.

(c)(1) A paraprofessional may not provide any instructional support service to a student unless the paraprofessional is working under the direct supervision of a teacher who meets the requirements in § 200.56.

(2) A paraprofessional works under the direct supervision of a teacher if—

(i) The teacher plans the instructional activities that the paraprofessional carries out;

(ii) The teacher evaluates the achievement of the students with whom the paraprofessional is working; and

(iii) The paraprofessional works in close and frequent physical proximity to the teacher.

(d) A paraprofessional may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under subpart A of this part—including non-instructional duties and duties that do not benefit participating students—if the amount of time the paraprofessional spends on those duties is the same proportion of total work time as the time spent by similar personnel at the same school.

(Authority: 20 U.S.C. 6319(g))

27. Revise § 200.60 and place it under the new undesignated center heading "Qualifications of Teachers and Paraprofessionals" in subpart A of part 200 to read as follows:

§ 200.60 Expenditures for professional development.

(a)(1) Unless a lesser amount is needed because most teachers and paraprofessionals covered under §§ 200.55 and 200.58 meet the requirements in those sections, an LEA must use funds it receives under subpart A of this part for professional development activities to ensure that teachers and paraprofessionals meet the requirements of §§ 200.56 and 200.58.

(2) The LEA must use these funds as follows:

(i) For each of fiscal years 2002 and 2003, the LEA must use not less than 5 percent or more than 10 percent of the funds it receives under subpart A of this part.

(ii) For each fiscal year after 2003, the LEA must use not less than 5 percent of the funds it receives under subpart A of this part.

(b) The LEA may use additional funds under subpart A of this part to support ongoing training and professional development, as defined in section 9101(34) of the Act, to assist teachers and paraprofessionals in carrying out activities under subpart A of this part.

(Authority: 20 U.S.C. 6319(h), (l); 7801(34))

27a. Add a new undesignated center heading following §200.60 to read as follows:

Participation of Eligible Children in Private Schools

28. Revise § 200.61 and place it under the undesignated center heading "Participation of Eligible Children in Private Schools" in subpart A of part 200 to read as follows:

§ 200.61 Responsibilities for providing services to private school children.

(a) After timely and meaningful consultation with appropriate officials of private schools, an LEA must—

(1) In accordance with §§ 200.61 through 200.66 and section 1120 of the Act, provide special educational services or other benefits under subpart A of this part, on an equitable basis and

in a timely manner, to eligible children who are enrolled in private elementary and secondary schools; and

(2) Ensure that teachers and families of these children participate, on a basis equitable to the participation of teachers and families of other children receiving these services in accordance with § 200.53.

(b) Eligible private school children are children who—

(1) Reside in participating public school attendance areas of the LEA, regardless of whether the private school they attend is located in the LEA; and

(2) Meet the criteria in section 1115(b) of the Act.

(c) Among the eligible private school children, the LEA must select children to participate, consistent with § 200.63.

(Authority: 20 U.S.C. 6315(b); 6320(a))

29. Add § 200.62 and place it under the undesignated center heading "Participation of Eligible Children in Private Schools" in subpart A of part 200 to read as follows:

§ 200.62 Consultation.

(a) In order to have timely and meaningful consultation, an LEA must consult with appropriate officials of private schools during the design and development of the LEA's program for eligible private school children.

(b) At a minimum, the LEA must consult on the following:

(1) How the LEA will identify the needs of eligible private school children.

(2) What services the LEA will offer to eligible private children.

(3) How and when the LEA will make decisions about the delivery of services.

(4) How, where, and by whom the LEA will provide services to eligible private school children.

(5) How the LEA will assess academically the services to private school children, and how the LEA will use the results of that assessment to improve Title I services.

(6) The size and scope of the equitable services that the LEA will provide to eligible private school children, and the proportion of funds that the LEA will allocate for these services.

(7) The method or sources of data that the LEA will use under § 200.78 to determine the number of private school children from low-income families residing in participating public school attendance areas, including whether the LEA will extrapolate data from a survey.

(8) The equitable services the LEA will provide to teachers and families of private school participating children.

(c)(1) Consultation by the LEA must—

(i) Include meetings of the LEA and appropriate officials of the private schools; and

(ii) Occur before the LEA makes any decision that affects the opportunity of eligible private school children to participate in Title I programs.

(2) The LEA must meet with officials of the private schools throughout the implementation and assessment of the Title I services.

(d)(1) Consultation must include—

(i) A discussion of service delivery mechanisms the LEA can use to provide equitable services to private school children; and

(ii) A thorough consideration and analysis of the views of the officials of the private schools on the provision of services through a contract with a third-party provider.

(2) If the LEA disagrees with the views of the officials of the private schools on the provision of services through a contract, the LEA must provide in writing to the officials of the private schools the reasons why the LEA chooses not to use a contractor.

(e)(1) The LEA must maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred.

(2) If the officials of the private schools do not provide the affirmations within a reasonable period of time, the LEA must submit to the SEA documentation that the required consultation occurred.

(f) An official of a private school shall have the right to complain to the SEA that the LEA did not—

(1) Engage in timely and meaningful consultation; or

(2) Consider the views of the officials of the private school.

(Authority: 20 U.S.C. 6320(b))

30. Revise §§ 200.63 through 200.65 and place them under the undesignated center heading "Participation of Eligible Children in Private Schools" in subpart A of part 200 to read as follows:

§ 200.63 Factors for determining equitable participation of private school children.

(a) *Equal expenditures.* (1) In the aggregate, funds expended by an LEA under subpart A of this part for services for eligible private school children in the aggregate must be equal to the amount of funds generated by private school children from low-income families under paragraph (a)(2) of this section.

(2) An LEA must meet this requirement as follows:

(i) In reserving funds off the top of its allocation to carry out the provisions of § 200.77, if the LEA reserves funds for instructional activities for public elementary or secondary school students at the district level, the LEA must provide equitable services to eligible private school children. The LEA must base equitable services from these reserved funds on the proportion of private school children from low-income families residing in participating public school attendance areas.

(ii) The LEA must reserve the amounts of funds generated by private school children under § 200.78 and, in consultation with appropriate officials of the private schools, may—

(A) Combine those amounts, along with funds under paragraph (a)(2)(i) of section, if appropriate, to create a pool of funds from which the LEA provides equitable services to eligible private school children, in the aggregate, in greatest need of those services; or

(B) Provide equitable services to eligible children in each private school with the funds generated by children from low-income families under § 200.78 who attend that private school.

(b) *Services on an equitable basis.* (1) The services that an LEA provides to eligible private school children must be equitable in comparison to the services and other benefits that the LEA provides to public school children participating under subpart A of this part.

(2) Services are equitable if the LEA—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children on a comparable basis as public school children;

(ii) Meets the equal expenditure requirements under paragraph (a) of section; and

(iii) Provides private school children with an opportunity to participate that—

(A) Is equitable to the opportunity provided to public school children; and

(B) Provides reasonable promise of the private school children achieving the high levels called for by the State's student academic achievement standards.

(3) The LEA must provide services to eligible private school children either directly or through arrangements with another LEA or a third-party provider.

(4) The LEA must make the final decisions with respect to the services it will provide to eligible private school children.

(Authority: 20 U.S.C. 6320(a))

§ 200.64 Determining equitable participation of teachers and families of participating private school children.

(a)(1) From funds reserved for parent involvement and professional development under § 200.77, an LEA shall ensure that teachers and families of participating private school children participate on an equitable basis in parent involvement and professional development activities, respectively.

(2) The LEA must base equitable services on the proportion of private school children from low-income families residing in participating public school attendance areas.

(b) After consultation with appropriate officials of the private schools, the LEA must conduct professional development and parent involvement activities for the families and teachers of participating private school children either—

(1) In conjunction with the LEA's professional development and parent involvement activities; or

(2) Independently.

(c) Private school teachers are not covered by the requirements in § 200.56.

(Authority: 20 U.S.C. 6320(a))

§ 200.65 Requirements to ensure that funds do not benefit a private school.

(a) An LEA must use funds under subpart A of this part to provide services that supplement, and in no case supplant, the services that would, in the absence of Title I services, be available to participating private school children.

(b)(1) The LEA must use funds under subpart A of this part to meet the special educational needs of participating private school children.

(2) The LEA may not use funds under subpart A of this part A of this part for—

(i) The needs of the private school; or

(ii) The general needs of children in the private school.

(Authority: 20 U.S.C. 6320(a), 6321(b))

31. Add a new § 200.66 and place it under the undesignated center heading "Participation of Eligible Children in Private Schools" in subpart A of part 200 to read as follows:

§ 200.66 Requirements concerning property, equipment, and supplies for the benefit of private school children.

(a) The LEA must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under subpart A of this part for the benefit of eligible private school children.

(b) The LEA may place equipment and supplies in a private school for the period of time needed for the program.

(c) The LEA must ensure that the equipment and supplies placed in a private school—

(1) Are used only for Title I purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The LEA must remove equipment and supplies from a private school if—

(1) The LEA no longer needs the equipment and supplies to provide Title I services; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Title I purposes.

(e) The LEA may not use funds under subpart A of this part for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 6320(d))

32. Place reserved §§ 200.67 through 200.69 under the undesignated center heading "Participation of Eligible Children in Private Schools" in subpart A of part 200.

33–34. Add a new undesignated center heading to subpart A of part 200 and place it after reserved § 200.69 to read as follows:

Allocations to LEAS

35. Add new §§ 200.70 through 200.75 and place them under the revised undesignated center heading "Allocations to LEAs" in subpart A of part 200 to read as follows:

§ 200.70 Allocation of funds to LEAs in general.

(a) The Secretary allocates basic grants, concentration grants, targeted grants, and education finance incentive grants, through SEAs, to each eligible LEA for which the Bureau of the Census has provided data on the number of children from low-income families residing in the school attendance areas of the LEA (hereinafter referred to as the "Census list").

(b) In establishing eligibility and allocating funds under paragraph (a) of this section, the Secretary counts children ages 5 to 17, inclusive (hereinafter referred to as "formula children")—

(1) From families below the poverty level based on the most recent satisfactory data available from the Bureau of the Census;

(2) From families above the poverty level receiving assistance under the Temporary Assistance for Needy Families program under Title IV of the Social Security Act;

(3) Being supported in foster homes with public funds; and

(4) Residing in local institutions for neglected children.

(c) Except as provided in §§ 200.72, 200.75, and 200.100, an SEA may not change the Secretary's allocation to any LEA that serves an area with a total population of at least 20,000 persons.

(d) In accordance with § 200.74, an SEA may use an alternative method, approved by the Secretary, to distribute the State's share of basic grants, concentration grants, targeted grants, and education finance incentive grants to LEAs that serve an area with a total population of less than 20,000 persons.

(Authority: 20 U.S.C. 6333–6337)

§ 200.71 LEA eligibility.

(a) *Basic grants.* An LEA is eligible for a basic grant if the number of formula children counted for allocation purposes is—

(1) At least 10; and

(2) Greater than two percent of the LEA's total population ages 5 to 17 years, inclusive.

(b) *Concentration grants.* An LEA is eligible for a concentration grant if—

(1) The LEA is eligible for a basic grant under paragraph (a) of this section; and

(2) The number of formula children exceeds—

(i) 6,500; or

(ii) 15 percent of the LEA's total population ages 5 to 17 years, inclusive.

(c) *Targeted grants.* An LEA is eligible for a targeted grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(d) *Education finance incentive grants.* An LEA is eligible for an education finance incentive grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(Authority: 20 U.S.C. 6333–6337)

§ 200.72 Procedures for adjusting allocations determined by the Secretary to account for eligible LEAs not on the Census list.

(a) *General.* For each LEA not on the Census list (hereinafter referred to as a "new" LEA), an SEA must determine the number of formula children and the number of children ages 5 to 17, inclusive, in that LEA.

(b) *Determining LEA eligibility.* An SEA must determine basic grant, concentration grant, targeted grant, and education finance incentive grant eligibility for each new LEA and redetermine eligibility for the LEAs on the Census list, as appropriate, based on the number of formula children and

children ages 5 to 17, inclusive, determined in paragraph (a) of this section.

(c) *Adjusting LEA allocations.* An SEA must adjust the LEA allocations calculated by the Secretary to determine allocations for eligible new LEAs based on the number of formula children determined in paragraph (a) of this section.

(Authority: 20 U.S.C. 6333–6337)

§ 200.73 Applicable hold-harmless provisions.

(a) *General.* (1) Except as authorized under paragraph (c) of this section and § 200.100(d)(2), an SEA may not reduce the allocation of an eligible LEA below the hold-harmless amounts established under paragraph (a)(4) of this section.

(2) The hold-harmless protection limits the maximum reduction of an LEA's allocation compared to the LEA's allocation for the preceding year.

(3) Except as provided in § 200.100(d), an SEA must apply the hold-harmless requirement separately for basic grants, concentration grants, targeted grants, and education finance incentive grants as described in paragraph (a)(4) of this section.

(4) Under section 1122(c) of the Act, the hold-harmless percentage varies based on the LEA's proportion of formula children, as shown in the following table:

LEA's number of formula children ages 5 to 17, inclusive, as a percentage of its total population of children ages 5 to 17, inclusive	Hold-harmless percentage	Applicable grant formulas
(i) 30% or more	95	Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants.
(ii) 15% or more but less than 30%	90	
(iii) Less than 15%	85	

(b) *Targeted grants and education finance incentive grants.* The number of formula children used to determine the hold-harmless percentage is the number before applying the weights described in section 1125 and section 1125A of the Act.

(c) *Adjustment for insufficient funds.* If the amounts made available to the State are insufficient to pay the full amount that each LEA is eligible to receive under paragraph (a)(4) of this section, the SEA must ratably reduce the allocations for all LEAs in the State to the amount available.

(d) *Eligibility for hold-harmless protection.* (1) An LEA must meet the eligibility requirements for basic grants, targeted grants, and education finance incentive grants under § 200.71 in order for any hold-harmless provision to apply.

(2) An LEA not meeting the eligibility requirements for concentration grants under § 200.71 must be paid its hold-harmless amount for four consecutive years.

(Authority: 20 U.S.C. 6332(c))

§ 200.74 Use of an alternative method to distribute grants to LEAs with fewer than 20,000 total residents.

(a) For eligible LEAs serving an area with a total population of less than 20,000 persons (hereinafter referred to as "small LEAs"), an SEA may apply to the Secretary to use an alternative method to distribute basic grant, concentration grant, targeted grant, and education finance incentive grant funds.

(b) In its application, the SEA must—

(1) Identify the alternative data it proposes to use; and

(2) Assure that it has established a procedure through which a small LEA that is dissatisfied with the determination of its grant may appeal directly to the Secretary.

(c) The SEA must base its alternative method on population data that best reflect the current distribution of children from low-income families among the State's small LEAs and use the same poverty measure consistently across the State for all Title I, part A programs.

(d) Based on the alternative poverty data selected, the SEA must—

(1) Redetermine eligibility of its small LEAs for basic grants, concentration grants, targeted grants, and education finance incentive grants in accordance with § 200.71;

(2) Calculate allocations for small LEAs in accordance with the provisions of sections 1124, 1124A, 1125, and 1125A of the Act, as applicable; and

(3) Ensure that each LEA receives the hold-harmless amount to which it is entitled under § 200.73.

(e) The amount of funds available for redistribution under each formula is the separate amount determined by the Secretary under sections 1124, 1124A, 1125, and 1125A of the Act for eligible small LEAs after the SEA has made the adjustments required under § 200.72(c).

(f) If the amount available for redistribution to small LEAs under an alternative method is not sufficient to satisfy applicable hold-harmless requirements, the SEA must ratably reduce all eligible small LEAs to the amount available.

(Authority: 20 U.S.C. 6333–6337)

§ 200.75 Special procedures for allocating concentration grant funds in small States.

(a) In a State in which the number of formula children is less than 0.25 percent of the national total on January 8, 2002, an SEA may either—

(1) Allocate concentration grants among eligible LEAs in the State in accordance with §§ 200.72 and 200.74, as applicable; or

(2) Without regard to the allocations determined by the Secretary—

(i) Identify those LEAs in which the number or percentage of formula children exceeds the statewide average number or percentage of those children; and

(ii) Allocate concentration grant funds among the LEAs identified in paragraph (a)(2)(i) of this section based on the number of formula children in each of those LEAs.

(b) If the SEA in a small State meeting the criteria described in paragraph (a) of this section uses an alternative method under § 200.74, the SEA must use the poverty data approved under the alternative method to identify those LEAs with numbers or percentages of formula children that exceed the statewide average number or percentage of those children for the State as a whole.

(Authority: 20 U.S.C. 6334(b))

36. Add and reserve new § 200.76 and place it under the revised undesignated center heading "Allocations to LEAs" in subpart A of part 200.

36a. Add a new undesignated center heading following §200.76 to read as follows:

Procedures for the Within-District Allocation of LEA Program Funds

37. Add new §§ 200.77 and 200.78 and place them under the undesignated center heading "Procedures for the Within-District Allocation of LEA Program Funds" in subpart A of part 200 to read as follows:

§ 200.77 Reservation of funds by an LEA.

Before allocating funds in accordance with § 200.78, an LEA must reserve funds as are reasonable and necessary to—

(a) Provide services comparable to those provided to children in participating school attendance areas and schools to serve—

(1) Homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where homeless children may live;

(2) Children in local institutions for neglected children; and

(3) If appropriate—

(i) Children in local institutions for delinquent children; and

(ii) Neglected and delinquent children in community-day school programs;

(b) Provide, where appropriate under section 1113(c)(4) of the Act, financial incentives and rewards to teachers who serve students in Title I schools identified for school improvement, corrective action, and restructuring;

(c) Meet the requirements for choice-related transportation and supplemental educational services in § 200.48, unless the LEA meets these requirements with non-Title I funds;

(d) Address the professional development needs of instructional staff, including—

(1) Professional development requirements under § 200.52(a)(2)(iii) if the LEA has been identified for improvement or corrective action; and

(2) Professional development expenditure requirements under § 200.60;

(e) Meet the requirements for parental involvement in section 1118(a)(3) of the Act;

(f) Administer programs for public and private school children under this part, including special capital expenses, if any, incurred in providing services to eligible private school children, such as—

(1) The purchase and lease of real and personal property (including mobile educational units and neutral sites);

(2) Insurance and maintenance costs;

(3) Transportation; and

(4) Other comparable goods and services, including non-instructional computer technicians; and

(g) Conduct other authorized activities, such as school improvement and coordinated services.

(Authority: 20 U.S.C. 6313(c)(3) and (4), 6316(b)(10), (c)(7)(iii), and (e)(6), 6318(a)(3), 6319(l), 6320).

§ 200.78 Allocation of funds to school attendance areas and schools.

(a)(1) An LEA must allocate funds under subpart A of this part to school attendance areas and schools, identified as eligible and selected to participate under section 1113(a) or (b) of the Act, in rank order on the basis of the total number of children from low-income families in each area or school.

(2)(i) In calculating the total number of children from low-income families, the LEA must include children from low-income families who attend private schools.

(ii) To obtain a count of private school children, the LEA may—

(A) Use the same poverty data the LEA uses to count public school children;

(B)(*1*) Use comparable poverty data from a different source such as a private school survey that, to the extent possible, protects the identity of families of private school students; and

(*2*) Extrapolate data from the survey based on a representative sample if complete actual data are unavailable;

(C) Apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area; or

(D) Use an equated measure of low income correlated with the measure of low income used to count public school children.

(iii) An LEA may count private school children from low-income families every year or every two years.

(iv) The LEA shall have the final authority in determining the method used to calculate the number of private school children from low-income families;

(3) If an LEA ranks its school attendance areas and schools by grade span groupings, the LEA may determine the percentage of children from low-income families in the LEA as a whole or for each grade span grouping.

(b)(1) Except as provided in paragraphs (b)(2) and (d) of this section, an LEA must allocate to each participating school attendance area or school an amount for each low-income child that is at least 125 percent of the per-pupil amount of funds the LEA received for that year under part A, subpart 2 of Title I. The LEA must calculate this per-pupil amount before it reserves funds under § 200.77, using the poverty measure selected by the LEA under section 1113(a)(5) of the Act.

(2) If an LEA is serving only school attendance areas or schools in which the percentage of children from low-income families is 35 percent or more, the LEA is not required to allocate a per-pupil amount of at least 125 percent.

(c) An LEA is not required to allocate the same per-pupil amount to each participating school attendance area or school provided the LEA allocates higher per-pupil amounts to areas or schools with higher concentrations of poverty than to areas or schools with lower concentrations of poverty.

(d) An LEA may reduce the amount of funds allocated under this section to a school attendance area or school if the area or school is spending supplemental State or local funds for programs that meet the requirements in § 200.79.

(e) If an LEA contains two or more counties in their entirety, the LEA shall distribute to schools within each county a share of the LEA's total grant that is no less than the county's share of the child count used to calculate the LEA's grant.

(Authority: 20 U.S.C. 6313(c), 6320(a) and (c)(1), 6333(c)(2)).

38. Add a new undesignated center heading to subpart A of part 200 and place it after new § 200.78 to read as follows:

Fiscal Requirements

39. Add new § 200.79 and place it under the new undesignated center heading "Fiscal Requirements" in subpart A of part 200 to read as follows:

§ 200.79 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For the purpose of determining compliance with the supplement not supplant requirement in section 1120A(b) and the comparability requirement in section 1120A(c) of the Act, a grantee or subgrantee under subpart A of this part may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program either—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is at least 40 percent;

(ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State's challenging academic achievement standards that all children are expected to meet;

(iii) Is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's challenging

student academic achievement standards; and

(iv) Uses the State's assessment system under § 200.2 to review the effectiveness of the program; or

(2)(i) Serves only children who are failing, or most at risk of failing, to meet the State's challenging academic achievement standards;

(ii) Provides supplementary services designed to meet the special educational needs of the children who are participating in the program to support their achievement toward meeting the State's academic achievement standards; and

(iii) Uses the State's assessment system under § 200.2 to review the effectiveness of the program.

(c) The conditions in paragraph (b) of this section also apply to supplemental State and local funds expended under section 1113(b)(1)(D) and 1113(c)(2)(B) of the Act.

(Authority: 20 U.S.C. 6321(b) and (c))

40. Revise subpart B of part 200 to read as follows:

Subpart B—Even Start Family Literacy Programs

Sec.

200.80 Migrant Education Even Start Program definition.

Subpart B—Even Start Family Literacy Programs

§ 200.80 Migrant Education Even Start Program definition.

Eligible participants under the Migrant Education Even Start Program (MEES) are those who meet the definitions of a migratory child, a migratory agricultural worker, or a migratory fisher in § 200.81.

(Authority: 20 U.S.C. 6381a and 20 U.S.C. 6399)

41. Revise subpart C of part 200 to read as follows:

Subpart C—Migrant Education Program

Sec.

200.81 Program definitions.
200.82 Use of program funds for unique program function costs.
200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.
200.84 Responsibilities of SEAs for evaluating the effectiveness of the MEP.
200.85 Responsibilities of SEAs and operating agencies for improving services to migratory children.
200.86 Use of MEP funds in schoolwide projects.
200.87 Responsibilities for participation of children in private schools.
200.88 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.
200.89 [Reserved]

Subpart C—Migrant Education Program

§ 200.81 Program definitions.

The following definitions apply to programs and projects operated under subpart C of this part:

(a) *Agricultural activity* means—

(1) Any activity directly related to the production or processing of crops, dairy products, poultry or livestock for initial commercial sale or personal subsistence;

(2) Any activity directly related to the cultivation or harvesting of trees; or

(3) Any activity directly related to fish farms.

(b) *Fishing activity* means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or personal subsistence.

(c) *Migratory agricultural worker* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in agricultural activities (including dairy work) as a principal means of livelihood.

(d) *Migratory child* means a child who is, or whose parent, spouse, or guardian is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent, spouse, guardian in order to obtain, temporary or seasonal employment in agricultural or fishing work—

(1) Has moved from one school district to another;

(2) In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or

(3) Resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.

(e) Migratory fisher means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in fishing activities as a principal means of livelihood. This definition also includes a person who, in the preceding 36 months, resided in a school district of more than 15,000 square miles, and moved a distance of 20 miles or more to a temporary residence to engage in a fishing activity as a principal means of livelihood.

(f) Principal means of livelihood means that temporary or seasonal agricultural or fishing activity plays an important part in providing a living for the worker and his or her family.

(Authority: 20 U.S.C. 6391–6399, 6571)

§ 200.82 Use of program funds for unique program function costs.

An SEA may use the funds available from its State Migrant Education Program to carry out other administrative activities, beyond those allowable under § 200.101, that are unique to the MEP, including those that are the same or similar to administrative activities performed by LEAs in the State under subpart A of this part. These activities include but are not limited to:

(a) Statewide identification and recruitment of eligible migratory children;

(b) Interstate and intrastate coordination of the State MEP and its local projects with other relevant programs and local projects in the State and in other States;

(c) Procedures for providing for educational continuity for migratory children through the timely transfer of educational and health records, beyond that required generally by State and local agencies;

(d) Collecting and using information for accurate distribution of subgrant funds;

(e) Development of a statewide needs assessment and a comprehensive State plan for service delivery; and

(f) Supervision of instructional and support staff.

(Authority: 20 U.S.C. 6392, 6571)

§ 200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.

(a) An SEA that receives a grant of MEP funds must develop and update a written comprehensive State plan (based on a current statewide needs assessment) that, at a minimum, has the following components:

(1) *Performance targets.* The plan must specify—

(i) Performance targets that the State has adopted for all children in reading and mathematics achievement, high school graduation, and the number of school dropouts, as well as the State's performance targets, if any, for school readiness; and

(ii) Any other performance targets that the State has identified for migratory children.

(2) *Needs assessment.* The plan must include an identification and assessment of—

(i) The unique educational needs of migratory children that result from the childrens' migratory lifestyle; and

(ii) Other needs of migratory students.

(3) *Service delivery.* The plan must describe the strategies that the SEA will pursue on a statewide basis to achieve the performance targets in paragraph (a)(1) of this section by addressing—

(i) First, the unique educational needs of migratory children consistent with paragraph (a)(2)(i) of this section; and

(ii) Then, the general educational needs of migratory children consistent with paragraph (a)(2)(ii) of this section.

(4) *Evaluation.* The plan must describe how the State will evaluate the effectiveness of its program.

(b) The SEA must develop its comprehensive State plan in consultation with the State parent advisory council or, for SEAs not operating programs for one school year in duration, in consultation with the parents of migratory children.

(c) Each SEA receiving MEP funds must ensure that its local operating agencies comply with the comprehensive State plan.

(Authority: 20 U.S.C. 6396)

§ 200.84 Responsibilities of SEAs for evaluating the effectiveness of the MEP.

Each SEA must determine the effectiveness of its program through a written evaluation that measures the implementation and results achieved by the program against the State's performance targets in § 200.83(a)(1), particularly for those students who have priority for service as defined in section 1304(d) of the Act.

(Authority: 20 U.S.C. 6394)

§ 200.85 Responsibilities of SEAs and operating agencies for improving services to migratory children.

While the specific school improvement requirements of section 1116 of the Act do not apply to the MEP, SEAs and local operating agencies receiving MEP funds must use the results of the evaluation carried out under § 200.84 to improve the services provided to migratory children.

(Authority: 20 U.S.C. 6394)

§ 200.86 Use of MEP funds in schoolwide projects.

Funds available under part C of Title I of the Act may be used in a schoolwide program subject to the requirements of § 200.28(c)(3)(i).

(Authority: 20 U.S.C. 6396)

§ 200.87 Responsibilities for participation of children in private schools.

An SEA and its operating agencies must conduct programs and projects under subpart C of this part in a manner consistent with the basic requirements of section 9501 of the Act.

(Authority: 20 U.S.C. 6394)

§ 200.88 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the Act, a grantee or subgrantee under part C of Title I may exclude supplemental State and local funds expended in any school attendance area or school for carrying out special programs that meet the intent and purposes of part C of Title I.

(b) Before funds for a State and local program may be excluded for purposes of these requirements, the SEA must make an advance written determination that the program meets the intent and purposes of part C of Title I.

(c) A program meets the intent and purposes of part C of Title I if it meets the following requirements:

(1) The program is specifically designed to meet the unique educational needs of migratory children, as defined in section 1309 of the Act;

(2) The program is based on performance targets related to educational achievement that are similar to those used in programs funded under part C of Title I of the Act, and is evaluated in a manner consistent with those program targets;

(3) The grantee or subgrantee keeps, and provides access to, records that ensure the correctness and verification of these requirements; and

(4) The grantee monitors program performance to ensure that these requirements are met.

(Authority: 20 U.S.C. 6321(d))

§ 200.89 [Reserved]

42. Revise subpart D of part 200 to read as follows:

Subpart D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-risk of Dropping Out

Sec.

200.90 Program definitions.

200.91 SEA counts of eligible children.

200.92—200.99 [Reserved]

Subpart D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-risk of Dropping Out

§ 200.90 Program definitions.

(a) The following definitions apply to the programs authorized in part D, subparts 1 and 2 of Title I of the Act:

Children and youth means the same as "children" as that term is defined in § 200.103(a).

(b) The following definitions apply to the programs authorized in part D, subpart 1 of Title I of the Act:

Institution for delinquent children and youth means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children and youth who—

(1) Have been adjudicated to be delinquent or in need of supervision; and

(2) Have had an average length of stay in the institution of at least 30 days.

Institution for neglected children and youth means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who—

(1) Have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians; and

(2) Have had an average length of stay in the institution of at least 30 days.

Regular program of instruction means an educational program (not beyond grade 12) in an institution or ■ community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

(c) The following definitions apply to the local agency program authorized in part D, subpart 2 of Title I of the Act:

Immigrant children and youth and limited English proficiency have the same meanings as the term "immigrant children" is defined in section 3301 of the Act and the term "limited English proficient" is defined in section 9101 of the Act, except that the terms "individual" and "children and youth" used in those definitions mean "children and youth" as defined in this section.

Locally operated correctional facility means a facility in which persons are confined as a result of a conviction for a criminal offense, including persons

under 21 years of age. The term also includes a local public or private institution and community day program or school not operated by the State that serves delinquent children and youth.

Migrant youth means the same as "migratory child" as that term is defined in § 200.81(d).

(Authority: 20 U.S.C. 6432, 6454, 6472, 7801)

§ 200.91 SEA counts of eligible children.

To receive an allocation under part D, subpart 1 of Title I of the Act, an SEA must provide the Secretary with a count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected or delinquent children and youth and adult correctional institutions as specified in paragraphs (a) and (b) of this section:

(a) *Enrollment.* (1) To be counted, a child or youth must be enrolled in a regular program of instruction for at least—

(i) 20 hours per week if in an institution or community day program for neglected or delinquent children; or

(ii) 15 hours per week if in an adult correctional institution.

(2) The State agency must specify the date on which the enrollment of neglected or delinquent children is determined under paragraph (a)(1) of this section, except that the date specified must be—

(i) Consistent for all institutions or community day programs operated by the State agency; and

(ii) Represent a school day in the calendar year preceding the year in which funds become available.

(b) *Adjustment of enrollment.* The SEA must adjust the enrollment for each institution or community day program served by a State agency by—

(1) Multiplying the number determined in paragraph (a) of this section by the number of days per year the regular program of instruction operates; and

(2) Dividing the result of paragraph (b)(1) of this section by 180.

(c) *Date of submission.* The SEA must annually submit the data in paragraph (b) of this section no later than January 31.

(Authority: 20 U.S.C. 6432)

§§ 200.92—200.99 [Reserved]

43. Revise subpart E of part 200 to read as follows:

Subpart E—General Provisions

Sec.

200.100 Reservation of funds for school improvement, State administration, and the State academic achievement award program.
200.101–200.102 [Reserved]
200.103 Definitions.
200.104–200.109 [Reserved]

Subpart E—General Provisions

§ 200.100 Reservation of funds for school improvement, State administration, and the State academic achievement award program.

A State must reserve funds for school improvement, State administration, and State academic achievement awards as follows:

(a) *School improvement.* (1) To carry out school improvement activities authorized under sections 1116 and 1117 of the Act, an SEA must first reserve—

(i) Two percent from the sum of the amounts allocated to the State under section 1002(a) of the Act for fiscal years 2002 and 2003; and

(ii) Four percent from the sum of the amounts allocated to the State under section 1002(a) of the Act for fiscal year 2004 and succeeding years.

(2) In reserving funds under paragraph (a)(1) of this section, a State may not reduce the sum of the allocations an LEA receives under section 1002(a) of the Act below the sum of the allocations the LEA received under section 1002(a) for the preceding fiscal year.

(3) If funds under section 1002(a) are insufficient in a given fiscal year to implement both paragraphs (a) (1) and (2) of this section, a State is not required to reserve the full amount required under paragraph (a)(1).

(b) *State administration.* (1) An SEA may reserve for State administrative activities authorized in sections 1004 and 1903 of the Act no more than the greater of—

(i) One percent from each of the amounts allocated to the State or Outlying Area under section 1002 (a), (c), and (d) of the Act; or

(ii) $400,000 ($50,000 for the Outlying Areas).

(2)(i) An SEA reserving $400,000 under paragraph (b)(1)(ii) of this section must reserve proportionate amounts from each of the amounts allocated to the State or Outlying Area under section 1002(a), but is not required to reserve proportionate amounts from section 1002 (a), (c), and (d) of the Act.

(ii) If an SEA reserves funds from the amounts allocated to the State or Outlying Area under section 1002 (c) or (d) of the Act, the SEA may not reserve from those allocations more than the amount the SEA would have reserved if it had reserved proportionate amounts from section 1002 (a), (c), and (d) of the Act.

(3) If the sum of the amounts allocated to all the States under section 1002 (a), (c), and (d) of the Act is greater than $14,000,000,000, an SEA may not reserve more than one percent of the amount the State would receive if $14,000,000,000 had been allocated among the States under section 1002 (a), (c), and (d) of the Act.

(4) An SEA may use the funds it has reserved under this paragraph to perform general administrative activities necessary to carry out, at the State level, any of the programs authorized under Title I, parts A, C, and D of the Act.

(c) *State academic achievement awards program.* To operate the State academic achievement award program authorized under section 1117 (b)(1) and (c)(2)(A) of the Act, an SEA may reserve up to five percent of the excess amount the State receives under section 1002(a) of the Act when compared to the amount the State received under section 1002(a) of the Act in the preceding fiscal year.

(d) *Reservations and hold-harmless.* In reserving funds under paragraphs (b) and (c) of this section, an SEA may—

(1) Proportionately reduce each LEA's total allocation received under section 1002(a) of the Act while ensuring that no LEA receives in total less than the hold-harmless percentage under § 200.73(a)(4), except that when the amount remaining is insufficient to pay all LEAs the hold-harmless amount provided in § 200.73, the SEA shall ratably reduce each LEA's hold-harmless allocation to the amount available; or

(2) Proportionately reduce each LEA's total allocation received under section 1002(a) of the Act even if an LEA's total allocation falls below its hold-harmless percentage under § 200.74(a)(3).

(Authority: 20 U.S.C. 6303, 6304, 6317(c)(2)(A))

§§ 200.101–200.102 [Reserved]

§ 200.103 Definitions.

The following definitions apply to programs and projects operated under this part:

(a) *Children* means—

(1) Persons up through age 21 who are entitled to a free public education through grade 12; and

(2) Preschool children below the age and grade level at which the agency provides free public education.

(b) *Fiscal year* means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month

period normally used by the SEA for record-keeping.

(Authority: 20 U.S.C. 6315, 6571)

§§ 200.104–200.109 [Reserved]

[FR Doc. 02–19539 Filed 7–31–02; 4:01 pm]

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Federal Register

Tuesday,
August 6, 2002

Part III

Department of Housing and Urban Development

24 CFR Part 903

Public Housing Agency Plans: Deconcentration—Amendments to "Established Income Range" Definition; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 903

[Docket No. FR–4677–F–02]

RIN 2577–AC31

Public Housing Agency Plans: Deconcentration—Amendments to "Established Income Range" Definition

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the deconcentration component of HUD's Public Housing Agency (PHA) Plans regulations and revises the definition of Established Income Range (EIR) to include within the EIR those developments in which the average income level is at or below 30 percent of the area median income, and therefore ensure that such developments cannot be categorized as having average income "above" the EIR. An income level that is at or below 30 percent of the area median income is defined as "extremely low income" in HUD's regulations. HUD believes that developments with an average family income at or below 30 percent of the area median income should not be categorized as higher income developments for purposes of income mixing because efforts to place lower income families into these developments would not result in income deconcentration as contemplated by the statute. This rule follows publication of an August 15, 2001, proposed rule, takes into consideration public comment received on the proposed rule, and slightly revises the proposed rule for clarity.

DATES: Effective Date: September 5, 2002.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708–0713 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 22, 2000 (65 FR 81214), HUD amended the deconcentration provisions of its Public Housing Agency (PHA) Plan regulations to achieve two purposes: (1) to assure that PHAs know what they must do to deconcentrate poverty in the public housing program; and (2) to assure that PHAs know what they must do to affirmatively further fair housing, as it relates to admissions to public housing. The December 22, 2000, final rule was preceded by an April 17, 2000, proposed rule, and took into consideration public comment received on the proposed rule. By a final rule published on February 5, 2001 (66 FR 8897), HUD amended the December 22, 2000, final rule to provide that the first PHA fiscal year that is covered by the new deconcentration requirements of the December 2000 final rule is the PHA fiscal year that begins October 1, 2001. (The December 22, 2000, final rule provided that the first PHA fiscal year that is covered by the new deconcentration requirements is the PHA fiscal year that begins July 1, 2001.)

Following issuance of the December 22, 2000, final rule, HUD received additional feedback from PHAs. PHAs advised HUD that in determining Established Income Range (EIR) for certain developments, in accordance with the procedures of the rule, the EIR for these developments is sufficiently low that some developments for which the average income is at or below 30 percent of the area median income, actually fall above the EIR. Developments that fall above the EIR are categorized as "higher income developments" and, in accordance with the deconcentration requirements, PHAs must undertake efforts to place lower income families into higher income developments. HUD regulations issued in December 2000 defined an income level that is at or below 30 percent of the area median income as "extremely low income" (24 CFR 5.603(b)). HUD agreed with PHA concerns that in all practicality deconcentration would not be fostered through efforts to place lower income families in developments categorized as higher income in which the average family income is in fact at the extremely low-income level.

While HUD's regulations issued on December 22, 2000, allowed a PHA to seek an exemption from income mixing by explaining why, in a given case, efforts to income mix would not effectively promote income deconcentration, HUD believed that this situation was widespread enough to merit a change in the regulation rather than PHAs and HUD having to treat developments in which the average family income is extremely low income on a case-by-case basis. On August 15, 2001 (66 FR 42926), HUD therefore published a proposed rule that would amend the deconcentration component of HUD's PHA Plans regulations to revise the definition of EIR to include within the EIR those developments in which the average income level is at or below 30 percent of the area median income.

II. This Final Rule

This final rule follows the August 15, 2001 proposed rule and is issued to help ensure that developments in which the average income level is at or below 30 percent of the median income cannot be categorized as having average income "above" the EIR. This final rule takes into consideration the public comments received on the proposed rule and slightly revises the proposed rule for clarity.

III. Public Comments Generally

The public comment period for the proposed rule closed on October 15, 2001. HUD received ten comments. Seven of the comments received were from PHAs; the remaining three comments were from legal service organizations. Most of the commenters expressed their support for HUD's proposed amendment to the deconcentration rule. However, most of the commenters also expressed that, while they supported HUD's efforts to revise the definition of EIR, they did not support the overall rule to deconcentrate. Several commenters in support of HUD's deconcentration efforts wrote that developments with average annual income at or below 30 percent of the area median income should not be categorized as "higher income" developments. Another commenter wrote that it is impractical to place "higher income" families in lower income developments as a mechanism to raise the average household income in these developments. All ten commenters offered suggestions to clarify and strengthen the deconcentration policy to better serve the housing community.

HUD also sought comments from PHAs on the requirements of the December 22, 2000, final rule for placing "higher income families" into "lower income developments". No changes were being proposed to those requirements in this rule. In requesting comments on this issue, however, HUD recognized that the success of income mixing actions may depend on marketability of a development and therefore may be beyond the PHA's control, at least to a certain extent; and that PHA efforts to achieve deconcentration by supporting resident self-sufficiency efforts as well as

necessary admissions efforts should be encouraged. HUD was therefore interested in PHA comments and feedback on the suitability of the December 22, 2000, final rule in this regard. In particular, HUD requested comments on whether the current rule's provisions that allow for explanations and justifications (and require corrective actions in the event HUD determines the explanations are not adequate) are sufficiently flexible to take into account these concerns. The following section of the preamble presents a summary of the significant issues raised by the public commenters on the August 15, 2001, proposed rule and HUD's responses to these comments.

IV. Discussion of Public Comments Received on the August 15, 2001, Proposed Rule

Comment: In the August 15 proposed rule HUD proposes to exclude from the requirement public housing developments with average incomes below 30 percent of area median income. The commenter wrote that should the amendment be adopted, every public housing development in its State would be exempt and there would be no need for the rule. The commenter noted further that should the amendment be adopted, such a result, could not have been anticipated by Congress.

HUD Response: According to HUD data about 82 percent of public housing family developments have average incomes below 30 percent of the area median income and 18 percent of public housing family developments have average incomes above 30 percent of the area median income. HUD believes that developments with an average family income at or below 30 percent of the area median income should not be categorized as higher income developments for purposes of income mixing because efforts to place lower income families into these developments would not result in income deconcentration as contemplated by the statute. Also, the deconcentration and income mixing policy should address only extensive income disparities among developments within a PHA.

Comment: HUD should consider changing "the 30 percent of median" criteria to "30 percent of the national median income" or, 30 percent of area median, whichever is higher. The commenter wrote that pursuant to HUD Notice PDR–2001–03 (April 6, 2001), the national median income is $52,500. Thirty percent of that amount is $15,750. The commenter noted that $15,750 is no more high-income than 30 percent of the median-income ($11,040) in their jurisdiction, and it is illogical to put lower income people into a $15,750 development to bring down the average as it is to put them into an $11,040 average development to bring down that average.

HUD Response: It is appropriate for HUD to take into account local market conditions when calculating median incomes. This method is used for public housing as well as HUD's other assisted housing programs when calculating median incomes.

Comment: HUD should abandon the deconcentration proposal in order to avoid harming low-income families in high-income states. One commenter wrote that in a state that has a much higher cost of living than most other wealthy states, low-income families with incomes that may be much higher than incomes elsewhere may be in greater distress. The commenter further noted that these families should not be deprived of the opportunity to reside in better and newer housing in less impacted neighborhoods.

HUD Response: As mentioned above, HUD's method for calculating median incomes takes into account local market conditions and makes adjustments for unusually high housing costs to income relationships. Also, nothing in this rule excludes low-income families from residing in better or newer housing. Admission policies, including preferences, are established at the local level.

Comment: HUD has failed to justify the need for the rule. One commenter wrote that HUD's deconcentration policy remains seriously flawed, and that the rule is unnecessary. The commenter noted further that their own statistical analysis indicates that there are very few developments that would fall outside the EIR and have residents with incomes above 30 percent of area median income. Additionally, the commenter wrote that HUD's deconcentration policy is administratively burdensome, and will require PHAs to do unnecessary income analysis of their developments.

HUD Response: As already discussed, HUD data indicate about 82 percent of public housing family developments have average incomes below 30 percent of the area median income and 18 percent of public housing family developments have average incomes above 30 percent of the area median income. This rule will simplify administrative requirements and not require a PHA to seek an exemption when the EIR for certain developments is sufficiently low that some developments for which the average income is at or below 30 percent of the area median income, actually fall above the EIR.

Comment: The policy requires an admissions-based solution if even one development in a portfolio is outside the parameters set by HUD. One commenter wrote that key management and policy decisions should be made through a local planning process that is responsive to local conditions, and not be mandated by the Federal government. The commenter noted further that he opposes the Federal requirement that the PHAs must "deconcentrate" through their admissions policies. Additionally, the commenter noted that the more important goal should be improving the economic conditions of all residents, rather than focusing on choosing families for a development based solely on their income.

HUD Response: Achieving deconcentration through admission policies is a statutory requirement. However, the final deconcentration rule published on December 22, 2000, does permit agencies to explain or justify cases where developments fall outside the EIR. HUD agrees that improving the economic conditions of all residents is an important goal.

Comment: HUD should amend the deconcentration rule to allow PHAs to adjust for unit/family size in a more refined method than required by the final rule. The commenter wrote that HUD's established method of adjustment is imprecise. The commenter noted further that PHAs should have the option of utilizing a range of methodologically valid techniques to make these adjustments instead of the prescribed method currently allowed by HUD.

HUD Response: This rule amends the definition of EIR but does not make changes to the broader deconcentration policy as described by the comment. However, the final deconcentration rule published on December 22, 2000, permits an agency to use median income instead of average income and to adjust its income analysis for unit size. This approach strikes a balance and provides agencies flexibility to perform their analysis, but at the same time makes administration and monitoring for HUD manageable.

Comment: True income mixing in public housing requires marketable units and adequate service levels. The commenter wrote that marketing to higher income families would be extremely difficult given the current poor condition of some public housing stock due to under funding of both the capital and operating costs. The commenter noted further that according

to HUD's own data, PHA operating subsidies have been under funded in the amount of almost $1.2 billion from fiscal year 1993 to fiscal year 2001.

HUD Response: This rule amends the definition of the EIR but does not make changes to the broader deconcentration policy as described by the comment. However, the final deconcentration rule published on December 22, 2000, does permit agencies to explain or justify cases where developments fall outside the EIR.

Comment: Increasing incomes in public housing will require more than administrative remedies. The commenter wrote that an admissions-based policy alone would never have the salutary effect of creating more viable, functional communities. The commenter suggested that this goal would be better served by strategies that aim not only to bring new, higher income residents into public housing, but that have the primary purpose to increase the incomes of existing public housing families.

HUD Response: HUD agrees that it is important to increase the incomes of existing residents. HUD has a strong commitment to providing employment opportunities, training, and supportive services to help low-income persons become self-sufficient. HUD has aggressively implemented laws to further many self-sufficiency efforts, for example by providing a model cooperation agreement for economic self-sufficiency between PHAs and Temporary Assistance to Needy Families (TANF) agencies. HUD plans additional initiatives to strengthen self-sufficiency efforts in the near future.

Comment: The rule should be modified to allow for certain family developments to always be treated as higher income. The commenter wrote that small developments in non-poverty areas, HOPE VI, mixed income, mixed finance and any development built after October 1998, the date Congress enacted the deconcentration policy, should always be treated as higher income. The commenter wrote that alternatively, if HUD decides to adopt the proposed 30 percent of the Area Median Income (AMI) rule, it should create an exception to that rule and not permit PHAs to exclude small developments in non-poverty areas, HOPE VI, mixed income, mixed finance, and any development built after October 1998, the date Congress enacted the deconcentration policy. The commenter noted further that these developments might be excluded if the 30 percent rule was applied uniformly.

HUD Response: HUD is not changing the rule to always treat certain developments as higher income. This would unnecessarily complicate the rule. Further, an income level that is at or below 30 percent of the area median income is defined as "extremely low-income" in HUD's regulations and is a low enough standard as a national policy. Nothing in this rule excludes extremely low-income families from residing in HOPE VI, mixed income, small, or scattered site developments of a PHA. The income mix of such developments may be addressed locally, including through local admissions preferences.

Comment: With respect to high-income Metropolitan Statistical Areas (MSAs), the rule should not apply. One commenter wrote that it is misleading to use 30 percent of the MSA median income of high-income MSAs, when there are great income disparities within the MSA as a result of affluent suburban areas or wealthy urban pockets. The commenter further noted that even in MSAs that are not high-income, it would be far more appropriate to use the median income figure for the area over which the PHA units are located (usually the central city) if there is to be any exclusion from the current rule at all. Additionally the commenter noted that it is inconceivable to use income figures based on areas in which the PHA has no units, when there is no way the deconcentration rule would result in any housing being offered in those areas.

HUD Response: As discussed in an earlier response, all HUD assisted housing programs use the same method to calculate income limits. HUD will not deviate from this approach and thus complicate the rule. PHAs may address the types of concerns raised by the comments through means such as local admissions preferences.

Comment: Scattered site developments should be excluded from the exemption. The commenter wrote that such developments should be excluded or at least subjected to closer scrutiny, perhaps by basing the analysis on the median income of the census tract in which the units are located.

HUD Response: As discussed in an earlier response, all HUD assisted housing programs use the same method to calculate income limits and HUD will not deviate from this approach. Also, local admissions preferences can address such situations.

Comment: The wording of the proposed rule is not entirely clear. The commenter wrote that the rule would be easier to understand if it read as follows: "The EIR is from 85 percent to 115 percent (inclusive) of the average family income (the PHA-wide average income for covered developments as defined in Step 1), except that the upper limit shall never be less than the extremely low-income threshold (30 percent of median income) for the jurisdiction."

HUD Response: HUD has accepted the suggestion and agreed to change part of the regulatory language. However, the rule will continue to reference the definition of extremely low-income family under 24 CFR 5.603(b) since the complete definition is too lengthy to repeat and the definition cite is referenced so that any future changes to the definition are made in one place only. The revised language at § 903.2(c)(1)(iii) Step 3 reads as follows: "A PHA shall determine whether each of its covered developments falls above, within or below the EIR. The EIR is from 85 percent to 115 percent (inclusive) of the average family income (the PHA-wide average income for covered developments as defined in Step 1), except that the upper limit shall never be less than the income at which a family would be defined as an extremely low-income family under 24 CFR 5.603(b)."

Comment: HUD's resident database does not facilitate accurate analysis of poverty concentrations, so PHAs have to spend more time doing their own data analysis. The commenter wrote that HUD should suspend the "deconcentration of poverty" rule until the Multifamily Tenant Characteristics System (MTCS) or the Public Housing Information Center can provide accurate information on average tenant incomes for each family development. For example, the PHA has a 153-unit hi-rise for elderly and disabled residents in the same development (same HUD project number) as a 298-unit family townhouse development. The MTCS standard reports blend all of the resident data together, so a PHA cannot isolate the family development data needed to analyze "concentration of poverty."

HUD Response: The MTCS has a field that identifies the HUD project number of the development in which the resident lives. A public housing development includes units or buildings with the same project number. Typically developments with more than one building house similar types of residents, such as elderly or disabled persons or families, in each building. In the case described, where one project number includes an elderly and disabled resident hi-rise and a family townhouse development, this is considered a single development for purposes of deconcentration. If such a development falls outside the EIR, the final deconcentration rule published on December 22, 2000, permits an agency

to explain or justify the circumstances of how this development meets the goals of deconcentration and income mixing.

Comment: As amended, the deconcentration rule imposes new administrative burdens on PHAs and further complicates the already difficult task of running public housing, thereby driving up administrative costs. The commenter wrote that applicants and advocates are likely to be confused by a system of "higher income" and "lower income" buildings and developments, resulting in more complaints, more staff time devoted to explaining the system, more customer dissatisfaction, and more fair housing complaints.

HUD Response: This rule, which revises the definition of EIR to include within the EIR those developments in which the average income level is at or below 30 percent of the area median income, and therefore ensure that such developments cannot be categorized as having average income "above" the EIR, will simplify deconcentration requirements for many PHAs that will no longer have to explain or justify why they need not undertake documentation measures for some of their developments.

V. Findings and Certifications

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule amends the deconcentration component of HUD's PHA Plans regulations and revises the definition of EIR to ensure that included within that range are developments in which the average income level is at or below 30 percent of the area median income and therefore such developments cannot be categorized as having average income "above" the EIR. This rule does not impose a burden on small entities. This rule alleviates an administrative burden on PHAs that have developments in which the average income is extremely low-income.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Environmental Impact

This issuance involves a discretionary establishment of external administrative or fiscal requirements or procedures related to rate or cost determinations that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to this rule after its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Office of General Counsel, Regulations Division, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs affected by this rule are 14.850 and 14.855.

List of Subjects in 24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD amends part 903 of title 24 of the Code of Federal Regulations as follows:

PART 903—PUBLIC HOUSING AGENCY PLANS

1. The authority for 24 CFR part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

2. In § 903.2, paragraph (c)(1)(iii) is revised to read as follows:

§ 903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?

* * * * * *

(c) * * *

(1) * * *

(iii) *Step 3.* A PHA shall determine whether each of its covered developments falls above, within or below the Established Income Range. The Established Income Range is from 85 to 115 percent (inclusive) of the average family income (the PHA-wide average income for covered developments as defined in Step 1), except that the upper limit shall never be less than the income at which a family would be defined as an extremely low income family under 24 CFR 5.603(b).

* * * * *

Dated: July 9, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–19751 Filed 8–5–02; 8:45 am]

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Federal Register

Tuesday,
August 6, 2002

Part IV

Department of Education

34 CFR Part 668 et al.
Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 682, and 685

RIN 1845–AA23

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions, Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The Secretary is amending these regulations to reduce administrative burden for program participants, to provide benefits to students and borrowers, and to protect taxpayers' interests.

DATES: We must receive your comments on or before October 7, 2002.

ADDRESSES: Address all comments about these proposed regulations to Ms. Gail McLarnon, U.S. Department of Education, P.O. Box 33076, Washington, DC 20033–3076. We encourage commenters to use e-mail because paper mail in the Washington area may be subject to delay, but please use one method only to provide your comments. If you comment via e-mail, we will send a return e-mail acknowledging our receipt of your comments. If you choose to send your comments through the Internet, use the following address: *LoanNPRM@ed.gov*

You must include the term "Team I Loan Issues" in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Ms. Gail McLarnon, Telephone: (202) 219–7048 or via the Internet: *gail.mclarnon@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as they are discussed in the Significant Proposed Regulations section of this document.

Section 482(c)(1) of the Higher Education Act of 1965, as amended (HEA) provides that in order for a regulatory change to be effective for the start of an award year on July 1, it must have been published in final form in the **Federal Register** no later than the preceding November 1. The Secretary's intent is to publish final rules resulting from this NPRM by November 1, 2002, making the new rules effective on July 1, 2003. However, section 482(c)(2) of the HEA allows the Secretary to designate regulatory provisions that an entity subject to the provision may, at its option, choose to implement earlier. Therefore, we are seeking suggestions on which of the proposed regulatory provisions in this NPRM, if finalized, should be so designated.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations at 1990 K Street, NW (8th Floor), Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. If you want to schedule an appointment to inspect the public comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject all proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes must conform to agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants in that process stating why the Secretary has decided to depart from the agreements.

We developed a list of proposed regulatory changes from advice and recommendations submitted by individuals and organizations in response to a May 24, 2001, request for recommendations on improving the Title IV student assistance programs from Representative Howard P. "Buck" McKeon and Representative Patsy Mink, the Chairman and Ranking Member, respectively, of the Subcommittee on 21st Century Competitiveness of the Education and the Workforce Committee of the U.S. House of Representatives.

On December 5, 2001, we published a notice in the **Federal Register** (66 FR 63203) announcing our intent to establish two negotiated rulemaking committees to develop proposed regulations. One committee (Committee I) would address issues related to the Title IV student loan programs. The other committee (Committee II) would address all other Title IV student aid issues. The notice requested nominations of individuals for membership on the committees who represented key stakeholder constituencies that are involved in the student financial assistance programs, with preference given to individuals who are actively involved in administering the Federal student financial assistance programs or whose interests are significantly affected by the regulations. In the notice, we identified the constituencies with interests that are

significantly affected by the subject matter of the negotiated rulemaking and announced that we expected that representatives of each of those constituencies would likely be selected as members of one, or both, committees. This Notice of Proposed Rulemaking (NPRM) is the result of the deliberations of Committee I.

The members of Committee I were:

- Corye Barbour and Ellynne Bannon (alternate), representing students, including the United States Student Association and the State PIRGs (Public Interest Research Groups) Higher Education Project;
- Deanne Loonin and Amy Marshall (alternate), representing legal assistance organizations that represent students; including the National Consumer Law Center and Community Legal Services;
- Irv Bodofsky and Virginia Foster (alternate), representing financial aid administrators at institutions of higher education; including the National Association of Student Financial Aid Administrators;
- Alisa Abadinsky and Laurie Quarles (alternate), representing business officers and bursars at institutions of higher education, and institutional servicers; including the Coalition of Higher Education Assistance Organizations and the National Association of College and University Business Officers;
- Reginald T. Cureton and William "Buddy" Blakey (alternate), representing institutions of higher education eligible to receive assistance from programs authorized under Titles III and V of the HEA; including the United Negro College Fund and the National Association for Equal Opportunity in Higher Education;
- George Chin and Patricia Smith (alternate), representing four-year public institutions of higher education; including the American Association of State Colleges and Universities;
- William Schilling and Maureen R. Budetti (alternate), representing private, non profit institutions of higher educations; including the National Association of Independent Colleges and Universities and the Association of American Jesuit Colleges and Universities;
- Ray Testa and Nancy Broff (alternate), representing for-profit postsecondary institutions; including the American Association of Cosmetology Schools and the Career College Association;
- Scott Miller and Elise Nowikowski (alternate), representing guaranty agencies and guaranty agency servicers; including the National Council of Higher Education Loan Programs, the Student Loan Servicing Alliance, the Guaranty Agency CEO Caucus, the National Association of Student Loan Administrators, Sallie Mae (USA Education, Inc.), and the National Association of State Scholarship and Grant Programs;
- Jane Stewart and Gail Somerville (alternate), representing lenders, secondary markets, and loan servicers; including the Consumer Bankers Association, the Education Finance Council, the Student Loan Servicing Alliance, the National Council of Higher Education Loan Programs, ELM Resources, and Sallie Mae;
- Dan Madzelan, representing the U.S. Department of Education.

At its first meeting, Committee I reached agreement on its protocols and agenda. During later meetings, the Committee reviewed and discussed drafts of proposed regulations. The Committee met over the course of several months, beginning in January 2002.

In addition to the proposed regulations discussed under the section of this document called Significant Proposed Regulations, Committee I discussed other issues related to the administration of the Title IV loan programs. One of these issues, which related to late disbursements of Title IV aid, was referred with recommendations to Committee II for disposition. Another issue that would have changed the regulation that provides that any single installment payment in a graduated or income sensitive repayment schedule cannot be more than three times greater than any other payment could not be addressed since there would be significant budgetary implications to the suggested change. One of the principles that the Secretary placed around this regulatory process was that no proposed change could have cost implications.

In order for the committee to have reached consensus, no member of the committee could dissent on the proposed regulations.

Consensus was reached by the members of Committee I on all of the proposed regulations in this document.

Significant Proposed Regulations

The following discussion of the proposed regulations begins with changes that affect more than one of the Title IV student loan programs.

This is followed by separate discussions of changes that affect only one of the three programs—the Perkins Loan Program, the FFEL Program, and the Direct Loan Program. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Perkins Loan Program, FFEL Program, and Direct Loan Program Changes

Rehabilitation of Defaulted Loans (Sections 668.35, 674.39, 682.405, and 685.211)

Current Regulations: Section 668.35 of the current regulations allows a borrower who is in default on a Title IV loan to regain eligibility for additional Title IV assistance by either repaying the loan in full or by making arrangements to repay the loan that are satisfactory to the holder of the loan and in accordance with the individual Title IV loan program regulations. In addition, the borrower must, as part of those satisfactory arrangements, make at least six consecutive monthly payments. The regulations do not explicitly address defaulted loans on which a judgment has been obtained by a Perkins school lender, a guaranty agency, or by the Department.

Sections 674.39 and 682.405 of the current regulations require schools and guaranty agencies to make a loan rehabilitation program available to all defaulted Perkins, and FFEL borrowers, respectively, as required by the HEA. Section 685.211 implements the rehabilitation program for the Direct Loan Program. Sections 674.39 and 682.405 of the regulations also require a borrower who wishes to rehabilitate a loan on which a judgment has been obtained to sign a new promissory note. We also apply this requirement when rehabilitating a defaulted Direct Loan.

Suggested Change: Many schools that participate in the Perkins Loan Program suggested that rehabilitation should not be available to a borrower who had a Perkins Loan on which a judgment has been obtained. As a result of this suggestion, we included this issue on the negotiated rulemaking agenda and expanded the discussion to include the FFEL and Direct Loan programs.

Those schools that suggested the change for the Perkins Loan program and the negotiators representing their interests argued that requiring schools to offer rehabilitation to borrowers against whom they have secured a judgment is not in the best interests of the Perkins Loan Program. They noted that Perkins schools are required by the regulations to litigate in certain circumstances to collect a defaulted loan. They stated that the considerable amount of effort and financial resources spent on litigation to obtain a judgment is wasted when the school is later required to vacate that judgment upon receipt of the borrower's 12 consecutive monthly payments, as part of a rehabilitation plan. They also noted that by the time a school is required to

commence litigation and obtain a judgment on a defaulted loan, the borrower has had ample opportunity to rehabilitate the defaulted loan. Those negotiators pointed out that vacating the judgment also results in additional court and legal fees and jeopardizes future collection efforts and litigation if the borrower subsequently re-defaults. Finally, they noted that the judgment obtained as the result of litigation was the enforceable debt instrument, and therefore the borrower arguably was not entitled to the benefit of rehabilitation under the original promissory note.

Proposed Regulations: We are proposing to amend §§ 674.39(a), 682.405(a)(1), and 685.211(f) of the regulations to exclude from rehabilitation defaulted Perkins, FFEL, and Direct Loan program loans on which a judgment has been obtained. In doing so, we are also proposing conforming changes to remove the requirements in §§ 674.39(a)(3) and 682.405(a)(4) relating to rehabilitation of a loan on which a judgment has been issued.

We are also proposing to amend § 668.35 by adding a paragraph that allows a borrower who is subject to a judgment to re-establish eligibility for Title IV, HEA program assistance by repaying the debt in full, or by making repayment arrangements that are satisfactory to the holder of the debt and that include at least six consecutive monthly payments. We also propose to add a new paragraph to § 668.35, which provides that a student may reestablish eligibility under the provisions of § 668.35 only once. Finally, we are proposing to revise § 682.405(b)(1) to clarify that voluntary payments do not include payments made after a judgment has been obtained on a loan.

Reason: During the discussion of the suggested change to the regulations, several negotiators expressed interest in amending the regulations to make rehabilitation of a loan on which a judgment has been obtained optional for the loan holder because they saw instances where providing some of the benefits of rehabilitation to certain borrowers could increase debt recovery and allow borrowers to rectify the past default. We noted that there was no statutory basis for providing a loan holder the option of offering rehabilitation to some borrowers against whom the holder had a judgment and not to others. However, we suggested that there were options that holders could consider to permit them to work with borrowers against whom they had a judgment in ways that could increase collections on defaulted loans and provide borrowers in default with some benefits as an incentive to make payments on their debt.

Prior to this rulemaking process, the regulations allowed borrowers against whom a judgment has been issued on a Title IV loan the same opportunity for rehabilitation of the loan as any other defaulted borrower. However, after considering the negative effects of this policy cited by the Perkins schools, we noted that neither of the statutory sections creating the rehabilitation program (Section 428F of the HEA for the FFEL and the Direct Loan programs and section 464(h) of the HEA for the Perkins Loan Program) specifically require that rehabilitation be offered to borrowers against whom there is a judgment. We also considered statistical information we received from some Perkins Loan lenders showing that rehabilitation was not generally effective for borrowers against whom the lender had obtained judgments. Based on these considerations we decided that it was appropriate to change the regulations to provide more flexibility to schools and other loan holders in developing repayment arrangements with individual debtors, by eliminating loans on which a judgment has been obtained from the scope of the rehabilitation programs.

Although the proposed regulations exclude a loan on which a judgment has been obtained from being rehabilitated, the proposed regulations would provide that a loan holder may, at its option, enter into an agreement with a borrower against whom it had obtained a judgment. For example, an agreement could include a commitment from the holder that if the borrower made 12 consecutive monthly payments and then signed a new promissory note, the holder would vacate the judgment and request that the default be removed from the debtor's credit history. Under such an agreement, the borrower in default would receive many of the benefits of rehabilitation but, as opposed to the current regulations, the loan holder would have more flexibility to define the terms of the repayment agreement and to maximize the recovery of the debt from the defaulted borrower.

Some negotiators were concerned that borrowers with a judgment against them would not only be excluded from the benefits of rehabilitation, but would also be unable to receive other benefits of the Title IV programs. In particular, these negotiators were concerned that the borrower against whom there is a judgment would be unable to regain eligibility for additional Title IV aid, and would be ineligible for the discharge of the loan obligation under various statutory provisions unless the judgment had been fully satisfied.

In the case of a borrower regaining eligibility, the proposed changes to § 668.35 allow a borrower who is subject to a judgment obtained on a defaulted Title IV loan the opportunity to regain eligibility. However, we propose to modify the current rules under which a judgment debtor may regain eligibility to provide schools and guarantors with greater flexibility to recover loans on which a judgment has been obtained. The negotiators agreed on new provisions that allow the loan holder to determine what terms must be satisfied for a judgment debtor to regain eligibility for Title IV aid, as long as those arrangements include the making of at least six consecutive monthly payments.

On the issue of other benefits, we explained to the negotiators that these proposed regulations address rehabilitation and eligibility for additional Title IV aid and not any other aspect of the programs. Accordingly, the proposed regulations would not affect a borrower's eligibility for other Title IV loan benefits.

After these clarifications were made, the negotiators reached agreement on the proposed changes.

Retention of Promissory Notes (Sections 674.19, 682.402, and 682.414)

Current Regulations: The FFEL Program regulations include a provision that allows lenders and guaranty agencies to store a promissory note electronically only under certain circumstances. There is no corresponding regulation in the Perkins Loan Program.

Suggested Change: FFEL loan holders requested clarification of the technical change that was made to the regulations in June 2001 that was related to the retention of promissory notes that were signed electronically. We suggested that the Perkins Loan regulations should also include a provision concerning the retention of promissory notes that were signed electronically.

Proposed Regulations: The proposed regulations state that if a promissory note was signed electronically it must be stored electronically in accordance with the record retention requirements of § 668.24(d)(3)(i) through (iv).

Reason: The committee agreed to the proposed change to the FFEL Program regulations to make clear that promissory notes that were signed electronically must be maintained electronically in accordance with the record retention requirements of 34 CFR 668.24(d)(3)(i) through (iv). The committee also agreed to add similar

language to the Perkins Loan Program regulations.

Economic Hardship Deferments (Sections 674.34, 682.210, and by Reference 685.204)

Current Regulations: Some borrowers of loans made under the FFEL, Direct Loan, or Perkins Loan programs are eligible to receive a deferment of the obligation to make payments for up to three years if the borrower is unable to make payments because of an economic hardship. Under current regulations, borrowers may qualify for an economic hardship deferment if they have an educational debt to income ratio that is higher than a specified percentage. When calculating a borrower's educational debt burden, the loan holder must consider the borrower's monthly payments on all Federal postsecondary education loans. Current regulations for all three Title IV student loan programs require that the monthly payment amount be based on what the payment would be if the borrower were repaying the loan over a 10 year period from the date the borrower entered repayment, regardless of the length of the borrower's actual repayment schedule or the borrower's actual monthly payment amount.

Suggested Change: Initially, we suggested that the regulations be changed so that the borrower's actual monthly payment amount would be used to determine eligibility for an economic hardship deferment. This change was suggested because many Perkins Loan borrowers repay their loans in less than 10 years. Using a 10-year repayment schedule results in a monthly payment amount that is less than what the borrower is actually paying each month, and as a result, the borrower may not qualify for an economic hardship deferment. During the committee's preliminary discussion of this suggested change, a non-Federal negotiator suggested that corresponding changes be made to the regulations governing economic hardship deferments in the FFEL and Direct Loan programs.

Proposed Regulations: The proposed regulations would change the monthly payment amount that loan holders must use to calculate a Perkins, FFEL, or Direct Loan program borrower's monthly educational loan payment burden in determining whether the borrower qualifies for an economic hardship deferment. Specifically, the proposed regulations would require a school for the Perkins Loan Program, an FFEL Program loan holder, or the Secretary to use the borrower's actual monthly payment amount if the loan is scheduled to be repaid in 10 years or less, or a monthly payment amount based on a 10-year repayment schedule if the borrower's actual repayment schedule is more than 10 years.

Reason: The proposed regulations would allow a borrower to receive an economic hardship deferment more easily. Borrowers in all three programs whose repayment schedules are less than 10 years in length would no longer be penalized by the required use of a monthly payment amount that is less than their actual monthly payment amount. The FFEL and Direct Loan programs provide for repayment plans of more than 10 years. FFEL and Direct Loan borrowers whose repayment schedules are more than 10 years in length would continue to benefit by having the monthly payment amount based on a 10-year repayment schedule.

Initial and Exit Counseling (Sections 674.42, 682.604, and 685.304)

Current Regulations: Current regulations require that schools provide initial counseling to students who are borrowing under the FFEL or Direct Loan programs for the first time. While the Perkins Loan Program does not have specific initial counseling regulations, Perkins schools are required to provide certain information to borrowers prior to making the first disbursement of a loan. The regulations also require schools to provide exit counseling to students who have borrowed from any of the three Title IV student loan programs. Further, someone familiar with the Title IV student aid programs must be reasonably available to answer the borrowers' questions following both entrance and exit counseling.

The current Perkins, FFEL, and Direct Loan program counseling regulations require that schools provide the counseling to borrowers at specific times and under specific conditions. The current regulations also specify information that must be disclosed to borrowers through the counseling.

Suggested Change: It was suggested that the Perkins Loan, FFEL, and Direct Loan program counseling regulations be revised to clarify that a party other than a school may provide counseling to borrowers on a school's behalf. This change was suggested to make the regulations consistent with longstanding Departmental guidance that allows a school to arrange for another party to provide counseling to the school's borrowers as long as the school ensured that the counseling was provided and that it included all of the necessary information. It was also suggested that the current Perkins Loan, FFEL, and Direct Loan program counseling regulations be revised so that the information that must be disclosed to borrowers through counseling would be consistent across all three programs.

Proposed Regulations: The proposed regulations would clarify that, for initial counseling under the FFEL and Direct Loan programs and for exit counseling under all three loan programs, the school need not provide the counseling but must ensure that it is provided, that it includes all of the required information, and that someone familiar with the Title IV student aid programs be available to answer students' questions following the counseling.

We are not proposing changes to the Perkins Loan Program regulations governing the information that a school must provide to a borrower prior to making the first disbursement of a loan.

As suggested, the proposed regulations would establish consistency across all three programs in the information that is required to be covered during counseling. When reviewing the counseling regulations for consistency, the committee noted that while the current Direct Loan Program regulations require the disclosure of average and anticipated indebtedness information, the FFEL Program regulations do not. After discussing the feasibility of schools providing this information, we modified the Direct Loan language to require only disclosure of average anticipated repayment amounts and added the same language to the FFEL regulations.

We also proposed that schools provide borrowers with information about the availability of the Department's National Student Loan Data System (NSLDS).

Reason: The proposed changes were made to reflect our long-standing guidance that a party other than the school may provide counseling to borrowers on a school's behalf. We modified the Direct Loan regulations and added to the FFEL regulations the requirement that schools, during exit counseling, provide borrowers with information about average monthly repayment amounts so that the borrowers will be better informed about their upcoming student loan repayment obligations.

Finally, the negotiators agreed that it is important for borrowers to be informed that they may access NSLDS to review information about all of their Title IV student loans.

FFEL and Direct Loan—Loan Limits (Sections 682.204 and 685.203)

Current Regulations: The current FFEL and Direct Loan program regulations specify maximum annual

loan limits for undergraduate students based on the number of years of an undergraduate program that the student has successfully completed.

Suggested Change: In light of questions that have arisen over the past several years, we proposed that the regulations clarify that a school may not link separate, stand-alone programs to allow students to be eligible for higher annual loan limits.

Proposed Regulations: The proposed regulations would specify that a student who is enrolled in a program that is one academic year or less in length is subject to the annual loan limits that apply to first-year undergraduates, and that a student who is enrolled in a program that is more than one academic year in length is subject to the first- and second-year annual loan limits for the first two years of that program. For example, if a school offers programs "A" and "B," each of which is one academic year in length, and the school requires students to have completed program "A" as a prerequisite for admission into program "B," students may not borrow at the second-year undergraduate level for program "B" based on the fact that they successfully completed program "A." Similarly, if a school offers a program that is two academic years in length, and requires students to have completed a separate one-year program as a prerequisite for admission into the two-year program, it may not consider the first and second years of that program to be the second and third years of an undergraduate program for loan limit purposes.

These proposed regulations do not affect the special statutory rule reflected in §§ 682.204 and 685.203 that allows a borrower, who has received an associate or baccalaureate degree and who enrolls in a new program for which such a degree is required, to borrow up to the higher annual loan limits that apply to borrowers who have successfully completed the first and second years of an undergraduate program. The proposed regulations also do not restrict an institution from determining the number of years a borrower has completed based on hours earned at another institution that are applicable to the program at the new institution.

Reason: For program integrity reasons, we believe that it is important to clearly state that, except as provided in the HEA, a school may not allow a student to qualify for higher annual loan limits based on prior completion of one or more years of study in a program other than the one in which the student is currently enrolled.

FFEL—Unemployment Deferment (Sections 682.210 and by reference 685.204)

Current Regulations: For any unemployment deferment period beyond the initial period granted by the lender, the FFEL regulations, and by reference the Direct Loan regulations, require a borrower who does not qualify for an unemployment deferment based on evidence of eligibility for unemployment benefits to provide the lender with a written certification describing the borrower's diligent search for full-time employment during the preceding six months. The regulations require the borrower to submit specific information about these attempts to gain employment, including the name of the employer contacted and the employer's address and telephone number or other information acceptable to the holder, showing that the borrower made at least six diligent attempts to gain employment. For both initial and subsequent deferment requests, the regulations further require that a borrower who does not qualify based on evidence of eligibility for unemployment benefits affirm in a written certification that he or she has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower's permanent or temporary address, and provide the agency's name, address, and the date the borrower registered with the agency.

Suggested Change: FFEL Program participants suggested revising the regulations governing unemployment deferments to simplify the process for those borrowers who do not qualify based on their eligibility for unemployment benefits. They stated that the regulations should be changed to simplify the information required to support the borrower's written certification that he or she has searched for full-time employment. They believed that allowing the borrower to certify to the diligent employment search and registration with an employment agency without providing additional information about the specific contacts was sufficient, given that the borrower's application for the deferment was certified under penalty of perjury. They also believed that this streamlined process was consistent with the fact that, given technological changes, a search for employment may be conducted in different ways and may not always involve direct contact with a particular person at an employer.

The negotiators representing FFEL Program lenders, servicers, and guarantors suggested eliminating the requirement for a written certification from the borrower confirming his or her diligent search for full-time employment. They supported their request by citing changes in the procedures used to apply for State unemployment benefits which now include certain oral and automated processes.

With regard to the certification of registration with an employment agency, the non-federal negotiators suggested that the 50-mile radius be based on where the borrower is currently residing rather than the borrower's permanent or other address that may no longer be relevant to the borrower's job search.

Proposed Regulations: The proposed regulations would provide that a borrower may qualify for an unemployment deferment beyond the initial unemployment deferment period by providing a written certification, or an equivalent as approved by the Secretary, that the borrower has made at least six diligent attempts during the preceding six-month period to secure full-time employment, without providing the details of those contacts. Similarly, the proposed regulations would allow the borrower to certify, if required, that he or she has registered with a local employment agency without providing the details of the registration. Finally, the proposed regulations also provide that the 50-mile radius requirement for registration with an employment agency be based on the borrower's current address.

As we have previously stated, as a general rule, the term "written certification" also includes electronically submitted certifications. Given technological or other developments, the Secretary may, in the future, approve other methods of submission that are equivalent to a written certification as long as such methods protect the integrity of the programs.

Reason: The negotiators believed that these proposed changes to the unemployment deferment regulations were appropriate for the reasons discussed above.

FFEL and Direct Loan—Consolidation Loan Benefits (Sections 682.402, 685.212, and 685.220)

Current Regulations: Under current regulations in the FFEL and Direct Loan programs, if a borrower meets the requirements for a loan discharge based on school closure, false certification, or unpaid refund on one or more of the loans that were repaid by a consolidation loan, but does not qualify for discharge on other loans that were

consolidated, the borrower may receive a partial discharge of the consolidation loan. However, the current regulations do not allow a borrower to receive a partial discharge of a consolidation loan based on a total and permanent disability. To receive a discharge of a consolidation loan based upon a total and permanent disability, the borrower must meet the conditions for a total and permanent disability discharge on all of the loans that were consolidated.

The current regulations provide for the discharge of a PLUS loan if the student on whose behalf the loan was obtained dies. However, if a parent borrower consolidates a PLUS loan and the student for whom that loan was obtained dies, a discharge of the portion of the consolidation loan attributable to that PLUS loan is not available.

In general, the current FFEL and Direct Loan program regulations provide for discharge of a joint consolidation loan only if each borrower meets the requirements for a loan discharge. There is an exception to this rule only for discharges based on school closure, false certification, or an unpaid refund. If one borrower meets the requirements for one of those discharges on a loan that was consolidated into a joint consolidation loan, but the other borrower does not qualify for any type of discharge, the regulations provide for a partial discharge of the joint consolidation loan.

Suggested Change: Some FFEL Program participants suggested that the regulations be modified to allow for the partial discharge of a consolidation loan if a borrower meets the requirements for discharge due to total and permanent disability on one or more, but not all, of the loans that were consolidated.

It was also suggested that the regulations be changed so that a parent borrower would qualify for a partial discharge of a consolidation loan if the consolidation loan repaid a PLUS loan obtained for a student who died.

We also suggested that the provisions for partial discharge of a joint consolidation loan be extended to cover cases in which one of the borrowers dies or becomes totally and permanently disabled, but the other borrower does not qualify for any type of discharge.

Proposed Regulations: The proposed regulations would specify that, if a consolidation loan repaid a PLUS loan obtained for a student who died, the portion of the consolidation loan attributable to that PLUS loan will be discharged. They would also provide for the discharge of the applicable portion of a joint consolidation loan if one of the borrowers dies or becomes totally and permanently disabled.

The proposed changes to § 685.220(l) of the Direct Loan Program regulations include new language stating that a joint Direct Consolidation Loan may be partially discharged if one of the borrowers qualifies for forgiveness under the teacher loan forgiveness program. The proposed change to the Direct Loan regulations would merely clarify current policy and provide for a more complete set of cross-references to the loan discharge types covered in § 685.212 of the regulations. Because the construction of the FFEL regulations currently provides for the partial discharge of a joint consolidation loan in this situation a change is not needed in the FFEL regulations.

Reasons: We declined to accept the suggested change that would allow for the partial discharge of a consolidation loan based on a total and permanent disability when a borrower meets the requirements for discharge on some, but not all, of the loans that were consolidated. The only way that some, but not all, of a borrower's consolidated loans could be eligible for a disability discharge would be if the ineligible loans were made after the date the borrower became totally and permanently disabled. This means that the borrower was no longer totally and permanently disabled and therefore not eligible for a discharge on any of the loans. The other negotiators agreed with our decision. We suggested the other changes described above because we believe that borrowers should be permitted to receive discharges that they would have qualified for if they had not consolidated their loans. The proposed changes are consistent with current regulations that allow partial discharge of consolidation loans due to school closure, false certification, and unpaid refunds.

Perkins Loan Program Changes

Federal Perkins Loan—Master Promissory Note (Sections 674.2 and 674.16)

Current Regulations: In § 674.2, the term "Making of a loan" is defined as when the borrower signs a promissory note for each award year and the institution makes the first disbursement of loan funds under that promissory note for that award year. The regulations do not define or provide for the use of a Master Promissory Note (MPN) in the Perkins Loan Program.

Under § 674.16(d)(2), the institution must obtain the borrower's signature on a promissory note for each award year before disbursing loan funds to the borrower under that note for that award year.

Suggested Change: To provide for the use of an MPN in the Federal Perkins Loan Program, we suggested that revisions were needed to the current definition of "Making of a loan" and that the regulations needed a specific definition of the term "Master Promissory Note (MPN)".

In addition, § 674.16(d)(2) needs to be amended to eliminate the regulatory requirement that a Perkins Loan borrower sign a promissory note for each award year. Finally, the regulations need to clearly state the conditions under which the ability of an institution to make Perkins loans under an MPN expires.

Proposed Regulations: The proposed regulations would modify the definition of "Making a loan" and add a definition for the term "Master Promissory Note (MPN)". They would also modify the requirements of § 674.16(d)(2) to be consistent with the use of an MPN in the Perkins Loan Program.

Proposed § 674.16 would require the institution to ensure that each loan is supported by a legally enforceable promissory note while eliminating the requirement for a new note for each award year. In addition, a new paragraph would be added to this section to state the conditions under which the Perkins Loan MPN would expire.

Reason: The adoption of an MPN in the Perkins Loan Program will simplify the loan process by eliminating the need for institutions to prepare, and students to sign, a promissory note each award year. The use of the MPN will reduce burden on both students and institutions and will ensure consistency across the three Title IV loan programs. The proposed changes to the Perkins Loan Program regulations are based on existing regulations for MPNs in the FFEL and Direct Loan programs.

During the negotiations, the negotiator representing State PIRGs expressed concern that the implementation of an MPN in the Perkins program might result in a student incurring additional debt without his or her knowledge. After additional discussion, that negotiator chose, with respect to this issue, to invoke the provision of the committee's protocols that allows one coalition partner to dissent on an issue while the rest of the coalition consents to it. Therefore, our suggestion to introduce an MPN in the Perkins Loan Program and the proposed supporting regulatory changes were both endorsed by the negotiating committee.

Federal Perkins Loan—Write-Offs (Sections 674.9 and 674.47)

Current Regulations: Current regulations in § 674.9 require a borrower who has a Perkins Loan, a National Direct Student Loan, (NDSL), or a National Defense Student Loan written off to reaffirm that debt in order to receive a new Perkins Loan. Reaffirmation is not required if the amount written off is $25 or less.

Current § 674.47(g) provides that an institution may cease collection activity on a defaulted account with a balance of less than $25 if the borrower has been billed for this balance in accordance with the regulations. The regulations further state that an institution may cease collection activity on a defaulted account with a balance of less than $200 if the institution has carried out the due diligence procedures required by the regulations and if the account has had no payment activity for at least four years. Under current § 674.47(h), an institution may write off an account with a balance of less than $5.

Suggested Change: Members of organizations representing Perkins Loan schools suggested that the current $5 Perkins "write-off" limit be raised to at least $25.

Proposed Regulations: The proposed regulations would amend § 674.47 (g) and (h) to provide increased flexibility to schools to write-off a low balance on a Perkins Loan account. Specifically, the proposed changes maintain the current provision that a school may cease collection activity on a defaulted Perkins Loan account of less than $200 if, for a period of four years, the institution has complied with the due diligence procedures of subpart C of the Perkins Loan regulations and the borrower has not made any payments or otherwise agreed to repay the loan.

The proposed changes would also allow an institution to write off account balances of less than $25, and if the borrower has been billed for at least two years, balances of less than $50.

The proposed regulation would also add new language making it clear that a borrower whose balance has been written off is relieved of all repayment obligations. Finally, a conforming change is proposed that would remove the requirement that a borrower must reaffirm a loan that was previously written off.

Reason: We believe that the changes approved by the negotiating committee will reduce costs and administrative burden at Perkins Loans schools.

Perkins Loan—Transfer of Loan Fund (Section 674.17)

Current Regulations: When an institution responsible for a Perkins Loan fund closes or ceases to participate in the Perkins Loan Program, it must take specific steps to protect the outstanding loans and the Federal interest in the loan fund. Under the current regulations, one of the options available to such an institution is to transfer any outstanding loans to another institution if directed to do so by the Secretary.

Suggested Change: We suggested that the regulations be changed to eliminate the option of the Secretary to direct a Perkins Loan institution to transfer its outstanding loans to another institution. We have determined that this is not an appropriate action to take if a Perkins Loan institution closes, or otherwise ends its participation in the program.

Proposed Regulations: The proposed change to § 674.17 would eliminate the provision allowing an institution to transfer its Perkins loan portfolio to another institution at the direction of the Secretary.

Reason: Several years ago, the Secretary administratively discontinued the practice of directing an institution that closes or otherwise ends its participation in the Perkins Loan Program to transfer its outstanding Perkins loans to another institution. The proposed change to the regulations will reflect that policy and clarify that assignment of Perkins loans to the Secretary is the only option available.

Federal Perkins Loan—Borrower Repayment (Sections 674.33 and 674.42)

Current Regulations: The current regulations require an institution that chooses to implement the minimum monthly payment option for a Perkins loan borrower to coordinate that minimum monthly payment with any other institution from which the borrower has received Perkins loans.

Suggested Change: Organizations that represent schools that participate in the Perkins Loan Program suggested that the regulations be modified to specify that an institution is required to coordinate minimum monthly repayment amounts with other institutions only if the borrower requests such coordination.

Proposed Regulations: Under § 674.33 of the proposed regulations, an institution would be required to coordinate a borrower's monthly payments with other institutions only if the borrower informs the institution that he or she wants the minimum monthly repayment determination to be based on payments due to other institutions.

We are also proposing to amend § 674.42 to require the institution to inform borrowers during exit counseling that they request coordination of monthly payments.

Reason: Many institutions participating in the Perkins Loan Program are not able to coordinate a borrower's minimum monthly payment amount with other institutions because they are unaware that the borrower has other Perkins loan debt. To address this concern, the negotiators agreed to require an institution to coordinate minimum monthly repayments with other institutions only if the borrower requests such coordination.

To ensure that borrowers who have loans at other institutions are aware that they must ask the institution to coordinate with other institutions in establishing the minimum payment amount, the proposed regulations would add a requirement in § 674.42 that institutions inform borrowers of the minimum repayment coordination provision.

Perkins Loan—Copies of Promissory Notes (Section 674.42)

Current Regulations: The Perkins Loan Program regulations provide that institutions must disclose critical repayment information to a Perkins loan borrower in a written statement either before the borrower ceases at least half-time study or during the exit interview. As part of the disclosure requirements, the institution must provide the borrower with a copy of the borrower's signed promissory note.

Suggested Change: Organizations that represent Perkins Loan schools suggested that the regulations be revised to require an institution to provide a copy of the signed promissory note to the borrower only at the borrower's request.

Proposed Regulations: The proposed regulations would eliminate the requirement that the school provide the borrower with a copy of his or her signed promissory note. Instead, the institution would be required, as part of its repayment information disclosure or during the exit interview, to inform each borrower that a copy of the promissory note will be provided upon request and provide each borrower with contact information that will allow the borrower to make such a request.

Reason: Many institutions give borrowers a copy of their signed promissory notes before the borrowers leave school, often when the note is first signed. The proposed change decreases the cost and burden of providing duplicate promissory notes for the school but preserves the borrower's

right to easily secure a copy of the signed promissory note.

Perkins Loan—Late Charges (Section 674.43)

Current Regulations: For Perkins Loans made for periods of enrollment beginning on or after January 1, 1986, institutions are required to impose a late charge if a borrower's payment is overdue.

Suggested Change: Organizations representing schools participating in the Perkins Loan Program suggested that the assessment of late charges in the Perkins Loan Program should be made optional for the school rather than mandatory.

Proposed Regulations: The proposed regulations would amend § 674.43(b)(2) by allowing the school the option of assessing late charges in the Perkins Loan Program. Consistent with current regulations, an institution that adopts a policy of assessing late charges would be required to impose them on all borrowers with overdue payments. The rules for the calculation and application of late charges would remain as specified in the regulations at § 674.43(b)(2)(iii).

Reason: Making the assessment of late charges optional would allow the charge to serve as a more effective collection tool and would reduce administrative burden on institutions.

Perkins Loan—Credit Bureau Reporting (Section 674.45)

Current Regulations: The current regulations under § 674.16 require an institution to report to at least one national credit bureau the amount and disbursement date of a loan and information concerning the repayment and collection of the loan until the loan is paid in full. This requirement must be disclosed to the borrower under § 674.31. Further, § 674.45(a)(1) requires an institution to report a defaulted loan account to a national credit bureau when a borrower has not responded satisfactorily to the final demand letter or the following telephone contact.

Suggested Change: Committee members representing Perkins Loan schools suggested that the regulations clarify when a borrower's default status is to be reported to a national credit bureau.

Proposed Regulations: We are proposing to revise the provisions governing credit bureau reporting in § 674.45(a)(1) to clarify that the institution must report an account as being in default to a national credit bureau as part of the collection procedures it is required to follow when a defaulted borrower does not respond satisfactorily to the institution's billing procedures under § 674.43.

Reason: Some negotiators felt that the current regulations did not clearly state when a borrower's default must be reported to a national credit bureau. The proposed change is intended to eliminate any confusion that exists from the current regulations.

Perkins Loan—Litigation (Section 674.46)

Current Regulations: Current regulations require institutions to review accounts for litigation at least annually if certain collection efforts set forth in § 674.45 do not result in repayment of the loan. The regulations require the school to, among other things, assess whether the total amount owed, including the outstanding principal, interest, collection costs and late charges, on all the borrower's Perkins loans at the institution is more than $200 and whether it would be cost effective for the institution to litigate the account and sue the borrower. If the institution determines, based upon its annual review, that the required conditions are met, it must sue to recover the debt and all litigation costs from the borrower.

Institutions may bring suit against a defaulted borrower even if the conditions included in the regulation are not met.

Suggested Change: Schools participating in the Perkins Loan Program requested that they be allowed more discretion when reviewing overdue accounts for litigation, and that the current litigation threshold amount be raised from $200 to $1000.

Proposed Regulations: Two specific changes are proposed for § 674.46. The first change would require institutions to review accounts for litigation once every two years, rather than every year. The second change would increase from $200 to $500 the amount that the institution must use to determine if it must litigate.

Reason: The proposal to review accounts for litigation less frequently than annually was recommended by some non-Federal negotiators to reduce the costs and administrative burden associated with conducting these reviews. These non-Federal negotiators stated that their experience shows that two of the factors used to support a decision to litigate, the borrower's assets and income, do not significantly change in the short time between annual reviews.

Several non-Federal negotiators stated that given the costs of litigation, it is not cost-effective to pursue small dollar accounts and recommended that the minimum dollar amount be increased to $700. Other negotiators recommended raising the litigation threshold to $1000. Based upon average loan balance data from NSLDS and our concern that the majority of these accounts should remain subject to litigation as the final due diligence effort, the negotiators agreed to increase the litigation threshold amount from $200 to $500.

Perkins Loan—Assignment of Loans (Section 674.50)

Current Regulations: Current regulations provide that the Secretary does not accept assignment of a loan if the loan has been cancelled due to the death or total and permanent disability of the borrower. They also require an institution to reimburse its Perkins Loan fund for the entire portion of the outstanding balance on a loan that has been determined by the Secretary to be unenforceable because of an act or omission of the institution or its–agent.

Suggested Change: The regulations need to be revised to be consistent with the regulatory requirement that an institution assign a Perkins Loan to the Secretary if the institution has made a preliminary determination that the borrower may qualify for a discharge based on a total and permanent disability. This change conforms the rules on assignment with the revised procedures for handling applications for discharges based on total and permanent disability which became effective July 1, 2002.

In addition, the regulations must be modified to conform to earlier changes that, instead of requiring reimbursement from an institution for loans deemed to be unenforceable, provide that the Secretary may require reimbursement.

Proposed Regulations: The proposed regulations would eliminate the provision in § 674.50(e)(4) that states that the Secretary does not accept assignments in cases where the loan was cancelled due to death or total and permanent disability. The proposed change to § 674.50(g)(2) would make it optional for the Secretary to require an institution to reimburse the Perkins Loan fund if an assigned loan is unenforceable because of an act or omission by the institution.

Reason: Effective July 1, 2002, under the new disability discharge requirements, when a Perkins Loan school makes a preliminary determination that a borrower is eligible for a discharge of his or her loan obligation, it must assign the loan to the Secretary for further action. The proposed change would also delete references to the assignment of loans after the institution has discharged the

loan due to death. By definition, once a loan has been discharged because of the borrower's death, there is no loan to assign.

The proposed change to § 674.50(g) conforms to an earlier change made in § 674.13, which provides the Secretary with the discretion to determine the circumstances under which reimbursement to the institution's Perkins Loan fund would be appropriate.

FFEL Program Changes

FFEL—Definition of Lender (Section 682.200)

Current Regulations: The current definition of lender in the FFEL Program regulations reflects the statutory restriction that a bank, savings and loan, or credit union which acts as a lender in the program not have the making or holding of student loans as its primary consumer credit function. The regulations provide that to be an eligible lender, a bank, savings and loan, or credit union may not hold FFEL Program loans at any time that total more than one-half of its combined consumer credit loan portfolio. In the case of a bank holding company, the company's wholly-owned subsidiaries as a group may not hold FFEL Program loans at any time that total more than one-half of the subsidiaries' combined consumer credit loan portfolios.

Suggested Change: Organizations representing FFEL lenders suggested that the definition of the term "lender" be revised to make clear that loans held in trust are not considered part of the trustee lender's consumer credit loan function in determining whether the lender has exceeded the limit of one-half of the lender's combined consumer credit loan portfolio. In addition, in a report titled "Trustee Arrangements Serve Useful Purposes in Student Loan Market" (GAO/HEHS–00–170) issued in September 2000, the General Accounting Office (GAO) recommended that we clarify how loans held by a trustee are treated for purposes of the limit on the percentage of a lender's consumer credit loan portfolio may be in student loans. The GAO report did not recommend a particular approach but only recommended that we clarify the application of the rule.

Proposed Regulations: The proposed regulations would add a new sentence to the definition of eligible lender that specifies that loans held in trust by a trustee lender are not part of the trustee lender's consumer credit loan function.

Reason: This change to the regulations is proposed so that eligible lenders will not be discouraged from serving as trustees for other lenders. A lender's trust department is generally separate from its own student loan department and its other consumer credit functions. Based on this factor, we have determined that including loans held in trust in the calculation of a lender's consumer credit loan portfolio may not give an accurate picture of the extent of the lender's consumer credit function that is represented by the lender's own student loan business. Loans held in trust will be considered instead to be part of the consumer credit function of the beneficial holder of the trust.

FFEL—Repayment Requirements (Section 682.209)

Current Regulations: Section 682.209 of the FFEL regulations provides that a lender must establish a first payment due date for a Stafford Loan that is not later than 45 days after the borrower's repayment period begins. It also provides that a lender must determine the beginning of the repayment period by using the date that the borrower was no longer enrolled in school, usually as provided by the school. Finally, the regulations provide that a borrower may orally request a repayment period that is less than the minimum 5-year period provided by the HEA, but may only extend the repayment period back to the minimum 5-year period only by a written notice to the lender.

Suggested Change: FFEL loan holders suggested that § 682.209 be amended in three ways. First they suggested that lenders be allowed to establish a first payment due date for a Stafford Loan that is not later than 60 days after the borrower's repayment period begins, rather than not later than 45 days after the borrower enters repayment. Second, they wanted the regulations to be changed to reflect non-regulatory guidance issued by the Department that provided that a lender would not be required to recalculate the start of the borrower's repayment period based on a new enrollment status date received from a school if the new date is in the same month and year as the date previously reported by the school. Finally, they suggested that the regulatory requirement that a borrower's notice to the loan holder to change a shorter repayment period to the minimum 5-year period be in writing be removed.

Proposed Regulations: The proposed regulations would change the lender's timeframe for establishing a first payment due date for a Stafford Loan borrower who enters initial repayment or reenters repayment at the conclusion of a deferment or forbearance, from 45 days to 60 days after the borrower's repayment begins or resumes.

The proposed regulations would also codify existing Departmental guidance by providing that if a lender receives a revised enrollment status date from a school after it has already provided the borrower with required repayment disclosures, and the new date is within the same month and year as the one previously reported, it may use the previously reported date.

Finally, the proposed regulations would remove the requirement that a borrower who previously asked to repay a loan in less than five years provide a written notice to the lender if the borrower now wishes to extend the repayment to a minimum of five years.

Reason: FFEL Program lenders and servicers requested the change in the lender's deadline to establish the first payment due date for Stafford Loan borrowers to provide consistency with similar timeframes that are currently in the regulations for other loans. Consistency in these timeframes reduces system complexity and administrative costs and provides borrowers with additional time after entering repayment to make the first scheduled payment.

FFEL participants cited existing Departmental guidance as the basis for their request that they be allowed to use a previously reported enrollment status change date if a new date reported by a school is within the same month and year. While their proposal would have allowed the use of the first date without regard to whether the lender had provided the borrower with repayment materials, the negotiators ultimately agreed to the proposal with the limitation that the lender could ignore the revised date submitted by the school only if it had already provided the borrower with the repayment disclosure materials.

Finally, to facilitate a borrower's ability to revise his or her repayment schedule quickly and easily from the less than five-year minimum repayment that the borrower previously requested and agreed to, the negotiators supported dropping the requirement that the borrower notify the lender in writing.

FFEL—Forbearance (Section 682.211)

Current Regulations: The lender and the borrower (or endorser, if applicable) must agree in writing to the terms of a discretionary forbearance and to some mandatory forbearances. If a forbearance involves the postponement of all payments, the lender must notify the borrower or endorser at least once every 3 months to remind the borrower or endorser of the continuing obligation to repay the loan. One of the discretionary

administrative forbearances that lenders may grant is for a period of up to 3 months for a borrower who is affected by a natural disaster.

Suggested Change: Members of the FFEL community requested that the regulations be changed, to the extent permitted by the statute, to eliminate the requirement that the borrower or endorser agree in writing to the terms of the forbearance. They also asked that the frequency of notice to a borrower in forbearance be decreased from once every three months to once every six months. Finally, some FFEL participants requested that the regulations be changed to permit a lender, without the Secretary's approval, to grant a discretionary forbearance for a period of up to three months to a borrower whose ability to make payments has been adversely affected by a local or national emergency.

Proposed Regulations: The proposed regulations would allow a lender to grant a discretionary forbearance without a written agreement. If the agreement is not in writing, the lender must send the borrower or endorser a notice confirming the terms of the forbearance agreement within 30 days of the agreement.

The proposed regulations would also reduce the frequency with which a lender must contact a borrower who has been granted a forbearance from once every three months to once every six months. In addition, the proposed regulations would specify that the information the lender provides to the borrower about the status of the debt must include: A statement that the borrower continues to have the outstanding obligation to repay the loan, the amount of the unpaid principal balance and any unpaid interest that has accrued on the loan, the fact that interest will accrue on the loan for the full term of the forbearance, and the fact that the borrower may discontinue the forbearance at any time.

Finally, the proposed regulations would authorize the lender to grant a discretionary administrative forbearance if the borrower's ability to repay is adversely impacted by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization.

Reason: The negotiators agreed that a lender should be able to address the needs of borrowers who are having difficulty making payments by granting forbearances without a written forbearance agreement, perhaps as part of a telephone conversation with the borrower. However, because a forbearance agreement amends the repayment terms of the loan, and in some cases could result in increased costs to the borrower, an oral agreement must be followed with a written notice to the borrower or endorser outlining the terms of the forbearance. That notice must be provided within 30 days of the oral agreement.

The negotiators also agreed to change the time between required lender contacts with borrowers in a forbearance from three to six months as long as there also was a requirement that the notification(s) to the borrower include the information noted above.

To ensure that lenders can react quickly during natural disasters, local or national emergencies, and military mobilizations to temporarily relieve borrowers of their repayment obligations without having to contact them first, the proposed regulations would authorize lenders to grant a discretionary administrative forbearance to borrowers for a limited three-month period until lenders can contact the borrowers and determine their ability to resume repayment.

FFEL—Sovereign Immunity (Section 682.402)

Current Regulations: When an FFEL lender receives notice that a borrower has filed a bankruptcy petition, it must, unless instructed otherwise by the guaranty agency, file a proof of claim with the court within a specified timeframe. Similarly, a guaranty agency is required to file a proof of claim on loans it holds.

Suggested Change: To ensure that the regulations do not interfere with a state guaranty agency's right to effectively invoke sovereign immunity as a defense to adversary proceedings seeking discharge or other relief brought in bankruptcy court on loans it holds or has guaranteed, we suggested that the regulations be amended to clearly provide such protection by clarifying that the agency may invoke its rights and may also instruct its lenders not to file a proof of claim.

Proposed Regulations: The proposed regulation would provide that a guaranty agency that is a State agency and does not assign to other guaranty agencies loans affected by bankruptcy filings is not required to file a proof of claim on loans it holds and may instruct lenders not to file proof of claims on loans that it guaranteed.

Reason: A State guaranty agency that has the protection of sovereign immunity should not be required to take actions, including either filing a proof of claim or accepting assignment of a proof of claim filed by another party, that may be viewed as waiving its sovereign immunity from suit in bankruptcy court. To avoid such contentions, a State guaranty agency should be allowed to instruct its lenders not to file claims.

A State guaranty agency that transfers to another guaranty agency any loans that it already holds as defaulted loans or any loans on which it has received a bankruptcy claim on the other hand, does not need this added protection. The strong public interest in recovering from the borrower any payments made available in the bankruptcy proceeding requires that this proposed change apply only to those State guaranty agencies that do not transfer to another guarantor any loans affected by a bankruptcy filing.

FFEL—Agency Review of Disability Claims (Section 682.402)

Current Regulations: A guaranty agency must pay an approved claim that is based upon a death, disability, or bankruptcy discharge within 45 days of receipt of the claim from the lender, and a claim that is based upon a closed school or false certification discharge within 90 days.

Suggested Change: A number of guaranty agencies suggested that agencies needed additional time to carefully review a claim submitted by a lender for a discharge based upon the total and permanent disability of the borrower. They commended that the regulations be changed to allow the agency up to 90 days to make the determination and, if approved, pay the claim to the lender.

Proposed Regulations: The proposed regulations would increase the time period in which a guaranty agency must pay a claim to a lender for a disability discharge from 45 days to 90 days.

Reason: The committee agreed with the suggestion for the reason stated above.

Direct Loan Program Changes

Definition of Default for Cohort Default Rate Calculations (Sections 668.183 and 668.193)

Current Regulations: When calculating a school's cohort default rate under the FFEL and Direct Loan programs, the denominator includes those borrowers whose loans entered repayment in the applicable fiscal year. Generally, the numerator includes borrowers from the denominator who defaulted on one or more loans before the end of the following fiscal year. However, the current regulations provide that certain non-defaulted Direct Loan borrowers also be included in the numerator. Specifically, the

regulations require the inclusion in the numerator of any borrower who received a Direct Loan from a proprietary, non-degree granting institution who has been repaying under the Direct Loan Program's income contingent repayment (ICR) plan for 360 days with scheduled payments less than 15 dollars per month and less than the amount of interest accruing on the loan.

Suggested Change: During the development of the negotiated rulemaking agenda, a non-Federal negotiator suggested changing the regulations to eliminate the current provision that includes in the numerator of the cohort default rate calculation the group of Direct Loan ICR borrowers discussed above. The non-Federal negotiator contended that the current regulations are unreasonable because they could result in a proprietary, non-degree-granting institution losing its eligibility to participate in the Title IV programs due to a cohort default rate based in part on borrowers who had met their repayment obligations and had not defaulted on their loans.

Proposed Regulations: The proposed regulations would make the suggested change. Borrowers included in a proprietary, non-degree-granting institution's cohort who have been repaying their loans under the Direct Loan Program's income-contingent repayment plan for 360 days with scheduled payments less than 15 dollars per month and less than the amount of interest accruing on the loan, would not be considered to be in default when calculating the institution's cohort default rate.

If the proposed regulations become final, the first official cohort default rates that would reflect the change would be the official rates for the 2001 fiscal year (FY 01) that the Secretary must publish by September 30, 2003. Therefore, to ensure consistency between the draft FY 01 cohort default rates and the official FY 01 cohort default rates, the Secretary plans to base the draft FY 01 cohort default rate calculation on the provisions of the revised regulations.

Reason: The change to the regulations that removes certain Direct Loan ICR borrowers from the numerator of a for-profit non-degree institution's cohort default rate calculation is proposed because such borrowers entered into ICR for a variety of valid reasons and are not in default. Thus, they should not be included in the calculation of an institution's cohort default rate.

Direct Loans—Expiration of Master Promissory Note (Section 685.102)

Current Regulations: Under current regulations, a Direct Loan Program Master Promissory Note (MPN) expires on the earliest of (1) the date the Secretary or the school receives the borrower's written notice that no additional loans may be disbursed under the MPN, (2) one year after the date of the first anticipated disbursement if no disbursement is made during that 12-month period, or (3) ten years after the date of the first anticipated disbursement.

Suggested Change: We suggested changing the current MPN expiration date rules so that instead of being based on the first anticipated disbursement date, the expiration date would be based on the signature or receipt date of the MPN.

Proposed Regulations: The proposed regulations would retain the current expiration date provisions for Direct Loan Program MPNs that are processed by the Secretary before July 1, 2003, and would establish new expiration date provisions for MPNs that are processed by the Secretary on or after July 1, 2003. Under the proposed provisions for MPNs that are processed by the Secretary on or after July 1, 2003, a Direct Loan Program MPN would expire on the earliest of (1) the date the Secretary or the school receives the borrower's written notice that no additional loans may be disbursed under the MPN, (2) one year after the date the borrower signed the MPN or the date the Secretary receives the MPN if no disbursements are made under that MPN, or (3) ten years after the date the borrower signed the MPN or the date the Secretary receives the MPN.

Reason: The implementation of the Common Origination and Disbursement (COD) System for processing Direct Loans provides the opportunity to make the Direct Loan Program MPN expiration date provisions more consistent with corresponding provisions under the FFEL Program. The FFEL Program provisions base the expiration date on the signature or receipt date of the MPN. The proposed change is also consistent with the MPN expiration date provisions for the Perkins Loan Program that are being proposed in this NPRM.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions. Summary of potential costs and benefits

The Secretary is amending these regulations to reduce administrative burden for program participants, provide benefits to students and borrowers, and to protect the taxpayers' interests. The proposed regulations are fully described elsewhere in this preamble. The Department of Education has estimated that the proposed regulations would have no effect on Federal costs over FY 2002–2006.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 682.209 Repayment of a loan.
- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs, and individual students and loan borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit or nonprofit institutions with total annual revenue below $5,000,000 or institutions controlled by governmental entities with populations below 50,000, and lenders with total assets under $100 million, as "small entities." Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered "small entities" under the Regulatory Flexibility Act. Individuals are also not defined as "small entities" under the Regulatory Flexibility Act.

A significant percentage of the over 4,000 lenders participating in the FFEL program meet the definition of "small entities." While these lenders and a number of institutions of higher education fall within the SBA size guidelines, the proposed regulations do not impose significant new costs on these entities.

The Secretary invites comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Sections 668.183, 668.193, 674.16, 674.19, 674.33, 674.34, 674.39, 674.42, 674.43, 674.45, 674.47, 674.50, 682.200, 682.209, 682.210, 682.211, 682.402, 682.405, 682.414, 682.604, 685.212, 685.220, and 685.304 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program.

Sections 668.183 and 668.193—Definition of Default for Cohort Default Rate Calculations

The proposed regulations eliminate the current provision that includes in the numerator of the cohort default rate calculation for a proprietary, non-degree-granting institution certain Direct Loan borrowers who are repaying under the income contingent repayment plan. There is no change in the burden hours associated with the affected sections of the regulations as a result of this proposed change because we calculate cohort default rates.

Section 674.16—Master Promissory Note

To provide for the use of a Master Promissory Note (MPN) in the Perkins Loan Program, we have proposed eliminating the regulatory requirement that a Perkins borrower sign a promissory note for each award year. The adoption of an MPN in the Perkins Loan Program will simplify the loan process by eliminating the need for institutions to prepare, and students to sign, a promissory note each award year. Because institutional use of the Secretary's promissory note in the Federal Perkins Loan program is considered part of normal business practice in administering the Federal Perkins Loan program, there are no burden hours calculated for this section.

Section 674.19—Retention of Promissory Notes

The proposed regulation provides that if a promissory note was signed electronically it must be stored electronically in accordance with the record retention requirements of 34 CFR 668.24(d)(3)(i) through (iv). The proposed change would not affect the process for retaining records in the Federal Perkins Loan Program. Therefore, this provision would not add burden hours associated with this section.

Sections 674.33 and 674.42—Borrower Repayment

Current regulations would be modified to specify that an institution's responsibility to coordinate minimum monthly repayment amounts with other institutions begins only when the borrower requests such coordination. Because the coordination of minimum monthly accounts is considered to be a normal business practice in the administration of the Federal Perkins Loan Program, the proposed regulation would not affect the burden hours associated with this section.

Section 674.34—Economic Hardship Deferment

Under the proposed regulations for economic hardship deferments, the amount of the borrower's monthly payment on a Federal postsecondary education debt scheduled to be repaid in 10 years or less would be the actual monthly payment amount, instead of, as under current regulations, a derived amount produced by converting repayment periods of less than 10 years to standard 10-year repayment periods. These changes do not change the burden hours associated with this section of the regulations because they are sufficiently covered by the current burden estimate for the section.

Section 674.39—Rehabilitation of Defaulted Loans

The proposed regulations would prohibit rehabilitation of loans on which a judgment has been obtained. As a result, institutions would be partially relieved of the current regulatory burden associated with obtaining a newly signed promissory note from the borrower after rehabilitating a loan on which a judgment has been obtained. In addition, an institution would no longer be required to instruct the credit bureau to remove the default from the borrower's credit history. We estimate that 592,000 Perkins Loan borrowers are currently in default. An estimated 5,920 (or 1%) of these borrowers have loans on which a judgment has been obtained. We estimate that it takes approximately 10 minutes (.167 hours) per rehabilitated loan for the institution to have the borrower sign a new promissory note and to instruct the credit bureau to remove the default from the borrower's credit history. Therefore, the proposed change will result in a burden reduction of 989 hours.

Section 674.42—Copies of Promissory Notes

The proposed regulations would remove the requirement that an institution provide to each borrower at the exit interview a copy of the borrower's signed promissory note. Instead, institutions would only be required to provide contact information that will allow a borrower to request and receive a copy of the borrower's signed promissory note. The proposed change would reduce burden for institutions because they would no longer be required to provide a copy of the promissory note to all borrowers. Under current regulations, an estimated 600,000 copies of promissory notes were provided to borrowers at an estimated time of 1 minute (.017 hours) per copy.

We expect that under the proposed regulations only about 10 percent of the borrowers will request copies of their notes. Therefore, the proposed change would result in 540,000 fewer notes needing to be distributed with a burden reduction of 9,180 hours.

Section 674.42—Exit Counseling

The proposed regulations revise the Perkins counseling regulations to clarify that a party other than a school may provide counseling to borrowers on a school's behalf. There is no change in the burden hours associated with this section of the regulations as a result of this proposed change because the current burden estimate reflects the counseling that must be provided to borrowers regardless of whether a school, or a party on behalf of a school, provides the counseling.

The proposed regulations also revise the information that must be disclosed to borrowers through counseling to be consistent with the Direct Loan and FFEL program counseling regulations. These revisions include new information that must be disclosed to borrowers through counseling. The revisions and additions do not change the burden hours associated with this section of the regulations because they are sufficiently covered by the current burden estimate for the section.

Section 674.43—Late Charges

The proposed regulations would amend § 674.43(b)(2) by making the institution's assessment of late charges optional in the Federal Perkins Loan Program. An institution that adopts a policy of assessing late charges would be required to assess them to all borrowers with overdue payments. The proposed regulation would reduce burden hours in this section because some institutions will choose not to adopt a policy of assessing late charges and, therefore, would not be required to respond to borrower inquires and complaints concerning the imposition of those charges. There are currently an estimated 2000 institutions that participate in the Federal Perkins Loan Program. We estimate that 200 (or 10%) of these institutions will choose not to assess late charges. We approximate that, on average each of those institutions spends one hour per month (12 hours per year) communicating with borrowers about the late charge. As a result, the proposed change would result in a burden reduction of 2400 hours.

Section 674.45—Credit Bureau Reporting

The proposed provisions governing credit bureau reporting in § 674.45(a)(1) would be revised to clarify that the institution would report an account as being in default to a national credit bureau as part of the collection procedures that follow the billing procedures in § 674.43.

Because credit bureau reporting is considered to be a normal business practice in the administration of the Federal Perkins Loan Program, the proposed regulation would not affect the burden hours associated with this section.

Section 674.47—Write-offs

The proposed regulations would allow an institution to write-off account balances of less than $25 and, if the borrower has been billed for at least two years, balances of less than $50. The proposed regulations would also add new language making it clear that a borrower whose balance has been written off is relieved of all repayment obligations. The proposed regulations would reduce burden for institutions because they would no longer be required to pursue collection of defaulted accounts with low balances. We estimate that 592,000 Perkins Loan borrowers are currently in default. An estimated 5920 (or 1%) of these borrowers would be eligible for write-off under the proposed regulations. We estimate that performing collection procedures on an overdue account takes 1 hour (1.00 hours) per borrower. Therefore, the proposed change will result in a burden reduction of 5,920 hours.

Section 674.50—Assignment of Loans

Two changes have been proposed for this section. The first change would conform the regulations to the requirement that an institution assign a loan to the Department when it makes a preliminary determination that the borrower qualifies for a total and permanent disability discharge on the loan. The second change conforms to an earlier change made in § 674.13, which provides the Secretary with the discretion to determine the circumstances under which reimbursement to the institution's Federal Perkins Loan fund would be appropriate. Because the proposed amendments in this section are technical conforming changes to earlier regulatory changes, we have determined that there are no burden hours associated with this section.

Section 682.200—Definitions

The proposed regulations would revise the definition of *Lender* to clarify that loans held in trust are not considered part of a trustee lender's consumer credit function in determining whether the lender has exceeded the limit of one-half of the lender's combined consumer credit loan portfolio. The revision to the definition does not change the burden hours associated with this section of the regulations because there is no burden currently associated with this provision.

Section 682.209—Repayment of a Loan

The proposed regulations would reduce burden on lenders by permitting them to establish first payment due dates for Stafford loan borrowers within 60 days following certain events instead of within 45 days under current requirements. As a result of these proposed regulations, the Stafford loan repayment due dates would be the same as those generally permitted for the PLUS and Consolidation loan programs, although the starting dates that trigger the 60-day deadline are different in the three programs. Since lenders would, under the proposed rule, simply re-set their computer systems and send out the same number of billings, there is no significant burden reduction as a result of this change.

Sections 682.210 and by Reference, 685.204—Deferment

The proposed regulations would affect the ability of borrowers to qualify for unemployment and economic hardship deferments. Current regulations require certain borrowers to provide job-search documentation to the lender. The proposed regulations would permit those borrowers to qualify for an unemployment deferment without providing specific details of their job searches.

For economic hardship deferments, the amount of the borrower's monthly payment on a Federal postsecondary education debt scheduled to be repaid in 10 years or less would be the actual monthly payment amount, instead of, as under current regulations, a derived amount produced by converting repayment periods of less than 10 years to a standard 10-year calculation. Because those derived amounts are generally lower than the actual monthly repayment amounts and will no longer be used if a borrower's loans are scheduled to be repaid in 10 years or less, more borrowers should qualify for economic hardship deferments.

These revisions do not change the burden hours associated with this

section of the regulations because the burden associated with the current requirement is associated with the forms that borrowers use to request unemployment and economic hardship deferments.

Section 682.211—Forbearance

The proposed regulations would decrease the required frequency of lender contacts with certain borrowers in forbearance from once every 3 months to once every 6 months. However, to compensate for this less frequent communication, the lender would be required to enhance some of the information it provides to the borrower about the status of the borrower's loan balance. Taken together, these two changes appear to cancel each other out and result in no net increase in burden to the lender.

Section 682.402—Death, Disability, Closed School, False Certification, Unpaid Refunds, and Bankruptcy Payments

The proposed regulations would provide that a guaranty agency that is a state agency is not required to file a proof of claim and it may instruct lenders not to file proof of claims on loans that it guaranteed.

The proposed regulations would change the timeframe in which a guaranty agency must pay a claim to a lender for a disability discharge from 45 days to 90 days.

These revisions do not change the burden hours associated with this section of the regulations.

Section 682.405—Loan Rehabilitation Agreement

The proposed regulations would prohibit rehabilitation of loans on which a judgment has been obtained. Because guaranty agencies would no longer permit the rehabilitation of these debts, lenders and guaranty agencies would be relieved of the current regulatory burden associated with obtaining a newly signed promissory note from the borrower prior to the sale of a rehabilitated judgment debt. However, this change does not impact the burden hours associated with this section of the regulations because there is no burden currently associated with this provision.

Section 682.414—Records, Reports, and Inspection Requirement for Guaranty Agency Programs

The proposed regulations state that if a promissory note was signed electronically it must be stored electronically in accordance with record retention requirements of 34 CFR 668.24. This revision is a clarification of current regulations, and has no effect on the burden hours associated with this section.

Section 682.604—Processing the Borrower's Loan Proceeds and Counseling Borrowers

The proposed changes would update the counseling requirements to ensure consistency among the FFEL, Perkins, and Direct Loan programs, and would clarify that parties other than the school may provide the counseling. There is no change in the burden hours because the current burden hour estimate reflects counseling that must be provided to borrowers regardless of whether the counseling is provided by the school itself, or a party on behalf of the school.

Section 685.212—Discharge of a Loan Obligation and Section 685.220 —Consolidation

The proposed regulations specify that if a Direct Consolidation Loan includes a PLUS loan obtained for a student who died, the portion of the Direct Consolidation Loan attributable to that PLUS loan is discharged. The proposed regulations also provide for the discharge of the applicable portion of a Direct Consolidation Loan that is obtained jointly by two married borrowers if one of the borrowers dies or becomes totally and permanently disabled. There is no change in the burden hours associated with the affected sections of the regulations as a result of these proposed changes because the slight increase in the number of borrowers who will be eligible to apply for these benefits is sufficiently covered by the current burden estimates for the affected sections.

Section 685.304—Counseling Borrowers

The proposed regulations revise the counseling regulations to clarify that a party other than a school may provide counseling to borrowers on a school's behalf. This proposed change makes the regulations consistent with longstanding guidance that has allowed another party to provide counseling for a school, as long as the school ensured that the counseling was provided and included all of the necessary information. There is no change in the burden hours associated with this section of the regulations as a result of this proposed change because the current burden estimate reflects the counseling that must be provided to borrowers regardless of whether a school or a party on behalf of a school provides the counseling.

The proposed regulations also revise the information that must be disclosed to borrowers through counseling to be consistent with the Perkins Loan and FFEL program counseling regulations. These revisions include two new pieces of information that must be disclosed to borrowers through counseling. The revisions to the disclosure requirements do not change the burden hours associated with this section of the regulations because they are sufficiently covered by the current burden estimate for the section.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR 674, 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 25, 2002.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 668, 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

2. Section 668.35 is amended:

A. In paragraph (a)(2), by adding new introductory text.

B. By redesignating paragraphs (b), (c), (d), (e), and (f) as (d), (e), (f), (g), and (h) respectively.

C. By adding new paragraphs (b) and (c).

The revision and additions read as follows:

§ 668.35 Student debts under the HEA and to the U.S.

(a) * * *

(2) Except as limited by paragraph (c) of this section—

* * * * *

(b) A student who is subject to a judgment for failure to repay a loan made under a title IV, HEA loan program may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays the debt in full; or

(2) Except as limited by paragraph (c) of this section—

(i) Makes repayment arrangements that are satisfactory to the holder of the debt; and

(ii) Makes at least six consecutive monthly payments under those arrangements.

(c) A student may reestablish eligibility under paragraph (a)(2) or (b)(2) of this section only once. For example, a student who reestablishes eligibility under paragraph (a)(2) may not reestablish eligibility under paragraph (b)(2).

* * * * *

§ 668.183 [Amended]

3. Section 668.183(c)(1) is amended as follows:

A. In paragraph (c)(1)(ii), by adding "or" after the semi-colon.

B. By removing paragraph (c)(1)(iii).

C. By redesignating paragraph (c)(1)(iv) as (c)(1)(iii).

§ 668.193 [Amended]

4. Section 668.193 is amended:

A. In paragraph (d)(1), by removing the last sentence.

B. By removing paragraph (f)(3).

PART 674—FEDERAL PERKINS LOAN PROGRAM

5. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421–429 unless otherwise noted.

6. Section 674.2(b) is amended:

A. By revising the definition of "Making of a loan".

B. By adding, in alphabetical order, a new definition of "Master Promissory Note (MPN)".

The revision and addition read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Making of a loan: When the institution makes the first disbursement of a loan to a student for an award year.

Master Promissory Note (MPN): A promissory note under which the borrower may receive loans for a single award year or multiple award years.

* * * * *

§ 674.9 [Amended]

7. Section 674.9 is amended:

A. By removing paragraph (g).

B. By redesignating paragraphs (h), (i), (j), (k) and (l) as (g), (h),(i), (j) and (k) respectively.

C. In newly redesignated paragraph (g)(3), by removing "(h)(1) and (h)(2)" and adding, in its place, "(g)(1) and (g)(2)"; and by removing the period at the end of the last sentence and adding, in its place, a "; and".

8. Section 674.16 is amended:

A. By revising paragraph (d)(2).

B. By adding a new paragraph (d)(3).

The revision and addition read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(d) * * *

(2) The institution shall ensure that each loan is supported by a legally enforceable promissory note as proof of the borrower's indebtedness.

(3) If the institution uses the Master Promissory Note (MPN), the institution's ability to make additional loans based on an MPN will automatically expire upon the earliest of—

(i) The date the institution receives written notification from the borrower requesting that the MPN no longer be used as the basis for additional loans;

(ii) Twelve months after the date the borrower signed the MPN if no disbursements are made by the institution under that MPN; or

(iii) Ten years from the date the borrower signed the MPN or the date the institution receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

* * * * *

§ 674.17 [Amended]

9. Section 674.17 is amended:

A. In paragraph (a), by removing in the introductory text "one or more of".

B. By removing paragraph (a)(2).

C. By redesignating paragraph (a)(3) as paragraph (a)(2).

D. In redesignated paragraph (a)(2), by removing "transfer" and adding, in its place, "assignment"; and by removing "Department of Education" and adding, in its place, "United States".

E. In paragraph (b), by removing "transfers" and adding, in its place, sbull I11"assigns".

F. By removing paragraphs (c), (d), and (e).

10. Section 674.19(e)(4) is revised to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(4) *Manner of retention of promissory notes and repayment schedules.* An institution shall keep the original promissory notes and repayment schedules until the loans are satisfied. If required to release original documents in order to enforce the loan, the institution must retain certified true copies of those documents.

(i) An institution shall keep the original paper promissory note or original paper Master Promissory Note (MPN) and repayment schedules in a locked, fireproof container.

(ii) The institution shall retain a promissory note that was signed by the borrower electronically in accordance with 34 CFR 668.24(d)(3)(i) through (iv).

(iii) After the loan obligation is satisfied, the institution shall return the original or a true and exact copy of the note marked "paid in full" to the borrower, or otherwise notify the borrower in writing that the loan is paid in full, and retain a copy for the prescribed period.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, NDSL, and Federal Perkins Loans.

(v) Only authorized personnel may have access to the loan documents.

11. Section 674.33(b) is amended as follows:

A. By revising the introductory text following the heading in paragraph (b)(2).

B. By revising the text following the heading of paragraph (b)(3).

The revisions read as follows:

§ 674.33 Repayment.

* * * * *

(b) * * *

(2) * * * If a borrower has received loans from more than one institution and has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, the following rules apply:

* * * * *

(3) * * * If the borrower has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to the other institutions, and if the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month.

* * * * *

12. Section 674.34(e)(10) is revised to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs and Defense loans.

* * * * *

(e) * * *

(10) In determining a borrower's eligibility for an economic hardship deferment under paragraph (e)(5) of this section, the institution shall—

(i) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly); or

(ii) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years.

* * * * *

§ 674.39 [Amended]

13. Section 674.39(a) is amended as follows:

A. In the first sentence of the introductory text in paragraph (a), by adding ", except for loans for which a judgment has been secured" after "part".

B. In paragraph (a)(2), by removing "; and" and adding, in its place, a period.

C. By removing paragraph (a)(3).

14. Section 674.42 is amended:

A. By revising paragraph (a)(10).

B. By adding a new paragraph (a)(11).

C. By revising paragraph (b)(1) and the introductory text in paragraph (b)(2).

D. In paragraph (b)(2)(i), by removing "that" and adding, in its place, "the".

E. By revising paragraph (b)(2)(iii).

F. In paragraph (b)(2)(v), by removing "in forceful terms".

G. In paragraph (b)(2)(vii), by removing "with" and adding, in its place, "for".

H. In paragraph (b)(2)(viii), by removing "corrections to the institution's records" and adding, in its place, "current information"; and by removing "and" following the semi-colon.

I. In paragraph (b)(2)(ix), by removing "with" and adding, in its place, "for"; and by removing the period and adding, in its place, "; and".

J. By adding a new paragraph (b)(2)(x).

K. By removing paragraph (b)(3).

L. By redesignating paragraphs (b)(4) and (b)(5) as (b)(3) and (b)(4) respectively.

M. By revising newly redesignated paragraph (b)(3).

The revisions and additions read as follows:

§ 674.42 Contact with the borrower.

(a) * * *

(10) The contact information of a party who, upon request of the borrower, will provide the borrower with a copy of his or her signed promissory note.

(11) An explanation that if a borrower is required to make minimum monthly repayments, and the borrower has received loans from more than one institution, the borrower must notify the institution if he or she wants the minimum monthly payment determination to be based on payments due to other institutions.

(b) * * * (1) An institution must ensure that exit counseling is conducted with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must ensure that exit counseling is conducted shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the school approves for credit, the school may provide written counseling material by mail within 30 days after the borrower completes the program. If the borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must ensure that exit counseling is provided through either interactive electronic means or by mailing counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete exit counseling as required.

(2) The exit counseling must—

* * * * *

(iii) Suggest to the borrower debt-management strategies that would facilitate repayment;

* * * * *

(x) Inform the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(3) If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and

participates in and completes the exit counseling.

* * * * *

§ 674.43 [Amended]

15. Section 674.43(b)(2) is amended in the introductory text by removing "shall" and adding, in its place, "may".

§ 674.45 [Amended]

16. Section 674.45(a)(1) is amended by removing "defaulted account" and adding, in its place, "account as being in default".

§ 674.46 [Amended]

17. Section 674.46(a)is amended as follows:

A. In the introductory text of paragraph (a)(1), by removing "annually" and adding, in its place, "once every two years".

B. In paragraph (a)(1)(i), by removing "$200" and adding, in its place, "$500".

18. Section 674.47 is amended:

A. By removing paragraph (g)(1).

B. By redesignating paragraphs (g)(2), (g)(2)(i), and (g)(2) (ii) as paragraph (g) introductory text, paragraph (g)(1), and paragraph (g)(2) respectively.

C. In newly redesignated paragraph (g)(1), by removing the last "the" and adding, in its place, "this".

D. In the paragraph (h) heading, by removing "of less than $5".

E. By revising paragraph (h)(1).

F. By adding a new paragraph (h)(3).

The revision and addition read as follows:

§ 674.47 Costs chargeable to the Fund.

* * * * *

(h) * * *

(1) Notwithstanding any other provision in this subpart, an institution may write off an account, including outstanding principal, accrued interest, collection costs, and late charges, with a balance of—

(i) Less than $25; or

(ii) Less than $50 if, for a period of at least 2 years, the borrower has been billed for this balance in accordance with § 674.43(a).

* * * * *

(3) When the institution writes off an account, the borrower is relieved of all repayment obligations.

§ 674.50 [Amended]

19. Section 674.50 is amended:

A. In paragraph (e)(2)(ii), by adding "or" after the semicolon.

B. In paragraph (e)(3), by deleting "; or" at the end of paragraph and adding, in its place, a period.

C. By removing paragraph (e)(4).

D. In paragraph (g)(2), by adding "Secretary may require the" after "The"; and by removing "shall" and adding, in its place, "to".

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

20. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.200 [Amended]

21. Section 682.200(b) is amended:

A. By adding a sentence at the end of the definition of "Lender" in paragraph (b)(2)(ii) to read as follows: "For purposes of this paragraph, loans held in trust by a trustee lender are not considered part of the trustee lender's consumer credit function."

B. Revise the definition of "Master promissory note (MPN)" to read "Master Promissory Note (MPN)".

22. Section 682.204 is amended by adding new paragraphs (a)(8), (a)(9), (d)(7), and (d)(8) to read as follows:

§ 682.204 Maximum loan amounts.

(a) * * *

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(2) of this section.

* * * * *

(d) * * *

(7) Except as provided in paragraph (d)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(8) Except as provided in paragraph (d)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(2) of this section.

* * * * *

23. Section 682.209(a) is amended by:

A. Removing the number "45" each time it appears in paragraphs (a)(3)(ii), (A), (a)(3)(ii)(B), and (a)(3)(ii)(C), and adding, in its place, the number "60".

B. Adding a new paragraph (a)(3)(iii).

C. Revising the last sentence in paragraph (a)(8)(iv).

The revisions and addition read as follows:

§ 682.209 Repayment of a loan.

(a) * * *

(3) * * *

(iii) When determining the date that the student was no longer enrolled on at least a half-time basis, the lender must use a new date it receives from the school, unless the lender has already disclosed repayment terms to the borrower and the new date is within the same month and year as the most recent date reported to the lender.

* * * * *

(8) * * *

(iv) * * * Subject to paragraph (a)(8)(iii) of this section, a borrower who makes such a request may notify the lender at any time to extend the repayment period to a minimum of 5 years.

* * * * *

24. Section 682.210 is amended by revising paragraphs (h)(2), (h)(3)(iv), (h)(4), (s)(6)(vii), and (s)(6)(ix) to read as follows:

§ 682.210 Deferment.

* * * * *

(h) * * *

* * * * *

(2) A borrower also qualifies for an unemployment deferment by providing to the lender a written certification, or an equivalent as approved by the Secretary, that—

(i) The borrower has registered with a public or private employment agency, if one is available to the borrower within

a 50-mile radius of the borrower's current address; and

(ii) For all requests beyond the initial request, the borrower has made at least six diligent attempts during the preceding 6-month period to secure full-time employment.

(3) * * *

* * * * *

(iv) A borrower requesting an initial period of unemployment deferment is not required to describe his or her search for full-time employment at the time the deferment is granted. The initial period of unemployment deferment may be granted for a period of unemployment beginning up to 6 months before the date the lender receives the borrower's request, and may be granted for up to 6 months after that date.

(4) A lender may not grant an unemployment deferment beyond the date that is 6 months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (h)(1) of this section or the date the borrower provides the written certification under paragraph (h)(2) of this section.

* * * * *

(s) * * *

(6) * * *

* * * * *

(vii) In determining a borrower's Federal education debt burden for purposes of an economic hardship deferment under paragraphs (s)(6)(iv) and

(v) of this section, the lender shall—

(A) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly);

(B) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years; and

(C) Require the borrower to provide evidence that would enable the lender to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period.

* * * * *

(ix) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (s)(6)(iii) through (v) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

* * * * *

25. Section 682.211 is amended by:

A. Revising paragraphs (b), (c), and (e).

B. Amending the introductory text of paragraph (f) by adding the words "or would be due" after the word "overdue".

C. Amending paragraph (f)(2) by removing the reference to paragraph "(f)(10)" and adding, in its place, "(f)(11)".

D. Revising paragraph (f)(11).

E. Redesignating paragraph (h)(3) as paragraph (h)(4).

F. Adding a new paragraph (h)(3).

The revisions and addition read as follows:

§ 682.211 Forbearance.

* * * * *

(b) A lender may grant forbearance if—

(1) The lender and the borrower or endorser agree to the terms of the forbearance and, unless the agreement was in writing, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance; or

(2) In the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree to the terms of the forbearance. If the lender and the borrower or endorser agree to the terms orally, the lender must notify the borrower or endorser of the terms within 30 days of that agreement.

* * * * *

(e) Except in the case of forbearance of interest payments during a deferment period if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser at least once every six months during the period of forbearance to inform the borrower or endorser of—

(1) The outstanding obligation to repay;

(2) The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan;

(3) The fact that interest will accrue on the loan for the full term of the forbearance; and

(4) The borrower or endorser's option to discontinue the forbearance at any time.

(f) * * *

(11) For a period not to exceed 3 months when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization.

* * * * *

(h) * * *

(3) *Written agreement.* The terms of the forbearance must be agreed to in writing—

(i) By the lender and the borrower for a forbearance under paragraphs (h)(1) or (h)(2)(ii)(A) of this section; or

(ii) By the lender and the borrower or endorser for a forbearance under paragraph (h)(2)(i) of this section.

* * * * *

§ 682.402 [Amended]

26. Section 682.402 is amended by:

A. Redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5), respectively.

B. Adding a new paragraph (a)(2).

C. Amending newly redesignated paragraph (a)(3) by removing the words "or a Consolidation loan was obtained by a married couple,".

D. Amending newly redesignated paragraph (a)(5)(iii) by removing the reference to paragraph "(a)(4)(i) or (ii)" and adding, in its place, "(a)(5)(i) or (ii)".

E. Adding a new paragraph (b)(6).

F. Revising paragraph (f)(4).

G. Revising paragraph (g)(1)(i).

H. Revising paragraph (h)(1)(i).

I. Revising paragraph (h)(3)(iii).

The revisions and additions read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) * * *

(2) If a Consolidation loan was obtained jointly by a married couple, the amount of the Consolidation loan that is discharged if one of the borrowers dies or becomes totally and permanently disabled is equal to the portion of the outstanding balance of the Consolidation loan attributable to any of that borrower's loans that would have been eligible for discharge.

* * * * *

(b) * * *

(6) In the case of a Federal Consolidation Loan that includes a Federal PLUS or Direct PLUS loan borrowed for a dependent who has died, the obligation of the borrower or any

endorser to make any further payments on the portion of the outstanding balance of the Consolidation Loan attributable to the Federal PLUS or Direct PLUS loan is discharged as of the date of the dependent's death.

* * * * *

(f) * * *

(4) *Proof of claim.* (i) Except as provided in paragraph (f)(4)(ii) of this section, the holder of the loan shall file a proof of claim with the bankruptcy court within—

(A) 30 days after the holder receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets; or

(B) 30 days after the holder receives a notice from the court stating that a chapter 7 no-asset case has been converted to an asset case.

(ii) A guaranty agency that is a state guaranty agency, and on that basis may assert immunity from suit in bankruptcy court, and that does not assign any loans affected by a bankruptcy filing to another guaranty agency—

(A) Is not required to file a proof of claim on a loan already held by the guaranty agency; and

(B) May direct lenders not to file proofs of claim on loans guaranteed by that agency.

* * * * *

(g) * * *

(1) * * *

(i) The original or a true and exact copy of the promissory note.

* * * * *

(h) * * *

(1) * * *

(i) The guaranty agency shall review a death, disability, bankruptcy, closed school, or false certification claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraphs (h)(2) and (h)(3) of this section—

(A) Not later than 45 days after the claim was filed by the lender for death and bankruptcy claims; and

(B) Not later than 90 days after the claim was filed by the lender for disability, closed school, or false certification claims.

* * * * *

(3) * * *

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed—

(A) 45 days for death or bankruptcy claims; or

(B) 90 days for disability, closed school, or false certification claims.

* * * * *

27. Section 682.405 is amended by:

A. Adding the words ", except for loans for which a judgment has been obtained," after "defaulted loans" in paragraph (a)(1).

B. Removing paragraph (a)(4).

C. Revising the fifth sentence in paragraph (b)(1).

The revision reads as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(1) * * * Voluntary payments are those made directly by the borrower, and do not include payments obtained by Federal offset, garnishment, income or asset execution, or after a judgment has been entered on a loan. * * *

* * * * *

28. Section 682.414 is amended by revising paragraph (a)(5)(ii) to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(5) * * *

(ii) If a promissory note was signed electronically, the guaranty agency or lender must store it in accordance with 34 CFR 668.24(d)(3)(i) through (iv).

* * * * *

29. Section 682.604 is amended by:

A. Revising paragraph (f)(1).

B. Revising the introductory text of paragraph (f)(2).

C. Revising paragraph (f)(2)(iii).

D. In paragraph (f)(2)(iv), removing the period and adding, in its place, "; and".

E. Adding a new paragraph (f)(2)(v).

F. Revising paragraph (f)(3).

G. Revising paragraph (g)(1).

H. Revising paragraph (g)(2).

I. Revising paragraph (g)(3).

The revisions and addition read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(f) * * *

(1) A school must ensure that initial counseling is conducted with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means prior to its release of the first disbursement, unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan. A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials, prior to releasing those loan proceeds.

(2) The initial counseling must—

* * * * *

(iii) Describe the likely consequences of default, including adverse credit reports, Federal offset, and litigation;

* * * * *

(v) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Stafford loan borrowers at the same school.

(3) If initial counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

* * * * *

(g) * * *

(1) A school must ensure that exit counseling is conducted with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that this counseling is conducted shortly before the student borrower ceases at least half-time study at the school, and that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, written counseling materials may be provided by mail within 30 days after the student borrower completes the program. If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must ensure that exit counseling is provided through either interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who

have obtained Stafford or SLS loans for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment options, including standard, graduated, extended, and income-sensitive repayment plans and loan consolidation;

(iii) Suggest to the student borrower debt-management strategies that would facilitate repayment;

(iv) Include the matters described in paragraph (f)(2) of this section;

(v) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial discharge of a loan;

(vi) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known). The school must ensure that this information is provided to the guaranty agency or agencies listed in the student borrower's records within 60 days after the student borrower provides the information;

(vii) Review for the student borrower information on the availability of the Student Loan Ombudsman's office; and

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(3) If exit counseling is conducted by electronic interactive means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

30. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

31. Section 685.102(b) is amended by revising the definition of "Master Promissory Note (MPN)" to read as follows:

§ 685.102 Definitions.

* * * * *

(b) * * *

Master Promissory Note (MPN): (1) A promissory note under which the borrower may receive loans for a single academic year or multiple academic years.

(2) For MPNs processed by the Secretary before July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement, except that a remaining portion of a loan may be disbursed after this date.

(3) For MPNs processed by the Secretary on or after July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date the borrower signed the MPN or the date the Secretary receives the MPN, if no disbursements are made under that MPN; or

(iii) Ten years after the date the borrower signed the MPN or the date the Secretary receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

* * * * *

32. Section 685.203 is amended:

A. By adding new paragraphs (a)(8) and (a)(9).

B. By adding new paragraphs (c)(2)(viii) and (c)(2)(ix).

The additions read as follows:

§ 685.203 Loan limits.

(a) * * *

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(2) of this section.

* * * * *

(c) * * *

(2) * * *

(viii) Except as provided in paragraph (c)(2)(iv) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(ix) Except as provided in paragraph (c)(2)(iv) of this section—

(A) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(B) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(ii) of this section.

* * * * *

§ 685.211 [Amended]

33. Section 685.211(f) is amended by adding, in the first sentence after the paragraph heading, ", except for a loan on which a judgment has been obtained," after "Loan".

34. Section 685.212(a) is amended by adding a new paragraph (3) to read as follows:

§ 685.212 Discharge of a loan obligation.

(a) * * *

(3) In the case of a Direct PLUS Consolidation Loan, the Secretary discharges the portion of the outstanding balance of the consolidation loan attributable to any Direct PLUS Loan or Federal PLUS Loan that was obtained on behalf of a student who dies and that was repaid by the consolidation loan.

* * * * *

35. Section 685.220(l)(3) is revised to read as follows:

§ 685.220 Consolidation.

* * * * *

(l) * * *

(3) *Discharge.* (i) If a borrower dies and the Secretary receives the documentation described in § 685.212(a), the Secretary discharges

the portion of the outstanding balance of the consolidation loan attributable to any of that borrower's loans that were repaid by the consolidation loan.

(ii) If a borrower meets the requirements for total and permanent disability discharge under § 685.212(b), the Secretary discharges the portion of the outstanding balance of the consolidation loan attributable to any of that borrower's loans that were repaid by the consolidation loan.

(iii) If a borrower meets the requirements for discharge under § 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the loan that would be eligible for discharge under the provisions of § 685.212(d), (e), or (f) as applicable, and that was repaid by the consolidation loan.

(iv) If a borrower meets the requirements for loan forgiveness under § 685.212(h) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary repays the portion of the outstanding balance of the consolidation loan attributable to the loan that would be eligible for forgiveness under the provisions of § 685.212(h), and that was repaid by the consolidation loan.

36. Section 685.304 is amended:

A. By revising paragraphs (a)(1), (a)(2), (a)(3), and (a)(5).

B. In paragraph (b)(1), by removing "conduct" and adding, in its place, "ensure that"; by adding "is conducted" after "counseling"; and by adding "Loan" after "Subsidized".

C. In paragraph (b)(2), by adding, in the first sentence, "exit" after "The"; by removing, in the second sentence, "knowledge of" and adding, in its place, "expertise in"; by removing, in the last sentence, "the school may provide"; and by adding, in the last sentence, "may be provided" after the second occurrence of "borrower".

D. In paragraph (b)(3), by removing "school must provide"; and by adding "must be provided" after the second occurrence of "counseling".

E. By revising paragraph (b)(4).

F. By revising paragraph (b)(5).

G. By redesignating paragraph (b)(6) as (b)(7).

H. By adding a new paragraph (b)(6).

The revisions and addition read as follows:

§ 685.304 Counseling borrowers.

(a) * * * (1) Except as provided in paragraph (a)(4) of this section, a school must ensure that initial counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan.

(2) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

(3) The initial counseling must—

(i) Explain the use of a Master Promissory Note (MPN);

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, garnishment of wages, Federal offset, and litigation;

(iv) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers at the same school;

(v) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school.

* * * * *

(5) If initial counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

* * * * *

(b) * * *

(4) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of Direct Subsidized Loan or Direct Unsubsidized Loan borrowers at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, and income contingent repayment plans, and loan consolidation;

(iii) Suggest to the student borrower debt-management strategies that would facilitate repayment;

(iv) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(v) Meet the requirements described in paragraphs (a)(3)(i), (ii), (iii), and (v) of this section;

(vi) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial discharge of a loan;

(vii) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS); and

(ix) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

(5) The school must ensure that the information required in paragraph (b)(4)(ix) of this section is provided to the Secretary within 60 days after the student borrower provides the information.

(6) If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

* * * * *

[FR Doc. 02–19521 Filed 8–5–02; 8:45 am]

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Federal Register

Tuesday,
August 6, 2002

Part V

Department of Health and Human Services

Centers for Disease Control and Prevention

OMB Approval of Data Collection; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of OMB Approval of Data Collection

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: General notice.

SUMMARY: The purpose of this Notice is to announce OMB approval of data collection, "Notification of Possession of Select Agents," under the Paperwork Reduction Act of 1995 (PRA). The OMB Control Number for this data collection is 0920–0561. The data collection will expire January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Anne O'Connor, Assistant Reports Clearance Officer, Centers for Disease Control and Prevention, Office of Program Planning and Evaluation, 1600 Clifton Road NE, Mailstop D–24, Atlanta, Georgia 30333. Telephone: (404) 498–1210.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2002, the President signed the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Act). The Act requires that all persons in possession of any "Select Agent" notify the Secretary of the Department of Health and Human Services (DHHS) by September 10, 2002. Section 213(b) of The Act requires all persons in possession of any "High Consequence Livestock Pathogen or Toxin" notify the Secretary of the U.S. Department of Agriculture (USDA) by October 8, 2002. The Centers for Disease Control and Prevention (CDC) has been designated as the agency responsible for providing guidance on this notification to the Secretary, DHHS. The Animal and Plant Health Inspection Service (APHIS) has been designated as the agency responsible for providing guidance on this notification to the Secretary, USDA. In order to minimize the reporting burden to the public, CDC and APHIS created a common notification form.

In compliance with requirements of the Paperwork Reduction Act of 1995 (PRA), CDC published a notice in the **Federal Register** on July 2, 2002 inviting public comment on the proposed data collection regarding: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of the information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. The public was asked to submit their comments within 14 days of the publication of the notice.

Discussion of Comments

CDC received a number of comments to the **Federal Register** Notice regarding five issues related to the proposed data collection.

Comment: Many commenters requested a definition of the term 'facility.' *CDC Response:* The Guidance Document (see below) provides a definition of facility. For the purposes of this data collection, facility is defined as any individual, or government agency, university, corporation, company, partnership, society, association, firm or other legal entity located at a single geographic site. A single geographic site is a building or complex of buildings at a single mailing address.

Comment: A number of commenters were concerned that clinical and diagnostic laboratories were being required to submit the notification form because they interpreted sections of The Act as exempting these facilities from submitting the notification form. *CDC Response:* Although exemption of these laboratories was discussed during the development of this legislation, Congress explicitly rejected any broad exclusion of these facilities. A fuller explanation of Congressional intent on this subject is contained in the House Conference Report No. 107–481 to accompany H.R. 3448, May 21, 2002, at page 122. Congress permits exemption of such clinical and diagnostic laboratories from registration requirements, "* * * only if they report the identification of select agents to the Secretary and either promptly transfer the agent to a registered person or destroy the agent on site in accordance with regulations established by the Secretary." The conference report further explains that laboratories which possess select agents for *reference purposes* must register and be subject to this full regulatory program. Although all clinical and diagnostic laboratories must participate in this *initial notification* phase under the legislation, DHHS and USDA will promptly develop, through rule-making, the regulations that will allow exemptions for those laboratories who only possess, use, or transfer select agents contained in specimens presented for *diagnosis, verification,* or *proficiency testing.* In order to comply with Congressional intent, CDC and APHIS are requiring all clinical and diagnostic laboratories that possess any agent or toxin listed on the notification form to submit a form to the address provided.

Comment: A number of commenters asked that CDC reconsider the requirement that facilities that do not possess a select agent complete and submit a declaration of non-possession. *CDC response:* CDC recognizes that The Act does not explicitly address this particular issue of a non-possession declaration. Asking respondents to declare non-possession is a critical means of ensuring that DHHS is knowledgeable of the potential universe of possessors of regulated agents and is necessary in order to effectively carry out the statutory intent of responsibly governing the transfer, possession, and use of biological agents or toxins.

Comment: Other commenters were concerned that CDC had underestimated the amount of time necessary to review instructions, gather the data, and enter it onto the form. *CDC Response:* CDC recognizes that many respondents will need less than two hours to complete the form and that other respondents will need more than two hours. However, given the vast universe of respondents, CDC feels that an average of two hours to review the instructions, gather the data, and complete the form is a reasonable estimate.

Comment: Several commenters asked about the list of Select Agents on the form. *CDC Response:* The notification form contains the list of Select Agents that was published in the **Federal Register** on October 24, 1996. As part of the rule-making process, CDC will publish another notice in the **Federal Register** requesting public comment on proposed changes to the list of select agents.

OMB Approved Guidance Document and Form

After considering the comments, CDC and APHIS submitted the Guidance Document and Notification Form (see below) to OMB for approval under the Paperwork Reduction Act. On July 31, 2002, OMB approved the Guidance Document and Notification Form under OMB Control No. 0920–0561. Upon OMB approval, CDC and APHIS plan to conduct a targeted mailing of the Guidance Document and form to approximately 190,000 facilities. If facilities have not received a copy of the Guidance Document and form within 10 days of publication of this notice, they

should call 866–567–4232 to request a copy of the Guidance Document and form. The Guidance Document and form will also be available at both the CDC Web site (*http://www.cdc.gov/od/ohs/lrsat.htm*) and the APHIS Web site (*http://www.aphis.usda.gov/vs/ncie*).

Dated: August 1, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[Approved Guidance Document and Notification Form follow.]

BILLING CODE 4163–18–P

Notification of Possession of Select Agents or High Consequence Livestock Pathogens and Toxins

Guidance Document

Introduction

Section 202(a) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 ("The Act") requires that all persons in possession of any "Select Agent" notify the Secretary of the Department of Health and Human Services (DHHS) by September 10, 2002. Section 213(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 requires all persons in possession of any "High Consequence Livestock Pathogens and Toxins" notify the Secretary of the Department of Agriculture (USDA) by October 8, 2002. The Act requires that both Secretaries be notified when an individual possesses agents that appear on both the "Select Agent" list and the "High Consequence Livestock Pathogens and Toxins" list. These agents are referred to as "Overlap Agents".

The Centers for Disease Control and Prevention (CDC) has been designated as the agency responsible for providing guidance on this notification to the Secretary, DHHS. The Animal and Plant Health Inspection Service (APHIS) has been designated as the agency responsible for providing guidance on this notification to the Secretary, USDA. In order to minimize the reporting burden to the public, DHHS/CDC and the USDA/APHIS have developed a common reporting form for this data collection. This form is designed to assist facilities with compliance with this legal obligation.

Step One. Who must respond to this request?

All facilities, including research, clinical, and diagnostic laboratories, that possess any agent or toxin listed on the attached notification form are required to complete the form and return it to the address provided below. All facilities receiving this form by mail must complete the appropriate responses. Exemptions to the notification of possession will be limited to persons or facilities that possess products that are, bear, or contain select agents or toxins that have been cleared, approved, licensed, or registered under the Federal Food, Drug, and Cosmetic Act, Section 351 of the Public Health Service Act, the Virus-Serum-Toxin Act, and the Federal Insecticide, Fungicide, and Rodenticide Act.

Since the Act was signed into law, CDC has received a number of inquiries about the inclusion of all clinical, and diagnostic laboratories during the initial notification of possession phase. Although exemption of these laboratories was discussed during the development of this legislation, Congress explicitly rejected any broad exclusion of these facilities.

A fuller explanation of Congressional intent on this subject is contained in the House Conference Report No. 107-481 to accompany H.R. 3448, May 21, 2002, at page 122. As discussed, Congress permits exemption of such clinical and diagnostic laboratories from registration requirements "...only if they report the identification of select agents to the

Secretary and either promptly transfer the agent to a registered person or destroy the agent on site in accordance with regulations established by the Secretary."

This conference report goes on to make it clear that such laboratories which possess select agents for reference purposes must register and be subject to this full regulatory program. Although all clinical and diagnostic laboratories must participate in this initial notification phase under the legislation, DHHS and USDA will promptly develop, through rulemaking, the regulations that will allow exemptions for those laboratories who only possess, use, or transfer select agents contained in specimens presented for diagnosis, verification, or proficiency testing. Therefore, in order to comply with Congressional intent, CDC and APHIS are requiring all clinical and diagnostic laboratories that possess any agent or toxin listed on the notification form to submit a form to the address provided.

Step Two. Who should complete this form?

Each facility should designate a Responsible Facility Official (RFO) to complete this form. The purpose of the RFO is to ensure management oversight of this notification requirement. The RFO should be either a safety officer, and/or senior management official of the facility who has been authorized to complete this form. Whenever possible, the RFO should not be an individual who actually possesses, uses or transfers such agents and toxins. The RFO must review and sign the 'Notification of Possession of Select Agents or High Consequence Livestock Pathogens and Toxins" form and will be the individual contacted if questions concerning the form arise. The RFO should consult with others (e.g., principal investigators) as necessary to obtain the information required to complete the form. The RFO should provide one form that represents a summary of all agents from his or her facility.

For the purpose of completing this notification form, a facility is defined as any individual or government agency, university, corporation, company, partnership, society, association, firm or other legal entity located at a single geographic site. A single geographic site is a building or complex of buildings at a single mailing address.

Step Three. How does the RFO fill out this form?

A. **All RFOs** must complete boxes #1-6.

B. Review the agents listed in box #7 and check each agent or toxin used or possessed by your facility. For each agent checked, check the appropriate descriptive category or categories, if known (e.g., viable, recombinant organisms, etc.). Definitions for the categories are listed below.

C. Provide the information in boxes #8-14. For box #8, Type of Facility, select the box that best describes your facility. For box #9, Type of Work Performed, check all boxes that apply to the facility.

D. **If your facility does not possess any agents on this list**, provide only the information requested in boxes #15-18.

E. Return the form to the address below.

F. Facilities that possess DHHS Select Agents or USDA/DHHS Overlap Agents must submit completed forms by September 10, 2002. Facilities that possess only USDA High Consequence Livestock Pathogens and Toxins must submit completed forms by October 8, 2002.

G. Do not report quantities of agents or toxins.

Definitions of Categories

- **Viable**: Capable of replication on its own, in cell culture, or in an appropriate host.
- **Recombinant organism, Nucleic acid, or Genetic elements from agent** include any of the following:
  - Nonviable agents
  - Full-length nucleic acid from any of the viruses on the list. For Variola major virus (Smallpox), any segment that exceed 100 nucleotides in length.
  - Natural or synthetic nucleic acids from bacteria, fungi, or viruses on the list that encode for either a functional toxin or virulence factor sufficient to cause disease, or natural or synthetic nucleic acid that encodes for a functional toxin of any of the toxins listed, if: (1) expressed *in vivo*; (2) in an expression vector or host chromosome; or (3) in a carrier plasmid.
- **Altered USDA or FDA approved vaccine strains**: Vaccine strains that have been modified from their original licensed, approved, or registered forms.

Obtaining extra copies of this form

Please call 866-567-4232 to obtain additional copies of this form. The notification form and Guidance Document is viewable on both the CDC website (http://www.cdc.gov/od/ohs/lrsat.htm) and the APHIS website (http://www.aphis.usda.gov/vs/ncie).

Return this form to:

Analytical Sciences, Inc.
Attn: FSO
P.O. Box 341809
Bethesda, MD 20827

Help Line: 866-567-4232
(8:00 am to 8:00 pm EDT)

NOTE: If you desire confirmation of delivery, please return your completed Notification Form using the **US Postal Service Priority Mail** in the 9.5" x 12" cardboard Priority Mail envelope (EP-14G) and complete and attach a fluorescent green **US Postal Service Delivery Confirmation Receipt** (PS Form 152) label to the envelope. You may track the delivery of your Notification form via the US Postal Service Web site at http://www.usps.com/shipping/deliveryconfirm.htm or by calling 800-222-1811 toll-free. Do **not** use the fluorescent pink US Postal Service Signature Confirmation Receipt (PS Form 153) or send the form via Certified Mail (PS Form 3800) as ASI will be unable to sign for these forms and they will be returned to you.

FORM APPROVED
OMB NO. 0920-0561
EXP DATE 01/31/2003

NOTIFICATION OF POSSESSION OF SELECT AGENTS OR HIGH CONSEQUENCE LIVESTOCK PATHOGENS AND TOXINS

USDA

1. NAME OF FACILITY	2. NAME OF RESPONSIBLE FACILITY OFFICIAL (RFO) AND ADDRESS, IF DIFFERENT FROM FACILITY
3. ADDRESS OF FACILITY	4. TITLE OF RFO 5. RFO TELEPHONE NUMBER 6. RFO FAX NUMBER

7 CHECK ("X") FOR EACH AGENT(S) OR TOXIN(S) USED OR POSSESSED BY YOUR FACILITY (CHECK ONE OR MORE CATEGORIES AS APPROPRIATE)	VIABLE	RECOMBINANT ORGANISM, NUCLEIC ACID OR GENETIC ELEMENTS FROM AGENT	ALTERED USDA OR FDA APPROVED VACCINE STRAINS	REGISTERED WITH HHS SELECT AGENT PROGRAM
HHS SELECT AGENTS				
☐ CRIMEAN-CONGO HAEMORRHAGIC FEVER VIRUS				
☐ EBOLA VIRUSES				
☐ LASSA FEVER VIRUS				
☐ MARBURG VIRUS				
☐ *RICKETTSIA PROWAZEKII*				
☐ *RICKETTSIA RICKETTSII*				
☐ SOUTH AMERICAN HAEMORRHAGIC FEVER VIRUSES				
☐ TICK-BORNE ENCEPHALITIS COMPLEX VIRUSES				
☐ VARIOLA MAJOR VIRUS (SMALLPOX VIRUS)				
☐ VIRUSES CAUSING HANTAVIRUS PULMONARY SYNDROME				
☐ YELLOW FEVER VIRUS				
☐ *YERSINIA PESTIS*				
☐ ABRIN	[redacted]			
☐ CONOTOXINS				
☐ DIACETOXYSCIRPENOL				
☐ RICIN				
☐ SAXITOXIN				
☐ TETRODOTOXIN				
USDA-HHS OVERLAP AGENTS				
☐ *BACILLUS ANTHRACIS*				
☐ *BRUCELLA ABORTUS*				
☐ *BRUCELLA MELITENSIS*				
☐ *BRUCELLA SUIS*				
☐ *BURKHOLDERIA (PSEUDOMONAS) MALLEI*				
☐ *BURKHOLDERIA (PSEUDOMONAS) PSEUDOMALLEI*				
☐ *CLOSTRIDIUM BOTULINUM*				
☐ *COCCIDIOIDES IMMITIS*				
☐ *COXIELLA BURNETII*				
☐ EASTERN EQUINE ENCEPHALITIS VIRUS				
☐ EQUINE MORBILLIVIRUS (HENDRA VIRUS)/NIPAH VIRUS				
☐ *FRANCISELLA TULARENSIS*				
☐ RIFT VALLEY FEVER VIRUS				
☐ VENEZUELAN EQUINE ENCEPHALITIS VIRUS				
☐ AFLATOXINS	[redacted]			
☐ BOTULINUM TOXINS				
☐ *CLOSTRIDIUM PERFRINGENS* EPSILON TOXIN				
☐ SHIGATOXIN				
☐ STAPHYLOCOCCAL ENTEROTOXIN				
☐ T-2 TOXIN				

CHECK ("X") FOR EACH AGENT(S) OR TOXIN(S) USED OR POSSESSED BY YOUR FACILITY (CHECK ONE OR MORE CATEGORIES AS APPROPRIATE)	VIABLE	RECOMBINANT ORGANISM, NUCLEIC ACID OR GENETIC ELEMENTS FROM AGENT	ALTERED USDA OR FDA APPROVED VACCINE STRAINS	REGISTERED WITH HHS SELECT AGENT PROGRAM
USDA HIGH CONSEQUENCE LIVESTOCK PATHOGENS AND TOXINS				
☐ AFRICAN HORSE SICKNESS VIRUS				
☐ AFRICAN SWINE FEVER VIRUS				
☐ AKABANE VIRUS				
☐ AVIAN INFLUENZA VIRUS (HIGHLY PATHOGENIC)				
☐ BLUE TONGUE VIRUS (EXOTIC)				
☐ BOVINE SPONGIFORM ENCEPHALOPATHY AGENT				
☐ CAMEL POX VIRUS				
☐ CLASSICAL SWINE FEVER VIRUS				
☐ *COWDRIA RUMINANTIUM* (HEARTWATER)				
☐ FOOT AND MOUTH DISEASE VIRUS				
☐ GOAT POX VIRUS				
☐ JAPANESE ENCEPHALITIS VIRUS				
☐ LUMPY SKIN DISEASE VIRUS				
☐ MALIGNANT CATARRHAL FEVER				
☐ MENANGLE VIRUS				
☐ *MYCOPLASMA CAPRICOLUM/M.F 38/M.MYCOIDES CAPRI* (CONTAGIOUS CAPRINE PLEUROPNEUMONIA AGENT)				
☐ *MYCOPLASMA MYCOIDES MYCOIDES* (CONTAGIOUS BOVINE PLEUROPNEUMONIA AGENT)				
☐ NEWCASTLE DISEASE VIRUS (EXOTIC)				
☐ NIPAH VIRUS				
☐ PESTE DES PETITS RUMINANTS				
☐ RINDERPEST VIRUS				
☐ SHEEP POX VIRUS				
☐ SWINE VESICULAR DISEASE VIRUS				
☐ VESICULAR STOMATITIS VIRUS				

8. TYPE OF FACILITY: ☐ ACADEMIC ☐ GOVERNMENT ☐ COMMERCIAL ☐ PRIVATE ☐ OTHER (PLEASE EXPLAIN)

9. TYPE OF WORK PERFORMED AT FACILITY:
☐ DIAGNOSTIC WORK
☐ VACCINE DEVELOPMENT
☐ REASEARCH
☐ USE IN ANIMALS ➔ ANIMAL SIZE: ☐ LIVESTOCK ☐ OTHER
☐ LARGE-SCALE PRODUCTION
☐ TEACHING
☐ STORAGE ONLY (NO CURRENT WORK)
☐ OTHER (PLEASE SPECIFY)

10. LIST ALL USDA VETERINARY PERMIT NUMBERS FOR IMPORTATION AND TRANSPORTATION OF CONTROLLED MATERIALS AND ORGANISMS AND VECTORS NUMBERS (VS Form 16-6A) (If applicable)

11. CDC SELECT AGENT TRANSFER PROGRAM REGISTRATION NUMBER AND EXPIRATION DATE (if applicable)

I hereby certify that I have been designated as the Responsible Facility Official for the institution/organization listed above, that I am authorized to bind the institution/organization, and that the information supplied on this form is to the best of my knowledge accurate and truthful. I understand that a false statement on any part of this form could result in a fine up to $500,000 or imprisonment of up to five years, or both for each violation (18 U.S.C §1001, 1 8 U.S.C § § 3559,3571)

12. SIGNATURE OF RESPONSIBLE FACILITY OFFICIAL

13. TYPED NAME AND TITLE

14. DATE

15. ☐ **DECLARATION OF NON-POSSESSION: THIS FACILITY DOES NOT POSSESS ANY AGENT ON THIS LIST.**

I hereby certify that I have been designated as the Responsible Facility Official for the institution/organization listed above, that I am authorized to bind the institution/organization, and that the information supplied on this form is to the best of my knowledge accurate and truthful. I understand that a false statement on any part of this form could result in a fine of up to $500,000 or imprisonment or up to five years, or both for each violation (18 U.S.C §10011 8 U.S.C § § 3559,3571).

16. SIGNATURE OF RESPONSIBLE FACILITY OFFICIAL

17. TYPED NAME AND TITLE

18. DATE

Public reporting burden of this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to CDC/ATSDR Information Clearance Officer; 1600 Clifton Road NE, MS D-24, Atlanta, Georgia 30333; ATTN: PRA (0920-xxxx).

RETURN THIS FORM TO:
Analytical Sciences, Inc.
Attn FSO
P.O. Box 371809
Bethesda, MD 20827

CDC FORM 50.01 Date: 07/2002

[FR Doc. 02–19897 Filed 8–2–02; 11:33 am]
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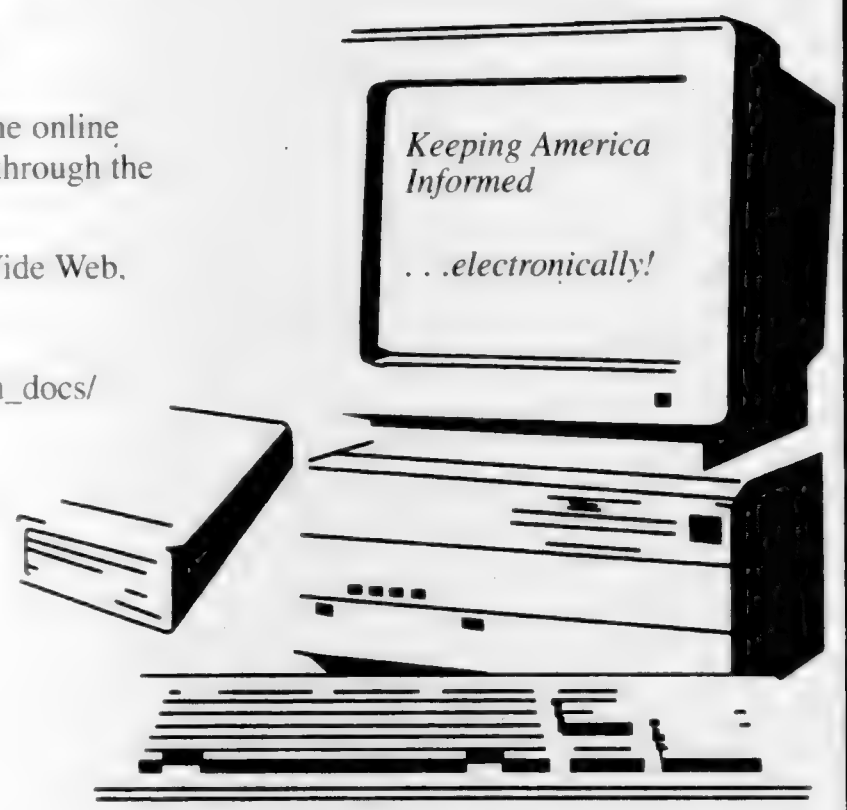

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–130–AD; Amendment 39–12840; AD 2002–16–01]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–21, –31, –32, –33, –41, –42, and –43 Airplanes; and Model DC–8–50, –60, and –70 Series Airplanes; Modified per Supplemental Type Certificates SA1063SO, SA1862SO, or SA1832SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8–21, –31, –32, –33, –41, –42, and –43 airplanes; and certain Model DC–8–50, –60, and –70 series airplanes; that have been converted from a passenger-to a cargo-carrying ("freighter") configuration. This action requires gaining access to the floor beam attachments to the lower door jamb within the main cargo door area; performing repetitive inspections to detect cracking or damage of such attachments, including splice plates, angles, and clips; and, if necessary, expanding the inspection area and replacing any cracked or damaged part with a new part. This action is necessary to prevent failure of such floor beam attachments during ground or flight operations, which could cause damage to the floor structure and consequent jamming of the flight control cables, and result in loss of controllability of the airplane in flight.

DATES: Effective August 22, 2002.

Comments for inclusion in the Rules Docket must be received on or before October 7, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–130–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–130–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Hassan Amini, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6080; fax (770) 703–6097.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 687–4271. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: The FAA has received several reports of findings of cracked or broken angles and splice plates on floor beam attachments to the lower door jamb of the main cargo door area on certain McDonnell Douglas Model DC–8–21, –31, –32, –33, –41, –42, and –43 airplanes; and Model DC–8–50, –60, and –70 series airplanes. One report revealed that, during a routine C-check on a Model DC–8–62 airplane, fractures were found in 9 of 11 of the floor beam attachments to the lower door jamb. Findings indicate that such fractures could be due to factors associated with flight operations and/or loading operations on the ground. Such conditions, if not corrected, could cause failure of such floor beam attachments during ground or flight operations. This could cause damage to the floor structure and consequent jamming of the control cables, and result in loss of controllability of the airplane in flight.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of the floor beam attachments to the lower door jamb. Such failure could cause damage to the floor structure and consequent jamming of the flight control cables, and result in loss of controllability of the airplane in flight. This AD requires gaining access to the floor beam attachments to the lower door jamb within the main cargo door area; and performing repetitive inspections to detect cracking or damage of such attachments, including splice plates, angles, and clips. If any cracking or damage is found, this AD also requires extending the area of inspection 60 inches forward and aft of the main cargo door area, and replacing any cracked or damaged part with a new part. Figure 1 of Appendix 1 of this AD identifies the inspection area and parts to be inspected.

This AD also requires operators to report the results of any detailed inspection required by paragraph (a) of this AD to the FAA.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking. Because the cause of the addressed cracking or damage is not currently known, the intent of the required inspection report is to enable the FAA to determine how widespread such cracking or damage may be in the affected fleet. Based on the results of this report, further corrective action may be warranted.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–130–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–01 McDonnell Douglas: Amendment 39–12840. Docket 2002–NM–130–AD.

Applicability: This AD applies to airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration per Supplemental Type Certificate SA1063SO, SA1862SO, or SA1832SO; certificated in any category; as listed in the following table:

TABLE—APPLICABILITY

Airplane Models
DC–8–21, –31, –32, –33, –41, –42, and –43 airplanes;
DC–8–51, –52, –53, and –55 airplanes;
DC–8–61, –62, and –63 airplanes; and
DC–8–71, –72, and –73 airplanes.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the floor beam attachments to the lower door jamb of the main cargo door due to cracking or damage during ground or flight operations, which could cause damage to the floor structure and consequent jamming of the flight control cables, and result in loss of controllability of the airplane in flight; accomplish the following:

Gaining Access and Repetitive Inspections

(a) Within 50 flight hours or 60 days after the effective date of this AD, whichever occurs later, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD.

(1) Gain access to the floor beam attachments to the lower door jamb within the main cargo door area by removing the cargo handling system (including ball mats, roller trays, and pallet locks), floor panels, and cargo liner of the lower baggage compartment as necessary to access both sides of the floor beam attachments.

(2) Perform a detailed inspection of the main cargo door area to detect any cracking or damage of the floor beam attachments to the lower door jamb, including the splice plates, angles, and clips identified in Figure 1 of Appendix 1 of this AD Thereafter, repeat the inspection at intervals not to exceed 2,500 flight cycles or 18 months, whichever occurs earlier.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Extending Inspection Area and Replacement

(b) If any cracking or damage is found during any inspection required by paragraph (a)(2) of this AD, before further flight, extend the area of inspection 60 inches forward and aft of the main cargo door area, and replace any cracked or damaged part with a new part identified in Figure 1 of Appendix 1 of this AD.

Reporting Requirement

(c) Within 10 days after performing any inspection required by paragraph (a)(2) of this AD: Send a report of the inspection findings to the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6080; fax (770) 703–6097. The report must include the inspection results, including a description of any cracking or damage found, crack location and length, part number of any cracked or damaged part, airplane serial number, number of flight cycles and flight hours on the airplane, and number of flight cycles and flight hours after the airplane was converted from a passenger-to a cargo-carrying ("freighter") configuration. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(f) This amendment becomes effective on August 22, 2002.

Appendix 1

BILLING CODE 4910–13–P

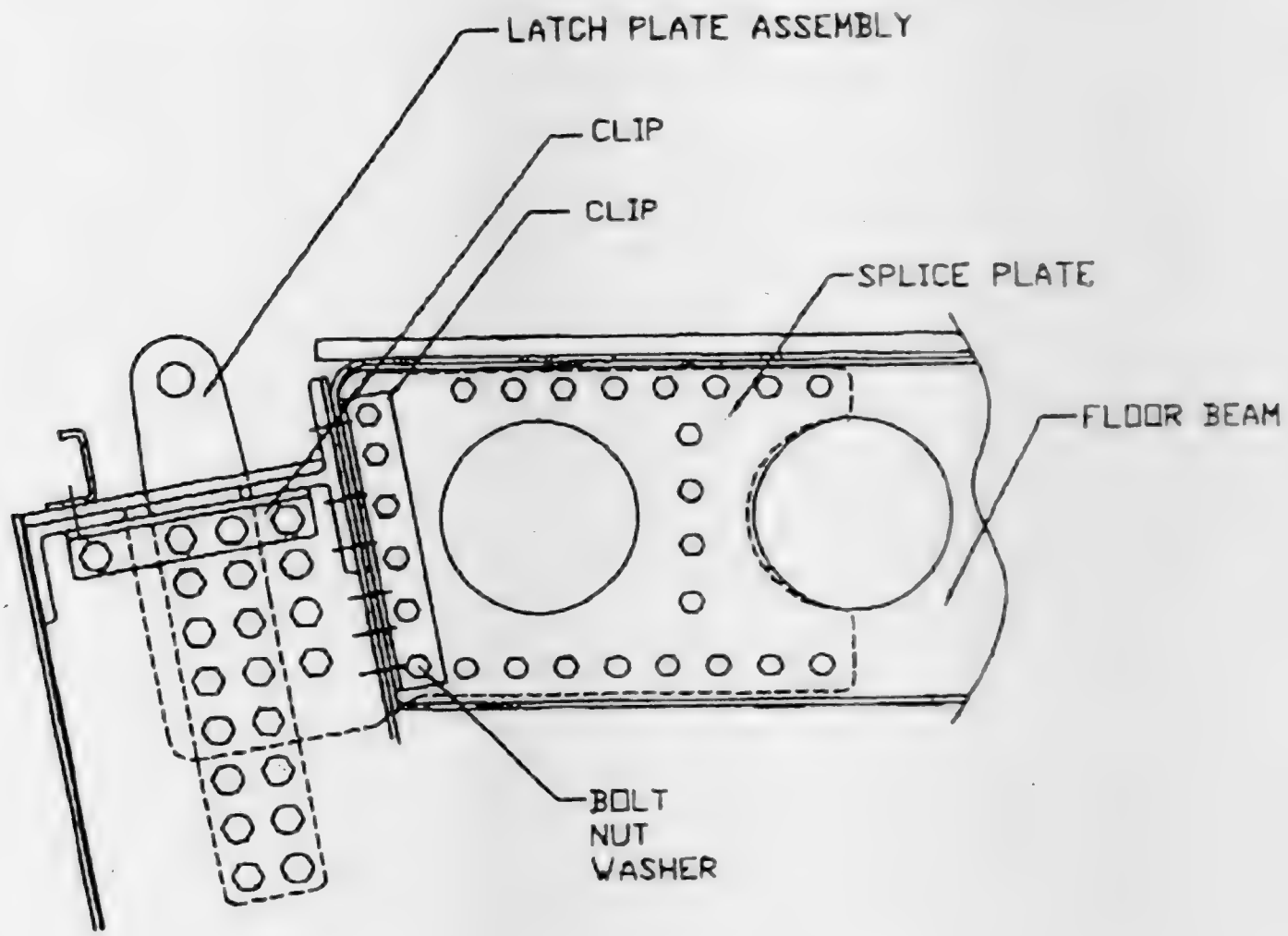

Figure 1.

Issued in Renton, Washington, on July 29, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–19879 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–24–AD; Amendment 39–12839; AD 2002–09–51]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, A–1, and B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Emergency Airworthiness Directive (EAD) 2002–09–51, sent previously to all known U.S. owners and operators of specified Bell Helicopter Textron, Inc. (Bell) model helicopters by individual letters. This AD requires cleaning and inspecting the tail rotor (T/R) grip to determine if the grip is made of steel and replacing any grip not made of steel with an airworthy, steel TR grip. This AD is prompted by reports of a certain timed-out life limited T/R grips being improperly identified and reinstalled on Bell Model 204B, 205A, A–1, and B helicopters. The actions specified by this AD are intended to prevent failure of the T/R grip and subsequent loss of helicopter control.

DATES: Effective August 22, 2002, to all persons except those persons to whom it was made immediately effective by EAD 2002–09–51, issued on May 9, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before October 7, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–24–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Kennedy Jones, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5148, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On May 9, 2002, the FAA superseded EAD 2002–08–53, issued April 22, 2002, with EAD 2002–09–51, issued May 9, 2002. EAD 2002–08–53 required, before further flight, cleaning and inspecting certain T/R grips and removing each unairworthy grip not made of steel. EAD 2002–09–51 retains those requirements and in addition corrects a statement in the preamble that T/R grip, part number (P/N) 205–011–711–101, has an unlimited life. That T/R grip has a life limit of 2,500 hours time-in-service. Also, EAD 2002–09–51 adds the Bell Model 204B helicopter to the applicability and clarifies the inspection requirements by specifying that the magnet be placed on the T/R grip body and not on the steel bushing or steel interior liner to determine if the grip is made of steel. EAD 2002–08–53, was prompted by reports that T/R grips, P/N 204–011–728–019, required to be removed from service by AD 73–17–04 (38 FR 22223, August 17, 1973), were being re-marked as P/N 205–011–711–101 and installed on certain Bell model helicopters. EAD 2002–09–51 was prompted by information from the manufacturer stating that the Bell Model 204B helicopter should be added to the applicability because the unairworthy grips could be installed on that model. This condition, if not detected, could result in failure of the T/R grip and subsequent loss of helicopter control.

This unsafe condition is likely to exist or develop on other Bell model helicopters of the same type design. Therefore, this AD requires cleaning and inspecting the T/R grip to determine if the grip is made of steel by placing a magnet on the exterior of the main body of the T/R grip. If the T/R grip is not made of steel, it must be removed from service. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, this AD requires, before further flight, that you clean and inspect the T/R grip to determine if the grip is made of steel and remove any grip that is not made of steel, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 9, 2002, to all known U.S. owners and operators of Bell Model 204B, 205A, A–1, and B helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that this AD will affect 269 helicopters of U.S. registry, that the required actions will take approximately 2 work hours per helicopter to accomplish, and that the average labor rate is $60 per work hour. Required parts will cost approximately $4864 per helicopter. Based on these figures, the FAA estimates the total cost impact of the AD on U.S. operators will be $1,340,696 to clean, inspect, and replace one T/R grip on each helicopter in the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–24–AD." The postcard will be date

stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–09–51 Bell Helicopter Textron, Inc.: Amendment 39–12839. Docket No. 2002–SW–24–AD. Supersedes Emergency AD 2002–08–53, Docket No. 2002–SW–23–AD.

Applicability: Model 204B, 205A, A–1, and B helicopters, with tail rotor (T/R) grip, part number (P/N) 205–011–711–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight, unless accomplished previously.

To prevent failure of the T/R grip and subsequent loss of helicopter control, accomplish the following:

(a) Clean the T/R grip.

(b) Determine if the T/R grip is made of steel by placing a magnet on the exterior of the main body of the T/R grip. Do *not* make this determination by placing the magnet on the steel bushing or steel interior liner. If the main body of the T/R grip is not made of steel, replace it with an airworthy steel T/R grip. Only replacement T/R grips made of steel are eligible for installation.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on August 22, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–09–51, issued May 9, 2002, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on July 26, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–19875 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–233–AD; Amendment 39–12785; AD 2002–12–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an inadvertent error that appeared in airworthiness directive (AD) 2002–12–13 that was published in the **Federal Register** on June 26, 2002 (67 FR 42985). The inadvertent error resulted in reference to an incorrect address for service information. This AD is applicable to all Boeing Model 727 series airplanes. This AD requires a review of maintenance records or a one-time test to determine if elevator hinge support ribs on the trailing edge of the horizontal stabilizer are made from a certain material, and follow-on repetitive inspections for corrosion or cracking of the elevator hinge support ribs, if necessary. For airplanes with the affected ribs installed, this AD eventually requires replacement of all affected ribs with new, improved ribs.

DATES: Effective July 31, 2002.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2773; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2002–12–13, amendment 39–12785, applicable to all Boeing Model 727 series airplanes, was published in the **Federal Register** on June 26, 2002 (67 FR 42985). That AD requires a review of maintenance records or a one-time test to determine if elevator hinge support ribs on the trailing edge of the horizontal stabilizer are made from a certain material, and follow-on repetitive inspections for corrosion or cracking of the elevator hinge support ribs, if necessary. For airplanes with the affected ribs installed, this AD eventually requires replacement of all affected ribs with new, improved ribs.

As published, paragraph (h) of that AD contained an incorrect address for obtaining copies of service information. Paragraph (h) of that AD identifies Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, as the appropriate address for obtaining copies of service information. However, the correct address is Boeing

Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains July 31, 2002.

§ 39.13 [Corrected]

On page 42989 of AD 2002–12–13, in the third column of paragraph (h) on the fourth line following the table, correct the sentence. "Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France." to read "Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207."

Issued in Renton, Washington, on July 29, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–19880 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–30]

Revision to Class D and Class E Airspace, Medford, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will correct official documents required as a result of a legal name change of the airport from the Medford-Jackson Airport to the Rogue Valley International-Medford Airport. Additionally, this action revises the Class E airspace at Medford, OR, to provide for adequate controlled airspace for those aircraft using the RNAV (GPS) RWY 14 Standard Instrument Approach Procedure (SIAP) to Rogue Valley International-Medford Airport located in Medford, OR.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mick Wall, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–30, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On August 17, 2001, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class D and Class E airspace at Medford, OR, (66 FR 43132). In 1992 the official name of the Medford Airport was changed from Medford-Jackson County Airport to Rogue Valley International-Medford Airport. This name change was reflected in a number of publications, but not officially referenced in 14 CFR 71.1. This rule corrects the legal description of airspaces associated with the airport to reflect its current name. Additionally, this rule revises the Class E airspace to provide adequate controlled airspace for aircraft executing the new RNAV (GPS) RWY 14 SIAP. Additional Class E airspace, 700-foot and 1,200 foot controlled airspace, is required to contain aircraft within controlled airspace which are executing IFR approaches to the airport. The intended effort of this rule is designed to revise the airspace's legal descriptions, provide safe and efficient use of the navigable airspace, and enhance/promote safe flight operations under Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) at Rogue Valley International-Medford Airport.

Interested parties were not invited to participate in the rule making proceedings regarding the revision to the Class D airspace or the Class E airspace designated as a surface area, as this is an action to correct official documents resulting from the legal name change of the airport. This is considered an insignificant modification to the airspace description as only the name of the associated airport is changed. The dimensions and effective hours of the Class D airspace Class E 2 surface area were not revised.

The Rule

This amendment to 14 CFR part 71 revises the Class D surface area and Class E airspace legal descriptions for Medford, OR. This rule revises the airspace legal descriptions to reflect the current name designation of the Rogue Valley International-Medford Airport, Medford, OR, and provides safe and efficient use of the navigable airspace. It will promote safe flight operations under Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) at Rogue Valley International-Medford Airport. Additionally, this rule will enhance flight operations during the transition between the terminal and en route phase of flight.

The airspace areas will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D surface airspace areas are published in Paragraph 5000, Class E Airspace areas designated as surface areas for an airport are published in paragraph 6002, Class E airspace areas designated as extensions to Class D or Class E surface areas are published in Paragraph 6004, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significantly regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ANM OR D Medford, OR [REVISED]

Rogue Valley International-Medford Airport, OR
(Lat. 42°22′20″ N, long. 122°52′21″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.1-mile radius of Rogue Valley International-Medford Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace designated as surface area for an airport.

* * * * *

ANM OR E2 Medford, OR [REVISED]

Rogue Valley International-Medford Airport, OR
(Lat. 42°22′20″ N, long. 122°52′21″ W.)

That airspace extending upward from the surface within a 4.1-mile radius of Rogue Valley International-Medford Airport. This Class E airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004—Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

ANM OR E4 Medford, OR [REVISED]

Rogue Valley International-Medford Airport, OR
(Lat. 42°22′20″ N, long. 122°52′21″ W.)
Rogue Valley VORTAC
(Lat. 42°27′47″ N, long. 122°54′47″ W.)
Pumie LOM
(Lat. 42°27′03″ N, long. 122°54′48″ W.)

That airspace extending upward from the surface within 1.8 miles west and 2.7 miles east of the Medford ILS localizer north course extending from the 4.1-mile radius to 2.7 miles north of the Pumie LOM and within 2.7 miles each side of the Rogue Valley VORTAC 352° radial extending from the Rogue Valley VORTAC to 11 miles north of the VORTAC, and within 4 miles each side of the Rogue Valley VORTAC 164° radial extending from the 4.1-mile radius to 19.3 miles south of the Rogue Valley International-Medford Airport.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Medford OR [REVISED]

Rogue Valley International-Medford Airport, OR
(Lat. 42°22′20″ N, long. 122°52′21″ W.)

That airspace extending upward from 700 feet above the surface bounded by a line from lat. (42°45′00″ N, long. 123°10′54″ W.); to lat. 42°48′54″ N, long. 122°57′06″ W.; to lat. 42°44′00″ N, long. 122°44′36″ W.; to lat. 42°04′00″ N, long. 122°30′00″ W.; to lat. 41°56′30″ N, long. 123°00′00″ W.; to the point of origin; that airspace extending upward from 1,200-feet above the surface bounded by a line from lat. 43°00′00″ N, long. 123°30′00″ W.; to lat. 41°43′40″ N, long. 123°14′36″ W.; to lat. 42°00′00″ N, long. 122°10′30″ W to lat. 43°00′00″ N, long. 122°30′00″ W.; to the point of origin; excluding that airspace within Federal Airway areas, and the Klamath Falls, OR and Grants Pass, OR Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on July 9, 2002.

Kathryn M. Vernon,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 02–19557 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–04]

Revision of Class E Airspace; Kodiak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Kodiak, AK. Four new Standard Instrument Approach Procedures (SIAP) have been established for the Kodiak Airport. The existing Class E airspace at Kodiak is insufficient to contain aircraft executing the new SIAPs. This rule will result in additional Class E airspace at Kodiak, AK.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

History

On May 13, 2002, a proposal to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to add to the Class E airspace at Kodiak, AK, was published in the **Federal Register** (67 FR 31994–31995). Due to the development of four new SIAPs; Instrument Landing System Y (ILS Y) Runway 25, Very High Frequency Omni-navigational Range or Tactical Air Navigation Y (VOR or TACAN Y) Runway 25, Non-directional Beacon (NDB) Runway 25, Area Navigation (Global Positioning System) (RNAV GPS) Runway 25, additional Class E airspace is necessary to ensure that IFR operations remain within controlled airspace at the Kodiak, AK Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001 and effective September 16, 2001 which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 adds to the Class E airspace at Kodiak, Alaska. Additional Class E airspace is being created to contain aircraft executing the four new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Kodiak Airport, Kodiak, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kodiak, AK [Revised]

Kodiak Airport, AK
(Lat. 57°45′00″ N., long. 152°29′38″ W.)
Kodiak VORTAC
(Lat. 57°46′30″ N., long. 152°20′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8 mile radius of the Kodiak Airport, and within 5 miles south and 9 miles north of the 070° radial of the Kodiak VORTAC extending to 17 miles northeast of the VORTAC and within 8 miles north and 4 miles south of the Kodiak Localizer front course extending from the airport to 20.3 miles east of the airport and within 14 miles of the Kodiak VORTAC extending from the 358° radial clockwise to the 107° radial; and that airspace extending upward from 1,200 feet above the surface within lat. 57°57′06″ N, long. 152°45′00″ W to lat. 57°55′00″ N, long. 152°28′00″ W to lat. 57°53′00″ N, long. 152°27′06″ W to point of beginning and within 27 miles of the Kodiak VORTAC extending clockwise from the 023 to the 088 radial and within 8 miles north and 5 miles south of the Kodiak Localizer front course extending from the airport to 32 miles east of the airport.

* * * * *

Issued in Anchorage, AK, on July 24, 2002.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–19554 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–03]

Revision of Class E Airspace; Nuiqsut, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Nuiqsut, AK. Two new Standard Instrument Approach Procedures (SIAP) have been established for the Nuiqsut Airport. The existing Class E airspace at Nuiqsut is insufficient to contain aircraft executing the new SIAPs. This rule results in additional Class E airspace at Nuiqsut, AK.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

History

On April 23, 2002, a proposal to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to add to the Class E airspace at Nuiqsut, AK, was published in the **Federal Register** (67 FR 19710–19711). Due to the development of two new SIAPs; Area Navigation-Global Positioning System (RNAV GPS) Runway 04, and RNAV (GPS) Runway 22, additional Class E airspace is necessary to ensure that IFR operations remain within controlled airspace at the Nuiqsut, AK Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J. *Airspace Designations and Reporting Points*, dated August 31, 2001 and effective September 16, 2001 which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 adds to the Class E airspace at Nuiqsut, Alaska. Additional Class E airspace is being created to contain aircraft executing the RNAV (GPS) Runway 04 and RNAV (GPS) Runway 22 SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Nuiqsut Airport, Nuiqsut, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001, and effective

September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Nuiqsut, AK [Revised]

Nuiqsut Airport, AK
(Lat. 70°12′36″ N., long. 151°00′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Nuiqsut Airport, and that airspace extending upward from 1,200 feet above the surface from 13 miles north and 8 miles south of the 249° bearing from the airport to 29 miles southwest, to 19 miles northwest of the airport on the 314° bearing clockwise to the 352° bearing 13 miles north of the airport.

* * * * *

Issued in Anchorage, AK, on July 24, 2002.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–19553 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–02]

Revision of Class E Airspace; Buckland, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Buckland, AK. Three new Standard Instrument Approach Procedures (SIAP) have been established for the Buckland Airport. The existing Class E airspace at Buckland is insufficient to contain aircraft executing the new SIAPs. This rule results in additional Class E airspace at Buckland, AK.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

History

On April 23, 2002, a proposal to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to add to the Class E airspace at Buckland, AK, was published in the **Federal Register** (67 FR 19711–19713). Due to the development of three new SIAPs, Area Navigation-Global Positioning System (RNAV GPS) Runway 28, Non-directional Radio Beacon/Distance Measuring Equipment (NDB/DME) Runway 10, and NDB/DME Runway 28, additional Class E airspace is necessary to ensure that IFR operations remain within controlled airspace at the Buckland, AK Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J. *Airspace Designations and Reporting Points*, dated August 31, 2001 and effective September 16, 2001 which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 adds to the Class E airspace at Buckland, Alaska. Additional Class E airspace is being created to contain aircraft executing the RNAV (GPS) Runway 28, NDB/DME Runway 28 and NDB/DME Runway 10 SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Buckland Airport, Buckland, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Buckland, AK [Revised]

Buckland Airport, AK
(Lat. 65°58′56″ N., long. 161°09′07″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Buckland Airport; and that airspace extending upward from 1,200 feet above the surface from 65°28′30″ N, 159°00′00″ W to 65°57′45″ N, 162°11′00″ W to 66°16′00″ N, 162°15′00″ W to 66°40′00″ N, 161°03′00″ W to 66°35′00″ N, 160°27′00″ W to 66°11′00″ N, 159°00′00″ W to point of beginning.

* * * * *

Issued in Anchorage, AK, on July 24, 2002.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–19552 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–08]

Amendment of Class E Airspace, Dunkirk, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the description of the Class E airspace designated for Dunkirk, NY. Angola airport has been closed and the Standard Instrument Approach Procedures (SIAP) for this airport have been canceled. Class E airspace for Angola Airport is no longer needed.

EFFECTIVE DATE: October 3, 2002.

Comment Date: Comments must be received on or before August 15, 2002.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–08, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone: (718) 553–3255.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Although this action is a final rule, which involves the amendment of the Class E airspace at Dunkirk, NY, by revoking that airspace designated for Angola Airport, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceeding to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the description of the Class E airspace at Dunkirk, NY, by revoking that airspace designated for Angola Airport. The Angola airport has been closed and abandoned for aeronautical use. As a result the Angola Airport Class E airspace is no longer required for air safety. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Under the circumstances presented, the FAA concludes that there is a need to amend the description of the Class E airspace area at Dunkirk, NY to ensure public access to that airspace designated for the Angola Airport. Accordingly, since this action merely involves a change in the legal description of the Dunkirk, NY, Class E airspace, revoking that airspace designated for the Angola airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Furthermore, in order to incorporate this change into the next sectional chart and avoid confusion on the part of pilots, I find that good cause exists, pursuant to 5 U.S.C 553(d), for making this amendment effective as soon as possible.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001 and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Dunkirk, NY [Revised]

Chautauqua County/Dunkirk Airport, NY
(Lat. 42°29′36″ N, long. 79°16′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Chautauqua County/Dunkirk Airport and within an 11.8-mile radius of the airport extending clockwise from a 022° to a 264° bearing from the airport.

* * * * *

Issued in Jamaica, New York on July 16, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–19677 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 011018254–2153–02; I.D. 071001F]

RIN 0648–AO51

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 11

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 11 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 11), as prepared and submitted by the Gulf of Mexico Fishery Management Council. This final rule requires owners or operators of all vessels harvesting shrimp in the exclusive economic zone of the Gulf of Mexico (Gulf EEZ) to obtain a commercial vessel permit for Gulf shrimp; prohibits the use of traps to harvest royal red shrimp in the Gulf EEZ; and prohibits the transfer of royal red shrimp at sea. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The permit requirement will provide an accurate and efficient method of identifying and quantifying the number of vessels in the Gulf EEZ shrimp fishery. The prohibition of the use of traps for royal red shrimp is intended to prevent gear conflict and potential overfishing. The prohibition on transfer of royal red shrimp at sea is intended to enhance enforceability of the prohibition on use of traps in the fishery.

DATES: This final rule is effective September 6, 2002, except for the addition of § 622.4(a)(2)(xi) and the revision of § 622.6(a)(1)(i) which are effective December 5, 2002.

ADDRESSES: Comments regarding the collection-of-information requirements contained in this final rule should be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for shrimp in the Gulf EEZ is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS approved Amendment 11 on October 17, 2001. On February 25, 2002, NMFS published a proposed rule to implement Amendment 11 and requested comments on the proposed rule through April 11, 2002 (67 FR 8503). The rationale for the measures in Amendment 11 is provided in the preamble to the proposed rule and is not repeated here.

Comments and Responses

Comments received during public comment periods for the Amendment and the proposed rule are considered together in this final rule. Comments opposing the permitting system included a minority report submitted by two members of the Council, and five letters from industry representatives (two of which were submitted during both public comment periods). Comments supporting the permitting system included letters from three environmental organizations (one organization submitted a comment under each comment period). Additionally, NMFS received several hundred form letters stating general support for the permitting action.

Vessel Permits

Comment 1: Opposing views were received regarding the need for a Federal shrimp vessel permit system as a mechanism to collect information regarding the shrimp fishery. Two individuals and one organization opposed the proposed permitting system noting that information was available through existing state and Federal programs to determine vessels and effort in the exclusive economic zone (EEZ) of the Gulf of Mexico. Specific issues identified in these letters are addressed as separate comments herein.

In contrast, three environmental organizations submitted comments and several hundred form letters were received stating general support for the permitting action as a means to gather information concerning bycatch in the fishery and as an enforcement tool that would enhance sea turtle conservation. Two of the environmental groups provided detailed comment in support of their position, noting that the existing Federal records include information compiled by port agents over several years, which may not be representative for the current year. Also, state licensing files do not necessarily distinguish between vessels that fish in state and Federal waters and when compiled among states would include duplicate records for those vessels licensed in multiple states.

Response: Data collection and identification systems do exist through either state or Federal systems, but none is comprehensive or specifically identifies shrimp fishing vessels that are actively working in the EEZ. The NMFS-maintained Shrimp Landings File (SLF) represents landings by individual shrimp vessels over the course of a year, but does not necessarily indicate whether the effort occurred in state or Federal waters. The purpose of the NMFS Vessel Operating Units File (VOUF) is to maintain a record of vessel characteristics (i.e., length, age, horsepower, etc.), for all active shrimp fishing vessels; this file may include several vessels that are not currently active in the fishery. Thus, the VOUF contains a list of all vessels found in the SLF, plus vessels fishing in the inshore areas, and vessels suspected to still be active in the fishery. Neither of these data files provides an indication of whether the vessels fish in the EEZ. Similarly, state licensing files or trip tickets may indicate active fishing vessels, but these files will not provide information on whether a vessel fishes in state or Federal waters, or both. In some instances, these licenses are not specific to a fishery, and, thus, they do not readily identify shrimp fishing vessels as opposed to vessels operating in other fisheries. Trip tickets are not uniform across the Gulf states, and the GulfFIN clearinghouse that will standardize this information is still in development. Additionally, these data collection systems, designed for different purposes, are not standardized as to the information that is collected. The immediate benefit of a Federal permit system is to accurately identify the existing, active (on an annual basis) universe of shrimp fishing vessels in the Gulf of Mexico EEZ.

A Federal permit system that creates a complete listing of all active vessels fishing in the EEZ is a prerequisite tool for any statistically robust data collection program intended to canvass or randomly sample the activities of the shrimp fishery in the EEZ. Previous data collection programs have been hampered by the inability to specifically identify the universe of vessels fishing for shrimp in the Gulf EEZ. Without this information, sampling programs have depended on non-random sampling. A more robust analysis of the shrimp fishery is only possible through stratified random sampling of the existing fleet, and that kind of sampling is only possible where the specific vessels are readily identifiable.

The ability to sanction permits is an enforcement tool and could apply for violations of certain statutes and where

there is an unpaid and overdue civil penalty or criminal fine imposed under any marine resource law administered by the Secretary of Commerce. Additional details concerning this specific issue are addressed in the response to Comment 11.

Comment 2: The Secretary of Commerce has the authority to implement measures that are needed to collect data under section 401 of the Magnuson-Stevens Act. Two comments suggested that a Gulf-wide vessel registration system be implemented under the auspices of the Gulf States Marine Fisheries Commission (Commission).

Response: In regards to the vessel registration system proposal required in Section 401 of the Magnuson-Stevens Act, NMFS proposed utilizing the Vessel Identification System that is under development by the US Coast Guard (USCG). However, the USCG is still reviewing options to implement this system, and its implementation is not anticipated in the near future. Trip tickets are not uniform across the Gulf states, and the GulfFIN clearinghouse under development by the Commission will provide a standardization of this information. This program will greatly enhance the overall data collection systems for Gulf of Mexico fisheries, but it will not identify the number of shrimp vessels fishing in the EEZ.

Comment 3: The shrimp fishery has been participating in a data collection program for several years. The Congressionally mandated Incidental Harvest Research Program collected substantial amounts of information regarding the characterization of the catch and bycatch species found in shrimp trawls. That program led to additional data collection efforts currently underway using observers and logbooks to document the port of departure, fishing time, catch, and the location of fishing effort.

Response: The industry contributions to collecting data on the catch and effort in the shrimp fishery were an integral part of the development of Council actions to implement Amendment 9 to the Gulf shrimp FMP. Continuing data collection efforts will benefit additional management decisions. However, without a method to identify the universe of vessels active in the fishery, these programs have relied on voluntary participation by the shrimp fleet. The results of NMFS' 1992–1996 Incidental Harvest Research Program, as well as the Council's subsequent actions implemented in Amendment 9 that were based on the results of that program, have been questioned because the sampling was not conducted through a stratified random sampling effort across the various strata of vessels. Similarly, during the summer 1998 Red Snapper/Shrimp Research Program, the Southeast Fisheries Science Center attempted to implement a trial logbook program. That attempt was only partially successful because it failed to reach many of the intended participants in a timely manner. These programs used the available information systems to identify potential participants, but even in combination, these other information systems do not directly provide current information on the number and location of shrimp fishing vessels operating in the EEZ. A major benefit of a Federal permit system is in providing opportunity to design statistically robust data collection programs to benefit management of the fishery resources of the region.

Comment 4: Amendment 11 does not state specifically what data are missing resulting in the need for a new data collection program. Data on fishing effort and catch are already collected by NMFS port agents and state agencies.

Response: Amendment 11 does not propose to implement a biological or fishery data collection system; it proposes to implement a vessel permitting system, which by itself is a data collection tool to identify those shrimp vessels actively fishing in the EEZ each year. With a permit system as a source to identify a representative stratified random sample of shrimp vessels, research to collect biological, fishery, social, and economic data on the fishery could be accomplished using observers, logbooks, vessel monitoring systems or other data collection methods. Once the Agency has more accurately determined the number of fishery participants through the permit system, then appropriate methods of data collection will be determined. Anticipated improvements from the permitting and subsequent sampling procedures would include more precise red snapper bycatch estimations and more accurate determinations of economic and community impacts. Information collected under such future programs would aid in the formulation of sound management measures for the shrimp fishery and those finfish fisheries that are affected by bycatch and bycatch mortality arising from the shrimp fishery. See also response to comment 10.

Comment 5: Amendment 11 does not state what supporting documents will be required to obtain a Federal fishing permit. There is no discussion of the conditions by which NMFS could reject the issuance or renewal of such a permit. Failure or delay in issuing or renewing a Federal permit in a timely manner because applications are incomplete or have a lack of supporting documentation could have a substantial economic impact on the vessel owner. Automatic renewal of permits should be issued with expiration dates spread evenly over the year, rather than with a single expiration date, to avoid administrative delays. Electronic (internet-based) permitting and payment of permitting fees via credit cards would additionally speed up the process.

Response: The conditions for obtaining and renewing a shrimp vessel permit, including the time frames for issuance, are a NMFS administrative procedure, and the Councils usually defer specific application procedures to NMFS. The proposed application procedures and requirements were described in the proposed rule (67 FR 8503, February 25, 2002). Current regulations (50 CFR 622.4(b)(3) and 50 CFR 622.4(h)) do provide the information that needs to be submitted to obtain and renew vessel permits and address the timing for applying and renewing permits. The procedures for shrimp permit applications will be based on these existing regulations.

Regarding the comments on internet-based permit issuance and fee payment, NMFS currently is developing the resources and technological capability for these opportunities. NMFS is actively examining the feasibility of changing to such a system to improve customer service without adversely affecting the accuracy and usefulness of the permit database.

Comment 6: Given that the permits would be non-transferrable, what would happen if the owner sold his permitted vessel?

Response: Open-access permits, such as the shrimp vessel permits, do not require transfer provisions. Once the vessel transaction is complete, the new owner may simply apply to obtain a new permit without relying on the more lengthy permit transfer process. As a result, the rule does not provide for permit transfers.

Comment 7: Without qualifying criteria the number of permits issued may be inflated due to speculation or part-time fishing in the EEZ, thus rendering the database unusable as a measure of effort.

Response: The database generated by the issuance of vessel permits is not intended as a direct measure of effort. The database will provide an enumeration of the vessels that either fish or have the intent to fish in the EEZ on an annual basis. However, by using the identification information from a permit system, those vessels can then be

contacted to gather the information necessary to estimate fishing effort. (See also the responses to Comments 3 and 4).

Comment 8: National standard 5 states in part that "conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources...". Efficiency in the utilization of fishery resources is enhanced through minimizing the regulatory burden on the harvesters. This measure will be costly to implement, more complex than the existing system, and will result in less rather than more efficiency.

Response: NMFS disagrees that this would be a complex or costly regulatory burden. This amendment includes a collection-of-information requirement subject to the Paperwork Reduction Act; namely, a requirement to submit an application for a Gulf shrimp commercial vessel permit. In addition, NMFS revised the Multiple Fishery Vessel Application (Application) that will be used for the Gulf shrimp permit and is used for other fishery permits issued by the NMFS Southeast Regional Office. NMFS added data fields for the applicant's birth date, street address, and county; vessel net tonnage; vessel gross tonnage; and vessel hull identification number. The collection of this information has been approved by the Office of Management and Budget, OMB control number 0648–0205. The public reporting burden for the collection of information related to the Gulf shrimp permit application and the additional data elements on the Application are estimated to average 20 minutes per response. This estimate of the public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Comment 9: National standard 6 states that "conservation and management measures shall take into account and allow for variations among, and contingencies in, fishery, fishery resources, and catches." Vessel permits are almost exclusively used as fishery management tools in fisheries where the intent is to control fishing effort to protect and rebuild stocks. This is not the case in the shrimp fishery. Shrimping in the EEZ is not a threat to shrimp stocks, and good fishery management practices do not require the level of effort scrutiny needed to manage other fisheries.

Response: Mandatory vessel permitting proved to be an effective way of obtaining information on the number of potentially active vessels and participants in other commercial and for-hire fisheries operating in the Gulf, including the reef fish and coastal migratory pelagics fisheries. These data combined with logbook reporting, observer reports, and other surveys provided managers with essential information on effort, catch, bycatch, and other important parameters regarding these fisheries. Having a known universe of vessels operating in the Gulf shrimp fishery will help provide the same opportunities for scientists and managers to collect data on effort, catch, bycatch, and other important parameters of both targeted shrimp stocks, as well as bycatch species that may or may not be under separate management regimes.

Comment 10: National standard 7 states that "conservation and management measures shall, where practicable, minimize cost and avoid unnecessary duplication." The estimated cost for implementation of shrimp permits is an unjustified burden on the taxpayers of this country and to the shrimping industry. The current data collection systems contain the information necessary to manage the fishery; therefore an additional permitting requirement will increase cost and create unnecessary duplication.

Response: Amendment 11 states that the public burden associated with vessel permits and data collection are estimated to be approximately $350,000 per year, based on an anticipated issuance of 7,000 permits at a cost of $50 per permit. NMFS costs associated with the issuance of these permits is estimated to be $350,000. The funds generated from permit fees are not retained by NMFS and revert to the General Treasury, thus offsetting any public (taxpayer) burden. There are no expected cost increases to be borne by state and other local governments from implementing a vessel permitting system for the shrimp fishery.

NMFS has assessed both the costs and benefits of the intended regulations and has determined that this action is justified. The permit cost of $50 per application, which represents the cost to the agency in processing and issuing the permit, represents less than one percent of the profits realized by the average Gulf of Mexico shrimp vessel, and burden time (estimated at 20 minutes per permit application) is minimal. The increased scientific information that can be collected by using the permit system to randomly sample the shrimp fleet will provide a greater benefit to the various Gulf of Mexico fisheries as a whole than the cost to develop the permit system. NMFS also does not believe that the permit system is duplicative and addressed its rationale for that finding in the Response to Comment 1.

Comment 11: National standard 8 states that "Conservation and management measures shall....take into account the importance of fishery resources to fishing communities in order to (a) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize adverse economic impacts on such communities." The shrimp fishery in the Gulf of Mexico is the most valuable fishery and involves the largest number of participants. Consequently, more people are affected by regulations on this fishery. Because of the many regulations applicable to this fishery under both the Endangered Species Act (ESA) and the Magnuson-Stevens Act (turtle-excluder-devices (TEDs), BRDs, closed areas, closed seasons, etc.), violations are proportionally more costly to shrimp vessel owners as opposed to other finfish fisheries. Additionally, the Gulf shrimp fishery consists of a large number of vessels that are not owner-operated. Given that an owner has little control over the operator while the vessel is at sea, owners could be economically ruined by operators who may violate regulations leading to a permit sanction.

Response: Participants in other fisheries are subject to requirements under more than one statute, such as the Magnuson-Stevens Act, Endangered Species Act, and/or the Marine Mammal Protection Act. For example, summer flounder fishermen are similarly required to use TEDs. As such, participants in the

Gulf shrimp fishery will not be subject to greater or disproportionate costs as a result of regulatory violations as compared to other fisheries. So long as permit holders remain in compliance with applicable law, they will not be subject to any additional economic burden. NMFS cannot insulate owners from liability, as the Magnuson-Stevens Act explicitly establishes liability for any person, including owners and operators of vessels involved in fisheries violations, as well as liability for the vessel, its cargo, and appurtenances.

Royal Red Shrimp Traps

Comment 1: One comment suggested that NMFS should more carefully consider alternative gears to trawls for shrimp fishing, noting that trawls are identified as some of the most destructive fishing gear currently in use. Given that the royal red shrimp fishery is prosecuted in deep water, and that deep water corals have long life spans and infrequent recruitment, trawls could severely damage deep water reefs.

The value of an alternative to trawls would depend on the intensity of fishing in a particular area, but should be considered.

Response: At this time, NMFS agrees with the Council's position that the prohibition of traps in the royal red shrimp fishery is beneficial. Allowing the use of traps could result in gear conflicts and entanglements that could compromise vessel safety considering the depth of water where this fishery is prosecuted. Additionally, the existing trawl fishery has been harvesting royal red shrimp at a level near maximum-sustainable-yield for several years. The addition of a new gear and additional harvesting efforts could lead to overfishing. NMFS recognizes the potential impacts to habitat from trawling operations, and should the Council choose to change allowable gears in this fishery, at a later time, NMFS would give careful consideration to the option.

Classification

On October 17, 2001, NMFS approved Amendment 11 based on a determination that it was consistent with the national standards of the Magnuson-Stevens Act and other applicable law. In making that determination, NMFS took into account the data, views, and comments received during the comment period on Amendment 11.

This final rule has been determined to be significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. Comments were received regarding the economic impacts (see Comments 8, 10, and 11) but did not alter the determination and appropriateness of the certification. As a result, no regulatory flexibility analysis was prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains collection-of-information requirements subject to the PRA--namely, a requirement to submit an application for a Gulf shrimp commercial vessel permit and a vessel identification requirement. In addition, NMFS is revising the Multiple Fishery Vessel Application (Application) that will be used for the Gulf shrimp permit and is used for other fishery permits issued by the NMFS Southeast Regional Office. NMFS is adding data fields for the applicant's birth date, street address, and county; vessel net tonnage; vessel gross tonnage, and vessel hull identification number. The permit application requirement and the new application data field requirements have been approved by OMB, OMB control number 0648–0205. The public reporting burden for the collection of information related to the Gulf shrimp permit application and the additional data elements on the Application is estimated to average 20 minutes per response. This estimate of the public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. The vessel identification requirement was previously approved by OMB under control number 0648–0358, with an estimated response time of 45 minutes total per vessel. Send comments regarding these burden estimates or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 1, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b), under 50 CFR, is amended by revising the entry for 622.6 to read as follows:

§ 902.1 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part of section where the information collectionrequirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR	
* * * * *	
622.6	-0358 and -0359
* * * * *	

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 622.2, the definition of "Shrimp" is revised to read as follows:

622.2 Definitions and acronyms.

* * * * *

Shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus.*

(2) White shrimp, *Litopenaeus setiferus.*

(3) Pink shrimp, *Farfantepenaeus duorarum.*

(4) Royal red shrimp, *Hymenopenaeus robustus.*

(5) Rock shrimp, *Sicyonia brevirostris.*

(6) Seabob shrimp, *Xiphopenaeus kroyeri.*

* * * * *

5. In § 622.4, paragraph (a)(2)(xi) is added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(xi) *Gulf shrimp.* For a person aboard a vessel to fish for shrimp in the Gulf EEZ or possess shrimp in or from the Gulf EEZ, a valid commercial vessel permit for Gulf shrimp must have been issued to the vessel and must be on board.

* * * * *

6. In § 622.6, paragraph (a)(1)(i) introductory text is revised to read as follows:

§ 622.6 Vessel and gear identification.

(a) * * *

(1) * * *

(i) *Official number.* A vessel for which a permit has been issued under § 622.4 must display its official number--

* * * * *

7. In § 622.31, paragraph (k) is added to read as follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(k) *Traps for royal red shrimp in the Gulf EEZ and transfer at sea.* A trap may not be used to fish for royal red shrimp in the Gulf EEZ. Possession of a trap and royal red shrimp on board a vessel is prohibited. A trap used to fish for royal red shrimp in the Gulf EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer. In addition, royal red shrimp cannot be transferred in the Gulf EEZ, and royal red shrimp taken in the Gulf EEZ cannot be transferred at sea regardless of where the transfer takes place.

[FR Doc. 02–19977 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Blue Ridge Pharmaceuticals, Inc., to IDEXX Pharmaceuticals, Inc.

DATES: This rule is effective August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Blue Ridge Pharmaceuticals, Inc., 4249–105 Piedmont Pkwy., Greensboro, NC 27410, has informed FDA of a change of name to IDEXX Pharmaceuticals, Inc. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Blue Ridge Pharmaceuticals, Inc." and by alphabetically adding an entry for "IDEXX Pharmaceuticals, Inc."; and in the table in paragraph (c)(2) by revising the entry for "065274" to read as follows.

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
IDEXX Pharmaceuticals, Inc., 4249–105 Piedmont Pkwy., Greensboro, NC 27410	065274

(2) * * *

Drug labeler code	Firm name and address
065274	IDEXX Pharmaceuticals, Inc., 4249–105 Piedmont Pkwy., Greensboro, NC 27410

Dated: July 19, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–19906 Filed 8–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 529

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from DEC International, Inc., to Pharmacia & Upjohn Co.

DATES: This rule is effective August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl.,

Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: DEC International, Inc., 1919 South Stoughton Rd., P.O. Box 8050, Madison WI 53708–8050, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA 141–200 for EAZI–BREED CIDR Progesterone Intravaginal Inserts to Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199. Accordingly, the agency is amending the regulations in 21 CFR 529.1940 to reflect the transfer of ownership.

Following this change of sponsorship, DEC International, Inc., is no longer the sponsor of any approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for DEC International, Inc.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 324, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "DEC International, Inc." and in the table in paragraph (c)(2) by removing the entry for "067080".

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1940 [Amended]

4. Section 529.1940 *Progesterone intravaginal inserts* is amended in paragraph (b) by removing "067080" and by adding in its place "000009".

Dated: July 17, 2002.

Alan Rudman,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–19862 Filed 8–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved abbreviated new animal drug application (ANADA) from Equi Aid Products, Inc., to Farnam Companies, Inc.

DATES: This rule is effective August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Equi Aid Products, Inc., 1517 West Knudsen Dr., Phoenix, AZ 85027, has informed FDA that it has transferred ownership of, and all rights and interest in, ANADA 200–168 for CW 48 (pyrantel tartrate) Type A medicated article to Farnam Companies, Inc., 301 West Osborn, Phoenix, AZ 85013–3928. Accordingly, the agency is amending the regulations in § 558.485 (21 CFR 558.485) to reflect the transfer of ownership.

Following this change of sponsorship, Equi Aid Products, Inc., is no longer the sponsor of any approved application. Accordingly, § 510.600(c) is amended to remove the entries for Equi Aid Products, Inc.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting =and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Equi Aid Products, Inc." and in the table in paragraph (c)(2) by removing the entry for "062240".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.485 [Amended]

4. Section 558.485 *Pyrantel tartrate* is amended in paragraph (b)(7) by removing ", 017135, and 062240" and by adding in its place "and 017135".

Dated: July 17, 2002.

Alan Rudman,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–19861 Filed 8–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Pennfield Oil Co. The supplemental ANADA provides for a zero-day preslaughter withdrawal time for use of oxytetracycline hydrochloride (HCl) soluble powder in the drinking water of swine.

DATES: This rule is effective August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137, filed a supplement to ANADA 200–026 that provides for use of PENNOX 343 (oxytetracycline HCl) soluble powder for making medicated drinking water for the treatment of various bacterial diseases of livestock. The supplemental ANADA provides for a zero-day preslaughter withdrawal time after the use of the product in the drinking water of swine. The supplemental ANADA is approved as of April 10, 2002, and 21 CFR 520.1660d is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency had determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1660d is amended by revising the last sentence in paragraph (d)(1)(iii)(C) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(C) * * * Administer up to 5 days; do not use for more than 5 consecutive days; withdraw zero days prior to slaughter those products sponsored by Nos. 046573, 053389, 057561, and 061133.

* * * * *

Dated: July 17, 2002.

Alan Rudman,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–19864 Filed 8–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Oxytetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADAs) filed by Phibro Animal Health, Inc., which provide for a zero-day preslaughter withdrawal time for use of oxytetracycline in swine feed.

DATES: This rule is effective August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7580, e-mail: *svaughn@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Phibro Animal Health, 710 Rte. 46 East, suite 401, Fairfield, NJ 07004, filed supplements to NADA 8–804 for TM–50, TM–50D, TM–100, and TM–100D (oxytetracycline) Type A medicated articles and NADA 95–143 for OXTC (oxytetracycline) Type A medicated articles used for making medicated feeds for the treatment of various bacterial diseases of livestock. The supplemental NADAs provide for a zero-day withdrawal time prior to slaughter when Type C medicated feeds containing oxytetracycline are fed continuously to swine at a dosage of 10 milligrams per pound (mg/lb) of body weight for up to 14 days. The supplemental NADAs are approved as of April 29, 2002, and the regulations are amended in 21 CFR 558.450 to reflect the approval. The basis of approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.450 [Amended]

2. Section 558.450 *Oxytetracycline* is amended in the table in paragraph (d)(1)(ix), in entries 4 and 5, under the "Limitations" column, by removing

"withdraw 5 d before slaughter" and by adding in its place "for No. 053389, withdraw 5 d before slaughter; for No. 066104, zero-day withdrawal".

Dated: July 17, 2002.

Alan Rudman,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–19905 Filed 8–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 6 and 125

[USCG–2002–12917]

Maritime Identification Credentials

AGENCY: Coast Guard, DOT.

ACTION: Clarification of regulation.

SUMMARY: The Coast Guard brings to the public's attention, clarification of the identification credentials that would be acceptable to the Commandant under 33 CFR 125.09(f), for access to waterfront facilities and to port and harbor areas, including the vessels and harbor craft in them. The Coast Guard has authority and the rules in place for this measure. As specified in 33 CFR 6.10–5, 125.15, and 125.53, such credentials—in addition to those acceptable under 33 CFR 125.09(a)–(e)—can, at a minimum, be laminated (or otherwise secured against tampering), contain the full name and a current photograph of the person, and bear the name of the issuing authority.

DATES: This clarification is effective on September 6, 2002.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Mr. Gerald Miante, Program Manager, Maritime Personnel Qualification Division, Coast Guard Headquarters, at (202) 267–0229. For questions on viewing materials already in the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Public Meetings

Apublic meeting concerning initiatives toward international maritime security was held on January 3, 2002 (see **Federal Register** of December 14, 2001 [66 FR 64898]), at Coast Guard Headquarters, Washington, DC. A workshop concerning National Maritime Security was held on January 28–29, 2002 (see **Federal Register** of January 16, 2002 [66 FR 2271]), in Washington, DC, to discuss issues of domestic maritime security.

We are not receiving comments in response to this document because it simply clarifies existing requirements. You may see materials from the meeting and workshop, including our responses to comments we did receive, on the Internet at *http://dms.dot.gov* under docket number USCG–2002–11137.

Background

On September 11, 2001, acts of terrorism were committed against the United States in New York, Virginia, and Pennsylvania. In light of these attacks, the security of all modes of transportation is being reevaluated. Under the provisions of Title 33, Code of Federal Regulations (33 CFR), parts 6 and 125, the Coast Guard has the authority and the rules in place to require identification credentials for access to waterfront facilities and to port and harbor areas, including vessels and harbor craft in them. This notice serves to announce a clarification of these rules and serves to direct the public's attention to 33 CFR 125.09(f) authorizing the Commandant of the Coast Guard to require approved identification credentials.

In the week after September 11, the Secretary of the Department of Transportation (SECDOT) established the National Infrastructure Security Committee (NISC) to evaluate security in the surface modes of transportation and to provide recommendations for improvement. To reach that goal, the NISC created six "Direct-Action Groups" (DAGs) to generally examine each mode of transportation; and, pursuant to their initial studies, it established a seventh DAG, the Credentialing Direct Action Group (CDAG), to study the issue of a National Transportation Workers' Identification Card (TWIC) for all transportation workers and other persons who require access to secure areas at transportation facilities. Pending legislation has pointed to a need for such a card. Further, the Transportation Security Administration (TSA), newly formed within the Department of Transportation (DOT) itself, formed "Go-Teams"—short-term, highly focused working groups that are concentrating on various specific technologies and credentialing issues, such as card architecture, biometrics, and "smart cards." More information about credentialing is available on the website of TSA at *http://www.tsa.gov/*.

The goal of the CDAG is to fashion a nationwide solution to the problem of identifying workers that verifies their identity, validates their background information, assists transportation facilities in managing their security risks, and accounts for access of authorized personnel to transportation facilities and activities. The CDAG is seeking to identify a solution that would—

- Be fully inter-modal;
- Be built on existing technology, as well as on governmental and commercial business processes and infrastructure, as much as possible;
- Minimize the need for workers and other people to carry multiple ID cards;
- Ensure due protection of a card holder's privacy;
- Meet Congressional mandates as both expressed in current legislation and supported in pending legislation;
- Meet standards of the International Maritime Organization (IMO); and
- Be scalable and expandable to address future access-enabling technologies.

In terms developed by the workshop, the solution would be Secure, Acceptable, Reliable, and Uniform.

The events of September 11 heightened awareness of waterfront vulnerability and the need for better control. This is a very dynamic area in which new risks are perceived and new technologies are available to address them. The Coast Guard intends to address those risks initially by resuming enforcement of existing rules, such as 33 CFR Parts 6 and 125, until DOT, Congress, and the CDAG provide new guidance and direction for incorporating more effective, commerce-friendly technology.

The Coast Guard is continually participating in the CDAG's efforts and awaits its recommendations, as well as DOT's decision on the TWIC, to avoid proceeding in any direction that may be in conflict with the decision ultimately chosen by the Department. We recognize the necessity of gathering information so that we will be prepared to carry out our commitment to enhance maritime security in a timely manner. We also recognize the imperative of controlling access while we achieve a longer-term, comprehensive means of security. At this time we are not requesting that comments be submitted addressing this notice or its subject. However, before any new rulemaking the public will have the opportunity to comment.

Purpose

This document serves to bring to the attention of the public clarification of the identification credentials deemed acceptable to the Commandant under 33 CFR 125.09(f). Furthermore, as stated in 33 CFR 6.10–5, and in 33 CFR 125.09, 125.15, and 125.53, the Coast Guard may, from time to time, prevent

individuals without the proper identification credentials from gaining access to waterfront facilities, areas within the port and harbor, and on vessels and harbor craft. From September 6, 2002, every person (including passengers) entering a waterfront facility, or embarking on or disembarking from a vessel or a harbor craft, may use credentials that are laminated (or otherwise protected against tampering), contain the person's full name and a current photograph, and bear the name of the issuing authority to meet the requirements of 33 CFR 6.10–5, 33 CFR 125.15, and 125.53.

Because these credentials are for use essentially in the maritime realm, they bear the narrow label of "maritime credentials." However, since the people carrying them will be representative of the inter-modal community (shipping, trucking, and rail employees, as well as longshoremen and mariners), the credentials will not apply solely to personnel in the maritime realm. When the Department of Transportation makes a decision concerning the TWIC, the Coast Guard will reevaluate this action and determine how best to harmonize these requirements with any requirements by the Department of Transportation.

At this time, we must limit identification credentials "satisfactory to the Commandant" [33 CFR 6.10–5] to those issued by a Federal, State, or local authority in the United States acceptable to the Captain of the Port (COTP). As Port Security Plans are developed, they will detail acceptable issuing authorities. Acceptable credentials include:

- A military identification card;
- A badge for a Federal employee such as DOT, DOD, FBI, CIA;
- A driver's license or official identification card issued by a Department of Motor Vehicles or a Motor-Vehicle Administration within the U.S.;
- A merchant mariner's document issued by the Coast Guard;
- A valid passport;
- A local-law enforcement credential;
- An identification credential issued by a State or local port authority; and
- An identification credential issued by a company, union, or trade association.

Signed: July 30, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–19844 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–501]

Safety Zone: Captain of the Port Milwaukee Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Milwaukee Zone during August 2002. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Milwaukee Zone.

DATES: The safety zone for the African World Festival—Milwaukee, WI (§ 165.909(a)(6)), will be enforced on August 2, 2002, from 8:50 p.m. until 9:30 p.m., but in the event of inclement weather on August 2, 2002, the safety zone will be enforced from 8:50 p.m. until 9:30 p.m. on August 3, 2002, instead. The safety zone for the Sturgeon Bay Venetian Night Fireworks (§ 165.909(a)(26)), will be enforced on August 3, 2002 from 9:20 a.m. until 10:10 p.m. The safety zone for the Menominee Waterfront Festival (§ 165.909(a)(24)), will be enforced on August 3, 2002 from 9:20 p.m. until 10:10 p.m. The safety zone for the Algoma Shanty Days Fireworks (§ 165.909(a)(26)), will be enforced on August 11, 2002, from 9:20 p.m. until 10:10 p.m. The safety zone for the Irish Fest Fireworks—Milwaukee, WI (§ 165.909(a)(7)), will be enforced on August 15 through 18, 2002, from 9:25 p.m. until 10 p.m. The safety zone for the Sister Bay Marinafest—Sister Bay Fireworks (§ 165.909(a)(27)), will be enforced on August 31, 2002, from 8 p.m. until 10 p.m.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief Dave McClintock, U.S. Coast Guard Marine Safety Office Milwaukee, (414) 747–7155.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing the permanent safety zones in 33 CFR 165.909(a)(6)(7)(24)–(27) (67 FR 44560, July 3, 2002), for fireworks displays in the Captain of the Port Milwaukee Zone during August 2002. In chronological order, the following safety zones are in effect for fireworks displays occurring in the month of August 2002:

African World Festival—Milwaukee, WI. This safety zone will be enforced on August 2, 2002, from 8:50 p.m. until 9:30 p.m. In the event of inclement weather on August 2, 2002, the safety zone will be enforced from 8:50 p.m. until 9:30 p.m. on August 3, 2002.

Sturgeon Bay Venetian Night Fireworks. This safety zone will be enforced on August 3, 2002 from 9:20 a.m. until 10:10 p.m.

Menominee Waterfront Festival. This safety zone will be enforced on August 3, 2002 from 9:20 p.m. until 10:10 p.m.

Algoma Shanty Days Fireworks. This safety zone will be enforced on August 11, 2002, from 9:20 p.m. until 10:10 p.m. If the secondary location is used it will be during the same times as the primary location.

Irishfest Fireworks—Milwaukee, WI. This safety zone will be enforced on August 15 through 18, 2002, from 9:25 p.m. until 10 p.m.

Sister Bay Marinafest—Sister Bay. This safety zone will be enforced on August 31, 2002, from 8 p.m. until 10 p.m.

In order to ensure the safety of spectators and transiting vessels, this safety zone will be in effect for the duration of the event. Vessels may not enter the safety zone without permission from Captain of the Port Milwaukee Zone. Requests to transit the safety zone must be made in advance by contacting the person listed in **FOR FURTHER INFORMATION CONTACT** and must be approved by the Captain of the Port Milwaukee before transits will be authorized. Spectator vessels may anchor outside the safety zone but are cautioned not to block a navigable channel.

Dated: July 29, 2002.

V. J. Kammer,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Milwaukee.

[FR Doc. 02–19849 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0106; FRL–7189–7]

Methyl Anthranilate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of methyl

anthranilate on all food commodities when applied/used in accordance with good agricultural practices. Bird Shield Repellent Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of methyl anthranilate.

DATES: This regulation is effective August 7, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0106, must be received on or before October 7, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit X. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0106 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Downing, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9071; e-mail address: Downing.Jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0106. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of February 27, 2002 (67 FR 8968) (FRL–6818–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a(d), as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 1F6271) by Bird Shield Repellent Corporation, P.O. Box 785, Pullman, WA 99163. This notice included a summary of the petition prepared by the petitioner Bird Shield Repellent Corporation. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1143 be amended by establishing an exemption from the requirement of a tolerance for residues of methyl anthranilate in or on all food commodities.

III. Risk Assessment

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major

identifiable subgroups of consumers, including infants and children.

Methyl anthranilate is naturally occurring in certain foods, such as concord grapes. It is also synthetically produced and used as a flavoring agent (21 CFR 182.60) in beverages, ice cream, candy, baked goods, gelatins, puddings, and chewing gum. It is also exempt from the requirement of a tolerance in or on blueberries, cherries, grapes, corn and sunflowers (40 CFR 180.1143). A discussion of the rationale supporting that exemption may be found in the first proposed rule ((60 FR 9816), February 22, 1995, (FRL–4936–2)), as well as in the final rules ((60 FR 20432), April 26, 1995, (FRL–4941–8)) and ((66 FR 30822), June 8, 2001, (FRL–6780–9)). In addition, methyl anthranilate is classified as generally recognized as safe (GRAS) by the Food and Drug Administration (FDA) (21 CFR 182.60).

Methyl anthranilate, applied at labeled rates, rapidly decomposes into non-toxic components leaving no significant residues relative to levels found in food commodities to which it is applied, because of its volatility (MRID 42151903). Some residues studies found no residues at time of harvest, while other studies showed that the residues of methyl anthranilate were less than those found naturally in grapes. Moreover, it has been determined that even if ingested, the chemical rapidly metabolizes in the intestines and byproducts are excreted (MRID 44786300, Part B). In addition to this information, the Agency has determined that all toxicology data requirements have been satisfied and it has conducted a review of these studies. Summaries of these studies are presented below. For a more detailed discussion of these studies, see the Data Review Records located in the information docket referred to above.

Methyl anthranilate exhibits little or no mammalian toxicity. It metabolizes in the intestine when consumed. The lethal dose $(LD)_{50}$ values for methyl anthranilate were estimated to be greater than 5,000 milligram/kilogram (mg/kg) in an acute oral toxicity study in rats (Toxicity Category IV) and greater than 2,000 mg/kg in dermal toxicity studies using rats (Toxicity Category III). Whole body inhalation studies, for the same species, determined toxicity to be greater than 2.24 mg/L. Methyl anthranilate was found to cause moderate irritation in a rabbit skin irritation assay (Toxicity Category III) and corneal effects that cleared in 8 to 21 days in a rabbit eye irritation assay (Toxicity Category II).

Guideline	Study	MRID No.	Toxicity Category
870.1100	Acute Oral Toxicity - rat	44740301	IV
870.1200	Acute Dermal Toxicity	44740302	III
870.1300	Acute Inhalation Toxicity - rat	44740303	III
870.2400	Acute (Primary) Eye Irritation - rabbits	44070302	II
870.2500	Acute (Primary) Dermal) Skin Irritation	44070301	III
870.2600	Hypersensitivity (skin sensitization)	NA	Waived

Appropriate labeling (protective eyewear) was used to mitigate these minimal acute toxicological risks. Due to the low toxicity, metabolism, rapid degradation and long history of dietary exposure to this naturally occurring biochemical, chronic and subchronic data were waived. No other toxic endpoints were identified and therefore no reference dose and no observable adverse effect levels were established.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Methyl anthranilate bird repellent is labeled to be applied at a rate of 0.2862 up to 6.18 pounds per acre depending on the crop/use. Pre-harvest intervals are established for all food crops on the label to minimize residues. Because of these relatively low use rates and pre-harvest intervals as currently registered and labeled, and the biochemical's rapid degradation, few methyl anthranilate residues have been detected on treated crops, and some studies found no residues immediately after application (MRID 45065102, 45065103, 45065104, 45065105). Further, because of its volatility and degradation (MRID 43119401) when exposed to ultraviolet light and elevated temperatures, no residues or low residues (below natural levels occurring in commonly consumed foods, such as grapes) are expected at harvest of treated crops (MRID 42740205). Dietary exposure to methyl anthranilate, by consumption of treated food or feed, is therefore expected to be negligible (MRID 44786301). Further, since methyl anthranilate has shown no mammalian toxicity and is rapidly metabolized in human intestines and liver, no dietary risk from any residues that may result from these additional uses of this biochemical pesticide are anticipated. To date, there have been no reports of any hypersensitivity incidents or reports of any known adverse reactions in humans resulting from exposure to methyl anthranilate.

2. *Drinking water exposure.* Methyl anthranilate is very unlikely to be found in drinking water, given the low application rates and rapid environmental and microbial degradation (MRID 431194–01).

B. Other Non-dietary, Non-Occupational Exposure

1. Even though methyl anthranilate products are registered for use on lawns and ornamentals and are used on household garden crops (cherries, blueberries and table grapes), the non-occupational exposure is not expected to be great because of the limited number of times it will be used (once per season), the size of the crops to which the repellent will be applied, (backyard trees, bushes and vines), and the small amounts of the repellent required to protect the crops (for example, 0.0945 lbs./tree) from bird damage during a brief period of time (typically, 1 to 2 weeks).

2. Because the labeled application rate is low for residential uses and the fact that methyl anthranilate rapidly degrades under sunlight and elevated temperatures after application, only limited human exposure is anticipated. Household applicator exposure is addressed through appropriate labeling: "Wear protective eyewear (goggles, face shield or safety glasses)" and "Do not get in eyes or on clothing."

3. Further, considering the fact that several uses of this biochemical have been registered for several years on several agricultural crops as well as turf, structures and ornamentals, the Agency has received no reports of adverse

effects from the uses of methyl anthranilate.

VI. Cumulative Effects

Methyl anthranilate does not exhibit a toxic mode of action to mammals, nor even to the target pest (birds), to which limit doses were tested. Thus, because there is no indication of mammalian toxicity to this biochemical, no cumulative effects with other compounds is expected.

VII. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population.* There is a reasonable certainty that no harm will result from aggregate exposure to residues of methyl anthranilate to the U.S. population under reasonably foreseeable circumstances. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the very low levels of mammalian toxicity (no toxicity at the maximum doses tested) associated with methyl anthranilate and a history of safe use and consumption of methyl anthranilate as well as a consideration of the product as currently registered and labeled.

2. *Infants and children.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, the Agency concludes that methyl anthranilate is practically non-toxic to mammals, including infants and children. Thus, there are no threshold effects of concern and, as a result the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply. As a result, EPA has not used a margin of exposure (safety) approach to assess the safety of methyl anthranilate.

VIII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally- occurring estrogen, to other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was scientific basis for including, as part of the program, the androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Programs (EDSP). When the appropriate screening and or testing protocols being considered under the Agency's EDSP have been developed, methyl anthranilate may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

Based on available data, no endocrine system-related effects have been identified with the consumption of methyl anthranilate. It is a naturally occurring substance found in grapes. To date, there is no evidence to suggest that methyl anthranilate affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

B. Analytical Method

This action is establishing an exemption from the requirement of a tolerance for the reasons described above. As previously noted, methyl anthranilate exhibits rather low toxicity. For this reason and because no significant residues have been detected on treated crops at time of harvest (in other words, residues beyond that of methyl anthranilate found naturally in grapes are unlikely), no analytical method for enforcement purposes is necessary.

C. Codex Maximum Residue Level

The Agency is not aware of any international tolerances, exemptions from tolerance or Maximum Residue Levels (MRLs) issued for methyl anthranilate. Furthermore, the Agency is not aware of any issues regarding Codex MRLs.

IX. Conclusions

Based on the toxicology data submitted and other relevant information in the Agency's files, there is reasonable certainty no harm will result from aggregate exposure of residues of methyl anthranilate to the U.S. population, including infants and children, under reasonably foreseeable circumstances when the biopesticide product is used as labeled and in accordance with good agricultural practices. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on data submitted demonstrating no toxicity at the maximum doses tested and a long history of safe use and consumption of naturally occurring methyl anthranilate as well as a consideration of the product as currently registered and labeled. As a result, EPA establishes an exemption from tolerance requirements pursuant to FFDCA 408(c) and (d) for residues of methyl anthranilate in or on all food commodities.

X. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0106 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 7, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0106, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XI. Regulatory Assessment Requirements

This final rule establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has

determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 26, 2002

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1143 is revised to read as follows:

§ 180.1143 Methyl anthranilate; exemption from the requirement of a tolerance.

Residues of methyl anthranilate, a biochemical pesticide, are exempt from the requirement of a tolerance in or on all food commodities, when used in accordance with good agricultural practices.

[FR Doc. 02–19808 Filed 8–6–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0160; FRL–7189–2]

Metsulfuron Methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of metsulfuron methyl and its metabolite methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-hydroxbenzoate in or on sorghum, grain, grain at 0.1 part per million (ppm); sorghum, grain, forage and sorghum, grain, stover at 0.2 ppm. E.I. DuPont de Nemours & Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 7, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0160, must be received on or before October 7, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0160 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: Tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://

www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0160. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 19, 1998 (63 FR 13401) (FRL–5776–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 3F4215) by E.I. du Pont de Nemours & Company, Agricultural Products, P. O. Box 80038, Wilmington, DE 19880–0038. This notice included a summary of the petition prepared by E.I. Du Pont de Nemours & Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.428 be amended by establishing tolerances for combined residues of the herbicide metsulfuron methyl, methyl-2-[[[[(4-methoxy-6- methyl-1,3,5-triazin-2-yl)amino]carbonyl] amino]sulfonyl] benzoate, in or on sorghum grain at 0.1 ppm, sorghum forage at 0.2 ppm, and sorghum fodder at 0.2 ppm. Since the publication of the notice of filing, the name and address of the registrant has changed to E.I. DuPont de Nemours and Company, Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714–0030. During the course of the review, the Agency determined the commodity listing for grain sorghum should be defined as sorghum, grain, forage; sorghum, grain, grain; and sorghum, grain, stover. The Agency also determined that the metabolite, methyl-2-[[[[(4-methoxy-6-methyl-1,3,5-triazin- 2-yl)amino] carbonyl]amino] sulfonyl]-4-hydroxybenzoate should be included in the tolerance expression for the sorghum, grain commodities. The Agency is also removing the time-limited tolerances established under paragraph b for sorghum, fodder at 0.5 ppm, sorghum, forage at 0.3 ppm, and sorghum, grain at 0.4 ppm, since these will be replaced by these tolerances.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that" there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of metsulfuron methyl (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino] carbonyl]amino]sulfonyl]benzoate) and its metabolite methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-hydroxybenzoate on sorghum, grain, forage at 0.2 ppm; sorghum, grain, grain at 0.1 ppm; and sorghum, grain, stover at 0.2 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by metsulfuron methyl are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 68/64 (M/F) milligrams/kilograms/day (mg/kg/day) LOAEL = 521/659 (M/F) mg/kg/day based on transient decreases in body weight gain.
870.3200	21–Day dermal toxicity	dermal NOAEL = 125 mg/kg/day dermal LOAEL = 500 mg/kg/day based on skin lesions characterized by diffuse/multifocal dermatitis. systemic NOAEL: 125 mg/kg/day systemic LOAEL: 500 mg/kg/day based on increased incidence of diarrhea.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3700a	Prenatal developmental in rodents	Maternal NOAEL = 250 mg/kg/day LOAEL = 1,000 mg/kg/day based on salivation and decreased body weight gain-compensatory increase after dosing stopped. Developmental NOAEL ≤ 1,000 mg/kg/day highest dose tested (HDT) LOAEL > 1000 mg/kg/day HDT.
870.3700b	Prenatal developmental in nonrodents	Maternal NOAEL = 25 mg/kg/day LOAEL = 1,000 mg/kg/day based on increased mortality, decreased body weight gains, and clinical signs of anorexia, red/orange urine and /or exudate. Developmental NOAEL ≥ 700 mg/kg/day HDT LOAEL > 700 mg/kg/day HDT.
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 34/43(M/F) mg/kg/day LOAEL = 342/475 (M/F) mg/kg/day based on decreased premating body weight gains by F0 males and females. Reproductive NOAEL ≥ 342/475 (M/F) mg/kg/day HDT LOAEL > 342/475 (M/F) mg/kg/day HDT. Offspring NOAEL ≥ 342/475 (M/F) mg/kg/day HDT LOAEL = 342/475 (M/F) mg/kg/day HDT.
870.4100a	Chronic toxicity rodents	NOAEL = 25 (M/F) mg/kg/day LOAEL = 250 (M/F) mg/kg/day based on decreased body weight and body weight gain.
870.4100b	Chronic toxicity dogs	NOAEL ≥ 125 (M/F) mg/kg/day HDT LOAEL = not determined
870.4200	Carcinogenicity rats	NOAEL = 25 (M/F) mg/kg/day LOAEL = 250 (M/F) mg/kg/day based on decreased body weight and body weight gain. (no) evidence of carcinogenicity
870.4300	Carcinogenicity mice	NOAEL ≥ 666/836 (M/F) mg/kg/day HDT LOAEL = not determined (no) evidence of carcinogenicity
870.5100	Gene Mutation *Salmo nella typhimurium*, Ames Test	Not mutagenic under the conditions of this study
870.5375	Cytogenetics *In vitro* mammalian chromosome aberrations-CHO cells (2 studies)	Metsulfuron methyl is not a clastogen under the conditions of this study.
870.5385	*In vivo* mammalian chromosome aberrations-rat bone marrow	Metsulfuron methyl did not induce a significant increase in chromosome aberrations in bone marrow cells when compared to the vehicle control group.
870.5395	*In vivo* mammalian cytogenics-micronucleusassay in mice	Metsulfuron methyl is negative at the limit dose for clastogenic activity in the micronucleus assay in bone marrow cells.
870.5550	Other Effects UDS assay in primary rat hepatocytes/ mammalian cell culture	Metsulfuron methyl tested negatively for UDS in mammalian hepatocytes *in vivo*

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics	Overall recovery of metsulfuron methyl among the treatment groups was acceptable (~91.6–103.8 %). The primary route of excretion was via the urine which accounted for approx. 71–95% (78–96% if cage wash radioactivity is considered) among the various treatment groups. Fecal elimination was 4.8–13.3%. Excretion was almost complete within 48 hours. Based on time course urinary and fecal excretion data, elimination half-lives (males and females) were estimated to be 13–16 hours for Group I (single low dose), 9–12 hours for Group II (21–day dietary exposure), and 23–29 hours for Group III (single high dose) which affirmed notable alteration of absorption and/or excretion processes in the high-dose group. Tissue burdens were minimal (generally < 0.1% to 1%) regardless of exposure protocol; the gastrointestinal tract, carcass, and skin had the highest concentrations of radioactivity. For the single or repeated low dose groups, the tissue content was generally ≤0.03 ppm. In the high-dose group, females had somewhat higher tissue burdens (ranging from 0.8 ppm in brain to 7.1 ppm in liver and 8.0 ppm in kidneys) than did males (0.1 ppm in blood to 1.6 ppm in liver and 2.6 ppm in kidneys). No evidence for sequestration of the test article or its biotransformation products. Four metabolites and parent were recovered in both urine and feces in all treatment groups. Parent compound accounted for most of the urinary and fecal radioactivity (77–90% and 1.8–6.2% of the administered dose, respectively). Metab. I was consistent with (methyl 2-[(amino)sulfonyl] benzoate); Metab. II - (2-[(amino)sulfonyl]-benzoic acid); and Metab. III was consistent with (methyl 2-[[[(amino)carbonyl]amino] sulfonyl] benzoate). Metab. I and II appeared to result from sequential hydrolysis reactions terminating in the formation of saccharin while Metab. III was formed by cleavage of the two ring structures. Total metabolites (in urine + feces of each group) accounted for approximately 5.4–8.2% of the administered dose. The metabolite profiles were qualitatively similar for urine and feces in that parent compound and the four metabolites (saccharin, Metabolites I, II, and III) were found in both matrices.

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for metsulfuron methyl used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR METSULFURON METHYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary general population including infants and children	NA	NA	An endpoint attributable to a single dose was not identified. Quantitation of acute dietary risk is not appropriate
Chronic Dietary all populations	NOAEL= 25 mg/kg/day UF = 100 Chronic RfD = 0.25 mg/kg/day	FQPA SF = 1 cPAD = 0.25 mg/kg/day	Chronic/oncogenicity study in the rat LOAEL = 250 mg/kg/day based on decreased body weight and body weight gain.
Short- and Intermediate-Term Incidental Oral (1 to 30 days and 1 month to 6 months) (Residential)	NOAEL= 34 mg/kg/day	LOC for MOE = 100 (Residential)	2–generation reproduction study in rats based on decreased premating (F0) body weights in male and female rats; systemic effects were seen up to 13 weeks at the LOAEL of 342 mg/kg/day.
Short-, Intermediate-, and Long-Term Dermal (1 to 30 days; 1 month to 6 months; and > 6 months) (Residential)	NOAEL= 125 mg/kg/day	LOC for MOE = 100 (Residential)	21–day dermal toxicity in rabbits based on an increased incidence of diarrhea in rabbits at the LOAEL of 500 mg/kg/day.
Short- and Intermediate-TermInhalation (1 to 30 days and 1 month to 6 months) (Residential)	oral study NOAEL= 34 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	2–generation reproduction study in rats LOAEL = 342 mg/kg/day based on decreased body weights in premating (F0) animals for up to 13 weeks.
Long-Term Inhalation (6 months to lifetime) (Residential)	oral study NOAEL= 25 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Chronic/oncogenicity study in the rat LOAEL = 250 mg/kg/day based on decreased body weight and body weight gain.
Cancer (oral, dermal, inhalation) - not likely to be carcinogenic.			

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.428) for the combined residues of metsulfuron methyl and its metabolite methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-hydroxybenzoate, in or on a variety of raw agricultural commodities. Tolerances have been established for residues of metsulfuron methyl on fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.1 ppm; kidney of cattle, goats, hogs, horse, and sheep at 0.5 ppm, and milk at 0.05 ppm. Risk assessments were conducted by EPA to assess dietary exposures from metsulfuron methyl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No acute dietary endpoint attributable to a single dose was identified. Therefore, quantification of acute dietary risk was not performed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance residue levels, 100% crop treated (CT) for all commodities, and DEEM® defaults for all processing factors. In addition, the chemical iodosulfuron methyl recently received a favorable recommendation for tolerances on corn, field, grain at 0.03 ppm, and corn, field, stover and forage at 0.05 ppm. Since the major metabolite of iodosulfuron methyl is metsulfuron methyl, these tolerances were included in the dietary exposure assessment.

iii. *Cancer.* Since metsulfuron methyl has been classified as "Not likely to be a human carcinogen", a cancer risk assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for metsulfuron methyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of metsulfuron methyl.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides.

While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to metsulfuron methyl they are further discussed in the aggregate risk sections in Unit E.

Based on the PRZM/EXAMS used to estimate the concentration of metsulfuron methyl in surface water and FIRST to estimate the concentration of metsulfuron methyl as a metabolite of iodosulfuron methyl since FIRST has been used in estimating the drinking water values for corn use with the proposed label for iodosulfuron methyl and SCI-GROW models the EECs of metsulfuron methyl for acute exposures are estimated to be 1.37 parts per billion (ppb) for surface water and 0.104 ppb for ground water. The EECs for chronic exposures are estimated to be 0.332 ppb for surface water and 0.104 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Metsulfuron methyl is currently registered for use on the following residential non-dietary sites: ornamental turf such as lawns, parks, cemeteries, golf courses (fairways, aprons, tees, and roughs) and similar non-crop areas. It has been determined that there is a potential for exposure in residential settings during the application process for homeowners who purchase and use products containing metsulfuron methyl. There is also a potential for exposure from entering areas previously treated with metsulfuron methyl such as turf (i.e., lawns and parks) and golf courses that could lead to exposures for adults and children. As a result, risk assessments have been completed for both residential handler and postapplication scenarios. Based on the use pattern, short-term exposure is expected. The risk assessment was conducted using the following residential exposure assumptions: The assumptions and factors used in the risk calculations for handler exposure scenarios include:

- Exposure factors used to calculate daily exposures to handlers are based on applicable data if available. For lack of appropriate data, values from a scenario deemed similar enough by the assessor might be used.
- The Agency always considers the maximum application rates allowed by labels in its risk assessments to consider what is legally possible based on the label. If additional information such as average or typical rates are available, these values are also used to allow risk managers to make a more informed risk management decision.

The Agency bases calculations for residential risk assessments on what would reasonably be treated by homeowners such as the size of the lawn, or the size of a garden. This information was used by the Agency to define chemical values for handlers which in turn are coupled with unit exposure to calculate risks.

Noncancer risk were calculated using the Margins of Exposure (MOE) for two scenarios, (1) low pressure handwand and (2) hose-end sprayer. Residential risk assessments apply an additional FQPA safety factor to the risk when appropriate, which defines the level of concern. In the case of metsulfuron methyl, no additional safety factor (1x) is necessary to protect the safety of infants and children in assessing metsulfuron methyl risks and exposure.

Children may also be exposed by incidental non-dietary ingestion of pesticide residues on residential lawns from hand to mouth transfer. This scenario assumes that pesticide residues are transferred to the skin of toddlers playing on recreational or residential lawns and turfs and are subsequently ingested as a result of hand-to-mouth transfer. The method for estimating postapplication incidental ingestion dose from pesticide residues on turf is based on the following assumptions.

- On the day of application 5% of the application rate are available on the turfgrass as dislodgeable residue. The 5% transfer factor is based on data by Clothier (2000). (Science Advisory Council for Exposure Policy #12: Recommended Revisions to the Standard Operating Procedures (SOPs) for Residential Exposure Assessments; Revised February 22, 2001).
- Postapplication activities are assessed on the same day the pesticide is applied since it is assumed that toddlers could play on the lawn immediately after application. For subsequent days after application, an assumed 10% pesticide dissipation rate is used.
- The median surface area of both hands is 20 cm^2 for a toddler. Since the hand-to-mouth has been defined by the February 1999 Science Advisory Panel (SAP) as 1 to 3 fingers (5.7 to 17.1 cm^2) a screening level of 20 cm^2 was selected based on the assumption that each hand-to-mouth event equals 3 fingers (Science Advisory Council for Exposure Policy #12: Recommended Revisions to the Standard Operating Procedures (SOPs) for Residential Exposure Assessments; Revised February 22, 2001).
- It is assumed that there is a one-to-one relationship between the dislodgeable residues on the turf and on the surface area of the skin after contact.
- The mean rate of hand-to-mouth activity is 20 events/hr for toddlers age 2 to 5 years old for short-term exposure. The 1999 SAP recommended the use of the 90th percentile value of 20 events based on reported hourly frequencies of hand-to-mouth events in pre school children aged 2 to 5 years observations using video tapes by Reed et al. (Science Advisory Council for Exposure Policy #12: Recommended Revisions to the Standard Operating Procedures (SOPs) for Residential Exposure Assessments; Revised February 22, 2001).
- The duration of exposure for toddlers is assumed to be 2 hours per day. This is based on the 75th percentile value (i.e., 120 min/day) for playing on grass for ages 1 to 4 years and 5-11 years (Tsang and Klepeis 1996 as cited on pag 15–79 of EPA 1997, Exposure Factors Handbook EFH).
- Toddlers (age 3 years) used to represent the 1 to 6 year old group, are assumed to weigh 15 kg. This is the mean of the median values for male and female children (US EPA 1996a).
- A saliva extraction factor of 50% was used (Science Advisory Council for Exposure Policy # 12: Recommended Revisions to the Standard Operating

Procedures (SOPs) for Residential Exposure Assessments; Revised February 22, 2001).

These values were used to calculate the MOE for incidental ingestion of pesticide residues from hand to mouth transfer.

Children (toddlers) may be exposed postapplication through ingestion of pesticide treated turfgrass. This scenario assumes that turf is ingested by toddlers who play on treated areas (i.e., yards, playgrounds). The method for estimating postapplication ingestion exposure to pesticide residues in turfgrass is based on the following assumptions:

- On the day of application 5% of the application rate are available to be ingested. This is assumed to represent an upper-percentile input.
- Postapplication must be assessed on the same day the pesticide is applied because it is assumed that toddlers could play on the lawn immediately after application.
- The assumed ingestion rate for grass for toddlers (age 3 years) is 25 cm^2/day. This value is intended to represent the approximate area from which a child may grasp a handful of grass. This is assumed to represent an upper-percentile input.
- Toddlers (age 3 years), used to represent the 1 to 6 year old age group, are assumed to weigh 15 kg (U.S. EPA, 1996).

These values were then used to calculate the MOE for ingestion of pesticide treated turf. Children may be exposed postapplication through ingestion of soil from pesticide treated residential areas. This scenario assumes that pesticide residues in soil are ingested by toddlers who play on treated areas as a result of normal mouthing activities. The method for estimating postapplication ingestion exposure to pesticide residues in soil is based on the following assumptions:

- On the day of application, it is assumed that 100% of the application rate are located within the soil's uppermost 1 cm.
- Postapplication must be assessed on the same day the pesticide is applied because it is assumed that toddlers could play on the lawn or other outdoor treated area immediately after application.
- The assumed soil ingestion rate for children (ages 1-6) is 100 mg/day. This is the mean soil ingestion rate value recommended by EPA for use in exposure/risk assessments (U.S. EPA, 1996).
- Toddlers (age 3 years), used to represent the 1 to 6 year old age group, are assumed to weigh 15 kg (U.S. EPA, 1996).

These values were than used to calculate the MOE for soil ingestion of pesticide treated areas.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether metsulfuron methyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, metsulfuron methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that metsulfuron methyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no quantitative or qualitative evidence of increased susceptibility in the pre-natal studies in rat and rabbit or in the multi-generation reproduction study evaluating pre- and post-natal exposure.

3. *Conclusion.* There is a complete toxicity data base for metsulfuron methyl and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because there is no quantitative or qualitative evidence of increased susceptibility in the pre-natal studies in rat and rabbit or in the multi-generation reproduction study evaluating pre- and post-natal exposure; a developmental neurotoxicity study is not required, and there are no data deficiencies or residual uncertainties identified in the hazard and exposure databases for metsulfuron methyl. The only study outstanding for metsulfuron methyl is a 28-day inhalation (nose only) study which is required due to the concern for the occupational exposure via this route based on current use pattern.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures

to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Because there was no acute endpoint attributable to a single dose identified for metsulfuron methyl, EPA does not expect metsulfuron methyl to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to metsulfuron methyl from food will utilize < 1% of the cPAD for the U.S. population, < 1% of the cPAD for all infants and <1% of the cPAD for children 1–6 years old. Based on the use pattern, chronic residential exposure to residues of metsulfuron methyl is not expected. In addition, there is potential for chronic dietary exposure to metsulfuron methyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO METSULFURON METHYL

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.25	<1	0.332	0.104	8700
Children 1–6 years	0.25	<1	0.332	0.104	2500
Females 13–50 years	0.25	<1	0.332	0.104	7500
Males 13–19 years	0.25	<1	0.332	0.104	8700

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Metsulfuron methyl is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for metsulfuron methyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 12,000 for children-short term aggregate, and 39,000 for adults-short term aggregate. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of metsulfuron methyl in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO METSULFURON METHYL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Children	12,000	100	0.332	0.104	3,400
Adult	39,000	100	0.332	0.104	12,000

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Though residential exposure could occur with the use of metsulfuron methyl, the potential intermediate-term exposures were not aggregated with chronic dietary food and water exposures because the short- and intermediate-term endpoints are the same (NOAEL = 34 mg/kg/day) and the short-term aggregate risk assessment which includes the same routes of exposure is worst-case and below the Agency level of concern. Therefore, based on the best available data and current policies, potential risks do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* Since metsulfuron methyl has been classified as "Not likely to be a human carcinogen", metsulfuron methyl is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to metsulfuron methyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methods are available for enforcement of tolerances for residues of metsulfuron methyl in/on plant and animal commodities. PAM Vol. II lists Methods I and III which are respectively capable of determining residues of metsulfuron methyl *per se* (LOQ = 0.02 ppm for wheat grain; 0.05 ppm for forage and straw) and combined Metabolites A and A1 (LOQ = ppm for grain and forage; 0.1 ppm for straw); Method II determines parent compound in ruminant tissues and milk to a lower limit of 0.02–0.05 ppm.

B. International Residue Limits

There are currently no Codex, Canadian, or Mexican maximum residue levels (MRLs) for metsulfuron methyl, thus international harmonization is not an issue.

C. Conditions

A 28–day inhalation (nose-only) study is required as a condition of registration.

V. Conclusion

Therefore, tolerances are established for combined residues of metsulfuron methyl, methyl 2-[[[[(4-methoxy-6-methyl-1,3,5- triazin-2-yl)amino]carbonyl] amino]sulfonyl]benzoate and its metabolite methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl) amino]carbonyl]amino]sulfonyl]- 4-hydroxybenzoate in or on sorghum, grain, forage at 0.2 ppm; sorghum, grain, grain at 0.1 ppm; and sorghum, grain, stover at 0.2 ppm. The text of paragraph (b) is removed and reserved.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0160 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 7, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0160, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16,

1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 24, 2002

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.428 is amended as follows:

i. By alphabetically adding entries for the commodities "sorghum, grain, forage;" "sorghum, grain, grain", and "sorghum, grain, stover" to the table in paragraph (a)(1) as set forth below.

ii. The text of paragraph (b) is removed and reserved.

§ 180.428 Metsulfuron methyl; tolerances for residues.

(a) General. (1) * * *

Commodity	Parts per million
* * * * *	
Sorghum, grain, forage	0.2
Sorghum, grain, grain	0.1
Sorghum, grain, stover	0.2
* * * * *	

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 02–19807 Filed 8–6–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0148; FRL–7188–3]

2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt; when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals. MeadWestaco Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt.

DATES: This regulation is effective August 7, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0148, must be received on or before October 7, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify

docket ID number OPP–2002–0148 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703).308–8380; e-mail address: gandhi.bipin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0148. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of (May 23, 2002, 67 FR 36176) (FRL–6834–9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 2E6411) by MeadWestvaco Corporation, 3950 Faber Place Drive, N. Charleston, SC 29405. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001 (c) and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-,polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt; CAS Registration No. 55989–05–4.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . ." and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this

action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen and nitrogen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to (in amu) 10,000.

Additionally, the polymer, 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average molecular weight (MW) of (in amu) 18,900 is greater than or equal to 10,000. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt meets all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt is (in amu) 18,900. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt share a common mechanism of toxicity with any other chemicals. However, 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt conform to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

There are no existing exemptions from the requirement of a tolerance.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA

procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0148 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 7, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0148, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not

require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically, the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
*	* * * *	
2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt (CAS Registration No. 55989–05–4), minimum number average molecular weight (in amu), 18,900.	.....	Encapsulating agent, dispensers, resins, fibers and beads
*	* * * *	

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
*	* * * *	
2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt (CAS Registration No. 55989–05–4), minimum number average molecular weight (in amu), 18,900.	.....	Encapsulating agent,dispensers, resins, fibers and beads
*	* * * *	

[FR Doc. 02–19806 Filed 8–6–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0149; FRL–7192–5]

Dichlormid; Extension of Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for residues of the inert ingredient (herbicide safener) dichlormid (*N,N*-diallyl dichloroacetamide) in or on corn commodities (forage, grain, stover) at 0.05 ppm. Dow AgroSciences requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances expired on March 27, 2002. This rule will re-establish these tolerances and extend them to December 31, 2005.

DATES: This regulation is effective August 7, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0149, must be received on or before October 7, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0149 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0149. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of September 16, 1998 (63 FR 49568) (FRL–6025–8), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of a pesticide petition (PP 6F03344) by Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE. This notice included a summary of the petition prepared by Zeneca Ag Products, the petitioner at that time. There were no comments received in response to the notice of filing. The Agency published a final rule in the **Federal Register** on March 27, 2000 (65 FR 16143)(FRL–6498–7) establishing time-limited tolerances, expiring on March 27, 2002. In correspondence to the Agency, Zeneca requested additional time past March 2002 for data generation. On November 9, 2000, Zeneca Ag Products sold certain parts of its business to Dow AgroSciences. In connection with the sale, Zeneca Ag Products transferred all rights, title, and interest in dichlormid to Dow AgroSciences. The new petitioner, Dow AgroSciences, has similarly requested additional time for data generation. In the **Federal Register** of May 22, 2002 (67 FR 35996) (FRL–6836–4), EPA issued a notice pursuant to section 408 of the FFDCA 21 U.S.C. 346a, as amended by the FQPA of 1996 (Public Law 104–170) announcing the filing of PP 6F03344 by Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268. This notice included a summary of the petition prepared by Dow Agrosciences. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.469 be amended by establishing tolerances for residues of the herbicide safener dichlormid, in or on field corn grain, field corn forage, and field corn fodder at 0.05 part per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to

mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of dichlormid on field corn grain; field corn forage; and field corn fodder, (now corn, field, grain; corn, field, forage; and corn, field, stover) at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

The Agency prepared a risk assessment which was used as the basis for establishing time-limited tolerances in residues of corn, field, grain; corn, field, forage; and corn, field, stover. A final rule for these tolerances was published in the **Federal Register** of March 27, 2000. Based on the risk assessment, EPA concluded at that time that all of the risks are below the Agency's level of concern and there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to residues of dichlormid on corn commodities.

For a complete description of the toxicological profile and endpoints, the uncertainty factors, the exposure assessment which included dietary exposure for both food and drinking water, the safety factor for infants and children, and aggregate risk for dichlormid, see the final rule of March 27, 2000.

The final rule of March 27, 2002, discussed data gaps which needed to be addressed before permanent tolerances could be established. Data generation is underway. According to a schedule provided by Dow AgroSciences, the following studies have been completed:

1. Chronic Feeding Study-Dog
2. 2-Generation Reproduction Study-Rat
3. General Metabolism
4. Acute Neurotoxicity
5. Subchronic Neurotoxicity
6. Plant Metabolism
7. Animal Metabolism

Studies remaining to be completed are: Crop Field Trials and Rotational Crop (Confined). Upon completion of all studies, Dow Agrosciences will submit them to the Agency. The last scheduled completion date is June 2003 for the Rotational Crop (Confined) Study. Upon receipt, the Agency will review and evaluate these studies, and prepare a new risk assessment. The Agency believes that this review and evaluation, as well as the preparation of a new risk assessment will be completed by December 31, 2005. Until that time, this final rule establishes the time-limited tolerances expiring December 31, 2005 in order to allow for the completion and then subsequent Agency review and evaluation of these studies.

There are a large number of studies that remain outstanding. However, the data gaps are not as extensive as it would seem. The nature of the residue in corn was previously found to be understood based on the published metabolism studies for a structurally similar chemical. Since the Agency's understanding of the plant metabolism of dichlormid was derived from an extrapolation from surrogate data, a plant metabolism study in accordance with OPPTS guidelines 860.1300 using dichlormid is required.

For the crop field trials, both pre-and post-emergent data using dichlormid have been provided. More field trials are to be submitted in order to fulfill the guideline requirements.

To account for the incomplete toxicological database, the Agency retained an additional 10X safety factor for infants and children as to acute risk and an additional 30X safety factor as to chronic risk. Once the data gaps have been fulfilled, retention of these safety factors will be evaluated.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican limits for residues of dichlormid in corn commodities.

V. Conclusion

Therefore, the time-limited tolerances are re-established for residues of the inert ingredient herbicide safener, dichlormid, *N,N*-diallyldichloracetamide in corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, grain; and corn, pop, stover at a tolerance level of 0.05 ppm. These tolerances will expire and be revoked on December 31, 2005. These tolerances are being established on a time-limited basis due to an incomplete datebase. The following toxicological data gaps (OPPTS Harmonized Test Guideline) have been identified:

- Chronic Feeding Study in Dogs, Test Guidelines 870.4100.
- 2-Generation Reporductive Study in Rats, Test Guideline 870.3900.
- General Metabolism Study, Test Guideline 870.6200.
- Subchronic Neurotoxicity Study, Test Guideline 870.6200.

The following product and residue chemistry data were also identified:

- Product Chemistry Data-color, Test Guideline 830.6302; physical state, Test Guideline 830.6303; odor, 830.6304; melting point, Test Guideline 830.7200; boiling point, Test Guideline 830.7220; water solubility, Test Guideline 830.7840; and stability, Test Gudieline 830.6313.
- Plant Metabolism Study, Test Guideline 860.1300.
- Animal Metablism Studies, Test Guideline 860.1300.
- Crop Field Trials, 860.1500.
- Rotational Crop Study, Test Guideline 860.1850 (Confined Study.

The toxicological product chemistry and residue chemistry data gaps as identified must be addressed before a permanent tolerance can be established.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178.

Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0149 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 7, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall; 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0149, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'"" Policies that have federalism implications" is defined in the Executive order to include regulations that have" substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801*et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 31, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.469 is amended by revising the table in paragraph (a) to read as follows:

§ 180.469 N,N-diallyl dichloroacetamide; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Corn, field, forage	0.05	12/31/05
Corn, field, grain	0.05	12/31/05
Corn, field, stover	0.05	12/31/05
Corn, pop, grain	0.05	12/31/05
Corn, pop, stover	0.05	12/31/05

* * * * *

[FR Doc. 02–19801 Filed 8–6–02; 8:45am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket 96–132; FCC 02–24]

Upper and Lower L-Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes licensing policies governing mobile-satellite service ("MSS") in certain portions of the L-band. It assigns lower L-band frequencies to Motient Services, Inc. ("Motient") in lieu of upper L-band frequencies that have been assigned to Motient, and that the United States has been unable to coordinate internationally for use by a U.S. licensee. Any coordinated lower L-band spectrum not required to secure Motient an aggregate of 20 megahertz of L-band spectrum will be made available for other MSS applicants that may wish to apply for assignment of the frequencies. This document also adopts and incorporates into part 25 of the Commission's service rules specific operational parameters and technical requirements to ensure that the integrity of maritime distress and safety communications service will not be compromised by MSS operation in the lower L-band.

DATES: Effective September 6, 2002.

FOR FURTHER INFORMATION CONTACT: Terrence E. Reideler, Attorney Advisor, Satellite Division, International Bureau at 202–418–2165.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in IB Docket No. 96–132, FCC 02–24, adopted January 28, 2002 and released February 7, 2002. The complete text of this R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898 or via email *qualexint@aol.com*. It is also available on the Commission's website at *http://www.fcc.gov*.

1. In the Notice of Proposed Rulemaking (NPRM), FCC 96–259 published at 61 FR 40772, August 6, 1996 preceding this R&O, the Commission asked for comment on the possibility of assigning up to a maximum of 28 megahertz of internationally coordinated upper and lower L-band spectrum to Motient. Additionally, the Commission asked for comment on whether any spectrum coordinated for U.S. use above 28 megahertz should be made available to future MSS applicants. The Commission also proposed a series of technical and operational standards designed to prevent new MSS operations from interfering with maritime distress and safety communications in the lower L-band.

2. To support providing Motient with spectrum in the lower L-band, the Commission explained that Motient was originally authorized to use 28 megahertz of spectrum in the upper L-band for MSS service. In the original Licensing Order the Commission required 12 applicants to form a single MSS operating consortium. The Commission based this requirement on the twelve applicants before it and the Commission's finding that there was only sufficient spectrum available to support one system. Subsequently, however, during on-going yearly international coordination meetings, the Commission has been unable to secure sufficient spectrum to support Motient's authorized system in the upper L-band. In the NPRM, the Commission also noted that the on-going international coordination in the lower L-band was similarly difficult.

3. Based on the inability to coordinate sufficient spectrum, the Commission tentatively concluded that Motient should be authorized to operate across the upper and lower L-band frequencies in order to support its authorized MSS system. Thus, it proposed that Motient be assigned up to 28 megahertz from the entire L-band. That amount of spectrum represented the optimum system that Motient hoped to operate.

4. In 1985, the Commission had estimated that an MSS system would likely require a minimum of 20 megahertz of spectrum to be viable. In the NPRM the Commission asked whether its estimate was still valid. The Commission tentatively concluded that there would be sufficient L-band spectrum available to support only one U.S. MSS system. Accordingly, the Commission proposed to assign the lower L-band frequencies it was able to coordinate for use by U.S. licensed space stations to Motient by modifying its existing license, pursuant to section 316 of the Communications Act ("the Act"), enabling Motient to use these frequencies in lieu of those from the upper portion of the L-band that the U.S. was unable to coordinate for domestic use. The Commission also tentatively concluded that reassignment is within the authority invested in the Commission by sections 303 and 4(i) of the Act to adopt regulations to carry out its spectrum management obligations.

5. To address issues pertaining to maritime distress and safety in the lower L-band, the Commission noted that the L-band is allocated for generic MSS. That is, aeronautical mobile-satellite service ("AMSS"), land mobile-satellite service ("LMSS"), and maritime mobile-satellite service ("MMSS") are allowed to share portions of the L-band for non-safety related communication on an equal basis. Operation within the Global Maritime Distress and Safety System ("GMDSS"), however, has priority access with real-time preemptive capability over all other mobile-satellite communications operating in the 1530–1544 MHz and the 1626.5–1645.5 MHz portions of the lower L-band. Therefore, to protect and maintain the integrity of safety and distress maritime communications, both internationally and domestically, the Commission proposed to establish and codify priority access and preemption standards and policies for MSS systems operating in these portions of the lower L-band. The Commission also proposed to allow mobile earth terminal data message transmissions to be half-duplex, rather than requiring full-duplex, and sought comment as to the maximum amount of time that transmissions should be permitted. The Commission tentatively concluded that adopting a maximum time limit on data message transmissions and proposed priority access and real-time preemption standards for distress and safety communication would provide sufficient priority to comply with the requirements of U.S. Footnote 315 of the U.S. Table of Frequency Allocations.

6. Nine parties filed initial comments in response to the NPRM. Five of these parties also filed reply comments. Nearly all of the comments address the proposals related to the assignment of lower L-band frequencies to Motient. Only Motient and the U.S. Coast Guard commented on the proposals concerning maritime safety and distress priority and preemptive access.

7. One of the concerns giving rise to the NPRM was that international coordination difficulties precluded securing sufficient spectrum in the upper L-band to support Motient's authorized system. Moreover, at the time of the NPRM, based on on-going international coordination meetings, the Commission believed the likelihood of securing more than 20 megahertz from the entire L-band (both upper and lower) for U.S. use was remote. Two parties, Celsat and LQL have taken issue with this assumption, contending that subsequent events have altered the L-band assignment process. They point out that shortly after the release of the NPRM the Commission issued a news release announcing that Inmarsat, Canada, Mexico, the Russian Federation, and the United States, the operators currently coordinating spectrum for a variety of MSS systems in the vicinity of North America, had signed a Memorandum of Understanding ("MOU") in Mexico City. The news release stated, in part, that the MOU specified that "[s]pectrum allocations to individual operators will be reviewed annually on the basis of actual usage and short-term projections of future need." LQL interprets the news release as providing the United States with what LQL characterizes as a "dynamic allocation" across the upper and lower L-band as determined by actual traffic.

8. We believe that the coordination process established in Mexico City has worked well to ensure equitable sharing of the L-band spectrum. It has not, however, altered the fact that the L-band is in high demand. All five MSS operators have claimed to need more spectrum than is currently assigned to them and some seek amounts that exceed availability. Consequently, the international coordination difficulties remain in negotiating sufficient spectrum to enable Motient to establish and operate a viable MSS system.

9. In the NPRM, the Commission gave three bases to support its proposal to modify Motient's license to allow it to operate over frequencies in the lower and upper L-band. First, MSS is well suited to serve areas that are too remote or sparsely populated to receive service from terrestrial land mobile systems. Second, since launching its first satellite in 1995, Motient was in the best position to provide MSS in the U.S. in the shortest amount of time. Third, and most importantly, a license issued by the Commission must include a reasonable expectation that spectrum will be available to enable the licensee to implement the system that it has proposed and has been authorized to operate. Each of these justifications has generated comments.

10. No commenter disagreed with the Commission's assertion that MSS systems are particularly well suited for providing mobile communication services to areas that are not being adequately served by terrestrial radio facilities. Commenters left undisputed the fact that despite the growth of terrestrial radio services such as cellular radio and Personal Communications Services ("PCS"), large areas of the nation remain without basic telecommunications services. Commenters agree that MSS provides the technical capability to meet the needs of people in remote areas for public safety, business and personal communications and that MSS operations should be supported in the L-band.

11. In the NPRM, the Commission concluded that Motient was best suited to provide expeditious service to the public because one of its three

authorized satellites is in operation. Our experience has been that it normally takes licensees three years to construct, launch and begin operations of a geostationary satellite. Motient concurs with this assessment. Motorola/Iridium disagrees. Motorola/Iridium contends that Motient is the only operational MSS system because the Commission has refused to accept other MSS applications. Motorola/Iridium submits that this action has been prejudicial to it and to other potential MSS applicants. What Motorola/Iridium fails to address in its argument, however, is that the Commission chose not to invite a new processing round because there was not sufficient spectrum to accommodate the existing licensed systems. Moreover, in this particular coordination process, where spectrum allocation is based on actual usage and short-term projections of future need, an operating system is essential. Without such a system, the available spectrum would have been allocated to non-U.S. systems and none would be available. Thus, under these circumstances, Motorola/Iridium's argument is not persuasive.

12. LQL, on the other hand, contends that the Commission has not adequately established a connection between expediting service and adding frequencies to Motient's system. It points out that Motient has failed to meet the deadlines for launching its other two satellites. LQL therefore argues that there are no rational grounds for concluding that Motient would use the additional spectrum that we propose to assign to it before another licensed system could be placed in operation. We disagree. Given that Motient has proposed an MSS system designed to use 28 megahertz of spectrum, requiring it to fully construct this system when the spectrum for which it was designed is not available would not advance the public interest. Moreover, given the lack of available spectrum, there is no indication that the expense of constructing, launching and operating these satellites would improve the services that Motient is currently providing. And, as pointed out above, waiting for another system to be placed in operation would have resulted in no frequencies being available. Thus, LQL's comments have not altered our conclusion that Motient is best suited to serve the U.S. MSS market using this portion of the L-band.

13. The Commission's proposal to allow Motient to have initial access to the lower L-band spectrum was based on our conclusion that, unless modified for overriding public interest reasons, licensees should be entitled to a reasonable expectation that adequate spectrum will be made available to support their authorized systems. Motient supports this determination. Other commenters, however, argue that satellite authorizations are conditioned upon, and subject to, international coordination. These commenters argue that there is no basis for providing Motient spectrum outside of what it has been able to coordinate though the normal coordination process in the upper L-band.

14. The Commission also stated in the NPRM that the Commission can, and shall, take reasonable and appropriate steps to ensure that licensees have a fair opportunity to compete. The commenters all agreed that the Commission is entrusted with this responsibility. In order for an MSS licensee to compete, it must have sufficient spectrum to provide acceptable service at a reasonable price. Previously, the Commission estimated that a minimum of 20 megahertz of L-band spectrum is necessary for an economically viable domestic MSS system in this frequency band. The NPRM sought comment on whether this amount is still needed to enable an MSS licensee to establish and operate a competitive system.

15. Commenters contend that based on the development of satellite and mobile radio technology, it is now possible to operate a profitable MSS system using less than 20 megahertz of spectrum. Commenters state that new MSS systems using state-of-the-art technology are dramatically more efficient than Motient's system and provide a higher level of satellite services, including service to hand-held mobile terminals. RSC, for instance, points out that there are three competing geostationary L-band systems under construction in Asia, and two other systems that are planned for service in the Middle East and nearby regions. In this regard, Lockheed Martin indicates that it is the prime contractor for the Asia Cellular Satellite ("ACeS") system, which is one of the systems identified by RSC. ACeS is a satellite-based, hand-held, digital mobile telecommunications system that is designed to provide service to subscribers in the Asia-Pacific region. Lockheed Martin maintains that use of the latest technological developments in its design of the ACeS satellite and associated ground equipment for the ACeS system enables it to achieve new levels of spectral efficiency and circuit capability. In fact, Lockheed Martin professes that the ACeS system may be up to 20 times more spectrum efficient than Motient's first generation MSS system because of its extensive reliance on frequency reuse. Accordingly, Lockheed Martin declares that as little as five megahertz of spectrum can now simultaneously support up to 16,000 MSS simplex circuits and ten megahertz of spectrum can support the same number of full duplex circuits. Both Motorola/Iridium and RSC support Lockheed Martin's assessments. Motient concedes that a multiple-beam satellite, such as the one Lockheed Martin has designed for the ACeS MSS system, would probably be three times more spectrum efficient than Motient's existing satellite, and that efficiency gains that the ACeS system achieves through the employment of newer voice coding and compression algorithms ("vocoders") are likely to result in a 20 percent reduction in Motient's spectrum usage.

16. We recognize that technical strides have been made since 1987, when MSS was first authorized in the L-band. The Commission then determined that there was insufficient spectrum to support the applications it had on file for this service. With this in mind, the Commission required the applicants to form a consortium. The consortium was the only licensee in the upper L-band. In the 1996 NPRM, the Commission concluded that Motient would need up to the first 28 megahertz of available L-band spectrum to operate an optimum MSS system. It also concluded that an economically viable MSS system designed to the technical specifications on file must have a minimum of 20 megahertz of spectrum. Based on the minimum spectrum estimation and ongoing international coordination meetings, the Commission concluded that opening the lower L-band for competing applications was unlikely. At the time the NPRM was adopted, the Commission did not believe that there would be sufficient spectrum to accommodate more than Motient's system in the entire L-band. Thus, it tentatively concluded that in the lower L-band Motient should be authorized to use the balance of the available 28 megahertz for which it is authorized.

Legal Authority

17. Section 316 of the Act provides the Commission with authority to modify an existing license when necessary. LQL challenges the Commission's authority to use Section 316 of the Act to modify Motient's current license to enable it to use lower L-band frequencies due to our unsuccessful attempts to coordinate sufficient upper L-band spectrum to support the system the Commission authorized Motient to operate. According to LQL, Section 316 does not

apply to Motient's situation. LQL claims that the application of Section 316 is limited to those cases in which the Commission's action has the effect of modifying an "unconditional right" in a license. According to LQL, that has not been done in the case before us. LQL argues that Motient's authorization does not encompass an unconditional right to operate in the lower L-band. LQL concludes that since we are not modifying Motient's existing license, Section 316 is not applicable. We disagree. As Motient correctly points out, we are modifying its assignment of specific frequencies in the upper L-band.

18. The language of section 316 is clear and unequivocal: "[A]ny station license * * * may be modified by the Commission * * * if in the judgment of the Commission such action will promote the public interest, convenience, and necessity." The original license authorized Motient to use the upper L-band frequencies. Now, because many of these frequencies are not available because of international coordination, we intend to modify Motient's license. If and when the spectrum becomes available, we will realign frequencies that are unavailable in the upper L-band and include frequencies in the lower L-band, up to the 20 megahertz that we intend to authorize to Motient. This action allows Motient to aggregate up to 20 megahertz of L-band spectrum in which to operate its current MSS system and promotes the public interest, convenience and necessity by providing Motient sufficient spectrum to provide service to many of the nation's rual and remote areas.

19. Because we are adopting the NPRM proposal to modify Motient's license pursuant to section 316 of the Act, we will dismiss its 1993 application in which Motient requests authority to use spectrum in the lower L-band. Accordingly, the concerns regarding the acceptance of Motient's 1993 application are now moot. New applications for L-band spectrum, however, may be filed once Motient has acquired the 20 megahertz that we are now authorizing.

20. We continue to believe, therefore, that the Commission has ample authority to modify Motient's license as discussed above and that this action best serves the public interest. MSS provides service to areas in the United States that would otherwise go unserved. Motient is the U.S. company in the best position in the L-band to provide this service and it is entitled to a reasonable expectation that enough spectrum will be coordinated to support its authorized system. Commenters have not persuasively demonstrated that a different outcome is warranted. Thus Motient will be granted use of the first 20 megahertz of internationally coordinated spectrum in the L-band.

Priority Access and Preemption

21. Footnote US315 to § 2.106 of the Commission's rules states that lower L-band MSS systems may not interfere with maritime mobile-satellite (MMSS) distress and safety communications that are also operating in these frequencies. Footnote US315 protects MMSS distress and safety communications, such as GMDSS, domestically by providing priority access and real-time preemptive capability for distress and safety communications. To ensure MSS compliance with the provisions of Footnote US315, the Commission proposed establishing priority access and preemption standards and policies for mobile-satellite service in the lower L-band and incorporating these standards into the Commission's rules. The proposed system and terminal requirements are delineated in Appendix B of the NPRM. The Commission sought comment on the proposed standards in Appendix B, and on the maximum number of seconds to which half-duplex data MET transmissions should be limited. The proposed requirements are derived from similar requirements that the Commission adopted in connection with the operation of aeronautical distress and safety-related communication in the upper L-band. These technical requirements were formulated in order to comply with the provisions of Footnote US308 for priority and preemptive access for aeronautical safety communications. The Commission also proposed in the NPRM to continue to allow U.S.-licensed MSS systems to operate half-duplex Inmarsat "Standard C" type or technically similar mobile earth terminals ("METs") in the lower L-band. Additionally, the Commission proposed establishing a time limit for data messages transmitted in half-duplex from METs in order to protect the integrity of maritime safety and distress communications in the lower L-band. At the end of this period, the MES could be commanded to pause by the LES and the higher priority traffic could be placed ahead of any further transmissions. In cases where priority traffic is intended for the MES that is transmitting, it could be commanded to stop transmitting and receive the priority traffic.

22. The Commission stated that the proposal to allow U.S.-licensed MSS systems to operate in half-duplex with appropriate restraints could provide sufficient distress and safety communication priority to comply with the intent of Footnote US315. The NPRM explained that maritime distress and safety services in the lower L-band have been operational for years and are sufficiently dynamic and robust to accommodate the operation of half-duplex METs. In this regard, it also noted that Inmarsat and others operate in half-duplex "Standard C" or other technically similar data METs with no apparent harm to maritime safety and distress communications. Motient offers some suggestions regarding the proposed system and terminal requirements specified in Appendix B of the NPRM. Motient maintains that some of the provisions in Appendix B are ambiguous. Its principal concerns are with Requirements Nos. 2 and 8 for MES and Requirement No. 9 for LES. Specifically, Motient argues that these requirements obligate terminals to be capable of being automatically interrupted during a transmission to receive a higher priority incoming call. Motient says that a more reasonable approach to a busy signal will typically be to try again momentarily. It explains that automatic preemption works well in the case of packet data or data message communications systems. In those cases, Motient says, messages or packets from a ship may be queued, either in the MES or in other shipboard communications equipment. It adds that a high priority message or packet could then be placed at the head of the queue, and, if necessary preempt an ongoing outbound transmission. Motient also advises that its data services queue messages for processing, distribution, and transmission, so that those services have the capabilities specified in Appendix B of the NPRM.

23. It is apparent from the U.S. Coast Guard's comments that it believes that the maritime distress and safety services in the lower L-band are not as dynamic and robust as described in the NPRM. The fact that the U.S. Coast Guard alleges that use of half-duplex METs has resulted in significant delays in the communication of maritime safety messages, despite the fact that the number of ship-borne earth station terminals has been relatively small, is of note. Consequently, we are concerned that as more vessels install satellite equipment and begin using their terminals for longer periods the situation will become more severe. Although we do not know exactly how many vessels will ultimately be affected, the U.S. Coast Guard estimates that as

of February 1, 1999, between 35,000 and 50,000 ships engaged in international voyages were required to carry GMDSS equipment. The U.S. Coast Guard also states that there is a fleet of approximately 30,000 American commercial fishermen that carry this equipment. Finally, the U.S. Coast Guard predicts additional demand for maritime distress and safety communications as over one million radio-equipped recreational craft begin to install marine satellite devices.

24. In addition to our concern regarding an increase in maritime distress and safety traffic, we believe it is reasonable to expect that the generic use of mobile terminals by Motient, and possibly additional systems, will increase as well. It is reasonable to assume that as mobile terminal usage increases so will channel congestion and the reliability of maritime distress and safety communications will diminish. Because of the importance of safety-related communications, we will take the U.S. Coast Guard's recommendation and therefore we decline to waive the provisions of Footnote US315 for half-duplex METs in the lower L-band on a permanent basis.

25. Accordingly, until a record on this issue is more fully developed, we decline to adopt a definite time limit for transmissions by half-duplex terminals. Parties may, of course, file a petition for rulemaking to address the imposition of a definite time limit if, and when there is sufficient evidence to demonstrate what the limit should be. Until that time, the Commission and the National Telecommunications and Information Administration (NTIA) will continue to review applications for half-duplex MES terminal operational authority (with requests for waiver of Footnote US315, as appropriate) on a case-by-case basis. NTIA indicated to the Commission, in its case-by-case review of recent applications to operate half-duplex MES terminals, that if a MES terminal is capable of, among other things, ceasing transmissions and inhibiting further transmissions within one second, that terminal would be considered to meet the real time preemption requirements. We anticipate that new licenses to operate half-duplex terminals will be similarly conditioned, or limited by waiver of Footnote US315 as in past practice, to ensure that GMDSS in the frequency band remain protected.

System Design

26. In the NPRM, the Commission specifically sought comment only on the proposed standards in Appendix B and on the maximum number of seconds to which half-duplex data MET transmissions should be limited in order to ensure the integrity of maritime distress and safety communications. Motient, however, has advanced several system design proposals for providing priority and preemptive access for maritime distress and safety communications. We believe that Motient's suggestions are beyond the scope of this proceeding. Matters such as how a licensee designs its system to comport with our rules are properly left to satellite system operators. Therefore, once Motient finalizes its system design, it can seek to amend its construction and operating authority.

Interference

27. Motorola/Iridium raises concerns about interference into its system from out-of-band emissions from Motient METs operating in the lower L-band. In the NPRM, however, the Commission explained that if the lower L-band spectrum coordinated for Motient's operation does not include spectrum at the lower band edge it expects that there will be no adjacent band interference. The Commission also noted that should an interference issue arise, it expects the parties to first attempt to resolve interference issues among themselves. We will address such interference issues only if the parties are unable to reach a solution. Finally, the Commission noted that Inmarsat, Australia, Mexico, Canada, and the Russian Federation are either now or will soon be using terminals having out-of-band emissions similar to the METs operated by Motient. Consequently, the Commission noted that Motorola/Iridium may need to coordinate, worldwide, with all the parties operating at band edge.

Inmarsat Use of Lower L-Band

28. The Commission also recently authorized several entities to operate mobile earth terminals and land earth stations via Inmarsat satellites to provide domestic and international mobile-satellite service in the L-band. The authorizations were granted pursuant to the ORBIT Act and our DISCO II decision. In the *Inmarsat Authorization Order*, the Commission stated that the permanent authority for the specified earth stations to communicate on frequencies in the lower L-band granted would not become effective until further action in this Lower L-Band proceeding. In the interim, the Commission granted applicants Special Temporary Authority to operate in the lower L-band subject to further action in the Lower L-band proceeding. It said that if the decision in the Lower L-Band Proceeding does not require modification of the authorizations granted for use of Inmarsat, the authorizations would become effective without further action by the applicants. Our decision in this proceeding requires modification only to the half-duplex terminal the authorizations granted to Comsat Corporation/Mobile Communications (Comsat) and Marinesat Communications Network d/b/s Stratos Communications (Stratos) for use of the Inmarsat system. Accordingly, the authorizations are now permanent. The authorizations recently granted to Comsat and Stratos for 1000 half-duplex terminals, each, are modified by this Order to be limited to a term of two years.

Final Regulatory Flexibility Certification

29. The Regulatory Flexibility Act of 1980, as amended ("RFA") requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as "small business concern" under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field or operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

30. The Report and Order adopts and incorporates into the Commission's service rules specific operational parameters and technical requirements to ensure that the integrity of maritime distress and safety will not be compromised by mobile satellite service operation in certain portions of the L-band. By this action the Commission is essentially codifying the same conditions that are placed on every mobile satellite service license for operation in these portions of the L-band. There are currently three entities, Motient Services, Inc., TMI Communications and Company, L.P., and the International Maritime Satellite Organization ("Inmarsat"), that are authorized to provide L-band mobile satellite service in the United States. None comes within the definition of small entity. We therefore certify that the adoption of this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a

copy of the Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

Ordering Clauses

31. Pursuant to sections 1, 2, 4(i), 303(c), 303(f), 303(g), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152,154(i), 303(c), 303(f), 303(g), 303(r), parts 2 and 25 of the Commission's rules *are amended* as specified in rule changes effective September 6, 2002.

List of Subjects in CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citations for part 25 continue to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies 47 U.S.C. sections 51, 152, 154, 302, 303, and 307, unless otherwise noted.

2. Section 25.136 is amended by revising the section heading, the introductory text, and by adding paragraphs (d) and (e) to read as follows:

§ 25.136 Operating provisions for earth stations for each station network in the 1.6/2.4 GHz and 1.5/1.6 GHz mobile-satellite services.

In addition to the technical requirements specified in § 25.213, earth stations operating in the 1.6/2.4 GHz and 1.5/1.6 GHz Mobile Satellite Services are subject to the following operating conditions:

* * * * *

(d) Any mobile earth station (MES) associated with the Mobile Satellite Service operating in the 1530–1544 MHz and 1626.5–1645.5 MHz bands shall have the following minimum set of capabilities to ensure compliance with Footnote S5.353A and the priority and real-time preemption requirements imposed by Footnote US315.

(1) All MES transmissions shall have a priority assigned to them that preserves the priority and preemptive access given to maritime distress and safety communications sharing the band.

(2) Each MES with a requirement to handle maritime distress and safety data communications shall be capable of either:

(i) Recognizing message and call priority identification when transmitted from its associated Land Earth Station (LES) or

(ii) Accepting message and call priority identification embedded in the message or call when transmitted from its associated LES and passing the identification to shipboard data message processing equipment

(3) Each MES shall be assigned a unique terminal identification number that will be transmitted upon any attempt to gain access to a system.

(4) After an MES has gained access to a system, the mobile terminal shall be under control of a LES and shall obtain all channel assignments from it.

(5) All MESs that do not continuously monitor a separate signalling channel or signalling within the communications channel shall monitor the signalling channel at the end of each transmission.

(6) Each MES shall automatically inhibit its transmissions if it is not correctly receiving separate signalling channel or signalling within the communications channel from its associated LES.

(7) Each MES shall automatically inhibit its transmissions on any or all channels upon receiving a channel-shut-off command on a signalling or communications channel it is receiving from its associated LES.

(8) Each MES with a requirement to handle maritime distress and safety communications shall have the capability within the station to automatically preempt lower precedence traffic.

(e) Any Land Earth Station (LES) associated with the Mobile Satellite Service operating in the 1530–1544 MHz and 1626.5–1645.5 MHz bands shall have the following minimum set of capabilities to ensure that the MSS system complies with Footnote S5.353A and the priority and real-time preemption requirements imposed by Footnote US315. It should be noted that the LES operates in the Fixed-Satellite Service ("FSS") as a feeder-link for the MSS (Radio Regulations 71) and that the following capabilities are to facilitate the priority and preemption requirements. The FSS feeder-link stations fulfilling these MSS requirements shall not have any additional priority with respect to FSS stations operating with other FSS systems.

(1) All LES transmissions to mobile earth stations (MESs) shall have a priority assigned to them that preserves the priority and preemptive access given to maritime distress and safety communications.

(2) The LES shall recognize the priority of calls to and from MES and make channel assignments taking into account the priority access that is given to maritime distress and safety communications.

(3) The LES shall be capable of receiving the MES identification number when transmitted and verifying that it is an authorized user of the system to prohibit unauthorized access.

(4) The LES shall be capable of transmitting channel assignment commands to the MESs.

(5) The communications channels used between the LES and the MES shall have provision for signalling within the voice/data channel, for an MES, which does not continuously monitor the LES signalling channel during the time of a call.

(6) The LES shall transmit periodic control signalling signals to MES, which do not continuously monitor the LES signalling channel.

(7) The LES shall automatically inhibit all transmissions to MESs to which it is not transmitting a signalling channel or signalling within the communications channel.

(8) The LES shall be capable of transmitting channel-shut-off commands to the MESs on signalling or communications channels.

(9) Each LES shall be capable of interrupting, and if necessary, preempting ongoing routine traffic from an MES in order to complete a maritime distress, urgency or safety call to that particular MES.

(10) Each LES shall be capable of automatically turning off one or more of its associated channels in order to complete a maritime distress, urgency or safety call.

[FR Doc. 02–19889 Filed 8–6–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 100

[IB Docket No. 98–21; FCC 02–110]

Policy and Rules for the Direct Broadcast Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission has adopted a *Report and Order* that modifies direct broadcast satellite (DBS) regulation to more closely reflect the regulation of other satellite services, and moves the rules for DBS, located in part 100, to part 25 (Satellite Communications) and eliminates part 100 of the Commission's rules. The Report and Order streamlines the regulation of this rapidly growing and changing service and helps promote fair and increased competition in the multi-channel video programming distribution ("MVPD") market. These rules also promote efficient and expeditious use of spectrum and orbital resources while preserving maximum flexibility for DBS operators. The current rules in part 100, for the most part, were adopted almost 20 years ago when DBS was envisioned to be essentially a broadcast-type service. Since that time, the service has instead grown into a robust and successful segment of the satellite industry with programming services provided on a subscription basis. The service rules are revised to comport with the way that DBS actually operates.

DATES: Effective September 6, 2002.

FOR FURTHER INFORMATION CONTACT: For more information regarding the *Report and Order*, contact Selina Y. Khan, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–7282 or via the Internet at *skhan@fcc.gov*. For additional information concerning the information collections contained in this document, contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (R&O), IB Docket 98–21, FCC 02–110, adopted April 8, 2002 and released June 13, 2002. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street SW, Room CY–B402, Washington, DC 20554, telephone (202)863–2893, facsimile (202)863–2898 or via email *qualexint@aol.com*. It is also available on the Commission's website at *http://www.fcc.gov*.

Paperwork Reduction Act

1. This *Report and Order* contains new information collections. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *Report and Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. This *Report and Order* has been submitted to OMB for review under the emergency clearance provisions of the PRA. Public and agency comments are due September 6, 2002. Emergency clearance is requested no later than September 6, 2002.

2. The Commission, under the normal provisions of the PRA, invites the general public, and other Federal agencies to comment on the information collections contained in this proceeding prior to submitting it to OMB for review. Public and agency comments are due September 6, 2002.

3. Comments should address: (a) Whether the modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0683.

Title: Direct Broadcast Satellite Service.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6.

Estimated Time Per Response: 1.5–20 hours.

Frequency of Response: On occasion.

Total Annual Burden: 300 hours.

Total Annual Costs: $50,000.

Needs and Uses: The information collected will be used by the Federal Communications Commission as part of the application and licensing process for DBS entities. Specifically, applicants for the DBS service will be required to file their applications to conform to the newly-adopted service rules. Without the newly adopted rules, future DBS applicants do not have rules in effect to file under.

Summary of the Report and Order

4. The Federal Communications Commission has adopted a *Report and Order* that revises its rules and policies governing the Direct Broadcast Satellite ("DBS") service. The *Report and Order* modifies DBS regulation to more closely reflect the regulation of other satellite services, moves the rules for DBS to part 25 and eliminates part 100.

5. The revisions will simplify the procedures applicable to DBS, eliminate unnecessary filing requirements, and harmonize the DBS licensing process with that of other satellite services. For example, the *Report and Order* eliminates the DBS-specific foreign ownership limits of § 100.11 of the Commission's rules and apply the statutory foreign ownership provision of section 310(b) of the Communications Act. The Commission also clarifies our geographic service rules to enhance the delivery of DBS service to the States of Alaska and Hawaii. The *Report and Order* updates and clarifies DBS technical rules, and clarify due diligence rules for DBS providers. In addition, the Commission moves the service-specific DBS auction rules to part 25 and defers to the Commission's general competitive bidding rules. Further, the Commission declines adopting any specific DBS ownership restrictions, but will continue to analyze DBS/DBS ownership issues in the context of assignment and transfer applications on a case-by-case basis.

6. In this *Report and Order* the Commission retains some DBS specific rules that reflect distinctions between DBS and other satellite services. Specifically, the *Report and Order* preserves certain specific part 100 rules (i.e. license terms, due diligence and geographic service requirements, competitive bidding, and technical requirements) in part 25 because DBS is a unique satellite service in some respects.

7. In this *Report and Order* the Commission eliminated § 100.11 of the Commission's rules. In first proposing rules in 1981, the Commission stated that it was seeking to apply an "open and flexible approach" to DBS to "allow the business judgments of individual applicants to shape the character of the service offered." The Commission stated that it intended to impose on DBS "only those regulatory requirements that [were] expressly mandated by the Communications Act" to afford the DBS service maximum regulatory freedom to develop. In the Report and Order, the Commission stated that although § 100.11, by its literal terms, extends to all DBS providers, subscription as well as broadcast and common carrier, there is no indication, that the Commission, in 1982 when it adopted the rule, meant to impose foreign ownership restrictions on DBS providers that are not subject to the foreign ownership restrictions in section 310(b).

8. The Commission declined to impose specific foreign ownership

limitations on DTH–FSS licensees providing subscription service in addition to the statutory limitations in section 310(a) and (b) of the Act. The Commission stated that there are no additional foreign ownership rules for MVPD services provided to subscribers by means of cable or DTH satellite systems, other than those required by statute. The Commission found that adopting foreign ownership rules for DTH–FSS licensees providing subscription services would affect the competitiveness of DBS, DTH and of the MVPD markets, which would be inconsistent with the Commission's efforts to increase competition in the MVPD market. Moreover, the Commission has traditionally taken a deregulatory approach to DTH–FSS and have refrained from imposing unnecessary regulations. In addition, the Commission will apply the requirements set forth in *DISCO II* in deciding questions of access to the U.S. market by non-U.S. lice DBS providers will remain subject to the relevant statutory requirements of section 310 of the Act." Thus, all DBS providers will be subject to section 310(a) of the Communications Act and to the relevant sections of Section 310(b) of the Act.

9. The Commission recognizes the importance of establishing DBS as a competitor to cable in the multi-channel video programming distribution market in the States of Hawaii and Alaska. In this *Report and Order*, the Commission clarifies its geographic service rules to enhance the delivery of DBS service to the States of Alaska and Hawaii. Under current rules, DBS licensees must serve Alaska and Hawaii if technically feasible. In this *Report and Order*, the Commission recognizes that it is possible to provide service to Hawaii and also to significant portions of Alaska from the 101° W.L orbit location in addition to the 110° W.L. and 119° W.L. orbit locations. Furthermore, the Commission concludes that it is not technically feasible to serve either Alaska or Hawaii from the 61.5° W.L. orbit location. In this *Report and Order*, the Commission clarifies that DBS operators must offer packages of services in Alaska and Hawaii that are reasonably comparable to what they offer in the contiguous 48 states. In an effort to balance requirements to provide service to all 50 states, and in order to avoid dictating system design or business plans, the Commission declines to specifically define what constitutes full or comparable service although we expect that DBS operators will offer the same level of service to customers throughout all 50 states. Specifically, the Commission clarifies that it will consider a DBS provider to be in compliance with this requirement, contained in § 100.53 of the Commission's rules, only if it offers packages of services in Alaska and Hawaii that are reasonably comparable to what the provider offers in the contiguous 48 states.

10. The Commission does not adopt any specific DBS/cable cross-ownership restrictions. The Commission also deferred this issue to the *Cable Ownership Further Notice of Proposed Rulemaking* in 66 FR 51905, October 11, 2001. The Commission will analyze DBS/DBS ownership issues in the context of assignment and transfer applications on a case-by-case basis.

11. In December of 2002, the Commission decided to seek further comment on non-conforming uses of DBS spectrum because it appeared that there are a number of orbit locations, particularly those covering only the western part of the U.S., that are not being used to provide DBS service. Under current rules, a DBS licensee, after the first five years, must provide DBS service at least fifty percent of the time. In this *Report and Order* the Commission concludes that it will allow non-conforming use for all orbital locations, including the western orbital locations, for downlink services that meet the technical requirements for interference protection. The *Report and Order* allows DBS licensees are free to provide non-conforming services on as many transponders on any of their satellites for as large a fraction of the time as they wish subject to the Commission's other requirements for DBS.

Final Regulatory Flexibility Analysis

12. The Regulatory Flexibility Act of 1980, as amended ("RFA"), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

13. As required by the RFA, an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rulemaking* ("NPRM") in IB Docket No. 98–21, 63 FR 11202, March 6, 1998. The Commission sought written public comments on the proposals in the NPRM including comments on the IRFA. There were no comments, which discussed or addressed the IRFA; nor were there comments on the effect of the proposed rules on small businesses. Nonetheless, the Commission considered the potential significant economic impact of the proposed rules on small entities.

14. The *Report and Order* streamlines and harmonizes the Commission's direct broadcast satellite ("DBS") service rules with other regulations governing satellite communications. Our objective is to consolidate, where possible, the DBS services rules with the rules for other satellite services and eliminate separate, DBS-specific rules in part 100 of the Commission's rules. Because DBS provides subscription services, DBS falls within the SBA-recognized definitions of "Cable Networks" and "Cable and Other Program Distribution." These definitions provide that small entities are ones with $11.0 million or less in annual receipts. Small businesses, *i.e.* ones with less than $11.0 million in annual receipts, do not have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services. Because this is an established service, with limited spectrum and orbital resources for assignment, we estimate that no more than 15 entities will be Commission licensees providing these services. In addition, because of the high implementation costs and the limited spectrum resources we believe that none of the 15 licensees will be small entities. We expect that no small entities will be impacted by this rulemaking. Therefore, we certify that the requirements of the *Report and Order* will not have a significant economic impact on a substantial number of small entities.

15. The Commission will send a copy of the *Report and Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

Ordering Clauses

16. Pursuant to sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the

Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), that the *Report and Order* is adopted. Part 25 of the Commission's rules is *amended as* specified in the rule change, effective September 6, 2002.

17. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A); and shall also send a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 605(b).

List of Subjects in 47 CFR Parts 25 and 100

Satellites.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, under the authority of 47 U.S.C. 154(i) and 303 the Federal Communications Commission amends 47 CFR chapter I as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

2. Section 25.109 is amended by removing paragraph (b) and by redesignating paragraph (c) as paragraph (b).

3. Section 25.111 is amended by adding paragraph (c) to read as follows:

§ 25.111 Additional information.

* * * * *

(c) In the Direct Broadcast Satellite service, applicants and licensees shall also provide the Commission with all information it requires in order to modify the Appendix 30 Broadcasting-Satellite Service ("BSS") Plans and associated Appendix 30A feeder-link Plans, if the system uses technical characteristics differing from those specified in the Appendix 30 BSS Plans, the Appendix 30A feederlink Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A. For such systems, no protection from interference caused by radio stations authorized by other Administrations is guaranteed until the agreement of all affected Administrations is obtained and the frequency assignment becomes a part of the appropriate Region 2 BSS and feeder-link Plans. Authorizations for which coordination is not completed and/or for which the necessary agreements under Appendices 30 and 30A have not been obtained may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations. Applicants and licensees shall also provide the Commission with the necessary Appendix 4 information required by the ITU Radiocommunication Bureau to advance publish, coordinate and notify the frequencies to be used for tracking, telemetry and control functions of DBS systems.

4. Section 25.114 is amended revising paragraphs (c)(13) and (c)(14), and adding paragraph (c)(22) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(c) * * *

* * * * *

(13) Space station license applicants subject to this section other than Direct Broadcast Satellite applicants shall provide detailed information demonstrating the financial qualifications of the applicant to construct and launch the proposed satellites. Applications shall provide the financial information required by §§ 25.140 (b) through (e), 25.142(a)(4), or 25.143(b)(3), as appropriate;

(14) A clear and detailed statement of whether the space station is to be operated on a common carrier basis, or whether non-common carrier transactions are proposed. If non-common carrier transactions are proposed, describe the nature of the transactions and specify the number of transponders to be offered on a non-common carrier basis. In addition, satellite applications in the Direct Broadcast Satellite service must provide a clear and detailed statement of whether the space station is to be operated on a broadcast or non-broadcast basis.

* * * * *

(22) For satellite applications in the Direct Broadcast Satellite service, if the proposed system's technical characteristics differ from those specified in the Appendix 30 BSS Plans, the Appendix 30A feeder link Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A, each applicant shall provide:

(i) The information requested in Appendix 4 of the ITU's Radio Regulations. Further, applicants shall provide sufficient technical showing that the proposed system could operate satisfactorily if all assignments in the BSS and feeder link Plans were implemented; and

(ii) Analyses of the proposed system with respect to the limits in Annex 1 to Appendices 30 and 30A.

* * * * *

5. Section 25.121 is amended by revising paragraph (a) to read as follows:

§ 25.121 License term and renewals.

(a) *License Term.* Except for licenses for DBS facilities, licenses for facilities governed by this part will be issued for a period of 15 years. Licenses for DBS space stations licensed as broadcast facilities will be issued for a period of 8 years. Licenses for DBS space stations not licensed as broadcast facilities will be issued for a period of 10 years.

* * * * *

6. Add § 25.148 to read as follows:

§ 25.148 Licensing provisions for the Direct Broadcast Satellite Service.

(a) *License terms.* License terms for DBS facilities are specified in § 25.121(a).

(b) *Due diligence.* (1) All persons granted DBS authorizations shall proceed with due diligence in constructing DBS systems. Permittees shall be required to complete contracting for construction of the satellite station(s) within one year of the grant of the authorization. The satellite stations shall also be required to be in operation within six years of the authorization grant.

(2) In addition to the requirements stated in paragraph (b)(1) of this section, all persons who receive new or additional DBS authorizations after January 19, 1996 shall complete construction of the first satellite in their respective DBS systems within four years of grant of the authorization. All satellite stations in such a DBS system shall be in operation within six years of the grant of the authorization.

(3) DBS licensees shall be required to proceed consistent with all applicable due diligence obligations, unless otherwise determined by the Commission upon proper showing in any particular case. Transfer of control of the authorization shall not be considered to justify extension of these deadlines.

(c) *Geographic service requirements.* Those entities acquiring DBS authorizations after January 19, 1996, or

who after January 19, 1996 modify a previous DBS authorization to launch a replacement satellite, must provide DBS service to Alaska and Hawaii where such service is technically feasible from the authorized orbital location. This requirement does not apply to DBS satellites authorized to operate at the 61.5° W.L. orbital location. DBS applicants seeking to operate from locations other than 61.5° W.L. who do not provide service to Alaska and Hawaii, must provide technical analyses to the Commission demonstrating that such service is not feasible as a technical matter, or that while technically feasible such services would require so many compromises in satellite design and operation as to make it economically unreasonable.

(d) *DBS subject to competitive bidding.* Mutually exclusive initial applications to provide DBS are subject to competitive bidding procedures. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

(e) *DBS long form application.* Winning bidders are subject to the provisions of § 1.2107 of this chapter except that in lieu of a FCC Form 601 each winning bidder shall submit the long-form satellite service application (FCC Form 312) within thirty (30) days after being notified by Public Notice that it is the winning bidder. Each winning bidder will also be required to submit by the same deadline the information described in § 25.215 (Technical) and § 25.601 (EEO), and in paragraph (f) of this section. Each winner also will be required to file, by the same deadline, a signed statement describing its efforts to date and future plans to come into compliance with any applicable spectrum limitations, if it is not already in compliance. Such information shall be submitted pursuant to the procedures set forth in § 25.114 and any associated Public Notices.

(f) *Technical qualifications.* DBS operations must be in accordance with the sharing criteria and technical characteristics contained in Appendices 30 and 30A of the ITU's Radio Regulations. Operation of systems using differing technical characteristics may be permitted, with adequate technical showing, and if a request has been made to the ITU to modify the appropriate Plans to include the system's technical parameters.

7. Section 25.201 is amended by adding the following definition in alphabetical order to read as follows:

§ 25.201 Definitions.

* * * * *

Direct Broadcast Satellite Service. A radiocommunication service in which signals transmitted or retransmitted by space stations, using frequencies specified in § 25.202(a)(7), are intended for direct reception by the general public. For the purposes of this definition, the term direct reception shall encompass both individual reception and community reception.

* * * * *

8. Section 25.202 is amended by revising footnote 9 in paragraph (a)(1) and by adding paragraph (a)(7) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a) * * *

* * * * *

[9] The use of the band 17.3–17.8 GHz by the Fixed-Satellite Service (Earth-to-space) is limited to feeder links for the Direct Broadcast Satellite Service, and the sub-band 17.7–17.8 GHz is shared co-equally with terrestrial fixed services.

* * * * *

(7) The following frequencies are available for use by the Direct Broadcast Satellite service:

12.2–12.7 GHz: Space-to-Earth.

* * * * *

9. Add § 25.215 to read as follows:

§ 25.215 Technical requirements for space stations in the Direct Broadcast Satellite Service.

In addition to § 25.148(f), space station antennas operating in the Direct Broadcast Satellite Service must be designed to provide a cross-polarization isolation such that the ratio of the on-axis co-polar gain to the cross-polar gain of the antenna in the assigned frequency band shall be at least 30 dB within its primary coverage area.

10. Section 25.601 is revised to read as follows:

§ 25.601 Equal employment opportunity requirement.

Notwithstanding other EEO provisions within these rules, an entity that uses an owned or leased fixed-satellite service or direct broadcast satellite service facility (operating under this part) to provide video programming directly to the public on a subscription basis must comply with the equal employment opportunity requirements set forth in part 76, subpart E, of this chapter, if such entity exercises control (as defined in part 76, subpart E, of this chapter) over the video programming it distributes. Notwithstanding other EEO provisions within these rules, a licensee or permittee of a direct broadcast satellite station operating as a broadcaster must comply with the equal employment opportunity requirements set forth in part 73.

10a. Add subpart J to part 25 to read as follows:

Subpart J—Public Interest Obligations

§ 25.701 Public interest obligations.

(a) DBS providers are subject to the public interest obligations set forth in paragraphs (b) and (c) of this section. For purposes of this rule, DBS providers are any of the following:

(1) Entities licensed to operate satellites in the 12.2–12.7 GHz DBS frequency bands; or

(2) Entities licensed to operate satellites in the Ku-band fixed satellite service and that sell or lease capacity to a video programming distributor that offers service directly to consumers providing a sufficient number of channels so that four percent of the total applicable programming channels yields a set-aside of at least one channel of non-commercial programming pursuant to paragraph (c) of this section, or

(3) Non-U.S. licensed satellite operators in the Ku-band that offer video programming directly to consumers in the United States pursuant to an earth station license issued under part 25 of this title and that offer a sufficient number of channels to consumers so that four percent of the total applicable programming channels yields a set-aside of one channel of non-commercial programming pursuant to paragraph (c) of this section,

(b) *Political broadcasting requirements*—(1) *Reasonable access.* DBS providers must comply with Section 312(a)(7) of the Communications Act of 1934, as amended, by allowing reasonable access to, or permitting purchase of reasonable amounts of time for, the use of their facilities by a legally qualified candidate for federal elective office on behalf of his or her candidacy.

(2) *Use of facilities.* DBS providers must comply with Section 315 of the Communications Act of 1934, as amended, by providing equal opportunities to legally qualified candidates.

(c) *Carriage obligation for noncommercial programming*—(1) *Reservation requirement.* DBS providers shall reserve four percent of their channel capacity exclusively for use by qualified programmers for noncommercial programming of an educational or informational nature. Channel capacity shall be determined annually by calculating, based on measurements taken on a quarterly basis, the average number of channels

available for video programming on all satellites licensed to the provider during the previous year. DBS providers may use this reserved capacity for any purpose until such time as it is used for noncommercial educational or informational programming.

(2) *Qualified programmer.* For purposes of these rules, a qualified programmer is:

(i) A noncommercial educational broadcast station as defined in section 397(6) of the Communications Act of 1934, as amended,

(ii) A public telecommunications entity as defined in section 397(12) of the Communications Act of 1934, as amended,

(iii) An accredited nonprofit educational institution or a governmental organization engaged in the formal education of enrolled students (A publicly supported educational institution must be accredited by the appropriate state department of education; a privately controlled educational institution must be accredited by the appropriate state department of education or the recognized regional and national accrediting organizations), or

(iv) A nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations.

(v) Other noncommercial entities with an educational mission.

(3) *Editorial control.* (i) A DBS operator will be required to make capacity available only to qualified programmers and may select among such programmers when demand exceeds the capacity of their reserved channels.

(ii) A DBS operator may not require the programmers it selects to include particular programming on its channels.

(iii) A DBS operator may not alter or censor the content of the programming provided by the qualified programmer using the channels reserved pursuant to this section.

(4) *Non-commercial channel limitation.* A DBS operator cannot initially select a qualified programmer to fill more than one of its reserved channels except that, after all qualified entities that have sought access have been offered access on at least one channel, a provider may allocate additional channels to qualified programmers without having to make additional efforts to secure other qualified programmers.

(5) *Rates, terms and conditions.* (i) In making the required reserved capacity available, DBS providers cannot charge rates that exceed costs that are directly related to making the capacity available to qualified programmers. Direct costs include only the cost of transmitting the signal to the uplink facility and uplinking the signal to the satellite.

(ii) Rates for capacity reserved under paragraph (a) of this section shall not exceed 50 percent of the direct costs as defined in this section.

(iii) Nothing in this section shall be construed to prohibit DBS providers from negotiating rates with qualified programmers that are less than 50 percent of direct costs or from paying qualified programmers for the use of their programming.

(iv) DBS providers shall reserve discrete channels and offer these to qualifying programmers at consistent times to fulfill the reservation requirement described in these rules.

(6) *Public file.* (i) Each DBS provider shall keep and permit public inspection of a complete and orderly record of:

(A) Quarterly measurements of channel capacity and yearly average calculations on which it bases its four percent reservation, as well as its response to any capacity changes;

(B) A record of entities to whom noncommercial capacity is being provided, the amount of capacity being provided to each entity, the conditions under which it is being provided and the rates, if any, being paid by the entity;

(C) A record of entities that have requested capacity, disposition of those requests and reasons for the disposition; and

(D) A record of all requests for political advertising time and the disposition of those requests.

(ii) All records required by this paragraph shall be placed in a file available to the public as soon as possible and shall be retained for a period of two years.

(7) *Effective date.* DBS providers are required to make channel capacity available pursuant to this section upon the effective date. Programming provided pursuant to this rule must be available to the public no later than six months after the effective date.

PART 100—[REMOVED]

11. Remove part 100.

[FR Doc. 02–19888 Filed 8–6–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket 01–276; FCC 02–209]

Table of Allotments To Delete Noncommercial Reservation on Channel *16, 482–488 MHz, Pittsburgh, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has before it a petition filed by WQED Pittsburgh ("QED"), licensee of noncommercial educational television stations WQED(TV), Channel *13 and WQEX(TV), Channel *16 in Pittsburgh, wherein it requests that the Commission dereserve Channel *16 and permit QED to sell the station to ShootingStar, a commercial entity. The Commission grants QED's request and permits QED to sell WQEX(TV) and use the proceeds to improve its financial condition, construct DTV facilities for its remaining station, and fund a permanent programming endowment.

DATES: Effective September 6, 2002.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein (202) 418–1600, Video Division, Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order Amendment of the Television Table of Allotments to Delete Noncommercial Reservation on Channel *16, 482–488 MHz, Pittsburgh, Pennsylvania* ("Report and Order"), MM Docket, 01–276, FCC 02–209, adopted July 11, 2002 and released July 18, 2002. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Vistronix, Inc.

Synopsis of Report and Order

The *Report and Order* finds that QED remains in financial distress, that it has taken dramatic steps to improve its financial condition, including reducing its workforce by half and selling available assets, and that QED and its auditors both conclude that the sale of WQEX(TV) as a commercial station is crucial to QED's financial recovery. The *Report and Order* also concludes that the Pittsburgh area can no longer support both WQED(TV) and WQEX(TV), given its population decline, and the downward trend in

contributions to QED. On balancing the needs and abilities of QED, given its financial condition and the community from which it derives support, the Commission finds that the continued use of the second channel is no longer necessary to meet the educational, instructional and cultural needs of the Pittsburgh community, especially since upon dereservation and sale of WQEX(TV), and initiation of digital service, QED will be able to substantially increase the amount of free over-the-air educational service.

The *Report and Order* concludes that QED's circumstances are highly unique and that the public interest would be served by waiving the Commission's policy disfavoring dereservation. The *Report and Order* also concludes that the record supports waiver of the policy requiring that newly dereserved channels be made available for competing applications.

Procedural Matters

The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceeds to amend the TV and DTV Table of Allotments, §§ 73.606 and 73.622(b). *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504, and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

Ordering Clauses

The Commission further finds that unique public interest considerations and benefits support a waiver of the policy set forth in the Sixth Report and Order requiring that newly dereserved channels be made available for competing applications.

It is further ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of WQED Pittsburgh for station WQEX(TV) *is modified* to specify operation on Channel 16 in lieu of Channel *16.

List of Subjects 47 CFR Part 73

Digital television broadcasting, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606, the Table of TV Allotments under Pennsylvania is amended by removing Channel *16 at Pittsburgh and adding in its place Channel 16 at Pittsburgh.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Pennsylvania is amended by removing Channel *26 at Pittsburgh and adding in its place Channel 26 at Pittsburgh.

[FR Doc. 02–20071 Filed 8–6–02; 12:45 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI18

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Carson Wandering Skipper

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the Carson wandering skipper (*Pseudocopaeodes eunus obscurus*) to be endangered under the Endangered Species Act of 1973, as amended (Act). The Carson wandering skipper is currently known from only two populations, one in Washoe County, Nevada, and one in Lassen County, California. The subspecies is found in grassland habitats on alkaline substrates.

Extinction could occur from naturally occurring events or other threats due to the small, isolated nature of the known populations of the Carson wandering skipper. These threats include habitat destruction, degradation, and fragmentation due to urban and residential development, wetland habitat modification, agricultural practices (such as excessive livestock grazing), gas and geothermal development, and nonnative plant invasion. Other threats include collecting, livestock trampling, water exportation projects, road construction, recreation, pesticide drift, and inadequate regulatory mechanisms. We find these threats constitute immediate and significant threats to the Carson wandering skipper. This rule implements Federal protection provided by the Act for the subspecies.

DATES: This rule becomes effective on August 7, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section) (telephone 775/861–6300; facsimile 775/861–6301), or Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825–1846 (telephone 916/414–6000; facsimile 916/414–6712).

SUPPLEMENTARY INFORMATION:

Background

The genus *Pseudocopaeodes* in the family Hesperiidae and subfamily Hesperiinae (grass skippers) contains only one species, *Pseudocopaeodes eunus*. Members of Hesperiidae are called skippers because of their powerful flight. While their flight may be faster than butterflies, they seldom fly far and few species migrate (Scott 1986).

The species *Pseudocopaeodes eunus* is thought to consist of five subspecies. The Carson wandering skipper (*P. e. obscurus*) is locally distributed in grassland habitats on alkaline substrates in eastern California and western Nevada. *P. e. eunus* is located in western desert areas of southern California; *P. e. alinea* is found in eastern desert areas of southern California and in southern Nevada; and *P. e. flavus* is found in western and central Nevada (Brussard 2000). In 1998, what is believed to be an undescribed fifth subspecies of *P. eunus* was found in Mono County, California. George Austin of the Nevada State Museum and Historical Society in Las Vegas is working to formally describe this fifth subspecies (Brussard 2000). Except for the Carson wandering skipper, the subspecies of *P. eunus* do not have universally accepted common names.

The Carson wandering skipper was collected in 1965 by Peter Herlan, Nevada State Museum, at a location north of U.S. Highway 50, Carson City, Nevada. It was first described by George Austin and John Emmel (1998), based

on 51 adult specimens. The body is tawny orange above except for a narrow uniform border and black veins near the border at the outer edge of the wing. The upper forewing and hindwing are orange with darker smudging. The lower surface of the hindwings is pale creamy orange with two creamy rays extending from the base of the wing to its margin, and there may be dusky suffusions along the wing veins (MacNeill 1975). Males tend to average 13.1 millimeters (mm) (0.52 inches (in)) in size (ranging from 12.0 to 13.9 mm (0.47 to 0.55 in)) (size is forewing length from base to apex). Females average 14.7 mm (0.58 in) in size, and range from 13.4 to 15.6 mm (0.53 to 0.61 in) from forewing base to apex. The female's dorsal (upper) surface is similar to the male's but with heavier dusting on the discal (relating to a disk) area of the hindwing. The female's ventral surface (undersurface of the abdomen) is similar in appearance to the male's (Austin and Emmel 1998).

The Carson wandering skipper can be distinguished from the other subspecies of *Pseudocopaeodes eunus* by a combination of several characteristics. The Carson wandering skipper is browner and less intensely orange on its dorsal surface, with thicker black coloring along the veins, outer margin, and on both basal surfaces; and it is duller, overall, with an expanse of bright yellow and orange ground color, especially on the ventral surface, interrupted by broadly darkened veins (Austin and Emmel 1998).

Carson wandering skipper females lay their cream-colored eggs on salt grass (*Distichlis spicata* (L.) Greene) (Hickman 1993), the larval host plant for the subspecies (Garth and Tilden 1986; Scott 1986). This is a common plant species in the saltbush-greasewood community of the intermountain west. Salt grass usually occurs where the water table is high enough to keep its roots saturated for most of the year (West 1988, as cited in Brussard *et al.* 1998).

No other observations have been made of the early life stages of the Carson wandering skipper. However, the Carson wandering skipper's life cycle is likely similar to other species of Hesperiinae. Larvae (immature, wingless, often worm-like form) of the subfamily Hesperiinae live in silked-leaf nests, and some species make their nests partially underground. Larvae are usually green or tan and have a dark head and black collar. Pupae (intermediate stage between larvae and adult) generally rest in the nest, and larvae generally hibernate (Scott 1986). Minno (1994) described a last instar (stage between molts) larvae and a pupa of *Pseudocopaeodes eunus*, based on one specimen of each collected in California. Some larvae may be able to extend their period of diapause (period of dormancy) for more than one season depending on the individual and environmental conditions (Dr. Peter Brussard, University of Nevada, Reno, pers. comm., 2001). Carson wandering skippers may differ from other *P. eunus* in producing only one brood per year during June to mid-July (Austin and Emmel 1998).

The other subspecies produce a second brood in late July to late September (Austin and Emmel 1998). Sites occupied by the Carson wandering skipper have been searched during August and September and a second brood has not been found (Austin and Emmel 1998; Brussard *et al.* 1999). However, additional research is needed to confirm that the Carson wandering skipper produces only one brood per year.

Little is known about the specific habitat requirements of the Carson wandering skipper, beyond the similarities recognized among known locations of this subspecies. As a result, the habitat requirements stated could apply to the species as a whole (Brussard *et al.* 1999). Habitat requirements for butterflies in general include: (1) Presence of a larval host plant; (2) appropriate thermal environment for larval development and diapause, and adult mate location and oviposition (to lay eggs); and (3) a nectar source (Brussard *et al.* 1999). Based on commonalities of known, occupied sites, suitable habitat for the Carson wandering skipper has the following characteristics: elevation of less than 1,524 meters (5,000 feet); located east of the Sierra Nevada; presence of salt grass; open areas near springs or water; and geothermal activity.

There are no data in the literature on the micro-habitat requirements of the Carson wandering skipper (Brussard *et al.* 1999). However, it is likely that suitable larval habitat is related to the water table. Many salt grass areas are inundated in the spring, and larvae do not develop under water. During wet years, larval survival depends on salt grass areas being above standing water. In dry years, survival is probably related to the timing of the host plant senescence (aging). Therefore, micro-topographic variation (slight irregularities of a land surface) is probably important for larval survival because it provides a greater variety of appropriate habitat over time (Brussard *et al.* 1999). Since the few historic collections of the Carson wandering skipper have been near hot springs, it is possible this subspecies may require the higher water table or ground temperatures associated with these areas to provide the appropriate temperatures for successful larval development (Brussard *et al.* 1999).

Adult Carson wandering skippers require nectar for food. Adults of all the species in the grass skipper subfamily seem to visit flowers, and sap-feeding is absent or rare (Scott 1986). There are no known observations of the Carson wandering skipper utilizing mud or other substances to obtain nutrients (P. Brussard, pers. comm., 2002a). Few plants that can serve as nectar sources grow in the highly alkaline soils occupied by salt grass. For a salt grass area to be appropriate habitat for the Carson wandering skipper, an appropriate nectar source must be present and in bloom during the flight season. Plant species known to be used by the Carson wandering skipper for nectar include a mustard (*Thelypodium crispum*), racemose golden-weed (*Pyrrocoma racemosus*), and slender birds-foot trefoil (*Lotus tenuis*) (Brussard *et al.* 1999). If alkaline-tolerant plant species are not present, but there is a fresh-water source to support alkaline-intolerant nectar sources adjacent to the larval host plant, the area may provide suitable habitat (Brussard *et al.* 1999).

No information is available on historic population numbers of the Carson wandering skipper. It is possible that a fairly large population of the subspecies occurred from the Carson Hot Springs site to the Carson River. Outflow from the springs likely supported a water table high enough for salt grass and a variety of nectar sources to grow. Urban development, water diversions, and wetland manipulations have eliminated most of the habitat type in this area (Brussard 2000).

Likewise, it is possible that appropriate habitat once existed for the Carson wandering skipper between the existing populations in Lassen County, California, and Washoe County, Nevada (P. Brussard, pers. comm., 2001). The population locations are approximately 120 kilometers (km) (75 miles (mi)) apart, and while the dispersal capability of the Carson wandering skipper is unknown, it is unlikely that any current genetic exchange occurs between the two populations. Over time, the habitat between the two populations has become unsuitable and fragmented due to agriculture and development, and the two populations have become isolated from one another. The subspecies likely represents a remnant of a more widely distributed complex of populations in

the western Lahontan basin (Brussard *et al.* 1999).

In 1998, collections of four of the *Pseudocopaeodes eunus* subspecies were made for a genetic study by University of Nevada-Reno (UNR) researchers (Brussard *et al.* 1999). In addition to collections made of the Carson wandering skipper at the Washoe County site (24) and the Lassen County site (25), individuals of three other *P. eunus* subspecies (173) were also collected. *P. e. eunus* individuals were not collected due to their scarcity. Genetic analysis was based on an analysis of allozyme (*i.e.*, protein) variation (Brussard *et al.* 1999). Levels of heterozygosity (genetic variability) were low in all but two populations of *P. eunus*, and the average heterozygosity over the nine populations was also low. The low levels of heterozygosity in many of the populations is likely due to repeated extirpation events, recolonizations, and population and genetic bottlenecks throughout the Holocene geologic period (beginning 10,000 years ago) to the present time (Brussard *et al.* 1999).

Population Sites

Historically, population locations included the type locality found near the Carson Hot Springs in Carson City, Carson City County, NV, and one other site in Lassen County, CA. When described in Austin and Emmel (1998), specimens from two additional sites, Dechambean Hot Springs at Mono Lake and Hot Springs, Mono County, CA, were assigned, with uncertainty due to their small numbers, to the Carson wandering skipper subspecies. Based on 1998 surveys by Brussard *et al.* (1999), these Mono County specimens would be more appropriately assigned to the currently undescribed subspecies (George Austin, Nevada State Museum and Historical Society, pers. comm., 2001).

Surveys conducted in 1997 in the vicinity of Carson City, and in 1998 throughout potential, suitable habitat in Nevada and California, found two new nectar sites occupied by the Carson wandering skipper. One site was located in Washoe County, NV, and the other site (two locations) was found in Lassen County, CA. The site in Lassen County could be a rediscovery of the area where Carson wandering skippers were collected in the 1970s; however, the collection record is too vague to be certain (P. Brussard, pers. comm., 2001). Despite additional, more limited attempts at finding other populations in 2000 and 2001, none have been found (P. Brussard, pers. comm., 2000; Rebecca Niell, UNR, pers. comm., 2001). While results of the surveys conducted in 2001 for the other subspecies of *Pseudocopaeodes eunus* are still pending, no new Carson wandering skipper populations were found during these surveys (R. Niell, pers. comm., 2002).

Carson City Site

The Carson City site was surveyed for the Carson wandering skipper by the UNR from 1997 to 2001. Only five individuals (four males and one female) were observed during surveys in June 1997. One possible sighting of a Carson wandering skipper occurred at a project site in 1998 (Brussard *et al.* 1999). No individuals were observed at this site in 1999 or 2000 (P. Brussard, pers. comm., 2000). In 2001, searches were again conducted with no individuals observed (R. Niell, pers. comm., 2001). Habitat changes resulting from drainage manipulations for residential and commercial development are likely responsible for this possible extirpation (Brussard *et al.* 1999). Construction of a freeway bypass will eliminate and fragment the remaining habitat (5 ha (12 ac)) of the Carson wandering skipper at this site.

An area just south of the Carson City site was also surveyed in 1997 and 1998. Twelve hectares (ha) (30 acres (ac)) of potential habitat were present (Paul Frost, Nevada Department of Transportation (NDOT), *in litt.*, 1998), however, no Carson wandering skippers were found during the surveys (Brussard *et al.* 1999). Approximately 5 ha (12 ac) of this potential habitat will be impacted by the construction of the Carson Highway 395 bypass (Alan Jenne, NDOT, pers. comm., 1999). Brussard *et al.* (1997) found no other suitable habitat in the vicinity of Carson City in 1997.

Because of habitat destruction, degradation, and fragmentation, the Carson wandering skipper has probably been extirpated from the Carson City site.

Washoe County Site

The nectar site in Washoe County occurs on Bureau of Land Management (BLM) administered lands and adjacent private lands. This nectar site is estimated to be about 10 to 12 ha (25 to 30 ac), with approximately half of the site occurring on BLM lands and half on private lands (Brussard *et al.* 1999). The nectar source at this site (racemose golden-weed) is abundant, as is salt grass. A few Carson wandering skippers were seen approximately 1.6 km (1 mi) northeast of the nectar site. This suggests the Carson wandering skipper may occur in small numbers elsewhere in adjacent areas (Brussard *et al.* 1999). Surveys were not conducted in 1999 or 2000 at this site. In 2001, searches of this area were made to confirm the Carson wandering skipper's presence. Five individuals were found at the nectar site on BLM lands; private lands were not searched (Virginia Rivers, Truckee Meadows Community College, pers. comm., 2001).

Lassen County Site

Two locations where the subspecies is found in Lassen County occur approximately 8 km (5 mi) apart. One location occurs on public lands managed by the California Department of Fish and Game (CDFG property). Another location is found on both private and public lands (private/public property). In 1998, two individuals were observed on the CDFG property, while several individuals were observed at a nectar site less than 2 ha (5 ac) in size on the private/public property. UNR did not conduct surveys at either of these locations in 1999. Surveys were conducted in 2000 and, while several individuals were seen on the private/public property nectar site location, none were seen on the CDFG property. Salt grass is abundant in the surrounding area of the private/public property but the attraction appears to be the nectar source, which is slender birds-foot trefoil. In 2001, searches were conducted to confirm the Carson wandering skipper's presence. A few sightings (three one day and four on another day) were observed on the private/public property nectar site, but again, none were observed on the CDFG property (V. Rivers, pers. comm., 2001).

Previous Federal Action

On May 22, 1984, we published an invertebrate wildlife Notice of Review in the **Federal Register** (49 FR 21664) designating *Pseudocopaeodes eunus eunus* as a category 2 candidate. Category 2 candidates were those species for which we had information indicating that listing may be appropriate, but for which additional information was needed to support the preparation of a proposed rule. The entity now known as the Carson wandering skipper was included in *P. e. eunus;* however, in early 1995, we were informed by Mr. George Austin that the Carson wandering skipper was a distinct, undescribed subspecies (G. Austin, pers. comm., 1995). In the February 28, 1996, Notice of Review (61 FR 7596), we discontinued the use of multiple candidate categories and considered the former category 1 candidates as simply "candidates" for listing purposes. The Carson wandering

skipper was removed from the candidate list at that time.

Following an updated assessment of the status of the Carson wandering skipper and its vulnerability to threats in 1998, we included this taxon as a candidate species in the Notice of Review published in the **Federal Register** on October 25, 1999 (64 FR 57533), with a listing priority number of 12.

A petition dated November 9, 2000, from Mr. Scott Hoffman Black, Executive Director, The Xerces Society, and received by the Service on November 10, 2000, requested that we emergency list the Carson wandering skipper as an endangered species throughout its range, and designate critical habitat concurrent with the listing. We responded in a letter dated February 20, 2001, that we would not publish a petition finding for the Carson wandering skipper because it was already listed as a candidate species in the most recent Notice of Review (64 FR 57533). This meant that we had already determined that listing was warranted for the species. We indicated we would continue to monitor the status of the Carson wandering skipper, and if an emergency listing was warranted, we would act accordingly, or list the subspecies when the action was not precluded by higher priorities.

In addition, the petitioner had also requested emergency listing of the entire species. We responded in our February 20, 2001, letter to the petitioner that we did not believe that an emergency situation existed at the time for the remaining subspecies. Surveys for *Pseudocopaeodes eunus* spp. were conducted in 1998 throughout potential, suitable habitat in Nevada and California (Brussard *et al.* 1999). Of the 78 sites (48 new; 30 historic) visited, *P. eunus* spp. were found at 14 sites. Of the 30 historic sites, *P. eunus* spp. were found at 8 sites. Seven areas (2 in Nevada; 5 in California) which were historic sites for these subspecies were not visited. We contracted with UNR to have additional status surveys conducted in 2001 for these other subspecies of *P. eunus*, and results of these surveys are pending. These surveys will assist in determining their status, and if we find that a listing of the remaining subspecies is warranted, we will act accordingly.

On August 28, 2001, we reached an agreement with the Center for Biological Diversity, California Native Plant Society, Southern Appalachian Biodiversity Project, and Foundation for Global Sustainability to complete work on a number of species proposed for listing. Under this "miniglobal" agreement, we agreed to issue several final listing decisions, propose a number of other species for listing, and review three species for emergency listing, including the Carson wandering skipper (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.), entered by the court on October 2, 2001).

The Carson wandering skipper was included in the October 30, 2001, candidate Notice of Review (66 FR 54808), but with a listing priority number change from a 12 to a 3. We made this change because we have been unsuccessful implementing actions outlined in a draft conservation plan for the subspecies and two additional threats appear imminent. These threats include: (1) A proposed water exportation project in the vicinity of the Washoe County site that is a potential threat to the subspecies and its habitat; and (2) tall whitetop (*Lepidium latifolium*), a nonnative invasive plant, becoming established at the Lassen County site and is a threat to the subspecies' nectar source.

On November 29, 2001, we issued an emergency rule listing the Carson wandering skipper as an endangered species because we found that a number of threats constituted immediate and significant risk to the subspecies (66 FR 59537). A proposed rule to list the Carson wandering skipper was published in the **Federal Register** concurrently with the emergency rule (66 FR 59550). The proposed rule opened a 60-day comment period which closed on January 28, 2002.

On May 7, 2002, we reopened the public comment period to allow additional time for all interested parties to submit written comments on the proposal, and to give notice of a public informational meeting (67 FR 30645). The comment period was open for 30 days and closed June 6, 2002.

The Carson wandering skipper was included in the Candidate Notice of Review (67 FR 40657) published June 13, 2002.

Summary of Comments and Recommendations

In the November 29, 2001, proposed rule (66 FR 59550), we requested that all interested parties submit factual reports, information, and comments that might contribute to the development of the final listing decision. We contacted appropriate State and Federal agencies, county and city governments, scientific organizations and authorities, and other interested parties and requested them to comment. We published legal notices in the Nevada Appeal on December 16, the Lassen County Times on December 18, and the Reno Gazette Journal on December 19, 2001. Following the publication of the proposed rule, we received a total of 183 comments from individuals or organizations. We opened a second comment period on May 7, 2002 for 30 days to give the public additional time to comment (67 FR 30645). We also held a public informational meeting in Susanville, CA on May 22, 2002. We received an additional 248 comments during the second comment period, for a total of 431 comments. Of the comments received, 263 were in support of the listing action, 165 were opposed to the listing, and 3 were neutral. Comments providing additional information were incorporated where appropriate. We have addressed each of the substantive issues raised by commenters and grouped them into several issues that are discussed below.

Issue 1: A number of commenters were opposed to the listing stating there was a lack of information to support a listing of the Carson wandering skipper as endangered.

Our Response: Since its discovery in 1965, data collections of the Carson wandering skipper have been limited to surveys, literature review, and collection records. The best scientific and commercial data available indicate the subspecies occurs at only two known sites and has been extirpated from a third site.

Geographic Information System modeling was incorporated into the Brussard *et al.* (1999) study to identify potential habitats for surveying. All records of *P. eunus* from various sources were compiled. Habitat characteristics, based on the records as well as areas of salt desert scrub and low elevation sagebrush vegetation and water sources along eastern California and western Nevada, were mapped. A total of 78 sites, 30 historic sites and 48 potential new sites were surveyed for the Carson wandering skipper and the other subspecies to assist in determining the Carson wandering skipper's range. Twenty-two of these historic and potential sites were located in the northern areas within the potential range of the Carson wandering skipper. As a result of surveys, two new populations of the Carson wandering skipper were found. The Carson City historic population of Carson wandering skipper is believed extirpated. At this time, only two known populations are extant. All of the surveys were conducted by qualified field biologists during the proper time of year and time of day when the Carson wandering skipper could reasonably be expected to be active, evident, and identifiable.

We have prepared a survey protocol to determine habitat suitability and presence or absence of the Carson wandering skipper, and to provide consistency among surveyors. This protocol is currently being used by consultants reviewing various current and proposed projects during the 2002 survey season. We will evaluate the appropriateness of the protocol for accuracy, usefulness of data, and implementation, and the protocol will be revised as needed. Additional monitoring of occupied sites will be needed to determine population sizes and trends in the future.

Surveys to estimate population size of the Carson wandering skipper have not been conducted. We recognize that population estimates refine our understanding of the status of the subspecies. However, the abundance of insect species can fluctuate greatly from year to year. Some insects may be abundant in localized populations yet susceptible to extirpation by a single event. Therefore, estimates of abundance are not necessarily adequate to determine whether a species is threatened or endangered. We based our determination to list the Carson wandering skipper on evaluation of the current and future threats from the five factors listed in section 4 (a) of the Act.

We acknowledge that undiscovered sites occupied by the Carson wandering skipper may exist and appreciate comments mentioning other areas where the Carson wandering skipper and suitable habitat may occur. However, until the existence of additional populations can be verified and threats, if any, can be determined in these areas, we consider the Carson wandering skipper an endangered species.

Issue 2: Some commenters were opposed to the listing of the Carson wandering skipper because they believed it would cause negative economic impact to the agricultural community.

Our Response: Under section 4 (b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial date available. The legislative history of this provision states the intent of Congress is to ensure that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting these decisions," H.R. Rep. No. 97–835, 97th Cong., 2nd Sess. 19 (1982). The legislative history also provides that, "applying economic criteria * * * to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word "solely" in the legislation," H.R. Rep. No. 97–835, 97th Cong. 2nd Sess. 19 (1982). Therefore, we are precluded from considering economic impacts in a final decision to list a species.

Issue 3: Other commenters stated that grazing was not a threat to the Carson wandering skipper. Many held this position based on the fact that the extirpation of a population of Carson wandering skipper occurred because of urban and residential development rather than agricultural land use. Many stated that grazing was not a threat to the Carson wandering skipper because salt grass was resistant to grazing and trampling by livestock. Others stated grazing is beneficial to butterflies. In addition, the nectar source, slender birds-foot trefoil, was introduced by farmers and ranchers in the area for pasture production, and the Carson wandering skipper has been utilizing this plant as a nectar source and is successful because of it.

Our Response: While the recently extirpated Carson wandering skipper population in Carson City was in an urban setting, the rural landscape in Nevada and California has also been altered over time. Grazing occurs at both known sites. Livestock grazing can impact: (1) Species composition of communities by decreasing the density and biomass of species, reducing species richness, and changing community organization; (2) ecosystem function including the disruption of nutrient cycling and succession; and (3) ecosystem structure including altering vegetation stratification, contributing to soil erosion and reducing the availability of water to biotic communities (Fleischner 1994). Hutchinson and King (1980) found abundance and biomass of invertebrates (including butterflies (Lepidoptera)) were reduced (with the exception of ants (Hymenoptera)) with increases in sheep numbers. Excessive grazing that reduces the availability of salt grass for Carson wandering skipper larvae and availability of nectar sources for the adults is considered a threat.

We recognize that different grazing intensities and management practices can impact areas differently, and impacts at each site must be evaluated independently. However, we have identified grazing as a threat to several butterfly species that have been listed under the Act (*e.g.*, Uncompahgre fritillary butterfly (*Boloria acrocnema*) (56 FR 28712); Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*) (57 FR 27858); Quino checkerspot butterfly (*Euphydryas editha quino*) (62 FR 2322); Callippe silverspot butterfly (*Speyeria callippe callippe*) and Behren's silverspot butterfly (*Speyeria zerene behrensii*) (62 FR 64320)). Grazing occurs at both of the known nectar sites. While we do not know the level or intensity of grazing at these sites, and acknowledge that specific impacts at these sites must be evaluated, we identified a concern that excessive grazing can threaten the species when it reduces the availability of salt grass for the larvae or nectar sources for the adults, or results in the trampling of the larvae. We recognize that grazing, at an appropriate level and season, may be compatible with the conservation of the skipper at these sites. However, such appropriate levels are not known at this time and must be assessed during the recovery process.

As noted by several commenters, salt grass is known to be resistant to grazing and trampling (Crampton 1974; Nebraska Cooperative Extension Service 1985). However, this does not mean that livestock will not graze or trample the salt grass. The term "resistant" means that salt grass is not killed by grazing or trampling and recovers well. Our concerns with impacts from grazing and trampling of salt grass to the Carson wandering skipper relate to the availability of food for the larvae, and the direct trampling of the larvae which are feeding on the salt grass, not impacts to salt grass itself.

As stated by commenters, slender birds-foot trefoil, a nonnative, has been planted in agricultural lands as a forage for cattle and has been utilized by the Carson wandering skipper. The presence of a nectar source is not the only factor influencing the occurrence of Carson wandering skippers. The nectar source location in relation to salt grass is also important and it may be too far from emerging adults to be utilized. Butterflies, in general, are less selective with regard to their nectar sources than they are about their larval host plants (Brussard *et al.* 1999). Flowers that are the proper size for the butterfly's proboscis (mouthparts) and that produce a sugar concentration of 15 to 25 percent are likely to be utilized (Kingsolver and Daniel 1979). As a result, nectar sources for a particular species can vary by locality and by season (Brussard *et al.* 1999). While the Carson wandering skipper has been observed nectaring on slender birds-foot trefoil, other plants in the area may offer additional nectar sources as well. If cattle are foraging on slender birds-foot trefoil during the adult flight period, the availability of slender birds-foot trefoil as a nectar source may be reduced. Given these considerations and the Carson wandering skipper's rarity,

grazing and trampling by livestock can significantly impact the subspecies and should be assessed in the recovery process.

Issue 4: Four commenters preferred that a collaborative conservation approach occur between the Service and local entities and individuals rather than a listing of the Carson wandering skipper under the Act. They suggested that listing the Carson wandering skipper would inhibit efforts to maintain and restore Carson wandering skipper habitat and likely prevent access to private lands. They proposed development of a process which would be "more informal, less restrictive" than what could occur under the Act.

Our Response: We strongly support the concept of utilizing a collaborative conservation effort to address the threats to species such that the need to list them is precluded. However, given the time needed to complete such an effort and the lack of protective measures afforded by the Act during the process, this type of approach is not well suited for species which are imminently threatened with extinction. We worked with agencies in Nevada and California, and a landowner in Nevada, and a draft conservation plan for the subspecies was developed in 2000. However, we were unable to obtain the information and commitment necessary to reduce or eliminate the threats to the Nevada and California populations. Given the immediate and significant threats to the Carson wandering skipper, we believe listing is necessary to put into effect the various conservation provisions in the Act including, but not limited to, interagency consultation, recovery planning, and take prohibitions as well as cooperative efforts with each State. We look forward to working with Federal, State, county, and private entities in development of a recovery plan to address the conservation needs of the Carson wandering skipper.

Issue 5: Three commenters stated that they believed that the emergency and proposed listing of the Carson wandering skipper was solely the result of the "miniglobal" lawsuit agreement and not science.

Our Response: As stated earlier, our "miniglobal" agreement provided we would review the status of the Carson wandering skipper to determine if emergency listing was appropriate. Based on our review of the available information, we believed emergency listing of the Carson wandering skipper was appropriate and adding it to the list of threatened and endangered species as endangered is also appropriate at this time.

Issue 6: Two commenters suggested that the Service list the Carson wandering skipper as threatened rather than endangered because this would enable the Service to protect the subspecies from urban pressures.

Our Response: We make a determination as to whether a species is threatened or endangered based on the magnitude of threats and the imminency of extinction. The term "endangered" is defined according to section 3(6) of the Act as "* * * any species which is in danger of extinction throughout all or a significant portion of its range * * *". A "threatened species" is defined as "* * * any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

Threats to this subspecies include habitat destruction, degradation, and fragmentation due to urban and residential development, wetland habitat modification, agricultural practices (such as excessive livestock grazing), gas and geothermal development, nonnative plant invasion, collecting, livestock trampling, water exportation/importation projects, road construction, recreation, pesticide drift, and inadequate regulatory mechanisms. Given that only two populations are known to exist, we find these threats constitute immediate and significant threats to the Carson wandering skipper. Based on the available information, we believe that endangered status is appropriate for the Carson wandering skipper.

Issue 7: Two commenters thought that groundwater exportation was not a threat to the Lassen County Carson wandering skipper population because Lassen County restricts transfer of groundwater out of the County under the 1999 Lassen County General Plan.

Our Response: The potential water development project that could impact the Lassen County population involves exportation of water from the Honey Lake Valley which is located in both Lassen County, California and Washoe County, Nevada. It is our understanding that the extraction would occur in the Washoe County portion of the Honey Lake Valley. While Lassen County may not support exportation of surface or ground waters from aquifers located in Lassen County, it is unclear, after review of the Lassen County General Plan Ordinance No. 539 (Andy Whiteman, Lassen County Board of Supervisors, in litt., 2002), how it could prevent actions taken by Washoe County, Nevada.

Issue 8: Two commenters stated that the Service has potentially extended its jurisdiction unlawfully by listing habitat modification under the heading of activities that we believe could potentially result in a violation of section 9, "without identifying an actual Carson wandering skipper specimen that has been taken." The commenters expressed the opinion that a direct impact is necessary before take has occurred.

Our Response: We have not extended our jurisdiction under section 9 of the Act. As stated in the listing, it is our policy (59 FR 34272) to identify, to the maximum extent practicable, those activities that we believe may or may not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within the species' range.

With regard to take, under the Act Federal agencies must address both indirect and direct impacts of activities they authorize, fund, or carry out, that may impact listed species and consult with us under section 7 of the Act. Also, under the Act, private entities must address indirect and direct impacts of activities that result in take of a listed species in order to be issued a permit exception from us for activities that incidentally take listed species but are otherwise lawful. This process occurs under section 10 of the Act and is separate from a listing action which is addressed in section 4 of the Act.

Issue 9: One commenter questioned whether urban development was a threat to the Lassen County Carson wandering skipper population because the area was zoned for agriculture and limited development pressure was occurring.

Our Response: Limited urban or residential development is occurring at both known sites. One example of development is the construction of the Federal Correctional Institution (Institution) in the vicinity of the Lassen County site. Not only can the construction of buildings and infrastructure impact Carson wandering skipper habitat directly, the withdrawal of water for home and business needs could impact groundwater resources. If the water table is lowered, and changes the salt grass community, the Carson wandering skipper may be impacted.

The Lassen County General Plan policies related to zoning (Policies AG–4, AG–8) (A. Whiteman, in litt., 2002), do not prohibit development in the area. Policy AG–4 supports agricultural uses and does not allow isolated subdivision in non-designated areas, but does allow for exceptions. Policy AG–8 recognizes that agricultural areas may be evaluated for alternative uses. Agricultural lands can be converted with adequate

justification and consideration of related policies. Again, exceptions may occur. It is unclear whether the Carson wandering skipper site located partially on private land would be considered a "significant wild habitat" by Lassen County. Therefore, it is unclear whether or not it would be taken into consideration prior to possible conversion from agricultural lands to an alternate land use. The Lassen County General Plan also does not address the potential indirect effects of development (A. Whiteman, in litt., 2002).

Issue 10: One commenter questioned whether tall whitetop was a threat to Carson wandering skipper habitat because there was no scientific evidence to support it. However, the commenter did also state that tall whitetop "* * * infestations most likely have a negative impact on salt grass and bird's-foot trefoil density."

Our Response: While it is correct that a study specific to the impacts of tall whitetop invasion at a Carson wandering skipper nectar site has not been conducted, tall whitetop is a threat to other native species. Tall whitetop is an aggressive invader that displaces other vegetation and can form monotypic stands (an area comprised of one species), decreasing biodiversity, and degrading wildlife habitat as well as reducing the value of agricultural lands (Young *et al.* 1995; Donaldson and Johnson 1999; Krueger and Sheley 1999; Howard 2000). The species is known to grow in alkaline soils (Hickman 1993; Young *et al.* 1995; Howard 2000) but is not restricted to them. Tall whitetop can invade disturbed and undisturbed sites including roadsides, agricultural fields, pastures, riparian areas, alkaline wetlands, natural areas, and irrigation canals (Donaldson and Johnson 1999; Howard 2000). It has become widely established in Lassen County and is found in Honey Lake Valley, California (Howard 2000). We are concerned that tall whitetop will displace the Carson wandering skipper's nectar source at the Lassen County site. We are also concerned that tall whitetop may displace salt grass, the Carson wandering skipper's larval host plant. According to Young *et al.* (1998), infestation areas, once well established, rarely contain other plant species. Tall whitetop appears to have increased at this nectar site compared to 2001 (V. Rivers, pers. comm., 2002).

We support efforts to control tall whitetop in Lassen County and elsewhere in Nevada and California. However, where the Carson wandering skipper is found, consideration must be given to any impacts of control methods. Appropriate methods must be selected, so that the Carson wandering skipper (or other sensitive wildlife, plants, or habitats) can be protected at the same time tall whitetop is controlled.

Issue 11: One commenter stated that pesticide use was not a threat because Carson wandering skippers still occur adjacent to an alfalfa field, and farmers have to pass a safety test prior to applying pesticides.

Our Response: We have indicated that the use of pesticides adjacent to the Carson wandering skipper population in question could be a potential threat if pesticide drift occurred because of the proximity of the agricultural fields to the species' habitat. We do not know what precautions, if any, are being taken at this time to prevent any impact.

Issue 12: One reviewer thought the Service should consider listing the entire species as endangered.

Our Response: As indicated earlier in this rule, a petitioner requested emergency listing of the entire species on November 9, 2000. In our February 20, 2001, response, we indicated we did not believe that an emergency situation existed at that time. Additional status surveys were conducted in 2001 for the remaining subspecies. The results of these surveys are pending, but they should assist us in determining the status of the additional subspecies and determining any threats to them. If our ongoing status review indicates a listing is warranted, we will act accordingly.

Issue 13: One commenter did not think critical habitat should be designated because the Carson wandering skipper has occurred in very small numbers within a few kilometers/miles of the known nectar sites and may exist at low numbers over large areas. Its ecology suggests that areas of relatively high population density may shift among sites within the salt grass community based on changes in climatic, hydrographic, and geothermal conditions. Accurately designating critical habitat will be difficult because either large areas of unoccupied habitat would need to be designated, or if small patches of habitat were designated, changing environmental conditions could result in these areas being uninhabited at a later date.

Our Response: Because information about the specific biological needs of the Carson wandering skipper is currently limited, we are not able to adequately perform critical habitat designation analysis at this time, and find that critical habitat for the species is not determinable. In the proposed rule, we specifically solicited information on potential critical habitat, biological information, and information that would aid our prudency analysis. We received no comments regarding specific physical or biological features essential for the Carson wandering skipper which provided information that added to our ability to determine critical habitat. When we find that critical habitat is not determinable, we have two years from the publication date of the original proposed rule to designate critical habitat, unless the designation is found to be not prudent.

Issue 14: One commenter noted that the description of the Carson wandering skipper by Austin and Emmel (1998) suggests that, infrequently, other subspecies of *Pseudocopaeodes eunus* approach the coloration of *P. e. obscurus*. Therefore, the commenter questioned the appropriateness of this subspecies. The commenter was also concerned that the designation "ssp." had not been included in the scientific name for the Carson wandering skipper indicating that a subspecies was being discussed.

Our Response: It is correct that Austin and Emmel (1998) indicated, as mentioned above, that infrequently, specimens from other populations approach the less heavily marked extremes of the Carson wandering skipper. These specimens do not, however, give the impression of an insect with a dark ventral hindwing, and they lack the dark apex on the ventral forewing. The Carson wandering skipper has been described by recognized authorities in a peer reviewed publication.

We do not use "ssp." to denote an animal subspecies, only plant subspecies. The absence of its use in animal scientific names does not indicate uncertainty in its taxonomic definition.

Issue 15: One commenter was concerned with the lack of information provided regarding habitat requirements for the Carson wandering skipper. It was suggested that, because soils are effective in discriminating environmental units, soil survey maps be utilized to delineate habitat for the Carson wandering skipper.

Our Response: We agree that additional information regarding Carson wandering skipper's habitat requirements would be useful. However, under the Act, the absence of more details regarding habitat requirements for a species or subspecies does not prevent the listing of the taxon. Habitat requirements for butterflies are primarily defined by its larval host plant, in this case, salt grass. While soils can be an effective means of indicating vegetation communities, salt grass has been observed in many soil types.

Researchers did review soil survey maps during the Carson wandering skipper surveys of 1998; however, salt grass did not appear to follow soil survey boundaries and as a result, they were not particularly helpful (P. Brussard, pers. comm., 2002b).

Issue 16: One commenter stated that when the Endangered Species Act was originally passed it "* * * did not contemplate the extinction of creatures of the phylum Insecta; it was aimed at the protection of vertebrate species."

Our Response: When the Endangered Species Act was passed in 1973, it provided for protection of insects and other invertebrate species. At the time of its passage, definitions for the purposes of the Act were found in section 3(5) which stated: "The term 'fish or wildlife' means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof." Several amendments to the Act have since occurred, and this definition can be found today in section 3(8) of the Act.

Issue 17: One commenter asked what information would be necessary for delisting of the Carson wandering skipper.

Our Response: The listing of a species is based on the best scientific and commercial data available at the time of listing as it relates to addressing the five listing factors defined under section 4 (a)(1) of the Act. Section 4 regulations (50 CFR 424.11(c–f)) provide guidance regarding the applicable criteria for delisting and reclassifying species. Delisting of a species can occur if: (1) The species is extinct or has been extirpated from its previous range; (2) the species has recovered and is no longer endangered or threatened; or (3) investigations show that the best scientific or commercial data available when the species was listed or the interpretations of such data were in error. The requirements for listing and delisting are different in that the information necessary to resolve the threats and recover the species need not be known at the time of listing. Specific recovery criteria, which define when a species may be downlisted or delisted, are developed for each species during the recovery planning process and are published in the recovery plan for the species.

Issue 18: One commenter repeated a comment the Service made that the Carson wandering skipper is rare in and of itself. The commenter states that "rare does not mean endangered".

Our Response: The commenter is correct. Just because a species is rare does not mean it should automatically be listed under the Act. However, if a rare species is determined to be threatened or endangered based on the listing factors in section 4 (a)(1) of the Act using the best scientific and commercial data available, it should be considered for listing.

Issue 19: One commenter stated that there had been insufficient time to gather information, research it, and comment on it by the public.

Our Response: A 60-day comment period was opened when the proposed rule was published. An additional 30-day comment was opened to provide opportunity for further public input. In addition, a public informational meeting was held to answer questions regarding the species and the proposed rule. We believe that the 60-day and 30-day comment periods and the informational meeting provided adequate opportunity for the public to gather available information and comment on the proposed listing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we have sought the expert opinions of four appropriate and independent specialists regarding our proposal to list the Carson wandering skipper. The purpose of these reviews is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We sent the peer reviewers copies of the emergency and proposed rules immediately following their publication in the **Federal Register**. Three of the four reviewers returned comments during the comment period. Two of the three reviewers supported our assumptions and conclusions as well as our decision to list the Carson wandering skipper as endangered, while a third reviewer was neutral in his opinion of our proposed action. We have incorporated their comments into this final determination.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act (16 U.S.C. 1531 *et seq.*) set forth the procedures for adding species to the Federal lists. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Carson wandering skipper are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The primary cause of the decline of the Carson wandering skipper is loss of salt grass, nectar sources, and wetland habitats from human activities. Threats include habitat fragmentation, degradation, and loss due to urban and residential development, wetland habitat modification, agricultural practices (such as excessive livestock grazing), nonnative plant invasion, gas and geothermal development, road construction, water exportation projects with their subsequent change in water table levels and plant composition, and recreation. Threats at each known or historic site are discussed below.

Carson City Site

Habitat at the original Carson City site has been greatly modified over time, and most of it was destroyed by construction of a shopping center (Brussard *et al.* 1999). Several years later, an extension of this population was discovered north of the original location (Brussard *et al.* 1999). The current site includes about 10 ha (24.7 ac) of known and potential Carson wandering skipper habitat (P. Frost, *in litt.*, 1998). Collections were made at this site from the late 1960s through the early 1990s, although population numbers were small (Austin and Emmel 1998; Brussard *et al.* 1999). In the 1990s, additional urban development further reduced the remaining habitat, and the site is now completely surrounded by development. Adult Carson wandering skippers have not been observed at this location since 1997.

The Carson wandering skipper has likely been extirpated from the Carson City site due to development and habitat changes resulting from drainage manipulations for residential and commercial development (Brussard *et al.* 1999). Adjacent lands surrounding this site will continue to be developed for commercial and residential use.

The remaining habitat at the type locality will also be fragmented or destroyed by construction of a freeway bypass and associated flood control facilities being planned by the Nevada Department of Transportation (NDOT). The bypass was approved and the right-of-way corridor was purchased several years ago. At the time, this was the only known site occupied by the Carson wandering skipper. The only suitable nectar source available during the

Carson wandering skipper's flight season at this site was the native mustard, *Thelypodium crispum* (Brussard *et al.* 1999). Construction of the bypass began in 2000 and impacts to Carson wandering skipper habitat will likely occur in 2002 (Julie Ervin-Holoubek, NDOT, pers. comm., 2001). The alignment will impact approximately 2.4 ha (6 ac) of previously occupied habitat, and about 8 ha (20 ac) of the potential habitat remaining at both areas north and south of U.S. 50 (P. Frost, *in litt.*, 1998). According to Brussard (2000), this will leave inadequate habitat to support a restored population.

Habitat loss and modifications of the Carson City site have also occurred due to the construction of a wetland mitigation area in the early 1990s to mitigate for wetlands lost approximately 0.8 km (0.5 mi) southwest of this site. The U.S. Army Corps of Engineers (Corps) issued a section 404 permit on March 10, 1993, for a residential housing and golf course project, impacting about 2 ha (5 ac) of wetlands. Mitigation for these impacts involved the creation of 9 ha (22 ac) of intermittent, seasonal, and semi-permanent wetlands adjacent to the existing wetlands (Robert W. Junell, Corps, *in litt.*, to Charles L. Macquarie, Lumos and Associates, Inc. 1993; Lumos and Associates, Inc. 1993). To date, this mitigation site has not met its objectives to provide high-value urban wetlands and enhance wetland function (Nancy Kang, Corps, *in litt.*, to Dwight Millard, J.F. Bawden and Stanton Park Development 2001).

In addition, this site is used for recreation by walkers and mountain and dirt bikers in the remaining open area.

Washoe County Site

Threats at the Washoe County site include excessive livestock grazing and trampling, residential development, increased potential recreational use, such as off-road vehicles (ORV), a proposed water exportation project, and potential impacts associated with pesticide drift.

Recent grazing practices on BLM-administered lands at the Washoe County site allowed for a November to March grazing season. Although this season of use avoided impacts to adult Carson wandering skipper nectar sources and impacts to eggs, larvae, and pupae during the spring and summer, high livestock densities can cause larval mortality by trampling larvae that hibernate during the winter in salt grass. On adjacent private lands, cattle densities and season of use are not regulated, and cattle have access to areas occupied by nectar sources during the Carson wandering skipper flight season. Livestock can trample the salt grass and nectar sources and also cause direct mortality of eggs, pupae, or feeding larvae. While the level of grazing on salt grass has not been measured at this site, cattle readily utilize this dominant forage species (Walt Devaurs, BLM, pers. comm., 2001), possibly competing with larval needs.

An assessment of the springs located on the BLM portion of this site occurred in 2001 (Daniel Jacquet, BLM, *in litt.*, 2002). Cattle use of this area resulted in the springs being determined "Functional at Risk" and "Non-functional," indicating that the springs were not in good condition. As a result of this determination, livestock grazing will be excluded from this area for 3 years or through the 2005 growing season to rehabilitate the area. This exclusion should improve the abundance and quality of nectar sources and salt grass habitat for the Carson wandering skipper. Grazing may be allowed after this 3-year period if it is determined that improvement to the springs has occurred. While long-term monitoring data of salt grass are lacking, transects established in March 2002, indicate overall utilization was in the "heavy to severe range." BLM will monitor the site annually for the 3-year period for improvement in growth of vegetation.

Residential development is occurring in the area surrounding the Washoe County site. Increases in domestic wells could impact the water table in the area, resulting in changes to the salt grass community. As this area becomes more populated, fragmentation and degradation of the Carson wandering skipper's habitat is expected to increase through development and recreational activities such as ORV use. Also, use of public lands for recreation will likely increase as the area becomes more developed.

The Nevada State Engineer's Office approved change-in-use applications (agricultural to municipal and industrial use) (Hugh Ricci, Nevada Department of Conservation and Natural Resources, Division of Water Resources, *in litt.*, 2001) for a private landowner plan to export water from this valley and import it to a neighboring valley. This project will involve the collection of up to 358 hectare-meters (ha-m) (2,900 acre-feet (ac-ft)) per year of surface and ground water through a system of ditches, natural channels, diversion structures, collection facilities, and recovery wells. The recovered water will be treated and exported via pipeline to the neighboring valley (Stantec Consulting, Inc. 2000). Implementation of this project, or a similar one, could result in the lowering of the water table in the valley and result in adverse changes to the salt grass community upon which the Carson wandering skipper at this site depends. In addition, the construction of facilities could result in direct impacts to Carson wandering skipper habitat.

Another potential threat is pesticide drift from alfalfa fields located near to the occupied nectar site. Pesticides are used to control pests such as aphids, cutworms, grasshoppers, and mites (Carpenter *et al.* 1998.). Pesticide drift from these fields to the nectar site could eliminate a large part of the Carson wandering skipper population (Brussard 2000).

Lassen County Site

Threats at the Lassen County site include the invasion of the nonnative plant species tall whitetop, proposed gas and geothermal development, urban development, and the potential for excessive livestock grazing and trampling. A water development project, which could affect the ground water table, is also of concern.

Tall whitetop, which was first noted in 2000, has encroached onto the nectar site on the public/private property and has become established in patches of slender birds-foot trefoil, this site's nectar source. Tall whitetop is a perennial native to Europe and Asia which grows in disturbed sites, wet areas, ditches, roadsides, and cropland. Spreading roots and numerous seeds make this plant difficult to control (Stoddard *et al.* 1996). No further advancement of tall whitetop into the nectar site was observed during visits in 2001 (V. Rivers, pers. comm., 2001), but it appears to have spread in 2002 (V. Rivers, pers. comm., 2002). The surrounding countryside, including both public and private lands, is infested (Howard 2000). Failure to control this invasive species could quickly result in the loss of this small nectar source and the immediate salt grass area (Young *et al.* 1998). Depending on the control methods used (herbicide treatments or mechanical means) and timing, efforts to control this plant species could also impact the Carson wandering skipper population and its habitat at this site. To date, the Carson wandering skipper has not been observed nectaring on tall whitetop.

A permit for proposed gas and geothermal development has been recently extended by the Lassen County Planning Commission (Albaugh 2002). The permit allows exploratory drilling

for 14 hydrocarbon wells and one geothermal water test well near the occupied site. The Carson wandering skipper has been associated with geothermal areas and the resulting ground and hydrologic disturbances caused by the exploratory drilling may impact the subspecies and its habitat.

Construction of the Federal Correctional Institution, and its associated water supply and wastewater treatment facilities for the Institution and adjacent community, could impact Carson wandering skipper habitat. The increased water needs (approximately 757 million liters (200 million gallons) per year) (The Louis Berger Group, Inc. 2002) for the project could impact Carson wandering skipper habitat if the ground water table is lowered and salt grass habitat is negatively affected. The Federal Bureau of Prisons is currently consulting with us on the potential impacts of this project to the Carson wandering skipper.

Cattle have access to the Lassen County site at the private/public lands location, however, it is unknown at this time what type of management is being implemented. Like the Washoe County site, season of use and densities of livestock can affect the availability of nectar sources for adults and salt grass for larvae. Trampling of larvae is also possible. In addition, the small size of this site makes it more susceptible to adverse impacts.

Additional potential threats include attempts to export water from the area to other locations. In 1991, the Nevada State Engineer approved exportation of 1,604 ha-m (13,000 ac-ft) of groundwater per year from Honey Lake Valley, located in Lassen and Washoe counties to Lemmon and Spanish Springs Valleys, Washoe County. In 1993, a draft Bedell Flat Pipelines Rights-of-Way, Washoe County, Nevada Environmental Impact Statement was prepared (BLM 1993). Further work on the Bedell Flats Project by BLM was suspended by the Secretary of the Interior (Secretary) in 1994 due to concerns with groundwater modeling, groundwater contamination, and potential impacts to Pyramid Lake (Bruce Babbitt, U.S. Department of the Interior, *in litt.*, 1994). The project has since been modified by new water rights holders, and there are future plans, not yet approved, to potentially export 987 ha-m (8,000 ac-ft) of groundwater annually from Honey Lake Valley to the North Valleys (Donald Pattalock, Vidler Water Company, pers. comm., 2002). If this project, or a similar project, is implemented, lowering of the water table could occur and result in adverse changes to the salt grass community upon which the Carson wandering skipper depends.

B. Over-Utilization for Commercial, Recreational, Scientific, or Educational Purposes

Rare butterflies and moths are highly prized by collectors, and an international trade exists for insect specimens for both live and decorative markets, as well as the specialist trade that supplies hobbyists, collectors, and researchers (Morris *et al.* 1991; Williams 1996). The specialist trade differs from both the live and decorative market in that it concentrates on rare and threatened species (U.S. Department of Justice 1993). In general, the rarer the species, the more valuable it is, and prices may exceed US $2,000 for rare specimens (Morris *et al.* 1991).

Simply identifying a species as rare can result in an increase in commercial or scientific interest, both legal and illegal, which can threaten the species through unauthorized and uncontrolled collection for scientific and/or commercial purposes. Even limited collection from small populations can have adverse impacts on their viability.

While there have been no studies on the impact of the removal of individuals from natural populations of this subspecies, it is possible that the Carson wandering skipper has been adversely affected. At the Carson City site, individuals of the Carson wandering skipper are known to have been collected for personal butterfly collections during the late 1960s until the early 1990s, though populations were small (Austin and Emmel 1998; Brussard *et al.* 1999). From 1965 to 1989, at least 86 males and 90 females were collected during 7 different years by various collectors (Austin and Emmel 1998). During this time, this was the only known site at which Carson wandering skipper occurred. The Carson wandering skipper is now believed to have been extirpated from the site. While habitat degradation and loss have occurred at this site, collecting may have also contributed to this extirpation.

In 1998, the Carson wandering skipper was collected at the Washoe County and Lassen County sites by UNR researchers for genetic analysis. Only males were collected, and these were taken late in the flight season to minimize impacts to the population (Brussard *et al.* 1999).

The two known populations of Carson wandering skipper could face strong pressure from collectors. Since the nectar sites occur along public roadsides, the subspecies is easily accessible, and the limited number and distribution of these populations make this subspecies vulnerable to collectors. Even limited collection from the small populations of Carson wandering skipper could have deleterious effects on its viability and lead to the eventual extinction of this subspecies.

C. Disease or Predation

Disease is not known to be a factor affecting this subspecies at this time.

Predation by species, such as birds or insects, on eggs, larvae, pupae, or adult Carson wandering skippers is likely, but it is unknown how this may affect the population's viability.

D. The Inadequacy of Existing Regulatory Mechanisms

The Carson wandering skipper occurs on Federal, State, and private lands. Existing regulatory mechanisms do not fully protect this subspecies or its habitat on these lands. Existing regulatory mechanisms that may provide some protection for the Carson wandering skipper include: (1) Federal laws and regulations including the Clean Water Act (CWA); and (2) State laws including the California Environmental Quality Act (CEQA).

Federal Laws and Regulations

The Carson wandering skipper appears to be closely associated with wetland habitats. Current regulatory mechanisms, such as section 404 of the CWA, have not precluded development and alteration of these habitats. Section 404 regulations require that applicants obtain a permit from the Corps for projects that place fill material into waters of the United States. Whether an individual or nationwide permit may be required depends upon the activity and the amount of fill proposed. Regulatory mechanisms addressing alterations to stream channels, riparian areas, springs and seeps from various activities such as agricultural activities, development, and road construction have been inadequate to protect the Carson wandering skipper habitat in Nevada and California.

Some protection is afforded to the Carson wandering skipper on lands administered by the BLM at the Washoe County site due to their commitment to assist in the conservation of this subspecies through a Cooperative Agreement (CA) signed in 1999. This CA was signed by the Service, NDOT, the Federal Highway Administration (FHA), and BLM in October 1999. It was developed to outline the actions necessary for the conservation and management of the Carson wandering skipper. Development of a conservation plan was one activity outlined by the

CA. UNR was contracted by NDOT, and a draft plan was completed in 2000. Additional biological information and agency commitment are needed before this plan can be finalized. Since signing the CA in 1999, BLM has designated 98 ha (243 ac) of their lands at the Washoe County site as an Area of Critical Environmental Concern. This designation allows BLM discretion in determining actions which can occur within the area (BLM 2001). However, these protections only cover a portion of Carson wandering skipper habitat in the area and are insufficient to protect the subspecies throughout the site.

Publication of the emergency rule on November 29, 2001, provides protection for the Carson wandering skipper until July 29, 2002. Until publication of the emergency rule, we considered the Carson wandering skipper a candidate species; a candidate species designation carries no formal Federal protection under the Act.

State Laws and Regulations

Although California State laws may provide a measure of protection to the subspecies, these laws are not adequate to protect the Carson wandering skipper and ensure its long-term survival. CEQA pertains to projects on non-Federal lands and requires that a project proponent publicly disclose the potential environmental impacts of proposed projects. Section 15065 of the CEQA Guidelines requires a "finding of significance" if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal" including those that are eligible for listing under the California Endangered Species Act. However, under CEQA, where overriding social and economic considerations can be demonstrated, a project may proceed despite significant adverse impacts to a species.

The California Natural Diversity Data Base (CNDDB) classifies the Carson wandering skipper as a S1S3 species, which identifies this subspecies as one that is extremely endangered with a restricted range within California (CNDDB 2001). This designation provides no legal protection in California. The CDFG is unable to protect insects under its current regulations (Pete Bontadelli, CDFG, *in litt.*, 1990), since the California Endangered Species Act does not allow for the listing of insect species.

In Nevada, there are no local or State regulations protecting the Carson wandering skipper on State or non-Federal lands. The Nevada Natural Heritage Program ranks the Carson wandering skipper as S1, meaning it is considered critically imperiled in the State of Nevada due to extreme rarity, imminent threats, or biological factors (Nevada Natural Heritage Program 2000). This designation provides no legal protection in Nevada. The Nevada Division of Wildlife is unable to protect insects under its current regulations (Nevada Revised Statutes 1999).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The apparent low numbers of the Carson wandering skipper make it vulnerable to risks associated with small, restricted populations. The elements of risk that are amplified in very small populations include: (1) Random demographic effects (*e.g.*, skewed sex ratios, high death rates or low birth rates); (2) the effects of genetic drift (random fluctuations in gene frequencies) and inbreeding (mating among close relatives); and (3) deterioration in environmental quality (Gilpin and Soulé 1986). Genetic drift and inbreeding may lead to reductions in the ability of individuals to survive and reproduce (*i.e.*, reductions in fitness) in small populations. In addition, reduced genetic variation in small populations may make any species less able to adapt to future environmental changes. Also, having only two locations and restricted habitat makes the Carson wandering skipper susceptible to extinction or extirpation from all or a portion of its range due to random events such as fire, flood, or drought (Shaffer 1981, 1987; Primack 1998).

In addition, the loss of habitat compromises the ability of the Carson wandering skipper to disperse. Populations are isolated with no opportunity to migrate or recolonize if conditions become unfavorable.

A wetlands mitigation bank is being established near the Lassen County site. It is located adjacent to existing CDFG lands. This parcel of land has been recently grazed and farmed. The bank is intended to create a minimum of 37 ha (92 ac) of emergent wetlands at this site to mitigate for wetland losses in sagebrush scrub and juniper woodland habitats due to road construction in Lassen and Modoc counties and the eastern portion of Plumas County. This bank will be managed by CDFG (California Department of Transportation (CalTrans) and CDFG 1998). Depending upon the location of constructed wetlands, loss of potential Carson wandering skipper habitat could occur. CalTrans, representing the FHA, is currently consulting with us regarding potential impacts to the subspecies with regard to this wetland mitigation bank project.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Carson wandering skipper in determining to make this rule final. We are concerned about the Carson wandering skipper because of the extremely small number of populations, habitat fragmentation, and significant decrease in its historical range in Nevada and California. This subspecies is threatened by the following factors: habitat destruction, degradation, and fragmentation due to urban and residential development, wetland habitat modification, agricultural uses (such as excessive livestock grazing), nonnative plant invasion, gas and geothermal development, road construction and recreation. Other threats include impacts from collecting, livestock trampling, pesticide drift, and inadequate regulatory mechanisms. Proposed water exportation projects pose an additional threat. These projects could severely impact Carson wandering skipper habitat by lowering the water table, and degrading or eliminating the salt grass community upon which the Carson wandering skipper depends.

This subspecies is also vulnerable to chance demographic, genetic, and environmental events, to which small populations are particularly vulnerable. The combination of only two populations, small range, and restricted habitat makes the subspecies highly susceptible to extinction or extirpation from a significant portion of its range due to random events such as fire, drought, disease, or other occurrences (Shaffer 1981, 1987; Meffe and Carroll 1994).

Because the Carson wandering skipper occurs at only two known locations, and because both locations are subject to various immediate, ongoing, and future threats as outlined above, we find that the Carson wandering skipper is in imminent danger of extinction throughout all or a significant portion of its range and, therefore, meets the Act's definition of endangered and warrants protection under the Act. Threatened status would not accurately reflect the diminished status and the threats to this subspecies.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the— (i) specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological

features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform the required analysis of impacts of the designation is lacking, or if the biological needs of the species are not sufficiently well known to allow identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific data available after considering economic and other relevant impacts of designating a particular area as critical habitat. We may exclude any area from critical habitat if we determine that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species.

We find that critical habitat is not determinable for the Carson wandering skipper. In the proposed rule, we specifically solicited information on potential critical habitat, biological information, and information that would aid our prudency analysis. We received no comments regarding specific physical or biological features essential for the Carson wandering skipper which provided information that added to our ability to determine critical habitat. In addition, the extent of habitat required for recovery of the Carson wandering skipper has not been identified. This information is considered essential for determining critical habitat. We are also concerned that the designation of critical habitat could increase the degree of threat to the subspecies through collecting or from intentional habitat degradation. Because information relevant to the specific biological needs of the Carson wandering skipper is not currently available, we are unable to adequately perform the analysis required to designate critical habitat and therefore, we find that critical habitat for the Carson wandering skipper is not determinable at this time. When a "not determinable" finding is made, we must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent.

We will protect the Carson wandering skipper and its habitat through section 7 consultations to determine whether Federal actions are likely to jeopardize the continued existence of the subspecies, through the recovery process, through enforcement of take prohibitions under section 9 of the Act, and through the section 10 process for activities on non-Federal lands with no Federal nexus.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, development of recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and encourages conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that the Service carry out recovery actions for all listed species. The protection required of Federal agencies, and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agencies whose actions may require consultation include, but are not limited to, the BLM, Corps, FHA, Natural Resources Conservation Service, U.S. Department of the Army, and the Federal Bureau of Prisons. Federal agencies with management responsibility for the Carson wandering skipper also include the Service, in relation to Partners for Fish and Wildlife projects and issuance of section 10(a)(1)(B) permits for habitat conservation plans, and other programs. Activities on BLM lands could include livestock grazing and associated management activities, sale, exchange, or lease of Federal land containing suitable habitat, recreational activities, or issuance of right-of-way permits for various projects across lands they administer. Occurrences of this subspecies could potentially be affected by projects requiring a permit from the Corps under section 404 of the CWA. The Corps is required to consult on permit applications they receive for projects that may affect listed species. Highway construction and maintenance projects that receive funding from the FHA would be subject to review under section 7 of the Act. Activities authorized under the Natural Resources Conservation Service's Emergency Watershed Protection program, such as fire rehabilitation projects, and activities authorized by the U.S. Department of the Army and the Federal Bureau of Prisons would also be subject to section 7 review. In addition, activities that are authorized, funded, or administered by Federal agencies on non-Federal lands will be subject to section 7 review.

We believe that protection and recovery of the Carson wandering skipper will require reduction of the threats from habitat destruction, degradation, and loss of salt grass and wetland habitats due to urban and residential development, agricultural practices (such as excessive livestock grazing), nonnative plant invasion, gas and geothermal development, and road construction. Threats from collection, livestock trampling, water exportation projects, pesticide drift, and recreation must also be reduced. These threats should be considered when management actions are taken in habitats currently and potentially occupied by the Carson wandering skipper, and areas deemed important for dispersal, and connectivity or corridors between known locations of this subspecies. Monitoring should also be undertaken for any management actions or scientific investigations designed to address these threats or their impacts.

Listing the Carson wandering skipper as endangered will provide for the

development of a recovery plan for the subspecies. Such a plan will bring together Federal, State, and regional agency efforts for conservation of the subspecies. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities, assign responsibilities, and estimate the costs of various tasks necessary to achieve conservation and survival of the subspecies. Additionally, pursuant to section 6 of the Act, we will be able to grant funds to the States of Nevada and California for management actions promoting the protection and recovery of this subspecies.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. All prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within the subspecies' range. With respect to the Carson wandering skipper, based upon the best available information, we believe the following actions would not be likely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, including interstate transport and import or export from the United States, involving no commercial activity, of dead Carson wandering skippers that were collected prior to the November 29, 2001 date of publication of the emergency listing rule in the **Federal Register**;

(2) Any actions that may result in take of the Carson wandering skipper that are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with the consultation requirements for listed species pursuant to section 7 of the Act;

(3) Any action taken for scientific research carried out under a recovery permit issued by the Service pursuant to section 10(a)(1)(A) of the Act; and

(4) Land actions or management carried out under a habitat conservation plan approved by the Service pursuant to section 10(a)(1)(B) of the Act, or an approved conservation agreement.

Activities that we believe would potentially result in a violation of section 9 include, but are not limited to:

(1) Unauthorized possession, handling, or collecting of the Carson wandering skipper. Research efforts involving these activities will require a permit under section 10(a)(1)(A) of the Act;

(2) Possession, sale, delivery, carriage, transportation, or shipment of illegally taken Carson wandering skipper specimens;

(3) Activities authorized, funded, or carried out by Federal agencies that may result in take of the Carson wandering skipper when such activities are not conducted in accordance with the consultation requirements for listed species under section 7 of the Act; and

(4) Activities (*e.g.*, habitat conversion, urban and residential development, gas and geothermal exploration and development, excessive livestock grazing, farming, road and trail construction, water development, recreation, and unauthorized application of herbicides and pesticides in violation of label restrictions) that directly or indirectly result in the death or injury of adult Carson wandering skippers, or their pupae, larvae or eggs, or that modify Carson wandering skipper habitat and significantly affect their essential behavioral patterns including breeding, foraging, sheltering, or other life functions that result in death or physical injuries to skippers. Otherwise lawful activities that incidentally take Carson wandering skipper specimens, but have no Federal nexus, will require a permit under section 10(a)(1)(B) of the Act.

Questions regarding whether specific activities risk violating section 9 should be directed to the Field Supervisor of the Nevada Fish and Wildlife Office or the Field Supervisor of the Sacramento Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife, and general inquiries regarding prohibitions and issuance of permits under the Act, may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Reasons for Effective Date

We published the emergency rule for this subspecies on November 29, 2001. The 240-day period expires on July 29, 2002. This final rule must be published on or before this date to prevent Federal protection for the Carson wandering skipper from expiring. Because of this, we find that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Information collections associated with endangered species permits are covered by an existing OMB approval and are assigned control number 1018–0093 expires March 31, 2004.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when

undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited herein is available upon request from the Nevada Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this final rule is Marcy Haworth, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), add the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
Skipper, Carson wandering.	*Pseudocopaeodes eunus obscurus.*	U.S.A. (CA, NV) ...	U.S.A., (Lassen County, CA; Washoe County, NV).	E	730	NA	NA

Dated: July 26, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–20007 Filed 8–6–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 080202A]

Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 2, 2002, until 1200 hrs, A.l.t., September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002) for the third season, the period June 30, 2002, through September 1, 2002, as 400 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastes* and *Sebastolobus*, deep water flatfish, rex sole, arrowtooth flounder, and sablefish.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that, because the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached, the need to immediately implement this action constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). These procedures are unnecessary and contrary to the public interest because of the need to implement these measures in a timely fashion because the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the deep-water species fishery in the

GOA has been reached. This constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 2, 2002.

Valerie Chambers,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19974 Filed 8–2–02; 2:01 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 080202B]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker and Rougheye Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of shortraker and rougheye rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of shortraker and rougheye rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the shortraker and rougheye rockfish 2002 total allowable catch (TAC) in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 2, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC allocation of shortraker and rougheye rockfish for the Western Regulatory Area was established as 220 metric tons by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 6, 2002).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the shortraker and rougheye rockfish TAC in the Western Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of shortraker and rougheye rockfish in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 2, 2002.

Valerie Chambers,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19975 Filed 8–2–02; 2:01 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 152
Wednesday, August 7, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104, 105 and 114

[Notice 2002–13]

Electioneering Communications

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comment on proposed rules regarding electioneering communications, which are certain broadcast, cable, and satellite communications that refer to a clearly identified Federal candidate within 60 days of a general election or within 30 days of a primary election for Federal office. The proposed rules implement the Bipartisan Campaign Reform Act of 2002 ("BCRA"), which adds to the Federal Election Campaign Act ("FECA" or "the Act") new provisions regarding "electioneering communications." The proposed rules would require any person who makes disbursements for electioneering communications in excess of $10,000 in a calendar year to file a disclosure statement within 24 hours of the time the disbursements exceed $10,000. Additionally, BCRA prohibits incorporated entities and labor organizations from making electioneering communications. The proposed rules would implement this prohibition. Please note that the draft rules that follow do not represent a final decision by the Commission on the issues presented by this rulemaking. In fact, some of the draft rules are offered as alternatives. Regardless, the Commission seeks comments on all of the issues that are raised in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: The Commission will hold a hearing on these proposed rules on August 28–29, 2002, at 9:30 a.m. Commenters wishing to testify at the hearing must submit their request to testify along with their written or electronic comments by August 21, 2002. Commenters who do not wish to testify must submit their written or electronic comments by August 29, 2002.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *Electioneering@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and the postal service address of the commenter will not be considered. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of each comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E. St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh, Jr., Acting Special Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This is one of a series of Notices of Proposed Rulemakings ("NPRM") the Commission will publish over the next several months in order to meet the rulemaking deadlines set out in BCRA.

This NPRM addresses electioneering communications, that is, certain broadcast, cable, or satellite communications that refer to a clearly identified candidate for Federal election that are made within 60 days of a general election or within 30 days of a primary election. Other rulemakings have addressed or will address: (1) Non-Federal funds or "soft money" promulgated on June 22, 2002 (67 FR 49063 (July 29, 2002)); (2) coordinated and independent expenditures;[1] (3) the so-called "millionaires' amendment," which increases contribution limits for congressional candidates facing self-financed candidates on a sliding scale, based on the amount of personal funds the opponent contributes to his or her campaign; (4) new or amended contribution limitations and prohibitions; (5) other new and amended provisions, including inaugural committees, fraudulent solicitations, disclaimers, personal use of campaign funds, and civil penalties; (6) reporting; and (7) reorganization of "contribution" and "expenditure" definitions. The reporting NPRM will contain the reporting rules proposed in several of the other NPRMs and will restructure 11 CFR part 104 to make the reporting rules more user-friendly. The deadline for the promulgation of the remaining rules (including those proposed in this NPRM) is 270 days after the date of BCRA's enactment, or December 22, 2002.

What Is an Electioneering Communication?

I. Introduction

BCRA at 2 U.S.C. 434(f)(3) defines a new term, called "electioneering communications." This term includes broadcast, cable, or satellite communications: (1) That refer to a clearly identified Federal candidate; (2) that are transmitted within certain time periods before a primary or general election; and (3) that are "targeted to the relevant electorate," that is, the relevant congressional district or State that candidates for the U.S. House of Representatives or the U.S. Senate seek to represent. Communications that refer to candidates for President or Vice-President do not need to be targeted to be electioneering communications. Those paying for the communications must meet certain disclosure requirements, and they cannot use funds from national banks, corporations, foreign nationals,[2] or labor organizations to pay for the communications. *See* 2 U.S.C.

[1] That future NPRM will also address electioneering communications that are coordinated with candidate and political party committees.

[2] The ban on foreign national funds will be addressed in a separate rulemaking.

441b(b)(2) and 441e(a)(2), as amended by BCRA section 203(b) and 303.

BCRA's sponsors have explained that these new "electioneering communications" provisions, set out at new 2 U.S.C. 434(f) and 441b(b)(2), are designed to ensure that campaign advertisements are paid for with funds subject to the prohibitions and limitations of campaign finance laws. According to the sponsors, putative "issue ads" have been used to circumvent FECA's prohibition on the use of union and corporate treasury funds in connection with Federal elections. In the sponsors' view, this is accomplished by creating and airing advertisements that avoid the specific language that the Supreme Court has said expressly advocates the election or defeat of a candidate. *See* 148 Cong. Rec. S2140–2141 (daily ed. Mar. 20, 2002) (statement of Sen. McCain); *see also Buckley* v. *Valeo*, 424 U.S. 1, 44, fn. 52 (1976); 11 CFR 100.22.[3]

BCRA's sponsors cited various studies and investigations that they say show that the express advocacy test does not distinguish genuine issue ads from campaign ads. 148 Cong. Reg. at S2140–2141 (statement of Sen. McCain). For example, Senator McCain cited a study by the Brennan Center for Justice, *Buying Time 2000*, that found that "97 percent of the electioneering ads reviewed" did not use the words and phrases cited by the *Buckley* Court, and that more than 99 percent of the "group-sponsored soft money ads" studied were in fact campaign ads. *Id.* at S2141. Senators Snowe and Jeffords stated that, because the electioneering communications provisions focus on the key elements of when, how, and to whom a communication is made, rather than relying on the express advocacy test or the intent of the advertiser, they are a clearer, more accurate test of whether an advertisement is campaign-related. *Id.* at S2117–18 (statement of Sen. Jeffords); S2135–37 (statement of Sen. Snowe).

[3] "Express advocacy" was first defined by the Supreme Court as "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Buckley* at 44, fn. 52 (1976). The Supreme Court created the express advocacy test to save the statutory phrase "for the purpose of * * * influencing"—the "critical phrase" within the definitions of "expenditure" and "contribution" at 2 U.S.C. 431(8) and (9)—from unconstitutional vagueness while furthering the goal of Congress "to insure both the reality and the appearance of the purity and openess of the federal election process." *Buckley* v. *Valeo*, 424 U.S. 1, 77–78 (1976). The Court's express advocacy test marked the dividing line between advocacy regulated by the FECA and the advocacy of "issues of public interest," both of which are constitutionally protected , *Id.* at 42, 44, 80.

Accordingly, the proposed rules would add a new definition for "electioneering communication," to be located at proposed 11 CFR 100.29. The new definition would be added to current 11 CFR part 100 because it has general applicability to Title 11 of the *Code of Federal Regulations*.

II. Alternative Definition

BCRA at 2 U.S.C. 434(f)(3)(A)(ii) provides an alternative definition of "electioneering communication," which would take effect in the event the definition in section 434(f)(3)(A)(i) is held to be constitutionally insufficient "by final judicial decision." The alternative definition of "electioneering communication" is "any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate." *Id.* The Commission is not proposing regulations to implement this alternative statutory definition at this time. Proposing two definitions for the same term, one to take effect only after the other may be held invalid, could be confusing to those who are affected by this new law. Additionally, any court decision regarding 2 U.S.C. 434(f)(3)(A) may provide guidance as to the appropriate standard. Consequently, the Commission intends to promulgate regulations to implement this alternative definition when and if it becomes necessary to do so. Nevertheless, in the alternative, the Commission seeks comment as to whether it should promulgate an alternative definition now. If so, should this definition simply reiterate the wording of the statute, or should it provide additional guidance as to what types of communications promote, support, attack, or oppose a candidate and suggest no plausible meaning other than an exhortation to vote for or against a candidate?

III. Definition of "Electioneering Communication"

A. Overview

BCRA amends 2 U.S.C. 434 by adding a new term, "electioneering communication," at section 434(f)(3). BCRA defines "electioneering communication" as a broadcast, cable, or satellite communication that: (1) Refers to a clearly identified candidate for Federal office; (2) is made within 60 days before a general, special, or runoff election, or within 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; (3) does not fall within any of the exceptions to the electioneering communication specified in the statute; and (4) in the case of a candidate for an office other than President or Vice-President, is targeted to the relevant electorate. BCRA also provides exceptions to the definition, and authorizes the Commission to approve additional exceptions.

The proposed definition of electioneering communication at proposed 11 CFR 100.29(a) largely tracks the language in BCRA. However, the word "made" as in "made within 60 days" would be changed to "publicly distributed" to clarify that it refers to the broadcasting or airing of the communication rather than the making of a disbursement for an electioneering communication. The proposed definition would also clarify that, in the case of a candidate for nomination for President or Vice-President, the 30-day window applies in those States that will hold a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate for President or Vice-President, during that time.

The Commission's current rules at 11 CFR 100.2 contain definitions of "general election," "primary election," "runoff election," "caucus or convention,"and "special election." Under 11 CFR 100.2(f), a "special election" could be a primary, general, or runoff election. BCRA, however, groups "special election" with general and runoff elections for purposes of an electioneering communication. Proposed new paragraph 100.29(a)(2) would clarify that, for purposes of section 100.29 only, "special elections" and "runoff elections" would be considered primary elections, if held to nominate a candidate; and general elections, if held to elect a candidate. Comments are sought on this approach.

B. Definition of "Refers to a Clearly Identified Candidate"

Proposed 11 CFR 100.29(b) would set out definitions of the terms used in 11 CFR 100.29(a). The first definition, at proposed 11 CFR 100.29(b)(1), defines the term "refers to a clearly identified candidate." This term is already defined in the Commission's rules at 11 CFR 100.17, which states that "clearly identified" means the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate

is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia." The proposed rule at 11 CFR 100.29(b) would track the language of the current rule in 11 CFR 100.17. This approach appears to be consistent with legislative intent. *See* 148 Cong. Rec. S2144 (daily ed. Mar. 20, 2002) (statement of Sen. Feingold indicating that a communication "refers to a clearly identified candidate" if it "mentions, identifies, cites, or directs the public to the candidate's name, photograph, drawing or otherwise makes an 'unambiguous reference' to the candidate's identity"). Please note that the definition would not be based on the intent or purpose of the person making the communication.

C. Definition of "Broadcast, Cable or Satellite Communication"

Proposed 11 CFR 100.29(b)(2) would define "broadcast, cable, or satellite communication" to mean a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. The term "distribute" reflects the legislation's apparent focus on the means of dissemination rather than on the means of receipt.

The definition would exclude "webcasts" or other communications that are distributed only over the Internet, but would include television or radio communications that are simultaneously webcast over the Internet, or archived for listening over the Internet. Internet subscribers would not be included in the calculation of how many persons a communication can reach in a particular district or state. The Commission seeks comment on whether this is an appropriate reading of the statute.

The legislative history, which is discussed below, makes it clear that this regulation should be limited to television and radio. The Commission seeks comment to confirm that this interpretation is correct. All other types of communications, such as print media, billboards, telephones, and the Internet, would therefore, *not* be considered electioneering communications. Consequently, proposed 11 CFR 100.29(c)(1) would specifically list these as exceptions to the definition.

The Commission also seeks comment on whether it would also be appropriate to exempt some types of television and radio broadcasting from the definition of "broadcast, radio or satellite." The Commission seeks comment on whether communications transmitted by digital audio radio satellite would be considered electioneering communications. Although newly added section 304(f)(3)(a) of BCRA seems to include communications by satellite without limitation as to the type of transmission, section 316(c)(6)(B) suggests that the term is limited to "satellite television service." Proposed 11 CFR 100.29(b) would exempt Low Power FM Radio (LPFM), Low Power Television (LPTV), and citizens band (CB) radio. Are there other types of television and broadcasting that should also be exempt? How should "web TV" (in which viewers access the Internet using television sets) be treated for purposes of these rules?

D. Definition of "Targeted to the Relevant Electorate"

Proposed 11 CFR 100.29(b)(3) would track the language of BCRA at 2 U.S.C. 434(f)(3)(C) in defining "targeted to the relevant electorate" as a communication that can be received by 50,000 or more persons: In the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the U.S. House of Representatives; or in the State the candidate seeks to represent, in the case of a candidate for the U.S. Senate.

Please note that the definition of "targeted to the relevant electorate" would include communications that can be received beyond the relevant geographical area. A communication that can also be received by large numbers of persons outside the relevant district or State would still be considered a targeted communication, as long as 50,000 persons in the relevant area could also receive it. Conversely, for example, an electioneering communication would not include a communication that reaches fewer than 50,000 persons in the State or district where the clearly identified candidate is running, even if at the same time it also reaches 50,000 or more persons in a State or district where the clearly identified candidate is not running.

Regarding whether a communication reaches 50,000 or more persons, the Commission seeks comment as to how to measure, and where to obtain the data concerning, the number of persons a communication reaches. For example, what signal measurement (*e.g.*, Grade B contour) should be used in determining how many people a broadcast signal reaches, and how does one determine if a broadcast station's signal could potentially reach 50,000 or more persons in a particular district or state? Should a broadcast station be required to provide the Federal Communications Commission with information regarding the cable system(s) and satellite system(s) that carry it in order that the cable and satellite systems' audience can be included in the calculation of the number of persons reached by the broadcast station? If such audiences were included in this calculation, how could double counting of some viewers (those that can receive the station's signal both over the air and through a cable or satellite system) be avoided? Is subscriber information the only basis for measuring the audience of a cable or satellite system? If so, must the FCC compel cable and satellite companies to provide it with this data because they are the only possible source of this information? How should subscriber information be converted into the chosen definition of "person" in new 2 U.S.C. 434(f)(3)(C), discussed herein? If, for whatever reason, it cannot be determined whether a particular communication will reach 50,000 or more persons in a relevant district or state, should it be presumed that the communication reaches fewer or more than 50,000 persons?

Theoretically, one ad could be publicly distributed via several small outlets, each of which reaches fewer than 50,000 persons in the relevant area, but in the aggregate reach 50,000 or more persons in the relevant area. Practically, the size of radio and television audiences may eliminate this concern. The Commission seeks comments on whether the regulations should address this situation to require aggregation of recipients of the same ad from multiple outlets and, if so, whether the regulations should aggregate substantially similar ads for this purpose.

The term "person" is defined in 2 U.S.C. 431(11) and in current Commission regulations at 11 CFR 100.10 to mean an individual, partnership, association, corporation, labor organization and any other organization or group of persons. It is not clear from the legislative history of BCRA whether the term "person" in new 2 U.S.C. 434(f)(3)(C) is intended to be restricted to only individuals, households, U.S. citizens, voters, those within the voting age population, or any other category of "person." The Commission believes that BCRA's policies are best served by construing the term "person" as applying to natural persons residing in a given jurisdiction, regardless of their citizenship status or whether they are of voting age. The

Commission seeks comments on which interpretation is correct. Whatever definition of "person" commenters choose should be associated with clearly identified sources of information needed to implement this section of BCRA.

Pursuant to section 201(b) of BCRA,[4] the Federal Communications Commission must "compile and maintain" any information the Federal Election Commission may require to ensure that proper disclosure of electioneering communications is made. The FCC is required to make such information publicly available on its website. These requirements appear to be necessary to promote compliance with the disclosure requirements in the new law regarding electioneering communications. Those who wish to make communications that meet the timing and medium requirements of the electioneering communication definition, must be able to easily determine whether the radio or television stations, cable systems, or satellite systems on which they wish to publicly distribute their communications will reach 50,000 or more persons in the State or congressional district in which the candidate mentioned in the communication is running for office. Consequently, the Commission has preliminarily concluded that a database searchable by State, congressional district, radio and television station call letters, cable system or satellite system, and radio station frequencies, should be created, and that a search under any of these options should reveal whether 50,000 or more persons in a specified State or congressional district are capable of receiving a communication transmitted through a broadcast station, cable system or satellite system. The Commission seeks comments as to whether any additional information or searchable options for the FCC's website are necessary or desirable.

It would also be helpful for the FCC's website to contain a link to the new electioneering communication forms (Form 9 and Schedule J) that the Commission will create for reporting electioneering communications. Further, the Commission anticipates placing a link on its own website to the page on the FCC website containing the database. The Commission seeks comments on what, if any, additional features on the FEC or FCC websites should be made available. Proposed 11 CFR 100.29(b)(5) would list the types of information the FCC may determine it will provide on its website.

[4] This section of BCRA has not been codified.

The Commission anticipates that the information on the FCC website will also allow interested parties to determine easily whether a given communication is capable of reaching 50,000 persons. Thus, the information on the FCC website is intended to serve as *definitive* evidence of whether a communication could have been received by 50,000 or more persons. For example, if the information on the FCC website indicated that a certain radio station can reach fewer than 50,000 persons in a certain congressional district, and an ad was run only on that station 45 days before the general election that referred to a House candidate in that district, then the persons paying for that communication would not have to disclose the communication under the proposed reporting rules and would have a complete defense against any charge that they violated that portion of BCRA. For a discussion of the determination of whether a communication reaches 50,000 or more persons, see above. Comments are sought as to whether this approach is correct.

E. Presidential Primary Candidates

With respect to Presidential primary candidates, one plausible reading of 2 U.S.C. 434(f)(3)(C) is that a communication that refers to a Presidential candidate does not need to be "targeted to the relevant electorate" to qualify as an "electioneering communication." Thus, under this interpretation, a communication referring to a clearly identified primary candidate for President that meets BCRA's timing and medium requirements, and that does not fall within any of the statutory exceptions, might be considered an electioneering communication, regardless of the number or geographic location of persons receiving the communication. For example, an ad referring to a primary candidate for President that is run anywhere in the United States could be considered an "electioneering communication" if the ad aired on a television or radio station within 30 days of a primary election taking place *anywhere* in the United States, even if the primary election were months away or had already taken place in the State or States in which the ad actually aired.

However, the Commission is concerned that such a sweeping impact on communications would be insufficiently linked to pending primary elections, may not have been contemplated by Congress and could raise constitutional concerns. It would result in a nationwide blackout on ads mentioning a Presidential candidate for more than 240 day between mid-December of the year preceding the election and the election itself. So interpreted, the restrictions on electioneering communications would take effect even if an ad were aired only in a State that has already held its primary, and thus would restrict ads more than 60 days before a general election, an apparent contravention of BCRA. Therefore, the Commission is proposing a definition of "publicly distributed within 30 days of a primary election" to make clear that an ad mentioning a candidate for President or Vice-President is not deemed to have been transmitted within 30 days before a primary election unless the ad is transmitted to an audience of 50,000 or more persons in an area in which a primary election is scheduled within 30 days. (This definition is listed as Alternative 1–B in proposed 11 CFR 100.29.) Such a definition, which would be placed within 11 CFR 100.29(b), would state that a communication that refers to a clearly identified candidate for President or Vice President would be "publicly distributed" within 30 days before a primary election, preference election, or convention or caucus of a political party only where and when the communication can be received by 50,000 or more persons within the State holding such election, convention or caucus. No such clarification is necessary for Presidential and Vice-Presidential nominees in the 60 days preceding the general election, as the date of the general election does not vary from State to State.

As an alternative means of addressing this concern, the Commission could adopt a provision stating that an advertisement be considered an electioneering communication only if the advertisement can be received by 50,000 or more persons in either a State in which a Presidential primary will occur within 30 days, or nationwide if within 30 days of the national nominating convention of that candidate's party. If adopted, this provision would appear at new 11 CFR 100.29(a)(1)(iv), rather than 11 CFR 100.29(b)(4), and appears in the proposed rules as Alternative 1–A.

Comments are sought on the alternative approaches, which are consistent with a requirement that the communication occur within a fixed number of days before a primary election, and would involve a far lesser impact on fundamental First Amendment rights. The Commission especially seeks comment on whether either alternative is allowed under BCRA.

Separately, comments are sought on whether BCRA's electioneering communications restrictions apply at all to communications depicting Presidential or Vice-Presidential candidates, other than 30 days before a party's national convention and 60 days before the general election, given that candidates can only be nominated for President or Vice-President at their parties' national convention.

What is Not an Electioneering Communication?

I. Specific Types of Communications

Consistent with 2 U.S.C. 434(f)(3)(B), proposed 11 CFR 100.29(c) would list examples of communications that are *not* "electioneering communications."

It appears clear from the legislative history of BCRA that the term "electioneering communications" only applies to communications that are publicly distributed by television or radio, and not through other media. For this reason the definition of "electioneering communications" is narrowly tailored, listing only three types of communications: broadcast, cable, and satellite communications.

The electioneering communication provisions were originally offered as an amendment to the predecessor of BCRA by Senators Snowe and Jeffords in 1998. That amendment, and all versions of that amendment prior to the 107th Congress, defined an electioneering communication to include "any broadcast from a television or radio broadcast station." *See* 144 Cong. Record S938 (daily ed. Feb. 24, 1998); *see also* S.26 (106th Congress), 145 Cong. Rec. S425 (daily ed. Jan. 19, 1999). Likewise, the floor debates on the electioneering communications provision during the 107th Congress frequently referred to "television and radio ads." During a final explanation of these provisions, Senator Snowe again stated that they would apply to "so-called issue ads run on television and radio only." 148 Cong. Rec. S2135 (daily ed. Mar. 20, 2002) (statement of Sen. Snowe).

Consistent with this legislative history, proposed 11 CFR 100.29(c)(1) provides examples of communications that are *not* included in the definition of "electioneering communication." The proposed list of exemptions includes communications appearing in print media, including a newspaper or magazine, handbills, brochures, yard signs, posters, billboards, and other written materials, including mailings; communications over the Internet, including electronic mail; and telephone communications.

The Internet is included in the above list of exceptions because, in most instances, it is not a broadcast, cable, or satellite communication, and it is not sufficiently akin to television and radio. During an early debate on the amendment, Senator Snowe was asked whether the definition of electioneering communication would "apply to the Internet." She replied, "No. Television and radio." *See* 144 Cong. Rec. S973 and S974 (daily ed. Feb. 25, 1998) (statement of Sen. Snowe). The Commission seeks comment confirming that this is a correct interpretation of BCRA.

II. The News Story, Commentary, or Editorial Exception

Proposed 11 CFR 100.29(c)(2) tracks the language in BCRA at 2 U.S.C. 434(f)(3)(B)(i) by excluding communications that appear in a "news story, commentary, or editorial" distributed from a broadcasting station, unless the broadcasting station is owned or controlled by any political party or committee, or candidate. The proposed rule, however, would add that the exception would apply to broadcasting stations owned or controlled by a party, committee, or candidate if the communication meets the requirements of 11 CFR 100.132(a) and (b). Please note that this portion of BCRA refers only to "broadcasting stations." While this is consistent with the use of the term throughout 2 U.S.C. 431, which sets out general definitions under the FECA, it is narrower than the term "broadcast, cable or satellite communication" found in the general definition of "electioneering communication" at 2 U.S.C. 434(f)(3)(A). The Commission is proposing to use the broader term in section 100.29(c)(2), as the legislative history gives no reason for this disparate treatment. However, it welcomes comments on whether the narrower term would be appropriate. In the alternative, the Commission could decline to create a new media exemption for electioneering communications, but instead rely on its existing media exemption at 11 CFR 100.132. The Commission seeks comment on which is the appropriate course of action.

III. Exception for Expenditures and Independent Expenditures

Proposed 11 CFR 100.29(c)(3) implements the language in BCRA at 2 U.S.C. 434(f)(3)(B)(ii) excluding communications that are "expenditures" or "independent expenditures" from the definition of "electioneering communications." Senator Feingold explained that independent expenditures were excluded because they contain express advocacy, apparently in contrast to electioneering communications, which do not contain express advocacy. *See* 148 Cong. Rec. S1993 (daily ed. Mar. 18, 2002) (statement and section-by-section analysis of BCRA by Sen. Feingold).

In this regard, the Commission is proposing two alternatives. One interpretation put forward by the Commission would be that any disbursement of funds for a communication that constitutes an expenditure or an independent expenditure under FECA is not an electioneering communication. *See* Alternative 2–A, below. In addition, any expenditure of a Federal political committee would remain subject to FECA's reporting requirements. 2 U.S.C. 434(b)(4)(A). Thus, Federal political committees would not be required to file an additional electioneering communication report for expenditures for communications that otherwise meet the definition of electioneering communication. Consequently, the segregated bank account provisions of 2 U.S.C. 434(f)(2)(E) would not apply to expenditures either.

It can be argued that FECA adequately addresses expenditures, independent expenditures and Federal political committee outlays, and BCRA's Title II was intended to address disbursements that are not subject to FECA's treatment of such expenditures. Similarly, the exclusion may represent an effort to avoid duplicative reporting requirements. To include communications that are expenditures and independent expenditures would subject such communications to duplicative and often conflicting reporting requirements.

The Commission also seeks comment on whether to limit the exclusion to candidate-specific expenditures reportable as independent expenditures, in-kind contributions or a party coordinated expenditure by non-authorized Federal political committees. *See* Alternative 2–B, below. This would subject non-authorized Federal political committees making non-coordinated non-express advocacy communications to duplicative reporting requirements. In addition, the Commission notes that all expenditures of authorized committees are, by definition, for the purpose of influencing the candidate's election to Federal office. For this reason, the Commission is seeking comment on excepting from the definition of electioneering communication expenditures for any public communication made by a

Federal candidate or officeholder's authorized campaign committee.

The Commission seeks comment on the approach and issues raised above and on any other interpretation of the exemption of 2 U.S.C. 434(f)(3)(B)(ii) that reconciles the exclusion of expenditures and independent expenditures from the definition of electioneering communication with FECA's treatment of expenditures and independent expenditures.

IV. Exception for Candidate Debates or Forums

Proposed 11 CFR 100.29(c)(4) tracks the language in BCRA at 2 U.S.C. 434(f)(3)(B)(iii) excluding communications that constitute "a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum."

The Commission's regulations at 11 CFR 110.13(a)(2) and 114.4(f) authorize incorporated broadcasters and other media organizations to stage and cover candidate debates without making impermissible contributions or expenditures. Section 110.13(c) requires those organizations staging debates to use pre-established objective criteria in determining which candidates may participate in a debate. It further prohibits staging organizations from using nomination by a major party as the sole objective criterion for choosing candidates to participate in a general election debate.[5]

V. Other Exceptions

New 2 U.S.C. 434(f)(3)(B)(iv) provides that "to ensure the appropriate implementation" of the electioneering communication provisions, the Commission may promulgate regulations exempting other communications from the "electioneering communications" definition, provided that the exemption otherwise complies with the new electioneering communication provision and is not described in 2 U.S.C. 431(20)(A)(iii) ("public communications" that refer to a clearly identified candidate for Federal office that promote or support a candidate for that office, or attack or oppose a candidate for that office). The Commission is interested in receiving specific suggestions on whether there should be exemptions for communications that refer to a clearly identified candidate but that promote local tourism, or a ballot initiative, or a referendum. The Commission is also interested in receiving suggestions on whether there should be exemptions for communications that refer to a clearly identified candidate but that are public service announcements or that promote a candidate's business or professional practice. Absent such exemptions, such communications could be electioneering communications even if they contain only a glimpse of a Federal candidate. Proposed 11 CFR 100.29(c)(1), (c)(5), (c)(6) (including four alternatives) and (c)(7) would set forth such exemptions. Proposed paragraph (c)(1) was discussed above.

Proposed paragraph (c)(5) would exempt a communication that refers to a bill or law by its popular name where that name happens to include the name of a Federal candidate, if the popular name is the sole reference made to a Federal candidate.

Four alternatives (Alternatives 3–A, 3–B, 3–C, and 3–D) for proposed paragraph (c)(6) would exempt communications that are devoted to urging support for or opposition to particular pending legislation or other matters, where the communications request recipients to contact various categories of public officials regarding the issue. The Commission seeks comment as to which, if any, alternative is most consonant with the language and purposes of BCRA.

Proposed paragraph (c)(7) would exempt communications by State or local candidates or officeholders that refer to a clearly identified federal candidate, provided that such mention of a federal candidate was merely incidental to the candidacy of one or more individuals for State or local office. For example, under this approach an ad for a State or local candidate that featured such candidate's views on education would not be rendered an electioneering communication if the ad were to indicate whether the State or local candidate supported or opposed the President's education policy.

The Commission seeks comments as to whether any other communications should be exempt from the "electioneering communication" definition, as well as whether the proposed exemptions are too broadly or narrowly crafted. For example, the Brennan Center report cited by Senator McCain states that so-called "genuine" issue ads discuss public policy issues and usually contain a toll-free number, whereas so-called "sham" issue ads do not. *Buying Time 2000*, p. 31–32. In light of this study, and to avoid overbreadth, should the Commission exempt ads that: (1) Do not include express advocacy; and (2) include both a telephone number and a reference to a specific piece of legislation either by formal name (for example, the "Bipartisan Campaign Reform Act of 2002"), popular name (for example, "Shays-Meehan"), or bill number (for example, "H.R. 2356")?

If the Commission creates an exemption like any of the proposed alternatives at paragraph (c)(6), because most Congressional offices do not maintain toll free numbers, should it be sufficient to list a non-toll free number? Must the number be to a Congressional or district office? Is it acceptable to provide the number for a campaign office? Alternatively, to what extent should these distinctions turn on whether the ad refers to a general issue, such as Medicare, without mentioning specific legislation? *See Buying Time 2000, p. 103.*

Another possible exemption might be for entertainment shows, such as television talk shows, which may fall outside of the news exemption, which feature a candidate as a guest, or a television drama or comedy in which a picture of a candidate appears. The Commission seeks comments on the appropriateness of all of the above-mentioned possible exemptions from the "electioneering communication" definition, and whether additional exemptions should be considered. Should the definition of electioneering communication be limited to paid advertisements? Should the Commission create an exemption for communications publicly distributed exclusively over public access channels? Should the Commission limit any of the exemptions to ads that do not promote, support, attack, or oppose any clearly identified candidate?

[5] The Commission received a Petition for Rulemaking from a number of corporations owning and operating news organizations, television stations, newspapers, cable channels, and other media ventures, as well as media trade associations. The petition asked the Commission to amend its regulation on sponsorship of candidate debates to "make clear that it does not apply to the sponsorship of a candidate debate by a news organization or a trade organization composed of, or representing, members of the press." The petition asserts that any regulation of the sponsorship of debates by news organizations or related trade associations is contrary to the clear intent of the U.S. Congress, irreconcilable with other FEC decisions, in conflict with the regulatory decisions of the Federal Communications Commission, and unconstitutional. A Notice of Availability for the petition was published on May 9, 2002 (65 Fed. Reg. 31164). Two comments were received by the end of the public comment period, on June 10, 2002. However, the Commission intends to defer consideration of whether to issue a Notice of Proposed Rulemaking until after the statutorily required BCRA rulemakings are completed by the end of the year. In the meantime, the Commission's debate regulations remain in effect.

Who May Make or Fund Electioneering Communications?

BCRA allows the following persons to make electioneering communications: (1) Individuals; (2) "political committees" as defined under FECA, including authorized committees, party committees, separate segregated funds, and nonconnected committees; (3) unincorporated organizations, including partnerships, limited liability companies (LLCs) that do not qualify as corporations, unincorporated trade associations or membership organizations, unincorporated 501(c)(3) or (4)'s, and unincorporated 527's, as long as they do not use funds received from corporations or labor organizations to pay for the electioneering communications; and (4) incorporated 501(c)(4)'s and 527's, as long as they meet certain requirements discussed more fully below. The Commission seeks comment on whether there is any section in BCRA that would prevent an entity prohibited from making an electioneering communication from being affiliated with an entity that is permitted to make electioneering communications, provided that the permissible entity received no prohibited funds from the prohibited entity. In addition, the Commission seeks comment on whether a 501(c)(4) or a 527 organization that was previously incorporated and that changes its status to become a limited liability company or similar type of entity under State law would be permitted to pay for electioneering communications with funds that had been donated from individuals to the 501(c)(4) or 527 organization during the time it was incorporated.

Who May Not Make or Fund Electioneering Communications?

I. Effect of the Snowe-Jeffords and Wellstone Amendments on 501(c)(4) and 527 Organizations

The BCRA provisions popularly known as the Snowe-Jeffords amendment expanded the prohibitions on corporations and labor organizations to prohibit use of general treasury funds to make electioneering communications. 2 U.S.C. 441b(b)(2). BCRA treats an electioneering communication as being made by a corporation or labor organization if that corporation or labor organization directly or indirectly disburses any amount for any of the costs of the electioneering communication. 2 U.S.C. 441b(c)(3)(A). The Snowe-Jeffords provisions included an exception, however, allowing corporations organized under 26 U.S.C. 501(c)(4) or 26 U.S.C. 527(e)(1) to make electioneering communications, as long as they use funds that do not come from prohibited sources.[6] As noted by Senator Snowe, these same section 501(c)(4) and 527 organizations must comply with BCRA's newly-enacted disclosure provisions. See 2 U.S.C. 434(f); see also proposed 11 CFR 104.19. Under Snowe-Jeffords, organizations that engaged in business activities or accepted corporate or labor organization funds would have been permitted to establish a segregated bank account to which only individuals (U.S. citizens, U.S. nationals, and green card holders) could contribute to pay for all electioneering communications. 2 U.S.C. 441b(c)(3)(B). It is important to note that the account required by Snowe-Jeffords is not a separate segregated fund or a political committee within the meaning of 2 U.S.C. 431(4)(B), and does not have the same registration, reporting and recordkeeping obligations of such a fund or committee.

The Snowe-Jeffords amendment was substantially modified in this regard by the Wellstone amendment. 2 U.S.C. 441b(c)(6). Where Snowe-Jeffords exempted section 501(c)(4) and section 527 corporations from the prohibition on using treasury funds to make electioneering communications under certain circumstances, the Wellstone amendment withdraws that exemption in the case of what are called "targeted communications," 2 U.S.C. 441b(c)(6)(A). The Wellstone amendment then defines "targeted communication" to encompass all electioneering communications. Specifically, it defines "targeted communication" to mean "an electioneering communication (as defined in section 304(f)(3)) [2 U.S.C. 434(f)(3)] that is distributed from a television or radio broadcast station or provider of cable or satellite television service and, in the case of a communication which refers to a candidate for an office other than President or Vice-President, is targeted to the relevant electorate." 2 U.S.C. 441b(c)(6)(B). The Wellstone amendment then defines "targeted to the relevant electorate" by referencing the definition in the Snowe-Jeffords amendment. 2 U.S.C. 441b(c)(6)(C). Under the interpretation of the Wellstone amendment in the proposed rules, "targeted communication" would not be limited to communications referring only to candidates for the U.S. House of Representatives and the U.S. Senate directed to the relevant electorate, but would also include communications that refer to Presidential and Vice-Presidential candidates, with all of the relevant restrictions being applicable. Further, it appears that Senator Wellstone intended his amendment to be applicable to Presidential and Vice-Presidential elections. During the Senate debate, one of the examples of the communications his amendment was intended to reach were ads run by an organization during a presidential primary campaign. *See* 147 Cong. Rec. S2848 (daily ed. Mar. 26, 2001).

An alternative interpretation of BCRA would remove communications that refer to a candidate for the office of President or Vice-President from the definition of "targeted communication." This interpretation of 2 U.S.C. 441b(c)(6)(B) is based on the reading that because the second condition in the section does not apply to candidates for President or Vice-President, the Wellstone amendment does not apply to these candidates. Under this interpretation, incorporated section 501(c)(4) organizations and section 527 organizations that accept corporate and labor organization funds would be able to make electioneering communications with respect to Presidential and Vice-Presidential elections, as described above, using funds that do not come from corporations, labor organizations or foreign nationals. Although this alternative is not set out in the proposed rules that follow, the Commission seeks comment on it.

Because the Wellstone amendment defines "targeted communication" to include all electioneering communications, *see* 2 U.S.C. 441b(c)(6)(B), the result of the Wellstone amendment is that any corporations whatever, including incorporated 501(c)(4) and 527 organizations, are prohibited from making electioneering communications. Because the restrictions exist within the ambit of section 441b, the Wellstone amendment does not restrict unincorporated 501(c)(4) and 527 organizations from making electioneering communications.

An initial reading of the Wellstone amendment suggests that it may go further than allowed by *MCFL*, in that it bans electioneering communications from all section 501(c)(4) corporations. In order to interpret the Wellstone amendment consistent with *MCFL*, an exception to the ban on corporations making electioneering communications should apply to section 501(c)(4) corporations that meet the conditions

[6] During the Senate debate, Senator McCain described these provisions as intended to be consistent with *FEC* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*"). 148 Cong. Rec. S2141 (daily ed. mar. 20, 2002).

for *MCFL* groups at 11 CFR 114.10. Proposed 11 CFR 114.2(b)(2) would ban only electioneering communications by incorporated section 501(c)(4) organizations that do not meet the 11 CFR 114.10 conditions.

Alternatively, in the absence of the Wellstone amendment, the Snowe-Jeffords provision by itself would have allowed all incorporated tax-exempt organizations that are described in 26 U.S.C. 501(c)(4), and political organizations described in 26 U.S.C. 527, to make electioneering communications, provided their funds do not come from corporations or labor organizations. 2 U.S.C. 441b(c).

II. Proposed Rules at 11 CFR 114.2, 114.10, and 114.14

To implement the new restrictions on corporate and labor organization activity, current 11 CFR 114.2(b) would be revised to reflect the restrictions found in the Snowe-Jeffords provision and the Wellstone amendment. For purposes of clarity, current paragraph 114.2(b) would be restructured. The general prohibition on corporations and labor organizations making contributions would be placed in proposed paragraph 114.2(b)(1). The corresponding prohibitions on corporate and labor organization expenditures would be located in paragraph (b)(2)(i). The restriction on express advocacy by corporations and labor organizations to those outside the restricted class would be moved to proposed paragraph 114.2(b)(2)(ii). Proposed paragraph 114.2(b)(2)(iii) would contain the new prohibition on electioneering communications by corporations and labor organizations.

Current paragraph 114.2(b) references the exception at 11 CFR 114.10 for qualified nonprofit corporations that wish to make independent expenditures. As redrafted, the reference to section 114.10 would also apply to electioneering communications.

Section 114.10 itself would be redrafted to incorporate references to electioneering communications. Thus, the title of section 114.10 would be redrafted to reflect its application to electioneering communications, as would the discussion of the scope of section 114.10 found at paragraph 114.10(a). Current paragraph 114.10(d) would be redesignated as "Permitted corporate independent expenditures and electioneering communications." Current paragraph 114.10(d)(2) would be redesignated as proposed paragraph 114.10(d)(3). Proposed paragraph 114.10(d)(2) would track the language of current paragraph 114.10(d)(1), except that it would substitute "electioneering communication" for "independent expenditure," and it would reference the definition of "electioneering communication" at 11 CFR 100.29.

The procedures for certification of qualified nonprofit corporation status would be revised to provide separate procedures for those making electioneering communications. Thus, the procedures for corporations making independent expenditures, which are currently found at 11 CFR 114.10(e)(1)(i), and (ii), would be redesignated as 11 CFR 114.10(e)(1)(i)(A) and (B). Proposed 11 CFR 114.10(e)(1)(ii)(A) and (B) would be added to describe the procedures for demonstrating qualified nonprofit corporation status when making electioneering communications. In all respects this provision is similar to the one for qualified nonprofit corporations making independent expenditures, except that the threshold for certification would be $10,000. The amount would be set at $10,000 because that is the amount that first triggers the reporting requirement for electioneering communications.

Further, 11 CFR 114.10(g) would be revised to require qualified nonprofit corporations to comply with the requirements of 11 CFR 110.11 regarding non-authorization notices ("disclaimers") when making electioneering communications. BCRA amended 2 U.S.C. 441d to require disclaimers for electioneering communications. Section 110.11 will be amended in a separate rulemaking.

Proposed paragraph 114.10(h) would serve as a notification to qualified nonprofit corporations that they may establish a segregated bank account for the purpose of depositing funds to be used to pay for electioneering communications, as identified in 11 CFR 104.19(b)(6) and (7).

Proposed paragraph 114.10(i) would track the language in 2 U.S.C. 441b(c)(5), which states that nothing in 2 U.S.C. 441b(c) shall be construed to authorize an organization exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 to carry out any activity that is prohibited under the Internal Revenue Code. For the reasons explained above, the proposed rule would clarify that this statutory prohibition specifically applies to any qualified nonprofit corporation.

Certain courts have interpreted *MCFL* to allow an incorporated 501(c)(4) organization to accept a *de minimis* amount of corporate or labor organization funds and still be able to make independent expenditures without violating 2 U.S.C. 441b. *See, e.g., Minnesota Citizens Concerned for Life, Inc.* v. *FEC*, 936 F.Supp. 633 (D.Minn. 1996), *aff'd*, 113 F.3d 129 (8th Cir. 1997).[7] Regarding BCRA, the Commission understands that the phrase "paid for exclusively by funds provided by individuals" at 2 U.S.C. 441b(c)(2), when read in conjunction with the Wellstone amendment at 2 U.S.C. 441b(c)(6)(A), is intended to establish a bright-line rule that, even if an organization accepted only a *de minimis* amount of corporate or labor organization funds, it is nevertheless barred under 2 U.S.C. 441b from making an electioneering communication. The Commission seeks comment as to whether the conclusion regarding acceptance of *de minimis* amounts of corporate or labor organization general treasury funds is appropriate and likely to survive constitutional scrutiny and, if so, whether it should be stated in the rule. Comment is sought, however, as to whether the certification of its status under 11 CFR 114.10(e) as a qualified nonprofit corporation should be revised for purposes of making either independent expenditures or electioneering communication so that a corporation could certify its status on the basis of a court decision rather than the criteria in the Commission's regulations.

Further, proposed 11 CFR 114.14 would be added to the regulations to implement the provisions in 2 U.S.C. 441b(b)(2), (c)(1) and (c)(3) prohibiting corporations and labor organizations from directly or indirectly disbursing any amount from general treasury funds for any of the costs of an electioneering communication.[8] Proposed 11 CFR 114.14(a) would contain the prohibition that applies to corporations and labor organizations generally, and is meant to eliminate any instance of a corporation or labor organization providing funds out of their general treasury funds for the purpose of paying for an electioneering communication, including through a non-Federal account. The Commission does not view

[7] Prior to enactment of BCRA, the *MCFL* status of incorporated 501(c)(4) organizations could change from year to year depending on the absolute total amount of corporate contributions received by these organizations. *FEC* v. *National Rifle Association*, 254 F.3d 173 (D.C. Cir 2001). In *FEC* v. *NRA*, the court held that $1000 in corporate contributions that the NRA received in 1980 was *de minimis* and did not affect in *MCFL* status for that year; however, the corporate contributions of $7,000 and $39,786 that it received in 1978 and 1982, respectively, were substantial and rendered the NRA ineligible for the *MCFL* exemption in 1978 and 1982. *Id.* at 192.

[8] The prohibition on direct disbursements of corporate or labor organization funds is contained at proposed new 11 CFR 114.2(b)(2). National banks would also be subject to proposed 11 CFR 114.14 through the operation of current 11 CFR 114.2(a)(2).

BCRA as in any way prohibiting or restricting corporations and labor organizations from paying for electioneering communications out of funds raised and spent by the Federal accounts of their separate segregated funds. The Commission seeks comment on what factors should be used to determine that the purpose element of this prohibition has been met.

Proposed paragraph (b) of new 11 CFR 114.14 would prohibit any person who accepts corporate or labor organization funds from using those funds to pay for an electioneering communication, or to provide those funds to any other person who would subsequently use those funds to pay for all or part of the costs of an electioneering communication. This proposed rule would be similar to the ban on contributions made in the name of another. *See* 2 U.S.C. 441f; 11 CFR 110.4(b). The rule would be intended to effectuate BCRA's treatment of an electioneering communication as being made by a corporation or labor organization if such an entity indirectly disburses any amount for the cost of the communication out of their general treasury funds. 2 U.S.C. 441b(c)(3)(A).

The Commission also seeks comments on contributor liability. Should contributors be held liable in instances where their contributions were not intended to be used for electioneering communications but the recipient used them for that purpose regardless of the contributors' intent?

Proposed paragraph (c) of 11 CFR 114.14 would provide certain limited exceptions to allow corporations or labor organizations to provide funds that might subsequently be used for electioneering communications. The first exception would cover salary, royalties, or any other income earned from *bona fide* employment or other contractual arrangements, including a pension or other retirement income. The second exception would cover interest earnings, stock or other dividends, or proceeds from the sale of stock or other investments. These exceptions are drawn from 11 CFR 110.10, which applies only to candidates' funds, by recognizing that such amounts constitute personal funds. The third proposed exception covers a corporation or labor organization payment of the fair market value for goods provided or services rendered to the corporation or labor organization.

Proposed paragraph 11 CFR 114.14(d) would require persons who receive funds from a corporation or a labor organization that do not meet the exceptions of proposed paragraph 11 CFR 114.14(c) to be able to demonstrate through a reasonable accounting method that no such funds were used to pay for any portion of an electioneering communication. The Commission seeks comment on whether a specific accounting method should be required, such as first-in-first-out (FIFO), last-in-first-out (LIFO), or any other method.

The Commission seeks comment on whether proposed 11 CFR 114.14 covers all instances where corporate or labor organization general treasury funds might indirectly be used to pay for electioneering communications, without going beyond the bounds of BCRA.

Are Amounts Given to Persons Making Electioneering Communications Contributions? When Are These Amounts Subject to the Contribution Limits? Would They Trigger Political Committee Status?

In the new reporting provisions of BCRA, monies provided for electioneering communications are characterized as "funds contributed," and the persons providing the monies as "contributors." 2 U.S.C. 434(f)(2)(E) and (F). BCRA amends the FECA's prohibitions against corporate and labor organization contributions and expenditures at 2 U.S.C. 441b(b)(2) by defining "contribution or expenditure" to include "any direct or indirect payment * * * for any applicable electioneering communication." It also amends the ban on contributions and donations by foreign nationals at 2 U.S.C. 441e to include electioneering communications. BCRA, however, does not amend the definition of contribution at 2 U.S.C. 431(8) to include monies given for electioneering communications. The Commission would interpret this statutory language to mean that such monies would be "contributions" when provided by any person to the Federal account of a political organization and, therefore, would be subject to the contribution limits and prohibitions of the FECA, as amended by BCRA. However, funds provided to persons that are *not* political committees would not be "contributions" and hence would not be subject to the contribution limits or prohibitions. Nor would these amounts trigger political committee status when given to an organization that is not already a political committee. Please note that amounts donated by an entity covered by 2 U.S.C. 441b or by a foreign national covered by 2 U.S.C. 441e nonetheless are subject to the bans on electioneering communications contained in those provisions. The Commission requests comments on this approach.

BCRA also prohibits the national party committees from donating non-Federal funds for any purpose, including electioneering communications. 2 U.S.C. 441i(a). BCRA prohibits a State, district, or local committee of a political party from donating non-Federal funds for ads that refer to a clearly identified candidate for Federal office and promote, support, attack or oppose that candidate. 2 U.S.C. 431(20)(A)(iii) and 441i(b). Such ads, with rare exception, encompass electioneering communications. For these reasons, the Commission would interpret monies provided by any person for electioneering communications to political committees that are the national, State, district or local committee of a political party ("party committees") to be contributions subject to the limitations or prohibitions of the FECA, as amended by BCRA. However, comments are sought as to whether funds provided for electioneering communications to a non-Federal account of a separate segregated fund or a non-connected committee should or should not be contributions subject to limitations or prohibitions, if the funds are not provided by a corporation, labor organization, foreign national or party committee, and if they are not coordinated with any candidate.

Funds provided by persons other than corporations, unions, foreign nationals or party committees to persons that are not political committees are not contributions. Thus, these amounts would not trigger political committee status when given to an organization that is not already a political committee. Persons that are not party committees or political committees, including individuals, would be able to raise and spend funds for electioneering communications without limitation as to amount, unless the funds are provided by corporations, unions, foreign nationals or party committees. The Commission requests comments on this approach.

Who Must Report Electioneering Communications?

I. Who Is Included in "Persons"?

BCRA, as codified at 2 U.S.C. 434(f)(1), requires all *persons* making electioneering communications to file statements when the disbursements for the electioneering communications exceed $10,000 in a calendar year. Under 2 U.S.C. 431(11) and 11 CFR 100.10, "persons" includes "an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons." This definition of

"person" would apply to proposed 11 CFR 104.19(a).

While all political committees are included as "persons" who would be required to report electioneering communications under proposed section 104.19(a), BCRA excludes communications that constitute an expenditure or an independent expenditure under FECA from the definition of electioneering communications. 2 U.S.C. 434(f)(3)(B)(ii). Thus, political committees will not be required to report their expenditures as electioneering communications.

The Commission seeks comments on eliminating this exemption when the authorized committee of a candidate makes an expenditure for a communication that refers to that candidate or that candidate's opponent. Under this approach, which is not included in the proposed rules that follow, if a candidate committee makes an expenditure for a communication that refers to that candidate or that candidate's opponent and that meets the definition of electioneering communication (other than the exclusion of expenditures in 2 U.S.C. 434(f)(3)(B)(ii)), then the candidate committee would have to report the cost as an electioneering communication within the 24-hour time requirement, if the costs of such ads exceed $10,000. The Commission recognizes that these amounts would be reported a second time on the authorized committee's regular report as expenditures. Comment is sought as to whether this limitation on the exemption for authorized committees would be consistent with BCRA.

The Commission requests comments on whether State and local party committees should be exempt from "persons" who must file reports of electioneering communications. State and local party committees' candidate-specific expenditures and independent expenditures that are otherwise reportable as such are not subject to the definition of electioneering communications under the Commission's construction of 2 U.S.C. 434(f)(3)(B)(ii). *See* above. However, certain other disbursements by a State party committee that include a reference to a clearly identified Federal candidate would be subject to the definition of electioneering communication, such as issue ads that do not require candidate-specific reporting. Exempting State and local party committees from 11 CFR 104.19 would mean that they would report such disbursements on their regular reporting schedule, as current law allows, rather than under the electioneering communications reporting requirements. Comments are requested.

II. Who Is Responsible for Filing Reports by Organizations That Are Not Political Committees?

Under the Commission's regulations at 11 CFR 104.1 and the FECA at 2 U.S.C. 432(i) and 434(a)(1), the treasurer is the individual responsible for the accuracy, and the filing, of a political committee's reports. BCRA requires organizations that are not political committees to report their electioneering communications. 2 U.S.C. 434(f)(2)(E). However, such organizations are not required by BCRA or the FECA to have a treasurer who is responsible for the filing. The Commission requests comments on whether to require that the individual responsible for filing the statement of electioneering communications on behalf of an organization that is not a political committee have actual knowledge of the receipts and disbursements for, and the contents and timing of, the electioneering communications.

When Must Electioneering Communications Be Reported?

The question of when electioneering communications must be reported presents several subsidiary issues. First, does the $10,000 threshold include the costs for producing electioneering communications, or for airing electioneering communications, or both? Second, must the electioneering communications be reported at the time the disbursements exceed $10,000 in a calendar year, or not until the disbursements exceed $10,000 *and* the communications have been aired? Third, when does the 24-hour period begin and end, and what would serve as proof of timely filing? These issues are discussed below.

I. Does the $10,000 Reporting Threshold Include the Direct Costs of Both Producing and Airing Electioneering Communications, or Does It Include Only One or the Other?

BCRA requires disbursements, and contracts to make disbursements, for the direct costs of producing *and* airing electioneering communications to be reported within 24 hours of the "disclosure date." 2 U.S.C. 434(f)(1). However, BCRA defines "disclosure date" as the date on which the direct costs of producing *or* airing exceed $10,000. 2 U.S.C. 434(f)(4). Thus, the proposed rules would require that when the direct costs of either producing or airing electioneering communications exceed $10,000, the person making the electioneering communications must report the direct costs of both producing and airing the electioneering communications within 24 hours. Specifically, proposed 11 CFR 104.19(a) would require every person who makes disbursements, or who executes contracts to disburse funds for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000, to report certain information regarding the sources of the funds used for producing *and* airing the electioneering communications.

The Commission requests comments on this interpretation. Does BCRA intend for persons to report only if the aggregate production costs or the aggregate airing costs exceed $10,000? For example, if Person K pays $7,000 to produce an electioneering communication and $7,000 to air the communication, would Person K have any reporting requirements at all because neither the cost of production nor the cost of airing the communication when treated separately exceeded $10,000? Alternatively, does the statute intend for persons to report when the aggregate of all direct production costs *and* all direct airing costs exceed $10,000? For example, if Person J pays $7,000 to produce an electioneering communication and pays $7,000 to air it, would Person J be required to report all $14,000 because the aggregate costs of producing and airing exceed $10,000?

Proposed paragraph (a)(2) would provide guidance with regard to what are considered to be direct costs of producing or airing an electioneering communication. The proposed regulation would provide a list of costs that would be considered "direct." The list would not be exhaustive. As proposed, the direct costs of producing a communication would include any costs charged by a production company, such as studio rental time, staff salaries, costs of video or audio recording media, hired talent, and any other cost involved in producing the video or audio communication. Direct costs of airtime would include the cost of airtime on broadcast, cable or satellite radio and television stations, and the charges for a broker to purchase the airtime. The Commission seeks comments on other examples of direct costs of producing or airing electioneering communications.

Direct costs for producing or airing electioneering communications would not include the cost of polling to determine the contents of a communication or whether to create or air the communication. Additionally,

such costs would not include the cost of a focus group or other polling to determine the effectiveness of the communication. The Commission seeks comment on whether these exceptions should be specifically included in the rules and what other types of costs should be excluded from "direct costs." Further, the Commission seeks comment on whether these lists should be exhaustive, thereby including everything that would be considered a direct cost.

II. Must Reports Be Filed When the Disbursements Exceed the Threshold, or When the Electioneering Communication Is Aired?

As noted above, BCRA requires persons making electioneering communications to report the disbursements for such communications within 24 hours of the "disclosure date." 2 U.S.C. 434(f)(1). "Disclosure date" is defined at 2 U.S.C. 434(f)(4) as the date "during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000." Therefore, proposed 11 CFR 104.19(a) would track the statutory language to require that statements of electioneering communications be filed within 24 hours of the time the $10,000 threshold is exceeded. Following the statutory language, proposed paragraph (a) would require that persons begin aggregating the direct costs of producing or airing electioneering communications anew after each disclosure date. Each time the aggregation of disbursements for electioneering communications exceeds $10,000 (since the most recent disclosure date), an additional statement of electioneering communications would be required.

Alternatively, the Commission could determine that a person makes disbursements for electioneering communications only when a communication is aired, and require reporting of disbursements that meet the statute's monetary thresholds at that time. One policy reason supporting such an interpretation is the practical difficulty or impossibility of determining whether a given communication has met BCRA's targeting requirements before a communication is actually aired. Another reason is that until a person or entity actually airs an electioneering communication, it is impossible to know with certainty that the person or entity ever will air a communication that constitutes an electioneering communication under BCRA; accordingly, to require reporting beforehand could lead to speculative and even inaccurate reporting through no fault of the reporting person or entity. Finally, there could be constitutional issues with compelling disclosure of potential electioneering communications before they are finalized and aired, particularly when such disclosure could force reporting entities to divulge confidential strategic and political information, and could force them to report information, under the penalty of perjury, that later turns out to be misleading or inaccurate if the reporting entity does not subsequently air any electioneering communications. The Commission seeks comments on these issues and specifically whether, in light of these constitutional and policy concerns, it should consider construing BCRA's electioneering communication reporting requirements to apply only when an electioneering communication is actually aired. The Commission further requests comments on whether it should limit reporting of electioneering communications to only the 30 days before a primary election or the 60 days before a general election.

The current rules at 11 CFR 104.5 set forth filing dates for each type of filer (*e.g.*, authorized committees, unauthorized committees, party committees) and for other required reports that are not part of the regular filing schedule (*e.g.*, certain reports of independent expenditures). Proposed new paragraph (i) of section 104.5 would state the filing deadlines for 24-hour statements of electioneering communications and would cross-reference proposed section 104.19.

BCRA at 2 U.S.C. 434(f)(2) requires, as do the proposed regulations at 11 CFR 104.5(i), that statements of electioneering communications be filed under penalty of perjury. Note that 24-hour reports of independent expenditures are also required to be filed under penalty of perjury.[9] Perjury consists of a false statement as to material fact willfully made under an oath authorized by a law of the United States taken before a competent tribunal, officer, or person. 28 U.S.C. 1621. In addition, 18 U.S.C. 1001(a)(3) establishes criminal penalties for "knowingly and willfully making or using false writings or documents" in connection with matters within the jurisdiction and before a government agency. Lastly, such violations may be subject to the FECA at 2 U.S.C. 437g, which establishes civil penalties of specified amounts for violations of the FECA. The Commission seeks comment on how 2 U.S.C. 437g would apply to violations of the requirements for electioneering communications, given that the defined terms in 2 U.S.C. 437g are different than the terms used in 2 U.S.C. 434(f).

III. Filed Within 24 Hours vs. Received Within 24 Hours

Under 2 U.S.C. 434(f)(1), electioneering communications must be reported within 24 hours of the time the $10,000 threshold is exceeded (i.e., on the "disclosure date", *see* below). The Commission proposes to add new paragraph (f) to 11 CFR 100.19 to require these 24-hour statements to be *received* by the Commission within 24 hours of the disclosure date, rather than *filed* within 24 hours of the disclosure date. In addition, to assist filers with meeting this deadline, the proposed rule would allow them to file their 24-hour statements by facsimile machine or e-mail. This proposed paragraph would follow the timing and filing methods of 24-hour reports for independent expenditures. The Commission proposes this interpretation to achieve the kind of disclosure contemplated by the 24-hour requirement. Under the proposed rules, a 24-hour statement of electioneering communications would be available to the public no later than 48 hours after its receipt by the Commission. Further, since these statements are required within 24-hours of the disclosure date, they are similar to 24-hour reports of independent expenditures and, thus, should be treated similarly. The Commission requests comments on this interpretation of "filed" in 2 U.S.C. 434(f).

The Commission recently concluded that sending 24-hour reports of independent expenditures by mail is not a viable option because it is unlikely that these reports will be received by the Commission within 24 hours of the making of the independent expenditure. (See Explanation and Justification for Independent Expenditure Reporting Rules, 65 FR 12834, March 20, 2002.) Thus, current paragraph (b) of 11 CFR 100.19 does not allow 24-hour reports of independent expenditures to be considered filed when postmarked, even if sent by registered or certified mail. These reports are only considered

[9] Like independent expenditure reporting, one concern regarding reporting expenditures for communications before the communications are publicly disseminated, is the possibility that the report will be erroneous if the communication is never publicly disseminated. Thus, if a person pays more than $10,000 for the production or airing of an electioneering comunication and properly reports those payments within 24 hours, but later decides not to air the ad, that person would not have committed perjury as long as the report reflected what the person knew to be true at the time it was filed.

timely filed if they are received by the Commission or Secretary of the Senate within 24 hours of the time the independent expenditure was made. For the same reasons, the Commission is also proposing to amend paragraph (b) to preclude filing 24-hour statements of electioneering communications by certified or registered mail. However, as explained above, these statements could be filed by facsimile machine or electronic mail, except by those persons who are required to file electronically under 11 CFR 104.18.

In addition to the substantive revisions noted above, all paragraphs in section 100.19 would be given titles to assist the reader in finding the appropriate information, and technical changes would be made to paragraph (d).

IV. When Does the 24 Hour Period Begin and End?

The Commission currently considers the term "24 hours" with regard to certain reports of independent expenditures to mean 24 contiguous hours even if the time period begins or ends on a weekend or holiday. The proposed rules would interpret the 24-hour reporting requirement for statements of electioneering communications the same way, since neither FECA nor BCRA appear to contemplate a different result. Both facsimile and electronic mail transmissions may be filed at any time and have a date and time stamp embedded for purposes of proof. However, the Commission requests comments on whether to use a different interpretation of "24 hours" for electioneering communications than is currently used for 24-hour reports of independent expenditures. For example, if the $10,000 threshold is exceeded on a Saturday at 5 p.m., should the statement be filed by Sunday at 5 p.m. or Monday at 5 p.m.? Would it be confusing to filers if this rule were different for electioneering communication statements than for other notices, statements or reports?

The Commission also requests comments on how a person should prove that he or she timely sent these 24-hour statements. For example, if reports were sent by fax, would a copy of the sender's fax cover page containing the date and time of the transmission be sufficient to prove timely receipt?

What Information Must Be Reported About Electioneering Communications?

BCRA at 2 U.S.C. 434(f)(2) requires that all persons making electioneering communications report the funds spent on those communications. This new statute is very specific regarding the types of information that must be reported. Consequently, the proposed rules at 11 CFR 104.19 would closely follow the statutory reporting requirements for "electioneering communications." These new 24-hour statements will require the Commission to create a new form for reporting electioneering communications. The Commission intends to create FEC Form 9 for persons other than political committees and to create Schedule J as part of FEC Form 3, 3X, or, 3P, as appropriate, for political committees. These forms would be available on the Commission's website and by Faxline.

Proposed 11 CFR 104.19(a) is discussed above. (*See* Who must report electioneering communications? When must electioneering communications be reported?)

Proposed 11 CFR 104.19(b) would specify the contents of the statement required under BCRA and the proposed rules. Because BCRA quite specifically addresses the contents of these statements, the proposed rules closely follow the statutory language. *See* 2 U.S.C. 434(f)(2). As discussed above, both BCRA and the proposed rules would require that these 24-hour reports be filed under the penalties for perjury.

Proposed paragraph (b)(1) would require the identification[10] of the person making the disbursement(s) for electioneering communications. If the person making the disbursement is not an individual, proposed paragraph (b)(1) would also require the person's principal place of business.

Proposed paragraph (b)(2) would require the identification of any person sharing or exercising direction or control over the activities of the person making the disbursement. The Commission requests comments as to whether "direction or control over the activities" should be further defined, and if so, what types of actions would constitute "direction or control over the activities?"

The Commission also seeks comment on whether it should draw upon in whole or in part its existing earmarking regulations, 11 CFR 110.6(d), in determining the scope of the statutory phrase "direction or control." These rules provide that if a conduit exercises any direction or control over the choice of the recipient candidate, the earmarked contribution shall be considered a contribution by both the original contributor and the conduit for both limitation and reporting purposes. The Commission determined that a conduit exercised direction over a contribution when it determined whether a contribution should be made, and, if so, the recipient, the amount, and the timing of any contribution. *See* Advisory Opinion ("AO") 1986–4. In two other AOs, the Commission determined that conduits did not exercise direction or control over a contribution when the original contributor made the same choices. *See* AO 1981–57 and AO 1980–46. The Commission seeks comment on whether a similar analysis should be used to define "direction and control" in this rulemaking.

The recently promulgated regulations on non-Federal funds (67 FR 49063 (July 29, 2002)) contained a definition of "direct" with regard to the making of contributions. That regulation defines "to direct" as "to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value, including through a conduit or intermediary." 11 CFR 300.2(n). The Commission requests comments as to whether this definition of "to direct" could be adopted for purposes of this rulemaking as the definition of "direction." The Commission further requests comments on whether "direction" and "control" should have the same meaning and, if not, what the distinction is.

Another issue that might be addressed is whether direction or control should be limited to influence over certain aspects of the electioneering communications (*e.g.*, the contents, timing, frequency, duration or intended audience of the communication, or the specific media outlet used). In the alternative, should these terms encompass all activities of the person making the electioneering communication, even when those activities are not related to the electioneering communication? This approach is reflected in Alternative 4–B of the proposed rule at 11 CFR 104.19(b)(2).

The Commission requests comments on these issues as well as any other issues relevant to this point.

Proposed paragraph (b)(3) would require the identification of the custodian of the books and accounts of the person or persons making the disbursements.

Proposed paragraph (b)(4) would require the amount of each

[10] 11 CFR 100.12 defines "identification" as: "in the case of an individual, his or her full name, including: First name, middle name or initial, if available, and last name; mailing address; occupation; and the name of his or her employer; and, in the case of any other person full name and address."

disbursement of more than $200 during the period covered by the statement, the date the disbursement was made, and the identification of the person to whom the disbursement was made.

Alternative 5–A of proposed paragraph (b)(5) would closely track the wording of BCRA by requiring the identification of all elections to which the electioneering communications pertain and the names (if known) of the candidates clearly identified or to be clearly identified in the communication. Alternative 5–B of proposed paragraph (b)(5) would require disclosure of all clearly identified candidates referred to in the communication and the elections in which they are candidates. The Commission seeks comment on whether Alternative 5–B is preferable to the statutory language, in that it is easier to follow and takes into consideration 2 U.S.C. 434(f)(3), which makes reference to a clearly identified candidate a threshold requirement for a communication to be deemed an electioneering communication.

Proposed paragraph (b)(6) would apply only to qualified nonprofit corporations under 11 CFR 104.10 that pay for electioneering communications only from a segregated bank account under 11 CFR 114.10(h). This proposed paragraph follows 2 U.S.C. 434(f)(2)(E) by providing that if a qualified nonprofit corporation pays for its electioneering communications only from its segregated bank account, it must report the name and address of only those individuals who provided $1,000 or more to the account, aggregating from January 1 of the preceding calendar year. If a qualified nonprofit corporation pays for its electioneering communications from any account other than its segregated bank account, it would be required to report *all* contributors who contributed $1,000 or more to the organization in general (as opposed to the segregated bank account for electioneering communications) under proposed paragraph (b)(7). Proposed paragraph (b)(7) would apply to qualified nonprofit corporations that pay for electioneering communications from an account other than that described in 11 CFR 114.10(h), and to all other persons who make electioneering communications.

Proposed paragraph (b)(7) would follow 2 U.S.C 434(f)(2)(F) by requiring the name and address of any contributor who contributed an amount aggregating $1,000 or more since the first day of the preceding calendar year to the person making the disbursement. Note that BCRA also requires the name and addresses of every U.S. citizen, U.S. national, or permanent resident contributing $1,000 or more to "a segregated bank account." *See* 2 U.S.C. 434(f)(2)(E). Sections 434(f)(2)(E) and 441b(c)(3)(B) of FECA, when read together, appear to contemplate that this segregated bank account is required only for section 501(c)(4) corporations. However, as explained above, section 501(c)(4) corporations (with the possible exception of qualified nonprofit corporations under *MCFL*) are prohibited from making electioneering communications. Therefore, the Commission proposes to omit this information from the required contents of reports, for all persons except qualified nonprofit corporations. Comments are sought on this approach.

In following 2 U.S.C. 434(f)(2)(E) and (F), proposed 11 CFR 104.19(b)(6) and (7) would require the identification of those persons who have contributed in excess of $1,000 since January 1 of the preceding calendar year. The Commission requests comments on whether to require all donations from these donors to be itemized every time the person making the electioneering communication files reports even if some of them were previously reported. An alternative would be to require the itemization of these funds in the same way that contributions are currently itemized under 11 CFR 104.8 on Schedule A. Thus, each time a person provides funds to the person making the electioneering communications, the filer would report the receipts but would not be required to itemize them until they aggregate in excess of $1,000. However, for each contribution/donation thereafter, the filer would be required to report the "to-date" total along with the itemization of any *new* funds provided by that donor since the last report, but the filer would not be required to re-report previous contribution/donations in each subsequent report. The Commission envisions that this alternative would require FEC Form 9 and Schedule J to contain space for reporting donations that would be similar to the current Schedule A. Comments are requested on this approach and on other possible methods of implementation of 2 U.S.C. 434(f)(2)(E) and (F) to avoid duplicative reporting.

Proposed paragraph (b)(8) would require the reporting of the disclosure date, as defined in proposed 11 CFR 104.19(a)(1). While BCRA does not specifically require the disclosure date to be reported, the Commission notes the necessity of this information as the triggering mechanism for filing the statement. This is similar to requiring the date an independent expenditure aggregating in excess of $1,000 is made during the 24-hour reporting period. The Commission requests comments on whether or not to require persons making electioneering communications to report the disclosure date.

Proposed paragraph (c) would require all persons (except qualified nonprofit corporations) making electioneering communications or accepting contributions for the purpose of making electioneering communications to comply with the Commission's current recordkeeping regulations at 11 CFR 104.14. Qualified nonprofit corporations would be exempt from the recordkeeping requirements in order to mirror the requirements for such entities that make independent expenditures. The Commission seeks comment on what records should be required to be maintained by persons who make electioneering communications. Should the recordkeeping requirements for electioneering communications and independent expenditures be the same? If so, what should those requirements be?

Where Must Electioneering Communications Statements Be Filed?

Currently, the FECA and 11 CFR 105.2 require that reports by, and solely regarding, candidates for the U.S. Senate be filed with the Secretary of the Senate as custodian for the Commission. BCRA requires that statements of electioneering communications that refer to Senate candidates must be filed with the Commission. 2 U.S.C. 434(f)(1). Therefore, proposed revisions to 11 CFR 105.2 would renumber the current section 105.2 as paragraph 105.2(a) under the heading of "General rule." Proposed new paragraph (b) would contain the exceptions to that rule, *i.e.*, persons who make electioneering communications that refer to candidates for Senate would report to the Commission rather than to the Secretary of the Senate. BCRA also requires that all 24-hour and 48-hour reports of independent expenditures be filed with the Commission regardless of whether they support or oppose a candidate for Senate. 2 U.S.C. 434(g)(3)(A). These independent expenditure reports would be added to revised section 105.2 in a separate rulemaking at a later point.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that these proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that since all political committees already have reporting requirements,

these additional statements do not create a significant new burden. Persons other than political committees would not have to report until they exceed a $10,000 threshold, at which point their reporting obligations would be no more than what is strictly necessary to comply with the new statutory requirements. In addition, they would have considerable flexibility in the method of filing the requisite statement.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 105

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, it is proposed to amend subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Paragraphs (b) and (d) of section 100.19 would be revised, titles would be added to paragraphs (a), (c), and (e), and paragraph (f) would be added to read as follows:

§ 100.19 File, filed or filing (2 U.S.C. 434(a)).

* * * * *

(a) *Where to deliver reports.* * * *

(b) *Timely filed. General rule.* A document, other than a report or statement covered by paragraphs (c) through (f) of this section, is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than midnight of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than midnight of the fifteenth day before the date of the election. Documents sent by first class mail must be received by the close of business on the prescribed filing date to be timely filed.

(c) *Electronic filing.* * * *

(d) *24-hour reports of independent expenditures.* A 24-hour report of independent expenditures under 11 CFR 104.4(b) or 109.2(c) is timely filed when it is received by the appropriate filing officer as listed in 11 CFR 104.4(c) after a disbursement is made, or, in the case of a political committee, a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure, but no later than 24 hours from the time the independent expenditure was made. In addition to other permissible means of filing, a 24-hour report of independent expenditures may be filed using a facsimile machine or by electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18.

(e) *48-hour statements of last-minute contributions.* * * *

(f) *24-hour statements of electioneering communications.* A 24-hour statement of electioneering communications under 11 CFR 104.19 is timely filed when it is received by the Commission within 24 hours of the disclosure date (*see* 11 CFR 104.19(a)(1)). In addition to other permissible means of filing, a 24-hour statement of electioneering communications may be filed using a facsimile machine or by electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18.

3. New section 100.29 would be added to read as follows:

§ 100.29 Electioneering communication.

(a)(1) *Electioneering communication* means any broadcast, cable, or satellite communication that:

(i) Refers to a clearly identified candidate for Federal office;

(ii) Is publicly distributed within 60 days before a general election for the office sought by the candidate; or within 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate;

(iii) Is targeted to the relevant electorate, in the case of a candidate for Senate or the House of Representatives; and

Alternative 1–A

(iv) In the case of a candidate for nomination for President:

(A) Can be received by 50,000 or more persons in a State where a primary election, as defined in 11 CFR 9032.7, is being held if publicly distributed within 30 days before the election; or

(B) Can be received by 50,000 or more persons anywhere in the United States if publicly distributed within 30 days before the national nominating convention.

(2) For purposes of this section only, a special election or a runoff election is a primary election if held to nominate a candidate. A special election or a runoff election is a general election if held to elect a candidate.

(b) For purposes of this section—

(1) *Refers to a clearly identified candidate* means that the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia."

(2) *Broadcast, cable, or satellite communication* means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system, but does not include any communication publicly distributed exclusively by Low Power FM Radio, Low Power Television or Citizens Band Radio, as those terms are defined by the Federal Communications Commission.

(3) *Targeted to the relevant electorate* means the communication can be received by 50,000 or more persons—

(i) In the district the candidate seeks to represent, in the case of a candidate for Representative in or Delegate or Resident Commissioner to, the Congress; or

(ii) In the State the candidate seeks to represent, in the case of a candidate for Senator.

Alternative 1–B

(4) A communication that refers to a clearly identified candidate for President or Vice-President is publicly distributed within 30 days before a primary election, preference election, or convention or caucus of a political party only where and when the communication can be received by 50,000 or more persons within the State holding such election, convention or caucus.

(5) For purposes of paragraph (b)(3) of this section, information on the number of persons in the congressional district or State that can receive a communication publicly distributed by a television station, radio station, a cable television system, or satellite system, is available on the Federal Communications Commission's website, *http://www.fcc.gov*. A link to that site is available on the Federal Election

Commission's website, *http://www.fec.gov*. It shall be a complete defense against any charge that a communication reached 50,000 or more persons when the maker of an electioneering communication relies on such information posted on the website of the Federal Communications Commission prior to the date the communication is publicly distributed.

(6) *Publicly distributed* means aired, broadcast, cablecast or otherwise disseminated through the facilities of a television station, radio station, cable television system, or satellite system. This definition also applies to the term airing in 11 CFR 104.5 and 104.19.

(c) *Electioneering communication* does not include any communication that:

(1) Is publicly distributed through a means of communication other than a broadcast, cable, or satellite television or radio station. For example, electioneering communication does not include communications appearing in print media, including a newspaper or magazine, handbill, brochure, yard sign, poster, billboard, and other written materials, including mailings; communications over the Internet, including electronic mail; or telephone communications;

(2) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcast, cable, or satellite television or radio station, unless such facilities are owned or controlled by any political party, political committee, or candidate. A news story distributed through a broadcast, cable, or satellite television or radio station owned or controlled by any political party, political committee, or candidate is nevertheless exempt if the news story meets the requirements described in 11 CFR 100.132(a) and (b);

Alternative 2–A

(3) Constitutes an expenditure or an independent expenditure.

Alternative 2–B

(3) Constitutes a candidate-specific expenditure reportable as an in-kind contribution or party coordinated expenditure, or an independent expenditure;

(4) Constitutes a candidate debate or forum conducted pursuant to 11 CFR 110.13, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(5) Refers to a bill or law by its popular name where that name includes the name of a Federal candidate, provided that the popular name is the sole reference made to a Federal candidate;

Alternative 3–A

(6) Is devoted exclusively to urging support for or opposition to particular pending legislative or executive matters, where the communication only requests recipients to contact a specific Member of Congress or public official, without promoting, supporting, attacking or opposing the candidate, or indicating the candidate's past or current position on the legislation;

Alternative 3–B

(6) Concerns only a pending legislative or executive matter, and the only reference to a Federal candidate is a brief suggestion that he or she be contacted and urged to take a particular position on the matter, and there is no reference to the candidate's record, position, statement, character, qualifications, or fitness for an office or to an election, candidacy, or voting;

Alternative 3–C

(6)(i) Does not include express advocacy;

(ii) Refers to a specific piece of legislation or legislative proposal, either by formal name, popular name or bill number; or refers to a general public policy issue capable of redress by legislation or executive action; and

(iii) Contains a phone number, toll free number, mail address, or electronic mail address, internet home page or other world wide web address for the person or entity that the ad urges the viewer or listener to contact;

Alternative 3–D

(6) Urges support of or opposition to any legislation, resolution, institutional action, or any policy proposal and only refers to contacting a clearly identified candidate who is an incumbent legislator to urge such legislator to support or oppose the matter, without referring to any of the legislator's past or present positions; or

(7) Refers to a clearly identified Federal candidate in a public communication by a candidate for State or local office, individual holding State or local office, or an association or similar group of candidates for State or local office or of individuals holding State or local office, if such mention of a Federal candidate is merely incidental to the candidacy of one or more individuals for State or local office.

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

4. The authority citation for part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b) and 439a.

5. In section 104.5, paragraph (j) would be added as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(j) *24-hour statements of electioneering communications.* Every person who makes a disbursement or executes a contract to make a disbursement for the direct costs of producing or airing electioneering communications as defined in 11 CFR 100.29 aggregating in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement under penalty of perjury in accordance with 11 CFR 104.19.

6. New section 104.19 would be added to read as follows:

§ 104.19 Reporting electioneering communications (2 U.S.C. 434(f)).

(a) *Who must report.* Every person who makes a disbursement or executes a contract to make a disbursement for the direct costs of producing or airing electioneering communications as defined in 11 CFR 100.29 aggregating in excess of $10,000 during any calendar year shall, within 24 hours of the disclosure date, file with the Commission a statement under penalty of perjury containing the information set forth in paragraph (b) of this section. Persons other than political committees must file these 24-hour statements on FEC Form 9. Political committees must file these 24-hour statements on Schedule J of FEC Forms 3, 3X, or 3P.

(1) *Disclosure date* means during a calendar year:

(i) The first date by which a person has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and

(ii) Any other date in a calendar year by which a person has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date during such calendar year.

(2) Direct costs of producing or airing electioneering communications include, but are not limited to, the following:

(i) Costs charged by a production company, such as studio rental time, staff salaries, costs of video or audio recording media, and talent; and

(ii) The cost of airtime on broadcast, cable or satellite radio and television stations, and the charges for a broker to purchase the airtime.

(b) *Contents of statement.* Every person described in paragraph (a) of this section shall disclose the following information:

(1) The identification (*see* 11 CFR 100.12) of the person making the disbursement and, if the person is not an individual, the person's principal place of business;

Alternative 4–A

(2) The identification (*see* 11 CFR 100.12) of any person sharing or exercising direction or control over the electioneering communication activities of the person making the disbursement;

Alternative 4–B

(2) The identification (*see* 11 CFR 100.12) of any person sharing or exercising direction or control over the contents, timing, duration, intended audience, frequency of placement of the electioneering communication or the specific media outlet used;

(3) The identification (*see* 11 CFR 100.12) of the custodian of the books and accounts from which the disbursements for electioneering communications were made;

(4) The amount of each disbursement of more than $200 during the period covered by the statement, the date the disbursement was made, and the identification (as defined in 11 CFR 100.12) of the person to whom that disbursement was made;

Alternative 5–A

(5) All elections to which the electioneering communication pertains and all names (if known) of clearly identified candidates referred to or to be referred to in the communication;

Alternative 5–B

(5) All clearly identified candidates referred to in the communication and the elections in which they are candidates;

(6) If the disbursements are paid out of a segregated bank account of a qualified nonprofit corporation under 11 CFR 114.10(h) consisting of funds provided solely by individuals who are U.S. citizens, U.S. nationals, or who are lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20), the name and address of each contributor who contributed an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year;

(7) If the disbursements are not paid out of the segregated bank account of a qualified nonprofit corporation under 11 CFR 114.10(h), the name and address of each contributor who contributed an amount aggregating $1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year; and

(8) The disclosure date as defined in this section.

(c) *Recordkeeping.* All persons, except qualified nonprofit corporations (see 11 CFR 114.10), who make electioneering communications or who accept contributions for the purpose of making electioneering communications, must maintain records in accordance with 11 CFR 104.14.

PART 105—DOCUMENT FILING (2 U.S.C. 432(g))

7. The authority citation for part 105 would be revised to read as follows:

Authority: 2 U.S.C. 432(g), 434, 438(a)(8).

8. Section 105.2 would be revised to read as follows:

§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (2 U.S.C. 432(g)(2)).

(a) *General rule.* Except as provided in paragraph (b) of this section all designations, statements, reports, and notices as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of United States Senator, by his or her principal campaign committee or by any other political committee(s) that supports only candidates for nomination for election or election to the Senate of the United States shall be filed in original form with, and received, by the Secretary of the Senate, as custodian for the Commission.

(b) *Exceptions.* Statements of electioneering communications filed in accordance with 11 CFR 104.19, regardless of whether the communication refers to a candidate for Senate, House of Representatives or President or Vice-President, must be filed in original form with, and received by the Commission.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

9. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8), 441b.

10. In section 114.2, paragraph (b) would be revised to read as follows:

§ 114.2 Prohibitions on contributions and expenditures.

* * * * *

(b)(1) Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR part 100, subpart B. Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR 114.1(a) in connection with any Federal election.

(2) Except as provided at 11 CFR 114.10, corporations and labor organizations are prohibited from:

(i) Making expenditures as defined in 11 CFR part 100, subpart D;

(ii) Making expenditures with respect to a Federal election (as defined in 11 CFR 114.1(a)), for communications to those outside the restricted class that expressly advocate the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party; or

(iii) Making payments for an electioneering communication to those outside the restricted class.

* * * * *

11. In section 114.10, paragraphs (a), (d), (e) and (g) would be revised and paragraphs (h) and (i) would be added to read as follows:

§ 114.10 Nonprofit corporations exempt from the prohibition on independent expenditures and electioneering communications.

(a) *Scope.* This section describes those nonprofit corporations that qualify for an exemption in 11 CFR 114.2. It sets out the procedures for demonstrating qualified nonprofit corporation status, for reporting independent expenditures and electioneering communications, and for disclosing the potential use of donations for political purposes.

* * * * *

(d) *Permitted corporate independent expenditures and electioneering communications.*

(1) A qualified nonprofit corporation may make independent expenditures, as defined in 11 CFR part 109, without violating the prohibitions against corporate expenditures contained in 11 CFR part 114.

(2) A qualified nonprofit corporation may make electioneering communications, as defined in 11 CFR 100.29, without violating the prohibitions against corporate expenditures contained in 11 CFR part 114.

(3) Except as provided in paragraph (d)(1) and (2) of this section, qualified nonprofit corporations remain subject to the requirements and limitations of 11 CFR part 114, including those

provisions prohibiting corporate contributions, whether monetary or in-kind.

(e) *Qualified nonprofit corporations; reporting requirements.*

(1) *Procedures for demonstrating qualified nonprofit corporation status.*

(i) If a corporation makes independent expenditures under paragraph (d)(1) of this section that aggregate in excess of $250 in a calendar year, the corporation shall certify, in accordance with paragraph (e)(1)(i)(B) of this section, that it is eligible for an exemption from the prohibitions against corporate expenditures contained in 11 CFR part 114.

(A) This certification is due no later than the due date of the first independent expenditure report required under paragraph (e)(2)(i) of this section. However, the corporation is not required to submit this certification prior to making independent expenditures.

(B) This certification may be made either as part of filing FEC Form 5 (independent expenditure form) or, if the corporation is not required to file electronically under 11 CFR 104.18, by submitting a letter in lieu of the form. The letter shall contain the name and address of the corporation and the signature and printed name of the individual filing the qualifying statement. The letter shall also certify that the corporation has the characteristics set forth in paragraphs (c)(1) through (c)(5) of this section.

(ii) If a corporation makes electioneering communications under paragraph (d)(2) of this section that aggregate in excess of $10,000 in a calendar year, the corporation shall certify, in accordance with paragraph (e)(1)(ii)(B) of this section, that it is eligible for an exemption from the prohibitions against corporate expenditures contained in 11 CFR part 114.

(A) This certification is due no later than the due date of the first electioneering communication statement required under paragraph (e)(2)(ii) of this section. However, the corporation is not required to submit this certification prior to making electioneering communications.

(B) This certification must be made as part of filing FEC Form 9 (electioneering communication form).

(2) *Reporting independent expenditures and electioneering communications.*

(i) Qualified nonprofit corporations that make independent expenditures aggregating in excess of $250 in a calendar year shall file reports as required by 11 CFR 109.2.

(ii) Qualified nonprofit corporations that make electioneering communications aggregating in excess of $10,000 in a calendar year shall file statements as required by 11 CFR 104.19.

* * * * *

(g) *Non-authorization notice.* Qualified nonprofit corporations making independent expenditures or electioneering communications under this section shall comply with the requirements of 11 CFR 110.11.

(h) *Segregated bank account.* A qualified nonprofit corporation may, but is not required to, establish a segregated bank account into which it deposits only funds provided by individuals, as described in 11 CFR 104.19(b)(6).

(i) *Activities prohibited by the Internal Revenue Code.* Nothing in this section shall be construed to authorize any organization exempt from taxation under 26 U.S.C. 501(a), including any qualified nonprofit corporation, to carry out any activity that it is prohibited from undertaking by the Internal Revenue Code, 26 U.S.C. 501, *et seq.*

12. Section 114.14 would be added to read as follows:

§ 114.14 Further restrictions on the use of corporate and labor organization funds for electioneering communications.

(a) No corporation or labor organization may give, disburse, donate or otherwise provide funds, the purpose of which is to pay for an electioneering communication, to any other person.

(b) No person who accepts funds given, disbursed, donated or otherwise provided by a corporation or labor organization may use those funds to:

(1) Pay for any electioneering communication; or

(2) Provide any portion of those funds to any person, for the purpose of defraying any of the costs of an electioneering communication.

(c) The prohibitions at paragraphs (a) and (b) of this section shall not apply to funds disbursed by a corporation or labor organization, or received by a person, that constitute—

(1) Salary, royalties, or other income earned from bona fide employment or other contractual arrangements, including pension or other retirement income;

(2) Interest earnings, stock or other dividends, or proceeds from the sale of the person's stocks or other investments; or

(3) Receipt of payments representing fair market value for goods provided or services rendered to a corporation or labor organization.

(d) Persons who receive funds from a corporation or a labor organization that do not meet the exceptions of paragraph (c) of this section must be able to demonstrate through a reasonable accounting method that no such funds were used to pay any portion of an electioneering communication.

Dated: August 2, 2002.

Karl J. Sandstrom,

Vice Chairman, Federal Election Commission.

[FR Doc. 02–19996 Filed 8–6–02; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–100–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes. This proposal would require replacement of the overwing emergency exit placards, door weight placards, and no baggage placards with new placards. This action is necessary to prevent the inability of a passenger to open and dispose of the overwing emergency exit door during an emergency evacuation due to incorrect placards. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–100–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–100–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–100–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–100–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 series airplanes. TCCA advises that the instructions pictured on the overwing emergency exit placards are incorrect. The existing placards show a person opening the overwing emergency exit door in a sitting position, but disposing of it while standing. Due to seat pitch and placement, the overwing emergency exit door can be opened and disposed of only while a person is seated. Incorrect placards on the overwing emergency exit door, if not corrected, could result in the inability of a passenger to open and dispose of the overwing emergency exit door during an emergency evacuation.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–11–077, Revision "A," dated December 11, 2001, including Attachments 1 and 2, which describes procedures for replacement of the overwing emergency exit placards, door weight placards, and no baggage placards with new placards (including cleaning of the applicable surface). Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2002–12, dated February 4, 2002, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the action specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for completing a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this proposed AD would not require those actions. The FAA does not need this information from operators.

Difference Between Proposed Rule and Canadian Airworthiness Directive

The Canadian airworthiness directive requires replacement of the overwing emergency exit placards, door weight placards, and no baggage placards with new placards, per Bombardier Alert Service Bulletin A601R–11–077, Revision 'A,' dated December 11, 2001, "or later revision approved by the Director, Aircraft Certification, Transport Canada." This proposed AD would NOT specify the option of accomplishing the proposed replacement per later approved revisions of the referenced Bombardier service bulletin. The use of the phrase, "or later approved revisions," violates Office of the Federal Register regulations regarding approval of materials that are incorporated by reference. However, affected operators may request approval to use a later revision of the referenced service bulletin as an alternative method of compliance, under the provisions of paragraph (b) of the proposed AD.

Cost Impact

The FAA estimates that 284 Model CL–600–2B19 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 1 and 2 hours per airplane depending on the airplane configuration to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately between $47 and $195

per airplane depending on the configuration of the airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $30,388 and $89,460, or $107 and $315 per airplane depending on the configuration of the airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, for affected airplanes within the period under the warranty agreement, the FAA has been advised that the manufacturer has committed previously to its customers that it will bear the cost of the placard kits.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2002–NM–100–AD.

Applicability: Model CL–600–2B19 series airplanes, certificated in any category, having the serial numbers listed in the following table:

Table—Serial Numbers

Serial Numbers
7003 through 7434 inclusive
7436 through 7442 inclusive
7444 through 7452 inclusive
7454 through 7458 inclusive
7460 through 7497 inclusive
7499 through 7504 inclusive

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of a passenger to open and dispose of the overwing emergency exit door during an emergency evacuation due to incorrect placards, accomplish the following:

Installation of Placards

(a) Within 12 months after the effective date of this AD, replace the overwing emergency exit placards, door weight placards, and no baggage placards with new placards (including cleaning of the applicable surface), as applicable, per Bombardier Alert Service Bulletin A601R–11–077, Revision 'A,' dated December 11, 2001, including Attachments 1 and 2; except it is not necessary to complete the comment and compliance sheet.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–12, dated February 4, 2002.

Issued in Renton, Washington, on July 29, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–19876 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–9]

Proposed Amendment of Class E5 Airspace; Prestonburg, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E5 airspace at Prestonburg, KY. A Area Navigation (RNAV), Global Positioning System (GPS), Runway (RWY) 3, a RNAV (GPS) RWY 21, and a VHF Omni-directional Range (VOR)/ Distance Measuring Equipment (DME)–A Standard Instrument Approach Procedure (SIAP) has been developed for Big Sandy Regional Airport, KY. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs.

DATES: Comments must be received on or before September 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–9, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Prestonburg, KY. A RNAV (GPS), RWY 3, a RNAV (GPS) RWY 21, and a VOR/DME–A SIAP has been developed for Big Sandy Regional Airport, KY. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO KY E5 Prestonburg, KY [REVISED]

Prestonburg, Big Sandy Regional Airport, KY

(Lat. 37°45′04″N, long. 82°38′12″W)

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of the Big Sandy Regional Airport.

* * * * *

Issued in College Park, Georgia, on July 24, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–19555 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101, 201, and 352

[Docket No. RM02–14–000]

Regulation of Cash Management Practices

August 1, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In order to protect the customers of jurisdictional companies, the Federal Energy Regulatory Commission is proposing to establish limits on the amount of funds that can be swept from a regulated subsidiary to a non-regulated parent under so-called "cash management" programs, as well as certain other requirements.

DATES: Comments are due 15 days after publication in the **Federal Register**.

ADDRESS: File written comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC, 20426. Comments should reference Docket No. RM02–14–000. Comments may be filed electronically or by paper (an original and 14 copies with an accompanying computer diskette in the prescribed format requested).

FOR FURTHER INFORMATION CONTACT:
Mark Klose (Technical Information), Office of the Executive Director, Division of Regulatory Accounting Policy, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 219–2595.
Mary Lauermann (Technical Information), Office of the Executive Director, Division of Regulatory Audits, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 208–0087.
Peter Roidakis (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202)208–1213.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes to amend its Uniform Systems of Accounts [1] for public utilities,[2] natural gas companies [3] and oil pipeline companies [4] by establishing the documentation necessary "to furnish readily full information" [5] concerning the management of funds from a FERC-regulated subsidiary by a non-FERC-regulated parent.[6] Specifically, the Commission is requiring that all such arrangements be in writing. Such arrangements must specify the duties and responsibilities of cash management participants and administrators, the methods of calculating interest and for allocating interest income and expenses, and the restrictions on deposits or borrowings by money pool members.

2. Under the proposed rule, such cash management or money pool agreements must provide documentation for all deposits into, borrowings from, interest income from, and interest expenses to such money pools. Such documentation shall include evidences of: (1) Each deposit with a money pool, including the date of the deposit, the amount of the deposit, the maturity date, if any, of the deposit, and the interest earning rate on the deposit; (2) each borrowing from a money pool, including the date of the borrowing, the amount of the borrowing, the maturity date, if any, of the borrowing and the interest rate on the borrowing; (3) the security provided by the money pool for repayment of deposits into the money pool and the security required by the money pool in support of borrowings from the money pool; and (4) daily balances of deposits with and borrowings from the money pool for each individual deposit or borrowing. Cash deposits and borrowings may not be netted.

3. Finally, the Commission is proposing that as a condition for participating in a cash management or money pool arrangement, the FERC-regulated entity must maintain a minimum proprietary capital balance (stockholder's equity) of 30 percent, and the FERC-regulated entity and its parent must maintain investment grade credit ratings. If either of these conditions is not met, the FERC-regulated entity may not participate in the cash management or money pool arrangement.

4. The proposed rule is in the public interest because it will permit FERC-regulated entities to benefit from properly structured cash management programs, while protecting customer interests.

II. Background

Cash Management Programs Generally

5. The overall objective of a cash management program is to enhance owner value. Cash management arrangements can provide participants with greater financing flexibility and a lower cost of borrowing than would otherwise be available to small entities. These arrangements can help smaller affiliates within the group receive the same favorable rates as larger entities.

6. There are several types of cash management programs. Some concentrate and transfer funds from multiple accounts into a single bank account in the parent company's name. Another type is known as "cash pooling" or "money pooling." This system uses a single summary account with interest earned or charged on the net cash balance position. There is no movement of funds between accounts of the entities participating in the pool. All accounts must be in the same bank, but not at the same branch. A third type, known as "zero balance accounts," empty or fill the balances in affiliated companies' accounts at a bank into or out of a parent's account each day.

7. In a typical zero balance program, excess funds are swept to a corporate concentration account every night from the regulated company's zero balance accounts, and an account receivable from the parent is established at the regulated company while an account payable is established at the parent company to record the transfer of funds. As part of the cash management program, the parent company provides the funds for payment of payroll and other expenditures of its subsidiaries from the funds that have been swept to the parent. The parent invests unspent funds in overnight investments so that the money of all the subsidiaries will be working for the company rather than being idle.

8. Cash management programs are not without risk, however. Problems can arise over the respective rights to the concentration or pooled account when the parent company or its subsidiaries file for bankruptcy. Courts have ruled that funds swept into a parent company's concentration account become the property of the parent, and the subsidiary loses all interest in those funds.[7]

9. There is thus a potential for degradation of the financial solvency of regulated entities if non-regulated parent companies declare bankruptcy and default on the accounts payable, advances or borrowings owed to their regulated subsidiaries.

FERC Regulated Entities' Cash Management Programs

10. In the fall of 2001, the Commission's Chief Accountant began a review of transactions between unregulated parent companies and their jurisdictional subsidiaries. Specifically, the balances in the cash account and accounts related to associated companies, reported in the FERC Forms 1, 2, and 6, were reviewed for the years 1997 through 2001. This review revealed that many companies had significant balances in Account 146—

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[1] Section 301(a) of the Federal Power Act (FPA), 16 U.S.C. 825(a), section 8 of the Natural Gas Act (NGA), 15 U.S.C. 717g, and section 20 of the Interstate Commerce Act (ICA), 49 App. U.S.C. 20 (1998), authorize the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for the purposes of administering the FPA, NGA and the ICA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

[2] Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, 18 CFR part 101 (2002).

[3] Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, 18 CFR part 201 (2002).

[4] Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act, 18 CFR part 352 (2002).

[5] *See* General Instructions—Records under Parts 101, 201, and 352 of the Commission's Uniform System of Accounts for public utilities, licensees, natural gas companies, and oil pipeline companies.

[6] The proposed regulations would apply to all public utilities subject to the Uniform System of Accounts, all natural gas companies subject to the Uniform System of Accounts, and all oil pipeline carriers subject to the Uniform System of Accounts.

[7] *See, e.g.*, In the Matter of Southmark Corporation, 49 F.3d 1111 (5th Cir. 1995), and *In re* Amdura Corporation, 75 F.3d 1447 (10th Cir. 1996).

Accounts Receivable from Associated Companies, and Account 13—Receivables from Affiliated Companies, and that the balances in these accounts were significantly increasing over the period under review.

11. As a result of the use of cash management programs and the increased balances in Account 146 identified by this initial review, the Chief Accountant began an audit in January 2002, to determine compliance with the Commission's accounting and reporting requirements for the years 2000 through 2001.

12. In March 2002, the Commission initiated a non-public investigation by the Chief Accountant, Office of the Executive Director, and the Market Oversight and Enforcement section, Office of the General Counsel, regarding financial data related to transactions, activities and accounting practices that may have impaired the financial condition of entities subject to the Commission's jurisdiction to the benefit of corporate parents or other affiliates or associated entities of jurisdictional companies.

13. The investigators reviewed transactions affecting Account 146—Accounts Receivable from Associated Companies for gas and electric companies, and Account 13—Receivables from Affiliated Companies for oil companies. Based on FERC Forms 1, 2 and 6 data from 2001, balances in Accounts 146 and 13 totaled approximately $16 billion ($8.2 billion in public utility accounts, $2 billion in natural gas company accounts, and $5.7 billion in oil and product pipeline accounts). The preliminary results of the audit/investigation also revealed severe record-keeping deficiencies:

- Cash management agreements, generally and across the electric, gas and oil industries, have not been formalized in writing to stipulate the terms of the programs and the interest associated with the loans of the subsidiaries' cash.
- Interest may or may not have been paid to subsidiary companies by the parents.
- Budgets are not developed at the subsidiary level for capital expenditures and operations and maintenance expenses.
- Inter-company billings between parents and subsidiaries may have occurred at preferential rates not given to non-affiliated customers.

III. Legal Authority and Proposed Regulations

14. The Commission is proposing to require clearly defined roles and responsibilities of all parties regarding transfers of cash, payments of bills, payments of interest, and the limitations to which funds can be taken from FERC-regulated subsidiaries. Cash management agreements must be reviewed and updated periodically to ensure that changes in corporate structure have not made the agreements obsolete.

15. The Natural Gas Act (NGA) with respect to natural gas companies, and the Federal Power Act (FPA) with respect to public utilities, and the Interstate Commerce Act (ICA) with respect to oil pipeline carriers authorize the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for the purposes of administering the FPA, NGA, and the ICA.[8] The NGA and the FPA also empower the Commission, with respect to natural gas pipelines and public utilities, to "perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of [the] Act." Section 16 of the NGA, 15 U.S.C. 717*o*, and section 309 of the FPA, 16 U.S.C. 825(h). Under the Interstate Commerce Act (ICA), the Commission may, with respect to oil and product pipelines "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers * * * as well as of the receipts and expenditures of monies." ICC, Title 49 Appendix section 20 (5), 49 App. U.S.C. 20 (5) (1988). The Commission also has the authority to perform the duties for which it was created "to inquire into and report on the business of persons controlling, controlled by, or under a common control with such carriers * * *." ICA, Title 49 Appendix section 12, 49 App. U.S.C. 12 (1988).

16. The Commission proposes to revise Account 146 in parts 101 and 201, and Account 13 in part 352 to provide instructions and conditions for the maintenance of cash management arrangements. Specifically, the Commission is requiring that all such arrangements be in writing. Such arrangements must specify the duties and responsibilities of cash management participants and the administrator, the methods of calculating interest and for allocating interest income and expenses, and the restrictions on deposits or borrowings by money pool members.

17. Under the proposed rule, such cash management agreements must provide documentation for all deposits into, borrowings from, interest income from, and interest expenses related to such agreements. Such documentation shall include evidence of: (1) Each deposit with a money pool, including the date of the deposit, the amount of the deposit, the maturity date, if any, of the deposit, and the interest earning rate on the deposit; (2) each borrowing from a money pool, including the date of the borrowing, the amount of the borrowing, the maturity date, if any, of the borrowing and the interest rate on the borrowing; (3) the security provided by the money pool for repayment of deposits into the money pool and the security required by the money pool in support of borrowings from the money pool; and (4) daily balances of deposits with and borrowings from the money pool for each individual deposit or borrowing. Cash deposits and borrowings may not be netted.

18. Because of the Commission's concern that such accounts not be used improperly so as to cause serious financial harm to FERC-regulated entities, and ultimately cause harm to the ratepayers, the Commission proposes that as a prerequisite to participating in a cash management arrangement, a FERC-regulated entity shall maintain a minimum proprietary capital balance of 30 percent,[9] and the FERC-regulated entity and its parent must maintain investment grade credit ratings.[10] If either of these conditions is no longer met, the FERC-regulated entity may not participate in the cash management or money pool arrangement.

IV. Information Collection Statement

19. The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for emergency review under section 3507(j)(1) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(j)(1). Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance quality, utility, and clarity of the information to

[8] *See* n.1, *supra*.

[9] *See* Niagara Mohawk Holdings, Inc. 99 FERC ¶ 61,323 (2002), where the Commission conditionally approved a requirement that a company maintain an equity balance equal to at least 30 percent of capital.

[10] The term "investment grade" was originally used by regulatory bodies to connote obligations eligible for investment by institutions such as banks, insurance companies, and savings and loan associations. Over time, this term became widespread throughout the investment community. Debt issues rated in four highest categories (*e.g.*, Standard & Poor's AAA, AA, A, and BBB rating, or Moody's Investors Service Aaa, Aa, and A and Baa rating are generally recognized as being investment grade. Lower rating categories are generally considered speculative.

be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Estimated Annual Burden

At present it is unclear how many companies already have written agreements in place and would not be impacted by this rule. But there are a significant number of FERC-regulated entities that could be impacted by this rule because of their membership in consolidated groups and their participation in cash management arrangements. For this reason, the Commission projects the total hours for the following collections of information:

Data collection	Number of respondents	Estimated % that are members of a consolidated group	No. of responses	Total annual hrs.
FERC–Form 1	268	51% or 137 (approx)	137	274
FERC Form 2	133	85% or 113 (approx)	113	226
FERC Form 6	201	98.5% or 198 (approx)	198	396
Totals				896

Total Annual Hours for Collection

(Reporting + Recordkeeping, (if appropriate)) = 896 hours

* This estimate is based on an average of 2 hours per respondent to convert verbal agreements into written agreements.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the cost for compliance to be the following: 896 hours ÷ 2,080 × $117,041 = $50,418.

Annualized capital/startup costs	$0
Annualized costs (Operations & Maintenance)	$50,418
Total annualized costs	$50,418

The Office of Management and Budget's (OMB) regulations [11] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC Form 1 Annual Report of Major Electric Utilities, Licensees and Others; FERC Form 2 Annual Report for Major Natural Gas Companies; FERC Form No. 6 Annual Report of Oil Pipeline Companies.

Action: Proposed Collections.

OMB Control No: 1902–0021; 1902–0028; and 1902–0022. [Note: The collections of information contained in this proposed rule are being submitted to OMB under OMB's emergency clearance procedures. These collections of information are also the subject of a separate proceeding in Docket No. RM02–3–000, and to avoid any delay in OMB's review of this proposed rule, the collections of information in this proposed rule will have a temporary designation of FERC–907. When the Commission issues a final rule, the collections of information will revert to their normal identifiers and control numbers.]

Respondents: Business or other for profit.

Frequency of Responses: On occasion.

Necessity of the Information: The Commission proposes to revise its Uniform System of Accounts to establish the documentation necessary to disclose information on the management of funds from a FERC-regulated subsidiary by a non-regulated parent. Specifically, the Commission is requiring that all such cash management arrangements be in writing. Such arrangements must specify the duties and responsibilities of cash management participants and administrators, the methods of calculating the interest and for allocating interest income and expenses, and the restrictions on deposits and/or borrowing of money pool members. The Commission is also proposing that as a condition for participating in cash management arrangements, the FERC-regulated entity must maintain a minimum proprietary capital balance of 30 percent and the FERC-regulated entity and its parent must maintain investment grade ratings.

As a result of the Commission's investigations, it was found that cash management agreements, generally and across the electric, gas and oil industries have not been formalized in writing stipulating both the terms of the programs and the interest associated with the loans of the subsidiaries' cash. In addition, budgets are not developed at the subsidiary level for capital expenditures, operations and maintenance expenses and the interest that may or may not have been paid to subsidiary companies by the parent.

The Commission is concerned that such accounts may be used so as create severe financial risk to FERC-regulated entities, and cause harm to rate payers should the subsidiaries attempt to pass through costs that result from defaults by unregulated parent companies, resulting in higher costs of capital.

Internal Review: The Commission has reviewed the requirements pertaining to the Uniform System of Accounts and to the three financial reports it prescribes and has determined that the proposed revisions are necessary because the Commission needs to establish uniform accounting and reporting requirements for cash management arrangements.

These requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric, natural gas and oil pipeline industries. The Commission has assured itself, by means of internal review, that there is objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 502–8415, fax: (202) 208–2425, e-mail: *michael.miller@ferc.fed.us*]

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7856, fax: (202) 395–7285.

V. Environmental Analysis

20. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human

[11] 5 CFR 1320.11 (1996).

environment.[12] The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental impact statement.[13] No environmental consideration is raised by the promulgation of a rule that is procedural or does not substantially change the effect of legislation or regulations being amended.[14] The proposed rule updates Parts 101, 201, and 352 of the Commission's regulations, and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. Accordingly, no environmental consideration is necessary.

VI. Regulatory Flexibility Act Statement

21. The Regulatory Flexibility Act of 1980 (RFA)[15] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission concludes that this rule would not have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of a small entity, and the data required by this rule are already being captured by their accounting systems. However, if the reporting requirements represent an undue burden on small businesses, the entity affected may seek a waiver of the requirements from the Commission.

VII. Comment Procedures

22. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 15 days from publication in the **Federal Register**. Comments must refer to Docket No. RM02–14–000, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

23. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Real Text Format, or ASCII format, as listed on the Commission's web site at *http://ferc.gov*, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by E-Mail to *efiling@ferc.gov*. Comments should not be submitted to the E-Mail address.

24. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

25. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the FERRIS link.

VIII. Document Availability

26. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

27. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

28. User assistance is available for FERRIS and the FERC's website during normal business hours from our Help line at (202) 208–2222 or the Public Reference Room at (202) 208–1371 Press 0, TTY (202) 208–1659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects

18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 101, 201, and 352, Title 18 of the Code of Federal Regulations, as follows:

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

2. In part 101, Balance Sheet Accounts, account 146 is revised to read as follows:

Balance Sheet Accounts

* * * * *

146 *Accounts receivable from associated companies.*

A. These accounts shall include notes and drafts upon which associated companies are liable, and which mature and are expected to be paid in full not later than one year from the date of issue, together with any interest thereon, and debit balances subject to current settlement in open accounts with associated companies. Items which do not bear a specified due date but which have been carried for more than twelve months and items which are not paid within twelve months from the due date shall be transferred to account 123, Investment in Associated Companies.

B. As a prerequisite for participating in a cash management or money pool arrangement, a utility shall maintain a minimum proprietary capital balance of 30 percent, and a utility and its parent must maintain an investment grade credit rating. If either of these requirements is not met, the utility may not participate in the cash management or money pool arrangement. A utility participating in a cash management or money pool arrangement shall maintain supporting documentation for all deposits into, borrowings from, interest income from, and interest expense to such money pool. The written documentation shall include evidences

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[12] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 47897 (Dec. 17, 1987), FERC Stats. & Regs. Prambles 1986–1990 ¶ 30,783 (1987).

[13] 18 CFR 380.4.

[14] 18 CFR 380.4(a)(2)(ii).

[15] 5 U.S.C. 601–612.

of: (1) Each deposit with the money pool, including the date of the deposit, the amount of the deposit, the maturity date, if any, of the deposit, and the interest earning rate on the deposit; (2) each borrowing from a money pool, including the date of the borrowing, the amount of the borrowing, the maturity date, if any, of the borrowing and the interest rate on the borrowing; (3) the security provided by the money pool for repayment deposits into the money pool and the security required by the money pool in support of borrowings from the money pool; and (4) daily balances of deposits with and borrowings from the money pool for each individual deposit or borrowing. Cash deposits and borrowings may not be netted.

C. The utility shall also maintain current and up-to-date copies of the documents authorizing the establishment of the cash management or money pool arrangement that specifies the following: (1) The duties and responsibilities of the money pool, its administrator and the other participants in the money pool; (2) the restrictions on deposits or borrowings by pool members, (3) the method used to determine the interest earning rates and interest borrowing rates by pool members; and (4) the method used to allocate interest income and expenses among the pool members.

Note A: On the balance sheet, accounts receivable from an associated company may be set off against accounts payable to the same company.

Note B: The face amount of notes receivable discounted, sold or transferred without releasing the utility from liability as endorser thereon, shall be credited to a separate subdivision of this account and appropriate disclosure shall be made in financial statements of any contingent liability arising from such transactions.

* * * * *

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

3. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

4. In part 201, Balance Sheet Accounts, account 146 is revised to read as follows:

Balance Sheet Accounts

* * * * *

146 *Accounts receivable from associated companies.*

A. These accounts shall include notes and drafts upon which associated companies are liable, and which mature and are expected to be paid in full not later than one year from the date of issue, together with any interest thereon, and debit balances subject to current settlement in open accounts with associated companies. Items which do not bear a specified due date but which have been carried for more than twelve months and items which are not paid within twelve months from the due date shall be transferred to account 123, Investment in Associated Companies.

B. As a prerequisite for participating in a cash management or money pool arrangement, a utility shall maintain a minimum proprietary capital balance of 30 percent and a utility and its parent must maintain an investment grade credit rating. If either of these requirements is not met, the utility may not participate in the cash management or money pool arrangement. A utility participating in a cash management or money pool arrangement shall maintain supporting documentation for all deposits into, borrowings from, interest income from, and interest expense to such money pool. The written documentation shall include evidences of: (1) Each deposit with the money pool, including the date of the deposit, the amount of the deposit, the maturity date, if any, of the deposit, and the interest earning rate on the deposit; (2) each borrowing from a money pool, including the date of the borrowing, the amount of the borrowing, the maturity date, if any, of the borrowing and the interest rate on the borrowing; (3) the security provided by the money pool for repayment deposits into the money pool and the security required by the money pool in support of borrowings from the money pool; and (4) daily balances of deposits with and borrowings from the money pool for each individual deposit or borrowing. Cash deposits and borrowings may not be netted.

C. The utility shall also maintain current and up-to-date copies of the documents authorizing the establishment of the money pool that specifies the following: (1) The duties and responsibilities of the money pool, its administrator and the other participants in the money pool; (2) the restrictions on deposits or borrowings by pool members, (3) the method used to determine the interest earning rates and interest borrowing rates by pool members; and (4) the method used to allocate interest income and expenses among the pool members.

Note A: On the balance sheet, accounts receivable from an associated company may be set off against accounts payable to the same company.

Note B: The face amount of notes receivable discounted, sold or transferred without releasing the utility from liability as endorser thereon, shall be credited to a separate subdivision of this account and appropriate disclosure shall be made in financial statements of any contingent liability arising from such transactions.

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PART 352—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

5. The authority citation for part 352 continues to read as follows:

Authority: 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

* * * * *

6. In part 352, Balance Sheet Accounts, account 13 is revised to read as follows:

Balance Sheet Accounts

* * * * *

13 *Receivables from affiliated companies.*

(a) This account shall include amounts receivable due and accrued from affiliated companies subject to settlement within one year from date of the balance sheet. This includes receivables for items such as revenue for services rendered, material furnished, rent, interest and dividends, advances and notes.

(b) As a prerequisite for participating in a cash management or money pool arrangement, a carrier shall maintain a minimum proprietary capital balance of 30 percent, and a carrier and its parent must maintain an investment grade credit rating. If either of these requirements is not met, the carrier may not participate in the cash management or money pool arrangement. A carrier participating in a money pool arrangement shall maintain supporting documentation for all deposits into, borrowings from, interest income from, and interest expense to such money pool. The written documentation shall include evidences of: (1) Each deposit with the money pool, including the date of the deposit, the amount of the deposit, the maturity date, if any, of the deposit, and the interest earning rate on the deposit; (2) each borrowing from a money pool, including the date of the borrowing, the amount of the borrowing, the maturity date, if any, of the borrowing and the interest rate on the borrowing; (3) the security provided by the money pool for repayment deposits into the money pool and the security

required by the money pool in support of borrowings from the money pool; and (4) daily balances of deposits with and borrowings from the money pool for each individual deposit or borrowing. Cash deposits and borrowings may not be netted.

(c) The carrier shall also maintain current and up-to-date copies of the documents authorizing the establishment of the money pool that specifies the following: (1) The duties and responsibilities of the money pool, its administrator and the other participants in the money pool; (2) the restrictions on deposits or borrowings by pool members, (3) the method used to determine the interest earning rates and interest borrowing rates by pool members; and (4) the method used to allocate interest income and expenses among the pool members.

[FR Doc. 02–20016 Filed 8–6–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 951; Re: Notice No. 903]

RIN 1512–AC83

Denial of the California Coast Viticultural Area Petition (2000R–166P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Termination of proposed rulemaking; denial of petition.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) announces the denial of the petition requesting establishment of the "California Coast" viticultural area and the termination of the related proposed rulemaking (Notice No. 903 of September 26, 2000, 65 FR 57763). ATF has concluded the petitioned viticultural area fails to meet the regulatory requirements issued under the authority of the Federal Alcohol Administration Act. ATF also announces that a supplemental report, "ATF Response to the California Coast Viticultural Area Petition," detailing the reasons for the petition's denial is available on the ATF website or by U.S. mail as described below.

ADDRESSES: A copy of this notice (Notice No. 951) and a link to the 80-page supplemental report, "ATF Response to the California Coast Viticultural Area Petition," detailing the reasons for the petition's denial, are available on the ATF website at: *http://www.atf.treas.gov/alcohol/rules/index.htm*.

Paper copies of the petition, the proposed regulation, the appropriate maps, the comments received in response to Notice No. 903, this notice (Notice No. 951), and the supplemental report are available for public inspection by appointment in the ATF Reading Room, Rm. 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–7890.

To obtain paper copies of the supplemental report, the comments received, or any other of the above documents by mail (at 20 cents per page), contact the ATF Librarian at the above address.

FOR FURTHER INFORMATION CONTACT: Nancy Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA 94105; telephone (415) 947–5192.

SUPPLEMENTARY INFORMATION:

Background—Viticultural Areas

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out its provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the names of approved viticultural areas to be used as appellations of origin on wine labels and in wine advertisements. Section 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable from surrounding areas by geographical features such as climate, elevation, soil, and topography.

ATF believes that viticultural area designations enable consumers to better identify the origin of the grapes used to produce a wine, provide significant information about the identity of a wine, and prevent consumer deception through the establishment of specific boundaries for viticultural areas. A list of approved viticultural areas is contained in 27 CFR part 9, American Viticultural Areas.

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include a description of area's proposed boundaries and United States Geological Survey maps with those boundaries prominently marked, as well as:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition; and
- Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, *etc.*), which distinguish the viticultural features of the proposed area from surrounding areas.

The petitioner bears the burden of providing evidence showing that a proposed viticultural area meets the regulatory requirements. ATF utilizes the proposed rulemaking process to facilitate the submission of additional information from the public showing that the proposed area does or does not comply with the regulatory requirements.

Background—California Coast Petition

1998 "California Coastal" Petition

In 1998, a group known as the Coastal Alliance submitted a petition to ATF requesting the establishment of the "California Coastal" viticultural area. The petitioned area's boundaries, extending along the California coastline north from Mexico into Mendocino County 175 miles south of the Oregon border, coincided with the established South Coast viticultural area's southern boundary and with the North Coast viticultural area's northern boundary.

ATF reviewed the petition and determined that the petitioned viticultural area did not meet the regulatory requirements. In the letter denying this petition, ATF noted that the "California Coastal" name could apply to the State's entire coastline and not just to the portion included in the petitioned area. ATF also determined that the petitioned viticultural area's geographic and climatic features were too diverse for it to be considered a delimited grape-growing region distinguishable from surrounding areas.

March 2000 "California Coast" Petition

The California Coast Alliance submitted a new petition to ATF on March 17, 2000, proposing the establishment of the "California Coast" viticultural area. The Alliance stated that the California Coast viticultural area would provide consumers with valuable information about the origin of wine made in this area and help prevent consumer deception from the growing

use of references to the California coast and coastal areas on wine labels.

The proposed California Coast viticultural area covered 22,000 square miles and spanned 650 miles along the Pacific coast, from the Mexican border north into Mendocino County in northern California, 175 miles south of the Oregon border. The petitioned area's inland width varied from approximately 5 to 68 miles. The petition's proposed boundary lines joined the established South Coast, Central Coast, San Francisco Bay, and North Coast viticultural areas and filled in the gaps between those established areas. The petitioned area included a total of 68 smaller, established viticultural areas.

Notice No. 903 and Resulting Comments

On September 26, 2000, ATF published a Notice of Proposed Rulemaking, Notice No. 903, in the **Federal Register** (65 FR 57763) soliciting public comments regarding the proposed California Coast viticultural area. In response to that notice, ATF received 477 comments from vineyard and winery owners, industry associations, city and county officials, and individuals. Of those commenting, 97% opposed the petition. These commenters stated that the petitioned area did not meet the regulatory requirements, and, if established, would threaten the California wine industry, jeopardize the viticultural area system, mislead consumers, and make the Estate-bottled claim less meaningful.

ATF Analysis of Petition and Comments

Prior to denying the California Coast viticultural area's establishment, ATF thoroughly reviewed all the information provided in the March 2000 petition and in the comments and documentation filed in response to Notice No. 903. The documentation and evidence provided by commenters and ATF's own research has established that the petitioned California Coast viticultural area fails to meet the regulatory requirements of 27 CFR, part 9, American Viticultural Areas.

Summary of the Reasons for Denial

The primary reasons for the denial of the California Coast viticultural area petition were:

- As commonly understood, the name "California Coast" applies to a longer coastal region than was included in the proposed area; and
- The significant climatic diversity found within the petitioned area due to its great north-south span.

Name Evidence

ATF has concluded that the California Coast viticultural area's petitioned boundary lines do not reflect the public's understanding of the "California Coast" name or meet the linguistic, geographic, or definition standards for viticultural areas or wine labeling purposes. ATF believes the term "California Coast" refers to the entire Pacific coastal area between Mexico and Oregon, and that no other use of the name, as related to a geographical area, can be considered accurate and true for viticultural area purposes.

Geographical Evidence

The geographical evidence presented in response to the Notice No. 903 shows that the proposed California Coast viticultural area is not a unified geographical area with viticultural features that distinguish it from surrounding areas. The area's proposed boundaries span almost 650 miles from north to south, and include shoreline, coastal plains, 5,000-foot high mountain ranges, and interior basins and valleys.

While the Pacific Ocean plays a dominate role in the California's coastal climate, the petitioned area's latitudinal span and differing ocean currents lead to significant climatic variations within it. Temperatures decrease, while rainfall and summer fog increase from south to north within the petitioned area. Two major ocean currents, the cold California Current flowing south from Alaska to Santa Barbara and the warmer Southern California Counter-Current flowing north from Mexico to Santa Barbara, are also responsible for the significantly different onshore coastal climates found within the petitioned area.

These factors are reflected in the petitioned area's differing climatic classifications. Experts classify the petitioned area's southern portion as a steppe or desert climate, while the central and northern portions are classified as a Mediterranean climate. ATF notes that even if the entire California coastline from Mexico to the Oregon border were included within a proposed viticultural area, such an area would likely have even greater climate diversity. Such a proposed area would, therefore, also not meet the regulatory criteria for an American viticultural area.

Supplemental Report Available

An 80-page report, "ATF Response to the California Coast Viticultural Area Petition," containing a detailed analysis of the petition evidence, commenter information and documentation, under the requirements of 27 CFR 9.3(b)(1) through (3) for name evidence, boundary evidence, and geographical evidence, is available on the ATF Internet website at: *http://www.atf.treas.gov/alcohol/rules/index.htm*. Paper copies of the report are also available as described in the **ADDRESSES** section above.

Drafting Information

The principal author of this document is Nancy Sutton, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. Michael D. Hoover provided editorial assistance.

Signed: July 29, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–19829 Filed 8–6–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–077]

RIN 2115–AE47

Drawbridge Operation Regulations; Coronado Beach Bridge (SR 44), Intracoastal Waterway, New Smyrna Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Coronado Beach drawbridge (SR 44), Intracoastal Waterway mile 845, New Smyrna Beach, Florida. This proposed rule would require the drawbridge to open on signal, except that from 7 a.m. until 7 p.m. each day of the week, the draw need only open on the hour, twenty minutes past the hour and forty minutes past the hour. This action is intended to improve the movement of vehicular traffic while not unreasonably interfering with the needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before October 7, 2002.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–02–077] and are available for inspection or copying at

Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Bridge Branch, 909 SE 1st Ave, Miami, FL 33131, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–077], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave, Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coronado Beach bascule bridge is a two-lane, narrow, undivided arterial roadway. This roadway is severely congested due to insufficient vehicular capacity. The existing operating schedule is published in 33 CFR 117.5 and requires the bridge to open on demand. This proposed rule would continue to require the drawbridge to open on signal, except that from 7 a.m. until 7 p.m. each day of the week, the draw need only open on the hour, twenty minutes past the hour and forty minutes past the hour.

Discussion of Proposed Rule

In order to meet the reasonable needs of vehicular traffic while not significantly impacting navigation, the Coast Guard proposes to allow the Coronado Beach bridge (SR 44) to open on signal, except that from 7 a.m. until 7 p.m. each day of the week, the bridge need open only on the hour, twenty minutes past the hour and forty minutes past the hour. This proposed rule would facilitate the movement of vehicle traffic across the bridge while not unreasonably interfering with or decreasing vessel safety while awaiting passage through the draw.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because this proposed rule only modifies the existing bridge operation schedule during heavy vehicle traffic hours and still provides for regular openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels and vehicles intending to transit under and over the Coronado Beach bridge (SR 44) during the hours of 7 a.m. to 7 p.m. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because this proposed rule only slightly modifies the existing bridge operation schedule and still provides for regular bridge openings.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.261(ss) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(ss) *Coronado Beach bridge (SR 44), mile 845, New Smyrna Beach, Florida.* The Coronado Beach bridge (SR 44), mile 845, shall open on signal, except that from 7 a.m. until 7 p.m. each day of the week, the draw need only open on the hour, twenty minutes past the hour and forty minutes past the hour.

Dated: July 24, 2002.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–19998 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[USCG–1998–3417]

RIN 2115–AF60

Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil

AGENCY: Coast Guard, DOT.

ACTION: Proposed rulemaking; notice of public meeting; notice of extension of comment period.

SUMMARY: The Coast Guard is announcing a public meeting to discuss its previously published notice of proposed rulemaking (NPRM) titled "Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil" (67 FR 40254). The Coast Guard is also announcing the extension of the comment period for the NPRM, and updating the point-of-contact for this rulemaking project.

DATES: Comments must reach the Coast Guard on or before October 18, 2002. The public meeting will be held in Louisville, KY, on September 26, 2002. The meeting may conclude before the allotted time if all matters of discussion have been addressed.

ADDRESSES: The public meeting will be held at the following location:

Louisville, KY—The Galt House Hotel (West Tower), Court Room (2nd Floor), 140 North Fourth Avenue, Louisville, KY, 40202.

Please submit your comments and related material(s) by any one of the following methods (choose only one method of delivery in order to avoid multiple listings in the public docket):

- By mail to the Docket Management Facility [USCG–1998–3417], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001;
- By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays;
- By fax to the Docket Management Facility at 202–493–2251; or
- Electronically through the website for the Docket Management System at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this proposed rulemaking, please contact Lieutenant Commander Paul Albertson, Office of Response, Response Operations Division, Coast Guard Headquarters, at 202–267–0423, or via e-mail at *PAlbertson@comdt.uscg.mil*. If you have questions on viewing or submitting material(s) to the docket, please call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material(s). If you do so, please include your name and address, identify the docket number for this rulemaking [USCG–1998–3417], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material(s) in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to receive confirmation that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material(s) received during the comment period.

Regulatory History

A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on May 10, 2002 (67 FR 31868), entitled "Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil." Subsequent to that publication, the Coast Guard

published a notice of public meeting in the **Federal Register** on June 12, 2002 (67 FR 40254).

In response to the NPRM, the Coast Guard received requests to extend the comment period, which would provide the public with additional time to submit their comments. Independent of these requests, the Coast Guard determined that an additional public meeting was necessary in order to allow for greater public involvement. We are extending the comment period to accommodate the date of this fourth meeting, and to provide additional time as requested in response to the NPRM.

Please do not resubmit comments that have already been submitted to this docket. The NPRM and comments already received may be viewed at *http://dms.dot.gov.*

Background and Purpose

In the NPRM, we proposed to revise the vessel response plan salvage and marine firefighting requirements for tank vessels transporting oil. The revisions would clarify the salvage and marine firefighting services that must be identified in vessel response plans. The proposed changes would insure that the appropriate salvage and marine firefighting resources are identified and available for responding to incidents up to, and including, the worst-case scenario. The proposed rulemaking would also set new response time requirements for each of the required salvage and marine firefighting services.

Public Meeting

The Coast Guard will hold an additional public meeting regarding this proposed rulemaking on the following date and at the following location:

Louisville, KY, September 26, 2002, from 9:30 a.m. to 4 p.m., at The Galt House Hotel (West Tower), Court Room (2nd Floor), 140 North Fourth Avenue, Louisville, KY, 40202.

The meeting may conclude before the allotted time if all matters of discussion have been addressed.

A summary of comments made and a list of attendees will be available on the docket after the meeting concludes.

Dated: August 2, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 02–19910 Filed 8–2–02; 2:01 pm]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 67, No. 152
Wednesday, August 7, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 1, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of the Chief Financial Officer

Title: Debt Collection.

OMB Control Number: 0505–0007.

Summary of Collection: The Debt Collection Act of 1982 requires that any monies that are payable or may become payable from the United States under contracts and other written agreements to any person or legal entity not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or a legal entity owes to the United States. Section 10 requires that debtors be provided due process prior to the collection of any claims through administrative offset. Delinquent debtors wishing to appeal must provide relevant information. USDA agencies will collect information using a letter of intent from the creditor agencies to delinquent debtors.

Need and Use of the Information: USDA agencies will collect information on delinquent debtors targeted for administrative offset who want additional information; wish to enter into repayment agreements; or wish to request a review of agencies' determination to offset appropriation act. The creditor agencies will not be able to comply with the due process provision of the Debt Collection Act or the Debt Collection Improvement Act if relevant information is not collected.

Description of Respondents: Individuals or households; Business or other for-profit; Farms.

Number of Respondents: 3,771.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 7,542.

Agricultural Research Service

Title: Utilization of Food and Nutrition Information Center (FNIC) Resources by Personnel at Schools Receiving USDA Funds for Child Nutrition Programs.

OMB Control Number: 0518–NEW.

Summary of Collection: The Food and Nutrition Information Center (FNIC) does not have a means to determine the use of FNIC resources by personnel at schools receiving USDA funds for Child Nutrition Programs. To collect this information, FNIC proposes to provide attendees of selected educated related conferences with a password to access a one-time, voluntary, electronic FNIC Resources usage survey. The information collected in this survey will assist FNIC staff in improving the resources provided to meet the needs of the targeted audience. The authority to collect this information is CFR, Title 7, Volume 1, part 2, subpart K, Sec. 2.65 (92).

Need and Use of the Information: FNIC will collect information to evaluate current FNIC resources and assist in planning and managing future projects. Failure to collect this information would inhibit FNIC's ability to ensure the resources FNIC provides are in accord with resources desired by targeted patron groups, such as personnel in schools participating in Child Nutrition Programs.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 50.

Farm Service Agency

Title: Standard Operating Agreement Governing Intermodal Transportation.

OMB Control Number: 0560–194.

Summary of Collection: The 49 U.S.C. authorizes the Kansas City Commodity Office, Export Operations Division (KCCO/EOD) to collect information to determine the eligibility of Intermodal Marketing Companies (IMC) to haul agricultural products for the USDA Farm Service Agency (FSA). For an IMC to participate in CCC freight, FSA requires a certificate of insurance to be filed with KCCO, EOD. IMC's are also required to furnish documentation from a rail company verifying that it has an ongoing business relationship with at least one rail company. The IMC shall complete KCCO's Standard Operating Agreement Governing Intermodal Transportation. The Standard Operating Agreement sets out operating rules for intermodal shipment, accessorial charges, and the terms and conditions of carriage.

Need and Use of the Information: FSA will collect information by mail to establish the Trailer on Flatcar/ Container on Flatcar (TORC/COFC) service needs of the Department of Agriculture, Farm Service Agency, the Kansas City Commodity Office, operating as Commodity Credit Corporation, for the movement of its freight, and to insure that an IMC

arranging for the transportation service has both the willingness and the capability to meet those needs. Without this information, FSA and KCCO could not meet program requirements.

Description of Respondents: Business or other for-profit; Federal; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 14.

Frequency of Responses: Reporting: Other (Once).

Total Burden Hours: 14.

Farm Service Agency

Title: Representations for CCC and FSA Loans and Authorization to File a Financing Statement.

OMB Control Number: 0560–0215.

Summary of Collection: The revised Article 9 of the Uniform Commercial Code deals with secured transaction for personal property. The revised Article 9 will affect the manner in which the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA), as well as any other creditor, perfect and liquidate security interests in collateral. FSA operates several loan programs that are affected by the revision to Article 9 of the Uniform Commercial Code. Each of the programs requires that loans be secured with collateral. The security interest is created and attaches to the collateral when: (1) Value has been given, (2) the debtor has rights in the collateral or the power to transfer rights in the collateral, and (3) the debtor has authenticated a security agreement that provides a description of the collateral. FSA will collect information using form CCC–10. The information obtained on CCC–10 is needed to obtain authorization from loan applicants to file a financing statement and to verify the name and location of the debtor.

Need and Use of the Information: The information that FSA collects will be used to gather or verify basic data regarding the applicant which is required on a financing statement and to obtain permission to file a financing statement prior to the execution of a security agreement. Without obtaining the information from loan applicants, CCC and FSA would be unable to perfect a security interest in collateral used to secure loans.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 207,500.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 120,350.

Animal and Plant Health Inspection Service

Title: Endangered Species Regulations and Forfeiture Procedures.

OMB Control Number: 0579–0076.

Summary of Collection: The Endangered Species Act of 1973 (16 U.S.C. 1513 *et seq.*) directs Federal departments to utilize their authorities under the Act to conserve endangered and threatened species. Section 3 of the Act specifies that the Secretary of Agriculture is authorized to promulgate such regulations as may be appropriate to enforce the Act. The regulations contained in 7 CFR 355 are intended to carry out the provisions of the Act. The Plant Protection and Quarantine (PPQ) division of USDA's Animal & Plant Health Inspection Service (APHIS) is responsible for implementing these regulations. Specifically, section 9(d) of the Act authorizes 7 CFR 355.11, which requires a general permit to engage in the business of importing or exporting terrestrial plants listed in 50 CFR Parts 17 and 23. APHIS will collect information using PPQ forms 368, 621, 625, 623, and 626.

Need and Use of the Information: APHIS will collect information on the applicant's name and address, whether the applicant is affiliated with a business, and the address of all the applicant's business locations in order for the applicant to obtain a general permit. Upon approval of the permit, any endangered species shipped via mail must be sent to an authorized port of entry and must be accompanied by appropriate supporting documentation.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,400.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 4,738.

Animal and Plant Health Inspection Service

Title: 9 CFR 50 & 77, Tuberculosis.

OMB Control Number: 0579–0084.

Summary of Collection: Title 21 U.S.C. authorizes the Secretary of Agriculture to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as hog cholera, African swine fever, and other foreign diseases. The Animal and Plant Health Inspection Service (APHIS) oversees the Cooperative State-Federal Bovine Tuberculosis Eradication Program to eliminate bovine tuberculosis, a serious disease of livestock. The disease also affects man through contracts with infected animals or their byproducts. APHIS works with State and other federal organizations to conduct epidemiologic investigations to locate bovine tuberculosis and provide a means of controlling it. Information is collected using a variety of forms to properly identify, test, and transport animals that are infected with or exposed to tuberculosis.

Need and Use of the Information: APHIS will collect information to search for infected herds, maintain identification of livestock, monitor deficiencies in identification of animals for movement, and monitor program deficiencies in suspicious and infected herds. Continued collection of this information is essential for program progress aimed at controlling and eradicating bovine tuberculosis.

Description of Respondents: Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 6,897.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 17,372.

Animal and Plant Health Inspection Service

Title: Wood Packing Material from China.

OMB Control Number: 0579–0135.

Summary of Collection: The United States Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. The Plant protection Act authorizes the Department to carry out this mission. Section 102 of the Organic Act (7 U.S.C. 147a) states, in part that the "the Secretary of Agriculture, either independently or in cooperation with the States * * * is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests. Effective January 1, 2002, the People's Republic of China required that Solid Wood Packing Material (SWPM) exported from the United States to China be certified as having been heat treated. To be certified, coniferous SWPM must be heat treated in the United States. The rule changed that requirement to allow Canadian-origin coniferous SWPM to be heat treated in Canada. Implementing the laws is necessary in order to prevent injurious insect pests and plant diseases from entering the United States. Solid wood items used to pack commodities imported from China must first be heat treated, fumigated, or treated with preservations before they leave China for the United States.

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) will collect information from the Treatment Certificate and

Exporter Document that will provide information that will enable APHIS inspectors to focus their attention on those shipments that present the most risk of harboring exotic insect pests (*i.e.*, those shipments that contain solid wood packing material, as opposed to those shipments that do not). Failure to collect this information would cripple APHIS ability to ensure that solid wood packing material from China does not harbor destructive plant pests.

Description of Respondents: Business or other for-profit; Individuals or households; State, Local or Tribal Government.

Number of Respondents: 29,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 73,950.

Animal and Plant Health Inspection Service

Title: ISA Payment of Indemnity.

OMB Control Number: 0579–0192.

Summary of Collection: Federal regulation contained in 9 CFR Subchapter B governs cooperative programs in control and eradicate communicable diseases of livestock from the United States. In accordance with 21 U.S.C. 111, 113, 114, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States and the interstate dissemination within the United States of communicable disease of livestock and poultry, and to pay claims growing out of the destruction of animals. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing APHIS' ability to compete in exporting animals and animal products. Veterinary Services, a unit within USDA's Animal and Plant Health Inspection Service (APHIS), is charged with carrying out this disease prevention mission. Infectious Salmon Anemia (ISA) poses a substantial threat to the economic viability and sustainability of salmon aquaculture in the United States and abroad. In an effort to control ISA in the State of Maine, to prevent further breakouts in that State, and to prevent the disease from spreading to other parts of the United States, APHIS is publishing an interim rule to provide for the payment of indemnity to producers in the State of Maine for fish destroyed because of ISA. APHIS will collect information using VS Form 1–22 ISA Program Enrollment Form and VS Form 1–23 All Species Appraisal & Indemnity Claim Form.

Need and Use of the Information: Each program participant must sign an ISA Program Enrollment Form in which they agree to participate fully in USDA's and the State of Maine's ISA Program. APHIS will collect the owner's name and address, the number of fish for which the owner is seeking payment, and the appraised value of each fish. The owner must also certify as to whether the fish are subject to a mortgage. Without the information it would be impossible for APHIS to launch a program to contain and prevent ISA outbreaks in the United States.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 110.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,934.

Food and Nutrition Service

Title: Food Stamp Program—Store Applications.

OMB Control Number: 0584–0008.

Summary of Collection: The Food Stamp Program (FSP) is designed to promote the general welfare and safeguard the health and well being of the Nation's population by raising levels of nutrition among low-income households. Section 9 of the Food Stamp Act of 1977, as amended, (the Act) (7 U.S.C. 2011 *et. seq.*) requires that the Food and Nutrition Service (FNS) provide for the submission of applications for approval by retail food establishments and meal service programs that wish to participate in the FSP. The need to collect information is established under the Act to determine the eligibility of retail food stores, wholesale food concerns, and food service organizations applying for authorization to accept and redeem food stamp benefits, to monitor these firms for continued eligibility, to sanction stores for non-compliance with the Act, and for program management. FNS will collect information using forms FNS–252, Food Stamp Application for Tore, and FNS 252–2, Application to Participate in the Food Stamp Program for Communal Dining Facility/Others.

Need and Use of the Information: FNS will collect information to determine a firm's eligibility for participation in the FSP, program administration, compliance monitoring and investigations, and for sanctioning stores found to be violating the program. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the retail food store, wholesale food concern, or food service organization continues to meet eligibility requirements. Owners Employer Identification Numbers (EIN) and Social Security Numbers (SSN) may be disclosed to and used by Federal agencies or instrumentalities that otherwise gave access to EINs and SSNs. FNS and other Federal Government agencies examine such information during compliance reviews, audit review, special studies or evaluation efforts.

Description of Repondents: Business or other for-profit; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 20,299.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 9,050.

Food and Nutrition Service

Title: 7 CFR Part 235 State Administrative Expense Funds.

OMB Control Number: 0584–0067.

Summary of Collection: Because the Food and Nutrition Service (FNS) is accountable for State Administrative Expense (SAE) funds by fiscal year, State agencies (SAs) are requested to report their SEA budget information on that basis. If the State budgets coincide with a fiscal year other than that used by the Federal government, the SA must convert its State budget figures to amounts to be used during the applicable Federal fiscal year for this purpose. Under 7 CFR Part 235, State Administrative Expense Funds, there are five reporting requirements, which necessitate the collection of information. They are as follows: SAE Plan, Reallocation Report, Coordinated Review Effort (CRE) Data Base Update, Report of SAE Funds Usage, and Responses to Sanctions. SAs also must maintain records pertaining to SEA. These include Ledger Accounts, Source Documents, Equipment to SAE. These include Ledger Accounts, Source Documents, Equipment Records and Record on State Appropriated Funds. FNS will collect information using forms FNS–74 and 525.

Need and Use of the Information: FNS will collect information on the total SAE cost the SA expects to incur in the course of administering the Child Nutrition Programs (CNP); the indirect cost rate used by the SA in charging indirect cost to SEA, together with the name of the Federal agency that assigned the rate and the date the rate was assigned, breakdown of the current year's SAE budget between the amount allocated for the current year and the amount carried over from the prior year; and the number and types of personnel currently employed in administering the

CNPs. The information is used to determine whether SA intends to use SEA funds for purposes allowable under OMB Circular A–87, Cost Principles for State and Local Governments; does SA's administrative budget provide for sufficient funding from State sources to meet the Maintenance of Effort requirement; and is SA's staff adequate to effectively administer the program covered by the SA's agreement with FNS.

Description of Respondents: State, Local or Tribal Government.

Number of Resondents: 87.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 12,922.

Food and Nutrition Service

Title: Waivers Under Section 6(o) of the Food Stamp Act.

OMB Control Number: 0584–0479.

Summary of Collection: Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193 (PRWORA) establishes a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. In areas where the unemployment rate is over 10 percent or does not have a sufficient number of jobs to provide employment for the individuals, the Secretary of Agriculture has the authority to waive the provision for any group of individuals, upon receiving a State agency's request.

Need and Use of the Information: Food and Nutrition Service use the information provided by State food stamp agencies to evaluate whether the statutory requirements for a waiver of the food stamp time limit have been met and to determine specifically whether the designated areas' unemployment rate is over 10 percent or if there is a lack of sufficient jobs available. If the information is not collected, the State Food Stamp agencies could not obtain waivers of time limits contained in Section 6(o) of the Act.

Description of Respondents: State, Local or Tribal Government; Individuals or household.

Number of Respondents: 42.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 148.

Animal and Plant Health Inspection Service

Title: Phytopthora Ramorum; Quarantine and Regulations.

OMB Control Number: 0579–0191.

Summary of Collection: The United States Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. The Plant Protection Act authorizes the Department to carry out this mission. The regulations were amended to quarantine portions of California and Oregon because of Phytophthora Ramorum (PR) and restrict the interstate movement of regulated and articles from quarantined areas. This is necessary to prevent the spread of PR to noninfested areas of the United States.

Need and Use of the Information: APHIS will collect information to protect U.S. nursery stock and other plant resources from the potential introduction of plant pests into the country. If the information were not collected, APHIS ability to verify that imported nursery stock does not present a significant risk of introducing plant pests to the U.S. would be severely hampered.

Description of Respondents: Business or other for-profit; Individuals or households; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 387.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 1,227.

Rural Housing Service

Title: 7 CFR Part 3565, "Guaranteed Rural Rental Housing Program" and its Supporting Handbook.

OMB Control Number: 0575–0174.

Summary of Collection: On March 26, 1996, the Housing Opportunity Program Extension Act of 1996 was signed. One of the provisions of the Act was the authorization of the section 538 Guaranteed Rural Rental Housing Program (GRRHP), adding the program to the Housing Act of 1949. The purpose of the GRRHP is to increase the supply of affordable rural rental housing through the use of loan guarantees that encourage partnerships between the Rural Housing Service (RHS), private lenders and public agencies. RUS will approve qualified lenders to participate and monitor lender performance to ensure program requirements are met. RHS will collect information from lenders on the eligibility cost, benefits, feasibility, and financial performance of the proposed project.

Need and Use of the Information: RHS will collect information from lenders to manage, plan, evaluate, and account for Government resources. The GRRHP regulation and handbook will provide lenders and agency staff with guidance on the origination and servicing of GRRHP loans and the approval of qualified lenders. RHS will use the information to evaluate a lender's request and make a determination that the interests of the government are protected. Failure to collect information could have an adverse impact on the agency ability to monitor lenders and assess program effectiveness and effectively guarantee loans.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 50.

Frequency of Responses: Reporting: Quarterly; Monthly; Annually.

Total Burden Hours: 1581.

Farm Service Agency

Title: Standard Rules Tender Governing Motor Carrier Transportation.

OMB Control Number: 0560–0195.

Summary of Collection: Public Law 104–88 authorizes the Export Operation Division (EOD) to collect information to determine motor carrier compliance with Kansas City Commodity Office (KCCO) requirements, to determine eligibility of motor carriers to haul agricultural products for the USDA. A motor carrier shall complete KCCO's Standard Rules Tender Governing Motor Carrier Transportation and file its rates with EOD. The Standard Rules Tender set the operating rules for the motor carrier to determine motor carrier compliance, accessorial charges, and the terms and conditions of carriage. Carriers are selected based on their rate and service levels. The information enables KCCO to evaluate the rates to obtain transportation services to meet domestic and export program needs.

Need and Use of the Information: FSA will collect information to establish the motor carrier's qualifications, and carriage rates and conditions. Without this information FSA and KCCO could not obtain transportation services to meet program requirements.

Description of Respondents: Business or other for-profit, Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 99.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 99.

Agricultural Research Service

Title: Utilization of Food and Nutrition Information Center (FNIC) Resources by Personnel at Schools Receiving USDA Funds for Child Nutrition Programs.

OMB Control Number: 0518–NEW.

Summary of Collection: The food and Nutrition Information Center (FNIC) does not have a means to determine the

use of FNIC resources by personnel at schools receiving USDA funds for Child Nutrition Programs. To collect this information, FNIC proposes to provide attendees of selected educated related conferences with a password to access a one-time, voluntary, electronic FNIC Resources usage survey. The information collected in this survey will assist FNIC staff in improving the resources provided to meet the needs of the targeted audience. The authority to collect this information is CFR, Title 7, Volume 1, Part 2, Subpart K, Sec. 2.65 (92).

Need and Use of the Information: FNIC will collect information to evaluate current FNIC resources and assist in planning and managing future projects. Failure to collect this information would inhibit FNIC's ability to ensure the resources FNIC provides are in accord with resources desired by targeted patron groups, such as personnel in schools participating in Child Nutrition Programs.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 50.

Animal and Plant Health Inspection Service

Title: CWD in Cervids; Payment of Indemnity.

OMB Control Number: 0579–0189.

Summary of Collection: Federal regulations contained in 9 CFR Subchapter B govern cooperative programs to control and eradicate communicable diseases of livestock from the United States. In accordance with 21 U.S.C. 111–113, 114, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States and the interstate dissemination within the United States of communicable diseases of livestock and poultry, and to pay claims growing out of the destruction of animals. Disease prevention is the most effective method for maintaining a health animal population and enhancing our ability to complete in exporting animals and animal products. Veterinary Services, a unit within USDA's Animal and Plant Health Inspection Service (APHIS), is charged with carrying out this disease prevention mission. Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy (TSE) of elk and deer typified by chronic weight loss leading to death. The presence of chronic wasting disease in cervids causes significant economic and market losses to U.S. producers. APHIS will collect information using VS Form 1–23 Appraisal & Indemnity Claim Form.

Need and Use of the Information: APHIS will collect the owner's name and address, the number of animals for which the owner is seeking payment, and the appraised value of each animal. The owner must also certify as to whether the animals are subject to a mortgage. If there is a mortgage, the form must be signed by the owner and each person holding a mortgage. Failure to collect this information would make it impossible for APHIS to launch its program to accelerate the eradication of chronic wasting disease from the United States.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10.

Sondra A. Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 02–19945 Filed 8–6–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Alpine County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Alpine County Resource Advisory Committee (RAC) will meet on August 26, 2002, in Markleeville, California. The purpose of the meeting is to discuss issues relating to implementing the *Secure Rural Schools and Community Self-Determination Act of 2000* (Payments to States) and the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, and Stanislaus National Forests in Alpine County.

DATES: The meeting will be held August, 2002 at 6 p.m.

ADDRESSES: The meeting will be held at the Turtle Rock County Park, Markleeville, CA.

FOR FURTHER INFORMATION CONTACT: Laura Williams, Committee Coordinator, USDA, Humboldt-Toiyabe National Forest, 1536 S Carson St., Carson City, NV, 89701, (775) 884–8150, e-mail: *ljwilliams@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Old business; (2) Project criteria discussion; (3) Camping in Alpine County; (4) Project proposals; (5) New business & Public comment.

The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 29, 2002.

Gary Schiff,

Carson District Ranger.

[FR Doc. 02–19873 Filed 8–6–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Southwest Idaho Resource Advisory Committee, Boise, ID. USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Source Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet Wednesday, August 21, 2002 in Cascade, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on August 21, begins at 10:30 AM. at the American Legion Hall, Cascade, Idaho. Agenda topics will include review and approval of projects proposals, a forum with County Commissioners, development of project solicitation strategies for FY'03, and an open public forum.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (435) 865–3701.

Dated: July 31, 2002.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 02–19899 Filed 8–6–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Extension of Certain Alaska Timber Sale Contracts; Finding of Substantial Public Interest

AGENCY: Forest Service, USDA.

ACTION: Notice

SUMMARY: There is substantial overriding public interest in extending

National Forest System timber sale contracts in Alaska for 3 years, subject to a maximum total contract length of 10 years. The extension applies to timber sale contracts awarded after January 1, 1997, which purchasers are diligently performing (not in default). To receive the extension, purchasers must request the extension in writing to the Contracting Officer and agree to release the Forest Service from damages for the replacement cost of timber if the contract is canceled in the future.

Contract extensions in Southeast Alaska will serve the public interest by advancing the Department's goal of economic stability through employment in Southeast Alaska in the wake of the closing of the region's two pulp mills. The intended effect is to minimize contract defaults, mill closures, and company bankruptcies.

DATES: The determination was made on July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Forest and Rangelands Staff (202) 205–0855.

SUPPLEMENTARY INFORMATION: The Forest Service sells timber from National Forest System lands to individuals or companies. Each sale is formalized by execution of a contract between the purchaser and the Forest Service. The contract sets forth the explicit terms and provisions of the sale, including such matters as the estimated volume of timber to be removed, the period for removal, price to be paid to the Government, road construction and logging requirements, and environmental protection measures to be taken. The average contract period is approximately 2 years, although a few contracts have terms of 5 or more years.

The National Forest Management Act of 1976 (16 U.S.C. 472a(c)) provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of 2 years or more, unless the purchaser has diligently performed in accordance with an approved plan of operations or the "substantial overriding public interest" justifies the extension. The authority to make this determination has been delegated to the Chief at 7 CFR 2.60.

The closure of the pulp mills operated by the Alaska Pulp Corporation (APC) and Ketchikan Pulp Company (KPC) in 1993 and 1997, respectively, has had a significant effect on the overall regional economy in Southeast Alaska. Wood consumption by these pulp mills and their associate sawmills accounted for about half of Alaska National Forest timber harvest since 1980. Employment in the wood products sector has declined significantly since the peak of 1990, decreasing by 2,500 jobs, or 72 percent, between 1990 and 2000. While this total includes the entire pulp mill labor force, which accounted for nearly 900 jobs in 1990, a larger absolute loss occurred in the logging sector with a loss of 1,433 jobs. A total of 993 people were employed in the wood products sector in 2000. Employment decreases tend to lag behind decreases in production. consequently, current wood products employment is projected to fall even lower since harvest has not rebounded. The unemployment rate in Alaska is 5 percent to 11 percent higher than the national average of 6 percent. Government indices indicate that the Western softwood lumber market has declined approximately 25 percent since mid-1999. Harvest from Tongass National Forest timber sales has steadily declined from 338 million board feet in 1990 to 147 million board feet in 2000. Although 2001 harvest level was only 48 million board feet, the lowest since industrial wood production started in the early 1950's this level was influenced not only by poor markets but also by court ordered injunctions that halted harvest for a portion of the year.

Rules at 36 CFR 223.52 permit contract extensions when Forest Service officials determine that adverse wood product market conditions have resulted in a drastic decline in wood product prices. Under market-related contract addition procedures, the Forest Service refers to the Western softwood lumber price index (PCU2421#4) to measure severe market declines in Western softwoods. The index has reflected the market decrease. Timber sale purchasers in Alaska, who have so requested, have received up to the maximum of 3 years of additional contract time authorized by 36 CFR 223.52. However, the market has not recovered, and companies in Alaska are still facing contract default, mill closure, and bankruptcy.

It has been determined that additional contract time will assist these purchasers by giving them more time in which the market may improve or in which they can mix their high-priced sales with lower priced sales. If bankruptcies, mill closures, and defaulted contracts are avoided, the United States and Southeast Alaska will benefit from more stable employment and market opportunities and increased competition for National Forest System timber sales. This action is consistent with Congress' direction to the Secretary in the Tongass Timber Reform Act of 1990 (16 U.S.C. 539d (note)) to provide for the multiple use and sustained yield of forest resources and to seek to provide a supply of timber from the Tongass National Forest which meets the annual market demand for timber from the Forest. This goal was also embodied in the February 21, 1997, settlement agreement reached between the Forest Service and the Ketchikan Pulp Company.

Accordingly, based on a study of alternatives and current rules at 36 CFR 223.115, it has been determined that there is substantial overriding public interest in extending sales in Alaska for up to 3 years, but not to exceed a total contract length of 10 years. To receive the extension, purchasers must request the extension in writing to the Contracting Officer and agree to release the Forest Service from damages for the replacement cost of timber if the contract is canceled in the future. The text of the finding is set out at the end of this notice.

Dated: July 30, 2002.

Sally D. Collins,

Associate Chief.

Determination of Substantial Overriding Public Interest for Extending Certain Timber Sale Contracts in Alaska

The Tongass Timber Reform Act (16 U.S.C. 539d (note)) directs the Secretary to provide for the multiple use and sustained yield of forest resources and to seek to provide a supply of timber from the Tongass National Forest which meets the annual market demand for timber from the Forest. Consistent with this direction the Forest Service seeks to maintain an economically viable timber sale program, which includes keeping volume under contract for future harvesting.

Periodically, lumber markets may experience severe declines in prices. Based on Bureau of Labor Statistics producer price indices, the lumber market for Western softwoods peaked in July 1999. Since then, price indices have declined approximately 25 to 30 percent. With the closings in 1993 and 1997 of the pulp mills operated by the Alaska Pulp Corporation and the Ketchikan Pulp Company, the economy of Southeast Alaska changed significantly. At the time of the mill closures, the Department committed itself to aiding the timber-dependent communities in Southeast Alaska by advancing the goal of economic stability through employment in the region. Currently, the unemployment rate in Alaska is 5 percent to 11 percent higher than the national average of 6 percent.

While most Forest Service timber sale contracts in Alaska contain provisions to extend termination dates during severely declining markets, many contracts have been extended for the

maximum amount of time permissable under 36 CFR 223.52. Nevertheless, the market has not improved significantly, and many companies in Alaska are still facing contract default, mill closure, and bankruptcy. A contract extension would assist these purchases by giving additional time in which the market may improve or in which they could mix their high-priced sales with lower-priced sales.

Having numerous, economically viable timber sale purchasers both maintains market opportunities and increases competition for National Forest System timber sales. These factors result in higher prices paid for such timber. Therefore, the Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided by granting contract extensions. In addition, the Government would avoid the difficult and expensive process of collecting default damages.

Therefore, pursuant to 16 U.S.C. 472a, 36 CFR 223.115, and the authority delegated to the Chief at 7 CFR 2.60 and from the Chief to the Associate Chief in Forest Service Manual Chapter 1230, I have determined that there is substantial overriding public interest in extending for 3 years National Forest System timber sales contracts in Alaska, subject to a maximum total contract length of 10 years. To receive the extension purchasers must make written request to the Contracting Officer and agree to release the Forest Service from damages for the replacement cost of timber if the contract is canceled in the future.

Dated: July 30, 2002.

Sally D. Collins,

Associate Chief.

[FR Doc. 02–19869 Filed 8–6–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is currently conducting an administrative review of the antidumping duty order on bulk aspirin from the People's Republic of China. The period of review is July 6, 2000, through June 30, 2001. This review covers imports of subject merchandise from two producer/exporters.

We preliminarily find that sales have not been made below normal value. If these preliminary results are adopted in our final results of review, we will instruct the Customs Service not to assess antidumping duties.

In addition, in response to a request from Jilin Pharmaceutical Import and Export Corporation, Jilin Pharmaceutical (U.S.A.) Inc., and Jilin Pharmaceutical Company Ltd., the Department of Commerce published a notice of initiation of changed circumstances review on June 7, 2002 (67 FR 39344). We preliminary find that Jilin Henghe Pharmaceutical is the successor-in-interest of Jilin Pharmaceutical Company Ltd. and Jilin Pharmaceutical Import and Export Corporation.

We invite interested parties to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Cole Kyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4207, or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR Part 351 (April 2001).

Background

On July 11, 2000, the Department published an antidumping order on bulk aspirin from the People's Republic of China ("PRC"). *See Notice of Antidumping Duty Order: Bulk Aspirin from the People's Republic of China*, 65 FR 42673 (July 11, 2000). On July 2, 2001 , the Department published in the **Federal Register** an *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910 (July 2, 2001).

On July 27 and 31, 2001, in accordance with 19 CFR 351.213(b), two manufacturers/exporters of the subject merchandise, Shandong Xinhua Pharmaceutical Co., Ltd. ("Shandong"), and Jilin Pharmaceutical Import and Export Company, Jilin Pharmaceutical (U.S.A.) Inc., and Jilin Pharmaceutical Limited Company (collectively, "Jilin Pharmaceutical"), respectively, requested that the Department conduct an administrative review of this order. In addition, Jilin Pharmaceutical requested that, contemporaneous with the ongoing administrative review of the order, the Department review the company's name change and determine that Jilin Henghe Pharmaceutical ("Jilin Henghe") is the successor-in-interest of Jilin Pharmaceutical.

On August 20, 2001, we published a notice of initiation of the administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 66 FR 43570 (August 20, 2001). The period of this review ("POR") is July 6, 2000, through June 30, 2001.

We issued questionnaires to Jilin Pharmaceutical and Shandong on October 29, 2001. We received responses to the questionnaires from Shandong and Jilin Pharmaceutical on December 5 and 27, 2001, respectively.

On December 21, 2001, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses from Rhodia, Inc., ("the petitioner") and Jilin Pharmaceutical on January 22, 2002. Shandong provided surrogate value information to the Department on July 8, 2002.

On March 29, 2002, the Department found that it was not practicable to complete the review in the time allotted and published an extension of time limit for the completion of the preliminary results of this review to no later than July 31, 2002, in accordance with section 751(a)(3)(A) of the Act. *See Bulk Aspirin from the People's Republic of China; Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 67 FR 15177 (March 29, 2002).

We issued supplemental questionnaires to Jilin Pharmaceutical and Shandong on April 22 and 24, 2002, respectively. We received responses to the supplemental questionnaires from Jilin Pharmaceutical and Shandong on May 24 and 29, 2002, respectively.

On June 3, 2002, we initiated a changed circumstances review to be conducted contemporaneously with the ongoing administrative review of the order. *See Bulk Aspirin From the People's Republic of China; Initiation of*

Changed Circumstances Antidumping Duty Administrative Review, 67 FR 39344 (June 7, 2002). On June 5, 2002, we issued a supplemental questionnaire to Jilin Pharmaceutical regarding the changed circumstances review. We received a response to the supplemental questionnaire from Jilin Pharmaceutical on June 28, 2002. *See* "*Changed Circumstances*" section, below.

Scope of the Order

The product covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula C9H8O4. It is defined by the official monograph of the United States Pharmacopoeia 23 ("USP"). It is currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is currently classifiable under HTSUS subheading 3003.90.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in nonmarket economy ("NME") countries a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) Any legislative enactments decentralizing control of companies; and (3) Any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

Absence of De Facto Control

A *de facto* analysis of absence of government control over exports is based on four factors -- whether the respondent: 1) sets its own export prices independently of the government and other exporters; 2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) has the authority to negotiate and sign contracts and other agreements; and 4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

In the *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China* 65 FR 33805 (May 25, 2000) ("*LTFV Investigation*"), we determined that there was *de jure* and *de facto* absence of government control of each investigated company's export activities and determined that each company warranted a company-specific dumping margin. For the POR, Jilin Pharmaceutical and Shandong (collectively, "the respondents"), responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final determination in the *LTFV Investigation* and the respondents continue to demonstrate an absence of government control, both in law and in fact, with respect to their exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

Changed Circumstances

Jilin Pharmaceutical has requested that the Department conduct a changed circumstances review to determine that Jilin Henghe is the successor-in-interest of Jilin Pharmaceutical. In making successor-in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20461 (May 13, 1992). While no single factor, or combination of factors, will necessarily prove dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., id.* and *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as its predecessor, the Department will assign the new company the cash-deposit rate of its predecessor.

Based on the information submitted by Jilin Pharmaceutical during the initiation stages of this changed circumstances review and the supplemental information submitted on June 28, 2002, we preliminarily determine that Jilin Henghe Pharmaceutical Company ("Jilin Henghe") is the successor-in-interest to Jilin Pharmaceutical. We find that the company's organizational structure, senior management, production facilities, supplier relationships, and customers have remained essentially unchanged. Furthermore, Jilin Pharmaceutical has provided sufficient documentation of its name change (*see* Jilin Pharmaceutical's June 28, 2002, supplemental response). Based on all the evidence reviewed, we find that Jilin Henghe operates as the same business entity as Jilin Pharmaceutical. Thus, we preliminarily determine that Jilin Henghe should receive the same antidumping duty cash-deposit rate with respect to the subject merchandise as Jilin Pharmaceutical, its predecessor company.

Export Price and Constructed Export Price

For certain sales made by the respondents to the United States, we used constructed export price ("CEP") in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For other sales made by

the respondents, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold outside the United States to unaffiliated purchasers in the United States prior to importation into the United States.

We calculated EP based on the CIF, C&F, and FOB prices to unaffiliated purchasers, as appropriate. In accordance with section 772(c) of the Act, we deducted from these prices, where appropriate, amounts for foreign inland freight, foreign brokerage and handling, international freight, and marine insurance. We valued the deductions for foreign inland freight, foreign brokerage and handling, and marine insurance using surrogate data based on Indian freight costs. (We selected India as the surrogate country for the reasons explained in the "*Normal Value*" section of this notice, below.) Where all of a respondent's marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using surrogate value data. However, where a respondent's marine insurance or ocean freight was provided by a market economy company and paid for in a market economy currency, we used the reported market economy marine insurance or ocean freight amount to value these expenses for all U.S. sales made by that respondent. *See* 19 CFR 351.408(c)(1).

We calculated CEP based on FOB and delivered prices from the respondents' U.S. subsidiaries to unaffiliated customers. In accordance with section 772(c) of the Act, we deducted from the CEP starting price foreign inland freight, international freight, marine insurance, U.S. inland freight, U.S. customs duties, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we made deductions for the following selling expenses that related to economic activity in the United States: credit expenses, indirect selling expenses, inventory carrying costs, and direct selling expenses. For certain sales made by Jilin Pharmaceutical, we have used the signature date of the preliminary results (*i.e.*, July 31, 2002) in the calculation of imputed credit expenses (see the memorandum from the Team to the file ("Preliminary Results Calculation Memorandum for Jilin Henghe Pharmaceutical Co., Ltd."), dated July 31, 2002). In accordance with section 772(d)(3) of the Act, we deducted from the starting price an amount for profit.

International Freight: Where the respondent used a market-economy shipper for a significant portion of its sales and paid for the shipping in a market-economy currency, we used the average price paid by that producer/exporter to value international freight for all of its sales. See Tapered Roller Bearings from the People's Republic of China; Notice of Preliminary Results of 2000–2001 Review, Partial Rescission of Review, and Notice of Intent to Revoke Order, in Part, 67 FR 45451 (July 9, 2002).

Marine Insurance: Where the respondent used a market-economy marine insurance provider for its sales and paid for the insurance in a market-economy currency, we used the average price for marine insurance paid by that producer/exporter for all of its sales. Where the respondent did not use a market-economy insurance provider, we used a June 1998 price quote from a U.S. insurance provider, as we have in past PRC cases. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1996–97 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part*, 63 FR 63842 (November 17, 1998).

Brokerage and Handling: To value brokerage and handling, we used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian wholesale price index.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value ("NV") using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value ("CV") under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The party in this proceeding has not contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development. For ▪ further discussion of our surrogate selection, see the December 18, 2001, Memorandum to Susan Kuhbach from Jeff May "1st Administrative Review of Bulk Aspirin from the People's Republic of China," ("Surrogate Country Memo"), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building. According to the available information on the record, we determined that India is a significant producer of comparable merchandise. None of the interested parties contested the selection of India as the surrogate country. Accordingly, we calculated NV using Indian values for the PRC producers' factors of production. We obtained and relied upon publicly available information wherever possible. In many instances, we used the *Monthly Statistics of the Foreign Trade of India; Volume II Imports* ("MSFTI") to value factors of production, energy inputs and packing materials. Consistent with the *Final Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying *Issues and Decision Memorandum*, we excluded Indian import data reported in the MSFTI for Korea, Thailand and Indonesia in our surrogate value calculations. In addition to the MSFTI data, we used information from *Indian Chemical Weekly* ("ICW") to value certain chemical inputs.

Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the respondents. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian surrogate values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to

make them delivered prices. For the distances reported, we added to Indian CIF surrogate values a surrogate freight cost using the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401, 1807–1908 (Fed.Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation using the appropriate wholesale or producer price index published in the International Monetary Fund's *International Financial Statistics*.

Many of the inputs in the production of bulk aspirin are considered business proprietary information by the respondents. Due to the proprietary nature of this data, we are unable to discuss many of the inputs in this preliminary results notice. For a complete analysis of surrogate values, see the memorandum from the Team to the file ("Factors of Production Valuation Memorandum"), dated July 31, 2002.

Labor: We valued labor using the method described in 19 CFR 351.408(c)(3).

Electricity, Coal and Oil: Consistent with our approach in *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 66 FR 15076 (March 15, 2001), we calculated our surrogate value for electricity based on electricity rate data reported by the International Energy Agency ("IEA"), 4th quarter 2000. For coal, we used import values from the MSFTI. We based the value of fuel oil on prices reported by the IEA, 4th quarter 2000.

Factory Overhead, SG&A, and Profit: We based our calculation of factory overhead, SG&A, and profit on a simple average derived from the financial data of three Indian companies of comparable merchandise: Andhra Sugars Ltd. ("Andhra"), Alta Laboratories Ltd. ("Alta"), and Gujarat Organics Ltd. ("Gujarat"). Our calculations and application of overhead, SG&A and profit ratios are consistent with the Department's practice. *See, e.g., Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 66703, 66707 (November 7, 2000); *Certain Cut-to-Length Carbon Steel Late from the People's Republic of China*, 62 FR 61964, 61970 (November 20, 1997); *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19039 (April 30, 1996).

Packing Materials: For packing materials we used import values from the MSFTI.

Inland Freight Rates: To value truck freight rates, we used a 2000 rate quote from an Indian trucking company. For rail freight, we based our calculation on 1999 price quotes from Indian rail freight transporters.

Preliminary Results of the Review

We preliminary find that the following dumping margins exist for the period July 6, 2000, through June 30, 2001:

Exporter/Manufacturer	Weighted-average margin percentage
Shandong Xinhua Pharmaceutical Co., Ltd.	0.00
Jilin Pharmaceutical	0.04 (*de minimis*)

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held approximately 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

The Department will issue a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Assessment Rates and Cash Deposit Requirements

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of bulk aspirin entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) For the PRC companies named above, which have separate rates, no antidumping duty deposits will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 144.02 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19989 Filed 8–6–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination to Revoke Order in Part: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to requests by producers/exporters of subject merchandise and by the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand. This review covers nine producers/exporters of the subject merchandise. The period of review (POR) is July 1, 2000, through June 30, 2001.

We preliminarily determine that for certain producers/exporters sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or the constructed export price (CEP), as applicable, and the NV.

Furthermore, if the preliminary results for one exporter/producer, Siam Food Products Public Co. Ltd. (SFP) are adopted in our final results of this administrative review, we intend to revoke the antidumping duty order with respect to SFP, based on three consecutive review periods of sales at not less than normal value. *See Intent to Revoke* section of this notice.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: David Layton or Charles Riggle, at (202) 482-0371 or (202) 482–0650, respectively; AD/CVD Enforcement Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2002).

Case History

On July 18, 1995, the Department issued an antidumping duty order on CPF from Thailand. *See Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit From Thailand*, 60 FR 36775 (July 18, 1995). On July 24, 2001, we published in the **Federal Register** the notice of opportunity to request the sixth administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910 (July 2, 2001); and *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review; Correction*, 66 FR 38455 (July 24, 2001).

In accordance with 19 CFR 351.213(b)(2), the following producers/exporters made timely requests that the Department conduct an administrative review for the period from July 1, 2000, through June 30, 2001: Vita Food Factory (1989) Co., Ltd. (Vita); Kuiburi Fruit Canning Company Limited (Kuiburi); Malee Sampran Public Co., Ltd. (Malee); SFP; The Thai Pineapple Public Co., Ltd. (TIPCO); and Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd (collectively, Dole).

In addition, on July 31, 2001, the petitioners, Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union, in accordance with 19 CFR 351.213(b)(1), submitted a timely request that the Department conduct a review of Malee, Prachuab Fruit Canning Company (Praft), Siam Fruit Canning (1988) Co., Ltd. (SIFCO), the Thai Pineapple Canning Industry Corp., Ltd. (TPC), SFP, TIPCO, Vita, and Dole.

On August 20, 2001, we published the notice of initiation of this antidumping duty administrative review, covering the period July 1, 2000, through June 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001).

On September 17, 2001, in response to the Department's questionnaire, Praft stated that it made no shipments to the United States of the subject merchandise during the POR. The Department independently confirmed with the U.S. Customs Service that there were no shipments from Praft during the POR. *See* Memorandum to File from David Layton, November 5, 2001. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, and consistent with our practice, we are treating Praft as a non-shipper for purposes of this review and are preliminarily rescinding this review with respect to Praft.

Scope of the Review

The product covered by this review is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive.

Verification

As provided in sections 782(i)(2) and (3) of the Act, we verified information provided by SFP, Vita and Kuiburi. We used standard verification procedures, including on-site inspection of the respondent producers' facilities and examination of relevant sales and financial records.

Fair Value Comparisons

We compared the EP or the CEP, as applicable, to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales in the U.S. and comparison markets of products that were identical with respect to the following characteristics: weight, form, variety, and grade. Where we were unable to compare sales of identical merchandise, we compared U.S. products with the most similar merchandise sold in the comparison market based on the characteristics listed above, in that order of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act. For all respondents, we based the date of sale on the date of the invoice.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of

the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we calculated the EP and CEP by deducting movement expenses and export taxes and duties from the starting price, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to CEP. Accordingly, for CEP sales we also reduced the starting price by direct and indirect selling expenses incurred in the United States and an amount for profit.

We determined the EP or CEP for each company as follows:

TIPCO

For TIPCO's U.S. sales, the merchandise was sold either directly by TIPCO or indirectly through its U.S. affiliate, TIPCO Marketing Co. (TMC), to the first unaffiliated purchaser in the United States prior to importation. We calculated an EP for all of TIPCO's sales because CEP was not otherwise warranted based on the facts of record. Although TMC is a company legally incorporated in the United States, the company does not have either business premises or employees in the United States. TIPCO employees based in Bangkok conduct all of TMC's activities out of TIPCO's Bangkok headquarters, including invoicing, paperwork processing, receipt of payment, and arranging for customs and brokerage. Accordingly, as the merchandise was sold before importation by TMC outside the United States, we have determined these sales to be EP transactions. *See Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 37518 (June 15, 2000) and accompanying *Decision Memorandum* at Hylsa Comment 3.

We calculated EP based on the packed FOB or CIF price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including brokerage and handling, port charges, stuffing expenses, and inland freight), international freight, U.S. customs duties, and U.S. brokerage and handling. *See* Analysis Memorandum for The Thai Pineapple Public Co., Ltd. dated July 31, 2002 (TIPCO Analysis Memorandum).

SFP

We calculated an EP for all of SFP's sales because the merchandise was sold directly by SFP outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. SFP has one employee in the United States; however, this employee does not: (1) Take title to the subject merchandise; (2) issue invoices or receive payments; or (3) arrange for other aspects of the transaction. The merchandise was shipped directly by SFP in Bangkok to the unaffiliated customer in the United States. The information on the record indicates that SFP's Bangkok office is responsible for confirming orders and for issuing the invoice directly to the customer. Payment also is sent directly from the unaffiliated U.S. customer to SFP in Bangkok. Therefore, the Department has determined that these sales were made in Bangkok prior to importation and, thus, are properly classified as EP transactions.

We calculated EP based on the packed FOB price to unaffiliated purchasers for exportation to the United States. We made deductions for foreign movement expenses in accordance with section 772(c)(2)(A) of the Act. *See* Analysis Memorandum for Siam Food Products Public Co. Ltd., dated July 31, 2002 (SFP Analysis Memorandum).

Vita

We calculated an EP for all of Vita's sales because the merchandise was sold directly by Vita outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed FOB price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including brokerage and handling, terminal handling charge, bill of lading fee, customs clearance (shipping) charge, port charges, document fee, stuffing expenses, inland freight and other miscellaneous charges). *See* Analysis Memorandum for Vita Food Factory (1989) Co., Ltd., dated July 31, 2002 (Vita Analysis Memorandum).

Kuiburi

We calculated an EP for all of Kuiburi's sales because the merchandise was sold directly by Kuiburi outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses and international freight. *See* Analysis Memorandum for Kuiburi Fruit Canning Company Limited, dated July 31, 2002 (Kuiburi Analysis Memorandum).

SIFCO

We calculated an EP for all of SIFCO's sales because the merchandise was sold directly by SIFCO outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses including inland freight (which consisted of handling charges, port/gate charges, stuffing charges, document charges, and truck costs), international freight, and U.S. brokerage and handling. *See* Analysis Memorandum for Siam Fruit Canning (1988) Co., Ltd., dated July 31, 2002 (SIFCO Analysis Memorandum).

SIFCO reported its sales contract date as the date of sale in its sales data base. However, in its responses to Section A and to the Department's supplemental questionnaire it indicated that certain terms of sale can and do change up to the invoice date. It also indicated that if the terms of sale are changed for a given transaction, the original sales contract is cancelled and a new contract is created. Since SIFCO can and did change the terms of sale after the original contract date, we have determined that invoice date is the proper date of sale.

TPC

During the POR, TPC had both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by TPC outside the United

States to the first unaffiliated purchaser in the United States prior to importation. We calculated a CEP for sales made by TPC's affiliated U.S. reseller, Mitsubishi International Corporation (MIC), after importation of the subject merchandise into the United States during the first 10 months of the POR. For the remainder of the POR, we calculated CEP for sales of MIC's products by Chicken of the Sea International (COSI) in the United States. EP and CEP were based on the packed, FOB, C&F, or delivered price to unaffiliated purchasers in the United States. We made deductions for discounts and rebates, including early payment discounts, promotional allowances, freight allowances, and billback discounts and rebates. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, international freight, marine insurance, U.S. customs brokerage, U.S. customs duty, harbor maintenance fees, merchandise processing fee, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer).

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions, direct selling expenses (credit costs, warranty expenses), and indirect selling expenses incurred by MIC and COSI in the United States. We also deducted from the starting price an amount for profit in accordance with section 772(d)(3) of the Act. *See* Analysis Memorandum for the Thai Pineapple Canning Industry, dated July 31, 2002 (TPC Analysis Memorandum).

Malee

For this POR, the Department found that all of Malee's U.S. sales were properly classified as CEP transactions because these sales were made in the United States by Malee's affiliated trading company, Icon Foods.

CEP was based on the packed C.I.F. ex-dock U.S. port price to unaffiliated purchasers in the United States. We made deductions for foreign inland movement expenses, insurance and international freight in accordance with section 772(c)(2)(A) of the Act. These include inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, international freight, marine insurance, U.S. customs brokerage, U.S. customs duty, harbor maintenance fees and merchandise processing fees. Because all of Malee's sales were CEP, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with selling the subject merchandise in the United States, including direct selling expenses and indirect selling expenses incurred by Icon Foods in the United States. We also deducted from the starting price an amount for profit in accordance with section 772(d)(3) of the Act. *See* Analysis Memorandum for Malee Sampran Public Co., Ltd., dated July 31, 2002 (Malee Analysis Memorandum).

Dole

For this POR, the Department found that all of Dole's U.S. sales were properly classified as CEP transactions because these sales were made in the United States by Dole Packaged Foods (DPF), a division of Dole.

CEP was based on DPF's price to unaffiliated purchasers in the United States. We made deductions from the starting price for discounts in accordance with 19 CFR 351.401(c). We also made deductions for foreign inland movement expenses, insurance and international freight in accordance with section 772(c)(2)(A) of the Act. Because all of Dole's sales were CEP, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with selling the subject merchandise in the United States, including direct and indirect selling expenses incurred by DPF in the United States. We also deducted from the starting price an amount for profit in accordance with section 772(d)(3) of the Act.

Normal Value

A. Selection of Comparison Markets

Based on a comparison of the aggregate quantity of home market sales and U.S. sales, we determined that, with the exception of Malee and Vita, the quantity of foreign like product each respondent sold in Thailand did not permit a proper comparison with the sales of the subject merchandise to the United States because the quantity of each company's sales in its home market was less than 5 percent of the quantity of its sales to the U.S. market. *See* section 773(a)(1) of the Act. Therefore, for all respondents except Malee and Vita, in accordance with section 773(a)(1)(B)(ii) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest viable third-country market, *i.e.*, France for SIFCO, the United Kingdom for SFP, Canada for Dole, Spain for Kuiburi and Germany for TPC and TIPCO. With respect to Malee and Vita, we based NV on the price at which the foreign like product was first sold for consumption in the home market.

B. Cost of Production Analysis

Pursuant to section 773(b)(1) of the Act, we initiated a cost of production (COP) investigation of comparison markets for each respondent. Because we disregarded sales that failed the cost test in the last completed review of TIPCO, SFP, TPC, Malee, Kuiburi, SIFCO, and Vita, and in the investigation (i.e., the last completed segment in which Dole participated) for Dole, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act.[1] We conducted the COP analysis as described below.

1. Calculation of COP/Fruit Cost Allocation

In accordance with section 773(b)(3) of the Act, for each respondent, we calculated the weighted-average COP, by model, based on the sum of the costs of materials, fabrication, selling, general and administrative expenses (SG&A), and packing costs. We relied on the submitted COPs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with production of the merchandise. In addition, as the statute indicates, the

[1] The 1999/2000 review was not completed until three months after the current review was initiated. Therefore, at the time the questionnaires were issued, we initiated the COP investigations based on the results of the completed 1998/1999 review and, in the case of Dole, based on our final determination in the investigation. *See Notice of Final Results of Antidumping Duty Administrative Review and Final Determination not to Revoke Order in Part: Canned Pineapple Fruit From Thailand*, 65 FR 77851 (December 10, 2000). *See also Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553 (June 5, 1995) and *Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit From Thailand*, 60 FR 36775 (July 18, 1995), representing our findings in the last completed segment in which Dole had participated at the time this review was initiated.

Department considers whether an accounting methodology, particularly an allocation methodology, has been historically used by the company. *See* section 773(f)(1)(A) of the Act. In previous segments of this proceeding, the Department has determined that joint production costs (i.e., pineapple and pineapple processing costs) cannot be reasonably allocated to canned pineapple on the basis of weight. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553, 29561 (June 5, 1995),[2] and *Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 7392, 7398 (February 13, 1998). For instance, cores and shells are used in juice production, while trimmed and cored pineapple cylinders are used in CPF production. Because these various parts of a pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts of the pineapple equally by using a weight-based allocation methodology.

Several respondents that revised their fruit cost allocation methodologies during the 1995/1996 POR changed from their historical net realizable value (NRV) methodology to weight-based methodologies and did not incorporate any measure of the qualitative factor of the different parts of the pineapple. As a result, such methodologies, although in conformity with Thai GAAP, do not reasonably reflect the costs associated with production of CPF. Therefore, for companies whose fruit cost allocation methodology is weight-based, we requested that they recalculate fruit costs allocated to CPF based on NRV methodology.

Consistent with prior segments of this proceeding, the NRV methodology that we requested respondents to use was based on company-specific historical amounts for sales and separable costs during the five-year period of 1990 through 1994. We initially made this request of all companies in this review except Malee. Because, in the past, Malee had allocated fruit costs on a basis that reasonably takes into account qualitative differences between pineapple parts used in CPF versus juice products in its normal accounting records, we did not originally require it to recalculate its reported costs using the NRV methodology. However, Malee updated its joint cost allocation methodology in 2000. Therefore, pursuant to a supplemental questionnaire, we obtained Malee's calculation of costs based on the Department's historic NRV methodology. For these preliminary results we have continued to use Malee's normal accounting methodology.

We made the following company-specific adjustments to the cost data submitted in this review.

SFP

Based on verification findings, we applied the net realizable value ratio to SFP's shared direct labor, fixed overhead , and variable overhead for all product models. As a result of these adjustments, we revised total cost of manufacturing, general and administrative expenses, and interest expense to reflect these changes. *See* Verification of the Home Market and Comparison Market Sales Information and the Cost Information in the Response of Siam Food Products Public Company Limited in the 2000–01 Administrative Review of Canned Pineapple Fruit from Thailand.

SIFCO

We recalculated SIFCO's pineapple fruit cost allocations for specific CPF product models. SIFCO correctly allocated its overall fruit costs between solid and juice products using its historic NRV ratio. However, SIFCO included a juice product among its solid products which slightly distorts the product model-specific allocations. We excluded this juice product from the fruit cost allocation for solid products. *See* SIFCO Analysis Memorandum.

Using information submitted by SIFCO, we also calculated the per-unit cost of the natural juice packing medium for each of SIFCO's juice-packed product models considered in our cost analysis. *See* SIFCO Analysis Memorandum. In our supplemental questionnaire, we asked that SIFCO calculate the cost of the natural juice packing medium based on NRV and to add this NRV-based cost to its direct material costs. In its supplemental response, SIFCO reported separate juice packing medium costs which we can tie to each product model, but it did not calculate these costs on the basis of NRV. Since we regard natural juice as a joint product with CPF, its pineapple fruit input cost must be linked to the NRV allocation for juice products. The central purpose of establishing the NRV ratio is to divide joint costs between a producer's solid and juice products based on NRV. We understand that SIFCO, in its normal books and records, ascribes the cost of the natural juice packing medium directly to the solid pineapple fruit costs for CPF. However, we note that after the specific CPF forms are packed in the cans, natural juice packing medium is added as another component. Since the natural juice packing medium is part of SIFCO's juice production, to apply the Department's NRV methodology correctly, the cost of the packing medium is added separately to the total direct material costs for CPF and is based on the overall NRV fruit cost allocation to SIFCO's juice production. Therefore, in order to account for the cost of natural juice used in the production of CPF the Department has calculated a separate unit cost for natural juice packing medium based on information from SIFCO's response. *See* SIFCO Analysis Memorandum.

Kuiburi

Based on verification findings, we adjusted Kuiburi's calculation of general and administrative (G&A) expenses and interest expense as a ratio of its cost of goods sold. Kuiburi included packing costs in the denominator of its original calculation of G&A and interest expenses. We recalculated the ratios after adjusting the denominator to deduct Kuiburi's packing costs. *See* Verification of Sales and Cost Information Submitted by Kuiburi Fruit Canning Co., Ltd. in the Sixth Administrative Review of the Antidumping Duty Order on Canned Pineapple Fruit from Thailand.

Vita

Based on verification findings, we adjusted Vita's allocation of fruit costs to canned pineapple products. Vita allocated fruit costs to canned pineapple fruit as fruit costs to solid products times the drained weight of canned pineapple fruit divided by the sum of the drained weights of canned pineapple fruit, tropical fruit and pouch pack products, i.e., all solid products containing pineapple. We found that Vita had erroneously multiplied the ratio to packing medium weight instead of total drained weight of the pineapple in the product. By adjusting the allocation of pineapple cost to tropical fruit, we also necessarily adjusted the cost of pineapple allocable to canned pineapple fruit products. *See* Verification of the Home Market and Comparison Market Sales Information and the Cost Information in the Response of Vita Food Factory (1989) Co., Ltd. in the 2000–2001 Administrative Review of Canned

[2] This determination was upheld by the Court of Appeals for the Federal Circuit. *The Thai Pineapple Public Co.* v. *United States*, 187 F.3d 1362 (Fed. Cir. 1999) (finding that the Department's cost allocation methodology in the original investigation was reasonable and supported by substantial evidence).

Pineapple Fruit from Thailand, dated July 31, 2002.

2. Test of Comparison Market Sales Prices

As required under section 773(b) of the Act, we compared the adjusted weighted-average COP for each respondent to the comparison market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." Where (1) 20 percent or more of a respondent's sales of a given product were made at prices below the COP and thus such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act, we disregarded the below-cost sales.

We found that for certain CPF products, Dole, Kuiburi, TIPCO, SFP, SIFCO, Malee, TPC and Vita made comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Comparison Market Prices

We determined price-based NVs for each company as follows. For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the "commission offset"). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. Company-specific adjustments are described below.

TIPCO

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Germany. We adjusted for the following movement expenses: brokerage and handling, port charges, stuffing expenses, liner expenses and foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (commissions, credit expenses and bank charges) and adding U.S. direct selling expenses (commissions, credit expenses and bank charges).

SFP

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in the United Kingdom. We adjusted for foreign movement expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges, warranties and commissions) and adding U.S. direct selling expenses (credit expenses, warranties, and bank charges). We applied the commission offset in the manner described above.

Vita

We based home market prices on the packed, delivered prices to unaffiliated purchasers in Thailand. We adjusted for inland freight. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, warranty expenses, commissions, and bank charges) and adding U.S. direct selling expenses (credit expenses, commissions and bank charges).

SIFCO

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in France. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges, and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

TPC

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in Germany. We adjusted for foreign movement expenses and international freight. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, letter of credit charges, and bank charges) and adding U.S. direct selling expenses (credit expenses, letter of credit charges, bank charges, and warranty expenses). For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales.

Kuiburi

We based third-country market prices on the packed, FOB and CNF prices to unaffiliated purchasers in Spain. We adjusted for foreign movement and international freight expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses and bank charges) and adding U.S. direct selling expenses (credit expenses, bank charges, and commissions).

Malee

We based home market prices on the packed, delivered prices to unaffiliated purchasers in Thailand. We adjusted for foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, warranty expenses, advertising expenses and commissions). We also made a level of trade (LOT) adjustment where appropriate. See the *Level of Trade* section, below.

Dole

We based third-country market prices on Dole Foods of Canada Ltd."s (DFC)

prices to unaffiliated purchasers in Canada. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred on third-country market sales. In addition, because the NV level of trade (LOT) is more remote from the factory than the CEP LOT (see the *Level of Trade* section, below), and there is no basis for determining whether the difference in the levels of trade between NV and CEP affects price comparability, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act.

D. Calculation of Normal Value Based on Constructed Value

For those CPF products for which we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared the EP or CEP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the COM of the product sold in the United States, plus amounts for SG&A expenses, comparison market profit, and U.S. packing costs. We calculated each respondent's CV based on the methodology described in the *Calculation of COP* section of this notice, above. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the comparison market to calculate SG&A expenses and comparison market profit.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses for comparison to EP transactions in the United States. We made no price-to-CV comparisons for Kuiburi, TIPCO, SFP or SIFCO because all U.S. sales were compared to contemporaneous sales of a comparable product in the ordinary course of trade. For the other companies we made the following adjustments:

Vita

We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, warranty expenses, commissions, and bank charges) and adding U.S. direct selling expenses (credit expenses, commissions and bank charges).

TPC

For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, letter of credit charges, and bank charges) and adding U.S. direct selling expenses (credit expenses, letter of credit charges, bank charges, and warranty expenses). For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales.

Malee

We made COS adjustments by deducting direct selling expenses (credit expenses, warranty expenses, advertising expenses and commissions) incurred for home market sales made at the level of trade equivalent to the CEP level of trade.

Dole

We made COS adjustments by deducting direct selling expenses incurred on third-country market sales. In addition, because the NV level of trade (LOT) is more remote from the factory than the CEP LOT (see the *Level of Trade* section, below), and there is no basis for determining whether the difference in the levels of trade between NV and CEP affects price comparability, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002).

In implementing these principles in this review, we obtained information from each respondent about the marketing stage involved in the reported U.S. and comparison market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and comparison market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar.

In this review, all respondents except Malee and Dole claimed that all of their sales involved identical selling functions, irrespective of channel of distribution or market. We examined these selling functions for Vita, SIFCO, SFP, TIPCO, TPC, and Kuiburi, and found that sales activities were limited to negotiating sales prices, processing of purchase orders/contracts, invoicing, and collecting payment. There was little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, or after-sale service performed in either market by the respondents. Therefore, for all respondents except Malee and Dole, we have preliminarily found that there is an identical LOT in the U.S. and relevant comparison market, and no level-of-trade adjustment is required for comparison of U.S. sales to comparison market sales.

Malee

Malee reported that all of its sales made to the United States were to distributors and involved minimal selling functions on the part of Malee. Malee reported two different channels of distribution for its sales in the home market: (1) Sales through an affiliated

reseller, Malee Enterprise Co. Ltd. (Malee Enterprise) (formerly Malee Supply (1994) Co. Ltd.), which are made at a more advanced marketing stage than the factory-direct sales, and (2) factory-direct sales involving minimal selling functions and which are at a marketing stage identical to that of the CEP transactions after deductions.

In the home market, Malee reported numerous selling functions undertaken by Malee Enterprise for its resales to small wholesalers, retailers and end-users. In addition to maintaining inventory, Malee Enterprise also handled all advertising during the POR. The advertising was directed at the ultimate consumer. Malee also reported that Malee Enterprise replaces damaged or defective merchandise and, as necessary, breaks down packed cases into smaller lot sizes for many sales. Malee made direct sales to hotels, restaurants and industrial users. Malee claimed that its only selling function on direct sales was delivery of the product to the customer.

Our examination of the selling activities, selling expenses, and customer categories involved in these two channels of distribution indicates that they constitute separate levels of trade, and that the direct sales are made at the same level as Malee's U.S. sales. Where possible, we compared sales at Malee's U.S. LOT to sales at the identical home market LOT. If no match was available at the same LOT, we compared sales at Malee's U.S. LOT to Malee's sales through Malee Enterprise at the more advanced LOT.

To determine whether a LOT adjustment was warranted, we examined the prices of comparable product categories, net of all adjustments, between sales at the two home market LOTs we had designated. We found a pattern of consistent price differences between sales at these LOTs. In making the LOT adjustment, we calculated the difference in weighted-average prices between the two different home market LOTs. Where U.S. sales were compared to home market sales at a different LOT, we reduced the home market price by the amount of this calculated LOT difference.

Dole

Dole reported six specific customer categories and one channel of distribution (sales through an affiliated reseller) for its comparison market and seven specific customer categories and one channel of distribution (sales through an affiliated reseller) for its U.S. sales. In its response, Dole claims that all of its sales to unaffiliated comparison market customers (i.e., the six customer categories) are at the same LOT because these sales are made through the same channel of distribution and involve the same selling functions.

Dole had only CEP sales in the U.S. market. Dole reported that its CEP sales were made through a single channel of distribution (*i.e.*, sales through its U.S. affiliate, Dole Packaged Foods (DPF)), which we have treated as one LOT because there is no apparent difference in the selling functions performed by DPF for the different customers. After making the appropriate deductions under section 772(d) of the Act for these CEP sales, we found that the remaining expenses associated with selling activities performed by Dole are limited to expenses related to the arrangement of freight and delivery to the port of export that are reflected in the CEP price. In contrast, the normal value prices include a number of selling expenses attributable to selling activities performed by DFC in the comparison market, such as inventory maintenance, warehousing, delivery, order processing, advertising, rebate and promotional programs, warranties, and market research. Accordingly, we concluded that CEP is at a different LOT from the NV LOT, *i.e.*, the CEP sales are less remote from the factory than are the NV sales.

Having determined that the comparison market sales were made at a level more remote from the cannery than the CEP transactions, we then examined whether a LOT adjustment or CEP offset may be appropriate. In this case, Dole only sold at one LOT in the comparison market; therefore, there is no information available to determine a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, in accordance with the Department's normal methodology as described above. *See Porcelain-on-Steel Cookware from Mexico Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000). Further, we do not have information which would allow us to examine pricing patterns based on respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the comparison market is at a more advanced stage of distribution than the LOT of the CEP transactions, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. This offset is equal to the amount of indirect expenses incurred in the comparison market not exceeding the amount of indirect selling expenses deducted from the U.S. price in accordance with 772(d)(1)(D) of the Act.

Intent To Revoke in Part

On July 31, 2001, SFP requested that "the Department revoke the antidumping order in part as regards SFP based on the absence of dumping pursuant to 19 CFR 351.222(b)(2)." SFP submitted, along with its revocation request, a certification stating that: (1) The company sold subject merchandise at not less than normal value during the POR, and that in the future it would not sell such merchandise at less than normal value (*see* 19 CFR 351.222 (e)(1)(i)); (2) the company has sold the subject merchandise to the United States in commercial quantities during each of the past three years (*see* 19 CFR 351.222(e)(1)(ii)); and (3) the company agreed to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2)(i)(B), and as referenced at 19 CFR 351.222(e)(1)(iii)).

Based on the preliminary results in this review and the final results of the two preceding reviews (*see Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part: Canned Pineapple Fruit From Thailand*, 65 FR 77851 (December 13, 2000) and *Notice of Final Results of Antidumping Duty Administrative Review and Recission of Administrative Review in Part: Canned Pineapple Fruit from Thailand*, 66 FR 52744, (October 17, 2001)), SFP has preliminarily demonstrated three consecutive years of sales at not less than normal value. Furthermore, SFP's aggregate sales to the United States have been made in commercial quantities during the last three segments of this proceeding. *See* the July 31, 2002 Memorandum to Bernard Carreau: Preliminary Determination to Revoke in Part the Antidumping Duty Order on Canned Pineapple Fruit from Thailand. Interested parties are invited to comment in their case briefs on all of the requirements that must be met by SFP under section 351.222 of the Department's regulations in order to qualify for revocation from the antidumping duty order. Based on the above facts and absent any evidence to the contrary, the Department preliminarily determines that the continued application of the order to SFP is not otherwise necessary to offset

dumping. Therefore, if these preliminary findings are affirmed in our final results, we intend to revoke the order with respect to merchandise produced and exported by SFP. In accordance with 19 CFR 351.222(f), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2001, and will instruct Customs to refund any cash deposit.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margins exist for the period July 1, 1999, through June 30, 2000:

Manufacturer/Exporter	Margin (percent)
Siam Food Products Company Ltd. (SFP)	0.09
Dole Food Company, Inc. (Dole)	0.63
The Thai Pineapple Public Company, Ltd. (TIPCO)	0.44
Kuiburi Fruit Canning Co. Ltd. (Kuiburi)	0.39
Thai Pineapple Canning Industry (TPC)	2.43
Siam Fruit Canning (1988) Co. Ltd. (SIFCO)	0.64
Vita Food Factory (1989) Co. Ltd. (Vita)	1.94
Malee Sampran Public Co., Ltd. (Malee)	0.56

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on all entries of subject merchandise by that importer. We have calculated each importer's duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. Where the assessment rate is above *de minimis*, the importer-specific rate will be assessed uniformly on all entries made during the POR.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CPF from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for companies listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 24.64 percent, the "All Others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19995 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a timely request by Tube Forgings of America, Inc., (the petitioner), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings (pipe fittings) from Thailand. This review covers Thai Benkan Corporation, Ltd. (TBC), a manufacturer/exporter of this merchandise to the United States, during the period July 1, 2000, through June 30, 2001. We have preliminarily determined that sales of the subject merchandise have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the NV and the export price (EP) or constructed export price (CEP). Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) a statement of the issues; and (2) a brief summary of the arguments.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Tom Futtner, Antidumping/Countervailing Duty Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4114 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute And Regulations:

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, (the Act) as amended, by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (2001).

Background

On July 6, 1992, the Department published in the **Federal Register** an antidumping duty order on pipe fittings from Thailand (57 FR 29702). On July 31, 2001, the petitioner requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on pipe fittings from Thailand covering the period, July 1, 2001, through June 30, 2001. We published a notice of initiation of the review on August 20, 2001(66 FR 43570). On September 13, 2001, the Department sent an antidumping questionnaire to TBC.[1] The Department received questionnaire responses in October and November of 2001. On February 12, 2002, we issued a supplemental questionnaire and received a response to that questionnaire on April 30, 2002. The Department is conducting this review in accordance with section 751 of the Act.

Extension of Deadlines

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of preliminary review results if it determines that it is not practicable to complete the review within the statutory time limit. On March 12, 2002, the Department extended the time limit for the preliminary results of this case (*see Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 11092).

Scope of the Review

The product covered by this order is certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. The review covers TBC and the period of review (POR) July 1, 2000, through June 30, 2001.

TBC's Financial Status

TBC informed the Department that it is currently in receivership under Thai bankruptcy law. TBC stated that while it continues its production activities as the debtor-in-possession, it had to lay off a large number of its production and office employees, including managers. According to TBC, these lay-offs have seriously affected TBC's ability to handle its day-to-day bookkeeping and administrative functions. TBC claims that the employees who possessed the experience relevant to the Department's antidumping reviews either left the company or were furloughed indefinitely. The minimal remaining staff is preoccupied with the bankruptcy proceedings, evaluating the company's assets, collecting receivables, negotiating loans and responding to creditors' inquiries. TBC maintains that under these circumstances, it has a limited ability to provide the necessary information to the Department. On numerous occasions, TBC requested extensions of time in order to collect the requested information and respond to the Department's antidumping questionnaires. The Department granted all extension requests and, in order to accommodate TBC, postponed the issuance of the preliminary results in this administrative review. *See* section "Extension of Deadlines" above, and letters from Perkins Coie, LLP to the Department, dated October 4, 2001, October 9, 2001, October 26, 2001, and February 13, 2002. The Department also postponed the verification until after the publication of the preliminary results.

Partial Facts Available

Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act, provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. While the Department granted TBC's requests for additional time to respond to the questionnaires, and TBC did appear to cooperate to the best of its ability, TBC did not submit all the information necessary for the Department to accurately conduct its review. For example, TBC did not, as requested by the Department, submit down-stream home market sales by its affiliated parties to whom TBC sold subject merchandise. *See* the *Affiliation* section of this notice below for a further discussion of TBC's downstream sales in the home market. Similarly, TBC did not provide reliable differences-in-merchandise (DIFMER) or CV data. As a result, the Department's analysis was limited to those U.S. sales by TBC which could be compared to sales of identical merchandise in the home market. *See* Questionnaire Response to Section B, p. 42, dated Nov. 30, 2001, Questionnaire Response to Section C, p. 47, dated Nov. 30, 2001, and Supplemental Questionnaire Response, p. C–11, dated April 30, 2002. As long recognized by the CIT, the burden is on the respondent, not the Department, to create a complete and accurate record. *See Pistachio Group of Association Food Industries* v. *United States*, 641 F. Supp. 31, 39–40 (CIT 1987). Therefore, in accordance with section 776(a)(2) of the Act, we are applying partial facts otherwise available in calculating TBC's dumping margins. However, since TBC did cooperate to the best of its ability, we are not making any adverse assumptions. Therefore, in the absence of downstream sales, as facts available, we have conducted our analysis using sales to unaffiliated home market customers and sales to affiliated parties that passed the arm's-length test. Further, for those U.S. transactions that would have required the use of DIFMER (U.S. sales compared to similar merchandise if the home market) or CV (where there were neither identical nor similar products sold in the home

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

market) to make NV comparisons, we have applied as facts available to those U.S. transactions the weighted-average dumping margin found on the U.S transactions that were compared to sales of identical merchandise in the home market.

Product Comparisons

In accordance with section 771(16) of the Act, all merchandise produced by the respondent, and covered by the description in the *Scope of Investigation* section above, that were sold in Thailand during the POR, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. To appropriately match U.S. sales of subject merchandise to sales of the foreign like product in the comparison market, we used the following product characteristics: industry standard, type of fitting, degree of processing, size, thickness, and type of material. As stated above, TBC did not provide the Department with reliable DIFMER figures. Consequently, as discussed above, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we applied facts available.

Normal Value Comparisons

With respect to TBC, in determining whether this respondent's sales of pipe fittings to customers in the United States were made at less than NV, we compared CEP to NV, as described in the *Constructed Export Price*, and *Normal Value* sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to the prices of individual U.S. transactions.

Constructed Export Price

We treated U.S. transactions as CEP in accordance with section 772(b) of the Act because all U.S. sales were made first to TBC's U.S.-based subsidiary and only after importation were they resold to the first unaffiliated purchaser. We based CEP on the packed FOB or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions for foreign inland freight from the plant to the port, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. customs brokerage and duties, and U.S. inland freight because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery. In addition, we deducted U.S. indirect selling expenses and inventory carrying costs in accordance with section 772(d)(1) of the Act, and made an adjustment for profit in accordance with section 772(d)(3) of the Act. We also increased CEP by the reported amount of duty drawback.

Normal Value

A. Viability

In accordance with section 773(a)(1)(C)(ii) of the Act, we preliminarily determine that the home market for the respondent serves as a viable basis for calculating NV because the aggregate volume of the respondent's home market sales of the foreign like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.

B. Affiliated-Party Transactions and Arm's-Length Test

1. Affiliation

As stated above, a portion of TBC's merchandise was sold during the POR through the reseller, Marubeni Thailand Co., Inc., (Marubeni Thailand). In its October 24, 2001, questionnaire response, TBC states that Marubeni Thailand and TBC are "affiliated" because of TBC's substantial "dependence" on Marubeni Thailand for its home market sales. TBC further stated that it intended to report to the Department the downstream sales by Marubeni Thailand to the first unaffiliated customer in the home market. *See* Antidumping Questionnaire Response, Section A, p. A–9, dated October 24, 2001. On October 26, 2001, however, TBC notified the Department that due to the financial difficulties stemming from its bankruptcy proceedings, it was not able to obtain the cooperation of Marubeni Thailand in reporting downstream sales from Marubeni Thailand to the first unrelated home market customer. TBC asked the Department for additional time to collect this information. *See* Letter to the Department from Yoshihiro Saito, counsel to TBC. The Department granted TBC's request.

On November 30, 2001, TBC submitted its questionnaire response for home market sales (Section B) stating that it was unable to obtain down stream sales from Marubeni Thailand. See TBC's Questionnaire Response (Section B), at 7. On February 13, 2002, the Department issued a supplemental questionnaire again requesting downstream sales from Marubeni Thailand. On April 30, 2002, TBC stated that it was unable to obtain such information and urged the Department to reconsider the "affiliation" between Marubeni Thailand and itself. TBC reasoned that the affiliation no longer applied in the current administrative review because: (1) There is no direct stock ownership between TBC and Marubeni Thailand; (2) although Marubeni Japan owns stock in both TBC and Marubeni Thailand, the two Thai-based companies are not under "common control" of Marubeni Japan; (3) unlike in the prior review, TBC no longer depends heavily on Marubeni Thailand's home market network of customers; and (4) TBC uses Marubeni Thailand as a reseller primarily to protect itself against bad debts, *i.e.*, as a "credit hedge." *See* TBC's Supplemental Questionnaire Response, at B5–B8.

The Department preliminarily disagrees with TBC's conclusion that it is no longer affiliated with Marubeni Thailand. This is consistent with the prior review of the antidumping duty order, in which TBC reported Marubeni Thailand as an affiliated party and provided downstream sales from Marubeni Thailand to the first unrelated customer. *See Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand; Final Results of Antidumping Duty Administrative Review*, 64 FR 68487 (Dec. 13, 1999). In the instant review, there were no changes in stock ownership or business relations among all relevant parties. The fact that TBC's was unable to obtain downstream sales does not change its status as a party affiliated with Marubeni Thailand. Consequently, for these preliminary results, we will continue to treat TBC and Marubeni Thailand as affiliated parties.

2. Arm's-Length Test

TBC reported that it made home market sales to both affiliated and unaffiliated companies. *See* Questionnaire Response to Section B, p. 7, dated Nov. 30, 2001. We applied the arm's-length test by comparing sales made to TBC's home market affiliate to sales of identical merchandise from TBC to unaffiliated home market customers. To test whether these sales were made at arm's-length prices, we compared model-specific prices to affiliated and unaffiliated customers net of all discounts and rebates, movement charges, direct selling expenses, and home market packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's-length. *See* 19 CFR 351.403(c) and *Preamble - Department's Final Antidumping Regulations* 62 FR 27296, 27355 (May

19, 1997). If the sales to the affiliated customer satisfied the arm's-length test, we used them in our analysis. If the sales to the affiliated customer in the home market did not satisfy the arm's-length test, sales to that customer were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102 (defining "ordinary course of trade").

Level of Trade/CEP Offset

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa (CTL Plate from South Africa)*, 62 FR 61731, 61732 (November 19, 1997). To determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. Also, pursuant to 19 CFR 351.412 (c), in identifying the LOT for CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and we are unable to make an LOT adjustment, the Department grants a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See CTL Plate from South Africa*.

We obtained information from TBC regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by TBC for *each* channel of distribution. While TBC did not request an LOT adjustment, it did request a CEP offset.

TBC reported home market sales to three customer categories through three distribution channels. In each of the distribution channels, TBC offered to its customers the same type of services such as booking orders, arranging freight, inventory maintenance, technical assistance and general customer service. Based on an analysis of the level and nature of the selling functions performed in each home market channel of distribution, we find that TBC's home market sales comprise a single LOT. For details, see the July 31, 2002, Memorandum to the File regarding TBC: *Level of Trade Analysis*.

For its U.S. sales, TBC reported CEP sales made to a single customer category through one channel of distribution. After deducting the CEP selling expenses incurred by its U.S. affiliate, Benkan America, Inc. (BAI) and reviewing the U.S. market selling functions reported by TBC, we found that TBC's United States sales also comprise a single LOT. *Id.* at 3.

In determining whether different LOTs existed in the home and U.S. markets, we examined whether TBC's sales in the two markets involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories and selling functions reported. In analyzing TBC's selling activities for CEP sales, we noted, preliminarily, that the home market LOT is different from, and constitutes a more advanced stage of distribution, than the CEP LOT because after making the CEP deductions under section 772(d) of the Act, the home market LOT includes significantly more selling functions than the CEP LOTs. While in the home market TBC performs selling functions such as booking orders, price negotiation, arranging freight, inventory maintenance, etc., it does not offer similar selling functions in the U.S. market. Therefore, because of the nature and level of selling functions offered by TBC in the home market, we find that the home market LOT is at a different, more advanced marketing stage than the CEP LOT. Consequently, since NV is established at a LOT which constitutes a more advanced LOT than the CEP LOT, and the data do not provide an appropriate basis upon which to determine a LOT adjustment (TBC has only one level of trade in the home market), we conclude that TBC is entitled to a CEP offset to NV. *Id.* at 4.

Price-to-Price Comparisons

As stated above, TBC did not report product-specific CV data. *See* TBC's Supplemental Questionnaire Response, at B15–B21. Consequently, we preliminarily determined NV for all U.S. sales based on contemporaneous home market sales for identical merchandise or facts available. In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and at the same LOT as the CEP sale. In accordance with section 773(a)(6) of the Act, where applicable, we made adjustments to home market prices for movement expenses (inland freight) and credit expenses. To adjust for differences in packing between the two markets, we deducted home market packing costs and added U.S. packing costs.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank, the Department's preferred source for exchange rates.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period July 1, 2000, through June 30, 2001:

Manufacturer/Exporter	Weighted-Average Margin (percent)
Thai Benkan Corporation, Ltd.	3.15

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument. The schedule for submitting case briefs will be established after publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

Assessment Rate

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For assessment of CEP sales, we have calculated a per-unit importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. Where the importer-specific assessment rate is above *de minimis*, the Department will instruct Customs to assess antidumping duties on all entries of subject merchandise by that importer during the POR.

Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pipe fittings from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis*, no cash deposit will be required: (2) for exporters not covered in this review, but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period: (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original LTFV investigation, the cash deposit rate will be 39.10 percent, the "All Others" rate which is based on the LTFV investigation (57 FR 29702, July 6, 1992). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under

19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

DATED: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19984 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination To Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by fifteen producers/exporters of subject merchandise and L.R. Enterprises,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on fresh Atlantic salmon from Chile. This review covers seventeen producers/exporters of the subject merchandise. The period of review (POR) is July 1, 2000, through June 30, 2001.

We preliminarily determine that sales of subject merchandise by four of the respondents under review have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties on appropriate entries based on the difference between the export price (EP) or constructed export price (CEP) and the normal value.

We are also rescinding this review with respect to 68 producers, and preliminarily rescinding this review with regard to one producer. Furthermore, if these preliminary results are adopted in our final results of this administrative review, we intend to revoke the antidumping order with respect to Cultivos Marinos Chiloe Ltda. (Cultivos Marinos), Pesquera Eicosal Ltda. (Eicosal), Salmones Mainstream S.A. (Mainstream), and Salmones Pacifico Sur, S.A. (Pacifico Sur). We do not intend to revoke the antidumping duty order with respect to Cultivadora de Salmones Linao Ltda. (Linao) and Salmones Tecmar, S.A. (Tecmar) because we have calculated a preliminary antidumping margin for these companies in this administrative review. If the final results of the review are positive antidumping margins for Linao and Tecmar, these companies will not have had sales not below their normal values for three consecutive years and, therefore, will not be eligible for revocation. We do not intend to revoke the antidumping duty with respect to Marine Harvest Chile S.A. (Marine Harvest), either. Marine Harvest, as currently constituted, had not existed for three years as of the end of the current review period, and has only been reviewed for two consecutive periods.[2] *See Preliminary Determination Not To Revoke* section of this notice.

Interested parties are invited to comment on these preliminary results. Parties that submit arguments are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. Further, we would appreciate parties submitting comments to provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Tracy Levstik or Constance Handley, at (202) 482–2815 or (202) 482–0631, respectively; AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

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[1] L.R. Enterprises is a domestic producer of subject merchandise with operations in Lubec, Maine.

[2] In reaching its determination on this issue, the Department is mindful of the fact that its determination in the changed circumstances review is currently under review by the U.S. Court of International Trade. The outcome of this litigation may affect the Department's determination regarding revocation for Marine Harvest in this proceeding.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Case History

On July 30, 1998, the Department issued an antidumping duty order on fresh Atlantic salmon from Chile. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Fresh Atlantic Salmon from Chile*, 63 FR 40699 (July 30, 1998). On July 2, 2001, the Department issued a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910 (July 2, 2001).

In accordance with 19 CFR 351.213(b)(2), the following producers/exporters made timely requests that the Department conduct an administrative review for the period from July 1, 2000, through June 30, 2001: (1) Chile Cultivos, S.A. (Chile Cultivos); (2) Linao; (3) Cultivos Marinos; (4) Fiordo Blanco S.A. (Fiordo Blanco); (5) Invertec Pesquera Mar de Chiloe Ltda (Invertec); (6) Marine Harvest; (7) Pesca Chile S.A. (Pesca Chile); (8) Eicosal; (9) Pesquera Pacific Star (Pacific Star); (10) Robinson Crusoe Y Cia. Ltda. (Robinson Crusoe); (11) Salmones Friosur S.A. (Friosur); (12) Mainstream; (13) Salmones Multiexport Ltda. (Multiexport); (14) Pacifico Sur; and (15) Tecmar.

In addition, on July 31, 2001, L.R. Enterprises, Inc., a domestic producer of subject merchandise, requested a review of 86 producers/exporters of fresh Atlantic salmon. As explained below, L.R. Enterprises, Inc., subsequently withdrew its request for review of all but 17 of these companies.

On August 20, 2001, we published the notice of initiation of this antidumping duty administrative review, covering the period July 1, 2000, through June 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001).

Per letters filed on September 4, 7, 19, October 18, and November 1 and 16, 2001, L.R. Enterprises, Inc., withdrew its request for review for all companies except the following: (1) Cultivos Marinos; (2) Eicosal; (3) Friosur; (4) Invertec; (5) Linao; (6) Los Fiordos Ltda. (Los Fiordos); (7) Mainstream; (8) Marine Harvest; (9) Multiexport; (10) Ocean Horizons Chile S.A. (Oceans Horizons); (11) Pacifico Sur; (12) Patagonia Salmon Farming S.A. (Patagonia); (13) Pesca Chile; (14) Robinson Crusoe; (15) Salmones Andes S.A. (Andes); (16) Salmones Unimarc, S.A. (Salmones Unimarc), and (17) Tecmar.

On September 13, 2001, Chile Cultivos submitted a letter withdrawing its request for an administrative review.

Partial Rescission of Antidumping Duty Administrative Review

Salmones Unimarc certified to the Department that it had not shipped subject merchandise to the United States during the POR. Our examination of entry data for U.S. imports confirmed that Salmones Unimarc had not shipped subject merchandise to the United States during the POR. Therefore, pursuant to 19 CFR 315.213(d)(3), we are preliminarily rescinding the review with respect to Salmones Unimarc.

In addition we are rescinding the review with regard to the following companies for which L.R. Enterprises, Inc., withdrew its request for a review, and with regard to Chile Cultivos, which withdrew its request for a review:

Acuicultura de Aquas Australes
Agromar Ltda.
Aguas Claras S.A.
Antarfish S.A.
Aquachile S.A.
Aquasur Fisheries Ltda.
Asesoria Acuicola S.A.
Australis S.A.
Best Salmon
Cenculmavique
Centro de Cultivo de Moluscos
Cerro Farrellon Ltda.
Chile Cultivos S.A.
Chisal S.A.
Comercializadora Smoltech Ltda.
Complejo Piscicola Coyhaique
Cultivos San Juan
Cultivos Yardan S.A.
Empresa Nichiro Chile Ltda.
Fiordo Blanco
Fisher Farms
Fitz Roy S.A.
Ganadera Del Mar
G.M. Tornagaleones S.A.
Hiuto Salmones S.A.
Huitosal Mares Australes Salmo Pac.
Instituto Tecnologico Del Salmon S.A.
Inversiones Pacific Star Ltda.
Manao Bay Fishery S.A.
Mardim Ltda.
Pacific Mariculture
Patagonia Fish Farming S.A.
Pesquera Antares S.A.
Pesquera Chiloe S.A.
Pesquera Friosur S.A.
Pesquera Mares de Chile S.A.
Pesquera Pacific Star
Pesquera Quellon Ltda.
Pesquera Y Comercial Rio Peulla S.A.
Piscicola Entre Rios S.A.
Piscicultura Iculpe
Piscicultura La Cascada
Piscultura Santa Margarita
Productos Del Mar Ventisqueros S.A.
Prosmolt S.A.
Quetro S.A.
River Salmon S.A.
Salmoamerica
Salmones Antarctica S.A.
Salmones Aucar Ltda.
Salmones Caicaen S.A.
Salmones Calbuco S.A.
Salmones Chiloe S.A.
Salmones Huillinco S.A.
Salmones Ice Val Ltda.
Salmones Llanquihue
Salmones Pacific Star Ltda.
Salmones Quellon
Salmones Ranco Sur Ltda.
Salmones Skyring S.A.
Salmones Tierra Del Fuego Ltda.
Salmosan
Seafine Salmon S.A.
Soc. Alimentos Maritimos Avalon Ltda.
Soc. Aquacultivos Ltda.
Truchas Aguas Blancas Ltda.
Trusal S.A.
Ventisqueros S.A.

Scope of the Review

The product covered by this review is fresh, farmed Atlantic salmon, whether imported "dressed" or cut. Atlantic salmon is the species *Salmo salar*, in the genus *Salmo* of the family *salmoninae*. "Dressed" Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the review. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the "pin bones" in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is "not farmed" (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this investigation is classifiable as item

numbers 0302.12.0003 and 0304.10.4093, 0304.90.1009, 0304.90.1089, and 0304.90.9091 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Verification

As provided in section 782(i)(2) of the Act, we verified information provided by Cultivos Marinos, Eicosal, Mainstream, Marine Harvest, Pacifico Sur, Tecmar and Linao. We used standard verification procedures, including on-site inspection of the respondent producers' facilities and examination of relevant sales and financial records.

Fair Value Comparisons

We compared the export price (EP) or constructed export price (CEP) to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales of products sold in the United States and comparison markets that are identical with respect to the matching characteristics. Pursuant to section 771(16) of the Act, all products produced by the respondents that fit the definition of the scope of the review and were sold in the comparison markets during the POR fall within the definition of the foreign like product. We have relied on four criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: form, grade, weight band, and trim. As in all previous administrative reviews, we have determined that it is generally not possible to match products of dissimilar forms, grades, and weight bands, because there are significant differences among products that cannot be accounted for by means of a difference-in-merchandise adjustment; we did, where appropriate, make comparisons of merchandise with different trims. (Unlike the other three physical characteristics, trim is the result of a processing operation with readily identifiable differences in the variable cost of manufacturing, which permits the comparison of similar products with a difference-in-merchandise adjustment.) *See Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile*, 65 FR 78472 (December 15, 2000). Where there were no appropriate sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV).

Collapse of Affiliated Parties

In November 2000, Linao and Tecmar were wholly purchased by a common parent, Fjord Seafood ASA. Such members of a corporate grouping are considered affiliated parties under section 351.102(b) of the Department's regulations (defining "affiliated" parties). Section 351.401(f)(1) of the regulations provides for affiliated producers of subject merchandise to be treated as a single entity (*i.e.*, collapsed), where (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and (2) the Department concludes that there is a significant potential for manipulation of price or production.

Section 351.401(f)(2) of the Department's regulations provides factors for the Department to consider when looking for a significant potential for manipulation of price or production, namely (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. Because they were purchased by a common parent during the POR and have production facilities for identical products, we find that there is a significant potential for the manipulation of prices or production. Accordingly, for the period November 15, 2000 through June 30, 2001 we have collapsed Linao and Tecmar (Linao/Tecmar) for purposes of our analysis.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States. Where sales were made through an unaffiliated consignment broker, we did not consider the consignment broker to be the customer; rather, we considered the customer to be the consignment broker's customer.

In accordance with section 772(c)(2) of the Act, for both the EP and CEP transactions, we reduced the starting price by amounts for movement expenses and export taxes and duties, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to CEP. Consistent with past practice, for these sales we deducted from the CEP commissions charged to, and other direct expenses incurred for the account of, the producer/exporter related to economic activity in the United States. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Administrative Review: Fresh Atlantic Salmon From Chile*, 65 FR 48457, 48460 (August 8, 2000). We did not deduct an amount for CEP profit for these sales, because the commission already contains an element for profit realized by the unaffiliated consignment broker. For Marine Harvest, Multiexport and Pesca Chile, which made sales through an affiliated reseller, we calculated a CEP profit ratio following the methodology set forth in section 772(f) of the Act. We determined the EP or CEP for each company as follows:

Andes

We calculated an EP for all of Andes' sales because the merchandise was sold directly by Andes to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, and brokerage.

Cultivos Marinos

We calculated an EP for all of Cultivos Marinos' sales because the merchandise was sold directly by Cultivos Marinos to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with

section 772(c)(2)(A) of the Act. These include foreign inland freight, international freight, U.S. brokerage and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Eicosal

We calculated an EP for all of Eicosal's sales because the merchandise was sold directly by Eicosal to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, U.S. brokerage and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Friosur

We calculated an EP for all of Friosur's sales because the merchandise was sold directly by Friosur to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, domestic and U.S. brokerage and handling expenses, U.S. customs duties and unloading costs. We also added duty drawback to the starting price, in accordance with section 772(c)(1)(B) of the Act.

Invertec

We calculated an EP for all of Invertec's sales because the merchandise was sold directly by Invertec to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, domestic and U.S. brokerage and handling expenses and U.S. customs duties. We also added duty drawback to the starting price, in accordance with section 772(c)(1)(B) of the Act.

Linao and Tecmar

For the period July 1, 2000 through November 14, 2001, we performed company-specific analyses for Linao and Tecmar. As of November 15, 2001, due to our decision to collapse the two companies, the databases of the two companies were merged, and a joint analysis was performed.

During the POR, Linao made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Linao to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made for the account of the producer/exporter by an unaffiliated consignment broker in the United States after the date of importation. EP and CEP sales were based on the packed, delivered and duty-paid (DDP) U.S. port and CIF U.S. port prices for exportation to the United States. We made deductions from the starting price for discounts and rebates, as well as movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, U.S. brokerage, and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added the amount for duty drawback, in accordance with section 772(c)(1)(B) of the Act.

In accordance with section 772(d)(1) of the Act, for CEP sales we also deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions to unaffiliated consignment brokers, direct selling expenses (credit expenses and industry association fees), and miscellaneous selling expenses incurred in the United States by the unaffiliated consignment broker on behalf of the exporter which were charged to the respondent separately from the commission. As discussed above, we did not deduct an amount for CEP profit, because the commission to the unaffiliated broker is considered to contain an element of profit.

For Tecmar, we calculated an EP for all of Tecmar's sales because the merchandise was sold directly by Tecmar to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, U.S. brokerage and handling, and U.S. duties. We also added the amount for duty drawback to the starting price, in accordance with section 772(c)(1)(B) of the Act.

Los Fiordos

We calculated an EP for all of Los Fiordos' sales because the merchandise was sold directly by Los Fiordos to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, brokerage and handling, and U.S. Customs duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Mainstream

We calculated an EP for all of Mainstream's sales because the merchandise was sold directly by Mainstream to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, brokerage and handling, and U.S. customs duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Marine Harvest

We calculated a CEP for Marine Harvest's sales, all of which were made by an affiliated reseller in the United States after the date of importation. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, U.S. duties and U.S. brokerage. We also deducted the amount for billing adjustments and rebates from the starting price, in accordance with section 772(c)(1)(B) of the Act, and added duty drawback, in accordance with section 772(c)(1)(B).

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions and other direct selling expenses (credit, inspection association fees, and brokerage, handling and document processing costs). We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

Multiexport

During the POR, Multiexport made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Multiexport to the first unaffiliated purchaser in the United States prior to importation. We calculated a CEP for sales made for the account of the producer/exporter by an affiliated reseller in the United States after the date of importation.

We made deductions from the starting price for rebates, as well as movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, and U.S. duties. We also added the amounts for delivery revenues and for duty drawback, in accordance with section 772(c)(1)(B) of the Act.

In accordance with section 772(d)(1) of the Act, for CEP sales we also deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (including credit expenses and miscellaneous direct selling expenses), and indirect selling expenses incurred by the affiliated reseller in the United States. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

Ocean Horizons

We calculated a CEP for Ocean Horizon's sales, all of which were made by an affiliated reseller in the United States after the date of importation. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, foreign brokerage and handling, and U.S. duties. We also added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

In accordance with section 772(d)(1) of the Act, for CEP sales, we also deducted from the starting price those direct selling expenses that were incurred in selling the subject merchandise in the United States (credit and inspection association fees). We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

Pacifico Sur

We calculated an EP for all of Pacifico Sur's U.S. sales because the merchandise was sold directly by Pacifico Sur to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, U.S. brokerage, and U.S. duties. We also added the amount for duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Patagonia

We calculated an EP for all of Patagonia's U.S. sales because the merchandise was sold directly by Patagonia to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, international freight, U.S. brokerage, and U.S. duties. We also added the amount for duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Pesca Chile

During the POR, Pesca Chile made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Pesca Chile to the first unaffiliated purchaser in the United States prior to importation. We calculated a CEP for sales made for the account of the producer/exporter by an affiliated reseller in the United States after the date of importation.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, inland insurance, warehousing, U.S. brokerage, and U.S. duties. We also deducted the amount for billing adjustments and rebates from the starting price, in accordance with section 772(c)(1)(B) of the Act.

In accordance with section 772(d)(1) of the Act, for CEP sales, we also deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions and other direct selling expenses (credit, inspection association fees, and bank charges). We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

Robinson Crusoe

We calculated an EP for all of Robinson Crusoe's sales because the merchandise was sold directly by Robinson Crusoe to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight, inland insurance, international freight, U.S. brokerage and handling, and U.S. duties. We also added the amount for duty drawback to the starting price, in accordance with section 772(c)(1)(B) of the Act.

Normal Value

A. Selection of Comparison Markets

Based on a comparison of the aggregate quantity of home market sales and U.S. sales by Cultivos Marinos, Eicosal, and Multiexport we determined that the quantity of foreign like product sold in Chile permitted a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1)(B) of the Act, because the quantity of sales in the home market was more than five percent of the quantity of sales to the U.S. market for each of these respondents. Accordingly, for those three respondents we based NV on home market sales.

Respondents Andes, Friosur, Invertec, Los Fiordos, Mainstream, Marine Harvest, Pesca Chile, and Robinson Crusoe did not have viable home markets, as defined above. Therefore, for these respondents, in accordance with section 773(a)(1)(C) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest third-country market. For Andes, Friosur, Invertec, Mainstream, Marine Harvest and Pesca Chile, the largest third-country market is Brazil; for Robinson Crusoe, the largest third-country market is Mexico; and for Los Fiordos, the largest third country market is Canada.

Respondents Ocean Horizons, Pacifico Sur and Patagonia did not have any viable comparison market. Therefore, in accordance with section 773(e) of the Act, we based NV for these respondents on CV.

Neither Tecmar nor Linao had viable home markets. In addition, prior to its date of affiliation with Tecmar, Linao did not have a viable comparison market. Therefore, in accordance with section 773(e) of the Act, we based NV for Linao, for the period July 1, 2000 until November 14, 2000, on CV. Tecmar's largest third-country market was Argentina. We used Tecmar's sales to Argentina for the purposes of calculating NV for Tecmar from July 1, 2000 until November 14, 2001. We also used Tecmar's sales to Argentina for the

collapsed entity, Linao/Tecmar, after November 15, 2001.

B. Cost of Production Analysis

Based on a timely allegation filed by L.R. Enterprises, we initiated cost of production (COP) investigations of Multiexport, Robinson Crusoe, Linao and Tecmar, and Pesca Chile to determine whether sales were made at prices below the COP. *See Memorandum From Case Analysts to Gary Taverman*, dated January 23, 2002. In addition, we initiated a cost of production investigation of Marine Harvest to determine whether sales were made at price below the COP. *See Memorandum From Case Analyst to Gary Taverman*, dated February 8, 2002.[3]

Because we disregarded below-cost sales in the calculation of the final results of the second administrative review of Eicosal, we had reasonable grounds to believe or suspect that home market sales of the foreign like product by Eicosal had been made at prices below the COP during the period of this review. Therefore, pursuant to section 773(b)(1) of the Act, we also initiated a COP investigation regarding home market sales by Eicosal.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of materials, fabrication, and general and administrative (G&A) expenses. We relied on the submitted COPs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

Eicosal

We revised financial expenses to reflect changes determined at verification.

Linao and Tecmar

We revised G&A and financial expenses to reflect changes determined at verification.

Marine Harvest

We revised the cost of production, variable cost of manufacture and total cost of manufacture reported in Schedule A for two forms/trims, as determined at verification.

Pacifico Sur

We used the revised, verified costs presented at verification.

2. Test of Comparison Market Sales Prices

As required by section 773(b) of the Act, we compared the adjusted weighted-average COP for each respondent subject to a cost investigation to the comparison-market sales prices of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP or revised COP, as appropriate, to the comparison-market prices, less any applicable movement charges, taxes, rebates, commissions, and other direct and indirect selling expenses.

3. Results of the COP Test

We disregarded below-cost sales where (1) 20 percent or more of a respondent's sales of a given product were made at prices below the COP and thus such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We disregarded comparison market sales of Eicosal, Linao and Tecmar, Marine Harvest, Multiexport, and Robinson Crusoe.

C. Calculation of Normal Value Based on Comparison-Market Prices

We determined price-based NVs for respondent companies as follows. For all respondents, we made adjustments for any differences in packing, in accordance with section 773(a)(6) of the Act, and we deducted movement expenses pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, pursuant to 19 CFR 351.410(e), for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset).

Company-specific adjustments are described below.

Andes

We based third-country market prices on the packed prices to unaffiliated purchasers in Brazil. We adjusted for the following movement expenses: foreign inland freight and customs brokerage. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, association fees, Certificate of Origin and Health Certificate fees, and bank charges) and adding U.S. direct selling expenses (credit, association fees, and bank charges). In addition, we deducted third-country packing expenses and added U.S. packing expenses.

Cultivos Marinos

We based home market prices on the packed prices to unaffiliated purchasers in Chile. We adjusted the starting price for foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit) and adding U.S. direct selling expenses (credit). We also deducted home market packing expenses and added U.S. packing expenses.

Eicosal

We based home market prices on the packed prices to unaffiliated purchasers in Chile. We adjusted the starting price for foreign inland freight and billing adjustments. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit) and adding U.S. direct selling expenses (credit, association fees, and bank charges). We also deducted home market packing expenses and added U.S. packing expenses.

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[3] On October 30, 2001, L.R. Enterprises filed a cost allegation with respect to Marine Harvest. On January 4, 2002, the Department determined that this allegation was inadequate. *See Letter From Constance Handley to Michael Coursey*, dated January 4, 2002. However, L.R. Enterprises submitted a revised cost allegation on January 7, 2002, which the Department deemed adequate. As such, the Department initiated a cost of production investigation on February 8, 2002.

On November 26, 2001, L.R. Enterprises also filed a cost allegation with respect to Mainstream. On January 23, 2002, the Department determined that this allegation was inadequate, and did not initiate a cost investigation with respect to that respondent. *See Memorandum From Case Analysts to Gary Taverman*, dated January 23, 2002. On February 7, 2002, L.R. Enterprises submitted a letter stating that the Department's decision with regard to Mainstream was based on a flawed analysis. On April 17, 2002, the Department again determined that the allegation of L.R. Enterprises was inadequate and did not initiate a cost investigation with respect to Mainstream. *See Memorandum from Case Analyst to Bernard Carreau, Deputy Assistant Secretary for Import Administration*, dated April 17, 2002.

Friosur

We based third-country market prices on the packed prices to unaffiliated purchasers in Brazil. We deducted billing adjustments and adjusted for the following movement expenses: foreign inland freight, international freight and brokerage and handling. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (including credit) and adding U.S. direct selling expenses (including credit and quality control expenses). We also added the amount for third-country duty drawback to the starting price. In addition, we deducted third-country packing expenses and added U.S. packing expenses and third-country duty drawback.

Invertec

We based third-country market prices on the packed prices to unaffiliated purchasers in Brazil. We adjusted for the following movement expenses: foreign inland freight, international freight, customs brokerage and special handling expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (including commissions, credit, certification expenses and bank charges) and adding U.S. direct selling expenses (including credit). We also added the amount for third-country duty drawback to the starting price. In addition, we deducted third-country packing expenses and added U.S. packing expenses and third-country duty drawback.

Linao and Tecmar

For Tecmar, from June 30, 2000 through November 14, 2001 and for the collapsed entity Linao/Tecmar, we based third-country market prices on the packed prices to unaffiliated purchasers in Argentina. We adjusted for the following movement expenses: foreign inland freight, international freight and brokerage and handling. We also added the amount for third-country duty drawback to the starting price. In addition, we deducted third-country packing expenses and added U.S. packing expenses. For comparisons to EP transactions in the United States, we made COS adjustments by deducting direct selling expenses incurred for third-country market sales (including credit, quality control, and health certification) and adding U.S. direct selling expenses (including credit, quality control, and health certification). For comparisons to CEP transactions, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales.

Linao did not have a viable home market or third-country sales prior to its affiliation with Tecmar. As discussed below, we calculated CV for Linao's NV from July 1, 2000 to November 14, 2001.

Los Fiordos

We based third-country market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted for the following movement expenses: foreign inland freight, international freight, and brokerage charges. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, association fees and bank charges) and adding U.S. direct selling expenses (credit, association fees and bank charges). We also added the amount for third-country duty drawback to the starting price. In addition, we deducted third-country packing expenses and added U.S. packing expenses and third-country duty drawback.

Mainstream

We based third-country market prices on the packed prices to unaffiliated purchasers in Brazil. We adjusted for the following movement expenses: foreign inland freight, international freight, customs fees and airport handling charges. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, sanitary certification fees, association fees, bank charges, loan guarantee fees, and other direct selling expenses) and adding U.S. direct selling expenses (credit, association fees, and bank charges).

Marine Harvest

We based third-country market prices on the packed prices to unaffiliated purchasers in Brazil. We adjusted for inland freight, a movement expense. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, inspection association fees, and brokerage, handling and document processing costs). We also added third-country duty drawback to the starting price. In addition, we deducted third-country packing expenses and added U.S. packing expenses.

Multiexport

We based home market prices on the packed prices to unaffiliated purchasers in Chile. We adjusted the starting price for foreign inland freight. We also deducted home market packing expenses and added U.S. packing expenses. For comparison to EP transactions, we made COS adjustments by deducting direct selling expenses incurred for home market sales (credit) and adding U.S. direct selling expenses (credit). For comparisons to CEP transactions, we made COS adjustments by deducting direct selling expenses incurred on home market sales.

Ocean Horizons

Ocean Horizons did not have a viable home market or third-country sales during the POR. As discussed below, we calculated CV for Ocean Horizons' NV.

Pacifico Sur

Pacifico Sur did not have a viable home market or third-country sales during the POR. As discussed below, we calculated CV for Pacifico Sur's NV.

Patagonia

Patagonia did not have a viable home market or third-country sales during the POR. As discussed below, we calculated CV for Patagonia's NV.

Pesca Chile

We based third-country market prices on the packed prices to unaffiliated purchasers in Brazil. We adjusted for the following movement expenses: foreign inland freight and inland insurance. In addition, we deducted third-country packing expenses and added U.S. packing expenses and third-country duty drawback. For comparisons to EP transactions, we made COS adjustments by deducting direct selling expenses incurred for third-country market sales (including commissions, credit, association fees, and bank charges) and adding U.S. direct selling expenses (including commissions, credit, association fees, bank charges, and customs expenses). For comparisons to CEP transactions, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales.

Robinson Crusoe

We based third-country market prices on the packed prices to unaffiliated purchasers in Mexico. We adjusted for the following movement expenses: foreign inland freight and inland insurance. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (including credit, accounts receivable insurance, association fees, and quality certification inspection expenses) and adding U.S. direct selling expenses (including credit, accounts receivable insurance, association fees, and quality certification inspection expenses). In addition, we deducted third-country packing expenses and added U.S. packing expenses and third-country duty drawback.

D. Calculation of Normal Value Based on Constructed Value

For those sales for which we could not determine NV based on comparison-market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared EP or CEP, to CV. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses (SG&A), profit, and U.S. packing. We calculated CV based on the methodology described in the COP section, above. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the comparison market to calculate SG&A expenses and profit. For Linao, from July 1, 2000 through November 14, 2001, and for Ocean Horizons, Pacifico Sur, and Patagonia, which had no comparison market sales, we calculated CV following the same methodology, except that we relied on the weighted-average SG&A and profit ratios of the three respondents (Cultivos Marinos, Eicosal and Multiexport) that had a viable home market, consistent with section 773(e)(2)(B)(ii) of the Act.

For price-to-CV comparisons, we made adjustments to CV for COS differences, pursuant to section 773(a)(8) of the Act. Company-specific adjustments are described below.

Andes

We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, association fees, Certificate of Origin and Health Certificate fees, and bank charges) and adding U.S. direct selling expenses (credit, association fees, and bank charges).

Cultivos Marinos

We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit) and adding U.S. direct selling expenses (credit) and third-country duty drawback.

Eicosal

We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit expense, association fees, and bank charges).

Friosur

We made COS adjustments by deducting direct selling expenses incurred for home market sales (including credit and quality control expenses) and adding U.S. direct selling expenses (including credit and quality control expenses).

Linao and Tecmar

For Linao, from July 1, 2000 through November 14, 2001, we made COS adjustments by deducting the weighted-average direct selling expenses incurred by the three respondents that had a viable home market during the period and, for comparison to EP transactions, adding U.S. direct selling expenses (credit, quality control, and health certification expenses).

For Tecmar, and for the collapsed entity Linao/Tecmar, we made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, quality control, and health certification expenses). For comparison to EP transactions, we added U.S. direct selling expenses (credit, quality control, and health certification expenses).

Los Fiordos

We made COS adjustments by deducting direct selling expenses incurred for third-country sales (credit, association fees and bank charges) and adding U.S. direct selling expenses (credit, association fees and bank charges).

Mainstream

We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit, sanitary certification fees, association fees, bank charges, loan guarantee fees, and other direct selling expenses) and adding U.S. direct selling expenses (credit, association fees, and bank charges).

Marine Harvest

We made COS adjustments by deducting direct selling expenses incurred for third-country sales (credit, inspection association fees, and brokerage, handling and document processing costs).

Multiexport

We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit) and adding U.S. direct selling expenses (credit) for comparison to EP transactions in the United States.

Ocean Horizons

We made COS adjustments deducting the weighted-average direct selling expenses incurred by the three respondents that had a viable home market during the POR.

Pacifico Sur

We made COS adjustments by adding U.S. direct selling expenses (including credit, inspection expenses, airline service charges and food and drug charges) and deducting the weighted-average direct selling expenses incurred by the three respondents that had a viable home market during the POR.

Patagonia

We made COS adjustments by adding U.S. direct selling expenses (including credit and inspection expenses) and deducting the weighted-average direct selling expenses incurred by the three respondents that had a viable home market during the POR.

Pesca Chile

We made COS adjustments by deducting direct selling expenses incurred for third-country sales (credit, commissions, association fees and bank charges). For comparison to EP transactions, we added U.S. direct selling expenses (credit, commissions, association fees and bank charges).

Robinson Crusoe

We made COS adjustments by deducting direct selling expenses incurred for third-country sales (credit, accounts receivable insurance, association fees, and quality certification inspection expenses) and adding U.S. direct selling expenses, including credit, accounts receivable insurance, association fees, and quality certification inspection expenses.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP transactions. The NV level of trade is that of the starting-price sale in the comparison market or, when the NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP transaction, we examine stages in the marketing process and selling functions

along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability with U.S. sales, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment pursuant to section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV pursuant to section 773(a)(7)(B) of the Act (the CEP offset provision). *See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002).

To apply these guidelines in this review, we obtained information from each respondent about the marketing stages involved in its reported U.S. and comparison-market sales, including a description of the selling activities performed by the respondent for each of its channels of distribution. In identifying levels of trade for EP and comparison market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit pursuant to section 772(d) of the Act. Generally, if the claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

In conducting our level-of-trade analysis for each respondent, we took into account the specific customer types, channels of distribution, and selling practices of each respondent. We found that, for all respondents, the fact pattern was virtually identical. Sales to both the U.S. and comparison markets were made to distributors, retailers, and, less commonly, to further-processors.

In this review, only three companies, Pesca Chile, Tecmar and Linao requested LOT adjustments. For each of the respondents, with the exception of Pesca Chile, we found that there was a single level of trade in the United States and a single, identical, level of trade in the comparison market. Therefore, it was not necessary to make any level of LOT adjustments or CEP offset adjustments. The companies requesting an LOT adjustment are discussed below, for all other companies, a discussion of our LOT analysis is included in their respective analysis memorandums.

Pesca Chile

For all its third country and EP sales, the selling functions Pesca Chile performed for its different customer categories and channels of distribution were virtually identical. Therefore, we found the EP and home market levels of trade to be the same and made no level-of-trade adjustment.

With regard to CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit covered in section 772(d) of the Act: customer development, sales negotiation, invoicing and collections, arranging customs clearance and handling any claims. After we deducted the expenses and profit covered in section 772(d), the NV level of trade was more remote from Pesca Chile than that of its U.S. sales through affiliate Pescanova, Inc., as adjusted. In addition, there is only one level of trade in the third-country market and we have no other appropriate information on which to determine if there is a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the level of trade of the export transactions. As a result, we are granting a CEP offset pursuant to section 773(a)(7)(B) of the Act.

Linao and Tecmar

During the POR, Linao claimed a CEP offset for its sales through an unaffiliated consignment broker. During verification, the Department noted that Linao does not perform fewer selling activities for U.S. sales made through the consignment broker than for its comparison-market sales. *See Verification of the Sales and Cost Responses of Cultivadora de Salmones Linao Ltda. and Salmones Tecmar S.A. in the Third Antidumping Duty Administrative Review of Fresh Atlantic Salmon from Chile From Case Analyst to Gary Taverman*, dated July 31, 2002. Therefore, the Department has preliminarily decided to deny Linao's request for a CEP offset. For a further discussion of this issue, which contains proprietary information, see the Analysis Memorandum for Linao and Tecmar.

Preliminary Determination Not To Revoke Order

The Department "may revoke, in whole or part" an antidumping order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222(b)(2). In determining whether to revoke an antidumping duty order in part, the Secretary will consider: (A) Whether one or more exporters or producers covered by the order have sold the merchandise at not less than NV for a period of at least three consecutive years; (B) Whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than NV, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV; and (C) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

The Department's regulation requires, *inter alia*, that a company requesting revocation submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the receipt of such a request; and (3) an agreement that the order will be reinstated if the company is subsequently found to be selling the subject merchandise at less than fair value. 19 CFR 351.222(e)(1)(i) *See*, e.g., *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands*, 65 FR 742, 743 (January 6, 2000). Cultivos Marinos, Eicosal, Mainstream, and Pacifico Sur each submitted a certification to the effect that for a consecutive three-year period, including the current review period, it sold the subject merchandise in commercial quantities at not less than normal value and that it would continue to do so in the future. Therefore, because we have determined that these respondents satisfy the requirements of 19 CFR 351.222(b), we preliminarily determine to revoke in part the antidumping order with respect to these respondents. Although Linao and Tecmar each submitted this certification also, we have preliminarily calculated an antidumping margin of 1.32 percent for

these companies in this review and these companies do not satisfy the requirements of 19 CFR 351.222(b).

As fully explained in the memorandum concerning the *Preliminary Determination to Revoke in Part the Antidumping Duty Order*, dated July 31, 2002, we have also preliminarily determined not to revoke the antidumping duty order with respect to Marine Harvest. This memorandum is on file in room B–099 of the main Department of Commerce building.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margins exist for the period July 1, 1999, through June 30, 2000:

Exporter/manufacturer	Weighted-average margin percentage
Andes	[1]0.16
Cultivos Marinos	[1]0.10
Eicosal	[1]0.44
Friosur	[1]0.18
Invertec	0.00
Linao	1.32
Los Fiordos	1.62
Mainstream	[1]0.05
Marine Harvest	[1]0.11
Multiexport	0.00
Ocean Horizons	[1]0.08
Pacifico Sur	0.00
Patagonia	[1]0.01
Pesca Chile	1.18
Robinson Crusoe	[1]0.06
Tecmar	1.32

[1] *De Minimis.*

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate on all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct the U.S. Customs Service to assess duties on all entries of subject merchandise by that importer.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of fresh Atlantic salmon from Chile entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for companies listed above will be the rates established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 4.57 percent, the All Others rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Because Linao and Tecmar were collapsed for only part of the POR, for the purposes of calculating a duty-deposit rate for the collapsed entity, we have calculated a weighted-average of the rates for both companies during the pre-acquisition period with the rate calculated for the combined entity. For the purposes of assessment, we will rely on the period-specific results.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entities during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19994 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–812]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a request by a U.S. producer, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on furfuryl alcohol from Thailand. This review covers one producer/exporter of the subject merchandise, Indorama Chemicals (Thailand) Limited (Indorama). The period of review (POR) is July 1, 2000, through June 30, 2001.

We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) and the NV.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Tisha Loeper-Viti at

(202) 482–0650 and (202) 482–7425, respectively; AD/CVD Enforcement Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 2002).

Case History

On July 25, 1995, the Department issued an antidumping duty order on furfuryl alcohol from Thailand. *See Notice of Amended Final Antidumping Duty Determination and Order: Furfuryl Alcohol from Thailand*, 60 FR 38035 (July 25, 1995). On July 2, 2001, we published in the **Federal Register** the notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910 (July 2, 2001).

On July 31, 2001, a U.S. producer of furfuryl alcohol, Penn Specialty Chemicals, Inc., in accordance with 19 CFR 351.213(b)(1), requested a review of Indorama. On August 20, 2001, we published the notice of initiation of this antidumping duty administrative review, covering the period July 1, 1999, through June 30, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001).

Scope of the Review

The merchandise covered by this review is furfuryl alcohol ($C^4H^3OCH^2OH$). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes.

The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Fair Value Comparisons

We compared the EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. We were able to compare all sales of furfuryl alcohol made by Indorama to the United States to contemporaneous sales of identical merchandise in the home market.

Export Price

For the price to the United States, we used EP as defined in sections 772(a) of the Act, because all merchandise was sold by Indorama to the first unaffiliated purchaser in the United States outside the United States prior to importation, and CEP was not otherwise indicated. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).

We calculated EP based on the packed CIF destination price to unaffiliated purchasers. In accordance with section 772(c)(2)(A) of the Act, we made additions to the starting price for duty drawback, and deductions from the starting price for foreign movement expenses (*i.e.*, inland freight and inland insurance), U.S. movement expenses (*i.e.*, international freight and marine insurance), and U.S. brokerage and handling. *See Analysis Memorandum for Indorama Chemicals (Thailand) Ltd.*, dated July 31, 2002 (*Indorama Analysis Memo*), on file in the Central Records Unit (CRU), Room B–099 of the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW, Washington, DC.

Normal Value

A. Selection of Comparison Market

Based on a comparison of the aggregate quantity of home market sales and U.S. sales, we determined that the quantity of foreign like product Indorama sold in Thailand is more than 5 percent of the quantity of its sales to the U.S. market and permits a proper comparison with the sales of the subject merchandise to the United States. *See* section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(1)(B)(ii) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market.

B. Calculation of Normal Value Based on Comparison Market Prices

We determined price-based NVs for Indorama as follows. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses (i.e., foreign inland freight and foreign inland insurance) consistent with section 773(a)(6)(B)(ii) of the Act. We also made circumstance of sale (COS) adjustments by deducting direct selling expenses (*i.e.*, credit expenses) incurred on home market sales and adding direct selling expenses (*i.e.*, credit expenses) incurred on U.S. sales. *See Indorama Analysis Memo.*

We note that Indorama, in its November 28 and December 18, 2001, submissions, argued that certain home market sales were outside the ordinary course of trade. Upon examining the information provided, we have preliminarily determined that these sales are within the ordinary course of trade and have, therefore, included these sales in our margin calculation. For further details, *see Indorama Analysis Memo.*

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than the U.S. transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If comparison-market sales are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison-market sales which are at the same LOT as the export transactions, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. *See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002).

In implementing these principles in this review, we obtained information

from Indorama about the marketing stage involved in the reported U.S. and home-market sales, including a description of the selling activities performed for each channel of distribution. In identifying levels of trade for EP and home-market sales, we considered the selling functions reflected in the starting price before any adjustments. We expect that, if claimed LOTs are the same,

the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar.

Indorama reported that all of its sales made to the United States were to unaffiliated trading companies. For its sales in the home market, Indorama reported two different channels of distribution, reflecting its two different categories of customers: (1) sales through unaffiliated trading companies, and (2) direct sales to end-users. Indorama claimed that the sales to the trading companies in the United States and to the trading companies in Thailand were at the same level of trade, while sales to end-users in the home market were at a different level of trade.

We examined the selling functions for Indorama in Thailand and the United States and found that sales activities were substantially the same in both markets. We also determined that, while there exist two customer categories in the home market, trading companies and end-users, there is only one channel of distribution, *i.e.*, direct sales from the factory to the unaffiliated customer. Our examination of the selling activities, selling expenses, and customer categories involved in this channel of distribution indicates that it constitutes a single LOT, and, furthermore, that this LOT is equivalent to that of Indorama's U.S. sales.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margin exists for the period July 1, 2000, through June 30, 2001:

Manufacturer/Exporter	Margin (percent)
Indorama Chemicals (Thailand) Ltd.	0.91

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or hearing, within 120 days from publication of this notice.

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. We have calculated each importer's duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on all entries of subject merchandise by that importer, where the assessment rate is above *de minimis*.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of furfuryl alcohol from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Indorama will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 7.82 percent, the "all others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19985 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–502]

Certain In-Shell Raw Pistachios From Iran: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On August 20, 2001, the Department of Commerce (the Department) published in the Federal Register (66 FR 43570) a notice announcing the initiation of an administrative review of the antidumping duty order on certain in-shell raw pistachios from Iran and

Rafsanjan Pistachio Producers Cooperative (RPPC). The review period is July 1, 2000 to June 30, 2001. This review has now been rescinded because there were no sales of subject merchandise by RPPC to the United States during the period of review.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Donna Kinsella, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–1398 or (202) 482–0194 respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Scope of Review

Imports covered by this review are raw, in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meats, from Iran. The merchandise under review is currently classifiable under item 0802.50.20.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Background

On July 11, 2001, Cyrus Marketing (Cyrus), a U.S. importer of subject merchandise, requested an administrative review of the antidumping duty order on Certain In-Shell Pistachios from Iran, published in the **Federal Register** on July 17, 1986 (51 FR 25922), and RPPC, an Iranian producer and exporter of pistachios. We initiated the review on August 20, 2001 (66 FR 43570). On September 28, 2001, January 8, 2002, February 7, 2002, March 6, 2002, and April 25, 2002 the Department issued standard and supplemental antidumping questionnaires. On November 15, 2001, December 4, 2000, February 4, 2002, March 20, 2002, and May 13, 2002, RPPC submitted responses to these questionnaires and a July 3, 2002, addendum. Additionally, on February 20, 2002, the Department orally requested information from RPPC. RPPC responded in writing on February 22, 2002.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing the preliminary results in an administrative review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days. On April 4, 2002, the Department published a notice of extension of the time limit for the completion of the preliminary results by 120 days, until July 31, 2002. *See Administrative Review of Certain In-Shell Raw Pistachios From Iran: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 16088 (April 4, 2002).

On June 11, 2002, the Department issued a memorandum indicating its intent to rescind the administrative review covering RPPC and invited interested parties to submit comments on its intent to rescind no later than June 25, 2002. See Decision Memorandum from Phyllis Hall, Case Analyst through Donna Kinsella, Case Manager and Richard Weible, Director, Office 8 to Joseph Spetrini, Deputy Assistant Secretary dated June 10, 2002. On June 24, 2002, the Department received joint comments from Cyrus and RPPC. No other interested party comments were received. On July 23, 2002, Cyrus submitted additional information that the Department rejected as untimely. See Letter from Phyllis Hall to Ed Borcherdt dated July 30, 2002.

Analysis of Comments Received

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Department concludes that, during the period covered by the review, there were no entries, exports or sales of the subject merchandise. In light of the fact that we have determined that the only company covered by the review did not have entries for consumption into the territory of the United States during the POR in question, we find that rescinding this review is appropriate. For a complete discussion see "Decision to Rescind the Antidumping Duty Administrative Review of Certain In-Shell Raw Pistachios from Iran Memorandum" from Donna Kinsella, Case Manager and Richard Weible, Director Office 8 through Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary for Import Administration dated July 31, 2002. The cash-deposit rate for RPPC will remain at 184.28 percent, the rate established in the most recently completed segment of this proceeding, adjusted for export subsidies. *See Certain In-Shell Pistachios: Final Determination of Sales at Less Than Fair Value*, 51 FR 18919, May 23, 1986.

This notice is in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19991 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part.

SUMMARY: In response to a request by one producer/exporter of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain pasta (pasta) from Turkey for the period July 1, 2000 through June 30, 2001.

We preliminarily determine that during the period of review (POR), Filiz Gida Sanayi ve Ticaret A.S. (Filiz) sold subject merchandise at less than normal value (NV). If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) and NV. In addition, we are not revoking the antidumping order with respect to Filiz, because it has not had zero or *de minimis* dumping margins for three consecutive reviews and has not had three years of sales in commercial quantities at not less than NV. See *Intent Not To Revoke* section of this notice.

Interested parties are invited to comment on these preliminary results. Parties who submit comments in this proceeding should also submit with

them: (1) A statement of the issues; (2) a brief summary of their comments; and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Cindy Robinson, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3601 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department regulations refer to the regulations codified at 19 CFR Part 351 (April 2001).

Case History

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Turkey (61 FR 38545). On July 2, 2001, we published in the **Federal Register** the notice of "Opportunity to Request Administrative Review" of this order, for the period July 1, 2000, through June 30, 2001 (66 FR 34910).

On July 31, 2001, we received a request for review from Filiz, a Turkish exporter/producer of pasta, in accordance with 19 CFR 351.213(b)(2). In addition, on July 31, 2001, Filiz submitted a letter to the Department requesting, pursuant to 19 CFR 351.222(b), revocation of the antidumping duty order with respect to its sales of the subject merchandise. On August 20, 2001, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2000 through June 30, 2001, for Filiz. *See Notice of Initiation*, 66 FR 43570 (August 20, 2001).

On August 28, 2001, we sent the antidumping duty questionnaires to Filiz. For Filiz, the Department disregarded sales that failed the cost test during the most recently completed segment of the proceeding in which this company participated.[1] Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales by this company of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production (COP). Thus, we initiated a cost investigation of Filiz at the time we initiated the antidumping review.

Filiz submitted its sections A through D questionnaire responses on October 25, 2001. The Department issued a supplemental sections A through D questionnaire to Filiz on February 6, 2002. Filiz submitted its response to our supplemental questionnaire on March 4, 2002.

On March 12, 2002, the Department published a notice postponing the preliminary results of this review until July 30, 2002.[2] *See Certain Pasta from Italy and Turkey: Extension of Preliminary Results of Antidumping Duty Administrative Reviews*, 67 FR 11095 (March 12, 2002).

We verified the sales and cost information submitted by Filiz from March 20 through March 29, 2002. On May 7, 2002, petitioners submitted comments requesting that the Department not revoke the antidumping duty order with respect to Filiz. On May 8, 2002 Filiz submitted rebuttal comments regarding revocation with respect to its sales of subject merchandise.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope ruling to date:

(1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* "Memorandum from John Brinkmann to Richard Moreland," dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B–099 (the CRU).

Verification

As provided in section 782(i) of the Act, we verified the cost and sales information provided by Filiz. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in a verification report placed in the case file in the CRU. We revised certain sales and cost data based on verification findings, *see, Filiz's Preliminary Calculation Memorandum (Preliminary Calculation Memorandum)* (July 31, 2002) and *Verification of the Sales Questionnaire of Filiz* (July 22, 2002) on file in the CRU.

Product Comparisons

In accordance with section 771(16) of the Act, the Department first attempted to match contemporaneous sales of products sold in the U.S. and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. Where there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority.

[1] The fourth administrative review covering the period July 1, 1999, through June 30, 2000, was the most recently completed review for Filiz. *See Certain Pasta From Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order in Part*, 67 FR 298 (January 3, 2002).

[2] There was a typographical error in the notice of "Extension of Preliminary Results of Antidumping Duty Administrative Reviews"; the preliminary results of this review are actually due on July 31, 2002.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing between each U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of certain pasta from Turkey were made in the United States at less than fair value, we compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. Because Turkey's economy experienced high inflation during the POR (over 60 percent), as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred and did not apply our 90/60 contemporaneity rule. *See, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68430 (December 11, 1998) and *Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 42496, 42503 (August 7, 1997). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

Export Price

For the price to the United States, we used EP in accordance with section 772(a) of the Act because the merchandise was sold by the producer or exporter outside the United States to the first unaffiliated purchaser in the United States prior to importation and constructed export price was not otherwise warranted based on the facts on the record. We based EP on the packed C&F prices to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage handling and loading charges, and international freight. In addition, we increased the EP by the amount of the countervailing duties paid that were attributable to an export subsidy, in accordance with section 772(c)(1)(C).

Normal Value

A. Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Filiz's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, because Filiz's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Filiz.

B. Arm's Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, rebates, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* (*Antidumping Duties*), 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56.

C. Cost of Production Analysis

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis, pursuant to section 773(b) of the Act, to determine whether the respondent's comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative (SG&A) expenses and packing, in accordance with section 773(b)(3) of the Act. We relied on the respondent's information as submitted, except in instances where we used revised data based on verification findings. *See* the *Preliminary Calculation Memorandum* on file in the CRU, for a description of any changes that we made.

As noted above, we determined that the Turkish economy experienced high inflation during the POR. Therefore, to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that the respondent submit the product-specific cost of manufacturing (COM) incurred during each month of the period for which it reported home market sales. We then calculated an average COM for each product after indexing the reported monthly costs to an equivalent currency level using the Turkish wholesale price index from the *International Financial Statistics* published by the International Monetary Fund (IMF). We then restated the average COM in the currency value of each respective month.

2. Test of Comparison Market Prices

As required under section 773(b) of the Act, for Filiz, we compared the weighted-average COP to the weighted-average per unit price of the comparison market sales of the foreign like product, to determine whether Filiz's sales had been made at prices below the COP within an extended period of time in substantial quantities. For Filiz, we determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses. We added interest revenue.

3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Filiz's sales of a given product during the twelve-month period were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) and (C) of the Act. In such cases, because we compared prices to POR-average costs (indexed for inflation), we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, for Filiz we

disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-factory or delivered prices to comparison market customers. We made deductions from the starting price for inland freight, warehousing, inland insurance, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing costs, respectively. In addition, we made circumstance of sale adjustments for direct expenses, including imputed credit, advertising, promotions, and warranties, in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Pursuant to section 351.411 of the Department's regulations, we based this adjustment on the difference in the variable COM for the foreign like product and subject merchandise, using twelve-month average costs, as adjusted for inflation for each month of the twelve-month period, as described in the *Cost of Production Analysis* section above.

E. Level of Trade (LOT)

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same LOT as the U.S. EP sales, to the extent practicable. When there are no sales at the same LOT, we compare U.S. sales to comparison market sales at a different LOT.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales are at a different LOT, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an a LOT adjustment under section 773(a)(7)(A) of the Act.

For Filiz, all EP sales were compared to home market sales at the same LOT. Therefore, no LOT adjustment was necessary.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see, Preliminary Calculation Memorandum* on file in the CRU.

Intent Not To Revoke

On July 31 2001, Filiz submitted a letter to the Department requesting, pursuant to 19 CFR 351.222(b), revocation of the antidumping duty order with respect to its sales of the subject merchandise.

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that one or more exporters and producers covered by the order submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, has sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether continued application of the AD order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR. 351.222(b)(2).

In accordance with 19 CFR 351.222(e), Filiz's request was accompanied by certifications from Filiz that it had not sold the subject merchandise at less than NV for a three-year period including this review period, and would not do so in the future. In addition, Filiz stated that it had sold subject merchandise in commercial quantities during this time. Filiz also agreed to immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, Filiz sold the subject merchandise at less than NV. The Department conducted verifications of Filiz's responses for this period of review.

In the two prior reviews of this order we determined that Filiz sold pasta from Turkey at not less than NV or at *de minimis* margins. We have preliminarily determined that Filiz sold pasta products at less than NV during the instant review period. However, in determining whether a requesting party is entitled to revocation, the Department must be able to determine that the company has continued to participate meaningfully in the U.S. market during each of the three years at issue. *See, e.g., Notice of Preliminary Results of Antidumping Administrative Review and Intent Not To Revoke Order in Part: Pure Magnesium from Canada* (*Pure Magnesium from Canada*), 63 FR 26147 (May 12, 1998) and *Notice of Preliminary Results of Antidumping Administrative Review and Intent Not To Revoke Order in Part: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea* 65 FR 54197 (September 7, 2000).

This practice has been codified in 19 CFR 351.222(e), which states that a party requesting a revocation review is required to certify that it has sold the subject merchandise in commercial quantities during the periods forming the basis of the revocation request. *See also*, Section 351.222(d)(1) of the Department's regulations, which states that, "before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply."; *see also*, the preamble of the Department's latest revision of the revocation regulation stating: "The threshold requirement for revocation continues to be that respondent not sell at less than normal value for at least three consecutive years and that, during those years, respondent exported subject merchandise to the United States in commercial quantities" *Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 64 FR 51236, 51237 (September 22, 1999). For purposes of revocation, the Department must be able to determine that past

margins reflect a company's normal commercial activity. Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. As the Department has previously stated, the commercial quantities requirement is a threshold matter. *See e.g., Pure Magnesium from Canada*, 64 FR 50489, 50490 (September 17, 1999). Thus, a party must have meaningfully participated in the marketplace in order to substantiate the need for further inquiry regarding whether continued imposition of the order is warranted.

Based on the current record, we find that Filiz did not sell merchandise in the United States in commercial quantities during the three consecutive reviews cited by Filiz to support its request for revocation. During the current POR (July 2000 through June 2001), Filiz made only one sale in the United States. Moreover, the total tonnage of this sale was small. By contrast, during the period covered by the antidumping investigation (May 1994 through April 1995), Filiz made numerous sales in the United States whose total quantity is 400 times greater than the quantity Filiz sold in the United States during the fifth administrative review period (the current review period). *See Verification of the Sales Questionnaire of Filiz* at exhibit 20. In other words, Filiz's sales for the entire year covered by the fifth review period were only 0.22 percent of its sales volume during the twelve-months covered by the investigation. Similarly, during the third and fourth administrative reviews, Filiz made only one sale during each of these respective reviews. *See Verification of the Sales Questionnaire of Filiz* at exhibit 20. Even, if Filiz receives a *de minimis* margin during the review at issue, this margin is not based on commercial quantities within the meaning of the revocation regulation. The number of sales and total sales volume is so small, both in absolute terms, and in comparison with the period of investigation and other review periods, that it does not provide any meaningful information about Filiz's normal commercial experience without the discipline of the antidumping duty order. *See, Preliminary Calculation Memorandum*. Therefore, we find that Filiz did not meaningfully participate in the marketplace, and thus, because it has not sold the subject merchandise for three years in commercial quantities within the meaning of 19 CFR 351.222(e), does not qualify for revocation.

Because the requirements under the regulations have not been satisfied, if these preliminary findings are affirmed in our final results, we do not intend to revoke the antidumping duty order with respect to merchandise produced and exported by Filiz.

Currency Conversion

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and home market sales to those occurring in the same month (as described above) and only used daily exchange rates. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429 (December 11, 1998).

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the *Wall Street Journal*.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margin exists for the period July 1, 2000 through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Filiz	16.06

The Department will disclose the calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs, limited to issues raised in such briefs, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent) the Department will issue appraisement instructions directly to the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements

To calculate the cash-deposit rates for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company listed above will be the rate established in the final results of this review except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm

covered in this or any previous review conducted by the Department, the cash deposit rate will be 51.49 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38546 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19986 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-825]

Stainless Steel Sheet and Strip in Coils From Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: August 7, 2002.

SUMMARY: In response to a request from Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization (collectively, petitioners) and respondent Krupp Thyssen Nirosta GmbH (KTN) and Krupp Hoesch Steel Products, Inc. (KHSP), Krupp Thyssen Nirosta North America, Inc. (KTNNA), Krupp VDM GmbH (VDM), and Krupp VDM Technologies Corporation (VDMT) (collectively, KTN), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4) from Germany. The review covers one manufacturer/exporter of the subject merchandise to the United States during the period July 1, 2000 through June 30, 2001.

We preliminarily determine that there are sales at less than normal value by KTN during the period July 1, 2000 through June 30, 2001. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the United States Price (USP) and normal value (NV).

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) a statement of the issues and (2) a brief summary of the arguments (no longer than five pages, including footnotes).

FOR FURTHER INFORMATION CONTACT: Patricia Tran, Michael Heaney, or Robert James at (202) 482-1121, (202) 482-4475, or (202) 482-0649, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2002).

Background

The Department published an antidumping duty order on S4 from Germany on July 27, 1999. *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Germany (Antidumping Duty Order)*, 64 FR 40557 (July 27, 1999). On July 2, 2001, the Department published the *Notice of Opportunity to Request Administrative Review* of stainless steel sheet and strip in coils from Germany for the period July 1, 2000 through June 30, 2001 (66 FR 34910), as corrected, July 24, 2001 (66 FR 38455).

On July 31, 2001, petitioners and KTN requested an administrative review of KTN's sales for the period July 1, 2000 through June 30, 2001. On August 20, 2001, we published in the Federal Register a notice of initiation of this antidumping duty administrative review covering the period July 1, 2000 through June 30, 2001. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001).

Because it was not practicable to complete this review within the normal time frame, on February 25, 2002, we published in the **Federal Register** our notice of the extension of time limits for the this review. *See Stainless Steel Sheet and Strips in Coils from Germany: Antidumping Duty Administrative Review; Time Limits; Notice of Extension of Time Limits*, 67 FR 8524 (February 25, 2002). This extension established the deadline for these preliminary results as July 31, 2002.

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44,

7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note"1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only

0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[5]

Fair Value Comparisons

To determine whether sales of S4 in the United States were made at less than fair value, we compared United States Price (USP) to normal value (NV), as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act, we calculated monthly weighted-average NVs and compared these to individual U.S. transactions.

Constructed Export Price (CEP)

We calculated CEP in accordance with subsection 772(b) of the Tariff Act, because sales to the first unaffiliated purchaser took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments for price or billing errors, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, marine insurance, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, international freight, foreign inland insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses, commissions and other direct selling expenses), inventory carrying costs, and indirect selling expenses. We offset credit expenses by the amount of interest revenue on sales. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

For those sales in which material was sent to an unaffiliated U.S. processor to be further processed, we made an adjustment based on the transaction-specific further-processing amounts reported by KTN. In addition, KTN's affiliated U.S. reseller, Ken-Mac, performed further processing on some of KTN's U.S. sales. For these sales, we deducted the cost of further processing in accordance with section 772(d)(2) of the Tariff Act. In calculating the cost of further manufacturing for Ken-Mac, we relied upon the further manufacturing information provided by KTN.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Tariff Act. As KTN's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. If sales were not made at arm's-length then the Department used the sale from the affiliated party to the first unaffiliated party. *See* 19 CFR 351.102. To test whether these sales to affiliates were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine whether these sales were made at arm's-length prices and, therefore, excluded them from our analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993) and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil*, 63 FR 59509, 59512 (November 4, 1998). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production (COP) Analysis

The Department disregarded certain sales made by KTN in the first administrative review because these sales failed the cost test. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Germany*, 67 FR 7668 (February 20, 2002); *see also Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 42509, 42512 (August 13, 2001). Thus, in accordance with section 773(b)(2)(A)(ii) of the Tariff Act, there are reasonable grounds to believe or suspect that sales of S4 in the home market were made at prices below their cost of production (COP) in the current review period. Accordingly, pursuant to section 773(b) of the Tariff Act, we initiated a cost investigation to determine whether sales made during the POR were at prices below their respective COP.

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), interest expenses, and home market packing costs. We relied on the COP data submitted by KTN, except where noted below:

In accordance with section 773(f)(2) of the Tariff Act, where KTN's reported transfer prices for purchases of nickel from an affiliated party were not at arm's length, we increased these prices to reflect the prevailing market prices. *See* KTN Preliminary Results Analysis Memorandum, July 31, 2002.

In accordance with section 773(b)(1) of the Tariff Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of KTN's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of KTN's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were made: (1) in substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Tariff Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act (*i.e.*, the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Tariff Act.

Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by KTN in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data KTN supplied in its section D supplemental questionnaire response, except for the adjustments that we made for COP, above.

Price-based Normal Value

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made adjustments for interest revenue, discounts, and rebates where appropriate. We made deductions, where appropriate, for foreign inland freight, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranty expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. *See* Level of Trade and CEP Offset section below. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a contemporaneous home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer. Moreover, for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit, pursuant to section 772(d) of the Tariff Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314-1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). *See e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we asked KTN to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States. KTN identified four channels of distribution in the home market: (1) Mill direct sales (2) mill inventory sales (3) service center inventory sales, and (4) service center processed sales. For all channels KTN performs similar selling functions such as negotiating prices with customers, setting similar credit terms, arranging freight to the customer, and conducting market research and sales calls. The remaining selling activities did not differ significantly by channel of distribution. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each customer class or channel are sufficiently similar, we determined one level of trade exists for KTN's home market sales.

For the U.S. market KTN reported four channels of distribution: (1) Back-to-back CEP sales made through KHSP, KTNNA and Thyssen Marathon Canada (TMC); (2) consignment CEP sales made through KHSP, KTNNA and TMC; (3) inventory sales from KTNNA and TMC; and (4) sales by Ken-Mac. All U.S. sales were CEP transactions. Therefore, the U.S. market has one LOT.

When we compared CEP sales (after deductions made pursuant to section 772(d) of the Tariff Act) to home market sales, we determined that for CEP sales KTN performed fewer customer sales contacts, technical services, delivery services, and warranty services. In addition, the differences in selling functions performed for home market and CEP transactions indicates that home market sales involved a more advanced stage of distribution than CEP sales. In the home market KTN provides marketing further down the chain of distribution by providing certain downstream selling functions that are normally performed by the affiliated resellers in the U.S. market (*e.g.*, technical advice, credit and collection, *etc.*).

Based on our analysis, we determined that CEP and the starting price of home market sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to HM sales, we examined whether a LOT adjustment may be appropriate. In this case KTN sold at one LOT in the home market;

therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of KTN's sales of other similar products, and there is no other record evidence upon which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment but the LOT in Germany for KTN is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Tariff Act, as claimed by KTN. Where there were commissions in U.S. market but not the home market, we calculated the CEP offset as the lesser of either the U.S. commissions or the home market indirect selling expenses. Where there were commissions in both the U.S. and home markets, we calculated the CEP offset as the lesser of either the home market indirect selling expenses or the difference between the U.S. and home market commissions. Where there were commissions in the home market but not the U.S. market, we set the CEP offset equal to zero. We performed these calculations in accordance with 772(d)(1)(D) of the Tariff Act. We applied the CEP offset to NV, whether based on home market prices or CV.

Facts Available

Section 776(a)(2) of the Tariff Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Tariff Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In our September 6, 2001 questionnaire we requested KTN to report the physical characteristics of grade (GRADEH), hot/cold rolled (ROLLH), gauge (GAUGEH), finish (FINISHH), metallic coated (MCOATH), non-metallic coating (NONMCOTH), width (WIDTHH), temper (TEMPERH), and edge trim (EDGEH). In its November 6, 2001 response KTN's affiliated home market reseller, Nirosta Service Center GmbH (NSC), was unable to provide the physical characteristics of ROLLH, GAUGEH, FINISHH, WIDTHH, TEMPERH for a small number of sales. The absence of the noted four characteristics precludes our making proper comparisons to these sales because of the uniqueness of each characteristic.

Section 782(c)(1) of the Tariff Act provides that if an interested party "promptly after receiving a request from [the Department] for information, notifies [the Department] that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information,"the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Also, section 782(d) of the Tariff Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Additionally, section 782(e) of the Tariff Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Pursuant to section 782(d) of the Tariff Act, the Department informed KTN of the deficiencies in its response. In the Department's April 8, 2002 supplemental we requested KTN to remedy the missing characteristics or explain in detail why it was not able to provide the requested information. KTN's April 26, 2002 supplemental response stated the company would have to manually review the invoices and that it would not be able to do so within the time permitted. The Department again asked KTN to remedy the deficiencies in a second supplemental questionnaire sent July 2, 2002. KTN's July 19, 2002 response stated the company attempted to the best of its ability to fill in the missing product characteristics but, for a small number of sales, could not supply the necessary information. However, KTN did not suggest an alternative method to remedy the product characteristics for these sales.

In accordance with section 776(a)(2)(B) of the Tariff Act, in these preliminary results we find it necessary to use partial facts available in those instances where the respondent did not provide us with certain information necessary to conduct our analysis.

Moreover, section 776(b) of the Tariff Act provides that the Department may use an inference adverse when a party has failed to cooperate to the best of its ability to the Department's requests for information. *See* also Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103-316 at 870 (1994).

The Department repeatedly requested KTN to instances to report product characteristics. As stated above, KTN's April 26, 2002, supplemental claimed the company would have to manually review the invoices and it would not be able to do so within the time permitted. KTN's July 19, 2002 supplement response stated again that it was not able to report the product characteristics. Pursuant to section 782(c)(1) of the Tariff Act, KTN had the opportunity to suggest reporting the missing characteristics in an alternative form, yet it failed to do so. During the 1999 - 2000 review of S4 from Germany, a similar situation occurred where KTN initially could not report the physical characteristics of ROLLH, GAUGEH, FINISHH, WIDTHH, and TEMPERH for a number of its home market sales. However, it was able to remedy the missing characteristics by either calculating the average finish, gauge, and width from its packing list data or eventually reporting the actual transaction-specific information. *See* KTN's March 2, 2001 supplemental A through C response and May 21, 2001 supplemental B and C response. KTN is a sophisticated company with experience in the procedures of an antidumping investigation and administrative review. *See Notice of Amended Final Determination of Antidumping Duty Investigation: Stainless Steel Sheet and Strip in Coils from Germany*, 67 FR 15178 (March 29, 2002) and *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Germany*, 67 FR 7668 (February 20, 2002).

Based on the foregoing, we preliminarily conclude that KTN has not provided all the information necessary to complete our analysis and has not acted to the best of its ability.

Therefore, pursuant to 776(b) of the Tariff Act, an adverse inference is warranted. We have preliminarily determined that, pursuant to section 776(b) of the Tariff Act, it is appropriate to use partial adverse facts available in calculating a margin on these sales. In each instance where KTN failed to provide one or more necessary model match characteristics, we matched this product to the lowest-priced product of the same grade sold in the United States by assigning the home market transaction the corresponding U.S. control number. For any home market sales of grades not sold in the United States which had missing characteristics, we assigned this product the home market control number of the highest-priced product of the same grade in the home market.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin exists for the period July 1, 2000 through June 30, 2001:

Manufacturer / Exporter	Weighted Average Margin (percentage)
KTN	5.34

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of these administrative reviews, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of S4 in coils from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

1) The cash deposit rate for KTN will be the rate established in the final results of review;

2) If the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

3) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 13.48 percent (*see Notice of Amended Final Determination of Antidumping Duty Investigation: Stainless Steel Sheet and Strip in Coils from Germany*, 67 FR 15178 (March 29, 2002)).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19987 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from respondent ThyssenKrupp Mexinox S.A. de C.V. (Mexinox) and ThyssenKrupp Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox)[1], and Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC (collectively, petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico (A–201–822). This review covers one manufacturer/exporter (Mexinox) of the subject merchandise to the United States during the period July 1, 2000 to June 30, 2001.

We preliminarily determine that sales of S4 in coils from Mexico have been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) a statement of the

[1] On July 26, 2002, we published in the **Federal Register** the final results of our determination that ThyssenKrupp Mexinox S.A. de C.V. is the successor-in-interest to Mexinox S.A. de C.V. for purposes of determining antidumping duty liability. *See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 67 FR 48878 (July 26, 2002).

issues and (2) a brief summary of the argument.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone : (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute And Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Rounds Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2001).

Background

On July 27, 1999, the Department published in the **Federal Register** the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order* on stainless steel sheet and strip in coils from Mexico (64 FR 40560). On July 2, 2001, the Department published the *Notice of Opportunity to Request Administrative Review* of, *inter alia*, stainless steel sheet and strip in coils from Mexico for the period July 1, 2000 through June 30, 2001 (66 FR 34910).

In accordance with 19 CFR 351.213 (b)(1), Mexinox and the petitioners requested that we conduct an administrative review of Mexinox. On August 20, 2001, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period July 1, 2000 through June 30, 2001 (66 FR 43570).

Because it was not practicable to complete this review within the normal time frame, on March 6, 2002, we published in the **Federal Register** our notice of the extension of time limits for this review (67 FR 10133). This extension established the deadline for these preliminary results as July 31, 2002.

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States*(HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium; and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[6]

Sales Made Through Affiliated Resellers

A. U.S. Market

As noted in Mexinox's October 12, 2001 questionnaire response at 10, Ken-Mac Metals Inc. (Ken-Mac) is an affiliated reseller that sold subject merchandise in the United States during the POR. Thus, we have included in our preliminary margin calculation resales of Mexinox subject merchandise made through Ken-Mac.

B. Home Market

Mexinox Trading, S.A. de C.V. (Mexinox Trading), a wholly-owned subsidiary of Mexinox, sells both subject and non-subject merchandise in the home market. In its October 12, 2001 questionnaire response, Mexinox reported that sales through Mexinox Trading represented less than five percent of Mexinox's total sales of subject merchandise in the home market. Because Mexinox Trading's sales of subject merchandise were less than five percent of home market subject merchandise sales, and because Mexinox certified these sales passed the Department's arm's-length test, pursuant to section 351.403 (c) and (d) of the Department's regulations, we permitted Mexinox to report its sales to Mexinox Trading rather than require it to report downstream sales by Mexinox Trading to the first unaffiliated customer.

Fair Value Comparisons

To determine whether sales of S4 in coils from Mexico to the United States were made at less than fair value, we compared the CEP[7] to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act, we compared individual CEPs to monthly weighted-average NVs.

Transactions Reviewed

For its home market and U.S. sales Mexinox reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale (19 CFR 351.401(i)). Mexinox stated the invoice date represented the date when the essential terms of sales, *i.e.*, price and quantity, are definitively set, and that up to the time of shipment and invoicing, these terms were subject to change. Because petitioners alleged that Mexinox did not provide adequate support for its claim that price and quantity may change at any time between the final order acceptance date (confirmation date) and the final invoice date, the Department requested that Mexinox provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. We also requested that Mexinox report the order date for each transaction. Mexinox responded to our request on May 8, 2002. Based on our analysis of the information submitted by Mexinox, we have preliminarily determined the date of invoice is the appropriate date of sale because record evidence indicates that in a number of instances the price and quantity changed between the date of the order

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

[7] Mexinox categorized some of its U.S. sales as CEP sales and some as export price (EP) sales. However, as discussed below in the "Level of Trade" section, we have determined that all of Mexinox's U.S. sales are properly classified as CEP sales for these preliminary results.

acceptance and the date of invoice. Therefore, we find Mexinox's claim that price and quantity terms are subject to negotiation until the date of invoice is substantiated.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by the respondent covered by the description in the "Scope of the Review" section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting price of the comparison sales in the home market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For CEP it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision).

In our September 6, 2001 questionnaire, we asked Mexinox to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States. Mexinox identified two channels of distribution in the home market: (1) retailers, and (2) end-users. For both channels, Mexinox performs similar selling functions such as pre-sale technical assistance and after-sales warranty services. *See, e.g.*, Attachment A–21 of Mexinox's May 8, 2002 submission. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, we determined one LOT exists for Mexinox's home market sales. *See Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 63 FR 30185, 30190 (June 3, 1998).

For the U.S. market Mexinox reported two LOTs: (1) sales designated as EP transactions, which consisted, in some cases, of sales made directly to unaffiliated U.S. customers ("direct shipments"), and in other cases of sales made from the stock of finished goods held at the Mexican factory in San Luis Potosi to unaffiliated U.S. customers ("SLP stock sales"); and (2) CEP sales made through Mexinox USA's Brownsville warehouse to service centers and end users. For both direct shipments and SLP stock sales (*i.e.*, those considered by Mexinox to be EP sales), Mexinox USA acted as the importer of record, collected purchase orders, invoiced the customer and collected payment. *See, e.g.*, Mexinox's October 12, 2001 questionnaire response at A–35 and 36 and Mexinox's November 7, 2001 questionnaire response at C–51. Thus, following the criteria set forth by the U.S. Court of Appeals for the Federal Circuit (the Federal Circuit) in *AK Steel Corp. v. United States*, 226 F.3d 1361 (Fed. Cir. 2000) (*AK Steel*), we determine Mexinox's direct shipments and SLP stock sales constitute a sale between Mexinox USA and its U.S. customer. In *AK Steel* the Federal Circuit, noting that CEP is defined as the price at which subject merchandise is first sold in the United States and EP as the price at which subject merchandise is first sold outside the United States, stated, "the location of the sale appears to be critical to the distinction between the two categories." *See* AK Steel at 1369. Because Mexinox's sales of merchandise to its U.S. customers took place within the United States, we have classified Mexinox's direct shipments and SLP stock sales as CEP sales for these preliminary results.

When we compared CEP sales (after deductions made pursuant to section 772(d) of the Tariff Act) to home market sales, we determined that for CEP sales Mexinox performed fewer customer sales contacts, technical services, inventory maintenance, and warranty services. *See, e.g.*, Mexinox's October 12, 2001 original questionnaire response at A–31 and Attachment A–21 of Mexinox's May 8, 2002 supplemental questionnaire response. In addition, the differences in selling functions performed for home market and CEP transactions indicate home market sales involved a more advanced stage of distribution than CEP sales. In the home market Mexinox provides marketing further down the chain of distribution by providing certain downstream selling functions that are normally performed by service centers in the U.S. market (*e.g.*, technical advice, credit and collection, *etc.*).

Based on our analysis, we determined that CEP and the starting price of home market sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to home market sales, we examined whether a level-of-trade adjustment may be appropriate. In this case, Mexinox sold at one LOT in the home market; therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of Mexinox's sales of other similar products, and there are no other respondents or other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment and the level of trade in Mexico for Mexinox is at a more advanced stage than the level of trade of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Tariff Act, as claimed by Mexinox. We based the amount of the CEP offset on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Tariff Act. We applied the CEP offset to NV, whether based on home market prices or CV.

In addition to the three U.S. channels of distribution discussed above (direct sales, SLP stock sales, and sales through Mexinox's affiliate, Mexinox USA), Mexinox reported U.S. sales through one other channel of distribution: CEP sales through its affiliated reseller Ken-Mac (*see* the section on "Affiliation" above). For purposes of this preliminary determination, we treated this channel

of distribution as equivalent to the level of trade of other CEP sales.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Tariff Act for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. We made adjustments for discounts, rebates, and debit/credit notes where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign inland insurance, foreign brokerage and handling, U.S. customs duties, U.S. inland freight, U.S. brokerage, and U.S. warehousing expenses. As further directed by section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and warranty expenses), inventory carrying costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act, and added duty drawback to the starting price in accordance with section 772(c)(1)(B) of the Tariff Act. For those sales in which the material was sent to an unaffiliated U.S. processor to be further processed, we made an adjustment based on the transaction-specific further-processing amounts reported by Mexinox. In addition, the U.S. affiliated reseller Ken-Mac performed some further manufacturing of some of Mexinox's U.S. sales. For these sales, we deducted the cost of further processing in accordance with 772(d)(2) of the Tariff Act. In calculating the cost of further manufacturing for Ken-Mac, we relied upon the further manufacturing information provided by Mexinox.

Facts Available

In accordance with section 776(a)(1) of the Tariff Act, in these preliminary results we find it necessary to use partial facts available in those instances where the respondent did not provide us with certain information necessary to conduct our analysis.

In our September 6, 2001 questionnaire at G–6, we requested that Mexinox provide sales and cost data for all affiliates involved with the production or sale of the merchandise under review during the POR in both the home and U.S. markets. In its October 12, 2001 questionnaire response at 10, Mexinox indicated its affiliated reseller, Ken-Mac, sold subject merchandise in the United States during the POR. In its November 7, 2001 submission, Mexinox provided data related to Ken-Mac's resales of subject merchandise to unaffiliated customers in the United States. At page S1–2 of its May 8, 2002 supplemental questionnaire response, Mexinox indicated that Ken-Mac was unable to confirm the origin of some of the stainless steel material it sold during the POR. Therefore, Mexinox reported data on these particular resales through Ken-Mac in a separate database, indicating the quantity of each transaction that could be allocated reasonably to Mexinox. To designate a portion of these "unattributable" sales as resales of subject merchandise by Ken-Mac, Mexinox first calculated the relative percentage, by volume, of stainless steel merchandise that Ken-Mac purchased during the POR from Mexinox and other vendors. Then, of Ken-Mac's purchases of stainless steel merchandise from Mexinox, Mexinox determined the relative percentage, by volume, of subject stainless steel merchandise and non-subject stainless steel merchandise. *See* Attachment KMC–25 of Mexinox's June 3, 2002 submission. Thus, because of the unknown origin of certain of Ken-Mac's resales of subject merchandise, Mexinox has, in effect, not provided all the information necessary to complete our analysis.

Since Mexinox has not provided all of the information necessary to perform our analysis, we have preliminarily determined that, pursuant to section 776(a)(1) of the Tariff Act, it is appropriate to use the facts otherwise available in calculating a margin on Ken-Mac's "unattributable" sales. Section 776(a)(1) of the Tariff Act provides that the Department will, subject to section 782(d), use the facts otherwise available in reaching a determination if "necessary information is not available on the record." Hence, for these preliminary results, we have calculated a margin on Ken-Mac's "unattributable" resales by applying the overall margin calculated on all other sales/resales of subject merchandise to the weighted-average price of these sales reported in Ken-Mac's "unattributable" sales database. *See also Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 67 FR 6490 (February 12, 2002). We note that for these preliminary results we have not used an adverse inference, as provided under section 776(b) of the Tariff Act, to calculate a margin on Ken-Mac's "unattributable" sales.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Tariff Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. *See, e.g.*, Mexinox's June 3, 2002 supplemental questionnaire response at Attachments A–35 (quantity and value chart), B–46 (home market sales listing), and C–43 (U.S. market sales listing).

B. Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. See 19 CFR 351.102(b). To test whether sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers minus all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine whether these sales were made at arm's-length prices and, therefore, excluded them from our margin calculation. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil*, 63 FR 59509 (Nov. 8, 1998), citing to *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most

similar model. For these preliminary results, we found that none of Mexinox's affiliated home market customers failed our arm's-length test.

C. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the cost of production (COP) in the investigation of S4 in coils from Mexico (*see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico*, 64 FR 30790 (June 8, 1999)),[8] we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for Mexinox may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act. Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by Mexinox.

To calculate COP, in accordance with section 773(f)(3) of the Tariff Act, we revised Mexinox's reported material costs to reflect the highest of cost of production, transfer price, or market price for those materials obtained from affiliated parties. We added the revised material costs to the respondent's reported cost of fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Tariff Act. We then computed weighted-average COPs during the POR, and compared the weighted-average COP figures to home market sales prices of the foreign like product as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act: (1) whether within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Where twenty percent or more of the respondent's sales of a given product were at prices below the COP, we found sales of that model were made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2) (B) and (C) of the Tariff Act. Based on our comparison of prices to the weighted-average per-unit cost of production for the POR, we determined whether the below-cost prices were such as to provide for recovery of costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

Our cost test for Mexinox revealed that fewer than twenty percent of Mexinox's home market sales of certain products were at prices below Mexinox's COP. We therefore concluded that for such products, Mexinox had not made below-cost sales in substantial quantities. *See* section 773 (b)(2)(C)(i) of the Tariff Act. We therefore retained all such sales in our analysis. For other products, more than twenty percent of Mexinox's sales were at below-cost prices. In such cases we disregarded the below-cost sales, while retaining the above-cost sales for our analysis.

D. Constructed Value

In accordance with section 773(e) of the Tariff Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We deducted from CV the weighted-average home market direct selling expenses incurred on sales made in the ordinary course of trade.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers we determined to be at arm's length. We made adjustments for debit or credit notes, discounts, rebates, interest revenue, and insurance revenue, where appropriate. We made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranty expenses. As noted in the "Level of Trade" section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

F. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review we preliminarily determine the following weighted-average dumping margin exists for the period July 1, 2000 through June 30, 2001:

Manufacturer / Exporter	Weighted Average Margin (percentage)
Mexinox	6.01

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the

[8] Since initiating the instant review, we completed our first administrative review of S4 in coils from Mexico, in which we also found home market sales below COP. *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 67 FR 6490 (February 12, 2002), as amended, *Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico*, 67 FR 15542 (April 2, 2002)).

issue, 2) a brief summary of the argument and 3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of S4 in coils from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

1) The cash deposit rate for Mexinox will be the rate established in the final results of review;

2) If the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

3) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all others rate from the investigation (30.85 percent; *see Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 40560, 40562 (July 27, 1999)).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19988 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Preliminary Results of Antidumping Administrative Review: Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results in the antidumping duty administrative review of stainless steel sheet and strip in coils from France.

SUMMARY: In response to requests from Ugine S.A. ("Ugine"), and Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Organization Inc., and the United Steelworkers of America, AFL–CIO/CLC, collectively, ("the Petitioners"), the U.S. Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip ("SSSS") from France for the period July 1, 2000 through June 30, 2001. The Department preliminarily determines that a dumping margin exists for Ugine's sales of SSSS in the United States. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ugine's merchandise during the period of review. The preliminary results are listed in the section titled "Preliminary Results of Review," *infra*.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–3208.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On July 27, 1999, the Department published in the **Federal Register** the amended final determination and antidumping duty order on SSSS from France. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from France*, 64 FR 40562 (July 27, 1999) ("*Antidumping Duty Order*"). On March 19, 2002, the Department published in the **Federal Register** the amended final results of the first antidumping duty administrative review of SSSS from France. *See Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 67 FR 12522 (March 19, 2002). On July 2, 2001, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on stainless steel sheet and strip in coils from France for the period July 1, 2000, through June 30, 2001. *See Notice of Opportunity to Request Administrative Review of Antidumping Duty or Countervailing Duty Order, Finding, or Suspended Investigation* 66 FR 34910 (July 2, 2001).

On July 31, 2001, Ugine, a French producer and exporter of subject merchandise, and the Petitioners requested that the Department conduct a review of sales or entries of merchandise subject to the Department's antidumping duty order on SSSS from France. On October 1, 2001, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period July 1, 2000 through June 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001).

On November 16, 2001, Ugine reported that it made sales of subject merchandise to the United States during

the period of review in its response to Section A of the Department's questionnaire. On December 21, 2001, Ugine submitted its responses to Sections B, C, D, and E of the Department's questionnaire. On January 29, 2002, the Department issued a supplemental questionnaire for Sections A, B, C, D, and E of Ugine's questionnaire responses. On February 19, 2002, the Department published an extension of time limit for the preliminary results of the antidumping duty administrative review. *See Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coil from France*, 67 FR 7357 (February 19, 2002). On February 26, 2002, Ugine submitted its response to the Department's Sections B, C, D, and E supplemental questionnaire. On March 12, 2002, the Department issued a supplemental questionnaire regarding affiliates customers in the home market. On March 19, 2002, Ugine submitted its response to this questionnaire. On March 25, 2002, the Department issued another supplemental questionnaire regarding the affiliated customers in the home market. On April 3, 2002, Ugine submitted its response to the second supplemental questionnaire regarding affiliated customers in the home market. On April 30, 2002, the Department issued a second supplemental questionnaire for Sections A, B, C, D, and E of Ugine's questionnaire responses. On May 13, 2002, Ugine submited its response to the second supplemental questionnaire for Sections A, B, C, D, and E. On May 31, 2002, the Department issued a supplemental questionnaire to Ugine regarding the reporting of certain affiliated customers' downstream sales. Their response was due by COB June 7, 2002; however, Ugine did not submit a response.

Verification

As provided in section 782(i)(3) of the Act, we verified the information submitted by Ugine for use in our preliminary results. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by Ugine. We verified Ugine's U.S. subsidiary, Hague Steel Corp. ("Hague"), from May 20, 2002 through May 24, 2002. Additionally, we verified sales and cost information provided by Ugine from June 10, 2002 through June 21, 2002. Our verification results are outlined in the public version of the verification report and are on file in the Central Records Unit ("CRU") located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC. *See Memorandum from Alex Villanueva and Jonathan Herzog, Case Analysts through James C. Doyle, Program Manager, to the File: Verification Report of the Second Administrative Review of Stainless Steel Sheet and Strip from France—United States Sales and Cost Verification Report of Hague Steel Corporation ("U.S. Verification Report")*, dated July 31, 2002, and *Memorandum from Alex Villanueva, Case Analyst through James C. Doyle, Program Manager, to the File: Verification Report of the Second Administrative Review of Stainless Steel Sheet and Strip from France—Home Market Sales and Cost Verification Report of Ugine, S.A., ("Home Market Verification Report")*, dated July 31, 2002.

Period of Review

The period of review ("POR") is July 1, 2000 through June 30, 2001.

Scope of Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* ("HTS") at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[6]

Normal Value Comparisons

To determine whether Ugine's sales of subject merchandise from France to the United States were made at less than fair value, we compared the constructed export price ("CEP") to the normal value ("NV"), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual CEP transactions.

Transactions Reviewed

A. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Ugine's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because Ugine's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable.

B. Arm's Length Test

Ugine reported that it made sales in the home market to affiliated end users and resellers during the POR. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated party were on

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

average 99.5 percent or more of the price to the unrelated party, we determined that sales made to the related party were at arm's length. Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See, e.g., Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Italy*, 67 FR 39677, 39679 (June 10, 2002). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model. In our home market NV calculation, we have included Ugine's sales to certain of its affiliated customers because these entities passed the Department's arm's length test criteria. Conversely, certain other affiliated customers did not pass the arm's length test and have therefore been excluded from our home market NV calculation. For a further discussion of home market sales made by Ugine to one affiliated reseller who failed the arm's length test, please see the "Facts Available" section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all SSSS products produced by Ugine, covered by the description in the "Scope of Review" section of this notice, *supra*, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to SSSS products sold in the United States. We have relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): grade, hot/cold rolled, gauge, finish, metallic coating, non-metallic coating, width, tempered/tensile strength, and edge trim.

Constructed Export Price

In accordance with section 772(a) of the Act, export price ("EP") is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this review, Ugine classified all of its reported sales of SSSS as CEP sales. During the review period Ugine made sales to the United States through its two U.S. based affiliates, Usinor Stainless USA and Hague, which then resold the merchandise to unaffiliated customers. According to Ugine, Usinor Stainless USA serves as a national "super-distributor" for Ugine in the U.S. market. Hague is an affiliated customer in the United States which further manufactured the SSSS before selling to unaffiliated customers. Therefore, because Ugine's U.S. sales were made by Usinor Stainless USA and Hague after the subject merchandise was imported into the United States, it is appropriate to classify these sales as CEP sales.

We calculated the CEP in accordance with section 772(b) of the Act. We based CEP on the packed ex-warehouse or delivered prices to unaffiliated purchasers in the United States. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: inland freight from plant to distribution warehouse, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse/plant to the unaffiliated customer, U.S. warehouse expenses, other U.S. transportation expense, and U.S. Customs duties. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, discounts, credit, warranty expenses, commissions and other indirect selling expenses.

For products that were further manufactured after importation, we adjusted for all costs of further manufacturing in the United States in accordance with section 772(d)(2) of the Act. We deducted the profit allocated to expenses deducted under section 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity (including further manufacturing costs), based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market. We also adjusted the starting price for billing adjustments.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Constructed Value ("CV") Comparison" and "Price-to-Price Comparisons" section of this notice.

Cost of Production Analysis

Because we disregarded sales below the cost of production in the first antidumping duty administrative review of SSSS from France, the two recently completed segment of these proceedings, we have reasonable grounds to believe or suspect that sales by Ugine in its home market were made at prices below the cost of production ("COP"), pursuant to section 773(b)(1) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 308204 (June 8, 1999) ("*LTFV Final*") and *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 67 FR 6493 (February 12, 2002). Therefore, pursuant to section 773 (b)(1) of the Act, we conducted a COP analysis of home market sales by Ugine as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Ugine's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses ("SG&A"), including interest expenses, and packing costs. We relied on the COP data submitted by Ugine in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to Ugine's submitted costs.

B. Test of Home Market Prices

We compared the weighted-average COP for Ugine to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities,

and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Ugine's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Ugine's sales of a given product during the POR were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ugine's cost of materials, fabrication, SG&A (including interest expenses), U.S. packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Ugine in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers or prices to affiliated customers that were determined to be at arm's length. Where appropriate, we deducted discounts, rebates, credit expenses, warranty expenses, inland freight, inland insurance, and warehousing expense. We also adjusted the starting price for billing adjustments. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing ("COM") of the U.S. product, we based NV constructed value.

For reasons discussed below in the "Level of Trade" section below, we allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted the home market indirect selling expenses from NV for home market sales that were compared to U.S. CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondent, we examined all types of selling functions and activities reported in the respondent's questionnaire responses on LOT and during verification. In analyzing whether separate LOTs existed in this review, we found that no single selling function was sufficient to warrant a separate LOT in the home market. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). However, based on a comparison of all selling functions performed for sales through affiliated parties to all selling functions performed for unaffiliated customers, we have preliminarily determined that Ugine sold merchandise at two LOTs in the home market during the POR. One LOT involved sales made through two channels: sales by Ugine directly to unaffiliated service centers or end users (Channel 1) and sales made by Ugine with the assistance of Ugine France Service in its capacity as sales agent, to unaffiliated end users (Channel 2). Additionally, the second LOT involved sales to affiliated parties made through two additional channels: sales from Ugine to its affiliate, IUP, for subsequent resales by IUP to unaffiliated end users and service centers (Channel 3) and sales from Ugine to its affiliate, IUP, for resale, with the assistance of Ugine France Service in its capacity as sales agent, to unaffiliated end users (Channel 4). From our analysis of the marketing process for these sales, we have determined that there are significant distinctions in selling activities between Ugine's sales to its affiliate in Channels 3 and 4 and its direct sales through Channels 1 or 2. *See Memorandum from Alex Villanueva, Case Analyst to the File through James C, Doyle, Program Manager, Second Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip from France: Level of Trade Analysis*, dated July 31, 2002 ("LOT Memorandum"), on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th &

Constitution Avenue, NW., Washington, DC. Based on these differences, we preliminarily concluded that two LOTs existed in the home market during the POR.

In order to determine the LOTs of the U.S. market, we reviewed the selling activities associated with each reported channel of distribution. Ugine only reported CEP sales in the U.S. market. Because all of Ugine's CEP sales in the U.S. market were made through Usinor Stainless USA and Hague, we found that there was one LOT in the U.S. market. For these CEP sales, we determined that fewer and different selling functions were performed for CEP sales to Usinor Stainless USA than for sales at either of the home market LOTs. In addition, we found that sales at both home market LOTs were at a more advanced stage of distribution compared to the CEP sales. *See LOT Memorandum* at 10.

We examined whether a LOT adjustment was appropriate. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that neither of the LOTs in the home market matched the LOT of the CEP transactions. Because of this, we did not calculate a LOT adjustment. Instead, a CEP offset was applied to the NV-CEP comparisons. *See LOT Memo* at 8. In the most recent administrative review of this order, where a similar fact pattern existed, we also granted a CEP offset. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France and accompanying Issues and Decision Memorandum* 67 FR 6493 (February 12, 2002) at Comment 8.

Facts Available

We preliminarily determine that the use of facts available is appropriate for two elements of Ugine's dumping margin calculation. Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In this case, at the verification of Ugine's sales information from June 10, 2002 through June 21, 2002, Ugine presented as a minor correction a very small number of previously unreported home market sales. The information Ugine supplied and accepted by the Department included the total sales value and the total weight in kilograms. *See Home Market Verification Report* at 3.

We have preliminarily determined that the use of neutral facts available, in accordance with section 776(a) of the Act, is warranted for these unreported home market sales. This unreported home market sales information should have been reported in the respondent's questionnaire responses. By failing to report these sales until the beginning of verification, the respondent prevented the Department from gathering and verifying further information necessary to its analysis. However, during verification, we noted that the total volume of unreported sales constituted less than one percent of total home market sales. Furthermore, Ugine volunteered the unreported sales information prior to the beginning of verification and the Department did not discover additional unreported sales or otherwise find that the respondent was uncooperative. Therefore, for these reasons, we are applying neutral facts available to the unreported sales information. As facts available, the Department has not considered these unreported home market sales in its dumping analysis.

Additionally, consistent with section 776(a)(2)(A) and (C) of the Act, we preliminarily determine that use of partial adverse facts available is warranted for home market sales made to an affiliated reseller who failed the arm's length test. On January 29, 2002, the Department sent Ugine a supplemental questionnaire requesting the downstream sales for all known affiliated customers and resellers who purchased the subject merchandise in the home market during the POR. On February 6, 2002, Ugine submited a letter arguing that if the Department applies one of the criteria outlined in the letter, resales by affiliated customers need not be reported. One of these criteria specifically stated that if the customers passed the arm's length test, then there was no need to report those customers' downstream sales. On February 26, 2002, Ugine submitted its Sections B–E supplemental questionnaire response, but did not include downstream sales for any affiliated customers. On May 31, 2002, the Department requested downstream sales for a smaller number of affiliated resellers, which included the affiliated customer who failed the arm's length test. To date, Ugine has not provided the downstream sales for any customer, including that affiliated customer. Therefore, consistent with section 776(a)(2)(A) and (C) of the Act, Ugine withheld information that had been requested by the Department, failed to provide such information in a timely manner, and significantly impeded the determination under the antidumping statute, justifying the use facts otherwise available in reaching the applicable determination. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts available otherwise available. In this case, Ugine failed to provide its downstream sales made by affiliated resellers as requested in the Department's February 26, 2002, and May 31, 2002, letters to Ugine.

In selecting from facts otherwise available, for these preliminary results, for those sales to the affiliated reseller that failed the arm's length test, for which Ugine did not provide downstream sales, the Department used the highest gross unit price of an identical model purchased by another affiliated customer. For that customer's sales of models that were not sold to other affiliated customers, we applied the highest gross unit price for those models with a match. The Department applied similar facts available in a recent investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from France*, 67 FR 31204 (May 9, 2002).

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's

practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM FRANCE

Producer/manufacturer/exporter	Weighted-average margin (in percent)
Ugine	1.64

Pursuant to 19 CFR 351.224, the Department will disclose to any party to the proceeding, within ten days of publication of this notice, the calculations performed. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue, (2) A brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with an additional copy of the public version of any such comments on a computer diskette. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Assessment

Upon issuance of the final results of review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

Cash Deposits

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Ugine will be that established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the "all other" rate established in the LTFV investigation, which was 9.38 percent. *See Antidumping Duty Order*, at 40565.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under regulation 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19990 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–834]

Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial rescission of antidumping duty administrative review of stainless steel sheet and strip in coils from the Republic of Korea.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils ("SSSS") from the Republic of Korea in response to a request from respondents Pohang Iron & Steel Co., Ltd. ("POSCO"), Samwon Precision Metals Co., Ltd. ("Samwon"), Daiyang Metal Co., Ltd. ("DMC"), and petitioners,[1] who requested a review of POSCO and DMC. This review covers imports of subject merchandise from POSCO and DMC. The period of review ("POR") is July 1, 2000, through June 30, 2001.

Our preliminary results of review indicate that POSCO and DMC have sold the subject merchandise at less than normal value ("NV") during the POR. We have also preliminarily determined to rescind the review with respect to Samwon because the evidence on the record indicates that Samwon had no shipments of subject merchandise to the United States during the POR. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of POSCO's and DMC's subject merchandise during the POR, in accordance with Sections 19 CFR 351.106 and 351.212(b) of the Department's regulations.

[1] Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding should also submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita (POSCO and Samwon), Lilit Astvatsatrian (DMC), or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243, (202) 482–6412, or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On July 2, 2001, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on stainless steel sheet and strip in coils from the Republic of Korea. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 66 FR 34910 (July 2, 2001), as corrected, 66 FR 38455 (July 24, 2001). On July 31, 2001, petitioners requested a review of POSCO and DMC in accordance with 19 CFR 351.213(b)(1). Also, on July 31, 2000, POSCO, Samwon, and DMC, producers and exporters of subject merchandise during the POR, in accordance with 19 CFR 351.213(b)(2), each requested administrative reviews of the antidumping order covering the period July 1, 2000, through June 30, 2001. On August 20, 2001, the Department published in the **Federal Register** a notice of initiation of administrative review of this order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001).

On August 27, 2001, Samwon informed the Department that it made no shipments of subject merchandise to the United States during the POR. We have confirmed this information with the U.S. Customs Service. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

On August 29, 2001, the Department issued questionnaires for this review to POSCO and DMC. POSCO and DMC submitted Section A questionnaire responses on October 3, 2001. On November 5, 2001, POSCO submitted its Sections B through D questionnaire responses and DMC submitted its Sections B through E questionnaire responses. POSCO submitted its cost reconciliation on November 5, 2001, in the context of the Section D response, and DMC submitted its cost reconciliation on November 19, 2001.

On October 23, 2001, DMC requested that the Department adjust DMC's cost reporting period to conform more closely with its fiscal year reporting period. On October 25, 2001, the Department requested additional information from DMC in order to evaluate DMC's request. DMC submitted the requested information on November 15, 2001. On the same date, petitioners submitted a letter regarding DMC's reporting of its cost using the fiscal year rather than the period of review. On November 27, 2001, the Department granted DMC's request to report its COP and CV information for its April 1, 2000, through March 31, 2001, fiscal year rather than for the period of review, July 1, 2000, through June 30, 2001.

On December 13, 2001, the Department issued supplemental questionnaires to POSCO and DMC covering their Section A though E responses. POSCO and DMC provided supplemental questionnaire responses on January 19, 2002.

On December 19, 2001, in a memorandum to the file from Catherine Bertrand through James Doyle, *Stainless Steel Sheet and Strip from Korea: Sales Below Cost Investigation*, we informed DMC that since the Department disregarded DMC's sales below cost from its analysis in the final results of the first administrative review (*see Stainless Steel Sheet and Strip From the Republic of Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 64950 (December 17, 2001)), it was therefore initiating a sales below cost investigation for the period July 1, 2000, through June 30, 2001. Our memorandum noted that DMC had already filed its Section D response on November 5, 2001.

The Department issued its second supplemental questionnaires to POSCO on March 21, 2002, and to DMC on April 4, 2002. POSCO responded on April 5, 2002, and DMC responded on April 19, 2002. On May 8, 2002, DMC submitted its sales reconciliation. On June 6, 2002, POSCO submitted its sales reconciliation.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On March 6, 2002, the Department extended the time limit for the preliminary results in this review to July 31, 2002. *See Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Extension of Time Limits for the Preliminary Results of the Antidumping Duty Administrative Review*, 67 FR 10134 (March 6, 2002).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[2] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025,

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise covered by this order is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products were excluded from the scope of the investigation and the subsequent order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6." [7]

Partial Rescission of Review

As noted above, Samwon informed the Department that it had no shipments of subject merchandise to the United States during the POR. The Department subsequently contacted the U.S. Customs Service, requested Customs to conduct an inquiry into entries of Samwon's subject merchandise into the United States during the POR, and reviewed Customs' data. There is no evidence on the record which indicates that Samwon made exports of subject merchandise during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Samwon. *See, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35190, 35191 (June 29, 1998); *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (Oct. 14, 1997).

Verification

As provided in section 782(i) of the Act, we verified sales and cost information provided by DMC from May 22, 2002, to May 30, 2002, in Seoul, Korea. We verified the CEP sales response of DMC's U.S. affiliate, Ocean Metal Corporation ("OMC"), from June 14, 2002, to June 18, 2002, in City of Industry, CA. We verified POSCO's sales and cost information from June 25 to July 5, 2002, at POSCO's plant headquarters in Pohang, Korea and their corporate offices in Seoul, Korea. We used standard verification procedures, including an examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification reports and are on file in the Central Records Unit ("CRU") located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Normal Value Comparisons

To determine whether POSCO's and DMC's sales of subject merchandise from Korea to the United States were made at less than normal value, we compared the constructed export price ("CEP") to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A of the Act, we calculated monthly weighted-average prices for NV and compared these to individual CEP transactions.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the description in the "Scope of the Review" section of this notice *supra*, which were produced and sold by POSCO and DMC in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to SSSS products sold in the United States. We have relied on nine product characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: grade, hot or cold-rolled, gauge, surface finish, metallic coating, non-metallic coating, width, temper, and edge. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the August 29, 2001, antidumping duty questionnaire and instructions, or to constructed value ("CV"), as appropriate.

Date of Sale

It is the Department's practice normally to use the invoice date as the date of sale, although we may use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i). We have preliminarily determined that the of invoice date as the date of sale for respondents Dai Yang and POSCO. Consistent with the prior review, for home market sales, we used the reported date of the invoice from the Korean manufacturer.

For U.S. sales, POSCO reported its date of sale to be the earlier of the shipment date from Korea or POSCO's invoice date, although these were CEP transactions. Additionally, POSCO reported that its sales are shipped directly from the factory in Korea to the U.S. customer. However, POSCO's U.S. affiliate, Pohang Steel America Corporation ("POSAM"), serves as the principal point of contact for the U.S. customer. Customers place their orders with POSAM, which then places an order with POSCO. Upon confirmation from POSCO, POSAM separately invoices the unaffiliated customer in the United States. POSAM is solely responsible for collecting payment from the U.S. customer, and for paying POSCO for the merchandise. Since POSCO's U.S. sales were made "in the United States" within the meaning of section 772(b) of the Act, we have treated these sales as CEP transactions, consistent with *AK Steel Corp.* v. *United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000). Thus, we have determined that the date of sale for these U.S. sale is the date of invoice from POSAM to the unaffiliated customer. Therefore, we have based date of sale on invoice date from the U.S. affiliate, unless that date was subsequent to the date of shipment to the unaffiliated customer from Korea, in which case that shipment date is the date of sale. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results*, 65 FR 54197, 54201 (September 7, 2000), and *see Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 66 FR 3540 (January 16, 2001).

Dai Yang reported that the date of sale for its U.S. sales, was the invoice date from its U.S. affiliate to the unaffiliated customer.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

[7] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

POSCO

For purposes of this administrative review, POSCO classified all of its sales as CEP sales. POSCO identified only one channel of distribution for U.S. sales through its wholly owned subsidiary, Pohang Steel America Corporation ("POSAM"), to its unaffiliated customer in the United States. We based our calculations on CEP, in accordance with subsections 772(b), (c), and (d) of the Act.

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and Korean customs clearance fees, international freight, marine insurance, U.S. customs duty, and U.S. brokerage and wharfage expenses (classified as other U.S. transportation expenses). Also, in accordance with section 772(c)(2)(A) of the Act, we deducted packing expenses because packing expenses are included in the CEP. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, postage and term credit expenses, and letter of credit and remittance expenses) and indirect selling expenses, including inventory carrying costs. For POSAM's indirect selling expenses, we reduced POSAM's reported interest expenses by the amount of the imputed credit expenses reported on POSCO's U.S. sales database. Additionally, we added an amount for duty drawback to the U.S. price pursuant to section 772(c)(1)(B) of the Act.

For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

We made no changes to POSCO's reported CEP sales database as a result of verification. *See Sales and Cost Verification of Pohang Iron and Steel Corporation ("POSCO") in the Antidumping Administrative Review of Certain Stainless Steel Sheet and Strip in Coils from Korea ("POSCO Verification Report")* (July 31, 2002); *Analysis for the preliminary results of review for stainless steel strip in coils from Korea—Pohang Iron & Steel Company ("POSCO") ("POSCO Prelim Analysis Memo")* (July 31, 2002).

DMC

DMC reported that it made all sales of subject merchandise to the United States through its wholly-owned subsidiary in the United States, OMC. Consequently, it classified all of its U.S. sales as CEP sales. We based our calculations on CEP, in accordance with subsections 772(b), (c), and (d) of the Act.

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made adjustments to the starting price for billing adjustments, where applicable. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and Korean customs clearance fees, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse/plant to the unaffiliated customer, U.S. brokerage and handling, and U.S. customs duty. Also, in accordance with section 772(c)(2)(A) of the Act, we deducted packing expenses because packing expenses are included in the CEP. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit, commissions, warranty expense, banking expenses, and domestic banking fees) and indirect selling expenses, including inventory carrying costs. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

We made corrections to the data for certain variables included in the pre-selected sales examined at verification. *See Daiyang Metal Co., Ltd. Home Market Sales, United States Sales, and Cost of Production Verification Report; Antidumping Administrative Review on Stainless Steel Sheet and Strip in Coils from Korea* (July 31, 2002) *("DMC Verification Report"); Verification Report of the Administrative Review of Stainless Steel Sheet and Strip from Korea—United States Sales Verification Report of Ocean Metal Corporation* (July 31, 2002) *("OMC Verification Report"); Analysis for the preliminary results of review for stainless steel strip in coils from Korea—Daiyang Metal Co., Ltd. ("DMC Prelim Analysis Memo")* (July 31, 2002).

Normal Value

1. Home Market Viability

For POSCO and DMC, we compared the aggregate volume of home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Korea was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because the volume of home market sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise for both companies, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon the home market sales of the foreign like product. Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Korea, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade ("LOT") as the CEP or NV sales, as appropriate.

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-Constructed Value ("CV") Comparisons" sections of this notice.

2. Arm's-Length Test

POSCO and DMC reported that they each made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to

affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, discounts and packing, but including the alloy surcharge. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated party, we determined that sales made to the affiliated party were made at arm's length. *See* 19 CFR 351.403(c). Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model. Certain of POSCO's and DMC's affiliated home market customers did not pass the arm's length test. However, we did not consider the downstream sales from these customers to the first unaffiliated customer because DMC's affiliated home market customers further manufactured the subject merchandise into merchandise outside of the scope of the order. With respect to POSCO, the total quantity of sales made through these affiliated parties was less than 5 percent of the total quantity of home market sales. Therefore, in accord with section 351.403 of the Department's regulations, we did not request information on the downstream sales.

3. Cost of Production ("COP") Analysis

Because the Department determined that POSCO and DMC made sales in the home market at prices below the cost of producing the subject merchandise in the previous administrative review of and therefore excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that POSCO and DMC made sales in the home market at prices below the cost of producing the merchandise in this administrative review. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry to determine whether POSCO and DMC made home market sales during the POR at prices below their respective COP within the meaning of section 773(b) of the Act.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of POSCO's and DMC's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A"), including interest expenses, and packing costs. We relied on the COP data submitted by POSCO and DMC in their original and supplemental cost questionnaire responses. For the preliminary results of review, we revised the COP information submitted by POSCO as follows: We reclassified net gains and losses on the valuation and disposition of marketable securities as financing expense, and we reclassified the reversal of an allowance for doubtful accounts as an indirect selling expense. *See POSCO Prelim Analysis Memo* and *POSCO Verification Report*.

We made no changes to the COP information provided by DMC to conduct the cost test.

B. Test of Home Market Prices

On a product-specific basis, we compared the weighted-average COP for POSCO and DMC, adjusted where appropriate, to their home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) Within an extended period of time, in substantial quantities; and (2) at prices which did not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product within an extended period of time are at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the extended period were at prices less than the COP, we determined such sales to have been made in "substantial quantities" pursuant to section 773(b)(2)(C)(i) within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. As a result, we disregarded such below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. Based on this test, we disregarded below-cost sales from our analysis for POSCO and DMC. For those sales of subject merchandise for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated POSCO's and DMC's constructed value ("CV") based on the sum of their cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COPs included in the calculation of CV as noted above in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by POSCO and DMC in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. For CV, we made the same adjustments described in the COP section above.

Price-to-Price Comparisons

POSCO

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight from plant to distribution warehouse, warehousing expense, and inland freight from plant/distribution warehouse to customer) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit, warranty expense and interest revenue, where appropriate in accordance with section 773(a)(6)(C). In

accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Also, on certain sales, we added to NV an amount for duty drawback. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with 773(1)(B)(i), we based NV on CV.

We did not make any adjustments to POSCO's reported home market sales data in the calculation of NV.

DMC

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We calculated NV based on the home market prices to both affiliated and unaffiliated home market customers. Because all of DMC's home market sales were made on an ex-factory basis, we made no adjustments for inland freight from the plant or distribution warehouse to the customer in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with 773(1)(B)(i), we based NV on CV.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find a home market match of identical or similar merchandise. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. Where applicable, we make adjustments to CV in accordance with section 773(a)(8) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this administrative review, we obtained information from POSCO and DMC about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by POSCO and DMC for each channel of distribution. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities should be dissimilar.

In the present review, neither POSCO nor DMC requested a LOT adjustment. To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer; and selling expenses.

POSCO

In the present review, POSCO did not request a LOT adjustment. However, because POSCO claims that the adjustment for the function of the U.S. operation would result in a U.S. level of trade that is less advanced than the home market level of trade, POSCO claims that a CEP offset is required. To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses.

In both the U.S. and home markets, POSCO reported one level of trade. *See* POSCO's October 3, 2001, Section A response, at A–9 through A–13. POSCO sold through two channels of distribution in the home market: (1) directly from its mill to all customers in the home market: end users, domestic trading companies and service centers; and (2) POSCO sold a limited quantity of overrun and secondary merchandise through the internet. POSCO sold through one channel distribution in the U.S. market: through POSAM to unaffiliated trading companies.

For sales in home market channel one, POSCO performed all sales-related activities, including arranging for freight and delivery; providing computerized accounting and sales systems; market research; warranty; sales negotiation; after-sales service; quality control; and extending credit. POSCO's home market sales in channel 1 were produced to order. The same selling functions were performed in home market channel two; however, all internet sales were made from inventory. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the home market.

For all U.S. sales made through POSAM, POSCO determined the price and terms of sale and performed all sales-related activities (with the exception of extending credit and invoicing the customers). Since all sales in the United States are made through a single channel of distribution, we preliminarily determine that there is one LOT in the U.S. market.

In comparing POSCO's home market and U.S. market sales, it appears that POSCO's offered many of the same selling functions in both markets, including: negotiating prices; meeting with customers; providing inventory; personnel management and training; technical advice; providing computerized accounting and sales

systems; engineering services; research and development and technical programs; procurement services; and quality control. Accordingly, we preliminarily determine that there is not a significant difference in the selling functions performed in the home market and U.S. market and that these sales are made at the same LOT. Consequently, we preliminarily determine that a LOT adjustment or CEP offset is not warranted in this case.

DMC

In the present review, DMC made no claims that a LOT adjustment was appropriate. To determine whether an adjustment is necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

In both the U.S. and home markets, DMC reported one level of trade. *See* DMC's October 3, 2001, Section A response, at A–8 through A–11. DMC sold through two channels of distribution in the home market: (1) Directly from its mill to affiliated and unaffiliated manufacturers; and (2) directly from its mill to unaffiliated distributors. DMC sold through two channels of distribution in the U.S. market: (1) Through OMC to unaffiliated customers in the United States; and (2) through OMC for further manufacturing into stainless steel pipe, which is not covered by the order.

For sales in the home market to either end-users or distributors, DMC's selling activities consisted of receiving and processing customers' orders, arranging freight and delivery for small customers and delivery services for customers purchasing large quantities, and inventory maintenance for small distributors. Because DMC's selling activities did not vary by channels of distribution, we preliminarily determine that there is one LOT in the home market.

In the U.S. market, DMC sold all of its merchandise through its's U.S. subsidiary, OMC. Consequently, DMC claimed that OMC performed the requisite selling activities, such as the negotiation of sales terms, maintenance and collection of accounts receivable, evaluation of customer credit, importation of subject merchandise and delivery of the merchandise to the unaffiliated customer. For the U.S. market, DMC's selling functions are limited to freight and delivery arrangements, which did not vary by customer type. Therefore, we preliminarily determine that there is one LOT in the U.S. market. For these CEP sales, we determined that fewer and different selling functions were performed for CEP sales to OMC than for sales at the home market LOT. We found sales at the home market LOT were at a more advanced stage of distribution (to end users) compared to the CEP sales.

We attempted to examine whether the difference in LOTs affects price comparability. However, we were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that there is only one LOT in the home market. Because of this, we were unable to calculate a LOT adjustment, as we found the LOT in the home market did not match the LOT of the CEP transactions. Therefore, because the NV is established at a more advanced level of trade than the LOT of the CEP transactions, we adjusted NV under section 773(a)(7)(B) of the Act (the CEP offset provision). Because of this, we did not calculate a LOT adjustment. Instead, a CEP offset was applied to the NV-CEP comparison.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of our administrative review, we preliminarily determine that the following weighted-average dumping margin exists for the period July 1, 2000, through June 30, 2001:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM KOREA

Manufacturer/exporter/reseller	Margin (percent)
POSCO	1.01
DMC	5.42

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs and comments must be served on interested parties in accordance with 19 CFR 351.303(f). Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to Section 751(a)(3)(A) of the Act.

Assessment

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department has calculated an assessment rate applicable to all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value, or entered quantity, as appropriate, of the examined sales for that importer. Upon completion of this review, where the assessment rate is above *de minimis*, we will instruct the U.S. Customs Service to assess duties on

all entries of subject merchandise by that importer.

Cash Deposit

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 2.49 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19992 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: In response to requests from domestic interested parties, ThyssenKrupp Acciai Speciali Terni S.p.A. ("TKAST")[1], a producer and exporter of subject merchandise, and ThyssenKrupp AST USA, Inc. ("TKAST USA"), an importer of subject merchandise, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils ("SSSS") from Italy. This review covers imports of subject merchandise from TKAST. The period of review ("POR") is July 1, 2000 through June 30, 2001.

The Department preliminary determines that SSSS from Italy has been sold in the United States at less than normal value during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service ("Customs") to assess antidumping duties equal to the difference between export price and normal value.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Robert A. Bolling at 202–482–3434, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. part 351 (2001).

Background

On July 2, 2001, the Department published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils ("SSSS") from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910 (July 2, 2001). On July 31, 2001, domestic industry parties from the original investigation ("petitioners"), TKAST and TKAST USA requested that the Department conduct an administrative review of the antidumping duty order. On August 20, 2001, the Department initiated an administrative review of the antidumping duty order on SSSS from Italy with regard to TKAST. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001).

On August 31, 2001, the Department issued an antidumping duty questionnaire to TKAST. On September 21, 2001, TKAST submitted its response to Section A of the questionnaire. On November 5, 2001, TKAST submitted its responses to Sections A through E of the questionnaire. On November 19, 2001, TKAST submitted its cost reconciliation to the Department. On December 21, 2001, petitioners submitted comments on TKAST's Sections A through C responses, which included concerns regarding TKAST's reported insurance revenues, indirect selling expenses, and export price sales. On January 31, 2002, petitioners submitted comments on TKAST's cost reconciliation, and TKAST's Sections D and E responses, which included concerns regarding tying the Section D cost data to TKAST's financial statements, the use of fiscal year 2000 data in reporting costs.

[1] On January 18, 2002 Acciai Speciali Terni S.p.A.'s shareholders voted to change the company's name to ThyssenKrupp Acciai Speciali Terni S.p.A. On February 27, 2002, Acciai Speciali Terni USA, Inc. became ThyssenKrupp AST USA, Inc. Throughout most of the responses, the companies refer to themselves as TKAST and TKAST USA, respectively.

and supporting documentation on further manufacturing costs.

On March 14, 2002, the Department issued a supplemental questionnaire to Sections A through C. On March 22, 2002, TKAST submitted a letter to the Department asking that the Department reconsider its request that TKAST report downstream home market sales from certain Italian affiliate(s). On March 27, 2002, the Department denied TKAST's request and reiterated to TKAST that, pursuant to section 351.403(d) of the Department's regulations, TKAST was required to report all downstream sales for these Italian affiliate(s). On April 2, 2002, the Department issued a supplemental questionnaire to Sections D and E. On April 8, 2002, TKAST submitted its Section A supplemental response. On April 15, 2002, TKAST submitted its Section B supplemental response. On April 22, 2002, TKAST submitted its Section C supplemental response. On April 30, 2002, TKAST submitted its Sections D and E supplemental responses. On May 1, 2002, petitioners submitted additional comments on TKAST's reported insurance revenue.

On May 13, 2002, the Department issued a second supplemental questionnaire to Sections A through C. Also on May 13, 2002, TKAST submitted downstream sales information for certain Italian affiliate(s). On May 24, 2002, TKAST submitted its Sections A through C second supplemental responses. On May 30, 2002, TKAST submitted its sales reconciliation information.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On February 26, 2002, the Department extended the time limit for the preliminary results in this administrative review by ninety days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy*, 67 FR 9960 (March 5, 2002). On May 3, 2002, the Department extended the time limit for the preliminary results in this administrative review another twenty-five days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy*, 67 FR 32015 (May 13, 2002). On July 26, 2002, the Department extended the time limit for the preliminary results in this administrative review another five days.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Period of Review

The POR is July 1, 2000 through June 30, 2001.

Verification

On December 21, 2001, petitioners requested that the Department conduct a verification in this administrative review. *See* petitioners' letter to the Department, at 53 (December 21, 2001). As provided in section 782(i) of the Act, the Department conducted a sales verification of the information provided by TKAST, from June 10, 2002 through June 14, 2002, using standard verification procedures, including an examination of relevant sales, cost, financial records, and a selection of relevant original documentation. Our verification results are outlined in the Report on the Sales Verification of ThyssenKrupp Acciai Speciali Terni S.p.A. (July 11, 2002) ("*Verification Report*"), a public version of which is available on file in the Central Records Unit, room B–099 of the Herbert C. Hoover Department of Commerce building, 1401 Constitution Avenue, N.W., Washington, D.C.

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTS") at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[2] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of this review. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo."[7] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5"[8] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[9]

Product Comparisons

In accordance with section 771(16) of the Act, we considered all SSSS products covered by the "Scope of the Review" section of this notice, *supra*, which were produced and sold by TKAST in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of SSSS products. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): (1) Grade; (2) hot/cold rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. For the grade product characteristic, TKAST reported additional grades which were specifically permitted by the Department's questionnaire. *See* Analysis Memorandum for ThyssenKrupp Acciai Speciali Terni S.p.A.: Preliminary Results of the 2000–2001 Administrative Review of Stainless Steel Sheet and Strip in Coils from Italy (July 26, 2002) ("*Analysis Memo*"). Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Export Price/Constructed Export Price

In accordance with section 772(a) of the Act, export price ("EP") is the price at which the subject merchandise is first

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] "GIN4 Mo" is the proprietary grade of Hitachi Metals America, Ltd.

[8] "GIN5" is the proprietary grade of Hitachi Metals America, Ltd.

[9] "GIN6" is the proprietary grade of Hitachi Metals America, Ltd.

sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, constructed export price ("CEP") is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this review, TKAST originally classified its U.S. sales as EP and CEP sales. *See* Section A supplemental response at Exhibit A–32. TKAST also argued that it is entitled to a CEP offset with respect to its CEP sales in the United States. See Section A response at A–21. For further discussion on CEP offset, see the "Level of Trade" section, *infra*. TKAST later reclassified its EP sales as CEP sales, pursuant to Departmental request. *See* Section C supplemental response at 3. Based on the information on the record, we preliminarily find that all of TKAST's U.S. sales are appropriately classified as CEP sales.

TKAST reported that it sold the subject merchandise in the United States through three channels (*i.e.*, Channels one, two and three). Channel two sales are made from the inventory of TKAST's U.S. based affiliated reseller, TKAST USA. Channel three sales involve subject merchandise that is sold by TKAST USA to an affiliated U.S. reseller (*i.e.*, Ken-Mac), who may or may not further manufacture the merchandise before reselling it to an unaffiliated customer. Therefore, because sales in channels two and three are sold from the inventory of TKAST's U.S. affiliated resellers, it is appropriate to classify these sales as CEP sales.

With respect to channel one sales, TKAST reported that these sales are shipped directly from the factory in Italy to the U.S. customer. However, TKAST USA serves as the principal point of contact for the U.S. customer. For channel one sales, customers place their orders with TKAST USA, which then places an order with TKAST. Upon confirmation from TKAST, TKAST USA separately issues an invoice to the customer. TKAST USA is solely responsible for collecting payment from the U.S. customer, and separately responsible for paying TKAST for the merchandise. TKAST USA separately invoiced and received payment from those customers. Accordingly, the Department preliminarily determines that TKAST's channel one sales were made "in the United States" within the meaning of section 772(b) of the Act and should be treated as CEP transactions, consistent with *AK Steel Corp.* v. *United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000).

We calculated CEP in accordance with section 772(b) of the Act. We based CEP on the packed, CIF or FOB prices to the first unaffiliated customer in the U.S. market. We made adjustments to the starting price for billing adjustments and the alloy surcharge, where applicable. Where appropriate, we made deductions from the starting price for credit, repacking, skid charges, and Ken-Mac commissions. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: international freight, U.S. inland freight from warehouse/plant to the unaffiliated customer, Ken-Mac's U.S. inland freight from warehouse/plant to the unaffiliated customer, Ken-Mac warehousing expense, other U.S. transportation expense, U.S. Customs duties, and freight equalization charges. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including technical services expenses, inventory carrying costs, and other indirect selling expenses. We recalculated the insurance revenue factor based on subject merchandise only. *See Analysis Memo* and *Verification Report*.

For products that were further manufactured after importation, we adjusted for all costs of further manufacturing in the United States in accordance with section 772(d)(2) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

After testing home market viability, we calculated NV as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

1. *Home Market Viability*

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value ("NV") (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared TKAST's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because TKAST's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that sales in the home market provide a viable basis for calculating NV. We therefore based NV on home market sales to unaffiliated purchasers and to those affiliated customer sales which passed the arm's length test, as discussed in the "Arm's Length Test" section of this notice, *infra*, made in the usual commercial quantities and in the ordinary course of trade.

Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Italy, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade ("LOT") as the constructed export price ("CEP") or NV sales, as appropriate. After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-Constructed Value ("CV") Comparisons" sections of this notice.

Arm's Length Test

During the POR, TKAST reported that it made sales of subject merchandise in the home market to affiliated customers (resellers and end-users). If any sales to affiliated customers in the home market were not made at arm's length prices, we excluded them from our analysis because we considered them to be outside the ordinary course of trade. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers, net of all billing adjustments, rebates, movement charges, direct selling expenses, and home market packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determine that

sales made to the affiliated party were at arm's-length. *See* 19 CFR 351.403(c); *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27355 (May 19, 1997). In our home market NV calculation, we have included TKAST's sales to certain of its affiliated customers because these entities passed the Department's arm's length test criteria. Conversely, certain other affiliated customers did not pass the arm's length test and have therefore been excluded from our home market NV calculation. For a further discussion of home market sales made by TKAST to affiliated resellers who failed the arm's length test, please see the "Facts Available" section below.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Where appropriate, we deducted early payment discounts, rebates, credit expenses, warranty expenses, and inland freight. We also adjusted the starting price for billing adjustments and the alloy surcharge. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Finally, in accordance with section 773(b)(1) of the Act, where there were no usable contemporaneous matches to a U.S. sale observation, we based NV on CV.

We have recalculated certain billing adjustments to be early payment discounts because it appears that early payment discounts were applicable only on certain home market sales during the POR. When a certain payment term code was reported and a billing adjustment was applied, the Department has recategorized the billing adjustment as an early payment discount in those instances. *See Analysis Memo.* Additionally, we have disallowed TKAST's home market insurance revenue adjustment. At verification, the Department discovered that TKAST could have reported home market insurance revenue on a sales specific basis and should not have allocated this adjustment over the entire home market database. *See Analysis Memo* and *Verification Report*. Also, we have recalculated TKAST's inventory carrying costs to include the alloy surcharge in the gross unit price and a new average inventory days. At verification, we discovered that TKAST's average days in inventory did not include fiscal year 2001. *See Analysis Memo* and *Verification Report.*

For reasons discussed below in the "Level of Trade" section, we have not granted TKAST a CEP offset.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses ("SG&A"), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Italy. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses.

2. Cost of Production

In the original investigation, the Department determined that TKAST made sales in the home market at prices below the cost of production ("COP") and, therefore, excluded such sales from NV. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30754–55 (June 8, 1999). Accordingly, the Department had reasonable grounds to believe or suspect that TKAST made sales in the home market at prices below the COP for this POR. *See* section 773(b)(2)(A)(ii) of the Act. As a result, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by TKAST.

A. Calculation of the COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of TKAST's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A"), interest expenses, and packing costs. We relied on the COP data submitted by TKAST in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to TKAST's submitted costs.

B. Test of Home Market Prices

We compared the weighted-average COP for TKAST to its home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of TKAST's sales of a given product were, within an extended period of time, at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of TKAST's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2)(B) of the Act. In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated constructed value ("CV") based on the sum of TKAST's cost of materials, fabrication, SG&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. As noted in the "Calculation of the COP" section, *supra*, we made no adjustments to TKAST's reported cost. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by TKAST in

connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, the LOT the level of the constructed sale from the exporter to the affiliated importer. *See* 19 C.F.R. 351.412(c)(1). As noted in the "Export Price/Constructed Export Price" section, *supra*, , we preliminarily find that all of TKAST's U.S. sales are appropriately classified as CEP sales.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stage of marketing. *See* 19 C.F.R. 351.412(c)(2). If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In the present administrative review, TKAST requested a CEP offset. To determine whether a CEP offset was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Italian markets, including the selling functions, classes of customer, and selling expenses.

TKAST reported one LOT in the home market, with two channels of distribution: (1) direct factory sales to end-users, manufacturers, service centers and distributors; and (2) warehouse sales to end-users, service centers and distributors. TKAST performed the same selling functions for sales in both home market channels of distribution, including production guidance, price negotiations, sales calls and services, arranging for freight and delivery, technical assistance and general selling activities. The only differences are that in warehouse sales TKAST initiates the sale (whereas direct sales are initiated by either party) by distributing a "Pronto" list of available inventory to potential customers, and warehouse sales typically carry no guarantee or warranty. Accordingly, because these selling functions are substantially similar for both channels of distribution, we preliminarily determine that there is one LOT in the home market.

TKAST reported two LOTs in the U.S. market, with three channels of distribution: (1) Direct factory sales through TKAST USA to end-users and service centers; (2) warehouse sales from the inventory of TKAST USA to end-users and service centers; and (3) sales from the mill through TKAST USA to Ken-Mac, its affiliated U.S. further manufacturer/reseller, which then sells to unaffiliated customers. TKAST performed many of the same selling functions for sales in all three U.S. market channels of distribution, including approaching the customer in conjunction with TKAST USA, processing TKAST USA inquiries and purchase orders, offering production and pricing guidance, invoicing TKAST USA, arranging for freight and delivery to the U.S. port, and general selling activities. Accordingly, because these selling functions are substantially similar for the three channels of distribution, we preliminarily determine that there is one LOT in the U.S. market.

In comparing TKAST's home market and U.S. market sales, it appears that TKAST offered many of the same selling functions in both market, including production and pricing guidance, invoicing, arranging for freight and delivery, technical service and other general selling activities. Accordingly, we preliminarily determine that sales in the home market and in the U.S. market were made at the same LOT and have not granted a CEP offset.

Facts Available

We preliminarily determine that the use of facts available is appropriate for one element of TKAST's dumping margin calculation. Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Consistent with section 776(a)(2)(A)(B) and (C) of the Act, we preliminarily determine that use of facts available is warranted for home market sales made to certain affiliated resellers who failed the arm's length test. The Department's original August 31, 2001, section B questionnaire requests that TKAST "report only the resales by the affiliated reseller to unaffiliated customers." The Department further requested in the August 31, 2001 section A questionnaire that TKAST exclude its "sales to affiliated resellers" and instead report the "resales by the affiliates to unaffiliated customers." On March 14, 2002, the Department further stated that TKAST must report the downstream sales of the affiliates with whom its sales were not on an arm's length basis.

On September 21, 2001, TKAST submitted a letter to the Department which stated that it did not intend to submit home market sales data by the customer that it claimed failed the arm's length test because.it accounted for only a portion of TKAST's total home market sales during the POR. TKAST further stated that TKAST did not have access to the sales and other data for companies that are not majority owned by it and could not compel such companies to provide such information. On November 5, 2001, TKAST stated that it had only reported the "home market sales to, rather than downstream sales by, its affiliated resellers of the foreign like product in the home market." Regarding those affiliates to whom TKAST maintained that it sold on an arm's length basis, TKAST stated that their downstream sales would not be used by the Department for matching purposes in any event. It further stated that "such sales are not necessary to the Department's analysis because home market sales of the same or similar products to unaffiliated companies

provide ample matches" to TKAST's U.S. sales. On March 21, 2002, TKAST submitted a letter in which it requested that the Department not require the reporting of downstream sales by a certain affiliate of TKAST.

On March 27, 2002, the Department denied this request in a letter to TKAST. The Department stated the following:

As stated in the Department's original questionnaire, dated August 31, 2001, at G–6: You must report all your sales to affiliated customers. If the Department determines that your sales to affiliated customers are at arm's length, the Department will use these sales in its analysis. For sales to affiliated resellers, you must report the sales from the affiliated resellers to the unaffiliated customers. However, if sales to all affiliated customers constitute less than 5% of your total sales in the foreign market, or if you are unable to collect information on such resales, please notify the official in charge in writing immediately so that the Department may consider a possible exemption.

In your September 21, 2001 section A response, at A–3, you failed to show that sales to all affiliated customers constituted less than 5% of your total sales in the foreign market, nor did you indicate you were unable to collect information on resales by the affiliate, although you recognized that sales to this affiliate failed the arm's length test. Accordingly, the Department restated in its Supp. A-C questionnaire, at question 3, that pursuant to section 351.403(d):

As the table on your affiliates' percentage of sales (at A–30) indicates that your sales to *all* affiliated parties do not account for less than five percent of the total sales, you must report the downstream home market sales by {the affiliate} and revise your database accordingly.

Please note that if you fail to provide accurately the information requested within the time provided, the Department may be required to base its findings on the facts available. If you fail to cooperate with the Department by not acting to the best of your ability to comply with a request for information, the Department may use information that is adverse to your interest in conducting its analysis.

Accordingly, the Department is requiring that AST report the downstream sales of the aforementioned affiliate. However, we are granting AST an extension of time in which to report the affiliate's downstream sales until c.o.b. April 29, 2002. If you are unable to collect the requested information on the affiliates resales, please notify the official in charge in writing immediately. We note that failure to provide the requested information may require us to use information that is based on facts available. Moreover, should the Department find that you failed to cooperate by not acting to your best of your ability, we may use information that is based on adverse facts available.

On May 1, 2002, in response to TKAST's request of April 29, 2002, the Department further extended the deadline for the reporting of downstream sales to May 13, 2002.

On May 13, 2002, TKAST provided a limited amount of downstream sales information. TKAST maintained in this submission that the information it provided was the best that it was able to extract and that it was not in a "position to compel the companies to comply with requests for information."

TKAST failed to provide its downstream sales made by certain affiliated resellers as requested by the Department in its August 31, 2001, and March 14 and 27, 2002, original questionnaire and supplemental questionnaires, respectively, in a format that is usable by the Department. Therefore, consistent with section 776(a)(2)(A)(B) and (C) of the Act, TKAST withheld information that had been requested by the Department, failed to provide such information in a timely manner or in the form or manner requested, and significantly impeded the determination under the antidumping statute, justifying the use facts otherwise available in reaching the applicable determination. Therefore, we preliminarily determine that use of facts available is warranted for home market sales made to certain affiliated resellers who failed the arm's length test.

For these preliminary results, the Department has disregarded all affiliated resellers sales that failed the arm's length test, and has used the remaining home market sales in its margin calculation.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the POR:

Producer/Manufacturer/ Exporter	Weighted-Average Margin
ThyssenKrupp ..... Acciai Speciali Terni S.p.A.	3.49%

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties to this proceeding the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.

Pursuant to 19 CFR 351.309, interested parties may submit written comments and/or case briefs on these preliminary results. Comments and case briefs must be submitted no later than thirty days after the date of publication of this notice. Rebuttal comments and briefs must be limited to issues raised in the case briefs and comments, and must be submitted no later than five days after time limit for filing case briefs and comments. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs and comments must be served on interested parties in accordance with 19 CFR 351.303(f). Also, within thirty days of the date of publication of this notice, an interested party may request a public hearing on the arguments to be raised in the case and rebuttal briefs and comments. *See* 19 CFR 351.310(c). Unless otherwise specified, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any case and rebuttal briefs and comments, within 120 days of publication of these preliminary results.

Assessment

Upon issuance of the final results of this administrative review, the Department shall determine, and the U.S. Customs Service ("Customs") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We calculated importer-specific duty assessment rates by dividing the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. If these preliminary results are adopted in our final results, we will direct Customs not to assess antidumping duties on the merchandise subject to review. Upon completion of this review, the Department will issue appraisement instructions directly to Customs.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except that no deposit will be required if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, a prior review, or the original LTFV investigation, the cash deposit rate will continue to be the "all others" rate of 11.23 percent, which is the all others rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 40567 (July 27, 1999). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this administrative review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19993 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Notice of Availability of Revised Draft Restoration Plan and Environmental Assessment for the Applied Environmental Services (Shore Realty) Superfund Site

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce

ACTION: Notice of availability; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), of the U.S. Department of Commerce, hereby gives notice of the availability of the Revised Draft Restoration Plan and Environmental Assessment for the Applied Environmental Services (Shore Realty) Superfund Site for public review. NOAA, the U.S. Fish and Wildlife Service (USFWS), of the U.S. Department of the Interior (DOI), and the State of New York (New York), share trusteeship authority over natural resources adversely affected by releases of hazardous substances from the Shore Realty Superfund Site (the Site) and are collectively referred to as the Natural Resource Trustees (the Trustees) for the Site. NOAA, the lead administrative Trustee, in consultation with the USFWS and New York, prepared this Revised Draft Restoration Plan and Environmental Assessment (Revised Draft RP/EA).

The original Draft RP/EA was published in the **Federal Register** on November 9, 2001 and a 30-day public notice and comment period was provided. See **Federal Register**, Volume 66, Number 218. No public comments were received. The primary difference between this Revised Draft RP/EA and the original Draft RP/EA is that the Trustees now propose to use all or part of an additional $50,000 in natural resources damages which was paid to the Federal Trustees by the Performing Parties Group (an entity composed of cooperating past and current owners, operators and generators who share liability for the releases from the Site, hereinafter referred to as "the PPG"), and set it aside to be used for off-site, compensatory restoration, to supplement the preferred restoration alternative—the North Hempstead Bar Beach Lagoon Project.

The public is invited to submit written comments on this Revised Draft RP/EA to the Trustees. Any and all written comments received on or before August 22, 2002 will be considered. The Trustees will respond to any comments received through revision of this Revised Draft RP/EA, incorporation into the Final Restoration Plan, or by letter to the commentor, after the close of the comment period. The Final Restoration Plan will then be published.

DATES: The Trustees will accept written comments on the Revised Draft Restoration Plan and Environmental Assessment through August 22, 2002.

ADDRESSES: A copy of this Revised Draft Restoration Plan and Environmental Assessment is available for review during office hours at the following locations: (1) Michelle Schimel, Town Clerk, Town of North Hempstead, 200 Plandome Road, Manhassett, NY 11030 (516–869–7646); (2) EPA Administrative Records Office, 290 Broadway, 18th Floor, New York, NY 10007 (212–637–4308); (3) Bryant Library, 2 Paper Mill Road, Roslyn, NY (516–621–2240); (4) Port Washington Library, Manorhaven Blvd., Port Washington (515–883–4400); (5) Lisa Holst, Long Island Sound Study Habitat Restoration, NYSDEC Bureau of Marine Resources, 205 North Belle Meade Road, Suite 1, East Setauket, NY (631–444–0469); (6) Steve Sanford , NYSDEC, Division of Fish, Wildlife, and Marine Resources, 625 Broadway, Albany, NY (518–402–8997). It is also available on NOAA's web page (*http://response.restoration.noaa.gov/cpr/library/publications.html*) or through a link on USFWS's web page (*http://contaminants.fws.gov/Issues/Restoration.cfm*). NOAA will accept written comments addressed to: Lisa Rosman, NOAA/CPRD, via fax to 212–637–4207 or email at *lisa.rosman@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Lisa Rosman, NOAA Coastal Resource Coordinator, at 212–637–3259.

SUPPLEMENTARY INFORMATION:

I. Background

The Applied Environmental Services Superfund Site (the Site), also known as the Shore Realty Superfund Site, is a 3.2 acre area located in Glenwood Landing, Nassau County, New York. Part of the Site is a peninsula surrounded by the waters of Motts Cove and Hempstead Harbor, located off of Long Island Sound. The Site was first used to store petroleum products in 1939. Subsequently, the Site was used for the distribution and storage of chemical solvents and the operation of a hazardous waste facility. Beginning in 1974, numerous organic chemical spills were reported to have occurred, including a 1978 spill of about 3,000 gallons of toluene. Several hazardous substances and materials, as defined by the U.S. Environmental Protection Agency (USEPA), and listed at 40 CFR 302.4, in accordance with Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), contaminated the soil, groundwater, surface water, sediment, and air of the Site, including toluene, xylene, ethylbenzene, naphthalene, phthalates, and polychlorinated biphenlys (PCBs). *See*, 40 CFR 302.4. and 42 U.S.C. 9602. In accordance with Section 105 of CERCLA, the USEPA placed the Site on the National Priorities List in June, 1986. *See* 42 U.S.C. 9605(8)(B) and 40 CFR 300, Appendix B.

In 1991, the USEPA issued a Record of Decision (ROD) for the Site. The selected remedy for the site included: active venting, by vacuum extraction, of contaminated soils; collection of contaminated groundwater and treatment by air-stripping; re-injection of treated groundwater, nutrients, and a chemical source of oxygen, to stimulate natural remediation of groundwater and saturated soils; and treatment of contaminant-laden vapors. The treatment plant has been operating since July of 1995 and will continue operation until site sampling data and analysis show that the performance standards set forth in the ROD are met. The performance standards include: reduction of concentrations of benzene, methylene chloride, and organic contaminants in soils to conformity with applicable state and Federal standards; reduction of contaminants in groundwater to levels equal to or less than the groundwater standards for the State of New York; indirect remediation of Site sediments by treating contamination in other Site media (soils and groundwater) which serve as the source of contaminants to the sediments; elimination of exceedance of ambient air standards over the mudflats of the Site; and elimination of sheen on surface waters to comply with applicable surface water standards.

Under CERCLA, owners and operators of facilities where hazardous wastes were located, and those who generated or transported the hazardous substances, are liable for response costs and damages for "injury to, destruction of, or loss of natural resources," including the reasonable costs of assessing those natural resource damages (42 U.S.C. 9607(a)). The President of the United States, and the Governor of each state whose resources have been affected by releases from a Site, have the authority to "act on behalf of the public as trustees of such natural resources to recover such damages." (*See* 42 U.S.C. 9607(F)(1).) In accordance with CERCLA, the President delegated this Trustee authority to the U.S. Department of Commerce (DOC), and the U.S. Department of the Interior (DOI) (42 U.S.C. 9607(f)(2)). The Secretary of Commerce delegated DOC Trustee authority to the National Oceanic and Atmospheric Administration (NOAA). The Secretary of the Interior delegated DOI Trustee authority to the U.S. Fish and Wildlife Service (USFWS).

The Site is located in Glenwood Landing, Nassau County, New York. Therefore, the Federal Trustees, NOAA and the USFWS, share Trustee authority with the State of New York. The Governor of New York delegated Trustee authority to the New York State Department of Environmental Conservation (NYSDEC).

NYSDEC, NOAA, and the USFWS cooperatively serve as the Natural Resource Trustees (the Trustees) for the natural resources affected by releases of hazardous substances at, or from, the Site. The Trustees are responsible for recovering damages for "injury to, loss of, or destruction of natural resources." (*See* 42 U.S.C. 9607 (f)(1).) The Trustees must use any recovered funds to "restore, replace, or acquire the equivalent of " the natural resources that have been injured by a release of a hazardous substance (42 U.S.C. 9607 (f)(1)). Approximately 2 to 3 acres of mudflat and saltmarsh cordgrass (Spartina alterniflora) were severely impacted as a result of hazardous releases at and from the Site. The Trustees are in the process of selecting a restoration project to address natural resource injuries and ecological service losses which resulted from the release of hazardous substances from the Site.

In 1992, the United States, the State of New York, and the Performing Parties Group (an entity composed of cooperating past and current owners, operators and generators who share liability for the releases from the Site, hereinafter referred to as "the PPG") entered into a Consent Judgment settling the liability of the responsible parties under CERCLA for response costs, natural resource damages, and the costs of assessing those damages related to the Site.

Section X of the 1992 Consent Judgment specifically requires the PPG to restore saltmarsh in the mudflats to the east and south of the Site, in Hempstead Harbor and Motts Cove, after it is determined that " * * * discharges to the shoreline and mud flats adjacent to the Site have been sufficiently abated by the remedial program." The Consent Judgment specifies that the PPG must plant saltmarsh grasses (*e.g.*, Spartina alterniflora, S. patens, and/or Distichlis spicata) in these areas and may also need to regrade the sediments. If the initial plantings are unsuccessful, the PPG would be required to plant more halophytic grasses to ensure that the vegetation is sustainable and able to support biota, including marine and/or estuarine fish and invertebrate species. However, the Consent Judgment does not require the PPG to physically alter the mudflats (*e.g.*, alter the elevation) to achieve optimal survival of the saltmarsh grasses over the broadest area. The PPG's monetary liability for performance of the on-site restoration is limited to $50,000. The PPG is also required to remit to the Trustees the sum of $60,000 for "the design and implementation of a post-planting monitoring program," to determine the functional success of the wetlands restoration.

The Trustees have determined, and the PPG agrees, that the restoration actions due to be implemented in areas of the Hempstead Harbor inlet and Motts Cove adjacent to the Site, should be relocated off-Site. The parties have concerns regarding the potential success of on-site restoration, which are unrelated to historical releases of hazardous substances from the Site.

Two major factors have led to this determination. First, there are a number of nearby sources of pollution and debris that impact the original on-site restoration areas. Storm water runoff, from storm water culverts draining the adjacent county road and upgradient areas east of the Site, directly impacts the Hempstead Harbor inlet (the inlet) and Motts Cove. The inlet is a natural

collection point for trash and other floating debris in the Harbor. The inlet is not protected from wave action caused by marine traffic and storm events, and is also vulnerable to erosion events. The Motts Cove marsh area is adjacent to a boat marina, and is also a natural collection point for trash and other debris of various sizes, some of which is not readily removable (*e.g.*, large concrete-based dock). The inlet and Motts Cove are subject to trespassing and potential incidental dumping. Second, and of greatest concern to the Trustees and the PPG, the current water levels in the areas of Hempstead Harbor and Motts Cove adjoining the Site do not provide optimum conditions for the long-term survival of a saltmarsh community. Water depths on the Hempstead Harbor side (in the inlet) exceed those required for successful growth of Spartina for a substantial part of the area originally set aside for restoration. All of these factors would reduce the efficacy and acreage of S. alterniflora marsh ultimately restored in the areas. Likewise, the ecological services provided from such a restoration would be less than, or substantially different from, those originally envisioned.

Therefore, the Trustees have decided to seek an alternate restoration project/location to ensure that natural resources and the ecological services they provide are satisfactorily restored. This decision was made for the reasons discussed above, the restrictions set forth in Paragraph X.1. of the Consent Judgment, and the added costs to implement the activities (*i.e.*, debris removal, excavation, fill to grade etc.) that would be required for successful on-Site restoration, but are not required under the terms of the original Consent Judgment. As noted above, under the terms of the 1992 Consent Judgment, the PPG is not required to alter the elevation of the mudflats in order to make the area more suitable for salt marsh grasses, and the costs of altering the elevation would far exceed the PPG's $50,000 liability limit.

In lieu of conducting the restoration actions called for in the Consent Judgment, the Trustees and the PPG have explored other restoration options available in the vicinity of the Site. These options have a high probability of success and would produce ecological benefits at least equivalent to those derived from the restoration project presently required in the Consent Judgment. The PPG has indicated its desire to perform an alternative off-Site project for a cost not to exceed $50,000 (the PPG's maximum liability as specified in the original Consent Judgment). In addition, the PPG participated in the identification and review of potential restoration alternatives, and has agreed to fund the designs costs for the preferred restoration project. The PPG has also agreed to replace a deteriorating bulkhead at the site in order to further remediation efforts.

II. Explanation for a Revised Draft Restoration Plan/Environmental Assessment

The Trustees released a Draft Restoration Plan/Environmental Assessment for the Applied Environmental Services (aka Shore Realty) Site in June 2001. The project and document availability were announced in the **Federal Register** Vol. 66, No. 218, Nov 9, 2001. No comments were received. This Revised Draft RP/EA primarily differs from the June 2001 version in that the Trustees would like to use all or part of the $50,000 natural resource damage settlement paid to the Federal Trustees for an off-Site enhancement project at the preferred restoration project location. It also reflects the subsequent availability of a draft design document and a draft monitoring plan. Sections updated include site selection, project design, project monitoring and Coastal Zone Management Act.

III. Restoration Alternatives Considered and the Preferred Restoration Project Selected by the Natural Resource Trustees

The Trustees identified three desired characteristics for potential projects: (1) the habitat proposed to be restored must be similar in type to the habitat that was impacted, and potentially provide similar service; (2) the project must be in the same watershed as the impacted wetland; and, (3) the project must provide long-term or perpetual benefits to the impacted resources, including fish and wildlife. Thirteen alternative restoration proposals were considered, including: a No Action alternative, the on-Site, in-kind Restoration specified in the 1992 Consent Judgment, and eleven off-Site, in-kind projects. The Trustees comparatively evaluated each of the proposed alternatives based on seven additional selection criteria: effectiveness, protectiveness, technical feasibility, cross-benefits, collateral effects, consistency, and cost considerations. Details of the alternative analysis can be found in Section 2.2.2.2. of the Draft Restoration Plan and Environmental Assessment.

Below is a description of the preferred restoration alternative selected by the Trustees: the North Hempstead Bar Beach Lagoon Project. If this proposed project becomes final, the Trustees and the PPG will modify the 1992 Consent Judgment to specify that this off-Site project will be conducted in lieu of the on-Site restoration project specified in the 1992 Consent Judgment.

The North Hempstead Bar Beach Lagoon Project would be located in the Town of North Hempstead, on municipal land. The proposed project area is located across from the Site on the western shore of Hempstead Harbor and immediately east of West Shore Road in Port Washington, New York. The proposed restoration site is ■ 5 +/− acre tidal cove situated within Bar Beach, a park owned by the Town of North Hempstead. The proposed project area consists of a mosaic of intertidal mudflat, sandflat, patchy low saltmarsh dominated by smooth cordgrass, and shellfish beds dominated by ribbed mussel and American oyster. Localized habitat loss and disturbances have degraded the habitat and adversely affected the full functioning of the saltmarsh.

The North Hempstead Bar Beach Lagoon Project will consist of several restoration components. Restoration tasks, listed in order of decreasing significance as determined by the Trustees, will likely include: Saltmarsh restoration, coastal shoreline restoration, Phragmites removal or control, and erosion control through the retrofitting of a culvert. Priorities may change upon input from the contractor selected to design and oversee the project.

The North Hempstead Bar Beach Lagoon Project would improve fish, bird, and shellfish habitat, enhance the detrital export functioning of this tidal community, and provide an opportunity for the public to enjoy this ecosystem due to its proximity to the North Hempstead Trail. Expected improvements include increased vegetative cover derived directly from plantings (approximately 0.6 acre) and indirectly from site enhancement. The latter could augment the density and coverage of the existing saltmarsh (approximately 2 acres). Amelioration of substrate conditions (*i.e.*, reduced erosion, reduced freshwater input) should increase the spatial coverage and/or density of Spartina over current conditions by fostering natural colonization. Habitat quality will improve due to increases in vegetative cover and structural complexity, thereby benefitting macroinvertebrates, fish and birds. Details of the project design can be found in Section 3.2 of the Draft Restoration Plan and Environmental Assessment.

The PPG would be primarily responsible for implementing the project. As noted above, the PPG's liability under the terms of the Consent Judgment is limited to $50,000. The available settlement funds would not be sufficient to address all of the ecological and anthropogenic challenges facing the proposed restoration area. Therefore, the Trustees, the PPG, and the Town of North Hempstead are working cooperatively with each other, and various nonprofit groups, to provide for the funding and implementation of additional projects in the same lagoon which will be conducted with, or complementary to, the North Hempstead Bar Beach Lagoon Project. The PPG has volunteered to pay for the restoration design for the North Hempstead Bar Beach Lagoon Project, in addition to their original $50,000 liability. The Town of North Hempstead has agreed to provide additional funding, goods, and services valued at approximately $59,896. The Town of North Hempstead received a NOAA/NMFS Community Outreach Grant of matching funds to partner with the Trustees and the PPG on the project. The Long Island Wetland Restoration Initiative Group and/or Ducks Unlimited may also contribute to the project or implement complementary projects. This synergy of projects will confer a greater ecological benefit to the natural resources and to the public in a highly cost-efficient manner.

Under the terms of the Consent Judgment entered into in 1992, the PPG also paid $50,000 to the Federal Trustees to compensate for "past injury to, destruction of, or loss of, natural resources," for the said purpose of "restoring, replacing or acquiring the equivalent of the affected natural resources' at an off-Site location. The Trustees now propose to use all or part of this $50,000 which was set aside for off-Site, compensatory restoration to supplement the budget for the preferred restoration alternative, the North Hempstead Bar Beach Lagoon Project.

The Trustees invite the public to comment on this Revised Draft RP/EA. All comments received on the Revised Draft RP/EA will be considered. The Trustees will respond to any comments received either through revision of this Revised Draft RP/EA, incorporation into the Final Restoration Plan, or by letter to the commentor once the comment period has ended. The Final Restoration Plan will then be published.

This notice does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

Authority: 42 U.S.C. 4321 *et seq.* and 42 U.S.C. 9601 *et seq.*

Dated: July 31, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–19972 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072602A]

Harbor Porpoise Bycatch Estimates for 2001

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of harbor porpoise bycatch estimates for January through December, 2001.

ADDRESSES: Send information requests to Protected Resources Division, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 or to Marine Mammal Conservation Division, NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kimberly Thounhurst, Northeast Region, phone: (978) 281–9138, e-mail: *Kimberly.Thounhurst@noaa.gov*.

SUPPLEMENTARY INFORMATION: In December of 1998, NMFS implemented a plan to reduce the incidental mortality and serious injury of the Gulf of Maine/Bay of Fundy (GOM/BOF) harbor porpoise stock in the Northeast sink gillnet fishery and Mid-Atlantic coastal gillnet fishery to below the Potential Biological Removal (PBR) level for that stock pursuant to the Marine Mammal Protection Act. The Harbor Porpoise Take Reduction Plan contains a combination of management measures including fishery closures and gear modifications. These measures are described in the December 2, 1998, final rule (63 FR 66464) and December 23, 1998, correction notice (63 FR 71041).

The most current estimate of incidental take of harbor porpoise for 2001 by fishery is available. This information is provided pursuant to a requirement of the May 12, 2000, Settlement Agreement in *Center for Marine Conservation et al.* v. *Daley et al.*(Civ. No. 1:98CV02029 EGS). The incidental take of GOM/BOF harbor porpoise in U.S. waters during 2001 is estimated to be 80 animals (Coefficient of Variation (CV)=0.71; 95–percent Confidence Interval (CI)=6–204). This estimate is comprised of 51 animals (64–percent; CV=0.97, 95–percent CI=2-166) extrapolated from takes observed during random sampling of the Northeast sink gillnet fishery, 26 animals (32–percent; CV=0.95, 95–percent CI=1-83) extrapolated from takes observed during random sampling of the Mid-Atlantic coastal gillnet fishery, and 3 animals (4–percent) represented in unextrapolated opportunistic data obtained from stranded animals displaying evidence of fishery interactions. An estimate of incidental take of GOM/BOF harbor porpoise in Canadian waters during 2001 is not available at this time.

For 2000, the estimated annual incidental take of harbor porpoise in U.S. waters was 529 animals (CV=0.36, 95–percent CI=267–1049). This estimate is comprised of 507 animals (CV=0.37, 95–percent CI=169–924) from the Northeast sink gillnet fishery, 21 animals (CV=0.76, 95–percent CI=1–53) from the Mid-Atlantic coastal gillnet fishery, and 1 animal from an unknown Mid-Atlantic fishery.

For 1999, the estimated annual incidental take of harbor porpoise in U.S. waters was 323 animals (CV=0.25, 95–percent CI=211–554), comprised of 270 animals (CV=-0.28, 95–percent CI=78–364) from the Northeast sink gillnet fishery and 53 animals (CV=0.49, 95-percent CI=3–98) from the Mid-Atlantic coastal gillnet fishery.

1999, 2000, and 2001 represent the years since implementation of the Harbor Porpoise Take Reduction Plan and fishery management measures intended to reduce harbor porpoise bycatch. From 1994 through 1998, the mean annual mortality of harbor porpoise was 1,521 animals (CV=0.10), comprised of 1163 animals (CV=0.11) from the Northeast sink gillnet fishery and 358 animals (CV=0.20) from the Mid-Atlantic coastal gillnet fishery.

Further detail on the 2001 GOM/BOF harbor porpoise bycatch analysis is available from NMFS (see **ADDRESSES** or **FOR FURTHER INFORMATION CONTACT**).

Dated: August 1, 2002.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19976 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

July 31, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryforward, and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59409, published on November 28, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 31, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 21, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on August 9, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	460,537 dozen.
338/339	2,473,117 dozen.
638/639	2,474,517 dozen.
641	1,208,418 dozen.
647/648	2,704,167 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–19893 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

August 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59581, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 1, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002.

Effective on August 7, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334/634	183,783 dozen.
335/635	335,513 dozen.
338/339	819,929 dozen.
347/348	1,400,674 dozen.
647/648	405,790 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–19894 Filed 8–6–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DOD.

ACTION: Notice to Amend two Systems of Records.

SUMMARY: The Office of the Secretary of Defense proposes to amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on September 6, 2002 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4728.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 1, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DPA DSR.A 06

SYSTEM NAME:

Security Review Index File (February 22, 1993, 58 FR 10227).

CHANGES

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with 'DFOISR 06'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Director, Freedom of Information and Security Review, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Department of Defense officials who present statements, testify, or who furnish information to the Congress of the United States. Department of Defense officials and citizens or organizations outside the Defense Department who submit documents, such as but not limited to, speeches and articles, for clearance prior to public release.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Names, organizational affiliations, addresses, and other contact information of individuals submitting material for security review. The material submitted for review is also maintained with a database link to information about the submitting official and the action officer.'

AUTHORITY:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations.'

PURPOSE(S);

Delete entry and replace with 'To manage the security review process for documents or materials before they are released outside of the Department of Defense. The documents and materials of completed security reviews are maintained for historical reference to ensure subsequent reviews, which may be similar in content are handled consistently.'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders and computer database.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by submitting official or action officer's name and/or organization, Security Review Case Number, or subject of submitted material.'

SAFEGUARDS:

Delete entry and replace with 'Paper files are maintained in security containers with access only to officials in accordance with assigned duties. Computer databases are password protected and accessed by individuals who have a need to know.'

* * * * *

DFOISR 06

SYSTEM NAME:

Security Review Index File.

SYSTEM LOCATION:

Director, Freedom of Information and Security Review, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense officials who present statements, testify, or who furnish information to the Congress of the United States. Department of Defense officials and citizens or organizations outside the Defense Department who submit documents, such as but not limited to, speeches and articles, for clearance prior to public release.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, organizational affiliations, addresses, and other contact information of individuals submitting material for security review. The material submitted for review is also maintained with a database link to information about the submitting official and the action officer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To manage the security review process for documents or materials before they are released outside of the Department of Defense. The documents and materials of completed security reviews are maintained for historical reference to ensure subsequent reviews, which may be similar in content, are handled consistently.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and computer database.

RETRIEVABILITY:

Retrieved by submitting official or action officer's name and/or organization, Security Review Case Number, or subject of submitted material.

SAFEGUARDS:

Paper files are maintained in security containers with access only to officials in accordance with assigned duties. Computer databases are password protected and accessed by individuals who have a need to know.

RETENTION AND DISPOSAL:

Security review initial files are destroyed 2 years after clearance without amendment and 6 years after record was cleared with amendment or denied clearance. Security review appeal files which are cleared are destroyed 2 years after clearance and 6 years after record was cleared with amendment or denied.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests for information should include the full name and organizational affiliation of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests for information should include the full name and organizational affiliation of the individual.

For personal visits to examine records, the individual should provide identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Submitted documents and materials with requests for security review from organizations and individuals and comments and recommendations returned by subject matter specialists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DPA DSR.B 11

SYSTEM NAME:

Mandatory Declassification Review Files (February 22, 1993, 58 FR 10227).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with 'DFOISR 11'.

SYSTEM LOCATION:

Delete entry and replace with 'Director, Freedom of Information and Security Review, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals who request Mandatory Declassification Review (MDR) or appeal an MDR determination of any classified document for the purpose of releasing declassified material to the public, as provided for under the applicable Executive Order(s) governing classified National Security Information. Other individuals in the system are action officers.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Name and address of person making MDR request or appeal, identification of records requested, dates and summaries of action taken, and documentation for establishing and processing collectable fees.

Names, titles, and/or positions of security specialists and/or officials responsible for an initial or final denial on appeal of a request for declassification of a record.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'E.O. 12958, Classified National Security Information, or other applicable Executive Order(s) governing classified National Security Information.'

PURPOSE(S):

Delete entry and replace with 'To manage requests and/or appeals from individuals for the mandatory review of classified documents for the purposes of releasing declassified material to the public; and to provide a research resource of historical data on release of records so as to facilitate conformity in subsequent actions.

Data developed from this system is used for the annual report required by the applicable Executive Order(s) governing classified National Security Information. This data also serves management needs, by providing information about the number of requests; the type or category of records requested; and the average processing time.'

* * * * *

SAFEGUARDS:

Delete second sentence and replace with 'Computer access is password protected and accessed by individuals who have a need to know.'

* * * * *

DFOISR 11

SYSTEM NAME:

Mandatory Declassification Review Files.

SYSTEM LOCATION:

Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request Mandatory Declassification Review (MDR) or appeal an MDR determination of any classified document for the purpose of releasing declassified material to the public, as provided for under the applicable Executive Order(s) governing classified National Security Information. Other individuals in the system are action officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of person making MDR request or appeal, identification of records requested, dates and summaries of action taken, and documentation for establishing and processing collectable fees.

Names, titles, and/or positions of security specialists and/or officials responsible for an initial or final denial on appeal of a request for declassification of a record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12958, Classified National Security Information, or other applicable Executive Order(s) governing classified National Security Information.

PURPOSE(S):

To manage requests and/or appeals from individuals for the mandatory review of classified documents for the purposes of releasing declassified material to the public; and to provide a research resource of historical data on release of records so as to facilitate conformity in subsequent actions.

Data developed from this system is used for the annual report required by the applicable Executive Order(s)

governing classified National Security Information. This data also serves management needs, by providing information about the number of requests; the type or category of records requested; and the average processing time

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media storage, computer database, paper computer printouts, and paper records in file folders.

RETRIEVABILITY:

Retrieved by name of requester and other pertinent information, such as organization or address, subject material describing the MDR item (including date), MDR request number using computer indices, referring agency, or any combination of fields.

SAFEGUARDS:

Paper records are maintained in security containers with access limited to officials having a need-to-know based on their assigned duties. Computer systems require user passwords and users are limited according to their assigned duties to appropriate access on a need-to-know basis.

RETENTION AND DISPOSAL:

Files that grant access to records are held in current status for two years after the end of the calendar year in which created, then destroyed. Files pertaining to denials of requests are destroyed 5 years after final determination. Appeals are retained for 3 years after final determination.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests for information should include the full name and organizational affiliation of the individual at the time the record would have been created.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests for information should include the full name and organizational affiliation of the individual at the time the record would have been created.

For personal visits to examine records, the individual should provide identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Requests from individuals for Mandatory Declassification Review and subsequent release of records and information provided by form and memorandum by officials who hold the requested records, act upon the request, or who are involved in legal action stemming from the action taken.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–19865 Filed 8–6–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 6, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 1, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Consolidated State Application/ Consolidated State Annual Report.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 52.
Burden Hours: 7,800.
Abstract: This information collection package describes the proposed criteria and procedures that govern the consolidated State application under which State educational agencies will apply to obtain funds for implementing Elementary and Secondary Education

Act (ESEA) programs. The option of submitting a consolidated application for obtaining federal formula program grant funds is provided for in the reauthorized ESEA (No Child Left Behind—NCLB) Sections 9301–9306. This information collection package will guide the States in identifying the information and data required in the application.

In addition to this comment period for the Consolidated State Application, the Department has published the Notice of Proposed Rulemaking (NPRM) for the Title 1—Improving the Academic Achievement of the Disadvantaged for public comment. The comment period for the information collection requirements pertaining to this collection has been offered through the NPRM.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2123. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19978 Filed 8–6–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–220–A]

Application To Export Electric Energy, NRG Power Marketing Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: NRG Power Marketing, Inc. (NRGPMI) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before September 6, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16U.S.C. § 824a(e)).

On May 3, 2000, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–220 authorizing NRGPMI to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company (formally The Detroit Edison Company), Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. That two-year authorization expired on May 3, 2002.

On July 10, 2002, DOE received an application from NRGPMI to renew its authorization to transmit electric energy from the United States to Canada.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the NRGPMI application to export electric energy to Canada should be clearly marked with Docket EA–220–A. Additional copies are to be filed directly with NRG Power Marketing Inc., 901 Marquette Ave, Suite 2300, Minneapolis, MN 55402–3265, ATTN: Contract Administration and General Counsel.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA–220. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–220 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the FE Home Page at *http://www.fe.de.gov*. Upon reaching the FE Home page, select "Electricity Regulation" and then "Pending Proceedings" from the options menus.

Issued in Washington, DC on July 31, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–19911 Filed 8–6–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, September 5, 2002, 9 a.m.–5 p.m. Friday, September 6, 2002, 8:30 a.m.–4 p.m.

ADDRESSES: Radisson Hotel Seattle Airport, 17001 Pacific Highway South, Seattle, WA (206) 244–6600.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, PO Box 550 (A7–75), Richland, WA, 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Thursday, September 5, 2002.

- Perspectives from Tri-Party Agreement (TPA) Senior Managers
- Performance Management Plan for the Accelerated Cleanup of the Hanford Site
- Hanford Advisory Board Work Plan Priorities for FY 2003
- Hanford Exposure Scenarios Task Force Workshop Draft Advice on the 100 and 300 areas
- Potential Draft Advice on FY 03 and FY 04 Budget
- Potential Draft Advice on Tank Waste Project

Friday, September 6, 2002

- Update on the Draft Hanford Solid (Radioactive and Hazardous) Waste Environmental Impact Statement (EIS) Public Meetings
- Agency Response to Hanford Advisory Board Advice
- Fast Flux Test Facility (FFTF) Tri-Party Agreement (TPA) Draft Change Package
- Lesson Learned from the Committee of the Whole and Task Force Meetings
- Committee Updates

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operation Office, PO Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC, on August 2, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–19912 Filed 8–6–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–480–001, RP00–445–002, and RP01–9–001]

Alliance Pipeline L.P.; Notice of Compliance Filing

August 1, 2002.

Take notice that on July 3, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets attached to Appendix A to the filing, with an effective date of August 2, 2002.

Alliance states that the purpose of this tariff filing is to comply with the Commission's Order issued June 5, 2002, on the compliance by Alliance with Commission Order Nos. 637, 587–G and 587–L.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 8, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19933 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–395–000]

ANR Storage Company; Notice of Tariff Filing

August 1, 2002.

Take notice that on July 26, 2002, ANR Storage Company (ANR Storage), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 25, 2002:

Fourth Revised Sheet No. 19
Second Revised Sheet No. 20A
Second Revised Sheet No. 25
Second Revised Sheet No. 26
First Revised Sheet No. 27
First Revised Sheet No. 28
First Revised Sheet No. 52 First Revised Sheet No. 54
Second Revised Sheet No. 126A
First Revised Sheet No. 127
Second Revised Sheet No. 128
First Revised Sheet No. 131
First Revised Sheet No. 156
Second Revised Sheet No. 157

ANR Storage states that the tariff sheets are being filed to make various minor clean-up related changes to its tariff including a change in the contact information due to the merger of The Coastal Corporation, ANR Storage's previous parent and El Paso Corporation. Also, a change is being made to the FS Rate Schedule so that it reflects actual current practices. Finally, ANR Storage is adding a provision that allows it to waive the requirement of providing earnest money for creditworthy companies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19936 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–061]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

August 1, 2002.

Take notice that on July 23, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction: FTS–1 Service Agreement No. 73132 between Columbia Gulf Transmission Company and Reliant Energy Services, Inc. dated July 1, 2002.

Transportation service is to commence July 1, 2002 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19928 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–462–002 and RP01–37–004]

Equitrans, L.P.; Notice of Compliance

August 1, 2002.

Take notice that on July 22, 2002, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective on the date designated by the Commission upon acceptance of the tariff sheets:

First Revised Sheet No. 201
First Revised Sheet No. 217
First Revised Sheet No. 227
Second Revised Sheet No. 245
First Revised Sheet No. 246
First Revised Sheet No. 249
Second Revised Sheet No. 253
Second Revised Sheet No. 254
Second Revised Sheet No. 267
First Revised Sheet No. 268
First Revised Sheet No. 269
Second Revised Sheet No. 270
First Revised Sheet No. 271
Second Revised Sheet No. 276
Original Sheet No. 276A
Original Sheet No. 276B
Original Sheet No. 276C
Original Sheet No. 276D
Second Revised Sheet No. 286
Second Revised Sheet No. 306

Equitrans states that the purpose of this tariff filing is to comply with the Commission's Order issued May 21, 2002, on the compliance by Equitrans with Commission Order Nos. 637, 58–G and 587–L.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 8, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19932 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. RP02–396–000]

Federal Energy Regulatory Commission Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

August 1, 2002.

Take notice that on July 29, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff Second Revised Volume No. 1 the following tariff sheets, proposed to be effective October 1, 2002:

Eleventh Revised Sheet No. 1
Seventh Revised Sheet No. 10A
Fifth Revised Sheet No. 11
Fourth Revised Sheet No. 39
Eighth Revised Sheet No. 41
Sixth Revised Sheet No. 42
Sixth Revised Sheet No. 42A
Eighth Revised Sheet No. 50C
Second Revised Sheet No. 50N

Great Lakes states that these tariff sheets are being filed to comply with the Commission's Order No. 587–O issued on May 1, 2002, in Docket No. RM96–1–020, 99 FERC 61,146 (2002). In Order No. 587–O, the Commission adopted Version 1.5 of the standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board, formerly the Gas Industry Standards Board (GISB), to be effective October 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link,

select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19937 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2364–013, 2365–024]

Madison Paper Industries, Maine; Notice of Docket Assignments

August 1, 2002.

Take notice that the applications for new licenses for the Abenaki and Anson Projects, located on the Kennebec River in Somerset County, Maine, have been assigned docket nos. P–2364–013 and P–2365–024, respectively. Filings under docket nos. 2364–012 and 2365–023, assigned to a Settlement Agreement for the Abenaki and Anson Projects, need not be refiled.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19920 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–29–005]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

August 1, 2002.

Take notice that on July 24, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective August 24, 2002:

Second Revised Sheet No. 273A.

Panhandle states that this filing is being made to comply with the Commission's Letter Order dated July 9, 2002 in Docket No. RP97–29–004 which requires Panhandle to provide a time frame for responding to customers' requests for interconnection.

Panhandle states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19929 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–414–001, and RP01–15–002]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance

August 1, 2002.

Take notice that on July 29, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of August 29, 2002.

GTN states that the tariff sheets are being filed to comply with the Commission's March 29, 2002 Order on Compliance with Order Nos. 637, 587–G and 587–L ("Compliance Order"), and requested that the Commission extend the date for GTN to comply with certain aspects of Order No. 637 until the first quarter of 2003.

GTN states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 8, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19931 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–362–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

August 1, 2002.

Take notice that on July 24, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, First Revised Sheet No. 127, First Revised Sheet No. 128 and First Revised Sheet No. 129, with an effective date of August 23, 2002.

GTN states that these tariff sheets are being submitted to comply with the Commission's July 5, 2002 Order in this docket, which directed GTN to revise its tariff to make clear that GTN will not enter into a pre-arranged deal during the bidding process in an open season and to better explain how GTN will be entering into pre-arranged deals.

GTN further states that a copy of this filing has been served on GTN's

jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19935 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–082]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

August 1, 2002.

Take notice that on July 25, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Cincinnati Gas & Electric Company. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19925 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–083]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

August 1, 2002.

Take notice that on July 25, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Union Light, Heat & Power Company. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19926 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–084]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

August 1, 2002.

Take notice that on July 25, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Rhode Island State Energy Partners. The filing also requests the Commission to determine that the FT–A agreement related to the negotiated rate arrangement does not constitute a non-conforming agreement. Tennessee requests that the Commission grant such approval effective September 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and

interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19927 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–011]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 1, 2002.

Take notice that on July 29, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective on the dates set forth on the respective tariff sheets in accordance with Article II and Article XIII of the Stipulation and Agreement of Settlement (Settlement).

Texas Gas states that this filing is being submitted in accordance with the Settlement filed on August 14, 2001 by Texas Gas. On March 4, 2002, the Commission issued an "Order Accepting Offer of Settlement and Severing Parties" which accepted the August 2001 Settlement as to the consenting parties and severed the Indicated Shippers for further proceedings before the Administrative Law Judge. Pursuant to Section 1 of Article II of the Settlement, Texas Gas shall file tariff sheets to implement the Settlement within twenty days after the date it becomes effective. Such tariff sheets shall place the "retroactive settlement base rates" into effect commencing November 1, 2000, and continuing until the "prospective settlement base rates" go into effect "* * * on the first day of the next calendar month after the date on which this Stipulation becomes effective * * *". The prospective rates contained herein are effective on August 1, 2002. By this filing, Texas Gas seeks to implement the provisions of the Settlement according to its terms.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the official service list, to Texas Gas's jurisdictional customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19930 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–245–010]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

August 1, 2002.

Take notice that on July 23, 2002, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, 3rd Sub Fourth Revised Sheet No. 328 and Second Revised Sheet No. 330, with an effective date of September 1, 2001.

Transco states that the purpose of this filing is to reflect the most recently approved provisions for Rate Zones, of Section 21 of the General Terms and Conditions, in Transco's currently effective tariff. These provisions were inadvertently removed from Transco's tariff by the Commission in its June 28, 2002 Order, in Docket No. RP98–430–002 which approved changes to Section 20 of the General Terms and Conditions (Policy For Construction Of Interconnect Facilities).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19934 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–171–000, et al.]

Genova Arkansas I, LLC, et al.; Electric Rate and Corporate Regulation Filings

July 30, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Genova Arkansas I, LLC

[Docket No. EG02–171–000]

Take notice that on July 25, 2002, Genova Arkansas I, LLC, 5700 West Plano Parkway, Suite 1000, Plano, Texas 75093, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Genova Arkansas I, LLC is a limited liability company, organized under the laws of the State of Delaware, and states it is engaged directly and exclusively in owning and operating the Genova Arkansas I, LLC electric generating facility (the Project) to be located in Washington County, Arkansas, and

selling electric energy at wholesale from the Project. The Project will consist of a combined cycle combustion turbine unit with a nominal rating of approximately 580 megawatts and associated transmission interconnection components.

Comment Date: August 20, 2002.

2. Ameren Services Company

[Docket No. ER02–1619–001]

Take notice that on July 25, 2002, Ameren Services Company (ASC) tendered for filing a Parallel Operating Agreement between ASC and Clay County Trust 2000. ASC asserts that the purpose of the Agreement is to replace Appendix B—Company Verification attached to the Agreement in Docket No. ER 02–1619–000 with an executed Appendix B—Company Verification.

Comment Date: August 15, 2002.

3. Carolina Power & Light Company and Florida Power Corporation

[Docket Nos. ER01–1807–010 and ER01–2020–007]

Take notice that on July 25, 2002, Progress Energy, Inc., on behalf of Florida Power Corporation (FPC) and Carolina Power & Light Company (CP&L), tendered for filing with the Federal Energy Regulatory Commission (Commission) a redesignated Service Agreement for Firm Point-To-Point Transmission Service (Firm PTP Service Agreement) between FPC and the City of Tallahassee and a redesignated, executed Service Agreement for Network Integration Transmission Service and Network Operating Agreement (collectively, Network Service Agreement) between FPC and Tampa Electric Company. Progress Energy is filing the agreements under both FPC's open-access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6 and CP&L's open-access transmission tariff, FERC Electric Tariff, Third Revised Volume No. 3, in compliance with the Commission's June 25, 2001, September 21, 2001 and November 26, 2001 orders in these proceedings.

Progress Energy respectfully requests waiver of the Commission's regulations to allow the Firm PTP Service Agreement to become effective December 1, 2000, and the Network Service Agreement to become effective June 18, 2002. Copies of the filing were served upon the City of Tallahassee, Tampa Electric Company, the Florida Public Service Commission and North Carolina Utilities Commission.

Comment Date: August 15, 2002.

4. Ameren Services Company

[Docket No. ER02–1936–003]

Take notice that on July 25, 2002, Ameren Services Company (ASC) tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and Edgar Electric Cooperative Association, d/b/a EnerStar Power Corp. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER 02–1936–000 with the executed Agreements.

Comment Date: August 15, 2002.

5. Ameren Services Company

[Docket No. ER02–2176–001]

Take notice that on July 25, 2002, Ameren Services Company (ASC) tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and Edgar Electric Cooperative Association, d/b/a EnerStar Power Corp. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER 02–2176–000 with the executed Agreements.

Comment Date: August 15, 2002.

6. Ameren Services Company

[Docket No. ER02–2236–001]

Take notice that on July 25, 2002, Ameren Services Company (ASC) tendered for filing a Firm Point-to-Point Transmission Service Agreement between ASC and American Electric Power Service Corp. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. ER 02–2237–000 with the executed Agreement.

Comment Date: August 15, 2002.

7. Central Maine Power Company

[Docket No. ER02–2363–000]

Please take notice that on July 25, 2002, Central Maine Power Company (CMP) and Maine Electric Power Company (MEPCO) tendered for filing a Support Services Agreement for support services provided by CMP to MEPCO, and designated as Rate Schedule FERC No. 115, First Revised

Comment Date: August 15, 2002.

8. Florida Power & Light Company

[Docket No. ER02–2364–000]

Take notice that on July 25, 2002, Florida Power & Light Company (FPL) tendered for filing a Notice of Termination of an Interconnection and Operation Agreement (IOA) between FPL and CPV Atlantic, Ltd. (CPV Atlantic). Termination of the IOA has been mutually agreed to by FPL and CPV Atlantic.

Comment Date: August 15, 2002.

9. PJM Interconnection, L.L.C.

[Docket No. ER02–2365–000]

Take notice that on July 25, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) an executed interconnection service agreement between PJM and Prince George's County, Maryland.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a June 26, 2002 effective date as agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 15, 2002.

10. Louis Dreyfus Energy LLC

[Docket No. ER02–2366–000]

Take notice that on July 25, 2002, Louis Dreyfus Energy LLC petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of its Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain of the Commission's Regulations.

Comment Date: August 15, 2002.

11. Ameren Services Company

[Docket No. ER02–2367–000]

Take notice that on July 25, 2002, Ameren Services Company (ASC) tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and EnerStar Power Corporation, previously d/b/a Edgar Electric Cooperative Association. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER02–1693–000 with the executed Agreements.

Comment Date: August 15, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person

designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19916 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–60–000]

CMS Trunkline LNG Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Trunkline LNG Expansion Project

August 1, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the liquefied natural gas (LNG) facilities proposed by CMS Trunkline LNG Company, LLC (Trunkline LNG) in the above referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed project which includes the expansion of the existing Trunkline LNG import terminal in Calcasieu Parish, Louisiana. Trunkline LNG proposes to:

- Construct an LNG ship unloading facility;
- Construct a 880,000-barrel double walled LNG storage tank;
- Construct three first-stage pumps;
- Construct four second-stage pumps, with a recondenser vessel;
- Construct three submerged combustion vaporizers;
- Construct a high expansion foam building;
- Construct an electrical building;
- Construct a cryogenic fuel gas/ship vapor return compressor; and
- Construct two nominal 22 megawatt gas turbine electric generators.

The proposed facilities would expand the storage and sendout capacity of Trunkline LNG's existing LNG import terminal in Calcasieu Parish, Louisiana. The proposal would: (1) Expand the storage capacity of the LNG terminal; (2) increase the sustainable daily sendout capability to 1,200 million standard cubic feet per day (MMscfd) and its peaking capacity to 1,300 MMscfd; and (3) allow the terminal to accommodate two LNG tankers at one time. This filing is related to Docket No. CP02–55–000, CMS Trunkline Gas Company, LLC's proposal to increase the maximum capacity at its metering facilities at the tailgate of the LNG terminal.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to:

Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

- Label one copy of the comments for the attention of the Gas Branch 1, PJ11.1;
- Reference Docket No. CP02–60–000; and
- Mail your comments so that they will be received in Washington, DC on or before August 30, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (866) 208-FERC or on the FERC Internet website (www.ferc.gov) using the "RIMS" link to information in this docket number. Click on the "RIMS" link select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19917 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3090–008 Vermont]

Village of Lyndonville Electric Department; Notice of Availability of Environmental Assessment

August 1, 2002.

In accordance with the National Environmental Policy Act of 1969 and

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for license for the Vail Hydroelectric Project and has prepared an Environmental Assessment (EA) for the project. The project is located on the Passumpsic River, in the Village of Lyndonville, within the county of Caledonia, Vermont. No federal lands or facilities are occupied or used by the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 3090–008 to all comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

For further information, contact Timothy Looney at (202) 219–2852.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19921 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10855–002, Michigan]

Upper Peninsula Power Company, Marquette Board of Light and PowerProject No. 2589–024, Michigan; Notice of Availability of Final Environmental Assessment

August 1, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations contained in the Code of Federal Regulations, Part 380 (18 CFR part 380) [FERC Order No. 486, 52 FR 47897], the Office of Energy Projects Staff (Staff) has reviewed the application for an initial license for the Dead River Project and a new license for the Marquette Project, both located on the Dead River in Marquette County, Michigan, and has prepared a final environmental assessment (FEA) for the projects. In this FEA, the Staff has analyzed the potential environmental effects of the existing projects and has concluded that licensing the projects, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2-A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. This FEA may also be viewed on the Internet at *http://www.ferc.gov* using the "RIMS" link; select "Docket#" and follow the instructions. Please call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19923 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

August 1, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 1895–012.

c. *Date Filed:* July 10, 2002.

d. *Applicants:* South Carolina Electric & Gas Company (Transferor) and the City of Columbia, South Carolina (Transferee).

e. *Name of Project:* Columbia.

f. *Location:* The project is located on the Broad and Congaree Rivers in the City of Columbia and Richland County, South Carolina. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants Contacts:* Brian J. McManus, Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW., Washington, DC 20001–2113, (202) 879–5452 (for the Transferor); Frances E. Francis and William S. Huang, Spiegel & McDiarmid, 1350 New York Avenue, NW., Suite 1100, Washington, DC 20005–4798, (202) 879–4000 (for the Transferee).

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments and or motions:* August 16, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the Project Number (1895–012) on any comments or motions filed.

k. *Description of Transfer:* As consideration for entering into a franchise agreement to supply electricity and gas service, South Carolina Electric & Gas Company (SCE&G) has agreed (pursuant to a Conveyance Agreement), to convey to the City of Columbia, South Carolina (City), the Columbia area transit system operated by SCE&G, and the Columbia Project No. 1895. Consequently, SCE&G and the City seek Commission approval to transfer the license for the Columbia Project from SCE&G to the City. On May 30, 2002, the Commission issued SCE&G a new license for the project. 99 FERC ¶ 62,152 (2002), reh'g filed, July 1, 2002. The application also includes a request to delete (as inapplicable to the City) Article 204 (requirement for maintaining amortization reserves) of the new license, upon approval of the transfer.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www/ferc/gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, 214. In determining the appropriate action to

take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19918 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Variance and Soliciting Comments, Motions To Intervene, and Protests

August 1, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for temporary variance to minimum flow releases.

b. *Project No:* 2197–054.

c. *Date Filed:* July 22 and July 26, 2002.

d. *Applicant:* Alcoa Power Generating Inc.

e. *Name of Project:* Yadkin.

f. *Location:* The project is located on the Yadkin/Pee Dee River, in Montgomery, Stanley, Davidson, Rowan, and Davie Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791 (a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Julian Polk, Alcoa Power Generating Inc., 293 NC 740 Highway, P.O. Box 576, Badin, NC 28009–0576, (704) 422–5617.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. T.J. LoVullo at (202) 219–1168, or e-mail address: *thomas.lovullo@ferc.gov* .

j. *Deadline for filing comments and or motions:* August 23, 2002.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2197) on any comments or motions filed.

k. *Description of Request:* As the result of a meeting held on July 25, 2002, Alcoa Power Generating Inc. (APGI or licensee), Duke Energy, Carolina Power and Light, Commission staff, and representatives from the resources agencies with responsibility for water for the States of North Carolina and South Carolina concerning the drought in the project area and reservoir levels in the project reservoirs, there emerged a consensus that it would be prudent on behalf of all users of water in the watershed to further reduce minimum releases from the Yadkin Project from 1,200 cubic feet per second (cfs) to 900 cfs as measured at the Rockingham, NC stream gage. Accordingly, APGI requested from the Commission that it be granted a temporary variance of the license requirements permitting APGI to coordinate Yadkin Project operations with Carolina Power and Light's Tillery and Blewett Falls developments such that Pee Dee River flows, measured at the Rockingham gage, are at least 900 cfs on a daily basis through September 15, 2002. Secondly, APGI requested a temporary variance of the operating guides to draw down Narrows reservoir (Badin Lake) at increments to be determined in consultation with the Water Resources Division of the North Carolina Department of Environment and Natural Resources. On July 30, 2002, the Commission granted the licensee's requests, but reserved authority to require changes in project operation based upon comments received from this notice.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19919 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

August 1, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 7000–017.

c. *Date Filed:* July 19, 2002.

d. *Applicants:* Newton Falls Holdings, LLC (transferor) and Orion Power New York GP II, Inc. (transferee).

e. *Project Name and Location:* The Newton Falls Project is on the East Branch of the Oswegatchie River near the Village of Newton Falls in St. Lawrence County, New York. The project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contacts:* For Transferor: Harold G. Slone, Manager, Newton Falls Holdings, LLC, 1930 West Wesley Road, NW., Atlanta, GA 30327, (770) 638–1172. For Transferee: William J. Madden, Jr., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502, (202) 371–5715.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing motions to intervene, protests, and comments:* August 30, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filngs. Please include the project number (P–7000–017) on any comments or motions filed.

j. *Description of Proposal:* The Applicants request approval of the transfer of the license for Project No. 7000 from the transferor to the transferee, in connection with the proposed sale of the project.

The transfer application was filed within five years of the expiration of the license for Project No. 7000, which is the subject of a pending relicense application in Project No. 7000–015. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the primary purpose of the transfer was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318).

k. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19922 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 1, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12249–000.

c. *Date Filed:* June 18, 2002.

d. *Applicant:* Waco Hydro, LLC.

e. *Name of Project:* Waco Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers (Corps), on the Bosque River in McLennan County, Texas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, (fax) (208) 745–7909, or e-mail address: *npsihydro@aol.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: *lynn.miles@ferc.fed.us.*

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12249–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners

filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the existing Corps' Waco Dam would consist of; (1) a 96-inch-diameter 500-foot-long steel penstock; (2) a powerhouse containing one generating unit with an installed capacity of 4 MW; (3) a 25 kv transmission line approximately 1 mile long; and (4) appurtenant facilities.

The project would have an annual generation of 5.4 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19924 Filed 8–6–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0122; FRL–7184–9]

Cancellation of Pesticides for Non-payment of Year 2002 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October, 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15 has gone unpaid for 914 registrations. Section 4(i)(5)(G) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all 914 of these registrations have been issued within the past few days.

FOR FURTHER INFORMATION CONTACT: For further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (7504C), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (703) 305–6426; e-mail address: jamula.john@epa.gov

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does This Apply to Me?

You may be potentially affected by this notice if you are an EPA registrant with any approved product registration(s). Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of Support Documents

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

The Agency has established an official record for this action under docket control number OPP–2002–0122. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Introduction

Section4(i)(5) of FIFRA as amended in October, 1988 (Public Law 100–532), December, 1991 (Public Law 102–237), and again in August, 1996 (Public Law 104–170), requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102–237, amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 133 minor agricultural use registrations at the request of the registrants.

In late December, 2001, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-February to companies who did not respond and to companies who responded, but paid for less than all of their registrations.

Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 15,444 section 3 registrations, or about 95 percent of the registrations on file in December. Fees have been paid for about 2,204 section 24(c) registrations, or about 79 percent of the total on file in December. Cancellations for non-payment of the maintenance fee affect about 511 section 3 registrations and about 403 section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2003, one year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. Listing of Registrations Canceled for Non-payment

Table 1 lists all of the Section 24(c)registrations, and Table 2 Lists all of the Section 3 registrations which were canceled for non-payment of the 2002 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

SLN no.	Product Name
009779 AL–80–0022	Riverside 912 Herbicide
003125 AL–81–0026	Sencor 4 Flowable Herbicide
038167 AL–91–0001	Weed-Rhap A-4D
000279 AL–93–0005	Command 4EC
000279 AL–94–0008	Ammo 2.5 EC Insecticide
059639 AL–99–0001	Select Herbicide
054555 AL–99–0002	Dormex
000279 AR–01–0001	Command Xtra Herbicide
000432 AR–81–0009	SBP-1382 - 40 MF "Z" Oil Base Concentrate
000100 AR–88–0004	D-Z-N Diazinon 50W Insecticide
000100 AR–88–0005	D.Z.N. Diazinon AG 500
000432 AR–89–0007	Permanone Multi-Purpose 10% E C
009779 AR–96–0007	Riverside 912 Herbicide
010182 AZ–01–0004	Cyclone Concentrate/ Gramoxone Max
007173 AZ–77–0006	Rozol Ground Squirrel Bait
010163 AZ–80–0010	Gowan Dimethoate E267
034704 AZ–81–0001	Dimethogon 267 EC
000400 AZ–81–0022	Comite Agricultural Miticide
004581 AZ–87–0018	Des-I-Cate
034704 AZ–88–0007	Clean Crop Dimethoate 400
000432 AZ–88–0023	Pyraperm 455 Dust
010182 AZ–91–0008	Stauffer Eptam 7-E Granules
000241 AZ–92–0007	Prowl 3.3 EC Herbicide
005905 AZ–93–0011	5LB Dimethoate Systemic Insecticide
010182 AZ–95–0002	Eptam (r) 20. G Granules
009779 AZ–96–0001	Dimate 4E
010182 AZ–98–0006	Gramoxone Extra Herbicide
066196 AZ–98–0010	Lime-Sulfur Solution
010163 AZ–99–0002	Supracide 25WP

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000275 CA–00–0009	Pro-Gibb 4% Liquid Concentrate
059639 CA–00–0010	Nylar Fire Ant Bait 26291
073554 CA–00–0012	Clean Crop(r) Amine 4CA 2,4-D Weed Killer
000275 CA–00–0015	Pro-Gibb 4% Liquid Concentrate
054555 CA–01–0005	Dormex
002935 CA–76–0114	Red-Top Strike Granular
000100 CA–78–0034	D-Z-N Diazinon 50W
010182 CA–78–0075	Ro-Neet 6e A Selective Herbicide Emulsifiable Liquid
002935 CA–78–0203	Red Top Chlorate Concentrate
059639 CA–79–0219	Volck Supreme Spray
052300 CA–83–0013	Niagara Pyrenone Crop Spray Insecticide
059623 CA–85–0060	Du Pont Karmex Weed Killer
000264 CA–86–0064	Rovral Fungicide
063231 CA–86–0067	Bacti-Chlor
059639 CA–87–0020	Orthene 75 S Soluble Powder
010182 CA–87–0025	Ambush Insecticide
037982 CA–89–0050	Chlorine Gas
002935 CA–90–0018	Wilbur-Ellis Sevin 5 Bait
065391 CA–91–0018	Avid 0.15 EC
068132 CA–94–0020	Pro-Gibb 4% Liquid Concentrate
063231 CA–94–0021	Dithane WF Turf & Ornamental Fungicide
000100 CA–94–0033	D-Z-N Diazinon 50W Insecticide
070165 CA–96–0018	Metasystox-R Spray Concentrate
000432 CA–97–0018	Chipco Ronstar 50 WSP Herbicide
005481 CA–97–0025	Dibrom 8 Emulsive
000241 CA–98–0006	Prowl 3.3 EC Herbicide
000241 CA–98–0009	Prowl 3.3 EC Herbicide
071857 CA–98–0014	Dylox 80 Turf and Ornamental Insecticide
000524 CA–98–0020	MON-65005 Herbicide
010182 CA–98–0025	Gramoxone Extra Herbicide
054555 CA–99–0001	Dormex
010182 CA–99–0009	Abound Flowable Fungicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
010163 CA–99–0023	Savey Ovicide/miticide 50-WP
059639 CO–98–0002	Dibrom 8 Emulsive
050534 CT–96–0003	Bravo 720
050534 CT–96–0004	Bravo 825
034704 DC–90–0001	Sprout Nip Emulsifiable Concentrate
074156 DE–01–0001	Sandea Herbicide
000432 DE–81–0001	SBP-1382 - 40 MF "Z" Oil Base Concentrate
000279 DE–89–0001	Command 4EC
000279 DE–90–0002	Command 4EC
000279 DE–93–0002	Command 4EC
000279 DE–96–0001	Command 4EC Herbicide
010163 FL–00–0005	Imidan 70-WP Agricultural Insecticide
000264 FL–00–0014	Aliette WDG Fungicide
000279 FL–77–0039	Niagara Ethion 4 Miscible Miticide Insecticide
000100 FL–78–0059	Geigy Diazinon AG 500
000100 FL–78–0060	D-Z-N Diazinon 50W
000432 FL–82–0045	Chipco Ronstar G
004581 FL–87–0006	Aquathol Granular
009779 FL–88–0009	Farmbelt 455 Soluble Oil
000100 FL–89–0024	D-Z-N Diazinon 50W Insecticide
000100 FL–89–0025	D.Z.N. Diazinon AG 500
000432 FL–89–0043	Permanone Multi-Purpose 10% E. C.
000100 FL–90–0002	Pennant Liquid Herbicide
062719 FL–90–0005	Lorsban 50W Wettable Powder
000400 FL–94–0008	Micromite 25W
008536 FL–97–0006	Methyl Bromide 98%
054555 FL–99–0011	Dormex
000279 GA–00–0002	Command 3ME Microencapsulated Herbicide
005905 GA–82–0001	Dimethoate 267 EC
000100 GA–88–0007	D-Z-N Diazinon 50W Insecticide
000100 GA–88–0008	D.Z.N. Diazinon AG 500
000279 GA–93–0001	Command 4EC
062719 GA–93–0003	Lorsban 50W
062719 GA–93–0004	Lorsban 50W Insecticide In Water Soluble Packets
000279 GA–96–0001	Command 4EC Herbicide
054555 GA–99–0002	Dormex

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
012455 HI–91–0004	Diphacinone Concentrate
059639 HI–91–0007	Volck Supreme Spray
000100 HI–91–0009	Tilt 250 EC
061282 HI–96–0007	Zinc Phosphide Oat Bait
000432 HI–97–0001	Chipco Ronstar G Herbicide
037982 HI–98–0009	Chlorine Gas
010182 ID–01–0008	Cyclone Concentrate/ Gramoxone Max
010182 ID–01–0009	Cyclone Concentrate/ Gramoxone Max
010182 ID–01–0010	Cyclone Concentrate/ Gramoxone Max
012455 ID–82–0025	Ditrac Rat and Mouse Bait
009779 ID–90–0001	Dimate 4E
007173 ID–92–0003	Rozol Paraffinized Pellets
010182 ID–92–0010	Gramoxone Extra Herbicide
010182 ID–93–0006	Gramoxone Extra Herbicide
000264 ID–93–0014	Rovral Fungicide
010163 ID–95–0001	Metasystox-R Spray Concentrate
010163 ID–95–0002	Metasystox-R Spray Concentrate
000100 ID–96–0010	Supracide 25WP Insecticide-Miticide
010163 ID–97–0005	Savey Ovicide/miticide 50-WP
009779 ID–97–0014	Dimate 4E
003125 ID–99–0001	Admire 2 Flowable
000524 ID–99–0021	MON-65005 Herbicide
000524 ID–99–0022	MON-65005 Herbicide
000279 IL–00–0003	Command 3ME Microencapsulated Herbicide
000279 IL–00–0004	Command 3ME Microencapsulated Herbicide
000279 IL–00–0005	Command 4EC Herbicide
010182 IL–90–0003	Ro-Neet 6-E
000279 IL–96–0002	Command 4EC Herbicide
000279 IL–99–0005	Command 3ME Microencapsulated Herbicide
004581 IN–96–0001	Ziram 76DF Fungicide
000241 KS–00–0001	Ac 263, 222 Herbicide
000279 KY–93–0002	Command 4EC
000279 KY–96–0003	Command 4EC Herbicide
003125 LA–00–0001	Baythroid 2 Emulsifiable Pyrethroid Insecticide
000241 LA–01–0007	Pursuit Herbicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 LA–01–0015	Cyclone Concentrate/ Gramoxone Max
009779 LA–90–0013	Riverside 912 Herbicide
009779 LA–90–0014	Riverside 120 Herbicide
000279 LA–91–0021	Pounce 3.2 EC Insecticide
004581 LA–94–0001	Penncozeb 75DF Fungicide
000279 LA–94–0002	Ammo 2.5 EC Insecticide
000352 LA–95–0016	Dupont Lannate Insecticide
000352 LA–95–0017	Dupont Lannate LV Insecticide
000241 LA–96–0002	Scepter Herbicide
000241 LA–96–0003	Scepter 70 DG Herbicide
000400 LA–96–0011	Dimilin 25W for Cotton/ Soybean
009779 LA–98–0006	Riverside 912 Herbicide
054555 LA–99–0001	Dormex
004816 MA–89–0001	Larvin Brand 3.2 Thiodicarb Insecticide/ Ovicide
050534 MA–90–0001	Bravo 720
050534 MA–96–0001	Bravo 825
000279 MD–88–0001	Command 4EC
000100 ME–77–0001	Geigy Diazinon AG 500
000100 ME–81–0003	Geigy Diazinon AG 500
000279 ME–94–0004	Command 4EC
050534 ME–95–0001	Bravo 500
050534 ME–96–0002	Bravo 720
050534 ME–96–0003	Bravo 825
001812 MI–91–0005	Granular Crystals Copper Sulfate
050534 MI–96–0001	Bravo 720
004581 MI–96–0002	Ziram 76DF Fungicide
000279 MI–96–0003	Command 4EC Herbicide
000279 MI–96–0004	Command 4EC Herbicide
000279 MI–96–0005	Command 4EC Herbicide
050534 MI–96–0008	Bravo 720
050534 MI–96–0009	Bravo Zn
050534 MN–00–0002	Bravo Weather Stik Zn
056576 MN–01–0001	Copper Sulfate Crystals
042750 MN–01–0006	MCPA Amine 4
072407 MN–01–0009	Sulphunc Acid Desiccant
000279 MN–01–0010	Aim Herbicide
050534 MN–96–0001	Bravo 720
050534 MN–96–0002	Bravo ZN

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
003125 MN–99–0006	Admire 2 Flowable
000279 MN–99–0009	Command 3ME Microencapsulated Herbicide
000279 MN–99–0010	Command 3ME Microencapsulated Herbicide
050534 MO–77–0005	Bueno-6
004643 MO–92–0006	Dearcide 723
000279 MO–96–0003	Command 4EC Herbicide
054555 MS–00–0002	Dormex
007138 MS–01–0040	2,4-D Amine Type Weed Killer
000100 MS–88–0005	D-Z-N Diazinon 50W Insecticide
000100 MS–88–0006	D.Z.N. Diazinon AG 500
038167 MS–89–0019	Liquid DSMA
038167 MS–89–0020	Msma Arsonate Liquid
009779 MS–90–0007	Mcpa Amine Herbicide
009779 MS–90–0008	2,4-D Amine 4
009779 MS–90–0029	Riverside 912 Herbicide
009779 MS–90–0031	Dsma 4
038167 MS–91–0002	Weed-Rhap A-4D
000279 MS–93–0003	Command 4EC
000279 MS–94–0004	Ammo 2.5 EC Insecticide
009779 MS–96–0012	Riverside 912 Herbicide
010163 MT–00–0002	Supracide 25W
010182 MT–00–0006	Gramoxone Extra Herbicide
000432 MT–89–0005	Permanone Tick Repellent
010182 MT–94–0005	Gramoxone Extra Herbicide
003125 MT–99–0001	Admire 2 Flowable
000524 MT–99–0016	MON-65005 Herbicide
000524 MT–99–0017	MON-65005 Herbicide
000352 NC–89–0010	Dupont Asana XL Insecticide
000279 NC–93–0002	Command 4EC
010163 NC–95–0009	Imidan 70-WSB/Imidan 70 - WP
010163 NC–98–0006	Imidan 70-WSB
050534 NC–99–0003	Bravo 825
050534 NC–99–0004	Bravo 720
050534 ND–00–0003	Bravo Weather Stik ZN
042750 ND–01–0006	Glyphosate 41% Plus
003125 ND–93–0004	Sencor 4 Flowable Herbicide
050534 ND–95–0003	Bravo 720
050534 ND–95–0004	Bravo ZN

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000264 ND–96–0003	Bugle Herbicide
003125 ND–99–0005	Admire 2 Flowable
010182 ND–99–0011	Bravo 720
000524 ND–99–0013	MON-65005 Herbicide
000279 NE–01–0003	Aim Herbicide
010707 NE–95–0002	Magnacide H Herbicide
050534 NE–97–0004	Bravo ZN
050534 NE–97–0005	Bravo 825
003125 NJ–00–0003	Admire 2 Flowable
000241 NJ–94–0004	Abate 4E Insecticide
000241 NJ–94–0005	Abate 5-G Insecticide
000279 NJ–95–0001	Command 4EC Herbicide
000279 NJ–95–0002	Command 4EC Herbicide
000352 NJ–95–0009	Dupont Asana XL Insecticide
050534 NJ–96–0001	Bravo 720
050534 NJ–96–0002	Bravo 825
000279 NJ–96–0006	Command 4EC Herbicide
050534 NJ–97–0002	Bravo 825
050534 NJ–97–0003	Bravo 720
000279 NJ–99–0003	Command 4EC Herbicide
008329 NJ–99–0008	Abate 5-G Insecticide
000279 NM–85–0006	Pounce 3.2 EC Insecticide
012455 NM–89–0001	Quintox Rat and Mouse Bait
010182 NM–94–0003	Cyclone Herbicide
010182 NM–95–0003	Cyclone Concentrate Herbicide
012455 NM–99–0005	Quintox Rat and Mouse Bait
000432 NV–88–0004	Pyraperm 455 Dust
010707 NV–93–0006	Magnacide H Herbicide
005481 NV–94–0004	Dibrom 8 Emulsive
010163 NV–97–0002	Savey Ovicide/Miticide 50-WP
010163 NV–99–0010	Supracide 25W
056576 NY–01–0001	Copper Sulfate Crystals
001812 NY–94–0005	Medium Crystals Copper Sulfate
001812 NY–96–0002	Tennessee Brand Copper Sulfate Crystal
004581 NY–98–0001	Aquathol Granular Aquatic Herbicide
000100 NY–99–0004	Vangard WG Fungicide
000279 OH–00–0001	Command 3ME Microencapsulated Herbicide
000279 OH–00–0002	Command 3ME Microencapsulated Herbicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000279 OH–00–0003	Command 3ME Microencapsulated Herbicide
000279 OH–01–0001	Aim Herbicide
000279 OH–93–0004	Command 4EC
010163 OH–94–0006	Metasystox-R Spray Concentrate
004581 OH–96–0004	Ziram 76DF Fungicide
059639 OH–97–0006	Orthene Turf, Tree, & Ornamental Spray
000432 OK–82–0006	Permanone Tick Repellent
009779 OK–85–0005	Riverside Atraside 4l
009779 OK–85–0006	Riverside Atrazine 90 Dry Flowable
059639 OK–89–0005	Orthene 75 S Soluble Powder
060063 OK–92–0005	Oxon Italia Atrazine 90 Herbicide
060063 OK–92–0006	IDA, Inc. Atrazine 4L Herbicide
010182 OK–94–0004	Cyclone Herbicide
010182 OK–95–0004	Cyclone Concentrate Herbicide
010163 OR–00–0011	Savey 2E
010182 OR–00–0027	Diquat Herbicide
000241 OR–00–0031	Raptor Herbicide
010182 OR–01–0010	Cyclone Concentrate/ Gramoxone Max
010182 OR–01–0012	Cyclone Concentrate/ Gramoxone Max
007173 OR–78–0018	Rozol Rodenticide Ground Spray Concentrate
003125 OR–78–0024	Mesurol 50% Hopper - Box Treater
002935 OR–81–0073	Wilbur-Ellis Malathion 8 Spray
012455 OR–85–0038	Ditrac Rat and Mouse Bait
000432 OR–87–0016	Acclaim 1 EC Herbicide
002935 OR–90–0003	Dupont Karmex DF Herbicide
010163 OR–90–0017	Gowan Diazinon 14G
034704 OR–91–0012	Sprout Nip Emulsifiable Concentrate
002792 OR–91–0021	Deccoquin 305 Concentrate
000241 OR–93–0002	Prowl 3.3 EC Herbicide
010182 OR–93–0009	Gramoxone Extra Herbicide
051161 OR–93–0013	Orthene 75 S Soluble Powder

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
067752 OR–93–0014	Orthene 75 S Soluble Powder
010182 OR–93–0019	Gramoxone Extra Herbicide
000264 OR–94–0014	Dodine 65W
010163 OR–94–0052	Metasystox-R Spray Concentrate
010163 OR–94–0054	Metasystox-R Spray Concentrate
000279 OR–96–0020	Command 4EC Herbicide
000432 OR–96–0022	Acclaim 1 EC Herbicide
010163 OR–97–0013	Savey Ovicide/miticide 50-WP
010182 OR–98–0009	Quadris Fungicide
071795 OR–98–0018	Clorox
050534 OR–99–0013	Bravo 825
050534 OR–99–0014	Bravo 825
000241 OR–99–0016	Raptor Herbicide
050534 OR–99–0019	Bravo 720
050534 OR–99–0020	Bravo 720
050534 OR–99–0021	Bravo 720
050534 OR–99–0025	Bravo 825
050534 OR–99–0026	Bravo 720
000524 OR–99–0047	MON-65005 Herbicide
000524 OR–99–0048	MON-65005 Herbicide
010163 OR–99–0053	Supracide 25W
000279 PA–89–0005	Command 4EC
000279 PA–93–0001	Command 4EC
000400 PA–95–0009	Dimilin 4L for Use on Forests
004581 PA–96–0003	Ziram 76DF Fungicide
000279 PA–98–0002	Command 4EC Herbicide
000100 PR–93–0001	Tilt 250 EC
011649 PR–96–0002	Avitrol Powder Mix
073545 SC–79–0033	Topsin-M 70 W
000279 SC–93–0002	Command 4EC
000279 SC–95–0008	Ammo 2.5 EC Insecticide
059639 SC–98–0005	Select Herbicide
054555 SC–99–0001	Dormex
010163 SC–99–0005	Imidan 70-WP Agricultural Insecticide
000264 SC–99–0007	Hoelon 3EC Herbicide
050534 SD–00–0006	Bravo Weather Stik ZN
050534 SD–00–0008	Bravo ZN
000279 SD–01–0004	Aim Herbicide
010182 SD–99–0003	Bravo 720
003125 TN–89–0007	Monitor 4

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000279 TN–93–0009	Command 4EC
054555 TX–00–0001	Dormex
003125 TX–00–0010	Admire 2 Flowable
010182 TX–01–0004	Cyclone Concentrate/ Gramoxone Max
004581 TX–78–0045	Aquathol Granular
000100 TX–83–0016	D.Z.N. Diazinon AG 500
000352 TX–88–0007	Dupont Asana XL Insecticide
060063 TX–92–0001	Oxon Italia Atrazine 90 Herbicide
060063 TX–92–0002	Ida, Inc. Atrazine 4L Herbicide
009779 TX–94–0014	Terranil 6l
010182 TX–96–0008	Gramoxone Extra Herbicide
004581 TX–99–0003	Aquathol Granular Aquatic Herbicide
000279 UT–00–0008	Capture 2 EC Insecticide/ Miticide
000279 UT–00–0009	Furadan 4F Insecticide/ Nematicide
000432 UT–01–0001	Permanone Insecticide Concentrate.
000432 UT–01–0002	Aqua-Permanone
007173 UT–77–0001	Rozol Paraffinized Pellets
007173 UT–78–0006	Rozol Rodenticide Ground Spray Concentrate
009779 UT–93–0001	Dimate 4E
010707 UT–93–0004	Magnacide H Herbicide
010182 UT–96–0003	Gramoxone Extra Herbicide
000279 UT–96–0005	Capture 2 EC Insecticide/ Miticide
000279 VA–00–0001	Command 4EC Herbicide
000279 VA–89–0001	Command 4EC
000279 VA–89–0002	Command 4EC
000279 VA–93–0003	Command 4EC
000279 VA–93–0004	Command 4EC
000279 VA–93–0009	Command 4EC
063569 VA–94–0011	Epco-Tek 2000
000279 VA–96–0004	Command 4EC Herbicide
000279 VA–96–0006	Command 4EC Herbicide
056576 VT–01–0001	Copper Sulfate Crystals
000100 VT–90–0001	D.Z.N. Diazinon AG 500
001812 VT–94–0002	Granular Crystals Copper Sulfate
050534 VT–96–0001	Bravo 720

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
050534 WA–00–0013	Daconil SDG
050534 WA–00–0025	Bravo 720
050534 WA–00–0026	Bravo 825 Agricultural Fungicide
010182 WA–00–0032	Gramoxone Extra Herbicide
010182 WA–01–0008	Cyclone Concentrate/ Gramoxone Max
010182 WA–01–0012	Cyclone Concentrate/ Gramoxone Max
007173 WA–78–0060	Rozol Rodenticide Ground Spray Concentrate
010707 WA–87–0018	Magnacide H Herbicide
009779 WA–87–0022	Dimethoate 4E
009779 WA–88–0014	Riverside Dimate 2.67
005481 WA–89–0019	Dibrom 8 Emulsive
009779 WA–92–0005	Phorate 20-G
010182 WA–93–0014	Gramoxone Extra Herbicide
010163 WA–95–0005	Metasystox-R Spray Concentrate
002792 WA–95–0039	Deccoquin 305 Concentrate
069880 WA–96–0011	Ro-Neet 6-E Selective Herbicide
000279 WA–96–0016	Command 4EC Herbicide
050534 WA–96–0029	Bravo 720
034704 WA–96–0036	Clean Crop Trifluralin 4EC
009779 WA–97–0019	Dimate 4E
010163 WA–97–0020	Savey Ovicide/miticide 50-WP
009779 WA–97–0031	Dimate 4E
050534 WA–99–0007	Bravo 720
050534 WA–99–0008	Bravo 825
010182 WA–99–0016	Abound Flowable Fungicide
000524 WA–99–0029	MON-65005 Herbicide
010163 WA–99–0030	Supracide 25W
000524 WA–99–0031	MON-65005 Herbicide
050534 WI–00–0001	Bravo 720
050534 WI–00–0004	Bravo Weather Stik ZN
000279 WI–01–0002	Command 4EC Herbicide
066222 WI–01–0003	Galigan 2E
009779 WI–91–0006	Phorate 20-G
000279 WI–92–0006	Command 4EC
000279 WI–96–0002	Command 4EC Herbicide
050534 WI–96–0003	Bravo 720

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
050534 WI–96–0004	Bravo ZN
000279 WI–97–0001	Command 4EC Herbicide
000279 WI–99–0006	Command 4EC Herbicide
003125 WI–99–0010	Admire 2 Flowable
007173 WV–77–0003	Rodenticide Ground Spray Concentrate
012455 WV–82–0005	Ditrac Rat and Mouse Bait
003125 WV–93–0002	Tempo 2 Ornamental Insecticide
010182 WY–00–0001	Gramoxone Extra Herbicide
010163 WY–00–0002	Supracide 25W
010163 WY–00–0004	Savey Ovicide/Miticide 50-WP
000432 WY–01–0002	Aqua-Permanone
010707 WY–93–0003	Magnacide H Herbicide
003125 WY–95–0003	Sencor Df 75% Dry Flowable Herbicide
010163 WY–97–0002	Gowan Endosulfan 3EC
059639 WY–98–0004	Dibrom 8 Emulsive

The following Table 2 lists all of the section 3 registrations which were canceled for non-payment of the 2002 maintenance fees.

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

Registration no.	Product Name
000052–00208	Germ Warfare Concentrated Detergent Germicide
000087–00009	Penngas Sterilizing Gas
000087–00011	Penngas 2
000100–00928	Bicep Magnum TR Herbicide
000100–00956	Prosulfuron + Atrazine Herbicide
000100–01094	Dynasty Herbicide
000106–00078	Broadspec 128
000193–00004	Wonder Bleach
000193–00016	Wonder Chlor
000193–00017	Jewel Bleach
000193–00018	Wonder Fresh Scent Bleach
000264–00630	Folistar 50WP
000270–00320	Bendiocarb 2.5 Insecticide Granules
000275–00078	Receptal Saf-Gard Liner System with Germicide
000279–03222	Methyl Parathion 2 Thiodan 3 EC
000283–00004	Neo Solu-Styril No. 5 Aqueous Germicidal Solution

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
000303–00063	Huntington Hi-Sine
000303–00108	H6-29I Sanitizer-Cleaner
000303–00116	Hunto-Pine
000303–00219	Firing Squad UIV Spray Insecticide
000303–00222	TOR II
000322–00007	Fort Brand Gopher Bait
000323–00025	N-Dit Concentrate
000323–00056	N-Dit 3
000323–00064	Holcomb Surface Cleaner and Disinfectant
000334–00566	Hytime Metered Aerosol Insecticide
000334–00567	HBII Wasp &Hornet Killer
000335–00178	Chlorine
000432–00547	Crossfire SBP-1382 3% Multipurpose Spray
000432–00554	Pramex Insecticide Emulsifiable Concentrate 13.3% Formu
000432–00711	Perimeter 57% MF
000432–00731	Dethmor Manufacturing - Use Product
000432–00815	Talex Manufacturing Use Product
000432–00902	Lawn Fungicide Granules
000432–00908	Ford's 50% Malathion Emulsifiable Concentrate
000432–00909	Ford's Malathion 57%
000432–00922	Ford's Pyricide Horse Spray
000432–00944	Ficam ULV Solution
000432–00970	Pyretox No. 100 D Insecticide
000432–00990	Pyrenone Grain Protectant
000432–01037	Pyrenone Flexi-Dust
000432–01049	Dairy Spray Concentrate
000432–01066	A-PB Food Plant Fogging Spray
000432–01075	Alleviate Equine Insecticide E.C.
000432–01109	Perma-Vape
000432–01126	Secure Insecticide
000432–01131	Turbocide Pest Control System with DDVP
000432–01206	GA6 - Weed &Grass Killer Ready-To-Use
000491–00217	Super Se-Fly-Go
000491–00263	DRB-SP
000498–00087	Chase-Mm Patio Patrol Outdoor Insect Fogger
000498–00144	Spray Pak Flying and Crawling Insect Killer Formula 2
000506–00184	TAT Residual Roach &Ant Killer
000524–00124	Avadex BW Selective Herbicide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
000524–00291	Granular Avadex BW Herbicide
000538–00087	Scotts Turf Builder with Halts
000538–00128	Scotts Vegetable Garden Weed Preventer
000538–00235	Flower and Garden Weed Preventer
000541–00168	Galahad Neutral Detergent-Germicide Hospital Grade
000541–00265	Puritan #6790 Detergent-Germicide
000550–00193	Liquichlor 10.0%
000550–00196	Vanchlor Sanitizer 5.25%
000550–20001	Liquichlor 12 1/2%
000655–00019	Prentox Warfarin Concentrate Rax Powder
000655–00457	Prentox Diazinon 4E Insecticide
000655–00519	Prentox Liquid Household Spray #1
000662–00073	GDA 50
000662–00074	Sepacide 25
000662–00075	Protectol GA 50
000675–00046	New O-Syl Disinfectant - Detergent
000773–00046	K.F.L. Insecticide-Shampoo
000773–00052	Weladol Disinfectant
000773–00058	Expar 3.2% EC
000773–00061	Expar Cream Rinse for Dogs and Cats
000773–00064	Ectiban Wp Insecticide
000833–00071	Vigilquat
000862–00027	Sunspray 8B
000862–00030	Sunspray 12N
000961–00343	Lebanon Granular 1.5% Oftanol Insecticide
000961–00351	Lebanon Lawn Food with Oftanol Insect Control
001015–00034	Douglas HI-PO "22" Ready To Use Fortified Multi-Purpose
001015–00071	Vaporooter
001317–00074	Fly Du
001317–00080	Du-Clor Swimming Pool Chlorine
001327–00038	Fulex Dithio Insecticidal Smoke
001459–00075	Wintermint Disinfectant, Cleaner, Deodorant
001475–00030	ENOZ Delicately Scented Bouquet-Aire Hang-Up Cakes
001475–00090	ENOZ Cedar Tree
001475–00142	Moth-Tek Paper Covered Moth Ball Hangers
001475–00148	Bacta-Clean Sanitizer Tablets

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
001475–00149	Paradise Cedar Scented Cedar Block
001475–00152	Click Moth Balls
001475–00153	Click 4 Moth &Mildew Discs
001475–00154	Click Solid Air Deodorizer and Bacteriostat for Urinal
001475–00155	Click Para Nuggets
001574–00031	First Mate Disinfectant Cleaner
001574–00034	Enda-Bug Insecticide III.
001677–00131	KX-6034-A
001677–00137	Sta-Chlor
001677–00147	BK LFI Germicide-Sanitizer
001677–00165	Enviro San II
001677–00168	Monarch Low-Foam Iodophor Germicidal Detergent
001677–00171	Monoklor Liquid
001677–00172	Advantage
001677–00173	Monarch CL-14
001677–00174	Monarch Bac'cide
001677–00175	CLX
001677–00176	SANEZE
001677–00178	Monarch Iodine Concentrate
001677–00179	Phos-Enquat
001677–00180	Enquat
001677–00181	Monarch - Ful- Chlor
001677–00182	Monoklor
001677–00184	KX-6078
001706–00042	Nalcon 248
001706–00180	Nalcon 7638
001706–00203	Tektamer 38 O.F.
001706–00204	Calgon PB-15I Papermill Slimicide
001706–00210	H-3130 M Municipal Water Treatment
002011–00007	Vigortone Bovotone FC "008" with Rabon Oral Larvicide
002382–00123	Ecto-Soothe Permethrin Shampoo for Dogs
002382–00139	Amitraz Tick Collar for Dogs
002382–00140	Permethrin-IGR #2 Flea and Tick Spray for Dogs
002382–00153	Knockout Room and Area Fogger #1
002382–00154	Flypel II
002382–00168	Diazion-Pyriproxyfen Collar for Dogs and Puppies #1
002382–00171	Diazion-Pyriproxyfen Collar for Dogs and Puppies #3
002382–00172	Diazion-Pyriproxyfen Collar for Dogs and Puppies #2
002439–20003	Sodium Hypochlorite Solution

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
002568–00092	Coastal Super Service Anti-Fouling 59-R-7 Red
002568–00097	Vinyl Anti-Fouling V59R25 Red
002568–00098	Sea Prince Antifouling Red 60a3000 Red
002792–00041	Pennwalt Decco 273 Aerosol Potato Sprout Inhibitor
002881–00068	Miraquat II
003008–00053	ADZ-Pad
003095–00061	Pic Room Fogger III
003134–00028	Evsco Theradex A Shampoo for Veterinary Use Only
003240–00009	Technical Grade Pival
003240–00010	Technical Grade Pivalyn
003573–00059	Cleaning Magic I
003862–00002	Insecticide No. 111
003862–00047	Malathion-50 Spray
003862–00049	LEM-O-DIS 27-42
003862–00051	O-DIS 27-42
003862–00065	Bromokil 2:0 Weed Killer
003862–00074	Lemon 7
003862–00079	Insect Death Mist
003862–00081	Destroyer
003862–00084	Easy Does It
003862–00090	Quick Kill Ready To Use Weed Killer
003862–00094	ABC Neutral Disinfectant
003862–00098	Chemscope Insecticide 150
003862–00113	Insect 3000
003862–00114	Dog Shampoo
003862–00118	Di-Elec Wasp &Hornet Spray
003862–00120	Acid Disenfectant Bowl Cleaner
004000–00069	Emulsol Disinfectant Bowl Cleaner
004170–00084	Bac Gard
004787–00024	Malathion Technical
004925–00003	Special King Mosquito Repellent Coil
004972–00063	Protexall Lice Killer (Alternate Formula)
005011–00004	Formula F-5
005011–00071	Formula MU-17
005202–00006	Agri-Fresh
005202–00017	Britex 360 F Apple Wax.
005481–00284	Thuricide HP-90M Dust
005481–00293	Royal Brand Thuricide Hp Cornmeal Bait
005481–00302	Royal Brand Dipel 150 Dust

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
005481–00303	Royal Brand Dipel 150 Corn-meal Bait
005481–00304	Royal Brand Dipel 110 Dust
005481–00313	5% Rotenone Fish Toxicant
005535–00074	Gro-Well No-Gro Weed and Grass Killer
005568–00185	Sodium Hypochlorite Solution
005602–00097	Di-Tox E
005602–00151	Di-Tox Plus
005602–00178	Virchem Seventy-Six Insecticide
005602–00201	Hub States Corporation/V-73
006035–00047	Vinco Formaldehyde Solution
006175–00020	Flea Sheen II Shampoo
006175–00024	Flea Sheen Concentrate
006175–00032	Aqua-Kill Forte
006175–00033	Aqua-Kill Flea &Tick Spray
006175–00045	Horse Spray &Rub
006175–00061	Ami Flea &Tick Spray #1
006175–00062	Ami Flea and Tick Dip for Dogs #2
006175–00065	Defend Insecticide for Dogs
006325–00016	Yellow Jacket Fluid Sulfur 70 Sd
006325–00018	Yellow Jacket Sulfur 80 Df
006390–00009	Vikol RG
006409–00014	Professional Do It Yourself Exterminator's Kit Formula
006718–00020	Quick Killing Bug Spray
006718–00021	Amway Fast-Acting Bowl Cleaner II
007001–00344	Sodium Chlorate 5lb Concentrate
007001–00373	Sochlor 6
007405–00034	Chemi-Cap Bamboo Air Sanitizer
007501–00098	Gustafson 2% Reldan Dust Insecticide
007616–00004	Shock
007809–00004	Dial-A-Therm Germicide
008119–00010	Deadline Force, Meal
008176–00024	Hvc 5.25% Sodium Hypochlorite
008176–20001	Hi-Test Sodium Hypochlorite
008176–20005	Premier No. 144 Microbiocide
008329–00058	Abate 2-CG Insecticide
008329–00059	Abate 5-G Insecticide
008540–00015	Garratt-Callahan Formula 34-A
008591–00045	Stabrex St30
008591–00046	N-136b
008616–00007	Iodex

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
008660–00053	25% Lindane Wettable Powder
008660–00085	Green Up Kerb 50w
008660–00129	Pursell Metam Sodium
008764–00009	Freshgard 20
008842–00004	Pynamin Forte 120 Mosquito and Fly Vape Mat
008873–20004	Kleen Brite Bleach
009198–00160	The Anderson's 7.5% Chloroneb Turf Fungicide
009386–00025	DMTT-24
009488–00001	Chlorine Liquefied (under Pressure)
009488–20002	Sodium Hypochlorite Solution
009591–00166	Insecticide 110
009616–00009	Vertex Css-10
009634–00002	Clorosol Chlornating Solution
009688–00118	Chemsico Granules Formula B
009779–00362	Riverside Methyl Parathion 4
009852–00070	No-Chlor Wasp and Hornet Killer
010107–00010	Micro - Gro Cythion Premium Grade Malathion E-5
010107–00036	6% Malathion Grain Protector
010145–00007	Vita-San WS
010352–00047	Stabilene Fly Repellent
010404–00010	Lesco Thiram 75W
010404–00092	Agway Lawn Shield Crabgrass Killer with Tupersan
010631–00002	Angel City House Plant Insect Spray
010634–00002	Alpha San 100
010634–00003	Alpha San 200
010951–00012	Britz Wettable or Dusting Sulfur
011204–00003	Greenall Pro-Formula Weed Control and Lawn Fertilizer 2
011364–00005	Angus Hot Rod
011399–00001	Quaternary Germicidal Cleaner UL-709
011399–00003	UL-530 Heavy Duty Cleaner and Disinfectant
011525–00014	Bathroom Cleaner
011525–00074	P/P Disinfectant, Degreaser and Cleaner
011529–00002	BAF-10
011556–00058	Fleatol Shampoo
011773–00018	De-Bug-1 Bait for Grasshoppers
013208–20001	White House Pool Chlorine
013648–00009	Glidclean 80/60 Pine Oil Disinfectant

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
013648–00020	Glidclean 20/80 20% Pine Type Disinfectant
013926–00006	Diaciclon F-5
017705–00002	Pathmark Fresh Scent Bleach
018184–00007	Sultan Germicide
019713–00118	Methoxychlor 4L Insecticide
026884–00001	Bonco Algaecide-Slimicide No. 15
028293–00256	Dursban Roach &Ant Bait
028293–00266	Dursban Plus Resmethrin Concentrate
030574–00007	Tri-Tox 55% Tablets
030574–00008	Tri-Tox 55% Pellets
032802–00023	Stop Grub Plus W/ 20-3-5 Fertilizer
032802–00025	Stop Grub Insecticide Granules
032802–00032	Systemic Rose &Flower Care
033560–00044	Staa - Free 2 + 2 Granular Weed Killer
033753–00001	Myacide Pharma BP
033753–00011	Myacide Bt
033753–00019	Myacide Bt30
033753–00024	Myacide GDA
033912–00001	Wagnol 40 Pest Control Spray Concentrate contains Diazi
034277–00001	Chlorine
034277–00002	Sodium Hypochlorite Solution
034750–20004	Sodium Hypochlorite 5
034871–00005	Chemicide 965
035512–00041	Weed &Feed "s" 32-3-8
035512–00042	Weed &Feed for St. Augustine Grass
035896–00004	Basic Copper TS-53
035896–00007	Copper Pride
035896–00009	Basic Copper Sulfate
036029–00015	Milo Bait for Pocket Gophers
036272–00020	Mystic Flea Spray
036488–00037	Ringer (Safer) Wasp &Hornet Attack RTU
037655–00003	Tropi-Clear Slow Dissolving 3" Wrapped Tabs
037655–00004	Tropi-Clear Black Algae Destroyer
037831–00009	Cu2o Antifouling Manne Paint FR-4800
037910–00002	Hi-Lite 60P
037910–00003	Hi-Lite 90p Powder
038110–00008	Green Grass M-14 with Rabon Oral Larvicide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
038797–00001	Nu-Clear Pool Chlorination Solution
039039–00005	Dryzon Wp Livestock Premise &Sheep Insecticide
039260–00001	M-44 Cyanide Capsules
039444–00007	Micropur Mt 5
040572–00001	Carrollchlor
040800–20001	Sodium Hypochlorite Solution
040841–00003	Microbiocide W-15
041014–00003	Marlate Garden Insecticide 5% Dust
041014–00012	Marlate 70% Methoxychlor Dust Base
041134–00004	Tica Granular
041134–00005	SDIC Granular
041391–00001	Sanitizer
042273–00001	Mercury Exterior-Ready Mixed Penetrating Oil Stain
042506–00004	Pine Fresh Household Cleaner
042697–00006	Safer Flea Soap for Cats and Dogs
042697–00040	Safer Brand Ant, Roach &Spider Killer I
042697–00051	Safer Brand Weed-Away Lawn Weed Killer Ready To Use
042697–00052	Safer Brand Weed-Away Lawn Weed Killer Concentrate
042697–00053	EH 1357 Herbicide
042697–00054	Delta S Rtu Insecticide
042697–00056	Ant Killer Granules
042697–00057	Deltamethrin Insect Control Dust
042964–00003	Entacide
043410–00027	ACI Sanitizer 405-R
043521–00003	Super Swim Brite 62
043602–00017	Kleer Tower X300 Cooling Tower Algaecide
043843–00003	Chlorine Liquified Gas Under Pressure
044446–00011	Quik-Kill Fly &Mosquito Spray
044446–00063	Remote Total Release Fogger
044786–00001	ABL 16
045600–00011	Insecta Perimeter Spray
045973–00001	Al-Chlor 150
045987–00006	Rodspray Mosquito Larvicide
046196–00001	Roach and Ant Killer
046579–00005	Pyra - Fog 3 Contact and Space Spray
046830–00001	Palene 586B
048273–00013	Pestban 2E
048273–00019	Pestban 4E

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
048301–00016	Bodoxin
049407–00001	Rescue! Dog &Cat Repellent
049517–00002	Poly-Foliant III Defoliant-Dessicant
049668–00007	Redball Lightning Degradable Sulfur
049720–00001	Scochlor Liquefied Chlorine
050039–00002	Abuse-A-Bug
050221–00001	Liquefied Chlorine Gas Under Pressure
050400–00001	Liquefied Chlorine Gas Under Pressure
050414–00002	Tomlyn Daily Protection
050414–00004	Tomyln Flea, Tick and Lice Shampoo
050414–00005	Tomlyn Flea, Tick &Lice Shampoo
050534–00004	Daconil 2787 W75
050534–00023	Bravo W-75 Agricultural Fungicide
050534–00106	Kacodil
050534–00107	Pickall
050534–00117	Tuffcide 960s
050534–00218	Tuffcide Ultrex ADG
050534–00224	Tuffcide Xtra
050654–00002	Insekten Killer
050654–00004	Insectkiller Cockroach Carpet
050675–00005	PB-Rope
051219–00005	CWT-BB100
051517–00007	Gargoil
051699–00001	C-H Formula #9 Bug Killer
051699–00002	Formula No. 15 Bug Killer
052287–00002	Harrell's Ronstar 1.5 with Fertilizer
052287–00004	Oftanol 660 with Plant Food
052287–00005	0.40% Chlorpyrifos Plus Fertilizer
053356–00002	D-Bug-75
053824–00002	P-7 Grain Preservative
053883–00058	Martin's Diazinon 4e Indoor-Outdoor Insecticide
054045–00001	Zebra Mosquito Coils
054679–00003	Custom Chlor 200
054705–00003	Fungi-Fighter Systemic Fungicide
054998–00003	Tablets
055236–00004	101 Blue 100 Copper Antifouling Paint

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
055615–00005	Wilbro Fertilizer with Ronstar
055773–00001	Score Roach Bait
056159–00002	Beaphar Flea and Tick Spray
056159–00003	Beaphar Flea and Tick Shampoo for Dogs (cats)
056159–00005	Durham's Flea, Tick and Lice Dip
056159–00006	Durham's General Purpose Insecticide
056212–00002	Dmx-7 Plus Lecithin
056572–00003	Liquid Chlor
056637–00001	Trap-n-a-Sak
056637–00003	Trap-n-a-Sak Bar Bait Kills Rats and Mice
056637–00004	Trap-n-a-Sak II Kills Rats and Mice
056986–00001	Insect Repellent Patio Candle
057538–00007	Top Cop Tri-Basic Flowable Fungicide/Bactericide
057787–00013	Combat
057966–00001	Chlorine
058199–00006	Jump Plant Regulator
058401–00012	Stellar One Inch Tablet
058401–00014	Stellar 90 Granular
058501–00001	Confront Weed Stick
058841–00001	Mosquito Shield
059732–00001	Liquified Chlorine Gas Under Pressure
059790–00001	El Matador
061219–20001	Sodium Hypochlorite
061602–00001	Laroche Chlorine
061616–00001	Liquified Chlorine Gas Under Pressure
061842–00001	Or-Cal Sectagon II
061842–00002	Sectagon
061842–00003	Pole Life
061842–00005	Or-Cal Metam-S.A.U.
062012–00001	Mr. Christal's Kills Fleas
062563–00002	Blue Ridge Bleach
062563–00003	Time Saver Bleach
062563–00005	Linco Bleach
062563–00006	SX-3 Liquid Bactericide
062719–00230	Grandstand
063015–00001	Liquified Chlorine Gas Under Pressure
063281–00003	Povidone Iodine, USP Solution
063281–00004	MTR Phenolic Germicidal Cleaner

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
063281–00009	BC II Phenolic
063569–00001	Epco-Tek 2000
063823–00035	Stick-Up Roach Trap
064005–00004	Itek-5 Water Purification Resin
064350–00002	W-60-3
064439–00002	Gopher-Med
064864–00037	Last-Bite Snail and Slug Killer Meal
064864–00044	Thiabendazole Citrus Fungicide Concentrate
064864–00049	Pacrite Clean San
065560–00001	Chlorine
065560–00003	Sodium Hypochlorite 10%
065560–20001	Sodium Hypochlorite 12.5%
065897–00001	Swepr Klorpik-Sr Fume
065987–00002	911 Home Exterminator
066301–00001	UBIX Animal Wash or Spray
066352–00002	Garlic Barrier AG
066736–00001	Ciba Seeds B. Thuringiensis S. K. European Corn Borer C
067003–00021	Calcium Hypochlorite Granular
067003–00022	Calcium Hypochlorite
067066–00001	EFFAC
067279–00001	Sodium Hypochlorite Solution
067279–00002	Chemply Chlorine Liquified Gas Under Pressure
067425–00001	Ant &Roach Killer
067425–00003	Ecopco G Granular Insecticide
067425–00006	Eco Safe(tm) Broad Spectrum Insecticide
067425–00012	Ecopco EC Emulsifiable Concentrate
067544–20001	Spar Chlor
067553–00001	Liquified Chlorine Gas Under Pressure
067572–00003	R &M Permethrin 10% E.C.
067572–00004	R &M Aqueous Residual Flea &Tick Spray #3
067572–00006	R &M Flea &Tick Spray #11
067572–00007	R &M Flea and Tick Shampoo #11
067572–00015	R &M Aqueous Flea &Tick Spray #13
067572–00018	R &M Aqueous Residual Flea &Tick Spray #1
067572–00019	R &M Hamster &Gerbil Spray
067572–00021	R &M Flea &Tick Shampoo #15
067572–00022	R &M Flea &Tick Shampoo #16
067572–00029	R &M Flea &Tick Spray #12

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
067572–00033	R &M Flea and Tick Dip #11
067572–00034	R &M Flea and Tick Dip #12
067572–00056	CP Snail &Bug Bait
067572–00057	CP Cage and Aviary Spray
067760–00037	Parathion 4 EC.
067959–00001	Trifluralin Technical
068150–00001	Maltchlor
068329–00020	Alpha 416
068338–00003	Sodium Hypochlorite 16%
068338–00006	North Bright Bleach
068543–00007	Bengal Roach &Ant Spray
068543–00011	Bengal Water-Based Wasp &Hornet Killer
068826–00001	Cal Crop USA Envirepel
068826–00002	Cal Crop USA Nutripel
069217–00001	Prevent
069421–00102	Irrigate
069607–00001	Double Duty Flea &Tick Collar for Dogs
069735–20001	Wilclor - 2
069897–00001	Microfree Brand B 507
069897–00002	Microfree Brand B 240
069900–00001	Outsmart
069979–00001	Acid-Anionic Sanitizer Cleaner
070051–00008	Neemguard
070051–00024	Azatin Technical
070051–00050	Able Biological Insecticide
070051–00058	Thuricide - 64LV Plus
070051–00059	Thuricide 64 LV
070051–00071	Teknar Hp-B Larvicide
070126–00002	Organic Resources Crawling Insect Killer
070271–00005	Sparkle Brite
070271–00006	Lasso Pine Aroma Disinfectant
070271–00007	Pure Bright Institutional Sanitizer
070271–00009	Pure Bright Industrial Sanitizer/ disinfectant
070271–00011	Pure Bright Liquid Chlorinator
070271–00014	Clo White Bleach
070395–00001	Gone Insect Repelling Wristband
070810–00002	Auxigro Manufacturing Use Product
070810–00007	Corngard
070810–00009	Mycotrol 22WP
070907–00002	Regatta 4E Chlorpyrifos Professional Insecticide
070907–00009	Regatta 50W Chlorpyrifos Professionalinsecticide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
071207–00001	Chlorine Liquified Gas Under Pressure
071207–20001	Sodium Hypochlorite Solution (end-Use Product)
071207–20007	Sodium Hypochlorite Solution (manufacturing Use)
071227–00002	Zeomic Type AJ10N Silver Zeolite A
071227–00003	Zeomic Type AJ10N Silver Zeolite A
071683–00001	Exile Herbicide Technical
071711–00009	Flutolanil Technical
071711–00010	Moncut 50WP
071711–00011	Moncut 50WP
071711–00012	Moncut 70WP (for Use on Rice)
071768–00001	Bear Pause Attack Deterrent
071817–00001	Brightwater Disinfectant
071829–00001	One Drop Anti-Flea and Tick Treatment
071946–00001	Sharp-Shield
072025–00001	Registered Rabbit Repellent
072190–00001	5-Chloro-2-(2,4-Dichlorophenoxy)phenol Polymer Additive
072437–00001	Stellar 85 Tabs
072437–00002	Stellar 80 Tabs
072437–00003	Stellar 95 Tabs
072439–00001	IPEX 200
072439–00002	IPEX 1000
072439–00003	IPEX 400
072451–00001	MSTRS ECB
072451–00004	MSTRS BHFW-2
072581–20004	Low Temp Sanitizer
072594–00002	Dyna-Gro Root-Gel
072639–00002	LT Biosyn, Inc. 1-Naphthaleneacetic Acid Technical
072679–00001	Copper Paint No.5 Green
072679–00003	Copper Paint No.3 Red
072738–20001	Sunscape
072738–20002	Patterson West Sunscape
072738–20004	Patterson West Blue Ribbon
073049–00007	Promalin II Plant Growth Regulator Solution
073748–00002	Kattleguard "plus"
073825–00003	Ecozap Granular Insecticide
073825–00004	Ecozap Carpet Powder
074180–00001	Super IQ Insecticide Coating-APT
074180–00002	Super IQ Insecticide Coating-LC

IV. Public Docket

Complete lists of registrations canceled for non-payment of the maintenance fee will also be available for reference during normal business hours in the OPP Public Docket, Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional Office. Product–specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

List of Subjects

Environmental protection, Fees.

Dated: July 25, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 02–19982 Filed 8–6–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0166; FRL–7190–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0166, must be received on or before September 6, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0166 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: treva.alston@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0166. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002-0166 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0166. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or

all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 2002.

Peter Caukins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Akzo Nobel Surface Chemistry LLC

PP 7E4807

EPA has received a pesticide petition PP 7E4807 from Akzo Nobel Surface Chemistry LLC, 300 South Riverside Plaza, Chicago, IL 60606, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180. To establish an exemption from the requirement of a tolerance for [2-ethylhexyl glucopyranoside] to be applied to growing crops only. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The plant metabolism of 2-ethylhexyl glucopyranoside has not been investigated. However, due to the structural similarity, the metabolic pathway for 2-ethylhexyl glucopyranoside is expected to be similar to that of other alkyl glucosides which have been previously granted an exemption from the requirement of a tolerance, and also of those alkyl glucosides of similar structure that appear on EPA's current List 4B Inert Ingredient List.

2. *Analytical method*. The inert ingredient, impurities and oligomer distribution can be analyzed using high temperature gas chromatography with cold on column injection after derivatization with silylating reagents. Low levels of the inert ingredient can be detected by HPLC.

3. *Magnitude of residues*. Given the current extensive and widespread use of structurally similar nonionic surfactants in herbicide formulations, the added use of 2-ethylhexyl glucopyranoside will not significantly contribute to the total use-volume of these materials. The expected concentration of 2ethylhexyl glucopyranoside when used in an herbicide formulation will be much lower than the concentration of any co-formulated pesticide active ingredient. Therefore, the comparable application rate, on a grams/acre basis will be significantly lower than that of any co-formulated active ingredient. It is then reasonable to assume that any potential residues resulting from the use of 2-ethylhexyl glucopyranoside in a pesticide formulation would be insignificant.

B. Toxicological Profile

1. *Acute toxicity*. The results of acute toxicity testing for 2-ethylhexyl glucopyranoside are as follows: Acute oral LD_{50} (rat) >2.0 gram/kilogram (g/kg); Acute dermal LD_{50} (rat) >2.38 g/kg; moderate to severe eye irritant (rabbit); non-irritating to skin (rabbit); not a skin sensitizer (guinea pig).

2. *Genotoxicty*. 2-Ethylhexyl glucoside was negative in the Ames test, and did not induce chromosomal aberrations in human lymphocytes cultured *in vivo*.

3. *Reproductive and developmental toxicity*. Although the final report has not yet been issued, the preliminary results from a one-generation reproduction toxicity study with 2-ethylhexyl glucoside administered in male and female Wistar rats are available. The results indicate gavage treatment of male and female Wistar rats with 2-ethylhexyl glucoside at dose levels of 15, 150 or 750 milligram/kilogram (mg/kg) body weight/day during one generation, revealed parental toxicity in animals receiving 750 mg/kg b.w./day. Reproductive parameters and development of the pups were not affected up to 750 mg/kg b.w./day.

Parental toxicity consisted of affected mortality, clinical signs, body weights, and food consumption for animals treated at 750 mg/kg body weight/day.

Based on the results in this one-generation study, the definitive parental no observed adverse effect level (NOAEL) was established as being 150 mg/kg body weight/day. The definitive reproductive and developmental NOAEL was established as being 750 mg/kg body weight/day.

4. *Subchronic toxicity*. A 28-day oral toxicity study in the rat was conducted

on 2-ethylhexyl glucopyranoside. The results were that in the rat, 750 mg/kg/day répresents the no-observed-toxic effect level (NOTEL) and 150 mg/kg/day represents the no-observed effect level (NOEL).

5. *Chronic toxicity.* Based on the NOTEL and NOEL results of the 28-day study conducted on 2-ethylhexyl glucopyranoside, there are no chronic health concerns.

6. *Animal metabolism.* Animal metabolism studies have not been conducted on 2-ethylhexyl glucopyranoside. However, structurally similar radiolabeled alkyl glucopyranosides were studied after oral administration to mice. The results indicate that the glycosidic bond was rapidly hydrolyzed in the intestine and liver to sugars and the parent alcohol. The sugars and alcohols then entered the pathways of lipid and carbohydrate metabolism.

7. *Metabolite toxicology.* The metabolites of 2-ethylhexyl glucopyranoside are expected to be the cleavage products at the glycosidic bond, 2-ethylhexanol and glucose. The toxicity of these two metabolites is well known.

8. *Endocrine disruption.* No evidence of endocrine disruption was observed in any of the studies conducted on 2-ethylhexyl glucopyranoside, nor are there any known reports of any estrogenic and adverse effects to human population as a result of the use of 2-ethyhexyl glucopyranoside.

C. Aggregate Exposure

1. *Dietary exposure.* Based on the metabolism study that indicates alkyl glucopyranosides are readily metabolized in the liver and intestine to glucose and the alcohol, exposure to 2-ethylhexyl glucopyranoside should not pose a dietary risk under any foreseeable circumstances to the U.S. population including infants and children.

i. *Food.* Exposures to 2-ethylhexyl glucopyranoside due to ingestion of food is not expected to occur.

ii. *Drinking water.* Exposures to 2-ethylhexyl glucopyranoside due to ingestion of water is not expected to occur.

2. *Non-dietary exposure.* Structurally similar alkyl glucopyranosides are currently being used in a number of institutional and household cleaning applications. These current uses are expected to result in significantly higher exposures than exposure due to the insignificant residue levels resulting from the use under the proposed exemption from the requirement of a tolerance applied to growing crops only.

D. Cumulative Effects.

From the results of the tests conducted on 2-ethylhexyl glucopyranoside, no evidence of any specific target organ toxicity has been produced. Therefore, there is no evidence of a common mechanism of toxicity with any other substance, and there is no reason to expect that the use of 2-ethyhexyl glucopyranoside will contribute to any cumulative toxicity resulting from exposures to other substances having a common mechanism of toxicity.

E. Safety Determination

1. *U.S. population.* The results of the acute, genotoxic, subacute and developmental toxicity studies conducted on 2-ethylhexyl glucopyranoside indicate a relatively low order of toxicity. Structurally similar alkyl glucopyranosides currently exempted from the requirement of a tolerance, also appear on EPA's List 4B Inert List. Therefore, due to the low order of toxicity of 2-ethylhexyl glucopyranoside and the lack of known adverse human health effects associated with this class of chemicals, the exemption from the requirement of a tolerance on growing crops only is not expected to result in any new, or adverse effects to human health or the environment.

2. *Infants and children.* Exposure to 2-ethylhexyl glucopyranosides to infants and children is not expected to occur. The substance will be used as an inert ingredient at low levels on growing crops only, and any residual levels are expected to be insignificant and consistent with structurally similar alkyl glucopyranosides currently exempted from the requirement of a tolerance.

F. International Tolerances

No codex maximum residue levels have been established for 2-ethyhexyl glucopyranoside.

[FR Doc. 02–19805 Filed 8–6–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0151; FRL–7188–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0151, must be received on or before September 6, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0151 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7610; e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this actionunder docket ID number OPP–2002–0151. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0151 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0151. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Reseaarch Project Number 4

PP 0E6205

Summary of Petitions

EPA has received a pesticide petition (PP 0E6205) from the Interregional Research Project Number 4 (IR-4), Technology Centre of New Jersey, Rutgers, the State University, 681 U. S. Highway #1 South, North Brunswick, NJ 08902 proposing, pursuant to section

408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.300 by establishing a tolerance for residues of ethephon, (2-chloroethyl)phosphonic acid in or on the raw agricultural commodity coffee, bean at 0.5 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

This Notice was prepared by Aventis CropScience USA LP, Research Triangle Park, NC 27709.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residue in plants is adequately understood based on tomato, cantaloupe, apple, fig, pineapple, tobacco, grape, walnut, filbert, cherry, tangerine and lemon metabolism data. Ethephon degrades to ethylene, phosphate and chloride. Data indicate that proximal and distal translocation of ethephon to fruits may occur following application to leaves. The residue of concern in plants is ethephon.

2. *Analytical method*. Adequate methods for purposes of enforcement of ethephon tolerances in plant commodities, ruminant tissues, and milk are available. The Amchem-Plant Method (PAM, Vol. II, Method I) is the recommended method for enforcement purposes for plant commodities and processed products other than wheat and barley straw. The Amchem-Cereal Method (forwarded to the Food and Drug Administration (FDA) for inclusion in the PAM, Vol. II, Method I) is the recommended method for enforcement purposes for wheat and barley straw. The Union Carbide-Animal Method (forwarded to the FDA for inclusion in the PAM, Vol. II, Method III) is the recommended method for enforcement purposes for milk and animal tissues. These methods employ diazomethane as a methylating agent. A new plant and animal method has been submitted for enforcement purposes that does not employ diazomethane. The method principally involves the decomposition of ethephon to ethylene to determine the residues of ethephon. An independent lab validation of this method has been completed and accepted by EPA.

3. *Magnitude of residues*. Residue studies have been conducted to support ethephon registrations on: cotton, apple, cherry, tomato, wheat, barley, pepper, grape, tobacco, walnut, almond, blackberry, cantaloupe, pineapple, sugarcane and macadamia nuts. In addition, IR-4 has conducted residue studies to support use on coffee. All residue data requirements cited in the ethephon Reregistration Eligibility Document (RED) have been submitted to EPA. As a result of this work, increased tolerances have been proposed for cottonseed (6 ppm, PP 6F4743) and cotton gin by-products (180 ppm, amendment to PP 1H5603). As part of the reregistration process, the following tolerances will be revoked: cucumber, filbert, lemon, pineapple forage and fodder, pumpkin, tangerine, tangerine hybrids and sugarcane molasses. The tolerances for residues of ethephon in or on food and feed commodities are currently based in terms of ethephon per se. Processing studies have been conducted on apple, barley, cottonseed, grape, pineapple, tomato, and wheat and are deemed adequate to determine the extent to which residues of ethephon concentrate in food/feed items upon processing of the raw agricultural commodity. Data indicate that ethephon residues concentrate in apple juice, dried apple pomace, barley hulls, cottonseed meal, grape juice, raisin, raisin waste, dried grape pomace, pineapple bran and pulp, dried tomato pomace, wheat bran, wheat shorts and germ and red dog. Available apple processing data indicate that residues of ethephon do not concentrate in wet apple pomace. Therefore, a feed additive tolerance on apple pomace is not required. Available tomato processing data indicate that residues of ethephon do not concentrate in tomato paste and, therefore, no tolerance is needed. Pineapple processing data indicate that residues of ethephon concentrate in dried pineapple bran (5.3X; no longer a processed commodity) and wet pulp (1.2X), but do not concentrate in juice, syrup, and slices. No feed additive tolerance for residues of ethephon in processed pineapple is required. As a result of a recent cow feeding study, new animal tolerances have been proposed. The following tolerances have been proposed for cattle, goat, hog, horse, and sheep: meat - 0.02 ppm; meat byproducts (except kidney) - 0.20 ppm; kidney - 1.0 ppm; fat 0.02 ppm, and milk (cow and goat) - 0.01 ppm. Following a hen feeding study, new tolerances were proposed for poultry: poultry meat - 0.01 ppm; poultry meat byproducts (except liver) - 0.01 ppm; poultry fat - 0.02 ppm; poultry liver - 0.05 ppm; and eggs - 0.002 ppm.

B. Toxicological Profile

1. *Acute toxicity*. A complete battery of acute toxicity studies for ethephon technical was completed. The acute oral toxicity study resulted in a lethal dose LD_{50} of 1,600 milligram/kilogram (mg/kg) for both sexes. The acute dermal toxicity in rabbits resulted in an LD_{50} in either sex of greater than 5,000 mg/kg. The acute inhalation study in rats resulted in a lethal concentration LC_{50} of 4.52 milligram/liter (mg/l). Ethephon was corrosive to the skin of rabbits in the primary dermal irritation study. Therefore, the primary eye irritation study in rabbits was not required. The dermal sensitization study in guinea pigs indicated that ethephon is not a sensitizer. Based on the results of the dermal irritation study, and the anticipated results in an eye irritation study, ethephon technical is placed in toxicity Category I. Based on the acute toxicity data cited above, the registrant concluded that ethephon technical does not pose any acute dietary risks.

2. *Genotoxicty*. The potential for genetic toxicity of ethephon was evaluated in several assays. The compound was found to be mutagenic in strain TA-1535 with and without S9 activation in the Ames assay. In the *in vitro* chromosomal aberrations study with Chinese hamster ovary cells, ethephon was negative. Ethephon was tested for unscheduled DNA synthesis in the rat hepatocyte system and was found to be negative. Based on the data cited above, Aventis contends that the weight of evidence indicates that ethephon technical does not pose a risk of mutagenicity or genotoxicity.

3. *Reproductive and developmental toxicity*. Ethephon has been tested for reproductive toxicity in rats and developmental toxicity in both rats and rabbits (two studies in each species). The results of these studies are summarized below:

i. In a two generation reproduction study, 28 Sprague-Dawley rats per sex per dose were administered 0, 300, 3,000, or 30,000 ppm (0,15, 150, or 1,500 mg/kg/day of ethephon in the diet. For the offspring, a no observed adverse effect level (NOAEL) of 15 mg/kg/day and a lowest observed adverse effect level (LOAEL) of 150 mg/kg/day was established based on decreased body weight gain in the females at 150 mg/kg/day and in both sexes at 1,500 mg/kg/day. No effects were observed on fertility, gestation, mating, organ weights, or histopathology in any generation.

ii. In rats, ethephon was administered by gavage at doses of 0, 20, 600, or 1,800 mg/kg for gestation days 6 through 15.

At 1,800 mg/kg/ day, 14 of the 24 treated female rats died. No toxic effects were observed at lower doses. The NOAEL for maternal and developmental toxicity was 600 mg/kg/day. In a second study, rats were dosed by gavage at 0, 125, 250, or 500 mg/kg/day on days 6 through 15 of gestation. No toxic effects were observed at any dose. The NOAEL for maternal and developmental toxicity was 500 mg/kg/day.

iii. In rabbits, ethephon was administered by gavage at doses of 0, 50, 100, and 250 mg/kg for gestation days 6 through 19. The number of doses with live fetuses were 10, 12, 8, and 5, respectively. Resorptions were increased at 100 mg/kg/day and statistically significantly increased at 250 mg/kg/day. At 250 mg/kg/day, does were depressed, ataxic, showed an increase of clinical observations and gross pathology in the gut. The NOAEL for maternal toxicity was 50 mg/kg/day and the NOAEL for developmental toxicity was 50 mg/kg/day. In a second study, rabbits were dosed by gavage at 0, 62.5, 125, or 250 mg/kg/day on days 6 through 19 of gestation. Maternal morbidity, mortality, and clinical signs of toxicity were observed at 250 mg/kg/day. Fetal toxicity, consisting of decreased number of live fetuses per doe, increased early resorptions and post implantation loss was observed at 250 mg/kg/day. A NOAEL for maternal and developmental toxicity of 125 mg/kg/day was observed.

Based on the 2-generation reproduction study in rats, ethephon is not considered a reproductive toxicant and shows no evidence of endocrine effects. The data from the developmental toxicity studies on ethephon show no evidence of a potential for developmental effects (malformations or variations) at doses that are not maternally toxic. The NOAEL for both maternal and developmental toxicity in rats was 500 mg/kg/day and for rabbits, the NOAEL for both maternal and developmental toxicity was 50 mg/kg/day, respectively.

4. *Subchronic toxicity*. The subchronic toxicity of ethephon has been studied in three human studies and a 21–day dermal study in rabbits. These studies are summarized below:

i. Male and female subjects received ethephon at doses of 0.17 and 0.33 mg/kg/day for 22 days. The daily doses were divided into 3 gelatin capsules. No adverse effects were noted in clinical observations, hematology, serum chemistry including red blood cell cholinesterase inhibitors (RBC ChE) and urinalysis. There was a significant decrease in plasma ChE for both treatment groups, although the effect at 0.17 mg/kg/day appeared to be very close to the threshold for significance.

ii. Male and female subjects received ethephon at a dosage of 0.5 mg/kg/day for 16 days. The daily dose was divided into 3 gelatin capsules. No adverse effects were noted in clinical observations, hematology, serum chemistry (including RBC ChE) and urinalysis. There was a significant decrease in plasma cholinesterase.

iii. Ethephon was administered to male and female subjects at a daily dose of 124 mg/day (1.8 mg/kg/day average for both sexes) divided up into 3 gelatin capsules for 28 days. Clinical signs of toxicity were observed and included diarrhea, urgency of bowel movements, urinary urgency and stomach cramps. No effects were noted with regard to hematology, urinalysis or serum chemistry including cholinesterase evaluations.

iv. In a 21–day dermal study, 10 rabbits per sex per group were dosed dermally at 0, 25, 75, and 150 mg/kg/day, 5–days per week for 3 weeks. Skin effects were observed at all doses. Effects ranged from erythema and desquamation at the lowest dose to acanthosis and chronic inflammation at 150 mg/kg/day. No systemic treatment-related effects were observed on body weight, food consumption, organ weight or histopathology. The systemic NOAEL was greater than 150 mg/kg/day.

Based on the results of the three studies in humans, a LOAEL of 1.8 mg/kg/day was established in the 28–day study. In the 22–day study, 0.17 mg/kg/day appeared to be very close to the threshold for significance. The systemic NOAEL in the 21–day dermal study in rabbits was greater than 150 mg/kg/day.

5. *Chronic toxicity*. A 2 year chronic toxicity/carcinogenicity study in rats, an 18-month mouse carcinogenicity study, a 1–year study in dogs, and a 2–year chronic study in dogs were performed on ethephon technical. These studies are summarized below:

i. A combined chronic/carcinogenicity study was performed on ethephon in Sprague-Dawley rats. Doses administered in the feed were 0, 300, 3,000, 10,000, or 30,000 ppm for 95 weeks to the males and 103 weeks for the females. The doses administered relative to body weight were 0, 13, 131, 446, or 1,416 mg/kg/day for males and 0, 16, 161, 543, or 1,794 mg/kg/day for females. Plasma and erythrocyte cholinesterase was inhibited at all doses (NOAEL <300 ppm). Brain cholinesterase inhibition was not observed. A decrease in male body weight was observed at 10,000 ppm. At 30,000 ppm a body weight decrease was observed in both sexes. Additional effects at 30,000 ppm were thyroglossal duct cysts, kidney glomerulo-sclerosis, nephritis, and biliary hyperplasia cholangiofibrosis. No carcinogenic effects were observed.

ii. Male and female CD-1 mice were administered ethephon in the diet at 0, 100, 1,000, or 10,000 ppm (0, 15.5, 156, or 1,630 mg/kg/day) for 78 weeks. An additional dose level of 50,000 ppm was terminated at 12-weeks because of excessive morbidity and mortality. No evidence of treatment related tumors was observed. A NOAEL of 15.5 mg/kg/day was determined for plasma cholinesterase inhibition. At 1,630 mg/kg/day male body weights were increased and female body weights decreased compared to controls.

iii. Ethephon technical was administered in the feed at 0, 30, 300, and 3,000 ppm (0, 0.75, 7.5, or 75 mg/kg/day) to male and female beagle dogs for 2 years. Due to toxicity/morbidity, the high dose was reduced as follows: 75 mg/kg/day weeks 0–3; 50 mg/kg/day weeks 4–5; 25 mg/kg/day weeks 6-24; 37.5 mg/kg/day weeks 25-104. Plasma cholinesterase was inhibited at all doses (NOAEL< 0.75 mg/kg/day). A NOAEL for erythrocyte cholinesterase inhibition of 0.75 mg/kg/day with a LOAEL of 7.5 mg/kg/day was observed. Histopathology showed smooth muscle atrophy in the gut at 7.5 mg/kg/day with a NOAEL of 0.75 mg/kg/day.

iv. Ethephon was administered in the feed at doses of 0, 100, 300, 1,000, or 2,000 ppm (0, 2.7, 8.2, 28.5, or 52.1 mg/kg/day) to male and female beagle dogs for 52 weeks. A systemic NOAEL of 1,000 ppm (28.5 mg/kg/day) was observed for decreased spleen weight, body weight, hemoglobin and hematocrit in males. The females showed a decreased spleen/body weight ratio for the same NOAEL. Cholinesterase inhibition was not determined.

The NOAEL in the chronic rat study was 131 mg/kg/day based on the decreased body weight gains in males. The NOAEL in the most recent 1–year dog study was determined to be 28.5 mg/kg/day based on body weight, organ weight effects and hematology effects. Ethephon has been tested in both rats and mice for carcinogenic activity. No carcinogenic effects were observed.

6. *Animal metabolism*. The rat metabolism study consisted of a single intravenous dose group at 50 mg/kg, and single and multiple oral high dose groups at 50 and 1,000 mg/kg. The oral Cmax (maximum concentrations) were reached at 1.3 and 1 hours for the 50 mg/kg dose and 1.9 and 2.5 hours for the 1,000 mg/kg dose in males and females, respectively. The $t_{1/2}$ of the

rapid excretion phase (A-phase) at the 50 mg/kg dose was 7 hours for both sexes and 4 and 9 hours at 1,000 mg/kg for the males and females, respectively. Oral and intravenous doses were rapidly excreted in the urine and accounted for 48 to 71% of the administered radioactivity. Approximately 7% was excreted in the feces. Exhaled ethylene was 10–20% and CO2 was less than 1% of the administered dose. The highest tissue concentrations were found in the blood, bone, liver, kidney, and spleen with no significant differences between single and multiple dosing. No significant differences were observed in the excretion pattern with either sex or multiple dosing.

In a goat metabolism study, ethephon was incorporated into natural products (glutathione conjugates, protein, glycogen, and triglycerides) and expired as CO2 and ethylene.

In a hen metabolism study, ethephon metabolism involved an initial removal of chlorine to form 2-hydroxyethanephosphonic acid followed by further metabolism which results in the release of ethylene and carbon dioxide as well as intermediates which can enter into fundamental biochemical pathways leading to the biosynthesis of proteins and lipids. Aventis believes that ethephon technical is not metabolized to breakdown products that can be reasonably expected to present any chronic dietary risk.

7. *Metabolite toxicology*. Ethephon degrades to ethylene phosphate and chloride. Therefore, no significant toxicity is anticipated from these breakdown/metabolites.

8. *Endocrine disruption*. EPA is required under the FFDCA, as amended by Federal Quality Protection Act (FQPA), to develop a screening program to determine certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there were scientific bases for including, as part of the program, the androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, ethephon may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Ethephon is registered for use on the following food crops: cotton, apple, cherry, tomato, wheat, barley, pepper, grape, tobacco, walnut, almond, blackberry, cantaloupe, pineapple, sugarcane, and macadamia nuts. In addition, IR-4 has conducted work to support new use on coffee. Ethephon has several ornamental/non-food applications as well. All residue requirements cited in the ethephon RED have been submitted to EPA. As a result of this work, increased tolerances have been proposed for cottonseed (6 ppm, PP 6F4743) and cotton gin byproducts (180 ppm, amendment to PP 1H5603). As part of the reregistration process, the following tolerances will be revoked: cucumber, filbert, lemon, pineapple, forage, fodder, pumpkin, tangerine, tangerine hybrids, and sugarcane molasses. The tolerances for residues of ethephon in or on food and feed commodities are currently based in terms of ethephon per se. An enforcement method was submitted to EPA for determination of residues of ethephon in/on plant commodities and in milk, ruminant and poultry tissues. The ethephon RED lists the number of treated acres by crop for all major ethephon uses in the United States.

ii. *Drinking water*. Based on the available studies and the use pattern, Aventis does not anticipate residues of ethephon in drinking water. There is no established Maximum Concentration Level or Health Advisory Level for ethephon under the Safe Drinking Water Act.

2. *Non-dietary exposure*. The potential for non-occupational exposure to the general public is also insignificant since only approximately 800 lbs of ethephon technical is sold in the U.S. home and garden market annually. The residential lawn or garden uses anticipated for these products where the general population may be exposed via inhalation or dermal routes are negligible. The home and garden formulation that is sold in the United States contains only 3.9% ethephon which would further limit exposure.

D. Cumulative Effects

While ethephon is an inhibitor of ChE of the plasma and RBC, it has not demonstrated any ability to inhibit brain ChE in rats, mice, or dogs under condition of a chronic dietary dosing regimen. Furthermore, unlike classic organophosphate ChE inhibitors, ethephon did not induce symptoms of ChE inhibition, such as constriction of the pupils, salivation, lacrimation, diarrhea, urination, tremors, and convulsions under chronic feeding of doses up to 30,000, 10,000, and 2,000 ppm in the rat, mouse, and dog, respectively. In the rat study, the plasma and RBC ChE were inhibited approximately 55% and 85%, respectively. In the mouse study, both peripheral ChEs were inhibited by approximately 70%. Although cholinesterase determinations were not performed in the 1 year dog study, in a 2 year dog study, plasma and RBC ChE were inhibited 60% and 70%, respectively. Despite these high degrees of inhibition of peripheral ChE, no clinical signs or symptoms consistent with ChE inhibition occurred in these studies. It is generally only under very extreme conditions such as high doses administered via oral gavage or under occlusive dermal dressing in rabbits in which signs that are consistent with ChE inhibition are observed. These clinical signs generally occur at doses that produce acute lethality. However, these signs may in fact be unrelated to CNS ChE inhibition and could be a non-specific reaction to the acidic and, therefore, highly irritant nature of ethephon.

Ethephon should not be regarded as a classical inhibitor of ChE such as the carbamates and organophosphates since it does not produce the typical nervous system effects of those compounds. The recently updated chronic data base adequately proves that very high dietary doses of ethephon do not inhibit brain ChE, that it does not produce the classical clinical signs of ChE inhibition, and that it does not produce life-shortening effects, despite moderate to severe lifetime inhibition of both plasma and RBC ChE. The inhibition of ChE by ethephon is only an indicator of exposure and is not a measure of its potential for inducing ChE-mediated toxicity. In summary, Aventis concludes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no significant toxicity observed for ethephon. Even at high doses, ethephon does not act as a classical inhibitor of cholinesterase.

Exposure, even at high doses, does not lead to brain cholinesterase inhibition. There is no reliable data to indicate that the effects noted would be cumulative with those of organophosphate or carbamate-type compounds. Therefore, Aventis has considered only the potential risks of ethephon in its exposure assessment.

E. Safety Determination

EPA reference dose (RfD) Peer Review Committee determined that the RfD should be based on the 28–day study in humans. Using the LOAEL of 1.8 mg/kg/day in this study and an uncertainty factor (UF) of 100 to account for intraspecies variability and the lack of a NOAEL, an RfD of 0.018 mg/kg/day was established as the chronic dietary endpoint.

1. *U.S. population*. A chronic dietary risk assessment which included all proposed changes in ethephon tolerances was conducted on ethephon using two approaches: A Tier 1 approach using tolerance-level residues for all foods included in the analysis, and Monte Carlo simulations using tolerance-level residues for all foods adjusted for percent crop treated (PCT) (Tier 3). Using the Tier 1 approach, margin of exposure (MOEs) at the percentiles of exposure for the overall U.S. population were 25 and 9, respectively. Using Tier 3 procedures in which residues were adjusted for the PCT, MOEs were 114 and 42, respectively. Acute exposure was also estimated for infants and children 1 to 6 years of age. In the Tier 1 analysis, the most highly exposed subgroup was infants. For this population, MOEs at the 95th and 99th percentiles of exposure were 7 and 4, respectively. Using the Tier 3 method MOEs were 56 and 12, respectively. Even under the conservative assumptions presented here, the more realistic estimates of dietary exposure (Tier 3 analyses) clearly demonstrate adequate MOEs up to the 99th percentile of exposure for all population groups analyzed.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of ethephon, the available developmental toxicity and reproductive toxicity studies and the potential for endocrine modulation by ethephon were considered. Developmental toxicity studies in two species indicate that ethephon is not a teratogen. The 2 generation reproduction study in rats demonstrated that there were no adverse effects on reproductive performance, fertility, fecundity, pup survival, or pup development. Maternal and developmental NOAELs and LOAELs were comparable, indicating no increase in susceptibility of developing organisms. No evidence of endocrine effects were noted in any study. It is therefore, concluded that ethephon poses no additional risk for infants and children and no additional uncertainty factor is warranted. FFDCA section 408 provides that an additional safety factor for infants and children may be applied in the case of threshold effects. Since, as discussed in the previous section, the toxicology studies do not indicate that young animals are any more susceptible than adult animals and the fact that the proposed RfD calculated from the LOAEL from the 28-day human study already incorporates an additional uncertainty factor, Aventis believes that an adequate margin of safety is, therefore, provided by the RfD established by EPA. Additionally, this LOAEL is also 8X lower than the next lowest NOAEL (2 generation reproduction study, NOAEL=15 mg/kg/day) in the ethephon toxicology data base. Ethephon has no endocrine-modulation characteristics as demonstrated by the lack of endocrine effects in developmental, reproductive, subchronic, and chronic studies.

An RfD of 0.018 mg/kg/day has been established by EPA based on the LOAEL in the 28–day human study. Adequate MOEs exist for all populations including infants and children. No additional uncertainty factor for infants and children is warranted based on the completeness and reliability of the database, the demonstrated lack of increased risk to developing organisms, and the lack of endocrine-modulating effects.

F. International Tolerances

The codex maximum residue limits (MRLs) for grape is 10 mg/kg verses 2 ppm for U.S. tolerance. The tomato codex MRL is 3 mg/kg verses 2 ppm for the U.S. tolerance. All other U.S. tolerances are identical to corresponding codex MRLs.

[FR Doc. 02–19803 Filed 8–6–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0173; FRL–7191–3]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0173, must be received on or before September 6, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0173 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460:telephone number: (703) 305–7610; e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0173. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703)305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0173 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0173. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 31, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number (IR–4)

PP 0E6150

EPA has received a pesticide petition PP (0E6150) from the Interregional Research Project Number (IR-4), Technology Centre of New Jersey, Rutgers, the State University of New Jersey, 681 U. S. Hwy., #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the

FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for combined residues of the herbicide, sethoxydim (2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1- one moiety (calculated as the herbicide)] in or on the raw agricultural commodities as follows:

1. Herb subgroup 19A, fresh leaves, except lemongrass at 5.0 parts per million (ppm).

2. Abarella, atemoya, avocado, acerola, banana, birbira, blimbe, breadfruit, cacao bean canistel, cherimoya, coconut, custard apple, date, durian, feijoa, fig, governor's plum, guava, ilama, imbe, imbu, jaboticaba, jackfruit, kiwifruit, longan, lychee, mamey apple, mango, marmaladebox, mamey sapote, mangosteen, mountain papaya, papaya, passionfruit, persimmon, pomegrante, rambutan, rose apple, sapodilla, black sapote, white sapote, soursop, spanish lime, starfruit, star apple, surinam cherry, sugar apple, tamarind, ugli fruit, and wax jambu at 0.5 ppm.

3. Lingonberries, juneberry, and salal at 5.0 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by BASF Corporation, P.O. Box 13528, Research Triangle Park, North Carolina.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues in plants and animals is adequately understood for the purposes of registration.

2. *Analytical method.* Analytical methods for detecting levels of sethoxydim and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances were submitted to EPA. The proposed analytical method involves extraction, partition, and clean-up. Samples are then analyzed by gas chromatography with sulfur-specific flame photometric detection. The limit of quantitation (LOQ) is 0.05 ppm.

B. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the reliability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sethoxydim are discussed in Unit II. A. of the final rule on sethoxydim pesticide tolerances published in the **Federal Register** of October 8, 1998 (63 FR 54066) (FRL–6034–1)

1. *Animal metabolism.* In a rat metabolism study, excretion was extremely rapid and tissue accumulation was negligible.

2. *Metabolite toxicology.* As a condition to registration, BASF had been asked to submit additional toxicology studies for the hydroxy-metabolites of sethoxydim. EPA agreed with BASF's recommendation to use the most abundant metabolite, 5–OH–MSO2, as surrogate for all metabolites. Based on these data, it was concluded that the toxicological potency of the plant hydroxy-metabolites is likely to be equal or less than that of the parent compound. The tolerance expression for sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety, measured as parent. Hence, the hyrdroxy-metabolites are figured into all tolerance calculations.

3. *Endocrine disruption.* No specific tests have been performed with sethoxydim to determine whether the chemical may have an effect in humans that is similar to an effect produced by naturally-occurring estrogen or other endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* For purposes of assessing the potential dietary exposure, BASF has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from existing and pending tolerances for sethoxydim. (The TMRC is a "worst case" estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels.) The TMRC from existing tolerances for the overall U.S. population is estimated at approximately 44% of the reference dose (RfD). BASF estimates indicate that dietary exposure will not exceed the RfD for any population subgroup for which EPA has data. This exposure assessment relies on very conservative assumptions 100% of crops will contain sethoxydim residues and those residues would be at the level of the tolerance which results in an overestimate of human exposure.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources.

ii. *Drinking water.* Based on the available studies submitted to EPA for assessment of environmental risk, BASF does not anticipate exposure to residues of sethoxydim in drinking water. There is no established maximum concentration level (MCL) for residues of sethoxydim in drinking water under the safe drinking water act (SDWA).

2. *Non-dietary exposure.* BASF has not estimated non-occupational exposure for sethoxydim. Sethoxydim is labeled for use by homeowners on and around the following use sites: Flowers, evergreens, shrubs, trees, fruits, vegetables, ornamental groundcovers, and bedding plants. Hence, the potential for non-occupational exposure to the general population exists. However, these use sites do not appreciably increase exposure. Protective clothing requirements, including the use of gloves, adequately protect homeowners when applying the product. The product may only be applied through hose-end sprayers or tank sprayers as a 0.14% solution. Sethoxydim is not a volatile compound so inhalation exposure during and after application would be negligible. Dermal exposure would be minimal in light of the protective clothing and the low application rate. According to BASF, post-treatment (re-entry) exposure would be negligible for these use sites as contact with treated surfaces would be low. BASF concludes that the potential for non-occupational exposure to the general population is insignificant.

D. Cumulative Effects

BASF also considered the potential for cumulative effects of sethoxydim and other substances that have a common mechanism of toxicity. BASF is aware of one other active ingredient which is structurally similar, clethodim. However BASF believes that consideration of a common mechanism of toxicity is not appropriate at this time. BASF does not have any reliable information to indicate that toxic effects produced by sethoxydim would be cumulative with clethodim or any other chemical; thus BASF is considering only the potential risks of sethoxydim in its exposure assessment.

E. Safety Determination

1. *U.S. population.* RFD using the conservative exposure assumptions described above, BASF has estimated that aggregate exposure to sethoxydim

will utilize 44% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data, and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of sethoxydim, including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children*—i. Developmental toxicity was observed in a developmental toxicity study using rats but was not seen in a developmental toxicity study using rabbits. In the developmental toxicity study in rats a maternal no observed adverse effect level (NOAEL) of 180 milligrams/kilograms/day (mg/kg/day) and a maternal lowest observed adverse effect level (LOAEL) of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining) was determined. A developmental NOAEL of 180 mg/kg/day and a developmental lowest effect level (LEL)__ of 650 mg/kg/day (21 to 22% decrease in fetal weights, filamentous tail and lack of tail due to the absence of sacral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsals, and pubes). Since developmental effects were observed only at doses where maternal toxicity was noted, the developmental effects observed are believed to be secondary effects resulting from maternal stress.

ii. *Reproductive toxicity*. A 2–generation reproduction study with rats fed diets containing 0, 150, 600, and 3,000 ppm (approximately 0, 7.5, 30, and 150 mg/kg/day) produced no reproductive effects during the course of the study. Although the dose levels were insufficient to elicit a toxic response, the Agency has considered this study usable for regulatory purposes and has established a free-standing NOAEL of 3,000 ppm (approximately 150 mg/kg/day). Proposed Rule of March 15, 1995, (60 FR 13941) (FRL–4936–1)

iii. *Reference dose*. Based on the demonstrated lack of significant developmental or reproductive toxicity BASF believes that the RfD used to assess safety to children should be the same as that for the general population, 0.09 mg/kg/day. Using the conservative exposure assumptions described above, BASF has concluded that the most sensitive child population is that of children ages 1 to 6. BASF calculates the exposure to this group to be approximately 96% of the RfD for all uses (including those proposed in this document). Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of sethoxydim, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

A maximum residue level has not been established by the Codex Alimentarius Commission for residues of sethoxydim on the crops included in this proposal.

[FR Doc. 02–19983 Filed 8–6–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–2139; FRL–7186–5]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–2139, must be received on or before September 6, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–2139 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224; e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–2139. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to

this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–2139 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–2139. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 29, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Syngenta Crop Protection Inc. and represents the view of Syngenta. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Crop Protection, Inc.

Interregional Research Project Number #4

PP 2F6443, PP 2E6465

EPA has received pesticide petitions 2F6443 and from Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300 and 2E6465 from the Interregional Research Project Number #4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on the raw agricultural commodities popcorn, sweet corn ears, sweet corn forage, and sweet corn stover at 0.01, 0.01, 0.50, and 2.0 parts per million (ppm); respectively. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue of mesotrione in plants is

adequately understood. Mesotrione is rapidly and completely metabolized in corn. No single extract or component accounted for greater than 0.01 ppm in grain. Numerous components were characterized in forage and fodder, including the metabolite 2-amino-4-methylsulfonyl benzoic acid (AMBA) and its conjugates and 4-methylsulfonyl-2-nitrobenzoic acid (MNBA).

2. *Analytical method.* Adequate analytical methods (HPLC- fluorescence method and HPLV-MS-MS) are available for enforcement purposes.

3. *Magnitude of residues.* The appropriate number of field residue studies were conducted with popcorn and sweet corn grown in 12 states. These trials were conducted in the major U.S. growing areas for popcorn and sweet corn.

B. Toxicological Profile

A full description of the studies describing the toxicity, animal metabolism, metabolite toxicology, and endocrine disruption of mesotrione can be found in the posting for its first tolerances in the **Federal Register** of June 21, 2001 (66 FR 33187) (FRL–6787–7)

C. Aggregate Exposure

1. *Dietary exposure.* For purposes of assessing the potential dietary exposure under the proposed tolerance, Syngenta estimated aggregate exposure based on the theoretical maximum residue concentration (TMRC) in popcorn, field corn, and sweet corn. The TMRC is calculated by multiplying the proposed tolerance levels for corn by the consumption data which estimate the amount of the commodity consumed by various population subgroups. Exposure was calculated only for the chronic exposures, since EPA has previously determined that mesotrione is not acutely toxic and no toxic reference dose was selected.

i. *Food.* Chronic exposure to mesotrione is negligible. Syngenta has conservatively assumed that 100% of all popcorn, field, and sweet corn used for human consumption would contain tolerance level residues of mesotrione. The potential dietary exposure to mesotrione was calculated on the basis of the proposed tolerance of the LOQ, 0.01 ppm, in corn. Residues in milk, meat and eggs due to the feeding of popcorn, field, and sweet corn commodities are not expected and tolerances for milk, meat and eggs are not required. However, exposure estimates took into consideration the transfer of minute residues from feed commodities into meat and dairy products. Calculated on this basis, the dietary exposure of the general U.S. population to mesotrione would correspond to 2.5% of the chronic reference dose. The percent of the reference dose that will be utilized by dietary exposure to residues of mesotrione is 1.4% for nursing infants less than 1 year old, 5.8% for non-nursing infants and 6.2% for children 1 to 6 years old. It is concluded, there is reasonable certainty that no harm will result from the additional tolerances on popcorn, and sweet corn.

ii. *Drinking water.* Based on EPA's "Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments" document (December 2, 1997), chronic drinking water levels of comparison (DWLOC) for mesotrione were calculated. The calculated DWLOCs for the U.S. population in general was 24.45 parts per billion (ppb). The most sensitive sub population was children between 1 to 6 years old with a chronic DWLOC of 6.96 ppb. The highly conservative model estimated water concentrations by FQPA Index Reservoir Screening Tool (FIRST) were 27 to 95 times lower than all the DWLOCs including the most sensitive group. It is, therefore, concluded that the potential impact of mesotrione residues in drinking water derived from either surface water or ground water on the aggregate risk to human health is negligible.

2. *Non-dietary exposure.* Mesotrione is not registered for any non-food use, and no significant non-dietary, non-occupational exposure is anticipated.

D. Cumulative Effects

Mesotrione is the only registered pesticide from the triketone chemical class, and mesotrione does not produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, mesotrione does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Mesotrione is not acutely toxic, no acute PAD has been selected, and no acute assessment is warranted. Under the most conservative estimates, the dietary exposure of the general U.S. population to mesotrione would be no more than 2.5% of the chronic reference dose. Highly conservative model estimated water concentrations by FIRST were 27 to 95 times lower than all the DWLOCs including the most sensitive group. It is, therefore, concluded that the potential impact of mesotrione residues derived from either dietary or water sources on the aggregate risk to human health is negligible.

2. *Infants and children.* EPA previously determined that there is quantitative evidence of increased susceptibility demonstrated in the oral prenatal developmental toxicity studies in rats, mice, and rabbits. Delayed ossification was seen in the fetuses at doses below those at which maternal toxic effects were noted. Maternal toxic effects in the rat were decreased body weight gain during treatment and decreased food consumption and in the rabbit, abortions and gastrointestinal (GI) effects. The Food Quality Protection Act (FQPA) 10x safety factor was retained. Syngenta has summarized new data in the popcorn, and sweet corn petition to support the position that the default FQPA safety factor of 10x should not be applied to mesotrione. There is direct evidence that has been accepted by EPA that the mouse is the most appropriate model for predicting potential effects of mesotrione-induced elevation of tyrosine in humans, based on the similarity of the key tyrosine catabolism enzyme, tyrosine aminotransferase (TAT), in mice and humans. Furthermore, there is direct evidence to indicate that all the biological processes needed to regulate tyrosine levels in neonates are developed at birth, and TAT levels are comparable to the degree of expression in adults. Therefore, there is no compelling evidence to indicate that developing organisms are more sensitive to mesotrione administration than adults.

F. International Tolerances

There are no codex maximum residue levels established for residues of mesotrione on popcorn, and sweet corn, nor are there maximum residue levels established in Canada or Mexico.

[FR Doc. 02–19804 Filed 8–6–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0164; FRL–7189–9]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The

exemptions or denials were granted during the period April 1, 2002 to June 30, 2002, to control unforseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for authorization under section 18 of FIFRA to use pesticide products which are otherwise unavailable for a given use. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Federal Government	9241	Federal agencies that petition EPA for section 18 pesticide use authorization
State and Territorial government agencies charged with pesticide authority.		State agencies that petition EPA for section 18 pesticide use authorization

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0164. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A "specific exemption" authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. "Quarantine" and "public health" exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A "crisis exemption" is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in "a reasonable certainty of no harm" to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the "reasonable certainty of no harm standard" of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U. S. States and Territories

Arkansas

State Plant Board

Crisis: On May 29, 2002, for the use of sodium chlorate on wheat as a desiccant/defoliant. This program ended on/is expected to end on June 13, 2002. Contact: Libby Pemberton

Specific: EPA authorized the use of fomesafen on snap beans to control various weed species: April 1, 2002 to September 15, 2002. Contact: Andrea Conrath

EPA authorized the use of methoxyfenozide on soybeans to control saltmarsh caterpillars and armyworms; May 28, 2002 to October 30, 2002. Contact: Barbara Madden

EPA authorized the use of diuron on catfish ponds to control blue-green algae; June 11, 2002 to September 30, 2002. Contact: Libby Pemberton

California

Environmental Protection Agency, Department of Pesticide Regulation

Specific: EPA authorized the use of fludioxonil on pomegranates to control gray mold; August 1, 2002 to December 15, 2002. Contact: Andrew Ertman

EPA authorized the use of avermecton on basil to control leafminers; July 1, 2002 to October 31, 2002. This request was granted because emergency conditions still exist and there are no registered or unregistered alternatives available. Contact: Barbara Madden

EPA authorized the use of myclobutanil on artichoke to control

powdery mildew; August 18, 2002 to August 17, 2003. Contact: Barbara Madden

Colorado

Department of Agriculture

Crisis: On June 14, 2002, for the use of clopyralid on canola to control weeds. This program ended on/is expected to end on August 1, 2002. Contact: Libby Pemberton

Specific: EPA authorized the use of dimethenamid-p on sugar beets to control various nightshade species, lambsquarter, redroot pigweed, barnyardgrass and the suppression of ALS-resistant kochia ; April 9, 2002 to August 1, 2002. Contact: Barbara Madden

EPA authorized the use of sulfentrazone on chickpeas to control broadleaf weeds; April 24, 2002 to June 30, 2002. Contact: Andrew Ertman

EPA authorized the use of lambda-cyhalothrin on barley to control Russian wheat aphids; May 8, 2002 to July 15, 2002. Contact: Andrew Ertman

EPA authorized the use of tetraconazole on sugarbeet to control Cercospora; May 29, 2002 to September 30, 2002. Contact: Andrea Conrath

EPA authorized the use of sulfentrazone on potatoes to control broadleaf weeds; June 4, 2002 to July 1, 2002. Contact: Andrew Ertman

EPA authorized the use of propiconazole on dry beans to control rust; June 18, 2002 to August 31, 2002. Contact: Andrea Conrath

EPA authorized the use of tebuconazole on sunflowers to control rust; July 1, 2002 to August 25, 2002. Contact: Barbara Madden

Connecticut

Department of Environmental Protection

Public Health: EPA authorized the use of fipronil in a rodent bait box system to control immature blacklegged ticks which are vectors for Lyme disease. Lyme disease is a serious public health concern. Lyme disease is caused by the bacterium, Borrelia burgdorferi. These bacteria are transmitted to humans by the bite of infected deer ticks and cause more than 16,000 infections in the United States each year. Lyme disease is spread by the bite of ticks of the genus Ixodes that are infected with Borrelia burgdorferi.; April 26, 2002 to December 31, 2002. Contact: Barbara Madden

Specific: EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; May 6, 2002 to September 30, 2002. Contact: Andrea Conrath

EPA authorized the use of imidacloprid on blueberries to control oriental beetles; May 15, 2002 to August 15, 2002. Contact: Andrew Ertman

Delaware

Department of Agriculture

Specific: EPA authorized the use of fomesafen on snap beans to control various weed species; April 1, 2002 to October 1, 2002. Contact: Andrea Conrath

EPA authorized the use of dimethomorph on cantaloupes, cucumbers, watermelons, and squash (summer, winter, and pumpkins) to control Phytophthora capsici; April 25, 2002 to September 30, 2002. Contact: Libby Pemberton

Florida

Department of Agriculture and Consumer Services

Specific: EPA authorized the use of carfentrazone-ethyl on fruiting vegetables (except cucurbits) to control Paraquat resistant nightshade, purslane and morningglory; May 31, 2002 to May 30, 2003. Contact: Barbara Madden

EPA authorized the use of fenbuconazole on blueberries to control Septoria leaf spot and rust; May 31, 2002 to May 30, 2003. Contact: Barbara Madden

EPA authorized the use of halosulfuron-methyl on tomatoes to control purple nutsedge (Cyperus rotundis L.) and yellow nutsedge (Cyperus esculentus L.); June 5, 2002 to June 4, 2003. Contact: Barbara Madden

Georgia

Department of Agriculture

Specific: EPA authorized the use of halosulfuron-methyl on tomatoes to control purple nutsedge (Cyperus rotundis L.) and yellow nutsedge (Cyperus esculentus L.); June 5, 2002 to June 4, 2003. Contact: Barbara Madden

Hawaii

Department of Agriculture

Specific: EPA authorized the use of hydramethylnon on pineapple to control big-headed and Argentine ants; May 31, 2002 to May 31, 2003. Contact: Libby Pemberton

Idaho

Department of Agriculture

Denial: On May 7, 2002 EPA denied the use of dimethenamid-p on potatoes to control hairy nightshade. This request was denied because the situation as described does not meet the criteria for an urgent, non-routine situation because an adequate alternative is available. Contact: Barbara Madden

Specific: EPA authorized the use of cymoxanil on hops to control downy mildew; April 3, 2002 to September 15, 2003. Contact: Libby Pemberton

EPA authorized the use of thiabendazole on lentils to control Ascochyta blight; April 23, 2002 to June 1, 2002. Contact: Andrea Conrath

EPA authorized the use of dimethenamid-p on sugar beets to control hairy nightshade, redroot pigweed, and yellow nutsedge; April 26, 2002 to July 15, 2002. Contact: Barbara Madden

EPA authorized the use of zinc phosphide on potato, sugarbeet, wheat, and barley to control mice and voles; May 6, 2002 to October 1, 2002. Contact: Libby Pemberton

EPA authorized the use of fluroxypyr on sweet corn and field corn to control volunteer potatoes; May 20, 2002 to August 1, 2002. Contact: Andrew Ertman

EPA authorized the use of lambda-cyhalothrin on barley to control Russian wheat aphids; May 22, 2002 to July 30, 2002. Contact: Andrew Ertman

EPA authorized the use of fenpyroximate on hops to control two-spotted spider mites; June 11, 2002 to September 15, 2002. Contact: Andrea Conrath

EPA authorized the use of clopyralid on canola to control Canada thistle; June 25, 2002 to July 31, 2002. Contact: Libby Pemberton

EPA authorized the use of myclobutanil on sugar beets to control powdery mildew; July 5, 2002 to September 15, 2002. Contact: Barbara Madden

Illinois

Department of Agriculture

Specific: EPA authorized the use of fomesafen on snap beans to control various weed species; April 1, 2002 to August 31, 2002. Contact: Andrea Conrath

EPA authorized the use of sulfentrazone on horseradish to control broadleaf weeds; April 15, 2002 to July 15, 2002. Contact: Andrew Ertman

Indiana

Office of Indiana State Chemist

Specific: EPA authorized the use of fomesafen on snap beans to control various weed species; May 6, 2002 to September 1, 2002. Contact: Andrea Conrath

Kansas

Department of Agriculture

Specific: EPA authorized the use of metsulfuron-methyl on sorghum to control various weed species; April 30, 2002 to July 31, 2002. Contact: Andrew Ertman

EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; May 6, 2002 to September 30, 2002. Contact: Andrea Conrath

EPA authorized the use of propiconazole on sorghum to control sorghum ergot; June 13, 2002 to June 12, 2003. Contact: Barbara Madden

EPA authorized the use of propiconazole on dry beans to control rust; June 18, 2002 to August 15, 2002. Contact: Andrea Conrath

Louisiana
Department of Agriculture and Forestry
Crisis: EPA authorized the use of methoxyfenozide on soybeans to control saltmarsh caterpillars, armyworms, and soybean loopers; June 13, 2002 to September 30, 2002. Contact: Barbara Madden
Specific: EPA authorized the use of emamectin benzoate on cotton to control beet armyworm and tobacco budworm; June 21, 2002 to September 30, 2002. Contact: Andrea Conrath
Maine
Department of Agriculture, Food, and Rural Resources
Specific: EPA authorized the use of fomesafen on dry beans to control various weed species; May 6, 2002 to July 15, 2002. Contact: Andrea Conrath

EPA authorized the use of tebufenozide on pasture to control armyworms; June 28, 2002 to October 31, 2002. This request was granted because IR-4 is currently conducting residue field trials for use of methoxyfenozide on pasture to control armyworms. However, the state was granted the use of tebufenozide instead of methoxyfenozide due to history of successful use of tebufenozide to control armyworm in pastures; and Dow AgroSciences anticipates only a limited supply of methoxyfenozide would be available to treat pastures for the 2002 growing season. Contact: Barbara Madden
Maryland
Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control various weed species; April 1, 2002 to September 15, 2002. Contact: Andrea Conrath

EPA authorized the use of terbacil on watermelons to control broadleaf weeds; April 4, 2002 to June 25, 2002. Contact: Dan Rosenblatt
Massachusetts
Massachusetts Department of Food and Agriculture
Specific: EPA authorized the use of fenbuconazole on blueberries to control Mummyberry disease; May 17, 2002 to June 30, 2002. Contact: Barbara Madden
Michigan
Michigan Department of Agriculture
Specific: EPA authorized the use of dimethomorph on cantaloupes, cucumbers, watermelons, and squash (summer, winter, and pumpkins) to control Phytophthora capsici; April 9, 2002 to November 1, 2002. Contact: Libby Pemberton

EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; May 6, 2002 to September 30, 2002. Contact: Andrea Conrath

EPA authorized the use of fomesafen on dry beans to control various weed species; May 6, 2002 to August 15, 2002. Contact: Andrea Conrath

EPA authorized the use of fomesafen on snap beans to control various weed species; May 6, 2002 to August 30, 2002. Contact: Andrea Conrath

EPA authorized the use of tebuconazole on asparagus to control rust; May 7, 2002 to November 1, 2002. Contact: Barbara Madden

EPA authorized the use of tebuconazole on wheat to control Fusarium head blight; May 17, 2002 to June 15, 2002. Contact: Barbara Madden

EPA authorized the use of tetraconazole on sugarbeet to control Cercospora; May 29, 2002 to September 30, 2002. Contact: Andrea Conrath
Minnesota
Department of Agriculture
Specific: EPA authorized the use of fomesafen on dry beans to control various weed species; April 1, 2002 to August 15, 2002. Contact: Andrea Conrath

EPA authorized the use of dimethenamid-p on sugar beets to control waterhemp and Powell amaranth; April 9, 2002 to August 1, 2002. Contact: Barbara Madden

EPA authorized the use of sulfentrazone on horseradish to control broadleaf weeds; April 15, 2002 to July 15, 2002. Contact: Andrew Ertman

EPA authorized the use of propiconazole on dry beans to control rust; June 18, 2002 to August 31, 2002. Contact: Andrea Conrath
Mississippi
Department of Agriculture and Commerce
Specific: EPA authorized the use of methoxyfenozide on soybeans to control saltmarsh caterpillars and armyworms; May 28, 2002 to October 30, 2002. Contact: Barbara Madden

EPA authorized the use of methoxyfenozide on field corn to control Southwestern corn borer; July 1, 2002 to September 30, 2002. Contact: Barbara Madden
Missouri
Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control various weed species; April 1, 2002 to September 10, 2002. Contact: Andrea Conrath
Montana
Department of Agriculture
Specific: EPA authorized the use of clopyralid on canola to control Canada thistle and perennial sowthistle; April 9, 2002 to July 31, 2002. Contact: Libby Pemberton

EPA authorized the use of sulfentrazone on chickpeas and dried peas to control kochia; April 9, 2002 to June 30, 2002. Contact: Andrew Ertman

EPA authorized the use of thiabendazole on lentils to control Ascochyta blight; April 10, 2002 to June 1, 2002. Contact: Andrea Conrath

EPA authorized the use of lambda-cyhalothrin on barley to control cutworms; May 22, 2002 to July 1, 2002. Contact: Andrew Ertman

EPA authorized the use of sethoxydim on safflower to control wild oats; June 28, 2002 to July 31, 2002. Contact: Libby Pemberton
Nebraska
Department of Agriculture
Specific: EPA authorized the use of dimethenamid-p on sugar beets to control nightshade, redroot pigweed and ALS-resistant kochia; April 9, 2002 to August 1, 2002. Contact: Barbara Madden

EPA authorized the use of sulfentrazone on chickpeas to control broadleaf weeds; April 12, 2002 to July 1, 2002. Contact: Andrew Ertman

EPA authorized the use of metsulfuron-methyl on sorghum to control various weed species; April 30, 2002 to August 15, 2002. Contact: Andrew Ertman

EPA authorized the use of sulfentrazone on potatoes to control broadleaf weeds; May 21, 2002 to July 1, 2002. Contact: Andrew Ertman

EPA authorized the use of tetraconazole on sugarbeet to control Cercospora; May 29, 2002 to September 30, 2002. Contact: Andrea Conrath
Nevada
Department of Agriculture
Denial: On June 4, 2002 EPA denied the use of bromoxynil on pasture to control weeds. This request was denied because the situation, as described did not meet the criteria for an urgent, non-routine situation. The situation appears to be a chronic weed control situation. Contact: Barbara Madden
New Hampshire
Department of Agriculture
Specific: EPA authorized the use of propiconazole on blueberries to control mummyberry disease; May 24, 2002 to June 30, 2002. Contact: Barbara Madden
New Jersey
Department of Environmental Protection
Public Health: EPA authorized the use of fipronil in a rodent bait box system to control immature blacklegged ticks which are vectors for Lyme disease. Lyme disease is a serious public health concern. Lyme disease is caused by the bacterium, Borrelia burgdorferi. These bacteria are transmitted to humans by the bite of infected deer ticks and cause more than 16,000 infections in the United States each year. Lyme disease is spread by the bite of ticks of the genus

Ixodes that are infected with Borrelia burgdorferi. May 8, 2002 to December 31, 2002. Contact: Barbara Madden
Specific: EPA authorized the use of dimethomorph on cantaloupes, cucumbers, watermelons, and squash (summer, winter, and pumpkins) to control Phytophthora capsici; April 25, 2002 to October 31, 2002. Contact: Libby Pemberton

EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; May 6, 2002 to September 30, 2002. Contact: Andrea Conrath

EPA authorized the use of imidacloprid on blueberries to control blueberry aphids; May 7, 2002 to August 10, 2002. Contact: Andrew Ertman

EPA authorized the use of imidacloprid on blueberries to control oriental beetles; May 15, 2002 to September 15, 2002. Contact: Andrew Ertman

EPA authorized the use of clopyralid on cranberries to control wild bean; May 23, 2002 to December 1, 2002. Contact: Libby Pemberton

EPA authorized the use of fludioxonil on peaches and nectarines to control brown rot, gray mold, and Rhizopus rot; July 1, 2002 to September 30, 2002. Contact: Andrew Ertman

New Mexico
Department of Agriculture
Specific: EPA authorized the use of emamectin benzoate on cotton to control beet armyworm; May 13, 2002 to October 31, 2002. Contact: Andrea Conrath

EPA authorized the use of spinosad on alfalfa to control beet armyworms; May 17, 2002 to November 1, 2002. Contact: Andrew Ertman

EPA authorized the use of spinosad on peanuts to control lepidopteran larvae; June 15, 2002 to October 30, 2002. Contact: Andrew Ertman

EPA authorized the use of myclobutanil on peppers to control powdery mildew; July 1, 2002 to October 15, 2002. Contact: Barbara Madden

New York
Department of Environmental Conservation
Public Health: EPA authorized the use of fipronil in a rodent bait box system to control immature blacklegged ticks which are vectors for Lyme disease. Lyme disease is a serious public health concern. Lyme disease is caused by the bacterium, Borrelia burgdorferi. These bacteria are transmitted to humans by the bite of infected deer ticks and cause more than 16,000 infections in the United States each year. Lyme disease is spread by the bite of ticks of the genus Ixodes that are infected with Borrelia burgdorferi. June 7, 2002 to December 31, 2002. Contact: Barbara Madden
Specific: EPA authorized the use of fomesafen on snap and dry beans to control various weed species; April 1, 2002 to August 30, 2002. Contact: Andrea Conrath

EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; May 6, 2002 to September 30, 2002. Contact: Andrea Conrath

North Dakota
Department of Agriculture
Crisis: On May 31, 2002, for the use of zeta-cypermethrin on mustard to control crucifer flea beetles. This program ended on/is expected to end on June 14, 2002. Contact: Libby Pemberton
Specific: EPA authorized the use of fomesafen on dry beans to control various weed species; April 1, 2002 to August 15, 2002. Contact: Andrea Conrath

EPA authorized the use of sulfentrazone on flax to control kochia and ALS-resistant kochia; April 1, 2002 to June 30, 2002. Contact: Andrew Ertman

EPA authorized the use of dimethenamid-p on sugar beets to control waterhemp and Powell amaranth; April 9, 2002 to August 1, 2002. Contact: Barbara Madden

EPA authorized the use of thiabendazole on lentils to control Ascochyta blight; April 10, 2002 to June 1, 2002. Contact: Andrea Conrath

EPA authorized the use of clopyralid on flax to control Canada thistle and perennial sowthistle; May 10, 2002 to July 31, 2002. Contact: Libby Pemberton

EPA authorized the use of sethoxydim on no till or reduced tillage safflower to control wild oat; May 29, 2002 to July 31, 2002. Contact: Libby Pemberton

EPA authorized the use of propiconazole on dry beans to control rust; June 18, 2002 to August 31, 2002. Contact: Andrea Conrath

Ohio
Department of Agriculture
Specific: EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; May 6, 2002 to September 30, 2002. Contact: Andrea Conrath

Oklahoma
Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control various weed species; April 1, 2002 to September 10, 2002. Contact: Andrea Conrath

EPA authorized the use of emamectin benzoate on cotton to control beet armyworm; May 13, 2002 to October 31, 2002. Contact: Andrea Conrath

EPA authorized the use of spinosad on peanuts to control lepidopteran larvae; June 15, 2002 to October 30, 2002. Contact: Andrew Ertman

Oregon
Department of Agriculture
Specific: EPA authorized the use of cymoxanil on hops to control downy mildew; April 3, 2002 to September 15, 2003. Contact: Libby Pemberton

EPA authorized the use of thiabendazole on lentils to control Ascochyta blight; April 10, 2002 to June 1, 2002. Contact: Andrea Conrath

EPA authorized the use of cyprodinil and fludioxonil on caneberries to control gray mold; April 19, 2002 to September 15, 2002. Contact: Libby Pemberton

EPA authorized the use of halosulfuron-methyl on asparagus to control yellow nutsedge; April 25, 2002 to July 15, 2002. Contact: Andrew Ertman

EPA authorized the use of dimethenamid-p on sugar beets to control hairy nightshade, redroot pigweed, and yellow nutsedge; April 26, 2002 to July 15, 2002. Contact: Barbara Madden

EPA authorized the use of triazamate on true fir Christmas trees to control root aphids; May 9, 2002 to October 31, 2002. Contact: Barbara Madden

EPA authorized the use of fluroxypyr on sweet corn and field corn to control volunteer potatoes; May 13, 2002 to August 1, 2002. Contact: Andrew Ertman

EPA authorized the use of tebuconazole on hops to control powdery mildew; June 15, 2002 to September 22, 2002. Contact: Barbara Madden

EPA authorized the use of clopyralid on canola to control Canada thistle; June 25, 2002 to July 31, 2002. Contact: Libby Pemberton

EPA authorized the use of myclobutanil on sugar beets to control powdery mildew; July 5, 2002 to September 15, 2002. Contact: Barbara Madden

Pennsylvania
Department of Agriculture
Specific: EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; May 6, 2002 to September 30, 2002. Contact: Andrea Conrath

Rhode Island
Department of Environmental Management
Specific: EPA authorized the use of propiconazole on blueberries to control mummyberry disease; May 24, 2002 to June 30, 2002. Contact: Barbara Madden

South Carolina
Clemson University
Specific: EPA authorized the use of fludioxonil on peaches, nectarines, and

plums to control brown rot; May 1, 2002 to September 15, 2003. Contact: Andrew Ertman

South Dakota

Department of Agriculture

Specific: EPA authorized the use of sulfentrazone on chickpeas and dried peas to control kochia; April 9, 2002 to June 30, 2002. Contact: Andrew Ertman

EPA authorized the use of tebuconazole on wheat and barley to control Fusarium head blight; May 17, 2002 to August 31, 2002. Contact: Barbara Madden

Tennessee

Department of Agriculture

Specific: EPA authorized the use of sulfentrazone on lima beans and cowpeas to control hophornbeam copperleaf; May 30, 2002 to September 30, 2003. Contact: Barbara Madden

Texas

Department of Agriculture

Specific: EPA authorized the use of emamectin benzoate on cotton to control beet armyworm; May 13, 2002 to October 31, 2002. Contact: Andrea Conrath

EPA authorized the use of spinosad on alfalfa to control beet armyworms; May 17, 2002 to November 1, 2002. Contact: Andrew Ertman

EPA authorized the use of spinosad on peanuts to control lepidopteran larvae; June 15, 2002 to October 30, 2002. Contact: Andrew Ertman

Utah

Department of Agriculture

Specific: EPA authorized the use of myclobutanil on sugar beets to control powdery mildew; April 26, 2002 to September 15, 2002. Contact: Barbara Madden

Vermont

Department of Agriculture

Specific: EPA authorized the use of fenbuconazole on blueberry to control mummy berry disease; June 4, 2002 to September 1, 2002. Contact: Andrea Conrath

EPA authorized the use of tebufenozide on pasture to control armyworms; June 28, 2002 to October 31, 2002. This request was granted because IR-4 is currently conducting residue field trials for use of methoxyfenozide on pasture to control armyworms. However, the state was granted the use of tebufenozide instead of methoxyfenozide due to history of successful use of tebufenozide to control armyworm in pastures; and Dow AgroSciences anticipates only a limited supply of methoxyfenozide would be available to treat pastures for the 2002 growing season. Contact: Barbara Madden

Virginia

Department of Agriculture and Consumer Services

Specific: EPA authorized the use of fomesafen on snap beans to control various weed species; April 1, 2002 to September 20, 2002. Contact: Andrea Conrath

EPA authorized the use of terbacil on watermelons to control broadleaf weeds; April 4, 2002 to July 10, 2002. Contact: Dan Rosenblatt

EPA authorized the use of s-metolachlor on spinach to control weeds; April 4, 2002 to December 31, 2002. Contact: Andrew Ertman

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; April 5, 2002 to February 1, 2003. Contact: Barbara Madden

EPA authorized the use of imidacloprid on peaches, nectarines and apricots to control aphids; April 9, 2002 to October 1, 2002. Contact: Andrew Ertman

EPA authorized the use of halosulfuron-methyl on tomatoes to control purple nutsedge and yellow nutsedge; June 19, 2002 to June 18, 2003. Contact: Barbara Madden

Washington

Department of Agriculture

EPA authorized the use of thiabendazole on lentils to control Ascochyta blight; April 10, 2002 to June 1, 2002. Contact: Andrea Conrath

EPA authorized the use of halosulfuron-methyl on asparagus to control yellow nutsedge; April 25, 2002 to July 15, 2002. Contact: Andrew Ertman

Specific: EPA authorized the use of cyprodinil and fludioxonil on caneberries to control gray mold; May 1, 2002 to September 15, 2002. Contact: Libby Pemberton

EPA authorized the use of triazamate on true fir Christmas trees to control root aphids; May 9, 2002 to October 31, 2002. Contact: Barbara Madden

EPA authorized the use of fluroxypyr on sweet corn and field corn to control volunteer potatoes; May 13, 2002 to August 1, 2002. Contact: Andrew Ertman

EPA authorized the use of fenpyroximate on hops to control two-spotted spider mites; June 11, 2002 to September 15, 2002. Contact: Andrea Conrath

EPA authorized the use of propiconazole on cranberry to control cotton ball disease; June 14, 2002 to July 31, 2002. Contact: Andrea Conrath

EPA authorized the use of tebuconazole on hops to control powdery mildew; June 15, 2002 to September 22, 2002. Contact: Barbara Madden

EPA authorized the use of clopyralid on canola to control Canada thistle; June 25, 2002 to July 31, 2002. Contact: Libby Pemberton

West Virginia

Department of Agriculture

Specific: EPA authorized the use of imidacloprid on peaches and nectarines to control aphids; April 9, 2002 to November 30, 2002. Contact: Andrew Ertman

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; June 17, 2002 to February 1, 2003. Contact: Barbara Madden

Wisconsin

Department of Agriculture, Trade, and Consumer Protection

Specific: EPA authorized the use of dimethomorph on cucumbers and pumpkins to control Phytophthora capsici; April 10, 2002 to September 30, 2002. Contact: Libby Pemberton

EPA authorized the use of sulfentrazone on horseradish to control broadleaf weeds; April 15, 2002 to July 15, 2002. Contact: Andrew Ertman

EPA authorized the use of sulfentrazone on strawberries to control common groundsel; June 20, 2002 to December 15, 2002. Contact: Barbara Madden

Wyoming

Department of Agriculture

Specific: EPA authorized the use of lambda-cyhalothrin on barley to control Russian wheat aphids; May 22, 2002 to July 31, 2002. Contact: Andrew Ertman

B. Federal Departments and Agencies

Agriculture Department

Animal and Plant Health Inspector Service

Crisis: On April 9, 2002, for the use of sodium carbonate, sodium hydroxide or sodium hypochlorite on various items including but not limited to aircraft surfaces, semen containers, regulated garbage, laboratory buildings, biological safety cabinets, animal isolation rooms, necropsy suites, and ancillary equipment for the control of exotic animal disease pathogens in various locations throughout the United States. These programs are expected to end on June 21, 2005. Contact: Barbara Madden

On April 25, 2002, for the use of potassium peroxymonosulfate and sodium chloride on clothing and various equipment to control avian influenza. This program is expected to end on May 8, 2005. Contact: Libby Pemberton

Quarantine: EPA authorized the use of sodium carbonate, sodium hydroxide or sodium hypochlorite on various items including but not limited to aircraft surfaces, semen containers, regulated garbage, laboratory buildings, biological safety cabinets, animal isolation rooms.

necropsy suites, and ancillary equipment for the control of exotic animal disease pathogens in various locations throughout the United States; June 21, 2002, to June 21, 2005. Contact: Barbara Madden

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 25, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–19802 Filed 8–6–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0127; FRL–7188–9]

Availability of the Tolerance Reassessment Decision (TRED) for Trichlorfon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the tolerance reassessment decision document for trichlorfon. The trichlorfon document, referred to as a TRED, is the Agency's Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Interim Risk Management Decision for Trichlorfon. The documents have been developed using a public participation process designed by EPA and the U.S. Department of Agriculture (USDA) to involve the public in the reassessment of pesticide tolerances under the FQPA and the reregistration of individual organophosphates (OPs) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: EPA is maintaining an open docket for trichloron under docket ID number, OPP–2002–0127. The Agency will place any new comments there for future consideration. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0127 in the subject line on the first page of your response.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0127 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Kylie Rothwell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8055; e-mail address: rothwell.kylie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under FIFRA or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access reregistration eligibility decision (RED) documents and fact sheets electronically, go directly to the documents on TREDs table on EPA's Office of Pesticide Programs Home Page, at http://www.epa.gov/pesticides/reregistration.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0127. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0127 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version

of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

These documents were developed using the OP public participation process. The process was designed to increase transparency and maximize stakeholder involvement, and provides numerous opportunities for public comment. EPA has also conducted extensive outreach to affected parties. EPA is taking this action without a formal comment period. The public participation process for trichlorfon provided opportunities for public comment as EPA developed these decisions. To read more about the OP public participation process, see http://www.epa.gov/pesticides/op/process.htm. Below is a brief summary of EPA's interim decisions, which are fully described in the TRED or interim reregistration eligibility decision (IRED) documents.

A. Trichlorfon Decision

EPA has reassessed risks from non-occupational exposure to trichlorfon through food, drinking water, and residential uses. Trichlorfon is not expected to pose risk concerns for these exposures provided that risk mitigation measures identified in the TRED for trichlorfon are adopted. Under the FQPA, EPA must review tolerances and tolerance exemptions that were already in effect when Congress enacted the FQPA in August 1996, to ensure that existing pesticide residue limits for food and feed commodities meet the safety standard of the new law. EPA completed a RED for trichlorfon in September 1995, prior to FQPA enactment, and therefore needed an updated assessment to consider the provisions of the Act. In reviewing these tolerances, the Agency must consider, among other things, aggregate risks from non-occupational sources of pesticide exposure, whether there is increased susceptibility to infants and children, and the cumulative effects of pesticides with a common mechanism of toxicity. Once the Agency has considered the cumulative risks for the OPs, tolerances for trichlorfon will be reassessed in that light.

The Agency also reevaluated the occupational risks for trichlorfon, based on newly submitted data associated with the current non-agricultural uses. Risk mitigation measures to be implemented for these uses included:

1. Limiting application of trichlorfon to tees and greens of golf course turf.
2. Cancelling foliar application of trichlorfon to ornamental plants (only direct application to soil is allowed).
3. Allowing only truck-drawn spraying of large ponds for ornamentals and bait fish, and requiring an on-off switch inside the truck cab.

B. Next steps

EPA's next step under FQPA is to consider a cumulative risk assessment and risk management decision for the OP pesticides, which share a common mechanism of toxicity. Because the Agency has not yet considered the cumulative risks for the OPs, the Agency's interim decisions do not fully satisfy the reassessment of the existing food residue tolerances as required by FQPA. When the Agency has considered the cumulative risks for the OPs, then the tolerances for OP pesticides will be reassessed in this light. At that time, the Agency will complete the FQPA requirements for the OPs and, where required, make final REDs, which may include further risk mitigation measures.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 29, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–19694 Filed 8–6–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 29, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 6, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0463.

Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities and te American with Disabilities Act of 1990, 47 CFR part 64 (Sections 64.601–64.605).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and state, local, and tribal government.

Number of Respondents: 5,052.

Estimated Time Per Response: 5.31 hours (average burden per response).

Frequency of Response: On occasion, annual, and ever five year reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 26,831 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission adopted cost-recovery guidelines to telecommunications relay services (TRS), speech-to-speech relay services (STS), and video relay services (VRS). These guidelines are based, in part, on the recommendation of the Interstate TRS Advisory Council and the TRS Fund Administrator (Advisory Council and Fund Administrator, respectively). In the Further Notice of Proposed Rulemaking that was adopted and released on December 21, 2001, in CC Docket No. 98–67, the Commission solicited comment on the recommendations submitted by the Advisory Council and the Fund Administrator relating to the appropriate permanent cost recovery mechanism for VRS. The Commission is submitting this information collection to extend the OMB to obtain the full three-year approval with no change.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19882 Filed 8–6–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 29, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments October 7, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0683.

Title: Direct Broadcast Satellite Service.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 6 respondents; 35 responses.

Estimated Time Per Response: 1.5–20 hours.

Frequency of Response: On occasion, one-time, and annual reporting requirements, and recordkeeping requirement.

Total Annual Burden: 3,200 hours.

Annual Reporting and Recordkeeping Cost Burden: $50,000.

Needs and Uses: The Commission sought and received emergency clearance of this information collection on 7/26/02. The Commission is now initiating a 60-day comment period to extend this collection with no change for the regular, three-year approval.

This information collection, among other things, previously modified Direct Broadcast Satellite (DBS) to Part 25 of the Commission's rules, and eliminated Part 100 of the Commission's rules. These revisions were necessary to simplify the procedures applicable to DBS, to eliminate unnecessary filing requirements, and to harmonize the DBS licensing process with that of other satellite services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19883 Filed 8–6–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 29, 2002.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 6, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les

Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0174.

Title: Section 73.1212, Sponsorship Identification; List Retention; Related Requirements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities.

Number of Respondents: 15,122.

Estimated Time per Response: 4 secs. to 6 mins.

Total Annual Burden: 91,231 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 73.1212 requires a broadcast station to identify the sponsor of programming for which consideration is provided. For programming advertising commercial products or services, generally mention of the product's name or service constitutes sponsorship identification. For television political advertisements for candidates seeking public office, the sponsor shall be identified with letters equal to or greater than four percent of the vertical height of the television screen. In addition, when an entity rather than an individual sponsors broadcast programming of a political or controversial nature, the licensee must retain a list of the executive officers, board of directors, or executive committee, *etc.*, of the organization paying for the programming. Sponsorship announcements are waived when broadcasting "want ads" are sponsored by individuals, but the licensee must maintain a list of each advertiser's name, address, and telephone number. Each list must be available for public inspection.

OMB Control Number: 3060–0707.

Title: Over-the-Air Reception Devices (OTARD).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: State, local, or tribal governments; Individuals or households.

Number of Respondents: 60.

Estimated Time per Response: 2 to 5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 224 hours.

Total Annual Costs: $9,050.

Needs and Uses: The FCC uses petitions for waivers of the rules under section 207 of the Telecommunications Act of 1996 to determine whether a state, local, or non-governmental regulation or restriction is unique in a way that justifies waiver of our rules prohibiting restrictions on the use of over-the-air reception devices (OTARD).

OMB Control Number: 3060–0896.

Title: Broadcast Auction Form Exhibits.

Form Number: FCC 175.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions; and State, Local, or Tribal Governments.

Number of Respondents: 5,650.

Estimated Time per Response: 0.5 to 2 hours.

Total Annual Burden: 10,903 hours.

Total Annual Costs: $32,535,500.

Needs and Uses: FCC Rules require broadcast auction participants to submit exhibits disclosing ownership, bidding agreements, and engineering data. The Commission staff use these data to ensure that applicants are qualified to participate in FCC auctions and to ensure that license winners are entitled to receive the new entrant bidding credit, if applicable. Exhibits regarding joint bidding agreements are designed to prevent collusion. Submission of engineering exhibits for non-table services enables the FCC to determine which applications are mutually exclusive.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–19884 Filed 8–6–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 29, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 7, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96–115.

Form No.: N/A.

Type of Review: Revision of a current collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,832.

Estimated Time Per Response: 17 hours (average).

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, third party disclosure requirement.

Total Annual Burden: 672,808 hours.

Total Annual Cost: $229,520,000.

Needs and Uses: The requirements implement the statutory obligations of section 222 of the Telecommunications Act of 1996. Among other things, carriers are permitted to use, disclose, or permit access to CPNI, without customer approval, under certain conditions. Many uses of CPNI require either opt-in or opt-out customer approval, depending upon the entity using the CPNI and the purpose for which it is used.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19885 Filed 8–6–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

July 31, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley Herman, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0939.

Expiration Date: 5/31/04.

Title: E911 Second Memorandum and Order.

Form No.: None.

Respondents: Business or other for profit; Not-for-profit institutions; and State, local, or tribal government entities.

Estimated Annual Burden: 50 responses, approximately 1 hour per response and 50 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: 0.

Frequency of Response: On occasion.

Description: Commercial Mobile Radio Service carriers and Public Safety Answering Points who cannot agree on the choice of transmission means and related technologies may ask the Commission for assistance in settling the disagreement. In approaching the Commission, the involved parties must provide the Commission with information, which will be used by the Commission to understand and resolve such disputes.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19881 Filed 8–6–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Thursday, August 8, 2002

August 1, 2002.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 8, 2002, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Media	*Title:* Digital Broadcast Copy Protection. *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning digital broadcast copy protection.
2	Office of Engineering and Technology and Media.	*Title:* Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MM Docket No. 00–39). *Summary:* The Commission will consider a Second Report and Order and Second Memorandum Opinion and Order regarding its policies and rules for conversion of the broadcast television service to digital technology.
3	Wireless Telecommunications	*Title:* Year 2000 Biennial Regulatory Review—Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services (WT Docket No. 01–108). *Summary:* The Commission will consider a Report and Order concerning various Part 22 rules that have become outdated due to technological change, increased competition in the Commercial Mobile Radio Service (CMRS), or supervening rules.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–20114 Filed 8–5–02; 2:06 pm]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement Nos.: 011803–001.

Title: Maersk Sealand/Evergreen Slot Exchange Agreement.

Parties: A.P. Moller-Maersk Sealand, Evergreen Marine Corp. (Taiwan) Ltd.

Synopsis: The proposed agreement modification adds Yantian as an additional port to the geographic scope of the agreement.

Dated: August 2, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–20003 Filed 8–6–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.: 13778N.

Name/Address: Triton Shipping Co., Inc., 8081 NW 67th Street, Miami, FL 33166.

Date Reissued: May 25, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–20004 Filed 8–6–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. HSBC Holdings PLC, London, England; HSBC Holdings B.V., London, England; HSBC Finance (Netherlands), London, England; and HSBC North America, Inc., Buffalo, New York; to acquire 100 percent of the voting shares of HSBC Washington Savings Bank, Seattle, Washington, and HSBC Oregon Shell Bank, Portland, Oregon, both banks in formation.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Guaranty Financial Services, Inc., Huntington, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Guaranty Bank & Trust Company, Huntington, West Virginia.

C. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309–4470:

1. Generation Bancshares, Inc., Blairsville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Generation Bank, Blairsville, Georgia (in organization).

D. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Bement Bancshares, Inc., Bement, Illinois; to acquire 100 percent of the voting shares of CGB&L Financial Group, Inc., Cerro Gordo, Illinois, and thereby indirectly acquire voting shares of Cerro Gordo Building and Loan, S.B., Cerro Gordo, Illinois.

2. Oswego Community Bank Employee Stock Ownership Plan, Oswego, Illinois; to acquire additional voting shares and increase its ownership from 32.52 percent to 51 percent of the voting shares of Oswego Bancshares, Oswego, Illinois, and thereby indirectly acquire additional voting shares of Oswego Community Bank, Oswego, Illinois.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Prosperity Bancshares, Inc., Houston, Texas; to merge with Southwest Bank Holding Company, Dallas, Texas, and thereby indirectly acquire Bank of the Southwest of Dallas, Dallas, Texas.

Board of Governors of the Federal Reserve System, August 2, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–20005 Filed 8–6–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02-17355) published on pages 45733-45734 of the issue for Wednesday, July 10, 2002.

Under the Federal Reserve Bank of San Francisco heading, the entry for UCBH Holdings, Inc., San Francisco, California, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. UCBH Holdings, Inc., San Francisco, California; to acquire up to 100 percent of the voting shares of Bank of Canton of California, San Francisco, California.

Comments on this application must be received by August 24, 2002.

Board of Governors of the Federal Reserve System, August 2, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–20006 Filed 8–6–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Proposed Recommendation Regarding Support of Research Protocol: Precursors to Diabetes in Japanese American Youth

AGENCY: Office of the Secretary, Office of Public Health and Science, Office for Human Research Protections.

Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of Public Health and Science, Department of Health and Human Services (HHS), gives notice that a panel of experts was convened pursuant to the requirements of 45 CFR 46.407 for review of a proposed protocol entitled "Precursors to Diabetes in Japanese American Youth." This proposed research would include children as research subjects. OHRP has reviewed the protocol and findings of the expert panel and proposes to recommend approval for HHS support of this research protocol, subject to the stipulation of a modification of the protocol and consent forms in accordance with expert recommendations. Public comment is solicited regarding this proposed recommendation pursuant to the requirements of 45 CFR 46.407.

DATES: To be considered, comments must be received on or before 5 p.m. on August 21, 2002.

ADDRESSES: Please send comments to: Clifford C. Scharke, Division of Policy Planning and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852. Comments also may be sent via facsimile at (301) 402–2071 (not a toll free number) or by e-mail to *cscharke@osophs.dhhs.gov*.

FOR FURTHER INFORMATION CONTACT: Clifford C. Scharke, Division of Policy Planning and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852; telephone number: (301) 402–5218 (not a toll free number) or by e-mail to *cscharke@osophs.dhhs.gov*.

SUPPLEMENTARY INFORMATION: The HHS regulations regarding the protection of human research subjects, 45 part 46, permit HHS to conduct or fund research involving children only if the research falls within one of the following categories: research not involving greater than minimal risk (45 CFR 46.404); research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects (45 CFR 46.405); research involving greater than minimal risk and presenting no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition (45 CFR 46.405); and research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children (45 CFR 46.407). In accordance with § 46.407, HHS will conduct or fund research involving children which an Institutional Review Board (IRB) has determined does not meet the requirements of 45 CFR 46.404–46.406 only if (a) the IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and (b) the Secretary of HHS, after consultation with a panel of experts in pertinent disciplines and following opportunity for public review and comment, has determined either: (1) That the research in fact satisfies the conditions of Section 46.404, Section 46.405, or Section 46.406, as applicable, or (2) the following: (i) the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; (ii) the research will be conducted in accordance with sound ethical principles; (iii) adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in § 46.408.

OHRP received a request from the University of Washington of Seattle, Washington to convene a panel of experts pursuant to 45 CFR 46.407 to review a protocol entitled "Precursors to Diabetes in Japanese American Youth" (1 R01 DK59234–01). The long-term aim of the proposed study is to increase understanding about the metabolic changes that precede the development of type 2 diabetes in children and the influence of Asian ethnicity on the diabetes risk. The institution's designated IRB determined that the research does not meet the requirements of 45 CFR 46.404, 46.405, or 46.406, but is suitable for review under 45 CFR 46.407. Although the IRB found that the research was not designed to provide direct benefit to subjects, it found that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children.

The panel of experts convened by OHRP, under authority delegated by the Secretary of HHS, found that the protocol presented a reasonable opportunity to further the understanding of a serious problem affecting the health or welfare of children and recommended modifications to the protocol to further minimize the risks to the children and to the consent forms. The experts found that if these recommended modifications are implemented, the research would be conducted in accordance with sound ethical principles, with adequate provisions for assent and permission, and would be in conformance with the requirements of 45 CFR 46.407 and 46.408. The summary report of the findings of the expert panel members is available from OHRP, upon request.

OHRP proposes to recommend approval of HHS support of this research protocol, subject to the stipulation that the protocol and consent forms be modified in accordance with the expert recommendations, to the satisfaction of the IRB and the funding authority, prior to the involvement of human subjects. Public review and comment on this proposal is hereby solicited pursuant to the requirements of 45 CFR 46.407.

Dated: June 27, 2002.

Eve E. Slater, F.A.C.C.,

Assistant Secretary for Health.

[FR Doc. 02–19871 Filed 8–6–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0307]

Draft Guidance for Industry on Potassium Chloride Modified-Release Tablets and Capsules: In Vivo Bioequivalence and In Vitro Dissolution Testing, Revision; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing the availability of a revised draft guidance for industry entitled "Potassium Chloride Modified-Release Tablets and Capsules: In Vivo Bioequivalence and In Vitro Dissolution Testing." This draft guidance document provides recommendations to sponsors of abbreviated new drug applications (ANDAs) on the design of bioequivalence studies for modified-release dosage forms of potassium chloride.

DATES: Submit written or electronic comments on the draft guidance by September 23, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lizzie Sanchez, Center for Drug Evaluation and Research (HFD–650), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5847.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled "Potassium Chloride Modified-Release Tablets and Capsules: In Vivo Bioequivalence and In Vitro Dissolution Testing." This draft guidance is intended to provide information to sponsors of ANDAs on the design of bioequivalence studies for modified-release dosage forms of potassium chloride. A document entitled "Guidance for In Vivo Bioequivalence Study for Slow-Release Potassium Chloride Tablets/Capsules" was issued on May 15, 1987, and revised on June 6, 1994. The guidance is now being revised to incorporate current thinking on the bioequivalence requirements for potassium chloride modified-release products.

In the previous guidance, the agency recommended a three-way crossover study design comparing the reference product (RLD) to the generic product and to a solution of potassium chloride. The earlier guidance also recommended analysis of covariance (ANCOVA) for the pharmacokinetic parameters. The revised draft guidance provides recommendations for a two-way crossover study design comparing the generic product to the RLD. In addition, in the revision, the use of ANCOVA is no longer recommended. The agency has found that the analysis of variance (ANOVA) with baseline correction is adequate for bioequivalence analysis of pharmacokinetic data obtained following oral administration of potassium chloride drug products. The recommendations for in vitro dissolution testing and the criteria for waivers of in vivo testing for lower strengths have been revised in accordance with the guidance entitled "Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations," issued in October 2000.

The agency is issuing this product-specific draft guidance because of special considerations for potassium chloride testing that are not covered in other agency guidances.

This revised draft guidance is being issued consistent with FDA's good guidance practices (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on studies to demonstrate the bioequivalence of potassium chloride modified-release tablets and capsules. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: July 31, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19863 Filed 8–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Peer Educator Training Sites and Resource and Evaluation Center Cooperative Agreements; Open Competition Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB) announces that applications will be accepted for fiscal year (FY) 2002 awards for up to four Peer Educator Training Sites (PETS) and one Resource and Evaluation Center (REC) Demonstration Cooperative Agreements. HRSA will support up to four national, regional, or local organizations with a demonstrable record of providing PETS, or similar programs, and other technical assistance (TA) designed to strengthen HIV/AIDS peer education programs within Ryan White Comprehensive AIDS Resources Emergency (CARE) Act funded sites. Through the training of peer educators, the PETS program will expand and improve the delivery of HIV/AIDS primary health care services in underserved communities of color significantly affected by existing and emerging HIV/AIDS epidemics. Peer educators assist people who are infected or affected by HIV to access and remain in care, through outreach, education, and advocacy services to affected individuals and health care professionals. These peer educators are typically not clinically trained health care professionals and may include peer counselors; community health center workers; promoters; outreach workers; treatment educators; HIV peer educators, consumer trainers, and peer advocates. Also, PETS will provide TA to the community-based organizations (CBOs) that employ the peer educators trained by the PETS. The purpose of the TA is two fold. First, the PETS will work with CBO peer educator programs to identify training needs and potential for capacity building to enhance peer educator programs. Second, the PETS will provide TA to CBOs to maximize the impact of peer educator activities within care service programs.

One cooperative agreement will support a REC to provide TA to PETS to develop effective programs for monitoring and evaluating peer educator training activities. The REC will also coordinate the collection,

evaluation, and dissemination of training and professional tools to support the development, adaptation, and translation of new or existing tools and materials and to reduce duplication among PETS grantees.

Available Funding: It is anticipated that awards for up to four PETS and one REC Demonstration Cooperative Agreements will be made in FY 2002 for a total of $2,000,000 of available funds. HRSA expects that the average PETS award will be approximately $300,000 to $400,000 and the average REC award will be approximately $400,000. It is anticipated that project funding will be for 3 years. After the first year, continuation funding will depend on reasonable progress and the availability of funds. There are no matching requirements for this program.

Eligible Applicants: Funding will be directed to activities designed to deliver services specifically targeting racial and ethnic minority populations affected by HIV/AIDS. Eligible entities may include: not-for-profit community-based organizations, national organizations, colleges and universities, clinics and hospitals, research institutions, State and local government agencies and tribal government and tribal/urban Indian entities and organizations. Faith-based and community-based organizations are eligible to apply.

Authorizing Legislation: The authority for these cooperative agreements is in Section 2692(a) of the Public Health Service Act, as amended, 42 U.S.C. 300ff–111(a). This program is excluded from coverage under Executive Order 12372.

Where to Request and Send Applications: To obtain an application kit: Call the HRSA Grants Application Center at the toll free number, 877–477–2123 and request the OMB Catalogue of Federal Domestic Assistance number (CFDA) 93.145, and cite "Peer Educator Training Sites and Resource and Evaluation Center Cooperative Agreements".

To submit the completed kit: Send the original and 2 copies of your grant application to: HRSA Grants Application Center, Attention: HAB Grants Management Officer, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879. Applications sent to any other address are subject to being returned. **Federal Register** notices are available on the following web site: *http://www.hab.hrsa.gov.*

Application Dates: A letter of intent to submit an application is requested by August 21, 2002. Applications for this announced grant must be received in the HRSA Grant Application Center by close of business September 6, 2002. Applications shall be considered as meeting the deadline if they are (1) received on or before the deadline date or (2) are postmarked on or before the deadline date and received in time for orderly processing and submission to the review committee. Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications postmarked after the due date will be returned to the applicant.

ADDRESSES: Brief letters of intent are requested for HAB to determine how many will apply. Letters of intent to apply for funding should be faxed, 301–594–2835 or mailed to Elijah Martin, Jr., HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–47, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Additional technical information may be obtained from Elijah Martin, Jr., HAB, HRSA, 5600 Fishers Lane 7–47 Rockville, MD 20857. His telephone number is (301) 443–0802; fax number (301) 594–2835; and e-mail emartin@hrsa.gov. You may also contact Ledia I. Martinez, M.D., Acting Chief, HIV Education Branch, Division of Training and Technical Assistance, HAB, HRSA, 5600 Fishers Lane, Room 7–46, Rockville, MD 20857. Her telephone number is (301) 443–5431 and e-mail *lmartinez@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Applications will be reviewed by an objective review committee. The review criteria will include: adequacy of needs assessment; adequacy of proposed plan; coordination and collaboration; management plan, staffing, project organization and resources; program documentation, program evaluation, and quality improvement; appropriateness and justification of budget; and adherence to program guidance.

The Secretary shall give preference to qualified projects which will—

(A) Train, or result in the training of, health professionals who will provide treatment for minority individuals with HIV disease and other individuals who are high risk of contracting such disease; and

(B) Train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with such disease.

As an active partner in this cooperative agreement, HRSA will have significant programmatic involvement with the applicant regarding program plans, policies and other issues which may have major implications for any activities undertaken by the applicant under the cooperative agreement. HRSA will provide consultation and technical assistance in planning, operating, and evaluating major program activities. HRSA's specific involvement will be to:

- Assist to facilitate collaborations with Ryan White grantees and other HIV community organizations to reach the target population;
- Participate, as appropriate, in planning and producing any conferences, meetings, or site visits conducted during the period of the project; and
- Attend and participate in advisory, consultant meeting, and other project planning meetings and conference calls.

Paper Reduction Act: Should any of the data collection activities associated with this cooperative agreement fall under the purview of the Paperwork Reduction Act of 1995, OMB clearance will be sought.

Dated: July 22, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–19908 Filed 8–6–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Training and Technical Assistance Program Announcement; American Indian/Alaska Native Technical Assistance Center

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA), HIV/AIDS Bureau (HAB) announces that applications will be accepted for fiscal year (FY) 2002 for the award of a cooperative agreement to support an American Indian/Alaska Native Technical Assistance Center (AIANTAC). The purpose of this cooperative agreement is to provide funding for the operation of a technical assistance center to provide competitive proposal development and implementation services to American Indian/Alaska Natives (AI/AN) in Urban and Tribal programs and in the AI/AN communities to increase their involvement in the competitive proposal process. This center will provide professional staff who will assist participants in the development,

preparation and finalization of written competitive proposals for submission. This one-on-one technical assistance will assist in the linkages among the AI/AN Urban and Tribal health care programs, which will increase their knowledge about HIV/AIDS prevention and treatment, increase their access to care and assist in eliminating health disparities in the AI/AN communities.

Available Funding: It is estimated that up to $700,000 will be available to support a single recipient. Actual funding levels will depend on the availability of funds. The entire project period will be 2 years. Continuation of awards will be made on the basis of satisfactory progress and the availability of funds.

Eligible Applicants: Eligible applicants are public and nonprofit private entities and schools and academic health sciences centers. Tribal/Native Alaskan organizations and faith-based and community-based organizations are eligible to apply. The applicant must demonstrate significant experience working with the AI/AN communities.

Authorizing Legislation: The authority of this cooperative agreement is Section 2692 of the Public Health Service Act.

Where To Request and Send an Application

To obtain an application kit: Call the HRSA Grants Application Center at 877–477–2123 and request the OMB Catalogue of Federal Domestic Assistance number is 93.145.

To submit the completed kit: Send the original and 2 copies of your grant application to: HRSA Grants Application Center, Attention: Grants Management Officer, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879.

Application Dates: The deadline for receipt of applications is close of business September 6, 2002. Applications shall be considered as meeting the deadline if they are either (1) received on or before the due date or (2) postmarked on or before the deadline date.

Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing. Grant applications postmarked after the deadline date and/or not received in time for the Objective Review Committee will be returned to the applicant.

FOR ADDITIONAL INFORMATION: Additional information may be obtained from Juanita Koziol, MS, NP, CS, RN., Senior Public Health Analyst, HAB, 5600 Fishers Lane, Parklawn Building, Room 7–47, Rockville, MD 20857, Telephone (301) 443–6068, FAX: (301) 443–6709, e-mail: *jkoziol@hrsa.gov*

SUPPLEMENTARY INFORMATION: The Secretary shall give preference to qualified projects which will—

(A) Train, or result in the training of, health professionals who will provide treatment for minority individuals with HIV disease and other individuals who are at high risk of contracting such disease; and

(B) Train, or result in the training of, minority health professional and minority allied health professionals to provide treatment for individuals with such disease.

As an active partner in this cooperative agreement, HRSA will have significant involvement with the applicant regarding training plans, program plans and other issues which may have major implications for any activities undertaken by the applicant under the cooperative agreement. HRSA will provide consultation and technical assistance in planning, operating, and evaluating activities for the AIANTAC.

Dated: July 12, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–19907 Filed 8–6–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: September 4, 2002; 9:00 a.m.–12:30 p.m.

Place: Audio Conference Call.

The full ACCV will meet via audio conference call on Wednesday, September 4, from 9:00 a.m. to 12:30 p.m. The public can join the meeting by dialing 1–888–968–3511 on September 4 and provide the following information:

Leader's Name: Thomas E. Balbier, Jr.

Password: ACCV.

The agenda items for September 4 will include, but not limited to: an update on the thimerosal class action lawsuits; an update on the CDC influenza vaccine recommendation; a presentation on the average cost of a health insurance policy; and updates from the Division of Vaccine Injury Compensation, the Department of Justice, and the National Vaccine Program Office.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857 or by e-mail at *clee@hrsa.gov*. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period on the audio conference call. These persons will be allocated time as time permits.

Anyone requiring information regarding the ACCV should contact Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2124 or e-mail: *clee@hrsa.gov*.

Agenda items are subject to change as priorities dictate.

Dated: July 31, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–19870 Filed 8–6–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; HIV Vaccine Awareness Study-Americans' Attitudes

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Allergy and Infectious Diseases (NIAID), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 28, 2001, pages 59438–59439 and allowed 60-days for public comment. No comments were received. The purpose

of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: HIV Vaccine Awareness Study-Americans' Attitudes. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* NIH/NIAID/DAIDS is in the process of planning a campaign to inform Americans about HIV preventive vaccine research. As part of planning, it is necessary to establish a baseline of Americans' levels of knowledge and attitudes with respect to HIV preventive vaccine research; to determine what information is required by communities to address the mistrust, myths, and misinformation about HIV vaccine research; and to identify how and what information should be provided to communities to promote more positive attitudes toward HIV vaccine research. Findings will help inform initial campaign decisions and serve to evaluate the effectiveness of the campaign's efforts. *Frequency of Response:* Two times. *Affected Public:* Individuals or households. *Type of Respondents:* Random samples of adults, including those considered at-risk for HIV and members of their social networks. The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
General Population Adults	4,000	1	.25	1,000
HIV-Affected Adults	3,000	1	.25	750
Total	7,000		.25	1,750

The annualized cost to respondents is estimated at $17,500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Robert J. Gulakowski, Health Sciences Communications Specialist, DAIDS, NIAID, NIH, 6700–B Rockledge Drive, MSC 7620, Room 4144, Bethesda, MD 20892–7620, or call non-toll free (301) 496–0545, or E-mail your request, including your address to *rg106x@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: July 31, 2002.

Brenda J. Velez,

Chief, CMB, NIAID and NIAID Project Clearance Liaison.

[FR Doc. 02–19868 Filed 8–6–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

An Obligate Domain-Swapped Dimer of Cyanovirin with Enhanced Anti-Viral Activity

Carole A. Bewley and Brendans Kelly (NIDDK).

DHHS Reference No. E–096–02/0 filed 25 Feb 2002.

Licensing Contact: Sally Hu; 301/496–7056 ext. 265; e-mail: *hus@od.nih.gov.*

The present invention provides a purified or isolated obligate domain-swapped dimer of Cyanovirin-N (CVN hereafter), a method of making an obligate domain-swapped dimer of CVN and a method of inhibiting a viral infection of a mammal by administering domain-swapped dimer of CVN. CVN is outstanding in that it potently blocks viral entry in all human and simian isolates by binding to HIV through highly avid and very specific carbohydrate-mediated interactions with the surface envelope glycoprotein gp120. CVN has also been shown to form a domain-swapped dimer under non-physiological conditions such as mM concentration and low pH. This invention provides an obligate domain-swapped dimeric mutant of CVN, called ΔQ50–CVN, which has several significant advantages over the wild-type CVN: First, ΔQ50–CVN can be purified form a crude bacterial cell

lysate in a single chromatographic step because it forms only one homogeneous species. Second, because this obligate dimer has four carbohydrate binding sites, it binds gp120 and other glycoproteins with greater affinity than wild-type CVN. Third, ΔQ50–CVN shows an enhancing increase in efficacy in blocking viral entry in a quantitative HIV–1 envelope-mediated cell fusion assay. Thus, ΔQ50–CVN displays enhanced anti-HIV activity relative to the wild-type CVN monomer and offers a great advantage over wild-type CVN because it is extremely easy to purify large quantities to greater than 95% homogeneity. So, it may open the possibility that an effective drug treatment for HIV could reach underdeveloped countries.

Finally, the background of this invention is further described in J. Am. Chem. Soc. (2002) 124:3210–3211, J. Magn. Reson. (2002) 154:329–335, Structure (2001) 10:931–940, J. Am. Chem. Soc. (2001) 123:3892–3902, J. Am. Chem. Soc. 122: 6009–6016, and J. Mol. Biol. (1999) 288:403–412.

Methods and Compositions for Antagonizing Septic Shock

George Kunos (NIAAA).
DHHS Reference No. E–321–01/0 filed 15 Aug 2001.
Licensing Contact: Norbert Pontzer; 301/496–7736, ext. 284; e-mail: *np59n@nih.gov*.

Septic shock is an often fatal type of vasodilatory shock that may accompany microbial infections. Septic shock has therefore been an increasing problem in recent years because of the increasing number of individuals who are immunocompromised. Recent studies have indicated that the hypotension associated with hemorrhagic shock (Wagner *et al.*, Nature 1997; 390:518–521) or septic shock (Varga *et al.*, FASEB J. 1998; 12:1035–1044) may be mediated by macrophage-derived endogenous cannabinoids such as anandamide, acting at vascular cannabinoid receptors. In an earlier study (PNAS, 1999; 96:14136) the NIH inventor(s) presented several lines of evidence indicating the vasodilator effect of anandamide is mediated by a receptor distinct from the two known cannabinoid receptors, CB1 and CB2. In particular, anandamide-induced vasodilation persists in mice deficient in both CB1 and CB2 receptors. They postulated that a yet unidentified cannabinoid receptor was responsible for the observed effect. The invention described and claimed in the pending patent application provides compounds acting as agonists and antagonists at the newly described cannabinoid receptor and methods for reversing pathological vasodilation of blood vessels observed during conditions such as septic shock.

Methods of Diagnosing and Treating Schizophrenia

Daniel R. Weinberger *et al.* (NIMH).
DHHS Reference No. E–247–01/0 filed 31 Aug 2001.
Licensing Contact: Norbert Pontzer; 301/496–7736, ext. 284; e-mail: *np59n@nih.gov*.

Neurotrophins promote survival of neurons from both the central nervous system and peripheral nervous system in cell culture. More recently it has been shown that neurotrophins may serve as a new class of neuromodulators that mediate activity-dependent modifications of neuronal connectivity and synaptic efficacy. Brain derived neurotrophic factor (BDNF) is a neurotrophin that mediates LTP and hippocampus-related spatial memory. Schizophrenia and other mental disorders appear to involve deficits in verbal memory and reduced hippocampal—acetyl aspartate (NAA), a measure of hippocampal neuronal integrity. BDNF may thus play a role in memory function and human diseases of the hippocampus such as schizophrenia.

The human BDNF gene contains one known non-conservative SNP, producing a met66val substitution. The invention is related to the discovery that a met66val polymorphism in the gene for BDNF is correlated with verbal memory and risk for schizophrenia. The invention provides methods and kits for diagnosing and modulating verbal memory and risk for schizophrenia in an individual by determining the individual's BDNF genotype, and associating a met allele with impaired verbal memory and risk for schizophrenia and a val allele with enhanced verbal memory and protection from schizophrenia. The invention also provides methods of finding and using compounds which modulate BDNF function in order to treat human diseases of the hippocampus such as memory disorders and schizophrenia.

Retinoids Can Increase the Potency of Anti-Cancer Immunotoxins

You N. Wu and Richard J. Youle (NINDS).
U.S. Patent 5,942,230 issued August 24, 1999 and U.S. Patent 6,197,528 issued March 6, 2001.
Licensing Contact: Richard Rodriguez; (301) 496–7056 ext 287; e-mail: *rodrigur@od.nih.gov*.

A unique method of potentiating the effect of anti-cancer immunotoxins has been developed, thus offering to significantly improve the treatment of a number of cancers as well as autoimmune diseases. Prolonged treatment of human cancers with classical methods such as radiation and chemotherapy, or a combination of both, may cause greater damage than the underlying disease because healthy tissue is often damaged along with diseased tissue. More recently, immunotherapy has emerged as a new and promising therapy for treating cancer because it employs monoclonal antibodies specific for tumor cells coupled to protein toxins. Thus, cancer cells are selectively targeted for destruction. These immunotoxins are being examined in numerous clinical trials for the treatment of cancer and autoimmune diseases. However, often the protein toxin coupled to the monoclonal antibody does not pass as readily into the cytosol of the target cell as does the native protein toxin. This invention improves the effectiveness of such immunotoxins by employing retinoic acid, which disrupts the Golgi apparatus of the target cell and increases the cytosolic routing of specific protein toxins. Also included in this invention is an in vitro method for assessing the ability of a retinoid to potentiate the activity of immunotoxins.

Dated: July 29, 2002.

Jack Spiegel.

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–19866 Filed 8–6–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Laboratory Animal Welfare: Change in PHS Policy on Humane Care and Use of Laboratory Animals

AGENCY: National Institutes of Health, DHHS.

ACTION: Amended Policy Statement.

SUMMARY: The NIH is changing the PHS Policy on Humane Care and Use of Laboratory Animals (PHS Policy) to permit institutions with PHS Animal Welfare Assurances to submit verification of Institutional Animal Care and Use Committee (IACUC) approval for competing applications subsequent to peer review but prior to award.

DATES: This change in PHS Policy is effective as of September 1, 2002 (*i.e.*, for all applications submitted for the May-June 2003 Advisory Council dates).

FOR FURTHER INFORMATION CONTACT: Anthony Demsey, Ph.D., Senior Advisor for Policy, Office of Extramural Research, National Institutes of Health, 301–496–5127, email: *demseya@od.nih.gov*.

SUPPLEMENTARY INFORMATION: In the March 28, 2002, **Federal Register** (67 FR 14956), the NIH proposed to change the PHS Policy to allow institutions to provide IACUC approval for competing applications subsequent to peer review but prior to award. This change would modify the PHS Policy, applicable to all PHS-conducted or -supported activities involving live, vertebrate animals, which currently provides institutions with a PHS-approved Animal Welfare Assurance the option of submitting verification of IACUC approval for competing applications (1) at the time of submission, or (2) subsequent to submission but within 60 days from the receipt date and in any case prior to peer review. Now, with this change in the PHS Policy, IACUC verification is no longer required to be submitted prior to NIH peer review, but instead is simply required prior to award. This process, already adopted as of May 1, 2000, for Institutional Review Board approval of applications involving human subjects, is often referred to as "just-in-time." The purpose of the change is to enhance the flexibility of institutions and reduce the burden on applicants and IACUCs, allowing resources to be focused on substantive review of applications likely to be funded. The change, however, permits funding components to require verification of IACUC approval at an earlier date if necessary.

Over 200 comments from the research community and institutional officials were received in response to the March 28, 2002, **Federal Register** solicitation for public comment on the proposed change. The comments were overwhelmingly in favor of the change; some included suggestions for NIH in its implementation of the change. Consequently, NIH emphasizes the following principles and expectations:

- The fundamental PHS Policy requirement that no award may be made without an approved Assurance and without verification of IACUC approval remains in effect. This change only affects the timing of the submission of the verification of that review.
- This change is intended to permit flexibility and discretion on the part of the institution. It is not a requirement that IACUC approval be deferred. Institutional officials retain the discretion to require IACUC approval prior to peer review in certain circumstances of their choosing if they so desire.
- Under no circumstances may an IACUC be pressured to approve a protocol or be overruled on its decision to withhold approval. NIH peer review groups will continue to address the adequacy of animal usage and protections in their review of an application and will continue to raise concerns about animal welfare issues. However, in no way is peer review intended to supersede or serve as a replacement for IACUC approval. An institution that elects to use IACUC just-in-time bears the responsibility for supporting the role of the IACUC.
- It remains incumbent upon investigators to be totally forthcoming and timely in conveying to their IACUCs any modifications related to project scope and animal usage that may result from the NIH review and award process. Should an institution find that one of its investigators disregards his/her responsibilities, the institution may, for example, determine that all animal protocols from that investigator be subject to IACUC approval before it will permit submission of an application from that investigator.
- The existing PHS Policy requirement that modifications required by the IACUC be submitted to the NIH with the verification of IACUC approval remains in effect, and it remains the responsibility of institutions to communicate any IACUC-imposed changes to NIH staff.
- The NIH understands its responsibility to ensure that institutions are given adequate notice to allow for timely IACUC review prior to award and will take appropriate internal measures to fulfill its responsibility to establish timely feedback.

For the reasons stated above, the NIH amends the PHS Policy on Humane Care and Use of Laboratory Animals as set forth below:

Amend the second sentence of Section IV.D.2. of the PHS Policy to delete the words "a time not to exceed 60 days after the receipt deadline date" and replace them with the words "any time prior to award unless specifically required earlier by the funding component" so that the sentence states: "For competing applications or proposals only, such verification may be filed at any time prior to award unless specifically required earlier by the funding component."

The NIH will modify the NIH Grants Policy Statement and instructions for the 398 Grant Application Form accordingly.

Dated: July 29, 2002.

Elias A. Zerhouni,

Director, National Institutes or Health.

[FR Doc. 02–19867 Filed 8–6–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contracting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Ferrous Metals Surveys.

Current OMB approval number: 1028–0053.

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on

nonferrous and related metals. This information will be published as monthly, quarterly, and annual reports for use by Government agencies, industry, and the general public.

Bureau form number: Various (32 forms).

Frequency: Monthly, Quarterly, and Annual.

Description of respondents: Producers and Consumers of nonferrous and related metals.

Annual Responses: 5,897.

Annual burden hours: 4,791.

Bureau of clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 02–19903 Filed 8–6–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Request for Public Comments on Proposed Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Earthquake Report.

Current OMB approval number: 1028–0048.

Abstract: Respondents supply information on the effects of the shaking from an earthquake—on themselves personally, buildings and their effects, other man-made structures, and ground effects such as faulting or landslides. This information will be used in the study of the hazards from earthquakes and used to compile and publish the annual USGS publication "United States Earthquakes".

Bureau form number: 9–3013.

Frequency: After each earthquake.

Description of respondents: State and local employees; and, the general public.

Estimated completion time: 0.1 hours.

Annual responses: 100,000.

Annual burden hours: 10,000 hours.

Bureau clearance officer: John Cordyack 703–648–7313.

Dated: June 28, 2002.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 02–19904 Filed 8–6–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BC–621–1830–PF–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0187

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the office of Management and Budget (OMB) to extend an existing approval to collect social security numbers or taxpayer identification numbers (SSN/TIN) from entities doing business with BLM. The BLM needs this information in case an entity fails to timely pay money owed, in which case BLM may refer the matter to the Treasury Department for collection. BLM uses Form 1372–6 to collect this information for debt collection purposes only under the Debt Collection Improvement Act of 1996.

DATES: You must submit your comments to BLM at the address below on or before October 7, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0187" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Dorothy Butler, Branch Chief, Collection and Billings (BC–621), National Business Center, Denver, Colorado, on (303) 236–6332 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Butler.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) the accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3701, contains a number of provisions that affect how BLM does business. One of the more significant provisions allows BLM to refer debts delinquent over 180 days to the Treasury Department for collection. Another provision gives the Treasury Department increased flexibility in seeking to collect the debts by various

offsets of payments, including tax refunds.

The DCIA requires that all Federal disbursements include the payee's SSN/TIN. This information aids the Treasury Department in matching debtors to payments and in seeking those payments from the debtors. BLM uses Form 1372–6 to collect the payee's full name, address, and the SSN/TIN. The SSN/TIN data is protected under the Privacy Act.

Based on BLM's experience administering this program, we estimate the public reporting burden is 1 minute to complete Form 1372–6. These estimates include the time spent on research, gathering, and assembling information, reviewing instructions, and completing the respective form. In FY 1999, BLM estimated 120,000 respondents the first year with a total annual burden of 20,000 hours. The number was expected to decrease the second year to 5,000 respondents with a total annual burden of 83 hours. Respondents are those entities who do business with BLM which include licensees, permittees, lessees, and contract holders. Individuals who pay one-time recreation fees are not affected.

Any member of the public may request and obtain, without charge, a copy of BLM Form 1372–6 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: August 1, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–19887 Filed 8–6–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities; Proposed Collection; Comment Request; Extension.

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Reclamation (Reclamation) intends to submit for approval the following extension of a currently approved information collection: Right-of-Use Application. Before submitting the information collection request to the Office of Management and Budget for approval, Reclamation is soliciting comments on specific aspects of the information collection.

DATES: Comments on this notice must be received by October 7, 2002.

ADDRESSES: Address all comments concerning this notice to the Bureau of Reclamation, Office of Policy, Attention: Gene Munson (D–5200), PO Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: Gene Munson, 303–445–2898.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Title: Right-of-Use Application.

OMB No.: 1006–0003.

Abstract: Reclamation is responsible for over 8 million acres of land in the 17 western States. Parties wishing to use any of that land must submit a Right-of-Use application. Reclamation will review the application and determine whether the granting of the right-of-use is compatible with the present or future uses of the land. After preliminary review of the application, the applicant will be advised of the estimated administrative costs for processing the application. In addition to the administrative costs, the applicant will also be required to pay a land use fee based on the fair market value for such land use, as determined by Reclamation. If the Right-of-Use application is for a bridge, building, or other type of major structure, Reclamation may require that all plans and specifications be signed and sealed by a professional engineer licensed by the State where the work is proposed. Linear facilities such as roads, pipelines, and transmission lines require a centerline survey defining the limits of the requested right-of-use.

Description of respondents: Individuals, corporations, companies, and State and local entities that desire to use Reclamation lands.

Frequency: Each time a Right of Use is requested.

Estimated completion time: An average of 2 hours per respondent.

Annual responses: 500 respondents.

Annual burden hours: 1,000.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: July 23, 2002.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 02–19901 Filed 8–6–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Office Management Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Extension of currently approved collection; Department of Justice federal Coal Lease Review Information.

The Department of Justice (DOJ), Antitrust Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, need a copy of the proposed information collection instrument, or additional information, please contact Jill Ptacek,

Antitrust Division, Department of Justice, 325 7th St., NW., Washington, DC 20350.

Written comments or suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Department of Justice Federal Coal Lease Review Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number(s): ATR–139; ATR–140. Antitrust Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for profit. Other: None. Abstract: The Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of federal coal leases. These forms seek information regarding a prospective coal lessee's coal reserves subject to the federal lease. The Department uses this information to determine whether the coal lease transfer is consistent with the antitrust laws.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses per year at two hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40 annual burden hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 1, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–19859 Filed 8–6–02; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a currently approved Fee Waiver Request.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the *Federal Register* Volume 67, Number 71, page 18036 on April 12, 2002, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until September 6, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC. 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form:* Fee Waiver Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice Sponsoring the collection:* Form EOIR 26A, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected Public who will be asked to respond, as well as brief abstract:* Primary: An alien appealing an Immigration Judge's decision. Other: None Abstract: The information collected on EOIR–26A will be used to determine whether the requisite fee for a motion or appeal will be waived due to an alien's financial situation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,500 responses are estimated annually with a average of one hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,500 hours annually.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 31, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–19860 Filed 8–6–02; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 11, 2002, Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxy-amphetamine (7402).	I
3,4-Methylenedioxy-N-ethylam-phetamine (7404).	I
3,4-Methylenedioxymeth-amphetamine (7405).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl] piper-idine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-carbonitrille (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 7, 2002.

Dated: June 28, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–19895 Filed 8–6–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 13, 2001, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperdine (9230)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk to supply final dosage form manufacturers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 7, 2002.

Dated: June 28, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Control, Drug Enforcement Administration.

[FR Doc. 02–19896 Filed 8–6–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,588; Osram Sylvania Products, Inc., Central Falls, RI

TA–W–41,580; Pacific Northwest Sugar Co., Moses Lake, WA

TA–W–41.559; Southern Button Industries, Inc., Rivera Beach, FL

TA–W–41,522; John W. Hancock, Jr., Inc. A Subsidiary of Roanoke Electric Steel Corp., Salem, VA

TA–W–41,516; Washington Mould Co., Washington, PA

TA–W–41,402; Instron-Satec Systems, Grove City, PA

TA–W–41,435; Imperial Holly Sugar, Hereford, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,572; RMH Teleservices, Inc., Scranton, PA

TA–W–41,000; Advanced Service, Inc., A Subsidiary of General Electric Appliances, Memphis, TN

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,729; Liz Claiborne, Inc., Mt. Pocono, PA

The investigation revealed that criteria (1) has not been met. A Significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–41,577; Minnesota Mining and Manufacturing Co., Microinternconnect Systems Div., Columbia, MO

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,597; Waukesha Engine Div., Waukesha, WI

TA–W–41,578; Holophane, A Div. Of Acuity Lighting Group, Inc., Springfield, OH

TA–W–41,501; Carolina Brand Foods, Div. Of Tyson Foods Group, Holly Ridge, NC

TA–W–41,504; US Timber Co., Camas Prairie Lumber Div., Craigmont, ID

TA–W–41,540; Anvil International, Inc., A Subsidiary of Mueller Group, Inc., Henderson, TN

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,585; C and M Knitting Mills, Inc., Maspeth, NY: May 2, 2001.

TA–W–41,567; Vaughan-Bassett Furniture Co., Inc., Virginia House Furniture Div., Atkins, VA: May 7, 2001.

TA–W–41,561; Casco Products Corp., Bridgeport, CT: April 29, 2001.

TA–W–41,553; Astechnologies, Inc., Laminated Products Group, Monroe, MI: April 19, 2001.

TA–W–41,530; Martin Color-FI, Palmetto Spinning Yarn Div., Laurens, SC: April 12, 2001.

TA–W–41,514; Aladdin Industries, LLC, Nashville, TN: April 19, 2001.

TA–W–41,506; Ampco Metal, Inc., Milwaukee, WI: April 10, 2001.

TA–W–41,445; Quantegy, Inc., Opelika, AL: January 27, 2002.

TA–W–41,212; Ametek Specialty Motors, Hudson, WI: March 25, 2001.

TA–W–40,666; Loren Castings, Inc., Loren Industries, Hollywood, FL: December 4, 2000.

TA–W–39,253; Federal Mogul, Abex Friction Product, Salisbury, NC: May 3, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05674; Loren Castings, Inc., Loren Industries, Hollywood, FL

NAFTA–TAA–06066 & A; Motorola, Inc., Semiconductor Products Sector, MOS 5, Mesa, AZ, Semiconductor Products Sector, MOS 6, Mesa, AZ

NAFTA–TAA–06177; US Timber Co., Camas Prairie Lumber Div., Craigmont, ID

NAFTA–TAA–06202; Pacific Northwest Sugar Co., Moses Lake, WA

NAFTA–TAA–06136; International Utility Structures, Inc., Batesville, AR

NAFTA–TAA–06176; Northstar Aerospace (Chicago), Inc., A Div. of Northstar Aerospace, Inc., Formerly Derlan Industries, Inc., Bedford Park, IL

NAFTA–TAA–06188; Martin Color-FI, Palmetto Spinning Yarn Div., Laurens, SC

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06345; The News Group, Midwest Div., A Div. of Great Midwest News, LLC, Jackson, MS

NAFTA–TAA–06148; Stanley Furniture Co., Inc., Stanleytown, VA

NAFTA–TAA–06049; Jacobs Sverdrup, Amherst, NY

Affimative Determinations NAFTA–TAA

NAFTA–TAA–06157; Astechnologies, Inc. Laminated Products Group, Monroe, MI: April 19, 2001.

NAFTA–TAA–06264; Washington Garment Co., Inc., Washington, NC: April 29, 2001.

NAFTA–TAA–05795; Lakemont Manufacturing Co., Inc., Lakemont, GA: January 24, 2001

NAFTA–TAA–06158; Fayette Cotton Mill, Inc. A Subsidiary of Union Underwear Co., Inc., A Subsidiary of Fruit of The Loom, Inc., Fayette, AL: April 29, 2001.

#NAFTA–TAA–06325; Metso Minerals, Inc., Clintonville, WI: June 25, 2001.

NAFTA–TAA–06340; Solectron Corp., West Palm Beach Interconnect and C–Mac Microcircuits, West Palm Beach, FL: July 5, 2001.

NAFTA–TAA–06274; Meyersdale Manufacturing Co., Div. Of Elbeco, Inc., Meyersdale, PA: May 29, 2001.

I hereby certify that the aforementioned determinations were issued during the months of July, 2002.

Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 26, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19957 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,018 and NAFTA–05269]

Trailmobile Trailer, LLC, Liberal, KS; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked May 14, 2002, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) under petition TA–W–40,018 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) under petition NAFTA–5269. The TAA and NAFTA–TAA denial notices applicable to workers of Trailmobile Trailer, LLC, Liberal, Kansas were signed on April 26, 2002 and April 29, 2002, respectively and published in the **Federal Register** on May 17, 2002 (67 FR 35143 & 35144, respectively).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Trailmobile Trailer, LLC, Liberal, Kansas engaged in employment related to the production of dry freight and refrigerator trailers, was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that the subject firm did not import dry freight trailers and refrigerator trailers during the relevant period. The investigation also revealed that the predominant cause of worker separations at the subject firm was a domestic shift of production to an affiliated facility.

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. The investigation revealed that the subject firm neither imported dry freight or refrigerator trailers from Canada or Mexico nor shifted production of dry freight or refrigerator trailers to Canada or Mexico. The investigation further revealed that the predominant cause of worker separations at the subject firm was a domestic shift of production to an affiliated facility.

The petitioner alleges that since all (three) domestic company plants closed and the company maintains a production plant in Canada, it is only logical that subject plant production would have been shifted to the affiliated Canadian plant.

A review of the initial decision and further contact with the company show that subject plant production was shifted to Charleston, Illinois. Based on information provided by the company, the subject plant was designed to produce only refrigerated truck trailers and was the only company location to produce these products. The plant never reached full planned employment or production. The plant was built in anticipation of acquiring new customers for a fleet type refrigerated trailer. These customers did not materialize. For a short time, dry van trailers with insulated panels were built in Liberal in addition to refrigerated trailers in an attempt to bring some production into the plant. Production of the fleet type refrigerated trailers ceased as of January 12, 2001. Specialty refrigerated trailers continued to be built in the affiliated Charleston, Illinois plant. No subject plant production of refrigerated trailers was ever shifted to Canada. With the closure of the three domestic sites by the latter part of 2001, the refrigerated trailer production was eliminated by the company and not shifted to Canada. The dry van trailers (3–4 percent of plant production) accounted for an extremely small portion of the work performed at the subject plant and thus any potential imports of this product cannot be considered as contributing importantly to the layoffs at the subject plant.

The petitioner further indicated that the plant worked in concert with an affiliated plant located in Missisaugua (Toronto), Canada and that on several occasions the plant sent equipment used in the trailer manufacturing to Canada, such as a vacuum lifter for roof mounting. The petitioner also indicated that one of the plant's C-frames for hydraulic punch Huck units was also sent to Canada.

The Canadian plant did not produce the major product the subject plant produced (refrigerated trailers) and therefore the working of the two plants in concert is not relevant in meeting the eligibility requirements of Section 222 or Section 250 of the Trade Act. Also, any machinery shipped to Canada was used to produce products other than those produced by the subject plant, and thus are not relevant factors in meeting eligibility requirements of Section 222 or Section 250 of the Trade Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19964 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,548]

BP Exploration Alaska, Inc. Prudhoe Bay, AK; Notice of Revised Determination on Reconsideration

By letter of May 30, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 25, 2002, based on the finding that the workers of BP Exploration Alaska, Inc., Prudhoe Bay, Alaska did not produce an article within the meaning of section 222(3) of the Act, as amended. The denial notice was published in the

Federal Register on May 2, 2002 (67 FR 22112).

To support the request for reconsideration, the company indicated that the workers were primarily engaged in the production of crude oil. They supplied additional information to help clarify the functions performed at the Prudhoe Bay location. They provided copies of job descriptions.

Based on data supplied by the company in their request for reconsideration and further clarification by the company, it is evident that the workers are primarily engaged in activities related to the production of crude oil.

Layoffs at the subject firm occurred from August 2001 through the April 2002 period. Further layoffs are scheduled throughout the remainder of 2002 into early 2003. Production at the subject facility declined in 2001 over the corresponding 2000 period.

A survey of the firm's major declining customer(s) was conducted regarding their purchases of crude oil during the relevant period. The survey revealed that a major customer increased their purchases of imported crude oil, while decreasing their purchases from the subject firm during the relevant period.

Also, aggregate U.S. imports of crude oil increased from 2000 to 2001. The U.S. import to U.S. production ratio of crude oil was over 150 percent during the 2001 period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at BP Exploration Alaska, Inc., Prudhoe Bay, Alaska, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of BP Exploration Alaska, Inc., Prudhoe Bay, Alaska, who became totally or partially separated from employment on or after December 27, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 25th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19952 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,043]

Champion Parts, Inc., Beech Creek, Pennsylvania; Notice of Negative Determination Regarding Application for Reconsideration

By application received on June 26, 2002, the International Brotherhood of Electrical Workers (IBEW), Local 1592 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice applicable to workers of the subject firm was signed on May 23, 2002. The decision was published in the **Federal Register** on June 11, 2002 (67 FR 40004).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition filed on behalf of workers of Champion Parts, Inc., Beech Creek, Pennsylvania, producing fuel systems and CV products was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the worker firm's customers. None of the customers reported importing fuel systems and CV products during the relevant period. The subject firm did not import fuel systems or CV products during the relevant period.

The petitioner indicates that the TAA decision depicts "that increases of imports of the articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separation, or threat thereof, and to the absolute declines in sales or production."

In the above instance, the petitioner appears to be referencing criterion (3) of the group eligibility requirement of Section 222 of the Act. In fact, the decision clearly states that subject firm workers do not meet the eligibility requirement of criterion (3) of Section 222 of the Act.

The petitioner also appears to be concerned that the Department may not have examined the correct products produced by the subject plant during the initial investigation.

A review of the customer survey conducted by the Department shows that none of the customers reported importing fuel systems and CV products (carburetors), during the relevant period. These products account for all production performed at the subject firm during the relevant period.

The petitioner also references plant production of carburetors that was produced during the mid-1990's and also indicates that this product was replaced by imported fuel injectors.

Products produced by the subject plant prior to the year 2000 are outside the scope of the relevant period. As indicated previously, customers reported no like or directly or competitive imports of products produced by the subject plant during the relevant period.

Finally, the petitioner contends that CV component production was not a part of the initial investigation.

A review of plant sales and production data pertaining to CV products (a relatively small portion of plant production) shows increases throughout the relevant period. Thus, import impact is not an issue in regard to this product.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 25th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19968 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,022]

DT Magnetics International, Inc., Knightdale, NC; Notice of Revised Determination on Reconsideration

By letter dated June 15, 2002, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on May 31, 2002, based on the finding that imports did not contribute importantly to the layoffs at the subject plant. The denial notice was published in the **Federal Register** on June 21, 2002 (67 FR 42285).

The request for reconsideration is based on the allegation that all production at the subject plant was shifted to the Dominican Republic and China. The petitioner further attached a "Certification Regarding Eligibility to Apply for Worker Adjustment Assistance" for a sister plant (TA–W–40,468, DT Magnetics International, Inc., Dover, New Hampshire) producing the same products as the subject plant. That certification was based on the subject firm increasing imports of inductors and transformers.

The Department on further review of the initial investigation and data supplied in the TAA certified DT Magnetics International, Inc., Dover, New Hampshire plant, shows both locations produced inductors and transformers. The subject plant workers were not separately identifiable. The review also showed that subject plant production was shifted to the Dominican Republic and the company increased their reliance on imported inductors and transformers during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at DT Magnetics, Inc., Knightdale, North Carolina contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of DT Magnetics, Inc., Knightdale, North Carolina who became totally or partially separated from employment on or after February 18, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 29th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19966 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,239]

Enerflex, Inc., Cedar Mountain, North Carolina; Notice of Revised Determination on Reconsideration

By application of June 23, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination based on the fact that the workers did not produce an article as required for certification under Section 222 of the Trade Act. The denial notice was published in the **Federal Register** on June 11, 2002 (67 FR 40004).

To support the request for reconsideration, the applicant provided additional information explaining the support and production functions performed by the subject workers. The company also indicated that the subject workers were working exclusively for a TAA certified facility.

Upon examination of the data supplied by the applicant, it became apparent that the workers were engaged in activities related to the production of an article. The workers were contract workers engaged in the production of medical x-ray film and the polyester base chemicals used in the manufacture of medical x-ray film at Afga Corporation, Cedar Mountain, North Carolina. The Afga plant was certified for Trade Adjustment Assistance under TA–W–40,818 under Afga Corporation, Brevard, North Carolina on March 31, 2002. The Brevard location is the post office address of the Afga Corporation, the physical plant is located in Cedar Mountain, North Carolina, the same location as the subject firm workers.

Based on the decision in case TA–W–40,818 and data supplied by the subject firm, it has become evident that all criteria have been met for the Enerflex, Inc. contractors working at Afga Corporation engaged in support and production activities at the certified plant. Plant sales, production and employment declined and Afga imports of film like or directly competitive with what the subject plant produced increased during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Afga Corporation, Cedar Mountain, North Carolina contributed importantly to the declines in the total or partial separation of Enerflex, Inc., Cedar Mountain, North Carolina workers, who performed work in direct support of the production of medical x-ray film and the polyester base chemicals at the Afga plant. In accordance with the provisions of the Act, I make the following certification:

"Workers of Enerflex, Inc., Cedar Mountain, North Carolina engaged in employment activities related to the production of medical x-ray film and the polyester base chemicals at Afga Corporation, Cedar Mountain, North Carolina, who became totally or partially separated from employment on or after March 29, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC this 25th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19969 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,853]

Hayes Lemmerz International, Inc., Wheels Business Unit, Somerset, KY, Including Leased Workers of Manpower Temporary Services, Somerset, KY, Job Shop Temporary Services, Somerset, KY, CBS Personnel Services, Cincinnati, OH, Technical Staffing Solutions, London, KY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the

Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 25, 2002, applicable to workers of Hayes Lemmerz International, Inc., Wheels Business Unit, Somerset, Kentucky. The notice was published in the **Federal Register** on April 5, 2002 (67 FR 16441).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that some employees of Hayes Lemmerz International, Inc., Wheels Business Unit were leased from Manpower Temporary Services, Job Shop Temporary Services, CBS Personnel Services, and Technical Staffing Solutions to produce aluminum wheels for the automobile industry at the Somerset, Kentucky facility of the subject firm.

Worker separations occurred at these companies as a result of worker separations a Hayes Lemmerz International, Inc., Wheels Business Unit, Somerset, Kentucky.

Based on these findings, the Department is amending the certification to include leased workers producing aluminum wheels at the Somerset, Kentucky location of the subject firm.

The intent of the Department's certification is to include all workers of Hayes Lemmerz International, Inc., Wheels Business Unit adversely affected by increased imports.

The amended notice applicable to TA–W–40,853 is hereby issued as follows:

All workers of Hayes Lemmerz International, Inc., Wheels Business Unit, Somerset Kentucky, and leased workers of Manpower Temporary Services, Job Shop Temporary Services, Somerset, Kentucky, CBS Personnel Services, Cincinnati, Ohio and Technical Staffing Solutions, London, Kentucky, engaged in employment related to the production of aluminum wheels for the automobile industry for Hayes Lemmerz International, Inc., Wheels Business Unit, Somerset, Kentucky who became totally or partially separated from employment on or after November 26, 2000, through March 25, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19965 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,947]

Martin Marietta Magnesia Specialties, Inc., Manistee, Michigan; Notice of Revised Determination on Reconsideration

On June 17, 2002, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice will soon be published in the **Federal Register**.

On March 27, 2002 the Department initially denied TAA to workers of Martin Marietta Magnesia Specialties, Inc., Manistee, Michigan producing magnesium oxide and magnesium hydroxide monolithics because the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department of Labor conducted a further survey of the subject plants' major declining customer(s) regarding their purchases of magnesium oxide during the relevant period. The survey revealed that a major customer increased their imports of magnesium oxide, while reducing their purchases from the subject firm during the relevant period.

Further review of company data supplied during the initial investigation shows that the company increased their reliance on imported magnesium oxide during the relevant period.

Imports of magnesium oxide contributed importantly to the layoffs at the subject firm based on the combination of increased reliance of imported magnesium oxide by a customer and the company during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with magnesium oxide, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Martin Marietta Magnesia Specialties, Inc., Manistee, Michigan. In accordance with the provisions of the Act, I make the following certification:

All workers of Martin Marietta Magnesia Specialties, Inc., Manistee, Michigan who became totally or partially separated from employment on or after August 13, 2000 through two years of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 25th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19951 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 19, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 19, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 2000 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 15th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 07/15/2002

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,808	Newcor (Co.)	Troy, MI	06/24/2002	Ford Oil Pump.
41,809	Encana Energy Resources (Co.).	Butte, MI	06/13/2002	Oil and Gas.
41,810	Mid Western Machinery Co. (Co.).	Joplin, MO	06/06/2002	Rock Drills and Replacement Part.
41,811	Clark Alabama (Co.)	Pell City, AL	06/24/2002	Handling Equipment.
41,812	A.O. Smith (Co.)	Monticello, IN	06/24/2002	C–Frame.
41,813	StarTrek (Co.)	Laramie, WY	05/31/2002	Technical Support.
41,814	Trus Joist (Co.)	Stayton, OR	06/25/2002	I–Joist Products.
41,815	Saunders Mfg. Co. Inc. (Co.)	Winthrop, ME	07/01/2002	Aluminum Clipboards.
41,816	Wisconsin Color Press (Co.)	Milwaukee, WI	06/20/2002	Magazines.
41,817	Arrow SI, Inc. (Co.)	Asheboro, NC	07/02/2002	Replacement Parts.
41,881	Robinson Mfg. (Co.)	Oxford, ME	07/02/2002	Wool/Nylon.
41,819	National Forge Company (Wkrs).	Irvine, PA	06/25/2002	CrankShafts.
41,820	General Cable (IBEW)	Bonham, TX	06/24/2002	Copper Cable.
41,821	Detroit Stoker Company (Wkrs)	Monroe, MI	04/02/2002	Roto Grates.
41,822	Nextec (Wkrs)	Vista, CA	06/11/2002	Textiles, Fabric, Carcovee.
41,823	Austin Farms (Wkrs)	Indianola, MS	06/18/2002	Catfish.
41,824	Spectel MultiLink Inc. (Wkrs)	Andover, MA	06/17/2002	Audio Conferencing Hard and Software.
41,825	Voith Paper (Wkrs)	Appleton, WI	06/19/2002	Paper Producing Machinery.
41,826	Marco Manufacturing (Wkrs)	Seattle, WA	06/28/2002	Fishing Gear and Equipment.
41,827	Motorola (Wkrs.)	Mesa, AZ	06/17/2002	LD–MOS Devices.
41,828	Eagle Picher Technologies (Wkrs).	Quapaw, OK	06/21/2002	Geraniam.
41,829	Aurafin LLC (Wkrs)	Providence, RI	06/26/2002	Gold Hoop Earrings.
41,830	Ameriphone (Wkrs.)	Garden Grove, CA	06/25/2002	Amplified Telephones.
41,831	Accura Tool & Die (Wkrs)	Crystal Lake, IL	04/26/2002	Metal Parts and Molds.
41,832	Alcoa Fujikura Ltd. (Wkrs)	Houston, MS	02/25/2002	Fiber Optical Cables.
41,833	Metso Automation (Wkrs)	Shrewsbury, MA	06/21/2002	Industrial Valves.
41,834	Munsey Products (Co.)	Little Rock, AR	06/19/2002	Small Electrical Appliance.
41,835	Premier Turbines (Co.)	Neosho, MO	06/25/2002	J85 Engine.
41,836	Mansfield Plumbing (Wkrs)	Kilgore, TX	06/03/2002	Toilet Bowls.
41,837	Kurt Manufacturing (Wkrs)	Mpls, MN	07/03/2002	Industrial Machinery.

[FR Doc. 02–19962 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,576 and TA–W–41,576A]

R&B Falcon Management, Services, Lafayette, LA, and R&B Falcon Management, Services, Houma, LA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 28, 2002, in response to a petition filed by a company official on behalf of workers at R&B Falcon Management, Services, Lafayette and Houma, Louisiana.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 19th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19956 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,919]

Sovereign Adhesives Incorporated, Formerly Croda Adhesives, Ewing, NJ; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked of June 7, 2002, a worker requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) under petition TA–W–40,919. The TAA denial notice applicable to workers of Sovereign Adhesives Incorporated, formerly Croda Adhesives, Ewing, New Jersey, was signed on April 30, 2002 and published in the **Federal Register** on May 17, 2002 (67 FR 35143).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Sovereign Adhesives Incorporated, formerly Croda Adhesives, Ewing, New Jersey engaged in employment related to the production of adhesives, was denied

because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The preponderance in the declines in employment at the subject plant was related to Sovereign Specialty Chemicals, Inc. acquiring Croda International Plc Specialty adhesive and coatings business in October 2000. Following this acquisition production was transferred from the Croda plant in Ewing, New Jersey to other Sovereign plants located in the United States.

The petitioner alleges, based on the company's SEC filings, that they have manufacturing plants in Brazil, Belgium and the United Kingdom. The SEC filing states that the Brazilian plant would be a conditional sale. The petitioner indicates the subject plant supplied Latiseal type sealants to Brazil and they would start production on their own and send them to the United States. The petitioner further indicates that the Ewing plant also produced acrylic blends 29–044 and 29–045, which were shipped to American and Canadian customers and subsequently replaced by European imports. The petitioner feels these events were overlooked.

A review of the initial investigation and further contact with the company revealed that the company did not import the sealants or blends as addressed by the petitioner above during the relevant period. The company indicated that any imported products like or directly competitive with what the subject plant produced would be "less than negligible".

Further review of the initial investigation shows the preponderance in the declines in employment at the subject plant was related to a domestic shift in plant production to Buffalo, New York and Akron, Ohio. Also, in the initial investigation the company reported no declines in their customer base during the relevant period. Therefore, any potential imports of products "like or directly competitive" with what the subject plant produced would not meet the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19953 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,560]

SRAM Corporation, Colorado Springs, CO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 20, 2002, in response to a petition filed by a company official on behalf of workers at SRAM Corporation, Colorado Springs, Colorado.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 19th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19955 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,515]

Stabilit America, Inc., Glasteel Division, Moscow, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 13, 2002 in response to a worker petition, which was filed on behalf of workers at Stabilit America, Inc., Glasteel Division, Moscow, Tennessee.

The petitioning group of workers was not employed at the subject facility. Consequently, the investigation has been terminated.

Signed in Washington, DC this 23rd day of July, 2002.

Curtis K. Kooser,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19954 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,024]

Whisper Jet, Inc., Sanford, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 2002, in response to a petition filed on behalf of workers at Whisper Jet, Sanford, Florida.

The investigation revealed that the petitioners were in fact workers of Vertical Aviation Technologies, Inc., Sanford, Florida.

The petitioner submitting the petition has requested that the petition be withdrawn. Further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19967 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05844]

Argus International, Inc., Including Leased Workers of ADP Total Source, Medley, FL; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on May 6, 2002, applicable to workers of Argus International, Inc., Medley, Florida. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 35142).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that leased workers of ADP Total Source were employed at Argus International, Inc. to produce ladies', men's and children's apparel at the Medley, Florida location of the subject firm.

Based on these findings, the Department is amending the certification to include leased workers

of ADP Total Source producing ladies', men's and children's apparel at the Medley, Florida location of the subject firm.

The intent of the Department's certification is to include all workers of Argus International, Inc., affected by layoffs and customer imports from Canada and/or Mexico.

The amended notice applicable to NAFTA–05844 is hereby issued as follows:

All workers of Argus International, Inc., Medley, Florida including leased workers of ADP Total Source engaged in employment related to the production of ladies', men's and children's apparel at Argus International, Inc., Medley, Florida, who became totally or partially separated from employment on or after January 7, 2001, through May 6, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 25th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19960 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA 5827]

Carey Industries, Inc., Danbury, CT; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on January 29, 2002 in response to a petition filed by a company official on behalf of workers at Carey Industries, Inc., Danbury, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 5th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19970 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05943]

F.H. Stoltze Land and Lumber Company, Stoltze Aspen Mills Division, Siguird, UT; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 1, 2002, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA). The NAFTA–TAA denial notice applicable to workers of F.H. Stoltze Land and Lumber Company, Stoltze Aspen Mills Division, Siguird, Utah was signed on June 21, 2002 and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The NAFTA–TAA petition, filed on behalf of workers at F.H. Stoltze Land and Lumber Company, Stoltze Aspen Mills Division, Siguird, Utah was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed that none of the respondents increased their imports from Canada or Mexico of products like or directly competitive with what the subject plant produced during the relevant period. The subject firm did not import from Canada or Mexico products like or directly competitive with what the subject plant produced, nor was the subject plant's production shifted from the workers' firm to Mexico or Canada. The workers were primarily engaged in activities related to the production of landscape timber.

The petitioner appears to be alleging that the subject firm's customers switched purchases from the subject firm in favor of buying from other domestic competitors that had an apparent competitive edge, since the competitors could purchase landscape timber directly from Canada at a lower price than the subject plant could produce landscape timber.

The Department, as already indicated, examines the impact of imports from Canada and Mexico by a survey of the subject firm's major declining customers to examine if the "contributed importantly" test is met. The survey conducted during the initial investigation revealed that none of the respondents increased their imports of landscape timbers from Canada or Mexico, while decreasing their purchases from the subject firm during the relevant period.

The survey also examines if the products purchased by the customers from other domestic sources were imported from Canada or Mexico. The survey revealed that none of the customers reported purchasing imported landscape timbers from other domestic sources.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19971 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05319, and NAFTA–05319A]

Motorola, Inc., Personal Communications Sector, Wireless Messaging Division, Including Leased Workers of Adecco Employment, Boynton Beach, FL and Motorola, Inc., Personal Communications Sector, Wireless Messaging Division, Buda, TX; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor

issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on February 11, 2002, applicable to workers of Motorola, Inc., Personal Communications Sector, Wireless Messaging Division, Boynton Beach, Florida. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9328). The certification was amended on April 9, 2002 to include leased workers of Adecco Employment employed at Motorola, Inc., Personal Communication Sector, Wireless Messaging Division, Boynton Beach, Florida. The notice was published in the **Federal Register** on April 24, 2002 (67 FR 20173).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that a worker separation occurred involving an employee whose wages were paid by Motorola, Inc., Personal Communications Sector, Wireless Messaging Div., Boynton Beach, Florida, but worked in Buda, Texas. This employee was engaged in employment related to the production of electronic paging and cellular products at the Boynton Beach, Florida location of the subject firm.

Based on these findings, the Department is amending the certification to include an employee of Motorola, Inc., Personal Communications Sector, Wireless Messaging Division, Buda, Texas.

The intent of the Department's certification is to include all workers of Motorola, Inc., Personal Communications Sector, Wireless Messaging affected by employment declines and a shift in the production of electronic paging and cellular products to Mexico.

The amended notice applicable to NAFTA–05319 is hereby issued as follows:

All workers of Motorola, Inc., Personal Communications Sector, Wireless Messaging Division, Boynton Beach, Florida including leased workers of Adecco Employment, Boca Raton, Florida (NAFTA–5319), and including a worker of Motorola, Inc., Personal Communications Sector, Wireless Messaging Division, Buda, Texas (NAFTA–5319A), engaged in employment related to the production of electronic paging and cellular products at Motorola, Inc., Personal Communications Sector, Wireless Messaging Division, Boynton Beach, Florida who became totally or partially separated from employment on or after September 13, 2000, through February 11, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 25th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19958 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05503]

Telair International Air Cargo Equipment, Rancho Domingez, California; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 3, 2002, applicable to workers of Telair International, Rancho Domingez, California. The notice was published in the **Federal Register** on April 17, 2002 (67 FR 18924).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of air cargo containers and hardware. New information shows that Air Cargo Equipment purchased Telair International in May, 2001.

Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Air Cargo Equipment.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Telair International, Rancho Domingez, California who were adversely affected by a shift of production of air cargo containers and hardware to Mexico.

The amended notice applicable to NAFTA–05503 is hereby issued as follows:

All workers of Telair International, Air Cargo Equipment, Rancho Domingez, California, who became totally or partially separated from employment on or after October 25, 2000, through April 3, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19959 Filed 8–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than August 19, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the

Director of DTAA at the address shown below not later than August 19, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Trinity Rail Group (Wrks)	Beaumont, TX	06/12/2002	NAFTA–6,272	Railcars.
Franklin Polo (Wrks)	Franklin, GA	06/10/2002	NAFTA–6,273	Men's polo shirts.
Meyersdale Manufacturing Co (Wrks)	Meyersdale, PA	06/11/2002	NAFTA–6,274	Uniform shirts.
Scotty's Fashions of Lewistown (UNITE).	Lewistown, PA	06/11/2002	NAFTA–6,275	Ladies' Sportswear.
Solectron of Oregon (Wrks)	Hillsboro, OR	06/07/2002	NAFTA–6,276	Auto electronics safety components.
St. Vincent de Paul Enterprises (Comp).	Portland, OR	06/06/2002	NAFTA–6,277	Hoods stays, brake harnesses.
Sony Electronics, Inc. (Wrks)	San Diego, CA	05/17/2002	NAFTA–6,278	Televisions and computer monitors.
Lexstar Technologies (Wrks)	Mason City, IA	05/22/2002	NAFTA–6,279	Battery packs, chargers, analyzers.
Intermix Distributors, Inc. (Wrks)	El Paso, TX	06/12/2002	NAFTA–6,280	Corn and flour tortillas.
Agrilink Foods (Comp)	Tacoma, WA	06/14/2002	NAFTA–6,281	Salsa, relish and other pickle products.
Glen Oaks Industries, Inc. (Wrks)	Dallas, TX	06/14/2002	NAFTA–6,282	Men's dress slacks.
Alfa Laval (IAM)	Kenosha, WI	05/14/2002	NAFTA–6,283	Pumps, valves and clamps.
Severn Trent Services	Fieldale, VA	06/24/2002	NAFTA–6,284	Dye for sewer plant.
NW Swissmatic ( )	Minneapolis, MN	06/06/2002	NAFTA–6,285	Cylindrical machine parts.
Joy Mining Machinery ( )	Mt. Vernon, IL	06/24/2002	NAFTA–6,286	Boilermakers.
Olson Technologies, Inc. ( )	Allentown, PA	06/17/2002	NAFTA–6,287	Valves.
Regal Plastics Company ( )	Roseville, MI	06/20/2002	NAFTA–6,288	Plastics.
Tecknit ( )	Cranford, NJ	05/10/2002	NAFTA–6,289	Gaskets.
Therm-O-Disc Inc. ( )	Muskegon, MI	06/20/2002	NAFTA–6,290	Saturn Probe assemblies (part numbers).
Sulzer Pumps ( )	Portland, OR	06/20/2002	NAFTA–6,291	Industrial pumps.
Weyerhaeuser ( )	Woodburn, OR	06/20/2002	NAFTA–6,292	Finished wood products.
Micro Molding Technologies ( )	Boynton Beach, FL	06/20/2002	NAFTA–6,293	Inection molding of plastic parts.
Curt G. Joa, Inc. ( )	Boynton Beach, FL	06/19/2002	NAFTA–6,294	Custom web processing machinery.
Sun Belt Interplex ( )	Tamarac, FL	04/22/2002	NAFTA–6,295	Metal stampings for med & tech. industrs.
Great Lakes Transportation ( )	Duluth, MN	06/25/2002	NAFTA–6,296	
American Corporation ( )	Carrollton, GA	06/19/2002	NAFTA–6,297	Women's white socks.
Angelica Image Apparel ( )	St. Louis, MO	06/21/2002	NAFTA–6,298	Uniforms (shirts and aprons).
EDUSA Corp. (Wkrs)	El Paso, TX	06/20/2002	NAFTA–6,299	Warehousing.
Strattec Security (Co)	Milwaukee, WI	06/20/2002	NAFTA–6,300	Locks.
BR Holdings LTD—Racine Steel Castings (CO).	Racine, WI	06/19/2002	NAFTA–6,301	Automobile seats.
Flextronics—Enclosure Systems (CO)	New Braunfels, TX	06/24/2002	NAFTA–6,302	Plastics and sheet metal fabrication.
Parker Hosiery (CO)	Old Fort, NC	06/25/2002	NAFTA–6,303	Socks.
Ericsson (CO)	Durham, NC	06/20/2002	NAFTA–6,304	Indoor/outdoor base stations products.
Montgomery Production (CO)	Montgomery, IL	06/26/2002	NAFTA–6,305	Retail grocery and foodservice products.
Signa Molds (Wkrs)	Pacoima, CA	06/24/2002	NAFTA–6,306	Injection molds.
Vishay Dale Electronics (Co.)	Columbus, NE	06/28/2002	NAFTA–6,307	Wirewound-military mount.
Santiom Forest Products (CO)	Sweet Home, OR	06/28/2002	NAFTA–6,308	Ran threw planer & molder.
Brooks-PRI Automation (Co.)	Hillsboro, OR	06/26/2002	NAFTA–6,309	Software design, development, and mgmt.
JB Tool & Machine (Wkrs)	Wapakoneta, OH	06/28/2002	NAFTA–6,310	TV frames.
Premier Turbines (CO)	Neosho, MO	06/26/2002	NAFTA–6,311	Military engines.
Delphi Corporation (CO)	Dayton, OH	05/14/2002	NAFTA–6,312	Brake and chase systems.
H and L Tool Company	Erie, PA	06/21/2002	NAFTA–6,313	Plastic injection molds.
Newcor Inc. (Wkrs)	Troy, MI	06/27/2002	NAFTA–6,314	Oil pump transmission shaft.
Paccar Kenworth (IAM)	Bentown, MA	04/23/2002	NAFTA–6,315	Fabricated parted.
Andrew Corporation (Wkrs)	Camarillo, CA	06/24/2002	NAFTA–6,316	Wireless antennas.
General Cable (CO)	Bonham, TX	06/27/2002	NAFTA–6,317	Copper telephone cable.
Ube Automotive North America (UAW)	Mason, OH	06/24/2002	NAFTA–6,318	Aluminum wheels.
General Cable (Wkrs)	Monticello, IL	06/26/2002	NAFTA–6,319	Telephone wire.
MSC Pinole Point Steel (Wkrs)	Richmond, CA	06/21/2002	NAFTA–6,320	Coils.
Xerox Corporation (Wkrs)	Webster, NY	06/17/2002	NAFTA–6,321	Lakes products.
Whisper Jet (Wrkrs)	Sanford, FL	06/20/2002	NAFTA–6,322	Helicopter.
Metso Automation (Co.)	Shrewbury, MA	06/26/2002	NAFTA–6,323	Control valves.
Neuroscan (Wkrs)	El Paso, TX	06/26/2002	NAFTA–6,324	Medical electronic equipment.
Metso Minerals (Co.)	Clintonville, WI	06/26/2002	NAFTA–6,325	Conveyers.

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Schneider Electric/Square D Company (Wrkrs).	Monroe, NC	06/25/2002	NAFTA–6,326	Low Voltage Transformers.
A.O. Smith Electrical Products (Co.)	Monticello, IN	06/26/2002	NAFTA–6,327	Subfractional motor.
A.O. Smith Electrical Products (CO)	Upper Sandusky, OH	04/17/2002	NAFTA–6,328	Electric motor stampings.
Tyco International (Wkrs)	White City, OR	05/30/2002	NAFTA–6,329	Printed circuits boards.
Johnson Controls (Co.)	Lapier, MI	06/21/2002	NAFTA–6,330	Headliners.
Permeir Turbines, Sabareliner (Wkrs)	Independence, KS	07/02/2002	NAFTA–6,331	Aircraft Products.
Trus Joist a Weyerhauser Business (Co).	Stayton, OR	07/02/2002	NAFTA–6,332	Engineered Wood Products.
King Press (Wkrs)	Joplin, MO	07/04/2002	NAFTA–6,333	Complete Printing Process.
Nortel Networks (Wkrs)	Billerica, MA	07/02/2002	NAFTA–6,334	BSN 5000/Broadband Service Node.
Fibermark (Wkrs)	South Hadley, MA	07/02/2002	NAFTA–6,335	Pulp and Specialty Paper.
Snorkel (Wkrs)	Elwood, KS	06/27/2002	NAFTA–6,336	Forklifts.
Trico Products Inc. (Wkrs)	Buffalo, NY	07/02/2002	NAFTA–6,337	IT Information Services.
Accura Tool and Die-Metaldyne (Wkrs).	Crystalake, IL	07/05/2002	NAFTA–6,338	Tools.
Maxxim Medical Inc. (Wkrs)	Asheville, NC	07/03/2002	NAFTA–6,339	Medical Surgical Drapes and Gowns.
Solectron (Wkrs)	West Palm Beach, FL	07/05/2002	NAFTA–6,340	Metal stamping, injection molding, etc.
Flextronics International (Wkrs)	Longmont, CO	06/24/2002	NAFTA–6,341	Contract Assembly Box Build.
Louisiana Pacific (Co.)	Bon Wier, TX	07/09/2002	NAFTA–6,342	Plywood panels.
Doutt Tool Inc. (Co.)	Venago, PA	07/03/2002	NAFTA–6,343	Punches, Dies, Machine Parts.
Wisconsin Color Press (Co.)	Milwaukee, WI	07/02/2002	NAFTA–6,344	Magazines, Catalogs & printing products.
News Group (The) (Wkrs)	Jackson, MI	07/03/2002	NAFTA–6,345	Magazine and book distributor.
National Textiles (Wkrs)	Winston Salem, NC	07/08/2002	NAFTA–6,346	Fabric.
Midwest Metallurgical-Detroit Stoker (GMP).	Mashall, MI	07/08/2002	NAFTA–6,347	New casting.
Feralloy North American Steel (Wkrs)	Melvindale, MI	07/08/2002	NAFTA–6,348	Steel.
John Deer Vehicle Group (Wkrs)	Williamsburg, VA	07/08/2002	NAFTA–6,349	Utility vehicles.
Medtronic (Co.)	Sunnse, FL	06/18/2002	NAFTA–6,350	Medical device.
FCI USA (Wkrs)	York, PA	07/08/2002	NAFTA–6,351	Connectors.

[FR Doc. 02–19963 Filed 8–6–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following party has filed a petition to modify the application of an existing safety standard under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Mountain Coal Company, LLC

[Docket No. M–2002–061–C]

Mountain Coal Company, LLC, 5174 Highway 133, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.321(a)(2) (Air quality) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner requests a modification of the standard to allow personnel to work in bleeder entries where the air quality contains a minimum of 18.0% oxygen. The petitioner states that the stipulations listed below, along with others listed in the petition, would be followed when its proposed alternative method is implemented: (a) Work in bleeder entries would be limited to what is necessary to complete required weekly examinations and maintain the bleeder in travelable condition such as pumping water, repairing water pumping system, installing additional supplemental roof support, calibrating sensors, etc.; (b) Oxygen sensors would be installed to continuously monitor the oxygen content every 4000 feet in the bleeder entry where the oxygen content is less than 19.5%; and (c) Training would be provided to all personnel assigned to work in the bleeder entries in the hazards of oxygen deficiency and the stipulations of this petition. The petitioner states that the reduced oxygen content in the bleeder entry would not affect the purpose of the bleeder entry for methane control. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard, and that application of the existing standard would result in a diminution of safety to the miners.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209–3939. All comments must be postmarked or received in that office on or before September 6, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 1st day of August, 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–19914 Filed 8–6–02; 8:45 am]
BILLING CODE 4510–43–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 98–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995, and 5 CFR part

1320), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 98–7, We Need Important Information About Your Eligibility for Social Security Disability Benefits, is used by OPM to verify receipt of Social Security Administration (SSA) disability benefits, to lessen or avoid overpayments to FERS disability retirees. It notifies the annuitant of the responsibility to notify OPM if SSA benefits begin and the overpayment that will occur with the receipt of both benefits.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 5,500 RI 98–7 forms will be completed annually. We estimate it takes approximately 5 minutes to complete the form. The annual burden is 458 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Lawrence P. Holman, Acting Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3313, Washington, DC 20415–3520.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–19950 Filed 8–6–02; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46288; File No. SR–NASD–2002–85]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Issuer Disclosure of Material Information

July 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify its rules pertaining to issuer disclosure of material information. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

4120. Trading Halts

(a) No change.

(b) Procedure for Initiating a Trading Halt

(1) Nasdaq issuers are required to notify Nasdaq of the release of [any] *certain* material news prior to the release of such information to the [press] *public* as required by Rules 4310(c)(16) and 4320(e)(14).

(2) Notification shall be provided directly to Nasdaq's MarketWatch Department by telephone, facsimile, or other compatible means of electronic communication.* Information communicated orally by authorized representatives of a Nasdaq issuer should be confirmed promptly in writing.

*Notification may be provided to the MarketWatch Department by telephone 1–800–537–3929 and (240) 386–6046. Between 7 p.m. and [8] *7:30 a.m.* Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386–604[6]*7*.

(3)—(6) No change

IM–4120–1. Disclosure of Material Information

Rules 4310(c)(16) and 4320(e)(14) require that, except in unusual circumstances, Nasdaq issuers disclose promptly to the public through [the news media] *any Regulation FD compliant method (or combination of methods) of disclosure* any material information which would reasonably be expected to affect the value of their securities or influence investors' decisions. [and that] Nasdaq issuers *shall* notify Nasdaq of the release of [any] such *material* information *that involves any of the events set forth below* prior to its release to the public [through the news media]. Nasdaq recommends that Nasdaq issuers provide such notification at least ten minutes before such release.** Under unusual circumstances issuers may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its corporate objectives. However, Nasdaq issuers remain obligated to disclose this information to Nasdaq upon request pursuant to Rules 4310(c)(15) or 4320(e)(13).

Whenever unusual market activity takes place in a Nasdaq issuer's securities, the issuer normally should determine whether there is material information or news that should be disclosed. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, or if information from a source other than the issuer becomes known to the investing public, a clear public announcement may be required as to the state of negotiations or development of issuer plans. Such an announcement may be required, even though the issuer may not have previously been advised of such information or the matter has not yet been presented to the issuer's Board of Directors for consideration. It may also be appropriate, in certain circumstances, to publicly deny false or inaccurate rumors which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

Trading Halts

A trading halt benefits current and potential shareholders by halting all trading in any Nasdaq securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

some investors acting on information known to them but which is not known to others. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has been released.

Nasdaq's MarketWatch Department monitors real time trading in all Nasdaq securities during the trading day for price and volume activity. In the event of certain price and volume movements, the MarketWatch Department may contact an issuer and its market makers in order to ascertain the cause of the unusual market activity. The MarketWatch Department treats the information provided by the issuer and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. A Nasdaq listing includes an obligation to disclose to the MarketWatch Department information that the issuer is not otherwise disclosing to the investing public or the financial community. On occasion, changes in market activity prior to the issuer's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the issuer, such as when a Nasdaq issuer is subject to an unsolicited take-over bid by another company. Depending on the nature of the event and the issuer's views regarding the business advisability of disclosing the information, the MarketWatch Department may work with the issuer to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated affect of the information on the price of the issuer's securities, the MarketWatch Department may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to private investors with the opportunity to evaluate the information in making investment decisions. A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an additional basis under Rule 4120 exists for continuing the trading halt.

The MarketWatch Department is required to keep non-public information confidential and to use such information only for regulatory purposes.

[Material information which would reasonably be expected to affect the value of the securities of an issuer or influence investors' decisions would include information regarding issuer events of an unusual and/or nonrecurrent nature.] *Issuers are required to notify the MarketWatch Department of the release of material information included in the following list of events prior to the release of such information to the public.* [The following list of events, while not an exhaustive summary of all situations in which disclosure to Nasdaq should be considered, may be helpful in determining whether information is material.] It should also be noted that every development that might be reported to Nasdaq in these areas would not necessarily be deemed to warrant a trading halt. *In addition to the following list of events, Nasdaq encourages issuers to avail themselves of the opportunity for advance notification to the MarketWatch Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.*

[• a merger, acquisition or joint venture;

• a stock split or stock dividend;

• earnings and dividends of an unusual nature;

• the acquisition or loss of a significant contract;

• a significant new product or discovery;

• a change in control or a significant change in management;

• a call of securities for redemption;

• the public or private sale of a significant amount of additional securities;

• the purchase or sale of a significant asset;

• a significant labor dispute;

• establishment of a program to make purchases of the issuer's own shares;

• a tender offer for another issuer's securities; and

• an event requiring the filing of a current report under the Act.]

(a) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."

(b) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.

(c) New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).

(d) Senior management changes of a material nature or a change in control.

(e) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.

(f) Events regarding the issuer's securities—e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.

(g) Significant legal or regulatory developments.

(h) Any event requiring the filing of a Form 8–K.

Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that an issuer chooses to utilize, issuers are required to notify the MarketWatch Department of the release of material information that involves any of the events set forth above prior to its release to the public. Nasdaq recommends that issuers provide such notification at least ten minutes before such release. When an issuer chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8–K, the issuer will be required to provide prior notice to the MarketWatch Department of: (1) the press release announcing the logistics of the future disclosure event; and (2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

Depending on the materiality of the information and the anticipated effect of the information on the price of the issuer's securities, the MarketWatch Department may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The MarketWatch Department will assess with issuers utilizing methods of disclosure other than a press release or Form 8–K the timing within the disclosure event when the issuer will cover the material information so that the halt can be commenced accordingly. Issuers will be responsible for promptly alerting the MarketWatch Department of any significant changes to the previously outlined disclosure timeline. Issuers are reminded that the posting of information on its own website is not by

itself considered a sufficient method of public disclosure under Regulation FD, and as a result, under Nasdaq rules.

[Use of the Internet in the Disclosure of Material Information

While Nasdaq requires that its listed issuers disseminate material press releases over one of the major news wires, Nasdaq recognizes the increased utilization of the Internet as a vehicle for additional news dissemination. The Internet is a valuable disclosure resource that can enhance the orderly dissemination of material information for all shareholders and market participants.

Issuers can and should provide shareholders direct access to corporate disclosures via their Internet home pages and web sites.

To ensure a level playing field for all investors in Nasdaq companies, however, this policy on disclosure of corporate information requires that the use of the Internet to disseminate material press releases is appropriate provided the information is not made available over the Internet before the same information is transmitted to, and received by, the traditional news vendor services. Issuers must still notify Nasdaq at least ten minutes prior to the release of any information that would reasonably be expected to affect the value of securities or influence investors' decisions, as indicated in this policy.]

**Notification may be provided to the MarketWatch Department by telephone 1–800–537–3929 and (240) 386–6046. Between 7 p.m. and [8] *7:30* a.m. Eastern Time, voice mail messages may be left on either number. Information communicated orally should be confirmed promptly in writing. The fax number is (240) 386–604[6]*7*.

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(15) No change.

(16) Except in unusual circumstances, the issuer shall make prompt disclosure to the public through [the news media] *any Regulation FD compliant method (or combination of methods) of disclosure* of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions [and shall]. *The issuer shall*, prior to the release of the information, provide notice of such disclosure to Nasdaq's MarketWatch Department *if the information involves any of the events set forth in IM–4120–1.**

* [This notice shall be made to Nasdaq's MarketWatch Department at 9509 Key West Avenue, Rockville, Maryland 20850–3351. The telephone numbers are] *Notification may be provided to the MarketWatch Department by telephone* 1–800–537–3929 and (240) 386–6046. Between 7 p.m. and [8] *7:30* a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386–6047.

(17)–(29) No change.

(d) No change.

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(13) No change.

(14) Except in unusual circumstances, the issuer shall make prompt disclosure to the public in the United States through [international wire services or similar disclosure media] *any Regulation FD compliant method (or combination of methods)* of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions [and shall]. *The issuer shall*, prior to the release of the information, provide notice of such disclosure to Nasdaq *if the information involves any of the events set forth in IM–4120–1.**

*[This notice shall be made to Nasdaq's MarketWatch Department at 9509 Key West Avenue, Rockville, Maryland 20850–3351. The telephone numbers are] *Notification may be provided to the MarketWatch Department by telephone* 1–800–537–3929 and (240) 386–6046. Between 7 p.m. and [8] *7:30* a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386–6047.

(15)–(25) No change.

(f) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Regulation Fair Disclosure ("Regulation FD" or "Reg FD") was adopted by the SEC in order to curb the selective disclosure of material non-public information by issuers to analysts and institutional investors. Generally, Regulation FD requires that when an issuer discloses material information, it do so publicly. Public disclosure under Reg FD can be accomplished by filing a Form 8–K with the SEC or through another method of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

Nasdaq has determined to harmonize its rules pertaining to issuer disclosure of material information with Reg FD by allowing issuers to disseminate material information via the same means permitted under Reg FD. Nasdaq also proposes to revise the list of material events set forth in IM–4120–1 and require issuers to provide prior notification to the MarketWatch Department only for information that involves any of the material events set forth in this list.

Disclosure of Material Information. Currently, Nasdaq rules require that, except in unusual circumstances, Nasdaq listed companies promptly disclose to the public through the news media any material information which would reasonably be expected to affect the value of their securities or influence investors' decisions.[3] This disclosure must be made via a press release that is distributed through news services such as Dow Jones, Reuters, Bloomberg, Business Wire or PR Newswire. In order

[3] *See* IM–4120–1.

to provide issuers with the flexibility afforded under Regulation FD, Nasdaq proposes to modify its rules in order to recognize all Reg FD compliant disclosure methods as a means for issuer compliance with Nasdaq disclosure obligations. In addition to a broadly disseminated press release, Reg FD compliant methods of disclosure include furnishing to or filing with the SEC a Form 8–K as well as conference calls, press conferences and webcasts, so long as the public is provided adequate notice (generally by press release) and granted access.[4]

By aligning Nasdaq disclosure options with those outlined in Reg FD, Nasdaq will enable issuers to recognize the benefits of utilizing current technologies as part of a comprehensive issuer disclosure strategy. In addition, issuer confusion between Reg FD compliant and Nasdaq compliant disclosure plans will be minimized. Lastly, allowing Nasdaq issuers to use Regulation FD compliant methods of disclosure will address the concerns that have been raised regarding self-regulatory organization rules overriding the flexibility provided by Reg FD.[5]

Irrespective of the method of disclosure, issuers will be required to provide prior notification of certain planned material news announcements to the MarketWatch Department prior to their release to the public.[6] Issuers using a press release or Form 8–K must notify MarketWatch by faxing the press release or Form 8–K, or providing the material information by phone prior to public dissemination.[7] When using a conference call, press conference or Web cast as the primary means for disclosure, issuers will be required to provide prior notice to MarketWatch of:

—The press release announcing the future conference call, press conference or Web cast; and

—A descriptive summary of the material elements to be announced in the call, press conference or Web cast if the press release does not contain a summary.

MarketWatch will continue to evaluate the materiality of these disclosures and implement temporary trading halts, where appropriate, to facilitate the orderly dissemination of certain issuer announcements having a potentially material impact on the price of the securities.[8] MarketWatch will assess with issuers using press conferences, conference calls and webcasts the timing during the event where the issuer will cover the material points. For example, if an issuer plans to commence discussing the material information ten minutes into the event and expects it to take fifteen minutes to address, MarketWatch will coordinate the resumption of trading (usually thirty minutes following dissemination of the material news) based on the material news being covered twenty-five minutes after the start of the event.[9] If a press release announcing a future conference call, press conference or webcast contains details of the essential material disclosure, Nasdaq may halt trading for dissemination of this statement. In that instance, trading would not be halted again for the subsequent press conference, conference call or webcast.

MarketWatch Notification Categories. Nasdaq rules currently require issuers to notify Nasdaq of the release of any material information prior to its release to the public.[10] Prior notification allows Nasdaq's MarketWatch Department to determine whether a temporary trading halt of an issuer's securities is appropriate to allow the full dissemination of the information to the public. In order to assist issuers in determining whether information is material, IM–4120–1 currently provides a non-exhaustive list of events that may affect the value of an issuer's securities or influence investors' decisions. Nasdaq proposes to revise the list set forth in IM–4120–1 and require issuers to provide prior notification to MarketWatch only of material information that involves the events set forth in this list.

The revised list is comprised of the events that are expected to have a material impact on the price of an issuer's securities or on investors' decisions. The list was developed through the analysis of Nasdaq trading halt data and material information categories outlined in other sources, including Reg FD. In fact, the events are generally similar to those enumerated in the Regulation FD adopting release,[11] but include certain additional clarifications deemed appropriate by Nasdaq. The following is a list of the categories of material information that must be disclosed to the MarketWatch Department prior to public dissemination:

(a) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."

(b) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.

(c) New products or discoveries, or developments regarding customers or suppliers (*e.g.*, significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).

(d) Senior management changes of a material nature or a change in control.

(e) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.

(f) Events regarding the issuer's securities—*e.g.*, defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.

(g) Significant legal or regulatory developments.

(h) Any event requiring the filing of a Form 8–K.

The proposed rule does not relieve Nasdaq issuers of their requirement to promptly disclose to the public any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Rather, the rule sets forth those instances in which issuers must provide prior notice to Nasdaq before the disclosure of the material information to the public. Of course, Nasdaq issuers are encouraged to provide advance notification to MarketWatch of material information that does not involve the events set forth in the above list in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or beneficial.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[12] in general, and with section 15A(b)(6) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, and, in

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[4] Securities Exchange Act Release No. 43154 (August 15, 2000), 65 FR 51716 (August 24, 2000) at 51724.

[5] *See e.g.*, Unger, *Special Study: Regulation Fair Disclosure Revisited* (December 2001).

[6] Nasdaq recommends that issuers provide such information at least 10 minutes before the release of the information to the public.

[7] Information communicated orally should be confirmed promptly in writing.

[8] Separate from this filing, Nasdaq will soon be seeking public comment on several issues related to trading halts, including a possible pilot halt-free period during the after hours trading session, the length of halts, and the procedure for resumption of trading following a halt.

[9] It will be the issuer's responsibility to promptly alert MarketWatch of any significant changes to a previously outlined disclosure timeline.

[10] *See* IM–4120–1.

[11] Securities Exchange Act Release No. 43154 (August 15, 2000), 65 FR 51716 (August 24, 2000) at 51721.

[12] 15 U.S.C. 78o–3.

[13] 15 U.S.C. 78o–3(b)(6).

general, to protect investors and the public interest. As noted above, Nasdaq believes the harmonization of Nasdaq's disclosure rules with Regulation FD will minimize issuer confusion while at the same time allowing issuers to utilize current technologies for the broad, non-exclusionary dissemination of material information to the public. In addition, Nasdaq believes the development of a list of categories of material information that must be disclosed to the MarketWatch Department prior to public dissemination will provide greater transparency for issuers while allowing Nasdaq to continue to ensure the fair and adequate dissemination of material information to the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–85 and should be submitted by August 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19890 Filed 8–6–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46289; File No. SR–NASD–2002–103]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend NASD Interpretive Material 8310–2 Regarding the Release of Disciplinary Information to the Public

July 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Interpretive Material 8310–2 ("IM–8310–2") to clarify the terms under which the NASD will release disciplinary information to the public. The proposed rule change will become operative on September 1, 2002. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

IM–8310–2. Release of Disciplinary Information

(a) through (c) No change.

(d)(1) [The Association] *NASD* shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of $10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD [Regulation, Inc.] *Regulatory Policy and Oversight* to be in the public interest. [The Association] *NASD* also may release to the public information with respect to any disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. [The Association] *NASD* may release to the public information on any [other final, litigated,] disciplinary decision issued pursuant to the Rule 8220 Series or Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NASD provided the Commission with notice of its intent to file the proposed rule change on June 28, 2002. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

(A) NASD shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in IM–8310–2(d)(1) for the release of information to the public, provided that the underlying decision issued pursuant to the Rule 9200 Series meets one or more of the criteria in IM–8310–2(d)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

(B) In the event there is more than one respondent in a disciplinary decision issued pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meets one or more of the criteria in Rule IM–8310–2(d)(1) for the release of information to the public, NASD shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, NASD shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the sanctions imposed on such respondent in the underlying decision issued pursuant to Rule 9200 meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

(2) No change.

(e) through (l) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend IM–8310–2 to clarify the circumstances under which the NASD shall redact information released to the public with respect to Hearing Panel and Extended Hearing Panel disciplinary decisions issued under the Rule 9200 Series (hereinafter collectively referred to as "Hearing Panel decisions"), and National Adjudicatory Council ("NAC") disciplinary decisions issued under the Rule 9300 Series. The proposed rule change also conforms the timing for the release of information in redacted form to the timing for the release of information in unredacted form with respect to both Hearing Panel and NAC decisions. As further detailed below, the proposed rule change is effective immediately upon filing and will become operative on September 1, 2002.

IM–8310–2(d)(1) requires the NASD to release to the public information with respect to any disciplinary decision that: imposes a suspension, cancellation or expulsion of a member; suspends or revokes an associated person's registration; suspends or bars an associated person; or imposes monetary sanctions of $10,000 or more. The NASD also may release to the public information about cases that involve a significant policy or enforcement determination where the President of NASD Regulatory Policy and Oversight (formerly the President of NASD Regulation, Inc.) deems the release of such information to be in the public interest.[6]

Additionally, pursuant to an amendment effective July 10, 2000,[7] IM–8310–2 permits the NASD to publish in redacted form decisions that do not meet any of the criteria for release of information to the public. As defined in IM–8310–2(d)(1), a redacted decision is one in which the names of the parties and other identifying information (such as the names of employer firms and addresses) are redacted prior to its release.

The first proposed amendment to IM–8310–2(d)(1) would permit the prompt release, in redacted form, of disciplinary decisions that do not meet one or more of the criteria for release of information to the public under IM–8310–2(d)(1). IM–8310–2(d)(1) currently provides that the NASD shall promptly publish on its web site "any disciplinary decision" that meets one or more of the criteria for release of disciplinary information to the public. The July 10, 2000 amendment to IM–8310–2(d)(1) that permits the NASD to publish in redacted form disciplinary decisions that do not meet one or more of the criteria for release of information to the public, however, provides that release of information with respect to such decisions is limited to the publication of "final, litigated decisions."

Limiting the publication of redacted disciplinary decisions to "final, litigated decisions" has the unintended consequence of preventing the NASD from promptly releasing information with respect to Hearing Panel decisions; rather, the NASD must wait until the time for appeal has expired. Further, in the event the decision is appealed or called for review, the NAC decision is considered the "final, litigated decision," and the Hearing Panel decision is never published. The proposed rule change would amend IM–8310–2(d)(1) to change "final, litigated, disciplinary decision" as to the release of information in redacted form to "any disciplinary decision." This rule change would eliminate the current internal inconsistency in IM–8310–2 by establishing the same standard for the release of unredacted and redacted information, thereby permitting the NASD to publish all disciplinary decisions (in unredacted or redacted form as the case may be) promptly after issuance.

Proposed IM–8310–2(d)(1)(A) would address the situation in which the NAC lowers the sanctions imposed in a Hearing Panel decision so that the NAC decision no longer meets the criteria for release of information to the public. In such cases, the NASD releases information to the public with respect to the Hearing Panel decision in unredacted form on the NASD's web site and in redacted form with respect to the NAC decision.

To make it easier to follow the history of a case, NASD Office of Hearing Officers ("OHO") is in the process of enhancing its web site by adding a direct link from Hearing Panel decisions that are appealed or called for review to the subsequent NAC decisions. Linking an unredacted Hearing Panel decision to a redacted NAC decision clearly

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[6] In this transitional period, Mary Schapiro is serving both as President of NASD Regulation, Inc. and President of NASD Regulatory Policy and Oversight. NASD is describing Ms. Schapiro solely as President of NASD Regulatory Policy in the text of IM–8310–2 to avoid the necessity of amending the rule filing at such time as NASD Regulation, Inc. no longer exists.

[7] See Securities Exchange Act Release No. 42783 (May 15, 2000), 65 FR 32140 (May 22, 2000) (SR–NASD–2000–05).

eliminates the effectiveness of redacting the NAC decision; not linking the two decisions, however, obscures the subsequent history of the Hearing Panel decision. To eliminate the anomalous practice of initially releasing information about the same disciplinary matter first in unredacted form and then in redacted form, the proposed rule change would require the NASD to release NAC decisions that do not meet the publication criteria in unredacted form if the underlying Hearing Panel decision meets the criteria for release of information under IM–8210–2 and has been published in unredacted form. This proposed rule change would permit public investors and other interested persons who have read an unredacted Hearing Panel decision to follow the history of a disciplinary matter without having to read a NAC decision that redacts information previously released to the public.

Proposed IM–8310–2(d)(1)(B) would address the situation in which sanctions imposed on one or more, but not all, of the respondents in Hearing Panel or NAC decisions meet the criteria for release of information to the public. The proposed rule change would clarify that, in such situations, the NASD will release information with respect to both Hearing Panel and NAC decisions in unredacted form as to the respondents who meet the publication criteria and in redacted form as to the respondents who do not meet the publication criteria.

In some cases, a subsequent NAC decision may modify the sanctions imposed by the Hearing Panel so that particular respondent(s) in the Hearing Panel decision no longer meet the criteria for release of information to the public. Consistent with proposed IM–8310–2(d)(1)(A) as discussed above, information regarding respondents in NAC decisions that do not meet the criteria for release of information to the public will be released in unredacted form if the sanctions imposed on the respondent in the underlying Hearing Panel decision meet one or more of such criteria and the Hearing Panel decision as to that respondent was published in unredacted form.

2. Statutory Basis

The NASD believes that the proposal is consistent with the provisions of section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is designed to accomplish these ends by clarifying that the NASD will release information to the public with respect to Rule 9200 Series disciplinary decisions upon the issuance of such decisions and clarifying the circumstances under which the NASD will redact information with respect to all Rule 9000 Series disciplinary decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–103 and should be submitted by August 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19891 Filed 8–6–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46294; File No. SR–PCX–2002–46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Size of Option Orders Eligible for Facilitation Crossing

August 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). PCX provided the Commission with notice of its intention to file this proposal on July 16, 2002.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend its rules by reducing the minimum number of contracts necessary for member firms to effect facilitation crossing transactions on the Trading Floor pursuant to PCX Rule 6.47(b). Specifically, the Exchange proposes to reduce the minimum contract size parameter under PCX Rule 6.47(b) from 200 contracts to 50 contracts. The text of the proposed rule change is below. New proposed language is italicized; deleted language is in brackets.

* * * * *

4987 "Crossing" Orders and Stock/Option Orders

Rule 6.47(a)—No change.

(b) *Crossing of Facilitation Orders.* A Floor Broker who holds an order for a public customer or a broker-dealer ("customer order") and an order for the proprietary account of a member organization that is representing that customer (the "facilitation order") may cross those orders only if the following procedures and requirements are followed.

(1) The size of the customer order subject to facilitation must be at least *fifty* [two hundred (200)] contracts. Orders for less than *fifty* [200] contracts may be facilitated pursuant to this rule but are not subject to subsection (4) below pertaining to firm guarantees.

(2)–(6)—No change.

(c)–(f)—No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under current PCX Rule 6.47(b), a Floor Broker who holds an order for a public customer or broker-dealer ("customer order") and an order for the proprietary account of a member organization that is representing that customer or broker-dealer ("firm order") may cross those orders, but only if certain procedures and requirements set forth in PCX Rule 6.47(b) are followed. If the transaction occurs at a price between the trading crowd's quoted market, then up to 40% of the customer order may be crossed with the firm order.[5] If the transaction occurs at a price that is equal to the trading crowd's quoted market, then up to 25% of the customer order may be crossed with the firm order.[6] In addition, current PCX Rule 6.47(b)(1) establishes a minimum order size parameter for facilitation crossing transactions. Specifically, it states that the size of a customer order subject to facilitation must be at least two hundred (200) contracts. It further states that orders for less than 200 contracts may be facilitated pursuant to PCX Rule 6.47(b), but such orders would not be subject to subsection (4) pertaining to firm guarantees. The Exchange is proposing to amend PCX Rule 6.47(b)(1) by replacing two references to "200 contracts" with references to "50 contracts."

The purpose of the proposal is to assure that member firms may receive guaranteed contracts to be eligible for participation on customer orders for 50 contracts or more. In that regard, the Exchange notes that the facilitation crossing rules of other options exchanges currently permit orders for at least 50 contracts for a guarantee whereby the firm entering the order may participate in the trade to a certain extent not to exceed 40%.[7]

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[5] *See* PCX Rule 6.47(b)(4)(A).

[6] *See* PCX Rule 6.47(b)(4)(B).

[7] *See* Rule 950(d), Commentary .02(d) of the American Stock Exchange; Rule 6.74(d) of the Chicago Board Options Exchange; and Rule 716(d) of the International Securities Exchange.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. The proposed rule change has therefore become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

SR–PCX–2002–46 and should be submitted by August 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19939 Filed 8–6–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46293; File No. SR–PCX–2002–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Adopt a Tape Revenue Sharing Program for Certain Transactions on the Exchange in Tape B Securities

August 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule for services provided to ETP Holders and Sponsored Participants[4] on the Archipelago Exchange, the equities trading facility of PCXE. The text of the proposed rule change is below. Proposed additions are in italics.

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

* * * * * * *

Archipelago Exchange: Other Fees and Charges

Market Data Revenue Sharing Credit

Liquidity Provider Credit ..... *50% tape revenue credit per qualifying trade (applicable to limit orders that are residing in the Book and that execute against inbound marketable orders in Tape B securities).*

Directed Order ..... *50% tape revenue credit per qualifying trade (applicable to any market maker that executes against a Directed Order in a Tape B security within the Directed Order Process, as defined in PCXE Rule 7.37(a)).*

Cross Order ..... *50% tape revenue credit per qualifying trade (applicable to any Cross Order, as defined in PCXE Rule 7.31(s), where the ETP Holder or Sponsored Participant represents all of one side of the transaction and all or a portion of the other side in a Tape B security.*

* * * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees charged to ETP Holders and Sponsored Participants (collectively "Users") that access the Archipelago Exchange ("ArcaEx") trading facility by adopting a mechanism for sharing with Users market data revenue derived from transactions in Tape B securities.[5]

The Exchange proposes to share a portion of its gross revenues derived from market data fees (*i.e.*, tape revenue) with (i) any User that provides liquidity in a Tape B security by entering a resting limit order into the ArcaEx Book that is then executed against an incoming marketable order within the Display Order, Working Order, or Tracking Order processes; (ii) any Market Maker that executes against a Directed Order in a Tape B security within the Directed Order Process;[6] and (iii) any User that represents all of one side and all or a portion of the other side of a Cross Order[7] execution in a Tape B security (individually, "Qualifying Transaction" and

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." *See* PCXE Rule 1.1(tt).

[5] Tape B securities include: (a) securities that are listed for trading on the American Stock Exchange; and (b) certain other securities that are deemed to be eligible for such listing.

[6] The Directed Order Process is the first step in the ArcaEx execution algorithm. Through this Process, Users may direct an order to a Market Maker with whom they have a relationship and the Market Maker may execute the order. To access this process, the User must submit a Directed Order, which is a market or limit order to buy or sell that has been directed to the particular market maker by the User. *See* PCXE Rule 7.37(a) (description of "Directed Order Process").

[7] A Cross Order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. *See* PCXE Rule 7.31(s).

collectively, "Qualifying Transactions"). Under the proposal, any User that meets the requirements stated above will receive a 50 percent (50%) tape revenue credit per Qualifying Transaction that is reported over the Consolidated Tape Association's Tape B Network.

The proposed tape revenue credit is intended to create additional incentives to participants to provide liquidity on the ArcaEx facility.

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(4),[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR–PCX–2002–42 and should be submitted by August 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19940 Filed 8–6–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–262]

WTO Dispute Settlement Proceeding Regarding U.S. Sunset Reviews of Antidumping and Countervailing Duties on Steel Products From France and Germany

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that, on July 25, 2002, the United States received from the European Communities ("EC") a request for consultations under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") regarding antidumping and countervailing duties imposed by the United States on imports of corrosion-resistant carbon steel flat products ("corrosion-resistant steel") from France and Germany and imports of cut-to-length carbon steel plate ("cut-to-length steel") from Germany. The EC alleges that the sunset review determinations made by U.S. authorities concerning these products, and certain related matters, are inconsistent with Articles 1, 2, 3, 5, 6 (including Annex II), 11.1, 11.3, 11.4, 18.3 and 18.4 of the Agreement on Implementation of Article VI of the General Agreements on Tariffs and Trade 1994 ("AD Agreement"), Articles 10, 11, 12, 15, 21.1, 21.3, 21.4, 32.3 and 32.5 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), Articles VI and X of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article XVI:4 of the WTO Agreement. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 30, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *ecsunset@ustr.gov*, Attn: "EC Sunset Dispute" in the subject line, or (ii) by mail, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: EC Sunset Dispute, with a confirmation copy sent electronically to the address above, or by fax to (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding ("DSU"). If such consultation should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the EC

With respect to the measures at issue, the EC request for consultations refers to the following:

- The final results of the sunset reviews by the DOC of the antidumping duty order on corrosion-resistant steel

from France (65 FR 18050 (April 6, 2000)), the antidumping duty orders on corrosion-resistant steel and cut-to length steel from Germany (65 FR 18051 (April 6, 2000) and 65 FR 18055 (April 6, 2000), respectively), and the countervailing duty order on corrosion-resistant steel from France (65 FR 18063 (April 6, 2000)):

- The ITC determinations in the sunset reviews of the antidumping and countervailing duty orders on cut-to-length steel from Germany and on corrosion-resistant steel from France and Germany (USITC Publication 3364, November 2000; 65 FR 75301 (December 1, 2000)):
- The DOC notice of the continuation of the antidumping and countervailing duty orders on cut-to-length steel from Germany and on corrosion-resistant steel from France and Germany (65 FR 78469 (December 15, 2000)); and
- Certain provisions and procedures contained in Sections 751 (c) and 752 of the Tariff Act of 1930 (the "Act"), the implementing regulations (referred to by the EC as "19 CFR Section 351"), and the Sunset Policy Bulletin issued by the DOC (63 FR 18871 (April 16, 1998)).

With respect to the claims of WTO-inconsistency, the EC request for consultations refers to the following:

- The presumption of continuation or recurrence of dumping or countervailable subsidy with respect to an interested party when this latter has waived its participation in a review conducted by the DOC (section 751(c)(4)(B) of the Act);
- The specific 0.5% *de minimis* dumping margin in a sunset review (section 752(c)(4)(B) of the Act, DOC regulation 19 CFR 351.106(c), section II.A.5 of the DOC Sunset Policy Bulletin);
- The specific conditions for assessing cumulatively the volume and effect of imports of the subject merchandise from all subject countries in a sunset review (section 752(a)(7) of the Act);
- The assessment of the likely volume of imports in a sunset review (sections 752(a)(2) of the Act) and the failure to determine that imports from France or Germany would be likely to rise above their historical and current negligible volume;
- The failure of the ITC to use publicly available information to account for the missing information due to the limited cooperation from the domestic producers, in particular from the service centers;
- the decision of the ITC to assess the likely impact of French and German imports cumulatively with the imports from "all subject countries".

Public Comment: Requirements for Submissions

Interested persons are invited to submit write comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above, or transmit a copy electronically to *ecsunset@ustr.gov*, with "EC Sunset Dispute" in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically, to the electronic mail address listed above, or by fax to (202) 395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similar, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, assessable to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–262, EC Sunset Dispute) may be made by selling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Bruce Hirsh,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–20002 Filed 8–6–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Hill and Blain Counties, Montana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: FHWA hereby gives notice that it intends to prepare an Environmental Impact Statement (EIS) for improvements to US Highway 2, in Hill and Blaine Counties, Montana.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Paulson, Program Development Engineer, FHWA Montana Division, 2880 Skyway Drive, Helena, Montana 59602; Telephone (406) 449–5302, extension 239; or Mr. Carl Helvik, Consultant Design, Montana Department of Transportation, 2701 Prospect Avenue, Helena, Montan 59620–1001; Telephone (406) 444–5446.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be download using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Interent users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

The FHWA, in cooperation with the Montana Department of Transportation

(MDT), will prepare an EIS for a proposal to improve US Highway 2 in Hill and Blaine Counties, Montana. The itnent of the proposed project is to replace the aging US Highway 2 with an efficient and safe highway that will be attracitve to the needs of agriculture, industry, commerce and tourism in the ara. The proposed imrpovement corridor is between Havre and Fort Belknap, a distance of approximately 72km (45 miles), and includes the towns of Lohman, Chinook, Zurich, and Harlem.

Alterantives under consideration include: (1) Taking no action; (2) improvements within the existing alignment; (3) improvements on a new alignment; and (4) combination of alternatives (2) and (3).

An extensive public involvement process will be conducted to solicit views and comments from the appropriate agencies and interested private organizations and citizens. The process will include a Citizens Advisory Committee, public meetings and workshops, a public hearing, small group presentations, and meetings with individuals along the corridor. The draft EIS will be available for public and agency reviews and comments prior to the public hearing. Public notice will be given of the time and place of all meetings and hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Project Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 1, 2002.

Dale W. Paulson,

Program Development Engineer, Montana Division, Federal Highway Administration, Helena, MT.

[FR Doc. 02–19902 Filed 8–6–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on exemption applications in April–June 2002. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicles, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on July 19, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
MODIFICATION EXEMPTIONS				
4453–M	DOT–E 4453	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 172.101, 173.62, 176.415, 176.83, Column (8C).	To modify the exemption to authorize the transportation of additional Division 1.5D liquid blasting explosives in non-DOT specification bulk cargo tanks, trailers and motor vehicles.
6805–M	DOT–E 6805	Air Liquide America Corporation, Houston, TX.	49 CFR 173.301(d), 173.302(a) (3).	To modify the exemption to authorize the use of DOT Specification 3A and 3AA cylinders as additional packaging for the transportation of Division 2.1 and 2.3 materials and a language clarification of the low pressure cylinders for transporting carbon monoxide.
7007–M	DOT–E 7007	Allied Universal Corp., Miami, FL.	49 CFR 173.314(c), 179.3 ..	To modify the exemption to authorize the use of additional non-DOT specification multi-unit tank car tanks with minimum shell thickness for the transportation of Division 2.3 materials.
7657–M	DOT–E 7657	Welker Engineering Company, Sugar Land, TX.	49 CFR 173.201, 173.202, 173.203, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.	To modify the exemption to authorize the transportation of additional Division 2.1, 2.2, 2.3 and Class 3 materials in a non-DOT specification stainless steel cylinder.
7765–M	DOT–E 7765	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302(a)(4), 175.3.	To modify the exemption to authorize the use of an additional non-DOT specification cylinder bottle assembly unit for the transportation of Division 2.2 materials.
8215–M	DOT–E 8215	Olin Corp., Brass & Winchester, Inc., East Alton, IL.	49 CFR 172.320, 173.230, 173.62(c), Part 172, Subpart E.	To modify the exemption to authorize the addition of a Division 1.1D material and for Division 1.1A and 1.1D materials to be transported in a newly designed motor vehicle (trailer).
8439–M	DOT–E 8439	Kidde Aerospace, Wilson, NC.	49 CFR 173.302, 173.304, 175.3.	To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification cylinders.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8451–M	DOT–E 8451	Olin Corporation, Winchester Group, East Alton, IL.	49 CFR 173.3, 173.52, 173.54, 173.60, 174.3, 175.3, 177.801.	To modify the exemption to authorize an alternative outer packaging for the transportation of not more than 25 grams of explosive or pyrotechnic materials classed as Division 1.4E.
8554–M	DOT–E 8554	TRADESTAR Corporation, West Jordan, UT.	49 CFR 173.154, 173.93	To modify the exemption to authorize a new cargo tank design for the transportation of Division 1.5 and 5.1 materials in bulk.
8723–M	DOT–E 8723	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 172.101, 173.242, 173.62, 176.83, 177.848.	To modify the exemption to authorize the transportation of additional Division 1.5D liquid blasting explosives in non-DOT specification bulk cargo tanks, trailers and motor vehicles.
9884–M	DOT–E 9884	Puritan Bennett Corp (Div. of Tyco Healthcare), Indianapolis, IN.	49 CFR 173.316	To modify the exemption to authorize the use of a blazing procedure for bonding of the non-DOT specification cylinder tubes with the heads for the transportation of certain Division 2.2 materials.
10427–M	DOT–E 10427	Astrotech Space Operations, Inc., Titusville, FL.	49 CFR 173.301, 173.302, 173.336, 173.61(d), 177.848(d).	To modify the exemption to authorize two additional launch vehicles that will utilize their fairing for packaging of spacecrafts during transport and a quantity increase of several hazardous materials contained in the "flight-ready" spacecraft.
10427–M	DOT–E 10427	Astrotech Space Operations, Inc., Titusville, FL.	49 CFR 173.301, 173.302, 173.336, 173.61(d), 177.848(d).	To authorize the shipment of Division 1.1 detonating cord and to correct the quantity of Xenon to 700 pounds.
10677–M	DOT–E 10677	Primus AB, Solna, SW ...	49 CFR 173.304(d)(3)(ii)	To modify the exemption to authorize the transportation of additional Division 2.1 materials and an increase in maximum charging pressure.
10751–M	DOT–E 10751	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 177.823, 177.835(c)(3), 177.848.	To modify the exemption to authorize the transportation of Division 1.5D liquid blasting explosives in non-DOT specification bulk cargo tanks, trailers and motor vehicles.
10869–M	DOT–E 10869	Norris Cylinder Company, Longview, TX.	49 CFR 173.301(b), 173.302(a)(5), 173.304(a), 175.3.	To modify the exemption to authorize an increase in service pressure from 5000-psi to a maximum of 6000-psi for the non-DOT specification steel cylinders transporting certain Division 2.1, 2.2, 2.3 materials.
10929–M	DOT–E 10929	Ashland Inc., Columbus, OH.	49 CFR 172.302(c), 174.67(i)(j).	To modify the exemption of authorize the transportation of additional Class 3 materials in DOT Specification tank cars.
11344–M	DOT–E 11344	E.I. DuPont de Nemours & Company, Inc. Wilmington, DE.	49 CFR 172.302(c), 174.67(i), (j).	To modify the exemption to authorize the transportation of an additional Division 6.1 material in DOT Specification tank cars.
11379–M	DOT–E 11379	TRW Automotive Occupant Safety Systems, Washington, MI.	49 CFR 173.301(h), 173.302.	To modify the exemption to authorize the use of the non-DOT specification pressure vessels in non-automotive safety systems.
11579–M	DOT–E 11579	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 177.848(e)(2), 177.848(g)(3).	To modify the exemption to authorize the transportation of additional Division 1.5D liquid blasting explosives in non-DOT specification cargo tanks.
11803–M	DOT–E 11803	Chart, Inc. (Storage Systems Div.), Plaistow, NH.	49 CFR 172.203(a), 173.26, 173.319, 179.13, 179.401–1.	To modify the exemption to authorize an increase of the maximum gross weight on rail from 263,000 lbs. to 286,000 lbs. for the transportation of Division 2.2 materials in DOT Specification tank cars.
12102–M	DOT–E 12102	Onyx Environmental Services. L.L.C., Ledgewood, NJ.	49 CFR 173.56(b), 173.56(i)	To modify the exemption to authorize the transportation of an additional Division 1.1D explosive material desensitized in an appropriate solvent to be shipped as a Class 3 material.
12196–M	DOT–E 12196	HR Textron, Pacoima, CA.	49 CFR 173.302(a), 173.34(e), 175.3.	To modify the exemption to authorize the hydrostatic retest period from 5 to 18 years for non-DOT specification stainless steel alloy cylinders used for the transportation of Division 2.2 materials.
12442–M	DOT–E 12442	Cryogenic Vessel Alternatives, La Porte, TX.	49 CFR 176.76(g)(1), 178.318.	To modify the exemption to authorize an increased service pressure from 45 psig to 100 psig for the 2200 gallon capacity internal insulated portable tank for the transportation of Division 2.2 materials.
12818–M	DOT–E 12818	HRD Aero Systems Inc., Valencia, CA.	49 CFR 173.301(i), 173.302	To reissue the exemption originally issued on an emergency basis for the transportation of certain foreign non-DOT specification steel cylinders used as components (fire extinguishers) in aircraft.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12882–M	DOT–E 12882	Eagle-Picher Technologies, LLC, Joplin, MO.	49 CFR 173.302(a), 173.34(d), 175.3.	To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.1 material in a non-DOT specification pressure vessel.
12885–M	DOT–E 12885	U.S. Department of Agriculture, Forest Service, Missoula, MT.	49 CFR 173.202(c)	To modify the exemption to authorize eliminating the requirement that the pump in the helitorch frame be an explosion proof diaphragm fuel transfer pump when transporting a Class 3 material.
		NEW EXEMPTIONS		
12433–N	DOT–E 12433	The Lighter Company, Inc., Miami, FL.	49 CFR 173.308(b)	To authorize the transportation and reclassification of lighters in limited quantities to be transported as ORM–D. (mode 1)
12634–N	DOT–E 12634	Norman International, Los Angeles, CA.	49 CFR 173.12(b)(2)	To authorize the manufacture, mark, sale and use of a corrugated fiberboard box as the outer packaging for lab pack applications in accordance with section 173.12(b). (modes 1, 2)
12661–N	DOT–E 12661	United Parcel Service (UPS), Atlanta, GA.	49 CFR 172.202, 172.203(c), (k), (m), 172.301, 172.302(c), 172.400.	To authorize the transportation in commerce of certain hazardous materials that are not properly packaged, marked, labeled or classed in accordance with the 49 CFR. (mode 1)
12690–N	DOT–E 12690	Air Liquide America Corporation, Houston, TX.	49 CFR 173.304(a)(2), Note 2.	To authorize the transportation in commerce of DOT specification 3AA cylinders having a water capacity of approximately 950 pounds, which when filled, would exceed the 150 pound limit for use in transporting chlorine. (mode 1)
12716–N	DOT–E 12716	Air Liquide America Corporation, Houston, TX.	49 CFR 173.304(a)(2)	To authorize the transportation in commerce of chlorine in uninsulated DOT Specification 3AAX cylinders permanently mounted on a motor vehicle. (mode 1)
12741–N	DOT–E 12741	Thunderbird Cylinder Inc., Phoenix, AZ.	49 CFR 172.203(a), 172.301(c), 173.302(c)(2), (3), (4), (5), 173.34(e)(1), (e)(4), (e)(8)(ii), (e)(8)(iii), 173.34(e)(14), (e)(16).	To authorize the transportation in commerce of certain DOT Specification 3A and 3AA cylinders which have been alternatively ultrasonically retested for sue in transporting Division 2.1, 2.2 and 2.3 materials. (modes 1, 2, 3, 4, 5)
12800–N	DOT–E 12800	Department of Energy (DOE), Washington, DC.	49 CFR 173.411(b)(2)	To authorize the transportation in commerce of unit train shipments in exclusive use of soil-like radioactive LSA–11 waste material in strong tight bulk packages (closed rail cars). (mode 2)
12844–N	DOT–E 12844	Delphi Automotive Systems, Troy, MI.	49 CFR 173.301(h), 173.302(a), 175.3.	To authorize the manufacture, marking, sale and use of non-DOT specification pressure vessels for use as components of automobile vehicle safety systems. (mode 1)
12871–N	DOT–E 12871	Southern California Edison, San Clemente, CA.	49 CFR 173.403, 173.411, 173.427(a), 173.427(b)(c), 173.465(c)&(d).	To authorize the one-time transportation of a nuclear generating-station reactor pressure vessel package transport system to a burial site. (modes 1, 2, 3)
12880–N	DOT–E 12880	Northrop Grumman Corporation, Baltimore, MD.	49 CFR 172.102, 173.222(b)(3), 173.304(a)(2), 173.34(d).	To authorize the transportation in commerce of a specially designed device consisting of a non-DOT specification cylinder containing 25 grams of Division 2.3 material. (modes 1, 3, 4)
12898–N	DOT–E 12989	SWS Environmental First Response, Panama City Beach, FL.	49 CFR 173.201, 173.202, 173.203, 173.226, 173.227, 173.302, 173.304, 173.34(d).	To authorize the manufacturing, marking, sale and use of a non-DOT specification salvage cylinder for overpacking damage or leaking cylinders of pressurized and non-pressurized hazardous materials for transportation in commerce (mode 1)
12905–N	DOT–E 12905	Railway Progress Institute, Inc., Alexandria, VA.	49 CFR 172.203(a), 172.302(c), 173.22a(a)&(b), 179.100–20(a), 179.200–24(a)&(b), 179.201–10(a), 179.220–25.	To authorize the transportation in commerce of various hazardous materials on rail cars without the required head stamping and without the exemption number on the rail car or the shipping paper. (mode 2)
12920–N	DOT–E 12920	Epichem, Inc., Haverhill, MA.	49 CFR 173.181(c)	To authorize the transportation in commerce of pyrophoric materials in combination packagings with inner containers that exceed currently authorized quantities. (modes 1, 3)
12925–N	DOT–E 12925	U.S. Department of Energy, Oak Ridge, TN.	49 CFR 173.244	To authorize the one-time, one-way transportation in commerce of solidified sodium metal in certain non-DOT specification bulk packaging. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12926–N	DOT–E 12926	S.C. Johnson & Son, Inc., Washington, DC.	49 CFR 173.306(a)(1)	To authorize the transportation in commerce of aersols, non-flammable, Division 2.2 in non-DOT specification containers. (mode 1)
12927–N	DOT–E 12927	Tri-Wall, A Weyerhaeuser Business, Butler, IN.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking and sale of a corrugated fiberboard box for use as the outer packaging for lab pack applications. (mode 1)
12930–N	DOT–E 12930	Roeder Cartage Company, Inc., Lima, OH.	49 CFR 180.407(c), (e) & (f)	To authorize the transportation of certain lined DOT Specification cargo tanks which are not subject to the internal visual inspections for use in transporting certain Class 8 hazardous materials. (modes 1, 3)
12946–N	DOT–E 12946	Baker Atlas, Houston, TX	49 CFR 173.304	To authorize the one-time transportation in commerce of 60 non-DOT specification cylinders for disposal containing chlorine trifluoride, Division 2.3, subsidiary hazards 5.1, 8 PIH Zone B. (mode 1)
12956–N	DOT–E 12956	Frazee Industries, Incorporated, San Diego, CA.	49 CFR 172.301(c), Part 172, Subpart C.	To authorize the transportation in commerce of combination packagings of 1 gallon and 5 gallon steel containers without overpack or shipping papers from the manufacturing facility to the distribution center. (mode 1)
12969–N	DOT–E 12969	Arrowhead Industrial Services Inc., Graham, NC.	49 CFR 172.203(a), 172.301(c), 173.34(d).	To authorize the transportation in commerce of non-DOT specification cylinders containing Division 2.2 material overpacked in strong outside packaging for transporting to remote test sites. (mode 1)
12970–N	DOT–E 12970	IMR Corporation, Tulsa, OK.	49 CFR 172.101(c)	To authorize the transportation in commerce of limited quantities of hazardous material with alternative shipping name on shipping papers. (mode 1)
12978–N	DOT–E 12978	Genesis Environmental Ltd., McKeesport, PA.	49 CFR 172.101 Col. 8(b) & 8(c), 173.197.	To authorize the transportation in commerce of solid regulated medical waste in non-DOT specification packaging consisting of a bulk outer packaging and a non-bulk inner packaging. (mode 1)
12979–N	DOT–E 12979	Medical Microwave, Inc., Livington, NJ.	49 CFR 172.101 Col. 8(b) & 8(c), 173.197.	To authorize the transportation in commerce of solid regulated medical in non-DOT specification packaging consisting of a bulk outer packaging and non-bulk inner packaging. (mode 1)
EMERGENCY EXEMPTIONS				
EE 6611–M	DOT–E 6611	Gardner Cryogenics, Lehigh, PA.	49 CFR 172.203(a), 173.318, 176.76(h), 177.840, 178.338.	Modification exemption to insert effective date in marking requirement. (modes 1, 3)
EE 6765–M	DOT–E 6765	Gardner Cryogenics, Bethlehem, PA.	49 CFR 172.203, 173.318	Modification exemption to place a sticker on the specification plate identifying the exemption authorizing use of the portable tank. (modes 1, 3)
EE 7737–M	DOT–E 7737	Catalina Cylinders, Hampton, VA.	49 CFR 173.192, 173.201(c), 173.302(a), 173.304(a), 173.304(d), 173.337, 175.3, 178.42.	Emergency request to modify exemption to remove "Catalina" from the cylinder marking paragraph of the exemption. (modes 1, 2, 3, 4)
EE 8556–M	DOT–E 8556	Gardner Cryogenics, Lehigh, PA.	49 CFR 173.318, 176.76(g)(1), 178.338.	Exemption request to modify exemption to insert effective date for marking requirement. (modes 1, 2)
EE 8995–M	DOT–E 8995	BASF, Mount Olive, NJ	49 CFR 173.315(a)(1), 174.63(c)(1).	Emergency request to modify DOT–E 8995 to authorize tanks up to 2,050 gallon capacity. (modes 1, 2, 3)
EE 9266–M	DOT–E 9266	Gold Inspection Service, Inc., Kingwood, TX.	49 CFR173.315, 178.245	Emergency request to add additional materials to this exemption. (modes 1, 2, 3)
EE 11167–M	DOT–E 11167	Columbiana Boiler Company, Columbiana, OH.	49 CFR 172.101, 173.240, 173.241, 173.242, 173.243, 173.244, 173.245.	
EE 12855–M	DOT–E 12855	KRATON Polymers U.S. LLC, Belpre, OH.	49 CFR 172.302(c), 173.240.	Emergency request to modify exemption to transport additional pressure vessels. (mode 1)
EE 12919–M	DOT–E 12919	Acambis, Inc., Canton, MA.	49 CFR 173.196(b), 178.609.	Emergency modification request to extend expiration date and prohibit dry ice from being present in package. (mode 1)
EE 12959–N	DOT–E 12959	Sara Export Import, Escondido, CA.	49 CFR 172.102 SP N10, 172.301(c), 173.21(i).	Emergency request to transport unapproved lighters by vessel to Hong Kong to be destroyed. (mode 4)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12974–N	DOT–E 12974	ShipMate, Inc., Torrance, CA.	49 CFR 172.203(a), 172.300(a), 172.301(c), 172.324.	Emergency request to transport packages of hazardous materials that were incorrectly marked "RQ" indicating the package contains a hazardous substance when it does not. (modes 1, 2, 3, 4, 5)
EE 12975–N	DOT–E 12975	Monsanto Company, St. Louis, MO.	49 CFR 178.270–6	Request for an emergency exemption to transport a damaged IMO portable tank. (modes 1, 2)
EE 12976–N	DOT–E 12976	University of Pittsburgh, Pittsburgh, PA.	49 CFR 172.302(c), 173.196.	Emergency request to transport live non-human primates infected with Division 6.2 materials from an existing animal facility to a newly constructed facility 15 miles away in non-specification packaging. (mode 1)
EE 12977–N	DOT–E 12977	JCI Jones Chemicals, Barberton, OH.	49 CFR 172.302(c), 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an emergency B kit to prevent leaking during transportation. (mode 1)
EE 12981–N	DOT–E 12981	Airgas, Inc., Cheyenne, WY.	49 CFR 172.203(a), 173.315(n)(2).	Emergency request for alternative to emergency discharge control requirement. (mode 1)
EE 12983–N	DOT–E 12983	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 172.302(c), 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12984–N	DOT–E 12984	DPC Industries, Inc., Houston, TX.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a 3A480 cylinder containing chlorine that has developed a leak at the fuze plugs and has a Chlorine Institute A Kit applied. (mode 1)
EE 12985–N	DOT–E 12985	Allied Universal Corp., Miami, FL.	49 CFR 172.302(c), 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to authorize the transportation of a leaking ton container that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12986–N	DOT–E 12986	Columbia Gas Transmission Corp, Fairfax, VA.	49 CFR 173.302(a)(1), 173.304(a), (d).	Emergency request to use an FRP–1 cylinder to transport natural gas (mode 1)
EE 12993–N	DOT–E 12993	Transportation Services Unlimited, Inc., Tampa, FL.	49 CFR 172.302(c), 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for emergency exemption to transport a leaking ton container that has been fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 13002–N	DOT–E 13002	U.S. Department of Defense, Washington, DC.	49 172.301(c), 173.203(a), 173.306(f)(1).	Request for an emergency exemption to transport a division 2.2 material in diaphram and bladder type accumulator. (modes 1, 2, 3, 4)
EE 13005–N	DOT–E 13005	JCI Jones Chemicals, Inc., Torrance, CA.	49 CFR 172.302(c), 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 13006–N	DOT–E 13006	DXI Industries, Inc., Houston, TX.	49 CFR 172.302(c), 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for emergency exemption to transport a leaking ton cylinder that has been fitted with a B kit. (mode 1)
EE 13007–M	DOT–E 13007	Slurry Explosive Corporation, Columbus, KS.	49 CFR 172.301(c), 173.24a(b)(2).	To authorize an additional commodity to an emergency exemption. (mode 1)
EE 13008–N	DOT–E 13008	U.S. Department of Agriculture, Forest Service, Missoula, MT.	49 CFR 173.202(c)	Request for emergency exemption to authorize the transportation of gelled gasoline in a non-DOT specification container. (mode 1)
EE 13009–N	DOT–E 13009	Jones Chemicals, Inc., Milford, VA.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a 3A480 cylinder of chlorine that developed a leak from the valve and has a Chlorine Institute approved A-Kit applied. (mode 1)
EE 13011–N	DOT–E 13011	Allied Universal Corp., Miami, FL.	49 CFR 172.302(c), 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for emergency exemption to transport a leaking ton cylinder containing sulfur dioxide that had been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 13014–N	DOT–E 13014	Acambis, Inc., Cambridge, MA.	49 CFR 173.196, 178.609 ..	Emergency request to transport a solid infectious substance in a non-specification packaging. (mode 1)
EE 13014–M	DOT–E 13014	Acambis, Canton, MA	49 CFR 173.196, 178.609 ..	To authorize an additional location. (mode 1)
EE 13015–N	DOT–E 13015	BOC Gases, Murray Hill, NJ.	49 CFR 172.203(a), 172.301(c), 173.400a(a)(1), 178.35(f).	Emergency request for authorization to transport cylinders that are fitted with cylinder collars that obscure required marking. (mode 1)
EE 13016–N	DOT–E 13016	Carrier Transicold, Syracuse, NY.	49 CFR 172.301(c), 173.24(b)(1).	Request for emergency exemption to authorize the release of carbon dioxide gas in freight containers during transportation. (modes 1, 2, 3)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 13017–N	DOT–E 13017	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 172.302(c), 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 13018–N	DOT–E 13018	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.24	Request emergency exemption to transport a leaking ton cylinder that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 13019–N	DOT–E 13019	JCI Jones Chemicals, Inc., Cadedonia, NY.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	Emergency request to transport a DOT 106A500 tank car tank containing Chlorine which has developed a leak and has a Chlorine Institute B Kit applied. (mode 1)
EE 13030–N	DOT–E 13030	DPC Industries, Inc., Houston, TX.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a cylinder of chlorine that has developed a leak and has a Chlorine Institute A Kit applied. (mode 1)
EE 13031–N	DOT–E 13031	Harcros Chemicals, Kansas City, KS.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	Emergency request to authorize the transportation of a DOT 106A500 tank car tank containing chlorine that has developed a leak and has a Chlorine Institute B Kit applied.
EE 13035–N	DOT–E 13035	JCI Jones Chemicals, Inc., Caledonia, NY.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	Emergency request to authorize the transportation of a DOT 106A500 tank car tank containing chlorine that has developed a leak and has a Chlorine Institute B Kit applied. (mode 1)
EE 13037–N	DOT–E 13037	Brenntag Mid-South, Inc., Saint Louis, MO.	49 CFR 172.301(c), 173.304(a)(2), 173.34(d).	Emergency request to authorize the transportation of a DOT 4B300 cylinder containing sulfur dioxide that has developed a leak and is contained in a salvage cylinder. (mode 1)
EE 13038–N	DOT–E 13038	Brenntag Mid-South, Inc., St. Louis, MO.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	Emergency request to authorize the transportation of a DOT 106A500X tank car tank containing chlorine that has developed a leak and has a Chlorine Institute B Kit applied. (mode 1)
EE 13039–N	DOT–E 13039	Airgas, East, Binghamton, NY.	49 CFR 172.301(c), 173.34(d).	Emergency request to authorize the one-time transportation of sulfur dioxide in a DOT Specification 3A480 cylinder equipped with a Chlorine Institute Emergency "A-Kit" to prevent leakage during transportation. (mode 1)
EE 13041–N	DOT–E 13041	Department of State, Sterling, VA.	49 CFR 172.101, Table Column 8C.	Emergency request to authorize the transportation of solid materials that are contaminated with or suspected to be contaminated with anthrax. (mode 1)
EE 13042–N	DOT–E 13042	Department of State, Sterling, VA.	49 CFR 172.101, Table Column 8C.	Emergency request to authorize the transportation of solid materials contaminated with or suspected of being contaminated with anthrax bacteria or spores in a bulk combination packaging. (mode 1)
EE 13043–N	DOT–E 13043	JCI Jones Chemicals, Inc., Beech Grove, IN.	49 CFR 172.301(c), 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request to transport a leaking ton container that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 13044–N	DOT–E 13044	Hawkins, Inc., Minneapolis, MN.	49 CFR 172.301(c), 173.34(d).	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted an A kit. (mode 1)
EE 13045–N	DOT–E 13045	Department of State, Sterling, VA.	49 CFR 172.101, Table Column 8C.	Emergency request to authorize the transportation in commerce for disposal of solid materials contaminated with or suspected to be contaminated with anthrax bacteria or spores in alternative packaging. (mode 1).

DENIALS

7951–X	Request by Rod's Food Products City of Industry, CA to renew exemption authorizing the transport of an aerosol foodstuff in a nonrefillable metal container, complying with DOT Specification 2P with certain exceptions denied June 17, 2002 due to lack of response to a request for additional information.
8554–X	Request by M.J. Baxter Drilling Co. El Cajon, CA to renew exemption authorizing the transport of propellant explosives and blasting agents in DOT Specification MC–306, MC–307, and MC–312 cargo tanks denied June 17, 2002 due to lack of response to a request for additional information.
8627–X	Request by Process Chemicals, Inc. Odessa, TX to renew exemption authorizing the shipment of various Class 8 or Class 3 materials (oil well treating compounds) contained in six separate 60-gallon steel tanks firmly mounted on the chassis of a truck denied June 17, 2002 due to lack of response to a request for additional information.

DENIALS—Continued

10898–X	Request by Gulf Controls Corporations Tampa, FL to renew exemption authorizing the transportation of a Division 2.2 material (nitrogen) in diaphragm and bladder type accumulators denied June 17, 2002 due to lack of response to a request for additional information.
12928–N	Request by Pacer Global Logistics Dublin, OH to authorize the transportation in commerce of rail cars containing various hazardous materials to be transported with alternative shipping papers denied May 31, 2002.
12933–N	Request by In–X Corporation Denver, CO to authorize the transportation in commerce of a specially designed device equipped with a small cylindrical pressure vessel containing limited quantity of helium gas overpacked in cardboard containers denied April 3, 2002.
12967–N	Request by Reilly Industries, Inc. Indianapolis, IN to authorize the transportation in commerce of fused solid coal tar enamel in non-DOT specification open-top or closed-top sift proof metal packagings when the amounts meet or exceed the reportable quantity denied June 6, 2002.

[FR Doc. 02–19997 Filed 8–6–02; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 31, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1790.

Regulation Project Number: REG–122564–02 NPRM and Temporary.

Type of Review: Extension.

Title: Carryback of Consolidated Net Operating Losses to Separate Return Years.

Description: Regulations 1.1502–21(b)(3)(ii)(C) provides taxpayers with an election to waive carryback years for certain consolidated net operating losses. To make the election, a taxpayer must attach to its return a statement prescribed by the regulation. The data will be used by Revenue Agents to ensure that taxpayers are preparing their returns in accordance with their elections. Respondents will be consolidated groups (generally not small taxpayers).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 4,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–19944 Filed 8–6–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0458]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to verify that a veteran's child between the ages of 18 and 23 years old is attending school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 7, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0458" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Certification of School Attendance or Termination, VA Forms 21–8960 and 21–8960–1.

OMB Control Number: 2900–0458.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on the forms is necessary to determine continued eligibility for benefits for a child between the ages of 18 and 23 years old who is attending school.

Affected Public: Individuals or households.

Estimated Annual Burden: 11,667 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 70,000.

Dated: July 19, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–19947 Filed 8–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 6, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–New."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Credentials Transfer Brief, VA Form 10–0376a.

b. Credentials Supplemental Questions, VA Form 10–0376b.

OMB Control Number: 2900–New.

Type of Review: New Collection.

Abstract: Currently VHA requires that credentialing occur prior to extension of initial employment offers to health care providers. The credentialing occurs upon employment, transfer, or at the time of initiating practice at a new site. Although credentialing may have been completed by one VHA facility, policy requires that the credentialing process be repeated by the receiving facility. VA Form 10–0376a improves the efficiencies of this process by facilitating the sharing of already verified health care provider's credential data between facilities and decreases the potential for duplication of efforts.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 15, 2002, at pages 18306–18307.

Affected Public: Not-for-profit Institutions; Business or other; and State, Local or Tribal governments.

Estimated Annual Burden: 6,750 hours.

a. Credentials Transfer Brief, VA Form 10–0376a—500 hours.

b. Credentials Supplemental Questions, VA Form 10–0376b—6,250 hours.

Estimated Average Burden Per Respondent: 11 minutes.

a. Credentials Transfer Brief, VA Form 10–0376a—60 minutes.

b. Credentials Supplemental Questions, VA Form 10–0376b—15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 25,500.

a. Credentials Transfer Brief, VA Form 10–0376a—500.

b. Credentials Supplemental Questions, VA Form 10–0376b–25,000.

Dated: July 25, 2002.

By Direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–19948 Filed 8–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 6, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to 2900–NEW."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "2900–NEW."

SUPPLEMENTARY INFORMATION:

Title: Longitudinal Health Study of Persian Gulf War Veterans, VA Form 10–21055 (NR).

Type of Review: New collection.

Abstract: The Department of Veterans Affairs (VA) has designed a longitudinal study of Gulf War veterans to evaluate the health of veterans ten years after the Gulf War. The study will allow VA to monitor the health of veterans over time to determine the extent of the health problems among Gulf War veterans and whether health status of Gulf War veterans is better or worse than the health of veterans who were not deployed to the Gulf.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection

of information was published on April 29, 2002, at page 21017.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,966 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency Of Response: Every three years.

Estimated Number Of Respondents: 7,933.

Dated: July 25, 2002.

By Direction of the Secretary.

Gene McCully,

Acting Director, Information Management Service.

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Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 170
Indian Reservation Roads Program; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

[Docket No. FHWA–2002–12229]

RIN 1076–AE17

Indian Reservation Roads Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish policies and procedures governing the Indian Reservation Roads (IRR) Program. It expands transportation activities available to tribes and tribal organizations and provides guidance to tribes and tribal organizations for planning, designing, constructing, and maintaining transportation facilities. BIA also proposes a Tribal Transportation Allocation Methodology that includes a Relative Need Distribution Factor for allocating IRR Program funds based on the relative needs of Indian tribes, and reservation or tribal communities, for transportation assistance; and the relative administrative capacities of, and challenges faced by, various Indian tribes, including the cost of road construction in each Bureau of Indian Affairs area, geographic isolation, and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources.

DATES: Written comments are due on or before October 7, 2002. For dates of public information and education meetings, please see Supplementary Information.

ADDRESSES: Mail or hand deliver written comments to the docket number appearing at the top of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001 or submit electronically at *http://dms.dot.gov/submit*. All comments should include the docket number appearing in the heading of this document. In addition, as part of the Department's ongoing effort to reduce paperwork burdens, the Department invites the general public to take this opportunity to comment to OMB on the information collections contained in this proposed rulemaking, as required by the Paperwork Reduction Act. Such comments should be sent to the following address: Attention—Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 27th Street, NW., Washington, DC 20503. Please send a copy of these paperwork burdens comments to the Dockets Management Facility as noted above. All comments received will be available for examination and copying at the Dockets Management Facility between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard, or you may print the acknowledgement page that appears after submitting comments electronically. For locations of public information meetings see the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, 1849 C Street, NW., MS 4058 MIB, Washington, DC 20240, (202) 208–4359 between 8 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's web site at: *http://www.access.gpo.gov/nara*.

I. Background

What Information Does This Section Address?

This section addresses:

—Public information and education meetings the Department will hold during the comment period;
—The Transportation Equity Act for the 21st Century (TEA–21), Public Law (Pub. L.) 105–178;
—The IRR Program;
—How the Secretary formed the TEA–21 Negotiated Rulemaking Committee (the Committee), who its members are, how the Committee operated, when the Committee met, and the Committee's process for developing the rule and the Tribal Transportation Allocation Methodology for distributing IRR Program funds;
—How funding for the IRR Program is currently distributed under the existing relative need formula; and
—Issues on which Federal and tribal negotiators were unable to agree.

What Public Information Meetings Are Scheduled To Explain This Rule?

We will hold a series of 12 public information and education meetings within the comment period for this notice of proposed rulemaking (NPRM) to explain the content of the NPRM, answer questions, and encourage written public comment. The meetings will be held at the locations listed below. Individuals wishing information, may contact the individual listed under the caption **FOR FURTHER INFORMATION CONTACT**.

The purpose of the public information and education meetings is to present the proposed rule and the proposed funding methodology. They are not public hearings. The meetings will include brief presentations by members of the TEA–21 Negotiated Rulemaking Committee on the content of the NPRM and the Tribal Transportation Allocation Methodology, including the Relative Need Distribution Factor for distributing IRR Program funds, and a period for clarifying questions. Attendees wishing to express comments on the content of the proposed rule should direct those comments to the address listed under the caption **ADDRESSES.**

The meeting sites and dates are:

Location	Dates
Minneapolis, Minnesota.	September 25, 2002.
Nashville, Tennessee	September 27, 2002.
Rapid City, South Dakota.	August 20, 2002.
Billings, Montana	August 22, 2002.
Las Vegas, Nevada ..	August 27, 2002.
Sacramento, California.	August 29, 2002.
Gallup, New Mexico	September 4, 2002.
Santa Fe, New Mexico.	September 6, 2002.
Anchorage, Alaska ...	September 10, 2002.
Portland, Oregon	September 12, 2002.
Tulsa, Oklahoma	September 17, 2002.
Oklahoma City, Oklahoma.	September 19, 2002.

How Will the Public Education and Information Meetings Be Conducted?

Each meeting will be conducted by a facilitator with tribal Committee members presenting the proposed rule and the proposed funding methodology. There will be periods for questions and answers. Each meeting will be held from

8 a.m. to 5 p.m., local time. The agenda for the meetings is:

Agenda for Information and Education Meetings (all times local)

8–8:30 a.m. Introduction (Meeting format)
8:30–8:45 a.m. Overview of the Negotiated Rulemaking Process
8:45–9:15 a.m. Explanation of NPRM—Preamble, Table of Contents, Parts
9:15–9:30 a.m. Break
9:30–12 noon Explanation and Clarification of Published Proposed Rule
12–1 p.m. Lunch Break
1–1:30 p.m. Overview of Tribal Transportation Allocation Methodology (TTAM) (funding)
1:30–3 p.m. Explanation and Clarification of TTAM (funding)
3–3:15 p.m. Break
3:15–5 p.m. (Continued) Explanation and Clarification of TTAM (funding)

What Is the Transportation Equity Act for the 21st Century?

The Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat.107, signed into law in 1998, is a broad-based statute that authorizes and expands the use of Federal Highway Trust funds through fiscal year 2003. Several provisions of TEA–21 directly affect the Indian Reservation Roads (IRR) program. TEA–21:

- Authorizes $1.6 billion for the IRR Program for fiscal years 1998–2003;
- Provides for use of the Indian Self-Determination and Education Assistance Act (the ISDEAA), Public Law 93–638, as amended, by tribes to contract IRR projects; and
- Establishes the Indian Reservation Roads Bridge Program (IRRBP), codified at 23 U.S.C. 202(d)(c).

A minimum of $13 million of IRR funds is set aside for a nationwide priority program for improving deficient IRR bridges. On July 19, 1999, the Secretary of Transportation issued an interim final rule for the IRR bridge program, now found at 23 CFR 661.

What Is the Indian Reservation Roads Program?

The Indian Reservation Roads (IRR) Program is a program of eligible transportation projects authorized under 23 U.S.C. 204. The program is jointly administered by BIA and FHWA's Federal Lands Highway Core Business Unit. The duties and responsibilities of BIA and FHWA are described in a Memorandum of Agreement between the two agencies which can be found at the section on joint administration. The IRR Program was established on May 26, 1928, by Pub. L. 520, 25 U.S.C. 318(a). It authorized the Secretary of Agriculture (which had responsibility for Federal roads at that time) to cooperate with state highway agencies and the Department of the Interior to survey, construct, reconstruct, and maintain Indian reservation roads serving Indian lands.

In 1982, under the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97–424, Congress created the Federal Lands Highway Program (FLHP). This coordinated program addresses access needs to and within Indian and other Federal lands. The IRR Program is a funding category of this program. STAA expanded the IRR system to include tribally-owned public roads as well as state and county-owned roads.

Each fiscal year FHWA determines the amount of funds available for construction. BIA works with tribal governments and tribal organizations to develop an annual priority program of construction projects which is submitted to FHWA for approval based on available funding. FHWA allocates funds to BIA which distributes them to IRR projects on or near Indian reservations according to the annual approved priority program of projects. BIA distributes funds using the relative need formula. This formula addresses the allocation of funds to reflect the cost to improve roads to an adequate standard, measure the relative importance of road usage, and measure the socio-economic needs to be served by new transportation facilities.

What Is the Purpose of the IRR Program?

The purpose of the IRR Program is to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands, and communities for Indians and Alaska Natives, visitors, recreational users, resource users, and others, while contributing to economic development, self-determination, and employment of Indians and Alaska Natives. As of October 2000, the IRR system consisted of approximately 25,700 miles of BIA and tribally-owned public roads and 25,600 miles of state, county, and local government public roads.

How Do BIA and FHWA Jointly Administer Statutory Requirements for the IRR Program?

The Federal-Aid Highway Act of 1944, Pub. L. 521, 58 Stat. 838, Section 10(c) required the Public Roads Administration to approve the location, type, and design of all IRR roads and bridges before any expenditures were made and generally supervise all such construction. In 1946, the predecessor agencies of BIA and FHWA (the Office of Indian Affairs and the Public Roads Administration, then in the Department of Commerce, respectively), entered into their first agreement to jointly administer statutory requirements for the IRR Program. Since that time, there have been other interagency agreements to carry out FHWA and BIA duties and responsibilities under 23 U.S.C. 208.

In 1973, BIA and FHWA entered into an agreement for an "Indian Roads Needs Study"; FHWA was to assist BIA in identifying roads that were at that time, or that should have been, included, as BIA's responsibility. In 1974, BIA and FHWA entered into two separate agreements which set out the joint and individual statutory responsibilities of FHWA and BIA for constructing and improving Indian reservation roads and bridges. The intent of both agreements was to establish a Federal-aid Indian road system consisting of public Indian reservation roads and bridges for which no other Federal-aid funds were available. Both BIA and FHWA jointly designated those roads and, under 23 U.S.C. 208, FHWA was responsible for approving the location, type, and design of IRR and bridge projects and supervising construction of these projects. At that time, IRR projects were authorized under the Federal-Aid Highway Act and under 23 U.S.C. 208, but they were constructed with Department of the Interior appropriations.

In 1979, BIA and FHWA entered into another agreement which explicitly recognized the role of individual tribes in defining overall transportation needs. This agreement provided that the Indian road system was to consist of:

[t]hose Indian reservations roads and bridges which are important to overall public transportation needs of the reservations as recommended by the tribal governing body. These are public roads for which BIA has primary responsibility for maintenance and improvement. Roads included on the Indian Road System shall not be on any Federal-aid system for which financial aid is available under 23 U.S.C. 104.

After STAA's enactment, BIA and FHWA entered into a new 1983 Memorandum of Agreement that set forth the respective duties and responsibilities of each agency for the IRR Program. Under the interagency agreement, BIA, working with each tribe, was to develop an annual priority program of construction projects and submit the annual priority program to FHWA for review, concurrence, and

allocation of funds. This 1983 agreement also specifically referenced the Buy Indian Act of June 25, 1910, 36 Stat. 891 (see also 25 U.S.C. 13) in response to 23 U.S.C. 204(e) which provided an exemption, if in the public interest, to the competitive bidding requirements of Title 23 with respect to all funds appropriated for the construction and improvements of IRRs that the Secretary administers. The 1983 interagency agreement also recognized that, although FHWA's assistance and oversight would continue, both FHWA and BIA would be responsible for the implementation and success of the IRR Program. As a result of section 1028 of ISTEA, which provided for the Highway Bridge Replacement and Rehabilitation Program, BIA and FHWA amended their 1983 agreement to provide for their respective responsibilities for that program.

Why Did the Secretary Enter Into Negotiated Rulemaking With Indian Tribal Governments?

TEA–21, Section 1115(b), mandates that the Federal Government (with representatives from the Department of the Interior and the Department of Transportation) enter into negotiated rulemaking with tribal governments to develop IRR Program procedures and a funding formula to allocate IRR funds. This rule was negotiated under the provisions of 5 U.S.C. 561.

What Is the Purpose of the TEA–21 Negotiated Rulemaking Committee?

The purpose of the TEA–21 Negotiated Rulemaking Committee is to negotiate and develop proposed regulations for the IRR Program to implement the applicable portions of TEA–21 and to establish a funding formula for fiscal year 2000 and each subsequent year based on factors that reflect:

- The relative needs of the Indian tribes, and reservations or tribal communities, for transportation assistance; and
- The relative administrative capacities of, and challenges faced by, various Indian tribes, including the cost of road construction in each Bureau of Indian Affairs area, geographic isolation and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources. (TEA–21, Pub. L 105–178, Section 1115(b)).

How Did the Secretary of the Interior Inform the Public About the TEA–21 Negotiated Rulemaking Process?

The Secretary published a **Federal Register** "Notice of Public Meeting" on October 30, 1998 (63 FR 58413). The Secretary held a national informational meeting for tribal governments, tribal organizations, individual tribal members, and the public to share information about the regulatory negotiation process for the IRR Program under TEA–21 on November 16, 1998, in Albuquerque, New Mexico. On December 17, 1998, the Secretary published a **Federal Register** "Notice of Intent to Form a Negotiated Rulemaking Committee and Accept Applications for Membership" (63 FR 69580). On February 11, 1999, the Secretary published a **Federal Register** notice proposing the members of the TEA–21 Negotiated Rulemaking Committee (Committee)(64 FR 6825). The Committee's meeting schedule was published on the IRR web site at *http://www.irr.bia.gov*. BIA produced a periodical newsletter that was published on the web site and was mailed to all primary and alternate Committee representatives. In addition, there were periodic mailings to all tribal leaders of federally recognized tribes. All full Committee and work group meetings were open to the public and the Committee accepted oral and written comments at each meeting. The Committee met in different geographical areas of the United States so that Indian tribes and tribal organizations could participate in the meetings and provide their comments for the record.

How Was the TEA–21 Negotiated Rulemaking Committee Formed?

The Secretary was required by 23 U.S.C. 202, as amended by TEA–21, to develop regulations and establish a funding formula for allocating IRR funds among Indian tribes using a negotiated rulemaking process. Section 202 also required the Secretary to:

- Apply the procedures of negotiated rulemaking under 5 U.S.C. 561 *et seq.* (the Negotiated Rulemaking Act of 1990), in a manner that reflects the unique government-to-government relationship between Indian tribes and the United States; and
- Ensure that the membership of the Committee includes only representatives of the Federal Government (the Department of the Interior and the Department of Transportation) and of geographically diverse small, medium, and large tribes.

In the **Federal Register** notice of December 17,1998 (63 FR 69580), the Secretary requested nominations for committee representatives from tribes in each of the 12 BIA regions. In addition, the Secretary invited other interested, qualified persons to apply. The Secretary encouraged tribes to nominate representatives and alternates who were members of geographically diverse direct service, self-determination, and self-governance tribes, as well as members of tribes who had varying levels and types of experience in transportation development and management. Each of the 12 BIA regions were also invited to nominate 2 representatives and 2 alternates to serve on the committee.

After reviewing the nominations, the Secretary appointed 2 primary tribal representatives and 2 alternate tribal representatives from each of the 12 BIA regions. In addition, the Secretary added five additional primary tribal committee representatives from regions that were considered under-represented in order to meet the statutory requirements for adequate representation of small, medium, and large tribes. On February 11, 1999, the Secretary published a **Federal Register** "Notice of the Proposed Membership of the Negotiated Rulemaking Committee" under Section 1115 of TEA–21 (64 FR 6825). After the Secretary received and reviewed comments, the representatives named in the notice were appointed to the Committee.

The Committee membership reflected balanced interests by including: (1) Members of geographically diverse small, medium, and large tribes; (2) members of tribes identified as direct service, self-governance, and self-determination; and (3) members of tribes with experience in many areas of transportation development and management (*e.g.*, jurisdictional issues, complexity of transportation systems, climatic concerns, environmental factors, geographic isolation, *etc.*). The Secretary appointed 10 Federal representatives from the Bureau of Indian Affairs (BIA) (the Department of the Interior) and 3 Federal representatives from the Federal Highway Administration (FHWA) (the Department of Transportation). The Committee has a total of 42 primary representatives—29 primary tribal representatives and 13 primary Federal representatives. The Secretary also appointed two alternates for each of the primary tribal representatives. The Secretary appointed the BIA Regional Director from the Southwest Regional Office as the Designated Federal Official.

How Does the Committee Operate?

The Committee operates under a set of written rules called protocols that the Committee developed. In the protocols, the Committee agreed to procedures for conducting meetings, to dates and locations of meetings, and to operate

based on consensus decision-making. Four tribal representatives and three Federal representatives, chosen by their respective caucuses, chaired the full Committee meetings.

The Committee identified over 117 issues with over 422 questions and answers for consideration. The Committee established four work groups to address identified subject matter areas of the IRR Program. Each work group chose a tribal representative to chair the work group. The work groups considered matters that addressed: (1) Funding formula, (2) policy, (3) delivery of services, and (4) technical standards. Tribal and federal resource persons who were not Committee members also assisted the work groups. The four work groups reviewed and researched issues and, where appropriate, drafted regulations in question and answer form. Each work group made recommendations to the full Committee on whether and how each issue should be addressed in the proposed regulations. Each work group presented its draft questions and answers to the full Committee for approval. The tribal and federal caucuses separately reviewed all proposed questions and answers and each caucus commented to the other on all proposed questions and answers. The full Committee considered the caucuses' comments. If the questions and answers needed further negotiation or consideration, a small group of tribal and federal members met to discuss them and work toward agreement. The small groups then presented their recommendations to the respective caucuses which made their recommendations to the full Committee. When the full Committee agreed on the questions and answers, approval was by consensus. All consensus items which were made a part of the official record are contained in the Committee's Documents 1–15. Consensus items were distributed to all Committee members and posted on the IRR web site for TEA–21.

When Did the TEA–21 Committee Meet?

The TEA–21 Committee held its first meeting March 16–18, 1999, in Albuquerque, New Mexico. The Committee decided that it would meet in various locations across the country to allow tribal representatives and individuals to present comments to the Committee and participate in full Committee and work group discussions. Between March 1999 and the last meeting November 27–December 1, 2000, the full Committee met 23 times at the following locations: Albuquerque, New Mexico; Portland, Oregon; Washington, DC; Sacramento, California; Anchorage, Alaska; Tulsa, Oklahoma; Ft. Yates, North Dakota; Phoenix, Arizona; Green Bay, Wisconsin; Minneapolis, Minnesota; Denver, Colorado; and San Diego, California. The four committee work groups met separately during full Committee meetings and at different times and locations.

How Will the TEA–21 Committee Handle Written Public Comments?

The Committee will review and consider all comments received within the comment period for this rule. To the extent practicable, the Committee will consider comments received after the comment closing date. It will make recommendations on the comments to the Secretary for the final rule.

How Is the IRR Program Funded?

From the DOT appropriation, FHWA reserves up to 1.5 percent for its administration and oversight of the IRR Program. Together BIA and FHWA develop a plan for using the remaining funds. This plan includes program management funds for BIA (up to 6 percent is authorized in the annual DOI Appropriations Act). Up to 2 percent of IRR Program funds are set aside for transportation planning by tribal governments.

What Is the Existing "Relative Need Formula" (RNF)?

The existing relative need formula is a mathematical calculation based on factors reflecting the cost to improve eligible IRR's, vehicle miles traveled, and population of federally-recognized tribes. As provided for in the 1982 Surface Transportation Assistance Act (STAA), BIA developed and FHWA approved the RNF to provide an acceptable method to compute the relative needs of the various Indian reservations for the distribution of Highway Trust Funds among all federally recognized Indian tribes.

What Is the History of the Existing Relative Need Formula?

On January 6, 1983, the STAA provided Highway Trust Funds for road construction on Indian reservations. Section 126 of the STAA required the Secretary of Transportation to allocate Highway Trust Funds for improvement of Indian Reservation Roads (IRR) according to the relative needs of the various reservations.

In 1983, BIA began a planning process to determine the relative need for roads on the various reservations and to develop transportation plans for Indian reservations. In 1988, BIA undertook a national relative need study. From January 1988 to May 1989, an independent Indian consulting firm conducted a study under the guidance of BIA. The result of the study was a proposed Relative Need Formula. This proposed Relative Need Formula was made available to all tribes for review and comment over a period of 2 years. A final review of the existing Relative Need Formula was conducted in 1992 and the Deputy Commissioner of Indian Affairs and the FHWA approved the existing relative need funding formula. In January 1993, BIA began implementing the RNF over a 4-year transition period.

What Is the Definition of "Relative Need" With Respect to Indian Reservation Roads?

"Relative Need" is a ranked series of road and bridge improvements (by estimated cost) required to bring the IRR system from its existing condition to an adequate safe standard. When applied to individual Indian reservations it is a ranked series of road improvements (by estimated cost) required to bring roads and bridges that are located within or provide access to an Indian reservation to an adequate safe standard.

Does the Existing Relative Need Formula Need To Be Used To Compute Percentages of Highway Trust Funds for Allocation to Indian Tribes?

The existing Relative Need Formula is used to compute percentages of Highway Trust Funds for allocation to Indian tribes because there is a legislative requirement as follows.

"On October 1 of each fiscal year, the Secretary [of Transportation] shall allocate the sums authorized to be appropriated for such fiscal year for Indian Reservation Roads according to the relative need of the various reservations as jointly identified by the Secretary [of Transportation] and the Secretary of the Interior." 23 U.S.C. § 202(e).

What Does the Existing Relative Need Formula Look Like?

The following is the final version of the existing Relative Need Formula:

$$A = 0.5 \times (CI \div \text{Total } CI) + 0.3 \times (VMT \div \text{Total } VMT) + 0.20 \times (POP \div \text{Total } POP)$$

Where:

A = Percent of Relative Need for an individual tribe

CI = Total cost to improve for an individual tribe

VMT = Total vehicle miles traveled for an individual tribe

POP = Total population for an individual tribe

Total CI = Total cost to improve for all tribes
Total VMT = Total vehicle miles traveled for all tribes
Total POP = Total population for all tribes
0.50, 0.30, 0.20 = Coefficients reflecting relative importance given to each formula factor

Example:
Tribe X has:
CI = $51,583,000
Total CI = $4,820,399,000
VMT = 45,680
Total VMT = 7,929,653
POP = 4,637
Total POP = 1,183,967
A = 0.00535 + 0.00173 + 0.00078
A = 0.00786 or 0.786 percent

If Construction Funds available for the fiscal year are $160,000,000
Then: Tribe X distribution would be:
$160,000,000 × 0.00786 = $1,257,600

How Is the Cost To Improve (CI) Computed?

The data needed to compute the CI is taken from road inventories performed by tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) contracts and by BIA. The road inventory includes attributes on individual road standards commonly found on reservations. In addition to the inventory, BIA regions supply cost tables identifying estimated costs for constructing a mile of road, in terms of four key road construction estimating items added to each specified standard, including grade and drain, gravel construction, pavement construction and incidental construction. Several other inventory attributes are then used to approximate the existing condition of the road or section of road in terms of the four key road construction-estimating items. Utilizing the cost per mile estimate tables submitted by BIA Regions, the cost for improving an existing road, or section of road, from its existing condition to its identified adequate road standard is computed. Once all of the computations are made for all roads or road sections needing improvement within each reservation, all costs are added up. BIA then uses the results in the Relative Need Formula.

How Is the VMT Acquired?

The road inventory data base includes existing average daily traffic (ADT) and/or projected 20-year ADT for each road or section of road which is eligible and designated for improvement. The length of road, or section of road, is also included in the inventory data base. The vehicle miles traveled (VMT) for each road, or section of road, to be improved is then computed by multiplying the 20-year projected ADT by the length of road or section of road. The VMTs for each road or section of road are then added up and the totals used in the Relative Need Formula.

How Is the Population Data Acquired?

BIA currently acquires the population data for each reservation from the Indian Service Population and Labor Force Estimates published by the U.S. Department of the Interior, Bureau of Indian Affairs.

What Is the Significance of the Coefficients 0.50, 0.30, and 0.20 That Are Used in the Current Relative Need Formula?

The coefficients used in the formula reflect the relative importance given to each factor. The size of the coefficient is justified on the following grounds:

- Cost to improve is the most important factor and is the primary basis for determining Relative Need. It is given the weight of 0.50 (50 percent).
- Benefits received from a road improvement are generally measured in terms of usage or VMT. This factor is important, but not as significant as cost in determining need. It is given the weight of 0.30 (30 percent).
- Population, in itself, is not an overwhelming indicator of the need for road improvements. It is given a weight of 0.20 (20 percent).

Which Roads Are Included in the Cost To Improve Calculations?

Existing or proposed roads in the BIA system which are considered to have a construction need by Indian tribes are included in the cost to improve calculations. Tribes must adhere to certain guidelines in the selection of those roads. The roads must:

- Be on the Indian Reservation Road system;
- Not belong to or be the responsibility of other governments (i.e., States or counties);
- Be within or provide access to reservations, groups, villages and communities in which the majority of the residents are Indian; and
- Be vital to the economic development of Indian tribes.

These roads are also identified by construction need (CN) in the road inventory which is performed for each reservation. Currently only the roads with a construction need category of 1 and 4 are included in the cost to improve calculations. These are defined as follows:

Construction Need 1 (CN1): Existing roads needing improvement.

Construction Need 4 (CN4): Roads which do not currently exist and need to be constructed (proposed roads).

What Is the Construction Need of Completed Road Improvements?

Roads or sections of roads which have been improved to their acceptable standard(s) are classified in the road inventory as construction need of 3 (CN3) roads or construction need of 0 (CN0) roads. CN3 roads or sections of roads are roads for which no further improvements are planned. Roads or sections of roads which have been improved to their acceptable standard but future improvements are anticipated, should be classified as CN0 until further improvements are needed due to deterioration based on age or increased traffic volumes. While classified as CN3 or CN0, roads are not included in the cost to improve calculations.

Why Is it Important To Have a Road Inventory That Is Accurate and Current?

Much of the data needed to compute the cost to improve and the VMT comes from the road inventory. If the data from the inventory is not accurate and current the true Relative Need for each tribe cannot be computed accurately. The inventory should be updated anytime a road is improved or added to the inventory. The inventory should also be updated periodically because deterioration of roads may occur and the cost to improve to the acceptable standard then increases. This would also indicate the true Relative Need.

What Is Being Done To Assure That the Data Used in the Relative Need Formula Is Uniform, Accurate, and Consistent?

The nationwide road inventory system, including all reservations, is continuously updated. This inventory is used to determine the relative condition of the road system for each reservation. The data is also used to compute the relative "cost to improve" roads on each reservation to an adequate safe standard. The cost to improve data is used together with the road usage (VMT) and Indian Population data to determine the latest "Relative Need" of each reservation. The new inventory is updated when a road is improved, when a new road is added to the inventory or when a road deteriorates to the point when it needs to be improved.

What Is the Proposed Method of Distributing IRR Program Construction Funds?

The Tribal Caucus of the TEA–21 Negotiated Rulemaking Committee developed the Tribal Transportation

Allocation Methodology (TTAM) as a consensus compromise.

1. TTAM distributes IRR Program construction funds as follows:

• *2% Transportation Planning Funds.* It continues to provide for 2% Transportation Planning Funds.

TTAM introduces 2 new concepts:

• *IRR High Priority Project Program (IRRHPP).* It creates a national funding pool for IRRHPP using 5% of IRR Program construction funds.

This pool will be available on an application basis for tribal projects needed for emergencies or disasters, or for tribes whose funding allocation under the formula is insufficient to build their highest priority project. IRRHPP projects must be IRR eligible and may not exceed $1 million. If Congress increases appropriations for the IRR Program above the current level of $275 million, 12.5% of the increase, after takedowns, will be added to the IRRHPP funding pool; and

• *Population Adjustment Factor (PAF) allocation.* If Congress increases appropriations for the IRR Program above the current level of $275 million, 12.5% of the increase, after takedowns, will be used for a new small minimum allocation, PAF, for all tribes based on population ranges. PAF addresses the relative administrative capacities of tribes by taking into account the fact that all tribes participating in the IRR program necessarily incur some costs. As a practical matter, any participating tribe must undertake activities such as inventory development, planning, inter-governmental coordination, and maintaining management systems. The PAF component ensures that all tribes have a small but meaningful amount of funds for these activities. By delaying the PAF until there are appropriations increases, the TTAM minimizes the negative impact on large tribes.

2. TTAM establishes a Relative Need Distribution Factor:

• *The Relative Need Distribution Factor.* The remainder of IRR Program construction funds (after 2% for Transportation Planning and 5% for IRRHPP) will be allocated by the following formula:

50% Cost-to-Construct (CTC) + 30% Vehicle Miles Traveled (VMT) + 20% Population (POP).

These are the same formula factors and the same percentage allocations as under the existing BIA Relative Need Formula, but some changes have been made in the definitions and data used for each. TTAM includes technical improvements in the way the Relative Need Distribution Factor data is collected, applied, and administered which will make it easier for all tribes to participate in the IRR Program.

How Is Cost-to-Construct (CTC) Calculated in the Relative Need Distribution Factor?

The largest component of the TTAM (50%) is CTC, a factor which measures the need for construction funds for tribally-identified projects and, thus, the relative need of tribes for transportation assistance. CTC in TTAM will be derived from an expanded inventory that will include all IRR-eligible transportation projects. TTAM provides guidelines for future improvements in the cost methodology for the Relative Need Distribution Factor. Until this revised method is completed, the Relative Need Distribution Factor uses the "Simplified Approach to Cost to Construct" in Appendix C to Subpart C. By expanding the inventory for funding purposes to include all IRR-eligible projects, the Relative Need Distribution Factor of TTAM will result in a more complete accounting of tribal transportation needs. It will also ensure that IRR Program funding is spent on projects that generate funding in the Relative Need Distribution Factor, and thereby remove completed projects from the funding system. In contrast, under the existing Relative Need Formula, cost to improve funding was generated only by BIA system routes, but could be expended on other IRR-eligible projects.

How Is the Vehicle Miles Traveled (VMT) calculated in the Relative Need Distribution Factor?

VMT (30%) is a factor measuring transportation facility usage and includes the need to maintain and improve the existing transportation infrastructure. The Relative Need Distribution Factor uses the same methodology for computing VMT as the existing relative need formula, except that it is computed from current Average Daily Traffic (ADT) counts rather than the projected 20-year ADT.

How Is Population (POP) Calculated in the Relative Need Distribution Factor?

POP (20%) is a factor that is one indicator of transportation needs. The data used for population will be the tribal service population taken from the BIA Labor Force Report, until such time as the Native American Housing Assistance and Self-Determination Act ("NAHASDA") American Indian and Alaska Native service population data is adjusted to include 2000 Federal census data. At that time, the NAHASDA service population will be used. The NAHASDA service population is developed by the Department of Housing and Urban Development pursuant to the Native American Housing Assistance and Self-Determination Act.

Why Did the Tribal Caucus Develop TTAM?

The Tribal Caucus developed TTAM to reflect Congress's intent expressed in TEA–21 that the funding distribution method balance the interests of all tribes and enable all tribes to participate in the IRR Program. Other guiding principles the Tribal Caucus used to develop the TTAM were:

• Avoiding major percentage reductions of funds from particular tribes;

• Allowing tribes to identify their true transportation needs;

• Correcting technical problems with the existing Relative Need Formula; and

• Devising a system that is accurate, verifiable, and uniformly applied.

The overall effect of the TTAM is to make it easier for small tribes to participate in the program, without making major reallocations of funds from larger tribes.

Why Did the Tribal Caucus Change the Existing Relative Need Formula to the Relative Need Distribution Factor?

The BIA's prior relative need formula was criticized by smaller and historically underserved tribes for allocating funds primarily from an inventory of roads BIA built in the past and still owns. By driving funding primarily from an inventory of BIA system roads, the existing RNF tended to direct funds to tribes according to their past participation in the program, leaving many tribes out. Further, tribes that generate a small share under the formula have had difficulty accessing any construction funds at all, since a road construction project typically costs more than a small tribe's entire allocation under the formula. On the other hand, many other tribes believe BIA's existing relative need formula serves their needs and requires only technical improvements to ensure that it is accurately and uniformly applied.

How Is the IRR Inventory Used in the Relative Need Distribution Factor?

The inventory used in the Relative Need Distribution Factor will be expanded to include tribally-owned public roads and other IRR-eligible transportation facilities identified by tribes to more accurately measure transportation assistance needs and to match the projects on which IRR Program funding is spent. Other improvements will be made in the way

the formula components are calculated and applied.

What Are Other Features of the New Relative Need Distribution Factor?

- It bases the inventory used for funding purposes on the needs of tribes as identified through long-range transportation planning.
- It allows the inclusion of all IRR-eligible facilities in the inventory, but gives greater weight to BIA and tribally-owned public facilities by limiting, for Relative Need Distribution Factor purposes, most other IRR-eligible facilities to the amount of local matching funds needed for the project.
- It provides that construction cost data be derived from an average of local tribal costs, state cost data from the tribe's area, and national tribal cost averages .

How Does the Relative Need Distribution Factor Meet the Needs of Small, Medium, and Large Tribes?

The Relative Need Distribution Factor will broaden tribal participation in the IRR Program. By expanding the inventory to include all IRR-eligible projects, the Relative Need Distribution Factor will benefit all tribes by allowing all of their actual IRR transportation needs to be counted for funding purposes. The Relative Need Distribution Factor improves the accuracy and uniformity of the data by using state and national average construction cost data in addition to self-reported costs. Various other improvements are made in the management and processing of the data.

How Does the Relative Need Distribution Factor Comply With Congressional Intent?

TEA–21, at 23 U.S.C. 202(d)(2)(D), required that the funding distribution method be based on factors that reflect:

- The relative needs of the Indian tribes, and reservation or tribal communities, for transportation assistance; and
- The relative administrative capacities of, and challenges faced by, various Indian tribes, including the cost of road construction in each Bureau of Indian Affairs area, geographic isolation and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources.

Relative Need of Indian Tribes for Transportation Assistance. The Relative Need Distribution Factor and inventory system address the relative need of all tribes for transportation assistance by setting up a tribally-driven process for developing and maintaining the inventory data from which funding is calculated. It provides for a full accounting of tribal transportation needs. In the existing relative need formula cost to improve funding was generated only by BIA system routes, but all IRR roads designated as construction need 1 (CN1) and 4 (CN4) compute a need based on VMT. The Relative Need Distribution Factor continues the practice of the existing formula using Population and VMT factors to allocate funds based on road use and population.

Relative Administrative Capacities of Indian Tribes. The Relative Need Distribution Factor recognizes that all tribes participating in the IRR Program necessarily incur some costs, such as the cost of planning, developing the inventory, and interacting with other government agencies. For this reason, 12.5% of future funding increases will be allocated by the Population Adjustment Factor so that all tribes receive at least some funding. The existing 2% Transportation Planning program is continued. Finally, the interim funding allocations used in FY 2000, 2001, and 2002 provided per tribe allocations to enable tribes to do administrative and planning work necessary to participate in the IRR Program.

Cost of Road Construction. Tribal construction costs will continue to drive 50% of the funding allocation.

Geographic Isolation. The difficulties caused by geographic isolation are addressed in the Cost-to-Construct factor of the Relative Need Distribution Factor because geographic isolation (location) is the biggest variable in determining construction costs. The Relative Need Distribution Factor uses an average of local tribal costs, local state costs, and national average tribal costs in applying the Construction Cost factor, and thus takes into account the geographic differences between the tribes.

Difficulty in Maintaining All-Weather Access. This factor will be addressed by the tribes themselves as they add projects they believe are important to the inventory. It is also addressed in the ranking system for the new IRRHPP program, where projects that address these particular needs score higher.

II. Summary of Regulations

Subpart A—General Provisions and Definitions

This subpart outlines the authority under which this rule is established. The purpose and scope of this rule is defined with respect to 23 U.S.C. 202(d) and 204 and the IRR Program. This subpart provides interpretation of the language used throughout 23 U.S.C. 202(d) and (204).

The subpart further outlines the policies, guidance manuals, directives, and procedures that will govern the IRR Program under direct service, self-determination contracts, and self-governance agreements. It also includes definitions used throughout the rule.

Subpart B—Indian Reservation Roads Program Policy and Eligibility

This subpart:

- Explains the Federal, tribal, state, and local governments' coordination, collaboration, and consultation responsibilities; and
- How these efforts can effectively assist the tribal governments in meeting their transportation needs.
- Lists activities eligible for IRR funding; and
- Lists activities not eligible for IRR funding.
- Discusses the use of all eligible Indian Reservations Roads; and
- Other transportation facilities eligible for construction, including cultural access roads, housing access roads, toll roads, recreation, tourism, trails, airport access roads, transit facilities, and seasonal transportation routes authorized under 23 U.S.C. 204(j).
- Covers the highway safety aspects of the IRR Program; and
- Those activities, functions, and equipment that may be eligible for funding under this program; and
- The formation of an IRR Coordinating Committee to make recommendations to help meet program objectives.
- Local Technical Assistance Programs available to BIA and tribes performing activities under the IRR Program.

This subpart also includes:

- Transportation research activities;
- Education and training opportunities available to tribes and BIA through Local Technical Assistance Programs and other federal, state, and local organizations; and
- How IRR Program funds may be used for education and training.

Subpart C—Indian Reservation Roads Program Funding

This subpart covers the Tribal Transportation Allocation Methodology and includes a Relative Need Distribution Factor to distribute IRR Program funds. It includes:

- Allocation of IRR Program Funds (overview);
- 2% Transportation Planning Program;

- Relative Need Distribution Factor for IRR Construction;
- IRR High Priority Projects Program (IRRHPP);
- Population Adjustment Factor (PAF); and
- Relative Need Distribution Factor.

It covers the following factors used in the Relative Need Distribution Factor:

- Cost-to-Construct;
- Vehicle Miles Traveled; and
- Population.

This subpart also includes:

- General Data Appeals;
- IRR Inventory; and
- Long-Range Transportation Planning.

Subpart D—Planning, Design, and Construction of Indian Reservation Roads Program Facilities

This subpart discusses:

- The transportation planning responsibilities and requirements consistent with 23 U.S.C. 134 and 135 and funding for transportation planning;
- The requirements for developing a Transportation Improvement Program and long-range plans; and
- The requirements for public hearings in the development of IRR TIPs.

This subpart also:

- Defines the IRR inventory and transportation classifications;
- Discusses how the IRR Inventory is developed and used;
- Discusses components of the IRR Inventory;
- Includes the environmental and archaeological requirements that apply to projects under this program;
- Covers whether IRR Program funds can be used for these requirements;
- Outlines design, construction, and construction monitoring standards;
- Includes procedures for road, bridge, and intermodal facilities;
- Identifies the roles of and the responsible entities for such activities;
- States the requirements for obtaining rights-of-way for construction of IRR facilities;
- Covers annual and semi-annual program reviews required as a part of the overall management and oversight of the IRR Program; and
- Discusses the processes and procedures used at the various office levels of the IRR Program to insure that the program is being carried under these regulations and the governing laws;
- Outlines the management systems that BIA must develop and maintain under 23 U.S.C. 303 for oversight and management of the IRR Program.

Subpart E—Service Delivery for Indian Reservation Roads

This subpart tells how the ISDEAA can be used:

- To contract for programs under the IRR Program;
- In self-governance agreements;
- In consortium contracts and agreements;
- In multiple-year agreements;
- For rights of first refusal;
- In applicability of advance payments for ISDEAA contracts and agreements;
- For contingency funds; and
- For cost overruns.

It also covers:

- Indian preference versus local preference in contracting;
- Contract enforcement;
- Applicability of the Buy Indian Act and the Buy American Act to the IRR Program;
- Applicability of the Federal Acquisition Regulations and Davis Bacon wage rates with respect to self-determination contracts or self-governance agreements;
- Force account work;
- Waivers of regulations;
- The Federal Tort Claims Act;
- Technical assistance available to tribes planning to contract for IRR Program eligible activities and/or functions; and
- Savings

Subpart F—Program Oversight and Accountability

This subpart discusses:

- Oversight roles and responsibilities for the IRR Program;
- Memoranda of Understanding;
- Professional licensing requirements;
- Requirements for project approvals; and
- Program accountability.

Subpart G—BIA Road Maintenance

This subpart covers:

- BIA Transportation Facility Maintenance Program;
- Eligible activities and facilities for maintenance including roads, bridges, airports, and other eligible facilities;
- Maintenance funding;
- Facility ownership;
- Maintenance responsibilities to the traveling public;
- Maintenance management system requirements;
- Maintenance standards that apply to the maintenance program;
- Mandated bridge inspection requirements and standards; and
- Provisions for emergency maintenance.

Subpart H—Miscellaneous

This subpart provides information to tribal governments on the transport of hazardous and nuclear waste and covers:

- Indian preference and tribal employment rights;
- Applicability of tribal taxes and fees for IRR Projects;
- Emergency relief for declared disasters on or near Indian reservations;
- Funding availability for repairs of eligible facilities;
- Tribal regulation of oversize and overweight vehicles;
- Reporting requirements;
- Welfare-to-work;
- Tribal employment rights;
- Establishing and operating tribal transportation departments and the eligible activities and/or functions for which these organizations can contract;
- Alternative dispute resolution procedures to resolve IRR Program disputes;
- Conflicts in law provisions; and
- Research activities available under the IRR Program.

III. Key Areas of Disagreement

During the negotiated rulemaking the Committee addressed seven general subject matter areas: (1) General provisions, (2) IRR Program policy and eligibility, (3) IRR Program funding, (4) planning, (5) design and construction of IRR Program facilities, (6) IRR Program service delivery, and (7) maintenance and miscellaneous provisions. The Committee broke each area into questions and answers, the vast majority of which were agreed to by the Federal and tribal representatives.

The tribal and Federal representatives did not reach a consensus on several issues. The disagreement items presented below by each side are not meant to be point-by-point rebuttals, rather, they are presentations of each side's views. The Federal and tribal suggestions on language (in question and answer format) for each area of disagreement are presented below, in order, by subpart and section, where appropriate. However, four areas of disagreement—advance funding, savings, contractibility, and availability of contract support funding—are outside the scope of this rulemaking. However, the Committee negotiated on these items and they are therefore presented together at the end of this section on disagreement items. In order to provide a complete proposed rule that could be commented upon, and pursuant to Administrative Procedure Act guidelines, the Federal text on the disagreement items is represented in the body of this proposed rule. Where Federal questions and answers are inserted into the rule, the section numbers are noted in the disagreement items below.

A. General Issues

The Tribal caucus and Federal caucus interpreted differently some statutory requirements about what TEA–21 requires BIA and FHWA to do and permits tribes to do, leading to disagreements on items such as availability of IRR Program funds under the Indian Self-Determination and Education Assistance Act, as amended (the ISDEAA).

Tribal View

As a general matter, the Tribal Caucus and Federal Caucus often disagreed over issues because they interpreted the statutory requirements of TEA–21 differently. For example, in the Tribal Caucus' view, TEA–21 plainly requires that all IRR Program funds be made available in accordance with the requirements of the Indian Self-Determination and Education Assistance Act, as amended (the ISDEAA), to Indian tribes that choose to administer IRR projects or the entire IRR Program. See 23 U.S.C. 202(d)(3). TEA–21 also provides that all funds made available under Title 23 U.S.C. for Indian reservation roads and bridges are subject to the ISDEAA mandates "[n]otwithstanding any other provision of law or any interagency agreement or program guideline, manual or policy directive." *Id.* Many of the disagreement items which follow stem from disagreements about what TEA–21 requires BIA and FHWA to do and permits Indian tribes to do.

To the extent that the IRR regulations differ in any respect from the provisions in the ISDEAA, the Tribal Caucus believes that the IRR regulations should serve to advance—rather than retard—the Federal Government's avowed policy of increasing tribal autonomy and discretion in the operation of this federal Indian program. See Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000) (mandating that executive agencies develop federal policies that "respect Indian tribal self-government and sovereignty" and that "grant Indian tribal governments the maximum discretion possible" with respect to Federal statutes and regulations.

Federal View

The Federal views below reflect the present Federal statutory and regulatory responsibilities of both DOI and DOT in their administration and oversight of the IRR Program.

The Federal Caucus agrees that TEA–21 applies the ISDEAA to all IRR Program funds. However, TEA–21 does not, as the tribal view states above, require all IRR Program funds to be made available to tribes. Simply stated, the disagreement in statutory interpretation is over whether all IRR Program funds must be transferred to tribes or whether all IRR Program funds are subject to the ISDEAA.

Section 1115(b) of TEA–21 provides:

(A) In General.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available under this title * * * shall be made available, upon request of the Indian tribal government * * * in accordance with the Indian Self-Determination and Education Assistance Act * * *.

(B) Exclusion of Agency Participation.—Funds for programs, functions, services, or activities, or portions thereof, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A) * * *.

B. Eligibility—Subpart B

The issue is whether BIA or FHWA makes the determination on a new proposed use of IRR Program funds. The Federal text is inserted at § 170.116.

Tribal View

The Tribal Caucus proposes the following regulatory provision to guide Indian tribes in determining whether a proposed use of IRR funds is allowable:

How Can an Indian Tribe Determine Whether a New Proposed Use of IRR Funds Is Allowable?

(a) An Indian tribe that proposes new uses of IRR funds may submit a written inquiry to BIA concerning whether the proposed use is eligible under Titles 23 and 25 of the United States Code, and other applicable provisions of federal law. The requesting Indian tribe must also provide a copy of its inquiry to FHWA.

(b) BIA must provide the requesting Indian tribe, with a response in writing, within 45 days of receipt of the written inquiry. BIA must approve the proposed use unless it can identify a specific statutory prohibition to the proposed use related to transportation. To the extent practicable, BIA will consult with FHWA and the IRR Program Coordinating Committee in addressing the inquiry.

(c) If BIA fails to issue a timely written response to the eligibility inquiry, the proposed use will be deemed to be allowable until guidance has been issued by the Coordinating Committee.

(d) BIA will refer all eligibility decisions to the Coordinating Committee for consideration for guidance updates.

(e) Denials of a proposed use may be appealed by the tribe under 25 CFR part 2.

(f) Nothing in this section shall be interpreted as modifying or diminishing an Indian tribe's authority to redesign programs and reallocate funds under Public Law 93–638, as amended, and applicable regulations.

When an Indian tribe assumes and performs IRR Program activities under either a self-determination contract or self-governance agreement, its ISDEAA agreement is an intergovernmental agreement and is with BIA, not FHWA. Under 23 U.S.C. 203, the Secretary of the Interior (and, thus, BIA) has express authorization to approve projects. This express statutory authority to approve projects independent of FHWA necessarily carries with it the ability to determine whether a proposed use of funds for a given project is permissible. General policy statements in 49 U.S.C. 101(b) about the need for the DOT does not preempt the specific grant of authority to the Interior Secretary contained in 23 U.S.C. 203. Therefore, the Tribal Caucus believes that tribal inquiries as to whether a proposed use of the IRR Program funding an Indian tribe administers under its ISDEAA agreement with BIA are appropriately directed to BIA and that BIA should be responsible for making the decision in a timely fashion.

The Federal Caucus approach would require the Indian tribe to submit its request to both BIA and FHWA for decision. This could lead to a situation where the agencies might issue inconsistent decisions. The Tribal Caucus believes that the Federal Caucus approach creates more procedural requirements than are necessary, discounts the fact that BIA has statutory authority to independently approve projects, overlooks that these ISDEAA agreements are 'government-to-government' agreements between BIA and the tribe, and is inconsistent with the ISDEAA. Under the Tribal Caucus approach, the inquiry is submitted directly to BIA, with a copy to FHWA, and BIA is the agency responsible for issuing the decision. By making BIA responsible for issuing the decision, instances of inconsistent or contradictory results or decisions by BIA and FHWA are avoided. The Tribal Caucus approach also facilitates the ability of BIA to timely seek input from FHWA by requiring the Indian tribe to provide a copy of its request to FHWA directly. This approach will provide FHWA with the ability to provide BIA with input or guidance, if it so chooses. This approach also recognizes that BIA, as a party to the ISDEAA agreement, is the appropriate entity to respond to such tribal inquiries about the program assumed under such an intergovernmental agreement.

With respect to the applicable standard, the Tribal Caucus believes

that a proposed use of IRR Program funds should be allowable unless the use would violate Congressional statutory dictates. The Tribal Caucus believes that the approach suggested by the Federal Caucus—that a proposed use must be approved if it is listed in Title 23 of the United States Code as an eligible item—rings hollow because the full Committee already took steps to ensure that all eligible items listed in Title 23 are incorporated into the Eligibility listing found in these regulations. The Tribal Caucus believes its approach on this issue is more consistent with the ISDEAA.

With respect to the amount of time for issuing a decision, the Tribal Caucus approach would limit the amount of time BIA has to issue a response to a maximum of 45 days because the building seasons tribes deal with are often extremely short, especially in Alaska and northern and mountainous regions of the United States. The 60 days the Federal Caucus prefers can effectively push tribal projects off until the following year.

Finally, with respect to the impact on redesign and reallocation authority, the Tribal Caucus believes that language should be included to clarify that this provision does not amend such authority which is otherwise available under the ISDEAA. Indian tribes performing IRR Program activities under self-determination contracts and self-governance agreements have some authority to redesign the program and reallocate funding in accordance with 25 U.S.C. 450j(j), 450j–1(o), 458cc(b). The Tribal Caucus recognizes that there are some limitations on this general redesign authority for construction activities. However, not all IRR Program activities are construction activities. Furthermore, no provision federal law requires tribes to obtain the approval of FHWA in advance of reprogramming or reallocating IRR Program funds in a manner which is consistent with the ISDEAA. With this in mind, the Tribal Caucus feels it is imperative to expressly state that the regulatory provision addressing new uses of IRR Program funds does not modify or diminish tribal redesign and reallocation authority which is otherwise available under the ISDEAA. Absent such a qualifying statement, one could incorrectly infer that this regulatory provision modifies such tribal redesign and reallocation authority.

Federal View

New proposed uses of IRR Program funds must be submitted to FHWA for approval for several reasons. Title 23 U.S.C. 204(h)(7) authorizes the Secretary of Transportation to make eligibility determinations for the Federal Lands Highway Program on projects for all funding categories, including the IRR Program. Title 49 U.S.C. 101(b) directs DOT to ensure the coordination and effective administration of the transportation programs of the United States Government. Eligibility determinations and use of funds is a crucial component of the effective administration of transportation programs. The eligibility list and the method for submitting new items for eligibility consideration ensures a consistent approach to national IRR transportation issues. The Federal position regarding eligibility denials provides for an appeal process pursuant to 25 CFR part 2.

The Federal proposal is as follows:

How Can a Tribe Determine Whether a New Proposed Use of IRR Funds Is Allowable?

(a) A tribe that proposes a new use of IRR program funds must submit a written inquiry to BIA and FHWA concerning whether the proposed use is eligible under Titles 23 and 25 of the United States Code and other applicable provisions of Federal law.

(b) For eligibility questions that refer to self-determination and self-governance contracting and road maintenance, BIA must provide a written response to the requesting tribe within 60 days of receipt of the written inquiry. For eligibility questions that refer to IRR Program, FHWA must provide a written response to the requesting tribe within 60 days of receipt of the written inquiry. BIA must approve the proposed use if it is authorized under Title 25 and is related to transportation. FHWA must approve the proposed use if it listed as an eligible item in Title 23. To the extent practicable and before denying the request, BIA or FHWA consults with the IRR Program Coordinating Committee.

(c) If either BIA or FHWA fails to issue the requesting tribe a timely written response to the eligibility inquiry, the proposed use will be deemed to be allowable until a determination has been made and the written response is provided to the tribe.

(d) BIA and FHWA will send copies of all eligibility determinations to the IRR Program Coordinating Committee and BIA regional offices.

(e) Tribes may appeal denials of a proposed use pursuant to 25 CFR part 2.

C. Updating the IRR TIP—Subpart D

The issue is how often the IRR TIP must be updated. The Federal text is inserted at § 170.420.

Tribal View

The Committee developed detailed planning regulations to better ensure the development of a comprehensive transportation program regardless of whether such program is administered by BIA, on behalf of Indian tribes, or is assumed by a tribe under the ISDEAA. Through better transportation planning, both tribes and BIA should maximize available resources. Only those transportation projects listed on the IRR TIP, however, are eligible for IRR construction funds. The Tribal Caucus therefore believes it is important: (1) That a specific time frame be set out in the IRR regulations governing the frequency with which BIA must update the IRR TIP, and (2) that a specific time frame be added by which BIA must actually complete the IRR TIP update once it has received a revised or amended tribal transportation improvement program (TTIP) or tribal priority list from an Indian tribe.

The Tribal Caucus recommended that the proposed regulation provide that updates to the IRR TIP occur on a quarterly basis, or as otherwise needed, and further proposed that the updating process, once BIA received a tribal request to modify the IRR TIP, be completed by BIA within 45 days from the date of receipt, except under unusual circumstances. Quarterly updates would ensure that BIA's update of the IRR TIP would occur on a regular schedule and would not be overly burdensome since it would be similar to the schedule by which State TIPS are updated. As proposed by the Tribal version, allowances are made for unusual circumstances. Regardless of how frequently an IRR TIP is updated, the 45-day limit is reasonable and will better ensure that IRR TIPS are accurate.

The Tribal Caucus recommends and requests public comment on the following regulatory provision to accomplish this goal:

How Is the IRR TIP Updated?

The updating process begins when BIA provides the projected IRR funding amounts to each tribe, or an analysis of the existing tribal priority list or TTIP. New transportation planning information or substantial changes to an IRR tribal project may require an IRR TIP update. BIA reviews the programming of proposed projects with the Indian tribal government and agreed upon adjustments are made to the IRR TIP on a quarterly basis or as otherwise needed. This updating process will, except under unusual circumstances, be completed within 45 days of receipt by BIA of the updated TTIP or tribal priority list submitted by the tribe.

Federal View

This issue involves the frequency of updating the IRR Transportation Improvement Program. Prior to Fiscal Year 2000, BIA submitted quarterly updated IRR TIPS to FHWA for review and approval. This quarterly procedure often resulted in untimely submissions of IRR TIPS to FHWA. This was a result of the overall TIP and Control Schedule

process, which required involvement of BIA Regional offices, BIA Division of Transportation in Albuquerque, and BIA DOT in Washington, DC. In addition, many of the quarterly updated TIPS submitted did not contain any significant changes to the previously approved TIP (*i.e.*, addition or deletion of projects). Therefore, a time-consuming exercise was conducted to produce an "update" that really did not update the TIP. Also, updating TIPS quarterly for 12 BIA Regions imposes an additional approximately 70 per cent cost in processing IRR TIPS.

Beginning in Fiscal Year 2000, FHWA requested that BIA submit TIP updates on an annual basis only, with updates submitted as required to reflect projects added to or deleted from the current TIP. Minor adjustments to funding between various projects, or within the activities (Preliminary Engineering, Construction Engineering, Construction) of a particular project, were determined to be insignificant and did not require the submittal of a TIP update.

The Federal view is that for Fiscal Year 2002 and beyond, the IRR TIP submittal process described above be continued for the following reasons:

(1) The IRR TIP development and submittal process is complex and lengthy. Performing four updates in one fiscal year may unnecessarily duplicate effort on the part of BIA and tribes, which could be performing other programmatic activities.

(2) The annual IRR Program funding, once established for a Fiscal Year, does not vary significantly within that Fiscal Year for a particular region or tribe, some minor increases or decreases may occur. Therefore, substantial changes to a TIP would not be anticipated over the course of a Fiscal Year, and updates would not be necessary on a frequent basis.

(3) Since public involvement process must occur before every TIP or TIP update/amendment is approved, fewer amendments would therefore decrease the necessity for multiple public involvement meetings for a single region's TIP, making the overall TIP approval process faster.

(4) Limiting the amount of TIPS submitted in a given Fiscal Year forces the tribes and BIA regions to conduct better "up front" planning cooperatively to ensure all tribal priorities are being initially included in the TIP. While it is understood that leadership changes in a tribe may require mid-year changes to a TIP, these changes could be better coordinated to prompt only one amendment per year rather than the recommended three per year.

The Federal view is that IRR TIPS only require updating as necessary not quarterly.

The Federal proposal is as follows:

How Is the IRR TIP Updated?

The updating process begins when BIA provides the projected IRR Program funding amounts to each tribe, or an analysis of the existing tribal priority list or TTIP. New transportation planning information or substantial changes to an IRR tribal project may require an IRR TIP update. BIA reviews the programming of proposed projects with the tribes. Agreed upon adjustments are made to the IRR TIP following the IRR TIP process defined in this part on an annual basis or as otherwise needed.

D. PS&E Approval Authority—Subpart D

The tribal caucus and Federal caucus disagree on the issue of whether a tribe may assume the review and approve plans, specifications and estimates. The Federal text is inserted at §§ 170.480–481.

Tribal View

The Tribal Caucus position is that the review and approval of plans, specifications and estimate (PS&E) packages are activities that Indian tribes may assume under self-determination contracts or self-governance agreements. In fact, the Interior Department has already permitted tribal assumption under a self-governance agreement of the authority to review and approve PS&E packages in the IRR Self-Governance demonstration. Similarly, Indian tribes, as public authorities, may assume the authority to review and approve PS&E packages under a Stewardship Agreement. Moreover, it is the Tribal Caucus position that an ISDEAA agreement can either serve as a Stewardship Agreement or incorporate an existing Stewardship Agreement of the tribe, to enable the tribe to, among other things, review and approve PS&E packages.

The Tribal Caucus acknowledges that all PS&E packages must be signed and/or sealed by a licensed professional engineer. However, it is the Tribal Caucus position that the extra-statutory "health and safety review" that the Federal Caucus insists on having simply is not required so long as the Indian tribe or tribal organization has provided assurances in the contract or agreement that the construction will meet or exceed proper health and safety standards, the licensed professional engineer approving the PS&E has certified that the plans and specifications meet or exceed the proper health and safety standards, and BIA receives a copy of this certification. See 25 U.S.C. 458cc(e)(2) ("In all construction projects performed pursuant to this part, the Secretary shall *ensure that proper health and safety standards are provided for in the funding agreements.*") (Emphasis added.) The Tribal Caucus approach is substantially the same as the clarification approach recently considered by the Senate Committee on Indian Affairs, which remarked: "[P]roviding tribes flexibility in meeting health and safety standards will not limit the ability of BIA or FHWA to ensure that the IRR roads and bridges are built safely and efficiently. BIA will retain its monitoring and final inspection authorities as currently permitted under law * * * Retaining a bureaucratic check on every detail of IRR planning and construction is unnecessary and creates redundancy and inefficiency." Senate Report 106–406 at pp. 6–7 (Sept. 11, 2000).

The Tribal Caucus strongly disagrees with the Federal Caucus' approach to this issue because it would place unnecessary and burdensome requirements on Indian tribes before they would be deemed eligible by FHWA to assume PS&E approval authority for IRR projects. As proposed by the Federal Caucus, only Indian tribes which meet 'the requirements of a state as defined in 23 U.S.C. 302(a)' of TEA–21 and enter into a tribal IRR Program stewardship agreement with DOT would be delegated PS&E review and approval authority for IRR projects. The Federal Caucus has not identified in its proposed regulation what FHWA requirements an Indian tribe would need to satisfy to demonstrate that it has 'adequate powers' and is 'suitably equipped and organized to discharge to the satisfaction of the Secretary [of Transportation] the duties required by this title' as set forth in 23 U.S.C. 302. Also, the Federal Caucus references 23 U.S.C. 106, 302 and 402 as giving FHWA authority to determine which public authorities, including tribes, are capable of approving PS&E packages, conducting project audits, project closeouts, inspections, and controls. However, sections 106 and 302 by their own terms only apply to state transportation departments, and do not apply to Indian tribes or the Federal Lands Highway Program. Also, section 402 addresses Highway Safety Programs only.

The Federal Caucus' proposal would require that a tribe also negotiate a separate stewardship agreement with DOT, rather than permitting the tribe to assume such duties under its self-determination contract or self-governance agreement. It is unclear why

stewardship provisions cannot be included in a self-determination contract or self-governance agreement, when such agreements can be used to explain the roles and responsibilities of the federal and tribal parties to the agreement. The Federal Caucus provision would further require that stewardship agreements include provisions for a health and safety review by the Secretary of the Interior and contain provisions and procedures by which the facility owner may review the PS&E. These provisions would place far too much discretion in the hands of FHWA, mandate agency oversight where such oversight may not be warranted, and increase the regulatory burden on tribes. The Tribal Caucus solution is to streamline the process as Congress intended.

The Tribal Caucus proposes the following two regulatory provisions to clarify this issue:

Can a Tribe Review and Approve PS&E Packages for IRR Projects?

Yes. As a public authority, a tribe may assume review and approval authority of PS&E packages under a Stewardship Agreement pursuant to a Public Law 93–638 contract or self-governance agreement. The Public Law 93–638 contract or self-governance agreement may serve as the Stewardship Agreement. Alternatively, a tribe without a Stewardship Agreement may assume responsibility to review and approve PS&E packages under a self-determination contract or self-governance agreement so long as the Indian tribe or tribal organization has: (1) Provided assurances in the contract or agreement that the construction will meet or exceed proper health and safety standards; (2) obtained the advance review of the plans and specifications from a licensed professional engineer who has certified that the plans and specifications meet or exceed the proper health and safety standards; and (3) provided a copy of the certification to BIA.

Must All PS&E Packages Be Approved?

Yes. All PS&E packages must be signed and/or sealed by the appropriate licensed professional engineer, and by the appropriate official as follows:

(a) Absent an approved Stewardship Agreement, FHWA approves all PS&E packages submitted by BIA;

(b) Where an approved Stewardship Agreement exists between FHWA and the BIA Regional Office, PS&E packages are approved by an official in the BIA Regional Office;

(c) Where an Indian tribe has assumed the responsibility to approve PS&E packages for IRR projects, in accordance with the question and answer above, the PS&E packages are approved by the tribe;

(d) Where an Indian tribe has not assumed the responsibility to approve PS&E packages under paragraph (c) above, PS&E packages are approved under paragraph (a) or (b) above, as applicable.

Federal View

Under 23 U.S.C. 106, 302 and 402 certain activities can be delegated to public authorities which have adequate powers and are suitably equipped and organized to carry out, to the satisfaction of the Secretary, the duties of Title 23. These include Plans, Specifications, and Estimate (PS&E) approval, conducting project audits, project closeouts, inspections, materials testing, and quality control. Moreover, since Public Law 93–638 requires the Secretary to assure health and safety, the Secretary must still review the PS&E, even if PS&E approval has been delegated to the public authority. It follows that the facility owner/maintainer must concur with the proposed construction activities. Finally, inclusion of PS&E approval and other stewardship provisions in a recent pilot self-governance agreement has created a situation where changes to the stewardship provisions are requested on a yearly basis. While tribes can enter into a stewardship agreement with the Secretary of Transportation, such stewardship provisions cannot be included in a self-determination contract or self-governance agreement.

The Federal proposal is as follows:

Can a Tribe Review and Approve PS&E Packages for IRR Projects?

Yes, a tribe can review and approve PS&E packages for IRR projects if the tribe meets the requirements of a state as defined in 23 U.S.C. 302 (a) and enters into a tribal IRR Program stewardship agreement with the Secretary of Transportation or designee.

Who Must Approve all PS&E Packages?

All PS&E packages must be signed and/or sealed by the appropriate licensed professional engineer and by the appropriate official as follows:

(a) Absent an approved IRR Program stewardship agreement, FHWA approves all PS&E packages submitted by BIA;

(b) When an approved BIA regional IRR Program stewardship agreement exists, PS&E packages are approved by an official in the BIA regional office;

(c) When a tribe has assumed the responsibility to approve PS&E packages for tribal, state, and locally owned IRR facilities through a tribal IRR Program stewardship agreement, the tribe approves PS&E packages with the consent of the facility owner after a health and safety review by the Secretary;

(d) When a tribe has not assumed the responsibility to approve PS&E packages under paragraph (c) above, BIA or FHWA approves PS&E packages under paragraph (a) or (b) above, as applicable.

E. IRR Construction Project Reports—Subpart D

The issue is how to regulate IRR construction project closeouts. The Federal text is inserted at §§ 170.485–489.

Tribal View

Detailed program oversight regulations have been developed by the Committee, with a number of provisions devoted to preparation of the IRR construction project close out report. The Federal and Tribal Caucuses did not reach consensus on a number of regulatory provisions governing the closeout of an IRR construction project. The Tribal and Federal Caucuses agreed to revise some regulatory provisions to substitute "IRR construction project report" in place of "IRR construction project audit" as the focus of the question and to delete regulations addressing an IRR project audit. It was the view of the Tribal Caucus that project audits were adequately addressed in existing Title I and Title IV regulations implementing the ISDEAA (See 25 CFR parts 900 and 1000). In some instances, the proposed regulations were corrected to reflect this intent. One regulatory provision, however, does not appear to have been modified as the Tribal Caucus believes should have been done. As a result, the proposed regulation contains a provision relating to an IRR construction project audit. The Tribal Caucus believes that the IRR regulations should only address IRR construction project closeout reports and omit any discussion of IRR project audits. Substitution of the phrase "construction project report" for the phrase "project audit" will accomplish this goal.

Accordingly, the Tribal Caucus proposes the following regulatory provision and requests public comment:

Who Has Final Acceptance of the IRR Construction Project Report?

(a) With regard to IRR construction projects performed by BIA, the Secretary has final acceptance and approval of the IRR construction project report.

(b) With regard to IRR construction projects performed by tribes under Public Law 93–638, the signatory authority has final acceptance and approval of the IRR construction project report.

The Tribal Caucus differed with the Federal Caucus on the requirement that, as part of an IRR construction project closeout, the facility owner must accept the IRR project. It is the Tribal Caucus' view that closeout of an IRR construction project, which the regulations define as the final accounting of all IRR construction project expenditures and closing of the financial books of the Federal Government for the project, occurs once the final inspection has been completed and the IRR construction project has

been accepted by the signatory authority for the project, which is the entity with final authority to sign the PS&E package.

Therefore, the Tribal Caucus recommends and requests public comment on the following regulatory provision:

When Does a Project Closeout Occur?

A project closeout occurs after the final project inspection is concluded and the IRR project is accepted by the signatory authority (the entity with final authority to sign the PS&E package).

It is the Tribal Caucus position that no regulation is required to identify the entity which must conduct the project closeout and prepare the IRR construction project closeout report. When an IRR construction project is performed by an Indian tribe under a self-determination contract or self-governance agreement, Title I and Title IV regulations implementing the ISDEAA adequately address the issue of who must conduct the project closeout and develop the IRR construction project closeout report. For example, 25 CFR 900.130(d) states: "Upon completion of the project, the Indian tribe or tribal organization shall provide to the Secretary a reproducible copy of the record plans and a contract closeout report." The Tribal and Federal Caucuses agree on this point. The Tribal Caucus, however, does not believe that the Federal Caucus has appropriately described the circumstances under which BIA performs the IRR construction project on behalf of a tribe. The Federal Caucus supports regulatory text which states that: "When the activity and/or project is conducted using BIA force account, [the] Regional Engineer or designee is responsible for closing out the project and preparing the report." BIA force account is only one of several methods available to BIA when it performs the IRR construction projects on behalf of tribes. As a result, it is the Tribal Caucus' position that no IRR regulatory provision is preferable to the incomplete provision proposed by the Federal Caucus.

The Tribal Caucus believes that the Title I Self-Determination regulations (25 CFR part 900) and Title IV Self-Governance regulations (25 CFR part 1000) adequately cover the project closeout reporting obligations of Indian tribes performing IRR activities under the ISDEAA. While it is appropriate for these proposed IRR regulations to identify the content of the project closeout report when BIA administers the IRR Program for a particular tribe, the regulations should leave the content of the IRR construction project closeout report to the negotiations between BIA and a tribe when a tribe assumes the obligation to prepare the closeout report under an ISDEAA agreement. The Tribal Caucus disagrees with the Federal Caucus' proposed regulation which mandates that "all project information must be made accessible for the IRR construction project closeout" when a project closeout and preparation of the closeout report is undertaken by a tribe under a self-determination contract or self-governance agreement.

It is the Tribal Caucus position that the proposed regulation be limited to BIA's preparation of the closeout report and leave the scope of project information to be made accessible for the IRR construction project closeout, when a tribe assumes such duties under the authorities of the ISDEAA, to the negotiation of BIA and the tribe.

The Tribal Caucus therefore requests public comment on the following recommended regulatory provision:

What Information Is Made Available for the Project Closeout?

If the project closeout and development of project closeout report is not contracted or compacted then all project information must be made accessible for the IRR construction project closeout. Such information may include, but is not limited to: Daily diaries, weekly progress reports, sub-contracts, subcontract expenditures, salaries, equipment expenditures, etc.

The Tribal Caucus believes that it is not necessary to identify in these regulations the entities which must receive a copy of the IRR construction project closeout report. As drafted, however, the proposed regulation is incomplete as it only addresses the entities to receive the closeout report for IRR construction projects when such projects are assumed under a self-determination contract or self-governance agreement. The proposed regulation fails to address the obligation of BIA to provide the closeout report to the Indian tribal government served by the construction project and to appropriate BIA officials, such as BIA Regional Engineer, BIA Agency Superintendent or Field Officer. The proposed regulation would read as follows:

Who Is Provided a Copy of the IRR Construction Project Closeout Report?

Projects negotiated under Public Law 93–638, as amended, shall specify who will be provided a copy of the closeout report.

Unless the proposed regulation is corrected in the final regulation to identify the recipients of the IRR construction project closeout report, regardless of which entity prepares the report, the Tribal Caucus position is to delete the provision entirely.

Federal View

The issue appears to be whether these regulations need to address project closeouts and audit. 25 CFR 900.131(b)(10) states that "The Secretary retains the right to conduct final projects inspections jointly with the Indian tribe or tribal organization and to accept the building or facility." A similar provision for self-governance tribes is provided in 25 CFR 1000.249(e). While 25 CFR 900.130(d) does contain project closeout requirements for self-determination contracts there is no similar provision for self-governance tribes in 25 CFR part 1000.

The Federal proposal is as follows:

Who Has Final Acceptance of the IRR Project Audit?

The Secretary has final acceptance and approval of the project including the IRR project audit.

When Does a Project Closeout Occur?

A project closeout occurs after the final project inspection is concluded and the IRR project is accepted by the facility owner and the Secretary.

Who Must Conduct the Project Closeout and Develop the Report?

(a) The self-determination contract or self-governance agreement must specify who is responsible for project closeout and development of a final report.

(b) The Secretary is responsible for closing out the project and preparing the report when the project is conducted by the Secretary.

What Information Must Be Made Available for the Project Closeout?

(a) When the Secretary conducts the project, all project information must be made accessible for the IRR construction project closeout. Such information may include, but is not limited to: Daily diaries, weekly progress reports, subcontracts, subcontract expenditures, salaries, equipment expenditures, *etc.*

(b) When a tribe conducts the project under a self-determination contract or self-governance agreement, all project information must be made accessible for the IRR construction project closeout. Such information may include but is not limited to: Daily diaries, weekly progress reports, subcontracts, subcontract expenditures, salaries, equipment expenditures, *etc.*

Who Is Provided a Copy of the IRR Construction Project Closeout Report?

(a) When the Secretary conducts the project, copies of the IRR construction project closeout reports are provided to the affected tribes and the Secretary of Transportation.

(b) When a tribe conducts the project under a self-determination contract or self-governance agreement, the contract or agreement must specify who will be provided a copy of the closeout report.

F. Content of Rights-of-Way Documents—Subpart D

The issue is on use of 25 CFR 169 in these regulations for IRR's as authority for rights-of-way over Indian Lands. The Federal text is inserted at §§ 170.501–502.

Tribal View

The Tribal Caucus is in general agreement with the Federal Caucus on the minimum content of a right-of-way document. The Tribal Caucus, however, disagrees that the status of the land dictates the content of the right-of-way document and strongly disagrees with the Federal Caucus' reliance upon and reference to 25 CFR 169 (Rights-of-Way Over Indian Lands) in these proposed regulations without appropriate qualifications. This is especially so in cases where it is the Indian tribe itself which seeks to construct a road across its own trust or restricted fee lands.

Part 169 primarily sets out procedures by which third parties, such as railroads, utilities, and state or local governments, obtain rights-of-ways over reservation lands. Many of the requirements of part 169 are not applicable to Indian tribes securing rights-of-way for roads on their own reservations. For example, 25 CFR 169.4 requires that an applicant for a right-of-way apply for permission to survey the land, and in connection with the application, must demonstrate to BIA's satisfaction its good faith and financial responsibility. Part 169 also requires that applicants must also agree to indemnify the United States, the owners and occupants of the land against liability for loss of life, personal injury and property damage occurring because of survey activities caused by the applicant. 25 CFR 169.14 requires an applicant for a right-of-way to make a deposit to cover damages and consideration for acquiring right-of-way at the time of making the application.

By cross-referencing 25 CFR part 169, the proposed regulations do not set out a clear response to the questions posed, but instead generate a series of questions about the extent to which part 169 should apply to the IRR Program. The Tribal Caucus recommends that the content of right-of-way documents be uniform and that no distinction be made in the right-of-way document regardless of whether the right-of-way sought is over trust, restricted fee, or fee simple lands.

Another concern of the Tribal Caucus is that some tribes have federal statutory authority to grant rights-of-way across their reservations without Secretarial approval under part 169. See, *e.g.*, 64 Stat. 442, as amended, 75 Stat. 499 § 2. The Tribal Caucus has proposed edits to a number of questions which acknowledge that some tribes have this authority, without otherwise altering the applicability of part 169 where part 169 is appropriate. The Tribal Caucus recommends that a provision be added to the regulation which makes clear that "nothing in this part is intended to supersede 25 CFR part 169 where part 169 is applicable to the right-of-way at issue."

The Tribal Caucus therefore requests public comment on the following regulatory provisions:

What Must the Rights-of-way Easement Documents Contain at a Minimum?

(a) All rights-of-way documents shall include the following:

(1) Identification of the grantor and grantee;

(2) Legal description of the property acquired for the right-of-way;

(3) Right-of-way plat/map of definite location;

(4) A statement of the term of the right-of-way, whether for a specific term of years, whether it includes a right of renewal, or whether the grant is in perpetuity;

(5) Terms and conditions on the grant of the right-of-way, including but not limited to, other permissible uses of the right-of-way, or specific restrictions on the rights-of-way easements;

(6) Identification of whether the rights-of-way includes the right to construct, and/or re-construct the facility; and

(7) A statement on whether the right-of-way may be transferred or assigned, and the terms and conditions under which a transfer or assignment may occur.

(b) Nothing in this part is intended to supersede the requirements of 25 CFR part 169 where part 169 is applicable to the right-of-way at issue.

(c) A right-of-way document, if covering maintenance, may include an identification of maintenance responsibilities assumed by the grantee or retained by the grantor, and whether such rights convey with any transfer of the rights-of-way.

It is the Tribal Caucus' view that procedures for acquiring rights-of-way over Indian trust lands and Indian lands subject to a restraint against alienation (restricted fee lands) should be the same, and separate regulatory provisions should address procedures to acquire right-of-way interests which traverse fee simple lands which are not subject of a federal restraint against alienation. The Tribal Caucus further believes that the party who must consent to the granting of a right-of-way will also depend upon the status of the land in question. In cases where an Indian tribe has granted a use right on its reservation to an individual Indian by virtue of a land use assignment, the Tribal Caucus believes that acquiring the individual Indian's interest for purposes of a right-of-way must be done in accordance with applicable tribal law and require the written consent of the tribe. The Tribal Caucus believes that this course of action is entirely consistent with applicable tribal law regarding such arrangements. The Tribal and Federal Caucuses also disagree on the applicability of part 169 to all rights-of-way over Indian allotted lands. It is the Tribal Caucus' view that other federal laws may apply and that the regulation should simply reflect that part 169 "or such other federal law" as may apply to the allotment at issue. As noted above, part 169 primarily addresses the procedures which third parties acquire right-of-way interests over Indian lands. If the regulations are to govern a tribe's administration of the IRR Program, the regulation must be drafted to accommodate both BIA and tribal administration of the program, and not be focused solely on BIA.

The Tribal Caucus recommends and requests public comment on the following regulatory provisions:

Who Grants a Right-of-way on Indian Trust or Restricted Fee Lands?

The tribe must consent in writing to the granting of a right-of-way on any land title to which is held by the tribe or in which the tribe holds a beneficial interest. Where an individual Indian has an interest in tribal land by virtue of a land use assignment, acquisition of the individual Indian's interest for purposes of a right-of-way shall be done in accord with applicable tribal law, and require the written consent of the tribe. Where an individual Indian holds an allotment in trust or subject to a restraint against alienation, acquisition of a right-of-way over such allotment must be made in accordance with 25 CFR 169, or such other federal law as may apply to the allotment at issue.

Federal View

With respect to questions affecting rights-of-way over Indian lands, the existing regulations covered in 25 CFR 169 are adequate. It is the Federal view that any issues beyond the scope of the existing 25 CFR 169 are properly dealt with in a future revision of part 169 and are inappropriate for inclusion in this rule or for public comment.

The Federal proposal is for two additional questions that reference 25 CFR 169 and reflect the minimum information an easement document must contain. They are as follows:

What Must a Right-of-way Easement Document Contain at a Minimum?

(a) For rights-of-way across Indian trust and restricted lands, those documents required by 25 CFR 169 must be submitted; and

(b) For lands other than trust or restricted, the following information must be submitted:

(1) Identification of the grantor and grantee;

(2) A legal description of the property acquired for the right-of-way;

(3) A right-of-way plat/map of definite location;

(4) A statement of the term of the right-of-way, whether for a specific term of years, whether it includes a right of renewal, or whether the grant is in perpetuity;

(5) Terms and conditions on the grant of the right-of-way, including but not limited to, other permissible uses of the right-of-way, or specific restrictions on the rights-of-way easements;

(6) Identification of whether the rights-of-way includes the right to construct, and/or re-construct the facility; and

(7) A statement on whether the right-of-way may be transferred or assigned and the terms and conditions under which a transfer or assignment may occur.

(c) If a rights-of-way document covers maintenance it may include an identification of maintenance responsibilities assumed by the grantee or retained by the grantor and whether such rights convey with any transfer of the rights-of-way.

How Are Rights-of-Way Granted on Indian Trust or Restricted Fee Lands?

Grants of right-of-way must be made under the provisions of 25 CFR 169.

G. Self-Governance Compacts—Subpart E

This issue is whether under the ISDEAA tribes may assume only individual IRR projects or all IRR projects that are not inherently Federal functions. The Federal text is inserted at §§ 170.633–170.634.

Tribal View

The Federal Caucus approach appears to be that Indian tribes may only assume individual IRR projects. It is the Tribal Caucus' position that this approach is inconsistent with TEA–21 or Public Law 93–638, as amended, and limits the opportunity for tribes to administer entire IRR construction programs under a self-governance agreement.

TEA–21 specifically includes language that accommodates the ability of an Indian tribe to assume under a self-governance agreement all IRR Program activities that are not inherently federal functions:

(3) Contracts and Agreements with Indian tribes—

(A) *In General.*—Notwithstanding any other provision of law or interagency agreement, program guideline, manual, or policy directive, *all funds made available under this title* for Indian reservation roads and for highway bridges located on Indian reservation roads to pay *for the cost of programs, services, functions, and activities, or portions thereof,* that are specifically or functionally related to the cost of planning, research, engineering, and construction of any highway, road, bridge, parkway, or transit facility that provides access to or is located within the reservation or community of an Indian tribe *shall be made available,* upon request of the Indian tribal government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction *in accordance with the Indian Self-Determination and Education Assistance Act.*

(B) *Exclusion of Agency Participation.*—Funds for programs, services, functions, and activities, or portions thereof, *including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies,* shall be paid in accordance with subparagraph (A) without regard to the organizational level at which the Department of the Interior that has previously carried out such programs, services, functions, or activities. 23 U.S.C. 202(d)(3). [Emphasis added.]

The Tribal Caucus position is that these part 170 regulations should contain provisions that both recognize and appropriately accommodate the ability of Indian tribes to assume under a self-governance agreement all IRR Program activities that are not inherently federal functions.

Federal View

Section 1000.240 of 25 CFR specifies that the IRR construction program including projects and activities are subject to 25 CFR 1000, subpart K and that these regulations should reference subpart K. Sections 1000.87 and 1000.243 require that the agreement specify in writing the services, functions, and responsibilities to be assumed by the tribe/consortium and those retained by the Secretary. Since an FHWA-approved IRR TIP is the document approving the use of IRR Program funds for projects and activities, it is appropriate that each project, by activity performed by the tribe/consortium, be listed separately in the agreement in sufficient detail to adequately describe the work or through attachment of the IRR TIP and Control Schedule.

The Federal proposal is as follows:

What IRR Programs, Functions, Services, and Activities Are Subject to the Construction Regulations Set Forth in Subpart K of 25 CFR Part 1000?

All IRR design and construction projects and activities, whether included separately or under a program in the agreement, are subject to the construction regulations set forth in subpart K of 25 CFR part 1000.

How Are IRR Program Projects and Activities Included in the Self-governance Agreement?

IRR Program projects and activities are included in the self-governance agreement as specific line items for each project or activity with sufficient detail to adequately describe the work as included in FHWA-approved IRR TIP and Control Schedule. Also, each agreement must include all other information required under 25 CFR 1000, subpart K.

H. Content of Stewardship Agreements—Subpart F

The issues are whether a tribe may enter into a Stewardship Agreement with FHWA directly and what a Stewardship Agreement must contain. The Federal text is inserted at §§ 170.701–170.705.

Tribal View

The Tribal Caucus agrees with the Federal Caucus that a Stewardship Agreement is an agreement between FHWA and the BIA Regional Office for assumption of FHWA's responsibilities for approval of Plans, Specifications & Estimates (PS&E). It was not the intent of the Tribal Caucus, however, that by agreeing to this definition, an Indian tribe would be precluded from entering into a Stewardship Agreement directly with FHWA and incorporate such agreement into its self-determination contract or self-governance agreement. Alternatively, a tribe without a Stewardship Agreement can assume authority to review and approve PS&E packages under a self-determination contract or self-governance agreement. There was no consensus on the mechanism by which an Indian tribe could assume PS&E approval when such authority had been delegated by FHWA to BIA. The Tribal Caucus recognizes the authority of Indian tribes to develop their own policies and procedures provided that such policies and procedures are consistent with applicable Federal requirements.

The tribal recommendation is to revise the proposed regulation to simply list the content of the Stewardship Agreement without identifying whether a particular activity is performed by BIA or a tribe and to require that the work to be performed will comply with "applicable requirements" (Federal or tribal) rather than stating that the work must meet "prescribed policies and procedures of BIA and FHWA." To achieve this result, the Tribal Caucus recommends revising the proposed regulation to read as follows:

What Must Be Included in an IRR Program Stewardship Agreement?

An IRR Program Stewardship Agreement must include:

(a) Description of the planning, design, construction, and maintenance activities developed to ensure work meets applicable requirements;

(b) Assumption of review and approval of PS&Es developed for Indian Reservation Road (IRR) construction projects and project monitoring; and

(c) The standards which will be implemented in accordance with these regulations.

Nothing in the Stewardship Agreement shall be construed to diminish or effect the rights, privileges and responsibilities of Indian tribes or tribal organizations to administer IRR programs under a self-determination contract or self-governance agreement, or to incorporate these IRR Program activities into such a contract or agreement.

Federal View

23 U.S.C. 204(j) provides that projects selected by tribes from the TIP shall be subject to the approval of both the Secretary and the Secretary of Transportation. This includes approval of the plans, specifications, and estimates. 23 U.S.C. 106 allows the Secretary of Transportation to enter into agreements with public authorities that address assumption of some of the Secretary's responsibilities. 23 U.S.C. 302 requires public authorities that participate in the highway program have adequate powers and be suitably equipped and organized to carry out, to the satisfaction of the Secretary, the duties required in Title 23. Prior to TEA–21, this assumption was covered in 23 U.S.C. 117, certification acceptance. Certification acceptance agreements included:

(1) Identification of which project approvals were delegated to BIA;

(2) Identification of Federal requirements that had to be adhered to in BIA's administration of these project authorities and handling of exceptions; and,

(3) BIA processes for providing the internal management of these authorities in lieu of Federal involvement.

FHWA has developed policy on stewardship and program oversight instead of issuing regulations. Any such agreements must be consistent with this policy. Hence, all such agreements will require FHWA review and approval because they deal with FHWA responsibilities.

The Federal proposal is as follows:

What Is a IRR Program Stewardship Agreement?

It is an agreement between FHWA and BIA Division of Transportation for assuming FHWA's responsibilities for planning, design, and construction within the IRR Program.

What Is a BIA Regional IRR Program Stewardship Agreement?

It is an agreement between FHWA, BIA Division of Transportation and a BIA regional office for assuming FHWA's responsibilities of the planning, design, and construction within the IRR Program.

Can a Self-Determination Contract or Self-Governance Agreement Serve as an IRR Program Stewardship Agreement?

No. A tribe must use a tribal IRR Program stewardship agreement. It is a separate agreement which details the tribe's assuming a portion of FHWA's and/or BIA's responsibilities for planning, design, and construction within the IRR Program.

What Must Be Included in a BIA Regional or Tribal IRR Program Stewardship Agreement?

At a minimum, these agreements must include:

(a) BIA regional roads or tribal transportation department organization chart;

(b) An IRR project development and construction flow chart;

(c) Description of the transportation planning, design, procurement, project administration, and construction processes to be followed;

(d) IRR design and construction standards to be used in accordance with this part;

(e) List of roles and responsibilities to be assumed;

(f) Provisions and process for obtaining the Secretary's health and safety reviews of the PS&E; and

(g) Provisions and processes for obtaining the facility owner's review of the PS&E.

What Is the Process for Obtaining the Facility Owner's Review of the PS&E?

The process is as follows:

(a) BIA region or tribe prepares and submits an IRR Program stewardship agreement to BIA Division of Transportation. BIA Division of Transportation forwards a copy to FHWA;

(b) BIA and FHWA visit the tribe or BIA region and evaluate the capabilities to assume the proposed IRR Program responsibilities;

(c) FHWA, in writing, advises the tribe or BIA region of any applicable changes to the proposed stewardship agreement; and

(d) After all changes are made, the revised agreement is approved by FHWA or its designee.

I. Arbitration Provisions—Subpart H

The disagreement in this section is about what alternative dispute resolution methods are available to the Federal government and tribes and how alternative dispute resolution options may be used. The Federal question and answer is inserted at §§ 170.941 through 170.952.

Tribal View

The ADR approach chosen must be "appropriate" for the situation and must not derogate the principals and authorities of the ISDEAA and its implementing regulations, and recognizes that ADR may be appropriate and is authorized in the construction context under the ADR Act; 25 U.S.C. 450j(a)(3), 450j(m)(3)(E), 450l (model contract section (b)(12)), 450m–1(d), 458cc(e)(1), 458cc(l); 41 U.S.C. 605(d)–(e); 25 CFR 900.122(b)(5), 900.131(b)(11)(iv), 900.217; 25 CFR 1000.84, 1000.252, 1000.422, 1000.424; and 48 CFR 33.214.

The Tribal Caucus would support clarification of this matter as follows:

Are Alternative Dispute Resolution Procedures Available to Self-Determination and Self-Governance Tribes and the Secretary to Resolve Disputes Between Them in Performing IRR Public Law 93–638 Activities?

Indian tribes and tribal organizations are entitled, at their option, to use the appropriate dispute resolution techniques or procedures set out in:

(a) The ADR Act, 5 U.S.C. 571–583;

(b) The Contract Disputes Act, 41 U.S.C. 601–613; and

(c) The Indian Self-Determination and Education Assistance Act (including the mediation and alternative dispute resolution options listed in 25 U.S.C. 450l (model contract section (b)(12)) and the implementing regulations.

Federal View

This issue is about what alternative dispute resolution methods are available and how alternative dispute resolution options may be used. The Federal view allows arbitration as a different dispute resolution option as long as it does not conflict with existing regulations. The ADR Act requires the consent of both parties for any ADR technique to be used. In addition, it is the Federal Caucus' view that the Contract Disputes Act of 1978, 41 U.S.C. 601, as amended, Public Law 95–563, applies to Titles I and IV construction activities. The proposed regulation drafted by the Committee would improperly change those regulations. The Federal Caucus adds "for non-construction activities" to (c) to make clear that the model contract section is inapplicable to construction activities. The Federal Caucus' proposed question and answer is as follows:

Are Alternative Dispute Resolution Procedures Available to Self-Determination and Self-Governance Tribes and the Secretary to Resolve Disputes Between Them in Performing IRR Public Law 93–638 Activities?

Yes. Except as required in 25 CFR part 900 and part 1000, tribes and tribal organizations are entitled to use the appropriate dispute resolution techniques or procedures set out in:

(a) The ADR Act, 5 U.S.C. 571–583;

(b) The Contract Disputes Act, 41 U.S.C. 601–613; and

(c) The Indian Self-Determination and Education Assistance Act (including the mediation and alternative dispute resolution options listed in 25 U.S.C. 450l (model contract section (b)(12)) and the implementing regulations for non-construction activities.

The Department considers the following issues to be outside the scope

of this rulemaking. However, because the Committee discussed these issues and attempted to come to consensus on them, they are presented to give a full picture of the Committee's deliberations.

J. Advance Funding—Subpart E

The issue is under what circumstances advance funding is available under self-determination contracts and self-governance agreements to tribes performing IRR construction and construction-engineering activities under these contracts and agreements. The Federal text is inserted at §§ 170.614–618.

Tribal View

The full Committee reached agreement regarding the advance payment of IRR funds to Indian tribal governments performing IRR non-construction activities under self-determination contracts and self-governance agreements. However, the Tribal Caucus and the Federal Caucus disagreed over the wording of proposed regulations for the advance payment of IRR funds to tribal governments performing IRR construction and construction-engineering activities under these contracts and agreements.

In the Tribal Caucus' view, the Federal Caucus' proposed advance funding provisions would impose restrictions on the awarding of advance payments that are unnecessary as a matter of law and unwise as a matter of policy. For the reasons explained below, the Tribal Caucus proposes that the following two "advance funding" provisions also be adopted when the full Committee develops the final rule:

May an Indian Tribe or Consortia Receive Advance Payment of IRR Funds Under a Self-Determination Contract for Construction Activities?

Yes. BIA and the tribes must negotiate a schedule of advance payments as part of the terms of a self-determination contract that includes construction or constructing engineering activities. Tribes may receive advance payments of IRR funds in annual, semiannual or quarterly installments in accordance with 25 CFR 900.132. Indian tribes may not expend funds advanced under this section for construction and construction engineering on an IRR project prior to approval of a PS&E for the project.

May an Indian Tribe or Consortia Receive Advance Payments of IRR Funds Under a Self-Governance Agreement?

Yes. Advance payments must be made to an Indian tribe in annual or semi-annual installments at the discretion of the tribe. Advance payments shall be made to the tribe in the amount established by the IRR funding formula. Within 21 days after apportionment, BIA shall transfer all IRR funds advanced under this section to the Office of Self-Governance for prompt payment to the tribe or consortia. Indian tribes may not expend funds advanced under this section for IRR activities that are not included on an approved IRR TIP.

At a minimum, the advance payment of IRR funds to Indian tribal governments must conform to the strict mandates of TEA–21 and the ISDEAA and its implementing regulations. Title I of the ISDEAA generally provides that "[u]pon the approval of the self-determination contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled." 25 U.S.C. 450j–1(f); see also 25 CFR 900.19. Title IV of the ISDEAA requires that self-governance compacts and annual funding agreements "shall provide for advance payments to the tribes in the form of annual or semiannual installments at the discretion of the tribes." 25 U.S.C. 458cc(g)(2).

However, the Title I self-determination regulations contain a special advance funding provision for construction contracts which requires that BIA provide advance funding to tribes performing construction contracts on at least a quarterly basis. See 25 CFR 900.132. In other words, quarterly advance payments are the minimum amounts authorized by law for self-determination construction contracts, but BIA and contracting tribes may negotiate an advance payment schedule on terms even more favorable to the tribes, based on the factors listed in the regulation.

It makes sense to transfer scarce IRR funds into an Indian tribe's IRR Program account as soon as possible so that the money can begin drawing interest and the tribe can better manage IRR planning, design, construction, and maintenance activities. These IRR regulations should promote sensible economic practices and, wherever possible, maximize the benefits of scarce IRR funding for the Indian people the IRR Program is intended to serve. There are many statutory and accounting protections in place, up to and including the threat of criminal prosecution, which act to prevent tribes from misusing advance payments. Self-determination and self-governance tribes have been receiving lump sum advance payments for years to do everything from running hospitals to operating housing programs. There is nothing special or different about the IRR Program which suggests tribes cannot be trusted to behave appropriately when building or maintaining their IRR road systems.

Throughout these negotiations, the Tribal Caucus has sought to clarify that BIA is authorized—and, in the case of self-governance agreements, required—to make advance payments of IRR funds to Indian tribal governments in annual, semiannual or quarterly installments, at the discretion of the tribe. Therefore, the Tribal Caucus believes that the IRR regulations should authorize, in clear and simple language, the advance payment of IRR funds to Indian tribes on the terms that the tribes themselves propose. These regulations should also clarify that advanced IRR funds must be paid to tribes as soon as possible after the start of the fiscal year.

Federal View

The Federal representatives are aware of the different payment provisions contained in Titles I, II, IV, V, and section 108 of the Indian Self-Determination and Education Assistance Act, as amended. Thus, how and when advance payments are made is based on which type of document (contract, grant, agreement) is used. The Committee reached agreement on an advance payments provision for section 108.

For Title I, the Secretary is given discretion to advance funds for self-determination contracts under 25 CFR 900.132. It is the Federal view that this regulation adequately addresses advance payments for construction and construction engineering activities included in a self-determination contract. In a design/construct self-determination contract, the Federal view is that advance payments for construction and construction engineering are based on progress and need as well as the negotiated payment schedule. Advancing funds beyond that permitted in 25 CFR 900.132 is neither required nor a prudent administration of IRR Program funds. Advancing funds for construction and construction engineering prior to PS&E approval would create problems if the design of the project is never completed and construction does not begin.

Congress, in Title V provisions (which applies only to the Indian Health Service), now authorizes advance payments for construction not only based on need, but also based on expenditures.

For Title IV, the Federal view is to use the statutory language to address advance payments and use a separate provision for adjusting for additional funds. In addition, the Federal proposal is consistent with 23 U.S.C. 204(j). Also, 25 CFR 1000.104 already contains procedures for adjusting funding amounts negotiated in an agreement

during the year it is in effect. The Federal representatives see no reason to develop an alternative process.

The Federal proposal is as follows:

May the Secretary Advance Payments of IRR Funds to a Tribe Under a Self-Determination Contract for Construction Activities?

Yes. The Secretary and the tribe must negotiate a schedule of advance payments as part of the term of a self-determination contract in accordance with 25 CFR 900.132.

What Is a Design/Construct IRR Self-Determination Contract?

It is a self-determination contract which includes both the design and construction of one or more IRR projects.

May the Secretary Advance Payments of IRR Funds to a Tribe Under a Self-Determination Design/Construct Contract for Construction Activities?

Yes. When making at least quarterly advance payments for construction and construction engineering, the Secretary includes IRR Program funds based on progress, need, and the payment schedule negotiated under 25 CFR 900.132.

May the Secretary Advance Payments of IRR Funds to a Tribe or Consortia Under a Self-Governance Agreement?

Yes. Advance payments must be made to the tribes/consortia in the form of annual or semiannual installments as indicated in the agreement.

How Are Advance Payments Made When Additional IRR Funds Are Made Available After Execution of the Self-Governance Agreement?

When additional IRR funds are available, following the procedures set forth in 25 CFR 1000.104, tribes can request to use the additional funds for approved IRR activities or projects contained in a subsequent year of FHWA-approved IRR TIP, and immediately have those funds added to the agreement.

K. Contractibility and Compactibility of TEA–21 Programs—Subpart E

The disagreements under contractibility and compactibility involve use of the "up to 6%" management funds. The Federal questions and answers are inserted at §§ 170.600 through 170.636.

Tribal View

The Tribal and Federal Caucuses strongly disagree on several issues related to the contractibility/compactibility of TEA–21 programs and funds: (1) Exactly what functions are contractible/compactible by tribes, and, generally, how is contractibility/compactibility under the ISDEAA to be determined? (2) Are programs and funds associated with the "6 percent funds" contractible/compactible under the ISDEAA? (3) May BIA reserve, up front, 6 percent of the Federal Highway Trust Fund for "non-contractible" administrative functions and activities, thereby rendering such funds automatically unavailable to the tribes? (4) May the 6 percent administrative funds be utilized to fund IRR Program Management Systems and public hearings for IRR planning and projects?

In connection with the first three of these questions the tribal team proposed a series of nine questions-and-answers as follows:

What IRR Program Functions May Be Assumed by an Indian Tribe in a Self-Determination or Self-Governance Agreement?

At the option of a tribe, all IRR functions, including those associated with BIA's 6 percent administrative funds, other than inherent federal functions, may be included in a self-determination contract or self-governance agreement.

What Is an Inherently Federal Function?

An inherently Federal function is a Federal function that cannot legally be transferred to a self-determination and self-governance tribe.

How Will BIA and a Tribe Determine Which IRR Program Functions May Be Included in a Self-Determination or Self-Governance Agreement?

(a) At the request of a tribe, BIA and the tribe will jointly identify all of the IRR Program functions that are part of or support the program, function, service or activity, or portion thereof, which a tribe might wish to assume. BIA shall also identify an estimated cost to accompany each of the identified functions.

(b) BIA shall provide the requested information to the tribe in writing no later than 30 days after receipt of the request.

(c) BIA shall also identify which of these functions it believes are inherently federal functions, with the rationale to support its conclusion.

(d) BIA will meet with and negotiate with the tribe the cost of the identified assumable functions. BIA and the tribe shall also seek to reach agreement about which functions are appropriately considered inherently federal.

(e) BIA shall maintain and update a list of all IRR Program functions which Indian tribes assume under Title I or IV of Public Law 93–638, as amended. BIA shall distribute this list to each of the BIA Regional Offices and it shall be available for review by an interested tribe.

What Happens if a Tribe Disagrees With BIA That a Specific Function Is Inherently Federal?

Disagreement over what is an inherent federal function shall be dealt with in accordance with the dispute resolution processes set out in 25 CFR 900.150 *et seq.* or self-determination contracts and 25 CFR 1000.95 and 1000.420 *et seq.* for self-governance agreements.

What IRR Funds Must Be Transferred to a Tribe Under a Self-Determination Contract or Self-Governance Agreement?

At the option of the tribe, the Secretary must provide a tribe all funds, including an appropriate portion of the up to 6 percent administrative funds that BIA is authorized to retain under TEA–21, that are specifically or functionally related to BIA providing IRR functions to the tribe without regard to the organizational level within BIA where such functions are carried out. The only funds that the Secretary is not obligated to transfer to a tribe are residual funds.

What Are BIA Residual Funds?

BIA residual funds are the funds necessary to carry out BIA's inherent Federal functions.

How Is BIA's Residual Determined?

(a) Generally, residuals will be determined through a process that is consistent with the overall process used by BIA and in consultation with tribes. Residual information will consist of residual functions performed by BIA, a brief justification why the function is not contractible or compactible, and the estimated funding level for each residual function. Each Regional Office and the Central Office will compile a single document for distribution each year that contains all the residual information of that respective office. The development of the residual information will be based on the following principles. BIA will:

(1) Develop uniform residual information to be used to negotiate residuals;

(2) Ensure functional consistency throughout BIA in the determination of residuals;

(3) Make the determination of residuals based upon the functions actually being performed by BIA without regard to the organizational level to which the functions are being performed;

(4) Annually consult with tribes on a region-by-region basis as requested by tribes/consortia; and

(5) Notify tribal leaders each year by March 1 of the availability of residual information.

(b) BIA shall use the residual information determined under subparagraph (a) as the basis for negotiating with individual tribes.

(c) If BIA and a participating tribe/consortium disagree over the content of residual functions or amounts, a participating tribe/consortium may request the Deputy Commissioner to reconsider residual levels for particular programs.

(1) The Deputy Commissioner must make a written determination on the request within 30 days of receiving it;

(2) The tribe/consortium may appeal the Deputy Commissioner's determination to the Assistant Secretary—Indian Affairs;

(3) The decision by the Assistant Secretary Indian Affairs is final for the Department.

(d) Information on residual functions may be amended if IRR Program functions are added or deleted, if statutory or final judicial determinations mandate, or if the Deputy Commissioner makes a determination that would alter the residual information or funding amounts.

May a Tribe/Consortium Finalize Negotiation of a Self-Determination Contract and Self-Governance Agreement Pending an Appeal of Residual Functions or Amounts?

Yes. Pending appeal of a residual function or amount, any tribe may decide to include funds in a contract or agreement using the residual information that is being appealed. The residual information will be subject to later adjustment based on the final determination of a tribe's appeal.

What Happens if a Tribe Disagrees With BIA About the Funding It Is Entitled To Be Paid?

Unless otherwise provided above, disagreements over the amount of funds that must be included in a contract or agreement shall be dealt with in accordance with the dispute resolution processes set out in 25 CFR 900.150 *et seq.* for self-determination contracts and 25 CFR 1000.95 and 1000.420 *et seq.* for self-governance agreements.

The Fiscal Year 1999 Omnibus Consolidated Appropriations Act provides that "*not to exceed* 6 percent of contract authority available to the Bureau of Indian Affairs from the Federal Highway Trust Fund *may be* used to cover the road program management costs of the Bureau * * *." (Emphasis added.) The argument that this language permits BIA to automatically withhold 6 percent of these funds from tribes is flawed. First, the phrase "not to exceed 6 percent" makes it clear that Congress did not intend to grant BIA 6 percent of the funding for its administrative activities. Rather, Congress intended to grant the Bureau the funds that it needed for such activities, up to 6 percent. "Not to exceed 6 percent" implies not a grant of funds to BIA but rather a ceiling on the amount of funds that the agency is permitted to use for road program management costs. In light of the goals and purposes of the ISDEAA, it is logical that Congress would choose to impose a ceiling upon BIA's use of funds, intending that as much funding as possible be available to go directly to the tribes. Finally, the word "may" confirms that Congress had no intention of setting aside these funds exclusively for road program management costs.

Even to the extent that these funds are used for administrative costs, the statute does not even hint at the notion of "non-contractibility." While the Federal Caucus contends that the 6 percent funds are reserved for and by BIA for non-contractible functions, the Omnibus Act imposes and the ISDEAA and TEA–21 permit no such priority. "Road program management costs" are not non-contractible by definition. In light of the fact that 23 U.S.C. 202(d)(3)(B) exists to clarify the fact that BIA administrative costs may be contracted or compacted by tribes, there is no reason to believe that Congress intended to earmark these "up-to-6 percent" funds for non-contractible activities at all, and it certainly could not have intended to earmark them exclusively for non-contractible activities.

In the end, the most powerful testament to Congress' intent that the "up-to-6 percent" administrative funds be available to tribes on the same basis as all other funds is the statement of Senator John McCain, who worked on both the ISDEAA and on TEA–21. On March 10, 1998, Senator McCain testified regarding an amendment to "ISTEA" (the former name for TEA–21) that was almost identical to the current Act's modified section 202(d)(3)(A). The purpose of Senator McCain's testimony was to speak out against the possibility that "up to 6 percent of the Indian ISTEA funds will continue to be diverted to pay for a BIA bureaucracy * * * Congress has been trying to curb BIA bureaucracy and support tribal autonomy ever since 1975 when it first enacted the Indian Self-Determination Act, known as Public Law 93–638." Senator McCain further testified as follows:

> In the 1994 amendments to Public Law 93–638, the Congress intended to apply these authorities to all funds administered by BIA, *including ISTEA funds transferred to BIA from the Department of Transportation for the benefit of Indian roads and bridges.* [However, d]espite our clear references in Committee report and floor language that this was our intent, BIA has refused tribal efforts to fully subject all ISTEA funds to Public Law 93–638. This issue has consumed hundreds of hours of federal-tribal negotiations since 1994 * * *. ISTEA is the last major BIA account which BIA continues to protect as immune from the reach of tribal requests under Public Law 93–638 to obtain a direct transfer of the full tribal share of these funds * * *. *[W]e in Congress intended the 1994 amendments to Public Law 93–638 to apply to ISTEA funds transferred to BIA from the Department of Transportation.* They were to be treated like all other funds administered by BIA—if a tribe wanted to obtain its full share of funds directly, in a flexible and accountable contract or compact, it could do so. [Emphasis added.]

Can the "up-to-6 percent" administrative funds be used to fund IRR Program Management Systems and public hearings for IRR planning and projects? Two points of contention that have arisen serve to underscore the disagreement on these issues. Specifically, the Tribal and Federal Caucuses disagree as to whether the 6 percent funds may be used to fund IRR Program Management Systems and public hearings for IRR planning and projects. It is the tribal position that both of these activities are the types of administrative functions for which the use of 6 percent administrative funds by a contracting or compacting tribe is perfectly appropriate.

In order to implement its views on these issues the Tribal Caucus proposed the following provisions:

How Are Public Hearings for IRR Planning and Projects Funded?

Transportation planning public hearings are funded by 2 percent planning or 6 percent administrative funds. Project public hearings are funded by construction funds.

How Are IRR Program Management Systems Funded?

IRR Program management systems shall be funded out of BIA's 6 percent.

How Will The IRR Management Systems Be Implemented?

A nationwide management system will be maintained and implemented by BIA Division of Transportation using IRR Program management funds. BIA Regional Offices will provide the database information for this nationwide system. Tribes may collect and provide this information in accordance with the terms of a self-determination contract or self-governance agreement.

23 U.S.C. 202(d)(3)(A), as modified by TEA–21, explicitly authorizes contracting and compacting tribes to receive funding for, and carry out, programs "specifically or functionally related to the cost of planning, research, engineering, and construction" that would otherwise be carried out by the Federal Government. Both IRR management systems and public hearings to plan for the implementation of IRR projects are clearly "related to the cost of planning, research, engineering, and construction" under TEA–21.

Section 202(d)(3)(B) specifically clarifies the fact that such funds

are to include those necessary for the carrying-out of administrative functions: "Funds for programs, functions, services, and activities, or portions thereof, including supportive administrative functions that are otherwise contractible * * *. shall be paid in accordance with subparagraph (A) * * *." Both public hearings and management systems are "supportive administrative functions" within the purview of this section.

Neither management systems nor public hearings are precluded from being contracted under the above-noted provisions, which reserve funds for functions that are "otherwise contractible." The regulations for Title I of the ISDEAA define a non-contractible function as one that "includes activities that cannot be lawfully carried out by the contractor." (25 CFR 900.22(e)). Other than illegal activities, such functions are limited to those that are

"inherently Federal"—i.e., either constitutionally non-delegable or necessarily vested in federal employees per the DOI Solicitor's Opinion. Because neither management systems nor public hearings are "inherently Federal," neither activity is inherently non-contractible.

Neither management systems nor public hearings may be defined up front in these regulations as "non-contractible." Rather, their contractibility must be determined on a case-by-case basis. The regulations for Title IV of the ISDEAA definitively institute this requirement:

The Department will decide what functions are * * * inherently Federal on a case-by-case basis after consultation with the Office of the Solicitor. The Solicitor has ruled that inherently Federal functions cannot be defined and must be determined on a case-by-case basis * * *. (65 FR 78690, Dec. 15, 2000).

Finally, so long as these activities are contractible/compactible to tribes, the 6 percent administrative funds are available to tribes for carrying them out. It is clear from the legislative history that Congress intended the "up-to-6 percent administrative funds" transferred from the Department of Transportation to BIA to be wholly available to contracting and compacting tribes. Thus, because neither of the activities in dispute may be defined as "inherently Federal," and because both are legally contractible, tribes are not only legally entitled to pay for them out of the 6 percent administrative funds, but both the ISDEAA and TEA–21 actually mandate that these funds be made available to tribes for that very purpose.

Federal View

The Federal Caucus believes that the issue of program management financing is a policy matter between BIA and FHWA. BIA is an agency within DOI. Unlike other program areas within BIA, BIA's Division of Transportation (BIA DOT) has no general appropriations through DOI for administering the IRR Program. All of BIA DOT's funding for administration of the IRR Program comes from the Highway Trust Fund. BIA DOT's only source of funds to carry out its responsibilities is the "not to exceed 6 percent" of the total funds transferred from FHWA to BIA DOT for program management and oversight. The Federal list of IRR Program management activities is set forth in this section. All of this work is performed by BIA DOT central or regional offices. Costs for this work comes from the "not to exceed 6 percent" funds FHWA transfers to BIA DOT.

By way of background, since fiscal year 1990, BIA annual construction appropriation has provided that "not to exceed 6 percent of the contract authority available to BIA from the Federal Highway Trust Fund may be used to cover the *road program management costs* of the Bureau." (Emphasis added.) On December 28, 1999, in written response to questions presented by the Senate Committee on Indian Affairs, the Assistant Secretary—Indian Affairs stated that this 6 percent limitation applies only to the management and oversight activities associated with non-project functions and that the 6 percent limitation does not apply to project-related costs of the IRR Program. This statement affirmed the longstanding BIA policy to use the 6 percent management and oversight funds to carry out the Federal Government's oversight and trust responsibilities associated with the IRR Program.

Congress has not further defined the term "road program management costs" in the Department of Interior Annual Appropriation Acts. However, in a 1997 survey of state non-project expenditures, FHWA determined that States spent approximately 5.5 percent of their general funds for non project-related program management costs to administer the Federal-aid construction program. Accordingly, BIA has used the 6 percent for non-project related costs in a manner consistent with the states' expenditures. BIA determined that because the States did not charge non-project expenditures to a specific project, the 6 percent road program management costs should similarly be limited to non-project related program management expenditures.

In an opinion to the General Accounting Office dated July 12, 2000, the former Department of the Interior Solicitor concluded that FHWA's and BIA's administrative use of the term "road program management funds" is reasonable. The General Accounting Office concurred in this opinion in a report dated August 14, 2000.

There is also statutory support for this interpretation. Title 23 U.S.C. 202 (d)(3)(B) states that only funds for programs, functions, services or activities or portions thereof, including supportive administrative functions that are otherwise contractible, shall be paid to tribes. The Federal Government has interpreted this provision to mean that all noncontractible activities in the IRR Program have to be funded using either the 6 percent program management funds or project funds. In short, Congress has directed the Secretary to use a percentage of the IRR funds to carry out these program management activities.

It is also important for the integrity and effective administration of the IRR Program that the use of program management funds be consistent throughout the twelve BIA regions. To negotiate a new list administrative responsibilities for each self-determination contract or self-governance agreement is inefficient and generates unnecessary costs to both tribes and

BIA. Moreover, to have a list of noncontractible items is consistent with 25 CFR 1000.243 under which the agreement must specify the services to be provided, the work to be performed, and the responsibilities of the tribe and the Secretary.

BIA has never viewed the 6 percent program management costs as a ceiling to use the entirety of these funds. Clearly, since the DOI Appropriations Act establishes an upper limit of 6 percent, BIA is obligated to make the remaining funds available for construction. It has been the Secretary of Interior's and the Secretary of Transportation's longstanding practice to maximize the amount of IRR funding for construction activities by redistributing the unused portion of the 6 percent funds to projects at the regional level.

Project-Related Management Costs

BIA receives funds for project-related management expenses from the Highway Trust Fund rather than from BIA's annual appropriations for operating Indian programs or for construction. FHWA funds projects based on its approval of a Transportation Improvement Program (TIP). See 23 U.S.C. 204(a)(3). Based on FHWA-approved TIPS, FHWA allocates funds to BIA for IRR Program activities. The applicable statute, 23 U.S.C. 204(b), states that project-related costs are eligible for IRR funding. "Funds available for * * *. Indian reservation roads shall be used by the Secretary * * * to pay for the cost of transportation planning, research, engineering, and construction of the highways, roads, and parkways * * *."

Neither BIA annual road maintenance appropriation nor BIA construction appropriation account may be used for IRR construction. Therefore, BIA has no discretion to use these funds to manage the IRR (Highway Trust Fund) construction program. See *Principles of Federal Appropriations*, Second Edition, Chapter Two, Part B, 1991 WL 645709, "If a specific appropriation

exists for a particular item, then that appropriation must be used and it is improper to charge the more general appropriation."

Finally, the Secretary remains responsible for ensuring that health and safety standards are met on all IRR construction projects. For example, those projects administered by self-governance tribes are subject to the requirements of section 403 (e)(2) of Public Law 93–638, which provides "[i]n all construction projects performed pursuant to this part, the Secretary shall ensure that proper health and safety standards are provided for in the funding agreements." Since the only funds available for IRR projects come from the IRR Program, 25 CFR 1000.256 directs that the Secretary must retain project funds to ensure proper health and safety standards in construction projects.

In addition, 25 CFR 900.131 and 1000.256 outlines additional requirements that the Secretary must perform in order to ensure health and safety, such as approving construction standards and monitoring design and construction. This includes the Secretary's monitoring for health and safety not only during the design phase, but also during actual construction and the review of the construction plans and specifications.

The Federal proposal is as follows:

What IRR Program Functions May Be Assumed by a Tribe in a Self-determination Contract or Self-Governance Agreement?

All IRR functions and activities that are otherwise contractible may be included in a self-determination contract or self-governance agreement. (23 U.S.C. 202(d)(3)(B)).

What IRR Project and Program Functions Are Not Otherwise Contractible?

The following IRR functions or activities are non-contractible:

(a) IRR project-related pre-contracting activities:

(1) Notifying tribes of available funding including the right of first refusal; and

(2) Providing technical assistance.

(b) IRR project-related contracting activities:

(1) Providing technical assistance;

(2) Reviewing all scopes of work (25 CFR 900.122);

(3) Evaluating proposals and making declination decisions, if warranted;

(4) Performing declination activities;

(5) Negotiating and entering into contracts or agreements with state, tribal, and local governments and other Federal agencies;

(6) Processing progress payments or contract payments;

(7) Approving contract modifications;

(8) Processing claims and disputes with tribal governments; and

(9) Closing out contracts or agreements.

(c) Planning activities:

(1) Reviewing IRR transportation improvement programs developed by tribes or other contractors;

(2) Reviewing IRR long-range transportation plans developed by tribes or other contractors; and

(3) Performing other Federal responsibilities identified in the IRR Transportation Planning Procedures and Guidelines manual.

(d) Environmental and historical preservation activities:

(1) Reviewing and approving all items required for environmental compliance; and

(2) Reviewing and approving all items required for archaeological compliance.

(e) Processing rights-of-way:

(1) Reviewing rights-of-way applications and certifications;

(2) Approving rights-of-way documents;

(3) Processing grants and acquisition of rights-of-way requests for tribal trust and allotted lands under 25 CFR 169;

(4) Responding to information requests;

(5) Filing Affidavit of Completion Forms; and

(6) Performing custodial functions related to storing right-of-way documents.

(f) Conducting project development and design under 25 U.S.C. 900.131:

(1) Participating in the plan-in-hand reviews as facility owner;

(2) Reviewing and/or approving plans, specifications, and cost estimates (PS&E's) for health and safety assurance as facility owner;

(3) Reviewing PS&E's to assure compliance with all other Federal laws; and

(4) Reviewing PS&E's to assure compliance with or exceeding Federal standards for IRR design and construction.

(g) Construction:

(1) Making application for clean air/clean water permits as facility owner;

(2) Ensuring that all required state/tribal/Federal permits are obtained;

(3) Performing quality assurance activities;

(4) Conducting value engineering activities as facility owner;

(5) Negotiating with contractors on behalf of Federal Government;

(6) Approving contract modifications/change orders;

(7) Conducting periodic site visits;

(8) Performing all Federal Government required project-related activities contained in the contract documents and required by 25 CFR parts 900 and 1000;

(9) Conducting activities to assure compliance with safety plans as ■ jurisdictional responsibility (hazardous materials, traffic control, OSHA, etc.);

(10) Participating in final inspection and acceptance of project documents (as-built drawings) as facility owner; and

(11) Reviewing project closeout activities and reports.

(h) Other activities:

(1) Performing other non-contractible required IRR project activities contained in this part, part 900 and part 1000; and

(2) Other Title 23 non-project-related management activities.

(i) BIA Division of Transportation program management:

(1) Developing budget on needs for the IRR Program;

(2) Developing legislative proposals;

(3) Coordinating legislative activities;

(4) Developing and issuing regulations;

(5) Developing and issuing IRR planning, design, and construction standards;

(6) Developing/revising interagency agreements;

(7) Developing and approving IRR stewardship agreements in conjunction with FHWA;

(8) Developing annual IRR obligation and IRR Program accomplishments reports;

(9) Developing reports on IRR project expenditures and performance measures for the Government Performance and Results Act (GPRA);

(10) Responding to/maintaining data for congressional inquiries;

(11) Developing and maintaining funding formula and its database;

(12) Allocating IRR Program and other transportation funding;

(13) Providing technical assistance to tribe/tribal organizations/agencies/regions;

(14) Providing national program leadership for: National Scenic Byways Program, Public Lands Highways Discretionary Program, Transportation Enhancement Program, Tribal Technical Assistance Program, Recreational Travel and Tourism, Transit Program, ERFO Program, Presidential initiatives (Millennium Trails, Lewis & Clark, Western Tourism Policy Group);

(15) Participating in and supporting tribal transportation association meetings such as the Intertribal Transportation Association regional and national meetings;

(16) Coordinating with and monitor Tribal Technical Assistance Program centers;

(17) Planning, coordinating, and conducting BIA/tribal training;

(18) Developing information management systems to support consistency in data format, use, etc., with the Secretary of Transportation for the IRR Program;

(19) Participating in special transportation related workgroups, special projects, task forces and meetings as requested by tribes;

(20) Participating in national transportation organizations, such as the Western Association of State Highway and Transportation Officials, American Association of State Highway and Transportation Officials, National Association of County Engineers, and Transportation Research Board;

(21) Participating in and supporting FHWA Coordinated Technology Improvement program;

(22) Participating in national and regional IRR Program meetings;

(23) Consulting with tribes on non-project related IRR Program issues;

(24) Participating in IRR Program, process, and product reviews;

(25) Developing and approve national indefinite quantity service contracts;

(26) Assisting and supporting the IRR Coordinating Committee;

(27) Processing IRR Bridge program projects and other discretionary funding applications or proposals from tribes;

(28) Coordinating with FHWA;

(29) Performing stewardship of the IRR Program;

(30) Performing oversight of the IRR Program and its funded activities; and

(31) Performing any other non-contractible IRR Program activity included in this part.

(j) BIA DOT Planning:

(1) Maintaining the official IRR inventory;

(2) Reviewing long-range transportation plans;

(3) Reviewing and approving IRR transportation improvement programs;

(4) Maintaining nationwide inventory of IRR strip and atlas maps;

(5) Coordinating with tribal/state/regional/local governments;

(6) Developing and issuing procedures for management systems;

(7) Distributing approved IRR transportation improvement programs to BIA regions;

(8) Coordinating with other Federal agencies as applicable;

(9) Coordinating and processing the funding and repair of damaged Indian reservation roads with FHWA;

(10) Calculating and distributing IRR transportation planning and Atlas mapping funds to BIA regions;

(11) Reprogramming unused IRR transportation planning and Atlas mapping funds at the end of the fiscal year;

(12) Monitoring the nationwide obligation of IRR transportation planning and Atlas mapping funds;

(13) Providing technical assistance and training to BIA regions and tribes;

(14) Approving Atlas maps;

(15) Reviewing IRR inventory information for quality assurance; and

(16) Advising BIA regions and tribes of transportation funding opportunities.

(k) BIA DOT engineering:

(1) Participating in the development of design/construction standards with FHWA;

(2) Developing and approving design/construction/maintenance standards;

(3) Conducting IRR Program/product reviews; and

(4) Developing and issuing criteria for pavement and congestion management systems.

(*l*) BIA DOT responsibilities for bridges:

(1) Maintaining BIA National Bridge Inventory information/database;

(2) Conducting quality assurance of the bridge inspection program;

(3) Reviewing and processing IRR Bridge program applications;

(4) Participating in second level review of IRR bridge PS&E; and

(5) Developing criteria for bridge management systems.

(m) BIA DOT responsibilities to perform other non-contractible required IRR Program activities contained in this part;

(n) BIA regional offices program management:

(1) Designating IRR system roads;

(2) Notifying tribes of available funding;

(3) Developing state IRR transportation improvement programs;

(4) Providing FHWA-approved IRR transportation improvement programs to tribes;

(5) Providing technical assistance to tribes/tribal organizations/agencies;

(6) Funding common services as provided as part of the region/agency/BIA Division of Transportation IRR costs;

(7) Processing and investigating non-project related tort claims;

(8) Preparing budgets for BIA regional and agency IRR Program activities;

(9) Developing/revising interagency agreements;

(10) Developing control schedules/Transportation Improvement Programs;

(11) Developing regional IRR stewardship agreements;

(12) Developing quarterly/annual IRR obligation and program accomplishments reports;

(13) Developing reports on IRR project expenditures and performance measures for Government Performance and Results Act (GPRA);

(14) Responding to/maintaining data for congressional inquiries;

(15) Participating in Indian transportation association meetings such as Intertribal Transportation Association regional and national meetings;

(16) Participating in Indian Local Technical Assistance Program (LTAP) meetings and workshops;

(17) Participating in BIA/tribal training development (highway safety, work zone safety, etc.);

(18) Participating in special workgroups, task forces, and meetings as requested by tribes (tribal members and BIA region/agency personnel);

(19) Participating in national transportation organizations meetings and workshops;

(20) Reviewing Coordinated Technology Improvement program project proposals;

(21) Consulting with tribal governments on non-project related program issues;

(22) Funding costs for common services as provided as part of BIA IRR region/agency/contracting support costs;

(23) Reviewing and approving IRR Atlas maps;

(24) Processing Freedom of Information Act (FOIA) requests;

(25) Monitoring the obligation and expenditure of all IRR Program funds allocated to BIA region;

(26) Performing activities related the application for ERFO funds, administration, and oversight of such funds; and

(27) Participating in IRR Program, process, and product reviews.

(o) BIA DOT regional offices planning:

(1) Coordinating with tribal/state/regional/local government;

(2) Coordinating and processing the funding and repair of damaged Indian reservation roads with tribes;

(3) Reviewing and approving IRR Inventory data;

(4) Maintaining, reviewing, and approving the management systems databases;

(5) Reviewing and approving IRR state transportation improvement programs; and

(6) Performing Federal responsibilities identified in the IRR Transportation Planning Procedures and Guidelines manual.

(p) BIA DOT regional offices engineering:

(1) Approving tribal standards for the IRR Program use;

(2) Developing and implementing new engineering techniques in the IRR Program; and

(3) Providing technical assistance.

(q) BIA DOT regional offices responsibilities for bridges:

(1) Reviewing and processing IRR bridge program applications;

(2) Reviewing and processing IRR bridge inspection reports and information; and

(3) Ensuring the safe use of roads and bridges.

(r) BIA DOT regional offices other responsibilities for performing other non-contractible required IRR Program activities contained in this part.

How Are the IRR Non-Contractible Program and Project Functions Funded?

(a) All non-contractible program functions are funded by IRR Program management and oversight funds; and

(b) All non-contractible project functions are funded by the IRR project construction funds.

May Tribes Include the Cost for Contractible Supportive Administrative Functions in Their Budgets?

Yes. Tribes may use IRR project funds contained in their contracts or annual funding agreements for contractible supportive administrative functions.

How Does BIA Determine the Amount of Funds Needed for Non-Contractible Non-Project Related Functions?

Each fiscal year the Secretary will develop a national and regional BIA IRR Program budgets. Within the first quarter of each fiscal year the Secretary will send a copy of the national IRR budget and BIA regional IRR budget to all tribes.

Are the Unused IRR Program Management Funds Reserved by the Secretary Considered Residual Funds?

No. The unused IRR Program management funds reserved by the Secretary are not considered residual funds.

What Happens to the Unused Portion of IRR Program Management Funds Reserved by the Secretary?

Any unused IRR Program management funds are distributed to BIA regions using the IRR Relative Need Formula and are used for additional construction activities.

Management Systems

It is appropriate for BIA to use IRR Program management funds for developing nationwide management systems because all tribes benefit. Using these funds for developing individual tribal management systems is not appropriate since only one tribe benefits. Data collection for management systems is basically a transportation planning activity and thus should be funded using either the 2 percent IRR tribal transportation planning or IRR construction funds.

The Federal proposal is as follows:

How Are IRR Program Management Systems Funded?

BIA funds IRR Program management systems to develop the nationwide IRR

Program management systems. If a tribe elects not to use the nationwide system, it may develop a tribal management system using the 2 percent IRR tribal transportation planning or IRR construction funds.

How Will the IRR Management Systems Be Implemented?

BIA Division of Transportation (BIA DOT) implements and maintains nationwide IRR management systems using IRR Program management funds. For direct service tribes that chose not to contract, BIA regional offices will provide the database information for these nationwide systems using IRR construction funds. A tribe may collect and must provide this information to the BIA regional office using IRR construction funds or 2 percent IRR tribal transportation planning funds under a self-determination contract or self-governance annual funding agreement.

Public Hearings

Funding for public hearings during project planning processes differs for tribes and for BIA. It is appropriate for tribes to use the 2 percent IRR tribal transportation planning funds or IRR construction funds for public hearings during the project planning process since conducting public hearings for approval of a long-range plan or TIP is part of the transportation planning process. BIA cannot use the 2 percent IRR tribal transportation planning funds, so IRR construction funds are the only funds available for it to use to conduct public hearings. Conducting public hearings during design of construction projects is a project related activity; therefore IRR construction funds should be used to pay for these hearings.

The Federal proposal is as follows:

How Are Public Hearings for IRR Planning and Projects Funded?

Public hearings for IRR planning and projects are funded as follows:

(a) Public hearings for IRR planning:

(1) Public hearings for TIPS and long-range transportation plans conducted by tribes are funded using the 2 percent IRR transportation planning or IRR construction funds; and

(2) Public hearings for the IRR TIP and long-range transportation plans conducted by BIA are funded using IRR construction funds.

(b) Public hearings for IRR projects conducted by either tribes or BIA are funded using IRR construction funds.

L. Availability of Contract Support Funding—Subpart E

The issue is how contract support funds are made available to tribes under self-determination contracts and self-governance agreements. The Federal text is inserted at § 170.635–636.

Tribal View

The Tribal Caucus believes that contract support funding should be made available under self-determination contracts and self-governance agreements in a manner consistent with the ISDEAA. Currently, the Interior Department is required to make contract support funding available for such contracts and agreements in accordance with sections 106(a) and 403 of the ISDEAA. However, the Interior Department has not extended this requirement to IRR Program activities assumed under such contracts and agreements.

The Tribal Caucus proposes the following regulatory provision to clarify that contract support costs funds are to be included for IRR Program activities assumed under self-determination contracts and self-governance agreements.

Are Contract Support Funds Available for IRR Program Activities Performed Under Public Law 93–638 Contracts?

Yes, in accordance with sections 106(a)(3) and 403 of Public Law 93-638 contract support funds are available.

Federal View

It is the position of the Federal Caucus that the issue of contract support funding is not appropriate for inclusion in this rule or for public comment since this is a matter in litigation.

The Federal view is that contract support costs are an eligible item for IRR Program funding and need to be included in the cost estimates submitted by tribes. Thus, contract support costs may be paid from IRR Program funds. Contract support funds are also provided in the Secretary's appropriations. The Secretary's appropriations are not available for DOT's IRR Program, which is a separate appropriation.

The Federal proposal is as follows:

Are Contract Support Funds Provided in Addition to the 2 Percent (2%) IRR Transportation Planning Funds?

Contract support costs are an eligible item out of the tribes' IRR Program funds allocation and need to be included in a tribe's budget.

May Contract Support Costs for IRR Construction Projects Be Paid Out of Department of the Interior or BIA Appropriations?

No.

M. Savings—Subpart E

The issue is whether tribes performing under self-determination contracts or self-governance agreements may keep savings. The Federal text is inserted at § 170.620.

Federal View

The Federal Caucus believes this issue has been resolved by legislation and is therefore not an appropriate area for public comment or inclusion in this rule.

Congress changed the provision in Public Law 93–638 regarding savings in 1998 to read as follows:

"Beginning in fiscal year 1998, and thereafter, where the actual costs of construction projects under self-determination contracts, compacts, or grants, pursuant to Public Law 93–638, 103–413, or 100–297, are less than the estimated costs thereof, use of the resulting excess funds shall be determined by the appropriate Secretary after consultation with the tribes."

Thus, the Federal proposal is as follows:

Can Indian Tribes and Tribal Organizations Performing Under Self-determination Contracts of Self-governance Agreements Keep Savings That Result From Their Administration of IRR Projects or an Entire Tribal IRR Program?

Pursuant to 25 U.S.C. 450e-2, where the actual costs of the contracts or agreements for construction projects are less than the estimated costs, use of the resulting excess funds shall be determined by the Secretary after consultation with the tribes.

Tribal View

The Tribal Caucus' view is that this question and answer improperly limit a tribe's discretion to use savings associated with IRR projects or programs. The Federal Caucus' question and answer are narrowly drafted based on 25 U.S.C. 450e-2, which provides that, for construction projects whose actual costs are less than the estimated costs, the Secretary is to determine how to use the excess funds after consulting with the tribes. There are several problems with the Federal proposal to use this statutory language as the basis for a question-and-answer limiting a tribe's or tribal organization's ability to use savings.

First, this statutory language is focused on construction projects and does not address non-construction IRR activities. Thus, savings from non-construction activities are not subject to the Secretary's discretion as to how they can be used.

Second, this statutory provision was included as a rider to an Interior and Related Agencies Appropriation Act in 1998 and thus applies only to funds appropriated under that Act, not to funds appropriated under TEA–21 or under the Department of Transportation's appropriations.

Third, the legislative history discussing this provision clarifies that it was intended to apply to funds appropriated by Congress for school construction activities, all of which are

appropriated under the Department of the Interior's appropriations.

Fourth, Title I and Title IV of the ISDEAA contain provisions that provide tribes and tribal organizations with considerably more flexibility and control over decisions associated with savings resulting from those agreements than over the reading of 25 U.S.C. 450e-2 that the Federal Caucus has incorporated into its proposed question and answer. (See, for example, 25 U.S.C. 450j(a)(4); 450l(c)(§ 1(d)(9)). With respect to Title IV self-governance agreements, tribes may opt, in accordance with 25 U.S.C. 458cc(l), to incorporate any provision of Title I in a self-governance agreement, including provisions that allow flexibility associated with savings.

Finally, and most importantly, in the recently published regulations implementing Title IV of the ISDEAA (25 CFR part 1000), the Department of the Interior enacted the following regulation regarding savings:

Section 1000.400 Can a Tribe/Consortium Retain Savings From Programs?

Yes. For BIA programs, the tribe/consortium may retain savings for each fiscal year during which an AFA is in effect. A tribe/consortium must use any savings that it realizes under an AFA, including a construction contract:

(a) To provide additional services or benefits under the AFA; or

(b) As carryover; and

(c) For purposes of this subpart only, programs administered by BIA using appropriations made to other Federal agencies, such as the Department of Transportation, will be treated in accordance with paragraph (b) of this section.

The Tribal Caucus believes that the Department must implement a similarly flexible provision relating to savings in these regulations. Accordingly, the Tribal Caucus has proposed the following two provisions to address this issue:

Can an Indian Tribe or Tribal Organization Performing Under a Self-determination Contract or Self-governance Agreement Keep Savings That Result From its Administration of IRR Project(s) or an IRR Program?

Yes. An Indian tribe or tribal organization may retain savings for each fiscal year for which a contract or agreement is in effect. A tribe or tribal organization must use any savings that it realizes under a contract or agreement, including a construction contract or agreement:

(a) To provide additional services or benefits under the contract or agreement; or

(b) As carryover.

Can an Indian Tribe or Tribal Organization Performing Under a Self-determination Contract or Self-governance Agreement Keep Profits Resulting From the Administration of IRR Project(s) or an Entire Tribal IRR Program?

Yes. Indian tribes and tribal organizations may use without restriction profits resulting from an IRR project or program performed under a fixed-price self-determination contract or a self-governance agreement.

IV. Procedural Requirements

A. Regulatory Planning and Review (Executive Order 12866)

This proposed rule is a significant regulatory action because it will have an annual effect of $100 million or more on the economy. Funding for the IRR Program in fiscal year 2001 is $275 million and is expected to increase in future years. The Department of Transportation, FHWA, allocates funds to the Department of the Interior, Bureau of Indian Affairs. The Bureau of Indian Affairs distributes the funds to each of its 12 regions based on the existing funding formula for the benefit of tribes in each region. The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866.

This proposed rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. This rule sets forth policies and guidelines under which Federal Lands Highway Administration, Bureau of Indian Affairs, and tribes that contract with the Bureau of Indian Affairs conduct the IRR Program. It also proposes a funding methodology for distributing IRR Program funds.

It covers current practices of DOT and DOI. DOT representatives have participated in this negotiated rulemaking, concur in all consensus items, and have provided comments on all disputed items.

This proposed rule does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients.

This proposed rule raises novel legal or policy issues that are contained in the Disagreement Items section of the Preamble. It also provides policy and guidance under the Indian Self-Determination and Education Assistance Act, Public Law 93–638, and under the Transportation Equity Act for the 21st Century, Public Law 105–178, as they relate to the IRR Program which has been in effect since 1983.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Indian tribes are not considered to be small entities for purposes of this Act.

C. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)) because it has an annual effect on the economy of $100 million or more. The yearly amount of IRR funds is approximately $275 million.

This proposed rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. ≤ Actions under this proposed rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, construction, and maintenance.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

E. Takings Implication Assessment (Executive Order 12630)

This proposed rule does not have significant "takings" implications. This proposed rule does not pertain to "taking" of private property interests, nor does it impact private property.

F. Federalism (Executive Order 12612)

This proposed rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

G. Civil Justice Reform (Executive Order 12988)

This proposed rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This proposed regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act of 1995, Public Law 104–13, is required. An OMB form 83–I has been reviewed by the Department and sent to the Office of Management and Budget (OMB) for approval. As part of the Department's ongoing effort to reduce paperwork burdens, the Department invites the general public to take this opportunity to comment to OMB on the information collections contained in this proposed rulemaking, as required by the Paperwork Reduction Act. Such comments should be sent to the following address: Attention—Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 27th Street, NW., Washington, DC 20503. Please also send a copy of your comments to the Department at the location noted under the heading **ADDRESSES.** OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days; therefore, public comments to OMB should be submitted within 30 days in order to assure their maximum consideration. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the BIA, including whether the information shall have practical utility; (2) the accuracy of the BIA's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The information collection will be used to enable the BIA to better administer the Indian Reservation Roads Program. In all instances, the Department has strived to lessen the burden on the constituent public and ask for only that information that is absolutely essential to the appropriate administration of the programs affected and in keeping with the Department's fiduciary responsibility to federally-recognized tribes.

A synopsis of the information collection burdens for regulatory revision are provided below. The explanatory summary of each information collection section identified will indicate what measurable standard has been used as a baseline for further calculations of burden hours and operations and maintenance costs to the government. Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.

ESTIMATED BURDEN HOURS

CFR section	Number of respondents	Responses per respondent	Burden per response (hours)	Total annual burden (hours)
170.252 Provide application	557	1	4	2,228
170.285 Provide request	557	1	2	1,114
170.296 Record review	557	1	1	557
170.302 Form requirement	557	1	4	2,228
170.413 Reporting requirement	557	1	2	1,114
170.418 Reporting requirement	557	1	1	557
170.428 Form requirement	557	1	40	22,280
170.441 Posting requirement	557	1	½	278
170.442(b) Recordkeeping req.	557	1	1	557
170.467 Provide info. for exception	557	1	1	557

[**Note:** For purposes of this part only, we have used the number 557 as the number of federally-recognized respondent tribes that could possibly file for benefits under the Indian Reservation Roads program. The cost of reporting and recordkeeping by the public is estimated to be approximately $10/. We have used this figure as a medium figure that would indicate the cost of a tribal official or his/her representative in typing a form, submitting information for BIA review, compiling reports from information gathered from outside sources, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements. Only federally-recognized tribes and their employees would be involved in this information collection activity.]

Summary

170.252 What Must an Application for an IRRHPP Include?

This section describes what information must be included in an IRRHPP application. While much of this information resides within the Bureau of Indian Affairs, some tribal effort will be expended in formulating its grant justification in addressing ranking criteria. We estimate that it would take tribal officials 4 hours to compile this information for BIA review, including the time required to have the action documented by an authorized tribal official through letter, resolution or similar facility.

Burden hours = 4 × 557 = 2,228 hours at a cost of $22,280 to the public.

170.285 May a Tribe Challenge the Cost-to-Construct, Vehicle Miles Traveled, and Population Data BIA Uses in the Relative Need Distribution Factor?

This section allows the tribe to request that the Regional Director revise the data that the BIA uses in the Relative Need Distribution Factor. This entails tribal submission of a request which includes relevant data that would allow the Regional Director to revise such data. Supporting data included in this request could take up to 2 hours to compile and format into a formal request.

Burden hours = 557 × 2 = 1,114 hours at a cost of $11,140 to the public.

170.296 How Is the IRR Inventory Kept Accurate and Correct?

This section details the effort expended to update the IRR Inventory data on an annual basis. While this is largely a BIA function, the tribes may review this data and submit a request to provide for errors or omissions to the IRR Inventory. We estimate that this tribal review and submission would take approximately 1 hour.

Burden hours = 557 × 1 = 557 hours and a cost of $5,570 to the public.

170.302 What Are the Minimum Requirements for a Tribe's LRTPs?

This section illustrates the items needed to support a transportation plan. While no form exists, the requirements for supporting the transportation plan are ennumerated. The compilation of

this information involves tribal review of its existing records, inventory data, strategies for meeting its transportation need, coordination efforts with other agencies as appropriate, and official endorsement from the designated tribal official. We estimate that this review and compilation of documents to complete a LRTP would take approximately 4 hours.

Burden hours = 557 × 4 = 2,228 hours at a cost of $22,280 to the public.

170.413 What Is the Tribal Transportation Improvement Program (TTIP)?

This section requires the tribe to submit a Tribal Transportation Improvement Program to the BIA by tribal resolution or tribally authorized government action for inclusion into the IRR TIP. The tribal official tasked with submitting this report must ensure that the TTIP is consistent with the tribal long-range transportation plan and must contain all Indian Reservation Roads funded projects. We estimate that it would take the responsible tribal official approximately 2 hours to complete this task, including the time needed to submit the TTIP to the Bureau of Indian Affairs.

Burden hours = 557 × 2 = 1,114 hours at a cost of $11,140 to the public.

170.418 What Is the Tribal Priority List?

This section describes the tribal priority list as a list of transportation projects which the tribe or tribal organization wants funded. The list is not financially constrained. The tribal government submits this listing to the BIA by official tribal action which we estimate would take 1 hour, including the time needed to identify tribal projects for inclusion.

Burden hours = 557 × 1 = 557 hours at a cost of $5,570 to the public.

170.428 What May a Long-Range Transportation Plan Include?

This section illustrates what items may be included in a tribal long-range transportation plan. While there is no official form for this submission, the section describes how various documents may be included. This task includes compiling information on transportation modes and routes, trip generation studies, social and economic planning documents, measures that address health and safety, review of existing transportation systems, cultural preservation planning documents, scenic byways and tourism plans, measures that address energy conservation considerations, a prioritized list of short-term transportation needs, and an analysis of funding alternatives to implement plan recommendations. This is the most comprehensive of the information collection requirements in this part and we estimate that the tribe would spend an average of 40 hours (or 5 working days) to complete this task.

Burden hours = 557 × 40 = 22,280 hours and a cost of $222,800 to the public.

170.441 How Must BIA or a Tribe Inform the Public When a Hearing Is Held?

This section describes the minimum standards for posting a public notice for hearings concerning the IRR. Since the tribes are already familiar with posting requirements for any number of meetings and public consultations, we estimate that the burden would not exceed ½ hour for each posting.

Burden hours = 557 × ½ = 278 hours at a cost of $2,780 to the public.

170.442 How Is a Public Hearing Conducted?

Paragraph (b) of this section requires a Record of hearing. The presiding official is responsible for compiling the official record of the hearing. A record of a hearing is a summary of oral testimony and all written statements submitted at the hearing. Additional written comments will be added to the record as appropriate. As the tribes are already familiar with record of hearing requirements for other public meetings and consultations, we estimate that the burden would not exceed 1 hour for each hearing.

Burden hours = 557 × 1 = 557 hours at a cost of $5,570 to the public.

170.467 When Can a Tribe Request an Exception From the Design Standards?

This section describes what the engineer of record must submit to request an exception from the design standards in Appendix B of this subpart. The documentation required would include appropriate supporting data, sketches, details, and a justification based on engineering analysis. We estimate that an experienced engineer could compile the necessary documents and make a justification for an exemption within 1 hour.

Burden hours = 557 × 1 = 557 hours at a cost of $5,570 to the public.

I. National Environmental Policy Act

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). Specific projects under the IRR Program will require NEPA review through an Environmental Assessment or Environmental Impact Statement.

J. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have consulted with tribal representatives throughout the negotiated rulemaking process of developing this rule. We conducted consultation at the Negotiated Rulemaking Committee's 23 meetings, accepted oral and written comments at all Committee meetings, maintained Committee information on the IRR web site, provided periodic newsletter and other mailings, provided updates at other transportation related meetings, and sent periodic letters to tribal leaders. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects. The proposed rule expands tribal participation in and responsibilities for various transportation-related activities of the IRR program. We are continuing to consult with tribal governments and tribal organizations as part of the negotiated rulemaking process throughout the comment period after publication of this proposed rule.

K. Clarity of This Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. In addition to the comments requested above, we invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule?

(5) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 'C' Street, NW., Washington, DC 20240. You may

also e-mail comments concerning the Department's handling of Executive Order 12866 in this rulemaking to this address: *Exsec@ios.doi.gov*.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in docket and will be considered to the extent practicable. In addition to the late comments, we will also continue to file relevant information in the docket as it becomes available after the comment closing date. Interested persons should continue to examine the docket for new material.

List of Subjects in 25 CFR Part 170

Highways and roads, Indians-lands.

Dated: July 18, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to revise 25 CFR part 170 as follows:

PART 170—INDIAN RESERVATION ROADS PROGRAM

Subpart A—General Provisions and Definitions

Sec.
170.1 What is the authority for this part?
170.2 What is the purpose and scope of this part?
170.3 What is the Federal Government's Indian Reservation Roads policy?
170.4 Do other requirements apply to the IRR Program?
170.5 What is the effect of these regulations on existing tribal rights?
170.6 What are definitions used in this part?

Subpart B—Indian Reservation Roads Program Policy and Eligibility

Consultation, Collaboration, Coordination

170.100 What does "consultation, collaboration, and coordination" mean?
170.101 What is the IRR Program consultation and coordination policy?
170.102 How do the Departments consult, collaborate, and coordinate with tribal governments?
170.103 What goals and principles guide the Secretaries?
170.104 Does the Secretary of the Interior consult with tribal governments during the formulation of the annual BIA budget process?
170.105 Must the Secretary consult with tribal governments before spending IRR funds?
170.106 What funds are available for consultation, collaboration, and coordination activities?
170.107 When must State governments consult with tribes and tribal organizations?
170.108 Should planning organizations and local governments consult with tribal governments when conducting planning for transportation projects?
170.109 How do the Secretaries prevent discrimination or adverse impact?
170.110 How can State and local governments prevent discrimination or adverse impact?
170.111 What can a tribe do if discrimination or adverse impacts occur?
170.112 How can tribes and State and government-agencies enhance consultation, collaboration, and coordination?

Eligibility for IRR Funding

170.114 What activities may be funded with IRR funds?
170.115 What activities are not eligible for IRR Program funding?
170.116 How can a tribe determine whether a new proposed use of IRR funds is allowable?

Use of IRR and Cultural Access Roads

170.120 What restrictions apply to the use of an Indian Reservation Road (IRR's)?
170.121 What is a cultural access road?
170.122 Who may designate a road as a cultural access road?
170.123 May cultural access roads be included in the IRR Inventory?
170.124 What is the significance of designating a road as a cultural access road?
170.125 Can a tribe close a cultural access road?
170.126 Can a tribe designate a non-tribal road a cultural access road?

Seasonal Transportation Routes

170.130 What are seasonal transportation routes?
170.135 Can IRR Program funds be used to build seasonal transportation routes?
170.136 Can seasonal transportation routes be included in the IRR system inventory?
170.137 Are there standards for seasonal transportation routes?
170.138 Does construction of a seasonal transportation route require rights-of-way or use permits?

IRR Housing Access Roads and Toll Roads

170.140 What is the definition of an IRR housing access road?
170.141 What is the definition of an IRR housing street?
170.142 Are IRR housing access roads and housing streets eligible for IRR Program funding?
170.143 How are IRR housing access roads and housing street projects funded?
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170.145 How does a tribe initiate construction of a toll highway, bridge or tunnel?
170.146 What is the Federal share of a toll highway, bridge or tunnel project?
170.147 How does a tribe initiate construction of ferry boats and ferry terminal facilities?
170.148 How can tribes find out more information about designing and operating a toll highway, bridge or tunnel?

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170.151 How can tribes access non-IRR Federal funds for their recreation, tourism, and trails programs?
170.152 Can IRR Program funds be used for recreation, tourism, and trails programs?
170.153 What types of activities may tribes perform under a recreation, tourism, and trails program?
170.154 Can roads be built in roadless and wild areas?

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170.156 How can tribes obtain funds to perform highway safety projects?
170.157 How can IRR funds be used for highway safety and impaired driver initiatives?
170.158 What types of activities are eligible as highway safety projects?
170.159 Are other funds available for a tribe's highway safety efforts?

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170.160 Can IRR Program funds be used for construction of runways, airports, and heliports?
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170.164 What is a tribal transit program?
170.165 Are IRR Program funds available for tribal transit programs?
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170.167 What Federal funds are available for a tribe's transit program?
170.168 May tribes or tribal organizations use IRR funds as matching funds for other transit grants or programs?
170.169 What transit facilities and related activities that support tribal transit programs are eligible for IRR funding?
170.170 May BIA use IRR funds as matching funds for other transit grants or programs?

IRR Program Coordinating Committee

170.171 What is the IRR Program Coordinating Committee?

170.172 Who are members of the IRR Program Coordinating Committee?
170.173 What are the responsibilities of the IRR Program Coordinating Committee?
170.174 How often will the IRR Program Coordinating Committee meet?
170.175 How does the IRR Program Coordinating Committee conduct business at its meetings?
170.176 How will the IRR Program Coordinating Committee be funded?
170.177 How must the Committee keep the Secretary and the tribes informed of the Committee's accomplishments?

Indian Local Technical Assistance Program (LTAP)

170.178 What is the Indian Local Technical Assistance Program?
170.179 How does the Indian LTAP work?
170.180 How is the Indian LTAP funded?
170.181 How do tribes receive information about opportunities under the Indian LTAP?
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170.183 Can tribes or tribal organizations enter into a contract or agreement for Indian LTAP funds under the ISDEAA?
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170.185 How does a tribe obtain services from an Indian LTAP center?
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170.188 How are Indian LTAP centers managed?
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IRR High Priority Project (IRRHPP) Program

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170.249 Is there a limit on the amount of IRRHPP funding available for a project?
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170.254 Who ranks the IRRHPP projects?
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170.256 What is the timeline for the IRRHPP, other than emergency/disaster projects, for any given fiscal year?
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170.265 What funding levels are available for distribution based on the PAF?
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Relative Need Distribution Factor

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170.272 What is the Cost-to-Construct for an individual tribe?
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170.298 Why exclude transportation planning from the TIP and the IRR Inventory?
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Long-Range Transportation Planning

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Appendix A to Subpart C—IRR High Priority Project Scoring Matrix

Appendix B to Subpart C—Population Adjustment Factor

Appendix C to Subpart C—Cost-to-Construct

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170.401 What transportation planning functions and activities must BIA perform for the IRR Program?
170.402 What transportation planning functions and activities must tribes perform under a self-determination contract or self-governance agreement?
170.403 Who performs transportation planning for the IRR Program?
170.404 What IRR funds can be used for transportation planning?
170.405 How must tribes use planning funds?
170.406 Can IRR construction funds be used for transportation planning activities?
170.407 Can IRR 2 percent planning funds be used for road construction and other projects?
170.408 What happens to 2 percent planning funds unobligated after August 15?
170.409 What is pre-project planning?
170.410 How is the IRR Program transportation planning funded?
170.411 What is the State Transportation Improvement Program (STIP)?
170.412 What is the Indian Reservation Roads Transportation Improvement Program (IRR TIP)?
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170.419 What is the IRR TIP annual update?
170.420 How is the IRR TIP updated?
170.421 Should the IRR TIP be coordinated within the STIP time frames?
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170.423 How is the IRR TIP amended?
170.424 Is public involvement required in the development of the IRR TIP?
170.425 How does public involvement occur in the development of the IRR TIP?
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170.428 What may a long-range transportation plan include?
170.429 What is the purpose of long-range transportation planning?
170.430 How does BIA or a tribe involve the public in developing the IRR long-range transportation plan?
170.431 How is the IRR long-range plan developed and approved?
170.432 How is the tribal long-range transportation plan used and updated?
170.433 When does BIA update the IRR TIP?
170.434 When may the Secretary amend the IRR TIP?
170.435 How does BIA or a tribe solicit public participation during the development of the IRR TIP?
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170.437 What are the purposes and objectives of public hearings for the IRR TIP, long range transportation plan, and IRR projects?
170.438 When is a public hearing for IRR TIP, long-range transportation plan or project held?
170.439 How are public hearings for IRR planning and projects funded?
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170.441 How is the public informed when no public hearing is scheduled?
170.442 How must BIA or a tribe inform the public when a hearing is held?
170.443 How is a public hearing conducted?
170.444 How are the results of a public hearing obtained?
170.445 Can a decision be appealed?

IRR Inventory

170.446 What is the IRR inventory?
170.447 How is the IRR inventory used?
170.448 How is the IRR inventory database amended?
170.449 How are transportation facilities added to or deleted from the IRR inventory?
170.450 What facilities can be included in the IRR inventory?
170.451 How accurate must the IRR road inventory database be?
170.452 What are the standards for IRR atlas maps?
170.453 What is a strip map?
170.454 How are strip maps used?
170.455 What standards must IRR inventory strip maps meet?
170.456 What is functional classification?
170.457 What are the functional classifications of the IRR Program?
170.458 How are functional classifications used in the IRR Program?
170.459 How is the surface type determined for an IRR road project?
170.460 What is a proposed IRR transportation facility?

Environment and Archeology

170.461 What are the archeological and environmental requirements for the IRR Program?
170.462 Can IRR funds be used for required archeological and environmental compliance work?

Design

170.464 What design standards are used in the IRR Program?
170.465 May BIA use FHWA-approved State or tribal design standards?
170.466 How are these standards used in the design of IRR projects?
170.467 When can a tribe request an exception from the design standards?
170.468 If BIA or FHWA denies a design exception, can that decision be appealed?
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Construction and Construction Monitoring and Rights-of-Way

170.472 What road and bridge construction standards are used in the IRR Program?
170.473 What standards must be used for intermodal projects?
170.474 May BIA use FHWA-approved State or tribal road and bridge construction standards?
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170.476 Is tribal consultation required in order to change a construction project?
170.477 Who conducts inspections of IRR construction projects under a self-determination contract or self-governance agreement?
170.478 What is quality control and who performs it?
170.479 What IRR construction records must tribes and BIA keep?
170.480 Can a tribe review and approve plans, specification and estimate (PS&E) packages for IRR projects?
170.481 Who must approve all PS&E packages?
170.482 How can the plans, specifications, and estimates of an IRR project be changed during construction?
170.483 What is the final inspection procedure for an IRR construction project?
170.484 How is construction project closeout conducted?
170.485 Who has final acceptance of the IRR project audit?
170.486 When does a project closeout occur?
170.487 Who must conduct the project closeout and develop the report?
170.488 What information must be made available for the project closeout?
170.489 Who is provided a copy of the IRR construction project closeout report?
170.490 Will projects negotiated under Public Law 93–638 specify who will be provided a copy of the closeout report?
170.491 Who prepares the IRR construction project closeout report?
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170.501 What must a right-of-way easement document contain at a minimum?
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170.511 What is an IRR process review of a BIA regional office?
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170.514 Are management systems required for the IRR Program?
170.515 How are IRR Program management systems funded?
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Appendix B to Subpart D—Design Standards for the IRR Program

Subpart E—Service Delivery for Indian Reservation Roads

170.600 What IRR Program functions may be assumed by a tribe in a self-determination contract or self-governance agreement?
170.601 What IRR project and program functions are not otherwise contractible?
170.602 How are the IRR non-contractible program and project functions funded?
170.603 May tribes include the cost for contractible supportive administrative functions in their budgets?
170.604 How does BIA determine the amount of funds needed for non-contractible non-project related functions?
170.605 Are the unused IRR Program management funds reserved by the Secretary considered residual funds?
170.606 What happens to the unused portion of IRR Program management funds reserved by the Secretary?
170.608 May IRR Programs be contracted under the ISDEAA?
170.609 What are consortium contracts/agreements?
170.610 What must BIA include in the notice of availability of funds?
170.611 Can the Secretary transfer funds to tribal governments before issuing a notice of funding availability?
170.612 Can a tribe enter into a self-determination contract or self-governance agreement that exceeds one year?
170.613 May a tribe receive advance payments of IRR funds for non-construction activities?
170.614 May the Secretary advance payments of IRR funds to a tribe under a self-determination contract for construction activities?
170.615 What is a design/construct IRR self-determination contract?
170.616 May the Secretary advance payments of IRR funds to a tribe under a self-determination design/construct contract for construction activities?
170.617 May the Secretary advance payments of IRR funds to a tribe or consortia under a self-governance agreement?
170.618 How are advance payments made when additional IRR funds are made available after execution of the self-governance agreement?
170.619 May a self-determination or self-governance tribe include a contingency in its proposal budget?
170.620 Can Indian tribes and tribal organizations performing under self-determination contracts of self-governance agreements keep savings that result from their administration of IRR projects or an entire tribal IRR Program?
170.621 How do the ISDEAA's Indian preference provisions apply?
170.622 Do tribal preference and Indian preference apply to IRR funding?
170.623 What protections does the government have if a tribe fails to perform?
170.624 What activities may the Secretary review and monitor?
170.625 If a tribe incurs unforeseen construction costs, can it get additional funds?
170.626 When may BIA use force account methods in the IRR Program?
170.627 What regulations apply to BIA force account project activities?
170.628 How do legislation and procurement requirements affect the IRR program?
170.630 What regulations apply to waivers?
170.631 How does a tribe request a waiver of a Department of Transportation regulation?
170.632 Is technical assistance available for self-determination contracts and self-governance agreements under the ISDEAA?
170.633 What IRR programs, functions, services, and activities are subject to the construction regulations set forth in subpart K of 25 CFR part 1000?
170.634 How are IRR program projects and activities included in the self-governance agreement?
170.635 Are contract support funds provided in addition to the 2 percent (2%) IRR transportation planning funds?
170.636 May contract support costs for IRR construction projects be paid out of Department of the Interior or BIA appropriations?

Subpart F—Program Oversight and Accountability

170.700 What is the IRR Program stewardship plan?
170.701 What is an IRR Program stewardship agreement?
170.702 What is a BIA regional IRR Program stewardship agreement?
170.703 Can a self-determination contract or self-governance agreement serve as an IRR program stewardship agreement?
170.704 What must be included in a BIA regional or tribal IRR Program stewardship agreement?
170.705 What is the process for obtaining the facility owner's review of the PS&E?
170.706 Can a direct service tribe and BIA region sign a Memorandum of Understanding?
170.707 Are there licensing requirements to ensure standards are met under the IRR Program?
170.708 Must an IRR PS&E be approved before proceeding to construction?

Subpart G—BIA Road Maintenance

170.800 What Is IRR Transportation Facility Maintenance?
170.801 Who owns IRR Transportation Facilities?
170.802 How is BIA Road Maintenance Program related to the IRR Program?
170.803 How is road maintenance funded?
170.804 What is the BIA Road Maintenance Program?
170.805 What facilities are eligible for maintenance and operation under the BIA Road Maintenance Program?
170.806 Is maintenance required on facilities built with federal funds?
170.807 Do BIA or the tribes have to perform all of the IRR facility maintenance?
170.808 What activities are eligible for funding under the BIA Road Maintenance Program?
170.809 What is an IRR TFMMS?
170.810 What must an effective IRR TFMMS include at a minimum?
170.811 Can Maintenance Program funds be used to upgrade IRR facilities?
170.812 Can tribes enter into a self-determination contract or self-governance agreement for the BIA Road Maintenance Program?
170.813 To what standards must an IRR transportation facility be maintained?
170.814 Can BIA Road Maintenance funds be used for heliport facilities?
170.815 What happens if a facility is not being maintained due to lack of funds?
170.816 Must IRR bridge inspections be coordinated with tribal and local authorities?
170.817 What are the minimum qualifications for certified bridge inspectors?
170.818 Must bridge inspection reports be reviewed?
170.819 How often are IRR bridge inspections performed?
170.820 What standards are used for bridge inspections?
170.821 What is emergency maintenance?
170.822 What is a Declared State of Emergency?
170.823 When can access to IRR transportation facilities be restricted?

Appendix A to Subpart G—List of Activities Eligible for Funding Under The BIA Transportation Facility Maintenance Program

Subpart H—Miscellaneous

Hazardous and Nuclear Waste Transportation

170.900 What is the purpose of the provisions relating to transportation of hazardous and nuclear waste.
170.901 What standards govern transportation of radioactive and hazardous materials?
170.902 What transport activities do State, tribal, and local governments perform?
170.903 How is a tribe notified of the transport of radioactive waste?
170.904 Who responds to an accident involving a radioactive or hazardous materials shipment?
170.905 Can tribes use IRR Program funds for training in handling radioactive and hazardous material?
170.906 Can tribes obtain training in transporting hazardous material?
170.907 How are radioactive and hazardous material spills addressed?

Reporting Requirements and Indian Preference

170.910 What information on the IRR Program or projects must BIA provide to tribes?
170.915 Are Indians entitled to employment and training preferences?
170.916 Are Indian organizations and Indian-owned businesses entitled to ■ contracting preference?
170.918 Is Indian preference permitted for federally funded non-IRR transportation projects?
170.919 May tribal-specific employment rights and contract preference laws apply to IRR projects?
170.920 What is the difference between tribal preference and Indian preference?
170.921 May the cost of tribal employment taxes or fees be included in the budget for an IRR project?
170.922 May tribes impose taxes or fees on those performing IRR Program services?
170.923 Can tribes receive direct payment of tribal employment taxes or fees?

Emergency Relief

170.924 What is the purpose of the provisions relating to emergency relief?
170.925 What emergency or disaster assistance programs are available?
170.926 How can States get Emergency Relief Program funds to repair IRR System damage?
170.927 What qualifies for ERFO funding?
170.928 What does not qualify for ERFO funding?
170.929 What happens if an ERFO claim is denied?
170.930 Is ERFO funding supplemental to IRR Program funding?
170.931 Can a tribe administer ERFO repairs under a self-determination contract or a self-governance agreement?
170.932 How can FEMA Program funds be accessed to repair damage to the IRR System?

Tribal Transportation Departments

170.936
Can a tribe establish a Tribal Transportation Department?
170.937 How can tribes find out information about staffing and organization of tribal transportation departments?
170.938 Are there any other funding sources available to operate tribal transportation departments?
170.939 Can tribes use IRR Program funds to pay for costs to operate a tribal transportation department?
170.940 Can tribes regulate oversize or overweight vehicles?

Arbitration Provisions

170.941 Are alternative dispute resolution procedures available to self-determination and self-governance tribes and the Secretary to resolve disputes between them in performing IRR Public Law 93–638 activities?
170.942 Are alternative dispute resolution procedures available to resolve IRR program disputes?
170.943 How does a direct service tribe begin the alternative dispute resolution process?

Other Miscellaneous Provisions

170.950 How can a tribe or tribal organization find out if the ISDEAA has superseded an IRR provision?
170.951 Can tribes become involved in transportation research?
170.952 Are federal funds available for coordinated transportation services for a tribe's Welfare-to-Work, Temporary Assistance to Needy Families, and other quality of life improvement programs?

Authority: Pub. L. 105–178, 112 Stat. 107; 5 U.S.C. 565; 23 U.S.C. 101(a), 208, 308; 25 U.S.C. 47.

Subpart A—General Provisions and Definitions

§ 170.1 What is the authority for this part?

This part is prepared and issued by the Secretary of the Interior with the active participation and agreement of the designated representatives of the Secretary of Transportation and with the active participation and representation of Indian tribes, tribal organizations, and individual tribal members under the Transportation Equity Act for the 21st Century (TEA–21), Section 1115(b), Title 23 Chapter 2, and the negotiated rulemaking procedures in 5 U.S.C. 565.

§ 170.2 What is the purpose and scope of this part?

(a) The purpose of this part is to provide uniform and consistent rules as well as a funding formula for the Department of Interior (DOI) in implementing the Indian Reservation Roads Program.

(b) Included in this part are other Title 23 programs administered by the Secretary and implemented by tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA).

§ 170.3 What is the Federal Government's Indian Reservation Roads policy?

(a) It is the policy of the Secretary of Interior and Secretary of Transportation to:

(1) Provide a uniform and consistent set of rules for the Indian Reservation Roads and BIA Road Maintenance programs;

(2) Encourage Indian tribes and tribal organizations to become more knowledgeable about these programs by providing information on the programs and the opportunities Indian tribes have regarding them;

(3) Facilitate the efforts of Indian tribes and tribal organizations to plan, conduct and administer these programs and to remove any obstacles to administering these programs;

(4) Encourage including these programs under self-determination contracts or self-governance agreements;

(5) Make available to Indian tribes and tribal organizations all administrative functions of these programs that are otherwise contractible under self determination contracts or self-governance agreements; and

(6) Implement policies, procedures, and practices at the Departments to ensure the letter, spirit, and goals of TEA–21 are fully and successfully implemented.

(b) This part is designed to facilitate and encourage Indian tribes to participate in the planning, design, construction, maintenance, conduct and administration of these programs. The Secretary shall afford Indian tribes and tribal organizations the flexibility, information and discretion necessary to design these programs under self-determination contracts and self-governance agreements to meet the needs of their communities consistent with these regulations and their diverse needs.

(c) The Secretary of Interior and Secretary of Transportation recognize that contracting, compacting, or continuing to allow federal administration of these programs is an exercise of Indian tribes' self-determination and self-governance.

(1) The tribal contractor is responsible for managing the day-to-day operation of the contracted Federal programs, functions, services, and activities.

(2) The tribe accepts responsibility and accountability to the beneficiaries

under self-determination contracts and self-governance agreements for:

(i) Use of the funds; and

(ii) Satisfactory performance of the program, functions, services, and activities funded under the contract or agreement.

(3) The Secretary will continue to discharge the trust responsibilities to protect and conserve the trust resources of Indian tribes and the trust resources of individual Indians.

(d) The Secretary should interpret Federal laws and regulations in a manner that facilitates including programs covered by this part in the government-to-government agreements authorized under the ISDEAA.

(e) The administrative functions referenced in paragraph (a)(5) of this section are contractible without regard to the organizational level within the Department that carries out these functions.

(1) Including IRR administrative functions under self-determination contracts and self-governance agreements does not limit or reduce in any way the funding for any program, function, service or activity serving any other Indian tribe.

(2) The Secretary is not required to reduce funding for these programs serving a tribe to make funds available to another Indian tribe or tribal organization. This part must be liberally construed for the benefit of Indian tribes and tribal organizations to implement the Federal policy of self-determination and self-governance. Any ambiguities in this part must be construed in favor of the Indian tribes or tribal organization so as to facilitate and enable the transfer of programs, authorized by 23 U.S.C. 202 and Title 25 U.S.C.

§ 170.4 Do other requirements apply to the IRR Program?

Yes, IRR Program policy and guidance manuals and directives must be consistent with the regulations in this part and 25 CFR parts 900 and 1000.

§ 170.5 What is the effect of these regulations on existing tribal rights?

This part does not:

(a) Affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by Indian tribes;

(b) Terminate, waive, modify, or reduce the trust responsibility of the United States to the Indian tribe(s) or individual Indians;

(c) Require an Indian tribe to assume a program relating to the Indian Reservation Roads program; or

(d) Impede awards by other Departments and agencies of the United States or a State to Indian tribes to administer programs under any other applicable law.

§ 170.6 What are definitions used in this part?

AASHTO means the American Association of State Highways and Transportation Officials.

Act means the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended.

Annual Funding Agreement means a document that represents the negotiated agreement of the Secretary to fund, on an annual basis, the programs, services, activities and functions transferred to an Indian tribe or tribal organization under the Indian Self-Determination and Education Assistance Act, as amended.

Appeal means a request by a tribe, tribal organization or consortium for an administrative review of an adverse Agency decision.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BIA DOT means the Bureau of Indian Affairs, Division of Transportation.

BIA force account means the performance of work done by BIA employees.

BIA Road Maintenance Program means the program that covers the distribution and use of the funds provided by Congress in the annual Department of Interior appropriations acts for maintaining transportation facilities.

BIA Regional Director means the BIA official in charge of a Regional Office.

CFR means the United States Code of Federal Regulations.

Compact means an executed document which affirms the government-to-government relationship between a self-governance tribe and the United States. The compact differs from an annual funding agreement in that parts of the compact apply to all bureaus of the Department of the Interior rather than to a single bureau.

Construction means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway. This includes bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefits the Federal-aid highway program. The term includes—

(1) Locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markets in accordance with specifications of the National Oceanic and Atmospheric Administration of the Department of Commerce);

(2) Resurfacing, restoration, and rehabilitation;

(3) Acquiring rights-of-way;

(4) Providing relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation and construction of replacement housing;

(5) Eliminating hazards of railway grade crossings;

(6) Eliminating roadside obstacles;

(7) Making improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(8) Making capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

Construction contract means a fixed price or cost-reimbursement self-determination or construction project, except that such term does not include any contract—

(1) That is limited to providing planning services and construction management services (or a combination of such services);

(2) For the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

(3) For the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

Construction management services (CMS) means activities limited to administrative support services, coordination, and monitoring oversight of the planning, design, and construction process. Typical CMS activities are defined in 25 CFR 900.113.

Construction programs means, when used in a self-determination contract, those programs as defined under 25 CFR 900.113(c); and, when used in a self-governance agreement, those programs as defined under 25 CFR part 240.

Construction project management means direct responsibility for the construction project through day-to-day on-site management and administration of the project. Activities may include cost management, project budgeting, project scheduling, and procurement services.

Consultation means government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to:

(1) Secure meaningful tribal input and involvement in the decision-making process; and

(2) Advise the tribe of the final decision and provide an explanation.

Contract means a self-determination contract as defined in section 4(j) of the Act.

Days means calendar days, except where the last day of any time period specified in these regulations falls on a Saturday, Sunday, or a Federal holiday, the period shall carry over to the next business day unless otherwise prohibited by law.

Departments means the Department of the Interior and the Department of Transportation.

Design means services performed by licensed design professionals related to preparing drawings, specifications, and other design submissions specified in the contract or agreement, as well as services provided by or for licensed design professionals during the bidding/negotiating, construction, and operational phases of the project.

DOI means the Department of the Interior.

FHWA means the Federal Highway Administration in the Department of Transportation.

Funding year means either fiscal year or calendar year, as may be appropriate.

Indian means a person who is a member of an Indian tribe or as otherwise defined in 25 U.S.C. 250b.

Indian tribe means any Indian tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native Village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act which is federally recognized by the U.S. government for special programs and services provided by the Secretary to Indians because of their status as Indians.

IRR means Indian Reservation Roads.

IRR bridge program means the program authorized under 23 U.S.C. 202(d)(4) using IRR Program funds for the improvement of deficient IRR bridges.

IRR inventory means a comprehensive list of information for all transportation facilities eligible for IRR funding by a tribe or reservation, in order by BIA agency and region, Congressional district, State, and county. Other specific information collected and maintained under the IRR Program includes classification, route number, bridge number, current and future traffic volumes, maintenance responsibility, ownership, and other information as required in subpart C.

IRR Program means a part of the Federal Lands Highway Program established in 23 U.S.C. 204 to address transportation needs of Indian tribes.

IRR Program Funds means the funds covered in chapter 2 of Title 23 for the cost of transportation planning, research, engineering, and construction of highways, roads, parkways, or transit facilities within or providing access to Indian lands, communities and Alaska Native villages and includes associated program management costs.

IRR transportation facilities means public roads, bridges, drainage structures, including culverts, ferry routes, marine terminals, transit facilities, boardwalks, pedestrian paths, trails, and their appurtenances, and other transportation facilities such as bus terminals, airports, heliports, road maintenance yards, adjacent parking areas, and public parking. It may also include other transportation facilities as designated by the tribe and the Secretary.

IRR transportation planning funds means the funds made available (up to 2%) for Indian reservation roads for each fiscal year under 23 U.S.C. 204(j) as may be allocated to such tribes for purposes of planning Indian reservation roads funding proposals.

ISDEAA means the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended.

Maintenance means the performance of activities to keep an IRR transportation facility at its as constructed condition and to insure the health, safety, and economical use of the traveling public. Maintenance includes the preservation of IRR transportation facilities including surfaces, shoulders, roadsides, structures, and such traffic control devices as are necessary for safe and efficient utilization of the facility.

NBI means the national inventory of structural and appraisal data collected to fulfill the requirements of the National Bridge Inspection Standards, as defined in 23 CFR 650, subpart C. Each State is required to prepare and maintain an inventory of all bridges within that State that are subject to these NBI standards and to provide the collected data to the Federal Highway Administration as needed. The NBI is maintained and monitored by the FHWA Bridge Division in Washington, DC.

Office of Self-Governance (OSG) means the office within the Office of the Assistant Secretary-Indian Affairs, Department of the Interior, which is responsible for the implementation and development of tribal self-governance programs.

Program means a policy, plan, project, program or activity covered by this part.

Project Planning means those project related activities which precede the design phase of a transportation project. These activities include, but are not limited to, collection of detailed traffic data, accident information, functional, safety or structural deficiencies; corridor studies; conceptual studies, environmental studies; geotechnical studies; archaeological studies; project scoping; public hearings; location analysis; preparation of application for permits and clearances, and meetings with facility owners and transportation officials.

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel. An Indian Reservation Road is a public road. Indian tribal governments and BIA are public authorities.

Real Property means any interest in land together with the improvements, structures, and fixtures and appurtenances.

Regionally significant project means a project that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminations as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including, at a minimum, all principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

Rehabilitation means the major work required to restore the structural integrity of a bridge as well as work necessary to correct major safety defects.

Relocation means the adjustment of utility facilities required by the highway project. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

Rest area means an area or site established and maintained within or adjacent to the highway right-of-way or under public supervision or control for the convenience of the traveling public.

Secretaries means the Secretary of the Interior and the Secretary of Transportation.

Secretary means the Secretary of the Interior or her/his designee authorized to act on behalf of the Secretary.

State transportation agency means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" would be considered equivalent to "State transportation agency" if the context so implies.

TEA–21 means the Transportation Equity Act for the 21st Century, Public Law 105–178, as amended by Title IX of Public Law 105–206.

Transportation Improvement Program (TIP) means a staged, multi-year intermodal program of transportation projects which is consistent with the metropolitan transportation plan.

Transportation planning means developing land use, economic development, traffic demand, public safety, health and social strategies to meet transportation current and future needs.

U.S.C. means the United States Code.

Subpart B—Indian Reservation Roads Program Policy and Eligibility

Consultation, Collaboration, Coordination

§ 170.100 What does "consultation, collaboration, and coordination" mean?

For purposes of this part:

(a) Consultation means government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to secure meaningful tribal input and involvement in the decision-making process, and to advise the tribe of the final decision and provide an explanation;

(b) Collaboration means that all parties involved in carrying out the planning and/or project development processes actively work together in a timely manner to achieve a common goal or objective; and

(c) Coordination means sharing and comparing by all parties in a timely manner of transportation plans, programs, projects, and schedules of one agency to related plans, programs, projects, and schedules of other agencies and adjustment of plans, programs, projects, and schedules to optimize the efficient and consistent delivery of transportation projects and services.

§ 170.101 What is the IRR Program consultation and coordination policy?

The IRR Program government-to-government consultation and coordination policy is to foster and improve communication, cooperation and coordination among tribal, Federal, state, and local governments and other transportation organizations when:

(a) Identifying high accident locations and locations for improving both vehicle and pedestrian safety;

(b) Developing state, metropolitan, regional, IRR, and tribal transportation improvement programs that impact tribal lands, communities, and members;

(c) Developing short- and long-range transportation plans;

(d) Developing IRR transportation projects;

(e) Developing environmental mitigation measures necessary to protect and/or enhance Indian lands and the environment, and counteract the impacts of the projects;

(f) Developing plans or projects to replace or rehabilitate IRR deficient bridges;

(g) Developing plans or projects for disaster and emergency relief response and the repair of eligible damaged IRR facilities;

(h) Assisting in the development of state and tribal agreements related to the IRR Program;

(i) Developing and improving transit systems serving Indian lands and communities; and

(j) Assisting in the submission of discretionary grant applications for state and Federal funding for IRR facilities.

§ 170.102 How do the Departments consult, collaborate, and coordinate with tribal governments?

The Department of the Interior and the Department of Transportation operate within a government-to-government relationship with federally recognized tribes. As a critical element of this relationship, these agencies should assess the impact of Federal transportation policies, plans, projects, programs on tribal rights and interests to ensure that these rights and concerns are appropriately considered during the development of all programs.

§ 170.103 What goals and principles guide the Secretaries?

When undertaking transportation activities affecting tribes, the Secretaries should, to the maximum extent permitted by law:

(a) Establish regular and meaningful consultation and collaboration with affected tribal governments, including facilitating the direct involvement of tribal governments in short- and long-range Federal transportation planning efforts;

(b) Promote the rights of tribal governments to govern their own internal affairs in tribal transportation matters;

(c) Promote the rights of tribal governments to continue receiving direct transportation services from the Federal Government, or to enter into self-determination and self-governance agreements to directly operate any tribally-related transportation programs serving tribal members;

(d) Ensure the continuation of the trust responsibility of the United States to tribes and Indian individuals;

(e) Take appropriate steps to reduce the imposition of unfunded mandates upon tribal governments to the extent permitted by law;

(f) Encourage flexibility and innovation in the implementation of the IRR Program;

(g) Reduce, streamline, and eliminate unnecessarily restrictive transportation policies, guidelines or procedures; and

(h) Ensure that the IRR Program is implemented consistent with tribal sovereignty and the government-to-government relationship.

§ 170.104 Does the Secretary of the Interior consult with tribal governments during the formulation of the annual BIA budget process?

It is the policy of the Secretary to consult with, and solicit the participation of, tribes and tribal organizations in the development of budget proposals for the IRR Program.

§ 170.105 Must the Secretary consult with tribal governments before spending IRR funds?

Yes, before spending IRR funds for any project, the Secretary must consult with any affected tribe or tribal organization to determine tribal preferences to the greatest extent feasible concerning all aspects of the project.

(a) Within 30 days after the Secretary's allocation of funds for any phase of an IRR project, the Secretary must notify affected tribes or tribal organizations by registered mail with return receipt.

(b) The Secretary's notice must offer technical assistance in preparing a self-determination contract or self-governance agreement proposal.

§ 170.106 What funds are available for consultation, collaboration, and coordination activities?

To fund consultation, collaboration, and coordination of IRR activities, tribes or tribal organizations may use:

(a) IRR funds;
(b) Tribal Priority Allocation (TPA) funds;
(c) Administration for Native Americans (ANA) funds;
(d) Economic Development Administration (EDA) funds;
(e) Community Development Administration (CDA) funds;
(f) Community Development Block Grant (CDBG) funds; Indian Housing Block Grant (IHBG) funds;
(g) Indian Health Service Tribal Management Grant (IHSTMG) funds;
(h) General funds of the tribal government, Federal Highway Administration (FHWA) transportation planning grants; and
(i) Any other funds available for the purpose of consultation, collaboration, and coordination activities.

§ 170.107 When must State governments consult with tribes and tribal organizations?

Each State must develop the State transportation improvement program in consultation with tribal organizations and BIA in those areas under Indian tribal jurisdiction. This includes providing for a fully coordinated transportation planning process which, among other things, coordinates transportation planning efforts carried out by the State with transportation planning efforts carried out by tribes and tribal organizations. The statewide and metropolitan planning organization requirements are in 23 U.S.C. 134 and 135. Regulations can be found at 23 CFR part 450.

§ 170.108 Should planning organizations and local governments consult with tribal governments when conducting planning for transportation projects?

Yes, it is the policy of the Department to foster and improve communication, cooperation, and coordination among Metropolitan Planning Organizations (MPOs), Rural Planning Organizations (RPOs), local governments, and municipal governments on transportation matters of common concern. Accordingly, planning organizations and local governments will consult with tribal governments when planning for transportation projects.

§ 170.109 How do the Secretaries prevent discrimination or adverse impact?

In administering the IRR Program, the Secretaries actively monitor these programs to ensure that nondiscrimination and environmental justice principles are integral parts of their programs, policies, and activities. The Secretaries consult with tribes early in the development of these programs, policies, or activities, to identify potential discrimination and to recommend positive corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.

§ 170.110 How can State and local governments prevent discrimination or adverse impact?

(a) Under 23 U.S.C. 134 and 135, and 23 CFR part 450, State and local government officials should consult and work with tribes early in the development of programs to:
(1) Identify potential discrimination; and
(2) Recommend positive corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.
(b) Examples of adverse effects include, but are not limited to:
(1) Impeding access to tribal communities or activities;
(2) Creating excessive access to culturally or religiously sensitive areas;
(3) Negatively impacting natural resources, trust resources, tribal businesses, religious, and cultural sites;
(4) Harming indigenous plants and animals; and
(5) Impairing the ability of tribal members to engage in commercial, cultural, and religious activities.

§ 170.111 What can a tribe do if discrimination or adverse impacts occur?

If discrimination or adverse impacts occur, a tribe should take the following steps in the order listed:
(a) Take reasonable steps to resolve the problem directly with the State or local government involved;
(b) Contact BIA, FHWA or Federal Transit Authority (FTA) officials to report the problem and seek assistance in resolving the problem through negotiation or other informal means; and
(c) If efforts under paragraphs (a) and (b) of this section are unsuccessful, request that BIA, FHWA or FTA invoke legal remedies to correct the problem.

§ 170.112 How can tribes and state and government agencies enhance consultation, collaboration, and coordination?

Tribes and state and Federal Government agencies may enter into intergovernmental Memoranda of Agreement (MOA) to streamline and facilitate consultation, collaboration, and coordination.

Eligibility for IRR Funding

§ 170.114 What activities may be funded with IRR funds?

Notwithstanding any prior guidance, IRR funds may be used:
(a) For all of the items listed in Appendix A to this subpart;
(b) For other purposes identified in this part; or
(c) For other purposes identified in guidance issued by the IRR Program Coordinating Committee under the procedures in Appendix A to this subpart, item (35) and § 170.173.
(d) Each of the items listed in the appendix must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

§ 170.115 What activities are not eligible for IRR Program funding?

IRR Program funds cannot be used for any of the following:
(a) Cyclical maintenance work, including patching or marking pavement; grading shoulders and ditches; cleaning culverts; snow removal, roadside mowing, normal sign repair and replacement, painting roadway structures, and maintaining, cleaning, and repairing bridge joints, drainage, and other bridge appurtenances;
(b) Structures and erosion protection unrelated to transportation and roadways;
(c) General reservation planning not involving transportation;
(d) Landscaping and irrigation systems not involving transportation programs and projects;
(e) Work performed on projects that are not included on an FHWA-approved IRR Transportation Improvement Program (TIP), unless otherwise authorized by the Secretary of the Interior and the Secretary of Transportation;
(f) Purchase of equipment unless authorized by Federal law; or
(g) Trail development and related activities prohibited by 23 U.S.C. 206(g).

§ 170.116 How can a tribe determine whether a new proposed use of IRR funds is allowable?

(a) A tribe that proposes a new use of IRR program funds must submit a written inquiry to BIA and FHWA concerning whether the proposed use is eligible under Titles 23 and 25 of the United States Code and other applicable provisions of Federal law.
(b) For eligibility questions that refer to self-determination and self-governance contracting and road maintenance, BIA must provide a written response to the requesting tribe within 60 days of receipt of the written inquiry. For eligibility questions that refer to IRR Program, FHWA must provide a written response to the requesting tribe within 60 days of receipt of the written inquiry. BIA must

approve the proposed use if it is authorized under title 25 of the United States Code and is related to transportation. FHWA must approve the proposed use if it listed as an eligible item in title 23 of the United States Code. To the extent practicable and before denying the request, BIA or FHWA consults with the IRR Program Coordinating Committee.

(c) If either BIA or FHWA fails to issue the requesting tribe a timely written response to the eligibility inquiry, the proposed use will be deemed to be allowable until a determination has been made and the written response is provided to the tribe.

(d) BIA and FHWA will send copies of all eligibility determinations to the IRR Program Coordinating Committee and BIA regional offices.

(e) Tribes may appeal denials of a proposed use pursuant to 25 CFR part 2.

Use of IRR and Cultural Access Roads

§ 170.120 What restrictions apply to the use of an Indian Reservation Road (IRR)?

IRR's must generally be open and available for public use. However, the public authority having jurisdiction over these roads may:

(a) Restrict road use or close roads temporarily to public use when required for public safety, fire prevention or suppression, fish or game protection, low load capacity bridges, or prevention of damage to unstable roadbeds;

(b) Conduct engineering and traffic analysis under established traffic engineering practices to determine maximum speed limits, maximum vehicular size, and weight limits, and identify needed traffic control devices; and

(c) Erect, maintain, and enforce compliance with the needed regulatory signs and pavement markings.

§ 170.121 What is a cultural access road?

A cultural access road is a public road that provides access to sites for cultural purposes as defined by individual tribal traditions, which may include, for example:

(a) Sacred and medicinal sites;

(b) Gathering medicines or materials such as grasses for basket weaving; or

(c) Other traditional activities, including, but not limited to, subsistence hunting, fishing and gathering.

§ 170.122 Who may designate a road as a cultural access road?

Indian tribal governments and other local public authorities may designate a road as a cultural access road.

§ 170.123 May cultural access roads be included in the IRR Inventory?

Yes, cultural access roads may be included in the IRR Inventory if they meet the definition of an IRR Road.

§ 170.124 What is the significance of designating a road as a cultural access road?

A cultural access road designation is an entirely voluntary and internal decision made by the tribe to help it and other public authorities manage, protect, and preserve access to locations that have cultural significance.

§ 170.125 Can a tribe close a cultural access road?

Yes, a tribe with jurisdiction over a cultural access road can close it. The tribe can do this:

(a) During periods when the tribe or tribal members are involved in cultural activities; and

(b) In order to protect the health and safety of the tribal members or the general public.

§ 170.126 Can a tribe designate a non-tribal road a cultural access road?

Yes, tribes and a public authority having jurisdiction over a road may enter into agreements that recognize the tribal designation of a cultural access road and cooperate to protect cultural resources.

Seasonal Transportation Routes

§ 170.130 What are seasonal transportation routes?

Seasonal transportation routes are non-recreational transportation routes in the IRR inventory which are used for access to Indian communities or villages and may not be open for year-round use. These include snowmobile trails, ice roads, and overland winter roads.

§ 170.135 Can IRR Program funds be used to build seasonal transportation routes?

Yes, IRR Program funds can be used to build seasonal transportation routes.

§ 170.136 Can seasonal transportation routes be included in the IRR system inventory?

Yes, by official tribal authorization, a tribe may request that seasonal transportation routes be included in an IRR system inventory.

§ 170.137 Are there standards for seasonal transportation routes?

Yes, in addition, a tribe can develop and/or adopt standards, which are equal to, or exceed, state, Federal, or national standards.

§ 170.138 Does construction of a seasonal transportation route require rights-of-way or use permits?

Yes, use of IRR funds requires rights-of-way or use permits.

IRR Housing Access Roads and Toll Roads

§ 170.140 What is the definition of an IRR housing access road?

An IRR housing access road is a public road on the IRR system that provides access to a housing cluster or Indian community.

§ 170.141 What is the definition of an IRR housing street?

An IRR housing street is a public road on the IRR system that provides access to adjacent homes within a housing cluster or Indian community.

§ 170.142 Are IRR housing access roads and housing streets eligible for IRR Program funding?

Yes, IRR housing access roads and housing streets are eligible for construction, reconstruction, and rehabilitation funding under the IRR Program.

§ 170.143 How are IRR housing access roads and housing street projects funded?

Tribes, following the transportation planning process as required in subpart D, include housing access roads and housing street projects on the Tribal Transportation Improvement Program (TTIP). IRR funds are available after the projects are on the FHWA-approved IRR TIP.

§ 170.144 Can tribes use Federal-aid highway funds, including IRR funds, for toll and ferry facilities?

Yes, Tribes can use Federal-aid highway funds, including IRR funds, to study, design, construct, and operate toll highways, bridges, tunnels, ferry boats and ferry terminal facilities. Tribes are authorized to study, design, construct, and operate these facilities because tribes are public authorities.

§ 170.145 How does a tribe initiate construction of a toll highway, bridge or tunnel?

To initiate construction of a toll highway, bridge, or tunnel, a tribe must:

(a) Enter into a toll revenue agreement with the Secretary of Transportation under 23 U.S.C. 129; and

(b) If IRR funds are used, enter into a self-governance agreement or self-determination contract with the Secretary of the Interior.

§ 170.146 What is the Federal share of a toll highway, bridge or tunnel project?

The Federal share is a maximum of 80 percent for conversion of an existing

toll-free highway, bridge or tunnel to a toll facility or 80 percent for construction of a new toll facility.

§ 170.147 How does a tribe initiate construction of ferry boats and ferry terminal facilities?

To initiate construction of ferry boats and ferry terminal facilities, a tribe must follow the procedures defined in 23 U.S.C. 129(c).

§ 170.148 How can tribes find out more information about designing and operating a toll highway, bridge or tunnel?

Information on designing and operating a toll highway, bridge or tunnel is available from the International Bridge, Tunnel and Turnpike Association. This is a Washington, DC-based organization that maintains an address directory of its membership and serves as an information clearinghouse and research center. It also conducts surveys and studies and publishes a variety of reports, statistics, and analyses. Their web site is located at *http://www.ibtta.org*. Information is also available from FHWA.

Recreation, Tourism, Trails

§ 170.150 Are Federal funds available for a tribe's recreation, tourism, and trails programs?

Yes, Tribes may access funding from the following Federal programs for recreation, tourism, and trails:

(a) IRR Program (23 U.S.C. 204);

(b) Surface Transportation Program—Transportation Enhancement (23 U.S.C. 133);

(c) National Scenic Byway Program (23 U.S.C. 162);

(d) Recreational Trails Program (23 U.S.C. 206);

(e) National Highway System (23 U.S.C. 104);

(f) Public Lands Discretionary Program (23 U.S.C. 204, 205, 214); and

(g) Other funding from other Federal departments.

§ 170.151 How can tribes access non-IRR federal funds for their recreation, tourism, and trails programs?

In order to use non-IRR federal funds for their recreation, tourism, and trails programs, tribes must have a current TIP in place.

(a) To increase opportunities to receive funding for programs that serve tribes' recreation, tourism, and trails goals, it is advisable thattribes:

(1) Have programs identified and scoped for development;

(2) Have viable projects ready for construction, including necessary permits;

(3) Have several projects ready for improvement or construction in any given year.

(b) FHWA provides Federal funds to the states for recreation, tourism, and trails under 23 U.S.C. 104, 133, 162, 204, and 206. States solicit proposals from tribes and local governments in their transportation planning process. Tribes may request:

(1) To administer these programs under the State's locally administered project program;

(2) That the funds be transferred to BIA for tribal self-determination contracts or self-governance agreements under the ISDEAA; and

(3) To contract directly with FHWA.

(c) Congress provides funds under 23 U.S.C. 205 and 214 for activities for Federal agencies such as the Bureau of Land Management, National Park Service, Forest Service, Bureau of Reclamation, and the Department of Defense. In accordance with Federal policy these agencies must work with tribal governments to identify and include tribal priority improvement projects on their TIP.

(1) Tribes can contract with all agencies within the Department of the Interior under the ISDEAA for this work.

(2) For agencies outside the Department of the Interior, funds are transferred to BIA for tribal self-determination contracts or self-governance agreements under the ISDEAA.

(d) In order to use National Scenic Byway funds, the project must be on a road designated as a state or Federal scenic byway.

§ 170.152 Can IRR Program funds be used for recreation, tourism, and trails programs?

Yes, a tribe, tribal organization, tribal consortium or BIA may fund activities for recreation, tourism, and trails programs if they are included in the IRR TIP.

§ 170.153 What types of activities may tribes perform under a recreation, tourism, and trails program?

(a) The following are some examples of activities that tribes may perform under a recreation, tourism, and trails program:

(1) Transportation planning for tourism and recreation travel;

(2) Adjacent vehicle parking areas;

(3) Development of tourist information and interpretative signs;

(4) Provision for non-motorized trail activities including pedestrians and bicycles;

(5) Provision for motorized trail activities including all terrain vehicles, motorcycles, snowmobiles, etc.;

(6) Construction improvements that enhance and promote safe travel on trails;

(7) Safety and educational activities;

(8) Maintenance and restoration of existing recreational trails;

(9) Development and rehabilitation of trailside and trailhead facilities and trail linkage for recreational trails;

(10) Purchase and lease of recreational trail construction and maintenance equipment;

(11) Safety considerations for trail intersections;

(12) Landscaping and scenic enhancement 23 U.S.C. 319;

(13) Bicycle Transportation and pedestrian walkways 23 U.S.C. 217; and

(14) Trail access roads.

(b) The items listed in paragraph (a) of this section are not the only activities that are eligible for recreation, tourism, and trails funding. The funding criteria may vary with the specific requirements of the non-IRR programs.

(c) Tribes may use IRR funds for any activity that is eligible for Federal funding under any provision of title 23 of the United States Code.

§ 170.154 Can roads be built in roadless and wild areas?

Under 25 CFR part 265 no roads can be built in roadless and wild areas.

Highway Safety Functions

§ 170.155 What Federal funds are available for a tribe's highway safety activities?

The following Federal funds are available for a tribe's highway safety activities:

(a) IRR funds, highway safety program funds under 23 U.S.C. 402;

(b) Occupant protection program funds under 23 U.S.C. 405;

(c) Alcohol traffic safety program funds under 23 U.S.C. 408;

(d) Alcohol-impaired driving countermeasures; and

(e) Funding for highway safety activities from the U.S. Department of Health and Human Services (HHS) under 23 U.S.C. 410.

§ 170.156 How can tribes obtain funds to perform highway safety projects?

There are two methods to access National Highway Traffic Safety Administration (NHTSA) and other FHWA safety funds for highway safety projects:

(a) FHWA provides safety funds to BIA under 23 U.S.C. 402. BIA annually solicits proposals from tribes for use of these funds. Proposals are processed under 25 CFR part 181. Tribes may

administer these funds under the ISDEAA.

(b) FHWA provides funds to the states under 23 U.S.C. 402, 405, 408, 410, and 412. States annually solicit proposals from tribes and local governments. Tribes may request that state DOTs agree to allow FHWA safety funds to be transferred to DOI so that they can be administered by the tribe under the ISDEAA. Alternatively, tribes can enter into contracts directly with FHWA.

§ 170.157 How can IRR funds be used for highway safety and impaired driver initiatives?

A tribe, tribal organization, tribal consortium, or BIA may fund projects to improve highway safety. Those projects that are not fully funded by BIA-administered Indian highway safety program must be incorporated into the FHWA-approved IRR TIP if IRR funds are used to complete funding of the project.

§ 170.158 What types of activities are eligible as highway safety projects?

The following are several examples of some of the activities that can be considered as highway safety projects:

(a) Highway alignment improvement;

(b) Bridge widening;

(c) Pedestrian paths/sidewalks and bus shelters;

(d) Installation and replacement of signs when designated as, or made part of, a highway safety project;

(e) Construction improvements that enhance and promote safe travel on IRR roads, such as guardrail construction and traffic markings;

(f) Development of a safety management system;

(g) Education and outreach highway safety programs, such as use of child safety seats, defensive driving, and Mothers Against Drunk Drivers;

(h) Development of a highway safety plan designed to reduce traffic accidents and deaths, injuries, and property damage;

(i) Collecting data on traffic-related deaths, injuries and accidents;

(j) Impaired driver initiatives;

(k) Child safety seat programs; and

(l) Purchasing necessary specific traffic enforcement equipment, such as radar equipment, breathalyser, video cameras.

§ 170.159 Are other funds available for a tribe's highway safety efforts?

Yes, Tribes should seek grant and program funding for highway safety activities from appropriate Federal, state, and local agencies and private grant organizations.

Non-Road Transportation Facilities

§ 170.160 Can IRR Program funds be used for construction of runways, airports, and heliports?

No, IRR Program funds cannot be used to construct or improve runways, airports or heliports which provide service to Indian reservations.

§ 170.161 Can IRR Program funds be used for construction of airport and heliport access roads?

Yes, IRR Program funds can be used for construction of airport and heliport access roads if the access roads are open to the public.

§ 170.162 Are funds available to construct airports, heliports, and runways?

Yes, the Federal Aviation Administration (FAA), DOT, funds projects under the Airport Improvement Program (AIP). (See FAA Advisory Circular No. 150/5370–10A.)

Transit Facilities

§ 170.163 What is transit?

For purposes of this part, transit includes those services, equipment, and functions associated with the public movement of people served within a community or network of communities.

§ 170.164 What is a tribal transit program?

A tribal transit program includes the planning, administration, acquisition of vehicles, and the operation and maintenance of a mass transit system associated with the public movement of people served within a community or network of communities on or near Indian reservations, lands, villages, communities, and pueblos.

§ 170.165 Are IRR Program funds available for tribal transit programs?

Yes, title 23 of the United States Code authorizes the use of IRR Program funds for transit facilities as defined in these regulations.

§ 170.166 How do tribes identify transit needs?

Tribes identify transit needs during the tribal transportation planning process. (See Subpart D.) Transit projects using IRR funds must be included in the FHWA-approved IRR TIP.

§ 170.167 What Federal funds are available for a tribe's transit program?

There are many sources of Federal funds that may help support tribal transit programs. These include, but are not limited to, the programs listed in this section. Note that each program has its own terms and conditions of assistance. For further information on these programs and their use for transit, contact the FTA Regional Transit Assistance Program (RTAP) National Transit Resource Center, 1–800–527–8279 or http://www.ctaa.org/ntrc.

(a) U.S. Department of Agriculture (USDA): community facilities loans, rural development loans, business and industrial loans, rural enterprise grants, commerce, public works and economic development grants, economic adjustment assistance.

(b) U.S. Department of Housing and Urban Development (HUD): community development block grants, supportive housing, tribal housing loan guarantees, resident opportunity and support services.

(c) U.S. Department of Labor: Native American employment and training, welfare-to-work grants.

(d) DOT: welfare-to-work, Indian Reservation Roads, transportation and community and systems preservation, Federal transit capital improvement grants, public transportation for non-urbanized areas, capital assistance for elderly and disabilities transportation, education, and Even Start.

(e) HHS: programs for Native American elders, community service block grants, job opportunities for low-income individuals, Head Start (capital or operating), administration for Native Americans programs, Medicaid, HIV Care Grants, Healthy Start, and the Indian Health Service.

§ 170.168 May tribes or tribal organizations use IRR funds as matching funds for other transit grants or programs?

Yes, a tribe or tribal organization may use IRR funds provided under a self-determination contract or self-governance agreement to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

§ 170.169 What transit facilities and related activities that support tribal transit programs are eligible for IRR funding?

Facilities and activities eligible for IRR funding include, but are not limited to:

(a) Acquiring, constructing, supervising or inspecting new, used or re-furbished equipment, buildings, facilities, buses, vans, water craft, and other vehicles for use in mass transportation;

(b) Transit-related intelligent transportation systems;

(c) Rehabilitating, re-manufacturing, and overhauling a transit vehicle;

(d) Preventive maintenance;

(e) Leasing transit vehicles, equipment, buildings, and facilities for use in mass transportation;

(f) Third-party contracts for otherwise eligible transit facilities and activities;

(g) Mass transportation improvements that enhance economic and community development, such as bus shelters in shopping centers, parking lots, pedestrian improvements, and support facilities that incorporate other community services;

(h) Passenger shelters, bus stop signs, and similar passenger amenities;

(i) Introduction of new mass transportation technology;

(j) Provision of fixed route, demand response services, and non-fixed route paratransit transportation services (excluding operating costs) to enhance access for persons with disabilities;

(k) Radio and communication equipment to support tribal transit programs; and

(l) Transit capital project activities authorized by 49 U.S.C. 5302(a)(1).

§ 170.170 May BIA use IRR funds as matching funds for other transit grants or programs?

Yes, BIA may use IRR funds to pay local matching funds for transit facilities and activities funded under 23 U.S.C. 104.

IRR Program Coordinating Committee

§ 170.171 What is the IRR Program Coordinating Committee?

Consistent with the government-to-government relationship the United States has with tribes and with the Federal policy of promoting tribal self-determination, the Secretaries established an IRR Program Coordinating Committee. The Committee provides input and recommendations to BIA and FHWA in developing policies and procedures for the IRR Program. The IRR Program Coordinating Committee supplements government-to-government consultation by coordinating with and obtaining input from tribes, BIA personnel, and FHWA personnel.

§ 170.172 Who are members of the IRR Program Coordinating Committee?

(a) The Committee consists of 12 tribal member representatives (one from each BIA Region) and three non-voting Federal representatives (FHWA, BIA, DOT and DOI–OSG).

(b) The Secretary will select one alternate tribal member from each BIA Region to attend committee meetings in the absence of the regional representative.

(c) The Secretary must select regional tribal representatives and alternates from nominees selected by the region's tribes by tribal resolution or other official action. To the extent possible, the Secretary must make the selection so that there is representation from a broad cross-section of large, medium, and small tribes. Each tribal representative must be a tribal governmental official or employee with authority to act for the tribal government.

(d) For purposes of continuity, the Secretary will appoint the initial tribal representative and alternate from each BIA region to either a 1-, 2-, or 3-year term so that only one-third of the tribal representatives and alternates change every year. Thereafter, all appointments must be for a term of 3 years.

§ 170.173 What are the responsibilities of the IRR Program Coordinating Committee?

(a) Committee responsibilities are to provide input and recommendations to BIA and FHWA during the development or revision of:

(1) BIA/FHWA IRR Stewardship Plan;

(2) IRR Program policy and procedures;

(3) IRR eligible activities determination;

(4) IRR transit policy;

(5) IRR regulations;

(6) IRR management systems policy and procedures; and

(7) National tribal transportation needs.

(b) The Committee may establish work groups to carry out their responsibilities; and

(c) The Committee also reviews IRR program national concerns (including the implementation of these regulations) brought to the attention of the Committee and provides recommendations.

§ 170.174 How often will the IRR Program Coordinating Committee meet?

The Committee holds at least two meetings a year. Additional Committee meetings may be called with the consent of one-third of the Committee members or by BIA or FHWA.

§ 170.175 How does the IRR Program Coordinating Committee conduct business at its meetings?

The Committee conducts business at its meetings as follows:

(a) A quorum consists of eight Committee members of which a majority must be tribal committee members.

(b) The Committee will operate by consensus or majority vote, as determined by the Committee in its protocols.

(c) Any Committee member can submit an agenda item to the Chairperson.

(d) The Committee will work through a committee-approved annual work plan and budget.

(e) Annually, the Committee must elect from among the Committee membership a Chairperson, a Vice Chairperson, and other officers. These officers will be responsible for preparing for and conducting Committee meetings and summarizing meeting results. These officers will also have such duties as the Committee may prescribe.

§ 170.176 How will the IRR Program Coordinating Committee be funded?

The budget will be funded through the IRR Program management funds, not to exceed $150,000 annually.

§ 170.177 How must the Committee keep the Secretary and the tribes informed of the Committee's accomplishments?

The Committee must keep the Secretary and the tribes informed through an annual accomplishment report provided within 90 days after the end of each fiscal year.

Indian Local Technical Assistance Program (LTAP)

§ 170.178 What is the Indian Local Technical Assistance Program?

The Indian LTAP program is authorized under 23 U.S.C. 504(b) and §§ 170.178–192 are provided for information only. The Indian Local Technical Assistance Program (LTAP) assists tribal governments and other IRR Program participants in extending their technical capabilities by providing them greater access to surface transportation technology and transportation training and research opportunities.

§ 170.179 How does the Indian LTAP work?

The Indian LTAP provides funds to Indian technical centers (also known as Tribal Technical Assistance Program Centers (TTAPs)) to provide transportation technology transfer services to tribal governments and IRR Program participants. FHWA can also make grants and enter into cooperative agreements and contracts with tribal governments or a consortium of tribal governments or state transportation departments or universities to provide education, training, technical assistance and related support services to do the following:

(a) Develop and expand tribal expertise in road and transportation areas;

(b) Improve IRR road and bridge performance;

(c) Enhance tribal intergovernmental transportation planning and project selection programs and tribal transit and freight programs;

(d) Develop transportation training courses, manuals, guidelines, and technical resource materials;

(e) Improve tribal programs for tourism and recreational travel;

(f) Develop and share tribal transportation technology and traffic safety information with other government transportation agencies so that they can deal more effectively with transportation-related problems affecting tribal governments;

(g) Operate Indian technical centers in cooperation with state transportation departments and universities;

(h) Enhance new technology implementation in cooperation with the private sector; and

(i) Develop educational programs to encourage and motivate interest in transportation careers among Native American students.

§ 170.180 How is the Indian LTAP funded?

FHWA uses Highway Trust Funds to fund the Indian LTAP program. BIA may only use IRR administrative funding for Indian LTAP centers. These funds may be used to operate Indian LTAP centers and to develop training materials and products for these centers. The Indian LTAP centers are encouraged to apply for supplemental funding from other sources to accommodate their needs.

§ 170.181 How do tribes receive information about opportunities under the Indian LTAP?

(a) FHWA announces Indian LTAP grant, cooperative agreement, and contracting opportunities in the **Federal Register**. The announcements state that tribal governments and consortia are eligible for these awards, indicate the amount of funds available and provide any eligibility criteria.

(b) FHWA sends the information in paragraph (a) of this section to BIA for distribution to tribal governments and consortia. BIA must provide written notice to tribal governments and consortia.

(c) FHWA notifies tribal governments and consortia if they receive grant awards.

§ 170.182 How are Indian LTAP grant, cooperative agreement, and contracting recipients selected?

A selection committee of Federal and tribal representatives from the region's Indian LTAP advisory committee (see § 170.189) reviews the proposals of eligible applicants and recommends the award recipient(s). FHWA selects recipients consistent with applicable law.

§ 170.183 Can tribes or tribal organizations enter into a contract or agreement for Indian LTAP funds under the ISDEAA?

Yes, if selected for award, a tribe or tribal organization may request that FHWA allocate the available funds to BIA and a tribe or tribal organization may enter into a self-determination contract or self-governance agreement for the activities under the ISDEAA.

§ 170.184 What services do Indian LTAP centers provide?

(a) The Indian LTAP centers:

(1) Provide training materials and present workshops to tribal personnel and IRR Program participants;

(2) Act as information clearinghouses for tribal governments and Indian-owned businesses on transportation-related topics; and

(3) Provide technical assistance on transportation technology and other transportation topics as requested by tribal staff and IRR Program participants.

(b) Unless otherwise stated in an Indian LTAP agreement, an Indian technical assistance program center must, at a minimum:

(1) Maintain a current mailing/contact list including, at a minimum, each tribe/tribal consortia and IRR Program participants within the service area;

(2) Publish a quarterly newsletter and maintain a web site;

(3) Conduct and/or coordinate 10 workshops per year;

(4) Maintain a library of technical publications and video tapes;

(5) Provide technical assistance to IRR Program participants;

(6) Hold two advisory committee meetings a year;

(7) Develop a yearly action plan in consultation with the advisory committee;

(8) Coordinate with state LTAPs, other Indian technical centers, and Rural Technical Assistance Program (RTAP) centers, tribal governments or consortia and local planning and transportation agencies to share and exchange publications, video tapes, training material, and conduct joint workshops;

(9) Consult with tribes, tribal consortia, and IRR Program participants concerning technical assistance and training desired; and

(10) Prepare an annual report and distribute this report to service area tribes.

§ 170.185 How does a tribe obtain services from an Indian LTAP center?

A tribe that wants to obtain services should contact the Indian LTAP center serving its service area or its BIA regional road engineer. Information about the centers and the services provided can be found on the Internet at the following address http://www.irr.bia.gov.

§ 170.186 Do Indian LTAP centers offer similar services provided by state LTAPs?

Yes, however, Indian LTAP centers are primarily responsible for increasing the capacity of tribal governments to administer transportation programs. State LTAPs also provide services to local and rural governments, including tribal governments. Indian LTAP centers should coordinate education and training opportunities with state LTAP centers to maximize resources.

§ 170.187 What can tribes do if LTAP services are unsatisfactory?

Tribal governments can make their concerns known to the Indian LTAP Center Director, FHWA and/or BIA. If the center does not adequately address these concerns in writing within 30 calendar days, the tribal government may request any or all of the following:

(a) A special meeting with the Center's Director and staff to address the concern;

(b) A review of the Center's performance by FHWA;

(c) Services from other Indian LTAP centers; or

(d) That the center's cooperative agreement not be funded in the subsequent year.

§ 170.188 How are Indian LTAP centers managed?

Each center is managed by its Center Director and staff, with the advice of its advisory committee under the LTAP agreements.

§ 170.189 What does the Indian LTAP center advisory committee do?

(a) The advisory committee consists of one BIA Regional Road Engineer, one FHWA representative, one state DOT representative, and at least five tribal representatives from the service area. The advisory committee may, among other activities:

(1) Recommend center policies;

(2) Review and approve the annual action plan for submission to FHWA for approval;

(3) Provide direction on the areas of technical assistance and training;

(4) Review and approve the annual report for submission to FHWA for approval;

(5) Develop recommendations for improving center operation services and budgets; and

(6) Assist in developing goals and plans for obtaining or using supplemental funding.

(b) The advisory committee must meet at least twice a year. Tribal representatives may request IRR funding to cover the cost of participating in these committee meetings.

§ 170.190 How are tribal advisory committee members selected?

(a) The LTAP center requests nominations from tribal governments and consortia within the service area for tribal transportation representatives to serve on the advisory committee.

(b) Tribes from the service area select tribal committee members from those nominated.

§ 170.191 How are tribal representatives nominated and selected?

In its written notice to tribal governments and consortia announcing opportunities under the Indian LTAP program, FHWA requests nominations within each Indian LTAP's service area for representatives to serve on the service area advisory committee. Forty-five days after the request for nominations, FHWA will notify tribal governments and consortia of the nominees for the service area. Each tribe then has 30 days to notify FHWA of its selection from the nominees.

§ 170.192 Who reviews the performance of Indian LTAP centers?

FHWA, BIA, advisory committees, and tribes review the performance of the Indian LTAP centers.

LTAP-Sponsored Education and Training Opportunities

§ 170.193 What LTAP-sponsored transportation training and educational opportunities exist?

There are many programs and sources of funding that provide tribal transportation training and education opportunities. Each program has its own terms and conditions of assistance. For further information on these programs and their use for tribal transportation education and training opportunities, contact the Regional Indian LTAP center or the BIA Regional Road Engineer. Appendix B to this subpart contains a list of programs and funding sources.

§ 170.194 Where can tribes get scholarships and tuition for LTAP-sponsored education and training?

Tribes can get tuition and scholarship assistance for LTAP-sponsored education and training from the following sources:

(a) LTAP centers;

(b) BIA-appropriated funds (for approved training); and

(c) IRR funds (for education and training opportunities and technical assistance programs related to developing skills for performing IRR Program activities).

Appendix A to Subpart B

Allowable Uses of IRR Program Funds

A. IRR Program Funds Can Be Used For the Following Planning and Design Activities:

1. Planning and design of IRR transit facilities eligible for IRR construction funding:
2. Planning and design of IRR roads and bridges.
3. Planning and design of transit facilities that provide access to or are located within an Indian reservation or community.
4. Transportation planning activities, including planning for tourism and recreational travel.
5. Development, establishment, and implementation of tribal transportation management systems such as safety, bridge, pavement, and congestion management.
6. Tribal transportation plans and transportation improvement programs (TIPS).
7. Research for coordinated technology implementation program (CTIP).
8. Traffic engineering and studies.
9. Identification and evaluation of accident prone locations.
10. Tribal transportation standards.
11. Preliminary engineering studies.
12. Interagency program/project formulation, coordination and review.
13. Environmental studies and archeological investigations directly related to transportation programs and projects.
14. Costs associated with obtaining permits and/or complying with tribal, Federal, state, and local environmental, archeological and natural resources regulations and standards.
15. Development of natural habitat and wetland conservation and mitigation plans, including plans authorized under the Water Resources Development Act of 1990, 104 Stat. 4604 (Water Resources Development Act).
16. Architectural and landscape engineering services related to transportation programs.
17. Engineering design related to transportation programs, including permitting activities.
18. Inspection of bridges and structures.
19. Indian local technical assistance program (LTAP) centers.
20. Highway and transit safety planning, programming, studies and activities.
21. Tribal employment rights ordinance (TERO) fees.
22. Purchase or lease of advanced technological devices used for transportation planning and design activities such as global positioning units, portable weigh-in-motion systems, hand held data collection units, related hardware and software, etc.
23. Planning, design and coordination for Innovative Readiness Training projects.
24. Transportation planning and project development activities associated with border crossings on or affecting tribal lands.
25. Public meetings and public involvement activities.
26. Leasing or rental of equipment used in transportation planning or design programs.
27. Transportation-related technology transfer activities and programs.
28. Educational activities related to bicycle safety.
29. Planning and design of mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project.
30. Evaluation of community impacts such as land use, mobility, access, social, safety, psychological, displacement, economic, and aesthetic impacts.
31. Acquisition of land and interests in land required for right-of-way, including control of access thereto from adjoining lands, the cost of appraisals, cost of examination and abstract of title, the cost of certificate of title, advertising costs, and any fees incidental to such acquisition.
32. Cost associated with relocation activities including financial assistance for displaced businesses or persons and other activities as authorized by law.
33. On the job education including classroom instruction and pre-apprentice training activities related to transportation planning.
34. Other eligible activities as approved by FHWA.
35. Any additional activities identified by IRR Program Coordinating Committee guidance and approved by the appropriate Secretary (see § 170.173).

B. IRR Program Funds Can Be Used for the Following Construction and Improvement Activities

1. Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for IRR roads and bridges including bridges and structures under 20 feet in length.
2. Construction or re-construction of IRR roads and bridges necessary to accommodate other transportation modes.
3. Construction of toll roads, bridges and tunnels, and toll and non-toll ferry boats and terminal facilities, and approaches thereto (except when on the Interstate System) to the extent permitted under 23 U.S.C. 129.
4. Construction of projects for the elimination of hazards at railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings.
5. Installation of protective devices at railway-highway crossings.
6. Transit facilities, whether publicly or privately owned, that serve Indian reservations and other communities or that provide access to or are located within an Indian reservation or community (See §§ 170.163–170.170 for additional information).
7. Engineered pavement overlays that add to the structural value and design life or increasing the skid resistance of the pavement.
8. Tribally-owned, post-secondary vocational school roads and bridges.
9. Road sealing.
10. Double bituminous surface and chip seals that are part of a predefined stage of construction or form the final surface of low volume roads.
11. Seismic retrofit, replacement, rehabilitation, and painting of bridges.
12. Application of calcium magnesium acetate, sodium acetate/formate, or other

environmentally acceptable, minimally corrosive anti-icing and de-icing compositions on bridges, and approaches thereto and other elevated structures.

13. Installation of scour countermeasures for bridges and other elevated structures.

14. Special pedestrian facilities built in lieu of streets or roads, where standard street or road construction is not feasible.

15. Interpretive signs, standard traffic regulatory and guide signs which are culturally relevant (native language, symbols, etc.) that are a part of transportation projects.

16. Traffic barriers and bridge rails.

17. Engineered spot safety improvements resulting from safety studies.

18. Planning and development of rest areas, recreational trails, parking areas, sanitary facilities, water facilities, and other facilities which accommodate the traveling public.

19. Public approach roads and interchange ramps which meet the definition of an Indian reservation road.

20. Construction of roadway lighting and traffic signals.

21. Adjustment or relocation of utilities directly related to roadway work, not required to be paid for by local utility companies.

22. Conduits crossing under the roadway to accommodate utilities which are part of future development plans.

23. Restoration of borrow and gravel pits created by projects funded from the IRR Program.

24. Force account and day labor work, including materials and equipment rental, being performed in accordance with approved plans and specifications.

25. Experimental features where there is a planned monitoring and evaluation schedule.

26. Capital and operating costs for traffic monitoring, management, and control facilities and programs.

27. Handling traffic and pedestrians through construction zones.

28. Construction engineering including contract/project administration, inspection, and testing.

29. Construction of temporary and permanent erosion control, including landscaping and seeding of cuts and embankments.

30. Landscape and roadside development features.

31. Marine terminals as intermodal linkages.

32. Construction of visitor information centers and related items.

33. Other appropriate public road facilities such as visitor centers as determined by the Secretary of Transportation.

34. Facilities adjacent to roadways to separate pedestrians and bicyclists from vehicular traffic for operational safety purposes, or special trails on separate rights-of-way.

35. Construction of pedestrian walkways and bicycle transportation facilities, such as a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

36. Facilities adjacent to roadways to separate modes of traffic for safety purposes.

37. Acquisition of scenic easements and scenic or historic sites provided they are part of an approved project or projects.

38. Debt service on bonds or other debt financing instruments issued to finance IRR construction and project support activities.

39. Any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

40. Fringe and corridor parking facilities including access roads, buildings, structures, equipment improvements, and interests in land.

41. Adjacent vehicular parking areas.

42. Costs associated with obtaining permits and/or complying with tribal, Federal, state, and local environmental, archeological, and natural resources regulations and standards on IRR projects.

43. Seasonal transportation routes, including snowmobile trails, ice roads, overland winter roads, and trail markings when designed and constructed with requirements defined in § 170.130.

44. Tribal fees such as employment taxes (TERO), assessments, licensing fees, permits, and other regulatory fees.

45. On the job education including classroom instruction and pre-apprentice training activities related to IRR construction projects such as equipment operations, surveying, construction monitoring, testing, inspection and project management.

46. Installation of advance technological devices on IRR facilities such as permanent weigh-in-motion systems, informational signs, intelligent transportation system hardware, etc.

47. Tribal, cultural, historical, and natural resource monitoring, management and mitigation.

48. Mitigation activities required by tribal, state, or Federal regulatory agencies and 42 U.S.C. 4321, *et seq.*, the National Environmental Policy Act (NEPA).

49. Leasing or rental of construction equipment.

50. Coordination and construction materials for innovative readiness training projects such as the Department of Defense (DOD), the American Red Cross, the Federal Emergency Management Agency (FEMA), etc.

51. Emergency repairs on IRR roads, bridges, trails, and seasonal transportation routes.

52. Public meetings and public involvement activities.

53. Construction of roads on dams and levees.

54. Transportation enhancement activities as defined in 23 U.S.C. 101(a)(35).

55 Modification of public sidewalks adjacent to or within IRR transportation facilities.

56. Highway and transit safety infrastructure improvements and hazard eliminations.

57. Transportation control measures such as employer-based transportation management plans, including incentives, shared-ride services, employer-sponsored programs to permit flexible work schedules and other activities listed in section 108(f)(1)(A) (other than clause (xvi) of the Clean Air Act, (42 U.S.C. 7408(f)(1)(A))).

58. Necessary environmental restoration and pollution abatement.

59. Trail development and related activities as identified in §§ 170.150–170.154.

60. Development of scenic overlooks and information centers.

61. Natural habitat and wetlands mitigation efforts related to IRR road and bridge projects, including:

a. Participation in natural habitat and wetland mitigation banks, including banks authorized under the Water Resources Development Act, and

b. Contributions to tribal, statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetland, including efforts authorized under the Water Resources Development Act.

62. Mitigation of damage to wildlife, habitat and ecosystems caused as a result of a transportation project.

63. Construction of permanent fixed or moveable structures for snow or sand control.

64. Cultural access roads.

65. Other eligible items as approved by the Federal Highway Administration (FHWA).

66. Any additional activities identified by IRR Program Coordinating Committee and approved by the appropriate Secretary (see § 170.173).

Appendix B to Subpart B

Sources of Tribal Transportation Training and Education Opportunities

The following is a list of some of the many sources for tribal transportation training and education opportunities. There may be other sources not listed here.

1. National Highway Institute training courses and fellowships

2. State and local technical assistance program workshops

3. Indian technical assistance center workshops

4. FHWA and FTA Research Fellowships

5. Dwight David Eisenhower Transportation Fellowship (23 U.S.C. 504)

6. Intergovernmental personnel agreement assignments

7. BIA transportation cooperative education program

8. American Association State Highway & Transportation Officials (AASHTO)

9. Transportation Research Board (TRB) workshops

10. Private sector course offerings

11. Union apprenticeships

12. BIA force account operations

13. Intertribal Transportation Association (ITA)

14. FTA RTAP

15. State DOTs

16. Federal-aid highway construction and technology training including skill improvement programs under 23 U.S.C. 140 (b)(c)

17. Minority Business Enterprise (MBE), Women's Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE),

Small Business Enterprise (SBE), Women's Disadvantaged Enterprise (WDBE)
18. Other funding sources identified in § 170.167 (Transit)
19. Department of Labor work force development
20. Indian Employment, Training, and Related Services Demonstration Act, Pub. L. 102–477
21. Garrett Morgan Scholarship (FHWA)
22. Tribal colleges
23. NITI—National Indian Telecommunications Institute
24. AISES—American Indian Science and Engineering Society
25. CTAA—Community Transit Association of America
26. NTRC—National Transit Resource Center
27. CTER—Council for Tribal Employment Rights
28. American Traffic Safety Association
29. APA—American Planning Association
30. PMI—Project Management Institute
31. BIA Indian Highway Safety Program
32. NRC—National Research Council
33. CERT—Council for Energy Resource Tribes
34. FHWA/STIPDG and NSTISS Student Internship Programs (Summer Transportation Internship Program for Diverse Groups and National Summer Transportation Institute for Secondary Students)
35. Environmental Protection Agency (EPA)
36. Department of Commerce (DOC)
37. HUD Community Planning and Development

Subpart C—Indian Reservation Roads Program Funding

§ 170.225 How are IRR Program funds allocated?

These regulations allocate IRR Program funds according to the Tribal Transportation Allocation Methodology (TTAM) by:

(a) Continuing the 2% Transportation Planning Program;

(b) Creating a discretionary pool for IRR High Priority Projects (IRRHPP);

(c) Creating a special provision for additional authorization greater than $275,000,000 that includes:

(1) Increased Funding = Authorization—$275,000,000;

(2) Of Increased Funding, after takedowns, 12.5% added to IRRHPP and 12.5% to Population Adjustment Factor (PAF); and

(3) Distributing the balance of the funds by the following Relative Need Distribution Factor: 50% Cost to Construct + 30% Vehicle Miles Traveled + 20% Population.

§ 170.226 What is the process to allocate IRR Program funds?

The following diagram illustrates the process for allocating IRR Program funds.

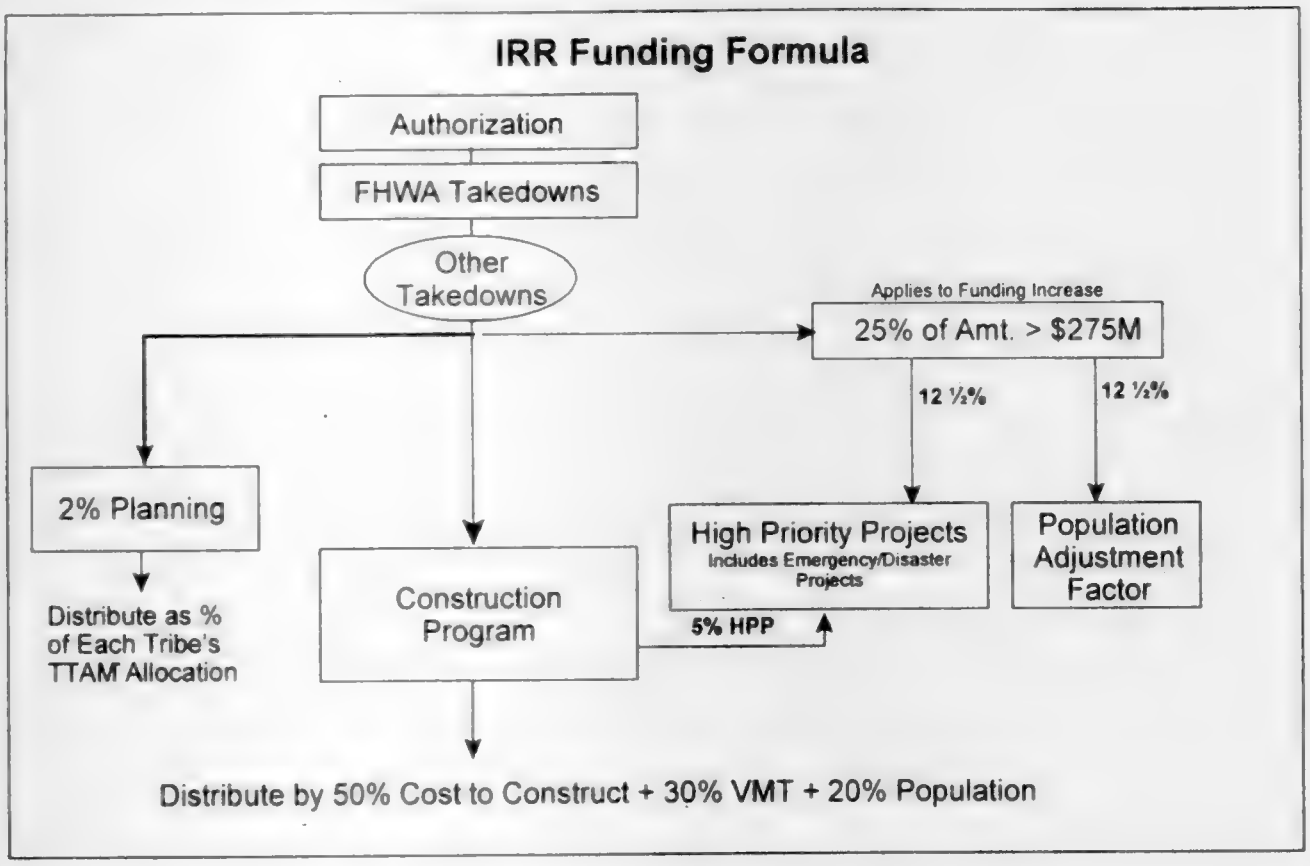

§ 170.232 How does BIADOT allocate and distribute 2% Transportation Planning funds?

BIADOT distributes 2% Tribal Transportation Planning funds described in § 170.404 pro rata according to the tribes' relative need percentage from the Relative Need Distribution Factor. The 2% transportation planning funds must be distributed to the Office of Self-Governance for self-governance tribes that negotiate 2% transportation planning in their AFA's and BIA Regional Offices for all other tribes.

Tribal Transportation Allocation Methodology for IRR Construction

§ 170.235 How does BIA allocate IRR construction program funds to the tribes?

BIA allocates IRR construction program funds by the Tribal Transportation Allocation Methodology as follows:

(a) Creating the IRRHPP funding pool;

(b) For authorizations greater than $275 million, after takedowns, establishing the PAF; and

(c) Allocating the balance of the funds according to the Relative NeedDistribution Factor.

§ 170.236 Does the Relative Need Distribution Factor allocate funding among the individual tribes, or only to the Regions?

The Relative Need Distribution Factor allocates funding to the tribes under 23 U.S.C. § 202(d)(2). The IRR construction

funds are allocated pro rata according to the tribes' relative need percentage from the Funding Formula. The IRR construction funds must be re-programmed to the Office of Self-Governance for Self-Governance tribes that negotiate IRR construction funds in their AFA, and distributed to BIA Regional Offices for all other tribes. However, in order for a tribe's IRR allocation to be expended on a construction project, the project must be included in an FHWA-approved Transportation Improvement Program (TIP).

IRR High Priority Project (IRRHPP) Program

§ 170.245 What is the IRR High Priority Project (IRRHPP) Program?

The IRRHPP Program is a special funding pool for tribes, or governmental subdivision of a tribe that is authorized to administer its own IRR funding, whose annual allocation is insufficient to complete their highest priority project. Eligible applicants may have only one application pending in the IRRHPP at any time. In addition, IRRHPP Program funds can be used in an emergency/disaster on any IRR system route.

§ 170.246 How is an emergency/disaster defined?

An emergency/disaster is defined as damage to an IRR facility identified as vital to the community, such that the facility is rendered impassable or unusable, caused by a natural disaster over a widespread area or catastrophic failure from an external cause.

(a) Examples of a natural disaster include, but are not limited to, floods, earthquakes, tornadoes, landslides, and avalanches or severe storms, such as saturated surface conditions and/or high-water table caused by precipitation over an extended period of time; and

(b) An example of a catastrophic failure includes, but is not limited to, a bridge collapse after being struck by a barge or a truck or a landslide.

§ 170.247 What funding levels are available to the IRRHPP Program?

The base IRRHPP Program funding level is 5% of available IRR Program funds, up to $275,000,000, after takedowns. If the yearly authorization is greater than $275,000,000, an additional amount, after takedowns, is available to IRRHPP. This amount is calculated as follows:

Additional IRRHPP = 12.5% × (Authorization − $275,000,000 (after takedowns)).

§ 170.248 How will BIA and FHWA rank and fund IRRHPP project applications?

(a) BIA and FHWA will fund IRRHPP project applications that are for emergency/disaster projects on a first-come first-serve basis, subject to availability of funds. Emergency/disaster awards are limited to the estimated cost of the emergency (necessary to restore usability of the facility), not to exceed $1,000,000, with certification of cost estimate by the Regional Engineer.

(b) BIA and FHWA will score, rank, and fund all other IRRHPP project applications based upon the following criteria and availability of funds:

(1) Safety hazards with documented fatality and injury accidents;

(2) Number of years since the tribe's last IRR construction project completed;

(3) Number of years that a proposed project has been in the IRRHPP applicant pool;

(4) Percentage of project matched by other non IRR funds (projects with a greater percentage of other matched funds rank ahead of lesser matches);

(5) Amount of funds requested (smaller requests receive greater priority);

(6) Challenges caused by geographic isolation; and

(7) All weather access for: employment, commerce, health, safety, educational resources, and housing.

(c) The Project Scoring Matrix is found in Appendix A to subpart C.

§ 170.249 Is there a limit on the amount of IRRHPP funding available for a project?

Yes, the limit of IRRHPP funding per project is $1,000,000.

§ 170.250 May an IRRHPP project be phased over several years?

Yes, IRRHPP projects may be phased over more than one year, provided the total amount of IRRHPP funds needed to complete the project does not exceed$1,000,000. For example, a tribe might receive $100,000 in year one for pre-construction and $900,000 in year two for construction. The plans, specifications, and estimates (PS&E) must be approved before IRRHPP funds will be provided for construction.

§ 170.251 How do tribes apply for IRRHPP?

A tribe may apply for IRRHPP funds by submitting a complete application package to the Chief of BIADOT.

§ 170.252 What must an application for an IRRHPP include?

The application must include:

(a) Project scope of work (deliverables, budget, timeline);

(b) Amount of IRRHPP funds requested;

(c) Project information addressing ranking criteria identified in § 170.248, or the nature of the emergency/disaster;

(d) Documentation that the project is in the IRR Inventory, or in the case of an emergency/disaster application that it meets the definition of an IRR facility;

(e) Documentation of official tribal action requesting the IRRHPP project; and

(f) An FHWA-approved IRR TIP.

§ 170.253 Are there any transportation activities for which IRRHPP funds cannot be used?

Yes, IRRHPP funds cannot be used for transportation planning or research.

§ 170.254 Who ranks the IRRHPP projects?

BIADOT and FHWA rank IRRHPP projects.

§ 170.255 What is the IRRHPP Award list?

The award list is the ranked IRRHPP projects that have been identified for current year IRRHPP funds, assuming that all current year IRRHPP funds are available for non-emergency projects.

§ 170.256 What is the timeline for the IRRHPP, other than emergency/disaster projects, for any given fiscal year?

The timeline is as follows:

(a) BIADOT will accept applications through March 1 of each year.BIADOT notifies all applicants and Regions of receipt and completeness of application within 30 days of receipt;

(b) During May and June BIADOT and FHWA rank all complete applications;

(c) August 1 BIADOT notifies applicants of award;

(d) BIADOT transfers funds to respective Regions of selected IRRHPP projects no later than September 1;

(e) Regions must obligate funds by September 15; and

(f) September 16 BIADOT redistributes un-obligated funds.

§ 170.257 How does the award of an emergency/disaster project application affect projects on the IRRHPP Award List?

Emergency/disaster projects are funded from October 1—August 31. Projects on the IRRHPP Award List are funded based upon order of rank until current year funds are allocated to IRRHPP projects. Projects not funded will retain order of rank and be placed at the top of the award list the following year, without resubmission of application. Projects that were not ranked high enough to be placed on the IRRHPP Award List must be resubmitted.

Population Adjustment Factor (PAF)

§ 170.263 What is the PAF?

The PAF is a special distribution calculated annually that provides for broader participation in the IRR Program by tribes (or federally recognized governmental subdivision of a tribe that is authorized to administer its own IRR funding) based upon the following population ranges and distribution factors (as further explained in Appendix B to subpart C):

Population range	Distribution factor	Number of tribes*	Funding amount per tribe (minimum base allocation)
Less than 25	1	N_1	MBA × 1
25–100	3.5	N_2	MBA × 3.5
101–1000	5.0	N_3	MBA × 5.0
1001–10,000	6.5	N_4	MBA × 6.5
10,000+	8	N_5	MBA × 8

*The number of tribes in a given population range may vary from year to year.

§ 170.264 What is the distribution factor?

As shown in the table § 170.263, the distribution factor is the multiplier used to determine the relative PAF funding between the population ranges. For example, if $1000 is available for the first population range (less than 25), then the second population range (25–100) will receive $3,500 or 3.5 times the amount available to the first population range.

§ 170.265 What funding levels are available for distribution based on the PAF?

When the yearly amount authorized and appropriated to the IRR program exceeds $275,000,000, then 12.5% of the increase over $275,000,000, after takedowns, is available for distribution.

§ 170.266 What is the Minimum Base Allocation (MBA)?

The MBA is the dollar value to be multiplied by the distribution factor for each population range to determine the distribution of the PAF. The MBA calculation is as follows:

$$MBA = \frac{\text{total amount available for PAF}}{(1\times N_1)+(3.5\times N_2)+(5\times N_3)+(6.5\times N_4)+(8\times N_5)}$$

§ 170.267 What population data is used to determine the PAF?

The population data used to determine PAF is the same data as used for the Population component of the Relative Need Distribution Factor.

Relative Need Distribution Factor

§ 170.270 What is the Relative Need Distribution Factor?

The Relative Need Distribution Factor is a mathematical formula for distributing the IRR construction funds using the following three factors: Cost-to-Construct (CTC), Vehicle Miles Traveled (VMT), and Population (POP). The Relative Need Distribution Factor is as follows:

$A = \alpha \times \{CTC \div \text{Total C}\} + \beta \times \{VMT \div \text{Total VMT}\} + \delta \times \{POP \div \text{Total POP}\}$

Where:

A = % Relative Need for an individual tribe

CTC = Total cost-to-construct calculated for an individual tribe

Total C = Total cost-to-construct calculated for all tribes shown in the IRR inventory

VMT = Total vehicle miles traveled for all routes in the IRR inventory for a given tribe

Total VMT = Total vehicle miles traveled for all routes in the IRR inventory

POP = Population of an individual tribe

Total POP = Total population for all tribes

α, β, δ = 0.50, 0.30, 0.20 respectively = Coefficients reflecting relative weight given to each formula factor

Example:

Tribe X has the following data:

CTC = $51,583,000

Total CTC = $10,654,171,742

VMT = 45,680

Total VMT = 10,605,298

POP = 4,637

Total POP = 1,010,236

$A = 0.50\ [CTC \div \text{Total CTC}] + 0.30[VMT \div \text{Total VMT}] + 0.20[\ POP \div \text{Total POP}]$

$A = 0.50\ [51,583,000 \div 10,654,171,742] + 0.30\ [45,680 \div 10,605,298] + 0.20\ [4,637 \div 1,010,236]$

$A = 0.00242 + 0.00129 + 0.00092$

$A = 0.00463$ or 0.463%

If construction funds available for the fiscal year are $226,065,139, then the allocation amount would be:

$226,065,139 \times 0.00463 = \$1,046,682$

§ 170.271 What is the Cost-to-Construct component in the Relative Need Distribution Factor?

The Cost-to-Construct component measures the estimated cost of a tribe's transportation projects as a percentage of the estimated cost nationally of all tribes' transportation facilities. Costs are derived from the IRR inventory of eligible IRR transportation facilities developed and approved by tribal governments through Long-Range Transportation Plans (LRTPs).

§ 170.272 What is the Cost-to-Construct for an individual tribe?

The Cost-to-Construct for an individual tribe is the sum of all project costs from the tribe's IRR Inventory.

§ 170.273 What is the BIA methodology of estimating construction costs for transportation facilities?

On an interim basis, the methodology for calculating the Cost-to-Construct is the simplified approach identified in the Cost-to-Construct (Appendix C of this subpart).

§ 170.274 How may BIA and FHWA revise the method for calculating the Cost-to-Construct component of the Relative Need Distribution Factor?

BIA and FHWA, in partnership with the IRR Program Coordinating Committee, will consider revising the method for calculating the Cost-to-Construct component of the Relative Need Distribution Factor. BIA and FHWA may incorporate the following elements in the new methodology:

(a) Include costs for all eligible IRR projects, including transportation facilities that are not roads or bridges;

(b) Take into account regional cost differences while maintaining the integrity of the system by, for example, using an average of local tribal costs,

national tribal costs, and the state project costs from the tribe's local area to derive the underlying cost data from which estimates are generated;

(c) Generate and report total costs by project and tribe;

(d) Create templates that can be easily used at the tribal level;

(e) Include as project costs:

(1) Project Planning;

(2) Project Administration;

(3) Preliminary Engineering;

(4) Construction;

(5) Project Bid Items;

(6) Construction Engineering;

(7) Quality Control; and

(8) Permits, fees and taxes.

§ 170.275 What is the source of the construction cost used to generate the CTC?

The construction cost is derived from the average of the following three project bid tabulation sources:

(a) Tribal bid tabulations;

(b) State bid tabulations for the region of the State in which the tribe's project will be constructed;

(c) National IRR programs bid tabulations; and

(d) If one or more of these bid tabulation sources is unavailable, use the average of the available sources.

§ 170.276 Do all IRR facilities identified in the IRR Inventory count in the Relative Need Distribution Factor at 100% of their CTC and VMT?

No. The CTC and VMT for any facility that is included in or added to the IRR Inventory and is eligible for funding for construction or reconstruction with Federal funds, other than IRR or Public Lands Highways (PLH) funds, must be computed at the non-federal share requirement for matching funds. If, however, the facility falls into one or more of the following categories, then the CTC and VMT factors must be computed at 100%:

(a) All transportation facilities approved and included in the BIA system for funding purposes prior to these regulations; or

(b) Any facility that is not eligible for funding for construction or reconstruction with Federal funds, other than IRR or PLH funding; or

(c) The state, municipality, county, or federal agency provides certification of inability to provide funding for the project and agrees to maintain the completed project under 23 U.S.C. 116.

§ 170.278 What is the VMT component of the Relative Need Distribution Factor and how is it calculated?

VMT is a measure of the IRR transportation system use. VMT is calculated using the sum of the length of IRR route segments in miles multiplied by the Average Daily Traffic (ADT) of the route segment.

§ 170.279 What IRR route segments are used to calculate VMT?

All IRR route segments in the IRR Inventory are used to calculate VMT, but percentage factors are applied.

§ 170.282 What is the Population component of the Relative Need Distribution Factor and how is it determined?

The population component is a factor used to define transportation need based on the number of American Indian or Alaska Native people served. On an interim basis, the population component will use data that is the on- and near-reservation service area population from the most recently published BIA Labor Force Report. The population data of the American Indian and Alaska Native Service Population developed by the Department of Housing and Urban Development, pursuant to the Native American Housing Assistance and Self-Determination Act (NAHASDA), will become the population component used, after the NAHASDA data is updated to reflect the 2000 or subsequent census data.

General Data Appeals

§ 170.285 May a tribe challenge the Cost-to-Construct, Vehicle Miles Traveled, and Population data BIA uses in the Relative Need Distribution Factor?

Yes, a tribe may submit a request to the Regional Director that it revise the data for the tribe that BIA uses in the Relative Need Distribution Factor. Such a request must include any relevant data in the tribe's possession, together with written support for its contention that such data is more accurate than the data the BIA uses for the tribe. The Regional Director must respond within 30 days of receipt of a Relative Need Distribution Factor data correction request.

§ 170.286 When may a tribe submit a Relative Need Distribution Factor data correction request?

A tribe may submit a data correction request at any time. In order to impact the distribution in a given fiscal year, a data correction request must be approved, or any subsequent appeals resolved, by June 1 of the prior fiscal year.

§ 170.287 When must a data correction request be approved?

Unless the Regional Director determines that the existing BIA data is more accurate, the Regional Director must approve the tribe's data correction request and accept the tribe's corrected data. If the Regional Director disapproves the tribe's request, the Regional Director's decision must include a detailed written explanation of the reasons for the disapproval, copies of any supporting documentation the Regional Director relied upon in reaching the decision (other than the tribe's request), and notice of the tribe's right to appeal the decision. If the Regional Director does not approve the tribe's request within 30 days of receipt of the request, the request must be deemed disapproved.

§ 170.288 How does a tribe appeal a disapproval from the Regional Director?

(a) Within 30 days of receipt of a disapproval, or within 30 days of a disapproval by operation of law, a tribe may file a written notice of appeal to the Deputy Commissioner of Indian Affairs, with a copy served upon the Regional Director; and

(b) Within 30 days of receipt of an appeal, the Deputy Commissioner must issue a written decision upholding or reversing the Regional Director's disapproval. Such a written decision must include a detailed written explanation of the reasons for the disapproval, copies of any supporting documentation the Deputy Commissioner relied upon in reaching the decision (other than the tribe's request or notice of appeal), and notice of the tribe's right to appeal the decision to the Interior Board of Indian Appeals pursuant to 25 CFR part 2.

IRR Inventory and Long-Range Transportation Planning (LRTP)

§ 170.290 How is the IRR Inventory used in the Relative Need Distribution Factor?

The IRR Inventory as defined in § 170.445 identifies the transportation need by providing the data used to generate the CTC and VMT components of the Relative Need Distribution Factor.

§ 170.291 How is the IRR inventory developed?

The IRR Inventory is developed through the LRTP process, as defined in § 170.427.

§ 170.292 Are all facilities included in the IRR Inventory used to calculate CTC?

No, projects that have been constructed to their design standard are not eligible for inclusion for purposes of applying the CTC portion of the formula for a period of 5 years after completion of the project.

§ 170.294 Is there a difference for funding purposes between the old BIA Roads Inventory and the IRR Inventory?

Yes, the IRR Inventory defined in this part expands the BIA Roads Inventory for funding purposes, it includes:

(a) All roads, bridges, and other eligible transportation facilities that were previously approved in the BIA system inventory in 1992 and each subsequent year thereafter;

(b) All miles of road that have been constructed using Highway Trust Funds (IRR) since 1983;

(c) All IRR routes;

(d) Non-road facilities; and

(e) Other IRR eligible projects.

§ 170.295 Who is responsible for maintaining the National IRR Inventory Database?

BIA Regional offices are responsible for maintaining, certifying, and entering the data for their region's portion of the National IRR Inventory Database.

§ 170.296 How is the IRR Inventory kept accurate and current?

The IRR Inventory data for a tribe is updated on an annual basis as follows:

(a) The BIA Regional Offices provide the tribes in the region a copy (electronic and hard copy) of the IRR Inventory by November 1st of each year;

(b) The tribe may review the data and advise the Regional Office of errors or omissions. The tribe submits additions and deletions to the IRR Inventory along with authorizing resolutions by May 1;

(c) The BIA Regional Office reviews the tribes' submission for errors or omissions and provides the tribes with their revised inventories by July 1;

(d) The tribe must correct any errors or omissions by August 1;

(e) The BIA Regional Offices certify the data and enter the data into the national IRR Inventory database. Certification of the data must be completed by September 1 for use in the Relative Need Distribution Factor for the following fiscal year;

(f) BIA provides the tribes with a copy (electronic and hard copy) of the Relative Need Distribution Factor distribution percentages by October 1; and

(g) The BIA DOT will approve all submissions from the BIA Regional Offices for inclusion into the National IRR Inventory.

§ 170.297 Is transportation planning included in the IRR Inventory and IRR Transportation Improvement Program (TIP)?

No, only project-specific transportation activities are included in the Inventory and TIP.

§ 170.298 Why exclude transportation planning from the TIP and the IRR Inventory?

Including routine transportation planning creates an undue administrative burden on BIA and tribes. The Inventory is used to generate the CTC and VMT components of the Relative Need Distribution Factor. Excluding non-project related planning does not affect the integrity of the inventory.

§ 170.299 What are the responsibilities of the IRR Program Coordinating Committee for funding issues?

Committee responsibilities are to provide input and recommendations to BIA and FHWA during the development or revision of:

(a) New IRR Inventory Data Format and Form;

(b) Simplified Cost to Construct Methodology;

(1) Formula Calculations;

(2) Formula Program and Design;

(3) Bid Tab Methodology;

(c) Cost Elements, not just roads;

(d) Over-Design Issues;

(e) Inflation Impacts on $1 Million Cap for IRRHPP and Emergency Projects;

(1) IRRHPP Ranking System;

(2) Emergency/disaster expenditures Report; and

(f) Impact of including funded but non-constructed projects in CTC calculation.

Long-Range Transportation Planning

§ 170.300 How does the LRTP process relate to the Relative Need Distribution Factor?

The LRTP process, as explained in subpart D (§ 170.427—170.432) is a uniform process by which the transportation needs and priorities of the tribes are identified. The IRR Inventory is derived from projects identified through the LRTP. It is also a means for identifying projects for the IRRHPP Program.

§ 170.301 Are there cost constraints in the transportation needs identified in the LRTP?

No, since the purpose of the LRTP is to identify need, it is not constrained by costs.

§ 170.302 What are the minimum requirements for a tribe's LRTPs?

At a minimum, the LRTP must:

(a) Document the tribe's public involvement;

(b) List the tribe's eligible IRR projects, costs estimates, and VMT data;

(c) Include inventory data forms for eligible IRR projects;

(d) Describe the tribe's strategy for meeting its transportation need;

(e) Provide documentation from other agencies regarding coordination of projects involving the other agencies; and

(f) Attach official tribal endorsement of LRTP.

§ 170.303 Are all transportation projects identified on the tribe's LRTP used to calculate the tribe's allocation of the national allocation?

No, the tribe's LRTP may include any transportation need or project of the tribe, but only eligible IRR facilities are included in the IRR Inventory and used to calculate the tribe's allocation.

Flexible Financing

§ 170.350 May tribes use flexible financing to finance IRR transportation projects?

Yes, Tribes are entitled to use the flexible financing provisions in Title 23 U.S.C. in the same manner as States to finance IRR transportation projects, unless otherwise prohibited by law.

§ 170.351 How may tribes finance IRR transportation projects that secure payment with IRR funds?

Tribes may issue bonds or enter into other debt financing instruments under 23 U.S.C. 122 with the expectation of payment of IRR funds to satisfy the instruments.

170.352 Can the Secretary of Transportation execute a federal credit instrument to finance IRR projects?

Yes, under 23 U.S.C. 182 and 183, the Secretary of Transportation may enter into an agreement for secured loans or lines of credit for IRR projects meeting the requirements contained in 23 U.S.C. 182. Tribes or BIA may service federal credit instruments. The secured loans or lines of credit must be paid from tolls, user fees, or other dedicated revenue sources.

§ 170.353 Can a tribe use IRR funds as collateral?

Yes, a tribe can use IRR funds as collateral for loans or bonds to finance IRR projects. Upon the request of a tribe, the BIA region will assist the tribe by providing necessary documentation to banks and other financial institutions.

170.354 Can a tribe use IRR funds to leverage other funds?

Yes, a tribe can use IRR funds to leverage other funds.

170.355 Can BIA regional offices borrow IRR funds from each other to assist in the financing and completion of an eligible IRR project?

Yes, Regional offices, in consultation with tribes, may enter into agreements to borrow IRR funds to assist another BIA regional office in financing the

completion of IRR projects. These funds must be repaid within the next fiscal year. No such agreements can be executed during the last year of a transportation authorization act unless IRR funds have been authorized for the next year.

§ 170.356 Can a tribe use IRR funds to pay back loans?

A tribe may use IRR funds to pay back loans or other finance instruments for a project that:

(a) The tribe paid for in advance of the current year using non-IRR Program funds; and

(b) Was included in FHWA-approved IRR TIP.

§ 170.357 Can a tribe apply for loans or credit from a state infrastructure bank?

Yes. Upon the request of a tribe, the BIA region will provide necessary documentation to a state infrastructure bank to facilitate obtaining loans and other forms of credit for an IRR project. A state infrastructure bank is a state or multi-state fund that can offer loans and other forms of credit to help project sponsors, such as tribes, pay for transportation projects.

APPENDIX A TO SUBPART C—IRR HIGH PRIORITY PROJECT SCORING MATRIX

Score	10	5	3	1	0
(a) Accident and fatality rate for proposed route [1].	Severe		Moderate	Minimal	No accidents.
(b) Years since last IRR construction project completed.	Never	Last project more than 10 years ago.	Last project 5-9 years ago.	Last project within last 1 to 4 years.	Currently has project.
(c) Readiness to Proceed to Construction or IRRBP Design Need.	PS&E Complete	Bridge Replacement PS&E development project.	Bridge Rehabilitation PS&E development project.		
(d) Percentage of project matched by other funds.		80% or more by other funds.	20–79% by other funds.	1–19%	No other funds.
(e) Amount of funds requested.		250,000 or less	250,001–500,000	500,001–750,000	Over 750,000.
(f) Geographic isolation	No external access to community.	Substandard Primary access to community.	Substandard Secondary access to community.	Substandard access to tribal facility.	
(g) All weather access for: (1) employment (2) commerce (3) health (4) safety (5) educational resources (6) housing	Addresses all 6 elements.	Addresses 4 or 5 elements.	Addresses 3 elements	Addresses 2 elements	Addresses 1 element.

[1] National Highway Traffic Safety Board standards.

Note: In the event of a tie, the IRR Program Coordinating Committee will determine which project is funded considering accident rates, no prior project, and no access, and available funding.

Appendix B to Subpart C—Population Adjustment Factor

The Population Adjustment Factor allows for participation in the IRR Program by all tribes. This funding formula reservation allocates a set amount of funds each fiscal year to a tribe based on the population range within which the tribe is included, as follows:

EXAMPLE USING $350 MILLION AUTHORIZATION

Population range (step)	No. of tribes	Distribution factor	Step factor	Funding per tribe	Total funding per step
Less than 25	17	1	17	$3,216	$54,665
25–100	66	3.5	231	11,255	742,797
101–1000	309	5	1545	16,078	4,968,059
1001–10,000	137	6.5	890	20,901	2,863,467
10,000+	29	8	232	25,725	746,013
Total			[1] 2,915.50		9,375,000

[1] Total step factor.

The steps to calculate the Population Adjustment Factor are applied as follows:

(a) For each population range, multiply the Distribution Factor by the total number of tribes identified in the population range (Step);

(b) Sum the products of the multiplication in step 1 above to derive a Total Step Factor; Calculate the Difference between the IRR Authorization for the Allocation Year and the 1999 IRR Authorization ($275 Million);

(c) Derive an Annual Adjustment Factor by dividing 12 1/2% of the Difference (step 3 above) by the Total Step Factor; and

(d) Calculate Population Adjustment Factor within each Population Range by multiplying the Distribution Factor for the Population Range by the Annual Adjustment Factor.

The mathematical equation for the Population Adjustment Factor calculation is as follows:

$$PAF_n = DF_n \times \left(\frac{12\,\frac{1}{2}\% \times (\$A - \$275MM)}{\sum (N_1 \times DF_1 \ldots N_5 \times DF_5)} \right)$$

PAF = Population Adjustment Factor
DF = Distribution Factor
$A = IRR Authorization in Allocation Year
$275MM = IRR Authorization in 1999
n = The nth Population Range
1...5 = Population Ranges 1 through 5
N_n = Number of Tribes in the nth Population Range

For example, for $DF_1 = 1.00$; $A = \$350MM$; $PAF_1 = 1.00 \times \frac{\$9,375,000}{2,915.50} = \$3,215.57$

For example, for $DF_3 = 5.00$; $A = \$350MM$; $PAF_3 = 5.00 \times \frac{\$9,375,000}{2,915.50} = \$16,077.86$

The Minimum Base calculation is as follows:

$$MBA = \left(\frac{12\,\frac{1}{2}\% \times (\$A - \$275MM)}{(N_1 + 3.5N_2 + 5N_3 + 6.5N_4 + 8N_5)} \right)$$

MBA = Minimum Base Allocation
Distribution Factors = 1, 3.5, 5, 6.5, and 8
$A = IRR Authorization in Allocation Year
n = The nth Population Range
1...5 = Population Ranges 1 through 5
N_n = Number of Tribes in the nth Population Range

The Population Adjustment Factor (PAF) calculation is as follows:

$PAF_n = MBA \times Df_n$
PAF = Population Adjustment Factor
MBA = Minimum Base Allocation
DF = Distribution Factor
n = The nth Population Range
1...5 = Population Ranges 1 through 5

Examples of the Population Adjustment Factor calculation for $350 Million Authorization:

$$MBA = \frac{12\,\frac{1}{2}\% \times (\$350MM - \$275MM)}{17 + 3.5(66) + 5(309) + 6.5(137) + 8(29)} = \frac{\$9,375,000}{2,915.50} = \$3,215.57$$

$PAF_n = MBA \times Df_n$

$PAF_1 = \$3,215.57 \times 1.00 = \$3,215.57$ = PAF Funding per Tribe for Step 1

$PAF_2 = \$3,215.57 \times 3.50 = \$11,254.50$ = PAF Funding per Tribe for Step 2

$PAF_3 = \$3,215.57 \times 5.00 = \$16,077.86$ = PAF Funding per Tribe for Step 3

$PAF_4 = \$3,215.57 \times 6.50 = \$20,901.22$ = PAF Funding per Tribe for Step 4

$PAF_5 = \$3,215.57 \times 3.50 = \$25,754.58$ = PAF Funding per Tribe for Step 5

POPULATION ADJUSTMENT FACTOR CALCULATED FOR $300 MILLION AUTHORIZATION

[Authorization—$300,000,000; Increase > $275MM, $25,000,000; Pop. Adj. Factor—$3,125,000]

Population range	No. of tribes	Distribution factor	Step factor	Funding per tribe	Total funding for population range
0 to 24	17	1.00	17.0	$1,071.86	$18,222
25 to 100	66	3.50	231.0	3,751.50	247,599
101 to 1,000	309	5.00	1,545.0	5,359.29	1,656,020
1,001 to 10,000	137	6.50	890.5	6,967.07	954,489
10,000+	29	8.00	232.0	8,574.86	248,671
Pop. adj. factor: 3,125.000	558		[1] 2,915.5		3,125,000

[1] Total step factor.

Appendix C to Subpart C—Cost-to-Construct

(Appendix C includes Tables 1–7)

This method utilizes the basic concepts of the Bureau of Indian Affairs' "*Simplified Approach to Compute the Cost-to-Construct*". The BIA concept has been modified, under this proposed method, to include computing costs for High Capacity Roads (multi-lane roads), non-road projects (snowmobile trails, boardwalks, footpaths, etc.) and other eligible projects.

This method offers a straightforward approach to calculate the Cost-to-Construct and is relatively easy to check. The theory behind this method is that the inventory and project need databases are used to determine, within reasonable limits, the costs of a new transportation facility or in the case of an existing facility, the existing condition of the facility and the costs that will be necessary to construct the facility to an adequate standard. For example, the Cost-to-Construct for a particular section of IRR system road is the cost required to improve the road's existing condition to a condition that would meet the Adequate Standard Characteristics. (see Table 1) Further, the standards for the geometrics and surface type for a roadway vary based on the road's functional classification, average daily traffic, and terrain. The Adequate Standard Characteristics table also includes standards for High Capacity roads and intermodal facilities.

The simplified approach will use cost indexes for five categories of cost. Four of the categories are Grade and Drain Costs, Aggregate Costs, Pavement Costs, and Incidental Costs. Information from the inventory database must provide an indication of the need for construction in each of these four categories. The fifth category, Bridge Costs, are derived from the BIA Bridge Study. The simplified approach includes no systematic method for indexing Rights-of-Way, Bridge, other pre-construction costs, and other transportation facilities.

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TABLE 1 ADEQUATE STANDARD CHARACTERISTICS

ADEQUATE STANDARD NUMBER	1 2 3	4 5 6	7 8 9	10 11 12	13	14	15	16 17 18	19 20
BIA CLASS	2 RURAL MINOR ARTERIALS		4 RURAL MAJOR COLLECTOR	4 RURAL LOCAL	4 CITY MINOR ARTERIAL	4 CITY COLLECTOR	3* CITY LOCAL	1 MAJOR ARTERIAL	5** 6** NON-MOTORIZED TRAILS AND OTHER FACILITIES
20 YEAR PROJECTED ADT ***	400 AND OVER	UNDER 400	UNDER 50 - EARTH 50-250 - GRAVEL OVER 250 - PAVED		400 AND OVER	250 TO 400	UNDER 250	OVER 10,000	N/A
TERRAIN ****	(1) (2) (3)	(1) (2) (3)	(1) (2) (3)	(1) (2) (3)	N/A	N/A	N/A	(1) (2) (3)	N/A
MINIMUM ROADWAY WIDTH (INCLUDING SHOULDERS)	36'	32'	32'	28'	50' TOTAL PARKING 7' TURNING 12'	21' TO 38' DEPENDING ON TURNING LANES AND PARKING			DEPENDS ON FACILITY
SURFACE TYPE	PAVED	PAVED	PAVED / GRAVEL / EARTH		PAVED			PAVED	DEPENDS ON FACILITY
SHOULDER WIDTH	6'	4'	4'	2'	N/A			6' MINIMUM	N/A
SHOULDER TYPE	PAVED	PAVED	PAVED / GRAVEL / EARTH		N/A			PAVED	N/A

* Local Class 3 roads may be earth, gravel or paved, depending on tribal customs, economics, or environmental.

** Class 5 trails encompasses non-road projects such as paths, trails, walkways, or other designated types of routes for public use by foot traffic, bicycles, snowmobiles, or other uses to provide for the general access of non-vehicular traffic. Class 6 includes other transportation facilities such as ferry terminals, transit facilities, etc.

*** Use default ADT + 20 where impractical to acquire ADTs or for proposed roads unless a traffic analysis proves otherwise. Where volumes are practical to acquire, they should be acquired and traffic projected at 2% per year.

**** (1) = Flat; (2) = Rolling; (3) = Mountainous

TABLE 2.—FUTURE SURFACE TYPE

Const. need	Adequate Std. No.	BIA system class	Class No.	ADT +20	Surface type
4	1, 2, 3, 4, 5, 6	Rural Minor Arterials	2	400–10,000	Paved.
4	16, 17, 18	Rural Major Arterials	1	> 10,000	Paved.
4	10, 11, 12	Rural Locals	5	51–399	Gravel.
4	13	Minor Arterial	4	400–10,000	Paved.
4	14	Collector	4	251–399	Paved.
4	15	Local	3	50–250	(Earth, Gravel, Paved)*.
1	7, 8, 9	Rural Major Collector	4	< 50	Earth.
				**50–250	Gravel.
				>250	Paved.
1	10, 11, 12	Rural Locals	5	< 50	Earth.
				**50–250	Gravel.
				**>250	Paved.
1	15	Local	3	< 50	Earth.
				**50–250	Gravel.
				**>250	Paved*.

*Local class 3 roads may be earth, gravel or paved depending on tribal customs, economics or environmental conditions.
**Use default ADT +20 where impractical to acquire ADT's or ADT is zero. Where volumes are practical to acquire, they should be acquired, and traffic projected at 2% per year.

A. Basic Procedures

1. A long-range plan must be developed for those tribes without data or that lack inventory data and updated for those tribes that have existing inventory systems. The plan would identify the system, collect the inventory data and create cost estimates for all "Needs." Once the inventory database is current and project need is identified, the cost-to-construct for those projects can be developed. The method for determining the estimated cost to construct of a proposed transportation project is accomplished through the following step-by-step process:

(a) Determine Future Surface Type for project (see table 2);

(b) Calculate 20 year Projected ADT based upon tribal economic and transportation development planning;

(c) Determine Class of project, e.g., local, rural local, rural major collector, other, utilizing projected ADT;

(d) Identify project terrain as flat, rolling, or mountainous;

(e) Identify Adequate Standard Characteristics (ASC) by applying Class, 20 year Projected ADT, and Terrain to ASC (see Table 1);

(f) Identify the project's estimated construction cost per standard industry measurement (SIM) (e.g., cost per mile, cost per linear foot) for the following components of construction: Aggregate, Paving, Grade/Drain, and Incidental (see tables 3–7);

(g) Multiply the estimated construction cost per SIM for each component of construction by the length of the route or proposed project to determine the estimated cost for each component of construction; and

(h) Calculate the estimated cost for the route or proposed project by adding together the estimated costs for each component of construction.

2. The method for determining the estimated cost to reconstruct or rehabilitate an existing transportation project is determined in the same manner as a proposed transportation project, except that the existing condition of the project is evaluated to determine the percentage to be applied to the estimated cost for each component of construction that will be included in the estimated cost for reconstruction:

(a) Evaluate existing condition of road or reconstruction project in accordance with applicable management systems, guidelines or other requirements;

(b) Identify percentage of allowable estimated cost for each component of construction by applying the Adequate Standards Characteristics (ASC) and existing condition to the percent cost requirement tables for aggregate, paving, grade/drain, incidental, and bridge;

(c) Multiply estimated construction cost for each component of construction by the corresponding percentage of allowable estimated cost to determine the estimated reconstruction cost for each component; and

(d) Calculate the estimated reconstruction cost by adding together the estimated reconstruction costs for each component of construction.

3. The Average Daily Traffic (ADT) for existing and proposed roads is determined by measuring either actual traffic counts, estimated traffic counts based on industry standard modeling methods, or the following default values: Functional Class 2 roads is 100 ADT, Functional Class 4 roads is 50 ADT, Functional Class 3 Streets-roads is 25 ADT, and Functional Class 4 motorized Trails is 20 ADT. Functional Class 1 roads must have an actual ADT greater than 10,000. This traffic count data is incorporated into the IRR road inventory for application into the RNF Cost-to-Construct calculations.

4. The 20-year projected ADT is calculated using growth rates established by current industry models or by a minimum default using a 2% growth rate, except where the default is used for ADT then the following values apply: Class 2 roads is 100 ADT+20, Class 4 roads is 50 ADT+20, Class 3 (Streets) is 25 ADT+20, and Motorized Trails is 20 ADT+20.

5. Functional Classification. As a part of the IRR Inventory system management, all facilities included on or added to the IRR System must be classified according to the following functional classifications as follows (Ref. § 170.456):

(a) *Class 1:* Major arterial roads providing an integrated network with characteristics for serving traffic between large population centers, generally without stub connections and having average daily traffic volumes of 10,000 vehicles per day or more with more than two lanes of traffic.

(b) *Class 2:* Major or minor arterial roads providing an integrated network having the characteristics for serving traffic between large population centers, generally without stub connections. May also link smaller towns and communities to major resort areas which attract travel over long distances and generally provide for relatively high overall travel speeds with minimum interference to through traffic movement. Generally provide for at least inter-county or inter-State service and are spaced at intervals consistent with population density. This class of road will have less than 10,000 vehicles per day.

(c) *Class 3:* Streets-roads which are located within communities serving residential and other urban type settings.

(d) *Class 4:* Section line and/or stub type roads which collect traffic for arterial type roads, make connections within the grid of the IRR system. This class of road may serve areas around villages, into farming areas, to schools, tourist attractions, or various small enterprises. Also included are roads and motorized trails for administration of forest, grazing mining, oil, recreation, or other utilization purposes. This classification encompasses all those public roads not falling into either the Class 2 or 3 definitions above.

(e) *Class 5:* This classification encompasses all non-road type paths, trails, walkways, or other designated types of routes for public use by foot traffic, bicycles, trail bikes, or other uses to provide for general access of non-motorized traffic.

(f) *Class 6:* This classification encompasses other modes of transportation such as public parking facilities adjacent to IRR routes and scenic byways, rest areas, and other scenic pullouts, ferry boat terminals, and transit terminals.

(g) *Class 7:* This classification encompasses airstrips which are within the boundaries of the IRR system grid and are open to the

public. These airstrips are included for inventory and maintenance purposes only.

6. Grade and Drain costs include the cost for constructing a roadbed to an adequate standard and providing adequate drainage. Specifically it includes the necessary earthwork to build the roadbed to the required horizontal and vertical geometric parameters above the surrounding terrain and provide for proper drainage away from the foundation with adequate cross drains. Table 3 presents a summary of the proposed method of estimating grade and drain costs based on the existing roadbed condition observed in the inventory update. To implement this proposed procedure, a one-digit data field in the inventory database needs to be created for roadbed condition.

TABLE 3.—PERCENT GRADE AND DRAIN COST REQUIRED

Roadbed condition	Percent [1]
Proposed Road	100
Primitive Trail	100
Bladed Unimproved Earth Road, Poor Drainage, Poor Alignment	100
Minimum Built-up Roadbed (Shallow cuts and fills) with inadequate drainage and alignment that generally follows existing ground	100
A designed and constructed roadbed with some drainage and alignment improvements required	100
A roadbed constructed to the adequate standards with good horizontal and vertical alignment and proper drainage	0
A roadbed constructed to adequate standards with curb and gutter on one side	0
A roadbed constructed to adequate standards with curb and gutter on both sides	0

[1] Percent grade and drain cost required.

B. Aggregate Costs

The costs of providing the surface or subsurface defined by the adequate standard will vary depending on the type of surface required. (see Table 1)

TABLE 4.—PERCENT AGGREGATE COST REQUIRED

[Table 4 summarizes the percentage of aggregate costs for all possible scenarios of existing conditions and recommended surface conditions]

Existing surface type	Future surface type		
	Paved (percent)	Gravel (percent)	Earth (percent)
Adequate Standard Surface			
Proposed	100	100	0
Primitive	100	100	0
Earth	100	100	0
Gravel	100	100	0
Bituminous <2″	100	0	0
Bituminous >2″	0 or 100*	0	0
Concrete	0 or 100*	0	0

*If the condition of the surface requires reconstruction then use 100% of aggregate cost.

C. Pavement (Surface) Costs

Table 5 summarizes the percentage of pavement (surface) costs for existing conditions and recommended surface types. Pavement overlays are calculated at 100 percent of the pavement costs.

TABLE 5.—PERCENT OF SURFACE COST REQUIRED

Existing surface type	Future surface type		
	Paved (percent)	Gravel (percent)	Earth (percent)
Adequate Standard Surface			
Proposed	100	100	0
Primitive	100	100	0
Earth	100	100	0
Gravel	100	100	0
Bituminous <2″	100	0	0
Bituminous >2″	0 or 100*	0	0
Concrete	0 or 100*	0	0

*If the condition of the surface requires reconstruction then use 100% of surface cost.

D. Incidental Costs

1. The following incidental cost items are generally required if a project includes construction or reconstruction of the roadbed.

(a) Clearing and Grubbing.
(b) Construction Surveying.
(c) Construction Inspection.
(d) Materials Testing.
(e) Mobilization.
(f) Guard Rails.
(g) Miscellaneous Pipe.
(h) New Traffic Control Devices.
(i) Signage.
(j) Other Minor Incidentals.
(k) Concrete Barriers.
(l) Obstruction Removal.
(m) Pavement Removal.
(n) Temporary Traffic Control.
(o) Construction Inspection.
(p) Material Testing.
(q) Mobilization.
(r) New Traffic Control.
(s) Temporary Traffic Control.
(t) Fencing.
(u) Landscaping.

(v) Structural Concrete.
(w) Traffic Signals.
(y) Utilities.

2. Table 6 accounts for those incidental construction costs normally found on a typical project. If any of the other items are required as show in Table 7, the appropriate percentage should be added to the percentage in Table 6.

TABLE 6.—PERCENT INCIDENTAL CONSTRUCTION COST REQUIRED

Roadbed condition	New alignment (in percent)	Maintenance of traffic required (in percent)
Proposed Road	65	N/A
Primitive Trail	65	N/A
Bladed Unimproved Earth Road, Poor Drainage, Poor Alignment	65	N/A
Minimum Built-up Roadbed (shallow cuts and fills) with inadequate drainage and alignment that generally follows existing ground	N/A	75
A designed and constructed roadbed with some drainage and alignment improvements required	N/A	75
A roadbed constructed to the adequate standards with good horizontal and vertical alignment and proper drainage. Requiring surfacing	N/A	30
A roadbed constructed to adequate standards with curb and gutter on one side. Requiring surfacing	N/A	30
A roadbed constructed to adequate standards with curb and gutter on both sides. Requiring surfacing	N/A	30

TABLE 7.—PERCENT ADDITIONAL INCIDENTAL CONSTRUCTION COSTS

Fencing	1% of Total Incidental Construction Costs.
Landscaping	9% of Total Incidental Construction Costs.
Structural Concrete	9% of Total Incidental Construction Costs.
Traffic Signals	3% of Total Incidental Construction Costs.
Utilities	3% of Total Incidental Construction Costs.

Subpart D—Planning, Design, and Construction of Indian Reservation Roads Program Facilities

Transportation Planning

§ 170.400 What is the purpose of transportation planning?

Transportation planning develops a vision of the future which guides decision-making today. The transportation planning process results in a short- and long-range transportation plan. The purpose of transportation planning is to fulfill goals by developing strategies to meet transportation needs. These strategies address current and future land use, economic development, traffic demand, public safety, health, and social needs.

§ 170.401 What transportation planning functions and activities must BIA perform for the IRR Program?

The activities and functions that BIA must perform for the IRR Program are:

(a) Preparing the regional IRR TIP and IRR Inventory data updates as required;

(b) Coordinating with States and their political subdivisions, metropolitan planning offices (MPO's) and rural planning offices (RPO's) on IRR regionally significant projects;

(c) Providing technical assistance to tribal governments and developing IRR budgets including transportation planning cost estimates;

(d) Facilitating public involvement and participating in planning and other transportation-related meetings;

(e) Performing traffic studies, preliminary project planning, and special transportation studies;

(f) Developing short and long-range transportation plans;

(g) Mapping;

(h) Developing and maintaining management systems;

(i) Transportation planning for operational and maintenance facilities; and

(j) Researching of rights-of-way documents for project planning.

§ 170.402 What transportation planning functions and activities must tribes perform under a self-determination contract or self-governance agreement?

Tribes must prepare a tribal TIP (TTIP). Tribes may also perform other transportation planning activities such as:

(a) Coordinating with States and their political subdivisions, MPO's and RPO's on IRR regionally significant projects;

(b) Preparing IRR Inventory data updates;

(c) Obtaining public involvement;

(d) Performing traffic studies;

(e) Developing short- and long-range transportation plans;

(f) Mapping;

(g) Developing and maintaining tribal management systems;

(h) Participating in transportation planning and transportation-related land use planning and other transportation related meetings;

(i) Performing transportation planning for operational and maintenance facilities;

(j) Developing IRR budget, including transportation planning cost estimates;

(k) Performing special transportation studies, as appropriate;

(l) Researching rights-of-way documents for project planning; and

(m) Performing preliminary project planning.

170.403 Who performs transportation planning for the IRR Program?

BIA and tribal governments perform transportation planning for the IRRProgram.

§ 170.404 What IRR funds can be used for transportation planning?

Up to 2 percent of the IRR funds are reserved for transportation planning for tribal governments as provided for under section 204(j) of Title 23. A tribe may make a request to the BIA regional office to enter into a self-determination contract or self-governance agreement for transportation planning activities and functions under the ISDEAA, or it may request a travel authorization to attend transportation planning functions and related activities using these funds.

§ 170.405 How must tribes use planning funds?

IRR 2 percent transportation planning funds are only available for tribal governments. These funds support the development and implementation of the tribal transportation planning process and associated strategies for identifying their intermodal transportation needs. This can include attending

transportation planning meetings, pursuing other sources of funds, development of the tribal priority list or any of the transportation functions/activities as defined in the IRR Transportation Planning PolicyGuide (TPPG).

§ 170.406 Can IRR construction funds be used for transportation planning activities?

Yes, Tribes may identify transportation planning as a priority in their tribal priority list or TTIP. Tribes may use up to 100 percent of their IRR construction funds for transportation planning.

§ 170.407 Can IRR 2 percent planning funds be used for road construction and other projects?

Yes, any tribe can request to have its planning funds transferred into construction funds for use on any eligible and approved IRR project.

§ 170.408 What happens to 2 percent planning funds unobligated after August 15?

Once all tribal governments' requests for 2 percent funds have been satisfied for a given fiscal year the BIA regional office may roll the unobligated balances into construction funds after consultation with the affected tribal governments.

§ 170.409 What is pre-project planning?

Pre-project planning includes the activities conducted before project approval on the IRR TIP. Such activities include preliminary project cost estimates, certification of public involvement, cooperation with States and/or MPO's for a regionally significant project, preliminary needs assessments, and preliminary environmental and archeological reviews for the development of the project.

§ 170.410 How is the IRR Program transportation planning funded?

As provided in 23 U.S.C. 204, IRR Program funds are available for transportation planning.

The Transportation Improvement Program Process Chart follows:

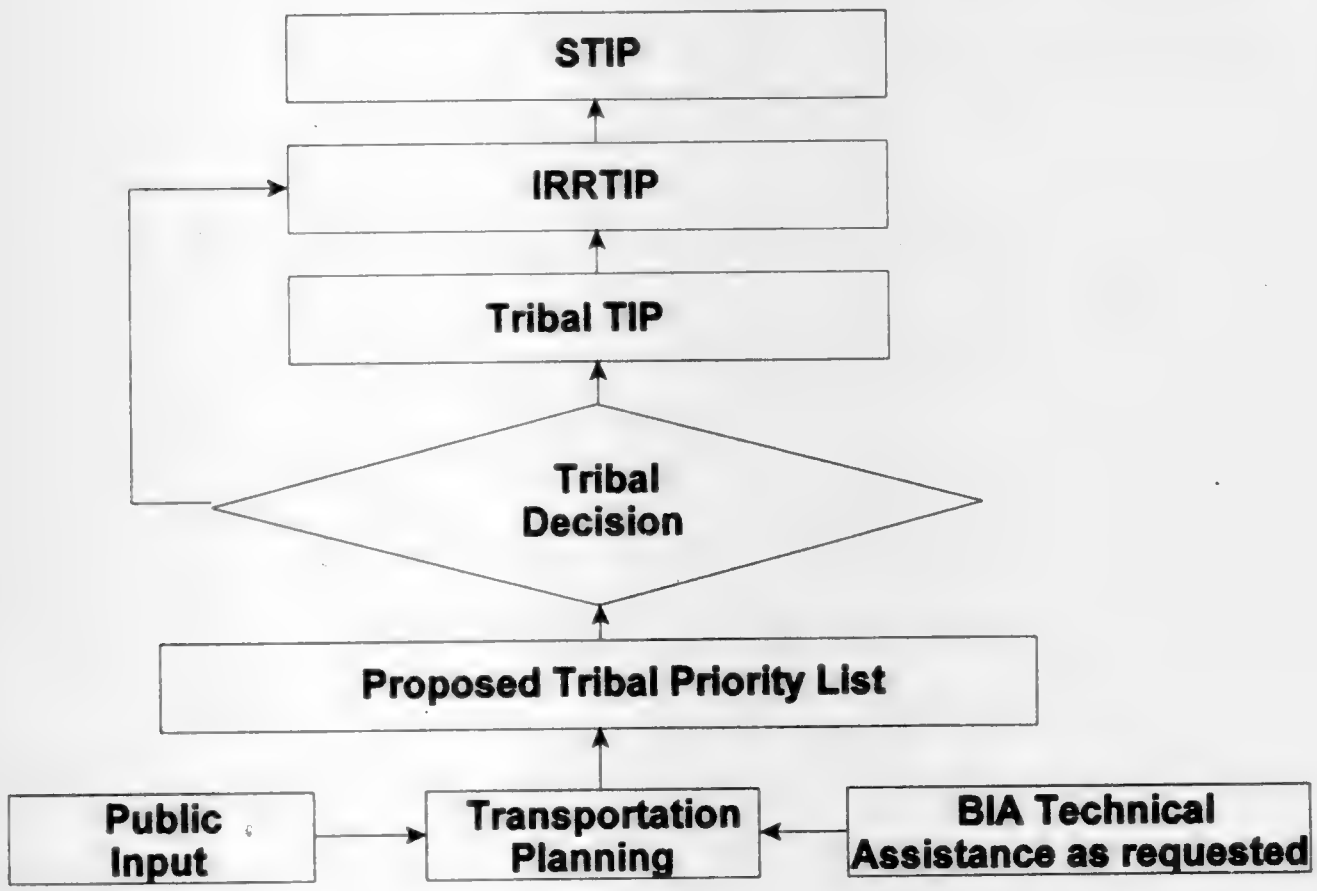

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§ 170.411 What is the State Transportation Improvement Program (STIP)?

The State Transportation Improvement Program is a financially constrained, multi-year list of transportation projects. The STIP is developed under 23 U.S.C. 134 and 135, and 49 U.S.C. 5303–5305. The Secretary of Transportation (FTA and FHWA) reviews and approves these documents for each state. Approval of the STIP gives authority to expend Highway Trust Funds for those projects.

§ 170.412 What is the Indian Reservation Roads Transportation Improvement Program (IRR TIP)?

The IRR TIP is a multi-year, financially constrained list by year, State, and tribe of IRR-funded projects selected by tribal governments from tribal TIPs, or other tribal actions, that are programmed for construction in the next 3 to 5 years. Information from the tribal TIP concerning non-IRR funded projects may be attached to the IRR TIP for inclusion into the STIP.

§ 170.413 What is the Tribal Transportation Improvement Program (TTIP)?

The TTIP is a multi-year, financially constrained list of proposed transportation projects. It may be developed from the tribal priority list. The TTIP should be consistent with the tribal long-range transportation plan and must contain all Indian Reservation Roads (IRR) funded projects. It is reviewed and updated as necessary. The only entity that can change the TTIP is the Indian tribal government. The TTIP is forwarded to the BIA by resolution or

by tribally authorized government action for inclusion into the IRR TIP.

§ 170.414 Must the eligible projects on the tribal TIP be included in the IRR TIP?

Yes, eligible projects on the tribal TIP must be included in the IRR TIP.

§ 170.415 What happens to the tribal TIP after eligible projects are included in the IRR TIP?

The Secretary and the Secretary of Transportation review and approve the IRR TIP. The IRR TIP, as approved by the Secretaries, is then included in the STIP without further action. Approval of the IRR TIP authorizes expenditure of IRR highway construction funds for those projects.

§ 170.416 What are the responsibilities of the BIA prior to the IRR TIP being included in the STIP?

The BIA regional office must work cooperatively with tribal, state, rural, and metropolitan transportation planning organizations concerning the leveraging of funds from non-IRR sources and identification of other funding sources in order to expedite the planning, design and construction of projects on the IRR TIP.

§ 170.417 How are projects placed on the TTIP and IRR TIP?

Each project is placed on the TTIP and IRR TIP as follows:

(a) The TTIP may be developed from either the tribal priority list or the long-range transportation plan. The TTIP identifies the implementation year of each project scheduled to begin within the next 3–5 years. It is the tribal government's decision to select the year in which projects are programmed. The TTIP may also contain information regarding other Federal, state, county, municipal, and tribal transportation projects initiated by or developed in cooperation with the Indian tribal government. The only entity that can change the TTIP is the tribal government;

(b) The tribal government develops the tribal control schedule from the tribal priority list or TTIP. The tribal control schedule is an accounting and project management tool which contains detailed project and tasks information for all projects identified in the TTIP;

(c) Project information from the tribal control schedule is then included in the BIA's region-wide control schedule without change, unless the tribes control schedule exceeds the amount available to the tribe;

(d) Projects identified on the TTIP that are scheduled in the next 3–5 years must be included by the BIA in the IRR TIP, unless the TTIP is not financially constrained; and

(e) Tribes that do not generate sufficient annual funding under the IRR funding formula to complete a project may submit their tribal priority lists to the BIA. The BIA will develop the region-wide control schedule and IRR TIP after consulting with and taking into account the tribe's priorities. Alternatively, such tribes may either enter a consortium of tribes and delegate authority to the consortium to develop the TTIP and tribal control schedule or may enter into agreement with other tribes to permit completion of the project. In order to get a project on the TIP, tribes may seek flexible financing alternatives available as described in subpart C of this part.

§ 170.418 What is the tribal priority list?

The tribal priority list is a list of transportation projects which the tribe or tribal organization wants funded. The projects may or may not be identified in order of priority. This list is not financially constrained. Unless the tribal government submits a TTIP, the tribal priority list is provided to the BIA by official tribal action.

§ 170.419 What is the IRR TIP annual update?

The IRR TIP annual update is the process by which the IRR TIP is kept current. The BIA regional office annually updates the IRR TIP for each state in its service area to reflect changes in the TTIP.

§ 170.420 How is the IRR TIP updated?

The updating process begins when BIA provides the projected IRR Program funding amounts to each tribe, or an analysis of the existing tribal priority list or TTIP. New transportation planning information or substantial changes to an IRR tribal project may require an IRR TIP update. BIA reviews the programming of proposed projects with the tribes. Agreed upon adjustments are made to the IRR TIP following the IRR TIP process defined in this part on an annual basis or as otherwise needed.

§ 170.421 Should the IRR TIP be coordinated within the STIP time frames?

Yes, the time frame for the annual update of the IRR TIPS for each state in a BIA regional office's service area should be coordinated with the state transportation agencies. This will ensure that approved IRR TIP updates are included with the STIPs when they are printed and distributed.

§ 170.422 When may the Secretary amend the IRR TIP?

The Secretary may amend the IRR TIP:

(a) At the request of a tribe at any time, the Secretary amend the IRR TIP to add or delete projects or reflect significant changes in scope to a project in a process similar to an IRR TIP update; and

(b) Before reducing the funding for, or rescheduling a project on the IRR TIP, by consulting with the affected tribe and obtaining its consent whenever practicable. The Secretary may not reduce funding for or reschedule a project which is the subject of a negotiated agreement except under the terms of the agreement.

§ 170.423 How is the IRR TIP amended?

The IRR TIP is amended using the same process as updating the IRR TIP.

§ 170.424 Is public involvement required in the development of the IRR TIP?

Yes, public involvement is required in the development of the IRR TIP.

§ 170.425 How does public involvement occur in the development of the IRR TIP?

Public involvement may occur in many ways. For example:

(a) Public involvement entails one or more public meetings. The public is provided the opportunity to comment, either verbally or in writing;

(b) Public involvement activities may be conducted by the state transportation agency or MPO; and

(c) Public notice requires publishing a notice in the local and tribal newspapers when the draft tribal or IRR TIP is complete. The notice must indicate where a copy can be obtained, contact person for questions, where comments may be submitted, and the deadline for submitting comments.

§ 170.426 What happens after the IRR TIP is approved?

The IRR TIP is approved by the Secretary and the Secretary of Transportation and is returned to the BIA. Copies are provided to the BIA DOT, BIA regional offices, FHWA division office, and Indian tribal governments. The FHWA division office transmits the approved IRR TIP to the state transportation agency for inclusion in the STIP.

Within 10 working days of receipt of the approved IRR TIP and IRR funds, the BIA enters the projects into the Federal finance system. Expenditure of funds for development of the projects may then begin even though the state transportation agency may not have yet added the approved IRR TIP to the STIP.

§ 170.427 What is a long-range transportation plan?

An IRR long-range transportation plan is a document setting out a tribe's long-range transportation priorities and needs.

§ 170.428 What may a long-range transportation plan include?

The comprehensive long-range transportation plan may include:

(a) An evaluation of a full range of modal and connections between transportation modes such as highway, rail, air, and water to effectively and economically meet short- and long-term transportation needs;

(b) Trip generation studies including determination of traffic generators due to land use;

(c) Social and economic development planning to identify transportation improvements or needs to accommodate existing and proposed land use in a safe and economical fashion;

(d) Measures that address health and safety concerns;

(e) A review of the existing and proposed transportation system to identify the relationships between the transportation system and the environment;

(f) Cultural preservation planning to identify those issues of importance to the tribe and develop a plan within transportation planning which is sensitive to tribal cultural preservation;

(g) Scenic byways and tourism plans;

(h) Measures that address energy conservation considerations;

(i) A prioritized list of short-term transportation needs; and

(j) An analysis of funding alternatives to implement plan recommendations.

§ 170.429 What is the purpose of long-range transportation planning?

The purpose of long-range transportation planning is to fulfill tribal goals by developing strategies to meet identified transportation needs.

These strategies should address future land use, economic development, traffic demand, public safety, and health and social needs.

(a) The time horizon for long-range transportation planning should be 20 years to match state transportation planning horizons.

(b) Tribes should develop long-range transportation plans to demonstrate their transportation needs.

(c) A tribe may develop a transportation plan under the ISDEAA or, if a tribe chooses, BIA may develop it on the tribe's behalf.

§ 170.430 How does BIA or a tribe involve the public in developing the IRR long-range transportation plan?

BIA or the tribe must solicit public involvement. Tribes may do so in accordance with their own tribal laws and policies. If there are no tribal policies, tribes must use the procedures in this section. Public involvement begins at the same time long-range transportation planning begins and covers the range of users, from private citizens to major public and private entities. Public involvement may be handled in either of the following two ways:

(a) *Public Meetings:* BIA or the tribe must:

(1) Advertise each public meeting in local public newspapers at least 15 days before the meeting date;

(2) Provide at the meeting copies of the draft long-range transportation plan;

(3) Information is provided on funding and the planning process; and

(4) Provide the public the opportunity to comment, either orally or in writing.

(b) *Public Notice:* BIA or the tribe must:

(1) Publish a notice in the local and tribal newspapers when the draft long-range transportation plan is complete;

(2) State in the notice that the long-range transportation plan is available for review, where a copy can be obtained, whom to contact for questions, where comments may be submitted, and the deadline for submitting comments (normally 30 days).

§ 170.431 How is the IRR long-range plan developed and approved?

A. The IRR long-range plan is developed and approved in one of three ways:

(1) By a tribe working through a self-determination contract or self-governance agreement or other funding sources;

(2) By a qualified consultant who is a subcontractor for a tribe that has a self-determination contract or self-governance agreement; or

(3) By BIA upon request of, and in consultation with, a tribe. The tribe and BIA need to agree on the methodology and elements included in development of the IRR long-range transportation plan along with time frames before work begins.

B. During the development of the IRR long-range transportation plan, it is recommended that a midpoint review be conducted jointly by the tribe and BIA. The public reviews a draft IRR long-range transportation plan as part of the public involvement process consistent with § 170.430 of this part. The plan is further refined to address any issues identified during the public review process.

C. The IRR long-range transportation plan is approved by the tribe(s).

§ 170.432 How is the tribal long-range transportation plan used and updated?

The tribal government uses its IRR long-range transportation plan in its development of a tribal priority list or TTIP. To be consistent with State and MPO planning practices, the IRR long-range transportation plan should be reviewed annually by the tribe, or BIA for direct service tribes, and updated every 5 years, unless conditions dictate otherwise.

§ 170.433 When does BIA update the IRR TIP?

(a) The BIA regional office annually updates the IRR TIP for each State in its service area to reflect changes in the TTIP.

(b) BIA regional offices should coordinate the annual update with each affected state transportation agency. This will ensure that approved IRR TIP updates are included with the STIPs.

§ 170.434 When may the Secretary amend the IRR TIP?

(a) The Secretary may amend the IRR TIP:

(1) At any time if requested by the tribe, in order to add or delete projects or reflect significant changes in scope; and

(2) Before reducing the funding for, or rescheduling a project on the IRR TIP, by consulting with the affected tribe and obtaining its consent whenever practicable.

(b) The Secretary may not reduce funding for or reschedule a project which is the subject of a negotiated agreement except under the terms of the agreement. The IRR TIP is amended using the same public involvement process as updating the IRR TIP.

§ 170.435 How does BIA or a tribe solicit public participation during the development of the IRR TIP?

Public involvement is required in the development of the IRR TIP.

(a) BIA or the tribe may publish a notice in the local and tribal newspapers when the draft tribal or IRR TIP is complete. The notice must indicate where a copy can be obtained, who to contact for answers to questions, where comments may be submitted, and the deadline for submitting comments;

(b) BIA or the tribe may conduct one or more public meetings at which it solicits comments, either orally or in writing; or,

(c) BIA, the tribe, the State, or the metropolitan planning office may conduct other involvement activities.

§ 170.436 What happens after the IRR TIP is approved?

(a) After the Secretaries approve the IRR TIP they will return it to BIA.

(b) BIA will provide copies to BIADOT, BIA regional offices, FHWA division office, and Indian tribal governments.

(c) The FHWA division office transmits the approved IRR TIP to the State transportation agency for inclusion in the STIP.

(d) Within 10 working days of receipt of the approved IRR TIP and IRR funds, BIA enters the projects into the Federal finance system. Expenditure of funds for development of the projects may then begin even though the State transportation agency may not have yet added the approved IRR TIP to the STIP.

Public Hearings

§ 170.437 What are the purposes and objectives of public hearings for the IRR TIP, long range transportation plan, and IRR projects?

The purposes and objectives of these public hearings are to:

(a) Inform the public and obtain public input;

(b) Ensure that locations, designs or specifications are consistent with tribal objectives and with applicable Federal law; and

(c) Promote coordination and comprehensive planning of IRR activities.

§ 170.438 When is a public hearing for IRR TIP, long-range transportation plan or project held?

BIA or the tribe must hold a public hearing if a plan or project:

(a) Is a new route;

(b) Would significantly change the layout or function of connecting or related roads or streets;

(c) Would cause a substantial adverse effect on adjacent real property;

(d) Is controversial or expected to be controversial in nature; or

(e) Is for obtaining input during the TIP and long-range transportation planning processes.

§ 170.439 How are public hearings for IRR planning and projects funded?

Public hearings for IRR planning and projects are funded as follows:

(a) Public hearings for IRR planning:

(1) Public hearings for TIPS and long-range transportation plans conducted by tribes are funded using the 2 percent IRR transportation planning or IRR construction funds; and

(2) Public hearings for the IRR TIP and long-range transportation plans conducted by BIA are funded using IRR construction funds.

(b) Public hearings for IRR projects conducted by either tribes or BIA are funded using IRR construction funds.

§ 170.440 How does BIA or the tribe determine the need for a public hearing?

The tribe, or BIA, after consultation with the appropriate tribe and other involved agencies, determines whether or not a public hearing is needed for an IRR TIP, long-range transportation plan or project. The determination based on the criteria in § 170.434.

§ 170.441 How is the public informed when no public hearing is scheduled?

When no public hearing for an IRR project is scheduled, either the tribe or BIA must do the following:

(a) Give adequate notice to the public before project activities are scheduled to begin;

(b) Include in the notice the project name and location, the type of improvement planned, the date the activity is scheduled to start, and the name and address where more information is available, and provisions for requesting a hearing; and

(c) Send a copy of the notice to the affected tribe(s).

§ 170.442 How must BIA or a tribe inform the public when a hearing is held?

When BIA or a tribe holds a hearing under this part, it must notify the public of the hearing by publishing a notice.

(a) The public hearing notice is a document containing:

(1) Date, time, and place of the hearing;

(2) Planning activities or project location;

(3) Proposed work to be done, activities to be conducted, etc.;

(4) Where preliminary plans, designs or specifications may be reviewed; and

(5) How and where to get more information.

(b) BIA or the tribe must publish the notice:

(1) By posting and/or publishing the notice at least 30 days before the public hearing. A second notice for a hearing is optional; and,

(2) By sending it to the affected tribe(s).

§ 170.443 How is a public hearing conducted?

(a) *Who conducts the hearing.* A tribal or Federal official is appointed to preside at the public hearing. The official presiding over the hearing must maintain a free and open discussion of the issues.

(b) *Record of hearing.* The presiding official is responsible for compiling the official record of the hearing. A record of a hearing is a summary of oral testimony and all written statements submitted at the hearing. Additional written comments made or provided at the hearing, or within 5 working days of the hearing, will be made a part of the record.

(c) *Hearing process.* (1) The presiding official(s) explains the purpose of the hearing and provides an agenda;

(2) The presiding official(s) solicits public comments from the audience on the merits of IRR projects and activities; and

(3) The presiding official(s) will inform the hearing audience of the appropriate procedures for a proposed IRR project or activity, including but not limited to:

(i) Right(s)-of-way acquisition;

(ii) Relocation of utilities and relocation services;

(iii) Authorized payments allowed by the Uniform Relocation and Real Property Acquisition Policies Act, 42 U.S.C. 4601 *et seq.* as amended;

(iv) Draft transportation plan; and

(v) Explain the scope of the project and its impact on traffic during and after construction.

(d) *Availability of information.* Appropriate maps, plats, project plans and/or specifications will be available at the hearing for public review. Appropriate officials are present to answer questions.

(e) *Opportunity for comment.* Comments are received as follows:

(1) Oral statement at the hearing;

(2) Written statement submitted at the hearing;

(3) Written statement sent to the address noted in the hearing notice within 5 working days following the public hearing.

§ 170.444 How are the results of a public hearing obtained?

Results of a public hearing are available as follows:

(a) Within 20 working days of the completion of the public hearing, the presiding official(s) issues a hearing statement summarizing the results of the public hearing and the determination of further needed action.

(b) The presiding official(s) posts the hearing statement at the hearing site. The public may request a copy. The hearing statement outlines appeal procedures.

§ 170.445 Can a decision be appealed?

Yes, a decision from the public hearing may be appealed through the appropriate appeal processes as follows:

(a) *Federal decisions:* For BIA decisions, 25 CFR part 2 applies. For FHWA decisions, 23 CFR part 1420 applies.

(b) *Tribal decisions:* The appropriate tribal dispute resolution process applies.

IRR Inventory

§ 170.446 What is the IRR inventory?

The IRR inventory is a comprehensive list of information for all transportation facilities eligible for IRR funding by tribe or reservation, by BIA agency and region, Congressional district, State, and county. Other specific information collected and maintained under the IRR Program includes classification, route number, bridge number, current and future traffic volumes, maintenance responsibility, ownership, and other information as required in subpart C.

§ 170.447 How is the IRR inventory used?

BIA or tribes can use the IRR inventory data for a variety of purposes, such as assisting in the transportation planning process, justifying expenditures, identifying transportation needs, maintaining existing facilities, developing management systems, and project planning and design.

§ 170.448 How is the IRR inventory database amended?

Either BIA or a tribe may initiate the process for updating the IRR inventory. The Secretary must update the IRR inventory to include the transportation facility as long as it is an eligible IRR facility.

§ 170.449 How are transportation facilities added to or deleted from the IRR inventory?

A tribal government or its designated body can propose changes to the IRR inventory by submitting a tribal resolution or similar official authorization to the appropriate BIA regional office. That office approves the submission if it is accurate and the facility is eligible as an IRR facility.

§ 170.450 What facilities can be included in the IRR inventory?

The minimum requirements for including proposed transportation facilities in the IRR inventory are:

(a) A tribal resolution or other official tribal authorization must be obtained in support of the proposed transportation facility;

(b) Proposed facilities must address documented transportation needs of tribes as demonstrated by tribal transportation planning efforts, such as identification in the long-range transportation plan;

(c) The proposed facility must be eligible for IRR funding; and

(d) The proposed facility, when constructed, must be open to the public.

§ 170.451 How accurate must the IRR road inventory database be?

The information contained in the inventory database must be to the following accuracy:

(a) The roadway width must be within 1 foot (.3048 meters) of actual width; and

(b) The length of roadway must be within 100 feet (30.48 meters) of actual length.

§ 170.452 What are the standards for IRR atlas maps?

IRR atlas maps must:

(a) Be drawn to an appropriate scale;

(b) Show adequate topography, all IRR roads, contours as appropriate, title block, and legend;

(c) Show State, county, tribal, congressional, and private land boundaries as appropriate; and

(d) Be capable of displaying a variety of coordinate systems to minimize the number of (C-size paper) maps for a given reservation.

§ 170.453 What is a strip map?

For purposes of this subpart, a strip map is a graphical image that reflects a section of road or other transportation facility being added to or modified in the IRR inventory. It also defines its location with respect to the various state, county, tribal, and congressional boundaries. These maps further define overall dimensions of a section of road or facility and the accompanying inventory data.

§ 170.454 How are strip maps used?

Strip maps are used for the following purposes:

(a) Maintaining a visual inventory of each transportation facility in the IRR inventory;

(b) Transportation planning;

(c) Project planning; and

(d) IRR management systems.

§ 170.455 What standards must IRR inventory strip maps meet?

Strip maps must be consistent with the requirements of atlas maps except that a table is also displayed that provides specific inventory information about a section of an IRR route or other transportation facility on the strip map. This information is taken from the IRR inventory.

§ 170.456 What is functional classification?

For purposes of this subpart, functional classification means an analysis of a specific transportation facility taking into account current and future traffic generators, and their relationship to connecting or adjacent BIA, state, county, Federal, and/or local roads and other intermodal facilities. Functional classifications are used to delineate the difference between the various road and/or intermodal facilities standards eligible for funding under the IRR Program.

§ 170.457 What are the functional classifications of the IRR Program?

The functional classifications of the IRR Program are given in the following list:

(a) *Class 1:* Major arterial roads providing an integrated network with characteristics for serving traffic between large population centers, generally without stub connections and having average daily traffic volumes of 10,000 vehicles per day or more with more than two lanes of traffic.

(b) *Class 2:* Major or minor arterial roads providing an integrated network having the characteristics for serving traffic between large population centers, generally without stub connections. May also link smaller towns and communities to major resort areas which attract travel over long distances and generally provide for relatively high overall travel speeds with minimum interference to through traffic movement. Generally provide for at least inter-county or inter-State service and are spaced at intervals consistent with population density. This class of road will have less than 10,000 vehicles per day.

(c) *Class 3:* Streets-roads which are located within communities serving residential and other urban type settings.

(d) *Class 4:* Section line and/or stub type roads which collect traffic for arterial type roads, make connections within the grid of the IRR system. This class of road may serve areas around villages, into farming areas, to schools, tourist attractions, or various small enterprises. Also included are roads and motorized trails for administration of forest, grazing mining, oil, recreation, or other utilization purposes. This classification encompasses all those public roads not falling into either the Class 2 or 3 definitions above.

(e) *Class 5:* This classification encompasses all non-road type paths, trails, walkways, or other designated types of routes for public use by foot traffic, bicycles, trail bikes, or other uses to provide for general access of non-motorized traffic.

(f) *Class 6:* This classification encompasses other modes of transportation such as public parking facilities adjacent to IRR routes and scenic byways, rest areas, and other scenic pullouts, ferry boat terminals, and transit terminals.

(g) *Class 7:* This classification encompasses air strips which are within the boundaries of the IRR system grid and are open to the public. These air strips are included for inventory and maintenance purposes only.

§ 170.458 How are functional classifications used in the IRR Program?

Functional classifications are used to delineate the difference between the various road and/or intermodal facilities standards eligible for funding under the IRR Program.

§ 170.459 How is the surface type determined for an IRR road project?

The surface type of a road is based on input from the tribe and engineering judgment, taking into account projected traffic volumes, terrain, location, functional classification, and use of the road.

§ 170.460 What is a proposed IRR transportation facility?

A proposed IRR transportation facility is any transportation facility, including bridges, identified to serve public transportation needs that is eligible for construction or improvement under the IRR Program.

Environment and Archeology

§ 170.461 What are the archeological and environmental requirements for the IRR Program?

(a) The archeological and environmental requirements for tribes that enter into self-determination contracts or self-governance agreements for the IRR Program are in 25 CFR 900.125 and 1000.243.

(b) The archeological and environmental requirements with which BIA must comply on the IRR Program are contained in Appendix A to this subpart.

§ 170.462 Can IRR funds be used for required archeological and environmental compliance work?

Yes, for approved IRR projects, IRR funds can be used for environmental and archeological work consistent with 25 CFR 900.125(c)(6) and (c)(8) and 25 CFR 1000.243(b) and applicable tribal laws for:

(a) Road and/or bridge rights-of-way;

(b) Borrow pits and/or aggregate pits associated with IRR activities staging areas;

(c) Limited mitigation outside of the construction limits as necessary to address the direct impacts of the construction activity as determined in the environmental analysis and after consultation with the affected tribe(s) and the appropriate Secretary(s); and

(d) Construction easements.

Design

§ 170.464 What design standards are used in the IRR Program?

Appendix B to this subpart is a listing of design standards that BIA may use for the IRR program. Tribes may propose road and bridge design standards to be used in the IRR Program which are consistent with or exceed applicable Federal standards. The standards may be negotiated between BIA and the tribe and included in a self-determination contract or self-governance agreement.

§ 170.465 May BIA use FHWA-approved State or tribal design standards?

Yes, BIA may use FHWA-approved State or tribal design standards?

§ 170.466 How are these standards used in the design of IRR projects?

The standards in this section must be applied to each construction project consistent with a minimum 20 year design life. The design of IRR projects must take into consideration:

(a) The existing and planned future usage of the IRR facility in a manner that is conducive to safety, durability, and economy of maintenance;

(b) The particular needs of each locality, and the environmental, scenic, historic, aesthetic, community, and other cultural values and mobility needs in a cost-effective manner; and

(c) Access and accommodation for other modes of transportation.

§ 170.467 When can a tribe request an exception from the design standards?

A tribe can request an exception from the design standards in Appendix B of this subpart under the conditions in this section. FHWA reviews and may approve all design exceptions for IRR projects unless otherwise delegated under an IRR stewardship plan or agreement. To request an exception from the standards, the engineer of record must submit written documentation with appropriate supporting data, sketches, details, and justification based on engineering analysis.

(a) FHWA may, in accordance with applicable law, grant exceptions for:

(1) Experimental features on projects; and

(2) Projects where conditions warrant that exceptions be made.

(b) FHWA can approve a project design that does not conform to the minimum criteria only after due consideration is given to all project conditions, such as:

(1) Maximum service and safety benefits for the dollar invested;

(2) Compatibility with adjacent features; and

(3) The probable time before reconstruction of the project due to increased transportation demands or changed conditions.

§ 170.468 If BIA or FHWA denies a design exception, can that decision be appealed?

Yes, if BIA denies a design exception request made by a tribe, the decision may be appealed to FHWA. If FHWA denies a design exception, the decision may be appealed to the next higher level of review within the Department of Transportation.

§ 170.469 How long does BIA or FHWA have to approve or decline a design exception request by a tribe?

BIA or FHWA has 30 days from receipt of the request to approve or decline the exception.

Construction and Construction Monitoring and Rights-of-Way

§ 170.472 What road and bridge construction standards are used in the IRR Program?

Appendix B to this subpart lists design standards that may be used in the IRR Program. Tribes may propose road and bridge construction standards to be used in the IRR Program which are consistent with or exceed applicable federal standards as may be negotiated between BIA and the tribe and included in a self-determination contract or self-governance agreement.

§ 170.473 What standards must be used for intermodal projects?

For designing and building eligible intermodal projects funded by the IRR Program, tribes must use either:

(a) Nationally recognized standards for comparable projects; or

(b) Tribally adopted standards that meet or exceed nationally recognized standards for comparable projects.

§ 170.474 May BIA use FHWA-approved State or tribal road and bridge construction standards?

Yes, BIA may use FHWA-approved, State or tribal road and bridge construction standards.

§ 170.475 How will BIA monitor the IRR project during construction?

When a tribe or tribal organization carries out the IRR project under Pub. L. 93–638, BIA will monitor performance under the requirements of 25 CFR 900.130 and 900.131(b)(9) or 25 CFR 1000.243 and 1000.249(c) and (e), as appropriate. If the Secretary discovers a problem during an on-site monitoring visit, the Secretary must promptly notify the tribe and, upon request by the tribe, provide technical assistance.

§ 170.476 Is tribal consultation required in order to change a construction project?

Yes, substantial changes to the construction project must be processed in consultation with the affected tribe, where feasible.

§ 170.477 Who conducts inspections of IRR construction projects under a self-determination contract or self-governance agreement?

The Secretary or tribal government, as provided for under the contract or agreement, is responsible for the day-to-day project inspections except for monitoring by the Secretary as provided in § 170.475.

§ 170.478 What is quality control and who performs it?

Quality control is all activity conducted to ensure that all construction requirements are fulfilled. The tribe, other contractors, and/or BIA may perform quality control.

§ 170.479 What IRR construction records must tribes and BIA keep?

The following table shows which IRR construction records BIA and tribes must keep and the requirements for access.

Record keeper	Records that must be kept	Access
(a) Tribe or tribal organization.	All records required by the ISDEAA and 25 CFR 900.130–900.131 or 25 CFR 1000.243 and 1000.249, as appropriate.	BIA is allowed access to tribal IRR construction records as required under 25 CFR 900.130, 900.131 or 25 CFR 1000.243 and 1000.249, as appropriate.
(b) BIA	Completed daily reports of construction activities appropriate to the type of construction it is performing.	Upon reasonable advance request by a Tribe, BIA must provide reasonable access to records.

§ 170.480 Can a tribe review and approve Plans, Specification and Estimate (PS&E) packages for IRR projects?

Yes, a tribe can review and approve PS&E packages for IRR projects if the tribe meets the requirements of a state as defined in 23 U.S.C. 302(a) and enters into a tribal IRR Program stewardship agreement with the Secretary of Transportation or designee.

§ 170.481 Who must approve all PS&E packages?

All PS&E packages must be signed and/or sealed by the appropriate licensed professional engineer and by the appropriate official as follows:

(a) Absent an approved IRR Program stewardship agreement, FHWA approves all PS&E packages submitted by BIA;

(b) When an approved BIA regional IRR Program stewardship agreement exists, PS&E packages are approved by an official in the BIA regional office;

(c) When a tribe has assumed the responsibility to approve PS&E packages for tribal, state, and locally owned IRR facilities through a tribal IRR Program stewardship agreement, the tribe approves PS&E packages with the consent of the facility owner after a health and safety review by the Secretary;

(d) When a tribe has not assumed the responsibility to approve PS&E packages under paragraph (c) of this section, BIA or FHWA approves PS&E packages under paragraph (a) or (b) of this section, as applicable.

§ 170.482 How can the plans, specifications, and estimates of an IRR project be changed during construction?

Only the licensed engineer may change an IRR project's plans, specifications, and estimates (PS&E) during construction.

(a) For substantial changes the original approving agency must review the change. The approving agency is the Federal, tribal, State, or local entity with PS&E approval authority over the project.

(b) In making any substantial change, the approving agency must consult with the affected tribe and the entity having maintenance responsibility over the facility.

(c) No change may be made that exceeds the limits of available funding without the consent of the funding agency.

§ 170.483 What is the final inspection procedure for an IRR construction project?

At the conclusion of a construction project, the agency or organization responsible for the project must make a final inspection. The purpose of the inspection is to determine that the project has been completed in reasonable conformity with the PS&E.

(a) Appropriate officials from the tribe, BIA, and FHWA are encouraged to participate in the inspection.

(b) BIA, FHWA, contractors, and maintenance personnel should also participate in the inspection.

§ 170.484 How is construction project closeout conducted?

An IRR construction project closeout is the final accounting of all IRR construction project expenditures. It is the closing of the financial books of the Federal Government for that construction project and is conducted after the final inspection. The following table contains the requirements for preparing the report.

If the project was completed by . . .	Then . . .	And the closeout report must . . .
(a) BIA	The regional engineer or designee is responsible for closing out the project and preparing the report.	(1) Summarize the construction project records to ensure compliance requirements have been met; and (2) Review the bid item quantities and expenditures to ensure reasonable conformance with the PS&E and modifications.
(b) A tribe	Agreements negotiated under Pub. L. 93–638 specify who is responsible for closeout and preparing the report.	(1) Meet the requirements of Pub. L. 93–638; and (2) Comply with 25 CFR 900.130(d) and 131(b)(10) and 25 CFR 1000.249, as applicable.

§ 170.485 Who has final acceptance of the IRR project audit?

The Secretary has final acceptance and approval of the project including the IRR project audit.

§ 170.486 When does a project closeout occur?

A project closeout occurs after the final project inspection is concluded and the IRR project is accepted by the facility owner and the Secretary.

§ 170.487 Who must conduct the project closeout and develop the report?

(a) The self-determination contract or self-governance agreement must specify who is responsible for project closeout and development of a final report.

(b) The Secretary is responsible for closing out the project and preparing the report when the project is conducted by the Secretary.

§ 170.488 What information must be made available for the project closeout?

(a) When the Secretary conducts the project, all project information must be made accessible for the IRR construction project closeout. Such information may include, but is not limited to: Daily diaries, weekly progress reports, subcontracts, subcontract expenditures, salaries, equipment expenditures, etc.

(b) When a tribe conducts the project under a self-determination contract or self-governance agreement, all project information must be made accessible for the IRR construction project closeout. Such information may include but is not limited to: Daily diaries, weekly progress reports, subcontracts, subcontract expenditures, salaries, equipment expenditures, etc.

§ 170.489 Who is provided a copy of the IRR construction project closeout report?

(a) When the Secretary conducts the project, copies of the IRR construction project closeout reports are provided to the affected tribes and the Secretary of Transportation.

(b) When a tribe conducts the project under a self-determination contract or self-governance agreement, the contract or agreement must specify who will be provided a copy of the closeout report.

§ 170.490 Will projects negotiated under Public Law 93–638 specify who will be provided a copy of the closeout report?

Yes, projects negotiated under Public Law 93–638 must specify who will be provided a copy of the closeout report.

§ 170.491 Who prepares the IRR construction project closeout report?

The IRR construction project closeout report is prepared by whomever administers the project or FHWA or BIA within 120 calendar days of project completion.

§ 170.500 What provisions apply to acquiring IRR Program rights-of-way over trust or restricted lands?

Rights-of-way across trust or restricted lands are covered by 25 CFR part 169 except where Federal statutory authority exists for tribes to grant rights-of-way across their reservations without approval by the Secretary.

§ 170.501 What must a right-of-way easement document contain at a minimum?

(a) For rights-of-way across Indian trust and restricted lands, those documents required by 25 CFR part 169 must be submitted; and

(b) For lands other than trust or restricted, the following information must be submitted:

(1) Identification of the grantor and grantee;

(2) A legal description of the property acquired for the right-of-way;

(3) A right-of-way plat/map of definite location;

(4) A statement of the term of the right-of-way, whether for a specific term of years, whether it includes a right of renewal, or whether the grant is in perpetuity;

(5) Terms and conditions on the grant of the right-of-way, including but not limited to, other permissible uses of the right-of-way, or specific restrictions on the rights-of-way easements;

(6) Identification of whether the rights-of-way includes the right to construct, and/or re-construct the facility; and

(7) A statement on whether the right-of-way may be transferred or assigned and the terms and conditions under which a transfer or assignment may occur.

(c) If a rights-of-way document covers maintenance it may include an identification of maintenance responsibilities assumed by the grantee or retained by the grantor and whether such rights convey with any transfer of the rights-of-way.

§ 170.502 How are rights-of-way granted on Indian trust or restricted fee lands?

Grants of right-of-way must be made under the provisions of 25 CFR part 169.

Program Reviews and Management Systems

§ 170.510 What are BIA IRR Program reviews?

On an annual basis, BIADOT and FHWA initiate and conduct informal program reviews to examine program procedures and identify improvements. These reviews evaluate the procedures being used by BIA and FHWA to administer, implement, and monitor the IRR Program. These program reviews may be held in conjunction with either a national BIA transportation meeting or an IRR Program Coordinating Committee meeting. BIA must provide notice to tribes of these informal program reviews. Tribes may send representatives to these meetings at their own expense.

§ 170.511 What is an IRR process review of a BIA regional office?

(a) The IRR process review of a BIA regional office is a review involving FHWA, BIA, and affected Tribe(s) in the region, of a BIA regional office's processes and controls in the following areas:

(1) Transportation;

(2) Planning;

(3) Design;

(4) Contract administration;

(5) Construction;

(6) Financial management; and

(7) Systems maintenance and existing stewardship agreements.

(b) The review may result in recommendations to improve transportation planning, design, contract administration, construction, financial management, and systems management activities performed by a BIA regional office.

§ 170.512 What happens with the information gathered from the IRR process review?

After the IRR process review, the review team must:

(a) Conduct an exit interview during which it makes a brief oral report of findings and recommendations to BIA regional director and IRR regional staff.

(b) Prepare a written report of its findings and recommendations which it combines the gathered information into a short written report. The final report is provided to the reviewed office, BIA, all participants, affected tribal governments and/or organizations.

§ 170.513 What happens when the review process identifies areas for improvement?

When the review process identifies areas for improvement:

(a) The regional office must develop a corrective action plan;

(b) BIADOT and FHWA review and approve the plan;

(c) FHWA may provide technical assistance during the development and implementation of the plan; and

(d) The reviewed BIA regional office provides either annual or biannual corrective action implementation reports to BIADOT and FHWA and implementation of the plan. The reviewed BIA regional office provides

either annual or biannual corrective action implementation reports to BIA DOT and FHWA.

§ 170.514 Are management systems required for the IRR Program?

(a) To the extent appropriate, the Secretaries must, in consultation with tribes, develop and maintain the following management systems for the IRR Program:

(1) Pavement management;

(2) Safety management;

(3) Bridge management; and

(4) Congestion management.

(b) Other management systems may include the following:

(1) Public transportation facilities;

(2) Public transportation equipment; and/or

(3) Intermodal transportation facilities and systems.

(c) All management systems for the IRR Program must be consistent with applicable Federal regulations to be developed by the Secretaries in consultation with tribes.

(d) A tribe may enter into an ISDEAA contract or agreement to develop, implement, and maintain alternative tribal management systems, provided that such systems are consistent with Federal management systems.

§ 170.515 How are IRR Program management systems funded?

BIA funds IRR Program management systems to develop the nationwide IRR Program management systems. If a tribe elects not to use the nationwide system, it may develop a tribal management system using the 2 percent IRR tribal transportation planning or IRR construction funds.

§ 170.516 How will the IRR management systems be implemented?

BIA Division of Transportation (BIA DOT) implements and maintains nationwide IRR management systems using IRR Program management funds. For direct service tribes that chose not to contract, BIA regional offices will provide the database information for these nationwide systems using IRR construction funds. A tribe may collect and must provide this information to the BIA regional office using IRR construction funds or 2 percent IRR tribal transportation planning funds under a self-determination contract or self-governance annual funding agreement.

Appendix A to Subpart D

Archeological and Environmental Requirements for the IRR Program

All BIA work for the IRR Program must comply with the following archeological and environmental requirements:

1. 16 U.S.C. 1531 Endangered Species Act.
2. 16 U.S.C. 460L Land and Water Conservation Fund Act (Section 6(f) .
3. 16 U.S.C. 661–667d Fish and Wildlife Coordination Act.
4. 23 U.S.C. 138 Preservation of Parklands.
5. 25 U.S.C. 3001–3013 Native American Graves Protection and Repatriation Act.
6. 33 U.S.C. 1251 Federal Water Pollution Control Act and Clean Water Act.
7. 42 U.S.C. 7401 Clean Air Act.
8. 42 U.S.C. 4321 National Environmental Policy Act.
9. 49 U.S.C. 303 Preservation of Parklands.
10. 7 U.S.C. 4201 Farmland Protection Policy Act.
11. 7 CFR 355 Endangered Species Act regulations.
12. 7 CFR 658 Farmland Protection Policy Act regulations.
13. 23 CFR 770 Air Quality Conformity and Priority Procedures for use in Federal-aid Highway and Federally-Funded Transit Programs.
14. 23 CFR 771 Environmental Impact and Related Procedures.
15. 23 CFR 772 Procedures for Abatement of Highway Traffic Noises and Construction Noises.
16. 23 CFR 777 Mitigation of Environmental Impacts To Privately Owned Wetlands.
17. 36 CFR 800 Historic Preservation.
18. 40 CFR 260–271 Resource Conservation and Recovery Act.
19. 40 CFR 300 Comprehensive Environmental Response, Compensation, and Liability Act.
20. Applicable tribal/State laws.
21. Other applicable Federal laws.

Appendix B to Subpart D

Design Standards for the IRR Program

Depending on the nature of the project, tribes may use the following design standards. Additional standards may also apply. To the extent that any provisions of these standards are inconsistent with the ISDEAA, these provisions do not apply.

1. AASHTO Policy on Geometric Design of Highways and Streets.
2. FHWA Federal Lands Highway, Project Development and Design Manual.
3. Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, latest edition.
4. 23 CFR 645 Utilities.
5. 23 CFR 646 Railroads.
6. MUTCD Manual of Uniform Traffic Safety Devices, latest edition.
7. AASHTO A Guide for Transportation Landscape and Environmental Design.
8. AASHTO Roadside Design Guide, latest edition.
9. AASHTO Guide for Selecting, Locating and Designing Traffic Barriers, latest edition.
10. AASHTO Standard Specifications for Highway Bridges, latest edition.
11. FHWA Flexibility in Highway Design.
12. FHWA Roadside Improvements for Local Road and Streets.
14. FHWA Improving Guardrail Installations and Local Roads and Streets.
15. 23 U.S.C. 106 PS&E.
16. 23 U.S.C. 109 Standards.
17. 23 CFR 625 Design Standards for Highways.
18. 23 CFR 630 Preconstruction Procedures.
19. 23 CFR 633 Required Contract Provisions.
20. 23 CFR 635 Construction and Maintenance.
21. DOT Metric Conversion Plan, October 31, 1991.

Subpart E—Service Delivery for Indian Reservation Roads

§ 170.600 What IRR Program functions may be assumed by a tribe in a self-determination contract or self-governance agreement?

All IRR functions and activities that are otherwise contractible may be included in a self-determination contract or self-governance agreement. (23 U.S.C. 202(d)(3)(B)).

§ 170.601 What IRR project and program functions are not otherwise contractible?

The following IRR functions or activities are non-contractible:

(a) IRR project-related pre-contracting activities:

(1) Notifying tribes of available funding including the right of first refusal; and

(2) Providing technical assistance.

(b) IRR project-related contracting activities:

(1) Providing technical assistance;

(2) Reviewing all scopes of work (25 CFR 900.122);

(3) Evaluating proposals and making declination decisions, if warranted;

(4) Performing declination activities;

(5) Negotiating and entering into contracts or agreements with state, tribal, and local governments and other Federal agencies;

(6) Processing progress payments or contract payments;

(7) Approving contract modifications;

(8) Processing claims and disputes with tribal governments; and

(9) Closing out contracts or agreements.

(c) Planning activities:

(1) Reviewing IRR transportation improvement programs developed by tribes or other contractors;

(2) Reviewing IRR long-range transportation plans developed by tribes or other contractors; and

(3) Performing other Federal responsibilities identified in the IRR Transportation Planning Procedures and Guidelines manual.

(d) Environmental and historical preservation activities:

(1) Reviewing and approving all items required for environmental compliance; and

(2) Reviewing and approving all items required for archaeological compliance.

(e) Processing rights-of-way:
(1) Reviewing rights-of-way applications and certifications;
(2) Approving rights-of-way documents;
(3) Processing grants and acquisition of rights-of-way requests for tribal trust and allotted lands under 25 CFR part 169;
(4) Responding to information requests;
(5) Filing Affidavit of Completion Forms; and
(6) Performing custodial functions related to storing right-of-way documents.
(f) Conducting project development and design under 25 U.S.C. 900.131:
(1) Participating in the plan-in-hand reviews as facility owner;
(2) Reviewing and/or approving plans, specifications, and cost estimates (PS&E's) for health and safety assurance as facility owner;
(3) Reviewing PS&E's to assure compliance with all other Federal laws; and
(4) Reviewing PS&E's to assure compliance with or exceeding Federal standards for IRR design and construction.
(g) Construction:
(1) Making application for clean air/clean water permits as facility owner;
(2) Ensuring that all required state/tribal/Federal permits are obtained;
(3) Performing quality assurance activities;
(4) Conducting value engineering activities as facility owner;
(5) Negotiating with contractors on behalf of Federal Government;
(6) Approving contract modifications/change orders;
(7) Conducting periodic site visits;
(8) Performing all Federal Government required project-related activities contained in the contract documents and required by 25 CFR parts 900 and 1000;
(9) Conducting activities to assure compliance with safety plans as a jurisdictional responsibility (hazardous materials, traffic control, OSHA, etc.);
(10) Participating in final inspection and acceptance of project documents (as-built drawings) as facility owner; and
(11) Reviewing project closeout activities and reports.
(h) Other activities:
(1) Performing other non-contractible required IRR project activities contained in 25 CFR part 900 and part 1000; and
(2) Other Title 23 United States Code non-project-related management activities.
(i) BIA Division of Transportation program management:
(1) Developing budget on needs for the IRR Program;
(2) Developing legislative proposals;
(3) Coordinating legislative activities;
(4) Developing and issuing regulations;
(5) Developing and issuing IRR planning, design, and construction standards;
(6) Developing/revising interagency agreements;
(7) Developing and approving IRR stewardship agreements in conjunction with FHWA;
(8) Developing annual IRR obligation and IRR Program accomplishments reports;
(9) Developing reports on IRR project expenditures and performance measures for the Government Performance and Results Act (GPRA);
(10) Responding to/maintaining data for congressional inquiries;
(11) Developing and maintaining funding formula and its database;
(12) Allocating IRR Program and other transportation funding;
(13) Providing technical assistance to tribe/tribal organizations/agencies/regions;
(14) Providing national program leadership for: National Scenic Byways Program, Public Lands Highways Discretionary Program, Transportation Enhancement Program, Tribal Technical Assistance Program, Recreational Travel and Tourism, Transit Program, ERFO Program, Presidential initiatives (Millennium Trails, Lewis & Clark, Western Tourism Policy Group);
(15) Participating in and supporting tribal transportation association meetings such as the Intertribal Transportation Association regional and national meetings;
(16) Coordinating with and monitor Tribal Technical Assistance Program centers;
(17) Planning, coordinating, and conducting BIA/tribal training;
(18) Developing information management systems to support consistency in data format, use, etc., with the Secretary of Transportation for the IRR Program;
(19) Participating in special transportation related workgroups, special projects, task forces and meetings as requested by tribes;
(20) Participating in national transportation organizations, such as the Western Association of State Highway and Transportation Officials, American Association of State Highway and Transportation Officials, National Association of County Engineers, and Transportation Research Board;
(21) Participating in and supporting FHWA Coordinated Technology Improvement program;
(22) Participating in national and regional IRR Program meetings;
(23) Consulting with tribes on non-project related IRR Program issues;
(24) Participating in IRR Program, process, and product reviews;
(25) Developing and approve national indefinite quantity service contracts;
(26) Assisting and supporting the IRR Coordinating Committee;
(27) Processing IRR Bridge program projects and other discretionary funding applications or proposals from tribes;
(28) Coordinating with FHWA;
(29) Performing stewardship of the IRR Program;
(30) Performing oversight of the IRR Program and its funded activities; and
(31) Performing any other non-contractible IRR Program activity included in this part.
(j) BIA DOT Planning:
(1) Maintaining the official IRR inventory;
(2) Reviewing long-range transportation plans;
(3) Reviewing and approving IRR transportation improvement programs;
(4) Maintaining nationwide inventory of IRR strip and atlas maps;
(5) Coordinating with tribal/state/regional/local governments;
(6) Developing and issuing procedures for management systems;
(7) Distributing approved IRR transportation improvement programs to BIA regions;
(8) Coordinating with other Federal agencies as applicable;
(9) Coordinating and processing the funding and repair of damaged Indian reservation roads with FHWA;
(10) Calculating and distributing IRR transportation planning and Atlas mapping funds to BIA regions;
(11) Reprogramming unused IRR transportation planning and Atlas mapping funds at the end of the fiscal year;
(12) Monitoring the nationwide obligation of IRR transportation planning and Atlas mapping funds;
(13) Providing technical assistance and training to BIA regions and tribes;
(14) Approving Atlas maps;
(15) Reviewing IRR inventory information for quality assurance; and
(16) Advising BIA regions and tribes of transportation funding opportunities.
(k) BIA DOT engineering:
(1) Participating in the development of design/construction standards with FHWA;
(2) Developing and approving design/construction/maintenance standards;
(3) Conducting IRR Program/product reviews; and
(4) Developing and issuing criteria for pavement and congestion management systems.

(l) BIA DOT responsibilities for bridges:
(1) Maintaining BIA National Bridge Inventory information/database;
(2) Conducting quality assurance of the bridge inspection program;
(3) Reviewing and processing IRR Bridge program applications;
(4) Participating in second level review of IRR bridge PS&E; and
(5) Developing criteria for bridge management systems.
(m) BIA DOT responsibilities to perform other non-contractible required IRR Program activities contained in this part;
(n) BIA regional offices program management:
(1) Designating IRR system roads;
(2) Notifying tribes of available funding;
(3) Developing state IRR transportation improvement programs;
(4) Providing FHWA-approved IRR transportation improvement programs to tribes;
(5) Providing technical assistance to tribes/tribal organizations/agencies;
(6) Funding common services as provided as part of the region/agency/BIA Division of Transportation IRR costs;
(7) Processing and investigating non-project related tort claims;
(8) Preparing budgets for BIA regional and agency IRR Program activities;
(9) Developing/revising interagency agreements;
(10) Developing control schedules/Transportation Improvement Programs;
(11) Developing regional IRR stewardship agreements;
(12) Developing quarterly/annual IRR obligation and program accomplishments reports;
(13) Developing reports on IRR project expenditures and performance measures for Government Performance and Results Act (GPRA);
(14) Responding to/maintaining data for congressional inquiries;
(15) Participating in Indian transportation association meetings such as Intertribal Transportation Association regional and national meetings;
(16) Participating in Indian Local Technical Assistance Program (LTAP) meetings and workshops;
(17) Participating in BIA/tribal training development (highway safety, work zone safety, etc.);
(18) Participating in special workgroups, task forces, and meetings as requested by tribes (tribal members and BIA region/agency personnel);
(19) Participating in national transportation organizations meetings and workshops;
(20) Reviewing Coordinated Technology Improvement program project proposals;
(21) Consulting with tribal governments on non-project related program issues;
(22) Funding costs for common services as provided as part of BIA IRR region/agency/contracting support costs;
(23) Reviewing and approving IRR Atlas maps;
(24) Processing Freedom of Information Act (FOIA) requests;
(25) Monitoring the obligation and expenditure of all IRR Program funds allocated to BIA region;
(26) Performing activities related the application for ERFO funds, administration, and oversight of such funds; and
(27) Participating in IRR Program, process, and product reviews.
(o) BIA DOT regional offices planning:
(1) Coordinating with tribal/state/regional/local government;
(2) Coordinating and processing the funding and repair of damaged Indian reservation roads with tribes;
(3) Reviewing and approving IRR Inventory data;
(4) Maintaining, reviewing, and approving the management systems databases;
(5) Reviewing and approving IRR state transportation improvement programs; and
(6) Performing Federal responsibilities identified in the IRR Transportation Planning Procedures and Guidelines manual.
(p) BIA DOT regional offices engineering:
(1) Approving tribal standards for the IRR Program use;
(2) Developing and implementing new engineering techniques in the IRR Program; and
(3) Providing technical assistance.
(q) BIA DOT regional offices responsibilities for bridges:
(1) Reviewing and processing IRR bridge program applications;
(2) Reviewing and processing IRR bridge inspection reports and information; and
(3) Ensuring the safe use of roads and bridges.
(r) BIA DOT regional offices other responsibilities for performing other non-contractible required IRR Program activities contained in this part.

§ 170.602 How are the IRR non-contractible program and project functions funded?

(a) All non-contractible program functions are funded by IRR Program management and oversight funds; and
(b) All non-contractible project functions are funded by the IRR project construction funds.

§ 170.603 May tribes include the cost for contractible supportive administrative functions in their budgets?

Yes, Tribes may use IRR project funds contained in their contracts or annual funding agreements for contractible supportive administrative functions.

§ 170.604 How does BIA determine the amount of funds needed for non-contractible non-project related functions?

Each fiscal year the Secretary will develop a national and regional BIA IRR Program budgets. Within the first quarter of each fiscal year the Secretary will send a copy of the national IRR budget and BIA regional IRR budget to all tribes.

§ 170.605 Are the unused IRR Program management funds reserved by the Secretary considered residual funds?

No, the unused IRR Program management funds reserved by the Secretary are not considered residual funds.

170.606 What happens to the unused portion of IRR Program management funds reserved by the Secretary?

Any unused IRR Program management funds are distributed to BIA regions using the IRR Relative Need Formula and are used for additional construction activities.

§ 170.608 May IRR Programs be contracted under the ISDEAA?

Yes, IRR Programs may be contracted under the regulations set out in 25 CFR part 900. In the event of an actual conflict between these IRR regulations and part 900, subpart J of the regulations, these IRR regulations control.

§ 170.609 What are consortium contracts/agreements?

Under title I and title IV of the ISDEAA, multiple tribes and/or multi-tribal organizations are eligible to assume IRR Programs under consortium contracts or agreements. For an explanation of self-determination contracts, refer to Title I, 25 U.S.C. 450f. For an explanation of self-governance agreements, refer to Title IV, 25 U.S.C. 450b(l) and 458bb(b)(2).

§ 170.610 What must BIA include in the notice of availability of funds?

The notice of availability of funds that BIA publishes in the **Federal Register** must include the following:
(a) The total amount of IRR Program funds allocated to the region for IRR transportation planning, design, and construction projects;
(b) A breakdown of IRR Program funds by tribe based on the distribution formula in subpart C;

(c) Copies of the FHWA-approved IRR TIPs for each state in the BIA region;

(d) Information on IRR Program funding by tribe for prior years. This information will identify over-funded or advance-funded tribes;

(e) An offer of technical assistance in the preparation of contract proposal(s);

(f) A request of a 30-day response from the tribe;

(g) A proposed project listing used to develop the region's control schedule; and

(h) The various options available to the tribe for IRR construction projects, i.e., direct service, self-determination contract, and self-governance agreement.

§ 170.611 Can the Secretary transfer funds to tribal governments before issuing a notice of funding availability?

Yes, the Secretary can transfer funds to tribal governments with negotiated self-determination contracts and self-governance agreements before issuing a notice of funding availability. The Secretary's ability to transfer funding is independent of and cannot be delayed by the requirement to provide tribes with a written notice of availability of funds.

§ 170.612 Can a tribe enter into a self-determination contract or self-governance agreement that exceeds one year?

Yes, the Secretary can enter into a multi-year IRR self-determination contract and self-governance agreement with a tribe under sections 105(c)(1)(A) and (2) of the ISDEAA. The amount of such contracts or agreements is subject to the availability of appropriations.

§ 170.613 May a tribe receive advance payments of IRR funds for non-construction activities?

Yes, BIA must advance payments to a tribe for non-construction activities under 25 U.S.C. 450*l* for self-determination contracts on a quarterly, semiannual, lump-sum, or other basis proposed by a tribe and authorized by law.

§ 170.614 May the Secretary advance payments of IRR funds to a tribe under a self-determination contract for construction activities?

Yes, the Secretary and the tribe must negotiate a schedule of advance payments as part of the term of a self-determination contract in accordance with 25 CFR 900.132.

§ 170.615 What is a design/construct IRR self-determination contract?

It is a self-determination contract which includes both the design and construction of one or more IRR projects.

§ 170.616 May the Secretary advance payments of IRR funds to a tribe under a self-determination design/construct contract for construction activities?

Yes, when making at least quarterly advance payments for construction and construction engineering, the Secretary includes IRR Program funds based on progress, need, and the payment schedule negotiated under 25 CFR 900.132.

§ 170.617 May the Secretary advance payments of IRR funds to a tribe or consortia under a self-governance agreement?

Yes, advance payments must be made to the tribes/consortia in the form of annual or semiannual installments as indicated in the agreement.

§ 170.618 How are advance payments made when additional IRR funds are made available after execution of the self-governance agreement?

When additional IRR funds are available, following the procedures set forth in 25 CFR 1000.104, tribes can request to use the additional funds for approved IRR activities or projects contained in a subsequent year of FHWA-approved IRR TIP, and immediately have those funds added to the agreement.

§ 170.619 May a self-determination or self-governance tribe include a contingency in its proposal budget?

Yes, a tribe with a self-determination contract may include a contingency amount in its proposal budget in accordance with 25 CFR 900.127(e)(8). A tribe with a self-governance agreement may include a project-specific line item for contingencies if the tribe does not include its full IRR allocation in the agreement.

§ 170.620 Can Indian tribes and tribal organizations performing under self-determination contracts of self-governance agreements keep savings that result from their administration of IRR projects or an entire tribal IRR Program?

Pursuant to 25 U.S.C. 450e–2, where the actual costs of the contracts or agreements for construction projects are less than the estimated costs, use of the resulting excess funds shall be determined by the Secretary after consultation with the tribes.

§ 170.621 How do the ISDEAA's Indian preference provisions apply?

This section applies when the Secretary or a tribe enters into a cooperative agreement with a State or local government for an IRR construction project. The tribe and the parties may choose to incorporate the provisions of section 7(b) in a cooperative agreement.

§ 170.622 Do tribal preference and Indian preference apply to IRR funding?

This section applies to any contract entered into under Title I of the ISDEAA.

(a) If the contract serves a single tribe, section 7(c) of the ISDEAA applies to allow the tribal employment or contract preference laws adopted by the tribe to govern. This includes tribal adoption of local preference laws.

(b) If the contract does not serve a single tribe, section 7(b) of the ISDEAA applies.

(c) Where a self-governance agreement exists under Title IV of the ISDEAA, 25 CFR 1000.406 governs Indian preference issues.

§ 170.623 What protections does the government have if a tribe fails to perform?

If a tribe substantially fails to perform a contract or agreement:

(a) For self-determination contracts, the Secretary must use the monitoring and enforcement procedures in 25 CFR 900.131(a)–(b) and part 900, subpart L (appeals); and

(b) For self-governance agreements, the Secretary must use the monitoring and enforcement procedures in 25 CFR 1000, subpart K.

§ 170.624 What activities may the Secretary review and monitor?

The Secretary reviews and monitors the performance of construction activities under 25 CFR 900.131.

§ 170.625 If a tribe incurs unforeseen construction costs, can it get additional funds?

Yes, to the extent feasible, the Secretary must pay for all costs (i.e., cost overruns) incurred resulting from unforeseen circumstances of the construction process. See 25 CFR 900.130(e). If the Secretary is unable to fund the unforeseen costs, the tribe can suspend or terminate work on the project and may return the project to the Secretary.

§ 170.626 When may BIA use force account methods in the IRR Program?

BIA may use force account methods in the IRR Program unless the tribe elects otherwise to enter into a self-determination contract or a self-governance agreement for IRR programs

§ 170.627 What regulations apply to BIA force account project activities?

The applicable FAR and Federal law apply to BIA force account project activities.

§ 170.628 How do legislation and procurement requirements affect the IRR program?

Other legislation and procurement requirements apply to the IRR program as shown in the following table.

Legislation, regulation or other requirement	Applies to tribes under self-determination contracts	Applies to tribes under self-governance agreements	Applies to activities performed by the Secretary
(a) Buy Indian Act	No	No	Yes
(b) Buy American Act	No	No	Yes
(c) Federal Acquisition Regulation (FAR)	No [1]	No	Yes
(d) Federal Tort Claims Act	Yes	Yes	Yes
(e) Davis-Bacon Act	Yes [2]	Yes [2]	Yes

[1] Unless agreed to by the tribe or tribal organization under the ISDEAA, 25 U.S.C. 450j(a), and 25 CFR part 900.115(b).
[2] Does not apply when tribe performs work with its own employees.

§ 170.630 What regulations apply to waivers?

The following regulations apply to waivers:

(a) For self-determination contracts, 25 CFR 900.140–148;

(b) For self-governance agreements, 25 CFR 1000.220–232; and

(c) For direct service, 25 CFR 1.2.

§ 170.631 How does a tribe request a waiver of a Department of Transportation regulation?

Tribes must follow the procedures in the ISDEAA, title I and 25 CFR 900.140 through 900.148 for self-determination contracts and ISDEAA, title IV, 25 CFR 1000.220 through 1000.232 for tribal self-governance agreements with a copy of the request sent to the Secretary of Transportation. When a waiver request is outside the Secretary's authority, the Secretary should forward the request to the Secretary of Transportation.

§ 170.632 Is technical assistance available for self-determination contracts and self-governance agreements under the ISDEAA?

Yes, for tribes or tribal organizations with questions about contracting the IRR Program or IRR project(s), technical assistance is available from BIA. For tribes or tribal organizations with questions about self-governance agreements for the IRR Program or IRR project(s), technical assistance is available from the office of self-governance and BIA.

Technical assistance can include, but is not limited to, assistance in the preparation of self-determination contract proposal(s) and self-governance agreements.

§ 170.633 What IRR programs, functions, services, and activities are subject to the construction regulations set forth in subpart K of 25 CFR part 1000?

All IRR design and construction projects and activities, whether included separately or under a program in the agreement, are subject to the construction regulations set forth in subpart K of 25 CFR part 1000.

§ 170.634 How are IRR program projects and activities included in the self-governance agreement?

IRR Program projects and activities are included in the self-governance agreement as specific line items for each project or activity with sufficient detail to adequately describe the work as included in FHWA-approved IRR TIP and Control Schedule. Also, each agreement must include all other information required under 25 CFR 1000, subpart K.

§ 170.635 Are contract support funds provided in addition to the 2 percent (2%) IRR transportation planning funds?

Contract support costs are an eligible item out of the tribes' IRR Program funds allocation and need to be included in a tribe's budget.

§ 170.636 May contract support costs for IRR construction projects be paid out of Department of the Interior or BIA appropriations?

No, appropriations for the Department of the Interior do not include contract support costs for IRR construction projects as allowable expenditures.

Subpart F—Program Oversight and Accountability

§ 170.700 What is the IRR Program stewardship plan?

The IRR Program stewardship plan delineates the respective roles and responsibilities of BIA and FHWA in the administration of the IRR Program and the process used for fulfilling those roles and responsibilities.

§ 170.701 What is an IRR Program stewardship agreement?

It is an agreement between FHWA and BIA Division of Transportation for assuming FHWA's responsibilities for planning, design, and construction within the IRR Program.

§ 170.702 What is a BIA regional IRR Program stewardship agreement?

It is an agreement between FHWA, BIA Division of Transportation and a BIA regional office for assuming FHWA's responsibilities of the planning, design, and construction within the IRR Program.

§ 170.703 Can a self-determination contract or self-governance agreement serve as an IRR program stewardship agreement?

No, a tribe must use a tribal IRR Program stewardship agreement. It is a separate agreement which details the tribe's assuming a portion of FHWA's and/or BIA's responsibilities for planning, design, and construction within the IRR Program.

§ 170.704 What must be included in a BIA regional or tribal IRR Program stewardship agreement?

At a minimum, these agreements must include:

(a) BIA regional roads or tribal transportation department organization chart;

(b) An IRR project development and construction flow chart;

(c) Description of the transportation planning, design, procurement, project administration, and construction processes to be followed;

(d) IRR design and construction standards to be used in accordance with this part;

(e) List of roles and responsibilities to be assumed;

(f) Provisions and process for obtaining the Secretary's health and safety reviews of the PS&E; and

(g) Provisions and processes for obtaining the facility owner's review of the PS&E.

§ 170.705 What is the process for obtaining the facility owner's review of the PS&E?

The process is as follows:

(a) BIA region or tribe prepares and submits an IRR Program stewardship agreement to BIA Division of Transportation. BIA Division of Transportation forwards a copy to FHWA;

(b) BIA and FHWA visit the tribe or BIA region and evaluate the capabilities to assume the proposed IRR Program responsibilities;

(c) FHWA, in writing, advises the tribe or BIA region of any applicable changes to the proposed stewardship agreement; and

(d) After all changes are made, the revised agreement is approved by FHWA or its designee.

§ 170.706 Can a direct service tribe and BIA region sign a Memorandum of Understanding (MOU)?

Yes, an IRR tribal/BIA region MOU is a document that a direct service tribe and BIA may enter into to help define the roles, responsibilities and consultation process between the regional BIA office and the Indian tribal government. It describes how the IRR Program will be carried out by BIA on the tribe's behalf.

§ 170.707 Are there licensing requirements to ensure standards are met under the IRR Program?

Yes, all engineering work must be performed under the direction of a professionally licensed engineer.

§ 170.708 Must an IRR PS&E be approved before proceeding to construction?

Yes, an IRR PS&E must be approved before proceeding to construction.

Subpart G—BIA Road Maintenance

§ 170.800 What Is IRR Transportation Facility Maintenance?

Maintenance is the performance of activities to keep an IRR transportation facility at its as constructed condition and to insure the health, safety, and economical use of the traveling public. Maintenance means the preservation of IRR transportation facilities including surfaces, shoulders, roadsides, structures, and such traffic control devices as are necessary for safe and efficient utilization of the facility.

§ 170.801 Who owns IRR Transportation Facilities?

IRR transportation facilities are owned by public authorities such as tribes, States, counties, local governments and the Federal Government.

§ 170.802 How is BIA Road Maintenance Program related to the IRR Program?

The following chart illustrates how the BIA Road Maintenance Program is related to other Title 23 United States Code programs and other BIA appropriated programs.

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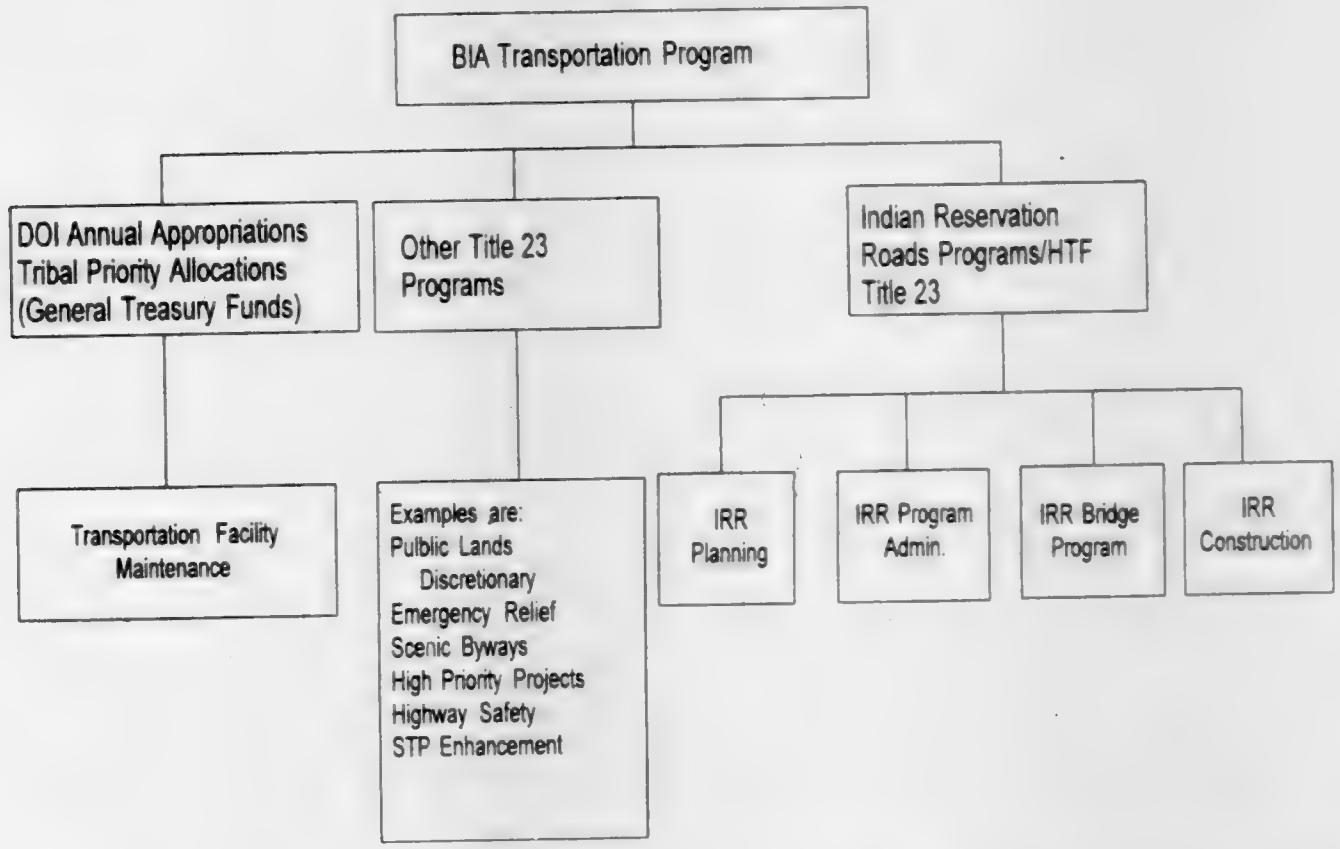

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§ 170.803 How is road maintenance funded?

BIA road maintenance program is funded through the Department of the Interior annual appropriations. All other programs are funded out of the Highway Trust Fund as shown in this subpart.

(a) The States, counties, and local governments fund the maintenance of IRR transportation facilities that they own or have agreed to maintain.

(b) The U.S. Congress funds a BIA program for the maintenance of IRR transportation facilities as defined in this part through annual appropriations for the Department of the Interior.

(c) Tribal governments, at their discretion, may also provide for the

maintenance of IRR transportation facilities.

§ 170.804 What is the BIA Road Maintenance Program?

The BIA Road Maintenance Program is the name of the program that covers the distribution and use of the funds provided by Congress in the annual Department of Interior appropriations acts for maintaining transportation facilities.

§ 170.805 What facilities are eligible for maintenance and operation under the BIA Road Maintenance Program?

(a) The following public transportation facilities are eligible for maintenance under the BIA Road Maintenance Program:

(1) BIA facilities listed in paragraph (b) of this section;

(2) Non-BIA facilities, if the tribe served by the facility feels that maintenance is required to ensure public health, safety, and economy, and if the tribe executes an agreement with the owning public authority within available funding;

(3) Tribal transportation facilities such as public roads, bridges, trails, and bus stations; and

(4) Other transportation facilities as approved by the Secretary.

(b) The following BIA facilities are eligible for maintenance under paragraph (a)(1) of this section:

(1) The BIA road system and related road appurtenances such as signs, traffic signals, pavement striping, trail markers, guardrails, etc.;

(2) Bridges and drainage structures;

(3) Airport runways and heliport pads;

(4) Boardwalks;

(5) Adjacent parking areas;

(6) Maintenance yards;

(7) Bus stations;

(8) System public pedestrian walkways, paths, bike and other trails;

(9) Motorized trails;

(10) BIA and tribal post-secondary school roads and parking lots built with IRR Program Funds; and

(11) Public ferryboats.

§ 170.806 Is maintenance required on facilities built with federal funds?

Yes, maintenance is required on all IRR facilities built with federal transportation funds.

§ 170.807 Do BIA or the tribes have to perform all of the IRR facility maintenance?

(a) State, county, and local governments normally perform the maintenance of their IRR transportation facilities.

(b) Tribes may perform or provide for their maintenance responsibilities by formal agreement or other contracts with any other, State, county, or local government.

(c) BIA's responsibility includes preparing annual budget requests under 23 U.S.C. 204(c) that include a report of the shortfalls in each Region in appropriations of BIA Road Maintenance dollars.

§ 170.808 What activities are eligible for funding under the BIA Road Maintenance Program?

Appendix A to this subpart contains a list of activities that are eligible for funding under the BIA road maintenance program.

§ 170.809 What is an IRR TFMMS?

The IRR Transportation Facilities Maintenance Management Systems (TFMMS) is a tool used by BIA and tribes to budget, prioritize, and efficiently schedule all transportation facility maintenance activities. It is employed to extend the life of an IRR transportation facility, ensure safety and report future funding needs to the Secretary.

§ 170.810 What must an effective IRR TFMMS include at a minimum?

(a) At a minimum the IRR TFMMS system must include components for:

(1) Uniformly collecting, processing, and updating data;

(2) Predicting facility deterioration;

(3) Identifying alternative actions;

(4) Projecting maintenance costs;

(5) Tracking and reporting of actual maintenance costs and activities accomplished;

(6) Forecasting short- and long-term budget needs;

(7) Recommended programs and schedules for implementation within policy and budget constraints;

(8) Tracking and reporting unmet needs; and

(9) Ability to produce various reports, including customized reports.

(b) The minimum data requirements include:

(1) Cost of maintenance activity per mile broken down by surface type and frequency of activity;

(2) Cost of bridge maintenance by surface area of deck and frequency of activity;

(3) Cost of maintenance of other inter-modal facilities;

(4) Information from other IRR management systems;

(5) Future needs; and

(6) Basic facility data including but not limited to route, bridge number, maintenance activity code, facility inspection dates.

§ 170.811 Can Maintenance Program funds be used to upgrade IRR facilities?

No, BIA Road maintenance Program funds must not be used to upgrade roads or other IRR transportation facilities to a higher road classification, standard or capacity.

§ 170.812 Can tribes enter into a self-determination contract or self-governance agreement for the BIA Road Maintenance Program?

Yes, any tribe may enter into contracts or self-governance agreements to conduct IRR transportation facility maintenance under the ISDEAA and 25 CFR part 900 or 1000. This self-determination contract or self-governance agreement does not relieve BIA of its responsibility for maintenance.

§ 170.813 To what standards must an IRR transportation facility be maintained?

IRR transportation facilities must be maintained, subject to availability of funding, in accordance with standards referred to in this part as the IRR Transportation Facility Maintenance Standards (IRR–TFMS). The Secretary will develop these standards with the assistance of the IRR Program Coordinating Committee. The Secretary must accept as interim standards any tribal maintenance standards that meet or exceed applicable Federal standards. Interim standards must include any or a combination of the following:

(a) Appropriate National Association of County Engineers maintenance standards;

(b) AASHTO road and bridge maintenance manuals, latest edition; or

(c) Other applicable Federal, State, tribal, or local government maintenance standards as may be negotiated in an ISDEAA road maintenance contract or self-governance agreement.

§ 170.814 Can BIA Road Maintenance funds be used for heliport facilities?

BIA road maintenance funds may be used to maintain heliports, runways, and public access roads to these facilities.

§ 170.815 What happens if a facility is not being maintained due to lack of funds?

If the Secretary determines that an IRR transportation facility is not being maintained under IRR–TFMS standards due to insufficient funding, the Secretary must report these findings to Congress under 23 U.S.C. 204.

§ 170.816 Must IRR bridge inspections be coordinated with tribal and local authorities?

(a) The certified bridge inspectors working for BIA, State, county or local

governments (per 23 CFR 650.307) must coordinate with the affected tribes, BIA Regional offices, and State or local governments before performing IRR bridge inspections. This coordination must include prior written notification to the tribal and other local public authorities and the opportunity to accompany the inspectors.

(b) When a tribe enters into an ISDEAA contract or self-governance agreement to perform bridge inspections, the certified bridge inspectors working for the tribe must coordinate with the BIA Regional office, and affected State or local governments before performing IRR bridge inspections. Such coordination must include prior written notification to the BIA Regional office and other local public authorities and the opportunity to accompany the inspectors.

§ 170.817 What are the minimum qualifications for certified bridge inspectors?

(a) The person responsible for the bridge inspection team is not required to be on site during all phases of the bridge inspection. The responsible person must possess one or more of the following minimum qualifications:

(1) Be a registered professional engineer;

(2) Be qualified for registration as a professional engineer under the laws of the State; or

(3) Have a minimum of 10 years experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course based on the "Bridge Inspector's Training Manual," as revised.

(b) The person signing the bridge inspection report must possess one or more of the following minimum qualifications:

(1) Have the qualifications specified for the individual in charge of the organizational unit delegated the responsibilities for bridge inspection;

(2) Have a minimum of 5 years experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course based on the "Bridge Inspector's Training Manual," as revised; or

(3) Have a current certification as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (NICET) is an alternate acceptable means for establishing that a bridge inspection team leader is qualified.

§ 170.818 Must bridge inspection reports be reviewed?

Yes, the data required to complete the forms and the functions that must be performed to compile the data are contained in section 3 of the AASHTO Manual. Copies of all IRR bridge inspection reports are sent to the respective BIA regional office. The BIA regional office reviews the reports and furnishes the report to the affected tribe for review, comment and use in the programming of transportation projects. After review, the inspection reports for BIA bridges are forwarded to BIADOT for quality assurance and inclusion into the National Bridge Inventory (NBI).

§ 170.819 How often are IRR bridge inspections performed?

IRR Bridge inspections must be performed at least every two years to update the NBI using standards that meet or exceed applicable federal standards (23 CFR 650.305).

§ 170.820 What standards are used for bridge inspections?

(a) Federal standards for bridge inspections are found in 23 CFR 650, subpart C.

(b) Tribes may develop alternative bridge inspection standards, provided that these standards meet or exceed applicable Federal standards.

§ 170.821 What is emergency maintenance?

Emergency maintenance is work that must be accomplished immediately because of life threatening circumstances. Examples of emergency maintenance include: Ice and snow control, traffic control, work in slide areas, repairs to drainage washouts, retrieving hazardous materials, suppressing wild fires, and repairing the ravages of other natural disasters.

§ 170.822 What is a Declared State of Emergency?

This is an official declaration of emergency by Federal, State, tribal, or local governments for adverse acts of nature that cannot be scheduled or planned in advance such as wind, earthquakes, floods, fire, and other acts of God.

§ 170.823 When can access to IRR transportation facilities be restricted?

(a) The Secretary may, in consultation with a tribe, restrict or temporarily close an IRR transportation facility to public use for the following reasons:

(1) During unsafe conditions;

(2) During natural disasters;

(3) For fish or game protection;

(4) To prevent traffic from causing damage to the facility; and

(5) For reasons deemed to be in the public interest such as fire prevention or suppression as approved by the Secretary.

(b) Certain IRR Transportation facilities owned by the tribes or BIA may be permanently closed when the tribal governments and the Secretary have agreed the facility's use is no longer needed. Once this determination is made, the facility must be removed from the IRR Transportation Facility Inventory and the BIA Transportation System.

Appendix A to Subpart G

List of Activities Eligible for Funding Under The BIA Transportation Facility Maintenance Program

The following activities are eligible for BIA Transportation Facility Maintenance Program. The list is not all-inclusive.

1. Cleaning and repairing ditches and culverts.
2. Stabilizing, removing, and controlling slides, drift sand, mud, ice, snow, and other impediments.
3. Adding additional culverts to prevent roadway and adjoining property damage.
4. Repairing, replacing or installing traffic control devices, guardrails and other features necessary to control traffic and protect the road and the traveling public.
5. Removing roadway hazards.
6. Repairing or developing stable road embankments.
7. Repairing parking facilities and appurtenances such as striping, lights, curbs, etc.
8. Repairing transit facilities and appurtenances such as bus shelters, striping, sidewalks, etc.
9. Training maintenance personnel.
10. Administration of the BIA Transportation Facility Maintenance Program.
11. Performing environmental/archeological mitigation associated with transportation facility maintenance.
12. Leasing, renting, or purchasing of maintenance equipment.
13. Paying utilities cost for roadway lighting and traffic signals.
14. Purchasing maintenance materials.
15. Developing, implementing, and maintaining an IRR Transportation Facility Maintenance Management System (TFMMS).
16. Performing pavement maintenance such as pot hole patching, crack sealing, chip sealing, surface rejuvenation, and thin overlays (less than 1 inch).
17. Performing erosion control.
18. Controlling roadway dust.
19. Re-graveling roads.
20. Controlling vegetation through mowing, noxious weed control, trimming, etc.
21. Making bridge repairs.
22. Paying the cost of closing of transportation facilities due to safety or other concerns.
23. Maintaining airport runways, heliport pads, and their public access roads.
24. Maintaining and operating BIA public ferryboats.

25. Making highway alignment changes for safety reasons. These changes require prior notice to the Secretary.

26. Making temporary highway alignment or relocation changes for emergency reasons.

27. Maintaining other IRR intermodal transportation facilities provided that there is a properly executed agreement with the owning public authority within available funding.

Subpart H—Miscellaneous

Hazardous and Nuclear Waste Transportation

§ 170.900 What is the purpose of the provisions relating to transportation of hazardous and nuclear waste?

Sections 170.900 through 170.907 on transportation of nuclear and hazardous waste are provided for information only, do not create any legal responsibilities or duties for any person or entity, and are not intended to create any basis for a cause of action under the Federal Tort Claims Act.

§ 170.901 What standards govern transportation of radioactive and hazardous materials?

DOT, International Atomic Energy Agency, U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency have established standards and regulations for the shipment of radioactive and hazardous materials. Legal authority includes, but is not limited to, 23 U.S.C. 141; 23 U.S.C. 127; 49 CFR parts 107, 171 through 180; 10 CFR part 71.

§ 170.902 What transport activities do State, tribal, and local governments perform?

State, tribal, and local governments typically provide for the safety of their residents and other persons and protection of resources within their jurisdictions. With respect to radioactive and hazardous materials, some state, tribal, and local governments choose to enact legislation, execute cooperative agreements, designate alternate transportation routes, develop emergency response plans, perform emergency response, issue permits, conduct vehicle inspections, enforce traffic laws, and perform highway construction and maintenance. These activities must not conflict with Federal laws and regulations.

§ 170.903 How is a tribe notified of the transport of radioactive waste?

The Department of Energy (DOE) has elected, by policy, to notify tribal governments of DOE shipments through their jurisdiction.

§ 170.904 Who responds to an accident involving a radioactive or hazardous materials shipment?

Tribal, federal, local, and state police, fire departments, and rescue squads are often the first to respond to transportation accidents involving radioactive or hazardous materials. If radioactive materials are involved, then DOE typically takes steps to ensure that the appropriate state and tribal agencies are contacted and coordinate any necessary Radiological Assistance Program team activities. These teams may include nuclear engineers, health physicists, industrial hygienists, public affairs specialists, and other personnel who provide field monitoring, sampling, decontamination, communications, and other services as may be requested.

§ 170.905 Can tribes use IRR Program funds for training in handling radioactive and hazardous material?

No, Tribes cannot use IRR Program construction funds to train personnel to handle radioactive and hazardous material.

§ 170.906 Can tribes obtain training in transporting hazardous material?

Yes, Tribes are encouraged to seek training from DOE, EPA, NRC, OSHA, states, and other sources. Funding is available from the U.S. DOT under the Hazardous Materials Uniform Safety Act, EPA for monitoring and FEMA for general preparedness. DOE is working with states and tribes to develop a uniform grant for transportation planning for accommodating radioactive and hazardous material transport.

§ 170.907 How are radioactive and hazardous material spills addressed?

The carrier is typically responsible for clean-up with assistance from the shipper using established standards and guidelines. The carrier of the cargo should work with the appropriate tribal, local, state and federal agencies to address all cleanup issues, such as arranging or repackaging of the cargo, if necessary, and disposing of contaminated materials.

Reporting Requirements and Indian Preference

§ 170.910 What information on the IRR Program or projects must BIA provide to tribes?

At the written request of a tribe, BIA must provide available information on the IRR Program within 15 workdays of the request.

§ 170.915 Are Indians entitled to employment and training preferences?

Yes, Federal law gives hiring and training preferences to Indians for all work performed under the IRR Program. Tribal governments and BIA must, to the greatest extent feasible, give hiring and training preferences to Indians when operating IRR programs or projects.

§ 170.916 Are Indian organizations and Indian-owned businesses entitled to a contracting preference?

Yes, under 25 U.S.C. 450e(b) and 23 U.S.C. 204(e), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts and sub-grants for all work performed under the IRR Program.

§ 170.918 Is Indian preference permitted for federally funded non-IRR transportation projects?

(a) Indian employment preference is permitted for federally-funded transportation projects not funded under the IRR Program if the project is carried out on an Indian Reservation Road.

(b) Tribal, State, and local governments may provide an employment preference to Indians when administering Federal Lands Highway and Federal-Aid Highway projects on Indian reservation roads. (See 23 U.S.C. 140(d), 204(b), 204(e), and 23 CFR 635.117.)

(c) Tribes may target recruiting efforts toward Indians living on or near Indian reservations, Indian lands, Alaska Native villages, pueblos, and Indian communities.

(d) Tribes and tribal employment rights offices are encouraged to work cooperatively with State and local governments to develop contract provisions promoting employment opportunities for Indians on eligible federally-funded transportation projects. Tribal, State, and local Representatives should confer to establish Indian employment goals for these projects. Once established, the agencies should only change these employment goals after consultation with the affected Indian tribal government(s).

§ 170.919 May tribal-specific employment rights and contract preference laws apply to IRR projects?

Yes, when a tribe or consortium administers an IRR Program intended to benefit that tribe or a tribe within the consortium, the benefitting tribe's employment rights and contracting preference laws apply. (See 25 U.S.C. 450e(c).)

§ 170.920 What is the difference between tribal preference and Indian preference?

Indian preference is a preference for Indians in general. Tribal preference is a preference adopted by a tribal government that may or may not include a preference for Indians in general, Indians of a particular tribe, Indians in a particular region, or any combination thereof.

§ 170.921 May the cost of tribal employment taxes or fees be included in the budget for an IRR project?

Yes, the cost of tribal employment taxes or fees may be included in the budget for an IRR program or project, except for BIA force account.

§ 170.922 May tribes impose taxes or fees on those performing IRR Program services?

Yes, Tribes, as sovereign nations, have inherent authority to impose taxes and fees for IRR activities on or near Indian reservations. When a tribe administers IRR programs or projects under the ISDEAA, its tribal employment and contracting preference laws, including taxes and fees, apply to those IRR activities whether or not the activities occur within the tribe's territorial jurisdiction.

§ 170.923 Can tribes receive direct payment of tribal employment taxes or fees?

This section applies to non-tribally-administered IRR projects. Tribes can request that BIA pay tribal employment taxes or fees directly to them under a voucher or other written payment instrument, based on a negotiated payment schedule. Tribes may consider requesting direct payment of tribal employment taxes or fees from other transportation departments in lieu of receiving their payment from the contractor.

Emergency Relief

§ 170.924 What is the purpose of the provisions relating to emergency relief?

Sections 170.924 through 170.932 relating to emergency relief are provided for information only and do not change the provisions of 23 CFR part 668 or existing guidance on emergency relief.

§ 170.925 What emergency or disaster assistance programs are available?

(a) FHWA operates two emergency relief programs:

(1) The Emergency Relief (ER) Program, which provides disaster assistance for Federal-aid highways owned by State, county and local governments; and

(2) The Emergency Relief for Federally Owned Roads (ERFO) Program, which provides disaster assistance for Federal roads, including Indian reservation roads, which have been damaged due to natural disasters (floods, hurricanes, tornadoes, etc.).

(b) The Federal Emergency Management Agency (FEMA) may be considered as an alternate funding source to repair damage that is ineligible under the ER or ERFO Programs.

§ 170.926 How can States get Emergency Relief Program funds to repair IRR System damage?

A State can request emergency relief program funds to repair damage to Federal-aid highways caused by natural disasters or catastrophic failures. It is the responsibility of individual States to request these funds.

§ 170.927 What qualifies for ERFO funding?

Tribes can use Emergency Relief for Federally Owned Roads (ERFO) funding to repair damage to Indian reservation roads, bridges, and related structures caused by natural disaster over a widespread area or by a catastrophic failure from any external cause. The Secretary of Transportation or his/her designee determines eligible repairs according to procedures in 23 CFR part 668, subpart B.

(a) Examples of natural disasters include, but are not limited to, floods, earthquakes, tornadoes, landslides, avalanches or severe storms, such as saturated surface conditions and/or high-water table caused by precipitation over an extended period of time.

(b) An example of a catastrophic failure includes, but is not limited to, a bridge collapse after being struck by a barge, truck or a landslide.

§ 170.928 What does not qualify for ERFO funding?

Structural deficiencies, normal physical deterioration, and routine heavy maintenance do not qualify for ERFO funding. The Secretary of Transportation or his/her designee determines eligible repairs according to procedures set forth in 23 CFR part 668, subpart B.

§ 170.929 What happens if an ERFO claim is denied?

If DOT denies an ERFO claim, BIA or the affected Indian tribe may appeal the finding or determination to the Secretary of Transportation or his/her designee. The appealing tribe must provide a courtesy copy of its appeal to BIA.

§ 170.930 Is ERFO funding supplemental to IRR Program funding?

Yes, if ERFO funds are approved and available, they can be used to supplement IRR construction and maintenance funds for FHWA-approved repairs. If IRR construction or maintenance funds are used to address an approved claim when ERFO funds are unavailable, the next available ERFO funds may be used to reimburse the construction or maintenance funds expended.

§ 170.931 Can a tribe administer ERFO repairs under a self-determination contract or a self-governance agreement?

Yes, ERFO funding is not part of the recurring base funding in a self-determination contract or self-governance agreement.

§ 170.932 How can FEMA Program funds be accessed to repair damage to the IRR System?

A tribe can request FEMA Program funds for emergency repairs to damaged roads on the IRR system if the President has declared a major disaster or emergency. The tribe makes the request by submitting an SF 424, Application for Federal Assistance, directly to FEMA, as described in FEMA Response and Recovery Directorate 9512.4 (Dec. 28, 1999). Tribes can also ask States to seek FEMA Program funds to repair damage to roads in the IRR System.

Tribal Transportation Departments

§ 170.936 Can a tribe establish a Tribal Transportation Department?

Yes, Tribal governments, as sovereign nations, have inherent authority to establish their own transportation departments under their own tribal laws.

§ 170.937 How can tribes find out information about staffing and organization of tribal transportation departments?

Tribes may staff and organize transportation departments in any manner that best suits their needs. Tribes can receive technical assistance from Indian LTAP centers, BIA road engineers, or AASHTO to establish a tribal transportation department.

§ 170.938 Are there any other funding sources available to operate tribal transportation departments?

There are many sources of funds that may help support a tribal transportation department. These include, but are not limited to, the sources listed below. Note that each source has its own terms and conditions of assistance.

(a) Tribal general funds;
(b) Tribal Priority Allocation (TPA);
(c) Revenue from States and counties;
(d) Fare collections;
(e) Aviation fees;
(f) Tribal permits and license fees;
(g) Tribal fuel tax;

(h) Federal, state, private and local transportation grants assistance;

(i) Funds for transit, safety and education from other federal programs;

(j) TERO fees;

(k) Capacity building grants from Administration for Native Americans and other organizations; and

(l) Federal Aviation Administration grants and education from other federal programs.

§ 170.939 Can tribes use IRR Program funds to pay for costs to operate a tribal transportation department?

Yes, Tribes can use IRR Program funds to pay the cost of administration and performance of approved IRR Program activities. Tribes can also use BIA road maintenance funds to pay the cost of administration and performance of maintenance activities under this part.

§ 170.940 Can tribes regulate oversize or overweight vehicles?

Yes, Tribal governments, as sovereign nations, have the authority to regulate travel on roads under their jurisdiction and to establish a permitting process to regulate the travel of oversize or overweight vehicles, in accordance with applicable federal law. BIA may, with the consent of the affected tribe, establish a permitting process to regulate the travel of oversize or overweight vehicles on BIA-system roads.

Arbitration Provisions

§ 170.941 Are alternative dispute resolution procedures available to self-determination and self-governance tribes and the Secretary to resolve disputes between them in performing IRR Public Law 93–638 activities?

Yes, except as required in 25 CFR part 900 and part 1000, tribes and tribal organizations are entitled to use the appropriate dispute resolution techniques or procedures set out in:

(a) The ADR Act, 5 U.S.C. 571–583;

(b) The Contract Disputes Act, 41 U.S.C. 601–613; and

(c) The Indian Self-Determination and Education Assistance Act (including the mediation and alternative dispute resolution options listed in 25 U.S.C. 4501 (model contract section (b)(12)) and the implementing regulations for non-construction activities.

§ 170.942 Are alternative dispute resolution procedures available to resolve IRR program disputes?

Yes. Federal agencies are authorized and encouraged to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes brought by IRR Program beneficiaries. The goal of these alternative dispute resolution (ADR) procedures is to provide an inexpensive and expeditious forum to resolve disputes. Federal agencies are authorized and encouraged to resolve disputes at the lowest possible staff level and in a consensual manner whenever possible.

§ 170.943 How does a direct service tribe begin the alternative dispute resolution process?

(a) To begin the ADR process, a direct service tribe must write to the Regional Director or the Chief of the BIA Division of Transportation. The letter must:

(1) Ask to begin one of the alternative dispute resolution (ADR) procedures in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–583 (ADR Act); and

(2) Explain the factual and/or legal basis for the dispute.

(b) ADR proceedings will be governed by procedures in the ADR Act and the implementing regulations.

Other Miscellaneous Provisions

§ 170.950 How can a tribe or tribal organization find out if the ISDEAA has superseded an IRR provision?

Any tribe or tribal organization may ask the Secretary for a determination that the ISDEAA has superseded a law or regulation. This would mean that the law has no applicability to any contract or self-governance agreements.

(a) The Secretary must provide an initial decision on the request within 75 days after receipt.

(b) If the Secretary denies the request, the tribe or tribal organization may appeal under 25 CFR 900.150 and 1000.201.

(c) The Secretary must provide notice of each determination made under this subpart to all tribes and tribal organizations.

§ 170.951 Can tribes become involved in transportation research?

Yes, Tribes may:

(a) Participate in Transportation Research Board meetings, committees, and workshops sponsored by the National Science Foundation;

(b) Participate in and coordinate the development of tribal and IRR transportation research needs;

(c) Submit transportation research proposals to States, FHWA, AASHTO, and FTA;

(d) Prepare and include transportation research proposals in their IRR TIPS;

(e) Access Transportation Research Information System Network (TRISNET) database; and

(f) Participate in transportation research activities under Intergovernmental Personnel Act agreements.

§ 170.952 Are federal funds available for coordinated transportation services for a tribe's Welfare-to-Work, Temporary Assistance to Needy Families, and other quality of life improvement programs?

Yes, IRR Program funds can be used to coordinate transportation related activities in conjunction with tribal resources to help provide adequate access to jobs and make education, training, childcare, healthcare and other services more accessible to tribal members as part of IRR Program transportation planning activities. IRR Program funds may also be used as the matching share for other federal, state, and local mobility programs. To the extent authorized by law, additional grants and programs funds are available for this purpose from other Federal programs administered by such departments as the Department of Transportation, Department of Health and Human Services and Department of Labor. Tribes are also encouraged to apply for federal and state public transportation and personal mobility programs grants and funds.

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Part III

Environmental Protection Agency

40 CFR Parts 85 and 86
Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles; Light-Duty Trucks; Heavy-Duty Vehicles and Engines; Nonroad Engines and Motorcycles; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 86

[AMS–FRL–7250–1]

RIN 2060–AJ62

Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles; Light-Duty Trucks; Heavy-Duty Vehicles and Engines; Nonroad Engines; and Motorcycles

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's action proposes to update the current Motor Vehicle and Engine Compliance Program (MVECP) fees regulation under which fees are collected for certification and compliance activities related to light-duty vehicles and trucks, heavy-duty highway vehicles and engines, and highway motorcycles. Today's action proposes to update the fees regulations to reflect increased costs of administering the compliance programs already covered within the existing MVECP fee program. In addition, EPA is proposing to add a fee program for the nonroad compliance programs that have been implemented since the initial MVECP fees regulation including certain nonroad compression ignition, locomotive, and small spark ignition engines. EPA is also proposing to add a fee program for other nonroad categories including recreational vehicles (including snowmobiles, off-road motorcycles and all-terrain vehicles), recreational marine compression ignition engines and the remaining nonroad large spark ignition engines (engines over 37 kW) compliance programs for which emission standards have been proposed but not yet finalized. Also included in this proposal are fees for marine spark ignition/inboard sterndrive engines; the emission standards for these engines are under development but not yet proposed.

DATES: *Comments:* Send written comments on this document by October 19,2002.

Hearings: We will hold a public hearing on September 19, 2002. The hearing will begin at 10 a.m. and continue until all testimony has been presented. If you want to testify at the hearing, notify either contact person below by September 12, 2002. See Section VII. A. and B. of the **SUPPLEMENTARY INFORMATION** section of this document for more information about public hearings and comment procedures.

ADDRESSES: *Comments:* You may send written comments in paper form or by e-mail. We must receive them by the date indicated under **DATES** above. Send paper copies of written comments (in duplicate, if possible) to either contact person listed below or by e-mail to "*otaqfees@epa.gov*". In your correspondence, refer to Docket A–2001–09.

EPA's air docket makes materials related to this rulemaking available for review in EPA Air Docket No. A–2001–09. Until August 26, 2002, the docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. After August 26, 2002, the Air Docket will be located at room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460. A reasonable fee may be charged by EPA for copying docket material.

Hearings: We will hold a public hearing at the Towsley Auditorium, Morris Lawrence Building, Washtenaw Community College, Ann Arbor, MI. See Section VII. A. and B. for more information about public hearings and comment procedures.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105, Telephone 734–214–4851, Internet e-mail "*sohacki.lynn@epa.gov*," or Trina D. Vallion, 734–214–4449, Internet e-mail "*vallion.trina@epa.gov*."

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture or seek certification ("manufacturer" or "manufacturers") of new motor vehicles and engines (including both highway and nonroad). The table below shows the category, North American Industry Classification System (NAICS) Codes, Standard Industrial Classification (SIC) Codes and examples of the regulated entities:

Category	NAICS Codes [1]	SIC Codes [2]	Examples of potentially regulated entities
Industry	333111	3523	Farm Machinery and Equipment Manufacturing.
Industry	333112	3524	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.
Industry	333120	3531	Construction Machinery Manufacturing.
Industry	333131	3532	Mining Machinery and Equipment Manufacturing.
Industry	333132	3533	Oil & Gas Field Machinery.
Industry	333210	3553	Sawmill & Woodworking Machinery.
Industry	333924	3537	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing.
Industry	333991	3546	Power Driven Handtool Manufacturing.
Industry	336111	3711	Automotive and Light-Duty Motor Vehicle Manufacturing.
Industry	336120	3711	Heavy Duty Truck Manufacturing.
Industry	336213	3716	Motor Home Manufacturing.
Industry	336311	3592	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing.
Industry	336312	3714	Gasoline Engine & Engine Parts Manufacturing.
Industry	336991	3751	Motorcycle, Bicycle, and Parts Manufacturing.
Industry	336211	3711	Motor Vehicle Body Manufacturing.
Industry	333618	3519	Gasoline, Diesel & dual-fuel engine Manufacturing.
Industry	811310	7699	Commercial & Industrial Engine Repair and Maintenance.
Industry	336999	3799	Other Transportation Equipment Manufacturing.
Industry	421110	.....	Independent Commercial Importers of Vehicles and Parts.
Industry	333612	3566	Speed Changer, Industrial High-speed Drive and Gear Manufacturing.
Industry	333613	3568	Mechanical Power Transmission Equipment Manufacturing.

Category	NAICS Codes [1]	SIC Codes [2]	Examples of potentially regulated entities
Industry	333618	3519	Other Engine Equipment Manufacturing.

[1] North American Industry Classification System (NAICS)
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in the table could also be regulated. To determine whether your product would be regulated by this proposed action, you should carefully examine the applicability criteria in title 40 of the Code of Federal Regulations, parts 86, 89, 90, 91, 92 and 94; also parts 1045, 1048, and 1051 when those Parts are finalized. If you have questions regarding the applicability of this proposed action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Rulemaking Documents Through the Internet

The preamble and regulatory language of today's proposal, and the Motor Vehicle and Engine Compliance Program Cost Analysis document (which is an explanation how we determined EPA's costs to conduct the MVECP and the proposed fees to cover the program) are also available electronically from the EPA Internet Web site. This service is free of charge. The official EPA version is made available on the day of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also publishes these notices on the secondary Web site listed below.

(1) *http://www.epa.gov/docs/fedrgstr/EPA-AIR/* (either select desired date or use Search feature)

(2) *http://www.epa.gov/OTAQ/* (look in "What's New" or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

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I. Introduction

A. Overview

EPA is proposing to update the current MVECP fees regulation which assesses fees for the EPA's certification and compliance activities related to highway vehicles and engines and to incorporate new fees for certification and compliance activities related to nonroad [1] engines. Currently, fees are collected for certification and compliance activities related to light-duty vehicles and trucks, heavy-duty highway vehicles and engines, and highway motorcycles. Today's action proposes to update the fees regulations to reflect the increased costs of administering the compliance programs already covered within the existing MVECP fee program and to add a fee program for the nonroad compliance programs we have implemented since the initial MVECP fees regulation including nonroad compression ignition, marine spark ignition outboard/personal-water-craft, locomotive, and small spark ignition (less than or equal to 19 kW) engines. We are also proposing to add a fee program for recreational vehicles (including, but not limited to, snowmobiles, off-road motorcycles and all terrain vehicles), recreational marine compression ignition engines and large spark ignition nonroad engines (over 19 kW) compliance programs. Also included in this proposal are fees for marine spark ignition/inboard-sterndrive engines. Hence, under this new proposal all manufacturers and Independent Commercial Importers (ICIs) of light-duty vehicles (LDVs), light-duty trucks (LDTs), heavy-duty vehicles (HDVs), heavy-duty highway engines (HDEs), nonroad spark and compression ignition engines (NR), marine compression and spark ignition engines (including recreational applications), locomotives, highway and off-road motorcycles (MCs), and recreational vehicles would be subject to fees. Table II–B.1 below lists the vehicle and engine classes that are affected by today's proposed action.

A certificate of conformity is generally required when a manufacturer [2] decides to market new vehicles or engines in the United States (see discussion below for complete discussion of when a certificate of conformity is required).

[1] Nonroad engines are defined in 40 CFR 89.2. It is a general term which encompasses all the regulated subclasses including, but not limited to, both CI and SI engines used in: farm and construction equipment, marine applications, recreation applications, and locomotives.

[2] Manufacturer, as used in this NPRM, means all entities or individuals requesting certification, including, but not limited to, Original Equipment Manufacturers, ICIs, and vehicle or engine converters.

Before issuing that certificate, EPA must perform certain activities necessary to ensure compliance with regulations implemented within the Motor Vehicle and Engine Compliance Program (MVECP). The MVECP includes all activities conducted by EPA that are associated with certification, fuel economy, Selective Enforcement Auditing (SEA), and in-use compliance monitoring and audits. Such MVECP activities include: Providing certification assistance during the pre-production phase; pre-certification confirmatory testing of vehicles; laboratory correlation; certification compliance audits and investigations; conducting fuel economy selection, testing, and labeling; selective enforcement audits (SEA); providing manufacturers and ICIs with CAFE calculations; monitoring of in-use vehicles and engines; monitoring/data review of mandatory production line (PLT) and in-use testing; and Agency-run in-use surveillance and/or recall tests.

In accordance with the Clean Air Act, as amended in 1990 (CAA), and the Independent Office of Appropriations Act (IOAA), EPA is authorized to collect fees for specific services it provides to manufacturers. Section 217 of the CAA (42 U.S.C. 7552) permits the EPA to establish fees to recover all reasonable costs associated with (1) new vehicle or engine certification under section 206(a) or part C,[3] (2) new vehicle or engine compliance monitoring and testing under section 206(b) or part C, and (3) in-use vehicle or engine compliance monitoring under section 207(c) or part C. Secondly, the authority to collect fees is also provided by the IOAA (31 U.S.C. 9701) which permits a government agency to establish fees for a service or thing of value provided by the agency to an identifiable recipient. Finally, Office of Management and Budget (OMB) Circular No. A–25 Revised, establishes Federal policy regarding fees assessed for Government services and for the sale or use of Government goods or resources and provides guidance for agency implementation of charges and the deposition of collections.

The MVECP fees have been in existence since 1992. The first fees regulations (57 FR 30055) were published on July 7, 1992, establishing MVECP fees to recover all reasonable costs associated with certification and compliance programs within the Office of Transportation and Air Quality (OTAQ), then called Office of Mobile Sources (OMS). In 1999, under the Compliance Assurance Program (CAP 2000) regulations (64 FR 23906), the provisions for fees were updated to reflect several changes in the costs of the MVECP. The fees regulations were further modified by a regulatory amendment published on March 7, 2000 (65 FR 11904). This amendment, which is applicable to original equipment manufacturers (OEMs) and aftermarket conversion manufacturers, allows a fee waiver for small volume engine families of alternatively fueled vehicles that are certified to the Clean-Fuel Vehicle standards for model years (MY) 2000 through 2003. Since the initial MVECP fees regulation, EPA has incurred additional costs and will continue to incur cost in supporting these current light-duty and heavy-duty compliance programs (including Tier 2 and new heavy-duty engine regulations), and new compliance programs and testing requirements for nonroad. Today's action proposes to update the MVECP fee provisions to reflect these changes.

Manufacturers receive certification and compliance services by initiating a certification request and an application for certification.[4] By determining the EPA activities and associated costs within the MVECP, we calculated a fee for each certification request type. The certification request types are described in more detail later in this proposal. Each request for a certificate of conformity within a certification request type is potentially subject to an equal amount of EPA expenditure related to the applicable certification, fuel economy, SEA, and in-use compliance monitoring and audit programs, thus EPA believes it is fair and equitable to calculate fees in a manner whereby the cost for each certificate within a certification request type is the same.

In summary, today we are proposing to collect fees under the authority of the IOAA and section 217 of the CAA to ensure that the MVECP is self-sustaining to the extent possible. In essence, this proposed regulation will require those manufacturers specially benefitting from the services provided under the MVECP to bear the EPA's cost of administering the program on their behalf.

B. What Programs Are Covered by the Fees?

EPA has a number of different services it provides under the MVECP. Under the MVECP, fees are collected to recover the cost of services associated with: (1) New vehicle or engine certification; (2) new vehicle or engine compliance monitoring (including selective enforcement auditing (SEA) and production line testing (PLT)); (3) in-use vehicle or engine compliance monitoring and testing; and (4) the fuel economy program. These services include: pre-production certification assistance; confirmatory testing of vehicles; laboratory correlation; certification compliance audits and investigations; conducting fuel economy selection, testing, and labeling; selective enforcement audits (SEA); providing manufacturers and ICIs with CAFÉ calculations; monitoring of in-use vehicles and engines; monitoring/data review of mandatory production line and in-use testing; and Agency-run in-use surveillance and/or recall tests. The proposed fees reflect the cost of these activities.

In addition to those services just mentioned, EPA also conducts activities for which a fee is not being proposed at this time. These activities include regulation development and policy, emission factors determination, air quality assessment and analysis, air quality initiatives, and support of state inspection and maintenance (I/M) programs. Under the currentMVECP fees regulation these activities are not covered.

II. Background

A. Basis for Action Under the Clean Air Act and Other Legal Authority

We are amending current fees and setting new fees within the MVECP fees regulation under the authority of section 217 of the Clean Air Act (CAA). EPA is authorized under section 217 of the CAA, as amended by Public Law 101–549, section 225, to establish fees for specific services it provides to vehicle and engine manufacturers. The CAA provides in pertinent part:

(a) Fee Collection.—Consistent with section 9701 of title 31, United

States Code, the Administrator may promulgate (and from time to time revise) regulations establishing fees to recover all reasonable costs to the Administrator associated with—

(1) New vehicle or engine certification under section 206(a) or part C,

(2) New vehicle or engine compliance monitoring and testing under section 206(b) or part C, and

(3) In-use vehicle or engine compliance monitoring and testing under section 207(c) or part C;

The Administrator may establish for all foreign and domestic manufacturers a fee schedule based on such factors as the Administrator finds appropriate and equitable and nondiscriminatory,

[3] Part C of the CAA, as amended, pertains to Clean Fuel Vehicles.

[4] A certification request is defined as a manufacturer's request for certification evidenced by the submission of an application for certification, Engine System Information (ESI) data sheet, or ICI Carry-Over data sheet.

including the number of vehicles or engines produced under a certificate of conformity. In the case of heavy-duty and vehicle manufacturers, fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs.

EPA is also authorized under the Independent Offices Appropriation Act of-1952 to establish fees for Government services and things of value that it provides. This provision, originally designated as 31 U.S.C. 483(a), was codified into law on September 13, 1982, at 31 U.S.C. 9701. This provision encourages Federal regulatory agencies to recover, to the fullest extent possible, costs provided to identifiable recipients. The relevant text states:

(a) It is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.

(b) The head of an agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be uniform as practicable. Each charge shall be—

(1) Fair; and

(2) Based on—

(A) Costs to the Government;

(B) The value of the service or thing to the recipient;

(C) Public policy or interest served; and

(D) Other relevant facts.

EPA also intends to follow, and is guided by, the Office of Management and

Budget's Circular No. A–25 (Revised),[5] which establishes Federal policy regarding fees assessed for Government services and for the sale or use of Government goods or resources and was issued under the authority of the IOAA. Included in the Circular's objectives are ensuring that each service provided by an agency to a specific recipient be self-sustaining, and to promote the efficient allocation of the Nation's resources by establishing charges for special benefits provided to a recipient that are at least as great as costs to the Government of providing the special benefits.

Subsequent to EPA's initial rulemaking that set forth the fees for the MVECP,[6] the U.S. Court of Appeals for the D.C. Circuit, upon reviewing EPA's authority to collect fees under the IOAA and section 217, held that for the regulated industry, a certificate of conformity is deemed a benefit specific to the recipient, for purposes of the provision of the Independent Offices Appropriation Act (IOAA): thus authorizing a federal agency to collect fees from a beneficiary of service or thing of value the federal agency provides in order to make the service self-sustaining to the extent possible.[7] The court held that because the Compliance Program confers a specific, private benefit upon the manufacturers, the EPA can lawfully recoup from them the reasonable cost of the program.

Court decisions have also provided guidance on the criteria to be used in implementing fee schedules under the IOAA when user fees are being charged for special benefits. See National Cable Television Ass'n v. Federal Communications Comm'n, 554 F.2d 1094 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Comm'n*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communications, Inc.* v. *Federal Communications Comm'n*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions indicate the following factors are relevant in developing a fee program:

1. An agency may impose a reasonable charge on recipients for an amount of work from which the recipients benefit. The fees must be for specific services to specific persons.

2. The fees may not exceed the cost to the agency in rendering the service.

3. An agency may recover the full cost of providing a service to an identifiable beneficiary regardless of the incidental public benefits which may flow from the service.

An agency, when it proposes a fee pursuant to the IOAA to recover special benefits, should also address the following matters set out in *Electronic Industries Ass'n* v. *Federal Communications Comm'n*, 554 F.2d at 1117:

1. The agency must justify the assessment of a fee by a clear statement of the particular service or benefit for which it seeks reimbursement.

2. The agency must calculate the cost basis for each fee by:

a. Allocating specific expenses of the cost basis of the fee to the smallest practical unit;

b. Excluding expenses that serve an independent public interest; and

c. Providing public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include or exclude a particular item.

3. The fee must be set to return the cost basis at a rate that reasonably reflects the cost of the services performed and valued conferred on the payor.

As detailed in today's proposal and in the Motor Vehicle and Engine Compliance Program Cost Analysis, EPA believes it has fulfilled all of these aims in developing this proposal.

EPA believes that all the fees included in this proposal are justified based on the tests for fee recovery relating to special benefits applicable under IOAA. In addition, EPA believes that CAA section 217 gives EPA additional support for imposing fees for the programs specified in that section. Section 217 authorizes EPA to establish fees "[c]onsistent" with the IOAA "to recover all reasonable costs to the Administrator associated" with certification, SEA testing and in-use compliance programs. This section establishes Congress' position that the specified programs provide the type of benefit and have the type of costs that are appropriately recoverable under the IOAA.

In addition to collecting fees for new highway vehicles and engines, EPA believes section 217 also authorizes the collection of fees for EPA certification and compliance activities related to new nonroad vehicles and engines. As noted above, section 217 sets forth the authority for EPA to collect fees for: new vehicle or engine certification activities conducted under section 206(a) of the CAA, new vehicle or engine compliance monitoring and testing under section 206(b) of the CAA (including such activities as SEA and PLT testing), and in-use vehicle or engine compliance monitoring and testing under section 207(c) of the CAA. Section 213 of the CAA[8] creates a statutory program which mirrors that Congress created for the regulation of new highway vehicles and engines. The nonroad standards created under section 213 are in fact subject to the same requirements (*e.g.*, sections 206, 207, 208, and 209) and implemented in the same manner (including certification, SEA, and in-use testing) under the same sections (as those referenced in section 217) as regulations for new highway vehicles and engines under section 202 (with modifications to the implementing nonroad regulations as the Administrator deems appropriate). Therefore, because EPA's certification and compliance activities related to new nonroad vehicles and engines are

[5] See *http://www.whitehouse.gov/omb/circulars/a025/a025.html* the text of which is also contained in the EPA Air Docket No. A–2001–09.

[6] See 57 FR 30055 (July 7, 1992).

[7] See *Engine Manufacturers Association* v. *EPA*, 20 F.3d 1177 (D.C. Cir. 1994).

[8] 42 U.S.C. 7547.

pursuant to sections 206 and 207 and because the text of section 217 authorizes the collection of fees for activities under such sections without limiting it to new highway vehicles and engines. EPA believes collecting fees for new nonroad vehicles and engines certification and compliance activities under section 217 is appropriate as an additional compliance requirement. EPA also believes that the IOAA creates an additional and independent authority for EPA to collect such fees due to the same special and unique benefits that manufacturers of both new highway and nonroad vehicle and engine manufacturers receive from EPA under the certification and compliance services.

Moreover, by providing authority to recover "all reasonable costs * * * associated" with the programs, Congress has given EPA authority to impose fees on a basis that can extend beyond the specific criteria used in interpreting the IOAA. See *Florida Power & Light Co.* v. *United States*, 846 F.2d 765 (DC Cir. 1988), cert denied, 109 S. Ct. 1952 (1989). If any commenters believe that any fee proposed by EPA for recovery for the programs identified in CAA section 217 is not recoverable under the IOAA, the commenters are requested to discuss whether, in their view, the fees would be recoverable under the "all reasonable costs associated" test found in section 217 and should do so in light of the court decision noted above. Additionally, if any commenters believe that any fee proposed by EPA for recovery is not identified or authorized by section 217, the commenters are requested to identify which portions of the fee program are not identified or authorized and why the provisions of the IOAA would not provide such authorization. As noted in more detail in the reduced fee section of today's preamble, EPA also believes that section 217 and the IOAA allow the Agency to set fees for specific small volume engine families and invites comments on this as well.

B. How Do EPA's Compliance Programs Work?

Certification

Section 203(a)[9] of the CAA requires that a manufacturer of new motor vehicles and new motor vehicle engines obtain a certificate of conformity prior to the distribution into commerce, sale, or offering for sale, or the introduction, or delivery for introduction, into commerce, within the United States of such new motor vehicles or engines. The certificate of conformity covers a defined group of vehicles or engines and has a specified duration referred to as the model year (MY).

"Model year" is defined in the CAA[10] to be the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of the calendar year. If the manufacturer has no annual production period, the term "model year" means the calendar year. For some industries, such as the light duty vehicle industry, the model year typically begins before the calendar year; for example, the 2003 model year might run from August 1, 2002 to July 31, 2003. For other industries it is synonymous with the calendar year and runs from January 1 to December 31. In some cases a model year may be longer than twelve months. However, in all cases the model year refers to an annual production period. Consequently new certificates must be issued each year.

For marine vessels covered under the voluntary IMO program, a letter of compliance is issued instead of a certificate of compliance. For purposes of the fee rulemaking, the letter of compliance will be treated the same as a certificate of compliance. In this case a request for certification shall mean a request for the voluntary IMO letter of compliance. Although such letters of compliance are not a requirement under title II of the CAA, EPA believes that it provides special and unique benefits to the manufacturers of marine vessels that seek and receive EPA services in order to receive letters of compliance. As explained above, EPA believes that the IOAA provides the basis by which to collect fees for this activity. As further discussed below, EPA is also considering and inviting comment on whether to finalize fees for industry categories that may not yet have final emission standards regulations, as part of the overall final fees regulation promulgated from today's proposal or to issue such fees requirements at the time the emission standards themselves become final. EPA anticipates promulgating fees for marine vessels covered under the voluntary IMO program as part of final fees regulation associated with today's proposal.

The group of vehicles or engines covered by a certificate of conformity is called either an "engine family" or a "test group" depending on the applicable class of vehicles or engines. While the terminology changes between classes, the basic certification unit (or group) is designed to accomplish the same purpose. Only vehicles or engines which are expected to exhibit similar emission characteristics and deterioration are combined together into a single group.

Table II.B–1, below, summarizes the name of these basic certification groups, the location of the general certification and compliance program rules, and the typical number of certificates which are issued for each class of vehicles and engines covered by this proposal. The number of certificates in the following table are projections. If there is a certification program currently active for the class, the number of certificates are based on latest actual numbers. For other industries, the number of certificates is based on projections gathered from the discussions with manufacturers and information presented when the Agency proposed and/or finalized the rules pertaining to the industry.

TABLE II.B–1.—CLASSES OF CERTIFICATES, THEIR UNIT, NUMBER OF CERTIFICATES AND REGULATIONS

Class of vehicles/engines	Basic certification unit	Number of certs	Location or future location of general certification regulations
Light Duty Vehicles & Trucks (LD)	Test Group	411	40 CFR Part 86, Subpart S.
Highway motorcycles (MC)	Engine Family	174	40 CFR Part 86, Subpart E
Heavy-duty Highway Engines	Engine Family	130	40 CFR Part 86, Subpart A.
Nonroad CI Engines	Engine Family	603	40 CFR Part 89.
Heavy-duty Vehicle Evap	Evap Family	42	40 CFR Part 86, Subpart M.
Marine SI Outboard/PWC	Engine Family	155	40 CFR Part 91.

[9] CAA Sec. 213(d) requires that the standards for nonroad engines or vehicles under Sec. 213 be enforced in the same manner as standards prescribed under section 202. As such, EPA applies the provisions of Sec. 203 to nonroad vehicles and engines.

[10] See CAA Sec. 202(b)(3). It is also defined in the applicable Title 40 regulations for the applicable class of vehicle or engine covered.

TABLE II.B–1.—CLASSES OF CERTIFICATES, THEIR UNIT, NUMBER OF CERTIFICATES AND REGULATIONS—Continued

Class of vehicles/engines	Basic certification unit	Number of certs	Location or future location of general certification regulations
Marine CI[a] > 37 kW	Engine Family	40	40 CFR Part 94.
International Maritime Organization[b]	Engine Family	9	
Small Nonroad SI	Engine Family	546	40 CFR Part 90
Locomotives & Locomotive Engines	Engine Family	10	40 CFR Part 92.
Large Nonroad SI (>19 kW)[c]	Engine Family	50	40 CFR Part 1048.
Recreational Marine CI>37 kW[c]	Engine Family	25	40 CFR Part 94.
Marine SI Inboard /Sterndrive[d]	Engine Family	50	40 CFR Part 1045.
Recreational[c] (including Off-road MC, ATV's, Snowmobiles).	Engine Family	100	40 CFR Part 1051.

[a] The rules for these classes are finalized but not yet implemented; numbers are estimates.
[b] The International Maritime Organization (IMO) has established procedures for obtaining a letter of compliance with the MARPOL 73/78 Annex 6 which have not yet been ratified by the U.S.A. Manufacturers of such engines may voluntarily comply with these requirements. EPA has agreed to issue a letter of compliance for such manufacturers who voluntarily comply with the MARPOL 73/78 Annex 6 emission requirements.
[c] The rules for these classes are proposed but not yet finalized; numbers are estimates.
[d] The rules for these classes are under development but not yet finalized; numbers are estimates.

To obtain a certificate, the manufacturers must perform the required testing and fulfill other requirements specified in the applicable regulations listed in the above table. When the manufacturer has satisfied itself that it has complied with all the requirements, it submits an application for certification for review by the Agency. EPA processes these applications and makes a determination of conformance with the CAA and the applicable regulations. If the vehicle or engine satisfies the prescribed emission standards and otherwise complies with the applicable provisions of the regulations, EPA issues a certificate of conformity for the group (*e.g.*, engine family).

The certification process includes, but is not limited to, review of the application for certification, review of the manufacturer's durability and deterioration determination, review of emission-data for test engine selection, review of the manufacturer's justification that auxiliary emission control devices (AECDs) are not defeat devices, and certification request processing and computer support. Other activities related to the certification process include auditing the applicant's testing and data collection procedures, laboratory correlation, and EPA confirmatory testing and compliance inspections and investigations related to certification. The certification program also covers ICI manufacturers review and processing and approval for final importation of vehicles and engines.

SEA and PLT

EPA conducts new vehicle or engine compliance monitoring in the form of Agency-conducted Selective Enforcement Audits (SEA) or manufacturer-conducted production line testing (PLT) programs. The purpose of these programs is to assure that the vehicles that are actually being produced comply with the emission standards. The certification portion of the MVEPC demonstrates that the vehicles are *designed* to pass the standards for the vehicles' useful life through testing of pre-production prototype vehicles or engines. The SEA or PLT testing also serves as some additional proof of in-use compliance for certain programs (where in-use testing is more difficult) by addressing the prototype to production effects on emissions.

SEA activities include the selection and testing of vehicles and engines off the assembly line at various production plants around the world to determine compliance with emission standards. PLT programs require the manufacturer (rather than EPA) to test a percentage of engines as they leave the production line. In either case, if a substantial number of vehicles or engines fail to meet the emission standards the manufacturer could be required to cease production of the failing vehicles until the manufacturer had demonstrated that a new version of the vehicle complied with the standard. The manufacturer may also be required to recall (see discussion below for the meaning of a recall) failing vehicles or engines which have been introduced into commerce.

In-Use Programs

EPA further ensures compliance with the CAA through a variety of in-use testing and in-use defect investigations.

These activities include investigations into potential emission-related defects vehicles and engines and various types of in-use compliance programs. In-use compliance activities ensure that vehicles and engines continue to meet emission standards throughout their useful life.

The type of in-use programs conducted by the Agency vary between the classes of vehicles and engines. These variations contribute to the different fee amounts which the Agency is proposing for different classes. (See Section IV of the Motor Vehicle and Engine Compliance Program Cost Analysis, available in the docket, for details of how the Agency calculated the fee amounts). In all cases, should the Administrator of EPA determine, by whatever means, that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not comply with their applicable regulations when in actual use throughout their useful life, the Agency requires the manufacturer to submit a plan to remedy the nonconformity of the vehicles or engines. The implementation of the plan to remedy vehicles is called a recall.

The Agency uses data from Selective Enforcement Audits (SEA), manufacturer-supplied production line testing (PLT), Agency-run in-use surveillance and/or recall tests conducted on a dynamometer and/or on the road , manufacturer-run in-use verification program (IUVP) testing, manufacturer-run engine testing and manufacturer-supplied defect reports to evaluate in-use emissions performance for the various classes of engines and vehicles which are certified.

For recall and surveillance testing, the Agency recruits vehicles from their owners and conducts tests either on a dynamometer or on the road using mobile emission measurement equipment. The IUVP program only applies to light-duty vehicles and medium-duty passenger vehicles; it requires manufacturers to conduct a specified amount of testing on in-use vehicles which they procure from

owners. Defect reporting (DR) generally requires manufacturers to notify the Agency when an emission related defect occurs on more than 25 vehicles or engines in use.

The specific programs currently employed by the Agency to assure in-use compliance for the various classes of vehicles and engines are summarized in the following paragraphs. This list is being provided to document the activities considered in the analysis for proposed fees. The Agency may at any time perform other investigations and/or use other sources of data to make compliance determinations of in use vehicles and engines.

The selection of which in-use tools are used by the Agency for each industry is based on the in-use compliance needs. Each of the industries are subject to different regulations which establish different requirements. When the applicable regulations require the manufacturer to supply some form of in-use data, production line data, or aged engine testing; this information makes it easier for the Agency to monitor compliance in actual use. Consequently for those industries the Agency can spend less of its own effort to collect data.

For the light-duty and highway motorcycle programs, the Agency conducts an in-use surveillance and recall program where individual owner's vehicles are recruited and tested by the Agency. This data is augmented by manufacturer-run in-use data to fulfill the requirements of the in-use verification program (IUVP) for light duty vehicles. The Agency also reviews defect reports submitted by the manufacturers for potential in-use problems. Although there is authority for the Agency to conduct SEA testing, EPA does not currently conduct SEA testing for light-duty vehicles.

For heavy-duty highway vehicles and nonroad vehicles, the Agency conducts SEAs and on-the-road emission measurements of engines installed in in-use vehicles. EPA may also remove engines from heavy-duty highway and nonroad vehicles for laboratory testing when problems are found using on-vehicle measurement equipment.

For other classes of engines such as marine SI outboards and personal water craft (PWC), manufacturers are required to age engines in fleets and then perform testing on the engine.

C. How Does This Rulemaking Affect the Proposed Recreational Vehicles Rule and Future Rules?

We are proposing fees for Large Nonroad SI (>19 kW), Recreational Marine CI, Marine SI Inboard and Sterndrive engines, Recreational engines (including Off-Road Motorcycles (MC), All-terrain Vehicles (ATVs), and Snowmobiles) even though emission regulations currently do not exist for those classes. As discussed previously, the Agency has proposed and is in the process of finalizing emission standards (See 66 FR 51098, (October 10, 2001)) or is in the process of preparing to propose emission standards for these industries. The fees listed in the Table III.D–1, below, will apply only after the applicable regulations are effective for these classes of engines. The fees are due only when a manufacturer is making a request for certification.

We are proposing fees for these classes at this time because enough is known of the anticipated Agency costs for the MVECP for these programs and the projected number of certificates to accurately calculate proposed fees. The fees proposed for these programs represent a reasonable but somewhat conservative and low estimate Agency cost and assume either low levels of EPA monitoring or monitoring through manufacturer-run PLT and in-use testing. In the event that the programs for these classes of engines significantly change, the Agency will revise the applicable fee by a separate regulation.

Today's proposal of potential fees for these classes in no way prejudges the outcome of the ongoing emission standards rulemakings.

D. How Does the Fuel Economy Program Work?

The Agency is proposing to continue the current provisions which incorporate the fuel economy program costs into a single fee due at the time of certification for light duty vehicles.

The fuel economy program applies to light duty vehicles only. There are three separate programs: fuel economy labeling and Guide publication, gas guzzler tax, and corporate average fuel economy (CAFÉ).

The fuel economy labeling program is a public information program which is designed to provide the public accurate fuel economy information for comparison purposes. All light duty vehicles are required to have a fuel economy label before they can be introduced into commerce. The label values are also published in the Fuel Economy Guide (a joint publication with the Department of Energy, DOE) and published on the internet on two web sites (*http://www.fueleconomy.gov* and *http://www.epa.gov/autoemissions)*. EPA reviews manufacturers' testing, conducts confirmatory testing, audits the manufacturers' label calculations, and determines the classification of vehicles. EPA receives approximately 1000 label calculations in a typical model year. The fuel economy label program is mandated by the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 620, and is codified in regulations in 40 CFR part 600.

The gas guzzler tax program is designed to discourage the purchase of vehicles with particularly poor fuel economy through a tax program administered by the Internal Revenue Service (IRS). Vehicles with a combined fuel economy value below 22.5 mpg must pay a tax which starts at the rate of $1000 per vehicle. EPA determines potential gas guzzlers as part of the labeling process; the final determination of the tax liability is made by the IRS. The gas guzzler program is mandated by the Gas Guzzler Tax Law and is codified in regulations in 40 CFR part 600.

The CAFÉ program is designed to reduce fuel consumption, reduce dependence on foreign oil, and to reduce greenhouse gas emissions from new light duty vehicles. Manufacturers are required to meet specified average fuel economy values. Separate values are specified for cars and trucks.[11] If manufacturers fail to meet the specified standards they are required to pay a fine.[12] The Department of Transportation (DOT) administers the CAFÉ program and collects the fines. Many additional vehicle tests are required to calculate the CAFÉ values. EPA reviews manufacturers' testing and conducts confirmatory testing as necessary. EPA also calculates the CAFÉ values; typically 50 CAFÉ are processed each year. The CAFÉ program is mandated by the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 620, and is codified in regulations in 40 CFR part 600.

The fuel economy and light-duty certification program have substantial overlap. Both programs collect fuel economy and emissions data. Emission-data vehicles provide both emissions and fuel economy data on engine families for which the manufacturer submits a certification request. Further, fuel economy-data vehicles are tested for emissions and must comply with the emission standards. Only then can the fuel economy data be used in the fuel economy program. Thus, each program generates data to support the other and to support decisions on both

[11] Current CAFÉ standards are 27.5 mpg for cars and 20.7 mpg for trucks.

[12] Current fines are $5.50 per tenth of an mpg beneath the standard multiplied by the total number of vehicles in the fleet average. Manufacturers are allowed to carry-forward or carry-back credits up to three years to offset short falls calculated in other years.

certification and fuel economy. This interrelationship has allowed EPA to streamline the certification program and procedures, thereby minimizing costs directly incurred by the industry as well as by EPA. Every vehicle that is certified must also receive a fuel economy label and will ultimately be included in the CAFÉ for that manufacturer.

For these reasons, it is unnecessary, for fee purposes, to distinguish between the efforts expended on fuel economy and certification. Consequently, the Agency is proposing to continue its current practice of assessing light duty vehicle fees based on certification of test groups and including the costs for the fuel economy activities in that single fee.

III. Proposed Fee System

A. What Agency Costs Are Recoverable by Fees?

Today's notice proposes a fee program to recover those costs incurred by EPA in conducting the MVECP as authorized under the CAA and the IOAA. These costs, incurred by EPA while conducting new vehicle and engine certification which includes EPA pre-certification testing, certification compliance audits and investigations, fuel economy labeling, CAFÉ calculations and certificate processing; new vehicle and engine compliance monitoring and testing which includes SEAs and review of manufacturer production line test data; and in-use vehicle or engine compliance monitoring which includes testing of in-use vehicles and engines, in-use audits and reviewing manufacturers' in-use test data. The proposed fees are based on all recoverable direct and indirect costs associated with administering these activities. Recoverable costs include all labor, operating and program costs associated with the activities listed above. Direct labor costs consist of the personnel compensation or pay and benefits for the people that directly administer the MVECP. Indirect labor costs consist of the personnel compensation or pay and benefits for the people that support the employees that directly administer the MVECP. This includes support staff, computer technicians in the lab, managers, etc.

Operating costs include all costs for contracts, parts, supplies and infrastructure, excluding labor costs that are used to support the MVECP. Examples of these costs include travel costs, building space, computer support and training for people who work directly on the MVECP.

Program Costs are those of specific compliance activities conducted for individual industries. These include the costs of testing either at the NVFEL or at a contracted facility, engine procurement for testing, equipment for testing and equipment used in analyzing the test data.

The overall EPA overhead cost is also included in the analysis. The overall EPA overhead costs are costs incurred by other parts of the EPA that support the people working directly on the MVECP. See the Motor Vehicle and Engine Compliance Program Cost Analysis [13] for further discussion.

These costs are all costs of providing a certificate of conformity and the related compliance activities which allows vehicle and engine manufacturers an opportunity to introduce such vehicles and engines into commerce within the United States, and are, therefore, recoverable by fees as stated in the Independent Offices Appropriation Act and the Office of Management and Budget's Circular No. A–25 discussed in Section II.A above. A more complete description of the agency costs that are recoverable by fees is in the Motor Vehicle and Engine Compliance Program Cost Analysis, Section III.A.

B. What OTAQ Activities Are Not Included in the Agency's Proposed Fee Program?

EPA conducts numerous activities related to certification and mobile source air pollution control, in general, for which it is not proposing to charge a fee at this time. These activities include but are not limited to: regulation development, emission factor testing, air quality assessment, support of state inspection and maintenance programs and research. For a more complete description of OTAQ's programs, see Section II.D of the Motor Vehicle and Engine Compliance Program Cost Analysis.

C. How Did the Agency Analyze the Costs of the Compliance Programs?

The proposed fees were based on the Agency's projected costs of providing certification and related compliance programs to manufacturers in the 2003 model year. To determine these projected costs, we conducted an in-depth analysis and detailed all of the direct and indirect costs incurred by EPA to operate the MVECP. Budget data from 2001 was used as a baseline since it is the most current data available. Cost estimates for future compliance programs are based on estimates for the equipment, labor and contract needs required to support new compliance-related programs and regulations and was collected through discussions with senior management. The full discussion of the methods and numbers used in the analysis is contained in the "Motor Vehicle and Engine Compliance Program Fees Cost Analysis."

EPA determined that by 2003, significant laboratory equipment modernization will be required to satisfactorily test vehicle and engines at the lower emission levels associated with Tier 2 and new diesel engine emission standards. Consequently, an appropriate portion of the cost of this laboratory upgrade ($10 million dollars of the total $14 million dollar upgrade) was included in the cost analysis that supports this proposal. The 10 million dollar projected, recoverable cost was amortized over 10 years for an annual cost of 1 million dollars. Refer to the Motor Vehicle and Engine Compliance Program Fees Cost Analysis for a complete discussion of the laboratory upgrade costs.

EPA is exploring the possibility of a partnership with industry through a Cooperative Research and Development Agreement (CRADA) that would fully develop and deploy the National Low Emission Vehicle Compliance/ Correlation Test Site at the National Vehicle and Fuel Emissions Laboratory. A CRADA agreement may reduce the cost of the laboratory modernization. In the event the EPA enters into such a CRADA and the agreement results in a significant cost savings, EPA may adjust the fees in a future rulemaking. However, at this time EPA believes it is appropriate to include in the costs to be recovered by today's proposal, those projected actual costs associated with the laboratory equipment modification, as such modification is necessary to conduct the MVECP.

Another cost that was projected for 2003 is the cost of a robust highway and nonroad engine compliance program, discussed in more detail in Section V.B of Motor Vehicle and Engine Compliance Program Cost Analysis available in the docket. These costs and the laboratory modernization costs were projected for 2003 and are included in the cost study because they will be incurred by the EPA as part of the MVECP in 2003.

[13] The Motor Vehicle and Engine Compliance Program cost is contained the EPA Air docket No. A–2001–09 and is on the EPA OTAQ website.

D. Proposed Fee Schedule

Today's action proposes the following fees for each certification request:

TABLE III.D–1—PROPOSED FEE SCHEDULE

Category	Certificate type [a]	Fee
LD, excluding ICIs	Fed Certificate	$33,911
LD, excluding ICIs	Cal-only Certificate	16,958
MDPV, excluding ICIs	Fed Certificate	33,911
MDPV, excluding ICIs	Cal-only Certificate	16,958
Complete SI HDVs, excluding ICIs	Fed Certificate	33,911
Complete SI HDVs, excluding ICIs	Cal-only Certificate	16,958
ICIs for the following industries: LD, MDPV, or Complete SI HDVs.	All Types	8,394
MC HW, including ICIs	All Types	2,416
HD HW, including ICIs	Fed Certificate	30,437
HD HW, including ICIs	Cal-only Certificate	827
HDV (evap), including ICIs	Evap Certificate	827
NR CI, including ICIs, but excluding Locomotives, Marine and Recreational engines.	All Types	2,156
NR SI, including ICIs	All Types	827
All Marine, including ICIs	All Types and IMO	827
All Recreational [b], including ICIs, but excluding marine engines	All Types	827
Locomotives, including ICIs	All Types	827

[a] Fed and Cal-only Certificate and IMO is defined in 40 CFR 85.2402
[b] Recreational means the engines subject to 40 CFR 1051 which includes off road motorcycles, all-terrain vehicles and snowmobiles.

The Agency is proposing fees for Large Nonroad SI (>19 kW), Recreational Marine CI, Marine SI Inboard and Sterndrive engines, Recreational engines (including Off Road MC, ATV's, and Snowmobiles) even though emission regulations currently do not exist for those classes. The Agency has proposed (See 66FR 51098, published on October 5, 2001) or is in the process of proposing regulations for these classes.

The fees listed in the above table will apply only after the applicable regulations are effective for these classes of engines. The fees are due only when a manufacturer is making a request for certification. It may be worth noting again, that we are considering whether to finalize the fees for these yet to be regulated industries within the final rule based on today's fee proposal or to finalize the fees associated with these yet to be regulated industries in the emission regulations covering such industries.

E. Will the Fees Automatically Increase To Reflect Future Inflation?

One factor that could keep EPA from recovering the full cost of conducting the MVECP is inflation. To help mitigate the effects of inflation, the Agency is proposing that fees be automatically adjusted annually by the change in the Consumer Price Index starting with the 2005 model year. The Agency is proposing a formula for manufacturers to use to calculate the applicable calculate beginning with the 2005 model year.

Starting with the 2005 model year, fees will be calculated using the following equation:

$$Fees_{MY} = Fees_{base} \times (CPI_{MY-2}/CPI_{2002})$$

Where:

$Fees_{MY}$ is the applicable fee for the model year of the certification request.

$Fees_{base}$ is the applicable fee from paragraph (a) of this section.

CPI_{MY-2} is the consumer price index for all U.S. cities using the "U.S. city average" area, "all items" and "not seasonally adjusted" numbers calculated by the Department of Labor listed for the month of July of the year two years before the model year. (*e.g.*, for the 2005 MY the CPI used in the equation will be calculated based on the date of July, 2003).

CPI_{2002} is the consumer price index for all U.S. cities using the "U.S. city average" area, "all items" and "not seasonally adjusted" numbers calculated by the Department of Labor for December, 2002.

The applicable CPI results calculated by the Department of Labor are currently published on the following internet address: *http://stats.bls.gov/cpihome.htm* by choosing the data option link for "Consumer Price Index—All Urban Consumers (Current Series)", then selecting "U.S. city average" area, "all items" and "not seasonally adjusted".

The Agency invites comment on alternate ways to adjust fees for inflation. As a convenience for manufacturers and to avoid errors in calculation, the Agency intends to provide, via a guidance letter, a listing of applicable fees calculated from the above equation for each model year beginning with the 2005 model year. The Agency invites comments regarding potential procedures for notification of the new fee amounts.

F. Comments on the Proposed Fee System

The Agency requests comments on the proposed fee system including the "Vehicle and Engine Compliance Program Fees Cost Analysis," recoverable costs, costs not recovered, the allocation of recoverable costs by compliance industry, and the fees per certificate. Comments can refer to this preamble, the proposed regulations and the cost analysis.

IV. Fee Collection and Transactions

A. Procedure for Paying Fees

Fees must be paid in advance of receiving a certificate. For each certification request, evidenced by an application for certification, ESI data sheet, or ICI Carryover data sheet, manufacturers and ICIs will submit a MVECP Fee Filing Form (filing form) and the appropriate fee in the form of a corporate check, money order, bank draft, certified check, or electronic funds transfer [wire or Automated Clearing House (ACH)], payable in U.S.

dollars, to the order of the U.S. Environmental Protection Agency. The filing form and accompanying fee will be sent to the address designated on the filing form. EPA will not be responsible for fees received in other than the designated location. Applicants will continue to submit the application for certification to the National Vehicle and Fuel Emission Laboratory (NVFEL) in Ann Arbor, Michigan or to the Engine Programs Group in Washington, DC.

To ensure proper identification and handling, the check or electronic funds transfer and the accompanying filing form will indicate the manufacturer's corporate name, the EPA standardized test group or engine family name. The full fee is to accompany the filing form. Partial payments or installment payments will not be permitted. If submitting a wire or an ACH payment the full fee payment does not include the extra fee a banking institution may charge to process the wire or ACH. The Agency invites comment on methods of streamlining the fee payment process while maintaining the requirement that fees are paid in advance of certification services.

B. What Is the Implementation Schedule for Fees?

The fee schedule proposed today will apply to 2003 and later model year vehicles and engines. This proposal will not apply to 2003 model year certification requests received by EPA prior to the effective date of the regulations, providing that they are complete and include all required data.

C. What Happens to the Money That Is Collected by the Fees Program?

Any fees collected for administering the MVECP will be deposited in a special fund in the United States Treasury.

D. Can I Qualify for a Reduced Fee?

EPA believes that an expansive fee reduction policy could violate the very premise underlying section 217 of the CAA: to reimburse the government for the specific regulatory services provided to an applicant. Nevertheless, EPA recognizes that there may be instances, in the case of small engine families, where the full proposed fee may represent an unreasonable economic burden. Therefore, EPA is proposing to continue the current two part test which, if met, would qualify an applicant for a reduction of a portion of the certification fee.

A reduced fee is available when:

(1) The certificate is to be used for the sale of vehicles or engines within the U.S.; and

(2) The full fee for the certification request exceeds 1% of the projected aggregate retail value of all vehicles or engines covered by that certificate.

The proposed requirement that the certificate request pertain to U.S. vehicle/engine sales is intended to exclude fee reductions for certificates used to support foreign vehicle or engine sales. This provision is carried over from the current fees rules. These certificates are not required and represent extra effort expended by the Agency beyond that which is mandated in U.S. laws or regulations. Further, the Certificate of Conformity does not distinguish between U.S. and foreign sales, therefore, although the manufacturer's intention may be to certify vehicles for a foreign market, there is nothing to prohibit the sale of these vehicles in the U.S. Consequently, the Agency is proposing that it is inappropriate to reduce the cost of these certificates below the actual cost to the Agency.

For the first time EPA is also proposing that the reduced fee will be the larger of 1% of the aggregate retail value of the vehicles and engines covered by the certificate or a minimum fee of $300. The $300 minimum fee represents the lowest level of fee that is cost effective for the Agency to collect and still represents actual costs incurred by the Agency in providing services. As noted below, the Agency is proposing two potential "pathways" by which a manufacturer can seek to pay a reduced fee. Under either pathway the minimum that a manufacturer will be required to pay is $300. The Agency invites comment on the concept of a minimum fee and the amount of the minimum fee.

The Agency is proposing two separate pathways by which a manufacturer can request and pay a reduced fee amount. One of the purposes of these pathways is to clarify when manufacturers are required to determine the value of the vehicles or engines actually sold under a certificate and to either pay additional fees or seek a refund if necessary. Under the first pathway, the Agency is proposing that manufacturers seeking a reduced fee include in their certification application a statement that the reduced fee is appropriate under the criteria and a calculation of the amount of the reduced fee. The manufacturer's evaluation and submission of a fee amount under this reduced fee provision is subject to EPA review or audit. A manufacturer's statement that it is eligible for a reduced fee can be rejected by EPA if the Agency finds that manufacturer's evaluation does not meet the eligibility requirements for a reduced fee, the amount of the reduced fee was improperly calculated, the manufacturer failed to meet the requirements to calculate a final reduced fee using actual sales data, or the manufacturer failed to pay the net balance due between the initial and final reduce fee calculation (see below for discussion of the final fee calculation, reporting and payment proposals). If the manufacturer's statement of eligibility or request of a reduced fee is rejected by EPA then EPA may require the manufacturer to pay the full fee normally applicable to it or EPA may adjust the amount of the reduced fee that is due or EPA may require the manufacturer to utilize the special fee provisions (the second pathway) which are explained below. To aid our review, the Agency is proposing that the applicant for a reduced fee also provide EPA with a report (called a "report card"). This report shall include the total number of vehicles ultimately covered by the certificate (the report card shall include information on all certificates held by the manufacturer that were issued with a reduced fee), a calculation of the actual final reduced fee due for each certificate which is derived by adding up the total number of vehicles and their sales prices, a statement of the total initial fees paid by the manufacturer and the total final fees due for the manufacturer. Manufacturers will be required to submit the report card within 30 days of the end of the model year,[14] EPA believes this is reasonable as manufacturers should have final figures for each certificate by this time. Manufacturers will be required to "true -up" or submit the final reduced fee due as calculated within the report card within 45 days of the end of the model year. The Agency is proposing to not require payment of the balance when the amount is less than $500 for a manufacturer. (The Agency requests comment on these special provisions.)

In addition, EPA may require that manufacturers submit a report card, with the same or similar information as noted above, for previous model years. The purpose of such report card would be to give EPA assurance that the manufacturer has demonstrated a continuous capability of submitting the necessary year to year report cards and that appropriate fees have been paid. This will assist EPA in its determination as to whether a manufacturer is capable of adequately projecting its annual sales for reduced fee purposes and whether

[14] Typically, this will be the first February 15 after a certificate expires. Certificates generally expire on December 31 of the model year.

the manufacturer shall remain eligible for the reduced fee provisions.

Under the second pathway, EPA is also proposing special provisions for fee payment that are available for manufacturers which, due to the nature of their business, may be unable to make good estimates of the aggregate projected retail value of all the vehicles or engines to be covered by the requested certificate. Examples of manufacturers that may be unable to estimate the number of vehicles and engines covered by a certificate are those that modify customer-owned vehicles (as done by some ICIs and after-market alternative fuel converters) that are uncertain how many owners will approach them to perform this service. Under the special provisions, manufacturers that obtain prior approval from the Agency may pay 1.0% of the retail selling price of 5 vehicles, engines or conversions when applying for a certificate. Manufacturers under this pathway will be required to submit the same report card and true-up the actual amount of reduced fee that is due in the same manner as described above under the first pathway.

Under either pathway, if a manufacturer fails to report within 30 days or pay the balance due by 45 days of the end of the model year, then EPA may refuse to approve future reduced fee requests from that manufacturer. In addition, if a manufacturer fails to report within 30 days and pay the balance due by 45 days of the end of the model year as noted above then the Agency may deem the applicable certificate as void ab initio.

In the case of vehicles or engines which have originally been certified by an OEM but are being modified to operate on an alternative fuel, EPA is proposing that the cost basis for the reduced fee amount be the value-added by the conversion, not the full cost of the vehicle or engine.

On the other hand, ICI vehicles or engines certificates cover vehicles or engines which are imported into the U.S.A. and that were not originally certified by an OEM. As such, EPA costs associated with proving various MVECP services for these vehicles has not yet been recovered. Since the Agency has not received a fee payment for the "base vehicle" or the vehicle imported before its conversion to meet U.S. emissions requirements, we are proposing that the cost basis for calculating a reduced fee for an ICI certification shall be based upon the full cost of the vehicle or engine rather than the cost or value of the conversion. As noted above, EPA is already proposing a fee of $8,394 for certain types of ICI certificates as EPA has determined the costs of MVECP services provided for such certificates regardless of the number of vehicles included under such certificates. However, we recognize that this fee or the full fee associated with other types of certificates may represent an unreasonable economic burden on smaller businesses or on the price of vehicles in smaller classes under a certificate. Therefore, EPA is proposing to retain its current requirement that manufacturers pay a fee based on 1% of the aggregate retail sales price (or value) of the vehicles covered by a certificate as EPA believes this best represents the proper balance between recovering the MVECP costs without imposing an unreasonable economic burden. EPA invites comment on the continued use of the 1% multiplier.

For ICI requests EPA proposes to continue the current requirement to calculate the full cost of a vehicle based on a vehicle's average retail price listed in the National Automobile Dealer's Association (NADA) price guide. By using the NADA price guide to establish a vehicle's retail sales price (or value), EPA ensures uniformity and fairness in charging fees. Further, it avoids problems associated with abuse, such as falsification of entry documents, in particular, sales receipts. Where the NADA price guide does not provide the retail price of a vehicle, and in the case of engines, the applicant for a reduced fee must demonstrate to the satisfaction of the Administrator, the actual market value of the vehicle or engine in the United States at the time of final importation. When calculating the aggregate retail sales price of vehicles or engines under the reduced fee provisions such calculation must not only include vehicles and engines actually sold but also those modified under the modification and test options in 40 CFR 85.1509 and 40 CFR 89.609 and those imported on behalf of a private or another owner.

EPA is continuing the current exemption of fees for small volume certification requests for vehicles using alternative fuels through the 2003 model year. EPA believes that this program has completed its purpose of providing a short-term relief for alternative fuel conversion manufacturers. Therefore, starting with the 2004 model year, EPA is no longer including this exemption for alternative fuel convertors, and such convertors shall be subject to the same fee provisions as other manufacturers. This includes the reduced fee provisions.

We believe that this fee reduction proposal will provide adequate relief for small entities that would otherwise have been harmed by a standardized fee. It is important to note that this fee reduction does not raise the fees for other manufacturers; EPA will simply collect less funds. The Agency invites comment on the necessity of a reduced fee provision.

E. What Is the Refund Policy?

Instances may occur in which an applicant submits a filing form with the appropriate fee, has an engine-system combination undergo a portion of the certification process, but fails to receive a signed certificate. Under the current rules, the Agency offers the manufacturer a partial refund in those situations. The Agency retains a portion of the fee to pay for the work which has already been done. This policy has been difficult to administer and required substantial Agency oversight. Consequently, we have included a simplified refund policy in today's proposal.

When a certificate has not been issued, the applicant will be eligible to receive, upon request, a full refund of the fee paid. Optionally, in lieu of a refund, the manufacturer may apply the fee to another certification request. The new refund policy will not reduce the money collected by the Agency because the fee schedule proposed today is based on the number of certificates actually issued rather than the number of certification requests.

The Agency also considered not allowing any refunds if the manufacturer overpaid based on their own projections. However, the Agency was concerned there could be cases where sales were significantly lower than expected and the overpayment amount would be significant. Also, the Agency does not want to encourage manufacturers to systematically under-project the reduced fees on the fear that they might significantly overpay and be unable to obtain a refund. On the other hand, processing refunds costs the Agency time and money and there is a potential for a large number of small refunds that would be not be cost effective for EPA to process or for the manufacturer to request. Therefore, the Agency is proposing to only consider refund requests for a minimum of $500 overpayment. The Agency invites comment on this issue.

V. What Other Options Were Considered by EPA When Proposing This Rule?

A. Separate Fees for Other ICI Categories Beyond Light-Duty

EPA considered continuing the current provisions which charge the

same fee for ICI and OEM manufacturers. However, when the Agency examined the costs associated with ICI and OEM manufacturers, we found the costs associated with administering the light-duty ICI program was lower than for light-duty OEM manufacturers. Consequently, today's proposal includes lower fees for light-duty ICI certificate requests.

EPA considered calculating separate fees for other ICI industries beyond light-duty. Currently, EPA has issued ICI certificates only for highway motorcycles in addition to light-duty. In this case, the costs to the Agency for the MVECP for motorcycles and ICI motorcycles are essentially the same. EPA expects that when other industries have ICI certification requests that the Agency will a similar amount of effort on the ICI manufacturers as the OEM manufacturers. Consequently, the Agency believes that ICI and OEM fees would be similar for all the categories other than light-duty. For that reason, today's proposal does not establish separate fees for ICI manufacturers other than the for the light-duty ICIs.

B. Start Updating Fees for Cost of Inflation in 2004 Model Year

EPA considered updating MVECP fees for the cost of inflation at the start of model year (MY) 2004. We also considered waiting one year to apply inflation costs to fees. We are proposing to postpone this update for one year and apply inflation costs in 2005 MY. The Agency invites comment on updating the fees before the start of MY 2005.

VI. What Is the Economic Impact of This Proposed Rule?

This proposed rule will not have a significant impact on the majority of vehicle and engine manufacturers. The cost to industry will be a relatively small value per unit manufactured for most engine-system combinations.

EPA expects to collect about 18 million dollars annually. This averages out to approximately 50 cents per vehicle or engine sold annually. However, for engine-system combinations with low annual sales volume, the cost per unit could be higher. To remove the possibility of serious financial harm on companies producing only low sales volume designs, the regulations adopted today include a reduced fee provision for small volume engine families to reduce the burden of fees. These provisions should alleviate concerns about undue economic hardship on small volume manufacturers. Refer to the Regulatory Flexibility Act section, Section VIII.B, below, for more discussion on this topic.

VII. How Can I Participate in the Rulemaking Process?

A. How To Make Comments and Use the Public Docket

EPA welcomes comments on all aspects of this proposed rulemaking. Commenters are especially encouraged to give suggestions for changing any aspects of the proposal. All comments, with the exception of proprietary information should be addressed to the EPA Air Docket Section, Docket No. A–2001–09 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, the submission may be made available to the public without notifying the commenters.

B. Public Hearings

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) by September 12, 2002. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first-come, first-serve basis. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-serve basis to follow the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advanced copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advanced copies should be submitted to the contact person listed.

The comment period will be kept open until October 19, 2002, and therefore will remain open for 30 days following the hearing. All such submittals should be directed to the Air Docket Section, Docket No. A–2001–09 (see **ADDRESSES**). The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

VIII. What Are the Administrative Requirements for This Proposal?

A. Executive Order 12866: Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA must determine whether this proposed regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because this rulemaking materially alters user fees. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations

will be documented in the public record.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that meets the definition for business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Table VIII.B–1 provides an overview of the primary SBA small business categories potentially affected by this regulation. This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this proposed action.

TABLE VIII.B–1.—PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS PROPOSED REGULATION

Industry	NAICS[a] Codes	Defined by SBA as a small business if:[b]
Farm Machinery and Equipment Manufacturing	333111	<500 employees.
Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing	333112	<500 employees.
Construction Machinery Manufacturing	333120	<750 employees.
Mining Machinery and Equipment Manufacturing	333131	<500 employees.
Turbine and Turbine Generator Set Unit Manufacturing	333611	<1,000 employees.
Speed Changer, Industrial High-speed Drive and Gear Manufacturing	333612	<500 employees.
Mechanical Power Transmission Equipment Manufacturing	333613	<500 employees.
Other Engine Equipment Manufacturing	333618	<1,000 employees.
Nonroad SI engines	333618	<1,000 employees.
Internal Combustion Engines	333618	<1,000 employees.
Industrial Truck, Tractor, Trailer, and Stacker Machinery	333924	<750 employees.
Power-Driven Handtool Manufacturing	333991	<500 employees.
Automobile Manufacturing	336111	<1000 employees.
Light Truck and Utility Vehicle Manufacturing	336112	<1000 employees.
Heavy-Duty Truck Manufacturing	336120	<1000 employees.
Fuel Tank Manufacturers	336211	<1000 employees.
Gasoline Engine and Engine Parts Manufacturing	336312	<750 employees.
Aircraft Engine and Engine Parts Manufacturing	336412	<1000 employees.
Railroad Rolling Stock Manufacturing	336510	<1000 employees.
Boat Building and Repairing	336612	< 500 employees.
Motorcycles and motorcycle parts manufacturers	336991	<500 employees.
Snowmobile and ATV manufacturers	336999	<500 employees.
Independent Commercial Importers of Vehicles and parts	421110	<100 employees.
Engine Repair and Maintenance	811310	<$5 million annual receipts.

Notes:
[a] North American Industry Classification System.
[b] According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

A review of rulemakings that set emissions standards for the industries affected by today's proposed rule, including those manufacturers affected by the recreational vehicle proposed rule, showed that approximately 108 small businesses that will be paying fees. EPA examined the cost of the proposed fees and determined that the average cost for manufacturers of all sizes, across industry sectors, is approximately $.41 per vehicle or engine.[15] In addition, under the reduced fee provisions described above in Section IV.D., the fee a manufacturer would pay will not exceed 1.0 percent of the aggregate retail sales price of the vehicles or engines covered by a certificate request or a minimum fee of $300. The reduced fee provision limits the impact of this proposed rule on small entities to 1.0 percent of the aggregate retail sales price or a minimum fee of $300.

EPA believes that in a very small number of cases, the 1.0 percent reduced fee amount will be less than the $300 minimum fee. The minimum, $300 fee is a modest amount and will only be required when engine families have less than $30,000 aggregate retail sales price. While the minimum fee would represent an impact greater than 1.0 percent of the aggregate retail sales price, the $300 amount will not have a significant economic impact on the manufacturers that pay it. This amount would represent a modest cost of doing business.

The following is an example of a reduced fee calculation: If a light-duty vehicle manufacturer has an engine family of 2 vehicles that are sold for $35,000 per vehicle, under the proposed fee schedule the full fee would be $33,911, or $16,958 per engine family ($16,956 or $8,479 per vehicle, respectively), depending upon whether the engine family is certified as a Federal vehicle or California-only engine family. Under the proposal, the

[15] The average costs of the fees per vehicle or engine (fee per unit) for the specific fee categories of Highway Motorcycle, Light-Duty, Light-Duty ICI, Heavy-Duty Highway CI and SI and Nonroad CI categories are shown in Worksheet 2, Appendix C, of the Motor Vehicle and Engine Compliance Program Cost Analysis available in EPA Air Docket No. A–2001–09.

reduced fee would be 1.0 percent of the aggregate retail sales price of the vehicles ($70,000), or $700 (or $350 per vehicle) as shown below:

2 * $35,000 * 0.01 = $700

In another example, a manufacturer of small nonroad spark ignition engines certifies an engine family of 500 engines that are sold for $50 apiece. In this case, under the proposed fee schedule the full fee would be $827. Under the reduced fee provisions, the manufacturer would determine 1 percent of the total retail sales price of the engines and determine whether this amount is less than the full fee or the minimum fee of $300. The aggregated retail sales price of the engines is $25,000; 1.0 percent of that is $250. Therefore, the manufacturer pays the minimum fee of $300 (or $.60 per engine).

500 * $50 * .01 = $250
$250 < $300 minimum fee
Fee = $300

EPA also had a fees rule briefing which was offered in Ann Arbor, MI, to regulated industries on August 29, 2001. The purpose of the briefing was to give businesses enough time to plan for fees in their 2003 FY budgets. We continue to be interested in the potential impacts of the proposed fees on small entities and welcome comments on issues related to such impacts.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–4901. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The information to be collected is necessary to assure that the fees collected are properly credited to the both the firm paying them and the specific product to be certified. In addition, under some circumstances, a fee may be reduced or refunded; information collected will be used to verify that such action is appropriate. Except for reduced fees and refunds, the submission of information is mandatory.

The collection is authorized by the Clean Air Act (42 U.S.C. 7552) and the Independent Offices Appropriations Act (31 U.S.C. 9701). Information collected will be available to the public.

EPA estimates that 1600 certifications will be requested annually of which 180 will qualify for a reduced fee. In addition, approximately 50 fee refunds will be processed each year. The total burden of these projected responses per year is 500 hours; an average of 18 minutes per response. There are no capital, start-up, operation, maintenance or other costs associated with this collection.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 7, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by September 6, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory action on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgation of an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates for state, local, or tribal governments. Nor does this proposed rule have Federal mandates that may result in the expenditures of $100 million or more in any year by the private sector as defined by the provisions of Title II of the UMRA as the total cost of the fee program is estimated to be below 20 million dollars. Nothing in the proposed rule would significantly or uniquely affect small governments.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Executive Order 13045: Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA believes this proposed rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, this proposed rule is not subject to the Executive Order because it does not involve decisions based on environmental health or safety risks that may disproportionately affect children. Today's proposed rule seeks to implement a fees program and is expected to have no impact on environmental health or safety risks that would affect the public or disproportionately affect children.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule will not have federalism implications. It will not have direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule will impose no direct compliance costs on states. Thus, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

H. Executive Order 13211: Energy Effects

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this proposed rule is not likely to have any adverse energy effects.

I. Executive Order 13175: Consultation With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The requirements proposed by this action impact private sector businesses, particularly the vehicle and engine manufacturing industries. Thus, Executive Order 13175 does not apply to this rule.

List of Subjects

40 CFR Part 85

Environmental protection, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air Pollution Control, Confidential business information, Diesel, Gasoline, Fees, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Motor vehicles, Reporting and recordkeeping requirements.

Dated: July 17, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

1. The Authority for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Add a new Subpart Y to Part 85 to read as follows:

Subpart Y—Fees for the Motor Vehicle and Engine Compliance Program

Sec.

85.2401 To whom do these requirements apply?
85.2402 [Reserved]
85.2403 What definitions apply to this subpart?
85.2404 What abbreviations apply to this subpart?
85.2405 How much are the fees?
85.2406 Can I qualify for reduced fees?
85.2407 Can I get a refund if I don't get a certificate or overpay?
85.2408 How do I make a fee payment?
85.2409 Deficiencies
85.2410 Special provisions applicable to the 2003 model year only.

Subpart Y—Fees for the Motor Vehicle and Engine Compliance Program

§ 85.2401 To whom do these requirements apply?

(a) This subpart prescribes fees manufacturers must pay for the motor vehicle and engine compliance program (MVECP) activities performed by the EPA. The prescribed fees and the provisions of this subpart apply to manufacturers of:

(1) Light-duty vehicles (cars and trucks) (See 40 CFR Part 86);

(2) Medium Duty Passenger Vehicles (See 40 CFR Part 86);

(3) Complete gasoline-fueled highway heavy duty vehicles (See 40 CFR Part 86);

(4) Heavy-duty highway diesel and gasoline engines (See 40 CFR Part 86);

(5) On-highway motorcycles (See 40 CFR Part 86);

(6) Nonroad compression ignition engines (See 40 CFR Part 89);

(7) Locomotives (See 40 CFR Part 92);

(8) Marine diesel and gasoline engines (See 40 CFR Parts 91, 94, or 1045 and MARPOL 73/78, as applicable);

(9) Small nonroad spark ignition engines (engines ≤ 19kW) (See 40 CFR Part 90);

(10) Recreational vehicles (including, but not limited to, snowmobiles, all-terrain vehicles and off-highway motorcycles) (See 40 CFR Part 1051);

(11) Heavy-duty highway gasoline vehicles (evaporative emissions certification only) (See 40 CFR Part 86); and

(12) Large nonroad spark ignition engines (engines > 19 kW) (See 40 CFR Part 1048).

(b) This subpart applies to manufacturers that submit 2003 and later model year certification requests received on or after [60 days after the date of publication of the final rule].

(c) Certification requests for the 2003 model year which are complete, contain all required data, and are received prior to [60 days after the date of publication of the final rule] are subject to the provisions of 40 CFR part 86, subpart J.

(d) Nothing in this subpart will be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in the Clean Air Act, including authority to require manufacturer in-use testing as provided in section 208 of the Clean Air Act.

§ 85.2402 [Reserved]

§ 85.2403 What definitions apply to this subpart?

(a) The following definitions apply to this subpart:

Agency or EPA means the U.S. Environmental Protection Agency.

Body Builder means a manufacturer, other than the OEM, who installs certified on-highway HD engines into equipment such as trucks.

California-only certificate is a Certificate of Conformity issued by EPA which only signifies compliance with the emission standards established by California.

Certification request means a manufacturer's request for certification evidenced by the submission of an application for certification, ESI data sheet, or ICI Carryover data sheet. A single certification request covers one test group, engine family, or engine system combination as applicable. For HDV evaporative certification, the certification request covers one evaporative family.

Consumer Price Index means the consumer price index for all U.S. cities using the "U.S. city average" area , "all items" and "not seasonally adjusted" numbers calculated by the Department of Labor.

Federal certificate is a Certificate of Conformity issued by EPA which signifies compliance with emission requirements in 40 CFR part 85, 86, 89, 90, 91, 92, 94, 1045, 1048, and/or 1051 as applicable.

Filing form means the MVECP Fee Filing Form to be sent with payment of the MVECP fee.

Fuel economy basic engine means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system, catalyst usage, and other characteristics specified by the Administrator.

MARPOL 73/78 is the international treaty regulating disposal of wastes generated by normal operation of vessels (Title: International Convention for the Prevention of Pollution from Ships).

Recreational means the engines subject to 40 CFR 1051 which includes off road motorcycles, all-terrain vehicles, and snowmobiles.

(b) The definitions contained in the following parts also apply to this subpart. If the term is defined in paragraph (a) of this section then that definition will take precedence.

(1) 40 CFR Part 85;
(2) 40 CFR Part 86;
(3) 40 CFR Part 89;
(4) 40 CFR Part 90;
(5) 40 CFR Part 91;
(6) 40 CFR Part 92;
(7) 40 CFR Part 94;
(8) 40 CFR Part 1045;
(9) 40 CFR Part 1048; and
(10) 40 CFR Part 1051.

§ 85.2404 What abbreviations apply to this subpart?

The abbreviations in this section apply to this subpart and have the following meanings:

Cal—California;
CI—Compression Ignition (Diesel) cycle engine;
CPI—Consumer Price Index;
ESI—Engine System Information;
EPA—U.S. Environmental Protection Agency;
Evap—Evaporative Emissions;
Fed—Federal;
HD—Heavy-duty engine;
HDV—Heavy-duty vehicle;
HW—On Highway versions of a vehicle or engine;
ICI—Independent Commercial Importer;
IMO—International Maritime Organization;
LD—Light-Duty including both LDT and LDV;
LDT—Light-duty truck;
LDV—Light-duty vehicle;
MARPOL—An IMO treaty for the control of marine pollution;
MC—Motorcycle;
MDPV—Medium-Duty Passenger Vehicle;
MVECP—Motor Vehicle and Engine Compliance Program;
MY—Model Year;
NR—Nonroad version of a vehicle or engine;
OEM—Original equipment manufacturer;
SI—Spark Ignition (Otto) cycle engine.

§ 85.2405 How much are the fees?

(a) *Fees for the 2003 and 2004 model years.* The fee for each certification request is in the following table:

Category	Certificate type	Fee
(1) LD, excluding ICIs	Fed Certificate	33,911
(2) LD, excluding ICIs	Cal-only Certificate	16,958
(3) MDPV, excluding ICIs	Fed Certificate	33,911
(4) MDPV, excluding ICIs	Cal-only Certificate	16,958
(5) Complete SI HDVs, excluding ICIs	Fed Certificate	33,911
(6) Complete SI HDVs, excluding ICIs	Cal-only Certificate	16,958

Category	Certificate type	Fee
(7) ICIs for the following industries: LD, MDPV, or Complete SI HDVs.	All Types	8,394
(8) MC HW, including ICIs	All Types	2,416
(9) HD HW, including ICIs	Fed Certificate	30,437
(10) HD HW, including ICIs	Cal-only Certificate	827
(11) HDV (evap), including ICIs	Evap Certificate	827
(12) NR CI, including ICIs, but excluding Locomotives, Marine and Recreational engines.	All Types	2,156
(13) NR SI, including ICIs	All Types	827
(14) All Marine, including ICIs	All Types and IMO	827
(15) All Recreational, including ICIs, but excluding marine engines.	All Types	827
(16) Locomotives, including ICIs	All Types	827

(b) *Fees for 2005 model year and beyond.*

(1) Starting with the 2005 model year, the fees due for each certification request will be calculated using an equation which adjusts the fees in paragraph (a) of this section for the change in the consumer price index.

(2) Fees for 2005 model year and later certification requests will be calculated using the following equation.

$$Fees_{MY} = Fees_{base} \times (CPI_{MY-2} / CPI_{2002})$$

Where:

$Fees_{MY}$ is the applicable fee for the model year of the certification request.

$Fees_{base}$ is the applicable fee from paragraph (a) of this section.

CPI_{MY-2} is the consumer price index for all U.S. cities using the "U.S. city average" area , "all items" and "not seasonally adjusted" numbers calculated by the Department of Labor listed for the month of July of the year two years before the model year. (*e.g.*, for the 2005 MY use the CPI based on the date of July, 2003).

CPI_{2002} is the consumer price index for all U.S. cities using the "U.S. city average" area , "all items" and "not seasonally adjusted" numbers calculated by the Department of Labor for December, 2002.

(c) A single fee will be charged when a manufacturer seeks to certify multiple evaporative families within a single engine family or test group.

(d) A body builder, who exceeds the maximum fuel tank size for a HDV that has been certified by an OEM and consequently makes a request for HDV certification, must pay a separate fee for each certification request. The fee will be that listed in paragraphs (a) and (b) of this section, paragraph (c) does not apply.

§ 85.2406 Can I qualify for reduced fees?

(a) *Eligibility Requirements.* To be eligible for a reduced fee, the following conditions must be satisfied:

(1) The certificate is to be used for sale of vehicles or engines within the United States; and

(2) The full fee for certification request for a MY exceeds 1.0% of the aggregate projected retail sales price of all vehicles or engines covered by that certificate.

(b) *Initial Reduced Fee Calculation.*

(1) If the requirements of paragraph (a) of this section are satisfied, the fee to be paid by the applicant (the "initial reduced fee") will be the greater of:

(i) 1.0% of the aggregate projected retail sales price of all the vehicles or engines to be covered by the certification request; or

(ii) A minimum fee of $300.

(2) For vehicles or engines that are converted to operate on an alternative fuel using as the basis for the conversion a vehicle or engine which is covered by an existing OEM certificate of conformity, the cost basis used in this section must be the aggregate projected retail value-added to the vehicle or engine by the conversion rather than the full cost of the vehicle or engine. To qualify for this provision, the applicable OEM certificate must cover the same sales area and model year as requested certificate for the converted vehicle or engine.

(3) For ICI certification requests, the cost basis of this section must be the aggregate projected retail cost of the entire vehicle(s) or engine(s), not just the value added by the conversion. If the vehicles/engines covered by an ICI certificate are not being offered for sale, the manufacturer shall use the fair retail market value of the vehicles/engines as the retail sale price required in this section. For an ICI certification request, the retail sales price (or fair retail market value) must be based on the applicable National Automobile Dealer's Association (NADA) appraisal guide and/or other evidence of the actual market value.

(4) The aggregate cost used in this section must be based on the total projected sales of all vehicles and engines under a certificate, including vehicles and engines modified under the modification and test option in 40 CFR 85.1509 and 89.609. The projection of the number of vehicles or engines to be covered by the certificate and their projected retail selling price must be based on the latest information available at the time of the fee payment.

(5) A manufacturer may submit a reduced fee as described in paragraphs (a) and (b)(1) through (b)(4) of this section if it is accompanied by a certification from the manufacturer that the reduced fee is appropriate under this section. The reduced fee shall be deemed approved, unless EPA determines that the criteria of this section have not been met. The Agency may make such determination either before or after EPA issues a certificate of conformity. If the Agency determines that the requirements of this section have not been met, EPA may:

(i) Require that future reduced fee eligibility determinations be made by the Agency;

(ii) Require that the manufacturer for future reduced fee requests use the special provisions contained in paragraph (b) (7); or

(iii) Deny future reduced fee requests and require submission of the full fee payment until such time as the manufacturer demonstrates to the satisfaction of the Administrator that its reduced fee submissions are based on accurate date and that final fee payments are made within 45 days of the end of the model year.

(6) If the reduced fee is denied by the Administrator, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to EPA or appeal the denial.

(7) The following special provisions are available for manufacturers which meet the requirements of paragraph (a) of this section but, due to the nature of their business, are unable to make good estimates of the aggregate projected retail sales price of all the vehicles or engines to be covered by the

certification request as required in paragraph (b)(1) of this section. EPA may also require a manufacturer to use these special provisions rather than the process described in paragraph (b)(5) of this section if EPA makes such a determination under paragraph (b)(5)(ii) of this section.

(i) A manufacturer's request to use of these provisions requires advance Agency approval and will be based on a determination of whether the requirements of this section have been met. The request to use these provisions shall be made prior to the submission of its application for certification. The manufacturer shall provide as part of this request:

(A) A statement that the eligibility requirements of paragraph (a) of this section are satisfied; and

(B) The reasons why it is unable to make a good estimate of the aggregate projected retail sales price of all the vehicles or engines to be covered by the certification request as required in paragraph (b)(1) of this section.

(ii) If the request is approved, the initial reduced fee is the greater of:

(A) 1% of the retail selling price of 5 vehicles, engines, or conversions, as appropriate; or

(B) A minimum fee of $300.

(c) *Final Reduced Fee Calculation and Adjustment.*

(1) Within 30 days of the end of the model year, the manufacturer shall submit a model year reduced fee payment report covering all certificates issued in the model year for which the manufacturer has paid a reduced fee. This report will include:

(i) The fee amount paid at certification time;

(ii) The total actual number of vehicles covered by the certificate;

(iii) A calculation of the actual final reduced fee due for each certificate; and

(iv) A difference between the total fees paid and the total final fees due for the manufacturer.

(2) The final reduced fee shall be calculated using the procedures of paragraph (b) of this section but using actual numbers rather than projections.

(3) If the difference calculated in paragraph (c)(1)(iv) of this section exceeds $500 which is due to the Agency, then the manufacturer shall pay any difference due between the initial reduced fee and the final reduced fee using the provisions of § 85.2408. This payment shall be paid within 45 days of the end of the model year. The total fees paid for a certificate shall not exceed the applicable full fee of § 85.2405. If a manufacturer fails to make complete payment within 45 days or to submit the report under paragraph (c)(1) of this section then the Agency may void *ab initio* the applicable certificate. EPA may also refuse to grant reduced fee requests submitted under paragraph (b)(5) or (b)(7) of this section.

(4) If the initial reduced fee paid exceeds the final reduced fee then the manufacturer may request a refund using the procedures of § 85.2407.

(5) Manufacturers must retain in their records the basis used to calculate the projected sales and fair retail market value and the actual sales and retail price for the vehicles and engines covered by each certificate that is issued under the reduced fee provisions of this section. This information must be retained for a period of at least three years after the issuance of the certificate and must be provided to the Agency within 30 days of request. Manufacturers are also subject to the applicable maintenance of records requirements of Part 86, Subpart A. If a manufacturer fails to maintain the records or provide such records to EPA as required by this paragraph then EPA may void *ab initio* the certificate for which such records shall be kept.

§ 85.2407 Can I get a refund if I don't get a certificate or overpay?

(a) *Full Refund.* The Administrator may refund the total fee imposed by § 85.2405 if the applicant fails to obtain a certificate and requests a refund.

(b) *Partial Refund.* The Administrator may refund a portion of a reduced fee, paid under § 85.2406, due to a decrease in the aggregate projected retail sales price of the vehicles or engines covered by the certification request.

(1) Partial refunds are only available for certificates which were used for the sale of vehicles or engines within the United States.

(2) Requests for a partial refund may only be made once the model year for the applicable certificate has ended. Requests for a partial refund must be submitted no later than six months after the model year has ended.

(3) EPA will only consider requests which result in at least a $500 refund. Smaller amounts of money will not be refunded, nor can they be credited to other certification fee payments due to the Agency.

(4) Requests for a partial refund must include all the following:

(i) A statement that the applicable certificate was used for the sale of vehicles or engines within the United States.

(ii) A statement of the fee amount paid (the reduced fee) under the applicable certificate.

(iii) The actual number of vehicles or engines produced under the certificate (whether or not the vehicles/engines have been actually sold).

(iv) The actual retail selling or asking price for the vehicles or engines produced under the certificate.

(v) The calculation of the reduced fee amount using actual production levels and retail prices. The calculated reduced fee amount may not be less than $300 under the provisions of § 85.2406(b)(1)(ii).

(vi) The calculated amount of the refund. Refund requests for less than $500 will not be considered under the provisions of paragraph (b)(3) of this section.

(c) *Refunds due to errors in submission.* The Agency will approve requests from manufacturers to correct errors in the amount or application of fees if the manufacturer provides satisfactory evidence that the change is due to an accidental error rather than a change in plans. Requests to correct errors must be made to the Administrator as soon as possible after identifying the error. The Agency will not consider requests to reduce fee amounts due to errors that are reported more than 90 days after the issuance of the applicable certificate of conformity.

(d) In lieu of a refund, the manufacturer may apply the refund amount to the amount due on another certification request.

(e) A request for a full or partial refund of a fee or a report of an error in the fee payment or its application must be submitted in writing to: U.S. Environmental Protection Agency, Vehicle Programs and Compliance Division, Fee Program Specialist, National Vehicle and Fuel Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105.

§ 85.2408 How do I make a fee payment?

(a) All fees required by this subpart must be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable in U.S. dollars to the order of the Environmental Protection Agency.

(b) A completed fee filing form must be sent to the address designated on the form for each fee payment made.

(c) Fees must be paid prior to submission of an application for certification. The Agency will not process applications for which the appropriate fee (or reduced fee amount) has not been fully paid.

(d) If EPA denies a reduced fee, the proper fee must be submitted within 30 days after the notice of denial, unless the decision is appealed. If the appeal is denied, then the proper fee must be submitted within 30 days after the notice of the appeal denial.

§ 85.2409 Deficiencies.

(a) Any filing pursuant to this subpart that is not accompanied by a completed fee filing form and full payment of the appropriate fee is deemed to be deficient.

(b) A deficient filing will be rejected and the amount paid refunded, unless the full appropriate fee is submitted within a time limit specified by the Administrator.

(c) EPA will not process a request for certification associated with any filing that is deficient under this section.

(d) The date of filing will be deemed the date on which EPA receives the full appropriate fee and the completed fee filing form.

§ 85.2410 Special provisions applicable to the 2003 model year only.

(a) For the 2003 model year, the fees specified in sec. 85.2405 of this part will be waived for any light-duty vehicle, light-duty truck, or heavy-duty engine certification request that meets the small volume sales requirements of 40 CFR 86.1838–01 or 86.098–14, as applicable, and:

(1) Is a dedicated gaseous-fueled vehicle or engine; or

(2) Receives a certificate of conformity with the LEV, ILEV, ULEV, or ZEV emissions standards in 40 CFR part 88.

(b) This section does not apply to 2004 model year and later vehicles or engines.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

3. The Authority for Part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart J—[Amended]

4. Section 86.903–93 is revised to read as follows:

§ 86.903–93 Applicability.

(a) This subpart prescribes fees to be charged for the MVECP for the 1993 through 2003 model year. The fees charged will apply to all manufacturers' and ICIs', LDVs, LDTs, HDVs, HDEs, and MCs. Nothing in this subpart shall be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in the Clean Air Act, including authority to require manufacturer in-use testing as provided in section 208 of the Clean Air Act.

(b) The fees prescribed in this subpart are replaced by the requirements of 40 CFR part 85, subpart Y for 2003 and later certification requests received on or after [60 days after the date of publication of the final rule].

(c) The fees prescribed in this subpart will only apply to those 2003 model year certification requests which are complete, include all data required by this title, and are received by the Agency prior to [60 days after the date of publication of the final rule].

[FR Doc. 02–19563 Filed 8–6–02; 8:45 am]

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Federal Register

Wednesday,
August 7, 2002

Part IV

Department of Justice

28 CFR Part 79
Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Final Rule and Proposed Rule

DEPARTMENT OF JUSTICE

28 CFR Part 79

[CIV100F; AG Order No. 2604–2002]

RIN 1105–AA75

Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Technical Amendments

AGENCY: Civil Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice ("the Department") revises its existing regulations to implement the Radiation Exposure Compensation Act ("the Act," or "RECA"), to reflect amendments to the Act made in the Radiation Exposure Compensation Act Amendments of 2000 ("2000 Amendments"), enacted on July 10, 2000. This is the first of two related rulemakings and is a final rule, technical in nature, providing conforming amendments consistent with the new law. These revisions reflect only those changes specifically set forth in the statute, and other technical amendments. The second related rulemaking is a proposed rule published elsewhere in this issue of the **Federal Register**. The final regulations: expand the list of radiogenic and chronic diseases that are compensable for "downwinder" and "onsite participant" claimants; eliminate smoking distinctions for all claimants; amend the list of geographical areas to provide additional radiation-affected areas for "downwinder" claimants; modify the burden of proof for purposes of claims processing; allow claimants who have previously been denied compensation to file up to three times; and make other technical revisions consistent with the amended Act.

DATES: Effective date: September 6, 2002. This final rule will apply to all claims pending with the Radiation Exposure Compensation Act Program ("Program") as of this date.

FOR FURTHER INFORMATION CONTACT: Gerard W. Fischer (Assistant Director), (202) 616–4090, and Dianne S. Spellberg (Senior Counsel), (202) 616–4129.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2000, the Radiation Exposure Compensation Act Amendments of 2000 were enacted, providing expanded coverage to individuals who developed one of the diseases specified in the Act following exposure to radiation related to the Federal Government's atmospheric nuclear weapons program or as a result of employment in the uranium production industry. This rule implements the Act's technical revisions, providing conforming amendments that incorporate the legislative language contained in the amended Act.

Discussion of Final Changes

This rule implements the Act by expanding the list of compensable "downwinder" and "onsite participant" diseases to include cancers of the lung, male breast, salivary gland, urinary bladder, brain, colon, and ovary. This rule eliminates regulatory distinctions based upon many of the risk factors associated with several of the original diseases, such as "age at time of initial exposure" and lifestyle restrictions, such as alcohol consumption and smoking.

The rule amends the list of "downwinder" geographical areas, designated as "affected areas" for purposes of establishing eligibility, to correlate with the areas specified in the Amended Act, including the addition of two additional counties in the State of Utah (Wayne and San Juan) and five additional counties in the State of Arizona (Coconino, Yavapai, Navajo, Apache, and Gila).

The rule modifies the burden of proof in conformance with the Act's provisions, ensuring that in determining whether each claim filed satisfies the requirements of the Act, all reasonable doubt shall be resolved in favor of the claimant.

Finally, the rule allows claimants who have previously been denied compensation to file up to three more times. This action would allow denied claimants to take advantage of changes in the law that liberalize the eligibility requirements. The Department anticipates that much of the information in refiled claims will have been previously verified. Presently, the regulations permit three attempts at establishing eligibility, so this provision simply continues that process.

Subparts E, F, and G are being reserved for provisions included in a proposed rulemaking that address claims by uranium mine workers, uranium mill workers, and uranium and uranium-vanadium ore transporters, respectively. The proposed rule published elsewhere in this issue of the **Federal Register**. Similarly, § 79.74 of subpart H is reserved for a provision addressing representatives and fees that is part of the proposed rulemaking.

A Proposed Rulemaking Related to This Final Rulemaking

Elsewhere in this issue of the **Federal Register**, the Department is publishing a related, proposed rule, *Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Expansion of Coverage for Uranium Mill Workers and Ore Transporters; Expansion of Coverage of Uranium Miners; Representation and Fees* (CIV 101). That proposed rule primarily addresses compensation for two new claimant categories: uranium mill workers and individuals employed in the transport of uranium ore or vanadium-uranium ore. It also addresses the expanded population of uranium mine workers made eligible for compensation by lowering the radiation exposure threshold for miners, enlarging the number of covered uranium mining states, and including "aboveground" miners within the scope of the Act.

Administrative Procedure Act

This rule merely conforms Department regulations to the 2000 Amendments, and makes other technical amendments. It does not expand upon the provisions of the statute. The statutory changes implemented by this rule provide expanded coverage, modify the burden of proof in favor of the claimant, and allow claimants who previously have been denied compensation to file additional times so that they may take advantage of the liberalized eligibility requirements. For the foregoing reasons, the Department finds that it would be unnecessary and contrary to the public interest to provide for notice and public comment on this rule. Accordingly, the Department finds that good cause exists for exempting this rule from the provisions of the Administrative Procedure Act (5 U.S.C. 553(b)) requiring notice of proposed rulemaking and the opportunity for public comment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the following reason: The claimant population benefitted by these regulations includes individuals who developed a specified illness following exposure to radiation related to the Federal Government's atmospheric nuclear weapons program or as a result of employment in the uranium

production industry. The regulations set forth eligibility criteria that claimants must satisfy in order to receive compensation. They have no impact on small business competitiveness.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation. The compensation payments provided for by the Radiation Exposure Compensation Act and the 2000 Amendments and implemented by this rule will exceed $100,000,000 a year for several years. Because of the aggregate size of these payments to eligible individuals, the Office of Management and Budget has determined that this rule is "economically significant" as defined by section 3(f)(1) of Executive Order 12866. Accordingly, this rule has been reviewed by OMB.

This rule will not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Rather, the RECA system is an administrative compensation program that serves to provide payments to individuals who meet the eligibility requirements of the Act and implementing regulations. Accordingly, qualifying individuals receive monetary compensation for certain diseases they developed following exposure to radiation under the conditions set forth in the rule.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The compensation payments provided for by the Radiation Exposure Compensation Act and the 2000 Amendments and implemented by this rule will exceed $100,000,000 a year for several years. Because of the aggregate size of these payments to eligible individuals, the Office of Management and Budget has determined that this rule is a "major rule" as defined by section 251 of the Small business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804.

However, this rule will not result in a major increase in costs or prices or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. Rather, the RECA system is an administrative compensation program that serves to provide payments to individuals who meet the eligibility requirements of the Act and implementing regulations. Accordingly, qualifying individuals receive monetary compensation for certain diseases they developed following exposure to radiation under the conditions set forth in the rule.

Further, this rule merely conforms Department regulations to the RECA Amendments of 2000. Also, the statutory changes implemented by this rule provide expanded coverage, modify the burden of proof in favor of the claimant, and allow claimants who have previously been denied compensation to file additional times so that they can take advantage of the liberalized eligibility requirements. For the foregoing reasons, the Department finds that it would be unnecessary and contrary to the public interest for the effectiveness of this rule to be deferred for the time specified by 5 U.S.C. 801. Accordingly, the Department invokes the exception allowed by 5 U.S.C. 808 and determines that this rule should take effect on September 6, 2002, as set forth above in the **DATES** section.

Paperwork Reduction Act

Information collection associated with this regulation has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995. The OMB control number for this collection is 1105–0052.

List of Subjects in 28 CFR Part 79

Administrative practice and procedure, Authority delegations (Government agencies), Cancer, Claims, Radiation Exposure Compensation Act, Radioactive materials, Reporting and recordkeeping requirements, Uranium mining, Uranium.

Accordingly, part 79 of chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

1. By revising the authority citation to read as follows:

Authority: Secs. 6(a), 6(i) and 6(j), Pub. L. 101–426, 104 Stat. 920, as amended by secs. 3(c)–(h), Pub. L. 106–245, 114 Stat. 501 (42 U.S.C. 2210 note).

2. By revising subparts A through D to read as set forth below;

3. By removing and reserving subparts E and F (§§ 79.40—79.55);

4. By adding and reserving subpart G; and

5. By adding subpart H to read as set forth below.

(**Note:** Appendices A through C remain unchanged.)

The revised and added text reads as follows:

PART 79—CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT

Subpart A—General

Sec.
79.1 Purpose.
79.2 General definitions.
79.3 Compensable claim categories under the Act.
79.4 Determination of claims and affidavits.
79.5 Requirements for medical documentation, contemporaneous records, and other records or documents.

Subpart B—Eligibility Criteria for Claims Relating to Leukemia

79.10 Scope of subpart.
79.11 Definitions.
79.12 Criteria for eligibility.
79.13 Proof of physical presence for the requisite period and proof of participation onsite during a period of atmospheric nuclear testing.
79.14 Proof of initial exposure prior to age 21.
79.15 Proof of onset of leukemia more than two years after first exposure.
79.16 Proof of medical condition.

Subpart C—Eligibility Criteria for Claims Relating to Certain Specified Diseases Contracted in an Affected Area

79.20 Scope of subpart.
79.21 Definitions.
79.22 Criteria for eligibility.
79.23 Proof of physical presence for the requisite period.

79.24 Proof of initial or first exposure after age 20 for claims under § 79.22(b)(1).
79.25 Proof of onset of leukemia at least two years after first exposure, and proof of onset of a specified compensable disease more than five years after first exposure.
79.26 Proof of medical condition.
79.27 Indication of the presence of hepatitis B or cirrhosis.

Subpart D—Eligibility Criteria for Claims by Onsite Participants

79.30 Scope of subpart.
79.31 Definitions.
79.32 Criteria for eligibility.
79.33 Proof of participation onsite during a period of atmospheric nuclear testing.
79.34 Proof of medical condition.
79.35 Proof of onset of leukemia at least two years after first exposure, and proof of onset of a specified compensable disease more than five years after first exposure.
79.36 Indication of the presence of hepatitis B or cirrhosis.

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—[Reserved]

Subpart H—Procedures

79.70 Attorney General's delegation of authority.
79.71 Filing of claims.
79.72 Review and resolution of claims.
79.73 Appeals procedures.
79.74 [Reserved]
79.75 Procedures for payment of claims.

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Subpart A—General

§ 79.1 Purpose.

The purpose of these regulations is to implement the Radiation Exposure Compensation Act ("Act"), as amended by the Radiation Exposure Compensation Act Amendments of 2000, which authorizes the Attorney General of the United States to establish procedures for making certain payments to qualifying individuals who contracted one of the diseases listed in the Act. The amount of each payment and a general statement of the qualifications are indicated in § 79.3(a). The procedures established in these regulations are designed to utilize existing records so that claims can be resolved in a reliable, objective, and non-adversarial manner, quickly and with little administrative cost to the United States or to the person filing the claim.

§ 79.2 General definitions.

(a) *Act* means the Radiation Exposure Compensation Act of 1990, Public Law 101–426, as amended by section 3139 of Public Law 101–510 and by the Radiation Exposure Compensation Act Amendments of 2000, Public Law 106–245 (see 42 U.S.C. 2210 note).

(b) *Child* means a recognized natural child of the claimant, a stepchild who lived with the claimant in a regular parent-child relationship, or an adopted child of the claimant.

(c) *Claim* means a petition for compensation under the Act filed with the Radiation Exposure Compensation Program by a claimant or by his or her eligible surviving beneficiary or beneficiaries.

(d) *Claimant* means the individual, living or deceased, who is alleged to satisfy the criteria for compensation set forth either in section 4 or in section 5 of the Act.

(e) *Contemporaneous Record* means any document created at or around the time of the event that is recorded in the document.

(f) *Eligible surviving beneficiary* means a spouse, child, parent, grandchild or grandparent who is entitled under section 6(c)(4) (A) or (B) of the Act to file a claim or receive a payment on behalf of a deceased claimant.

(g) *Grandchild* means a child of a child of the claimant.

(h) Grandparent means a parent of a parent of the claimant.

(i) *Immediate family member* of a person means a spouse or child if the person is an adult, but if the person is a minor, immediate family member means either parent.

(j) *Indian tribe* means any Indian tribe, band, nation, pueblo, or other organized group or community that is recognized as eligible for special programs and services provided by the United States to Indian tribes.

(k) *Medical document, documentation, or record* means any contemporaneous record of any physician, hospital, clinic, or other certified or licensed health care provider, or any other records routinely and reasonably relied on by physicians in making a diagnosis.

(l) *Onset* or *incidence* of a specified compensable disease means the date a physician first diagnosed the disease.

(m) *Parent* means the natural or adoptive father or mother of the claimant.

(n) *Program or Radiation Exposure Compensation Program* means the component of the Constitutional and Specialized Tort Litigation Section of the Torts Branch of the Civil Division of the United States Department of Justice designated by the Attorney General to execute the powers, duties, and responsibilities assigned to the Attorney General pursuant to pertinent provisions of the Act.

(o) *Spouse* means a wife or husband who was married to the claimant for a period of at least one (1) year immediately before the death of the claimant.

(p) *Trust Fund* or *Fund* means the Radiation Exposure Compensation Trust Fund in the Department of the Treasury, administered by the Secretary of the Treasury pursuant to section 3 of the Act.

§ 79.3 Compensable claim categories under the Act.

(a) In order to receive a compensation payment, each claimant or eligible surviving beneficiary must establish that the claimant meets each and every criterion of eligibility for at least one of the following compensable categories designated in the Act:

(1) *Claims of leukemia.* (i) For persons exposed to fallout from the atmospheric detonation of nuclear devices at the Nevada Test Site due to their physical presence in an affected area during a designated time period, the amount of compensation is $50,000.

(ii) For persons exposed to fallout from the atmospheric detonation of nuclear devices due to their participation onsite in a test involving the atmospheric detonation of a nuclear device, the amount of compensation is $75,000. The regulations governing these claims are set forth in subpart B of this part.

(2) *Claims Related to the Nevada Test Site Fallout.* For persons exposed to fallout from the atmospheric detonation of nuclear devices at the Nevada Test Site due to their physical presence in an affected area during a designated time period, the amount of compensation is $50,000. The regulations governing these claims are set forth in subpart C of this part.

(3) *Claims of Onsite Participants.* For persons who contracted certain specified diseases after onsite participation in the atmospheric detonation of a nuclear device, the amount of compensation is $75,000. The regulations governing these claims are set forth in subpart D of this part.

(4) *Miners' Claims.* For persons who contracted lung cancer or certain nonmalignant respiratory diseases after being employed in uranium mines located in a specified state during the designated time period who were exposed to a specified minimum level of radiation during the course of their employment, the amount of compensation is $100,000. The regulations governing these claims are set forth in subpart E of this part.

(5) *Millers' Claims.* For persons who contracted lung cancer, certain nonmalignant respiratory diseases, renal cancer, or chronic renal disease

(including nephritis and kidney tubal tissue injury) following employment for at least one year (12 consecutive or cumulative months) in a uranium mill in a specified state during the designated time period, the amount of compensation is $100,000. The regulations governing these claims are set forth in subpart F of this part.

(6) *Ore Transporters' Claims.* For persons who contracted lung cancer, certain nonmalignant respiratory diseases, renal cancer, or chronic renal disease (including nephritis and kidney tubal tissue injury) following employment for at least one year (12 consecutive or cumulative months) as a transporter of uranium ore or vanadium-uranium ore from a uranium mine or uranium mill located in a specified state during the designated time period, the amount of compensation is $100,000. The regulations governing these claims are set forth in subpart G of this part.

(b) Any claim that does not meet all the criteria for at least one of these categories, as set forth in these regulations, must be denied.

(c) All claims for compensation under the Act must comply with the claims procedures and requirements set forth in subpart H of this part before any payment can be made from the Fund.

§ 79.4 Determination of claims and affidavits.

(a) The claimant or eligible surviving beneficiary or beneficiaries bears the burden of providing evidence of the existence of each element necessary to establish eligibility under any compensable claim category set forth in § 79.3(a).

(b) In the event that reasonable doubt exists with regard to whether a claim meets the requirements of the Act, that doubt shall be resolved in favor of the claimant or eligible surviving beneficiary.

(c) Written affidavits or declarations, subject to penalty for perjury, will be accepted only for the following purposes:

(1) To establish eligibility of family members as set forth in § 79.71(e), (f), (g), (h), or (i);

(2) To establish other compensation received as set forth in § 79.75(c) or (d);

(3) To establish employment in a uranium mill or as an ore transporter in the manner set forth in §§ 79.53(d) and 79.63(d), respectively; and

(4) To substantiate the claimant's uranium mining employment history for purposes of determining working level months of radiation exposure, in the manner set forth in § 79.43(d), provided the affidavit or declaration:

(i) Is provided in addition to any other material that may be used to substantiate the claimant's employment history as set forth in § 79.43;

(ii) Is made subject to penalty for perjury;

(iii) Attests to the employment history of the claimant; and

(iv) As made by a person other than the individual filing the claim.

§ 79.5 Requirements for medical documentation, contemporaneous records, and other records or documents.

(a) All medical documentation, contemporaneous records, and other records or documents submitted by a claimant or eligible surviving beneficiary to prove any criterion provided for in these regulations must be originals, or certified copies of the originals, unless it is impossible to obtain an original or certified copy of the original. If it is impossible for a claimant to provide an original or certified copy of an original, the claimant or eligible surviving beneficiary must provide a written statement with the uncertified copy setting forth the reason why it is impossible.

(b) All documents submitted by a claimant or eligible surviving beneficiary must bear sufficient indicia of authenticity or a sufficient guarantee of trustworthiness. The Program shall not accept as proof of any criterion of eligibility any document that does not bear sufficient indicia of authenticity, or is in such a physical condition, or contains such information, that otherwise indicates the record or document is not reliable or trustworthy. When a record or document is not accepted by the Program under this section, the claimant or eligible surviving beneficiary shall be notified and afforded the opportunity to submit additional documentation in accordance with § 79.72(b) or (c).

(c) To establish eligibility the claimant or eligible surviving beneficiary may be required to provide additional records to the extent they exist. Nothing in the regulations in this section shall be construed to limit the Assistant Director's ability to require additional documentation.

Subpart B—Eligibility Criteria for Claims Relating to Leukemia

§ 79.10 Scope of subpart.

The regulations in this subpart describe the criteria for eligibility for compensation under section 4(a)(1) of the Act and the evidence that will be accepted as proof of the various criteria. Section 4(a)(1) of the Act provides for a payment of $50,000 to individuals exposed to fallout from the detonation of atmospheric nuclear devices at the Nevada Test Site due to their physical presence in an affected area during a designated time period, and $75,000 to individuals who participated onsite in a test involving the atmospheric detonation of a nuclear device and who later developed leukemia.

§ 79.11 Definitions.

(a) *Affected area* means one of the following geographical areas, as they were recognized by the state in which they are located, as of July 10, 2000:

(1) In the State of Utah, the counties of Beaver, Garfield, Iron, Kane, Millard, Piute, San Juan, Sevier, Washington, and Wayne;

(2) In the State of Nevada, the counties of Eureka, Lander, Lincoln, Nye, White Pine, and that portion of Clark County that consists of townships 13 through 16 at ranges 63 through 71;

(3) In the State of Arizona, the counties of Coconino, Yavapai, Navajo, Apache, and Gila.

(b) *Atmospheric detonation of nuclear device* means only a test conducted by the United States prior to January 1, 1963, as listed in § 79.31(f).

(c) *Designated time period* means the period beginning on January 21, 1951, and ending on October 31, 1958, or the period beginning on June 30, 1962, and ending on July 31, 1962, whichever is applicable.

(d) *First exposure or initial exposure* means the date on which the claimant was first physically present in the affected area during the designated time period, or the date on which the claimant first participated onsite in an atmospheric nuclear test, whichever is applicable.

(e) *Leukemia* means any medically recognized form of acute or chronic leukemia other than chronic lymphocytic leukemia.

(f) *Onsite* means physical presence above or within the official boundaries of any of the following locations:

(1) The Nevada Test Site (NTS), Nevada;

(2) The Pacific Test Sites (Bikini Atoll, Enewetak Atoll, Johnston Island, Christmas Island, the test site for the shot during Operation Wigwam, the test site for Shot Yucca during Operation Hardtack I, and the test sites for Shot Frigate Bird and Shot Swordfish during Operation Dominic I) and the official zone around each site from which non-test affiliated ships were excluded for security and safety purposes;

(3) The Trinity Test Site (TTS), New Mexico;

(4) The South Atlantic Test Site for Operation Argus and the official zone

around the site from which non-test affiliated ships were excluded for security and safety purposes;

(5) Any designated location within a Naval Shipyard, Air Force Base, or other official government installation where ships, aircraft, or other equipment used in an atmospheric nuclear detonation were decontaminated; or

(6) Any designated location used for the purpose of monitoring fallout from an atmospheric nuclear test conducted at the Nevada Test Site.

(g) *Participant* means an individual

(1) Who was:

(i) A member of the armed forces;

(ii) A civilian employee or contract employee of the Manhattan Engineer District, the Armed Forces Special Weapons Project, the Defense Atomic Support Agency, the Defense Nuclear Agency, or the Department of Defense or its components or agencies or predecessor components or agencies;

(iii) An employee or contract employee of the Atomic Energy Commission, the Energy Research and Development Administration, or the Department of Energy;

(iv) A member of the Federal Civil Defense Administration or the Office of Civil and Defense Mobilization; or

(v) A member of the United States Public Health Service; and

(2) Who:

(i) Performed duties within the identified operational area around each atmospheric nuclear test;

(ii) Participated in the decontamination of any ships, planes, or equipment used during the atmospheric nuclear test;

(iii) Performed duties as a cloud tracker or cloud sampler;

(iv) Served as a member of the garrison or maintenance forces on the atoll of Enewetak between June 21, 1951, and July 1, 1952; between August 7, 1956, and August 7, 1957; or between November 1, 1958, and April 30, 1959; or

(v) Performed duties as a member of a mobile radiological safety team monitoring the pattern of fallout from an atmospheric nuclear test.

(h) *Period of atmospheric nuclear testing* means any of the periods associated with each test operation specified in § 79.31(f), plus an additional six-month period thereafter.

(i) *Physically present* (or *physical presence*) means present (or presence) for a substantial period of each day.

§ 79.12 Criteria for eligibility.

To establish eligibility for compensation under this subpart, a claimant or eligible surviving beneficiary must establish each of the following:

(a)(1) That the claimant was physically present at any place within the affected area for a period of at least one year (12 consecutive or cumulative months) during the period beginning on January 21, 1951, and ending on October 31, 1958;

(2) That the claimant was physically present at any place within the affected area for the entire, continuous period beginning on June 30, 1962, and ending on July 31, 1962; or

(3) That the claimant was present onsite at any time during a period of atmospheric nuclear testing and was a participant during that period in the atmospheric detonation of a nuclear device;

(b) That after such period of physical presence or onsite participation the claimant contracted leukemia;

(c) That the claimant's initial exposure occurred prior to age 21; and

(d) The onset of the leukemia occurred more than two years after the date of the claimant's first exposure to fallout.

§ 79.13 Proof of physical presence for the requisite period and proof of participation onsite during a period of atmospheric nuclear testing.

(a) Proof of physical presence may be made by the submission of any trustworthy contemporaneous records that, on their face or in conjunction with other such records, establish that the claimant was present in the affected area for the requisite period during the designated time period. Examples of such records include:

(1) Records of the federal government (including verified information submitted for a security clearance), any tribal government, or any state, county, city or local governmental office, agency, department, board or other entity, or other public office or agency;

(2) Records of any accredited public or private educational institution;

(3) Records of any private utility licensed or otherwise approved by any governmental entity, including any such utility providing telephone services;

(4) Records of any public or private library;

(5) Records of any state or local historical society;

(6) Records of any religious organization that has tax-exempt status under section 501(c)(3) of the United States Internal Revenue Code;

(7) Records of any regularly conducted business activity or entity;

(8) Records of any recognized civic or fraternal association or organization; and

(9) Medical records created during the designated time period.

(b) Proof of physical presence by contemporaneous records may also be made by submission of original postcards and envelopes from letters (not copies) addressed to the claimant or an immediate family member during the designated time period that bear a postmark and a cancelled stamp(s).

(c) The Program will presume that an individual who resided or was employed on a full-time basis within the affected area was physically present during the time period of residence or full-time employment.

(d) For purposes of establishing eligibility under § 79.12(a)(1), the Program will presume that proof of a claimant's residence at one or more addresses or proof of full-time employment at one location within the affected area on any two dates less than three years apart during the period beginning on January 21, 1951, and ending on October 31, 1958, establishes the claimant's presence within the affected area for the period between the two dates reflected in the documentation submitted as proof of presence.

(e) For purposes of establishing eligibility under § 79.12(a)(1), the Program will presume that proof of residence at one or more addresses or proof of full-time employment at one location within the affected area on two dates, one of which is before January 21, 1951, and another of which is within the specified time period, establishes the claimant's presence in the affected area between January 21, 1951, and the date within the specified time period, provided the dates are not more than three years apart.

(f) For purposes of establishing eligibility under § 79.12(a)(1), the Program will presume that proof of residence at one or more addresses or proof of full-time employment at one location within the affected area on two dates, one of which is after October 31, 1958, and another which is within the specified time period, establishes the claimant's presence in the affected area between the date within the specified time period and October 31, 1958, provided the dates are not more than three years apart.

(g) For purposes of establishing eligibility under § 79.12(a)(2), the Program will presume that proof of residence or proof of full-time employment within the affected area at least one day during the period beginning June 30, 1962, and ending July 31, 1962, and proof of residence or proof of full-time employment at the same address within six months before June 30, 1962, and six months after July 31, 1962, establishes the claimant's

physical presence for the necessary one-month-and-one-day period.

(h) For purposes of establishing eligibility under § 79.12(a)(2), the Program will presume that proof of residence or full-time employment at the same address or location on two separate dates at least 14 days apart within the time period beginning June 30, 1962, and ending July 31, 1962, establishes the claimant's physical presence for the necessary one-month-and-one-day period.

(i) For purposes of establishing eligibility under § 79.12(a)(3), the claimant must establish, in accordance with § 79.33, that he or she participated onsite in the atmospheric detonation of a nuclear device.

§ 79.14 Proof of initial exposure prior to age 21.

(a) Proof of the claimant's date of birth must be established by the submission of any of the following:

(1) Birth certificate;

(2) Baptismal certificate;

(3) Tribal records; or

(4) Hospital records of birth.

(b) Absent any indication to the contrary, the Program will assume that the earliest date within the designated time period indicated on any records accepted by the Program as proof of the claimant's physical presence in the affected area or participation during a period of atmospheric nuclear testing was also the date of initial exposure.

§ 79.15 Proof of onset of leukemia more than two years after first exposure.

The Program will presume that the date of onset was the date of diagnosis as indicated in the medical documentation accepted by the Program as proof of the claimant's leukemia. The date of onset must be more than two years after the date of first exposure as determined under § 79.14(b).

§ 79.16 Proof of medical condition.

(a) Medical documentation is required in all cases to prove that the claimant suffered from or suffers from leukemia. Proof that the claimant contracted leukemia must be made either by using the procedure outlined in paragraph (b) of this section or submitting the documentation required in paragraph (c) of this section.

(b) If a claimant was diagnosed as having leukemia in one of the States of Arizona, Colorado, Nevada, New Mexico, Utah or Wyoming, the claimant or eligible surviving beneficiary need not submit any medical documentation of disease at the time the claim is filed (although medical documentation may subsequently be required). Instead, the claimant or eligible surviving beneficiary must submit with the claim an Authorization To Release Medical and Other Information, valid in the state of diagnosis, that authorizes the Program to contact the appropriate state cancer or tumor registry. The Program will accept as proof of medical condition verification from the state cancer or tumor registry that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of one type of leukemia. If the designated state does not possess medical records or abstracts of medical records that contain a verified diagnosis of leukemia, the Radiation Exposure Compensation Program will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit the medical documentation required in paragraph (c) of this section, in accordance with the provisions of § 79.72(b).

(c)(1) Proof that the claimant contracted leukemia may be made by the submission of one or more of the following contemporaneous medical records provided that the specified document contains an explicit statement of diagnosis or such other information or data from which appropriate authorities at the National Cancer Institute can make a diagnosis of leukemia to a reasonable degree of medical certainty:

(i) Bone marrow biopsy or aspirate report;

(ii) Peripheral white blood cell differential count report;

(iii) Autopsy report;

(iv) Hospital discharge summary;

(v) Physician summary;

(vi) History and physical report; or

(vii) Death certificate, provided that it is signed by a physician at the time of death.

(2) If the medical record submitted does not contain sufficient information or data to make such a diagnosis, the Program will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit additional medical records identified in this paragraph, in accordance with the provisions of § 79.72(b). Any such additional medical documentation submitted must also contain sufficient information from which appropriate authorities at the National Cancer Institute can determine the type of leukemia contracted by the claimant.

Subpart C—Eligibility Criteria for Claims Relating to Certain Specified Diseases in an Affected Area

§ 79.20 Scope of subpart.

The regulations in this subpart describe the criteria for eligibility for compensation under sections 4(a)(2) (A) and (B) of the Act and the evidence that will be accepted as proof of the various criteria. Sections 4(a)(2) (A) and (B) of the Act provide for a payment of $50,000 to individuals who were exposed to fallout from the atmospheric detonation of nuclear devices at the Nevada Test Site due to their physical presence in an affected area during a designated time period and who later developed one or more specified compensable diseases.

§ 79.21 Definitions.

(a) The definitions listed in § 79.11 (a) through (e) and (i) apply to this subpart.

(b) *Indication of disease* means any medically significant information that suggests the presence of a disease, whether or not the presence of the disease is later confirmed.

(c) *Leukemia, lung cancer, in situ lung cancer, multiple myeloma, lymphomas, Hodgkin's disease, primary cancer of the thyroid, primary cancer of the male breast, primary cancer of the female breast, primary cancer of the esophagus, primary cancer of the stomach, primary cancer of the pharynx, primary cancer of the small intestine, primary cancer of the pancreas, primary cancer of the bile ducts, primary cancer of the gallbladder, primary cancer of the salivary gland, primary cancer of the urinary bladder, primary cancer of the brain, primary cancer of the colon, primary cancer of the ovary,* and *primary cancer of the liver* mean the physiological conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

(d) *Lung cancer* means any physiological condition of the lung, trachea, or bronchus that is recognized under that name or nomenclature by the National Cancer Institute.

(e) *Specified compensable diseases* means leukemia (other than chronic lymphocytic leukemia), provided that initial exposure occurred after the age of 20 and that the onset of the disease was at least two years after first exposure, lung cancer (other than in situ lung cancer that is discovered during or after a postmortem exam), and the following diseases, provided onset was at least five years after first exposure: multiple myeloma; lymphomas (other than

Hodgkin's disease); and primary cancer of the thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gallbladder, salivary gland, urinary bladder, brain, colon, ovary, or liver (except if cirrhosis or hepatitis B is indicated).

§ 79.22 Criteria for eligibility.

To establish eligibility for compensation under this subpart, a claimant or eligible surviving beneficiary must establish each of the following:

(a)(1) That the claimant was physically present at any place within the affected area for a period of at least two years (24 consecutive or cumulative months) during the period beginning on January 21, 1951, and ending on October 31, 1958; or

(2) That the claimant was physically present at any place within the affected area for the entire, continuous period beginning on June 30, 1962, and ending on July 31, 1962; and

(b) That after such period of physical presence the claimant contracted one of the following specified compensable diseases:

(1) Leukemia (other than chronic lymphocytic leukemia), provided that:

(i) The claimant's initial exposure occurred after the age of 20; and

(ii) The onset of the disease was at least two years after first exposure;

(2) Lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam);

(3) Multiple myeloma, provided onset was at least five years after first exposure;

(4) Lymphomas, other than Hodgkin's disease, provided onset was at least five years after first exposure;

(5) Primary cancer of the thyroid, provided onset was at least five years after first exposure;

(6) Primary cancer of the male or female breast, provided onset was at least five years after first exposure;

(7) Primary cancer of the esophagus, provided onset was at least five years after first exposure;

(8) Primary cancer of the stomach, provided onset was at least five years after first exposure;

(9) Primary cancer of the pharynx, provided onset was at least five years after first exposure;

(10) Primary cancer of the small intestine, provided onset was at least five years after first exposure;

(11) Primary cancer of the pancreas, provided onset was at least five years after first exposure;

(12) Primary cancer of the bile ducts, provided onset was at least five years after first exposure;

(13) Primary cancer of the gallbladder, provided onset was at least five years after first exposure;

(14) Primary cancer of the salivary gland, provided onset was at least five years after first exposure;

(15) Primary cancer of the urinary bladder, provided onset was at least five years after first exposure;

(16) Primary cancer of the brain, provided onset was at least five years after first exposure;

(17) Primary cancer of the colon, provided onset was at least five years after first exposure;

(18) Primary cancer of the ovary, provided onset was at least five years after first exposure; or

(19) Primary cancer of the liver, provided,

(i) Onset was at least five years after first exposure;

(ii) There is no indication of the presence of hepatitis B; and

(iii) There is no indication of the presence of cirrhosis.

§ 79.23 Proof of physical presence for the requisite period.

(a) Proof of physical presence for the requisite period may be made in accordance with the provisions of § 79.13 (a) and (b). An individual who resided or was employed on a full-time basis within the affected area is presumed to have been physically present during the time period of residence or full-time employment.

(b) For purposes of establishing eligibility under § 79.22(a)(1), the Program will presume that proof of residence at one or more addresses or proof of full-time employment at one location within the affected area on any two dates less than three years apart, during the period beginning on January 21, 1951, and ending on October 31, 1958, establishes the claimant's presence within the affected area for the period between the two dates reflected in the documentation submitted as proof of presence.

(c) For purposes of establishing eligibility under § 79.22(a)(1), the Program will presume that proof of residence at one or more addresses or proof of full-time employment at one location within the affected area on two dates, one of which is before January 21, 1951, and another of which is within the specified time period, establishes the claimant's presence in the affected area between January 21, 1951, and the date within the specified time period, provided the dates are not more than three years apart.

(d) For purposes of establishing eligibility under § 79.22(a)(1), the Program will presume that proof of residence at one or more addresses or proof of full-time employment at one location within the affected area on two dates, one of which is after October 31, 1958, and another of which is within the specified time period, establishes the claimant's presence in the affected area between the date within the specified time period and October 31, 1958, provided the dates are not more than three years apart.

(e) For purposes of establishing eligibility under § 79.22(a)(2), the Program will apply the presumptions contained in § 79.13(g) and (h).

§ 79.24 Proof of initial or first exposure after age 20 for claims under § 79.22(b)(1).

(a) Proof of the claimant's date of birth must be established in accordance with the provisions of § 79.14(a).

(b) Absent any indication to the contrary, the Program will presume that the earliest date within the designated time period indicated on any records accepted by the Program as proof of the claimant's physical presence in the affected area was the date of initial or first exposure.

§ 79.25 Proof of onset of leukemia at least two years after first exposure, and proof of onset of a specified compensable disease more than five years after first exposure.

The date of onset will be the date of diagnosis as indicated in the medical documentation accepted by the Radiation Exposure Compensation Program as proof of the claimant's specified compensable disease. The date of onset must be at least five years after the date of first exposure as determined under § 79.24(b). In the case of leukemia, the date of onset must be at least two years after the date of first exposure.

§ 79.26 Proof of medical condition.

(a) Medical documentation is required in all cases to prove that the claimant suffered from or suffers from any specified compensable disease. Proof that the claimant contracted a specified compensable disease must be made either by using the procedure outlined in paragraph (b) of this section or by submitting the documentation required in paragraph (c) of this section. (For claims relating to primary cancer of the liver, the claimant or eligible surviving beneficiary must also submit the additional medical documentation prescribed in § 79.27.)

(b) If a claimant was diagnosed as having one of the specified compensable diseases in any of the States of Arizona, Colorado, Nevada, New Mexico, Utah or Wyoming, the claimant or eligible surviving beneficiary need not submit any medical documentation of disease

at the time the claim is filed (although medical documentation subsequently may be required). Instead, the claimant or eligible surviving beneficiary may submit with the claim an Authorization to Release Medical and Other Information, valid in the state of diagnosis, that authorizes the Program to contact the appropriate state cancer or tumor registry. The Program will accept as proof of medical condition verification from the state cancer or tumor registry that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of one of the specified compensable diseases. If the designated state does not possess medical records or abstracts of medical records that contain a verified diagnosis of one of the specified compensable diseases, the Program will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit the written medical documentation required in paragraph (c) of this section, in accordance with the provisions of § 79.72(b).

(c) Proof that the claimant contracted a specified compensable disease may be made by the submission of one or more of the contemporaneous medical records listed in this paragraph, provided that the specified document contains an explicit statement of diagnosis and such other information or data from which the appropriate authorities with the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty. If the medical record submitted does not contain sufficient information or data to make such a diagnosis, the Program will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit additional medical records identified in this paragraph, in accordance with the provisions of § 79.72(b). The medical documentation submitted under this section to establish that the claimant contracted leukemia or a lymphoma must also contain sufficient information from which the appropriate authorities with the National Cancer Institute can determine the type of leukemia or lymphoma contracted by the claimant. Proof of leukemia shall be made by submitting one or more of the documents listed in § 79.16(c).

(1) *Multiple myeloma.*

(i) Pathology report of tissue biopsy;

(ii) Autopsy report;

(iii) Report of serum electrophoresis;

(iv) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Hematology summary or consultation report;

(D) Medical oncology summary or consultation report;

(E) X-ray report; or

(v) Death certificate, provided that it is signed by a physician at the time of death.

(2) *Lymphomas.*

(i) Pathology report of tissue biopsy;

(ii) Autopsy report;

(iii) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Hematology consultation or summary report;

(D) Medical oncology consultation or summary report; or

(iv) Death certificate, provided that it is signed by a physician at the time of death.

(3) *Primary cancer of the thyroid.*

(i) Pathology report of tissue biopsy or fine needle aspirate;

(ii) Autopsy report;

(iii) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary;

(C) Operative summary report;

(D) Medical oncology summary or consultation report; or

(iv) Death certificate, provided that it is signed by a physician at the time of death.

(4) *Primary cancer of the male or female breast.*

(i) Pathology report of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary;

(C) Operative report;

(D) Medical oncology summary or consultation report;

(E) Radiotherapy summary or consultation report;

(iv) Report of mammogram;

(v) Report of bone scan; or

(vi) Death certificate, provided that it is signed by a physician at the time of death.

(5) *Primary cancer of the esophagus.*

(i) Pathology report of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) Endoscopy report;

(iv) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Operative report;

(D) Radiotherapy report;

(E) Medical oncology consultation or summary report;

(v) One of the following radiological studies:

(A) Esophagram;

(B) Barium swallow;

(C) Upper gastrointestinal (GI) series;

(D) Computerized tomography (CT) scan;

(E) Magnetic resonance imaging (MRI); or

(vi) Death certificate, provided that it is signed by a physician at the time of death.

(6) *Primary cancer of the stomach.*

(i) Pathology report of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) Endoscopy or gastroscopy report;

(iv) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Operative report;

(D) Radiotherapy report;

(E) Medical oncology summary report;

(v) One of the following radiological studies:

(A) Barium swallow;

(B) Upper gastrointestinal (GI) series;

(C) Computerized tomography (CT) series;

(D) Magnetic resonance imaging (MRI); or

(vi) Death certificate, provided that it is signed by a physician at the time of death.

(7) *Primary cancer of the pharynx.*

(i) Pathology report of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) Endoscopy report;

(iv) One of the following summary medical reports:

(A) Physician summary;

(B) Hospital discharge summary;

(C) Report of otolaryngology examination;

(D) Radiotherapy summary report;

(E) Medical oncology summary report;

(F) Operative report;

(v) Report of one of the following radiological studies:

(A) Laryngograms;

(B) Tomograms of soft tissue and lateral radiographs;

(C) Computerized tomography (CT) scan;

(D) Magnetic resonance imaging (MRI); or

(vi) Death certificate, provided that it is signed by a physician at the time of death.

(8) *Primary cancer of the small intestine.*

(i) Pathology report of tissue biopsy;

(ii) Autopsy report;

(iii) Endoscopy report, provided that the examination covered the duodenum and parts of the jejunum;

(iv) Colonoscopy report, provided that the examination covered the distal ileum;
(v) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary;
(C) Report of gastroenterology examination;
(D) Operative report;
(E) Radiotherapy summary report;
(F) Medical oncology summary or consultation report;
(vi) Report of one of the following radiologic studies:
(A) Upper gastrointestinal (GI) series with small bowel follow-through;
(B) Angiography;
(C) Computerized tomography (CT) scan;
(D) Magnetic resonance imaging (MRI); or
(vii) Death certificate, provided that it is signed by a physician at the time of death.

(9) *Primary cancer of the pancreas.*
(i) Pathology report of tissue biopsy or fine needle aspirate;
(ii) Autopsy report;
(iii) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;
(C) Radiotherapy summary report;
(D) Medical oncology summary report;
(iv) Report of one of the following radiographic studies:
(A) Endoscopic retrograde cholangiopancreatography (ERCP);
(B) Upper gastrointestinal (GI) series;
(C) Arteriography of the pancreas;
(D) Ultrasonography;
(E) Computerized tomography (CT) scan;
(F) Magnetic resonance imaging (MRI); or
(v) Death certificate, provided that it is signed by a physician at the time of death.

(10) *Primary cancer of the bile ducts.*
(i) Pathology of tissue biopsy or surgical resection;
(ii) Autopsy report;
(iii) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;
(C) Operative report;
(D) Gastroenterology consultation report;
(E) Medical oncology summary or consultation report;
(iv) Report of one of the following radiographic studies:
(A) Ultrasonography;
(B) Endoscopic retrograde cholangiography;
(C) Percutaneous cholangiography;
(D) Computerized tomography (CT) scan;
(v) Death certificate, provided that it is signed by a physician at the time of death.

(11) *Primary cancer of the gallbladder.*
(i) Pathology report of tissue from surgical resection;
(ii) Autopsy report;
(iii) Report of one of the following radiological studies:
(A) Computerized tomography (CT) scan;
(B) Magnetic resonance imaging (MRI);
(C) Ultrasonography (ultrasound);
(iv) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;
(C) Operative report;
(D) Radiotherapy report;
(E) Medical oncology summary or report; or
(v) Death certificate, provided that it is signed by a physician at the time of death.

(12) *Primary cancer of the liver.*
(i) Pathology report of tissue biopsy or surgical resection;
(ii) Autopsy report;
(iii) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;
(C) Medical oncology summary report;
(D) Operative report;
(E) Gastroenterology report;
(iv) Report of one of the following radiological studies:
(A) Computerized tomography (CT) scan;
(B) Magnetic resonance imaging (MRI); or
(v) Death certificate, provided that it is signed by a physician at the time of death.

(13) *Cancer of the lung.*
(i) Pathology report of tissue biopsy or resection, including, but not limited to specimens obtained by any of the following methods:
(A) Surgical resection;
(B) Endoscopic endobronchial or transbronchial biopsy;
(C) Bronchial brushings and washings;
(D) Pleural fluid cytology;
(E) Fine needle aspirate;
(F) Pleural biopsy;
(G) Sputum cytology;
(ii) Autopsy report;
(iii) Report of bronchoscopy, with or without biopsy;
(iv) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;
(C) Radiotherapy summary report;
(D) Medical oncology summary report;
(E) Operative report;
(v) Report of one of the following radiology examinations:
(A) Computerized tomography (CT) scan;
(B) Magnetic resonance imaging (MRI);
(C) X-rays of the chest;
(D) Chest tomograms; or
(vi) Death certificate, provided that it is signed by a physician at the time of death.

(14) *Primary cancer of the salivary gland.*
(i) Pathology report of tissue biopsy or resection;
(ii) Autopsy report;
(iii) Report of otolaryngology or oral maxillofacial examination;
(iv) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;
(C) Radiotherapy summary report;
(D) Medical oncology summary report;
(E) Operative report;
(v) Report of one of the following radiology examinations:
(A) Computerized tomography (CT) scan;
(B) Magnetic resonance imaging (MRI); or
(vi) Death certificate, provided that it is signed by a physician at the time of death.

(15) *Primary cancer of the urinary bladder.*
(i) Pathology report of tissue biopsy or resection;
(ii) Autopsy report;
(iii) Report of cytoscopy, with or without biopsy;
(iv) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;
(C) Radiotherapy summary report;
(D) Medical oncology summary report;
(E) Operative report;
(v) Report of one of the following radiology examinations:
(A) Computerized tomography (CT) scan;
(B) Magnetic resonance imaging (MRI); or
(vi) Death certificate, provided that it is signed by a physician at the time of death.

(16) *Primary cancer of the brain.*

(i) Pathology report of tissue biopsy or resection;
(ii) Autopsy report;
(iii) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;
(C) Radiotherapy summary report;
(D) Medical oncology summary report;
(E) Operative report;
(iv) Report of one of the following radiology examinations:
(A) Computerized tomography (CT) scan;
(B) Magnetic resonance imaging (MRI);
(C) CT or MRI with enhancement; or
(v) Death certificate, provided that it is signed by a physician at the time of death.
(17) *Primary cancer of the colon.*
(i) Pathology report of tissue biopsy;
(ii) Autopsy report;
(iii) Endoscopy report, provided the examination covered the duodenum and parts of the jejunum;
(iv) Colonoscopy report, provided that the examination covered the distal ileum;
(v) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary;
(C) Report of gastroenterology examination;
(D) Operative report;
(E) Radiotherapy summary report;
(F) Medical oncology summary or consultation report;
(vi) Report of one of the following radiologic studies:
(A) Upper gastrointestinal (GI) series with small bowel follow-through;
(B) Angiography;
(C) Computerized tomography (CT) scan;
(D) Magnetic resonance imaging (MRI); or
(vii) Death certificate, provided that it is signed by a physician at the time of death.
(18) *Primary cancer of the ovary.*
(i) Pathology report of tissue biopsy or resection;
(ii) Autopsy report;
(iii) One of the following summary medical reports:
(A) Physician summary report;
(B) Hospital discharge summary report;
(C) Radiotherapy summary report;
(D) Medical oncology summary report;
(E) Operative report; or
(iv) Death certificate, provided that it is signed by a physician at the time of death.

§ 79.27 Indication of the presence of hepatitis B or cirrhosis.

(a)(1) If the claimant or eligible surviving beneficiary is claiming eligibility under this subpart for primary cancer of the liver, the claimant or eligible surviving beneficiary must submit, in addition to proof of the disease, all medical records listed below from any hospital, medical facility, or health care provider that were created within the period six months before and six months after the date of diagnosis of primary cancer of the liver:
(i) All history and physical examination reports;
(ii) All operative and consultation reports;
(iii) All pathology reports; and
(iv) All physician, hospital, and health care facility admission and discharge summaries.
(2) In the event that any of the records in paragraph (a)(1) of this section no longer exists, the claimant or eligible surviving beneficiary must submit a certified statement by the custodian(s) of those records to that effect.
(b) If the medical records listed in paragraph (a) of this section, or information possessed by the state cancer or tumor registries, indicates the presence of hepatitis B or cirrhosis, the Radiation Exposure Compensation Program will notify the claimant or eligible surviving beneficiary and afford that individual the opportunity to submit other written medical documentation or contemporaneous records in accordance with § 79.72(b) to establish that in fact there was no hepatitis B or cirrhosis.
(c) The Program may also require that the claimant or eligible surviving beneficiary provide additional medical records or other contemporaneous records, or an authorization to release such additional medical and contemporaneous records, as may be needed to make a determination regarding the indication of the presence of hepatitis B or cirrhosis.

Subpart D—Eligibility Criteria for Claims by Onsite Participants

§ 79.30 Scope of subpart.

The regulations in this subpart describe the criteria for eligibility for compensation under section 4(a)(2)(C) of the Act, and the evidence that will be accepted as proof of the various criteria. Section 4(a)(2)(C) of the Act provides for a payment of $75,000 to individuals who participated onsite in the atmospheric detonation of a nuclear device and later developed a specified compensable disease.

§ 79.31 Definitions.

(a) The definitions listed in § 79.11(b), (e), (f), (g), and (h), and in § 79.21, apply to this subpart.
(b) *Atmospheric detonation of a nuclear device* means only a test conducted by the United States prior to January 1, 1963, as listed in paragraph (d) of this section.
(c) *First exposure* or *initial exposure* means the date on which the claimant first participated onsite in an atmospheric nuclear test.
(d) *Period of atmospheric nuclear testing* means one of the periods listed in this paragraph that are associated with each test operation, plus an additional six-month period thereafter:
(1) For Operation Trinity, the period July 16, 1945, through August 6, 1945:

Event name	Date	Location
Trinity	07/16/45	Trinity Test Site.

(2) For Operation Crossroads, the period June 28, 1946, through August 31, 1946, for all activities other than the decontamination of ships involved in Operation Crossroads; the period of atmospheric nuclear testing for the decontamination of ships involved in Operation Crossroads shall run from June 28, 1946, through November 30, 1946:

Event name	Date	Location
Able	07/01/46	Bikini.
Baker	07/25/46	Bikini.

(3) For Operation Sandstone, the period April 13, 1948, through May 20, 1948:

Event name	Date	Location
X-ray	04/15/48	Enewetak.
Yoke	05/01/48	Enewetak.
Zebra	05/15/48	Enewetak.

(4) For Operation Ranger, the period January 27, 1951, through February 7, 1951:

Event name	Date	Location
Able	01/27/51	Nevada Test Site ("NTS").
Baker	01/28/51	NTS.
Easy	02/01/51	NTS.
Baker-2	02/02/51	NTS.
Fox	02/06/51	NTS.

(5) For Operation Greenhouse, the period April 5, 1951, through June 20, 1951, for all activities other than service as a member of the garrison or maintenance forces on the atoll of Enewetak between June 21, 1951, and July 1, 1952; the period of atmospheric

nuclear testing for service as a member of the garrison or maintenance forces on the atoll of Enewetak shall run from April 5, 1951, through July 1, 1952:

Event name	Date	Location
Dog	04/08/51	Enewetak.
Easy	04/21/51	Enewetak.
George	05/09/51	Enewetak.
Item	05/25/51	Enewetak.

(6) For Operation Buster-Jangle, the period October 22, 1951, through December 20, 1951:

Event name	Date	Location
Able	10/22/51	NTS.
Baker	10/28/51	NTS.
Charlie	10/30/51	NTS.
Dog	11/01/51	NTS.
Sugar	11/19/51	NTS.
Uncle	11/29/51	NTS.

(7) For Operation Tumbler-Snapper, the period April 1, 1952, through June 20, 1952:

Event name	Date	Location
Able	04/01/52	NTS.
Baker	04/15/52	NTS.
Charlie	04/22/52	NTS.
Dog	05/01/52	NTS.
Easy	05/07/52	NTS.
Fox	05/25/52	NTS.
George	06/01/52	NTS.

(8) For Operation Ivy, the period October 29, 1952, through December 31, 1952:

Event name	Date	Location
Mike	11/01/52	Enewetak.
King	11/16/52	Enewetak.

(9) For Operation Upshot-Knothole, the period March 17, 1953, through June 20, 1953:

Event name	Date	Location
Annie	03/17/53	NTS.
Nancy	03/24/53	NTS.
Ruth	03/31/53	NTS.
Dixie	04/06/53	NTS.
Ray	04/11/53	NTS.
Badger	04/18/53	NTS.
Simon	04/25/53	NTS.
Encore	05/08/53	NTS.
Harry	05/19/53	NTS.
Grable	05/25/53	NTS.
Climax	06/04/53	NTS.

(10) For Operation Castle, the period February 27, 1954, through May 31, 1954:

Event name	Date	Location
Bravo	03/01/54	Bikini.
Romeo	03/27/54	Bikini.
Koon	04/07/54	Bikini.
Union	04/26/54	Bikini.
Yankee	05/05/54	Bikini.
Nectar	05/14/54	Enewetak.

(11) For Operation Teapot, the period February 18, 1955, through June 10, 1955:

Event name	Date	Location
Wasp	02/18/55	NTS.
Moth	02/22/55	NTS.
Tesla	03/01/55	NTS.
Turk	03/07/55	NTS.
Hornet	03/12/55	NTS.
Bee	03/22/55	NTS.
Ess	03/23/55	NTS.
Apple-1	03/29/55	NTS.
Wasp Prime	03/29/55	NTS.
Ha	04/06/55	NTS.
Post	04/09/55	NTS.
Met	04/15/55	NTS.
Apple-2	05/05/55	NTS.
Zucchini	05/15/55	NTS.

(12) For Operation Wigwam, the period May 14, 1955, through May 15, 1955:

Event name	Date	Location
Wigwam	05/14/55	Pacific.

(13) For Operation Redwing, the period May 2, 1956, through August 6, 1956, for all activities other than service as a member of the garrison or maintenance forces on the atoll of Enewetak from August 7, 1956, through August 7, 1957; the period of atmospheric nuclear testing for service as a member of the garrison or maintenance forces on the atoll of Enewetak shall run from May 2, 1956, through August 7, 1957:

Event name	Date	Location
Lacrosse	05/05/56	Enewetak.
Cherokee	05/21/56	Bikini.
Zuni	05/28/56	Bikini.
Yuma	05/28/56	Enewetak.
Erie	05/31/56	Enewetak.
Seminole	06/06/56	Enewetak.
Flathead	06/12/56	Bikini.
Blackfoot	06/12/56	Enewetak.
Kickapoo	06/14/56	Enewetak.
Osage	06/16/56	Enewetak.
Inca	06/22/56	Enewetak.
Dakota	06/26/56	Bikini.
Mohawk	07/03/56	Enewetak.
Apache	07/09/56	Enewetak.
Navajo	07/11/56	Bikini.
Tewa	07/21/56	Bikini.
Huron	07/22/56	Enewetak.

(14) For Operation Plumbbob, the period May 28, 1957, through October 22, 1957:

Event name	Date	Location
Boltzmann	05/28/57	NTS.
Franklin	06/02/57	NTS.
Lassen	06/05/57	NTS.
Wilson	06/18/57	NTS.
Priscilla	06/24/57	NTS.
Hood	07/05/57	NTS.
Diablo	07/15/57	NTS.
John	07/19/57	NTS.
Kepler	07/24/57	NTS.
Owens	07/25/57	NTS.
Stokes	08/07/57	NTS.
Shasta	08/18/57	NTS.
Doppler	08/23/57	NTS.
Franklin Prime.	08/30/57	NTS.
Smoky	08/31/57	NTS.
Galileo	09/02/57	NTS.
Wheeler	09/06/57	NTS.
Laplace	09/08/57	NTS.
Fizeau	09/14/57	NTS.
Newton	09/16/57	NTS.
Whitney	09/23/57	NTS.
Charleston	09/28/57	NTS.
Morgan	10/07/57	NTS.

(15) For Operation Hardtack I, the period April 26, 1958, through October 31, 1958, for all activities other than service as a member of the garrison or maintenance forces on the atoll of Enewetak from November 1, 1958, through April 30, 1959; the period of atmospheric nuclear testing for service as a member of the garrison of maintenance forces on the atoll of Enewetak shall run from April 26, 1958, through April 30, 1959:

Event name	Date	Location
Yucca	04/28/58	Pacific.
Cactus	05/06/58	Enewetak.
Fir	05/12/58	Bikini.
Butternut	05/12/58	Enewetak.
Koa	05/13/58	Enewetak.
Wahoo	05/16/58	Enewetak.
Holly	05/21/58	Enewetak.
Nutmeg	05/22/58	Bikini.
Yellowwood	05/26/58	Enewetak.
Magnolia	05/27/58	Enewetak.
Tobacco	05/30/58	Enewetak.
Sycamore	05/31/58	Bikini.
Rose	06/03/58	Enewetak.
Umbrella	06/09/58	Enewetak.
Maple	06/11/58	Bikini.
Aspen	06/15/58	Bikini.
Walnut	06/15/58	Enewetak.
Linden	06/18/58	Enewetak.
Redwood	06/28/58	Bikini.
Elder	06/28/58	Enewetak.
Oak	06/29/58	Enewetak.
Hickory	06/29/58	Bikini.
Sequoia	07/02/58	Enewetak.
Cedar	07/03/58	Bikini.
Dogwood	07/06/58	Enewetak.
Poplar	07/12/58	Bikini.
Scaevola	07/14/58	Enewetak.
Pisonia	07/18/58	Enewetak.
Juniper	07/22/58	Bikini.
Olive	07/23/58	Enewetak.
Pine	07/27/58	Enewetak.
Teak	07/31/58	Johnston Isl.
Qunice	08/06/58	Enewetak.

Event name	Date	Location
Orange	08/11/58	Johnston Isl.
Fig	08/18/58	Enewetak.

(16) For Operation Argus, the period August 25, 1958, through September 10, 1958:

Event name	Date	Location
Argus I	08/27/58	South Atlantic.
Argus II	08/30/58	South Atlantic.
Argus III	09/06/58	South Atlantic.

(17) For Operation Hardtack II, the period September 19, 1958, through October 31, 1958:

Event name	Date	Location
Eddy	09/19/58	NTS.
Mora	09/29/58	NTS.
Quay	10/10/58	NTS.
Lea	10/13/58	NTS.
Hamilton	10/15/58	NTS.
Dona Ana	10/16/58	NTS.
Rio Arriba	10/18/58	NTS.
Socorro	10/22/58	NTS.
Wrangell	10/22/58	NTS.
Rushmore	10/22/58	NTS
Sanford	10/26/58	NTS.
De Baca	10/26/58	NTS.
Humboldt	10/29/58	NTS
Mazama	10/29/58	NTS.
Santa Fe	10/30/58	NTS.

(18) For Operation Dominic I, the period April 23, 1962, through December 31, 1962:

Event name	Date	Location
Adobe	04/25/62	Christmas Isl.
Aztec	04/27/62	Christmas Isl.
Arkansas	05/02/62	Christmas Isl.
Questa	05/04/62	Christmas Isl.
Frigate Bird	05/06/62	Pacific.
Yukon	05/08/62	Christmas Isl.
Mesilla	05/09/62	Christmas Isl.
Muskegon	05/11/62	Christmas Isl.
Swordfish	05/11/62	Pacific.
Encino	05/12/62	Christmas Isl.
Swanee	05/14/62	Christmas Isl.
Chetco	05/19/62	Christmas Isl.
Tanana	05/25/62	Christmas Isl.
Nambe	05/27/62	Christmas Isl.
Alma	06/08/62	Christmas Isl.
Truckee	06/09/62	Christmas Isl.
Yeso	06/10/62	Christmas Isl.
Harlem	06/12/62	Christmas Isl
Rinconada	06/15/62	Christmas Isl.
Dulce	06/17/62	Christmas Isl.
Petit	06/19/62	Christmas Isl.
Otowi	06/22/62	Christmas Isl.
Bighorn	06/27/62	Christmas Isl.
Bluestone	06/30/62	Christmas Isl.
Starfish	07/08/62	Johnston Isl.
Sunset	07/10/62	Christmas Isl.
Pamlico	07/11/62	Christmas Isl.
Androscoggin	10/02/62	Johnston Isl.
Bumping	10/06/62	Johnston Isl.
Chama	10/18/62	Johnston Isl.
Checkmate	10/19/62	Johnston Isl.
Bluegill	10/25/62	Johnston Isl.
Calamity	10/27/62	Johnston Isl.
Housatonic	10/30/62	Johnston Isl.
Kingfish	11/01/62	Johnston Isl.
Tightrope	11/03/62	Johnston Isl.

(19) For Operation Dominic II, the period July 7, 1962, through August 15, 1962:

Event name	Date	Location
Little Feller II	07/07/62	NTS.
Johnie Boy	07/11/62	NTS.
Small Boy	07/14/62	NTS.
Little Feller I	07/17/62	NTS.

(20) For Operation Plowshare, the period July 6, 1962, through July 7, 1962, covering Project Sedan.

§ 79.32 Criteria for eligibility.

To establish eligibility for compensation under this subpart, a claimant or eligible surviving beneficiary must establish each of the following:

(a) That the claimant was present onsite at any time during a period of atmospheric nuclear testing;

(b) That the claimant was a participant during that period in the atmospheric detonation of a nuclear device; and

(c) That after such participation, the claimant contracted a specified compensable disease as set forth in § 79.22(b).

§ 79.33 Proof of participation onsite during a period of atmospheric nuclear testing.

(a) *Claimants associated with the Department of Defense (DoD) Components or DoD contractors.* (1) A claimant or eligible surviving beneficiary who alleges that the claimant was present onsite during a period of atmospheric nuclear testing as a member of the armed forces or an employee or contractor employee of the DoD, or any of its components or agencies, must submit the following information on the claim form:

(i) The claimant's name;

(ii) The claimant's military service number;

(iii) The claimant's social security number;

(iv) The site at which the claimant participated in an atmospheric nuclear test;

(v) The name or number of the claimant's military organization or unit assignment at the time of his or her onsite participation;

(vi) The dates of the claimant's assignment onsite; and

(vii) As full and complete a description as possible of the claimant's official duties, responsibilities, and activities while participating onsite.

(2) A claimant or eligible surviving beneficiary under this section need not submit any additional documentation of onsite participation during an atmospheric nuclear test at the time the claim is filed; however, additional documentation may be required as set forth in paragraph (a)(3) of this section.

(3) Upon receipt under this subpart of a claim that contains the information set forth in paragraph (a)(1) of this section, the Radiation Exposure Compensation Program will forward the information to the DoD and request that the DoD conduct a search of its records for the purpose of gathering facts relating to the claimant's presence onsite and participation in an atmospheric nuclear test. If the facts gathered by the DoD are insufficient to establish the eligibility criteria in § 79.32 of these regulations, the claimant or eligible surviving beneficiary will be notified and afforded the opportunity to submit military, government, or business records in accordance with the procedure set forth in § 79.72(c).

(b) *Claimants Associated with the Atomic Energy Commission (AEC) or the Department of Energy (DOE), or Who Were Members of the Federal Civil Defense Administration or the Office of Civil and Defense Mobilization.* (1) A claimant or eligible surviving beneficiary who alleges that the claimant was present onsite during an atmospheric nuclear test as an employee of the AEC, the DOE or any of their components, agencies or offices, or as an employee of a contractor of the AEC, or DOE, or as a member of the Federal Civil Defense or the Office of Civil and Defense Mobilization, must submit the following information on the claim form:

(i) The claimant's name;

(ii) The claimant's social security number;

(iii) The site at which the claimant participated in an atmospheric nuclear test;

(iv) The name or other identifying information associated with the claimant's organization, unit, assignment, or employer at the time of the claimant's participation onsite;

(v) The dates of the claimant's assignment onsite; and

(vi) As full and complete a description as possible of the claimant's official duties, responsibilities, and activities while participating onsite.

(2) A claimant or eligible surviving beneficiary under this section need not at the time the claim is filed submit any additional documentation demonstrating the claimant's presence

onsite during an atmospheric nuclear test; however, additional documentation may be thereafter be required as set forth in paragraph (b)(3) of this section.

(3) Upon receipt under this subpart of a claim that contains the information set forth in paragraph (b)(1) of this section, the Radiation Exposure Compensation Program will forward the information to the Nevada Field Office of the Department of Energy (DOE/NV) and request that the DOE conduct a search of its records for the purpose of gathering facts relating to the claimant's presence onsite and participation in an atmospheric nuclear test. If the facts gathered by the DOE/NV are insufficient to establish the eligibility criteria in § 79.32 of these regulations, the claimant or eligible surviving beneficiary will be notified and afforded the opportunity to submit military, government, or business records in accordance with the procedure set forth in § 79.72(c).

§ 79.34 Proof of medical condition.

Proof of medical condition under this subpart will be made in the same manner, and according to the same procedures and limitations, as are set forth in § 79.16 and § 79.26.

§ 79.35 Proof of onset of leukemia at least two years after first exposure, and proof of onset of a specified compensable disease more than five years after first exposure.

Absent any indication to the contrary, the earliest date of onsite participation indicated on any records accepted by the Radiation Exposure Compensation Program as proof of the claimant's onsite participation will be presumed to be the date of first or initial exposure. The date of onset will be the date of diagnosis as indicated on the medical documentation accepted by the Radiation Exposure Compensation Program as proof of the specified compensable disease. Proof of the onset of leukemia shall be established in accordance with § 79.15.

§ 79.36 Indication of the presence of hepatitis B or cirrhosis.

Possible indication of hepatitis B or cirrhosis will be determined in accordance with the provisions of § 79.27.

Subparts E–G [Reserved]

Subpart H—Procedures

§ 79.70 Attorney General's delegation of authority.

(a) An Assistant Director within the Constitutional and Specialized Tort Staff, Torts Branch, Civil Division, shall be assigned to manage the Radiation Exposure Compensation Program and issue a decision on each claim filed under the Act, and otherwise act on behalf of the Attorney General in all other matters relating to the administration of the Program, except for rulemaking authority. The Assistant Director may delegate any of his or her responsibilities under these regulations to an attorney working under the supervision of the Assistant Director.

(b) The Assistant Attorney General, Civil Division, or the official designated by him to act on his behalf (the Appeals Officer), shall act on appeals from the Assistant Director's decisions.

§ 79.71 Filing of claims.

(a) All claims for compensation under the Act must be in writing and submitted on a standard form designated by the Assistant Director for the filing of compensation claims. Except as specifically provided in these regulations, the claimant or eligible surviving beneficiary must furnish the medical documentation required by these regulations with his or her standard form. Except as specifically provided in these regulations, the claimant or eligible surviving beneficiary must also provide with the standard form any records establishing his or her physical presence in an affected area, onsite participation, employment in a uranium mine or mill, or employment as an ore transporter, in accordance with these regulations. The standard form must be completed, signed under oath either by a person eligible to file a claim under the Act or by that person's legal guardian, and mailed with supporting documentation to the following address: Radiation Exposure Compensation Program, U.S. Department of Justice, P.O. Box 146, Ben Franklin Station, Washington, DC 20044–0146. Copies of the standard form, as well as the regulations, guidelines, and other information, may be obtained by requesting the document or publications from the Assistant Director at the address indicated above or by accessing the Program's website at *www.usdoj.gov/reca*.

(b) The Assistant Director will file a claim after receipt of the standard form with supporting documentation and examination for substantial compliance with these regulations. The date of filing shall be recorded by a stamp on the face of the standard form. The Assistant Director shall file only claims that substantially comply with § 79.71(a) of these regulations. If a claim substantially fails to comply with the aforementioned section, the Assistant Director shall promptly return the claim unfiled to the sender with a statement identifying the reason(s) why the claim does not comply with the regulations. The sender may return the claim to the Assistant Director after correcting the deficiencies. For those cases that are filed, the Assistant Director shall promptly acknowledge receipt of the claim with a letter identifying the number assigned to the claim, the date the claim was filed, and the period within which the Assistant Director must act on the claim.

(c) The following persons or their legal guardians are eligible to file claims for compensation under the Act in the order listed below:

(1) The claimant;

(2) If the claimant is deceased, the spouse of the claimant;

(3) If there is no surviving spouse, a child of the claimant;

(4) If there is no surviving spouse or child, a parent of the claimant;

(5) If there is no surviving spouse, child or parent, a grandchild of the claimant; or

(6) If there is no surviving spouse, child, parent or grandchild, a grandparent of the claimant.

(7) Only the above-mentioned beneficiaries are eligible to file a claim on behalf of the claimant.

(d) The identity of the claimant must be established by submitting a birth certificate or one of the documents identified in § 79.14(a) of these regulations when the person has no birth certificate. Additionally, documentation demonstrating any and all name changes must be provided.

(e) (1) The spouse of a claimant must establish his or her eligibility to file a claim by furnishing:

(i) His or her birth certificate and, if applicable, documentation demonstrating any and all name changes;

(ii) The birth and death certificates of the claimant;

(iii) One of the following documents to establish a marriage to the claimant:

(A) The public record of marriage;

(B) A certificate of marriage;

(C) The religious record of marriage; or

(D) A judicial or other governmental determination that a valid marriage existed, such as the final opinion or order of a probate court or a determination of the Social Security Administration that the claimant is the spouse of the decedent;

(iv) A death certificate or divorce decree for each spouse of the claimant (if applicable); and

(v) An affidavit (or declaration under oath on the standard claim form) stating that the spouse was married to the claimant for at least one year

immediately prior to the claimant's death.

(2) If the spouse is a member of an Indian Tribe, he or she need not provide any of the documents listed in paragraph (e)(1) of this section at the time the claim is filed (although these records may later be required), but should instead furnish a signed release of private information that the Assistant Director will use to obtain a statement of verification of all of the information listed above directly from the tribal records custodian. In identifying those individuals eligible to receive compensation by virtue of marriage, relationship, or survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

(f)(1) A child of a claimant must establish his or her eligibility to file a claim by furnishing:

(i) His or her birth certificate and, if applicable, documentation demonstrating any and all name changes;

(ii) The birth and death certificates of the claimant;

(iii) One of the documents listed in paragraph (e)(3) of this section to establish each marriage to the claimant (if applicable);

(iv) A death certificate or divorce decree for each spouse of the claimant (if applicable);

(v) A death certificate for each of the other children of the claimant (if applicable);

(vi) An affidavit (or declaration under oath on the standard claim form) stating the following:

(A) That the claimant was never married, or, if the claimant was ever married, the name of each spouse, the date each marriage began and ended, and the date and place of divorce or death of the last spouse of the claimant; and

(B) That the claimant had no other children, or, if the claimant did have other children, the name of each child, the date and place of birth of each child, and the date and place of death or current address of each child; and

(vii) One of the following:

(A) In the case of a natural child, a birth certificate showing that the claimant was the child's parent, or a judicial decree identifying the claimant as the child's parent;

(B) In the case of an adopted child, the judicial decree of adoption; or

(C) In the case of a stepchild, evidence of birth to the spouse of the claimant as outlined above, and records reflecting that the stepchild lived with the claimant in a regular parent-child relationship.

(2) If the child is a member of an Indian Tribe, he or she need not provide any of the documents listed above in paragraph (f)(1) of this section at the time the claim is filed (although these records may later be required), but should instead furnish a signed release of private information that the Assistant Director will use to obtain a statement of verification of all of the information listed above directly from the tribal records custodian. In identifying those individuals eligible to receive compensation by virtue of survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

(g)(1) A parent of a claimant must establish his or her eligibility to file a claim by furnishing:

(i) His or her birth certificate and, if applicable, documentation demonstrating any and all name changes;

(ii) The birth and death certificates of the claimant;

(iii) One of the documents listed in paragraph (e)(3) of this section to establish each marriage to the claimant (if applicable);

(iv) A death certificate or divorce decree for each spouse of the claimant (if applicable);

(v) A death certificate for each child of the claimant (if applicable);

(vi) A death certificate for the other parent(s) (if applicable);

(vii) An affidavit (or declaration under oath on the standard claim form) stating the following:

(A) That the claimant was never married, or, if the claimant was ever married, the name of each spouse, the date each marriage began and ended, and the date and place of divorce or death of the last spouse of the claimant;

(B) That the claimant had no children, or, if the claimant did have children, the name of each child, the date and place of birth of each child, and the date and place of death of each child; and

(C) The name and address, or date and place of death, of the other parent(s) of the claimant; and

(viii) One of the following:

(A) In the case of a natural parent, a birth certificate showing that the claimant was the parent's child, or a judicial decree identifying the claimant as the parent's child; or

(B) In the case of an adoptive parent, the judicial decree of adoption.

(2) If the parent is a member of an Indian Tribe, he or she need not provide any of the documents listed in paragraph (g)(1) of this section at the time the claim is filed (although these records may later be required), but should instead furnish a signed release of private information that the Assistant Director will use to obtain a statement of verification of all of the information listed above directly from the tribal records custodian. In identifying those individuals eligible to receive compensation by virtue of survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

(h)(1) A grandchild of a claimant must establish his or her eligibility to file a claim by furnishing:

(i) His or her birth certificate and, if applicable, documentation demonstrating any and all name changes;

(ii) The birth and death certificates of the claimant;

(iii) One of the documents listed in paragraph (e)(1)(iii) of this section to establish each marriage to the claimant (if applicable);

(iv) A death certificate or divorce decree for each spouse of the claimant (if applicable);

(v) A death certificate for each child of the claimant;

(vi) A death certificate for each parent of the claimant;

(vii) A death certificate for each of the other grandchildren of the claimant (if applicable);

(viii) An affidavit (or declaration under oath on the standard claim form) stating the following:

(A) That the claimant was never married, or, if the claimant was ever married, the name of each spouse, the date each marriage began and ended, and the date and place of divorce or death of the last spouse of the claimant;

(B) The name of each child, the date and place of birth of each child, and the date and place of death of each child;

(C) The names of each parent of the claimant together with the dates and places of death of each parent; and

(D) That the claimant had no other grandchildren, or, if the claimant did have other grandchildren, the name of each grandchild, the date and place of birth of each grandchild, and the date and place of death or current address of each child; and

(ix) One of the following:

(A) In the case of a natural grandchild, a combination of birth certificates showing that the claimant was the grandchild's grandparent;

(B) In the case of an adopted grandchild, a combination of judicial records and birth certificates showing

that the claimant was the grandchild's grandparent; or

(C) In the case of a stepgrandchild, evidence of birth to the spouse of the child of the claimant, as outlined above, and records reflecting that the stepchild lived with a child of the claimant in a regular parent-child relationship.

(2) If the grandchild is a member of an Indian Tribe, he or she need not provide any of the documents listed above in paragraph (h)(1) of this section at the time the claim is filed (although these records may later be required), but should instead furnish a signed release of private information that the Assistant Director will use to obtain a statement of verification of all of the information listed above directly from the tribal records custodian. In identifying those individuals eligible to receive compensation by virtue of survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

(i)(1) A grandparent of the claimant must establish his or her eligibility to file a claim by furnishing:

(i) His or her birth certificate and, if applicable, documentation demonstrating any and all name changes;

(ii) The birth and death certificates of the claimant,

(iii) One of the documents listed in paragraph (e)(3) of this section to establish each marriage to the claimant (if applicable);

(iv) A death certificate or divorce decree for each spouse of the claimant (if applicable);

(v) A death certificate for each child of the claimant (if applicable);

(vi) A death certificate for each parent of the claimant;

(vii) A death certificate for each grandchild of the claimant (if applicable);

(viii) A death certificate for each of the other grandparents of the claimant (if applicable);

(ix) An affidavit stating the following:

(A) That the claimant was never married, or if the claimant was ever married, the name of each spouse, the date each marriage began and ended, and the date and place of divorce or death of the last spouse of the claimant;

(B) That the claimant had no children, or, if the claimant did have children, the name of each child, the date and place of birth of each child, and the date and place of death of each child;

(C) The names of each parent of the claimant together with the dates and places of death of each parent;

(D) That the claimant had no grandchildren, or, if the claimant did have grandchildren, the name of each grandchild, the date and place of birth of each grandchild, and the date and place of death of each grandchild; and

(E) The names of all other grandparents of the claimant together with the dates and places of birth of each grandparent, and the dates and places of death of each other grandparent or the current address of each other grandparent; and

(x) One of the following:

(A) In the case of a natural grandparent, a combination of birth certificates showing that the claimant was the grandparent's grandchild;

(B) In the case of an adoptive grandparent, a combination of judicial records showing that the claimant was the grandparent's grandchild.

(2) If the grandparent is a member of an Indian Tribe, he or she need not provide any of the documents listed above in paragraph (i)(1) of this section at the time the claim is filed (although these records may later be required), but should instead furnish a signed release of private information that the Assistant Director will use to obtain a statement of verification of all of the information listed above directly from the tribal records custodian. In identifying those individuals eligible to receive compensation by virtue of survivorship, the Assistant Director shall, to the maximum extent practicable, take into consideration and give effect to established law, tradition, and custom of the particular affected Indian tribe.

(j) A claim that was filed and denied may be filed again in those cases where the claimant or eligible surviving beneficiary obtains documentation that he or she did not possess when the claim was filed previously and that redresses the deficiency for which the claim was denied, including, where applicable, documentation addressing:

(1) An injury specified in the Act;

(2) Residency in the affected area;

(3) Onsite participation in a nuclear test;

(4) Exposure to 40 WLMs of radiation while employed in a uranium mine or mines during the designated time period;

(5) Employment for one year (12 consecutive or cumulative months) as a miller or ore transporter; or

(6) The identity of the claimant and/or the eligible surviving beneficiary.

(k) A claimant or eligible surviving beneficiary may not refile a claim more than two times. Claims filed prior to July 10, 2000, will not be included in determining the number of claims filed.

§ 79.72 Review and resolution of claims.

(a) *Initial review.* The Assistant Director shall conduct an initial review of each claim that has been filed to determine whether:

(1) The person submitting the claim represents that he or she is an eligible surviving beneficiary, in those cases where the claimant is deceased;

(2) The medical condition identified in the claim is a disease specified in the Act for which the claimant or eligible surviving beneficiary could recover compensation;

(3) For claims submitted under subparts B and C of this part, the period or place of physical presence set forth in the claim falls within the designated time period or affected areas identified in § 79.11;

(4) For claims submitted under subparts B and D of this part, the place and period of onsite participation set forth in the claim falls within the places and times set forth in § 79.11 and § 79.31; and

(5) For claims submitted under subparts E, F, and G of this part, the period or place of uranium mining, mill working or ore transporting set forth in the claim falls within the designated time period and specified states identified in §§ 79.42, 79.52, and 79.62.

If the Assistant Director determines from the initial review that any one of the applicable criteria is not met, or that any other criterion of the regulations is not met, the Assistant Director shall so advise the claimant or eligible surviving beneficiary in writing, setting forth the reasons for the determination, and allow the claimant or eligible surviving beneficiary 60 days from the date of such notification to correct any deficiency in the claim. If the claimant or eligible surviving beneficiary fails adequately to correct the deficiencies within the 60-day period, the Assistant Director shall, without further review, issue a Decision denying the claim.

(b) *Review of medical documentation.* The Assistant Director will examine the medical documentation submitted in support of the claim and determine whether it satisfies the criteria for eligibility established by the Act and these regulations. The Assistant Director may, for the purpose of verifying eligibility, require the claimant or eligible surviving beneficiary to provide an authorization to release any medical record identified in these regulations. If the Assistant Director determines that the documentation does not satisfy the criteria for eligibility established by the Act and these regulations, the Assistant Director shall so advise the claimant or eligible surviving beneficiary in writing, setting forth the reason(s) for the determination, and shall allow the claimant or eligible beneficiary 60 days from the date of notification, or such

greater period as the Assistant Director permits, to furnish additional medical documentation that meets the requirements of the Act and the regulations. Where appropriate, the Assistant Director may require the claimant or eligible surviving beneficiary to provide an authorization to release additional records. If the claimant or eligible beneficiary fails, within 60 days or the greater period approved by the Assistant Director, to provide sufficient medical documentation or a valid release when requested by the Assistant Director, then the Assistant Director shall, without further review, issue a Decision denying the claim.

(c) *Review of the records.* The Assistant Director will examine the other records submitted in support of the claim to prove those matters set forth in all other sections of the Act and the regulations, and will determine whether such records satisfy all other criteria for eligibility. For the purposes of verifying such eligibility, the Assistant Director may require the claimant or eligible surviving beneficiary to provide an authorization to release any record identified in these regulations. If the Assistant Director determines that the records do not satisfy the criteria for eligibility established by the Act and the regulations, the Assistant Director shall so advise the claimant or eligible surviving beneficiary in writing, setting forth the reasons for the determination, and shall provide the claimant or eligible surviving beneficiary 60 days from the date of notification, or such greater period as the Assistant Director permits, to furnish additional records to satisfy the requirements of the Act and the regulations. Where appropriate, the Assistant Director may require the claimant or eligible surviving beneficiary to provide an authorization to release additional records as an alternative to, or in addition to, the claimant or eligible beneficiary furnishing such additional records. If the claimant or eligible beneficiary fails, within sixty days or the greater period approved by the Assistant Director, to provide sufficient records or a valid release when requested by the Assistant Director, then the Assistant Director shall, without further review, issue a Decision denying the claim.

(d) *Decision.* The Assistant Director shall review each claim and issue a written Decision on each claim within twelve months of the date the claim was filed. The Assistant Director may request from any claimant, or from any individual or entity on behalf of the claimant, any relevant additional information or documentation necessary to complete the determination of eligibility under paragraphs (a), (b), or (c) of this section. The period beginning on the date on which the Assistant Director makes a request for such additional information or documentation and ending on the date on which the claimant or individual or entity acting on behalf of the claimant submits that information or documentation (or informs the Assistant Director that it is not possible to provide that information or that the claimant or individual or entity will not provide that information) shall not apply to the twelve-month period. Any Decision denying a claim shall set forth reason(s) for the denial, shall indicate that the Decision of the Assistant Director may be appealed to the Assistant Attorney General, Civil Division, in writing within 60 days of the date of the Decision, or such greater period as may be permitted by the Assistant Attorney General, and shall identify the address to which the appeal should be sent.

§ 79.73 Appeals procedures.

(a) An appeal must be in writing and must be received by the Radiation Exposure Compensation Program within sixty days of the date of the Decision denying the claim, unless a greater period has been permitted. Appeals must be sent to the following address: Radiation Exposure Compensation Program, Appeal of Decision, U.S. Department of Justice, P.O. Box 146, Ben Franklin Station, Washington, DC 20044–0146.

(b) The claimant or eligible surviving beneficiary must set forth in the appeal the reason(s) why he or she believes that the Decision of the Assistant Director is incorrect.

(c) Upon receipt of an appeal, the Radiation Exposure Compensation Program shall forward the appeal, the Decision, the claim, and all supporting documentation, to the Assistant Attorney General, or to the Appeals Officer if one is designated, for action on the appeal. If the appeal is not received within the 60-day period, or such greater period as may be permitted, the appeal may be denied without further review.

(d) The Assistant Attorney General or Appeals Officer shall review any appeal and other information forwarded by the Program. Within 90 days after the receipt of an appeal, the Assistant Attorney General or Appeals Officer shall issue a Memorandum either affirming or reversing the Assistant Director's Decision or, when appropriate, remanding the claim to the Assistant Director for further action. The Memorandum shall include a statement of the reason(s) for such reversal, affirmance, or remand. The Memorandum and all papers relating to the claim shall be returned to the Radiation Exposure Compensation Program, which shall promptly inform the claimant or eligible surviving beneficiary of the action of the Assistant Attorney General or Appeals Officer. A Memorandum affirming or reversing the Assistant Director's Decision shall be deemed to be the final action of the Department of Justice on the claim.

(e) Before seeking judicial review of a decision denying a claim under the Act, an individual must first seek review by the designated Appeals Officer. Once the appeals procedures are completed, an individual whose claim for compensation under the Act is affirmed on appeal may seek judicial review in a district court of the United States.

§ 79.74 [Reserved]

§ 79.75 Procedures for payment of claims.

(a) Payment shall be made to the claimant or to the legal guardian of the claimant, unless the claimant is deceased at the time of the payment. In cases involving a claimant who is deceased, payment shall be made to an eligible surviving beneficiary or to the legal guardian acting on behalf of the eligible surviving beneficiary, in accordance with the terms and conditions specified in the Act. Once the Program has received the claimant's or eligible surviving beneficiary's election to accept the payment, the Assistant Director shall ensure that the claim is paid within six weeks. All time frames for processing claims under the Act are suspended during periods where the radiation Trust Fund is not funded.

(b) In cases involving the approval of a claim, the Assistant Director shall take all necessary and appropriate steps to determine the correct amount of any offset to be made to the amount awarded under the Act and to verify the identity of the claimant or the existence of eligible surviving beneficiaries who are entitled by the Act to receive the payment the claimant would have received. The Assistant Director may conduct any investigation, and may require any claimant or eligible surviving beneficiary to provide or execute any affidavit, record, or document or authorize the release of any information the Assistant Director deems necessary to ensure that the compensation payment is made in the correct amount and to the correct person(s). If the claimant or eligible surviving beneficiary fails or refuses to execute an affidavit or release of

information, or to provide a record or document requested, or fails to provide access to information, such failure or refusal may be deemed to be a rejection of the payment, unless the claimant or eligible surviving beneficiary does not have and cannot obtain the legal authority to provide, release or authorize access to the required information, records or documents.

(c) Prior to authorizing payment, the Assistant Director shall require the claimant or each eligible surviving beneficiary to execute and provide an affidavit (or declaration under oath on the standard claim form) setting forth the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation), against any person, that is based on injuries incurred by the claimant on account of:

(1) Exposure to radiation from atmospheric nuclear testing while present in an affected area (as defined in § 79.11(a) of these regulations) at any time during the periods described in § 79.11(c) of these regulations; or

(2) Exposure to radiation during employment in a uranium mine, during employment as a uranium mill worker or during employment as an ore transporter at any time during the period described in section 5 of the Act. For purposes of this paragraph, a "claim" includes, but is not limited to, any request or demand for money made or sought in a civil action or made or sought in anticipation of the filing of a civil action, but shall not include requests or demands made pursuant to a life insurance or health insurance contract. If any such award or settlement payment was made, the Assistant Director shall subtract the sum of such award or settlement payments from the payment to be made under the Act.

(d) In the case of a claim filed under section 4(a)(1)(A)(i)(III) or section 4(a)(2)(C) of the Act, the Assistant Director shall require the claimant or each eligible surviving beneficiary to execute and provide an affidavit (or declaration under oath on the standard claim form) setting forth the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation) against any person or any payment made by the Department of Veterans Affairs, that is based on injuries incurred by the claimant on account of exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device. For purposes of this paragraph, a "claim" includes, but is not limited to, any request or demand for money made or sought in a civil action or made or sought in anticipation of a civil action, but shall not include requests or demands made pursuant to a life- or health-insurance contract.

(1) Payments by the Department of Veterans Affairs shall include:

(i) Any disability payments or compensation benefits paid to the claimant and his or her dependents while the claimant is alive; and

(ii) Any Dependency and Indemnity Compensation payments made to survivors due to death related to the illness for which the claim under the Act is submitted.

(2) Payments by the Department of Veterans Affairs shall not include:

(i) Active duty pay, retired pay, retainer pay, or payments under the Survivor Benefits Plan;

(ii) Death gratuities;

(iii) SGLI, VGLI, or mortgage, life or health insurance payments;

(iv) Burial benefits or reimbursement for burial expenses;

(v) Loans or loan guarantees;

(vi) Education benefits and payments;

(vii) Vocational rehabilitation benefits and payments;

(viii) Medical, hospital and dental benefits; or

(ix) Commissary and PX privileges.

(e) If any such award, settlement, or payment was made as described in paragraphs (c) or (d) of this section, the Assistant Director shall calculate the actuarial present value of such payment(s), and subtract the actuarial present value from the payment to be made under the Act. The actuarial present value shall be calculated using the worksheet attached as appendix C of this part in the following manner:

(1) Step 1. Enter the sum of the past payments received in each year in the appropriate rows in column (2). Additional rows will be added as needed to calculate present value of payments received in the years prior to 1960 and after 1990.

(2) Step 2. Enter the present CPI–U (to be obtained monthly from the Bureau of Labor Statistics, Department of Labor) in column (3).

(3) Step 3. Enter the CPI (Major Expenditure Classes—All Items) for each year in which payments were received in the appropriate row in column (4). (These measures are provided for 1960 through 1990. The measures for subsequent years will be obtained from the Bureau of Labor Statistics.)

(4) Step 4. For each row, multiply the amount in column (2) by the corresponding inflator (column (3) divided by column (4)) and enter the product in column (5).

(5) Step 5. Add the products in column (5) and enter the sum on the line labeled "Total of column (5) equals actuarial present value of past payments."

(6) Step 6. Subtract the total in Step 5 from the statutory payment of $75,000 and enter the remainder on the line labeled "Net Claim Owed To Claimant."

(f) When the Assistant Director has verified the identity of the claimant or each eligible surviving beneficiary who is entitled to the compensation payment or to a share of the compensation payment, and has determined the correct amount of the payment or the share of the payment, he or she shall notify the claimant or each eligible surviving beneficiary, or his or her legal guardian, and require such person(s) to sign an Acceptance of Payment Form. Such form shall be signed and returned within 60 days of the date of the form or such greater period as may be allowed by the Assistant Director. Failure to return the signed form within the required time may be deemed to be a rejection of the payment. Signing and returning the form within the required time shall constitute acceptance of the payment, unless the individual who has signed the form dies prior to receiving the actual payment, in which case the person who possesses the payment shall return it to the Assistant Director for redetermination of the correct disbursement of the payment.

(g) Rejected compensation payments or shares of compensation payments shall not be distributed to other eligible surviving beneficiaries, but shall be returned to the Trust Fund for use in paying other claims.

(h) Upon receipt of the Acceptance of Payment Form, the Assistant Director or the Constitutional and Specialized Tort Staff Director or Deputy Director, or their designee, shall authorize the appropriate authorities to issue a check to the claimant or to each eligible surviving beneficiary who has accepted payment out of the funds appropriated for this purpose.

(i) *Multiple payments.* (1) No claimant may receive payment under more than one subpart of these regulations for illnesses that he or she contracted. In addition to one payment for his or her illnesses, he or she may also receive one payment for each claimant for whom he or she qualifies as an eligible surviving beneficiary.

(2) An eligible surviving beneficiary who is not also a claimant may receive one payment for each claimant for whom he or she qualifies as an eligible surviving beneficiary.

Dated: July 24, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–19221 Filed 8–6–02; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 79

[CIV101P; AG Order No. 2605–2002]

RIN 1105–AA75

Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Expansion of Coverage to Uranium Millers and Ore Transporters; Expansion of Coverage for Uranium Miners; Representation and Fees

AGENCY: Civil Division, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice ("the Department") proposes to amend its existing regulations implementing the Radiation Exposure Compensation Act ("the Act") to reflect amendments to the Act made in the Radiation Exposure Compensation Act Amendments of 2000 ("2000 Amendments"), enacted on July 10, 2000. This is the second of two related rulemakings and is a proposed rule. The related rulemaking is a final rule published elsewhere in this issue of the **Federal Register**. This proposed rule describes the expanded population of eligible uranium mine workers created by lowering the radiation exposure threshold for miners; identifies the new uranium mining states with respect to which miners may be eligible for compensation; includes provision for compensation to "aboveground" miners; sets forth employment eligibility criteria for the new claimant categories; describes the documentation that would be required to establish proof of employment in a uranium mine or mill or as an ore transporter; describes the medical documentation necessary to establish the existence of renal cancer and chronic renal disease; and revises the provision concerning representation of claimants before the Department of Justice with respect to claims brought under the Act.

DATES: Written comments must be submitted on or before October 7, 2002.

ADDRESSES: Please submit written comments to Gerard W. Fischer, Assistant Director, U.S. Department of Justice, Civil Division, P.O. Box 146, Ben Franklin Station, Washington, DC 20044–0146.

FOR FURTHER INFORMATION CONTACT: Gerard W. Fischer (Assistant Director), (202) 616–4090, and Dianne S. Spellberg (Senior Counsel), (202) 616–4129.

SUPPLEMENTARY INFORMATION: On July 10, 2000, the Radiation Exposure Compensation Act Amendments of 2000 were enacted, providing expanded coverage to individuals who developed one of the diseases specified in the amended Act following exposure to radiation related to the Federal Government's atmospheric nuclear weapons program or as a result of employment in the uranium production industry. This rule proposes amendments to the regulations governing radiation exposure compensation claims, principally in order to implement the 2000 Amendments' expansion of the Act to cover uranium mill workers and individuals employed in the transport of uranium ore or vanadium-uranium ore, and to expand the population of eligible uranium mine workers by lowering the radiation exposure threshold for miners, by enlarging the number of uranium mining states with respect to which miners may be eligible for compensation, and by including "aboveground" miners within the scope of the regulations.

This proposed rule sets forth the criteria that a claimant must establish to be eligible for compensation under certain provisions of the Act. Section 5(a)(1)(A) of the amended Act provides that certain "miners," "millers," and "ore transporters" are eligible for compensation. The terms "miner," "miller," and "ore transporter" are not self-defining. The definitions of those terms in the proposed rule are drafted broadly, reflecting the statutory objective to provide comprehensive compensation to all persons who contracted serious illnesses as a result of employment in uranium mines or uranium mills and as ore transporters. The structure of section 5(a)(1)(A) of the Act, as well as the legislative history, strongly indicate that Congress intended the words "miner" and "miller" to be simple shorthands for anyone who was employed in a uranium mine and a uranium mill, respectively. Accordingly, the proposed rule adopts broad definitions of the words "miner" and "miller." Similarly, the rule defines an "ore transporter" as someone whose employment involved the transportation or hauling of uranium ore or vanadium-uranium ore from a uranium mine or uranium mill, including the transportation or hauling of ore from the ore buying station, "upgrader," "concentrator" facility, or pilot plant areas of a mill by means of truck, rail, or barge.

The rule replaces the radiation exposure thresholds for claimants who were miners with a single minimum exposure level. Specifically, the requirement that a claimant or beneficiary establish exposure to 200 working level months (WLMs) of radiation if the claimant was a non-smoker and 300 WLMs if the claimant was a smoker and diagnosed with a compensable disease before age 45 (and 500 WLMs if a smoker and diagnosed after age 45) is stricken. Instead, a miner must establish a single exposure level of 40 WLMs of radiation to satisfy that "uranium miner" eligibility criterion.

The list of states in which an individual was employed in a uranium mine for purposes of establishing eligibility has been expanded to include South Dakota, Washington, Idaho, North Dakota, Oregon, and Texas. In addition, the Act provides that other states may be included for coverage if certain specific requirements are satisfied. The definition of "uranium mine" contained in the Act's provisions has been adopted in the rule and, accordingly, the rule expands coverage under the regulations to persons who worked in "aboveground" uranium mines.

In the case of millers and ore transporters—who are covered under the Act by virtue of the 2000 Amendments—the Act does not require specific proof of a certain level of exposure to radiation (as is required for miners), but instead require proof merely that a claimant was employed for at least one year in a uranium mill (as that term is defined in the proposed regulations), or in the transport of uranium ore or vanadium-uranium ore, in those states and during the time period specified in the Act. In addition, the claimant must have contracted a specified illness following such employment. The proposed rule describes the work history documentation required to establish proof of employment as a miller or as an ore transporter. The rule identifies numerous types of records that a claimant may submit to establish employment history. Moreover, the Department has accumulated extensive data to assist in evaluating a claimant's history of employment as a miller or as an ore transporter, including data obtained from a team of medical and scientific experts at the National Institute for Occupational Safety and Health (NIOSH) in Cincinnati, Ohio, who are studying the effects of radiation on mill workers. NIOSH was instrumental in detailing the work records it has accummulated for purposes of its studies and the personnel records that were available from the uranium mill companies. In addition, milling consultants for the Department provided extensive information during the course of a training workshop relative to the history of uranium milling for the period January 1, 1942, through December 31,

1971. The types of information and data collected by the Department include an exhaustive compilation of all uranium mills by state, size of the mills, tons of ore processed, ore types, type of milling circuit(s) at each mill, the number of employees at each mill, wage rate information, the ore suppliers (mines), and, in some instances, the names of the ore transporting companies that delivered the product from mine to mill. In light of the limited information available concerning ore transporting during the relevant period (1942–1971), the Department is particularly interested in receiving comments from individuals who operated ore transporting companies, or who were otherwise employed as ore haulers or transporters.

The proposed rule identifies particular forms of medical documentation that claimants can, and in some cases, must, provide in order to establish the existence of compensable diseases for miners, millers, and ore transporters, and also identifies other categories of health and medical records that the Department ordinarily will consult in determining whether there is sufficient evidence of disease to warrant compensation. In cases of claimants who are deceased and living claimants who were millers or ore transporters and who developed renal cancer or another chronic renal disease, the Act does not require submission of any particular form of written medical documentation. Section 5(b)(5) of the Act, however, requires that living claimants who developed lung cancer or a nonmalignant respiratory disease provide certain forms of written medical documentation, which are specified in the proposed rule. The proposed rule also reflects the requirements in section 5(c) of the Act that the Department treat certain forms of written medical documentation as conclusive evidence that a living claimant developed a nonmalignant respiratory disease or lung cancer. The proposed rule does not independently address the provisions concerning conclusive evidence in section 5(c)(2)(B) of the Act, because that section is substantially identical to section 5(c)(1)(B) and appears to have been included in the 2000 Amendments in error. The Department requests public comments on whether the regulations should accord any additional, independent effect to section 5(c)(2)(B).

The proposed rule provides specific clarification of the showing necessary to establish that a claimant developed renal cancer and chronic renal disease. (The renal cancer and chronic renal disease regulations apply only to millers and to ore transporters. The Act does not prescribe compensation for miners who contracted renal cancer or chronic renal disease.) The Department consulted with medical experts at the National Cancer Institute and NIOSH in order to identify what a claimant should document in order to establish that the claimant developed these illnesses. An expansive understanding of "renal disease" could imply a broad spectrum of impairment ranging from "acute disease"' to "chronic disease." However, because the revised Act provides compensation only for "chronic" illness, the Department determined that a minimum level of impairment must be demonstrated. Some individuals with diabetes would be able to present medical documentation reflecting an elevated creatinine, which is symptomatic of both chronic renal disease and diabetes, without an actual diagnosis of chronic renal disease. The Department was advised by NIOSH to include certain diagnostic criteria to preclude compensating claimants for a condition not covered by the Act.

Finally, section 79.74 of the proposed rule revises the regulation (currently 28 CFR 79.54) concerning representation of claimants and beneficiaries before the Department. The revised regulation implements the provision contained in section 9 of the amended Act limiting the fees that representatives of claimants and beneficiaries may receive in connection with a claim under the Act. In addition, the proposed rule would require that a claimant's or beneficiary's representative before the Radiation Exposure Compensation Program ("Program") be either an attorney or a representative of a federally recognized Indian tribe. The section heading of section 9 of the amended Act ("Attorney Fees"), as well as certain statements in the legislative history of the 2000 Amendments, *see, e.g.*, H.R. Rep. 106–697, at 12, 16 (2000), suggest a possible congressional assumption that "representatives" of claimants and beneficiaries would be attorneys. Nevertheless, nothing in the Act, in the Administrative Procedure Act, or in any other law either prohibits or requires the Department of Justice to permit non-attorneys to represent claimants and beneficiaries before the Department with respect to radiation exposure compensation claims. *See* 5 U.S.C. 500(d)(1), 555(b). In the absence of such specific statutory direction, Congress has left it within the discretion of the Department to decide whether or not to permit "duly qualified" persons, *see* 5 U.S.C. 555(b), other than attorneys to represent interested parties in administrative proceedings before the Department. *See Sperry* v. *Florida*, 373 U.S. 379, 396–98 (1963). The Department has determined generally not to permit non-attorneys to represent claimants and beneficiaries before the Program with respect to radiation exposure compensation claims. The Department is of the view that claimants and beneficiaries would be best served by relying on the expertise and legal training of attorneys in cases where such claimants and beneficiaries determine it would be beneficial to use the services of a representative. Moreover, an attorney representing a claimant or beneficiary before the Department must be a member in good standing of the bar of the highest court of a state, 5 U.S.C. 500(b), which provides assurance that an attorney representative will be subject to oversight and disciplinary rules that will best guarantee faithful, ethical, and adequate representation of claimants and beneficiaries. An attorney representative may hire, and make use of, experts, aids, paralegals, and other persons who are not attorneys. The use of such assistants and experts, however, will not affect the fee limitations specified in the Act and in this proposed rule, which establish an overall limitation on the total amount of fees that a representative, along with his or her assistants and experts, may receive. The proposed rule permits an exception to the attorney requirement for claimant or beneficiary representatives who are representatives of a federally recognized Indian tribe. This exception is included in recognition of the role such tribal representatives traditionally have played in representing claimants; the specialized knowledge and expertise such representatives have developed with respect to the language, culture, and familial relationships of claimants who are tribal members; and Congress's directive in section 6(d)(5) of the amended Act that "[a]ny procedures under this subsection shall take into consideration and incorporate, to the fullest extent feasible, Native American law, tradition, and custom with respect to the submission and processing of claims by Native Americans."

A Final Rulemaking Related to This Proposed Rulemaking

Elsewhere in today's issue of the **Federal Register** the Department is publishing a related, final rule entitled *Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Technical Amendments* (CIV 100). That final rule is technical in nature and provides conforming amendments to

implement the Radiation Exposure Compensation Act Amendments of 2000.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the following reason: The claimant population benefitted by these regulations is limited to persons who developed a specified illness following exposure to radiation related to the Federal Government's atmospheric nuclear weapons program or as a result of employment in the uranium production industry. The regulations set forth eligibility criteria that individual claimants must satisfy in order to be eligible for compensation. They will have no impact on small business competitiveness.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget.

It is not clear whether this proposed rule should be considered "economically significant." The uncertainty arises from the inability to quantify with precision the number of miners, millers and ore transporters that contracted one of the occupational illnesses compensable under the Act and the attendant economic impact of their receipt of benefits. In the event that the measure of these benefits exceeds $100 million, then this proposed rule will be "economically significant." To date, after nearly 24 months of operation under the new law, less than $20 million has been approved for newly eligible miners, millers, and ore transporters. It is difficult at this time to ascertain whether the cumulative economic impact of claims brought by such persons will eventually reach the $100 million threshold amount. Accordingly, the Department requests public comment on the issue of whether this rule should be considered "economically significant."

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

Because of the uncertainty of the eventual cumulative impact of the new provisions reflected in this rule, the Department is uncertain whether this rule meets the standard for a major rule. At present, the Department is of the opinion that this is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804, and that it will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

Information collection associated with this regulation has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995. The OMB control number for this collection is 1105–0052.

List of Subjects in 28 CFR Part 79

Administrative practice and procedure, Authority delegations (Government agencies), Cancer, Claims, Radiation Exposure Compensation Act, Radioactive materials, Reporting and recordkeeping requirements, Uranium mining, Uranium milling, Uranium, Uranium ore hauling.

Accordingly, the Department of Justice proposes to amend part 79 of chapter I of Title 28 of the Code of Federal Regulations as follows:

PART 79—CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT

1. The authority citation for part 79 is revised to read as follows:

Authority: Secs. 6(a), 6(i) and 6(j), Pub. L. 101–426, 104 Stat. 920, as amended by sections 3(c)–(h), Pub. L. 106–245, 114 Stat. 501 (42 U.S.C. 2210 note; 5 U.S.C. 500(b)).

2. Subparts E, F, and G and § 79.74 of subpart H are added, to read as follows:

Subpart E—Uranium Miners

Sec.
79.40 Scope of subpart.
79.41 Definitions.
79.42 Criteria for eligibility.
79.43 Proof of employment as a miner.
79.44 Proof of working level month exposure to radiation.
79.45 Proof of lung cancer.
79.46 Proof of nonmalignant respiratory disease.

Subpart F—Uranium Millers

79.50 Scope of subpart.
79.51 Definitions.
79.52 Criteria for eligibility.
79.53 Proof of employment as a miller.
79.54 Proof of lung cancer.
79.55 Proof of nonmalignant respiratory disease.
79.56 Proof of renal cancer.
79.57 Proof of chronic renal disease.

Subpart G—Ore Transporters

79.60 Scope of subpart.
79.61 Definitions.
79.62 Criteria for eligibility.
79.63 Proof of employment as an ore transporter.
79.64 Proof of lung cancer.
79.65 Proof of nonmalignant respiratory disease.
79.66 Proof of renal cancer.
79.67 Proof of chronic renal disease.

Subpart E—Uranium Miners

§ 79.40 Scope of subpart.

The regulations in this subpart define the eligibility criteria for compensation under section 5 of the Act pertaining to miners, i.e., uranium mine workers, and the nature of the evidence that will be accepted as proof of the various criteria. Section 5 of the Act provides for a payment of $100,000 to miners who contracted lung cancer or one of a limited number of nonmalignant respiratory diseases following exposure to a defined minimum level of radiation

during employment in an aboveground or underground uranium mine or uranium mines in specified states during the period beginning January 1, 1942, and ending December 31, 1971.

§ 79.41 Definitions.

(a) *Cor pulmonale* means heart disease, including hypertrophy of the right ventricle, due to pulmonary hypertension secondary to fibrosis of the lung.

(b) *Designated time period* means the period beginning on January 1, 1942, and ending on December 31, 1971.

(c) *Fibrosis of the lung or pulmonary fibrosis* for purposes of the Act and these regulations means chronic inflammation and scarring of the pulmonary interstitium and alveoli with collagen deposition and progressive thickening causing pulmonary impairment.

(d) *Lung cancer* means any physiological condition of the lung, trachea, or bronchus that is recognized under that name or nomenclature by the National Cancer Institute. The term includes in situ lung cancers.

(e) *Miner* or *uranium mine worker* means a person who operated or otherwise worked in a uranium mine.

(f) *National Institute for Occupational Safety and Health (NIOSH) certified "B" reader* means a physician who is certified as such by NIOSH. A list of certified "B" readers is available from the Radiation Exposure Compensation Program upon request.

(g) *Nonmalignant respiratory disease* means fibrosis of the lung, pulmonary fibrosis, cor pulmonale related to fibrosis of the lung, silicosis, or pneumoconiosis.

(h) *Pneumoconiosis* means a chronic lung disease resulting from inhalation and deposition in the lung of particulate matter, and the tissue reaction to the presence of the particulate matter.

(i) *Readily available documentation* means documents in the possession, custody, or control of the claimant or an immediate family member.

(j) *Silicosis* means a pneumoconiosis due to the inhalation of the dust of stone, sand, flint, or other materials containing silicon dioxide, characterized by the formation of pulmonary fibrotic changes.

(k) *Specified state* means Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, or Texas. Additional states may be included, provided:

(1) An Atomic Energy Commission uranium mine was operated in such state at any time during the period beginning on January 1, 1942, and ending on December 31, 1971;

(2) The state submits an application to the Assistant Director (specified in 28 CFR 79.70(a)) to include such state; and

(3) the Assistant Director makes a determination to include such state.

(l) *Uranium mine* means any underground excavation, including "dog holes" and open-pit, strip, rim, surface, or other aboveground mines where uranium ore or vanadium-uranium ore was mined or otherwise extracted.

(m) *Working level* means the concentration of the short half-life daughters of radon that will release (1.3×10^5) million electron volts of alpha energy per liter of air.

(n) *Working level month of radiation* means radiation exposure at the level of one working level every work day for a month, or an equivalent cumulative exposure over a greater or lesser amount of time.

(o) *Written diagnosis by a physician* means a written determination of the nature of a disease made from a study of the signs and symptoms of a disease that is based on a physical examination of the patient, medical imaging or a chemical, microscopic, microbiologic, immunologic or pathologic study of physiologic and functional tests, secretions, discharges, blood, or tissue. For purposes of satisfying the requirement of a "written diagnosis by a physician" for living claimants specified in §§ 79.45 and 79.46, a physician submitting a written diagnosis of a nonmalignant respiratory disease or lung cancer must be employed by the Indian Health Service or the Department of Veterans Affairs or be certified by a state medical board, and must have a documented, ongoing physician-patient relationship with the claimant. An "ongoing physician-patient relationship" can include referrals made to specialists from a primary care provider (and accepted by the primary care provider) for purposes of diagnosis or treatment.

§ 79.42 Criteria for eligibility.

To establish eligibility for compensation under this subpart, a claimant or eligible surviving beneficiary must establish each of the following:

(a) The claimant was employed as a miner in a specified state;

(b) The claimant was so employed at any time during the period beginning on January 1, 1942, and ending on December 31, 1971;

(c) The claimant was exposed during the course of his or her mining employment to 40 or more working level months of radiation; and

(d) The claimant contracted lung cancer or a nonmalignant respiratory disease following such exposure.

§ 79.43 Proof of employment as a miner.

(a) The Department will accept, as proof of employment for a designated time period, information contained in any of the following records:

(1) Records created by or gathered by the Public Health Service (PHS) in the course of any health studies of uranium workers during or including the period 1942–1990;

(2) Records of a uranium worker census performed by the PHS at various times during the period 1942–1990;

(3) Records of the Atomic Energy Commission (AEC), or any of its successor agencies; and

(4) Records of federally supported, health-related studies of uranium workers, including:

(i) Studies conducted by Geno Saccamanno, M.D., St. Mary's Hospital, Grand Junction, Colorado; and

(ii) Studies conducted by Jonathan Samet, M.D., University of New Mexico School of Medicine.

(b) The Program will presume that the employment history for the time period indicated in records listed in paragraph (a) of this section is correct. If the claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may provide one or more of the records identified in paragraph (c) of this section, and the Assistant Director will determine whether the employment history indicated in the records listed in paragraph (a) is correct.

(c) If the sources in paragraph (a) of this section do not contain information regarding the claimant's uranium mine employment history, do not contain sufficient information to establish exposure to at least 40 working level months of radiation, or if a claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may submit records from any of the following sources, and the Assistant Director shall consider such records (in addition to any sources listed in paragraph (a) of this section) in order to determine whether the claimant has established the requisite employment history:

(1) Governmental records of any of the specified states, including records of state regulatory agencies, containing information on uranium mine workers and uranium mines;

(2) Records of any business entity that owned or operated a uranium mine, or its successor-in-interest;

(3) Records of the Social Security Administration reflecting the identity of the employer, the years and quarters of employment, and the wages received during each quarter;

(4) Federal or state income tax records that contain relevant statements regarding the claimant's employer and wages;

(5) Records containing factual findings by any governmental judicial body, state worker's compensation board, or any governmental administrative body adjudicating the claimant's rights to any type of benefits (which will be accepted only to prove the fact of and duration of employment in a uranium mine);

(6) Statements in medical records created during the period 1942–1971 indicating or identifying the claimant's employer and occupation;

(7) Records of an academic or scholarly study, not conducted in anticipation of or in connection with any litigation, and completed prior to 1990; and

(8) Any other contemporaneous record that indicates or identifies the claimant's occupation or employer.

(d) To the extent that the documents submitted from the sources identified in this section do not so indicate, the claimant or eligible surviving beneficiary must set forth under oath on the standard claim form the following information, if known:

(1) The names of the mine employers for which the claimant worked during the time period identified in the documents;

(2) The names and locations of any mines in which the claimant worked;

(3) The actual time period the claimant worked in each mine;

(4) The claimant's occupation in each mine; and

(5) Whether the mining employment was conducted aboveground or underground.

(e) If the claimant or eligible surviving beneficiary cannot provide the name or location of any uranium mine at which the claimant was employed as required under paragraph (d)(2) of this section, then the Program shall, if possible, determine such information from records reflecting the types of mines operated or owned by the entity for which the claimant worked.

(f) If the information provided under paragraphs (a) and (c) of this section is inadequate to determine the time period during which the claimant was employed in each uranium mine, then the Program will, where possible, calculate such employment periods in the following manner, for purposes of calculating working level months of exposure:

(1) If records of the Social Security Administration exist that indicate the claimant's work history, the Program will estimate the period of employment by dividing the gross quarterly income by the average pay rate per hour for the claimant's occupation;

(2) If such Social Security Administration records do not exist, but other records exist that indicate that the claimant was employed in a uranium mine on the date recorded in the record, but do not indicate the period of employment, then the Program will apply the following presumptions:

(i) If the records indicate that the claimant worked at the same mine or for the same uranium mining company on two different dates at least three months apart but less than 12 months apart, then the Program will presume that the claimant was employed at the mine or for the mining company for the entire 12-month period beginning on the earlier date.

(ii) If the records indicate that the claimant worked at the same mine or for the same uranium mining company on two different dates at least one month apart but less than three months apart, then the Program will presume that the claimant was employed at the mine or for the mining company for the entire six-month period beginning on the earlier date.

(iii) If the records indicate that the claimant worked at any mine or for a uranium mining company on any date within the designated time period, but the presumptions listed above are not applicable, then the Program will presume that the claimant was employed at the mine or for the mining company for a six-month period, consisting of three months before and three months after the date indicated.

(g) In determining whether a claimant satisfies the employment and exposure criteria of the Act, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. If the Assistant Director concludes that the claimant has not satisfied the employment or exposure requirements of the Act, the claimant or eligible surviving beneficiary will be notified and afforded the opportunity, in accordance with the provisions of § 79.72(c), to submit additional records to establish that the statutory criteria are satisfied.

§ 79.44 Proof of working level month exposure to radiation.

(a) If one or more of the sources in § 79.43(a) contain a calculated total of working level months (WLMs) of radiation for the claimant equal to or greater than 40 WLMs, then the Program will presume that total to be correct, absent evidence to the contrary, in which case the claimant or eligible surviving beneficiary need not submit additional records.

(b) If the sources in § 79.43(a) do not contain a calculated total of WLMs of radiation for the claimant, or contain a calculated total that is less than 40 WLMs, a claimant or eligible surviving beneficiary may submit the following records reflecting a calculated number of WLMs of radiation for periods of employment established under § 79.43(c):

(1) Certified copies of records of regulatory agencies of the specified states, provided that the records indicate the mines at which the claimant was employed, the time period of the claimant's employment in each mine, the exposure level in each mine during the claimant's employment, and the calculations on which the claimant's WLMs are based, unless the calculation is apparent;

(2) Certified copies of records of the owner or operator of a uranium mine in the specified states, provided that the records indicate the mines at which the claimant was employed, the time period of the claimant's employment in each mine, the exposure level in each mine during the claimant's employment, and the calculations on which the claimant's WLMs are based, unless the calculation is apparent.

(c) If the number of WLMs established under paragraphs (a) and (b) of this section is equal to or greater than 40 WLMs of radiation, the claimant or eligible surviving beneficiary need not submit additional records. When the sources referred to in paragraphs (a) and (b) of this section do not establish a calculated number of at least 40 WLMs, the Program will, where possible, calculate additional WLMs in the manner set forth in paragraphs (d) through (g) of this section for the periods of employment for which the sources in paragraphs (a) and (b) do not establish calculated totals. When calculating an exposure level for a particular period of a claimant's employment history, the Program will apply aboveground exposure levels with respect to those periods in which the claimant worked principally aboveground and will apply underground exposure levels with respect to those periods in which the claimant worked principally underground.

(d) To the extent the sources referred to in paragraphs (a) and (b) of this section do not contain a calculated number of WLMs, but do contain annual

exposure levels measured in Working Levels (WLs) for mines in which the claimant was employed, the Program will calculate the claimant's exposure to radiation measured in WLMs in the manner set forth in paragraph (h) of this section.

(e) For periods of employment in a uranium mine that a claimant establishes under § 79.43(c) as to which paragraph (d) of this section is not applicable, the Program will, where possible, use any or all of the following sources in computing the annual exposure level measured in WLs in each mine for the period of the claimant's employment, in the manner set forth in paragraph (g) of this section:

(1) Records of the AEC, or its successor agencies;

(2) Records of the PHS, including radiation-level measurements taken in the course of health studies conducted of uranium miners during or including the period 1942–1971;

(3) Records of the United States Bureau of Mines;

(4) Records of regulatory agencies of the specified states; or

(5) Records of the business entity that was the owner or operator of the mine.

(f) For periods of employment in unidentified or misidentified uranium mines that a claimant establishes under § 79.43(c)–(f), the Program will determine annual exposure levels measured in WLs in the unidentified or misidentified mines by calculating an average of the annual exposure levels measured in WLs in all the uranium mines owned or operated by the entities for which the claimant worked during the appropriate time periods and in the identified states.

(g) With respect to periods of employment in a uranium mine that a claimant establishes under § 79.43(c) as to which paragraph (d) of this section is not applicable, and periods of employment in unidentified or misidentified uranium mines that a claimant establishes under § 79.43(c)–(f), the Program will use the following methodology to calculate the annual exposure level measured in WLs for each mine:

(1) If one or more radiation measurements are available for a mine in a given year, such values will be averaged to generate the WLs for the mine for that year.

(2) If radiation measurements exist for the mine, but not for the year in which the claimant was employed in the mine, the WLs for the mine for that year will be estimated if possible as follows:

(i) If annual average measurements exist within four years of the year in which the claimant was employed in the mine, the measurements for the two years closest will be averaged, and that value will be assigned to the year the claimant was employed in the mine;

(ii) If one or more annual average measurements exist for a mine, but are not more than five years from the year the claimant was employed, the annual average closest in time will be assigned either forward or backward in time for two years.

(3) If the methods described in paragraphs (g)(1) and (2) of this section interpolate or project the annual exposure level measured in WLs for a mine in a year in which the claimant was employed in the mine, the Program will use an estimated average for mines of the same or similar type, ventilation, and ore composition in the same geographical area for that year. An estimated area average will be calculated as follows:

(i) If actual measurements from three or more mines of the same or similar type, ventilation, and ore composition are available from mines in the same locality as the mine in which the claimant was employed, the average of the measurements for the mines within that locality will be used.

(ii) If there are insufficient actual measurements from mines in the same locality to use the method in paragraph (g)(3)(A) of this section, an average of exposure levels in mines in the same mining district will be used.

(iii) If there is no average of exposure levels from mines in the same mining district, the average of exposure levels in mines in the same state will be used.

(iv) If there are insufficient actual measurements from mines in the same state, the estimated average for the State of Colorado for the relevant year will be used.

(4) With respect to a year between 1942 and 1949, if the claimant was employed in a mine for which no exposure levels are available for that year, then the Program will estimate the annual exposure levels measured in WLs by averaging the two earliest exposure levels recorded from that mine after the year 1941. If there are not two exposure levels recorded from that mine, the Program will estimate the WLs by averaging the two earliest exposure levels after the year 1941 from the mines identified according to the methods set forth in paragraphs (g)(3)(i)–(iv).

(h) The Program will calculate a claimant's total exposure to radiation expressed in WLMs, for purposes of establishing eligibility under § 79.42(c), by adding together the WLMs for each period of employment that the claimant has established. For those periods of a claimant's employment for which the Program has obtained or calculated WLs pursuant to paragraphs (d)–(g) of this section, the Program shall determine WLMs by multiplying the WL by the pertinent time period, measured in months, yielding a claimant's exposure to radiation expressed in WLMs.

§ 79.45 Proof of lung cancer.

(a) In determining whether a claimant developed lung cancer following pertinent employment as a miner, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed lung cancer must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (e) of this section. A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (e)(2) of this section. In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources identified in paragraphs (b), (c), and (d) of this section.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of lung cancer.)

(c) If a claimant was diagnosed as having lung cancer in the State of Arizona, Colorado, Nevada, New Mexico, Utah, or Wyoming, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Program to contact the appropriate state cancer or tumor registry, the Program will, where appropriate, request the relevant information from that registry and will review records that it obtains from the registry. (In cases where the claimant is deceased, the Program will accept as proof of medical condition verification

from the state cancer or tumor registry that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of lung cancer.)

(d) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of lung cancer.)

(e)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted lung cancer. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

(i) Pathology report of tissue biopsy, including, but not limited to, specimens obtained by any of the following methods:

(A) Surgical resection;

(B) Endoscopic endobronchial or transbronchial biopsy;

(C) Bronchial brushings and washings;

(D) Pleural fluid cytology;

(E) Fine needle aspirate;

(F) Pleural biopsy;

(G) Sputum cytology;

(ii) Autopsy report;

(iii) Bronchoscopy report;

(iv) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Operative report;

(D) Radiation therapy summary report;

(E) Oncology summary or consultation report;

(v) Reports of radiographic studies, including:

(A) X-rays of the chest;

(B) Chest tomograms;

(C) Computer-assisted tomography (CT);

(D) Magnetic resonance imaging (MRI);

(vi) Death certificate, provided that it is signed by a physician at the time of death; or

(vii) Any of the forms of documentation enumerated in paragraph (e)(2) of this section.

(2) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:

(i) Either:

(A) An arterial blood gas study administered at rest in a sitting position, or an exercise arterial blood gas test, reflecting values equal to or less than the values set forth in the Tables in Appendix B of this part; or

(B) A written diagnosis by a physician in accordance with § 79.41(o); and

(ii) One of the following:

(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:

(*1*) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO") or subsequent revisions; or

(*2*) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);

(B) High resolution computed tomography scans (commonly known as "HRCT scans"), including computer-assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;

(C) Pathology reports of tissue biopsies; or

(D) Pulmonary function tests indicating restrictive lung function and consisting of three tracings recording the results of the forced expiratory volume in one second (FEV1) and the forced vital capacity (FVC) administered and reported in accordance with the Standardization of Spirometry—1987 Update by the American Thoracic Society, and reflecting values for FEV1 or FVC that are less than or equal to 80% of the predicted value for an individual of the claimant's age, sex, and height, as set forth in the Tables in Appendix A.

(f) The Assistant Director shall treat any documentation described in paragraph (e)(2)(i)(B) or paragraph (e)(2)(ii)(A) of this section as conclusive evidence of the claimant's lung cancer; provided, however, that the Program may subject such documentation to a fair and random audit procedure to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (e)(2)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant. Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (e)(2).

§ 79.46 Proof of nonmalignant respiratory disease.

(a) In determining whether a claimant developed a nonmalignant respiratory disease following pertinent employment as a miner, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed a nonmalignant respiratory disease must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (d)(1) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (d)(3) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources referred to in paragraphs (b) and (c) of this section. With respect to a deceased claimant, the Program will treat as equivalent to a diagnosis of pulmonary fibrosis any diagnosis of "restrictive lung disease" made by a physician employed by the Indian Health Service.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of a nonmalignant respiratory disease.)

(c) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of a nonmalignant respiratory disease.)

(d)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted a nonmalignant respiratory disease, including pulmonary fibrosis, fibrosis of the lung, cor pulmonale, silicosis, and pneumoconiosis. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

(i) Pathology report of tissue biopsy;

(ii) Autopsy report;

(iii) If an x-ray exists, the x-ray and interpretive reports of the x-ray by two NIOSH certified "B" readers classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO"), or subsequent revisions;

(iv) If no x-rays exist, an x-ray report;

(v) Physician summary report;

(vi) Hospital discharge summary report;

(vii) Hospital admitting report;

(viii) Death certificate, provided that it is signed by a physician at the time of death; or

(ix) Any form of documentation enumerated in paragraphs (d)(2) and (d)(3) of this section.

(2) In order to demonstrate that the claimant developed cor pulmonale related to fibrosis of the lung, the claimant or beneficiary must, at a minimum, submit one or more of the following medical records:

(i) Right heart catheterization;

(ii) Cardiology summary or consultation report;

(iii) Electrocardiogram;

(iv) Echocardiogram;

(v) Physician summary report;

(vi) Hospital discharge report;

(vii) Autopsy report;

(viii) Report of physical examination;

(ix) Death certificate, provided that it is signed by a physician at the time of death.

(3) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:

(i) Either:

(A) An arterial blood gas study administered at rest in a sitting position, or an exercise arterial blood gas test, reflecting values equal to or less than the values set forth in the Tables in Appendix B of this part; or

(B) A written diagnosis by a physician in accordance with § 79.41(o); and

(ii) One of the following:

(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:

(*1*) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO"), or subsequent revisions; or

(*2*) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);

(B) High-resolution computed tomography scans (commonly known as "HRCT scans"), including computer-assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;

(C) Pathology reports of tissue biopsies; or

(D) Pulmonary function tests indicating restrictive lung function and consisting of three tracings recording the results of the forced expiratory volume in one second (FEV1) and the forced vital capacity (FVC) administered and reported in accordance with the Standardization of Spirometry—1987 Update by the American Thoracic Society, and reflecting values for FEV1 or FVC that are less than or equal to 80% of the predicted value for an individual of the claimant's age, sex, and height, as set forth in the Tables in Appendix A.

(e) The Assistant Director shall treat any documentation described in paragraph (d)(3)(i)(B) or paragraph (d)(3)(ii)(A) as conclusive evidence of the claimant's nonmalignant respiratory disease; provided, however, that the Program may subject such documentation to a fair and random audit to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (d)(3)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant. Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (d)(3).

Subpart F—Uranium Millers

§ 79.50 Scope of subpart.

The regulations in this subpart define the eligibility criteria for compensation under section 5 of the Act pertaining to millers, i.e., uranium mill workers, and the nature of evidence that will be accepted as proof that a claimant satisfies such criteria. Section 5 of the Act provides for a payment of $100,000 to "millers" who contracted lung cancer, one of a limited number of nonmalignant respiratory diseases, renal cancer, or chronic renal disease, following employment for at least one year as a uranium mill worker in specified states during the period beginning January 1, 1942, and ending December 31, 1971.

§ 79.51 Definitions.

(a) *Chronic nephritis* means an inflammatory process of the kidneys resulting in chronic renal disease.

(b) *Chronic renal disease* means the chronic, progressive, and irreversible destruction of the nephrons. It is exhibited by renal atrophy and diminution of renal function.

(c) *Cor pulmonale* means heart disease, including hypertrophy of the right ventricle, due to pulmonary hypertension secondary to fibrosis of the lung.

(d) *Designated time period* means the period beginning on January 1, 1942, and ending on December 31, 1971.

(e) *Employment for at least one year* means employment for a total of at least one year (12 consecutive or cumulative months).

(f) *Fibrosis of the lung or pulmonary fibrosis* means chronic inflammation and scarring of the pulmonary interstitium and alveoli with collagen deposition and progressive thickening causing pulmonary impairment.

(g) *Kidney tubal tissue injury* means structural damage to the kidney tissues or tubules that results in chronic renal disease.

(h) *Lung cancer* means any physiological condition of the lung, trachea, or bronchus that is recognized under that name or nomenclature by the National Cancer Institute. The term includes in situ lung cancers.

(i) *Miller or uranium mill worker* means a person who operated or otherwise worked in a uranium mill.

(j) *National Institute for Occupational Safety and Health (NIOSH) certified "B" reader* means a physician who is certified as such by NIOSH. A list of certified "B" readers is available from the Radiation Exposure Compensation Program upon request.

(k) *Nonmalignant respiratory disease* means fibrosis of the lung, pulmonary fibrosis, cor pulmonale related to fibrosis of the lung, silicosis, and pneumoconiosis.

(l) *Pneumoconiosis* means a chronic lung disease resulting from inhalation and deposition in the lung of particulate matter, and the tissue reaction to the presence of the particulate matter.

(m) *Readily available documentation* means documents in the possession, custody, or control of the claimant or an immediate family member.

(n) *Renal cancer* means any physiological condition of the kidneys that is recognized under that name or nomenclature by the National Cancer Institute.

(o) *Silicosis* means a pneumoconiosis due to the inhalation of the dust of stone, sand, flint, or other materials containing silicon dioxide, characterized by the formation of pulmonary fibrotic changes.

(p) *Specified state* means Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, or Texas. Additional states may be included, provided:

(1) An Atomic Energy Commission uranium mine was operated in such state at any time during the period beginning on January 1, 1942, and ending on December 31, 1971;

(2) The state submits an application to the Assistant Director (specified in 28 CFR 79.70(a)) to include such state; and

(3) The Assistant Director makes a determination to include such state.

(q) *Uranium mill* means any milling operation involving the processing of uranium ore or vanadium-uranium ore, including carbonate plants and acid leach plants. The term applies to ore-buying stations where ore was weighed and sampled prior to delivery to a mill for processing; "upgrader" or "concentrator" facilities located at the mill or at a remote location where uranium or vanadium-uranium ore was processed prior to delivery to a mill; and pilot plants where uranium ore or vanadium-uranium ore was processed.

(r) *Uranium mine* means any underground excavation, including "dog holes," as well as open-pit, strip, rim, surface, or other aboveground mines the primary or significant purpose of which was the extraction of uranium ore or vanadium-uranium ore.

(s) *Written diagnosis by a physician* means a written determination of the nature of a disease made from a study of the signs and symptoms of a disease that is based on a physical examination of the patient, medical imaging or a chemical, microscopic, microbiologic, immunologic, or pathologic study of physiologic and functional tests, secretions, discharges, blood, or tissue. For purposes of satisfying the requirement of a "written diagnosis by a physician" for living claimants specified in §§ 79.54 and 79.55, a physician submitting a written diagnosis of a nonmalignant respiratory disease or lung cancer must be employed by the Indian Health Service or the Department of Veterans Affairs or be certified by a state medical board, and must have a documented, ongoing physician-patient relationship with the claimant. An "ongoing physician-patient relationship" can include referrals made to specialists from a primary care provider (and accepted by the primary care provider) for purposes of diagnosis or treatment.

§ 79.52 Criteria for eligibility.

To establish eligibility for compensation under this subpart, a claimant or eligible surviving beneficiary of a claimant must establish each of the following:

(a) The claimant was employed as a miller in a specified state;

(b) The claimant was so employed for at least one year (12 consecutive or cumulative months) during the period beginning on January 1, 1942, and ending on December 31, 1971; and

(c) The claimant contracted lung cancer, a nonmalignant respiratory disease, renal cancer, or chronic renal disease (including nephritis and kidney tubal tissue injury) following such employment.

§ 79.53 Proof of employment as a miller.

(a) The Department will accept, as proof of employment for the time period indicated, information contained in any of the following records:

(1) Records created by or gathered by the Public Health Service (PHS) in the course of any health studies of uranium workers during or including the period 1942–1990;

(2) Records of a uranium worker census performed by the PHS at various times during the period 1942–1990;

(3) Records of the Atomic Energy Commission (AEC), or any of its successor agencies; and

(4) Records of federally supported, health-related studies of uranium workers.

(b) The Program will presume that the employment history for the time period indicated in records listed in paragraph (a) is correct. If the claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may provide one or more of the records identified in paragraph (c) of this section, and the Assistant Director will determine whether the employment history indicated in the records listed in paragraph (a) is correct.

(c) If the sources in paragraph (a) of this section do not contain information regarding the claimant's uranium mill employment history, do not contain sufficient information to establish employment for at least one year in a uranium mill during the specified time period to qualify under § 79.52(b), or if a claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may submit records from any of the following sources, which the Assistant Director shall consider (in addition to any sources listed in paragraph (a) of this section) in order to

determine whether the claimant has established the requisite employment history:

(1) Records of any of the specified states, including records of state regulatory agencies, containing information on uranium mill workers and uranium mills;

(2) Records of any business entity that owned or operated a uranium mill, or its successor-in-interest;

(3) Records of the Social Security Administration reflecting the identity of the employer, the years and quarters of employment, and the wages received during each quarter;

(4) Federal or state income tax records that contain relevant statements regarding the claimant's employer and wages;

(5) Records containing factual findings by any governmental judicial body, state worker's compensation board, or any governmental administrative body adjudicating the claimant's rights to any type of benefits (which will be accepted only to prove the fact of and duration of employment in a uranium mill);

(6) Statements in medical records created during the period 1942–1971 indicating or identifying the claimant's employer and occupation;

(7) Records of an academic or scholarly study, not conducted in anticipation of or in connection with any litigation, and completed prior to 1990; or

(8) Any other contemporaneous record that indicates or identifies the claimant's occupation or employer.

(d) To the extent that the documents submitted from the sources identified in this section do not so indicate, the claimant or eligible surviving beneficiary must set forth under oath on the standard claim form the following information, if known:

(1) The names of the mill employers for which the claimant worked during the time period identified in the documents;

(2) The names and locations of any mills in which the claimant worked;

(3) The actual time period the claimant worked in each mill; and

(4) The claimant's occupation in each mill.

(e) The Program may, for the purpose of verifying information submitted pursuant to this section, require the claimant or any eligible surviving beneficiary to provide an authorization to release any record identified in this section, in accordance with the provisions of § 79.72(c).

(f) In determining whether a claimant satisfies the employment criteria of the Act, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. If the Assistant Director concludes that the claimant has not satisfied the employment requirements of the Act, the claimant or eligible surviving beneficiary will be notified and afforded the opportunity, in accordance with the provisions of § 79.72(c), to submit additional records to establish that the statutory employment criteria are satisfied.

§ 79.54 Proof of lung cancer.

(a) In determining whether a claimant developed lung cancer following pertinent employment as a miller, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed lung cancer must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (e) of this section. A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (e)(2) of this section. In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources identified in paragraphs (b), (c) and (d) of this section.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of lung cancer.)

(c) If a claimant was diagnosed as having lung cancer in the State of Arizona, Colorado, Nevada, New Mexico, Utah, or Wyoming, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Program to contact the appropriate state cancer or tumor registry, the Program will, where appropriate, request the relevant information from that registry and will review records that it obtains from the registry. (In cases where the claimant is deceased, the Program will accept as proof of medical condition verification from the state cancer or tumor registry that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of lung cancer.)

(d) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of lung cancer.)

(e)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted lung cancer. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

(i) Pathology report of tissue biopsy, including, but not limited to, specimens obtained by any of the following methods:

(A) Surgical resection;

(B) Endoscopic endobronchial or transbronchial biopsy;

(C) Bronchial brushings and washings;

(D) Pleural fluid cytology;

(E) Fine needle aspirate;

(F) Pleural biopsy;

(G) Sputum cytology;

(ii) Autopsy report;

(iii) Bronchoscopy report;

(iv) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Operative report;

(D) Radiation therapy summary report;

(E) Oncology summary or consultation report;

(v) Reports of radiographic studies, including:

(A) X-rays of the chest;
(B) Chest tomograms;
(C) Computer-assisted tomography (CT);
(D) Magnetic resonance imaging (MRI);
(vi) Death certificate, provided that it is signed by a physician at the time of death; or
(vii) Any type of documentation enumerated in paragraph (e)(2) of this section.
(2) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:
(i) Either:
(A) An arterial blood gas study administered at rest in a sitting position, or an exercise arterial blood gas test, reflecting values equal to or less than the values set forth in the Tables in Appendix B of this part; or
(B) A written diagnosis by a physician in accordance with § 79.51(s); and
(ii) One of the following:
(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:
(*1*) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO") or subsequent revisions; or
(*2*) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);
(B) High-resolution computed tomography scans (commonly known as "HRCT scans"), including computer assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;
(C) Pathology reports of tissue biopsies; or
(D) Pulmonary function tests indicating restrictive lung function and consisting of three tracings recording the results of the forced expiratory volume in one second (FEV1) and the forced vital capacity (FVC) administered and reported in accordance with the Standardization of Spirometry—1987 Update by the American Thoracic Society, and reflecting values for FEV1 or FVC that are less than or equal to 80% of the predicted value for an individual of the claimant's age, sex, and height, as set forth in the Tables in Appendix A.
(f) The Assistant Director shall treat any documentation described in paragraph (e)(2)(i)(B) or paragraph (e)(2)(ii)(A) as conclusive evidence of the claimant's lung cancer; provided, however, that the Program may subject such documentation to a fair and random audit procedure to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (e)(2)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant. Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (e)(2).

§ 79.55 Proof of nonmalignant respiratory disease.

(a) In determining whether a claimant developed a nonmalignant respiratory disease following pertinent employment as a miller, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed a nonmalignant respiratory disease must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (d)(1) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (d)(3) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources referred to in paragraphs (b) and (c) of this section. With respect to a deceased claimant, the Program will treat as equivalent to a diagnosis of pulmonary fibrosis any diagnosis of "restrictive lung disease" made by a physician employed by the Indian Health Service.
(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of a nonmalignant respiratory disease.)
(c) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of a nonmalignant respiratory disease.)
(d)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted a nonmalignant respiratory disease, including pulmonary fibrosis, fibrosis of the lung, cor pulmonale, silicosis, and pneumoconiosis. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:
(i) Pathology report of tissue biopsy;
(ii) Autopsy report;
(iii) If an x-ray exists, the x-ray and interpretive reports of the x-ray by two NIOSH certified "B" readers classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO"), or subsequent revisions;
(iv) If no x-rays exist, an x-ray report;
(v) Physician summary report;

(vi) Hospital discharge summary report;
(vii) Hospital admitting report;
(viii) Death certificate, provided that it is signed by a physician at the time of death; or
(ix) Any of the types of documentation enumerated in paragraphs (d)(2) and (d)(3) of this section.
(2) In order to demonstrate that the claimant developed cor pulmonale related to fibrosis of the lung, the claimant or beneficiary must, at a minimum, submit one or more of the following medical records:
(i) Right heart catheterization;
(ii) Cardiology summary or consultation report;
(iii) Electrocardiogram;
(iv) Echocardiogram;
(v) Physician summary report;
(vi) Hospital discharge report;
(vii) Autopsy report;
(viii) Report of physical examination;
(ix) Death certificate, provided that it is signed by a physician at the time of death.
(3) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:
(i) Either:
(A) An arterial blood gas study administered at rest in a sitting position, or an exercise arterial blood gas test, reflecting values equal to or less than the values set forth in the Tables in Appendix B of this part; or
(B) A written diagnosis by a physician in accordance with § 79.51(s); and
(ii) One of the following:
(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:
(*1*) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO") or subsequent revisions; or
(*2*) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);
(B) High-resolution computed tomography scans (commonly known as "HRCT scans"), including computer-assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;
(C) Pathology reports of tissue biopsies; or
(D) Pulmonary function tests indicating restrictive lung function and consisting of three tracings recording the results of the forced expiratory volume in one second (FEV1) and the forced vital capacity (FVC) administered and reported in accordance with the Standardization of Spirometry—1987 Update by the American Thoracic Society, and reflecting values for FEV1 or FVC that are less than or equal to 80% of the predicted value for an individual of the claimant's age, sex, and height, as set forth in the Tables in Appendix A.
(e) The Assistant Director shall treat any documentation described in paragraph (d)(3)(i)(B) or paragraph (d)(3)(ii)(A) of this section as conclusive evidence of the claimant's nonmalignant respiratory disease; provided, however, that the Program may subject such documentation to a fair and random audit to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (d)(3)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant. Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (d)(3).

§ 79.56 Proof of renal cancer.

(a) In determining whether a claimant developed renal cancer following pertinent employment as a miller, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed renal cancer must be supported by medical documentation. In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources referred to in paragraphs (b) and (c) of this section.
(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. The Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of renal cancer.
(c) If a claimant was diagnosed as having renal cancer in the State of Arizona, Colorado, Nevada, New Mexico, Utah, or Wyoming, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Program to contact the appropriate state cancer or tumor registry, the Program will, where appropriate, request the relevant information from that registry and will review records that it obtains from the registry. The Program will accept as proof of medical condition verification from the state cancer or tumor registry that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of renal cancer.
(d) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. The Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of renal cancer.
(e) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted renal cancer. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:
(1) Pathology report of tissue biopsy or resection;
(2) Autopsy report;

(3) One of the following summary medical reports:
(i) Physician summary report;
(ii) Hospital discharge summary report;
(iii) Operative report;
(iv) Radiotherapy summary report;
(v) Medical oncology summary or consultation report;
(4) Report of one of the following radiology examinations:
(i) Computerized tomography (CT) scan;
(ii) Magnetic resonance imaging (MRI); or
(5) Death certificate, provided that it is signed by a physician at the time of death.

§ 79.57 Proof of chronic renal disease.

(a) In determining whether a claimant developed chronic renal disease following pertinent employment as a miller, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed chronic renal disease must be supported by medical documentation. The Assistant Director shall not conclude that a claimant developed chronic renal disease if there is evidence of any of the following:
(1) Volume depletion as a cause of elevated creatinine;
(2) Urinary obstruction as a cause of elevated creatinine;
(3) Diabetes mellitus; or
(4) Diabetic nephropathy (by pathology report of tissue biopsy or autopsy, or heavy proteinuria in diabetic patient).
(b) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted chronic renal disease. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty.
(1) Pathology report of tissue biopsy;
(2) If blood or renal function tests exist:
(i) Plasma creatinine values greater than age and gender adjusted normal values; and
(ii) Glomerular filtration tests (using either creatinine or iothalamate clearance) with values less than age and gender adjusted normal values; and
(iii) Bilateral small kidneys by ultrasound, CT scan, or MRI scan with parenchymal changes consistent with chronic renal disease;
(3) Autopsy report;
(4) Physician summary report;
(5) Hospital discharge summary report;
(6) Hospital admitting report; or
(7) Death certificate, provided that it is signed by a physician at the time of death.

Subpart G—Ore Transporters

§ 79.60 Scope of subpart.

The regulations in this subpart define the eligibility criteria for compensation under section 5 of the Act pertaining to uranium or vanadium-uranium ore transporters and the nature of evidence that will be accepted as proof that a claimant satisfies such criteria. Section 5 of the Act provides for a payment of $100,000 to persons who contracted lung cancer, one of a limited number of nonmalignant respiratory diseases, renal cancer, or chronic renal disease, following employment for at least one year as a transporter of uranium ore or vanadium-uranium ore from a uranium mine or uranium mill located in a specified state during the period beginning January 1, 1942, and ending December 31, 1971.

§ 79.61 Definitions.

(a) *Chronic nephritis* means an inflammatory process of the kidneys resulting in chronic renal disease.
(b) *Chronic renal disease* means the chronic, progressive, and irreversible destruction of the nephrons. It is exhibited by renal atrophy and diminution of renal function.
(c) *Cor pulmonale* means heart disease, including hypertrophy of the right ventricle, due to pulmonary hypertension secondary to fibrosis of the lung.
(d) *Designated time period* means the period beginning on January 1, 1942, and ending on December 31, 1971.
(e) *Employment as an ore transporter* means employment involving the transporting or hauling of uranium ore or vanadium-uranium ore from a uranium mine or uranium mill, including the transportation or hauling of ore from an ore buying station, "upgrader," "concentrator" facility, or pilot plant area of a mill by means of truck, rail or barge.
(f) *Employment for at least one year* means employment for a total of at least one year (12 consecutive or cumulative months).
(g) *Fibrosis of the lung or pulmonary fibrosis* means chronic inflammation and scarring of the pulmonary interstitium and alveoli with collagen deposition and progressive thickening causing pulmonary impairment.
(h) *Kidney tubal tissue injury* means structural damage to the kidney tissues or tubules that results in chronic renal disease.
(i) *Lung cancer* means any physiological condition of the lung, trachea, or bronchus that is recognized under that name or nomenclature by the National Cancer Institute. The term includes in situ lung cancers.
(j) *National Institute for Occupational Safety and Health (NIOSH) certified "B" reader* means a physician who is certified as such by NIOSH. A list of certified "B" readers is available from the Radiation Exposure Compensation Program upon request.
(k) *Nonmalignant respiratory disease* means fibrosis of the lung, pulmonary fibrosis, cor pulmonale related to fibrosis of the lung, silicosis, and pneumoconiosis.
(l) *Pneumoconiosis* means a chronic lung disease resulting from inhalation and deposition in the lung of particulate matter, and the tissue reaction to the presence of the particulate matter.
(m) *Readily available documentation* means documents in the possession, custody, or control of the claimant or an immediate family member.
(n) *Renal cancer* means any physiological condition of the kidneys that is recognized under that name or nomenclature by the National Cancer Institute.
(o) *Silicosis* means a pneumoconiosis due to the inhalation of the dust of stone, sand, flint or other materials containing silicon dioxide, characterized by the formation of pulmonary fibrotic changes.
(p) *Specified state* means Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, or Texas. Additional states may be included, provided:
(1) An Atomic Energy Commission uranium mine was operated in such state at any time during the period beginning on January 1, 1942, and ending on December 31, 1971;
(2) The state submits an application to the Assistant Director (specified in 28 CFR 79.70(a)) to include such state; and
(3) The Assistant Director makes a determination to include such state.
(q) *Uranium mill* means any milling operation involving the processing of uranium ore or vanadium-uranium ore, including carbonate plants and acid leach plants. The term applies to ore-buying stations where ore was weighed and sampled prior to delivery to a mill for processing; "upgrader" or "concentrator" facilities located at the mill or at a remote location where uranium or vanadium-uranium ore was processed prior to delivery to a mill; and pilot plants where uranium ore or vanadium-uranium ore was processed.

(r) *Uranium mine* means any underground excavation, including "dog holes," as well as open-pit, strip, rim, surface, or other aboveground mines the primary or significant purpose of which was the extraction of uranium ore or vanadium-uranium ore.

(s) *Written diagnosis by a physician* means a written determination of the nature of a disease made from a study of the signs and symptoms of a disease that is based on a physical examination of the patient, medical imaging or a chemical, microscopic, microbiologic, immunologic, or pathologic study of physiologic and functional tests, secretions, discharges, blood, or tissue. For purposes of satisfying the requirement of a "written diagnosis by a physician" for living claimants specified in §§ 79.64 and 79.65, a physician submitting a written diagnosis of a nonmalignant respiratory disease or lung cancer must be employed by the Indian Health Service or the Department of Veterans Affairs or be certified by a state medical board, and must have a documented, ongoing physician-patient relationship with the claimant. An "ongoing physician-patient relationship" can include referrals made to specialists from a primary care provider (and accepted by the primary care provider) for purposes of diagnosis or treatment.

§ 79.62 Criteria for eligibility.

To establish eligibility for compensation under this subpart, a claimant or eligible surviving beneficiary of a claimant must establish each of the following:

(a) The claimant was employed as an ore transporter in a specified state;

(b) The claimant was so employed for at least one year (12 consecutive or cumulative months) during the period beginning on January 1, 1942, and ending on December 31, 1971; and

(c) The claimant contracted lung cancer, a nonmalignant respiratory disease, renal cancer, or chronic renal disease (including nephritis and kidney tubal tissue injury) following such employment.

§ 79.63 Proof of employment as an ore transporter.

(a) The Department will accept, as proof of employment for the time period indicated, information contained in any of the following records:

(1) Records created by or gathered by the Public Health Service (PHS) in the course of any health studies of uranium workers during or including the period 1942–1990;

(2) Records of a uranium worker census performed by the PHS at various times during the period 1942–1990;

(3) Records of the Atomic Energy Commission (AEC), or any of its successor agencies; and

(4) Records of federally supported, health-related studies of uranium workers.

(b) The employment history for the time period indicated in such records will be presumed to be correct. If the claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may provide one or more of the records identified in paragraph (c) of this section, and the Assistant Director will determine whether the employment history indicated in the records listed in paragraph (a) is correct.

(c) If the sources in paragraph (a) of this section do not contain information regarding the claimant's ore transporting employment history, do not contain sufficient information to establish employment for at least one year as an ore transporter during the specified time period to qualify under § 79.62(b), or if a claimant or eligible surviving beneficiary wishes to contest the accuracy of such records, then the claimant or eligible surviving beneficiary may submit records from any of the following sources, which the Assistant Director shall consider (in addition to any sources listed in paragraph (a) of this section) in order to determine whether the claimant has established the requisite employment history:

(1) Records of any of the specified states, including records of state regulatory agencies, containing information on uranium ore transporters and ore-transporting companies;

(2) Records of any business entity that owned or operated an ore-transporting company, or its successor-in-interest;

(3) Records of the Social Security Administration reflecting the identity of the employer, the years and quarters of employment, and the wages received during each quarter;

(4) Federal or state income tax records that contain relevant statements regarding the claimant's employer and wages;

(5) Records containing factual findings by any governmental judicial body, state worker's compensation board, or any governmental administrative body adjudicating the claimant's rights to any type of benefits (which will be accepted only to prove the fact of and duration of employment as an ore transporter);

(6) Statements in medical records created during the period 1942–1971 indicating or identifying the claimant's employer and occupation;

(7) Records of an academic or scholarly study, not conducted in anticipation of or in connection with any litigation, and completed prior to 1990; or

(8) Any other contemporaneous record that indicates or identifies the claimant's occupation or employer.

(d) To the extent that the documents submitted from the sources identified in this section do not so indicate, the claimant or eligible surviving beneficiary must set forth under oath on the standard claim form the following information, if known:

(1) The name or other identifying symbol of each employer for which the claimant worked during the time period identified in the documents;

(2) The name of the mine or mill from which uranium or uranium-vanadium ore was transported;

(3) The county and state in which the mine or mill was located;

(4) The actual time period the claimant worked as an ore transporter; and

(5) The method of transportation used to transport the ore.

(e) The Program may, for the purpose of verifying information submitted pursuant to this section, require the claimant or any eligible surviving beneficiary to provide an authorization to release any record identified in this section, in accordance with the provisions of § 79.72(c).

(f) In determining whether a claimant satisfies the employment criteria of the Act, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. If the Assistant Director concludes that the claimant has not satisfied the employment requirements of the Act, the claimant or eligible surviving beneficiary will be notified and afforded the opportunity, in accordance with the provisions of § 79.72(c), to submit additional records to establish that the statutory employment criteria are satisfied.

§ 79.64 Proof of lung cancer.

(a) In determining whether a claimant developed lung cancer following pertinent employment as an ore transporter, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed lung cancer must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (e) of this

section. A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (e)(2) of this section. In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources identified in paragraphs (b), (c), and (d) of this section.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of lung cancer.)

(c) If a claimant was diagnosed as having lung cancer in the State of Arizona, Colorado, Nevada, New Mexico, Utah or Wyoming, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Program to contact the appropriate state cancer or tumor registry, the Program will, where appropriate, request the relevant information from that registry and will review records that it obtains from the registry. (In cases where the claimant is deceased, the Program will accept as proof of medical condition verification from the state cancer or tumor registry that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of lung cancer.)

(d) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of lung cancer.)

(e)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted lung cancer. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

(i) Pathology report of tissue biopsy, including, but not limited to, specimens obtained by any of the following methods:

(A) Surgical resection;

(B) Endoscopic endobronchial or transbronchial biopsy;

(C) Bronchial brushings and washings;

(D) Pleural fluid cytology;

(E) Fine needle aspirate;

(F) Pleural biopsy;

(G) Sputum cytology;

(ii) Autopsy report;

(iii) Bronchoscopy report;

(iv) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Operative report;

(D) Radiation therapy summary report;

(E) Oncology summary or consultation report;

(v) Reports of radiographic studies, including:

(A) X-rays of the chest;

(B) Chest tomograms;

(C) Computer-assisted tomography (CT);

(D) Magnetic resonance imaging (MRI);

(vi) Death certificate, provided that it is signed by a physician at the time of death; or

(vii) Any of the forms of documentation enumerated in paragraph (e)(2) of this section.

(2) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:

(i) Either:

(A) An arterial blood gas study administered at rest in a sitting position, or an exercise arterial blood gas test, reflecting values equal to or less than the values set forth in the Tables in Appendix B of this part; or

(B) A written diagnosis by a physician in accordance with § 79.61(s); and

(ii) One of the following:

(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:

(*1*) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO") or subsequent revisions; or

(*2*) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);

(B) High resolution computed tomography scans (commonly known as "HRCT scans"), including computer-assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;

(C) Pathology reports of tissue biopsies; or

(D) Pulmonary function tests indicating restrictive lung function and consisting of three tracings recording the results of the forced expiratory volume in one second (FEV1) and the forced vital capacity (FVC) administered and reported in accordance with the Standardization of Spirometry—1987 Update by the American Thoracic Society, and reflecting values for FEV1 or FVC that are less than or equal to 80% of the predicted value for an individual of the claimant's age, sex, and height, as set forth in the Tables in Appendix A.

(f) The Assistant Director shall treat any documentation described in paragraph (e)(2)(i)(B) or paragraph (e)(2)(ii)(A) of this section as conclusive evidence of the claimant's lung cancer; provided, however, that the Program may subject such documentation to a fair and random audit procedure to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (e)(2)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant.

Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (e)(2).

§ 79.65 Proof of nonmalignant respiratory disease.

(a) In determining whether a claimant developed a nonmalignant respiratory disease following pertinent employment as an ore transporter, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed a nonmalignant respiratory disease must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (d)(1) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). A living claimant also may submit any form of medical documentation. However, a living claimant must at a minimum submit the medical documentation required in paragraph (d)(3) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources referred to in paragraphs (b) and (c) of this section. With respect to a deceased claimant, the Program will treat as equivalent to a diagnosis of pulmonary fibrosis any diagnosis of "restrictive lung disease" made by a physician employed by the Indian Health Service.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of a nonmalignant respiratory disease.)

(c) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of a nonmalignant respiratory disease.)

(d)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted a nonmalignant respiratory disease, including pulmonary fibrosis, fibrosis of the lung, cor pulmonale, silicosis and pneumoconiosis. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty.

(i) Pathology report of tissue biopsy;

(ii) Autopsy report;

(iii) If an x-ray exists, the x-ray and interpretive reports of the x-ray by two NIOSH certified "B" readers classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO"), or subsequent revisions;

(iv) If no x-rays exist, an x-ray report;

(v) Physician summary report;

(vi) Hospital discharge summary report;

(vii) Hospital admitting report;

(viii) Death certificate, provided that it is signed by a physician at the time of death; or

(ix) Any form of documentation enumerated in paragraphs (d)(2) and (d)(3) of this section.

(2) In order to demonstrate that the claimant developed cor pulmonale related to fibrosis of the lung, the claimant or beneficiary must, at a minimum, submit one or more of the following medical records:

(i) Right heart catheterization;

(ii) Cardiology summary or consultation report;

(iii) Electrocardiogram;

(iv) Echocardiogram;

(v) Physician summary report;

(vi) Hospital discharge report;

(vii) Autopsy report;

(viii) Report of physical examination;

(ix) Death certificate, provided that it is signed by a physician at the time of death.

(3) Notwithstanding any other documentation provided, a living claimant must at a minimum provide the following medical documentation:

(i) Either:

(A) An arterial blood gas study administered at rest in a sitting position, or an exercise arterial blood gas test, reflecting values equal to or less than the values set forth in the Tables in Appendix B of this part; or

(B) A written diagnosis by a physician in accordance with § 79.61(s); and

(ii) One of the following:

(A) A chest x-ray on full-size film administered in accordance with standard techniques accompanied by:

(*1*) Interpretive reports of the x-ray by two NIOSH certified "B" readers, rating the film at quality 1 or 2 and classifying the existence of disease of category 1/0 or higher according to a 1980 report of the International Labor Office (known as the "ILO"), or subsequent revisions; or

(*2*) Medical documentation interpreting the chest x-ray from a physician employed by the Indian Health Service or the Department of Veterans Affairs who has a documented, ongoing physician-patient relationship with the claimant (which may include referrals to physicians employed by the Indian Health Service or the Department of Veterans Affairs for the purposes of diagnosis or treatment);

(B) High-resolution computed tomography scans (commonly known as "HRCT scans"), including computer-assisted tomography scans (commonly known as "CAT scans"), magnetic resonance imaging scans (commonly known as "MRI scans"), and positron emission tomography scans (commonly known as "PET scans"), and interpretive reports of such scans;

(C) Pathology reports of tissue biopsies; or

(D) Pulmonary function tests indicating restrictive lung function and consisting of three tracings recording the results of the forced expiratory volume in one second (FEV1) and the forced vital capacity (FVC) administered and reported in accordance with the Standardization of Spirometry—1987 Update by the American Thoracic Society, and reflecting values for FEV1 or FVC that are less than or equal to 80% of the predicted value for an individual of the claimant's age, sex, and height, as set forth in the Tables in Appendix A.

(e) The Assistant Director shall treat any documentation described in paragraph (d)(3)(i)(B) or paragraph (d)(3)(ii)(A) as conclusive evidence of

the claimant's nonmalignant respiratory disease; provided, however, that the Program may subject such documentation to a fair and random audit to guarantee its authenticity and reliability for purposes of treating it as conclusive evidence; and provided further that, in order to be treated as conclusive evidence, a written diagnosis described in paragraph (d)(3)(i)(B) must be by a physician who is employed by the Indian Health Service or the Department of Veterans Affairs or who is certified by a state medical board, and who must have a documented, ongoing physician-patient relationship with the claimant. Notwithstanding the conclusive effect given to certain evidence, nothing in this paragraph shall be construed as relieving a living claimant of the obligation to provide the Program with the forms of documentation required under paragraph (d)(3).

§ 79.66 Proof of renal cancer.

(a) In determining whether a claimant developed renal cancer following pertinent employment as an ore transporter, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed renal cancer must be supported by medical documentation. In all cases, the Program will review submitted medical documentation, and, in addition and where appropriate, will review any pertinent records discovered within the sources referred to in paragraphs (b) and (c) of this section.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. The Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of renal cancer.

(c) If a claimant was diagnosed as having renal cancer in the State of Arizona, Colorado, Nevada, New Mexico, Utah or Wyoming, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Program to contact the appropriate state cancer or tumor registry, the Program will, where appropriate, request the relevant information from that registry and will review records that it obtains from the registry. The Program will accept as proof of medical condition verification from the state cancer or tumor registry that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of renal cancer.

(d) If medical records regarding the claimant were gathered during thecourse of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. The Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of renal cancer.

(e) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted renal cancer. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

(1) Pathology report of tissue biopsy or resection;

(2) Autopsy report;

(3) One of the following summary medical reports:

(i) Physician summary report;

(ii) Hospital discharge summary report;

(iii) Operative report;

(iv) Radiotherapy summary report;

(v) Medical oncology summary or consultation report;

(4) Report of one of the following radiology examinations:

(i) Computerized tomography (CT) scan;

(ii) Magnetic resonance imaging (MRI); or

(5) Death certificate, provided that it is signed by a physician at the time of death.

§ 79.67 Proof of chronic renal disease.

(a) In determining whether a claimant developed chronic renal disease following pertinent employment as an ore transporter, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed chronic renal disease must be supported by medical documentation. The Assistant Director shall not conclude that a claimant developed chronic renal disease if there is evidence of any of the following:

(1) Volume depletion as a cause of elevated creatinine;

(2) Urinary obstruction as a cause of elevated creatinine;

(3) Diabetes mellitus; or

(4) Diabetic nephropathy (by pathology report of tissue biopsy or autopsy, or heavy proteinuria in diabetic patient).

(b) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted chronic renal disease. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty.

(1) Pathology report of tissue biopsy;

(2) If blood or renal function tests exist:

(i) Plasma creatinine values greater than age and gender adjusted normal values; and

(ii) Glomerular filtration tests (using either creatinine or iothalamate clearance) with values less than age and gender adjusted normal values; and

(iii) Bilateral small kidneys by ultrasound, CT scan, or MRI scan with parenchymal changes consistent with chronic renal disease;

(3) Autopsy report;

(4) Physician summary report;

(5) Hospital discharge summary report;

(6) Hospital admitting report; or

(7) Death certificate, provided that it is signed by a physician at the time of death.

Subpart H—Procedures

* * * * *

§ 79.74 Representatives and fees.

(a) *Representation.* In submitting and presenting a claim to the Program, a claimant or beneficiary may, but need not, be represented by an attorney or by a representative of an Indian tribe. To the extent that resources are available, the Assistant Director will provide assistance to all persons who file claims for compensation.

(b) *Fees.* (1) Notwithstanding any contract, the representative of a claimant or beneficiary, along with any

assistants or experts retained on behalf of the claimant or beneficiary, may not receive from a claimant or beneficiary any fee for services rendered, and costs incurred, in connection with an unsuccessful claim, and, except as provided in paragraph (b)(2) of this section, may receive from a claimant or beneficiary no more than two percent of the total award for all services rendered, and costs incurred, in connection with a successful claim.

(2)(i) If a representative before July 10, 2000, entered into a contract with the claimant or beneficiary for services with respect to a particular claim, then that representative may receive up to ten percent of the total award for services rendered in connection with that claim.

(ii) If a representative resubmits a previously denied claim, then that representative may receive up to ten percent of the total award to the claimant or beneficiary for services rendered in connection with that claim. Resubmitted claims include claims that were previously denied and refiled under the Act, claims administratively appealed to the designated Appeals Officer, and actions for review filed in United States District Court.

(3) Any violation of this subsection shall result in a fine of not more than $5,000.

(c) *Attorney qualifications.* An attorney may not represent a claimant or beneficiary unless the attorney is a member in good standing of the bar of the highest court of a state. If a claimant or beneficiary is represented by an attorney, then the attorney must submit the following documents to the Program along with the claim:

(1) A statement of the attorney's membership in good standing of the bar of the highest court of a state; and

(2) A signed representation agreement, retainer agreement, fee agreement, or contract, documenting the attorney's authorization to represent the claimant or beneficiary.

Dated: July 24, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–19222 Filed 8–6–02; 8:45 am]

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H.R. 2175/P.L. 107–207

Born-Alive Infants Protection Act of 2002 (Aug. 5, 2002; 116 Stat. 926)

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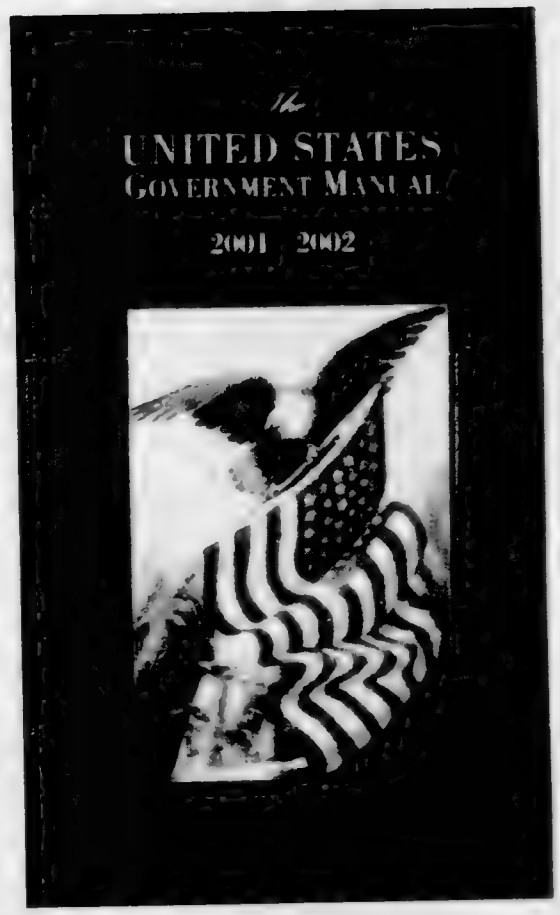

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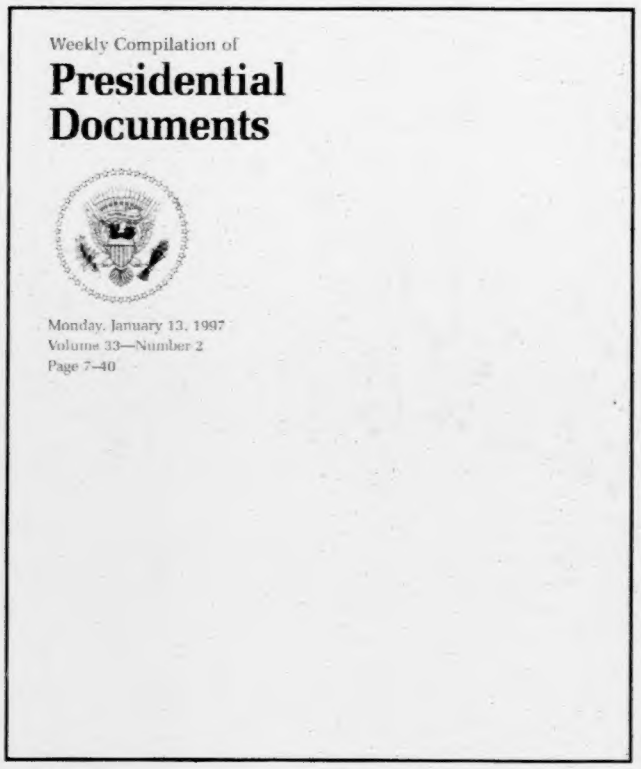

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